

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge
Trial Court Case No. 2016-CP-40-00164

Appellate Case No. 2017-001522

RECEIVED

MAR 14 2018

SC Court of Appeals

The Kitchen Planners, LLC, ...Appellant,

v.

Samuel E. Friedman and Jane Breyer Friedman and
Branch Banking and Trust, ...Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-00164
The Kitchen Planners, LLC,	)	
	)	
Plaintiff,	)	
vs.	)	ORDER GRANTING
	)	DEFENDANTS' MOTION FOR
Samuel E. Friedman and Jane Breyer	)	SUMMARY JUDGMENT
Friedman, and Branch Banking and Trust.	)	
	)	
Defendants,	)	

Date of Hearing: April 25, 2017

Trial Judge: The Hon. Robert Hood

Plaintiff's Attorneys: Jean Derrick

Defendants' Attorney: Charles A. Krawczyk

RICHLAND COUNTY
FILED
2017 MAY 12 PM 12:44
JANETTE W. MCARDLE
C.C.P. & C.S.

This matter came before the Court on April 25, 2017, for a hearing pursuant to Defendants Samuel E. Friedman and Jane Breyer Friedman's (hereinafter "Friedmans") Motion for Summary Judgment, whereby the Defendants sought a dismissal of Plaintiff The Kitchen Planners, LLC's ("KP") claim for foreclosure of its Mechanic's Lien and Verified Statement of Account in support of the Lien, 2015-CP-40-06849 (collectively "the Lien") filed on November 12, 2015.

Plaintiff Patricia Comose of KP was present in the Court with her attorney, Jean Derrick, Esquire. Attorney for the Friedmans, Charles Krawczyk, was also present in the Court.

I find for the following reasons, the Defendants' Motion should be GRANTED.

000001

1. KP, through its representative Patricia Comose (hereinafter "Ms. Comose"), failed to follow the statutory requirements of S.C. Code Ann. §29 for the following:
 - a. The Lien was not timely filed because the Lien was filed and served later than 90 days from the date that KP performed any labor or furnished any materials to the Freidmans' property in violation of S.C. Code Ann. §29-5-90;
 - b. The basis of the Lien was not labor performed or furnished or for materials furnished and **actually used** in the erection, alteration, or repair of a building in violation of S.C. Code Ann. §29-5-10;
 - c. In filing the Lien, KP, through Ms. Comose, willfully and knowingly claimed more than it could possibly be due in violation of S.C. Code Ann. §29-5-100;
 - d. KP failed to commence the action to foreclose the lien within six (6) months of the date that pursuant to S.C. Code Ann. § 29-5-120.

I. DISCUSSION

A mechanic's lien exists only by virtue of statute, and one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it. *Clo-Car Trucking Co., Inc. v. Cliffure Estates of S. Carolina, Inc.*, 282 S.C. 573, 575, 320 S.E.2d 51, 53 (Ct. App. 1984). A mechanic's lien is purely statutory; therefore, the requirements of the statute must be strictly followed. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985). The basis for a mechanic's lien is a debt due "for labor performed or furnished or for materials furnished and **actually used** in the erection, alteration, or repair of a building or structure upon real estate." S.C. Code Ann. § 29-5-10 (emphasis added). A Mechanic's lien must be filed **and served** within ninety days after the claimant ceases to labor on or furnish labor or materials on the property. S.C. Code Ann. §29-5-90. A suit to foreclose on the lien must be

commenced within six (6) months after the claimant ceases to labor on or furnish labor or materials on the property in order to collect the debt pursuant to S.C. Code Ann. § 29-5-120.

In addition to the strict rules required to file a valid lien, the mechanic's lien statutes provide for a discharge of the lien by showing that the filer of the lien willfully and knowingly claimed more than is due pursuant to S.C. Code Ann. § 29-5-100.

- a. **The Mechanic's Lien was not filed and served within 90 days of Plaintiff providing labor or material to the Friedmans' home.**

S.C. Code Ann. §29-5-90 states:

Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession **and** files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due (emphasis added).

The Lien was filed by Plaintiff with the clerk in the Richland County Court of Common Pleas on November 12, 2015. It was served upon Dr. and Mrs. Friedman on November 17, 2015. To be valid under S.C. Code Ann. §29-5-90, Plaintiff must have last provided material and labor on the home within 90 days of November 17, 2015, which is the date that the Friedmans were served. Ninety days back from November 17, 2015 is August 19, 2015. Thus, the Plaintiff had to perform work or provide materials on August 19, 2015 or later in order to satisfy the statute requirement.

On its face, the mechanic's lien filed by Plaintiff states that the materials and labor were furnished on or about "March 11, 2015 through on or about August 18, 2015." Thus, the date given on the Lien itself falls outside of the 90 day time period. Therefore, the Lien's service was untimely and must be dissolved.

The Court also reviewed the submissions of the parties regarding the evidence of when the last date that Plaintiff provided materials or labor to the Friedmans' home. It is clear to the Court that no credible evidence exists to show that Plaintiff provided any materials or labor to the Friedmans' home after August 18, 2015. Plaintiff's sworn deposition testimony stated that the last date any material or labor was provided by KP was before June 18, 2015. Ms. Comose, the only member/employee of KP, was deposed on April 7, 2017. In that deposition, Ms. Comose stated that she furnished no materials or labor after June 18, 2015. Additionally, there is corroborating evidence in the form of e-mails and other documents that indicate KP was no longer providing services of material after that June 18, 2015 date.

The Court finds that there is no question of material fact that the Lien was not timely filed and served in accordance with S.C. Code Ann. §29-5-90; therefore, the Lien should be dissolved, and the cause of action for foreclosure of the Lien dismissed with prejudice.

- b. **The basis for Kitchen Planners' Lien was not actual labor and material used to construct the home and, as such, was in violation of S.C. Code Ann. § 29-5-10.**

The basis for a mechanic's lien is a debt due "for labor performed or furnished or for materials furnished and **actually used** in the erection, alteration, or repair of a building or structure upon real estate." S.C. Code Ann. § 29-5-10. Section 29-5-10 is an extraordinary remedy created by statute, and it requires strict compliance by the entity seeking to lien the property. In order to establish a mechanic's lien, it is generally necessary that the labor performed go into something which has attached to and become a part of the real estate, adding to the value thereof. *Tenny v. Anderson Water, Light & Power Co.*, 67 S.C. 11, 17, 45 S.E.2d 111, 113 (1903). The court finds that there is no question of material fact that the materials furnished by KP were never installed in the Friedmans' home; therefore, the materials were not "actually

used," which fails to meet the requirements of § 29-5-10. As such, the Lien should be dissolved, and the cause of action for foreclosure of the Lien dismissed with prejudice.

c. Kitchen Planners willfully and knowingly claimed more than it could possibly be due.

An inaccuracy in the statement of the amount due for labor and materials supporting a mechanic's lien shall not invalidate the lien "unless it appear[s] that the person filing the certificate has willfully and knowingly claimed more than his due." S.C. Code Ann. § 29-5-100. Mechanic's liens benefit the contractor, protecting the value of the materials and labor used on the project. Overhead and profit is not lienable unless the "terms of overhead and profit are agreed upon by the parties and are subsequently embodied within a contract." *Zepso Construction, Inc. v. Randazzo*, 357 S.C. 32, 591 S.E.2d 29 (2003).

In this case, Plaintiff testified that she already made a profit prior to filing the Lien. The terms of overhead and profit were not specified in the contract. The Lien is seeking solely overhead and profit. Ms. Comose understood this when she filed the Lien; therefore, she knowingly sought more than she was entitled. This action is in violation of S.C. Code Ann. § 29-5-100. Therefore, the amount sought is not for materials used in the job, but for overhead and profit alone. The Court finds that there is no question of material fact that the Plaintiff willfully and knowingly claimed more than her due; therefore, the Lien should be dissolved, and the cause of action for foreclosure of the Lien dismissed with prejudice.

d. Suit for the enforcement of the Lien was not timely filed.

For the same reasons put forth for the failure of the Lien, the Plaintiff's suit for enforcing the Lien was not timely filed. The last date that KP furnished labor or materials to the Friedmans' home was before June 18, 2015. This required that the suit be filed on or before December 18, 2015. The suit was not filed until January 13, 2016. The Court finds that there is

no question of material fact that the suit was not timely filed, violating S.C. Code Ann. § 29-5-120. As such, the action for foreclosure of the Lien should be dismissed with prejudice.

II. ATTORNEY FEES

S.C. Code Ann. § 29-5-20(a) states in part that "if the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court." In this case, the infirmities of the Lien require that the Lien be dissolved and the foreclosure action dismissed. As such, the Friedmans prevail and must be awarded attorney fees. The Defendants have submitted an attorney's fee affidavit, which I have reviewed and find to meet the factors necessary to determine reasonable attorney's fees as set out in Rule 407, South Carolina Appellate Court Rules and *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). The factors include: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. I find the fee request to be proper and necessary under S.C. Code Ann. § 29-5-20(a). The Court finds that the Friedmans have amassed in excess of \$20,690.65 in attorney fees and costs associated with defending against the Lien and the associated foreclosure action. However, due to the limitation placed on the attorney fees award under S.C. Code Ann. §29-5-20(a), the Friedmans may only be awarded up to the amount of the Lien. Therefore, I find that the Friedmans shall be awarded \$16,594.68 in attorney fees and costs.

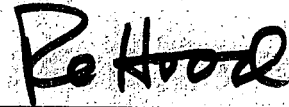
NOW THEREFORE, based upon the pleadings duly filed, the evidence before the Court, the arguments of counsel, and the laws of this State set forth above,

IT IS HEREBY ORDERED THAT:

- a. Defendants Samuel E. Friedman and Jane Breyer Friedman's Motion for Summary Judgment is granted;
- b. Plaintiff Kitchen Planners, LLC's Mechanic's Lien 2015-CP-40-06849 is discharged;
- c. Plaintiff Kitchen Planners, LLC's claim for Foreclosure of Mechanic's Lien is dismissed with prejudice; and
- d. Plaintiff Kitchen Planners, LLC shall pay the Defendants' attorney's fees and costs associated with defending against Mechanic's Lien 2015-CP-40-06849 and its foreclosure in the amount of \$16,594.68.

IT IS SO ORDERED.

Richland County, South Carolina
May 11, 2017



Robert E. Hood, Judge
Circuit Court, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-00164
The Kitchen Planners, LLC,	)	
Plaintiff,	)	
vs.	)	ORDER DENYING PLAINTIFF'S MOTION
Samuel E. Friedman and Jane Breyer	)	TO ALTER OR AMEND
Friedman, and Branch Banking and Trust.	)	
Defendants,	)	

This matter came before the Court pursuant to a Motion to Alter or Amend Pursuant to filed on May 30, 2017 by Plaintiff The Kitchen Planners, LLC's ("KP") seeking to Alter or Amend the Order of this Court of May 12, 2017 (the "Order"). This Court has considered the Plaintiff's Motion and all of the evidence provided the record in this action and by the parties and I find for the following reasons, the Plaintiff's Motion should be DENIED.

I. DISCUSSION

The Order was granted pursuant to Defendants' S.C.R.C.P. Rule 56(a) Motion which, while labeled Motion to Dismiss Mechanic's Lien and Foreclosure, was in fact a Motion for Summary Judgment both by reference in the filed motion, the memorandum in support of the motion and by statement of counsel at the hearing. Defendants timely filed a 10 page Memorandum in Support of the Rule 56(a) Motion with extensive exhibits and cross references to depositions and discovery in the action.

Plaintiff's Motion to sets forth 15 requests to Alter and Amend the Order which the Court addresses as follows:

000008

1. The Court considered the affidavit of Patricia Comose which was filed one day prior to the hearing. The Court found that the affidavit was not credible as it was a self-serving statement which was in complete contradiction to all of the other evidence including the dates on the Lien, the e-mails between the parties and Ms. Comose's own sworn testimony that she provided no materials after June 18, 2015 and that Derrick Tackett had been fired from Friedman job by August 18, 2015 (the date given in the Lien).

Even if Ms. Comose's affidavit were credible its contents fail to change the filing date for the Lien. Title §29-5-90 requires that a mechanic's lien be filed and served within 90 days after the materials are **furnished**. Ms. Comose's affidavit merely states that materials were ordered and paid for, but never indicated that they were ever delivered to the Friedman residence. That the materials be actually delivered and used in the structure is essential to a contractor's right to a lien under the statute. For these reasons and the reasons set forth in the Order, Plaintiff's request to alter or amend is DENIED.

2. As set forth in the Order the court finds that the materials furnished by the Kitchen Planners under the Lien were never installed in the Friedmans home and as such were not "actually used" and as such does not meet the requirements of § 29-5-10. For the same reasons as above, the Court finds Ms. Comose's affidavit unpersuasive and fails to establish a question of fact. For the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED.

3. For the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED

4. For the reasons set forth in the Order and in Paragraph 1 above, Plaintiff's request to alter or amend is DENIED.

5. The Court found that the allegations in the Defendants' motion and supporting Memorandum were sufficient. For the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED

6. The Motion filed by Defendants was clearly filed pursuant to Rule 56(a) and as such the Court may look to evidence outside the pleadings including but not limited to affidavits, deposition testimony and answers to discovery. For these reasons and the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED.

7. Although the Court may take judicial notice of the requirements for filing a mechanic's lien under the applicable statutes, the Court finds Defendants' Amended Answer sets forth the specific defense of Plaintiff's failure to follow the requirements of Title 29 Article 5 of the South Carolina Code of Laws. Defendants' motion and memorandum in support also specifically set forth §29-5-90 as a basis to dismiss the Lien. For these reasons and the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED

8. For the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED.

9. The Defendants' motion and memorandum in support specifically set forth §29-5-10. For the reason set forth in the Order Plaintiff's request to alter or amend is DENIED.

10. Although the Court may take judicial notice of the requirements for filing a mechanic's lien under the applicable statutes the Court finds Defendant's Answer sets forth the specific defense of Plaintiff's failure to follow the requirements of Title 29 Article 5 of the South Carolina Code of Laws. The motion and memorandum in support also specifically set forth §29-5-90. For these reasons and the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED.

11. For the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED.

12. For the reasons set forth in the Order the Court finds Defendants' Fee Affidavit which was filed on April 20, 2017 sufficient. Plaintiff's request to alter or amend is DENIED.

13. For the reasons set forth in the Order the Court finds Defendants' Fee Affidavit which was filed on April 20, 2017 sufficient. Plaintiff's request to alter or amend is DENIED.

14. For the reasons set forth in the Order Plaintiff's request to alter or amend is DENIED.

15. The judgment granted by the Order was an attorney fee award for an improperly filed mechanic's lien pursuant to S.C. Code Ann. § 29-5-20(a) and unrelated to any claims for damages made by the parties under the Complaint, Amended Answer, Counterclaims or Third Party Claims. Whatever settlement was reached between the Defendants and the Third Party Defendants are separate and unrelated to the attorney fees award required by §29-5-20(a). As such Plaintiff would not be entitled to a set off from moneys collected from the Third Party Defendant, and thus the amount of that settlement is irrelevant to the judgment under the Order. Plaintiff's request to alter or amend is DENIED.

NOW THEREFORE, based upon the pleadings duly filed, the evidence before the Court, the arguments of counsel, and the laws of this State set forth above,

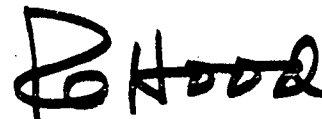
IT IS HEREBY ORDERED THAT:

Plaintiff Kitchen Planners, LLC's Motion to Alter or Amend is hereby DENIED in its totality

AND IT IS SO ORDERED.

Richland County, South Carolina
May 5, 2017

July 5, 2017



Robert E. Hood, Judge
Circuit Court, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Kitchen Planners, LLC,)

DOCKET NO.: 2015-CP-40-

Plaintiff,)

MECHANIC'S LIEN

v.)

Samuel E. Friedman and Jane Breyer)
Friedman,)

Defendant.)

RICHLAND COUNTY
FILED
2015 NOV 12 AM 10:56
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that a mechanic's lien for materials and labor were furnished for improvements to the below described property by The Kitchen Planners, LLC, which materials and labor were furnished beginning on or about March 11, 2015 through on or about August 18, 2015, with a net balance due and owing of \$16,594.68, for improvements to the following described real property:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as .74 acre, known as 333 Spring Lake Road, and being shown on a plat prepared for G. Thaddeus Williams by Cox and Dinkins, Inc., dated October 10, 1994 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 55 at page 4969; and being further shown and delineated on a plat prepared for Samuel E. Friedman and Jane B. Friedman by Cox and Dinkins, Inc., dated February 23, 2000 and recorded in the Office of the Register of Deeds for Richland County in Record Book 391 at page 990 and having such metes, bounds, courses and distances as shown on said plat which is incorporated herein by reference.

This being the same property conveyed to Defendant Samuel E. Friedman and Jane Breyer Friedman by Deed recorded in Deed Book 391 at page 991 on March 10, 2000 in the records of the Register of Deeds for Richland County.

TMS No: 16801-04-12

Defendants' Address: 333 Spring Lake Road
Columbia, SC 29206



JEAN P. DERRICK
Attorney for Plaintiff
PO Box 929 (29071)
205 West Main Street
Lexington, SC 29072
Tel: (803) 359-6189; Fax: (803) 808-1657
Email: jderrick@windstream.net

October 22 2015

Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Kitchen Planners, LLC,

Plaintiff,

v.

Samuel E. Friedman and Jane Breyer
Friedman,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO: 2015-CP-40

VERIFIED
STATEMENT OF ACCOUNT

JEANETTE M. MCBRIDE
C.C. #28 G.S.

2015 NOV 12 AM 10:56

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME Patricia C. Comose, who, being sworn,
deposes and says:

I make this Verified Statement of Account pursuant to the provisions of Section 29-5-90, South Carolina Code of Laws. Pursuant to written contract between The Kitchen Planners, LLC and Samuel Friedman and Jane Friedman, dated March 16, 2015, the Friedmans agreed to pay a total of \$49,784.04 for cabinets for their remodeled kitchen. The Friedmans have paid two payment installments, at the time of order, and at the time of shipment, of \$16,594.68 each, for a total of \$33,129.36, and there is still due and owing from them, exclusive of installation costs, \$16,594.68.



Patricia C. Comose

Subscribed and sworn to me this

27th day of October, 2015

Reborah S. Lucas

Notary Public for South Carolina

My commission expires: 5-17-2020

000014

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court
RICHLAND COUNTY
FILED
2015 NOV 30 AM 11:39
JANETTE W. HODGINS
Clerk of Court

Case Number: 2015-CP-40-

Plaintiff:

The Kitchen Planners, LLC

vs.

Defendant:

Samuel E. Friedman and Jane Breyer Friedman

For:

Jean P. Derrick

P.O. Box 929

Lexington, SC 29071

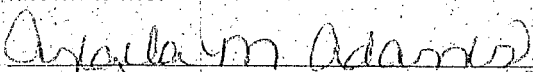
Received by John Adams & Associates to be served on **Samuel E. Friedman, 333 Spring Lake Road, Columbia, SC 29206.**

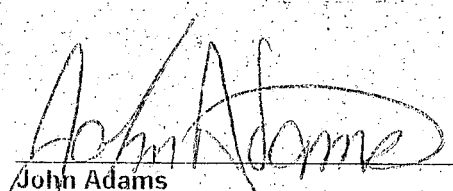
I, John Adams, being duly sworn, depose and say that on the **17th day of November, 2015** at **8:21 pm**, I:

Individually Served the within named person with a true copy of this **MECHANICS LIEN AND VERIFIED STATEMENT OF ACCOUNT** with the date and hour endorsed thereon by me, pursuant to State Statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 18th day of November, 2015 by the affiant who is personally known to me.


NOTARY PUBLIC Exp. Date: 7-1-2017


John Adams
Process Server

John Adams & Associates
P.O. Box 1070
Elgin, SC 29045
(803) 600-7722

Our Job Serial Number: MCK-2015000553

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2015-CP-40-

Plaintiff:

The Kitchen Planners, LLC

vs.

Defendant:

Samuel E. Friedman and Jane Breyer Friedman

For:

Jean P. Derrick

P.O. Box 929

Lexington, SC 29071

2015 NOV 30 AM 11:39
FILED
CLERK OF COURT
RICHLAND COUNTY
JEANETTE W. HERRICK
CLERK P. & C. S.

Received by John Adams & Associates to be served on **Jane Breyer Friedman, 333 Spring Lake Road, Columbia, SC 29206.**

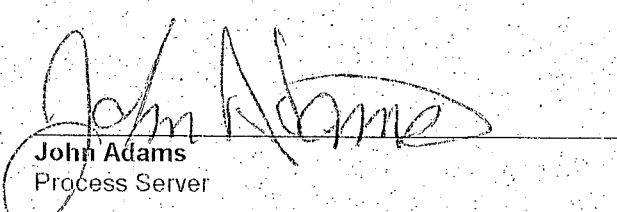
I, John Adams, being duly sworn, depose and say that on the **17th day of November, 2015** at **8:21 pm**, I:

Substitute Served by leaving a true copy of this **MECHANICS LIEN AND VERIFIED STATEMENT OF ACCOUNT** with the date and hour of service endorsed thereon by me; at the within named person's usual place of abode, to a person residing therein who is 15 years of age or older to wit: Samuel Friedman/Husband and informing said person of the contents thereof.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 18th day of November, 2015 by the affiant who is personally known to me.


NOTARY PUBLIC Exp. Date: 7-19-21


John Adams
Process Server

John Adams & Associates
P.O. Box 1070
Elgin, SC 29045
(803) 600-7722

Our Job Serial Number: MCK-2015000554

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Kitchen Planners, LLC,)
)
Plaintiff,)

DOCKET NO.: 2016-CP-40-

LIS PENDENS

v.)
)
Samuel E. Friedman and Jane Breyer)
Friedman, and Branch Banking and)
Trust Company)
)
Defendant.)

RICHLAND COUNTY
FILED
2016 JAN 13 AM 10:00
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

NOTICE IS HEREBY GIVEN that an action will shortly be commenced in this Court upon complaint of the above named Plaintiff against the above named Defendants for the foreclosure of a certain Mechanic's Lien existing in his favor for furnishing materials, supplies and labor for improvements to the following described premises:

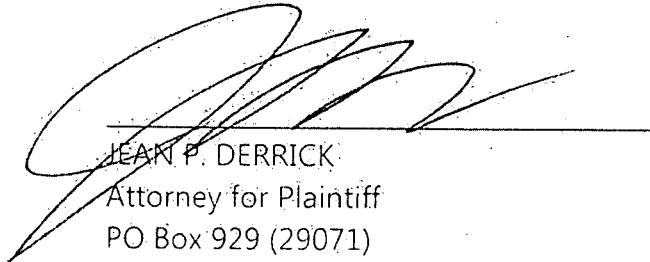
All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as .74 acre, known as 333 Spring Lake Road, and being shown on a plat prepared for G. Thaddeus Williams by Cox and Dinkins, Inc., dated October 10, 1994 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 55 at page 4969; and being further shown and delineated on a plat prepared for Samuel F. Friedman and Jane B. Friedman by Cox and Dinkins, Inc., dated February 23, 2000 and recorded in the Office of the Register of Deeds for Richland County in Record Book 391 at page 990 and having such metes, bounds, courses and distances as shown on said plat which is incorporated herein by reference.

This being the same property conveyed to Defendant Samuel E. Friedman and Jane Breyer Friedman by Deed recorded in Deed Book 391 at page

991 on March 10, 2000 in the records of the Register of Deeds for Richland County.

TMS No.: 16801-04-12

Defendants' Address: 333 Spring Lake Road
Columbia, SC 29206



JEAN P. DERRICK

Attorney for Plaintiff

PO Box 929 (29071)

205 West Main Street

Lexington, SC 29072

Tel: (803) 359-6189; Fax: (803) 808-1657

Email: jderrick@windstream.net

January 17, 2016

Lexington, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The Kitchen Planners, LLC,)

Plaintiff,)

v.)

Samuel E. Friedman and Jane Breyer)
Friedman, and Branch Banking and)
Trust Company)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO.: 2016-CP-40-

COMPLAINT
(Foreclose on Mechanic's Lien)

RICHLAND COUNTY
FILED
2016 JAN 13 AM 10:00
JEANNETTE M. MCBRIDE
C.C.P. & G.S.

The Plaintiff above captioned appears and alleges as follows:

1. The Plaintiff is a limited liability corporation duly registered and authorized to do business in the State of South Carolina and does routinely and consistently conduct business in the County of Richland, State of South Carolina. The Defendants Steinberg are citizens and residents of the County of Richland, State of South Carolina. The Defendant Branch Banking and Trust Company ("BB&T") is a banking company duly registered in one of these United States and authorized to conduct business in the State of South Carolina and does routinely and consistently conduct business in Richland County South Carolina.

2. That heretofore, at the request of the Defendants, the Plaintiff did furnish materials, supplies, and labor beginning in or around March 16, 2015 and continuing

through August, 18, 2015, for improvements upon the following described real estate, titled in the names of the Defendants:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as .74 acre, known as 333 Spring Lake Road, and being shown on a plat prepared for G. Thaddeus Williams by Cox and Dinkins, Inc., dated October 10, 1994 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 55 at page 4969; and being further shown and delineated on a plat prepared for Samuel F. Friedman and Jane B. Friedman by Cox and Dinkins, Inc., dated February 23, 2000 and recorded in the Office of the Register of Deeds for Richland County in Record Book 391 at page 990 and having such metes, bounds, courses and distances as shown on said plat which is incorporated herein by reference.

This being the same property conveyed to Defendant Samuel E. Friedman and Jane Breyer Friedman by Deed recorded in Deed Book 391 at page 991 on March 10, 2000 in the records of the Register of Deeds for Richland County.

TMS No.: 16801-04-12

Defendants' Address: 333 Spring Lake Road
Columbia, SC 29206

3. There is presently due and owing to your Plaintiff the total sum of Sixteen Thousand Five Hundred Ninety Four and 68/100 (\$16,594.68) Dollars, that demand has been made for payment of this amount, but Defendants Samuel E. Friedman and Jane Breyer Friedman have failed and refused to pay same.

4. That Plaintiff did cause to be filed for the public record, and served upon the Defendants Samuel E. Friedman and Jane Breyer Friedman its Mechanic's Lien secured by this property in the amount of Sixteen Thousand Five Hundred Ninety Four

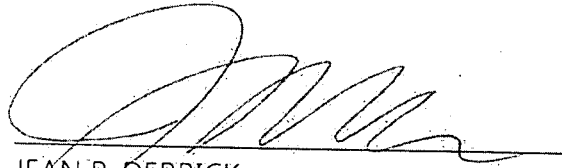
and 68/00 (\$16,594.68) Dollars, together with interest accruing thereon; that such lien was duly and timely perfected by the filing on November 12, 2015.

5. The Defendant Branch Banking and Trust Company is made a party to this action by reason that certain mortgage given by Defendants Samuel E. Friedman and Jane Breyer Friedman recorded in Mortgage Book 1632 at Page 2763 on September 20, 2010; that since Plaintiff commenced work and made improvements by the furnishing of materials and supplies and labor to the premises of Defendants Defendant Samuel E. Friedman and Jane Breyer Friedman, Plaintiff is informed and believes that its Mechanic's Lien is secondary to the mortgage lien of the Defendant Branch Banking and Trust Company, and that sale and judgment of foreclosure should be subject to the lien of the mortgage, and the property should be sold subject to this mortgage loan.

6. That Plaintiff would therefore pray for judgment of foreclosure of of its lien, and upon such judgment, that this Court order the sale of the property, applying the net proceeds from such sale to satisfy the debt of the Plaintiff, together with all interest, attorney's fees, and costs accrued through the date of such sale, and thereafter determine the entitlement of the Defendant Branch Banking and Trust Company to the excess proceeds, if any.

WHEREFORE, Plaintiff prays for judgment and foreclosure upon its lien, and satisfaction in full of the debt due it, together with all interest, attorney's fees, and costs

accrued in this action; together with such other and further relief as the Court should deem meet and proper.



JEAN P. DERRICK

Attorney for Plaintiff

PO Box 929 (29071)

205 West Main Street

Lexington, SC 29072

Tel: (803) 359-6189; Fax: (803) 808-1657

Email: jderrick@windstream.net

January 13 2016

Lexington, South Carolina

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-00164
The Kitchen Planners, LLC,	)	
Plaintiff,	)	
vs.	)	ANSWER, COUNTERCLAIMS AND
Samuel E. Friedman and Jane Breyer	)	THIRD PARTY CLAIMS
Friedman and Branch Banking and Trust	)	OF SAMUEL E. FRIEDMAN and JANE
Company.,	)	BREYER FRIEDMAN
Defendants	)	Jury Trial Requested
Vs,	)	
Crystal Cabinet Works, Inc	)	
Third Party Defendants.	)	

I. ANSWER AND DEFENSES

Defendants Samuel E. Friedman and Jane Breyer Friedman (hereinafter referred to collectively as Defendants” or “Friedmans) by and through their undersigned Attorneys file their Answer and Counterclaims to the Complaint. With respect to the allegations, Defendants answer as follows:

FOR A FIRST DEFENSE

Defendants deny each and every allegation and any inferences contained in the Complaint unless hereinafter specifically admitted, qualified or otherwise answered.

1. Defendants admit that Defendants are residents of Richland County. Defendants have no knowledge of the remaining allegations made in Paragraphs 1 of the Complaint therefore deny same, and demand strict proof thereof.
2. Defendants deny allegations of Paragraphs 2 and 3 of the Complaint and demand strict proof thereof.

000023

3. In response to Paragraph 4 of the Complaint, Defendants admit that Plaintiff has filed a mechanic's lien on the Property but deny the remaining allegations made in Paragraphs 4 of the Complaint therefore deny same, and demand strict proof thereof.
4. Defendants deny the allegations contained in Paragraphs 5 and 6 of the Complaint.

FOR A SECOND DEFENSE
(Accord and Satisfaction)

5. Plaintiff's claims are barred by accord and satisfaction. Defendants have paid Plaintiff an amount more than the contractual value of the work performed on the home.

FOR A THIRD DEFENSE
(Laches)

6. Plaintiff's claims are barred by the doctrine of laches by virtue of the Plaintiff's excessive delay in bringing this claim.

FOR A FOURTH DEFENSE
(Mistake)

7. Plaintiff's claims are barred by the doctrine of mistake.

FOR A FIFTH DEFENSE
(Payment)

8. Plaintiff's claims are barred by fulfillment of payment by Defendants.
9. Defendants had a written contract with Plaintiffs for a fixed amount which has been paid in full.

FOR A SIXTH DEFENSE
(Violation of SC Code Ann. § 29-5-100)

10. Plaintiff's claims for enforcement of mechanic's lien are in violation of S.C. Code Ann. § 29-5-100. Plaintiff willfully and knowingly claimed more than his due therefore invalidating this action.

FOR A SEVENTH DEFENSE
(Failure to Properly File Mechanic's Lien)

11. Plaintiff failed to properly file the mechanic's lien in question, specifically failing to adhere to the requirements of Title 29 Article 5 of the South Carolina Code of Laws.

FOR AN EIGHTH DEFENSE
(Failure to state a Cause of Action)

12. The Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted against Defendant and therefore should be dismissed.

II. COUNTERCLAIMS AND THIRD PARTY CLAIMS

Defendants Samuel E. Friedman and Jane Breyer Friedman (hereinafter referred to collectively as "Defendants") by and through their undersigned Attorneys file their Counter Claims and Third Party Claims against Plaintiff, Crystal Cabinet Works, Inc. Defendants would allege the following:

13. Crystal Cabinet Works, Inc. ("Crystal") is a Minnesota Corporation that does business in Richland County South Carolina.
14. Upon information and belief Plaintiff is the designated dealer for Crystal products in Richland County South Carolina.
15. Upon information and belief Plaintiff acted as the representative and agent of Crystal in South Carolina at all times during the time period applicable to this action.
16. Upon information and belief, by designating Plaintiff as their dealer for Crystal products in the Columbia area Crystal impliedly represented that Plaintiff would have the training, experience and knowledge necessary to properly measure, order and install the Crystal cabinets.

17. Upon information and belief, by designating Plaintiff as their dealer for Crystal products in the Columbia area Crystal impliedly represented that Plaintiff would have the knowledge of their product lines necessary to perform kitchen remodeling services in the Columbia area.
18. In early 2015 Defendants' home was damaged by a burst water pipe, requiring the removal and replacement of their kitchen cabinets.
19. Prior to the flood event the Defendant's kitchen included cabinets constructed by Crystal with which they were very pleased. When the cabinets required removal and replacement they desired to replace the cabinets with the exact same cabinets constructed by Crystal.
20. Defendants consulted Crystal and were directed to Plaintiff as the local dealer knowledgeable in Crystal cabinets.
21. The Defendants chose Plaintiff because they were they designated by Crystal Cabinet Works as their representative and in the Columbia area.
22. Upon information and belief Plaintiff held themselves out to be experienced and qualified kitchen remodeling designers and Plaintiff capable of performing the remodeling of Defendants' kitchen.
23. Plaintiff met with Defendants and understood that the Defendants wanted their original kitchen reproduced with Crystal cabinets. Contractor would merely have to measure and order the same sized cabinets which were already in place.
24. Plaintiff drafted the quotation/invoice that would serve as the basis for their understanding.
25. Plaintiff measured and drafted the plans and specifications and created the list of cabinets to be ordered from Crystal.

26. Upon information and belief as part of the agreement Plaintiff was to also coordinate other aspects of the kitchen remodel such as under cabinet lighting, plumbing and kitchen countertops.

27. Upon information and belief Plaintiff consulted Crystal in devising the list of cabinets.

28. Defendants' paid to Plaintiff \$16,594.68 which amounted to one third of the contract price so that the cabinets would be ordered.

29. When the cabinets were shipped from Crystal, Defendants paid an additional \$16,594.68 to Plaintiff.

30. When the cabinets arrived it became obvious that there were several problems including but not limited to:

- a. There had been significant mismeasurements of the kitchen, which altered placement, size and other aspects of the cabinets.
- b. Several of the cabinets had had vertical dividers which were improper.
- c. There were problems with the decorative side panels.
- d. The cabinet boxes were made of particle board, not the plywood that had been specified.
- e. The decorative panels were not sized to allow them to fit with the baseboard molding already in place.
- f. Two corner "lazy susan" cabinets had accordion style doors instead of the bivalve doors as on the old cabinets. In addition, the carousels inside were wood instead of chrome as specified.

31. Defendants met with Plaintiff and Plaintiff indicated that the problems would be rectified, but no action was taken.

32. Defendants contacted Crystal about the deficiencies and Crystal sent their regional representative Derek Tackett to assess the situation.
33. When Mr. Tackett arrived he confirmed the problems and indicated that:
- a. That the kitchen had been improperly measured
 - b. That the cabinets had been improperly ordered.
 - c. Other deficiencies.
34. Upon information and belief Plaintiff then refused to complete the job.
35. Upon information and belief, Crystal's regional representative took over the job and indicated that he would secure the new Crystal Cabinets "at cost".
36. When the new cabinets ordered by Mr. Tackett arrived from Crystal they too were incorrect.
37. Because of the errors of Plaintiff and Crystal, Defendants had been without a kitchen for almost 5 months and the correct cabinets were still not on sight.
38. When it was apparent that Plaintiff and Crystal were unable to fulfil their obligations, Defendants terminated the agreement and instructed Plaintiff to remove the Crystal Cabinets.
39. Defendants paid approximately \$40,000 to another contractor have new cabinets constructed and installed in their home.
40. The Crystal cabinets have not been installed in the Defendants' home.
41. Plaintiff has failed to remove the Crystal cabinets and they remain in the Defendants' garage.
42. Upon information and belief Plaintiff has been paid by Defendants more than the amount Plaintiff has paid for all material and labor it has provided on the Property.

43. Upon information and belief despite knowing that it has been paid more than the value of the material and labor provided on the Property Plaintiff has willfully and knowingly claimed more than they are due under the mechanic's lien statute.

FOR A NINTH DEFENSE BY WAY OF COUNTERCLAIM AS TO PLAINTIFF
(Breach of Contract)

44. Plaintiff entered into a contract with Defendants for the supply and installation of kitchen cabinets for which Defendants paid good and valuable consideration.

45. Plaintiff has materially breached the contract entered into with Defendants for the supply and installation of kitchen cabinets:

46. Plaintiff materially breached said contract in failing to properly measure and order the correct sized cabinets.

47. Plaintiff breached the contract by ordering and providing improper and inferior products to those promised.

48. Plaintiff breached the contract by failing to have the materials delivered and installed in a timely manner.

49. Plaintiff breached the contract by abandoning the job.

50. The above breaches and others have resulted in actual and proximate damage to Defendants.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM AS TO
PLAINTIFF AND THIRD PARTY COMPLAINT AS TO CRYSTAL
(Negligence/Improper Supervision)

51. When Plaintiff took on the obligation of remodeling the Defendants' kitchen, they undertook the duty to ensure that the Plaintiff would complete the work properly, timely and within the contract price.

