

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

RECEIVED

NOV 27 2017

SC Court of Appeals

J. Scott Kunst Respondent,

v.

David Loree Appellant.

**2nd SUPPLEMENTAL RECORD ON APPEAL
VOLUME I**

V. Elizabeth Wright (SC Bar ID 76029)
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Gregory K. Smith (admitted *pro hac vice*)
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Attorneys for the Appellant

Other counsel of record:
J. Scott Kunst, *pro se*
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(864) 979-7961
Respondent

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 J. Scott Kunst,)
)
 Plaintiff,)
)
 v.)
)
 Richard Gaby, Barbara Van Andel –)
 Gaby, and David Loree,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2006-CP-39-1826

**DEFENDANT DAVID LOREE'S
 ANSWER TO COMPLAINT**

2007 FEB 22 P 12:34
 CLERK OF COURT
 SOUTH CAROLINA

The Defendant, David Loree, subject to his Motion to Dismiss, answering the Complaint of Plaintiff, states as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not herein below specifically admitted is denied and strict proof demanded thereof.
2. Defendant admits that he is without information sufficient to form a belief as to the allegations of Paragraph 1 and therefore denies same.
3. This Defendant admits the allegations of Paragraph 2.
4. Answering Paragraph 3, this Defendant admits only so much that Kunstwerke Corporation, pursuant to contract, constructed a residence for the Defendants Richard Gaby and Barbara Van Andel Gaby in Pickens County, South Carolina.
5. This Defendant denies the allegations of Paragraph 4.
6. Defendant answers the admissions and denials in Paragraph 5 in the same manner in the same manner consistent with his previous admissions and denials.

7. This Defendant is without information sufficient to respond to Paragraph 6, therefore denies same.

8. Answer Paragraph 7, this Defendant admits only so much of Paragraph 7 as alleges that Defendants Richard Gaby and Barbara Van Andel Gaby entered into a contract with Kunstwerke Corporation. Any and all allegations contrary to the terms and conditions of said contract are denied and strict proof demanded thereof.

9. Answering Paragraph 8, this Defendant admits only so much of Paragraph 8 as alleges that the home under contract with Kunstwerke Corporation and Defendants Richard Gaby and Barbara Van Andel Gaby was one of several homes owned by the Gabys.

10. Answering allegations of Paragraph 9, this Defendant is without information sufficient to form a belief and therefore denies same.

11. Answering Paragraph 10, this Defendant is without information sufficient to form an opinion or belief as to the allegations in Paragraph 10 and therefore denies same.

12. Answering Paragraph 11, this Defendant is without information sufficient to form an opinion or belief as to the allegations in Paragraph 10 and therefore denies same.

13. Answering Paragraph 12, this Defendant admits only so much that the project was financed by the Gabys. This Defendant denies the remaining allegations.

14. Answering Paragraph 13, this Defendant would allege and show that a fiduciary relationship existed between Kunstwerke Corporation and the Defendants Richard Gaby and Barbara Van Andel Gaby. All remaining allegations are denied.

15. This Defendant denies the allegations of Paragraph 14.

16. This Defendant is without information sufficient to form a belief as to the allegations of paragraph 15 and therefore denies same.

17. Answering Paragraph 16, this Defendant admits only so much that Kunstwerke Corporation provided progress billings to Defendants Gaby for the purpose of determining amounts allegedly due. All contrary allegations are denied.

18. Answering Paragraph 17, this Defendant admits that Kunstwerke Corporation's billings including subcontractor and supplier invoices which Kunstwerke Corporation represented had been paid.

19. This Defendant denies the allegations of Paragraph 18.

20. Answering Paragraph 19, this Defendant specifically and expressly denies that such allegations and would allege and show that as a matter of law, the invoices included on Kunstwerke Corporation's progress billings were held in trust by Kunstwerke Corporation on behalf of those subcontractors and supplies included in said progress billings.

21. This Defendant denies the allegations of Paragraph 20.

22. This Defendant denies the allegations of Paragraph 21.

23. Answering Paragraph 22, this Defendant admits only so much of said paragraph as alleges that Defendants were not required to maintain a construction deposit withdrawal account.

24. This Defendant denies the allegations of Paragraph 23.

25. Answering Paragraph 24, this Defendant admits that Defendants Richard Gaby and Barbara Van Andel Gaby wired funds in payment of progress billings.

26. This Defendant denies the allegations of Paragraph 25.

27. Answering Paragraph 26, this Defendant admits only so much that David Loree is an employee of the Gaby family.

28. This Defendant admits that David Loree was in contact with Plaintiff and Kunstwerke Corporation on behalf of the Gabys, all remaining allegations are denied.

29. This Defendant admits that Defendant David Loree, acting on behalf of the Defendants Richard Gaby and Barbara Van Andel Gaby, terminated Kunstwerke Corporation's performance on the project by reason of Kunstwerke Corporation's breaches of contract and fraud.

30. Answering Paragraph 25, this Defendant is without information sufficient to form a belief as to the allegations of Paragraph 29 and therefore denies same.

31. This Defendant denies the allegations of Paragraph 30.

32. Answering Paragraph 31, this Defendant is without information sufficient to form a belief as to the allegations of Paragraph 31 and therefore denies same.

33. Answering Paragraph 32, this Defendant is without information sufficient to form a belief as to the allegations of Paragraph 32 and therefore denies same.

34. Answering Paragraph 33, this Defendant specifically and expressly denies the allegations of said paragraph.

35. Answering Paragraph 32, this Defendant admits only so much of said paragraph as alleges that a binder was provided to the Defendants. This Defendant specifically and expressly denies all remaining allegations of this paragraph.

36. This Defendant denies the allegations of Paragraph 35.

37. This Defendant denies the allegations of Paragraph 36.

38. Answering Paragraph 37, this Defendant responds to the allegations of said paragraph in the same manner and consistent with its admissions and denials of the proceeding paragraphs.

39. This Defendant admits only so much of Paragraph 38 as alleges that this Defendant communicated with suppliers and subcontractors of Kunstwerke Corporation for the purposes of completing performance of the contract defaulted by Kunstwerke Corporation.

40. Defendant denies the allegations of Paragraph 39.

41. Defendant denies the allegations of Paragraph 40.

42. Defendant denies the allegations of Paragraph 41, 42, 43, 44, and 45.

43. Answering Paragraph 46, this Defendant responds to the allegations of said paragraph in the same manner and consistent with its admissions and denials of the proceeding paragraphs.

44. Defendant denies the allegations of Paragraph 47, 48, 49, 50, and 51.

45. Answering Paragraph 52, this Defendant responds to the allegations of said paragraph in the same manner and consistent with its admissions and denials of the proceeding paragraphs.

46. Defendant denies the allegations of Paragraph 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62.

FOR A SECOND DEFENSE

47. This Defendant herein incorporates by reference all previous allegations consistent herewith.

48. The Defendant would respectfully allege and show that the Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

49. This Defendant herein incorporates by reference all previous allegations consistent herewith.

50. This Defendant would respectfully allege and show that Plaintiff has failed to join an indispensable party within the meaning of Rule 19, that party being Kunstwerke Corporation and would allege and show that in the absence of Kunstwerke Corporation, complete belief cannot be accorded among those already parties, that Kunstwerke Corporation would claim an interest in the subject matter of this action, that the absence of Kunstwerke Corporation would leave this Defendant with a substantial risk of incurring double, multiple or otherwise inconsistent obligations.

FOR A FOURTH DEFENSE
(Lack of Privity)

51. This Defendant herein incorporates by reference all previous allegations consistent herewith.

52. Plaintiff's claims are barred by reason of Plaintiff's lack of privity of a contract with this Defendant.

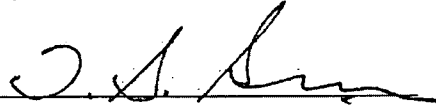
FOR A FIFTH DEFENSE
(Unclean Hands)

53. This Defendant herein incorporates by reference all previous allegations consistent herewith.

54. Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that it be dismissed and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



T.S. Stern, Jr. (#5337)
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

Attorneys for Defendant David Loree

February 19, 2007
Greenville, South Carolina

STATE OF SOUTH CAROLINA

2015 APR 28 AM 11 05

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CASE NO.: 2006-CP-39-1826

J. Scott Kunst

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.

David Loree

Plaintiff,)
)
)
)
)
)
Defendant.)

Plaintiff's Attorney: J. Scott Kunst, *pro se*
, Bar No.
Address: 130 Arabian Way, Simpsonville, SC 29681
Phone: Fax
E-mail: Other:

Defendant's Attorney:
V. Elizabeth Wright, SC Bar 76029
Covington, Patrick, Hagins, Stern & Lewis, P.A.
Address: P.O. Box 2343, Greenville, SC 29602
Phone: 864.242.9000 Fax 864.233.9777
E-mail: bwright@covpatlaw.com Other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Answer

Estimated Time Needed: 15 min.

Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant

4-22-2015
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00

EXEMPT:

(check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

2015 APR 28 AM 11 05

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

CASE NO. 2006-CP-39-1826

J. Scott Kunst,

Plaintiff(s),

v.

David Loree,

Defendant(s).

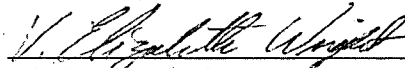
**DEFENDANT'S MOTION TO AMEND
ANSWER**

TO: J. Scott Kunst, *pro se* Plaintiff.

YOU WILL PLEASE TAKE NOTICE ten (10) days after service of this motion or as soon as counsel may be heard, Defendant David Loree, pursuant to Rule 15, SCRPC, will respectfully request leave to amend his Answer. A copy of the proposed amended answer is attached to this Motion. The proposed amended answer adds the affirmative defenses of truth of the statement and conditionally privileged communication. Defendant is informed and believes that no additional discovery will be necessary by any party were the Court to grant him leave to amend his Answer. Defendant also believes granting leave to amend its Answer will not prejudice the Plaintiff.

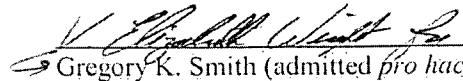
Counsel has not consulted with the *pro se* litigant because it will serve no useful purpose.

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.



T.S. Stern, Jr. (S.C. Bar #5337)
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Atlanta, GA 30309
(404) 572-2858
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Attorneys for Defendant David Loree

Greenville, South Carolina
April 22, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

J. Scott Kunst,)
)
)
Plaintiff,)
)
v.)
)
Richard Gaby, Barbara Van Andel –)
Gaby, and David Loree,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2006-CP-39-1826

**DEFENDANT DAVID LOREE'S
AMENDED ANSWER TO COMPLAINT**

The Defendant, David Loree, subject to his Motion to Dismiss, answering the Complaint of Plaintiff, states as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not herein below specifically admitted is denied and strict proof demanded thereof.
2. Defendant admits that he is without information sufficient to form a belief as to the allegations of Paragraph 1 and therefore denies same.
3. This Defendant admits the allegations of Paragraph 2.
4. Answering Paragraph 3, this Defendant admits only so much that Kunstwerke Corporation, pursuant to contract, constructed a residence for the Defendants Richard Gaby and Barbara Van Andel Gaby in Pickens County, South Carolina.
5. This Defendant denies the allegations of Paragraph 4.
6. Defendant answers the admissions and denials in Paragraph 5 in the same manner in the same manner consistent with his previous admissions and denials.

7. This Defendant is without information sufficient to respond to Paragraph 6, therefore denies same.

8. Answer Paragraph 7, this Defendant admits only so much of Paragraph 7 as alleges that Defendants Richard Gaby and Barbara Van Andel Gaby entered into a contract with Kunstwerke Corporation. Any and all allegations contrary to the terms and conditions of said contract are denied and strict proof demanded thereof.

9. Answering Paragraph 8, this Defendant admits only so much of Paragraph 8 as alleges that the home under contract with Kunstwerke Corporation and Defendants Richard Gaby and Barbara Van Andel Gaby was one of several homes owned by the Gabys.

10. Answering allegations of Paragraph 9, this Defendant is without information sufficient to form a belief and therefore denies same.

11. Answering Paragraph 10, this Defendant is without information sufficient to form an opinion or belief as to the allegations in Paragraph 10 and therefore denies same.

12. Answering Paragraph 11, this Defendant is without information sufficient to form an opinion or belief as to the allegations in Paragraph 10 and therefore denies same.

13. Answering Paragraph 12, this Defendant admits only so much that the project was financed by the Gabys. This Defendant denies the remaining allegations.

14. Answering Paragraph 13, this Defendant would allege and show that a fiduciary relationship existed between Kunstwerke Corporation and the Defendants Richard Gaby and Barbara Van Andel Gaby. All remaining allegations are denied.

15. This Defendant denies the allegations of Paragraph 14.

16. This Defendant is without information sufficient to form a belief as to the allegations of paragraph 15 and therefore denies same.

17. Answering Paragraph 16, this Defendant admits only so much that Kunstwerke Corporation provided progress billings to Defendants Gaby for the purpose of determining amounts allegedly due. All contrary allegations are denied.

18. Answering Paragraph 17, this Defendant admits that Kunstwerke Corporation's billings including subcontractor and supplier invoices which Kunstwerke Corporation represented had been paid.

19. This Defendant denies the allegations of Paragraph 18.

20. Answering Paragraph 19, this Defendant specifically and expressly denies that such allegations and would allege and show that as a matter of law, the invoices included on Kunstwerke Corporation's progress billings were held in trust by Kunstwerke Corporation on behalf of those subcontractors and supplies included in said progress billings.

21. This Defendant denies the allegations of Paragraph 20.

22. This Defendant denies the allegations of Paragraph 21.

23. Answering Paragraph 22, this Defendant admits only so much of said paragraph as alleges that Defendants were not required to maintain a construction deposit withdrawal account.

24. This Defendant denies the allegations of Paragraph 23.

25. Answering Paragraph 24, this Defendant admits that Defendants Richard Gaby and Barbara Van Andel Gaby wired funds in payment of progress billings.

26. This Defendant denies the allegations of Paragraph 25.

27. Answering Paragraph 26, this Defendant admits only so much that David Loree is an employee of the Gaby family.

28. Answering Paragraph 27, this Defendant admits that David Loree was in contact with Plaintiff and Kunstwerke Corporation on behalf of the Gabys, all remaining allegations of said paragraph are denied.

29. Answering Paragraph 28, this Defendant admits that Defendant David Loree, acting on behalf of the Defendants Richard Gaby and Barbara Van Andel Gaby, terminated Kunstwerke Corporation's performance on the project by reason of Kunstwerke Corporation's breaches of contract and fraud.

30. Answering Paragraph 29, this Defendant is without information sufficient to form a belief as to the allegations of Paragraph 29 and therefore denies same.

31. This Defendant denies the allegations of Paragraph 30.

32. Answering Paragraph 31, this Defendant is without information sufficient to form a belief as to the allegations of Paragraph 31 and therefore denies same.

33. Answering Paragraph 32, this Defendant is without information sufficient to form a belief as to the allegations of Paragraph 32 and therefore denies same.

34. Answering Paragraph 33, this Defendant specifically and expressly denies the allegations of said paragraph.

35. Answering Paragraph 32, this Defendant admits only so much of said paragraph as alleges that a binder was provided to the Defendants. This Defendant specifically and expressly denies all remaining allegations of this paragraph.

36. This Defendant denies the allegations of Paragraph 35.

37. This Defendant denies the allegations of Paragraph 36.

38. Answering Paragraph 37, this Defendant responds to the allegations of said paragraph in the same manner and consistent with its admissions and denials of the proceeding paragraphs.

39. This Defendant admits only so much of Paragraph 38 as alleges that this Defendant communicated with suppliers and subcontractors of Kunstwerke Corporation for the purposes of completing performance of the contract defaulted by Kunstwerke Corporation.

40. Defendant denies the allegations of Paragraph 39.

41. Defendant denies the allegations of Paragraph 40.

42. Defendant denies the allegations of Paragraph 41, 42, 43, 44, and 45.

43. Answering Paragraph 46, this Defendant responds to the allegations of said paragraph in the same manner and consistent with its admissions and denials of the proceeding paragraphs.

44. Defendant denies the allegations of Paragraph 47, 48, 49, 50, and 51.

45. Answering Paragraph 52, this Defendant responds to the allegations of said paragraph in the same manner and consistent with its admissions and denials of the proceeding paragraphs.

46. Defendant denies the allegations of Paragraph 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62.

FOR A SECOND DEFENSE

47. This Defendant herein incorporates by reference all previous allegations consistent herewith.

48. The Defendant would respectfully allege and show that the Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

49. This Defendant herein incorporates by reference all previous allegations consistent herewith.

50. This Defendant would respectfully allege and show that Plaintiff has failed to join an indispensable party within the meaning of Rule 19, that party being Kunstwerke Corporation and would allege and show that in the absence of Kunstwerke Corporation, complete relief cannot be accorded among those already parties, that Kunstwerke Corporation would claim an interest in the subject matter of this action, that the absence of Kunstwerke Corporation would leave this Defendant with a substantial risk of incurring double, multiple or otherwise inconsistent obligations.

FOR A FOURTH DEFENSE
(Lack of Privity)

51. This Defendant herein incorporates by reference all previous allegations consistent herewith.

52. Plaintiff's claims are barred by reason of Plaintiff's lack of privity of a contract with this Defendant.

FOR A FIFTH DEFENSE
(Unclean Hands)

53. This Defendant herein incorporates by reference all previous allegations consistent herewith.

54. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE
(Truth as an Affirmative Defense)

55. This Defendant herein incorporates by reference all previous allegations consistent herewith.

56. Any alleged defamatory statements made by this Defendant, if any were made, are true and therefore are not defamatory.

FOR A SEVENTH DEFENSE
(Conditionally Privileged Communication)

57. This Defendant herein incorporates by reference all previous allegations consistent herewith.

58. Any alleged defamatory statements made by this Defendant, if any were made, are conditionally privileged communications.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that it be dismissed and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

T.S. Stern, Jr. (#5337)
Covington, Patrick, Hagins, Stern & Lewis, P.A.
V. Elizabeth Wright (#76029)
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(404) 572-2858

GKSmith@kslaw.com

Attorneys for Defendant David Loree

_____, 2015
Greenville, South Carolina

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 MEMORANDUM IN
SUPPORT OF MOTION TO AMEND
ANSWER**

Introduction

Defendant Loree's Motion to Amend Answer should be granted because justice so requires and because the Plaintiff will not be prejudiced if the motion is granted. Loree seeks to add two affirmative defenses: truth of the statement and conditionally privileged communication. Plaintiff is aware of these defenses and has cited them in recent pleadings before this Court. Defendant's motion should be granted because Plaintiff will not suffer prejudice from the amendment and the amendment will not cause any delay.

Background of the Case

This case began in 2006 with three defendants: Richard Gaby, Barbara Gaby and David Loree. In his Order of April 14, 2007, the Honorable D. Garrison Hill granted the Gabys' motion to dismiss all claims against them, finding Kunst's claims were compulsory counterclaims under Rule 13(a), SCRPC, and were barred because of Kunst's and Kunstwerke's default in the action of *Gaby v. Kunst and Kunstwerke*. On February 3, 2009, the remaining defendant, David Loree, argued for summary judgment as to Kunst's claims of tortious interference, intentional infliction of emotional distress and defamation. The Honorable Edward W. Miller in his Order of March 3, 2009, granted summary judgment as to the tortious

interference and intentional infliction of emotional distress claims, but denied summary judgment as to the defamation claim. As a result, the only cause of action remaining to be tried is that of defamation.

Kunst asserted in his Complaint that he had been defamed when "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.

Plaintiff's Complaint, paragraph 53.

David Loree is an employee of Richard and Barbara Gaby. When Kunst walked off the building site of the Gabys' home in The Reserve, leaving the house uncompleted and vendors unpaid, the Gabys instructed Loree to get the building project back on line. Loree had to meet with suppliers and subcontractors in order to do so. Any alleged defamatory statements that Loree may have made would be protected because they were conditionally privileged due to the nature of his business or because they are true statements and therefore do not rise to the level of defamation. For this reason, justice requires that Loree be allowed to amend his answer and add the affirmative defenses of truth and of conditional privilege.

Law of the Case

Rule 15, SCRPC, allows a party to amend his pleading by leave of the court and leave shall be freely given when justice so requires and does not prejudice any other party. See also *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005) (Rule governing amendments of pleadings strongly favors amendments and the court is encouraged to freely grant leave to amend); *Duncan v. CRS Serrine Engineers, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (Ct. App. 1999) (a motion to amend a pleading is addressed to the sound discretion of the trial judge).

While it is true that Rule 15, SCRPC, strongly favors amendments of pleadings, the court must deny the motion in the following instances: (1) when amendment would prejudice or surprise the other party, *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997), and (2) when amendment would cause excessive delay, *Crowley v. Spivey*, 285 S.C. 397, 329 S.E.2d 774 (Ct. App. 1985).

Plaintiff will not be prejudiced or surprised by the amendment of Loree's Answer because he is already aware of these defenses and has conducted discovery enabling him to investigate the causes of action. In Plaintiff's Motion for A Continuance of Trial, filed October 7, 2014, (attached as Ex. A) Plaintiff argued on page 3 of his motion that "Defendant Loree slandered the Plaintiff while on the job" (paragraph 1) and "Both Richard and Barbara Gaby are the victims of an alleged crime perpetuated by the Plaintiff according to the truth defense of Defendant Loree. (paragraph 3). Plaintiff reasserted this argument in his Affidavit, attached as Ex. B. This Court granted Plaintiff's motion and Plaintiff deposed Richard and Barbara Gaby on December 5, 2014 in Atlanta, Georgia. Plaintiff has already had the opportunity to investigate the affirmative defenses of truth and conditional privilege and therefore cannot claim to be

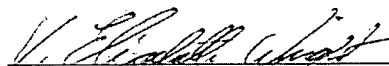
prejudiced or surprised by Loree's amendment of his Answer. Certainly there will be no delay due to Loree's amendment because discovery has already been conducted and no further discovery is needed.

Conclusion

Loree's motion to amend should be granted because Rule 15, SCRCP, encourages the amendment of pleadings when justice so requires, the Plaintiff will not be prejudiced by Loree's amendment and the amendment will not cause delay.

Respectfully submitted.

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.



T.S. Stern, Jr. (S.C. Bar #5337)

E-Mail: sstern@covpatlaw.com

V. Elizabeth Wright (S.C. Bar #76029)

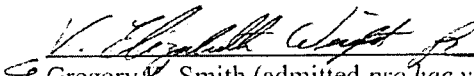
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P.O. Box 2343 (29602)

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Atlanta, GA 30309

(404) 572-2858

GKSmith@kslaw.com

Attorneys for Defendant David Loree

Greenville, South Carolina
April 22, 2015

2015 APR 28 AM 11-06

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

EX. A

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

CASE NO. 2006-CP-39-1826

J. Scott Kunst,

Plaintiff,

v.

David Loree,

Defendant.

PLAINTIFF'S MOTION FOR
A CONTINUANCE OF TRIAL
UNTIL FINAL TWO DEPOSITIONS
FROM DISCOVERY ARE COMPLETE

TO: Defendant, David Loree:

Please take notice that on the tenth (10th) day hereafter from the date of this Notice of Motion, or as soon thereafter as Plaintiff may be heard, the above-named Plaintiff *pro se* will move before the Presiding Judge at the Pickens County Courthouse, for a continuance of trial until such time as the two main witnesses of this case can be compelled to provide testimony as ordered during discovery by Judge Few by commission to the Fulton County Clerk of Court in 2008. Richard Gaby and Barbara Gaby were issued Georgia subpoenas during discovery but have refused to appear in this civil action involving their employee and former co-defendant David Loree. It is believed that Richard and Barbara Gaby continue to reside at 445 Old Homestead Trail, Duluth Georgia. The Plaintiff has taken action to enforce the Georgia subpoenas in the state of Georgia. This motion is based on the following:

The trial court forced an unwarranted and unnecessary delay in this case by granting the Defendant's Motion for Stay in 2009. This stay was granted based on an incorrect determination by the trial court that the doctrine of collateral estoppel *may* apply upon the final order of a related *default* case.

In 2010, the trial court erred again and directly contradicted South Carolina law by dismissing this case based on an incorrect application of collateral estoppel to the civil *default* case.

The South Carolina Court of Appeals unanimously overturned the trial court in 2011 - after four years had been lost. During this time, the Plaintiff's key witness, Bronson Shepherd committed suicide.

The trial court would only err again and place the Plaintiff in an untenable position of having to present this case to a jury without the testimony of the two witnesses with the most factual knowledge of this event. It would be a miscarriage of justice to be forced to proceed without a full case.

The Defendant Loree delayed this case yet another year with a poorly argued and frivolous attempt to have the State Supreme Court consider South Carolina's first ever "novel" collateral estoppel application to a *default* judgment. Loree did not even file a reply brief. Five years have now been lost due to trial court errors and the obstructive efforts of this Defendant.

After the Defendant exhausted every other possible delay tactic, his counsel has suddenly announced that they are no longer representing Richard Gaby and Barbara Gaby in the narrow "matter" of their testimony. The Plaintiff will show that every effort has been made to obtain the voluntary cooperation of the Gabys through their former counsel. Indeed, the Plaintiff's memorandum will show that their former counsel even arranged a deposition time and place for Richard Gaby in 2007. The Plaintiff's memorandum will also show that Barbara Gaby has submitted an affidavit declaring that she was an informed party throughout this event.

There was no objection during discovery claiming "relevance" or "harassment" when

Judge Few issued a commission for their testimony. The commission was issued because the Gaby's are Georgia residents and were no longer named parties to this action.

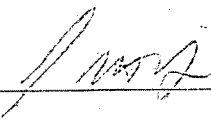
The Plaintiff will show those reasons why he cannot go safely to trial without the testimony of Richard Gaby and Barbara Gaby including, but not limited to:

1. Defendant Loree slandered the Plaintiff while on the job. Both Richard and Barbara Gaby were his employer. Only Richard and Barbara Gaby have direct and personal knowledge of all facts of Loree's employment in regards to this event.
2. Both Richard and Barbara Gaby's personal funds are the subject of Defendant Loree's slander. Only Richard and Barbara Gaby have direct and personal knowledge regarding the facts of any supposed embezzlement of their own money.
3. Both Richard and Barbara Gaby are the victims of an alleged crime perpetrated by the Plaintiff according to the truth defense of Defendant Loree. Only Richard and Barbara Gaby have direct and personal knowledge of the facts of any such crime.
4. Both Richard and Barbara Gaby are the only signors to the contract with the Plaintiff at the heart of this event. Defendant Loree is not a party to the contract nor was he even employed by the Gaby's when signed. Only Richard and Barbara Gaby have direct and personal knowledge of the facts of their own relationship with the Plaintiff in regards to this event.
5. Both Richard and Barbara Gaby have not been deposed in this or any of the other related cases. Both Richard and Barbara Gaby are the only two witnesses out of

dozens subpoenaed who have actively avoided being deposed.

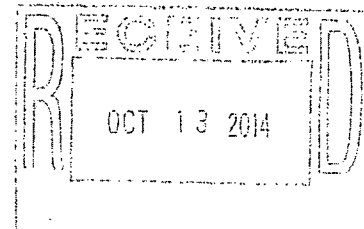
6. Both Richard and Barbara Gaby have direct and personal knowledge of the facts of Defendant Loree's employment contract and responsibilities. Defendant Loree repeatedly referenced his efforts on behalf of his "boss" in his testimony, but his "boss" has never been deposed. A jury cannot possibly decide this case without hearing from Loree's "boss."
7. Both Richard and Barbara Gaby were the direct and personal recipients of billings from the Plaintiff's company that Defendant Loree has stated to others were fraudulent. Loree continues to plead a truth defense that they were fraudulent.
8. Both Richard and Barbara Gaby are the only two witnesses who have direct and personal knowledge of the facts of whether Defendant Loree was acting within his scope of employment.
9. Both Richard and Barbara Gaby are the only two witnesses with direct and personal knowledge of the facts of what instruction they may or may not have given Defendant Loree regarding his contact and communication with two hundred and forty individuals associated with the Plaintiff.

This motion is based upon the requested witnesses in this case from discovery and the memorandum of the plaintiff pro se.



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

Simpsonville, South Carolina
October 7, 2014



EX. B

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

CASE NO. 2006-CP-39-1826

J. Scott Kunst,

Plaintiff,

Affidavit of J. Scott Kunst

v.

David Loree,

Defendant.

Personally appeared before me J. Scott Kunst, who being duly sworn, states as follows:

I, J. Scott Kunst, Plaintiff *pro se*, cannot go safely to trial in the above referenced case without the testimony of Richard and Barbara Gaby and I believe they can testify to the following:

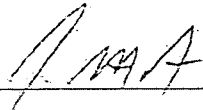
1. Defendant Loree slandered the Plaintiff while on the job. Both Richard and Barbara Gaby were his employer. Only Richard and Barbara Gaby have direct and personal knowledge of all facts of Loree's employment in regards to this event.
2. Both Richard and Barbara Gaby's personal funds are the subject of Defendant Loree's slander. Only Richard and Barbara Gaby have direct and personal knowledge regarding the facts of any supposed embezzlement of their own money.
3. Both Richard and Barbara Gaby are the victims of an alleged crime perpetrated

by the Plaintiff according to the truth defense of Defendant Loree. Only Richard and Barbara Gaby have direct and personal knowledge of the facts of any such crime.

4. Both Richard and Barbara Gaby are the only signors to the contract with the Plaintiff at the heart of this event. Defendant Loree is not a party to the contract nor was he even employed by the Gaby's when signed. Only Richard and Barbara Gaby have direct and personal knowledge of the facts of their own relationship with the Plaintiff in regards to this event.
5. Both Richard and Barbara Gaby have not been deposed in this or any of the other related cases. Both Richard and Barbara Gaby are the only two witnesses out of dozens subpoenaed who have actively avoided being deposed.
6. Both Richard and Barbara Gaby have direct and personal knowledge of the facts of Defendant Loree's employment contract and responsibilities. Defendant Loree repeatedly referenced his efforts on behalf of his "boss" in his testimony, but his "boss" has never been deposed. A jury cannot possibly decide this case without hearing from Loree's "boss."
7. Both Richard and Barbara Gaby were the direct and personal recipients of billings from the Plaintiff's company that Defendant Loree has stated to others were fraudulent. Loree continues to plead a truth defense that they were fraudulent.
8. Both Richard and Barbara Gaby are the only two witnesses who have direct and personal knowledge of the facts of whether Defendant Loree was acting within his scope of employment.
9. Both Richard and Barbara Gaby are the only two witnesses with direct and

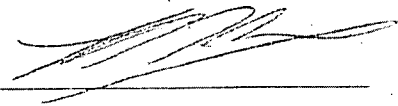
personal knowledge of the facts of what instruction they may or may not have given Defendant Loree regarding his contact and communication with two hundred and forty individuals associated with the Plaintiff.

Further, Affiant sayeth naught..



J. Scott Kunst, Plaintiff, *pro se*

Sworn to before me this 7th day
of October, 2014



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Nicholas T. DeSanto, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires March 3, 2018
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

RECEIVED
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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

J. Scott Kunst,

Plaintiff(s),

v.

David Loree,

Defendant(s).

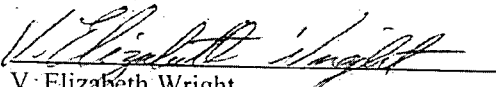
IN THE COURT OF COMMON PLEAS

CASE NO. 2006-CP-39-1826

CERTIFICATE OF SERVICE

I, V. Elizabeth Wright, an attorney with the law firm of Covington, Patrick, Hagins, Stern & Lewis, LLC, do hereby certify that on the 22nd day of April 2015, I deposited into the U.S Mail, First-Class postage prepaid, Defendant's Motion to Amend Complaint and Memorandum in Support to the *pro se* litigant at the address listed below.

J. Scott Kunst, *Pro Se*
130 Arabian Way
Simpsonville, SC 29681


V: Elizabeth Wright

Greenville, South Carolina
April 22, 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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**ALL EXHIBITS WERE RETAINED BY THE
PICKENS COUNTY CLERK OF COURT**

May 26, 2015

1
2 THE COURT: Okay. All right, ladies and
3 gentlemen, I'll remind you before we get started that
4 you continue under the oath that you previously took
5 to tell the truth. This is -- we're going to go
6 through, essentially, the same process wherein I ask
7 you questions to determine whether you're qualified
8 and/or whether it's appropriate for you to preside as
9 a juror in this specific case which is being called
10 to bar.

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

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

1 Keowee in February and March 2006.

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

11 (There was no response.)

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

17 (There was no response.)

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

24 (There was no response.)

25 THE COURT: All right. Let the record reflect

1 no affirmative response.

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

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

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

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

12 MS. WRIGHT: Yes, sir.

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

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

18 (There was no response.)

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

23 (There was no response.)

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

1 you saw and you're making qualitative decisions about
2 what the evidence told you and you're doing it with
3 somebody who is not on the deliberating jury. So
4 please don't discuss the case with anyone except the
5 12 deliberating jurors when I've told you to do so.

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

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

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

7 Now, ladies and gentlemen, we are going to break
8 now. We are going to break until after lunchtime at
9 1:00. The reason for that is there are matters of
10 law and motions that I must take up before we begin
11 the trial of this case. That will delay us beginning
12 the introduction of the testimony and evidence, but
13 will, ultimately, speed us up because we will move
14 forward knowing what is going to be admitted and it
15 will help us in the process of the procedure. And
16 there are a couple of hours of just hearings that I'm
17 going to have to conduct before we start so we can
18 get to a place where we can begin the introduction of
19 testimony.

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

1 14th shows up. And it's not being inconsiderate to
2 me, it's being inconsiderate to your fellow jurors.
3 And I'm sure you'll receive nasty glares from the
4 rest of them if you decide to be 15 minutes late. So
5 please be on time. Don't discuss the case. When we
6 get back, we'll swear you in and we'll begin with the
7 opening statements from the parties. Thank you very
8 much.

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

11 THE COURT: Okay. Motions?

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

25 THE COURT: Yes, ma'am.

1 Mr. Kunst, your position, sir?

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

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

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

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

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

1 that regard.

2 MR. KUNST: Thank you, Your Honor.

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

13 MR. SMITH: Yes, Your Honor.

14 MR. KUNST: Yes, Your Honor.

15 THE COURT: Good enough.

16 Additional motions?

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

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

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

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

24 THE COURT: Okay.

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

1 from you, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 MR. KUNST: That is correct.

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

1 that says that truth must be affirmatively pled — is
2 there? Does it say that?

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: Okay. I got you.

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

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

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

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

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

1 seconds if you want to.

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

5 THE COURT: Yeah.

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

18 THE COURT: Okay.

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

24 THE COURT: Okay. All right.
25 Mr. Kunst?

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

10 **THE COURT:** Okay.

11 **MR. KUNST:** That's my case.

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

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

21 **THE COURT:** All right. Anything else?

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

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

3 THE COURT: Yes, ma'am.

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

8 THE COURT: All right.

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

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

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

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

5 MR. SMITH: Your Honor, if I may?

6 THE COURT: Yes, sir.

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

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

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

8 MR. SMITH: Thank you, Your Honor.

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

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

16 MS. WRIGHT: Yes, Your Honor.

17 THE COURT: Okay. All right:

18 Mr. Kunst?

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

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

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

5 **THE COURT:** Okay.

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

8 **MR. KUNST:** I'm a little confused, Your Honor.

9 Can Defense please clarify?

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

17 **THE COURT:** Okay. Mr. Kunst.

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

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

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

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

1 into evidence.

2 THE COURT: Okay. Mr. Kunst?

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

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

16 All right. Next issue?

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

24 THE COURT: Okay.

25 All right. Mr. Kunst.

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

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

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

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

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

8 THE COURT: Yes, ma'am.

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

13 THE COURT: Okay.

14 All right. Mr. Kunst.

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

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

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

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

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

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

17 THE COURT: Okay.

18 Yes, ma'am, Ms. Wright.

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

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

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

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

1 **Statements under belief of impending death. Was**
2 **he under — understand that only applies in the**
3 **prosecution for homicide or in a civil action or**
4 **proceeding, a statement made by declarant while**
5 **believing the declarant's death was imminent. I**
6 **presume that that wasn't made while he was under**
7 **duress of death.**

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

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

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

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

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

6 THE COURT: Okay.

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

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

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

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

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

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

25 Okay. Next motion.

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

7 **THE COURT:** Okay.

8 **Mr. Kunst.**

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

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

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

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

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

17 MR. SMITH: I agree.

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

25 MR. SMITH: Thank you, Judge.

1 **THE COURT:** Yes, ma'am.

2 **MS. WRIGHT:** Our final one, Your Honor, the
3 Plaintiff has stated in pre-trial brief he will be
4 calling himself as an expert witness — or if it
5 wasn't in his pre-trial brief, it may have been after
6 we had communications. We object to that, Your
7 Honor. First, he has not informed us as to what his
8 expertise is going to be. Second, we're mystified as
9 to how he can be an expert on information, which is
10 the sole issue here in the trial. And third, we
11 understand it's possible he might be trying to make
12 himself out as an expert in accounting. However, he
13 has let his CPA license lapse some years ago and he
14 has not run or operated a business as a CPA. So, we
15 question his ability to appear as an expert witness.
16 Let me stress that we're not saying he cannot testify
17 personally, we're not saying that. But we are saying
18 that he does not have the ability to be his own
19 expert witness.

20 **THE COURT:** Okay.

21 All right. Mr. Kunst.

22 **MR. KUNST:** Your Honor, I have no idea where it
23 is stated that I would be my own expert witness. If
24 I did, it was a mistake. Prior to being an
25 architectural designer, I was a CPA. I don't think

1 that will be hidden from the jury. They are not
2 going to use an expert witness in this case, which is
3 remarkable, after nine years, particularly since it
4 has to do with specific statements of theft and
5 reconciliation of accounts and stuff. I am going to
6 have to explain my company's books. I'm going to
7 have to represent my company and records kept. I
8 have no problem with the jury knowing that I'm also a
9 CPA and accountant and that I understand these
10 things, but I'm not going to purport to an expert at
11 defamation, but I do understand my company's books
12 and can be questioned on it.

13 THE COURT: Yeah, you can testify from your o
14 personal knowledge about your books.

15 Does that satisfy your inquiry?

16 MS. WRIGHT: Well, he can't represent his
17 company, Your Honor. First of all, his company was
18 an LLC, that requires its own representation. More
19 importantly, Kunstwerke is not a party in this case.
20 So, if he wants to testify as to his experience in
21 his business, that's one thing, but if he's
22 representing his company, we do object.

23 THE COURT: Okay. All right. My inclination is
24 to allow him to testify as to the books and the
25 records of the company inasmuch as he has personal

1 knowledge of the same. I won't limit him in that
2 regard. I recognize the distinction that you made
3 between a corporate entity and his corporate entity.
4 However, I think in this instance, in order to allow
5 him to fully present his case that that's proper and
6 it's fair.

7 MS. WRIGHT: That concludes our motion in
8 limine, Your Honor.

9 THE COURT: All right. Good enough. Okay.

10 MR. KUNST: Mine are much shorter, Your Honor.

11 THE COURT: Okay.

12 MR. KUNST: May I approach?

13 THE COURT: Sure. Absolutely.

14 MR. KUNST: Your Honor, if I may, I would like
15 to enter and offer proof of evidence of the affidavit
16 before I continue on in my motion in limine.

17 My first is any evidence and testimony alleging
18 that there is any truth of criminal findings of any
19 kind regarding slander statements attributed to the
20 Defendant. The reason I'm making this motion is it's
21 been a problem with this case from the start. I
22 think it's pretty evident in my pre-trial brief and
23 in my memorandum against the amendments to change the
24 pleading. The Defense has continually tried to cross
25 the line between criminal and civil. I've never had

1 more than a speeding ticket.

2 THE COURT: I want to ask you this, do you
3 intend to try to introduce any evidence of
4 criminality?

5 MR. SMITH: Your Honor, what we are going to
6 introduce — no, we do not plan — there's been no
7 conviction. I don't think there's any contest that
8 there's been no conviction. I'll state that in my
9 place, there's been no conviction of a criminal
10 nature by Mr. Kunst.

11 THE COURT: Okay. So, you don't intend to
12 introduce any evidence of criminality?

13 MR. SMITH: Well, we may introduce — and it
14 depends on how the evidence goes. Of course, being
15 the Defense, we don't know exactly what he's going to
16 do. We may at some point want to introduce a statute
17 that Judge Welmaker found he violated which had
18 criminal penalties, but there was no criminal
19 prosecution of it.

20 THE COURT: Okay.

21 MR. SMITH: Judge Welmaker — well, I'm sorry.
22 I didn't mean to interrupt you.

23 THE COURT: No, you're not interrupting me.
24 This is the preferred way of handling that, and that
25 is make a request for charge at the end of evidence,

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

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

12 THE COURT: Yes, sir.

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

19 THE COURT: Right.

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

24 THE COURT: Got it.

25 MR. SMITH: And that's what Judge Welmaker

1 found.

2 THE COURT: Okay.

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

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

12 MR. SMITH: Thank you, Your Honor.

13 THE COURT: Mr. Kunst.

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

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

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

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

10 THE COURT: Okay.

11 Y'all intending to do that?

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

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

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

1 about privilege.

2 THE COURT: Yes, sir.

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

15 THE COURT: I understand. I understand.

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

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

1 Mr. Loree on the document.

2 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

14 Okay. Anything else?

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

17 MR. KUNST: No, Your Honor.

18 THE COURT: Okay. Good. So we'll come back
19 1:00 and begin the trial of the case.

20 Mr. Kunst, you'll open.

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

22 MR. SMITH: I'll open, sir.

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

25 Mr. Kunst, you have footed yourself very well so

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

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

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

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

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

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

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

20 THE COURT: My father taught me that, too.

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

22 THE COURT: Okay. No worries.

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

25 MR. SMITH: No, Your Honor.

1 MR. KUNST: No, Your Honor.

2 THE COURT: All right. Thank you. Y'all have a
3 great lunch. See you back in a little bit.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Are we ready for the jury?

6 MR. SMITH: Ready, Your Honor.

7 THE COURT: Let's bring them in, please, sir.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 1:00 p.m.)

10 THE COURT: All right. Ladies and gentlemen,
11 we're going to start the trial of this case. Before
12 we get started, I'm going to ask the Clerk of Court
13 to swear you in. You've already taken an oath to
14 tell the truth. This is a different oath. This is
15 an oath to try the case in accordance with the law as
16 I give it to you. So, I'll turn it over to
17 Ms. Watson to administer the oath.

18 Yes, ma'am.

19 THE CLERK: Please raise your right hand, stand
20 up and raise your right hand.

21 (WHEREUPON, the jury was sworn.)

22 THE CLERK: Thank you. You can be seated.

23 THE COURT: All right. Mr. Kunst, your
24 argument, sir.

25 OPENING STATEMENT

1 MR. KUNST: May it please the Court, Your Hon

2 THE COURT: Yes, sir.

3 MR. KUNST: Defense.

4 Good afternoon, folks. You might have heard
5 that good news earlier, I'm not a lawyer. My name is
6 Scott Kunst. It's spelled K-U-N-S-T. I'm an
7 architectural design artist. I'm also a craftsman
8 and I also am a small businessman. I design and
9 build multimillion dollar extreme mansions that hang
10 off the cliffs. This is Tracy. She's the love of my
11 life. We've been together for 18 years. And she's
12 not a lawyer either.

13 I'm probably one of the most self-made men
14 you'll ever meet. I say that humbly. I've never
15 really earned much money doing what I do because I
16 just love doing what I do that much. I started way
17 back in 1996 building a cottage with my own hands up
18 on Caesars Head. And within a decade of that, I had
19 a portfolio of 16 of those multimillion dollar
20 extreme mansions I just mentioned. If you've been in
21 Barnes and Nobles say back in 2005, you might have
22 seen one of them in a magazine up by the register.

23 You would think to build houses like that would
24 have a lot of paper work, a lot of contracts. Mine
25 didn't. Mine was relied on on a handshake. I think

1 it has always been if I can't rely on another man's
2 handshake that I didn't want his business. And if he
3 didn't trust my handshake, I didn't need his
4 business. I always had a waiting list of clients who
5 would trust my handshake that I would take. My
6 reputation back then was that strong.

7 My company's name was Kunstwerke, which is a
8 German word meaning work of art. My last name is
9 Kunst. That means art in German. I lucked out with
10 my name. But Kunstwerke did something that no other
11 builder had done. It advanced credit to my
12 billionaire and millionaire clients by paying for the
13 cost of construction as it went along, the lumber and
14 painters and suppliers, then asking for reimbursement
15 after the fact. It was a courtesy to my clients.
16 They're certainly good for it. That will be a very
17 important thing to remember in this case, the credit
18 nature of my company. My clients were always really
19 good people and they could be trusted. I didn't get
20 this far with myself by lying, cheating or stealing.
21 I couldn't live with myself.

22 Back in 2004, I made a big mistake. I shook the
23 hand of someone I should have never trusted. I
24 agreed to build a 9000 square foot, three-lot mega
25 mansion for a family from Atlanta. I should have

1 known that eventually I would be stolen from and
2 destroyed. Their name is Gaby, G-A-B-Y.

3 We broke ground on the Gaby house in
4 November 2004. This is all a long time ago. It's
5 taken a long time to get this to you, folks. The
6 Gaby house was 75 percent done by March of 2006. A
7 few months before that, things started getting
8 strange. Mr. Gaby began to complain about the cost.
9 My clients do that. Then he complained about the
10 time. My clients do that, too. Then he said, Keep
11 the rising cost of the house under your hat and not
12 tell my wife, Barb. I knew then something was going
13 to happen and eventually hit the fan. And on
14 February 16th, 2006, it did. The Gaby's sent someone
15 to South Carolina to fix their problem. They have
16 people for that. That's when I met the man that
17 you're going to meet here a little later. His name
18 is David Loree, L-O-R-E-E. He's the Defendant in
19 this case. He's the one being sued.

20 David Loree arrived on the scene and handed me
21 business card that said executive protection
22 administrator. He is actively employed by the
23 Gaby's. He is offered by the pyramid company as a
24 body guard to Mrs. Gaby. When Mr. Loree arrived on
25 the scene, he first told me that he just wanted to

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

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

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

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

10 The statements that witnesses will attest to,
11 there are eight, will be numbered, and you'll hear
12 witnesses say that David Loree stated that I stole
13 \$400,000 from the Gaby's. You will hear witnesses
14 say that David Loree stated that I stole from all of
15 my clients. Slander three, I stole money from named
16 clients, Parham, Coco, Hickey, Covington. Slander
17 four, I created dummy invoices from dummy companies
18 so that I could bill my clients and keep the money.
19 Slander five, I spent some of the stolen money on
20 cars, trips, family members. Subcontractors were
21 told I stiffed their money that was owed them.
22 Slander number six, I did criminal things like take
23 out an insurance policy on the Gaby project, bill the
24 Gaby's, cancel the policy the next day and pocket the
25 money. Slander seven, Scott is going to jail.

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

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Yes, sir, absolutely.

25 OPENING STATEMENT

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

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

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

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

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

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

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

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

25 And what you're going to find out the evidence

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

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

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

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

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

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

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

TRACY HILTON-DIRECT BY MR. KUNST

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

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

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

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

13 **TRACY HILTON,** after being duly sworn,
14 testified as follows:

15 **THE CLERK:** State your full name for the record.

16 **THE WITNESS:** Tracy Diane Hilton.

17 **THE CLERK:** Please be seated.

18 **DIRECT EXAMINATION**

19 **BY MR. KUNST:**

20 **Q** State your full name again and profession.

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

23 **Q** Where were you born?

24 **A** In Greenville.

25 **Q** Do you have family here in South Carolina?

TRACY HILTON-DIRECT BY MR. KUNST

- 1 A Yes, my whole family is here in the Greenville
2 area.
3 Q Where did you go to school?
4 A I went to Furman University, majored in English.
5 Q Where do you live today?
6 A I live in Pittsburgh, Pennsylvania today.
7 Q Why do you not live in South Carolina?
8 A Because after what happened with the defamation
9 that damaged your reputation, we felt like we needed to
10 move somewhere else to try to start over.

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

13 THE COURT: What does that mean?

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

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

20 You may proceed, sir.

21 BY MR. KUNST:

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

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

TRACY HILTON-DIRECT BY MR. KUNST

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

4 Q When did we first meet?

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

8 Q Do you recall the age that we were?

9 A I think we were 25.

10 Q Describe our relationship on Caesars Head.

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

TRACY HILTON-DIRECT BY MR. KUNST

1 Q When did we become engaged?

2 A September of 2005.

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

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

8 Q What were some of your duties with my business?

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

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

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

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

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

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

TRACY HILTON-DIRECT BY MR. KUNST

1 A No.

2 Q Why not?

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

6 Q Have you ever met Defendant David Loree?

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

12 Q Do you recall who all attended this meeting?

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

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

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

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

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

TRACY HILTON-DIRECT BY MR. KUNST

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

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

12 A No.

13 Q When was the Gaby relationship terminated?

14 A They sent you a letter on March 3rd, and this is
15 2006.

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

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

22 Q Did I walk off of the Gaby project?

23 A No.

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

TRACY HILTON-DIRECT BY MR. KUNST

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

8 Q Did you accompany me on any specific client
9 trips?

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

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

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

25 Q Who is Gene Covington?

TRACY HILTON-DIRECT BY MR. KUNST

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

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

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

9 MR. KUNST: I apologize, Your Honor.

10 THE COURT: I understand.

11 BY MR. KUNST:

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

14 A That's my understanding, yes.

15 Q Do you recognize this document?

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

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

20 THE WITNESS: Do I show it to her?

21 MR. KUNST: We premarked exhibits.

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

25 THE COURT: Okay.

TRACY HILTON-DIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q What was your reaction to this letter?

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

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

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

15 MS. WRIGHT: Yes, sir.

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

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

21 THE COURT: Okay. Objection?

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

TRACY HILTON-DIRECT BY MR. KUNST

1 THE COURT: Okay.

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

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

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

11 BY MR. KUNST:

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

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

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

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

TRACY HILTON-DIRECT BY MR. KUNST

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

3 Q Why specifically, though, was the wedding
4 canceled?

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

8 Q Did we ever fight back?

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

13 Q Who is Bronson Sheppard?

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

18 Q When was the last time you saw Bronson Sheppard?

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

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

25 THE COURT: I sustain it as to any hearsay from

TRACY HILTON-DIRECT BY MR. KUNST

1 a deceased individual

2 BY MR. KUNST:

3 Q Describe Bronson's condition?

4 A We met with him.

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

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

12 Pose the question.

13 BY MR. KUNST:

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

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

18 Q Did you see Bronson again?

19 A No.

20 Q What happened to Bronson Sheppard?

21 A He committed suicide.

22 Q Do you need a moment?

23 A I'm okay.

24 Q Were you a signer on the Kunstwerke checking
25 account?

TRACY HILTON-DIRECT BY MR. KUNST

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

5 Q What kind of checks did you write?

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

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

11 A Yes. I wrote a check for them.

12 Q What happened to that check?

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

17 Q What month was this?

18 A April of 2006.

19 Q What happened?

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

TRACY HILTON-DIRECT BY MR. KUNST

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

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

8 A I'm not sure I understand the question.

9 MR. KUNST: Question is withdrawn, Your Honor.

10 THE COURT: Yes, sir.

11 BY MR. KUNST:

12 Q Do you recognize this document?

13 A You need to show it.

14 Q I do. I apologize.

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

19 THE COURT: Sure.

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

22 THE COURT: Okay.

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

25

TRACY HILTON-DIRECT BY MR. KUNST

1 BY MR. KUNST: .

2 Q Do you recognize these documents?

3 A Yes. This is regarding an insurance policy on
4 the Gaby project through Johnson Insurance Agency. This
5 was sent to us from Johnson Insurance Agency. It's marked
6 here, it says that it was returned to the post office. I
7 can only assume they tried to get it to the Gaby's, but it
8 came back. Maybe they tried to deliver it to the
9 construction site, I don't know.

10 Q Is that the type of clerical thing that you
11 handled during those months in 2005?

12 A Yes. And it's a request from the insurance
13 company requesting cancellation of a duplicate policy.
14 And it is marked for the signature of the named insured,
15 which is Richard Gaby. It's to sign to cancel the policy.
16 This came in and I wrote a note on the back to Mr. Gaby to
17 please sign it and fax it directly to the insurance
18 company. And I faxed that to Mr. Gaby.

19 Q Is that your original handwriting?

20 A That's my handwriting.

21 Q When did you make that handwriting?

22 A When this came in. Let's see, it says the end
23 of December 2005, so it would have been around that time.

24 Q Thank you.

25 MR. KUNST: Plaintiff moves for Exhibit A.

TRACY HILTON-DIRECT BY MR. KUNST

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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's 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 marked 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.

TRACY HILTON-DIRECT BY MR. KUNST

1 Q Do you recall what time that was?

2 A I imagine — no, actually, I don't specifically
3 remember when it was, but it was after April 2006,
4 somewhere between then and March 2007.

5 MS. WRIGHT: No objection to this one, Your
6 Honor.

7 THE COURT: Okay.

8 BY MR. KUNST:

9 Q Do you recognize this document?

10 A Yes. It's a copy of the letter that I wrote to
11 Ms. Gaby and the card that I put the letter in.

12 Q What does the card say?

13 A The card says, Thanks. It's a thank you card.

14 Q How was that delivered to Ms. Gaby?

15 A I put the note in the thank you card — the
16 letter in the thank you card.

17 Q What was the purpose of your letter?

18 A My letter was to contact her personally,
19 woman-to-woman, to let her know what had happened to our
20 family because of her family and the person she sent to
21 ruin your reputation. I wanted her to know the truth. I
22 didn't think she was getting information or maybe she was
23 just ignoring it.

24 Q You just said the person she sent. Who did she
25 send?

TRACY HILTON-DIRECT BY MR. KUNST

1 A David Loree.

2 Q Would you read the —

3 A I wanted her to know the effects of what he did
4 for them on our family was.

5 Q Would you read the letter, please?

6 A Dear Barb Van Andel-Gaby, please allow me to
7 introduce myself and give you a little background. I'm a
8 38-year-old single woman whose dreams came true in
9 September of 2005. The man I've been in love with for
10 over 14 years proposed to me in the most beautiful and
11 romantic way imaginable. We have known each other for s
12 long and I have watched him work day and night, year after
13 year to build his business to the point that he felt
14 comfortable finally taking this big step in our lives.
15 You can imagine how excited we were to now be able to pla
16 our future together as we should be, particularly after
17 waiting so long.

18 However, something happened shortly thereafter
19 that changed our lives and you and your husband are
20 directly responsible for that. If you haven't figured it
21 out by now, my fiance is Scott Kunst. You and your
22 husband have taken advantage of him and his generosity in
23 the design and construction of your beautiful lakeside
24 home. You have accused him of misappropriating funds
25 when, indeed, you still owe him for credit he extended on

TRACY HILTON-DIRECT BY MR. KUNST

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

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

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

TRACY HILTON-DIRECT BY MR. KUNST

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

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

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

25 If you think you have suffered damages, why

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TRACY HILTON-DIRECT BY MR. KUNST

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

5 MR. KUNST: Plaintiff's Exhibit 2.

6 THE COURT: All right. Any objections?

7 MS. WRIGHT: No objection, Your Honor.

8 THE COURT: All right. Without objection, the
9 same is admitted into evidence as Plaintiff's Exhibit No.
10 2.

11 BY MR. KUNST:

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

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

18 Q The Gaby suit?

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

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TRACY HILTON-DIRECT BY MR. KUNST

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

4 Q You just stated that I couldn't defend myself --

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

9 THE COURT: Okay.

10 MR. KUNST: Your Honor, in their opening
11 statement, they've already mentioned this judgment of
12 \$400,000.

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

17 MR. KUNST: I have no further questions, Your
18 Honor.

19 THE COURT: Okay. All right.

20 Cross-examination?

21 MS. WRIGHT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MS. WRIGHT:

24 Q Well, before I continue, Ms. Hilton, I want to
25 make sure that your comfortable and set and prepared for

1 my questions because you seem to be a bit distraught. Do
2 you need a moment?

