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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

J. Scott Kunst .....Respondent,

v.

David Loree .....Appellant.

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	CASE NO. 2006-CP-39-1826
J. Scott Kunst,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
David Loree,	)	
	)	
Defendant.	)	
	)	

2010 NOV -5 P 2:12
COURT
COUNTY
CAROLINA

This defamation case came before me on September 20, 2010 on Defendant David Loree's ("Loree" or "Defendant") Motion for Summary Judgment on the ground of collateral estoppel. Plaintiff, J. Scott Kunst ("Kunst" or "Plaintiff"), appeared *pro se* and T. S. Stern, Jr. of Covington, Patrick, Hagins, Stern & Lewis, P.A. appeared for Loree. The issue before the Court is whether Loree is entitled to Summary Judgment because the affirmative defense of "truth" to this defamation action has been established as a matter of law by the final adjudication of the case of Gaby v. Kunstwerke Corporation, et al. C.A. No 2006-CP-23-2943 (hereinafter the "Greenville action'). For the reasons discussed below, this Court grants summary judgment in favor of Loree. The material facts are not in dispute.

Undisputed Facts

This case arises out of the construction of a residence in the Reserve in Pickens County. Richard and Barbara Gaby contracted with Kunst for the design and with his now defunct business Kunstwerke Corporation ("Kunstwerke") to construct the residence. Loree worked for the Gabys and acted as their agent in matters related to the construction. The construction contract provided, "the owner shall pay contractor for materials at the cost paid by contractor for

those materials with no mark up, and for labor costs incurred by the contractor with no mark up on labor costs." The agreement further provided for the payment of a fixed fee to Kunstwerke. In late 2005 and in early 2006, disputes arose when subcontractors complained to Loree about non-payment but the Gabys records showed that they had fully paid Kunstwerke.

On May 2, 2006, the Gabys sued Kunstwerke and Kunst for breach of contract, breach of contract accompanied by fraudulent acts, conversion, and unfair and deceptive trade practices pursuant to S.C. Code Ann. § 39-5-10 *et seq*. The Defendants failed to timely answer the Gabys' Complaint, and an Order of Default was entered on June 20, 2006. On July 27, 2006, Kunst and Kunstwerke were served with notice of a September 5, 2006 damages hearing. On August 28, 2006, Kunst and Kunstwerke filed a Motion for Relief from Default claiming that his failure to respond was excusable and that there were meritorious defenses. That motion was heard and denied by Judge Patterson on December 12, 2006.

A lengthy hearing on damages in the Greenville action was held on March 13, 2007. On May 16, 2007, the court entered judgment against Kunst and Kunstwerke on all causes of action for actual damages in the amount of $353,993.91[1] together with punitive damages of $70,798.00 and attorney's fees and costs in the amount of $35,807.41. The testimony at the hearing established and the court adopted at least the following facts:

1. The Gabys paid a total of $143,000 to Kunstwerke to pay to Paul Anderson Design, but of those funds only $68,000 had been paid to Paul Anderson;
2. The Gabys overpaid Kunstwerke by $32,000 because of a duplicate payment of that amount that it made to Paul Anderson Design;
3. The Gabys paid $164,514 to Kunstwerke to satisfy an obligation to a supplier, Window and Door Concepts, but only $85,000 of that money was paid to

[1] As of today's date the value of the judgment with accrued interest is well over $600,000.

Window and Door Concepts resulting in an overpayment by the Gabys of $84,835.86.

(See Order of Judge Welmaker, page 2)

The foregoing specific findings were included in the court's assessment of damages of $353,993.91 which consisted of duplicate payments and overpayments. These findings support the conclusion that Kunstwerke and its principal, Kunst, converted monies and failed to pay its subcontractors with funds paid by the Gabys in violation of S.C. Code Ann § 29-7-20(1), which provides:

> "A contractor or subcontractor who, for other purposes than paying the money loaned upon such contract, transfers, invests or expends and fails to pay a laborer, subcontractor, or materialman out of the money received as provided in Section 29-7-10 is guilty of a misdemeanor and, upon conviction, when the consideration for the work and material exceeds the value of one hundred dollars must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not less than three months nor more than six months and when such consideration does not exceed the value of one hundred dollars must be fined not more than five hundred dollars or imprisoned not longer than thirty days." (emphasis added)

Moreover, Judge Welmaker found that Kunst and Kunstwerke converted funds and engaged in unfair and deceptive trade practices in violation of S.C. Code Ann. § 39-5-10 *et. seq.* It is important to note that Loree, the Gabys' agent who dealt with the construction, was a key witness at the hearing on damages and was cross-examined by Kunst and counsel for Kunstwerke.

It has been established by prior and final adjudication of the Greenville action that Kunst and Kunstwerke breached the contract with the Gabys by failing to pay certain subcontractors and suppliers, resulting in duplicative and overcharges to the Gabys. *See* Order of the Honorable G. Edward Welmaker dated March 26, 2007, 2009-UP-028 (Ct. App. January 14, 2009), Order of Court of Appeals Denying Re-Hearing, June 10, 2010 Order Denying Petition for Writ of

Certiorari. The Court further determined that these actions constituted breach of contract accompanied by fraudulent acts, conversion and unfair and deceptive trade practices.

On December 19, 2006, Plaintiff Kunst brought the present action in Pickens County against the Gabys and Loree. The Gabys moved to dismiss Kunst's claim because his newly filed claim in Pickens was a compulsory counterclaim in the Greenville action, and thus was barred by the default. Kunst brought claims against Loree for tortuous [sic] interference, unjust enrichment, and slander *per se*. On February 2, 2007, Loree moved to dismiss Kunst's claims for tortuous [sic] interference and unjust enrichment. This court granted the motion as to the tortuous (sic) interference claim, but denied it as to defamation. On June 10, 2010, Kunst lost his final appeal of the Greenville action when the South Carolina Supreme Court denied his Petition for Certiorari.

Conclusions of Law

Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. Wilson v. Moseley, 327 S.C. 144, 146, 488 S.E.2d 862, 865 (1997). In ruling on a motion for summary judgment the evidence and all inferences which can be reasonably drawn therefrom must be viewed in a light most favorable to a non-moving party. Id.

A. The truth of the defamatory statements has been established in by the final adjudication of the Greenville action.

Kunst alleges that Loree made the following defamatory statements concerning him:

1. Scott Kunst has been caught commingling his clients' money.
2. Scott Kunst has embezzled money from all of his clients.
3. The money was hidden somewhere and that's why I'm here to investigate where it went.

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4. I do know that some of it went to a luxury car and foreign trips.
5. I would just like to get my hands on him.
6. Scott is going to jail.
7. Scott Kunst took $400,000 from the Gaby project and had left his other clients in a similar situation.
8. Scott Kunst provided his clients with dummy invoices from dummy companies to take money from his clients.
9. Kunst took out an insurance policy, billed the Gabys, then canceled the policy and kept the money.

(Plaintiff's Memorandum in Opposition of Summary Judgment, Exhibits B-D)

Even if the alleged statements are deemed to be true, the defense of truth has been established by adjudicated facts underlying the favorable conclusion of the Greenville action and further litigation is barred under the principles of collateral estoppel. [2]

Where evidence establishes that statements are substantially true, there is no action for defamation. Ross v. Columbia Newspapers, Inc., 266 S.C. 775, 221 S.E.2d 770 (1976) (sufficient defense made where evidence established statements substantially true); Parker v. Evening Post Publishing Co., 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994, *cert. denied*) 516 U.S. 1172, 116 S. Ct. 1263, 134 L. Ed. 211 (1996). It has been established that Kunst and Kunstwerke failed to pay subcontractors because of financial difficulties. First, Judge Welmaker awarded damages of $353,993.91 based upon duplicate payments and overpayments on the Gaby project. In awarding these damages, the court accepted as true that the Gabys paid certain subcontractors amounts asked for by Kunst and that Kunstwerke failed to pay the same amounts to those subcontractors. For example, the Gabys paid $140,000 to Kunstwerke for Paul Anderson Design for cabinets, but Kunst paid only $68,000 of that money to Paul Anderson Design. The same is true for Window and Door Concepts. The Gabys paid Kunstwerke $164,514 on behalf of Window and Door Concepts but Kunst paid only $85,000 to Window and

[2] While accepted as true for purposes of this motion, the Court also notes that statements of opinion are not defamatory per se. Moreover, some of these statements may be privileged, given Loree's job responsibility to investigate the complaints of Kunst and Kunstwerke's subcontractors and suppliers.

Door Concepts. Finding such conduct to constitute conversion and deceptive trade practices would establish as true the defamatory statements attributable to Loree.

The truth of Kunst's financial difficulties is also established in the public record, as at least the following entities hold final, but uncollected judgments against him:

1.	IRS	$ 147,878.00
2.	SCDOR (ind.)	$1,664,006.16
3.	SCDOR(corp.)	$ 22,615.63
4.	Cliffs Valley HOA	$ 957.50
5.	General Shale Brick	$ 17,255.29
6.	GBS Lumber	$ 8,702.82
7.	Jennings Builders	$ 178,367.07
8.	Mr. and Mrs. Gaby	$ 460,597.72
9.	Hertz Equipment	$ 54,316.81

While instructive but not conclusive of the collateral estoppel issue, this Court also takes notice of the following cases in which Kunst's claims of defamation failed:

1. Kunst v. Gene and Susan Covington, C.A. No. 2006-CP-23-7047
   (Directed Verdict for Defendants)

2. Kunst v. Michael Parham, C.A. No. 2006-CP-23-7897
   (Summary Judgment for Defendant Parham)

3. Kunst v. Steve and Julie DeBacco, C.A. No. 2006-CP-39-1787
   (Jury Verdict for Defendants)

4. Kunst v. the Reserve at Lake Keowee, C.A. No. 2007-CP-39-293
   (Summary Judgment for Defendants)

The fact of Kunst and Kunstwerke's financial difficulties is significant because it was certainly prudent for the Gabys to ask Loree to inquire as to the use of their funds.

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B. **The Greenville Action, Gaby v. Kunstwerke, Has Been Litigated to a Final Conclusion and Kunst's Claim is Barred Under the Principles of Collateral Estoppel.**

Kunst is collaterally estopped from bringing a defamation claim in this action. To assert collateral estoppel a party needs to show:

1. The issue was actually litigated in a prior action;
2. The issue was directly determined in the prior action; and
3. The issue was necessary to support the prior judgment.

Carolina Renewal, Inc. v. S.C. Dept. Transp., 385 S.C. 550, 684 S.E.2d 779 (Ct. App. 2009).

The precise issue is whether in the default proceedings in the Greenville action, the issue of the truth was "actually litigated." I find and conclude that it was.

The issue of the truth of statements allegedly made by Loree was litigated in the Greenville action. Kunst argued that it was not true that he had not paid the subcontractors, suppliers and vendors in full and that Loree had maliciously spread rumors that Kunst did not pay entities involved with the construction of the Gaby home. However, the trial court, after a lengthy damages hearing on March 13, 2007, in awarding damages, ruled that Kunstwerke had not met its obligation to pay these entities, establishing that, in fact, Kunst had not paid the subcontractors, etc. and thereby establishing as true the gist of Loree's allegedly defamatory statements. Kunst appealed Judge Welmaker's Order to the South Carolina Court of Appeals, which affirmed the trial court's order, and later, the South Carolina Supreme Court, which denied Kunst's Petition for Writ of Certiorari.

Concluding that Kunstwerke breached its contract with the Gabys and converted funds earmarked for the payment of subs and suppliers, the trial court noted that the suppliers,

subcontractors and vendors had not been paid in full. Kunst argued that he had not breached his contract nor converted funds, relying upon his "unique system" of accounting to demonstrate that somehow more monies were owed to Kunstwerke by the Gabys, which negated any alleged duplicate or non-payments to subcontractors.

The issue of the truth of the statements allegedly made by Loree was necessary to support the prior judgment and damages in the Gaby action. Kunst's non-payment of subcontractors, suppliers and vendors was the evidence the trial court relied upon to rule Kunst had breached the contract with the Gabys and converted funds in awarding damages based on overpayment by the Gabys. In upholding that judgment, the Court of Appeals determined that the trial court was correct in finding a breach of contract due to non-payment of the subcontractors, suppliers, and vendors. The South Carolina Supreme Court denied certiorari, thus preserving the Court of Appeals' opinion as the law of the case.

Kunst cites State v. Bacote, 331 S.C. 328, 503 S.E.2d, 161 (1998), arguing that Bacote lays down a bright line rule that default judgments may not be the basis for collateral estoppel. I disagree. After careful review of this case, this Court finds that State v. Bacote does not apply to the facts of this case and therefore the dicta in that opinion is not controlling. First, Bacote involved a case in which a defendant in a DUI claimed that collateral estoppel barred the state's introduction of evidence of the defendant's refusal to take a breathalyzer. Defendant argued that at a prior administrative hearing, defendant's automatic suspension was lifted for failing to take a breathalyzer test, because the arresting officer failed to show for the administrative hearing. The trial court ruled that collateral estoppel applied. The Court of Appeals reversed and the Supreme Court agreed.

In holding that collateral estoppel did not apply, the Court focused on the impact of collateral estoppel on administrative hearings on subsequent litigation. If the doctrine was to apply, the Court suggested that the administrative hearings would become full-blown trials and the purpose of administrative hearings would be subverted to the litigation process. The Bacote court affirmed that collateral estoppel is intended to reduce litigation and conserve the resources of the courts and litigants, Id. at 330,163, which would be defeated if collateral estoppel was applied to administrative hearings. The present matter does not involve an administrative action nor does it concern a criminal case. Bacote simply does not apply. Even more importantly, in the Greenville action, there was a hearing on Kunst's Motion for Relief from Default, a subsequent damages hearing and exhaustive appeals of those rulings.

The fact that Bacote did not lay down the "bright line" rule argued by Kunst is established by the court's statements on the factors which would mandate "relitigation of the issue" in a subsequent action. They are:

1. A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them;
2. There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest of the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action or (c) because the party sought to be precluded, as a result of the conduct of the adversary or other special circumstances, did not have an adequate

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opportunity or incentive to obtain a full and fair adjudication in the initial action. Id. at 332,163.

None of these concerns are present here. Kunst has not demonstrated differences in the quality or extensiveness of procedures followed by the court in the underlying action or in this action nor did he raise any issues of jurisdiction. This Court finds that because no such differences are present, Bacote does not apply.

Kunst also did not raise issues concerning the potential adverse impact had on public interest or on persons who were not parties to the underlying action. If anything, the public interest favors the application of the principle given this litigant's multiple unsuccessful defamation cases. Understandably, Kunst has issues on how the litigation of the alleged Loree statements has affected him, but the Bacote court was interested in protecting public interests.

Finally, Bacote does not apply because in this action, Kunst has had an adequate opportunity to receive full and fair adjudication in the Greenville action. Kunst had an opportunity to answer the Complaint in the Greenville action, but chose not to do so. Kunst had an opportunity to bring a motion to set aside the default judgment and indeed did so. Importantly, Kunst was required to show the existence of a meritorious defense to the Gaby's claims of breach at the hearing on the Motion for Relief from Default before Judge Patterson. Kunst was present and represented himself at the damages hearing on March 13, 2007 and his company, Kunstwerke, was represented by separate counsel. Kunst also appealed to the South Carolina Court of Appeals and by petitioning the South Carolina Supreme Court for a Writ of Certiorari. The Bacote court was concerned with instances in default cases where the defaulting party might not even be aware it is in default and so not have a chance to defend itself. Id. at 332, 163. Here, Plaintiff knew he was in default and had ample opportunity to

defend himself as the record reflects. Thus, Bacote does not apply and this Court finds that collateral estoppel is applicable in this action.

Kunst also argues that Powell v. Lane, 289 S.W.3d 440 (Ark. 2008) supports his claim that collateral estoppel does not apply. Kunst's reliance on Powell is misplaced. Powell involved a dispute over an adoption and the validity of an earlier marriage. Contrary to Kunst's suggestion, the majority opinion actually supports Loree's argument that collateral estoppel may apply though the earlier proceeding involved a default judgment. The dissent concluded that the doctrine did not apply to a default judgment, but the majority opinion held that an issue in a default judgment action was "actually" litigated because the issue was raised in pleadings, the party had a full and fair opportunity to be heard and a decision was rendered on the issue. Id. at p. 186. The Powell case correctly observes that the applicability of collateral estoppel should be on a case-by-case basis, and not through the application of a bright line rule as Kunst argues here.

As noted earlier, the issue of the truth of Loree's alleged statements was raised in the pleadings in the Greenville action when the court, in determining damages, necessarily found that Kunst had not paid suppliers and thus had converted funds owed to them. Kunst had a full and fair opportunity to be heard in both actions. Finally, the trial court in the Greenville action rendered a decision on the issue when it held that Kunstwerke had breached its contract by not paying the entities as he claimed he had. The Powell case actually supports Loree's position rather Kunst's.

Finally, Kunst also cites Treglia v. MacDonald, 717 N.W.2d 249 (Mass. 1999) to support his position that collateral estoppel may not be based on a default judgment. While it is true that the Massachusetts Supreme Court held that issues raised in a default judgment were not

precluded by collateral estoppel, the court also held that circumstances could arise in which issues raised in a default judgment might be barred in later litigation. The Massachusetts Court stated that if a party in a default judgment had been given a full and fair opportunity to argue his position in court, then collateral estoppel could preclude issues raised in the default judgment. Id. at p. 250.

There can be little question that Kunst certainly had full and fair opportunity to be heard and even had that opportunity in the appellate courts. For this reason, Treglia does not apply. Kunst's cited cases do not apply to the facts of this action and so Plaintiff has failed to state a convincing legal argument as to why collateral estoppel does not preclude the issues raised in this action and why summary judgment should not be granted to Defendant Loree.

Courts disagree on the application of collateral estoppel to default cases; however, courts have applied the doctrine in default cases as to matters essential to the judgment. See e.g. Aspen Plaza Co. v. Garcia, 691 P.2d 763 (Colo. App 1984); Krug v. Meros, 468 So. 2d 299 (Fla. Dist. Ct. App. 2d Dist. 1985), review den (Fla) 480 So 2d 1295; In re Byard, 47 B.R. 700, 12 Bankr. Ct. Dec. (CRR) 1069, 12 Collier Bankr. Cas. 2d (MB) 387, Bankr. L. Rep. (CCH) P 70341 (Bankr. M.D. Tenn. 1985) (rejected by, In re Mady, 159 B.R. 487 (Bankr. N.D. Ohio 1993)) (applying Kan law); In re Eadie, 51 B.R. 890 (Bankr. E.D. Mich. 1985) (rejected by, In re Mady, 159 B.R. 487 (Bankr. N.D. Ohio 1993)) (applying Mich law) (collateral estoppel applies to default judgments); . Gottlieb v. Kest, 141 Cal. App. 4th 110, 46 Cal. Rptr. 3d 7 (2d Dist. 2006).; Rohe Scientific Corp. v. National Bank of Detroit, 133 Mich. App. 462, 350 N.W.2d 280 (1984), on reh'g, 135 Mich. App. 777, 355 N.W.2d 883 (1984).

CONCLUSION

Taking the issues raised in this motion in a light more favorable to the Plaintiff, I find that the affirmative defense of collateral estoppel applies in this action under the elements set forth in Carolina Renewal, Inc. v. S.C. Dept. Transp., 385 S.C. 550, 684 S.E.2d 779 (Ct. App. 2009). I also find that no material issues of fact have been raised by the Plaintiff that would preclude summary judgment as defined in Rule 56, SCRCP. Therefore, it is **ORDERED** that summary judgment be granted to Defendant Loree.

Edward W. Miller
Presiding Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

October 19, 2010

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2009 MAR 10 A 8:48

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP3901826

J Scott KUNST *vs.* Richard GABY

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.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: x☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

J Scott KUNST 2607 Woodruff Rd Suite E 204 Simpsonville, SC 29681

ATTORNEY(S) FOR THE PLAINTIFF(S)

T. S. Stern Jr. Covington Patrick Hagins Stern & Lewis P.O. Box 2343 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P. Welborn Jr. MD

Harold P Welborn, Jr. - Clerk of Court

SCRCP APP-24/FORM 4

CPFORM4M

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS) CASE NO. 2006-CP-39-1826

2009 MAR -9 P 12:44

J. Scott Kunst,)

Plaintiff,)

ORDER

v.)

David Loree,)

Defendant.)

THIS MATTER comes before the Court pursuant to Defendant, David Loree's, Motion for Summary Judgment, which was supported by the pleadings, discovery, a memorandum of law and other supporting documentation. Defendant moved for Summary Judgment as to the Plaintiff J. Scott Kunst's claims for defamation, tortious interference, and intentional infliction of emotional distress.

Arguments on the Motion were heard on February 3, 2009.[1] For the reasons stated at the recent hearing, Defendant's Motion is granted to the claims of tortious interference and intentional infliction of emotional distress. The Motion for Summary Judgment is denied as to the Plaintiff's claim for defamation.

IT IS ORDERED,

Edward W. Miller
Circuit Judge

3/9, 2009
Pickens, South Carolina

[1] At the recent hearing, Plaintiff offered to introduce a large volume of alleged accounting records, identified as a trial exhibit, but not considered as a part of the Summary Judgment proceedings. All parties agreed Plaintiff should produce electronic versions of said documents in native format, and they were so requested. Plaintiff is hereby ordered to produce the requested electronic documents, in native format, within ten (10) days from the date of this Order.

FORM 4

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

J. Scott Kunst

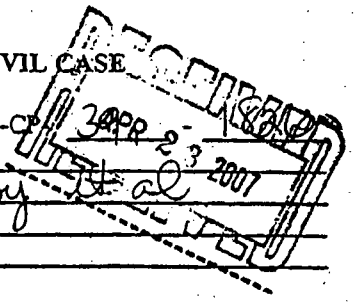
PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 2006 -CP- 39[illegible]

Richard Gaby et al

DEFENDANT(S)



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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____.

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____.

IT IS ORDERED AND ADJUDGED: ☑ See attached order; ☐ Statement of Judgment by the Court:

2007 APR 19 P4:23

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20_____, and a copy mailed first class this _____ day of _____, 20_____ to attorneys of record or to parties (when appearing pro se) as follows:

Pro Se -
2607 Woodruff Rd.
Suite E #204
Simpsonville SC 29681

ATTORNEY(S) FOR THE PLAINTIFF(S)

T.S. Stern Jr.
PO Box 2343
Greenville SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Lisa H. Gallen MB

CLERK OF COURT

SCRCP FORM 4 (Revised 5/00)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	CASE NO. 2006-CP-39-1826
J. Scott Kunst,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
Richard Gaby, Barbara Van Andel – Gaby, and David Loree,	)	
	)	
Defendants.	)	
	)	

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APR 23 2007
2007 APR 19 P 4:23

This matter is before me on motions to dismiss by Defendants Richard and Barbara Gaby ("Gabys") pursuant to SCRCP 12(b)(5), 12(b)(7), 12(b)(8) and Rule 13(a) and a motion to dismiss by Defendant David Loree pursuant to SCRCP 12(b)(1), 12(b)(4), 12(b)(5), 12(b)(6), and 12(b)(7).[1] For the reasons set forth , the Gabys' Motion to Dismiss is granted and Defendant Loree's motion to dismiss is denied.

By way of background, the Gabys previously brought suit in Greenville County, Civil Action No. 2006-CP-23-2943 naming the builder of their home , Kunstwerke Corporation and its principal , J. Scott Kunst as defendants it further appears that neither Kunstwerke nor Kunst filed responsive pleadings as required by law and an order of default was entered against them on June 20, 2006.

Thereafter, Kunst and Kunstwerke Corporation moved to set aside that default, which motion was heard and later denied by the order of Judge Patterson on December 7, 2006. On March 13, 2007, a hearing on damages was held in Greenville County before Judge Welmaker who found that the Gabys proved their damages on all causes of action in the amount of

[1] Defendants no longer assert their motions under 12(b)(1), 12(b)(4), and 12(b)(5).

#1 & 4
4th

$353,992.91. The Court also awarded the Gabys punitive damages and attorneys' fees totaling $106,605.40.

The present motions were heard by me in Pickens on March 15, 2007. Following the hearing both Kunst and the Gabys filed post-hearing submissions. The gist of the Gabys' Motion is that the present claims by Kunst were compulsory counterclaims in the Greenville action as defined by SCRCP 13(a) and are barred because of Kunst's and Kunstwerke Corporation's default. Rule 13(a) provides in pertinent part:

> Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

In determining whether a claim arises out of the same "transaction or occurrence" the test for determining if a counterclaim is compulsory is whether there is "a logical relationship between the claim and the counterclaim." The Beach Company v. Twillman Ltd., 351 S.C. 56, 566 S.E.2d. 863 (Ct. App. 2002). Whether a counterclaim is logically related to the initial claim depends upon the facts of each case. The Beach Company v. Twillman, Ltd supra, 351 S.C. 56, 61, 566 S.E.2d. 863. In the Greenville action, the Gabys brought suit for breach of contract, breach of contract accompanied by a fraudulent act, conversion, and unfair and deceptive trade practices. Those contract and tort actions all arose out of the construction of the Gaby residence and Kunst's alleged failure to pay subcontractors. Kunst now brings an action for tortious interference with contractual relations and unjust enrichment. Those claims are similarly related to the construction of the residence and alleged misrepresentations to subcontractors involved in the construction. The court finds and concludes that the present claims of Kunst arise out of the same transaction or occurrence as the Gaby's claims in the Greenville action.

#234
4/18

Having determined that the present claims were compulsory, the only remaining issue is whether or not the default judgment precludes further litigation. It is clear that valid default judgments establish claim and defense preclusion as litigated judgments are equally entitled to enforcement in other jurisdictions. 18(a) Federal Practice and Procedure, Wright, Miller, and Cooper § 4442 (2007). The Gabys' position that the claims by Kunst are barred by his default is further supported by Stark Truss Co. v. Superior Construction, 360 S.C. 503, 602 S.E.2d 90-99 (Ct.App.2004). In that case Start Truss sued Superior and its bonding company National Fire Insurance Company of Hartford to recover under a construction payment bond. Superior and National Fire failed to respond within 30 days after service. The Defendants filed a joint answer and counterclaim on September 6, 2002, one day after Plaintiff served an Affidavit of Default, Motion for Entry of Default, and a Proposed Order of Entry of Default which were filed five days later. The court granted the Entry of Default against National Fire. Following the Entry of Default, Plaintiff moved to dismiss the counterclaims asserting that as compulsory counterclaims under SCRCP 13(a) they were barred by the default judgment. The court granted Stark Truss's motion. Stark Truss, 360 S.C. at 512. In upholding the counterclaims, the Court of Appeals observed:

> The circuit court found, and Appellants do not dispute, that the counterclaims asserted with the late answer were compulsory. Rule 13(a), SCRCP, provides that compulsory counterclaims must be asserted along with a responsive pleading. As Appellants were in default and failed to timely file and serve their answer, they also failed to timely assert their counterclaims. In this instance, we find the circuit court did not err in dismissing the Appellants' counterclaims.

360 S.C. 503, 602 S.E. 2d 99.

Moreover, in Lexus Real Estate Group, Inc. v. Bullet County Bank, 2007 W.L. 542402 (WD Kentucky 2007) the court applied the principle of *res judicata* to preclude a counterclaim brought in a later action in Kentucky after a default in Indiana state court.

#3+4
9/11+

Plaintiff Kunst, on the strength of Mercoid Corporation v. Mid-Continent Inv. Co., 321 U.S. 802 (1944), argues that his present claims are not compulsory. The court does not believe Mercoid supports the proposition urged by Kunst as that case did not involve a compulsory counterclaim. Rather, the case clearly indicates that the counterclaim at issue was a permissive counterclaim under Federal Rule of Civil Procedure 13(b) and not a compulsory counterclaim.

Regarding the motions by Defendant Loree, the court denies those motions.

D. Garrison Hill
Circuit Judge

Dated: April 14, 2007

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP3901826

J Scott KUNST *vs.* David LOREE

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.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

2015 JUN 17 PM 3 51
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

J Scott KUNST 3955 BIGELOW BLVD 410
PITTSBURG, PA 15213

ATTORNEY(S) FOR THE PLAINTIFF(S)

Violet Elizabeth Wright 217 Park Avenue Greenville, SC 29601
Gregory K Smith ,

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr. - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff, vs. David Loree, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT **ORDER DENYING DEFENDANT'S MOTION FOR JNOV, FOR A NEW TRIAL OR IN THE ALTERNATIVE A NEW TRIAL *NISI REMITTITUR* OR NEW TRIAL ABSOLUTE** 2006-CP-39-1826

2015 JUN 17 PM 3 51
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court pursuant to the Defendant's Motion for JNOV for a New Trial or in the Alternative a New Trial *Nisi Remittitur* or New Trial Absolute. After having considered the Motion in context with the trial and all evidence presented in the case, this Court respectfully denies the same.

AND IT IS SO ORDERED.

ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT

June 12, 2015
Greenville, South Carolina

Certified Copy
Harold P. Wallace
Clerk of Court
Pickens County, SC
Dated June 2015
MB

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: **2006CP2302943**

Richard Gaby *vs.* Kunstwerke Corporation

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

SEE ATTACHED ORDER

FILED CLERK OF COURT GREENVILLE CO. S.C. PAUL B. WICKENSIMER 2007 APR 2 A 11: 40

Dated at Greenville, South Carolina, this _____ day of _____, 20____.

Court Reporter:

_____

PRESIDING JUDGE

This judgment was entered on the 2ND ___day of____APRIL_____, 2007, and a copy mailed first class this _2ND____day of __APRIL_____, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

T. S. Stern Jr. Covington Patrick Hagins Stern & Lewis P.O. Box 2343 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

James G. Carpenter The Carpenter Law Firm, PC 819 East North Street, Ste. 230 Greenville, SC 296013101
J. Scott Kunst

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4 (Rev. 6/02)

Paul B. Wickensimer - Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO. 2006-CP-23-2943
COUNTY OF GREENVILLE	)	
	)	
Richard Gaby and Barbara Van Andel Gaby,	)	
	)	
Plaintiffs,	)	
	)	
Vs.	)	**ORDER**
	)	
Kunstwerke Corporation and J. Scott Kunst,	)	
	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2007 APR -2 A 11: 40

This matter came before me at a regularly scheduled term of non-jury court held in Greenville County the week of March 12, 2007. A hearing was held relating to assessment of damages to be awarded to Plaintiffs, the Defendants previously having been found in default. The complaint alleges several causes of action. Those to which Plaintiffs seek recovery include breach of contract; breach of contract accompanied by fraudulent act; breach of fiduciary duty; conversion; and, violation of the South Carolina Unfair Trade Practice Act. Representing Plaintiffs was T. S. Stern; James Carpenter appeared on behalf of Defendant corporation; Defendant Kunst appeared pro se.

Plaintiffs presented four witnesses to substantiate their claim, including the property manager of Plaintiffs during construction; two of the suppliers of products for the project; and, an expert witness (Bill Larkin) in the field of forensic accounting to testify as to certain financial transactions. Both legal counsel for the corporation and Defendant Kunst individually conducted extensive cross-examination of the witnesses, the Court allowing Defendants broad leeway beyond the customary cross-examination.

[See Doe v. S.V.M., 327 S.C. 352, 488 S.E.2nd 878 (1997)]. In addition, Plaintiffs offered into evidence several exhibits.

Having reviewed all pertinent information, including the file, the exhibits, and having weighed the testimony of the witnesses,[1] the Court finds that Plaintiffs have presented sufficient evidence to establish their claims fully. Of course, the Court starts from the premise that all facts relating to the pertinent causes of action are admitted. Beyond a preponderance of the evidence, clear and convincing evidence has been presented by the Plaintiffs to show actual damages in the amounts of $353,993.91 on all causes of action outside of mere breach of contract. The Court finds that Plaintiffs are entitled to that sum, along with punitive damages in the amount of $70,798.00.

As to the breach of contract action, the agreement between the parties provided for attorneys fees and costs. As to this cause of action, Plaintiffs shall be awarded $353,993.91, with attorneys fees and costs in the amount of $35,807.41. Plaintiffs shall have ten days from the receipt of this order to exercise their election as to the cause of action under which judgment is to be entered. [See Tomlinson v. Mixon, 367 S.C. 467, 626 S.E.2d 43 (2006), cert. granted 2007].

Also before the Court at the hearing was Plaintiffs' motion for restraining order against Defendants and Defendants' agents. The Court instructed the litigants of the necessity of communication only with the attorneys representing them rather than to the parties individually. Both Defendant Kunst and his assistant, Tracey Hilton,

[1] The Court has deliberately not considered the testimony of witness Bill Larkin. While certainly well qualified as an expert to render his opinion, he did testify as to the limited time he had to examine the financial information to which he was testifying, and further indicated that his investigation was still ongoing. While he did acknowledge that he could testify as to the pertinent facts relating to the payments made by Plaintiffs to Defendants, and the apparent misappropriation of funds, he had not yet retained sufficient information to determine the ultimate location of the funds. For precaution, the Court has therefore not considered the testimony of Mr. Larkin in its ultimate decision.

2

acknowledged full understanding of the requirement of such limited communication, and that all communication must be made in a civil manner, with the powers of the Court to issue contempt citations if the Court's order was not followed.

Upon election by Plaintiffs, judgment shall be entered accordingly.

IT IS SO ORDERED.

G. Edward Welmaker
Presiding Judge, Thirteenth Judicial Circuit

DATE: March 26, 2007
Greenville, South Carolina

A Certified Copy
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 4-2-07

STATE OF SOUTH CAROLINA COUNTY OF PICKENS **J. Scott Kunst,** **Plaintiff,** **vs.** **Richard Gaby,** **Barbara Van Andel - Gaby, and** **David Loree** **Defendants,**	IN THE COURT OF COMMON PLEAS CASE NO. 2006-CP - -_____ COMPLAINT **(Jury Demanded)**

PLAINTIFF, complaining of the Defendants, would respectfully allege and show as follows:

PARTIES AND JURISDICTION

1. Plaintiff J. Scott Kunst ("Kunst") is a citizen and resident of Greenville County in the State of South Carolina.

2. The Defendants are all residents of the State of Georgia.

3. The following allegations arise from the Defendants' conduct and business activities in Pickens County in the State of South Carolina.

4. Jurisdiction and venue are proper in this court.

FACTUAL BACKGROUND

5. Plaintiff herein incorporates by reference all previous allegations consistent herewith.

6. The Plaintiff was a well known and respected designer and builder in The Reserve at Lake Keowee ("The Reserve") as well as the surrounding area and came highly recommended by current and former clients as well as The Reserve sales staff.

7. The Defendants Richard and Barb Gaby commissioned Plaintiff Kunst to design and subsequently build a resort home on their property, lots B-29 and B-30, at The Reserve.

8. This home was to be one of numerous homes already owned by the Gabys throughout the world.

9. The Plaintiff was better known for designing and crafting high-end resort homes on a speculative basis and only accepted "build for" clients, such as the Defendants, under certain conditions not typically seen in residential home construction. This was known to the Defendants.

10. As part of Kunst's unique and artistic way of crafting his homes, he has never offered a fixed bid nor provided change orders.

11. The Defendants were warned prior to construction that the potential cost for a structure with the amenities they were asking for would easily exceed two million dollars. (the final cost exceeded three million).

12. The project was not financed by a construction loan. The proceeds came from discretionary funds. The Defendants could certainly afford to pay (at least the average cost) of

the things they requested, and pay for same in a timely manner.

13. This was a special fiduciary relationship of trust between the Plaintiff and Defendants. The Plaintiff did not enjoy the usual contractual protection seen in typical residential construction.

14. The Defendants Richard Gaby and Barb Van Andel - Gaby have a history of abusing their wealth and the legal system to intimidate and avoid payment for goods and services rendered by small businesses.

15. Most of the highly specialized artisans (subcontractors) that craft Kunst's homes bill the same way, without requiring a deposit and always extending credit, and rarely can offer fixed bids.

16. Kunst provided weekly "Progress Billings" to the Defendants which were in reality an accumulation of subcontractor and supplier invoices with no mark up. A fixed monthly fee for Kunst's design, overhead, and general contracting would typically appear in the first progress billing of a particular month.

17. These billings included actual copies of subcontractor and supplier invoices and could be independently verified by the Defendants at any time.

18. The Plaintiff personally prepared these progress billings and never was it explicitly stated or implied that all items appearing had been either prepaid by the Plaintiff (though often they were) or still owing to sub laborers or suppliers at the time the Defendant received these billings.

19. Never was it explicitly stated or implied that the specific funds paid by the Defendant for a specific progress billing would go exclusively and directly to pay only those sub

labor and supplier invoices provided in that progress billing. In fact this was an impossibility in as much as greater than 30% of all sub labor and material expenditures had already been paid by the Plaintiff prior to the Defendants' payment of the progress billing in which they appeared.

20. The Defendants were given regular master budget updates that fully reconciled every payment wired by the Defendants. On this document is a column entitled "total paid" which is clearly referencing the amount that Defendant Gaby has paid to date. The Plaintiffs billing system is on an accrual basis and a reasonable person would not conclude that this heading meant that the Plaintiff was claiming to have prepaid 100% of sub labor and supply invoices before billing the Defendants as Richard Gaby has falsely alleged.

21. The Defendants were free to pay for any or all sub labor or materials directly. Billings processed through Kunst's company were a courtesy offered by Kunst.

22. The Defendants were not required to maintain a construction deposit or draw account as is typical in this type of construction.

23. The Defendants maintained a revolving credit account balance with the Plaintiff's company which would regularly include large amounts of credit generously extended by the Plaintiff

24. The Defendant Richard Gaby faithfully wired the funds requested in the weekly progress billings to the Plaintiff's business (Kunstwerke) account at Regions Bank up until February 2006.

25. A dispute arose between Richard Gaby and his wife Barb Van Andel - Gaby when Richard Gaby was discovered "hiding" the true cost of the project from his wife Barb for fear that she would "drastically scale the project back." The Defendant Richard Gaby then began to

falsely allege that Plaintiff Kunst had embezzled large amounts of money from the project and had failed to distribute funding provided by Gaby.

26. Defendant David Loree ("Loree"), a Gaby family security officer, was then asked by Gaby to investigate Plaintiff Kunst's business activities and create the appearance that Kunst was being targeted for wrongdoing.

27. Defendant David Loree assumed all contact with Plaintiff Kunst from the Gaby's and proceeded, on or about February 2006, to contact the Plaintiff's other clients, business associates, and suppliers, and planted numerous slanderous statements about the Plaintiff.

28. Defendant David Loree terminated the Plaintiff's involvement in the project on March 3, 2006 with 80% of the project completed and numerous sub laborers and suppliers never to be paid.

29. The construction cost and timeline are well within The Reserve's average for this type of home.

30. The Defendant's have failed to pay three billings totaling $190,000 for sub labor and materials. More than ninety percent of this amount had already been paid out by the Plaintiff to sub laborers and suppliers.

31. Average weekly disbursements made by the Plaintiff on the Defendant's behalf averaged $60,000. The above referenced $190,000 represents, as would be expected, three weeks of activity.

32. The Defendant's default has caused the Plaintiff to default on numerous personally guaranteed trade accounts and has resulted in numerous judgments filed against the Plaintiff.

33. The Defendants have been given full cash support and a full reconciliation of every

dollar processed through the Plaintiff's company.

34. A three hundred page binder has been published by the Plaintiff in an effort to offer full public disclosure and has been issued to over forty individuals. These individuals were contacted by the Defendants in an effort to defame Kunst and justify their actions in terminating Kunst. This binder documents every financial transaction, bank statement, correspondence, and a full narrative of the Plaintiffs business relationship with the Defendants. The content of this binder stands as hard evidence and fully contradicts the Defendant's slanderous statements.

35. The Plaintiff's company processed over nine million dollars in payments to sub laborers and suppliers through his company in 2005 alone, as a courtesy to the Defendants and other clients, without any breach of fiduciary trust.

36. The Plaintiff has conducted himself and his business affairs with the highest level of integrity and is completely blameless of the Defendants' slanderous attacks.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS
(Tortuous interference)

37. Plaintiff has incorporated by reference all previous allegations consistent herewith.

38. The Defendants communicated with numerous business associates of the Plaintiff, specifically sub laborers and suppliers with whom the Plaintiff had personally guaranteed accounts and long term business relationships and, through dubious means, offered to pay funds directly to them for additional goods and services all the while still owing the Plaintiff for previous goods and services provided by same sub laborers and suppliers.

39. The Defendants enticed Kunst's key sub laborers to work for them directly and

continued to use equipment purchased by the Plaintiff and never recovered. The Defendants even continued construction under the Plaintiff's building license.

40. The Defendants "terminated" the Plaintiff at a time in which approximately 80% of the project had been completed and continued construction without pause.

41. The Defendants planted false rumors about the Plaintiff amongst the large crew building the house in an effort to secure their cooperation.

42. The Plaintiff did not interfere in any way nor pressure anyone to remain loyal to him. These sub laborers needed payment and needed the continued work.

43. Many of these sub laborers had a decade long personal and business relationship with the Plaintiff and indeed were trained by the Plaintiff. Further, many had entered into business to specifically provide unique services to the Plaintiff. The Plaintiff had worked hard for a decade as a young entrepreneur to create his unique business. The Defendants destroyed the Plaintiff's business relationships virtually over night, and maliciously with wanton greed continued on with Kunst's (now former)"crew."

44. Over $17,000 in loans provided by the Plaintiff to key sub contractors for special equipment needed for the Plaintiffs' unique business activities have now gone unpaid as a result of this interference.

45. As a direct and proximate result of the Defendants' tortuous interference, the Plaintiff has been damaged.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
(Unjust Enrichment)

46. Plaintiff has incorporated by reference all previous allegations consistent herewith.

47. The Plaintiff provided or furnished valuable services to the Defendants, and also paid for services and materials on behalf of the Defendants.

48. The Defendants were charged for the valuable services and materials.

49. The Defendants accepted, used, and enjoyed the materials and services provided by the Plaintiff.

50. The materials and services were furnished and used under circumstances as reasonably notified the Defendants that the Plaintiff expected to be paid for the materials and services.

51. The Defendants were unjustly enriched by the furnishing of the materials and services and their failure to pay for the same.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS
(Defamation *per se*, Business Slander with Actual Damages, and the Intentional Infliction of Emotional Distress)

52. Plaintiff has incorporated by reference all previous allegations consistent herewith.

53. The Defendants made statements to key sub laborers, suppliers, and clients, including, but not limited to the following:

a) The Plaintiff had embezzled money from the Defendants.

b) The Plaintiff had also embezzled money from other clients.

c) The Defendants reported to numerous sub laborers and suppliers that funds

intended for them were taken by the Plaintiff for his own personal use.

d) The Defendants stated to numerous business associates, clients, and The Reserve sales staff that the Plaintiff was in financial trouble and unable to meet his future obligations.

e) The Defendants stated to associates of the Plaintiff that the Plaintiff could go to prison.

f) The Defendants planted rumors that the Plaintiff's design work and construction were defective and that he lacked professional qualification.

These statements constitute the worst possible accusations you can make about an individual operating this type of niche business, wholly dependant on reputation and word of mouth, in a close-knit business community such as The Reserve. These slanderous statements were analogous to a customer accusing a deli of serving tainted food or a bank customer rumoring to all of the bank's depositors that the bank was in financial trouble.

54. Because of the unique situation in which the Plaintiff had credit extended to all of his current clients, the Defendant's actions and statements precipitated the defaults of five of these clients. Indeed the Defendant's own lawyers told these clients not to pay any more of the Plaintiff's billings because the Plaintiff was "going down" and that they needed to "protect themselves."

55. The Defendant's actions and statements have now forced the Plaintiff to file nine lawsuits in the South Carolina Court of Common Pleas to collect over $500,000 in credit defaulted on by the Plaintiff's other clients and to collect for other damages to his business and

reputation. The Plaintiff is now without any resources to hire counsel and is forced to proceed in this and the other cases *Pro Se*.

56. Numerous small business in Pickens and Greenville remain unpaid for goods and services provided to the Defendant's . Some small businesses have been destroyed as a direct and proximate result of the Defendants actions.

57. The Defendants' conduct was extreme and outrageous, exceeding all possible bounds of decency, and is intolerable in a civilized community.

58. The Defendants' conduct directly and proximately caused the Plaintiff emotional distress and humiliation which was so severe as no reasonable man could be expected to endure requiring the Plaintiff to require medical attention.

59. The Defendants actions were intended to cast aspersions on the Plaintiff and have lowered his standing in the community (more specifically the business community) in an attempt to justify the Defendants actions in terminating the Plaintiff and to avoid pay certain amounts to the Plaintiff.

60. The Defendants were in a position to know, and in fact were told repeatedly by the Plaintiff, that the allegations were false.

61. As a direct and proximate result of the Defendants' intentional and malicious slander, and as a direct and proximate result of the Defendants' negligent rumor mongering the Plaintiff has been severely financially damaged and personally injured and is entitled to actual as well as *per se* damages.

62. The Plaintiff's financial health, physical health, and reputation have been severely damaged by the Defendants and the Plaintiff cannot recover without full restitution.

WHEREFORE, Plaintiff prays for relief as follows:

1. For a jury verdict that will aid in the restoration of the Plaintiff's good name and reputation;
2. For actual damages;
3. For punitive damages of such amount as to deter individuals such as the Defendants from abusing their wealth and from proceeding in like manner against others in the future.
4. For *per se* damages that a jury may deem appropriate;
5. For interest, costs, and attorneys' fees; and,
6. For such other and further relief as the court may deem just and proper.

J. Scott Kunst, (*pro se*)
2607 Woodruff Rd. Suite E, # 204
Simpsonville, SC 29681
(864) 979-7961

December 19, 2006

Pickens, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff, v. David Loree, Defendant.	IN THE COURT OF COMMON PLEAS **CASE NO. 2006-CP-39-1826** **Plaintiff's Pre-Trial Brief**

Statement of the Facts of the Case

This case is going to trial with a single cause of action: Defamation *per se*. The Plaintiff has specifically plead Defamation *per se* because the specific statements attributed to Defendant David Loree, and sworn to in affidavits and in the deposition testimony of witnesses, falsely impute to the plaintiff allegations of criminal activity within his trade or business.

All of the statements to be placed before the triers of fact allege criminal activity:

Slander 1: The Plaintiff embezzled $400,000 from the Gabys.

Slander 2: The Plaintiff embezzled money from all of his clients.

Slander 3: The Plaintiff had taken money from named clients Parham, Covington, Coco, and Hickey.

Slander 4: The Plaintiff created dummy invoices from dummy companies so that he could steal money from these clients.

Slander 5: The Plaintiff took money from his clients to spend on an investment project, a car, trips, and family members.

Slander 6: The Plaintiff did "criminal things" like take out an insurance policy, bill the

Gabys, and then cancel it the next day so that he could keep the money.

Slander 7: The Plaintiff "is going to jail."

Slander 8: The Plaintiff took money from his other projects and that money was missing from these projects.

The Defendant has never plead truth or privilege in this case. It would have been an impossible defense. The Plaintiff has never been charged with, or convicted of, any misdemeanor or felony under any criminal penalty statute related to anything alleged above. The Plaintiff has never had more than a speeding ticket.

This case comes to trial after an inexcusably long nine-year delay due to defense tactics and trial court errors. The Defendant has never refuted any of the eight specific statements nor has he proffered any evidence that any of the above allegations are true.

The Defendant's sole effort throughout discovery and during the nine years that this case has been pending is to seek claim preclusion through a default damages judgment from the related Gaby (Loree's "boss") civil contract case. This effort ultimately failed in 2013 when the South Carolina Court of Appeals unanimously reversed and remanded this case for trial.

There are twenty related lawsuits filed by the Plaintiff or the Plaintiff's company, Kunstwerke, as a result of the avalanche of damage Defendant Loree caused. Every defamation lawsuit filed against other parties points to defendant Loree as the original source. All six contract cases filed resulted in settlement in favor of the Plaintiff's company, Kunstwerke.

Kunstwerke maintained reimbursement contracts with all of its clients. It did not hold client deposits for distribution. Kunstwerke advanced credit from its own capital. Embezzlement is an impossibility.

All of Kunstwerke's clients stopped paying the week Defendant David Loree came to

town and made his allegations. For all 5,200 weeks that the Plaintiff was in business, no client had ever missed a payment. Every client owed a large balance to be reimbursed at the moment of Loree's alleged slander. Every client eventually wrote the Kunstwerke attorney a check.

Unlike the Gaby civil default case that the Defendant continually references, all twenty of the Plaintiff's cases were *actually litigated on their merits* and all twenty point to this case. The Gaby/Kunstwerke account is the only account that has not been litigated on its merits. This Plaintiff's and Kunstwerke's counterclaims were significantly larger than anything the Gabys claimed in the default case. The order of default was appealed to the South Carolina Supreme Court, but failed.

Furthermore, the South Carolina Court of Appeals ruled in this present defamation case: *"Accordingly, we hold Kunst was not presented with a fair opportunity to "actually litigate" the veracity of Loree's alleged statements to others."*

Defendant Loree is **not** an employee of Richard and Barbara Gaby. He is employed and paid by Jay Van Andel Enterprises(JVA). The Gabys do not reimburse JVA for services rendered by David Loree. He is provided as a security guard for Barbara Gaby. David Loree was the bodyguard of Barbara Gaby's father, Jay van Andel (co-founder of Amway) until his death in 2004.

Defendant Loree arrived on the scene in February 2006 posing as a "detective" investigating the Plaintiff's financial dealings with **all** his clients. David Loree contacted 240 individuals (clients, investors, suppliers, contractors, and friends) who had any kind of connection with the Plaintiff. Only 86 of those contacted had any connection whatsoever to the Gaby project.

Facts in Controversy

The Defendant's Pre-Trial Brief continually references supposed "findings" from the civil contract default case presided over by the Honorable Judge Welmaker which are in direct contravention of what the default judge intended and ordered. None of these "findings" actually occurred. The Defendant fails to reference the fact that the Gaby contract case was a civil default case. This fact is significant in so far as South Carolina Law deems such a case as not having been actually litigated on its merits. The South Carolina Court of Appeals has already applied that law and ruled in this specific case.

The Gabys *elected* to have the court enter judgment on one cause of action: Breach of Contract. Any supposed findings regarding deceptive trade practices or faulty work are fabricated by the Defendant and are not in Judge Welmaker's order.

This civil contract case was not litigated on its merits and resulted in no findings that have any relevance to the criminal activity alleged in the Defendant's alleged slander.

Legal Issues Involved

The only cause of action in this case is **Defamation**. The alleged eight statements referenced above were spoken, and would be considered **slander**. An action of slander is based on the violation of a person's right to enjoy his good reputation, unimpaired by false and defamatory attacks. **Slander** consists of the publication of defamatory matter by spoken words, transitory gestures or by any form of communication other than those defined as part of libel.

South Carolina recognizes that some categories of false statements are so innately harmful that they are considered to be **defamatory *per se***. In the common law tradition, damages for such false statements are presumed and do not have to be proven. Statements are

defamatory ***per se*** where they falsely impute to the plaintiff allegations or imputations of criminal activity within his trade or business.

To **recover** for defamation, the plaintiff must establish, by a preponderance of the evidence, that there was:

1. a false and defamatory statement by the defendant concerning the plaintiff;
2. an unprivileged publication by the defendant to a third party;
3. fault on the defendant's part in publishing the statement;
4. either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

Defamation need not be accomplished in a direct manner. An **insinuation** may be defamatory. A mere insinuation is as actionable as a positive assertion if it is false and malicious and its meaning is plain. *(Cooper v. Laboratory Corp., 150F.3d 376 (4th Cir. 1998)*

A Listing of Exhibits and Witnesses

A list of exhibits will be provided at trial. The Plantiff plans to call the following witnesses:

Kevin Goad
Glenn Alfonso
Eugene Covington
Tracey Hilton
David Loree
J. Scott Kunst

Unusual Problems Related to Evidence

None

Unusual Questions or Matters for the Court

None

Statement of Settlement Negotiations

An inadequate settlement offer was offered twice to the Plaintiff in 2014. Settlement at this point is highly unlikely.

Respectfully submitted:

J. Scott Kunst, Plaintiff, *pro se*
130 Arabian Way
Simpsonville, SC 29681
864 979 7961

Simpsonville, South Carolina
May 21, 2015

May 18, 2015

Via Email (Rstilwellc@sccourts.org)
The Honorable Robin Stilwell
Greenville County Courthouse
305 E. North St.
Greenville, SC 29601

Re: *J. Scott Kunst v. David Loree,*

Trial Date Certain, May 26, 2015, Pickens

C.A No.: 2006-CP-39-1826

Dear Judge Stilwell:

Please find attached the Plaintiff's Memorandum in Opposition to the Defendant's Motion to Amend Answer. I have filed this memorandum with the Pickens Clerk of Court on this day. I am emailing a copy directly to you in advance of trial. This motion has enormous ramifications for the trial next week in Pickens.

Kind Regards,

J. Scott Kunst, Plaintiff, *Pro se*
130 Arabian Way
Simpsonville, SC 29681
(864) 979-7961
Scottkunst@aol.com

C: V. Wright
G. Smith, Co-Counsel

May 18, 2015

The Honorable Harold P. Welborn
Pickens County Clerk of Court
214 E. Main Street
Pickens, South Carolina 29671

Re: *J. Scott Kunst v. David Loree,*

C.A No.: 2006-CP-39-1826

Dear Mr. Welborn:

Enclosed for filing please find the following documents:

1. Plaintiff's Memorandum in Opposition to Defendant's Motion to Amend Answer;
2. Certificate of Service;

Please do not hesitate to contact me should you have any questions.

Sincerely,

J. Scott Kunst
130 Arabian Way
Simpsonville, SC 29681
(864) 979-7961

cc: V. Wright
217 E. Park Avenue
Greenville, SC 29601

Greg Smith
King and Spalding
1180 Peachtree St.
Atlanta, GA, 30309

STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff, v. David Loree, Defendant.	IN THE COURT OF COMMON PLEAS **CASE NO. 2006-CP-39-1826** **Memorandum in Opposition to Defendant's Motion to Amend Answer**

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Introduction

This case has been to the South Carolina Court of Appeals and the South Carolina Supreme Court and back due to the Defendant's continual effort to fabricate criminal findings within civil proceedings. Loree is attempting to plead the impossible. His new plea cannot conform to the evidence.

Truth has never been plead during the inexcusably long nine years this case has been pending. Loree had nine years to seek a criminal finding but he has never made such an effort. He would have failed at that attempt. *That* is why this case is going to trial.

Truth or substantive truth in defamation causes of action do not cross the line between civil and criminal. Is the jury going to be charged with making a criminal finding? Is the Plaintiff on trial?

Loree has offered no new evidence to support an amended plea. In fact, he is not even calling his own expert witness (page 9). *All* of Loree's efforts during discovery in this defamation cause of action have focused on avoiding the merits of the case and hoping for claim preclusion. That effort failed.

The Plaintiff's case has already been irreparably harmed by the trial court's error of granting claim preclusion to a default case and by Loree's inexcusable delays. Loree has never plead truth or privilege because none of the defamatory statements sworn to by witnesses allow for a defense of truth or privilege. (Please read all three witness affidavits, Exhibits A, B, C).

Factual Errors in the Defendant's "Background of Case"

In this rabbit hole of fraud, deceit, and corruption the Plaintiff was thrown into in March 2006, it is stunning that everything alleged by the defense is just the opposite of what occurred. It is shocking how willfully they lie about it.

There was never any theft or embezzlement, nor money from clients held on deposit for embezzlement to even be a consideration. The Plaintiff's company, Kunstwerke, had reimbursement contracts and was forced to sue every client (including the Gabys) who stiffed the Plaintiff's company in the amount of $500,000+ when Loree's embezzlement slander exploded.

Every contract case settled in Kunstwerke's favor.

Furthermore, Loree now claims that the Plaintiff "walked off the job" and left "unpaid subcontractors." Loree was aware that his boss had not reimbursed the last three Kunstwerke reimbursement statements in February 2006 for subcontractor and supplier costs already incurred by the Plaintiff's company. On page 30, line 21 (Exhibit D) of his testimony, Richard Gaby admits not paying all of his bills. The actual accounting records show that there were three weekly billings from Kunstwerke containing over one hundred invoices that Richard Gaby was required to reimburse per his contract. He never did.

The Plaintiff was present at and directly involved with the Gaby project until the moment the Plaintiff received a termination notice and no trespass order on March 3, 2006. As recently as February 16, 2006, the Plaintiff had a formal meeting in which he requested reimbursement and discussed other issues with Loree. The Plaintiff's correspondence with Loree continues right up until the termination date. The Plaintiff did not "walk off the job."

David Loree is **not** an employee of Richard and Barbara Gaby. He is employed and paid by Jay Van Andel Enterprises(JVA). The Gabys do not reimburse JVA for services rendered by David Loree. He is provided as a security guard for Barbara Gaby.

David Loree arrived on the scene in February 2006 posing as a "detective" investigating the Plaintiffs financial dealings with **all** his clients. (Exhibit A). Richard Gaby sent emails to the Plaintiff in the spring of 2006 complaining about the construction cost and timing of their $5,000,000 Lake Keowee home.

David Loree contacted 240 individuals (clients, investors, suppliers, contractors, and

friends) who had any kind of connection with the Plaintiff. Only 86 of those contacted had any connection whatsoever to the Gaby project. This is why privilege was never plead. There was no discovery on a possible privilege defense.

David Loree intentionally had the Gabys withhold contractual reimbursement payments in order to make it appear that money was missing (embezzled). Not only did David Loree slander, he also performed deceptive acts to make his statements appear true. It could be considered a civil version of planting false evidence.

Loree's slander was intentionally spoken with malice to Kunstwerke's own contractors and suppliers as blanket statements in an effort to gain their cooperation to remain on the project once Kunstwerke was terminated.

There has never been any criminal finding or even an attempt at a criminal inquiry. The Gaby Kunstwerke account has never been actually litigated in civil court. There has been no audit of the Gaby account. Loree has never refuted the actual Gaby accounting ledger on file in this case. There is no accountant, auditor, expert witness, or criminal authority that will testify on Loree's behalf.

The Defendant never plead truth or privilege because both defenses are obvious non-starters in this case based on the language and context of the actual statements that have been sworn to and will be placed before the jury.

The Law

The Defendant incorrectly references *Crowley v. Spivey* in his argument by stating that an amendment to an answer should be denied if it "Would cause excessive delay." *Crowley* v. *Spivey* actually says "Circumstances such as **inexcusable delay**, surprise to the adverse party, or the like, may justify refusal to amend." (See also *Braudie v. Richland County.*) *Spivey* is <u>not</u> concerned about a <u>potential</u> delay, but rather the inexcusable delay that has <u>already occurred</u>

during which time the amending party could have amended. The inexcusable delay in the *Spivey* case was that the moving party waited sixteen months to amend. The court ruled that *that* was inexcusably long. In this present case, the defendant may set a new South Carolina case law record for inexcusable delay: nine years!

In *Alamance Industries v. Chesterfield Hosiery Mill, (239 S.C.287, 122 S.E (2nd) 648 (1961))* the Court ruled that it was no abuse of discretion to deny a request to amend an answer five days before trial where the defendant was aware of the factual matter that was the subject of the proposed amendment from the time that the suit was commenced eight months earlier. The defendant was fully informed as to the nature of the cause of action and the defendant did not demonstrate diligence required in proposing amendment.

In this present case, the Defendant has been well aware of the factual matter and pleadings available for nine years. The witness affidavits are seven years old. It was not an accident that he did not opt for a truth defense. It is an impossible defense. The statements sworn to by witnesses and listed above are all criminal in nature and would require a criminal finding to establish truth. The defendant has not even taken the steps to pursue such truth through proper venues. He did not do so before he posited such statements, nor during the past nine years this case has been pending.

The jury in this case cannot be charged with making a criminal finding. They can only be charged with determining whether the statements were actually said and evaluating the credibility of the witnesses.

The great irony here is, if the defendant indeed had "affirmative truth" in this case, he would not have clogged the courts for nine years and he would have not attempted a collateral estoppel scam that ultimately failed. One cannot plead truth as a defamation defense when no truth is proffered. There is no gray area. There is no truth or substantive truth to be found to Loree's statements in some gray area between civil and criminal.

Rule 15, SCRCP would not allow Loree's amendment because it would substantially change the defense and would not conform to the evidence submitted or the facts proved. It would be a manifest injustice to the Plaintiff.

Court of Appeals Ruling in this Case

In its nine page order to reverse and remand this case to trial, the South Carolina Court of Appeals ruled in *Kunst v. Loree*:

"Accordingly, we hold Kunst was not presented with a fair opportunity to "actually litigate" the veracity of Loree's alleged statements to others." (Exhibit E)

In a defamation cause of action, the focus must be on the specific statements. The burden of provable truth is on the one who posits specific statements at the time they are made. The fabricated damages computation Loree submitted under oath in the Gaby civil contract default case occurred one year after he made the alleged slanderous statements. This is the first and only submission he has made in this present case as well. His damages computation was uncontested, not actually litigated on its merits, and was provided in a civil proceeding.

The Plaintiff is not the one on trial and is not required to prove every statement false (although this Plaintiff can do so easily).

Loree has never pursued any venue through which provable truth could be obtained.

Loree's own attorney admits that "criminal" could only be "hypothetical" because there has never been any such finding

Loree's bosses, Richard and Barbara Gaby, refused to testify on Loree's behalf. The Plaintiff obtained a commission from Judge Few in 2009 to obtain Georgia subpoenas for these Georgia residents. Both Gabys ignored their first subpoenas. As a trial date neared in November

2014, the Plaintiff obtained another commission from Judge Verdin and the Gabys were served again in Georgia.

The Gabys were both deposed on December 5, 2014. Note this exchange between attorneys during the testimony of Barbara Gaby when she was provided Loree's "damages computation" from the Gabys' civil contract default case (Loree attorneys Smith (added to Loree's defense in March) and Stern were present):

Stern: "The false premise is your statement that this is the only evidence that would support the claim of money being embezzled."

Smith: "And that's my – embezzlement is a criminal –"

Kunst: "Indeed."

Smith: "– accusation, so your question is hypothetical because there's been no finding of $353,993 embezzled. I'm not sure my client can answer – I am not going to let her answer a hypothetical question like that."

Kunst: "Do you have any knowledge as to whether there has been a finding that $353,000 has been embezzled from you?

Gaby: No. (Exhibit F)

A truth defense, if added, could only be hypothetical. What is a civil jury to be charged with? This civil trial would become a circus of criminal matters as "evidence" and decided as "affirmative truth" without any such finding. The possibility of a truth defense at this point in this case is on its face absurd and would severely prejudice this Plaintiff.

The remainder of Barbara Gaby's deposition is just as damning. She has no knowledge of

any crime. She did not even ask for an audit or reconciliation of her account with Kunstwerke, and she has never heard the eight slanderous statements at the heart of this case. She had never even seen the three witness affidavits before. The alleged victim of a crime of $400,000 embezzlement had no proof and knew little about it.

Richard Gaby's testimony is no different. He also has no proof. When pressed for any evidence or proof of those statements sworn to in witness affidavits, he had none. When pressed for any proof of embezzlement, he finally concludes "We have a judgment against Scott Kunst" (Exhibit D). This "judgment" is the uncontested default damages award that the Appeals Court has already ruled cannot be a defense in Loree's case.

In Loree's memorandum requesting a last minute truth and privilege plea, Loree cherry picks instances in which the Plaintiff references "Loree's truth defense." In every context the Plaintiff is referencing Loree's effort to attempt claim preclusion (which the Appeals Court did not allow) and pass it off to the public as proof of embezzlement. Loree's default "Damages Computation" has been published to the community at large as "proof" of embezzlement. The Plaintiff was well aware of the **actual pleadings** in this case.

It must be noted that Loree's attorney Sandy Stern announced in subsequent hearings for four years that the Plaintiff was an "adjudicated embezzler" based solely on the uncontested civil default damages judgment the Gabys forced and fought for all the way to the State Supreme Court. One can readily judge the ethics of breaching the civil/criminal line. In the hearing before Judge Miller in 2009, in which Loree moved for summary judgment based strictly on the doctrine of collateral estoppel derived solely from the default judgment, Stern opened the hearing: "For the purposes of this hearing we admit to the defamation."

Every time throughout discovery when the Plaintiff has asked for the proof (criminal findings) of the slander, there has been none. These inquiries by the Plaintiff throughout discovery are not an implied understanding that Loree *meant* to plead truth for nine years and just forgot, but rather it is proof that the Plaintiff has made every effort to protect himself from

being prejudiced with a last second plea change and the potential surprise of new evidence before trial. Nothing has changed. There is no new evidence to conform to a new plea.

The Plaintiff's only cause of action is specifically plead as defamation *per se.* All of the defamatory statements require a criminal finding. This has been understood for nine years by both parties. Loree has had a revolving door of teams of attorneys and multiple law firms representing him against this *pro se* plaintiff. This was no mistake.

The fact that a Plaintiff asks for proof of a crime during discovery in a slander case does not imply that the Defendant is actually pleading truth. Truth is not a "tag-on" defense of defamation. It is generally the only absolute defense. Nothing has changed in the status of the evidence. Loree's attorney has admitted that there is no criminal finding and that any such defense would be "hypothetical." It is an impossible defense intended only to confuse the jury and prejudice the Plaintiff.

Again, Loree's own attorney makes the most valid point of this Plaintiff's Memorandum in Opposition when he states: "embezzlement is a criminal" – "accusation, so your question is hypothetical because there's been no finding of $353,993 embezzled." Smith objected to any discovery questions regarding criminal findings, because there were none.

Loree's Two Expert Witness Scams

Scam 1:

In Loree's continual effort to fabricate criminal findings from anywhere other than a criminal venue, his first expert witness scam is the most outrageous and unethical. Loree spent a fortune on an expert witness ruse that blew up twice in spectacular fashion. Needless to say, Loree's only expert witness, Bill Larkin, will not be appearing on Loree's behalf.

Two years into this present case, Loree's expert witness Bill Larkin submitted a report that was distributed widely throughout the community and used in efforts to obtain summary judgments. This report is so outrageous that it has been used to discredit Bill Larkin in

subsequent unrelated cases by other attorneys.

The following transcript is from Bill Larkin's deposition in *Enterprise Bank vs. Daniel* on July 22, 2009. In his testimony, Larkin admits having submitted the original report used in Loree's case. Loree's attorney Sandy Stern asked Larkin to change his report and add language to something that Larkin admits he was not permitted to do by the standards. This transcript explains why there will not be an expert witness in this case and the unethical lengths that Loree has gone to fabricate the appearance of criminal findings.

Attorney: What I have handed you is a report, and I'm going to ask you – is this report your work?

Larkin: Yes, it is.

Attorney: It's not involved in this case. It's the investigation of the Kunstwerke Corporation dated January of last year. Was this a final report that you prepared?

Larkin: No, it's not a final report.

Attorney: So this is not a final report?

Larkin: No.

Attorney: How do we know that a report that you have prepared is a final report? Does it say it?

Larkin: It will say it.

Attorney: It will say "final report"?

Larkin: Yes.

Attorney: Have you ever prepared a final report in the Kunstwerke case?

Larkin: No. The case is still ongoing.

Attorney: Take a look at page four, if you would, please. At the bottom of page four it says, "The actions of this corporation and an individual Scott Kunst, "may be in violation of the following South Carolina and United States statutes." And it lists – you list a number of statutes grouped by South Carolina statutes and then by the U.S. Government statutes, including breach of trust and fraudulent intent, swindling, subcontractor, payment, failure to pay laborers, contractors, subcontractors, day laborers, time and manner of making payment, South Carolina Department of Revenue Code, U.S. Government mail fraud, wire fraud, money laundering, RICO, bank fraud, and then federal tax laws.

Do you believe that those statements are consistent with the Association of Certified Fraud Examiners' guidelines and requirements?

Larkin: Well, they're not, and I'll tell you why. There was a report prior to this that was delivered to the attorney in this case that did not have these in there. And he asked – I was asked by him to write it as if it were a prosecutorial memoranda; therefore, entering the laws I thought that were involved. This was rewritten with the laws written in. There was a prior report without this in it, and this is the report that the attorney released.

Attorney: The lawyer, whoever it was, released this; but this is your work product?

Larkin: It's my work product, yes. But the lawyer released it.

Attorney: Are you being offered in that case, as you are in this case, as a certified fraud examiner?

Larkin: Yes, I am.

Attorney: So your explanation for why these statements would not be a violation of the Association of Certified Fraud Examiner standards is because the lawyer asked you to write up something that was like a prosecutorial memo; is that right?

Larkin: That's correct. In fact, I have the lawyer's handwritten notes.

[unrelated discussion]

Attorney: Will your final report in this particular case, the Kunstwerke case, be done consistent with the Association of Certified Fraud Examiners' standards?

Larkin: Yes, it will.

Attorney: So will those statements, then, have to come out?

Larkin: Those statements will have to come out. (Exhibit G)

Scam 2:

On March 13, 2007, at the Gaby civil contract default damages hearing, witness Loree fabricated a $353,000 embezzlement number in an uncontested environment in which the other side, the Kunstwerke ledger, was barred from evidence. The "damages amount" would have otherwise been zero. The Gabys chose to force the default and not to actually litigate their account. This Plaintiff and Kunstwerke fought to litigate the case on its merits all the way to the Supreme Court of South Carolina.

Loree's attorney Sandy Stern attempted to sneak expert witness Bill Larkin into this civil contract default damages hearing in order to give some "credibility" to Loree's testimony. Larkin was added to the case on the Friday before the Tuesday hearing in which they had one year to prepare for. Larkin was given little to look at and could only speak to generalizations. The Honorable Judge Welmaker excluded Larkin's testimony from consideration.

Collateral Estoppel Scam

Loree's defense from the very beginning has been an incessant parade of attempting to fabricate criminal findings from civil process. Some of these attempts have been less than ethical and have already caused great prejudice to this Plaintiff. Loree's collateral estoppel scam caused a five year delay in this case until the South Carolina Court of Appeals reversed and remanded.

Loree opted for claim preclusion derived solely from a civil contract default case. Loree was the sole witness representing his boss in a default damages hearing that occurred on March 13, 2007, three months **after** Loree was sued for defamation. At this hearing, he attempted to fabricate the appearance of criminal activity to influence his own case as a defamation defendant.

At a later hearing in which Judge Miller granted collateral estoppel in 2009, Sandy Stern, the defendant's counsel, began the hearing by stating: "for purposes of this hearing, we admit to the defamation." It was a scam. There was no truth defense attempted because they were attempting to manipulate the default findings and use claim preclusion to get the case dismissed.

Sandy Stern was permitted by Judge Miller to write the order granting summary judgment based solely on collateral estoppel. In this outrageous order that was reversed by the South Carolina Court of Appeals, Stern wrote that criminal findings had been found by the civil default hearing judge. Warren Clayton, Kunstwerke attorney, wrote Judge Miller and states it better than this *pro se* Plaintiff can:

"In direct contravention of Judge Welmaker's Order, the proposed order falsely states that the Court found Kunst and Kunstwerke violated the SCUTPA. Furthermore, the Loree and Gaby cases are both civil actions, and neither our client nor Scott Kunst have ever been charged with, or convicted of a criminal misdemeanor charge for conversion under S.C. CODE ANN. 29-7-20(1), or otherwise. S. C. CODE ANN 29-7-20 is a criminal penalty statute, and all allegations of conversion against Kunstwerke or Kunst have been improperly alleged in the proposed order for this civil case.
The entire letter is a must read (Exhibit H).

This last minute amended plea change to truth is not what the South Carolina Court of Appeals intended when they remanded *Kunst v. Loree* for trial. The line between civil and criminal can not be breached.

Conclusion

At this hearing the morning before trial, the Defendant will move this court to change his pleading to truth and privilege.

The Defendant alleges that the Plaintiff should have known that he *meant* to plead privilege because the Plaintiff once referenced Loree as "on the job" for the Gabys. The Plaintiff's context was clear. The Gabys were refusing to testify claiming no knowledge of the case. The Plaintiff was merely arguing the Gabys' connection to Loree in order to obtain a commission for an out-of-state deposition.

The Defendant has flooded this court with expert witness ruses and a collateral estoppel scam, all in an effort to fabricate criminal findings in a civil environment. This motion to amend is merely his latest attempt.

The Defendant's continual attempt at fabricating criminal findings demonstrates that he is aware of the provable truth he would have needed to conform to the evidence if he were able to

plead it. No one is surprised that he didn't plead truth. The Plaintiff is surprised and shocked that he is doing so the morning of trial.

The Defendant was fully informed as to the nature of the cause of action and Loree did not demonstrate the diligence required in proposing the amendment.

Nine years has been an inexcusable delay to enter an impossible plea that Loree's own attorney refers to as "hypothetical." There has been no discovery on any criminal finding whatsoever. The Plaintiff has already been harmed and prejudiced by the inexcusable amount of time it has taken to get this case to a jury. This plea change only furthers that prejudice.

Any inexcusable delay in a defamation case is especially prejudicial to a Plaintiff. A defamed Plaintiff continues to be defamed until litigation is resolved.

The Defendant's motion to amend is nothing more than a masked effort to open a window to throw mud at trial and cloud the waters for a civil jury that cannot possibly make criminal findings. The Defendant had nine years to obtain such findings from criminal statutes and never attempted to do such (for obvious reasons).

It would be a manifest injustice to allow this defendant to change his plea and argue an impossible, "hypothetical" defense yet again – this time to a civil jury.

Respectfully submitted:

J. Scott Kunst, Plaintiff, *pro se*
130 Arabian Way
Simpsonville, SC 29681
864 979 7961

Simpsonville, South Carolina
May 18, 2015

Exhibit A

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
	CASE NO. 2006-CP-39-1826
COUNTY OF PICKENS	
J. Scott Kunst,	
Plaintiff,	
vs.	**AFFIDAVIT OF KEVIN GOAD**
David Loree,	
Defendant.	

Personally appeared before me Kevin Goad, who being duly sworn, states as follows:

I reside in Greenville County, South Carolina and I give this Affidavit voluntarily. My company, Window and Door Concepts, provided windows and doors for Scott Kunst and his company Kunstwerke from 2003 to 2006.

During the spring of 2006, David Loree, who was managing the construction of Richard and Barbara Gaby's personal residence at the Reserve at Lake Keowee, spoke with me on numerous occasions. David Loree represented to me that he was a former detective and was in the process of investigating Scott Kunst's financial dealings with his clients.

David Loree stated to me that contact had been made with many of Scott Kunst's clients and vendors and stated that money was missing from many of Scott's clients. He referenced Parham, Covington, Coco, and Hickey specifically. He stated that Scott Kunst had taken $400,000 from the Gaby project and had left his other clients in a similar situation. David Loree stated that Scott Kunst had provided his clients with "dummy" invoices from "dummy" companies to take money from these clients.

David Loree stated to me that the money Scott Kunst had taken from his clients was spent on his (Scott Kunst's) speculative project with an investor named Hickey. He stated that progress at the speculative project with Hickey had stopped because Scott Kunst's clients had stopped paying Scott's company altogether and, as a result, there was no money available to be illegally transferred from these clients to the spec project. He stated that he was in contact with Hickey and that a lot of money had been taken from Hickey as well. David Loree appeared to know a great deal about Hickey and the speculative project.

David Loree implied that he had reconciled the Gaby Kunstwerke account, and that the accounts of the other clients had also been reconciled.

Further, Affiant sayeth naught.

Kevin Goad 8-25-08
Kevin Goad

Sworn to before me this 25th
day of July, 2008
August, 2008
Notary Public, State of South Carolina
My Commission Expires: 2/15/12

Exhibit B

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**CASE NO. 2006-CP-39-1826**
COUNTY OF PICKENS	)	
	)	
J. Scott Kunst,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF BRONSON SHEPHERD**
	)	
David Loree.	)	
	)	
Defendant.	)	

Personally appeared before me Bronson Shepherd, who being duly sworn, states as follows:

I reside in Brevard, North Carolina and I give this Affidavit voluntarily.

I was an independent contractor managing construction sites at The Reserve at Lake Keowee from 2005 through 2006.

In early March 2006, David Loree, stated to me that:

1. "Scott Kunst has been caught commingling his (Scott's) clients' money."
2. "Scott Kunst has embezzled money from all of his clients "
3. "The money was hidden somewhere, and that's why I'm here, to investigate where it went."
4. "I do know that some of it went to a luxury car and foreign trips."
5. "I would just like to get my hands on him." (Scott Kunst)
6. "Scott is going to jail."

Later in March 2006, when I asked Sandy Stern what was going to happen to Scott Kunst and what he was going to do to him, he stated that :

7. "he (Stern) was going to go after jail time."

Further, Affiant sayeth naught.

Bronson Shepherd

Sworn to before me this 2nd
day of February 2, 2009

Notary Public, State of South Carolina
My Commission Expires: 10-24-2012

Exhibit C

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**CASE NO. 2006-CP-39-1826**
COUNTY OF PICKENS	)	
	)	
J. Scott Kunst,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF GLENN ALFONSO**
	)	
David Loree.	)	
	)	
Defendant.	)	

Personally appeared before me Glenn Alfonso, who being duly sworn, states as follows:

I reside in Easley, South Carolina and I give this Affidavit voluntarily.

My company, New Creations, crafted ornamental copper roofing and copper fixtures for Scott Kunst and his company Kunstwerke from 2004 to 2006.

During the spring of 2006, David Loree, who was managing the construction of Richard and Barbara Gaby's personal residence at the Reserve at Lake Keowee, spoke with me on numerous occasions. I recall David Loree referring to Scott Kunst as a "criminal" on more than one occasion.

In one particular instance I recall him stating to me that "I'm not supposed to be telling you this, but to give you an idea of some of the criminal things Scott has been doing." David Loree then referenced an insurance policy for the Gaby project and claimed that Scott Kunst took out the policy, billed the Gabys, and intentionally cancelled the policy the next day so that he could keep the money.

During this same period of time, David Loree also stated that Scott Kunst had taken money from his other clients and that money was "missing" from these other projects.

Further, Affiant sayeth naught.

Glenn Alfonso

Sworn to before me this 21st day of July, 2008

Notary Public, State of South Carolina
My Commission Expires: 10-24-2012

Exhibit D

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA - COUNTY OF PICKENS

J. SCOTT KUNST, Plaintiff, vs. DAVID LOREE, Defendant.	CASE NO. 2006-CP-39-1826

DEPOSITION OF

RICHARD D. GABY

Friday, December 5, 2014
9:45 a.m.

Suite 1600
1180 Peachtree Street, N.E.
Atlanta, Georgia

Lisa A. Messina, RMR, CRR, CCR-A-421

attention, Mr. Gaby, to Page 102 which is the last page. If you could read Lines 1 through 14 quietly to yourself and then I'll provide a question. Take whatever time you need.

Mr. Loree states that "He," meaning you, "had the e-mails, but I don't know they were going to go too far."

Do you have any recollection of what that meant?

A. I do not.

MR. STERN: Object to the form of the question.

MR. SMITH: I join in that objection, but he answered that he does not have knowledge.

Q. (By Mr. Kunst) Based on the contract that you signed, was there any stipulation for withholding reimbursement based on progress?

MR. STERN: Object to the form of the question.

MR. SMITH: If you know you can answer.

THE WITNESS: I paid every invoice that was submitted to me other than the last one.

Q. (By Mr. Kunst) Did you file a lawsuit against Kunstwerke Corp and me?

MR. SMITH: Object to form, but you may

at trial. The only form --

MR. SMITH: Scott, I'm absolutely trying to give you as much leeway as I can.

MR. KUNST: Off the record.

(Off the record.)

Q. (By Mr. Kunst) Do you have today as you sit here any specific knowledge that Scott Kunst has embezzled funds from you?

MR. SMITH: You can answer that.

THE WITNESS: We have a judgment against Scott Kunst.

Q. (By Mr. Kunst) Is that the default judgment?

A. Is that what it was, default judgment?

MR. STERN: Yes. It was appealed to the South Carolina Supreme Court and it's still in effect today.

Q. (By Mr. Kunst) Do you know how large that judgment is?

A. I don't have a recollection.

(Plaintiff's Exhibit 10 was marked.)

Q. (By Mr. Kunst) Exhibit 10 is an affidavit submitted by Glenn Alfonso in this present case. Take whatever time you need to read it.

Have you ever seen this affidavit before?

Exhibit E

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Scott Kunst, Appellant,

v.

David Loree, Respondent.

Appellate Case No. 2011-199507

Appeal From Pickens County
Edward W. Miller, Circuit Court Judge

Opinion No. 5163
Heard May 9, 2013 – Filed August 14, 2013

REVERSED AND REMANDED

J. Scott Kunst, pro se, of Simpsonville.

T. S. Stern, Jr. and Violet Elizabeth Wright, both of Covington Patrick Hagins Stern & Lewis, P.A., of Greenville, for Respondent.

WILLIAMS, J.: J. Scott Kunst appeals the circuit court's grant of summary judgment on his defamation cause of action against David Loree. On appeal, Kunst argues the circuit court improperly applied the doctrine of collateral estoppel when dismissing his defamation claim. We reverse and remand.

FACTS/PROCEDURAL HISTORY

This case arises out of the construction of a lake home on Lake Keowee in Pickens County, South Carolina. Richard and Barbara Gaby ("the Gabys") hired Kunstwerke Corporation ("Kunstwerke") to construct a residence in the Reserve on Lake Keowee. Kunst is the sole owner of Kunstwerke.

In early 2006, disputes arose when the Gabys began to suspect Kunst was not paying subcontractors for completed work on their lake home. The Gabys instructed an employee, David Loree, to investigate their suspicions. Loree contacted a number of subcontractors and vendors who worked on the Gabys' lake home and questioned them about whether they had been paid. From this investigation, Loree concluded that, although the Gabys made timely payments to Kunst, Kunst failed to make the proper payments to the subcontractors and vendors. Loree also concluded that Kunst overcharged the Gabys for work provided by certain subcontractors.

On May 3, 2006, the Gabys brought suit (the "Gaby Action") against Kunstwerke and Kunst, individually, alleging breach of contract, breach of contract accompanied by a fraudulent act, breach of fiduciary duty, conversion, and violation of the South Carolina Unfair Trade Practices Act. The defendants failed to timely answer the Gabys' complaint, and the Gabys filed a motion for entry of default. On June 20, 2006, the circuit court issued an order of default. Thereafter, Kunst and Kunstwerke filed a motion for relief from default, claiming their failure to respond was excusable and that meritorious defenses existed. On December 7, 2006, the circuit court heard arguments on this motion and denied relief from the default.

On March 13, 2007, the circuit court held a hearing to determine damages in the Gaby Action. The Gabys presented testimony from four witnesses at this damages hearing, including testimony from Loree. Kunstwerke's counsel and Kunst, who proceeded pro se, were allowed to extensively cross-examine each of these witnesses. On May 16, 2007, the circuit court entered an order finding the Gabys had "presented sufficient evidence to establish their claims fully." The order states the circuit court "start[ed] with the premise that all facts relating to the pertinent causes of action [were] admitted." The circuit court awarded the Gabys

$353,993.91 in actual damages, $70,798 in punitive damages, and $35,807.41 in attorney's fees and costs.[1]

On December 19, 2006, shortly after the motion for relief from default was denied, Kunst brought the current action against the Gabys and Loree, alleging defamation, tortious interference, and intention infliction of emotional distress. In his complaint, Kunst alleged the Gabys and Loree damaged his reputation and the reputation of Kunstwerke during their investigation leading up to the Gaby Action.

On April 14, 2007, the circuit court issued an order dismissing Kunst's causes of action against the Gabys on the basis that these causes of action were compulsory counterclaims under Rule 13(a), SCRCP, that should have been brought in the Gaby Action and were therefore barred under the doctrine of collateral estoppel.[2] As a result of this April 2007 order, the only causes of action remaining were those against Loree. On March 9, 2009, the circuit court issued an order granting Loree summary judgment on Kunst's tortious interference and intentional infliction of emotional distress claims. Kunst's defamation claim against Loree was the sole remaining cause of action.

On October 19, 2010, the circuit court issued an order dismissing Kunst's defamation claim against Loree. In dismissing this cause of action, the circuit court reasoned that truth is an absolute defense to defamation and "[t]he issue of the truth of the statements allegedly made by Loree was necessary to support the prior judgment and damages in the [Gaby Action]." Accordingly, the circuit court found the veracity of Loree's statements had been "actually litigated" during the Gaby Action and, therefore, the doctrine of collateral estoppel barred Kunst from relitigating this matter.

---

[1] Following this order, Kunst appealed the circuit court's denial of his motion for relief from default and the award of damages to this court. This court affirmed the circuit court's denial of Kunst's motion for relief from default and award of actual and punitive damages. *See Gaby v. Kunstwerke Corp.*, Op. No. 2009-UP-028 (S.C. Ct. App. filed Jan. 9, 2009). Kunst then sought a writ of certiorari from our supreme court, which was denied on June 10, 2010.

[2] Kunst does not appeal this order in the instant appeal.

On November 12, 2010, Kunst filed a lengthy motion "to reconsider or amend," arguing, in part, that the circuit court deviated from South Carolina case law in applying collateral estoppel to a default judgment. This appeal followed.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56(c), SCRCP." *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Rule 56(c) provides a circuit court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* (quoting Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). To withstand a motion for summary judgment "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Id.* at 330, 673 S.E.2d at 803.

LAW/ANALYSIS

Kunst argues the circuit court erred in granting summary judgment by applying the doctrine of collateral estoppel based upon the default judgment rendered against him in the Gaby Action. We agree.

Under South Carolina law, "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to

previously litigate the issues." *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008).

In *State v. Bacote*, our supreme court stated:

> We have previously adopted the general rule of collateral estoppel as set forth in the Restatement (Second) of *Judgments* § 27 (1982) in *South Carolina Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Section 27 states: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim." *See also Palm v. General Painting Co., Inc.*, 302 S.C. 372, 396 S.E.2d 361 (1990) (citations omitted) ("Under the doctrine of collateral estoppel, . . . the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues 'actually and necessarily litigated in the first suit.'").
>
> In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation. 50 C.J.S. *Judgments* § 797 (1997).

331 S.C. 328, 330-31, 503 S.E.2d 161, 162-63 (1998).

In *Bacote*, a defendant charged with driving under the influence moved to suppress evidence regarding his refusal to take a breath test. *Id.* at 329, 503 S.E.2d at 162. Prior to his trial, an administrative hearing was held to determine whether the defendant's license would be automatically suspended under section 56-5-2950 of the South Carolina Code. *Id.* The arresting officer failed to appear at this hearing and, as a result, the hearing officer rescinded the defendant's suspension. *Id.* At trial, the circuit court granted the defendant's motion to suppress, finding the State was collaterally estopped from introducing evidence of his refusal to take a breath test based upon the rescission of his license suspension at the administrative hearing. *Id.* The State appealed, and the court of appeals reversed. *Id.* The supreme court agreed and held that an administrative license revocation proceeding

does not preclude litigation of the same issues in ensuing criminal prosecution. *Id.* at 331, 503 S.E.2d at 163.

In reaching this conclusion, the supreme court first found that "[i]n the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation." *Id.* The supreme court went on to state, "Even had the issue actually been litigated, we hold collateral estoppel does not apply to issues decided at administrative hearings held pursuant to § 56-5-2950." *Id.* In support of this alternative ground, the court relied upon two exceptions to the general rule regarding issue preclusion. *Id.* at 331-32, 503 S.E.2d at 163 (relying upon the fairness and public policy exceptions found in section 28 of the Restatement (Second) of Judgments).

In the instant case, the circuit court found *Bacote* was distinguishable from the facts of the current case and, thus, did not apply. The circuit court also found that language in *Bacote* regarding the application of default judgments to the doctrine of collateral estoppel was dicta and thus not controlling. Following out-of-state precedent, the circuit court determined that the doctrine of collateral estoppel could be applied "in default cases as to matters essential to the [prior] judgment." We disagree and hold South Carolina jurisprudence overwhelmingly supports the position that the doctrine of collateral estoppel cannot be applied to default judgments to preclude subsequent litigation.

First, we find the circuit court erred in interpreting *Bacote* in its order granting summary judgment. The circuit court found the language in *Bacote* addressing the application of collateral estoppel to default judgments was dicta, as opposed to controlling precedent. We disagree and read *Bacote* as offering two separate but equally viable grounds. *See Bacote*, 331 S.C. at 331, 503 S.E.2d at 163 ("*Even had the issue actually been litigated*, we hold collateral estoppel does not apply [to the current action]." (emphasis added)).

Both federal courts and other state courts have interpreted *Bacote* as establishing the rule that default judgments cannot be used to preclude subsequent litigation under the doctrine of collateral estoppel. *See In re Springhart*, 450 B.R. 725, 727 (Bankr. S.D. Ohio 2011) ("After reviewing the doctrine of collateral estoppel or issue preclusion, as adopted in South Carolina, the court concludes that the default judgment and order awarding damages cannot be afforded preclusive effect . . . . First, South Carolina does not allow default judgments to have preclusive effect

under the collateral estoppel doctrine because no issues were actually litigated."); *Powell v. Lane*, 289 S.W.3d 440, 451 (Ark. 2008) (Wills, J., dissenting) (citing *Bacote* as an example of state law which "adhere[s] to the general rule" that default judgments cannot be used under the doctrine of collateral estoppel).

Additionally, South Carolina jurisprudence regarding collateral estoppel strongly supports the position in *Bacote*. South Carolina courts have consistently followed the Restatement (Second) of Judgments with regard to the issue of collateral estoppel. *See, e.g., S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991) (adopting the general rule set forth in the Restatement for offensive use of collateral estoppel); *Beall v. Doe*, 281 S.C. 363, 370, 315 S.E.2d 186, 190 (Ct. App. 1984) ("[A] fair rule regarding the application of issue preclusion in subsequent litigation with different parties is the rule recently formulated by the American Law Institute [in the Restatement (Second) of Judgments]."). The Restatement takes the position that default judgments have not been "actually litigated," and therefore cannot be used as the basis for collateral estoppel in subsequent actions. *See* Restatement (Second) of Judgments § 27 cmt. e (1982) ("In the case of a judgment entered by . . . default, none of the issues is actually litigated. Therefore, the rule of this Section does not apply with respect to any issue in a subsequent action."). Some courts have applied the doctrine of collateral estoppel in default cases as to matters that are essential to the judgment. *See, e.g., In re Byard*, 47 B.R. 700, 706 (Bankr. M.D. Tenn. 1985) (finding that, under Kansas law, a default judgment would preclude relitigation of issues "determined and necessary" to that judgment). However, the Restatement's position is the view taken by the majority of the courts throughout our nation. *See Powell*, 289 S.W.3d at 450 (Wills, J., dissenting) (stating that the "majority view" is that default judgments cannot serve as the basis for collateral estoppel); 50 C.J.S. *Judgments* § 1049 (2013) ("Although a party against whom a default judgment is entered certainly had an opportunity to litigate, *most courts* have concluded that an opportunity to litigate should not be given the same effect as actual litigation . . . ." (emphasis added)).

Second, we find the circuit court erred in holding that *Bacote* and the current case were factually distinguishable. The circuit court found that, unlike *Bacote* in which the State did not participate in the administrative hearing resulting in default, Kunst actively took part in the damages hearing in the Gaby Action. The circuit court determined this participation in the damages hearing afforded him a "full and fair opportunity to be heard." We disagree.

Some courts adhering to the general rule that default judgments cannot be used to establish collateral estoppel have recognized an exception when a party extensively participated in litigation. *See, e.g., In re Ragucci*, 433 B.R. 889, 985 (Bankr. M.D. Fla. 2010) ("[When] a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently [chose] not to do so, it is not an abuse of discretion to apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior action." (alterations and internal quotation marks omitted)); *Insituform Techs., Inc. v. AMerik Supplies, Inc.*, 850 F. Supp. 2d 1336, 1362 (N.D. Ga. 2012) (finding when a defendant has substantially participated in a lawsuit and "is defaulted as a sanction for dilatory or obstructive conduct," the "actually litigated" requirement is met, and it is within the court's discretion to apply collateral estoppel). However, this exception has not been recognized under South Carolina case law.

Further, we find this exception would not apply to the facts of this case. Although Kunst participated in the damages hearing by cross-examining witnesses called by the Gabys, it appears he was not afforded the opportunity to testify or to call witnesses to testify on his behalf. Kunst was also not allowed to participate in any discovery on this matter. In addition, because Kunst was in default, the circuit court "start[ed] with the premise that all facts relating to the pertinent causes of action [were] admitted." Accordingly, we hold Kunst was not presented with a fair opportunity to "actually litigate" the veracity of Loree's alleged statements to others.

Accordingly, we hold the doctrine of collateral estoppel cannot be applied to default judgments because the essential element requiring the claim sought to be precluded actually have been litigated in the earlier action is not met. Therefore, we find the circuit court erred in ruling Kunst's defamation claim was precluded under the doctrine of collateral estoppel based upon the default judgment rendered in the Gaby Action.[3] Accordingly, we reverse the circuit court's grant of summary judgment on Kunst's defamation claim.

---

[3] Kunst raises several additional arguments on appeal. However, because we find his first issue dispositive of this appeal, we decline to address his remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Based on the foregoing, the circuit court's order granting summary judgment is

REVERSED AND REMANDED.

HUFF and KONDUROS, JJ., concur.

Exhibit F

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA - COUNTY OF PICKENS

J. SCOTT KUNST, Plaintiff, vs. DAVID LOREE, Defendant.	CASE NO. 2006-CP-39-1826

DEPOSITION OF

BARBARA VAN ANDEL GABY

Friday, December 5, 2014
12:30 p.m.

Suite 1600
1180 Peachtree Street, N.E.
Atlanta, Georgia

Lisa A. Messina, RMR, CRR, CCR-A-421

with it.

MR. STERN: The false premise is your statement that this is the only evidence that would support the claim of money being embezzled.

MR. SMITH: And that's my -- embezzlement is a criminal --

MR. KUNST: Indeed.

MR. SMITH: -- accusation, so your question is a hypothetical because there's been no finding of $353,993 embezzled. I'm not sure my client can answer -- I'm not going to let her answer a hypothetical question like.

Q. (By Mr. Kunst) Do you have any knowledge as to whether there has been a finding that $353,000 has been embezzled from you?

A. I have no knowledge.

Q. Exhibit 4. The following is a transcript of a hearing presented by David Loree. It's a default damages hearing in a case involving Richard Gaby and Barbara Van Andel versus Scott.

Did you testify in this hearing?

A. No.

Q. Were you present?

A. No.

Q. Did you want to be present?

Exhibit G

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS

COUNTY OF CHARLESTON
ENTERPRISE BANK OF SOUTH CAROLINA,
Plaintiff,
Vs.
CASE NO. 2007-CP-04-1439
BENJAMIN L. DANIEL, SR., BENJAMIN L. DANIEL, JR., THOMAS, DANIEL, ELIZABETH DANIEL, WILLIAM R. SPENCE, PENDLETON STATION, LLC, COASTAL PLAINS DEVELOPMENT CO., INC., ENGINEERED CONCRETE STRUCTURES, INC., ENGINEERED CONCRETE PRODUCTS, INC. AND ENTASIS DESIGN, PLLC, CAROLINA CONCRETE HOMES, INC., BENJAMIN L. DANIEL SR. REVOCABLE LIVING TRUST AND MARIE R. DANIEL REVOCABLE LIVING TRUST,
Defendants.
And
BENJAMIN L. DANIEL, SR., AND ELIZABETH DANIEL
Third-Party Plaintiffs,
Vs.
ERVIN M. MATHIAS, BROOKS HARVEY, DAVID JOHNS AND WILLIAM J. CUTCHIN,

Third-Party Defendants.

DEPOSITION OF: WILLIAM LARKIN
DATE: July 22, 2009
TIME: 10:11 AM

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Q. Did you discuss with any other person having that person make an inquiry of these bank branches about accounts in the name of Mr. Busche?

A. I spoke to people involved in the case about the individuals. Whether they decided to do something, I don't know.

Q. Who did you talk to about getting information related to Mr. Busche?

A. I'm not saying about getting information on Mr. Busche. I'm saying his name came up during conversations. Whether or not any further inquiry was asked of that, I'm not sure.

Q. Has anyone ever suggested to you that as part of the effort on behalf of Enterprise Bank that anyone was going to try find out information about Mr. Busche's personal bank accounts?

A. I never heard that conversation.

(DFT EXH. 14, Report on the Investigation of the Kunstwerke Corporation, was marked for identification.)

BY MR. BARNETT:

Q. What I have handed you is a report, and I'm going to ask you -- is this report your work?

A. Yes, it is.

Q. It's not involved in this case. It's

the investigation of the Kunstwerke Corporation dated January of last year. Was this a final report that you prepared?

A. No, it's not a final report.

Q. So this is not a final report?

A. No.

Q. How do we know that a report that you have prepared is a final report? Does it say it?

A. It will say it.

Q. It will say "final report"?

A. Yes.

Q. Have you ever prepared a final report in the Kunstwerke case?

A. No. The case is still ongoing.

Q. Take a look at page four, if you would, please. At the bottom of page four it says, The actions of this corporation" and an individual Scott Kunstwerke, "may be in violation of the following South Carolina and United States statutes." And it lists -- you list a number of statutes grouped by South Carolina statutes and then by the U.S. government statutes, including breach of trust with fraudulent intent, swindling, subcontractor payment, failure to pay laborers, contractors, subcontractors, day laborers, time and

manner of making payment, South Carolina Department of Revenue Code, U.S. government mail fraud, wire fraud, money laundering, RICO, bank fraud, and then federal tax laws.

Do you believe that those statements are consistent with the Association of Certified Fraud Examiners' guidelines and requirements?

A. Well, they're not, and I'll tell you why.

There was a report prior to this that was delivered to the attorney in this case that did not have these in there. And he asked -- I was asked by him to write it as if it were a prosecutorial memoranda; therefore, entering the laws I thought that were involved.

This was rewritten with the laws written in. There was a prior report without this in it, and this is the report that the attorney released.

Q. The lawyer, whoever it was, released this; but this is your work product?

A. It's my work product, yes. But the lawyer released it.

Q. Are you being offered in that case, as you are in this case, as a certified fraud

examiner?

A. Yes, I am.

Q. So your explanation for why these statements would not be a violation of the Association of Certificate Fraud Examiner standards is because the lawyer asked you to write up something that was like a prosecutorial memo; is that right?

A. That's correct. In fact, I have the lawyer's handwritten notes.

Q. I don't want to see it.

There are two other iterations -- no, there are more. Elizabeth did not count correctly. There is one more on page 11, and another one on page 23, and another one on page 25, another one on page 27, another one on page 29, another one on page 30, and the last one on page 36 with similar statements about various groupings of these transactions, all saying that some of these people may have violated various state and federal criminal statutes.

Will your final report in this particular case, the Kunstwerke case, be done consistent with the Association of Certified Fraud Examiners' standards?

A. Yes, it will.
Q. So will those statements, then, have to come out?
A. Those statements will have to come out.
Q. When you get on the stand and are qualified as a certificate fraud examiner, you won't be able to testify to those statements, will you?
A. I can testify that everything else is in there, but I cannot testify to those statements.
MR. BARNETT: We are done. Jim will have to talk to Tom about what has been asked for, what has not been provided. But at the point that you do provide a final report, if you do provide a final report, we may need to depose you again. We reserve the right to redepose you.
MR. DUDLEY: Absolutely.
MR. BARNETT: I don't have my fingers on the status of discovery. I don't know if the things he mentioned have been asked for or not. We will figure that out.

EXAMINATION

BY MR. HASELDEN:
Q. Mr. Larkin, I'm Andrew Haselden. I represent an attorney named William Cutchin. His

Exhibit H

CARPENTER
ATTORNEYS AND COUNSELORS AT LAW

*JAMES C. CARPENTER
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warren.clayton@carpenterlawfirm.net
*LICENSED IN S.C. & N.C.

October 6, 2010

Via US Mail & Email (emillerk@sccourts.org)
The Honorable Edward W. Miller
Greenville County Courthouse
305 E. North St., Suite 219
Greenville, SC 29601

Re: *J. Scott Kunst v. David Loree, C.A No.: 2006-CP-39-1826*

Dear Judge Miller:

Scott Kunst recently provided us with a copy of Sandy Stern's proposed order granting summary judgment in the above-referenced case. Our firm has not represented Mr. Kunst in the *Loree* case. But we do represent Mr. Kunst's company, Kunstwerke Corporation, in several breach of contract cases against other defendants also represented by Mr. Stern, in which we are trying to collect legitimate contract balances owed to our client.

After reviewing the proposed order, we are deeply troubled by Mr. Stern's repeated allegations that our client and Mr. Kunst converted monies in violation of S.C. CODE ANN. § 29-7-20(1), and engaged in unfair and deceptive trade practices in violation of S.C. CODE ANN. § 39-5-10 *et. seq.*

On April 25, 2007, Judge Welmaker specifically found and ordered that Kunstwerke and Scott Kunst did **not** "employ[] an unfair or deceptive method, act, or practice that was a willful or knowing violation of §39-5-20 of the South Carolina Unfair Trade Practices Act." (See attached Welmaker Order filed April 25, 2007). In direct contravention of Judge Welmaker's Order, the proposed order falsely states that the Court found Kunst and Kunstwerke violated the SCUTPA. Furthermore, the *Loree* and *Gaby* cases are both civil actions, and neither our client nor Scott Kunst have ever been charged with, or convicted of a criminal misdemeanor charge for conversion under S.C. CODE ANN. § 29-7-20(1), or otherwise. S.C. CODE ANN. § 29-7-20 is a *criminal* penalty statute, and all allegations of conversion against Kunstwerke or Kunst have been improperly alleged in the proposed order for this *civil* case.

Mr. Stern elected to have the Court enter judgment in the *Gaby* case for the Gabys' "cause of action for violation of the breach of contract accompanied by fraudulent act" and no others. (See attached Supplemental Notice of Election.) This claim is the only cause of action that the Court entered judgment upon, and the proposed order's findings to the contrary are unfounded. (See Welmaker Orders filed April 25, 2007, and April 2, 2007).

We are perplexed by the proposed order's many alleged "findings" of Judge Welmaker from the March 13, 2007 damages hearing. Judge Welmaker's April 2, 2007, and April 25, 2007, Orders, are very plain three and two page orders, respectively, which only outline the amount of damages awarded to the Gabys. (See attached Welmaker Orders filed April 2, 2007, and April 25, 2007.) The proposed order asks this Court to make factual findings from the damages hearing that Judge Welmaker himself did not make.

We are also troubled by the broad and argumentative nature of the proposed order. We are concerned by its overreaching language, and that defense counsel may attempt to use the order as a form of precedent in our corporate cases, even though neither we nor our client was involved in the *Loree* case. We are further concerned that the Court based its decision to grant summary judgment on the same misrepresentations we have discovered in the proposed order.

Finally, we submit authorities from the South Carolina Supreme Court and Court of Appeals, the U.S. Supreme Court, and the Fourth Circuit, all seeming to hold that a default judgment fails to meet the collateral estoppel requirement that the issue be "actually litigated," and we respectfully request that the Court review these authorities. We have highlighted the relevant sections.

If the Court is nevertheless inclined to grant summary judgment in the *Loree* case, we respectfully request that the Court's order only apply to the *Loree* case, and that the written order include language specifically stating that it will not apply to any other cases.

Thank you for your time and consideration. If you have any questions or comments, please feel free to contact me at (864) 235-1269.

Respectfully Submitted,

THE CARPENTER LAW FIRM, P.C.

L. Warren Clayton, III

Cc: T. S. Stern, Jr.
Scott Kunst

STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff, v. David Loree, Defendant.	IN THE COURT OF COMMON PLEAS **CASE NO. 2006-CP-39-1826** CERTIFICATE OF SERVICE

I, J. Scott Kunst, Plaintiff *pro se*, do hereby certify that on Monday, May 18, 2015, I deposited into the U.S. Mail, postage prepaid, Plaintiff's Memorandum in Opposition to the Defendant's Motion to Amend Answer to the Defendant's counsels of record at their addresses listed below.

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217 E. Park Avenue
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J. Scott Kunst, Plaintiff, *pro se*

Simpsonville, South Carolina
May 18, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) COURT OF COMMON PLEAS
) 2006-GP-39-01826
)
J. SCOTT KUNST)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
DAVID LOREE)
DEFENDANT)

May 26-28, 2015
Pickens, South Carolina

BEFORE:

THE HONORABLE ROBIN B. STILWELL, Judge; and a jury.

APPEARANCES:

J. SCOTT KUNST, PRO SE,

GREGORY K. SMITH, ESQ.
V. ELIZABETH WRIGHT, ESQ.
Attorneys for the Defendant

APRIL HERRON
Official Court Reporter

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May 26, 2015

THE COURT: Okay. All right, ladies and gentlemen, I'll remind you before we get started that you continue under the oath that you previously took to tell the truth. This is -- we're going to go through, essentially, the same process wherein I ask you questions to determine whether you're qualified and/or whether it's appropriate for you to preside as a juror in this specific case which is being called to bar.

Now, as distinguished from the questions that I previously asked you, those were generally your qualifications under the law. These will be specific to this case. Now, the process will be the exact same. And that is, if the answer is in the affirmative, I ask that you stand up, state your name and juror number and respond appropriately if that's necessary.

Ladies and gentlemen, the case that we are going to try today is the case of J. Scott Kunst vs. David Loree. That is case No. 2006-CP-39-1826. Ladies and gentlemen, this is a case wherein the Plaintiff has brought a defamation case about alleged statements made by David Loree about Scott Kunst during the construction of a residence at The Reserve at Lake

Keowee in February and March 2006.

Now, ladies and gentlemen, those are the allegations in this case. I don't present those to you as fact. The jury will determine, ultimately, what the facts in the case are. But I do tell you those allegations so you can answer the following question intelligently. And that is this, do any of you have any knowledge, prior opinion or predisposition regarding the parties or allegation in this case?

(There was no response.)

THE COURT: All right. Ladies and gentlemen, the Plaintiff in this case, Mr. Scott Kunst, is representing himself. I will ask you, is there anyone among you who has a personal, professional or family relationship with Mr. Kunst?

(There was no response.)

THE COURT: Ladies and gentlemen, in this case, the Defendant is represented by Ms. Elizabeth Wright of the Greenville County Bar and Mr. Gregory Smith of the Georgia Bar. Is there anyone among you who has a personal or professional relationship with Ms. Wright or Mr. Smith?

(There was no response.)

THE COURT: All right. Let the record reflect

no affirmative response.

I'll also point out for you the firms with which Mr. Smith and Ms. Wright are affiliated. Ms. Wright is with --

Is it the firm of Covington, Patrick, Hagins and Lewis and Stern?

MS. WRIGHT: Actually, Your Honor, Mr. Stern practice no longer exist, so it's Elizabeth Wright, PA.

THE COURT: Okay. So you're Elizabeth Wrigh PA now; is that correct?

MS. WRIGHT: Yes, sir.

THE COURT: All right. And Mr. Smith is with King and Spalding, LLC.

Is there anyone among you who has a professional relationship or a personal or family relationship with those firms or anyone employed by those firms?

(There was no response.)

THE COURT: Ladies and gentlemen, the Defend in this case is Mr. David Loree. I would ask you, is there anyone among you who has a personal, professional or family relationship with Mr. Loree?

(There was no response.)

THE COURT: Am I pronouncing that right, Mr. Loree?

you saw and you're making qualitative decisions about what the evidence told you and you're doing it with somebody who is not on the deliberating jury. So please don't discuss the case with anyone except the 12 deliberating jurors when I've told you to do so.

Also, when you take a break, understand that you should not do any self help. That is, you shouldn't go on the Internet. You shouldn't look in the clerk of court's records. You shouldn't try to find out something outside of this courtroom about this case. I suspect that you couldn't. However, you shouldn't even try because the only thing that will be relevant to your deliberations and your consideration is the evidence that's presented in the trial in this case.

Now, ladies and gentlemen, as I've told you, we will take breaks. I want to make sure that y'all are comfortable during the conduct of this trial, at least, to the extent that those chairs you're sitting in can be comfortable. So if at any point in time, y'all decide that you need to take a break for whatever reason, even if we've only been back at it for five minutes, please let me or let the bailiff know. Because right now, y'all are the 14 most important people in this courtroom. So it's important that you're paying attention to the

evidence that's being presented and you're paying attention to what's going on. And if for some reason, you're distracted, I'd like to know so that we can take a break, you can refresh and come back in and pay attention to the evidence that's being presented.

Now, ladies and gentlemen, we are going to break now. We are going to break until after lunchtime at 1:00. The reason for that is there are matters of law and motions that I must take up before we begin the trial of this case. That will delay us beginning the introduction of the testimony and evidence, but will, ultimately, speed us up because we will move forward knowing what is going to be admitted and it will help us in the process of the procedure. And there are a couple of hours of just hearings that I'm going to have to conduct before we start so we can get to a place where we can begin the introduction of testimony.

So, ladies and gentlemen, I'm going to dismiss you now, but I'm going to ask you to be back at 1:00. Please be on time. Not out of consideration for me or for the parties in this case, but out of consideration for each other. Because if 13 of you shows up, then we're going to have to wait until the

14th shows up. And it's not being inconsiderate to me, it's being inconsiderate to your fellow jurors. And I'm sure you'll receive nasty glares from the rest of them if you decide to be 15 minutes late. So please be on time. Don't discuss the case. When we get back, we'll swear you in and we'll begin with the opening statements from the parties. Thank you very much.

(WHEREUPON, the jury left the courtroom at approximately 11:55 p.m.)

THE COURT: Okay. Motions?

MS. WRIGHT: Yes, Your Honor. First, we'd like to move for sequestration of witnesses. Of course, they could come back in the courtroom after they've testified. The reason we're asking for that, Your Honor, is there's a lot of overlap in this case between who's the witness and who's working for whom. Of course, as you know, I have an association with one of the witnesses, Eugene Covington, who used to be part of this firm. One of the witnesses here, Ms. Hilton, who's presently at the table assisting Mr. Kunst. So, we have this overlap I think that will cause confusion in the testimony. So, that's why we request sequestration, Your Honor.

THE COURT: Yes, ma'am.

Mr. Kunst, your position, sir?

MR. KUNST: Your Honor, I don't believe it's necessary. I need the support of Ms. Hilton. And her testimony will not be towards the facts or the evidence or the information. It will be strictly character background to the case.

THE COURT: Okay. In what order do you inter for Ms. Hilton to testify?

MR. KUNST: That may be guided by when witn arrive. But she would likely be third in line.

THE COURT: Okay. Sequestration in federal court is a matter of right, so it's freely given. In state court, it's in the discretion of the trial judge. I will tell you, it is my general practice to grant sequestration when it's requested absent some compelling reason to deny the same.

So, I'll grant the order for sequestration. However, I will tell you, Mr. Kunst, if Ms. Hilton testifies first, then she can stay with you for the trial. She just couldn't be recalled as a witness. That's why I asked you the order. Because it may have – that sequestration may have no practical effect on you if, in fact, she's your first witness. Okay? And that's entirely up to you in what order you want to call her and I wouldn't second guess in

that regard.

MR. KUNST: Thank you, Your Honor.