52. When Crystal designated Plaintiff as its agent and representative they represented that Plaintiff was qualified to provide the services necessary to ensure that the
53. Crystal had a duty to ensure that its agents and representatives were properly trained in its products and their installation and had the duty to supervise its agent and representatives Plaintiffs and Tackett.
54. Crystal breached that duty in that both of its designated agents were not properly trained to properly order and install the kitchen cabinets.
55. As a result of the Crystal's breach, the Defendants have suffered actual and consequential damages.

**FOR AN ELEVENTH DEFENSE BY WAY OF COUNTERCLAIMS AGAINST
PLAINTIFF**

(Violation of SC Code Ann. § 29-5-100)

56. Upon information and belief Plaintiff has been paid by Defendants more than the amount Plaintiff has paid for all material and labor it has provided on the Property.
57. Upon information and belief despite knowing that it has been paid more than the value of the material and labor provided on the Property Plaintiff has willfully and knowingly claimed more than they are due under the mechanic's lien statute.
58. As a result Defendants have suffered actual and consequential damages including but not limited to attorney fees and costs associated with defending a frivolous lien foreclosure action.

**FOR A TWELTH DEFENSE BY WAY OF COUNTERCLAIMS AGAINST
PLAINTIFF AND THIRD PARTY COMPLAINT AGAINST CRYSTAL**

(Negligent Misrepresentation)

000030

59. Upon information and belief, Plaintiff and Crystal represented that Plaintiff and Tackett were properly trained and qualified to measure, order and install kitchen cabinets for Defendant's kitchen.
60. Upon information and belief, both Plaintiff and Crystal knew or should have known that this representation was false.
61. Upon information and belief, both Plaintiff and Crystal had a pecuniary interest in making the representation in order to sell more products in South Carolina.
62. Upon information and belief, both Plaintiff and Crystal owed a duty of care to Defendants to see that truthful information was communicated to the Defendants.
63. Crystal breached that duty of care by failing to exercise due care in appointing Plaintiff and Tackett as their designated representatives.
64. Defendants justifiably relied upon the representation to their detriment.
65. As a result of the negligent misrepresentation Defendants suffered actual and consequential damages.

RELIEF REQUESTED

WHEREFORE, the Defendants having fully responded to the Complaint of the Plaintiff would respectfully pray that this Court issue its order:

- a. Dismissing the Complaint and the lien with prejudice;
- b. Dismissing and releasing the bond being held by the court in favor of the Defendants
- c. Awarding the Defendant emotional, physical, actual, proximate, and consequential damages in an amount provable at trial;

- d. Awarding punitive damages authorized by law and in amount provable at trial;
- d. Awarding Defendants' attorney's fees and costs;
- e. For other such relief as this Court deems just and equitable.

Respectfully submitted.

FINKEL LAW FIRM, L.L.C.

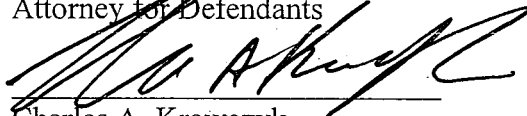
1201 Main Street, Suite 1800

Post Office Box 1799

Columbia, South Carolina 29202

(003) 765-2935

Attorney for Defendants



Charles A. Krawczyk

SC Bar Number: 16082

Columbia, South Carolina
August 26, 2016

000032

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Kitchen Planners, LLC,)
)
Plaintiff,)

DOCKET NO.: 2016-CP-40-00164

v.)

**REPLY TO COUNTERCLAIMS OF
DEFENDANTS SAMUEL E. FRIEDMAN
AND JANE BREYER FRIEDMAN**

Samuel E. Friedman and Jane Breyer)
Friedman, and Branch Banking and)
Trust Company,)

Defendants.)

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JANET W. BRIDE
C.C.
RICHLAND COUNTY
FILED

Plaintiff, The Kitchen Planners, LLC replies to the Counterclaims of Defendants as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Each and every allegation not herein specifically admitted is denied.
2. She admits the allegations of paragraphs 13, 14, 15, 16 and 17, and affirmatively alleges that Plaintiff at all times has acted competently as a trained Crystal representative.
3. Plaintiff admits the allegations of paragraphs 18, 19, 20 and 21, upon information and belief.
4. Plaintiff admits the allegations of paragraph 22, and affirmatively alleges that it is in fact an experienced and qualified kitchen remodel designer.

5. Answering the allegations of paragraphs 23, 24, 25, 26 and 27, Plaintiff generally admits the same, although the process was considerably more intricate than as alleged by Defendants.

6. Plaintiff admits the allegations of paragraph 27, 28 and 29.

7. Answering the allegations of paragraph 30, Plaintiff generally denies the same, and further alleges, that through no fault of any person, but because of the change over time in the design of cabinets by Crystal, some adjustments needed to be made in the cabinets ordered by Defendants, and Plaintiff competently did so.

8. Plaintiff denies the allegations of paragraphs 31, 32, 33 and 34.

9. Plaintiff denies for lack of information and belief the allegations in paragraphs 35, 36 and 37.

10. Plaintiff admits so much of the allegations of paragraph 38 as allege that Defendants terminated the agreement; such termination was without cause.

11. Plaintiff denies for lack of information and belief the allegations of paragraph 39.

12. Plaintiff admits upon information and belief the allegations of paragraphs 40 and 41.

13. Plaintiff denies the allegations of paragraph 42 and 43, and affirmatively alleges that Defendants owe the amounts alleged in the Complaint.

14. Plaintiff admits the allegations in paragraph 44.

15. Plaintiff denies the allegations of paragraphs 45, 46, 47, 48, 49 and 50.
16. Plaintiff admits the allegations of paragraphs 51, 52 and 53.
17. Plaintiff denies the allegations of paragraphs 54 and 55.
18. Plaintiff denies the allegations of paragraphs 56, 57 and 58.
19. Plaintiff admits so much of the allegations of paragraph 59 as allege that

Plaintiff is properly trained and qualified to measure, order and install standard style kitchen cabinets.

20. Plaintiff denies the allegations of paragraphs 60 and 61.
22. Plaintiff admits the allegations of paragraph 62.
23. Plaintiff denies the allegations of paragraphs 63 and 65.
24. Plaintiff admits the allegations of paragraph 64.

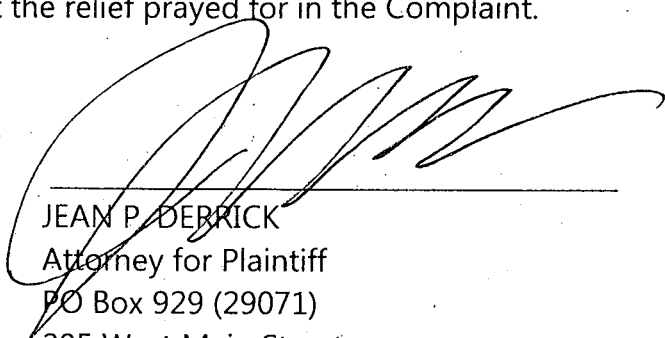
FOR A SECOND DEFENSE
(Failure to State A Cause of Action)

25. Defendants' Counterclaims fail to state facts sufficient to constitute a cause of action and therefore the Answer and Counterclaim should be dismissed.

FOR A THIRD DEFENSE
(Failure to Offer Cure)

26. Defendants failed to offer Plaintiff as well as Crystal the right to cure, so that the Answer and Counterclaim should be dismissed, and Plaintiff alleges this failure constitutes a complete defense to the Counterclaim.

WHEREFORE, having replied, Plaintiff would pray that this Court dismiss the Answer and Counterclaim and grant it the relief prayed for in the Complaint.



JEAN P. DERRICK

Attorney for Plaintiff

PO Box 929 (29071)

205 West Main Street

Lexington, SC 29072

Tel: (803) 359-6189; Fax: (803) 808-1657

Email: jderrick@windstream.net

September 27, 2016

Lexington, South Carolina

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-00164
The Kitchen Planners, LLC,	)	
	)	
Plaintiff,	)	
vs.	)	MOTION TO DISMISS MECHANIC'S LIEN
	)	AND FORECLOSURE
Samuel E. Friedman and Jane Breyer	)	
Friedman and Branch Banking and Trust	)	
Company.,	)	
Defendants	)	

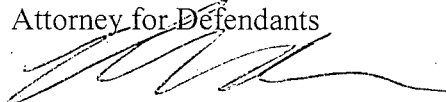
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
2017 JAN 19 PM 3:50
RICHLAND COUNTY
FILED

COMES NOW, Samuel E. Friedman and Jane Breyer Friedman by and through their undersigned attorney responding to the Notice and Certificate of Mechanic's Lien and subsequent Foreclosure action filed on January 13, 2016 by The Kitchen Planners, LLC and seeks its dismissal pursuant to SC Statute 29-5-10, 29-5-100 and South Carolina Rules of Civil Procedure 56(a). Defendants would show that the lien filed by The Kitchen Planners, LLC, is invalid and that there is no issue of fact to support the Plaintiff's claims and that Defendants are entitled to a dismissal of the Lien and the dismissal of the Plaintiff's cause of action for Foreclosure of the Lien with prejudice.

Wherefore Defendants would move this Court to dismiss the Lien and the Plaintiff's cause of action for Foreclosure with prejudice pursuant to SC Statute 29-5-10, 29-5-100 and South Carolina Rule of Civil Procedure 56(a). In addition Defendant would direct the Court to award Defendant all attorney's fees and costs for defending this claim Pursuant to SC Statute 29-5-20. Defendants may supplement with a memorandum of law to be filed prior to the hearing of this matter..

FINKEL LAW FIRM, L.L.C.

1201 Main Street, Suite 1800
Post Office Box 1799
Columbia, South Carolina 29202
(803) 765-2935
Attorney for Defendants



Charles A. Krawczyk (SC Bar16832)

Columbia, South Carolina
January 11, 2017

000037



April 13, 2017

Leigh Albers, Legal Assistant
lalbers@finkellaw.com

Reply to:
Columbia Office

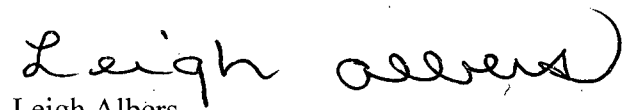
Jean P. Derrick, Esquire
205 West Main Street
Lexington, SC 29072

RE: The Kitchen Planners LLC vs. Samuel and Jane Friedman
Docket No. 2015-CP-40-00164
Our File No.: 77515-50289

Dear Ms. Derrick:

Enclosed please find a copy of the Affidavit of Samuel E. Friedman in connection with the above-referenced matter which we hereby serve upon you by mail. If you have any questions, please do not hesitate to call.

Sincerely,


Leigh Albers
Legal Assistant

/la
Encl.

COLUMBIA
1201 Main Street, Suite 1800
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Tel: (803) 765-2935
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CHARLESTON
Litigation, Real Estate & REO
4000 Faber Place Drive, Suite 450
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Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
Foreclosure
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

000038

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The Kitchen Planners, LLC,)

Plaintiff,)

vs.)

Samuel E. Friedman and Jane Breyer)

Friedman and Branch Banking and)

Trust Company,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-40-00164

CERTIFICATE OF SERVICE BY MAIL

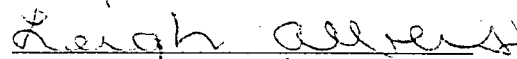
I, the undersigned, of the law offices of Finkel Law Firm, LLC, attorneys for Defendants Samuel E. Friedman and Jane Breyer Friedman, do hereby certify that I have served all counsel of record on this date, April 13, 2017, in this action with a copy of the pleading(s) herein below specified, by depositing same in the United States mail, first-class postage pre-paid to the following address(es):

PLEADINGS: *Affidavit of Samuel E. Friedman*

COUNSEL:

Jean P. Derrick, Esquire
205 West Main Street
Lexington, SC 29072

Finkel Law Firm, LLC
1201 Main Street, Suite 1800
Post Office Box 1799
Columbia, South Carolina
(803)765-2935
(803) 252-0786 fax


Leigh Albers – Legal Assistant

Columbia, South Carolina
April 13, 2017

000039

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No.: 2015-CP-40-00164
The Kitchen Planners, LLC,	)	
Plaintiff,	)	
vs.	)	AFFIDAVIT OF SAMUEL E FREIDMAN
Samuel E. Friedman and Jane Breyer and	)	
Friedman, and Branch Banking and.,	)	
Defendants,	)	

2017 APR 13 PM 4:17
RICHLAND CO. CLERK
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, Samuel E. Friedman, who, being duly sworn, deposes and states the following:

1. I have personal knowledge of the facts and matters stated therein, and all are true to my own personal knowledge except as to the matters described as having been stated upon information and belief, and as to those matters, I believe them to be true.
2. I am the owner of the residence which is the subject of the mechanic's lien which was filed by Plaintiff in the action and now subject to a cause of action for foreclosure.
3. The last time that anyone from the Kitchen Planners was at my home was June 2, 2015.
4. The last time that any materials were provided to my home which had been paid for by Kitchen Planners was May 21, 2015.
5. The last time any materials were ever delivered to my home for anything regarding the subject of this lawsuit, the third party complaint or counterclaims was August 10, 2015 which were materials not paid for or provided by Kitchen Planners.

000040

6. No cabinets paid for and/or delivered by Kitchen Planners LLC were ever installed in our home.

FURTHER AFFIANT SAYETH NOT.


Samuel E. Friedman

SWORN TO me this 13th day of March, 2017

Leigh F. Allen (seal)

Notary Public for South Carolina

My Commission Expires: 3/11/2018

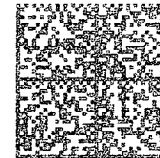
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Post Office Box 1799
Columbia, SC 29202

77515-50289

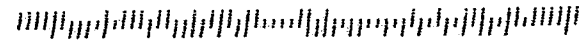
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Jean P. Derrick, Esquire
205 West Main Street
Lexington, SC 29072

29072-263305



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
The Kitchen Planners, LLC,	)	Case No.: 2016-CP-40-00164
Plaintiff,	)	
vs.	)	NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER
Samuel E. Friedman, Jane Breyer Friedman, and Branch Banking and Trust Company,	)	
Defendants.	)	

2017 APR 17 PM 3:53
JAMETT W. MCGRIDE
C.O.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Defendants, will move before this Court of Common Pleas of Richland County, on the tenth (10th) day after service of this motion or as soon thereafter as this matter can be heard, for a protective order, pursuant to Rule 26 (c)(4), SCRCF, limiting the production of communications and documents prepared in connection with the Confidential Settlement Agreement between the Defendants and Crystal Cabinet Works, Inc.

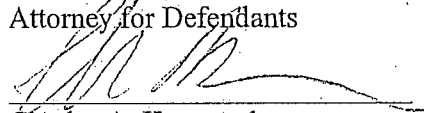
This Motion is made on the grounds that the Plaintiff's seek disclosure of the Settlement Agreement between the Defendants and Crystal Cabinet Works, Inc. and that agreement is outside of the scope of discovery, as it is not reasonably calculated to lead to the discovery of admissible evidence. The Defendants claims against Crystal Cabinet Works, Inc. are wholly independent of the current litigation between the Plaintiff and Defendants. Plaintiff cannot "take advantage of a contract between [Defendants] and a third person[.]" *Puttner v. Gooden*, 350 S.C. 409, 413, 566 S.E.2d 199, 201 (Ct. App. 2002). As such, any compensation Defendants received from Crystal Cabinet Works, Inc. is not reasonably calculated to lead to discovery of admissible evidence.

Further, the agreement between Defendants and Crystal Cabinet Works, Inc. contains a confidentiality clause. Defendants are legally bound to that contract and are not permitted to share such information with others who were not a party to the agreement, such as Plaintiff.

WHEREFORE, for the reasons stated above, Defendants respectfully request that the Court issue an Order limiting the scope of discovery to exclude all communications and documentation relating to Defendants Confidential Settlement Agreement with Crystal Cabinet Works, Inc. Counsel avers pursuant to Rule 11(a), SCRPC that communication prior to the filing of this motion would serve no useful purpose.

Respectfully submitted.

FINKEL LAW FIRM, L.L.C.
1201 Main Street, Suite 1800
Post Office Box 1799
Columbia, South Carolina 29202
(803) 765-2935
Attorney for Defendants



Charles A. Krawczyk
SC Bar Number: 16832

Columbia, South Carolina
April 14, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Kitchen Planners, LLC,)
)
Plaintiff,)

DOCKET NO.: 2015-CP-40-00164

**NOTICE OF MOTION AND MOTION TO
STRIKE**

v.)

Samuel E. Friedman and Jane Breyer)
Friedman, and Branch Banking and)
Trust Company,)
)
Defendants.)

RICHLAND COUNTY
FILED
2017 APR 24 PM 2:08
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO: CHARLES A. KRAWCZYK, ESQUIRE ATTORNEY FOR DEFENDANTS SAMUEL E. FRIEDMAN AND JANE BREYER FRIEDMAN

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for Plaintiff, will appear before the Honorable Robert E. Hood, in Courtroom 2E at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on April 25, 2017 at 2:00p.m. and move for an Order striking the affidavit of Samuel E. Friedman served by mail on attorney for Plaintiff and received April 17, 2017, upon the following grounds:

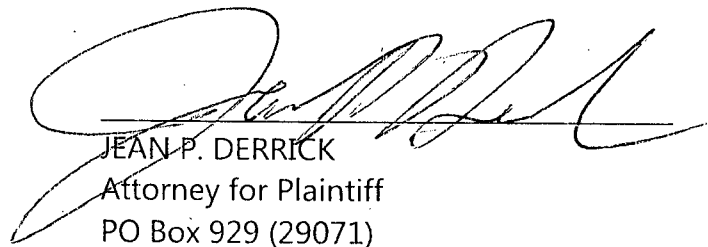
1. The affidavit is improperly submitted, because Defendants have filed a Motion to Dismiss Mechanic's Lien and Foreclosure, and motions to dismiss are determined by the Court on the four corners of the pleadings themselves. See Charleston County v. Harrell, 393 S.C. 552 (2011); Johnson v. Dailey, 318 S.C. 318 (1995);
2. Any affidavit should have been served concurrent with the motion, pursuant to SCRCP Rule 6(d);

3. Plaintiff objects to the introduction of any matters outside the pleadings submitted in connection with the Motion to Dismiss, and affidavit should be stricken pursuant to SCRPC Rule 12(b);

4. The affidavit fails to support the only raised affirmative defense in the Answer and Counterclaim of Defendants which is relevant to their Motion to Dismiss, the Sixth Defense for violation of §29-5-100, which statute states in full:

No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials shall invalidate the proceedings, unless it appear that the person filing the certificate has willfully and knowingly claimed more than is his due.

5. For all of the above reasons, the affidavit should be stricken.



JEAN P. DERRICK
Attorney for Plaintiff
PO Box 929 (29071)
205 West Main Street
Lexington, SC 29072
Tel: (803) 359-6189
Fax: (803) 808-1657
Email: jderrick@windstream.net

April 18, 2017

Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-00164
The Kitchen Planners, LLC,	)	
Plaintiff,	)	
vs.	)	MOTION TO ALTER OR AMEND
Samuel E. Friedman and Jane Breyer	)	
Friedman, and Branch Banking and Trust.	)	
Defendants,	)	

2017 MAY 30 PM 1:31
JANETTE W. MCAN
C.C.P. & G.S.

TO: CHARLES A. KRAWCZYK, ESQUIRE, ATTORNEY FOR DEFENDANTS SAMUEL E. FRIEDMAN AND JANE B. BREYER FRIEDMAN

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for Plaintiff, will appear before the Honorable Robert E. Hood, at a date and time to be noticed, and move pursuant to SCRCP Rule 59(e) to alter or amend the Order filed May 12, 2017, copy of which is attached to this Motion, which Order was served by mail on Plaintiff's counsel May 16, 2017, in the following respects:

1. Altering and amending the finding in the Order Granting Summary Judgment that Plaintiff's Mechanic's Lien was not timely filed, upon the grounds that the Affidavit of Patricia Comose filed April 24, 2017, establishes that on September 29, 2015 she reordered drawer boxes for the island in the kitchen and paid Crystal Cabinets \$550.61; this purchase is work on the contract; the lien was filed November 12, 2015 and served on both Defendants November 17, 2015, so that it was served and filed well within

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the ninety (90) day time frame; the Complaint to foreclose the lien was filed January 13, 2016, again well within the six month period after Plaintiff had ceased to labor on the project;

2. Altering and amending the finding in the Order Granting Summary Judgment that materials Plaintiff furnished Defendants were not utilized in the improvement of the property, upon the grounds that the Viggiano remodeling estimate, attached to Plaintiff's affidavit filed April 24, 2017, establishes that "all usable hardware and drawers from the existing Crystal Cabinets will be reflected as a credit in the final price;" Plaintiff's materials were therefore utilized;

3. Altering and amending the finding in the Order Granting Summary Judgment that Plaintiff willfully claimed more than due, upon the grounds that there was a written contract between the parties which is attached to the Affidavit of Crystal Comose, and an additional payment of \$16,594.68 is still due under such contract;

4. Altering or amending the finding in the Order Granting Summary Judgment that suit was not timely filed, because in fact the Complaint to foreclose was filed January 13, 2016, in ample time pursuant to the applicable statutes;

5. Denying *in toto* Defendant Friedman's "Motion to Dismiss Mechanic's Lien and Foreclosure" filed January 19, 2017, in that said Motion to Dismiss fails to specify any grounds, and merely alleges that "the lien filed by The Kitchen Planners LLC is invalid and that there is no issue of fact to support the Plaintiff's claims and the Defendants are

entitled to dismissal of the Lien and the dismissal of Plaintiff's cause of action for Foreclosure of the Lien with prejudice";

6. Granting Plaintiff's Motion to Strike and striking the single affidavit of Samuel E. Friedman served on Plaintiff's counsel April 17, 2017, upon the grounds that matters outside the pleadings should not be considered in determining the Motion to Dismiss;

7. Altering or amending the finding in the Order Granting Summary Judgment that Plaintiff's Mechanic's Lien was not filed within ninety (90) days of providing labor and materials, upon the grounds that neither Defendant's Answer nor the Motion to Dismiss specify Section 29-5-90, South Carolina Code of Laws as a defense or ground;

8. Altering and amending the finding in the Order Granting Summary Judgment that the materials were not actually used in construction and improvement of Defendant's home, upon the grounds that neither Defendant's Answer nor the Motion to Dismiss raise this as a defense or specify it as a ground;

9. Altering and amending the finding in the Order Granting Summary Judgment that Plaintiff allegedly claimed more than was due, because this ground is not stated in Defendant's Motion to Dismiss;

10. Altering and amending the granting of Summary Judgment on the basis that suit to enforce the lien was not timely filed, upon the grounds that this was not raised as a defense in the Answer or specified as a ground of the Motion to Dismiss;

11. Altering or amending the granting of attorney's fees to Defendants, in that such fees are excessive and unreasonable;

12. Altering and amending the Order granting fees to Defendants, on the grounds that there was no proper itemized Affidavit of Fees ever submitted;

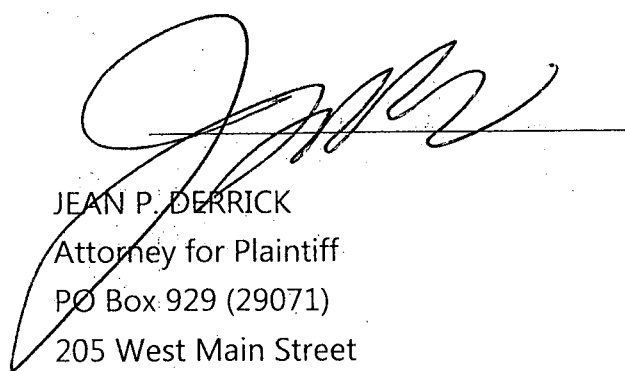
13. Granting Plaintiff a hearing in connection with the award of fees sought by Defendants;

14. Vacating the attached Order Granting Summary Judgement on the ground that numerous issues of fact exist and the case should proceed to a trial by jury;

15. Alter and amending the finding in the Order Granting Summary Judgment that Plaintiff owes to Defendant any amount of money, upon the grounds that there is still pending a Motion for Protective Order (copy of Motion attached) sought by Defendants, and the amount of the "confidential" settlement already paid by Third Party Defendant Crystal Cabinets to Defendants in this case needs to be determined, and proper credit given Plaintiff.

(Signature Block on next page)

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JEAN P. DERRICK

Attorney for Plaintiff

PO Box 929 (29071)

205 West Main Street

Lexington, SC 29072

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Fax: (803) 808-1657

Email: jderrick@windstream.net

May 23, 2017

Lexington, South Carolina

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

CASE NUMBER: **2016CP4000164**

Kitchen Planners LLC

Samuel E Friedman

Jane Breyer Friedman

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of May, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 16 May 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Jean Perrin Derrick

Charles A. Krawczyk

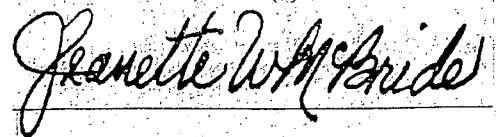
A. Walker Barnes

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS
2015-CP-40-00164

THE KITCHEN PLANNERS LLC)

PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

SAMUEL E. FRIEDMAN AND JANE)

BREYER FRIEDMAN AND BRANCH)

BANKING AND TRUST COMPANY,)

DEFENDANT,)

APRIL 25, 2017
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

JEAN P. DERRICK, ESQ.
Attorney for the Plaintiff

CHARLES KRAWCZYK, ESQ.
Attorney for the Defendants

KAREN AMBROZIAK
Official Court Reporter

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C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. So we're on the record in
2 2016-CP-40-164, Kitchen Planners against Samuel Friedman,
3 Jane Friedman, and BB&T.

4 The plaintiff's attorney is present, Mr. Krawczyk,
5 and the defense attorney is Ms. Derrick.

6 MR. KRAWCZYK: It's the opposite, Your Honor. She is
7 the plaintiff's attorney.

8 THE COURT: Oh, it's written on here wrong.

9 MR. KRAWCZYK: It is odd for that to happen, yes.

10 THE COURT: Okay. So I'm sorry. The defense
11 attorney is Mr. Krawczyk. And this is -- I apologize for
12 that. It was captioned incorrectly on this form cover
13 sheet, so I do apologize.

14 And so this is the defense's motion to dismiss the
15 mechanic's lien, foreclosure; is that right, Mr. Krawczyk?

16 MR. KRAWCZYK: That's correct, Your Honor.

17 THE COURT: Okay. I'm listening.

18 MS. DERRICK: Yes, sir. And for the record, Your
19 Honor, I've made a motion to strike an affidavit that he
20 sent me last week in connection with this motion to
21 dismiss.

22 THE COURT: What -- okay. And what's your basis for
23 that?

24 MS. DERRICK: Well, let me hand up my filed copy. A
25 number of reasons. He didn't timely serve the affidavit

1 in connection with the motion which is supposed to be
2 under Rule 6.

3 THE COURT: What about that, Mr. Krawczyk?

4 MR. KRAWCZYK: Well, Your Honor, I did file the
5 affidavit for ten days before this hearing. The
6 understanding of Rule 6 being that this hearing is going
7 to be set within ten days of your motion.

8 The motion was actually filed well back in January,
9 and information became available afterwards, and now it's
10 being produced. It was produced in time for Mrs. -- for
11 Ms. Derrick to also put a counter affidavit which I think
12 is also the purpose of that particular rule that --

13 THE COURT: I didn't think we were supposed to
14 consider affidavits in Rule 12 motions.

15 MS. DERRICK: That's --

16 THE COURT: It was a rule --

17 MS. DERRICK: Yes, sir.

18 MR. KRAWCZYK: Your Honor, while this is -- the
19 heading said Motion to Dismiss. The motion was actually
20 filed pursuant to Rule 56.

21 THE COURT: Oh, okay.

22 MR. KRAWCZYK: So this is a summary judgment motion
23 not a 12(b)(6).

24 THE COURT: Okay.

25 MR. KRAWCZYK: And if you look at the motion, it does

1 say that within the motion.

2 THE COURT: Oh, I see it now. Okay. All right. All
3 right.

4 I'm going to deny your motion to strike the
5 affidavit. You've had time to review it, had time to
6 reply to it.

7 All right. So we're going under 56 not 12; is that
8 right, Mr. Krawczyk?

9 MR. KRAWCZYK: That's correct, Your Honor.

10 THE COURT: Okay. All right. Let's do it.

11 Ms. Derrick?

12 MS. DERRICK: Your Honor, I filed and served last
13 week the original affidavit of Patricia Comose subject to
14 my motion to -- to strike. Is that in the file?

15 THE COURT: Hold on just a second.

16 (Pause).

17 It is not.

18 MS. DERRICK: Thank you.

19 THE COURT: Do you have a copy of it?

20 MS. DERRICK: Yes, sir.

21 THE COURT: Okay.

22 MS. DERRICK: Here's the copy.

23 THE COURT: Thank you.

24 MS. DERRICK: That's the opposing affidavit that's
25 converted to a summary judgment motion.

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1 THE COURT: All right. Okay.

2 MR. KRAWCZYK: All right. Your Honor, this is a
3 mechanic's lien foreclosure action filed by The Kitchen
4 Planners, LLC.

5 A mechanic's lien was filed on November 12th, 2015.
6 In accordance with the mechanic's lien, the work was done
7 between March 11th and August 18th of 2015 with
8 August 18th on -- basing the mechanic's lien being the
9 last day that labor and material was provided which is
10 disputed.

11 We can get into that in a minute, but I just want to
12 talk. On its face, Your Honor, that would require the
13 mechanic's lien to be filed and served by November 16th,
14 2015, 90 days.

15 The mechanic's lien was filed but was not served
16 until November 17th. Under the mechanic's lien law which
17 is to be strictly construed, that's a late filing. And
18 thus, the lien is no good. As -- because the lien fails,
19 the foreclosure action must fail.

20 I have provided Your Honor with my memorandum, copy
21 of the affidavits of service on my clients which indicate
22 November 15th and -- I mean, excuse me, November 17th
23 which is the day after the 90-day time -- time span ran.

24 Now, in addition to that from -- there's three
25 grounds in which I think the lien needs to be dismissed,

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1 Your Honor. Let me just talk -- this is the first one,
2 and that was just going based upon the face of the actual
3 documents.

4 The testimony of the plaintiff in her deposition --
5 who is sitting here today -- was that she provided no
6 labor or material after June 18th, 2015.

7 I've included -- and I -- a copy of -- and I have
8 with me if you need, Your Honor, the testimony of
9 Ms. Comose who said that she did not perform any work.

10 And so those are undisputed dates as of -- as of --
11 until this affidavit was filed, those were undisputed
12 dates. That's what her testimony was, and I'm going to
13 give you a little background in this situation. The
14 Kitchen Planners were hired to design and implement a
15 kitchen on my client's house.

16 The cabinets were ordered by The Kitchen Planners.
17 They came to the house on May 21st, 2015. When they got
18 there, my clients were not satisfied with the cabinets.
19 They were not installed. That was brought to the
20 attention of The Kitchen Planners who promised to make
21 things better.

22 Things didn't go fast enough. My clients contacted
23 the manufacturer of the cabinets who sent down a
24 representative on June 2nd, and that representative -- it
25 is undisputed that representative took over the job from

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1 The Kitchen Planners.

2 That representative then ordered some new cabinets.
3 When those cabinets were delivered on August 10th, they,
4 too, were wrong, and the whole thing was scrapped, and the
5 cabinets were not installed at my client's house.

6 So there's a couple of reasons. So when you look at
7 the actual date that anything Kitchen Planners actually
8 paid for or delivered is May 21st, 2015 well before the
9 deadline.

10 Now, Ms. Comose is not a contractor, so she cannot
11 file a lien for her -- any work associated with their
12 installing or anything else. She has -- and she has made
13 it clear that this is a mechanic's lien just for
14 materials.

15 She has also indicated in her deposition that the
16 Crystal rep did everything from June 18th on. She has
17 never been back to the house. She has never ordered any
18 cabinets, hasn't provided anything. So really, the last
19 date that Kitchen Planners ever put anything on this site
20 was May 21, 2015, and that's the testimony.

21 THE COURT: Okay.

22 MR. KRAWCZYK: So -- but even still if you believe
23 what they say -- and let me just back up again. On
24 August 18th -- back up.

25 The last of the cabinets that were actually ordered

1 directly through Crystal and paid through my clients was
2 delivered on August 10th, 2015, and they were
3 insufficient. The Crystal rep wasn't even on site. He
4 was nowhere near.

5 On August 18th, the Crystal rep e-mails Kitchen
6 Planners saying, "We've been fired. Everything is done."

7 And so as of August 18th, which is the reason why
8 they used that date in their pleadings, because that is
9 the last day that anybody did anything even if they're
10 able to bootstrap somebody else's work in the mechanic's
11 lien, that is the date.

12 A strict interpretation of the -- of the statute, 90
13 days is 90 days. Ninety-one is 91, and this lien should
14 be invalid. Foreclosure should be dismissed.

15 The second grounds is that the statute requires that
16 the material be actually used on the property. These
17 cabinets were never installed. They're still sitting in
18 my client's garage. They were never used.

19 Now, there may a breach of contract associated with
20 that but not a mechanic's lien. Lastly, Your Honor, the
21 third reason is that the purpose of the mechanic's lien --
22 and the case law supports this -- is to protect the
23 contractor from the value of the material, in this case
24 materials, that they used on the property.

25 It is not to protect any overhead or profit

1 associated with that work unless that overhead and profit
2 is specifically outlined. You know, what percentage, what
3 amount it is in the contract.

4 It is undisputed that The Kitchen Planners have
5 already been paid in excess. They made a \$4,000 plus
6 profit on this job on the cabinets alone. So now they're
7 seeking a mechanic's lien for material -- I mean, excuse
8 me. Not for materials, but for overhead and profit.

9 So I think you can take your pick, Your Honor, any
10 one of those three would -- will get you -- will get me
11 the relief that I'm looking for.

12 THE COURT: All right. Ms. Derrick?

13 MS. DERRICK: Thank you, Your Honor. With all due
14 respect to worthy opposing counsel, every one of his
15 positions is transparently incorrect.

16 The affidavit submitted by my client shows that she
17 continued to work from August through November on this
18 cabinet project not at the home of the Friedmans.

19 The portion of the deposition that he attaches to the
20 motion for his -- in his memorandum regards the
21 questioning at her deposition of whether or not she had
22 been back to the house since June 18th, and she said no, I
23 haven't. I haven't been there at the house, but you can
24 continue to work elsewhere on site.

25 She continued to do that, coordinated. This is

1 Ms. Comose here with me now, the co-owner of Kitchen
2 Planners, coordinating with Derrick Tackett who is the
3 Crystal representative who is finishing the project.

4 In addition -- and this has been produced in
5 discovery -- she, for example, wrote a check for \$550,
6 Kitchen Planners, on September 29 and sent it off to pay
7 for some of the cabinets that are installed in the
8 Friedman kitchen.

9 So her affidavit shows that she worked well within
10 the ambit of the 90 days allowed on the lien, and it was
11 timely served and filed. I also object to this ground
12 because it's not raised in their -- their answer and
13 counterclaim in this case, too.

14 You know, Mr. Krawczyk -- I guess because he is doing
15 the best he can, is real close to the best of me about
16 whatever he is objecting to in this motion to dismiss
17 because I can't tell reading on its face what error of law
18 or fact they are asserting is incorrect.

19 There is nothing specifying about the lien wasn't
20 served timely. It just says it just fails to comply with
21 the mechanic's lien statute. So this is the first time
22 I've heard him say that, but I'm not worried about that.

23 That's a transparently incorrect fact because our
24 affidavit, as well as what I submitted to you today, as
25 well as my client's deposition establishes facts work well

1 within the mechanic's lien statute.

2 The dates are disputed at the very -- at the very
3 least under the summary judgment if we're proceeding under
4 Rule 56. There's plenty of disputes of fact contained in
5 the two affidavits in front of you, Dr. Friedman and
6 Ms. Comose's.

7 In addition, he claims that the lien doesn't apply
8 because the cabinets weren't installed in the kitchen.
9 That is incorrect. At least a portion of the cabinets
10 that my client has paid Crystal cabinets for, but she has
11 not in turn been paid by her customer the Friedmans for,
12 were installed, the cabinet, by the follow-up contractor,
13 a fellow individual Vigiano...

14 THE COURT: Vigiano Gumond.

15 MS. DERRICK: Yes, sir. That's her -- and you will
16 see from the second attachment to my client's affidavit
17 that he is talking about the drawers and the corner
18 cabinets, where they are in the new kitchen's estimate in
19 November of 2015 when they were working on this.

20 He utilized the product that my client has paid for,
21 the manufacturer, paid the manufacturer but has not been
22 paid by her customer.

23 The third ground that he is complaining about that
24 we've already made a profit and the lien should be
25 dismissed is likewise transparent and is not supported by

1 any law.

2 As a matter of fact, it's not supported by the law
3 that he quotes in his memorandum, and he says on page
4 eight, "Overhead and profit is not lienable unless the"
5 quote -- he is quoting the case, "terms of overhead and
6 profit are agreed upon by the parties and are subsequently
7 embodied in the contract period". That's exactly what
8 we've got here. It was attached to her affidavit.

9 This was a written contract for \$52,000 worth of
10 cabinets. My client delivered all the cabinets and been
11 paid two of the three installments that are due, but the
12 16,800 odd dollar third payment hasn't been met. That's
13 where the lien comes from.

14 So we would ask that Your Honor deny the motion and
15 allow the matter to proceed to trial which is going to be
16 on the next jury trial roster.