3 A I'm ready.

4 Q Do need any water?

5 A No, thank you.

6 Q Okay. Now, getting to this letter that was just
7 introduced as Plaintiff's Exhibit No. 2, do you recall
8 what Judge Welmaker said about this letter?

9 A I don't recall what he said, but I remember he
10 told me not to contact the Gaby's anymore.

11 Q So, you were ordered by a court of law to cease
12 contact with the Gaby's?

13 A (The witness nods.)

14 Q So, is it fair to say that a Judge saw this
15 particular letter as a threat?

16 A I think it's fair to say that Ms. Gaby saw it as
17 a threat —

18 Q But the Judge took action, correct —

19 A — and something she didn't want to hear. I'm
20 sorry?

21 Q I'm sorry, I spoke over you and that was rude of
22 me. Please finish what you were saying.

23 A I said I think it's fair to say that Ms. Gaby
24 saw it as a threat or something and she didn't want to
25 hear the truth.

TRACY HILTON-CROSS BY MS. WRIGHT

1 Q But the Judge did issue you an order telling you
2 to cease and desist?

3 A Yes. And that was fine because I didn't want
4 anything to do with them anymore anyway.

5 Q Now, do you have a copy of that letter in front
6 of you?

7 A No.

8 Q Let me take care of that.

9 MS. WRIGHT: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 THE COURT REPORTER: I need to mark it, please.
13 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked
14 for identification and received into evidence.)

15 MS. WRIGHT: Thank you.

16 BY MS. WRIGHT:

17 Q Would you like to take a moment to look through
18 that?

19 A No, I just read it.

20 Q Okay. Was there anything in that letter that
21 referenced a defamatory statement from Mr. David Loree?

22 A There's the part where I said that they're too
23 cowardly to do their own dirty work, perhaps, they'll send
24 David Loree.

25 Q But there's nothing in there that you state to

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TRACY HILTON-CROSS BY MS. WRIGHT

1 Ms. Gaby, David Loree said this about J. Scott Kunst, is
2 there?

3 A No.

4 Q Thank you. Now, you stated earlier that you
5 were working part-time for Mr. Kunst; is that correct?

6 A I was helping him, not —

7 Q You were helping him?

8 A — working for him.

9 Q Okay. So, as I recall, your duties included
10 going through the mail and sending out billing notices and
11 so on; is that correct?

12 A No. Those were prepared by Scott and he gave me
13 the stapled stack and I put it in an envelope and
14 addressed it, put postage on it.

15 Q Okay. But you were working in an office,
16 correct?

17 A Our home office.

18 Q Where is that located?

19 A It was our apartment downtown Greenville at the
20 time.

21 Q May I have the address, please?

22 A I do not remember.

23 Q Do you remember what street it was on?

24 A Main street, I think. It was above Sticky
25 Fingers restaurant.

TRACY HILTON-CROSS BY MS. WRIGHT

1 Q Now, Plaintiff's Exhibit No. 1 — well, in any
2 of these exhibits that Mr. Kunst has presented, have any
3 of them contained a statement made by Mr. Loree that was
4 defamatory?

5 A No. I don't believe so. What the first — no,
6 that was just the entrance stuff.

7 Q Now, the exhibit we had of the insurance policy,
8 do you have any proof that you actually sent that to the
9 Gaby's?

10 A No, I don't. I just faxed things from the
11 office.

12 Q Okay. So, there's no fax cover sheet or
13 anything like that?

14 A No. We weren't that formal.

15 Q Okay. Now, did Mr. Loree ever tell you that
16 Mr. Kunst embezzled \$400,000 from the Gaby's?

17 A No. He never spoke to me except for at that
18 meeting, probably.

19 Q Did he say anything defamatory at that meeting?

20 A No.

21 Q So you, yourself, have not heard Mr. Loree state
22 one single defamatory statement; is that correct?

23 A No — I mean, yes. He did not say anything to
24 me, no.

25 MS. WRIGHT: No further questions, Your Honor

TRACY HILTON-CROSS BY MS. WRIGHT

1 THE COURT: Okay. Thank you.

2 Any redirect, sir?

3 MR. KUNST: Just a couple, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. KUNST:

6 Q Tracy, at the date of this letter, February 7th,
7 2007, had we accumulated all the affidavits in this
8 present case from witnesses?

9 A No.

10 MS. WRIGHT: Your Honor, objection. Affidavits
11 did not come up in his direct examination and I did
12 not bring it up in cross-examination.

13 THE COURT: Okay. I don't know where it's
14 leading, just know that your redirect must be limited
15 to the scope of the cross-examination. So, if it's
16 new ground, you can't ask it. If it relates
17 specifically to something that Ms. Wright asks, then
18 you can ask. Okay?

19 MR. KUNST: Yes, Your Honor.

20 BY MR. KUNST:

21 Q Ms. Wright just asked you if your letter
22 included any defamatory statements by Mr. Loree. As of
23 the date of this letter, did you know all the specific
24 statements?

25 A The date of the letter again was February of

1 2007?

2 Q 2007? . . .

3 A Seven?

4 Q Uh-huh.

5 A Okay. No.

6 Q Did you know what he had said to Glenn Alfonzo?

7 A At that time, no.

8 MS. WRIGHT: Objection, Your Honor. Again,

9 we're getting into the hearsay. Mr. Alfonzo has yet

10 to appear as a witness.

11 THE COURT: Okay. I don't think she stated wh
12 he said. Overruled.

13 Go ahead.

14 BY MR. KUNST:

15 Q Did you know what he had said to Kevin Goad?

16 A No.

17 Q Did David Loree ever contact you during his
18 investigation about this insurance policy?

19 A No. I wish he had.

20 Q Could you have explained to Mr. Loree the
21 situation regarding this insurance policy had he —

22 MS. WRIGHT: Objection, Your Honor. Facts n
23 in evidence, she can't explain anything. She just
24 said to me in cross-examination she has no proof she
25 sent that to anybody.

TRACY HILTON-REDIRECT BY MR. KUNST

1 THE COURT: Okay. He can ask that question
2 could she explain it.

3 Go ahead.

4 BY MR. KUNST:

5 Q Could you explain the situation had Mr. Loree
6 called you?

7 A If had he called me to ask me about the
8 insurance policy, I could have gotten him directly that
9 letter that showed the insurance company issued a
10 different policy and wanted Mr. Gaby to sign and cancel
11 it.

12 MR. KUNST: Nothing else, Your Honor.

13 THE COURT: Any recross based on that redirect?

14 MS. WRIGHT: No, Your Honor.

15 THE COURT: All right. Thank you. You can step
16 down, I appreciate it.

17 All right. You may call your next witness.

18 MR. KUNST: The Plaintiff calls Kevin Goad.

19 THE CLERK: Raise your right hand. Place your
20 left hand on the Bible, please.

21 KEVIN GOAD, after being duly sworn,
22 testified as follows:

23 THE CLERK: State your full name for the record.

24 THE WITNESS: Charles Kevin Goad.

25 THE CLERK: Please be seated.

DIRECT EXAMINATION

1

2 BY MR. KUNST:

3 Q Good afternoon, Mr. Goad.

4 A Hi.

5 Q State your name and occupation.

6 A Kevin Goad. I work for Window and Door Conce
7 as a salesman.

8 Q Did your company supply doors and windows for
9 company, Kunstwerke, back in 2005 and 2006?

10 A Yes.

11 Q Describe, if you would, my houses in relation to
12 your windows. Have you seen houses like mine before?

13 A Your homes were very custom. Probably more
14 customized than most other homes we do. They were
15 intricate and involved quite a bit of measuring and
16 fieldwork to prepare windows and doors for the homes. So
17 in that regard, they were highly customized.

18 Q Did you provide windows and doors for the Gaby
19 project?

20 A We did.

21 Q Did you have contact with Mr. David Loree during
22 the spring of 2006?

23 A I had contact with him, but I don't remember the
24 timeframe.

25 Q Do you recall as you sit here today the specific

KEVIN GOAD-DIRECT BY MR. KUNST

1 statements that Mr. Loree made to you?

2 A I remember the general statements after I was
3 introduced to him as to what he was coming on the job site
4 to do or to handle.

5 Q Did you prepare a document closer to the time
6 that these statements were actually made way back in 2006?

7 A I believe so, yes.

8 Q Do you recognize this document?

9 A I do.

10 MS. WRIGHT: Okay. Thank you.

11 We have seen it, Your Honor. We may have
12 objections later on.

13 THE COURT: All right.

14 BY MR. KUNST:

15 Q Would this refresh your memory better as to what
16 was actually said closer to the date it was said?

17 A I remember some of the details of this. I would
18 trust this paperwork more than my memory now.

19 Q Is that your signature at the bottom of the
20 affidavit?

21 A It is.

22 Q Could you please read the affidavit for us?

23 A In full?

24 Q Yes, please.

25 A Personally appeared before me, Kevin Goad, who

KEVIN GOAD-DIRECT BY MR. KUNST

1 being duly sworn states as follows: I reside in
2 Greenville County, South Carolina. I give this affidavit
3 voluntarily. My company, Window and Door Concepts,
4 provided windows and doors for Scott Kunst and his
5 company, Kunstwerke, around 2003 to 2006.

6 During the spring of 2006, David Loree, who was
7 managing the construction of Richard and Barbara Gaby's
8 personal residence at The Reserve on Lake Keowee spoke
9 with me on numerous occasions. David Loree presented to
10 me that he was a former detective and was in the process
11 of investigating Scott Kunst's financial dealings with his
12 clients. David Loree stated to me that contact had been
13 made with many of Scott Kunst's clients and vendors as to
14 if money was missing from any of Scott's clients. He
15 referenced to Parham, Covington, Coco and Hickey
16 specifically. He stated that Scott Kunst had taken
17 \$400,000 from the Gaby project and had left his other
18 clients in a similar situation. David Loree stated that
19 Scott Kunst had provided his clients with dummy invoices
20 from dummy companies to take monies from these clients.

21 David Loree stated to me that the money Scott
22 Kunst had taken from his clients were spent on his, Scott
23 Kunst, speculative project with an investor named Hickey.
24 He stated that progress on the speculative project with
25 Hickey had stopped because Scott's clients had stopped

KEVIN GOAD-DIRECT BY MR. KUNST

1 paying Scott's company altogether and as a result, there
2 was no money to be illegally transferred from his clients
3 to the spec project. He stated that he was in contact
4 with Hickey and that a lot of money had been taken from
5 Hickey as well. David Loree appeared to know a great deal
6 about Hickey and the speculative project.

7 David Loree implied that he had reconciled the
8 Gaby/Kunstwerke account and that the accounts of the other
9 clients could also be reconciled.

10 Q Thank you. Was there a time after Mr. Loree
11 took over the Gaby project that you could not get in
12 contact with me?

13 A Yes.

14 Q Did you ever get an explanation as to why?

15 A Not that I recall.

16 Q In your affidavit, you state David Loree stated
17 to me that contact had been made with many of Scott
18 Kunst's client. He referenced Parham, Covington, Coco and
19 Hickey. Did you, yourself, have direct contact with
20 client Parham and Covington during this time?

21 A I don't recall having a conversation with
22 Covington ever. I had spoken with Parham directly. But
23 as for the timing of that, I don't recall if that was
24 during that time or not, but I did speak to Mr. Parham
25 personally on occasion.

KEVIN GOAD-DIRECT BY MR. KUNST

1 Q Did either Parham or Covington state to you that
2 money had been taken from them?

3 MS. WRIGHT: . Objection, Your Honor. Hearsay
4 here, we're talking about people not involved in this
5 lawsuit.

6 THE COURT: Sustained on the grounds of hearsay
7 BY MR. KUNST:

8 Q Did Mr. Loree provide you any dollar figures for
9 money taken from these other projects?

10 A The only thing I recall was the number \$400,000
11 that was in the conversation.

12 Q Did he provide you a document?

13 A No, sir.

14 Q In your affidavit, you also stated David Loree
15 stated that Scott Kunst had provided his clients with
16 dummy invoices from dummy companies to take money from
17 clients. My question to you is, did Mr. Loree make this
18 reference pertaining specifically to the Gaby project or
19 any other project?

20 A I don't know that it was specific. It seemed
21 like it was a general statement.

22 Q Did he provide you any document for that?

23 A No.

24 Q In your affidavit, you say, David Loree implied
25 that he had reconciled the Gaby/Kunstwerke account and

KEVIN GOAD-DIRECT BY MR. KUNST

1 that the accounts of the other clients had also been
2 reconciled. My question to you is, did Mr. Loree provide
3 you any documentation or support of the reconciliation of
4 any Kunstwerke account?

5 A No, he did not.

6 Q Did Mr. Loree ever state to you directly that I
7 was out of the picture and that he was taking over?

8 A I don't know if he specifically said that you
9 were no longer involved or out of the picture, but he was
10 presenting himself to me as someone who was taking over
11 from the initial contact on. I don't know if he was going
12 to be the contractor or if he was just taking over some
13 details of the job, but he was my contact point after
14 that.

15 Q Did you have any direct contact with either
16 Mr. or Mrs. Gaby during this time?

17 A No.

18 Q Did you receive a call from Ed Coco?

19 A I did.

20 MS. WRIGHT: Your Honor, again, hearsay.
21 Mr. Coco is not a party to this case.

22 THE COURT: Well, he hasn't commented on what he
23 said, he just said he got a statement. So, at this
24 point, I overrule.

25 Go ahead.

KEVIN GOAD-DIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q Who is Ed Coco?

3 A He is a client who we had built a home with you
4 supplying windows and doors prior to the Gaby's. I don't
5 recall the exact timeline. He was a customer.

6 Q Were you done with the Coco project at that time
7 as far as supplying windows and doors to him?

8 A At that time I worked with Coco, from my scope
9 of work was fully done or mostly done.

10 Q So, what was the reason for Mr. Coco to call you
11 then?

12 A As I recall, he had maybe moved into the house
13 or was close enough to finishing up that he wanted a
14 couple of loose ends taken care of. He called me direct
15 in order to tell me to contact another gentleman who was
16 working on his house who would be letting me in the house
17 for replacing window stripping, looking at hardware,
18 adjusting doors, typically, things that we do at the end
19 of the project for any customer.

20 Q Beyond getting information regarding windows,
21 please describe the call in general.

22 A That initial call, he was, I guess, somewhat
23 agitated. He was not very pleased with how his house
24 wrapped up or finished in regards to you and the
25 disappearance. I don't recall a whole lot of other

KEVIN GOAD-DIRECT BY MR. KUNST

1 details about that.

2 Q What effect did Coco's call have on you
3 regarding information that you had heard from Mr. Loree
4 regarding me?

5 A It just raised more questions or suspicions as
6 to what was actually going on with all of those projects.

7 Q Based on the things that you state in your
8 affidavit, was David Loree someone who was sending or I'll
9 say, originating these statements?

10 A I'm not sure I follow you.

11 MR. KUNST: I'll withdraw the question, Your
12 Honor.

13 THE COURT: Yes, sir.

14 BY MR. KUNST:

15 Q Did you believe that the things in this
16 affidavit you attribute Mr. Loree stating might be true?

17 A They had as much merit as anything else I had
18 heard.

19 Q Were you due a payment for the Gaby project at
20 this time?

21 A We were.

22 Q Would you have delivered the windows without a
23 payment on the Gaby project?

24 A We would not have.

25 Q Did Kunstwerke or I make that final payment?

KEVIN GOAD-DIRECT BY MR. KUNST

1 A I do not believe so.

2 Q Did the Gaby's make that payment?

3 A I believe I got the check from Mr. Loree. I
4 don't exactly recall who wrote that check.

5 Q Who would normally make payments to you?

6 A Generally, the contractor, general contractor.

7 Q In this case Kunstwerke?

8 A Correct.

9 Q Were payments from Kunstwerke sometimes for
10 multiple projects?

11 A Often.

12 Q Describe what that is.

13 A We had a number of projects going on with your
14 company and depending on where they were and having
15 ordered windows or taken delivery of windows, we may
16 receive a check that would cover two or three different
17 invoices. And that was common.

18 Q Did you provide windows or doors for this Hickey
19 speculative project you referenced in your affidavit?

20 A We did not.

21 Q Was Loree trying to get -- David Loree trying to
22 get information from you about the Hickey project?

23 A I don't believe so. I had no interest in that
24 project in any way. We weren't working on it in any way.

25 Q Would there be any reason for David Loree to say

KEVIN GOAD-DIRECT BY MR. KUNST

1 anything to you regarding the Hickey project?

2 A I don't know.

3 Q To the best of your knowledge that you state in
4 your affidavit, was this a serious allegation that
5 Mr. Loree was making regarding me?

6 A It would seem so at the time, yes.

7 Q What did it imply to you?

8 A That something had gone array. And we were
9 concerned for our business sake as well as, obviously, the
10 status of your company and the project.

11 Q Were you concerned about your business being
12 harmed?

13 A Certainly.

14 Q Has Mr. Loree contacted you at any point since
15 the spring of 2006 to modify or correct any of the
16 statements contained in your affidavit?

17 A No, sir.

18 MR. KUNST: I have nothing further, Your Honor.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MS. WRIGHT:

22 Q Good afternoon, Mr. Goad.

23 A Good afternoon.

24 Q Do you need any water or anything before I get
25 started here?

KEVIN GOAD-CROSS BY MS. WRIGHT

1 A No, I'm fine.

2 Q Okay. Now, I had a question about your
3 affidavit, Mr. Goad. Did you actually sit down at a
4 computer and actually type all this out yourself?

5 A I did not.

6 Q Who did?

7 A I'm not sure.

8 Q Was this provided to you the way it was typed up
9 for you to sign?

10 A That is correct.

11 Q Who provided it to you?

12 A Scott or his wife, I would guess. I don't
13 recall specifically who brought it to me or how this was
14 presented and signed.

15 Q So, this was not an affidavit that you drafted
16 yourself?

17 A No, ma'am.

18 Q Okay. All right. Now, I'm noticing in your
19 affidavit — oh, where are we here. The third paragraph
20 down when you state, He referenced Parham, Covington, C
21 and Hickey specifically.

22 Do see where I'm at?

23 A Yes.

24 Q Okay. Now, were you the subcontractor on
25 windows for Parham?

KEVIN GOAD-CROSS BY MS. WRIGHT

- 1 A We supplied windows to Parham, yes, ma'am.
- 2 Q Did you do that for Covington?
- 3 A We provided some windows for Covington, a
4 smaller portion.
- 5 Q How about Coco?
- 6 A We supplied windows there.
- 7 Q Did you supply windows for Hickey?
- 8 A We did nothing for Hickey.
- 9 Q Okay. So, were you involved at all in the
10 Hickey project?
- 11 A No.
- 12 Q Okay. And if I understood you correctly, only
13 partially involved in the other three, correct?
- 14 A Fully involved in Parham and Coco.
- 15 Q Okay.
- 16 A Partially in Covington because it was a later
17 addition after his lake house was completed.
- 18 Q Okay. So, you wouldn't be privy to everything
19 that was going on in Coco or Hickey, correct?
- 20 A Certainly not.
- 21 Q Okay. Now, you're designing custom windows,
22 correct -- or let me rephrase that. You are selling
23 custom made windows, correct?
- 24 A That is correct.
- 25 Q Now, aren't custom made windows made

KEVIN GOAD-CROSS BY MS. WRIGHT

1 specifically for one specific residence?

2 A Typically, in our business, yes.

3 Q Okay. So, if you ordered windows, let's say,
4 for the Smith house, custom made windows, they couldn't b
5 interchanged in any other type of house, could they?

6 A Not likely.

7 Q So, you have to be careful and make sure you
8 have your money coming in; is that correct?

9 A That is correct.

10 Q You have to keep an eye on the bottom line?

11 A That is correct.

12 Q Was there a point in time when you could not get
13 in contact with Mr. Kunst on the Gaby project?

14 A There was.

15 Q About how long was that?

16 A I don't recall specifically, but it seemed like
17 it was maybe two months or longer. It was a relatively
18 long time.

19 Q Did that cause you any concern?

20 A Certainly.

21 Q Why is that?

22 A We had received a deposit for the windows, which
23 is common, and we had ordered the windows based on that
24 deposit. Now, we had windows either coming in, even
25 sitting in our warehouse at that time with no certainty as

KEVIN GOAD-CROSS BY MS. WRIGHT

1 to how we would actually be paid for them.

2 Q So, did you feel a sense of relief when
3 Mr. Loree approached you and said he was taking over on
4 the Gaby project?

5 A Some, yes.

6 Q Why is that?

7 A Someone was back involved in the project that
8 had interest in finishing it. And assuming that the money
9 had already been spent, the deposit, it would make sense
10 they would wanted the windows we had ordered.

11 Q So, did they actually pay you in full for the
12 windows?

13 A That is correct. My memory we were paid in full
14 for the windows after Mr. Loree became involved in the
15 project.

16 Q Okay. Now, do you recall testifying at a
17 damages hearing in 2007?

18 A I was in a number of hearings in 2007.

19 Q Okay. This one would have been involving the
20 Gaby project?

21 A Uh-huh.

22 Q Do you recall that one?

23 A I do.

24 Q Okay. Do you recall testifying that the Gaby's
25 had paid you \$83,000 for windows?

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KEVIN GOAD-CROSS BY MS. WRIGHT

1 A I don't recall the specific amount, but we
2 received payment from Mr. Loree, which I assume came from
3 the Gaby's:

4 Q And do you recall testifying that you had
5 received an invoice from Kunstwerke for double that
6 amount?

7 A I don't recall. I don't receive invoices.

8 Q Okay. Do you recall hearing at the damages
9 hearing that there had been an invoice supposedly to your
10 company -- from your company for \$164,000?

11 A I don't remember that specifically. There were
12 questions as to our original quote, which was about
13 \$160,000, but that was not our initial invoice. We would
14 not initially invoice for the full amount. We would have
15 no number to invoice for deposits and balances due. It
16 may have totaled up to 160, I don't remember the size of
17 the project.

18 Q Do you recall any testimony that amounts that
19 were supposedly paid to you were twice what you actually
20 charged?

21 A No, ma'am.

22 Q Okay. Do you recall Mr. Loree ever complaining
23 about Mr. Kunst's construction ability?

24 A I don't recall any conversation regarding that
25 specifically.

KEVIN GOAD-CROSS BY MS. WRIGHT

1 Q Do you recall him complaining about the Gaby
2 house and how it was built?

3 A Not from Mr. Loree, I don't recall.

4 Q It is fair to say the only questions or comments
5 Mr. Loree had to you concerned the accounting on the Gaby
6 project?

7 A That would be fair. I don't recall having any
8 construction conversations with him specifically.

9 Q The conversations would have been more along the
10 lines of what was paid, correct?

11 A Paperwork, yes, ma'am.

12 Q Paperwork, okay. Now, let me ask you this, do
13 you recall Mr. Loree specifically stating to you that
14 Mr. Kunst had taken money from Parham, Covington, Coco and
15 Hickey?

16 A I do.

17 Q Do you recall when that was?

18 A When he told me that?

19 Q Yes.

20 A I don't specifically. It was one of the initial
21 meetings where he was introducing himself telling me he
22 was, I guess, taking over the project in Scott's absence.

23 Q But you were working with him on the Gaby
24 project, correct?

25 A By default.

KEVIN GOAD-CROSS BY MS. WRIGHT

1 Q Okay. Do you recall Mr. Loree telling you that
2 Mr. Kunst took money from the Gaby's to spend on
3 investment project?

4 A Yes, ma'am.

5 Q You do you recall that. You don't recall when,
6 though?

7 A It was in that initial meeting.

8 Q But you don't recall a specific date, correct?

9 A Not a specific date.

10 Q Okay. Did he ever tell you that Mr. Kunst is
11 going to jail?

12 A I don't recall Mr. Loree saying that.

13 Q Okay. But to sum up, your conversation with
14 Mr. Loree was just to make sure you got paid, right?

15 A That and other things. I mean, he was asking me
16 what we did in our scope of work. We do the windows and
17 doors, but initially, he was trying to figure out what we
18 were doing on the project and I was trying to figure out
19 what he was doing on the project.

20 Q Did you have any difficulty dealing with
21 Mr. Loree?

22 A Not that I recall.

23 MS. WRIGHT: No further questions, Your Honor.

24 THE COURT: Mr. Kunst.

25 REDIRECT EXAMINATION

KEVIN GOAD-REDIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q Mr. Goad, who did tell you that Scott Kunst was
3 going to jail?

4 A I'm sorry.

5 Q Who did tell you that Scott Kunst was going to
6 jail?

7 A I don't recall. I heard it a couple of times.
8 Once was in court from one of the other attorneys.

9 Q You don't remember the attorney's name?

10 A I heard Sandy Stern specifically tell you that.
11 I've heard him saying that to you.

12 Q Ms. Wright spoke about the preparation of
13 affidavit, is it notarized?

14 A Yes.

15 Q Whose notary seal is that?

16 A Sheila Ilashaw, she was my accountant at the
17 time.

18 Q Did you return the affidavit to make corrections
19 after the first draft?

20 A I believe so. I believe that's correct.

21 Q Did you make those changes because you wanted to
22 make it more accurate?

23 A I would imagine so, yes.

24 Q Thank you.

25 MS. WRIGHT: This was not produced in discovery,

1 Your Honor.

2 THE COURT: Was it produced in the course of
3 discovery? Have you seen it before?

4 MS. WRIGHT: I've not seen it before and I've
5 not seen a Bates mark numbering or anything to
6 indicate it was served on us.

7 MR. KUNST: Your Honor, this is a nine year old
8 case. This has been provided through discovery.

9 THE COURT: Okay. What's the question?

10 BY MR. KUNST:

11 Q Do you recognize these drawings?

12 A That's my handwriting and some of my notes.

13 Q Is there a date on there, on that document?

14 A There is a date December 21st, 2005, which is
15 stamp from a fax machine it looks like.

16 MS. WRIGHT: Your Honor, this is beyond the
17 scope of inquiry into this case. It's going into a
18 construction issue. As Plaintiff himself has said,
19 this is defamation.

20 THE COURT: My question is, is it within the
21 scope of cross-examination?

22 MR. KUNST: It is, Your Honor. It's speaking to
23 the last time there was any kind of adjustment to the
24 order and when the funds were due. She had questions
25 regarding when funds were specifically due.

KEVIN GOAD-REDIRECT BY MR. KUNST

1 **MS. WRIGHT:** Your Honor, I did not raise any
2 questions to when funds were specifically due. That
3 was not part of my cross-examination at all.

4 **THE COURT:** I don't necessarily remember that
5 either.

6 Do you remember her asking that specific
7 question?

8 **MR. KUNST:** She was asking about timely payments
9 and who made the payments and when the last
10 payment --

11 **MS. WRIGHT:** I did not say --

12 **MR. KUNST:** And she also had questions regarding
13 the order itself, the final order.

14 **THE COURT:** Okay. I'm going to -- I'll let you
15 ask questions regarding that. Now, whether I allow
16 you to admit that document, that's another matter
17 altogether. Go ahead and the questions, but I want
18 you to stay focused on relevant matters, okay?

19 **MR. KUNST:** Yes, Your Honor.

20 **BY MR. KUNST:**

21 **Q** As of the date of that drawing to the best of
22 your recollection, were adjustments still being made to
23 the Gaby's window order?

24 **A** This looks like drawings that were some of the
25 last windows ordered, I believe, or maybe an upstairs

KEVIN GOAD-REDIRECT BY MR. KUNST

1 bedroom, which was towards the end of the project. But
2 what is your specific question?

3 Q Was on the date of that drawing a time in which
4 the Gaby final window order was not complete?

5 A Possibly so. These are notes to make final shop
6 drawings. These are not the final. This could have still
7 been ongoing discussions.

8 MR. KUNST: That's all I have, Your Honor.

9 THE COURT: Okay.

10 MS. WRIGHT: Your Honor, I move that not be
11 admitted into evidence. He hasn't shown that's been
12 produced in discovery or how it's relevant —

13 THE COURT: I don't think he's admitted —

14 MR. KUNST: I'm not moving it.

15 MS. WRIGHT: Very good.

16 THE COURT: Okay. Thank you, sir. I appreciate
17 you being here. You may step down.

18 All right. Ladies and gentlemen, let's take a
19 short break, say about 10 minutes. Come back in and
20 resume testimony. Please don't discuss the case.

21 (WHEREUPON, the jury left open court at
22 approximately 2:30 p.m.)

23 MR. SMITH: Your Honor, may the witness be
24 excused?

25 THE COURT: Yes, absolutely.

KEVIN GOAD-REDIRECT BY MR. KUNST.

1 Okay. We'll be in recess for a few minutes.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: Okay. Ready for the jury?

4 MR. KUNST: Yes.

5 THE COURT: Bring in the jury, please.

6 THE BAILIFF: Yes, Your Honor.

7 (WHEREUPON, the jury came into open court at
8 approximately 2:45 p.m.)

9 THE COURT: All right. Mr. Kunst, you may call
10 your next witness, sir.

11 MR. KUNST: The Plaintiff calls Glenn Alfonzo.

12 THE CLERK: Place your left hand on the Bible,
13 raise your right hand.

14 GLENN ALFONZO, after being duly sworn,
15 testified as follows:

16 THE CLERK: State your full name for the record.

17 THE WITNESS: Glenn Peter Alfonzo.

18 THE CLERK: Please be seated.

19 DIRECT EXAMINATION

20 BY MR. KUNST:

21 Q Good afternoon, Glenn.

22 A Hello.

23 Q State your name and your business name.

24 A Glenn Alfonzo, New Creations.

25 Q What does your company do?

GLENN ALFONZO-DIRECT BY MR. KUNST

1 A Underdeck, ceilings, custom order, metal copper
2 work.

3 Q Did your company do work on the Gaby project at
4 The Reserve?

5 A Yes.

6 Q After March 2006, after the dust settled, were
7 you still owed money by Kunstwerke?

8 A Yes.

9 MR. KUNST: May I approach the witness?

10 THE COURT: Sure. Yes, sir, you may.

11 BY MR. KUNST:

12 Q You recognize that document, Mr. Alfonzo?

13 A Looks like one of our invoices.

14 Q Is that a typical invoice you would have
15 submitted say during 2005?

16 A Yes. Well, no, not typical.

17 Q How would it be different?

18 A A little notation on it.

19 Q Could you read the notation?

20 A It's got, I regret the difficulty you're now
21 facing. I'm also very grateful for the opportunity to
22 work on your jobs, which have put me in a position to
23 obtain much more work on the north end of Lake Keowee,
24 i.e. The Reserve, etcetera. The invoice I'm sending you
25 was recently sent in January of 2006 and is the only

GLENN ALFONZO-DIRECT BY MR. KUNST

1 remaining balance you owe me. I am longer requiring
2 payment for this invoice, therefore, I'm applying a credit
3 to your account. If you need any work in the future,
4 please feel free to call me.

5 Q Did I accept your \$2,500 write off?

6 A I don't recall ever hearing back from you, but I
7 did eventually get paid on it by Mr. Coco, who the invoice
8 was to.

9 Q When did you get paid by Mr. Coco?

10 A I don't know the date.

11 Q Was it in a courtroom?

12 A That was one time he paid me. I believe he
13 actually paid me twice for it.

14 Q Did David Loree speak to you in the spring of
15 2006?

16 A It's possible, that was a long time ago.

17 Q Do you remember specifically what David Loree
18 might have said to you back in 2006?

19 A I only remember one occasion having a
20 conversation with him. I don't remember much of the
21 details. I was introduced to him by Bronson Sheppard over
22 some other issues.

23 Q Who was Bronson Sheppard?

24 A It was the job foreman.

25 Q Job foreman for who?

GLENN ALFONZO-DIRECT BY MR. KUNST

1 A For you.

2 Q On what project?

3 A The Gaby project.

4 Q Did you prepare a document closer to the spring
5 of 2006 that might help your recollection as to what
6 Mr. Loree specifically said to you?

7 A Maybe, I don't know.

8 Q Did you prepare an affidavit in this case?

9 A Seems like there was something, yeah.

10 Q Do you recall this document?

11 A I remember the document.

12 Q How did that document come about?

13 A Apparently there was a conversation, but it came
14 about because you came to my house and asked me for it.

15 Q Describe that meeting at your house. Do you
16 remember any of it?

17 A I remember you came by and asked some question
18 about it. That was a long time ago, I don't remember much
19 of the specifics.

20 Q Would you please read the affidavit? And I
21 would ask you slowly. She's typing everything you're
22 saying and she needs to be able to hear you.

23 A Okay.

24 I reside in Easley, South Carolina, and give
25 this affidavit voluntarily. My company, New Creations,

GLENN ALFONZO-DIRECT BY MR. KUNST

1 crafted ornamental copper roofing, copper fixtures for
2 Scott Kunst and his company, Kunstwerke, from 2004 to
3 2006. During the spring of 2006, David Loree, who was
4 managing the construction of Richard and Barbara Gaby's
5 personal residence at The Reserve at Lake Keowee, spoke
6 with me on numerous occasions. I recall David Loree
7 referring to Scott Kunst as a criminal, quotations, on
8 more than one occasion. In one particular instance, I
9 recall him stating to me that I'm not supposed to be
10 telling you this, but to give you an idea of some of the
11 criminal things Scott has been doing, that was a
12 quotation, was David Loree referenced an insurance policy
13 for the Gaby project and claimed that Scott Kunst took out
14 the policy, billed the Gaby's and intentionally canceled
15 the policy the next day so that he could keep the money.

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

20 Q In your affidavit you just read, and I'll quote
21 again, In one particular instance, I recall him stating to
22 me I'm not supposed to be telling you this, but to give an
23 idea of some of the criminal things Scott has been doing.
24 David Loree then referenced an insurance policy.

25 Did David Loree give you any examples? Did he

GLENN ALFONZO-DIRECT BY MR. KUNST

1 give you any documentation for this insurance policy?

2 A Not that I recall, but that was a long time ago.

3 Q Is it true that Mr. Loree did, in fact, imply
4 there were other examples?

5 A I can't remember specifically if he did or not.

6 Q Glenn, I know it's been a very long time. I
7 know recollection after nine years can fade. Do you
8 remember giving a deposition in this case?

9 A I don't know. I mean, I gave depositions for
10 other things. I don't know.

11 Q I understand.

12 A There's been several cases.

13 Q Do you remember specifically giving a deposition
14 on November 2008?

15 A I don't remember that, but if there's a record
16 of it, then I'm sure it happened.

17 MR. KUNST: May I approach, Your Honor?

18 THE COURT: Sure.

19 BY MR. KUNST:

20 Q I just want you to recall your testimony to help
21 refresh your memory. Starting at Line 13 down and then
22 I'll ask you the question again.

23 THE COURT: Ladies and gentlemen, before he
24 testifies, let me explain something to you briefly.

25 A deposition is an out-of-court statement taken under

GLENN ALFONZO-DIRECT BY MR. KUNST

1 oath in anticipation of a trial. Ordinarily, what
2 happens is one party or the other may subpoena a
3 witness to appear at the deposition. Usually, it
4 happens at one of the attorney's offices. A court
5 reporter will appear and will swear the witness in
6 just as the witness has been sworn in today. And
7 then questions will be posed and answers will be
8 given just like in a courtroom. So oftentimes, in
9 trial, either party will take a deposition and ask
10 questions relative to that deposition and statements
11 which have already been given. Understand that
12 deposition testimony is just another form of evidence
13 that you receive in a case. You decide what weight
14 it has just like you decide what weight any other
15 piece of evidence or any other testimony that may be
16 presented in the case. I just wanted to let you know
17 what a deposition was so you wouldn't be wondering
18 what is it that they're talking about right now.

19 So, Mr. Kunst, you may continue, sir.

20 MR. KUNST: Thank you, Your Honor.

21 BY MR. KUNST:

22 Q With your attention on Page 44, Line 15, I'll
23 ask the question I just asked you.

24 It is true that Mr. Loree did, in fact, imply
25 that there were other examples?

GLENN ALFONZO-DIRECT BY MR. KUNST

1 A I may have inferred it, but on the record, I
2 said he implied it.

3 Q Were you alone with Mr. Loree when he discussed
4 this insurance police?

5 A I don't recall being alone with Loree.

6 Q Were there other construction workers standing
7 around?

8 A I vaguely remember at one point Bronson Sheppa
9 was involved with some of the conversations.

10 Q I would direct your attention to Line 13 — Page
11 13, Line 13. Okay. I'll ask the question again, were you
12 and Mr. Loree alone when he said this?

13 A I have no idea. I cannot tell you one way or
14 the other.

15 Q Did you state in your deposition, I'll quote,
16 There were several other workers that was on the — I
17 can't remember who was standing around, but there were
18 several other workers that were on the job site?

19 A Is that in the deposition?

20 Q Page 13, Line 13.

21 MR. KUNST: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. KUNST:

24 Q I'm just going to move on to the next question,
25 please.

GLENN ALFONZO-DIRECT BY MR. KUNST

1 Did you speak to a client of mine named Mike
2 Parham during this time during 2006?

3 A I've done some work for Mike Parham, yes.

4 Q Did Mike Parham indicate to you that there were
5 any financial problems at his site?

6 MS. WRIGHT: Objection, Your Honor. Hearsay
7 again. Mr. Parham is not a party to this action.

8 THE COURT: Okay. All right. I sustain that.

9 BY MR. KUNST:

10 Q In your affidavit, do you state, and I'll read
11 again, During this period of time, David Loree also stated
12 that Scott Kunst had taken money from his other clients
13 and that money was missing, quote, unquote, from these
14 projects? Did you hear any speculation as to where any of
15 those funds might have gone?

16 A Not that I recall.

17 MR. KUNST: May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. KUNST:

20 Q Page 13, Line 13. I'm going to ask a question
21 that I asked you a short while ago. And that is in
22 regards to this insurance policy.

23 Were you and Mr. Loree alone when he said this?

24 If you would please read —

25 MS. WRIGHT: Objection, Your Honor. Page 13,

GLENN ALFONZO-DIRECT BY MR. KUNST

1 Line 13 and this page here makes no reference to the
2 insurance policy. The testimony we have here is just
3 that there were some people standing around. That
4 has already been asked and already been answered.

5 THE COURT: Okay. Mr. Kunst.

6 MR. KUNST: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. KUNST:

9 Q I'm just going to read --

10 MS. WRIGHT: Your Honor, what purpose -- I n
11 I can keep interrupting like this, but, of course, I
12 have to do this. But I need to know what purpose
13 he's going to read from the deposition testimony when
14 the deponent is right there on the stand?

15 THE COURT: I don't know if he's suggesting he
16 needs to read it himself to get his bearings or
17 whether he's going to read it to the jury.

18 MR. KUNST: I'm just helping the witness with
19 his recollection, Your Honor.

20 THE COURT: Okay. All right.

21 BY MR. KUNST:

22 Q In your affidavit, you reference the criminal
23 things that Scott Kunst has been doing that Mr. Loree
24 stated to you. I'll ask the question yet again, were you
25 and Mr. Loree alone when he said this?

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GLENN ALFONZO-DIRECT BY MR. KUNST

1 A I don't know.

2 MS. WRIGHT: Your Honor, again, it has been
3 asked and answered twice.

4 THE COURT: Okay. I overrule.

5 You may move on.

6 MR. KUNST: May I approach?

7 THE COURT: Yes, sir.

8 BY MR. KUNST:

9 Q Page 13, Line 13. Is it not true, Mr. Alfonzo,
10 that you state in your deposition that, It wasn't just
11 between me and him, there were several others standing
12 around. I can't remember who was standing around, but
13 there were several other workers that were on the job
14 site.

15 A I mean, that's what it says here, yes.

16 Q In your deposition?

17 A I'm sorry, what's the question?

18 Q Is that what you stated in your deposition?

19 A Yes, yes.

20 Q Thank you. May I have it?

21 MR. KUNST: Plaintiff moves to admit exhibit.

22 MS. WRIGHT: Which exhibit is that? I can't see
23 that far away.

24 MR. SMITH: Your Honor, I think we object to the
25 admission of this. It's not even from the Gaby job,

GLENN ALFONZO-DIRECT BY MR. KUNST

1 it's a completely different job. There's been no
2 substantiation it was a business records kept in the
3 regular course. It's not relevant. Subject to that.

4 THE COURT: What's its relevance, Mr. Kunst, i
5 it's for another job?

6 MR. KUNST: He stated it was a invoice that he
7 sent to Kunstwerke in which he spoke about enjoying
8 working -- there's a letter involved in the text.

9 THE COURT: All right. I'll allow it to be
10 introduced as Plaintiff's Exhibit No. 3 over
11 objection.

12 (WHEREUPON, Plaintiff's Exhibit No. 3 was mar
13 for identification and received into evidence.)

14 MR. KUNST: Nothing further, Your Honor.

15 THE COURT: Okay.

16 Cross-examination?

17 MS. WRIGHT: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. WRIGHT:

20 Q Good afternoon, Mr. Goad [verbatim], I don't
21 think we have officially met. I'd like to introduce
22 myself. I'm Elizabeth Wright. I'm one of the attorneys,
23 along with Mr. Smith, representing Defendant Loree. That
24 affidavit, do you have it in front of you, your affidavit?

25 A Yes.

- GLENN ALFONZO-CROSS BY MS. WRIGHT.

1 Q Good. Now, I wanted to take a look at that
2 affidavit since you have it right in front of you and,
3 let's see, looks like it's about the one, two, three,
4 fourth paragraph down, it starts with the words, During
5 the spring of 2006.

6 Do you see where I'm at?

7 A Yes.

8 Q Okay. And I want to look at the last sentence
9 there. And it says, I recall David Loree referring to
10 Scott Kunst as a criminal, criminal in quotation marks, on
11 more than one occasion.

12 Did I read that correctly?

13 A Yes.

14 Q Now, I know it's been a long time, this lawsuit
15 has go on for quite some time, but during your deposition,
16 do you recall being asked — do you recall stating that
17 that was — that sentence was not quite what you meant, do
18 you recall that?

19 A Actually, yes, I do remember that.

20 Q What do you recall?

21 A The indefinite article a.

22 Q So instead, you did not refer to Mr. —

23 Mr. Loree did not refer to Mr. Kunst as a criminal,
24 correct?

25 A Right.

GLENN ALFONZO-CROSS BY MS. WRIGHT

1 Q But that some of the things he did were
2 criminal; is that correct?

3 A Correct.

4 Q So, when you had your affidavit when it was
5 first presented to you, it was not correct?

6 A That's right.

7 Q So, you had to have a correction made; is that
8 true?

9 A I never saw a correction made. This is the only
10 thing I ever saw.

11 Q Okay. So, that affidavit you have in your hand
12 does not accurately reflect your testimony, correct?

13 A It does not.

14 Q Okay. Now, the next question I have for you
15 concerning your deposition testimony, I believe you
16 testified that you were getting checks and payment from
17 Kunstwerke and they were bouncing. Am I remembering th
18 correctly?

19 A That's true.

20 Q Okay. So what did you do when you got checks
21 that were bouncing?

22 A Well, as it specifically relates to the Gaby
23 job, I brought it to the attention of Bronson Sheppard.

24 Q Okay. And did you take — did you then require
25 that Kunstwerke pay you in certified checks?

GLENN ALFONZO-CROSS BY MS. WRIGHT

1 A I can't remember the specifics. There was
2 something that I asked for. It may have been certified —
3 I think it was certified checks now that think about it.
4 I'd have them go to the bank. I can't remember the
5 details, but there was something to that effect.

6 Q So from Kunstwerke, you wanted a certified
7 check, correct?

8 A Something to that effect, I would say yes.

9 Q All right. Now, in your dealings with Mr. Loree
10 over here, did he every complain to you about the
11 construction of the Gaby home?

12 A I don't — I can't say for sure.

13 Q Okay. Do you recall him ever complaining about
14 the design of the Gaby home?

15 A No.

16 Q Did your conversations with Mr. Loree just
17 concern accounting matters, as to how much you were paid?

18 A Yes.

19 Q Thank you, Mr. Alfonzo.

20 MS. WRIGHT: I have no further questions, Your
21 Honor.

22 REDIRECT EXAMINATION

23 BY MR. KUNST:

24 Q So, Mr. Alfonzo, if I may just follow up on
25 something that Beth just asked you. Would you want the

GLENN ALFONZO-REDIRECT BY MR KUNST

1 jury to take from your affidavit — did you state that you
2 wanted the article a removed before the word criminal?

3 A Yes.

4 Q Could you please reread that line to the jury
5 with that correction?

6 A If I recall, David Loree referred to Scott Kunst
7 as criminal on more than one occasion.

8 MR. KUNST: Thank you. I have nothing further
9 Your Honor.

10 MS. WRIGHT: Brief recross?

11 THE COURT: Yes, ma'am.

12 RE-CROSS-EXAMINATION

13 BY MS. WRIGHT:

14 Q Mr. Alfonzo, did you actually write the
15 affidavit yourself?

16 A I did not.

17 Q Did someone prepare it for you?

18 A Yes.

19 Q Who did?

20 A Scott Kunst.

21 Q Thank you.

22 MS. WRIGHT: No further questions, Your Honor.

23 THE COURT: Okay. All right, sir. You may step
24 down. I appreciate you being here.

25 Any objection to this witness being excused?

GLENN ALFONZO-RECROSS BY MS. WRIGHT

1 MR. SMITH: Nothing from the Defense, Your
2 Honor.

3 MR. KUNST: No, sir.

4 THE COURT: All right. Thank you.

5 MR. KUNST: The plaintiff calls David Loree to
6 the stand.

7 DAVID LOREE, after being duly sworn,
8 testified as follows:

9 THE WITNESS: David Marion Loree.

10 THE CLERK: Please be seated.

11 DIRECT EXAMINATION

12 BY MR. KUNST:

13 Q Good afternoon, Mr. Loree.

14 A Good afternoon.

15 Q State your name and profession.

16 A David Marion Loree. I'm an executive protection
17 coordinator/property manager.

18 Q What is your educational background?

19 A I have certificates of law enforcement,
20 para-medicine. I'm a graduate of Northwestern University
21 School police staff. I've for the last 15 years been an
22 executive professional coordinator for Richard and Barbara
23 and Ms. Gaby's father and mother.

24 MR. KUNST: May I approach, Your Honor?

25 THE COURT: Sure.

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DAVID LOREE-DIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q Mr. Loree; do you recognize that business card?

3 A That's an old inaccurate business card, correct.

4 I can provide you with a current one if you'd like.

5 Q That's not necessary.

6 A Okay.

7 Q Is this a photo copy of it?

8 MR. KUNST: May I approach, Your Honor.

9 A Of an old inaccurate company that doesn't exist
10 business card, yes, sir, it is.

11 MR. KUNST: If I may approach?

12 THE WITNESS: Would you like a current one, s

13 MR. KUNST: No thanks.

14 THE WITNESS: Okay.

15 MR. KUNST: The Plaintiff moves to admit a pho
16 copy of the business card as an exhibit.

17 THE COURT: Objection?

18 MR. SMITH: No objection, Your Honor.

19 THE COURT: All right. Without objection, sam
20 is admitted. That I believe is Plaintiff's Exhibit
21 No. 4.

22 (WHEREUPON, Plaintiff's Exhibit No. 4 was mar
23 for identification and received into evidence.)

24 MR. KUNST: If I may approach again, Your Ho

25 THE COURT: Yes, sir.

DAVID LOREE-DIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q Based on your title listed on the old card, as
3 you describe it, what specifically does an executive
4 protection administrator do?

5 A I travel globally with a high wealth client. I
6 do advanced work from them. I guarantee their property
7 and personal security. The client that I have now has six
8 children, so my responsibilities are to do advanced work
9 when they're moving around globally as well as
10 domestically.

11 Q Back in the spring of 2006, where did your
12 paychecks come from? Who was your employer?

13 A Richard and Barbara Gaby.

14 Q Did your paychecks come from them?

15 A It came from a company a called VA Enterprises,
16 which is a family holdings office. Yes, it would be
17 Richard and Barb Gaby.

18 Q I ask you again to clarify. Did your paychecks
19 say JVA Enterprises?

20 A Ask the question one more time with the date,
21 sir.

22 Q In the spring of 2006, did your paychecks say
23 JVA Enterprises.

24 A I do not believe it said JVA Enterprises. The
25 company name is VA Enterprises.

DAVID LOREE-DIRECT BY MR. KUNST

1 Q Okay.

2 A It probably would have, yes, sir.

3 Q Are you a detective?

4 A No, sir, never was.

5 Q Do you have any experience with criminal law?

6 A Yes, sir, 18 years of law enforcement. Five
7 part time and 13 full-time.

8 Q Do you have any expertise in financial crimes?

9 A No, sir.

10 Q Are you familiar with terms such as
11 embezzlement?

12 A Yes, sir. Investigated those in the past.

13 Q What are the main element of embezzlement?

14 A It's taking with the permanent intent of funds
15 that don't belong to you by an employer.

16 Q Does it involve criminal intent?

17 A Intent to permanently deprive, correct, sir.

18 Q Are you an accountant?

19 A No, sir.

20 Q Are you a auditor?

21 A No, sir.

22 Q Are you a CPA?

23 A No, sir.

24 Q Prior to 2006, were you ever involved in any
25 kind of residential construction?

DAVID LOREE-DIRECT BY MR. KUNST

1 A Yes, sir.

2 Q If you could please expound on that.

3 A My own personal construction, so, yes, sir.

4 Q Have you ever signed a construction contract?

5 A Yes, sir.

6 Q Have you ever written a construction contract?

7 A In conjunction with the legal department, yes,

8 sir.

9 MR. KUNST: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. KUNST:

12 Q Do you recognize this document, Mr. Loree?

13 A No, sir.

14 Q Can you tell me what it is?

15 A It's title as construction contract.

16 Q Can you read the first paragraph?

17 A This contract is made, is that where you would

18 like for me start?

19 Q Yes, please.

20 A This contract is made and entered into this 24th
21 day of September, 2004, between Kunstwerke, hereinafter
22 contractor, and Richard and Barbara Gaby Van Andel, herein
23 called owner.

24 Q Thank you. Can you turn to the second page?

25 A (The witness complies.)

1 Q Is there a highlighted line on that page —

2 A Yes, sir.

3 Q — for your convenience? Can you please read
4 the highlighted line that I marked in yellow?

5 A The second sentence in number six on the second
6 page reads, Due upon receipt as weekly billings seeking
7 reimbursement or provided with adequate support.

8 Q What does that term reimbursement mean to you?

9 A Websters would be reimburse, so it would be pay
10 after the fact, sir.

11 Q Specifically, to you, what does reimbursement
12 mean in the context of that contract?

13 A I just gave you what it meant, sir.

14 MR. SMITH: I hate to do this, I'm going to
15 object, Your Honor, but he's claiming he's never seen
16 the contract before. He's now being questioned about
17 what the contract means to him.

18 THE COURT: All right. I don't know if I'll
19 sustain on that ground, but I'll sustain it based
20 upon the fact that he's testified as to what he
21 thinks the word means.

22 You may not like the answer, but you have to
23 live with it. You may move on.

24 BY MR. KUNST:

25 Q I'm going to ask again to be redundant because I

DAVID LOREE-DIRECT BY MR. KUNST

1 may not have heard you correctly. You stated that you've
2 never seen the Gaby contract?

3 A It's been nine or 10 years. You asked me --
4 your statement was do you know what this is and have you
5 seen it before. Nine plus years ago, no, it does not look
6 familiar to me.

7 Q Thank you.

8 MR. KUNST: May I approach, Your Honor?

9 THE COURT: Sure.

10 BY MR. KUNST:

11 Q Do you recognize that email, Mr. Loree?

12 A Yes, sir.

13 Q What was that email related to?

14 A Give me a moment to read it. I know it's my
15 email, but I'd like to refresh if I could. All right.

16 Q What did you mean when you wrote in your email
17 at the top, Before further funds will be transferred?

18 A That was a document that I was asked to prepare
19 and forward to you by my employers, Richard and Barbara
20 Gaby, after they realized that their building project was
21 far behind and payments were not being distributed as they
22 thought that they should be. They asked me to prepare a
23 document, meet with you and have you reconcile or produce
24 all canceled checks and correlate those correctly with
25 receipts to find out where their funds for their project

1 had gone and reconcile the account as a total.

2 Q Far behind what?

3 A Far behind what? What is your question, sir?

4 Q You just stated that the Gaby's stated their
5 project was far behind. Far behind what?

6 A There was a completion date that they were
7 apprized by you of and the project was not progressing at
8 what they believed to be a timely fashion, so they asked
9 me to follow up on that.

10 Q What was that completion date?

11 A I don't know, sir. We're talking nine or 10
12 years ago. I wasn't privy to the initial contract.

13 Q Have you ever seen a completion date promised in
14 a document to the Gaby's?

15 A Again, I don't recall, sir.

16 Q To the best of your knowledge, does my company
17 ever provide completion dates?

18 A I have no idea, sir.

19 Q Okay. I'll go back to when I just asked about
20 the quote. Before funds will be transferred, is that
21 related to the reimbursement portion of the contract you
22 just read?

23 A I would have no knowledge of that, sir. This
24 document was created completely independent of whatever
25 that contract read. I have never seen or was not made

DAVID LOREE-DIRECT BY MR. KUNST.

1 aware of the contract.

2 Q Okay. So this document was prepared without
3 looking at the contract?

4 A Correct, sir.

5 Q To the best of your knowledge in taking over the
6 financial aspect as was stated earlier, were the Gaby's
7 transferring money to be disbursed or were they
8 reimbursing costs already incurred?

9 A Can you ask the beginning of that question --

10 Q I will.

11 A -- again, sir?

12 Q I will. Were the Gaby's transferring money --

13 A No, not that part. Before that, sir, you had
14 asked when I took control of the financials. I never took
15 control of any financials.

16 Q Did you assume the payment of subcontractors and
17 suppliers on the project?

18 A Mr. Gaby always had control of that. I did
19 forward documents to him from vendors requesting he make
20 those payments. I didn't have control. I was simply
21 forwarding those to him.

22 Q So, you interacted with Mr. Gaby in that
23 respect?

24 A Yes.

25 Q So my question is again, was Mr. Gaby -- when he

DAVID LOREE-DIRECT BY MR. KUNST

1 made Kunstwerke payments, was he providing money to
2 Kunstwerke to be disbursed or was he reimbursing costs
3 that were already incurred by Kunstwerke?

4 A He was supplying funds to your corporation to be
5 distributed as a pass-through to vendors in correlation
6 with receipts that you forwarded to him on a weekly
7 basis or a synopsis of those receipts on a weekly basis on
8 items that were already prepaid, his understanding was.

9 Q How does that relate to the term reimbursement?

10 A I have no idea, sir.

11 Q Is it your assertion that Mr. Gaby was directing
12 funds through what you just described as a pass-through
13 account?

14 A You would ask on a weekly basis in an email to
15 him for a dollar amount and he would then wire those fund
16 to you to be distributed to subcontractors, tradesmen,
17 vendors, correct.