THE COURT: All right. Now, with an order of sequestration, the parties are charged with responsibility for policing the same. Meaning, I don't know who your witnesses are and I don't know what they look like. And if one walks in the courtroom and sits in the gallery and is present during testimony, I'm not going to be able to sua sponte say, hey, we're violating the order of sequestration. So, y'all have to be cognizant of who's coming and going. Okay?

MR. SMITH: Yes, Your Honor.

MR. KUNST: Yes, Your Honor.

THE COURT: Good enough.

Additional motions?

MS. WRIGHT: Yes, Your Honor. We have moved to amend our answer to allow defenses of truth and qualified privilege. And we have asked for those amendments because first off, there will be no delay in the trial. Okay. We're ready to go, so we're not asking for additional time to conduct discovery concerning the affirmative defenses. As you know, Mr. Stern has a medical emergency. He was supposed to be handling the trial of this case. And it wasn't

until after his emergency that we began to review the file and to add these affirmative defenses.

Further, Your Honor, the Plaintiff has been aware of the issues that go into these defenses since the very beginning of the case. You'll find in the complaint that he alleges that my client, Mr. Loree, an agent who was working on behalf of the Gaby's, so he was aware there might be circumstances of qualified privilege. And even as late as December of this year, he deposed Barbara and Rick Gaby, he asserted in the deposition that Loree was asserting a true defense.

As you're also probably aware, there was a side line order to the Court of Appeals and that centered around the whole issue of truth as a defense. And we were using the findings of the Court in [indiscernible] Kunst and Kunstwerke. So, all through that entire appellate process, the Plaintiff has been aware of our affirmative defenses, certainly, the circumstances that lead to that. So, there's no surprise, there's no prejudice that would effect the Plaintiff. So, we would respectfully request that our motion be granted.

THE COURT: Okay.

All right. Mr. Kunst, I'll be happy to hear

from you, sir.

MR. KUNST: Your Honor, we, of course, wish Mr. Stern well. Mr. Stern's medical emergency occurred seven years after the complaint was filed. Perhaps, it's eight now. And the Defendant has never asserted truth or privilege in this case in all nine years. Failure to assert truth or privilege is a waiver. And in essence, what she said about the claim preclusion, collateral estoppel, was it wasn't a affirmative defense of truth in the claim of preclusion, it was just saying that the matters had already been decided in the other case and had actually been litigated. And the language of the appeals court reverse and remand in this case specifically states that the specific statements of the witnesses in the affidavits were not litigated and that I did not have a fair opportunity to litigate the specific statements.

We have never had discovery on privilege. We have never had discovery on truth. Every effort through discovery was claim preclusion and that has caused the inexcusable delay in this case. I should be standing here eight years younger. It was a trial court error that caused this case to be delayed in the first place and their effort of even trying to

get claim preclusion from a default judgment, South Carolina clearly does not allow claim preclusion in default cases of default judgment.

So, as we stand here today, they're not stating that they want to claim privilege because he happened to be – I happened to admit that he was in the employ of someone. That doesn't automatically say they meant to plead privilege way back when. Way back when being nine years. Now, she stated it would not cause excessive delay. I'm not sure of that because there may be issues in discovery if we're going to claim the specific statements in those affidavits are actually true and it was privileged.

But moreover, this concept that it would cause excessive delay, that's not the case studies that she submitted in her memo. She quotes Spivey and Crawley, which clearly say it's the inexcusable delay that has happened up until they decided to amend the pleading. And the cases that are referenced as an inexcusable delay are 16 months, eight months, maybe there might be one that's two years. This would be a new case study, nine years, where they arrive and move this Court to add the two most significant defenses in a defamation case, one being an absolute defense.

And moreover, as I stated in my memorandum in opposition is I have limited my pleadings to one cause of action and within that cause of action is defamation per se. And I specifically state in my complaint per se because it implies criminality. It imputes certain criminal findings. Every eight -- each of the eight statements all imply criminality. And for that criminality to be true, even if they were to attempt to plead the truth, it would have to be a criminal finding.

So, I really don't know what the proceedings would be here for a jury to decide. I'm certainly not the one on trial. And the onus is on them, once I submit my evidence the statements were made. If they were to do a truth defense, they would have to prove them true. And I don't know how that could happen. The jury is not seated to come up with a criminal finding.

So, I vehemently object to any introduction of any new pleading at this late hour. It would cause a manifest of injustice to me, to my case. It would prejudice me in not knowing what this new truth is or what this new privilege claim is. It's never been in discovery. They have only claimed preclusion since the very beginning.

THE COURT: Mr. Kunst, let me as you this, as part of your case in chief under the law, are you required to prove by -- is it preponderance of the evidence or clear and convincing evidence of the untruthfulness of the representation that was made?

MR. KUNST: It depends on what their pleadings are, Your Honor. I can prove under a preponderance of the evidence the statements were made and that they were on their face -- defamation per se that they are defamatory on their face and that damages are assumed. I can prove them false easily just based on reality.

THE COURT: But don't you have to -- I mean, under the law, isn't the truth a defense?

MR. KUNST: It's an absolute defense, Your Honor.

THE COURT: I mean -- and it's that part of the Plaintiff's burden to demonstrate that the representation were untrue, that they were published?

MR. KUNST: That is correct.

THE COURT: See, I'm not -- and this is to both of y'all. I mean, I think this is an academic discussion. I think that, ultimately, it comes to nothing. I don't think the amendment really changes anything significantly. Now, if there's case law

that says that truth must be affirmatively pled -- is there? Does it say that?

MS. WRIGHT: Yes, it does, Your Honor.

THE COURT: Okay. And it says privilege must be affirmatively pled?

MS. WRIGHT: Not the qualified privilege if there is the truth. A 2009 case, the name behooves me, but I remember discussing with Mr. Plumblee and that's one of the reasons why we wanted to bring in truth.

THE COURT: Okay. But, ultimately, what we're talking about is, you know, flip sides of the very same coin. And that is the jury is going to take a look at it and say, was what he said truthful or was it not? And with respect to the issue of truth, that is the question of whether if the pleadings will be amended, under the law, pleadings -- amendment of pleadings will be liberally allowed. That's the law. And pleadings can be amended up and through the close of the introduction of evidence. I'm not going to make a decision on it right now because I want to see what the evidence tells me. Because it may be that -- it sounds to me that -- like I said, it's fairly academic. It's not going to change the presentation of the case in one way, shape or form.

What it's going to change ultimately is potentially a jury charge. Because that's what we're getting around to at the end of the day is what are we going to charge the jury. Because notwithstanding whether I allow the amendment or not, the Defense is still going to be allowed to put into evidence the truthfulness of the statement and, certainly, the Plaintiff is going to be able to put into evidence the untruthfulness of the statement. Because, ultimately, it seems to me that's going to be the question that the jury will need to resolve. Okay.

Therefore, again, with respect to truth, I find that it has, at this point, been affirmatively pled. Whether I will allow the amendment or not will be a matter that I will decide at the close of evidence in this case. And the pleadings can in that event conform to the evidence that is presented under the law.

Now, with respect to qualified privilege, that sounds to me like an evidentiary issue as well, Ms. Wright. That is, you ask is the defense that these communications were privileged and therefore, they shouldn't be admissible or is it they are admissible, but they were privileged communications. And if they are admissible and they're privileged

communications, does that go to the issue of whether it was actually published or not?

MS. WRIGHT: That's correct, Your Honor. They are admissible, but they are privileged. And because they are privileged, then they are not defamatory. That's the law for qualified privilege. So, we're not getting into whether or not they're admissible, they are admissible, but because they are a qualified privilege, of course, these statements being made in the course of duty to people who are related to that duty he's trying to perform, then in that case, they're not defamatory.

THE COURT: Okay. I got it. And it's your position, too, that that's an affirmative defense that must be pled?

MS. WRIGHT: It is affirmative defense. There is no case law that says it must be pled. I just like to keep it tidy in the pleadings.

THE COURT: Okay. I got you.

All right. Mr. Kunst, anything additional you would like to put on the record, sir?

MR. KUNST: Yes, Your Honor, I would like to object to any privilege introduced during the case. They did not assert privilege at any time during discovery. They did not include it in their

response. It is possible that the Defendant can plead to something that's true, but that they did it within privilege. And that yes, I did say something that is a lie, but I did it in a privileged environment. Just on the face of the statements, it's not possible that these could have been privileged. These are blanket statements of criminality to individuals who had no direct interest in those statements. He did not have a duty to tell those individuals those statements. And they have waived their right to assert privilege at this late date. It's inexcusable to even assert it at this late date. And I object to privilege being introduced at any point during this trial.

THE COURT: Okay. All right. I have the exact same ruling with respect to qualified privilege and that is I'll take it up after the introduction of all of the evidence. And again, it's going to go towards more what a jury charge will be than the presentation of evidence in this case. Okay.

I've been advised that there is a witness outside, a Mr. Alfonzo. Is that your witness? I don't know what you want to tell him. If you want to just take a moment and tell him either come or go or stay or go eat lunch, I'll give you a couple of

seconds if you want to.

MR. KUNST: I will. I imagine that Ms. Hilton is sequestered from the witness, so I should talk to him.

THE COURT: Yeah.

MS. WRIGHT: All right. This is going to sound strange from the Defense, but we would like to have the complaint amended so we can have an agreement as to exactly what statements it was that were defamatory. Because we're looking at the complaint, specifically, Paragraph 53, we see allegations. And then we look at the Plaintiff's pre-trial brief, there was a series of statements that were not the same as it was in Paragraph 53. Whichever one it is, we would like the ruling these are the statements that the Plaintiff is going to present so that we can formulate our defense.

THE COURT: Okay.

MS. WRIGHT: And I know it sounds, you know, sauce for the goose is sauce for the gander. You know, if we can amend ours and we have no objection to the Plaintiff amending his complaint. It would be easier for everybody concerned.

THE COURT: Okay. All right.

Mr. Kunst?

MR. KUNST: Your Honor, the statements in the pre-trial brief are just more specific than what was in the original complaint. There are eight specific statements and they're supported by the affidavits which were taken after the complaint. And they were served with the affidavits. And within two months of being served, they deposed the witnesses. So, I have no problem being limited to these eight statements in the pretrial brief.

THE COURT: Okay.

MR. KUNST: That's my case.

THE COURT: Okay. Good enough. All right. Then what I'll do is I'll accept that representation at face value. I don't think it's necessary to amend the complaint in that regard, but he has made a representation in open court. So I'll accept that. I'm sure that the presentation of the evidence in this case will be a significant salve to any of your concerns in that regard.

MS. WRIGHT: Good. Thank you, Your Honor.

THE COURT: All right. Anything else?

MS. WRIGHT: We have remaining our motions limine and because I knew what the Greenville postal service is like, that it really isn't any service, I have these here for you right now. At any rate, we

just want to make sure the Plaintiff is limited of serving only alleged defamatory statements.

THE COURT: Yes, ma'am.

MS. WRIGHT: We want to have any alleged threats be excluded from admission in the testimony because it's an issue of defamation and threats have nothing to do with defamation.

THE COURT: All right.

Mr. Kunst, what's your position on that, sir?

MR. KUNST: Any alleged threat cannot be excluded from the statements themselves because some of them were made as threats. I don't how you can possibly part a witness' testimony and stop them from saying anything about a threat. There is no threat in the eight statements, but if a witness speaks to a threat, I think it's something the jury has to hear because it describes the context of the damage of the defamation.

THE COURT: All right. I'm not going to rule to exclude that at this time. It's difficult to rule on matters in limine because, essentially, it's in a vacuum and I don't hear the statement in the context with the additional evidence that's being presented. Therefore, most trial judges are reluctant to rule in limine to exclude evidence unless it's very clear.

You can make a contemporaneous objection at the tim I will tell you that my – that my inclination is to let it in. That's my inclination as long as it is admissible under all of the civil rules of evidence.

MR. SMITH: Your Honor, if I may?

THE COURT: Yes, sir.

MR. SMITH: The reason we are moving to exclu this one in particular is none of the statements are being alleged against my client. This case is about what Mr. Loree said or did. And if someone else at The Reserve hypothetically said that Mr. Kunst would end up at the bottom of Lake Keowee, that's not something my client said and that would be highly prejudicial for the jury to even hear that.

THE COURT: I got you. And it may be that – let me just by way of example, you've just said this statement will be highly prejudicial and you went through an entire argument without me even knowing what the statement was, who made the statement. So again, in a vacuum, it's difficult for me to make a determination. And most trial judges and I are very reluctant to do it because in limine exclusions can have an extremely prejudicial effect. And the ruling may be completely different when it's offered in the context of the evidence that's being introduced.

So, you may be right, you may be right. Like I said, make a contemporaneous objection at the time and if it's not relevant or it violates a 403 analysis or it's hearsay or violates some other rule of evidence, then I'll sustain the motion. But I'm just not prepared to do it yet because I don't know enough about it.

MR. SMITH: Thank you, Your Honor.

MS. WRIGHT: We also ask that the existence or substance to any rumors concerning the Plaintiff at the work site that were not specifically stated by our client, Mr. Loree, the Defendant, be excluded for admission into evidence.

THE COURT: Okay. All right. And would those be excluded as hearsay?

MS. WRIGHT: Yes, Your Honor.

THE COURT: Okay. All right.

Mr. Kunst?

MR. KUNST: I cannot anticipate any such rumors. I'm not offering any rumors. I think the jury can be instructed as to what hearsay is, Your Honor.

THE COURT: I don't know if that's going to be an issue. Just make a contemporaneous objection. Certainly, I'll sustain an exclusionary motion if, in fact, it's hearsay.

MS. WRIGHT: And we would also ask the same any statements by anyone else other than the Defendant that money was missing from what the clients have paid to Mr. Kunst.

THE COURT: Okay.

All right. What's your position on that, Mr. Kunst?

MR. KUNST: I'm a little confused, Your Honor. Can Defense please clarify?

MS. WRIGHT: Certainly. If there's any allegations that money is missing from the work site, okay, the client's money they paid must have went missing or went to another account, anything along those lines made from my Defendant – by my Defendant, not by anyone else, otherwise, that would, indeed, be hearsay.

THE COURT: Okay. Mr. Kunst.

MR. KUNST: Mr. Loree was a representative of the homeowner, the Gaby's. I don't know of any other statements that are in evidence or would come about other than from a potential client who would be a witness. In some way, I guess, you can say it's hearsay, but then again, I really don't understand how it could be prejudicial. I think it's just part of the context. Whenever the Defendant defamed me,

all of my clients, there were six at the time, stopped paying that week. And they got reimbursement contracts. They owed hundreds of thousands of dollars. So, within that context, there was a very clear result of the slander. There was a very clear avalanche of harm that spread to all these sites. And it's going to very hard in this environment to try to grab these sites and somehow push them out of the way because, in fact, that was really part of the damages, that was part of the harm. So, that's why I asked for clarification. I don't see how this number four is even possible.

THE COURT: Okay. All right. Again, I'm not going to rule in limine. I prefer to see the context under which some of these statements are offered into evidence. You may make a contemporaneous objection.

MS. WRIGHT: I guess to the next motion in limine we have, there's been allegations of conspiracy, that Mr. Loree was involved in a conspiracy with other homeowners in an effort to work against the Plaintiff and bring his business to ruin. The conspiracy has been pled, in fact, in his own pre-trial brief, the Plaintiff said the only issue before us is defamation. So, we ask that any references to any kind of conspiracy not be committed

into evidence.

THE COURT: Okay. Mr. Kunst?

MR. KUNST: Conspiracy implies that everybody took an equal stand and came to an agreement to act together. I don't allege that. I allege he's the point person. So again, I don't think it's a valid concern. I'm not alleging any conspiracy or going to before the jury.

THE COURT: Okay. All right. If that comes up in the trial, then, clearly, I can give a charge to -- a corrected charge. We'll wait and see if that comes up in trial. Certainly, you can be assured that on the verdict form or in the charge on the law, I will be charging conspiracy in as much as it's not a cause of action in this trial.

All right. Next issue?

MS. WRIGHT: And we want any references the Plaintiff suffered any kind of medical condition, injury or damage as a result of some alleged defamation. We have seen no discovery, no evidence, no documents to support any sort of medical conditions that the Plaintiff had as a result of the defamation.

THE COURT: Okay.

All right. Mr. Kunst.

MR. KUNST: One of the original causes of action was emotional distress, that did not survive the appeal, so I'm not claiming that. Within the damages of defamation, within those charges, there is an element of -- I shouldn't say distress, but there is an element of harmed feelings and harmed -- public humiliation and such. So, I have to assume she's not referring to that and that should remain within the charges.

THE COURT: Okay. All right. Okay. I understand that there is some concern that the Plaintiff would attempt to introduce some type of evidence that would demonstrate medical, psychological damages that emanated as a result -- or occurred as a result of the alleged defamation. I will find that if there are any -- if there's any documentary evidence which purports to be charges for services rendered, that is medical services rendered, things of that sort, then I would -- if it hasn't been disclosed in discovery, then I would exclude that.

I suspect that in the Plaintiff's testimony, if he testifies as to general mental anguish that he suffered, I'll let him testify as to that. All right. But insofar as placing a value on it, if he

has not given you any values that is documented evidence of demonstrated value, then you may impose a contemporaneous objection to that.

MS. WRIGHT: Your Honor, our final concern, Your Honor, is that in this case over the years of this litigation, there have been a plethora of affidavits circulating around.

THE COURT: Yes, ma'am.

MS. WRIGHT: And we move that any introduction of affidavit testimony not be allowed unless they particularly need on presence that we can cross-examine that person.

THE COURT: Okay.

All right. Mr. Kunst.

MR. KUNST: Your Honor, this may be the most significant pretrial motion. One of the affidavits was provided by a person who is now deceased. This affidavit was provided in 2009. They were served the affidavit. And all of the other instances in which an affidavit was submitted, as I stated before, they deposed the affiant within two months, I believe it was. This particular affiant, they did not for a very good reason. He was the site manager of the project who was told the most of what I have alleged to be slanderous. And his name is Bronson Sheppard.

When this all happened, my ties with Bronson Sheppard were severed for a while. He remained -- they needed him to remain on the project to finish it, so that's why he was targeted. Well, he continued on the project.

And some years later when all the dust settled and this litigation continued, Bronson Sheppard approached us. And we met him in a little cafe in Brevard, North Carolina, where he lived. And he told us -- he apologized for any role he had in spreading the slander and he said he wanted to help and wanted to be a witness. An affidavit was prepared. He signed the affidavit with a notary present.

Things were very difficult for Bronson at that time. He was broke. He was no longer serving in the capacity that he had -- he was actually working as a fry cook at a fish camp in Brevard. We were, supposedly, just months from trial back then in 2009. So, it was timely. Well, two years later, things did not get much better for Bronson and Bronson committed suicide. So, Bronson's not with us today.

So, I understand the hearsay exemption and I also understand the declarant unavailable because of death. I also understand the affidavit being a weaker form of evidence. I believe that the jury can

be instructed that it is hearsay. But I think that it is a critical part and the inferences are consistent with all the other affidavits. And he was the main witness in this case. I think that was understood by everybody prior to his suicide. And they had ample opportunity to depose him like they did all the other witnesses. And they specifically chose not to. It is the affidavit listed with the original signature on the court record the date it was served, including the certificate of service. And I think that the triers of fact will understand the context of the situation. And I'm certain that that's what the Defendant's motion in limine here is addressing. They're concerned about the affidavit of Bronson Sheppard. And I would argue that it really must be heard by the jury.

THE COURT: Okay.

Yes, ma'am, Ms. Wright.

MS. WRIGHT: First off, Your Honor, we never had the opportunity to cross-examine Mr. Sheppard or talk with him about his affidavit. Another concern we have about his affidavit is it's notarized by Ms. Hilton sitting with us right now. So, we have a concern about whether or not this is actually Mr. Sheppard's statement. We will never know if it

was actually Mr. Sheppard's statement. We have no way of finding that out.

It's not the same thing as deposition testimony where, clearly, the deponent made an appearance and was sworn under oath and there was an opportunity to cross-examine him. Mr. Loree has the right to his counsel to cross-examine any witnesses brought against him. If he's not able to do that, then that's not admissible. What we have here in these affidavits is hearsay. And as he had stated, he cannot produce the witness who actually made that particular affidavit.

THE COURT: Okay. All right. Now, I determine this in accordance with Rule 804 of the Rules of Evidence. Mr. Kunst, I'm looking at the exceptions. He, clearly, is an unavailable declarant, there's no question about that, by consequences of his death. And then in the exceptions to the hearsay rule, there are four. Former testimony, and this is testimony given as a witness at another hearing of the same or different proceeding or in a deposition taken in compliance with law in the course of the same or another proceeding. This isn't testimony taken under oath at a deposition or another proceeding, so it doesn't fall within that exception.

Statements under belief of impending death. Was he under -- understand that only applies in the prosecution for homicide or in a civil action or proceeding, a statement made by declarant while believing the declarant's death was imminent. I presume that that wasn't made while he was under duress of death.

Okay. Statement against interest. He's not a party to the action and he has no interest in this proceeding that I know of. Statement of personal or family history, I presume that this was not bearing upon birth, adoption, marriage, divorce, ancestry or any of the following.

So, under what exemption, Mr. Kunst, would you suggest that it would be admissible as an exception to Rule 804?

MR. KUNST: I don't believe, Your Honor, that there's any argument to specifically include it based on the circumstances. The underlying rationale for many of the hearsay exceptions is that the circumstances of a particular statement make them reliable enough to be heard by trier of fact.

Whoever notarized it is irrelevant in this respect because they could have contested that as well in the two years after it was taken. And

Ms. Hilton's notary is also on other affidavits that they could be appropriate witnesses for. I see nothing that says that such a critical piece of evidence to this trial is specifically excluded by any code.

THE COURT: Okay.

MR. KUNST: And they had an opportunity to disclose -- to depose. And even with the declarant being unavailable because of death, I believe it is a critical evidentiary matter for this case.

THE COURT: Okay. Well, let's look at the rules, though, in combination with one another. We got Rule 801, which defines hearsay as a statement other than one made by the declarant while testifying at the trial or hearing offered in evidence to prove the truth of the matter asserted.

You go to Rule 802, which specifically says hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this state. Then you go to the one that we just discussed, which is 804. Of course, we're skipping over 803, which has the specific hearsay exceptions, none of which applies as far as I know in this instance. And then 804 for unavailable declarant.

I think -- my objective reading of that suggests that there is a law, a rule that says that that is hearsay. And that it would only be admissible under exceptions enumerated under Rule 804. And I don't think there's an exception.

Now, let me tell you, I tend to be fairly liberal with regard to the introduction of evidence, particularly in a civil case. I think more is more. And in a lot of these in limine issues that y'all have before the Court, you know, I'm inclined to get more into the record than less. But this is clear, it is hearsay. There's no question about that. I don't think there's any argument to the contrary. And it doesn't fall under an enumerated exception.

Now, again, it all depends on -- in what context it is introduced. I could be wrong. And we're discussing it, essentially, academically right now. But from an academic perspective, from an objective academic perspective, that affidavit would not be admissible, okay. Again, I don't know in what context it may be offered. But having said that, at a threshold, at a threshold, I will tell you that the rules do not allow for the admission of that affidavit. Okay.

Okay. Next motion.

MS. WRIGHT: Yes, Your Honor. The Defendant, Mr. Loree, works for a couple by the name of Richard and Barbara Gaby. They are well-to-do. We ask that any references to their wealth be excluded from the testimony because they are no longer parties to the action and they are not appearing as witnesses.

THE COURT: Okay.

Mr. Kunst.

MR. KUNST: Your Honor, I'm not aware of the Gaby's net value. I'm not going to address that. But within the context of this case, it's a 9,000 square foot, five million dollar mansion and he operates as a body guard provided by Amway for Ms. Gaby, the daughter of the Amway founder. So, I don't know how we extract that from this case. My business is multi-million dollar extreme mansions. So, I can't get that out of the jury's mind that these people, obviously, are wealthy to even employee me. So, I will not discuss their net worth, but I really -- it's going to be implied through the relationship and the context of this case.

THE COURT: Mr. Smith, you look pregnant with information.

MR. SMITH: Your Honor, the reason we're moving for this is -- and I loathe to stand up and mention

this yet because I don't want to present evidence. It's not my job to give evidence to the Court. Mr. Kunst, being pro se, is sort of doing that, trying to give evidence. But the reason we're moving for this in some of these is we expect the evidence will show that Mr. Kunst has, actually, written a 300 page book on the wealth and what he, and it will be moved into evidence, about how much he dislikes these people and how bad he thinks they and everybody anywhere in the social group with them are. And we just don't want to run down any rabbit trails. And that was one of them.

THE COURT: Yeah. Okay. I do think that probably during the introduction of Mr. Kunst's case, it's going to be unavoidable that the jury will be able to see that these are people of some means.

MR. SMITH: I agree.

THE COURT: But I agree with you, at some poi it will cease to be relevant. So, make your motions -- objections based on relevancy because I think there will be some of that that will be offered in from which the jury will be able to deduce that fact. But the point in and of itself doesn't seem to me to be relevant.

MR. SMITH: Thank you, Judge.

THE COURT: Yes, ma'am.
MS. WRIGHT: Our final one, Your Honor, the Plaintiff has stated in pre-trial brief he will be calling himself as an expert witness -- or if it wasn't in his pre-trial brief, it may have been after we had communications. We object to that, Your Honor. First, he has not informed us as to what his expertise is going to be. Second, we're mystified as to how he can be an expert on information, which is the sole issue here in the trial. And third, we understand it's possible he might be trying to make himself out as an expert in accounting. However, he has let his CPA license lapse some years ago and he has not run or operated a business as a CPA. So, we question his ability to appear as an expert witness. Let me stress that we're not saying he cannot testify personally, we're not saying that. But we are saying that he does not have the ability to be his own expert witness.
THE COURT: Okay.
All right. Mr. Kunst.
MR. KUNST: Your Honor, I have no idea where it is stated that I would be my own expert witness. If I did, it was a mistake. Prior to being an architectural designer, I was a CPA. I don't think

that will be hidden from the jury. They are not going to use an expert witness in this case, which is remarkable, after nine years, particularly since it has to do with specific statements of theft and reconciliation of accounts and stuff. I am going to have to explain my company's books. I'm going to have to represent my company and records kept. I have no problem with the jury knowing that I'm also a CPA and accountant and that I understand these things, but I'm not going to purport to an expert at defamation, but I do understand my company's books and can be questioned on it.
THE COURT: Yeah, you can testify from your o personal knowledge about your books.
Does that satisfy your inquiry?
MS. WRIGHT: Well, he can't represent his company, Your Honor. First of all, his company was an LLC, that requires its own representation. More importantly, Kunstwerke is not a party in this case. So, if he wants to testify as to his experience in his business, that's one thing, but if he's representing his company, we do object.
THE COURT: Okay. All right. My inclination i to allow him to testify as to the books and the records of the company inasmuch as he has personal

knowledge of the same. I won't limit him in that regard. I recognize the distinction that you made between a corporate entity and his corporate entity. However, I think in this instance, in order to allow him to fully present his case that that's proper and it's fair.
MS. WRIGHT: That concludes our motion in limine, Your Honor.
THE COURT: All right. Good enough. Okay.
MR. KUNST: Mine are much shorter, Your Honor.
THE COURT: Okay.
MR. KUNST: May I approach?
THE COURT: Sure. Absolutely.
MR. KUNST: Your Honor, if I may, I would like to enter and offer proof of evidence of the affidavit before I continue on in my motion in limine.
My first is any evidence and testimony alleging that there is any truth of criminal findings of any kind regarding slander statements attributed to the Defendant. The reason I'm making this motion is it's been a problem with this case from the start. I think it's pretty evident in my pre-trial brief and in my memorandum against the amendments to change the pleading. The Defense has continually tried to cross the line between criminal and civil. I've never had

more than a speeding ticket.
THE COURT: I want to ask you this, do you intend to try to introduce any evidence of criminality?
MR. SMITH: Your Honor, what we are going to introduce -- no, we do not plan -- there's been no conviction. I don't think there's any contest that there's been no conviction. I'll state that in my place, there's been no conviction of a criminal nature by Mr. Kunst.
THE COURT: Okay. So, you don't intend to introduce any evidence of criminality?
MR. SMITH: Well, we may introduce -- and it depends on how the evidence goes. Of course, being the Defense, we don't know exactly what he's going to do. We may at some point want to introduce a statute that Judge Welmaker found he violated which had criminal penalties, but there was no criminal prosecution of it.
THE COURT: Okay.
MR. SMITH: Judge Welmaker -- well, I'm sorry. I didn't mean to interrupt you.
THE COURT: No, you're not interrupting me. This is the preferred way of handling that, and that is make a request for charge at the end of evidence,

okay? It may be applicable and it may not be. But inasmuch as I'm charged with responsibility for giving the law to the jury as opposed to introducing a statute as evidence in the case, you can make a motion and request for charge. And I may do it that way. And I will tell you that in any event, I would not introduce the criminal -- or I would not charge them as to the potential sentencing ranges for the criminal conduct.

MR. SMITH: Your Honor, if may give you a little bit of context.

THE COURT: Yes, sir.

MR. KUNST: As you noted, we're kind of talking about this in a vacuum. One of the statements I think -- and Mr. Kunst can correct me if I'm wrong, that he alleges, and we deny, that Mr. Loree made was that Scott has done something criminal or something to that effect.

THE COURT: Right.

MR. SMITH: And that statement comes in when Mr. Kunst, we allege, did not pass money that our client or our client's employer paid to him as subcontractor, which is a violation of --

THE COURT: Got it.

MR. SMITH: And that's what Judge Welmaker

found.

THE COURT: Okay.

MR. SMITH: So, if he says our client said something criminal, we don't think he said that, but if he did, there's been a ruling of a Court in this circuit that says that he did.

THE COURT: Okay. I got you. I got you. And it may be admissible in that regard, primarily on cross-examination. If there's an assertion and that completely contradicts the assertion that was made, now, in that event, it could be admissible.

MR. SMITH: Thank you, Your Honor.

THE COURT: Mr. Kunst.

MR. KUNST: Your Honor, if it was simple defau case where nothing was litigated and a civil default judge cannot make criminal findings --

THE COURT: Mr. Kunst, I'm not going to let th admit it. The only way it's going to be admitted is if you open the door to it. So, you know, in your testimony and in your presentation of your evidence, you just need to be careful that you don't open the door.

MR. KUNST: Your Honor, if I may, I'm concern that they are going to submit actual orders from Judge Welmaker in the default case and they're going

to try to enter into evidence an older order where Judge Welmaker offered for the Defendants, the Gaby's, to make an election as to how they wanted the default damages to be handled. They entered an election of breach of contract. And they're going to try to bring in certain trade practices and several other code violations, which Judge Welmaker did not have in his final order. They may not show the final order. I'm concerned about that.

THE COURT: Okay.

Y'all intending to do that?

MR. SMITH: I'm not sure yet. We may introduce Judge Welmaker's order. But if we do, we are more than happy for him to introduce any later orders from Judge Welmaker.

THE COURT: And understand, if that happens, you know, that's something that is very difficult to anticipate how exactly it would be offered. It may be that if that happens, then I will take judicial notice to certain portions of orders that may be relevant and redact others. We'll just have to wait and see. We'll just have to wait and see how it fleshes out.

MR. KUNST: I'm going to skip my second motion, Your Honor, because you've already made statements

about privilege.

THE COURT: Yes, sir.

MR. KUNST: There was an actual default dama computation in that hearing that Judge Welmaker rule on. It's a document. It will likely be in evidence. Both sides may present it. My motion in limine states that they not be permitted to use it as an affirmative defense of truth. It could be -- it will have value as evidence as to what Mr. Loree testified a year after the slander. He can be questioned on that, the accuracy of the statement, but the appeals court specifically ruled that it does not apply to this case and that it is not proof of any kind of criminal finding. I would like to preserve that.

THE COURT: I understand. I understand.

Y'all intend to introduce evidence of the judgment having been entered?

MR. SMITH: Your Honor, we may certainly introduce evidence of a judgment being entered. We would respectfully disagree with that's what the Court of Appeals has said. If we use this computation -- and again, I don't know that we will. We gave it to the Plaintiff yesterday in case we do in full disclosure. But if we do, the Plaintiff and his attorney both got very full cross-examination of

Mr. Loree on the document.

THE COURT: Okay.

MR. SMITH: And that's on the record as well.

THE COURT: Right now, again, I hate to rule in a vacuum, but I would think that the entry of a civil judgment would be fair game for cross-examination. I don't know if it is or not. You have to pose a contemporaneous objection. But, you know, cross-examination, so long as it's relevant under the rules, I'm probably going to allow it. As I've indicated to both of you, you know, in this case and civil cases, I'm going to let you try your case.

MR. KUNST: Your Honor, my last one. I'm going to skip this one based on your other rulings. Any evidence and testimony of tax liens placed on the Plaintiff, including testimony from the SCDOR. It's very significant that in this case they do not have a expert witness. They're not going to call any kind of accountant expert or anyone other than Mr. Loree himself that can say that this account was even reconciled. The only other witnesses they have are ones I'm calling. But they do have a representative from the South Carolina Department of Revenue.

Now, I have a significant number of tax liens on me, both federal and state. That's never been in

dispute. Both parties and the prior witnesses know full well why those liens are there. They have nothing to do with the defamation. They occurred after the fact. In fact, they occurred based on what I call before the avalanche of harm that came through.

When the slander hit in 2006, my business collapsed. I had significant loss carry backs. I engaged with the South Carolina Department of Reven how to deal with those carry backs. It created a huge problem where they went ahead and imputed a tremendous amount of income to me because they said they didn't have a complete record of my expenses. I never had more than about $80,000 worth of income in my life. They imputed millions of dollars of income to me because my company handles a lot of money. I have been in a continual battle to have it removed. Recently, in 2009, I did file my amended returns. That wiped out all of my income from those years.

Well, in those returns that I filed, I apparently made an error and tried to carry the carry back one year too much, so the liens are still there. They're being filed, but it's going to cost a tremendous amount of money with a legal firm to have them removed. I, obviously, never had four million

dollars income in my life. And it's going to be enormously prejudicial to this jury to have this tax situation that actually derived from the explosion brought to them to make it seem like that I'm some kind of tax evader, when I'm not. I've never been audited. I'm not accused of evading any of my taxes. There's no criminality. It's a process that's being worked out. And this comes up every trial.

In the most recent case brought here was the Kunstwerke v. Covington Contract case, in which the corporation was suing to collect money from the Covington's. And in that case, the judge ruled that the tax issues were excluded because they had no relevance to specific facts of the case. Part of our discussion was if they even came up that they should be seen in-camera anyhow.

If they bring up a representative and they bring in the actual liens themselves as documents, I'm going to have to respond and explain to the jury why they exist and what relevance they might have to the defamation. If that occurs, I have to go through six years of returns, explain line by line how it's reconciled to my books, the status of the correction with the IRS and the South Carolina Department of Revenue. It will extend this trial by, at least, a

day because they would be opening the door to something that is enormous and complicated. And it would unfairly prejudice the jury. It would confuse them. It would mislead them. It would, basically, turn this into a tax trial. They would, basically, see a defense that has no expert witness about defamation or about any of alleged money stolen, but they'll hear my two witnesses again and someone from the South Carolina Department of Revenue for a whol day. I just don't think that's what this trial is about.

THE COURT: Yes, sir.

MR. SMITH: Your Honor, the records were produced by Mr. Kunst. They're clearly admissible under 803(a), public records. Mr. Kunst will have every opportunity to present his defense on them. We disagree with almost everything he said right there. His tax problems started well before -- I forget what he -- the avalanche, I think he calls it.

By bringing a defamation suit, he necessarily puts his character at issue. And we have the opportunity and the right to fully examine that. And part of that is he claims that he is an upstanding member of the community and that he's never had any issues. And the South Carolina Department of Revenu

and the Internal Revenue Service have disagreed with that for a good part – for over a decade now. And we have a right to bring that out in the trial and include it as well in the evidence, Your Honor.

THE COURT: Okay. All right. I note that you've made the motion in limine to exclude under relevancy. I'm going to forego ruling on that in limine for the same reason that I have withheld ruling on a lot of in limine evidentiary motions. I will tell you that generally if it falls within one of the exceptions to the hearsay rule and it's relevant, I'm going to allow it in. I think that's generally fair game. And then you can, obviously, respond to it, Mr. Kunst.

I would tell you this, you know, I don't represent you and I'm not in a position to give you any advice, but I can tell you that the surest way for you to lose this case is to spend a day going over tax returns. You may chose to do that and I won't stop you or limit you, but you do understand that the jury is going to either reward or punish you based on what you make them sit through.

What I would suggest to both of you is y'all are in the technical weeds right now. In a few minutes, we're going to – we're going to transition to the

trial of the case. You should probably, both sides, forget about the technicalities and establish your narrative, tell your story and get your case up and down. That's the way my experiences tells me cases are won and lost. Establish the narrative, make your arguments, get it up and down. If you get into the technicalities and minutia of the case, you'll lose the jury because they'll think you don't know what's relevant. Because you might be stuck on things that aren't necessarily relevant.

Again, I just give you that as an advisory opinion. Take it for what it's worth. You don't have to listen to me. I know my children don't.

Okay. Anything else?

MR. SMITH: No, Your Honor, not from the Defense.

MR. KUNST: No, Your Honor.

THE COURT: Okay. Good. So we'll come back 1:00 and begin the trial of the case.

Mr. Kunst, you'll open.

Mr. Smith, Ms. Wright, who's going to open?

MR. SMITH: I'll open, sir.

THE COURT: All right. Try to limit it to 10 minutes.

Mr. Kunst, you have footed yourself very well so

far. You appear to me to be very competent and intelligent. And it sounds to me like you have some experience in the courtroom as well. What I will tell you – and I'm not suggesting that you'll do this, just my experience with pro se litigants, a lot of times in opening and closing, they want to testify as opposed to give opening or closing statements. I would tell you try to limit yourself to an introduction of yourself and your case.

I tell the Defense the same thing. I am limiting each of you to 10 minutes, okay, so you can't go over 10 minutes in opening. And I tell you that because it's only fair to you. I don't mean to shut you down, but you need to know that it's 10 minutes, okay? And then you develop your case in testimony and the presentation of evidence. Okay.

MR. SMITH: Your Honor, I do have one more matter. I loathe to object during opening of another party. However, given that Mr. Kunst is pro se and he may unintentionally cross that line, I don't want to have Columbia say – come back and tell me I didn't object. So, I will take Your Honor's direction on objections during opening.

THE COURT: I got you. Yeah, don't – what I would tell you is it's poor form for either side to

object during arguments. It happens from time to time. If you feel like you have no choice but to object, please do.

I will tell you this, that I intend to give Mr. Kunst significant latitude. This is his day and trial. I know that he asserts that he is – that there has been a great injustice visited upon him and I intend to give him some latitude in that regard. I intend to give the Defense latitude as well. I think my reputation among members of the Bar is I let people try their cases. So, you know, if you think there's something on the margins and you're wonderin should I object or should I not object, well, engage what you think my response might be unless you feel compelled to protect the record. In that instance, I certainly respect your right to pose it on the record.

MR. SMITH: Thank you, Your Honor. I loathe t ever interrupt during opening.

THE COURT: My father taught me that, too.

MR. SMITH: I hope it's not done.

THE COURT: Okay. No worries.

Okay. Good enough. Anything else we need to put on the record before we come back?

MR. SMITH: No, Your Honor.

MR. KUNST: No, Your Honor.
THE COURT: All right. Thank you. Y'all have a great lunch. See you back in a little bit.
(WHEREUPON, a lunch break was taken.)
THE COURT: Are we ready for the jury?
MR. SMITH: Ready, Your Honor.
THE COURT: Let's bring them in, please, sir.
(WHEREUPON, the jury entered the courtroom at approximately 1:00 p.m.)
THE COURT: All right. Ladies and gentlemen, we're going to start the trial of this case. Before we get started, I'm going to ask the Clerk of Court to swear you in. You've already taken an oath to tell the truth. This is a different oath. This is an oath to try the case in accordance with the law as I give it to you. So, I'll turn it over to Ms. Watson to administer the oath.
Yes, ma'am.
THE CLERK: Please raise your right hand, stand up and raise your right hand.
(WHEREUPON, the jury was sworn.)
THE CLERK: Thank you. You can be seated.
THE COURT: All right. Mr. Kunst, your argument, sir.
OPENING STATEMENT

MR. KUNST: May it please the Court, Your Hon
THE COURT: Yes, sir.
MR. KUNST: Defense.
Good afternoon, folks. You might have heard that good news earlier, I'm not a lawyer. My name is Scott Kunst. It's spelled K-U-N-S-T. I'm an architectural design artist. I'm also a craftsman and I also am a small businessman. I design and build multimillion dollar extreme mansions that hang off the cliffs. This is Tracy. She's the love of my life. We've been together for 18 years. And she's not a lawyer either.
I'm probably one of the most self-made men you'll ever meet. I say that humbly. I've never really earned much money doing what I do because I just love doing what I do that much. I started way back in 1996 building a cottage with my own hands up on Caesars Head. And within a decade of that, I had a portfolio of 16 of those multimillion dollar extreme mansions I just mentioned. If you've been in Barnes and Nobles say back in 2005, you might have seen one of them in a magazine up by the register.
You would think to build houses like that would have a lot of paper work, a lot of contracts. Mine didn't. Mine was relied on on a handshake. I think

it has always been if I can't rely on another man's handshake that I didn't want his business. And if he didn't trust my handshake, I didn't need his business. I always had a waiting list of clients who would trust my handshake that I would take. My reputation back then was that strong.
My company's name was Kunstwerke, which is a German word meaning work of art. My last name is Kunst. That means art in German. I lucked out with my name. But Kunstwerke did something that no other builder had done. It advanced credit to my billionaire and millionaire clients by paying for the cost of construction as it went along, the lumber and painters and suppliers, then asking for reimbursement after the fact. It was a courtesy to my clients. They're certainly good for it. That will be a very important thing to remember in this case, the credit nature of my company. My clients were always really good people and they could be trusted. I didn't get this far with myself by lying, cheating or stealing. I couldn't live with myself.
Back in 2004, I made a big mistake. I shook the hand of someone I should have never trusted. I agreed to build a 9000 square foot, three-lot mega mansion for a family from Atlanta. I should have

known that eventually I would be stolen from and destroyed. Their name is Gaby, G-A-B-Y.
We broke ground on the Gaby house in November 2004. This is all a long time ago. It's taken a long time to get this to you, folks. The Gaby house was 75 percent done by March of 2006. A few months before that, things started getting strange. Mr. Gaby began to complain about the cost. My clients do that. Then he complained about the time. My clients do that, too. Then he said, Keep the rising cost of the house under your hat and not tell my wife, Barb. I knew then something was going to happen and eventually hit the fan. And on February 16th, 2006, it did. The Gaby's sent someone to South Carolina to fix their problem. They have people for that. That's when I met the man that you're going to meet here a little later. His name is David Loree, L-O-R-E-E. He's the Defendant in this case. He's the one being sued.
David Loree arrived on the scene and handed me a business card that said executive protection administrator. He is actively employed by the Gaby's. He is offered by the pyramid company as a body guard to Mrs. Gaby. When Mr. Loree arrived on the scene, he first told me that he just wanted to

take over the direct payments to the contractors and suppliers. That was fine. It was a courtesy my company offered anyhow, so I agreed. David Loree was told to get the house done in a hurry because the wife wanted to visit in June. They would visit the house in four weeks. David Loree couldn't fire me, the builder and designer. I would have taken my crew to one of my other five houses on Lake Keowee. You'll see pictures of them later. They're crazy houses. I also would have placed a lien on the house for the stack of invoices Richard Gaby was hiding from his wife.

Two weeks after that -- or at that time, I should add, I told David Loree we needed to get those -- I'll transfer the payments over to you, but we need to get those other invoices for reimbursement. And he said, quote, I think I can get that done. Two weeks after that, I got a termination notice and a no trespass on the Gaby site. David Loree, the detective. Oh, he posed to be a lot of different things in South Carolina. One of the things was a detective, investigating my financial dealings.

David Loree needed me out of the picture. He contacted 240 people in the community, contractors,

subcontractors, clients of mine, investors and told them things about me. Only 86 of the people that he contacted had anything to do with the Gaby project. The things he told some of the people were lies about criminal activity. He said he uncovered all kinds of criminal activity investigating my financial dealings. These lies are alleged slander. That's what this case is about. One cause of action of slander.

The statements that witnesses will attest to, there are eight, will be numbered, and you'll hear witnesses say that David Loree stated that I stole $400,000 from the Gaby's. You will hear witnesses say that David Loree stated that I stole from all of my clients. Slander three, I stole money from named clients, Parham, Coco, Hickey, Covington. Slander four, I created dummy invoices from dummy companie so that I could bill my clients and keep the money. Slander five, I spent some of the stolen money on cars, trips, family members. Subcontractors were told I stiffed their money that was owed the them. Slander number six, I did criminal things like take out an insurance policy on the Gaby project, bill the Gaby's, cancel the policy the next day and pocket the money. Slander seven, Scott is going to jail.

Slander eight, I took money from all these projects and money is still missing from these projects. They're trying to figure out where it all went. These statements that he made, some of them were made at the job site to workers just standing around, just blanket statements of fact.

David Loree never knew me. He never came to me as a man of honor would do. In nine years, he has never attempted to amend, correct, rectify or recant a single one of those eight statements. When David Loree announced to the world that I stole money from a lot of clients, it's a kind of statement that can't be taken back. My business collapsed immediately. When someone's accused of a crime, everyone runs. They don't want to be tagged as being involved in.

I began to get frantic calls from clients, what's going on? Who's this guy? Tracy and I made frantic trips to living rooms in places like Atlanta to visit clients and tell them, it's not true. Let us explain. But at the end of the day, it was over. It created an explosion that I could not control, could not stop.

Things got really bad for us, I think around March 2006. Our lives were destroyed. March 2006 was also supposed to be the month of our wedding. I

don't think they ever thought I would fight back. But I had no choice. If I did nothing, everybody out there, the 240 people plus would have thought it was true what he said. I've never been involved in any kind of legal matter whatsoever. Tracy and I had to learn how to do this. I eventually had to file 20 lawsuits to clean up the mess that this man caused and to get you the evidence that you're going to see. I even had to sue lawyers and win.

For 10 years, that's 5200 weeks I was in business, no client had never missed making a weekly payment to my company reimbursing me until the weel this man came to town. That week, hundreds of thousands of dollars were owed from six clients. Never saw that money again. Hundreds of thousands c dollars would have been due on any day in any year. There was nothing different about my business until he came to town.

It's been nine years, folks. There's no excuses for delays they have caused. I should be standing here eight years younger telling you all this. You know how many times I've ever been arrested? Never. I haven't even gotten a speeding ticket.

Defamation law, folks, it's clear. It's been around before this country was founded. Defamation

law exist for people like me because there's always somebody out there who's trying to get a result that the truth would not afford them. I wasn't going to wait around nine years to learn this. I did it on my own, that's what the 20 lawsuits were for. I've written about it, I've done all kinds of things to get it out in the public. I haven't set back and done nothing.

We are here to determine the damages that were caused by this man's slander. Later on, I will be giving you a piece of paper that will have a number that it will take to get everybody back to where they were before David Loree came to town.

Now, this is not a criminal trial, even though you talked about criminal things. I'm not the one on trial this week. But you're going to hear a lot of mud slinging. It has nothing to do with the eight statements. Because for these nine years, Mr. Loree and his lawyers have never really stopped attacking me. But after nine long years of hell, this is where it stops. Thank you.

MR. SMITH: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir, absolutely.

OPENING STATEMENT

MR. SMITH: If you don't mind, I may pull this around?

THE COURT: Sure. Yes, sir. You may use anything.

MR. SMITH: There's so much, I don't want to forget. Ladies and gentlemen, my name is Greg Smith. And with Beth Wright here, we represent David Loree. And we consider it a privilege to represent Mr. Loree. And Mr. Loree is also glad to be here to be able to clear his name after nine years. This case should have never been brought and we want to show you that.

And as a little bit of background, this is actually the 13th defamation action filed by the Plaintiff, Mr. Kunst. In the previous 12 defamation actions filed by Mr. Kunst, there has not been a single jury verdict in his favor. And you heard Mr. Kunst's speech to you. And I hope this will be Mr. Kunst last time to bring this to another jury. Because we have a very different story to tell. And I think by the time we finish here, you will see there truly is a very different story.

The evidence will show, the uncontradicted evidence will show Mr. Loree did not slander Mr. Kunst. And you've probably figured out by

listening to Mr. Kunst that there is a – aside from the defamation action, there are seven or eight other lawsuits filed by Mr. Kunst relating to his business.

And as quick background from our point of view, Mr. Kunst brought this action, this particular one against Mr. Loree and his employers in 2006 after Mr. Kunst lost the lawsuit that Mr. Loree's employers brought against him. He lost the lawsuit that Mr. Loree's employers brought against Mr. Kunst for his account issues. And I think I'm standing too close to that microphone. If it's reverberating, I apologize.

What we're going to show is Dave's employee, who at the direction of his boss, investigated Mr. Kunst's work, just like Mr. Kunst said. He was sent up here to investigate the work Mr. Kunst was doing. Because I think the evidence will show that Mr. Kunst was way over budget and way over schedule in this house that he was building. And Dave came up to figure out why. If you're building a house and it's promised at one time for one dollar amount and months and months have passed and much more money has been spent, you may want to ask why. So, they sent one of their fellows up to figure out why.

And what you're going to find out the evidence

will show is that when Mr. Loree came up here, he found that Mr. Kunst wasn't paying the subcontractors. The evidence is going to show that Mr. Loree's employers were sending checks every single week – or wires every single week, tens of thousands of dollars to pay invoices that were sent for the plumbers, the painters, the electricians, for example. And now all of a sudden, these plumbers, painters and electricians are saying, We're not working anymore. That's why your house is taking so long because we're not getting paid. They sent him up here, why aren't you getting paid, we're sending the money?

And you're going to hear that it's been found by another Court that in the course of this investigation that Mr. Loree was asked to do, that the money was being spent on other things. On engagement rings, trips, his personal home. And, in fact, there's a court order, a judgment from a Court that actually states that Mr. Kunst failed to pay vendors and subcontractors and that Mr. Kunst diverted the Gaby's funds for his personal use. That is a matter of public record. A Court found that. And you heard the number $400,000 and I want you to remember that number. Because Judge Welmaker fou

that is the amount that had been diverted from the project, was $400,000.

To put this in a little bit of context, we've all had problems where you may get a phone bill that has a charge for a number to Tokyo on it. You know, have a charge on your cell phone for $2,000 because you called Tokyo for four hours. Well, you didn't do that. So, you had to call the phone company to figure out what had happened. Or you may have an electric bill that's five times what it should be and you call the electric company and you call the power company and they say, well, we had to guesstimate your bill because we couldn't get in your backyard because of the dog. The problem is you don't have a backyard because you live in an apartment and you don't have a dog. So, this is an issue and you've got to work it out. And while you're working that out, you may get frustrated and you may have to listen to elevator music on the phone and press one to speak to the operator and five to speak to one in English and whatever else. And by the time you get to somebody, you may be a little upset and you may say things you didn't necessarily want to say, but that's not defamation. You're trying to work out a problem.

And that's what's happened with Mr. Loree. I think you're going to see -- we're going to show you those eight statements he read, we'll put those -- some of them, he did not say at all. Others we'll put in context and you'll see why some of those things were said.

I want to make a very important distinction here and then I'll wrap up. You might be thinking from what you've heard that this case is about the Plaintiff's construction of buildings. That is not the case here. I think what you're going to find is there is no one complaining about the building or design of the house. I think the evidence will show that he's built some very nice homes and he's very good at that. The chief complaint here is about his accounting. If he would have kept his books while he was doing that, that's what we're here to talk about.

Mr. Kunst told you when he was opening that his business collapsed immediately when these alleged events happened. The simplest way to have fixed that would have been to say look, here's my books. I can prove to you no money was taken. End of story. He didn't do that. If he had simply had the books and shown where the money had gone, there would have be no need to file and lose 20 lawsuits. We are not

here to determine damages. We are here to show that Mr. Loree never slandered Mr. Kunst in the process of his investigation. He just wanted to know -- he was sent up here by his boss to find out what happened to all the money I'm sending up to South Carolina and where did it go. Thank you, ladies and gentlemen.

THE COURT: Okay. Mr. Kunst, you may call your first witness.

MR. KUNST: The Plaintiff calls Tracy Hilton to the stand, please.

THE CLERK: Place your left hand on the Bible and raise your right hand.

TRACY HILTON, after being duly sworn, testified as follows:

THE CLERK: State your full name for the record.

THE WITNESS: Tracy Diane Hilton.

THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. KUNST:

Q State your full name again and profession.

A Tracy Hilton. And I'm a branch officer administrator for Edward Jones.

Q Where were you born?

A In Greenville.

Q Do you have family here in South Carolina?

A Yes, my whole family is here in the Greenville area.

Q Where did you go to school?

A I went to Furman University, majored in English.

Q Where do you live today?

A I live in Pittsburgh, Pennsylvania today.

Q Why do you not live in South Carolina?

A Because after what happened with the defamation that damaged your reputation, we felt like we needed to move somewhere else to try to start over.

MS. WRIGHT: Objection, Your Honor. She's testifying to facts that are not in evidence.

THE COURT: What does that mean?

MS. WRIGHT: There's no evidence that's been admitted that said that she had to leave for Pennsylvania because Mr. Kunst had been defamed.

THE COURT: She can testify as to why she left. The jury will determine whether that's credible or not. I respectfully overrule your objection.

You may proceed, sir.

BY MR. KUNST:

Q Well, Ms. Hilton, I'll ask another question then about moving to Pittsburgh. Were there any other reasons you moved to Pittsburgh?

A Yes, in addition to that, we were trying to

start a family and I had had some fertility issues and there was a good hospital in Pittsburgh we wanted to work with.

Q When did we first meet?

A 1993, up on Caesars Head. My parents built a house up there and you had just moved into a house there with your parents.

Q Do you recall the age that we were?

A I think we were 25.

Q Describe our relationship on Caesars Head.

A Well, I was working in Greenville and you were working in Greenville. During the day, you would drive back up to your house there and you were building another house. On your own, you were building a house on another lot there. And I would go up on the weekends to visit my family and visit with you. I would – you would work during the evenings. You would work at your job in Greenville, eight or nine hours a day, and then come home and work seven or eight more hours at night building a house with your own hands. And I would hang out there on the construction site and watch you and keep you company. And then on Saturday nights, if the weather was good, we would hop on your motorcycle and go to Brevard. It was a date night kind of thing. And we did that for several years.

Q When did we become engaged?

A September of 2005.

Q Did your employment status change at the time you became engaged?

A Yes, I started to work part-time for Edward Jones then and devoted some of my time helping you with some of the things with your business.

Q What were some of your duties with my business?

A I would get the mail together for the invoices mailed out to clients, I would take messages from your site managers if they couldn't get ahold of you, things like that.

Q As part of this duty, did you do a lot of mailing?

A Yes. There were weekly mailings of reimbursement invoices that went out to all of your clients.

Q What did those billings look like? Were they large?

A They had a cover sheet and then they had all the invoices behind them attached to them for support for all the work that had been done on the site.

Q You stated this was 2005. Do you recall ever sending any reimbursement statements to the Gaby's durin that time?

A No.

Q Why not?

A We put his in a box in your office. You said that's where they went. You told me he said he didn't want them.

Q Have you ever met Defendant David Loree?

A Yes, I did one time on that meeting that we had with him in February of 2006. It was at the clubhouse at The Reserve. I believe the occasion was that he told us he was taking over communications between you and the Gaby's, so we went to meet with him there.

Q Do you recall who all attended this meeting?

A You and me and your father and Mr. Loree.

Q What, ultimately, happened to that box you described of the Gaby reimbursement statements?

A We took it to the meeting to give to Mr. Loree for him – the Gaby's to have.

Q Do you recall any statements by Mr. Loree at that February 16th, 2006 meeting?

A Well, there was a lot of discussion. During that meeting, you explained to him the contract that you had with the Gaby's. And you explained to him about the invoices. You told him at that time, there were a couple of invoices that had not been reimbursed. And I remember him saying he thought he could get those paid. But he was

also – he was just very, I don't know what's the word to describe. He told us about the Gaby's. This was all about the bottom line to them, they don't care about people. They have mansions all over the world. This is just one of them. He worked for her father for years and he never thanked them maybe three times for anything. Yo know, he was just giving us that – those kind of things he was telling us about the Gaby's during this meeting.

Q To the best of your knowledge, were those reimbursement statements in the box ever paid by the Gaby's?

A No.

Q When was the Gaby relationship terminated?

A They sent you a letter on March 3rd, and this is 2006.

Q During that time between February 16th, 2006, and the termination on March 3rd, did my duties at The Reserve or in relation to the Gaby project change?

A No, I went out there with you several times to the Gaby house, like I always did to all of your projects. And so, no, it did not.

Q Did I walk off of the Gaby project?

A No.

Q Did your daily life change after this February 16th meeting?

A It did. Since -- you know, when I had started helping you with things, we had given my phone number to clients and to subcontractors to leave messages. And we started, both of us, our phones started lighting up with phone calls, clients, subcontractors asking who's David Loree? Why is he calling us? What's going on? It was just constant.

Q Did you accompany me on any specific client trips?

A Around this time, we went to visit a particular client named Debaco in Atlanta. I think we went to their house, at least, twice. They asked us to come. And we sat at their kitchen table and Ms. Debaco asked us over and over who is this David Loree? Why is he calling us? Are you declaring bankruptcy? What else did she say? Have you been sued? Are you going to jail? I mean, that was just the basis of that whole conversation. They just kept asking us these things over and over.

Q Did you contact any client regarding the reimbursement statements that you were mailing out at that time?

A I did. I contacted Gene Covington because he was the furthest behind on his reimbursements and asked him to please pay.

Q Who is Gene Covington?

A He was one of your clients. He is an attorney with Covington, Patrick, Hagins, Stern and Lewis. It's on his letterhead.

Q Is that the law firm that Beth Wright mentioned earlier that she worked for?

MS. WRIGHT: Objection, Your Honor. I made clear I no longer have an association with that law firm.

MR. KUNST: I apologize, Your Honor.

THE COURT: I understand.

BY MR. KUNST:

Q Is that the law firm that represented David Loree for the first eight years of this case?

A That's my understanding, yes.

Q Do you recognize this document?

A Yes. This is the letter that I received in response to my letter asking Mr. Covington to --

MS. WRIGHT: Objection, Your Honor. We hav seen that letter.

THE WITNESS: Do I show it to her?

MR. KUNST: We premarked exhibits.

MS. WRIGHT: We have seen this, Your Honor. have no further objection as he goes through this testimony.

THE COURT: Okay.

BY MR. KUNST:

Q What was your reaction to this letter?

A This letter from Mr. Covington was in response to my letter asking him to please reimburse us for the bills he owed. And this letter was very upsetting. It's on his law firm's letterhead and he, basically.--

MS. WRIGHT: Objection, Your Honor. She's referring to Mr. Covington upsetting her. Mr. Covington is not on trial.

THE COURT: I understand. I'm not certain that's a valid objection. I'll let the jury determine the reference. The letter's not in evidence yet, but she can testify as to it. I respectfully overrule your objection.

MS. WRIGHT: Yes, sir.

THE WITNESS: He threatened to go to proper authorities when I was just asking him to reimburse what he owed us, so I was very upset.

MR. KUNST: Your Honor, Plaintiff moves this into evidence.

THE COURT: Okay. Objection?

MS. WRIGHT: We would object, Your Honor, because that's hearsay. It's just what Mr. Covington allegedly said. Again, he's not a party to this action.

THE COURT: Okay.

What's your position on the hearsay nature of the letter?

MR. KUNST: It's addressed to Ms. Hilton. She can speak to it directly. Mr. Covington is a witness first thing here tomorrow morning. He's one of the clients that she's testified to as stopped paying.

THE COURT: At this point in time, I'm going to sustain the objection. You can introduce it through Mr. Covington, okay.

BY MR. KUNST:

Q I'd like to take you back to March 2006 and describe for us what it was like at the business.

A Okay. We were in an apartment -- or your studio was in downtown Greenville. Your countertop was starting to get covered with legal notices and threats. Copies of letters that the Covington Law Firm for the Gaby's -- the law firm was sending out for the Gaby's to subcontractors saying that you had stiffed them and had stolen money fron them. Again, we were still getting frantic calls from everybody, what's going on?

Q More specifically what was our personal life together in March 2006 like?

A Well, we had to cancel the wedding. We were financially devastated because you had put most of your

money out in advance for these clients. We had nothing. It was bad.

Q Why specifically, though, was the wedding canceled?

A We canceled the wedding to protect me financially. You wouldn't declare bankruptcy. And we felt like one of us needed to maintain good credit.

Q Did we ever fight back?

A We did. We did. We got a book on slander and how to represent yourself in court. And we sold furniture and electronics and things to get enough money for depositions.

Q Who is Bronson Sheppard?

A He was your site manager, your top site manager. You had a site manager at every project. He was your best one. He was the site manager at the Gaby and the Parham project.

Q When was the last time you saw Bronson Sheppard?

A It was in 2009. It was in Brevard. We hadn't spoken in a while after everything happened. He contacted us, said he wanted to meet with us.

MS. WRIGHT: Objection, Your Honor. This is the gentleman that is deceased. That's definitely a hearsay statement what he has said.

THE COURT: I sustain it as to any hearsay from

a deceased individual.

BY MR. KUNST:

Q Describe Bronson's condition?

A We met with him.

MS. WRIGHT: Objection, Your Honor. She's n an expert as to Mr. Sheppard's state of mind. She cannot describe as to what he was feeling or what he looked like in this situation.

THE COURT: Okay. All right. Well, she can testify as to what she saw and what her perception of him was. So sustained and overruled.

Pose the question.

BY MR. KUNST:

Q What was your perception of Bronson's condition at the time?

A He was very sad. That's all I can say. He was sad.

Q Did you see Bronson again?

A No.

Q What happened to Bronson Sheppard?

A He committed suicide.

Q Do you need a moment?

A I'm okay.

Q Were you a signer on the Kunstwerke checking account?

A Once I started working part-time and helping you, you did have me become a signer on the checking account, yes, so I could write checks to suppliers that you had accounts with.

Q What kind of checks did you write?

A Well, people – there were companies, supply companies that you had accounts with and I would make payments on those.

Q Do you recall making a payment to Builders First Source?

A Yes. I wrote a check for them.

Q What happened to that check?

A That check bounced. It was during this time when everything was crashing around us and clients weren't reimbursing us. I wasn't aware of it at the time. It was a mistake.

Q What month was this?

A April of 2006.

Q What happened?

A When we realized that it may have bounced, we contacted Builders First Source. They told us they had reported it to the police. So, I voluntarily went to the police station, told them what had happened, told them it would be covered. It was awful. I was crying the whole time. I never had anything like this happen. My world

was collapsing around us. My father at that time was in the hospital having quadruple bypass and all I remember was crying the whole time I was at the police station. But we covered it within days and I personally delivered a cashier's check to Builder's First Source.

Q Was that client money that caused it to bounce or was it Kunstwerke's own capital?

A I'm not sure I understand the question.

MR. KUNST: Question is withdrawn, Your Hon

THE COURT: Yes, sir.

BY MR. KUNST:

Q Do you recognize this document?

A You need to show it.

Q I do. I apologize.

MS. WRIGHT: Your Honor, we have seen this exhibit. We have the same objection we had to the previous exhibit. We reserve any objection until we hear it being introduced.

THE COURT: Sure.

MS. WRIGHT: Also, Your Honor, this was also produced in discovery.

THE COURT: Okay.

MR. KUNST: We disagree about it being introduced in discovery.

BY MR. KUNST:
Q Do you recognize these documents?
A Yes. This is regarding an insurance policy on the Gaby project through Johnson Insurance Agency. This was sent to us from Johnson Insurance Agency. It's marked here, it says that it was returned to the post office. I can only assume they tried to get it to the Gaby's, but it came back. Maybe they tried to deliver it to the construction site, I don't know.
Q Is that the type of clerical thing that you handled during those months in 2005?
A Yes. And it's a request from the insurance company requesting cancellation of a duplicate policy. And it is marked for the signature of the named insured, which is Richard Gaby. It's to sign to cancel the policy. This came in and I wrote a note on the back to Mr. Gaby to please sign it and fax it directly to the insurance company. And I faxed that to Mr. Gaby.
Q Is that your original handwriting?
A That's my handwriting.
Q When did you make that handwriting?
A When this came in. Let's see, it says the end of December 2005, so it would have been around that time.
Q Thank you.
MR. KUNST: Plaintiff moves for Exhibit A.

THE COURT: Okay. Any objection?
MS. WRIGHT: Again, Your Honor, we have a hearsay objection. Supposedly, this is a communication between her and Mr. Gaby and Mr. G is not a party and not available to testify as to that document.
THE COURT: Okay. Well, she says that's her representation to him; is that correct?
THE WITNESS: Yes. I wrote that.
THE COURT: No, I'm asking her.
MS. WRIGHT: I have no idea if that's correct. As I say, that's not been produced in discovery.
THE COURT: She's testified that that is her communication. The jury can determine whether that' credible testimony or not. Therefore, I overrule the objection and introduce it as Plaintiff's Exhibit No. 1.
(WHEREUPON, Plaintiff's Exhibit No. 1 was mar for identification and received into evidence.)
BY MR. KUNST:
Q Last question. Did you communicate with Ms. Gaby?
A Yes, I did.
Q How so?
A I wrote her a letter.

Q Do you recall what time that was?
A I imagine – no, actually, I don't specifically remember when it was, but it was after April 2006, somewhere between then and March 2007.
MS. WRIGHT: No objection to this one, Your Honor.
THE COURT: Okay.
BY MR. KUNST:
Q Do you recognize this document?
A Yes. It's a copy of the letter that I wrote to Ms. Gaby and the card that I put the letter in.
Q What does the card say?
A The card says, Thanks. It's a thank you card.
Q How was that delivered to Ms. Gaby?
A I put the note in the thank you card – the letter in the thank you card.
Q What was the purpose of your letter?
A My letter was to contact her personally, woman-to-woman, to let her know what had happened to our family because of her family and the person she sent to ruin your reputation. I wanted her to know the truth. I didn't think she was getting information or maybe she was just ignoring it.
Q You just said the person she sent. Who did she send?

A David Loree.
Q Would you read the –
A I wanted her to know the effects of what he did for them on our family was.
Q Would you read the letter, please?
A Dear Barb Van Andel-Gaby, please allow me to introduce myself and give you a little background. I'm a 38-year-old single woman whose dreams came true in September of 2005. The man I've been in love with for over 14 years proposed to me in the most beautiful and romantic way imaginable. We have known each other for s long and I have watched him work day and night, year afte year to build his business to the point that he felt comfortable finally taking this big step in our lives. You can imagine how excited we were to now be able to pla our future together as we should be, particularly after waiting so long.
However, something happened shortly thereafter that changed our lives and you and your husband are directly responsible for that. If you haven't figured it out by now, my fiance is Scott Kunst. You and your husband have taken advantage of him and his generosity in the design and construction of your beautiful lakeside home. You have accused him of misappropriating funds when, indeed, you still owe him for credit he extended on

your behalf. We have undeniable proof of this. You and your husband have just chosen to ignore it. You have ruined the reputation he has worked so hard to build. When you did this, the shock was so great that he has suffered emotionally, mentally and physically. Indeed, that is why he was unable to answer your frivolous and greedy lawsuit in time and we are now facing a quote, damages hearing February 15th, 2007.

I almost have to laugh at the description of the hearing as if you have suffered any damages in this. Your only problem is that your husband was overspending on this project and he tried to hide it from you. When he could not, he took it out on Scott. Again, let me emphasize that we have proof that you owe Scott on this project. I want you to know that Scott was so overcome by your false accusations and the events that have precipitated that I was afraid to leave his side for those first few months. I want you to know that he is not a weak man, but this is the effect your actions and words had on him. This is because he is an honorable man and one who has always been honest and generous in his personal business dealings.

I want you to know that I hold you personally responsible for taking this time in our lives that was supposed to be so magical and making it a living hell. Instead of planning and looking forward to our wedding,

which was supposed to be in March of 2006, we are fighting to restore the reputation and business that you ruined. We are, basically, destitute now having exhausted most of both of our funds on legal fees and just trying to get by.

I am sure you cannot understand how this is both so sad and at the same time so infuriating for me because I have watched Scott sacrifice so much and work so hard to get where he was before you came along. Not you nor your husband is a true entrepreneur. You will never be able to understand that concept. I being a person of reasonable conscience cannot understand how you can enjoy that hous on the lake at all knowing what you have done. But perhaps, I expect too much of you.

Scott tells me that you have several children. I honestly feel sorry for them and hope that somehow they will be able to learn true compassion and human relationships as well as appreciation for the satisfaction that honest hard work can bring. I sincerely do not believe that they will learn this from you. I do not expect to see you or your husband at this, quote, damages hearing. You are both, obviously, too cowardly to do your own dirty work. Perhaps, you'll send David Loree and to face what you have done. I, however, will be there standing proudly at Scott's side.

If you think you have suffered damages, why

don't you take a few minutes and think about what you have put us through. I will be happy to tell you more about it, but I'm sure you would rather hide behind your lawyers than face the truth. With sincere disdain, Tracy Hilton.

MR. KUNST: Plaintiff's Exhibit 2.

THE COURT: All right. Any objections?

MS. WRIGHT: No objection, Your Honor.

THE COURT: All right. Without objection, the same is admitted into evidence as Plaintiff's Exhibit No. 2.

BY MR. KUNST:

Q I'll add one more question. I know I said that was the last one. You referenced several times in your letter a hearing, a damages hearing. What kind of hearing was that, do you recall?

A It was a hearing regarding the suit they filed against you.

Q The Gaby suit?

A The Gaby's sued you saying, I think, that you owed them money. And as I said in my letter, you were suffering this devastation and that we're not lawyers. We didn't know that you had to answer that in a certain amount of time. You wrote a letter to them two days late, which is considered being in default. And that means you, basically, didn't get to answer them and you had no right

to defend yourself against their case. So, it was a damages hearing where they got to say what damages they supposedly suffered.

Q You just stated that I couldn't defend myself –

MS. WRIGHT: Your Honor, I have to object aga This lawsuit has been tried to a conclusion and has nothing to do with this lawsuit for defamation against the Defendant Loree.

THE COURT: Okay.

MR. KUNST: Your Honor, in their opening statement, they've already mentioned this judgment of $400,000.

THE COURT: What I would encourage both of is to let's focus on this suit. I'll allow you to ask that question, but I don't want you to go too far afield in that regard.

MR. KUNST: I have no further questions, Your Honor.

THE COURT: Okay. All right. Cross-examination?

MS. WRIGHT: Yes, sir.

CROSS-EXAMINATION

BY MS. WRIGHT:

Q Well, before I continue, Ms. Hilton, I want to make sure that your comfortable and set and prepared for

my questions because you seem to be a bit distraught. Do you need a moment?
A I'm ready.
Q Do need any water?
A No, thank you.
Q Okay. Now, getting to this letter that was just introduced as Plaintiff's Exhibit No. 2, do you recall what Judge Welmaker said about this letter?
A I don't recall what he said, but I remember he told me not to contact the Gaby's anymore.
Q So, you were ordered by a court of law to cease contact with the Gaby's?
A (The witness nods.)
Q So, is it fair to say that a Judge saw this particular letter as a threat?
A I think it's fair to say that Ms. Gaby saw it as a threat –
Q But the Judge took action, correct –
A – and something she didn't want to hear. I'm sorry?
Q I'm sorry, I spoke over you and that was rude of me. Please finish what you were saying.
A I said I think it's fair to say that Ms. Gaby saw it as a threat or something and she didn't want to hear the truth.

Q But the Judge did issue you an order telling you to cease and desist?
A Yes. And that was fine because I didn't want anything to do with them anymore anyway.
Q Now, do you have a copy of that letter in front of you?
A No.
Q Let me take care of that.
MS. WRIGHT: May I approach the witness, You Honor?
THE COURT: Yes, ma'am.
THE COURT REPORTER: I need to mark it, pl
(WHEREUPON, Plaintiff's Exhibit No. 2 was mar for identification and received into evidence.)
MS. WRIGHT: Thank you.
BY MS. WRIGHT:
Q Would you like to take a moment to look through that?
A No, I just read it.
Q Okay. Was there anything in that letter that referenced a defamatory statement from Mr. David Loree?
A There's the part where I said that they're too cowardly to do their own dirty work, perhaps, they'll send David Loree.
Q But there's nothing in there that you state to

Ms. Gaby, David Loree said this about J. Scott Kunst, is there?
A No.
Q Thank you. Now, you stated earlier that you were working part-time for Mr. Kunst; is that correct?
A I was helping him, not –
Q You were helping him?
A – working for him.
Q Okay. So, as I recall, your duties included going through the mail and sending out billing notices and so on; is that correct?
A No. Those were prepared by Scott and he gave me the stapled stack and I put it in an envelope and addressed it, put postage on it.
Q Okay. But you were working in an office, correct?
A Our home office.
Q Where is that located?
A It was our apartment downtown Greenville at the time.
Q May I have the address, please?
A I do not remember.
Q Do you remember what street it was on?
A Main street, I think. It was above Sticky Fingers restaurant.

Q Now, Plaintiff's Exhibit No. 1 – well, in any of these exhibits that Mr. Kunst has presented, have any of them contained a statement made by Mr. Loree that was defamatory?
A No. I don't believe so. What the first – no, that was just the entrance stuff.
Q Now, the exhibit we had of the insurance policy, do you have any proof that you actually sent that to the Gaby's?
A No, I don't. I just faxed things from the office.
Q Okay. So, there's no fax cover sheet or anything like that?
A No. We weren't that formal.
Q Okay. Now, did Mr. Loree ever tell you that Mr. Kunst embezzled $400,000 from the Gaby's?
A No. He never spoke to me except for at that meeting, probably.
Q Did he say anything defamatory at that meeting?
A No.
Q So you, yourself, have not heard Mr. Loree state one single defamatory statement; is that correct?
A No – I mean, yes. He did not say anything to me, no.
MS. WRIGHT: No further questions, Your Hon

THE COURT: Okay. Thank you.
Any redirect, sir?
MR. KUNST: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. KUNST:

Q Tracy, at the date of this letter, February 7th, 2007, had we accumulated all the affidavits in this present case from witnesses?

A No.

MS. WRIGHT: Your Honor, objection. Affidavits did not come up in his direct examination and I did not bring it up in cross-examination.

THE COURT: Okay. I don't know where it's leading, just know that your redirect must be limited to the scope of the cross-examination. So, if it's new ground, you can't ask it. If it relates specifically to something that Ms. Wright asks, then you can ask. Okay?

MR. KUNST: Yes, Your Honor.

BY MR. KUNST:

Q Ms. Wright just asked you if your letter included any defamatory statements by Mr. Loree. As of the date of this letter, did you know all the specific statements?

A The date of the letter again was February of

2007?

Q 2007?

A Seven?

Q Uh-huh.

A Okay. No.

Q Did you know what he had said to Glenn Alfonzo?

A At that time, no.

MS. WRIGHT: Objection, Your Honor. Again, we're getting into the hearsay. Mr. Alfonzo has yet to appear as a witness.

THE COURT: Okay. I don't think she stated wh he said. Overruled.

Go ahead.

BY MR. KUNST:

Q Did you know what he had said to Kevin Goad?

A No.

Q Did David Loree ever contact you during his investigation about this insurance policy?

A No. I wish he had.

Q Could you have explained to Mr. Loree the situation regarding this insurance policy had he –

MS. WRIGHT: Objection, Your Honor. Facts n in evidence, she can't explain anything. She just said to me in cross-examination she has no proof she sent that to anybody.

THE COURT: Okay. He can ask that question could she explain it.

Go ahead.

BY MR. KUNST:

Q Could you explain the situation had Mr. Loree called you?

A If had he called me to ask me about the insurance policy, I could have gotten him directly that letter that showed the insurance company issued a different policy and wanted Mr. Gaby to sign and cancel it.

MR. KUNST: Nothing else, Your Honor.

THE COURT: Any recross based on that redirect?

MS. WRIGHT: No, Your Honor.

THE COURT: All right. Thank you. You can step down, I appreciate it.

All right. You may call your next witness.

MR. KUNST: The Plaintiff calls Kevin Goad.

THE CLERK: Raise your right hand. Place your left hand on the Bible, please.

KEVIN GOAD, after being duly sworn, testified as follows:

THE CLERK: State your full name for the record.

THE WITNESS: Charles Kevin Goad.

THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. KUNST:

Q Good afternoon, Mr. Goad.

A Hi.

Q State your name and occupation.

A Kevin Goad. I work for Window and Door Conce as a salesman.

Q Did your company supply doors and windows for company, Kunstwerke, back in 2005 and 2006?

A Yes.

Q Describe, if you would, my houses in relation to your windows. Have you seen houses like mine before?

A Your homes were very custom. Probably more customized than most other homes we do. They were intricate and involved quite a bit of measuring and fieldwork to prepare windows and doors for the homes. So in that regard, they were highly customized.

Q Did you provide windows and doors for the Gaby project?

A We did.

Q Did you have contact with Mr. David Loree durin the spring of 2006?

A I had contact with him, but I don't remember the timeframe.

Q Do you recall as you sit here today the specific

statements that Mr. Loree made to you?
A I remember the general statements after I was introduced to him as to what he was coming on the job site to do or to handle.
Q Did you prepare a document closer to the time that these statements were actually made way back in 2006?
A I believe so, yes.
Q Do you recognize this document?
A I do.
MS. WRIGHT: Okay. Thank you.
We have seen it, Your Honor. We may have objections later on.
THE COURT: All right.
BY MR. KUNST:
Q Would this refresh your memory better as to what was actually said closer to the date it was said?
A I remember some of the details of this. I would trust this paperwork more than my memory now.
Q Is that your signature at the bottom of the affidavit?
A It is.
Q Could you please read the affidavit for us?
A In full?
Q Yes, please.
A Personally appeared before me, Kevin Goad, who

being duly sworn states as follows: I reside in Greenville County, South Carolina. I give this affidavit voluntarily. My company, Window and Door Concepts, provided windows and doors for Scott Kunst and his company, Kunstwerke, around 2003 to 2006.
During the spring of 2006, David Loree, who was managing the construction of Richard and Barbara Gaby's personal residence at The Reserve on Lake Keowee spoke with me on numerous occasions. David Loree presented to me that he was a former detective and was in the process of investigating Scott Kunst's financial dealings with his clients. David Loree stated to me that contact had been made with many of Scott Kunst's clients and vendors as to if money was missing from any of Scott's clients. He referenced to Parham, Covington, Coco and Hickey specifically. He stated that Scott Kunst had taken $400,000 from the Gaby project and had left his other clients in a similar situation. David Loree stated that Scott Kunst had provided his clients with dummy invoices from dummy companies to take monies from these clients.
David Loree stated to me that the money Scott Kunst had taken from his clients were spent on his, Scott Kunst, speculative project with an investor named Hickey. He stated that progress on the speculative project with Hickey had stopped because Scott's clients had stopped

paying Scott's company altogether and as a result, there was no money to be illegally transferred from his clients to the spec project. He stated that he was in contact with Hickey and that a lot of money had been taken from Hickey as well. David Loree appeared to know a great deal about Hickey and the speculative project.
David Loree implied that he had reconciled the Gaby/Kunstwerke account and that the accounts of the other clients could also be reconciled.
Q Thank you. Was there a time after Mr. Loree took over the Gaby project that you could not get in contact with me?
A Yes.
Q Did you ever get an explanation as to why?
A Not that I recall.
Q In your affidavit, you state David Loree stated to me that contact had been made with many of Scott Kunst's client. He referenced Parham, Covington, Coco and Hickey. Did you, yourself, have direct contact with client Parham and Covington during this time?
A I don't recall having a conversation with Covington ever. I had spoken with Parham directly. But as for the timing of that, I don't recall if that was during that time or not, but I did speak to Mr. Parham personally on occasion.

Q Did either Parham or Covington state to you that money had been taken from them?
MS. WRIGHT: Objection, Your Honor. Hearsay here, we're talking about people not involved in this lawsuit.
THE COURT: Sustained on the grounds of hearsay
BY MR. KUNST:
Q Did Mr. Loree provide you any dollar figures for money taken from these other projects?
A The only thing I recall was the number $400,000 that was in the conversation.
Q Did he provide you a document?
A No, sir.
Q In your affidavit, you also stated David Loree stated that Scott Kunst had provided his clients with dummy invoices from dummy companies to take money from clients. My question to you is, did Mr. Loree make this reference pertaining specifically to the Gaby project or any other project?
A I don't know that it was specific. It seemed like it was a general statement.
Q Did he provide you any document for that?
A No.
Q In your affidavit, you say, David Loree implied that he had reconciled the Gaby/Kunstwerke account and

that the accounts of the other clients had also been reconciled. My question to you is, did Mr. Loree provide you any documentation or support of the reconciliation of any Kunstwerke account?

A No, he did not.

Q Did Mr. Loree ever state to you directly that I was out of the picture and that he was taking over?

A I don't know if he specifically said that you were no longer involved or out of the picture, but he was presenting himself to me as someone who was taking over from the initial contact on. I don't know if he was going to be the contractor or if he was just taking over some details of the job, but he was my contact point after that.

Q Did you have any direct contact with either Mr. or Mrs. Gaby during this time?

A No.

Q Did you receive a call from Ed Coco?

A I did.

MS. WRIGHT: Your Honor, again, hearsay. Mr. Coco is not a party to this case.

THE COURT: Well, he hasn't commented on what he said, he just said he got a statement. So, at this point, I overrule.

Go ahead.

BY MR. KUNST:

Q Who is Ed Coco?

A He is a client who we had built a home with you supplying windows and doors prior to the Gaby's. I don't recall the exact timeline. He was a customer.

Q Were you done with the Coco project at that time as far as supplying windows and doors to him?

A At that time I worked with Coco, from my scope of work was fully done or mostly done.

Q So, what was the reason for Mr. Coco to call you then?

A As I recall, he had maybe moved into the house or was close enough to finishing up that he wanted a couple of loose ends taken care of. He called me direct in order to tell me to contact another gentleman who was working on his house who would be letting me in the house for replacing window stripping, looking at hardware, adjusting doors, typically, things that we do at the end of the project for any customer.

Q Beyond getting information regarding windows, please describe the call in general.

A That initial call, he was, I guess, somewhat agitated. He was not very pleased with how his house wrapped up or finished in regards to you and the disappearance. I don't recall a whole lot of other

details about that.

Q What effect did Coco's call have on you regarding information that you had heard from Mr. Loree regarding me?

A It just raised more questions or suspicions as to what was actually going on with all of those projects.

Q Based on the things that you state in your affidavit, was David Loree someone who was sending or I'll say, originating these statements?

A I'm not sure I follow you.

MR. KUNST: I'll withdraw the question, Your Honor.

THE COURT: Yes, sir.

BY MR. KUNST:

Q Did you believe that the things in this affidavit you attribute Mr. Loree stating might be true?

A They had as much merit as anything else I had heard.

Q Were you due a payment for the Gaby project at this time?

A We were.

Q Would you have delivered the windows without a payment on the Gaby project?

A We would not have.

Q Did Kunstwerke or I make that final payment?

A I do not believe so.

Q Did the Gaby's make that payment?

A I believe I got the check from Mr. Loree. I don't exactly recall who wrote that check.

Q Who would normally make payments to you?

A Generally, the contractor, general contractor.

Q In this case Kunstwerke?

A Correct.

Q Were payments from Kunstwerke sometimes for multiple projects?

A Often.

Q Describe what that is.

A We had a number of projects going on with your company and depending on where they were and having ordered windows or taken delivery of windows, we may receive a check that would cover two or three different invoices. And that was common.

Q Did you provide windows or doors for this Hickey speculative project you referenced in your affidavit?

A We did not.

Q Was Loree trying to get -- David Loree trying to get information from you about the Hickey project?

A I don't believe so. I had no interest in that project in any way. We weren't working on it in any way.

Q Would there be any reason for David Loree to say

anything to you regarding the Hickey project?
A I don't know.
Q To the best of your knowledge that you state in your affidavit, was this a serious allegation that Mr. Loree was making regarding me?
A It would seem so at the time, yes.
Q What did it imply to you?
A That something had gone array. And we were concerned for our business sake as well as, obviously, the status of your company and the project.
Q Were you concerned about your business being harmed?
A Certainly.
Q Has Mr. Loree contacted you at any point since the spring of 2006 to modify or correct any of the statements contained in your affidavit?
A No, sir.
MR. KUNST: I have nothing further, Your Honor.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. WRIGHT:
Q Good afternoon, Mr. Goad.
A Good afternoon.
Q Do you need any water or anything before I get started here?

A No, I'm fine.
Q Okay. Now, I had a question about your affidavit, Mr. Goad. Did you actually sit down at a computer and actually type all this out yourself?
A I did not.
Q Who did?
A I'm not sure.
Q Was this provided to you the way it was typed up for you to sign?
A That is correct.
Q Who provided it to you?
A Scott or his wife, I would guess. I don't recall specifically who brought it to me or how this was presented and signed.
Q So, this was not an affidavit that you drafted yourself?
A No, ma'am.
Q Okay. All right. Now, I'm noticing in your affidavit – oh, where are we here. The third paragraph down when you state, He referenced Parham, Covington, C and Hickey specifically.
Do see where I'm at?
A Yes.
Q Okay. Now, were you the subcontractor on windows for Parham?

A We supplied windows to Parham, yes, ma'am.
Q Did you do that for Covington?
A We provided some windows for Covington, a smaller portion.
Q How about Coco?
A We supplied windows there.
Q Did you supply windows for Hickey?
A We did nothing for Hickey.
Q Okay. So, were you involved at all in the Hickey project?
A No.
Q Okay. And if I understood you correctly, only partially involved in the other three, correct?
A Fully involved in Parham and Coco.
Q Okay.
A Partially in Covington because it was a later addition after his lake house was completed.
Q Okay. So, you wouldn't be privy to everything that was going on in Coco or Hickey, correct?
A Certainly not.
Q Okay. Now, you're designing custom windows, correct – or let me rephrase that. You are selling custom made windows, correct?
A That is correct.
Q Now, aren't custom made windows made

specifically for one specific residence?
A Typically, in our business, yes.
Q Okay. So, if you ordered windows, let's say, for the Smith house, custom made windows, they couldn't b interchanged in any other type of house, could they?
A Not likely.
Q So, you have to be careful and make sure you have your money coming in; is that correct?
A That is correct.
Q You have to keep an eye on the bottom line?
A That is correct.
Q Was there a point in time when you could not get in contact with Mr. Kunst on the Gaby project?
A There was.
Q About how long was that?
A I don't recall specifically, but it seemed like it was maybe two months or longer. It was a relatively long time.
Q Did that cause you any concern?
A Certainly.
Q Why is that?
A We had received a deposit for the windows, which is common, and we had ordered the windows based on that deposit. Now, we had windows either coming in, even sitting in our warehouse at that time with no certainty as

to how we would actually be paid for them.
Q So, did you feel a sense of relief when Mr. Loree approached you and said he was taking over on the Gaby project?
A Some, yes.
Q Why is that?
A Someone was back involved in the project that had interest in finishing it. And assuming that the money had already been spent, the deposit, it would make sense they would wanted the windows we had ordered.
Q So, did they actually pay you in full for the windows?
A That is correct. My memory we were paid in full for the windows after Mr. Loree became involved in the project.
Q Okay. Now, do you recall testifying at a damages hearing in 2007?
A I was in a number of hearings in 2007.
Q Okay. This one would have been involving the Gaby project?
A Uh-huh.
Q Do you recall that one?
A I do.
Q Okay. Do you recall testifying that the Gaby's had paid you $83,000 for windows?

A I don't recall the specific amount, but we received payment from Mr. Loree, which I assume came fr the Gaby's.
Q And do you recall testifying that you had received an invoice from Kunstwerke for double that amount?
A I don't recall. I don't receive invoices.
Q Okay. Do you recall hearing at the damages hearing that there had been an invoice supposedly to your company – from your company for $164,000?
A I don't remember that specifically. There were questions as to our original quote, which was about $160,000, but that was not our initial invoice. We would not initially invoice for the full amount. We would have no number to invoice for deposits and balances due. It may have totaled up to 160, I don't remember the size of the project.
Q Do you recall any testimony that amounts that were supposedly paid to you were twice what you actually charged?
A No, ma'am.
Q Okay. Do you recall Mr. Loree ever complaining about Mr. Kunst's construction ability?
A I don't recall any conversation regarding that specifically.

Q Do you recall him complaining about the Gaby house and how it was built?
A Not from Mr. Loree, I don't recall.
Q It is fair to say the only questions or comments Mr. Loree had to you concerned the accounting on the Gaby project?
A That would be fair. I don't recall having any construction conversations with him specifically.
Q The conversations would have been more along the lines of what was paid, correct?
A Paperwork, yes, ma'am.
Q Paperwork, okay. Now, let me ask you this, do you recall Mr. Loree specifically stating to you that Mr. Kunst had taken money from Parham, Covington, Coco and Hickey?
A I do.
Q Do you recall when that was?
A When he told me that?
Q Yes.
A I don't specifically. It was one of the initial meetings where he was introducing himself telling me he was, I guess, taking over the project in Scott's absence.
Q But you were working with him on the Gaby project, correct?
A By default.

Q Okay. Do you recall Mr. Loree telling you that Mr. Kunst took money from the Gaby's to spend on investment project?
A Yes, ma'am.
Q You do you recall that. You don't recall when, though?
A It was in that initial meeting.
Q But you don't recall a specific date, correct?
A Not a specific date.
Q Okay. Did he ever tell you that Mr. Kunst is going to jail?
A I don't recall Mr. Loree saying that.
Q Okay. But to sum up, your conversation with Mr. Loree was just to make sure you got paid, right?
A That and other things. I mean, he was asking me what we did in our scope of work. We do the windows and doors, but initially, he was trying to figure out what we were doing on the project and I was trying to figure out what he was doing on the project.
Q Did you have any difficulty dealing with Mr. Loree?
A Not that I recall.
MS. WRIGHT: No further questions, Your Hon
THE COURT: Mr. Kunst.
REDIRECT EXAMINATION

BY MR. KUNST:
Q Mr. Goad, who did tell you that Scott Kunst was going to jail?
A I'm sorry.
Q Who did tell you that Scott Kunst was going to jail?
A I don't recall. I heard it a couple of times. Once was in court from one of the other attorneys.
Q You don't remember the attorney's name?
A I heard Sandy Stern specifically tell you that. I've heard him saying that to you.
Q Ms. Wright spoke about the preparation of affidavit, is it notarized?
A Yes.
Q Whose notary seal is that?
A Sheila Ilashaw, she was my accountant at the time.
Q Did you return the affidavit to make corrections after the first draft?
A I believe so. I believe that's correct.
Q Did you make those changes because you wanted to make it more accurate?
A I would imagine so, yes.
Q Thank you.
MS. WRIGHT: This was not produced in discovery,

Your Honor.
THE COURT: Was it produced in the course of discovery? Have you seen it before?
MS. WRIGHT: I've not seen it before and I've not seen a Bates mark numbering or anything to indicate it was served on us.
MR. KUNST: Your Honor, this is a nine year old case. This has been provided through discovery.
THE COURT: Okay. What's the question?
BY MR. KUNST:
Q Do you recognize these drawings?
A That's my handwriting and some of my notes.
Q Is there a date on there, on that document?
A There is a date December 21st, 2005, which is stamp from a fax machine it looks like.
MS. WRIGHT: Your Honor, this is beyond the scope of inquiry into this case. It's going into a construction issue. As Plaintiff himself has said, this is defamation.
THE COURT: My question is, is it within the scope of cross-examination?
MR. KUNST: It is, Your Honor. It's speaking to the last time there was any kind of adjustment to the order and when the funds were due. She had question regarding when funds were specifically due.

MS. WRIGHT: Your Honor, I did not raise any questions to when funds were specifically due. That was not part of my cross-examination at all.
THE COURT: I don't necessarily remember that either.
Do you remember her asking that specific question?
MR. KUNST: She was asking about timely payments and who made the payments and when the last payment –
MS. WRIGHT: I did not say –
MR. KUNST: And she also had questions regarding the order itself, the final order.
THE COURT: Okay. I'm going to – I'll let you ask questions regarding that. Now, whether I allow you to admit that document, that's another matter altogether. Go ahead and the questions, but I want you to stay focused on relevant matters, okay?
MR. KUNST: Yes, Your Honor.
BY MR. KUNST:
Q As of the date of that drawing to the best of your recollection, were adjustments still being made to the Gaby's window order?
A This looks like drawings that were some of the last windows ordered, I believe, or maybe an upstairs

bedroom, which was towards the end of the project. But what is your specific question?
Q Was on the date of that drawing a time in which the Gaby final window order was not complete?
A Possibly so. These are notes to make final shop drawings. These are not the final. This could have still been ongoing discussions.
MR. KUNST: That's all I have, Your Honor.
THE COURT: Okay.
MS. WRIGHT: Your Honor, I move that not be admitted into evidence. He hasn't shown that's been produced in discovery or how it's relevant –
THE COURT: I don't think he's admitted –
MR. KUNST: I'm not moving it.
MS. WRIGHT: Very good.
THE COURT: Okay. Thank you, sir. I apprecia you being here. You may step down.
All right. Ladies and gentlemen, let's take a short break, say about 10 minutes. Come back in and resume testimony. Please don't discuss the case.
(WHEREUPON, the jury left open court at approximately 2:30 p.m.)
MR. SMITH: Your Honor, may the witness be excused?
THE COURT: Yes, absolutely.

Okay. We'll be in recess for a few minutes.
(WHEREUPON, a short break was taken.)
THE COURT: Okay. Ready for the jury?
MR. KUNST: Yes.
THE COURT: Bring in the jury, please.
THE BAILIFF: Yes, Your Honor.
(WHEREUPON, the jury came into open court at approximately 2:45 p.m.)
THE COURT: All right. Mr. Kunst, you may call your next witness, sir.
MR. KUNST: The Plaintiff calls Glenn Alfonzo.
THE CLERK: Place your left hand on the Bible, raise your right hand.
GLENN ALFONZO, after being duly sworn, testified as follows:
THE CLERK: State your full name for the record.
THE WITNESS: Glenn Peter Alfonzo.
THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. KUNST:
Q Good afternoon, Glenn.
A Hello.
Q State your name and your business name.
A Glenn Alfonzo, New Creations.
Q What does your company do?

A Underdeck, ceilings, custom order, metal copper work.
Q Did your company do work on the Gaby project at The Reserve?
A Yes.
Q After March 2006, after the dust settled, were you still owed money by Kunstwerke?
A Yes.
MR. KUNST: May I approach the witness?
THE COURT: Sure. Yes, sir, you may.
BY MR. KUNST:
Q You recognize that document, Mr. Alfonzo?
A Looks like one of our invoices.
Q Is that a typical invoice you would have submitted say during 2005?
A Yes. Well, no, not typical.
Q How would it be different?
A A little notation on it.
Q Could you read the notation?
A It's got, I regret the difficulty you're now facing. I'm also very grateful for the opportunity to work on your jobs, which have put me in a position to obtain much more work on the north end of Lake Keowee, i.e. The Reserve, etcetera. The invoice I'm sending you was recently sent in January of 2006 and is the only

remaining balance you owe me. I am longer requiring payment for this invoice, therefore, I'm applying a credit to your account. If you need any work in the future, please feel free to call me.
Q Did I accept your $2,500 write off?
A I don't recall ever hearing back from you, but I did eventually get paid on it by Mr. Coco, who the invoice was to.
Q When did you get paid by Mr. Coco?
A I don't know the date.
Q Was it in a courtroom?
A That was one time he paid me. I believe he actually paid me twice for it.
Q Did David Loree speak to you in the spring of 2006?
A It's possible, that was a long time ago.
Q Do you remember specifically what David Loree might have said to you back in 2006?
A I only remember one occasion having a conversation with him. I don't remember much of the details. I was introduced to him by Bronson Sheppard over some other issues.
Q Who was Bronson Sheppard?
A It was the job foreman.
Q Job foreman for who?

A For you.
Q On what project?
A The Gaby project.
Q Did you prepare a document closer to the spring of 2006 that might help your recollection as to what Mr. Loree specifically said to you?
A Maybe, I don't know.
Q Did you prepare an affidavit in this case?
A Seems like there was something, yeah.
Q Do you recall this document?
A I remember the document.
Q How did that document come about?
A Apparently there was a conversation, but it came about because you came to my house and asked me for it.
Q Describe that meeting at your house. Do you remember any of it?
A I remember you came by and asked some question about it. That was a long time ago, I don't remember much of the specifics.
Q Would you please read the affidavit? And I would ask you slowly. She's typing everything you're saying and she needs to be able to hear you.
A Okay.
I reside in Easley, South Carolina, and give this affidavit voluntarily. My company, New Creations,

crafted ornamental copper roofing, copper fixtures for Scott Kunst and his company, Kunstwerke, from 2004 to 2006. During the spring of 2006, David Loree, who was managing the construction of Richard and Barbara Gaby's personal residence at The Reserve at Lake Keowee, spoke with me on numerous occasions. I recall David Loree referring to Scott Kunst as a criminal, quotations, on more than one occasion. In one particular instance, I recall him stating to me that I'm not supposed to be telling you this, but to give you an idea of some of the criminal things Scott has been doing, that was a quotation, was David Loree referenced an insurance policy for the Gaby project and claimed that Scott Kunst took out the policy, billed the Gaby's and intentionally canceled the policy the next day so that he could keep the money.

During this same period of time, David Loree also stated that Scott Kunst had taken money from his other clients, that that money was missing from these other projects.

Q In your affidavit you just read, and I'll quote again, In one particular instance, I recall him stating to me I'm not supposed to be telling you this, but to give an idea of some of the criminal things Scott has been doing. David Loree then referenced an insurance policy.

Did David Loree give you any examples? Did he

give you any documentation for this insurance policy?

A Not that I recall, but that was a long time ago.

Q Is it true that Mr. Loree did, in fact, imply there were other examples?

A I can't remember specifically if he did or not.

Q Glenn, I know it's been a very long time. I know recollection after nine years can fade. Do you remember giving a deposition in this case?

A I don't know. I mean, I gave depositions for other things. I don't know.

Q I understand.

A There's been several cases.

Q Do you remember specifically giving a deposition on November 2008?

A I don't remember that, but if there's a record of it, then I'm sure it happened.

MR. KUNST: May I approach, Your Honor?

THE COURT: Sure.

BY MR. KUNST:

Q I just want you to recall your testimony to help refresh your memory. Starting at Line 13 down and then I'll ask you the question again.

THE COURT: Ladies and gentlemen, before he testifies, let me explain something to you briefly. A deposition is an out-of-court statement taken under

oath in anticipation of a trial. Ordinarily, what happens is one party or the other may subpoena a witness to appear at the deposition. Usually, it happens at one of the attorney's offices. A court reporter will appear and will swear the witness in just as the witness has been sworn in today. And then questions will be posed and answers will be given just like in a courtroom. So oftentimes, in trial, either party will take a deposition and ask questions relative to that deposition and statements which have already been given. Understand that deposition testimony is just another form of evidence that you receive in a case. You decide what weight it has just like you decide what weight any other piece of evidence or any other testimony that may be presented in the case. I just wanted to let you know what a deposition was so you wouldn't be wondering what is it that they're talking about right now.

So, Mr. Kunst, you may continue, sir.

MR. KUNST: Thank you, Your Honor.

BY MR. KUNST:

Q With your attention on Page 44, Line 15, I'll ask the question I just asked you.

It is true that Mr. Loree did, in fact, imply that there were other examples?

A I may have inferred it, but on the record, I said he implied it.

Q Were you alone with Mr. Loree when he discussed this insurance police?

A I don't recall being alone with Loree.

Q Were there other construction workers standing around?

A I vaguely remember at one point Bronson Sheppai was involved with some of the conversations.

Q I would direct your attention to Line 13 – Page 13, Line 13. Okay. I'll ask the question again, were you and Mr. Loree alone when he said this?

A I have no idea. I cannot tell you one way or the other.

Q Did you state in your deposition, I'll quote, There were several other workers that was on the – I can't remember who was standing around, but there were several other workers that were on the job site?

A Is that in the deposition?

Q Page 13, Line 13.

MR. KUNST: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. KUNST:

Q I'm just going to move on to the next question, please.

Did you speak to a client of mine named Mike Parham during this time during 2006?
A I've done some work for Mike Parham, yes.
Q Did Mike Parham indicate to you that there were any financial problems at his site?
MS. WRIGHT: Objection, Your Honor. Hearsay again. Mr. Parham is not a party to this action.
THE COURT: Okay. All right. I sustain that.
BY MR. KUNST:
Q In your affidavit, do you state, and I'll read again, During this period of time, David Loree also stated that Scott Kunst had taken money from his other clients and that money was missing, quote, unquote, from these projects? Did you hear any speculation as to where any of those funds might have gone?
A Not that I recall.
MR. KUNST: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. KUNST:
Q Page 13, Line 13. I'm going to ask a question that I asked you a short while ago. And that is in regards to this insurance policy.
Were you and Mr. Loree alone when he said this? If you would please read –
MS. WRIGHT: Objection, Your Honor. Page 13,

Line 13 and this page here makes no reference to the insurance policy. The testimony we have here is just that there were some people standing around. That has already been asked and already been answered.
THE COURT: Okay. Mr. Kunst.
MR. KUNST: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. KUNST:
Q I'm just going to read –
MS. WRIGHT: Your Honor, what purpose – I n I can keep interrupting like this, but, of course, I have to do this. But I need to know what purpose he's going to read from the deposition testimony when the deponent is right there on the stand?
THE COURT: I don't know if he's suggesting he needs to read it himself to get his bearings or whether he's going to read it to the jury.
MR. KUNST: I'm just helping the witness with his recollection, Your Honor.
THE COURT: Okay. All right.
BY MR. KUNST:
Q In your affidavit, you reference the criminal things that Scott Kunst has been doing that Mr. Loree stated to you. I'll ask the question yet again, were you and Mr. Loree alone when he said this?

A I don't know.
MS. WRIGHT: Your Honor, again, it has been asked and answered twice.
THE COURT: Okay. I overrule.
You may move on.
MR. KUNST: May I approach?
THE COURT: Yes, sir.
BY MR. KUNST:
Q Page 13, Line 13. Is it not true, Mr. Alfonzo, that you state in your deposition that, It wasn't just between me and him, there were several others standing around. I can't remember who was standing around, but there were several other workers that were on the job site.
A I mean, that's what it says here, yes.
Q In your deposition?
A I'm sorry, what's the question?
Q Is that what you stated in your deposition?
A Yes, yes.
Q Thank you. May I have it?
MR. KUNST: Plaintiff moves to admit exhibit.
MS. WRIGHT: Which exhibit is that? I can't see that far away.
MR. SMITH: Your Honor, I think we object to the admission of this. It's not even from the Gaby job,

it's a completely different job. There's been no substantiation it was a business records kept in the regular course. It's not relevant. Subject to that.
THE COURT: What's its relevance, Mr. Kunst, i it's for another job?
MR. KUNST: He stated it was a invoice that he sent to Kunstwerke in which he spoke about enjoying working – there's a letter involved in the text.
THE COURT: All right. I'll allow it to be introduced as Plaintiff's Exhibit No. 3 over objection.
(WHEREUPON, Plaintiff's Exhibit No. 3 was mar for identification and received into evidence.)
MR. KUNST: Nothing further, Your Honor.
THE COURT: Okay.
Cross-examination?
MS. WRIGHT: Thank you, Your Honor.
CROSS-EXAMINATION
BY MS. WRIGHT:
Q Good afternoon, Mr. Goad [verbatim], I don't think we have officially met. I'd like to introduce myself. I'm Elizabeth Wright. I'm one of the attorneys, along with Mr. Smith, representing Defendant Loree. That affidavit, do you have it in front of you, your affidavit?
A Yes.

Q Good. Now, I wanted to take a look at that affidavit since you have it right in front of you and, let's see, looks like it's about the one, two, three, fourth paragraph down, it starts with the words, During the spring of 2006.

Do you see where I'm at?

A Yes.

Q Okay. And I want to look at the last sentence there. And it says, I recall David Loree referring to Scott Kunst as a criminal, criminal in quotation marks, on more than one occasion.

Did I read that correctly?

A Yes.

Q Now, I know it's been a long time, this lawsuit has go on for quite some time, but during your deposition, do you recall being asked -- do you recall stating that that was -- that sentence was not quite what you meant, do you recall that?

A Actually, yes, I do remember that.

Q What do you recall?

A The indefinite article a.

Q So instead, you did not refer to Mr. -- Mr. Loree did not refer to Mr. Kunst as a criminal, correct?

A Right.

Q But that some of the things he did were criminal; is that correct?

A Correct.

Q So, when you had your affidavit when it was first presented to you, it was not correct?

A That's right.

Q So, you had to have a correction made; is that true?

A I never saw a correction made. This is the only thing I ever saw.

Q Okay. So, that affidavit you have in your hand does not accurately reflect your testimony, correct?

A It does not.

Q Okay. Now, the next question I have for you concerning your deposition testimony, I believe you testified that you were getting checks and payment from Kunstwerke and they were bouncing. Am I remembering t correctly?

A That's true.

Q Okay. So what did you do when you got checks that were bouncing?

A Well, as it specifically relates to the Gaby job, I brought it to the attention of Bronson Sheppard.

Q Okay. And did you take -- did you then require that Kunstwerke pay you in certified checks?

A I can't remember the specifics. There was something that I asked for. It may have been certified -- I think it was certified checks now that think about it. I'd have them go to the bank. I can't remember the details, but there was something to that effect.

Q So from Kunstwerke, you wanted a certified check, correct?

A Something to that effect, I would say yes.

Q All right. Now, in your dealings with Mr. Loree over here, did he every complain to you about the construction of the Gaby home?

A I don't -- I can't say for sure.

Q Okay. Do you recall him ever complaining about the design of the Gaby home?

A No.

Q Did your conversations with Mr. Loree just concern accounting matters, as to how much you were paid?

A Yes.

Q Thank you, Mr. Alfonzo.

MS. WRIGHT: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. KUNST:

Q So, Mr. Alfonzo, if I may just follow up on something that Beth just asked you. Would you want the

jury to take from your affidavit -- did you state that you wanted the article a removed before the word criminal?

A Yes.

Q Could you please reread that line to the jury with that correction?

A If I recall, David Loree referred to Scott Kunst as criminal on more than one occasion.

MR. KUNST: Thank you. I have nothing furthe Your Honor.

MS. WRIGHT: Brief recross?

THE COURT: Yes, ma'am.

RECROSS-EXAMINATION

BY MS. WRIGHT:

Q Mr. Alfonzo, did you actually write the affidavit yourself?

A I did not.

Q Did someone prepare it for you?

A Yes.

Q Who did?

A Scott Kunst.

Q Thank you.

MS. WRIGHT: No further questions, Your Honc

THE COURT: Okay. All right, sir. You may ste down. I appreciate you being here.

Any objection to this witness being excused?

MR. SMITH: Nothing from the Defense, Your Honor.
MR. KUNST: No, sir.
THE COURT: All right. Thank you.
MR. KUNST: The plaintiff calls David Loree to the stand.
DAVID LOREE, after being duly sworn, testified as follows:
THE WITNESS: David Marion Loree.
THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. KUNST:
Q Good afternoon, Mr. Loree.
A Good afternoon.
Q State your name and profession.
A David Marion Loree. I'm an executive protection coordinator/property manager.
Q What is your educational background?
A I have certificates of law enforcement, para-medicine. I'm a graduate of Northwestern University School police staff. I've for the last 15 years been an executive professional coordinator for Richard and Barbara and Ms. Gaby's father and mother.
MR. KUNST: May I approach, Your Honor?
THE COURT: Sure.

BY MR. KUNST:
Q Mr. Loree, do you recognize that business card?
A That's an old inaccurate business card, correct. I can provide you with a current one if you'd like.
Q That's not necessary.
A Okay.
Q Is this a photo copy of it?
MR. KUNST: May I approach, Your Honor.
A Of an old inaccurate company that doesn't exist business card, yes, sir, it is.
MR. KUNST: If I may approach?
THE WITNESS: Would you like a current one, s
MR. KUNST: No thanks.
THE WITNESS: Okay.
MR. KUNST: The Plaintiff moves to admit a pho copy of the business card as an exhibit.
THE COURT: Objection?
MR. SMITH: No objection, Your Honor.
THE COURT: All right. Without objection, sam is admitted. That I believe is Plaintiff's Exhibit No. 4.
(WHEREUPON, Plaintiff's Exhibit No. 4 was mar for identification and received into evidence.)
MR. KUNST: If I may approach again, Your Ho
THE COURT: Yes, sir.

BY MR. KUNST:
Q Based on your title listed on the old card, as you describe it, what specifically does an executive protection administrator do?
A I travel globally with a high wealth client. I do advanced work from them. I guarantee their property and personal security. The client that I have now has six children, so my responsibilities are to do advanced work when they're moving around globally as well as domestically.
Q Back in the spring of 2006, where did your paychecks come from? Who was your employer?
A Richard and Barbara Gaby.
Q Did your paychecks come from them?
A It came from a company a called VA Enterprises, which is a family holdings office. Yes, it would be Richard and Barb Gaby.
Q I ask you again to clarify. Did your paychecks say JVA Enterprises?
A Ask the question one more time with the date, sir.
Q In the spring of 2006, did your paychecks say JVA Enterprises.
A I do not believe it said JVA Enterprises. The company name is VA Enterprises.

Q Okay.
A It probably would have, yes, sir.
Q Are you a detective?
A No, sir, never was.
Q Do you have any experience with criminal law?
A Yes, sir, 18 years of law enforcement. Five part time and 13 full-time.
Q Do you have any expertise in financial crimes?
A No, sir.
Q Are you familiar with terms such as embezzlement?
A Yes, sir. Investigated those in the past.
Q What are the main element of embezzlement?
A It's taking with the permanent intent of funds that don't belong to you by an employer.
Q Does it involve criminal intent?
A Intent to permanently deprive, correct, sir.
Q Are you an accountant?
A No, sir.
Q Are you a auditor?
A No, sir.
Q Are you a CPA?
A No, sir.
Q Prior to 2006, were you ever involved in any kind of residential construction?

A Yes, sir.
Q If you could please on expound on that.
A My own personal construction, so, yes, sir.
Q Have you ever signed a construction contract?
A Yes, sir.
Q Have you ever written a construction contract?
A In conjunction with the legal department, yes, sir.

MR. KUNST: May I approach, Your Honor?
THE COURT: Yes, sir.

BY MR. KUNST:
Q Do you recognize this document, Mr. Loree?
A No, sir.
Q Can you tell me what it is?
A It's title as construction contract.
Q Can you read the first paragraph?
A This contract is made, is that where you would like for me start?
Q Yes, please.
A This contract is made and entered into this 24th day of September, 2004, between Kunstwerke, hereinafter contractor, and Richard and Barbara Gaby Van Andel, herein called owner.
Q Thank you. Can you turn to the second page?
A (The witness complies.)