17 Thank you.

18 THE COURT: All right. Anything further,
19 Mr. Krawczyk?

20 MR. KRAWCZYK: Yes, Your Honor. Very simply, here is
21 the testimony from Ms. Comose: "Okay. After the
22 June 18th date, did you order any more materials for the
23 Friedman job?"

24 "No, Derrick ordered. Derrick was doing the
25 reorder." After June 18th she provided nothing.

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1 The first time I've ever seen anything about the --
2 you know, her providing anything in this affidavit -- but
3 even what her affidavit says is I wrote a check to the
4 manufacturer for something.

5 You have to deliver materials. You have to provide
6 something. She provided nothing after June 18th, and
7 that's undisputed, and just because you write a check to a
8 supplier somewhere, that doesn't -- that doesn't create
9 some obligation of my client under the lien. It certainly
10 isn't providing any labor or material to my -- to my
11 client's residence.

12 That is why they had their affidavit -- excuse me,
13 not their affidavit, the mechanic's lien said August 18th,
14 and there are numerous, numerous references with --
15 throughout her deposition. I can pull them out if you
16 want, Your Honor, basically stating, for example,
17 Ms. Comose said in her deposition, "Did you return to the
18 Friedman home after your surgery at any time?"

19 "I didn't return after they took me off the project."

20 "So after June 16th, you weren't ever back to the
21 Friedman house?"

22 "Definitely after June 18th."

23 She acknowledges that Derrick Tackett who was the --
24 or let me back up. "So the last day you did anything as
25 far as being at the Friedman house was June -- before

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1 June 18th?"

2 "I believe so, yes."

3 "And you did not provide any other additional
4 materials after June 18th? You didn't provide anything?
5 Derrick did all of that."

6 "I think that's correct."

7 And now we get an affidavit saying she did something.
8 Your Honor, direct -- directly against her testimony in
9 here. So I think even under their dates -- and this
10 September date of, obviously, looking at she said -- all
11 she said she did, for example, "I reordered drawer boxes
12 for the island in the kitchen and paid \$550 after."

13 Your Honor, nobody was on the job after that.
14 Everybody was fired. She, obviously, couldn't order
15 things for my client after that point. She wasn't there.
16 She testified that -- when that was done.

17 As for what was installed, here is the deposition of
18 Ms. Derrick taking my client's deposition but asking about
19 The Kitchen Planners, "Did you use the drawers -- use the
20 Kitchen Planners' drawers?"

21 "No, ma'am."

22 "In the kitchen?"

23 "No, ma'am. The only thing that is in my kitchen now
24 that was purchased -- or that was purchased by us directly
25 from Crystal, we paid Crystal directly for what I call the

1 corner cabinets that had Lazy Susans, and that's the only
2 two pieces."

3 "Did you use the drawers that Kitchen Planners had
4 delivered?"

5 "No, ma'am."

6 All of these are still -- all of these materials are
7 still sitting in my client's garage, and Mr. --
8 Ms. Derrick correctly cites the law.

9 If you look at the law also in that case, it says
10 generally as an overall proposition, overhead and profit
11 are not lienable unless they specifically set forth as
12 terms within the contract.

13 This was a pass \$49,000 and we'll give you cabinets
14 contract. There was no set forth of what the -- what the
15 profit and overhead was. In fact, we didn't know any of
16 that until after discovery, and that's exactly what Zepsis
17 (phonetic) says.

18 Zepsis says in that case it was question of a
19 contractor seeking a lien, overhead and profit where they
20 had been dismissed from the house, and because it was
21 not -- well, there's two cases.

22 One is Century. In that case, the Court said, yes.
23 Here it set forth 15 percent overhead, 15 percent profit.
24 You're entitled to lien that.

25 Zepsis says no, unless it's specifically set forth

1 you're not entitled to it. So again, on all three
2 grounds, I think there is no question of fact.

3 Ms. Derrick tries to create a question of fact by
4 self-serving affidavit of Ms. Comose who basically
5 contradicts everything she told me in her deposition so...

6 THE COURT: All right.

7 MR. KRAWCZYK: And again, mechanic's lien case,
8 mechanic's lien statute is to be strictly interpreted. If
9 they wanted to file a breach of contract action, they
10 could have done that, but they chose a mechanic's lien,
11 and that's where we are.

12 THE COURT: Okay. I'll let you all know by the end
13 of the week.

14 MR. KRAWCZYK: Thank you, sir.

15 THE COURT: Thank you very much.

16 (Whereupon, the proceedings were concluded.)
17
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 25th day of April,
2017.

September 25, 2016

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

000070

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-00164
The Kitchen Planners, LLC,	)	
Plaintiff,	)	
vs.	)	MEMORANDUM IN SUPPORT OF
Samuel E. Friedman and Jane Breyer	)	DEFENDANTS' MOTION FOR
Friedman, and Branch Banking and,	)	SUMMARY JUDGMENT
Defendants,	)	

2017 APR 20 AM 10:53
DEANNETTE W. MCBRIDE
C.C.R. & G.S.
RICHLAND COUNTY
FILED

I. INTRODUCTION

Defendants Samuel E. Friedman and Jane Breyer Friedman (hereinafter "Friedmans"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion for Summary Judgment. The Friedman's contend that that there is no genuine issue of material fact and they are thus entitled to judgment as a matter of law, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on Plaintiff The Kitchen Planners LLC's (hereinafter "KP") claim for foreclosure of its Notice of Certificate of Mechanic's Lien and Statement of Account and Affidavit in Support of Mechanic's Lien, (hereinafter collectively "the Lien") filed on November 12, 2015 and attached hereto as **Exhibit A**. As will be more fully set forth herein, the Lien should be discharged and the Friedmans should be **GRANTED** partial summary judgment for the following reasons:

1. The Kitchen Planners LLC, through its representative Patricia Comose (hereinafter "Ms. Comose"), failed to follow the statutory requirements of South Carolina Code Ann. Title §29 for the following:

000071

- a. The lien was not timely filed in that the Lien was filed and served later than 90 days from the date that the Kitchen Planners performed any labor or furnished any materials to the Freidmans' property in violation of South Carolina Code Ann. Title §29-5-90.
- b. The basis of the Lien was not labor performed or furnished or for materials furnished and **actually used** in the erection, alteration, or repair of a building in violation of South Carolina Code Ann. Title §29-5-10 and;
- c. In filing the Lien, KP, through its representative Patricia Comose willfully and knowingly claimed more than it could possibly be due in violation of South Carolina Code Ann. Title §29-5-100;

II. FACTUAL AND PROCEDURAL HISTORY

KP is a limited liability corporation formed and operating under the laws of the State of South Carolina. Ms. Comose is the sole member and principal of KP. The Friedmans are citizens and residents of Richland County, South Carolina.

The Friedmans own a home at 333 Spring Lake Rd, Columbia, SC 29206. After a water pipe burst in their home they needed to have their kitchen remodeled. They wanted to duplicate their existing kitchen including cabinets from the same cabinet manufacturer Crystal Cabinets. The only Crystal Cabinets dealer in Columbia, South Carolina is KP. The parties agreed that KP would provide the cabinets to the Friedmans. An agreement was entered into on March 16, 2015 and on May 21, 2015, the cabinets were delivered to the Friedman's residence. Prior to delivery, the Friedmans paid to the Kitchen Planners \$33,129.36 of the \$49,784.04 contract price for the cabinets. It turns out that Kitchen Planners paid \$28,953.58 for the cabinets and had already

made a \$4,000.00 profit before they were even delivered. When they arrived it became apparent to the Friedmans that there were problems with the cabinets that were delivered many of which were acknowledged by KP. The Friedmans were promised that certain cabinets and other issues would be addressed by KP. When that did not happen on a timely basis the Friedmans contacted Crystal Cabinets who sent out their representative to look. As a result of that visit several cabinets were reordered. As a result of these problems and other issues the Crystal Cabinets representative eventually took over the job on June 18, 2015. Nobody from KP provided any labor or materials after that date.

After taking over the job the Crystal Cabinets representative reordered cabinets and those new cabinets arrived on August 10, 2015. The Friedmans paid Crystal Cabinets directly for these cabinets. The Kitchen Planners did not pay for or provide any of the reordered cabinets. August 10, 2015 was the last day that any material was delivered or labor performed regarding the Crystal Cabinets at the Friedman's home. When those cabinets arrived they too were incorrect. At this point the Friedmans were done with Crystal Cabinets. They ended up hiring a local custom cabinet maker to manufacture new cabinets for their kitchen. None of the Crystal Cabinets paid for and furnished by the Kitchen Planners were installed in the Friedmans' home and are still sitting in their garage where KP left them.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRCP. Rule 56(e) states that the party opposing the motion "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as

otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRPC.

The United States Supreme Court has interpreted Rule 56(e) to require the party opposing the motion for summary judgment to "go beyond the pleadings . . . and designate 'specific facts showing that there is a genuine issue for trial.'" *Cellotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quoting Fed. R. Civ. P. Rule 56(e)). The party opposing the motion must establish the existence of a genuine issue of material fact by referring to the depositions, answers to interrogatories, and admissions on file. *Id.* The party opposing the motion, not the Court, bears the burden of identifying the specific facts in the record which establish a genuine issue of material fact. *Id.* Finally, summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (S.C. 1991).

IV. DISCUSSION

A mechanic's lien exists only by virtue of statute, and one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it. *Clo-Car Trucking Co., Inc. v. Cliffure Estates of S. Carolina, Inc.*, 282 S.C. 573, 575, 320 S.E.2d 51, 53 (Ct. App. 1984). The basis for a mechanic's lien is a debt due "for labor performed or furnished or for materials furnished and **actually used** in the erection, alteration, or repair of a building or structure upon real estate." S.C. Code Ann. § 29-5-10 (emphasis added). A Mechanic's Lien must be filed **and served** within ninety days after the claimant ceases to labor on or furnish labor or materials on the property. South Carolina Code Ann. Title §29-5-90. Additionally, the prevailing party may recover the costs which may arise in enforcing or defending against a mechanic's lien, including

attorney's fees. S.C. Code Ann § 29-5-20(a). As a derivation of the common law the mechanic's lien must be strictly complied with, no variation or leeway may be given

In addition to the strict rules required to file a valid lien, the mechanic's lien statutes provide for a discharge of the lien by showing that the filer of the lien has willfully and knowingly claimed more than is due pursuant to S.C. Code Ann. § 29-5-100; by showing that a suit was not commenced within six (6) months to collect the debt pursuant to S.C. Code Ann. § 29-5-120; and by defeating the claim upon trial. *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 156, 232 S.E.2d 501, 502 (1977). Additionally, the South Carolina Supreme court has held that the Court has "inherent powers to afford relief where the deprivation imposed by a wrongfully filed mechanic's lien cannot be corrected by the statutory methods." *Id.* at 157, 232 S.E.2d at 502.

a. The Mechanic's Lien was not filed and served within 90 days of Plaintiff providing labor or material to the Friedman's home.

South Carolina Code Ann. Title §29-5-90 states:

Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession **and** files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due (emphasis added)

The lien in this action was filed by Plaintiff with the clerk in the Richland County Court of Common Pleas on November 12, 2015. It was served upon Dr. and Mrs. Friedman on November 17, 2015 (see attached affidavit of service as **Exhibit B**). To be valid South Carolina Code Ann. Title §29-5-90 Plaintiff must have last provided material and labor on the home within 90 days of November 17, 2015 which is the date that the Friedmans were served. Ninety

days back from November 17, 2015 is August 19, 2015. Thus the Plaintiff would have had to perform work on August 19, 2015 or later.

On its face the mechanic's lien filed by Plaintiff (see **Exhibit A**) states that the materials and labor were furnished on or about "March 11, 2015 through on or about August 18, 2015". If this is accurate, (which the Friedmans deny) then the lien was served 91 days after materials and labor were furnished to the home. As such the lien is invalid on its face and must be dissolved.

In addition to the above deficiency the date on the Mechanic's lien is inaccurate. The last date that any material or labor was provided by the Kitchen Planners was before June 18, 2015. Patricia Comose, the only member/employee of the Kitchen Planners LLC was deposed on April 7, 2017. In that deposition Ms. Comose states that she furnished no materials or labor after June 18, 2015.

Q: All right. So the last day you were at the – did anything, as far as being at the Friedmans' house was before June 18, correct? I think we established that.

A: I believe so, yes.

Q: Okay. And you did not provide any additional materials after June 18th. You didn't provide anything. Derrick (the Crystal Rep) did all that.

A: I think that is correct. (Comose deposition page 112 lines 12-20)

According to her own testimony, the last date Kitchen Planners furnished material or labor was before June 18, 2015; well before the August 19, 2015 deadline.

The August 18, 2015, date used by the Kitchen Planners in the lien appears to be from an e-mail dated August 18, 2015, from the Crystal Cabinets representative to Patricia Comose indicating that the Friedmans had terminated their relationship with Crystal Cabinets (see E-mail attached hereto as **Exhibit C**). This had nothing to do with any materials or labor performed by the Kitchen Planners, but it was clear that by August 18, 2015 neither Crystal Cabinets nor the Kitchen Planners were on the job.

The last materials provided by Crystal Cabinets were delivered on August 10, 2015 (see the affidavit of Sam Friedman and cancelled check as **Exhibit D**). These cabinets were paid for by the Friedmans directly to Crystal Cabinets. They were not provided by the Kitchen Planners. Even if were argued that they were provided by the Kitchen Planners they were delivered on August 10, 2015 well before the August 19, 2015 deadline date

Because the Lien was untimely filed it should be dissolved and the cause of action for foreclosure dismissed.

b. The basis for Kitchen Planners' Lien was not actual labor and material used to construct the home and as such was in violation of § 29-5-10

The basis for a mechanic's lien is a debt due "for labor performed or furnished or for materials furnished and **actually used** in the erection, alteration, or repair of a building or structure upon real estate." S.C. Code Ann. § 29-5-10. Section 29-5-10 is an extraordinary remedy created by statute and it requires strict compliance by the entity seeking to lien the property. In order to establish a mechanic's lien, it is generally necessary that the labor performed go into something which has attached to and become a part of the real estate, adding to the value thereof." *Tenny v. Anderson Water, Light & Power Co.*, 67 S.C. 11, 17, 45 S.E. 111, 113 (1903) The cabinets ordered by the Kitchen Planners were never installed in the Friedman's home (see Affidavit of Sam Friedman). Thus the materials furnished were not "actually used" and as such does not meet the requirements of § 29-5-10. This fact may not preclude a breach of contract action brought by the Kitchen Planners, but it does preclude the filing of a mechanics lien. As such the lien should be dissolved and the foreclosure cause of action dismissed.

c. Kitchen Planners, willfully and knowingly claimed more than it could possibly be due.

By filing the Lien Kitchen Planners, willfully and knowingly claimed more than Kitchen Planners could possibly be due, and the Friedmans should be granted summary judgment and the Lien discharged pursuant to S.C. Code Ann. § 29-5-100.

Section 29-5-100 states that an inaccuracy in the statement of the amount due for labor and materials supporting a mechanic's lien shall not invalidate the lien "unless it appear[s] that the person filing the certificate has willfully and knowingly claimed more than his due." In her deposition Ms. Comose had indicated that all the materials were already paid for and that the Kitchen Planners had already made over \$4,000 in profit on the Friedmans prior to filing the lien.

Q: Provided the numbers I give you are correct you've made a little over \$4,000 in profit on this job? Well, just the cabinets?

A: Okay. Probably. Roughly. Roughly (Comose Deposition pg. 119 Lines 17-20)

Mechanic's liens are made for the contractor to protect the value of cost of the materials and labor used on the project. Overhead and profit is not lienable unless the "terms of overhead and profit are agreed upon by the parties and are subsequently embodied within a contract". *Zepso Construction, Inc. v. Randazzo* 357 S.C. 32; 591 S.E.2d 29 (2003)

In this case Plaintiff has already made a profit on the job and the amount of the profit was a highly guarded secret until discovery in this action. It certainly was not specifically embodied into the contract. The lien is clearly seeking solely overhead and profit. Ms. Comose understood this when she filed the lien, thus she knowingly sought more than she was entitled. In addition this also shows that she is not seeking the costs associated with the materials in violation of § 29-5-10. She has already been paid an amount in excess of the costs of materials and labor. Therefore the amount sought is not for materials used in the job but for overhead and profit alone. As such the Lien should be dissolved and the foreclosure action dismissed.

d. Suit for the enforcement of the lien was not timely filed.

For the same reasons put forth for the failure of the lien, the Plaintiff's suit for enforcing the lien was not timely filed. The last date that the Kitchen Planners furnished labor or materials to the Friedmans' home was before June 18, 2015. That would have required that the suite be filed on or before December 18, 2015. The suit was not filed until January 13, 2016. Even if Kitchen Planners was somehow given the benefit of the materials that were paid for by the Friedmans directly to Crystal Cabinets and delivered on August 10, 2015 the suit would have had to have been filed by January 10, 2016. Since the suit was filed 3 days after that deadline it must fail for not being timely filed.

ATTORNEY FEES

S.C. Code Ann. § 29-5-20(a) states in part that "if the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court "(emphasis added). In this case due to the infirmities of the Lien the lien must be dissolved and the foreclosure action dismissed. As such, the Friedmans, as the prevailing party must be awarded attorney fees. Attached hereto as **Exhibit E** is an attorney fee affidavit indicating that the Friedmans have amassed \$20,690.65 in attorney fees and costs associated with the mechanic lien and associated foreclosure action. However, the Friedman's are only seeking \$16,594.68, which is the amount of the lien and the maximum attorney's fees allowed under S.C. Code §29-5-20(a).

V. CONCLUSION

The Lien filed by the Kitchen Planners against the Friedmans was and is an improper lien and should be dismissed by this Court. The foreclosure action must fail both because the lien fails and by the fact that the foreclosure action was not timely filed. Defendant has met its burden in this Motion for the Court to dismiss the Lien pursuant to the statutory requirements

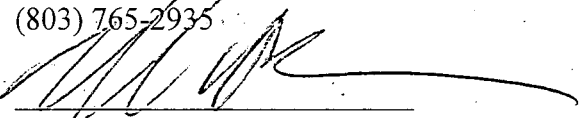
listed above. However in addition this Court has the "inherent powers to afford relief where the deprivation imposed by a wrongfully filed mechanic's lien cannot be corrected by the statutory methods." *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 156, 232 S.E.2d 501, 502 (1977).

For the aforementioned reasons, this Court should issue an Order:

- a. Granting the Defendant's Motion for Summary Judgment;
- b. Requiring the Plaintiff to reimburse the Defendants for all of their attorney's fees and costs arising in defense of the Lien pursuant to S.C. Code Ann. § 29-5-20(a); and
- c. Granting the Defendants such other and further relief as the Court may deem just and proper.

Respectfully submitted,

FINKEL LAW FIRM, LLC
1201 Main Street, Suite 1800
Post Office Box 1799
Columbia, South Carolina 29202
(803) 765-2935



Charles A. Krawczyk
SC Bar #: 16832
Attorneys for Defendants/

Columbia, South Carolina
April 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Kitchen Planners, LLC

Plaintiff(s)

vs.

Samuel E. Friedman and Jane Breyer Friedman

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 40- 06849

Submitted By: Jean P. Derrick, Esquire

Address: PO Box 929

Lexington, SC 29071

SC Bar #: 4417

Telephone #: 803-359-6189

Fax #: 803-808-1657

Other:

E-mail: jderrick@windstream.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

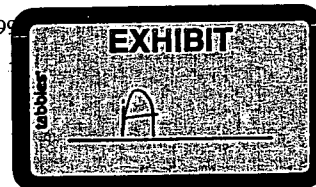
NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☒ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: November 9, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



PROBATION AND ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

The Kitchen Planners, LLC,)

DOCKET NO.: 2015-CP-4

Plaintiff,)

MECHANIC'S LIEN

v.)

Samuel E. Friedman and Jane Breyer
Friedman,)

Defendant.)

RICHLAND COUNTY
FILED
2015 NOV 12 AM 10:56
JANETTE W. MCBRIDE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that a mechanic's lien for materials and labor were furnished for improvements to the below described property by The Kitchen Planners, LLC, which materials and labor were furnished beginning on or about March 11, 2015 through on or about August 18, 2015, with a net balance due and owing of \$16,594.68, for improvements to the following described real property:

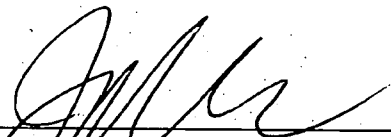
All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as .74 acre, known as 333 Spring Lake Road, and being shown on a plat prepared for G. Thaddeus Williams by Cox and Dinkins, Inc., dated October 10, 1994 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 55 at page 4969; and being further shown and delineated on a plat prepared for Samuel F. Friedman and Jane B. Friedman by Cox and Dinkins, Inc., dated February 23, 2000 and recorded in the Office of the Register of Deeds for Richland County in Record Book 391 at page 990 and having such metes, bounds, courses and distances as shown on said plat which is incorporated herein by reference.

This being the same property conveyed to Defendant Samuel E. Friedman and Jane Breyer Friedman by Deed recorded in Deed Book 391 at page 991 on March 10, 2000 in the records of the Register of Deeds for Richland County.

TMS No.: 16801-04-12

Defendants' Address:

333 Spring Lake Road
Columbia, SC 29206



JEAN P. DERRICK

Attorney for Plaintiff

PO Box 929 (29071)

205 West Main Street

Lexington, SC 29072

Tel: (803) 359-6189; Fax: (803) 808-1657

Email: jderrick@windstream.net

October 22 2015

Lexington, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The Kitchen Planners, LLC,)

Plaintiff,)

v.)

Samuel E. Friedman and Jane Breyer)
Friedman,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

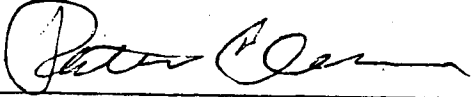
DOCKET NO.: 2015-CP-40

VERIFIED
STATEMENT OF ACCOUNT

RICHLAND COUNTY
FILED
2015 NOV 12 AM 10:56
JEANETTE M. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME Patricia C. Comose, who, being sworn,
deposes and says:

I make this Verified Statement of Account pursuant to the provisions of Section 29-5-90, South Carolina Code of Laws. Pursuant to written contract between The Kitchen Planners, LLC and Samuel Friedman and Jane Friedman, dated March 16, 2015, the Friedmans agreed to pay a total of \$49,784.04 for cabinets for their remodeled kitchen. The Friedmans have paid two payment installments, at the time of order, and at the time of shipment, of \$16,594.68 each, for a total of \$33,129.36, and there is still due and owing from them, exclusive of installation costs, \$16,594.68.


Patricia C. Comose

Subscribed and sworn to me this

27th day of October, 2015

Deborah S. Harris

Notary Public for South Carolina

My commission expires: 5-17-2020

000085

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2015-CP-40- ~~6849~~

Plaintiff:

The Kitchen Planners. LLC

vs.

Defendant:

Samuel E. Friedman and Jane Breyer Friedman

For:

Jean P. Derrick

P.O. Box 929

Lexington, SC 29071

RICHLAND COUNTY
FILED
2015 NOV 30 AM 11:39
JEAN P. DERRICK
C.C.P. & C.S.

Received by John Adams & Associates to be served on Samuel E. Friedman, 333 Spring Lake Road, Columbia, SC 29206.

I, John Adams, being duly sworn, depose and say that on the 17th day of November, 2015 at 8:21 pm, I:

Individually Served the within named person with a true copy of this **MECHANICS LIEN AND VERIFIED STATEMENT OF ACCOUNT** with the date and hour endorsed thereon by me, pursuant to State Statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 18th day of November, 2015 by the affiant who is personally known to me.

John Adams
NOTARY PUBLIC

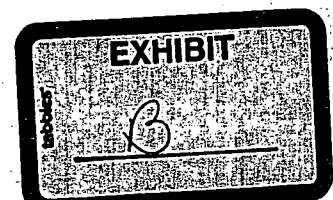
Exp. Date: 7-19-21

John Adams
John Adams
Process Server

John Adams & Associates
P.O. Box 1070
Elgin, SC 29045
(803) 600-7722

Our Job Serial Number: MCK-2015000553

000086



AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2015-CP-40- *6849*

Plaintiff:

The Kitchen Planners. LLC

vs.

Defendant:

Samuel E. Friedman and Jane Breyer Friedman

For:

Jean P. Derrick

P.O. Box 929

Lexington, SC 29071

2015 NOV 30 AM 11:39
JEANETTE
C.C.P. & G.S.
RICHLAND COUNTY
CLERK

Received by John Adams & Associates to be served on **Jane Breyer Friedman, 333 Spring Lake Road, Columbia, SC 29206.**

I, John Adams, being duly sworn, depose and say that on the **17th day of November, 2015 at 8:21 pm, I:**

Substitute Served by leaving a true copy of this **MECHANICS LIEN AND VERIFIED STATEMENT OF ACCOUNT** with the date and hour of service endorsed thereon by me, at the within named person's usual place of abode, to a person residing therein who is 15 years of age or older to wit: Samuel Friedman/Husband and informing said person of the contents thereof.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 18th day of November, 2015 by the affiant who is personally known to me.

Angela M. Adams
NOTARY PUBLIC Exp. Date: *7-19-21*

John Adams
John Adams
Process Server

John Adams & Associates
P.O. Box 1070
Elgin, SC 29045
(803) 600-7722

Our Job Serial Number: MCK-2015000554

LAW OFFICES OF

Jean Perrin Derrick, LLC

ATTORNEY AT LAW

205 WEST MAIN STREET
P.O. BOX 929
LEXINGTON, SOUTH CAROLINA 29072

TELEPHONE
(803) 359-6189
FAX NO. 808-1657
jderrick@windstream.net

November 23, 2015

The Honorable Jeanette W. McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

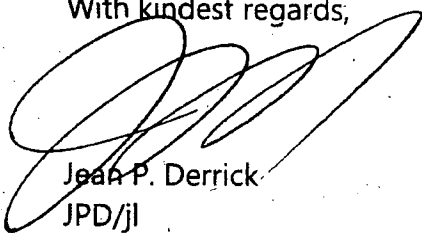
Re: The Kitchen Planners, LLC v. Samuel E. Friedman and Jane Breyer Friedman
(Our File No. 15-819)

Dear Ms. McBride:

Enclosed for filing in the above-referenced matter please find an original and two (2) copies of an Affidavit of Service for Jane Breyer Friedman and an original and two (2) copies of an Affidavit of Service for Samuel E. Friedman in the above-captioned matter. Please file the originals and return the clocked-in copies to me in the enclosed self-addressed stamped envelope.

Please let me know if you have any questions. Thank you for your attention to this matter.

With kindest regards,



Jean P. Derrick

JPD/jl

Enclosures

cc: Patricia C. Comose (w/enclosures)

000088

Patricia Comose

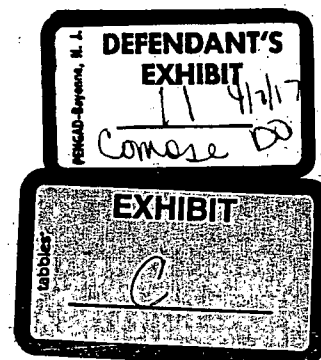
From: Derek Tackett <Derek@TheHughRileyCompany.com>
Sent: Tuesday, August 18, 2015 2:03 PM
To: Patricia Comose
Subject: Friedman

I missed the finished interiors on the cabinets that I reordered. I guess I rushed it too fast and did not see that. Jane has told me that we are done and I am canceling the shipment that is supposed to go out this week. We are done with them as of right now. I have not spoken with Sam yet and before I cancel everything I will message him. Just wanted to keep you posted...

Thank you.

Derek Tackett

The Hugh Riley Company
(423) 930-0977 Cell
(423) 933-3171 E-Fax



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No.: 2015-CP-40-00164
The Kitchen Planners, LLC,	)	
Plaintiff,	)	
vs.	)	AFFIDAVIT OF SAMUEL E FREIDMAN
Samuel E. Friedman and Jane Breyer and	)	
Friedman, and Branch Banking and.,	)	
Defendants,	)	

PERSONALLY APPEARED BEFORE ME, Samuel E. Friedman, who, being duly sworn, deposes and states the following:

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

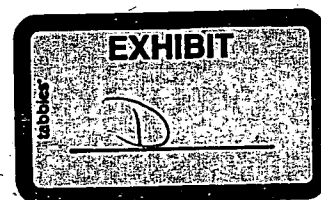
2. I am the owner of the residence which is the subject of the mechanic's lien which was filed by Plaintiff in the action and now subject to a cause of action for foreclosure.

3. The last time that anyone from the Kitchen Planners was at my home was June 2, 2015.

4. The last time that any materials were provided to my home which had been paid for by Kitchen Planners was May 21, 2015.

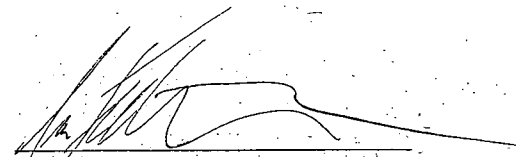
5. The last time any materials were ever delivered to my home for anything regarding the subject of this lawsuit, the third party complaint or counterclaims was August 10, 2015 which were materials not paid for or provided by Kitchen Planners.

000090



6. No cabinets paid for and/or delivered by Kitchen Planners LLC were ever installed in our home.

FURTHER AFFIANT SAYETH NOT.


Samuel E. Friedman

SWORN TO me this April
13th day of March, 2017

Leigh Z Allen (seal)
Notary Public for South Carolina
My Commission Expires: 3/11/20

000091

Main Checking: Account Activity Transaction Details

My Description: Palmetto Specialty Transfer**Check number:** 00000001235**Post date:** 08/11/2015**Amount:** -251.62**Type:** Check**Description:** Check**Merchant name:** Check**Transaction category:** Cash, Checks & Misc: Checks

Bank of America Advantage

SAMUEL E FRIEDMAN 00-10
JANE B FRIEDMAN 1235
333 SPRING LAKE RD (803) 743-0084 67-448530 SC
COLUMBIA, SC 29206 1541

Aug 10, 2015
Date

Pay Palmetto Specialty Transfer \$ 251.62
to the order of two hundred fifty one & 62/100 Dollars

Bank of America
ACH RT 053004453

Memo Kitchen

Jane B Friedman

⑆053904483⑆ 223006965094⑆ 1235

PAY TO THE ORDER OF
Branch Banking and Trust
053201607
FOR DEPOSIT ONLY
H&F Transfer
DBA Palmetto Specialty Transfer
0005224959518

000092

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Kitchen Planners, LLC,

Plaintiff,

vs.

Samuel E. Friedman and Jane Breyer
Friedman and Branch Banking and
Trust Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-00164

AFFIDAVIT OF ATTORNEY'S FEES

RICHLAND COUNTY
FILED
2017 APR 20 AM 10:53
JANETTE W. MORRIS
C.C.P. & C.S.

Personally appeared before me, Charles A. Krawczyk, Attorney-at-Law, who being duly sworn, deposes and says the following:

1. That he is the attorney for the Defendants Samuel E. Friedman and Jane Breyer Friedman above-named.

2. That he was admitted to the South Carolina Bar in 2000 and, I have been engaged in private practice since 1992.

3. I actively practice in the area of construction law and have done so since 1996.

4. I am a member of the South Carolina Bar Section of Construction Law, and I have participated in seminars sponsored by the South Carolina Trial Lawyers Association and the South Carolina Bar related to construction law.

5. I have represented the Defendants above-named in the proceedings which have been pending before the Court and this Affidavit is filed in support of Defendants' claim for attorney's fees relating to the defense of the mechanic's lien filed on November 12, 2015.

6. I incorporate herein Rule 407, South Carolina Appellate Court Rules (and especially Rule 1.5 thereof), concerning the setting of attorney's fees. I further call to the



360000

attention of the Court the statutory **requirement** to award attorney's fees in the matter, South Carolina Code Ann. § 29-5-10, and § 29-5-20(a). The factors to determine reasonable attorney's are fees set out in *Bloomburg V. NEALCO, INC*, 310 S.C. 492, 427 S.E.2d 659 (Ct. App. 1993), which are as follows:

- a) the nature, extent, and difficulty of the legal services rendered;
- b) the time and labor necessarily devoted to the case;
- c) the professional standing of counsel;
- d) the contingency of compensations;
- e) the beneficial results accomplished;
- f) the fee customarily charged in the locality for similar services; and
- g) the beneficial results obtained.

7. I rely upon the discretion of this Court in the determination of the amount of fees based upon, among other things, the Court's file herein and the Court's knowledge of the litigation between the parties, which reflect the difficulty of the services rendered, the time necessarily expended, the results accomplished, and the other factors which are set forth in Rules of Professional Conduct and the case law decisions of this State.

8. That he is informed and believes that during the preparation of this case, the time expended, as set forth more fully hereinafter, was necessary to protect the client's interest and to make as concise and clear a presentation to the Court of the issues as possible.

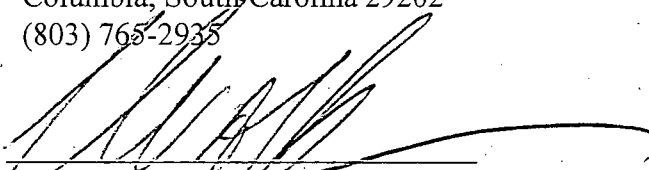
9. That the undersigned, in accordance with his time and expense records, which are maintained on a daily basis, states to the Court that the following time was necessarily expended in the preparation for this cause through April 19, 2017: 58.6 hours for Attorney Charles A. Krawczyk hours at \$275.00 per hour; 3 hours for Attorney Anthony J. Charles associate hours at \$225.00 per hour; 1.5 hours for Attorney Carl D. Hiller associate hours at \$215.00 per hour and 18.6 in paralegal hours at \$125.00, such fees being the amount customarily charged in the Columbia South Carolina area and costs of \$2,190.65; for a total of \$20,690.65.

8. That based not only upon the time necessarily devoted to this cause, but also upon

the other criteria which have been held to be relevant in setting of attorney's fees, the undersigned, on behalf of his clients, requests that this Court review the file herein, together with this Affidavit, and grant judgment in favor of the undersigned's clients against the Plaintiffs in a sum which may be determined by the Court to be reasonable as attorney's fees and that the Plaintiffs be required to pay the same within a reasonable time as may be determined by the Court.

FINKEL LAW FIRM LLC
Post Office Box 1799
1201 Main Street, Suite 1800
Columbia, South Carolina 29202
(803) 765-2935

BY:


Charles A. Krawczyk (SC Bar #16832)
Attorney for the Defendant

SWORN to before me this
19th day of April, 2017.

Margaret M. Rock
Notary Public for South Carolina
My Commission Expires: 11/24/24

000095

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Kitchen Planners, LLC,)
)
Plaintiff,)

DOCKET NO.: 2015-CP-40-00164

AFFIDAVIT OF PATRICIA COMOSE

v.)

Samuel E. Friedman and Jane Breyer)
Friedman, and Branch Banking and)
Trust Company,)

Defendants.)

FILED
2017 APR 24 PM 2:09
JANETTE W. HOSKINS
C.C.P. & C.S.
RICHLAND COUNTY

PERSONALLY APPEARED BEFORE ME Patricia Comose who, being duly sworn deposes and says:

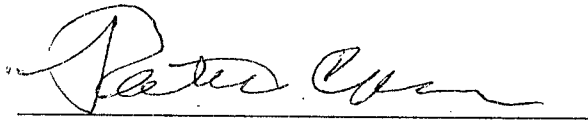
I make this affidavit conditional upon preserving the objections stated in the Motion to Strike:

1. I am the sole member and shareholder of Kitchen Planners, LLC.
2. Kitchen Planners, LLC contracted with Jane and Sam Friedman on March 16, 2015 to furnish cabinets for a total price of \$49,784.04, plus an installation and delivery charge of \$2,995. See attached contract.
3. We agreed to breakdown the purchase price of the cabinets into three equal installments of \$16,594.68. Kitchen Planners has not been paid for the third installment.
4. In mid-June 2015 I was taken off the job, for no good reason. I continued to work with Derrick Tackett, the manufacturer's representative for Crystal Cabinets through November 2015, when Crystal was taken off the job too. For example, on September 29, 2015 I reordered drawer boxes for the island in the kitchen, and paid \$550.61.

5. The kitchen was ultimately finished by Viggiano Remodeling, which utilized some of the cabinets I had furnished the Friedmans pursuant to my cabinet contract. See attached Viggiano estimate.

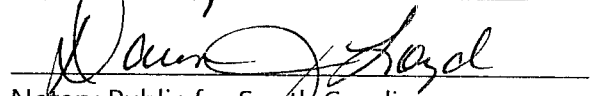
6. I would ask the Court to allow the Mechanics Lien action to proceed to foreclosure.

FURTHER DEPONENT SAYETH NOT.


Patricia Comose

April 18, 2017

Subscribed and sworn to me this 18
day of April, 2017.