18 Q Was Mr. Gaby provided any detailed support for
19 that wired amount?

20 A It was, as I recall, two or three pages,
21 perhaps, with a one line header about a construction
22 subcontractor, vendor and a dollar amount. As far as full
23 receipts, I don't believe so. I don't recall seeing those
24 early on until we met and you provided some of those. And
25 someone testified earlier that he didn't ask for them, is

DAVID LOREE-DIRECT BY MR. KUNST

1 that what you're getting at, sir?

2 Q Yes.

3 A Okay.

4 Q Did he to your knowledge?

5 A I have no knowledge of that. That was before my
6 time.

7 Q In your email, you also quote and ask for
8 stamped paid invoices. What did you mean by that?

9 A Let me find where we were at here.

10 You have in your possession and will prepare
11 stamped paid invoices to include copies of your canceled
12 checks showing disbursement to match the transferred funds
13 Mr. Gaby has made related to the Gaby home project. You
14 will complete those invoices and canceled checks started
15 with those funds transferred on 10/07/2004 in the amount
16 of \$19,214. They will continue and be complete to include
17 a transfer on 02/13/2006 in the amount of \$61,323.

18 Q Did you ever receive stamped paid invoices?

19 A No, sir. May I correct myself? When we met at
20 The Reserve, you brought a large box and I'm sure some of
21 those invoices that you brought were stamped paid.

22 Q At the time that that large box was brought to
23 you at that meeting you referenced, had either you or
24 Mr. Gaby ever seen a Kunstwerke billing statement?

25 A I don't -- if you can produce a billing

DAVID LOREE-DIRECT BY MR. KUNST

1 statement, I'll be able to better answer that question for
2 you. I'm not sure what you're referring to.

3 MR. KUNST: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. KUNST:

6 Q Mr. Loree, do you recognize that document as a
7 progress billing from the box?

8 A It is not titled at such. It just says Reserve
9 Lot B 29B in progress. It doesn't reference billing.

10 Yes, I have seen these documents. I think this is what
11 you forwarded Mr. Gaby on a weekly basis.

12 Q Did Mr. Gaby ever state to you prior to this
13 meeting in February '06 that he never received any
14 support?

15 A I don't recall, that, sir.

16 Q Did Mr. Gaby, in fact, Mr. Loree, wire money
17 based on an email?

18 A If this was an attachment to the email, my
19 understandings were, I believe that's how he responded and
20 forwarded funds.

21 Q Did Mr. Gaby ever state to you that he could not
22 open the attachments?

23 A I don't recall that.

24 Q To the best of your knowledge, did the Gaby's
25 maintain their own checking account with Kunstwerke?

DAVID LOREE-DIRECT BY MR. KUNST

1 A I have no knowledge of that, no, sir.

2 Q Do you have any specific knowledge as to what
3 account or to where these wires specifically went?

4 A As I recall — and I just recall this from
5 seeing various documents, Regions Bank. Is that your
6 construction account, perhaps?

7 Q Did the Gaby's to the best of your knowledge
8 maintain any kind of construction deposit with Kunstwerke?

9 A Unknown, sir.

10 MR. KUNST: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. KUNST:

13 Q If I may, I'd like to direct your attention to
14 the third page of that document and ask you to identify
15 what it is?

16 MR. SMITH: I'm sorry, Your Honor. I just want
17 to make sure I see what the witness is looking at.

18 BY MR. KUNST:

19 Q What is that document?

20 A It is — they are dates followed by the word
21 Billing, followed by a dollar amount with a far column to
22 the right that says, Total to date.

23 Q Is it an invoice from someone?

24 A No, sir.

25 Q Hold on —

170

DAVID LOREE-DIRECT BY MR. KUNST

1 MR. KUNST: Your Honor, may I approach?

2 THE COURT: Sure.

3 THE WITNESS: I don't think you counted, sir,
4 that wasn't the third page.

5 BY MR. KUNST:

6 Q I apologize, it's the fourth page. One was
7 sticking. Please identify that document.

8 A That is a document, invoice number 12 from
9 Bronson Sheppard.

10 Q Have you seen invoices from Bronson Sheppard
11 before?

12 A Been many years ago, but yes, I'm sure I have.

13 Q Does Bronson's invoice have contact information
14 on it?

15 A 510 Hunters Ridge Road, Brevard, North Carolina
16 Yes.

17 Q When you took the box back to Atlanta on
18 February 16th, 2006, did you make contact with individuals
19 based on a similar invoice as to Bronson's?

20 MR. SMITH: Objection, Your Honor. I don't
21 understand the question.

22 THE COURT: Okay. Restate the question.

23 THE WITNESS: Yeah, me either.

24 MR. KUNST: I apologize.

25

DAVID LOREE-DIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q Would you have obtained contact information from
3 the box of billing?

4 A We did compile a database by which to contact
5 various vendors from — I'm sure from addresses and
6 contacts that would have been on invoices in that box,
7 yes, sir.

8 Q Back to the email that's underneath that
9 document, give us a better description of why you called
10 this meeting.

11 A This was an effort for Mr. and Mrs. Gaby to
12 become comfortable with your accounting, to find where
13 their funds they had forwarded to you had gone knowing
14 that vendors were going unpaid, there was a slow down on
15 their work project and there was frustration on their
16 part. Their home wasn't being finished and there was a
17 fear on their part that the vendors — that funds were to
18 go to Mr. Kunst and to be forwarded to subcontractors,
19 that was not actually happening.

20 Q How did you determine that the project was
21 slowing down?

22 A I was told by Mr. Gaby.

23 Q Did you look at progress reports or any kind of
24 —

25 A I answered your question, sir.

DAVID LOREE-DIRECT BY MR. KUNST

1 Q I'm asking a new question.

2 A Okay.

3 Q Did you do an independent investigation, other
4 than through Mr. Gaby you just stated, as to whether or
5 not the project was genuinely slowing down?

6 A It was evident very soon that it was indeed.

7 Q Do you have any specific evidence of that today?

8 A I don't know what you would be looking for, sir.

9 Q Who was present at this meeting on
10 February 16th, 2006?

11 A You and I. And I was informed earlier --
12 overheard that Ms. Hilton was there and your father.

13 Q At this meeting, were two unreimbursed
14 statements, similar to one that you have in front of you,
15 provided to you?

16 A I think if we go back in my two depositions, in
17 testimony we've talked about this before, I do not recall
18 you -- it was a large box. There very well could have
19 been those documents in there.

20 Q When you took the box back to Atlanta, did you
21 investigate or cause to be investigated whether or not
22 there were any unreimbursed billing statements similar to
23 that in the box?

24 A We're referencing back to this item?

25 Q (Mr. Kunst nods.)

DAVID LOREE-DIRECT BY MR. KUNST

1 A I reviewed numerous documents similar to this.

2 Q I'll ask the question again. The question was,
3 did you find any that had not been reimbursed by the
4 Gaby's?

5 MR. SMITH: Your Honor, he's asked and answered
6 the question.

7 THE COURT: I'll let him the answer the
8 question.

9 THE WITNESS: No, sir, I don't recall.

10 BY MR. KUNST:

11 Q Okay. Do you recall stating at that meeting,
12 quote, I think I can get these paid?

13 A No, sir.

14 Q Do you deny stating that?

15 A I think in previous testimony, deposition, I
16 said that would be making a claim on behalf of my employer
17 that until I spoke to him about that, I wouldn't have that
18 ability to guarantee a payment.

19 Q Have you ever stated, I'm unsure?

20 A In my whole life, I've used the term I'm unsure
21 many times, sir.

22 Q No, in the context of the question I just asked?

23 A I don't recall, sir.

24 Q Mr. Loree, do you recall testifying in a damages
25 hearing on March 13th, 2007, on behalf of the Gaby's?

DAVID LOREE-DIRECT BY MR. KUNST

1 A Yes, sir.

2 Q Do you recall in that same hearing being asked
3 the same question about whether or not you stated, I think
4 I can get these paid?

5 A No, sir, I don't have any personal recollection
6 of that.

7 MR. KUNST: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. KUNST:

10 Q Please review lines 13 through 18.

11 MR. SMITH: What page, Scott?

12 MR. KUNST: Seventy-eight.

13 BY MR. KUNST:

14 Q Did you not, in fact, Mr. Loree, state on that
15 date that you were unsure?

16 A Starting on Line 13, it says, I do not believe
17 so. I did not say that.

18 You don't believe? Yes or no, sir.

19 I don't believe I said that, sir.

20 You did not say that?

21 I do not believe I said that.

22 You are not sure?

23 And I did finally say unsure.

24 Q Thank you. In relation to the time that you
25 compiled that email before you requesting the

DAVID LOREE-DIRECT BY MR. KUNST

1 February 16th meeting, when did you make contact with the
2 240 individuals?

3 A It would be roughly -- if this was on the 13th,
4 we met on the 16th, it would have been shortly after the
5 16th when I actually had contact information for them.
6 Shortly after the 16th, I would imagine.

7 Q I'll move on to speed things along and move on
8 to another question and we'll come back to that. Did you
9 tell any of the 240 people that you contacted --

10 MR. SMITH: Your Honor, I hate to do this, but
11 I have to object again because there's been no evidence
12 that Mr. Loree contacted 240 people. He has twice now
13 made that assumption and prefaced his question with that.
14 There's not any testimony in evidence that some 240 people
15 were contacted.

16 THE COURT: Ladies and gentlemen, I told you
17 when we first started the case that lawyers opening
18 statements and closings statement aren't evidence to be
19 considered by you. The same thing is true to questions
20 that are posed to witnesses. The questions are not
21 evidence. The responses to the question are evidence. So
22 if you hear either side make an assertion in a question
23 that's not in evidence, you understand that that is not
24 evidence to be considered by you, okay? So, I tell you to
25 be weary of that. I'm not suggesting that anyone has done

1 anything wrong or that anyone has tried to convince you of
2 something that is not accurate. I just tell you that
3 generally because that's the rule.

4 You may proceed, Mr. Kunst.

5 BY MR. KUNST:

6 Q Mr. Loree, did you ever state in a deposition
7 that the number of individuals you contacted was 240ish?

8 A I don't recall, sir. A large number, I could
9 stipulate to that.

10 THE COURT: Ladies and gentlemen of the jury.
11 Let's take a short break. Let's take about five minutes,
12 then we'll come back in and resume testimony. Please
13 don't discuss the case.

14 (WHEREUPON, the jury left open court at
15 approximately 3:48 p.m.)

16 THE COURT: All right. Mr. Loree, you can take
17 a break, too. Please remember you're still under oath,
18 which means you can't discuss your testimony with your
19 attorney.

20 Go ahead and get together what you need to get
21 together. And I also want to tell you, and I told you
22 this before, the most successful litigators establish a
23 narrative and move forward with a narrative. If you
24 respond to — if you decide to respond to individual
25 questions that are posed by objection by the other side,

DAVID LOREE-DIRECT BY MR. KUNST

1 you may be being thrown off of your narrative. So, just
2 be careful about that. Make sure you're focused on the
3 message you want to convey.

4 All right. We'll take about five minutes and
5 come back in.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: All right. Let me ask you this.
8 Mr. Kunst, how much longer do you intend to take with
9 Mr. Loree?

10 MR. KUNST: I may fill up the hour, Your Honor.

11 THE COURT: Okay. All right. And are you going

12 —

13 MR. SMITH: He said —

14 THE COURT: He said the remainder of the hour is
15 what he said. So, based on that, I'm thinking
16 5:00ish.

17 Okay. Do you intend to cross-examine Mr. Loree
18 or call him in your case in chief?

19 MR. SMITH: I do intend to cross-examine him. I
20 assume that will take a couple of hours.

21 THE COURT: What we will do is after you
22 complete your direct examination, then we'll adjourn
23 for the evening and come back and do
24 cross-examination tomorrow. Because I have not
25 advised the jury that we will be staying after 5:00.

DAVID LOREE-DIRECT BY MR. KUNST

1 It may be that we do tomorrow, but I like to give
2 them a little heads-up if we do. Based on where we
3 are right now, I'm not certain that we'll need to.

4 MR. SMITH: We have no objection to that, Your
5 Honor.

6 THE COURT: Okay.

7 MR. SMITH: Remember, you have one juror that
8 needs to leave early.

9 THE COURT: Is it tomorrow or is it Friday?

10 MR. SMITH: Well, you've got who has to not be
11 here Friday and one that has to take his momma to
12 work.

13 THE COURT: Right, start at 9:30.

14 MR. SMITH: You asked us to remind you, Your
15 Honor.

16 THE COURT: Yeah, you did. And I appreciate
17 that, I do. Sure as night follows day, I forget
18 about things like that.

19 Will you bring them in, please.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:00 p.m.)

22 THE COURT: All right. Ladies and gentlemen, I
23 have had a discussion with the parties about timing
24 just so I'll know and I can tell you what you can
25 expect for the remainder of the afternoon. Mr. Kunst

DAVID LOREE-DIRECT BY MR. KUNST

1 intends to examine Mr. Loree probably until about
2 5:00. At that point in time, what we'll do is we'll
3 adjourn for the evening. We'll come back tomorrow,
4 probably at 9:30.

5 Because I know you've got to take your mom some
6 place; is that right?

7 Okay. So, we'll back at 9:30. And we'll resume
8 the cross-examination of Mr. Loree at that time. At
9 that time, too, I might be able to give you some
10 additional information about how long it will be
11 until we get to the end of testimony and we can
12 transition into closing argument and charge. I don't
13 know that right now. So, I don't want to speculate.
14 But in any event, I'll turn it over to Mr. Kunst.

15 You can resume your examination, sir.

16 MR. KUNST: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 BY MR. KUNST:

19 Q. Mr. Loree, did I take money from the Gaby's and
20 spend it on personal things?

21 A. Unknown, sir.

22 Q. Have you ever stated to anyone that?

23 A. No, sir.

24 Q. What is an S Corp? Do you know what an S Corp
25 is?

DAVID LOREE-DIRECT BY MR. KUNST

1 A An escort?

2 Q An S Corp, C-O-R-P?

3 A No, I do not.

4 Q Have you ever been involved in one?

5 A No, sir.

6 Q Have you investigated or caused to be
7 investigated my draw schedule?

8 A I don't know what your draw schedule is. No,
9 sir.

10 Q Do you understand what a draw schedule would b

11 A Could you define it for me, sir?

12 Q Do you understand what a partnership draw —

13 A No, sir.

14 Q — is from a partnership?

15 A No, sir.

16 Q Okay. Have you ever asked for a full accounting
17 of my draw schedule for my company?

18 A That would be included in — accompanying those
19 reconciled documents would be an addendum explaining an
20 prior to paying for disbursement of funds — we asked for
21 everything related to the Gaby's finances relating to the
22 construction of their home. So, in a round about way, to
23 answer your question, yes, sir. If it was relevant, we
24 asked for it.

25 Q No, I think you misunderstood my question. I'm

DAVID LOREE-DIRECT BY MR. KUNST

1 speaking of my own personal draws from my company, my own
2 income that belongs to me?

3 A No, sir.

4 Q Did you have any such document in your
5 possession when you contacted the large number of people
6 you indicated that you contacted?

7 A I don't recall that, no, sir.

8 Q Did you have in your possession when you made
9 these contacts the full Kunstwerke accounting ledger?

10 A It was asked for, but wasn't provided. That was
11 one of the reasons that I made those calls.

12 Q Where specifically did you ask for a full
13 accounting ledger?

14 A Would you like me to read the whole email, sir?

15 Q Please read it again for us.

16 A You have in your possession and will prepare
17 stamped paid invoices to include copies of your canceled
18 checks showing disbursements to match the transferred
19 funds Mr. Gaby has made relating to the Gaby home project.
20 You will compile those invoices and canceled checks
21 starting with those funds — we can go on, gave you the
22 dates. They will and be complete to include the transfer
23 on 02/13/06 in the amount of \$51,823. Accompanying those
24 records, all documents will be an addendum explaining, as
25 you put it, prioritizing disbursements of funds to those

DAVID LOREE-DIRECT BY MR. KUNST

1 who were not the vendor indicated or referenced for
2 disbursement in your email. You will produce that series
3 of documents by 12 noon on Thursday, February 16th. You
4 will have those documents available for review at that
5 time. Please secure a meeting room for 1:30, Thursday,
6 02/16 at The Reserve Clubhouse and have those documents
7 laid out and available for review. Please have a second
8 copy of those same documents for the Gaby's to retain
9 and -- would you like me continue on the last paragraph as
10 well?

11 Q That's enough. Did you ever ask to have the
12 Kunstwerke books audited?

13 A No, sir.

14 Q Are you in possession of any kind of audit of
15 Kunstwerke records?

16 A No, sir.

17 Q Do you have any evidence that I embezzled money
18 from any other client other than the Gaby's?

19 A No, sir.

20 Q Do you have any evidence that I embezzled money
21 from the Gaby's?

22 A We have a judgment against you of funds that
23 were unpaid by you to vendors relative to their project.

24 Q And what is that? Describe that judgment.

25 A We have copies of it. I wouldn't be able to.

DAVID LOREE-DIRECT BY MR. KUNST

1 verbatim read it to you.

2 Q Is it a default judgment?

3 A Unknown sir.

4 Q Do you know what a default judgment is?

5 A No, sir.

6 Q Have you ever sought any kind of criminal
7 finding?

8 A You're going to have to be specific.

9 Q For the \$400,000 number you just mentioned the
10 judgment.

11 A Can you rephrase the question?

12 Q Yes, I should. It's confusing. I understand.
13 You stated just now you have a judgment?

14 A I don't personally have a judgment. The Gaby
15 family has a judgment.

16 Q I understand. Did you take the Gaby family's
17 judgment to a prosecutor?

18 A No, sir.

19 Q Has there been any kind of criminal finding?

20 A Not to my knowledge, sir.

21 Q Have you ever spoken with client Susan
22 Covington?

23 A Is she the real estate attorney?

24 Q Yes.

25 A May have nine or ten years ago.

DAVID LOREE-DIRECT BY MR. KUNST

1 Q Have you ever spoken with client Mike Parham?

2 A Again, may have nine or ten years ago.

3 Q Did you ever speak with client, Ed Coco?

4 A Perhaps, same time frame.

5 Q Did you ever speak with client, Thomas Hickey?

6 A Same time frame, perhaps.

7 Q What reason did you have to talk to those
8 clients?

9 A Once I began unraveling where some of the funds
10 went, I found that there was commonality. For example,
11 the stone on the Gaby residence is from Montana. That
12 same stone was being used at The Reserve on another
13 project. Through contacting a gentleman by the last name
14 of Luckay in Montana, it was determined that that project
15 was kind of overlapping and shipments were coming in both
16 directions. They had stopped shipping the stone to the
17 Gaby project due to lack of payment. So, I did call, once
18 the name was attached similar called, I believe the
19 Debaco's, and asked if they were having similar problems.
20 We were trying to get stone reshipped so the project could
21 get going again. So, under those contacts, those were
22 the --

23 Q Thank you. You've answered.

24 A -- contacts I made with other clients.

25 Q You've answered it. Did Susan Covington state

DAVID LOREE-DIRECT BY MR. KUNST

1 to you there were any financial problems with her project?

2 A Unknown, sir.

3 Q Did Mike Parham state to you there were any
4 financial problems with his project?

5 A Unknown, sir.

6 Q Did Ed Coco state to you there were any
7 financial problems with his project?

8 A Unknown, sir.

9 Q Did Thomas Hickey state to you there were any
10 financial problems with his project?

11 A Unknown, sir.

12 MR. KUNST: May I approach, Your Honor?

13 THE COURT: Sure.

14 BY MR. KUNST:

15 Q Do you recognize this document, Mr. Loree?

16 A Yes, sir.

17 Q What is it?

18 A This is the database that the office staff and I
19 prepared relative to taking a large box of receipts, the
20 first one being 3-D Land Survey, Forwren Incorporated,
21 Adam Durkin. These were all the invoices that were in the
22 box. I attached either physical addresses or P.O. boxes,
23 the city and state where they were from and a contact
24 phone number for their business to call and find out if
25 Mr. Kunst was current on his billing with them. And

DAVID LOREE-DIRECT BY MR. KUNST

1 this -- you mentioned 240, I don't know what that number
2 was, but it's multiple pages front and back and doing
3 rough math, there could probably be that -- close to that
4 number. Called these businesses one by one and asked.
5 Some of them were -- had no balance. Some of them were
6 current, some of them had open balances, some of them were
7 to 120 days past due and they were no longer willing to
8 provide services or product to the homesite. So, this is
9 what I used to chronologically move through contacting
10 different businesses to find out whether the Gaby project
11 stood in relation to funds that had been forwarded to
12 Mr. Kunst, had they been forwarded to the vendor.

13 Q Are there 240ish --

14 A I have no idea --

15 Q -- people?

16 A Looking, it's front and back. I don't know how
17 many are there, could be close to that.

18 Q Do you have a complete list of everyone you
19 contacted then?

20 A I think this is a pretty good -- if this is the
21 full list. And, again, it was built nine years ago. It
22 looks like it would be roughly a complete list. I don't
23 know that for sure.

24 MR. KUNST: May I approach?

25 THE COURT: Sure.

DAVID LOREE-DIRECT BY MR. KUNST

1 **MR. KUNST:** Plaintiff moves for this to become
2 an exhibit into evidence.

3 **THE COURT:** Objection, sir?

4 **MR. SMITH:** No objection, Your Honor.

5 **THE COURT:** All right, without objection the
6 same is admitted.

7 (WHEREUPON, Plaintiff's Exhibit No. 5 was marked
8 for identification and received into evidence.)

9 **MR. KUNST:** May I approach, Your Honor?

10 **THE COURT:** That's fine.

11 **BY MR. KUNST:**

12 **Q** Do you recognize that document?

13 **A** Yes, sir.

14 **Q** Did you draft it?

15 **A** Yes, sir.

16 **Q** What is that document?

17 **A** In boldface in the middle paragraph, it says
18 this is your notice of termination as the Gaby's
19 designer/builder on the project effective immediately.

20 **Q** What is the date of the document?

21 **A** March 3, 2006.

22 **Q** Did you secure the cooperation of Bronson
23 Sheppard prior to sending that document?

24 **A** I don't recall, sir.

25 **Q** When you arrived on the Gaby project in 2006,

1 was I over budget?

2 A Yes, sir.

3 Q Did you see a budget?

4 A I was told by Mr. Gaby it was over budget. He
5 keeps very — he's a very intelligent man. He keeps very
6 good records.

7 Q Did you see the budget?

8 A No, sir.

9 Q Did Mr. Gaby ever show you a budget?

10 A He may have. Not that I recall.

11 Q Did Mr. Gaby show you any evidence that the
12 project was behind?

13 A It was obvious it was behind. I didn't need —
14 no, he did not.

15 Q Did your boss have a fixed budget?

16 A Unknown, sir.

17 Q Did your boss have a fixed timeline?

18 A My understanding was that he did. He had to
19 have come up with a date to say we should be taking
20 possession of our house. To have that date not met would
21 mean it's past due, past time of completion. So, there
22 was something there, yes. Not that I felt it was.

23 Q After nine years, do you have a copy of that?

24 A Copy of that what? What, sir?

25 Q The timeline, the fixed timeline agreement?

DAVID LOREE-DIRECT BY MR. KUNST

1 A I think I said I had no idea if you had one.

2 Q Okay. How did you deliver the termination
3 notice?

4 A Well, the first line on this, I left you a voice
5 mail this morning at 9:45 as I was unable to contact you
6 personally notifying you of the following. So, I made
7 attempts to, obviously, contact you personally. And that
8 was unsuccessful, obviously, so I sent this and I know
9 that there was also a registered letter. That is an
10 email, so I think we — it was redundant. You were
11 notified here and you were also — I think you mentioned
12 earlier they had sent a certified letter of termination.

13 MR. KUNST: Plaintiff moves to admit the email
14 requesting the February 16th meeting.

15 MR. SMITH: No objection.

16 THE COURT: Without objection, same is admitted
17 as Plaintiff's Exhibit 6.

18 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked
19 for identification and received into evidence.)

20 MR. KUNST: The Plaintiff moves to enter into
21 evidence the March 3rd, 2006 termination notice.

22 MR. SMITH: No objection, Your Honor.

23 THE COURT: All right, sir. Same is admitted.

24 (WHEREUPON, Plaintiff's Exhibit No. 7 was marked
25 for identification and received into evidence.)

DAVID LOREE-DIRECT BY MR. KUNST

1 BY MR. KUNST:

2 Q Mr. Loree, did you send out or cause to be sent ..
3 out any letters to the public that stated that I had
4 stiffed, quote, unquote, my subs?

5 A No, sir. Stiffed is not a term I would use.

6 Q Have you ever seen such a letter?

7 A Not that I recall, sir.

8 Q Mr. Loree, have you ever seen any of the
9 original invoices submitted on the Gaby project other than
10 photocopies?

11 A Did you produce those in the box when we met in
12 February? Were the originals in there?

13 Q Did the box contain photocopies?

14 A No, I'm asking you did you submit originals to
15 me? I would be able to answer your question then, sir.

16 Q I'll clarify. The box contained photocopies.

17 A Okay.

18 Q Have you ever had in your possession the
19 original documents from the subcontractors?

20 A For clarification again, sir, were there
21 originals in that box or were they just all photocopies?

22 Q They were all photocopies.

23 A Then you have your answer.

24 Q Have you ever asked to see the original
25 documents?

DAVID LOREE-DIRECT BY MR. KUNST

1 A No, sir. Would the photocopies be different
2 from the originals?

3 Q Have you ever done or asked to have done a full
4 account reconciliation of the Gaby account with
5 Kunstwerke?

6 A Yes, sir.

7 Q Do you have that, please?

8 A I do not.

9 Q Where is it?

10 A I believe the gentleman's last name was Larkin
11 with Sandy Stern's office. A forensic accountant did
12 that. I think that's what you're referring to.

13 Q Will Mr. Larkin be testifying here this week?

14 A Did you subpoena him, sir?

15 Q Will Mr. Larkin be testifying on your behalf
16 this week?

17 A No, sir.

18 Q Will any accountant be testifying on your behalf
19 this week?

20 A No, sir.

21 Q Will any auditor be testifying on your behalf
22 this week?

23 A I believe so.

24 Q Do you recognize this document?

25 A By name, it says Gaby damages computation.

DAVID LOREE-DIRECT BY MR. KUNST

1 Q Yes. Do you recognize that document?

2 A I recognize it by the name on it. I don't
3 recognize the document, no, sir. It's Page 257 of a
4 larger document.

5 Q Did you submit that document?

6 A That would be — no, that's not a font that I
7 use. I certainly never produced a 257 page document. I
8 think this may, again, be produced by Mr. Larkin's firm.
9 It's not —

10 Q My question to you is did you —

11 MR. SMITH: Objection, Your Honor. Let the
12 witness finish his answer, please.

13 THE COURT: When you ask him a question, let
14 finish.

15 MR. KUNST: All right.

16 THE WITNESS: I think I can clarify for you. I
17 did not. I believe that the Larkin forensic
18 accountant may have prepared this. I did not.

19 BY MR. KUNST:

20 Q And will Mr. Larkin testify to that this week?

21 A I wouldn't know that, sir.

22 Q In the default damages hearing, did you testify?

23 A Yes, sir.

24 Q Did you submit that document?

25 A Unknown, sir.

DAVID LOREE-DIRECT BY MR. KUNST

1 Q Were you the one that submitted that document
2 into evidence and testified accordingly?

3 A Eight or nine years ago, I have — by looking at
4 it, I can't tell you. I didn't submit it. I wasn't an
5 attorney in the case. I certainly didn't submit any
6 evidence.

7 Q Did you testify as to any of the numbers on
8 there?

9 A Probably. The bottom line, the \$424,801.32 is a
10 rough estimation of what we calculated. So, I very likely
11 could have, sir.

12 Q Between the time of termination of March 3rd,
13 2006, and the date of the default damages hearing in March
14 of 2007, did you submit any other documentation regarding
15 the Gaby's accounts?

16 A We tried to procure that from you, sir, from our
17 meeting at The Reserve in which you were going to forward
18 documents to us to complete our documents and they never
19 arrived. That's one of the reasons you were terminated on
20 the 3rd of March, for not returning documents.

21 Q Is this document from 2007 valid in 2006? Is
22 that the best of your recollection?

23 A I see dates on it, so there's actually — it
24 was — it's looks like 12/05 of 2014 Plaintiff's Exhibit.
25 It probably came from another trial. 12/05 of 2014, I'm

DAVID LOREE-DIRECT BY MR. KUNST

1 not sure — I was certainly not involved in any litigation
2 at that point, so I'm not even sure where this document
3 came from. It certainly represents my employer, Gaby
4 damages computation. I understand that. Beyond that, I'm
5 not sure.

6 Q There's a line item on there called CMC Asphalt
7 for \$7,500. Can you find that?

8 A There's a CMC Asphalt for \$7,100.

9 Q Yes, I'm sorry, \$7,100?

10 A Correct, sir.

11 Q Did you testify to that number?

12 A Nine years ago, perhaps. I'm unaware, sir.

13 Q As you sit here today, do you have any evidence
14 of a dummy invoice from a dummy company submitted by
15 a client?

16 A Actually, that was a peculiar statement. It was
17 one of the gentleman's affidavits, dummy — received
18 dummy. It was something that was prepared other than me.
19 That's certainly not a term I would use. No. If you can
20 rephrase the question, I can answer it for you, though,
21 sir.

22 Q Did you not, in fact, testify at the default
23 damages hearing that the Gaby's were owed \$7,100 in
24 damages because a dummy company named CMC Asphalt

25 A If you have my testimony —

DAVID LOREE-DIRECT BY MR. KUNST

1 Q — was created?

2 A — from that damages hearing, I'll certainly
3 read that for you, sir. I don't recall nine years ago.

4 Q You don't recall anything regarding that number,
5 \$7,100?

6 A Personal knowledge today, 7,100, no, sir.

7 Q In preparation for this trial, did you study
8 that damages computation?

9 A I never saw this till you placed it in front of
10 me a few moments ago. I read my two depositions and my
11 testimony from the damages hearing. I refreshed again
12 last night doing that. That was my preparation for this.

13 Q There's another line item on there called
14 Johnson Insurance Agency.

15 A Yes, sir, I see that.

16 Q Did you testify at the damages hearing regarding
17 the dollar amount beside Johnson Insurance Agency?

18 A I would like to see my testimony. I'm sure that
19 I did and you've referenced this several times earlier
20 today. I don't have personal recollection of that nine
21 years ago.

22 Q Do you have any evidence as you sit here today
23 that I took out an insurance policy for the Gaby's and
24 intentionally canceled it the next day and billed the
25 Gaby's for it and pocketed the money?

DAVID LOREE-DIRECT BY MR. KUNST

1 A Could I see my testimony from the damages
2 hearing?

3 Q I'm asking you do you have evidence as you sit
4 here today?

5 A I believe I do. If you'd show me that document,
6 I can read that verbatim for you. I think that's what
7 occurred.

8 Q What document are you asking for?

9 A My testimony from the damages hearing. And if
10 we can peruse that to find the portion that you'd like to
11 address toward the Johnson Insurance Company. I don't
12 have personal knowledge of that from nine years ago, but
13 my only recollection would be reading it.

14 Q Did you call anybody in your investigation at
15 the Johnson Insurance Agency?

16 A I don't recall, sir. I'm sure that I did.

17 Q Did you call Tracy regarding that?

18 A No, sir.

19 Q Did you call anybody from the Johnson Insurance
20 Agency?

21 A Was it Johnson or was it Zurich, perhaps? For
22 some reason, Zurich is sticking in my head. I don't know
23 if that's --

24 Q Zurich is the insurance company, Johnson is the
25 agency. Did you call the agency or did you call the

DAVID LOREE-DIRECT BY MR. KUNST

1 company?

2 A Unknown, sir. I think I called both. I don't
3 know that for sure.

4 Q At the bottom of that number -- at the bottom of
5 that page, it states \$353,000. Is it your testimony that
6 that's the number that has been taken from the Gaby's by
7 me?

8 A No, sir.

9 Q What is that number?

10 A I don't know. With a single page of a 257 page
11 document, you're asking for something I can't testify to
12 with concrete. I'm seeing a number here of a document. I
13 didn't prepare it and you're asking me if --

14 Q You heard testimony earlier today that Kevin
15 Goad attributed to you a statement that \$400,000 had been
16 taken from the Gaby's?

17 A Correct.

18 Q As you sit here now, do you have any evidence
19 that \$400,000 was taken from the Gaby's by me?

20 A We actually -- I think the Gaby family has a
21 judgment in the courts here in South Carolina in favor of
22 the Gaby's awarding them over \$400,000, so I'd say yes, we
23 have plenty of that, sir.

24 Q Do you have evidence of actual theft?

25 A It's a civil trial, not a criminal trial. No,

DAVID LOREE-DIRECT BY MR. KUNST

1 sir.

2 Q Thank you. Did Mr. Gaby state to you at any
3 time in February 2006 that my company was having a cash
4 crisis?

5 A I don't recall, sir.

6 Q Did Mr. Gaby show you any email stating or
7 requesting by me funds?

8 A I saw funds request from you on a weekly basis.

9 Q Did Mr. Gaby ever state to you that he had seen
10 Kunstwerke statements that he had not reimbursed?

11 A No, sir.

12 Q Did you ever ask him?

13 A I had no cause to do that. No, sir.

14 Q So, you investigated my finances but you never
15 asked Mr. Gaby whether or not he had reimbursed everyth
16 per the contract?

17 A Did I investigate — ask that question again,
18 the beginning of the question, sir. I investigated your
19 what?

20 Q You were investigating balances with
21 subcontractors and suppliers; is that correct?

22 A I was investigating the Gaby's building project,
23 sir.

24 Q In so doing, at any time, did you ask Mr. Gaby
25 whether or not he had, in fact, reimbursed everything?

DAVID LOREE-DIRECT BY MR. KUNST

1 A He had told me that he was ahead and you had a
2 surplus from funds that were forwarded to you against your
3 weekly progress billing. Is that what you call this?

4 Q You stated a moment ago that you found accounts
5 that were past due?

6 A Yes, sir.

7 Q Is it possible that these accounts were past due
8 because Mr. Gaby was past due?

9 A No, sir.

10 Q How is that —

11 A Absolutely not, sir.

12 Q How is that possible?

13 A Because the funds that he forwarded to you were
14 to be passed through — my understanding, and please
15 correct me if I'm incorrect here, direct to vendors.
16 Those numbers were tallied by you in these progress
17 billings for dollars that were going to vendors or had
18 already gone to vendors. Those dollars when I called —
19 and if you'd like to use this document a little further,
20 Paul Anderson Designs, Select Stone, Window and Door
21 Concepts. There are some very large numbers here that
22 we've already substantiated in here today didn't go to
23 those subcontractors, which it left your account a
24 surplus, sir. There is no way he was behind.

25 Q In your investigation, did you discover whether

. DAVID LOREE-DIRECT BY MR. KUNST

1 there were things that Kunstwerke had paid that Mr. Gaby
2 had not yet reimbursed?

3 A I found little, if any, of those, sir. And
4 again, nine years ago, there may have been a small one.
5 Nothing substantial.

6 Q Do you have those with you today?

7 A No, sir.

8 Q Did you look at the February 16th, February 20th
9 or March 3rd billing statements?

10 A Are we in a circle now, sir? Are you asking me
11 if I've looked at things that I told you that you say were
12 in a box that I don't recall ever getting? They may have,
13 indeed, been there. No, sir, I did not.

14 Q Okay. Did you ever compile a list, a definitive
15 list of those items that Mr. Gaby had not reimbursed?

16 A We found no items that Mr. Gaby or Mrs. Gaby h.
17 not reimbursed.

18 Q Allow me to ask you a question regarding your
19 understanding of the payment process. When Mr. Gaby m:
20 a wire, did that wire sit in the Kunstwerke account
21 waiting to be distributed to certain things?

22 A That's my understanding.

23 Q Was it restricted to certain things?

24 A It was restricted to things specifically for the
25 Gaby project.

DAVID LOREE-DIRECT BY MR. KUNST

1 Q Do you have any contract or any document that
2 states it was restricted to those things?

3 A No, sir.

4 Q If a concrete truck arrived on the site and was
5 paid, let's give an example, weeks before Mr. Gaby was
6 billed for it, who paid for that concrete?

7 A I don't know, sir.

8 MR. SMITH: Your Honor, I'm sorry to do this,
9 but he's asking him a question of a fact witness.

10 THE COURT: Okay. All right. I'm going to
11 sustain that.

12 BY MR. KUNST:

13 Q Did you compile a finite list of every invoice
14 that flowed through Kunstwerke to the Gaby's?

15 A Prior to — if we can reference that document
16 again, but I asked you to bring all of those to a meeting
17 on 02/16 so that we could do that. I reconciled every
18 document that you brought there. However, there were —

19 Q Did you have an accountant or an auditor look at
20 those documents before you made your contacts?

21 A I'm not sure when Mr. Larkin would have been
22 involved. Simultaneously or — I'm not sure.

23 Q Mr. Larkin wasn't involved until 2007?

24 A Yeah, I don't know.

25 Q In February 2006 when you took the box back to

DAVID LOREE-DIRECT BY MR. KUNST

1. Atlanta, did you show it or give it to any kind of
2 accountant or auditor or expert in financial matters?

3 A No, sir.

4 Q Did the Gaby's have to purchase new tools and
5 things like walk boards and such once Kunstwerke was
6 terminated?

7 A I--

8 Q Did the Gaby's have to make any large equipment
9 purchases after the termination of Kunstwerke?

10 A Unknown, sir.

11 Q Were there Kunstwerke tools and equipment and
12 vehicles on site?

13 A I don't believe there were vehicles. Unknown,
14 sir. I don't know.

15 MR. SMITH: Objection, Your Honor, it would be
16 for a legal conclusion that I don't think my client
17 can make.

18 THE COURT: He can testify as to his knowledge
19 whether there was remaining residual equipment on
20 site. I don't know what the answer would be, but he
21 can answer that question.

22 You can restate if you would like to, Mr. Kunst.

23 BY MR. KUNST:

24 Q These individuals that you contacted, did you
25 ever follow up with them?

DAVID LOREE-DIRECT BY MR. KUNST

1 A Many of them, multiple times, yes, sir.

2 Q Have you ever followed up with Kevin Goad?

3 A Yes, sir.

4 Q Did you follow up with Kevin Goad any time
5 between 2007 and today?

6 A Yes, sir.

7 Q Did you discuss with Kevin Goad his testimony?

8 A No, sir.

9 Q Did you attempt to clarify or correct anything
10 you may have said to Kevin Goad in the past?

11 A Not to my knowledge. Ms. Wright asked me to
12 contact several of the vendors from that database, so I
13 called them recently and told them that Ms. Wright may be
14 contacting them. That was a contact here within the last

15 —

16 Q Did you contact Glenn Alfonzo as well?

17 A No, sir.

18 Q Have you had any contact with Glenn Alfonzo
19 since 2006?

20 A I don't believe so, no, sir.

21 Q Did you listen to the affidavit read by Kevin
22 Goad?

23 A Yes, sir.

24 Q Do you deny making those statements to Kevin
25 Goad?

DAVID LOREE-DIRECT BY MR. KUNST

1 A What were those statements, sir?

2 Q Did you state to Kevin Goad that Scott Kunst had
3 taken \$400,000 from the Gaby project and left his other
4 clients in a similar situation?

5 A Unknown, sir, nine years ago.

6 Q Did you state to Kevin Goad that Scott Kunst had
7 provided his clients with dummy invoices from dummy
8 companies to take money from his clients?

9 A That's what I was referencing earlier.

10 Certainly, did not make those — those are not terms that
11 I would use, so I know 100 percent that is not a statement
12 that I made.

13 Q Did you represent to Kevin Goad that you were a
14 former detective and in the process of investigating my
15 financial dealings?

16 A No, sir. That was the other thing and I
17 clarified that as I sat down. He identified me as a
18 detective. I was never a detective. I left the sberiff's
19 department with the rank of sergeant. I was certainly
20 investigating the Gaby's building project, but never would
21 have represented myself as a detective, never was.

22 Q Is it your testimony that Kevin Goad was not
23 being truthful?

24 A No, sir.

25 Q Then what is your testimony?

DAVID LOREE-DIRECT BY MR. KUNST

1 A That he inferred when I used the word
2 investigation as a police officer that the lay public may
3 believe investigations, police officer, must have been a
4 detective. Not the case.

5 Q Did you state to Kevin Goad to contact — that
6 you had made contact with Hickey and that a lot of money
7 that been taken from Hickey as well?

8 A I don't recall that, sir. I talked to multiple
9 clients of yours, yes, but I don't recall that from nine
10 years ago. Is that in deposition testimony somewhere,
11 perhaps?

12 Q At any time, did you contact Kevin Goad in the
13 last nine years and discuss these statements?

14 A No, sir.

15 Q Did you correct or amend any of these
16 statements?

17 A No. I made a contact with him just briefly at
18 Ms. Wright's direction within the last 90 days.

19 Q Did you refer to Glenn Alfonzo that Scott Kunst
20 had done criminal things?

21 A No, sir.

22 Q Is Mr. Alfonzo being untruthful?

23 A No, sir. I think — wasn't there an amendment
24 there? There may have been actions that could be
25 construed as criminal. I don't recall making any

DAVID LOREE-DIRECT BY MR. KUNST

1 statement of that, no, sir.

2 Q Another statement would be, perhaps, the one
3 that you're referring to, I recall David Loree referring
4 to Scott Kunst as, and he dropped the participle a. So,
5 I'll reread it the way that he read it into evidence.

6 I recall David Loree referring to Scott Kunst as
7 criminal on more than one occasion?

8 A I don't recall making that statement, sir, no.

9 Q Is it your testimony that Glenn Alfonzo is not
10 being truthful?

11 A Certainly not, sir. It's that I don't recall
12 that, sir.

13 Q In another instance, did you state to Glenn
14 Alfonzo, I'm not supposed to be telling you this, but to
15 give you an idea of some of the criminal things Scott has
16 been doing. David Loree then referenced an insurance
17 policy for the Gaby project and claimed that Scott took
18 out the policy, billed the Gaby's and intentionally
19 canceled the policy the next day so he could keep the
20 money.

21 Is that a statement that you made to Glenn
22 Alfonzo?

23 A I don't recall making that statement, sir.

24 If — he also referenced being at the job site and you
25 referenced Bronson Sheppard. We had — I spent five days

DAVID LOREE-DIRECT BY MR. KUNST

1 a week at the job site to get the project done. We had
2 very candid conversations. If someone were at a distance
3 and overheard something like that. I don't recall making
4 that statement. I can't tell you if I did or did not,
5 sir.

6 Q Then you don't recall ever correcting that
7 statement? .

8 A What statement is that, sir?

9 Q Regarding the insurance policy. Did you ever go
10 back and correct any kind of statement regarding the
11 insurance policy —

12 A Absolutely not.

13 Q — based on information you may have received
14 later?

15 A No, sir.

16 Q Did you have an ongoing conversation with these
17 individuals regarding the insurance policy?

18 A No, sir.

19 Q Did you state to Glenn Alfonzo that Scott Kunst
20 had taken money from his other clients and that money was
21 missing from these other projects?

22 A I don't recall making that statement. As I
23 said, I contacted Parham and — I can't think of the names
24 right now, but multiple other clients who said they were
25 having similar issues. So, I may have made that

1 statement. We were not the only ones having problems with
2 accounting.

3 Q Well, any of those clients testify on your
4 behalf and attest to those issues?

5 A Mr. Covington is coming in tomorrow.

6 Q Mr. Covington is my witness. Do you have any
7 witnesses coming in that are going to attest to what you
8 stated?

9 A That would be to the attorneys, not to me, sir.
10 I'm not sure, no.

11 MR. SMITH: Your Honor, I hate to do this again
12 but I am going to object to the last line of questioning.
13 He's trying to imply that the burden of proof is on us.
14 The burden of proof is on the Plaintiff, it is not on the
15 Defendant.

16 THE COURT: I understand. I'll give them the
17 charge on the law at the end of the case.

18 MR. SMITH: Thank you, Your Honor. I'm sure
19 you will.

20 BY MR. KUNST:

21 Q Please review the stack of letters there. I am
22 so sorry, I apologize. Do you recognize that letter?

23 A It's a document relative to the Gaby's building
24 project from — I can't tell who it's from because the
25 header — it's a photocopy and the header is no longer

DAVID LOREE-DIRECT BY MR. KUNST

1 there.

2 Q There are other letters attached that are
3 identical with that heading.

4 A Coming to Patrick Gates. It's from a law firm.

5 Q Is the Covington Law Firm the law firm you
6 engaged at the time of the termination?

7 A I engaged no law firm, no, sir, I did not.

8 Q Did you engage Attorney Sandy Stern?

9 A I did not, sir.

10 Q Did the Gaby's?

11 A I believe they did, yes, sir.

12 Q Is that a letter from Sandy Stern?

13 A I'm trying to find his name in here. It's from
14 his law firm, certainly, but I continue to peruse to find.
15 Yeah, Page 3, yes. Signed by Mr. Stern.

16 Q Did any subcontractors come to you as the
17 contact at the site and discuss liens, possible liens on
18 the Gaby property?

19 A I don't recall, sir. I don't believe so, but I
20 don't recall.

21 Q Did any subcontractors threaten to place liens
22 on the property?

23 A Unknown, sir.

24 Q And the second to last paragraph.

25 A Which page?

DAVID LOREE-DIRECT BY MR. KUNST

1 Q Of each letter, front page of the letter. The
2 letter from the attorney states that I stiffed the
3 subcontractors and suppliers. Is that statement correct
4 to the best of your knowledge?

5 A There's the term stiffed that you used earlier
6 that I said isn't terminology that I would use, but it is
7 on letterhead from an attorney. So, what was the question
8 you were asking?

9 Q My question to you is so far as your
10 investigation went, did you find that I had stiffed
11 contractors and suppliers?

12 A Yes.

13 Q Do you have any instances of such?

14 A Select Stone, Paul Anderson Design, Kevin Goad
15 with Window and Door Concepts. There's a list there, yes.

16 Q Is it your testimony that specific funds that
17 the Gaby's provided were ear marked specifically to those
18 companies?

19 A Yes, sir. You had asked specifically for a
20 given dollar amount with that company's name attached to
21 it. Mr. Gaby had every reason to believe those funds that
22 you were asking for for a specific vendor were going to go
23 to that specific vendor.

24 Q And your investigation of the Gaby account was
25 based on that premise?

DAVID LOREE-DIRECT BY MR. KUNST

1 A Yes, sir.

2 MR. KUNST: Okay. I have nothing further.

3 THE COURT: Okay. Ladies and gentlemen, we're
4 going to adjourn for the evening. We'll start back
5 tomorrow at 9:30. Please don't discuss the case. I
6 know that when you get home, you may be invited to
7 discuss it by friends, neighbors, relatives. Just
8 tell them to keep their powder dry and at the end of
9 this case, you'll have the opportunity to discuss it
10 with them as much as you'd like. So, y'all have a
11 great evening and I'll see you back here at 9:30
12 tomorrow morning. Okay.

13 (WHEREUPON, the jury left open court and was
14 excused for the day at approximately 4:45 p.m.)

15 THE COURT: All right. Mr. Loree, you continue
16 under oath. Now, I presume -- I don't know this, but
17 I presume that you and Mr. Smith are staying some
18 place locally and not going back and forth to
19 Atlanta. Am I right? So, y'all might have occasion
20 to see each other and talk to one another.

21 THE WITNESS: Actually, he's staying in Lake
22 Keowee and I'm staying in Greenville.

23 THE COURT: Okay.

24 THE WITNESS: Opposite directions.

25 THE COURT: Okay. Well, good. Don't discuss

DAVID LOREE-DIRECT BY MR. KUNST

1 the case, okay? Not by telephone, not in person.
2 Don't discuss it because y'all are beginning your
3 examination in the morning.

4 And I know you know that, Mr. Smith. I'm just
5 reminding you on the record. It's important that you
6 not discuss it.

7 We'll see y'all back here tomorrow morning. If
8 y'all need me before 9:30, let me know. If the jury
9 is going to be here at 9:30, if there is an issue
10 that we need to discuss, I would like to discuss it
11 and resolve it before they get here. So, y'all come
12 see me before then if there's anything we need to
13 discuss before we get started. Okay.

14 Y'all have a great evening.

15 (WHEREUPON, the proceedings were concluded
16 the day to be reconvened on Wednesday, May 27,
17 2015.)
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DAVID LOREE-DIRECT BY MR. KUNST

May 27, 2015

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2 THE COURT: Mr. Smith, let me know when you're
3 ready for the jury?

4 MR. SMITH: We're ready, your Honor.

5 THE COURT: Okay, bring the jury in, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 9:53 a.m.)

8 THE COURT: All right, good morning, ladies and
9 gentlemen, hope y'all had a good evening, it's good
10 to see you again today.

11 Okay, Mr. Loree, you may resume the stand, sir.
12 I remind you that you continue under your oath from
13 yesterday.

14 Mr. Smith, I believe it's your witness, sir.

15 MR. SMITH: Yes, Your Honor, thank you, Your
16 Honor.

17 THE COURT: Yes, sir.

18 MR. SMITH: Good morning, ladies and gentlemen.

19 CROSS-EXAMINATION

20 BY MR. SMITH:

21 Q Mr. Loree, since we've had a break since you
22 were sworn in earlier yesterday, could you remind the jury
23 who you are and what you do?

24 A David Loree, I'm a executive protection
25 administrator and property manager Richard and Barbara

1 Gaby.

2 Q And I believe yesterday you described you'd been
3 with the Sheriff's Department for?

4 A About 18 years --

5 Q Correct --

6 A Thirteen full-time and five -- part-time in the
7 beginning and part-time at the end.

8 Q And just to kind of build back up to where we
9 were yesterday afternoon, can you give me in generalities
10 when you first met Mr. Kunst?

11 A It was a introduction by Mr. Gaby, they were
12 just beginning their lake house on Lake Keowee. Had the
13 foundation poured and we took a drive to Lake Keowee for
14 him to check the status on the property and just introduce
15 me to what he had going on in South Carolina. That's the
16 first time I'd been there.

17 Q Do you remember ballpark when that was?

18 A Maybe mid 2005, late 2005, I can't say.

19 Q And then did you have any further dealings with
20 Mr. Kunst at all until the meeting you described
21 yesterday?

22 A I don't recall any contact until roughly right
23 around the meeting.

24 Q Okay. And so, remind us once more again, don't
25 want to replot grown but since we've had a break

DAVID LOREE-CROSS BY MR. SMITH

1 overnight, what were the circumstances that caused you to
2 become involved with the Gaby project?

3 A Mr. Gaby had — I was speaking on Mr. Gaby's
4 behalf. I don't know this for a fact but he had asked me
5 to become in the project after he had some frustration
6 with Mr. Kunst on a late schedule on completion and over
7 budget on his project.

8 Q Okay. I want to talk for a little bit about
9 this investigation that you under took on behalf of
10 Mr. Gaby.

11 May I approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. SMITH:

14 Q I believe there's a Plaintiff's Exhibit 6 that I
15 wanted to hand to the witness.

16 A Uh-huh.

17 Q This has already been marked for evidence, can
18 you explain what this document — what you were doing in
19 this document?

20 A This was sent after a conversation Mr. Gaby had
21 with Mr. Kunst about the finances related to his project.
22 He wasn't getting a satisfactory response to that so he
23 asked for me to set up a meeting at The Reserve and asked
24 Scott to bring all documents required to reconcile the
25 account to find where funds had been distributed to and

1 just come to a complete understanding of where the Gaby's
2 money had gone relative to their project.

3 Q And to be clear, because the jury can't see the
4 document, and please correct me if I misstate this. It's
5 an email from you to Mr. Kunst on February 13th, 2006.
6 where you're asking these things?

7 A Correct.

8 Q Okay. Okay. And I believe you testified.
9 yesterday that you asked Mr. Kunst to bring, and it's
10 right there in the first line of the first bullet point,
11 Stamped paid invoices and canceled checks to show the
12 disbursements so that you could match those disbursements
13 with money that had been paid by Mr. Gaby?

14 A Correct.

15 Q Correct, okay. And then you go down, you try to
16 set up a meeting with Mr. Kunst, at The Reserve, at Lake
17 Keowee?

18 A Correct.

19 Q Did you ask for anything else in this email?

20 A The final paragraph talks about lien waivers.
21 Mr. Gaby was worried that vendors had not been paid and
22 that potentially his property could have lien waivers put
23 on them. So, he wanted Scott to secure lien waivers from
24 all the contractors to protect his property.

25 Q And can you describe for the jury how that

DAVID LOREE-CROSS BY MR. SMITH

1 meeting went with Mr.~Kunst?

2 A Again, ten years ago. We arrived, we met at one
3 of the conference rooms or room at the clubhouse at Lake
4 Keowee. We -- they helped refresh my memory yesterday.
5 Tracy was there, Scott's father was there, Scott was
6 there, I was there. We had laid out very clearly what we
7 asked them to bring, anticipated those documents to be
8 properly laid out, to be prepared for that meeting. They
9 did show up with documents. Made an attempt to show me
10 what those documents were. I not being an accountant was
11 not satisfied when I left there that all of the documents
12 were there. It wasn't a highly productive meeting. It
13 was, we're going to have to get back together at a later
14 dates because there were a lot of canceled checks and
15 other documents that weren't needed -- or that were needed
16 that weren't with them. And I think that, I don't know --
17 I don't remember her verbatim statement, but I think there
18 was discussions about we would need to get some more of
19 those documents together at the very near future to
20 satisfy Mr. Gaby's request.

21 Q So, the documents you requested, the stamped
22 invoices and the canceled checks, the lien waivers were
23 not all present, is that fair?

24 A No. And I was alarmed yesterday when Mr.~Kunst
25 stated that everything he brought were copies. That was

DAVID LOREE-CROSS BY MR. SMITH

1 news to me. I put up another red flag yesterday, I asked
2 if those could have been altered. So, that was a concern
3 to me yesterday when he said he brought copies.

4 He said, They were all copies.

5 I think is what he said.

6 MR. SMITH: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 MR. SMITH: Your Honor, I brought courtesy
9 copies if you'd like?

10 THE COURT: No, I'm good.

11 MR. SMITH: Okay.

12 BY MR. SMITH:

13 Q Mr. Loree, if you would, could you look at this
14 document and tell me if you recognize this document?

15 A I do.

16 Q And can you tell the jury what the document is?

17 A It's an email from Mr. Gaby to Studio Kunstwerke
18 Corporation, which was Scott's business, copied myself and
19 Mr. Gaby. And the subject line is Reconciliation.

20 MR. SMITH: Your Honor, we'd ask this be
21 admitted into evidence as Defendant's Exhibit one.

22 THE COURT: Okay. No objections? No
23 objections?

24 MR. KUNST: No objections.

25 THE COURT: Okay, without objection the same

DAVID LOREE-CROSS BY MR. SMITH

1 admitted as Defendant's Exhibit 1?

2 Do you need to mark that, April?

3 **THE COURT REPORTER:** Yes, sir.

4 **THE COURT:** Give her the opportunity.

5 **MR. SMITH:** Okay.

6 (WHEREUPON, Defendant's Exhibit No. 1 was marked
7 for identification and received into evidence.)

8 **BY MR. SMITH:**

9 Q Mr. Loree, in this email you were copied on
10 Mr. Gaby to Mr.~Kunst, can you describe for the jury —
11 well, I'll just have you read it. About four or five
12 lines down, do you — Mr. Gaby writes, We have gleaned —
13 do you see where it starts there?