Q Is there a highlighted line on that page –
A Yes, sir.
Q – for your convenience? Can you please read the highlighted line that I marked in yellow?
A The second sentence in number six on the second page reads, Due upon receipt as weekly billings seeking reimbursement or provided with adequate support.
Q What does that term reimbursement mean to you?
A Websters would be reimburse, so it would be pay after the fact, sir.
Q Specifically, to you, what does reimbursement mean in the context of that contract?
A I just gave you what it meant, sir.

MR. SMITH: I hate to do this, I'm going to object, Your Honor, but he's claiming he's never seen the contract before. He's now being questioned about what the contract means to him.

THE COURT: All right. I don't know if I'll sustain on that ground, but I'll sustain it based upon the fact that he's testified as to what he thinks the word means.

You may not like the answer, but you have to live with it. You may move on.

BY MR. KUNST:
Q I'm going to ask again to be redundant because I

may not have heard you correctly. You stated that you've never seen the Gaby contract?
A It's been nine or 10 years. You asked me – your statement was do you know what this is and have you seen it before. Nine plus years ago, no, it does not look familiar to me.
Q Thank you.

MR. KUNST: May I approach, Your Honor?
THE COURT: Sure.

BY MR. KUNST:
Q Do you recognize that email, Mr. Loree?
A Yes, sir.
Q What was that email related to?
A Give me a moment to read it. I know it's my email, but I'd like to refresh if I could. All right.
Q What did you mean when you wrote in your email at the top, Before further funds will be transferred?
A That was a document that I was asked to prepare and forward to you by my employers, Richard and Barbara Gaby, after they realized that their building project was far behind and payments were not being distributed as they thought that they should be. They asked me to prepare a document, meet with you and have you reconcile or produce all canceled checks and correlate those correctly with receipts to find out where their funds for their project

had gone and reconcile the account as a total.
Q Far behind what?
A Far behind what? What is your question, sir?
Q You just stated that the Gaby's stated their project was far behind. Far behind what?
A There was a completion date that they were apprized by you of and the project was not progressing at what they believed to be a timely fashion, so they asked me to follow up on that.
Q What was that completion date?
A I don't know, sir. We're talking nine or 10 years ago. I wasn't privy to the initial contract.
Q Have you ever seen a completion date promised in a document to the Gaby's?
A Again, I don't recall, sir.
Q To the best of your knowledge, does my company ever provide completion dates?
A I have no idea, sir.
Q Okay. I'll go back to when I just asked about the quote. Before funds will be transferred, is that related to the reimbursement portion of the contract you just read?
A I would have no knowledge of that, sir. This document was created completely independent of whatever that contract read. I have never seen or was not made

aware of the contract.
Q Okay. So this document was prepared without looking at the contract?
A Correct, sir.
Q To the best of your knowledge in taking over the financial aspect as was stated earlier, were the Gaby's transferring money to be disbursed or were they reimbursing costs already incurred?
A Can you ask the beginning of that question –
Q I will.
A – again, sir?
Q I will. Were the Gaby's transferring money –
A No, not that part. Before that, sir, you had asked when I took control of the financials. I never took control of any financials.
Q Did you assume the payment of subcontractors and suppliers on the project?
A Mr. Gaby always had control of that. I did forward documents to him from vendors requesting he make those payments. I didn't have control. I was simply forwarding those to him.
Q So, you interacted with Mr. Gaby in that respect?
A Yes.
Q So my question is again, was Mr. Gaby – when he

made Kunstwerke payments, was he providing money to Kunstwerke to be disbursed or was he reimbursing costs that were already incurred by Kunstwerke?
A He was supplying funds to your corporation to be distributed as a pass-through to vendors in correlation with receipts that you forwarded to him on a weekly basis or a synopsis of those receipts on a weekly basis on items that were already prepaid, his understanding was.
Q How does that relate to the term reimbursement?
A I have no idea, sir.
Q Is it your assertion that Mr. Gaby was directing funds through what you just described as a pass-through account?
A You would ask on a weekly basis in an email to him for a dollar amount and he would then wire those fund to you to be distributed to subcontractors, tradesmen, vendors, correct.
Q Was Mr. Gaby provided any detailed support for that wired amount?
A It was, as I recall, two or three pages, perhaps, with a one line header about a construction subcontractor, vendor and a dollar amount. As far as full receipts, I don't believe so. I don't recall seeing those early on until we met and you provided some of those. And someone testified earlier that he didn't ask for them, is

that what you're getting at, sir?
Q Yes.
A Okay.
Q Did he to your knowledge?
A I have no knowledge of that. That was before my time.
Q In your email, you also quote and ask for stamped paid invoices. What did you mean by that?
A Let me find where we were at here.
You have in your possession and will prepare stamped paid invoices to include copies of your canceled checks showing disbursement to match the transferred funds Mr. Gaby has made related to the Gaby home project. You will complete those invoices and canceled checks started with those funds transferred on 10/07/2004 in the amount of $19,214. They will continue and be complete to include a transfer on 02/13/2006 in the amount of $61,323.
Q Did you ever receive stamped paid invoices?
A No, sir. May I correct myself? When we met at The Reserve, you brought a large box and I'm sure some of those invoices that you brought were stamped paid.
Q At the time that that large box was brought to you at that meeting you referenced, had either you or Mr. Gaby ever seen a Kunstwerke billing statement?
A I don't – if you can produce a billing

statement, I'll be able to better answer that question for you. I'm not sure what you're referring to.
MR. KUNST: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. KUNST:
Q Mr. Loree, do you recognize that document as a progress billing from the box?
A It is not titled at such. It just says Reserve Lot B 29B in progress. It doesn't reference billing. Yes, I have seen these documents. I think this is what you forwarded Mr. Gaby on a weekly basis.
Q Did Mr. Gaby ever state to you prior to this meeting in February '06 that he never received any support?
A I don't recall, that, sir.
Q Did Mr. Gaby, in fact, Mr. Loree, wire money based on an email?
A If this was an attachment to the email, my understandings were, I believe that's how he responded and forwarded funds.
Q Did Mr. Gaby ever state to you that he could not open the attachments?
A I don't recall that.
Q To the best of your knowledge, did the Gaby's maintain their own checking account with Kunstwerke?

A I have no knowledge of that, no, sir.
Q Do you have any specific knowledge as to what account or to where these wires specifically went?
A As I recall – and I just recall this from seeing various documents, Regions Bank. Is that your construction account, perhaps?
Q Did the Gaby's to the best of your knowledge maintain any kind of construction deposit with Kunstwerke?
A Unknown, sir.
MR. KUNST: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. KUNST:
Q If I may, I'd like to direct your attention to the third page of that document and ask you to identify what it is?
MR. SMITH: I'm sorry, Your Honor. I just want to make sure I see what the witness is looking at.
BY MR. KUNST:
Q What is that document?
A It is – they are dates followed by the word Billing, followed by a dollar amount with a far column to the right that says, Total to date.
Q Is it an invoice from someone?
A No, sir.
Q Hold on –

MR. KUNST: Your Honor, may I approach?
THE COURT: Sure.
THE WITNESS: I don't think you counted, sir, that wasn't the third page.
BY MR. KUNST:
Q I apologize, it's the fourth page. One was sticking. Please identify that document.
A That is a document, invoice number 12 from Bronson Sheppard.
Q Have you seen invoices from Bronson Sheppard before?
A Been many years ago, but yes, I'm sure I have.
Q Does Bronson's invoice have contact information on it?
A 510 Hunters Ridge Road, Brevard, North Carolina Yes.
Q When you took the box back to Atlanta on February 16th, 2006, did you make contact with individuals based on a similar invoice as to Bronson's?
MR. SMITH: Objection, Your Honor. I don't understand the question.
THE COURT: Okay. Restate the question.
THE WITNESS: Yeah, me either.
MR. KUNST: I apologize.

BY MR. KUNST:
Q Would you have obtained contact information from the box of billing?
A We did compile a database by which to contact various vendors from – I'm sure from addresses and contacts that would have been on invoices in that box, yes, sir.
Q Back to the email that's underneath that document, give us a better description of why you called this meeting.
A This was an effort for Mr. and Mrs. Gaby to become comfortable with your accounting, to find where their funds they had forwarded to you had gone knowing that vendors were going unpaid, there was a slow down on their work project and there was frustration on their part. Their home wasn't being finished and there was a fear on their part that the vendors – that funds were to go to Mr. Kunst and to be forwarded to subcontractors, that was not actually happening.
Q How did you determine that the project was slowing down?
A I was told by Mr. Gaby.
Q Did you look at progress reports or any kind of –
A I answered your question, sir.

Q I'm asking a new question.
A Okay.
Q Did you do an independent investigation, other than through Mr. Gaby you just stated, as to whether or not the project was genuinely slowing down?
A It was evident very soon that it was indeed.
Q Do you have any specific evidence of that today?
A I don't know what you would be looking for, sir.
Q Who was present at this meeting on February 16th, 2006?
A You and I. And I was informed earlier – overheard that Ms. Hilton was there and your father.
Q At this meeting, were two unreimbursed statements, similar to one that you have in front of you, provided to you?
A I think if we go back in my two depositions, in testimony we've talked about this before, I do not recall you – it was a large box. There very well could have been those documents in there.
Q When you took the box back to Atlanta, did you investigate or cause to be investigated whether or not there were any unreimbursed billing statements similar to that in the box?
A We're referencing back to this item?
Q (Mr. Kunst nods.)

A I reviewed numerous documents similar to this.
Q I'll ask the question again. The question was, did you find any that had not been reimbursed by the Gaby's?
MR. SMITH: Your Honor, he's asked and answered the question.
THE COURT: I'll let him the answer the question.
THE WITNESS: No, sir, I don't recall.
BY MR. KUNST:
Q Okay. Do you recall stating at that meeting, quote, I think I can get these paid?
A No, sir.
Q Do you deny stating that?
A I think in previous testimony, deposition, I said that would be making a claim on behalf of my employer that until I spoke to him about that, I wouldn't have that ability to guarantee a payment.
Q Have you ever stated, I'm unsure?
A In my whole life, I've used the term I'm unsure many times, sir.
Q No, in the context of the question I just asked?
A I don't recall, sir.
Q Mr. Loree, do you recall testifying in a damages hearing on March 13th, 2007, on behalf of the Gaby's?

A Yes, sir.
Q Do you recall in that same hearing being asked the same question about whether or not you stated, I think I can get these paid?
A No, sir, I don't have any personal recollection of that.
MR. KUNST: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. KUNST:
Q Please review lines 13 through 18.
MR. SMITH: What page, Scott?
MR. KUNST: Seventy-eight.
BY MR. KUNST:
Q Did you not, in fact, Mr. Loree, state on that date that you were unsure?
A Starting on Line 13, it says, I do not believe so. I did not say that.
You don't believe? Yes or no, sir.
I don't believe I said that, sir.
You did not say that?
I do not believe I said that.
You are not sure?
And I did finally say unsure.
Q Thank you. In relation to the time that you compiled that email before you requesting the

February 16th meeting, when did you make contact with the 240 individuals?
A It would be roughly – if this was on the 13th, we met on the 16th, it would have been shortly after the 16th when I actually had contact information for them. Shortly after the 16th, I would imagine.
Q I'll move on to speed things along and move on to another question and we'll come back to that. Did you tell any of the 240 people that you contacted –
MR. SMITH: Your Honor, I hate to do this, but. I have to object again because there's been no evidence that Mr. Loree contacted 240 people. He has twice now made that assumption and prefaced his question with that. There's not any testimony in evidence that some 240 people were contacted.
THE COURT: Ladies and gentlemen, I told you when we first started the case that lawyers opening statements and closings statement aren't evidence to be considered by you. The same thing is true to questions that are posed to witnesses. The questions are not evidence. The responses to the question are evidence. So if you hear either side make an assertion in a question that's not in evidence, you understand that that is not evidence to be considered by you, okay? So, I tell you to be weary of that. I'm not suggesting that anyone has done

anything wrong or that anyone has tried to convince you of something that is not accurate. I just tell you that generally because that's the rule.
You may proceed, Mr. Kunst.
BY MR. KUNST:
Q Mr. Loree, did you ever state in a deposition that the number of individuals you contacted was 240ish?
A I don't recall, sir. A large number, I could stipulate to that.
THE COURT: Ladies and gentlemen of the jury. Let's take a short break. Let's take about five minutes, then we'll come back in and resume testimony. Please don't discuss the case.
(WHEREUPON, the jury left open court at approximately 3:48 p.m.)
THE COURT: All right. Mr. Loree, you can take a break, too. Please remember you're still under oath, which means you can't discuss your testimony with your attorney.
Go ahead and get together what you need to get together. And I also want to tell you, and I told you this before, the most successful litigators establish a narrative and move forward with a narrative. If you respond to – if you decide to respond to individual questions that are posed by objection by the other side,

you may be being thrown off of your narrative. So, just be careful about that. Make sure you're focused on the message you want to convey.

All right. We'll take about five minutes and come back in.

(WHEREUPON, a short break was taken.)

THE COURT: All right. Let me ask you this. Mr. Kunst, how much longer do you intend to take with Mr. Loree?

MR. KUNST: I may fill up the hour, Your Honor.

THE COURT: Okay. All right. And are you going –

MR. SMITH: He said –

THE COURT: He said the remainder of the hour is what he said. So, based on that, I'm thinking 5:00ish.

Okay. Do you intend to cross-examine Mr. Loree or call him in your case in chief?

MR. SMITH: I do intend to cross-examine him. I assume that will take a couple of hours.

THE COURT: What we will do is after you complete your direct examination, then we'll adjourn for the evening and come back and do cross-examination tomorrow. Because I have not advised the jury that we will be staying after 5:00.

It may be that we do tomorrow, but I like to give them a little heads-up if we do. Based on where we are right now, I'm not certain that we'll need to.

MR. SMITH: We have no objection to that, Your Honor.

THE COURT: Okay.

MR. SMITH: Remember, you have one juror that needs to leave early.

THE COURT: Is it tomorrow or is it Friday?

MR. SMITH: Well, you've got who has to not be here Friday and one that has to take his momma to work.

THE COURT: Right, start at 9:30.

MR. SMITH: You asked us to remind you, Your Honor.

THE COURT: Yeah, you did. And I appreciate that, I do. Sure as night follows day, I forget about things like that.

Will you bring them in, please.

(WHEREUPON, the jury came into open court at approximately 4:00 p.m.)

THE COURT: All right. Ladies and gentlemen, I have had a discussion with the parties about timing just so I'll know and I can tell you what you can expect for the remainder of the afternoon. Mr. Kunst

intends to examine Mr. Loree probably until about 5:00. At that point in time, what we'll do is we'll adjourn for the evening. We'll come back tomorrow, probably at 9:30.

Because I know you've got to take your mom some place; is that right?

Okay. So, we'll back at 9:30. And we'll resume the cross-examination of Mr. Loree at that time. At that time, too, I might be able to give you some additional information about how long it will be until we get to the end of testimony and we can transition into closing argument and charge. I don't know that right now. So, I don't want to speculate. But in any event, I'll turn it over to Mr. Kunst.

You can resume your examination, sir.

MR. KUNST: Thank you, Your Honor.

THE COURT: Yes, sir.

BY MR. KUNST:

Q Mr. Loree, did I take money from the Gaby's and spend it on personal things?

A Unknown, sir.

Q Have you ever stated to anyone that?

A No, sir.

Q What is an S Corp? Do you know what an S Corp is?

A An escort?

Q An S Corp, C-O-R-P?

A No, I do not.

Q Have you ever been involved in one?

A No, sir.

Q Have you investigated or caused to be investigated my draw schedule?

A I don't know what your draw schedule is. No, sir.

Q Do you understand what a draw schedule would b

A Could you define it for me, sir?

Q Do you understand what a partnership draw –

A No, sir.

Q – is from a partnership?

A No, sir.

Q Okay. Have you ever asked for a full accounting of my draw schedule for my company?

A That would be included in – accompanying those reconciled documents would be an addendum explaining an prior to paying for disbursement of funds – we asked for everything related to the Gaby's finances relating to the construction of their home. So, in a round about way, to answer your question, yes, sir. If it was relevant, we asked for it.

Q No, I think you misunderstood my question. I'm

speaking of my own personal draws from my company, my own income that belongs to me?
A No, sir.
Q Did you have any such document in your possession when you contacted the large number of people you indicated that you contacted?
A I don't recall that, no, sir.
Q Did you have in your possession when you made these contacts the full Kunstwerke accounting ledger?
A It was asked for, but wasn't provided. That was one of the reasons that I made those calls.
Q Where specifically did you ask for a full accounting ledger?
A Would you like me to read the whole email, sir?
Q Please read it again for us.
A You have in your possession and will prepare stamped paid invoices to include copies of your canceled checks showing disbursements to match the transferred funds Mr. Gaby has made relating to the Gaby home project. You will compile those invoices and canceled checks starting with those funds -- we can go on, gave you the dates. They will and be complete to include the transfer on 02/13/06 in the amount of $51,823. Accompanying those records, all documents will be an addendum explaining, as you put it, prioritizing disbursements of funds to those

who were not the vendor indicated or referenced for disbursement in your email. You will produce that series of documents by 12 noon on Thursday, February 16th. You will have those documents available for review at that time. Please secure a meeting room for 1:30, Thursday, 02/16 at The Reserve Clubhouse and have those documents laid out and available for review. Please have a second copy of those same documents for the Gaby's to retain and -- would you like me continue on the last paragraph as well?
Q That's enough. Did you ever ask to have the Kunstwerke books audited?
A No, sir.
Q Are you in possession of any kind of audit of Kunstwerke records?
A No, sir.
Q Do you have any evidence that I embezzled money from any other client other than the Gaby's?
A No, sir.
Q Do you have any evidence that I embezzled money from the Gaby's?
A We have a judgment against you of funds that were unpaid by you to vendors relative to their project.
Q And what is that? Describe that judgment.
A We have copies of it. I wouldn't be able to

verbatim read it to you.
Q Is it a default judgment?
A Unknown sir.
Q Do you know what a default judgment is?
A No, sir.
Q Have you ever sought any kind of criminal finding?
A You're going to have to be specific.
Q For the $400,000 number you just mentioned the judgment.
A Can you rephrase the question?
Q Yes, I should. It's confusing. I understand. You stated just now you have a judgment?
A I don't personally have a judgment. The Gaby family has a judgment.
Q I understand. Did you take the Gaby family's judgment to a prosecutor?
A No, sir.
Q Has there been any kind of criminal finding?
A Not to my knowledge, sir.
Q Have you ever spoken with client Susan Covington?
A Is she the real estate attorney?
Q Yes.
A May have nine or ten years ago.

Q Have you ever spoken with client Mike Parham?
A Again, may have nine or ten years ago.
Q Did you ever speak with client, Ed Coco?
A Perhaps, same time frame.
Q Did you ever speak with client, Thomas Hickey?
A Same time frame, perhaps.
Q What reason did you have to talk to those clients?
A Once I began unraveling where some of the funds went, I found that there was commonality. For example, the stone on the Gaby residence is from Montana. That same stone was being used at The Reserve on another project. Through contacting a gentleman by the last name of Luckay in Montana, it was determined that that project was kind of overlapping and shipments were coming in both directions. They had stopped shipping the stone to the Gaby project due to lack of payment. So, I did call, once the name was attached similar called, I believe the Debaco's, and asked if they were having similar problems. We were trying to get stone reshipped so the project could get going again. So, under those contacts, those were the --
Q Thank you. You've answered.
A -- contacts I made with other clients.
Q You've answered it. Did Susan Covington state

to you there were any financial problems with her project?
A Unknown, sir.
Q Did Mike Parham state to you there were any financial problems with his project?
A Unknown, sir.
Q Did Ed Coco state to you there were any financial problems with his project?
A Unknown, sir.
Q Did Thomas Hickey state to you there were any financial problems with his project?
A Unknown, sir.
MR. KUNST: May I approach, Your Honor?
THE COURT: Sure.
BY MR. KUNST:
Q Do you recognize this document, Mr. Loree?
A Yes, sir.
Q What is it?
A This is the database that the office staff and I prepared relative to taking a large box of receipts, the first one being 3-D Land Survey, Forwren Incorporated, Adam Durkin. These were all the invoices that were in the box. I attached either physical addresses or P.O. boxes, the city and state where they were from and a contact phone number for their business to call and find out if Mr. Kunst was current on his billing with them. And

this -- you mentioned 240, I don't know what that number was, but it's multiple pages front and back and doing rough math, there could probably be that -- close to that number. Called these businesses one by one and asked. Some of them were -- had no balance. Some of them were current, some of them had open balances, some of them wer to 120 days past due and they were no longer willing to provide services or product to the homesite. So, this is what I used to chronologically move through contacting different businesses to find out whether the Gaby project stood in relation to funds that had been forwarded to Mr. Kunst, had they been forwarded to the vendor.
Q Are there 240ish --
A I have no idea --
Q -- people?
A Looking, it's front and back. I don't know how many are there, could be close to that.
Q Do you have a complete list of everyone you contacted then?
A I think this is a pretty good -- if this is the full list. And, again, it was built nine years ago. It looks like it would be roughly a complete list. I don't know that for sure.
MR. KUNST: May I approach?
THE COURT: Sure.

MR. KUNST: Plaintiff moves for this to become an exhibit into evidence.
THE COURT: Objection, sir?
MR. SMITH: No objection, Your Honor.
THE COURT: All right, without objection the same is admitted.
(WHEREUPON, Plaintiff's Exhibit No. 5 was marked for identification and received into evidence.)
MR. KUNST: May I approach, Your Honor?
THE COURT: That's fine.
BY MR. KUNST:
Q Do you recognize that document?
A Yes, sir.
Q Did you draft it?
A Yes, sir.
Q What is that document?
A In boldface in the middle paragraph, it says this is your notice of termination as the Gaby's designer/builder on the project effective immediately.
Q What is the date of the document?
A March 3, 2006.
Q Did you secure the cooperation of Bronson Sheppard prior to sending that document?
A I don't recall, sir.
Q When you arrived on the Gaby protect in 2006,

was I over budget?
A Yes, sir.
Q Did you see a budget?
A I was told by Mr. Gaby it was over budget. He keeps very -- he's a very intelligent man. He keeps very good records.
Q Did you see the budget?
A No, sir.
Q Did Mr. Gaby ever show you a budget?
A He may have. Not that I recall.
Q Did Mr. Gaby show you any evidence that the project was behind?
A It was obvious it was behind. I didn't need -- no, he did not.
Q Did your boss have a fixed budget?
A Unknown, sir.
Q Did your boss have a fixed timeline?
A My understanding was that he did. He had to have come up with a date to say we should be taking possession of our house. To have that date not met would mean it's past due, past time of completion. So, there was something there, yes. Not that I felt it was.
Q After nine years, do you have a copy of that?
A Copy of that what? What, sir?
Q The timeline, the fixed timeline agreement?

A I think I said I had no idea if you had one.
Q Okay. How did you deliver the termination notice?
A Well, the first line on this, I left you a voice mail this morning at 9:45 as I was unable to contact you personally notifying you of the following. So, I made attempts to, obviously, contact you personally. And that was unsuccessful, obviously, so I sent this and I know that there was also a registered letter. That is an email, so I think we – it was redundant. You were notified here and you were also – I think you mentioned earlier they had sent a certified letter of termination.
MR. KUNST: Plaintiff moves to admit the email requesting the February 16th meeting.
MR. SMITH: No objection.
THE COURT: Without objection, same is admitted as Plaintiff's Exhibit 6.
(WHEREUPON, Plaintiff's Exhibit No. 6 was marked for identification and received into evidence.)
MR. KUNST: The Plaintiff moves to enter into evidence the March 3rd, 2006 termination notice.
MR. SMITH: No objection, Your Honor.
THE COURT: All right, sir. Same is admitted.
(WHEREUPON, Plaintiff's Exhibit No. 7 was marked for identification and received into evidence.)

BY MR. KUNST:
Q Mr. Loree, did you send out or cause to be sent out any letters to the public that stated that I had stiffed, quote, unquote, my subs?
A No, sir. Stiffed is not a term I would use.
Q Have you ever seen such a letter?
A Not that I recall, sir.
Q Mr. Loree, have you ever seen any of the original invoices submitted on the Gaby project other than photocopies?
A Did you produce those in the box when we met in February? Were the originals in there?
Q Did the box contain photocopies?
A No, I'm asking you did you submit originals to me? I would be able to answer your question then, sir.
Q I'll clarify. The box contained photocopies.
A Okay.
Q Have you ever had in your possession the original documents from the subcontractors?
A For clarification again, sir, were there originals in that box or were they just all photocopies?
Q They were all photocopies.
A Then you have your answer.
Q Have you ever asked to see the original documents?

A No, sir. Would the photocopies be different from the originals?
Q Have you ever done or asked to have done a full account reconciliation of the Gaby account with Kunstwerke?
A Yes, sir.
Q Do you have that, please?
A I do not.
Q Where is it?
A I believe the gentleman's last name was Larkin with Sandy Stern's office. A forensic accountant did that. I think that's what you're referring to.
Q Will Mr. Larkin be testifying here this week?
A Did you subpoena him, sir?
Q Will Mr. Larkin be testifying on your behalf this week?
A No, sir.
Q Will any accountant be testifying on your behalf this week?
A No, sir.
Q Will any auditor be testifying on your behalf this week?
A I believe so.
Q Do you recognize this document?
A By name, it says Gaby damages computation.

Q Yes. Do you recognize that document?
A I recognize it by the name on it. I don't recognize the document, no, sir. It's Page 257 of a larger document.
Q Did you submit that document?
A That would be – no, that's not a font that I use. I certainly never produced a 257 page document. I think this may, again, be produced by Mr. Larkin's firm. It's not –
Q My question to you is did you –
MR. SMITH: Objection, Your Honor. Let the witness finish his answer, please.
THE COURT: When you ask him a question, let finish.
MR. KUNST: All right.
THE WITNESS: I think I can clarify for you. I did not. I believe that the Larkin forensic accountant may have prepared this. I did not.
BY MR. KUNST:
Q And will Mr. Larkin testify to that this week?
A I wouldn't know that, sir.
Q In the default damages hearing, did you testify?
A Yes, sir.
Q Did you submit that document?
A Unknown, sir.

Q Were you the one that submitted that document into evidence and testified accordingly?
A Eight or nine years ago, I have – by looking at it, I can't tell you. I didn't submit it. I wasn't an attorney in the case. I certainly didn't submit any evidence.
Q Did you testify as to any of the numbers on there?
A Probably. The bottom line, the $424,801.32 is a rough estimation of what we calculated. So, I very likely could have, sir.
Q Between the time of termination of March 3rd, 2006, and the date of the default damages hearing in March of 2007, did you submit any other documentation regarding the Gaby's accounts?
A We tried to procure that from you, sir, from our meeting at The Reserve in which you were going to forward documents to us to complete our documents and they never arrived. That's one of the reasons you were terminated on the 3rd of March, for not returning documents.
Q Is this document from 2007 valid in 2006? Is that the best of your recollection?
A I see dates on it, so there's actually – it was – it's looks like 12/05 of 2014 Plaintiff's Exhibit. It probably came from another trial. 12/05 of 2014, I'm

not sure – I was certainly not involved in any litigation at that point, so I'm not even sure where this document came from. It certainly represents my employer, Gaby damages computation. I understand that. Beyond that, I'm not sure.
Q There's a line item on there called CMC Asphalt for $7,500. Can you find that?
A There's a CMC Asphalt for $7,100.
Q Yes, I'm sorry, $7,100?
A Correct, sir.
Q Did you testify to that number?
A Nine years ago, perhaps. I'm unaware, sir.
Q As you sit here today, do you have any evidence of a dummy invoice from a dummy company submitted by a client?
A Actually, that was a peculiar statement. It was one of the gentleman's affidavits, dummy – received dummy. It was something that was prepared other than me That's certainly not a term I would use. No. If you can rephrase the question, I can answer it for you, though, sir.
Q Did you not, in fact, testify at the default damages hearing that the Gaby's were owed $7,100 in damages because a dummy company named CMC Asphalt
A If you have my testimony –

Q – was created?
A – from that damages hearing, I'll certainly read that for you, sir. I don't recall nine years ago.
Q You don't recall anything regarding that number, $7,100?
A Personal knowledge today, 7,100, no, sir.
Q In preparation for this trial, did you study that damages computation?
A I never saw this till you placed it in front of me a few moments ago. I read my two depositions and my testimony from the damages hearing. I refreshed again last night doing that. That was my preparation for this.
Q There's another line item on there called Johnson Insurance Agency.
A Yes, sir, I see that.
Q Did you testify at the damages hearing regarding the dollar amount beside Johnson Insurance Agency?
A I would like to see my testimony. I'm sure that I did and you've referenced this several times earlier today. I don't have personal recollection of that nine years ago.
Q Do you have any evidence as you sit here today that I took out an insurance policy for the Gaby's and intentionally canceled it the next day and billed the Gaby's for it and pocketed the money?

A Could I see my testimony from the damages hearing?
Q I'm asking you do you have evidence as you sit here today?
A I believe I do. If you'd show me that document, I can read that verbatim for you. I think that's what occurred.
Q What document are you asking for?
A My testimony from the damages hearing. And if we can peruse that to find the portion that you'd like to address toward the Johnson Insurance Company. I don't have personal knowledge of that from nine nears ago, but my only recollection would be reading it.
Q Did you call anybody in your investigation at the Johnson Insurance Agency?
A I don't recall, sir. I'm sure that I did.
Q Did you call Tracy regarding that?
A No, sir.
Q Did you call anybody from the Johnson Insurance Agency?
A Was it Johnson or was it Zurich, perhaps? For some reason, Zurich is sticking in my head. I don't know if that's –
Q Zurich is the insurance company, Johnson is the agency. Did you call the agency or did you call the

company?
A Unknown, sir. I think I called both. I don't know that for sure.
Q At the bottom of that number -- at the bottom of that page, it states $353,000. Is it your testimony that that's the number that has been taken from the Gaby's by me?
A No, sir.
Q What is that number?
A I don't know. With a single page of a 257 page document, you're asking for something I can't testify to with concrete. I'm seeing a number here of a document. I didn't prepare it and you're asking me if --
Q You heard testimony earlier today that Kevin Goad attributed to you a statement that $400,000 had been taken from the Gaby's?
A Correct.
Q As you sit here now, do you have any evidence that $400,000 was taken from the Gaby's by me?
A We actually -- I think the Gaby family has a judgment in the courts here in South Carolina in favor of the Gaby's awarding them over $400,000, so I'd say yes, we have plenty of that, sir.
Q Do you have evidence of actual theft?
A It's a civil trial, not a criminal trial. No,

sir.
Q Thank you. Did Mr. Gaby state to you at any time in February 2006 that my company was having a cash crisis?
A I don't recall, sir.
Q Did Mr. Gaby show you any email stating or requesting by me funds?
A I saw funds request from you on a weekly basis.
Q Did Mr. Gaby ever state to you that he had seen Kunstwerke statements that he had not reimbursed?
A No, sir.
Q Did you ever ask him?
A I had no cause to do that. No, sir.
Q So, you investigated my finances but you never asked Mr. Gaby whether or not he had reimbursed everyth per the contract?
A Did I investigate -- ask that question again, the beginning of the question, sir. I investigated your what?
Q You were investigating balances with subcontractors and suppliers; is that correct?
A I was investigating the Gaby's building project, sir.
Q In so doing, at any time, did you ask Mr. Gaby whether or not he had, in fact, reimbursed everything?

A He had told me that he was ahead and you had a surplus from funds that were forwarded to you against your weekly progress billing. Is that what you call this?
Q You stated a moment ago that you found accounts that were past due?
A Yes, sir.
Q Is it possible that these accounts were past due because Mr. Gaby was past due?
A No, sir.
Q How is that --
A Absolutely not, sir.
Q How is that possible?
A Because the funds that he forwarded to you were to be passed through -- my understanding, and please correct me if I'm incorrect here, direct to vendors. Those numbers were tallied by you in these progress billings for dollars that were going to vendors or had already gone to vendors. Those dollars when I called -- and if you'd like to use this document a little further, Paul Anderson Designs, Select Stone, Window and Door Concepts. There are some very large numbers here that we've already substantiated in here today didn't go to those subcontractors, which it left your account a surplus, sir. There is no way he was behind.
Q In your investigation, did you discover whether

there were things that Kunstwerke had paid that Mr. Gaby had not yet reimbursed?
A I found little, if any, of those, sir. And again, nine years ago, there may have been a small one. Nothing substantial.
Q Do you have those with you today?
A No, sir.
Q Did you look at the February 16th, February 20th or March 3rd billing statements?
A Are we in a circle now, sir? Are you asking me if I've looked at things that I told you that you say were in a box that I don't recall ever getting? They may have, indeed, been there. No, sir, I did not.
Q Okay. Did you ever compile a list, a definitive list of those items that Mr. Gaby had not reimbursed?
A We found no items that Mr. Gaby or Mrs. Gaby h not reimbursed.
Q Allow me to ask you a question regarding your understanding of the payment process. When Mr. Gaby m a wire, did that wire sit in the Kunstwerke account waiting to be distributed to certain things?
A That's my understanding.
Q Was it restricted to certain things?
A It was restricted to things specifically for the Gaby project.

Q Do you have any contract or any document that states it was restricted to those things?
A No, sir.
Q If a concrete truck arrived on the site and was paid, let's give an example, weeks before Mr. Gaby was billed for it, who paid for that concrete?
A I don't know, sir.
MR. SMITH: Your Honor, I'm sorry to do this, but he's asking him a question of a fact witness.
THE COURT: Okay. All right. I'm going to sustain that.
BY MR. KUNST:
Q Did you compile a finite list of every invoice that flowed through Kunstwerke to the Gaby's?
A Prior to – if we can reference that document again, but I asked you to bring all of those to a meeting on 02/16 so that we could do that. I reconciled every document that you brought there. However, there were –
Q Did you have an accountant or an auditor look at those documents before you made your contacts?
A I'm not sure when Mr. Larkin would have been involved. Simultaneously or – I'm not sure.
Q Mr. Larkin wasn't involved until 2007?
A Yeah, I don't know.
Q In February 2006 when you took the box back to

Atlanta, did you show it or give it to any kind of accountant or auditor or expert in financial matters?
A No, sir.
Q Did the Gaby's have to purchase new tools and things like walk boards and such once Kunstwerke was terminated?
A I –
Q Did the Gaby's have to make any large equipment purchases after the termination of Kunstwerke?
A Unknown, sir.
Q Were there Kunstwerke tools and equipment and vehicles on site?
A I don't believe there were vehicles. Unknown, sir. I don't know.
MR. SMITH: Objection, Your Honor, it would c for a legal conclusion that I don't think my client can make.
THE COURT: He can testify as to his knowledge whether there was remaining residual equipment on site. I don't know what the answer would be, but he can answer that question.
You can restate if you would like to, Mr. Kunst.
BY MR. KUNST:
Q These individuals that you contacted, did you ever follow up with them?

A Many of them, multiple times, yes, sir.
Q Have you ever followed up with Kevin Goad?
A Yes, sir.
Q Did you follow up with Kevin Goad any time between 2007 and today?
A Yes, sir.
Q Did you discuss with Kevin Goad his testimony?
A No, sir.
Q Did you attempt to clarify or correct anything you may have said to Kevin Goad in the past?
A Not to my knowledge. Ms. Wright asked me to contact several of the vendors from that database, so I called them recently and told them that Ms. Wright may be contacting them. That was a contact here within the last –
Q Did you contact Glenn Alfonzo as well?
A No, sir.
Q Have you had any contact with Glenn Alfonzo since 2006?
A I don't believe so, no, sir.
Q Did you listen to the affidavit read by Kevin Goad?
A Yes, sir.
Q Do you deny making those statements to Kevin Goad?

A What were those statements, sir?
Q Did you state to Kevin Goad that Scott Kunst had taken $400,000 from the Gaby project and left his other clients in a similar situation?
A Unknown, sir, nine years ago.
Q Did you state to Kevin Goad that Scott Kunst had provided his clients with dummy invoices from dummy companies to take money from his clients?
A That's what I was referencing earlier. Certainly, did not make those – those are not terms that I would use, so I know 100 percent that is not a statement that I made.
Q Did you represent to Kevin Goad that you were a former detective and in the process of investigating my financial dealings?
A No, sir. That was the other thing and I clarified that as I sat down. He identified me as a detective. I was never a detective. I left the sheriff's department with the rank of sergeant. I was certainly investigating the Gaby's building project, but never would have represented myself as a detective, never was.
Q Is it your testimony that Kevin Goad was not being truthful?
A No, sir.
Q Then what is your testimony?

A That he inferred when I used the word investigation as a police officer that the lay public may believe investigations, police officer, must have been a detective. Not the case.

Q Did you state to Kevin Goad to contact -- that you had made contact with Hickey and that a lot of money that been taken from Hickey as well?

A I don't recall that, sir. I talked to multiple clients of yours, yes, but I don't recall that from nine years ago. Is that in deposition testimony somewhere, perhaps?

Q At any time, did you contact Kevin Goad in the last nine years and discuss these statements?

A No, sir.

Q Did you correct or amend any of these statements?

A No. I made a contact with him just briefly at Ms. Wright's direction within the last 90 days.

Q Did you refer to Glenn Alfonzo that Scott Kunst had done criminal things?

A No, sir.

Q Is Mr. Alfonzo being untruthful?

A No, sir. I think -- wasn't there an amendment there? There may have been actions that could be construed as criminal. I don't recall making any

statement of that, no, sir.

Q Another statement would be, perhaps, the one that you're referring to, I recall David Loree referring to Scott Kunst as, and he dropped the participle a. So, I'll reread it the way that he read it into evidence.

I recall David Loree referring to Scott Kunst as criminal on more than one occasion?

A I don't recall making that statement, sir, no.

Q Is it your testimony that Glenn Alfonzo is not being truthful?

A Certainly not, sir. It's that I don't recall that, sir.

Q In another instance, did you state to Glenn Alfonzo, I'm not supposed to be telling you this, but to give you an idea of some of the criminal things Scott has been doing. David Loree then referenced an insurance policy for the Gaby project and claimed that Scott took out the policy, billed the Gaby's and intentionally canceled the policy the next day so he could keep the money.

Is that a statement that you made to Glenn Alfonzo?

A I don't recall making that statement, sir. If -- he also referenced being at the job site and you referenced Bronson Sheppard. We had -- I spent five days

a week at the job site to get the project done. We had very candid conversations. If someone were at a distance and overheard something like that. I don't recall making that statement. I can't tell you if I did or did not, sir.

Q Then you don't recall ever correcting that statement?

A What statement is that, sir?

Q Regarding the insurance policy. Did you ever go back and correct any kind of statement regarding the insurance policy --

A Absolutely not.

Q -- based on information you may have received later?

A No, sir.

Q Did you have an ongoing conversation with these individuals regarding the insurance policy?

A No, sir.

Q Did you state to Glenn Alfonzo that Scott Kunst had taken money from his other clients and that money was missing from these other projects?

A I don't recall making that statement. As I said, I contacted Parham and -- I can't think of the names right now, but multiple other clients who said they were having similar issues. So, I may have made that

statement. We were not the only ones having problems witl accounting.

Q Well, any of those clients testify on your behalf and attest to those issues?

A Mr. Covington is coming in tomorrow.

Q Mr. Covington is my witness. Do you have any witnesses coming in that are going to attest to what you stated?

A That would be to the attorneys, not to me, sir. I'm not sure, no.

MR. SMITH: Your Honor, I hate to do this agair but I am going to object to the last line of questioning. He's trying to imply that the burden of proof is on us. The burden of proof is on the Plaintiff, it is not on the Defendant.

THE COURT: I understand. I'll give them the charge on the law at the end of the case.

MR. SMITH: Thank you, Your Honor. I'm sure you will.

BY MR. KUNST:

Q Please review the stack of letters there. I am so sorry, I apologize. Do you recognize that letter?

A It's a document relative to the Gaby's building project from -- I can't tell who it's from because the header -- it's a photocopy and the header is no longer

there.
Q There are other letters attached that are identical with that heading.
A Coming to Patrick Gates. It's from a law firm.
Q Is the Covington Law Firm the law firm you engaged at the time of the termination?
A I engaged no law firm, no, sir, I did not.
Q Did you engage Attorney Sandy Stern?
A I did not, sir.
Q Did the Gaby's?
A I believe they did, yes, sir.
Q Is that a letter from Sandy Stern?
A I'm trying to find his name in here. It's from his law firm, certainly, but I continue to peruse to find. Yeah, Page 3, yes. Signed by Mr. Stern.
Q Did any subcontractors come to you as the contact at the site and discuss liens, possible liens on the Gaby property?
A I don't recall, sir. I don't believe so, but I don't recall.
Q Did any subcontractors threaten to place liens on the property?
A Unknown, sir.
Q And the second to last paragraph.
A Which page?

Q Of each letter, front page of the letter. The letter from the attorney states that I stiffed the subcontractors and suppliers. Is that statement correct to the best of your knowledge?
A There's the term stiffed that you used earlier that I said isn't terminology that I would use, but it is on letterhead from an attorney. So, what was the question you were asking?
Q My question to you is so far as your investigation went, did you find that I had stiffed contractors and suppliers?
A Yes.
Q Do you have any instances of such?
A Select Stone, Paul Anderson Design, Kevin Goad with Window and Door Concepts. There's a list there, yes.
Q Is it your testimony that specific funds that the Gaby's provided were ear marked specifically to those companies?
A Yes, sir. You had asked specifically for a given dollar amount with that company's name attached to it. Mr. Gaby had every reason to believe those funds that you were asking for for a specific vendor were going to go to that specific vendor.
Q And your investigation of the Gaby account was based on that premise?

A Yes, sir.
MR. KUNST: Okay. I have nothing further.
THE COURT: Okay. Ladies and gentlemen, we're going to adjourn for the evening. We'll start back tomorrow at 9:30. Please don't discuss the case. I know that when you get home, you may be invited to discuss it by friends, neighbors, relatives. Just tell them to keep their powder dry and at the end of this case, you'll have the opportunity to discuss it with them as much as you'd like. So, y'all have a great evening and I'll see you back here at 9:30 tomorrow morning. Okay.
(WHEREUPON, the jury left open court and was excused for the day at approximately 4:45 p.m.)
THE COURT: All right. Mr. Loree, you continue under oath. Now, I presume -- I don't know this, but I presume that you and Mr. Smith are staying some place locally and not going back and forth to Atlanta. Am I right? So, y'all might have occasion to see each other and talk to one another.
THE WITNESS: Actually, he's staying in Lake Keowee and I'm staying in Greenville.
THE COURT: Okay.
THE WITNESS: Opposite directions.
THE COURT: Okay. Well, good. Don't discuss

the case, okay? Not by telephone, not in person. Don't discuss it because y'all are beginning your examination in the morning.
And I know you know that, Mr. Smith. I'm just reminding you on the record. It's important that you not discuss it.
We'll see y'all back here tomorrow morning. If y'all need me before 9:30, let me know. If the jury is going to be here at 9:30, if there is an issue that we need to discuss, I would like to discuss it and resolve it before they get here. So, y'all come see me before then if there's anything we need to discuss before we get started. Okay.
Y'all have a great evening.
(WHEREUPON, the proceedings were concluded the day to be reconvened on Wednesday, May 27, 2015.)

May 27, 2015

THE COURT: Mr. Smith, let me know when you're ready for the jury?

MR. SMITH: We're ready, your Honor.

THE COURT: Okay, bring the jury in, please.

(WHEREUPON, the jury came into open court at approximately 9:53 a.m.)

THE COURT: All right, good morning, ladies and gentlemen, hope y'all had a good evening, it's good to see you again today.

Okay, Mr. Loree, you may resume the stand, sir. I remind you that you continue under your oath from yesterday.

Mr. Smith, I believe it's your witness, sir.

MR. SMITH: Yes, Your Honor, thank you, Your Honor.

THE COURT: Yes, sir.

MR. SMITH: Good morning, ladies and gentlemen.

CROSS-EXAMINATION

BY MR. SMITH:

Q Mr. Loree, since we've had a break since you were sworn in earlier yesterday, could you remind the jury who you are and what you do?

A David Loree, I'm a executive protection administrator and property manager Richard and Barbara

Gaby.

Q And I believe yesterday you described you'd been with the Sheriff's Department for?

A About 18 years –

Q Correct –

A Thirteen full-time and five – part-time in the beginning and part-time at the end.

Q And just to kind of build back up to where we were yesterday afternoon, can you give me in generalities when you first met Mr. Kunst?

A It was a introduction by Mr. Gaby, they were just beginning their lake house on Lake Keowee. Had the foundation poured and we took a drive to Lake Keowee for him to check the status on the property and just introduce me to what he had going on in South Carolina. That's the first time I'd been there.

Q Do you remember ballpark when that was?

A Maybe mid 2005, late 2005, I can't say.

Q And then did you have any further dealings with Mr. Kunst at all until the meeting you described yesterday?

A I don't recall any contact until roughly right around the meeting.

Q Okay. And so, remind us once more again, don't want to replow grown but since we've had a break

overnight, what were the circumstances that caused you to become involved with the Gaby project?

A Mr. Gaby had – I was speaking on Mr. Gaby's behalf. I don't know this for a fact but he had asked me to become in the project after he had some frustration with Mr. Kunst on a late schedule on completion and over budget on his project.

Q Okay. I want to talk for a little bit about this investigation that you under took on behalf of Mr. Gaby.

May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q I believe there's a Plaintiff's Exhibit 6 that I wanted to hand to the witness.

A Uh-huh.

Q This has already been marked for evidence, can you explain what this document – what you were doing in this document?

A This was sent after a conversation Mr. Gaby had with Mr. Kunst about the finances related to his project. He wasn't getting a satisfactory response to that so he asked for me to set up a meeting at The Reserve and asked Scott to bring all documents required to reconcile the account to find where funds had been distributed to and

just come to a complete understanding of where the Gaby's money had gone relative to their project.

Q And to be clear, because the jury can't see the document, and please correct me if I misstate this. It's an email from you to Mr.~Kunst on February 13th, 2006 where you're asking these things?

A Correct.

Q Okay. Okay. And I believe you testified yesterday that you asked Mr. Kunst to bring, and it's right there in the first line of the first bullet point, Stamped paid invoices and canceled checks to show the disbursements so that you could match those disbursements with money that had been paid by Mr. Gaby?

A Correct.

Q Correct, okay. And then you go down, you try to set up a meeting with Mr. Kunst, at The Reserve, at Lake Keowee?

A Correct.

Q Did you ask for anything else in this email?

A The final paragraph talks about lien waivers. Mr. Gaby was worried that vendors had not been paid and that potentially his property could have lien waivers put on them. So, he wanted Scott to secure lien waivers from all the contractors to protect his property.

Q And can you describe for the jury how that

meeting went with Mr.~Kunst?
A Again, ten years ago. We arrived, we met at one of the conference rooms or room at the clubhouse at Lake Keowee. We -- they helped refresh my memory yesterday. Tracy was there, Scott's father was there, Scott was there, I was there. We had laid out very clearly what we asked them to bring, anticipated those documents to be properly laid out, to be prepared for that meeting. They did show up with documents. Made an attempt to show me what those documents were. I not being an accountant was not satisfied when I left there that all of the documents were there. It wasn't a highly productive meeting. It was, we're going to have to get back together at a later dates because there were a lot of canceled checks and other documents that weren't needed -- or that were needed that weren't with them. And I think that, I don't know -- I don't remember her verbatim statement, but I think there was discussions about we would need to get some more of those documents together at the very near future to satisfy Mr. Gaby's request.
Q So, the documents you requested, the stamped invoices and the canceled checks, the lien waivers were not all present, is that fair?
A No. And I was alarmed yesterday when Mr.~Kunst stated that everything he brought were copies. That was

news to me. I put up another red flag yesterday, I asked if those could have been altered. So, that was a concern to me yesterday when he said he brought copies.
He said, They were all copies.
I think is what he said.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
MR. SMITH: Your Honor, I brought courtesy copies if you'd like?
THE COURT: No, I'm good.
MR. SMITH: Okay.
BY MR. SMITH:
Q Mr. Loree, if you would, could you look at this document and tell me if you recognize this document?
A I do.
Q And can you tell the jury what the document is?
A It's an email from Mr. Gaby to Studio Kunstwerk Corporation, which was Scott's business, copied myself and Mr. Gaby. And the subject line is Reconciliation.
MR. SMITH: Your Honor, we'd ask this be admitted into evidence as Defendant's Exhibit one.
THE COURT: Okay. No objections? No objections?
MR. KUNST: No objections.
THE COURT: Okay, without objection the same

admitted as Defendant's Exhibit 1?
Do you need to mark that, April?
THE COURT REPORTER: Yes, sir.
THE COURT: Give her the opportunity.
MR. SMITH: Okay.
(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Mr. Loree, in this email you were copied on Mr. Gaby to Mr.~Kunst, can you describe for the jury -- well, I'll just have you read it. About four or five lines down, do you -- Mr. Gaby writes, We have gleaned -- do you see where it starts there?
A Uh-huh.
Q Can you read that?
A We have gleaned from subcontractors that you are significantly behind in paying them and many of them are pulling off the job and or not providing information until you are current. I.E. landscaper. This is obviously causing delays which is hard to digest given the timeliness of my disbursements to you.
Continue on?
Q Yes, sir, do the next one.
A You have requested specific wire transfers for cabinetry installments but have not passed those through

to Paul, which is Paul Anderson. I have paid you 140,000, he has only received 20,000.
Q Okay. And I think this is an email where it looks like you're trying to work it out with Mr.~Kunst for the next meeting, that a fair statement?
A I'd have to read it.
Q Okay, go ahead, take your time.
A To myself?
Q Yeah, please.
A Yes, that what it looks like.
Q And specifically I think in the second paragraph. . .
A I have--
Q The sentence that begins with, Copies of specific checks.
A Copies of specific checks need to be organized and copies of invoices that those checks were applied to needs to be attached to the reconciliation. Until you accomplish this and demonstrate you have a handle on whe these funds were applied, I will not forward you any additional funds.
Q Okay. And continue the next sentence, if you don't mind.
A To keep the project progressing, Dave will contact vendors and I will pay for new invoices directly

to vendors.
Q Okay. So, it is at that point this was the second time you contacted Mr.~Kunst and asked for the records to show where vendors had been paid?
A I'm looking at it, it looks like it's two days after my meeting with Scott and his group at The Reserve. We had brought back items, laid them out, I explained to Mr. Gaby, as I stated to you, it was confusing, it wasn't complete. Mr. Gaby looked through those. And this was an email in response back to Scott to encourage him to put the reminder of the documents together in an orderly, discernible fashion so that we could find out where those funds went.
Q Okay. And you read that, To keep the project progressing, Dave will contact vendors and I will pay the invoices directly to the vendors.
A Yes, sir.
Q Is that the time -- I think you testified yesterday at some point you began to be the point of contact for the subcontractors and vendors?
A That sentence would have pulled the trigger for me to -- Mr. Gaby said contact vendors, find out where we are relative to current balances, unpaid balances, things of that nature, anything that would prioritize and get the contractors back to the job site and get his home done on

time or as close as we could.
Q Okay. Did Mr. Kunst ever tell you, no you can't contact the vendors or subcontractors?
A No, sir.
Q In fact, I think -- did he encourage you to contact them?
A No, sir.
Q Just he didn't care one way or the other?
A No, sir.
Q Okay.
MR. SMITH: Your Honor, may I approach the witness?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Mr. Loree, I'm handing you a document and ask you if you could identify that document for the Court?
A Saw a couple of these yesterday. This is what Mr.~Kunst called his Progress Bill, I believe. Is that accurate?
Q And that's a bill you would have probably seen during the course of your investigation?
A Correct.
MR. SMITH: Your Honor, we would move that I admitted into evidence as Defendant's Exhibit 2.
THE COURT: Objection, sir?

MR. KUNST: No objection, Your Honor.
THE COURT: All right, without objection, the same is admitted into evidence.
Hand that to the Court Reporter so she can mark it.
MR. SMITH: Yes, Your Honor.
(WHEREUPON, Defendant's Exhibit No. 2 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Dave, if you could look at this invoice, which has been marked as Defendant's Exhibit 2, I think you testified was one of the progress billings, one of the cover sheets for the progress billings from Mr.~Kunst; do you see a date on that?
A There's a date of October 18th, 2005 at the top of it.
Q Okay. October 18th, 2005. And on this document do you see a line item for System Specialities?
A Yes.
Q And how much is that line item?
A $3,860.
Q Okay. And was this invoice from October 2008 -- I'm sorry, October 18th, 2005, from Mr. Kunst to Mr. Gaby, was that paid by Mr. Gaby? To the best of your knowledge?
A October of 2005. If it's in the total at the

bottom it would have been a wire that went to Mr. Kunst.
Q So, this was at a point before February 2006?
A Right.
Q So, the weekly billings were still being paid weekly?
A Correct.
Q Okay.
Your Honor, may I approach?
THE COURT: Yes, sir.
BY MR. SMITH:
Q I want you to look at that. And Dave, I'm going to ask, if you can, identify that document for the Court.
A It appears to be another progress billing.
MR. SMITH: If there's no objection from the Plaintiff, Your Honor, we move for it to be admitted into evidence.
MR. KUNST: No objection.
THE COURT: All right, without objection the same is admitted into evidence.
MR. SMITH: And that is Defendant's Exhibit 3.
THE COURT: Again, give her a minute so she ca mark it.
MR. SMITH: Yes, sir.
(WHEREUPON, Defendant's Exhibit No. 3 was m for identification and received into evidence.)

BY MR. SMITH:
Q Mr. Loree, looking at this document, which has been marked as Defendant's Exhibit 3, I think you stated this is another one of Mr.~Kunst's progress billings to Mr. Gaby. Do you see the date at the top of that invoice?
A October 25th, 2005.
Q And is there a line item on this invoice for Systems Specialities?
A To Systems Specialities, correct.
Q And how much was that invoice for?
A $3,318.
Q Okay.
May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Can you identify that document for the Court?
A Again, progress billing.
Q Progress billing from Mr. Kunst?
A Mr. Kunst.
MR. SMITH: Your Honor, we'd offer that into evidence as Defendant's Exhibit 4.
THE COURT: Objection, sir?
MR. KUNST: No objection.
THE COURT: All right, without objection the same is admitted as Defendant's Exhibit 4.

(WHEREUPON, Defendant's Exhibit No. 4 was m
for identification and received into evidence.)
BY MR. SMITH:
Q Look at this invoice, Mr. Loree. Can you tell the jury the date of this invoice as well?
A This is December 2 of 2005.
Q December 2, 2005. And is there a line item for Systems Specialities?
A Yes, sir.
Q And how much is that?
A That's $1,240.
Q And again, this invoice, Defendant's 4, and the one we marked as Defendant's 3, to your knowledge were paid by Mr. Gaby to Mr.~Kunst?
A Yes.
Q Okay.
May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Mr. Loree, if you can, take a moment and look at that document and see if you can identify that for the Court.
A It is a document from System Specialities from someone named Lori Simpson there. The subject line is Past due balance on steel supplied to the Gaby home.

MR. SMITH: Your Honor, we would move for this to be admitted as Defendant's Exhibit 5.
THE COURT: Objections?
MR. KUNST: No objection, Your Honor.
THE COURT: All right, without objection the same is admitted into evidence.
Again, give it to her so she can mark it.
MR. SMITH: I'm on my way.
(WHEREUPON, Defendant's Exhibit No. 5 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Mr. Loree, could you tell the jury the date of this letter from Systems Specialities to you?
A March 14th, 2006.
Q And who is Systems Specialities?
A They provided I-beam and other steel structures for construction of residence.
Q And I believe we just looked at three invoices from Mr.~Kunst to Mr. Gaby wherein there were three line items for steel -- or for materials from Systems Specialities, Incorporated. And I believe you testified those were all paid, correct?
A Yes, sir, to the best of my knowledge.
Q This is a short letter so could you just read the two paragraphs to the jury since they can't see it?

A Header again, Past due balance on steel supplied to the Gaby home. It's addressed to me. David, it is been a couple of weeks now since I faxed over the unpaid invoices for the Gaby home on Keowee. We did receive a check from the Gaby's for one of their recent smaller invoices. However, there is still an unpaid balance on the steel for this home totaling $6,500.47, see statement as follows. Realizing that you and the Gaby's just became aware of the financial problems with relation to labor and materials provided on the home just a few short weeks ago, we are in no position to further delay collection of payment and or to supply additional materials for the home.
Some of the invoices due to us are now six months old. Please call me with your intentions on getting this balance paid as soon as possible so that we will know how to proceed. I can be reached at 864-868-3457. Thank you so much for your help in getting this matter resolved.
Respectfully, Lori Simpson, secretary/treasurer.
Q So, Systems Specialities is telling you in mid-March, after your meeting with Mr. Kunst in mid-February, that they have outstanding invoices that are six months old?
A Yes, sir.

Q Did you or -- I'm sorry, not you, did Mr. Gaby, to your knowledge, end up paying Systems Specialities again?
A I don't know that, sir. We paid many of them. I don't know about this one specifically.
Q That's fair, it's been many years.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Mr. Loree, I'm handing you a document and ask if you can take a look at that and tell the Court if you can identify that document?
A This is an invoice from Select Stone in Bozeman, Montana. They were the quarry stone for the exterior of the Gaby residence. And this is an invoice from them dated 11-11-2005.
MR. SMITH: Your Honor, we would move for this to be admitted into evidence.
THE COURT: Any objection, sir?
MR. KUNST: No, objection, Your Honor.
THE COURT: All right, without objection the same is admitted into evidence.
(WHEREUPON, Defendant's Exhibit No. 6 was marked for identification and received into evidence.)
BY MR. SMITH:

Q Mr. Loree, if you would look back at -- forgive me, let me figure out which number it was. Defendant's Exhibit 4, which was the invoice from Mr.~Kunst to Mr. Gaby dated December 2, 2005. Do you see a line item on there for Select Stone?
A Yes, sir.
Q And what is the amount on there?
A Says, Stone to Select Stone on 11-16. Shipment of stone, $8,010.
Q And I've just handed you what's been marked as Exhibit -- Defendant's Exhibit 6, and you testified that it's a Select Stone invoice dated November 11, 2005. And can you tell the jury how much it is?
A $8,010.
Q Okay. So, this appears to be an invoice back-up. The $8,010 back-up for the $8,010 line item on Mr.~Kunst's billing?
A It would appear that.
Q As far as we can tell. Okay. Okay.
May I approach, Your Honor?
THE COURT: Sure.
BY MR. SMITH:
Q Mr. Loree, if you could, take a look at that document and, if you can, tell the Court what that is.
A This is a email from Chris Luckay from Select

Stone to me, dated 2-8 -- or 2-28 of 2006.
MR. SMITH: Your Honor, we'd ask that be admitted as Defendant's Exhibit 7.
THE COURT: Any objection, sir?
MR. KUNST: No objection, Your Honor.
THE COURT: All right, without objection the same is admitted.
(WHEREUPON, Defendant's Exhibit No. 7 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Mr. Loree, in this email and its supplier, Select Stone, in this email, can you tell the jury who Select Stone was?
A Select Stone, as I say, supplied the quarry Montana Stone for the exterior of the Gaby property. And others.
Q And if you look down at the bottom of this email, because the jury doesn't -- can't see it, it looks like there's two emails. One is from Chris Luckay to you and he describes -- well, I won't describe it. Why don't you, it's short, just read down to the first three or four lines there.
A His response--
Q No, no. The bottom part, the first email to you.

A I sent this -- no, this was a response from him. I guess it gives -- There are currently two outstanding invoices for the supply of stone to the Gaby project. Which are summarized as follows. Invoice 3994, stone shipped on 11-21- of 2005, $6,020. Invoice number 4065, stone shipped on 12-05 $8,010. Total needed in other to ship another load of stone $14,030. All future shipments will be due upon receipt. I would like to have a good understanding of how much stone is remaining to be shippe on this project in order to keep the order moving. My records show 80 tons remaining. Please contact.
Q Yeah, that's fine. So, in this email, which is dated, I think, you said October -- or February 27th, 2006?
A 28. 2/28.
Q I'm sorry, 2/28. 2/28. You see he's asking for invoice number 4065 for $8,010, correct?
A Yes, sir.
Q And if you look back at Defendant's Exhibit 6, we believe that is the invoice for $8,010 for Select Stone, correct?
A Yes, sir.
Q Then if you look back at Defendant's Exhibit 4, which was the invoice from Mr. Kunst to Mr. Gaby, we alsc see where on December 2nd, Mr.~Kunst billed Mr. Gaby fo

the invoice that he received in November. And in late February this invoice is being listed by Select Stone as unpaid by Mr. Kunst?

A Yes, sir.

May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q I'm handing you another document and was wondering if you can tell the Court what this document is?

MR. KUNST: I object, Your Honor. We've never seen this and it has no identification on it.

MR. SMITH: It was provided to you in discovery. I gave it to you personally on Monday when we met at Ms. Wright's office and you made the same objection then. And I said we would let the Court deal with the evidentiary issue of it. So, you have seen the document.

THE COURT: Okay. I tell you what, ask him the question to authenticate it so I'll understand what it is and what the contexts are.

MR. SMITH: That's fair.

BY MR. SMITH:

Q Mr. Loree, can you tell the Court what this document purports to be?

A It is a document that I prepared. It's

addressed to Scott and I noted on the upper right corner that it was emailed 2-26-08.

Q So, you believe this was a document that was prepared by you, in the course of your investigation, on Mr. Gaby's lake house project that you would have emailed to Mr.~Kunst?

A Yes, sir.

MR. SMITH: Your Honor, offer into evidence as business record.

THE COURT: Okay, Mr.~Kunst, do you have a continuing objection?

MR. KUNST: I just read it, Your Honor, I have no objections whatsoever.

THE COURT: Okay. All right, good enough. Tl same is admitted.

(WHEREUPON, Defendant's Exhibit NO. 8 was n for identification and received into evidence.)

THE COURT: Hand it to the court reporter so that she can mark it.

MR. SMITH: Yes, sir.

BY MR. SMITH:

Q Mr. Loree, for the jury, can you read Paragraph Number 2 of this email from you to Mr.~Kunst?

A I have spoken to Select Stone's representative, Chris Luckay advising that you are past due with their

company, $14,000 for material at the Gaby project. They will not forward any additional stone until you pay the funds owed them. Please do that this week so that the further delay due to the lack of materials can be avoided at the Gaby site.

And I -- maybe it will clarify for you this document that we are now looking at. I think redundancy, I may have cut and pasted this and then faxed it, perhaps. As a second means to deliver it to Mr.~Kunst.

Q Okay. And so, this is the summary where you have spoken to Mr. Luckay at Select Stone who's claiming he's not gotten paid from Mr.~Kunst?

A Yes, sir.

Q And again, Mr. Gaby had paid these invoices with these -- or paid the progress billings to Mr. Kunst with these invoices attached to them?

A Yes, sir.

Q Okay. If you go down to the paragraph that starts with After, would you read that to the jury?

A After speaking to numerous vendors it is obvious that you have not been paying invoices that you have been submitting disbursement requests to Mr. Gaby. The funds have been sent reliably to you from Mr. Gaby throughout the project and that cumulative figure does not coincide with the amount afforded to vendors.

Q Can you explain that to the jury? That is a mouth full. Can you explain what you meant when you wei talking to Mr.~Kunst here?

A I'll give you a reference in the time as well. Met with Mr.~Kunst on the 16th. This is a document from roughly a weekish later, maybe ten days later. We were asking him to fill in those gaps and provide some additional documents so we could reconcile the entire account. And what I'm asking you to do after calling a handful of vendors, I'm not sure at this point in this letter, but the number was quickly adding up saying this as we've explained, like Select Comfort for example, that the numbers that Scott was requesting and had been forwarded through him, through the progress billings and the monies that were then moving through those vendors, were so delinquent that they were no longer either to work at the project or provide materials so the project could move on. I'm trying to get a handle on this so we can get that back in place and get working again.

Q And this was after getting Mr. Kunst, at least two opportunities we've seen, to just show us the bills or show us how the money was spent?

A Right, the 16th to the 28th. So, there's 12 days, business days, 12 days at least from my initial meeting at The Reserve at Keowee saying we need some mo

this isn't adding up. It's not reconciling, you need to do a better job at that. An email earlier Mr. Gaby had sent him that, asking him that, I asked him that day. We we're still trying to work through that at this point.

Q Did you ever hear back from Mr.~Kunst?

A No, sir.

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q Mr. Loree, I'm handing you another document and ask that you identify that for the Court, the jury.

A It's another progress billing similar to the others.

MR. SMITH: Your Honor, if there's no objection I'd ask that it be moved into evidence.

MR. KUNST: No objection, Your Honor.

THE WITNESS: All right, no objection the same is admitted.

(WHEREUPON, Defendant's Exhibit No. 9 was marked for identification and received into evidence.)

BY MR. SMITH:

Q Give me just one second. Before we get to that date I was wondering, did Mr.~Kunst ever provide you proof that he had paid Systems Specialities for the steel?

A No, sir.

Q Did Mr.~Kunst ever give you any proof that he paid for the rock from Select Stone?

A No, sir.

Q To this day have you ever seen—

A No, sir.

Q If you would take a look at the document that was just marked as Defendant's Exhibit 9, could you tell the jury what we're looking at?

A It's another progress billing. This one's dated December 6th, 2005.

Q And can you tell, because they can't see it, what this progress billing — what's it's for and how much is it for?

A This is a progress billing for kitchen and cabinetry. And it says — this is typed in here. To Paul Anderson Design, phone number, for 50 percent deposit amount for all cabinetry total of 165, excluding freight and taxes. It's a request for $82,500, dated 1/26 of 2005. Lower it says, under Progress Status it says, Cabinetry production begun.

Q So, fair to say this is an invoice from Mr. Kunst to Mr. Gaby, asking for a $82,500 deposit for cabinet work?

A Correct. Due upon receipt and payable to Kunstwerke at the address in Simpsonville, correct.

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q Dave, I'm handing you a document, we're going to ask if you can identify that document for the Court?

A I can. This is an email from Mr. Gaby, copied to Mr.~Kunst. And Paul Anderson Designs to his financials woman, his portfolio manager, if you will. An email dated 12/6 of 2005.

Sally, please transfer—

MR. SMITH: Before you read it, hold on.

We'd ask that this be moved for admission into evidence as Defendant's Exhibit 10, Your Honor.

THE COURT: Any objection?

MR. KUNST: No objection.

THE COURT: Okay, the same is admitted into evidence.

(WHEREUPON, Defendant's Exhibit No. 10 was marked for identification and received into evidence.)

BY MR. SMITH:

Q All right, I'm sorry, Dave, I didn't mean to cut you off. Now, that we've got it admitted, if you could explain to the jury, they can't see the document, what this document is.

A It is an email from Mr. Gaby to a woman by the name of Sally Fordsland. And the narrative reads, Sally, please transfer $82,500 from our personal checking account to the following account. And it says, Regions Bank Birmingham, Alabama. And it lists a routeing and account number. And under that it says, Kunstwerke Corporation Incorporation, banks for Gaby. P.S. cabinet deposit. Which I guess is just a note at the bottom what the funds were for.

Q So, if you look back at Defendant's Exhibit 9, it's an invoice dated December 6, 2005 for $82,500 for cabinet deposit. Is that fair—

A Uh-huh.

Q The very same day, if you look at Defendant's Exhibit 10, there is an email from Mr. Gaby to his financial — one of his financial managers saying, Transfer $82,500 from my checking account to Mr.~Kunst's company, is that correct?

A Correct.

Q So, that was paid the same day?

A That was generally his practice. It happened very, very quickly.

Q Okay.

May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:
Q Do you recognize that document?
A Yes, sir.
Q Could you, for the Court, tell them what this document is without reading it yet?
A Yes. It's an email from Paul Anderson Design, actually Crystal it looks like, someone in his office. The tag is PaulAndersondesign.com. And it's an email to me and it's dated 2-13 of 2006.
MR. SMITH: Your Honor, we would move that this be admitted as Defendant's Exhibit 11.
THE COURT: Okay, sir?
MR. KUNST: No objection.
THE COURT: All right, without objection, the same is moved into evidence.
(WHEREUPON, Defendant's Exhibit No. 11 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Now that it's been admitted into evidence, can you explain to the jury – or it's so short you may just want to read it. Go ahead and read it so that they will know what you're looking at.
A It's a email from Paul Anderson Design Cabinet Builder to me. Subject Line is reference the Gaby

residence. It reads, Dave, thank you for your prompt attention. I was in need of $140,000 for cabinetry. To date we have received about 23,000. I had told you 43,000 on the phone earlier but since then my wife investigated and found that the $20,000 check that we picked up from them last week bounced. Thanks, Paul Anderson.
Q So, here you, just going back so we can put the story together, you had an invoice from December, early December, for $82,500 cabinet deposit; which was then paic the very same day?
A Correct.
Q And now here we are in February, mid-February, and the cabinet designers are telling you they've only received $20,000, is that a fair statement?
A She said about $23,000, yes.
Q Oh, $23,000, okay.
A Uh-huh.
Q So, do you know what happened to the rest of the money that was sent from Mr. Gaby to Mr. Kunst?
A Gosh, I wish I did. No, sir, I do not.
Q Have you ever had any explanation from Mr. Kun about what happened to that?
A No.
Q I can do the math, $60,000 or so?
A Uh-huh.

Q Has Mr.~Kunst ever given you any documentation or any proof that he, in fact, did pay Paul Anderson Designs?
A No, sir.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Dave, I'm handing you another document, I'm going to ask if you would identify that for the Court.
A It is an email dated 2/20 of 2006 from Mr. Gaby to Kunstwerke Corporation, copying me. And again, it's a reconciliation is the subject line.
MR. SMITH: Your Honor, we'd ask that this be admitted as Defendant's Exhibit 11.
THE COURT REPORTER: Twelve.
MR. SMITH: Twelve.
THE COURT: Any objection, sir?
MR. KUNST: No objection, Your Honor.
THE COURT: All right, without objection the same is admitted.
(WHEREUPON, Defendant's Exhibit No. 12 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Mr.~Kunst claims he had paid for the cabinets

from Paul Anderson Design, is that a fair statement? No, I'm sorry, not according to the document, in general.
A Okay. Yes.
Q Okay. But he couldn't produce any proof of that payment, is that fair?
A Yes.
Q And Paul Anderson, the cabinet contractor, claimed also that he had not been paid by Mr.~Kunst?
A Correct.
Q In here we have an email going back and forth – well, you tell the jury, I won't do it, you tell them.
A Okay. Again, it's dated 2-20-2006 from Mr. Gaby to Mr.~Kunst or his company, copying me on it. It – this is in response, obviously, to some of my contacts and emails from Paul Anderson saying the dollars we forwarde you and the dollars that they received do not coincide.
Q And if you look at the bottom of this email, it looks like it's a string of emails, and the bottom part looks like an email from Studio Kunstwerke@aol.com. Wh was Mr.~Kunst's email address to Mr. Gaby, is that accurate?
A This is – Mr. Gaby's is at 6:09 on the 20th and Kunstwerke's is at 4:26 on the 20th. So, it looks like there's a thread going back and forth. The first one would be from Kunstwerke to Mr. Gaby, Mr. Gaby then

responding back.
Q Okay. And if you look on Page 2 at the email from Mr.~Kunst to Mr. Gaby, about half way down it says, In response to a few questions.
A Uh-huh.
Q What is that next paragraph say? That short one there.
A In response to a few questions, the amount paid toward the cabinets is $75,800 with a balance due of $64,200.
Q Okay. And that's different from what you heard from Paul Anderson Designs?
A That's vastly different.
Q Vastly different. Mr. Gaby in his response email had some pointed advice, I think, for Mr.~Kunst. The last sentence, last two sentences of the third paragraph, would you read those to the jury? If you simply...
A If you simply passed through the funds you received from me to what was listed on requests, you would not be in this situation. You were obviously robbing Peter to pay Paul or you would not be where you are now.
Q So, if Mr.~Kunst would have simply produced the evidence that he had paid for these cabinets, this would have been a done deal?

A It certainly would have alleviated many, many issues.
Q Oaky. And for one other point on this email from Mr. Gaby to Mr.~Kunst, could you read the very last paragraph?
A Front page or?
Q I'm sorry, the front page from Mr. Gaby to Mr.~Kunst, copied to you. Dave returns from Colorado.
A Dave returns from Colorado Wednesday, I have knee surgery on Wednesday and will be out of pocket for a while. I will have him be my point man to sort through all of this.
Q So, on February 20th, four days after you met with Mr.~Kunst, you've gone back to Atlanta and you've tried to work through things. Mr. Gaby decided that you would be – your boss told you to take care of this?
A Correct. I was still running everything through him but, yes. I would be Mr.~Kunst's point of contact.
Q And this was shortly after you were – started your investigation?
A (The witness nods.)
Q Did you ever have trouble finding Mr.~Kunst?
A It was increasingly difficult to find Mr. Kunst and get responses, yes.
Q When was it that he started being less

responsive?
A Pretty much the moment after I met with him at The Reserve.
Q And how did you go about trying to contact Mr.~Kunst to get...
A We, well had emails, we had phones that went unanswered. I actually drove to Simpsonville one day to the address listed and hoped to find him in his office. And that was a UPS mail store. It wasn't an office, it was a drop box, a mailbox.
Q Okay. It is fair to say that at some point Mr.~Kunst stopped responding all together?
A Yes.
Q And when that happened, when Mr.~Kunst stopped responding all together and you had been asked by your boss to go figure out what happened, what did you do?
A I had to kind of recreate and much of it was off of that database that was produced yesterday. I continued to find out the status of tradesmen and vendors and materials. And tried to negotiate some of them that were prioritized and critical, we double paid. We knew from documentation that it had been paid to Mr.~Kunst. It didn't pass through. So, my boss had to bite the bullet and write another check to get cabinets, to get stone started again, those sorts of things to put the projected

back on the road to get it finished.
Q Okay. So, you had to go about calling, because you couldn't find Mr.~Kunst, you had to also then go about calling all these folks to find out exactly who had been paid?
A Right.
Q The status of their invoices if they had not been paid. And you had to sort through all that without the benefit of having Mr. Kunst to help you?
A I had the initial box of documents that he produced at the meting on the 16th, the early February meeting that we had at The Reserve. From that point on there was – there were promises early on to provide additional items. They were emails from Mr. Gaby to Mr.~Kunst pleading for him to do the same. And the frustration level grew when he was not willing to do that. Which led to his termination in early March.
Q Okay.
May I approach the witness, Your Honor?
THE COURT: Yes, sir.
I just want to advise you or your order of sequestration. I think you may have had a witness walk in the courtroom.
MR. SMITH: His witness.
THE COURT: Okay.

Mr. Covington, I see that you've walked in the courtroom. The parties made a motion for an order of sequestration, which I granted. Which means that you can't be in the courtroom during the conduct of the trial.

MR. SMITH: It's not our witness so I don't care one way or the other but since we do have the order.

THE COURT: Yes, sir.

MR. KUNST: Sorry, I didn't see him walk in, Your Honor.

THE COURT: I knew you hadn't. I knew neither of you had, that's why I advised you of it.

BY MR. SMITH:

Q I'm going to hand you what was marked yesterday as Plaintiff's Exhibit No. 5 and ask you if you can take a look at that document?

A Yes, this as I said, once I began contacting vendors, that's the database that we put together with addresses and contact numbers.

Q You can hold it up so that they can at least see it. That it's just a list of four, five, six pages of names—

A It was – the number 240 came up, I'm still not quite sure what that was but three plus pages with a large number of vendors and subcontractors and tradesmen.

Q And what was the purpose to this list?

A Was just to be able to chronologically go through and find companies that the Gaby project had opened balances, overdue balances. Some were paid in full. Just trying to get a handle on a rough – a rough number of dollars that went to vendors, tradesmen, subcontractors, relative to the Gaby's project. I didn't receive that or didn't have sufficient documentation from Mr. Kunst; so it was a way of reinventing the wheel so to speak to get going again.

Q Okay. So, when you called these vendors to find out what the status of your project was that had been paid, did you ever discuss Mr.~Kunst's financial condition with anyone on that list? Or say – well, did you ever discuss his financial condition, Mr. Kunst, with anyone on the list?

A No. Not his financial condition. I was certainly saying that he had been paying bills up to this point to subcontractors and it had come to our attention that he was far behind in some. Were they in that position with him? So, to the context of talking about finances, yeah, to find out what he had paid, what he hadn't paid and how much.

Q Did you ever tell anyone on that list that funds were missing from the Gaby project?

A No, sir, didn't know that.

Q Did you tell anyone on that list that Mr. Kunst had embezzled money from his clients?

A No, sir.

Q Did you tell anyone on that list that Mr.~Kunst may go to prison?

A No, sir.

Q When you contacted these people, what was – I don't want to go through a list of 240, generally, what was the reaction when you called them?

A Those that had opened balances were, thank you for calling, now there's a means for which we can be paid for our opened balances. Honestly, some of the things that we knew had been paid by Mr. Gaby that were not critical to the completion, I certainly did some prioritizing and they did find themselves lower on the list. So, there were some that were more pleasant with me on the phone.

I said, I'm sorry, that money's been paid to the company that should have paid you already. I'm not going to tell you we're going to take care of that.

I compiled the list, went back to Mr. Gaby, we prioritized and to get the project running again we paid some of them. In context, there were – some of them, and I refresh from a deposition that I gave Mr.~Kunst a few

years ago, on the Parham job that they came to me saying you may want to call the Parham's, they may be in a similar position. I didn't recall that until I refreshed from a deposition that was forwarded to me and asked me t review last night. So, some of them gave me information and some of them I received information from.

Q Did you learn from any of these vendors/contractors that Mr.~Kunst had been bouncing checks?

A Yes, sir.

Q Fair to say that was fairly common?

A I don't now about common but there were a numb of them, sir.

Q Okay. Did you ever talk about Mr.~Kunst to anyone other than your employers or the folks, for example, on this list who had something to do with this project that you were working on?

A Not specifically to people who had something to do with this project. Or that I could glean information as to where our funds were at.

MR. KUNST: Your Honor, I'm going to object o the privilege argument.

THE COURT: What's the privilege, sir? Privilege from whom to whom?

MR. KUNST: Oh, he's establishing a privilege

argument. We reserve our objections to it.
THE COURT: All right, I respectfully deny the same.
You may proceed.
MR. SMITH: Thank you.
BY MR. SMITH:
Q Did you ever tell anyone that Mr.~Kunst had created -- or committed a crime of moral turpitude?
A I'm not even sure what that is, sir, absolutely not.
Q Did you ever tell anyone that Mr. Kunst had a loathsome disease.
A The terminology that's surfaced, I want to say comical. It's a very serious proceeding but it's not terminology that I use so I absolutely did not say that.
Q Did you ever tell anyone that Mr. Kunst committed adultery?
A No, sir. To my knowledge they admitted earlier that they're not married. So, I think adultery would be related to a marriage description, obviously not.
Q Did you ever tell anyone that Mr. Kunst was unchased?
A I don't know that term so absolutely not.
Q Well, I'm just going through the elements of what we're alleging here.

A No, sir.
Q Did you ever tell anyone that Mr.~Kunst was unfit in his occupation as a builder or designer?
A No, absolutely not. I commend him on his imagination and his design. The homes that he's built are gorgeous, no.
Q Okay. Well, let's explore that for a minute. So, is it fair to say that you think Mr.~Kunst is a good designer?
A Yeah. I've had people on Lake Keowee and if I take them by boat we go past the Parham's, we go past the Gaby's, we go past the Covington's. They're three of the most beautiful homes on the lake without a doubt. He's a gifted designer.
Q Okay. I think you've testified to this yesterday but I'm getting older, my memory's not as good so forgive me if you did. Do -- did you ever tell Mr. Goad that Mr. Kunst had provided your client with dummy invoices from dummy companies in order to take m away from the Gaby's.
A No. And I was intrigued yesterday when I heard that affidavits were created by Mr. Kunst and his fiance that those weren't written by the people that presented them. That was -- the terminology is not anything that I would use. And I was wondering where that came from an

now I know they crafted that document and got signatures from those other people. It cleared it up for me.
Q Give me just one second. I want to make sure that -- I think I'm done but I just want to be sure that I don't miss anything. Because we've been sitting here for about an hour and 15 minutes. I know you're tired and I am done. Thank you.
THE COURT: Thank you.
MR. SMITH: And reserve the right to recross if necessary.
THE COURT: Yes, sir.
Okay, let's take just a short break, come back in and we'll resume testimony of Mr. Loree. Please don't discuss the case.
Mr. Loree, you can take a break as well, just don't discuss your testimony.
(WHEREUPON, the jury left open court at approximately 10:55 a.m.)
THE COURT: All right, ladies and gentlemen, we'll be in recess for a few minutes.
(WHEREUPON, a short break was taken.)
THE COURT: Let's bring the jury in, please.
(WHEREUPON, the jury came into open court at approximately 11:09 a.m.)
THE COURT: All right, Mr.~Kunst, you can

conduct redirect examination, remembering that the same is limited to the scope of cross.
MR. KUNST: Your Honor, thank you.
REDIRECT EXAMINATION
BY MR. KUNST:
Q Mr. Loree, you just testified that you had first met me, the Plaintiff, and you stated mid 2005. Were you living at Lake Keowee at the time or were you still living in Atlanta?
A I've never lived at Lake Keowee so I would have been in Atlanta, certainly.
Q Do you have a house at Lake Keowee?
A No, sir.
Q Is a house at Lake Keowee provided for you by the Gaby's?
A No, sir. They do have a home I stay at, they provide for me if I'm in service for them at Lake Keowee, yes, sir.
Q So, you were living in Atlanta at that time?
A Correct.
Q Okay. When you began taking more responsibility over for the Gaby project, were you then living at the lake?
A Not living at the lake, I would commute back and forth sometimes daily if I had to be back Atlanta. Other

times I would overnight at Keowee until my duties weren't required there anymore then I would return. So, back and forth.

Q Was the project finished on 2/16/06?

A Absolutely not.

Q Construction was still going on?

A It was. You had referenced 75 percent completion when you were terminated, it wasn't 75 percent but.

Q Do you have any evidence that supports that it wasn't 75?

A Just my eye ball, sir.

Q Okay. You stated that in your email requesting the meeting, that you requested lien waivers, can lien waivers be obtained during construction?

A I would not know that, sir.

Q If there are opened accounts in which purchases are made through daily, can a subcontractor or supplier issue a lien waiver?

A Can you ask that again, sir?

Q Yes.

MR. SMITH: I'm going to object, I think he's asking for a legal conclusion there.

THE COURT: I'll let him rephrase the question.

THE WITNESS: Maybe more simplistic if you

would, sir.

MR. KUNST: Okay.

BY MR. KUNST:

Q You asked for lien waivers, correct?

A No, sir. Mr. Gaby asked for lien waivers.

Q Do you understand what lien waivers are?

A Not fully referenced, no.

Q Was it your email requesting the 2/16 meeting that stated that I must have lien waivers?

A I will refresh and let you know in just a minute, sir. Had documents here earlier, Ms. Hilton was here with the paperwork but it's not here now. So, if I had that email it would help me.

MR. SMITH: Plaintiff's No. 6, Scott.

MR. KUNST: Yeah, I got it.

May I approach?

Here it is. Thank you.

THE WITNESS: You're referring to the last paragraph, sir?

BY MR. KUNST:

Q Yes.

A You are to gain lien waivers for the various trades and contractors who are participating in the construction of the Gaby project at The Reserve. On Thursday, February 16th, 2006, you will provide an update

as to the progress of securing those waivers, correct.

Q Did you write that email?

A Yes, sir.

Q Thank you. If you recall in yesterday's testimony you read a transcript in which you said quote, You were unsure about a statement, I think can get these paid.

On the date of this meeting on February 16th, you just testified that you were seeking a reconciliation of some such.

A Can you provide me that section of the transcript that you're referencing where you said I'm sure, please.

Q That was yesterday's testimony.

A Is that a no, sir, you won't provide that?

Q At the date of the 2/16/06 meeting, did you make certain that Mr. Gaby had reimbursed all of the Kunstwerke progress billings that had been submitted to him?

A I took Mr. Gaby at his word that he had forwarded you a surplus of moneys that were unaccounted for. So, that would in my mind tell me that everything had been paid. To the best of my knowledge, sir.

Q Did you personally investigate or caused to be investigated whether or not Mr. Gaby had indeed paid?

A We have discussed this. It was asked and

answered yesterday but.

Q Okay. Will Mr. Gaby be appearing here to testify towards that?

A Did you subpoena him, sir? You would have that answer.

Q Is Mr. Gaby going to appear here to testify to that?

A Who do I. . .

MR. SMITH: We're not aware, we didn't subpoe him.

THE WITNESS: Not to my knowledge. Unless someone has knowledge of that but not to my knowledge.

BY MR. KUNST:

Q You made a statement that it was a surprise to you that the progress billings in the box were not originals that they were copies?

A I wasn't aware of that, you made me aware of that yesterday.

Q You stated that that was a red flag. Why is that a red flag?

A When you – I asked you from here, I said, were they amended in some way? And you shrugged your shoulders. So again, it was – I'm not sure. You said Mr. Gaby did not want the originals. And then we asked

you to produce everything and you didn't produce originals, you said you produced photo copies. That's it. I don't know where those originals are.
Q Have you ever asked for original copies of invoices?
A You should have in your possession and will prepare stamped, paid invoices to include copies of all canceled checks. In my mind, yes, I asked for those from you to be brought on the 16th of or -- 13th of -- 16th of February in this 13th of February letter, yes.
Q You testified, again from the letter, verification of invoice. What does that mean?
A I don't think that's a complete sentence so let me look here and find that. Do you know what paragraph?
Q In the February 18th, Richard Gaby email that was submitted into evidence, Exhibit 1.
A You can continue while I'm looking for it. Go ahead.
Q I'll read, Once verification of invoices complete, papers will be promptly disbursed.
What did that verification mean?
A Where do you see that, sir?
Q Second to the bottom paragraph.
A Are we talking about the same document, just to confirm?

MR. KUNST: May I approach?
THE COURT: Sure.
BY MR. KUNST:
Q Once verification --
A Once we have in our possession all of the invoices and they can be substantiated.
Q What does verification mean?
MR. SMITH: I'm sorry, Scott, where are you reading from?
THE WITNESS: Asked and answered, sir.
MR. SMITH: Okay. Okay, I'm sorry.
BY MR. KUNST:
Q The next sentence says or the other half of the sentence I could say is, Payments will be promptly disbursed.
What payments are--
A -- once invoice is complete, payment will be promptly disbursed.
So, once you provided all the documentation that we requested, it could be substantiated, payments could be resumed. There was no decision on the 18th of February that this is -- we we're giving you the benefit of the doubt. We were hoping you provided further materials for us.
Q Were you provided other progress billings that

had not been reimbursed by Mr. Gaby?
A No, sir.
Q You testified about a company named Systems Specialities. There were several progress billings submitted into evidence. Did you investigate the full Kunstwerke account with Systems Specialities?
A I don't believe so, sir. And when you say full account, that would be other clients and things that I was concerned with the Gaby project. I had no concern with others.
Q In your investigation, did you look to see if there were any Systems Specialities invoices on the February 16th, February 20th or March 3rd? Progress billings that Mr. Gaby did not reimburse.
A Did you provide those to me in that box of materials at The Reserve that day? I was working out of the materials you had provided, so.
Q I answered a question but for the record, 2/16 and 2/20 were in the box. 3/3 followed.
A Okay.
Q Do you have any information from your investigation whether or not the System Specialities account with Kunstwerke was personally guaranteed by me?
A Rephrase the question, I'm not sure what you're looking for there.

Q I'll do a broader question then that may apply to some of these others. These vendors that you contacted, did the account belong to Mr. Gaby or did the account belong to Kunstwerke?
A The invoices were generally -- I saw some of them here earlier. In fact, let me look at it. I think it says, Gaby project on the invoice. That would lead me to believe that it would be relative to his property being constructed. Here's Select Stone, not one we're talking about, PO number it says Gaby on it. So, it does -- it's billed to you referencing the Gaby project. If that answers your question.
Q So, once it appears on a progress billing and Mr. Gaby pays that progress billing, is it your understanding then that it becomes a Kunstwerke obligatio to pay?
A Yes.
Q You stated that Mr. Gaby paid some things twice?
A Correct.
Q Why did he do that?
A For the sake of -- if we could use Paul Anderson for an example, he was creating cabinets for the project. Scott bounced checks to him. He was not willing to ramp up production, if you will, due to having large outstanding balances and receiving bounced checks. So, in

order for us to get cabinets installed in that home in a timely fashion so we could get it completed, I prioritized and said, I'll have to bite the bullet, I know I've paid for them once, I'm going to have to pay them a second time if I want cabinets in my home.

Q Mr. Loree, should the project had stopped on February 16th, 2006 until a reconciliation was done?

A I have no knowledge, unknown, sir.

Q Should construction have stopped until a full reconciliation was done to ascertain if Mr. Gaby had, in fact, reimbursed Kunstwerke Corporation per the contract?

A In my opinion, no, sir.

Q Do you have in your possession today any kind of reconciliation of the Gaby account with Kunstwerke Corporation?

A I have what you and my attorneys presented in front me me, sir. That would be obviously no.

Q Do you have in your possession today a total of all the costs that Kunstwerke incurred versus all the costs that Mr. Gaby reimbursed?

A No, sir.

Q Could you have obtained such schedule on February 16th, 2006?

A Ask the question again, sir.

Q Could you have obtained such a reconciliation on

February 16th?

A Simplify the question for me, sir.

Q Were you prohibited from obtaining a full reconciliation of the Kunstwerke Corporation account, and I'll define that as the total amount that Kunstwerke had incurred on the Gaby project and how much -- versus how much Mr. Gaby had reimbursed as of that date?

A That's what we were hopping you would bring to our February meeting.

Q Are you stating that you never got that?

A Never got that. We -- that what?

Q Any reconciliation of that sort?

A We never got a complete comprehensive reconciliation of documents from you, yes, sir.

Q In all of these years of litigation have you never seen a large ledger?

A Does it begin with the word, The Story? I've been deposed on that before. I think very early on in the pages it says, The Story. After we had gone through these documents which my attorney and I went over just a short time ago, we tried to reconcile the account. There was a forensic accountant involved in it at some point. Please tell me the date that you forwarded that.

Q I'm asking about the Kunstwerke accounting records.

A Correct.

Q Have you ever reviewed or looked at the actual Kunstwerke accounting records?

A No, sir.

Q That reconciled to the bank statements?

A No, sir.

Q Do you have any proof or evidence, as you sit here today, that Mr. Gaby reimbursed Kunstwerke for a 2006 progress billing for $57,015, a February 20th progress billing for $27,068 and a March 3rd progress billing of $125,387?

A No, sir.

MR. SMITH: Your Honor, I have to object. Those are -- I'm not saying they're wrong but we haven't seen any evidence of those bills. If he wants to show them to the witness, I'm fine with that.

THE COURT: I believe the question was, do you have them?

Was that the question?

THE WITNESS: I do not know if that was the question.

THE COURT: Well, what's the question?

MR. KUNST: That are in Exhibit A, the full ledger of the case, they've had them. For eight years.

THE COURT: Well, answer my question. The question was, do you have them, right?

MR. KUNST: Yes.

THE COURT: Okay, you can answer that questi I already advised the jury that questions are not evidence, responses are evidence. So, you may ask the question.

BY MR. KUNST:

Q I'll just ask a more broad question then. Simplify things. Do you have proof that Mr. Gaby paid the last three reimbursement payments on the --

A You've referenced those repeatedly the question's been asked and answered. I do not, sir, no.

Q Okay. There was reference to a cabinet deposit -- when you contacted, as you just stated you contacted Paul Anderson of Anderson Design, were the cabinets ready at that point to be delivered?

A Unknown, sir.

Q In your investigation did you find other deposits and partial deposits for items that were waiting to be delivered?

A Again, ask the question again, sir.

Q Were there ever any instances in which Kunstwerke made a partial deposit on something that had not yet been delivered? The cabinets yes, they readily

admit they received 23,000 of 140,000. So, there had been a deposit on them, yes. The other 20,000 that you wrote to them bounced, so. It should have been 43,000 but I guess $23,000 bounced check.

Q You stated, rather emphatically a short while ago, that you didn't know where the money went that Mr. Gaby had wired. And your quote was, Do I know? I wish I knew.

This case has been around for nine years. Have you caused or performed your own audit of the Kunstwerke accounting ledger to determine where the Gaby money went?

A No. Thank you for bringing that up. The document you mentioned earlier in your large binder there, that you produced seven years ago, a moment ago you said, that would have gone to the Stern Law Firm which had a forensic accountant involved. That was well beyond – I washed my hands of that portion of it. There were people much more intelligent than I going through accounts. So, that binder that I did see went to the Stern firm with their forensic accountant at some point.

Q Will you have anyone here in the next few days more intelligent than you that can speak to that?

A If you turn and ask my attorneys, I don't know that.

Q I would like to draw your attention to

Defendant's Exhibit 12. It should be an email that you just submitted in evidence from February 20th from Richai Gaby to the Plaintiff.

A Uh-huh, yes.

Q You read several sections of the email for Mr. Smith. I would ask you to read the last two paragraphs, I've highlighted them for your convenience.

A Yes, sir, you're welcome to that one.

Q For the record that is my email to Mr. Gaby, my response.

A Okay.

Q You can read the highlighted portion.

A The entire paragraph or just a snippet?

Q The last three paragraphs.

A Just the snippet you'd like for me to read, not the entire paragraph?

Q Just read the page.

A Read the page?

Q Read the page.

A As you requested I have worked through those invoices to send directly for payment. There won't be the risk of double payment because the cut off of things we have already paid for is the 2/20 progress billing. My challenge is this. The sheer volume of activity and payment made before billing you has resulted in two

progress billings that I have not been reimbursed for. Everything on the 2/16 billing of $60,372 as well as the subsequent 2/20 billing for $27,066, we have paid out. I have roughly $90,000 paid out.

Activity at the site spiked in December and January and the progress billing payments fell one week behind during the same period. I know that I need to pay the cabinet balance immediately. It is just more difficult for me to pay the remaining when I don't know what becomes of the 90,000 outstanding that I have already paid out and I have not been reimbursed for.

Then the final paragraph, I will continue to compile what you request. I will also FedEx the two above-mentioned billings with support. Please call anytime to discuss anything else you need. I understand about the shutters and Dan Elfelman (ph), who is making the screen doors, was willing to do a drawing on how they could function with the finish existing opening sizes. Thanks, Scott.

Q Will you confirm for us that that is my email to Richard Gaby?

A It appears to be, yes, sir.

Q You read the word Reimbursement in here. Have you seen that word before?

A In my life, sir, I've seen the word

reimbursement–

Q Between today and yesterday?

A Yes, sir.

Q Where else did you see it?

A I can't tell you, sir.

Q Did you read in the Gaby contract?

A Did I or didn't I, I don't know, sir.

Q Is it not true, Mr. Loree, that in this email to your boss I clearly state that there were at that point already two progress billings that had not been reimbursed?

A That's what I just read, I believe so.

Q It is your testimony that your boss did not tell you about these?

A No, not at all, sir.

Q Is it possible, Mr. Loree, that as I state here on 90,000 outstanding, that a 90,000 balance may cause checks to bounce?

MR. SMITH: Your Honor, I'm going to object there. Aside from leading the witness, he's also asking questions that he has no way of knowing. He's asking him to speculate.

THE COURT: Okay. All right.

MR. SMITH: He is a fact witness.

THE COURT: I understand, I'll respectfully

overrule your objection.
You can ask the question, sir.
MR. KUNST: All right.
BY MR. KUNST:
Q You've testified to these folks about several checks that had bounced to places like Systems Specialities, cabinet guy. Tracy testified yesterday about one to Builders First Source. My question to you is, it is possible that if your boss is $90,000 behind, that could cause checks to bounce?
A My boss was not $90,000 behind, sir.
Q Please provide the evidence that states that.
A We just talked about funds that were forwarded to you, substantiated with bank records that were never forwarded to vendors. There would have been -- it's simple math, there would have been a surplus in the account. 90,000 is easily coverable by those documents that we've already showed you that were never paid through to those vendors. You would have had those monies in reserve.
Q Is that based on your premises yesterday where you stated that once Mr. Gaby wired an amount of money, that money was restricted to a certain purpose?
A That's what you led him to believe when you requested, I'll just give you one, for example. This came

from you to my employer on December 6th of 2005.
To Paul Anderson Design for a total 50 percent deposit amount for all cabinetry. Total will be 165,000. You requested 82,500 and some time later we had a docume that Anderson tells us that they really received 23,000. 43,000 if you count the check that was insufficient funds. So, I was doing that math, sir. And then it was substantiated and litigated and they have a judgment when Mr. Larkin and the previous trial.
Q You keep mentioning this Mr. Larkin, who is this Mr. Larkin?
A You know, sir, who Mr. Larkin is--
Q I'm asking the question, who is Mr. Larkin?
A He is a forensic accountant, sir. He was present in your hearing.
Q What is a forensic accountant?
A After the fact he would reconstruct an account from receipts from documents that he was able to locate to put a document together, funding a project, funding whatever that may be after the fact.
Q Would this forensic accountant be smarter than you in regard to these books?
A I don't know his IQ, sir, I don't know.
Q As you stated before--
MR. SMITH: Your Honor.

THE COURT: Yes, sir.
MR. SMITH: He's badgering the witness, he's gone way beyond the scope.
THE COURT: Y'all come up real quick.
(WHEREUPON, an off-a bench conference was held in the presence of the jury but out of the hearing of the jury.)
THE COURT: You may continue, Mr. Kunst.
MR. KUNST: Thank you, Your Honor.
BY MR. KUNST:
Q You made the statement regarding Mr. Kevin Goad's affidavit. You made a statement that you were surprised that it was prepared by -- who did you say prepared it?
A I believe Mr. Goad sat here and said someone -- one of the attorneys asked him who prepared that?
And he said, It was not I.
You brought that document to him or something of that nature. Which was surprising. I didn't know that's how the affidavit was prepared.
Q Have you ever prepared an affidavit in a legal case?
A No, sir.
Q Did you hear Mr. Goad's testimony yesterday?
A Yes, sir.

Q Did you hear Mr. Goad testify that he received a rough draft and made corrections?
A Correct.
Q Did you hear Mr. Goad state that he signed the affidavit?
A Yes, sir.
Q Did you hear Mr. Goad state who notarized the affidavit?
A I believe Ms. Hilton.
Q So, are you implying to this -- did Ms. Hilton sign all the affidavits to your knowledge?
A I have no idea. When you talk about affidavits, could we talk about Mr. Alfonazo's?
Q That's next, thank you.
A Thank you.
Q When Kevin Goad stated that you stated that dummy invoices were created from dummy companies to ta money from my clients, was Mr. Goad lying?
A No. When it appeared in the affidavit, the words that I said dummy company, dummy invoices, that's not terminology that I would use so I know it's not a in quote comment. So, it's not something I said.
Q His affidavit is speaking to an allegation. Were dummy invoices prepared by me from dummy compa fraudulently obtain funds?

A Unknown, sir.
Q Regarding Mr. Alfonzo's testimony, his affidavit I should say, he mentions the word criminal twice. Was Mr. Alfonzo lying?
A No, I was intrigued when he said that he altered his affidavit after saying that I said Mr.~Kunst was a criminal. I never said that. He said then it was amended to say some things he may have done could have been construed as criminal. It's interesting that the way that it was crafted initially would have made me sound like I was saying some really bad things. It was reedited by him to then be more subjective to actually what he did say. I did find that interesting.
Q You did hear Mr. Alfonazo's testimony yesterday, correct?
A Yes, sir.
Q Did you hear Mr. Alfonazo make a one word change to his affidavit and read it to the jury?
A I don't know if it was one word but a change, yes, sir.
Q Did you recall that one word change being the word A in front of criminal?
A It may very well have been, I'm not sure what the change was exactly.
Q You stated that you couldn't find me. My

question to you is, based on the date of these email communications, did the email communication cease betwe February 16th and March 3rd, the termination date?
A They got harder and harder, yes, sir. It wasn't--
Q The emails got harder? What's that?
A No, no. Not referring to the emails. The means by which to contact you personally for progress status on projects and things. Timely returns on emails, seem to be getting harder and harder to contact you. Yeah.
Q What specific evidence do you have of that?
A My comment, sir.
Q Did I have other projects going on at The Reserve that you know of?
A Unknown.
Q You did not know of any other projects that I had going on at The Reserve concurrent with the Gaby's?
A Oh, you may have, I don't know what the completion dates and things were. You may have had othe projects. You've built other homes in The Reserve, yes.
Q Is it not true, Mr. Loree, that I was at The Reserve everyday?
A I would not know that, sir.
Q It is not true, Mr. Loree, that my houses did not have detailed plans?

A Unknown, sir.
Q Do you have any knowledge that I could not be found?
A I know that we made attempts and you were increasingly difficult to contact. That's from personal recollection.
Q And is that what caused the termination notice?
A No, sir.
Q What caused the termination notice?
A I think your unwillingness to supply full records so that we could do a more substancive [verbatim] reconciliation of your accounts pertinent to the Gaby project and from our meeting on the 16th. There were emails that went back and forth asking you to provide additional documentation that led all the way through roughly 14 calendar date period to around the second or third of March when that document was issued to terminate. We gave an opportunity to respond, you chose not to.
Q Okay. Did the Gaby's eventually sue me?
A I don't know, sir. No, sir. Unknown, sir.
Q Okay. It is possible, through litigation, that the full accounting ledger could have been subpoenaed?
A If we can go back. We have a judgment against Mr.~Kunst or his company. So, the answer to the previous question would have been, yes. Obviously, there were some

filings there.
Q Prior to that judgment, another opportunity to have looked at the Kunstwerke ledger. In this judgment you've referenced now for two days, was the Kunstwerke ledger ever looked at in preparation for that judgment?
A I can't tell you what the trial date was or the hearing date was versus the date that that was forwarded. It went immediately a law office to be reviewed. So, I don't know. I don't know what those dates are.
Q One last question. The money that was sitting in the Kunstwerke account, that was deposited by the Gaby's, did you see bank statements showing that money deposited?
A There were funds wired. I don't know about the term deposited but Mr. Gaby wired funds, I believe, to your Regions bank account from the documents you saw earlier today.
Q In this week between February 16th, 2006 and March 3rd, 2006, did I provide you with Kunstwerke bank statements?
A You're asking nine or ten year question. Not to my knowledge.
MR. KUNST: Nothing further.
THE COURT: Recross?
MR. SMITH: I have nothing further, Your Hono

THE COURT: Thank you, Mr. Loree, I appreciate it, sir. You may step down.

All right, Mr. Kunst, you may call your next witness, sir.

MR. KUNST: Plaintiff calls Eugene Covington.

THE CLERK: Place your left hand on the Bible raise your right hand, please.

EUGENE COVINGTON, after being duly sworn, testified as follows:

THE CLERK: State your name for the record.

THE WITNESS: Gene Covington.

DIRECT EXAMINATION

BY MR. KUNST:

Q Hello, Mr. Covington. Please state your full name and occupation.

A Gene Covington, I am a lawyer.

Q What is the name of your law firm?

A Eugene C. Covington, Jr, P.A.

Q Are you part of Covington Patrick Harris?

A No, there is no Covington Patrick Harris.

Q Covington Patrick Hagins Stern and Lewis, is that your law firm?

A No, it use to be. It was a P.A. It was terminated January 1, 2015.

Q All right. Did the law firm that was

terminated, did it represent Mr. Loree for the past eight years?

A Sandy Stern, who suffered a stroke, is no longer with the firm, was attorney for Mr. Loree.

Q Did you have a written contract with my company Kunstwerke for the construction of your house at The Reserve?

A No. I wish I had.

MR. KUNST: May I approach?

THE COURT: Yes, sir.

BY MR. KUNST:

Q Mr. Covington, do you recognize either of those two letters?

A Well, I am certain that I wrote these letters sometime back in 2005 or six but they would -- I don't know how you got a copy without me singing them.

Q Do you recall what the purpose of those letters were?

A Sure, I recall exactly what the purpose was. This was about the time that you disappeared. And no one was getting paid. And I found out that money I had been paying you to pay subs weren't getting paid. And the only way I could finish my house was to tell all these subs that I would pay them whatever you hadn't paid them to ge my house finished.

Q So, on the -- at the date of those letters did you take over direct payment of subcontractors and suppliers at your project?

A There's no date on these letters.

Q Okay. During February of 2006, did you take over the direct payment of subcontractors and suppliers at your project?

A I took over everything on my project because you disappeared.

Q Who remained the licensed builder through completion?

A Well, I don't know who was the licensed builder. I'm not sure I had a licensed builder when you were in it.

Q Did you ever terminate Kunstwerke as a licensed builder of your house?

A I couldn't terminate Kunstwerke because that's you and you went missing.

Q At the time that these letters were sent out and you were taking over direct payments, you claimed you couldn't find me. Had you paid your Kunstwerke balance in full?

A No, actually I had paid more than my Kunstwerke balance in full. Because I found out the money I'd been paying you, you had been using for other things other than my house. One being your fiance's wedding ring.

Q Mr. Covington, were you sued by Kunstwerke?

A I and 22 other people.

Q Yes. Was it a civil breach of contract suit?

A Well, which one are you talking about, Mr. Kunst, you sued me three times?

Q I'm referring to the contract case, Kunstwerke versus Eugene Covington and Susan Covington.

A You sued us, me and my wife twice. So which one are you talking about?

Q I'm not referring to the malpractice suit against your wife, I'm not referring to the defamation suit against you and your wife. I'm referring to the Kunstwerke breach of contract suit claiming monies owed t Kunstwerke. Represented by the Carpenter Law Firm?

A Yeah. And I countersued against you, too.

Q Yes, sir.

A It was in this courtroom.

Q Did that case settle mid trial?

A That case settled while you were on the stand after the Judge ruled that your $300,000 claim couldn't be worth any more than 25,000. At best.

Q Mr. Covington, did you write a check for $25,000?

A Yes, I did.

Q To your knowledge, has there ever been an

independent audit of your Kunstwerke account?
A It couldn't be because the forensic accountant that we hired to do it could not get the records because you wouldn't give them to us. But we did get all the invoices from every person that you were building houses for and we subpoenaed all of your bank records. So, we were able to put together what you were doing to people in a group. But we could never individualize it.
Q You're the second person in a row to mention a forensic accountant. Are you referring to Mr. Bill Larkin?
A Absolutely, yes. He use to work for the Attorney General's Office in New York City prosecuting white collar crime.
Q Did Mr. Larkin spend a lot of time working on these cases?
A He certainly did.
Q To your knowledge, was Mr. Larkin ever provided a full Kunstwerke ledger?
A Of course not because you refused to produce it. Just like you refused to produce it to the United States government on your tax claims. That is over 5 million dollars on record today.
Q Do you have any information as to the date that the full Kunstwerke ledger was filed at the Pickens County

courthouse? In these related cases as Exhibit A?
A I have no idea what you're talking about.
Q Did you state to David Loree directly that there were any financial problems with your project?
A I don't know that I've ever had a conversation with Mr. Loree. I saw him today and I honestly didn't recognize him. He wasn't involved with my house, I know that.
Q So, did you ever state to Mr. Loree that I personally took or stole any funds from you?
A I don't remember ever having a conversation at all with Mr. Loree. I have had no personal relationship with him.
MR. KUNST: Nothing further, Your Honor.
THE COURT: Cross-examination?
MS. WRIGHT: We have no questions, Your Hon
THE COURT: Thank you, Mr. Covington, I appreciate your being here, sir.
THE WITNESS: May I be excused?
THE COURT: Yes, sir, absolutely.
Mr. Kunst, who's your next witness, sir?
MR. KUNST: That would be myself, Your Hono
THE COURT: Okay. How long do you anticipat that will take, sir?
MR. KUNST: Probably the rest of the day.

THE COURT: Okay, you're going to be your last witness for your case?
MR. KUNST: Your Honor, we have a situation with some sealed depositions that must be read. We discovered that we did not have the seal copies. We are having them Fedex first thing tomorrow morning. And that should be the end of the case.
THE COURT: Okay. All right.
Let me ask Ms. Wright and Mr. Smith, do y'all intend to put evidence into the record?
MR. SMITH: We have one witness coming in, Your Honor, from The Department of Revenue.
THE COURT: Okay. When is that witness coming in?
MS. WRIGHT: I had actually had her coming in the afternoon today.
THE COURT: Okay.
MS. WRIGHT: I haven't had a chance to go down and see if she's here. But I asked her to come in this afternoon.
THE COURT: All right. Okay. The only – the only reason I'm asking that is just for scheduling purposes. I want to – I want to argue and charge tomorrow morning if there's any way that we can arrive there.

Ladies and gentlemen, I'm talking out loud so you'll have the benefit of knowing where we're headed. You've heard that we have some testimony – some testimony that still needs to be introduced into the record. And I want to make sure that we're not bleeding into Friday on this case. I know you have an issue on Friday. I want to go ahead and get all the evidence in so we can argue and charge tomorrow. It may be in order to get all of our testimony into the record, we may stay a little bit late tonight. I'm not talking about 10 o'clock, I'm talking about 6:00 or 7:00. I hope that's not the case. But I'm just giving you the benefit of what's in my head right now. Again, the end game is, I want to be done tomorrow, okay. So, I'm going to do what I have to do to get this done tomorrow. So, if that means we go a little bit late tonight, then we just may do that, okay.
And you've heard the conversation that I've had with the attorneys. It sounds to me like we're going to have two additional witnesses testify and perhaps some deposition testimony tomorrow morning, perhaps Which should put us in good shape to then proceed to argument and charge on the law. Which I would like for y'all to have – I'd like to be done with the

introduction of evidence and argument and charge by lunch tomorrow. That's what I'm driving at, okay. So, right now it's 12:00. I want y'all to take an hour and 15 minutes and be back at 1:15.

Am I reading that right?

THE CLERK: Yes, Your Honor.

THE COURT: My eyesight is not very good.

Okay, y'all be back at 1:15 and we're going to resume testimony. Please don't discuss the case.

(WHEREUPON, the jury left open court at approximately 11:58 a.m.)

THE COURT: Okay. All right. I want y'all to consider the possibility of perhaps going out of order with some the witnesses. That is ordinarily the defense doesn't put any evidence into the record until the plaintiff ends. But if you've got one witness, then you have some depositions tomorrow, I don't want to wait until you put those depositions for that one witness to take the stand. So, what I would prefer to do is go out of order, okay? So, y'all decide if that's acceptable to you and if that works, okay. That hopefully will speed us up a little bit and make us go a little bit more efficiently moving forward, okay.

MR. SMITH: Your Honor, I'm fine with if we have

the Department of Revenue representative here already, I don't know that, but I am fine with doing that. And it's his case so it's up to him.

THE COURT: Y'all talk it through, okay. Y'all aren't charged with the responsibility for making sure, you know, that the jury is engaged and that they're actually receiving useful information. Up to now I think we've done a fairly good job but on the last witness we kind of, we kind of went on a bit. And I, by judging the jury's language, some of it may have been minutia that isn't necessarily relevant to their ultimate decision. So, what I want to do is when we go forward, make sure that what you're presenting to them is focused and surgical and that it's aiding them in the ultimate resolution of the case, okay.