Notary Public for South Carolina
My commission expires: 1/12/2026

THE KITCHEN PLANNERS, LLC
403-B CHAPIN ROAD
CHAPIN, SC 29036
(PH) 803.586.5624 (FAX) 803.941.7495
patricia@thekitchenplanners.com

QUOTATION / INVOICE

TO: Jane & Sam Friedman

DATE: 3/11/15

DESCRIPTION: Kitchen Cabinetry

TERMS: Upon Ordering

To provide and install Cabinetry per approved Design Layout. Cabinets to be Encore Frameless Cabinets, by Crystal. Door Style to be Aurora Square MDF in Full Overlay. Drawer Fronts to be Aurora Square MDF in Full Overlay. Drawer Boxes to be 5/8" White Melamine with Full Extension Glides and Soft-Close. Doors to have Concealed hinges with Soft-Close. Cabinets to Have White Melamine Interiors, except for those Cabinets which feature Mullion doors prepped for 1/8" Glass. These cabinets will have Interiors which match the Cabinet Exterior. Mullion Doors are prepped for glass, but glass is not included. Finish color to be SW 7008 Alabaster, per door Sample provided and approved. Note: Dishwasher Panel not included here as Bosch suggested ordering it after the dishwasher is installed in order to determine correct dimensions. No bar brackets included here pending decision later.

Cabinetry	50,284.04
Less Design Fee Paid	- 500.00
Sub-Total	49,784.04
Delivery & Installation	2,995.00
Total	52,779.04
Deposit to Order (SEE BELOW)	- 49,784.04
Balance Upon Completion	2,995.00

Your approval and return of one copy of this quote along with your check allows ordering to begin. Payment of deposit indicates that order is ready to be placed; as such, deposit is non-refundable. The Kitchen Planners does not specify appliances. Unforeseen circumstances of remodeling may result in an extra labor charge. No returns on special

PAYMENT SCHEDULE:

1/3 DEPOSIT AT TIME OF ORDER: 16594.68 PR. CR #1002 3/11/15
1/3 DEPOSIT AT TIME OF SHIPMENT: 16594.68 PR. CR #1002 5/11/15
1/3 CABINET BALANCE WHEN CABINETS DELIVERED: 16594.68
1/3 INSTALLATION BALANCE DUE UPON COMPLETION: 2995.00

000098

order items. Any and all costs incurred in collection, including attorney's fees, to be paid by customer. THANK YOU. WE APPRECIATE YOUR BUSINESS.

Jane B. Sudman

Customer Approval

3/16/15

Date

000099

000100



COLOR-PER-SAMPLE APPROVAL - 03/2013

Please retain and send in with EVERY CPS order that pertains to this CPS.

9

ATTENTION KIPL02

AT KIT PLANNERS

Enclosed is your color sample for color match for P.O.# FRIEDMAN. Also enclosed is our version in a half-door sample, for you to retain. If the color is acceptable, please read and sign this Color-Per-Sample Approval Form, and fax or mail it as soon as possible. NO ORDER can be processed without the approval form signed by your homeowner or yourself.

Sincerely, JILL

Wood Characteristics: It is the nature of real hardwood to have a variety of colors and grain textures. Because these variations are the real, natural beauty of hardwood, unusual or wild grain patterns **will not** constitute a reason for replacement. No special emphasis will be made to select doors/drawers to match one another.

Wood Mellowing: Wood "mellows" with age, exposure to sunlight and the elements. A slight color difference may occur after a year's time, thus affecting the actual color (natural or stained) of your color sample. This could result in customer concern if the sample they choose from is slightly different in color than the cabinets they receive.

In an effort to be more consistent with our standard finishing process and to save time for everyone through accurate order information, we would like you to know that on all Color-Per-Sample orders, the tracking number represents the **MATCHED/BASE COLOR ONLY**. This color is indicated on the back of your CPS half doors with Highlight on them. If ANY Signature elements or standard White Gaze are desired, the dealer needs to indicate these on the Product Order Head Sheet. Orders that do not indicate the proper Signature elements will cause delays in the order process or, worse, a finish that you and your customer do not desire.

Approved By: Jane B. Friedman Date: 3/16/15

Tracking #: E-4510-G

Wood Specie*: MDF

CPS expiration Date: 2-26-17

Color Description: SW 7008 ALABASTER

Sheen Level: STD

Additional Comments:

SIGNATURE ELEMENTS (please select the elements that pertain to your CPS)

- ☐ Highlight
- ☐ Signature Glazing
- ☐ Signature Brushing
- Choose one:
- ☐ Black
- ☐ Pewter
- ☐ Van Dyke Brown
- ☐ White

- ☐ Cracking
- ☐ Distressing
- ☐ Scraping
- ☐ Spatting
- ☐ Rasping
- ☐ Wearing
- ☐ Worm Holing

*Note: If wood specie changes on your kitchen order, a new Color-Per-Sample will need to be done.

**Note: If suggested PVC with sample is not desirable, please indicate other selection or wood edge tape.

CPSAF.doc

000101

Viggiano Remodeling, LLC

1360 Lewie Rd.

Gilbert, SC 29054

803-546-1362

License #: RBB . 49487

Estimate

August 25, 2015

Job: Mr. & Mrs. Friedman
333 Spring Lake Rd.
Columbia, SC 29206

Kitchen Remodel:

Cabinets: Cabinet layout as per plans. All boxes are 3/4 birch plywood with MDF raised panel sides where applicable. Door will be Roy's Wood Products 050-08-307-110 MDF raised panel, and all drawer slabs under 10" high will be Roy's Wood Products 401-00-000-110 solid MDF slabs. Drawer boxes will be Melamine to match Crystal Cabinets drawer boxes. Drawers will have full-extension soft close under mount track. Doors will have Blum soft close 110 degree hinges with the exception of the corner cabinets which will have 170 degree hinges. The base corner cabinets will have two lazy Susan trays. The 57 inch wall cabinets will have three adjustable shelves. The cabinet over refrigerator will have two doors on the top and one fold up door below. The oven cabinet will have one large drawer below the oven and doors above with wood tray dividers. Cabinet left of sink will have a trash pullout. The sink cabinet will have full access storage below with a center style at the front for support. All cabinets will be ready for paint.

Trim: Install three piece crown around the cabinets to match existing. Install shoe molding.

Plumbing: All plumbing related to the sink will be provided and the sink will be installed. Water shut offs will be provided for the dish washer and ice maker. Installation of the dish washer and refrigerator ice maker will not be provided.

Electrical: Install new receptacle outlets where needed. Install under cabinet power strips. Install under cabinet lighting and top display cabinet lighting. Install dimmers for cabinet lighting.

Misc: Install knobs and pulls for cabinets (owner supplies knob and pulls).

Total labor and materials to complete above work **\$ 35,500.00 to \$40,500.00**

Viggiano Remodeling, LLC
1360 Lewie Rd.
Gilbert, SC 29054
803-546-1362
License #: RBB . 49487

Estimate

Note:

Paint, pulls and knobs, counter tops and back splash, lighting, sink, faucet, garbage disposer, garbage pullout, appliances, appliance installation, is not included in estimate.

All usable hardware and drawers from the existing Crystal cabinets will be reflected as a credit in final price.

Additional work requested will incur additional charge.

Prices good for thirty days from proposal date.

Viggiano Remodeling

1360 Lewie Rd.
Gilbert, SC 29054
Phone 803-546-1362

DATE: January 10, 2016
INVOICE #: FRI-2015-1007
FOR: Mr. & Mrs. Friedman
333 Spring Lake Rd.
Columbia, SC 29206

Bill To:
Mr. & Mrs. Friedman
333 Spring Lake Rd.
Columbia, SC 29206
Phone 803

DESCRIPTION	AMOUNT
Fabricate and install new kitchen cabinets.	
Install trim moldings in kitchen.	
Install kitchen plumbing fixtures.	
Install kitchen electrical.	
Upgrade drawer boxes.	
Purchase trash pull out, air switch, three plug mold strips, three GFCI breakers, and one arc fault breaker.	
Install powder room plumbing fixtures.	
Credit for two base corner cabinets.	
SUB TOTAL	\$39,500.00
PAYMENTS	\$25,000.00
TOTAL BALANCE DUE	\$14,500.00

If you have any questions concerning this invoice, contact:
Andrew Viggiano (803) 546-1362 or Viggianoremod@aol.com
Please include invoice number.

Handwritten: Paid in full
1-11-16
Signature: Andrew Viggiano

THANK YOU FOR YOUR BUSINESS!

Friedman 254

000104

Copy and Index

Patricia Comose

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

THE KITCHEN PLANNERS, LLC, :

Plaintiff, :

vs. :

SAMUEL E. FRIEDMAN AND JANE:

BREYER FRIEDMAN AND BRANCH :

BANKING AND TRUST COMPANY, :

Defendants. :

CIVIL ACTION NO.:

2016-CP-40-00164

DEPOSITION OF PATRICIA COMOSE

DATE TAKEN: Friday, April 7, 2017

TIME BEGAN: 10:01 a.m.

TIME ENDED: 12:54 p.m.

LOCATION: The Law Office of Jean P. Derrick
205 West Main Street
Lexington, South Carolina

REPORTED BY: Deidre Osborne
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

000105

(It is hereby stipulated and agreed by and between counsel for the respective parties that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure and that the deponent waives reading and signing of this deposition transcript.)

PATRICIA COMOSE, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KRAWCZYK:

Q. Ms. -- is it Comose?

A. Comose.

Q. Okay. Ms. Comose, my name is Charlie Krawczyk. I'm with the Finkel Law Firm here in Columbia, and I represent Dr. and Mrs. Friedman in a case you've brought against them in Richland County. We just met, but let me ask you a question. Have you ever taken your deposition -- has anybody ever taken your deposition before?

A. Years and years ago. I had one taken in Georgia.

Q. Okay. And what kind of case was that?

000106

1 A. It was a case where we had a house that we
2 had leased, done a lease purchase contract, and the
3 tenant decided he did not want to ex- -- you know,
4 execute the purchase portion of it which would have
5 been fine with us. The problem was, he stopped
6 paying rent but he also wouldn't leave.

7 Q. Okay.

8 A. So --

9 Q. So it was an eviction case?

10 A. Yeah. And he wouldn't let us in the house
11 to check it out, so we didn't have any choice but
12 to -- to bring a suit. After -- after depositions he
13 left.

14 Q. Okay. So you were deposed in that action?

15 A. Correct.

16 Q. All right. But you haven't been deposed in
17 South Carolina?

18 A. No.

19 Q. All right. So I'm going to tell you some
20 basic rules that we have for -- for taking
21 depositions. The first and foremost is this is not
22 an endurance test. While we -- you know, we have
23 time. If we need to, if you need to, feel like, take
24 a break --

25 A. Uh-huh.

000107

1 Q. -- or you just need to walk around, clear
2 your head, just let me know --

3 A. Okay.

4 Q. -- and we can take a break. However, now
5 that the deposition has started, I would ask that you
6 direct any questions that you have regarding this
7 case or your testimony to me rather than your
8 attorney. Most of the time when you speak with your
9 attorney, those -- those are privileged
10 communications and I can't ask you about them, but
11 now that the deposition has started, if you speak to
12 your attorney about this case or your testimony, I
13 can ask you about those questions.

14 A. Okay.

15 Q. Do you understand that?

16 A. I do.

17 Q. Okay. You're doing a good job. We have a
18 court reporter here, and she is going to take down
19 every word we say verbatim, so there's a couple of
20 things we want to make sure we do. Number one, we
21 want to make sure we answer verbally with a "yes" or
22 a "no" rather than a "huh-uh" or a "uh-huh" or a
23 shake of the head because it's hard for the court
24 reporter to interpret that. Okay?

25 A. I understand.

000108

1 Q. The other thing -- again, you're doing a
2 good job -- is when we have a normal conversation, we
3 tend to talk over each other, and so the best thing
4 for her is if you let me finish my question before
5 you respond, and I'll let you finish your answer
6 before I start the next question. Is that fair
7 enough?

8 A. I understand.

9 Q. Okay. During the deposition there may be
10 questions that I ask you that are bad questions,
11 poorly worded or you just don't understand. If
12 that's the case, I'm just going to ask that you tell
13 me that you don't understand the question. If you
14 respond to the question, I'm going to assume you
15 understood the question and answered accordingly. Is
16 that fair?

17 A. That's fair.

18 Q. Okay. As you sit here today, are you under
19 the influence of any medication, prescription drugs
20 or anything else that would hamper your ability to
21 recall or to tell the truth?

22 A. No, I'm not.

23 Q. Okay. Tell me your full name, please.

24 A. Patricia Ann Comose.

25 Q. Okay. And where is your primary residence?

000109

1 A. 112 Parapet Trail, Chapin, South Carolina.

2 Q. Okay. And how long have you lived there?

3 A. We've been there about 15 months.

4 Q. Okay. Where were you before that?

5 A. Before that we were at 532 Mallard Drive in
6 Chapin.

7 Q. And how long were you there?

8 A. About -- let's see. About six years, I
9 believe.

10 Q. Okay. How long have you lived in the
11 Columbia area?

12 A. 29 years.

13 Q. Okay. Have your residences all been in
14 Chapin in that time frame?

15 A. Yes.

16 Q. Okay. And prior to that, where did you
17 live?

18 A. In Atlanta, Georgia.

19 Q. Okay. Where in Atlanta did you live?

20 A. In Roswell.

21 Q. All right. And if you could, give me your
22 brief educational background, please.

23 A. I received my interior design degree from
24 the Art Institute of Fort Lauderdale in 1981. Prior
25 to that I attended the University of Cincinnati.

000110

1 Q. Okay. Did you get a degree at the
2 University of Cincinnati?

3 A. No, I did not. I did not -- I didn't stay
4 through the whole term there.

5 Q. Okay. And where did you go to high school?

6 A. Seton High School, Cincinnati, Ohio.

7 Q. Is that where you were born?

8 A. Yes, born in Cincinnati.

9 Q. And we can do this through your attorney if
10 you want. I'd like to get your social security
11 number. Rather than have it on the deposition, if
12 you could, give that to your attorney, and then she
13 could give that to me.

14 A. Okay.

15 Q. Okay.

16 MS. DERRICK: Or we can -- let's just go off
17 the record and let her tell you.

18 MR. KRAWCZYK: Okay.

19 - - -

20 (A discussion was held off the record.)

21 - - -

22 BY MR. KRAWCZYK:

23 Q. All right. I'm going to ask you a series of
24 questions. Don't take them personally. I ask
25 everybody these questions. Have you ever been

000111

1 arrested or convicted of a crime, anything above a
2 speeding traffic violation?

3 A. No, I have not.

4 Q. Okay. Have you ever sat on a jury before?

5 A. No. I was called for jury duty, but I was
6 dismissed.

7 Q. Okay. Do you have any relatives by blood or
8 marriage that live in Richland County?

9 A. No.

10 Q. I believe this is pending in Richland
11 County. Is it not? Yes.

12 Okay. Do you belong to a church or any
13 other civic organizations?

14 A. Yes, I belong to Our Lady of the Lake Church
15 in Chapin.

16 Q. Okay. Any civic organizations, Kiwanis --

17 A. No, not --

18 Q. -- you know, Rotary --

19 A. Not civic organizations, no.

20 Q. -- any of those things?

21 MS. DERRICK: Let him finish.

22 THE WITNESS: Oh, I'm sorry.

23 BY MR. KRAWCZYK:

24 Q. All right. Do you belong to any
25 professional organizations?

000112

1 A. Yes.

2 Q. Okay. What professional organizations do
3 you --

4 A. American --

5 MS. DERRICK: Let him finish.

6 THE WITNESS: I'm sorry.

7 MR. KRAWCZYK: That's okay.

8 MS. DERRICK: All right.

9 THE WITNESS: It's ASID, American Society of
10 Interior Designers. Sorry about that.

11 BY MR. KRAWCZYK:

12 Q. Okay. And how long have you been a member
13 of that?

14 A. Probably 25 years.

15 Q. Okay.

16 A. Give or take.

17 Q. And what does AS -- is it --

18 A. It's --

19 Q. ASDI?

20 A. ASID.

21 Q. ASID.

22 A. It's American Society of Interior Designers.

23 Q. What do they do?

24 A. It's a professional organization that
25 promotes the interior design field, sponsors

000113

1 educational opportunities, and it requires
2 credentials to belong to it. You don't just sign up
3 for it.

4 Q. Okay. And do you hold any licenses with the
5 State of South Carolina?

6 A. My retail license.

7 Q. Okay.

8 A. Uh-huh.

9 Q. So it's like a business license?

10 A. Correct. It is -- well, it's a retail
11 license.

12 Q. Okay. And what does that allow you to do?

13 A. That allows you to buy things at wholesale
14 and sell them at retail. It allows you to sell
15 things primarily.

16 Q. Okay. Do you have to be licensed to be an
17 interior designer in South Carolina?

18 A. Not in South Carolina.

19 Q. Okay. Do you in any other states -- have
20 you ever been licensed in any other states?

21 A. No.

22 Q. Okay. Have you ever held any licenses of
23 any kind anywhere for anything?

24 A. Real estate license.

25 Q. Okay. And where was that, and when was

000114

1 that?

2 A. South Carolina, probably maybe four or five
3 years ago is when I first got it.

4 Q. Okay. Do you still have that license?

5 A. It's inactive.

6 Q. Okay. And when did you get your interior
7 design degree?

8 A. 1981.

9 Q. 1981. Okay.

10 And tell me if you could, since 1981 what
11 has been your work experience?

12 A. Well, I practiced interior design, broad- --
13 broad-based interior design up to about 15 years ago
14 when I started to specialize in kitchens and baths.

15 Q. All right. Now, you say "broad-based."
16 What does that mean?

17 A. Any -- any part of the house basically.

18 Q. Okay. And who did you work for?

19 A. Well, in -- I lived in Florida prior to
20 Atlanta --

21 Q. Okay.

22 A. -- and I was with a firm called Virginia
23 Courtney Interiors.

24 Q. Okay.

25 A. And then in Atlanta there was a time when I

000115

1 didn't practice. I was assisting my husband in a
2 business, but then I had a firm called Patricia
3 Comose Interiors in Columbia, and then The Kitchen
4 Planners came after that.

5 Q. All right. What is your husband's name?

6 A. Andrew.

7 Q. And what does he do?

8 A. He's retired.

9 Q. What did he do before he was retired?

10 A. He was a businessman and a restaurant owner,
11 and years ago he was a police officer.

12 Q. Okay. And you say "business owner,
13 restaurant owner." Is that in Columbia?

14 A. Yes.

15 Q. What did he -- what business did he own?

16 A. As a restaurant owner, he owned a couple of
17 McDonald's restaurants, and then he had a barbecue
18 restaurant for a short time, and then after that he
19 assisted our son in his granite business.

20 Q. All right. Does your husband own any
21 interest in Kitchen Planners?

22 A. No, he does not.

23 Q. Okay. And Kitchen Planners, LLC, that is a
24 limited liability company. Is that a South Carolina
25 company?

000116

1 A. Yes.

2 Q. And who are the members of that LLC?

3 A. I'm the managing member and really the only
4 member.

5 Q. Okay. There's no other members?

6 A. No.

7 Q. Are there any employees?

8 A. No. Just me.

9 Q. Okay. Do you have any interest in any other
10 companies at the moment?

11 A. No.

12 Q. All right. Do you -- do you own the home at
13 112 Parapet Trail?

14 A. Yes.

15 Q. Do you own any other real estate in South
16 Carolina?

17 A. Yes.

18 Q. Okay. Where -- what other real estate do
19 you own?

20 A. There's a lot at Hilton Head, a motor home
21 lot at Hilton Head.

22 Q. Okay. Anything else?

23 A. No.

24 Q. So do you own a motor home?

25 A. We did. We sold it.

000117

1 Q. Okay. But you still own the lot?

2 A. Correct.

3 Q. All right. Do you have any other jobs that
4 you're currently doing besides Kitchen Planners?

5 A. No.

6 Q. All right. How many children do you have?

7 A. Two.

8 Q. And what are their names?

9 A. Timothy and Jennifer.

10 Q. And how old is Jen- -- Timothy?

11 A. He is 46. And Jennifer is 42.

12 Q. Okay. And where do they live?

13 A. In -- they both live in Chapin.

14 Q. Okay. Is Jennifer married?

15 A. Yes.

16 Q. What is her last name?

17 A. Vonahn.

18 Q. V-o-n --

19 A. V-o-n-a-h-n.

20 Q. All right. And I'm assuming Timothy is
21 still Comose?

22 A. Yes.

23 Q. Okay. Are those both by your current
24 husband?

25 A. Yes.

000118

1 Q. All right. Have you ever been married
2 besides your current husband?

3 A. No.

4 Q. All right. How long have you been a rep for
5 Crystal Cabinets?

6 A. I'm not sure exactly how many years.

7 Q. Can you give me a guess?

8 A. Eight years, ten years. Something like
9 that.

10 Q. Okay.

11 A. But I'm not sure.

12 Q. Is that the only brand you currently rep, or
13 do you rep other brands as well?

14 A. Other brands as well.

15 Q. Okay. What other brands do you rep?

16 A. Shiloh Cabinetry --

17 Q. Okay.

18 A. -- which is -- which is -- actually the
19 company name is WW Wood Company.

20 Q. Okay.

21 A. And ProCraft Cabinetry.

22 Q. All right. Are there any lines that you
23 previously had repped but no longer --

24 A. Yes.

25 Q. -- rep? Okay.

000119

1 A. KraftMaid.

2 Q. Okay. Why don't you rep KraftMaid anymore?

3 A. Because I had KraftMaid before I got Shiloh,
4 and they're similar lines except Shiloh is a much
5 better line, so I found myself always gravitating
6 when I had them both in the showroom toward Shiloh
7 because it was just a better product and a better
8 value for my customers, and so then I took KraftMaid
9 out.

10 Q. All right. Do the -- the three that you
11 currently rep, Crystal, Shiloh and ProCraft, would
12 you consider those to be upper-end cabinets or
13 mid-grade cabinets or -- I'm just trying to get an
14 understanding within your -- within your industry
15 where they kind of fit.

16 A. Crystal is considered to be a higher-end
17 cabinet line --

18 Q. Okay.

19 A. -- and Shiloh is a middle-price cabinet
20 line, and ProCraft is just below that, a lower --
21 lower-price cabinet line.

22 Q. So that gives your clients multiple choices
23 of things to chose from?

24 A. That's correct.

25 Q. Okay. How do you get most of your work?

000120

1 A. Referral. Referrals from other clients and
2 also people that I meet at the home show.

3 Q. Okay. Do you work with builders?

4 A. Rarely.

5 Q. Okay. Do you ever do any new construction,
6 or it's just all remodel?

7 A. New construction as well. Uh-huh.

8 Q. Okay. And percentage-wise between new
9 construction and remodel, what is your --

10 A. Probably 85/15. 85 remodel, 15 new
11 construction.

12 Q. So those new construction, is it safe to say
13 those are spec home -- I mean custom homes?

14 A. Yes.

15 Q. Okay. You don't work with a builder on spec
16 homes and designing things --

17 A. No, I do not.

18 Q. -- or their standard homes?

19 A. No, I do not.

20 Q. Okay. Now, do you ever do any just design
21 work without providing materials?

22 A. Yes.

23 Q. Okay. And when you do that, how do you
24 charge your customers?

25 A. It depends on what the project is.

000121

1 Q. Okay.

2 A. But I'll set a design fee for -- typically
3 if I'm doing design work for a kitchen, it's \$500.

4 Q. Okay.

5 A. And it will vary if there's multiple areas
6 in the house or something like that.

7 Q. Okay. And for that \$500, what does that get
8 you?

9 A. That gets you floor plan, elevations,
10 prospective drawings and all of the planning, and so
11 at that point my clients own that design, and then if
12 they choose to go forward, have us do the work,
13 that's fine. If they don't chose to do that, that's
14 fine as well.

15 Q. Okay. And from that design, would they be
16 able to take that design, let's say, to a cabinet
17 manufacturer and they would be able to order the
18 cabinets and give them a list of cabinets and sizes,
19 dimensions and all that?

20 A. They would have all the dimensions. They
21 could order -- anybody could order from it.

22 Q. Okay.

23 A. Uh-huh.

24 Q. How did you get to know the Friedmans? How
25 did they become your client?

000122

1 A. They contacted me because they, I
2 understand, wanted Crystal Cabinets, and I'm the
3 Crystal dealer in the area.

4 Q. Okay. Is there anybody else in South
5 Carolina who can sell Crystal Cabinets besides you?

6 A. Oh, I would -- yes, I would imagine so.

7 Q. Okay. Can anybody buy Crystal Cabinets, or
8 do you have to go through a dealer?

9 A. You go through a dealer. They're not sold
10 to the public.

11 Q. Okay. Do you know of any other Crystal
12 Cabinet dealers in South Carolina, personally as you
13 sit here today?

14 A. Personally, no.

15 Q. Okay.

16 A. I know they exist. I just don't know them.

17 Q. And would you -- do you know if any exist in
18 the Columbia area?

19 A. Not that I'm aware of.

20 Q. Okay. And what is your arrangement with
21 Crystal Cabinets as far as being a dealer? Are you
22 exclusive to the Columbia area? Can --

23 A. Well, Crystal does not have -- we don't
24 execute a territorial agreement or anything like
25 that, but my understanding is that, for example, if

000123

1 they get -- if somebody contacts Crystal and they're
2 interested in Crystal Cabinets in this area, then
3 that request will come to me as the dealer.

4 Q. Okay. What did you have to do to become a
5 Crystal dealer?

6 A. Well, they check your credentials. They
7 check your education. They check a lot of things,
8 and once you pass all of that, then they will -- then
9 they will make you a dealer.

10 Q. Did you have to make an application or
11 contact them?

12 A. Well, the sales -- the sales rep for Crystal
13 was at the time also the sales rep for Shiloh, and so
14 we got into conversations about Crystal just in the
15 normal course of business when he would come and see
16 me.

17 Q. So the sales --

18 A. He knew me.

19 Q. Okay. And who is that?

20 A. Hugh Tackett --

21 Q. Okay.

22 A. -- and his son Derrick. They work together.

23 Q. All right. And when you say "sales rep,"
24 what's his responsibility?

25 A. His responsibility is to represent the line. 000124

1 He visits dealers. He handles things that come up.
2 He -- I mean, I don't know what all they do as reps,
3 but if there's a -- if there's an inquiry to Crystal,
4 it goes to the sales rep, and then the sales rep will
5 pass it along to the dealer. For example, if it's
6 some other part of South Carolina, he would pass it
7 along to that dealer.

8 Q. So would Hugh be your point of contact at
9 Crystal generally?

10 A. Well, as -- as a sales rep, yes, either Hugh
11 or Derrick.

12 Q. Okay. So like if you were going to do an
13 order, you would send that in to Crystal and to his
14 attention and he would take care of it, or would you
15 then send that to Crystal?

16 A. I would send it to Crystal.

17 Q. Okay. Do you as a designer have to take
18 any, you know, yearly courses? You know, like
19 lawyers have to take continuing legal education. Is
20 there a requirement in order to stay in your
21 profession to -- to have any continuing educational
22 classes or such?

23 A. ASID requires continuing education, a
24 certain number of points each year or two, and then
25 the individual designer can chose to fulfill those

000125

1 through whatever -- whatever courses they want. They
2 have their choice of courses.

3 Q. Okay. And that's something do?

4 A. Yes.

5 Q. All right. Was -- so is it fair to say that
6 you got -- your -- the Crystal rep -- you got --
7 you're representing the Crystal dealer because you
8 were already representing the Shiloh dealer? Is that
9 how it worked?

10 A. Right. That's how I started to learn about
11 Crystal --

12 Q. Okay.

13 A. -- was through him.

14 Q. Do you have a showroom?

15 A. Yes.

16 Q. Okay. Where is that located?

17 A. It's 403 Chapin Road, Suite B.

18 Q. Do you own that showroom?

19 A. No, I do not.

20 Q. And I -- I know you told me, but I've
21 already forgotten. How did you get the contact from
22 the Friedmans? Did Crystal call you, or did the
23 Friedmans call you?

24 A. The Friedmans either called or emailed. I'm
25 not sure which.

000126

1 Q. Okay. And what was your understanding of
2 what they wanted?

3 A. They wanted to -- they had had damage in the
4 house. I believe it was a water leak, and they were
5 replacing cabinets, and so they wanted the kitchen
6 designed.

7 Q. Okay. And did they give you any special
8 instructions about what they wanted?

9 A. Well, we had a -- we did a lot of planning,
10 and some of the elements of the design were what they
11 had before, and then some were different --

12 Q. Okay.

13 A. -- so we planned -- we, you know, needed to
14 plan out the whole thing.

15 Q. As you sit here today, do you know what was
16 different from the original kitchen?

17 A. Yes, I do.

18 Q. Okay. Can you tell me what those were?

19 A. Yes. All of the wall cabinets and the tall
20 cabinets needed to be different due to the fact that
21 the room had a soffit, a Sheetrock soffit running
22 around the top of it, and that was to be removed by
23 their contractor, so the cabinets and the crown were
24 to now go to the ceiling instead of to the soffit as
25 before.

000127

1 Also, the island cabinets had to be
2 different because the appliance -- the cooktop going
3 into it was a different size. The run of cabinets
4 where the -- the short run of cabinets where the
5 double ovens were had to be different.

6 Q. Okay.

7 A. All right. Let's see that -- the sink-base
8 cabinet was different because it was a -- they were
9 changing to a -- a farmhouse sink, a sink with an
10 apron.

11 Q. Okay.

12 A. Trying to think what else. The enclosure
13 for the refrigerator needed to be different because
14 they wanted the new refrigerator to be a flush mount
15 installation for their Sub-Zero as opposed to what
16 they had before.

17 Q. Okay. Anything else that you can think of?

18 A. No, not off the top of my head.

19 Q. Okay.

20 MR. KRAWCZYK: Let's go ahead and mark this.

21 - - -

22 (Design Services Agreement marked Defendants'
23 Exhibit Number 1, for identification.)

24 - - -

25 BY MR. KRAWCZYK:

000128

1 Q. Ms. Comose, I'm showing you what's been
2 marked as Plaintiff's Exhibit Number 1. Do you see
3 that? Do you recognize that document?

4 A. Yes, I do.

5 Q. Okay. And tell me what this document is,
6 please.

7 A. That is a design retainer agreement that
8 just sort of lays out what we're preparing to do.
9 You see the \$500 retainer that I take for the
10 planning of the kitchen, and it also states that if
11 the client goes forward to purchase cabinetry from
12 us, then that \$500 is applied to the cabinet order.

13 Q. Okay. So is this -- did you present this to
14 your -- to them at their first meeting with you?

15 A. I normally do, so I would assume so. Yes.

16 Q. Okay. And did they pay the \$500?

17 A. They did.

18 Q. Okay. So in looking at Exhibit Number 1, if
19 they had decided not to purchase cabinets through
20 you, this would have been your charge for your time
21 in doing the design --

22 A. Correct.

23 Q. -- which would have been the same with
24 anybody. That's your standard rate for the design of
25 the kitchen?

000129

1 A. Correct.

2 Q. Okay. All right. Did -- did the -- with
3 the -- let's see -- one, two, three, four, five
4 changes that were -- you discussed earlier, did the
5 Friedmans ask you basically to duplicate the kitchen
6 that they had?

7 A. No.

8 Q. Okay. Tell me -- tell me why not. What --

9 A. Well, because it would not have been
10 possible to duplicate. As I said, there were
11 elements of it that were similar to what they had,
12 but had we just duplicated what they had, it would --
13 well, it would not have worked. The appliances would
14 not have fit, and also it would not have addressed
15 the need for the cabinets to go all the way up as
16 opposed to coming to the soffit. I mean, there were
17 a number of reasons why, you know, it would not -- it
18 just would not have worked.

19 Q. Okay. And at -- I guess the only thing I'm
20 real trying to do is -- I'm not trying to trick you
21 or anything. I'm just trying to make sure that --
22 well, let me back up. Did they indicate to you with
23 these exceptions I guess -- I'm not -- okay. Again,
24 bad -- sometimes I get ahead of myself and my brain
25 just goes -- so you're obviously the -- the kitchen

000130

1 design expert. I mean, that's something you do for a
2 living, correct?

3 A. Correct.

4 Q. And your job is to look at what the client
5 wants and tell them what they can and what they can't
6 have and what will work and what won't work.

7 A. Uh-huh.

8 Q. Is that --

9 A. Right.

10 Q. Okay. And -- and I understand that the
11 ultimate design was a little different than what --
12 the kitchen that you -- that you designed at the end.
13 But did they indicate initially that they wanted to
14 have something very similar to what they already had?

15 A. I would characterize it as the same but
16 different.

17 Q. Okay.

18 A. I could not duplicate what they had or I
19 would not have achieved what they indicated they
20 wanted.

21 Q. Okay. Did they put any restrictions on you
22 as to whether there was standard cabinets or custom
23 cabinets? Did they indicate that they had any budget
24 concerns or anything in that nature?

25 A. I don't recall any. And they're all custom

000131

1 cabinets.

2 Q. Okay. Now, some of the cabinets are
3 standard cabinets that are made by Crystal, right? I
4 mean, they have some standard boxes and sizes and
5 that sort of thing.

6 A. They have some standard sizes. However, in
7 this case, they were all a custom color, finish
8 color, and when I say "custom," part of that is
9 because they're -- they're built when they're
10 ordered, so, yes --

11 Q. Okay.

12 A. -- they do have certain parameters that they
13 work from, but they're -- they're all built, you
14 know -- they don't just go pull it off a shelf
15 somewhere. It's all built when ordered.

16 Q. Okay. I understand. And what -- I guess
17 what I'm trying to distinguish is obviously -- I
18 would think Crystal has probably a catalog of
19 different sizes and shapes of their standard
20 cabinets.

21 A. They have a spec book, yes.

22 Q. Okay. Can you go off from that and have
23 them custom make something completely different? Is
24 that possible?

25 A. It is possible within certain parameters as

000132

1 long as I'm not requesting something that they don't
2 consider structurally sound.

3 Q. Fair enough. But -- so when I say "custom"
4 today, I'm -- I'm probably more in the line of custom
5 being more of a special order rather than -- and I
6 understand your statement is "custom" is because
7 they're made right there and then and not pulled off
8 a shelf.

9 A. Uh-huh.

10 Q. Okay. Do you understand the difference
11 between that?

12 A. Yes.

13 Q. Okay. So what would be the better term to
14 use if I want to talk about -- "special order"?
15 Would that be a better term than "custom"?

16 A. Crystal calls it "special request."

17 Q. "Special request."

18 A. Uh-huh.

19 Q. Okay.

20 A. Yes.

21 Q. Have you ever done a kitchen that was mostly
22 special requests?

23 A. Yes.

24 Q. Okay. And where did you do that; do you
25 recall?

000133

1 A. Yes. I did one in Timberlake in Chapin,
2 and --

3 Q. How many have you done? Just --

4 A. How many Crystals kitchens?

5 Q. How many kitchens just that are just --
6 well, yeah. Let's talk about Crystal kitchens, how
7 many have you done, do you think?

8 A. Probably four or five.

9 Q. So it's not that unusual to just completely
10 manufacture yourself -- or not -- or design yourself
11 the -- the -- the cabinets to -- that are all special
12 request?

13 A. I don't understand the question.

14 Q. Okay. Let me back up. So at least four
15 times you've had kitchens that were mostly special
16 request cabinets.

17 A. Well, at least some --

18 Q. Okay.

19 A. -- special request. I don't know that I'd
20 say "mostly."

21 Q. And by -- and by necessity sometimes
22 kitchens just don't fit into a standard size. Would
23 that be correct?

24 A. That's correct.

25 Q. Okay.

000134

1 A. This particular kitchen had a number of
2 special requests.

3 Q. And we'll get to that.

4 All right. So the Friedmans paid their
5 \$500, and they engaged you to design their kitchen --

6 A. Correct.

7 Q. -- in accordance with their discussions with
8 you and what they wanted and you spoke together to
9 come up with that?

10 A. Correct.

11 Q. Okay.

12 A. We went through a number of changes and so
13 forth. This all took place in the planning stage.

14 Q. Okay. Go ahead and mark that which has
15 conveniently already got a number "2" on it.

16 - - -

17 (Quotation/Invoice marked Defendants' Exhibit
18 Number 2, for identification.)

19 - - -

20 BY MR. KRAWCZYK:

21 Q. Okay. I'm showing you what's been marked as
22 Defendants' Exhibit 2. Do you recognize this
23 document?

24 A. Yes, I do.

25 Q. Okay. And tell me what this document is, 000135

1 please.

2 A. This is the contract for the ordering of the
3 cabinets.

4 Q. Okay. The date on this is March 11, 2015.
5 Do you recall when you first came -- went to go see
6 the -- the Friedmans?

7 A. Well, likely it was on the 23rd of
8 January --

9 Q. Okay.

10 A. -- when the design retainer was signed.

11 Q. Do you know when -- the accident that took
12 place, do you know the date of that?

13 A. No, I don't.

14 Q. Okay. What was the state of the kitchen
15 when you first went there? What were -- were
16 there --

17 A. There was a contractor in there working who
18 had been -- who had at that point was working another
19 area of the house. It was explained to me that the
20 floor was needing to come up as well as the cabinets
21 coming out. I can't remember if that floor had
22 started to come up yet or not.

23 Q. The cabinets were all in place at that time?

24 A. I believe they were.

25 Q. Okay. So this quotation was approximately,

1 what, about two weeks after your initial meeting? Is
2 that about what it takes to design --

3 MS. DERRICK: Months.

4 MR. KRAWCZYK: Two months. You're right.

5 THE WITNESS: Yes. Almost two months.

6 BY MR. KRAWCZYK:

7 Q. Yes.

8 A. Uh-huh.

9 Q. You know, when you met on the 23rd, did you
10 tell them how long it would take for you to do the
11 design for the kitchen?