14 A Uh-huh.

15 Q Can you read that?

16 A We have gleaned from subcontractors that you are
17 significantly behind in paying them and many of them are
18 pulling off the job and or not providing information until
19 you are current. I.E. landscaper. This is obviously
20 causing delays which is hard to digest given the
21 timeliness of my disbursements to you.

22 Continue on?

23 Q Yes, sir, do the next one.

24 A You have requested specific wire transfers for
25 cabinetry installments but have not passed those through

DAVID LOREE-CROSS BY MR. SMITH

1 to Paul, which is Paul Anderson. I have paid you 140,000,
2 he has only received 20,000.

3 Q Okay. And I think this is an email where it
4 looks like you're trying to work it out with Mr.~Kunst for
5 the next meeting, that a fair statement?

6 A I'd have to read it.

7 Q Okay, go ahead, take your time.

8 A To myself?

9 Q Yeah, please.

10 A Yes, that what it looks like.

11 Q And specifically I think in the second
12 paragraph. . .

13 A I have—

14 Q The sentence that begins with, Copies of
15 specific checks.

16 A Copies of specific checks need to be organized
17 and copies of invoices that those checks were applied to
18 needs to be attached to the reconciliation. Until you
19 accomplish this and demonstrate you have a handle on where
20 these funds were applied, I will not forward you any
21 additional funds.

22 Q Okay. And continue the next sentence, if you
23 don't mind.

24 A To keep the project progressing, Dave will
25 contact vendors and I will pay for new invoices directly

1 to vendors.

2 Q Okay. So, it is at that point this was the
3 second time you contacted Mr. Kunst and asked for the
4 records to show where vendors had been paid?

5 A I'm looking at it, it looks like it's two days
6 after my meeting with Scott and his group at The Reserve.
7 We had brought back items, laid them out, I explained to
8 Mr. Gaby, as I stated to you, it was confusing, it wasn't
9 complete. Mr. Gaby looked through those. And this was an
10 email in response back to Scott to encourage him to put
11 the reminder of the documents together in an orderly,
12 discernible fashion so that we could find out where those
13 funds went.

14 Q Okay. And you read that, To keep the project
15 progressing, Dave will contact vendors and I will pay the
16 invoices directly to the vendors.

17 A Yes, sir.

18 Q Is that the time — I think you testified
19 yesterday at some point you began to be the point of
20 contact for the subcontractors and vendors?

21 A That sentence would have pulled the trigger for
22 me to — Mr. Gaby said contact vendors, find out where we
23 are relative to current balances, unpaid balances, things
24 of that nature, anything that would prioritize and get the
25 contractors back to the job site and get his home done on

DAVID LOREE-CROSS BY MR. SMITH

1 time or as close as we could.

2 Q Okay. Did Mr. Kunst ever tell you, no you can't
3 contact the vendors or subcontractors?

4 A No, sir.

5 Q In fact, I think — did he encourage you to
6 contact them?

7 A No, sir.

8 Q Just he didn't care one way or the other?

9 A No, sir.

10 Q Okay.

11 MR. SMITH: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, sir.

14 BY MR. SMITH:

15 Q Mr. Loree, I'm handing you a document and ask
16 you if you could identify that document for the Court?

17 A Saw a couple of these yesterday. This is what
18 Mr. Kunst called his Progress Bill, I believe. Is that
19 accurate?

20 Q And that's a bill you would have probably seen
21 during the course of your investigation?

22 A Correct.

23 MR. SMITH: Your Honor, we would move that I
24 admitted into evidence as Defendant's Exhibit 2.

25 THE COURT: Objection, sir?

DAVID LOREE-CROSS BY MR. SMITH

1 MR. KUNST: No objection, Your Honor.

2 THE COURT: All right, without objection, the
3 same is admitted into evidence.

4 Hand that to the Court Reporter so she can mark
5 it.

6 MR. SMITH: Yes, Your Honor.

7 (WHEREUPON, Defendant's Exhibit No. 2 was marked
8 for identification and received into evidence.)

9 BY MR. SMITH:

10 Q Dave, if you could look at this invoice, which
11 has been marked as Defendant's Exhibit 2, I think you
12 testified was one of the progress billings, one of the
13 cover sheets for the progress billings from Mr.~Kunst; do
14 you see a date on that?

15 A There's a date of October 18th, 2005 at the top
16 of it.

17 Q Okay. October 18th, 2005. And on this document
18 do you see a line item for System Specialities?

19 A Yes.

20 Q And how much is that line item?

21 A \$3,860.

22 Q Okay. And was this invoice from October 2008 —
23 I'm sorry, October 18th, 2005, from Mr. Kunst to Mr. Gaby,
24 was that paid by Mr. Gaby? To the best of your knowledge?

25 A October of 2005. If it's in the total at the

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DAVID LOREE-CROSS BY MR. SMITH

1 bottom it would have been a wire that went to Mr. Kunst.

2 Q So, this was at a point before February 2006?

3 A Right.

4 Q So, the weekly billings were still being paid
5 weekly?

6 A Correct.

7 Q Okay.

8 Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 BY MR. SMITH:

11 Q I want you to look at that. And Dave, I'm going
12 to ask, if you can, identify that document for the Court.

13 A It appears to be another progress billing.

14 MR. SMITH: If there's no objection from the
15 Plaintiff, Your Honor, we move for it to be admitted
16 into evidence.

17 MR. KUNST: No objection.

18 THE COURT: All right, without objection the
19 same is admitted into evidence.

20 MR. SMITH: And that is Defendant's Exhibit 3.

21 THE COURT: Again, give her a minute so she can
22 mark it.

23 MR. SMITH: Yes, sir.

24 (WHEREUPON, Defendant's Exhibit No. 3 was m
25 for identification and received into evidence.)

DAVID LOREE-CROSS BY MR. SMITH

1 BY MR. SMITH:

2 Q Mr. Loree, looking at this document, which has
3 been marked as Defendant's Exhibit 3, I think you stated
4 this is another one of Mr.~Kunst's progress billings to
5 Mr. Gaby. Do you see the date at the top of that invoice?

6 A October 25th, 2005.

7 Q And is there a line item on this invoice for
8 Systems Specialities?

9 A To Systems Specialities, correct.

10 Q And how much was that invoice for?

11 A \$3,318.

12 Q Okay.

13 May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. SMITH:

16 Q Can you identify that document for the Court?

17 A Again, progress billing.

18 Q Progress billing from Mr. Kunst?

19 A Mr. Kunst.

20 MR. SMITH: Your Honor, we'd offer that into
21 evidence as Defendant's Exhibit 4.

22 THE COURT: Objection, sir?

23 MR. KUNST: No objection.

24 THE COURT: All right, without objection the
25 same is admitted as Defendant's Exhibit 4.

DAVID LOREE-CROSS BY MR. SMITH

1 (WHEREUPON, Defendant's Exhibit No. 4 was m
2 for identification and received into evidence.)

3 BY MR. SMITH:

4 Q Look at this invoice, Mr. Loree. Can you tell
5 the jury the date of this invoice as well?

6 A This is December 2 of 2005.

7 Q December 2, 2005. And is there a line item for
8 Systems Specialities?

9 A Yes, sir.

10 Q And how much is that?

11 A That's \$1,240.

12 Q And again, this invoice, Defendant's 4, and the
13 one we marked as Defendant's 3, to your knowledge were
14 paid by Mr. Gaby to Mr.~Kunst?

15 A Yes.

16 Q Okay.

17 May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. SMITH:

20 Q Mr. Loree, if you can, take a moment and look at
21 that document and see if you can identify that for the
22 Court.

23 A It is a document from System Specialities from
24 someone named Lori Simpson there. The subject line is
25 Past due balance on steel supplied to the Gaby home.

DAVID LOREE-CROSS BY MR. SMITH

1 MR. SMITH: Your Honor, we would move for this
2 to be admitted as Defendant's Exhibit 5.

3 THE COURT: Objections?

4 MR. KUNST: No objection, Your Honor.

5 THE COURT: All right, without objection the
6 same is admitted into evidence.

7 Again, give it to her so she can mark it.

8 MR. SMITH: I'm on my way.

9 (WHEREUPON, Defendant's Exhibit No. 5 was marked
10 for identification and received into evidence.)

11 BY MR. SMITH:

12 Q Mr. Loree, could you tell the jury the date of
13 this letter from Systems Specialities to you?

14 A March 14th, 2006.

15 Q And who is Systems Specialities?

16 A They provided I-beam and other steel structures
17 for construction of residence.

18 Q And I believe we just looked at three invoices
19 from Mr. Kunst to Mr. Gaby wherein there were three line
20 items for steel — or for materials from Systems
21 Specialities, Incorporated. And I believe you testified
22 those were all paid, correct?

23 A Yes, sir, to the best of my knowledge.

24 Q This is a short letter so could you just read
25 the two paragraphs to the jury since they can't see it?

DAVID LOREE-CROSS BY MR. SMITH

1 A Header again, Past due balance on steel supplied
2 to the Gaby home. It's addressed to me. David, it is
3 been a couple of weeks now since I faxed over the unpaid
4 invoices for the Gaby home on Keowee. We did receive a
5 check from the Gaby's for one of their recent smaller
6 invoices. However, there is still an unpaid balance on
7 the steel for this home totaling \$6,500.47, see statement
8 as follows. Realizing that you and the Gaby's just became
9 aware of the financial problems with relation to labor and
10 materials provided on the home just a few short weeks ago,
11 we are in no position to further delay collection of
12 payment and or to supply additional materials for the
13 home.

14 Some of the invoices due to us are now six
15 months old. Please call me with your intentions on :
16 getting this balance paid as soon as possible so that we
17 will know how to proceed. I can be reached at
18 864-868-3457. Thank you so much for your help in getting
19 this matter resolved.

20 Respectfully, Lori Simpson, secretary/treasurer.

21 Q So, Systems Specialities is telling you in
22 mid-March, after your meeting with Mr. Kunst in
23 mid-February, that they have outstanding invoices that are
24 six months old?

25 A Yes, sir.

DAVID LOREE-CROSS BY MR. SMITH

1 Q Did you or — I'm sorry, not you, did Mr. Gaby,
2 to your knowledge, end up paying Systems Specialities
3 again?

4 A I don't know that, sir. We paid many of them.
5 I don't know about this one specifically.

6 Q That's fair, it's been many years.

7 MR. SMITH: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. SMITH:

10 Q Mr. Loree, I'm handing you a document and ask if
11 you can take a look at that and tell the Court if you can
12 identify that document?

13 A This is an invoice from Select Stone in Bozeman,
14 Montana. They were the quarry stone for the exterior of
15 the Gaby residence. And this is an invoice from them
16 dated 11-11-2005.

17 MR. SMITH: Your Honor, we would move for this
18 to be admitted into evidence.

19 THE COURT: Any objection, sir?

20 MR. KUNST: No, objection, Your Honor.

21 THE COURT: All right, without objection the
22 same is admitted into evidence.

23 (WHEREUPON, Defendant's Exhibit No. 6 was marked
24 for identification and received into evidence.)

25 BY MR. SMITH:

DAVID LOREE-CROSS BY MR. SMITH

1 Q Mr. Loree, if you would look back at — forgive
2 me, let me figure out which number it was. Defendant's
3 Exhibit 4, which was the invoice from Mr.~Kunst to
4 Mr. Gaby dated December 2, 2005. Do you see a line item
5 on there for Select Stone?

6 A Yes, sir.

7 Q And what is the amount on there?

8 A Says, Stone to Select Stone on 11-16. Shipment
9 of stone, \$8,010.

10 Q And I've just handed you what's been marked as
11 Exhibit — Defendant's Exhibit 6, and you testified that
12 it's a Select Stone invoice dated November 11, 2005. And
13 can you tell the jury how much it is?

14 A \$8,010.

15 Q Okay. So, this appears to be an invoice
16 back-up. The \$8,010 back-up for the \$8,010 line item on
17 Mr.~Kunst's billing?

18 A It would appear that.

19 Q As far as we can tell. Okay. Okay.

20 May I approach, Your Honor?

21 THE COURT: Sure.

22 BY MR. SMITH:

23 Q Mr. Loree, if you could, take a look at that
24 document and, if you can, tell the Court what that is.

25 A This is a email from Chris Luckay from Select

DAVID LOREE-CROSS BY MR. SMITH

1 Stone to me, dated 2-8 -- or 2-28 of 2006.

2 MR. SMITH: Your Honor, we'd ask that be
3 admitted as Defendant's Exhibit 7.

4 THE COURT: Any objection, sir?

5 MR. KUNST: No objection, Your Honor.

6 THE COURT: All right, without objection the
7 same is admitted.

8 (WHEREUPON, Defendant's Exhibit No. 7 was marked
9 for identification and received into evidence.)

10 BY MR. SMITH:

11 Q Mr. Loree, in this email and its supplier,
12 Select Stone, in this email, can you tell the jury who
13 Select Stone was?

14 A Select Stone, as I say, supplied the quarry
15 Montana Stone for the exterior of the Gaby property. And
16 others.

17 Q And if you look down at the bottom of this
18 email, because the jury doesn't -- can't see it, it looks
19 like there's two emails. One is from Chris Luckay to you
20 and he describes -- well, I won't describe it. Why don't
21 you, it's short, just read down to the first three or four
22 lines there.

23 A His response--

24 Q No, no. The bottom part, the first email to
25 you.

DAVID LOREE-CROSS BY MR. SMITH

1 A I sent this — no, this was a response from him.
2 I guess it gives — There are currently two outstanding
3 invoices for the supply of stone to the Gaby project.
4 Which are summarized as follows. Invoice 3994, stone
5 shipped on 11-21- of 2005, \$6,020. Invoice number 4065,
6 stone shipped on 12-05 \$8,010. Total needed in other to
7 ship another load of stone \$14,030. All future shipments
8 will be due upon receipt. I would like to have a good
9 understanding of how much stone is remaining to be shipped
10 on this project in order to keep the order moving. My
11 records show 80 tons remaining. Please contact.

12 Q Yeah, that's fine. So, in this email, which is
13 dated, I think, you said October — or February 27th,
14 2006?

15 A 28. 2/28.

16 Q I'm sorry, 2/28. 2/28. You see he's asking for
17 invoice number 4065 for \$8,010, correct?

18 A Yes, sir.

19 Q And if you look back at Defendant's Exhibit 6,
20 we believe that is the invoice for \$8,010 for Select
21 Stone, correct?

22 A Yes, sir.

23 Q Then if you look back at Defendant's Exhibit 4,
24 which was the invoice from Mr. Kunst to Mr. Gaby, we also
25 see where on December 2nd, Mr. Kunst billed Mr. Gaby for

DAVID LOREE-CROSS BY MR. SMITH

1 the invoice that he received in November. And in late
2 February this invoice is being listed by Select Stone as
3 unpaid by Mr. Kunst?

4 A Yes, sir.

5 May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. SMITH:

8 Q I'm handing you another document and was
9 wondering if you can tell the Court what this document is?

10 MR. KUNST: I object, Your Honor. We've never
11 seen this and it has no identification on it.

12 MR. SMITH: It was provided to you in discovery.
13 I gave it to you personally on Monday when we met at
14 Ms. Wright's office and you made the same objection
15 then. And I said we would let the Court deal with
16 the evidentiary issue of it. So, you have seen the
17 document.

18 THE COURT: Okay. I tell you what, ask him the
19 question to authenticate it so I'll understand what
20 it is and what the contexts are.

21 MR. SMITH: That's fair.

22 BY MR. SMITH:

23 Q Mr. Loree, can you tell the Court what this
24 document purports to be?

25 A It is a document that I prepared. It's

DAVID LOREE-CROSS BY MR. SMITH

1 addressed to Scott and I noted on the upper right corner
2 that it was emailed 2-26-08.

3 Q So, you believe this was a document that was
4 prepared by you, in the course of your investigation, on
5 Mr. Gaby's lake house project that you would have emailed
6 to Mr.~Kunst?

7 A Yes, sir.

8 MR. SMITH: Your Honor, offer into evidence as
9 business record.

10 THE COURT: Okay, Mr.~Kunst, do you have a
11 continuing objection?

12 MR. KUNST: I just read it, Your Honor, I have
13 no objections whatsoever.

14 THE COURT: Okay. All right, good enough. The
15 same is admitted.

16 (WHEREUPON, Defendant's Exhibit NO: 8 was n
17 for identification and received into evidence.)

18 THE COURT: Hand it to the court reporter so
19 that she can mark it.

20 MR. SMITH: Yes, sir.

21 BY MR. SMITH:

22 Q Mr. Loree, for the jury, can you read Paragraph
23 Number 2 of this email from you to Mr.~Kunst?

24 A I have spoken to Select Stone's representative,
25 Chris Luckay advising that you are past due with their

DAVID LOREE-CROSS BY MR. SMITH

1 company, \$14,000 for material at the Gaby project. They
2 will not forward any additional stone until you pay the
3 funds owed them. Please do that this week so that the
4 further delay due to the lack of materials can be avoided
5 at the Gaby site.

6 And I -- maybe it will clarify for you this
7 document that we are now looking at. I think redundancy,
8 I may have cut and pasted this and then faxed it, perhaps.
9 As a second means to deliver it to Mr.~Kunst.

10 Q Okay. And so, this is the summary where you
11 have spoken to Mr. Luckay at Select Stone who's claiming
12 he's not gotten paid from Mr.~Kunst?

13 A Yes, sir.

14 Q And again, Mr. Gaby had paid these invoices with
15 these -- or paid the progress billings to Mr. Kunst with
16 these invoices attached to them?

17 A Yes, sir.

18 Q Okay. If you go down to the paragraph that
19 starts with After, would you read that to the jury?

20 A After speaking to numerous vendors it is obvious
21 that you have not been paying invoices that you have been
22 submitting disbursement requests to Mr. Gaby. The funds
23 have been sent reliably to you from Mr. Gaby throughout
24 the project and that cumulative figure does not coincide
25 with the amount afforded to vendors.

DAVID LOREE-CROSS BY MR. SMITH

1 Q Can you explain that to the jury? That is a
2 mouth full. Can you explain what you meant when you were
3 talking to Mr.~Kunst here?

4 A I'll give you a reference in the time as well.
5 Met with Mr.~Kunst on the 16th. This is a document from
6 roughly a weekish later, maybe ten days later. We were
7 asking him to fill in those gaps and provide some
8 additional documents, so we could reconcile the entire
9 account. And what I'm asking you to do after calling a
10 handful of vendors, I'm not sure at this point in this
11 letter, but the number was quickly adding up saying this
12 as we've explained, like Select Comfort for example, that
13 the numbers that Scott was requesting and had been
14 forwarded through him, through the progress billings and
15 the monies that were then moving through those vendors,
16 were so delinquent that they were no longer either to work
17 at the project or provide materials so the project could
18 move on. I'm trying to get a handle on this so we can get
19 that back in place and get working again.

20 Q And this was after getting Mr. Kunst, at least
21 two opportunities we've seen, to just show us the bills or
22 show us how the money was spent?

23 A Right, the 16th to the 28th. So, there's 12
24 days, business days, 12 days at least from my initial
25 meeting at The Reserve at Keowee saying we need some mo

DAVID LOREE-CROSS BY MR. SMITH

1 this isn't adding up. It's not reconciling, you need to
2 do a better job at that. An email earlier Mr. Gaby had
3 sent him that, asking him that, I asked him that day. We
4 we're still trying to work through that at this point.

5 Q Did you ever hear back from Mr.~Kunst?

6 A No, sir.

7 MR. SMITH: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. SMITH:

10 Q Mr. Loree, I'm handing you another document and
11 ask that you identify that for the Court, the jury.

12 A It's another progress billing similar to the
13 others.

14 MR. SMITH: Your Honor, if there's no objection
15 I'd ask that it be moved into evidence.

16 MR. KUNST: No objection, Your Honor.

17 THE WITNESS: All right, no objection the same
18 is admitted.

19 (WHEREUPON, Defendant's Exhibit No. 9 was marked
20 for identification and received into evidence.)

21 BY MR. SMITH:

22 Q Give me just one second. Before we get to that
23 date I was wondering, did Mr.~Kunst ever provide you proof
24 that he had paid Systems Specialities for the steel?

25 A No, sir.

DAVID LOREE-CROSS BY MR. SMITH

1 Q Did Mr.~Kunst ever give you any proof that he
2 paid for the rock from Select Stone?

3 A No, sir.

4 Q To this day have you ever seen—

5 A No, sir.

6 Q If you would take a look at the document that
7 was just marked as Defendant's Exhibit 9, could you tell
8 the jury what we're looking at?

9 A It's another progress billing. This one's dated
10 December 6th, 2005.

11 Q And can you tell, because they can't see it,
12 what this progress billing — what's it's for and how much
13 is it for?

14 A This is a progress billing for kitchen and
15 cabinetry. And it says — this is typed in here. To Paul
16 Anderson Design, phone number, for 50 percent deposit
17 amount for all cabinetry total of 165, excluding freight
18 and taxes. It's a request for \$82,500, dated 1/26 of
19 2005. Lower it says, under Progress Status it says,
20 Cabinetry production begun.

21 Q So, fair to say this is an invoice from
22 Mr. Kunst to Mr. Gaby, asking for a \$82,500 deposit for
23 cabinet work?

24 A Correct. Due upon receipt and payable to
25 Kunstwerke at the address in Simpsonville, correct.

DAVID LOREE-CROSS BY MR. SMITH.

1 MR. SMITH: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. SMITH:

4 Q Dave, I'm handing you a document, we're going to
5 ask if you can identify that document for the Court?

6 A I can. This is an email from Mr. Gaby, copied
7 to Mr.~Kunst. And Paul Anderson Designs to his financials
8 woman, his portfolio manager, if you will. An email dated
9 12/6 of 2005.

10 Sally, please transfer —

11 MR. SMITH: Before you read it, hold on.

12 We'd ask that this be moved for admission into
13 evidence as Defendant's Exhibit.10, Your Honor.

14 THE COURT: Any objection?

15 MR. KUNST: No objection.

16 THE COURT: Okay, the same is admitted into
17 evidence.

18 (WHEREUPON, Defendant's Exhibit No. 10 was
19 marked for identification and received into
20 evidence.)

21 BY MR. SMITH:

22 Q All right, I'm sorry, Dave, I didn't mean to cut
23 you off. Now, that we've got it admitted, if you could
24 explain to the jury, they can't see the document, what
25 this document is.

DAVID LOREE-CROSS BY MR. SMITH

1 A It is an email from Mr. Gaby to a woman by the
2 name of Sally Fordsland. And the narrative reads, Sally,
3 please transfer \$82,500 from our personal checking account
4 to the following account. And it says, Regions Bank
5 Birmingham, Alabama. And it lists a routing and account
6 number. And under that it says, Kunstwerke Corporation
7 Incorporation, banks for Gaby. P.S. cabinet deposit.
8 Which I guess is just a note at the bottom what the funds
9 were for.

10 Q So, if you look back at Defendant's Exhibit 9,
11 it's an invoice dated December 6, 2005 for \$82,500 for
12 cabinet deposit. Is that fair--

13 A Uh-huh.

14 Q The very same day, if you look at Defendant's
15 Exhibit 10, there is an email from Mr. Gaby to his
16 financial -- one of his financial managers saying,
17 Transfer \$82,500 from my checking account to Mr.~Kunst:
18 company, is that correct?

19 A Correct.

20 Q So, that was paid the same day?

21 A That was generally his practice. It happened
22 very, very quickly.

23 Q Okay.

24 May I approach, Your Honor?

25 THE COURT: Yes, sir.

DAVID LOREE-CROSS BY MR. SMITH

1 BY MR. SMITH:

2 Q Do you recognize that document?

3 A Yes, sir.

4 Q Could you, for the Court, tell them what this
5 document is without reading it yet?

6 A Yes. It's an email from Paul Anderson Design,
7 actually Crystal it looks like, someone in his office.
8 The tag is PaulAndersondesign.com. And it's an email to
9 me and it's dated 2-13 of 2006.

10 MR. SMITH: Your Honor, we would move that this
11 be admitted as Defendant's Exhibit 11.

12 THE COURT: Okay, sir?

13 MR. KUNST: No objection.

14 THE COURT: All right, without objection, the
15 same is moved into evidence.

16 (WHEREUPON, Defendant's Exhibit No. 11 was
17 marked for identification and received into
18 evidence.)

19 BY MR. SMITH:

20 Q Now that it's been admitted into evidence, can
21 you explain to the jury — or it's so short you may just
22 want to read it. Go ahead and read it so that they will
23 know what you're looking at.

24 A It's a email from Paul Anderson Design Cabinet
25 Builder to me. Subject Line is reference the Gaby

DAVID LOREE-CROSS BY MR. SMITH

1 residence. It reads, Dave, thank you for your prompt
2 attention. I was in need of \$140,000 for cabinetry. To
3 date we have received about 23,000. I had told you 43,000
4 on the phone earlier but since then my wife investigated
5 and found that the \$20,000 check that we picked up from
6 them last week bounced. Thanks, Paul Anderson.

7 Q So, here you, just going back so we can put the
8 story together, you had an invoice from December, early
9 December, for \$82,500 cabinet deposit; which was then paid
10 the very same day?

11 A Correct.

12 Q And now here we are in February, mid-February,
13 and the cabinet designers are telling you they've only
14 received \$20,000, is that a fair statement?

15 A She said about \$23,000, yes.

16 Q Oh, \$23,000, okay.

17 A Uh-huh.

18 Q So, do you know what happened to the rest of the
19 money that was sent from Mr. Gaby to Mr. Kunst?

20 A Gosh, I wish I did. No, sir, I do not.

21 Q Have you ever had any explanation from Mr. Kunst
22 about what happened to that?

23 A No.

24 Q I can do the math, \$60,000 or so?

25 A Uh-huh.

DAVID LOREE-CROSS BY MR. SMITH

1 Q Has Mr.~Kunst ever given you any documentation
2 or any proof that he, in fact, did pay Paul Anderson
3 Designs?

4 A No, sir.

5 MR. SMITH: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. SMITH:

8 Q Dave, I'm handing you another document, I'm
9 going to ask if you would identify that for the Court.

10 A It is an email dated 2/20 of 2006 from Mr. Gaby
11 to Kunstwerke Corporation, copying me. And again, it's a
12 reconciliation is the subject line.

13 MR. SMITH: Your Honor, we'd ask that this be
14 admitted as Defendant's Exhibit 11.

15 THE COURT REPORTER: Twelve.

16 MR. SMITH: Twelve.

17 THE COURT: Any objection, sir?

18 MR. KUNST: No objection, Your Honor.

19 THE COURT: All right, without objection the
20 same is admitted.

21 (WHEREUPON, Defendant's Exhibit No. 12 was
22 marked for identification and received into
23 evidence.)

24 BY MR. SMITH:

25 Q Mr.~Kunst claims he had paid for the cabinets

DAVID LOREE-CROSS BY MR. SMITH

1 from Paul Anderson Design, is that a fair statement? No,
2 I'm sorry, not according to the document, in general.

3 A Okay. Yes.

4 Q Okay. But he couldn't produce any proof of that
5 payment, is that fair?

6 A Yes.

7 Q And Paul Anderson, the cabinet contractor,
8 claimed also that he had not been paid by Mr.~Kunst?

9 A Correct.

10 Q In here we have an email going back and forth --
11 well, you tell the jury, I won't do it, you tell them.

12 A Okay. Again, it's dated 2-20-2006 from Mr. Gaby
13 to Mr.~Kunst or his company, copying me on it. It -- this
14 is in response, obviously, to some of my contacts and
15 emails from Paul Anderson saying the dollars we forwarded
16 you and the dollars that they received do not coincide.

17 Q And if you look at the bottom of this email, it
18 looks like it's a string of emails, and the bottom part
19 looks like an email from Studio Kunstwerke@aol.com. Wh
20 was Mr.~Kunst's email address to Mr. Gaby, is that
21 accurate?

22 A This is -- Mr. Gaby's is at 6:09 on the 20th and
23 Kunstwerke's is at 4:26 on the 20th. So, it looks like
24 there's a thread going back and forth. The first one
25 would be from Kunstwerke to Mr. Gaby, Mr. Gaby then

DAVID LOREE-CROSS BY MR. SMITH

1 responding back.

2 Q Okay. And if you look on Page 2 at the email
3 from Mr.~Kunst to Mr. Gaby, about half way down it says,
4 In response to a few questions.

5 A Uh-huh.

6 Q What is that next paragraph say? That short one
7 there.

8 A In response to a few questions, the amount paid
9 toward the cabinets is \$75,800 with a balance due of
10 \$64,200.

11 Q Okay. And that's different from what you heard
12 from Paul Anderson Designs?

13 A That's vastly different.

14 Q Vastly different. Mr. Gaby in his response
15 email had some pointed advice, I think, for Mr.~Kunst.
16 The last sentence, last two sentences of the third
17 paragraph, would you read those to the jury? If you
18 simply...

19 A If you simply passed through the funds you
20 received from me to what was listed on requests, you would
21 not be in this situation. You were obviously robbing
22 Peter to pay Paul or you would not be where you are now.

23 Q So, if Mr.~Kunst would have simply produced the
24 evidence that he had paid for these cabinets, this would
25 have been a done deal?

DAVID LOREE-CROSS BY MR. SMITH

1 A It certainly would have alleviated many, many
2 issues.

3 Q Oaky. And for one other point on this email
4 from Mr. Gaby to Mr.~Kunst, could you read the very last
5 paragraph?

6 A Front page or?

7 Q I'm sorry, the front page from Mr. Gaby to
8 Mr.~Kunst, copied to you. Dave returns from Colorado.

9 A Dave returns from Colorado Wednesday, I have
10 knee surgery on Wednesday and will be out of pocket for a
11 while. I will have him be my point man to sort through
12 all of this.

13 Q So, on February 20th, four days after you met
14 with Mr.~Kunst, you've gone back to Atlanta and you've
15 tried to work through things. Mr. Gaby decided that you
16 would be -- your boss told you to take care of this?

17 A Correct. I was still running everything through
18 him but, yes. I would be Mr.~Kunst's point of contact.

19 Q And this was shortly after you were -- started
20 your investigation?

21 A (The witness nods.)

22 Q Did you ever have trouble finding Mr.~Kunst?

23 A It was increasingly difficult to find Mr. Kunst
24 and get responses, yes.

25 Q When was it that he started being less

DAVID LOREE-CROSS BY MR. SMITH

1 responsive?

2 A Pretty much the moment after I met with him at
3 The Reserve.

4 Q And how did you go about trying to contact
5 Mr.~Kunst to get. . .

6 A We, well had emails, we had phones that went
7 unanswered. I actually drove to Simpsonville one day to
8 the address listed and hoped to find him in his office.
9 And that was a UPS mail store. It wasn't an office, it
10 was a drop box, a mailbox.

11 Q Okay. It is fair to say that at some point
12 Mr.~Kunst stopped responding all together?

13 A Yes.

14 Q And when that happened, when Mr.~Kunst stopped
15 responding all together and you had been asked by your
16 boss to go figure out what happened, what did you do?

17 A I had to kind of recreate and much of it was off
18 of that database that was produced yesterday. I continued
19 to find out the status of tradesmen and vendors and
20 materials. And tried to negotiate some of them that were
21 prioritized and critical, we double paid. We knew from
22 documentation that it had been paid to Mr.~Kunst. It
23 didn't pass through. So, my boss had to bite the bullet
24 and write another check to get cabinets, to get stone
25 started again, those sorts of things to put the projected

DAVID LOREE-CROSS BY MR. SMITH

1 back on the road to get it finished.

2 Q Okay. So, you had to go about calling, because
3 you couldn't find Mr.~Kunst, you had to also then go about
4 calling all these folks to find out exactly who had been
5 paid?

6 A Right.

7 Q The status of their invoices if they had not
8 been paid. And you had to sort through all that without
9 the benefit of having Mr. Kunst to help you?

10 A I had the initial box of documents that he
11 produced at the meeting on the 16th, the early February
12 meeting that we had at The Reserve. From that point on
13 there was — there were promises early on to provide
14 additional items. They were emails from Mr. Gaby to
15 Mr.~Kunst pleading for him to do the same. And the
16 frustration level grew when he was not willing to do that.
17 Which led to his termination in early March.

18 Q Okay.

19 May I approach the witness, Your Honor?

20 THE COURT: Yes, sir.

21 I just want to advise you of your order of
22 sequestration. I think you may have had a witness
23 walk in the courtroom.

24 MR. SMITH: His witness.

25 THE COURT: Okay.

DAVID LOREE-CROSS BY MR. SMITH

1 Mr. Covington, I see that you've walked in the
2 courtroom. The parties made a motion for an order of
3 sequestration, which I granted. Which means that you
4 can't be in the courtroom during the conduct of the
5 trial.

6 MR. SMITH: It's not our witness so I don't care
7 one way or the other but since we do have the order.

8 THE COURT: Yes, sir.

9 MR. KUNST: Sorry, I didn't see him walk in,
10 Your Honor.

11 THE COURT: I knew you hadn't. I knew neither
12 of you had, that's why I advised you of it.

13 BY MR. SMITH:

14 Q I'm going to hand you what was marked yesterday.
15 as Plaintiff's Exhibit No. 5 and ask you if you can take a
16 look at that document?

17 A Yes, this as I said, once I began contacting
18 vendors, that's the database that we put together with
19 addresses and contact numbers.

20 Q You can hold it up so that they can at least see
21 it. That it's just a list of four, five, six pages of
22 names—

23 A It was — the number 240 came up, I'm still not
24 quite sure what that was but three plus pages with a large
25 number of vendors and subcontractors and tradesmen.

DAVID LOREE-CROSS BY MR. SMITH

1 Q And what was the purpose to this list?

2 A Was just to be able to chronologically go
3 through and find companies that the Gaby project had
4 opened balances, overdue balances. Some were paid in
5 full. Just trying to get a handle on a rough — a rough
6 number of dollars that went to vendors, tradesmen,
7 subcontractors, relative to the Gaby's project. I didn't
8 receive that or didn't have sufficient documentation from
9 Mr. Kunst; so it was a way of reinventing the wheel so to
10 speak to get going again.

11 Q Okay. So, when you called these vendors to find
12 out what the status of your project was that had been
13 paid, did you ever discuss Mr. Kunst's financial condition
14 with anyone on that list? Or say — well, did you ever
15 discuss his financial condition, Mr. Kunst, with anyone on
16 the list?

17 A No. Not his financial condition. I was
18 certainly saying that he had been paying bills up to this
19 point to subcontractors and it had come to our attention
20 that he was far behind in some. Were they in that
21 position with him? So, to the context of talking about
22 finances, yeah, to find out what he had paid, what he
23 hadn't paid and how much.

24 Q Did you ever tell anyone on that list that funds
25 were missing from the Gaby project?

DAVID LOREE-CROSS BY MR. SMITH

1 A No, sir, didn't know that.

2 Q Did you tell anyone on that list that Mr. Kunst
3 had embezzled money from his clients?

4 A No, sir.

5 Q Did you tell anyone on that list that Mr.~Kunst
6 may go to prison?

7 A No, sir.

8 Q When you contacted these people, what was — I
9 don't want to go through a list of 240, generally, what
10 was the reaction when you called them?

11 A Those that had opened balances were, thank you
12 for calling, now there's a means for which we can be paid
13 for our opened balances. Honestly, some of the things
14 that we knew had been paid by Mr. Gaby that were not
15 critical to the completion, I certainly did some
16 prioritizing and they did find themselves lower on the
17 list. So, there were some that were more pleasant with me
18 on the phone.

19 I said, I'm sorry, that money's been paid to the
20 company that should have paid you already. I'm not going
21 to tell you we're going to take care of that.

22 I compiled the list, went back to Mr. Gaby, we
23 prioritized and to get the project running again we paid
24 some of them. In context, there were — some of them, and
25 I refresh from a deposition that I gave Mr.~Kunst a few

DAVID LOREE-CROSS BY MR. SMITH

1 years ago, on the Parham job that they came to me saying
2 you may want to call the Parham's, they may be in a
3 similar position. I didn't recall that until I refreshed
4 from a deposition that was forwarded to me and asked me to
5 review last night. So, some of them gave me information
6 and some of them I received information from.

7 Q Did you learn from any of these
8 vendors/contractors that Mr.~Kunst had been bouncing
9 checks?

10 A Yes, sir.

11 Q Fair to say that was fairly common?

12 A I don't know about common but there were a number
13 of them, sir.

14 Q Okay. Did you ever talk about Mr.~Kunst to
15 anyone other than your employers or the folks, for
16 example, on this list who had something to do with this
17 project that you were working on?

18 A Not specifically to people who had something to
19 do with this project. Or that I could glean information
20 as to where our funds were at.

21 MR. KUNST: Your Honor, I'm going to object on
22 the privilege argument.

23 THE COURT: What's the privilege, sir?
24 Privilege from whom to whom?

25 MR. KUNST: Oh, he's establishing a privilege

DAVID LOREE-CROSS BY MR. SMITH

1 argument. We reserve our objections to it.

2 THE COURT: All right, I respectfully deny the
3 same.

4 You may proceed.

5 MR. SMITH: Thank you.

6 BY MR. SMITH:

7 Q Did you ever tell anyone that Mr. Kunst had
8 created — or committed a crime of moral turpitude?

9 A I'm not even sure what that is, sir, absolutely
10 not.

11 Q Did you ever tell anyone that Mr. Kunst had a
12 loathsome disease.

13 A The terminology that's surfaced, I want to say
14 comical. It's a very serious proceeding but it's not
15 terminology that I use so I absolutely did not say that.

16 Q Did you ever tell anyone that Mr. Kunst
17 committed adultery?

18 A No, sir. To my knowledge they admitted earlier
19 that they're not married. So, I think adultery would be
20 related to a marriage description, obviously not.

21 Q Did you ever tell anyone that Mr. Kunst was
22 unchased?

23 A I don't know that term so absolutely not.

24 Q Well, I'm just going through the elements of
25 what we're alleging here.

DAVID LOREE-CROSS BY MR. SMITH

1 A No, sir.

2 Q Did you ever tell anyone that Mr.~Kunst was
3 unfit in his occupation as a builder or designer?

4 A No, absolutely not. I commend him on his
5 imagination and his design. The homes that he's built are
6 gorgeous, no.

7 Q Okay. Well, let's explore that for a minute.
8 So, is it fair to say that you think Mr.~Kunst is a good
9 designer?

10 A Yeah. I've had people on Lake Keowee and if I
11 take them by boat we go past the Parham's, we go past the
12 Gaby's, we go past the Covington's. They're three of the
13 most beautiful homes on the lake without a doubt. He's a
14 gifted designer.

15 Q Okay. I think you've testified to this
16 yesterday but I'm getting older, my memory's not as good
17 so forgive me if you did. Do — did you ever tell
18 Mr. Goad that Mr. Kunst had provided your client with
19 dummy invoices from dummy companies in order to take m
20 away from the Gaby's.

21 A No. And I was intrigued yesterday when I heard
22 that affidavits were created by Mr. Kunst and his fiance
23 that those weren't written by the people that presented
24 them. That was — the terminology is not anything that I
25 would use. And I was wondering where that came from an.

DAVID LOREE-CROSS BY MR. SMITH

1 now I know they crafted that document and got signatures
2 from those other people. It cleared it up for me.

3 Q Give me just one second. I want to make sure
4 that -- I think I'm done but I just want to be sure that I
5 don't miss anything. Because we've been sitting here for
6 about an hour and 15 minutes. I know you're tired and I
7 am done. Thank you.

8 THE COURT: Thank you.

9 MR. SMITH: And reserve the right to recross if
10 necessary.

11 THE COURT: Yes, sir.

12 Okay, let's take just a short break, come back
13 in and we'll resume testimony of Mr. Loree. Please
14 don't discuss the case.

15 Mr. Loree, you can take a break as well, just
16 don't discuss your testimony.

17 (WHEREUPON, the jury left open court at
18 approximately 10:55 a.m.)

19 THE COURT: All right, ladies and gentlemen,
20 we'll be in recess for a few minutes.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: Let's bring the jury in, please.

23 (WHEREUPON, the jury came into open court at
24 approximately 11:09 a.m.)

25 THE COURT: All right, Mr. Kunst, you can

DAVID LOREE-CROSS BY MR. SMITH

1 conduct redirect examination, remembering that the
2 same is limited to the scope of cross.

3 MR. KUNST: Your Honor, thank you.

4 REDIRECT EXAMINATION

5 BY MR. KUNST:

6 Q Mr. Loree, you just testified that you had first
7 met me, the Plaintiff, and you stated mid 2005. Were you
8 living at Lake Keowee at the time or were you still living
9 in Atlanta?

10 A I've never lived at Lake Keowee so I would have
11 been in Atlanta, certainly.

12 Q Do you have a house at Lake Keowee?

13 A No, sir.

14 Q Is a house at Lake Keowee provided for you by
15 the Gaby's?

16 A No, sir. They do have a home I stay at, they
17 provide for me if I'm in service for them at Lake Keowee,
18 yes, sir.

19 Q So, you were living in Atlanta at that time?

20 A Correct.

21 Q Okay. When you began taking more responsibility
22 over for the Gaby project, were you then living at the
23 lake?

24 A Not living at the lake, I would commute back and
25 forth sometimes daily if I had to be back Atlanta. Other

DAVID LOREE-REDIRECT BY MR. KUNST

1 times I would overnight at Keowee until my duties weren't
2 required there anymore then I would return. So, back and
3 forth.

4 Q Was the project finished on 2/16/06?

5 A Absolutely not.

6 Q Construction was still going on?

7 A It was. You had referenced 75 percent.

8 completion when you were terminated, it wasn't 75 percent
9 but.

10 Q Do you have any evidence that supports that it
11 wasn't 75?

12 A Just my eye ball, sir.

13 Q Okay. You stated that in your email requesting
14 the meeting, that you requested lien waivers, can lien
15 waivers be obtained during construction?

16 A I would not know that, sir.

17 Q If there are opened accounts in which purchases
18 are made through daily, can a subcontractor or supplier
19 issue a lien waiver?

20 A Can you ask that again, sir?

21 Q Yes.

22 MR. SMITH: I'm going to object, I think he's
23 asking for a legal conclusion there.

24 THE COURT: I'll let him rephrase the question.

25 THE WITNESS: Maybe more simplistic if you

DAVID LOREE-REDIRECT BY MR. KUNST

1 would, sir.

2 MR. KUNST: Okay.

3 BY MR. KUNST:

4 Q You asked for lien waivers, correct?

5 A No, sir. Mr. Gaby asked for lien waivers.

6 Q Do you understand what lien waivers are?

7 A Not fully referenced, no.

8 Q Was it your email requesting the 2/16 meeting
9 that stated that I must have lien waivers?

10 A I will refresh and let you know in just a
11 minute, sir. Had documents here earlier, Ms. Hilton was
12 here with the paperwork but it's not here now. So, if I
13 had that email it would help me.

14 MR. SMITH: Plaintiff's No. 6, Scott.

15 MR. KUNST: Yeah, I got it.

16 May I approach?

17 Here it is. Thank you.

18 THE WITNESS: You're referring to the last
19 paragraph, sir?

20 BY MR. KUNST:

21 Q Yes.

22 A You are to gain lien waivers for the various
23 trades and contractors who are participating in the
24 construction of the Gaby project at The Reserve. On
25 Thursday, February 16th, 2006, you will provide an update

DAVID LOREE-REDIRECT BY MR. KUNST

1 as to the progress of securing those waivers, correct.

2 Q Did you write that email?

3 A Yes, sir.

4 Q Thank you. If you recall in yesterday's
5 testimony you read a transcript in which you said quote,
6 You were unsure about a statement, I think can get these
7 paid.

8 On the date of this meeting on February 16th,
9 you just testified that you were seeking a reconciliation
10 of some such.

11 A Can you provide me that section of the
12 transcript that you're referencing where you said I'm
13 sure, please.

14 Q That was yesterday's testimony.

15 A Is that a no, sir, you won't provide that?

16 Q At the date of the 2/16/06 meeting, did you make
17 certain that Mr. Gaby had reimbursed all of the Kunstwerke
18 progress billings that had been submitted to him?

19 A I took Mr. Gaby at his word that he had
20 forwarded you a surplus of moneys that were unaccounted
21 for. So, that would in my mind tell me that everything
22 had been paid. To the best of my knowledge, sir.

23 Q Did you personally investigate or caused to be
24 investigated whether or not Mr. Gaby had indeed paid?

25 A We have discussed this. It was asked and

DAVID LOREE-REDIRECT BY MR. KUNST

1 answered yesterday but.

2 Q . Okay. Will Mr. Gaby be appearing here to
3 testify towards that?

4 A Did you subpoena him, sir? You would have that
5 answer.

6 Q Is Mr. Gaby going to appear here to testify to
7 that?

8 A Who do I . . .

9 MR. SMITH: We're not aware, we didn't subpoena
10 him.

11 THE WITNESS: Not to my knowledge. Unless
12 someone has knowledge of that but not to my
13 knowledge.

14 BY MR. KUNST:

15 Q You made a statement that it was a surprise to
16 you that the progress billings in the box were not
17 originals that they were copies?

18 A I wasn't aware of that, you made me aware of
19 that yesterday.

20 Q You stated that that was a red flag. Why is
21 that a red flag?

22 A When you — I asked you from here, I said, were
23 they amended in some way? And you shrugged your
24 shoulders. So again, it was — I'm not sure. You said
25 Mr. Gaby did not want the originals. And then we asked

1 you to produce everything and you didn't produce
2 originals, you said you produced photo copies. That's it.
3 I don't know where those originals are.

4 Q Have you ever asked for original copies of
5 invoices?

6 A You should have in your possession and will
7 prepare stamped, paid invoices to include copies of all
8 canceled checks. In my mind, yes, I asked for those from
9 you to be brought on the 16th of or — 13th of — 16th of
10 February in this 13th of February letter, yes.

11 Q You testified, again from the letter,
12 verification of invoice. What does that mean?

13 A I don't think that's a complete sentence so let
14 me look here and find that. Do you know what paragraph?

15 Q In the February 18th, Richard Gaby email that
16 was submitted into evidence, Exhibit 1.

17 A You can continue while I'm looking for it. Go
18 ahead.

19 Q I'll read, Once verification of invoices
20 complete, papers will be promptly disbursed.

21 What did that verification mean?

22 A Where do you see that, sir?

23 Q Second to the bottom paragraph.

24 A Are we talking about the same document, just to
25 confirm?

DAVID LOREE-REDIRECT BY MR. KUNST

1 MR. KUNST: May I approach?

2 THE COURT: Sure.

3 BY MR. KUNST:

4 Q Once verification --

5 A Once we have in our possession all of the
6 invoices and they can be substantiated.

7 Q What does verification mean?

8 MR. SMITH: I'm sorry, Scott, where are you
9 reading from?

10 THE WITNESS: Asked and answered, sir.

11 MR. SMITH: Okay. Okay, I'm sorry.

12 BY MR. KUNST:

13 Q The next sentence says or the other half of the
14 sentence I could say is, Payments will be promptly
15 disbursed.

16 What payments are--

17 A -- once invoice is complete, payment will be
18 promptly disbursed.

19 So, once you provided all the documentation that
20 we requested, it could be substantiated, payments could be
21 resumed. There was no decision on the 18th of February
22 that this is -- we we're giving you the benefit of the
23 doubt. We were hoping you provided further materials for
24 us.

25 Q Were you provided other progress billings that

DAVID LOREE-REDIRECT BY MR. KUNST

1 had not been reimbursed by Mr. Gaby?

2 A No, sir.

3 Q You testified about a company named Systems
4 Specialities. There were several progress billings
5 submitted into evidence. Did you investigate the full
6 Kunstwerke account with Systems Specialities?

7 A I don't believe so, sir. And when you say full
8 account, that would be other clients and things that I was
9 concerned with the Gaby project. I had no concern with
10 others.

11 Q In your investigation, did you look to see if
12 there were any Systems Specialities invoices on the
13 February 16th, February 20th or March 3rd? Progress
14 billings that Mr. Gaby did not reimburse.

15 A Did you provide those to me in that box of
16 materials at The Reserve that day? I was working out of
17 the materials you had provided, so.

18 Q I answered a question but for the record, 2/16
19 and 2/20 were in the box. 3/3 followed.

20 A Okay.

21 Q Do you have any information from your
22 investigation whether or not the System Specialities
23 account with Kunstwerke was personally guaranteed by me?

24 A Rephrase the question, I'm not sure what you're
25 looking for there.

DAVID LOREE-REDIRECT BY MR. KUNST

1 Q I'll do a broader question then that may apply
2 to some of these others. These vendors that you
3 contacted, did the account belong to Mr. Gaby or did the
4 account belong to Kunstwerke?

5 A The invoices were generally -- I saw some of
6 them here earlier. In fact, let me look at it. I think
7 it says, Gaby project on the invoice. That would lead me
8 to believe that it would be relative to his property being
9 constructed. Here's Select Stone, not one we're talking
10 about, PO number it says Gaby on it. So, it does -- it's
11 billed to you referencing the Gaby project. If that
12 answers your question.

13 Q So, once it appears on a progress billing and
14 Mr. Gaby pays that progress billing, is it your
15 understanding then that it becomes a Kunstwerke obligatio
16 to pay?

17 A Yes.

18 Q You stated that Mr. Gaby paid some things twice?

19 A Correct.

20 Q Why did he do that?

21 A For the sake of -- if we could use Paul Anderson
22 for an example, he was creating cabinets for the project.
23 Scott bounced checks to him. He was not willing to ramp
24 up production, if you will, due to having large
25 outstanding balances and receiving bounced checks. So, in

DAVID LOREE-REDIRECT BY MR. KUNST

1 order for us to get cabinets installed in that home in a
2 timely fashion so we could get it completed, I prioritized
3 and said, I'll have to bite the bullet, I know I've paid
4 for them once, I'm going to have to pay them a second time
5 if I want cabinets in my home.

6 Q Mr. Loree, should the project had stopped on
7 February 16th, 2006 until a reconciliation was done?

8 A I have no knowledge, unknown, sir.

9 Q Should construction have stopped until a full
10 reconciliation was done to ascertain if Mr. Gaby had, in
11 fact, reimbursed Kunstwerke Corporation per the contract?

12 A In my opinion, no, sir.

13 Q Do you have in your possession today any kind of
14 reconciliation of the Gaby account with Kunstwerke
15 Corporation?

16 A I have what you and my attorneys presented in
17 front me me, sir. That would be obviously no.

18 Q Do you have in your possession today a total of
19 all the costs that Kunstwerke incurred versus all the
20 costs that Mr. Gaby reimbursed?

21 A No, sir.

22 Q Could you have obtained such schedule on
23 February 16th, 2006?

24 A Ask the question again, sir.

25 Q Could you have obtained such a reconciliation on

DAVID LOREE-REDIRECT BY MR. KUNST

1 February 16th?

2 A Simplify the question for me, sir.

3 Q Were you prohibited from obtaining a full
4 reconciliation of the Kunstwerke Corporation account, and
5 I'll define that as the total amount that Kunstwerke had
6 incurred on the Gaby project and how much -- versus how
7 much Mr. Gaby had reimbursed as of that date?

8 A That's what we were hoping you would bring to
9 our February meeting.

10 Q Are you stating that you never got that?

11 A Never got that. We -- that what?

12 Q Any reconciliation of that sort?

13 A We never got a complete comprehensive
14 reconciliation of documents from you, yes, sir.

15 Q In all of these years of litigation have you
16 never seen a large ledger?

17 A Does it begin with the word, The Story? I've
18 been deposed on that before. I think very early on in the
19 pages it says, The Story. After we had gone through these
20 documents which my attorney and I went over just a short
21 time ago, we tried to reconcile the account. There was a
22 forensic accountant involved in it at some point. Please
23 tell me the date that you forwarded that.

24 Q I'm asking about the Kunstwerke accounting
25 records.

DAVID LOREE-REDIRECT BY MR. KUNST

1 A Correct.

2 Q Have you ever reviewed or looked at the actual
3 Kunstwerke accounting records?

4 A No, sir.

5 Q That reconciled to the bank statements?

6 A No, sir.

7 Q Do you have any proof or evidence, as you sit
8 here today, that Mr. Gaby reimbursed Kunstwerke for a 2006
9 progress billing for \$57,015, a February 20th progress
10 billing for \$27,068 and a March 3rd progress billing of
11 \$125,387?

12 A No, sir.

13 MR. SMITH: Your Honor, I have to object. Those
14 are -- I'm not saying they're wrong but we haven't
15 seen any evidence of those bills. If he wants to
16 show them to the witness, I'm fine with that.

17 THE COURT: I believe the question was, do you
18 have them?

19 Was that the question?

20 THE WITNESS: I do not know if that was the
21 question.

22 THE COURT: Well, what's the question?

23 MR. KUNST: That are in Exhibit A, the full
24 ledger of the case, they've had them. For eight
25 years.

DAVID LOREE-REDIRECT BY MR. KUNST

1 THE COURT: Well, answer my question. The
2 question was, do you have them, right?

3 MR. KUNST: Yes.

4 THE COURT: Okay, you can answer that questi-
5 I already advised the jury that questions are not
6 evidence, responses are evidence. So, you may ask
7 the question.

8 BY MR. KUNST:

9 Q I'll just ask a more broad question then.
10 Simplify things. Do you have proof that Mr. Gaby paid the
11 last three reimbursement payments on the —

12 A You've referenced those repeatedly the
13 question's been asked and answered. I do not, sir, no.

14 Q Okay. There was reference to a cabinet
15 deposit — when you contacted, as you just stated you
16 contacted Paul Anderson of Anderson Design, were the
17 cabinets ready at that point to be delivered?

18 A Unknown, sir.

19 Q In your investigation did you find other
20 deposits and partial deposits for items that were waiting
21 to be delivered?

22 A Again, ask the question again, sir.

23 Q Were there ever any instances in which
24 Kunstwerke made a partial deposit on something that had
25 not yet been delivered? The cabinets yes, they readily

DAVID LOREE-REDIRECT BY MR. KUNST

1 admit they received 23,000 of 140,000. So, there had been
2 a deposit on them, yes. The other 20,000 that you wrote
3 to them bounced, so. It should have been 43,000 but I
4 guess \$23,000 bounced check.

5 Q You stated, rather emphatically a short while
6 ago, that you didn't know where the money went that
7 Mr. Gaby had wired. And your quote was, Do I know? I
8 wish I knew.

9 This case has been around for nine years. Have
10 you caused or performed your own audit of the Kunstwerke
11 accounting ledger to determine where the Gaby money went?

12 A No. Thank you for bringing that up. The
13 document you mentioned earlier in your large binder there,
14 that you produced seven years ago, a moment ago you said,
15 that would have gone to the Stern Law Firm which had a
16 forensic accountant involved. That was well beyond — I
17 washed my hands of that portion of it. There were people
18 much more intelligent than I going through accounts. So,
19 that binder that I did see went to the Stern firm with
20 their forensic accountant at some point.

21 Q Will you have anyone here in the next few days
22 more intelligent than you that can speak to that?

23 A If you turn and ask my attorneys, I don't know
24 that.

25 Q I would like to draw your attention to

DAVID LOREE-REDIRECT BY MR. KUNST

1 Defendant's Exhibit 12. It should be an email that you
2 just submitted in evidence from February 20th from Richa
3 Gaby to the Plaintiff.

4 A Uh-huh, yes.

5 Q You read several sections of the email for
6 Mr. Smith. I would ask you to read the last two
7 paragraphs, I've highlighted them for your convenience.