And I would suggest to you, Mr. Kunst, that, you know, four hours of you sitting on that stand may be a little bit much for the jury to stand. Not that you're not a charming and engaging fella, it's just the subject matter isn't necessarily charming and engaging.

MR. KUNST: I'm estimating, Your Honor, their redirect.

THE COURT: Do what?

MR. KUNST: I'm estimating the time they're going to keep me on the stand.

THE COURT: Yeah, I understand. I understand. But in any event, again, I'd encourage you, again, establish a narrative, stick to the narrative. And although y'all have a lot of detail, about nine years of litigation, I don't know that the jury is concerned about the details of the litigation. Just from my perspective watching it as an objective observer just like they are, okay. Take that for what it's worth.

MR. KUNST: Your Honor, if I may?

THE COURT: Yes, sir.

MR. KUNST: Regarding one of the last witnesses, in time, their witness is – I renew my objection to the representative of SCDOR based on my motion in limine regarding the relevance of tax matters in this case. I think it would confuse the jury and has nothing to do with the statement of slander.

THE COURT: As I sit here right now, again, I'm still – I still don't have it full context. However, I will tell you to the extent that this case, it henges upon the varsity of the representations that allegedly were made, I think that is relevant to that defense. You may have to

answer it and I'm sure you have a plausible explanation for the same. I understand your narrative which is it blew up because they blew me up. I got it. You'll have to explain that. But it's relevant. And as I sit here right now, I'm inclined to allow it, okay. All right.

MR. SMITH: She is here.

THE COURT: Okay. Well, y'all talk and decide how you want to do it. I'm not going to tell you how to do it. Again, it's y'all's case, you tell me how you want to do it. I've given you the instate, I want you to figure out how to accomplish the instate, okay. All right.

MR. SMITH: Thank you, Your Honor.

MR. KUNST: Thank you, Your Honor.

(WHEREUPON, a lunch break was taken.)

THE COURT: Ready to proceed?

MR. KUNST: Yes, sir.

MR. SMITH: Yes, sir, Your Honor.

THE COURT: All right, sir, you can bring them in, please, sir.

(WHEREUPON, the jury came into open court at approximately 1:20 p.m.)

THE COURT: Okay, Mr. Kunst, you may call yo next witness, sir.

MR. KUNST: The Plaintiff calls Scott Kunst to the stand.

THE COURT: All right, sir, you may come forward.

THE CLERK: Place your left hand on the Bible raise your right hand, please.

SCOTT KUNST, after being duly sworn, testified as follows:

THE CLERK: State your full name.

THE WITNESS: James Scott Kunst.

THE CLERK: Please be seated.

THE COURT: Yes, sir, you can proceed when you're ready.

MR. KUNST: Good afternoon, folks. This is rather odd because I'm basically am going to have to question myself. But it will just be a narrative and I'll be as quick as I can. It -- there won't be questions, I'll just say things into evidence, basically. And I'll try not to be boring if you can just stick with me. I'm the only person you haven't heard from yet, directly. You heard me ask a lot of questions. My name is Scott Kunst. I'm 47 years old. I live in Pittsburgh, Pennsylvania. That's where I was born and raised. I lived in South Carolina for 15 years. I went to Bob Jones

University and got an accounting degree there in Ridgeland before going on and doing architectural design work that I do. I am the youngest of four children. My parents have been married 55 years. My father is 83 so my parents are getting up there.

I just stated that I have a degree in accounting. I went on to work as a CPA. I graduated with a accounting degree. And I've got six offers from six big firms. If you know anything what that is, those are big, high dealing firms. And when I graduated way back in 1990, there were six. I chose Deloitte & Touche and I moved to New York City. An I worked in the World Trade Center while it was still there. And I specialized in auditing. Auditing accounting records and looking for things like fraud. And looking for mistakes and interpreting contracts and such.

I moved back to Greenville in 1993 and lived with my retired parents up in the mountains. You heard Tracy talk about Caesars Head. I worked for an insurance agency in Greenville, South Carolina as a controller and CFO for a few years. Five years, actually. During those years I began my business of actually designing and building houses. It was in 1996 that I started my first house. As I said in my

opening I built it with my own hands, my father helped me. It's on Caesars Head. It was during that time that I met Tracy. And we kind of started dating right away. And I built six houses on Caesars Head total. The three were built after I quit my accounting job. I built the houses full-time.

I left the accounting profession. I allowed my CPA license to expire. And after six years on Caesars Head, I was asked by a gentleman, by the name of Tom Atkinson. His name was Dr. Tom. He was an orthodontist in Greenville. Some of you may know him. He asked me if I would consider doing a house for him on Keowee. Up until this time my entire business was strictly houses that I built myself, designed myself and then sold. This is the first time I did a house for someone. Like the Gaby's.

So, Dr. Tom and I shook our hands. Didn't have a contract. And he agreed to the same billing system that I had from my earlier houses. And that billing system is actually the progress billing system that you've seen here in the last two days. I developed that system for when some of my earlier houses sold before I was completed. And I had to bill clients. It is a spreadsheet base system if you know what a spreadsheet is like Excel. And for every weekly

reimbursement statement that goes out, that sheet feeds into a bigger ledger. And that's the big blue ledger I've been pointing to many times during this trial. So, everything's connected. All of the these records have always existed concurrently from the very beginning.

When I was building the houses on Caesars Head, a publisher came along that was very fascinated with my story about how I started out as a CPA and did my own Design and my own houses. And she wrote an article about me in the magazine. And the title of the article was Living a Dream. And that was the title that she came up with. It's a builder/architect article and I have to admit I'm a lot younger on the front here. This was 14 years ago. But she wrote a nice cover story on me. And inside are many pictures of my early houses on Caesars Head. It describes how my business was unique and how my father helped me and all those things.

Plaintiff would like to submit. . .

THE COURT: Any objection to submitting that exhibit?

MR. SMITH: I don't have any objection to it being entered unless it's being offered for the truth

of the matter asserted. If he just wants to describe it, I have no problem with that. If he wants to describe what the writer describes, we would ask that – that would be hearsay, we object. If he just wants to talk about it, that's fine.

THE COURT: Okay. All right. So, what you're saying is you don't want it to be admitted as an exhibit in the record but you don't have any problem with him discussing the same?

MR. SMITH: It really – if he's trying – if he wants to offer this article for the truth of the matter asserted in it, then it would be hearsay. If that's not what he's doing with it, then I don't care if he offers it.

THE COURT: What are you offering it for?

MR. KUNST: The exhibit is being submitted as evidence of my work. And who I was.

THE COURT: Any issue with that?

MR. SMITH: No.

THE COURT: Okay. No objection, the same is admitted as the next Plaintiff's Exhibit.

(WHEREUPON, Plaintiff's Exhibit No. 8 was marked for identification and received into evidence.)

THE COURT: All right, go ahead, Mr. Kunst.

MR. KUNST: The other time that magazine was

published was the time I went down to Keowee for Dr. Tom, the first house for someone. Doctor Tom's house was built without a contract, without a budget and without a timeline. And that was something that I insisted from the very beginning. Because I wanted to do things my way. Which is completely unlike any other builder, designer, architect. I charged very little for what I did. And I didn't have to accept Dr. Tom as a client. I had a waiting list of people who would buy houses that I already designed and built. But at that time I decided that perhaps I needed to go to architectural school as well. And The Savannah College of Art Design has a program th: provides a master's degree in architectural to add to the CPA degree.

So, I decided maybe I shouldn't have the risk of doing speculative houses and maybe I would take Dr. Tom as a client. We shook hands, his house was an overwhelming success. Dr. Tom recommended me t someone who had a house at The Reserve on Lake Keowee, across from the lake. And that's how I got involved with all the clients that were in The Reserve at Lake Keowee like the Gaby's. Very similar to that article, Dr. Tom's house was featured. This is the only other periodical that I'll submit. But

this is the At Home magazine sold at Barnes & Noble in 2005. A little closer to the events in this case. And in the article it features Dr. Tom's house. And if you look at my work there's sort of a evolution to it. Up on the mountain it was kind of boxy and rustic. And once I was on the lake my design style matured to the to point that by the Gaby's house, my houses were completely – the architectural term is organic. It has no square rooms. The house flows. You walk through it and the walls just wind. Some people call it crazy but it really just works with the flow.

The Plaintiff moves for. . .

THE COURT: Any objection, sir?

MR. SMITH: No objections.

THE COURT: All right, without objection the same is admitted as next Plaintiff's Exhibits.

(WHEREUPON, Plaintiff's Exhibit No. 9 was marked for identification and received into evidence.)

MR. KUNST: Once on The Reserve at Lake Keowee I became known pretty well for the one house I did for Dr. Tom's friend. And they weren't my houses at The Reserve at that time. It was one of the first houses. So, I got to know the sales staff and everybody at The Reserve. And it was through the

sales staff at The Reserve that I was introduced to Susan Covington who you met her husband here a litt while ago. They also had a lot on Lake Keowee and wanted me to build a house for them. So, I agreed. And it was a long, long process. It took three years. Some of my houses do. Some have considered their's the craziest of all the houses. Some of the things that I use are very unique. Like for example, my crew can only build my houses. That's why it was so significant to keep house – my crew on the Gaby project to finish it. We could make a new house look old with the way we roof. We would by handmade tile from Provence in France for the roof. That, in fact, happened for the Covington house. The Covington house was featured in a lot of different advertisements and features regarding architectural elements including an advertisement for Northern Roo Tiles. I'm not going to submit that but I am going to submit three pictures that I took of the Covington house that you can look at later just to get an idea of just how unique some of the houses are.

It's a French chateau. Ms. Covington wanted a very – a very – it's called story book. Sort of a like a French story book look, it's very playful. Every ceiling is vaulted, every brick is handmade.

It's really a quite remarkable structure from the lake. You can almost see how the roof sags.

I'd like to submit this in evidence and perhaps it can be handed to them.

MR. SMITH: No objection.

THE COURT: All right, without objection the same is admitted as a Plaintiff's next exhibit.

(WHEREUPON, Plaintiff's Exhibit No. 10 was marked for identification and received into evidence.)

MR. KUNST: Like I said, it took three years to build this house. And I'm not going to tell you the cost of it, it's not my business to tell you. But I will tell you how much I charge because I think that's important. The builder/architect fees for a house like that should have been around the 600,000, I charged 48,000. As I said in the opening, I never really made much money doing what I design. It's just a pleasure to be able to build something like that. The Covington's through the three year construction process never missed a single payment. They were one of my best payers and some of my closet friends throughout the process. Mr. Covington didn't sound like that on the stand but they made over 140 weekly reimbursement payments. They were given

deposit tickets to my own checking account. And Susan Covington would run to the bank as soon as she got the bill to pay. They stopped paying on February 16th, 2006. When two other bills had accumulated. My father contacted them. She said her husband was taking care of it.

At that date the accounting records shows that there was $130,000 that Kunstwerke Corporation had paid out.

MR. SMITH: Your Honor, I am going to object here. The accounting records we show, introduced into evidence as best evidence.

THE COURT: I'll overrule. I'll allow him to testify of his own finances.

You may continue.

MR. KUNST: I will be submitting an accounting record in a moment that shows what everybody owed a the date that David Loree came to town. You heard that there was a lawsuit. Well, in fact, there's been 20 lawsuits. The Covington lawsuit was one of them. I had to collect that money. I had no choice. Partly because I had to prove that there was no money missing from them at all. You've heard testimony that Covington was named specifically as someone where money was missing from. I did not want to sue

the Covington's. I didn't want to sue anybody. But as Gene Covington testified, I can testify to, he settled mid trial with a check.

I was also not fired from the Gaby project — the Covington project. I was not missing. And thirdly, the Kunstwerke builders license was active to the Covington project through closing.

Mr. Covington made a reference up here regarding an engagement ring. This is something we've heard in just about every trial. They like using that one.

The funny thing about it is in the opening statement you heard that Gaby money was spent on an engagement ring. Then you heard Mr. Covington say his money was spent on an engagement ring. Folks, my money was spent on an engagement ring. And when I explain how my S Corp was set up, you'll understand that Kunstwerke maintained its own capital. My own earnings that I kept in the company, that's how it advanced credit. It was never these peoples money.

Well, shortly before this all happened, I say about six or seven months, my business had grown a good bit. Just before the events of this case I had six large mega mansions being built. And I was very well known in The Reserve. If you were to drive around The Reserve you would see my houses but you

would only find them out on the point lots where the property itself is usually worth over a million dollars before the house is even put on it. When my company got very big in 2005, just at the time the Gaby's house was really getting started, I felt it was necessary to send my current six clients a letter. Just reminding them what the business was, how it operated and to let them all know who they were. I had six different families. Most of them trusted me with just a handshake, without a contract. The few that I had a contract with was because their bank required it for construction funding, mortgage purposes.

I'd like to submit into evidence this letter that I wrote to all my clients, including the Gaby's, Covington's and all the other names you've heard here this week. It's a letter dated July 25, 2005. And in the back there's a picture of every house that was under construction at that time. Including probably the craziest of all, the Gaby house. And you're finally going to get to see it.

Plaintiff moves to introduce the exhibit.

THE COURT: Any objection, sir?

MR. SMITH: No, Your Honor.

THE COURT: Okay.

MR. SMITH: We don't object to its admission.
THE COURT: Okay, the same is admitted and introduced as Plaintiff's next exhibit.
(WHEREUPON, Plaintiff's Exhibit No. 11 was marked for identification and received into evidence.)
THE COURT: Yes, sir, you may publish it.
MR. KUNST: I would also like to mention another thing about that letter which segways into the Gaby's as we begin to talk about that project. In that letter I described everybody, the accounting system, how everything was built. How I was paying things in advance. And how important it was, my reputation, the financial matters and how that everybody trusted me at the time. I could not have had the houses that you see in that letter all under construction at the same time with site managers driving all over The Reserve representing Kunstwerke on just handshakes. There was $100,000 racing through my company a week.
At the point of construction of the Gaby's, where they were really roaring along, just about the time this exploded, it was $60,000 a week for the Gaby project alone. $10,000 a day. If somebody missed a day of payment, that's $10,000 worth shooting through the system that my company was

having to cover. The only reason I was able to charge as little as I was, for example, the Gaby project should have been also about $600,000, I charged them $96,000. I barely covered my cost. And one reason I was able to do it is you heard Tracy testified that she volunteered and worked with me, she wasn't paid. My elderly father, he wasn't paid. But he did all the bookkeeping. These hundreds of invoices that would come in everyday would come through his house in Simpsonville and he would process it and put it together and send it to us. And we made these progress billings that you see in our apartment in Greenville.
You've heard a lot of discussion about the Gaby contract. You see it already admitted into evidence. Well, folks, I wrote the Gaby contract. I know what the Gaby contract says. And what is strange about that is you heard Gene Covington say he wish he had a contract. Well, most people didn't. And for some reason in our last design meeting I had one with me. I don't know what even caused me to even take one. They're the only client who's ever signed a contract that didn't have a construction loan.
The Plaintiff – the Plaintiff moves to add the Gaby contract as an Exhibit.

THE COURT: Any objection, sir?
MR. SMITH: No objection. I would like to know for the record that the highlighting, that's not part of the original contract.
THE COURT: Do you want to redact the copy or a clean copy?
MR. SMITH: No, I'm fine with that.
THE COURT: All right, good enough. The same is admitted as the Plaintiff's next exhibit.
(WHEREUPON, Plaintiff's Exhibit No. 12 was marked for identification and received into evidence.)
MR. KUNST: For house as large as the Gaby's, this contract is pretty small. Not typical. The most significant line in it is the line that I wrote myself. And it item number six called Progress Payments. And it states, Owner, which would be the Gaby's, shall make progress payments to the contractor in the following manner. Due upon receipt as weekly billings seeking reimbursement are provided with adequate support.
Now, the other clients who didn't have contracts, it was the same process. They would get these same weekly billings and they would reimburse. The important thing was, because all this money was

going through the company, advancing credit to them, was that they reimburse upon receipt right away. Otherwise, I'd have to stop the project.
It was about January 2006, just before this all happened that I had what I've described and have described to my clients in emails, as cash crisis. My company had never been more profitable. The fees that were coming in for me for income were the best they'd ever been. There's plenty of capital in the company but I had the most credit extended that I ever had. And I had a lot of projects that were coming to completion like the Covington's. And normally when that happens is there's a lot of items that are still back in the system that needs to be billed for or old reconciled items that have to occur.
Well, it was in January that a few clients got a little slow. A few days late. And the Gaby's themselves, there was a 10 day period where I didn't hear anything. So, there was an extra week of Gaby activity going through the site. And the problem is construction trucks show up. Equipment is rented on the debit card. Other things, deliveries are paid by check. Everything that you've heard so far Mr. Loree described is based on a false premises. And that

false premises is that the Gaby's wired a certain amount of money into Kunstwerke checking account and that money sat there waiting to be disbursed. Things were paid based on my accounts, Kunstwerke accounts, when they were due or when Kunstwerke negotiated it. That's why we ended up with so many things unreimbursed for the Gaby's. Someone cannot just simply stop paying their account at a certain date without all this other construction costs coming through. It was a reimbursement contract. And the worst possible thing that could happen is for someone to stop abruptly as of a certain date and then refuse to pay anything else. I'm basically handcuffed at the site. The site should stop. There would have to be a reconciliation of the account.

During this January, also, it may have been the same week the Gaby's were late, is – my bank is Regions Bank or was in Greenville. They began to put a 10 day hold on deposits. That was a nightmare as well. Because now suddenly clients deposits coming in were held for 10 days and weren't available. Only a few were. I think the Gaby wire was available. But checks and such that clients paid with sat there. We had a diaster. And you've heard about checks bouncing. It's a terrible thing. It

should never happen. It was embarrassing. But the point is that checks weren't bouncing because client money was sitting there waiting to be disbursed and spent elsewhere. That's part of the slander. The checks bounced because Kunstwerke had loaned out to much money, had too much outstanding, needed to collect.

Any check that bounced, my account status was never a secret from anyone. I told people, including Mr. Gaby, about the cash crises. It was about this time that the Gaby relationship began to get a little strange. Mr. Gaby began to complain about the cost and the timing. They wanted to be in by the summer. They planned to use the house four weeks a year. And their first summer visit was going to be roughly in June. Well, all of my clients want to get in right away. All my clients complained about costs. The point being, for this kind of house to be constructed, there can't be a budget. I do estimates. But they're making decisions too as things evolve. And things cost what they cost. There's nothing in the contract about a timeline or a fixed budget. I could never agreed to something like that this open ended. This is the whole contract.

So, when you've heard testimony about it was

over budget or it took too long, there were no assurances. Mr. Gaby asked me if they could be done by May 1st. And there were emails back and forth in which I told him that I'll do my best, here's the status. There's a lot of communication in that regard. But at some point the costs were going along at 60,000 a week, as I said. Mr. Gaby contacted me and stated, Keep the rising cost under your hat and not tell Barb. Barb is–

MR. SMITH: Your Honor, I'm going to object here. This is blatant hearsay, not proven. Anyway, it's not admissible under the rules of evidence.

THE COURT: All right, I'm going to sustain the objection on hearsay grounds.

Mr. Kunst, you may proceed.

MR. KUNST: As you've seen from the emails there were concerns about the cost and there was concern about the timing. Part of the issue is my houses have to be finished a certain way because they have my name on them. If I were to have remained on the Gaby project it might have taken a few more months. And that was mostly the problem. One of the things that happened when Mr. Loree came aboard is they scaled it way back. And they finished it very differently. They basically just stuccoed the

outside real quick and did a much more simple version. So, the exterior isn't quite right.

But one of the reasons I only charged $96,000 was because it was another house in my portfolio. And the Gaby house was one of the last few that I was going to do for someone. I had already made arrangements to go back to building speculative houses only. And I already had one house under way that was spec only with an investor from Florida. His name was Thomas Hickey. He's one of gentlemen that you heard David Loree state that he talked to. And Kevin Goad say that – that David Loree had told him things about my Hickey project.

The architectural plans that I would make were very fluid. Because things were allowed to change. One of things that I did was unique is I'm known for making full scale models to look like the exact house as though people could move in. And sometimes even those models change. During construction I even sometimes have construction models that the site manager drives around with because they're some things you just can't translate in architectural plans. Sometimes I'll just hand a model to them and say you're just going to have to make it look like this and they would. Sitting over there –

If you care to show it to them.
MR. SMITH: Are you moving for this to be introduced into evidence?
MR. KUNST: I would just like to present it.
MR. SMITH: If Your Honor doesn't care I don't.
THE COURT: If you just want to use it as demonstrative tool that's fine with me.
MR. KUNST: Yes.
THE COURT: Yes, sir, that's fine.
MR. KUNST: That is actually a construction model of the Gaby house. That's the side that faces the water. It obviously doesn't have windows, it doesn't have all the detail a construction model -- the real model would have. That's the model my site manager would drive around with. That was Bronson Sheppard's model. They would -- if you saw one of my site managers back during that time, they usually had something like that sitting on the front seat. Sometimes they would have more than one. And that was almost more important than the drawings. Seven bedrooms, underground parking built into the hillside on this side. You don't even see the garage because it's underground. Underground theater. Kitchens on every level. Opens up to the water. The big play rooms, things underneath. It's not shaped like any

ordinary house even on the sketches. That's how unique my business was.

And it was not uncommon to have visitors to the houses just to see them. For example, I remember one time the building inspector of Pickens County made a special field trip just to look at my houses one time. And a little earlier in 2005 there was actually a time in which they stopped inspecting my houses like other ones because structurally they're just too unique and it didn't fit what was typical. So, they would tell Bronson to -- have Bronson send them the structural plans stamped. Because they couldn't really inspect the structure. Well, that's the house that David Loree arrived to finish.

And you heard about this meeting on February 16th that we had with Mr. Loree. You've heard from everybody there except from me and my father now. This meeting was called after a series of emails. The main purpose of the meeting was to bring the box of billings. And I'm going to tell you why that was significant. Out of all of these clients, of the ones that were listed in that letter, all those pictures, everybody received a weekly statement that Tracy mailed to them. Which had copies of every supplier and contractor who paid,

stapled a summary of everything attached. They were pretty thick. Every client got one. And the Gaby's were the only client not to have one mailed to them. And the reason was in our first meeting, the meeting that we signed this contract, Richard Gaby said he didn't want to bother with the paper work. He said keep our copies. I told him I would keep it in a box.

What I did was I emailed a cover sheet of the bill to Mr. Gaby with a request for the wire every week. Basically, Mr. Gaby wired for 70 weeks. Wires without really knowing exactly where it went. And the point was it never occurred to me that I couldn't be trusted. You know, all my clients -- I mean, it was never a question like could Scott or his company be trusted with this? There was never a problem. There was nothing different about my accounting records, about the way my company was managed. In February 2006, then in February 2005, 2004, 2003, 2002, the way I paid myself, the way I paid the subs, the way I had contracts set up with the supplying companies, it was all the same. It was into this environment that David Loree came.

One of the things that I wanted to get across in the meeting with David Loree was how that I needed to

get the two most recent statements reimbursed. That was critical. David Loree stated that he wanted to take over the payments of subcontractors and suppliers. That was a good thing ultimately. Because something that's very important that you need to understand is that this was a courtesy. Normally a builder would have a mark up on say a painters invoice or a lumber invoice from a supplier. There would be a little percentage like the handling cost or the builder's fee would be attached as a percentage.

All of these invoices that you've been hearing about from all these companies, from Systems Specialities, to Builders First Source, all we were doing was paying them on their behalf. And accounting for them and creating summaries so that they didn't have to do it themselves. There was no mark up. It cost me money. It cost my dad time. That's what makes it even that much more, I won't use the word evil, but folks, I was -- when a concrete truck would come and we would pay say $4,000 at the Gaby site, that payment came out of my own capital. I was basically loaning that money. And my clients trusted me. And I trusted that when I wrote that or the site manager wrote it or the site manager used

his debit card on my account, I trusted that the people would reimburse. Up until February 16th, 2006, no client had ever not reimbursed. Because every client up until that point, 5200 weeks, had a full support and could contact anybody, any of the suppliers listed in that progress billing if they had any doubt. I don't know if any ever did but everybody continued to trust me. There was nothing different about that day.

In Defendant's Exhibit 12 Mr. Loree read an email from Mr. Gaby to me. I later had him read my response. And I'm going to read it again. Not to be redundant but I want to state something about it.

I said, my challenge is this. The sheer volume of activity and payments made before billing you has resulted in two progress billings that I have not been reimbursed for. Everything under 2/16 billing of 60,000 as well as a subsequent 2/20 billing of 27,000 he had paid out. I have roughly 90,000 paid out. Then I go on later to state, It's just more difficult for me to pay the remaining when I don't know what becomes of the 90,000 outstanding.

That was the environment at that time. I had a client who basically said they were going to stop paying. They're subcontractors who are owed,

suppliers that are owed that I have to protect. There's also the possibility of liens. At some point if a client doesn't pay I may have to put a lien on the house to protect everybody. I have a legal obligation to do that. At this date on February 20th, 2006, it's just yet one more reminder that Mr. Gaby, and if he shared this with Mr. Loree, should have known my dilemma. That obviously wasn an account where they just put in money that I disbursed from. That would be considered a fiduciary account. And that's usually what happens in building. Usually there's what's called a construction account that funds are put into and the builder pays from that. And there's certain codes and laws based on that to make certain that the builder really spends it for the purposes that it's going.

All the way back to Dr. Tom's house, the one thing I insisted was I did not want to hold fiduciary deposits. That's why I was willing to take the risk to advance credit. I didn't want to have to be responsible for taking bank draws from mortgage loans, I didn't want to have to do any of that. All I said was I'm going to build your house like I use to do my spec houses. I'm to going use my same

accounts from the same companies that I've always used. I personally guaranteed everyone of them. And I'm going to just send you -- after a week I'm going to send you a stack of invoices and you reimburse me. That's what the Gaby's agreed to.

There were other emails at that time that I sent to Mr. Gaby describing my cash crises and reminding him that it was not a fiduciary type deposit account, that it was a credit account. And that I had to be reimbursed. One of the benefits of having a spreadsheet based accounting system, if anyone is familiar with that, is that you can sort data and move it places and you can summarize things as you need them. I've pointed often to the big blue binder there. Those records have always existed. They're accounting records. Accounting records always exist at the point that the transaction occurs. Now, they accumulate over time but the accounting records are objective, they're knowable. One can state that they didn't exist but they exist. That's how I accounted for things. The progress billing could not have been prepared but for the spreadsheets that produce this data.

One of things that was my most important, I'd say data point to look at, that's what I called my

funding deficit. I could actually determine on a given day, if I wanted to, how much cost Kunstwerke had incurred more than a client had actually reimbursed. Wasn't hard to do. Now, I use the word incurred instead of paid. The reason is when invoices would come in from big suppliers, they were bought on account. So, there wasn't a check for every little invoice. Some accounts, if timing was bad and we had a cash crisis, yes, like you heard David Loree testified, there could be an account that was a month or two months past due. I had certain vendors that let that happen because I gave them so much business. That didn't mean that something arra had occurred with the client money, that was just my own cash flows.

Well, on the date that the Gaby's stopped paying and we had this meeting on February 16th, every other client stopped paying. Including the Covington's. There was one client named Coco, according to my records, who paid just a little later. I don't know if he knew what was going on but his last payment was on February the 24th. Way back in 2008, in this case and all the other related cases, the big blue binder was printed out and placed into evidence. It's been available all this time. It was available back at

this February 16th meeting.

Well, one of the summaries that I prepared when I filed that, I asked it to tell me, how much did each client owe as of that date? And this sheet lists every client. It showed me that on that date that the Gaby's stopped paying, that there was $102,405 funding deficit. Not cash. That's just the cost that my company had incurred more than they had paid. It's a large number in the millions. But the total payment at that date that the Gaby's had made was this amount and the total invoices from everybody else was this amount. And when you cross them together, it's 102,405. That's always been in the records. That's always been auditable. Anybody could have done an audit. My old career was as an auditor. That would be about a 30 day audit if you were to do all the clients and do the full set of books. It wouldn't be hard to do. I have a team of two. I use to budget those things when I did audits.

The only testimony you've heard from Mr. Loree has been about invoices paid and cash. Calling people. No accounting records but just calling to see if people have paid or not. Well, if you were to stop paying at any one day, you would have found the same results that Mr. Loree found in February of

2006, you would have found those same results in 2005, nothing different. Didn't mean that money was being abused. Or I think as Mr. Gaby put it, you're robbing Peter to pay Paul. It's more -- I would say it's more like accusing me of being a thief because I didn't loan you enough.

Also, when I printed out the big binder for this expert witness that was supposed to be here--

MR. SMITH: Objection --

Hold on.

Objection, Your Honor. He was perfectly free to call Mr. Larkin. We don't need him for a defamation case. We have heard him say this over and over and over and over again. He has subpoena power. I would ask the Court to instruct him to stop this.

THE COURT: All right. I sustain.

Characterizes it as oppose to -- I just want to make sure it's not incumbent upon any party, whether it's Mr.~Kunst or Mr. Loree to call any particular witness. They all have the discretion to call those witnesses which they think appropriate, important and necessary to advance their positions.

So, go ahead, Mr.~Kunst.

MR. KUNST: Plaintiff moves to enter Exhibit 13 into evidence.

THE COURT: Objection, sir?

MR. SMITH: Yes, Your Honor. We object that it's hearsay. It's not the best evidence and...

THE COURT: Have you authenticated it? That is, have you described what it is?

MR. KUNST: Yes, sir, Your Honor. It is the first four pages of the voluminous ledger that's already been in evidence.

THE COURT: Who prepared that?

MR. KUNST: It's Kunstwerke accounting records prepared my Kunstwerke and myself.

THE COURT: All right, I'll respectfully overrule your objection. He's authenticated as his own work and described what it is. I'll allow it in as the next Plaintiff's Exhibit.

(WHEREUPON, Plaintiff's Exhibit No. 13 was marked for identification and received into evidence.)

MR. SMITH: Your Honor, just to be clear, are you admitting as a summary exhibit or as?

THE COURT: I'm admitting it for what it's worth without characterization.

MR. SMITH: Thank you, Your Honor.

THE COURT: You may proceed, Mr. Kunst.

MR. KUNST: In this exhibit that you'll also see

in evidence, is a summary that flows through the ledgers and reconciles to Kunstwerke's bank statements. A full summary of all my own personal draws from the company. Which would basically be m income. Kunstwerke was a S Corp. Which meant that any income from the company flowed directly to my ta returns. I paid taxes based on the income of the whole company. That income could become my prope basically if I retained it in the corporation to use for things like paying out. It's sort of a version of retained capital. Records exists that show every personal draw and how they're accounted for. Record exists that show what my personal draws have been. In 2004 this could be considered the cash I took out. 76,986. In 2005 it was a 89,596. And in 2006 it was 13,757.

When this crisis hit I sold a house. Tracy actually had a house when she -- started building when she was 25 with her own income. She lost that eventually too throughout all of this. But I got a loan from Tracy's father. And the money I got from selling the house on Caesars Head, I actually put that in the company. In January, February 2006 during the cash crisis to cover things. Not to cover up, to cover what was all lost. Because on this

front sheet, the funding deficit at that date, was $539,000 from all the clients involved. That was money lost. That was money due to be paid to Kunstwerke. Not the other way around.

You heard about the engagement ring and things like that. Kunstwerke was my only source of income. So, when purchases would be needed for something big like the event in September of – oh boy, I'm probably going to be in trouble.

MS. HILTON: 2005.

MR. KUNST: 2005. I had to buy an engagement ring from Haywood Mall. I had to withdraw money from the company to do that. It didn't mean I was taking some client's money. And there's no expert that will be here to say that. Because I'm entitled to withdraw my own income. For example, at the time that they mentioned this engagement ring, I could quickly look at my draw schedule and say that I had accumulated over $100,000 that I could take out if I wanted. It wasn't someone else's cash, it wasn't a fiduciary trust account.

One thing that's never been addressed in this case or any other cases are how I made my income in the company. And that is from the little fees I charged. I talked about the 48,000 to the

Covington's and the 96,000 to the Gaby's. Well, everyone client would pay a little fee. Some 4000 a month, some as high as 6000 a month. Well, it's all in the ledger. And each year the fees would come out to be about 200,000 or so. A lot of work, a lot of houses. Well, the corporate expenses would come out of that. And after the corporate expenses come out of that, that would be what's available for my draw. The client money was accounted for completely different. These were separate autonomous accounts within the ledger that rolled up through these spreadsheets to this front page that tell me that had no bearing on these. So, it's deceptive for anyone to tell you that money was taken from these clients and spent on personal things. It not only didn't happen, it was impossible.

Mr. Loree stated he was surprised they were just copies that he got at that February 16th meeting. What I'm showing you is an example of actual invoices that would come into my father's desk in Simpsonville. Some would even have construction dirt on them.

Plaintiff moves for Exhibit 14.

THE COURT: Okay.

Any objection, sir?

MR. SMITH: Yes, Your Honor. I was asking if what he was intending to use those for. If they're just to show that they're invoices, we don't object to admission. But testify to content of – I mean, of the invoice that as it relates to the project, then we would like to have the contractor testify.

THE COURT: What's the foundation?

MR. KUNST: An example, I won't testify to content.

THE COURT: Okay. You comfortable with that, sir?

MR. SMITH: Yes, Your Honor.

THE COURT: All right, then I'll allow it in as next Plaintiff's Exhibit.

(WHEREUPON, Plaintiff's Exhibit No. 14 was marked for identification and received into evidence.)

MR. KUNST: What would occur is my father would photo copy these and then they would get part of the progress billings. And then one copy of the progress billing would get mailed to the client, one would get mailed to the site manager and I would keep one. Well, why this is significant is my father would just throw these in a box, kind of like a shoe box. And for a big project it could really build up. Well, at

the time that everybody stopped paying and all this litigation began where we had to try to collect it through litigation, eventually, those records were taken and looked at by whoever. I'm here to testify that I have always been in possession of the original Gaby documents. The original Gaby invoices from suppliers. It's the only one that stopped paying that I'm still in possession of. No one else has touched them but me, Tracy, my father and whoever sent them.

One of the reasons that this exploded so bad was not just that 539,000 was outstanding, was that I had to deal with letters that were going out from attorneys. You heard Mr. Loree testify or read a part of a letter that said I had stiffed subs. And taken money from them. Well, that's part of the slander is that it was represented that money intended for the subcontractors had been taken by me because it was missing. That's why that term missing was so important. These subcontractors had a right to file liens on the property. But the contract was misrepresented to the point that they were told if they filed liens, that there were laws and they would come after them. And the letters specifically referenced codes, legal codes. That made my job that

much harder.

You heard Mr. Loree testify and show documents regarding some cabinet deposits. And I think there was a reference to some window deposits earlier in Kevin Goad's testimony. These were two large items. They're roughly in the $80,000 range. They were deposits that Kunstwerke had already collected but not paid out to the windows or the door people. Or the cabinet people. At the time that the Gaby's stopped paying, and my ledger showed $102,000 in the hole, basically. I was not going to pay out those amounts until the Gaby account was reconciled. My reconciliation would have the Gaby account going to zero. What needed to happen at that time is the cabinets should not be delivered, the windows should not be delivered, the project needed to stop and needed to be reconciled and all the accounts settled. What they wanted to do is not miss a day of construction because they had to get it done in a hurry. And they misrepresented the contract in so doing.

I had no other option but to withhold certain things to reconcile against what they owed. It's a way of netting out. If I showed there were things that I paid out already, then the idea would be to

refund them, the window and the cabinets to pay directly. That's the leverage I had by extending credit. That's how the contract was set up. The last thing I was going to do is do what Richard Gaby asked in an email that he read to you earlier and that was, pay the window deposit and pay the cabinet deposit. Because that would have meant extending another $180,000 or whatever it was in credit. With absolutely no assurances that that other large amount would ever be reimbursed. And he already told me it wouldn't be.

Well, you've heard some reference to a lawsuit by the Gaby's. I had never been sued before. And as I said in my opening, I had never been involved in any kind of legal matter whatsoever. The Gaby's sued me. In, I believe, it was May of 2006. I responded to the lawsuit, I couldn't find a lawyer. I couldn't afford a lawyer. We were broke. Everything had completely collapsed by then. So, what I did was I sent a letter to Sandy Stern, the attorney at the time for the Gaby's, explaining the whole situation. I was – I have to admit I was a bit incredulous about the lawsuit. So, I sent this letter.

Plaintiff moves to introduce Exhibit 15 into evidence.

THE COURT: Any objection, sir?

MR. SMITH: No objection.

THE COURT: Without objection the same is admitted into evidence.

(WHEREUPON, Plaintiff's Exhibit No. 15 was marked for identification and received into evidence.)

MR. KUNST: I'd never been sued before. Sometimes I guess a lawsuit can be more scary depending on who is suing you. If someone like the Gaby's are suing you it's going to be pretty darn scary. Particularly considering their resources. We were scared out of our minds. I wasn't doing well at the time. As this all happened but I'm not going to use that as an excuse. I sent this letter and in it I summarize the whole situation. Reminded them, yet again, of the unreimbursed invoices.

In the next to last paragraph I state, If Rick Gaby had simply paid all progress billings as agreed, there would be little more to discuss. Please forward as soon as possible a listing of all those items that the Gaby's have reportedly paid twice and I will then adjust the final 4106 progress billing accordingly and provide a final balance owed by Gaby with full cash support within three business days of

receipt.

This obviously is not an answer to a lawsuit. There's a more formal way that you answer. We eventually got an attorney to help us answer in a more formal way but we were late. We were deemed a few days late. What occurs if you're late on a lawsuit is that they can petition for what's called a default. Which means you've already answered. You basically agree to their lawsuit, the fight's over.

Well, the Gaby's never responded to this letter. There was no interaction with the accounting records. There was no litigation where I brought my records and they brought their's and we came to some new balance. The Gaby's forced a default on me. I hired – we didn't have the money, really, but we were able to get a law firm named–

MR. SMITH: Your Honor.

THE COURT: Yes, sir.

MR. SMITH: I have to object. And I really hate to do this, I'm trying to let him tell his story. The statement the Gaby's forced the default on him is not an accurate statement. And he's testifying to something that he has no first handle knowledge about.

THE COURT: Let me say this, I don't take the

position as to whether he's mischaracterizing it or not. I know that there is another way to characterize it. And I'm sure in cross-examination you can flesh all of that out.

MR. SMITH: I'll do my best, Your Honor.

THE COURT: Yes, sir. I respectfully overrule the objection.

You may continue, Mr. Kunst.

MR. KUNST: Jim Carpentar, a law firm in Greenville, he agreed to represent us. He prepared a counterclaim to the Gaby lawsuit. He prepared an answer. Kunstwerke counterclaim to the Gaby lawsuit was larger than their claim. We fought to remove the default so that the case could be litigated like the Covington case and all the other cases were. Where the clients ended up paying money. The Gaby's challenged the default all the way to the State Supreme Court. I lost. The Gaby's then were granted what's called a default damages hearing. What that hearing is is it occurs in a courtroom like this without a jury. And me and Kunstwerke show up. Basically, already at fault for whatever the claim stated. We were not permitted to introduce any evidence, any accounting records. Anything that would contradict what the Gaby's said. The Gaby's

did not testify. Only David Loree testified on the Gaby's behalf.

You have heard very often the statement that the support for the $400,000 missing Gaby amount or whatever, stolen, embezzled, whatever they use. You have heard that their truth defense is based on a judgment. That there's a judgment against me by court of law. That judgment is a default judgment. It's a judgment I could not contest. In that hearing David Loree submitted what was called the Gaby Damages Computation. It's the document we saw earlier that totals to $353,993. What's significant about this document is it's not a reconciliation of the Gaby account. It is just a series of damages that they believe they have. There is no corresponding column for everything they had not paid. There's no corresponding column for any kind of reconciliation. There were items introduced there that were blatantly wrong but I could not contest them.

At any time during the hearing in which I would try to introduce evidence that might contradict what was in this computation, it was objected to. There has been no criminal finding on any code whatsoever. This was a civil default damages that was

uncontested. If that $353.00 number that totaled on that computation were correct, if I had actually taken that money from the Gaby's, it's very likely that I would be sitting in jail. And as I stated earlier, I've never had more than a traffic ticket.

One of the things that has upset Tracy and I the most was that the Gaby's did not give us a chance to fight. They would have you believe that there's is the only account that money was taken from because in all the other instances that I listed that totaled that 539, everyone of those clients were sued. Everyone of those clients settled in Kunstwerke's favor because money was owed. Now, Eugene Covington's case, as you heard his testimony, we only collected 25,000. That's pennies on the dollar. But we knew at that point that we wouldn't collect 10 percent and I just needed the evidence for you. I wanted to be able to stand here nine – sit here nine years later and say the Gaby's were the only people that we could not collect from. It was because of this default damages. Our counterclaims were dismissed.

One thing that I've done, and I would hope y'all would do the same if you're ever defamed, I have not been quiet about it. When this was happening, after

it happened, I have been as vocal as I could possibly be. And I haven't snuck around construction sites saying that somebody stole money or did this stuff without confronting them first, either. I have put things in writing and I published it.

THE COURT: Ladies and gentlemen, I ask you, any of need to take a break? By show of hands, anybody? Okay. All right. Let's take a short break, we'll come back on the record. Please don't discuss the case.

(WHEREUPON, the jury left open court at approximately 2:37 p.m.)

THE BAILIFF: Jury secured, Your Honor.

THE COURT: Okay. Thank you.

The clerk handed me a note that said some jurors were nodding off. Which I noted as well. The message that you should take from that is you may not be resonating with all the jurors right now. You need to pick up your pace and you need to be more surgical, okay?

MR. KUNST: Okay.

THE COURT: And I'm saying that just as an objective observation of them nodding off while you're talking to them, okay.

All right. Good enough, we'll come back in in

about 5, 10 minutes when the jury is ready. Thank you.

(WHEREUPON, a short break was taken.)

THE COURT: Okay, ready for the jury?

All right, bring them in, please.

(WHEREUPON, the jury came into open court at approximately 2:55 p.m.)

THE COURT: Okay, Mr. Kunst, you may resume your testimony, sir.

MR. KUNST: The Plaintiff moves to introduce Exhibit 16.

MR. SMITH: No objection.

THE COURT: All right, without objection the same is admitted into evidence.

(WHEREUPON, Plaintiff's Exhibit No. 16 was marked for identification and received into evidence.)

MR. KUNST: Folks, as I said yesterday, David Loree never confronted me with anything he said. I didn't know any specifics of the allegations. I had to find it out from witnesses myself. Some of those affidavits weren't prepared until as late as 2007. The first document I ever received to indicate to me what was wrong, what amount was -- whatever missing, their damages, was that damages computation from the

default hearing. David Loree never sent me anything else.

So, when we arrived, Tracy and I, and the in Kunstwerke's attorney in the default damages hearing, I was desperate to get that piece of paper. Because that would be the first time that David Loree would testify under oath as to what went wrong and have to provide numbers for it. Within a week of getting that sheet of paper, I took it, took the real accounting records to it and I sent it out to the public and I massed mailed it to as many people as possible. And I'm telling you under oath right now that I did that. With no fear.

I wrote a letter, it's dated April 12th, 2007. It explains the whole default fight. How we fought it. It takes the actual Gaby damages computation, and I was being very colorful, I put a letter beside every item and explained it to the public. Then I created what I thought would be the correct Gaby damages computation, which would be zero. And I also included invoices, progress billings, they never paid. And I also sent to the public detailed as to why everyone I felt was wrong. Well, another reason this was so important is there were a lot of subcontractors and suppliers that never got paid.

And as of this very date there are still some that have not gotten paid. And one thing that I did, as I was sending out these things to the public, I gave my word to the subcontractors who were left high and dry, if any of them wanted to sue me they could. I would not contest the judgment. I have several judgments against me from companies like Jennings Builder Supply in Brevard, North Carolina. They were my biggest supplier and I had the largest outstanding balance at the time. I owed them $175,000, personally. Because I personally guaranteed the account. Every year I give them an update and send them an email and give them my word that they will get paid.

This week we're pretty much at the end of the line as far as that ever occurring. But I needed to correct the record because no one is going to do it for us. If we sat back and did nothing, they were going to assume it was all true. And when I say they, I mean the public. Because you don't know who did not hear. If Bronson Sheppard the site manager knew, he wasn't going to keep it a secret. He was going to tell other people and it was going to explode and it did. It obviously did. So, I had an obligation to folks to give my side. And I've done

that repeatedly.

Mr. Loree testified a short while ago about a black binder. He thought it was accounting records when I was referencing the actual accounting records. That was something else I did. I did that even in the default damages hearing. I sent out 50 large black binders with copies of Gaby invoices and the whole story as I felt it was. I have had no fear of telling people what happened. And I continue to do that. And I will continue.

One of the items on here that I'd like to share with you, I'm almost done, is what I think is the most outrageous. David Loree testified in the damages hearing about one of the line items which is called CMC Asphalt. You'll see it in the damages computation, $7,100. He claimed that the Gaby's were damaged for $7,100. I believe that this is the dummy invoice. I believe that that was placed here for that purpose. What happened was Bronson, the site manager at the Gaby project, said that the driveway was very steep. And when it would rain it would be hard to get up and down. So, we did a early paving, asphalt paving so that trucks can get down. It wouldn't be the final coat but we had to pay it. It was about $7,100. Bronson sent in to my father the

invoice like the site managers did every week. He sent in an invoice that said Triple N Paving. A copy of it is in here. Bronson wrote a check at the site for it. My site managers wrote checks. They even had debit cards. It was Triple N Paving.

Well, $7,100 was a decent amount of money. And Bronson called me and said we had the driveway paved today and I wrote a check for $7,100. A few days after that it was time for me to prepare a Gaby progress billing. I put in the progress billing, CMC asphalt. There's a company that was doing hydro seeding and other curb work. I thought Bronson told me that it was CMC that got the asphalt pavers. Well, I had put in a budget number. We never used Triple N Paving. I shouldn't call it a budget number, it's kind of like a sub ledger category. Every person that did work on the Gaby site and the other project has their own little ledger in that big binder. Well, I had to put something, he didn't tell me who it was, so I just put in CMC Asphalt little A. Check was still written, everything was fine.

In this hearing, Mr. Loree and the attorney, went through this whole process where they told the Judge that I had created a dummy company named CMC Asphalt that didn't exist. They went through this

entire ruse in which they stated that they contacted these licensing agents, did you find that CMC Asphalt? And Loree would say, No. But in reality everybody knew all along it was Triple N. And that within weeks, once I got the invoice and I changed the line item and printed the Triple N Paving account, there was no money taken from the Gaby's. The point was it was a default judgment hearing, they knew it was a default judgment hearing and they knew that I could not submit any evidence to contradict them and say, here is the check, here is the actual invoice. The Gaby's aren't due that $7,100. That ruse occurred, that's part of the 400,000 judgment against me. Along with other items. That's why the default damages was so bad. So, when you hear that there was a $400,000 Gaby damages against me, in my opinion, in my own testimony, it's cowardice. They could have litigated their account like everyone else did.

Now, this is so upsetting for Tracy and I. We were discussing on the way over here, this is terrible. You know, I meant to say in the opening that I know jury duty is awful but you don't know, it's harder for me. We do not have lawyer personalities. This is not – you can see this is

not what I do. We never wanted to do any of this. I could not afford to sue these people. I could not afford to make this right. Everything that's said here upsets us, you just don't see it. Those pews are empty. You don't see family members here. Because we don't allow it. Because I have sat through nine years of hearings and lawsuits. Where mud has been slung at me. Where dirty tricks like the Triple N Paving thing. And family members say they want to come here and support us. We say, No. We tell them that Tracy and I have gotten thick skinned to all this. We really haven't, we just tell them that for their sake.

I was eight years younger when this began. There's a reason why this is the last lawsuit. It is so difficult to learn how to do this. Particularly, when it's not your talent, your personalty. The – you heard in their opening statement regarding the 20 lawsuits. You heard something incorrect. I have to correct it. Mr. Smith stated that I lost all 20 lawsuits. Quite the opposite's true. It has been quite a battle. There was not a lawsuit that we desperately did not want to file. But we needed to until this week. Because I would not have been able to tell you that Gene Covington settled and that

there was no theft from his project. I won't be able to show you what I'm about to show you with these other clients that settled and paid. I wouldn't be able to demonstrate to you that the Gaby account was the only one that wasn't litigated.

When this started hitting everybody was spreading rumors. We knew where it started but we needed facts. And we went to people and we told them, you know, you need to pay your account. Where did you hear these rumors? Some people repeated them, they shouldn't have. We would have settled any lawsuit if anybody would have told us the source and would have agreed to an independent audit of their account. We said that repeatedly. In many cases we did settle for just information that we're using today.

Every Kunstwerke, which is an S Corp, lawsuit that was filed had to be done by an attorney. I couldn't represent the corporation. I had to agree then that the proceeds that whatever came from those lawsuits would go toward attorneys fees. In the end Kunstwerke collected very little. So, I was still responsible, personally, for all that debt. I'll say it again, there was not one corporate lawsuit that Kunstwerke filed that did not settle in Kunstwerke's

favor. That's not what you heard earlier. Secondly, many of the defamation lawsuits were dismissed because there wasn't enough evidence. The people only heard it secondhand, perhaps. There wasn't evidence like this case. But we got information. And it's called discovery.

MR. SMITH: Your Honor, I truly hate to do this but we have gone so far into argument, away from evidence, that I'm compelled to stand up and object.

THE COURT: Okay. All right. I'm going to respectfully deny your objection or overrule the objection. I'll allow Mr.~Kunst to continue testifying.

MR. KUNST: Plaintiff moves to introduce Exhibit 17.

THE COURT: Any objection?

MR. SMITH: No objection, Your Honor.

THE COURT: Okay, without objection the same is admitted into evidence as Plaintiff's Exhibit 17.

(WHEREUPON, Plaintiff's Exhibit No. 17 was marked for identification and received into evidence.)

MR. KUNST: It seems almost flippant to introduce these exhibits because it's just a stack of paper. But it took a long time to win some of these.

It almost seem anticlimactic to introduce them. Tracy testified about a couple named Debaco that we visited in Atlanta a couple of times. One of the reasons we visited them twice was that they had heard things and we begged them to tell us who. They also owed a tremendous amount of money. After the Covington's they owed the second most amount. They continued to refuse to pay. We continued on the project longer than anybody else's project even though they owed that money. Under the assumption that perhaps they may pay. They ultimately did. They didn't agree to independent audit, we had to sue. We collected a judgment. It's a confession judgment. It just states that they admit they didn't pay all their bills and they're agreeing to pay the Kunstwerke attorney going forward. There was no money taken from their project. Anymore than the Covington's.

Plaintiff moves to introduce Exhibit 18 into evidence.

THE COURT: Any objection, sir?

MR. SMITH: No objection, Your Honor.

THE COURT: All right, without objection the same is admitted as Plaintiff's Exhibit 18.

(WHEREUPON, Plaintiff's Exhibit No. 18 was marked for identification and received into evidence.)

MR. KUNST: If you recall in Kevin Goad's affidavit he named four clients that David Loree alleged that money was taken from. He alleged Parham, Coco, Covington and Hickey. You've heard from Covington today. This is Coco. You also heard Mr. Smith say that I lost all of my defamation cases, that's not true. This was a settlement of the defamation and corporate case together. This happened mid-trial of a defamation case just like this. Mr. Coco had repeated many of the things that David Loree had told him. It went half way through trial. This is a judgment --

MR. SMITH: Your Honor, I have to object again. I'm really sorry about this but he's -- now he's saying what I said, he's not he -- he's misrepresenting what I said to the jury. I never said that he lost all 20 of those cases.

MR. KUNST: Check the record, Your Honor.

MR. SMITH: We can.

THE COURT: The jury heard everything that's been submitted on the record.

MR. SMITH: I just want it on the record.

THE COURT: I understand that. The jury remembers what was said and what was not. And I'll leave it in their good discretion and their memories to determine--

MR. SMITH: Thank you.

THE COURT: Who's correct.

Go ahead.

MR. KUNST: One that I don't have, perhaps I should have got it for today, that's not in evidence. And that is an attorney who died before the settlement occurred. It was Mike Parham. He was an attorney in Greenville, he had a auto accident and died. He passed away at about the sixth year of his lawsuit, Kunstwerke lawsuit again him. He was a client of mine as well. He was a friend of Gene Covington's, who was sitting here. Both Gene Covington and Mike Parham's case were outstanding f six years. Parham's case was settled. There's court record that would state that. I can testify that it was about $15,000 that was paid.

There was also another one mentioned in Kevin Goad's affidavit named Hickey. This one's unique. And I'll be as quick as I can. That was my Florida investor. That was the project -- that was the project that was supposed to get me back into spec

only. Actually a good thing, I wouldn't have to deal with clients again. But David Loree, according to the affidavit that Kevin Goad submitted, spoke to this investor in Florida. I was part owner of the property. I lost that. It's a long story. Nonetheless, I had to sue Mr. Hickey as well, that case settled.

There were other ancillary cases in this 20 but there was not a case that was filed that didn't point to this one. This kind of thing -- when there is an explosion this massive in a person's life and their business, you have to respond in the same way and get everybody out in the open and force it to the top. And it will float to the top. It will end up with one case.

One of things that's upsetting for us, Tracy and I, is the mud slung in these cases. Because I've never had my character questioned until February 2006. The hard part of building these houses, folks, is the building and design of the house. They're complicated and a lot of risk. The financing, this voice stuff going back and forth, that was the least complicated. It ran itself for all these years. I never had to worry. As long as they reimbursed. My focus, Bronson's focus,

everybody's focus was getting a house that complicated done. And time and time again for 16 houses, there were never financial issues.

And one issue I never had is tax issues. One of the mud slinging's that occurs to me in every case, when we get to this point, is introduction of tax evidence. I have enormous tax liens on me. With the IRS and with the South Carolina Department of Revenue. The explosion created a tax explosion. And I will explain it as quickly as I can. And I have to explain it. I don't have a choice. At the time that this occurred, it was early in 2006. The income that flowed through from the fees was only around the 20 or $30,000 mart at that point. I was confronted with a $500,000 that would never be collected. That was more money than I had earned in the last six years combined. That's a lost. That would eventually be a loss.

I know I was a CPA, I'm not a very good tax expert, I know a little bit. My 2006 tax return was going to be very complicated. I believe it was in 2006 also that my corporation was dissolved. I -- the narrative -- I'm going to have to put a letter in evidence in a minute but part of the narrative is that I met with a young lady from the South Carolina

Department of Revenue to try to work out what it would be. I gave her my expense side -- I'm sorry, strike that. I gave her my revenue side but I gave her no expense documentation. It wasn't an audit, we were working together. She called and asked for certain things. We worked through it. There's correspondence that I'll introduce into evidence and I ask you to read it. It explains everything. Better than what you're going to hear in a short while.

She got back with me, claims that she didn't get certain records, she didn't get my expense records. So, what the South Carolina Department of Revenue did was take all that money that came into my company from all these fees and had no expense income against that they imputed a large income number like four million dollar income on here. And as I stated earlier, I never made more than, I guess, it was 80 for that one year. So, they placed on me a lien for over a million dollars in taxes, that's not correct. It needs fixed. But I can tell you folks as I'm sitting here, the tax liens are not the biggest concern I have. They're going to get fixed. It's going to be expensive to fix them. The federal government didn't have a 2000 tax return either, they

copied what the state did. The state gave them the same information. So I have federal tax liens.

Well, I attempted one fix in 2011. At that point, my losses for 2006 were minus 182,000. So, I went ahead and filed what's called amended returns. Going all the way back to 2003. You can do that. I have to file for the S Corp Kunstwerke and for me personally. I filed all those returns. And then when I got to 2006 with a minus 182 loss, you're able to carry that all the way back. Well, I have the documentation and letters. I was applying the carry back loss incorrectly. And so they denied that. I'm not really sure what occurs at this point. I have to -- I've gone to a tax law firm. It's going to cost over $10,000 to fix everything. But it will be fixed. There's no tax invasion. My income numbers have been scrutinized by courts of law for nine years. These records are available to the IRS and the South Carolina Department of Revenue. I have -- it is strictly a bookkeeping error, it will be fixed.

Another problem is this, in Gene Covington's case, there was a series of time in which Gene Covington still owed for some labor on his site. When I described that roof of the Covington's house that was wavy, with the handmade tiles from Provence

I had to hire people to do it that were very good at what they did. And I actually withheld wages for them. So, I was an employer. So, I had to file taxes for them. There is a time that I was, I could use their word, I was stiffed by the Covington's for $75,000 worth of labor that I paid. I still owe withholding for that to this date to South Carolina. You will hear about that.

In all of these instances, and maybe, perhaps, you had trouble with the IRS, it starts out at like a little 10,000, $12,000 lien. And then every year it seems to double with fees and such. To the point that I think even the South Carolina Department of Revenue one is 100,000 maybe for that. Withholding problem. The point is my records have always been clear. Have always been auditable. I'm not a tax cheat. I've certainly never made four million dollars in one year. And the numbers that you're going to hear would require that I made four million dollars in one year. There's a reason why, folks, that this is being brought up. But I have to bring it up first.

One of the mistakes I made sometime back was my elderly parents live in a house in Simpsonville. My dad has congestive heart failure. I happened to own

the house. It's the only house that I have. Not [indiscernible] I have a bicycle. Tracy's parents bought us a car. That's about it. We have fought these nine years for that house for my parents. I wish there was some way I could have transferred it to their names before this all hit. Nobody saw this coming. I could have protected them better and I feel bad about it. Well, with these tax liens against me, it doesn't seem that any of the other creditors are coming after me. It seems as though the tax liens take priority. And the IRS and the South Carolina Department of Revenue have never tak the house. Nobody else have taken the house. And for nine years I never had to declare bankruptcy because when this is over this week, I want to be able to pay everybody myself what they're owed. Not what some Judge says.

Sixty days before this trial I had to fly down from Pittsburgh and attend a hearing in Greenville. It was in the Gaby case, a default judgment. The -- David Loree's attorney, Elizabeth Wright, conducted the hearing before Judge Simmons in Greenville. Which is kind of like a collection judge, like the bankruptcy judge. And the documentation that I received said that we're trying to collect the

400,000 from the Gaby's. And we know he has a house. Sixty days before this trial. They never did anything about that for the first eight years. Until 60 days before this trial. I didn't have money to fly down here. We didn't have money to drive down here for this trial. But I came down and sat in a witness stand like this and told the judge, Judge it's going to be a trial in Pickens in so many days.

He said, Are you the Plaintiff?

I said, Yes.

He said, We'll continue this.

So, I'm guessing, based on the documents that I have at home, that I'm going to have to appear in Greenville some day in 30 days and Loree's attorney and the Gaby's attorney are going to try to take my parents house.

I need to just say a little short something about my life now. I try to do design work. I filed an affidavit about the taxes.

Plaintiff moves to introduce Exhibit 19.

MR. SMITH: No objection, Your Honor.

THE COURT: All right, without objection the same is admitted into evidence.

MR. SMITH: What number is that?

THE COURT REPORTER: Nineteen.

(WHEREUPON, Plaintiff's Exhibit No. 19 was marked for identification and received into evidence.)

MR. KUNST: I thought about introducing my amended tax returns and stuff into evidence but I don't think that I provided them and I don't want to [indiscernible] -- their person. I'm not sure how that's going to develop in the rest of this case. But there is a lot of other documentation, of course, between me and the South Carolina Department of Revenue and the IRS from resolving these issues. These issues have absolutely nothing to do with my alleged [indiscernible]. I was not destroyed in February 16th, 2006 because of tax issues. The tax issues arrived after that. The tax issues did not arrive because my bookings were incomplete. My book have always been there, always auditable. I would not have been destroyed if the public discovered that I had tax liens in 2006. Plaintiff's Exhibit 19 is a nice letter to a young lady named Kayenta Benson who caused that first large lien. And it explains how it all happened. I submitted it into evidence, it should be enough said but it won't be.

My life now. I can't explain to you how difficult this has been. We would go through times

in which we would just forget about the legal stuff. We went to -- we went to Pittsburgh to get away from it and to try to start over. For some of the years that we've been up there, I've worked at night as a security guard. In historic buildings, I like to work in old buildings. And I could write at night and I can do design work at night. I've actually designed some incredible buildings in the middle of the night. So, I've been working at night for several years. At some point, I hope, when this is all resolved, to get an investor or get enough capital to start another house. I can start tomorrow, build it myself and start from my bootstraps. Like I always have. I started from nothing, I can do it again. But not with this mess.

So, we haven't really been able to go on with our life with this mess. There is no excuse in civil law why a defamation case would take nine years. Because while the case is going, in a way I'm still defamed. Because while they're litigating they're able to say anything. So, the harm is that much better. I've been pretty good at writing at night and I've written a lot about what's happened. It's pretty stunning. There's a lot that's happened these nine years in the legal field as it relates to me.

The damages that we've suffered made under facing significant. But only because it's what we owe. And that there's taxation on damages.

I've suffered economic loss, obviously. The amount that we owe these contractors and suppliers that I've personally guaranteed and such, the amount that it's going to take to fix that is roughly $400,000. We also have legal debt with lawyers and other people that we borrowed from in order to survive. It's roughly $640,000. Net up any taxes from damages, the amount it's going to take in order to get me to where I can do a house again and continue is roughly 1.6 million dollars. These amounts are taxed. The total damages in this case, economic loss, is roughly 2.6 million dollars. Of which a small amount would come to us. But it's what's necessary. If the damages did not occur, then we're pretty much at the end.

In defamation cases like this there's also punitive damages which a jury is at their discretion. I'm not here to get rich, folks, I'm just here to pay people. I'm here to just get going again. So, I won't even recommend a number for that. Nothing further.

THE COURT: All right, Mr. Smith,

cross-examination, sir?

MR. SMITH: Yes, sir, Your Honor. Want me to get started?

THE COURT: Yeah, let's go ahead and get started.

Does anybody need to take a break right now or you're okay?

(There was no response.)

Okay, Mr. Smith, go ahead.

CROSS-EXAMINATION

BY MR. SMITH:

Q Mr. Kunst, I want to clear up something right away, are you testifying that Rick and Barbara Gaby are trying to take your parents house and start a foreclosure proceedings on that?

A Yes, I am.

Q So, it's not your bank who started foreclosure procedures?

A The bank started foreclosure proceedings and we were able to refinance it. I provided you the refinance document. It has been refinanced with a lower payment.

Q You keep saying you provided all these documents. If you --

A I did at the hearing that Beth Wright attended. She wanted any refinancing documents. We've refinanced

with Green Tree Financial in Colorado. We now have a mu lower payment. It's only about $800 --

Q So, there's nobody foreclosing on your house?

A -- it's more affordable than 1400 before, so the house isn't in foreclosure now.

Q Then it's not true that the Gaby's are trying to foreclose on your house?

A It is true. I attended a hearing conducted by Beth Wright, your co-counsel, in which I was to present whatever assets I had. And the top asset presented was it is believed that he has an asset in South Carolina, a house. And it gave the value of the house. He is a judge that collects. Why else did that hearing occur, Greg?

Q But my question was a little different. You said, The Gaby's are trying to throw my parents out of their house. And that's simply not the case. The bank was foreclosing on your house, we were not. And now you've refinanced your house. There's nobody trying to kick you out of your house, is there?

A So Greg, is the hearing canceled next month?

Q I get to ask the questions here.

A The foreclosure was complete. There was no foreclosure. We refinanced it with -- we tried to use the Affordable Housing Act, but I didn't qualify for some reason, so Green Tree refinanced it in-house with a lower

payment. My father contributes about half and Tracy does the other half from her income working at Edward Jones. So, that's how we've kept the house all these years. But it used to be 1400 a month. It was way too high, the interest rate was too high, so we got behind, particularly, during the Coco case.

And what happened was it went into foreclosure. And we got it out of foreclosure by refinancing. That was long -- we've been paying that $800 a month for a long time before Beth called that hearing. The mortgage company was not at the hearing. The IRS was not at the hearing. The South Carolina Department of Revenue was not at the hearing. There was one person at the hearing, your co-counsel, Beth Wright, representing Richard and Barbara Gaby.

Q The question was are you being thrown out of your house right now by Richard and Barbara Gaby?

A I live in an apartment in Pittsburgh, so.

Q I'll move on. I'll move on. What are you currently doing as an occupation?

A I stated I worked as a security guard.

Q Where do you work as a security guard?

A I work at the Union -- well, I quit for the case. The Union Trust building in Pittsburgh, it's an old historic landmark building. I can't think of the name of

the security company. It changed hands. It used to be Allied Barton and then it changed. It's an ideal job because I basically -- all I have to do is sit there and just be present. Occasionally, I do some rounds. So, I just sit there. I'm allowed to do whatever I want to do. I even take a box of models and glue stuff together.

Q And you've now quit that job?

A I quit it so we could come down here. I didn't have -- I don't get vacation in that kind of job.

Q Now, before you started building for yourself, you had never worked in the construction industry; is that correct?

A Define work in the construction industry.

Q Well, have you ever worked in the -- have you ever worked in the construction industry before you started building --

A My family has always -- we've always been good with our hands. We always build our own houses, if that's what you mean. I've always been involved in the construction industry. I've always built things. I've always worked with my hands. Is that your question?

Q No, it's not and that's a fair point. Let me try. I build furniture and stuff as well. I don't consider that I'm in the construction industry. Have you -- before you went out and built your first spec house

for a profit, had you ever worked in the construction industry as a means to support yourself?

A No.

Q Okay. Is it fair to say then that you have no experience in typical construction accounting methods?

A It's fair to say, yes. I never had to account for construction, yes.

Q Okay.

May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q Mr. Kunst, I've handed you a document from the South Carolina Board of Accountancy. Can you identify that document?

A I do.

Q Does that look to be a true and accurate copy of the letter you received from August 30th, 1999, from the South Carolina Board of Accountancy?

A I have a copy, yes.

MR. SMITH: Your Honor, we move for admission.

THE COURT: Any objection, sir?

MR. KUNST: No objection.

THE COURT: Without objection, the same is moved as Defendant's Exhibit. Hand it to the court reporter so she can mark it.

(WHEREUPON, Defendant's Exhibit No. 13 was marked for identification and received into evidence.)

BY MR. SMITH:

Q So, your license to practice accounting before in South Carolina was revoked; is that correct?

A It expired because I didn't -- I let it expire because I didn't continue my fees or continuing education. In fact, there's two more --

If you can, perhaps, find it, Tracy, to help explain it to him.

South Carolina Board of Accountancy states why it was revoked. They call it revoked, but it really is when you let your CE credits expire. This is at the point that I started building. I didn't need my CPA exam at that point.

Q So, this is not a notice of revoked -- revocation from the South Carolina Board of Accountancy, is that what your testimony is?

A My testimony is it's not a revocation for cause other than because of not continuing my CE credits. I have -- this has been used in every case. What I had to do back in 2007 is write the South Carolina Board of Accountancy and have them send a letter that says your certificate was revoked because of not continuing your

education and paying the fee. It's not for cause, like I was a bad accountant.

Q If you would give me a moment here. It says you didn't pay your fees, you didn't comply with your continuing education?

A Yes, sir.

Q That's correct?

A That's correct.

Q Okay. Now, is there another way to go about going inactive with the South Carolina Board of Accountancy other than just not paying anymore?

A I have no idea. I have no interest in ever going back. The reason I took accounting first is I wanted business experience. Accounting is not my thing. My brother got an accounting degree from Bob Jones as well. He said you need to get a business degree and worry about the architectural stuff later. So, I went and got a business degree. And being a CPA and working in New York and then here, it gave me a decent amount of income when I started my houses. It gave me more income than any other profession would. So, when it came time to build houses, I didn't care. I'm not going to be an accountant again. I promise you I won't be one.

Q So, you just stopped paying?

A Yes.

Q Okay. Is your company Kunstwerke still in existence?

A No, it was dissolved.

Q And how did you wind down your company?

A I think it exploded in 2006.

Q Well, sir, that's not technically possible, so you had to do something.

A It was – it was dissolved. It doesn't exist. It's not a business.

Q Did you wind it down or did you stop paying the fees this date and they dissolved it for you?

A It's semantics. I would have had the fees to pay.

Q It may be semantic, but – so, for your accounting license, you stopped paying the fees and it was revoked. For your business license, you stopped paying the fees and it was revoked. Is that fair? Now, you can quibble about the reason, I'm just asking if it's fair?

A Well, on the accountancy part, it's more of the continuing education. In order to be a CPA, you have to take two or three weeks a year of courses. And that's certainly not something I was going to do while I was building houses. I could have afforded the fee back then.

Q But you just let it lapse?

A Yes.

Q Since losing your license to practice accounting, have you ever represented yourself as a CPA?

A No.

Q You want to try that one more time?

A In order to represent yourself as a CPA, you have to – you're a public auditor. You're engaged in the practice of public auditing. Now, I often represent myself as a former CPA because I'm really proud. You know, the CPA certificate is hard to get. It's a three-day exam. I'm really proud that I was able to pass it. It was a great accomplishment in my life. But no, I don't practice accounting.

Q And you've never said in the course of this litigation that as a CPA, it took me a month to do this or a month to prepare that?

A I often refer to my CPA background, as I have to these folks today. But if you're imputing that I was somehow representing that I was still licensed, well, that's not what I was doing. That was obvious. Everybody knows that my licensed expired back in 1999.

Q I'm just asking if you've ever represented yourself as a CPA since your license was revoked?

A I don't believe so. There would be no occasion to do it.

Q Okay. Okay. When you were doing the spec

houses, you testified that you only had one checking account; is that correct?

A I've always had only one checking account.

Q And you've testified you had no prior experience with construction accounting; is that correct?

A That's correct. My construction accounting, the way I do things wouldn't fit the mold of traditional construction accounting.

Q I will agree with you on that. I think you've admitted this, but you did use the – and I would like a yes or no answer, then you can explain as much as you want. You used the corporate banking account for your company, Kunstwerke, to make personal purchases, correct

A That is correct. As personal draws.

Q Okay. And you admit you did purchase Tracy's engagement ring out of your corporate account?

A When you say corporate account, the checking account is just a checking account. Accounting is accounting –

Q Can you answer me yes or no and then explain? You admitted –

A Yes.

Q – that you bought Tracy's ring out of your corporate account, yes or no?

A Yes.

Q Okay. Now you can -- please explain anything you want.
A There seems to be some confusion about a checking account versus accounting. Disbursements come out of a checking account. Those disbursements are accounted for. They can be accounted for as electric bill. They can be accounted for as a personal draw. They can be accounted for as paying for some invoice to a company like Jennings. The point is, it's properly accounted for as a draw.
Q Okay. And we're going to talk about that. And when you told these folks there was no reason for us to talk about your tax returns, I think the IRS and the South Carolina Department of Revenue very much disagreed with you on how you took money out of your account.
A Is that a question?
Q No, it's a statement. Did you ever have an apartment in downtown Greenville?
A Yes. It was a studio apartment on Main Street. I used to do my model making and my corporate activity in my house on Caesars Head and we moved down to Greenville and set up a studio. It was actually a large studio. It had several office rooms. It was above Sticky Fingers.
Q And you paid for your apartment out of your corporate account?

A Yes.
Q And you had a reserved parking spot with that apartment, correct?
A Yes.
Q And you paid for your parking spot in downtown Greenville out of your -- the funds in your corporate checking account?
A Yes. The parking spot was occupied by the car that Kunstwerke had leased for me.
Q Right, the BMW SUV that you also paid for out of the corporate accounts, correct?
A Yes, because it was a Kunstwerke lease.
Q Okay. So far we've got engagement rings, BMWs, and a studio in downtown that you're paying for out of your corporate account?
A It is a corporate lease for the vehicle. Companies lease vehicles all the time. The vehicle traveled 100 miles a day on business --
Q Okay. I'm just asking.
A -- to The Reserve, to Atlanta.
Q Did you also rent furniture for your apartment in Greenville?
A Rent furniture? It was a printer we leased. There was a lot of office furniture in there. I can't answer. It would just be speculation.

Q Well, let me help you then.
May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q I'm going to hand you a copy of one of your deposition transcripts. We have the sealed copy here. I think I've referred to it many times. Can you turn to -- and my apologies, take me just one second. Page 190, starting at Line 11.
A Yes, I'm there.
Q Does that help refresh your recollection about whether you were renting furniture for your apartment through with company funds?
A Yes. It describes a seating arrangement around the easel and pictures. What's your question?
Q Well, I'm just asking if you rented -- we figured out that you have an engagement ring, an apartment, BMW, a parking space. And I'm now asking if you also got furniture for your apartment through your corporate account?
A You continually say corporate account. If it's for personal use, it's accounted for in the big blue ledger as a draw. If it belongs to the corporation, if it's a corporation purchase, like a printer or ink for the printer or easels or whatever is described here, if it's

part of the studio that's used for the business, it's expensed by the business. There's no cross between. I account for them separately. The big blue binder accounts for them from separately. What this has to do with David Loree's slander, I don't know.
Q Well, sir, you put yourself -- you have put your character on trial here.
A Okay.
Q Because you are making accusations against Mr. Loree and this jury needs to know whether or not those accusations, since you've brought no other evidence of it, can be trusted. And one of allegations is --
A The evidence is --
Q One of the allegations, sir, is that you were taking money for personal use out of your corporate account?
A That is not the allegation. You're absolutely wrong. It was taken from clients.
Q Where did the money in your corporate accounts come from?
A Not all the money comes from just the payment of subcontractors. That is the fee income from which expenses come. That's a simple accounting process. There's hundreds of thousands of dollars the fees come from. If you had had the accounting ledger audited, you

would know that all of these expenses that you're telling this jury about right now are deducted as expenses from the income, that the client money is separate. The slander is about the use of the pass-through account and the client's money, what the client represented. The corporate lawsuits were resolved based on the client money, not on how I accounted –

Q Did you also pay for our parents home out of the corporate account? The one we've been talking about on Reagan Way.

A If payments come out of the corporate account, it's accounted for as a draw.

Q Yes or no, did you –

A I don't recall. I may have, but it's a draw.

Q So, you're not denying that you might have taken money out of your corporate account to also not only pay for your BMW, your engagement ring, your apartment, your furniture, but also your parents house?

A You see, within the – within the corporation, how an S Corp exist, once it's income, it becomes retained capital. Okay. That money is sitting there. I have not drawn it out yet. It's available to me. My draw schedule exist. It's auditable. You can determine whether or not I was deducting from my paid in capital balance, anything. It's accounted for.

Now, I know there are instances which people try to claim that if there's any personal disbursements out of a S Corp or a small partnership that that's somehow wrong There's no law against that. As long as you account for it properly. I had no other source of income. And if I had to make a big purchase, yes, perhaps, I could have transferred it to a personal account and then paid it.

Q You mean you could have –

A But that's –

Q I'm sorry, let me finish. I'll extend you the same courtesy. So, you admit that you, perhaps, could have taken a salary from your company and moved that mc to a personal checking account from where you could have paid your own bills?

A Yes. I never had a fixed salary, though. That was never available to me because the cash flows were never consistent. The point is you're mischaracterizing what would have been just a perfunctory step of taking it from the corporate account and putting it in a private account. I still accounted for it properly. The income still flowed through the S Corp to my personal tax records.

Q So the answer is yes, you did take money out of the corporate account to pay for your parents house as well?

A If that occurred, I accounted for it as a draw.

Q So you would have accounted for that as income personally on your tax returns?

A You don't understand how S Corp works.

Q Well, apparently, I don't. And, apparently, neither does the IRS.

A That's not true. The S Corp – you get a K-1 from an S Corp. Whatever the income – the net of the two flows through to your personal return. They're not considered – the draws are not considered income. The income is the fees that Kunstwerke had collected minus the corporate expenses, not the personal draws. That's what flowed to my personal returns.

Q Did you also own a house – I think you answered yes, so we'll go ahead and move on because it's already 4:00 and if we continue like this, we're going to be until 10:00 tonight. So, did you also own a house at 308 Hemlock Trail, Cleveland, South Carolina?

A That's the house that I lived on Caesars Head.

Q Yes or no?

A I just testified to the house in Caesars Head that I sold and made the capital contribution to the corporation.

Q Did you own a house –

A Yes.

Q Thank you. And if I refer to that as the Cliff Ridge property, is that acceptable?

A That would be fair.

Q Did you make purchases for the Cliff Ridge property from your corporate account?

A What kind of purchases?

Q Any kind of purchases.

A I mean, I don't remember.

MR. SMITH: I'm sorry, Your Honor, Ms. Hilton over here whispering answers to –

THE COURT: Ms. Hilton, you need to avoid doi that, okay?

MS. HILTON: Yes, sir.

BY MR. SMITH:

Q Did you make purchases for the Cliff Ridge property from your corporate account?

A When you say purchases, what do you mean? Do you mean landscaping or – what do you mean? You need t be more specific for me to remember something.

Q Did you make purchases – if you don't remember, that's fine. I'm just asking if you made purchases –

A I don't remember specifics. I'm not going to testify to specifics I don't remember.

Q If I showed you testimony then that showed where you made windows and doors purchases and such as that fc

your house, the Cliff Ridge property, would you agree with that?

A Prior to it being sold, it was remodeled. So yes, there were purchase of construction material, is that what you're getting at?

Q I'm not getting at – I'm only getting at did you use your corporate funds to make purchases that went into your personal residence?

A Again, you need to give me specifies, I don't know.

Q Okay. Okay. That's fine. If you will – I think it's in the same deposition transcript. Look at Page 205 of your deposition transcript. And you'll agree that this is – deposition transcript was testimony you gave under oath?

A I have been deposed so many times. Is this the one with the camera and lights?

Q I wasn't there. Are you on Page 202?

A Oh, 202. Yes, go ahead.

Q You see starting at Line 5, you were showed a check and it's to Windows and Doors Concepts for $50,330.52?

A Yes.

Q You said, That's right?

A Yes.

Q And then you say – and the question is, And it's broken down in the left-hand side column as $44,000 for the Parham residence and $5,750 for the Kunst residence. Does that refresh your memory that you bought almost $6,000 worth of windows for your personal residenc from your corporate account?

A There were some new windows purchased for the house to remodel as just referred to, so it wouldn't be unusual to have it on the same account.

Q You paid for that from your corporate account?

A Are you – are you trying to say that Parham paid for them?

Q I'm not trying to say that. Are you trying to say that?

A No, that's why I'm asking. Why are you even asking the question?

Q Well, I'll tell you why. I think we've established, have we not, that you were making purchases from your corporate account for your residence? Is that fair?

A I was drawing income from the corporation.

Q We're going to be here all night.

A Until you understand it.

Q Then we may be here longer than that. While you were making purchases from the Cliff Ridge property from

your corporate account, were you deducting the mortgage interest from that house on your personal income taxes?

A I don't recall.

Q Would it surprise you if I can point you to testimony that would say that while you were making purchases from your corporate account for your personal house you were also taking personal deductions of the mortgage interest on your personal income taxes? I mean, we can sit here and we can go through it if we need to.

A Well, I don't recall every draw. So, what's your question?

Q My question is while making purchases for the Cliff Ridge property from your corporate account, you were deducting the mortgage interest from that house on your personal income taxes, correct?

A The Cliff Ridge property was my primary residence, so I would have deducted the mortgage interest, I assume. If that's your question.

Q That's my question.

A Oh, okay.

Q So, you're taking money from your corporate account to put it into your personal house and then you're taking the deduction from the interest for your personal house off your personal income taxes, that's all I'm asking. Okay.

A Was that a question?

Q Is that a fair statement of what we've just taken 20 minutes to figure out?

A I'm not even sure I understand what you just asked.

Q Okay. Then we'll do it again. You admit you were taking corporate funds from Kunstwerke and using those to, at least, buy windows for your Cliff Ridge property?

A If I was withdrawing capital, yes.

Q Okay. And you admit that was your personal residence?

A It would be accounted for that way.

Q And you admit it was your personal residence?

A Yes.

Q Okay. Did you often buy – do you admit that you bought gifts for your employees and subcontractors from your corporate account?

A Like Christmas gifts?

Q Gifts.

A I did get my site managers gifts every year.

Q What about things like trucks, tools?

A Occasionally, Kunstwerke would have to loan money to a site manager for a truck. Occasionally, I would give them the truck that I finished using.

Q So, you would take corporate assets and just give them to –
A There were two – I think at one point there were two Toyota pickup trucks in the company at its peak.
Q And then you just gave those away to employees or to subcontractors?
A I remember Shane Kidd needed a truck. He didn't have one. I think I may have when he left the company, I let him have it.
Q Okay, that's all I'm asking. Where did the money for that truck come from? You said – you've told this jury many times how you didn't make a lot of money. And now you've just said you gave away two trucks. So, where did the money for those trucks come from?
A Kunstwerke fee income.
Q Where did Kunstwerke income come from?
A It came from fees that it charged for its services.
Q And you testified those weren't very much?
A Well, hold on. I can tell you what they were. Oh, no, wait, let me correct that. No, I did not testify to that. That's a mischaracterization. I said my net income, after expenses. For instance, if I would expense a truck that I give a guy as an expense, that's less that I get personally. So, you're mischaracterizing it. The

fee income to the corporation was in the hundreds of thousands every year.
Q Okay.
A And corporate expenses were deducted from that.
Q And then you would take the trucks and give them away and then whatever was left you would keep?
A I have no idea what you're getting at.
Q You prepared bills for your clients weekly; is that correct?
A That's correct.
Q And you typically showed by line items what was included on your bill; is that correct?
A Yes. Yes.
Q And you would show what materials or what subcontractor for which you were asking your client to pay money; is that correct?
A That's correct.
Q And all those payments went into your Kunstwerk corporate account; is that correct?
A That's correct.
Q Okay. What does the term fungible mean to you?
A It's an accounting term. It's used in instances like money where you may have an account in which the accounting records say there's five different things in that one bank account, but the money itself is fungible.

There's not a specific dollar that one could claim is for this one thing. You can't split it up.
Q Okay. So, if you sent a bill out to a client, for instance, the Gaby's, and on that bill you had a line item for – and I'm just making this up hypothetically, we can look at something if you want, $10,000 for stone, whatever. And they send you a check for $10,000. You're testimony is that $10,000 doesn't necessarily need to go to pay for that stone?
A That $10,000 based on the contract is reimbursing cost incurred. In the accounting world, there's a big difference between cost incurred and cash. One could make expenditures through debt. One could make expenditures without cash. The corporation could go out and purchase things on account. The corporation is still on the hook for those things. And based on the flow-through contract, people like the Gaby's and the Covington's, they are just as much liable to reimburse Kunstwerke if it was paid out of cash or on account. Because by the time the Covington's or someone else got a statement, it was already a week or two of activity that Kunstwerke had already incurred cost for. For example, in 25 percent of the Covington instances, that blue ledger will explain all this to you, I can calculate how much Kunstwerke had actually paid out in advance before the

client reimbursed.
Q My question was –
A Yes.
Q – if you sent an invoice to the Gaby's, the Debaco's, or Coco's for $10,000 listing stone from company X and they sent you $10,000, it's your testimony that you did not need to pay company X $10,000?
A That is true. Because –
Q Thank you.
A I need to answer that. In the case of the Covington's, for example, when Mr. Covington would make say a $30,000 deposit into my account towards the end of the project, say in January of 2006, there was $130,000 already paid out in cash on his behalf that he was in debt to. You are doing your entire examination on a false premise.
Q That may be the case. That's not for you to decide. But I think you answered my question and I appreciate that. You have talked a lot about the crumbling down or the crisis. Do you admit, though, that Kunstwerke was strapped for cash well before Mr. Loree began his investigation?
A Yes, I told the Gaby's about that. January was a terrible month. There are two emails to Mr. Gaby in which I state that, that it was harder for me to advance

credit than typical.
MR. SMITH: Your Honor, if you'll indulge me for about another five minutes, I'll be at a place where we can break if you want.
THE COURT: Okay. Good.
Y'all ready to take a break? Give him about five minutes?
MR. SMITH: It shouldn't take me more than five minutes.
May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Mr. Kunst, can you identify that document?
A Yes, this is the order dismissing the defamation case against Mike Parham.
MR. SMITH: Your Honor, I ask that it to be moved into evidence either by his testimony or by judicial notice.
MR. KUNST: I have no objection.
THE COURT: Okay. All right. The same is admitted.
MR. SMITH: Let me get it marked.
(WHEREUPON, Defendant's Exhibit No. 14 was marked for identification and received into evidence.)

BY MR. SMITH:
Q Mr. Kunst, are you familiar with this order?
A Yes. I remember Judge Early's order. He wrote it in all caps.
Q He did write it in all caps. And, apparently, he's never written another order like that.
A This was the order dismissing the defamation case against the Parham's.
Q And do you remember that Judge Early found tha your finances were in disarray?
A They were not in disarray.
Q Huh?
A They've never been.
Q The question was do you see where Judge Early found that your finances were in disarray?
A I believe that's what you've alleged and Parham attorney has alleged. And, obviously, since the defamation case was dismissed, the order was written based on your representations, but I can testify –
Q Well, they're not my representations.
A – they've never been in a mess.
Q Okay. We'll try this again. Bottom of Page 4, last sentence, it goes on to the top of Page 5. Will you read that to the jury?
A Give me the start specifically.

Q Unfortunately. The bottom of Page 4.
A Oh.
Unfortunately, the depositions submitted clearly indicate that by late 2005 and early 2006, the finances at Kunstwerke Corporation were in disarray. For instance, the depositions of the painting contractor, Conrad Owen, clearly indicates that a check issued by Kunstwerke Corporation for payment for work performed on the defendant's project bounced, therefore, numerous checks issued by Mr. Owen to his employees would bounce. However, he recalled no communications published by either Mr. Parham or his wife which could be constituted as defamatory towards the plaintiff.
Q Who was the plaintiff?
A That was me.
Q That was you?
A Yes.
Q And you sued –
A I, obviously, disagree with the Honorable Judge Early. My accounting records weren't in disarray.
Q You sued – you read here where Judge Early also found you weren't paying your subcontractors?
A That was not the corporate case. That's the problem. The key is that Mike Parham, when we finally litigated the corporate case, he did pay. He did so in my

favor. Judge Early was wrong.
Q Okay. I know everybody in the world's wrong –
A Well –
Q – but I'm asking you –
A Well, I have litigation in the corporate case –
Q – what the judge found?
A – that says that Judge Early was wrong.
Q Did Judge Early find that you weren't paying your subcontractors?
A And the corporate settlement states I did.
Q I want you to answer me yes or no. Did Judge Early find you were not paying your subcontractors?
A Judge Early was not charged with that. This wasn't –
Q I'll move on. You've given plenty –
A I don't even understand your question.
Q You've given plenty of answer. You sued Mr. Parham, though, for the exact – pretty close, same statements you sued Mr. Loree for, right?
A Everything that named sources, as I explained earlier, was sued.
MR. SMITH: Your Honor, can we instruct the witness to answer the questions?
THE COURT: Mr. Kunst, when a question's pos you will answer it. Now, I'm not going to instruct

you how to answer it, whether it's yes or no. And I'm not suggesting by insinuation or directly or otherwise that you're being evasive or being obtuse, but I will say that if you are, the jury will see it. I don't like to get between lawyers and witnesses, but I will say that justice is best served when the questions are answered directly. Okay.

You may continue, Mr. Kunst.

BY MR. SMITH:

Q You sued Mr. Parham for the same sort of statements that you allege Mr. Loree made; is that correct?

A Yes.

Q And what did the Court find in that case where you sued Mr. Parham for the same statements?

A The Court dismissed the case because there wasn't the same evidence.

Q Well, I don't think that Court had this evidence in front of it. The Court dismissed the case because it had no evidence?

A I could not get the witnesses that I needed to testify against the lawyer.

Q Is it not true that the Court also found that the statements made by Mr. Parham were true?

A What are the specific statements?

Q It was your lawsuit?

A I can't answer the question without knowing what the statement was.

Q My question was rather simple. Did Judge – I'm sorry, there's so many judges – Judge Early find that the statements made by Mr. Parham that you sued him for defamation were true?

A He did.

Q Okay.

MR. SMITH: If you want to take a break, Your Honor, this would be a fine time to do it.

THE COURT: All right. Ladies and gentlemen, let's take a short break. And please don't discuss the case.

(WHEREUPON, the jury came into open court at approximately 4:20 p.m.)

MR. SMITH: Your Honor, I fear we're going to l here a lot longer.

THE COURT: It is what it is.

MR. SMITH: I just wanted you to know, Your Honor.

THE COURT: Understand. Okay. All right. We'll be in recess for a few minutes. We'll come back in when the jury is ready.

Mr. Kunst, you're welcome to take a break, too.

You can't discuss your testimony with anybody.

MR. KUNST: Yes, sir.

(WHEREUPON, a short break was taken.)

THE COURT: Ready for the jury?

MR. SMITH: I'm ready, Your Honor.

THE COURT: Ask the jury to come in, please.

(WHEREUPON, the jury came into open court at approximately 4:36 p.m.)

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q I'm handing you another deposition transcript and ask if you recognize that as the transcript from your deposition on December 6th, 2007?

A I do.

Q And the other one – and I didn't move for admission of it, was November 21st, 2007; do you agree with that?

A That's correct.

MR. SMITH: Okay. I would ask the Court to move both those transcripts into evidence.

THE COURT: The entirety of the transcripts or do you want to simply read into the record those relevant portions? Are you going to question him from those?

MR. SMITH: I'm going to question him. It may be easier just to move them into evidence and that way we don't have to do it piecemeal. I'm happy to do as the Court wants.

THE COURT: Mr. Kunst, do you have an object

MR. KUNST: I don't have any objection.

THE COURT: Without objection then, they're admitted.

(WHEREUPON, Defendant's Exhibits Nos. 15 & 1 were marked for identification and received into evidence.)

BY MR. SMITH:

Q So, those deposition transcripts have been admitted as Defendant's Exhibits 15 and 16. Mr. Kunst, throughout your soliloquy, we've heard many times that th account simply needed to be reconciled; is that correct?

A That is correct.

Q And, in fact, in those two deposition transcripts I've handed you, I spent considerable time reading those, do you know how many times you use the wo reconcile or reconciliation or some variation thereof, just ballpark?

A I have no guess.

Q Would you believe over 150 times?

A All right.

Q So, it was fairly important to get the accounts reconciled?
A Indeed.
Q Why then, if it was so important to reconcile the accounts, don't you think you would have done some reconciliation at some point before all your clients began to figure out that money was missing? You had six projects going on. You never reconciled the accounts.
A Clients did not figure out money was missing. There was nothing to figure out. They were sued and I collected. Nothing was missing. It was all accounted for.
Q Do we have to go back through the orders? For the sake of argument then – I'm not going to argue with you on the stand. For the sake of argument, assume that there's been judges in South Carolina who have said money was missing. Don't you think if it was that important to do these reconciliations, you would have done so before your clients started saying money was missing?
A The reconciliations are done on a continual basis.
Q Well, that's not what you've said. You've said they needed to be reconciled?
A At the time they stopped paying in February 16th, 2006, it required a reconciliation because

some of these clients, like the Gaby's, started paying things a second time. They were paying things on their own.
Q And why was that?
A It was a different set of circumstances. My accounting records are designed to reconcile. It's a reimbursement contract. It needs reconciled. Things are – just like a bank reconciliation, if I can explain it that way, there's activity. You can stop at a certain date and say I need to reconcile activity as of that date. When I used this 150 times, as you claim, I'm stating that all people need to do is reconcile the date that they stopped paying and then you will know what everyone else – that's eventually what happened in the corporate cases. They eventually got reconciled.
Q Well, we'll leave that alone for a minute. My point is you said they were continuously reconciled?
A They can be reconciled any day.
Q But you didn't do so? If they could have been reconciled at any day, then why on February 16th, 13th, I forget, 2006, when you met with David Loree weren't the accounts reconciled?
A The account is reconciled continually. That's how I knew they were 90,000 in the hole one day, 102,000 in the hole the other day.

Q So, the accounts were reconciled, but you just simply couldn't show that invoices were paid?
A No.
Q Okay.
A David Loree's premise is incorrect. I can't possibly reconcile to his premise.
Q You can't possibly take an invoice for which you billed your client $10,000, show the invoice for $10,000, there's a wire for $10,000 that shows where that's paid, that's impossible.
A It is impossible because –
Q Okay. Thank you.
A – there is a lot of money already paid out. The money is fungible. You've already used that word.
Q No, you used that word, I did not.
A You introduced the word.
Q And you've maintained that any of your clients were free at any time to have an independent audit of their accounts with Kunstwerke?
A Yes. Still are.
Q In fact, you told the Gaby's that they could have requested an independent audit at any time they wanted; is that correct?
A In that public document I sent around to everybody on April 12th, I challenged the Gaby's

publically to do an independent audit of their account.
Q You seem to be convinced the public is very concerned with what's going on in Scott Kunst's world.
A I don't know if they're concerned, I just don't want to be defamed.
Q So, you think it's okay to mail hundreds – how many of those did you mail, I'm just curious?
A Public is probably too broad of a term. It would be the interested public, people that worked on the job who might have known me in the community. People deserve an update.
Q Because people care?
A If they're owed money, they care. I have friends, Greg. Do you have friends?
Q No, I'm a lawyer. You've said now that any client could get an independent audit if they wanted it, correct?
A Yes.
Q Is it not true, however, that you refused to provide the Kunstwerke books to Gene Covington when he asked for an independent accounting?
A I have heard that and that is completely untrue.
Q It's completely untrue. So, Mr. Covington is lying?
A Why would I refuse books to Gene Covington as

opposed to other clients? In fact, he owed the most.
Q And you deny that you did not let him have your books?
A At what time did I – they've been filed at the courthouse. There's nothing to let at this point.
Q No, no, no. At the end of the project, February 2006, when Gene asked for your books so he could do an independent audit, did you not refuse to let him have those?
A Gene Covington offered to do a forensic audit of his account with, I believe, the corporate attorneys or somebody at the time. The point was Gene Covington was never going to pay the whole $130,000.
Q No, that's not the question.
A I never kept the documents from him.
Q Okay. Okay.
A In fact, based on the statements that he had, if you just take the progress billings and you have a complete list – the Gaby's did not have a complete list. They ignored the last three. But Covington had a complete list. He could actually reconstruct a lot of it because as I stated earlier, it all flows up through. So, Gene Covington could have done an independent audit of those invoices he had.
Q So, when Gene Covington – did Gene Covington

offer to do an independent accounting of his books and, basically, said wherever the chips may fall, they will fall. If I owe you money, I'll pay you. If you owe me money, you pay me and you refused?
A When did – do you have record of me refusing that?
Q 2006. I'm just asking you if you refused?
A I don't recall – I wouldn't refuse. Why would I refuse that? I made that offer to everybody.
Q Okay. And you made that offer to Gene Covingto –
A That would be an odd exception. I don't understand your question. That would just be –
Q My question is if he offered to take all your books and give them to an independent accounting – an independent accountant, I'm sorry for slip of the tongue, and the deal was if I owe you money, I'll pay you, if you owe me money, you pay me. You're denying that Mr. Covington offered that?
A He stated in his deposition something to that sort, but that's always been available to him. I can't deny that. I don't understand what your – how you want me to respond.
Q I would just like the truth.
A What would you like me to answer? What's the

question, yes or no?
Q Did you refuse Gene Covington's offer to take your books to an independent accountant to let a completely independent person audit and let the chips fall where they may? If he owes you money, he'll pay you. If you owe him money, you'll pay him.
A I don't recall refusing that. I would not have refused that.
Q Okay.
A That option was available to him. Even after the lawsuit, he could have done that.
Q With regard to another one of your clients, to be very specific, in an October 24th, 2005 billing, do you admit that you received $676 from one of your clients, Mr. Coco, specifically to pay Wilson Gas?
A There are 10,000 Kunstwerke transactions a year, I don't know.
Q So, you don't know the answer to it?
A I don't know that specific instance.
Q Okay. If you look at your deposition transcript from December 6th, 2007, sworn testimony given by you, correct?
A That's correct. What page?
Q Page 128. You see where it starts on October 24th, 2005, bill to Mr. Coco, you received $676 as

part of that progress billing of $38,835? And you say that's correct?
A That's correct.
Q And you indicated that you did not pay Wilson Gas $676. And you say that is correct. And a question was put to you, Well, what did you do with that $676? And you just said you spent it on the Coco project. But you don't know what for?
A The question is the 38,000 that Coco paid. And again, my answer to the question involves the reconciliation. Why that Wilson Gas was not paid as of that specific time, I can't speak to that. But you're asking me what specifically happened to that money as earmarked. Again, your premises is false. We're getting nowhere with the false premise. You are asking questions –
Q We may be able to shortcut this then. You freely admit just because you received payment from a client for a specific subcontractor, you don't necessarily need to forward that payment to the specific subcontractor for whom you requested payment? Do I need to break that down?
A That is incorrect. It needs to be paid, yes. You are trying to say when it's paid and how it's paid, that it's specifically earmarked. And I'm trying to

explain the correct premise.
Q It sounds like you're saying two different things to me.
A Okay.
Q Just because you received a payment from a client for a specific subcontractor line item, for example, Wilson Gas, $676, you did not necessarily need to forward that payment to Wilson Gas? That's my question. That's what I would just like you to answer.
A My answer is the Wilson Gas 676 is a cost incurred by Kunstwerke on behalf of Coco. Coco's obligation is to reimburse that. It is Kunstwerke's obligation to pay it, that is correct. That's the answer. The point is there are also items that Kunstwerke is paying before Coco knows about it. That's why you see reconciliation 150 times.
Let's say if on this date, Mr. Coco were to default and not pay another thing, I would bounce that 676 back to him to pay directly and credit that 676 against his account. That's the best way I can possibly explain the correct premise, the reimbursement premise. It wasn't a fiduciary account.
Q You keep using that term fiduciary.
A Yes.
Q Do you actually know what that means?

A Yes. It's money placed in trust.
Q Money placed in trust. I think you've testified that you had a great amount of trust between you and your clients?
A For 10 years, Greg. Never a question.
Q But it wasn't fiduciary trust? You just wanted them to trust you, but not a fiduciary trust?
A I was sticking my neck out extending credit and everybody knew that and they appreciated it. I wasn't making money on processing these payments. The difficult part was constructing the houses. Everything –
Q The easy part was the accounting, right? Is that what you're saying?
A These pass-through accounts, the reimbursement accounts worked perfectly as long as the people paid.
Q As long as they kept putting money in your account?
A No, as long as they reimbursed everything submitted.
Q Okay.
A There was always a finite number of items to be –
Q Did Ed Coco reimburse you for $676 for Wilson Gas?
A Yes.

Q Did you pay Wilson Gas $676?
A I don't know. If I didn't, it was credited back to him as part of his final reconciliation. I do know that –
Q Ah, the reconciliation.
A I do know at the end of the day whenever his account was reconciled, Mr. Coco paid me $13,000.
Q Well, that's not true either, is it? Who did he pay the $13,000 to? Let's talk – you've done this long enough. You talk about these corporate accounts. Couple of questions. To whom did Mr. Coco make out the check for $13,000? Was it to you?
A The settlement check?
Q Yeah, was it to you?
A I don't know who it was to.
Q While you're looking that up, is it conceivable that somebody might pay you $13,000 not because they thought they owed it, because they wanted you to go away?
A As a lawyer, I think you understand, Greg, that the man who writes the check lost the suit.
Q No, that's not what it says. What my question was, is it conceivable that somebody might have paid you $13,000 just to go away?
A Mid trial?
Q Is it conceivable?

A (There was no response.)
Q Thank you. To whom was the $13,000 paid?
A I do not know. This is 2000 – I do not know. Most checks were made out to the Kunstwerke attorney. If it was a settlement to me, it might have been made out to Tracy because I didn't have a checking account. Was that your question?
Q Well, that's sort of my question. My question is, I think it was made out to Tracy because you refused to let him make the check out to you and I want to know why?
A Because I have no bank account, Greg.
Q And if you did have a bank account and you took that $13,000 and tried to deposit it, what might have happened? Perhaps, the IRS would have tried to take it or the South Carolina Department of Revenue would have trie to take it?
A I don't know if they would take a judgment in a civil case, I have no idea. They didn't take my income.
Q But we're not taking any chances, are we?
A That wasn't the point. That wasn't my intention. You don't place –
Q Was it your intention to not pay your lawyers for that case?
A It was not my intention, no.

Q Well, did you pay your lawyers in that case?
A No.
Q No. But you had them make the check out to Tracy?
A (There was no response.)
Q Do you remember in your complaint against the Gaby's and Mr. Loree that you alleged that it was never explicitly stated or implied that specific funds paid by the defendant for specific progress billing would go exclusively and directly to pay only those sub-labor and supplier invoices provided in that progress billing?
A That's a long question. But yes, money could not be earmarked in a reimbursement contract. It's not possible.
Q Okay. Are you familiar with South Carolina code 29-7-20?
A I have seen some codes, yes.
Q Well –
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q I'm going to hand you a South Carolina code. I'll ask you take a moment and look at it.
Your Honor, I would ask that it be judicially noticed as a copy of the South Carolina statute Title 29

Chapter 7.
THE COURT: Any objection to that?
MR. KUNST: No objection.
THE COURT: Okay. Let me see it before I take notice of it.
MR. SMITH: It's simply a printout from the State House website.
THE COURT: All right. I take notice of the same, sir.
Ladies and gentlemen, when I take notice – when the Court takes notice of a document or a published record of any sort, essentially, it establishes its authenticity. That is, I take notice of the fact that is a statute which emanates from the legislature of the State of South Carolina. It is authentic. I do that without exception or objection from the parties.
Give her time to mark it.
(WHEREUPON, Defendant's Exhibit No. 17 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Do you see Section 29-7-20 in the middle of the page?
A Yes.

Q Somewhat slowly because our court reporter will get angry otherwise and I don't blame her, would you read that Section 1 to the jury?
A Yes.
A contractor or subcontractor, who for the purposes – for other purposes, I correct that, than paying the money loaned upon such contract transfers, invests or expends and fails to pay to a laborer, subcontractor or material man out of the money received as provided in Section 29-7-10 is guilty of a misdemeanor. And, upon conviction, when the consideration for the work and material exceeds the value of $100 must be fined not less than $500 nor more than $1,000 or imprisoned not less than three months nor more than six months. And when such consideration does not exceed the value of $100 must be fined not more than $500 or imprisoned not longer than 30 days.
Q Now, I'm not implying that you've been convicted of this statute.
A I certainly haven't.
Q Okay. I'm implying is there a statute in South Carolina that says when you're given money to pass through to a subcontractor, you must do that?
A Yes.
Q Thank you. Mr. Kunst, I was a little confused

on your testimony on another issue. Did you or did you not disappear from the projects?
A I did not disappear from the projects.
Q There is not a time when you wouldn't return phone calls or emails?
A There was a time once this hit when I was receiving death threats that we were very careful not to email –
MR. SMITH: Your Honor, objection. There has been no one who said there's a death threat here.
THE WITNESS: Bottom of the lake, Greg.
MR. SMITH: Never heard it.
THE COURT: I'll let him testify.
You may continue.
THE WITNESS: When we were at The Reserve, of the rumors were that if they ever found me, I'd be at the bottom of the lake. Tracy testified to my legs being broken. There were a lot of subcontractors who were very angry with me.
BY MR. SMITH:
Q Mr. Loree didn't make any of these statements, correct?
A Yes. In one affidavit, he stated that I would like to get my hands on Scott.
Q I don't believe that's the case and I don't

believe that's been submitted into evidence.
A Okay.
Q So, do you have any evidence that Mr. Loree made any threats against you?
A I have that evidence. It's just not allowed to be submitted here.
THE COURT: You had a motion? You have to state it on the record.
MR. SMITH: Your Honor, we had a motion that this alleged affidavit is not admissible evidence because it's completely fabricated for all we know. And you told us to bring it up – you told us not to bring it up. And then–
THE COURT: Well, let's just say that this case has gone a little bit differently than any of us had anticipated and had exceptions – some things have gotten into the record that would not have ordinarily gotten into the record except for the flow of the evidence.
Ladies and gentlemen, with respect to the facts in this case, I defer to you entirely. There are some documents, testimony that you received in evidence and some that you don't. You understand that if there is a fact that is not in evidence that is purported by one party or the other, you will

determine whether it is in evidence. You'll determine what value any of the evidence that is presented as when you make a determination of the facts in the case.
This examination is unusual in that it pits an attorney against a party, not necessarily saying that in an adversarial way, but it's going a little bit differently than ordinarily. So, you understand that from time to time there will be things said, objections posed. And I'll interject as appropriate – pursuant to appropriate motions made.
But do know this, to both of you, that this is y'all's case. And to the extent that you muddy the record a little bit based on the questions posed and the answers submitted, that's not a consequence of the rulings of the Court. It's a consequence of the answers that are posed – or excuse me, the questions that are posed and the answers that are presented. Okay.
Just know I have no dog in the fight. I state that to y'all. I have no dog in the fight. You're hearing what I'm hearing.
Go ahead, sir.
MR. SMITH: Yes, Your Honor.

BY MR. SMITH:
Q Would you agree with me that more than one subcontractor has testified under oath in the myriad of depositions that have been done here that from February 2006 on, you wouldn't return phone call and you wouldn't return emails?
A Yes, Kevin Goad was one of them.
Q So you – we can move on, you will admit you disappeared in February of 2006 from the projects?
A I was not contacting people through email or phone because I knew that we would end up in an environment like this and my hard drive would be subpoenaed and all my email records would be subpoenaed. I had to be careful.
Q So you – again –
A I met – in all instances that I met people, Tracy and I met them personally. So I certainly didn't disappear.
Q You admit you stopped returning phone calls? You admit you –
A Not all.
Q – stopped returning emails?
A Not all.
Q Do you admit to many of your clients and subcontractors you stopped returning calls and stopped

returning emails? Scott, we can do this all night.
A It was not a time that I stopped returning all calls. I had to be careful of who I spoke to. That's my answer. I did not.
Q You admit that you stopped returning phone calls and emails with Mr. Loree?
A The record shows that I continued to email him up to the end of the termination.
Q Now, you admit Mr. Loree was acting on behalf of Mr. and Mrs. Gaby when you first met with him in Februai of 2006, correct?
A Yes.
Q And you admit that Mr. Loree was just sent to find out what was happening at the project? That was his charge?
A I don't believe he was sent to just find out, I think he was sent to take over.
Q Okay. But he was sent on behalf of Mr. and Mrs. Gaby?
A Yes.
Q To either take over or to investigate what was going on at their project?
A Yes.
Q And, in fact, you admit that it was the Gaby's, actually, not Mr. Loree who was responsible for most of

your woes?
A Not true. He's an agent of the Gaby's.
Q So, because he's an agent of the Gaby's out doing their work, he's responsible as well?
A Of course. He's the one that spoke the specific statements, why we're here today, not the Gaby's.
Q Well --
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Mr. Kunst, can you identify that for me?
THE WITNESS: Your Honor, can we approach?
THE COURT: Yeah, absolutely.
(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)
BY MR. SMITH:
Q Can you identify that document for the Court?
A Yes, it is a 100 page document that I sent to the Gaby's on February 26th, 2015. For the past nine years, I occasionally sent a large document like this to the Gaby's reminding them --
Q Hold on. Hold on. I want to get it admitted first, then I'll let you talk about it.
MR. SMITH: Your Honor, I'd move for the

admission of the document into evidence.
THE COURT: Okay. Subject to the objection, th same is admitted.
(WHEREUPON, Defendant's Exhibit No. 18 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Before all that, my question was, in fact, haven't you stated that most of your -- the problems you claim to encounter were caused by the Gaby's, not Mr. Loree?
A The termination from the project was decided by the Gaby's. I've never claimed that the Gaby's were responsible for the slanderous statements. I claimed that Mr. Loree is their agent.
Q And acting on their --
A But I have no evidence they instructed him to say those things. In fact, they deny it.
Q Okay. So, your testimony is he was their agent, acting on their behalf and he's the one who said these things while in the course of his investigation; is that your testimony?
A He was acting as their agent, yes.
Q During the course of his investigation that he was doing?

A Well, he was -- well, he was investigating the Gaby project and apparently others, but yes, he would have been their agent.
Q And you admit that it was Mr. Loree who contacted subcontractors to determine if money was owed, correct?
A Correct.
Q And you admit it was Mr. Loree who informed you that you were terminated from the project?
A Yes. I had no contact with anyone other than David Loree at that time on behalf of the Gaby's.
Q Have you ever made false statements under oath?
A No.
Q No?
A No.
Q No. Have you ever filed tax returns with the South Carolina Department of Revenue that misrepresented your personal income?
A No.
Q No. Have you ever filed tax returns with the South Carolina Department of Revenue that misrepresented your corporate income tax and withholdings?
A No.
Q No. Have you ever filed tax returns with the Internal Revenue Service that misrepresented your

corporate income tax and withholdings?
A No.
Q Have you ever filed tax returns with the Internal Revenue Service that misrepresented your persona income tax?
A No.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q This has your social security number on it. If you want to scratch that out, I am perfectly fine with you doing that. I mean, you filed them with the Court, but if you would, identify that document for me.
A This is the 2004 individual 1040 prior to the amended returns.
MR. SMITH: Your Honor, I would move that th same be received into evidence.
THE COURT: Objection, sir?
MR. KUNST: No objection.
THE COURT: Okay. Without objection, the san is admitted into evidence.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
(WHEREUPON, Defendant's Exhibit No. 19 was marked for identification and received into

evidence.)
BY MR. SMITH:
Q Do you recognize that document, Mr. Kunst?
A This is the U.S. income tax return for the S Corp 1120 S from 2004.
MR. SMITH: Your Honor, I would move that document into evidence.
THE COURT: Objection, sir?
MR. KUNST: No objection.
THE COURT: Okay. Without objection, the same is admitted into evidence.
(WHEREUPON, Defendant's Exhibit No. 20 was marked for identification and received into evidence.)
BY MR. SMITH:
Q I would ask that you take a look at that document –
THE COURT: Hold on a second. Are you going to mark that one?
MR. SMITH: What I'm going to do is there's four of them. That's the third one. And once he identifies them all, I'm going to let her mark them all at once –
THE COURT: Got you.
MR. SMITH: – instead of stopping.