12 A. No.

13 Q. Okay.

14 A. Because there's not really a way to know.
15 It depends on how many changes there are, and a lot
16 of times clients will change their mind on things,
17 and so it just depends on how long it takes to get it
18 to where we want it.

19 Q. Between the 23rd and the -- January 23rd and
20 March 11th, did you -- were you having discussions
21 back and forth with the Friedmans?

22 A. Yes.

23 Q. Okay. And you -- were you presenting
24 designs and getting comments and that sort of thing?

25 A. Yes.

000137

1 Q. Okay.

2 A. And meetings in the showroom as well.

3 Q. Okay. And what kind of things were you
4 discussing just in general?

5 A. Just different elements of the design,
6 changes that were being made, things they had changed
7 their minds about, and just overall -- overall
8 elements of the design, I would say.

9 Q. Okay. And when you -- you presented this to
10 the Friedmans, do you think it was on -- it was
11 probably on or around March 11th? May not be the
12 exact day, but close to that?

13 MS. DERRICK: Counsel, Exhibit 2 is dated
14 March 16th.

15 MR. KRAWCZYK: I'm looking at -- oh, well,
16 I'm -- okay. I'm looking at the date up above.

17 THE WITNESS: That it was prepared, yeah.

18 BY MR. KRAWCZYK:

19 Q. Okay. And that's when it was prepared. And
20 then on the -- then there's some signatures later and
21 some changes that you make later.

22 A. Correct.

23 Q. Okay.

24 MS. DERRICK: Right. Okay.

25 BY MR. KRAWCZYK:

000138

1 Q. And there's a description here, and when
2 you pres- -- let me ask you this. Did they sign it
3 the same day you presented it even though there's
4 some alters/changes, or was it -- did they have it
5 for a few days, or was it that day?

6 A. I'm not certain.

7 Q. Okay.

8 A. I know that it was signed -- it was signed
9 and the payment schedule was changed on the same
10 day --

11 Q. Okay.

12 A. -- but I don't recall. Likely they had it
13 when I -- when I prepared it on the 11th, it might
14 have been emailed or something. I'm not certain
15 about that. But the changes were made when I was
16 there at the house when they signed -- when Jane
17 signed it.

18 Q. Okay. And -- and who is James?

19 A. Jane. Mrs. Friedman.

20 Q. Oh, I thought you said James. I'm sorry.

21 A. I'm sorry.

22 Q. That was -- that was my -- my bad hearing.

23 Now, there's a description of what your --

24 what -- let me back up. There's a description in

25 here like of a paragraph of different things. Did 000139

1 you -- did you take that step by step with the
2 Friedmans and discuss what each one of those meant?

3 A. We went over all of that.

4 Q. Okay.

5 A. And this, by the way, is not the complete
6 contract. There are two more pages.

7 Q. Okay. What else is included on the
8 contract?

9 A. There's a copy of the plan, initial -- the
10 initialed floor plan --

11 Q. Okay.

12 A. -- and there's also a form where the custom
13 color sample that was done was accepted. Crystal
14 requires that before they will produce anything in a
15 custom color.

16 Q. Okay. And it might just be the way that
17 they were presented to me that I thought they were
18 separate documents, but let me see if I can find
19 those and include those with this. I think I know
20 what you're talking about.

21 All right. Now -- and I don't -- if you
22 just look at this, and I don't think this is part of
23 the contract, right?

24 A. It is not.

25 Q. Okay. Was this part of the contract? And 000140

1 then this document here, Pre- -- Color Pre-Sample
2 Approval?

3 A. That's part of it.

4 Q. I don't know if these --

5 A. If that -- if that's one that's signed, then
6 it's part of it.

7 Q. It's signed by Jane --

8 A. Right.

9 Q. -- on 3/16. So I'm going to go ahead and
10 pull that out and ask you just to put that behind
11 there. Is that the document you were just saying was
12 part of the contract?

13 A. Yes.

14 Q. Okay.

15 MS. DERRICK: Do you want me to make copies?
16 I can do that.

17 MR. KRAWCZYK: Actually, that is a copy. So
18 for that one, I'm okay.

19 MS. DERRICK: All right.

20 MR. KRAWCZYK: And then I've got all these
21 on disks, so I'm all right unless you want to
22 have one in front of you that's a full copy.

23 MS. DERRICK: At the moment I don't think
24 that's necessary.

25 BY MR. KRAWCZYK:

000141

1 Q. Okay. And then I'm going to show you this.
2 Is this the other document you were talking about?

3 A. No.

4 Q. Okay. And what we may do to sort of save
5 time is -- why don't you hand me that one back?

6 A. Okay.

7 Q. I'll put it back in. We'll take a break at
8 some point in time, and these are all the documents
9 that you've given us and not -- if you would, I just
10 ask you to take that document and --

11 MS. DERRICK: Okay.

12 THE WITNESS: The other document is a floor
13 plan, but it's initialed.

14 MR. KRAWCZYK: Okay.

15 MS. DERRICK: Do you have a copy?

16 THE WITNESS: Yes.

17 MR. KRAWCZYK: I'm sure there's a copy in
18 here. I just --

19 MS. DERRICK: For time purposes, why don't
20 you go ahead and get it?

21 MR. KRAWCZYK: Yeah.

22 THE WITNESS: Want me to get it?

23 MS. DERRICK: Yeah.

24 MR. KRAWCZYK: Okay. Wait a minute. Let me
25 see.

000142

1 Jane, do you have it?

2 MRS. FRIEDMAN: I probably do.

3 MR. KRAWCZYK: You can go ahead and look.

4 MRS. FRIEDMAN: Here it is.

5 MR. KRAWCZYK: Okay.

6 THE WITNESS: You got it?

7 MRS. FRIEDMAN: It has some of my scribble
8 on it, but I don't --

9 BY MR. KRAWCZYK:

10 Q. If you have one that's clean that's the
11 actual copy, I think that's probably the best to do.

12 MS. DERRICK: I'm make copies.

13 MR. KRAWCZYK: Let's go ahead and go off the
14 record so you don't have to be taking down this
15 conversation.

16 - - -

17 (There was a recess from 10:40 to 10:50.)

18 - - -

19 BY MR. KRAWCZYK:

20 Q. Okay. Ms. Comose, we've now put in a
21 document that's a set of plans, and I think we need
22 to just discuss them real quick. It's just one
23 that's now back on the back of --

24 A. Oh.

25 Q. -- Number 2. I want to make sure you have

000143

1 the right one where the bottom corner says, "Design
2 3/5/2015." Is that --

3 A. Right.

4 Q. Okay. Now, there are some -- on the left
5 margin there's something that says, "Plan 207."
6 That's not your handwriting. We discussed that's --
7 that's -- that was not part of the original plan.

8 A. Correct.

9 Q. Okay. And then there's something on the
10 right that says, "Measures 145 1/2." That was also
11 not part of the original plan, correct?

12 A. Correct.

13 Q. But everything else is your handwriting.
14 Would you agree that the rest of this would have been
15 what was attached to the contract?

16 A. Well, this -- this document would have
17 been -- this -- this document reflects changes that
18 were made in particular to -- particularly to the
19 island where Jane wanted changes made. That's why
20 those things are crossed out and things are -- you
21 know, different notations are made. And the change
22 to the wall cabinet -- actually, that wall -- the
23 wall cabinet on either side of the sink was changed
24 anyway, but the computer -- for example, if you look
25 under the printing there, it says "42." That

000144

1 indicates 42 wide, 15 tall. That's the top -- the
2 top part of the cabinet. But, anyway, even though it
3 was modified, the computer still shows it as a 42.

4 Q. Okay.

5 A. So that's why I wrote "41" there.

6 Q. Okay.

7 A. Uh-huh.

8 Q. And so all these -- would these changes
9 probably have been made on March 16th when you were
10 discussing all of this with the Friedmans?

11 A. Could have been.

12 Q. Okay.

13 A. But definitely prior to ordering.

14 Q. Okay. And there's a -- the initials on the
15 right side --

16 A. Yeah, because my initials are there. Yes.

17 Q. Okay. 3/16. And your initials are there.
18 Where are your initials?

19 A. Right here where it --

20 Q. Okay.

21 A. Next to where -- yeah.

22 Q. Okay. All right. So that was all part of
23 Exhibit -- Defendants' Exhibit 2 which had this on
24 the front which is the quote.

25 A. Okay.

000145

1 Q. Is that correct? I just want to make sure
2 we have it -- that's everything that's included with
3 the contract.

4 A. Well, yeah. It has -- it has the same date
5 on it, so I'm assuming, yes.

6 Q. Okay. Now, looking at the front of Exhibit
7 2 which has got the quote, your charge for the
8 cabinets is \$50,284.04; is that correct?

9 A. Correct.

10 Q. All right. And then less the design fee
11 paid. You'd already been paid \$500 --

12 A. Correct.

13 Q. -- for the design fee.

14 And then -- so the -- you're saying here in
15 this that the total cabinet cost is \$49,784.04; is
16 that correct?

17 A. Correct.

18 Q. Okay.

19 - - -

20 (Plaintiff's Answers to Defendants' First Set of
21 Continuing Interrogatories marked Defendants'
22 Exhibit Number 3, for identification.)

23 - - -

24 MS. DERRICK: For the record, can we get
25 these things stapled together for Exhibit 2 so we

1 can finish that?

2 BY MR. KRAWCZYK:

3 Q. All right. Ms. Comose, I'm showing you
4 what's been marked as Defendants' Exhibit 3. Have
5 you ever seen this document before?

6 A. Yes.

7 Q. Okay. And did you have a hand in responding
8 to these interrogatories?

9 A. Yes.

10 Q. All right. Did anybody else besides your
11 attorney help you respond to this?

12 A. No.

13 Q. Okay. Look at number 11 if you would,
14 please, because I want to -- I want to ask about
15 this. Number 11 says, "Provide a complete accounting
16 of all the material and labor Plaintiff claims in its
17 mechanic's lien and who calculated the amount."

18 And in there it says that the amount was
19 "calculated at cost plus 33 percent, a standard in
20 the industry." Is it your testimony that the
21 standard mark-up in the industry is a 33 percent
22 mark-up?

23 A. The standard margin in the industry is 33
24 percent.

25 Q. Margin. Okay.

000147

1 And I know there's a different between
2 mark-up and margin. How do you calculate your
3 margin?

4 A. Well, margin is the -- is the profit,
5 standardly the profit. For example, if there is a 50
6 percent mark-up, it results in a 30 -- about a 33
7 percent margin.

8 Q. Okay. And tell me again how that's
9 calculated. And, I mean, how you -- the
10 difference -- I know it's been -- tried to be
11 explained to me before, the difference between
12 mark-up and margin.

13 A. Well, mark-up is what is added to a
14 wholesale cost to arrive at a retail cost. Margin is
15 the profit that one arrives at.

16 Q. And how do they differ? How are the
17 calculations differed? I mean, I understand mark-up.

18 A. Yeah.

19 Q. It's a certain amount above what you pay.

20 A. Yeah.

21 Q. Tell me what margin is.

22 A. Well, it's the difference -- it's the
23 difference between cost and -- cost and the amount
24 that's paid.

25 Q. Okay. So --

000148

1 A. That's the only way I know to explain it.

2 Q. Let's say your cost is \$10,000 for
3 something --

4 A. Uh-huh.

5 Q. -- and you're going to make a 33 percent
6 margin. How do you figure out your margin?

7 A. Well, I figure -- what I do is figure the
8 mark-up because I know that it results in -- in the
9 margin. People work on different margins. I work on
10 a rather lower-end margin because I don't have a lot
11 of overhead.

12 Q. Well, see, I'm trying -- and I'm trying to
13 understand how you came up with your margin. So what
14 I need for you to do is tell me exactly how you came
15 up with the margin in this case.

16 A. Because -- because when I figure -- because
17 that's why -- that's how I figure my mar- -- when I
18 figure my mark-up, that's the margin that it creates.
19 I can't explain it any differently than that.

20 Q. Okay.

21 A. I mean, I just know this from, you know,
22 being in retail.

23 Q. So, again, if I -- if I -- if you're selling
24 me \$10,000 worth of cabinets --

25 A. Uh-huh.

000149

1 Q. -- and you have -- you consider you're going
2 to have a 33 percent margin, how much would you be
3 charging me as a client?

4 A. For 10,000?

5 Q. Yeah.

6 A. Probably about 15,000.

7 Q. Okay.

8 A. And that -- it would result in about, well,
9 a 33 percent --

10 Q. Okay. So --

11 A. -- profit.

12 Q. So -- in that case you multiply times
13 1.33 -- one and a third --

14 A. Yeah. I --

15 Q. -- because you --

16 A. I never do it that way, but --

17 Q. Okay. I'm just trying to figure out. So
18 there you have -- no. I guess that wouldn't be
19 right. All right. So in that case if you had
20 \$10,000 in cabinetry and you're making a \$5,000
21 profit, correct --

22 A. No.

23 Q. -- if you're charging \$15,000?

24 A. Well, I know it's kind of confusing. The --
25 the margin -- if it's 10,000 -- if the cost is

000150

1 10,000, net cost is 10,000, and it's marked up by
2 1.5, that would be 15,000. Then the -- the profit
3 is -- let's say it's -- if it's 33 percent, the
4 profit is one-third of the 15,000.

5 Q. Okay. In looking at number 11, it says the
6 amount owed is calculated at cost plus 33 percent. Is
7 that different than the margin?

8 A. 33 percent would be the margin.

9 Q. Okay. How long does a kitchen remodel of
10 this type normally take, if everything goes
11 correctly?

12 A. Yeah. Well, it varies according to what all
13 is being done. Typically about six weeks or so.

14 Q. All right. So in looking at Exhibit Number
15 2, you originally, as I understand it, were
16 requesting -- well, let me back up. You have
17 delivery and installation in here at \$2,995, correct?

18 A. Correct.

19 Q. And that includes your installer and the
20 delivery of the materials to the site?

21 A. Correct.

22 Q. Is the -- are the materials generally
23 delivered straight to the house, or are they
24 delivered to your showroom first?

25 A. To my showroom.

000151

1 Q. Okay. And is that delivery and
2 installation -- is the delivery from your showroom,
3 or is that delivery included all the way from the --
4 from the --

5 A. No. The del- -- sorry.

6 Q. How much of this is delivery, and how much
7 is -- was installation?

8 A. It's not separated because the installer is
9 the one who brings them from my showroom to the house
10 when it's -- when we're ready for installation, and
11 he figures his time and so forth, time and work in
12 that delivery and installation and provides me with a
13 figure, so it's not broken down between delivery and
14 installation.

15 Q. And who was supposed to be installer of this
16 initially?

17 A. Bennie Clowney.

18 Q. Okay. And is Mr. Clowney a licensed
19 contractor?

20 A. Yes.

21 Q. Okay. What kind of license does he hold?

22 A. I'm not sure. He's not a general
23 contractor, but he's -- but he's licensed for the
24 work that he does. I'm not sure what it's called.

25 Q. Okay. I'm sure that would be in the LLR. 000152

1 Do you -- did he give you a quote and did you have an
2 agreement with him, or was it verbal? Was there
3 anything written between the two of you?

4 A. To do the installation?

5 Q. Yes.

6 A. He does all my installations, so we don't --
7 it's verbal. I mean, he does my work.

8 Q. Okay. Was he going to be charging you
9 \$2,995, or were you marking that up as well?

10 A. Pretty much that's the charge that he was --
11 he was going to charge for it.

12 Q. Okay.

13 A. Uh-huh.

14 Q. So that -- you're not making any mark-up on
15 that at all?

16 A. No.

17 Q. Okay. Okay. So the total cost was going to
18 be \$52,779.04; is that correct?

19 A. Correct.

20 Q. All right. And then we have some changes to
21 the payment schedule.

22 A. Correct.

23 Q. As I understand it, that was at the request
24 of the Friedmans?

25 A. Correct.

000153

1 Q. All right. And they agreed to pay a third
2 deposit at the time of the order, a third at the time
3 of shipment, and a third when the cabinets were
4 delivered; is that correct?

5 A. Correct.

6 Q. All right. And then you would -- they would
7 pay the balance of the -- of the delivery and
8 installation at -- when they were -- when they were
9 done.

10 A. Correct.

11 Q. All right. Why was that done?

12 A. The payment schedule was changed because
13 Jane told me that they had been taken advantage of by
14 so many people that they -- they wanted it broken
15 down. They didn't want to pay -- typically cabinets
16 are paid for when they're ordered because when I
17 order them, it's on my account, and I'm responsible
18 for the full amount.

19 Q. Okay.

20 A. And so that's how it's -- typically they're
21 paid when they're ordered and then the installation
22 is paid after the installation, but she asked for
23 something different, so I accommodated them.

24 Q. Okay. So I'm assuming between the time you
25 met with the Friedmans initially and the giving of

000154

1 this quote that you had contacted Crystal and got an
2 estimate of how much the cabinets were going to cost?

3 A. Right.

4 Q. Okay.

5 - - -
6 (Crystal Cabinet Order marked Defendants' Exhibit
7 Number 4, for identification.)
8 - - -

9 BY MR. KRAWCZYK:

10 Q. All right. Do you recognize document Number
11 4?

12 A. Yes.

13 Q. All right. Is this -- as I look at it,
14 the -- the date that says this was faxed at 3/19/15
15 at 5:15 p.m. which would have been after the -- the
16 signing of the contract.

17 A. Correct.

18 Q. And they had paid you 16,000, and they had
19 paid their first third at the time of the signing of
20 the contract, correct?

21 A. Correct.

22 Q. Did the Friedmans negotiate or dicker with
23 you at all over the price?

24 A. Not that I recall.

25 Q. Okay.

000155

1 A. Only over the payment schedule.

2 Q. Okay. And so in looking at this document,
3 Number 4, there was a couple of dates here. Quote
4 date, 3/5/15. And I'm -- you know, just correct me
5 if I'm wrong. I'm just trying to speed things up.
6 I'm assuming that's when you got the quote from
7 Crystal which would have been before you met with the
8 Friedmans.

9 MS. DERRICK: Counsel, it says, "3/3/15."

10 MR. KRAWCZYK: Excuse me. Thank you.

11 BY MR. KRAWCZYK:

12 Q. 3/3/15 at 12:15 a.m. Would that be an
13 accurate time frame?

14 A. I'm not sure what that date reflects because
15 this is not the full order. Of course, the full
16 order was 16 pages, and so that might have been when
17 they quoted some of the special request cabinets.
18 I'm not sure what that reflects.

19 Q. Okay. Again, I just want to make sure. I
20 know there were 16 pages that were marked, but then
21 we started going into some documents that include
22 Sub-Zero refrigerators and other things. I -- I'm
23 just more interested in if this was the order for the
24 cabinets, if these documents include what would have
25 been ordered for the -- just the cabinets and not for

1 anything else?

2 A. This is -- this is part of the order for the
3 cabinets.

4 Q. Okay. What else is missing from that?

5 A. This -- well, if this is seven pages,
6 there's nine more pages.

7 Q. Okay. So I'm going to --

8 A. And I believe they would have been the
9 special -- all of the special requests.

10 Q. Okay. I'm going to show you the documents
11 that I've been given and where I pulled these from.

12 A. Uh-huh.

13 Q. Okay. And there's -- number 8 maybe should
14 go on the back of that. Is that on -- has it got
15 eight?

16 A. No. This ends with 7. So --

17 Q. Okay. Well, there's my mistake, number one.
18 Let's go ahead and put that on the back.

19 A. Okay.

20 Q. All right. It looks like page number 9 is
21 what we already attached to the contract which was
22 the color order that you --

23 A. Okay. That would have had to have gone with
24 it.

25 Q. Okay. And then the plan, it looks like.

1 A. Okay.

2 Q. Then a sink specification?

3 A. Right. That's for production of the
4 sink-based cabinet.

5 Q. Okay. And then a oven specification.

6 A. Okay.

7 Q. A refrigerator specification.

8 A. So it was appliance specs.

9 Q. Appliance specs.

10 A. Okay.

11 Q. And then it looks like some moulding specs
12 or something for the appliance, the Sub-Zero, and
13 then 16 being the last page of the Sub-Zero
14 specifications.

15 A. Okay.

16 Q. All right. Does that clarify whether or not
17 Exhibit 4 is the order for the cabinets?

18 A. Yes, I believe so.

19 Q. Okay. I just want to make sure I have
20 everything in.

21 A. Because I think the special requests are
22 covered in here. They're just not shown. It's
23 specified, but it doesn't say "special request number
24 such-and-such" --

25 Q. Right.

000158

1 A. -- that I can see.

2 Q. Okay. In looking at the last page -- page
3 number 8 -- yeah. All right. Look at the last page
4 of that document, please. Okay. And there's a -- it
5 looks like a price at the very end. There's a price,
6 and I'm going to have to kind of look over your
7 shoulder because I don't have an extra page of that.
8 There's a -- there appears to be a subtotal list
9 price. That's not what you actually paid for the
10 cabinets, correct?

11 A. Correct.

12 Q. What your net price was was \$27,779.86,
13 correct?

14 A. After application of the multiplier, yes.

15 Q. Okay. And what is the multiplier? That's
16 your discount off of the list?

17 A. Correct.

18 Q. And what is your multiplier?

19 A. I'm trying to remember. It's probably --
20 I'm not sure.

21 Q. Okay.

22 A. I'm not sure.

23 Q. Fair enough. I'm sure we can calculate it
24 if we needed to.

25 A. Yeah.

000159

1 Q. And then below that is a fuel -- it looks
2 like a freight and fuel charge?

3 A. Correct.

4 Q. And then at the bottom is the total
5 delivered cost to you of \$29,072.17.

6 A. Correct.

7 Q. And when you ordered them from Crystal,
8 that's what you thought you were going to be paying?

9 A. Correct.

10 Q. All right. So according to that document,
11 you ordered the cabinets, it looks like, about three
12 days after the Friedmans wrote you a check and signed
13 their agreement.

14 A. Right.

15 Q. Okay. Is -- was it on a weekend that you
16 came to their house?

17 A. I get -- I don't remember what day of the
18 week the 16th was.

19 Q. Okay. But within three days you ordered it.

20 A. Yeah. It seems likely since the order is
21 dated the 19th it might possibly have been a weekend.

22 Q. Okay.

23 - - -

24 (Charges and Credits List marked Defendants'

25 Exhibit Number 5, for identification.)

000160

1

2 BY MR. KRAWCZYK:

3 Q. All right. I'm going to show you what's
4 been marked as Exhibit Number 5. Do you recognize
5 that document?

6 A. Yes.

7 Q. Is that a document you prepared?

8 A. Yes.

9 Q. All right. Is that an accounting of the job
10 at the -- at the Friedman home for you?

11 A. Yes.

12 Q. And that has all the costs and all the
13 payments that were made by you and to you for this
14 job, correct?

15 A. Yes.

16 Q. Okay. I want to ask you about a couple of
17 things. First of all, there are two -- on the bottom
18 there's a re-order of two base cabinets 1,559.89, and
19 there's -- well -- and let me back up. Looking at
20 Exhibit Number 4 there are some things that are
21 circled, and those things that are circled, I assume
22 they were circled by you because that's how it was --
23 that's how it was presented to me.

24 A. Oh, Exhibit 5 you mean?

25 Q. Yeah, Exhibit 5. I'm not doing too good on

1 that today, am I? And I'm assuming that all those
2 things are circled because next to it it says "Paid
3 by TKP" which I assume is you.

4 A. Is The Kitchen Planners. I don't know who
5 circled it.

6 Q. All right. Well, I will state to you that
7 all the ones that are circled next to them have "Paid
8 by The Kitchen Planners" next to it. Do you see
9 that?

10 A. I do.

11 MR. KRAWCZYK: Okay. And let's go ahead and
12 mark this.

13 - - -
14 (Canceled Checks marked Defendants' Exhibit
15 Number 6, for identification.)

16 - - -

17 MS. DERRICK: Yeah. We didn't produce this
18 exhibit.

19 MR. KRAWCZYK: Okay. That's -- that's how I
20 have it, from your documents, so...

21 MS. DERRICK: Okay.

22 MR. KRAWCZYK: And it doesn't make a
23 difference to me. If you want to make a
24 statement or alter it, however, I just -- that's
25 how I got it.

000162

1 BY MR. KRAWCZYK:

2 Q. All right. I'm being shown what's been
3 marked as Defendants' Exhibit Number 6, and I will
4 state to you that those are copies of the canceled
5 checks that were sent to us through discovery.

6 A. Correct.

7 Q. Okay. And so as I look at -- at -- at this,
8 I'm able to line up four out of the five things that
9 were paid by The Kitchen Planners in the canceled
10 checks. The only one I'm not able to do is the
11 6/26/15 re-order of two base cabinets for \$1,559.89.

12 A. Correct.

13 Q. Is it your statement that you paid that?

14 A. Well, I thought that I did at the time
15 because that was the first -- those were the first
16 cabinets -- those were the beginning of my
17 re-order --

18 Q. Okay.

19 A. -- of the cabinets, and the order came
20 through billed to me, and the cabinets were delivered
21 to me, and so I initially assumed I had been the one
22 to pay for them, but I could not find a canceled
23 check for that, so subsequently I realized that
24 probably the Friedmans paid Crystal or paid Derrick
25 Tackett for it.

000163

1 Q. Okay.

2 A. I thought initially that I did because of
3 the way it was billed and shipped, because they
4 came -- Derrick had somebody come and pick up those
5 cabinets from me on the re-order.

6 Q. Okay. So looking at this, there is a check
7 that was paid on 9/26 for a re-order of boxes for
8 island for 550.61. Can you tell me what that was and
9 why it was paid it looks like in September of 2015?

10 A. Yes. Because the cabinets in the island
11 were -- were built deeper, 2 inches I believe or so,
12 deeper than what a cabinet would -- normally a base
13 cabinet is 24 inches, and when the cabinet came in,
14 the factory had not extended the drawer boxes as
15 well, so Jane pointed this out to me, that the drawer
16 box was -- it could have been deeper because the
17 cabinet was deeper, and so I re-ordered the drawer
18 boxes.

19 Q. Okay. But -- and -- and -- but why was that
20 paid in September as opposed to earlier than that; do
21 you know?

22 A. I don't know. I don't know about the date.

23 Q. Okay.

24 A. And I have those, by the way.

25 Q. All right. So looking at this -- and I --

1 as I -- as I add all these documents up -- and you
2 can do it. I'll give you a calculator if you need
3 it. I -- what I see is that -- no. That's not
4 right.

5 Tell me what "sample block for color" is.
6 What was that?

7 A. That's a block that is produced by the
8 factory whenever somebody wants a custom color, and
9 they produce the block, and they ship it, and it
10 needs to be approved. It's strictly for color, and
11 it needs to be approved -- and you see where it's
12 approved as part of the contract here -- before they
13 will produce anything in a custom color.

14 Q. Okay.

15 A. The client signs off on it, and the dealer
16 signs off on it.

17 Q. And that -- would that normally be included
18 in the cabinet cost in your deal with the Friedmans?

19 A. Well, I paid that myself early on, so I -- I
20 don't even think I was charging them for it.

21 Q. Okay. So when I add up the 115.13 for the
22 sample block for color, the first payments you made
23 for \$10,000 to Crystal Cabinets, the second payment
24 you made for Crystal Cabinets for \$18,247.84, and the
25 last re-order drawer boxes for island for \$550.61, I

1 get a total of \$28,913.58. Does that sound about
2 right for all the money that you've expended on this
3 job?

4 A. Well, I know that I paid -- I would have had
5 to pay Crystal what they're showing as their total
6 delivered cost, so I don't know where the difference,
7 you know, comes in.

8 Q. As you sit here today, has Crystal claimed
9 you owe them any money for this job at all?

10 A. No, they do not.

11 Q. Okay. So they're fully paid as far as you
12 know?

13 A. Yes.

14 Q. Okay. And with the exception of -- well,
15 let me back up. When the cabinets were delivered,
16 you were given a second payment by --

17 A. When the cabinets were shipped.

18 Q. Were shipped, you were given a second
19 payment?

20 A. Correct.

21 Q. Okay. And that payment was from the
22 Friedmans for their -- for their third -- I mean for
23 their second of the three scheduled payments.

24 A. Correct.

25 Q. All right. And as I understand it, the

1 Friedmans have paid you just -- just cabinets
2 approximately \$33,129.36.

3 A. If that's what those two come out to be,
4 then that's correct.

5 Q. Then I will -- okay. All right. So -- all
6 right. Looking at Number 5, I just -- I want to ask
7 you a couple of other things. There was a 3/5/15,
8 the fireclay farmhouse sink, \$1,190.97, which was
9 ordered through your company.

10 A. Correct.

11 Q. Did -- what was your mark-up on the sink?

12 A. I don't know.

13 Q. Okay. So do you apply the same mark-up to
14 the sink as you do for the cabinets?

15 A. No.

16 Q. Okay. And do you have any -- so -- but you
17 did make some profit on the sink?

18 A. Some. Uh-huh.

19 Q. Okay. The granite, same with the granite
20 slab?

21 A. No.

22 Q. Okay. You didn't mark-up the granite slab
23 at all?

24 A. Correct.

25 Q. Okay. The puck lights, LED puck lights, did

1 you mark those up?

2 A. Yes.

3 Q. Okay. Cabinet pulls, did you make a profit
4 on that as well?

5 A. Yes.

6 Q. There was an electrician who was coming in
7 to do some electric -- to install, as I understand,
8 the -- at least the lights that -- the LED puck
9 lights. Is that correct?

10 A. Yes. I gave -- I gave Jane the name of an
11 electrician that I use on my projects. It's not --
12 it doesn't go through me or anything, but I just gave
13 her the name.

14 Q. Okay. So you didn't pay him. They paid him
15 directly?

16 A. Correct.

17 Q. Okay. So you didn't make any mark-up on
18 that.

19 A. Correct.

20 Q. All right. So in general when you buy
21 something, cabinet pulls, farmhouse sink, what do you
22 believe your mark-up might be? I mean, just round
23 figures. I'm not looking for exact.

24 A. It varies. It varies from item to item, and
25 it's -- it's merely a matter of buying it wholesale

1 and selling at retail because I don't charge for any
2 of the hours that I put into it other than the
3 initial design retainer which the clients then are --
4 have it -- give it back to them.

5 Q. All right. And maybe I didn't understand
6 what that meant. Are you saying you -- in ordering a
7 farmhouse sink there's a design element to it that
8 you haven't already worked into the plan?

9 A. I don't understand your question.

10 Q. Well, I mean, because I didn't understand
11 your answer.

12 A. Okay. Let's try again.

13 Q. I'm just trying to figure out -- okay. So
14 farmhouse sink, what is the range of profit you would
15 make off a farmhouse sink? And do you still have the
16 receipt from the farmhouse sink and what it cost you?

17 A. I'm sure I do. Not with me, but I'm sure I
18 do.

19 Q. Okay. Could you -- I didn't recall seeing
20 that within the documents. Could you see if you
21 could find that and then give that to your attorney,
22 please, and I think that would --

23 A. Yeah.

24 Q. That will solve the mystery.

25 A. Yeah.

1 Q. Okay. And if you would do that with the
2 puck lights and the cabinet pulls, I would appreciate
3 that too.

4 A. Designers work in different ways. Some
5 charge by the hour. Some charge a percentage of the
6 project. Some charge both. Some charge wholesale
7 versus retail. I'm a dealer for all of these various
8 vendors, and so I buy at wholesale and sell at
9 retail, and I don't charge for my time basically at
10 all.

11 Q. Okay. So your profit comes off of your
12 mark-up on the cabinets?

13 A. What I provide.

14 Q. And the other things that you provide.

15 A. Correct.

16 Q. All right. And I'm not judging you for
17 this. I'm just trying to understand how this project
18 went.

19 A. Uh-huh.

20 Q. Okay? So when I'm asking these questions,
21 I'm just trying to get information. Okay?

22 A. Okay.

23 Q. So the cabinets were ordered March 19th and
24 they are delivered on May 20th. Does that sound
25 correct?

1 A. Partially.

2 Q. Okay. Tell me what's incorrect about that.

3 A. They were delivered to me on May 11th --

4 Q. Okay.

5 A. -- but when I contacted the Friedmans, the
6 house was not ready for them yet.

7 Q. Okay.

8 A. The floor, I believe, was still being done,
9 and so we set up the install date of the 20th, so
10 that's the day that we brought the cabinets. I held
11 them between -- which was fine.

12 Q. All right. So you're talking about -- if
13 they're delivered to you on the 8th --

14 A. 11th.

15 Q. Excuse me. The 11th. You're looking at
16 about eight weeks? Is that about the time it took?

17 A. No. About nine days.

18 Q. No. I'm sorry. Between the time you order
19 them and the time they're delivered. Am I looking at
20 this wrong?

21 A. Is that your question?

22 Q. Yes.

23 A. Okay. Well, it would be between March --

24 Q. March 19th --

25 A. -- 19th and May 11th.

1 Q. So about -- about eight weeks.

2 A. Yeah. Which is typical for --

3 Q. Around about.

4 A. Yeah. Crystal generally runs about eight
5 weeks.

6 Q. Okay. All right. So when they were
7 delivered, at that point in time the Friedmans had
8 some issues with what was delivered; is that correct?

9 A. Yes.

10 Q. All right. Now -- and I know there's a
11 dispute about what was correct and what wasn't
12 correct, and before we get to those items of
13 dispute -- correct me if I'm wrong -- I think there
14 were a few things that were -- were -- yes, were
15 problems. For example, the Lazy Susan cabinets were
16 incorrect.

17 A. I acknowledged that.

18 Q. Okay. And there were -- some of the
19 cabinets had some marring on them or damage to them.

20 A. I'm not aware of that other than some --
21 something at the bottom of the toe kick space on the
22 oven cabinet --

23 Q. Okay.

24 A. -- that looked like it might have happened
25 in shipping which was going to have toe kick material

1 on it anyway.

2 Q. Okay. And -- all right. What about the
3 fact that the wall cabinets were different than what
4 was previously installed? You recall that issue? In
5 other words, there were some dividers in there that
6 weren't in the previous wall cabinets that were now
7 in there?

8 A. Right. The two wall -- the wall cabinet on
9 the left and the right of the sink had a center stile
10 which I told Jane I did not expect to see the center
11 stile because on the drawing that Crystal sent me for
12 those special request cabinets, it did not show it,
13 but I told her that I would re-order them without the
14 center stile.

15 But I called the factory the -- you're
16 talking about the morning I was out there when the
17 cabinets were delivered, and I called the factory a
18 number of times that morning because I called --
19 particularly one of the calls was about those two
20 cabinets, and they said that they do the center stile
21 because they don't consider a cabinet of that
22 width -- and the cabinet is very tall.

23 It's essentially two cabinets built into --
24 instead of stacking a cabinet, it's all built in --
25 as one, so they -- those cabinets were 57 inches

1 tall. They don't consider that 42-inch width without
2 a center stile to be structurally sound, and so I
3 explained to them that this is what Ms. Friedman
4 wanted, and she said, "Yeah, we'll -- we'll do it if
5 that's what you want, but it may very well not have a
6 warranty."

7 And then I told Ms. Friedman that, and she
8 said, "That's okay. I don't care."

9 Q. Okay.

10 A. So I would have re-ordered those.

11 Q. There were some issues about the side
12 decorative panels extending past the front edge of
13 the adjacent drawers. Can you tell me about that?

14 A. The decorative end panels as sent by Crystal
15 were installed exactly the correct way that they
16 should have been because in a frameless cabinet like
17 that, they're designed to come flush with the front
18 edge so it's a clean line coming around that cabinet.

19 Jane did not like the way that looked, and
20 so she said she wanted it -- the cab- -- wanted it
21 set back, so the cab- -- the panel that was on the
22 end of the peninsula, the last peninsula cabinet,
23 Bennie detached and moved it back so it was sitting
24 behind -- you know, sitting probably three-quarters
25 of an inch or so behind it, and Jane said, yeah,

1 that's the way that she liked it, but Crystal did not
2 send those incorrectly. They sent a correct
3 installation.

4 Q. But you would agree that Mrs. Friedman
5 didn't think that was what she was getting.

6 A. No.

7 Q. There was a discussion about it or a problem
8 that she thought she had --

9 A. I would agree that, -- that --

10 MS. DERRICK: Let him finish.

11 THE WITNESS: Okay.

12 BY MR. KRAWCZYK:

13 Q. She indicated to you at that time that she
14 wasn't happy with that.

15 A. Correct.

16 Q. Okay.

17 A. That's why we -- that's why we moved one
18 back, to show her. And if that meant that we needed
19 different size end panels on there because of the way
20 that she wanted it to be, even though it's not the
21 way the factory does it, then I would have re-ordered
22 those as well.

23 Q. And so that would be the five decorative
24 panels that --

25 A. I don't know the number of them --

1 Q. Okay.

2 A. -- off the top of my head.

3 Q. At the back of the peninsula?

4 A. The back -- the back of the peninsula was
5 a -- I believe it was a 96-inch long panel that I
6 don't even recall if we were -- we were allowed to
7 open it up yet. It might have been open. I'm not
8 sure. But what you're talking about there, I
9 believe, are the -- the ones on the end of the
10 cabinet.