8 A Yes, sir, you're welcome to that one.

9 Q For the record that is my email to Mr. Gaby, my
10 response.

11 A Okay.

12 Q You can read the highlighted portion.

13 A The entire paragraph or just a snippet?

14 Q The last three paragraphs.

15 A Just the snippet you'd like for me to read, not
16 the entire paragraph?

17 Q Just read the page.

18 A Read the page?

19 Q Read the page.

20 A As you requested I have worked through those
21 invoices to send directly for payment. There won't be the
22 risk of double payment because the cut off of things we
23 have already paid for is the 2/20 progress billing. My
24 challenge is this. The sheer volume of activity and
25 payment made before billing you has resulted in two

1 progress billings that I have not been reimbursed for.
2 Everything on the 2/16 billing of \$60,372 as well as the
3 subsequent 2/20 billing for \$27,066, we have paid out. I
4 have roughly \$90,000 paid out.

5 Activity at the site spiked in December and
6 January and the progress billing payments fell one week
7 behind during the same period. I know that I need to pay
8 the cabinet balance immediately. It is just more
9 difficult for me to pay the remaining when I don't know
10 what becomes of the 90,000 outstanding that I have already
11 paid out and I have not been reimbursed for.

12 Then the final paragraph, I will continue to
13 compile what you request. I will also FedEx the two
14 above-mentioned billings with support. Please call
15 anytime to discuss anything else you need. I understand
16 about the shutters and Dan Efelman (ph), who is making
17 the screen doors, was willing to do a drawing on how they
18 could function with the finish existing opening sizes.

19 Thanks, Scott.

20 Q Will you confirm for us that that is my email to
21 Richard Gaby?

22 A It appears to be, yes, sir.

23 Q You read the word Reimbursement in here. Have
24 you seen that word before?

25 A In my life, sir, I've seen the word

DAVID LOREE-REDIRECT BY MR. KUNST

1 reimbursement--

2 Q Between today and yesterday?

3 A Yes, sir.

4 Q Where else did you see it?

5 A I can't tell you, sir.

6 Q Did you read in the Gaby contract?

7 A Did I or didn't I, I don't know, sir.

8 Q Is it not true, Mr. Loree, that in this email to
9 your boss I clearly state that there were at that point
10 already two progress billings that had not been
11 reimbursed?

12 A That's what I just read, I believe so.

13 Q It is your testimony that your boss did not tell
14 you about these?

15 A No, not at all, sir.

16 Q Is it possible, Mr. Loree, that as I state here
17 on 90,000 outstanding, that a 90,000 balance may cause
18 checks to bounce?

19 MR. SMITH: Your Honor, I'm going to object
20 there. Aside from leading the witness, he's also
21 asking questions that he has no way of knowing. He's
22 asking him to speculate.

23 THE COURT: Okay. All right.

24 MR. SMITH: He is a fact witness.

25 THE COURT: I understand, I'll respectfully

DAVID LOREE-REDIRECT BY MR. KUNST

1 overrule your objection.

2 You can ask the question, sir.

3 MR. KUNST: All right.

4 BY MR. KUNST:

5 Q You've testified to these folks about several
6 checks that had bounced to places like Systems
7 Specialities, cabinet guy. Tracy testified yesterday
8 about one to Builders First Source. My question to you
9 is, it is possible that if your boss is \$90,000 behind,
10 that could cause checks to bounce?

11 A My boss was not \$90,000 behind, sir.

12 Q Please provide the evidence that states that.

13 A We just talked about funds that were forwarded
14 to you, substantiated with bank records that were never
15 forwarded to vendors. There would have been -- it's
16 simple math, there would have been a surplus in the
17 account. 90,000 is easily coverable by those documents
18 that we've already showed you that were never paid through
19 to those vendors. You would have had those monies in
20 reserve.

21 Q Is that based on your premises yesterday where
22 you stated that once Mr. Gaby wired an amount of money,
23 that money was restricted to a certain purpose?

24 A That's what you led him to believe when you
25 requested, I'll just give you one, for example. This came

DAVID LOREE-REDIRECT BY MR. KUNST

1 from you to my employer on December 6th of 2005.

2 To Paul Anderson Design for a total 50 percent
3 deposit amount for all cabinetry. Total will be 165,000.

4 You requested 82,500 and some time later we had a docume
5 that Anderson tells us that they really received 23,000.

6 43,000 if you count the check that was insufficient funds.

7 So, I was doing that math, sir. And then it was
8 substantiated and litigated and they have a judgment when
9 Mr. Larkin and the previous trial

10 Q You keep mentioning this Mr. Larkin, who is this
11 Mr. Larkin?

12 A You know, sir, who Mr. Larkin is—

13 Q I'm asking the question, who is Mr. Larkin?

14 A He is a forensic accountant, sir. He was
15 present in your hearing.

16 Q What is a forensic accountant?

17 A After the fact he would reconstruct an account
18 from receipts from documents that he was able to locate to
19 put a document together, funding a project, funding
20 whatever that may be after the fact.

21 Q Would this forensic accountant be smarter than
22 you in regard to these books?

23 A I don't know his IQ, sir, I don't know.

24 Q As you stated before—

25 MR. SMITH: Your Honor.

DAVID LOREE-REDIRECT BY MR. KUNST

1 THE COURT: Yes, sir.

2 MR. SMITH: He's badgering the witness, he's
3 gone way beyond the scope.

4 THE COURT: Y'all come up real quick.
5 (WHEREUPON, an off-a bench conference was held
6 in the presence of the jury but out of the
7 hearing of the jury.)

8 THE COURT: You may continue, Mr. Kunst.

9 MR. KUNST: Thank you, Your Honor.

10 BY MR. KUNST:

11 Q You made the statement regarding Mr. Kevin
12 Goad's affidavit. You made a statement that you were
13 surprised that it was prepared by — who did you say
14 prepared it?

15 A I believe Mr. Goad sat here and said someone —
16 one of the attorneys asked him who prepared that?

17 And he said, It was not I.

18 You brought that document to him or something of
19 that nature. Which was surprising. I didn't know that's
20 how the affidavit was prepared.

21 Q Have you ever prepared an affidavit in a legal
22 case?

23 A No, sir.

24 Q Did you hear Mr. Goad's testimony yesterday?

25 A Yes, sir.

DAVID LOREE-REDIRECT BY MR. KUNST

1 Q Did you hear Mr. Goad testify that he received a
2 rough draft and made corrections?

3 A Correct.

4 Q Did you hear Mr. Goad state that he signed the
5 affidavit?

6 A Yes, sir.

7 Q Did you hear Mr. Goad state who notarized the
8 affidavit?

9 A I believe Ms. Hilton.

10 Q So, are you implying to this — did Ms. Hilton
11 sign all the affidavits to your knowledge?

12 A I have no idea. When you talk about affidavits,
13 could we talk about Mr. Alfonazo's?

14 Q That's next, thank you.

15 A Thank you.

16 Q When Kevin Goad stated that you stated that
17 dummy invoices were created from dummy companies to take
18 money from my clients, was Mr. Goad lying?

19 A No. When it appeared in the affidavit, the
20 words that I said dummy company, dummy invoices, that's
21 not terminology that I would use so I know it's not a in
22 quote comment. So, it's not something I said.

23 Q His affidavit is speaking to an allegation.
24 Were dummy invoices prepared by me from dummy compa
25 fraudulently obtain funds?

DAVID LOREE-REDIRECT BY MR. KUNST

1 A Unknown, sir.

2 Q Regarding Mr. Alfonzo's testimony, his affidavit
3 I should say, he mentions the word criminal twice. Was
4 Mr. Alfonzo lying?

5 A No, I was intrigued when he said that he altered
6 his affidavit after saying that I said Mr. Kunst was a
7 criminal. I never said that. He said then it was amended
8 to say some things he may have done could have been
9 construed as criminal. It's interesting that the way that
10 it was crafted initially would have made me sound like I
11 was saying some really bad things. It was reedited by him
12 to then be more subjective to actually what he did say. I
13 did find that interesting.

14 Q You did hear Mr. Alfonzo's testimony yesterday,
15 correct?

16 A Yes, sir.

17 Q Did you hear Mr. Alfonzo make a one word change
18 to his affidavit and read it to the jury?

19 A I don't know if it was one word but a change,
20 yes, sir.

21 Q Did you recall that one word change being the
22 word A in front of criminal?

23 A It may very well have been, I'm not sure what
24 the change was exactly.

25 Q You stated that you couldn't find me. My

DAVID LOREE-REDIRECT BY MR. KUNST

1 question to you is, based on the date of these email
2 communications, did the email communication cease between
3 February 16th and March 3rd, the termination date?

4 A They got harder and harder, yes, sir. It
5 wasn't--

6 Q The emails got harder? What's that?

7 A No, no. Not referring to the emails. The means
8 by which to contact you personally for progress status on
9 projects and things. Timely returns on emails, seem to be
10 getting harder and harder to contact you. Yeah.

11 Q What specific evidence do you have of that?

12 A My comment, sir.

13 Q Did I have other projects going on at The
14 Reserve that you know of?

15 A Unknown.

16 Q You did not know of any other projects that I
17 had going on at The Reserve concurrent with the Gaby's?

18 A Oh, you may have, I don't know what the
19 completion dates and things were. You may have had other
20 projects. You've built other homes in The Reserve, yes.

21 Q Is it not true, Mr. Loree, that I was at The
22 Reserve everyday?

23 A I would not know that, sir.

24 Q It is not true, Mr. Loree, that my houses did
25 not have detailed plans?

DAVID LOREE-REDIRECT BY MR. KUNST

1 A Unknown, sir.

2 Q Do you have any knowledge that I could not be
3 found?

4 A I know that we made attempts and you were
5 increasingly difficult to contact. That's from personal
6 recollection.

7 Q And is that what caused the termination notice?

8 A No, sir.

9 Q What caused the termination notice?

10 A I think your unwillingness to supply full
11 records so that we could do a more substancive [verbatim]
12 reconciliation of your accounts pertinent to the Gaby
13 project and from our meeting on the 16th. There were
14 emails that went back and forth asking you to provide
15 additional documentation that led all the way through
16 roughly 14 calendar date period to around the second or
17 third of March when that document was issued to terminate.
18 We gave an opportunity to respond, you chose not to.

19 Q Okay. Did the Gaby's eventually sue me?

20 A I don't know, sir. No, sir. Unknown, sir.

21 Q Okay. It is possible, through litigation, that
22 the full accounting ledger could have been subpoenaed?

23 A If we can go back. We have a judgment against
24 Mr.~Kunst or his company. So, the answer to the previous
25 question would have been, yes. Obviously, there were some

DAVID LOREE-REDIRECT BY MR. KUNST

1 filings there.

2 Q Prior to that judgment, another opportunity to
3 have looked at the Kunstwerke ledger. In this judgment
4 you've referenced now for two days, was the Kunstwerke
5 ledger ever looked at in preparation for that judgment?

6 A I can't tell you what the trial date was or the
7 hearing date was versus the date that that was forwarded.
8 It went immediately a law office to be reviewed. So, I
9 don't know. I don't know what those dates are.

10 Q One last question. The money that was sitting
11 in the Kunstwerke account, that was deposited by the
12 Gaby's, did you see bank statements showing that money
13 deposited?

14 A There were funds wired. I don't know about the
15 term deposited but Mr. Gaby wired funds, I believe, to
16 your Regions bank account from the documents you saw
17 earlier today.

18 Q In this week between February 16th, 2006 and
19 March 3rd, 2006, did I provide you with Kunstwerke bank
20 statements?

21 A You're asking nine or ten year question. Not to
22 my knowledge.

23 MR. KUNST: Nothing further.

24 THE COURT: Recross?

25 MR. SMITH: I have nothing further, Your Hono

DAVID LOREE-REDIRECT BY MR. KUNST

1 **THE COURT:** Thank you, Mr. Loree, I appreciate
2 it, sir. You may step down.

3 All right, Mr. Kunst, you may call your next
4 witness, sir.

5 **MR. KUNST:** Plaintiff calls Eugene Covington.

6 **THE CLERK:** Place your left hand on the Bible
7 raise your right hand, please.

8 **EUGENE COVINGTON,** after being duly
9 sworn, testified as follows:

10 **THE CLERK:** State your name for the record.

11 **THE WITNESS:** Gene Covington.

12 **DIRECT EXAMINATION**

13 **BY MR. KUNST:**

14 **Q** Hello, Mr. Covington. Please state your full
15 name and occupation.

16 **A** Gene Covington, I am a lawyer.

17 **Q** What is the name of your law firm?

18 **A** Eugene C. Covington, Jr, P.A.

19 **Q** Are you part of Covington Patrick Harris?

20 **A** No, there is no Covington Patrick Harris.

21 **Q** Covington Patrick Hagins Stern and Lewis, is
22 that your law firm?

23 **A** No, it use to be. It was a P.A. It was
24 terminated January 1, 2015.

25 **Q** All right. Did the law firm that was

EUGENE COVINGTON-DIRECT BY MR. KUN

1 terminated, did it represent Mr. Loree for the past eight
2 years?

3 A Sandy Stern, who suffered a stroke, is no longer
4 with the firm, was attorney for Mr. Loree.

5 Q Did you have a written contract with my company
6 Kunstwerke for the construction of your house at The
7 Reserve?

8 A No. I wish I had.

9 MR. KUNST: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. KUNST:

12 Q Mr. Covington, do you recognize either of those
13 two letters?

14 A Well, I am certain that I wrote these letters
15 sometime back in 2005 or six but they would -- I don't
16 know how you got a copy without me signing them.

17 Q Do you recall what the purpose of those letters
18 were?

19 A Sure, I recall exactly what the purpose was.
20 This was about the time that you disappeared. And no one
21 was getting paid. And I found out that money I had been
22 paying you to pay subs weren't getting paid. And the only
23 way I could finish my house was to tell all these subs
24 that I would pay them whatever you hadn't paid them to get
25 my house finished.

EUGENE COVINGTON-DIRECT BY MR. KUNST

1 Q So, on the — at the date of those letters did
2 you take over direct payment of subcontractors and
3 suppliers at your project?

4 A There's no date on these letters.

5 Q Okay. During February of 2006, did you take
6 over the direct payment of subcontractors and suppliers at
7 your project?

8 A I took over everything on my project because you
9 disappeared.

10 Q Who remained the licensed builder through
11 completion?

12 A Well, I don't know who was the licensed builder.
13 I'm not sure I had a licensed builder when you were in it.

14 Q Did you ever terminate Kunstwerke as a licensed
15 builder of your house?

16 A I couldn't terminate Kunstwerke because that's
17 you and you went missing.

18 Q At the time that these letters were sent out and
19 you were taking over direct payments, you claimed you
20 couldn't find me. Had you paid your Kunstwerke balance in
21 full?

22 A No, actually I had paid more than my Kunstwerke
23 balance in full. Because I found out the money I'd been
24 paying you, you had been using for other things other than
25 my house. One being your fiance's wedding ring.

EUGENE COVINGTON-DIRECT BY MR. KUN

1 Q Mr. Covington, were you sued by Kunstwerke?

2 A I and 22 other people.

3 Q Yes. Was it a civil breach of contract suit?

4 A Well, which one are you talking about,

5 Mr. Kunst, you sued me three times?

6 Q I'm referring to the contract case, Kunstwerke
7 versus Eugene Covington and Susan Covington.

8 A You sued us, me and my wife twice. So which one
9 are you talking about?

10 Q I'm not referring to the malpractice suit
11 against your wife, I'm not referring to the defamation
12 suit against you and your wife. I'm referring to the
13 Kunstwerke breach of contract suit claiming monies owed t
14 Kunstwerke. Represented by the Carpenter Law Firm?

15 A Yeah. And I countersued against you, too.

16 Q Yes, sir.

17 A It was in this courtroom.

18 Q Did that case settle mid trial?

19 A That case settled while you were on the stand
20 after the Judge ruled that your \$300,000 claim couldn't be
21 worth any more than 25,000. At best.

22 Q Mr. Covington, did you write a check for
23 \$25,000?

24 A Yes, I did.

25 Q To your knowledge, has there ever been an

EUGENE COVINGTON-DIRECT BY MR. KUNST

1 independent audit of your Kunstwerke account?

2 A It couldn't be because the forensic accountant
3 that we hired to do it could not get the records because
4 you wouldn't give them to us. But we did get all the
5 invoices from every person that you were building houses
6 for and we subpoenaed all of your bank records. So, we
7 were able to put together what you were doing to people in
8 a group. But we could never individualize it.

9 Q You're the second person in a row to mention a
10 forensic accountant. Are you referring to Mr. Bill
11 Larkin?

12 A Absolutely, yes. He use to work for the
13 Attorney General's Office in New York City prosecuting
14 white collar crime.

15 Q Did Mr. Larkin spend a lot of time working on
16 these cases?

17 A He certainly did.

18 Q To your knowledge, was Mr. Larkin ever provided
19 a full Kunstwerke ledger?

20 A Of course not because you refused to produce it.
21 Just like you refused to produce it to the United States
22 government on your tax claims. That is over 5 million
23 dollars on record today.

24 Q Do you have any information as to the date that
25 the full Kunstwerke ledger was filed at the Pickens County

EUGENE COVINGTON-DIRECT BY MR. KUN

1 courthouse? In these related cases as Exhibit A?

2 A I have no idea what you're talking about.

3 Q Did you state to David Loree directly that there
4 were any financial problems with your project?

5 A I don't know that I've ever had a conversation
6 with Mr. Loree. I saw him today and I honestly didn't
7 recognize him. He wasn't involved with my house, I know
8 that.

9 Q So, did you ever state to Mr. Loree that I
10 personally took or stole any funds from you?

11 A I don't remember ever having a conversation at
12 all with Mr. Loree. I have had no personal relationship
13 with him.

14 MR. KUNST: Nothing further, Your Honor.

15 THE COURT: Cross-examination?

16 MS. WRIGHT: We have no questions, Your Hon

17 THE COURT: Thank you, Mr. Covington, I

18 appreciate your being here, sir.

19 THE WITNESS: May I be excused?

20 THE COURT: Yes, sir, absolutely.

21 Mr. Kunst, who's your next witness, sir?

22 MR. KUNST: That would be myself, Your Honor

23 THE COURT: Okay. How long do you anticipate
24 that will take, sir?

25 MR. KUNST: Probably the rest of the day.

1 **THE COURT:** Okay, you're going to be your last
2 witness for your case?

3 **MR. KUNST:** Your Honor, we have a situation with
4 some sealed depositions that must be read. We
5 discovered that we did not have the seal copies. We
6 are having them Fedex first thing tomorrow morning.
7 And that should be the end of the case.

8 **THE COURT:** Okay. All right.
9 Let me ask Ms. Wright and Mr. Smith, do y'all
10 intend to put evidence into the record?

11 **MR. SMITH:** We have one witness coming in, Your
12 Honor, from The Department of Revenue.

13 **THE COURT:** Okay. When is that witness coming
14 in?

15 **MS. WRIGHT:** I had actually had her coming in
16 the afternoon today.

17 **THE COURT:** Okay.

18 **MS. WRIGHT:** I haven't had a chance to go down
19 and see if she's here. But I asked her to come in
20 this afternoon.

21 **THE COURT:** All right. Okay. The only -- the
22 only reason I'm asking that is just for scheduling
23 purposes. I want to -- I want to argue and charge
24 tomorrow morning if there's any way that we can
25 arrive there.

1 Ladies and gentlemen, I'm talking out loud so
2 you'll have the benefit of knowing where we're
3 headed. You've heard that we have some testimony —
4 some testimony that still needs to be introduced into
5 the record. And I want to make sure that we're not
6 bleeding into Friday on this case. I know you have
7 an issue on Friday. I want to go ahead and get all
8 the evidence in so we can argue and charge tomorrow.
9 It may be in order to get all of our testimony into
10 the record, we may stay a little bit late tonight.
11 I'm not talking about 10 o'clock, I'm talking about
12 6:00 or 7:00. I hope that's not the case. But I'm
13 just giving you the benefit of what's in my head
14 right now. Again, the end game is, I want to be done
15 tomorrow, okay. So, I'm going to do what I have to
16 do to get this done tomorrow. So, if that means we
17 go a little bit late tonight, then we just may do
18 that, okay.

19 And you've heard the conversation that I've had
20 with the attorneys. It sounds to me like we're going
21 to have two additional witnesses testify and perhaps
22 some deposition testimony tomorrow morning, perhaps
23 Which should put us in good shape to then proceed to
24 argument and charge on the law. Which I would like
25 for y'all to have — I'd like to be done with the

1 introduction of evidence and argument and charge by
2 lunch tomorrow. That's what I'm driving at, okay.
3 So, right now it's 12:00. I want y'all to take an
4 hour and 15 minutes and be back at 1:15.

5 Am I reading that right?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: My eyesight is not very good.

8 Okay, y'all be back at 1:15 and we're going to
9 resume testimony. Please don't discuss the case.

10 (WHEREUPON, the jury left open court at
11 approximately 11:58 a.m.)

12 THE COURT: Okay. All right. I want y'all to
13 consider the possibility of perhaps going out of
14 order with some the witnesses. That is ordinarily
15 the defense doesn't put any evidence into the record
16 until the plaintiff ends. But if you've got one
17 witness, then you have some depositions tomorrow, I
18 don't want to wait until you put those depositions
19 for that one witness to take the stand. So, what I
20 would prefer to do is go out of order, okay? So,
21 y'all decide if that's acceptable to you and if that
22 works, okay. That hopefully will speed us up a
23 little bit and make us go a little bit more
24 efficiently moving forward, okay.

25 MR. SMITH: Your Honor, I'm fine with if we have

1 the Department of Revenue representative here
2 already, I don't know that, but I am fine with doing
3 that. And it's his case so it's up to him.

4 THE COURT: Y'all talk it through, okay. Y'all
5 aren't charged with the responsibility for making
6 sure, you know, that the jury is engaged and that
7 they're actually receiving useful information. Up to
8 now I think we've done a fairly good job but on the
9 last witness we kind of, we kind of went on a bit.
10 And I, by judging the jury's language, some of it may
11 have been minutia that isn't necessarily relevant to
12 their ultimate decision. So, what I want to do is
13 when we go forward, make sure that what you're
14 presenting to them is focused and surgical and that
15 it's aiding them in the ultimate resolution of the
16 case, okay.

17 And I would suggest to you, Mr. Kunst, that, you
18 know, four hours of you sitting on that stand may be
19 a little bit much for the jury to stand. Not that
20 you're not a charming and engaging fella, it's just
21 the subject matter isn't necessarily charming and
22 engaging.

23 MR. KUNST: I'm estimating, Your Honor, their
24 redirect.

25 THE COURT: Do what?

1 MR. KUNST: I'm estimating the time they're
2 going to keep me on the stand.

3 THE COURT: Yeah, I understand. I understand.
4 But in any event, again, I'd encourage you, again,
5 establish a narrative, stick to the narrative. And
6 although y'all have a lot of detail, about nine years
7 of litigation, I don't know that the jury is
8 concerned about the details of the litigation. Just
9 from my perspective watching it as an objective
10 observer just like they are, okay. Take that for
11 what it's worth.

12 MR. KUNST: Your Honor, if I may?

13 THE COURT: Yes, sir.

14 MR. KUNST: Regarding one of the last witnesses,
15 in time, their witness is — I renew my objection to
16 the representative of SCDOR based on my motion in
17 limine regarding the relevance of tax matters in this
18 case. I think it would confuse the jury and has
19 nothing to do with the statement of slander.

20 THE COURT: As I sit here right now, again, I'm
21 still — I still don't have it full context.
22 However, I will tell you to the extent that this
23 case, it hinges upon the veracity of the
24 representations that allegedly were made, I think
25 that is relevant to that defense. You may have to

1 answer it and I'm sure you have a plausible
2 explanation for the same. I understand your
3 narrative which is it blew up because they blew me
4 up. I got it. You'll have to explain that. But
5 it's relevant. And as I sit here right now, I'm
6 inclined to allow it, okay. All right.

7 MR. SMITH: She is here.

8 THE COURT: Okay. Well, y'all talk and decide
9 how you want to do it. I'm not going to tell you how
10 to do it. Again, it's y'all's case, you tell me how
11 you want to do it. I've given you the instate, I
12 want you to figure out how to accomplish the instate,
13 okay. All right.

14 MR. SMITH: Thank you, Your Honor.

15 MR. KUNST: Thank you, Your Honor.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: Ready to proceed?

18 MR. KUNST: Yes, sir.

19 MR. SMITH: Yes, sir, Your Honor.

20 THE COURT: All right, sir, you can bring them
21 in, please, sir.

22 (WHEREUPON, the jury came into open court at
23 approximately 1:20 p.m.)

24 THE COURT: Okay, Mr. Kunst, you may call yo
25 next witness, sir.

1 **MR. KUNST:** The Plaintiff calls Scott Kunst to
2 the stand.

3 **THE COURT:** All right, sir, you may come
4 forward.

5 **THE CLERK:** Place your left hand on the Bible
6 raise your right hand, please.

7 **SCOTT KUNST,** after being duly sworn,
8 testified as follows:

9 **THE CLERK:** State your full name.

10 **THE WITNESS:** James Scott Kunst.

11 **THE CLERK:** Please be seated.

12 **THE COURT:** Yes, sir, you can proceed when
13 you're ready.

14 **MR. KUNST:** Good afternoon, folks. This is
15 rather odd because I'm basically am going to have to
16 question myself. But it will just be a narrative and
17 I'll be as quick as I can. It -- there won't be
18 questions, I'll just say things into evidence,
19 basically. And I'll try not to be boring if you can
20 just stick with me. I'm the only person you haven't
21 heard from yet, directly. You heard me ask a lot of
22 questions. My name is Scott Kunst. I'm 47 years
23 old. I live in Pittsburgh, Pennsylvania. That's
24 where I was born and raised. I lived in South
25 Carolina for 15 years. I went to Bob Jones

1 University and got an accounting degree there in
2 Ridgeland before going on and doing architectural
3 design work that I do. I am the youngest of four
4 children. My parents have been married 55 years. My
5 father is 83 so my parents are getting up there.

6 I just stated that I have a degree in
7 accounting. I went on to work as a CPA. I graduated
8 with a accounting degree. And I've got six offers
9 from six big firms. If you know anything what that
10 is, those are big, high dealing firms. And when I
11 graduated way back in 1990, there were six. I chose
12 Deloitte & Touche and I moved to New York City. And
13 I worked in the World Trade Center while it was still
14 there. And I specialized in auditing. Auditing
15 accounting records and looking for things like fraud.
16 And looking for mistakes and interpreting contracts
17 and such.

18 I moved back to Greenville in 1993 and lived
19 with my retired parents up in the mountains. You
20 heard Tracy talk about Caesars Head. I worked for an
21 insurance agency in Greenville, South Carolina as a
22 controller and CFO for a few years. Five years,
23 actually. During those years I began my business of
24 actually designing and building houses. It was in
25 1996 that I started my first house. As I said in my

1 opening I built it with my own hands, my father
2 helped me. It's on Caesars Head. It was during that
3 time that I met Tracy. And we kind of started dating
4 right away. And I built six houses on Caesars Head
5 total. The three were built after I quit my
6 accounting job. I built the houses full-time.

7 I left the accounting profession. I allowed my
8 CPA license to expire. And after six years on
9 Caesars Head, I was asked by a gentleman, by the name
10 of Tom Atkinson. His name was Dr. Tom. He was an
11 orthodontist in Greenville. Some of you may know
12 him. He asked me if I would consider doing a house
13 for him on Keowee. Up until this time my entire
14 business was strictly houses that I built myself,
15 designed myself and then sold. This is the first
16 time I did a house for someone. Like the Gaby's.

17 So, Dr. Tom and I shook our hands. Didn't have
18 a contract. And he agreed to the same billing system
19 that I had from my earlier houses. And that billing
20 system is actually the progress billing system that
21 you've seen here in the last two days. I developed
22 that system for when some of my earlier houses sold
23 before I was completed. And I had to bill clients.
24 It is a spreadsheet base system if you know what a
25 spreadsheet is like Excel. And for every weekly

1 reimbursement statement that goes out, that sheet
2 feeds into a bigger ledger. And that's the big blue
3 ledger I've been pointing to many times during this
4 trial. So, everything's connected. All of the these
5 records have always existed concurrently from the
6 very beginning.

7 When I was building the houses on Caesars Head,
8 a publisher came along that was very fascinated with
9 my story about how I started out as a CPA and did my
10 own Design and my own houses. And she wrote an
11 article about me in the magazine. And the title of
12 the article was Living a Dream. And that was the
13 title that she came up with. It's a
14 builder/architect article and I have to admit I'm a
15 lot younger on the front here. This was 14 years
16 ago. But she wrote a nice cover story on me. And
17 inside are many pictures of my early houses on
18 Caesars Head. It describes how my business was
19 unique and how my father helped me and all those
20 things.

21 Plaintiff would like to submit . . .

22 THE COURT: Any objection to submitting that
23 exhibit?

24 MR. SMITH: I don't have any objection to it
25 being entered unless it's being offered for the truth

1 of the matter asserted. If he just wants to describe
2 it, I have no problem with that. If he wants to
3 describe what the writer describes, we would ask
4 that — that would be hearsay, we object. If he just
5 wants to talk about it, that's fine.

6 THE COURT: Okay. All right. So, what you're
7 saying is you don't want it to be admitted as an
8 exhibit in the record but you don't have any problem
9 with him discussing the same?

10 MR. SMITH: It really — if he's trying — if he
11 wants to offer this article for the truth of the
12 matter asserted in it, then it would be hearsay. If
13 that's not what he's doing with it, then I don't care
14 if he offers it.

15 THE COURT: What are you offering it for?

16 MR. KUNST: The exhibit is being submitted as
17 evidence of my work. And who I was.

18 THE COURT: Any issue with that?

19 MR. SMITH: No.

20 THE COURT: Okay. No objection, the same is
21 admitted as the next Plaintiff's Exhibit.

22 (WHEREUPON, Plaintiff's Exhibit No. 8 was marked
23 for identification and received into evidence.)

24 THE COURT: All right, go ahead, Mr. Kunst.

25 MR. KUNST: The other time that magazine was

1 published was the time I went down to Keowee for
2 Dr. Tom, the first house for someone. Doctor Tom's
3 house was built without a contract, without a budget
4 and without a timeline. And that was something that
5 I insisted from the very beginning. Because I wanted
6 to do things my way. Which is completely unlike any
7 other builder, designer, architect. I charged very
8 little for what I did. And I didn't have to accept
9 Dr. Tom as a client. I had a waiting list of people
10 who would buy houses that I already designed and
11 built. But at that time I decided that perhaps I
12 needed to go to architectural school as well. And
13 The Savannah College of Art Design has a program that
14 provides a master's degree in architectural to add to
15 the CPA degree.

16 So, I decided maybe I shouldn't have the risk of
17 doing speculative houses and maybe I would take
18 Dr. Tom as a client. We shook hands, his house was
19 an overwhelming success. Dr. Tom recommended me to
20 someone who had a house at The Reserve on Lake
21 Keowee, across from the lake. And that's how I got
22 involved with all the clients that were in The
23 Reserve at Lake Keowee like the Gaby's. Very similar
24 to that article, Dr. Tom's house was featured. This
25 is the only other periodical that I'll submit. But

1 this is the At Home magazine sold at Barnes & Noble
2 in 2005. A little closer to the events in this case.
3 And in the article it features Dr. Tom's house. And
4 if you look at my work there's sort of a evolution to
5 it. Up on the mountain it was kind of boxy and
6 rustic. And once I was on the lake my design style
7 matured to the to point that by the Gaby's house, my
8 houses were completely — the architectural term is
9 organic. It has no square rooms. The house flows.
10 You walk through it and the walls just wind. Some
11 people call it crazy but it really just works with
12 the flow.

13 The Plaintiff moves for. . .

14 THE COURT: Any objection, sir?

15 MR. SMITH: No objections.

16 THE COURT: All right, without objection the
17 same is admitted as next Plaintiff's Exhibits.

18 (WHEREUPON, Plaintiff's Exhibit No. 9 was marked
19 for identification and received into evidence.)

20 MR. KUNST: Once on The Reserve at Lake Keowee I
21 became known pretty well for the one house I did for
22 Dr. Tom's friend. And they weren't my houses at The
23 Reserve at that time. It was one of the first
24 houses. So, I got to know the sales staff and
25 everybody at The Reserve. And it was through the

1 sales staff at The Reserve that I was introduced to
2 Susan Covington who you met her husband here a little
3 while ago. They also had a lot on Lake Keowee and
4 wanted me to build a house for them. So, I agreed.
5 And it was a long, long process. It took three
6 years. Some of my houses do. Some have considered
7 their's the craziest of all the houses. Some of the
8 things that I use are very unique. Like for example,
9 my crew can only build my houses. That's why it was
10 so significant to keep house — my crew on the Gaby
11 project to finish it. We could make a new house look
12 old with the way we roof. We would by handmade tile
13 from Provence in France for the roof. That, in fact,
14 happened for the Covington house. The Covington
15 house was featured in a lot of different
16 advertisements and features regarding architectural
17 elements including an advertisement for Northern Roo-
18 Tiles. I'm not going to submit that but I am going
19 to submit three pictures that I took of the Covington
20 house that you can look at later just to get an idea
21 of just how unique some of the houses are.

22 It's a French chateau. Ms. Covington wanted a
23 very — a very — it's called story book. Sort of a
24 like a French story book look, it's very playful.
25 Every ceiling is vaulted, every brick is handmade.

1 It's really a quite remarkable structure from the
2 lake. You can almost see how the roof sags.

3 I'd like to submit this in evidence and perhaps
4 it can be handed to them.

5 MR. SMITH: No objection.

6 THE COURT: All right, without objection the
7 same is admitted as a Plaintiff's next exhibit.

8 (WHEREUPON, Plaintiff's Exhibit No. 10 was
9 marked for identification and received into
10 evidence.)

11 MR. KUNST: Like I said, it took three years to
12 build this house. And I'm not going to tell you the
13 cost of it, it's not my business to tell you. But I
14 will tell you how much I charge because I think
15 that's important. The builder/architect fees for a
16 house like that should have been around the 600,000,
17 I charged 48,000. As I said in the opening, I never
18 really made much money doing what I design. It's
19 just a pleasure to be able to build something like
20 that. The Covington's through the three year
21 construction process never missed a single payment.
22 They were one of my best payers and some of my closet
23 friends throughout the process. Mr. Covington didn't
24 sound like that on the stand but they made over 140
25 weekly reimbursement payments. They were given

1 deposit tickets to my own checking account. And
2 Susan Covington would run to the bank as soon as she
3 got the bill to pay. They stopped paying on
4 February 16th, 2006. When two other bills had
5 accumulated. My father contacted them. She said her
6 husband was taking care of it.

7 At that date the accounting records shows that
8 there was \$130,000 that Kunstwerke Corporation had
9 paid out.

10 MR. SMITH: Your Honor, I am going to object
11 here. The accounting records we show, introduced
12 into evidence as best evidence.

13 THE COURT: I'll overrule. I'll allow him to
14 testify of his own finances.

15 You may continue.

16 MR. KUNST: I will be submitting an accounting
17 record in a moment that shows what everybody owed a
18 the date that David Loree came to town. You heard
19 that there was a lawsuit. Well, in fact, there's
20 been 20 lawsuits. The Covington lawsuit was one of
21 them. I had to collect that money. I had no choice.
22 Partly because I had to prove that there was no money
23 missing from them at all. You've heard testimony
24 that Covington was named specifically as someone
25 where money was missing from. I did not want to sue

1 the Covington's. I didn't want to sue anybody. But
2 as Gene Covington testified, I can testify to, he
3 settled mid trial with a check.

4 I was also not fired from the Gaby project —
5 the Covington project. I was not missing. And
6 thirdly, the Kunstwerke builders license was active
7 to the Covington project through closing.

8 Mr. Covington made a reference up here regarding an
9 engagement ring. This is something we've heard in
10 just about every trial. They like using that one.

11 The funny thing about it is in the opening statement
12 you heard that Gaby money was spent on an engagement
13 ring. Then you heard Mr. Covington say his money was
14 spent on an engagement ring. Folks, my money was
15 spent on an engagement ring. And when I explain how
16 my S Corp was set up, you'll understand that
17 Kunstwerke maintained its own capital. My own
18 earnings that I kept in the company, that's how it
19 advanced credit. It was never these peoples money.

20 Well, shortly before this all happened, I say
21 about six or seven months, my business had grown a
22 good bit. Just before the events of this case I had
23 six large mega mansions being built. And I was very
24 well known in The Reserve. If you were to drive
25 around The Reserve you would see my houses but you

1 would only find them out on the point lots where the
2 property itself is usually worth over a million
3 dollars before the house is even put on it. When my
4 company got very big in 2005, just at the time the
5 Gaby's house was really getting started, I felt it
6 was necessary to send my current six clients a
7 letter. Just reminding them what the business was,
8 how it operated and to let them all know who they
9 were. I had six different families. Most of them
10 trusted me with just a handshake, without a contract.
11 The few that I had a contract with was because their
12 bank required it for construction funding, mortgage
13 purposes.

14 I'd like to submit into evidence this letter
15 that I wrote to all my clients, including the Gaby's,
16 Covington's and all the other names you've heard here
17 this week. It's a letter dated July 25, 2005. And
18 in the back there's a picture of every house that was
19 under construction at that time. Including probably
20 the craziest of all, the Gaby house. And you're
21 finally going to get to see it.

22 Plaintiff moves to introduce the exhibit.

23 THE COURT: Any objection, sir?

24 MR. SMITH: No, Your Honor.

25 THE COURT: Okay.

1 **MR. SMITH:** We don't object to its admission.

2 **THE COURT:** Okay, the same is admitted and
3 introduced as Plaintiff's next exhibit.

4 **(WHEREUPON, Plaintiff's Exhibit No. 11 was**
5 **marked for identification and received into**
6 **evidence.)**

7 **THE COURT:** Yes, sir, you may publish it.

8 **MR. KUNST:** I would also like to mention another
9 thing about that letter which segways into the Gaby's
10 as we begin to talk about that project. In that
11 letter I described everybody, the accounting system,
12 how everything was built. How I was paying things in
13 advance. And how important it was, my reputation,
14 the financial matters and how that everybody trusted
15 me at the time. I could not have had the houses that
16 you see in that letter all under construction at the
17 same time with site managers driving all over The
18 Reserve representing Kunstwerke on just handshakes.
19 There was \$100,000 racing through my company a week.

20 **At the point of construction of the Gaby's,**
21 **where they were really roaring along, just about the**
22 **time this exploded, it was \$60,000 a week for the**
23 **Gaby project alone. \$10,000 a day. If somebody**
24 **missed a day of payment, that's \$10,000 worth**
25 **shooting through the system that my company was**

1 having to cover. The only reason I was able to
2 charge as little as I was, for example, the Gaby
3 project should have been also about \$600,000, I
4 charged them \$96,000. I barely covered my cost. And
5 one reason I was able to do it is you heard Tracy
6 testified that she volunteered and worked with me,
7 she wasn't paid. My elderly father, he wasn't paid.
8 But he did all the bookkeeping. These hundreds of
9 invoices that would come in everyday would come
10 through his house in Simpsonville and he would
11 process it and put it together and send it to us.
12 And we made these progress billings that you see in
13 our apartment in Greenville.

14 You've heard a lot of discussion about the Gaby
15 contract. You see it already admitted into evidence.
16 Well, folks, I wrote the Gaby contract. I know what
17 the Gaby contract says. And what is strange about
18 that is you heard Gene Covington say he wish he had a
19 contract. Well, most people didn't. And for some
20 reason in our last design meeting I had one with me.
21 I don't know what even caused me to even take one.
22 They're the only client who's ever signed a contract
23 that didn't have a construction loan.

24 The Plaintiff — the Plaintiff moves to add the
25 Gaby contract as an Exhibit.

1 **THE COURT:** Any objection, sir?

2 **MR. SMITH:** No objection. I would like to know
3 for the record that the highlighting, that's not part
4 of the original contract.

5 **THE COURT:** Do you want to redact the copy or a
6 clean copy?

7 **MR. SMITH:** No, I'm fine with that.

8 **THE COURT:** All right, good enough. The same is
9 admitted as the Plaintiff's next exhibit.

10 **(WHEREUPON, Plaintiff's Exhibit No. 12 was**
11 **marked for identification and received into**
12 **evidence.)**

13 **MR. KUNST:** For house as large as the Gaby's,
14 this contract is pretty small. Not typical. The
15 most significant line in it is the line that I wrote
16 myself. And it item number six called Progress
17 Payments. And it states, Owner, which would be the
18 Gaby's, shall make progress payments to the
19 contractor in the following manner. Due upon receipt
20 as weekly billings seeking reimbursement are provided
21 with adequate support.

22 Now, the other clients who didn't have
23 contracts, it was the same process. They would get
24 these same weekly billings and they would reimburse.
25 The important thing was, because all this money was

1 going through the company, advancing credit to them,
2 was that they reimburse upon receipt right away.

3 Otherwise, I'd have to stop the project.

4 It was about January 2006, just before this all
5 happened that I had what I've described and have
6 described to my clients in emails, as cash crisis.
7 My company had never been more profitable. The fees
8 that were coming in for me for income were the best
9 they'd ever been. There's plenty of capital in the
10 company but I had the most credit extended that I
11 ever had. And I had a lot of projects that were
12 coming to completion like the Covington's. And
13 normally when that happens is there's a lot of items
14 that are still back in the system that needs to be
15 billed for or old reconciled items that have to
16 occur.

17 Well, it was in January that a few clients got a
18 little slow. A few days late. And the Gaby's
19 themselves, there was a 10 day period where I didn't
20 hear anything. So, there was an extra week of Gaby
21 activity going through the site. And the problem is
22 construction trucks show up. Equipment is rented on
23 the debit card. Other things, deliveries are paid by
24 check. Everything that you've heard so far Mr. Loree
25 described is based on a false premises. And that

1 false premises is that the Gaby's wired a certain
2 amount of money into Kunstwerke checking account and
3 that money sat there waiting to be disbursed. Things
4 were paid based on my accounts, Kunstwerke accounts,
5 when they were due or when Kunstwerke negotiated it.
6 That's why we ended up with so many things
7 unreimbursed for the Gaby's. Someone cannot just
8 simply stop paying their account at a certain date
9 without all this other construction costs coming
10 through. It was a reimbursement contract. And the
11 worst possible thing that could happen is for someone
12 to stop abruptly as of a certain date and then refuse
13 to pay anything else. I'm basically handcuffed at
14 the site. The site should stop. There would have to
15 be a reconciliation of the account.

16 During this January, also, it may have been the
17 same week the Gaby's were late, is — my bank is
18 Regions Bank or was in Greenville. They began to put
19 a 10 day hold on deposits. That was a nightmare as
20 well. Because now suddenly clients deposits coming
21 in were held for 10 days and weren't available.
22 Only a few were. I think the Gaby wire was
23 available. But checks and such that clients paid
24 with sat there. We had a diaster. And you've heard
25 about checks bouncing. It's a terrible thing. It

1 should never happen. It was embarrassing. But the
2 point is that checks weren't bouncing because client
3 money was sitting there waiting to be disbursed and
4 spent elsewhere. That's part of the slander. The
5 checks bounced because Kunstwerke had loaned out to
6 much money, had too much outstanding, needed to
7 collect.

8 Any check that bounced, my account status was
9 never a secret from anyone. I told people, including
10 Mr. Gaby, about the cash crises. It was about this
11 time that the Gaby relationship began to get a little
12 strange. Mr. Gaby began to complain about the cost,
13 and the timing. They wanted to be in by the summer.
14 They planned to use the house four weeks a year. And
15 their first summer visit was going to be roughly in
16 June. Well, all of my clients want to get in right
17 away. All my clients complained about costs. The
18 point being, for this kind of house to be
19 constructed, there can't be a budget. I do
20 estimates. But they're making decisions too as
21 things evolve. And things cost what they cost.
22 There's nothing in the contract about a timeline or a
23 fixed budget. I could never agreed to something like
24 that this open ended. This is the whole contract.

25 So, when you've heard testimony about it was

1 over budget or it took too long, there were no
2 assurances. Mr. Gaby asked me if they could be done.
3 by May 1st. And there were emails back and forth in
4 which I told him that I'll do my best, here's the
5 status. There's a lot of communication in that
6 regard. But at some point the costs were going along
7 at 60,000 a week, as I said. Mr. Gaby contacted me
8 and stated, Keep the rising cost under your hat and
9 not tell Barb. Barb is—

10 MR. SMITH: Your Honor, I'm going to object
11 here. This is blatant hearsay, not proven. Anyway,
12 it's not admissible under the rules of evidence.

13 THE COURT: All right, I'm going to sustain the
14 objection on hearsay grounds.

15 Mr. Kunst, you may proceed.

16 MR. KUNST: As you've seen from the emails there
17 were concerns about the cost and there was concern
18 about the timing. Part of the issue is my houses
19 have to be finished a certain way because they have
20 my name on them. If I were to have remained on the
21 Gaby project it might have taken a few more months.
22 And that was mostly the problem. One of the things
23 that happened when Mr. Loree came aboard is they
24 scaled it way back. And they finished it very
25 differently. They basically just stuccoed the

1 outside real quick and did a much more simple
2 version. So, the exterior isn't quite right.

3 But one of the reasons I only charged \$96,000
4 was because it was another house in my portfolio.
5 And the Gaby house was one of the last few that I was
6 going to do for someone. I had already made
7 arrangements to go back to building speculative
8 houses only. And I already had one house under way
9 that was spec only with an investor from Florida.
10 His name was Thomas Hickey. He's one of gentlemen
11 that you heard David Loree state that he talked to.
12 And Kevin Goad say that — that David Loree had told
13 him things about my Hickey project.

14 The architectural plans that I would make were
15 very fluid. Because things were allowed to change.
16 One of things that I did was unique is I'm known for
17 making full scale models to look like the exact house
18 as though people could move in. And sometimes even
19 those models change. During construction I even
20 sometimes have construction models that the site
21 manager drives around with because they're some
22 things you just can't translate in architectural
23 plans. Sometimes I'll just hand a model to them and
24 say you're just going to have to make it look like
25 this and they would. Sitting over there —

1 If you care to show it to them.

2 MR. SMITH: Are you moving for this to be
3 introduced into evidence?

4 MR. KUNST: I would just like to present it.

5 MR. SMITH: If Your Honor doesn't care I don't.

6 THE COURT: If you just want to use it as
7 demonstrative tool that's fine with me.

8 MR. KUNST: Yes.

9 THE COURT: Yes, sir, that's fine.

10 MR. KUNST: That is actually a construction
11 model of the Gaby house. That's the side that faces
12 the water. It obviously doesn't have windows, it
13 doesn't have all the detail a construction model —
14 the real model would have. That's the model my site
15 manager would drive around with. That was Bronson
16 Sheppard's model. They would — if you saw one of my
17 site managers back during that time, they usually had
18 something like that sitting on the front seat.
19 Sometimes they would have more than one. And that
20 was almost more important than the drawings. Seven
21 bedrooms, underground parking built into the hillside
22 on this side. You don't even see the garage because
23 it's underground. Underground theater. Kitchens on
24 every level. Opens up to the water. The big play
25 rooms, things underneath. It's not shaped like any

1 ordinary house even on the sketches. That's how
2 unique my business was.

3 And it was not uncommon to have visitors to the
4 houses just to see them. For example, I remember one
5 time the building inspector of Pickens County made a
6 special field trip just to look at my houses one
7 time. And a little earlier in 2005 there was
8 actually a time in which they stopped inspecting my
9 houses like other ones because structurally they're
10 just too unique and it didn't fit what was typical.
11 So, they would tell Bronson to — have Bronson send
12 them the structural plans stamped. Because they
13 couldn't really inspect the structure. Well, that's
14 the house that David Loree arrived to finish.

15 And you heard about this meeting on
16 February 16th that we had with Mr. Loree. You've
17 heard from everybody there except from me and my
18 father now. This meeting was called after a series
19 of emails. The main purpose of the meeting was to
20 bring the box of billings. And I'm going to tell you
21 why that was significant. Out of all of these
22 clients, of the ones that were listed in that letter,
23 all those pictures, everybody received a weekly
24 statement that Tracy mailed to them. Which had
25 copies of every supplier and contractor who paid,

1 stapled a summary of everything attached. They were
2 pretty thick. Every client got one. And the Gaby's
3 were the only client not to have one mailed to them.
4 And the reason was in our first meeting, the meeting
5 that we signed this contract, Richard Gaby said he
6 didn't want to bother with the paper work. He said
7 keep our copies. I told him I would keep it in a
8 box.

9 What I did was I emailed a cover sheet of the
10 bill to Mr. Gaby with a request for the wire every
11 week. Basically, Mr. Gaby wired for 70 weeks. Wires
12 without really knowing exactly where it went. And
13 the point was it never occurred to me that I couldn't
14 be trusted. You know, all my clients — I mean, it
15 was never a question like could Scott or his company
16 be trusted with this? There was never a problem.
17 There was nothing different about my accounting
18 records, about the way my company was managed. In
19 February 2006, then in February 2005, 2004, 2003,
20 2002, the way I paid myself, the way I paid the subs,
21 the way I had contracts set up with the supplying
22 companies, it was all the same. It was into this
23 environment that David Loree came.

24 One of the things that I wanted to get across in
25 the meeting with David Loree was how that I needed to

1 get the two most recent statements reimbursed. That
2 was critical. David Loree stated that he wanted to
3 take over the payments of subcontractors and
4 suppliers. That was a good thing ultimately.
5 Because something that's very important that you need
6 to understand is that this was a courtesy. Normally
7 a builder would have a mark up on say a painters
8 invoice or a lumber invoice from a supplier. There
9 would be a little percentage like the handling cost
10 or the builder's fee would be attached as a
11 percentage.

12 All of these invoices that you've been hearing
13 about from all these companies, from Systems
14 Specialities, to Builders First Source, all we were
15 doing was paying them on their behalf. And
16 accounting for them and creating summaries so that
17 they didn't have to do it themselves. There was no
18 mark up. It cost me money. It cost my dad time.
19 That's what makes it even that much more, I won't use
20 the word evil, but folks, I was — when a concrete
21 truck would come and we would pay say \$4,000 at the
22 Gaby site, that payment came out of my own capital.
23 I was basically loaning that money. And my clients
24 trusted me. And I trusted that when I wrote that or
25 the site manager wrote it or the site manager used

1 his debit card on my account, I trusted that the
2 people would reimburse. Up until February 16th,
3 2006, no client had ever not reimbursed. Because
4 every client up until that point, 5200 weeks, had a
5 full support and could contact anybody, any of the
6 suppliers listed in that progress billing if they had
7 any doubt. I don't know if any ever did but
8 everybody continued to trust me. There was nothing
9 different about that day.

10 In Defendant's Exhibit 12 Mr. Loree read an
11 email from Mr. Gaby to me. I later had him read my
12 response. And I'm going to read it again. Not to be
13 redundant but I want to state something about it.

14 I said, my challenge is this. The sheer volume
15 of activity and payments made before billing you has
16 resulted in two progress billings that I have not
17 been reimbursed for. Everything under 2/16 billing
18 of 60,000 as well as a subsequent 2/20 billing of
19 27,000 he had paid out. I have roughly 90,000 paid
20 out. Then I go on later to state, It's just more
21 difficult for me to pay the remaining when I don't
22 know what becomes of the 90,000 outstanding.

23 That was the environment at that time. I had a
24 client who basically said they were going to stop
25 paying. They're subcontractors who are owed,

1 suppliers that are owed that I have to protect.
2 There's also the possibility of liens. At some point
3 if a client doesn't pay I may have to put a lien on
4 the house to protect everybody. I have a legal
5 obligation to do that. At this date on
6 February 20th, 2006, it's just yet one more reminder
7 that Mr. Gaby, and if he shared this with Mr. Loree,
8 should have known my dilemma. That obviously wasn
9 an account where they just put in money that I
10 disbursed from. That would be considered a fiduciary
11 account. And that's usually what happens in
12 building. Usually there's what's called a
13 construction account that funds are put into and the
14 builder pays from that. And there's certain codes
15 and laws based on that to make certain that the
16 builder really spends it for the purposes that it's
17 going.

18 All the way back to Dr. Tom's house, the one
19 thing I insisted was I did not want to hold fiduciary
20 deposits. That's why I was willing to take the risk
21 to advance credit. I didn't want to have to be
22 responsible for taking bank draws from mortgage
23 loans, I didn't want to have to do any of that. All
24 I said was I'm going to build your house like I use
25 to do my spec houses. I'm to going use my same

1 accounts from the same companies that I've always
2 used. I personally guaranteed everyone of them. And
3 I'm going to just send you — after a week I'm going
4 to send you a stack of invoices and you reimburse me.
5 That's what the Gaby's agreed to.

6 There were other emails at that time that I sent
7 to Mr. Gaby describing my cash crises and reminding
8 him that it was not a fiduciary type deposit account,
9 that it was a credit account. And that I had to be
10 reimbursed. One of the benefits of having a
11 spreadsheet based accounting system, if anyone is
12 familiar with that, is that you can sort data and
13 move it places and you can summarize things as you
14 need them. I've pointed often to the big blue binder
15 there. Those records have always existed. They're
16 accounting records. Accounting records always exist
17 at the point that the transaction occurs. Now, they
18 accumulate over time but the accounting records are
19 objective, they're knowable. One can state that they
20 didn't exist but they exist. That's how I accounted
21 for things. The progress billing could not have been
22 prepared but for the spreadsheets that produce this
23 data.

24 One of things that was my most important, I'd
25 say data point to look at, that's what I called my

1 funding deficit. I could actually determine on a
2 given day, if I wanted to, how much cost Kunstwerke
3 had incurred more than a client had actually
4 reimbursed. Wasn't hard to do. Now, I use the word
5 incurred instead of paid. The reason is when
6 invoices would come in from big suppliers, they were
7 bought on account. So, there wasn't a check for
8 every little invoice. Some accounts, if timing was
9 bad and we had a cash crisis, yes, like you heard
10 David Loree testified, there could be an account that
11 was a month or two months past due. I had certain
12 vendors that let that happen because I gave them so
13 much business. That didn't mean that something array
14 had occurred with the client money, that was just my
15 own cash flows.

16 Well, on the date that the Gaby's stopped paying
17 and we had this meeting on February 16th, every other
18 client stopped paying. Including the Covington's.
19 There was one client named Coco, according to my
20 records, who paid just a little later. I don't know
21 if he knew what was going on but his last payment was
22 on February the 24th. Way back in 2008, in this case
23 and all the other related cases, the big blue binder
24 was printed out and placed into evidence. It's been
25 available all this time. It was available back at

1 this February 16th meeting.

2 Well, one of the summaries that I prepared when
3 I filed that, I asked it to tell me, how much did
4 each client owe as of that date? And this sheet
5 lists every client. It showed me that on that date
6 that the Gaby's stopped paying, that there was
7 \$102,405 funding deficit. Not cash. That's just the
8 cost that my company had incurred more than they had
9 paid. It's a large number in the millions. But the
10 total payment at that date that the Gaby's had made
11 was this amount and the total invoices from everybody
12 else was this amount. And when you cross them
13 together, it's 102,405. That's always been in the
14 records. That's always been auditable. Anybody
15 could have done an audit. My old career was as an
16 auditor. That would be about a 30 day audit if you
17 were to do all the clients and do the full set of
18 books. It wouldn't be hard to do. I have a team of
19 two. I use to budget those things when I did audits.

20 The only testimony you've heard from Mr. Loree
21 has been about invoices paid and cash. Calling
22 people. No accounting records but just calling to
23 see if people have paid or not. Well, if you were to
24 stop paying at any one day, you would have found the
25 same results that Mr. Loree found in February of

1 2006, you would have found those same results in
2 2005, nothing different. Didn't mean that money was
3 being abused. Or I think as Mr. Gaby put it, you're
4 robbing Peter to pay Paul. It's more -- I would say
5 it's more like accusing me of being a thief because I
6 didn't loan you enough.