THE COURT: Yes, sir.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Finally, can you identify that one for the Court?
A It appears to be the 1040 2005.
Q Any reason to doubt that that's what it is?
A I have no reason to doubt.
MR. SMITH: Your Honor, we would move that t also be admitted into evidence.
THE COURT: Any objection?
MR. KUNST: No objection.
THE COURT: Without objection the same is admitted into evidence.
(WHEREUPON, Defendant's Exhibit No. 21 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Scott, I'd ask you to look at the first document, the 2004 IRS personal tax return. Do you see the back of the first page where your signature is located?
A Yes.
Q Do you see right above it, there's a little

paragraph there?
A Yes, I see under penalty of perjury.
Q I was going to say would you read that to the jury?
A Yes.
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are correct and complete, declaration of preparer.
Q So, would you agree with me that that is a statement you have made under oath to the Internal Revenue Service?
A This is a signed return that I submitted to the IRS, yes.
Q Okay. And we can walk through each of the other four returns as well if you want or we can stipulate that you signed all four of these under the penalties of perjury?
A Yes.
Q Okay.
MR. SMITH: Your Honor?
THE COURT: Yes, sir.
MR. SMITH: It may be keeping with your suggestion the last time, instead of marking each of these 20 documents individually, I can mark them as a

collective exhibit if you want me to do it that way instead.
THE COURT: Yeah, that's probably easier than marking them –
MR. SMITH: Okay. It might just take me one second to make the pile.
THE COURT: Yes, sir.
Okay. Let's take a short break and come back in.
(WHEREUPON, the jury left open court at approximately 5:22 p.m.)
THE COURT: We'll take a break for about five minutes, then we'll come back in.
(WHEREUPON, a short break was taken.)
THE COURT: I suspect that y'all have noted the mood of the jury.
MR. SMITH: Oh, absolutely.
THE COURT: I just pass that along to you for information sake.
MR. SMITH: Absolutely, Your Honor. My mood getting the same way.
THE COURT: Okay. Good enough.
All right. Bring the jury in please, sir.
(WHEREUPON, the jury came into open court at approximately 5:36.)

THE COURT: All right. Mr. Smith, your witness.
MR. SMITH: May I approach?
THE COURT: Yes, sir.
BY MR. SMITH:
Q Scott, I'm going to hand you what's been marked as Defendant's Exhibit 20 and I think you said you were -- maybe you haven't seen them. Have you seen those yet, did I show those to you?
A Yes, you did.
Q And those are -- can you tell the jury what those are?
A These are the South Carolina Department of Revenue liens.
Q And how many liens do you have against you by the South Carolina Department of Revenue?
A Is each one of these pages an individual lien?
Q There's more than one lien on some pages. I mean, do you know?
A Well, I've reviewed this and it looks like for every penalty and every item, they make a new lien. So, I mean, the total is large whatever it is, I know that.
Q So, you wouldn't argue with me that there's probably over 20 liens the South Carolina Department of Revenue has against you and your company?
A Well, some would be the individual income tax

return lien from the county bond Benson brought and then the other would be the unemployment tax from that period in 2004. So yes, I would expect there to be a lot of liens, yes.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q I'm going to hand you what's been marked as Defendant's Exhibit 21 and ask if you can recognize those documents?
A I do.
Q Can you tell the jury what those are?
A These are the federal tax liens.
Q Now, one of the things you've said is you never had any tax issues before 2006 or did I misunderstand that?
A That is correct. I have never had any liens or any kind of issues. I've never been audited. I've never had a levy or certainly never been found guilty of tax invasion.
Q But my question -- then can you explain why some of those liens are for 2004/2005 time frame?
A The newer ones?
Q The State of South Carolina has liens against you from 2004 and 2005?

A I can't speak specifically to each lien here.
Q Well, I'm just curious because you said you've never had any tax issues before 2006. And there's liens that predate 2006.
A Oh, okay. If there are on the federal side, it could be the loss carry back they didn't accept. I did an accounting change to cash basis.
Q Well, these are the South Carolina ones.
A Well, the unemployment tax will definitely be from 2004 and that may have leaked over to 2005, yes.
Q So, you did have tax issues prior to 2006?
A These weren't filed until after.
Q But you had delinquent taxes from 2004/2005 is what I'm trying to get to.
A If that's the period they applied to, yes.
Q Okay. So, when you say you've never made a false statement under oath, you admit those tax documents were signed under oath, under penality of perjury, correct?
A The tax documents I filed with the IRS, of course.
Q Okay. And the IRS does not agree with what you put in those documents; is that fair to say?
A That's incorrect.
Q Okay. So, they filed liens on you --

A I don't understand your question they don't agree. They don't agree in what respect?
Q Well, they disagree with what you put in your return and they filed a lien against you for taxes that you did not report?
A It's the statement of the income of 2006 that originated from the South Carolina Department of Revenue that I explained earlier.
Q So, all of this, all 24, 25 liens are from that one incident, that's your testimony?
A What one incident is that?
Q I'm not sure. You're saying that there was something in 2006 that caused all of this. And I'm just trying to figure it out.
A I said there's an unemployment tax situation arising from the Covington roof that I still owe withholding on. I know that. I know the numbers. They've grown because of the penalties. They weren't large to start with. The federal tax lien has to do with that issue with my 2006 tax return.
Q Do you admit, too, that you didn't claim any of the money that you spent from the Kunstwerke corporate accounts on the things we've talked about earlier as personal income?
A Absolutely not. There's no finding of that.

Why did you bring that up?
Q Okay. So, you did claim the personal spending from the corporate account as income, is that what you're saying?
A It is a draw. The income – the only income that can appear on a tax return is the corporation's income minus its expenses.
Q I am going to really, really try not to go around on this one.
A Okay.
Q Will you admit on your individual tax returns that you did not declare any of the money that you spent, for example, on the Kunst residence, the Cliff Ridge property as income? That's as simple as I can make it.
A It's not accounted as an expense.
Q So, the answer is no, you didn't claim it as – you did not claim it as income on your personal tax?
A It was a draw from income that had been earned much earlier.
Q You're not going to answer my question, are you?
A I don't know how to answer –
Q It's a yes or no question.
A Again, it's a premise thing. I –
Q Can you show on your tax return –
A Do you have a specific finding that says they

found I didn't do that?
Q Can you show –
A That would be tax evasion.
Q Have you testified previously under oath that you can't show on your individual tax returns that you declared any of the money that you spent from your corporate account on your personal items as income?
A I'm not even sure I understand the question. Say it again a little more simple.
Q I have tried to be as simple as I can and you're trying to evade my question.
A I'm not trying to evade your question.
Q The money you spent on, for example, the Cliff Ridge property, the corporate money, the money for the windows you took out –
A Okay.
Q – of the Kunstwerke account and put into your personal residence.
A Yes.
Q Did you declare the value of that money as income to the Internal Revenue Service?
A It would have been income originally, yes, when it occurred.
Q So, you did claim it as income, is that your testimony now?

A The records are set up on a draw basis. I don't understand at what point – it would not have been an expense. It would not have been income. I have no salary. You see?
Q I nor the IRS see. The question –
A What finding do you have from the IRS that they agree with you.
Q I have testimony from you that – maybe it's just easier if I show you that, where you claim under oath – the question is – in the December 6th, 2007, deposition transcript, which you have and been marked, Pages 55, Lines 1 through 7.
The question to you, Can you show me on either of the individual tax returns that you identified as exhibits a moment ago where you declared any of that money spent on the Kunst residence as income to you?
Answer, No.
A Because it doesn't appear specifically.
Q So, there's –
A You have to look within the ledger how it's accounted within the accounting ledger.
Q So, you're changing your testimony from this?
A I'm not changing anything. The numbers on the federal tax return that are done in Turbo Tax come from the ledger.

Q Further down, question, Would you agree then on none of the returns that I've showed you, which is the individual 1040s for 2004/2005 and the 1120s for the corporation, which have been marked previously as exhibits here, you do not show any treatment of your payment of this $5,000 for the improvements to the Kunst residence paid to Window and Door Concepts; would you agree with that?
Answer, Yes, I agree with that.
And I just simply was trying to get you to say do you agree that you did not report any of the money that you took out of the Kunstwerke account to put into your personal home as income to you?
A It was already –
Q I will move on. You did testify –
A There's no specific line – whatever.
Q We're going to move on. You've testified under oath today and previously that you're trying to work out your tax issues with the South Carolina Department of Revenue?
A Yes.
Q And I believe if you see Plaintiff's Exhibit 19, if you have it up there?
A Here it is.
Q Do you see at the bottom of the affidavit that

you filed where it states -- or does that got the affidavit on top of it?
A It does.
Q Okay. Due to legal cost incurred during 2006 for a refund will occur. Do you see that?
A Yes.
Q And you wrote that in 2009?
A Yes.
Q Has a refund occurred?
A Not yet. I filed amended returns, as I testified earlier, with a loss of $182,000 in 2006. Now, the question is the corporation continues to suffer losses.
Q Well, the corporation doesn't exist. It can't suffer losses?
A Here's the issue, though. Here's why I have the mess I have. The corporation was technically collecting debt as late as 2013 even though it's dissolved. It's really a quagmire. It's beyond -- it's beyond my expertise, that's why I have to have someone more professional.
Q And you've also testified that you were going to work out your issues with the IRS, correct?
A Yes, that's why I filed the amended returns in 2011.

Q And those were rejected as well?
A No, the returns were all accepted, the amended returns, except for the last one that had the carry back.
Q Which is the one that would have alleviated the debt?
A The one with the 182 and I got a letter stating how it was incorrect. I met with -- I can tell you her name, hold on. I think her name was Leisenburger. I have several letters in here. These are all the amended returns. I have several letters that I've written to her. Her name is --
Q So, it's all just a -- go ahead. I didn't mean to interrupt you.
A Lizeena Lineburger of the IRS in Pittsburgh because that's where all of this is occurring now. And it's going to take a Pittsburgh attorney to do it.
Q So, it's all just a big mess that needs to be straightened out?
A Yes.
Q If you can just get it reconciled?
A Yes. They haven't audited me. There's no tax evasion.
Q Okay. Now, you've touted in several places and in your testimony and in other places that your corporate cases were successful; is that correct?

A They were.
Q Were all of them successful?
A Uh-huh.
Q Okay.
A Yes.
Q Now, you've also testified several times previously under oath that when your Kunstwerke corporate accounts were resolved that you were going to pay the subcontractors that were not paid; is that correct?
A That's correct.
Q Have you paid those subcontractors?
A No.
Q So, were your cases successful?
A They were, indeed, successful. The problem was that 100 percent of the funds collected, which were a little over $100,000 when you add everybody up all went to the Carpenter Law Firm and legal fees. That's your answer.
Q Okay. So, were the cases successful?
A They were successful. But see, once we got past the lien fraud, these kinds of debts aren't as collectable. That's why we have lien laws. That's why those lien laws were breached. If I could have filed liens at the time, I would have collected. I would have foreclosed on properties. By the time the Carpenter Law

Firm took the corporate cases, they were practically unsecured debt and he wasn't going to collect 100 percent. It's basically like factoring it to a collection agency.
Q Mr. Kunst, you may not know this and I'm not trying to testify, but I'm a construction lawyer. That's what I do by trade.
A All right.
Q Are you testifying to this jury that you couldn't have filed a lien in February of 2006 if you thought you were owed 90,000?
A I was threatened if I filed a lien, as were the subs. You've seen the letters.
Q I never saw a letter to you saying you better not -- that you couldn't file a lien. Are you testifying you could not file a lien in February 2006?
A I was threatened if --
Q By whom?
A By Mike Parham, for one.
Q Did Mr. and Mrs. Gaby threaten you if you filed a lien?
A They sent the letter to the subcontractors and suppliers.
Q Asking for how much they were owed.
A I was told that if I filed any liens on any houses there would be legal action.

Q But not by Mr. Loree?
A I can't say that.
Q Okay. That's good enough. But you were not physically prevented from filing a lien? You could have filed liens for all the amount of money you claim owned?
A I was not going to file a lien while I'm threatened.
Q But 20 lawsuits were okay?
A That was the way to resolve it in a court of law with discovery.
Q So, it's your testimony that it was easier to litigate for nine years than to file a lien that could be resolved in 90 days?
A You don't understand. This was long before we even thought about filing these lawsuits. Everybody wanted to file liens, but nobody did because they were threatened.
Q So, now you're blaming the reason your corporate case weren't successful was your own lawyers –
A I didn't say they were unsuccessful. They were successful for Tracy and I because all we wanted to do is prove that the other side would pay something, that it wasn't the other way around, that money wasn't taken from those people, it was the other way. The dollar amount at that point wasn't as important to us. We knew the

Carpenter Law Firm would take most of it anyhow. It was tremendous victory that we won all of those and everybody paid something rather than the other way around.
Q So, if you were owed $300,000, if somebody paid – wrote a check to your fiance for $13,000, that's a victory?
A The man who settles mid-trial with a check is the loser.
Q Okay.
A If I had taken money from the Coco project has Mr. Loree said to witnesses, then that lawsuit would have been another way resolved.
Q So, have you – do you admit also that you thought the Kunstwerke attorneys were acting against your interest then, or against the interest of the company?
A No, no, no. I wish they would have fought more, but these lawsuits are very expensive. And I understand, there's a lot of paperwork involved and such and they have legal fees. What Tracy and I are doing isn't as expensive for us as it is for them. We understood that.
Q Okay. So then you don't make any allegations under oath now that your attorneys were in bed or snuggled up other attorneys against your interest?
A It's not in bed. The issue that I have is with all attorneys, that at the end of the day, it's about

fees. And that's what I'm referring if that's where you're going.
Q That's where I'm going.
A Okay. Go there.
Q Because you wrote me a letter?
A I did.
Q And that's right in front of you, right?
A Yes.
Q And I believe you wrote that they, being your attorneys, desperate for fees snuggled up with Stern and settled anyway?
A Yes.
Q Against your interest?
A Well, not necessarily against my interest, but the point being was the Gaby's had the $400,00 damage out there. That made – I stated this two days ago. With the Gaby's damage out there for $400,000, anything my corporation collected would have gone to them. So, attorneys have ways, I guess, of how they settle cases. And the most difficult thing out of these nine years has been having the Gaby damages out there. It changed everything, specifically, in the Covington case. I was told when we settled for $25,000 – I didn't want to settle for that much. They said – because he owed 130. I was told that if we didn't settle for 25 that the Gaby's

would sell their judgment to the Covington's.
Q So, they're out to get you, too?
A No, but I was told that that's what would occur. There's so many finaglings that go on in these settlements. That's what I'm referring to here. That's what I was told would happen by the Carpenter Law Firm.
Q In the Hickey case you keep referring to –
A Yes.
Q – how much did you get from Mr. Hickey for his egregious actions against you?
A Mr. Hickey wasn't a client.
Q I just asked how much you got. I didn't ask whether he was a client or not.
A We settled – we settled even because we were partners in that property. The man had no money and I wa –
Q But you count that as a victory?
A The Hickey case, again, is different. I was an owner of the property. He wasn't a client. He wasn't a client that stole money – that said I stole money from him.
Q I'll move on. It is not true, though, that sometimes you didn't pay subcontractors even when your clients didn't have a balance outstanding to you at all? If they were completely paid up, there were still

contractors you didn't pay?
A Nobody's paid up as long as work is occurring. Bills are being paid by the hour at the site. There's no such thing as being -- when someone forwards a wire or a check to Kunstwerke say on Friday afternoon after receiving a statement, by the time they get that and by the time they pay it, there's likely been a week's worth of activity there and never paid up. That's why the contract says reimbursement. That's the proper premise.
Q So, your testimony is even if there's no money outstanding from a client to you, they have paid up 100 percent of everything you've asked for, then there may still be subcontractors who for whom you've billed those clients are not paid?
A That's incorrect. That's a false premise again. For example -- I'll give you a good example that may help you understand and the jury understand. I think it was in October of 2005, I signed a heating and air contract for the Gaby project. It was roughly 40,000. I wrote a check on the Gaby driveway to the heating and air guy for $40,000. That did not occur or did not appear in the Gaby progress billing for another week. And by the time that Richard Gaby wired that money, it had been 10 days.
So, the question is when Mr. Gaby had paid the previous weeks, which hit at about the time that I paid

that, Mr. Gaby wasn't paid up because I had already put him on the hook for $40,000 he didn't even know about. That's the little part in your premise that's incorrect. These clients were accruing, incurring, whatever accounting word you want to use, cost at their project that they were contractually liable for. So, they were never paid up until the project was completely done and a full reconciliation occurred.
Q Okay. I'm going to move on.
A Yes, please.
Q So, we're not going to agree on this. And I'm trying to get more to the heart of the matter. You claimed that around February 2006, there were rumors abounding everywhere; is that correct?
A Yes.
Q And over the years, you've testified very differently about who started those rumors; haven't you?
A Not true.
Q Not true?
A (The witness shook his head.)
Q Okay. Over the years, you've testified very differently about what those rumors are; is that correct?
A There's a big difference between rumors and finding people who will testify to specific statements. It was very difficult for Tracy and I to get affidavits

from individuals who were willing to come in here and put up with this. I couldn't sue on rumors. I needed specific statements. But there were rumors about everything. There were rumors I declared bankruptcy. There were rumors that I had taken a million dollars and skipped town and they couldn't find me. Rumors abounded everywhere.
Q So, is it fair to say they then that you've had many different stories over the years?
A That's not true.
Q Not true? Okay.
A All the rumors based on the 20 lawsuits originated from Mr. Loree. Others repeated them.
Q So, it is your testimony now that you've never accused anyone else of starting those rumors? You've always said it was David Loree? That's what your testimony is now that David Loree started these rumors?
A If there's a statement that cannot be attributed to David Loree, if somebody -- like, for instance, Ed Coco, if he originated a different rumor that may have been incorrect, then yes, I can't attribute that to Mr. Loree.
Q What about Mr. Covington, something he had said?
A Mr. Covington's a lawyer. When he was avoiding his debt, he used words like misappropriation and

commingling of funds. Those are words that Mr. Loree would not understand. I think we can agree on that. So, I would say that Mr. Covington originated the rumor that there had been misappropriated funds.
Q So, it's your testimony that you've never accused Gene Covington of using the word embezzlement? mean, that's what you just said?
A Well, without seeing specific statements. You're asking generalities. This is a slander case about very specific statements. Now, the other slander cases were resolved, but they didn't have the affidavit statements. But Mr. Loree was the first on the scene --
Q Mr. Kunst.
A -- to allege anything.
Q Mr. Kunst.
A Everybody else was paying up until the day Mr. Loree arrived.
Q Mr. Kunst, you have filed a lawsuit against my client?
A Yes.
Q And we are here in a court of law where it's after 6:00 at night, none of us want to be here. I just want you to answer my questions.
A Ask the question.
Q The question was, are you denying that you said

Gene Covington was the one who started the embezzlement rumor? Because you're making a lot of statements here. And we want to be very specific. If you're accusing my client of making these statements and asking for millions of dollars from him, we need to be sure.

A I don't think there's the word embezzle in any of the affidavits that are admitted into evidence here.

Q That wasn't my question either.

A Well, what's your question? You asked specifically about embezzlement. Maybe it was Covington that came up with the term embezzlement at the time.

Q So, you don't know; is that fair?

A I can speak only to the evidence submitted regarding Mr. Loree today without seeing the Covington –

Q The problem is what you're accusing Mr. Loree of you've accused a lot of other people of as well. And that's what I'm trying to figure out here is you say it was my client, you've also said it's other people over the years. And now you've just said Gene Covington never said I embezzled money. Is that true? Is that your testimony?

A Gene Covington's case was dismissed because I did not have witnesses that would say anything other than Gene Covington saying embezzled, now, misappropriation. I have contended all along that it was Mr. Loree first on the scene. I've contended all along that Mr. Loree caused

everyone else to stop paying. Mr. Covington had paid over 140 weekly invoices prior. All the other clients paid their weekly invoices. None of them made any allegation until Mr. Loree contacted them. And what we discovered in discovery was that a lot of these people, they were just repeating what they were told and they may have repeated a little different. I would rather just focus on what Mr. Loree said.

Q I'm sure you would, what you allege Mr. Loree said. What I'm asking you, though, are you saying that you've never alleged Mr. Covington also stated you were embezzling money. It's a very simple question. I'm not going to ask it again because I've asked it three times and you've not answered it three times. Will you give me an answer this time? I'm moving on.

A Okay.

Q That's what I thought. Is it fair to say you've also accused counsel, the lawyers, in the various lawsuits as starting and spreading the rumors against you?

A Yes, absolutely.

Q So, we've got Mr. Covington, we've got the lawyers?

A I attempted to sue Loree's attorney, Sandy Stern, because he was the author of that letter that said I had stiffed subs –

Q And –

A – and sent it out to everybody. And the lawsuit was dismissed because the judge said that Sandy Stern was acting as an agent for the Gaby's.

Q Are you done?

A I'm done.

Q Okay. And in the past as in right now, when pressed for specifics about your defamation claim, you can't really give those specific; is that correct?

A Mr. Loree's claim? I can indeed give specifics.

Q The myriad of defamation claims you have made?

A There are affidavits filed in every case.

Q Well –

A For example, one of the rumors –

Q – when you were asked about those things in your prior testimony, you said you couldn't?

A You're reading from a transcript that was taken before the affidavits were provided in different cases. You need to jump forward to after all the affidavits were submitted. For example, there was the rumor about the bankruptcy, that I declared bankruptcy. That rumor just developed amongst the job site. It never originated from Mr. Loree. But it was stated by the Debaco's to people and I needed to clear that up and find out who the originator was. It wasn't until much later that we

identified who was the originator of specific statements.

Q So, you sued the Debaco's for defamation, right?

A Yes.

Q How did that turn out for you?

A We lost that case.

Q To a jury?

A Yes, to a jury just like this.

Q Now –

A The Debaco's are very different people.

Q Now, in the past, you've actually testified that Mr. Loree had heard the rumors from other people, not tha he started them; is that correct?

A That's not correct.

Q That's not correct? While we're looking for it, do you remember testifying in a case where you sued The Reserve at Lake Keowee?

A Yes.

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: I've got the sealed transcript as well. Had Your Honor rather me submit the sealed?

THE COURT: Either way that y'all want to do it As long as there's no contest as to whether that's an accurate copy of the sealed original, then I don't necessarily need the sealed.

MR. SMITH: I have them in the courtroom if it's needed by the Court.

THE COURT: If it's a contest, we'll go to the original.

BY MR. SMITH:

Q Do recognize that document?

A I do.

Q Is it fair to say that that is the transcript of the testimony you gave in another case, defamation case that you had filed?

A Yes.

Q And my question to you – and I'll ask it one more time for context for the jury. In fact, in the past, you've actually testified Mr. Loree had heard the rumors from others, not that he started the rumors. And you say that is incorrect, you've never said that?

A It depends upon the rumor. You're not being specific.

Q Well –

A There could be many rumors. He may have heard the bankruptcy rumor from someone else. Mr. Loree can only be responsible for the statements that he made.

Q What about that he's a crook?

A That was an Ed Coco statement.

Q So, that wasn't a David Loree statement?

A There's no evidence here today stating that.

Q Okay. And you didn't accuse The Reserve sales people of starting rumors, or did you?

A In that close, tight-knit community where I knew every sales representative by name, when on a February afternoon it's announced to the world that Scott Kunst has embezzled or stolen hundreds of thousands of dollars, you know how quickly that went through the sales staff and do you think that everyone kept it secret? The reason there were so many defamation lawsuits is it exploded and everybody was repeating it. We just had to get to the source. Yes, many of the sales staff repeated it. That furthers the damage. That shows how this kind of thing can explode.

Q Well, they repeated it or did they start it? And what specifically did they start?

A Through my clients, the sales staff have nothing to start. They don't know if I've embezzled money or stolen money.

Q Okay.

A But it was the gossip of the day.

Q Okay. So, everybody was talking about these rumors?

A Yeah.

Q Okay.

A We were getting calls from everybody.

Q In fact, just to press on one point, Mr. Loree was not the only person contacting your subcontractors about payments, was he?

A Well, once the rumors were out there, that there was embezzlement, people started calling the subcontractors and me asking questions. Particularly, people like the Debaco's. They were freaking out. They were contacting people saying, Is this true? What did you hear? There were a lot of conversations between Bronson and Debaco's even though Bronson wasn't on that project.

Q So, the answer to my question is yes, there were a lot of people contacting your subcontractors to find out whether or not you had paid them?

A That's not what – people were trying to figure out what was going on. People knew what their balances were, I told them. People like Gene Covington had invoices in his desk. He knew what was due. The Debaco's had statements. They knew – everybody knew what was due. They were just afraid to pay it because they were told I was going to prison or declaring bankruptcy. Nobody wanted to forward money to a corporation that was in this kind of trouble.

MR. SMITH: Your Honor, I think we're getting close if you want me to continue.

THE COURT: Yes, sir.

MR. SMITH: At least, I hope we are.

BY MR. SMITH:

Q Mr. Kunst, do you believe that over the past nine years several of the judges in these judicial circuits have been against you to the point of corruption?

A There are several opinions that I disagree with.

Q That's not what I asked. I asked do you believe that several of the judges in this judicial circuit are corrupt?

A I don't think they're corrupt.

Q You don't?

A No.

Q You've never said that?

A Huh-uh.

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q I know this is the moment you've been waiting for. Can you tell the jury and the Court what this document is?

A Where I've been working as a security guard at night.

Q Before you go into a narrative, can you tell them if you recognize the document?

A Oh, I recognize the document.
Q And the document is the book that you've been writing?
A It's in the process.
Q Right. That's why I said the book you've been writing.
A Yes.
MR. SMITH: I would move for this to be admitted into evidence.
THE COURT: Objection, sir?
MR. KUNST: No objection.
THE COURT: All right. Without objection, the same is admitted as the Defendant's next exhibit.
(WHEREUPON, Defendant's Exhibit No. 22 was marked for identification and received into evidence.)
BY MR. SMITH:
Q If you don't mind, can you turn to Page 14?
A (The witness complies.)
Q Hold on. The number is –
A I don't know if that's the page you want.
Q No, it's not. There is a quote in there and I can't – I put it in my notes, so I'll read it and you can tell me if – if you disagree with it, then we'll sit here and we'll find it.

Neither Gaby nor Loree, in my personal opinion, are bright enough to have pulled this scam off alone?
A I agree.
Q The Gaby's needed legal help and eventually a judicial favor or two and in return, Parham and Covington needed their own cover?
A Yes.
Q Everyone else was stuck in the middle protecting themselves, including subcontractor and suppliers?
A Absolutely.
Q Mr. Kunst, do you believe that all your clients and the Courts and the lawyers all around Greenville are out to get you?
A I do not believe that whatsoever. What I'm stating – that statement, if you read the whole context, was the Gaby default damages. I was told that typically when there's a default damage that if you have valid counterclaims and you're just a few days late that that default would be reversed nine times out of ten because South Carolina wants to litigate cases. And mine was a typical case, I fully expected that.
And then at the time that this was to be – this case was actually dismissed for a while because a judge – a judge allowed Sandy Stern to write an order on his behalf. And this order included numerous criminal

findings that never occurred and the appellate court had to reverse it. I had to go as a pro se – I'm not a lawyer. I had to go before the Appeals Court of South Carolina and argue, standing there with the three-judge panel and explain to them how bad that order was that the judge signed that said I have committed criminal acts, listed codes in a civil environment. And the appeals court agreed with me and reversed it back here.
Q So, Mr. Kunst, that's not true?
A It's absolutely true.
Q We will get to the appeals opinion then. I was hoping we did not have to go to the appeals opinion.
Your Honor, we're going to have to go to the appeals opinion. I apologize for that, but that is clearly not what the South Carolina Court of Appeals did.
THE COURT: I understand.
MR. KUNST: The fact that this case is here nine years later –
BY MR. SMITH:
Q There's not a question before you. You've had your chance to testify. You did testify, though, before that if only one person had made the allegations, you could have fought that allegation, reconciled that account, again, reconciling, and dispatch that client if I had to remove myself from the project –

A It's not the allegation. It's –
Q I'm not finished. Let me finish, please.
A Go ahead.
Q You said if one person had made the allegation, I could have fought that allegation, reconciled the account, and dispatched that client if I had to remove myself from the project. When all of them do it at one time, it's impossible to stop that kind of rumor. Is that your testimony?
A That's – not all of them. I didn't say all of them. I state that Lawyer Covington took advantage of what the Gaby's were doing to avoid his own debt.
Q Okay.
A That's what I'm referring to. He's an officer of this court. He's a lawyer –
Q When Mr. Loree came to you in February of 2006, was he not the only one asking at that time about his time?
A Mr. Loree?
Q Yes.
A At what date?
Q In February 2006 when he came to you, was he the only one at the time asking about his account?
A No.
Q Oh, so they were all asking –

A I mean, yes, he was the only one that stopped paying. The Gaby's were the only ones threatening – the Gaby's –
Q It's yes or no.
A The Gaby's started threatening not to pay as late as January. There were no issues with clients not paying or accusing of money being mishandled.
Q So, they were the only ones at the time? They were the only ones?
A Yes.
Q So, you said it, if only one person had made the allegation, you could have fixed that, you could have reconciled that?
A I said if one person had stopped paying, it would have been easy just to take care of it –
Q No.
A – file the lien on the property and move on. The problem was every project stopped paying the same day, so we had $500,000 sitting out there. That's the explosion. If David Loree had kept it to himself and just simply handled the Gaby account and not contacted anybody and handled it privately with me, we would have done so.
MR. SMITH: I'm sorry, Your Honor. I'm looking for something that I can't tell if it's been put into evidence yet or not.

Has there been an order from Judge Welmaker pu into evidence yet?
THE COURT REPORTER: The only order I hav Defendant's 14 from 01/15/08.
MR. SMITH: Okay.
May I approach, Your Honor?
THE COURT: Yes, sir.
MR. SMITH: And I apologize, this is a highlighted copy because I can't find my regular copy.
THE COURT: Yes, sir.
BY MR. SMITH:
Q Scott, I was going to ask you if you've seen that document?
A Yes, I have it right here.
Q Okay. You do have it? Have we marked it?
A No, no, this is my copy. I knew you were going here.
Q Okay. Can we use your copy to mark as an exhibit?
A No, I need to keep it.
MR. SMITH: Well, Your Honor, then I'd like to move to – for judicial notice Judge Welmaker's order –
Or do you have any objection to it being

admitted?
MR. KUNST: No objection.
THE COURT: Okay. All right, the same is admitted.
(WHEREUPON, Defendant's Exhibit No. 23 was marked for identification and received into evidence.)
BY MR. SMITH:
Q Scott, I'm handing you Judge Welmaker's Order. Do you see on Page 2 where Judge Welmaker finds by clear and convincing evidence that the Gaby's are entitled to damages from you?
A Yes.
Q And do you find where he – Judge Welmaker finds the Gaby's are entitled to punitive damages from you?
A Yes.
Q And you have not paid this judgment; is that correct?
A That is correct. This is a default damages order.
Q Okay.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q I ask you if you've seen that document?

A Oh, my goodness, this is it.
Q That's it. That's what you've been waiting for, isn't it?
A This is the order that Sandy Stern wrote and –
Q I ask you if you knew what the document is?
A I do.
Q Do you have any objection to it being admitted into evidence? If so, I can ask the Court –
A It's been overturned. It's been remanded. I object.
Q Do you because it's a counterfeit document or just because you disagree with it?
A Because the Court of Appeals of South Carolina has reversed this order.
THE COURT: I can take judicial notice of its existence and the fact that it was overturned by the Court.
MR. SMITH: If it was overturned by the Court.
THE COURT: To the extent it may have been.
MR. SMITH: Thank you, Your Honor.
THE COURT: You want to admit it as an exhibit understanding you have the opportunity to admit the appellate opinion as an exhibit as well or you want to just take judicial notice of both?
MR. SMITH: I would like to admit it. And then

if he wants to admit the Court of Appeals opinion, I'm fine with that, too. I don't think the jury's going to read these cases, but I'm fine with them in evidence.

THE COURT: What's your preference, Mr. Kunst?

MR. KUNST: My preference is maybe Tracy could find the Court of Appeals?

MR. SMITH: I have it. You want me to go ahead and mark it? It has nothing to do with the questions I'm asking, but we'll go ahead –

BY MR. SMITH:

Q Is this the Court of Appeals opinion?

My apologies again for the delay, Your Honor.

THE COURT: No worries.

THE WITNESS: Yes.

MR. SMITH: Any objection to this being admitted into evidence?

THE WITNESS: Put it all in. Let them read it.

THE COURT: Okay. Without objection, then let's enter each of them as exhibits in sequence.

(WHEREUPON, Defendant's Exhibits Nos. 24 & 25 were marked for identification and received into evidence.)

MR. SMITH: So, now we have marked the Appellate opinion as well, Your Honor.

THE COURT: Yes, sir.

BY MR. SMITH:

Q But my question is if you turn to Page 3 of Judge Miller's Order, do you see where Judge Miller found that you had converted monies and failed to pay subcontractors?

A Yes, he references – Sandy Stern references South Carolina Code –

Q No –

A – ANN 29-7-20, which is a criminal code.

Q Turn to Page 13, Mr. Kunst. Do you see the signature on the document?

A Yes.

Q Who signed this document?

A Edward Miller.

Q Edward Miller being whom?

A Presiding Judge.

Q Okay. And so, this is Judge Miller's Order? Judge Miller signed this Order; is that correct?

A Yes. I got a proof – I got a copy of it before it was sent to Judge Miller. The attorneys typically are allowed to write orders.

Q That happens in every case.

A I got a proof of it before it went to the Judge. And I actually sent it to the Carpenter Law Firm. They

were so upset with how bad it was that they wrote a very long scathing letter to the Judge about how inaccurate it was and –

Q You can bring –

A – how wrong it was to even infer there were criminal findings in a civil case.

Q So, do you think –

A These are acts of conversion. These are governed by South Carolina code.

Q Mr. Kunst –

A Yes.

Q – you've had your chance to give your soliloquy. I am trying to get my cross-examination done.

A Good.

Q My question is quite simple. Do you think Judge Miller's corrupt, too?

A I don't think he's corrupt.

Q Oh, you don't think he's corrupt?

A No, absolutely not.

Q Okay. In this book you've written, you've changed a few names slightly; is that correct?

A Yes, because I'm not going to put people's names out there. I don't –

Q So, who –

A It's not about that. It's about the kind of

people there are in the world.

Q Who's Rolley?

A Mr. Loree.

Q And who do you refer to as Nertz as a character in your book?

A Stern. The lawyer who's been fighting me all these years.

Q Who's also against you?

A He cornered Tracy and I in a Pickens County doorway and shouted loud enough for everybody to hear th I was going to prison. He met with a lot of my crew and told them a lot of things.

Q If you turn to Page 1 of your book, do you admit that you write, Thanks to a couple of horrible, and you put in quotes, "mistakes" by a couple of judges in South Carolina?

A Yes.

Q Four years have been wasted chasing a goon name Rolley?

A Because he's definitely a goon.

Q And goon being Mr. Loree?

A Yes.

Q That's who you're talking about?

A Definitely. The mistakes are allowing collateral estoppel in a default case –

Q What are you implying –
A – doing that and no, it's not South Carolina law.
Q What are you implying when you put the word mistakes in quotation marks when you're referring to Judge Miller's Order?
A It should have never been argued. It was not an option for that case. It was –
Q What are you implying by – when you say mistakes by a judge?
A I'm implying it was a mistake. It was reversed as a mistake. I'm saying it should have never been pled.
Q Okay.
A Collateral estoppel is not an option.
Q And I apologize as you're numbering on the books are a little bit different than in a PDF. I'm trying to figure it out. Later on in the book – and I'm looking for it, you say moreover, South Carolina law specifically does not allow collateral estoppel to be derived from default cases for the very reason that nothing is actually litigated, but Nertz, being Mr. Stern, got the, and you put in quotes again, "right" judge.
A Uh-huh.
Q And boom, your quote, Rolley's case was dismissed in 2010 based on collateral estoppel. Why is

the right in quotation marks?
A He got the right judge to do it. I just don't think – nine times out of ten that never occurs. You cannot grant collateral estoppel to a default judgment.
Q And so, a little further on, you say, Nertz, being Sandy Stern, got a couple of favors from judges and boom, Rolley's case was dismissed.
So, now you're saying – that's not quite as open to interpretation, is it?
A It delayed the case for nine years, yes.
Q Scott, what I'm asking is are you saying that Sandy Stern got favors from judges?
A In my opinion, he did?
Q Okay. And you do admit, also, that the Gaby's had to get a restraining order against you?
A They got a restraining order against Tracy because of that letter that she wrote. Because you're not supposed to contact clients and other people that are involved in litigation directly. You have to go through the attorney.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
(WHEREUPON, an off-the-record bench conferer was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, what we're talking about is the schedule. I told y'all we would go to either 6:00 or 7:00 and we've got a little bit left to go in this testimony. We're going to go to 7:00, we're going to stop, then we're going to come back tomorrow morning. So, that's what we were just discussing.
So, Mr. Smith, you may proceed, sir.
MR. SMITH: Hopefully, this will go a little faster.
BY MR. SMITH:
Q Mr. Kunst, I want to talk to you about your future business plans –
A Yes.
Q – after you had finished up at the client houses at The Reserve. I think you testified to this, so we may be able to move quickly, that it's true you didn't plan on taking any future clients. After you were done with the houses at The Reserve, you were not going to take any future clients; is that correct?
A I had hoped not to.
Q You want to go back to spec houses –
A But I lost all my capital, so I couldn't, no.
Q But you –
A I would have liked to, yes.

Q Okay. And you've also testified, did you not, that you didn't make any real money on your clients houses anyway?
A The net fee income was not typical – was not the average that one would expect from projects like that, that's what I testified to.
Q So, is it fair to say that you didn't want to build any more client houses, that means you didn't want to take any more clients on to build houses for them? You wanted to go out and buy your property, build your house and then sell it?
A That's what I had always done before.
Q Okay. And that's what you planned to do after you finished these houses in The Reserve?
A It's not what I planned, I had already started. I had two projects underway.
Q Okay. That's even better. That's what you were doing. So, how is it that all these terrible rumors, just for the sake of argument, would hurt you from going out right now or over the past nine years instead of sitting in the dark writing this book and buying some land and building a house?
A Because I'm broke and I –
Q But you just said –
A I have incurred the debt of five mansions upon

me. I have liens and all kinds of things. I cannot be in business until this is resolved.

Q Because all those clients ganged up on you?

A I didn't collect 100 percent of the lawsuits. That $500,00 was never collected to the corporation. It was -- all the accounts, like from Jennings and all those judgments are all still out there.

Q Because all your clients ganged up on you and stopped paying at once?

A I don't know if they ganged up on me, they stopped paying. If you had read all of Cold and Greedy --

Q I read every word.

A Good, I'm glad.

Q Do you remember testifying that most of the damages you suffered were not caused by Mr. Loree?

A In what respect?

Q Well, you're sitting here telling this jury you wanted $2.6 million dollars from Mr. Loree, is that a fair statement?

A Yes, yes. That's what it will take, yes.

Q Well, that's what it will take. That's not your damages. There's a difference, I assume. But do you remember testifying that most of the damages you suffered you claim were not caused by Mr. Loree?

A I don't understand the context of the question.

If someone said something else that was different that caused other than minor damage somewhere, he's still the originator.

Q So, your testimony is you never testified that most of the damages you suffered were caused by other people, not by Mr. Loree? Of this $2.6 million, your testimony is you've maintained from the beginning that those were always caused by Mr. Loree? You haven't had other theories along the way that didn't pan out?

A If someone stopped paying, then that -- it was the damage on that, yes, from that person.

Q Can you look at your December 6th, 2007, deposition testimony? Page 77.

A Hold on. There's several up here.

Q Try to keep those together so we don't get in trouble. Are you there?

A Which one are you at again?

Q December 6th, 2007, Page 77, Lines 3 through 15. If you want, I'll read the question and you can read the answer.

A I state --

Q The question is, Okay. But the basis for your claim, for your individual damages for slander and interferences with contractural relations is based highly on the obligations that are owed to Kunstwerke

Corporation?

And what is your answer?

A I state that that's not true, it allocated based out of fairness. It allocated based on the total damages done, but there were varying degrees of damages by each person. That's what I just stated. If some -- the Kennedy's activities listed --

Q I'm sorry, the Kennedy's activities is what you said?

A Yes. In this incident, in fairness to them, didn't begin to approach Parham and Covington. The point being that their balances were much larger.

Q Please continue to read.

A Oh.

Q The next sentence is pretty key.

A So, in fairness to them, I believe that the vast majority of my damages are related more to Covington, Parham, and Hickey.

Q So, the vast majority of your damages are related to Covington, Parham, and Hickey?

A Those specific damages on those accounts.

Q And isn't it true --

A We were talking about those account balances at the time.

Q Well, that's not what this is about. And we

can -- if we have to, we can dig down on this. And I guess we will. Because you testified -- and we can go back and read the whole thing, that most of your damages -- because you're in here today claiming 2.6 million dollars. Most of your damages, you claimed, were caused by Covington, Parham, and Hickey -- Parham, Covington, Hickey, Kennedy's. Never mentioned a Loree, never mentioned a Gaby. Is that what you testified to?

A The Hickey investment property was lost. That was the single largest damage. I'm not saying that it was Hickey specifically, I'm talking about the damages in order of where the damages were the greatest. I would not have lost the Hickey project, I would not have deemed Covington and Parham uncollectible but for Mr. Loree coming to town.

Q So, you're changing --

A I was stating that those were my biggest damages because that was my big spec project. I had money invested in that.

Q So, the vast majority of your damages are from Covington, Parham, and Hickey?

A From those projects.

Q Okay. That's all I'm trying to establish. And isn't it true that you've never shown us, Mr. Loree, though we've asked you to, how you've been damaged?

Today, you've said 2.6 million dollars, but we've asked for damages information from you before in discovery, but you've never provided that. So, is that a fair statement?

A I don't think you've ever asked for specific damages in discovery. I've never been asked that.

Q It's in interrogatory responses. We'll move on. Not important. And you've talked about your damages being to your reputation generally in this area?

A Yes.

Q Have you produced one witness that says they won't work with you again? Mr. Goad said he would gladly work with you again, didn't he?

A Those that would not, I guess I would have a hard time getting them here.

Q Well, no, you have subpoena power. You could have brought anybody you wanted here. Mr. Alfonzo said he would work with you again, correct?

A That's correct.

Q Okay. So, you can't name anyone who wouldn't work with you again right now? That's part of damages.

A Yes, there's many – there's many –

Q Who?

A Particularly the ones that are owed money don't like me because they think I'm the reason they're owed money.

Q They're out to get you, huh?

A No.

Q And since you're asking for 2.6 million dollars, there's a thing in the law called mitigation of damages. Do you understand what mitigation of damages is?

A (The witness nods.)

Q You do? Can you tell –

A I understand what the word mitigate means.

Q Well, I'm not allowed to testify, though, I probably have gone a little liberal of that this time. But mitigation of damages means that if you're damaged by something, you have an obligation under the law to make those damages as little as possible. Is that correct?

A Yes.

Q Or do you – okay. So, this has been going on since 2006, that's correct?

A Yes.

Q And now you're claiming 2.6 million dollars?

A Yes.

Q If you had filed bankruptcy in 2006, do you know how long that bankruptcy would have been on your credit record?

A I've already stated I wouldn't.

Q You wouldn't file bankruptcy?

A No.

Q Okay.

A I'm not going to supply –

Q Do you know how long a bankruptcy remains on your credit history?

A I have no idea.

Q It's about seven years. So, if you had filed bankruptcy in 2006, in 2013, you would have had a clean credit record. There would have been no liens, no judgments?

A Yes. And my suppliers would have been paid pennies on the dollars.

Q Okay. Which is more than they've got right now, isn't it?

A Not what they're about to get.

Q Okay. So, you're looking for a windfall?

A No, I'm looking to pay the people that were harmed. That's why I have allowed the judgments to be against me. The worst possible thing I could do after these men trusted me was to declare bankruptcy and walk away.

Q The question, though, is a question of mitigation of damages?

A Yes.

Q You were legally obligated to make your damages as little as possible. If you had declared bankruptcy, in

2013, you would have had a clear record. You could be out building houses again right now. Is that fair?

A I can't say that for sure, but I just wouldn't do it.

Q You just don't know, right?

A Are you suggesting I should have declared bankruptcy –

Q I'm not suggesting one way or the other. I'm suggesting that you have sat around for nine years doing nothing and now you want millions of dollars?

A I haven't sat around. I've got quite a portfolio of stuff I've designed. You should see my website. And secondly, I tried to mitigate the damages by getting the truth out there.

Q Well – okay.

A That's how I –

Q Didn't you testify earlier that if you didn't get favorable verdicts in the contract cases your career is over?

A Not that my career is over necessarily. I needed favorable outcomes in the corporate cases to show that money was not embezzled from them because Mr. Lor was not going to correct the record for me. I had to correct the record for myself. I basically –

Q So, you did not testify – I'm sorry, I didn't

mean to interrupt you. It's your testimony now that you have never testified under oath that unless I get a favorable jury verdict in all these cases, my career is over?

A Well, as long as I'm stuck with this debt, yes.

Q Okay. And isn't it true that, in fact, you actually lost your license as a residential builder before the events of 2006?

A That's not true.

Q That's not true?

A No.

Q You did not testify that you lost your license to build houses in 2005?

A No.

Q Okay.

MR. SMITH: One moment, Your Honor. I'm done with this witness, Your Honor, subject to any recross if he comes back.

THE COURT: I understand.

MR. SMITH: And I apologize for the lengthiness.

THE COURT: No worries. No worries.

Mr. Kunst, I know that you have testified for a significant amount of time and you have also testified on cross-examination. Do you have anything else that you need to put into the record?

MR. KUNST: Just two minutes, Your Honor.

THE COURT: Two minutes, okay. We're going hold you to that, okay?

MR. KUNST: Okay. Two minutes.

MR. SMITH: Should I just stand here if it's only two minutes?

THE COURT: No, you can sit down. Let him testify.

MR. SMITH: All right.

THE COURT: You have some redirect – we'll ta that up – or recross.

MR. SMITH: Yes, sir.

THE COURT: Go ahead.

MR. KUNST: Just to clear up the mortgage incident, in this hearing that occurred in Greenville a month ago, two months ago, it wasn't the IRS and it wasn't the mortgage company that was moving in. It was Ms. Wright. She was the only one there. The paperwork did not say the others. The others might appear as lienholders, but it was a tactic. It was a move by them to try to, in a way, threaten me. It was my parents house. They've always targeted people close to me. Like you heard Gene Covington threatened Tracy with the proper authorities. It's over and over and over again.

He's referenced code violations in these documents and these judges' order that were incorrect and overturned. He's tried to get these – he's got some of it in evidence. Folks, I've never been convicted of a misdemeanor. If anything that has been innuendo here today were true, they would have definitely sought those criminal findings. They would have definitely found, at least, a misdemeanor. And I'll say in closing I've never had more than a traffic ticket. Thank you.

THE COURT: Okay.

Any redirect based on that? Or recross?

MR. SMITH: No, Your Honor.

THE COURT: Thank you, Mr. Kunst. I appreciate it. You may step down.

Okay. It's my understanding that tomorrow you have a representative from Department of Revenue?

MS. WRIGHT: Actually, she's out there right now.

THE COURT: How long will it take you? 7:00 o'clock is the end time.

MS. WRIGHT: I should be done.

THE COURT: Do you have an objection to going out of order, Mr. Kunst?

MR. KUNST: I have no objection.

THE COURT: Okay.

MS. WRIGHT: I do request, Your Honor, that w be granted protection because normally, the Plaintiff rests and then we're able to do our directed verdict motions, then we do our case.

THE COURT: He hasn't rested yet.

MS. WRIGHT: I know that, that's why I'm askin

THE COURT: You're fine.

MS. WRIGHT: Okay. Thank you.

MR. SMITH: Your Honor, I'm sorry, I may not have heard correctly. Because the Plaintiff hasn't rested yet, we are not precluded from moving for directed verdict even though we're calling our witness?

THE COURT: That's exactly right.

MR. SMITH: Thank you, Your Honor.

THE COURT: Ma'am, if you would come up her place your left hand on the Bible and raise your right to be sworn in.

MELISSA ADDCOX, after being duly sworn, testified as follows:

THE CLERK: Have a seat, state your name for t record, please.

THE WITNESS: My name is Melissa Addcox.

DIRECT EXAMINATION

BY MS. WRIGHT:
Q Good afternoon – actually, I'm going to rephrase that. Good evening, Ms. Addcox. I'm going to look through this paper here. I'm referencing the Defendant's Exhibit 20, South Carolina tax lien. Would you look at those for me, please?
A Yes. Okay.
Q All right. Ms. Addcox, would you please tell the jury where it is you work?
A I work with the South Carolina Department of Revenue. I'm currently a collections supervisor. I supervise 16 revenue officers. We are in the collections area. We enforce tax laws and collect debt.
Q And how long have you worked for the Department of Revenue?
A Twenty-seven years.
Q Those liens that you just looked through, have you seen those before?
A Yes.
Q What occasion did you look through those liens?
A When you contacted me to testify, you sent the information that I reviewed.
Q Now, those liens that you have right under your fingers there, are those the same liens that you reviewed prior to your testimony today?

A Yes.
Q Okay. And are those tax liens still outstanding?
A Yes, they are.
MS. WRIGHT: I have no further questions, Your Honor.
THE COURT: Mr. Kunst, any questions, sir?
MR. KUNST: Real brief, Your Honor.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KUNST:
Q Do you have any evidence that I violated any tax codes?
A I do not have that information.
Q Do you have any evidence that I've committed tax evasion?
A I do not have that information.
Q Do you have any evidence as to whether or not I have embezzled or taken money from my clients?
A I do not have that information.
Q Has the South Carolina Department of Revenue done an audit on my records?
A I cannot answer that question.
Q Is it possible for a citizen to request an audit be done?

A I cannot answer that question.
MR. KUNST: Nothing further, Your Honor.
THE COURT: Okay.
Any redirect, ma'am?
MS. WRIGHT: No, Your Honor.
THE COURT: Okay.
Thank you, ma'am, I appreciate you being patient and waiting today.
MS. WRIGHT: May the witness be excused, Your Honor?
THE COURT: Yes.
All right. Ladies and gentlemen, you may notice before we started, I ask is there any objection to taking the witness out of order. That was because the Plaintiff has not yet closed his case yet. And that witness was called by the Defense. The reason we did it out of order is so she wouldn't have to drive from Columbia again. That was the Defense's witness, not the Plaintiff's witness. That's a very final distinction, but I thought it important to, at least, point out to you so you would understand what we were talking about with taking it out of order.
My understanding is tomorrow, we may have some deposition testimony, some deposition of a witness that was taken who may not appear in court. I don't

know that for sure, but that's my understanding. After we've heard that testimony, then we will go into argument and charge. And again, I think we're on the timeline that I set out this morning.
So, ladies and gentlemen, I will see you tomorrow morning. Please don't discuss the case. 9:30 tomorrow morning. 9:30 tomorrow morning. Th you.
(WHEREUPON, the jury left open court and was excused for the day at approximately 6:55 p.m.)
THE COURT: All right. If y'all would – if y'all will, please, we'll start tomorrow at 9:30. I want y'all to be here at 9:00, though, because I want to discuss charge. And I want to do that in chambers, I won't do it on the record. And then just discuss, make sure that we're clear on the deposition testimony. We had a discussion earlier this morning first light that we may come to some accommodation a to what would be admissible and what's not. I want to see where y'all stand on this. Okay? So, I will see y'all tomorrow morning. Is there anything we need to put on the record this evening?
MR. KUNST: No, Your Honor.
MR. SMITH: No, Your Honor.
THE COURT: Okay. All right. I will tell you,

you know, I've listened with some curiosity to the testimony that's been presented today. I don't know what the settlement negotiations have been. I have heard the testimony that there appears to be some room potentially for settlement. I don't know if that's possible or not. I don't know if this is a case that needs to go to a jury verdict. I will tell you this that I'm not sure of many things in this world, but I am fairly sure that when and if you reach a jury verdict in this case, you probably will have some additional work to do at the appellate level. It's my guess. So, I would suggest that, perhaps, y'all have a conversation about the value in being shed of this controversy. It certainly has value. And y'all should explore any potential settlement possibilities that are outstanding. They may not be there. And I'm not going to twist your arms.

To me, it's -- I'm happy having a jury verdict. We've come this far. But after a jury verdict is rendered, I'm not going to have anything else to do with this case, but y'all may. And you may want to consider what's next. And the best, the best salve for a grievance is resolution to the grievance. So, y'all discuss it.

In any event, I'll see y'all tomorrow morning. If you have requests for charge, I'll be happy to look at them at that time. And we'll move forward with the case and anticipate closing argument and charge tomorrow morning.

Yes, ma'am.

MS. WRIGHT: Your Honor, has the Plaintiff rested?

THE COURT: No, they haven't rested. And I kn you haven't either. Y'all -- both your cases are still open right now.

Yes, ma'am.

MS. HILTON: The issue with the deposition testimony tomorrow, there will be originals that are being FedExed here, should be here by 10:00 a.m., sealed copies. So, I just wanted to let you know that was the situation.

THE COURT: Well, y'all talk through that. It may be that y'all can agree that those deposition copies are authentic and you might be able to move forward. I don't know. Y'all talk about it.

MS. HILTON: We discussed it and they wanted originals.

THE COURT: Okay. Well, I will tell you that I'll be somewhat disappointed if we wait until 10:00

for deposition transcripts, just know that.

All right. Y'all have a great evening.

MR. SMITH: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on May 28, 2015.)

May 28, 2015

THE COURT: Counsel, we ready for the jury?

MS. WRIGHT: Yes, we are, Your Honor.

THE COURT: If you would, sir, put Ms. Sharon King, please, Sharon King, as foreperson of the jury. Sharon. There are two Kings. There's a Pamela and a Sharon. It's Sharon.

THE BAILIFF: Yes, sir, Your Honor.

(WHEREUPON, the jury came into open court at approximately 9:37 a.m.)

THE COURT: Good morning, everybody. Good see you here again this morning.

Ms. King, I am appointing you as foreperson of the jury. Congratulations. That's a reward for your accomplishments as a juror this week. I can tell you that the duties of a jury foreperson are fairly ill defined under the law. What your duties are as foreperson is to make sure that when the jury is in deliberations that everyone has the opportunity to be heard, that everyone has a voice and no one is drowned out. I know that in a group of 12 people, there are going to be some people who are very loud and verbose, and there may be some people a little more reserved. Need to make sure that just everybody has the opportunity to be heard. Otherwise, I can't

give you any instructions as to how to conduct jury deliberations. It could be a matter of consensus among you or you can try to organize it. I don't know because I've never been on a jury and because I'm not allow to go into the jury room while the jury is deliberating or it would be an automatic mistrial. So, I don't know how y'all arrive at questions -- at the answers other than by mutual agreement and discussing it.

So, when you get into your jury room, make sure everybody has the opportunity to be heard. If during your deliberations you have any questions, then you may write those down and you can give them to the bailiff to present to me. I am hopeful that you won't have any questions, that my charge will answer all of your questions, however, you may have some and you're welcome to give them to me to answer. Sometimes, I can answer questions that are posed and sometimes I can't. Also, when and if the jury reaches a unanimous verdict, you will sign the verdict form and you will let the bailiff know that you've reached a unanimous verdict.

Now, I'm leaning forward a little bit because I anticipate we're going to argue and charge here in a little bit. The only matter remaining, evidentiary

matter remaining, is the reading into the record a deposition transcript. Now, I told you earlier in the trial that a deposition is an out-of-court statement made by witnesses under oath in anticipation of trial. In many instances, it's made as a part of discovery, that is as people are going through the process of learning what the other party is saying, what they're opposing.

Now, at certain times, it may come to pass that those depositions are used at trial. You heard depositions used at trial to clarify and/or impeach a witness's testimony already. In this instance, we have an unavailable witness, that is a witness that is outside of the subpoena power of the parties in this case. And that witness will not be available to testify. So, the parties have determined certain portions of that -- of the transcript, the deposition transcript which should be read to you, which can be read to you, which will be read to you. Again, those deposition transcripts are just like any other piece of evidence that you receive in a case, just like any other testimony. You decide if it's valuable or not. You decide if it's credible or not. All right. Having said that, we'll proceed.

Mr. Kunst, I believe it's your case, sir.

MR. KUNST: Thank you, Your Honor. If it pleases the Court, the Plaintiff would like to read from the deposition of Richard Gaby.

THE COURT: Okay. All right. Who is going to read? Who is going to play the role of Mr. Gaby?

MS. HILTON: I will, Your Honor.

THE COURT: All right. Ms. Hilton, if you will come forward please, ma'am, you can take a seat on the witness stand.

Do the parties concede, stipulate, that Mr. Gaby was under oath at the deposition at the taking of the same?

MR. SMITH: Yes, Your Honor.

MR. KUNST: Yes, Your Honor.

THE COURT: All right. We will forgo the reading of the swearing of the witness and there will be a stipulation that he was under oath at the time.

Okay. You may begin, Mr. Kunst.

MR. KUNST: Are you ready, Ms. Hilton?

MS. HILTON: Yes.

MR. KUNST: Please begin reading the first part of the line.

(WHEREUPON, the deposition of Richard Gaby was read into the record by Ms. Hilton.)

MS. HILTON: Question by Mr. Kunst --

THE COURT: And here's what I would like you do. I'd like you to read the question, then you can read the answer to the question, okay?

MR. KUNST: Yes, sir, Your Honor.

MS. HILTON: We can just go back and forth?

THE COURT: Tell you what, if that's the way y'all rehearsed doing it, you just do it. Just make clear what the question is and what the answer is okay. All right. Go ahead. You may proceed.

MS. HILTON: Question by Kunst: Who is Davi Loree?

Answer: He works for us.

Question: Do you recognize his business card?

Answer: Yeah.

Question: Do you need time to review it for accuracy?

Question: When did Loree first begin working for you?

Answer: Spring of 2005.

Question: What is his official job title?

Answer: He doesn't have an official job title. He does anything I ask him to do.

Question: Does he no longer serve in the capacity as indicated on that business card?

Answer: He does to some degree.

Question: Does he serve as an executive protection administrator for you?
Answer: Yes, on some levels, he does.
Question by Mr. Kunst: Based on the contract that you signed, was there any stipulation for withholding reimbursement based on progress?
The Witness: I paid every invoice that was submitted to me other than the last one.
Question: At any time, did you order an independent audit of your account with Kunstwerke?
The Witness: I don't recollect.
Question by Mr. Kunst: Did you order him to contact, as his employer, any subcontractors, vendors?
Answer: We were trying to ascertain how monies were being handled.
Question: Did you ask him to contact other clients of Kunstwerke?
Answer: No.
Question: Are you aware that he did?
Answer: No.
Question by Mr. Kunst: Do you have any information regarding whether or not Scott Kunst has been caught co-mingling his clients money?
The Witness: I don't know how I'd have a – no,

I don't.
Question by Mr. Kunst: Has Scott Kunst embezzled money from all of his clients to your knowledge?
Answer: I have no knowledge of that.
Question by Mr. Kunst: Do you have any information as to whether or not funds that you disbursed to Kunstwerke were spent on luxury cars or foreign trips?
Answer: No.
Question: Have you ever asked Mr. Loree to mak physical –
Mr. Smith: To be clear, you're saying you have no knowledge of that?
The Witness: I have no knowledge.
Mr. Kunst: That was understood.
Mr. Smith: I want it clear for the record.
Question by Mr. Kunst: Have you ever asked Mr. Loree to make physical threats to anyone of his employees?
Answer: Absolutely not.
Question: Did Scott Kunst ever go to jail to your knowledge?
Answer: I have no knowledge.
Question: Do you have any reason as you sit

here to believe that Scott Kunst is going to jail as it relates to your project?
Mr. Smith: Object to the form.
Mr. Stern: Object to the form of the question. I'm sorry.
MS. HILTON: Is that okay?
THE COURT: Is that the objection you wish to lodge, Mr. Smith?
MR. SMITH: No, that was an objection to the form, but she can finish reading the answer.
THE COURT: You may continue.
(WHEREUPON, Ms. Hilton continues reading deposition of Richard Gaby into the record.)
MS. HILTON: The Witness: I have no basis to answer that.
Question by Mr. Kunst: Do you have today as you sit here any specific knowledge that Scott Kunst has embezzled funds with you?
Mr. Smith: You can answer that.
The Witness: We have a judgment against Scott Kunst.
Question by Mr. Kunst: Is that the default judgment?
Answer: Is that what it was, default judgment?
Question by Mr. Kunst: Do you know how large

that judgment is?
Answer: I don't have a recollection.
Have you ever seen this affidavit before?
Answer: I have not.
Question: Do you have any information regarding an insurance policy as stated in the third line from the bottom that was taken out on your house?
Answer: I do not.
Have you ever referred to Scott Kunst as a criminal?
Answer: I have no recollection.
As you sit here today, do you have any knowledge regarding money missing from other Kunstwerke projects?
Answer: No, I do not.
Mr. Smith: Meaning you don't have knowledge o way or the other?
The Witness: I have no knowledge.
Question: Do you have any knowledge of dummy invoices that you may or may not have received?
Answer: I do not have any knowledge.
Question by Mr. Kunst: You may have answered this question, but refresh my memory, you have not performed a reconciliation of your Kunstwerke account?

Mr. Smith: Answer.
The Witness: I have no knowledge or recollection.
Question: Has Mr. Loree ever said to you, his employer, that he believed that 400,000 had been embezzled from you?
Answer: I don't recollect.
Question: Did you ask him to do something insofar as determining the payment of subcontractors, suppliers, that sort of thing?
Answer: We were trying to ascertain the facts.
Question: But did you ask him to do that?
Answer: Yes.
Question: The questions you've been asked here today about amounts and contracts and accounts and reconciliations, are those questions more properly directed to Mr. Loree?
Answer: Most of them, yes.
THE COURT: Does that conclude the deposition of Mr. Gaby?
MR. KUNST: That concludes the deposition testimony of Richard Gaby.
THE COURT: You have another witness whose deposition you'd like to read?
MR. KUNST: Yes, Your Honor. The Plaintiff

would ask that the deposition of Barbara Van Andel-Gaby be read.
THE COURT: Barbara Van Andel-Gaby?
MR. KUNST: Yes.
THE COURT: Okay.
MR. KUNST: May I approach?
THE COURT: Yes, sir, absolutely.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby was read into the record by Ms. Hilton.)
MS. HILTON: Question: Do you own a home designed by me at The Reserve at Lake Keowee in Pickens County, South Carolina?
The Witness: Yes.
Question by Mr. Kunst: How often do you visit that home?
Answer: It varies, but about a month out of the year.
Question: Four weeks a year?
Answer: Witness nods head affirmatively.
Question: Do you appear here today voluntarily or by subpoena?
Answer: By subpoena, right?
Mr. Smith: I'll object to the form. It's basically calling for a legal conclusion that my

client is not competent to answer.
Mr. Stern: Same objection.
Mr. Smith: She's here by agreement and then your subpoena was served after our agreement.
Question by Mr. Kunst: What is an executive protection administrator?
Answer: I don't know.
Question: Is Mr. Loree still employed by you?
Answer: Yes.
Question: Has he been continually employed by you since March 2006 until present?
Answer: Yes.
Question by Mr. Kunst: Did Mr. Loree ever speak to you regarding his relationship with me directly?
Answer: No.
Question: Did he ever report to you directly regarding the construction of the house at Lake Keowee?
Answer: No.
Question: As a signer of the contract, did you make any effort to ascertain whether all weekly billings were reimbursed?
Mr. Smith: Object to form. She can answer that question if she knows.

Question by Mr. Kunst: You can answer it.
Answer: I don't know. I'm not involved.
Question: You say you're not involved? This may answer that question, but just to be sure, at any time, have you asked Mr. Loree or anyone else to do a full audit of your Kunstwerke Construction account?
Answer: No.
Question: Have you asked Mr. Loree or anyone else to do a full reconciliation of your Kunstwerke Construction account?
Mr. Smith: Object to form, but to the extent you can, you may answer.
The witness: I have no idea.
MR. SMITH: I think you actually skipped a page
MS. HILTON: Okay. Where is that?
MR. SMITH: Page 12, Lines 4 through 10.
MS. HILTON: Page 12?
MR. SMITH: Yes, ma'am.
MS. HILTON: What lines?
MR. SMITH: Four through 12 – I'm sorry, 4 through 10.
MS. HILTON: I think I did read it, but I'll read it again.
MR. SMITH: I'm sorry if you did. I must have

missed it.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby continued to be read into the record by Ms. Hilton.)
MS. HILTON: Question by Mr. Kunst: Did Mr. Loree ever speak to you regarding his relationship with me directly?
Answer: No.
Question: Did he ever report to you directly regarding the construction of the house at Lake Keowee?
Answer: No.
Question: Do you have any information as you sit here today whether or not Scott Kunst has embezzled money from all of his clients?
Answer: I do not know.
Question: Do you have any information as you sit here today whether or not any of your personal funds intended to go towards your house on Lake Keowee went towards luxury cars or foreign trips?
Answer: I do not know.
Question: Have you ever instructed Mr. Loree to make personal threats against anyone?
Answer: Absolutely not.

Question: Based on your knowledge, is Scott going to jail?
Answer: I do not know.
Question by Mr. Kunst: Did you ever instruct David Loree to use the word jail time in reference to Scott Kunst?
Answer: No.
Have you heard David Loree ever refer to Scott Kunst as a criminal?
No.
Have you instructed him to state that to anyone else?
Mr. Smith: To state what?
Mr. Kunst: That Scott Kunst is a criminal.
The witness: No.
Question begins: My question to you relates to that. Do you have any information or evidence that 400,000 has been taken from the Gaby project?
Answer: I have no knowledge of any of this.
Question: At any time since March 2006, did you instruct David Loree to contact all of Kunstwerke clients?
Answer: No.
Question: Did you ask David Loree to do an

investigation of Scott Kunst's financial matters?
Mr. Stern: Object to the form of the question.
Mr. Smith: Join.
The witness: I have no knowledge.
MR. SMITH: Tracy, you forgot Page 22 as well.
MS. HILTON: I'm sorry?
MR. SMITH: And Page 24 and Page 20.
MS. HILTON: Oh, really. I didn't have a tab on that, I'm sorry.
MR. SMITH: And 27.
MS. HILTON: Okay. If you can give me the pages one at a time, I'll read it.
MR. SMITH: Page 22, Lines 6 through 12.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby continued to be read into the record by Ms. Hilton.)
MS. HILTON: Question: During the time you spent at your lake home at Lake Keowee in 2006, did you hear any rumors regarding Scott Kunst regarding financial matters?
Answer: In 2006?
Question: Yes.
Answer: I have no memory of that.
MR. SMITH: Page 24, 17 through 24.

MS. HILTON: Okay. I didn't have that highlighted. 17 through 24?
MR. SMITH: Yes.
MS. HILTON: 24, 17 through 24?
MR. SMITH: Yes, ma'am.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby continued to be read into the record by Ms. Hilton.)
MS. HILTON: Question: Exhibit 4, the followin is a transcript of a hearing presented by David Loree. It's a default damages hearing in a case involving Richard Gaby and Barbara Van Andel v. Scott. Did you testify in this hearing?
Answer: No.
Question: Were you present?
Answer: No.
MR. SMITH: Page 26, 10 through 13.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby continued to be read into the record by Ms. Hilton.)
MS. HILTON: Question by Mr. Kunst: Do you l an outstanding damage award against me personally a Kunstwerke?
Mr. Smith: You may answer if you know.
The Witness: Yes.

MR. SMITH: Page 26, Lines 23 to over the next page through Line 3.
MS. HILTON: Twenty-two through?
MR. SMITH: Three on the next page.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby continued to be read into the record by Ms. Hilton.)
MS. HILTON: Did you ever ask Mr. Loree to make sure that Kunstwerke was paid everything it was due as signer of the contract?
Mr. Smith: Object to the form. If you know, you may answer.
The Witness: I don't know. I'm not involved in the financial side of things.
MR. SMITH: And Page 29, 7 through 13.
MS. HILTON: Really? Lines again?
MR. SMITH: Seven through 13.
MR. KUNST: Your Honor, may we pause for a moment?
THE COURT: Yes. We're getting some water for you.
MS. HILTON: Seven through 13?
MR. SMITH: Yes, ma'am.
(WHEREUPON, the deposition of Barbara Van Andel-Gaby continued to be read into the record

by Ms. Hilton.)
MS. HILTON: Question: Did you hear at that same time the possibility from someone other than David Loree that there may be an account balance owed?
Answer: I have no knowledge of anything.
Question: When you say you have no knowledge, you do not recall or you have no knowledge?
Answer: I don't have any knowledge.
MR. SMITH: That's all.
THE COURT: Anything else?
MR. KUNST: That's all from this witness, Your Honor.
THE COURT: Okay. You may step down. Thar you.
Anything further from the Plaintiff?
MR. KUNST: That's it, Your Honor.
THE COURT: Okay.
MR. KUNST: The Plaintiff rests, Your Honor.
THE COURT: Okay. Good enough.
MS. WRIGHT: Defense rests, Your Honor.
THE COURT: Okay. Good enough. Y'all have s motions, I presume?
MS. WRIGHT: Yes, we do.
THE COURT: Okay.

MS. WRIGHT: In the presence of the jury, Your Honor?
THE COURT: Ma'am?
MS. WRIGHT: You want me to make my motion for directed verdict in the presence of the jury?
THE COURT: No, no, no, no, ma'am. Don't. I didn't know if you had anything you wanted to put into the record, any evidence to put into the record?
MS. WRIGHT: No, Your Honor.
THE COURT: All right.
Ladies and gentlemen, at the point in time which the parties rest, it is incumbent upon me to take up matters of law. There may be motions that need to be made and I need to resolve them before we move forward. There are also matters that we need to discuss before we begin our argument and charge. It's not going to take us long. We got here early this morning and we talked through a lot of the issues that we needed to to get to argument and charge, but I must necessarily from a procedural perspective hear arguments now.
So, I ask you to retire to your jury room. Don't discuss the case. When we come back, we'll go into argument and charge on the law. Okay. Please don't discuss the case.

(WHEREUPON, the jury left open court at approximately 10:00 a.m.)
THE BAILIFF: The jury is secured, Your Honor
THE COURT: Okay.
Yes, ma'am.
MS. WRIGHT: Your Honor, the Defense moves f directed verdict on the grounds that the Plaintiff has not proven the elements of slander per se. It's -- slander per se requires that the Plaintiff prove that either Mr. Loree charged him with the commission of a crime of moral turpitude, contraction of a loathsome disease, adultery, unchastity, or unfitness in business or occupation. There has been no witness testimony to any of these items. In fact, Plaintiff's own witnesses, Mr. Goad and Mr. Alfonzo, indicated that they had been told that Mr. Loree had no problems with Mr. Kunst as a builder or home design. And because this is the Plaintiff's case in chief on slander per se, we move that the case be dismissed.
THE COURT: All right. Thank you. I respectfully deny the same. The standard for review of the directed verdict motion is to review the same in the light most favorable to the nonmoving party and not to weigh the sufficiency of the evidence, but

merely to ascertain the existence of evidence. I think taking the evidence in the light most favorable to the Plaintiff, there was suggestion that the Defendant may have said something that impugned his fitness to conduct business. Therefore, on that basis, I respectfully deny the same.

MS. WRIGHT: Thank you, Your Honor. Just for housekeeping, I had added directed verdict motions concerning qualified privilege. We had addressed that in chambers.

THE COURT: Okay. And I'll address that on the record as well. Is there anything else you need to put on the record?

MS. WRIGHT: No, Your Honor.

THE COURT: Okay. I know that when we began the case, there was a motion in limine to amend the pleadings. I told you at the time that I thought that that was a fairly academic matter and that I would take it up after having heard all of the evidence.

One of the things that I was looking at specifically is whether the amendment would change in any way, shape or form the presentation of the case, the manner and the method of presentation of evidence and/or the tactical positions of either parties.

It's clear to me after having heard the evidence in this case that no prejudice at all is upon either party from amendment to the pleadings. Matter of fact, from the evidence, it appears that the issue of truth and qualified privilege in the underlying factual allegations were present from inception of this action, actually, were known to the parties prior to the inception of the action. Testimony clearly was that Plaintiff knew that Mr. Loree was an agent of the Gaby's. He said that directly on direct examination.

Also, the -- it's clear that from all the pleadings from all the submissions in this case that the relationship between the Gaby's and Mr. Loree wa: clear and fully disclosed at inception. Therefore, I find with respect to qualified privilege, there is no prejudice that visits upon the Plaintiff or the Defendant from the amendment of the pleadings in accordance with established law the amendments shoul be liberally granted. I find again, no legal prejudice and I find no actual prejudice.

With respect to the amendment for truth, again, there is -- the record is replete with discussions, arguments, orders which discuss the truth as an absolute defense. I will also say that in the

pleadings, there's an allegation of the falsity of representations that were made and there was a denial of the falsity of those representations, which indicates to me that whether you characterize it as an affirmative defense or not, it certainly was affirmatively asserted in the initial pleadings in this case. I also tell you it's entirely academic inasmuch as it's the Plaintiff's burden of proof to demonstrate the falsity of the -- the falsity of the statements that were made.

Therefore, it is this Court's opinion that whether it's amended or not really has no practical effect in the way this case has even been presented or the charge that will be given to the jury. Therefore, inasmuch as it is academic and innocuous, I will allow the amendment.

Anything additional?

MR. SMITH: Yes, Your Honor.

THE COURT: Yes, sir.

MR. SMITH: Given your ruling that qualified immunity is a defense in this matter, we would ask the Court to recognize as a matter of law the Defense's qualified immunity applies in many cases in South Carolina is a matter of law not a matter of fact whether qualified immunity applies. And if the

Court finds that qualified immunity applies, we would ask the defense for the Plaintiff be dismissed.

THE COURT: Okay. Do you have any position (that, Mr. Kunst?

MR. KUNST: I do not, Your Honor.

THE COURT: Okay. I have read with some interest the case law on defamation in the State of South Carolina as well. It's unclear. I've read the cases to which you refer, also, read cases where it's a matter for the jury. I think in this case inasmuch as this has been a tortured litigation that has taken place over the last nine years, it has gone to the appellate level and back, that we are better served to not direct verdicts or summarily make any decisions in this matter. If I'm wrong, the Court of Appeals or Supreme Court can overturn me, but, at least, they will have an evidentiary and a decision from a jury that will serve the purposes of the ultimate resolution of this case.

In this matter, I think it's appropriate to have the jury make that determination. I've allowed the amendment and then the jury as a matter of fact will make a determination, first of all, as to whether he was acting within the scope of his agency and whether he enjoys the qualified privilege of acting outside

the scope.
MR. SMITH: I understand. Thank you, Your Honor.
THE COURT: All right. Okay. All right, sir. Anything before we go in front of the jury?
MR. KUNST: Nothing more, Your Honor.
MR. SMITH: Could we take about a two-minute break?
THE COURT: I'm definitely going to take a break before we get started.
MR. KUNST: Your Honor, I will make a motion for a directed verdict.
THE COURT: Oh, you're going to make one?
MR. KUNST: Yes, sir.
THE COURT: Okay. Go ahead and make one.
MR. KUNST: Okay. Your Honor, the Plaintiff moves for a motion of directed verdict because the Defendant has failed to prove the defense of truth and privilege over the last three days. The specific statements are there. The ones that were read in the beginning. They had an obligation to not just have truth, but provable truth. They called one witness. They had no experts. Mr. Loree specifically on many instances not only didn't deny, he just simply said I couldn't recall. A couple of times, he said I may

have said such things. When you look at every slander regarding insurance policy, the dummy invoices, the stealing money or money missing, the 400,000 from the Gaby's or from all the other clients, there is not one item of truth or evidence submitted by the Defense this week in any one of those statements.
THE COURT: Okay. All right. Thank you, Mr. Kunst, I appreciate it. And on the same basis upon which I denied the directed verdict motion from the Defendant, I respectfully deny the Plaintiff's as well. Viewing the evidence in the light most favorable to the nonmoving party, there is evidence in the record which demands a jury decision on those very same matters.
MR. KUNST: Thank you, Your Honor.
THE COURT: All right. Let's take a break.
(WHEREUPON, a short break was taken.)
THE COURT: All right. Let's bring in the jury.
(WHEREUPON, the jury came into open court at approximately 10:20 a.m.)
THE COURT: All right. Ladies and gentlemen, we're going to get closing arguments like I told you at the beginning of the case. Closing arguments, just like opening arguments, are not evidence.

You've already heard all of the evidence that you will receive in this case. Arguments are simply that. They are the particular party's attempt to persuade you to their respective positions.
What will happen is the Plaintiff will have the opportunity to begin and open, then the Defense will have the opportunity to respond. The Plaintiff will then have closing arguments. Now, I have spoken to the parties and they've agreed – in fact, they suggested that I give them a time limit, which I have elected to do happily.
So, the Plaintiff will argue for no more than 15 minutes initially. The Defense will have the opportunity to respond for no more than 20 minutes. And then the Plaintiff will have five residual minutes to reply and to close. So collectively, it's no more than 40 minutes. I'll be watching the clock. I know you will, too. After we have heard arguments, I'll give you a charge on the law and that should be about 20 minutes, I suspect. At that point, then I'll allow you to go back to begin your deliberations of the case.
Having said that, ladies and gentlemen, I defer to Mr. Kunst.
You may begin, sir.

CLOSING STATEMENT
MR. KUNST: Thank you, Your Honor. If it plea the Court?
THE COURT: Yes, sir.
MR. KUNST: Good morning, ladies and gentlem it's been a long three days. We made it, thank you. As I stated on Tuesday morning, someone is always attempting to get a result that the truth would not afford them. Sometimes the lies that they tell are so bad that they can destroy good people. That is why we have defamation law. And that is why this case is so important. How do you stop someone from going around accusing you of things you didn't do? How do you stop them? If David Loree didn't say the things that he said, how would our lives be different?
According to the law, defamation occurs when there's a false, defamatory statement made about someone and unproven communications with a third party. I remind you, the law states it doesn't have to be just one person. It could be just one person. If that defamation imputes unfitness in business, then damages are assumed.
When David Loree came to town to fix things, the truth didn't matter. You heard him admit that he is

not a detective and has no expertise in financial matters. He's not accountant, auditor or CPA. You heard David Loree admit that he never saw or read the Gaby contract with Kunstwerke. He has shown you that he understands nothing about a reimbursement contract. The Gaby contract placed into evidence states funds are due upon receipt at weekly billing seeking reimbursement. His supposed investigation did not even consider the crux of the contract, reimbursement. He never looked at the last weekly billing for reimbursement. You heard me ask him.

Do you believe the funds the Gaby's wired were earmarked for specific invoices?

He said, Yes.

I asked him. I asked him is that the premise you based your investigation on?

He said, Yes.

Folks, the premises was false. He didn't even read the contract before going out and making false statements to other clients, subcontractors, suppliers, many who had nothing to do with the Gaby project. He went over the line. When I asked him if he had contact with Covington, Mike Parham, Ed Coco and my investigator, Tom Hickey, he denied it. His response was maybe, perhaps.

You heard me testify that the week David Loree came to town every client stopped reimbursing my company. You have seen evidence that the collective amount owed by all these clients exceeded $500,000. In 52 other weeks of business prior to that time, no client missed a weekly statement. No reimbursement. I spent your valuable time this week providing facts and evidence directly related to specific statements that David Loree made. How did they spend your time this week? Mud slinging. For two hours, you heard nothing but my taxes, my tax issues. Tax issues that were created by the chaos David Loree caused.

By the way, no clients testified that David Loree said anything about my taxes. No client over the last three days testified that they told David Loree that there was money missing or stolen from their projects. Mr. Covington, he was a little belligerent at the time, but he said, I don't recall ever speaking to Mr. Loree. Who was their only witness? A woman from the South Carolina Departme of Revenue who was only on the stand for five minutes. I asked her did she have any proof that I stole money? She didn't.

Let's talk about my witnesses. You heard testimony from the Gaby's just now. They are the

alleged victims of these problems or crimes that David Loree communicated to others. They know nothing about it. They had no proof. Do you remember Glenn Alfonzo? You heard Glenn Alfonzo testify that David Loree told him as others were standing around, quote, I'm not supposed to be telling you this, but to give you an idea of some of the criminal things that Scott has been doing, David Loree had referenced an insurance policy for the Gaby project and claimed that Scott Kunst took out a policy, billed the Gaby's and intentionally canceled the policy the next day so that he, Scott Kunst, could keep the money. There, David Loree was being reckless. He had no reason to discuss the insurance policy with the copper guy even if it were true, which it wasn't, particularly as he stated with others standing around.

Glenn Alfonzo also testified that David Loree stated to him that quote, Scott Kunst had taken money from his other clients and that money was missing from these other projects. You heard Glenn Alfonzo testify what David Loree said to him. As Glenn wants it to read on the record, quote, I recall David Loree referring to Scott Kunst as a criminal on more than one occasion. You heard me ask David Loree if he

referred to Scott Kunst as a criminal when speaking to Glenn Alfonzo.

What was Loree's response? Don't recall.

I asked David Loree, Is Glenn being untruthful?

His response, No, I just don't recall if I said it.

I asked David Loree if he told Glenn I took out an insurance policy and billed the Gaby's for it and then canceled it.

You heard David Loree's response, Don't recall. Can't say if I did or didn't.

I asked David Loree if he told Glenn that money was missing from other clients.

David Loree's response, Don't recall.

Ladies and gentlemen, Glenn Alfonzo recalls it.

Kevin Goad, the window guy, you heard him state that David Loree represented to him that he was a former detective and was in the process of investigating my – Scott Kunst's financial dealings with his clients. You also Kevin Goad say that David Loree stated to him, quote, Scott Kunst had taken $400,000 from the Gaby project and that his other clients had a similar situation. You heard Kevin Goad say that David Loree told him that money was missing from Parham, Covington, Coco and Hickey.

Named clients specifically. You heard Kevin Goad say that David Loree told him that, quote, Scott Kunst had provided his client with dummy invoices from dummy companies to take money from his clients. Kevin Goad testified that David Loree's lawyer, Sandy Stern, told him that Scott was going to jail.

You heard Kevin Goad say that David Loree implied that he had reconciled the Gaby/Kunstwerke account and the accounts of other clients had also been reconciled. I asked David Loree on Tuesday if he told Kevin that he had reconciled the Gaby account and that other client accounts had been reconciled.

David Loree's response, Unknown, nine years ago.

Kevin Goad also testified that David Loree stated to him that money Scott Kunst had taken from his clients was spent on his personal speculative project. David Loree stated that progress in the speculative project had stopped because Scott's clients had stopped paying Scott all together. And as a result, there was no money available to be illegally transferred from his clients. David Loree stated that he was in contact with Hickey and that a lot of money had been taken from Hickey as well. David Loree appeared to know a great deal about Hickey and the speculative project. I asked David

Loree on Tuesday did he tell Kevin that money from his clients was spent on the speculative project.

David Loree's response, Don't recall.

Ladies and gentlemen, Kevin Goad recalls. You know what else? Kevin Goad wasn't even involved in the Hickey project. Ladies and gentlemen, David Loree showed reckless disregard for my rights, made these false blanket statements and needs to be held liable for the damage it caused my reputation and career.

I broached the subject with you yesterday, it's a touchy subject, but there's $400,000 to subcontractors that I personally guaranteed. I also incurred legal debt of $640,000 through loans and legal fees to a law firm. I'm missing self-made capital that was in my business that allowed me to do my work that will place me back in business, start again, hopefully, is 1.6 million. The total is 2.6 million dollars, $2,640,000. These are the actual damages, folks. They are what they are.

There's such a thing as punitive damages that you will hear about. And that punishes reckless behavior in an effort to stop this kind of conduct in the future. That's in your discretion. I just need it to get going again. I'm almost finished.

Mr. Smith asked me yesterday why did I not just declare bankruptcy? He doesn't get it. None of them do. I gave good people my word that I would not give up until everyone is paid, made whole. It has been my responsibility to introduce the evidence in this case. I now pass that responsibility on to you. It is now your job to end this nine year nightmare. Thank you.

THE COURT: Mr. Smith.

MR. SMITH: May it please the Court?

THE COURT: Yes, sir.

CLOSING STATEMENT

MR. SMITH: Good morning. We don't get to talk directly very much, so when I do, I find it an honor to do that. When we started this trial Tuesday, I believe it was, I ask you to remember two things. First, that a court of law has determined that Mr. Kunst took $400,000 from the Gaby's that should have been paid to subcontractors and suppliers. Second, I ask you to remember that you will see absolutely no evidence whatsoever that Dave ever made disparaging remarks about Mr. Kunst design or construction work.

The Judge will tell you about the law that you must follow. I just want to bring one thing to your

attention. Mr. Kunst brought this lawsuit. Mr. Kunst decided to bring a lawsuit for something called slander per se. It's a little different than just slander. Because that's what Mr. Kunst chose to sue Dave for, it is Mr. Kunst's burden, as the Judge will tell you, to prove by a preponderance of the evidence that Mr. Loree said one of the following kinds of things about Mr. Kunst. That Mr. Kunst either committed a crime of moral turpitude, that Mr. Kunst has contracted a loathsome disease, that Mr. Kunst had committed adultery, that Mr. Kunst is unchaste or that Mr. Kunst is unfit in his business or occupation. Mr. Kunst had to show that Dave actually made these statements. But he's given no evidence that he said any of those list of things, which are the very things that he must have said some of those things. Instead, you've heard a lot of theories and a whole lot of stories.

But here's what the uncontroverted facts of this case have shown. Dave has never said anything bad about Mr. Kunst business of design and construction. In fact, I think you heard that he said Mr. Kunst builds beautiful houses. Dave just stated he wished he kept his books a little better. If you've got $100,00 flowing through your accounts as Mr. Kunst

claimed, you might need a bookkeeper.

Dave was asked by his boss to investigate what was happening at the project site. I have a boss, some of you may have bosses and when they ask us to do something, we generally do it because we need our jobs. We want our jobs. So, Dave came up and he asked Mr. Kunst a very simple question, very simple. Bring me an invoice, show me the check where you paid it. We've sent you -- my boss has sent you over 2.5 million dollars and we want to see that you've been paying because we're getting notices that things are not being paid. This is very simple. It does not have to be as complicated as some want to make it. You bring an invoice. You show where you paid it. That would have been the end of this matter.

But instead, Mr. Kunst didn't do that. Presumably, Mr. Kunst still can't do that. So, he disappeared, leaving Dave with the task of unraveling who had been paid and who had not been paid. Dave had to call these subcontractors, Dave had to call these vendors to determine whether or not he had been paid by Mr. Kunst. Dave did only what he needed to do and only talked to those folks who were around the projects that he was involved in. And Mr. Kunst has produced absolutely no evidence to contradict these

basic facts.

One thing Mr. Kunst does continue to bring up is that we didn't put anybody on the stand to say that Dave didn't say these things. Well, the legal answer is it's not our burden to do that. It's his burden to show they were said, not ours to say it wasn't said. But what he's asking me to do is impossible. I could call 10,000 people to come up here and say I never heard Dave say that because you're trying to prove something that didn't happen. It's like trying to prove -- I mean, you're trying to prove something that didn't happen. So, I could have brought in 10,000 people to sit up there and say nope, never heard say those things, but we thought that would be a waste of our time and your time.

And while we'll submit to you that Dave has not slandered per se Mr. Kunst at all. He has not said he's contracted a loathsome disease, is unchaste, he's committed adultery. We think the evidence shows that if there were statements made by Dave in the course of his investigations, those statements were true. For example, the $400,000 you continue to hear about, that was proven to a court. Now, I know Mr. Kunst thinks that court was corrupt, but it was proven to a court. The IRS and Department of

Revenue, he also thinks that they're wrong. But they have also decided that he has been less than truthful in his financial dealings.

Now, in South Carolina, the law protects someone like Mr. Kunst -- I'm sorry, the law protects somebody like Dave from being sued by somebody like Mr. Kunst. And that's called qualified immunity. And the judge will tell you about that. But, in essence, it means that if you make a good statement, a good faith statement and you have an interest to be upheld and the statement is limited in scope to the purpose, its proper occasion, publication and proper to people -- it's very technical -- it's not very technical and legal, but it basically says if you're doing your job, if your boss tells you to do something and you go do that and you're investigating it and you say some things one way or the other, you're not liable for slander. Otherwise, none of us could ever do our jobs because we'd all be afraid we're going to be sued all the time. That's what's happened here. And ladies and gentlemen, the law in South Carolina is clear. It protects employees in doing their job from being sued for slander per se.

Now, one of the elements of defamation is damages. And Mr. Kunst's responsibility was to come

in here with reasonable certainty. We don't think he's been damaged at all, but if he has, it is his job to show you with reasonable certainty the amount of damages he has suffered, he's actually suffered. Well, you've heard nothing of credible evidence of what he's actually suffered in damages. What you've heard is him say well, I think about 2.6 million dollars. Well, I wish someone would give me 2.6 million dollars, too. The damages portions of a trial -- I don't know if any of y'all have ever been in a civil trial, but the damages portion of a trial is often the longest and most tedious part of a trial because you have to show with certainty -- they have to show to a jury how he's been damaged.

Well, what's happened here? Mr. Kunst in a typical fashion has just said well, I'm missing 2.6 million dollars. Show me how. Well, it's in the books. If you look at the big blue book, it's in there. Just show me the books. Again, he's coming in here and just saying y'all give me 2.6 million dollars. And he said the actual damages, he just told you, they are what they are. Well, okay, show us. Show us what they are. That's his burden to do. And if he doesn't do that, you can't award damages to him because he hasn't met that burden. He's passed

out magazine articles. He's shown you models. Beautiful houses. What has he not shown at all? How he came up with 2.6 million dollars, how that was calculated down to the penny. And as we have seen, he has trouble doing that.

Finally, he talks about lost income. Lost income, under South Carolina law, you have to prove with more than reasonable certainty. You have to show how you would have lost that income. And we know he hasn't done that. In fact, he has testified that he was no longer going to take clients anymore. He was just going to go build spec houses. And we talked about yesterday a theory called mitigation. If he thought he was owed money by any of these clients -- and that's not a part of this lawsuit, by the way, but if he thought he was, he could have filed a lien at any time he wanted to and that would have been resolved in about 90 days, instead of 20 lawsuits nine years later. That tells you a little bit about what he's really after here.

But finally, and most importantly on the damages, he said 2.6 million dollars. The one thing he hasn't told you is how Dave Loree caused him 2.6 million dollars in damages. He has to show you that. He has not done that. This lawsuit is about

Mr. Kunst seeking revenge for his loss in the Gaby lawsuit and in the other lawsuits that he'll claim victory in, but has not shown any victory.

The evidence will show that Mr. Kunst has spent nine years writing letters to the, I believe he called it the general public and writing a 300 page book that he publishes on the internet about how bad the judges in South Carolina are and how everybody's out to get him. But one thing has been shown clearly here, it's never Scott's fault. And I'm not sure whether Scott actually believes this or not. And if it wasn't for so many lies being caught up in the middle of this, we could have an academic discussion about whether if he firmly believes that ground is wet and water is dry, is it true to him. But no matter how much he believes it, if it's not true, it's simply not true. He has brought about his own issues.

If Mr. Kunst had simply provided documentation to show he had spent the money the way it was supposed to be spent and not on his houses and not on his cars and not on a myriad of other things where he was spending this money out of his corporate account, we wouldn't be here today. Mr. Kunst's projects crumbled because he finally ran out of other people's

money and he has only himself to blame.

Wrapping up, Mr. Kunst reminds me of my Aunt Mary. Let me tell you about my Aunt Mary -- my great aunt, actually, my grandmother's sister. My great Aunt Mary had been married, I think, 10 or 11 times. Nobody actually knows how many times she was actually married. And I love my great Aunt Mary, don't think I don't, but right before she passed away, we were having a real candid conversation one day and we were talking about all the number of husbands she's had. A few of them passed away. It would be a fool to marry her. But she actually believed that every one of those husbands were wrong and every divorce was their fault. Now, the evidence would tend to favor that out of 10, 11, maybe 12 times, we don't know how many times she was married, it wasn't the other person every single time when you go through that many.

Well, that resonates with me here. Every single failure is somebody else's fault. It's Dave's fault, it's the lawyer's fault, it's the judge's fault, it's his client's fault. All these people, all these people all over Greenville, all over Pickens have decided -- got together, apparently, and decided they are going to go against Mr. Kunst. But not once is

it Mr. Kunst's fault.

Folks, Dave was simply doing his job. As I told you when we started, a court of law determined that Mr. Kunst had taken $400,000 that should have been paid to subcontractors, that should have been paid to painters, to steel companies, to cabinet makers, and he took that money and he used it somewhere else. And there's no evidence at all, other than some convoluting, well, this was not the way this -- there's no evidence. It's clear, the courts have found he should have paid the cabinet makers, he should have paid the steel folks, he didn't do it. And there's absolutely no evidence that Dave ever made any disparaging remarks whatsoever about Mr. Kunst's design or construction work. To the contrary. And now Mr. Kunst wants to blame everybo else.

Mr. Loree ask that you find that he did not commit slander per se against Mr. Kunst and that, certainly, Mr. Kunst was not damaged to 2.6 million dollars by Mr. Loree simply doing his job. He was simply doing what his boss asked him to do. And the law in South Carolina says he's not liable for slander for doing that.

Thank y'all for sitting so patiently for the

last couple of days. I know it's been an ordeal. I appreciate your attention and your service.

THE COURT: Yes, sir, Mr. Kunst.

MR. KUNST: Thank you, Your Honor.

THE COURT: Yes, sir.

CLOSING STATEMENT

MR. KUNST: Thank you, folks. I wasn't going to bring this back out again, but since Mr. Smith brought it up. In my right hand is every financial record from the Kunstwerke Corporation, reconciliation of bank statements, every transaction, every expenditure of the Gaby project, every project in spreadsheet form with codes I used to audit from the firm in New York City. I know how to audit. I prepared this so they could audit fairly quickly if they wanted to. It's been filed in this courthouse since the beginning of this case.

Mr. Smith made a comment about preponderance of the evidence, that the burden's on me. Let me just explain something, I'm sure the judge will, preponderance means in civil 50 percent of that scale. If you believe that I have been harmed by Mr. Loree and you're 51 percent more certain, 51/49, you have decided for me. That's what that means.

He brought up the -- again, the $400,000

judgment. When you go back and look at the evidence. there's several documents. There are a lot of legal documents, look at those. I ask you to look at my letter of April 12th, 2007. It shows that there was not $400,000. If there was, they would have brought in -- had an expert sit here and tell you that. There was an expert in this case. He didn't show up.

Crimes of moral turpitude. He said that I pled defamation per se. Specifically, I did. A crime of moral turpitude is a legal concept about community standards and general sense of justice. Obviously, criminal activity was imputed by what he said. He was also wrong about the damages. He said I wasn't specific. I don't have to be specific, specific to the point that I'm showing you actual receipts. There are records that show that $500,000 was lost to the clients. It's obvious that I had capital in a company that was lost, too. All these things are tangible numbers. Obviously, I had $640,000 worth of legal fees. But what he failed to tell you, if a defamation is actual per se, then the law presumes the defamed acted with common law actual malice and that the plaintiff suffered general damages and that such defamation is actual without proof of special damages. Actual per se carries with it the

presumption that actual damages to reputation and character and proximately resulted therefrom. And it is not necessary to allege or to prove any actual special damages.

Lastly, he said I could have filed a lien. Read the lien threat letters and you determine if I was free to file liens. He's mocked my writings to the public. You're truly defamed is you're not like -- what was the name of his aunt? You're not like his aunt, but you're truly defamed and you've been harmed and you want to fix it, you're going to tell people about it. You're going to write about it. You're going to fight it. You're going to put it out there, put the truth out there in every venue possible because there's no guarantee a court of law is going to consider it. You have -- it explodes across the landscape. Everybody hears it. I don't know who's all heard this.

This was so bad -- and when you file a defamation suit, the decision is do you want to file a suit because that will make it even more broadcast to people. You have to make a decision. This was so bad, exploded so big that there was nothing that you would be presented this week that could harm me anymore. There are nine years of fighting and mud

slinging that you've seen in the last few days, it's not as bad as what David Loree originally said. That's why we were willing to sue. You file all these lawsuits because nine years later, all the other lawsuits are going to be one, dismissed for a hundred different reasons. And one person's going to rise to the top. There's going to be one courtroom nine years later where one man is going to win. There's a reason why Mr. Loree is one man alone. Thank you.

THE COURT: All right. Ladies and gentlemen, the time has come now for me to give you a charge on the law. It's going to take me about 20 minutes. It's not too gosh awful dry. Does anybody need to take a break before we get started?

(There was no response.)

THE COURT: Okay. All right, ladies and gentlemen, when we first started the case, I advised you that you had a duty as jurors and I had a duty as the judge. Your duty as jurors is to determine what the facts are in the case. I told you that I have no opinion on the facts. That you have the sole and exclusive authority and jurisdiction to determine what the facts are in this case based on the evidence that has been presented. If it at any time during

this case I have given you the indication that I have an opinion about what the facts are or what you should do, please disabuse yourself of that notion. Forget about that because I honestly have no stake in this case. I have no concern for the outcome of the case. Again, my only concern is that it is a fair trial for both parties.

Now, my role, obviously, as I've told you is the judge of the law. When you took your oath at the beginning of this case, you swore to accept the law as I give it to you. Now, if you come into this courtroom with any impression or any opinion about what the law is or about what the law should be, then I charge you now that, again, to forget about that because under your oath, you must accept the law as I give it to you in this case.

Now, ladies and gentlemen, in this case, the Defendant has -- excuse me. I apologize. The Plaintiff has the burden of proving his case. The Plaintiff has the burden of proving his case by a preponderance of the evidence. Now, you may have heard on television or in other cases that you may have heard of or been involved in or other jury trials different burdens of proof. In a criminal case, you have proof beyond a reasonable doubt, which

is the highest level of proof that exist under the law. Then you have another proof, clear and convincing evidence, which we'll talk about in a few minutes. In this instance, the Plaintiff has the burden of proving his case of defamation by a preponderance of the evidence.

Now, let me give you an example of that so you'll understand. Preponderance of the evidence is -- means that you have proved that it is more likely than not, greater than 50 percent. Now, ladies and gentlemen, I give you the example of the scales of justice. So, when the parties to this case walk into this courtroom and begin to try this case, those scales of justice are absolutely even. They are not one going one way or the other. If at the conclusion of this trial those scales are even, if they remain even or if they have tipped, even slightly in favor of the Defense, then you would find that the Plaintiff has not met his burden of proof. However, understand that if you find at the conclusion of this trial that the scales have tipped, even ever so slightly in favor of the Plaintiff, then he will have met his burden of proof.

Now, ladies and gentlemen, when we're talking about weighing evidence, obviously, you can't weigh,

physically weigh evidence. And it doesn't matter who put more into the record, who put less into the record. What matters is what you take away from the evidence in its aggregate. And you'll determine what evidence has weight, what weight it has, whether witnesses were credible or not credible.

Now, ladies and gentlemen, when you were looking at the witnesses and you decide whether they're credible, that is whether they're believable, you'll use your own common sense, your common knowledge in determining that. You know that in your life and in your common sense, you can look at a person, you can listen to what they have to say, the manner in which they deliver what they have said, what they said, how they said it, their physical expression, their mannerisms you can look at and determine whether they have something to gain or something to lose from what they said. And you can determine from all of that whether a witness is credible or not.

Again, it is entirely up to you to determine whether a witness is credible or not. And you will decide -- you can decide that a witness was credible in some regard and, perhaps, not so credible in another regard. You may accept a portion of his testimony as very believable and decide that another

portion of his or her testimony was not believable and discount it entirely.

The same is true with the value that you place on evidence that was presented into the record. You may decide some is very valuable and you may decide that some is not so valuable. That is entirely within your discretion. And you will take all of the evidence that's been presented, you will decide what's credible, you will decide what is valuable and how valuable it may be and take all that and apply it to the law as I give it to you and then determine whether the Plaintiff has met his burden of proof in this case.

Now, ladies and gentlemen, evidence will be introduced in two different forms, two different possible forms of evidence. Direct and circumstantial. Now, I want you to understand that the law does not prefer one over the other. Again, it's just like any other form of evidence, you decide what weight that either direct or circumstantial evidence has. Direct evidence is that evidence which immediately establishes a fact to be proven. Circumstantial evidence is proof of a chain of facts or proof of collateral facts that when taken together prove the main fact to be asserted.

Now, that's a pretty simply definition, but I'm going to give you an example again that may help you conceptualize the two a little bit better. Let's say that on a January evening, you're going to bed. You walk past your front window or your front door and you look on your front lawn or your front yard and you see that there's no precipitation on the ground. You go to bed. You wake up the next morning and you walk past that very same door or window and you see that there's a blanket of snow on the ground. You also see in that blanket of snow footsteps which lead to your door and then lead away.

Now, you've got direct evidence that it snowed last night because the snow is right there and you can pick it up and feel it and touch it. It's there. It's immediately established. But you have circumstantial evidence as well that someone, either that evening or early that morning came to your door and walked away. You can't see that person. You can't touch them. You can't feel them. But you know as a consequence of the timing of the snowfall and the existence of the footsteps in the snow that someone came to your door and walked away. That's circumstantial evidence.

Now again, ladies and gentlemen, the law does

not prefer circumstantial over direct evidence or direct evidence over circumstantial evidence. You decide what value and what weight the evidence has.

Now, ladies and gentlemen, I'm going to discuss with you now specifically the law as its relate to defamation. I'm going to read a little bit to you. I don't like to read because it suggest to you that, perhaps, I'm too lazy to learn the law or, perhaps, I'm not smart enough to remember it, but the fact of the matter is we have very precise definitions of legal terms. It's incumbent upon me to get it precisely right. So if I read a little bit, I apologize to you on the front end. I try not to, but I may read just a little bit to you.

Ladies and gentlemen, as you know, it's on secret, the Plaintiff has brought a case alleging that he was defamed by the Defendant. Now, just generally speaking, defamation -- in order to prove defamation, the Plaintiff must prove the following four elements: A false and defamatory statement was made, the unprivileged publication was made to a third party, the publisher was at fault, and the Plaintiff suffered damages as a result. Those are the four elements. Now, I'm going to go into those in a little bit greater detail, but on the front end,

I just wanted to describe for you those four elements so you can keep the rest of the definitions in context. So, let's talk about it again. A false and defamatory statement, an unprivileged publication that it was published to a third person, the publisher was at fault, and, four, that the Plaintiff suffered damages as a result of the publication.

Ladies and gentlemen, the Plaintiff claims that the Defendant communicated a defamatory statement about the Plaintiff to another person. This action is based on violation of the Plaintiff's right to enjoy good reputation without false and defamatory attacks. Defamatory language is language that tends to injure or adversely affect the Plaintiff's reputation. In order to recover in this case, the Plaintiff must first prove that defamatory language was communicated by the Defendant about the Plaintiff. A defamatory statement is one which tends to attack the honesty, integrity, virtue or reputation of a person and exposes the person to disgrace, public hatred, avoidance, contempt or ridicule. A defamatory statement does not have to be direct, open or positive attack. It may be merely a suggestion or hint which is false and malicious, as long as the meaning is plain.

A statement, ladies and gentlemen, is not defamatory if it is substantially true. Even if the Defendant made the statement for no good purpose, w inspired by ill will toward the Plaintiff and made the statement solely for the purpose of harming the Plaintiff, if the statement is true, the Plaintiff cannot recover for defamation. Truth is an absolute defense.

Next, the Plaintiff must prove that the statement was communicated to someone other than th Plaintiff and that the Defendant made the statement knowing or reasonably expecting it to reach a third person. Finally, the Plaintiff must prove that his reputation was damaged by the defamatory statement. The Plaintiff must prove that the damages naturally and proximately resulted from the Defendant's statement.

Actual damages are damages which compensate th Plaintiff for the injury and put the Plaintiff in the same position as he was prior to the defamatory statement as much as is possible. General damages include humiliation, hurt feelings, mental suffering, injury to reputation and other types of injuries which you cannot place -- upon which you cannot plac a monetary value.

Now, ladies and gentlemen, damages must be proven just like every other element of the cause of action. They need not be proven to a mathematical certainty, however, evidence must be sufficient to establish what is fair, just and reasonable. The Plaintiff must also prove special damages resulting from the defamatory statement. Special damages are monetary damages with respect to the property, business, profession or occupation of the Plaintiff, such as the loss of a job, the loss of customers, or the loss of a business relationship as a result of the injury to the Plaintiff's reputation.

Now, ladies and gentlemen, I'll explain to you in a little bit slander per se. And I want you to remember this, in a case for slander per se, the requirement for the proof of special damages is not necessary. And I will get to that in a second.

Ladies and gentlemen, I will tell you that if you determine, if you determine that the Plaintiff has proved his case and he should be awarded actual damages, then you may consider awarding punitive damages. Punitive damages are intended to punish the Defendant and to attempt to ensure that neither the Defendant or anyone else commit similar conduct in the future.

In order to recover punitive damages, the Plaintiff must prove by clear and convincing evidence that the Defendant acted with actual malice in making the defamatory statement. Clear and convincing evidence is more than a preponderance or greater weight of the evidence. As I've told you before, with respect to the burden of proof for the cause of action of defamation, the burden by a preponderance of the evidence.

If you elect to consider punitive damages, then the proof must be by clear and convincing evidence. As I told you before, preponderance of the evidence is 50 percent. Clear and convincing is just that, clear and convincing evidence and it is greater than preponderance of the evidence. But understand it is less than the criminal burden of proof, which is not at all at issue in this case. I only tell you this by way of example, the burden of proof is beyond a reasonable doubt. Punitive damages must be proven b the intermediate level of clear and convincing evidence.

Now, ladies and gentlemen, actual malice involves a malicious intent or recklessness, willfulness or wantonness. This means the Defendant's statement was motivated by ill will, the

intent to injure the Plaintiff, or that the statement was made with such recklessness as to show a conscious indifference toward disregard of the Plaintiff's right. In determining any appropriate amount of punitive damages, you should consider the nature of the Defendant's actions, the punishment, if any, which should be given for those actions and the ability of the Defendant to pay.

Now, ladies and gentlemen, in this instance, the Plaintiff alleges that this is a case of slander per se. Now, slander per se is distinguished from general slander, that's general defamation. And if a statement is slanderous per se, injury to the Plaintiff is presumed and the Plaintiff does not have to prove special damages. You will remember that I told you that before that if it's slander per se, he doesn't have to prove special damages.

Now, statements which charge the Plaintiff with the commission of a crime of moral turpitude, contraction of a sexually transmitted disease, adultery, unchastity, or unfitness in the Plaintiff's business or profession are slanderous per se. So if you find that any of the statements charge a crime of moral turpitude, contraction of a sexually transmitted disease, adultery, unchastity, or

unfitness in the Plaintiff's business or profession, then you may find that it is slanderous per se.

If you find that the statement was slanderous per se, you should return a verdict for the Plaintiff and must award the Plaintiff at least nominal actual damages. Nominal actual damages means at least something. It doesn't mean that it has to be a great amount, but it can be a small amount. It just means that you must award the Plaintiff something because the damages are presumed under slander per se. Nominal damages may only be a small or trivial sum. Nominal damages are required because the law presun that some actual damage to the Plaintiff's reputation and character directly and proximately resulted from the Defendant's defamatory statement.

Now, ladies and gentlemen, I also tell you that the Defense alleges in this action that the Defendant enjoyed a qualified privilege. That is that he was the agent of a principle and acting in furtherance of the principles, the main person's interest. In order to prove that a qualified privilege exist, the Defendant must prove by a preponderance of the evidence – now, understand in this instance, the Defendant must prove by a preponderance or a greate weight of the evidence that the Defendant made the

statement in good faith. If the statement was made with actual malice, that is with knowledge that the statement was false, or with reckless disregard of whether it was true or false, the Defendant cannot claim a qualified privilege. The Defendant must also prove that there was an interest to be upheld and the statement was made solely to uphold the interest of the Defendant or a third party. In addition, the Defendant must prove that the statement was made at the proper time. Finally, the Defendant must prove that the statement was communicated in a proper manner and only to the proper parties.

You also note, ladies and gentlemen, that the -- that the Plaintiff alleges that the -- excuse me, that the Defense alleges that the Plaintiff did not mitigate his damages in this case. When a Plaintiff is injured or damaged by the wrongful act of another person, it's the duty of the Plaintiff to reasonably try to avoid and lessen the damages. Those damages which may be avoided by the use of reasonable efforts, care and prudence by the Plaintiff cannot be the proximate result of the Defendant's wrongful act. Therefore, the Plaintiff cannot recover for damage which reasonably might have been avoided. The efforts required by the Plaintiff must be determined

by the rules of common sense and fair dealing, what a person of ordinary reason and prudence would do und the same circumstances. The Plaintiff is not required to use unreasonable efforts or great expense to avoid or lessen the damage. The Defendant has the burden of proving a failure to lessen damages on the part of the Plaintiff by the preponderance or greater weight of the evidence.

Now, ladies and gentlemen, I have here for you the verdict form. And this verdict form is what you will fill out in your deliberations -- or in the jury room during your deliberations. You will see it's a very simple form. It starts with the caption of the case entitled verdict. It says, we, the jury, unanimously find as follows -- understand it's a unanimous decision. Any decision that you reach must be unanimous. It can't be 11 to one or 10 to two. It must be a unanimous decision. You must all agree on that decision. Then you have a series of choices.

Now, I want to point out before I go over these choices that they're in no particular order. Yesterday, as we were hearing evidence, my law clerk was preparing the verdict form and I was telling him what I wanted on it. I didn't tell him in what order because I don't have a preference as to what order.

What I don't want you to do is look at this and say because it appears in this order, he must want us or prefer us to make a certain determination. I don't. It has to be in some order and it was just put in in this way. So, don't deduce any calculation from me any order which I present it.

The first one is a blank for the Defendant. If you find that the Plaintiff has failed to meet his burden of proof with respect to the cause of action, then you would find for the Defendant and you would check that. If you find for the Defendant, then you would simply sign as foreperson of the jury, date it, and tell the bailiff that you have come to a unanimous decision.

But ladies and gentlemen, if you find that the Defendant has met his burden of proof with respect to defamation or if you find that he has proven defamation per se under the definition that I have given you, then you would check for the Plaintiff in actual damages in the amount of. You will determine what actual damages were proven by the preponderance of the evidence in this case by a unanimous agreement and put that number down. Again, if you find that it was slanderous per se, then you must then award at least nominal damages, some sum, can be small or

trivial, but it must be some sum.

Ladies and gentlemen, if you elect, if you decide that the Plaintiff has met its burden of proof and you award actual damages, then you may consider punitive damages. So, if you do find for the Plaintiff in this column and you award actual damages, then you can consider punitive damages. An you consider it under the law and under the rules as I have given it to you in the charge. Once you have come to a unanimous decision, again, you would sign as foreperson of the jury, then date it, and let the bailiff know you have come to a unanimous decision.

Now, ladies and gentlemen, I'm about to let you begin your deliberations. I don't want you to start quite yet, though, because the attorneys and the parties have the opportunity to take exception to the law that I've given to you or correct something that I may have said. So, I need to give them the opportunity to tell me how I messed up. Okay. And if I messed up, I'll either bring you back out here and give you -- and correct the charge that I have made or I'll send you additional instructions, whatever is appropriate under the circumstances.

When it's time to begin your deliberations, I'm going to send back with the bailiff this verdict

form. And when you receive this verdict form from the bailiff, you may begin your deliberations, but not until. And then after you receive the verdict form, very close thereafter, you will receive all of the evidence. The parties are going to go through and do an inventory to make sure that you're getting what was introduced into evidence, no more, no less and then you'll have that evidence as well. It will be coming to you probably between five and 10 minutes.

So, if you will, please return to your jury room. Don't begin your deliberations quite yet.

(WHEREUPON, the jury left open court at approximately 11:15 a.m.)