11 Q. And my understanding is one of the issues
12 that came up was -- and just so you know, I'm just
13 trying to get whatever information you have. If you
14 know or don't know, you can feel free to tell me.

15 A. I understand.

16 Q. That -- is that the -- on the back of the
17 peninsula it had five decorative panels which had not
18 been requested or desired. And that interfered with
19 the decorative baseboard moulding. Are you aware of
20 that?

21 A. Okay. That's -- there's two parts to that
22 question.

23 Q. Okay.

24 A. I don't have any knowledge that they were
25 not desired. I mean, it was always in the plan for

1 the back to have decorative panels as opposed to just
2 a plain panel. That would have been the alternative.
3 And the forming of the panel around the -- they
4 had -- they've got a rather unusual baseboard
5 profile, and that's done in the field. That's not
6 done at the factory.

7 Q. Okay. And we talked about some issues with
8 the drawers being short. Is that when --

9 A. In -- in the island.

10 Q. Okay. And tell me what was the issue with
11 that again.

12 A. They -- when they extended -- when the
13 cabinets were extended by whatever that dimension
14 was -- I'm thinking it was 2 inches deeper than what
15 it normally would have been. The factory produced
16 the same depth drawer boxes instead of extending them
17 2 inches, so --

18 Q. Would that -- would that have been a fault
19 of the factory? Should they have extended it?

20 A. I would have thought so. But in any case I
21 re-ordered them --

22 Q. Okay.

23 A. -- to be deeper.

24 Q. Was there an issue with the design on the
25 narrow drawers on the bookcase, slash, TV cabinet

1 that would not allow for placement of the drawer
2 hardware, are you aware of that issue?

3 A. No, because that was checked ahead of time.
4 I was asked what size drawer -- drawer fronts those
5 were going to be based on the opening that needed to
6 be allowed for the TV and the way the cabinet was
7 apportioned, and I remember checking with the factory
8 to say, you know, "How -- how tall will these drawers
9 be?" And Jane wanted to use T-knobs on it anyway
10 which is a little narrow knob, and so we knew that
11 would fit, so I'm not aware of any question there.

12 Q. All right. And rather than just go through
13 all the issues, at that point in time did it appear
14 that the -- the Friedmans were not happy with what
15 had been delivered?

16 A. Yes.

17 Q. Okay. And did you have a discussion with
18 them about how you were going to deal with the
19 problems that had arisen?

20 A. Yes.

21 Q. Okay. What did you tell them that you were
22 going to do?

23 A. I told them that I would -- if there was --
24 if there was anything particular, for example, the
25 cabinets with the center stile that they did not want

1 there, I would -- I would be glad to re-order them
2 for them.

3 Q. Okay. And did you ultimately do that?

4 A. I began the process.

5 Q. Okay. Meaning --

6 A. And I got as far as getting the base corner
7 cabinets with the Lazy Susans ordered, and then they
8 took me off the project.

9 Q. All right. Tell me -- tell me your
10 understanding of that. What happened?

11 A. Well, the -- the day that we delivered -- we
12 delivered the cabinets on the 20th, and the loading
13 and the unloading of the cabinets took most of the
14 day, so my installer went back on the 21st to start
15 delivering -- I mean start installing, and he called
16 me after a while, and he said, "I think you want to
17 come out here because everything that we're unboxing
18 Jane is picking apart."

19 Q. Okay.

20 A. "Picking -- you know, complaining about
21 this, complaining about that."

22 So I said, "Okay. I'll be right out." So I
23 came out, and I don't think I was there very long
24 till I was put on -- Jane was talking to Sam on the
25 phone, and I was put on the phone with Sam, and we --

1 I don't even think we had all the cabinets in the
2 house yet. We certainly didn't have them unboxed or
3 anything. Some of them, but not -- we hadn't gotten
4 that far yet.

5 And he said -- Sam told me that he wanted
6 all the cabinets taken out of the house and he wanted
7 his money back.

8 Q. All right. Well, what did you say?

9 A. Well, I told him that, you know, cabinets
10 are not returnable. They're all special ordered, and
11 the contract states that, but, you know, I was trying
12 to find out what was the problem. And I don't
13 remember exactly what his answer was. I remember --
14 I remember him being rather insulting, and I remember
15 him saying that he didn't have any confidence in the
16 kitchen, and I responded that I was sorry he felt
17 that way because I have full confidence in the
18 kitchen.

19 And so we continued unboxing and everything,
20 and I was going over with Jane the various things
21 that she didn't like. I said, "If there's something
22 that you don't like, I'll re-order it. You know, the
23 center stile or the drawer box, whatever."

24 And so then Bennie even went to the trouble
25 to take all the base cabinets and lay them out around

1 the room, set them in place, not attaching them but
2 setting them in place, and as much as he was able to
3 do wall cabinet-wise. It was kind of -- kind of hard
4 to do that, but he -- I remember he had a number of
5 them up there.

6 So we went over everything. I -- he and I
7 were there about five hours that day, and when I left
8 there, Jane said, you know, "I think these are going
9 to be beautiful. I'm sorry we got off on the wrong
10 foot earlier."

11 And I said, "Yes, I agree that they will be,
12 and I think Sam will think so too when he sees them
13 because the cabinets are beautiful," were beautiful.
14 And so then -- do you want me to continue what
15 happened after that?

16 Q. Sure. Yes.

17 A. Okay. All right. So then I went back.
18 That was the 21st. I went back, and I said, "I'll
19 get a list together of what we need to -- what needs
20 to be re-ordered." She and I had gone over
21 everything. So I went back and I prepared the list.

22 This -- this all happened over the next two,
23 three days, something like that. And so then I
24 prepared the list, and Jane either called or emailed
25 me, I can't remember which, and she said, "Well, I

1 really think that we should meet and go over the
2 cabinets one by one."

3 I said, "That's perfectly fine." I was not
4 able to come the very next day because I was having
5 an MRI on my knee, but I came -- I said I would come
6 the following day. So that's what we scheduled. So
7 in the meantime I had the -- I had this list ready,
8 and my intention was to specify the cabinet, get it
9 exactly the way that she wanted it, have her approve
10 the specification and place the order.

11 So the afternoon that I had the -- yeah.
12 Afternoon of the day that I had the MRI on my knee,
13 when I was scheduled to go there the next day, I got
14 a call from Hugh Tackett late in the afternoon, and
15 he said that Sam Friedman had called either one
16 person or various people or emailed or something,
17 contacted Crystal, president, CEO, whomever, talking
18 about an issue with customer satisfaction.

19 So, of course, that inquiry was referred
20 back to the sales -- to Hugh as a sales rep, Hugh and
21 Derrick. And he said, "Tell me what's going on." So
22 I explained everything to him, and he was quite
23 astounded.

24 And he said, "Okay. Let me go over this
25 with Derrick, and we'll schedule for him to come

1 down." Because -- since Crystal was contacted,
2 Crystal wanted the sales rep to be part of the
3 discussions, and he said, "I want to make sure
4 that -- that both parties, both Sam and Jane, are
5 there when we meet."

6 So Derrick got in touch and said, you know,
7 he -- they -- they come -- they live in Tennessee.
8 So he said, "The soonest I can come is" -- I think it
9 was the 2nd of June. So he came down and did that,
10 and we went out and met at the house.

11 Q. Okay. Had you worked with Derrick before
12 this?

13 A. Sure. Yeah.

14 Q. Had he come down and watched your jobs or
15 looked at your jobs at all before?

16 A. No. There was never a need.

17 Q. Okay.

18 A. But I've worked with him as a sales rep --

19 Q. Okay.

20 A. -- but, no, I -- he was never called in on a
21 job.

22 Q. All right. So tell me when you met that day
23 what -- what -- did you meet with Derrick before the
24 meeting?

25 A. Well, only so that I could tell him where we

1 were going.

2 Q. Okay.

3 A. But we took our own cars, I believe.

4 Q. So did he come to your showroom?

5 A. He came to the showroom first.

6 Q. Okay. And what did you and he discuss at
7 the showroom?

8 A. Just that we were going -- going out there.
9 He -- he asked me again what had transpired so far,
10 and I explained to him, and he said, "Okay. Let's go
11 and -- let's go and take a look." So --

12 Q. Okay. And so then when you got to the
13 Friedmans', what happened?

14 A. When we got to the Friedmans', he -- he
15 already knew what -- what some of the issues were,
16 and so he started to go over it with them and
17 everything, and --

18 Q. And who was there besides you? It was just
19 you, Derrick and the Friedmans, or was anybody else
20 there?

21 A. Probably their contractor, Joe Viggiano, was
22 somewhere in the house.

23 Q. Okay.

24 A. I don't remember. I don't remember anybody
25 else being there.

1 Q. Okay.

2 A. There could have been somebody else there.

3 Q. And I'm sorry. I didn't mean to interrupt
4 you, but I just wanted to have that set up.

5 A. That's okay.

6 Q. So y'all went to the Friedmans' house.

7 A. Right.

8 Q. Okay. Tell me what --

9 A. He start- -- he -- he went over everything
10 with them and, you know, different things that they
11 wanted changed that he knew I was perfectly happy to
12 re-order, and I felt like I -- I wasn't -- I felt
13 like we weren't connecting on some level, "we" being
14 myself and Mrs. Friedman, because things seemed to
15 turn on a dime.

16 Like, for example, when I left the house on
17 the 21st and we had the cabinets laid out, everything
18 was fine with the exception of a couple of things I
19 was re-ordering, and then, you know, several hours
20 later it was like totally different. So -- so
21 Derrick said, "Well, you know, let me -- let me see."

22 So he told me -- I just kind of let -- I let
23 him take the lead at that point because I figured if
24 he was communicating better, then -- we all wanted
25 the same -- we want the same outcome. I wanted them

1 to be happy, and I told him afterwards that -- I
2 said, you know, "I just want them to be happy.
3 Whatever I need to re-order, I'll re-order."

4 And I remember what his statement was to me
5 at that point. He said, "Trish, you could jump off a
6 bridge and you would not make these people happy.
7 They absolutely hate you."

8 Q. Okay. Did Derrick point out any things that
9 he thought you had done incorrect?

10 A. Not to my knowledge.

11 Q. Okay. Now, did --

12 A. He didn't convey anything like that to me.

13 Q. Okay. Now, I guess as a result -- what
14 happened as a result of that meeting?

15 A. Well, as a result of that meeting, as I
16 said, I had prepared the list of cabinets to
17 re-order, and I think at that point Derrick said,
18 "Let me be the one to send the orders in because as a
19 rep I can probably get them out of the factory more
20 quickly than -- than if you order them."

21 And so that was the basis on which we were
22 working. Then I noticed when I was out there that --
23 that was that day that I noticed this -- that there
24 was a light switch on the wall to the right of the
25 refrigerator, between the refrigerator and the

1 doorway opening, and since the refrigerator
2 installation that the Friedmans wanted was a flush
3 installation, even though the refrigerator -- even if
4 the refrigerator is the same size, the flush
5 installation takes up about 2 more inches than a -- a
6 standard installation.

7 And so I said, "Oh, that -- that switch
8 needs to be moved over a little bit." And so rather
9 than bring the electrician back out or an electrician
10 back out, I just -- I just asked Joe, the contractor,
11 could he just move the light switch over a little
12 bit, and he said that he would.

13 Then after that I got an email -- and I
14 don't remember if it was an email or a phone call at
15 this point. But, anyway, it was probably an email,
16 and it was from Sam, and he said, "Since you put that
17 light switch in the wrong place, you should pay for
18 moving it."

19 And I told him I didn't put the light switch
20 there. That light switch, as far as I know, looked
21 like it had been there since the house was built,
22 but, I mean, I have no way of knowing that, but I
23 know I didn't position it there. We didn't move it
24 or anything.

25 And so -- but I said, "That's okay. You

1 know, if he moves it, I'll pay for it, to move the
2 light switch," because like I knew it was going to be
3 in the way. So then the next communication I had
4 was -- I believe it was from Derrick, and Derrick
5 said -- this is pretty much a quote. "They are done
6 with you because you accused Jane of doing
7 something."

8 I said, "What?"

9 He said, "I don't -- I don't know, but they
10 said they're done. They don't want you doing
11 anything more."

12 So I said, "Okay." So I told them -- I told
13 Derrick at that point, I said, "They still owe."
14 Putting aside the installation, because we didn't get
15 that far to be allowed to install, they still owed
16 the final third of the cabinet contract, but if
17 they -- if they acknowledge that they were removing
18 me from the project, I would forego that last cabinet
19 payment at that time.

20 So that's when I prepared that little
21 one-paragraph document called "Cessation of
22 Contract," and the reason I did that is obvious. I
23 did not want it to look on paper like we had
24 abandoned the contract. So it was simply
25 acknowledging that they were removing me from the

1 project, and I was acknowledging that they would not
2 owe me any further payment.

3 So Derrick presented that, and in -- in that
4 cessation of contract -- there were two of them.
5 There were two of them. The first one took the final
6 cabinet payment and added the installation cost
7 because that was the amount that was remaining on the
8 contract, and Derrick said that Jane said she
9 wouldn't sign it because the amount was wrong.

10 And I said, "Well, no, it's not wrong. I'm
11 looking at it right here." But maybe she didn't
12 understand that it -- it was comprised of those two
13 figures. So then I did another one where I separated
14 them out, the end result being the same thing, that
15 there was nothing further owed on the contract, but
16 they were acknowledging that they were removing me
17 from the project. So she wouldn't sign it the second
18 time, and I don't know what that excuse was. I don't
19 know what the reason was for that.

20 Q. Okay.

21 A. So then Derrick said, "Well, how about if
22 we -- I'll -- I'll have them -- we'll re-order what
23 they want to re-order. They can order that at
24 dealer's cost. I'll handle it all."

25 And I said, "Well, if that's what they want

1 and they acknowledge that they're not letting me do
2 anything more, that's fine." So that's what they --
3 that's what they then started to do.

4 Q. All right. And so I can understand your
5 testimony, at that point basically you were willing
6 to say, "Okay. If you agree we end the contract, I'm
7 going to walk away"?

8 A. At that time.

9 Q. Okay.

10 A. If -- as long as they acknowledged -- I just
11 didn't want it to look like I had walked away from
12 the contract and not finished.

13 Q. Okay.

14 A. That's why I prepared that document.

15 MS. DERRICK: And for the record, these are
16 settlement negotiations the client is talking
17 about, so while we can do it in discovery, it's
18 our position that this is inadmissible in
19 evidence.

20 Go ahead.

21 MR. KRAWCZYK: Okay.

22 MS. DERRICK: Next question.

23 MR. KRAWCZYK: I will, yeah. I'll get to
24 it.

25 MS. DERRICK: All right.

1

- - -

2

(Cessation of Contract marked Defendants' Exhibit
Number 7, for identification.)

3

4

- - -

5

MR. KRAWCZYK: I'll go ahead and -- I'm
going to put this in as an exhibit subject to
counsel's objection.

6

7

8

MS. DERRICK: No, just a statement that
these are settlement negotiations --

9

10

MR. KRAWCZYK: Okay.

11

MS. DERRICK: -- and while they're
discoverable, they're not admissible.

12

13

MR. KRAWCZYK: That -- and that -- I don't
agree with it, but it's on the record.

14

15

All right. Number 6? Is this Number 6?

16

THE COURT REPORTER: Number 7.

17

MR. KRAWCZYK: Number 7.

18

BY MR. KRAWCZYK:

19

Q. I'm showing you Exhibit Number 7 which is a
document that says "Cessation of Contract" on the
top, and then I believe according to your testimony
this is the one that was broken out with two -- in
two numbers?

20

21

22

23

24

A. Yes.

25

Q. Okay.

1 A. The first one was a total of the two.

2 Q. Okay. It -- after your initial meeting with
3 Derrick, did it appear that you were back on course
4 in finishing the kitchen and ordering some new
5 cabinets and getting this done?

6 A. Yes. I mean, I had -- I had prepared the
7 list of cabinets to order. I was going to have
8 each -- well, in order to get them ordered, they had
9 to be -- a special request had to be submitted --
10 this is procedural -- had to be submitted to the
11 factory, and then I had to hear back from them on the
12 special request, and then I would have -- just like I
13 did on the corner cabinets, I would have Jane or Sam,
14 whomever -- in this case it was Jane -- approve the
15 order for the corner cabinets, and then they would --
16 and then it would be placed. What I had prepared was
17 a list of what cabinets need to be re-ordered, but
18 then when Jane requested that we meet in person to do
19 it, I said, "Sure. That's fine."

20 Q. Okay. Okay.

21 - - -

22 (Email Dated 6/13/2015 marked Defendants' Exhibit
23 Number 8, for identification.)

24 - - -

25 \ BY MR. KRAWCZYK:

1 Q. Showing you what's been marked as
2 Defendants' Exhibit 8 which I will state to you is a
3 set -- first set of emails as it appears between
4 yourself, Derrick and Dr. and Mrs. Friedman. Do you
5 recognize these?

6 A. Yes.

7 Q. Okay.

8 A. It was -- it was emailed to both Derrick and
9 myself.

10 Q. Okay. So this would have taken place after
11 meeting with Derrick and the Friedmans at the house?

12 A. Yes. And it would have taken place while
13 Derrick was in the process of preparing -- preparing
14 orders.

15 Q. Okay. And it appears that the Friedmans
16 sent a -- this email which starts at the bottom of
17 page -- of the first page. I'm not going to go into
18 detail, but it seems to indicate they're unhappy.
19 They don't feel they're getting communication. Do
20 you recall that being an issue? And if you -- if you
21 look at the very first page, it's the second
22 sentence. It says, "So far, we have received only
23 minimal communications regar- -- referring to the
24 corner Lazy Susan cabinets, as well as the columns
25 for the island. There are at least ten other issues

1 that have not been addressed to our knowledge."

2 A. This was on the 13th. Yeah. That -- that
3 was -- that was after Derrick had taken over when
4 they had -- they had removed me from the project.

5 Q. Okay.

6 A. Let me just check something in my notes.

7 Q. And let me know if you need a break or...

8 A. When Derrick was preparing -- was preparing
9 the orders -- and that was -- that was right about
10 the time when they said they didn't want me on the
11 project any longer.

12 Q. Okay. Now -- and I've got an email here, as
13 soon as I find it, that was sent to you regarding
14 the -- hold on.

15 MR. KRAWCZYK: Okay. This is what I wanted.
16 Let's go ahead, and here's this so I can...

17 - - -
18 (Email Chain marked Defendants' Exhibit Number 9,
19 for identification.)
20 - - -

21 BY MR. KRAWCZYK:

22 Q. All right. In looking at Number 9 -- and
23 you'll have to forgive. This one's got my header up
24 on the top which obviously is not the date that is --

25 A. Right.

1 Q. But this appears to be an email from the
2 Friedmans' -- well, first, I guess on the second page
3 is on the -- the date is July 3rd where you are -- it
4 looks like at that point on July 3rd you were sending
5 them the cessation of contract?

6 A. Well, I -- I -- Derrick presented it.

7 Q. Okay. So at this point in time you're
8 dealing through Derrick. You're not going direct to
9 the Friedmans?

10 A. Correct. They did not want to talk to me.

11 Q. Okay. And I know somewhere in here that I
12 have an email and not -- maybe I can find it --
13 that -- from Derrick to you that was on June 18th
14 which was an email which I think you testified to he
15 said, "They're done with you." I guess I've got --
16 I -- we can take a break, and I can get that
17 document.

18 A. Let me check my --

19 Q. Didn't seem to make it into my files.

20 MR. KRAWCZYK: Do have that with you?

21 MRS. FRIEDMAN: I don't have that one.

22 MR. KRAWCZYK: Okay.

23 THE WITNESS: June 18th.

24 BY MR. KRAWCZYK:

25 Q. Is that June 18th? Does --

1 A. Uh-huh.

2 Q. -- that sound right?

3 A. Uh-huh.

4 Q. All right. So --

5 A. That's where Derrick said he got a call from
6 Sam. Sam said they were done with me because I had
7 accused Jane of doing something.

8 Q. Okay. So that was the date that -- that
9 Derrick indicated to you that they were done with
10 you?

11 A. Right.

12 Q. Okay. So as we look at Number 8, this is --
13 this is June 13th which is before that time frame.

14 A. Uh-huh.

15 Q. Okay. And getting back to where we were, we
16 were talking -- this email seems to be showing some
17 frustration on the Friedmans', one, lack of
18 communication, and there's a -- there was an issue.
19 I'm going to look down on the second page where
20 they're complaining about the work that -- the
21 electrician you recommended messed up some -- the
22 lighting. Do you remember that?

23 A. I remember the conversation.

24 Q. Okay. And so --

25 A. I don't agree that he -- that he messed it

1 up, but --

2 Q. Okay.

3 A. -- I remember the conversation. He went
4 back and changed what they wanted to change anyway.

5 Q. Okay. So he fixed that problem?

6 A. Uh-huh.

7 Q. Is that a "yes"?

8 A. Yes.

9 Q. How are you holding up?

10 A. I'm fine. I -- I might need -- I hate to
11 have to keep running to the restroom.

12 Q. No.

13 A. I'm still coming off the end of the stomach
14 virus.

15 Q. Okay. Well, let's take a break. You can
16 probably use the restroom.

17 A. But that's fine. Are you ready to take a
18 break anyway?

19 MR. KRAWCZYK: Yeah.

20 - - -

21 (There was a recess from 12:01 to 12:11.)

22 - - -

23 BY MR. KRAWCZYK:

24 Q. Okay. Going back to Exhibit Number 8 which
25 was the emails and email, and on the second page it

1 looks like this is Dr. Friedman saying, "We see two
2 paths forward. The first requires that we be
3 informed of the resolution of all the issues
4 discussed when we met, that all materials have been
5 ordered and will be delivered on or before July
6 13th."

7 And then the second issue which is on the
8 next page is a complete refund and sending the
9 Crystal Cabinets back. Is it possible this is the
10 point in time where Mr. Friedman or Dr. Friedman
11 requested a refund?

12 A. No. He requested a refund when the --
13 the -- within a few minutes of my arrival at the
14 house on the 21st of May.

15 Q. Okay. Who was --

16 A. Before we even --

17 Q. I'm sorry.

18 A. -- had the cabinets in the house.

19 Q. And -- and --

20 A. There were some in -- I'm sorry. Some in
21 but some not.

22 Q. Who was with you at that time?

23 A. Bennie was there bringing cabinets in and
24 unboxing them --

25 Q. Okay.

1 A. -- and Jane was there, and I would presume
2 their contractor was somewhere working in the house
3 because he was usually there. I don't know for a
4 fact if he was there that day, but --

5 Q. And that's Joe Viggiano?

6 A. Uh-huh.

7 Q. Okay. Do you know Mr. Viggiano? Have you
8 worked with him before?

9 A. No, I have not.

10 Q. Do you have any understanding of his
11 abilities or his trustworthiness or anything of that
12 as you sit here today?

13 A. Not directly, only from Derrick.

14 Q. Okay. And what did Derrick say about
15 Mr. Viggiano?

16 A. Derrick said in conversations with him about
17 cabinet installation and so forth he didn't appear to
18 know what -- what he was doing.

19 Q. Okay. Did he give any specifics?

20 A. No, I don't think so.

21 MS. DERRICK: The frameless cabinet.

22 THE COURT REPORTER: Say it --

23 THE WITNESS: Frameless, right.

24 MS. DERRICK: Did Derrick tell you that the
25 Viggiano didn't even know what a frameless

1 cabinet was?

2 MR. KRAWCZYK: Well, you know --

3 THE WITNESS: He -- he --

4 MS. DERRICK: All right.

5 MR. KRAWCZYK: Let her testify, please.

6 MS. DERRICK: Okay.

7 THE WITNESS: He was not -- he -- he was not
8 impressed with the knowledge -- the knowledge
9 that -- that Joe exhibited in that regard.

10 BY MR. KRAWCZYK:

11 Q. Okay.

12 A. And these were frameless cabinets.

13 Q. All right. Did I look -- I already gave you
14 Number 9, correct?

15 A. Yes.

16 Q. Okay. Well, hold on. Let's go ahead and do
17 this one. I think this is the --

18 - - -

19 (Email Chain marked Defendants' Exhibit Number
20 10, for identification.)

21 - - -

22 BY MR. KRAWCZYK:

23 Q. I'm going to show you what is Exhibit 10
24 which is another set of emails between you and
25 Derrick and the Friedmans. On the last page, on June

1 15th at 2:59 you emailed back to -- as I understand
2 how this took place, your email here was in response
3 to Exhibit Number 8. Does that appear to be correct?

4 A. That seems likely.

5 Q. Okay. And it talks about you having an MRI
6 which you discussed earlier.

7 A. Right. I wound up having surgery.

8 Q. Okay. What kind of surgery did you have?

9 A. Knee surgery. I had a torn meniscus.

10 Q. And how long were you out because of that?

11 A. I don't remember. I don't recall.

12 Q. Okay.

13 A. The MRI is what revealed the torn meniscus
14 because I had been having trouble with my knee.

15 Q. Now, I know we said that June 18th was when
16 Derrick told you that -- that the Friedmans were done
17 with you.

18 A. Uh-huh.

19 Q. Between this time, were you and Derrick
20 working together? Was Derrick taking the lead or
21 what was going on?

22 A. Derrick had taken the lead because I felt
23 that really for the first time in my career I was not
24 able to communicate well with -- with the Friedmans.
25 I mean, I just wasn't -- they weren't -- we weren't

1 clicking, and so I asked him, you know, if -- to --
2 to take the lead, and that's when he -- he said he
3 would, you know, go ahead and send the orders into
4 the factory and all that sort of thing.

5 Q. Okay. So at this point in time you're out
6 with surgery.

7 A. Uh-huh.

8 Q. Did you ever return to the Friedmans' home
9 after your surgery at any time?

10 A. I don't recall specifically. I know I
11 didn't return after they took me off the project, but
12 I don't recall in the in-between time whether I did
13 or not.

14 Q. Okay.

15 A. Derrick and I had the same goal. We just
16 both wanted them to be happy, just like I always do
17 with my clients.

18 Q. Okay. And let's see. Did you ever have a
19 conversation with the Friedmans about you not -- no
20 longer being -- other than -- than emails, verbal
21 conversations with the Friedmans, about you not being
22 wanted on the job anymore?

23 A. I don't recall.

24 Q. Okay. So after June 16th you weren't ever
25 back to the Friedmans' house?

1 A. Well, I would say after -- definitely after
2 June --

3 Q. June --

4 A. -- 18th.

5 Q. -- 18th. I'm sorry. June 18th.

6 A. This is just my log. You've got a copy of
7 this. After Derrick told me that Sam had said they
8 were, quote/unquote, "done with me," unquote, I know
9 I wasn't back after that. Prior to that I can't -- I
10 don't recall.

11 Q. And then on July 13th, which is Exhibit
12 Number 9, there's an email from Sam and Jane saying,
13 "Derrick has indeed taken over the design and
14 execution of this project."

15 A. That looked like --

16 Q. Is that a correct date, July -- that would
17 have been the time that they actually told you?

18 A. Right. That was in -- that was -- that
19 email was in response to them being presented with
20 the cessation of contract --

21 Q. Okay.

22 A. -- document.

23 Q. Which they never agreed or signed?

24 A. Correct.

25 MS. DERRICK: Okay. Let me stop. I

1 don't -- I'm looking at Exhibit 9, and I don't
2 see that material on here. What are you talking
3 about?

4 MR. KRAWCZYK: Very front page.

5 MS. DERRICK: That's not what I have.

6 THE WITNESS: That's not -- that's not your
7 exhibit. This is -- do you have this?

8 MS. DERRICK: No.

9 Okay. This is what you handed me.

10 THE WITNESS: There it is.

11 MS. DERRICK: Oh.

12 THE WITNESS: They're both marked Exhibit 9
13 on your copy.

14 MS. DERRICK: All right. What's this?

15 MR. KRAWCZYK: That's Exhibit 10.

16 MS. DERRICK: Okay.

17 THE WITNESS: Do I have a 10? Yes.

18 BY MR. KRAWCZYK:

19 Q. Okay. After the June 18th date, did you
20 order any more materials for the Friedmans' job?

21 A. No. Derrick ordered -- Derrick was doing
22 re-order --

23 Q. Okay.

24 A. -- and he had arranged, I guess, at that
25 date -- I mean, that's what he was proposing, to

1 arrange with them to just pay Crystal directly at
2 dealer cost.

3 Q. Okay. What was your arrangement with
4 Derrick? I mean, was he going to get paid for the
5 work he was doing? Were you supposed to get the
6 money after it was all over? What was your
7 understanding of what was going to happen at that
8 point?

9 A. Well, I always expected that once I got
10 cabinets re-ordered that -- that they wanted
11 re-ordered that I would receive the final payment,
12 yes.

13 Q. Okay.

14 A. As far as an arrangement with Derrick, the
15 only arrangement was he was just trying to help.

16 Q. Well, let's just assume for the sake of
17 argument --

18 A. Uh-huh.

19 Q. -- that the kitchen got completed --

20 A. Uh-huh.

21 Q. -- installed and everybody lived happily
22 ever after.

23 A. Uh-huh.

24 Q. Where would the -- where would the money go
25 for -- for the balance of the contract? Who would

1 that go to?

2 A. Well, the contract was with The Kitchen
3 Planners --

4 Q. Okay.

5 A. -- so I would assume the money would go to
6 The Kitchen Planners.

7 Q. All right. What about the cabinets that had
8 to be re-ordered and paid for by the Friedmans, would
9 they get credit for that? Should they get credit for
10 that?

11 A. Well, at that -- I don't understand.

12 MS. DERRICK: Seems like nobody's testified
13 about any re-order that the Friedmans were going
14 to pay for. Derrick was paying for it.

15 BY MR. KRAWCZYK:

16 Q. Okay. Well, you understand and we talked
17 about before that there was some money that was paid
18 by the Friedmans directly to Crystal?

19 A. Correct.

20 Q. Okay. A little over \$3,000, you're aware of
21 that?

22 A. I'm not aware of the amount, but I'm aware
23 of the arrangement.

24 Q. Okay. And I recall there being a chain of
25 email between yourself and Derrick about whether or

1 not the Friedmans paid for cabinets, and if I were to
2 state to you that the Friedmans paid essentially
3 3,000 -- a little over \$3,000 directly to Crystal for
4 re-ordered cabinets, assuming that's correct, should
5 they get credit for that against what they owe you?

6 A. Derrick and I didn't -- didn't discuss that
7 because when they took me off the project, what I
8 wanted at that point was just in writing that I had
9 been removed from project. That's why I drafted that
10 little -- that little document. I know Derrick
11 ordered other cabinets, went further in the ordering
12 that he -- that were not paid for.

13 And I don't know if Derrick wound up -- my
14 understanding -- and this is just from Derrick
15 because I was not involved in it. My understanding
16 was that the next order that he placed could not be
17 canceled, and so he figured that he was going to have
18 to pay for it because they wouldn't pay for it. Now,
19 whether he wound up paying for it or not, I don't
20 know.

21 Q. Well, you've sued the Friedmans seeking the
22 entire amount owed under the contract, correct?

23 A. Correct.

24 Q. For the cabinets, anyway.

25 A. Right.

1 Q. And you understand that -- and you've
2 testified today that cabinets had to be re-ordered.

3 A. Right.

4 Q. And that the Friedmans paid for some of
5 those cabinets. Would you agree with that?

6 A. To the best of my knowledge, yes, there was
7 some.

8 Q. Okay. And to the extent that they paid for
9 those, would you agree with me that they should get
10 credit for having to pay for the cabinets a second
11 time?

12 MS. DERRICK: Object to the form of the
13 question. You're trying to bargain with the
14 client.

15 MR. KRAWCZYK: Well, you can object. I
16 don't want any speaking objections, please.

17 BY MR. KRAWCZYK:

18 Q. And you can answer the question.

19 A. I don't have an opinion on that right now.

20 Q. Well, you understand that the -- the
21 Friedmans believe that they've paid more than the
22 value -- well, let me back up. That's a bad
23 question. If you misorder cabinets, which you've
24 testified at least as to the Lazy Susan cabinets you
25 did, would you agree that the Friedmans should not

1 have to pay for that re-order of the cabinets?

2 A. Well, my -- my understanding when I
3 prepared -- because that was the re-order that I had
4 already prepared, that I was paying for that cabinet.
5 So with me paying for that cabinet, then they would
6 owe the balance on the contract.

7 Q. But you didn't pay for those at this point
8 in time, did you?

9 A. Right. I -- I thought that I did because of
10 the way it was billed and the way it was shipped
11 because when I looked at the order, it was billed to
12 me and shipped to me, but then I acknowledged that as
13 it turns out I did not because I didn't find a
14 canceled check to that amount.

15 Q. Okay. And to the extent the Friedmans paid
16 for those cabinets, you agree that you should not be
17 paid for those re-order?

18 MS. DERRICK: Are you talking about the Lazy
19 Susan?

20 BY MR. KRAWCZYK:

21 Q. To the extent -- okay. Well, let's talk
22 about the Lazy Susan.

23 MR. KRAWCZYK: And if she has a question,
24 she can ask me. She doesn't need your help on
25 how to testify.

1 BY MR. KRAWCZYK:

2 Q. So the question is: To the extent that you
3 misordered cabinets on the Friedmans' house and the
4 Friedmans had to re-order and pay for a second set,
5 they should not have to reimburse you anything for
6 the initial cabinets, should they?

7 A. Well, my -- my intention was to pay myself
8 for anything that -- that was re-ordered. Okay? So
9 if -- if they made a different arrangement later,
10 like with Derrick, no, I would not sitting here right
11 now agree with that -- with that statement.

12 Q. So they should have paid twice for cabinets
13 that were misordered?

14 A. Well, as it -- as it stood, they had only
15 paid two-thirds of what was owed to start with.

16 Q. I understand that.

17 A. Uh-huh.

18 Q. But you're asking for the full amount to be
19 paid.

20 A. Uh-huh.

21 Q. And so as I understand your testimony, the
22 Friedmans should have to pay twice for cabinets that
23 were misordered by you.

24 MS. DERRICK: Object to the form of the
25 question. That's argumentative and improper.

1 MR. KRAWCZYK: You can object to the form of
2 the question, and that is it, please.

3 BY MR. KRAWCZYK:

4 Q. Go ahead.

5 MS. DERRICK: Follow the rules, counsel.

6 THE WITNESS: We never discussed that and so
7 I don't have an opinion on that right now.

8 BY MR. KRAWCZYK:

9 Q. Well, I'm asking you for your opinion. It's
10 just very simple. You --

11 MS. DERRICK: Asked --

12 MR. KRAWCZYK: And --

13 MS. DERRICK: -- and answered. I object.

14 MR. KRAWCZYK: I haven't asked the question,
15 so you can let me finish my question.

16 BY MR. KRAWCZYK:

17 Q. If you misordered cabinets, should they have
18 to pay twice for that? Should they pay for your
19 mistake if you misorder cabinets?

20 MS. DERRICK: Asked and answered. I object.
21 Argumentative.

22 BY MR. KRAWCZYK:

23 Q. You can answer the question.

24 A. I don't know the answer to that right now.

25 Q. And what would you need to know the answer

1 to that?

2 A. I think I would have to think about that a
3 little bit because of the arrangement that was made
4 with Derrick and with them taking me off the project.

5 Q. All right. So --

6 A. You're asking me to comment on a process
7 that at that point I didn't -- I was not a part of.

8 Q. Okay. But you testified that you at
9 least -- let's talk about the Lazy Susan. You at
10 least misordered the Lazy Susan cabinets, correct?

11 A. Jane gave me a picture of what -- of what
12 she wanted. There was -- there's two factors to
13 that. I don't know how -- how much of this you want
14 to get into, but the Lazy Susans were to have chrome
15 rails. That's the part that I missed. The picture
16 that she gave me also had a bi-fold hinge door. Jane
17 wanted two doors on it, not a bi-fold hinge, but I
18 was not even aware that she wanted two doors, so when
19 I re-ordered -- when I prepared the re-order, I
20 prepared it with chrome rails and with two doors.

21 Q. And ultimately those were delivered to the
22 Friedmans?

23 A. Ultimately. They were delivered to me
24 first.

25 Q. Okay. And then to the Friedmans from there.

1 A. Derrick had somebody pick them up and take
2 them to the house.

3 Q. Okay. You didn't do that. Derrick did
4 that.

5 A. Correct.

6 Q. Do you know about when that happened?

7 A. No.

8 Q. All right. And so those were re-ordered,
9 and somebody had to pay for those, correct?

10 A. Correct. I -- I -- like I said, I thought
11 it was me because of the way it was billed, but it
12 looks like it was not me. It was them.

13 Q. Okay. And you would have paid factory price
14 or your dealer price?

15 A. Correct.

16 Q. And as I understand your testimony, Derrick
17 was giving the Friedmans the same deal.

18 A. That's my understanding.

19 Q. Okay. So if you were having to re-order
20 cabinets and the Friedmans paid for them, would it
21 only be fair that they only get charged for one set
22 of cabinets?