7 Also, when I printed out the big binder for this
8 expert witness that was supposed to be here--

9 MR. SMITH: Objection --

10 Hold on.

11 Objection, Your Honor. He was perfectly free to
12 call Mr. Larkin. We don't need him for a defamation
13 case. We have heard him say this over and over and
14 over and over again. He has subpoena power. I would
15 ask the Court to instruct him to stop this.

16 THE COURT: All right. I sustain.

17 Characterizes it as oppose to -- I just want to
18 make sure it's not incumbent upon any party, whether
19 it's Mr.~Kunst or Mr. Loree to call any particular
20 witness. They all have the discretion to call those
21 witnesses which they think appropriate, important and
22 necessary to advance their positions.

23 So, go ahead, Mr.~Kunst.

24 MR. KUNST: Plaintiff moves to enter Exhibit 13
25 into evidence.

1 THE COURT: Objection, sir?

2 MR. SMITH: Yes, Your Honor. We object that
3 it's hearsay. It's not the best evidence and...

4 THE COURT: Have you authenticated it? That is,
5 have you described what it is?

6 MR. KUNST: Yes, sir, Your Honor. It is the
7 first four pages of the voluminous ledger that's
8 already been in evidence.

9 THE COURT: Who prepared that?

10 MR. KUNST: It's Kunstwerke accounting records
11 prepared by Kunstwerke and myself.

12 THE COURT: All right, I'll respectfully
13 overrule your objection. He's authenticated as his
14 own work and described what it is. I'll allow it in
15 as the next Plaintiff's Exhibit.

16 (WHEREUPON, Plaintiff's Exhibit No. 13 was
17 marked for identification and received into
18 evidence.)

19 MR. SMITH: Your Honor, just to be clear, are
20 you admitting as a summary exhibit or as?

21 THE COURT: I'm admitting it for what it's worth
22 without characterization.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: You may proceed, Mr. Kunst.

25 MR. KUNST: In this exhibit that you'll also see

1 in evidence, is a summary that flows through the
2 ledgers and reconciles to Kunstwerke's bank
3 statements. A full summary of all my own personal
4 draws from the company. Which would basically be m
5 income. Kunstwerke was a S Corp. Which meant that
6 any income from the company flowed directly to my ta
7 returns. I paid taxes based on the income of the
8 whole company. That income could become my proper
9 basically if I retained it in the corporation to use
10 for things like paying out. It's sort of a version
11 of retained capital. Records exists that show every
12 personal draw and how they're accounted for. Record
13 exists that show what my personal draws have been.
14 In 2004 this could be considered the cash I took out.
15 76,986. In 2005 it was a 89,596. And in 2006 it was
16 13,757.

17 When this crisis hit I sold a house. Tracy
18 actually had a house when she -- started building
19 when she was 25 with her own income. She lost that
20 eventually too throughout all of this. But I got a
21 loan from Tracy's father. And the money I got from
22 selling the house on Caesars Head, I actually put
23 that in the company. In January, February 2006
24 during the cash crisis to cover things. Not to cover
25 up, to cover what was all lost. Because on this

1 front sheet, the funding deficit at that date, was
2 \$539,000 from all the clients involved. That was
3 money lost. That was money due to be paid to
4 Kunstwerke. Not the other way around.

5 You heard about the engagement ring and things
6 like that. Kunstwerke was my only source of income.
7 So, when purchases would be needed for something big
8 like the event in September of — oh boy, I'm
9 probably going to be in trouble.

10 MS. HILTON: 2005.

11 MR. KUNST: 2005. I had to buy an engagement
12 ring from Haywood Mall. I had to withdraw money from
13 the company to do that. It didn't mean I was taking
14 some client's money. And there's no expert that will
15 be here to say that. Because I'm entitled to
16 withdraw my own income. For example, at the time
17 that they mentioned this engagement ring, I could
18 quickly look at my draw schedule and say that I had
19 accumulated over \$100,000 that I could take out if I
20 wanted. It wasn't someone else's cash, it wasn't a
21 fiduciary trust account.

22 One thing that's never been addressed in this
23 case or any other cases are how I made my income in
24 the company. And that is from the little fees I
25 charged. I talked about the 48,000 to the

1 Covington's and the 96,000 to the Gaby's. Well,
2 everyone client would pay a little fee. Some 4000 a
3 month, some as high as 6000 a month. Well, it's all
4 in the ledger. And each year the fees would come out
5 to be about 200,000 or so. A lot of work, a lot of
6 houses. Well, the corporate expenses would come out
7 of that. And after the corporate expenses come out
8 of that, that would be what's available for my draw.
9 The client money was accounted for completely
10 different. These were separate autonomous accounts
11 within the ledger that rolled up through these
12 spreadsheets to this front page that tell me that had
13 no bearing on these. So, it's deceptive for anyone
14 to tell you that money was taken from these clients
15 and spent on personal things. It not only didn't
16 happen, it was impossible.

17 Mr. Loree stated he was surprised they were just
18 copies that he got at that February 16th meeting.
19 What I'm showing you is an example of actual invoices
20 that would come into my father's desk in
21 Simpsonville. Some would even have construction dirt
22 on them.

23 Plaintiff moves for Exhibit 14.

24 THE COURT: Okay.

25 Any objection, sir?

1 **MR. SMITH:** Yes, Your Honor. I was asking if
2 what he was intending to use those for. If they're
3 just to show that they're invoices, we don't object
4 to admission. But testify to content of — I mean,
5 of the invoice that as it relates to the project,
6 then we would like to have the contractor testify.

7 **THE COURT:** What's the foundation?

8 **MR. KUNST:** An example, I won't testify to
9 content.

10 **THE COURT:** Okay. You comfortable with that,
11 sir?

12 **MR. SMITH:** Yes, Your Honor.

13 **THE COURT:** All right, then I'll allow it in as
14 next Plaintiff's Exhibit.

15 (WHEREUPON, Plaintiff's Exhibit No. 14 was
16 marked for identification and received into
17 evidence.)

18 **MR. KUNST:** What would occur is my father would
19 photo copy these and then they would get part of the
20 progress billings. And then one copy of the progress
21 billing would get mailed to the client, one would get
22 mailed to the site manager and I would keep one.
23 Well, why this is significant is my father would just
24 throw these in a box, kind of like a shoe box. And
25 for a big project it could really build up. Well, at

1 the time that everybody stopped paying and all this
2 litigation began where we had to try to collect it
3 through litigation, eventually, those records were
4 taken and looked at by whoever. I'm here to testify
5 that I have always been in possession of the original
6 Gaby documents. The original Gaby invoices from
7 suppliers. It's the only one that stopped paying
8 that I'm still in possession of. No one else has
9 touched them but me, Tracy, my father and whoever
10 sent them.

11 One of the reasons that this exploded so bad was
12 not just that 539,000 was outstanding, was that I had
13 to deal with letters that were going out from
14 attorneys. You heard Mr. Loree testify or read a
15 part of a letter that said I had stiffed subs. And
16 taken money from them. Well, that's part of the
17 slander is that it was represented that money
18 intended for the subcontractors had been taken by me
19 because it was missing. That's why that term missing
20 was so important. These subcontractors had a right
21 to file liens on the property. But the contract was
22 misrepresented to the point that they were told if
23 they filed liens, that there were laws and they would
24 come after them. And the letters specifically
25 referenced codes, legal codes. That made my job that

1 much harder.

2 You heard Mr. Loree testify and show documents
3 regarding some cabinet deposits. And I think there
4 was a reference to some window deposits earlier in
5 Kevin Goad's testimony. These were two large items.
6 They're roughly in the \$80,000 range. They were
7 deposits that Kunstwerke had already collected but
8 not paid out to the windows or the door people. Or
9 the cabinet people. At the time that the Gaby's
10 stopped paying, and my ledger showed \$102,000 in the
11 hole, basically. I was not going to pay out those
12 amounts until the Gaby account was reconciled. My
13 reconciliation would have the Gaby account going to
14 zero. What needed to happen at that time is the
15 cabinets should not be delivered, the windows should
16 not be delivered, the project needed to stop and
17 needed to be reconciled and all the accounts settled.
18 What they wanted to do is not miss a day of
19 construction because they had to get it done in a
20 hurry. And they misrepresented the contract in so
21 doing.

22 I had no other option but to withhold certain
23 things to reconcile against what they owed. It's a
24 way of netting out. If I showed there were things
25 that I paid out already, then the idea would be to

1 refund them, the window and the cabinets to pay
2 directly. That's the leverage I had by extending
3 credit. That's how the contract was set up. The
4 last thing I was going to do is do what Richard Gaby
5 asked in an email that he read to you earlier and
6 that was, pay the window deposit and pay the cabinet
7 deposit. Because that would have meant extending
8 another \$180,000 or whatever it was in credit. With
9 absolutely no assurances that that other large amount
10 would ever be reimbursed. And he already told me it
11 wouldn't be.

12 Well, you've heard some reference to a lawsuit
13 by the Gaby's. I had never been sued before. And as
14 I said in my opening, I had never been involved in
15 any kind of legal matter whatsoever. The Gaby's sued
16 me. In, I believe, it was May of 2006. I responded
17 to the lawsuit, I couldn't find a lawyer. I couldn't
18 afford a lawyer. We were broke. Everything had
19 completely collapsed by then. So, what I did was I
20 sent a letter to Sandy Stern, the attorney at the
21 time for the Gaby's, explaining the whole situation.
22 I was -- I have to admit I was a bit incredulous
23 about the lawsuit. So, I sent this letter.

24 Plaintiff moves to introduce Exhibit 15 into
25 evidence.

1 **THE COURT:** Any objection, sir?

2 **MR. SMITH:** No objection.

3 **THE COURT:** Without objection the same is
4 admitted into evidence.

5 (WHEREUPON, Plaintiff's Exhibit No. 15 was
6 marked for identification and received into
7 evidence.)

8 **MR. KUNST:** I'd never been sued before.

9 Sometimes I guess a lawsuit can be more scary
10 depending on who is suing you. If someone like the
11 Gaby's are suing you it's going to be pretty darn
12 scary. Particularly considering their resources. We
13 were scared out of our minds. I wasn't doing well at
14 the time. As this all happened but I'm not going to
15 use that as an excuse. I sent this letter and in it
16 I summarize the whole situation. Reminded them, yet
17 again, of the unreimbursed invoices.

18 In the next to last paragraph I state, If Rick
19 Gaby had simply paid all progress billings as agreed,
20 there would be little more to discuss. Please
21 forward as soon as possible a listing of all those
22 items that the Gaby's have reportedly paid twice and
23 I will then adjust the final 4106 progress billing
24 accordingly and provide a final balance owed by Gaby
25 with full cash support within three business days of

1 receipt.

2 This obviously is not an answer to a lawsuit.
3 There's a more formal way that you answer. We
4 eventually got an attorney to help us answer in a
5 more formal way but we were late. We were deemed a
6 few days late. What occurs if you're late on a
7 lawsuit is that they can petition for what's called a
8 default. Which means you've already answered. You
9 basically agree to their lawsuit, the fight's over.

10 Well, the Gaby's never responded to this letter.
11 There was no interaction with the accounting records.
12 There was no litigation where I brought my records
13 and they brought their's and we came to some new
14 balance. The Gaby's forced a default on me. I
15 hired — we didn't have the money, really, but we
16 were able to get a law firm named—

17 MR. SMITH: Your Honor.

18 THE COURT: Yes, sir.

19 MR. SMITH: I have to object. And I really hate
20 to do this, I'm trying to let him tell his story.

21 The statement the Gaby's forced the default on him is
22 not an accurate statement. And he's testifying to
23 something that he has no first hand knowledge
24 about.

25 THE COURT: Let me say this, I don't take the

1 position as to whether he's mischaracterizing it or
2 not. I know that there is another way to
3 characterize it. And I'm sure in cross-examination
4 you can flesh all of that out.

5 MR. SMITH: I'll do my best, Your Honor.

6 THE COURT: Yes, sir. I respectfully overrule
7 the objection.

8 You may continue, Mr. Kunst.

9 MR. KUNST: Jim Carpenter, a law firm in
10 Greenville, he agreed to represent us. He prepared a
11 counterclaim to the Gaby lawsuit. He prepared an
12 answer. Kunstwerke counterclaim to the Gaby lawsuit
13 was larger than their claim. We fought to remove the
14 default so that the case could be litigated like the
15 Covington case and all the other cases were. Where
16 the clients ended up paying money. The Gaby's
17 challenged the default all the way to the State
18 Supreme Court. I lost. The Gaby's then were granted
19 what's called a default damages hearing. What that
20 hearing is is it occurs in a courtroom like this
21 without a jury. And me and Kunstwerke show up.
22 Basically, already at fault for whatever the claim
23 stated. We were not permitted to introduce any
24 evidence, any accounting records. Anything that
25 would contradict what the Gaby's said. The Gaby's

1 did not testify. Only David Loree testified on the
2 Gaby's behalf.

3 You have heard very often the statement that the
4 support for the \$400,000 missing Gaby amount or
5 whatever, stolen, embezzled, whatever they use. You
6 have heard that their truth defense is based on a
7 judgment. That there's a judgment against me by
8 court of law. That judgment is a default judgment.
9 It's a judgment I could not contest. In that hearing
10 David Loree submitted what was called the Gaby
11 Damages Computation. It's the document we saw
12 earlier that totals to \$353,993. What's significant
13 about this document is it's not a reconciliation of
14 the Gaby account. It is just a series of damages
15 that they believe they have. There is no
16 corresponding column for everything they had not
17 paid. There's no corresponding column for any kind
18 of reconciliation. There were items introduced there
19 that were blatantly wrong but I could not contest
20 them.

21 At any time during the hearing in which I would
22 try to introduce evidence that might contradict what
23 was in this computation, it was objected to. There
24 has been no criminal finding on any code whatsoever.
25 This was a civil default damages that was

1 uncontested. If that \$353.00 number that totaled on
2 that computation were correct, if I had actually
3 taken that money from the Gaby's, it's very likely
4 that I would be sitting in jail. And as I stated
5 earlier, I've never had more than a traffic ticket.

6 One of the things that has upset Tracy and I the
7 most was that the Gaby's did not give us a chance to
8 fight. They would have you believe that there's is
9 the only account that money was taken from because in
10 all the other instances that I listed that totaled
11 that 539, everyone of those clients were sued.

12 Everyone of those clients settled in Kunstwerke's
13 favor because money was owed. Now, Eugene
14 Covington's case, as you heard his testimony, we only
15 collected 25,000. That's pennies on the dollar. But
16 we knew at that point that we wouldn't collect 10
17 percent and I just needed the evidence for you. I
18 wanted to be able to stand here nine — sit here nine
19 years later and say the Gaby's were the only people
20 that we could not collect from. It was because of
21 this default damages. Our counterclaims were
22 dismissed.

23 One thing that I've done, and I would hope y'all
24 would do the same if you're ever defamed, I have not
25 been quiet about it. When this was happening, after

1 it happened, I have been as vocal as I could possibly
2 be. And I haven't snuck around construction sites
3 saying that somebody stole money or did this stuff
4 without confronting them first, either. I have put
5 things in writing and I published it.

6 THE COURT: Ladies and gentlemen, I ask you, is
7 any of need to take a break? By show of hands,
8 anybody? Okay. All right. Let's take a short
9 break, we'll come back on the record. Please don't
10 discuss the case.

11 (WHEREUPON, the jury left open court at
12 approximately 2:37 p.m.)

13 THE BAILIFF: Jury secured, Your Honor.

14 THE COURT: Okay. Thank you.

15 The clerk handed me a note that said some jurors
16 were nodding off. Which I noted as well. The
17 message that you should take from that is you may not
18 be resonating with all the jurors right now. You
19 need to pick up your pace and you need to be more
20 surgical, okay?

21 MR. KUNST: Okay.

22 THE COURT: And I'm saying that just as an
23 objective observation of them nodding off while
24 you're talking to them, okay.

25 All right. Good enough, we'll come back in in

1 about 5, 10 minutes when the jury is ready. Thank
2 you.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: Okay, ready for the jury?

5 All right, bring them in, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:55 p.m.)

8 THE COURT: Okay, Mr. Kunst, you may resume your
9 testimony, sir.

10 MR. KUNST: The Plaintiff moves to introduce
11 Exhibit 16.

12 MR. SMITH: No objection.

13 THE COURT: All right, without objection the
14 same is admitted into evidence.

15 (WHEREUPON, Plaintiff's Exhibit No. 16 was
16 marked for identification and received into
17 evidence.)

18 MR. KUNST: Folks, as I said yesterday, David
19 Loree never confronted me with anything he said. I
20 didn't know any specifics of the allegations. I had
21 to find it out from witnesses myself. Some of those
22 affidavits weren't prepared until as late as 2007.
23 The first document I ever received to indicate to me
24 what was wrong, what amount was — whatever missing,
25 their damages, was that damages computation from the

1 default hearing. David Loree never sent me anything
2 else.

3 So, when we arrived, Tracy and I, and the in
4 Kunstwerke's attorney in the default damages hearing,
5 I was desperate to get that piece of paper. Because
6 that would be the first time that David Loree would
7 testify under oath as to what went wrong and have to
8 provide numbers for it. Within a week of getting
9 that sheet of paper, I took it, took the real
10 accounting records to it and I sent it out to the
11 public and I massed mailed it to as many people as
12 possible. And I'm telling you under oath right now
13 that I did that. With no fear.

14 I wrote a letter, it's dated April 12th, 2007.
15 It explains the whole default fight. How we fought
16 it. It takes the actual Gaby damages computation,
17 and I was being very colorful, I put a letter beside
18 every item and explained it to the public. Then I
19 created what I thought would be the correct Gaby
20 damages computation, which would be zero. And I also
21 included invoices, progress billings, they never
22 paid. And I also sent to the public detailed as to
23 why everyone I felt was wrong. Well, another reason
24 this was so important is there were a lot of
25 subcontractors and suppliers that never got paid.

1 And as of this very date there are still some that
2 have not gotten paid. And one thing that I did, as I
3 was sending out these things to the public, I gave my
4 word to the subcontractors who were left high and
5 dry, if any of them wanted to sue me they could. I
6 would not contest the judgment. I have several
7 judgments against me from companies like Jennings
8 Builder Supply in Brevard, North Carolina. They were
9 my biggest supplier and I had the largest outstanding
10 balance at the time. I owed them \$175,000,
11 personally. Because I personally guaranteed the
12 account. Every year I give them an update and send
13 them an email and give them my word that they will
14 get paid.

15 This week we're pretty much at the end of the
16 line as far as that ever occurring. But I needed to
17 correct the record because no one is going to do it
18 for us. If we sat back and did nothing, they were
19 going to assume it was all true. And when I say
20 they, I mean the public. Because you don't know who
21 did not hear. If Bronson Sheppard the site manager
22 knew, he wasn't going to keep it a secret. He was
23 going to tell other people and it was going to
24 explode and it did. It obviously did. So, I had an
25 obligation to folks to give my side. And I've done

1 that repeatedly.

2 Mr. Loree testified a short while ago about a
3 black binder. He thought it was accounting records
4 when I was referencing the actual accounting records.
5 That was something else I did. I did that even in
6 the default damages hearing. I sent out 50 large
7 black binders with copies of Gaby invoices and the
8 whole story as I felt it was. I have had no fear of
9 telling people what happened. And I continue to do
10 that. And I will continue.

11 One of the items on here that I'd like to share
12 with you, I'm almost done, is what I think is the
13 most outrageous. David Loree testified in the
14 damages hearing about one of the line items which is
15 called CMC Asphalt. You'll see it in the damages
16 computation, \$7,100. He claimed that the Gaby's were
17 damaged for \$7,100. I believe that this is the dummy
18 invoice. I believe that that was placed here for
19 that purpose. What happened was Bronson, the site
20 manager at the Gaby project, said that the driveway
21 was very steep. And when it would rain it would be
22 hard to get up and down. So, we did a early paving,
23 asphalt paving so that trucks can get down. It
24 wouldn't be the final coat but we had to pay it. It
25 was about \$7,100. Bronson sent in to my father the

1 invoice like the site managers did every week. He
2 sent in an invoice that said Triple N Paving. A copy
3 of it is in here. Bronson wrote a check at the site
4 for it. My site managers wrote checks. They even
5 had debit cards. It was Triple N Paving.

6 Well, \$7,100 was a decent amount of money. And
7 Bronson called me and said we had the driveway paved
8 today and I wrote a check for \$7,100. A few days
9 after that it was time for me to prepare a Gaby
10 progress billing. I put in the progress billing, CMC
11 asphalt. There's a company that was doing hydro
12 seeding and other curb work. I thought Bronson told
13 me that it was CMC that got the asphalt pavers.
14 Well, I had put in a budget number. We never used
15 Triple N Paving. I shouldn't call it a budget
16 number, it's kind of like a sub ledger category.
17 Every person that did work on the Gaby site and the
18 other project has their own little ledger in that big
19 binder. Well, I had to put something, he didn't tell
20 me who it was, so I just put in CMC Asphalt little A.
21 Check was still written, everything was fine.

22 In this hearing, Mr. Loree and the attorney,
23 went through this whole process where they told the
24 Judge that I had created a dummy company named CMC
25 Asphalt that didn't exist. They went through this

1 entire ruse in which they stated that they contacted
2 these licensing agents, did you find that CMC
3 Asphalt? And Loree would say, No. But in reality
4 everybody knew all along it was Triple N. And that
5 within weeks, once I got the invoice and I changed
6 the line item and printed the Triple N Paving
7 account, there was no money taken from the Gaby's.
8 The point was it was a default judgment hearing, they
9 knew it was a default judgment hearing and they knew
10 that I could not submit any evidence to contradict
11 them and say, here is the check, here is the actual
12 invoice. The Gaby's aren't due that \$7,100. That
13 ruse occurred, that's part of the 400,000 judgment
14 against me. Along with other items. That's why the
15 default damages was so bad. So, when you hear that
16 there was a \$400,000 Gaby damages against me, in my
17 opinion, in my own testimony, it's cowardice. They
18 could have litigated their account like everyone else
19 did.

20 Now, this is so upsetting for Tracy and I. We
21 were discussing on the way over here, this is
22 terrible. You know, I meant to say in the opening
23 that I know jury duty is awful but you don't know,
24 it's harder for me. We do not have lawyer
25 personalities. This is not — you can see this is

1 not what I do. We never wanted to do any of this. I
2 could not afford to sue these people. I could not
3 afford to make this right. Everything that's said
4 here upsets us, you just don't see it. Those pews
5 are empty. You don't see family members here.
6 Because we don't allow it. Because I have sat
7 through nine years of hearings and lawsuits. Where
8 mud has been slung at me. Where dirty tricks like
9 the Triple N Paving thing. And family members say
10 they want to come here and support us. We say, No.
11 We tell them that Tracy and I have gotten thick
12 skinned to all this. We really haven't, we just tell
13 them that for their sake.

14 I was eight years younger when this began.
15 There's a reason why this is the last lawsuit. It is
16 so difficult to learn how to do this. Particularly,
17 when it's not your talent, your personalty. The —
18 you heard in their opening statement regarding the 20
19 lawsuits. You heard something incorrect. I have to
20 correct it. Mr. Smith stated that I lost all 20
21 lawsuits. Quite the opposite's true. It has been
22 quite a battle. There was not a lawsuit that we
23 desperately did not want to file. But we needed to
24 until this week. Because I would not have been able
25 to tell you that Gene Covington settled and that

1 there was no theft from his project. I won't be able
2 to show you what I'm about to show you with these
3 other clients that settled and paid. I wouldn't be
4 able to demonstrate to you that the Gaby account was
5 the only one that wasn't litigated.

6 When this started hitting everybody was
7 spreading rumors. We knew where it started but we
8 needed facts. And we went to people and we told
9 them, you know, you need to pay your account. Where
10 did you hear these rumors? Some people repeated
11 them, they shouldn't have. We would have settled any
12 lawsuit if anybody would have told us the source and
13 would have agreed to an independent audit of their
14 account. We said that repeatedly. In many cases we
15 did settle for just information that we're using
16 today.

17 Every Kunstwerke, which is an S Corp, lawsuit
18 that was filed had to be done by an attorney. I
19 couldn't represent the corporation. I had to agree
20 then that the proceeds that whatever came from those
21 lawsuits would go toward attorneys fees. In the end
22 Kunstwerke collected very little. So, I was still
23 responsible, personally, for all that debt. I'll say
24 it again, there was not one corporate lawsuit that
25 Kunstwerke filed that did not settle in Kunstwerke's

1 favor. That's not what you heard earlier. Secondly,
2 many of the defamation lawsuits were dismissed
3 because there wasn't enough evidence. The people
4 only heard it secondhand, perhaps. There wasn't
5 evidence like this case. But we got information.
6 And it's called discovery.

7 MR. SMITH: Your Honor, I truly hate to do this
8 but we have gone so far into argument, away from
9 evidence, that I'm compelled to stand up and object.

10 THE COURT: Okay. All right. I'm going to
11 respectfully deny your objection or overrule the
12 objection. I'll allow Mr.~Kunst to continue
13 testifying.

14 MR. KUNST: Plaintiff moves to introduce Exhibit
15 17.

16 THE COURT: Any objection?

17 MR. SMITH: No objection, Your Honor.

18 THE COURT: Okay, without objection the same is
19 admitted into evidence as Plaintiff's Exhibit 17.

20 (WHEREUPON, Plaintiff's Exhibit No. 17 was
21 marked for identification and received into
22 evidence.)

23 MR. KUNST: It seems almost flippant to
24 introduce these exhibits because it's just a stack of
25 paper. But it took a long time to win some of these.

1 It almost seem anticlimactic to introduce them.
2 Tracy testified about a couple named Debaco that we
3 visited in Atlanta a couple of times. One of the
4 reasons we visited them twice was that they had heard
5 things and we begged them to tell us who. They also
6 owed a tremendous amount of money. After the
7 Covington's they owed the second most amount. They
8 continued to refuse to pay. We continued on the
9 project longer than anybody else's project even
10 though they owed that money. Under the assumption
11 that perhaps they may pay. They ultimately did.
12 They didn't agree to independent audit, we had to
13 sue. We collected a judgment. It's a confession
14 judgment. It just states that they admit they didn't
15 pay all their bills and they're agreeing to pay the
16 Kunstwerke attorney going forward. There was no
17 money taken from their project. Anymore than the
18 Covington's.

19 Plaintiff moves to introduce Exhibit 18 into
20 evidence.

21 THE COURT: Any objection, sir?

22 MR. SMITH: No objection, Your Honor.

23 THE COURT: All right, without objection the
24 same is admitted as Plaintiff's Exhibit 18.

25

1 (WHEREUPON, Plaintiff's Exhibit No. 18 was
2 marked for identification and received into
3 evidence.)

4 MR. KUNST: If you recall in Kevin Goad's
5 affidavit he named four clients that David Loree
6 alleged that money was taken from. He alleged
7 Parham, Coco, Covington and Hickey. You've heard
8 from Covington today. This is Coco. You also heard
9 Mr. Smith say that I lost all of my defamation cases,
10 that's not true. This was a settlement of the
11 defamation and corporate case together. This
12 happened mid-trial of a defamation case just like
13 this. Mr. Coco had repeated many of the things that
14 David Loree had told him. It went half way through
15 trial. This is a judgment --

16 MR. SMITH: Your Honor, I have to object again.
17 I'm really sorry about this but he's -- now he's
18 saying what I said, he's not he -- he's
19 misrepresenting what I said to the jury. I never
20 said that he lost all 20 of those cases.

21 MR. KUNST: Check the record, Your Honor.

22 MR. SMITH: We can.

23 THE COURT: The jury heard everything that's
24 been submitted on the record.

25 MR. SMITH: I just want it on the record.

1 **THE COURT:** I understand that. The jury
2 remembers what was said and what was not. And I'll
3 leave it in their good discretion and their memories
4 to determine—

5 **MR. SMITH:** Thank you.

6 **THE COURT:** Who's correct.
7 Go ahead.

8 **MR. KUNST:** One that I don't have, perhaps I
9 should have got it for today, that's not in evidence.
10 And that is an attorney who died before the
11 settlement occurred. It was Mike Parham. He was an
12 attorney in Greenville, he had a auto accident and
13 died. He passed away at about the sixth year of his
14 lawsuit, Kunstwerke lawsuit again him. He was a
15 client of mine as well. He was a friend of Gene
16 Covington's, who was sitting here. Both Gene
17 Covington and Mike Parham's case were outstanding f
18 six years. Parham's case was settled. There's court
19 record that would state that. I can testify that it
20 was about \$15,000 that was paid.

21 There was also another one mentioned in Kevin
22 Goad's affidavit named Hickey. This one's unique.
23 And I'll be as quick as I can. That was my Florida
24 investor. That was the project — that was the
25 project that was supposed to get me back into spec

1 only. Actually a good thing, I wouldn't have to deal
2 with clients again. But David Loree, according to
3 the affidavit that Kevin Goad submitted, spoke to
4 this investor in Florida. I was part owner of the
5 property. I lost that. It's a long story.
6 Nonetheless, I had to sue Mr. Hickey as well, that
7 case settled.

8 There were other ancillary cases in this 20 but
9 there was not a case that was filed that didn't point
10 to this one. This kind of thing — when there is an
11 explosion this massive in a person's life and their
12 business, you have to respond in the same way and get
13 everybody out in the open and force it to the top.
14 And it will float to the top. It will end up with
15 one case.

16 One of things that's upsetting for us, Tracy and
17 I, is the mud slung in these cases. Because I've
18 never had my character questioned until
19 February 2006. The hard part of building these
20 houses, folks, is the building and design of the
21 house. They're complicated and a lot of risk. The
22 financing, this voice stuff going back and forth,
23 that was the least complicated. It ran itself for
24 all these years. I never had to worry. As long as
25 they reimbursed. My focus, Bronson's focus,

1 everybody's focus was getting a house that
2 complicated done. And time and time again for 16
3 houses, there were never financial issues.

4 And one issue I never had is tax issues. One of
5 the mud slinging's that occurs to me in every case,
6 when we get to this point, is introduction of tax
7 evidence. I have enormous tax liens on me. With the
8 IRS and with the South Carolina Department of
9 Revenue. The explosion created a tax explosion. And
10 I will explain it as quickly as I can. And I have to
11 explain it. I don't have a choice. At the time that
12 this occurred, it was early in 2006. The income that
13 flowed through from the fees was only around the 20
14 or \$30,000 mart at that point. I was confronted with
15 a \$500,000 that would never be collected. That was
16 more money than I had earned in the last six years
17 combined. That's a lost. That would eventually be a
18 loss.

19 I know I was a CPA, I'm not a very good tax
20 expert, I know a little bit. My 2006 tax return was
21 going to be very complicated. I believe it was in
22 2006 also that my corporation was dissolved. I —
23 the narrative — I'm going to have to put a letter in
24 evidence in a minute but part of the narrative is
25 that I met with a young lady from the South Carolina

1 Department of Revenue to try to work out what it
2 would be. I gave her my expense side — I'm sorry,
3 strike that. I gave her my revenue side but I gave
4 her no expense documentation. It wasn't an audit, we
5 were working together. She called and asked for
6 certain things. We worked through it. There's
7 correspondence that I'll introduce into evidence and
8 I ask you to read it. It explains everything.
9 Better than what you're going to hear in a short
10 while.

11 She got back with me, claims that she didn't get
12 certain records, she didn't get my expense records.
13 So, what the South Carolina Department of Revenue did
14 was take all that money that came into my company
15 from all these fees and had no expense income against
16 that they imputed a large income number like four
17 million dollar income on here. And as I stated
18 earlier, I never made more than, I guess, it was 80
19 for that one year. So, they placed on me a lien for
20 over a million dollars in taxes, that's not correct.
21 It needs fixed. But I can tell you folks as I'm
22 sitting here, the tax liens are not the biggest
23 concern I have. They're going to get fixed. It's
24 going to be expensive to fix them. The federal
25 government didn't have a 2000 tax return either, they

1 copied what the state did. The state gave them the
2 same information. So I have federal tax liens.

3 Well, I attempted one fix in 2011. At that
4 point, my losses for 2006 were minus 182,000. So, I
5 went ahead and filed what's called amended returns.
6 Going all the way back to 2003. You can do that. I
7 have to file for the S Corp Kunstwerke and for me
8 personally. I filed all those returns. And then
9 when I got to 2006 with a minus 182 loss, you're able
10 to carry that all the way back. Well, I have the
11 documentation and letters. I was applying the carry
12 back loss incorrectly. And so they denied that. I'm
13 not really sure what occurs at this point. I have
14 to -- I've gone to a tax law firm. It's going to
15 cost over \$10,000 to fix everything. But it will be
16 fixed. There's no tax invasion. My income numbers
17 have been scrutinized by courts of law for nine
18 years. These records are available to the IRS and
19 the South Carolina Department of Revenue. I have --
20 it is strictly a bookkeeping error, it will be fixed.

21 Another problem is this, in Gene Covington's
22 case, there was a series of time in which Gene
23 Covington still owed for some labor on his site.
24 When I described that roof of the Covington's house
25 that was wavy, with the handmade tiles from Provence

1 I had to hire people to do it that were very good at
2 what they did. And I actually withheld wages for
3 them. So, I was an employer. So, I had to file
4 taxes for them. There is a time that I was, I could
5 use their word, I was stiffed by the Covington's for
6 \$75,000 worth of labor that I paid. I still owe
7 withholding for that to this date to South Carolina.
8 You will hear about that.

9 In all of these instances, and maybe, perhaps,
10 you had trouble with the IRS, it starts out at like a
11 little 10,000, \$12,000 lien. And then every year it
12 seems to double with fees and such. To the point
13 that I think even the South Carolina Department of
14 Revenue one is 100,000 maybe for that. Withholding
15 problem. The point is my records have always been
16 clear. Have always been auditable. I'm not a tax
17 cheat. I've certainly never made four million
18 dollars in one year. And the numbers that you're
19 going to hear would require that I made four million
20 dollars in one year. There's a reason why, folks,
21 that this is being brought up. But I have to bring
22 it up first.

23 One of the mistakes I made sometime back was my
24 elderly parents live in a house in Simpsonville. My
25 dad has congestive heart failure. I happened to own

1 the house. It's the only house that I have. Not
2 [indiscernible] I have a bicycle. Tracy's parents
3 bought us a car. That's about it. We have fought
4 these nine years for that house for my parents. I
5 wish there was some way I could have transferred it
6 to their names before this all hit. Nobody saw this
7 coming. I could have protected them better and I
8 feel bad about it. Well, with these tax liens
9 against me, it doesn't seem that any of the other
10 creditors are coming after me. It seems as though
11 the tax liens take priority. And the IRS and the
12 South Carolina Department of Revenue have never tak
13 the house. Nobody else have taken the house. And
14 for nine years I never had to declare bankruptcy
15 because when this is over this week, I want to be
16 able to pay everybody myself what they're owed. Not
17 what some Judge says.

18 Sixty days before this trial I had to fly down
19 from Pittsburgh and attend a hearing in Greenville.
20 It was in the Gaby case, a default judgment. The —
21 David Loree's attorney, Elizabeth Wright, conducted
22 the hearing before Judge Simmons in Greenville.
23 Which is kind of like a collection judge, like the
24 bankruptcy judge. And the documentation that I
25 received said that we're trying to collect the

1 400,000 from the Gaby's. And we know he has a house.
2 Sixty days before this trial. They never did
3 anything about that for the first eight years. Until
4 60 days before this trial. I didn't have money to
5 fly down here. We didn't have money to drive down
6 here for this trial. But I came down and sat in a
7 witness stand like this and told the judge, Judge
8 it's going to be a trial in Pickens in so many days.

9 He said, Are you the Plaintiff?

10 I said, Yes.

11 He said, We'll continue this.

12 So, I'm guessing, based on the documents that I
13 have at home, that I'm going to have to appear in
14 Greenville some day in 30 days and Loree's attorney
15 and the Gaby's attorney are going to try to take my
16 parents house.

17 I need to just say a little short something
18 about my life now. I try to do design work. I filed
19 an affidavit about the taxes.

20 Plaintiff moves to introduce Exhibit 19.

21 MR. SMITH: No objection, Your Honor.

22 THE COURT: All right, without objection the
23 same is admitted into evidence.

24 MR. SMITH: What number is that?

25 THE COURT REPORTER: Nineteen.

1 (WHEREUPON, Plaintiff's Exhibit No. 19 was
2 marked for identification and received into
3 evidence.)

4 MR. KUNST: I thought about introducing my
5 amended tax returns and stuff into evidence but I
6 don't think that I provided them and I don't want to
7 [indiscernible] -- their person. I'm not sure how
8 that's going to develop in the rest of this case.
9 But there is a lot of other documentation, of course,
10 between me and the South Carolina Department of
11 Revenue and the IRS from resolving these issues.
12 These issues have absolutely nothing to do with my
13 alleged [indiscernible]. I was not destroyed in
14 February 16th, 2006 because of tax issues. The tax
15 issues arrived after that. The tax issues did not
16 arrive because my bookings were incomplete. My books
17 have always been there, always auditable. I would
18 not have been destroyed if the public discovered that
19 I had tax liens in 2006. Plaintiff's Exhibit 19 is a
20 nice letter to a young lady named Kayenta Benson who
21 caused that first large lien. And it explains how it
22 all happened. I submitted it into evidence, it
23 should be enough said but it won't be.

24 My life now. I can't explain to you how
25 difficult this has been. We would go through times

1 in which we would just forget about the legal stuff.
2 We went to -- we went to Pittsburgh to get away from
3 it and to try to start over. For some of the years
4 that we've been up there, I've worked at night as a
5 security guard. In historic buildings, I like to
6 work in old buildings. And I could write at night
7 and I can do design work at night. I've actually
8 designed some incredible buildings in the middle of
9 the night. So, I've been working at night for
10 several years. At some point, I hope, when this is
11 all resolved, to get an investor or get enough
12 capital to start another house. I can start
13 tomorrow, build it myself and start from my
14 bootstraps. Like I always have. I started from
15 nothing, I can do it again. But not with this mess.

16 So, we haven't really been able to go on with
17 our life with this mess. There is no excuse in civil
18 law why a defamation case would take nine years.
19 Because while the case is going, in a way I'm still
20 defamed. Because while they're litigating they're
21 able to say anything. So, the harm is that much
22 better. I've been pretty good at writing at night
23 and I've written a lot about what's happened. It's
24 pretty stunning. There's a lot that's happened these
25 nine years in the legal field as it relates to me.

1 The damages that we've suffered made under facing
2 significant. But only because it's what we owe. And
3 that there's taxation on damages.

4 I've suffered economic loss, obviously. The
5 amount that we owe these contractors and suppliers
6 that I've personally guaranteed and such, the amount
7 that it's going to take to fix that is roughly
8 \$400,000. We also have legal debt with lawyers and
9 other people that we borrowed from in order to
10 survive. It's roughly \$640,000. Net up any taxes
11 from damages, the amount it's going to take in order
12 to get me to where I can do a house again and
13 continue is roughly 1.6 million dollars. These
14 amounts are taxed. The total damages in this case,
15 economic loss, is roughly 2.6 million dollars. Of
16 which a small amount would come to us. But it's
17 what's necessary. If the damages did not occur, then
18 we're pretty much at the end.

19 In defamation cases like this there's also
20 punitive damages which a jury is at their discretion.
21 I'm not here to get rich, folks, I'm just here to pay
22 people. I'm here to just get going again. So, I
23 won't even recommend a number for that. Nothing
24 further.

25 THE COURT: All right, Mr. Smith,

1. cross-examination, sir?

2. MR. SMITH: Yes, sir, Your Honor. Want me to
3. get started?

4. THE COURT: Yeah, let's go ahead and get
5. started.

6. Does anybody need to take a break right now or
7. you're okay?

8. (There was no response.)

9. Okay, Mr. Smith, go ahead.

10. CROSS-EXAMINATION

11. BY MR. SMITH:

12. Q Mr. Kunst, I want to clear up something right
13. away, are you testifying that Rick and Barbara Gaby are
14. trying to take your parents house and start a foreclosure
15. proceedings on that?

16. A Yes, I am.

17. Q So, it's not your bank who started foreclosure
18. procedures?

19. A The bank started foreclosure proceedings and we
20. were able to refinance it. I provided you the refinance
21. document. It has been refinanced with a lower payment.

22. Q You keep saying you provided all these
23. documents. If you -

24. A I did at the hearing that Beth Wright attended.
25. She wanted any refinancing documents. We've refinanced

SCOTT KUNST-CROSS BY MR. SMITH

1 with Green Tree Financial in Colorado. We now have a mu
2 lower payment. It's only about \$800 —

3 Q So, there's nobody foreclosing on your house?

4 A — it's more affordable than 1400 before, so the
5 house isn't in foreclosure now.

6 Q Then it's not true that the Gaby's are trying to
7 foreclose on your house?

8 A It is true. I attended a hearing conducted by
9 Beth Wright, your co-counsel, in which I was to present
10 whatever assets I had. And the top asset presented was it
11 is believed that he has an asset in South Carolina, a
12 house. And it gave the value of the house. He is a judge
13 that collects. Why else did that hearing occur, Greg?

14 Q But my question was a little different. You
15 said, The Gaby's are trying to throw my parents out of
16 their house. And that's simply not the case. The bank
17 was foreclosing on your house, we were not. And now
18 you've refinanced your house. There's nobody trying to
19 kick you out of your house, is there?

20 A So Greg, is the hearing canceled next month?

21 Q I get to ask the questions here.

22 A The foreclosure was complete. There was no
23 foreclosure. We refinanced it with — we tried to use the
24 Affordable Housing Act, but I didn't qualify for some
25 reason, so Green Tree refinanced it in-house with a lower

SCOTT KUNST-CROSS BY MR. SMITH

1 payment. My father contributes about half and Tracy does
2 the other half from her income working at Edward Jones.
3 So, that's how we've kept the house all these years. But
4 it used to be 1400 a month. It was way too high, the
5 interest rate was too high, so we got behind,
6 particularly, during the Coco case.

7 And what happened was it went into foreclosure.
8 And we got it out of foreclosure by refinancing. That was
9 long — we've been paying that \$800 a month for a long
10 time before Beth called that hearing. The mortgage
11 company was not at the hearing. The IRS was not at the
12 hearing. The South Carolina Department of Revenue was not
13 at the hearing. There was one person at the hearing, your
14 co-counsel, Beth Wright, representing Richard and Barbara
15 Gaby.

16 Q The question was are you being thrown out of
17 your house right now by Richard and Barbara Gaby?

18 A I live in an apartment in Pittsburgh, so.

19 Q I'll move on. I'll move on. What are you
20 currently doing as an occupation?

21 A I stated I worked as a security guard.

22 Q Where do you work as a security guard?

23 A I work at the Union — well, I quit for the
24 case. The Union Trust building in Pittsburgh, it's an old
25 historic landmark building. I can't think of the name of

SCOTT KUNST-CROSS BY MR. SMITH

1 the security company. It changed hands. It used to be
2 Allied Barton and then it changed. It's an ideal job
3 because I basically — all I have to do is sit there and
4 just be present. Occasionally, I do some rounds. So, I
5 just sit there. I'm allowed to do whatever I want to do.
6 I even take a box of models and glue stuff together.

7 Q And you've now quit that job?

8 A I quit it so we could come down here. I didn't
9 have — I don't get vacation in that kind of job.

10 Q Now, before you started building for yourself,
11 you had never worked in the construction industry; is that
12 correct?

13 A Define work in the construction industry.

14 Q Well, have you ever worked in the — have you
15 ever worked in the construction industry before you
16 started building —

17 A My family has always — we've always been good
18 with our hands. We always build our own houses, if that's
19 what you mean. I've always been involved in the
20 construction industry. I've always built things. I've
21 always worked with my hands. Is that your question?

22 Q No, it's not and that's a fair point. Let me
23 try. I build furniture and stuff as well. I don't
24 consider that I'm in the construction industry. Have
25 you — before you went out and built your first spec house

SCOTT KUNST-CROSS BY MR. SMITH

1 for a profit, had you ever worked in the construction
2 industry as a means to support yourself?

3 A No.

4 Q Okay. Is it fair to say then that you have no
5 experience in typical construction accounting methods?

6 A It's fair to say, yes. I never had to account
7 for construction, yes.

8 Q Okay.

9 May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. SMITH:

12 Q Mr. Kunst, I've handed you a document from the
13 South Carolina Board of Accountancy. Can you identify
14 that document?

15 A I do.

16 Q Does that look to be a true and accurate copy of
17 the letter you received from August 30th, 1999, from the
18 South Carolina Board of Accountancy?

19 A I have a copy, yes.

20 MR. SMITH: Your Honor, we move for admission.

21 THE COURT: Any objection, sir?

22 MR. KUNST: No objection.

23 THE COURT: Without objection, the same is moved
24 as Defendant's Exhibit. Hand it to the court
25 reporter so she can mark it.

SCOTT KUNST-CROSS BY MR. SMITH

1 (WHEREUPON, Defendant's Exhibit No. 13 was
2 marked for identification and received into
3 evidence.)

4 BY MR. SMITH:

5 Q So, your license to practice accounting before
6 in South Carolina was revoked; is that correct?

7 A It expired because I didn't — I let it expire
8 because I didn't continue my fees or continuing education.
9 In fact, there's two more —

10 If you can, perhaps, find it, Tracy, to help
11 explain it to him.

12 South Carolina Board of Accountancy states why
13 it was revoked. They call it revoked, but it really is
14 when you let your CE credits expire. This is at the point
15 that I started building. I didn't need my CPA exam at
16 that point.

17 Q So, this is not a notice of revoked —
18 revocation from the South Carolina Board of Accountancy,
19 is that what your testimony is?

20 A My testimony is it's not a revocation for cause
21 other than because of not continuing my CE credits. I
22 have — this has been used in every case. What I had to
23 do back in 2007 is write the South Carolina Board of
24 Accountancy and have them send a letter that says your
25 certificate was revoked because of not continuing your

SCOTT KUNST-CROSS BY MR. SMITH

1 education and paying the fee. It's not for cause, like I
2 was a bad accountant.

3 Q If you would give me a moment here. It says you
4 didn't pay your fees, you didn't comply with your
5 continuing education?

6 A Yes, sir.

7 Q That's correct?

8 A That's correct.

9 Q Okay. Now, is there another way to go about
10 going inactive with the South Carolina Board of
11 Accountancy other than just not paying anymore?

12 A I have no idea. I have no interest in ever
13 going back. The reason I took accounting first is I
14 wanted business experience. Accounting is not my thing.
15 My brother got an accounting degree from Bob Jones as
16 well. He said you need to get a business degree and worry
17 about the architectural stuff later. So, I went and got a
18 business degree. And being a CPA and working in New York
19 and then here, it gave me a decent amount of income when I
20 started my houses. It gave me more income than any other
21 profession would. So, when it came time to build houses,
22 I didn't care. I'm not going to be an accountant again.
23 I promise you I won't be one.

24 Q So, you just stopped paying?

25 A Yes.

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SCOTT KUNST-CROSS BY MR. SMITH

1 Q Okay. Is your company Kunstwerke still in
2 existence?

3 A No, it was dissolved.

4 Q And how did you wind down your company?

5 A I think it exploded in 2006.

6 Q Well, sir, that's not technically possible, so
7 you had to do something.

8 A It was — it was dissolved. It doesn't exist.
9 It's not a business.

10 Q Did you wind it down or did you stop paying the
11 fees this date and they dissolved it for you?

12 A It's semantics. I would have had the fees to
13 pay.

14 Q It may be semantic, but — so, for your
15 accounting license, you stopped paying the fees and it was
16 revoked. For your business license, you stopped paying
17 the fees and it was revoked. Is that fair? Now, you can
18 quibble about the reason, I'm just asking if it's fair?

19 A Well, on the accountancy part, it's more of the
20 continuing education. In order to be a CPA, you have to
21 take two or three weeks a year of courses. And that's
22 certainly not something I was going to do while I was
23 building houses. I could have afforded the fee back then.

24 Q But you just let it lapse?

25 A Yes.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Since losing your license to practice
2 accounting, have you ever represented yourself as a CPA?

3 A No.

4 Q You want to try that one more time?

5 A In order to represent yourself as a CPA, you
6 have to — you're a public auditor. You're engaged in the
7 practice of public auditing. Now, I often represent
8 myself as a former CPA because I'm really proud. You
9 know, the CPA certificate is hard to get. It's a
10 three-day exam. I'm really proud that I was able to pass
11 it. It was a great accomplishment in my life. But no, I
12 don't practice accounting.

13 Q And you've never said in the course of this
14 litigation that as a CPA, it took me a month to do this or
15 a month to prepare that?

16 A I often refer to my CPA background, as I have to
17 these folks today. But if you're imputing that I was
18 somehow representing that I was still licensed, well,
19 that's not what I was doing. That was obvious. Everybody
20 knows that my license expired back in 1999.

21 Q I'm just asking if you've ever represented
22 yourself as a CPA since your license was revoked?

23 A I don't believe so. There would be no occasion
24 to do it.

25 Q Okay. Okay. When you were doing the spec

SCOTT KUNST-CROSS BY MR. SMITH

1 houses, you testified that you only had one checking
2 account; is that correct?

3 A I've always had only one checking account.

4 Q And you've testified you had no prior experience
5 with construction accounting; is that correct?

6 A That's correct. My construction accounting, the
7 way I do things wouldn't fit the mold of traditional
8 construction accounting.

9 Q I will agree with you on that. I think you've
10 admitted this, but you did use the — and I would like a
11 yes or no answer, then you can explain as much as you
12 want. You used the corporate banking account for your
13 company, Kunstwerke, to make personal purchases, correct?

14 A That is correct. As personal draws.

15 Q Okay. And you admit you did purchase Tracy's
16 engagement ring out of your corporate account?

17 A When you say corporate account, the checking
18 account is just a checking account. Accounting is
19 accounting —

20 Q Can you answer me yes or no and then explain?
21 You admitted —

22 A Yes.

23 Q — that you bought Tracy's ring out of your
24 corporate account, yes or no?

25 A Yes.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Okay. Now you can — please explain anything
2 you want.

3 A There seems to be some confusion about a
4 checking account versus accounting. Disbursements come
5 out of a checking account. Those disbursements are
6 accounted for. They can be accounted for as electric
7 bill. They can be accounted for as a personal draw. They
8 can be accounted for as paying for some invoice to a
9 company like Jennings. The point is, it's properly
10 accounted for as a draw.

11 Q Okay. And we're going to talk about that. And
12 when you told these folks there was no reason for us to
13 talk about your tax returns, I think the IRS and the South
14 Carolina Department of Revenue very much disagreed with
15 you on how you took money out of your account.

16 A Is that a question?

17 Q No, it's a statement. Did you ever have an
18 apartment in downtown Greenville?

19 A Yes. It was a studio apartment on Main Street.
20 I used to do my model making and my corporate activity in
21 my house on Caesars Head and we moved down to Greenville
22 and set up a studio. It was actually a large studio. It
23 had several office rooms. It was above Sticky Fingers.

24 Q And you paid for your apartment out of your
25 corporate account?

SCOTT KUNST-CROSS BY MR. SMITH

1 A Yes.

2 Q And you had a reserved parking spot with that
3 apartment, correct?

4 A Yes.

5 Q And you paid for your parking spot in downtown
6 Greenville out of your — the funds in your corporate
7 checking account?

8 A Yes. The parking spot was occupied by the car
9 that Kunstwerke had leased for me.

10 Q Right, the BMW SUV that you also paid for out of
11 the corporate accounts, correct?

12 A Yes, because it was a Kunstwerke lease.

13 Q Okay. So far we've got engagement rings, BMWs,
14 and a studio in downtown that you're paying for out of
15 your corporate account?

16 A It is a corporate lease for the vehicle.
17 Companies lease vehicles all the time. The vehicle
18 traveled 100 miles a day on business —

19 Q Okay. I'm just asking.

20 A — to The Reserve, to Atlanta.

21 Q Did you also rent furniture for your apartment
22 in Greenville?

23 A Rent furniture? It was a printer we leased.
24 There was a lot of office furniture in there. I can't
25 answer. It would just be speculation.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Well, let me help you then.

2 May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. SMITH:

5 Q I'm going to hand you a copy of one of your
6 deposition transcripts. We have the sealed copy here. I
7 think I've referred to it many times. Can you turn to --
8 and my apologies, take me just one second. Page 190,
9 starting at Line 11.

10 A Yes, I'm there.

11 Q Does that help refresh your recollection about
12 whether you were renting furniture for your apartment
13 through with company funds?

14 A Yes. It describes a seating arrangement around
15 the easel and pictures. What's your question?

16 Q Well, I'm just asking if you rented -- we
17 figured out that you have an engagement ring, an
18 apartment, BMW, a parking space. And I'm now asking if
19 you also got furniture for your apartment through your
20 corporate account?

21 A You continually say corporate account. If it's
22 for personal use, it's accounted for in the big blue
23 ledger as a draw. If it belongs to the corporation, if
24 it's a corporation purchase, like a printer or ink for the
25 printer or easels or whatever is described here, if it's

SCOTT KUNST-CROSS BY MR. SMITH

1 part of the studio that's used for the business, it's
2 expensed by the business. There's no cross between. I
3 account for them separately. The big blue binder accounts
4 for them from separately. What this has to do with David
5 Loree's slander, I don't know.

6 Q Well, sir, you put yourself — you have put your
7 character on trial here.

8 A Okay.

9 Q Because you are making accusations against
10 Mr. Loree and this jury needs to know whether or not those
11 accusations, since you've brought no other evidence of it,
12 can be trusted. And one of allegations is —

13 A The evidence is —

14 Q One of the allegations, sir, is that you were
15 taking money for personal use out of your corporate
16 account?

17 A That is not the allegation. You're absolutely
18 wrong. It was taken from clients.

19 Q Where did the money in your corporate accounts
20 come from?

21 A Not all the money comes from just the payment of
22 subcontractors. That is the fee income from which
23 expenses come. That's a simple accounting process.
24 There's hundreds of thousands of dollars the fees come
25 from. If you had had the accounting ledger audited, you

SCOTT KUNST-CROSS BY MR. SMITH

1 would know that all of these expenses that you're telling
2 this jury about right now are deducted as expenses from
3 the income, that the client money is separate. The
4 slander is about the use of the pass-through account and
5 the client's money, what the client represented. The
6 corporate lawsuits were resolved based on the client
7 money, not on how I accounted —

8 Q Did you also pay for our parents home out of the
9 corporate account? The one we've been talking about on
10 Reagan Way.

11 A If payments come out of the corporate account,
12 it's accounted for as a draw.

13 Q Yes or no, did you —

14 A I don't recall. I may have, but it's a draw.

15 Q So, you're not denying that you might have taken
16 money out of your corporate account to also not only pay
17 for your BMW, your engagement ring, your apartment, your
18 furniture, but also your parents house?

19 A You see, within the — within the corporation,
20 how an S Corp exist, once it's income, it becomes retained
21 capital. Okay. That money is sitting there. I have not
22 drawn it out yet. It's available to me. My draw schedule
23 exist. It's auditable. You can determine whether or not
24 I was deducting from my paid in capital balance, anything.
25 It's accounted for.

SCOTT KUNST-CROSS BY MR. SMITH

1 Now, I know there are instances which people try
2 to claim that if there's any personal disbursements out of
3 a S Corp or a small partnership that that's somehow wrong
4 There's no law against that. As long as you account for
5 it properly. I had no other source of income. And if I
6 had to make a big purchase, yes, perhaps, I could have
7 transferred it to a personal account and then paid it.