THE BAILIFF: The jury is secured, Your Honor.

THE COURT: Okay.

Exceptions to charge?

MR. SMITH: No, Your Honor.

MR. KUNST: No, Your Honor.

MS. WRIGHT: No, Your Honor.

THE COURT: Okay. All right. Ladies and gentlemen, I'm going to deliver the verdict form to the jury. Each of you did an exceptional job and I thank you for your conduct during the trial of this case. It was different, but it was enjoyable as

well. It had the potential not to be. It had the potential to be very contentious, had the potential to be uncivil. And I appreciate the gracious manner, the professional manner in which all of you conducted yourself. I don't know what the verdict would be, but regardless, I congratulate both of you, all of y'all having tried an excellent case. And I exclude Mr. Lewis from all those comments.

MR. SMITH: We concur in the thanking, Your Honor.

MR. KUNST: Thank you, Your Honor.

THE COURT: All right. Thank you.

If y'all will do in inventory, I am going to discharge the two alternates in chambers.

(WHEREUPON, deliberations began at approxim 11:23 a.m.)

(WHEREUPON, Court was in recess awaiting a verdict.)

(WHEREUPON, Court's Exhibits Nos. 1 & 2 were marked for identification and received into evidence.)

(WHEREUPON, Court's Exhibit No. 3 was marke identification and received into evidence.)

THE COURT: I have a note from the jury. I'm going to mark it as Court's Exhibit No. 3.

MR. SMITH: No objection, Judge.

THE COURT: Let me say while y'all are reading that, you will see – you see that I included not just the definition of slander per se, but the definition of slander as well. That's because they can't be read separate from one another. You must have the definition of slander in order to have that definition of slander per se. One read without the benefit of the other doesn't make sense and it's not a holistic answer to their question. That what I have put in that charge is exactly what I charged them verbally on the record.

MR. SMITH: That's what I was going to say, your Honor. It looks like exactly what you charged earlier.

THE COURT: It was. That's why I came back to get my notes to make sure that I didn't substitute a word. And if not mistaken, this is verbatim what I told them. So, what I'm going to do is I'm going to bring them in and I'm going to tell them exactly – I've given you both because they can't be read separate and distinct from one another. And tell them that I'm giving it to them and that the distinction to be drawn between slander and slander per se is that if you find that – if you find that

the comments were slanderous, then you would look to see if it fits the definition of slander per se. And if you decide that, then the imposition of damages, even nominal, is automatic and as the distinction to be drawn between the two.

MR. SMITH: Your Honor, one quick word and I not sure if it matters. It could be – and I hate this phrase, but a distinction without a difference. But there's no – there's no cause of action for slander, so I don't know if they have the option to just find slander.

THE COURT: I got you. I got you. Okay. You agree with that?

MR. KUNST: Not sure, Your Honor. I would lea that open.

THE COURT: All right. Well, I'm going to explain it to them. I'm not going to deviate – basically, I'm not going to deviate from my charge. The verdict form gives them one option, okay. One option.

So, if you would bring them in, please, sir.

(WHEREUPON, the jury came into open court at approximately 1:55 p.m.)

THE COURT: Okay. Ladies and gentlemen, I gc your note and I've marked it as Court's Exhibit No.

3.

Can you tell us again the definition of slander per se?

What I've done is I've taken the charge that I delivered to you earlier and I've printed off the definition of slander and slander per se. The reason I've done both is they can't be read without the benefit of the other because they work together. You understand that if you find that the Plaintiff has met its burden of proof with respect to slander, then you would make the determination as to whether it fits the definition of slander per se.

Now, the distinction to be drawn between slander and slander per se is that if you determine that it's slander per se under the definition that I give you, then the imposition of damages, even if those are trivial or nominal is automatic in that regard. And that's the only distinction to be drawn from the effect of a finding of slander per se as opposed to slander.

So, I'm going to give you the definition exactly as I gave it to you on the record before for you to take back with you, but I wanted to make sure you knew why I was giving you both, because they must be read together. Okay.

Ms. King, this is for you. I ask you to return

to your jury room and begin your deliberations.

(WHEREUPON, the jury left open court at approximately 1:58 p.m.)

(WHEREUPON, deliberations continued.)

THE COURT: All right. We'll be in recess until we hear from the jury. Thank you.

(WHEREUPON, Court was in recess awaiting a verdict.)

(WHEREUPON, Court's Exhibit No. 4 was marke identification and received into evidence.)

THE COURT: I'm informed the jury has come t verdict. Are the parties ready to receive the verdict?

MS. WRIGHT: Yes, sir, Your Honor.

MR. KUNST: Yes, sir, Your Honor.

MR. SMITH: Yes, sir, Your Honor.

THE COURT: All right. Bring them in, please.

(WHEREUPON, the jury came into open court at approximately 3:10 p.m.)

THE COURT: All right. Madam Forelady, has t jury reached a unanimous verdict, ma'am?

MADAM FORELADY: Yes, we have.

THE COURT: Okay. Would you hand the verdi form to the bailiff, please?

Would you publish the verdict, please, ma'am?

VERDICT

THE CLERK: In the case of J. Scott Kunst vs. David Loree, 2006-CP-39-1826, we, the jury, unanimously find as follows: For the Plaintiff for actual damages in the amount of one million dollars. Foreperson, Sharon King.

If this is your verdict and still your verdict, so say you all by raising your right hand.

(WHEREUPON, all members of the jury raised their right hand.)

THE COURT: All right. Counsel, Mr. Kunst, any additional matters of law or issues to take up for this jury?

MR. KUNST: No, Your Honor.

MR. SMITH: None for the jury, Your Honor.

THE COURT: Okay. Good enough.

All right. Ladies and gentlemen, thank you for your service. If you go back to your jury room, the bailiffs will take your badges and give you your phones back. I'll come back and dismiss you informally. It won't take long. I'm not going to take up anymore of your time. I just want to say thank you in an informal setting and give you the opportunity to ask me any questions if you have any. Okay.

(WHEREUPON, the jury left open court and was excused at approximately 3:11 p.m.)

THE COURT: Any post-trial motions?

MR. SMITH: Yes, Your Honor. We would move a remittitur to at least zero.

THE COURT: Okay.

MR. SMITH: Because the evidence did not suppc the verdict and, certainly, the damages evidence did not support such an award.

THE COURT: Okay. All right.

MR. SMITH: I'm sorry, South Carolina, is there a time that you can file?

THE COURT: You have 10 days under the rules. if you'd like to submit it in writing, you're welcome to. If you want me to withhold any ruling at this time.

MS. WRIGHT: If you would, please, Your Honor I understand 10 days from today is the seventh, which is a Sunday, so we would appreciate having until June 8th to get that to you.

THE COURT: That's fine.

MS. WRIGHT: Thank you, Your Honor.

THE COURT: All right. Okay.

Well, ladies and gentlemen, again, thank you for having tried an excellent case. I certainly

appreciate it. Hope y'all have a great day. Thank you.

MR. KUNST: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter fo the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 26-28 day of May, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 12, 2015

~~APRIL P. HERRON, Court Reporter~~

STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff(s), v. David Loree, Defendant(s).	IN THE COURT OF COMMON PLEAS **CASE NO. 2006-CP-39-1826** **DEFENDANT'S MOTION FOR DIRECTED VERDICT**

2015 MAY 27 AM 8 52
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Defendant David Loree moves for directed verdict on the following grounds:

1.) **Plaintiff has not proven the elements of slander *per se*.**

Grounds:

Plaintiff failed to show in testimony that Loree charged him with commission of crime of moral turpitude, contraction of a loathsome disease, adultery, unchastity or unfitness in his business or occupation. *Holtzscheiter v. Thomson Newspapers, Inc.* 332 S.C. 502, 506 S.E.2d 497 (1998). Further, Plaintiff's witnesses Kevin Goad and Glenn Alfonso testified that Loree had not said anything slanderous about Plaintiff's design or construction of the Gaby home, thus showing Loree had not stated Plaintiff was unfit in his business or occupation.

2.) **Plaintiff has failed to prove his case in chief and therefore directed verdict should be granted in favor of the Defendant.**

Plaintiff alleged defamation *per se* in his Complaint and because the alleged defamatory statements were spoken statements, the type of defamation is slander *per se*. Plaintiff further asserted in his Pre-Trial Brief that the only cause of action he was asserting was

slander *per se*. Because Plaintiff has failed to prove the elements of slander *per se*, Defendant Loree should be granted a directed verdict.

Further, none of Plaintiff's alleged defamatory statements rise to the level of slander *per se*. Plaintiff alleged Loree made eight slanderous statements:

- Plaintiff embezzled $400,000 from the Gabys.
- Plaintiff embezzled money from all of his clients.
- Plaintiff had taken money from named clients Parham, Covington, Coco, and Hickey.
- Plaintiff created dummy invoices from dummy companies so that he could steal money from these clients.
- Plaintiff took money from his clients to spend on an investment project, a car, trips and family members.
- Plaintiff did "criminal things" like take out an insurance policy, bill the Gabys, and then cancel it the next day so that he could keep the money.
- Plaintiff is "going to jail."
- Plaintiff took money from his other projects and that money was missing from those projects.

In none of these statements does Plaintiff allege Loree said he was unfit for his occupation as a designer of homes nor does Plaintiff allege Loree said he had committed a crime of moral turpitude.

3.) Loree should be allowed to amend his Answer to add the affirmative defense of truth.

Truth is an affirmative defense that must be pleaded. See *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007). In his testimony Defendant Loree testified that it was true Kunst took $400,000 from the Gabys because Judge Welmaker had awarded a judgment in that amount based on that very finding. Plaintiff has not produced any witness testimony to refute Loree and to show that he did not steal the funds from his clients. Witness Tracey Hilton testified to the effect the lawsuit had on her and Kunst, but did not provide any evidence that Kunst had not taken the money for his own uses. None of the Plaintiff's other witnesses, Goad, Alfonso or Covington, testified that Kunst had not taken the money. Because Plaintiff's own case in chief establishes the elements of the affirmative defense of truth, Loree should be allowed to amend his Answer to add this affirmative defense.

4.) Loree should be allowed to amend his Answer to add the affirmative defense of qualified privilege.

Qualified privilege is a communication made in good faith on any subject matter in which the person communicating has an interest or duty if made to a person with a corresponding interest or duty even though it contains matter, which, without this privilege, would be actionable. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C., 86, 447 S.E.2d 194 (1994). One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged and (2) the privilege is not abused. *Murray v. Holnam*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

When one has an interest in the subject matter of a communication, and the person to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by the occasion. Statement must be such as the

occasion warrants and must made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. *Murray, id.* Whether privilege exists is a question of law, whether it was abused is a question for the jury. *Murray, id.* Publisher must not go beyond the scope of his imagination.

Plaintiff established in the testimony of his witnesses Goad, Alfonso and Hilton that Loree's alleged defamatory statements were made in the course of his investigation of the Gaby home project. Further, the witnesses were all connected with the Gaby project with Hilton working as Kunst's assistant while Goad and Alfonso were suppliers to the project. There has been no testimony to show Loree indiscriminately published his alleged defamatory statements to anyone other than persons connected with the Gaby home project. There has also been no evidence to show that Loree failed to act in good faith in the course of his investigation. Because Plaintiff's own case in chief establishes the elements of qualified privilege, Loree should be allowed to amend his Answer to add the affirmative defense of qualified privilege.

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Greenville, South Carolina

_____, 2015

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff, v. David Loree, Defendant.	IN THE COURT OF COMMON PLEAS **CASE NO. 2006-CP-39-1826** **DEFENDANT'S MOTION FOR JNOV, FOR A NEW TRIAL WITH OR IN THE ALTERNATIVE AND NEW TRIAL *NISI REMITTITUR* OR NEW TRIAL ABSOLUTE (Rule 50(b), SCRCP and Rule 59(b), SCRCP)**

2015 JUN 8 AM 9 16
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

TO: *Pro Se* Plaintiff:

PLEASE TAKE NOTICE that Defendant David Loree ("Loree") hereby moves for Judgment Notwithstanding the Verdict ("JNOV"), a new trial with or in the alternative of JNOV, and new trial *nisi remittitur* or new trial absolute. Loree's reasons for said motions are set more fully below.

I. Judgment Notwithstanding the Verdict

A. *Insufficient Evidence to Support the Verdict*

Loree moves for JNOV on the grounds that Plaintiff did not prove the elements of slander *per se*. To recover for slander *per se*, Plaintiff must show by a preponderance of the evidence that Loree charged Plaintiff with commission of a crime of moral turpitude, contraction of a loathsome disease, adultery, unchastity or unfitness in his business or occupation. *Holtzscheiter v. Thomson Newspapers, Inc.* 332 S.C. 502, 506 S.E.2d 497 (1998). Plaintiff failed to present any evidence at trial to show that Loree ever charged Plaintiff with any of these elements.

During His Honor's hearing on pre-trial motions, Plaintiff stated he was asserting the

following statements as the statements allegedly made by Loree (though these statements are different than the statements alleged in Plaintiff's Complaint):

- The Plaintiff embezzled $400,000 from the Gabys.
- The Plaintiff embezzled money from all of his clients.
- The Plaintiff had taken money from named clients Parham, Covington, Coco, and Hickey.
- The Plaintiff created dummy invoices from dummy companies so that he could steal money from these clients.
- The Plaintiff took money from his clients to spend on an investment project, a car, trips, and family members.
- The Plaintiff did "criminal things" like take out an insurance policy, bill the Gabys, and then cancel it the next day so that he could keep the money.
- The Plaintiff "is going to jail."
- The Plaintiff took money from his other projects and that money was missing from these projects.

In none of these statements is it alleged that Plaintiff had a loathsome disease, committed adultery, was unchaste or was unfit for his profession or occupation, a designer and builder of residential homes. Further, none of the alleged statements charge Plaintiff with a crime of moral turpitude. Crimes of moral turpitude involve acts of baseness, vileness, or depravity in private and social duties which man owes to his fellow man or to society in general, contrary to the customary and accepted rule of right and duty between man and man. *Green v. Hewett*. 305 S.C. 238, 407 S.E.2d 651, 652 (1991) citing *State v. Ball*, 292 S.C. 71, 354 S.E.2d 906 (1987). None of the alleged statements rise to the level of baseness, vileness or depravity.

While there is a case in South Carolina that may raise certain thefts to the level of "crimes of moral turpitude," that case is inapposite to the case at bar. In *McBride v. School District of Greenville County*, 389 S.C. 546, 698 S.E.2d 845, 852 (Ct. App. 2010), the Court of Appeals found the statement that a public employee stole public property was actionable *per se*. A teacher who takes school property is taking property from all the taxpayers in that school district, which may have broad implications for society as a whole. In Plaintiff's case, there is no evidence that the alleged bad acts would affect more than just his five clients. There is nothing in the alleged statements rising to the level of baseness, vileness or depravity (and certainly nothing that affects society as a whole). Plaintiff did not prove Loree ever charged him with committing a crime of moral turpitude. In fact, the record is clear that Plaintiff never suggested that he was accused of committing a crime of moral turpitude.

Plaintiff chose to bring an action solely on the grounds of slander *per se*. Plaintiff did not prove elements required for slander *per se*.

Loree also moves for JNOV on the grounds that because Plaintiff did not allege a cause of action for slander and did not prove common law malice or special damages, the case should be dismissed.

B. *Loree Proved Truth and Substantial Truth*

Loree moves for JNOV on the grounds that if the jury found that Loree did make any of the alleged defamatory statements, Loree has produced unrefuted evidence at trial that the statements are true. Loree introduced in his testimony evidence from Select Stone and Systems Specialties (Defense Exs. 2 and 3) to show that Plaintiff sent invoices to Loree's employer for payment. Loree introduced evidence of an email from Paul Anderson (Defense Ex. 11) to show

Plaintiff had not paid a supplier even though he had been provided with the funds to do so from Loree's employer.

In contrast, Plaintiff kept a notebook on his table at trial, which he referred to as "Exhibit A." Plaintiff repeatedly claimed "Exhibit A" contained full explanations of his accounting. Plaintiff never sought to use introduce "Exhibit A" into evidence.

On cross-examination of Plaintiff, Loree entered into evidence the *Kunst v. Parham* Order (Defense Ex. 14) and the *Gaby v. Kunst* Order (Defense Ex. 23) to prove that two South Carolina courts had found Plaintiff had, in fact, taken funds from his clients. While Plaintiff did not like the Orders and felt they were issued by corrupt judges (Defense Exhibit 22, "Cold and Greedy"), he nonetheless was unable to refute or introduce evidence to contradict the Orders.

Plaintiff's own witness, Eugene Covington, testified that Plaintiff had taken money from the Covington's project. Covington testified that Plaintiff refused to provide any documentation in support of the missing funds, even when Covington offered to pay for an independent audit. Plaintiff did not introduce any evidence to refute Covington's sworn testimony at trial.

Simply put, everything Loree allegedly said about Plaintiff is true and because it is true, it is not defamatory as a matter of law. Truth of the matter or substantial truth is a complete defense to a claim for defamation. *A Fisherman's Best v. Recreational Fishing*, 310 F.3d 183 (4th Cir. 2002). A sufficient defense is made out where the evidence establishes that the statement was substantially true. *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976).

C. *The Alleged Statements Are Squarely Within Qualified Privilege*

Loree also moves for JNOV on the grounds that even if Loree made the alleged statements, the statements were protected by qualified privilege. Qualified privilege is a communication made in good faith on any subject matter in which the person communicating has

an interest or duty if made to a person with a corresponding interest or duty even though it contains matter, which, without this privilege, would be actionable. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C., 86, 447 S.E.2d 194 (1994). One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged and (2) the privilege is not abused. *Murray v. Holnam*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001). One publishing under a qualified privilege is liable only upon the plaintiff's proof of actual malice. *See, e.g., Constant v. Spartanburg Steel Products, Inc.*, 316 S.C., 86, 447 S.E.2d 194 (1994). When one has an interest in the subject matter of a communication, and the person to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by the occasion.

Plaintiff offered no evidence whatsoever to show Loree acted with actual malice toward the Plaintiff. Plaintiff's witness Eugene Covington testified that he had never seen nor met with Loree. Plaintiff's witness Goad testified Loree had made remarks concerning other clients' properties, but also testified that Loree met with him to verify Goad's accounts were in order. Goad further testified that because Plaintiff had disappeared from the project site and could not be located, Loree became the only contact for payment of outstanding invoices not paid by Plaintiff. Plaintiff's witness Alfonso testified that Loree consulted with him to ensure he had been paid so that Loree's employers' project could go forward. None of Plaintiff's witnesses ever testified that Loree had behaved in a malicious, reckless, or wanton manner. Plaintiff offered no evidence to show that Loree had made defamatory statements to people not concerned with the project. Plaintiff himself introduced testimony from the deposition of Richard Gaby that Loree is employed by the Gabys.

Now that the evidence is closed, and the Plaintiff did not introduce *any* evidence to refute Loree's qualified immunity, this Court should find that qualified immunity applied to the alleged statements as a matter of law. Because Loree proved every element of his affirmative defense of qualified privilege and Plaintiff offered no evidence to show actual malice on Loree's part, Plaintiff's case should be dismissed.

II. New Trial in the Alternative

The trial judge not only has the discretion but the duty to grant a new trial where the jury verdict is contrary to the preponderance of the evidence. *Jessup v. Hansen*, 289 SC 54, 344 S.E.2d 618 (Ct. App. 1986). The Thirteenth Juror Doctrine is the vehicle by which the trial judge may grant a new trial absolute when he is convinced justice has not been served by the verdict. *Watson v. Town of Pendleton*, 294 S.C. 155, 363 S.E.2d 234 (Ct. App. 1987). A trial judge may grant a new trial upon the facts if the judge determines the verdict is contrary to the fair preponderance of the evidence. *McEntire v. Mooregard Exterminating Services, Inc.*, 353 SC 629, 633, 747 S.E.2d 746, 747 (Ct. App. 2003). Where the jury renders a verdict in disregard of the charge, it is error for the trial judge not to grant a new trial, on motion. *Southeastern Mobile Homes, Inc. v. Walicki*, 282 SC 298, 317 SE2d 773, 776 (Ct. App. 1984)

The jury's verdict was contrary to the elements of slander *per se*, the affirmative defense of truth and the affirmative defense of qualified privilege. As stated previously, there is simply no evidence in the record to show grounds for slander *per se* based on statements concerning disease, adultery, unchastity, or unfitness in occupation. Further, while Plaintiff alleged Loree made statements accusing him of committing a crime, none of the statements rise to the level of a crime of moral turpitude, in which Loree alleged Plaintiff committed acts of baseness, vileness, or depravity in private and social duties. *Green v. Hewett*. 305 S.C. 238, 407 S.E.2d 651, 652

(1991). The record is replete with evidence to support Loree's affirmative defense of truth, including two orders from Circuit Court judges. There was unrefuted evidence on the record, including Plaintiff's own testimony, to prove that Loree was investigating the accounting of the building project per his employers' directions. Plaintiff offered no evidence whatsoever to show that any remarks made by Loree were beyond the scope of the qualified privilege. Therefore, as a matter of law, without any evidence, the jury could not find that Loree exceeded the scope of the privilege.

Given these circumstances, it is clear that the jury's verdict is contrary to the fair preponderance of the evidence. Therefore, Loree should be granted a new trial either with a JNOV or in the alternative.

III. New Trial *Nisi Remittitur*/New Trial Absolute

A motion for new trial *nisi remittitur* asks the trial court, in its discretion, to reduce the verdict because the verdict is excessive, though not necessarily motivated by considerations such as passion, caprice, or prejudice. The granting or denial of this motion is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66, 74 (Ct. App. 1994).

If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice or some other influence outside the evidence, the trial court must grant a new trial absolute. *Curtis v. Blake*, 392 SC 494, 709 SE2d 79, 82 (Ct. App. 2011). When a verdict is grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, *or other consideration not founded on the evidence*, it becomes the duty of this Court, as well as the trial court, to set aside the verdict. *Curtis v. Blake*, 392 SC 494, 709 SE2d 79, 82 (Ct. App. 2011) citing *Small v.*

Springs Indus., 292 SC 481, 487, 357 SE2d 452, 455 (1987). Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur* and the consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Curtis v. Blake*, 392 SC 494, 709 SE2d 79, 82 (Ct. App. 2011) citing *Proctor v. Dep't of Health & Envtl. Control*, 368 SC 279, 320, 628 SE2d 496, 518 (Ct. App. 2006)

The amount of one million dollars in actual damages is excessive and is not based on any evidence in the record. Plaintiff did not produce any evidence to support a verdict of one million dollars. Further, there is no evidence on the record to show that any monetary loss Plaintiff suffered was caused by Loree.

Plaintiff merely stated to the jury that he needed approximately one million dollars to pay his attorneys' fees and the judgments levied against him. As Plaintiff was *pro se*, there are no attorneys' fees to pay in this matter. In fact, Plaintiff testified that he could not afford to hire an attorney. Any attorneys' fees Plaintiff owes in cases other than this matter are certainly not proper for an award in this matter against Loree. Aside from the uncontroverted fact that there are no attorneys' fees for Plaintiff in this matter, a jury may not award attorneys' fees to Plaintiff in his slander *per se* action because in South Carolina one is entitled to attorneys' fees only if there is a provision in the contract or there is a statute providing for attorneys' fees. Neither is present in this matter.

The evidence did show that suppliers were unpaid due to Plaintiff's poor accounting and not anything Loree allegedly said. For example, Alfonso testified that he had to make Plaintiff pay him with certified checks because Plaintiff's business checks bounced. Plaintiff himself testified that he was having financial problems with his business in January 2006, a month before

Loree began his investigation. Goad testified that Plaintiff disappeared from the site and could not be found. Covington testified that the accounting for his project was in arrears and Plaintiff would not provide him the records needed to reconcile the account.

As discussed above, Plaintiff failed to prove his case for slander *per se*, and therefore he is not entitled to any damages at all. The jury's verdict is grossly excessive and the amount awarded is shockingly disproportionate to Plaintiff's alleged injuries. Indeed, there is no evidence to show Plaintiff suffered any injury caused by Loree. Because the verdict is so disproportionate and not based on any evidence in the record the Court is entitled in its discretion to reduce this excessive verdict. *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66, 74 (Ct. App. 1994). The Court should reduce the damages awarded to Plaintiff to zero dollars.

Finally, a new trial is also justified by the Supreme Court's ruling in *Sanders v. Prince*, 304 SC 426, 403 S.E.2d 640 (1991). In *Sanders*, a slander action in which the jury returned a verdict in excess of one million dollars, the Supreme Court found that the jury sent a question to the trial judge during deliberations, asking "Can we force [the defendant] to resign from the School Board?" The Supreme Court noted that the trial judge acted properly in answering the jury's question in the negative, but that the "attempt by the jurors to exceed the authority granted them by the trial judge's instructions is evidence of the fact that the jury was motivated by passion, caprice, and prejudice." *Sanders*, 304 SC at 238-39. The Supreme Court held that, "The conduct of the jury, as well as the amount of the award, lead us to the conclusion that the jury's verdict was based on passion, caprice, and prejudice, rather than on the evidence presented at trial." *Id.*

In the case at bar, the jury sent in a note asking if they could decide who would get the money they chose to award. This is exactly what the South Carolina Supreme Court in *Sanders* found to be "evidence of the fact that the jury was motivated by passion, caprice, and prejudice." *Sanders*, 304 SC at 238-39. Given the notes and questions sent by the jury during deliberations in this matter, the holding in *Sanders* mandates a similar result. It is clear that the amount of the verdict is so disproportionate to any reasonable amount, and given the paucity of evidence offered by Plaintiff on damages, that the jury must have been motivated by passion, caprice, and prejudice.

Conclusion

There is no evidence in the record to support Plaintiff's cause of action of slander *per se*. Even if the Court were to find such evidence is in the record, there is also a preponderance of evidence to show Loree's alleged statements were either true or protected by qualified privilege and therefore not defamatory. Certainly there is no evidence whatsoever in the record to support an award of one million dollars. For these reasons, Loree respectfully requests that the judgment be set aside, the verdict reduced to zero dollars, and that he be granted a new trial.

Respectfully submitted.

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_____, 2015

STATE OF SOUTH CAROLINA COUNTY OF PICKENS J. Scott Kunst, Plaintiff, v. David Loree, Defendant.	IN THE COURT OF COMMON PLEAS **CASE NO. 2006-CP-39-1826** **PLAINTIFF'S REPLY TO DEFENDANT'S MOTION FOR JNOV, FOR A NEW TRIAL WITH OR IN THE ALTERNATIVE AND NEW TRIAL, NISI REMITTITUR OR NEW TRIAL ABSOLUTE**

Plaintiff, *pro se*, J. Scott Kunst hereby replies to the Defendant's Motion for JNOV or a New Trial and respectfully requests that the court deny the Defendant's motion in its entirety. The Plaintiff replies to Defendant Loree's reasons for filing his motion in the order presented.

I. Judgment Notwithstanding the verdict

A. *Insufficient Evidence to Support the Verdict (page 1 of Defendant's motion)*

The Defendant lists all eight defamatory statements on page two of his motion but then proceeds to misstate defamation *per se* law in South Carolina and how damages are proven. In South Carolina a statement that is defamatory on its face is referred to as defamation *per se*. For example, "Scott Kunst created dummy invoices from dummy companies so that he could steal money from his clients" (testimony at trial of Plaintiff witness Kevin Goad) is obviously

defamatory on its face because it imputes criminality and is injurious to the Plaintiff's business or profession. All eight defamatory statements are defamatory on their face. It is textbook defamation *per se* in South Carolina. Defamation *per se* was properly plead and charged in this case.

On the other hand, if the statement is unclear requiring outside evidence to prove who or what the speaker was saying, the statement is referred to as defamation *per quod,* and the plaintiff has the burden to present evidence to prove defamation. Holtzscheiter v. Thomson Newspapers, 376 S.C. 308 (Ct. App. 2007).

If the defamatory statement is actionable on it's face, or *per se*, then the plaintiff need not prove damages or actual malice. ((See Turner v. Montgomery Ward & Co. 165 S.C. 253, 261, 163 S.E. 796, 798-99 (1932))).

The Jury in this present case was exceptionally thorough in ascertaining the correct definition of defamation *per se* and asked for a written definition midway through deliberation. Juries such as this are given wide discretion regarding damages in South Carolina. Money damages rewarded for defamation are those that necessarily result from publication of a defamatory statement. General damages are those which arise by "interference of law and need not be proved." Holtzscheiter, 338 S.C. 308 (Ct. App. 2007). They include injury to reputation, mental suffering, hurt feelings, and other similar types of injuries which are incapable of definite money valuation.

The trial court judge properly instructed the jury that if they found for the Plaintiff in the defamation *per se* cause of action, damages are assumed under the law and must be greater than $0.

The Plaintiff in this present case properly alleged that all eight statements are actionable *per se* (*See* S.C. Juris. *Libel and Slander*§ 3 (1993)) and the finders of fact agreed. In older South Carolina case law, to be actionable *per se*, a statement must impute (1) commission of crime of moral turpitude, (2) contraction of loathsome disease, (3) adultery, (4) unchastity, or (5) unfitness in one's business or profession. (See *Pierce v. Northwestern Mut. Life Ins. Co.*, 444 F. Supp. 1098 (D.S.C. 1978)).

The Defendant wrongly asserts that the Plaintiff did not prove those elements of slander *per se* that specifically apply to these eight statements: (1) commission of a crime of moral turpitude, and (5) unfitness in one's business or profession. Simply put, the defendant could not be more wrong in his mischaracterization of these two elements.

(5) Unfitness in one's business or profession.

All eight allegations impute criminal behavior to the Plaintiff while acting within his business or profession and were specifically injurious to his ability to conduct his business or profession. This is textbook defamation *per se* in any state that recognizes defamation *per se*, as well as in US Federal Court, or in any other common law tradition.

The Defendant makes the absurd assumption that the inference and definition of being "unfit" in one's business or profession must be strictly limited to a specific professional skill or professional product.

The absurdity of the Defendant's assertion can be demonstrated by reversing his flawed logic. Based on his restricted definition of "unfit," one must conclude that a citizen of South Carolina can perform numerous criminal acts within the conduct of his business or profession

and still be considered "fit" in the public's eye while conducting his trade or business as long as his specific skill or the product he creates in the end is fine.

In this present case, The Defendant wrongly asserts that he can allege that the Plaintiff stole hundreds of thousands of dollars from all of his clients, prepared fraudulent billings, and be on his way to jail, but would somehow still be deemed "fit" in his business or profession in the public's eye. The Defendant apparently expected the jury to conclude that the Plaintiff was still "fit" in his business or profession and could design and build houses from a jail cell. Would the South Carolina LLR allow a builder's license to remain in effect for a builder who has embezzled money from all of his clients and prepared fraudulent billings? Of course not.

Viewed in the light most favorable to the Plaintiff, there was more than sufficient evidence that the eight statements were defamatory on their face and that the statements charged the Plaintiff with unfitness in his particular and unique business and in the specific way he conducted that business – reimbursement contracts.

Whether the statements were defamatory was a question for the jury as the finders of fact. Viewing the evidence in the light most favorable to the Plaintiff, it is a reasonable inference that, under the circumstances in which the Defendant made the statements, the jury could find that the defamatory statements charged the Plaintiff with unfitness in his business (see Goodwin v. Kennedy, 347 S.C 30, 36, 552 S.E.2nd 319, 322-23 (Ct. App. 2001)).

It cannot be said that when viewing the evidence in the light most favorable to the Plaintiff, the jury could not have inferred that the statements attacked the Plaintiff's fitness to conduct his business. In fact, the jury saw evidence and heard the Plaintiff's testimony that every client stopped paying their weekly billings the same week as the Defendant's slander. For ten

years prior, no client had ever missed a payment. None of this evidence or testimony was refuted by the Defendant.

All eight statements allege criminal behavior within the Plaintiff's business and professional duties and impute serious, news headline grabbing felonies. Witness Kevin Goad testified that the theft amount from client Gaby alleged by the Defendant was $400,000 and that other specifically named clients of the Plaintiff were in a "similar situation." Such allegations would not only on their face deem the Plaintiff unfit in his business or profession, but would also destroy his business and profession. Such allegations lead nightly news broadcasts and headline newspapers. The jury saw evidence (with the benefit of nine years of hindsight) that the Defendant's statements did in fact directly cause the destruction of the Plaintiff's business and profession.

Furthermore, the jury saw evidence that the Defendant maliciously withheld reimbursement payments to the Plaintiff's company Kunstwerke so that it would falsely appear to the subcontractors and suppliers that money had been stolen and his slander were true.

The question of whether the eight statements were actionable *per se* is a matter for the finders of fact. (See Turner v. Montgomery Ward & Co. 165 S.C. 253, 261, 163 S.E. 796, 798-99 (1932)).

To demonstrate further the absurdity of the Defendant's restricted and strained definition of "unfit," consider this analogy. What if a dentist is accused of molesting all of his female clients while they were under anesthesia having dental work done? His license would be suspended and his practice would be destroyed. This, too, would be a headline grabbing felony. If the accusation is untrue, the dentist would win a large defamation *per se* verdict as did the

Plaintiff in this present case. If the accusation were found to be true, the dentist would be in a jail cell with his license revoked. The same restricted and incorrect definition of "unfit in business and profession" asserted by Defendant Loree would conclude that the dentist was not slandered as "unfit" because it was not alleged that there was anything wrong with his work on the female patients' teeth. That is simply laughable and absurd. The American Dental Association would agree.

This strictly limited definition of "unfit" in one's business or profession that the Defendant wants to place on the finders of fact is found nowhere in the law. The finders of fact understood precisely what it means to be charged as "unfit," and they got it right. Their decision must not be disturbed.

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(1) Crimes of moral turpitude.

A crime of moral turpitude is defined by the Supreme Court of South Carolina as: "...an act of baseness, vileness, or depravity in the private and social duties that a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (State v. Ball, (292 S.C. 71, 73, 354 S.E. 2D 908 (1987))

The Defendant asserts that none of the alleged statements rise to the level of baseness, vileness or depravity. But he does not define these terms and does not cite any South Carolina case law that specifically defines them. Moreover, the South Carolina General Assembly, most States, and Federal common law are very specific about what constitutes crimes of moral turpitude and what is considered base, vile, and depraved.

West Law defines turpitude as conduct that is unjust, depraved, or shameful; that which is

contrary to justice, modesty, or good morals. Everything done contrary to justice, honesty, modesty, or good morals, is said to be done with turpitude.

Baseness is defined as morally low or dishonorable.

Vileness is defined as wretchedly bad.

Depravity is defined as a corrupt act or practice.

Perhaps it is no surprise that a bodyguard who is employed by a pyramid scheme that is exposed on Dateline NBC as a scam that preys on good people and destroys them would opine that stealing hundreds of thousands of dollars from all of one's clients and forging fraudulent invoices from fraudulent companies is not a morally low, dishonorable, wretchedly bad, corrupt, and immoral act. Thankfully, a jury of average citizens disagreed. The jury in this present case heard how flippant the Defendant's answers were when asked in direct examination about each of the defamatory statements attributed to him by witnesses. (When asked if he made these statements, the record shows loree's responses to be "don't recall" and "can't say if I did or didn't.")

It is even more disconcerting that anyone would write a legal brief and opine that embezzling $400,000 from your fellow man is not a debased, vile, and depraved act.

The term *crime of moral turpitude* most commonly appears in South Carolina law and in Federal Law in relation to immigration law and as a standard for impeaching witnesses.

In 1976, the South Carolina General Assembly set forth an amendment to the code of laws of South Carolina (conditioned upon approval by the governor) to provide a list of crimes involving moral turpitude that may be used to impeach a witness. The 1976 Code was amended by adding:

"Section 19-11-65. Only a crime involving moral turpitude may be used to impeach a witness. Moral turpitude involves an act of baseness, vileness, or depravity in the social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary role of right and duty between men.

A crime of moral turpitude includes one that involves an element of fraud, dishonest behavior, or a breach of one's duty to society. The includes:

(1) arson;

(2) assault with intent to ravish;

(3) assault and battery with intent to kill;

(4) auto theft;

(5) breaking into vehicles with intent to steal;

(6) burning an untenanted or unoccupied building;

(7) conspiracy to distribute marijuana;

(8) criminal sexual conduct with a minor;

(9) distribution of marijuana;

(10) forgery;

(11) fraudulent check;

(12) grand larceny;

(13) hit and run driving;

(14) housebreaking;

(15) larceny;

(16) lewd and lascivious conduct with children;

(17) making illegal whiskey;

(18) malicious destruction of personal property;

(19) manufacture of marijuana;

(20) mistreatment of a child;

(21) peeping Tom;

(22) possession of cocaine;

(23) possession of heroin;

(24) possession of heroin with intent to distribute;

(25) rape;

(26) receiving stolen goods;

(27) resisting arrest;

(28) robbery;

(29) trafficking in marijuana, including conspiracy to import."

The Defendant in his motion on page 3 makes the following outrageous assertion: "In Plaintiff's case, there is no evidence that the alleged bad acts would affect more than just his five clients. There is nothing in the alleged statements rising to the level of baseness, vileness, or depravity (and certainly nothing that affects society as a whole)."

It appears that the South Carolina General Assembly would beg to differ with Defendant Loree's definition of baseness, vileness, or depravity. The South Carolina General Assembly deems regular (15) larceny (<$500) as well as (12) grand larceny to be crimes of moral

turpitude regardless of whether or not it is limited to "five clients" or supposedly doesn't "affect society as a whole." What about the Plaintiff's duty to his "fellow man?" Is any one of five clients not a fellow man?

The US Government's own guidance on crimes involving moral turpitude (CMTs) is much longer than the list above. Under the category of property crimes, the US government includes the following:

Fraud:

Making false representation

Knowledge of such false representation by the perpetrator

Reliance on the false representation by the person defrauded

An intent to defraud

The actual act of committing fraud

Evil intent:

Arson

Blackmail

Burglary

Embezzlement

Extortion

False pretenses

Forgery

Fraud

Larceny (grand or petty)

Malicious destruction of property

Knowingly Receiving stolen goods

Robbery

Theft (when it involves the intention of permanent taking)

Transporting stolen property (with guilty knowledge)

("U.S. Department of State Foreign Affairs Manual Volume 9 - Visas: 9 FAM 40.21(A) N2 Moral turpitude)

Most states have adopted statutes that mirror the US Government guidelines. The Defendant references only one South Carolina case study on page 3 of his motion in which the Court of Appeals found that a statement alleging embezzlement is actionable *per se. (McBride v. School District of Greenville County).* The Defendant makes his own conclusion that this ruling occurred only because it was public money that was embezzled and thus affected only "society as a whole." This case established no hard line separating private matters versus society as a whole as a threshold to overcome in order to "reach the level of crimes of moral turpitude."

Such a threshold is found nowhere in the law and is not a restriction placed on finders of fact.

The Defendant confuses public affect with public sentiment in order to create his false threshold. In State v. Bailey, 275 S.C. 444, 272 S.E.2nd 439 (1980), the South Carolina Supreme Court addressed the general law regarding crimes of moral turpitude: *"...the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances. The standard is public sentiment, and this may change as the moral views and opinions of the public change."*

There is no priority given to harm to "society as a whole" over harm to a single man. A man's personal duty to his fellow man is equally important. If there is any threshold to be found in the law, it pertains to crimes that involve self-destructive behavior versus those that harm others. In State v. Ball, (292 S.C. 71, 73, 354 S.E. 2D 908 (1987)) the Court ruled that *"In determining whether a crime involves moral turpitude, one looks not to instances involving self-destructive behavior but, rather, instances where the duty to society and fellow man ... is breached by the commission of the crime ..."* Society and fellow man is intended to represent all others, other than oneself. A crime of moral turpitude was specifically defined in *State v. Ball* as acts of baseness, vileness, or depravity in private and social duties which man owes to his fellow man or to society in general.

There is indeed South Carolina case law involving the theft of private funds that is deemed a crime of moral turpitude. In Bell v. Bank of Abbeville, 208 S.C. 490,496,38 S.E.2d 641,644 (1946), the Court held that an allegation charging the plaintiff with larceny or breach of trust, both named as crimes involving moral turpitude, was actionable *per se* and did not require

an allegation of special damages. Thus common law malice and damages were presumed.

The Defendant has failed to establish under any law or authority that the eight statements are not actionable on their face. The finders of fact followed the law as charged and came to the right conclusion. Stating that a man has stolen "$400,000" in the course of his business and profession is clearly actionable *per se*. Stating that a man prepared "dummy invoices from dummy companies so that he could steal money from his clients" in the course of his business and profession is clearly actionable *per se*. The jury's factual findings must not be disturbed.

B. Loree Proved Truth and Substantial Truth (page 3 of Defendant's motion)

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict *(Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)*. When considering JNOV motions, the trial court has no authority to decide credibility issues or to resolve conflicts in the testimony or evidence *(Reiland v. Southland Equip. Serv. Inc., 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998))*.

There were only three people in the courtroom during this three day trial who refused to acknowledge what a "reimbursement contract" is (two of them were attorneys). On page 3 of his motion, the Defendant brings up yet again subcontractor and supplier invoices to System Specialties, Select Stone, and Paul Anderson in an attempt to prove that "earmarked" funds provided to these entities were not disbursed and that the only possible explanation for that was embezzlement by the Plaintiff (Kunstwerke's owner). The jury was provided a full accounting of these items by the Plaintiff and was shown their treatment (refunded, etc.) in Kunstwerke's final

three billing statements which were all submitted as evidence. The jury was also provided in those billing statements a detailed accounting of the 100+ invoices totaling >$90,000 that the Gaby's never reimbursed. The jury also heard testimony from Mr. Gaby on the last morning of trial that he did not pay all of the statements submitted to him requesting reimbursement.

The Defendant attempts a very significant misrepresentation in his motion for JNOV at the top of page 4 of his motion. The Defendant asserts: *"Plaintiff kept a notebook on his table at trial which he referred to as 'Exhibit A.'* The Defendant then alleges that the Plaintiff *"never sought to introduce 'Exhibit A.'"* This is simply untrue. A copy of the top seven pages of "Exhibit A" containing a summary of the full accounting ledger was admitted into evidence at trial per SCRCP 1006. The underlying data was deemed admissible as a business document per SCRCP 803. This same summary exhibit was admitted in all related civil trials, including Kunstwerke contract cases and the Plaintiff's *pro se* defamation cases. (see Exhibit "A" attached.)

"Exhibit A" is a full thousand page, Bates stamped, blue binder of every Kunstwerke transaction for its final three years of operation (before the Defendant's slander in February 2006). It is a full accounting (fully reconciled to bank statements and tax returns) of every Kunstwerke corporate expense, fee income, ownership draws, and all client transactions. Early on in discovery, it was deemed too voluminous to store in the Clerk of Court's case folder. Instead, a computer disk containing the full binder was filed. In every related trial, the "big blue binder" itself was deemed too voluminous to be submitted into evidence.

The Plaintiff explained in great detail to this jury what the blue binder was and what the summary pages represented. This is also the exhibit that provided evidence to the jury that the

balance owed to Kunstwerke by all of Kunstwerke's clients at the time of the Defendant's slander was greater than $500,000 (and that much of the subcontractor and supplier debt was personally guaranteed by the Plaintiff) and shows that every client stopped paying that same week. It also summarizes the Plaintiff's personal draws from his wholly owned S Corp. Kunstwerke.

The Defendant's ignorance of "Exhibit A" is understandable if one considers that he has intentionally avoided the *actual* accounting records available to him during nine years of litigation. Instead, we have been treated to a collateral estoppel scam and two expert witness scams as detailed in the Plaintiff's pre-trial motions.

The Defendant was permitted to plead truth and privilege the day of trial for the first time in nine years. This new plea was objected to by the Plaintiff. The Defendant is attempting to now assert in his JNOV motion that no reasonable jury could not have found his supposed "truth." However, he never even attempted at trial to take each defamatory statement at its face and prove each one true with actual evidence, nor does he attempt to do this in his JNOV motion. For example, where are the alleged "dummy invoices?"

If the Defendant is indeed alleging truth, then he is alleging serious financial crimes. The finders of fact heard from no expert witness, accountant, auditor, or prosecutor. Defendant Loree demonstrated no understanding of the financial and contractual matters at hand. Defendant Loree admitted under oath that he never saw or read the Gaby contract with Kunstwerke, which was a reimbursement contract. He was asked under direct examination if someone would appear on his behalf later in the trial who could testify to these things. He said "no."

Not a single client of the Plaintiff's testified that they told the Defendant that any money

was stolen from them, including the Gabys themselves. Furthermore, the finders of fact saw evidence that all 5 clients who stopped reimbursing the Plaintiff's company the week of the Defendant's slander were eventually sued by Kunstwerke and all 5 clients settled with payment – not the other way around. It was established at trial through evidence and testimony regarding the resolution of every related client contract case that no money was missing or stolen from anyone. The Plaintiff explained to the jury that all twenty related cases were filed to obtain evidence for them to consider.

The Defendant called only one witness, a representative of the SCDR to discuss the Plaintiff's tax liens who was on the stand for five minutes. The jury noticed that.

It visibly annoyed the Defendant's counsel when the absence of the expert witness they had hired was mentioned at trial. There were only 908 Gaby transactions and they were easily auditable. Any attempt at a "truth" defense could have only started there. In a reimbursement contract, all 908 transactions must be fully accounted for and reconciled before one could even begin to suspect what the Defendant told to witnesses as fact. The finders of fact understood this and decided accordingly.

On page four of his JNOV motion, the Defendant attempts to assert that the Order granting summary judgment in the Kunst v. Parham defamation case somehow proved that money had been stolen from this client. The Plaintiff was questioned about this order under cross-examination and reminded the jury of the contract case Kunstwerke v. Parham which settled in Kunstwerke's favor. There was not a dime stolen or missing from client Parham. In fact, just the opposite was true.

The Defendant was permitted to introduce into evidence the Gaby default judgment order

that was not actually litigated and was ruled as such by the South Carolina Court of Appeals. The jury saw evidence that the Court of Appeals ruled that the Plaintiff had not been able to "actually litigate the veracity of Loree's statements to others." The veracity of these statements has finally been litigated after an inexcusable delay, and the finders of fact got it right.

Gene Covington

Weeks before trial, the Defendant attempted to preclude the testimony of Gene Covington by asserting that he had no information about the case. Now Covington appears in the Defendant's JNOV motion. The Jury heard a belligerent attorney who had to be sued to pay his bills and who used his law firm to threaten others and avoid personal debts. The jury heard that Covington's own firm represented the Defendant until very recently even though Covington owed the single largest balance to Kunstwerke at the time of Loree's slander. More importantly, the jury heard that Covington settled the contract case against him mid-trial with a check. There was not a dime stolen or missing from client Covington. In fact, just the opposite was true.

The jury heard testimony from the Plaintiff and saw evidence of the spreadsheet based Kunstwerke weekly reimbursement billing system. Every transaction was accounted for in great detail as each transaction occurred. Covington already had in his possession a copy of all 1,215 subcontractor and supplier invoices with full contact information. Covington simply refused to pay the last $130,000 he owed. If Covington's "claim" about wanting an independent audit was genuine, nothing was stopping him from doing so. Was he looking for some kind of deal? Kunstwerke waited fourteen months before suing Covington to collect.

If Covington wanted to do a full audit of all of Kunstwerke's books with all of its clients, his firm had subpoena power to do so through the Gaby case as early as June 2006. There was

nothing unusual about the final two weekly reimbursement statements from the previous 105 that Covington had paid. Mrs. Covington closed their permanent mortgage weeks after the Plaintiff refused to sign a builder affidavit which said that all of the subcontractors and suppliers had been paid. The jury understood that they themselves would not have that option.

If Mr. Covington's intentions are honorable, he is free today to do an independent audit and add to his mid-trial settlement. There are dozens of still unpaid subcontractors and suppliers in South Carolina that hope he would. The jury as finders of fact understood precisely why Gene Covington was called as a witness for the Plaintiff.

The Defendant makes a specious and inflammatory reference on page four of his JNOV and attempts to place words in the Plaintiff's mouth regarding judges in South Carolina. The Defendant in no way quotes *Cold and Greedy,* nor would he understand it if he read it.

The actual Kunstwerke accounting records prove the Defendant to be a lying. This is why an enormous amount of resources and court time has been wasted by this Defendant in an effort to avoid actually litigating these records. There was not a single piece of evidence submitted at trial to refute the company's full records. They were avoided yet one more time.

Also on page four, the Defendant argues that "everything Loree allegedly said about the Plaintiff is true and because it is true, it is not defamatory as a matter of law." This is simply not true, and the finders of fact agreed. The jury was not provided any evidence at trial that proved that any of the actual statements sworn to by the witnesses were true. Furthermore, the Defendant did not deny making any of them.

Actual Witness Testimony at Trial

On Page 159 of Ralph King Anderson's Requests to Charge in a civil case in South Carolina *(14-7 Defamation - Defamation per se or Defamation per Quod)* we read the following: *"The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory per se. A statement is defamatory per se, or on its face, if its defamatory meaning is apparent from the language itself. It must be susceptible of only one meaning, that being a defamatory one. If an innocent construction can fairly be made of the statement, it cannot be defamation per se. An example of defamation per se is "A is a thief."*

The finders of fact heard sworn testimony that the following statements were made to the witnesses by the Defendant. These statements are defamatory on their face and cannot be constructed in any other way.

Glenn Alfonso

Witness Glenn Alfonso testified that the Defendant told him as others were standing around: **"I am not supposed to be telling you this, but to give you an idea of some of the criminal things Scott has been doing."** He further testified that **"David Loree then referenced an insurance policy for the Gaby project and claimed that Scott Kunst took out the policy, billed the Gabys, and intentionally cancelled the policy the next day so that he could keep the money."** This was not a privileged conversation. The audience had no interest in this insurance policy nor did the Defendant have a duty to tell them about it. The Defendant's sole purpose was to spread an allegation of criminality. The Defendant knew it was reckless and

malicious, that is why he prefaced his slander by stating **"I am not supposed to be telling you this."**

Witness Glenn Alfonso testified that the Defendant told him that **"Scott Kunst had taken money from his other clients and that money was missing from these other projects."** Glenn Alfonso was particularly careful when testifying about the following statement he attributed to the Defendant to the point of wanting the article "a" before "criminal" removed from this statement in his affidavit: **"I recall David Loree referring to Scott Kunst as "criminal" on more than one occasion."**

The record shows that the Defendant was asked under direct examination if he described the Plaintiff as "criminal" when speaking to Glenn Alfonso. The Defendant responded: **"Don't recall."**

The Defendant was asked if Glenn Alfonso was being untruthful. The Defendant responded: **"No, I just don't recall if I said it."**

The Defendant was asked if he told Glenn Alfonso that the Plaintiff took out an insurance policy, billed the Gabys for it then cancelled it in order to keep the money. The Defendant responded: **"Don't recall, can't say if I did or I didn't."**

The Defendant was asked if he told Glenn Alfonso that money was missing from other clients. The Defendant responded: **"Don't recall."**

Kevin Goad

Witness Kevin Goad testified that the Defendant represented to him that he **"was a former detective and was in the process of investigating Scott Kunst's financial dealings**

with his clients."

Witness Kevin Goad testified that the Defendant stated to him: **"Scott Kunst had taken $400,000 from the Gaby project and had left his other clients in a similar situation."**

Witness Kevin Goad testified that the Defendant stated to him that **"money was missing from Parham, Covington, Coco, and Hickey."**

Witness Kevin Goad testified that the Defendant stated to him: **"Scott Kunst had provided his clients with "dummy" invoices from "dummy" companies to take money from these clients."**

Witness Kevin Goad testified that the Defendant implied that he had reconciled the Gaby Kunstwerke account, and that the accounts of the other clients had also been reconciled.

Witness Kevin Goad testified that the Defendant stated to him: **"The money Scott Kunst had taken from his clients was spent on his (Scott Kunst's) speculative project with an investor named Hickey. David Loree stated that progress at the specultive project with Hickey had stopped because Scott Kunst's clients had stopped paying Scott's company altogether and, as a result, there was no money available to be illegally transferred from these clients to the spec project." "David Loree stated that he was in contact with Hickey and that a lot of money had been taken from Hickey as well. David Loree appeared to know a great deal about Hickey and the speculative project."** This could not have been a privileged conversation. Kevin Goad's company was not even involved with the Hickey project. The Defendant's sole purpose was to recklessly spread an allegation of criminality.

The Defendant was asked if he told Kevin Goad that money the Plaintiff took from his clients was spent on the speculative project with Hickey. The Defendant responded: **"Don't**

recall."

The Defendant was asked if he told Kevin Goad that he had reconciled the Gaby Kunstwerke account, and that other client accounts had been reconciled. The Defendant responded: **"Unknown, nine years ago."**

C. The Alleged Statements Are Squarely Within Qualified Privilege (page 4)

The Defendant never plead privilege until the day of trial. The Plaintiff objected to this sudden plea after an inexcusable nine year delay.

The question of privilege is a mixed question of law and fact to be determined by the jury. (Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001)). Abuse of privilege is also a question for the jury. (Woodward v. South Carolina Farm Bureau Ins. Co., 277 S.C. 29, 282 S.E.2d 599 (1981)). The finders of fact were charged in this present case with privilege as a defense and made the proper decision.

Abuse of Privilege

The Defendant is liable for a defamatory statement if the scope of any privilege he is asserting is exceeded. When determining if the privilege was abused, one should consider whether:

(1) the Defendant acted in good faith in making the statement;

(2) the scope of the statement was properly limited;

(3) the statement was sent only to the proper parties;

(4) the publication went beyond what the occasion required and was unnecessarily

defamatory.

Good faith? The Defendant never attempted to first contact the Plaintiff seeking an explanation from the source that would have the most knowledge. Defamers never do. Good faith implies an ongoing conversation with interested parties sharing information. Every statement testified to was described as a blanket statement about criminality and not as an ongoing conversation seeking information. Both Kevin Goad and Glenn Alfonso testified that Defendant Loree never contacted them again to correct, clarify, or to seek or add additional information. In fact, Glenn Alfonso described the Defendant's statement about the Plaintiff's criminal behavior regarding an insurance policy as a "blanket statement." Both Kevin Goad and Glenn Alfonso testified that they were not given any documentation or support for what the Defendant said.

Scope? The scope of every statement wandered far beyond whatever purpose the Defendant could have possibly had representing the Gaby's interests. Glenn Alfonso and those standing around him at the Gaby site had no interest in the insurance policy that the Defendant brought up out of the blue. The Defendant even prefaced his statement by saying **"I am not supposed to be telling you this."** Furthermore, Defendant Loree went well beyond the scope of representing the Gaby's interests by making blanket statements that the Plaintiff had taken money from all of his clients. If the Defendant were, as he claims, just working for the Gabys and merely inquiring about the Gaby account balance with various vendors and contractors, why did he represent to Kevin Goad that he was a **"former detective ... in the process of investigating Scott Kunst's financial dealings with his clients."** Was it within Defendant

Loree's scope of representing the Gaby's interests to discuss with Kevin Goad the Plaintiff's financial dealings with investor Hickey? Of course not. Were the "dummy invoices from dummy companies" alleged to Kevin Goad identified as invoices Kevin Goad would know anything about? No, they were not identified at all. It was just a blanket statement in order to recklessly spread unsubstantiated claims of criminality.

Proper parties? Was Glenn Alfonso and the random men standing around him on the Gaby property the proper parties with whom to discuss an insurance policy as an example of the "criminal things" the Plaintiff had done? Of course not. The Defendant's sole purpose was to spread allegations of criminality. Did the Defendant tell Glenn Alfonso or Kevin Goad that money was stolen from just the Gaby project he was representing? No, he said money had been taken from all of the Plaintiff's clients and he sometimes gave specific client names. Kevin Goad did not provide windows to the Hickey project as the jury was reminded during closing arguments. Was Kevin Goad the proper party with whom to discuss whether money was "missing from the Hickey project" or that money allegedly transferred there was "illegal?" Of course not. Was Kevin Goad the proper party to discuss unsubstantiated claims of "dummy invoices from dummy companies?" Of course not.

Beyond the occasion and unnecessarily defamatory? The Defendant misrepresented to Kevin Goad that he had "reconciled the Gaby Kunstwerke account" before telling Goad that $400,000 was stolen from it by the Plainitff. The jury also heard testimony that the Defendant went so far as to imply to Kevin Goad that the accounts of the other clients had been reconciled as well. This was not true. The Defendant never even read the Gaby contract and would not know where to begin to reconcile a reimbursement contract. Furthermore, the Defendant

admitted that his entire "investigation" was based on the false premise that every dollar the Gabys provided was specifically "earmarked." Why? Because if a dollar did not go where he expected it, the only other posssible conclusion was theft by the company's owner. This was the unsubstantiated conclusion the defamer wanted to make.

It is far beyond the occasion and unnecessarily defamatory to make the broad leap of imputing criminality based on a false premise when criminality could never be supported by the actual accounting records. The Defendant unnecessarily imputed criminality because he was seeking to win over subcontractor and supplier support. It is unnecessarily defamatory to say that a typical reconciling item processed in the ordinary course of business is somehow theft and is somehow "pocketed" by the company's owner.

Actual Malice

The jury was reminded again and again that the Defendant went too far. It is more than reckless to throw out terms like criminality and jail to a crowd of men at a construction site. A reasonable jury understands that such accusations are explosive and would spread within hours. The jury heard testimony describing physical threats against the Plaintiff from subcontractors who were told that money earmarked for them was stolen by the Plaintiff. That is textbook malice.

The jury was shown emails and other correspondence in which the Plaintiff desperately asked the Defendant and the Gabys to reimburse the stack of 100+ invoices that rapidly accumulated in February 2006. The Plaintiff complained of the cash crisis this caused. Funds were intentionally withheld in breach of the contract in order to make it appear that the reason

some contractors and suppliers went unpaid was because money was diverted and stolen by the Plaintiff. The Defendant's actions displayed ill will, wanton disregard for the Plaintiff's rights, and were base, vilem and morally depraved.

The jury heard testimony as to why the Defendant had come to town and why he desperately needed the cooperation of the construction site and the Plaintiff's unique organization. The jury also heard testimony regarding the Gabys' domestic problem and the costs that Mr. Gaby was hiding from his wife.

The defendant desperately sought out any items processed in the ordinary course of business that he thought might reconcile in the Gabys' favor and imputed criminality to them while intentionally ignoring those typical reconciling items that would not go in the Gabys' favor and be part of a typical full account reconciliation. In short, the Defendant committed various deceitful acts in order to make it appear that his slander was true, and did so with blatant disregard for the Plaintiff's rights.

The jury saw evidence that a year later, and even under oath, the Defendant submitted a default "Damages Computation" in which he again excluded the reconciling items that would reduce those damages to $0. He got away with it because it was an uncontested hearing in which the actual accounting records and all 908 invoices could not be submitted into evidence to refute him. There is nothing about the efforts of this defamer in February and March 2006 that were done honestly and in good faith. His very purpose for coming to town was rooted in ill will toward the Plaintiff.

Needless to say, the finders of fact did not find any qualified privilege defense for the Defendant, nor should they have.

Judgment Notwithstanding the Verdict (JNOV) Standard

In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993); Force v. Richland Mem'l Hosp., 322 S.C. 283, 471 S.E.2d 714 (Ct.App.1996).

In making this determination, the judge must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. Gilliland v. Doe, 357 S.C. 197, 592 S.E.2d 626 (2004); Small v. Pioneer Mach., Inc., 329 S.C. 448, 494 S.E.2d 835 (Ct.App.1997).

The trial court must deny the motion when the evidence yields more than one inference or its inferences are in doubt. Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003); Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct.App.2000); see also Force, 322 S.C. at 284, 471 S.E.2d at 715 (stating that if more than one reasonable inference exists, jury verdict must stand).

In deciding a motion for JNOV, the trial judge is concerned with the existence of evidence, not its weight. Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003).

When considering a JNOV motion, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. Id. at 320, 585 S.E.2d at 274; Reiland v. Southland Equip. Serv., Inc., 330 S.C. 617, 500 S.E.2d 145 (Ct.App.1998).

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998); Welch, 342 S.C. at 300, 536 S.E.2d at 419.

If more than one inference can be drawn from the evidence, the grant of a JNOV is improper and the case must be left to the jury's determination. Gastineau, 331 S.C. at 568, 503 S.E.2d at 713.

The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App.1994).

II. New Trial in the Alternative (page 6 of Defendant's JNOV Motion)

The jury verdict is not contrary to the preponderance of overwhelming evidence presented through witness testimony and accounting documents presented again in the pages above. The jury asked for a written copy of the definition of defamation *per se* and carefully deliberated. The elements of defamation as found in actual South Carolina case law is presented in the pages above as it was presented to the jury. The Defendant's incorrect and strictly limited definition of crimes of moral turpitude and unfitness in business or profession are found nowhere in the law. Statements that on their face impute criminality in the conduct of one's business are clearly actionable *per se* in South Carolina.

It is worth noting that on page 6 of the Defendant's motion for JNOV, he changes unfitness in business or profession to "unfitness in occupation." His argument only gets more absurd.

The question of privilege is reserved for the finders of fact. A preponderance of the evidence presented to the jury and presented again here on pages 22-26 above show clear abuse of any privilege the Defendant may have been entitled to and actual malice.

III. New Trial *Nisi Remittitur*/New Trial Absolute (page 7 of Defendant's JNOV Motion)

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. (Rush v. Blanchard , 310 S.C. 375, 426. S.E.2d 802 (1993)). The jury's determination of damages, however, is entitled to substantial deference. The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, partiality, corruption, or some other improper motives. (Weir v. Citicorp nat'l Servs., Inc., 312 S.C. 511, 435 S.E.2d 864 (1996)). The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered. (Vinson v. Harley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996)).

The jury found that the Defendant's slander was actionable *per se* and awarded damages accordingly. A one million dollar verdict for a defamation *per se* case in which the defamer was found to have wrongly imputed criminality that immediately destroyed a career and business once spoken is not at all excessive. In fact, based on average awards for such slander *per se* injuries, one million is on the low side. The Plaintiff suggested over $2,000,000 to the jury for general *per se* damages and made no recommendation for a punitive amount.

The plaintiff testified about the destruction of his career and livelihood. The Plaintiff submitted into evidence a summary of how much every client owed the week that Defendant

Loree came to town. The Plaintiff explained how that he personally guaranteed much of the $500,000 listed there that was lost. The jury was provided a schedule showing what the Plaintiff's annual income was from his company prior to the week that defendant Loree came to town. The jury also heard testimony that the Plaintiff had endured the cost of nine years of litigation and incurred additional legal costs from the Defendant's inexcusable delays and his failed attempt to keep this case from a jury. The jury also heard testimony that general *per se* damages accrue and should be greater the longer a case is kept from a jury because the Defendant was free to continue to defame the Plaintiff during litigation. If anything, the general damages awarded were much too low.

The jury was anything but capricious and overcome by passion. They awarded less than half of what was requested and did not award any punitive damages. The jury believed the Plaintiff when he testified that he had personally guaranteed the trade accounts that clients like Gaby and Covington left him holding the bag for. The jury believed the Plaintiff when he testified that he had given his word to these subcontractors and suppliers that they would be made whole. The moral character on display on the other side of the aisle had no problem stiffing scores of small businesses in South Carolina. The Defendant's counsel could not comprehend why the Plaintiff would not declare bankruptcy and "mitigate" his damages.

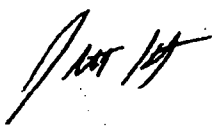
This is precisely why we have a jury system. The jury was being deliberately thorough and conscientious when it sent out a note asking if it could direct where the funds went. These were good people who were troubled that a billionaire would not pay his bills and leave subcontractors unpaid. The Plaintiff is troubled, too, and will keep his word.

Conclusion

This nine year event has been a sad chapter in the lives of many good people who were directly harmed by a man who a jury of his peers found to have lied and defamed. This was no small defamation case. Nine years of litigation and twenty related lawsuits has revealed a lot. The trial court judge recognized that this was finally the Plaintiff's day in court and that he had been harmed by a trial court error that kept this case from a jury for six years. It is beyond sad that the testimony of Bronson Shepherd, the main witness to this event, was not heard at trial.

The defendant's JNOV motion does not provide a single reason found in the law or in the preponderance of the evidence as to why a trial court must disturb this verdict. The Plaintiff respectfully requests that the Defendant's motion be denied in its entirety.

Respectfully submitted:



J. Scott Kunst, Plaintiff, *pro se*
130 Arabian Way
Simpsonville, SC 29681
864 979 7961

Simpsonville, South Carolina
June 12, 2015

Status of the Five Defendant accounts when last payments received

	Date of last Payment	Amount	Total Payments at that date	Total SUB Invoices Submitted as of that date	Funding Deficit at that date		Ledger Code
Coco	2/24/2006	32,278	1,424,887	1,454,846	29,959	BATES 000126	COCO P71
Covington	2/15/2006	6,315	2,402,685	2,540,319	137,634	BATES 000263	COV P105
DeBacco	2/10/2006	25,000	832,111	962,152	130,041	BATES 000394	DEBA P21
Gaby	2/13/2006	61,823	2,654,087	2,656,492	102,405	BATES 000470	GABY P68
Parham	2/16/2006	2,014	2,374,542	2,445,448	70,906	BATES 000816	PAR P108
Spec 227	2/16/2006	67,257	720,643	788,725	68,082	BATES 000871	SPEC P17
					539,027		

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Summary of Fee Income, Personal Draws and Personal Contributions

	2004	2005	2006	3 Year
Fee Income	220,270 BATES 00087	274,000 BATES 00098	49,000 BATES 00099	543,270
Automobile Expense	(28,405) BATES 00921	(18,253) BATES 00993	(3,191) BATES 01097	(49,849)
Bank Service charges	(2,440) BATES 00923	(11,012) BATES 00998	(2,035) BATES 01098	(15,487)
Design Periodicals	(614) BATES 00924	(250) BATES 00999	(31) BATES 01100	(895)
Fees	(2,551) BATES 00929	(2,018) BATES 01004		(4,569)
Fuel	(3,218) BATES 00932	(2,320) BATES 01006	(417) BATES 01102	(5,953)
Insurance	(16,144) BATES 00933	(5,867) BATES 01007	(380) BATES 01103	(22,391)
Licenses and permits	(4,210) BATES 00935	(686) BATES 01009		(4,896)
Misc	(1,708) BATES 00937	(703) BATES 01011	(965) BATES 01105	(3,375)
Model Supplies	(1,172) BATES 00938	(758) BATES 01012		(1,930)
Office Supplies	(28,890) BATES 00940	(20,182) BATES 01014	(1,147) BATES 01106	(50,219)
Postage	(2,075) BATES 00961	(4,692) BATES 01018	(579) BATES 01107	(7,347)
Rent	(10,116) BATES 00962	(21,710) BATES 01019		(31,826)
Travel	(5,645) BATES 00991	(2,805) BATES 01099	(98) BATES 01123	(8,548)
Verizon Phones	(7,058) BATES 00992	(15,318) BATES 01096		(22,376)
Operating costs	(114,244)	(106,573)	(8,843)	(229,661)
Personal Draws	(76,986) BATES 00928	(89,596) BATES 01003	(13,757) BATES 01101	(180,339)
Personal Contribution 2/14/06			50,000	50,000
Personal Contribution 2/21/06			117,000	117,000
NET Contribution*	29,040	77,831	193,400	300,270

* Represents a net of additional funds contributed to Kunstwerke available to advance client credit, provide additional personal draws, or pay down debt.

KUNST 000094

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Summary of net unpaid balances per final ledger

	Final net SUB invoices	Total Reimbursed	Balance owed Kunstwerke	reference
Coco	1,452,932	1,424,887	28,045	BATES 000125
Covington	2,534,519	2,402,685	131,834	BATES 000264
DeBacco	927,025	832,111	94,914	BATES 000385
Gaby	2,513,060	2,554,087	(41,027)	BATES 000471
Propper	1,404,670	1,350,366	54,304	BATES 000777
Parham	2,449,714	2,374,542	75,172	BATES 000818
Spec 227	751,856	720,643	31,213	BATES 000871
			371,855	

Overhead Fees Ledger

11/12/2008		Appears in Kunstwerke Progress Billing	Description			Overhead Draw Date	
PROP FEE 2	1/5/2004	1/5/2004	Overhead			1/5/2004	(4,000)
PAR FEE 3	1/8/2004	1/8/2004	Overhead draw			1/8/2004	(4,000)
COV FEE 13	1/19/2004	1/20/2004	Overhead draw			1/19/2004	(2,170)
PROP FEE 3	2/5/2004	2/5/2004	Overhead			2/5/2004	(4,000)
PAR FEE 4	2/7/2004	2/7/2004	Overhead draw			2/7/2004	(4,000)
COCO FEE 1	3/1/2004	3/11/2004	Overhead Draw			3/1/2004	(5,000)
PAR FEE 5	3/9/2004	3/13/2004	Overhead draw			3/9/2004	(4,000)
PROP FEE 4	3/9/2004	3/9/2004	Overhead			3/9/2004	(4,000)
COCO FEE 2	4/1/2004	4/11/2004	Overhead Draw			4/1/2004	(5,000)
RUB FEE 1	4/4/2004	4/4/2004	Overhead			4/4/2004	(4,000)
PAR FEE 6	4/9/2004	4/4/2004	Overhead draw			4/3/2004	(4,000)
PROP FEE 5	4/14/2004	4/14/2004	Overhead			4/14/2004	(4,000)
COV FEE 14	4/27/2004	4/27/2004	Overhead draw			4/27/2004	(3,100)
COCO FEE 3	5/1/2004	5/3/2004	Overhead Draw			5/1/2004	(5,000)
PAR FEE 7	5/4/2004	5/8/2004	Overhead draw			5/4/2004	(4,000)
RUB FEE 2	5/4/2004	5/4/2004	Overhead			5/4/2004	(4,000)
COCO FEE 4	6/1/2004	6/4/2004	Overhead Draw			6/1/2004	(5,000)
GABY FEE 1	6/1/2004	6/9/2004	Overhead			6/1/2004	(5,000)
PAR FEE 8	6/4/2004	6/5/2004	Overhead draw			6/4/2004	(4,000)
RUB FEE 3	6/4/2004	6/4/2004	Overhead			6/4/2004	(4,000)
PROP FEE 6	6/5/2004	6/5/2004	Overhead			6/5/2004	(4,000)
COCO FEE 5	7/1/2004	6/29/2004	Overhead Draw			7/1/2004	(5,000)
GABY FEE 2	7/1/2004	7/9/2004	Overhead			7/1/2004	(5,000)
PAR FEE 9	7/4/2004	7/5/2004	Overhead draw			7/4/2004	(4,000)
RUB FEE 4	7/4/2004	7/4/2004	Overhead			7/4/2004	(4,000)
COV FEE 15	7/18/2004	7/19/2004	Overhead draw			7/19/2004	(3,000)
COCO FEE 6	8/1/2004	8/10/2004	Overhead Draw			8/1/2004	(5,000)
GABY FEE 3	8/1/2004	8/7/2004	Overhead			8/1/2004	(5,000)
PAR FEE 10	8/4/2004	8/13/2004	Overhead draw			8/4/2004	(4,000)
PROP FEE 7	8/7/2004	8/7/2004	Overhead			8/7/2004	(4,000)
DEBA FEE 1	9/1/2004	8/5/2004	Overhead draw			8/5/2004	(5,000)
COCO FEE 7	9/1/2004	9/14/2004	Overhead Draw			9/1/2004	(5,000)
DEBA FEE 2	9/1/2004	9/1/2004	Overhead draw			9/1/2004	(5,000)
GABY FEE 4	9/1/2004	9/7/2004	Overhead			9/1/2004	(5,000)
PROP FEE 8	9/1/2004	9/7/2004	Overhead			9/1/2004	(4,000)
PAR FEE 11	9/4/2004	9/3/2004	Overhead draw			9/4/2004	(4,000)

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Overhead Fees Ledger

11/12/2008		Appears In Kunstwerke Progress Billing	Description			Overhead Draw Date	
DEBA FEE 3	9/10/2004	9/27/2004	Overhead draw			9/10/2004	(5,000)
COCO FEE 8	10/1/2004	10/7/2004	Overhead Draw			10/1/2004	(5,000)
GABY FEE 8	10/1/2004	10/7/2004	Overhead			10/1/2004	(6,000)
PAR FEE 12	10/4/2004	10/11/2004	Overhead draw			10/4/2004	(4,000)
PROP FEE 9	10/4/2004	10/5/2004	Overhead			10/4/2004	(4,000)
DEBA FEE 4	10/10/2004	10/25/2004	Overhead draw			10/10/2004	(5,000)
COCO FEE 9	11/1/2004	11/29/2004	Overhead Draw			11/1/2004	(5,000)
GABY FEE 6	11/1/2004	10/26/2004	Overhead			11/1/2004	(6,000)
PAR FEE 13	11/1/2004	11/7/2004	Overhead draw			11/1/2004	(4,000)
PROP FEE 10	11/1/2004	11/7/2004	Overhead			11/1/2004	(4,000)
GABY FEE 7	12/1/2004	12/13/2004	Overhead			12/1/2004	(6,000)
PAR FEE 14	12/1/2004	12/6/2004	Overhead Draw			12/1/2004	(4,000)
PROP FEE 11	12/4/2004	12/8/2004	Overhead			12/4/2004	(4,000)
DEBA FEE 5	12/10/2004	12/31/2004	Overhead Draw			12/10/2004	(5,000)
			Total 2004				(220,270)
PAR FEE 15	1/1/2005	1/4/2005	Overhead Draw			1/4/2005	(4,000)
GABY FEE 8	1/1/2005	1/17/2005	Overhead			1/1/2005	(6,000)
COCO FEE 10	1/5/2005	1/10/2005	Overhead Draw			1/5/2005	(5,000)
PAR FEE 16	2/5/2005	2/7/2005	Overhead Draw			2/5/2005	(4,000)
DEBA FEE 6	2/10/2005	2/8/2005	Overhead draw			2/10/2005	(5,000)
GABY FEE 10	3/1/2005	4/6/2005	Overhead			3/1/2005	(6,000)
PAR FEE 17	3/3/2005	3/1/2005	Overhead Draw			3/3/2005	(4,000)
GABY FEE 9	3/4/2005	2/1/2005	Overhead			2/1/2005	(6,000)
DEBA FEE 7	3/10/2005	3/5/2005	Overhead Draw			3/5/2005	(5,000)
COCO FEE 11	3/14/2005						
PROP FEE 12	4/1/2005						
GABY FEE 11	4/1/2005						
PAR FEE 18	4/1/2005					4/1/2005	(4,000)
KEN FEE 1	4/6/2005	4/5/2005	Overhead Draw				
SMITH FEE 1	4/26/2005	4/26/2005	Overhead			4/26/2005	(5,000)
GABY FEE 12	5/1/2005	5/16/2005	Overhead			5/1/2005	(6,000)
PAR FEE 19	5/5/2005	5/16/2005	Overhead Draw			5/5/2005	(4,000)
KEN FEE 2	5/6/2005	5/6/2005	Overhead Draw			5/6/2005	(9,000)
COCO FEE 12	5/7/2005	5/7/2005	Overhead draw			5/7/2005	(5,000)

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Overhead Fees Ledger

11/12/2006		Appears in Kunstwerke Progress Billing	Description			Overhead Draw Date	
DEBA FEE 8	5/10/2005	5/2/2005	Overhead draw			5/10/2005	(5,000)
KEN FEE 3	6/6/2005	6/6/2005	Overhead Draw			6/6/2005	(9,000)
GABY FEE 13	6/7/2005	6/10/2005	Overhead			6/1/2005	(6,000)
PAR FEE 20	6/8/2005	6/8/2005	Overhead Draw			6/8/2005	(4,000)
DEBA FEE 9	6/10/2005	6/10/2005	Overhead draw			6/10/2005	(5,000)
SMITH FEE 3	6/16/2005	6/16/2005	Overhead			6/16/2005	(10,000)
GABY FEE 14	7/1/2005	7/21/2005	Overhead			7/1/2005	(6,000)
PAR FEE 21	7/3/2005	7/6/2005	Overhead draw			7/3/2005	(4,000)
KEN FEE 4	7/5/2005	7/5/2005	Overhead Draw			7/5/2005	(9,000)
DEBA FEE 10	7/10/2005	7/29/2005	Overhead draw			7/10/2005	(5,000)
SMITH FEE 2	7/26/2005	7/26/2005	Overhead			7/26/2005	(5,000)
GABY FEE 15	8/1/2005	8/24/2005	Overhead			8/1/2005	(6,000)
KEN FEE 6	8/3/2005	9/5/2005	Overhead Draw				
PAR FEE 22	8/5/2005	2/28/2006	Overhead draw				
GABY FEE 16	9/1/2005	10/25/2005	Overhead				
KEN FEE 6	9/5/2005	9/5/2005	Overhead Draw			9/5/2005	(9,000)
PAR FEE 23	9/5/2005	2/28/2006	Overhead draw			9/5/2005	(4,000)
DEBA FEE 11	9/10/2005	9/27/2005	Overhead draw			9/10/2005	(5,000)
GABY FEE 17	10/1/2005	11/10/2005	Overhead			10/1/2005	(6,000)
PROP FEE 13	10/4/2005	10/11/2005	Overhead			10/4/2005	(4,000)
KEN FEE 7	10/5/2005	9/27/2006	Overhead Draw			10/5/2005	(9,000)
PAR FEE 24	10/5/2005	2/28/2006	Overhead draw			10/5/2005	(4,000)
GABY FEE 18	11/1/2005	12/2/2005	Overhead			11/1/2005	(6,000)
KEN FEE 8	11/5/2005	12/6/2005	Overhead Draw			11/5/2005	(9,000)
PAR FEE 25	11/5/2005	2/28/2006	Overhead				
GABY FEE 19	12/1/2005	1/16/2006	Overhead				
KEN FEE 9	12/5/2005	1/9/2006	Overhead Draw				
PAR FEE 26	12/5/2005						
			Total 2005				(274,000)
GABY FEE 20	1/1/2006	2/2/2006	Overhead			1/1/2006	(6,000)
KEN FEE 10	1/5/2006	2/18/2006	Overhead Draw			1/5/2006	(9,000)
PAR FEE 27	1/20/2006	1/23/2006	Overhead Draw			1/20/2006	(4,000)
GABY FEE 21	2/1/2006	3/3/2006	Overhead			2/1/2006	(6,000)
KEN FEE 11	2/5/2006	2/18/2006	Overhead Draw			2/5/2006	(9,000)

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Overhead Fees Ledger

11/12/2006		Appears in Kunstwerke Progress Billing	Description			Overhead Draw Date		
PAR FEE 28	2/20/2006	2/28/2006	Overhead Draw			2/20/2006	(4,000)	
COCO FEE 1	3/1/2006	4/4/2006	Overhead draw			3/1/2006	(5,000)	
GABY FEE 22	3/1/2006	3/3/2006	Overhead			3/1/2006	(6,000)	
			Total 2006					(49,000)
								(543,270)

KUNST.000098

PLAINTIFF'S TRIAL EXHIBIT 1

ACORD CANCELLATION REQUEST / POLICY RELEASE

DATE: 06/29/2005

PRODUCER
PHONE (A/C, No, Ext): (864) 246-3900

Johnston Insurance Agency, Inc.
1228 Green Fern Drive
P.O. Box 14610
Greenville SC 29610-4610

CODE:
SUB CODE:
AGENCY CUSTOMER ID: 438

INSURED NAME AND ADDRESS

RICHARD GABY
445 OLD HOMESTEAD TRAIL

DELUTH SC 30097

COMPANY NAME AND ADDRESS
NAIC CODE:

Zurich/Maryland Ins Services
PO Box 931794

Atlanta GA 31193-1794

POLICY TYPE: Builders Risk

CANCELLED POLICY INFORMATION

POLICY NUMBER: BR61556736

EFFECTIVE DATE AND HOUR OF CANCELLATION	CANCELLATION DATE	TIME		
	06/20/2005	2:40		AM
			X	PM

POLICY TERM	EFFECTIVE DATE	EXPIRATION DATE
	05/12/2005	05/12/2006

☐ CANCELLATION REQUEST (Policy attached)
☐ POLICY RELEASE (Complete Statement Section Below)

POLICY RELEASE STATEMENT

The undersigned agrees that:

The above referenced policy is lost, destroyed or being retained.
No claims of any type will be made against the Insurance Company, its agents or its representatives, under this policy for losses which occur after the date of cancellation shown above.
Any premium adjustment will be made in accordance with the terms and conditions of the policy.

WITNESS _____ DATE _____ SIGNATURE OF NAMED INSURED _____ DATE _____

WITNESS _____ DATE _____ SIGNATURE OF NAMED INSURED _____ DATE _____

☐ LIEN HOLDER ☐ MORTGAGEE ☐ LOSS PAYEE AUTHORIZED SIGNATURE _____ TITLE _____ DATE _____

☐ LIEN HOLDER ☐ MORTGAGEE ☐ LOSS PAYEE AUTHORIZED SIGNATURE _____ TITLE _____ DATE _____

FOR AGENCY/COMPANY USE

REASON FOR CANCELLATION

☐ NOT TAKEN
☒ REQUESTED BY INSURED
☐ REWRITTEN (Complete below)
☐ OTHER (Identify)

COMPANY

POLICY NUMBER
EFFECTIVE DATE

METHOD OF CANCELLATION

☐ FLAT
☐ SHORT RATE
☐ PRO RATA
☐ PREMIUM CALCULATION SUBJECT TO AUDIT

FULL TERM PREMIUM: $3750
UNEARNED FACTOR:
RETURN PREMIUM: $

REMARKS

Underwriter combined the two policies into one . Cancelling BR 61556736 retaining BR61555795

New York Only: If you do not keep your auto insurance in force during the entire registration period, your motor vehicle registration will be suspended. If your vehicle is still uninsured after 90 days, your driver's license will be suspended. To avoid these penalties, you must surrender your registration certificate and plates before your insurance expires. By law, we must report the termination of auto insurance coverage to the Department of Motor Vehicles.

NAME AND ADDRESS

REQUEST/RELEASE DISTRIBUTION

☐ INSURED ☐ LOSS PAYEE
☐ MORTGAGEE ☐ LIEN HOLDER
☐ COMPANY ☐ FINANCE COMPANY

PRODUCER'S SIGNATURE: T.C. Johnston <DS.> DATE: 06/29/2005

ACORD 35 (1/97)

© ACORD CORPORATION 1988

ACORD CANCELLATION REQUEST / POLICY RELEASE

DATE: 12/28/2005

PRODUCER	COMPANY NAME AND ADDRESS
PHONE (A/C, No, Ext): (864) 246-3900	NAIC CODE:
Johnston Insurance Agency, Inc. 1228 Green Fern Drive P.O. Box 14610 Greenville SC 29610-4610	Zurich/Maryland Ins Services PO Box 931794 Atlanta GA 31193-1794
CODE: / SUB CODE:	POLICY TYPE: Builders Risk
AGENCY CUSTOMER ID: 438	
INSURED NAME AND ADDRESS	CANCELLED POLICY INFORMATION
RICHARD GABY 445 OLD HOMESTEAD TRAIL DELUTH SC 30097	POLICY NUMBER: BR61556736

	CANCELLATION DATE	TIME	
EFFECTIVE DATE AND HOUR OF CANCELLATION	12/28/2005	4:55	AM: ; PM: X
	EFFECTIVE DATE	EXPIRATION DATE	
POLICY TERM	05/12/2005	05/12/2006	

[ ] CANCELLATION REQUEST (Policy attached) [X] POLICY RELEASE (Complete Statement Section Below)

POLICY RELEASE STATEMENT

The undersigned agrees that:

The above referenced policy is lost, destroyed or being retained.
No claims of any type will be made against the Insurance Company, its agents or its representatives, under this policy for losses which occur after the date of cancellation shown above.
Any premium adjustment will be made in accordance with the terms and conditions of the policy.

WITNESS	DATE	SIGNATURE OF NAMED INSURED	DATE
WITNESS	DATE	SIGNATURE OF NAMED INSURED	DATE
[ ] LIEN HOLDER [ ] MORTGAGEE [ ] LOSS PAYEE		AUTHORIZED SIGNATURE / TITLE	DATE
[ ] LIEN HOLDER [ ] MORTGAGEE [ ] LOSS PAYEE		AUTHORIZED SIGNATURE / TITLE	DATE

FOR AGENCY/COMPANY USE

REASON FOR CANCELLATION

[ ] NOT TAKEN
[ ] REQUESTED BY INSURED
[ ] REWRITTEN (Complete below)
[X] OTHER (Identify): duplicate policy

COMPANY

POLICY NUMBER / EFFECTIVE DATE

METHOD OF CANCELLATION

[X] FLAT
[ ] SHORT RATE
[ ] PRO RATA
[ ] PREMIUM CALCULATION SUBJECT TO AUDIT

FULL TERM PREMIUM: $3750
UNEARNED FACTOR:
RETURN PREMIUM: $

REMARKS

ISSUED IN ERROR SEE DUPLICATE POLICY # BR61555795

New York Only: If you do not keep your auto insurance in force during the entire registration period, your motor vehicle registration will be suspended. If your vehicle is still uninsured after 90 days, your driver's license will be suspended. To avoid these penalties, you must surrender your registration certificate and plates before your insurance expires. By law, we must report the termination of auto insurance coverage to the Department of Motor Vehicles.

NAME AND ADDRESS

REQUEST/RELEASE DISTRIBUTION

[ ] INSURED [ ] LOSS PAYEE
[ ] MORTGAGEE [ ] LIEN HOLDER
[ ] COMPANY [ ] FINANCE COMPANY

PRODUCER'S SIGNATURE: T.C. Johnston <DSJ> DATE: 12/28/2005

ACORD 35 (1/97)

© ACORD CORPORATION 1988

ZURICH

Zurich Insurance Services, Inc
P.O. Box 10197
Jacksonville, FL 32247-0 197
(800) 800-3907
(877) 397-2329 fax

DATE: Nov. 10, 05

INSURED: SCOTT J KUNST	POLICY #: 61491025

We are using this method of correspondence to speed transmittal of information. Please note the item checked below and if a reply is in order **please return a copy of this form with that reply.** Thank you.

☐ We have received an agent of record letter from the above captioned insured stating that he wishes to change agencies. If we have not heard from you regarding this matter within 10 days, we will process this request effective _____.

☐ We received your request for name change, in order to process the following information is needed:
Change in ownership? _____ no _____ yes. (If yes, answer the following questions)
Does builder have at least 2 years building experience? _____ yes _____ no (not eligible)
Average number of homes built/remodeled per year. _____
Has this principle had any losses in the past 3 years? _____
If eligible, issue name change on blank endorsement (IH1011).

☐ We received an endorsement/cancellation request on _____. We can only go back 60 days to process this request. The earliest effective date we can use is _____.

☐ We received the attached request. The following is necessary before processing:

_____ Location Needs to be Reported

_____ Location Needs to be Reported. Please advise the Additional Insured there is **no coverage in force.**

_____ Non premium bearing endorsements are issued in agent's office on blank ISO endorsement (IH1011)

_____ Issue a certificate for the mortgagee's interest (not necessary to send copy to ZIS).

X **Enclosed document was returned by the Post Office. Please forward this to the insured and issue an address change endorsement.**

☐ We have received your request for cancellation on the above referenced account. According to cancellation laws in your state we are unable to issue Direct Notice of Cancellation. To process cancellation a signed Lost Policy Release is required and/or the original policy.

☐ We have received notice that a loss occurred on _____. Zurich North America Small Business received notification_____; please explain the delay in reporting.
Losses must be reported promptly for effective claims handling. Please stress to your insured the importance of timely loss reporting. To complete our underwriting files, let us have verification of your discussion with the builder.

☐ Builder's Risk policy premiums are fully earned; therefore, there is no need to delete locations when locations are sold.

☐ Builder's Risk policies are continuous and do not have an expiration date; therefore, renewal of the policy is not necessary. Locations which the insured still has in his inventory for more than a year need to be reported again and the premium paid.

☐ Builder's Risk policies are continuous and do not have an expiration date; therefore, renewal of the policy is not necessary. The Builder simply continues to report locations each month and pays the monthly premium.

☐ Inasmuch as the attached location has not been reported, please be advised that there is **no coverage in force** until properly reported and the premium is paid.

☐ Make the following changes to policy and issue blank endorsement.

☐ delete _____

☐ add mandatory forms _____

☐ add _____

☐ add builder as additional insured _____

☐ other _____

Agent's Information

Producer Number: 14120109
Mailing Address:

JOHNSTON INSURANCE AGENCY, INC.
PO BOX 14610
GREENVILLE, SC 29610-4610

REPLY _____

FMZIS1O8 07/02

AGENT ORIGINAL

Rick –

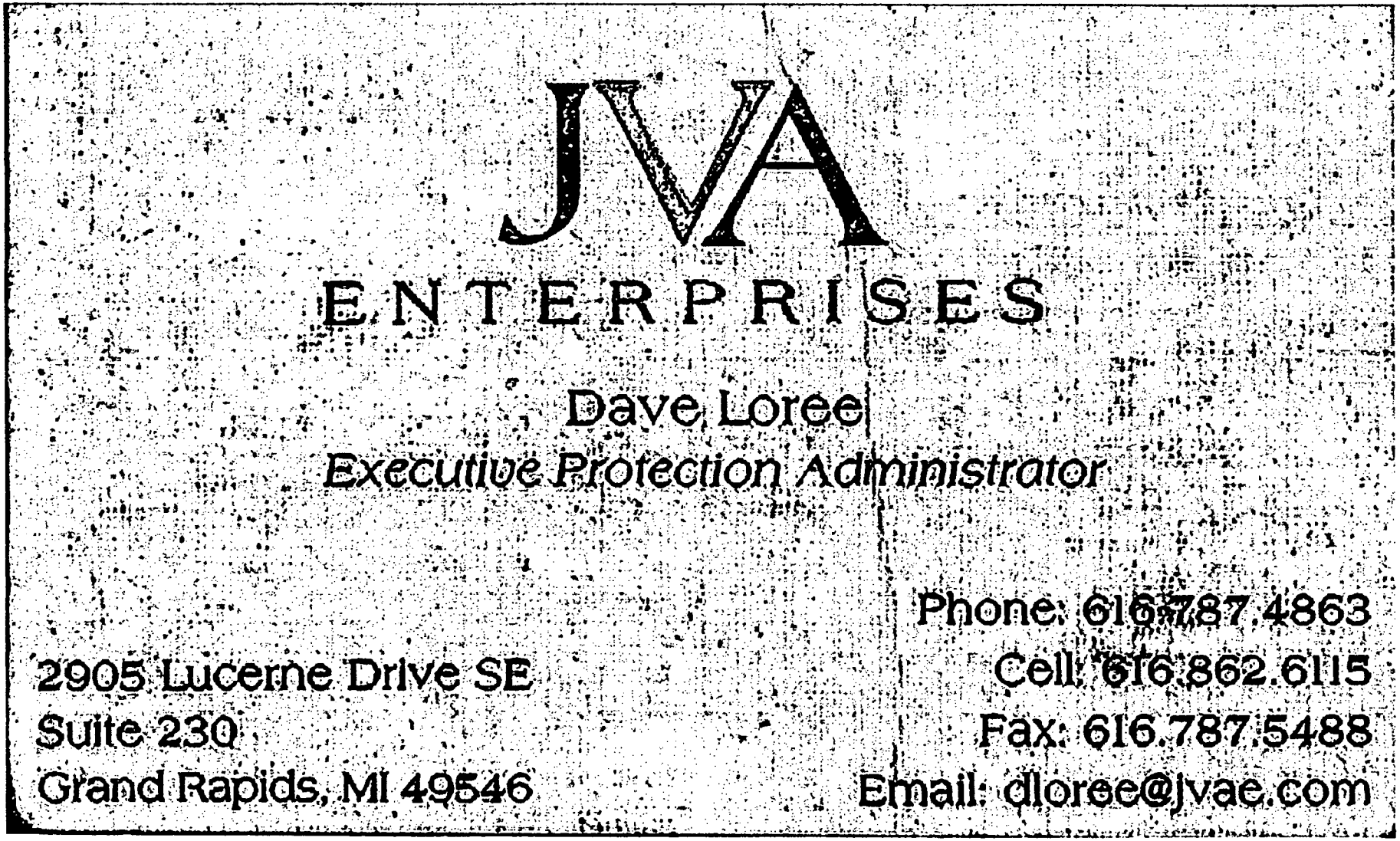
Please see the following form. The insurance company accidentally issued duplicate policies and needs to cancel one of them.

Please sign (next to the asterisk) and fax directly to them at 864-246-4490.

Thank you!

Tracey Helton 864-270-0238
Kunststuerke

PLAINTIFF'S TRIAL EXHIBIT 4


JVA
ENTERPRISES
Dave Loree
Executive Protection Administrator
Phone: 616.787.4863
Cell: 616.862.6115
Fax: 616.787.5488
Email: dloree@jvae.com
2905 Lucerne Drive SE
Suite 230
Grand Rapids, MI 49546

PLAINTIFF'S TRIAL EXHIBIT 5

Pickens Culvert & Pipe	2121 Gentry Memorial Hwy.	Pickens, SC 29671	(864) 878-4555	
Precision Welding	192 Crowe Creek Road	Six Mile, SC 29682	(864) 868-3636	NIB
Premium Services Lanscape, LLC	PO Box 1489	Hendersonville, NC 28793	(828) 329-5060	NIB
Professional Engineering Associates	PO Box 8836	Greenville, SC 29604	(864) 242-4373	902.81
Prosource, LLC	200 Industrial Drive PO Box 5339	Greenville, SC 29607	(864) 232-2545	NIB
Quality on Tap	PO Box 350	Six Mile, SC 29682	(864) 868-0942	
Randy Lance	232 Rosman Hwy	Brevard, NC 28712	(828) 553-5009	
Raymack Builders	100 Leroy Ct.	West Union, SC 29696	(864) 710-7297	
Riddle's Tree Service	PO Box 141	Balsam Grove, NC 28708	(828) 293-0342	
RMC Mid-Atlantic, LLC	PO Box 198839	Atlanta, GA 30384-8839	(770) 724-6600	
Robert Builders	280 Colony Lane	West Union, SC 29696	(864) 908-5850?	
Robin Wright, LLC	2202 Concord Rd	Anderson, SC 29621	(864) 844-1811	see wall Guard
Salem Stone	PO Box 40	Sapphire, NC 28774	(828) 966-4270	
Sam Saxton	65 Century Circle Apt. 700 C	Greenville,SC 29607	(864) 244-8160	
Sealing Agents	1621 Poplar Dr. Ext	Greer, SC 29651	(864) 877-9391	NIB
Select Stone, Inc.	PO Box 6403	Bozeman, MT 59771	(888) 237-1000 (Ext. 3)	14,030 - DP
Shoreline Restoration Services, LLC.	104 Firefly Court	Central, SC 29630	(864) 885-7026	See trees unlimited
Site Design, Inc.	800 East Washington St. Suite B	Greenville, SC 29601	(864) 271-0496	
South Oak Floors	204 Luke Court	Easley, SC 29640		
Southern Concrete Specialties, Inc.	11253 South Hwy 11	Westminster, SC 29693	(864) 972-1173	15,381 50 10-21-05
Stanely Joe Chapman Septic Tank	539 Mauldin Lake Road	Liberty, SC 29657	(864) 878-9287	
Stewart Home Improvements	5 Totem Pole Lane	Brevard, NC 28712	(828) 712-1366	-
System Specialties, Inc.	1750 Liberty Hwy.	Six Mile, SC 29682	(864) 868-3457	- 4600.57
Theron McCall's Grading	730 Everett Rd.	Pisgah Forest, NC 28768	(828) 883-8250	7635 DP
Travis James: Foothills Concrete	205 Gethsemane Dr.	Greenville, SC 29611		-
Tree's Unlimited, Inc.	413 Hood Road	Easley, SC 29640-6604		DeDuk - 5726.50
Triple N Pevins	36 Morning Side Drive	Easley, SC 29640	(864) 449-2220	NIB
Tri-state Concrete Pumping	PO Box 1813	Easley, SC 29642	(864) 855-3573	NIB
TSC, Inc.	3385 Brushy Creek Road	Greer, SC 29650	(864) 770-8000	NIB
Tucker Materials, Inc.	101 Bilo Blvd.	Greenville, SC 29607	(864) 297-9181	NIB
Waste Management	40 Estes Plant Road	Piedmont, SC 29673	(884)) 845-8355	NIB
WCA Waste	40 Estes Plant Road	Piedmont, SC 29673	(884) 845-8355	1050 DP
Wall-Guard Corp.	7024 N. Honeytown Rd.	Smithville, OH 44677	(330)-669-2552	Gabby Pd 5640 - +500
Wilson Gas Service	PO Box 492	Pickens, SC 29671	(864) 878-0160	3113 -

Waste - Houston TX 713-512-6200

~~864-439-4426~~ 864-949-2600

DL 000003

Window & Door Concepts	341 West Phillips Road	Greer, SC 29650	(864) 877-3113	NB
Kroeger Marine Construction	879 Highway 123 By-Pass	Seneca, SC 29678	(864) 882-7671	—

289

DL 000004

(Double Pay)

Gaby Construction Project Invoices

	A	B	C	D	E	F	G
969	G	Credit Card	3/13/2006		Misc. Fees	WCA Waste	$1,050.00
970	G	1794	12/9/2005		Landscape	Theron McCall's Grading	$7,635.00
971	G	1745	3/1/2006		Stone	Select Stone, Inc.	$14,030.00
972	G	1818	2/22/2006		Energy System	Energy Savers Comfort Systems	$14,633.00
973	G	1718	2/8/2006		Lighting Supply	Majestic Lighting	$15,954.28
974	G	1719	2/16/2006		Electrician	Knutson Electrical Services, Inc.	$16,770.90
975	G	Wired	3/13/2006	email	Cabinets	Paul Anderson Design, Ltd	$32,000.00

3/2/06

$700 new

$102,073.18

290

DL 000005

$14,633.00

→ Energy Savers $ to Scott for insulation
2/9/06 $29K for insulation never forwarded

→ Shoreline Restoration 9/29/05 4293 -
12/1/05 1433.50
$ 5726.50
shows as paid Shoreline never received

→ Wilson Gas 11/3/06 $131.17
Scott requested $ 1/9/06 request - never paid

→ Fireplaces Plus $ 19,850 - starting bal.
10,000 - recieved after returned.
$9850.00 Real

K & S Welding: Crane (Gayle putting it together) (455 ~~50~~ $1,300 Gaby specific

Paul Anderson Resign

Bennett Equip 40 outstanding

Mc Call Theron $7635.00 Double Pay

Knutson Electrical $14,770 Dbl pay
$ 8496.34 Knutson never received
$24,966.34

DL 000006

PLAINTIFF'S TRIAL EXHIBIT 6

Subj: **reconciling of all to date expenditures on the Gaby project**
Date: 2/13/2006 4:03:19 PM Eastern Standard Time
From: Dave.Loree@alticor.com
To: StudioKunstwerke@aol.com
CC: rgaby@[redacted]

Scott,

Just a follow up to our earlier telephone conversation today. This in order to me clear on what you are required to produce before further funds will be transferred for the Gaby's home at the Reserve.

- You have in your possession, and will prepare "stamped paid invoices" to include copies of your cancelled checks showing disbursement to match the transferred funds Mr. Gaby has made relating to the Gaby home project. You will compile those invoices and cancelled checks starting with those funds transferred on 10/7/2004 in the amount of $19,214.00, they will continue and me complete to include the transfer on 2/13/2006 in the amount of $61,823.00

- Accompanying those reconciled documents will be addendums explaining as you put it "prioritized" disbursement of funds to those who were not the vendor indicated or referenced for disbursement in your email requests.

- You will produce that series of documents by 12:00PM on Thursday February 16, 2006. You will have those documents available for review at that time. Please secure a meeting room for 1:30PM on Thursday 2/16/06 at The Reserve Club house and have those documents laid out and available for review. Please have a second copy of those same documents for the Gaby's to retain.

- You are to gain Lien Waivers for the various trades and contractors who are participating in the construction of the Gaby project at the Reserve. On Thursday Februarys 16, 2006 you will provide an update as the progress of securing those waivers.

Thank You for your prompt attention in this matter.

David M. Loree
770-315-3808

PLAINTIFF'S TRIAL EXHIBIT 11

July 25, 2005

To: My clients

Just a quick note to update you all on my current work and formally introduce four houses underway.

I am very proud of my current portfolio of homes. I am also proud of the select group of technicians and artisans that I've assembled to help me build them. For me, the initial conceptualizing and design is the easy part. The physical construction of each house is far more daunting. Each of my projects is as intensely personal to me as it is to you.

Not that one can rightly compare my projects to any others, I still find it interesting to learn how others go about designing and building high-end custom homes. My favorite clients are those who have been through this process recently and who fully appreciate what we do.

All design is subjective - it starts with a blank sheet and there is no guarantee you are going to like what the designer creates. It is a product of the artist's imagination - the ultimate intangible. Residential architects functioning at this level of design typically require six to twelve months to get to the point of ground breaking. Most fees are over 7% of estimated cost - 20% for the better known. It is not likely that that design professional will assume responsibility as GC and oversee daily construction or allow the design process to evolve and flow as the project evolves. That would require an unlimited amount of their time and a lot of hard work. I suspect they would not be apt to travel or spend weekends at the sites. Some might provide a scaled model of building and site.

The licensed builders or general contractors that are able to build high-end custom, do so most often on a cost plus basis. A percentage is negotiated and added to all costs associated with construction. 10% is on the low end. 15% to 16% is more accurate. Fixed bidding is rare and highly inflated due to the risk and is often encumbered with change orders.

The square footage benchmark is not always the best tool for analyzing the cost of high-end resort homes, nonetheless very little of quality is obtained in the Reserve for less than $250. It is more or less the average. With that as a benchmark, it is stunning and an object of particular pride that most of my current houses are all in the $200 range. None of my most extreme houses - those with the more exotic materials - will surpass $350. Considering the complexity of design and the type of materials used, the construction timelines have been even more remarkable.

I depend solely on the monthly line item called Overhead/Oversight/ and Design fees to operate. My actual monthly overhead costs, exclusive of the hourly site managers fees and other physical labor billed separately, averages $3,000 per site. That is before any consideration of my time and effort - the ultimate intangible. If not billed, I personally lose $3,000 per month in addition to the value of my own time.

My clients are given weekly progress billings complete with copies of actual invoicing - most of which has already been paid on their behalf at the date of the invoicing. Most of the GCs noted above require a sizable construction deposit.

Recently, Pickens CO gathered all of their building officials and conducted a field trip of my houses. The head of residential inspections wanted the others to see a small group of remarkable houses being built in their county - completely unlike anything else they've seen.

Last month I gave a group of interns from Fowler Interiors (the largest interior design firm we work with) a tour of several homes. One of the interns, Jennifer, later wrote me a thank you note. She wisely picked up on the immeasurable amount of personal effort invested in each project.

At this date I have an optimal number of projects (7) to fill my time and keep the majority of subs that I use busy enough to be exclusive. I am often asked how I am able to find the craftsmen and technicians that are even capable of doing the things we do. The truth is, many of them are the best at their craft and know that I am able to offer them the finest and most unique houses in this area. Working exclusively for me, they become accustomed to my way of doing things. It is truly a remarkable team: from my framing crews, to my built-in furniture craftsmen, to my landscape architect.

I visit most sites every day, and frankly I need to. There is much of what I do that cannot be translated from drawings. I depend greatly on the site managers that I have trained and selected for each project to be my eyes and ears when I am not there. They are not there to replace me as builder. Often times a site manager will split his time between two houses, particularly if they are close by (same street). It is simply more efficient to split the billing of their time between two projects when possible. And of course they bill each hour to only one site. Additionally, they typically do actual physical construction work at the site. They are chosen because they are young, aggressive, and are willing to work with me within my way of doing things.

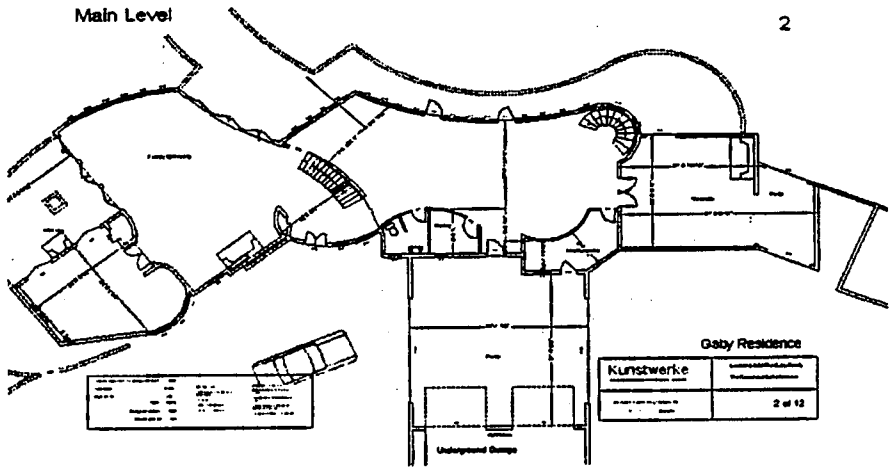
I have recruited my brother, David, to move here with his family from Pittsburgh after Labor Day to add one more level of oversight and management to our day to day construction activities. He is also going to ease the burden of the site managers- they will no longer be the on-site liaison to homeowners. I still, however, personally prepare the master schedules and every progress billing. Particularly in the Reserve, you will not find any other organization that has site managers permanently stationed at sites managing daily activity as well as two other levels of daily oversight/visits.