23 MS. DERRICK: Object. Asked and answered
24 multiple types. Repetitive, argumentative.

25 BY MR. KRAWCZYK:

1 Q. You can answer.

2 A. No. Like I said, I don't have -- I don't
3 have an opinion right now.

4 Q. All right. Well, if you don't have an
5 opinion now, you can't have an opinion at trial.
6 Okay?

7 MS. DERRICK: Object. Incorrect. Don't
8 give her legal advice.

9 MR. KRAWCZYK: I'm going to -- you know, I
10 will object to any opinion given at trial.

11 BY MR. KRAWCZYK:

12 Q. All right. So the last day you were at
13 the -- did anything, as far as being at the
14 Friedmans' house, was before June 18th, correct? I
15 think we established that.

16 A. I believe so, yes.

17 Q. Okay. And you did not provide any other
18 additional materials after June 18th. You didn't
19 provide anything. Derrick did all that.

20 A. I think that's correct.

21 Q. Okay. And as far as you understood, you
22 were done with anything with the Friedmans' house
23 after June 18th.

24 A. Based on what they -- what they stated, yes.
25 I mean, I was not allowed to go back. I didn't have

1 anything more to do with the project at their
2 request.

3 Q. Okay. And then on August 18th Derrick sent
4 you an email.

5 MR. KRAWCZYK: And I'll go ahead and...

6 - - -

7 (Email Dated 8/18/2015 marked Defendants' Exhibit
8 Number 11, for identification.)

9 - - -

10 BY MR. KRAWCZYK:

11 Q. That's Number 11. And this appears to be an
12 email from Derrick to you, correct?

13 A. Correct.

14 Q. And in it Derrick says that he missed the
15 finished interiors on the cabinets that were
16 re-ordered; is that correct?

17 A. That's what it says.

18 Q. All right. And he says that Jane has told
19 me that we are done, and he's canceling the shipment
20 that's supposed to go out this week.

21 A. That's the shipment that I was referring to
22 that he told me he -- my understanding from him is
23 that he was not able to cancel it. It was too late
24 to cancel it.

25 Q. All right. But you didn't have anything to

1 do with that order.

2 A. Correct. I had already prepared an order
3 for -- he's referring to the two wall cabinets on
4 either side of the sink, and I had already prepared
5 an order for that, but I was not the one ordering at
6 that point.

7 Q. All right. So as of August 18th Derrick's
8 off the job?

9 A. That's what it looks like.

10 Q. And are you aware of anything more that
11 Derrick might have done after August 18th at the
12 house? Do you have any knowledge, information?

13 A. I don't have any direct knowledge of that,
14 but I know that Derrick -- if he missed a finish
15 interior -- and I know where he's talking about in
16 the upper part of the cabinets -- he would have
17 re-ordered it for them.

18 Q. All right. But this is August 18th, and the
19 whole process started on January 23rd.

20 A. The entire planning process --

21 Q. Correct.

22 A. -- started on January 23rd.

23 Q. So the Friedmans have been without a kitchen
24 for almost eight months at this point.

25 A. Well, at that point it was really their

1 choice.

2 Q. So you think they chose to be without a
3 kitchen?

4 A. I don't think they consciously chose to be
5 without a kitchen, but of the cabinets that I was
6 re-ordering or, indeed, Derrick was re-ordering, the
7 only cabinets that needed to come in prior to
8 continuing on with the kitchen was the two corner
9 cabinets because once they -- and they came in, you
10 know, fairly quickly. Once those were in, the
11 countertops could have gone on. Everything could
12 have continued because the rest of them didn't have
13 any bearing on -- on that.

14 Q. But you weren't on the job at that period of
15 time.

16 A. I was not at that period of time.

17 Q. And so you don't really know what the
18 Friedmans and Derrick were discussing and what issues
19 might have existed outside of that.

20 A. I don't know. I was not there to know of
21 conversations, but I know that the -- that the
22 kitchen could have continued -- Derrick and I talked
23 about that. The kitchen could have continued once
24 those corner -- the corner cabinets were the only
25 thing that needed to be in there prior to the

1 countertops going on because the rest of the cab- --
2 the other cabinets in question were separate from
3 that, and the kitchen could have been in working
4 order.

5 Q. So -- but as you sit here today, you don't
6 have any personal knowledge of why that was done
7 other than what Derrick might have told you.

8 MS. DERRICK: Why what was done?

9 THE WITNESS: I don't understand your
10 question.

11 BY MR. KRAWCZYK:

12 Q. Well, why the kitchen wasn't put together
13 because you were -- you weren't on the job at that
14 point, correct?

15 A. By that point, correct.

16 Q. All right. So any knowledge you have about
17 why the kitchen wasn't completed or wouldn't be
18 completed would have come from Derrick, not from your
19 direct knowledge.

20 A. I don't -- well, I don't know what they --
21 no, I don't know what they discussed. I don't know
22 what they discussed. I'm just telling you from the
23 standpoint of what needs to come first, what needs to
24 come second, what needs to come third. Those
25 countertops could have gone on and the appliances

1 been installed and -- because those were not in
2 question, and plumbing hooked up and all of that.

3 Q. There's some risk associated with that,
4 isn't there, when you --

5 A. With what?

6 Q. -- install your new countertops without
7 having all the cabinets in?

8 A. It's -- it's preferable to install the wall
9 cabinets first from the standpoint of the installer
10 but not absolutely necessary.

11 Q. All right. As we discussed before, the cost
12 of the materials that you've paid on the job is
13 \$28,953.58 in accordance with the canceled checks and
14 things that you've provided to us.

15 A. Right, I believe. But there must be
16 something else that makes up that difference because
17 I would have paid -- this is what I would have paid
18 Crystal in total.

19 Q. Okay. Well, I can only go by your
20 accounting which I've asked for.

21 A. Right. I know. Right.

22 Q. And if there's anything else, I'm not aware
23 of it.

24 A. Right. Well, I'm not sitting -- I'm not
25 aware of it sitting here either, but I can tell you

1 that when they send me an order and this is the
2 total -- and the total delivered cost is \$29,072, I
3 can't turn around and say to them, "Oh, by the way,
4 I'll send you \$28,462.35." So I know somehow that
5 was -- that was paid. You may not have a canceled
6 check. I didn't find anything, but I know that the
7 price didn't change.

8 Q. Okay. Well, the -- so the difference could
9 be maybe a thousand dollars?

10 A. Sounds like about that.

11 Q. Okay. So -- but at -- at this point in time
12 Crystal hasn't notified you that you owe anything on
13 this job.

14 A. Correct. That's why I'm -- I know that I
15 paid what they asked for.

16 Q. And do you pay everything to Crystal out of
17 your corporate account?

18 A. Yes.

19 Q. Okay. And you pay them by check?

20 A. Yes.

21 Q. And you've checked all -- all your bank
22 records, and you can't find any other payments?

23 A. I didn't find anything unless I used a --
24 a -- I typically pay by check, but unless I used a
25 debit card or something like that --

1 Q. Okay.

2 A. -- that would be the --

3 Q. Well, if you would, just look to see if
4 there was any further payments. Your debit card,
5 have you checked that as well?

6 A. No, because it's not -- it's not the way I
7 normally pay.

8 Q. Okay. Well, I'm just -- these are things
9 that I'm just trying to focus in on --

10 A. I understand.

11 Q. -- because as I look at it at the moment,
12 you've been paid \$33,129 by the Friedmans, and as you
13 sit here today, you've made a profit of \$4,175 on
14 this job. Would you agree with that?

15 MS. DERRICK: Object to the form.

16 BY MR. KRAWCZYK:

17 Q. Provided the numbers I give you are correct,
18 you've made a little over \$4,000 in profit on this
19 job? Well, just the cabinets.

20 A. Okay. Probably. Roughly. Roughly.

21 Q. Okay. And you've made some small amount of
22 profit off of the other items, the sink, the pulls.

23 A. Uh-huh.

24 Q. Is that correct?

25 A. Correct.

1 Q. All right. And, now, as you sit here today,
2 you understand that those cabinets were never fully
3 installed in the Friedmans' home.

4 A. I understand that we were not allowed to
5 install them.

6 Q. Okay. But did -- did -- let me back up.
7 When was your first knowledge that -- that the
8 Friedmans had gone and decided on a different product
9 and not used the Crystal Cabinets at all?

10 A. I don't recall. I don't recall when that
11 was.

12 Q. Okay. Did you and Derrick talk about it?

13 A. I don't re- -- I don't recall talking with
14 Derrick about it.

15 Q. All right. Now, you've filed a mechanic's
16 lien on this house, correct?

17 A. Correct.

18 Q. And that mechanic's lien -- let's go ahead
19 and...

20

21 (Mechanic's Lien marked Defendants' Exhibit
22 Number 12, for identification.)

23

24 BY MR. KRAWCZYK:

25 Q. I just want to make sure of a couple of

1 things, that the mechanic's lien was seeking
2 \$16,594.68 which is the entire amount of the cabinets
3 under the contract.

4 A. The third payment under the contract, yes.

5 Q. Okay. And that you haven't given them any
6 credit under this mechanic's lien for any things that
7 had to be re-ordered.

8 A. That's correct.

9 Q. Okay.

10 A. It was based on the contract.

11 Q. And take some time and look through Number
12 12. There's -- there's a mechanic's lien, and the
13 verified statement of account, and as you sit here
14 today, I want to know if there's anything that's
15 changed, anything that's different about -- if
16 everything in this is still accurate, I guess is a --
17 is a better response.

18 A. Okay. No. That appears -- that appears
19 accurate.

20 Q. So other than this -- are you seeking any
21 other damages other than the \$16,594.68?

22 A. Yes. I'm seeking attorney's fees as
23 provided under the contract and mediation fee.
24 Mediator's fee I should say.

25 Q. Okay. Anything else?

1 A. No. I could, but I didn't.

2 Q. I just want to make sure. Then we get to
3 trial, and there's not going to be any other damages
4 that you're going to be seeking.

5 A. Huh-huh.

6 Q. That's all we're seeking in this --

7 A. Uh-huh.

8 Q. -- case?

9 A. Uh-huh.

10 MR. KRAWCZYK: Okay. All right. Let's go
11 ahead and take a break, and let me just discuss
12 something with my client, and then we'll go from
13 there.

14 MS. DERRICK: All right. All right. We'll
15 leave y'all here.

16 MR. KRAWCZYK: We can just walk outside.

17 - - -

18 (There was a recess from 12:42 to 12:49.)

19 - - -

20 BY MR. KRAWCZYK:

21 Q. All right. Ms. Comose, there's just one
22 little last issue I wanted to address. The --

23 A. Uh-huh.

24 Q. There was an issue with the farmhouse sink.

25 A. Okay.

1 Q. Do you recall this?

2 A. Yes.

3 Q. And I believe the Friedmans were unhappy
4 with the sink because they thought it should be
5 deeper. Correct?

6 A. I had an email to that effect.

7 Q. And I understand. At some point in time,
8 though, the Friedmans were looking to return the sink
9 to --

10 A. I had an email to that effect.

11 Q. Okay. And they requested you to contact the
12 manufacturer of the distributor of the sink so that
13 they could return the sink. Can you tell me why you
14 didn't do that?

15 A. Well, I did contact them, and I was told
16 that it was not returnable, but I didn't understand
17 how the whole question came up anyway because the
18 specs were provided to them. The sink had a -- at
19 their request has a low center divide -- what they
20 call a low center divide which cuts down the depth of
21 the sink.

22 But the other thing is that at that point
23 the cabinet, the farmhouse sink base cabinet, had
24 been built to hold that sink, so if they had
25 substituted another sink, unless it was something

1 exactly the same dimension-wise it would not have
2 worked in the cabinet.

3 Q. Okay. And we got a little off cue there.
4 They did -- they did contact you about returning --
5 being able to return --

6 A. I got an email about that. Uh-huh.

7 Q. Okay. And your statement is that you
8 contacted the sink folks, and they --

9 A. They told me that I could not return it.

10 Q. Okay.

11 A. I spoke to customer service. They told me I
12 could not return it.

13 Q. Okay.

14 A. But I also had a concern about -- because at
15 this point I had no knowledge that they weren't going
16 to use the cabinets, and I also had a concern that
17 switching out the sink would make the cabinet not
18 work because the cabinet was built for the sink.

19 Q. I understand. But you weren't on the job at
20 that point, right?

21 A. I think that's correct.

22 Q. Okay.

23 A. But that doesn't change the cabinet.

24 Q. Okay. I understand. But if the Friedmans
25 wanted to return the sink -- and let me -- let me

1 back up.

2 MR. KRAWCZYK: Let's go ahead and mark this.
3 Let's just make it easier.

4 THE WITNESS: Typically special order items
5 are not returnable.

6 - - -
7 (Email Chain marked Defendants' Exhibit Number
8 13, for identification.)

9 - - -
10 THE WITNESS: Thank you.

11 MS. DERRICK: Do you got a copy for me?

12 MR. KRAWCZYK: Yeah, I do. I'm just trying
13 to make sure I'm giving you the same thing.

14 BY MR. KRAWCZYK:

15 Q. Okay. If you look at the second page, this
16 is a woman from Signature Hardware.

17 A. Uh-huh.

18 Q. Says that "any returns allowed on the order
19 and refunds would have to be coordinated and paid
20 directly to Kitchen Designers," and she says, "Please
21 give Trish a call -- give us a call on your behalf.
22 Just for reference, if we were able to get the return
23 approved, there would be a 10 percent re-stocking fee
24 assessed" --

25 A. Uh-huh.

1 Q. -- "and \$175 trucking fee."

2 And to the -- I just want to understand your
3 testimony, is that you called them and said that it
4 was okay for them to return the sink?

5 A. No. I called them -- when I called customer
6 service, I was told we could not return it. I did
7 not have this email with this person's name --

8 Q. Okay.

9 A. -- that they spoke to, and I also see where
10 they said -- somebody said, "She never asked us which
11 sink we wanted. Took it upon herself to pick the
12 wrong one for us." That's completely false because
13 the specs were sent to them prior to ordering, and
14 the order was approved before the order was placed.

15 Q. I understand. And I --

16 A. So the --

17 Q. -- wasn't asking about --

18 A. Yeah.

19 Q. -- whether or not you approved the sink or
20 they approved the sink. I was just --

21 A. Right.

22 Q. Wanted to understand what happened with --

23 A. Right. If this person at Signa- -- I'm
24 sorry. Finish.

25 Q. Go ahead. Go ahead. Whatever you were

1 going to say.

2 A. If this person at Signature Hardware said
3 that they could, I did not have this person's name --

4 Q. Okay.

5 A. -- to speak to. So when I called, I called
6 customer service. But what I'm saying is typically
7 special order items like that are not returnable.

8 MR. KRAWCZYK: Okay. That's all I have.

9 MS. DERRICK: No questions.

10 THE COURT REPORTER: Did you want to a order
11 copy?

12 MS. DERRICK: Yes.

13 - - -

14 (Witness excused.)

15 - - -

16 (Deposition concluded at 12:54 p.m.)

17 - - -

18

19

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25

THE KITCHEN PLANNERS, LLC

403-B CHAPIN ROAD
CHAPIN, SC 29036
(Ph) 803.586.5624 (Fax) 803.941.7495
patricia@thekitchenplanners.com

DESIGN SERVICES AGREEMENT

This is to state that I, JANE FRIEDMAN, am retaining The Kitchen Planners, LLC, to perform design services for me. The scope of the project is KITCHEN DESIGN

My payment of design retainer in the amount of \$ 500.00 allows planning and design work to begin.

Design work done by The Kitchen Planners is proprietary and subject to copyright laws. Design retainer is non-refundable. Customer owns design after completion of design phase of project.

If I elect to purchase Cabinetry from The Kitchen Planners, the amount of my design fee will be applied to my cabinet order.

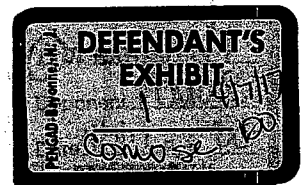
A faxed signature or email approval will be considered the same as an original signature.

I have read and I understand the above agreement, and my signature below signifies my approval.

X Jane B Friedman
Customer Signature

X Jan. 2015
Date

Pd #1206 1/23/15



000230

2

THE KITCHEN PLANNERS, LLC
403-B CHAPIN ROAD
CHAPIN, SC 29036
(PH) 803.586.5624 (FAX) 803.941.7495
patricia@thekitchenplanners.com

QUOTATION / INVOICE

TO: Jane & Sam Friedman

DATE: 3/11/15

DESCRIPTION: Kitchen Cabinetry

TERMS: Upon Ordering



To provide and install Cabinetry per approved Design Layout. Cabinets to be Encore Frameless Cabinets, by Crystal. Door Style to be Aurora Square MDF in Full Overlay. Drawer Fronts to be Aurora Square MDF in Full Overlay. Drawer Boxes to be 5/8" White Melamine with Full Extension Glides and Soft-Close. Doors to have Concealed hinges with Soft-Close. Cabinets to Have White Melamine Interiors, except for those Cabinets which feature Mullion doors prepped for 1/8" Glass. These cabinets will have Interiors which match the Cabinet Exterior. Mullion Doors are prepped for glass, but glass is not included. Finish color to be SW 7008 Alabaster, per door Sample provided and approved. Note: Dishwasher Panel not included here as Bosch suggested ordering it after the dishwasher is installed in order to determine correct dimensions. No bar brackets included here pending decision later.

Cabinetry	50,284.04
Less Design Fee Paid	- 500.00
Sub-Total	49,784.04
Delivery & Installation	2,995.00
Total	52,779.04
Deposit to Order (SEE BELOW)	- 49,784.04
Balance Upon Completion	2,995.00

138
3/16/15
3/16/15
JAC

Your approval and return of one copy of this quote along with your check allows ordering to begin. Payment of deposit indicates that order is ready to be placed; as such, deposit is non-refundable. The Kitchen Planners does not specify appliances. Unforeseen circumstances of remodeling may result in an extra labor charge. No returns on special

PAYMENT SCHEDULE:

1/3 DEPOSIT AT TIME OF ORDER: 16594.68 P/L CR #1002 3/16/15
1/3 DEPOSIT AT TIME OF SHIPMENT: 16594.68 P/L CR #1021 5/14/15
1/3 CABINET BALANCE WHEN CABINETS DELIVERED: 16594.68
INSTALLATION BALANCE DUE (AFTER) COMPLETION: 2995.00

000231

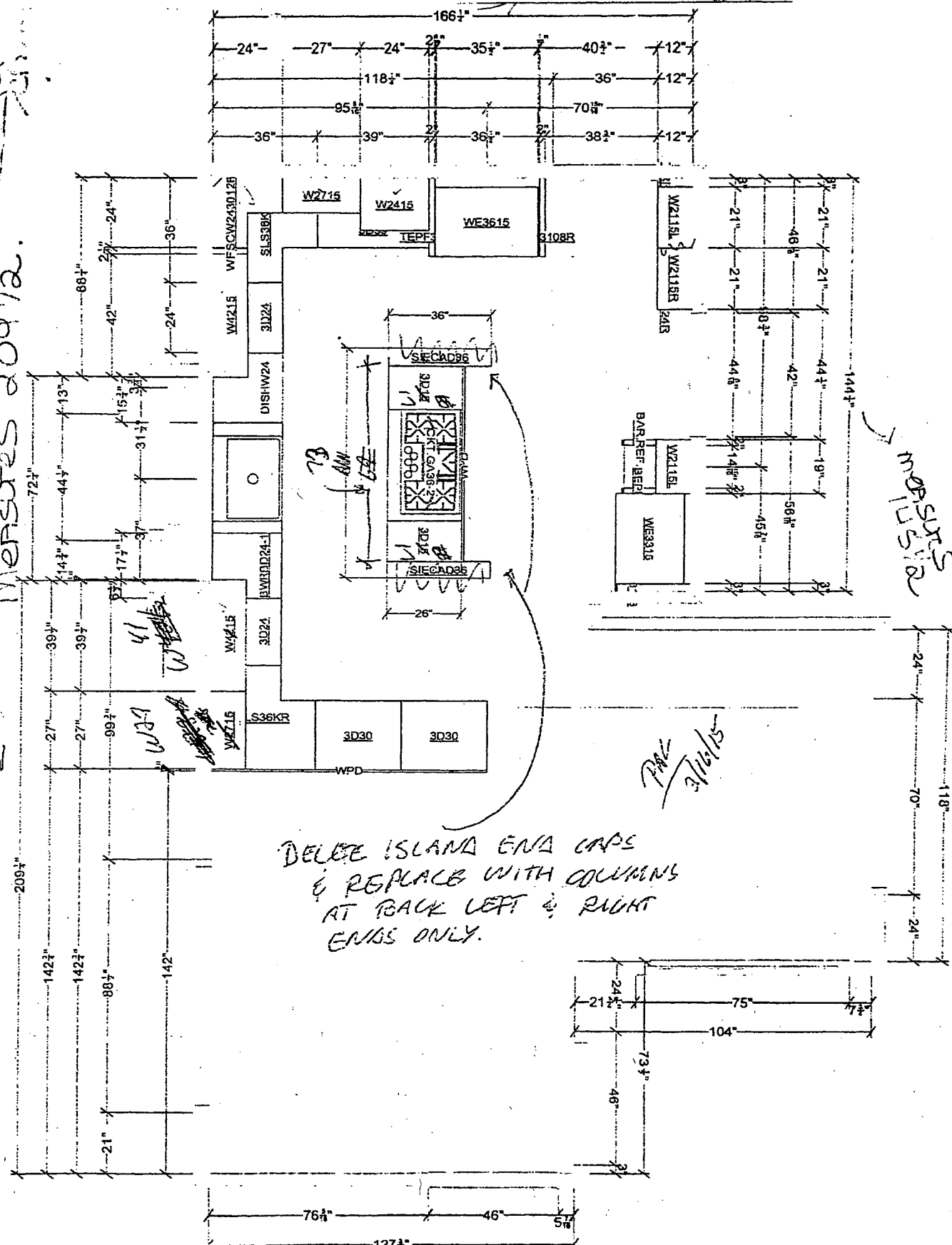
order items. Any and all costs incurred in collection, including attorney's fees, to be paid by customer. THANK YOU. WE APPRECIATE YOUR BUSINESS.

Jane B. Sweden
Customer Approval

3/16/15
Date

000232

Plan 201 for White
 Measures 209'2"



All dimensions size designations given are subject to verification on job site and adjustment to fit job conditions.	20 TECHNOLOGIES	This is an original design and must not be released or copied unless applicable fee has been paid or job order placed.	Designed: 3/5/2015 Printed: 3/15/2015 3/16/15
---	----------------------------	---	--

CRYSTAL
a fine name in cabinetry

COLOR-PER-SAMPLE APPROVAL - 08/2013
Please retain and send in with EVERY CPS order that pertains to this CPS.

ATTENTION KIPL02
AT KIT PLANNERS

Enclosed is your color sample for color match for P.O.# FRIEDMAN. Also enclosed is our version in a half-door sample, for you to retain. If the color is acceptable, please read and sign this

Color-Per-Sample Approval Form, and fax or mail it as soon as possible.

NO ORDER can be processed without the approval form signed by your homeowner or yourself.

Sincerely, JILL

Wood Characteristics: It is the nature of real hardwood to have a *variety of colors and grain textures*. Because these variations are the real, natural beauty of hardwood, unusual or wild grain patterns **will not** constitute a reason for replacement. No special emphasis will be made to select doors/drawers to match one another.

Wood Mellowing: Wood "mellows" with age, exposure to sunlight and the elements. A slight color difference may occur after a year's time, thus affecting the actual color (natural or stained) of your color sample. This could result in customer concern if the sample they choose from is slightly different in color than the cabinets they receive.

In an effort to be more consistent with our standard finishing process and to save time for everyone through accurate order information, we would like you to know that on all Color-Per-Sample orders, the tracking number represents the **MATCHED/BASE COLOR ONLY**. This color is indicated on the back of your CPS half doors with Highlight on them. If ANY Signature elements or standard White Gaze are desired, the dealer needs to indicate these on the Product Order Head Sheet. Orders that do not indicate the proper Signature elements will cause delays in the order process or, worse, a finish that you and your customer do not desire.

Approved By: Jane B. Friedman Date: 3/16/15

Tracking #: E-4510-G

Wood Specie*: MDF

CPS expiration Date: 2-26-17

Color Description: SW 7008 ALABASTER

Sheen Level: STD

Additional Comments:

SIGNATURE ELEMENTS (please select the elements that pertain to your CPS)

- ☐ Highlight
- ☐ Signature Glazing
- ☐ Signature Brushing
- Choose one:*
- ☐ Black
- ☐ Pewter
- ☐ Van Dyke Brown
- ☐ White

- ☐ Cracking
- ☐ Distressing
- ☐ Scraping
- ☐ Spatting
- ☐ Rasping
- ☐ Wearing
- ☐ Worm Holing

*Note: If wood specie changes on your kitchen order, a new Color-Per-Sample will need to be done.

**Note: If suggested PVC with sample is not desirable, please indicate other selection or wood edge tape.

CPSAF.doc

000234

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The Kitchen Planners, LLC,)

Plaintiff,)

v.)

Samuel E. Friedman and Jane Breyer)
Friedman, and Branch Banking and)
Trust Company,)

Defendants.)

Samuel E. Friedman and Jane Breyer)
Friedman,)

Third Party Plaintiffs,)

v.)

Crystal Cabinet Works,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

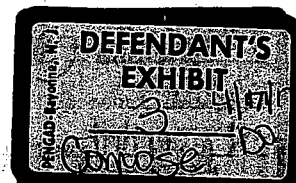
DOCKET NO.: 2016-CP-40-00164

**PLAINTIFF'S ANSWERS TO
DEFENDANTS/THIRD PARTY
PLAINTIFFS SAMUEL E. FRIEDMAN AND
JANE BREYER FRIEDMAN'S FIRST SET
OF CONTINUING INTERROGATORIES**

TO: CHARLES A. KRAWCZYK, ESQUIRE, ATTORNEY FOR DEFENDANTS/THIRD PARTY
PLAINTIFFS AND WALKER BARNES, ESQUIRE, ATTORNEY FOR THIRD PARTY
DEFENDANTS

Plaintiff, by and through its undersigned counsel answers Defendants/Third Party
Plaintiffs Samuel E. Friedman and Jane Breyer Friedman's First set of Continuing
Interrogatories as follows:

1. List the names and addresses of all persons known to the Plaintiff or
Counsel to be witnesses concerning the facts of the case and indicate whether or not
written or recorded statements have been taken from the witnesses and indicate who
has possession of such statements. Set forth either a summary sufficient to inform the
Defendant of the important facts known to or observed by such witness.



ANSWER: Patricia C. Comose
403-B Chapin Road
Chapin, SC 29036

This witness will testify regarding her interaction with the Defendants and her working relationship with the Defendants including, but not limited to her first contact with Defendants and each and every contact thereafter. She will further testify regarding the process of ordering the cabinets, the steps taken to resolve the issues raised by Defendants, failure of same, and the termination of the contract between the parties by the Defendant Samuel Friedman.

Benny Clowney
460 Lakeside View Circle
Jenkinsville, SC 29065

This witness will testify regarding his interaction with Defendants once the cabinets were on site.

Derek Tackett
Crystal Cabinets
Address unknown

This witness will testify regarding his interaction with Defendants when he attempted to address the issues raised by the Defendants.

Samuel and Jane Freidman
333 Spring Lake Road
Columbia, SC 29206

It is anticipated that these witnesses will testify regarding their version of events leading up to this action.

2. List any documents, photographs, plats, sketches or similar materials in possession of the Plaintiff or Counsel that relate to the facts, claims, or defenses in the case.

ANSWER: Design Services Agreement signed by Jane Friedman
Kitchen Cabinetry contract and plan approved by Jane Friedman
Color-Per-Sample approval
form signed by Jane Friedman
Email between Defendant Jane Friedman and Plaintiff
Email from Plaintiff to Defendant Samuel Friedman

Email from Defendant Samuel Friedman to Plaintiff
Email from Derek Tackett to Plaintiff
Kitchen Planner Invoices to Defendants
Invoices from Crystal Cabinets to Plaintiff
Numerous Special Request Quick Estimate/Final Quote forms
pertaining to the job
Log of events by Plaintiff
Cessation of Contract form (Defendants refused to sign)

3. List the names and addresses of any expert witnesses with whom the Plaintiff or Counsel has consulted or propose to use as a witness at the trial of the case.

ANSWER: None.

4. List any documents, photographs, plats, sketches, contracts, or similar materials in possession of the Plaintiff or Counsel that relate to this matter.

ANSWER: See answer to Interrogatory No. 2.

5. List all insurance policies currently carried by Plaintiff including the name of the carrier, policy number, type of policy and policy limits.

ANSWER: Main Street of America Insurance Company
Policy No.: MPF5984Y
Business Owners
1M/500K/2M

United States Liability Group
Policy No.: SP1560900
Errors and Omissions
1M

6. Provide copies of all receipts, invoices, cancelled checks or documents of any kind that evidence the cost of all materials and labor that were provided as part of Plaintiff's scope of work on the Defendants' home as part of this dispute.

ANSWER: See attached in response to Requests to Produce Nos. 1 and 8.

7. Provide a complete accounting of the work done on the Defendant's home including all costs, markups, payments made, payments received and profits made.

ANSWER: See attached in response to Request to Produce No. 1.

8. Provide all contracts agreements or understandings between Plaintiff and Crystal.

ANSWER: None, other than those produced in response to Requested to Produce Nos. 1 and 8.

9. List all training or efforts required by Plaintiff to become a dealer of Crystal Cabinets.

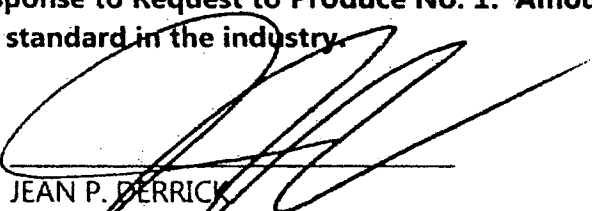
ANSWER: Plaintiff is not aware of any training program.

10. List all contracts, sub-contracts, e-mails, texts, documents or communications of any kind between Plaintiff (or its principals and agents) and any party, subcontractor, manufacturer, supplier or third party that has any bearing on the work completed at Defendants' home which is the subject of this action.

ANSWER: See attached in response to Request to Produce No. 1.

11. Provide a complete accounting of all the material and labor Plaintiff claims it is due in the mechanic's lien and who calculated the amount.

ANSWER: See attached in response to Request to Produce No. 1. Amount owed is calculated as cost plus 33%, a standard in the industry.



JEAN P. DERRICK
Attorney for Plaintiff
PO Box 929 (29071)
205 West Main Street
Lexington, SC 29072
Tel: (803) 359-6189; Fax: (803) 808-1657
Email: jderrick@windstream.net

October 25, 2016

Lexington, South Carolina

16 PAGES TOTAL

Manufactured Order Type

CRYSTAL
a fine name in cabinets

Crystal Cabinet Works Inc.
1100 Crystal Drive
Princeton, Mn 55371
Phone: 763-389-4187
Fax: 763-389-3825

This Box is for office use only
Piece Count: 29
LOLT: 0
Display Discount: _____
Territory: _____
Doc Count: 49

Quotation #: 1016 Folder: Friedman Kitchen Job Name: Friedman Po Number: 4550
Requested Delivery Date: 04/15/2015 Quote Date: 3/3/15 12:00 AM
Ver. 3.80.1865

Salesperson: Trish Dealer Code: KIPL02 Dealer Phone: 803-586-5624 Fax Ack No: 803-941-7495 Ship Via: Crystal Truck
Sold To: The Kitchen Planners, LLC 403 Chapin Rd, Ste B Ship To: The Kitchen Planners, LLC 403 Chapin Rd, Ste B

Chapin, SC 29036

Chapin, SC 29036

When ordering I agree: I have reviewed with the customer the natural and manufactured characteristics of wood and finish selections on this order along with representative sample(s) as needed. The customer and I understand the conditions of the Finish Acceptance and order process and agree not to hold Crystal Cabinet Works liable should the terms be found unacceptable.