8 Q You mean you could have —

9 A But that's —

10 Q I'm sorry, let me finish. I'll extend you the
11 same courtesy. So, you admit that you, perhaps, could
12 have taken a salary from your company and moved that mc
13 to a personal checking account from where you could have
14 paid your own bills?

15 A Yes. I never had a fixed salary, though. That
16 was never available to me because the cash flows were
17 never consistent. The point is you're mischaracterizing
18 what would have been just a perfunctory step of taking it
19 from the corporate account and putting it in a private
20 account. I still accounted for it properly. The income
21 still flowed through the S Corp to my personal tax
22 records.

23 Q So the answer is yes, you did take money out of
24 the corporate account to pay for your parents house as
25 well?

SCOTT KUNST-CROSS BY MR. SMITH

1 A If that occurred, I accounted for it as a draw.

2 Q So you would have accounted for that as income
3 personally on your tax returns?

4 A You don't understand how S Corp works.

5 Q Well, apparently, I don't. And, apparently,
6 neither does the IRS.

7 A That's not true. The S Corp -- you get a K-1
8 from an S Corp. Whatever the income -- the net of the two
9 flows through to your personal return. They're not
10 considered -- the draws are not considered income. The
11 income is the fees that Kunstwerke had collected minus the
12 corporate expenses, not the personal draws. That's what
13 flowed to my personal returns.

14 Q Did you also own a house -- I think you answered
15 yes, so we'll go ahead and move on because it's already
16 4:00 and if we continue like this, we're going to be until
17 10:00 tonight. So, did you also own a house at 308
18 Hemlock Trail, Cleveland, South Carolina?

19 A That's the house that I lived on Caesars Head.

20 Q Yes or no?

21 A I just testified to the house in Caesars Head
22 that I sold and made the capital contribution to the
23 corporation.

24 Q Did you own a house --

25 A Yes.

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SCOTT KUNST-CROSS BY MR. SMITH

1 Q Thank you. And if I refer to that as the Cliff
2 Ridge property, is that acceptable?

3 A That would be fair.

4 Q Did you make purchases for the Cliff Ridge
5 property from your corporate account?

6 A What kind of purchases?

7 Q Any kind of purchases.

8 A I mean, I don't remember.

9 MR. SMITH: I'm sorry, Your Honor, Ms. Hilton
10 over here whispering answers to —

11 THE COURT: Ms. Hilton, you need to avoid doing
12 that, okay?

13 MS. HILTON: Yes, sir.

14 BY MR. SMITH:

15 Q Did you make purchases for the Cliff Ridge
16 property from your corporate account?

17 A When you say purchases, what do you mean? Do
18 you mean landscaping or — what do you mean? You need to
19 be more specific for me to remember something.

20 Q Did you make purchases — if you don't remember,
21 that's fine. I'm just asking if you made purchases —

22 A I don't remember specifics. I'm not going to
23 testify to specifics I don't remember.

24 Q If I showed you testimony then that showed where
25 you made windows and doors purchases and such as that for

SCOTT KUNST-CROSS BY MR. SMITH

1 your house, the Cliff Ridge property, would you agree with
2 that?

3 A Prior to it being sold, it was remodeled. So
4 yes, there were purchase of construction material, is that
5 what you're getting at?

6 Q I'm not getting at — I'm only getting at did
7 you use your corporate funds to make purchases that went
8 into your personal residence?

9 A Again, you need to give me specifics, I don't
10 know.

11 Q Okay. Okay. That's fine. If you will — I
12 think it's in the same deposition transcript. Look at
13 Page 205 of your deposition transcript. And you'll agree
14 that this is — deposition transcript was testimony you
15 gave under oath?

16 A I have been deposed so many times. Is this the
17 one with the camera and lights?

18 Q I wasn't there. Are you on Page 202?

19 A Oh, 202. Yes, go ahead.

20 Q You see starting at Line 5, you were showed a
21 check and it's to Windows and Doors Concepts for
22 \$50,330.52?

23 A Yes.

24 Q You said, That's right?

25 A Yes.

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SCOTT KUNST-CROSS BY MR. SMITH

1 Q And then you say — and the question is, And
2 it's broken down in the left-hand side column as \$44,000
3 for the Parham residence and \$5,750 for the Kunst
4 residence. Does that refresh your memory that you bought
5 almost \$6,000 worth of windows for your personal residence
6 from your corporate account?

7 A There were some new windows purchased for the
8 house to remodel as just referred to, so it wouldn't be
9 unusual to have it on the same account.

10 Q You paid for that from your corporate account?

11 A Are you — are you trying to say that Parham
12 paid for them?

13 Q I'm not trying to say that. Are you trying to
14 say that?

15 A No, that's why I'm asking. Why are you even
16 asking the question?

17 Q Well, I'll tell you why. I think we've
18 established, have we not, that you were making purchases
19 from your corporate account for your residence? Is that
20 fair?

21 A I was drawing income from the corporation.

22 Q We're going to be here all night.

23 A Until you understand it.

24 Q Then we may be here longer than that. While you
25 were making purchases from the Cliff Ridge property from

SCOTT KUNST-CROSS BY MR. SMITH

1 your corporate account, were you deducting the mortgage
2 interest from that house on your personal income taxes?

3 A I don't recall.

4 Q Would it surprise you if I can point you to
5 testimony that would say that while you were making
6 purchases from your corporate account for your personal
7 house you were also taking personal deductions of the
8 mortgage interest on your personal income taxes? I mean,
9 we can sit here and we can go through it if we need to.

10 A Well, I don't recall every draw. So, what's
11 your question?

12 Q My question is while making purchases for the
13 Cliff Ridge property from your corporate account, you were
14 deducting the mortgage interest from that house on your
15 personal income taxes, correct?

16 A The Cliff Ridge property was my primary
17 residence, so I would have deducted the mortgage interest,
18 I assume. If that's your question.

19 Q That's my question.

20 A Oh, okay.

21 Q So, you're taking money from your corporate
22 account to put it into your personal house and then you're
23 taking the deduction from the interest for your personal
24 house off your personal income taxes, that's all I'm
25 asking. Okay.

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SCOTT KUNST-CROSS BY MR. SMITH

1 A Was that a question?

2 Q Is that a fair statement of what we've just
3 taken 20 minutes to figure out?

4 A I'm not even sure I understand what you just
5 asked.

6 Q Okay. Then we'll do it again. You admit you
7 were taking corporate funds from Kunstwerke and using
8 those to, at least, buy windows for your Cliff Ridge
9 property?

10 A If I was withdrawing capital, yes.

11 Q Okay. And you admit that was your personal
12 residence?

13 A It would be accounted for that way.

14 Q And you admit it was your personal residence?

15 A Yes.

16 Q Okay. Did you often buy — do you admit that
17 you bought gifts for your employees and subcontractors
18 from your corporate account?

19 A Like Christmas gifts?

20 Q Gifts.

21 A I did get my site managers gifts every year.

22 Q What about things like trucks, tools?

23 A Occasionally, Kunstwerke would have to loan
24 money to a site manager for a truck. Occasionally, I
25 would give them the truck that I finished using.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q So, you would take corporate assets and just
2 give them to —

3 A There were two — I think at one point there
4 were two Toyota pickup trucks in the company at its peak.

5 Q And then you just gave those away to employees
6 or to subcontractors?

7 A I remember Shane Kidd needed a truck. He didn't
8 have one. I think I may have when he left the company, I
9 let him have it.

10 Q Okay, that's all I'm asking. Where did the
11 money for that truck come from? You said — you've told
12 this jury many times how you didn't make a lot of money.
13 And now you've just said you gave away two trucks. So,
14 where did the money for those trucks come from?

15 A Kunstwerke fee income.

16 Q Where did Kunstwerke income come from?

17 A It came from fees that it charged for its
18 services.

19 Q And you testified those weren't very much?

20 A Well, hold on. I can tell you what they were.

21 Oh, no, wait, let me correct that. No, I did not testify

22 to that. That's a mischaracterization. I said my net

23 income, after expenses. For instance, if I would expense

24 a truck that I give a guy as an expense, that's less than

25 I get personally. So, you're mischaracterizing it. The

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SCOTT KUNST-CROSS BY MR. SMITH

1 fee income to the corporation was in the hundreds of
2 thousands every year.

3 Q Okay.

4 A And corporate expenses were deducted from that.

5 Q And then you would take the trucks and give them
6 away and then whatever was left you would keep?

7 A I have no idea what you're getting at.

8 Q You prepared bills for your clients weekly; is
9 that correct?

10 A That's correct.

11 Q And you typically showed by line items what was
12 included on your bill; is that correct?

13 A Yes. Yes.

14 Q And you would show what materials or what
15 subcontractor for which you were asking your client to pay
16 money; is that correct?

17 A That's correct.

18 Q And all those payments went into your Kunstwerk
19 corporate account; is that correct?

20 A That's correct.

21 Q Okay. What does the term fungible mean to you?

22 A It's an accounting term. It's used in instances
23 like money where you may have an account in which the
24 accounting records say there's five different things in
25 that one bank account, but the money itself is fungible.

SCOTT KUNST-CROSS BY MR. SMITH

1 There's not a specific dollar that one could claim is for
2 this one thing. You can't split it up.

3 Q Okay. So, if you sent a bill out to a client,
4 for instance, the Gaby's, and on that bill you had a line
5 item for — and I'm just making this up hypothetically, we
6 can look at something if you want, \$10,000 for stone,
7 whatever. And they send you a check for \$10,000. You're
8 testimony is that \$10,000 doesn't necessarily need to go
9 to pay for that stone?

10 A That \$10,000 based on the contract is
11 reimbursing cost incurred. In the accounting world,
12 there's a big difference between cost incurred and cash.
13 One could make expenditures through debt. One could make
14 expenditures without cash. The corporation could go out
15 and purchase things on account. The corporation is still
16 on the hook for those things. And based on the
17 flow-through contract, people like the Gaby's and the
18 Covington's, they are just as much liable to reimburse
19 Kunstwerke if it was paid out of cash or on account.
20 Because by the time the Covington's or someone else got a
21 statement, it was already a week or two of activity that
22 Kunstwerke had already incurred cost for. For example, in
23 25 percent of the Covington instances, that blue ledger
24 will explain all this to you, I can calculate how much
25 Kunstwerke had actually paid out in advance before the

1 client reimbursed.

2 Q My question was —

3 A Yes.

4 Q — if you sent an invoice to the Gaby's, the
5 Debaco's, or Coco's for \$10,000 listing stone from company
6 X and they sent you \$10,000, it's your testimony that you
7 did not need to pay company X \$10,000?

8 A That is true. Because —

9 Q Thank you.

10 A I need to answer that. In the case of the
11 Covington's, for example, when Mr. Covington would make
12 say a \$30,000 deposit into my account towards the end of
13 the project, say in January of 2006, there was \$130,000
14 already paid out in cash on his behalf that he was in debt
15 to. You are doing your entire examination on a false
16 premise.

17 Q That may be the case. That's not for you to
18 decide. But I think you answered my question and I
19 appreciate that. You have talked a lot about the
20 crumbling down or the crisis. Do you admit, though, that
21 Kunstwerke was strapped for cash well before Mr. Loree
22 began his investigation?

23 A Yes, I told the Gaby's about that. January was
24 a terrible month. There are two emails to Mr. Gaby in
25 which I state that, that it was harder for me to advance

SCOTT KUNST-CROSS BY MR. SMITH

1 credit than typical.

2 MR. SMITH: Your Honor, if you'll indulge me for
3 about another five minutes, I'll be at a place where
4 we can break if you want.

5 THE COURT: Okay. Good.

6 Y'all ready to take a break? Give him about
7 five minutes?

8 MR. SMITH: It shouldn't take me more than five
9 minutes.

10 May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. SMITH:

13 Q Mr. Kunst, can you identify that document?

14 A Yes, this is the order dismissing the defamation
15 case against Mike Parham.

16 MR. SMITH: Your Honor, I ask that it to be
17 moved into evidence either by his testimony or by
18 judicial notice.

19 MR. KUNST: I have no objection.

20 THE COURT: Okay. All right. The same is
21 admitted.

22 MR. SMITH: Let me get it marked.

23 (WHEREUPON, Defendant's Exhibit No. 14 was
24 marked for identification and received into
25 evidence.)

SCOTT KUNST-CROSS BY MR. SMITH

1 BY MR. SMITH:

2 Q Mr. Kunst, are you familiar with this order?

3 A Yes. I remember Judge Early's order. He wrote
4 it in all caps.

5 Q He did write it in all caps. And, apparently,
6 he's never written another order like that.

7 A This was the order dismissing the defamation
8 case against the Parham's.

9 Q And do you remember that Judge Early found that
10 your finances were in disarray?

11 A They were not in disarray.

12 Q Huh?

13 A They've never been.

14 Q The question was do you see where Judge Early
15 found that your finances were in disarray?

16 A I believe that's what you've alleged and Parham
17 attorney has alleged. And, obviously, since the
18 defamation case was dismissed, the order was written based
19 on your representations, but I can testify —

20 Q Well, they're not my representations.

21 A — they've never been in a mess.

22 Q Okay. We'll try this again. Bottom of Page 4,
23 last sentence, it goes on to the top of Page 5. Will you
24 read that to the jury?

25 A Give me the start specifically.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Unfortunately. The bottom of Page 4.

2 A Oh.

3 Unfortunately, the depositions submitted clearly
4 indicate that by late 2005 and early 2006, the finances at
5 Kunstwerke Corporation were in disarray. For instance,
6 the depositions of the painting contractor, Conrad Owen,
7 clearly indicates that a check issued by Kunstwerke
8 Corporation for payment for work performed on the
9 defendant's project bounced, therefore, numerous checks
10 issued by Mr. Owen to his employees would bounce.
11 However, he recalled no communications published by either
12 Mr. Parham or his wife which could be constituted as
13 defamatory towards the plaintiff.

14 Q Who was the plaintiff?

15 A That was me.

16 Q That was you?

17 A Yes.

18 Q And you sued --

19 A I, obviously, disagree with the Honorable Judge
20 Early. My accounting records weren't in disarray.

21 Q You sued -- you read here where Judge Early also
22 found you weren't paying your subcontractors?

23 A That was not the corporate case. That's the
24 problem. The key is that Mike Parham, when we finally
25 litigated the corporate case, he did pay. He did so in my

SCOTT KUNST-CROSS BY MR. SMITH

1 favor. Judge Early was wrong.

2 Q Okay. I know everybody in the world's wrong —

3 A Well —

4 Q — but I'm asking you —

5 A Well, I have litigation in the corporate case —

6 Q — what the judge found?

7 A — that says that Judge Early was wrong.

8 Q Did Judge Early find that you weren't paying
9 your subcontractors?

10 A And the corporate settlement states I did.

11 Q I want you to answer me yes or no. Did Judge
12 Early find you were not paying your subcontractors?

13 A Judge Early was not charged with that. This
14 wasn't —

15 Q I'll move on. You've given plenty —

16 A I don't even understand your question.

17 Q You've given plenty of answer. You sued
18 Mr. Parham, though, for the exact — pretty close, same
19 statements you sued Mr. Loree for, right?

20 A Everything that named sources, as I explained
21 earlier, was sued.

22 MR. SMITH: Your Honor, can we instruct the
23 witness to answer the questions?

24 THE COURT: Mr. Kunst, when a question's pos-
25 you will answer it. Now, I'm not going to instruct

SCOTT KUNST-CROSS BY MR. SMITH

1 you how to answer it, whether it's yes or no. And
2 I'm not suggesting by insinuation or directly or
3 otherwise that you're being evasive or being obtuse,
4 but I will say that if you are, the jury will see it.
5 I don't like to get between lawyers and witnesses,
6 but I will say that justice is best served when the
7 questions are answered directly. Okay.

8 You may continue, Mr. Kunst.

9 BY MR. SMITH:

10 Q You sued Mr. Parham for the same sort of
11 statements that you allege Mr. Loree made; is that
12 correct?

13 A Yes.

14 Q And what did the Court find in that case where
15 you sued Mr. Parham for the same statements?

16 A The Court dismissed the case because there
17 wasn't the same evidence.

18 Q Well, I don't think that Court had this evidence
19 in front of it. The Court dismissed the case because it
20 had no evidence?

21 A I could not get the witnesses that I needed to
22 testify against the lawyer.

23 Q Is it not true that the Court also found that
24 the statements made by Mr. Parham were true?

25 A What are the specific statements?

SCOTT KUNST-CROSS BY MR. SMITH

1 Q It was your lawsuit?

2 A I can't answer the question without knowing what
3 the statement was.

4 Q My question was rather simple. Did Judge — I'm
5 sorry, there's so many judges — Judge Early find that the
6 statements made by Mr. Parham that you sued him for
7 defamation were true?

8 A He did.

9 Q Okay.

10 MR. SMITH: If you want to take a break, Your
11 Honor, this would be a fine time to do it.

12 THE COURT: All right. Ladies and gentlemen,
13 let's take a short break. And please don't discuss
14 the case.

15 (WHEREUPON, the jury came into open court at
16 approximately 4:20 p.m.)

17 MR. SMITH: Your Honor, I fear we're going to l.
18 here a lot longer.

19 THE COURT: It is what it is.

20 MR. SMITH: I just wanted you to know, Your
21 Honor.

22 THE COURT: Understand. Okay. All right.
23 We'll be in recess for a few minutes. We'll
24 come back in when the jury is ready.

25 Mr. Kunst, you're welcome to take a break, too.

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1 You can't discuss your testimony with anybody.

2 MR. KUNST: Yes, sir.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: Ready for the jury?

5 MR. SMITH: I'm ready, Your Honor.

6 THE COURT: Ask the jury to come in, please.

7 (WHEREUPON, the jury came into open court at
8 approximately 4:36 p.m.)

9 MR. SMITH: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. SMITH:

12 Q I'm handing you another deposition transcript
13 and ask if you recognize that as the transcript from your
14 deposition on December 6th, 2007?

15 A I do.

16 Q And the other one — and I didn't move for
17 admission of it, was November 21st, 2007; do you agree
18 with that?

19 A That's correct.

20 MR. SMITH: Okay. I would ask the Court to move
21 both those transcripts into evidence.

22 THE COURT: The entirety of the transcripts or
23 do you want to simply read into the record those
24 relevant portions? Are you going to question him
25 from those?

SCOTT KUNST-CROSS BY MR. SMITH

1 MR. SMITH: I'm going to question him. It may
2 be easier just to move them into evidence and that
3 way we don't have to do it piecemeal. I'm happy to
4 do as the Court wants.

5 THE COURT: Mr. Kunst, do you have an object

6 MR. KUNST: I don't have any objection.

7 THE COURT: Without objection then, they're
8 admitted.

9 (WHEREUPON, Defendant's Exhibits Nos. 15 & 1
10 were marked for identification and received into
11 evidence.)

12 BY MR. SMITH:

13 Q So, those deposition transcripts have been
14 admitted as Defendant's Exhibits 15 and 16. Mr. Kunst,
15 throughout your soliloquy, we've heard many times that the
16 account simply needed to be reconciled; is that correct?

17 A That is correct.

18 Q And, in fact, in those two deposition
19 transcripts I've handed you, I spent considerable time
20 reading those, do you know how many times you use the wo
21 reconcile or reconciliation or some variation thereof,
22 just ballpark?

23 A I have no guess.

24 Q Would you believe over 150 times?

25 A All right.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q So, it was fairly important to get the accounts
2 reconciled?

3 A Indeed.

4 Q Why then, if it was so important to reconcile
5 the accounts, don't you think you would have done some
6 reconciliation at some point before all your clients began
7 to figure out that money was missing? You had six
8 projects going on. You never reconciled the accounts.

9 A Clients did not figure out money was missing.
10 There was nothing to figure out. They were sued and I
11 collected. Nothing was missing. It was all accounted
12 for.

13 Q Do we have to go back through the orders? For
14 the sake of argument then — I'm not going to argue with
15 you on the stand. For the sake of argument, assume that
16 there's been judges in South Carolina who have said money
17 was missing. Don't you think if it was that important to
18 do these reconciliations, you would have done so before
19 your clients started saying money was missing?

20 A The reconciliations are done on a continual
21 basis.

22 Q Well, that's not what you've said. You've said
23 they needed to be reconciled?

24 A At the time they stopped paying in
25 February 16th, 2006, it required a reconciliation because

SCOTT KUNST-CROSS BY MR. SMITH

1 some of these clients, like the Gaby's, started paying
2 things a second time. They were paying things on their
3 own.

4 Q And why was that?

5 A It was a different set of circumstances. My
6 accounting records are designed to reconcile. It's a
7 reimbursement contract. It needs reconciled. Things
8 are — just like a bank reconciliation, if I can explain
9 it that way, there's activity. You can stop at a certain
10 date and say I need to reconcile activity as of that date.
11 When I used this 150 times, as you claim, I'm stating that
12 all people need to do is reconcile the date that they
13 stopped paying and then you will know what everyone
14 else — that's eventually what happened in the corporate
15 cases. They eventually got reconciled.

16 Q Well, we'll leave that alone for a minute. My
17 point is you said they were continuously reconciled?

18 A They can be reconciled any day.

19 Q But you didn't do so? If they could have been
20 reconciled at any day, then why on February 16th, 13th, I
21 forget, 2006, when you met with David Loree weren't the
22 accounts reconciled?

23 A The account is reconciled continually. That's
24 how I knew they were 90,000 in the hole one day, 102,000
25 in the hole the other day.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q So, the accounts were reconciled, but you just
2 simply couldn't show that invoices were paid?

3 A No.

4 Q Okay.

5 A David Loree's premise is incorrect. I can't
6 possibly reconcile to his premise.

7 Q You can't possibly take an invoice for which you
8 billed your client \$10,000, show the invoice for \$10,000,
9 there's a wire for \$10,000 that shows where that's paid,
10 that's impossible.

11 A It is impossible because --

12 Q Okay. Thank you.

13 A -- there is a lot of money already paid out.
14 The money is fungible. You've already used that word.

15 Q No, you used that word, I did not.

16 A You introduced the word.

17 Q And you've maintained that any of your clients
18 were free at any time to have an independent audit of
19 their accounts with Kunstwerke?

20 A Yes. Still are.

21 Q In fact, you told the Gaby's that they could
22 have requested an independent audit at any time they
23 wanted; is that correct?

24 A In that public document I sent around to
25 everybody on April 12th, I challenged the Gaby's

SCOTT KUNST-CROSS BY MR. SMITH

1 publically to do an independent audit of their account.

2 Q You seem to be convinced the public is very
3 concerned with what's going on in Scott Kunst's world.

4 A I don't know if they're concerned, I just don't
5 want to be defamed.

6 Q So, you think it's okay to mail hundreds — how
7 many of those did you mail, I'm just curious?

8 A Public is probably too broad of a term. It
9 would be the interested public, people that worked on the
10 job who might have known me in the community. People
11 deserve an update.

12 Q Because people care?

13 A If they're owed money, they care. I have
14 friends, Greg. Do you have friends?

15 Q No, I'm a lawyer. You've said now that any
16 client could get an independent audit if they wanted it,
17 correct?

18 A Yes.

19 Q Is it not true, however, that you refused to
20 provide the Kunstwerke books to Gene Covington when he
21 asked for an independent accounting?

22 A I have heard that and that is completely untrue.

23 Q It's completely untrue. So, Mr. Covington is
24 lying?

25 A Why would I refuse books to Gene Covington as

SCOTT KUNST-CROSS BY MR. SMITH

1 opposed to other clients? In fact, he owed the most.

2 Q And you deny that you did not let him have your
3 books?

4 A At what time did I — they've been filed at the
5 courthouse. There's nothing to let at this point.

6 Q No, no, no. At the end of the project,
7 February 2006, when Gene asked for your books so he could
8 do an independent audit, did you not refuse to let him
9 have those?

10 A Gene Covington offered to do a forensic audit of
11 his account with, I believe, the corporate attorneys or
12 somebody at the time. The point was Gene Covington was
13 never going to pay the whole \$130,000.

14 Q No, that's not the question.

15 A I never kept the documents from him.

16 Q Okay. Okay.

17 A In fact, based on the statements that he had, if
18 you just take the progress billings and you have a
19 complete list — the Gaby's did not have a complete list.
20 They ignored the last three. But Covington had a complete
21 list. He could actually reconstruct a lot of it because
22 as I stated earlier, it all flows up through. So, Gene
23 Covington could have done an independent audit of those
24 invoices he had.

25 Q So, when Gene Covington — did Gene Covington

SCOTT KUNST-CROSS BY MR. SMITH

1 offer to do an independent accounting of his books and,
2 basically, said wherever the chips may fall, they will
3 fall. If I owe you money, I'll pay you. If you owe me
4 money, you pay me and you refused?

5 A When did — do you have record of me refusing
6 that?

7 Q 2006. I'm just asking you if you refused?

8 A I don't recall — I wouldn't refuse. Why would
9 I refuse that? I made that offer to everybody.

10 Q Okay. And you made that offer to Gene Covington:
11 —

12 A That would be an odd exception. I don't
13 understand your question. That would just be —

14 Q My question is if he offered to take all your
15 books and give them to an independent accounting — an
16 independent accountant, I'm sorry for slip of the tongue,
17 and the deal was if I owe you money, I'll pay you, if you
18 owe me money, you pay me. You're denying that
19 Mr. Covington offered that?

20 A He stated in his deposition something to that
21 sort, but that's always been available to him. I can't
22 deny that. I don't understand what your — how you want
23 me to respond.

24 Q I would just like the truth.

25 A What would you like me to answer? What's the

SCOTT KUNST-CROSS BY MR. SMITH

1 question, yes or no?

2 Q Did you refuse Gene Covington's offer to take
3 your books to an independent accountant to let a
4 completely independent person audit and let the chips fall
5 where they may? If he owes you money, he'll pay you. If
6 you owe him money, you'll pay him.

7 A I don't recall refusing that. I would not have
8 refused that.

9 Q Okay.

10 A That option was available to him. Even after
11 the lawsuit, he could have done that.

12 Q With regard to another one of your clients, to
13 be very specific, in an October 24th, 2005 billing, do you
14 admit that you received \$676 from one of your clients,
15 Mr. Coco, specifically to pay Wilson Gas?

16 A There are 10,000 Kunstwerke transactions a year,
17 I don't know.

18 Q So, you don't know the answer to it?

19 A I don't know that specific instance.

20 Q Okay. If you look at your deposition transcript
21 from December 6th, 2007, sworn testimony given by you,
22 correct?

23 A That's correct. What page?

24 Q Page 128. You see where it starts on
25 October 24th, 2005, bill to Mr. Coco, you received \$676 as

SCOTT KUNST-CROSS BY MR. SMITH

1 part of that progress billing of \$38,835? And you say
2 that's correct?

3 A That's correct.

4 Q And you indicated that you did not pay Wilson
5 Gas \$676. And you say that is correct. And a question
6 was put to you, Well, what did you do with that \$676? And
7 you just said you spent it on the Coco project. But you
8 don't know what for?

9 A The question is the 38,000 that Coco paid. And
10 again, my answer to the question involves the
11 reconciliation. Why that Wilson Gas was not paid as of
12 that specific time, I can't speak to that. But you're
13 asking me what specifically happened to that money as
14 earmarked. Again, your premises is false. We're getting
15 nowhere with the false premise. You are asking
16 questions —

17 Q We may be able to shortcut this then. You
18 freely admit just because you received payment from a
19 client for a specific subcontractor, you don't necessarily
20 need to forward that payment to the specific subcontractor
21 for whom you requested payment? Do I need to break that
22 down?

23 A That is incorrect. It needs to be paid, yes.
24 You are trying to say when it's paid and how it's paid,
25 that it's specifically earmarked. And I'm trying to

SCOTT KUNST-CROSS BY MR. SMITH

1 explain the correct premise.

2 Q It sounds like you're saying two different
3 things to me.

4 A Okay.

5 Q Just because you received a payment from a
6 client for a specific subcontractor line item, for
7 example, Wilson Gas, \$676, you did not necessarily need to
8 forward that payment to Wilson Gas? That's my question.
9 That's what I would just like you to answer.

10 A My answer is the Wilson Gas 676 is a cost
11 incurred by Kunstwerke on behalf of Coco. Coco's
12 obligation is to reimburse that. It is Kunstwerke's
13 obligation to pay it, that is correct. That's the answer.
14 The point is there are also items that Kunstwerke is
15 paying before Coco knows about it. That's why you see
16 reconciliation 150 times.

17 Let's say if on this date, Mr. Coco were to
18 default and not pay another thing, I would bounce that 676
19 back to him to pay directly and credit that 676 against
20 his account. That's the best way I can possibly explain
21 the correct premise, the reimbursement premise. It wasn't
22 a fiduciary account.

23 Q You keep using that term fiduciary.

24 A Yes.

25 Q Do you actually know what that means?

SCOTT KUNST-CROSS BY MR. SMITH

1 A Yes. It's money placed in trust.

2 Q Money placed in trust. I think you've testified
3 that you had a great amount of trust between you and your
4 clients?

5 A For 10 years, Greg. Never a question.

6 Q But it wasn't fiduciary trust? You just wanted
7 them to trust you, but not a fiduciary trust?

8 A I was sticking my neck out extending credit and
9 everybody knew that and they appreciated it. I wasn't
10 making money on processing these payments. The difficult
11 part was constructing the houses. Everything —

12 Q The easy part was the accounting, right? Is
13 that what you're saying?

14 A These pass-through accounts, the reimbursement
15 accounts worked perfectly as long as the people paid.

16 Q As long as they kept putting money in your
17 account?

18 A No, as long as they reimbursed everything
19 submitted.

20 Q Okay.

21 A There was always a finite number of items to
22 be —

23 Q Did Ed Coco reimburse you for \$676 for Wilson
24 Gas?

25 A Yes.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Did you pay Wilson Gas \$676?

2 A I don't know. If I didn't, it was credited back
3 to him as part of his final reconciliation. I do know
4 that —

5 Q Ah, the reconciliation.

6 A I do know at the end of the day whenever his
7 account was reconciled, Mr. Coco paid me \$13,000.

8 Q Well, that's not true either, is it? Who did he
9 pay the \$13,000 to? Let's talk — you've done this long
10 enough. You talk about these corporate accounts. Couple
11 of questions. To whom did Mr. Coco make out the check for
12 \$13,000? Was it to you?

13 A The settlement check?

14 Q Yeah, was it to you?

15 A I don't know who it was to.

16 Q While you're looking that up, is it conceivable
17 that somebody might pay you \$13,000 not because they
18 thought they owed it, because they wanted you to go away?

19 A As a lawyer, I think you understand, Greg, that
20 the man who writes the check lost the suit.

21 Q No, that's not what it says. What my question
22 was, is it conceivable that somebody might have paid you
23 \$13,000 just to go away?

24 A Mid trial?

25 Q Is it conceivable?

SCOTT KUNST-CROSS BY MR. SMITH

1 A (There was no response.)

2 Q Thank you. To whom was the \$13,000 paid?

3 A I do not know. This is 2000 — I do not know.

4 Most checks were made out to the Kunstwerke attorney. If
5 it was a settlement to me, it might have been made out to
6 Tracy because I didn't have a checking account. Was that
7 your question?

8 Q Well, that's sort of my question. My question
9 is, I think it was made out to Tracy because you refused
10 to let him make the check out to you and I want to know
11 why?

12 A Because I have no bank account, Greg.

13 Q And if you did have a bank account and you took
14 that \$13,000 and tried to deposit it, what might have
15 happened? Perhaps, the IRS would have tried to take it or
16 the South Carolina Department of Revenue would have tried
17 to take it?

18 A I don't know if they would take a judgment in a
19 civil case, I have no idea. They didn't take my income.

20 Q But we're not taking any chances, are we?

21 A That wasn't the point. That wasn't my
22 intention. You don't place —

23 Q Was it your intention to not pay your lawyers
24 for that case?

25 A It was not my intention, no.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Well, did you pay your lawyers in that case?

2 A No.

3 Q No. But you had them make the check out to
4 Tracy?

5 A (There was no response.)

6 Q Do you remember in your complaint against the
7 Gaby's and Mr. Loree that you alleged that it was never
8 explicitly stated or implied that specific funds paid by
9 the defendant for specific progress billing would go
10 exclusively and directly to pay only those sub-labor and
11 supplier invoices provided in that progress billing?

12 A That's a long question. But yes, money could
13 not be earmarked in a reimbursement contract. It's not
14 possible.

15 Q Okay. Are you familiar with South Carolina code
16 29-7-20?

17 A I have seen some codes, yes.

18 Q Well --

19 MR. SMITH: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. SMITH:

22 Q I'm going to hand you a South Carolina code.
23 I'll ask you take a moment and look at it.

24 Your Honor, I would ask that it be judicially
25 noticed as a copy of the South Carolina statute Title 29

SCOTT KUNST-CROSS BY MR. SMITH

1 Chapter 7.

2 THE COURT: Any objection to that?

3 MR. KUNST: No objection.

4 THE COURT: Okay. Let me see it before I take
5 notice of it.

6 MR. SMITH: It's simply a printout from the
7 State House website.

8 THE COURT: All right. I take notice of the
9 same, sir.

10 Ladies and gentlemen, when I take notice — when
11 the Court takes notice of a document or a published
12 record of any sort, essentially, it establishes its
13 authenticity. That is, I take notice of the fact
14 that is a statute which emanates from the legislature
15 of the State of South Carolina. It is authentic. I
16 do that without exception or objection from the
17 parties.

18 Give her time to mark it.

19 (WHEREUPON, Defendant's Exhibit No. 17 was
20 marked for identification and received into
21 evidence.)

22 BY MR. SMITH:

23 Q Do you see Section 29-7-20 in the middle of the
24 page?

25 A Yes.

SCOTT KUNST-CROSS BY MR. SMITH

1 **Q** Somewhat slowly because our court reporter will
2 get angry otherwise and I don't blame her, would you read
3 that Section 1 to the jury?

4 **A** Yes.

5 **A** contractor or subcontractor, who for the
6 purposes — for other purposes, I correct that, than
7 paying the money loaned upon such contract transfers,
8 invests or expends and fails to pay to a laborer,
9 subcontractor or material man out of the money received as
10 provided in Section 29-7-10 is guilty of a misdemeanor.
11 And, upon conviction, when the consideration for the work
12 and material exceeds the value of \$100 must be fined not
13 less than \$500 nor more than \$1,000 or imprisoned not less
14 than three months nor more than six months. And when such
15 consideration does not exceed the value of \$100 must be
16 fined not more than \$500 or imprisoned not longer than 30
17 days.

18 **Q** Now, I'm not implying that you've been convicted
19 of this statute.

20 **A** I certainly haven't.

21 **Q** Okay. I'm implying is there a statute in South
22 Carolina that says when you're given money to pass through
23 to a subcontractor, you must do that?

24 **A** Yes.

25 **Q** Thank you. Mr. Kunst, I was a little confused

SCOTT KUNST-CROSS BY MR. SMITH

1 on your testimony on another issue. Did you or did you
2 not disappear from the projects?

3 A I did not disappear from the projects.

4 Q There is not a time when you wouldn't return
5 phone calls or emails?

6 A There was a time once this hit when I was
7 receiving death threats that we were very careful not to
8 email—

9 MR. SMITH: Your Honor, objection. There has
10 been no one who said there's a death threat here.

11 THE WITNESS: Bottom of the lake, Greg.

12 MR. SMITH: Never heard it.

13 THE COURT: I'll let him testify.

14 You may continue.

15 THE WITNESS: When we were at The Reserve,
16 of the rumors were that if they ever found me, I'd be
17 at the bottom of the lake. Tracy testified to my
18 legs being broken. There were a lot of
19 subcontractors who were very angry with me.

20 BY MR. SMITH:

21 Q Mr. Loree didn't make any of these statements,
22 correct?

23 A Yes. In one affidavit, he stated that I would
24 like to get my hands on Scott.

25 Q I don't believe that's the case and I don't.

SCOTT KUNST-CROSS BY MR. SMITH

1 believe that's been submitted into evidence.

2 A Okay.

3 Q So, do you have any evidence that Mr. Loree made
4 any threats against you?

5 A I have that evidence. It's just not allowed to
6 be submitted here.

7 THE COURT: You had a motion? You have to state
8 it on the record.

9 MR. SMITH: Your Honor, we had a motion that
10 this alleged affidavit is not admissible evidence
11 because it's completely fabricated for all we know.
12 And you told us to bring it up — you told us not to
13 bring it up. And then—

14 THE COURT: Well, let's just say that this case
15 has gone a little bit differently than any of us had
16 anticipated and had exceptions — some things have
17 gotten into the record that would not have ordinarily
18 gotten into the record except for the flow of the
19 evidence.

20 Ladies and gentlemen, with respect to the facts
21 in this case, I defer to you entirely. There are
22 some documents, testimony that you received in
23 evidence and some that you don't. You understand
24 that if there is a fact that is not in evidence that
25 is purported by one party or the other, you will

SCOTT KUNST-CROSS BY MR. SMITH

1 determine whether it is in evidence. You'll
2 determine what value any of the evidence that is
3 presented as when you make a determination of the
4 facts in the case.

5 This examination is unusual in that it pits an
6 attorney against a party, not necessarily saying that
7 in an adversarial way, but it's going a little bit
8 differently than ordinarily. So, you understand that
9 from time to time there will be things said,
10 objections posed. And I'll interject as
11 appropriate — pursuant to appropriate motions made.

12 But do know this, to both of you, that this is
13 y'all's case. And to the extent that you muddy the
14 record a little bit based on the questions posed and
15 the answers submitted, that's not a consequence of
16 the rulings of the Court. It's a consequence of the
17 answers that are posed — or excuse me, the questions
18 that are posed and the answers that are presented.

19 Okay.

20 Just know I have no dog in the fight. I state
21 that to y'all. I have no dog in the fight. You're
22 hearing what I'm hearing.

23 Go ahead, sir.

24 MR. SMITH: Yes, Your Honor.

25

1 BY MR. SMITH:

2 Q Would you agree with me that more than one
3 subcontractor has testified under oath in the myriad of
4 depositions that have been done here that from
5 February 2006 on, you wouldn't return phone call and you
6 wouldn't return emails?

7 A Yes, Kevin Goad was one of them.

8 Q So you — we can move on, you will admit you
9 disappeared in February of 2006 from the projects?

10 A I was not contacting people through email or
11 phone because I knew that we would end up in an
12 environment like this and my hard drive would be
13 subpoenaed and all my email records would be subpoenaed.
14 I had to be careful.

15 Q So you — again —

16 A I met — in all instances that I met people,
17 Tracy and I met them personally. So I certainly didn't
18 disappear.

19 Q You admit you stopped returning phone calls?
20 You admit you —

21 A Not all.

22 Q — stopped returning emails?

23 A Not all.

24 Q Do you admit to many of your clients and
25 subcontractors you stopped returning calls and stopped

SCOTT KUNST-CROSS BY MR. SMITH

1 returning emails? Scott, we can do this all night.

2 A It was not a time that I stopped returning all
3 calls. I had to be careful of who I spoke to. That's my
4 answer. I did not.

5 Q You admit that you stopped returning phone calls
6 and emails with Mr. Loree?

7 A The record shows that I continued to email him
8 up to the end of the termination.

9 Q Now, you admit Mr. Loree was acting on behalf of
10 Mr. and Mrs. Gaby when you first met with him in February
11 of 2006, correct?

12 A Yes.

13 Q And you admit that Mr. Loree was just sent to
14 find out what was happening at the project? That was his
15 charge?

16 A I don't believe he was sent to just find out, I
17 think he was sent to take over.

18 Q Okay. But he was sent on behalf of
19 Mr. and Mrs. Gaby?

20 A Yes.

21 Q To either take over or to investigate what was
22 going on at their project?

23 A Yes.

24 Q And, in fact, you admit that it was the Gaby's,
25 actually, not Mr. Loree who was responsible for most of

SCOTT KUNST-CROSS BY MR. SMITH

1 your woes?

2 A Not true. He's an agent of the Gaby's.

3 Q So, because he's an agent of the Gaby's out
4 doing their work, he's responsible as well?

5 A Of course. He's the one that spoke the specific
6 statements, why we're here today, not the Gaby's.

7 Q Well --

8 MR. SMITH: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. SMITH:

11 Q Mr. Kunst, can you identify that for me?

12 THE WITNESS: Your Honor, can we approach?

13 THE COURT: Yeah, absolutely.

14 (WHEREUPON, an off-the-record bench conference
15 was held in the presence of the jury but out of
16 the hearing of the jury.)

17 BY MR. SMITH:

18 Q Can you identify that document for the Court?

19 A Yes, it is a 100 page document that I sent to
20 the Gaby's on February 26th, 2015. For the past nine
21 years, I occasionally sent a large document like this to
22 the Gaby's reminding them --

23 Q Hold on. Hold on. I want to get it admitted
24 first, then I'll let you talk about it.

25 MR. SMITH: Your Honor, I'd move for the

SCOTT KUNST-CROSS BY MR. SMITH

1 admission of the document into evidence.

2 THE COURT: Okay. Subject to the objection, the
3 same is admitted.

4 (WHEREUPON, Defendant's Exhibit No. 18 was
5 marked for identification and received into
6 evidence.)

7 BY MR. SMITH:

8 Q Before all that, my question was, in fact,
9 haven't you stated that most of your -- the problems you
10 claim to encounter were caused by the Gaby's, not
11 Mr. Loree?

12 A The termination from the project was decided by
13 the Gaby's. I've never claimed that the Gaby's were
14 responsible for the slanderous statements. I claimed that
15 Mr. Loree is their agent.

16 Q And acting on their --

17 A But I have no evidence they instructed him to
18 say those things. In fact, they deny it.

19 Q Okay. So, your testimony is he was their agent,
20 acting on their behalf and he's the one who said these
21 things while in the course of his investigation; is that
22 your testimony?

23 A He was acting as their agent, yes.

24 Q During the course of his investigation that he
25 was doing?

SCOTT KUNST-CROSS BY MR. SMITH

1 A Well, he was — well, he was investigating the
2 Gaby project and apparently others, but yes, he would have
3 been their agent.

4 Q And you admit that it was Mr. Loree who
5 contacted subcontractors to determine if money was owed,
6 correct?

7 A Correct.

8 Q And you admit it was Mr. Loree who informed you
9 that you were terminated from the project?

10 A Yes. I had no contact with anyone other than
11 David Loree at that time on behalf of the Gaby's.

12 Q Have you ever made false statements under oath?

13 A No.

14 Q No?

15 A No.

16 Q No. Have you ever filed tax returns with the
17 South Carolina Department of Revenue that misrepresented
18 your personal income?

19 A No.

20 Q No. Have you ever filed tax returns with the
21 South Carolina Department of Revenue that misrepresented
22 your corporate income tax and withholdings?

23 A No.

24 Q No. Have you ever filed tax returns with the
25 Internal Revenue Service that misrepresented your

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SCOTT KUNST-CROSS BY MR. SMITH

1 corporate income tax and withholdings?

2 A No.

3 Q Have you ever filed tax returns with the
4 Internal Revenue Service that misrepresented your personal
5 income tax?

6 A No.

7 MR. SMITH: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. SMITH:

10 Q This has your social security number on it. If
11 you want to scratch that out, I am perfectly fine with you
12 doing that. I mean, you filed them with the Court, but if
13 you would, identify that document for me.

14 A This is the 2004 individual 1040 prior to the
15 amended returns.

16 MR. SMITH: Your Honor, I would move that the
17 same be received into evidence.

18 THE COURT: Objection, sir?

19 MR. KUNST: No objection.

20 THE COURT: Okay. Without objection, the same
21 is admitted into evidence.

22 MR. SMITH: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 (WHEREUPON, Defendant's Exhibit No. 19 was
25 marked for identification and received into

SCOTT KUNST-CROSS BY MR. SMITH

1 evidence.)

2 BY MR. SMITH:

3 Q Do you recognize that document, Mr. Kunst?

4 A This is the U.S. income tax return for the S
5 Corp 1120 S from 2004.

6 MR. SMITH: Your Honor, I would move that
7 document into evidence.

8 THE COURT: Objection, sir?

9 MR. KUNST: No objection.

10 THE COURT: Okay. Without objection, the same
11 is admitted into evidence.

12 (WHEREUPON, Defendant's Exhibit No. 20 was
13 marked for identification and received into
14 evidence.)

15 BY MR. SMITH:

16 Q I would ask that you take a look at that
17 document —

18 THE COURT: Hold on a second. Are you going to
19 mark that one?

20 MR. SMITH: What I'm going to do is there's four
21 of them. That's the third one. And once he
22 identifies them all, I'm going to let her mark them
23 all at once —

24 THE COURT: Got you.

25 MR. SMITH: — instead of stopping.

SCOTT KUNST-CROSS BY MR. SMITH

1 THE COURT: Yes, sir.

2 MR. SMITH: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. SMITH:

5 Q Finally, can you identify that one for the
6 Court?

7 A It appears to be the 1040 2005.

8 Q Any reason to doubt that that's what it is?

9 A I have no reason to doubt.

10 MR. SMITH: Your Honor, we would move that it
11 also be admitted into evidence.

12 THE COURT: Any objection?

13 MR. KUNST: No objection.

14 THE COURT: Without objection the same is
15 admitted into evidence.

16 (WHEREUPON; Defendant's Exhibit No. 21 was
17 marked for identification and received into
18 evidence.)

19 BY MR. SMITH:

20 Q Scott, I'd ask you to look at the first
21 document, the 2004 IRS personal tax return. Do you see
22 the back of the first page where your signature is
23 located?

24 A Yes.

25 Q Do you see right above it, there's a little

SCOTT KUNST-CROSS BY MR. SMITH

1 paragraph there?

2 A Yes, I see under penalty of perjury.

3 Q I was going to say would you read that to the
4 jury?

5 A Yes.

6 Under penalties of perjury, I declare that I
7 have examined this return and accompanying schedules and
8 statements, and to the best of my knowledge and belief,
9 they are correct and complete, declaration of preparer.

10 Q So, would you agree with me that that is a
11 statement you have made under oath to the Internal Revenue
12 Service?

13 A This is a signed return that I submitted to the
14 IRS, yes.

15 Q Okay. And we can walk through each of the other
16 four returns as well if you want or we can stipulate that
17 you signed all four of these under the penalties of
18 perjury?

19 A Yes.

20 Q Okay.

21 MR. SMITH: Your Honor?

22 THE COURT: Yes, sir.

23 MR. SMITH: It may be keeping with your
24 suggestion the last time, instead of marking each of
25 these 20 documents individually, I can mark them as a

SCOTT KUNST-CROSS BY MR. SMITH

1 collective exhibit if you want me to do it that way
2 instead.

3 THE COURT: Yeah, that's probably easier than
4 marking them --

5 MR. SMITH: Okay. It might just take me one
6 second to make the pile.

7 THE COURT: Yes, sir.
8 Okay. Let's take a short break and come back
9 in.

10 (WHEREUPON, the jury left open court at
11 approximately 5:22 p.m.)

12 THE COURT: We'll take a break for about five
13 minutes, then we'll come back in.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: I suspect that y'all have noted the
16 mood of the jury.

17 MR. SMITH: Oh, absolutely.

18 THE COURT: I just pass that along to you for
19 information sake.

20 MR. SMITH: Absolutely, Your Honor. My mood
21 getting the same way.

22 THE COURT: Okay. Good enough.

23 All right. Bring the jury in please, sir.

24 (WHEREUPON, the jury came into open court at
25 approximately 5:36.)

SCOTT KUNST-CROSS BY MR. SMITH

1 THE COURT: All right. Mr. Smith, your witness.

2 MR. SMITH: May I approach?

3 THE COURT: Yes, sir.

4 BY MR. SMITH:

5 Q Scott, I'm going to hand you what's been marked .
6 as Defendant's Exhibit 20 and I think you said you were --
7 maybe you haven't seen them. Have you seen those yet, did
8 I show those to you?

9 A Yes, you did.

10 Q And those are -- can you tell the jury what
11 those are?

12 A These are the South Carolina Department of
13 Revenue liens.

14 Q And how many liens do you have against you by
15 the South Carolina Department of Revenue?

16 A Is each one of these pages an individual lien?

17 Q There's more than one lien on some pages. I
18 mean, do you know?

19 A Well, I've reviewed this and it looks like for
20 every penalty and every item, they make a new lien. So, I
21 mean, the total is large whatever it is, I know that.

22 Q So, you wouldn't argue with me that there's
23 probably over 20 liens the South Carolina Department of
24 Revenue has against you and your company?

25 A Well, some would be the individual income tax

SCOTT KUNST-CROSS BY MR. SMITH

1 return lien from the county bond Benson brought and then
2 the other would be the unemployment tax from that period
3 in 2004. So yes, I would expect there to be a lot of
4 liens, yes.

5 MR. SMITH: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. SMITH:

8 Q I'm going to hand you what's been marked as
9 Defendant's Exhibit 21 and ask if you can recognize those
10 documents?

11 A I do.

12 Q Can you tell the jury what those are?

13 A These are the federal tax liens.

14 Q Now, one of the things you've said is you never
15 had any tax issues before 2006 or did I misunderstand
16 that?

17 A That is correct. I have never had any liens or
18 any kind of issues. I've never been audited. I've never
19 had a levy or certainly never been found guilty of tax
20 invasion.

21 Q But my question -- then can you explain why some
22 of those liens are for 2004/2005 time frame?

23 A The newer ones?

24 Q The State of South Carolina has liens against
25 you from 2004 and 2005?

SCOTT KUNST-CROSS BY MR. SMITH

1 A I can't speak specifically to each lien here.

2 Q Well, I'm just curious because you said you've
3 never had any tax issues before 2006. And there's liens
4 that predate 2006.

5 A Oh, okay. If there are on the federal side, it
6 could be the loss carry back they didn't accept. I did an
7 accounting change to cash basis.

8 Q Well, these are the South Carolina ones.

9 A Well, the unemployment tax will definitely be
10 from 2004 and that may have leaked over to 2005, yes.

11 Q So, you did have tax issues prior to 2006?

12 A These weren't filed until after.

13 Q But you had delinquent taxes from 2004/2005 is
14 what I'm trying to get to.

15 A If that's the period they applied to, yes.

16 Q Okay. So, when you say you've never made a
17 false statement under oath, you admit those tax documents
18 were signed under oath, under penalty of perjury,
19 correct?

20 A The tax documents I filed with the IRS, of
21 course.

22 Q Okay. And the IRS does not agree with what you
23 put in those documents; is that fair to say?

24 A That's incorrect.

25 Q Okay. So, they filed liens on you —

SCOTT KUNST-CROSS BY MR. SMITH

1 A I don't understand your question they don't
2 agree. They don't agree in what respect?

3 Q Well, they disagree with what you put in your
4 return and they filed a lien against you for taxes that
5 you did not report?

6 A It's the statement of the income of 2006 that
7 originated from the South Carolina Department of Revenue
8 that I explained earlier.

9 Q So, all of this, all 24, 25 liens are from that
10 one incident, that's your testimony?

11 A What one incident is that?

12 Q I'm not sure. You're saying that there was
13 something in 2006 that caused all of this. And I'm just
14 trying to figure it out.

15 A I said there's an unemployment tax situation
16 arising from the Covington roof that I still owe
17 withholding on. I know that. I know the numbers.
18 They've grown because of the penalties. They weren't
19 large to start with. The federal tax lien has to do with
20 that issue with my 2006 tax return.

21 Q Do you admit, too, that you didn't claim any of
22 the money that you spent from the Kunstwerke corporate
23 accounts on the things we've talked about earlier as
24 personal income?

25 A Absolutely not. There's no finding of that.

SCOTT KUNST-CROSS BY MR. SMITH

1 Why did you bring that up?

2 Q Okay. So, you did claim the personal spending
3 from the corporate account as income, is that what you're
4 saying?

5 A It is a draw. The income -- the only income
6 that can appear on a tax return is the corporation's
7 income minus its expenses.

8 Q I am going to really, really try not to go
9 around on this one.

10 A Okay.

11 Q Will you admit on your individual tax returns
12 that you did not declare any of the money that you spent,
13 for example, on the Kunst residence, the Cliff Ridge
14 property as income? That's as simple as I can make it.

15 A It's not accounted as an expense.

16 Q So, the answer is no, you didn't claim it as --
17 you did not claim it as income on your personal tax?

18 A It was a draw from income that had been earned
19 much earlier.

20 Q You're not going to answer my question, are you?

21 A I don't know how to answer --

22 Q It's a yes or no question.

23 A Again, it's a premise thing. I --

24 Q Can you show on your tax return --

25 A Do you have a specific finding that says they

SCOTT KUNST-CROSS BY MR. SMITH

1 found I didn't do that?

2 Q Can you show —

3 A That would be tax evasion.

4 Q Have you testified previously under oath that
5 you can't show on your individual tax returns that you
6 declared any of the money that you spent from your
7 corporate account on your personal items as income?

8 A I'm not even sure I understand the question.
9 Say it again a little more simple.

10 Q I have tried to be as simple as I can and you're
11 trying to evade my question.

12 A I'm not trying to evade your question.

13 Q The money you spent on, for example, the Cliff
14 Ridge property, the corporate money, the money for the
15 windows you took out —

16 A Okay.

17 Q — of the Kunstwerke account and put into your
18 personal residence.

19 A Yes.

20 Q Did you declare the value of that money as
21 income to the Internal Revenue Service?

22 A It would have been income originally, yes, when
23 it occurred.

24 Q So, you did claim it as income, is that your
25 testimony now?

SCOTT KUNST-CROSS BY MR. SMITH

1 A The records are set up on a draw basis. I don't
2 understand at what point — it would not have been an
3 expense. It would not have been income. I have no
4 salary. You see?

5 Q I nor the IRS see. The question —

6 A What finding do you have from the IRS that they
7 agree with you.

8 Q I have testimony from you that — maybe it's
9 just easier if I show you that, where you claim under
10 oath — the question is — in the December 6th, 2007,
11 deposition transcript, which you have and been marked,
12 Pages 55, Lines 1 through 7.

13 The question to you, Can you show me on either
14 of the individual tax returns that you identified as
15 exhibits a moment ago where you declared any of that money
16 spent on the Kunst residence as income to you?

17 Answer, No.

18 A Because it doesn't appear specifically.

19 Q So, there's —

20 A You have to look within the ledger how it's
21 accounted within the accounting ledger.

22 Q So, you're changing your testimony from this?

23 A I'm not changing anything. The numbers on the
24 federal tax return that are done in Turbo Tax come from
25 the ledger.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Further down, question, Would you agree then on
2 none of the returns that I've showed you, which is the
3 individual 1040s for 2004/2005 and the 1120s for the
4 corporation, which have been marked previously as exhibit
5 here, you do not show any treatment of your payment of
6 this \$5,000 for the improvements to the Kunst residence
7 paid to Window and Door Concepts; would you agree with
8 that?

9 Answer, Yes, I agree with that.

10 And I just simply was trying to get you to say
11 do you agree that you did not report any of the money that
12 you took out of the Kunstwerke account to put into your
13 personal home as income to you?

14 A It was already --

15 Q I will move on. You did testify --

16 A There's no specific line -- whatever.

17 Q We're going to move on. You've testified under
18 oath today and previously that you're trying to work out
19 your tax issues with the South Carolina Department of
20 Revenue?

21 A Yes.

22 Q And I believe if you see Plaintiff's Exhibit 19,
23 if you have it up there?

24 A Here it is.

25 Q Do you see at the bottom of the affidavit that

SCOTT KUNST-CROSS BY MR. SMITH

1 you filed where it states — or does that got the
2 affidavit on top of it?