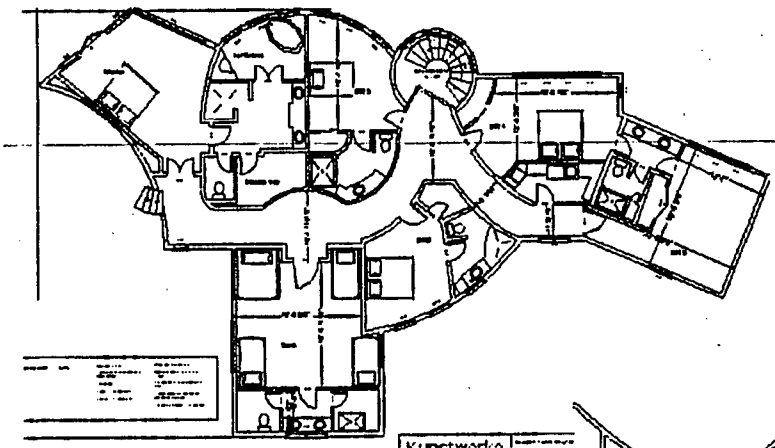
My current projects are as follows:

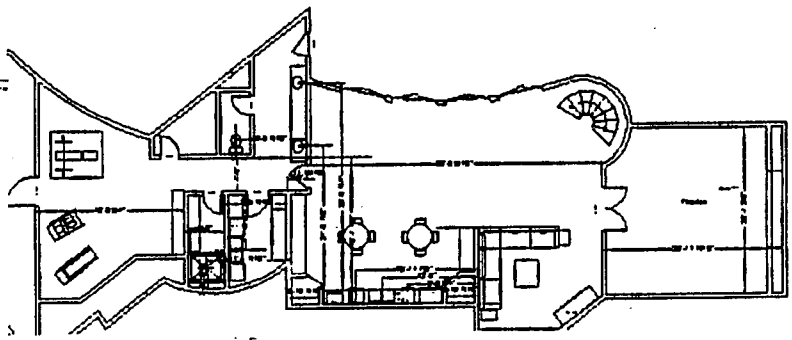
Propper	In the final weeks - cabinet and appliance install
Covington	In the final finishing stages of cabinet, railing, and faux finishing
Coco	At the stage of drywall and floor install and other interior finishes
Parham	In the drywall stage
Gaby	90 % framing and beginning roofing stage
227 Spec	70% of framing stage
DeBacco	40% of framing stage
Kennedy	Final stages of design

Gaby

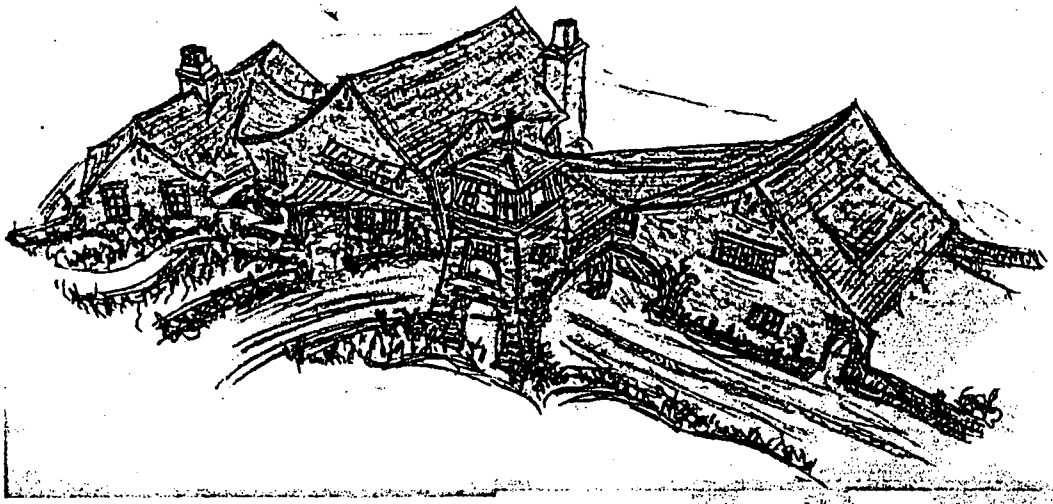


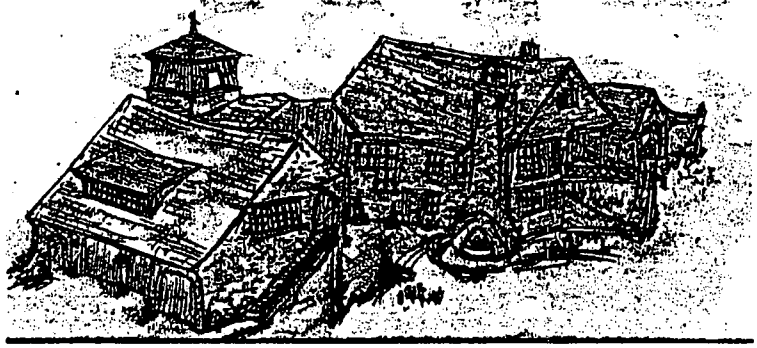


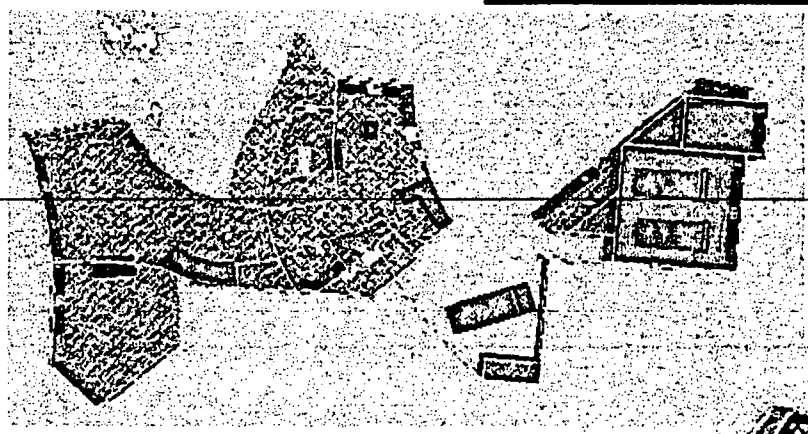


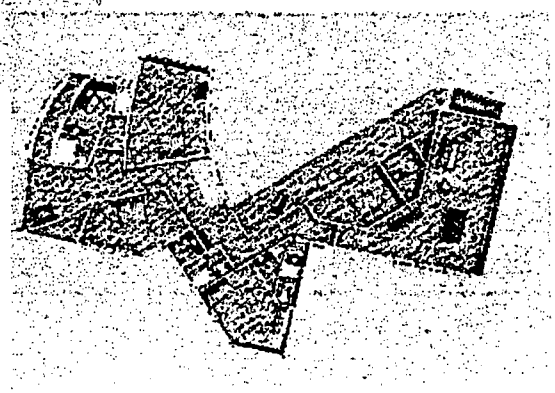


227 Spec



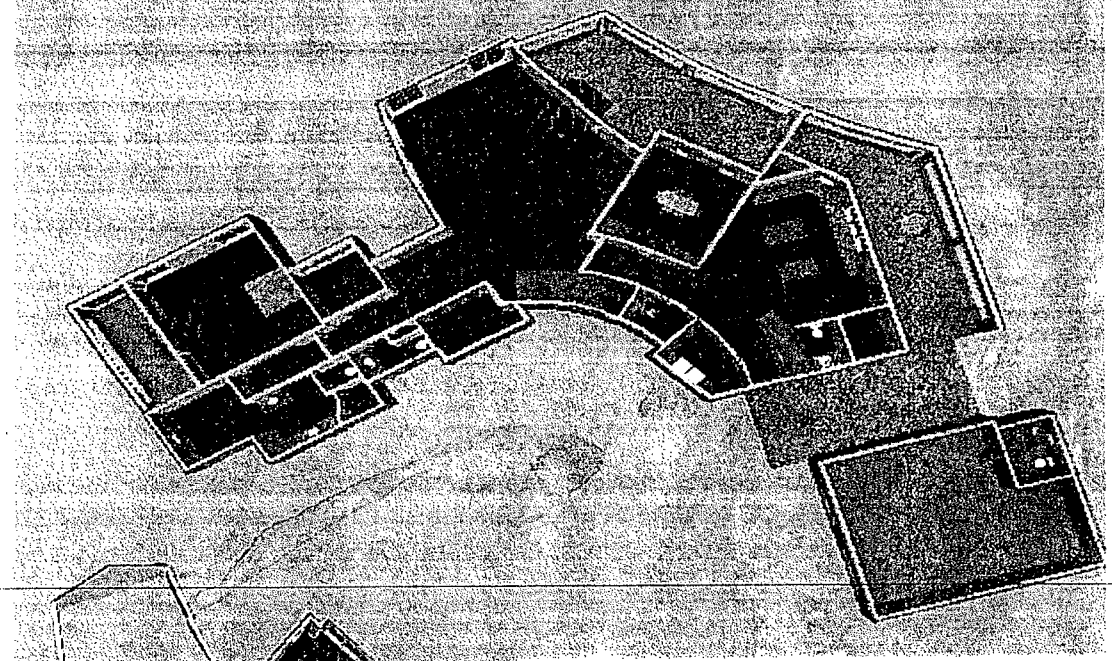


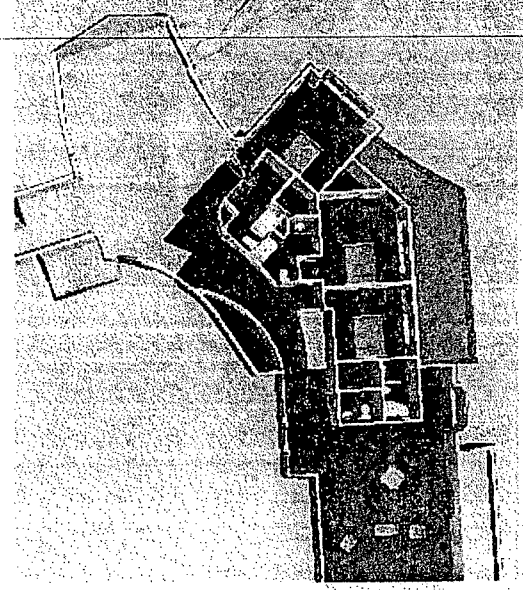




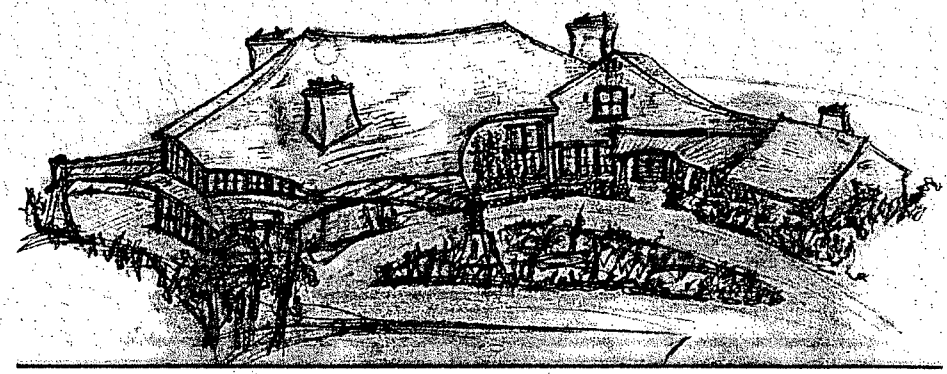
DeBacco

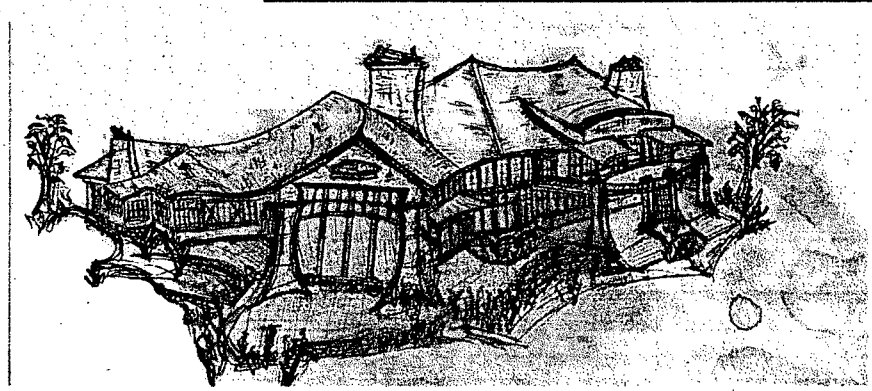


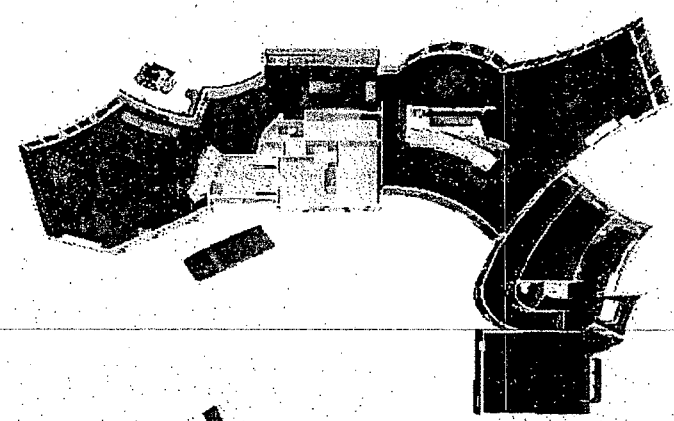


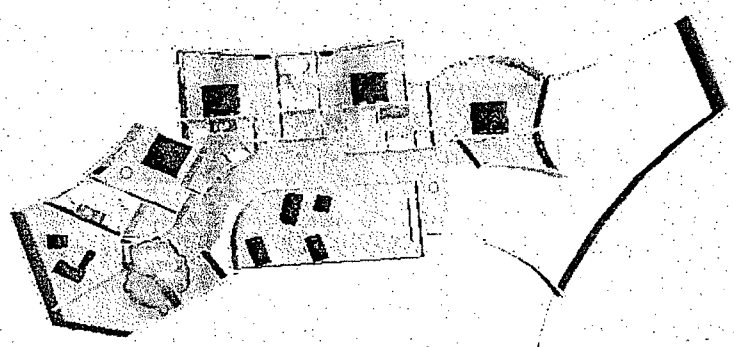


Kennedy









PLAINTIFF'S TRIAL EXHIBIT 12

CONSTRUCTION CONTRACT

This Contract is made and entered into this 29 day of September, 2004, between Kunstwerke, hereinafter called "Contractor," and Richard Gaby and Barbara Van Andel Gaby, hereinafter called "Owner."

RECITALS

A. Owner is the owner of that certain property located at Lot(s) b29 and b30, The Reserve, Sunset, South Carolina (the "Property").

B. Contractor is a licensed general Contractor pursuant to the laws of the State of South Carolina.

C. Owner is retaining Contractor to construct certain improvements on the Property, all as more particularly set forth below. Owner has previously engaged Contractor, more specifically Scott Kunst, Contractor's principle, to design the Property and draft the plans for the Property.

NOW, THEREFORE, in consideration of the mutual premises and the sum of $10.00 and other sufficient consideration which has been and will be received by the parties, they agree as follows:

1. The Work. Contractor agrees to construct the improvements described in those certain plans and specifications dated 9/20/04 by Scott Kunst, architect (the "Plans"). Contractor agrees to furnish all of the materials, equipment, personnel and labor, to acquire all permits required by law, to perform any necessary testing and obtain any necessary inspections, and to do everything necessary to complete the improvements described in the Plans. (As used herein the "Work" refers to the undertaking of Contractor as set forth in this paragraph and elsewhere in this Contract.) The specifications should contain detailed information giving the types of materials, grade, species, color, and product brands that will be used to build a home as well as necessary allowances.

2. Contract Price. The Owner shall pay the Contractor $84,000 for architectural and general contracting services, at the rate of $7,000/month, of which $20,000 has already been paid pursuant to the prior agreement between Owner and Contractor. In addition, the Owner shall pay Contractor for materials, at the cost paid by Contractor for those materials with no mark-up, and for labor costs incurred by Contractor, with no mark-up on labor costs. The total cost contemplated by the parties is set forth in the Specifications, which is appended hereto as Exhibit A. All allowances should be at builder's cost or sub-contractor's cost. The Contractor should provide actual receipts or invoices to prove what was paid for items. Labor costs should not be included in allowances, but delivery costs and taxes should be.



3. Association Guidelines and Building Permits. Contractor agrees to work with and abide by the covenants of the Reserve's Architectural Review Committee. Contractor agrees to obtain all required building permits and further agrees that they will be applied for in Contractor's name.

4. Schedule. The Contractor shall commence the Work on or before 9/30/04 and shall complete all Work hereunder on or before 9/30/05.

5. Title. Title to material and equipment furnished by the Contractor for incorporation in the Work shall pass to Owner upon delivery to the Property. The Contractor shall, nonetheless, remain liable for the safekeeping and preservation of such material and equipment and for loss or theft or damage thereto pending completion of Work by Contractor and acceptance thereof by Owner.

6. Progress Payments. Owner shall make progress payments to the Contractor in the following manner:

Due upon receipt as weekly billings seeking reimbursement are provided with adequate support.

7. Final Payment. Owner shall make final payment to Contractor within 30 days after complete performance of the Work if: (a) a certificate of occupancy has been issued by the appropriate municipal permit authority; and (b)Contractor has delivered a Contractor's final affidavit, Contractor's final waiver and release, and final waivers and releases of lien from all subcontractors, sub-subcontractors, laborers and suppliers. The acceptance by the Contractor of final payment hereunder shall be a release to the Owner of all claims and liability to the Contractor for anything done or furnished or relating to the Work or for any act or neglect of the Owner relating to or affecting the Work hereunder.

8. Insurance. Prior to commencing the Work, Contractor shall furnish Certificates of Comprehensive General Liability and Property Damage Insurance, including contractual liability coverage (specifying this Contract, its parties and the nature and situs of the Work hereunder), builder's risk insurance, as well as bodily injury and property damage liability insurance on all automotive or truck equipment to be used in the performance of work. The Contractor shall also furnish certificates evidencing workers compensation insurance coverage as required by law.

9. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from the performance of the Work. If any subcontractor, sub-subcontractor, supplier, other lienor, or any third party should file an action against Owner to enforce a mechanics' lien for Work for which Contractor has received payment or arising from Contractor's performance of the Work, Contractor shall defend the Owner in such action, and shall indemnify Owner from any and all claims, damages, and liabilities that

may arise therefrom. The Contractor acknowledges receipt of the sum of Ten Dollars ($10.00) as sufficient and adequate consideration for this indemnification and such other indemnities as are provided in the Plans pursuant to state law. Contractor shall satisfy or transfer to bond any and all such liens within 72 hours of receipt of written notice from the Owner.

10. Warranties. The Contractor guarantees and warrants to the Owner that, at its sole cost and expense, it shall promptly repair, replace or correct any defective materials, equipment or workmanship furnished or performed by Contractor or its subcontractors or suppliers, which become apparent within a period of one year after the date of final payment to Contractor, and within such time, it shall pay for any damage to property of Owner which results therefrom.

11. Compliance With Laws. Contractor shall be responsible for ensuring compliance of the Work with the Plans and all applicable laws and regulations, and inspection of the Work by Owner or its architect shall not relieve the Contractor of such responsibility.

12. Attorneys Fees. In the event of any dispute hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and expenses, whether incurred in litigation or arbitration, through all trial and appellate levels.

13. Manufacturers Specs and Literature
Many of the items you buy for your home will have product information, specifications, and warrantee information included with the products. You may want to specify the builder must save the information for you and provide a convenient place to store these items.

14. Miscellaneous. This Contract contains the entire Contract of the parties. It may not be changed orally but only by a signed change order as provided above or a written amendment. Paragraph headings are inserted only for convenience and are not to be construed as part of the Contract or a limitation of the scope of the particular paragraph to which they refer. The waiver by any party of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by any party.

Owner:

Contractor:

PLAINTIFF'S TRIAL EXHIBIT 13

Status of the Five Defendant accounts when last payments received

	Date of last Payment	Amount	Total Payments at that date	Total SUB Invoices Submitted as of that date	Funding Deficit at that date		Ledger Code
Coco	2/24/2006	32,278	1,424,887	1,454,846	29,959	BATES 000126	COCO P71
Covington	2/15/2006	6,315	2,402,686	2,540,319	137,634	BATES 000263	COV P105
DeBacco	2/10/2006	25,000	832,111	962,152	130,041	BATES 000394	DEBA P21
Gaby	2/13/2006	61,823	2,554,087	2,656,492	102,405	BATES 000479	GABY P68
Parham	2/16/2006	2,014	2,374,542	2,445,448	70,906	BATES 000616	PAR P105
Spec 227	2/16/2006	67,257	720,843	788,725	68,082	BATES 000671	SPEC P17
					539,027		

A

Summary of Fee Income, Personal Draws and Personal Contributions

	2004	2005	2006	3 Year
Fee Income	**220,270** BATES 00087	**274,000** BATES 00098	**49,000** BATES 00099	**543,270**
Automobile Expense	(28,405) BATES 00921	(18,253) BATES 00999	(3,191) BATES 01097	(49,849)
Bank Service charges	(2,440) BATES 00923	(11,012) BATES 00998	(2,035) BATES 01098	(15,487)
Design-Periodicals	(614) BATES 00924	(250) BATES 00999	(31) BATES 01100	(895)
Fees	(2,551) BATES 00929	(2,018) BATES 01004		(4,569)
Fuel	(3,215) BATES 00932	(2,320) BATES 01006	(417) BATES 01102	(5,953)
Insurance	(16,144) BATES 00933	(5,867) BATES 01007	(380) BATES 01103	(22,391)
Licenses and permits	(4,210) BATES 00935	(686) BATES 01009		(4,896)
Misc	(1,708) BATES 00937	(703) BATES 01011	(965) BATES 01105	(3,375)
Model Supplies	(1,172) BATES 00938	(758) BATES 01012		(1,930)
Office Supplies	(28,890) BATES 00940	(20,182) BATES 01014	(1,147) BATES 01106	(50,219)
Postage	(2,075) BATES 00951	(4,692) BATES 01016	(579) BATES 01107	(7,347)
Rent	(10,115) BATES 00952	(21,710) BATES 01018		(31,826)
Travel	(6,645) BATES 00961	(2,805) BATES 01094	(98) BATES 01123	(8,548)
Verizon Phones	(7,058) BATES 00962	(15,318) BATES 01096		(22,376)
Operating costs	**(114,244)**	**(106,573)**	**(8,843)**	**(229,661)**
Personal Draws	**(76,986)** BATES 00928	**(89,596)** BATES 01003	**(13,757)** BATES 01101	**(180,339)**
Personal Contribution 2/14/06			50,000	**50,000**
Personal Contribution 2/21/06			**117,000**	**117,000**
NET Contribution*	**29,040**	**77,831**	**193,400**	**300,270**

* Represents a net of additional funds contributed to Kunstwerke available to advance client credit, provide additional personal draws, or pay down debt.

KUNST 000094

Summary of net unpaid balances per final ledger

	Final net SUB invoices	Total Reimbursed	Balance owed Kunstwerks	reference
Coco	1,452,932	1,424,887	28,045	BATES 000126
Covington	2,534,519	2,402,685	131,834	BATES 000264
DeBacco	927,025	832,111	94,914	BATES 000395
Gaby	2,513,060	2,554,087	(41,027)	BATES 000471
Propper	1,404,070	1,352,366	51,704	BATES 000777
Parham	2,449,714	2,374,542	75,172	BATES 000916
Spec 227	751,856	720,643	31,213	BATES 000971
			371,855	

KUNST 000095

Overhead Fees Ledger

11/12/2008		Appears in Kunstwerke Progress Billing	Description			Overhead Draw Date	
PROP FEE 2	1/5/2004	1/5/2004	Overhead			1/5/2004	(4,000)
PAR FEE 3	1/8/2004	1/8/2004	Overhead draw			1/8/2004	(4,000)
COV FEE 13	1/19/2004	1/20/2004	Overhead draw			1/19/2004	(2,170)
PROP FEE 3	2/5/2004	2/5/2004	Overhead			2/5/2004	(4,000)
PAR FEE 4	2/7/2004	2/7/2004	Overhead draw			2/7/2004	(4,000)
COCO FEE 1	3/1/2004	3/11/2004	Overhead Draw			3/1/2004	(5,000)
PAR FEE 5	3/9/2004	3/13/2004	Overhead draw			3/9/2004	(4,000)
PROP FEE 4	3/9/2004	3/9/2004	Overhead			3/9/2004	(4,000)
COCO FEE 2	4/1/2004	4/11/2004	Overhead Draw			4/1/2004	(5,000)
RUB FEE 1	4/4/2004	4/4/2004	Overhead			4/4/2004	(4,000)
PAR FEE 6	4/9/2004	4/4/2004	Overhead draw			4/3/2004	(4,000)
PROP FEE 5	4/14/2004	4/14/2004	Overhead			4/14/2004	(4,000)
COV FEE 14	4/27/2004	4/27/2004	Overhead draw			4/27/2004	(3,100)
COCO FEE 3	5/1/2004	5/3/2004	Overhead Draw			5/1/2004	(5,000)
PAR FEE 7	5/4/2004	5/8/2004	Overhead draw			5/4/2004	(4,000)
RUB FEE 2	5/4/2004	5/4/2004	Overhead			5/4/2004	(4,000)
COCO FEE 4	6/1/2004	6/4/2004	Overhead Draw			6/1/2004	(5,000)
GABY FEE 1	6/1/2004	6/9/2004	Overhead			6/1/2004	(5,000)
PAR FEE 8	6/4/2004	6/5/2004	Overhead draw			6/4/2004	(4,000)
RUB FEE 3	6/4/2004	6/4/2004	Overhead			6/4/2004	(4,000)
PROP FEE 6	6/5/2004	6/5/2004	Overhead			6/5/2004	(4,000)
COCO FEE 5	7/1/2004	6/29/2004	Overhead Draw			7/1/2004	(5,000)
GABY FEE 2	7/1/2004	7/9/2004	Overhead			7/1/2004	(5,000)
PAR FEE 9	7/4/2004	7/5/2004	Overhead draw			7/4/2004	(4,000)
RUB FEE 4	7/4/2004	7/4/2004	Overhead			7/4/2004	(4,000)
COV FEE 15	7/18/2004	7/19/2004	Overhead draw			7/19/2004	(3,000)
COCO FEE 6	8/1/2004	8/10/2004	Overhead Draw			8/1/2004	(5,000)
GABY FEE 3	8/1/2004	8/7/2004	Overhead			8/1/2004	(5,000)
PAR FEE 10	8/4/2004	8/13/2004	Overhead draw			8/4/2004	(4,000)
PROP FEE 7	8/7/2004	8/7/2004	Overhead			8/7/2004	(4,000)
DEBA FEE 1	9/1/2004	8/5/2004	Overhead draw			8/5/2004	(5,000)
COCO FEE 7	9/1/2004	9/14/2004	Overhead Draw			9/1/2004	(5,000)
DEBA FEE 2	9/1/2004	9/1/2004	Overhead draw			9/1/2004	(5,000)
GABY FEE 4	9/1/2004	9/7/2004	Overhead			9/1/2004	(5,000)
PROP FEE 8	9/1/2004	9/7/2004	Overhead			9/1/2004	(4,000)
PAR FEE 11	9/4/2004	9/3/2004	Overhead draw			9/4/2004	(4,000)

Overhead Fees Ledger

11/12/2008		Appears in Kunstwerke Progress Billing	Description			Overhead Draw Date		
DEBA FEE 3	9/10/2004	9/27/2004	Overhead draw			9/10/2004	(5,000)	
COCO FEE 8	10/1/2004	10/7/2004	Overhead Draw			10/1/2004	(5,000)	
GABY FEE 5	10/1/2004	10/7/2004	Overhead			10/1/2004	(6,000)	
PAR FEE 12	10/4/2004	10/11/2004	Overhead draw			10/4/2004	(4,000)	
PROP FEE 9	10/4/2004	10/5/2004	Overhead			10/4/2004	(4,000)	
DEBA FEE 4	10/10/2004	10/25/2004	Overhead draw			10/10/2004	(5,000)	
COCO FEE 9	11/1/2004	11/29/2004	Overhead Draw			11/1/2004	(5,000)	
GABY FEE 6	11/1/2004	10/26/2004	Overhead			11/1/2004	(6,000)	
PAR FEE 13	11/1/2004	11/7/2004	Overhead draw			11/1/2004	(4,000)	
PROP FEE 10	11/1/2004	11/7/2004	Overhead			11/1/2004	(4,000)	
GABY FEE 7	12/1/2004	12/13/2004	Overhead			12/1/2004	(6,000)	
PAR FEE 14	12/1/2004	12/6/2004	Overhead draw			12/1/2004	(4,000)	
PROP FEE 11	12/4/2004	12/8/2004	Overhead			12/4/2004	(4,000)	
DEBA FEE 5	12/10/2004	12/31/2004	Overhead draw			12/31/2004	(5,000)	
			Total 2004					(220,270)
PAR FEE 15	1/1/2005	1/4/2005	Overhead Draw			1/4/2005	(4,000)	
GABY FEE 8	1/1/2005	1/17/2005	Overhead			1/1/2005	(6,000)	
COCO FEE 10	1/5/2005	1/10/2005	Overhead draw			1/5/2005	(5,000)	
PAR FEE 16	2/5/2005	2/7/2005	Overhead Draw			2/5/2005	(4,000)	
DEBA FEE 6	2/10/2005	2/8/2005	Overhead draw			2/10/2005	(5,000)	
GABY FEE 10	3/1/2005	4/8/2005	Overhead			3/1/2005	(6,000)	
PAR FEE 17	3/3/2005	3/1/2005	Overhead Draw			3/3/2005	(4,000)	
GABY FEE 9	3/4/2005	3/4/2005	Overhead			2/1/2005	(6,000)	
DEBA FEE 7	3/10/2005	3/25/2005	Overhead draw			3/5/2005	(5,000)	
COCO FEE 11	3/14/2005	3/14/2005	Overhead draw			3/14/2005	(5,000)	
PROP FEE 12	3/30/2005	3/25/2005	Overhead			3/20/2005	(4,000)	
GABY FEE 11	4/1/2005	4/15/2005	Overhead			4/1/2005	(6,000)	
PAR FEE 18	4/1/2005	4/1/2005	Overhead Draw			4/1/2005	(4,000)	
KEN FEE 1	4/6/2005	4/6/2005	Overhead Draw			4/6/2005	(9,000)	
SMITH FEE 1	4/26/2005	4/26/2005	Overhead			4/26/2005	(5,000)	
GABY FEE 12	5/1/2005	5/16/2005	Overhead			5/1/2005	(6,000)	
PAR FEE 19	5/5/2005	5/16/2005	Overhead Draw			5/5/2005	(4,000)	
KEN FEE 2	5/6/2005	5/6/2005	Overhead Draw			5/6/2005	(9,000)	
COCO FEE 12	5/7/2005	5/7/2005	Overhead draw			5/7/2005	(5,000)	

Overhead Fees Ledger

11/12/2008		Appears in Kunstwerke Progress Billing	Description			Overhead Draw Date		
DEBA FEE 8	5/10/2005	5/2/2005	Overhead draw			5/10/2005	(5,000)	
KEN FEE 3	6/6/2005	6/6/2005	Overhead Draw			6/6/2005	(9,000)	
GABY FEE 13	6/7/2005	6/10/2005	Overhead			6/1/2005	(6,000)	
PAR FEE 20	6/8/2005	6/8/2005	Overhead Draw			6/8/2005	(4,000)	
DEBA FEE 9	6/10/2005	6/10/2005	Overhead draw			6/10/2005	(5,000)	
SMITH FEE 3	6/16/2005	6/16/2005	Overhead			6/16/2005	(10,000)	
GABY FEE 14	7/1/2005	7/21/2005	Overhead			7/1/2005	(6,000)	
PAR FEE 21	7/3/2005	7/6/2005	Overhead draw			7/3/2005	(4,000)	
KEN FEE 4	7/5/2005	7/5/2005	Overhead Draw			7/5/2005	(9,000)	
DEBA FEE 10	7/10/2005	7/29/2005	Overhead draw			7/10/2005	(5,000)	
SMITH FEE 2	7/26/2005	7/26/2005	Overhead			7/26/2005	(5,000)	
GABY FEE 15	8/1/2005	8/24/2005	Overhead			8/1/2005	(6,000)	
KEN FEE 5	8/5/2005	8/5/2005	Overhead Draw			8/5/2005	(9,000)	
PAR FEE 22	8/5/2005	2/28/2006	Overhead draw			8/5/2005	(4,000)	
GABY FEE 16	9/1/2005	10/25/2005	Overhead			9/1/2005	(6,000)	
KEN FEE 6	9/5/2005	9/5/2005	Overhead Draw			9/5/2005	(9,000)	
PAR FEE 23	9/5/2005	2/28/2006	Overhead draw			9/5/2005	(4,000)	
DEBA FEE 11	9/10/2005	9/27/2005	Overhead draw			9/10/2005	(5,000)	
GABY FEE 17	10/1/2005	11/10/2005	Overhead			10/1/2005	(6,000)	
PROP FEE 13	10/4/2005	10/11/2005	Overhead			10/4/2005	(4,000)	
KEN FEE 7	10/5/2005	9/27/2005	Overhead Draw			10/5/2005	(9,000)	
PAR FEE 24	10/5/2005	2/28/2006	Overhead draw			10/5/2005	(4,000)	
GABY FEE 18	11/1/2005	12/2/2005	Overhead			11/1/2005	(6,000)	
KEN FEE 8	11/5/2005	12/6/2005	Overhead Draw			11/5/2005	(9,000)	
PAR FEE 25	11/5/2005	2/28/2006	Overhead draw			11/5/2005	(4,000)	
GABY FEE 19	12/1/2005	1/16/2006	Overhead			12/1/2005	(6,000)	
KEN FEE 9	12/5/2005	1/9/2006	Overhead Draw			12/5/2005	(9,000)	
PAR FEE 26	12/5/2005	2/28/2006	Overhead draw			12/5/2005	(4,000)	
			Total 2005					(274,000)
GABY FEE 20	1/1/2006	2/2/2006	Overhead			1/1/2006	(6,000)	
KEN FEE 10	1/5/2006	2/18/2006	Overhead Draw			1/5/2006	(9,000)	
PAR FEE 27	1/20/2006	1/23/2006	Overhead Draw			1/20/2006	(4,000)	
GABY FEE 21	2/1/2006	3/3/2006	Overhead			2/1/2006	(6,000)	
KEN FEE 11	2/5/2006	2/18/2006	Overhead Draw			2/5/2006	(9,000)	

KUNST 000098

Overhead Fees Ledger

11/12/2008		Appears in Kunstwerks Progress Billing	Description			Overhead Draw Date	
PAR FEE 28	2/20/2006	2/28/2006	Overhead Draw			2/20/2006	(4,000)
COCO FEE 13	3/1/2006	4/4/2006	Overhead draw			3/1/2006	(5,000)
GABY FEE 22	3/1/2006	3/3/2006	Overhead			3/1/2006	(6,000)
			Total 2006				(49,000)
							(543,270)

KUNST000099

PLAINTIFF'S TRIAL EXHIBIT 14

ex 7

Kingston Marshall
206 Butterfly Way
Greenville, SC 29687
(864) 275-6703

Invoice #6

Billing Dates: 12/16-12/22/05

Bill to: **Kunstwerke Corporation**
2607 Woodruff Road Ste 204
Simpsonville, SC 29681

Location: Gaby

Description: Roof tile installation

Hours:	24.5
Hourly Billing Rate:	$25.00
Reimbursable Expenses:	
Total:	**$612.50**

Thank You,

Kingston Marshall

PLAINTIFF'S EXHIBIT 7 Pam 12/5/14

Kingston Marshall
206 Butterfly Way
Greenville, SC 29687
(864) 275-6703

Invoice #7

Billing Dates: 1/25-1/26/06

Bill to: **Kunstwerke Corporation**
2607 Woodruff Road Ste 204
Simpsonville, SC 29681

Location: Gaby

Description: Roof tile installation

Hours:	16.5
Hourly Billing Rate:	$25.00
Reimbursable Expenses:	
Total:	**$412.50**

Thank You,

Kingston Marshall

GABY 891	4/1/2006	3/3/2006	misc materials	Jennings	44912	2/7/2006	(50)	judgment	
GABY 474	9/7/2005	9/28/2005	Soffit crew	Jimenez	Jimenez	9/2/2005	(3,450)	ck 4869	(321,128)
GABY 467	9/13/2005	9/15/2005	Soffit crew	Jimenez	Jimenez	9/9/2005	(1,273)	ck 5406	
GABY 253	6/28/2005	6/17/2005	Builder's Risk	Johnston Ins	BR61555795	5/18/2005	(4,500)	ck 4527	(4,723)
GABY 254	6/28/2005	6/17/2005	Builder's Risk	Johnston Ins	BR61555736	5/18/2005	(3,750)	ck 4527	
GABY 254	6/28/2005	3/3/2006	reverse	Johnston Ins	BR61555736	5/18/2005	3,750	ck 4527	
GABY 128	6/8/2005	4/15/2005	crane	K&S Welding	8610	3/29/2005	(1,578)	ck 4379	(4,500)
GABY 155	6/8/2005	5/8/2005	crane	K&S Welding	8644	4/14/2005	(1,526)	ck 4379	
GABY 154	8/3/2005	5/8/2005	crane	K&S Welding	8662	4/21/2005	(1,283)	ck 4703	
GABY 184	8/3/2005	5/16/2005	crane	K&S Welding	8667	4/27/2005	(1,090)	ck 4703	
GABY 183	8/17/2005	5/16/2005	crane	K&S Welding	8690	5/6/2005	(663)	ck 4751	
GABY 241	8/17/2005	6/10/2005	crane	K&S Welding	8698	5/11/2005	(712)	ck 4751	
GABY 257	8/29/2005	6/23/2005	crane	K&S Welding	8758	5/23/2005	(1,008)	ck 4789	
GABY 384	9/28/2005	8/18/2005	crane	K&S Welding	8828	7/14/2005	(1,843)	ck 4877	
GABY 434	9/27/2005	9/7/2005	crane	K&S Welding	8841	7/18/2005	(276)	ck 5458	
GABY 435	9/27/2005	9/7/2005	crane	K&S Welding	8846	7/20/2005	(2,169)	ck 5458	
GABY 433	11/22/2005	9/7/2005	crane	K&S Welding	8869	7/28/2005	(1,190)	ck 5719	
GABY 432	11/22/2005	9/7/2005	crane	K&S Welding	8874	7/28/2005	(240)	ck 5719	
GABY 546	4/1/2006	11/25/2005	crane	K&S Welding	9161	11/4/2005	(1,205)	paid judgment	
GABY 883	4/1/2006	2/16/2006	crane	K&S Welding	9166	11/7/2005	(1,492)	paid judgment	
GABY 731	4/1/2006	12/29/2005	crane	K&S Welding	9236	12/8/2005	(560)	paid judgment	
GABY 817	4/1/2006	2/2/2006	crane	K&S Welding	9244	12/13/2005	(420)	paid judgment	
GABY 956	4/1/2006	3/3/2006	crane	K&S Welding	9272	12/26/2005	(540)	paid judgment	
GABY 955	4/1/2006	3/3/2006	crane	K&S Welding	9377	2/3/2006	(340)	paid judgment	
GABY 658	12/9/2005	12/2/2005	Kingston's time	Kingston Marshall	2	11/10/2005	(775)	ck 5836	(18,135)
GABY 657	11/22/2005	12/2/2005	Kingston's time	Kingston Marshall	1	11/15/2005	(725)	ck 5768	
GABY 713	1/3/2006	12/29/2005	Kingston's time	Kingston Marshall	5	12/1/2005	(200)	ck 5938	
GABY 752	12/15/2005	1/9/2006	Kingston's time	Kingston Marshall	3	12/1/2005	(400)	ck 5878	
GABY 712	1/3/2006	12/29/2005	Kingston's time	Kingston Marshall	4	12/13/2006	(213)	ck 5940	
GABY 900	1/30/2006	2/20/2006	Kingston's time	Kingston Marshall	6	12/22/2005	(613)	ck 6083	
GABY 870	2/15/2006	2/16/2006	Kingston's time	Kingston Marshall	7	1/26/2006	(413)	ck 6149	
GABY 871	4/1/2006	2/16/2006	Kingston's time	Kingston Marshall	8	2/2/2006	(163)	held	
GABY 36	3/11/2005	2/14/2005	rough electrical	Knutson	649	2/1/2005	(1,017)	ck 3996	(3,502)

KUNST 000561

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

November 25, 2005

Budgeted area	Due	
Framing Labor/Roofing		
To Bronson Shepherd for his oversight and physical assist., errands, -27 hrs	1,026	11/6/2005
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -4 errands, etc - 42 hrs	1,218	11/14/2005
To David Marshall, added to roofing crew - 50hrs 11/10	1,550	11/10/2005
To David Marshall, added to roofing crew - 48.5hrs 11/13	1,407	11/3/2005
To Jeff White, added to roofing crew - 5.5hrs 11/5	238	11/5/2005
To Sam Saxton, added to roofing crew - 35hrs 11/3	890	11/3/2005
To Sam Saxton, added to roofing crew - 35hrs 11/3	800	11/10/2005
Framing Labor/Roofing		
To Norton Builder's crew for interior modifications and window install	3,500	11/9/2005
Garage/ Roofing		
To System Specialties for steel	1,376	11/11/2005
To K&S for crane rental	1,205	11/4/2005
Finish Electrical		
To Majestic lighting (Kerry Penwell) for rough-in lighting materials. Includes recessed cans, transformers, bulbs and cove lighting per plans	33,781	10/28/2005
Fees/Misc		
To Higdons for porta rental	89	11/4/2005
To Waste Management for three dumpster hauls	1,050	10/27/2005

Progress:
Roof tile progressing now over 60%. Electrical and HVAC continued. Stone progressing. Stucco begins nexrt week. Window install continues

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681 **48,128**

Kunstwerke Corp.

Gaby Cost Estimate 11-10-05

Budget Category			Actual/Paid
Design/oversight/overhea	Architectural design and general contracting	121,000	101,100
Site Design	Site engineering and Reserve approval documentation	8,000	8,525
Excavation & Driveway	driveway, site clearing, retaining walls, paving	127,000	173,233
Septic system		20,771	24,971
Shoreline Restoration	$80k to Buske's group and $5k to shore side w/ McCall	85,000	106,757
Foundation	engineered poured solid basement -now includes pier	140,000	146,129
Garage	Engineering and construction of underground structure	82,000	71,234
Chimney masonry	Flues and liners for two units: both 38 ft.	23,000	31,242
Framing Materials	Floor, wall, and roof system for house 10,000 sq ft total	280,000	294,700
Framing Labor	All labor including window install	282,000	296,914
Roof	61 sqr.s of Pan clay tile 70,000 material 61,000 labor	156,000	148,609
	Copper awnings and other accents	26,000	
Door/Window Qoute	Eagle qoute of leaded glass and mahogany doors	193,000	92,864
	Garage doors and specialty storage	12,000	
Interior Doors	39 solid fir units @ $410 each including hardware	15,900	
Stone veneer	6800 Sq ft. x $21	142,800	2,839
Rough electric		19,000	2,984
Heat & Air	Zonal system	40,500	57,561
Rough Plumb	8 1/2 baths	31,000	10,725
Insulation	Cellulose all wall sound deadening, Quote by TSC	29,000	
Wall and ceiling plaster	10,900 sqft. wall , 7,800 ceiling	59,000	
Floors	6,000 sqr.ft wood, 3,000 tile	81,000	
Stair	Two spiral units one winding	35,000	
Finish Trim	labor and materials including beam accents	31,000	
finish elect	and light fixtures	32,000	
finish plumb	and fixtures	46,000	
Kitchen and cabinet	includes countertops and bath cabinets	167,000	5,000
Stain and paint	Int/ext various	34,000	4,900
Landscaping/final		33,000	19,502
Theatre?			
Insurance/structure		7,400	7,400
Fees/Miscellaneous	Fees/permits/utilities	8,500	13,603
		2,367,871	1,620,792

Reconciliation of billings to actual column in budget		Total to Date
6/4 billing	5,000	5,000
7/9 billing	7,620	12,620
8/7 billing	5,480	18,100
9/13 billing	8,500	26,600
10/7 billing	19,214	45,814
10/16 billing	14,140	59,954
10/26 billing	8,816	68,770
11/3 billing	101,214	169,984
11/15 billing	16,537	186,521
12/1 billing	11,459	197,980
12/13 billing	6,360	204,340
12/31 billing	12,053	216,393
1/17 billing	30,505	246,898
1/27 billing	51,648	298,546
2/4 billing	17,225	315,771
2/14 billing	48,831	364,602
2/26 billing	52,101	416,703
3/4 billing	45,723	462,426
3/11 billing	28,578	491,004
3/18 billing	10,015	501,019
3/25 billing	18,522	519,541
4/1 billing	26,990	546,531
4/8 billing	18,215	564,746
4/15 billing	24,986	589,732
4/22 billing	20,881	610,613
5/8 billing	39,594	650,207
5/16 billing	39,690	689,897
5/23 billing	29,290	719,187
5/31 billing	36,848	756,035
6/10 billing	32,586	788,621
6/17 billing	26,939	815,560
6/23 billing	35,831	851,391
6/29 billing	38,772	890,163
7/7 billing	43,948	934,111
7/17 billing	37,358	971,469
7/21 billing	37,110	1,008,579
7/27 billing	69,019	1,077,598
8/3 billing	25,905	1,103,503
8/11 billing	39,291	1,142,794
8/18 billing	37,114	1,179,908
8/24 billing	31,501	1,211,409
8/31 billing	67,939	1,279,348
9/7 billing	44,598	1,323,946
9/15 billing	32,219	1,356,165
9/26 billing	27,961	1,384,126
9/30 billing	33,446	1,417,572
10/6billing	34,931	1,452,503
10/11billing	41,385	1,493,888
10/18billing	33,229	1,527,117
11/01billing	50,012	1,577,129
11/10billing	43,663	1,620,792
11/17billing	50,840	1,671,632

Bronson Shepherd
510 HUNTER'S RIDGE RD.
HORSESHOE NC, 28742

Invoice #12

Date: 11/6/05

Bill To:
KUNSTWERKE CORP.
2607 Woodruff Rd. Ste E #204
Simpsonville SC, 29681

DESCRIPTION

Supervision for Gaby project:

Progress:

Hours this week.27
At $38 per hour

This week's Supervision
At lot 29&30. This week
the roof crew got a section
on the right finish. The framers
put more batts on roof and
inside framing. The plumbing
rough-in is getting close for
inspection. I spread gravel on
drive. Mason got started on
chimney. Met Scott on site to
do a walk through. Electricians
are also working on rough-in.
Crane got set up to set steel in
back for porch framing.

Total$1,026.00
Thank you
Site Manager
Bronson Shepherd

254889

INVOICE

SOLD TO	SHIP TO
Kunstwerke	Caleb Hill
ADDRESS: 2607 Woodruff Rd. Suite E #204	ADDRESS: 372 Mountain Valley Drive
CITY, STATE, ZIP: Simpsonville SC 29681	CITY, STATE, ZIP: Hendersonville NC 28739

CUSTOMER ORDER NO.	SOLD BY	TERMS	F.O.B.	DATE
				11/14/05

ORDERED	SHIPPED	DESCRIPTION	PRICE	UNIT	AMOUNT
		11/7/05 - 11/12/05			
[Gaby]		- Assist in Supervision of site			
		- Get supplies for site			
		- Clean-up			
		- Misc. framing projects			
			29.00	42hrs	
					$1,218.00

adams 5620

322

David Marshall Jr.
330 Dellwood Dr.
Easley, SC 29642
(864) 269-1826

Invoice #13

Billing Dates: 11/4-11/0/05

Bill to: **Kunstwerke Corporation**
2607 Woodruff Road Ste 204
Simpsonville, SC 29681

Location: Gaby

Description: Roof tile installation

Hours:	50
Hourly Billing Rate:	$29.00 plus Sat bonus = $100
Reimbursable Expenses:	
Total:	**$1,550.00**

Thank You,

David Marshall Jr.

David Marshall Jr.
330 Dellwood Dr.
Easley, SC 29642
(864) 269-1826

Invoice #12

Billing Dates: 10/28-11/3/05

Bill to: **Kunstwerke Corporation**
2607 Woodruff Road Ste 204
Simpsonville, SC 29681

Location: Gaby

Description: Roof tile installation

Hours:	48.5
Hourly Billing Rate:	$29.00
Reimbursable Expenses:	
Total:	**$1,406.50**

Thank You

David Marshall Jr.

Jeff White
373 Berry Rd
Taylors, SC 29687
864.525.3389

Invoice

No. 003

Billing Dates:
5-Nov

Bill to: **Kunstwerke Corporation**
2607 Woodruff Road Ste 204
Simpsonville, SC 29681

Location: Gaby

Description: Roof-tile installation (+$100 Saturday Bonus)

Total Hours:	5.5
Reimbursable Expenses:	
Total:	**$237.50**

Thank You,

Jeff White

NORTON BUILDERS — INVOICE

132 Independent Lane / Pickens, S.C. 29671/ Phone (828) 226-4860 Fax (828) 877-5628

BILL TO:	JOB NAME:	DATE:	IINVOICE #
Kunstwerke Corp. 2607 Woodruff Rd./ Suite E # 204 Simpsonville, S.C. 29681	Gaby	11/9/2005	540

DATE	DAY	DESCRIPTION	AMOUNT
11-03-05	Thu	2men 8 hrs 3men 4 hrs framing	$700.00
11-04-05	Fri	2 men 8 hrs framing	$400.00
11-05-05	Sat		
11-07-05	Mon	1 man 8 hrs framing	$200.00
11-08-05	Tue	2 men 9 hrs framing	$450.00
11-09-05	Wed	6 men 9 hrs framing	$1,350.00
		Bryan 10 hrs blueprints and work	$400.00

LABOR	$3,500.00
MATERIALS	
MISC	
TOTAL	$3,500.00

Make checks payable to RAY NORTON

If you have any questions concerning this invoice, contact me at the above numbers, or e-mail me at norton_builders@yahoo.com

THANK YOU FOR YOUR BUSINESS!

Systems Specialties, Inc.
1750 Liberty Highway
Six Mile, SC 29682
phone (864) 868-3457
fax (864) 868-3459

Parts Invoice

DATE	INVOICE #
11/11/2005	25-6560M

BILL TO
Kunstewerke 2607 Woodruff Road Suite 204 Simpsonville, SC 29681 Attn: Accounts Payable

SHIP TO
Kunstewerke 2607 Woodruff Road Suite 204 Simpsonville, SC 29681

P.O. NUMBER	TERMS	SHIP	VIA	F.O.B.	ORDER DATE
Gaby home	Due on receipt	11/10/2005			11/09/05

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
2	Job Materials	4 x 2 x 1/4" x 20' tubing	122.50	245.00T
2	Job Materials	5 x 3 x 1/4" x 20' square tubing	168.75	337.50T
1	Job Materials	W10 @ 39 x 25'	450.33	450.33T
60	Job Materials	3/4 - 10x12' B-7 All threaded rod	3.13	187.80T
50	Job Materials	3/4 - 10 A325 Nuts	0.35	17.50T
50	Job Materials	3/4 flat washers	0.42	21.00T
50	Job Materials	3/4 lockwashers	0.11	5.50T
1	S&H	Shipping and Handling	35.00	35.00
		SC Sales Tax	6.00%	75.88

Thank you for your business. If you have any questions feel free to call at anytime 864-868-3457.

Total $1,375.51

K & S WELDING & STEEL ERECTORS,
INC & CRANE RENTAL
P. O. BOX 1648
EASLEY, SC 29641
864-269-4289

Invoice

DATE	INVOICE #
11/4/2005	9161

BILL TO
Kunstwerke Corp Ray Norton 2607 Woodruff Road Suite E#204 Simpsonville, SC 29681

P.O. NO.	TERMS	PROJECT
Gaby Job	Net 30	

QUANTITY	DESCRIPTION	RATE	AMOUNT
4.75	40 Ton Lorain Crane 11-3-05	110.00	522.50
1	Operator's Travel without crane	25.00	25.00
5.75	40 Ton Lorain Crane 11-4-05	110.00	632.50
1	Operator's Travel without crane	25.00	25.00
		Total	$1,205.00

Phone #	Fax #
	CRANE RENTAL

Majestic
lighting•design

Invoice No. 05-086

INVOICE

Customer

Name: Rick Gaby
Address: Residence @ The Reserve-
City: State SC ZIP
Builder: Kunstwerke

Misc

Date: 10/28/2005
Order No.
Rep
FOB

Qty	Description	Unit Price	TOTAL
1	Light Fixtures Release A - Includes all materials necessary for rough-in including recessed cans, transformers, and all trims for recessed cans, all bulbs, cove lighting, etc	$ 26,910.00	$ 26,910.00
-1	MLD negotiated 15% discount, below contractor pricing, from manufacturer	$ 3,510.00	$ (3,510.00)
	Price does not include any decorative fixtures or landscape lighting.		
1	Electrical Contractor fee (10%)	$ 2,340.00	$ 2,340.00
0.75	Consultanting Services, Buyer's Agent	$ 8,500.00	$ 6,375.00
0	Construction Administration (to billed at an hourly rate each month)	$ 65.00	$ -
	Fixture Prices does include Tax. Actual shipping charges will be billed upon receipt.		
		SubTotal	$ 32,115.00
		Shipping	$ 320.00
	Tax Rate(s)	5.00%	$ 1,345.50
		TOTAL	$ 33,780.50

Thank you for the oportunity of providing my services!

Office Use Only

Payment to be made in full within 15 days of invoice date. A 5% finance charge will be added to total cost on 16th day if invoice is not paid in full. A 1 1/2% per month carrying charge will be added after 30 days of date of invoice.

8 Summer Glen Dr
Simpsonville, SC 29681
o 864.228.6447 f 864.228.6446

HIGDON'S PORTABLE TOILETS
P.O.BOX 288
DONALDS S.C. 29638
TELEPHONE: 864-379-8903

INVOICE # : 58404
INVOICE DATE : 11/07/2005
TERMS : NET30
CONTRACT # : 08181
BILLING PERIOD: 10/08/2005 TO 11/04/2005
ORDERED BY : RAY
P.O. NUMBER : LT B,29 THE RES
JOB NUMBER : GABY
SALESPERSON : LAM

CUSTOMER 01366

KUNSTWERKE CONSTRUCTION
2607 WOODRUFF ROAD SUITE 204

SIMPSONVILLE SC 29681

SITE NAME - ADDRESS
GABY
LOT B
29 THE RESERVE
PICKENS CO. SC

QUANT	DESCRIPTION	START-END BILLING	AMOUNT
1	STANDARD UNIT RENT	10/08/2005 TO 11/04/2005	$ 10.00
1	STANDARD UNIT SERVICE 1-PER WEEK	10/08/2005 TO 11/04/2005	$ 69.50

FUEL SURCHARGE	$	8.35
SUB-TOTAL	$	87.85
SC SALES TAX	$	1.32
PC SALES TAX	$	0.26
DUE THIS INVOICE	$	89.43

	(0002)	COVINGTON JOB		
		443 AUGUSTA WAY, SUNSET, SC 29		
10/21	01 10.	EMPTY/RETURN 10 YRD.	1.00	350.00
		W/O #: 28912		
		Site Total	0.00	350.00
	(0003)	PARHAM JOB		
		2956 WAHALLA HWY, SIX MILE, SC.		
10/14	01 30.	EMPTY/RETURN 30 YRD.	1.00	350.00
		W/O #: 28490		
		Site Total	0.00	350.00
	(0004)	COCO JOB		
		NORTH TURTLE ROCK RD, SIX MILE		
10/04	01 20.	EMPTY/RETURN 20 YRD.	1.00	350.00
		W/O #: 27890		
		Site Total	0.00	350.00
	(0005)	PROPER JOB #:NO FUEL SURCHARGE		
		E. FORT GEORGE, LAKE KEOWEE, S		
10/25	01 20.	EMPTY/RETURN 20 YRD.	1.00	350.00
		W/O #: 28913		
		Site Total	0.00	350.00

TRANSACTION DATE	SERVICE CODE	INVOICE DESCRIPTION	INVOICE REFERENCE	QTY	AMOUNT
	(0008)	GABBY JOB #:NO FUEL SURCHARGE			
		B-29/30 SOUTH FALL ST, KEOWEE			
10/10	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 28212			
10/20	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 28789			
10/27	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 29001			
		Site Total		0.00	1050.00
	(0009)	THE SPEC KEOWEE RESERVE			
		LONG RIDGE RD, LOT 227, KEOWEE			
10/04	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 27871			
10/18	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 28616			
		Site Total		0.00	700.00
	(0010)	DEBECCO JOB			
		THE RESERVE, KEOWEE, SC			
10/05	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 27888			
10/20	01 30.	EMPTY/RETURN 30 YRD.		1.00	350.00
		W/O #: 28790			
		Site Total			700.00
		FUEL SURCHARGE		0.00	365.75

PLAINTIFF'S TRIAL EXHIBIT 15

Scott Kunst
Kunstwerke
2607 Woodruff Rd.
Suite E #204
Simpsonville, SC 29681

June 9, 2006

T.S. Stem , Jr.
PO Box 2343
Greenville, SC 29602

Mr. Stem,

As I stated in my e-mail dated Monday, June 5th, there is very little in your submittal that resembles reality or is worth responding to. My fiduciary responsibility to pay subs and suppliers is obvious. This was a complex multi-million dollar project which averaged $60,000 in disbursements weekly, had no construction deposit, and a mutually agreed funding arrangement. It is particularly malicious that Rick Gaby and Barb Van Andel - Gaby cut off funding and defaulted on over $150,000 of outstanding debt and made very public and repeated false accusations that I misappropriated funds for personal use. Every dollar has been properly accounted for.

It has been well explained to Rick Gaby that the Progress Billing is a statement of funding needs as it relates to construction progress and future funding. On any current progress billing, there are items that have been prepaid by me (some weeks or months before), items that are not yet paid out, items that are estimates of an upcoming need, and items which will be paid on account at a future date. There was a significant amount that had been paid to subs and suppliers by me and not yet presented on a progress billing. Rick Gaby was hand delivered a May 5, 2005 letter, during early construction, as a second reminder of the above.

My billing system works well for a high-end clientele who require an open-ended project not encumbered with change orders. I benefit from a steady predictable cash flow as I commit to future obligations and the client benefits by being able to track progress and the resulting cost as it accrues. The focus is on getting current progress reported and costs accumulated. A progress billing was never intended to be scrutinized at a specific date as proof of payment. Payables occur independent of progress billings with the understanding that each project is tracked closely so that the capital extended by me for each project is maintained at a reasonable level. I do have added risk by extending credit whereas others would have required a deposit. Rick Gaby and Barb Van Andel - Gaby are the first clients to abuse this trust and act with such wanton greed.

I managed this project based on the ratio of amounts paid out in excess of funding received. If funding was slow, then the progress was slow and priority was given to daily cash needs at the site. When funding was abruptly halted, selected invoices were temporarily held back until current and future disbursements were reconciled and settled. Beginning in December of 2005, the average wire turnaround rose to five days (the agreement was 3). It was during this time

that I and the decorators were asked by Rick Gaby to keep the escalating costs, due to their own choices, "under our hats" for fear that his wife would halt the project. No funding was received from 12/23/05 to 1/9/06 - (18 days) with no explanation and during one of my busiest cash out lay periods. (I withheld a planned December cabinet disbursement and a few others in order to cover costs at the site). Further, Gaby had threatened on two occasions not to pay the 2/2/06 and 2/9/06 progress billings and eventually defaulted on the 2/16/06 and 2/20/06 progress billings (together totaling $90,000). After my "removal" from the project, as more automatic debits were processed and other payments reviewed, a third progress billing dated 4/1/06 totals an additional $100,500 and is also due.

If Rick Gaby had simply paid all progress billings as agreed, there would be little more to discuss. Please forward as soon as possible a listing of those items that Gaby has reportedly "paid twice" and I will then adjust the final 4/1/06 progress billing accordingly and provide a final balance owed by Gaby with full cash support within three business days of receipt.

There is a much more serious issue and action to be taken involving Richard Gaby, David Loree, and seven others who will be notified on or before July 1st.

Sincerely,

Scott Kunst

PLAINTIFF'S TRIAL EXHIBIT 16

Scott Kunst
2607 Woodruff Rd.
Suite E #204
Simpsonville, SC 29681

April 12, 2007

TO: The general public

SUBJECT: Update on my continuing legal struggle with Richard Gaby and Barbara Gaby

I am finally able to provide proof that, based on their own recently filed documents, the Gabys and their agent David Loree were not telling the truth when they attacked my business and reputation.

As you may know, the Gabys filed suit against me personally and against Kunstwerke in May 2006, accusing me and the company of not disbursing monies it provided for sub laborers and materials. They accused me of taking these funds for personal use. In their lawsuit they also claimed defective work and a defective design. They never provided me any support for their accusations before or after filing suit. Nothing but a third party rumor that $300,000 was missing.

My circumstances in May 2006 were as some of you know very difficult. The Gabys contend that I was late in my answer to their lawsuit and filed a default judgment against me. I then fought as hard as one could possibly fight to have the default overturned and then counter sue them - but lost. The Gabys refused to release me from the default which basically meant the case was over and they had won without me being able to contest or counter sue.

I am writing today because after the Gabys were FINALLY forced to back up and detail their accusations to the court in a hearing held 3/13/07, I am now able to prove that the Gabys and David Loree were not telling the truth, and that not one dime was mismanaged or "missing" from their project. **The rumors were absolutely false.**

They dropped the defective work and defective design damages because they simply had no case. At the hearing they were finally required to back up the rumors they had spread for the past year that $300,000 +/- had been taken from their project. (This should be a simple issue, not based on someone's opinion, but a reconciliation of tangible dollars received and dollars paid out).

They submitted to the court the attached "GABY DAMAGES COMPUTATION." This

GABY DAMAGES COMPUTATION

PAYEE	DUPLICATE PAYMENTS		OVERPAYMENTS		EXTENDED AMOUNT
WCA Waste	$1,050.00	A			
Theron McCall's Grading	$7,635.00	B			
Select Stone, Inc	$14,030.00	C			
Knutson Electrical Services, Inc.	$24,998.10	D			
Energy Savers Comfort Systems	$14,633.00	E			
Majestic Lighting	$15,954.28	F			
Norton Builders	$22,800.00	G			
Ceramic Tile Design	$3,500.00	H			
Paul Anderson Design, Ltd	$32,000.00		$72,000.00		
CMC Asphalt			$7,100.00	I	
Kunstwerke Allocation			$32,000.00	K	
Johnston Insurance Agency			$3,750.00	L	
Window and Door Concepts			$83,835.86	M	
Fireplaces Plus			$9,850.00	N	
Wilson Gas			$3,131.17	O	
Shoreline Restoration	$5,726.50			P	
SUBTOTAL	$142,326.88		$211,667.03		$353,993.91
Attorneys' Fees and Costs to Date					$35,807.41
Projected Attorneys' Fees and Costs					$25,000.00
					$10,000.00
DAMAGES TOTAL					$424,801.32

GABY TRUTHFUL "DAMAGES" COMPUTATION

PAYEE	DUPLICATE PAYMENTS	OVERPAYMENTS	EXTENDED AMOUNT
WCA Waste	$1,050.00 A		
Theron McCall's Grading	$0.00 B		
Select Stone, Inc	$0.00 C		
Knutson Electrical Services, Inc.	$24,998.10 D		
Energy Savers Comfort Systems	$0.00 E		
Majestic Lighting	$10,270.00 F		
Norton Builders	$0.00 G		
Ceramic Tile Design	$0.00 H		
Paul Anderson Design, Ltd	$69,200.00	$0.00 I	
CMC Asphalt		$0.00 J	
Kunstwerke Allocation		$0.00 K	
Johnston Insurance Agency Window and Door		$3,750.00 L	
Concepts		$49,514.00 M	
Fireplaces Plus		$9,850.00 N	
Wilson Gas		$3,131.17 O	
Shoreline Restoration	$0.00	P	
SUBTOTAL	$105,518.10	$66,245.17	$171,763.27
Attorneys' Fees and Costs to Date			$35,807.41
And now the 800 pound Guerilla that Sandy Stern kept dancing around in the courtroom:			The Unpaid Billings
2/16 Progress Billing (prepaid with full typical support)			($57,015.00) 2-16
2/20 Progress Billing (prepaid with full typical support)			($27,068.00) 2-20
3/3 Progress Billing (final reconciliation with full typical)			($125,387.00) 3-3
Judge disallowed expert witness fees			$0.00
DAMAGES TOTAL			($1,899.32)

"Damages" total is a negative number even granting Gaby his attorney fees!

WCCA



This is Kunstwerke's dumpster rental account for seven different sites. This is indeed a duplicate payment and should be part of the reconciliation. It is one of several items that would have been paid in the ordinary course of business if the Gabys had simply brought their account current.

Theron McCall's Grading



Sandy Stern, Richard Gaby, Barbara Gaby, and David Loree. Why did you misrepresent to the court on 3/13/07 that Kunstwerke failed to pay Theron McCall? You had in your possession as early as August 2006 that this amount was paid with certified ck. # 6126. Why are you asking the court to order Tracey and I to personally pay you $7,635 when you held proof that your assertion is false?—Why?

Select Stone



This amount does not belong in this computation. The reconciliation of payments mac to Select Stone resulted in a net $11,500 refunded to Gaby. This appears in the 3/3/06 Progress Billing and is netted out of the total there. The Gabys have yet to pay the 3/3/06 Progress Billing and continue to deny it even exists (because they cannot contest its content).

Knutson Electrical Services



The amount profferred in the Gaby's computation is correct. This balance to Knutson could have easily been paid by Kunstwerke had Gaby brought his account current. This amount should be part of any reconcilation and netted against what Gaby still owe

Energy Savers Comfort Systems

E

Kunstwerke Payment method/ check number	Invoicing From Energy Savers		Kunstwerke billed Gaby	Appears in Progress Billing
ck 5546	41,385	10/12/2006	41,385	10/11/2005
certified from ck 6230	27,599	12/2/2005	27,599	12/9/2005
certified from ck 6237	6,990	1/18/2006	6,990	1/27/2006
wire	29,000	2/6/2006	29,000	2/9/2006
	104,974		104,974	

No support was ever given to me at the hearing or before supporting the $14,633 amount that Gaby is claiming is a duplicate payment. Why was this amount even included in the computation???

Majestic Lighting

F

The Bill from Majestic proferred by the Gabys in the damage hearing was not issued to Kunstwerke and I had never seen it until the hearing. The last billing from Majestic Lighting was 10/28/06 for $33,780. Kunstwerke billed Gaby in the 11/25/05 Progress Billing. Kunstwerke paid Majestic $20,000 (ck 5962) and asked Majestic to apply a Kunstwerke credit of $3,510. This left a balance due Majestic from Kunstwerke of $10,270 to be applied to a future credit. This $10,270 can be included in the truthful reconciliation.

Gaby falsely represented that he double paid $15,954. Richard Gaby, why did you feel it necessary to mislead the court by claiming that you paid the full $15,954.28 twice? Why?

Majestic
lighting·design

INVOICE

Customer
Name: Rick Gaby
Address: Residence @ The Reserve-
City: State SC ZIP:
Builder: Kunstwerke

Misc
Date: 10/28/2005
Order No.:
Rep:
FOB:

Qty	Description	Unit Price	TOTAL
1	Light Fixtures Release A - Includes all materials necessary for rough-in including recessed cans, transformers, and all trims for recessed cans, all bulbs, cove lighting, etc	$ 26,910.00	$ 26,910.00
-1	MLD negotiated 15% discount, below contractor pricing, from manufacturer	$ 3,510.00	$ (3,510.00)
	Price does not include any decorative fixtures or landscape lighting.		
1	Electrical Contractor fee (10%)	$ 2,340.00	$ 2,340.00
0.75	Consulting Services, Buyer's Agent	$ 8,500.00	$ 6,375.00
0	Construction Administration (to billed at an hourly rate each month)	$ 65.00	$ -
	Fixture Prices does include Tax. Actual shipping charges will be billed upon receipt.		
		SubTotal	$ 32,115.00
		Shipping	$ 220.00
		6.00%	$ 1,945.50
		TOTAL	$ 34,780.50

Thank you for the opportunity of providing my services!

Tax Rate(s)

Payment to be made in full within 15 days of invoice date. A 5% fin day if invoice is not paid in full. A 1 1/2% per month carrying charge

5962 $20,000.01

Norton Builders

G

This one is very simple. The following reconciliation was given to Gaby in August 2006.

Every invoice from Norton is numbered and amount billed Gaby is listed indicating the progress billing it appeared in. This one is easily understood and exposes one of the more outrageous Gaby fabrications.

Payment Method/ Check #			Appeared in Progress Billing	Amount billed in Progress Billing
3962	501	8,960	2/14	8,960
3996	500	2,160	2/4	4,160
4028	502	11,700	2/26	11,700
4055	503	8,505	3/4	8,505
4080	504	1,200	5/16	1,200
4110	505	7,295	3/18	7,295
4140	506	6,270	3/25	6,270
4187	507	9,675	4/1	9,675
4201	508	5,000	4/8	5,000
4229	508	5,850	4/8	5,850
4244	509	10,750	4/15	10,750
4272	510	10,575	4/22	10,575
4325	511	15,749	4/30	15,749
4371	512	13,975	5/8	13,794
4402	513	12,825	5/16	12,825
4435	514	14,475	5/23	14,475
4454	515	10,800	5/31	10,800
4492	516	9,925	6/10	9,925
4545	517	7,075	6/17	7,075
4575	518	11,925	6/29	11,925
4601	519	10,500	7/7	10,500
4673	520	10,350	7/17	10,350
4636	521	10,800	7/21	10,800
4706	522	9,150	7/27	9,150
4733	523	10,850	8/4	10,850
4790	524	11,650	8/11	11,650
4810	525	8,175	8/18	8,175
4849	527	8,275	8/31	6,850
4897	528	5,950	9/15	5,950
5456	529	6,700	9/15	6,700
5499	530	7,100	10/6	7,100
5517	531	9,650	9/26	9,650
5558	532	9,575	10/6	9,575
5589	533	7,225	10/21	7,225
5607	534	9,100	10/25	9,100
5659	535	3,625	10/25	3,625
5704	536	10,850	11/1	10,850
5718	537	4,075	11/10	4,075
5758	538	5,675	11/10	5,675
5805	539	5,600	11/17	5,600
5842	540	3,500	11/25	3,500
5929	541	7,550	2/16	7,550
5930	542	7,220	1/9	7,220
5979	543	4,200	1/16	4,200

6031	544	7,700	12/29	7,700
6091	545	7,750	3/3	7,750
6139	546	5,000	2/2	5,000
direct	547	5,450	2/9	5,450

This is the complete list of all Norton invoices billed Gaby

The 22,800 that Gaby represented to the court as an "overpayment" is a wholly fraudulent number. And he cannot provide support if challenged! In fact, the two items circled above which total $15,300 appear in Progress Billings that Gaby has not paid and is now forced to deny even existed. Richard Gaby, why do you want me personally to pay you $22,800 when you have left ME/Kunstwerke holding the bag for $15,300. Why?

CT Design



CT Design/ Abraham Comancho

Payment method/ check number	Progress draws to Comancho	Date paid Comancho	Amount billed in Progress Billings	Appears in Progress Billing	
5539	2,000	10/12/2006			
5587	1,500	10/14/2006			
5682	3,500	11/3/2006			
5729	10,276	11/11/2006	13,699	11/17/2006	
5870	5,000	12/12/2006			
5959	8,000	12/20/2006	11,200	12/12/2006	
5926	5,000	12/20/2006			
6010	8,000	1/9/2006	15,356	12/16/2006	
6186	10,000	2/9/2006			
6233	6,894	2/17/2006	14,406	2/9/2006	
6234	5,000	2/21/2006			This progress billing never paid by Gaby!
			10,509	**3/3/2006**	
	65,170		65,170		

Sandy Stern, Richard Gaby, Barbara Gaby, and David Loree. Why did you misrepresent to the court on 3/13/07 that you "overpaid" for CTD? You had in your possession the above reconciliation as early as August 2006. Why are you asking the court to order Tracey and I to personally pay you $3,500 when the truth obvious to all is that you never paid for $10,509 that Kunstwerke paid on your behalf. You had the bank statements, original CTD invoices to verify this. Why?

Paul Anderson Design

12/6/2005	certified ck	7,800	
2/13/2006	certified ck	23,000	
1/4/2006	wire	10,000	
2/15/2006	wire	30,000	
	Total paid by Kunstwerke to Anderson		70,800
12/6/2005	Gaby Paid Kunstwerke 12/6/06	82,500	
1/25/2005	Gaby Paid Kunstwerke 1/25/06	57,500	
	Total paid by Gaby to Kunstwerke		140,000
	Difference		69,200

$69,200 was held back and purposely not distributed to Anderson by Kunstwerke due to the excessive amount of credit extended to Gaby for the project overall and the unpaid Gaby Balance at the time. Sandy Stern, Richard Gaby, Barbara Gaby, and David Loree. Why did you misrepresent to the court on 3/13/07 that the amount Kunstwerke did not distribute was $104,000? Why?

CMC Asphalt (Triple N Paving)

This is one of the most disgusting and revealing Gaby fabrications.

In October 2005, during construction, it was decided that the steep driveways needed an initial coat of asphalt so vehicles could get close to the structure. The initial paving company that I had met with was never able to get to it. Bronson Shepherd, the site manager, through contacts notified me that he had another paver who could get to it right away. Bronson wrote a check for $7,000 at the site to pay for the paving. I then placed that amount in the next Progress Billing dated 11/10/05 to Gaby for reimbursement. I was unaware that the actual name of the asphalt company was Triple N Paving. We had just begun a relationship with a company called CMC, who indeed did do work at the Gaby site, and inadvertently typed "CMC Asphalt" on the progress billing coversheet even though the attached invoice was from "Triple N Paving." At the time I initially prepared the cover sheet, Bronson had not yet sent in his paperwork which would have identified Triple N Paving as the company that actually did the paving.

Kunstwerke never billed Gaby at any other time for this or any other paving. The Gaby's, in the default damages hearing during which I was not permitted to provide my own evidence, misrepresented to the court that I had actually created a fraudulent company named "CMC asphalt" and falsely charged Gaby $7,000 (in essence stealing the money for personal use). The only evidence they submitted was the 11/10 progress billing cover sheet with the typo and David Loree's own testimony.

Remember, Kunstwerke made no profit on the transaction and was simply processing a payment as a courtesy to Gaby.

Sandy Stern, Richard Gaby, Barbara Gaby, and David Loree. Why did you misrepresent to the court that you "overpaid" Triple N Paving and that Kunstwerke had not in fact paid this billing?

Now asked the court for me to personally pay you $7,000 while the overwhelming evidence that you have had in your possession as early as August 2006 proves you were not telling the truth. Why?

Re: Invoice for B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

November 10, 2005

Budgeted area	Due		
Framing Labor/Roofing			
To Shannon Shepherd for his oversight and physical assist., errands, -14 hrs	[redacted]	11/2/2005	ck 5707
To Caleb Hill for his assist.w/ window openings and new roof bats, errands, -		10/31/2005	ck 5700
errands, etc - 34 hrs			
To Jeff Greene, added to roofing crew - 7hrs 10/15		10/29/2005	ck 5701
To Jeffrey Pidcock, added to roofing crew - 336.5hrs 10/27		10/27/2005	ck 5706
To David Mansell, leading roofing crew - 44hrs 11/1		11/1/2005	ck 5699
To Sam Gordon, added to roofing crew - 31hrs 10/27		10/27/2005	ck 5696
Framing Labor/Roofing			
To Norton Builder's crew for installing roof bats & interior modifications	[redacted]	10/20/2005	ck 5718
	5,676	10/26/2005	ck 5758
Framing materials/ Roofing			
To Precision Weld for porch roof system install	[redacted]	10/17/2005	ck 5658
m			TA - Jennings
Jennings and others - deliveries from latest statement - mostly roof related	18	10/20/2005	27101
	286	9/19/2005	23582
	702	10/3/2005	24041
	357	9/28/2005	22518
	207	9/27/2005	22870
	144	9/29/2005	23488
	34	10/4/2005	24092
	214	10/3/2005	23852
	383	10/5/2005	24327
	329	10/6/2005	24556
	15	9/29/2005	22529
	254	10/10/2005	25031
	1,445	9/28/2005	22656
	[redacted]	10/20/2005	debit
Stone			TA - General
To General Shale for mortar, etc	682	11/2/2005	5489
Continued Lull rental from CAT now used for hauling stone as much as roof sh	[redacted]	9/26/2005	TA - CatStanch
Design/Oversight/Overhead			
October allocation	[redacted]	11/3/2005	
Driveway			
To Cmc asphalt for driveway paving	7,100	11/7/2005	ck 5675
Garage			
Progress draw from Professional Engineering for garage engineering and inspection	700	10/20/2005	TA - Profess
Paint/stain			
To CO's Painting for soffit facia painting	[redacted]	10/21/2005	ck 5710
Progress:			
Roof tile progressing. Electrical and HVAC continued. Stone progressing			

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

43,664 [redacted]

Kunstwerke Corp.

CMC Asphalt (Triple N Paving)

This is one of the most disgusting and revealing Gaby fabrications.

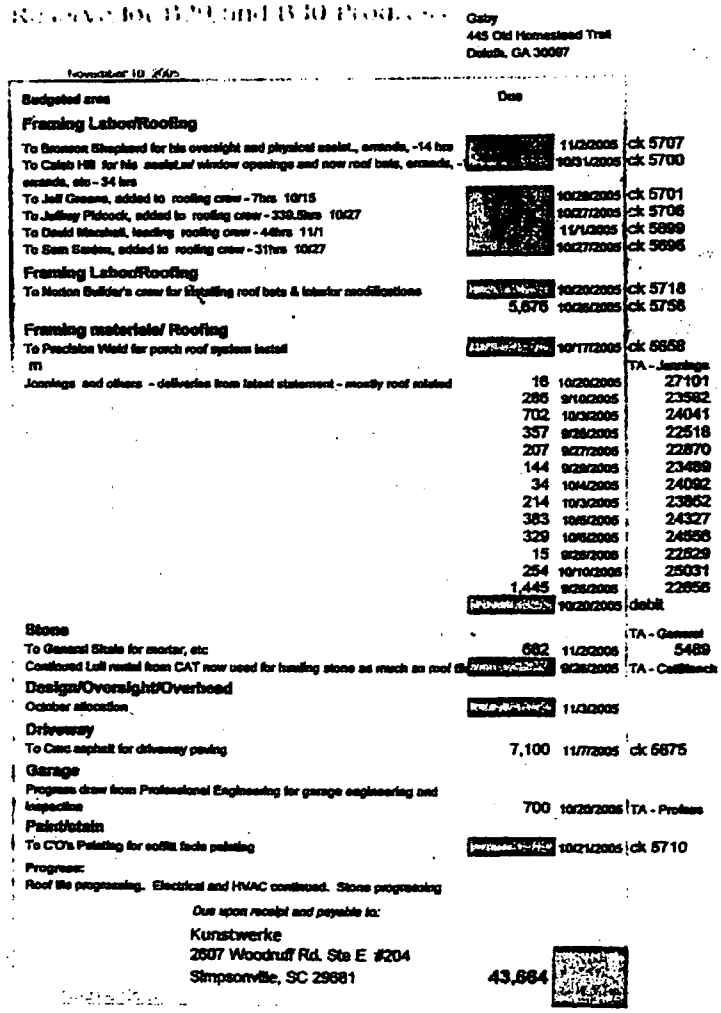
In October 2005, during construction, it was decided that the steep driveways needed an initial coat of asphalt so vehicles could get close to the structure. The initial paving company that I had met with was never able to get to it. Bronson Shepherd, the site manager, through contacts notified me that he had another paver who could get to it right away. Bronson wrote a check for $7,000 at the site to pay for the paving. I then placed that amount in the next Progress Billing dated 11/10/05 to Gaby for reimbursement. I was unaware that the actual name of the asphalt company was Triple N Paving. We had just begun a relationship with a company called CMC, who indeed did do work at the Gaby site, and inadvertently typed "CMC Asphalt" on the progress billing coversheet even though the attached invoice was from "Triple N Paving." At the time I initially prepared the cover sheet, Bronson had not yet sent in his paperwork which would have identified Triple N Paving as the company that actually did the paving.

Kunstwerke never billed Gaby at any other time for this or any other paving. The Gaby's, in the default damages hearing during which I was not permitted to provide my own evidence, misrepresented to the court that I had actually created a fraudulent company named "CMC asphalt" and falsely charged Gaby $7,000 (in essence stealing the money for personal use). The only evidence they submitted was the 11/10 progress billing cover sheet with the typo and David Loree's own testimony.

Remember, Kunstwerke made no profit on the transaction and was simply processing a payment as a courtesy to Gaby.

Sandy Stern, Richard Gaby, Barbara Gaby, and David Loree. Why did you misrepresent to the court that you "overpaid" Triple N Paving and that Kunstwerke had not in fact paid this billing?

Now asked the court for me to personally pay you $7,000 while the overwhelming evidence that you have had in your possession as early as August 2006 proves you were not telling the truth. Why?



Gaby
445 Old Homestead Trail
Duluth, GA 30097

Budgeted area	Due		
Framing Labor/Roofing			
To Bronson Shepherd for his oversight and physical assist., errands, -14 hrs	[redacted]	11/2/2005	ck 5707
To Caleb Hill for his assistant window openings and new roof bets, errands, -errands, etc - 34 hrs	[redacted]	10/31/2005	ck 5700
To Jeff Greene, added to roofing crew - 7hrs 10/15	[redacted]	10/28/2005	ck 5701
To Jeffrey Pidcock, added to roofing crew - 339.5hrs 10/27	[redacted]	10/27/2005	ck 5706
To David Marshall, leading roofing crew - 44hrs 11/1	[redacted]	11/1/2005	ck 5699
To Sam Sexton, added to roofing crew - 31hrs 10/27	[redacted]	10/27/2005	ck 5696
Framing Labor/Roofing			
To Nation Builder's crew for finishing roof bets & interior modifications	[redacted]	10/20/2005	ck 5718
	5,676	10/26/2005	ck 5758
Framing materials/ Roofing			
To Precision Weld for porch roof system instal	[redacted]	10/17/2005	ck 5658
m			TA - Jennings
Jennings and others - deliveries from latest statement - mostly roof related	18	10/20/2005	27101
	286	9/10/2005	23582
	702	10/3/2005	24041
	357	9/26/2005	22518
	207	9/27/2005	22870
	144	9/28/2005	23489
	34	10/4/2005	24092
	214	10/3/2005	23862
	383	10/5/2005	24327
	329	10/6/2005	24556
	15	9/28/2005	22829
	254	10/10/2005	25031
	1,445	9/26/2005	22856
	[redacted]	10/20/2005	debit
Stone			TA - General
To General Stone for mortar, etc	682	11/2/2005	5489
Continued Lull rental from CAT now used for hauling stone as much as roof st	[redacted]	9/26/2005	TA - Caldbeck
Design/Oversight/Overhead			
October allocation	[redacted]	11/3/2005	
Driveway			
To Cmc asphalt for driveway paving	7,100	11/7/2005	ck 5675
Garage			
Progress draw from Professional Engineering for garage engineering and inspection	700	10/20/2005	TA - Profess
Paint/stain			
To CO's Painting for soffit facia painting	[redacted]	10/21/2005	ck 5710
Progress:			
Roof tile progressing. Electrical and HVAC continued. Stone progressing			

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

43,664 [redacted]

Kunstwerke Allocation



The initial agreement with Gaby was that the design and general contracting for their house would be $96,000.

Gaby is now claiming that he never agreed to extend the $6,000 monthly fee during construction, and now wants me to personally pay him back $32,000 that he had already paid.

I was simply being generous and preferred not to add to the cost and complexity of the project by making formal change orders. My projects have never been governed by change orders which is impossible for a project that is allowed to evolve. Past clients understood and were grateful. The Gabys greedily took advantage of this, which, along with the other facts in this booklet, reveals the type of people that they are.

It was not that I needed to contractually protect myself better from these people, I simply should have done a better job of investigating who they were before I agreed to accept them as clients. No one will ever know how disgusting it is for me that these people lay claim to one of my designs.

I should have charged for some of the major projects that I managed on their behalf unrelated to the original agreement, but I didn't. I was in the process of negotiating additional fees to cover Kunstwerke's costs with David Loree when I alone was suddenly "fired" and the Gabys continued construction with the crew of subcontractors that Kunstwerke had procured and trained.

Some of the largest projects unrelated to the original fee:

1. The shoreline restoration project is something that I suggested and presented to the Gabys long after construction began. I invested an excess of 200 hours in this project. Kunstwerke processed the $120,000 dollars in disbursements for this project free of charge. When the adjacent property (lot 31) was purchased by the Gabys, I agreed to expand the shoreline project to this property. I even ordered and paid for a $1,250 survey from 3D surveying for the new lot. It is presented in the 3/3/06 progress billing which is one of the three progress billings totalling $200,000 that the Gabys have not paid, and are denying the existence of in order to mislead the court.

2. The library structure doubled in size, and its pavilion area and fireplace were added.

3. The floor plan changed almost daily including the addition of two laundry rooms and 1,000 sq ft. in additional living space carved out of the basement.

4. Windows were being added as late as February 2006.

5. The costs of construction including fixtures and mechanical costs drove the cost of the project from the original $2,000,000 to over $3,000,000. Kunstwerke managed an increasingly expanding project and had the right at any point to negotiate a higher fee.

Reasonable design and general conracting fees should have been $160,000 for these extra projects

In summary, Gaby is now claiming that he "overpaid me" because we never "agreed in writing" to extend the small $6,000 monthly fee that covered Kunstwerke's fixed overhead.
The Progress Billings clearly showed that a continuation of the fee was agreed.

The average total general contracting and design fee in The Reserve for a similar structure would have been in excess of $600,000. The Gabys cannot deny this. They paid a total of $119,000, and now they have asked the court to give them back $32,000 of the $119,000. Yes, it is disgusting.

Sandy Stern, Richard Gaby, Barbara Gaby, and David Loree, how can you with any conscience actually demand that I personally pay $32,000 when Gaby agreed to extend it and indeed paid it for five more months.

Johnston Insurance

L

Johnston inadvertently issued two policies. Gaby was aware of this. Johnston was to apply the difference to the next renewal

Window and Door Concepts

M

The design of the Gaby home began in June 2004. By that September, I had already obtained an initial window and door quote from Kevin Goad in order to begin accumulating the potential costs of the project. By November I was comfortable with the initial order and believed that a manufacturing deposit was eminent. As described in the timeline presented in this binder, The project was delayed for several weeks during this period. Kevin and I were also researching the possibility of a leaded glass look and were kicking the ideas around wth various post-production manufacturers.

I had billed for an estimated 50% of the first order in the 11/3/04 Progress Billing. I I would eventually not need to disburse window funds until August 2005.and would not bill again until 12/23/05. This provided a good float to work from as the weekly disbursements were rapidly increasing.

Detail for the window and door packages as well as billings follow;

	Kunstwerke billed Gaby	Appears in Progress Billing	Kunstwerke disbursements Method	Date	Amount
1/2 of intial quote of $1	86,664	11/3/2004	ck 5460	9/10/2005	20,000
			ck 5622	10/18/2005	28,000
			wire	12/7/2005	37,000
Second half	77,850	12/23/2005	ck 6126	1/26/2006	30,000
	164,514				115,000
				Difference/ amount held back	49,514

At the time that Gaby defaulted on the February 16 and 20 Progress Billings, $49,514 in collected funds could not be disbursed to Window and Door until Gaby's account balance with Kunstwerke was reduced or paid. Also, not all this $49,514 was yet due to Windows and Doors because the window shipment was delayed.

Note that the final billing from Window and Door is dated 1/26/06

RIchard Gaby, why did you represent to the court on 3/13/06 the you overpaid by $83,825.86 when clearly only $49,514 was held back until you paid your account full. Why are you now asking the court that I personally pay you $83,825.86 when the net is $49,514 and can be easily deducted from the three Kunstwerke progress billings that you have refused to pay and are now 14 months past due?

Fireplaces Plus



The $9,850 appearing in the Gaby computation is correct and was only being held back because this amount was not due until the fireplaces were complete and the contract complete. This was in no way an "overpayment" but still needs to be deducted from the total Gaby still owes.

Richard Gaby, why did represent to the court that his was an "overpayment" when Kunstwerke simply had not paid the amount because it was not yet due FirePlaces Plus. Why?

Wilson Gas



The $3,131 appearing in the Gaby computation is correct and can be easily deducted from the total Gaby still owes. Kunstwerke simply held back this payment until Gaby brought his account current.

Shoreline Restoration



Gaby incorrectly lists this $5,726.50 as a "duplicate payment." This payment has never been made! coincidently Larry Dyck E-mailed me recently unsolicited, confirming such. See below.

Richard Gaby, Why are you asking the court to have me personally pay YOU $5,726.50? The logic escapes me.

Subj: **Info on Bill from Shoreline Restoration Services**
Date: 4/6/2007 8:55:35 AM Eastern Daylight Time
From: **dyck@att.net**
To: **studiokunstwerke@aol.com**
Sent from the Internet (Details)

Scott-
can you update me on any progress you've made toward resolving this billing issue? Have you declared bankruptcy?
Any information you can provide is appreciated.
Sincerely,
Larry Dyck
Shoreline Restoration Services

Scott- This is a repeated email I sent some months ago. You indicated you would explain how I might expect to be paid. I have not heard anything from you.
I look forward to hearing from you.
Larry Dyck, PhD
Shoreline Restoration Services, LLC
864-885-7026

(original message)
Scott,
thank you for your letter dated June 22, 2006. The situation appears to be complicated with factors that I do not fully comprehend. What I do understand is that my invoices were submitted to you, they were included in payments you received from the client and yet I was not paid.

I certainly hope you receive additional payments due to you from these same clients and that you will protect your name and fine reputation as a builder of high quality luxury homes.

My outstanding invoices are two, both for shoreline restoration work:
for the Gaby residence I am owed..... $5,726.50
for the Kennedy residence..... $1,885.50

total due Shoreline Restoration Services, LLC $7,612.00

By the way, I consider the Gaby project "THE" new standard for shorelines on Lake Keowee. It's ashame not to have received the compensation due for this exceptional project and the still unfinished Kennedy project.

Larry Dyck, PhD
Shoreline Restoration Services, LLC

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

2-16

February 16, 2006

Budgeted area	Due		
Roofing Tile/ framing modifications			
To Bronson Shepherd for his oversight and physical assist., errands, -16 hrs	640	1/31/2006	ck 6165
To Bronson for hourly through2/7 plus his skidsteer use	3,753	2/7/2006	TA - Bronson
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -	1,334	1/30/2006	TA - Caleb
errands, etc - 46 hrs			
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -	1,590	2/4/2006	TA - Caleb
errands, etc - 53 hrs			
David Marshall, supervising roof tile 45 @29 -1/19	1,405	1/19/2006	ck 6148
David Marshall, supervising roof tile 46.5 @29 -2/2	1,449	2/2/2006	to be reversed
David Marshall, supervising roof tile 2.5 @29 1/12/6	1,432	1/12/2006	ck 6084
David Marshall, supervising roof tile 19.5 @29 12/27/6	566	12/27/2006	ck 5993
Kingston Marshall, supporting David Marshall on roof tile 6.5 @25 -2/6	163	2/2/2006	to be reversed
Kingston Marshall, supporting David Marshall on roof tile 16.5 @25 -1/26	413	1/26/2006	ck 6145
Adam Dierking, supporting David Marshall on roof tile 26 @25 -1/28	650	1/25/2006	ck 6187
Jeff Greene, supporting David Marshall on roof tile 34 @20 -2/6	680	2/6/2006	to be reversed
Sam Saxton, supporting David Marshall on roof tile 34 @20 -2/6	680	2/6/2006	ck 6169
Excavation			
To Bennet Supply for skidsteer rental	1,082	12/7/2005	debit
laser level package from	1,326	11/18/2005	debit
Ceilings - specialty framing			
To Norton Builders averaging 4 men - porch construction and interior mod.	7,550	11/23/2005	ck 5929
Scaffold	59	2/8/2006	debit
	240	2/8/2006	debit
	318	11/15/2005	debit
Garage Porta Cochere Framing			
To System Specialties for Lintel angle pieces	281	2/2/2006	TA - System
To K&S Crane requested by welders	1,492	11/7/2005	TA - K&S
Foothills Concrete service certified counter check	4,692	2/8/2006	ck 4417135
To Pickens Co concrete pumping for patio in back and garage roof	2,776	2/8/2006	to be reversed
To TriState concrete pumping for patio in back and garage roof	596	2/8/2006	to be reversed
Precision weld for porch welding	2,380	11/14/2005	ck 5863
Precision weld for porch welding and porta cochere and garage	3,430	11/21/2005	ck 5838
Precision weld for porch welding	1,750	11/28/2005	ck 5872
Window lintels welded and installed by Precision Weld	3,465	1/30/2006	to be reversed
Precision weld for porch welding and porta cochere and garage	2,415	1/23/2006	to be reversed
To Precision Weld for Chimney lintel pieces	1,855	1/2/2006	ck 6078
Precision weld for porch welding and porta cochere and garage	1,890	1/16/2006	ck 6170
Chimneys/Fireplaces			
To Duvall for garage parapets and chimney faux requested in veranda	3,520	1/31/2006	ck 6167
Fees/Misc			
To Higdons for porta rental	78	1/28/2006	TA - Higdons
To Higdons for porta rental	89	1/28/2006	TA - Higdons
To Waste Management for dumpster haul	350	1/26/2006	TA - WCCA
Structural Engineer regular visit/inspection	626	1/23/2006	TA - Profess

Progress:
Inspection passed, insulation begun.

Due upon receipt and payable to:
Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

57,015 past due

Kunstwerke Corp.

This billing was hand delivered to David Loree on 2/15/06

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

2-20

February 20, 2006

Budgeted area	Due		
Roofing specialty framing			
David Marshall, supervising roof tile 24.5 @29 -12/8	711	12/8/2005	ck 6135
Kingston Marshall, supporting David Marshall on roof tile 24.5 @25 -12/22	613	12/22/2005	ck 6083
Adam Dierking, supporting David Marshall on roof tile 25 @	1,150	2/4/2006	ck 6187
Jeff White, supporting David Marshall on roof tile 5.5 @20 -2/4	138	2/4/2006	ck 6163
Jeff White, supporting David Marshall on roof tile 7.5 @20 -11/19	288	11/19/2005	
Jeff White, supporting David Marshall on roof tile 6.5 @20 -11/12	263	11/12/2005	ck 5750
Sam Saxton, supporting David Marshall on roof tile 34 @20 -1/19	480	1/19/2006	TA - Saxton
Sam Saxton, supporting David Marshall on roof tile 25 @20 -12/15	600	12/15/2005	ck 5970
Sam Saxton, supporting David Marshall on roof tile 29 @20 -11/24	680	11/24/2005	ck 5970
Sam Saxton, supporting David Marshall on roof tile 45 @20 -12/1	1,000	12/1/2005	ck 5970
Sam Saxton, supporting David Marshall on roof tile 22 @20 -12/8	540	12/8/2005	TA - Saxton
Sam Saxton, supporting David Marshall on roof tile 21.5 @20 -1/5	505	1/5/2006	ck 5970
Bryan Shannon, supporting David Marshall on roof tile 20 @10 -11/24	200	11/24/2005	ck 5873
Bryan Shannon, supporting David Marshall on roof tile 20 @10 -1/5	90	1/5/2006	ck 6050
Jeffrey Pidcock, supporting David Marshall on roof tile 22 @20 -11/26	606	1/26/2006	
Jeffrey Pidcock, supporting David Marshall on roof tile 68 @20 -12/29	1,764	12/29/2005	ck 6026
Jeffrey Pidcock, supporting David Marshall on roof tile 39 @ 20-12/29	1,012	1/5/2006	ck 6049
Colin Smith assiting on roof	324	1/26/2006	ck 6173
Jason Pidcock, supporting David Marshall on roof tile 40.5 @ 20-1/5	910	1/5/2006	ck 6048
Jason Pidcock, supporting David Marshall on roof tile 38 @ 20 12/29	960	12/29/2005	ck 6025
Jeff Greene, supporting David Marshall on roof tile 26.5 @ 20 12/06	530	12/6/2005	ck 6136
Jeff Greene, supporting David Marshall on roof tile 35.5 @ 20 1/19	810	1/19/2006	ck 6136
Jeff Greene, supporting David Marshall on roof tile 35.5 @ 20 1/19	670	1/5/2006	TA - Greene
Jeff Greene, supporting David Marshall on roof tile 27 @ 20 1/19	640	12/23/2005	ck 6027
Jeff Greene, supporting David Marshall on roof tile 19.5 @ 20 1/5	490	1/5/2006	ck 5971
Jeff Greene, supporting David Marshall on roof tile 47 @ 20 12/8	1,040	12/8/2005	ck 5971
Jeff Greene, supporting David Marshall on roof tile 29 @ 20 12/22	580	12/22/2005	ck 5971
Jeff Greene, supporting David Marshall on roof tile 38.5 @ 20 11/17	870	11/17/2005	TA - Greene
Bradley Ware, supporting David Marshall on roof tile 15 @ 20 1/5	300	1/5/2006	ck 6051
Bradley Ware, supporting David Marshall on roof tile 30 @ 20 12/9	600	12/9/2005	ck 6024
Cameron Sherban, supporting David Marshall on roof tile 7 @ 18 12/22	126	12/22/2005	ck 5977
Tinsley and Lance assisting master deck and porch area	1,380	1/26/2006	ck 6225
Randy Lance adjusting window openings and porch roof	1,378	2/2/2006	ck 6225
Larry Tinsley adjusting window openings and porch roof	1,590	2/2/2006	ck 6190
Foundation/Slab			
Patio pour and concrete finishing paid to Travis James with certified funds	3,231	2/14/2006	ck 4417144

Progress:
Insulation underway. Prepping for copper roof accents

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

27,068 past due

Kunstwerke Corp.

This billing was hand delivered to David Loree on 2/15/06

Reserve lot B29 and B30 Progress

3-3

Gaby
445 Old Homestead Trail
Duluth, GA 30097

March 03, 2006

Budgeted area		Due		
Fees/Misc				
To 3D landscaping for survey of new lot		1,250	2/6/2006	ck 6247
Design/Overhead allocation				
February allocation	Regular allocation for month before	6,000	2/1/2006	
March allocation	Regular allocation for month before (prior to dism	6,000	3/1/2006	
April allocation	GC on permit, trade accounts in use	6,000	4/1/2006	
Roofing/Specialty framing				
Bronson's site management and physical assistance		540	11/18/2004	ck 3671
Bronson's site management and physical assistance		400	10/12/2005	ck 5534
Bronson's site management and physical assistance		1,627	12/29/2005	ck 5972
Bronson's site management and physical assistance		2,880	2/14/2006	ck 6193
To adjust Bronson's payments vs total billings see schedule		5,117	2/14/2006	TA - Bronson
David Marshall assisting on roof		1,260	1/26/2006	ck 4417131
David Marshall assisting on roof		532	10/1/2005	TA - Marshall
David Marshall - reverse from 2/16 progress billing		(1,449)	2/2/2006	TA - Marshall
Sam Saxton assisting on roof		680	2/2/2006	ck 6169
Colin Smith assiting on roof		324	1/26/2006	ck 6173
Adam Dierking assisting on roof		1,128	2/26/2006	ck 4417131
Jeff Greene, roof tile 34 @20 -2/6 (adj from 2/16)		(680)	2/6/2006	TA - Greene
Bryan Shannon assisting on roof		885	10/23/2005	ck 5630
Caleb Hill's time assisting Bronson		870	2/13/2006	ck 6028
To adjust Caleb Hill's payments vs total billings see schedule		1,164	2/13/2006	TA - Caleb
To Lovell construction for trim prep		670	2/4/2006	credit on 115
Deposit paid to Dan Eshelman to craft shutters for veranda and other built-ins		1,000	1/31/2006	ck 6229
		3,500	9/29/2005	ck 5533
		1,500	11/18/2005	ck 5781
To Bennet Supply for scaffold rental for first month cycle		318	11/15/2005	debit
Norton Builders		7,750	1/20/2006	ck 6091
Excavation/Driveway				
Cat/Blanchard balance for Lull lease serial # 5WM08008		16,165	2/17/2006	TA - Cat/Blan
Cat/Blanchard balance for excavation equipment through Robin Wright		11,045	3/3/2006	TA - Cat/Blan
To Cason for grates, etc		1,983	1/23/2006	764461
To Cason for grates, etc		140	1/31/2006	764949
To Cason for sand		313	1/17/2006	764083
To Cason for sand		313	1/20/2006	764314
CMC hydro seeding		325	10/20/2005	ck 5841
To Pickens Culvert		1,279	12/7/2005	ck 6100
To Pickens Culvert		1,053	1/24/2006	ck 6090
Stone/Stucco				
To ABC Supply for misc		1,970	2/2/2006	ck 6191
Northern Roof Tiles		1,251	2/3/2006	ck 6237
Final Comancho reconciliation of draws paid vs. reimbursed progress billings		10,509	3/3/2006	TA Comancho
Items to be reversed from 2/16 Progress Billing				
Kingston Marshall		(163)	2/2/2006	
Pickens Co Concrete		(2,776)	2/8/2006	
Tri-state concrete		(596)	2/8/2006	
Precision Weld		(3,465)	1/30/2006	
Precision Weld		(2,415)	1/23/2006	

Unrecovered tools still in use			
Impact Drive	254	10/10/2005	25031
recip saws	229	10/6/2005	24556
compressor	383	10/5/2005	24327
Miter stand	214	10/3/2005	23852
Post hole	36	7/15/2005	154195
Timber Loc	23	11/14/2005	31904
Hitachi nailer	483	8/19/2005	16023
Hitachi nailer	612	8/17/2005	15657
Blades	81	11/1/2005	29383
	71	11/14/2005	31742
tarp and fuel cells	327	11/16/2005	32212
tarp	21	4/26/2005	8861
Blades	29	11/5/2005	30253
Bostitch coil nailer	102	8/26/2005	17360
blades	104	5/10/2005	96520
nailer	182	7/1/2005	7413
power box	55	6/11/2005	3228
tarp	21	7/12/2005	147010
nailer	336	8/14/2005	3594
	674	2/18/2005	81224
	127	2/11/2005	80050
	96	2/4/2005	78770
	353	2/1/2005	78153
tie downs	29	3/25/2005	87424
Framing Labor/Materials			
To Duvall Masonry	750	10/21/2005	ck 5606
Cash Deposit paid to Jimenez at site - balance paid directly by Gaby	300		
Pickens Co Concrete	623	11/18/2005	ck 5780
			TA - K&S
K&S Welding	340	2/3/2006	9377
K&S Welding	540	12/26/2005	9272
			TA - System
System Specialties	1,508	5/12/2005	26-6248M
System Specialties	134	2/16/2006	26-5044M
System Specialties	413	2/28/2006	26-6059M
			TA - Jennings
Cedar from Jennings	306	1/25/2006	428866
Jennings Deliveries	748	1/27/2006	43372
	737	1/27/2006	43352
	158	1/31/2006	43854
	41	1/26/2006	43111
	282	1/30/2006	43593
	31	11/16/2005	32220
	359	7/5/2005	7637
			TA - Durhams
GBS Feb statement	263	2/2/2006	6006266
	103	2/1/2006	6006221
	120	2/2/2006	6006285
	109	2/7/2006	6006563
	228	2/8/2006	6006650
	118	2/10/2006	6006818
	11	2/13/2006	6006887
			TA - Builders 1
Builder's First Feb statement	64	2/7/2006	8611773
	397	2/8/2006	8611833
	220	2/8/2006	8611879
	14	5/25/2006	60325

To adjust account balance with Select Stone to actual netting out deposit		(11,500)	3/3/2006	TA - Select
Fees/Misc				
To Professional Engineering for site visits	adjust	(1,914)	1/23/2006	TA - Professio
To Dean and Associates for engineering visits		441	11/14/2005	ck 5901
To Higdons for porta		81	10/31/2004	51605
To Higdons for porta		12	11/4/2004	52254
To Higdons for porta		89	2/25/2006	60486
To Higdons for porta		78	2/27/2006	60489
To Higdons for porta		157	3/25/2006	60800
To Higdons for porta		157	3/26/2006	60801
To Higdons for porta		157	4/22/2006	61129
To Higdons for porta		157	4/25/2006	61132
To Higdons for porta		157	5/22/2006	61720
To Higdons for porta		157	5/22/2006	61722
To Higdons for porta		157	6/20/2006	62293
To Higdons for porta		157	6/20/2006	62295
To Higdons for porta		157	7/18/2006	62855
To Higdons for porta		157	7/18/2006	62856
To Pickens Co. for septic approval		210	9/20/2004	ck 3419
Garage/Foundation				
Garage walls never billed	35,392			
Foundation work from 3/4 progress reversed (See explanation)	(11,600)			
Paito work from 6/23 progress reversed (See explanation)	(23,239)			
	552.5	553	10/25/2005	TA - Southern
To Robin Wright - Waterguard was paid $5,280 and billed 4/22. $5,680 was also invoiced for backfilling and not yet collected until Robin Wright's account was reconciled.		5,680	5/3/2005	ck 4449
Unrecovered Model		10,000	3/3/2006	Model
Finance charge of 1.5% monthly from beginning of default of unpaid balance co		1,350	3/3/2006	
		3,015	4/3/2006	
		3,060	5/3/2006	
		3,106	6/3/2006	
		3,153	7/3/2006	
		3,200	8/3/2006	
		3,248	9/3/2006	

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

125,387

past due

Kunstwerke Corp.

No one offers the type of funding contracts I offered and no one could have been more generous than I was to these people in financing their projects. This is why their actions are that much more despicable.

Contracts for funding construction projects can be complicated. The Gabys and the defendants in the other cases have tried to make it more complicated than it was. It appears their defense is beginning to take shape. Here are some contentions or accusations you will hear from this group's lawyers.

1. He was caught co-mingling funds. He was not protecting my assets.
2. He was using money provided to him for my project for personal use.
3. He created a mess, no one knows where their money went.

Gene Covington's partner Sandy Stern, who just happens to be representing Gaby, Loree, DeBacco, and Coco, calls this all a great "canard" and enjoys broadcasting that I am "going to prison." He has even stated that I am "delusional." None of this bothers me - it reminds me we are winning and gives me occasion to laugh.

My simple response is:

They are attempting to now convince the public and the courts that they had a cash/trust account agreement and not a credit relationship and that their payments were held in trust to specifically pay only those items indicated on a Kunstwerke billing. Apparently they would have had me - with no deposit from them for immediate cash needs - open accounts in each of their names, fund their accounts MYSELF, with my own Kunstwerke capital, make disbursements from these accounts, and hope they would reimburse me **FULLY**. This is the only way what they are claiming would have worked. Absurd!

They all agreed to a system far more generous than the one they are falsely claiming existed. My agreement with them provided for an after-the-fact accrual based billing system in which cash was to be regularly fronted (items paid out by Kunstwerke prior to billing clients as credit extended). Kunstwerke maintained a "balance due" (an accounts receivable in an accrual system) from most clients at all times. The timing of payables and receivables in such a system are processed under separate circumstances and contractual terms.

Specifically these contracts provided for an account balance that at all times could be reconciled by ALL of the following factors to accurately determine on a cash basis what is owed or due to be refunded to them:

1. The total that the clients have paid to date (via the number of progress billings submitted to them and paid).
2. **Plus:** The total presented in outstanding Progress Billings that the clients have not yet paid.
3. **Less:** The specific items that Kunstwerke has yet to distribute to the vendors ultimately due these monies. The timing of these disbursements is properly at Kunstwerke's discretion, under contracts negotiated between Kunstwerke and these vendors.

The fact that all of the accounts of those who abruptly stopped paying in February 2006 reconciled showing them all owing large net cash balances (credit extended to them by Kunstwerke) proves that the funds were not mismanaged and they had indeed a credit relationship and not a trust deposit.

They are now all denying that they still owe anything because once the courts rule that they all do have an unpaid credit balance, their defamation defense collapses.

The only noise I heard out of Gaby as he sat in the default hearing was an indignant laugh when I stated that his was a credit relationship. For those of you who received Gaby account binders, note how almost 40% of all Kunstwerke payments to sub laborers and suppliers were paid before being reimbursed by Gaby. Sounds a whole lot like credit to me. Gaby simply needs to pay the billings he is pretending don't exist.

Text of E-mail to Rick Gaby 2-9-06 accompanying 2-9 Progress Billing

It helps to revisit the timeline and progress to date in order to assess how quickly we can have the house available for a drop date of 5/1. Much of what we discussed at the early design stage of the project still holds true. **The actual design process - from initial concept to ground breaking occurred from July 04 to October 04. Just four months. We lost six weeks in late 2004 and early 2005 as we reassessed the size of the house and possible costs. By March 04 the foundation was complete and we were framing in earnest.**

As I have stated before, my track record consists of numerous houses in the 200 per sq ft range and none surpassing $350. These are exceptionally designed and complicated houses unsurpassed in cost and timing.

I am slowly reverting back to my early beginnings when I created homes only on a speculative basis. I am progressing to a higher-end market and am grateful to have investors who are allowing me to do this when I personally do not have the means. These projects will be successful, as before, because the design is exceptional and the final cost will land below the average in the market. Interestingly , I do not know what one of my houses would bring in the open market because, in nine years, not one has been offered for resale.

Last month I hosted the entire sales force of the Cliffs at Keowee Falls (adjacent to the Reserve) and gave them a tour of all my projects. They were all overwhelmed by the design, materials used, and construction costs. In this market, houses in the $300 to $500 range are not uncommon. In November, A spec house designed by Summerour and built by a builder acquaintance of mine, sold for $4.2M. It is less than 6,000 square feet on a very average building site. It is a great custom home but can not be placed in the same league as yours.

In your case, here is what we are managing. We are just under 10,000 sq ft. I create budgets and push everyone hard. As the project evolves, **we do not have change orders**. Since I combine the design and building aspect, There is no penalty. The project is allowed to evolve without change penalties and complications. We have worked through numerous requests from the beginning and will continue to do so to the end. **One small example is the laundry set up. We now have three complete appliance and laundry systems on three levels. There are numerous adjustments and technical scenarios to work through on a daily basis. Our goal is to make the house perfect for your use in a reasonable amount of time.** Therefore we are glad to adjust as requested to the very end.

We are currently at less than 5% for all design and general contracting which is remarkable. I continue to go through the list of what has been ordered and scheduled with Melissa and Bronson. I reiterated to them that May 1 was the drop date and there would be no exceptions.

I know the burn rate has increased and that is because of activity. **From the stand point of cash flows, I seem to still be catching up from the holidays. Of late, it has been a little harder than usual billing after I am billed. It is more typical to maintain a construction deposit, nonetheless,** I would rather your billings reflect actual progress.

I have attached a progress billing for $61.823 as of 2/9 most of which is insulation and some stone. As I accumulate a large interior crew, **cash flows will become more important as there will be numerous small disbursements.**

PLAINTIFF'S TRIAL EXHIBIT 17

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF PICKENS	)	**C.A. NO.: 20____-CP-39-_____**
Kunstwerke Corporation, Plaintiff, v. Steven DeBacco and Julie DeBacco, Defendants.	)	**CONFESSION OF JUDGMENT (Pursuant to S.C. CODE ANN. § 15-35-360)**

Defendants Steven DeBacco and Julie DeBacco (hereinafter collectively referred to as "DeBacco(s)" or the "Defendants"), jointly and severally, by and through their undersigned authorized representative(s), hereby make an appearance and confess judgment to the Plaintiff Kunstwerke Corporation (hereinafter "Kunstwerke" or the "Plaintiff"), (all collectively the "Parties") as follows:

1. Defendants confess judgment to Plaintiff in the amount of Fifty Thousand and 00/100 Dollars ($50,000.00) and hereby authorize the Clerk of Court for Pickens County, South Carolina, to enter judgment in favor of Plaintiff against Defendants, jointly and severally, for such amount plus costs, reasonable pre-judgment and post-judgment attorney's fees, and post-judgment interest of 1.5% per month, compounded daily. Defendants further waive the service of any summons and complaint praying for such judgment.

2. It is understood between the Defendants and Plaintiff, that this Confession of Judgment is being given contemporaneously with a Settlement Agreement for a *discounted* settlement amount, and this Confession will extinguish upon payment in full of the *discounted* settlement amount, and Defendants' compliance with the other terms of the Settlement Agreement,

a true and accurate copy of which is attached hereto as **Exhibit 1** and incorporated herein by reference (the "Agreement" or "Settlement Agreement").

3. This Confession of Judgment shall only be effective in the event that Defendants fail to fulfill their payment and/or other contractual obligations by breach of the Parties' written Settlement Agreement.

4. In the event of a default or breach of the Settlement Agreement that is not cured within seven (7) days as outlined in the Settlement Agreement, Plaintiff shall have the right to enter this Confession of Judgment, and shall partially satisfy said Judgment to the extent of any monthly settlement payments ($550.00/month) actually collected by Plaintiff pursuant to or arising from the Settlement Agreement.

5. Upon execution, this Confession of Judgment shall supersede and replace any and all prior Confessions of Judgment related to this matter between these parties.

6. Each Defendant affirms that the above amount is justly due or to become due the Plaintiff, and that the debt/liability arose out of the following facts:

a. On or about the Fall of 2004, Kunstwerke entered into a cost reimbursement based agreement (the "Contract") with DeBacco to construct a residential house in The Reserve at Lake Keowee at 511 W. Fort George Way in Pickens County, South Carolina (the "Project" or "Property"). The Contract contained an attorney fees provision which would award Plaintiff its attorney fees should Defendants breach the terms of the Contract;

b. During the course of the Project, disputes arose between Kunstwerke and DeBacco regarding the Project;

c. Defendants failed and/or refused to make any further payments to Plaintiff, and/or otherwise terminated their Contract with the Plaintiff;

d. On or about July 12, 2007, Kunstwerke commenced a lawsuit against DeBacco in the Pickens County Court of Common Pleas, captioned *Kunstwerke Corporation v. Steven DeBacco and Julie DeBacco*, Civil Action No. 2007-CP-39-1026 (the "Lawsuit"), in which Kunstwerke originally alleged that it was entitled to at least the amount of $103,767.00, plus interest, attorney fees and costs;

e. On or about September 20, 2007, DeBacco answered, denying the complaint, and further denying full liability for amounts claimed;

f. All Defendants acknowledge that Plaintiff has incurred significant attorney fees and costs in relation to the Lawsuit and stemming from Defendants' failure to make payments pursuant to the Contract, and all Defendants further acknowledge that the amount of damages arising from their potential liability to Plaintiff for its causes of action in the Lawsuit would/could likely exceed $100,000.00 including principal, interest, attorney fees and costs, should a judgment be rendered in Plaintiff's favor at trial.

g. On April 2, 2012, Kunstwerke and DeBacco participated in mediation of the Lawsuit;

h. The Parties compromised the Lawsuit described above by executing the Settlement Agreement by which Plaintiff accepted the *discounted* settlement amount of $38,100.00 ($15,000.00 upon execution of the Settlement Agreement, and $23,100.00 in monthly payments of $550.00/month for 42 consecutive months) as outlined in the Settlement Agreement;

i. As further inducement for Plaintiff to settle this debt, Defendants secured their payment of the future monthly payments in the *discounted* settlement amount, and compliance with the terms of the Settlement Agreement by contemporaneously executing this Confession of Judgment for an amount that accurately represented Plaintiff's damages, and did not exceed the Defendants' liability to Plaintiff; and,

j. For these reasons, all Defendants, jointly and severally confess judgment to Plaintiff for Fifty Thousand and 00/100 Dollars ($50,000.00), plus costs, attorneys' fees, and post-judgment interest as outlined in Paragraph No. 1 above, less the amount of monthly installment funds actually collected by Plaintiff pursuant to or arising from the Settlement Agreement that remain after subtracting any and all costs and fees Plaintiff incurred in the collection of those funds, if any.

EXECUTED this 1st day of May, 2012.

BY OUR HANDS AND SEALS,

STEPHEN DEBACCO

This 1st Day of May, 2012.

JULIE DEBACCO

This _____ Day of _____, 2012.

PLAINTIFF'S TRIAL EXHIBIT 18

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP3901787

J Scott KUNST *vs.* Ed COCO

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.