Salesperson Signature

Date

Style Line: Encore

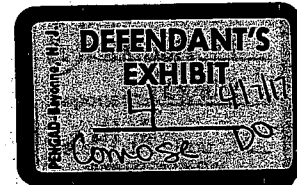
Box Material: White Melamine Laminate
Drawer Box: 5/8" Melamine Soft Close Full Ext
Accent: No
Cont Wood Btm: No

Hinge: 110 Degree
Soft Close Option: Soft Close Doors
Boxwork Edge:

Upper Door: Aurora Square Full Overlay
Lower Door: Aurora Square Full Overlay
Drawer: Routed

Wood: Medium Density Fiberboard (MDF)
Finish: Color Per Sample E-4510-G Paint Semi Gloss

Header Comments:



--Quote Price Breakdown--

Line #	Qty	Code	Description	Hinge Finished Side Ends	Prices
1	1	3D30	Three Drawer	NONE	\$1072.00
	1	FB36	Finished Back		~~\$205.00~~

000240

(2)

2	1	3D30	Three Drawer	LEFT	\$1072.00
	1	~~FB36~~	~~Finished Back~~		~~\$205.00~~
	1	FDECBL	False Door On End Base Left Full Height Door Configuration		\$199.00

3	1	SLS36K	Super Carousel Wood Knuckle Hinged. Attached Toe	R	NONE	\$1163.00
	1	~~FB36~~	~~Finished Left Back~~			~~\$205.00~~
	1	~~FB36~~	~~Finished Right Back~~			~~\$205.00~~

4	1	3D24	Three Drawer	NONE	\$975.00
---	---	------	--------------	------	----------

5	1	BWRBD24-1	Base Waste/Recycle Bins Bottom Mount	NONE	\$1259.00
---	---	-----------	--------------------------------------	------	-----------

6	1	3D24	Three Drawer	LEFT	\$975.00
---	---	------	--------------	------	----------

7	1	SLS36K	Super Carousel Wood Knuckle Hinged. Attached Toe	R	NONE	\$1163.00
---	---	--------	--	---	------	-----------

8	1	3D39	Three Drawer	NONE	\$1374.00
---	---	------	--------------	------	-----------

9	1	BEPF3L	Base End Panel W/filler 2X34.5X24 Single return Left Notch for toe	LEFT	\$214.00
	1	FDECBL	False Door On End Base Left Full Height Door Configuration		\$199.00
	1	CDEPF	Cut down width end panel w/filler 2X34.5X24		\$0.00

10	1	BEPF3R	Base End Panel W/filler 2X34.5X24 Single return Right Notch for toe	RIGHT	\$214.00
	1	~~FDEGBR~~	~~False Door On End Base Right Full Height Door Configuration~~		~~\$199.00~~
	1	CDEPF	Cut down width end panel w/filler 2X34.5X24		\$0.00

11	1	WSTK2754	Wall Stack 15.0 Upper Cabinet Height	L_R	NONE	\$754.00
	2	MDA	Mullion Style A Upper Prep for 1/8" glass			\$232.00
	1	EHW	Extra Height Wall 57" High			\$88.00
	1	FB	Finished Bottom			\$84.00
	1	MIW	Matching Interior Wood			\$339.30

000241

(3)

✓	12	1	✓	WSTK2454	✓	Wall Stack 15.0 Upper Cabinet Height	L_R	LEFT	\$699.00
		2	✓	MDA	✓	Mullion Style A Upper Prep for 1/8" glass			\$232.00
		1	✓	EHW	✓	Extra Height Wall 57" High			\$88.00
		1	✓	FB	✓	Finished Bottom			\$84.00
		1	✓	MIW	✓	Matching Interior Wood			\$314.55

→ ✓ DO 18" DEEP ✓

✓	13	✓	1	WSTK2154	✓	Wall Stack 15.0 Upper Cabinet Height	L	LEFT	\$586.00
		✓	1	EHW	✓	Extra Height Wall 57" High			\$88.00
		✓	1	FB	✓	Finished Bottom			\$84.00
		✓	1	FDECWL	✓	False Door On End Wall Left Match Face Configuration			\$173.00
		✓	1	CDS	✓	Cut Down Set Up - Width 19 X Height 57 X Depth 12			\$0.00

✓	14	✓	2	BF6	✓	Base Filler 6 X 34.5			\$192.00
		✓	2	FTSNC	✓	Flush toe space no charge			\$0.00

✓	15	✓	2	WF657	✓	Wall Filler 6 X 57			\$280.00
---	----	---	---	-------	---	--------------------	--	--	----------

✓	16	✓	1	WPD	✓	Wainscot Panel Style D. Panel Width: 61. Panel Height: 34.5. Base Configuration. 4 Lower Doors. See Drawing.			\$818.42
---	----	---	---	-----	---	--	--	--	----------

✓	17	✓	1	WPD	✓	Wainscot Panel Style D. Panel Width: 96. Panel Height: 34.5. Base Configuration. 5 Lower Doors. See Drawing.			\$1288.00
---	----	---	---	-----	---	--	--	--	-----------

✓	18	✓	6	TF6108	✓	Tall Filler 6 X 103.5 No Toe Space (NTS)			\$1332.00
---	----	---	---	--------	---	--	--	--	-----------

✓	19	✓	56	BSM	✓	Base shoe			\$383.04
		✓	56	FASOM	✓	Finish all sides			\$299.04

✓	20	✓	24	DNC	✓	Double Nose Cove			\$185.04
		✓	24	FASOM	✓	Finish all sides			\$128.16

✓	21	✓	72	SBM	✓	Small bead			\$563.04
		✓	72	FASOM	✓	Finish all sides			\$304.48

000242

22	3	CWBMD8	Gabled End Continuous Wood Bottom Moulding 8 feet long CWB Moulding Profile D	\$453.00
23	1	CWBMD4	Gabled End Continuous Wood Bottom Moulding 4 feet long CWB Moulding Profile D	\$87.00
24	4	TUKMC	Touch Up Kit w/marker & fill stick Black	\$120.00
25	1	SOLPC6	Thickness:0.75 Width:3.5 Length:86.0 Routed Profile: same as door Edges Profiled In Length: Right 86.0 inches Edges Profiled In Width: None	\$123.33..
	1	FFAE	Finish face and all edges	\$22.00
	1	DEGE	Door edge	\$34.00
26	1	SOLPC6	Thickness:0.75 Width:3.5 Length:26.0 Routed Profile: same as door Edges Profiled In Length: Right 26.0 inches Edges Profiled In Width: None	\$57.00
	1	FFAE	Finish face and all edges	\$22.00
	1	DEGE	Door edge	\$34.00
27	1	SOLPC6	Thickness:0.75 Width:3.5 Length:72.0 Routed Profile: same as door Edges Profiled In Length: Right 72.0 inches Edges Profiled In Width: None	\$103.25
	1	FFAE	Finish face and all edges	\$22.00
	1	DEGE	Door edge	\$34.00
28	2	SOLPC6	Thickness:0.75 Width:3.5 Length:63.0 Routed Profile: same as door Edges Profiled In Length: Right 63.0 inches Edges Profiled In Width: None	\$180.69
	2	FFAE	Finish face and all edges	\$44.00
	2	DEGE	Door edge	\$68.00
29	30	TBC	Toe Board Standard Height Wood	\$330.00
30	1	WF357	Wall Filler 3 X 57	\$107.00
31	1	CWBMD4	Gabled End Continuous Wood Bottom Moulding 4 feet long CWB Moulding Profile D	\$87.00

000243

(5)

32	1	✓	3D39	u	Three Drawer	NONE	\$1374.00
	1	✓	DWRD	u	Drawer reduced depth 2nd 18		\$0.00
	1	✓	DWRD	u	Drawer reduced depth 3rd 18		\$0.00
	1	✓	EDB	u	Extra Depth Base 26 Deep		\$107.00
					Top drawer is a dummy drawer - this is a cooktop base.		NaN

33	1	✓	WSTK3948	u	Wall Stack 15.0 Upper Cabinet Height	L_R	NONE	\$881.00
	2	✓	MDA	u	Mullion Style A Upper Prep for 1/8" glass			\$232.00
	2	✓	EDW	u	Extra Depth Wall 24 Deep			\$214.00
	1	✓	FB	u	Finished Bottom			\$84.00
	1	✓	MIW	u	Matching Interior Wood			\$396.45
	1	✓	CDS	u	Cut Down Set Up - Width ~~36~~ X Height 26 X Depth 24			\$0.00

34	1	✓	AP6	u	Overlay Construction First panel width: 18.375 First panel height: 50.125 Second panel width: 18.375 Second panel height: 50.125 Third panel width: 37 Third panel height: 19 Model # BI-36UFD/O Fourth panel width: 37 Fourth panel height: 9.25			\$1543.93
	4	✓	F2SS	u	Finish two sides			\$276.00
					See Panel Specs attached.			NaN

35	1	✓	SOLPC6	u	Thickness:0.75 Width:3.5 Length:72.0 Routed Profile: same as door Edges Profiled In Length: Right 72.0 inches Edges Profiled In Width: None			\$103.25
	1	✓	FFAE	u	Finish face and all edges			\$22.00
	1	✓	DEGE	u	Door edge			\$34.00

36	1	✓	3D18	u	Three Drawer	LEFT		\$882.00
	1	✓	SSDNW	u	Spice Storage Drawer Narrow Wood SSD 15" top drawer (DO WHITES MELAMINE AS DEALER BUT)			\$134.00
	1	✓	EDB	u	Extra Depth Base 26 Deep			\$107.00
	1	✓	FDECBL	u	False Door On End Base Left Full Height Door Configuration			\$199.00
	1	✓	CDS	u	Cut Down Set Up - Width 17 X Height 34.5 X Depth 26			\$0.00
					Can MCOLIS be factory-attached at back of this cabinet at left corner?			NaN

37	1	✓	3D18	u	Three Drawer	RIGHT		\$882.00
	1	✓	EDB	u	Extra Depth Base 26 Deep			\$107.00

000244

(6)

✓	1	✓	FDECBR	False Door On End Base Right Full Height Door Configuration		\$199.00
	1	✓	CDS	Cut Down Set Up - Width 17 X Height 34.5 X Depth 26		\$0.00
		✓		**Can MCOLIS be factory-attached at back of this cabinet at right corner?**		NaN
✓	38	2	MCOLIS6341/2	Base Configuration Square Corner Insert Panel Width: 6" Height: 34 1/2"		\$1734.00
✓	39	✓1	SWCWD	Special Wall Cabinet With Drawers: Special Request #369935Width:27.Height:74.Depth12. Hinge:L/R. Cubes:19. Number of Upper doors:2. Number of Drawer Fronts:3. Number of Drawer Boxes:3. Number of Shelves:3. Number of Soft Close Doors:2.	L/R LEFT	\$2794.00
	1		ADDON	Addon pricing		\$404.00
✓	40	1	SWC	Special Wall Cabinet. Special Request #369931Width:41.Height:57.Depth12. Hinge:L/R. Cubes:21.5. Number of Upper doors:4. Number of Shelves:3. Number of Soft Close Doors:4. **False door at right end. MD's at top 15" section, and fixed MD at right end. Note width has changed from 40 to to 41.**	L/R RIGHT	\$3090.00
						NaN
✓	41	1	SWC	Special Wall Cabinet. Special Request #369930Width:42.Height:57.Depth12. Hinge:L/R. Cubes:22. Number of Upper doors:4. Number of Shelves:3. Number of Soft Close Doors:4. **Note width has changed to 42". False door left end. MD's at top 15" H section and fixed MD at left end.**	L/R LEFT	\$3169.00
						NaN
✓	42	1	SWC	Special Wall Cabinet. Special Request #369936Width:24.Height:57.Depth12. Hinge:R. Cubes:24. Number of Upper doors:2. Number of Shelves:3. Number of Soft Close Doors:2.	R NONE	\$2671.00
✓	43	1	STC	Special Tall Cabinet. Special Request #369929Width:21.Height:110.Depth12. Hinge:L. Cubes:22. Number of Upper doors:1. Number of Lower doors:1. Number of Soft Close Doors:2. **Do recessed toekick, not flush toekick.**	L NONE	\$2422.00
						NaN

000245

44 1 STC Special Tall Cabinet. Special Request R RIGHT \$2826.00
 #369928 Width: 21 Height: 110 Depth 12. Hinge: R.
 Cubes: 22. Number of Upper doors: 1. Number of
 Lower doors: 1. Number of Soft Close Doors: 2.
 Do recessed toekick, not flush toekick. NaN

45 1 SBC Special Base Cabinet. Special Request L/R NONE \$946.63
 #370089 Width: 39 Height: 34.5 Depth 24.
 Hinge: L/R. Cubes: 23.5. Number of Lower doors: 2.
 Number of Soft Close Doors: 2.
 **Platform in cabinet to support farmhouse sink.
 See farmhouse sink specs attached.** NaN

46 1 STCWD Special Tall Cabinet With Drawers. Special Request L/R LEFT \$3039.00
 #370071 Width: 33 Height: 110 Depth 26.
 Hinge: L/R. Cubes: 65. Number of Upper doors: 4.
 Number of Drawer Fronts: 1. Number of Drawer
 Boxes: 1. Number of Shelves: 2. Number of Soft
 Close Doors: 4.
 **See oven specs attached. Do recessed toekick,
 not flush toekick.** NaN

47 1 SR-TEPF Special Tall End Panel with Filler. Special Request \$723.00
 #369975 Width: 35 Height: 110 Depth 27.
 Cubes: 7 FE Left DO 1" WIDE

48 1 SR-TEPF Special Tall End Panel with Filler. Special Request \$1127.00
 #369973 Width: 35 Height: 110 Depth 27.
 Cubes: 7 FE Right DO 1" WIDE
 **False door configuration right end. Match front
 configuration of Refrigerator which is 84" H at
 bottom and 26" H at top. (84" refrig plus two cabs
 above it which are 11" & 15". Just match those
 two cabs w/ one false door on end.)** NaN

49 2 SR-TF3110 Special Tall Fillers. Special Request NONE \$732.00
 #369976 Width: 3 Height: 110. Cubes: 1 FE None

0 WTK Wood Toe Kick

Cabinet Total \$38346.63
 Other Total \$17633.97
 Subtotal 1 \$55980.60

000246

(8)

Finished End Charges Wall (5 * \$60.00)	\$300.00
Finished End Charges Base (4 * \$83.00)	\$332.00
Finished End Charges Tall (2 * \$152.00)	\$304.00
Drawer Box Option Charge (29 * -\$13.00)	-\$377.00
Upper Door Style Charges (34 * \$75.00)	\$2550.00
Lower Door Style Charges (25 * \$75.00)	\$1875.00
Soft Close Charges (36 * \$19.00)	\$684.00

Subtotal 2 \$61648.60

Box Option Charge (-07% * \$38346.63)	-\$2684.26
Finish Charge (08% * \$61648.60)	\$4931.89
Color Per Sample Setup (1 * \$409.00)	\$409.00

List Total \$64305.23

(List Total:\$64305.23 * Order Multiplier:) Net Price \$27779.86

(Freight Rate:1.98 * Cubes:618.654 * Fuel
Surcharge:05.50%) Freight \$1292.31

Tax \$0.00

Total Delivered Cost \$29072.17

CHARGES & CREDITS - THE KITCHEN PLANNERS FOR THE FRIEDMAN'S

1/23/15	Design Retainer	500.00	Paid ck #1206	1/23/15
3/2/15	Sample Block for Color	115.13	Paid by TKP	3/2/15
3/5/15	Fireclay Farmhouse Sink	1,190.97	Paid ck #1002	3/16/15
3/16/15	Cabinet Contract - First Payment	16,594.68	Paid ck #1002	3/16/15
3/30/15	Crystal Cabinets	10,000.00	Paid by TKP	3/30/15
4/2/15	Perla Venato Granite Slabs	7,441.00	Paid ck #5006	4/13/15
4/20/15	LED Puck Lights	1,849.39	Paid ck #215	4/21/15
4/29/15	Cabinet Pulls	944.27	Paid ck #1016	5/6/15
5/5/15	Cabinet Contract - Second Payment	16,594.68	Paid ck #1021	5/14/15
5/14/15	Crystal Cabinets	18,247.84	Paid by TKP	
5/21/15	Cabinet Contract - Third Payment	16,594.68	NOT PAID	
6/26/15	Re-Order 2 Base Corner Cabinet	1,559.89	Paid by TKP	
9/29/15	Re-Order Drawer Boxes for Island	550.61	Paid by TKP	

Many, many hours spent with client. Did not bill them for these.



000248

THE KITCHEN PLANNERS, LLC. 11-00 KIPLO2 9/29/15 3328

Pay to the Order of CRYSTAL CABINET WORKS \$ 550.61

FIVE HUNDRED FIFTY + 00/100 Dollars

First Community Bank, S.C. Patricia Allen

For KIPLO2

3326 - \$550.61 - 10/6/2015

THE KITCHEN PLANNERS, LLC. 11-00 KIPLO2 3/2/15 3097

Pay to the Order of CRYSTAL CABINETS \$ 115.13

ONE HUNDRED FIFTEEN + 00/100 Dollars

First Community Bank, S.C. Patricia Allen

For 3/2/15

3097 - \$115.13 - 3/9/2015

THE KITCHEN PLANNERS, LLC. 11-00 KIPLO2 5/19/15 3125

Pay to the Order of CRYSTAL CABINET WORKS \$ 18,247.84

EIGHTEEN THOUSAND TWO HUNDRED FORTY SEVEN + 00/100 Dollars

First Community Bank, S.C. Patricia Allen

For DDA Debits

DDA Debits - 05/19/2015 - \$18,247.84

THE KITCHEN PLANNERS, LLC. 11-00 KIPLO2 3/30/15 3125

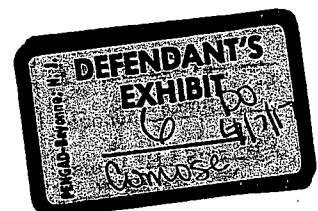
Pay to the Order of CRYSTAL CABINET WORKS \$ 10,000.00

TEN THOUSAND + 00/100 Dollars

First Community Bank, S.C. Patricia Allen

For DEPOSIT - FRIEDMAN

3125 - \$10,000.00 - 4/6/2015



000249

CESSATION OF CONTRACT

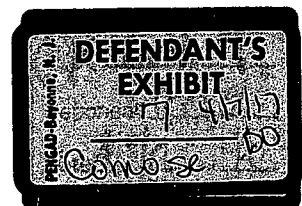
This is to state that I, Jane Friedman, wish to end the contract for Kitchen Cabinetry and Installation dated 3/11/15 between me and The Kitchen Planners.

With the cessation of this contract it is understood that I will have no further obligation to the Kitchen Planners and/or Patricia Comose, financial or otherwise, and that The Kitchen Planners and/or Patricia Comose will forego the remaining \$16,594.68 cabinet payment, and the 2,995.00 installation cost due on the contract, and will have no obligation or liability, financial or otherwise, to me or my husband, Sam Friedman.

Signed,

Jane Friedman

Date



000250

Trish

Patricia Clark Comose

Allied Member, ASID

The Kitchen Planners, LLC

403B Chapin Road

Chapin, SC 29036

803-586-5624

patricia@thekitchenplanners.com

From: sfriedman@pittsrad.com [mailto:sfriedman@pittsrad.com] On Behalf Of Friedman, Sam

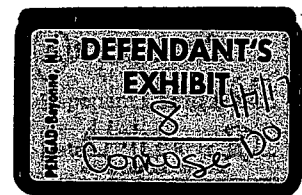
Sent: Saturday, June 13, 2015 12:09 PM

To: derek; Patricia Comose

Cc: Jane Friedman

Subject: Friedman Kitchen

Dear Derek and Trish:



It has been almost one month since the (wrong and/or damaged) cabinets were delivered, and almost two weeks since we all met at our home to review the situation. So far, we have received only minimal communications referring to the corner Lazy Susan cabinets, as well as the columns for the island. There are at least 10 other issues that have not been addressed to our knowledge.

000251

We are having to continue to function without a kitchen, far longer than we had anticipated, with the associated financial impact and health implications of eating most meals at restaurants. We need to have an idea of when this will all be resolved. We were very encouraged after our meeting, and we had hoped to have the installation complete within three weeks of that time. At the two-week mark, we have had no indication that the rest of the items have even been ordered, and it is apparent that the installation will not take place for quite a while yet.

Frankly, at this point we see only two paths forward. The first requires that we be informed of the resolution of all issues discussed when we met, that all materials have been ordered and will be delivered on or before July 13. However, we will be out of town from July 3 through July 10, and cannot receive anything during that time. Our contractor, Joe Viggiano, will supervise the uncrating and installation, and we will deduct \$1,000 from the final installment of the \$52,000 payment to cover his expenses for this. There will be an additional charge for Joe to move the light switch by the refrigerator which was initially incorrectly localized on Trish's plans. In addition, we will require a different electrician to perform the installation of the puck LED lighting. Jamey, the electrician recommended initially by Trish as having had experience mounting these lights, in reality had absolutely no idea of how to work with them. We have spoken to Michelle from My Granite Kitchen, and she strongly recommends against installing the quartzite countertops before the cabinetry is installed, both upper and lower. The final payment will not be made until and unless all cabinets and associated fittings, etc., are confirmed to be accurately made, positioned and properly installed.

Given the extreme difficulty we have experienced on what should have been a simple duplication of the existing cabinetry, we are willing at this point to follow the second path, that being the removal of all Crystal products for a complete refund of the \$33,689.36 already paid. We will keep all other items ordered such as knobs, handles, lights, and the sink, for which we have already paid separately.

Please let us know on or before Tuesday afternoon, June 16, how you wish to proceed. All we really want is our working kitchen back in the most expedient manner possible.

Sincerely,

Sam and Jane Friedman

333 Spring Lake Road

Columbia,

SC, 29206

Home: 803-743-0064

Cell: 803-479-6988

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Charles Krawczyk

From: frasier333@gmail.com
Sent: Wednesday, February 10, 2016 10:30 PM
To: Charles Krawczyk
Subject: Fwd: Re: Cessation of Contract

---Forwarded using Multi-Forward Chrome Extension---

From: "Friedman, Sam"
Date: Mon Jul 13 2015 06:04:23 GMT+0530 (IST)
Subject: Re: Cessation of Contract
To: Patricia Comose
Cc: Jane Friedman , derek

Trish:

Derek has indeed taken over design and execution of this project, independent of the prior situation, and no further payment is due to you/The Kitchen Planners.

Sincerely,

Sam and Jane Friedman

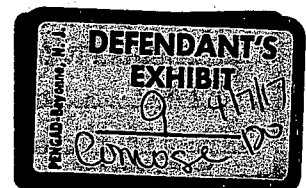
Samuel E. Friedman, M.D.
Pitts Radiology
1519 Marion Street
Columbia, SC 29220

Work: 803-296-5060
Cell: 803-479-6988

On Sat, Jul 4, 2015 at 10:18 PM, Jane Friedman <frasier333@gmail.com> wrote:

Sent from my iPhone

Begin forwarded message:



From: "Patricia Comose" <patricia@thekitchenplanners.com>
Date: July 3, 2015 at 9:37:39 AM EDT
To: <frasier333@gmail.com>
Subject: Cessation of Contract

Dear Jane,

As Derek has explained to you, since you no longer want my participation in your project, and he has arranged for you to order cabinets directly from the factory, we must have an agreement to abandon our cabinet contract. This is why he presented it to you for your signature when he was at your house.

Derek indicated that you thought the amount shown on the Cessation of Contract form was incorrect. The figure shown was a total of the remaining 1/3 cabinet payment (16,594.68) and the installation cost (2,995.00). So it is now revised to show both of those costs separately, which correspond to the cabinet contract you signed.

We must have this form signed and received in order to continue with the arrangement which has been set up for you. Since you indicated that you no longer wanted to work with me, it protects you from liability with regard to the rest of the money due on the contract. Please sign and return to me at your earliest convenience.

Thanks,

~ Trish

Patricia Clark Comose

Allied Member, ASID

The Kitchen Planners, LLC

403B Chapin Road

Chapin, SC 29036

803-586-5624

patricia@thekitchenplanners.com

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Patricia Comose

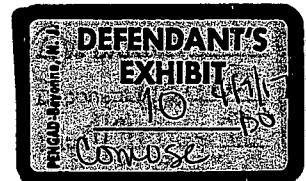
From: Patricia Comose <patricia@thekitchenplanners.com>
Sent: Tuesday, June 16, 2015 12:42 PM
To: 'Friedman, Sam'
Cc: Jane Friedman (frasier333@gmail.com)
Subject: RE: Friedman Kitchen

Sam & Jane,

Please see answers below:

Patricia Clark Comose
Allied Member, ASID
The Kitchen Planners, LLC
403B Chapin Road
Chapin, SC 29036
803-586-5624
patricia@thekitchenplanners.com

From: sfriedman@pittsrad.com [mailto:sfriedman@pittsrad.com] On Behalf Of Friedman, Sam
Sent: Monday, June 15, 2015 8:52 PM
To: Patricia Comose; derek@thehughrileycompan.com; Jane Friedman
Subject: Re: Friedman Kitchen



Trish and Derek:

First off, we certainly hope the surgery went well, and that you will be back to 100% very soon! Thank you.

We were encouraged to hear that some of the other items mentioned above were in the process of being ordered. However, there are several items yet to be completed.

We wanted to be certain that the upper cabinets to either side of the sink, and window are to be identical in size and configuration, and symmetrically placed about the window, as they were in the old kitchen. These are, of course, to be made with NO divider. Until these and the quartzite are in place, we cannot specify further how the bookcase will fit, and whether it will have to be reordered. We know that neither wall cabinet is to have a center divider, and that configuration is to be the same.

000258

The space on the right side of the sink is different from the space on the left side. We currently have the right wall cabinet at 41" wide. This combined with the 24" wide cabinet which goes to the right corner gives us a run of $65" + \frac{3}{4}"$ for the end panel. What width would you like the wall cabinet to the left of the sink to be? Note that the TV cabinet cannot be installed until after the countertop is in, since it sits on the countertop. But if we can determine the width of the wall cabinet next to it, it would be most helpful because the wall cabinets are installed before the base cabinets, so installer can access the area without the base cabinets being in his way.

There was no mention of the side panels in your recent email, which must be reordered to accommodate the baseboard moldings, as well as those on the island which must be made to work with the columns on the back of the island. Please recall that these are to fit flush and are *not* to cover the sides of the drawers or cabinets. Do we know when they will be reordered? I am referring this question to Derek; am forwarding this email to him.

Will it be possible to have the reordered merchandise delivered to our home by July 13? We will be away from July 3 through July 10, and we cannot receive the replacements during that time. We have not been given dates yet for anything except for the two Base Corner Cabinets, but that does not seem like a problem.

There were several other questions in our email which have not yet been answered, and a response would be appreciated. In order to keep everyone in the loop (Jane did not get your email earlier today) we would also appreciate both of us being copied on all communications pertaining to this project. I'm sorry – what are your other questions? I sent the email to both of you – I don't know why the copy to Jane did not come through.

Thanks, Trish

Thank you so much!

Sam and Jane Friedman

333 Spring Lake Road
Columbia, SC 29206

Home: 803-743-0064
Cell: 803-479-6988

On Mon, Jun 15, 2015 at 2:59 PM, Patricia Comose <patricia@thekitchenplanners.com> wrote:

Dear Sam & Jane,

This is my first day back in the office after my surgery, and I have gotten an update from Derek which I am passing on to you:

I have received the confirmation from the factory on the two base corner cabinets. They are showing a ship date of 6/26.

The wall cabinet to the right of the sink, the tall pantry cabinet, the wall cabinet to the left of the oven cabinet, and the drawer boxes and the glides for the island have already been ordered. Since all of these are Special Request cabinets, Derek is just waiting for the confirmations from Crystal. That is why you have not yet received paperwork on them. When those are received, we will forward them to you for your approval.

Please remember that the wall cabinet to the left of the sink cannot be ordered until I know if the TV cabinet you have is staying. If the size of it changes, that will change the size of the wall cabinet next to it, so please let me know as soon as possible what you want to do there.

Let me know if you have any other questions at this point.

Thanks,

Patricia Comose

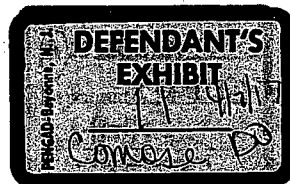
From: Derek Tackett <Derek@TheHughRileyCompany.com>
Sent: Tuesday, August 18, 2015 2:03 PM
To: Patricia Comose
Subject: Friedman

I missed the finished interiors on the cabinets that I reordered. I guess I rushed it too fast and did not see that. Jane has told me that we are done and I am canceling the shipment that is supposed to go out this week. We are done with them as of right now. I have not spoken with Sam yet and before I cancel everything I will message him. Just wanted to keep you posted...

Thank you.

Derek Tackett

The Hugh Riley Company
(423) 930-0977 Cell
(423) 933-3171 E-Fax



000261

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Kitchen Planners, LLC,

Plaintiff,

v.

Samuel E. Friedman and Jane Breyer
Friedman,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

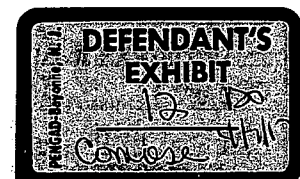
DOCKET NO.: 2015-CP-40-

MECHANIC'S LIEN

YOU WILL PLEASE TAKE NOTICE that a mechanic's lien for materials and labor were furnished for improvements to the below described property by The Kitchen Planners, LLC, which materials and labor were furnished beginning on or about March 11, 2015 through on or about August 18, 2015, with a net balance due and owing of \$16,594.68 for improvements to the following described real property:

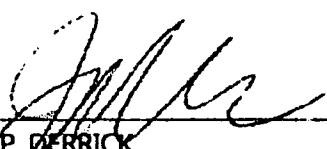
All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as .74 acre, known as 333 Spring Lake Road, and being shown on a plat prepared for G. Thaddeus Williams by Cox and Dinkins, Inc., dated October 10, 1994 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 55 at page 4969; and being further shown and delineated on a plat prepared for Samuel F. Friedman and Jane B. Friedman by Cox and Dinkins, Inc., dated February 23, 2000 and recorded in the Office of the Register of Deeds for Richland County in Record Book 391 at page 990 and having such metes, bounds, courses and distances as shown on said plat which is incorporated herein by reference.

This being the same property conveyed to Defendant Samuel E. Friedman and Jane Breyer Friedman by Deed recorded in Deed Book 391 at page 991 on March 10, 2000 in the records of the Register of Deeds for Richland County.



TMS No.: 16801-04-12

Defendants' Address: 333 Spring Lake Road
Columbia, SC 29206



JEAN P. DERRICK

Attorney for Plaintiff

PO Box 929 (29071)

205 West Main Street

Lexington, SC 29072

Tel: (803) 359-6189; Fax: (803) 808-1657

Email: jderrick@windstream.net

October 24, 2015

Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
 The Kitchen Planners, LLC,	)	 DOCKET NO.: 2015-CP-40-
	)	
Plaintiff,	)	
	)	VERIFIED
v.	)	STATEMENT OF ACCOUNT
	)	
Samuel E. Friedman and Jane Breyer	)	
Friedman,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME Patricia C. Comose, who, being sworn, deposes and says:

I make this Verified Statement of Account pursuant to the provisions of Section 29-5-90, South Carolina Code of Laws. Pursuant to written contract between The Kitchen Planners, LLC and Samuel Friedman and Jane Friedman, dated March 16, 2015, the Friedmans agreed to pay a total of \$49,784.04 for cabinets for their remodeled kitchen. The Friedmans have paid two payment installments, at the time of order, and at the time of shipment, of \$16,594.68 each, for a total of \$33,129.36, and there is still due and owing from them, exclusive of installation costs, \$16,594.68.


 Patricia C. Comose

Subscribed and sworn to me this
17th day of October, 2015
Patricia C. Comose
 Notary Public for South Carolina
 My commission expires: 10/17/2017

000264

Charles Krawczyk

From: sfriedman@pittsrad.com
Sent: Wednesday, February 10, 2016 10:27 PM
To: Charles Krawczyk
Subject: Fwd: Re: Contact Form Submission

-----Forwarded using Multi-Forward Chrome Extension-----

From: Signature Hardware
Date: Thu Jul 16 2015 04:25:11 GMT+0530 (IST)
Subject: Re: Contact Form Submission
To: Nucleon

== Please type in reply above this line ==

Jennifer H (Signature Hardware)

Jul 15 4 15 PM

I understand that this situation is terribly frustrating. I can't imagine your frustration. We've just run into situations where we have intervened and paid an end customer only to have the actual purchaser contact us stating the refund belongs to them. In the end, we have had to pay out a double refund. We've had to make our policy to deal only with the purchaser in regards to returns and refunds.

Thank you,
Jennifer H.

Nucleon

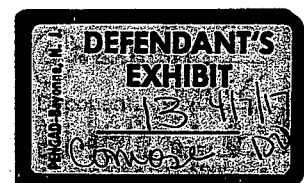
Jul 17 10 43 PM

I am aware of the time frame. Trish completely bungled our \$50,000 cabinet order, and so the project that was supposed to be done in May will now carry on well beyond August. We have therefore taken her completely off this project. She never asked us which sink we wanted, and took it upon herself to pick the wrong one for us.

Your response simply adds even more regret to what is turning out to be an incredibly painful process. I will ask you to contact Trish and confirm that this sink was ours. 10% restocking fee seems to be standard, but I suspect I can ship it back to you for far less than \$175.

I understand your difficulties with this process, but as your end-customer, I fully expect you to realize what we have gone through and help us out a bit.

Sincerely,



Sam and Jane Friedman

Samuel E. Friedman, M.D.

Pitts Radiology

1519 Marion Street

Columbia, SC 29220

Work: 803-296-5060

Cell: 803-479-6988

Jennifer H (Signature Hardware)

JUL 13 10 53 PM

Dear Samuel,

Thank you for your inquiry. I can see the sink order you have referenced. Any returns allowed on this order (because it is well beyond our normal 30 day return period) and refunds would have coordinated and paid directly to Kitchen Designers. You aren't listed on the order at all. I'm very sorry. Please have Trish give us a call on your behalf. Just for your reference, if we were able to get the return approved, there would a 10% restocking fee assessed and a return trucking fee of \$175.00 for the return.

Thank you,
Jennifer H.

Nucleon

JUL 12 10 44 PM

Name: Samuel Friedman

E-mail: nucleon@gmail.com

Telephone: 8034796988

Comment: Hello! Our now former designer, Trish Comose of Kitchen Designers in Chapin, SC, purchased a Risinger 36" farmhouse sink for us from you, order SHP1919202. Long story, but she ordered the wrong item, and we were able to find the right one locally. We would like to return it to you, and have you refund the purchase price to US (not Kitchen Designers). Please advise as to how to proceed. Thank you!!!!

For assistance with your account or any other matter, please contact us at:

support@signaturehardware.com | 866.855.2284



CUSTOMER SERVICE AND SALES HOURS (EST):

Mon-Thurs: 8 AM to 11 PM

Fri: 8 AM to 7 PM

Sat: 8 AM to 5:30 PM

Prefer to contact us by phone? Call 1-866-855-2284.

PITTS RADIOLOGY CONFIDENTIALITY NOTICE

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1 State of South Carolina Court Of Common Pleas
2 County of Richland CA No.2015-CP-40-0164
3

4 THE KITCHEN PLANNERS, LLC,)
5)
6 Plaintiff,)
7)
8 vs.)
9)
10 SAMUEL E. FRIEDMAN AND JANE BREYER)
11 FRIEDMAN, AND BRANCH BANKING AND)
12 TRUST COMPANY,)
13)
14 Defendants.)
15)

16 SAMUEL E. FRIEDMAN AND JANE BREYER)
17 FRIEDMAN,)
18)
19 Third-Party)
20 Plaintiffs,)
21)
22 vs.)
23)
24 CRYSTAL CABINET WORKS,)
25)
Third-Party)
Defendants.)

18 D E P O S I T I O N

19 WITNESS: SAMUEL FRIEDMAN
20 DATE: April 13, 2017
21 TIME: 9:30 a.m. - 11:05 a.m.
22 LOCATION: The Finkel Law Firm
23 1201 Main Street
24 Columbia, South Carolina
25 TAKEN BY: Attorney for the Plaintiff
REPORTED BY: KATHRYN J. LINDLER

COPY

1 contract mentions Encore Cabinetry. I have to preface
2 this. There was much we have learned over this. I don't
3 think we knew what we know now at that time.

4 Q. I don't want a partial list. I want a complete
5 list of all events or items that you allege are
6 non-compliant with the contract.

7 MR. KRAWCZYK: Object to the form.

8 A. I'll do my best. Let's start with Encore. What
9 I know about Crystal Cabinetry, I know from the Crystal
10 website, crystal Cabinets.com. On Crystal Cabinets.com
11 Encore cabinets are stated to be built with plywood. Ours
12 turned out to have been built with particle board. That's
13 a breach.

14 Q. Let's stop right there. The contract provides
15 cabinets to be Encore frameless cabinets by Crystal.

16 A. Yes, ma'am.

17 Q. The word plywood or particle board is no where in
18 this contract.

19 A. But Encore is. If you'll -- I'll refer you to
20 the Crystal website just as I looked there. On the website
21 Encore Cabinets are very clearly stated to be made of
22 plywood.

23 Q. Does this contract say the Crystal website is
24 part of it?

25 A. When buying from a company I believe it has to

1 those?

2 A. Right. Those were purchased separately and we
3 are using those.

4 Q. What about the drawers?

5 A. We have -- we've not used any of the drawers.

6 Q. Do you remember on the estimate of Viggiano
7 Remodeling, LLC, that he stated that all usable hardware
8 and drawers from the existing Crystal Cabinets would be
9 reflected as a credit in final price? And this is document
10 number 293 that your lawyer produced.

11 A. Okay. He put that as a possibility. We
12 ultimately did not use again anything but the boxes and
13 Lazy Susans for those corner cabinets. We used none of the
14 hinge hardware if you will. The pulls as I mentioned were
15 purchased separately.

16 Q. When you say we used the boxes, you're talking
17 about the actual cabinets?

18 A. Correct. Just those, the two Lazy Susan
19 cabinets. The doors were not used.

20 Q. Kitchen Planners provided the pulls too, did they
21 not?

22 A. We purchased, we purchased at least some of them
23 through Trish, not all of them.

24 Q. Do you recall how much of a credit you were given
25 for that?

1 State of South Carolina Court Of Common Pleas
2 County of Richland CA No.2015-CP-40-0164
3

4 THE KITCHEN PLANNERS, LLC,)
5)
6 Plaintiff,)
7)
8 vs.)
9)
10 SAMUEL E. FRIEDMAN AND JANE BREYER)
11 FRIEDMAN, AND BRANCH BANKING AND)
12 TRUST COMPANY,)
13)
14 Defendants.)
15)

16 SAMUEL E. FRIEDMAN AND JANE BREYER)
17 FRIEDMAN,)
18)
19 Third-Party)
20 Plaintiffs,)
21)
22 vs.)
23)
24 CRYSTAL CABINET WORKS,)
25)
Third-Party)
Defendants.)

18 D E P O S I T I O N

19 WITNESS: JANE FRIEDMAN
20 DATE: April 13, 2017
21 TIME: 11:15 a.m. - 12:15 p.m.
22 LOCATION: The Finkel Law Firm
23 1201 Main Street
24 Columbia, South Carolina
25 TAKEN BY: Attorney for the Plaintiff
REPORTED BY: KATHRYN J. LINDLER

COPY

1 A. No, ma'am, I did not.

2 Q. Tell me what a lot of the differences are.

3 A. Number one -- I guess the easiest thing is to
4 start with the bookcase. When -- which was also a TV
5 cabinet. At the bottom of that bookcase, the Kitchen
6 Planners had put three drawers and the knobs that we had
7 ordered through the Kitchen Planners, the way in which the
8 panel was in the middle where the knob went was too narrow
9 for that knob to go on there. It hung over on either side
10 of the little piece in the middle. So that was no longer
11 three drawers. It was two drawers. I'm going to go around
12 the top of the kitchen.

13 Q. But you used the Kitchen Planners' drawers?

14 A. No, ma'am.

15 Q. In the kitchen?

16 A. No, ma'am. The only thing that is in my kitchen
17 now that was purchased by us directly from Crystal, we paid
18 Crystal directly for the what I call corner cabinets that
19 had Lazy Susans in them. That is the only two pieces.

20 Q. Did you use drawers that Kitchen Planners had
21 delivered?

22 A. No, ma'am.

23 Q. How about pulls?

24 A. I used the pulls.

25 Q. Is that the pull you're talking about you thought

1 Q. There's nothing in your pleadings about that, is
2 there?

3 A. No, ma'am.

4 Q. There is nothing about inconsistent finishes in
5 any letters you've written complaining about things, is
6 there?

7 A. No, ma'am.

8 Q. Did you actually look at the cabinets that Derek
9 Tackett had ordered? Were they delivered to you?

10 A. Yes, ma'am.

11 Q. Did you tell him to cancel another order?

12 A. I didn't know another order was on.

13 Q. Where are those cabinets?

14 A. I have no clue. Which cabinets?

15 Q. I'm talking about the cabinets that you looked at
16 that Derek Tackett had delivered, where are those cabinets?

17 A. Those cabinets are in the garage.

18 Q. Who paid for those?

19 A. I did.

20 Q. How much was that?

21 A. I don't recall the exact price for just those two
22 cabinets.

23 Q. What cabinets were they? The side cabinets to
24 the sink?

25 A. Yes, ma'am.

000273

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge
Trial Court Case No. 2016-CP-40-00164

Appellate Case No. 2017-001522

RECEIVED
MAR 14 2018
SC Court of Appeals

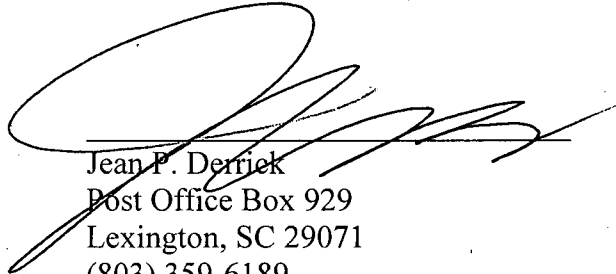
The Kitchen Planners, LLC, ...Appellant,

v.

Samuel E. Friedman and Jane Breyer Friedman and
Branch Banking and Trust, ...Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal complies with Rule 210, SCARC, and contains all material proposed to be included by either of the parties, and not any other material.


Jean P. Derrick
Post Office Box 929
Lexington, SC 29071
(803) 359-6189
jean@jeanpderricklaw.com
Attorney for Appellant

March 8, 2018

Lexington, South Carolina

000274