3 A It does.

4 Q Okay. Due to legal cost incurred during 2006
5 for a refund will occur. Do you see that?

6 A Yes.

7 Q And you wrote that in 2009?

8 A Yes.

9 Q Has a refund occurred?

10 A Not yet. I filed amended returns, as I
11 testified earlier, with a loss of \$182,000 in 2006. Now,
12 the question is the corporation continues to suffer
13 losses.

14 Q Well, the corporation doesn't exist. It can't
15 suffer losses?

16 A Here's the issue, though. Here's why I have the
17 mess I have. The corporation was technically collecting
18 debt as late as 2013 even though it's dissolved. It's
19 really a quagmire. It's beyond — it's beyond my
20 expertise, that's why I have to have someone more
21 professional.

22 Q And you've also testified that you were going to
23 work out your issues with the IRS, correct?

24 A Yes, that's why I filed the amended returns in
25 2011.

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1 Q And those were rejected as well?

2 A No, the returns were all accepted, the amended
3 returns, except for the last one that had the carry back.

4 Q Which is the one that would have alleviated the
5 debt?

6 A The one with the 182 and I got a letter stating
7 how it was incorrect. I met with -- I can tell you her
8 name, hold on. I think her name was Leisenburger. I have
9 several letters in here. These are all the amended
10 returns. I have several letters that I've written to her.
11 Her name is --

12 Q So, it's all just a -- go ahead. I didn't mean
13 to interrupt you.

14 A Lizeena Lineburger of the IRS in Pittsburgh
15 because that's where all of this is occurring now. And
16 it's going to take a Pittsburgh attorney to do it.

17 Q So, it's all just a big mess that needs to be
18 straightened out?

19 A Yes.

20 Q If you can just get it reconciled?

21 A Yes. They haven't audited me. There's no tax
22 evasion.

23 Q Okay. Now, you've touted in several places and
24 in your testimony and in other places that your corporate
25 cases were successful; is that correct?

SCOTT KUNST-CROSS BY MR. SMITH

1 A They were.

2 Q Were all of them successful?

3 A Uh-huh.

4 Q Okay.

5 A Yes.

6 Q Now, you've also testified several times
7 previously under oath that when your Kunstwerke corporate
8 accounts were resolved that you were going to pay the
9 subcontractors that were not paid; is that correct?

10 A That's correct.

11 Q Have you paid those subcontractors?

12 A No.

13 Q So, were your cases successful?

14 A They were, indeed, successful. The problem was
15 that 100 percent of the funds collected, which were a
16 little over \$100,000 when you add everybody up all went to
17 the Carpenter Law Firm and legal fees. That's your
18 answer.

19 Q Okay. So, were the cases successful?

20 A They were successful. But see, once we got past
21 the lien fraud, these kinds of debts aren't as
22 collectable. That's why we have lien laws. That's why
23 those lien laws were breached. If I could have filed
24 liens at the time, I would have collected. I would have
25 foreclosed on properties. By the time the Carpenter Law

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1 Firm took the corporate cases, they were practically
2 unsecured debt and he wasn't going to collect 100 percent.
3 It's basically like factoring it to a collection agency.

4 Q Mr. Kunst, you may not know this and I'm not
5 trying to testify, but I'm a construction lawyer. That's
6 what I do by trade.

7 A All right.

8 Q Are you testifying to this jury that you
9 couldn't have filed a lien in February of 2006 if you
10 thought you were owed 90,000?

11 A I was threatened if I filed a lien, as were the
12 subs. You've seen the letters.

13 Q I never saw a letter to you saying you better
14 not -- that you couldn't file a lien. Are you testifying
15 you could not file a lien in February 2006?

16 A I was threatened if --

17 Q By whom?

18 A By Mike Parham, for one.

19 Q Did Mr. and Mrs. Gaby threaten you if you filed
20 a lien?

21 A They sent the letter to the subcontractors and
22 suppliers.

23 Q Asking for how much they were owed.

24 A I was told that if I filed any liens on any
25 houses there would be legal action.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q But not by Mr. Loree?

2 A I can't say that.

3 Q Okay. That's good enough. But you were not
4 physically prevented from filing a lien? You could have
5 filed liens for all the amount of money you claim owned?

6 A I was not going to file a lien while I'm
7 threatened.

8 Q But 20 lawsuits were okay?

9 A That was the way to resolve it in a court of law
10 with discovery.

11 Q So, it's your testimony that it was easier to
12 litigate for nine years than to file a lien that could be
13 resolved in 90 days?

14 A You don't understand. This was long before we
15 even thought about filing these lawsuits. Everybody
16 wanted to file liens, but nobody did because they were
17 threatened.

18 Q So, now you're blaming the reason your corporate
19 case weren't successful was your own lawyers —

20 A I didn't say they were unsuccessful. They were
21 successful for Tracy and I because all we wanted to do is
22 prove that the other side would pay something, that it
23 wasn't the other way around, that money wasn't taken from
24 those people, it was the other way. The dollar amount at
25 that point wasn't as important to us. We knew the

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1 Carpenter Law Firm would take most of it anyhow. It was
2 tremendous victory that we won all of those and everybody
3 paid something rather than the other way around.

4 Q So, if you were owed \$300,000, if somebody
5 paid -- wrote a check to your fiance for \$13,000, that's a
6 victory?

7 A The man who settles mid-trial with a check is
8 the loser.

9 Q Okay.

10 A If I had taken money from the Coco project has
11 Mr. Loree said to witnesses, then that lawsuit would have
12 been another way resolved.

13 Q So, have you -- do you admit also that you
14 thought the Kunstwerke attorneys were acting against your
15 interest then, or against the interest of the company?

16 A No, no, no. I wish they would have fought more,
17 but these lawsuits are very expensive. And I understand,
18 there's a lot of paperwork involved and such and they have
19 legal fees. What Tracy and I are doing isn't as expensive
20 for us as it is for them. We understood that.

21 Q Okay. So then you don't make any allegations
22 under oath now that your attorneys were in bed or snuggled
23 up other attorneys against your interest?

24 A It's not in bed. The issue that I have is with
25 all attorneys, that at the end of the day, it's about

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1 fees. And that's what I'm referring if that's where
2 you're going.

3 Q That's where I'm going.

4 A Okay. Go there.

5 Q Because you wrote me a letter?

6 A I did.

7 Q And that's right in front of you, right?

8 A Yes.

9 Q And I believe you wrote that they, being your
10 attorneys, desperate for fees snuggled up with Stern and
11 settled anyway?

12 A Yes.

13 Q Against your interest?

14 A Well, not necessarily against my interest, but
15 the point being was the Gaby's had the \$400,00 damage out
16 there. That made — I stated this two days ago. With the
17 Gaby's damage out there for \$400,000, anything my
18 corporation collected would have gone to them. So,
19 attorneys have ways, I guess, of how they settle cases.
20 And the most difficult thing out of these nine years has
21 been having the Gaby damages out there. It changed
22 everything, specifically, in the Covington case. I was
23 told when we settled for \$25,000 — I didn't want to
24 settle for that much. They said — because he owed 130.
25 I was told that if we didn't settle for 25 that the Gaby's

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1 would sell their judgment to the Covington's.

2 Q So, they're out to get you, too?

3 A No, but I was told that that's what would occur.

4 There's so many finaglings that go on in these
5 settlements. That's what I'm referring to here. That's
6 what I was told would happen by the Carpenter Law Firm.

7 Q In the Hickey case you keep referring to --

8 A Yes.

9 Q -- how much did you get from Mr. Hickey for his
10 egregious actions against you?

11 A Mr. Hickey wasn't a client.

12 Q I just asked how much you got. I didn't ask
13 whether he was a client or not.

14 A We settled -- we settled even because we were
15 partners in that property. The man had no money and I was

16 --

17 Q But you count that as a victory?

18 A The Hickey case, again, is different. I was an
19 owner of the property. He wasn't a client. He wasn't a
20 client that stole money -- that said I stole money from
21 him.

22 Q I'll move on. It is not true, though, that
23 sometimes you didn't pay subcontractors even when your
24 clients didn't have a balance outstanding to you at all?
25 If they were completely paid up, there were still

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1 contractors you didn't pay?

2 A Nobody's paid up as long as work is occurring.
3 Bills are being paid by the hour at the site. There's no
4 such thing as being -- when someone forwards a wire or a
5 check to Kunstwerke say on Friday afternoon after
6 receiving a statement, by the time they get that and by
7 the time they pay it, there's likely been a week's worth
8 of activity there and never paid up. That's why the
9 contract says reimbursement. That's the proper premise.

10 Q So, your testimony is even if there's no money
11 outstanding from a client to you, they have paid up 100
12 percent of everything you've asked for, then there may
13 still be subcontractors who for whom you've billed those
14 clients are not paid?

15 A That's incorrect. That's a false premise again.
16 For example -- I'll give you a good example that may help
17 you understand and the jury understand. I think it was in
18 October of 2005, I signed a heating and air contract for
19 the Gaby project. It was roughly 40,000. I wrote a check
20 on the Gaby driveway to the heating and air guy for
21 \$40,000. That did not occur or did not appear in the Gaby
22 progress billing for another week. And by the time that
23 Richard Gaby wired that money, it had been 10 days.

24 So, the question is when Mr. Gaby had paid the
25 previous weeks, which hit at about the time that I paid

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1 that, Mr. Gaby wasn't paid up because I had already put
2 him on the hook for \$40,000 he didn't even know about.
3 That's the little part in your premise that's incorrect.
4 These clients were accruing, incurring, whatever
5 accounting word you want to use, cost at their project
6 that they were contractually liable for. So, they were
7 never paid up until the project was completely done and a
8 full reconciliation occurred.

9 Q Okay. I'm going to move on.

10 A Yes, please.

11 Q So, we're not going to agree on this. And I'm
12 trying to get more to the heart of the matter. You
13 claimed that around February 2006, there were rumors
14 abounding everywhere; is that correct?

15 A Yes.

16 Q And over the years, you've testified very
17 differently about who started those rumors; haven't you?

18 A Not true.

19 Q Not true?

20 A (The witness shook his head.)

21 Q Okay. Over the years, you've testified very
22 differently about what those rumors are; is that correct?

23 A There's a big difference between rumors and
24 finding people who will testify to specific statements.
25 It was very difficult for Tracy and I to get affidavits

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1 from individuals who were willing to come in here and put
2 up with this. I couldn't sue on rumors. I needed
3 specific statements. But there were rumors about
4 everything. There were rumors I declared bankruptcy.
5 There were rumors that I had taken a million dollars and
6 skipped town and they couldn't find me. Rumors abounded
7 everywhere.

8 Q So, is it fair to say they then that you've had
9 many different stories over the years?

10 A That's not true.

11 Q Not true? Okay.

12 A All the rumors based on the 20 lawsuits
13 originated from Mr. Loree. Others repeated them.

14 Q So, it is your testimony now that you've never
15 accused anyone else of starting those rumors? You've
16 always said it was David Loree? That's what your
17 testimony is now that David Loree started these rumors?

18 A If there's a statement that cannot be attributed
19 to David Loree, if somebody — like, for instance, Ed
20 Coco, if he originated a different rumor that may have
21 been incorrect, then yes, I can't attribute that to
22 Mr. Loree.

23 Q What about Mr. Covington, something he had said?

24 A Mr. Covington's a lawyer. When he was avoiding
25 his debt, he used words like misappropriation and

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1 commingling of funds. Those are words that Mr. Loree
2 would not understand. I think we can agree on that. So,
3 I would say that Mr. Covington originated the rumor that
4 there had been misappropriated funds.

5 Q So, it's your testimony that you've never
6 accused Gene Covington of using the word embezzlement?
7 mean, that's what you just said?

8 A Well, without seeing specific statements.
9 You're asking generalities. This is a slander case about
10 very specific statements. Now, the other slander cases
11 were resolved, but they didn't have the affidavit
12 statements. But Mr. Loree was the first on the scene —

13 Q Mr. Kunst.

14 A — to allege anything.

15 Q Mr. Kunst.

16 A Everybody else was paying up until the day
17 Mr. Loree arrived.

18 Q Mr. Kunst, you have filed a lawsuit against my
19 client?

20 A Yes.

21 Q And we are here in a court of law where it's
22 after 6:00 at night, none of us want to be here. I just
23 want you to answer my questions.

24 A Ask the question.

25 Q The question was, are you denying that you said

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1 Gene Covington was the one who started the embezzlement
2 rumor? Because you're making a lot of statements here.
3 And we want to be very specific. If you're accusing my
4 client of making these statements and asking for millions
5 of dollars from him, we need to be sure.

6 A I don't think there's the word embezzle in any
7 of the affidavits that are admitted into evidence here.

8 Q That wasn't my question either.

9 A Well, what's your question? You asked
10 specifically about embezzlement. Maybe it was Covington
11 that came up with the term embezzlement at the time.

12 Q So, you don't know; is that fair?

13 A I can speak only to the evidence submitted
14 regarding Mr. Loree today without seeing the Covington —

15 Q The problem is what you're accusing Mr. Loree of
16 you've accused a lot of other people of as well. And
17 that's what I'm trying to figure out here is you say it
18 was my client, you've also said it's other people over the
19 years. And now you've just said Gene Covington never said
20 I embezzled money. Is that true? Is that your testimony?

21 A Gene Covington's case was dismissed because I
22 did not have witnesses that would say anything other than
23 Gene Covington saying embezzled, now, misappropriation. I
24 have contended all along that it was Mr. Loree first on
25 the scene. I've contended all along that Mr. Loree caused

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1 everyone else to stop paying. Mr. Covington had paid over
2 140 weekly invoices prior. All the other clients paid
3 their weekly invoices. None of them made any allegation
4 until Mr. Loree contacted them. And what we discovered in
5 discovery was that a lot of these people, they were just
6 repeating what they were told and they may have repeated
7 little different. I would rather just focus on what
8 Mr. Loree said.

9 Q I'm sure you would, what you allege Mr. Loree
10 said. What I'm asking you, though, are you saying that
11 you've never alleged Mr. Covington also stated you were
12 embezzling money. It's a very simple question. I'm not
13 going to ask it again because I've asked it three times
14 and you've not answered it three times. Will you give me
15 an answer this time? I'm moving on.

16 A Okay.

17 Q That's what I thought. Is it fair to say you've
18 also accused counsel, the lawyers, in the various lawsuits
19 as starting and spreading the rumors against you?

20 A Yes, absolutely.

21 Q So, we've got Mr. Covington, we've got the
22 lawyers?

23 A I attempted to sue Loree's attorney, Sandy
24 Stern, because he was the author of that letter that said
25 I had stiffed subs --

SCOTT KUNST-CROSS BY MR. SMITH

1 Q And —

2 A — and sent it out to everybody. And the
3 lawsuit was dismissed because the judge said that Sandy
4 Stern was acting as an agent for the Gaby's.

5 Q Are you done?

6 A I'm done.

7 Q Okay. And in the past as in right now, when
8 pressed for specifics about your defamation claim, you
9 can't really give those specific; is that correct?

10 A Mr. Loree's claim? I can indeed give specifics.

11 Q The myriad of defamation claims you have made?

12 A There are affidavits filed in every case.

13 Q Well —

14 A For example, one of the rumors —

15 Q — when you were asked about those things in
16 your prior testimony, you said you couldn't?

17 A You're reading from a transcript that was taken
18 before the affidavits were provided in different cases.
19 You need to jump forward to after all the affidavits were
20 submitted. For example, there was the rumor about the
21 bankruptcy, that I declared bankruptcy. That rumor just
22 developed amongst the job site. It never originated from
23 Mr. Loree. But it was stated by the Debaco's to people
24 and I needed to clear that up and find out who the
25 originator was. It wasn't until much later that we

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1 identified who was the originator of specific statements.

2 Q So, you sued the Debaco's for defamation, right?

3 A Yes.

4 Q How did that turn out for you?

5 A We lost that case.

6 Q To a jury?

7 A Yes, to a jury just like this.

8 Q Now —

9 A The Debaco's are very different people.

10 Q Now, in the past, you've actually testified that
11 Mr. Loree had heard the rumors from other people, not tha
12 he started them; is that correct?

13 A That's not correct.

14 Q That's not correct? While we're looking for it,
15 do you remember testifying in a case where you sued The
16 Reserve at Lake Keowee?

17 A Yes.

18 MR. SMITH: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. SMITH: I've got the sealed transcript as
21 well. Had Your Honor rather me submit the sealed?

22 THE COURT: Either way that y'all want to do it
23 As long as there's no contest as to whether that's an
24 accurate copy of the sealed original, then I don't
25 necessarily need the sealed.

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1 MR. SMITH: I have them in the courtroom if it's
2 needed by the Court.

3 THE COURT: If it's a contest, we'll go to the
4 original.

5 BY MR. SMITH:

6 Q Do recognize that document?

7 A I do.

8 Q Is it fair to say that that is the transcript of
9 the testimony you gave in another case, defamation case
10 that you had filed?

11 A Yes.

12 Q And my question to you — and I'll ask it one
13 more time for context for the jury. In fact, in the past,
14 you've actually testified Mr. Loree had heard the rumors
15 from others, not that he started the rumors. And you say
16 that is incorrect, you've never said that?

17 A It depends upon the rumor. You're not being
18 specific.

19 Q Well —

20 A There could be many rumors. He may have heard
21 the bankruptcy rumor from someone else. Mr. Loree can
22 only be responsible for the statements that he made.

23 Q What about that he's a crook?

24 A That was an Ed Coco statement.

25 Q So, that wasn't a David Loree statement?

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1 A There's no evidence here today stating that.

2 Q Okay. And you didn't accuse The Reserve sales
3 people of starting rumors, or did you?

4 A In that close, tight-knit community where I knew
5 every sales representative by name, when on a February
6 afternoon it's announced to the world that Scott Kunst has
7 embezzled or stolen hundreds of thousands of dollars, you
8 know how quickly that went through the sales staff and do
9 you think that everyone kept it secret? The reason there
10 were so many defamation lawsuits is it exploded and
11 everybody was repeating it. We just had to get to the
12 source. Yes, many of the sales staff repeated it. That
13 furthers the damage. That shows how this kind of thing
14 can explode.

15 Q Well, they repeated it or did they start it?
16 And what specifically did they start?

17 A Through my clients, the sales staff have nothing
18 to start. They don't know if I've embezzled money or
19 stolen money.

20 Q Okay.

21 A But it was the gossip of the day.

22 Q Okay. So, everybody was talking about these
23 rumors?

24 A Yeah.

25 Q Okay.

SCOTT KUNST-CROSS BY MR. SMITH

1 A We were getting calls from everybody.

2 Q In fact, just to press on one point, Mr. Loree
3 was not the only person contacting your subcontractors
4 about payments, was he?

5 A Well, once the rumors were out there, that there
6 was embezzlement, people started calling the
7 subcontractors and me asking questions. Particularly,
8 people like the Debaco's. They were freaking out. They
9 were contacting people saying, Is this true? What did you
10 hear? There were a lot of conversations between Bronson
11 and Debaco's even though Bronson wasn't on that project.

12 Q So, the answer to my question is yes, there were
13 a lot of people contacting your subcontractors to find out
14 whether or not you had paid them?

15 A That's not what — people were trying to figure
16 out what was going on. People knew what their balances
17 were, I told them. People like Gene Covington had
18 invoices in his desk. He knew what was due. The Debaco's
19 had statements. They knew — everybody knew what was due.
20 They were just afraid to pay it because they were told I
21 was going to prison or declaring bankruptcy. Nobody
22 wanted to forward money to a corporation that was in this
23 kind of trouble.

24 MR. SMITH: Your Honor, I think we're getting
25 close if you want me to continue.

SCOTT KUNST-CROSS BY MR. SMITH

1 THE COURT: Yes, sir.

2 MR. SMITH: At least, I hope we are.

3 BY MR. SMITH:

4 Q Mr. Kunst, do you believe that over the past
5 nine years several of the judges in these judicial
6 circuits have been against you to the point of corruption?

7 A There are several opinions that I disagree with.

8 Q That's not what I asked. I asked do you believe
9 that several of the judges in this judicial circuit are
10 corrupt?

11 A I don't think they're corrupt.

12 Q You don't?

13 A No.

14 Q You've never said that?

15 A Huh-uh.

16 MR. SMITH: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. SMITH:

19 Q I know this is the moment you've been waiting
20 for. Can you tell the jury and the Court what this
21 document is?

22 A Where I've been working as a security guard at
23 night.

24 Q Before you go into a narrative, can you tell
25 them if you recognize the document?

SCOTT KUNST-CROSS BY MR. SMITH

1 A Oh, I recognize the document.

2 Q And the document is the book that you've been
3 writing?

4 A It's in the process.

5 Q Right. That's why I said the book you've been
6 writing.

7 A Yes.

8 MR. SMITH: I would move for this to be admitted
9 into evidence.

10 THE COURT: Objection, sir?

11 MR. KUNST: No objection.

12 THE COURT: All right. Without objection, the
13 same is admitted as the Defendant's next exhibit.

14 (WHEREUPON, Defendant's Exhibit No. 22 was
15 marked for identification and received into
16 evidence.)

17 BY MR. SMITH:

18 Q If you don't mind, can you turn to Page 14?

19 A (The witness complies.)

20 Q Hold on. The number is --

21 A I don't know if that's the page you want.

22 Q No, it's not. There is a quote in there and I
23 can't -- I put it in my notes, so I'll read it and you can
24 tell me if -- if you disagree with it, then we'll sit here
25 and we'll find it.

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1 Neither Gaby nor Loree, in my personal opinion,
2 are bright enough to have pulled this scam off alone?

3 A I agree.

4 Q The Gaby's needed legal help and eventually a
5 judicial favor or two and in return, Parham and Covington
6 needed their own cover?

7 A Yes.

8 Q Everyone else was stuck in the middle protecting
9 themselves, including subcontractor and suppliers?

10 A Absolutely.

11 Q Mr. Kunst, do you believe that all your clients
12 and the Courts and the lawyers all around Greenville are
13 out to get you?

14 A I do not believe that whatsoever. What I'm
15 stating -- that statement, if you read the whole context,
16 was the Gaby default damages. I was told that typically
17 when there's a default damage that if you have valid
18 counterclaims and you're just a few days late that that
19 default would be reversed nine times out of ten because
20 South Carolina wants to litigate cases. And mine was a
21 typical case, I fully expected that.

22 And then at the time that this was to be -- this
23 case was actually dismissed for a while because a judge --
24 a judge allowed Sandy Stern to write an order on his
25 behalf. And this order included numerous criminal

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1 findings that never occurred and the appellate court had
2 to reverse it. I had to go as a pro se -- I'm not a
3 lawyer. I had to go before the Appeals Court of South
4 Carolina and argue, standing there with the three-judge
5 panel and explain to them how bad that order was that the
6 judge signed that said I have committed criminal acts,
7 listed codes in a civil environment. And the appeals
8 court agreed with me and reversed it back here.

9 Q So, Mr. Kunst, that's not true?

10 A It's absolutely true.

11 Q We will get to the appeals opinion then. I was
12 hoping we did not have to go to the appeals opinion.

13 Your Honor, we're going to have to go to the
14 appeals opinion. I apologize for that, but that is
15 clearly not what the South Carolina Court of Appeals did.

16 THE COURT: I understand.

17 MR. KUNST: The fact that this case is here nine
18 years later.—

19 BY MR. SMITH:

20 Q There's not a question before you. You've had
21 your chance to testify. You did testify, though, before
22 that if only one person had made the allegations, you
23 could have fought that allegation, reconciled that
24 account, again, reconciling, and dispatch that client if I
25 had to remove myself from the project —

SCOTT KUNST-CROSS BY MR. SMITH

1 A It's not the allegation. It's —

2 Q I'm not finished. Let me finish, please.

3 A Go ahead.

4 Q You said if one person had made the allegation,
5 I could have fought that allegation, reconciled the
6 account, and dispatched that client if I had to remove
7 myself from the project. When all of them do it at one
8 time, it's impossible to stop that kind of rumor. Is that
9 your testimony?

10 A That's — not all of them. I didn't say all of
11 them. I state that Lawyer Covington took advantage of
12 what the Gaby's were doing to avoid his own debt.

13 Q Okay.

14 A That's what I'm referring to. He's an officer
15 of this court. He's a lawyer —

16 Q When Mr. Loree came to you in February of 2006,
17 was he not the only one asking at that time about his
18 time?

19 A Mr. Loree?

20 Q Yes.

21 A At what date?

22 Q In February 2006 when he came to you, was he the
23 only one at the time asking about his account?

24 A No.

25 Q Oh, so they were all asking —

SCOTT KUNST-CROSS BY MR. SMITH

1 A I mean, yes, he was the only one that stopped
2 paying. The Gaby's were the only ones threatening — the
3 Gaby's —

4 Q It's yes or no.

5 A The Gaby's started threatening not to pay as
6 late as January. There were no issues with clients not
7 paying or accusing of money being mishandled.

8 Q So, they were the only ones at the time? They
9 were the only ones?

10 A Yes.

11 Q So, you said it, if only one person had made the
12 allegation, you could have fixed that, you could have
13 reconciled that?

14 A I said if one person had stopped paying, it
15 would have been easy just to take care of it —

16 Q No.

17 A — file the lien on the property and move on.
18 The problem was every project stopped paying the same day,
19 so we had \$500,000 sitting out there. That's the
20 explosion. If David Loree had kept it to himself and just
21 simply handled the Gaby account and not contacted anybody
22 and handled it privately with me, we would have done so.

23 MR. SMITH: I'm sorry, Your Honor. I'm looking
24 for something that I can't tell if it's been put into
25 evidence yet or not.

SCOTT KUNST-CROSS BY MR. SMITH.

1 Has there been an order from Judge Welmaker pu
2 into evidence yet?

3 THE COURT REPORTER: The only order I ha
4 Defendant's 14 from 01/15/08.

5 MR. SMITH: Okay.

6 May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 MR. SMITH: And I apologize, this is a
9 highlighted copy because I can't find my regular
10 copy.

11 THE COURT: Yes, sir.

12 BY MR. SMITH:

13 Q Scott, I was going to ask you if you've seen
14 that document?

15 A Yes, I have it right here.

16 Q Okay. You do have it? Have we marked it?

17 A No, no, this is my copy. I knew you were going
18 here.

19 Q Okay. Can we use your copy to mark as an
20 exhibit?

21 A No, I need to keep it.

22 MR. SMITH: Well, Your Honor, then I'd like to
23 move to — for judicial notice Judge Welmaker's order

24 —

25 Or do you have any objection to it being

SCOTT KUNST-CROSS BY MR. SMITH

1 admitted?

2 MR. KUNST: No objection.

3 THE COURT: Okay. All right, the same is
4 admitted.

5 (WHEREUPON, Defendant's Exhibit No. 23 was
6 marked for identification and received into
7 evidence.)

8 BY MR. SMITH:

9 Q Scott, I'm handing you Judge Welmaker's Order.
10 Do you see on Page 2 where Judge Welmaker finds by clear
11 and convincing evidence that the Gaby's are entitled to
12 damages from you?

13 A Yes.

14 Q And do you find where he — Judge Welmaker finds
15 the Gaby's are entitled to punitive damages from you?

16 A Yes.

17 Q And you have not paid this judgment; is that
18 correct?

19 A That is correct. This is a default damages
20 order.

21 Q Okay.

22 MR. SMITH: May I approach, Your Honor?.

23 THE COURT: Yes, sir.

24 BY MR. SMITH:

25 Q I ask you if you've seen that document?

SCOTT KUNST-CROSS BY MR. SMITH

1 A Oh, my goodness, this is it.

2 Q That's it. That's what you've been waiting for,
3 isn't it?

4 A This is the order that Sandy Stern wrote and —

5 Q I ask you if you knew what the document is?

6 A I do.

7 Q Do you have any objection to it being admitted
8 into evidence? If so, I can ask the Court —

9 A It's been overturned. It's been remanded. I
10 object.

11 Q Do you because it's a counterfeit document or
12 just because you disagree with it?

13 A Because the Court of Appeals of South Carolina
14 has reversed this order.

15 THE COURT: I can take judicial notice of its
16 existence and the fact that it was overturned by the
17 Court.

18 MR. SMITH: If it was overturned by the Court.

19 THE COURT: To the extent it may have been:

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: You want to admit it as an exhibit
22 understanding you have the opportunity to admit the
23 appellate opinion as an exhibit as well or you want
24 to just take judicial notice of both?

25 MR. SMITH: I would like to admit it. And then

SCOTT KUNST-CROSS BY MR. SMITH

1 if he wants to admit the Court of Appeals opinion,
2 I'm fine with that, too. I don't think the jury's
3 going to read these cases, but I'm fine with them in
4 evidence.

5 **THE COURT:** What's your preference, Mr. Kunst?

6 **MR. KUNST:** My preference is maybe Tracy could
7 find the Court of Appeals?

8 **MR. SMITH:** I have it. You want me to go ahead
9 and mark it? It has nothing to do with the questions
10 I'm asking, but we'll go ahead —

11 **BY MR. SMITH:**

12 **Q** Is this the Court of Appeals opinion?

13 My apologies again for the delay, Your Honor.

14 **THE COURT:** No worries.

15 **THE WITNESS:** Yes.

16 **MR. SMITH:** Any objection to this being admitted
17 into evidence?

18 **THE WITNESS:** Put it all in. Let them read it.

19 **THE COURT:** Okay. Without objection, then let's
20 enter each of them as exhibits in sequence.

21 (WHEREUPON, Defendant's Exhibits Nos. 24 & 25
22 were marked for identification and received into
23 evidence.)

24 **MR. SMITH:** So, now we have marked the Appellate
25 opinion as well, Your Honor.

1 THE COURT: Yes, sir.

2 BY MR. SMITH:

3 Q But my question is if you turn to Page 3 of
4 Judge Miller's Order, do you see where Judge Miller found
5 that you had converted monies and failed to pay
6 subcontractors?

7 A Yes, he references — Sandy Stern references
8 South Carolina Code —

9 Q No —

10 A — ANN 29-7-20, which is a criminal code.

11 Q Turn to Page 13, Mr. Kunst. Do you see the
12 signature on the document?

13 A Yes.

14 Q Who signed this document?

15 A Edward Miller.

16 Q Edward Miller being whom?

17 A Presiding Judge.

18 Q Okay. And so, this is Judge Miller's Order?
19 Judge Miller signed this Order; is that correct?

20 A Yes. I got a proof — I got a copy of it before
21 it was sent to Judge Miller. The attorneys typically are
22 allowed to write orders.

23 Q That happens in every case.

24 A I got a proof of it before it went to the Judge.
25 And I actually sent it to the Carpenter Law Firm. They

SCOTT KUNST-CROSS BY MR. SMITH

1 were so upset with how bad it was that they wrote a very
2 long scathing letter to the Judge about how inaccurate it
3 was and —

4 Q You can bring —

5 A — how wrong it was to even infer there were
6 criminal findings in a civil case.

7 Q So, do you think —

8 A These are acts of conversion. These are
9 governed by South Carolina code.

10 Q Mr. Kunst —

11 A Yes.

12 Q — you've had your chance to give your
13 soliloquy. I am trying to get my cross-examination done.

14 A Good.

15 Q My question is quite simple. Do you think Judge
16 Miller's corrupt, too?

17 A I don't think he's corrupt.

18 Q Oh, you don't think he's corrupt?

19 A No, absolutely not.

20 Q Okay. In this book you've written, you've
21 changed a few names slightly; is that correct?

22 A Yes, because I'm not going to put people's names
23 out there. I don't —

24 Q So, who —

25 A It's not about that. It's about the kind of

SCOTT KUNST-CROSS BY MR. SMITH

1 people there are in the world.

2 Q Who's Rolley?

3 A Mr. Loree.

4 Q And who do you refer to as Nertz as a character
5 in your book?

6 A Stern. The lawyer who's been fighting me all
7 these years.

8 Q Who's also against you?

9 A He cornered Tracy and I in a Pickens County
10 doorway and shouted loud enough for everybody to hear th
11 I was going to prison. He met with a lot of my crew and
12 told them a lot of things.

13 Q If you turn to Page 1 of your book, do you admit
14 that you write, Thanks to a couple of horrible, and you
15 put in quotes, "mistakes" by a couple of judges in South
16 Carolina?

17 A Yes.

18 Q Four years have been wasted chasing a goon name
19 Rolley?

20 A Because he's definitely a goon.

21 Q And goon being Mr. Loree?

22 A Yes.

23 Q That's who you're talking about?

24 A Definitely. The mistakes are allowing
25 collateral estoppel in a default case —

SCOTT KUNST-CROSS BY MR. SMITH

1 Q What are you implying — .

2 A — doing that and no, it's not South Carolina
3 law.

4 Q What are you implying when you put the word
5 mistakes in quotation marks when you're referring to Judge
6 Miller's Order?

7 A It should have never been argued. It was not an
8 option for that case. It was —

9 Q What are you implying by — when you say
10 mistakes by a judge?

11 A I'm implying it was a mistake. It was reversed
12 as a mistake. I'm saying it should have never been pled.

13 Q Okay.

14 A Collateral estoppel is not an option.

15 Q And I apologize as you're numbering on the books
16 are a little bit different than in a PDF. I'm trying to
17 figure it out. Later on in the book — and I'm looking
18 for it, you say moreover, South Carolina law specifically
19 does not allow collateral estoppel to be derived from
20 default cases for the very reason that nothing is actually
21 litigated, but Nertz, being Mr. Stern, got the, and you
22 put in quotes again, "right" judge.

23 A Uh-huh.

24 Q And boom, your quote, Rolley's case was
25 dismissed in 2010 based on collateral estoppel. Why is

SCOTT KUNST-CROSS BY MR. SMITH

1 the right in quotation marks?

2 A He got the right judge to do it. I just don't
3 think -- nine times out of ten that never occurs. You
4 cannot grant collateral estoppel to a default judgment.

5 Q And so, a little further on, you say, Nertz,
6 being Sandy Stern, got a couple of favors from judges and
7 boom, Rolley's case was dismissed.

8 So, now you're saying -- that's not quite as
9 open to interpretation, is it?

10 A It delayed the case for nine years, yes.

11 Q Scott, what I'm asking is are you saying that
12 Sandy Stern got favors from judges?

13 A In my opinion, he did?

14 Q Okay. And you do admit, also, that the Gaby's
15 had to get a restraining order against you?

16 A They got a restraining order against Tracy
17 because of that letter that she wrote. Because you're not
18 supposed to contact clients and other people that are
19 involved in litigation directly. You have to go through
20 the attorney.

21 MR. SMITH: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 (WHEREUPON, an off-the-record bench conferrer
24 was held in the presence of the jury but out of
25 the hearing of the jury.)

SCOTT KUNST-CROSS BY MR. SMITH

1 THE COURT: Ladies and gentlemen, what we're
2 talking about is the schedule. I told y'all we would
3 go to either 6:00 or 7:00 and we've got a little bit
4 left to go in this testimony. We're going to go to
5 7:00, we're going to stop, then we're going to come
6 back tomorrow morning. So, that's what we were just
7 discussing.

8 So, Mr. Smith, you may proceed, sir.

9 MR. SMITH: Hopefully, this will go a little
10 faster.

11 BY MR. SMITH:

12 Q Mr. Kunst, I want to talk to you about your
13 future business plans —

14 A Yes.

15 Q — after you had finished up at the client
16 houses at The Reserve. I think you testified to this, so
17 we may be able to move quickly, that it's true you didn't
18 plan on taking any future clients. After you were done
19 with the houses at The Reserve, you were not going to take
20 any future clients; is that correct?

21 A I had hoped not to.

22 Q You want to go back to spec houses —

23 A But I lost all my capital, so I couldn't, no.

24 Q But you —

25 A I would have liked to, yes.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Okay. And you've also testified, did you not,
2 that you didn't make any real money on your clients houses
3 anyway?

4 A The net fee income was not typical -- was not
5 the average that one would expect from projects like that,
6 that's what I testified to.

7 Q So, is it fair to say that you didn't want to
8 build any more client houses, that means you didn't want
9 to take any more clients on to build houses for them? You
10 wanted to go out and buy your property, build your house
11 and then sell it?

12 A That's what I had always done before.

13 Q Okay. And that's what you planned to do after
14 you finished these houses in The Reserve?

15 A It's not what I planned, I had already started.
16 I had two projects underway.

17 Q Okay. That's even better. That's what you were
18 doing. So, how is it that all these terrible rumors, just
19 for the sake of argument, would hurt you from going out
20 right now or over the past nine years instead of sitting
21 in the dark writing this book and buying some land and
22 building a house?

23 A Because I'm broke and I --

24 Q But you just said --

25 A I have incurred the debt of five mansions upon

SCOTT KUNST-CROSS BY MR. SMITH

1 me. I have liens and all kinds of things. I cannot be in
2 business until this is resolved.

3 Q Because all those clients ganged up on you?

4 A I didn't collect 100 percent of the lawsuits.
5 That \$500,00 was never collected to the corporation. It
6 was — all the accounts, like from Jennings and all those
7 judgments are all still out there.

8 Q Because all your clients ganged up on you and
9 stopped paying at once?

10 A I don't know if they ganged up on me, they
11 stopped paying. If you had read all of Cold and Greedy —

12 Q I read every word.

13 A Good, I'm glad.

14 Q Do you remember testifying that most of the
15 damages you suffered were not caused by Mr. Loree?

16 A In what respect?

17 Q Well, you're sitting here telling this jury you
18 wanted \$2.6 million dollars from Mr. Loree, is that a fair
19 statement?

20 A Yes, yes. That's what it will take, yes.

21 Q Well, that's what it will take. That's not your
22 damages. There's a difference, I assume. But do you
23 remember testifying that most of the damages you suffered
24 you claim were not caused by Mr. Loree?

25 A I don't understand the context of the question.

SCOTT KUNST-CROSS BY MR. SMITH

1 If someone said something else that was different that
2 caused other than minor damage somewhere, he's still the
3 originator.

4 Q So, your testimony is you never testified that
5 most of the damages you suffered were caused by other
6 people, not by Mr. Loree? Of this \$2.6 million, your
7 testimony is you've maintained from the beginning that
8 those were always caused by Mr. Loree? You haven't had
9 other theories along the way that didn't pan out?

10 A If someone stopped paying, then that — it was
11 the damage on that, yes, from that person.

12 Q Can you look at your December 6th, 2007,
13 deposition testimony? Page 77.

14 A Hold on. There's several up here.

15 Q Try to keep those together so we don't get in
16 trouble. Are you there?

17 A Which one are you at again?

18 Q December 6th, 2007, Page 77, Lines 3 through 15.
19 If you want, I'll read the question and you can read the
20 answer.

21 A I state —

22 Q The question is, Okay. But the basis for your
23 claim, for your individual damages for slander and
24 interferences with contractual relations is based highly
25 on the obligations that are owed to Kunstwerke

SCOTT KUNST-CROSS BY MR. SMITH

1 Corporation?

2 And what is your answer?

3 A I state that that's not true, it allocated based
4 out of fairness. It allocated based on the total damages
5 done, but there were varying degrees of damages by each
6 person. That's what I just stated. If some — the
7 Kennedy's activities listed —

8 Q I'm sorry, the Kennedy's activities is what you
9 said?

10 A Yes. In this incident, in fairness to them,
11 didn't begin to approach Parham and Covington. The point
12 being that their balances were much larger.

13 Q Please continue to read.

14 A Oh.

15 Q The next sentence is pretty key.

16 A So, in fairness to them, I believe that the vast
17 majority of my damages are related more to Covington,
18 Parham, and Hickey.

19 Q So, the vast majority of your damages are
20 related to Covington, Parham, and Hickey?

21 A Those specific damages on those accounts.

22 Q And isn't it true —

23 A We were talking about those account balances at
24 the time.

25 Q Well, that's not what this is about. And we

SCOTT KUNST-CROSS BY MR. SMITH

1 can — if we have to, we can dig down on this. And I
2 guess we will. Because you testified — and we can go
3 back and read the whole thing, that most of your
4 damages — because you're in here today claiming 2.6
5 million dollars. Most of your damages, you claimed, were
6 caused by Covington, Parham, and Hickey — Parham,
7 Covington, Hickey, Kennedy's. Never mentioned a Loree,
8 never mentioned a Gaby. Is that what you testified to?

9 A The Hickey investment property was lost. That
10 was the single largest damage. I'm not saying that it was
11 Hickey specifically, I'm talking about the damages in
12 order of where the damages were the greatest. I would not
13 have lost the Hickey project, I would not have deemed
14 Covington and Parham uncollectible but for Mr. Loree
15 coming to town.

16 Q So, you're changing —

17 A I was stating that those were my biggest damages
18 because that was my big spec project. I had money
19 invested in that.

20 Q So, the vast majority of your damages are from
21 Covington, Parham, and Hickey?

22 A From those projects.

23 Q Okay. That's all I'm trying to establish. And
24 isn't it true that you've never shown us, Mr. Loree,
25 though we've asked you to, how you've been damaged?

SCOTT KUNST-CROSS BY MR. SMITH

1 Today, you've said 2.6 million dollars, but we've asked
2 for damages information from you before in discovery, but
3 you've never provided that. So, is that a fair statement?

4 A I don't think you've ever asked for specific
5 damages in discovery. I've never been asked that.

6 Q It's in interrogatory responses. We'll move on.
7 Not important. And you've talked about your damages being
8 to your reputation generally in this area?

9 A Yes.

10 Q Have you produced one witness that says they
11 won't work with you again? Mr. Goad said he would gladly
12 work with you again, didn't he?

13 A Those that would not, I guess I would have a
14 hard time getting them here.

15 Q Well, no, you have subpoena power. You could
16 have brought anybody you wanted here. Mr. Alfonzo said he
17 would work with you again, correct?

18 A That's correct.

19 Q Okay. So, you can't name anyone who wouldn't
20 work with you again right now? That's part of damages.

21 A Yes, there's many — there's many —

22 Q Who?

23 A Particularly the ones that are owed money don't
24 like me because they think I'm the reason they're owed
25 money.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q They're out to get you, huh?

2 A No.

3 Q And since you're asking for 2.6 million dollars,
4 there's a thing in the law called mitigation of damages.

5 Do you understand what mitigation of damages is?

6 A (The witness nods.)

7 Q You do? Can you tell —

8 A I understand what the word mitigate means.

9 Q Well, I'm not allowed to testify, though, I
10 probably have gone a little liberal of that this time.

11 But mitigation of damages means that if you're damaged by
12 something, you have an obligation under the law to make
13 those damages as little as possible. Is that correct?

14 A Yes.

15 Q Or do you — okay. So, this has been going on
16 since 2006, that's correct?

17 A Yes.

18 Q And now you're claiming 2.6 million dollars?

19 A Yes.

20 Q If you had filed bankruptcy in 2006, do you know
21 how long that bankruptcy would have been on your credit
22 record?

23 A I've already stated I wouldn't.

24 Q You wouldn't file bankruptcy?

25 A No.

SCOTT KUNST-CROSS BY MR. SMITH

1 Q Okay.

2 A I'm not going to supply --

3 Q Do you know how long a bankruptcy remains on
4 your credit history?

5 A I have no idea.

6 Q It's about seven years. So, if you had filed
7 bankruptcy in 2006, in 2013, you would have had a clean
8 credit record. There would have been no liens, no
9 judgments?

10 A Yes. And my suppliers would have been paid
11 pennies on the dollars.

12 Q Okay. Which is more than they've got right now,
13 isn't it?

14 A Not what they're about to get.

15 Q Okay. So, you're looking for a windfall?

16 A No, I'm looking to pay the people that were
17 harmed. That's why I have allowed the judgments to be
18 against me. The worst possible thing I could do after
19 these men trusted me was to declare bankruptcy and walk
20 away.

21 Q The question, though, is a question of
22 mitigation of damages?

23 A Yes.

24 Q You were legally obligated to make your damages
25 as little as possible. If you had declared bankruptcy, in

SCOTT KUNST-CROSS BY MR. SMITH

1 2013, you would have had a clear record. You could be out
2 building houses again right now. Is that fair?

3 A I can't say that for sure, but I just wouldn't
4 do it.

5 Q You just don't know, right?

6 A Are you suggesting I should have declared
7 bankruptcy —

8 Q I'm not suggesting one way or the other. I'm
9 suggesting that you have sat around for nine years doing
10 nothing and now you want millions of dollars?

11 A I haven't sat around. I've got quite a
12 portfolio of stuff I've designed. You should see my
13 website. And secondly, I tried to mitigate the damages by
14 getting the truth out there.

15 Q Well — okay.

16 A That's how I —

17 Q Didn't you testify earlier that if you didn't
18 get favorable verdicts in the contract cases your career
19 is over?

20 A Not that my career is over necessarily. I
21 needed favorable outcomes in the corporate cases to show
22 that money was not embezzled from them because Mr. Lora
23 was not going to correct the record for me. I had to
24 correct the record for myself. I basically —

25 Q So, you did not testify — I'm sorry, I didn't

SCOTT KUNST-CROSS BY MR. SMITH

1 mean to interrupt you. It's your testimony now that you
2 have never testified under oath that unless I get a
3 favorable jury verdict in all these cases, my career is
4 over?

5 A Well, as long as I'm stuck with this debt, yes.

6 Q Okay. And isn't it true that, in fact, you
7 actually lost your license as a residential builder before
8 the events of 2006?

9 A That's not true.

10 Q That's not true?

11 A No.

12 Q You did not testify that you lost your license
13 to build houses in 2005?

14 A No.

15 Q Okay.

16 MR. SMITH: One moment, Your Honor. I'm done
17 with this witness, Your Honor, subject to any recross
18 if he comes back.

19 THE COURT: I understand.

20 MR. SMITH: And I apologize for the lengthiness.

21 THE COURT: No worries. No worries.

22 Mr. Kunst, I know that you have testified for a
23 significant amount of time and you have also
24 testified on cross-examination. Do you have anything
25 else that you need to put into the record?

1 MR. KUNST: Just two minutes, Your Honor.

2 THE COURT: Two minutes, okay. We're going
3 hold you to that, okay?

4 MR. KUNST: Okay. Two minutes.

5 MR. SMITH: Should I just stand here if it's
6 only two minutes?

7 THE COURT: No, you can sit down. Let him
8 testify.

9 MR. SMITH: All right.

10 THE COURT: You have some redirect – we'll ta
11 that up – or recross.

12 MR. SMITH: Yes, sir.

13 THE COURT: Go ahead.

14 MR. KUNST: Just to clear up the mortgage
15 incident, in this hearing that occurred in Greenville
16 a month ago, two months ago, it wasn't the IRS and it
17 wasn't the mortgage company that was moving in. It
18 was Ms. Wright. She was the only one there. The
19 paperwork did not say the others. The others might
20 appear as lienholders, but it was a tactic. It was a
21 move by them to try to, in a way, threaten me. It
22 was my parents house. They've always targeted people
23 close to me. Like you heard Gene Covington
24 threatened Tracy with the proper authorities. It's
25 over and over and over again.

1 He's referenced code violations in these
2 documents and these judges' order that were incorrect
3 and overturned. He's tried to get these — he's got
4 some of it in evidence. Folks, I've never been
5 convicted of a misdemeanor. If anything that has
6 been innuendo here today were true, they would have
7 definitely sought those criminal findings. They
8 would have definitely found, at least, a misdemeanor.
9 And I'll say in closing I've never had more than a
10 traffic ticket. Thank you.

11 **THE COURT:** Okay.

12 Any redirect based on that? Or recross?

13 **MR. SMITH:** No, Your Honor.

14 **THE COURT:** Thank you, Mr. Kunst. I appreciate
15 it. You may step down.

16 Okay. It's my understanding that tomorrow you
17 have a representative from Department of Revenue?

18 **MS. WRIGHT:** Actually, she's out there right
19 now.

20 **THE COURT:** How long will it take you?

21 7:00 o'clock is the end time.

22 **MS. WRIGHT:** I should be done.

23 **THE COURT:** Do you have an objection to going
24 out of order, Mr. Kunst?

25 **MR. KUNST:** I have no objection.

1 **THE COURT:** Okay.

2 **MS. WRIGHT:** I do request, Your Honor, that w
3 be granted protection because normally, the Plaintiff
4 rests and then we're able to do our directed verdict
5 motions, then we do our case.

6 **THE COURT:** He hasn't rested yet.

7 **MS. WRIGHT:** I know that, that's why I'm askin

8 **THE COURT:** You're fine.

9 **MS. WRIGHT:** Okay. Thank you.

10 **MR. SMITH:** Your Honor, I'm sorry, I may not
11 have heard correctly. Because the Plaintiff hasn't
12 rested yet, we are not precluded from moving for
13 directed verdict even though we're calling our
14 witness?

15 **THE COURT:** That's exactly right.

16 **MR. SMITH:** Thank you, Your Honor.

17 **THE COURT:** Ma'am, if you would come up her
18 place your left hand on the Bible and raise your
19 right to be sworn in.

20 **MELISSA ADDCOX**, after being duly
21 sworn, testified as follows:

22 **THE CLERK:** Have a seat, state your name for t
23 record, please.

24 **THE WITNESS:** My name is Melissa Addcox.

25 **DIRECT EXAMINATION**

MELISSA ADDCOX-DIRECT BY MS. WRIGHT

1 BY MS. WRIGHT:

2 Q Good afternoon — actually, I'm going to
3 rephrase that. Good evening, Ms. Addcox. I'm going to
4 look through this paper here. I'm referencing the
5 Defendant's Exhibit 20, South Carolina tax lien. Would
6 you look at those for me, please?

7 A Yes. Okay.

8 Q All right. Ms. Addcox, would you please tell
9 the jury where it is you work?

10 A I work with the South Carolina Department of
11 Revenue. I'm currently a collections supervisor. I
12 supervise 16 revenue officers. We are in the collections
13 area. We enforce tax laws and collect debt.

14 Q And how long have you worked for the Department
15 of Revenue?

16 A Twenty-seven years.

17 Q Those liens that you just looked through, have
18 you seen those before?

19 A Yes.

20 Q What occasion did you look through those liens?

21 A When you contacted me to testify, you sent the
22 information that I reviewed.

23 Q Now, those liens that you have right under your
24 fingers there, are those the same liens that you reviewed
25 prior to your testimony today?

MELISSA ADDCOX-DIRECT BY MS. WRIGH

1 A Yes.

2 Q Okay. And are those tax liens still
3 outstanding?

4 A Yes, they are.

5 MS. WRIGHT: I have no further questions, Your
6 Honor.

7 THE COURT: Mr. Kunst, any questions, sir?

8 MR. KUNST: Real brief, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. KUNST:

12 Q Do you have any evidence that I violated any tax
13 codes?

14 A I do not have that information.

15 Q Do you have any evidence that I've committed tax
16 evasion?

17 A I do not have that information.

18 Q Do you have any evidence as to whether or not I
19 have embezzled or taken money from my clients?

20 A I do not have that information.

21 Q Has the South Carolina Department of Revenue
22 done an audit on my records?

23 A I cannot answer that question.

24 Q Is it possible for a citizen to request an audit
25 be done?

MELISSA ADDCOX-CROSS BY MR. KUNST

1 A I cannot answer that question.

2 MR. KUNST: Nothing further, Your Honor.

3 THE COURT: Okay.

4 Any redirect, ma'am?

5 MS. WRIGHT: No, Your Honor.

6 THE COURT: Okay.

7 Thank you, ma'am, I appreciate you being patient
8 and waiting today.

9 MS. WRIGHT: May the witness be excused, Your
10 Honor?

11 THE COURT: Yes.

12 All right. Ladies and gentlemen, you may notice
13 before we started, I ask is there any objection to
14 taking the witness out of order. That was because
15 the Plaintiff has not yet closed his case yet. And
16 that witness was called by the Defense. The reason
17 we did it out of order is so she wouldn't have to
18 drive from Columbia again. That was the Defense's
19 witness, not the Plaintiff's witness. That's a very
20 final distinction, but I thought it important to, at
21 least, point out to you so you would understand what
22 we were talking about with taking it out of order.

23 My understanding is tomorrow, we may have some
24 deposition testimony, some deposition of a witness
25 that was taken who may not appear in court. I don't.

1 know that for sure, but that's my understanding.
2 After we've heard that testimony, then we will go
3 into argument and charge. And again, I think we're
4 on the timeline that I set out this morning.

5 So, ladies and gentlemen, I will see you
6 tomorrow morning. Please don't discuss the case.
7 9:30 tomorrow morning. 9:30 tomorrow morning. Th.
8 you.

9 (WHEREUPON, the jury left open court and was
10 excused for the day at approximately 6:55 p.m.)

11 THE COURT: All right. If y'all would -- if
12 y'all will, please, we'll start tomorrow at 9:30. I
13 want y'all to be here at 9:00, though, because I want
14 to discuss charge. And I want to do that in
15 chambers, I won't do it on the record. And then just
16 discuss, make sure that we're clear on the deposition
17 testimony. We had a discussion earlier this morning
18 first light that we may come to some accommodation as
19 to what would be admissible and what's not. I want
20 to see where y'all stand on this. Okay? So, I will
21 see y'all tomorrow morning. Is there anything we
22 need to put on the record this evening?

23 MR. KUNST: No, Your Honor.

24 MR. SMITH: No, Your Honor.

25 THE COURT: Okay. All right. I will tell you,

1 you know, I've listened with some curiosity to the
2 testimony that's been presented today. I don't know
3 what the settlement negotiations have been. I have
4 heard the testimony that there appears to be some
5 room potentially for settlement. I don't know if
6 that's possible or not. I don't know if this is a
7 case that needs to go to a jury verdict. I will tell
8 you this that I'm not sure of many things in this
9 world, but I am fairly sure that when and if you
10 reach a jury verdict in this case, you probably will
11 have some additional work to do at the appellate
12 level. It's my guess. So, I would suggest that,
13 perhaps, y'all have a conversation about the value in
14 being shed of this controversy. It certainly has
15 value. And y'all should explore any potential
16 settlement possibilities that are outstanding. They
17 may not be there. And I'm not going to twist your
18 arms.

19 To me, it's -- I'm happy having a jury verdict.
20 We've come this far. But after a jury verdict is
21 rendered, I'm not going to have anything else to do
22 with this case, but y'all may. And you may want to
23 consider what's next. And the best, the best salve
24 for a grievance is resolution to the grievance. So,
25 y'all discuss it.

1 In any event, I'll see y'all tomorrow morning.
2 If you have requests for charge, I'll be happy to
3 look at them at that time. And we'll move forward
4 with the case and anticipate closing argument and
5 charge tomorrow morning.

6 Yes, ma'am.

7 **MS. WRIGHT:** Your Honor, has the Plaintiff
8 rested?

9 **THE COURT:** No, they haven't rested. And I know
10 you haven't either. Y'all -- both your cases are
11 still open right now.

12 Yes, ma'am.

13 **MS. HILTON:** The issue with the deposition
14 testimony tomorrow, there will be originals that are
15 being FedExed here, should be here by 10:00 a.m.,
16 sealed copies. So, I just wanted to let you know
17 that was the situation.

18 **THE COURT:** Well, y'all talk through that. It
19 may be that y'all can agree that those deposition
20 copies are authentic and you might be able to move
21 forward. I don't know. Y'all talk about it.

22 **MS. HILTON:** We discussed it and they wanted
23 originals.

24 **THE COURT:** Okay. Well, I will tell you that
25 I'll be somewhat disappointed if we wait until 10:00

1 for deposition transcripts, just know that.
2 All right. Y'all have a great evening.
3 MR. SMITH: Thank you, Your Honor.
4 (WHEREUPON, the proceedings were concluded for
5 the day to be reconvened on May 28, 2015.)
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