☒ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☒ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this June 8, 2011.

Court Reporter: ***Hollie Jenkins***

R. Ferrll Cothran

PRESIDING JUDGE - R. Ferrll Cothran, Jr

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

J Scott KUNST 3955 Bigilow Blvd # 410 Pittsburg, PA 15213

ATTORNEY(S) FOR THE PLAINTIFF(S)

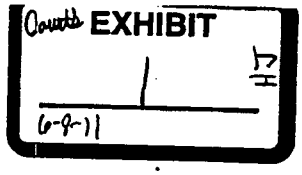
T. S. Stern Jr. Covington Patrick Hagins Stern & Lewis P.O. Box 2343 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Watson - Deputy

Harold P Welborn, Jr. - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008



Release AND Settlement Agreement

(1) Ed Coco will pay as follows:

A. $13,000 to J. Scott Kunst

B. 8,374 to New Creations, Raymack and Robert Builders

(2) This Release and Settlement Agreement shall resolve all claims in both pending civil actions J. Scott Kunst v Ed and Jill Coco C.A. No 2006-CP-39-1787 and Kunstwerke v. Coco C.A. No 2007-CP-39-1023 ("Actions")

(3) The parties will execute ~~mutual releases~~ Stipulations of Dismissals with prejudice of both actions.

Edward M. Coco

Jill Coco

Jill Coco

Kunstwerke Comp.
By: J. Coco

PLAINTIFF'S TRIAL EXHIBIT 19

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF PICKENS	)	
	)	
J. Scott Kunst,	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF J. SCOTT KUNST**
	)	
Loree,	)	**CASE NO. 2006-CP-39-1826**
Coco,	)	**CASE NO. 2006-CP-39-1787**
DeBacco	)	**CASE NO. 2006-CP-39-1751**
Reserve.	)	**CASE NO. 2007-CP-39-0239**
Defendants.	)	
	)	

Personally appeared before me J. Scott Kunst, who being duly sworn, states as follows:

The attached letter to Mike Lawless of the South Carolina Department of Revenue explains well my effort to have errant tax liens placed on me and my company, resulting from an incomplete audit, removed. The Department of Revenue claimed that they were unable to reach me and completed their audit by estimating the total funds paid by all Kunstwerke clients for reimbursement for subcontractors as income without deducting Kunstweke's corresponding disbursements. The two net out. This resulted in a ridiculous estimate of greater than $4,000,000 income annually for me personally. The actual K-1 income as reported to the IRS never exceeded $100,000. Due to legal costs incurred during 2006 forward, a refund will occur.

Further, Affiant sayeth naught.

J. Scott Kunst

Sworn to before me this 2nd
day of February 2, 2009

Notary Public, State of South Carolina
My Commission Expires: 11-24-2012

J.Scott Kunst
2607 Woodruff Rd.
Suite E. # 204
Simpsonville, SC 29681
864 879 7861

Hand delivered
December 19, 2008

Michael Lawless
South Carolina Department of Revenue
Suite 210b, Century Drive
Greenville, SC 29607

Re: Audit and tax liens against J. Scott Kunst and Kunstwerke Corp.

Dear Mr. Lawless:

I recently met with Chianti Benson regarding an incomplete audit and resulting tax liens placed on me and my dissolved company Kunstwerke Corp.. We discussed my circumstances and the timeline which caused the liens to be placed and I asked for Chianti's help. She suggested that I write you.

I was first notified of an audit and made an appointment to meet with Chainti. To this first meeting, I brought my basic spreadsheet ledgers and other documents. We discussed what my company did and the types of records available. My concern at the time was that four clients had defaulted on payments greater than $400,000 for goods and services which Kunstwerke had purchased on their behalf. The result would be a large restated loss for 2006 which could be carried back. I explained that my company handled millions of dollars for these clients for a small fee. My fee income was very small and rarely exceeded $60,000. This had never happened before and it would not take that large of an uncollectible balance to cause a great loss (through legal fees in collection alone). Chianti gave me a listing of what additional documents she needed.

Chianti and I agreed to meet again and I was instructed as to what to bring. I arrived at your office on time for the next appointed meeting. After waiting almost an hour in the waiting room, I was told that Chianti was out sick that day and that I would be contacted. Chianti has been courteous and professional and I believe she even tried to locate me through my parents before filing the liens.

Since that time I have moved twice, ceased business operations and have been dedicated full time to several lawsuits filed in Greenville and Pickens Counties to collect the balances owed my company as well as several related personal defamation cases.

Two of the clients who stiffed my company are local attorneys. It is unusual, and has required a lot of courage, for someone like me to sue an attorney *pro se* (representing

myself). Because the personal financial interests of these attorneys are involved, they have pulled out all of the resources of their respective firms. Typically these types of cases are settled quickly, however, the defamation element has greatly expanded the scope of the litigation and has opened the door to all of my financial dealings.

In one trial held in Greenville on December 15, 2008, before the honorable Judge John C. Few, they made the tax liens a focus of their defense and threatened to subpoena Chianti as a witness. Beginning in February 2009 the remaining ten cases will begin to be tried. They have signaled that they will subpoena Chianti repeatedly for these cases.

The events of the spring of 2006 have been devastating to me and my family. The actions of these clients created a bookkeeping and tax nightmare. The defaulted amounts in the recorded tax liens bare no resemblance to the little income my company provided me. Unfortunately, the existence of the liens have worked to defame me further. The amounts recorded are so large that I could not possibly pay the minimum as a prerequisite to having the lien amounts reversed and refunded as I was told was the procedure during my recent meeting with your staff.

I now have full possession of all of my records. These documents have since been assembled for convenient reference and audit to aid the forensic auditors who have subpoenaed and reviewed them on behalf of the defendants I am suing for collection. A reasonably quick determination as to whether any tax amounts need to be restated can be made.

I trust that you will agree that it is in the best interests of all involved to resolve the outstanding liens to the State's satisfaction as soon as possible. I believe that any tax issues with the state can be resolved quickly and I am fully committed and prepared to assist in any way. I would like to avoid the circus-like atmosphere these attorneys will create if my liens are not resolved soon. There is currently a window of opportunity before the court trials begin again in Pickens County in February. I am available any time before then if there is any thing that can be done.

Thanking you in advance for your kind consideration.

Sincerely,

J. Scott Kunst
StudioKunstwerke@aol.com
2607 Woodruff Road, Suite E-204
Simpsonville, SC 29681
864-979-7961

Defense Trial Exhibit 1



rgaby@peterisland.net
02/18/2006 03:35 PM

To studiokunstwerke@aol.com
cc Dave.Loree@alticor.com, BVGaby@peterisland.net
bcc
Subject Reconciliation

Scott - Dave provided me an overview of your converstion on Thursday. From that communication, he informed me that none of the written feedback I have received from you ties to anything. The weekly detail for wire transfer does not relate to how those funds are disbursed and the budget/actual report you have provided also does not relate to what you have actually paid. We have gleaned from sub-contractors that you are significantly behind in paying them and many are pulling off the job and/or not providing information until you are current (ie. landscaper). This is obviously causing delays which is hard to digest given the timeliness of my disbursements to you. You have requested specific wire transfers for cabinetry installments, but have not passed those through to Paul (I have paid you $140K...he has only received $20K). All of this does not reflect well of how you have handled this project. The box of data you gave to Dave does not help much either. It is your responsibility to organize and keep track of the inflows/outflows of this project. I can not tell if the amount that I have transferred you has been used in total for our project and where it has gone. You are responsible for providing a clear reconciliation that the $2,385,523 that I have transferred to you has been applied to our project and where it has gone.

I have attached a sample spreadsheet as a template for a method of clearly showing where funds have gone and where you have applied them within the budget accounts you established. I do not care if you use this spreadsheet. If you use an alternative one, It needs to be clear to understand and complete. Copies of specific checks need to be organized and copy of invoices that those checks were applied to need to be attached to reconciliation. Until you accomplish this task and demonstrate you have a handle of where these funds were applied, I will not forward you any additional funds.

To keep the project progressing, Dave will contact vendors and I will pay for new invoices directly to vendors. I will keep organized files of everything and provide you copies so you can appropriately apply the payments I have made. I will not pay any invoices from vendors that precede the date of my last transfer (2/10/2006). Until you provide a clear picture of where we are at, I do not want the possibility of double payment, or add to the confusion you have already created. Dave will confirm with either you, or Bronson, that submitted invoices are valid. He may require the subs to get a signature from you, or Bronson, before any payments are to be made. Once verification of invoice is complete, payments will be promptly disbursed. You need to immediately pay Paul Anderson and the landscaper (for shoreline work). I have disbursed these funds to you long ago and the reason for you not to give them these funds can not fall under "timing" of inflows/outflows.

I am hoping you can accomplish this quickly so we can determine how we are going to proceed. It is my desire for all legitimate invoices to be paid quickly and in full (which is what I had assumed was occurring with weekly wire transfers from me). I also do not want the project delayed any further than necessary.

I need, and expect, your prompt response to these requests.

Rick Gaby

(See attached file: gaby project reconciliation.xls) 

Defense Trial Exhibit 2

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

C2

October 18, 2005

Budgeted area	Due	
Framing Labor/Roofing		
To Bronson Shepherd for his oversight and physical assist., errands, -15 hrs	570	10/4/2005
To Bronson Shepherd for his oversight and physical assist., errands, -31 hrs	1,633	10/11/2005
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -1 errands, etc - 48 hrs	1,305	10/3/2005
Framing Labor/Roofing		
To Norton Builder's crew for installing roof bats	7,225	9/22/2005
Framing materials/ Roofing		
To Precision Weld for Garage roof pieces	3,010	9/26/2005
To System Specialties for steel	3,860	8/31/2005
Jennings and others - deliveries from latest statement - mostly roof related	167	8/31/2005
	80	9/21/2005
	2,450	9/20/2005
	1,329	9/22/2005
	702	8/31/2005
	526	9/21/2005
	1,391	9/19/2005
	6	10/5/2005
	1,503	10/7/2005
	16	10/8/2005
	2,401	10/7/2005
	549	10/7/2005
	316	9/7/2005
	7	10/4/2005
Diamond cut wet saw for roof tiles	1,916	10/3/2005
To CAT/Blanchard for Lull rental for month on site moving tile, etc.	2,177	8/31/2005
Fees/Misc		
To Higdons for porta potty rental	89	10/10/2005

Progress:
Roof tile progressing. Rough Plumb complete. Electrical and HVAC continued

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

33,229

Kunstwerke Corp.

$25.91 - Jennings 9/21/05

GABY 00752

Defense Trial Exhibit 3

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

C3

October 25, 2005

Budgeted area	Due	
Framing Labor/Roofing		
To Bronson Shepherd for his oversight and physical assist., errands, -18 hrs	684	10/20/2005
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -1 errands, etc - 48 hrs	1,276	10/17/2005
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -1 errands, etc - 43 hrs	1,247	10/10/2005
To David Marshall, heading up roofing crew through 10/13 - 36.5	1,022	10/13/2005
To David Marshall, heading up roofing crew through 10/13 - 47	1,316	10/20/2005
To David Marshall, heading up roofing crew through 10/13 - 35.5	994	10/6/2005
To David Marshall, heading up roofing crew through 10/13 - 10	280	9/22/2005
Framing Labor/Roofing		
To Norton Builder's crew for installing roof bats & interior window modifications	9,100	9/29/2005
	3,625	10/6/2005
Framing materials/ Roofing		
To Dean and Associates for structural engineering inspection	995	10/17/2005
To Precision Weld for Garage roof pieces	2,674	10/3/2005
To System Specialties for steel	3,318	10/9/2005
Jennings and others - deliveries from latest statement - mostly roof related	34	10/7/2005
	123	9/27/2005
	5	10/3/2005
	11	10/3/2005
	73	9/29/2005
	797	10/14/2005
	62	10/14/2005
	93	10/14/2005
	57	10/14/2005
	23	10/14/2005
Stone Veneer		
First two shipments of stone to site at $9510 each -cod from Select Stone Bozeman Mt. 406 763 4210	[redacted]	10/20/2005
Design/Oversight/Overhead		
September allocation	[redacted]	10/3/2005
landscaping		
To Premium for retaining net and planting along driveway	2,615	10/18/2005
Fees/Misc		
To Duke Power for service	32	10/18/2005

Progress:
Roof tile progressing. Electrical and HVAC continued.

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

55,474

Kunstwerke Corp.

GABY 00776

Defense Trial Exhibit 4

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

C7

December 02, 2005

Budgeted area	Due	
Framing Labor/Roofing		
To Bronson Shepherd for his oversight and physical assist., errands, -13 hrs	520	11/27/2005
To Bronson Shepherd for his oversight and physical assist., errands, 43 hrs	2,270	11/20/2005
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -4 errands, etc - 38hrs	1,102	11/28/2005
To Caleb Hill for his assist.w/ window openings and now roof bats, errands, -4 errands, etc - 45hrs	1,305	11/21/2005
To David Marshall, added to roofing crew - 22.5hrs 11/17	653	11/17/2005
To David Marshall, added to roofing crew - 16hrs 11/24	464	11/24/2005
To Kingston Marshall on roofing crew 31 hrs 10/30-11/1	725	11/15/2005
To Kingston Marshall on roofing crew 27 hrs 11/4-11/10	775	11/10/2005
To Jeffrey Pidcock on roofing crew 59.5 hrs 11/11-11/24	1,569	11/24/2005
Garage/ Roofing		
Jennings pickup and deliveries from statement ovre past two weeks	23	11/14/2005
	327	11/16/2005
	228	11/15/2005
	31	11/16/2005
	81	11/1/2005
	48	11/2/2005
	725	10/27/2005
	333	11/11/2005
	83	11/9/2005
	18	11/7/2005
	993	11/3/2005
	105	11/14/2005
	196	11/10/2005
	22	11/3/2005
	1,696	11/14/2005
	859	11/15/2005
To System Specialties for steel	1,240	11/15/2005
Stone		
To Select Stone for 11/16 shipment of Stone	8,010	11/21/2005
To General Shale for mortar and river sand	662	11/23/2005
To General Shale for mortar and river sand	661	11/15/2005
Second pmt. to Abraham Comancho's crew for next 800 sq ft of stone	11,200	11/20/2005
Design/Oversight/Overhead		
November monthly allocation	6,000	12/2/2005
Fees/Misc		
To Duke Power for service	31	11/17/2005

(2)

Progress:
Roof tile progressing now over 70%. Electrical and HVAC 99% complete. Stone progressing to over 60%.

Due upon receipt and payable to:

Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681

42,954

Kunstwerke Corp.

Interest Inc. 8010

Inv not included in total here

8010 - Select Stone

GABY 00875

Defense Trial Exhibit 5

"Specializing In Crane Relocation And Material Handling Systems"

SYSTEMS SPECIALTIES INCORPORATED

March 14, 2006

To: David c/o The Gaby's Keowee Home

Fax: 770-232-0647

From: Lori Simpson
Systems Specialties, Inc.

Re: Past Due Balance on Steel Supplied to Gaby Home

David:

It has been a couple of weeks now since I faxed over the unpaid invoices for the Gaby Home on Keowee. We did receive a check from the Gaby's for one of the recent smaller invoices; however, there is still an unpaid balance on the steel for this home totaling $6500.47. (See statement as follows.)

Realizing that you and the Gaby's just became aware of the financial problems with relation to the labor and materials provided on the home just a few short weeks ago, we are in no position to further delay collection of payment and/or to supply additional materials for the home. Some of the invoices due to us are 6 months old.

Please call me with your intentions on getting this balance paid as soon as possible so that we will know how to proceed. I can be reached at (864) 868-3457, ext. 126.

Thanks so much for your help in getting this matter resolved.

Respectfully,

Lori Simpson
Secretary/Treasurer

/lss

1750 Liberty Highway
Six Mile, SC 29682

FAX (864) 868-3459
PHONE (864) 868-3457

Mar 14 2006 3:54PM Systems Specialties, Inc. 864-868-3451 p.1

Defense Trial Exhibit 6

Select Stone, Inc.
P.O. Box 6403
Bozeman, MT 59771-6403
(888) 237-1000 or (406) 763-3027
(406)763-3029 (fax)

Invoice

DATE	INVOICE NO.
11/11/2005	3971

BILL TO

Kunstwerke Architects
2607 Woodruff Rd. Suite E#204
Simpsonville, SC 29681

P.O. NO.	TERMS	DUE DATE
Gaby	Due on receipt	11/11/2005

QTY	DESCRIPTION	RATE	AMOUNT
48,000	Garden City Buff limestone	0.12	5,760.00
1	Shipment to Six Mile, SC on 11/11/05 via Top Flight Transportation	2,250.00	2,250.00

Total	$8,010.00
Payments/Credits	$0.00
Balance Due	$8,010.00

Select Stone, Inc. makes no express warranties of any kind, including any warranty regarding the use of the product in construction. Stone is a natural product, and color and texture may vary. Select Stone shall not be liable for any incidental, special or consequential damages resulting from any breach of warranty.

mine

GABY 00897

Defense Trial Exhibit 7



"Chris Luckay"
<cluckay@selectstone.com>
02/28/2006 12:39 PM

To <dloree@jvae.com>
cc
bcc
Subject RE: Gaby Project in SC

Dave,

I have spoken to the owner of Select Stone and we must receive the full $14,030 in order to release the next load. The reason I agreed verbally yesterday afternoon is because there in a different job in the same situation (Debacco residence) that owes approximately $8000 in order to move forward. I apologize, but I got these two jobs confused.

I apologize for the inconvenience, but we must stand firm on the original email amount.

Please contact me if you have questions.

Thank you,
Chris Luckay

-----Original Message-----
From: Chris Luckay [mailto:cluckay@selectstone.com]
Sent: Monday, February 27, 2006 9:59 AM
To: dloree@jvae.com
Subject: Gaby Project in SC

Dave,

There are currently two outstanding invoices for the supply of stone to the Gaby project, which are summarized as follows:

Invoice # 3994 (stone shipped on 11/21/05) - $6020
Invoice # 4065 (stone shipped on 12/7/05) - $8010

Total needed in order to ship another load of stone - $14,030

All future shipments will be due upon receipt.

I would like to have a good understanding of how much stone is remaining to be shipped on this project in order to keep the quarry moving. My records show 80 tons remaining.

Please contact me with questions.

Regards,
Chris Luckay

Select Stone, Inc.
P.O. Box 6403
Bozeman, MT 59771
Phone: 1-888-237-1000 ext. 3
Cell: 406-581-2947
Fax: 406-763-3029
www.selectstone.com

Physical address:

262 Penny Lane
Gallatin Gateway, MT 59730

Defense Trial Exhibit 8

emailed 2/28/06

Scott,

As we discussed on the phone on Tuesday 2/28, Mr. Gaby has decided he does not want Norton Builder's crews to do any further carpentry at his project site.

I have spoken to Select Stone's representative Chris Luckay who advises you are past due with their company $14,000.00 for materials at the Gaby project. They will not forward any additional stone until you pay the funds owed them. Please do that this week so that further delay due to lack of materials can be avoided at the Gaby site.

Please give an update as to your acquiring the lien waivers from the varies trades working at the site as you were requested to do on Thursday 2/16/06.

You also advised on 2/16 that you would provide the missing pages of your check registry, to date we have not received those, please update us on the progress you have made. You told me that Thursday you would have them by the next week, it has now been 12 days since our meeting can you explain your lack of follow through. We also need a bank document reflecting the wire transfers you made relevant to paying trades and vendors for work and materials at the Gaby project.

After speaking to numerous vendors it is obvious that you have not been paying invoices that you have been submitting disbursement requests for to Mr. Gaby. The funds have been sent reliably to you from Mr. Gaby through out the project and the cumulative figure does not coincide with the amounts you forwarded to vendors.

1. Scott please explain were the unaccounted for dollars went.
2. What dollar amount do you have on hand to pay these drastically late bills you have amassed?
3. In the event you do not have adequate funds at your disposal, how do you plan to become current with the many vendors who you are drastically delinquent with?

Please respond to the above questions no later than 5:00pm Thursday March 2, 2006

Defense Trial Exhibit 9

Reserve lot B29 and B30 Progress

Gaby
445 Old Homestead Trail
Duluth, GA 30097

C8

December 06, 2005

Budgeted area	Due
Kitchen and cabinetry	
To Paul Anderson Design, 864 335 9563 for total 50% deposit amount for all cabinetry. Total of 165,000 excluding freight and tax.	82,500 12/6/2005

Progress:
Cabinetry production begun. Mechanical rough-ins complete.

Due upon receipt and payable to:
Kunstwerke
2607 Woodruff Rd. Ste E #204
Simpsonville, SC 29681 **82,500**

Kunstwerke Corp.

GABY 00901

Defense Trial Exhibit 10

Richard Gaby/PeterIsland
12/06/2005 06:43 PM

To sally.forslund@53.com
cc studiokunstwerke@aol.com, paul@padesignltd.com
bcc
Subject wire transfer

Sally – Please transfer $82,500 from our personal checking account to the following account:

Regions Bank
Birmingham AL
Routing: 062005690
Acct#: 3858010773
Kunstwerke Corp

Thanks – Rick Gaby

PS. Cabinet Deposit

1/2 Deposit

Defense Trial Exhibit 11



<crystal@padesignltd.com>
02/13/2006 10:58 AM
Please respond to
<crystal@padesignltd.com>

To <dloree@jvae.com>
cc
bcc
Subject Gaby Residence

Dave,

Thanks for you prompt attention.

I was in need of $140,000 for cabinetry. To date we have received about $23,000. (had told you $43,000 on the phone earlier, but since then my wife investigated and found that the $20,000 check we picked up from them last week bounced.)

Thanks!

Paul Anderson

Paul Anderson Design, Ltd.

106 Brittle Creek Lane

Simpsonville, SC. 29680

Ph. 864.335.9563

Fax 864.335.9564

Defense Trial Exhibit 12



rgaby@peterisland.net
02/20/2006 06:09 PM

To StudioKunstwerke@aol.com
cc Dave.Loree@alticor.com
bcc
Subject Re: Reconciliation

I am not going to address this point by point, but you are absolutely incorrect in regards to cabinets. You requested 50% deposit in early December for $82,500 which I wired. You requested another installment in late Jan for ($57,500). I have copies of both. The amount I have paid for cabinets to date is $140K which Pauld Anderson says that he has only received $20K.

You first sentence if irrelevant because you admitted to Dave that report does not reflect what you have actually paid the vendors.

I have paid you what you negogiated for your services. If you wanted another arrangement, you should have discussed when we were considering who to hire. Actually, the contract says $85K which you increased without any discussion with me to $120K. Barb and I have held up our end of the relationship...try to answer questions/give direction quickly and pay on a timely basis. I am only asking you hold your end...provide design direction (we are very happy with the house) and construction management (here you are falling short). Many contractors are openly disappointed about the amount you are behind in payment to them. If you simply passed through the funds you received from me to what was listed on requests, you would not be in this situation. You were abviously "robbing Peter to pay Paul" or you would not be were you are now.

The amounts that have been communicated to Dave is not reflective of "the cost flow through at face". The amount owed Paul, landscaper, electrician ,etc is well over $200K....where did that go? You demonstrate that you are current with the funds that I have already forwarded to you and I will consider catching up with the last two progress billings otherwise the float from above more than covers it until we can get our arms around where we are at.

Dave returns from Colorado Wednesday. I have knee surgery on Wednesday and will be out of pocket for a while. I will have him be my "point man" to sort through all of this.

Rick

StudioKunstwerke@
aol.com

02/20/2006 04:26
PM

rgaby@peterisland.net

To
cc
Subject
Re: Reconciliation

Rick,

Regarding the reconciliation of what you've paid and what is supported. I can reformat to your spreadsheet suggestion. But more immediately, let me explain the reconciliation that comes with every budget update and how it flows from the progress billings. On Thursday, Dave and I compared your disbursement schedule with The "Reconciliation of billings to actual column in budget" which is the third page of the progress billing and it agreed within $2,000.

For every payment you have made, you have paid from a "Progress Billing." The front page shows a list of every invoiced item with an explanation and amount. You wired the total. The second page shows the accumulated costs by budget area - one column shows Projected and totals, the second column is "Actual Paid" and totals to what you have paid to date. As a cross-check, that total always equals the accumulated total on the third page called "reconciliation of billings to actual column in budget" which presents individually every progress billing/wire in order with a cumulative total. That cumulative total matches yours.

Attached to each progress billing is every invoice from the vendor describing the work performed. We went through your copies, that have been maintained here, and noted the check # paid for all items paid individually. We also printed the full volume of cancelled checks from my account except for a few pages Tracey could not down load - which we will still provide.

From the beginning I have tried to keep the cost of my involvement in the design and construction of the house as low as possible. I have relied solely on the $6,000 monthly fee for all design and general contracting. It now totals $119,000, less than 5% for everything. I did not request a typical 15% construction deposit and I do not function as a cost-plus builder with a typical 10% to 15% markup. The costs flow through at face.

In response to a few questions;

The amount paid toward the cabinets is $75,800. With a balance due of $64,200.

Something was brought up about the stone mason refusing to work for not being paid. Artisan stone works has never been the stone/stucco sub on site. They manufactured a few pieces for our masons and have been paid for this site. Dave called and confirmed during our meeting. I do have an issue with their performance at another site.

There is $10k in boulders that I paid related to the shore work that we have not billed that needs to go against the original shore deposit when resolved.

There are always numerous issues with different subs wherein I need to make certain something is performed or received before releasing funds.

Everyone who needs to be at the site is there. As the insulation continues, we have the drywall on standby as well as the multiple trim

crews.

As you requested I have worked through those invoices to send directly for payment. There won't be a risk of double payment because the cut off of things we have already paid for is the 2/20 progress billing. My challenge is this: The sheer volume of activity and payments made before billing you has resulted in two progress billings that I have not been reimbursed for. Everything on the 2/16 billing of $60,372 as well as a subsequent 2/20 billing of $27,066 we have paid out. I have roughly $90k paid out. Activity at the site spiked in Dec. and January and the progress billing payments fell one week behind during the same period. I know that I need to pay the cabinet balance immediately. It is just more difficult for me to pay the remaining when I don't know what becomes of the $90k outstanding that I have already paid out and have not been reimbursed.

I will continue to compile what you request. I will also FedEx the two above mentioned billings with support. Please call anytime to discuss anything else you need. I understand about the shutters. Dan Eshelman, who is making the screen doors, was willing to do a drawing of how they could function with the finished existing opening sizes.

Thanks
Scott

Defense Trial Exhibit 13

South Carolina Board of Accountancy

Koger Office Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4492
FAX: (803) 896-4554

August 30, 1999

04243
J SCOTT KURST CPA
308 HEMLOCK TRAIL
CLEVELAND SC 29635

NOTICE OF REVOCATION

This is to advise you that your certificate of registration as a Certified Public Accountant has been revoked by this Board after a proper hearing as provided in Section 40-2-280 of the South Carolina Accountancy Law. This revocation is based upon evidence of proper notification to you of your failure to pay your annual renewal fee and/or comply with continuing professional education requirements as provided by Sections 40-2-270 and 40-2-380.

You are hereby instructed to surrender your certificate as required by Regulation 1-14 by mailing it to the Secretary of the Board, in care of the Board Office, by October 1, 1999.

Sincerely,

Robert W. Wilkes, Jr., CPA
Administrator

RWW:mm

South Carolina Department of Labor, Licensing and Regulation

Jim Hodges
Governor

Rita M. McKinney
Director

J SCOTT KUNST
2607 WOODRUFF ROAD SUITE E #204
SIMPSONVILLE, SC 29681

License number: 4243
License type: CPA
Issued: 10/22/1993
Expiration: 06/30/1999
Status: Revoked
Firm: ROSENFELD-EINSTEIN & ASSOC

Disciplinary Status: REVOCATION

Defense Trial Exhibit 14

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
J. SCOTT KUNST,	)	C.A. NO: 2006-CP-23-7897
PLAINTIFF,	)	
VS.	)	**ORDER**
MIKE PARHAM AND JUDY PARHAM,	)	
DEFENDANTS.	)	

FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL B. WICKENSHAW

2008 JAN 15 P 3:59

ORIGINALLY THIS MATTER CAME TO BE HEARD BEFORE ME ON THE 19TH. DAY OF MARCH, 2007. THE PLAINTIFF APPEARED REPRESENTING HIMSELF, *PRO SE* THE DEFENDANTS APPEARED TOGETHER WITH THEIR ATTORNEYS, S. BLAKELY SMITH AND JAMIE R. DEMINT OF PARHAM SMITH & DODSON, LLC.

THE COMPLAINT IN THIS ACTION WAS FILED ON DECEMBER 8, 2006, WHEREIN THE PLAINTIFF, INDIVIDUALLY, SOUGHT TO RECOVER UPON SEVERAL CAUSES OF ACTION, INCLUDING: A) BREACH OF CONTRACT; B) UNJUST ENRICHMENT; C) TORTIOUS INTERFERENCE WITH CONTRACT; AND D) DEFAMATION. THE DEFENDANTS TIMELY ANSWERED AND SUBSEQUENTLY FILED A MOTION FOR SUMMARY JUDGMENT TOGETHER WITH A MEMORANDUM, EXHIBITS AND AFFIDAVITS, AS WELL AS INTERROGATORY RESPONSES AND ADMISSIONS IN SUPPORT OF THEIR MOTION PURSUANT TO THE REQUIREMENTS OF RULE 56, SCRCP. THE PLAINTIFF SUBMITTED AN AFFIDAVIT ON THE DATE OF THE HEARING IN OPPOSITION TO THE MOTION. ORAL ARGUMENT ON ALL CAUSES OF ACTION WAS PRESENTED BY BOTH PARTIES, HOWEVER, AT THE HEARING THE PLAINTIFF REQUESTED AND WAS GRANTED

AN ADDITIONAL PERIOD OF THIRTY (30) DAYS WITHIN WHICH TO FILE A MEMORANDUM IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT. THIS MEMORANDUM, TOGETHER WITH EXHIBITS, WAS FILED ON APRIL 18, 2007.

BY ORDER DATED JUNE 16, 2007, THE COURT GRANTED THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO ALL CAUSES OF ACTION WITH THE EXCEPTION OF DEFAMATION. THE COURT THEN GRANTED THE PLAINTIFF FORTY-FIVE (45) DAYS WITHIN WHICH HE COULD ASSEMBLE AND TAKE DISCOVERY DEPOSITIONS TO FURTHER HIS OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT ON THE DEFAMATION CLAIM. BY CONSENT, THE PARTIES AGREED TO EXTEND THE TIME FOR DEPOSITIONS UP TO AND UNTIL SEPTEMBER 30, 2007.

DURING THIS PERIOD FROM JUNE 16, 2007 UNTIL SEPTEMBER 30, 2007, THE PLAINTIFF NOTICED AND DEPOSED EIGHT (8) PERSONS, INCLUDING THE DEFENDANTS, A PAINTING CONTRACTOR, A GRADING CONTRACTOR, TWO (2) INTERIOR DECORATORS, THE PROJECT SUPERINTENDENT, AND DAVID LOREE, WHO IS A PROPERTY MANAGER FOR THE GABY FAMILY WHO ARE NAMED AS DEFENDANTS IN ANOTHER *PRO SE* ACTION BROUGHT BY THE PLAINTIFF. THESE DEPOSITIONS HAVE BEEN SUBMITTED TO THE COURT FOR REVIEW. FURTHERMORE, PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE DEFAMATION CAUSE OF ACTION WAS SUBMITTED TO THE COURT IN OCTOBER 2007. FINALLY, DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT ON THE DEFAMATION CAUSE WAS SUBMITTED TO THE COURT ON OR ABOUT OCTOBER 30, 2007. ADDITIONAL ORAL ARGUMENT WAS NOT DEEMED NECESSARY BY THE COURT UPON

THE DEFAMATION CAUSE [1]

DISCUSSION

RULE 56, SCRCP, PROVIDES A DEFENDING PARTY THE OPPORTUNITY TO MOVE FOR A SUMMARY JUDGMENT AS TO ALL OR ANY PART OF THE CLAIM AGAINST THEM. JUDGMENT SOUGHT SHALL BE RENDERED IF THE PLEADINGS, DEPOSITIONS, ANSWERS TO INTERROGATORIES AND ADMISSIONS ON FILE, TOGETHER WITH SUPPORTING AFFIDAVITS, IF SUBMITTED, SHOW THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT THE MOVING PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. RULE 56, SCRCP (B)(C).

IN DECIDING A MOTION FOR SUMMARY JUDGMENT UNDER RULE 56, THIS COURT MUST VIEW THE EVIDENCE AND ALL REASONABLE INFERENCES TO BE DERIVED THEREFROM IN THE LIGHT MOST FAVORABLE TO THE OPPOSING PARTY. SIDES V. GREENVILLE HOSP. SYSTEM, 362 S.C. 250, 607 S.E.2D 362 (CT. APP. 2005).

A PLAINTIFF MAY RECOVER FOR INJURY TO HIS REPUTATION AS A RESULT OF A FALSE COMMUNICATION TO OTHERS ABOUT HIM MADE BY THE DEFENDANTS. IN ORDER TO PROVE DEFAMATION, THE PLAINTIFF MUST SHOW THAT A FALSE AND DEFAMATORY STATEMENT WAS MADE, THE UNPRIVILEGED PUBLICATION OF THIS STATEMENT TO A THIRD-PARTY, THAT THE PUBLISHER WAS AT FAULT, AND EITHER

[1] THE DEFENDANTS, AS THE MOVING PARTIES, ADVISED THE COURT THEY HAD NO OBJECTION TO A FINAL RULING ON THEIR MOTION WITH OR WITHOUT ADDITIONAL ORAL ARGUMENT. THE COURT NOTES THAT THE PLAINTIFF REQUESTED ADDITIONAL ORAL ARGUMENT, HOWEVER, THE PLAINTIFF WAS ALLOWED ORAL ARGUMENT UPON THE DEFAMATION CLAIM AT THE INITIAL HEARING ON DEFENDANTS' MOTION. SINCE THE COURT'S ONLY REMAINING FUNCTION WAS TO REVIEW THE TWO (2) MEMORANDA SUBSEQUENTLY SUBMITTED BY THE PLAINTIFF AND THE DEPOSITIONS WHICH HE TOOK TO SUPPORT HIS OPPOSITION TO THE MOTION, THE COURT FEELS NO ADDITIONAL ORAL ARGUMENT IS NECESSARY.

THE STATEMENT WAS ACTIONABLE, IRRESPECTIVE OF HARM, OR THE PUBLICATION OF THE STATEMENT CAUSED SPECIAL HARM. FLEMING V. ROSE 350 S.C. 488, 494, 567 S.E.2D 857, 860 (2002). TRUTH MAY BE ASSERTED AS A DEFENSE TO A CLAIM OF DEFAMATION AND IF THE DEFENDANTS PROVE THAT AN OTHERWISE DEFAMATORY STATEMENT IS SUBSTANTIALLY TRUE, IT IS NOT ACTIONABLE AS DEFAMATION.

HAVING REVIEWED THE PLEADINGS, DEPOSITIONS, ANSWERS TO INTERROGATORIES, ADMISSIONS ON FILE, AND AFFIDAVITS[2], THE COURT CONCLUDES THAT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE REMAINING CLAIM OF DEFAMATION SHOULD, AND THE SAME IS HEREBY GRANTED.

THE PLAINTIFF IS THE OWNER AND SOLE SHAREHOLDER OF KUNSTWERKE CORPORATION, NOW DISSOLVED, WHICH WAS LICENSED BY THE STATE OF SOUTH CAROLINA AS A RESIDENTIAL HOME BUILDER. THE DEFENDANTS ADMITTEDLY ENTERED INTO A VERBAL CONTRACT WITH KUNSTWERKE CORPORATION SUCH THAT KUNSTWERKE CORPORATION WOULD PROVIDE DESIGN AND OVERSIGHT SERVICES FOR CONSTRUCTION OF THEIR HOME IN SIX MILE, SOUTH CAROLINA. THE CONTRACT WAS APPARENTLY ON A COST PLUS FLAT FEE BASIS. THE PLAINTIFF WOULD PREPARE A PROGRESS BILLING, USUALLY WEEKLY, IN WHICH HE SOUGHT PAYMENT FROM THE DEFENDANTS FOR VARIOUS INVOICES SUBMITTED BY SUBCONTRACTORS AND MATERIAL MEN. UNFORTUNATELY, THE DEPOSITIONS SUBMITTED CLEARLY INDICATE THAT BY LATE 2005 AND EARLY 2006, THE FINANCES

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[2]NEITHER OF THE TWO (2) AFFIDAVITS SUBMITTED BY THE PLAINTIFF WERE TIMELY. THE FIRST WAS SUBMITTED ON THE DATE OF THE HEARING ON THE MOTION FOR SUMMARY JUDGMENT. THE SECOND WAS AN AFFIDAVIT PREPARED BY THE PLAINTIFFS FATHER WHICH WAS SUBMITTED IN APRIL 2007. NEVERTHELESS, THE COURT HAS CONSIDERED BOTH AFFIDAVITS AS HAVING BEEN TIMELY FILED FOR THE PURPOSES OF THIS ORDER.

AT KUNSTWERKE CORPORATION WERE IN DISARRAY. FOR INSTANCE, THE DEPOSITION OF THE PAINTING CONTRACTOR, CONRAD OWEN, CLEARLY INDICATES THAT CHECKS ISSUED BY KUNSTWERKE CORPORATION FOR PAYMENT TO HIM FOR WORK PERFORMED ON THE DEFENDANTS' PROJECT BOUNCED. THEREAFTER, NUMEROUS CHECKS ISSUED BY MR. OWEN TO HIS EMPLOYEES WOULD BOUNCE. HOWEVER, HE RECALLED NO COMMUNICATIONS PUBLISHED BY EITHER MR. PARHAM OR HIS WIFE WHICH COULD BE CONSTRUED AS DEFAMATORY TOWARDS THE PLAINTIFF.

THE FINANCIAL DIFFICULTIES OF KUNSTWERKE CORPORATION WERE CONFIRMED AGAIN BY SHANON GRAVLEY, A GRADING CONTRACTOR. MR. GRAVLEY WAS GETTING PAID LATER AND LATER ON BILLS AND HIS COMPANY WAS HAVING A HARD TIME KEEPING CONTACT WITH KUNSTWERKE CORPORATION TO COLLECT ITS MONEY. RUMORS OF FINANCIAL PROBLEMS EXPERIENCED BY PLAINTIFF'S CORPORATION WERE NOTED TO BE RAMPANT AT A PROJECT CALLED THE RESERVE, IN PICKENS COUNTY, WHICH IS A RESORT COMMUNITY NOT ASSOCIATED WITH THE PARHAM PROJECT. AGAIN, MR. GRAVLEY COULD NOT RECALL ANY STATEMENT MADE BY THE PARHAMS CONCERNING THE FINANCIAL DIFFICULTIES OF EITHER KUNSTWERKE CORPORATION OR THE PLAINTIFF.

THE PLAINTIFF NOTICED THE DEPOSITIONS OF TRACY AND NATHAN FOWLER, TWO (2) INTERIOR DECORATORS WHO TOO WORKED ON THE PARHAM PROJECT. NEITHER RECALLED ANY STATEMENT MADE BY THE PARHAMS OF A DEFAMATORY NATURE. THE PROJECT MANAG BRONSON SHEPHERD, INDICATED THAT WHILE HE WORKED AS AN INDEPENDENT CONTRACTOR FOR KUNSTWERKE CORPORATION ON

THE PARHAM PROJECT, THERE WERE A LOT OF BOUNCED CHECKS. HE ALSO RECALLED THAT KUNSTWERKE CORPORATION WAS REMOVED FROM THE PARHAM PROJECT FOR NOT PAYING SUBCONTRACTORS. FURTHERMORE, SHIPMENTS OF MATERIALS TO THE PARHAM PROJECT WERE HALTED BECAUSE OF THE FINANCIAL INABILITY OF KUNSTWERKE CORPORATION TO PAY MATERIAL MEN, EVEN WHEN THE FUNDS FOR THE GOODS HAD ALREADY BEEN PAID TO KUNSTWERKE CORPORATION BY THE DEFENDANTS.

FINALLY, NEITHER THE DEPOSITION OF DAVID LOREE, WHO PROVIDES PROPERTY MANAGEMENT AND EXECUTIVE PROTECTION SERVICES TO THE GABY FAMILY NOR THE DEPOSITIONS OF MR. AND MRS. PARHAM LEND ANY SUPPORT TO THE PLAINTIFFS CLAIM.

THERE IS ABSOLUTELY NO EVIDENCE TO SUPPORT THE PROPOSITION THAT MRS. PARHAM MADE ANY DEFAMATORY STATEMENT AS TO THE PLAINTIFF. MOST OF THE TESTIMONY GATHERED BY PLAINTIFF PURPORTEDLY SUPPORTING HIS POSITION WAS AN ATTEMPT BY THE PLAINTIFF TO ELICIT INFORMATION CONCERNING MR. PARHAM WHO MANAGED THE FINANCIAL AFFAIRS WITH KUNSTWERKE CORPORATION. WHILE THE PLAINTIFF SEEKS TO AVOID SUMMARY JUDGMENT BY SUBMITTING AN AFFIDAVIT THAT HE (THE PLAINTIFF) HEARD MR. PARHAM SHOUTING TO A PAINTER THAT MR. KUNST WAS "GUILTY OF BREACH OF TRUST", THAT SAME PAINTER, CONRAD OWEN, WAS ONE OF THE DEPONENTS. HE DOES NOT RECALL SUCH A STATEMENT BEING MADE BY MR. PARHAM AND, IN FACT, TESTIFIED THE PLAINTIFF WAS NOT ON THE JOB SITE ON THE DATE IN QUESTION. THE PUBLICATION OF A STATEMENT WHICH MIGHT OTHERWISE BE DEFAMATORY AS TO

THE PLAINTIFF, IS NOT ACTIONABLE IF PUBLISHED ONLY BY THE DEFENDANT TO THE PLAINTIFF. THERE MUST BE PUBLICATION TO A THIRD-PARTY, SOMEONE OTHER THAN THE PERSON DEFAMED. HOLTZSCHEITER V. THOMSON NEWSPAPERS, INC., 332 S.C. 502, 508, 506 S.E.2D 501 (1998). THE DEPOSITION OF THE THIRD-PARTY INDICATES THE PUBLICATION OF A DEFAMATORY STATEMENT DID NOT TAKE PLACE.

THE ONLY OTHER AFFIDAVIT SUBMITTED BY THE PLAINTIFF WAS AN AFFIDAVIT OF HIS FATHER SUBMITTED WITH HIS INITIAL MEMORANDUM IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT. WHILE THE AFFIDAVIT WAS TARDY, SHOULD THIS COURT CONSIDER THE SUBSTANCE OF THIS AFFIDAVIT, IT TOO FAILS TO SUPPORT A CLAIM FOR DEFAMATION. THE PLAINTIFF'S FATHER SIMPLY CITES ONE PHONE CONVERSATION HE CLAIMS TO HAVE HAD WITH THE DEFENDANT MIKE PARHAM AND THAT MR. PARHAM, RATHER RUDELY, HUNG UP ON HIM. THIS IS NOT EVIDENCE OF DEFAMATION.

OF COURSE, TRUTH IS ALWAYS A DEFENSE TO DEFAMATION. ERICKSON V. JONES STREET PUBLISHERS, L.L.C., 368 S.C. 444, 459, 629 S.E.2D 653, 661 (2006). SHOULD THE COURT CONCLUDE THAT ANY STATEMENT MADE BY THE DEFENDANT MIKE PARHAM COULD BE CONSIDERED DEFAMATORY, ALL OF THE STATEMENTS THAT PLAINTIFF HAS CITED IN HIS MEMORANDA, IN DEPOSITIONS OR AFFIDAVITS AS BEING EVIDENCE OF DEFAMATION, ARE TRUE. THE EXHIBITS SUBMITTED TO THE COURT IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, TOGETHER WITH AFFIDAVITS AND DISCOVERY RESPONSES, CLEARLY INDICATE THAT THE PARHAMS PAID EACH INVOICE SUBMITTED BY KUNSTWERKE CORPORATION IN A VERY TIMELY MANNER. AFTER PAYMENT, KUNSTWERKE CORPORATION WOULD ISSUE CHECKS TO

SUBCONTRACTORS AND MATERIAL MEN, MANY OF WHICH WERE RETURNED FOR INSUFFICIENT FUNDS. OTHERS HAVE NOT BEEN PAID, EVEN TODAY. KUNSTWERKE CORPORATION'S FAILURE TO PAY FUNDS TO SUBCONTRACTORS AND MATERIAL MEN IS THE REASON THE PLAINTIFF HAS FOUND HIMSELF IN HIS PRESENT FINANCIAL CONDITION.

VIEWING ALL OF THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, THERE IS SIMPLY NO EVIDENCE TO SUPPORT THE INITIAL PROPOSITION THAT A DEFAMATORY STATEMENT WAS PUBLISHED BY THE DEFENDANTS TO A THIRD-PARTY WHICH CAUSED DAMAGE TO THIS PLAINTIFF. AS IMPORTANTLY, IF ANY STATEMENT COULD BE CONSTRUED TO BE DEFAMATORY, IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, THOSE STATEMENTS WERE TRUE AND TRUTH IS AN ABSOLUTE DEFENSE.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE DEFAMATION CLAIM OF THE PLAINTIFF BE, AND THE SAME IS HEREBY GRANTED.

DOYET A. EARLY, III
CIRCUIT COURT JUDGE

DATED: January 10, 2008
BAMBERG, SOUTH CAROLINA

JOYCE\KUNST\ORDER #3788

Defense Trial Exhibit 19

DEFENDANT'S EXHIBIT 39

Form **1040** Department of the Treasury — Internal Revenue Service **U.S. Individual Income Tax Return 2004** (99) IRS Use Only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2004, or other tax year beginning , 2004, ending , 20 — OMB No. 1545-0074

Label (See instructions.)
Use the IRS label. Otherwise, please print or type.

Your first name	MI	Last name	Your social security number
James	S	Kunst	183-64-8154
If a joint return, spouse's first name	MI	Last name	Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. — Apartment no.
308 Hemlock Trail

City, town or post office. If you have a foreign address, see instructions. — State — ZIP code
Cleveland SC 29635

▲ **Important!** ▲ You must enter your social security number(s) above.

Presidential Election Campaign (See instructions.)
▶ Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want $3 to go to this fund? ▶ You: ☐ Yes ☒ No Spouse: ☐ Yes ☐ No

Filing Status Check only one box.
1 ☒ Single
2 ☐ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above & full name here ▶
4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ▶
5 ☐ Qualifying widow(er) with dependent child (see instructions)

Exemptions
6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a — Boxes checked on 6a and 6b: 1
b ☐ Spouse
c Dependents:

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see instrs)
			☐
			☐
			☐
			☐

If more than four dependents, see instructions.

No. of children on 6c who: • lived with you • did not live with you due to divorce or separation (see instrs) — Dependents on 6c not entered above — Add numbers on lines above ▶ 1

d Total number of exemptions claimed 1

Income Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld. If you did not get a W-2, see instructions. Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7	Wages, salaries, tips, etc. Attach Form(s) W-2		7	
8a	Taxable interest. Attach Schedule B if required		8a	
b	Tax-exempt interest. Do not include on line 8a	8b		
9a	Ordinary dividends. Attach Schedule B if required		9a	
b	Qualified dividends (see instrs)	9b		
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)		10	
11	Alimony received		11	
12	Business income or (loss). Attach Schedule C or C-EZ		12	
13	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here ▶ ☐		13	
14	Other gains or (losses). Attach Form 4797		14	
15a	IRA distributions 15a	b Taxable amount (see instrs)	15b	
16a	Pensions and annuities 16a	b Taxable amount (see instrs)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17	67,208.
18	Farm income or (loss). Attach Schedule F		18	
19	Unemployment compensation		19	
20a	Social security benefits 20a	b Taxable amount (see instrs)	20b	
21	Other income		21	
22	Add the amounts in the far right column for lines 7 through 21. This is your total income ▶		22	67,208.

Adjusted Gross Income

23	Educator expenses (see instructions)	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	IRA deduction (see instructions)	25	
26	Student loan interest deduction (see instructions)	26	
27	Tuition and fees deduction (see instructions)	27	
28	Health savings account deduction. Attach Form 8889	28	
29	Moving expenses. Attach Form 3903	29	
30	One-half of self-employment tax. Attach Schedule SE	30	
31	Self-employed health insurance deduction (see instrs)	31	
32	Self-employed SEP, SIMPLE, and qualified plans	32	
33	Penalty on early withdrawal of savings	33	
34a	Alimony paid b Recipient's SSN ▶	34a	
35	Add lines 23 through 34a	35	
36	Subtract line 35 from line 22. This is your adjusted gross income ▶	36	67,208.

JSK 000001

Tax and Credits	37	Amount from line 36 (adjusted gross income)		37	67,208.
	38a	Check if: ☐ You were born before January 2, 1940, ☐ Blind. ☐ Spouse was born before January 2, 1940, ☐ Blind. Total boxes checked ► 38a			
		b If your spouse itemizes on a separate return, or you were a dual-status alien, see instructions and check here ► 38b ☐			
Standard Deduction for — • People who checked any box on line 38a or 38b or who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, $4,850 Married filing jointly or Qualifying widow(er), $9,700 Head of household, $7,150	39	Itemized deductions (from Schedule A) or your standard deduction (see left margin)		39	25,647.
	40	Subtract line 39 from line 37		40	41,561.
	41	If line 37 is $107,025 or less, multiply $3,100 by the total number of exemptions claimed on line 6d. If line 37 is over $107,025, see the worksheet in the instructions		41	3,100.
	42	Taxable income. Subtract line 41 from line 40. If line 41 is more than line 40, enter -0-		42	38,461.
	43	Tax (see instrs). Check if any tax is from: a ☐ Form(s) 8814 b ☐ Form 4972		43	6,356.
	44	Alternative minimum tax (see instructions). Attach Form 6251		44	
	45	Add lines 43 and 44		45	6,356.
	46	Foreign tax credit. Attach Form 1116 if required	46		
	47	Credit for child and dependent care expenses. Attach Form 2441	47		
	48	Credit for the elderly or the disabled. Attach Schedule R	48		
	49	Education credits. Attach Form 8863	49		
	50	Retirement savings contributions credit. Attach Form 8880	50		
	51	Child tax credit (see instructions)	51		
	52	Adoption credit. Attach Form 8839	52		
	53	Credits from: a ☐ Form 8396 b ☐ Form 8859	53		
	54	Other credits. Check applicable box(es): a ☐ Form 3800 b ☐ Form 8801 c ☐ Specify	54		
	55	Add lines 46 through 54. These are your total credits		55	
	56	Subtract line 55 from line 45. If line 55 is more than line 45, enter -0-		56	6,356.
Other Taxes	57	Self-employment tax. Attach Schedule SE		57	
	58	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137		58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		59	
	60	Advance earned income credit payments from Form(s) W-2		60	
	61	Household employment taxes. Attach Schedule H		61	
	62	Add lines 56-61. This is your total tax		62	6,356.
Payments If you have a qualifying child, attach Schedule EIC.	63	Federal income tax withheld from Forms W-2 and 1099	63		
	64	2004 estimated tax payments and amount applied from 2003 return	64		
	65a	Earned income credit (EIC)	65a		
		b Nontaxable combat pay election ► 65b			
	66	Excess social security and tier 1 RRTA tax withheld (see instructions)	66		
	67	Additional child tax credit. Attach Form 8812	67		
	68	Amount paid with request for extension to file (see instructions)	68		
	69	Other pmts from: a ☐ Form 2439 b ☐ Form 4136 c ☐ Form 8885	69		
	70	Add lines 63, 64, 65a, and 66 through 69. These are your total payments		70	
Refund Direct deposit? See instructions and fill in 72b, 72c, and 72d.	71	If line 70 is more than line 62, subtract line 62 from line 70. This is the amount you overpaid		71	
	72a	Amount of line 71 you want refunded to you		72a	
		► b Routing number ► c Type: ☐ Checking ☐ Savings			
		► d Account number			
	73	Amount of line 71 you want applied to your 2005 estimated tax ► 73			
Amount You Owe	74	Amount you owe. Subtract line 70 from line 62. For details on how to pay, see instructions		74	6,356.
	75	Estimated tax penalty (see instructions) 75			

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? ☐ Yes. Complete the following. ☒ No

Designee's name ► Phone no. ► Personal identification number (PIN) ►

Sign Here Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
	4/14/05	developer	864 979 7961
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature ►	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ► Self-Prepared		EIN	
		Phone no.	

Name(s) shown on return. Do not enter name and social security number if shown on Page 1. | Your social security number

James S Kunst | 183-64-8154

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ..... ☐ Yes ☒ No

If you answered 'Yes,' see instructions before completing this section.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	Kunstwerke Corp.	S		05-0526213	
B					
C					
D					

	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					67,208.
B					
C					
D					
29a Totals					67,208.
b Totals					

30	Add columns (g) and (j) of line 29a	30	67,208.
31	Add columns (f), (h), and (i) of line 29b	31	
32	**Total partnership and S corporation income or (loss).** Combine lines 30 and 31. Enter the result here and include in the total on line 41 below	32	67,208.

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
34a Totals				
b Totals				

35	Add columns (d) and (f) of line 34a	35	
36	Add columns (c) and (e) of line 34b	36	
37	**Total estate and trust income or (loss).** Combine lines 35 and 36. Enter the result here and include in the total on line 41 below	37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) – Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below	39	

Part V Summary

40	Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
41	**Total income or (loss).** Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17 ►	41	67,208.
42	**Reconciliation of farming and fishing income.** Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code N; and Schedule K-1 (Form 1041), line 14 (see instructions)	42	
43	**Reconciliation for real estate professionals.** If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

SCHEDULE A (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Itemized Deductions

► Attach to Form 1040.
► See instructions for Schedule A (Form 1040).

OMB No. 1545-0074

2004
07

Name(s) shown on Form 1040: James S Kunst

Your social security number: 183-64-8154

Medical and Dental Expenses		**Caution.** Do not include expenses reimbursed or paid by others.			
	1	Medical and dental expenses (see instructions)	1		
	2	Enter amount from Form 1040, line 37 2			
	3	Multiply line 2 by 7.5% (.075)	3		
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-		4	
Taxes You Paid (See instructions.)	5	State and local (check only one box): a [X] Income taxes, or b [ ] General sales taxes (see instructions)	5	1,957.	
	6	Real estate taxes (see instructions)	6	3,958.	
	7	Personal property taxes	7	1,159.	
	8	Other taxes. List type and amount ►	8		
	9	Add lines 5 through 8		9	7,074.
Interest You Paid (See instructions.)	10	Home mtg interest and points reported to you on Form 1098	10	18,573.	
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ►	11		
Note. Personal interest is not deductible.	12	Points not reported to you on Form 1098. See instrs for spcl rules	12		
	13	Investment interest. Attach Form 4952 if required. (See instrs.)	13		
	14	Add lines 10 through 13		14	18,573.
Gifts to Charity If you made a gift and got a benefit for it, see instructions.	15	Gifts by cash or check. If you made any gift of $250 or more, see instructions	15		
	16	Other than by cash or check. If any gift of $250 or more, see instructions. You must attach Form 8283 if over $500	16		
	17	Carryover from prior year	17		
	18	Add lines 15 through 17		18	
Casualty and Theft Losses	19	Casualty or theft loss(es). Attach Form 4684. (See instructions.)		19	
Job Expenses and Most Other Miscellaneous Deductions (See instructions.)	20	Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ►	20		
	21	Tax preparation fees	21		
	22	Other expenses — investment, safe deposit box, etc. List type and amount ►	22		
	23	Add lines 20 through 22	23		
	24	Enter amount from Form 1040, line 37 24			
	25	Multiply line 24 by 2% (.02)	25		
	26	Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-		26	
Other Miscellaneous Deductions	27	Other — from list in the instructions. List type and amount ►		27	
Total Itemized Deductions	28	Is Form 1040, line 37, over $142,700 (over $71,350 if MFS)?			JSK 000004
		[X] No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 39.		28	25,647.
		[ ] Yes. Your deduction may be limited. See instructions for the amount to enter.			

DEFENDANT'S EXHIBIT 38

Form **1120S** — Department of the Treasury, Internal Revenue Service

U.S. Income Tax Return for an S Corporation

► Do not file this form unless the corporation has filed Form 2553 to elect to be an S corporation.
► See separate instructions.

2004

For the year Jan 1 - Dec 31, 2004, or other tax year beginning , 2004, ending , 20

A Effective date of S election: 01/01/03	Use the IRS label. Otherwise, print or type.	Name: Kunstwerke Corp.	C Employer identification number: 05-0526213
B Business code number (see instructions): 236110		Number, street, and room or suite no. (If a P.O. box, see instructions.): 2607 Woodruff Road Suite E #204	D Date incorporated: 01/01/03
		City or town, state, and ZIP code: Simpsonville SC 29681	E Total assets (see instructions): $ 25,169.

F Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return

G Enter number of shareholders in the corporation at end of the tax year ► 1

Caution: *Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1a	Gross receipts or sales: 4,081,592.	b Less returns and allowances:	c Bal ► 1c	4,081,592.
	2	Cost of goods sold (Schedule A, line 8)		2	
	3	Gross profit. Subtract line 2 from line 1c		3	4,081,592.
	4	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*		4	
	5	Other income (loss) *(attach statement)*		5	
	6	**Total income (loss).** Add lines 3 through 5		► 6	4,081,592.
Deductions	7	Compensation of officers		7	
	8	Salaries and wages (less employment credits)		8	175,047.
	9	Repairs and maintenance		9	
	10	Bad debts		10	
	11	Rents		11	
	12	Taxes and licenses		12	11,407.
	13	Interest		13	34,928.
	14a	Depreciation *(attach Form 4562)*	14a		
	b	Depreciation claimed on Schedule A and elsewhere on return	14b		
	c	Subtract line 14b from line 14a		14c	
	15	Depletion **(Do not deduct oil and gas depletion.)**		15	
	16	Advertising		16	
	17	Pension, profit-sharing, etc, plans		17	
	18	Employee benefit programs		18	
	19	Other deductions *(attach statement)* *. STMT		19	3,793,002.
	20	**Total deductions.** Add the amounts shown in the far right column for lines 7 through 19		► 20	4,014,384.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6		21	67,208.
Tax and Payments	22	Tax: a Excess net passive income tax *(attach statement)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b (see the instructions for additional taxes)		22c	
	23	Payments: a 2005 estimated tax payments and amount applied from 2004 return	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for Federal tax paid on fuels *(attach Form 4136)*	23c		
	d	Add lines 23a through 23c		23d	
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐		24	
	25	**Tax due.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed		25	
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid		26	
	27	Enter amount of line 26 you want: **Credited to 2006 estimated tax** ► **Refunded** ►		27	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ► [signature] Date ► 6/4/05 Title ► President

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Preparer's signature ►		Date	Check if self-employed ☐	Preparer's SSN or PTIN
Preparer's Use Only — Firm's name (or yours if self-employed), address, and ZIP code ►	Self-Prepared			EIN
				Phone no.

BAA For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. SPSA0112 12/08/05 Form 1120S (2004)

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs *(attach statement)*	4	
5	Other costs *(attach statement)*	5	
6	**Total.** Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	

9a Check all methods used for valuing closing inventory:

(i) ☐ Cost as described in Regulations section 1.471-3

(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4

(iii) ☐ Other (specify method used and attach explanation) ►

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ► ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ► ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation? ☐ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If 'Yes,' attach explanation ☐ Yes ☐ No

Schedule B Other Information (see instructions)

		Yes	No
1	Check method of accounting: (a) ☒ Cash (b) ☐ Accrual (c) ☐ Other (specify) ►		
2	See the instructions and enter the: (a) Business activity ► Service (b) Product or service ► design/build		
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If 'Yes,' attach a statement showing: (a) name, address, and employer identification number and (b) percentage owned		X
4	Was the corporation a member of a controlled group subject to the provisions of section 1561?		X
	Has this corporation filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
6	Check this box if the corporation issued publicly offered debt instruments with original issue discount ► ☐ If checked, the corporation may have to file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments.		
7	If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation **and** (b) has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ► $		
8	Check this box if the corporation had accumulated earnings and profits at the close of the tax year ► ☐		
9	Are the corporation's total receipts (see instructions) for the tax year **and** its total assets at the end of the tax year less than $250,000? If 'Yes,' the corporation is not required to complete Schedules L and M-1	X	

Note: *If the corporation had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.*

Schedule K Shareholders' Shares of Income, Deductions, Credits, etc

	Shareholders' Pro Rata Share Items		Total amount
INCOME (LOSS)	1 Ordinary business income (loss) (page 1, line 21)	1	67,208.
	2 Net rental real estate income (loss) *(attach Form 8825)*	2	
	3a Other gross rental income (loss) 3a		
	b Expenses from other rental activities *(attach statement)* 3b		
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4 Interest income	4	
	5 Dividends: a Ordinary dividends	5a	
	b Qualified dividends 5b		
	6 Royalties	6	
	7 Net short-term capital gain (loss) *(attach Schedule D (Form 1120S))*	7	
	8a Net long-term capital gain (loss) *(attach Schedule D (Form 1120S))*	8a	
	b Collectibles (28%) gain (loss) 8b		
	c Unrecaptured section 1250 gain *(attach statement)* 8c		
	9 Net section 1231 gain (loss) (attach Form 4797)	9	
	10 Other income (loss) *(see instructions)*	10	

	Shareholders' Pro Rata Share Items (continued)		Total amount
Deductions	11 Section 179 deduction *(attach Form 4562)*	11	
	12a Contributions	12a	
	b Investment interest expense	12b	
	c Section 59(e)(2) expenditures (1) Type ► (2) Amount ►	12c (2)	
	d Other deductions *(see instructions)* ... Type ►	12d	
Credits and Credit Recapture	13a Low-income housing credit (section 42(j)(5))	13a	
	b Low-income housing credit (other)	13b	
	c Qualified rehabilitation expenditures (rental real estate) *(attach Form 3468)*	13c	
	d Other rental real estate credits (see instrs) Type ►	13d	
	e Other rental credits (see instrs) Type ►	13e	
	f Credit for alcohol used as fuel *(attach Form 6478)*	13f	
	g Other credits and credit recapture *(see instrs)* Type ►	13g	
Foreign Transactions	14a Name of country or U.S. possession ►		
	b Gross income from all sources	14b	
	c Gross income sourced at shareholder level	14c	
	Foreign gross income sourced at corporate level:		
	d Passive	14d	
	e Listed categories *(attach statement)*	14e	
	f General limitation	14f	
	Deductions allocated and apportioned at shareholder level:		
	g Interest expense	14g	
	h Other	14h	
	Deductions allocated and apportioned at corporate level to foreign source income:		
	i Passive	14i	
	j Listed categories *(attach statement)*	14j	
	k General limitation	14k	
	Other information:		
	l Total foreign taxes (check one): ► ☐ Paid ☐ Accrued	14l	
	m Reduction in taxes available for credit *(attach statement)*	14m	
	n Other foreign tax information *(attach statement)*		
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a	
	b Adjusted gain or loss	15b	
	c Depletion (other than oil and gas)	15c	
	d Oil, gas, and geothermal properties – gross income	15d	
	e Oil, gas, and geothermal properties – deductions	15e	
	f Other AMT items *(attach statement)*	15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a	
	b Other tax-exempt income	16b	
	c Nondeductible expenses	16c	
	d Property distributions	16d	67,208.
	e Repayment of loans from shareholders	16e	
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	0.
	d Other items and amounts *(attach statement)*		
	e **Income/loss reconciliation.** (Required only if Schedule M-1 must be completed.) Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and lines 14l	17e	67,208.

Note: The corporation is not required to complete Schedules L and M-1 if question 9 of Schedule B is answered 'Yes'.

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash		520.		25,169.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach stmt)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach stmt)				
15 Total assets		520.		25,169.
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt)				
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
Other liabilities (attach statement)				
22 Capital stock		100.		100.
23 Additional paid-in capital		420.		25,069.
24 Retained earnings		0.		0.
25 Adjustments to shareholders' equity (att stmt)				
26 Less cost of treasury stock				
27 Total liabilities and shareholders' equity		520.		25,169.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

1 Net income (loss) per books	67,208.	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest . $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):		6 Deductions included on Schedule K, lines 1 through 12, and 14l, not charged against book income this year (itemize): a Depreciation .... $	
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12, and 14l (itemize): a Depreciation ..... $ b Travel and entertainment . $		7 Add lines 5 and 6	
4 Add lines 1 through 3	67,208.	8 Income (loss) (Schedule K, line 17e). Ln 4 less ln 7	67,208.

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year			
2 Ordinary income from page 1, line 21	67,208.		
3 Other additions			
4 Loss from page 1, line 21			
5 Other reductions			
6 Combine lines 1 through 5	67,208.		
7 Distributions other than dividend distributions	67,208.	0.	0.
8 Balance at end of tax year. Subtract line 7 from line 6	0.	0.	0.

Form **4562**
(Rev January 2006)
Department of the Treasury
Internal Revenue Service

Depreciation and Amortization
(Including Information on Listed Property)

► See separate instructions. ► Attach to your tax return.

OMB No. 1545-0172

2004

Attachment Sequence No. 67

Name(s) shown on return

Kunstwerke Corp.

Identifying number

05-0526213

Business or activity to which this form relates

Form 1120S Line 21

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	$105,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	$420,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2004 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2006. Add lines 9 and 10, less line 12 ►	13	

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special allowance for certain aircraft, certain property with a long production period, and qualified New York Liberty or GO Zone property (other than listed property) placed in service during the tax year (see instrs)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2005	17	
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ► ☐		

Section B — Assets Placed in Service During 2005 Tax Year Using the General Depreciation System

	(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property						
b	5-year property						
c	7-year property						
d	10-year property						
e	15-year property						
f	20-year property						
g	25-year property			25 yrs		S/L	
h	Residential rental property			27.5 yrs	MM	S/L	
				27.5 yrs	MM	S/L	
i	Nonresidential real property			39 yrs	MM	S/L	
					MM	S/L	

Section C — Assets Placed in Service During 2005 Tax Year Using the Alternative Depreciation System

20a	Class life					S/L	
b	12-year			12 yrs		S/L	
c	40-year			40 yrs	MM	S/L	

Part IV Summary (see instructions)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Part V Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: *For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.*

Section A — Depreciation and Other Information (Caution: *See the instructions for limits for passenger automobiles.*)

24a Do you have evidence to support the business/investment use claimed? ..... Yes No 24b If 'Yes,' is the evidence written? ..... Yes No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special allowance for certain aircraft, certain property with a long production period, and qualified New York Liberty or GO Zone property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)						25		
26 Property used more than 50% in a qualified business use:								
27 Property used 50% or less in a qualified business use:								
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28		
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29	

Section B — Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other 'more than 5% owner,' or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
30 Total business/investment miles driven during the year (do not include commuting miles)	36,800											
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32	36,800											
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34 Was the vehicle available for personal use during off-duty hours?		X										
35 Was the vehicle used primarily by a more than 5% owner or related person?		X										
36 Is another vehicle available for personal use?		X										

Section C — Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions)		

Note: *If your answer to 37, 38, 39, 40, or 41 is 'Yes,' do not complete Section B for the covered vehicles.*

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2005 tax year (see instructions):					
43 Amortization of costs that began before your 2005 tax year				43	
44 Total. Add amounts in column (f). See instructions for where to report				44	

671105

Schedule K-1 (Form 1120S) — 2004

Department of the Treasury Internal Revenue Service

For calendar year 2004, or tax year beginning _____, 2004 ending _____

☐ Final K-1 ☐ Amended K-1 — OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc. ► See page 2 of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
05-0526213

B Corporation's name, address, city, state, and ZIP code
Kunstwerke Corp.
2607 Woodruff Road Suite E #204
Simpsonville, SC 29681

C IRS Center where corporation filed return
Cincinnati, OH 45999-0013

D ☐ Tax shelter registration number, if any

E ☐ Check if Form 8271 is attached

Part II Information About the Shareholder

F Shareholder's identifying number
183-64-8154

G Shareholder's name, address, city, state, and ZIP code
James Scott Kunst
2607 Woodruff Road
Suite E # 204
Simpsonville , SC 29681

H Shareholder's percentage of stock ownership for tax year ..... 100.00000 %

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss) 67,208.	13	Credits & credit recapture
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
11	Section 179 deduction	16	Items affecting shareholder basis D 67,208.
12	Other deductions		
		17	Other information

*See attached statement for additional information.

FOR IRS USE ONLY

BAA For Privacy Act and Paperwork Reduction Act Notice, see instructions for Form 1120S. Schedule K-1 Form 1120S (2004)

Form 1120S, Page 1, Line 19
Other Deductions

Automobile and truck expense	20,748.
Insurance	10,677.
Office expense	28,965.
Travel	5,429.
Sub Services	2,555,192.
Sub Materials	1,104,536.
Client Services	67,455.
Total	3,793,002.

DEFENDANT'S EXHIBIT 41

Department of the Treasury · Internal Revenue Service

Form 1040 U.S. Individual Income Tax Return 2005

(99) IRS Use Only—Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2005, or other tax year beginning , 2005, ending , 20

OMB No. 1545-0074

Label (See instructions.) Use the IRS label. Otherwise, please print or type.

Your first name	MI	Last name	Your social security number
James	S	Kunst	183-64-8154
If a joint return, spouse's first name	MI	Last name	Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. Apartment no.

130 Arabian Way

City, town or post office. If you have a foreign address, see instructions. State ZIP code

Simpsonville SC 29681

You must enter your social security number(s) above. J J

Presidential Election Campaign

A Check here if you, or your spouse if filing jointly, want $3 to go to this fund? (see instructions).. G ☐ You ☐ Spouse

Checking a box below will not change your tax or refund.

Filing Status

Check only one box.

1 [X] Single
2 [ ] Married filing jointly (even if only one had income)
3 [ ] Married filing separately. Enter spouse's SSN above & full name here G
4 [ ] Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here . G
5 [ ] Qualifying widow(er) with dependent child (see instructions)

Exemptions

6a [X] Yourself. If someone can claim you as a dependent, do not check box 6a
b [ ] Spouse

Boxes checked on 6a and 6b .. 1

c Dependents:

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ☐ if qualifying child for child tax credit (see instrs)
			☐
			☐
			☐
			☐

If more than four dependents, see instructions.

No. of children on 6c who: ? lived with you ; ? did not live with you due to divorce or separation (see instrs) ; Dependents on 6c not entered above .

d Total number of exemptions claimed — Add numbers on lines above G 1

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7	Wages, salaries, tips, etc. Attach Form(s) W-2		7	
8a	Taxable interest. Attach Schedule B if required		8a	
b	Tax-exempt interest. Do not include on line 8a	8b		
9a	Ordinary dividends. Attach Schedule B if required		9a	
b	Qualified dividends (see instrs)	9b		
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)		10	
11	Alimony received		11	
12	Business income or (loss). Attach Schedule C or C-EZ		12	
13	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here G ☐		13	
14	Other gains or (losses). Attach Form 4797		14	
15a	IRA distributions 15a	b Taxable amount (see instrs)	15b	
16a	Pensions and annuities 16a	b Taxable amount (see instrs)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17	42,105.
18	Farm income or (loss). Attach Schedule F		18	
19	Unemployment compensation		19	
20a	Social security benefits 20a	b Taxable amount (see instrs)	20b	
21	Other income		21	
22	Add the amounts in the far right column for lines 7 through 21. This is your total income. G		22	42,105.

Adjusted Gross Income

23	Educator expenses (see instructions)	23		
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24		
25	Health savings account deduction. Attach Form 8889	25		
26	Moving expenses. Attach Form 3903	26		
27	One-half of self-employment tax. Attach Schedule SE	27		
28	Self-employed SEP, SIMPLE, and qualified plans	28		
29	Self-employed health insurance deduction (see instructions)	29		
30	Penalty on early withdrawal of savings	30		
31a	Alimony paid Recipient's SSN. G	31a		
32	IRA deduction (see instructions)	32		
33	Student loan interest deduction (see instructions)	33		
34	Tuition and fees deduction (see instructions)	34		
35	Domestic production activities deduction. Attach Form 8903	35		
36	Add lines 23 - 31a and 32 - 35		36	
37	Subtract line 36 from line 22. This is your adjusted gross income G		37	42,105.

JSK 000005

Tax and Credits	38	Amount from line 37 (adjusted gross income)		38	42,105.
	39a	Check if: ☐ You were born before January 2, 1941, ☐ Blind. ☐ Spouse was born before January 2, 1941, ☐ Blind. Total boxes checked G 39a ☐			
Standard Deduction for ? People who checked any box on line 39a or 39b or who can be claimed as a dependent, see instructions. ? All others: Single or Married filing separately, $5,000 Married filing jointly or Qualifying widow(er), $10,000 Head of household, $7,300		b If your spouse itemizes on a separate return, or you were a dual-status alien, see instructions and check here G 39b ☐			
	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)		40	7,815.
	41	Subtract line 40 from line 38		41	34,290.
	42	If line 38 is over $109,475, or you provided housing to a person displaced by Hurricane Katrina, see instructions. Otherwise, multiply $3,200 by the total number of exemptions claimed on line 6d		42	3,200.
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43	31,090.
	44	Tax (see instrs). Check if any tax is from: ☐ Form(s) 8814 ☐ Form 4972		44	4,434.
	45	Alternative minimum tax (see instructions). Attach Form 6251		45	
	46	Add lines 44 and 45	G	46	4,434.
	47	Foreign tax credit. Attach Form 1116 if required	47		
	48	Credit for child and dependent care expenses. Attach Form 2441	48		
	49	Credit for the elderly or the disabled. Attach Schedule R	49		
	50	Education credits. Attach Form 8863	50		
	51	Retirement savings contributions credit. Attach Form 8880	51		
	52	Child tax credit (see instructions). Attach Form 8901 if required.	52		
	53	Adoption credit. Attach Form 8839	53		
	54	Credits from: a ☐ Form 8396 b ☐ Form 8859	54		
	55	Other credits. Check applicable box(es): a ☐ Form 3800 b ☐ Form 8801 c ☐ Form	55		
	56	Add lines 47 through 55. These are your total credits		56	
	57	Subtract line 56 from line 46. If line 56 is more than line 46, enter -0-	G	57	4,434.
Other Taxes	58	Self-employment tax. Attach Schedule SE		58	
	59	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137		59	
	60	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		60	
	61	Advance earned income credit payments from Form(s) W-2		61	
	62	Household employment taxes. Attach Schedule H		62	
	63	Add lines 57-62. This is your total tax	G	63	4,434.
Payments	64	Federal income tax withheld from Forms W-2 and 1099	64		
If you have a qualifying child, attach Schedule EIC.	65	2005 estimated tax payments and amount applied from 2004 return	65		
	66a	Earned income credit (EIC)	66a		
		b Nontaxable combat pay election G 66b			
	67	Excess social security and tier 1 RRTA tax withheld (see instructions)	67		
	68	Additional child tax credit. Attach Form 8812	68		
	69	Amount paid with request for extension to file (see instructions)	69		
	70	Payments from: a ☐ Form 2439 b ☐ Form 4136 c ☐ Form 8885	70		
	71	Add lines 64, 65, 66a, and 67 through 70. These are your total payments	G	71	
Refund Direct deposit? See instructions and fill in 73b, 73c, and 73d.	72	If line 71 is more than line 63, subtract line 63 from line 71. This is the amount you overpaid		72	
	73a	Amount of line 72 you want refunded to you	G	73a	
		G b Routing number ..... G c Type: ☐ Checking ☐ Savings			
		G d Account number			
	74	Amount of line 72 you want applied to your 2006 estimated tax. G	74		
Amount You Owe	75	Amount you owe. Subtract line 71 from line 63. For details on how to pay, see instructions	G	75	4,434.
	76	Estimated tax penalty (see instructions)	76		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? ☐ Yes. Complete the following. ☒ No

Designee's name G | Phone no. G | Personal identification number (PIN) G

Sign Here Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
A [signature]	4/15/06	developer	(864) 979-7961
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	
A			

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐	Preparer's SSN or PTIN
A			
Firm's name (or yours if self-employed), address, and ZIP code	A Self-Prepared	EIN	
		Phone no.	

Form 1040 (2005)

FDIA0112 11/07/05 JSK 000006

SCHEDULE A (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Itemized Deductions

G Attach to Form 1040.
G See instructions for Schedule A (Form 1040).

OMB No. 1545-0074

2005

Attachment Sequence No. 07

Name(s) shown on Form 1040: James S Kunst

Your social security number: 183-64-8154

Medical and Dental Expenses (See instructions.)		Caution. Do not include expenses reimbursed or paid by others.			
	1	Medical and dental expenses (see instructions)	1		
	2	Enter amount from Form 1040, line 38 | 2 |			
	3	Multiply line 2 by 7.5% (.075)	3		
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-		4	
Taxes You Paid (See instructions.)	5	State and local (check only one box): a [X] Income taxes, or b [ ] General sales taxes (see instructions)	5	2,470.	
	6	Real estate taxes (see instructions)	6	3,857.	
	7	Personal property taxes	7	1,488.	
	8	Other taxes. List type and amount G	8		
	9	Add lines 5 through 8		9	7,815.
Interest You Paid (See instructions.) **Note.** Personal interest is not deductible.	10	Home mtg interest and points reported to you on Form 1098	10		
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address G	11		
	12	Points not reported to you on Form 1098. See instrs for spcl rules	12		
	13	Investment interest. Attach Form 4952 if required. (See instrs.)	13		
	14	Add lines 10 through 13		14	
Gifts to Charity If you made a gift and got a benefit for it, see instructions.	15a	Total gifts by cash or check. If you made any gift of $250 or more, see instrs	15a		
	b	Gifts by cash or check after August 27, 2005 that you elect to treat as qualified contributions (see instructions) | 15b |			
	16	Other than by cash or check. If any gift of $250 or more, see instructions. You must attach Form 8283 if over $500	16		
	17	Carryover from prior year	17		
	18	Add lines 15a, 16, & 17		18	
Casualty and Theft Losses	19	Casualty or theft loss(es). Attach Form 4684. (See instructions.)		19	
Job Expenses and Certain Miscellaneous Deductions (See instructions.)	20	Unreimbursed employee expenses ' job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) G	20		
	21	Tax preparation fees	21		
	22	Other expenses ' investment, safe deposit box, etc. List type and amount G	22		
	23	Add lines 20 through 22	23		
	24	Enter amount from Form 1040, line 38 | 24 |			
	25	Multiply line 24 by 2% (.02)	25		
	26	Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-		26	
Other Miscellaneous Deductions	27	Other ' from list in the instructions. List type and amount G		27	
Total Itemized Deductions	28	Is Form 1040, line 38, over $145,950 (over $72,975 if MFS)? [X] No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 40. [ ] Yes. Your deduction may be limited. See instructions for the amount to enter.		G 28	7,815.
	29	If you elect to itemize deductions even though they are less than your standard deduction, check here [ ]			

JSK 000007

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions. FDIA0301 11/18/05 Schedule A (Form 1040) 2005

Name(s) shown on return. Do not enter name and social security number if shown on Page 1. | Your social security number

James S Kunst | 183-64-8154

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ..... ☐ Yes ☒ No

If you answered 'Yes,' see instructions before completing this section.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	Kunstwerke Corp.	S		05-0526213	
B					
C					
D					

	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					42,105.
B					
C					
D					
29a Totals					42,105.
b Totals					

30	Add columns (g) and (j) of line 29a	30	42,105.
31	Add columns (f), (h), and (i) of line 29b	31	
32	Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below	32	42,105.

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
34a Totals				
b Totals				

35	Add columns (d) and (f) of line 34a	35	
36	Add columns (c) and (e) of line 34b	36	
37	Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below	37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below	39	

Part V Summary

40	Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
41	Total income or (loss). Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17 G	41	42,105.
42	Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B, Schedule K 1 (Form 1120S), box 17, code N; and Schedule K 1 (Form 1041), line 14, code F (see instructions)	42	
43	Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

Form **1120S**
Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

► Do not file this form unless the corporation has filed Form 2553 to elect to be an S corporation.
► See separate instructions.

OMB No. 1545-0130

2005

For calendar year 2005, or tax year beginning , 2005, and ending ,

A Effective date of S election: 01/01/03	Use the IRS label. Otherwise, print or type.	Name: Kunstwerke Corp.	C Employer identification number: 05-0526213
B Business code number (see instructions): 236110		Number, street, and room or suite no. (If a P.O. box, see instructions.): 2607 Woodruff Rd. Suite E #204	D Date incorporated: 01/01/03
		City or town, state, and ZIP code: Simpsonville SC 29681	E Total assets (see instructions): $ 396.

F Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return

G Enter number of shareholders in the corporation at end of the tax year ► 0

Caution: *Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1a	Gross receipts or sales: 6,458,028. b Less returns and allowances: 0. c Bal ►		1c	6,458,028.
	2	Cost of goods sold (Schedule A, line 8)		2	
	3	Gross profit. Subtract line 2 from line 1c		3	6,458,028.
	4	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*		4	
	5	Other income (loss) *(attach statement)*		5	
	6	**Total income (loss).** Add lines 3 through 5 ►		6	6,458,028.
Deductions (see instructions)	7	Compensation of officers		7	
	8	Salaries and wages (less employment credits)		8	0.
	9	Repairs and maintenance		9	
	10	Bad debts		10	0.
	11	Rents		11	19,100.
	12	Taxes and licenses		12	
	13	Interest		13	68,400.
	14a	Depreciation *(attach Form 4562)* 14a			
	b	Depreciation claimed on Schedule A and elsewhere on return 14b			
	c	Subtract line 14b from line 14a		14c	
	15	Depletion (Do not deduct oil and gas depletion.)		15	
	16	Advertising		16	
	17	Pension, profit-sharing, etc, plans		17	
	18	Employee benefit programs		18	
	19	Other deductions *(attach statement)* STMT		19	6,307,755.
	20	**Total deductions.** Add the amounts shown in the far right column for lines 7 through 19 ►		20	6,395,255.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6		21	62,773.
Tax and Payments	22	Tax: a Excess net passive income tax *(attach statement)* 22a			
	b	Tax from Schedule D (Form 1120S) 22b			
	c	Add lines 22a and 22b (see the instructions for additional taxes)		22c	
	23	Payments: a 2005 estimated tax payments and amount applied from 2004 return 23a			
	b	Tax deposited with Form 7004 23b			
	c	Credit for Federal tax paid on fuels *(attach Form 4136)* 23c			
	d	Add lines 23a through 23c		23d	
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐		24	
	25	**Tax due.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed		25	
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid		26	
	27	Enter amount of line 26 you want: **Credited to 2006 estimated tax** ► **Refunded** ►		27	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer: [signature] Date: 6/1/06 Title: Owner

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature ►	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ► Self-Prepared			EIN

BAA For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Form 1120S (2005)

DEFENDANT'S EXHIBIT 40

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs *(attach statement)*	4	
5	Other costs *(attach statement)*	5	
6	**Total.** Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	

9a Check all methods used for valuing closing inventory:

(i) ☐ Cost as described in Regulations section 1.471-3

(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4

(iii) ☐ Other (specify method used and attach explanation) ►

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ► ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ► ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation? ☐ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If 'Yes,' attach explanation ☐ Yes ☐ No

Schedule B Other Information (see instructions)

		Yes	No
1	Check method of accounting: (a) ☒ Cash (b) ☐ Accrual (c) ☐ Other (specify) ►		
2	See the instructions and enter the: (a) Business activity ► Service (b) Product or service ► Design/build		
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If 'Yes,' attach a statement showing: (a) name, address, and employer identification number and (b) percentage owned		X
4	Was the corporation a member of a controlled group subject to the provisions of section 1561?		X
5	Has this corporation filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
6	Check this box if the corporation issued publicly offered debt instruments with original issue discount ► ☐ If checked, the corporation may have to file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments.		
7	If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ► $		
8	Check this box if the corporation had accumulated earnings and profits at the close of the tax year ► ☐		
9	Are the corporation's total receipts (see instructions) for the tax year and its total assets at the end of the tax year less than $250,000? If 'Yes,' the corporation is not required to complete Schedules L and M-1		X

Note: *If the corporation had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.*

Schedule K Shareholders' Shares of Income, Deductions, Credits, etc

	Shareholders' Pro Rata Share Items			Total amount	
INCOME (LOSS)	1	Ordinary business income (loss) (page 1, line 21)		1	62,773.
	2	Net rental real estate income (loss) *(attach Form 8825)*		2	
	3a	Other gross rental income (loss)	3a		
	b	Expenses from other rental activities *(attach statement)*	3b		
	c	Other net rental income (loss). Subtract line 3b from line 3a		3c	
	4	Interest income		4	
	5	Dividends: a Ordinary dividends		5a	
		b Qualified dividends	5b		
	6	Royalties		6	
	7	Net short-term capital gain (loss) *(attach Schedule D (Form 1120S))*		7	
	8a	Net long-term capital gain (loss) *(attach Schedule D (Form 1120S))*		8a	
	b	Collectibles (28%) gain (loss)	8b		
	c	Unrecaptured section 1250 gain *(attach statement)*	8c		
	9	Net section 1231 gain (loss) (attach Form 4797)		9	
	10	Other income (loss) *(see instructions)*		10	

	Shareholders' Pro Rata Share Items (continued)		Total amount
Deductions	11 Section 179 deduction *(attach Form 4562)*	11	
	12a Contributions	12a	
	b Investment interest expense	12b	
	c Section 59(e)(2) expenditures (1) Type ► (2) Amount ►	12c (2)	
	d Other deductions *(see instructions)* ... Type ►	12d	
Credits and Credit Recapture	13a Low-income housing credit (section 42(j)(5))	13a	
	b Low-income housing credit (other)	13b	
	c Qualified rehabilitation expenditures (rental real estate) *(attach Form 3468)*	13c	
	d Other rental real estate credits (see instrs) Type ►	13d	
	e Other rental credits (see instrs) Type ►	13e	
	f Credit for alcohol used as fuel *(attach Form 6478)*	13f	
	g Other credits and credit recapture *(see instrs)* Type ►	13g	
Foreign Transactions	14a Name of country or U.S. possession ►		
	b Gross income from all sources	14b	
	c Gross income sourced at shareholder level	14c	
	Foreign gross income sourced at corporate level:		
	d Passive	14d	
	e Listed categories *(attach statement)*	14e	
	f General limitation	14f	
	Deductions allocated and apportioned at shareholder level:		
	g Interest expense	14g	
	h Other	14h	
	Deductions allocated and apportioned at corporate level to foreign source income:		
	i Passive	14i	
	j Listed categories *(attach statement)*	14j	
	k General limitation	14k	
	Other Information:		
	l Total foreign taxes (check one): ► ☐ Paid ☐ Accrued	14l	
	m Reduction in taxes available for credit *(attach statement)*	14m	
	n Other foreign tax information *(attach statement)*		
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a	
	b Adjusted gain or loss	15b	
	c Depletion (other than oil and gas)	15c	
	d Oil, gas, and geothermal properties – gross income	15d	
	e Oil, gas, and geothermal properties – deductions	15e	
	f Other AMT items *(attach statement)*	15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a	
	b Other tax-exempt income	16b	
	c Nondeductible expenses	16c	670.
	d Property distributions	16d	62,103.
	e Repayment of loans from shareholders	16e	
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	0.
	d Other items and amounts *(attach statement)*		
	e **Income/loss reconciliation.** (Required only if Schedule M-1 must be completed.) Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and lines 14l	17e	62,773.

Note: The corporation is not required to complete Schedules L and M-1 if question 9 of Schedule B is answered 'Yes'.

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash		25,169.		396.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach stmt)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach stmt)				
15 Total assets		25,169.		396.
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt)				
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach statement)				
22 Capital stock		100.		100.
23 Additional paid-in capital		25,069.		296.
24 Retained earnings		0.		0.
25 Adjustments to shareholders' equity (att stmt)				
26 Less cost of treasury stock				
27 Total liabilities and shareholders' equity		25,169.		396.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

1 Net income (loss) per books	62,103.	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest . $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):		6 Deductions included on Schedule K, lines 1 through 12, and 14l, not charged against book income this year (itemize): a Depreciation . . . . $	
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12, and 14l (itemize): a Depreciation . . . . . $ b Travel and entertainment . $ 670.	670.	7 Add lines 5 and 6	
4 Add lines 1 through 3	62,773.	8 Income (loss) (Schedule K, line 17e). Ln 4 less ln 7	62,773.

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year			
2 Ordinary income from page 1, line 21	62,773.		
3 Other additions			
4 Loss from page 1, line 21			
5 Other reductions * STMT	670.		
6 Combine lines 1 through 5	62,103.		
7 Distributions other than dividend distributions	62,103.	0.	0.
8 Balance at end of tax year. Subtract line 7 from line 6	0.	0.	0.

Form **4562**
(Rev January 2006)
Department of the Treasury
Internal Revenue Service

Depreciation and Amortization
(Including Information on Listed Property)

► See separate instructions. ► Attach to your tax return.

OMB No. 1545-0172

2005

Attachment Sequence No. 67

Name(s) shown on return: Kunstwerke Corp.

Identifying number: 05-0526213

Business or activity to which this form relates: Form 1120S Line 21

Part I Election To Expense Certain Property Under Section 179

Note: *If you have any listed property, complete Part V before you complete Part I.*

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	$105,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	$420,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2004 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2006. Add lines 9 and 10, less line 12 ►	13	

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special allowance for certain aircraft, certain property with a long production period, and qualified New York Liberty or GO Zone property (other than listed property) placed in service during the tax year (see instrs)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2005	17	
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ► ☐		

Section B — Assets Placed in Service During 2005 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
			27.5 yrs	MM	S/L	
i Nonresidential real property			39 yrs	MM	S/L	
				MM	S/L	

Section C — Assets Placed in Service During 2005 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs		S/L	
c 40-year			40 yrs	MM	S/L	

Part IV Summary (see instructions)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Part V Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: *For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.*

Section A – Depreciation and Other Information (Caution: *See the instructions for limits for passenger automobiles.*)

24a Do you have evidence to support the business/investment use claimed? ..... Yes No 24b If 'Yes,' is the evidence written? ..... Yes No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special allowance for certain aircraft, certain property with a long production period, and qualified New York Liberty or GO Zone property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)						25		
26 Property used more than 50% in a qualified business use:								
27 Property used 50% or less in a qualified business use:								
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28		
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29	

Section B – Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other 'more than 5% owner,' or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
30 Total business/investment miles driven during the year (do not include commuting miles)	37,400											
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32	37,400											
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34 Was the vehicle available for personal use during off-duty hours?		X										
35 Was the vehicle used primarily by a more than 5% owner or related person?		X										
36 Is another vehicle available for personal use?		X										

Section C – Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions)		

Note: *If your answer to 37, 38, 39, 40, or 41 is 'Yes,' do not complete Section B for the covered vehicles.*

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2005 tax year (see instructions):					
43 Amortization of costs that began before your 2005 tax year				43	
44 **Total.** Add amounts in column (f). See instructions for where to report				44	

671105

Schedule K-1 (Form 1120S)

Department of the Treasury Internal Revenue Service

2005

For calendar year 2005, or tax year beginning _____, 2005 ending _____

[X] Final K-1 [ ] Amended K-1 OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc.

► See page 2 of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
05-0526213

B Corporation's name, address, city, state, and ZIP code
Kunstwerke Corp.
2607 Woodruff Rd. Suite E #204
Simpsonville, SC 29681

C IRS Center where corporation filed return
Cincinnati, OH 45999-0013

D [ ] Tax shelter registration number, if any

E [ ] Check if Form 8271 is attached

Part II Information About the Shareholder

F Shareholder's identifying number
183-64-8154

G Shareholder's name, address, city, state, and ZIP code
James Scott Kunst
2607 Woodruff Rd.
Suite E, #204
Simpsonville, SC 29681

H Shareholder's percentage of stock ownership for tax year ..... 100.00000 %

FOR IRS USE ONLY

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss) 62,773.	13	Credits & credit recapture
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
11	Section 179 deduction	16	Items affecting shareholder basis
		C	670.
12	Other deductions	D	62,103.
		17	Other information

*See attached statement for additional information.

Form 1120S, Page 1, Line 19
Other Deductions

Automobile and truck expense	19,110.
Insurance	11,640.
Meals and entertainment (50%)	670.
Office expense	22,600.
Travel	6,291.
Sub Services	4,226,510.
Sub labor	2,020,934.
Total	6,307,755.

Form 1120S, Page 4, Schedule M-2, Line 5
Schedule M-2, Other Reductions

Meals and entertainment	670.	
Total	670.	

Defense Trial Exhibit 20

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/21/04)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50625467-0

File Number: 25462899
Period Covered: 09/04 - 09/04

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 06/20/05 .

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	09/04	02793542-5	02-28-05	500.00	647.50	20.77	1,168.27

FT
JUL 1 2005
Tim... By
Regist...

SUBTOTAL: 1,168.27
COURT COSTS: 68.41
TOTAL: $1,236.68

JUL 1 2005

590476

06-29-2005 01:01:2222 RECORDING FEE 10.00

TXPRC 108 1,276

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 9/22/05)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50680752-4

File Number: 25462899
Period Covered: 12/04 - 12/04

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 01/06/06.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	12/04	02940016-1	11-23-05	500.00	652.50	29.82	1,182.32

FILED
JAN 25 2006
Timothy L. Nanney
Register of Deeds

SUBTOTAL: 1,182.32
COURT COSTS: 69.12
TOTAL: $1,251.44

JAN 25 2006

7339

01-18-2006 01:04:55 RECORDING FEE 10.00

TXPRC108 1,405

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 9/22/05)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50684325-4

File Number: 25462899
Period Covered: 03/05 - 03/05

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 01/12/06.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	03/05	02975360-5	12-13-05	500.00	647.50	24.98	1,172.48

FILED
JAN 31 2006
Timothy L. Nanney
Register of Deeds

SUBTOTAL: 1,172.48
COURT COSTS: 68.62
TOTAL: $1,241.10

JAN 31 2006

9206

01-24-2006 01CL8735 RECORDING FEE 10.00

TXPRC108 1,016

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 9/22/05)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50707425-9

File Number: 25462899
Period Covered: 06/05 - 06/05

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2006034434 SC/TLIEN
Book.MI 9 1 PG
Page.472-472
April 13, 2006 09:56:37 AM
Rec.$10.00 Cnty Tax:$0.00 State Tax $0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 03/29/06.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	06/05	03084460-2	02-27-06	500.00	647.50	25.99	1,173.49

SUBTOTAL:	1,173.49
COURT COSTS:	68.67
TOTAL:	$1,242.16

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2006034434 Book:MI 9 Page:472-472
April 13, 2006 09:56:37 AM

Timothy L Nanney

TXPRC108 900

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 3/21/06)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50721751-3

File Number: 25462899
Period Covered: 09/05 - 09/05

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2006068873 SC/TLIEN
1 PG
Book:MI 10 Page:1922-1922
July 19, 2006 08:53:35 AM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 07/05/06.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	09/05	03179594-7	06-05-06	500.00	647.50	27.32	1,174.82

SUBTOTAL:	1,174.82
COURT COSTS:	68.74
TOTAL:	$1,243.56

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2006068873 Book:MI 10 Page:1922-1922
July 19, 2006 08:53:35 AM
Timothy F Kenney

TXPRC108 961

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 3/21/06)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50758594-0

File Number: 25462899
Period Covered: 12/05 - 12/05

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 12/04/06.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	12/05	03361982-7	11-01-06	500.00	650.00	32.89	1,182.89

2006120359 SC/TLIEN
1 PG
Book:MI 14 Page:231-231
December 12, 2006 10:55:41 AM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2006120359 Book:MI 14 Page:231-231
December 12, 2006 10:55:41 AM
Timothy J Hannay

SUBTOTAL: 1,182.89
COURT COSTS: 69.14
TOTAL: $1,252.03

TXPRC108 1,050

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 3/21/06)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50776741-4

File Number: 25462899
Period Covered: 03/06 - 03/06

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2007011612 SC/TLIEN 1 PG
February 05, 2007 08:57:08 AM Book:MI 15 Page:833-833
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC
(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 01/26/07.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	03/06	03400838-3	11-27-06	500.00	650.00	33.55	1,183.55

SUBTOTAL: 1,183.55
COURT COSTS: 69.18
TOTAL: $1,252.73

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2007011612 Book:MI 15 Page:833-833
February 05, 2007 08:57:08 AM
Timothy F Kenney

TXPRC108 53

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 3/21/06)

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50794181-6

File Number: 25462899
Period Covered: 06/06 - 06/06

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2007035846 SC/TLIEN 1 PG
Book:MI 17 Page:94-94
April 11, 2007 10:29:38 AM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 03/28/07.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	06/06	03493474-1	02-26-07	500.00	647.50	30.82	1,178.32

SUBTOTAL: 1,178.32
COURT COSTS: 68.92
TOTAL: $1,247.24

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2007035846 Book:MI 17 Page:94-94
April 11, 2007 10:29:38 AM
Timothy J Hannay

TXPRC108 1,021

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 3/21/07)
2047

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50838145-5

File Number: 25462899
Period Covered: 09/06 - 09/06

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2007076267 SC/TLIEN
1 PG
July 31, 2007 11:13:30 AM Book:MI 20 Page:1213-1213
Rec.$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 07/23/07.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0609	09/06	03606406-8	06-05-07	500.00	650.00	34.44	1,184.44

SUBTOTAL: 1,184.44
COURT COSTS: 69.22
TOTAL: $1,253.66

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2007076267 Book:MI 20 Page:1213-1213
July 31, 2007 11:13:30 AM
Timothy L Hannay

TXPRC108 1,645

20471037

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev 3/21/07)
2047

SID/Suffix: 2258858-000
Tax Type. EMPLOYER WITHHOLDING TAX

County. GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50877326-9

File Number: 25462899
Period Covered: 12/06 - 12/06

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2007125361 SC/TLIEN
Book:MI 24 1 PG
Page.352-352
December 26, 2007 10:42:21 AM
Rec.$10 00 Cnty Tax:$0.00 State Tax.$0 00
FILED IN GREENVILLE COUNTY,SC
(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 12/17/07.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	12/06	03797709-9	11-01-07	500.00	652.50	37.85	1,190.35

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2007125361 Book:MI 24 Page:352-352
December 26, 2007 10:42 21 AM

Timothy L Hannay

SUBTOTAL: 1,190.35
COURT COSTS: 69.52
TOTAL: $1,259.87

TXPRC108 1,000

20471017

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev 3/21/07)
2047

SID/Suffix. 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County GREENVILLE
Contact Number: (864) 241-1200
Tax Lien Number: 3-50888647-9

File Number: 25462899
Period Covered: 03/07 - 03/07

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008006472 SC/TLIEN 1 PG
Book:MI 25 Page:287-287
January 22, 2008 11:38:11 AM
Rec:$10 00 Cnty Tax.$0.00 State Tax $0 00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed
Dated and signed under the seal of the SC Department of Revenue 01/14/08.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	03/07	03834915-4	11-27-07	500 00	647.50	30.71	1,178.21

SUBTOTAL: 1,178.21
COURT COSTS: 68.91
TOTAL: $1,247 12

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008006472 Book:MI 25 Page:287-287
January 22, 2008 11:38 11 AM

TXPRC108 1,180

20471017

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix:
Tax Type: INDIVIDUAL INCOME TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50919749-3
SSN: XXX-XX-8154
File Number: 16472371
Period Covered: 12/06 - 12/06

KUNST JAMES S

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008047020 SC/TLIEN 1 PG
Book:MI 29 Page:699-699
May 19, 2008 12:43:08
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 05/12/08.

Tax Type: INDIVIDUAL INCOME TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0801	12/06	04202250-2	03-28-08	241,916.00	96,598.55	21,363.71	359,878.26

SUBTOTAL: 359,878.26
COURT COSTS: 18,003.91
TOTAL: $377,882.17

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008047020 Book:MI 29 Page:699-699
May 19, 2008 12:43:08
Timothy J Hannay

TXPRC108 373

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix:
Tax Type: INDIVIDUAL INCOME TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50919936-9
SSN: XXX-XX-8154
File Number: 73146058
Period Covered: 12/03 - 12/03

KUNST JAMES S

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008047021 SC/TLIEN
Book:MI 29 1 PG
Page:000-000
May 19, 2008 12:43:07
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 05/12/08.

Tax Type: INDIVIDUAL INCOME TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0801	12/03	04202445-4	03-28-08	239,779.00	118,434.10	76,842.29	435,055.39

SUBTOTAL:	435,055.39
COURT COSTS:	21,762.77
TOTAL:	$456,818.16

TXPRC108 374

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008047021 Book:MI 29 Page:000-000
May 19, 2008 12:43:07
Timothy J Kenney

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix:
Tax Type: INDIVIDUAL INCOME TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50919939-0
SSN: XXX-XX-8154
File Number: 74159128
Period Covered: 12/04 - 12/04

KUNST JAMES S

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008047022 SC/TLIEN
Book:MI 29 1 PG
Page:901-901
May 19, 2008 12:43:08
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 05/12/08.

Tax Type: INDIVIDUAL INCOME TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0801	12/04	04202409-6	03-28-08	242,091.00	112,128.84	62,107.15	416,326.99

SUBTOTAL:	416,326.99
COURT COSTS:	20,826.35
TOTAL:	$437,153.34

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008047022 Book:MI 29 Page:901-901
May 19, 2008 12:43:08
Timothy J Kenney

TXPRC108 375

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix:
Tax Type: INDIVIDUAL INCOME TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50919954-3
SSN: XXX-XX-8154
File Number: 75166714
Period Covered: 12/05 - 12/05

KUNST JAMES S

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008047023 SC/TLIEN
Book:MI 29 1 PG
Page:982-982
May 19, 2008 12:43:09
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 05/12/08.

Tax Type: INDIVIDUAL INCOME TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0801	12/05	04202407-2	03-28-08	242,300.00	105,536.34	42,779.28	390,615.62

SUBTOTAL:	390,615.62
COURT COSTS:	19,540.78
TOTAL:	$410,156.40

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008047023 Book:MI 29 Page:982-982
May 19, 2008 12:43:09
Timothy L Hannay

TXPRC108 376

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50926799-6

File Number: 25462899
Period Covered: 06/07 - 06/07

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008052794 SC/TLIEN 1 PG
Book:MI 30 Page:25-25
June 05, 2008 09:34:19 AM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC
(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 05/27/08.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	06/07	03954892-3	04-08-08	500.00	652.50	34.02	1,186.52

SUBTOTAL: 1,186.52
COURT COSTS: 69.33
TOTAL: $1,255.85

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008052794 Book:MI 30 Page:25-25
June 05, 2008 09:34:19 AM
Timothy J Hannay

TXPRC108 1,516

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50940767-1

File Number: 25462899
Period Covered: 09/07 - 09/07

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008069958 SC/TLIEN 1 PG
Book:MI 31 Page:507-507
July 29, 2008 02:27:34 PM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 07/21/08.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	09/07	04049928-1	06-03-08	500.00	650.00	27.83	1,177.83

SUBTOTAL:	1,177.83
COURT COSTS:	68.89
TOTAL:	$1,246.72

TXPRC108 1,446

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008069958 Book:MI 31 Page:507-507
July 29, 2008 02:27:34 PM
Timothy L Hannay

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix: 2176652-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50944149-7

File Number: 25492874
Period Covered: 09/03 - 09/04

KUNSTWERKE CORPORATION

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2008073675 SC/TLIEN 1 PG
Book:MI 31 Page:1051-1051
August 08, 2008 01:38:38 PM
Rec:$10.00 Cnty Tax $0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC
(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 07/28/08.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	09/03	04293651-9	06-25-08	627.00	447.65	224.31	1,298.96
0809	03/04	04293652-6	06-25-08	1,992.00	1,385.09	657.16	4,034.25
0809	06/04	04293653-3	06-25-08	2,604.00	1,777.87	818.68	5,200.55
0809	09/04	04293654-0	06-25-08	1,778.00	1,174.85	533.64	3,486.49

SUBTOTAL:	14,020.25
COURT COSTS:	711.01
TOTAL:	$14,731.26

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2008073675 Book:MI 31 Page:1051-1051
August 08, 2008 01:38:38 PM

TXPRC108 350

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix: 2258858-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-50987527-4

File Number: 25462899
Period Covered: 12/07 - 12/07

STUDIOKUNSTWERKE CORP

130 ARABIAN WAY
SIMPSONVILLE SC 29681-6605

2009001323 SC/TLIEN
Book:MI 35 1 PG
Page:1250-1250
January 08, 2009 12:45:49
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 12/18/08.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	12/07	04262212-4	11-03-08	500.00	652.50	27.52	1,180.02

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2009001323 Book:MI 35 Page:1250-1250
January 08, 2009 12:45:49
Timothy J Hannay

SUBTOTAL:	1,180.02
COURT COSTS:	69.00
TOTAL:	$1,249.02

TXPRC108 1,251

20471025

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

TAX LIEN

W-131
(Rev. 1/11/08)
2047

SID/Suffix: 2176652-000
Tax Type: CORPORATE LICENSE

County: GREENVILLE
Contact Number: (864)241-1200
Tax Lien Number: 3-51004320-6

File Number: 20312531
Period Covered: 12/04 - 12/07

KUNSTWERKE CORPORATION

10 E WASHINGTON ST APT 3E
GREENVILLE SC 29601-4817

2009011733 SC/TLIEN 1 PG
Book:MI 36 Page:1946-1946
February 13, 2009 03:04:47 PM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

(CORP)

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 02/06/09.

Tax Type: CORPORATE LICENSE

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0401	12/07	04199639-6	03-25-08	100.00	61.52	20.79	182.31
0401	12/04	04493267-4	12-08-08	25.00	12.50	9.41	46.91
0401	12/05	04493272-8	12-08-08	25.00	12.24	7.85	45.09
0401	12/06	04493273-5	12-08-08	25.00	10.74	5.82	41.56
0401	12/07	04493274-2	12-08-08	25.00	9.24	3.52	37.76

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2009011733 Book:MI 36 Page:1946-1946
February 13, 2009 03:04:47 PM
Timothy L Hannay

SUBTOTAL: 353.63
COURT COSTS: 27.69
TOTAL: $381.32

TXPRC108 810

20471025

Defense Trial Exhibit 21

8397

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #3
Lien Unit Phone: (800) 829-3903

Serial Number
341622307

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer KUNSTWERKE CORPORATION , a Corporation

Residence 308 HEMLOCK TRL
CLEVELAND, SC 29635-9534

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
941	12/31/2003	05-0526213	03/20/2006	04/19/2016	37903.07

2007011670 T/LIEN
Book:MI 15 1 PG
Page:842-842
February 05, 2007 10:28:58 AM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2007011670 Book:MI 15 Page:842-842
February 05, 2007 10:28:58 AM
Timothy J Kenney

Place of Filing
REGISTER OF DEEDS
GREENVILLE SQUARE
GREENVILLE, SC 29601

Total $ 37903.07

This notice was prepared and signed at JACKSONVILLE, FL , on this,

the 25th day of January , 2007.

Signature R. A. Mitchell
for THERESA HARLEY

Title
ACS
(800) 829-3903

23-00-0008

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

3479

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #3
Lien Unit Phone: (800) 913-6050

Serial Number
634808510

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer JAMES S KUNST

Residence 130 ARABIAN WAY
SIMPSONVILLE, SC 29681-6605

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2005	XXX-XX-8154	05/29/2006	06/28/2016	4696.82
1040	12/31/2005	XXX-XX-8154	09/28/2009	10/28/2019	1482768.78

2010019513 T/LIEN
1 PG
Book:MI 48 Page:1683-1683
March 25, 2010 08:24:14 AM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2010019513 Book:MI 48 Page:1683-1683
March 25, 2010 08:24:14 AM

Timothy J Mauney

Place of Filing
REGISTER OF DEEDS
GREENVILLE SQUARE
GREENVILLE, SC 29601

Total $ 1487465.60

This notice was prepared and signed at BALTIMORE, MD, on this,

the 16th day of March, 2010.

Signature R. A. Mitchell
for B. JONES

Title
REVENUE OFFICER
(864) 286-7057

23-12-3410

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

3351

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #3
Lien Unit Phone: (800) 829-3903

Serial Number
657749610

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer KUNSTWERKE CORPORATION, a Corporation

Residence 308 HEMLOCK TRL
CLEVELAND, SC 29635-9534

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
940	12/31/2002	05-0526213	06/30/2008	07/30/2018	3562.64
940	12/31/2004	05-0526213	06/30/2008	07/30/2018	6051.74
941	03/31/2002	05-0526213	06/30/2008	07/30/2018	7007.08
941	06/30/2002	05-0526213	06/30/2008	07/30/2018	6921.08
941	09/30/2002	05-0526213	06/30/2008	07/30/2018	915.76
941	03/31/2004	05-0526213	06/30/2008	07/30/2018	21761.54
941	06/30/2004	05-0526213	06/30/2008	07/30/2018	21555.59
941	09/30/2004	05-0526213	06/30/2008	07/30/2018	21365.99
941	12/31/2004	05-0526213	06/30/2008	07/30/2018	20833.51

FILED FOR RECORD IN GREENVILLE COUNTY,SC ROD
2010035964 Book:MI 50 Page:1691-1691
May 28, 2010 02:38:12 PM

Timothy J. Mooney

2010035964 T/LIEN
1 PG
Book:MI 50 Page:1691-1691
May 28, 2010 02:38:12 PM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

Place of Filing
REGISTER OF DEEDS
GREENVILLE SQUARE
GREENVILLE, SC 29601

Total $ 109974.93

This notice was prepared and signed at BALTIMORE, MD, on this,

the 19th day of May, 2010.

Signature R. A. Mitchell
for THERESA HARLEY

Title
ACS
(800) 829-3903

23-00-0008

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

11883

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #2
Lien Unit Phone: (800) 913-6050

Serial Number
912334412

For Optional Use by Recording Office

FILED
12 DEC 24 PM 2:20
DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer JAMES S KUNST

Residence 3955 BIGELOW BLVD
PITTSBURGH, PA 15213-1250

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

FTL-12-1649

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2003	[redacted]	06/28/2004	07/28/2014	
1040	12/31/2003		07/02/2012	08/01/2022	4466.69
1040	12/31/2004		05/23/2005	06/22/2015	
1040	12/31/2004		07/30/2012	08/29/2022	67948.39

Place of Filing
Allegheny Prothonotary
Allegheny County
Pittsburgh, PA 15219

Total $ 72415.08

lidate Check
OPS$JCONN01
01-03-2013 08:11:45
FTL-12-001649

This notice was prepared and signed at DETROIT, MI, on this, the 17th day of December, 2012.

Signature for LAZENIA LINEBERGER

Title
REVENUE OFFICER
(412) 395-6333

22-06-2127

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

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Form **668(Y)(c)** (Rev. 2-2004)
CAT. NO 60025X

Existing Judgments

[Go To Home]

Case: FTL-12-001649 **Case Desc:** IRS vs Kunst
Docket: 1040 **Docket Desc:** Individual Income Tax

– Judgments Against –			
ID	**Name**	**Amount**	**Satisfied**
@1950359	Kunst James S	72415.08	N

– Judgments For –		
ID	**Name**	**Amount**
IRS	Internal Revenue Service	72415.08

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