

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM PICKENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826
Appellate Case No. 2015-001536

J. Scott Kunst, ...Respondent

v.

David Loree, ...Petitioner.

APPENDIX
VOLUME II

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In the Court of Appeals

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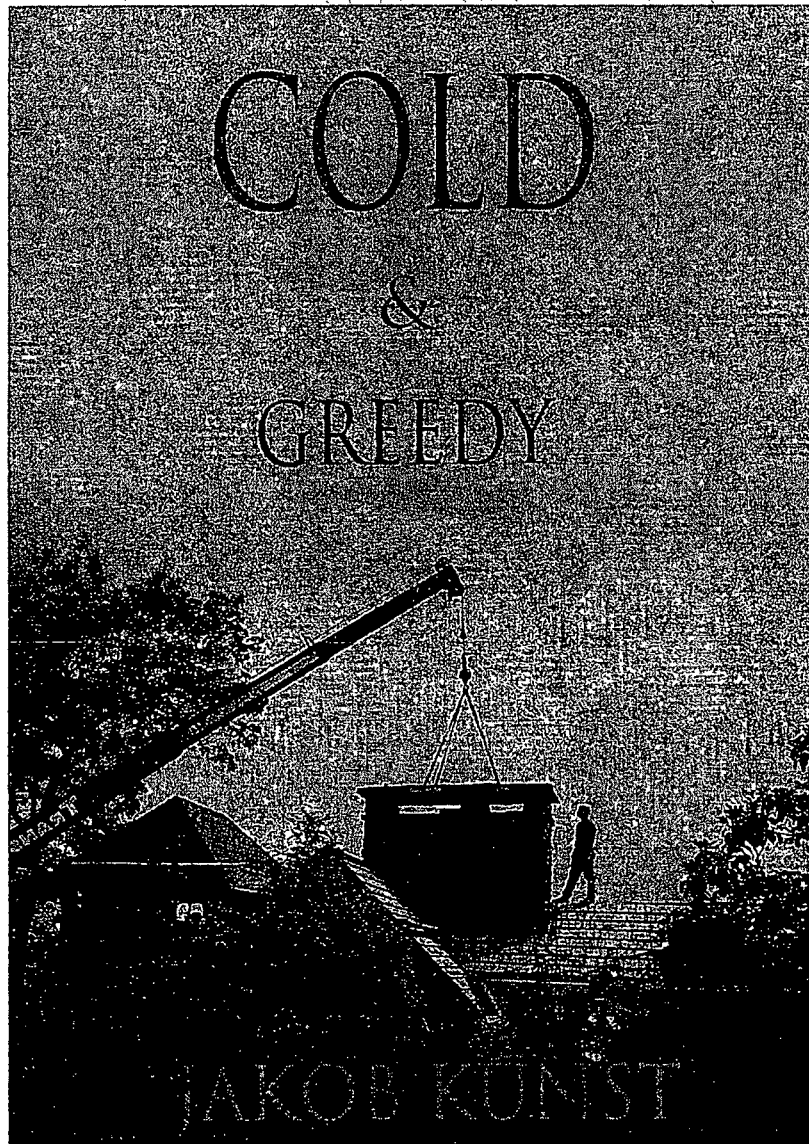
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Introduction

"For honest merit to succeed amid the tricks and intrigues which are now so lamentably common, I know it is difficult; but the honor of success is increased by the obstacles which are to be surmounted. Let me triumph as a man or not at all." - Rutherford B. Hayes

[Imagination is the forming of mental images, concepts, or sensations of what is not actually present.

Creativity is the process of bringing such images or concepts to life.]

INTRODUCTION

“We are the music makers and we are the dreamers of dreams;” We are the first-handers whose sparks of imagination become reality.

We replace silence with music and blank pages with words worth reading. We project our films onto blank screens and fill theater seats all over the world. From raw materials we imagine, design, and produce cars, clothes, buildings, smartphones...

We are the makers, creators, producers, and innovators who create the wealth that moves the world and makes everything else possible. Whether through the arts or by invention, we are the ones who initiate it all. We have been the world's movers and shakers since forever, it seems.

We walk the fine line between folly and genius without a safety net - dancing in a land of ambiguity and wresting order from chaos - while others seek the comfort of processing a process for a paycheck.

Introduction

We venture by merit and boldly risk what others won't. We confront failure with a white-hot passion to succeed the next time. We love our lives.

We do not fake reality in any manner whatsoever - why would we want to?

"The best people possess a feeling for beauty, the courage to take risks, the discipline to tell the truth, the capacity for sacrifice. Ironically, their virtues make them vulnerable; they are often wounded, sometimes destroyed." - Ernest Hemingway

Beware of those who envy the life you love and the success you've earned. They do not envy *what* you have, they envy *how* you got it. Anyone can accumulate material wealth if that is the only end to their means. But even thieves understand that material wealth is relative and fleeting. Self-worth and happiness can only come from the means.

A failed venture or experiment is not the greatest threat to your achievement and happiness. Such failures are expected and necessary. As long as man has free will, your greatest threat are those risks over which you have the least control: those inflicted on you by another man's volition. Looters, moochers, and second-handers see in you everything they are not. They envy your abilities, confidence, and independence.

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Looters, moochers, and second-handers of lesser character will turn envy to spite - and worse. If they can leverage force through wealth or position, they will act. Beware.

Reality

There may come a day in which you desperately reach for that which exists independently of the mere thoughts of anyone's mind, even your own. You may confront an evil from which reality is your only refuge and means of survival.

If this happens, you will reach beyond the apparent or understood; you will grasp for *the real*. Others may avoid reality as a refuge because it is at once too objective, tangible, harsh, brutal, raw, and unrelenting. Fiction is preferred because it is safe, subjective, and lacking in causation and consequence. Reality offers no such filter.

"Humankind cannot bear too much reality." TS Eliot.

Reality exists independently of what you and I may believe or want it to be. The reality that people fake to themselves is the most convenient lie there is because it is the easiest to get away with; it is kept safe and hidden from scrutiny. But reality is that much harder to bear if you cannot first to your own self be true.

One can only *attempt* to avoid or fake reality - usually at the expense of others and usually by some kind of force.

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Every tick of the clock brings a new reality - for better or worse. And time ticks at an ever increasing speed as we age, and it doesn't pause to show us a moment's concern. Somewhere along the path of maturity, a man who reasons realizes that there are no genuine contradictions in nature. There are never two genuinely conflicted sides to any issue or story. Somewhere there is a false premise. You may be engaged in a process in which the objective truth is being sought, but there can only be *one* correct premise.

Situational ethics, moral relativism, deception, fraud, or any other faked reality exists only because someone is seeking an end that the truth would not otherwise afford them. Fakers create a false premise so that they can prevaricate conjecture as truth.

There is a hard line drawn between reality and fiction. We didn't draw it and we can't budge it, either. Schemers and frauds may attempt to shade or blur the line, but it cares nothing about a billionaire's dollar or a lawyer's silver tongue. This line that separates the real from the fake is absolute and impenetrable.

Is it not your experience that those who venture and achieve by merit acknowledge and depend on this line more than others? Humans are unique creatures who possess free will and can choose their own destruction. An honest man chooses to make an honest living. Those who are self-made-by-merit rely most on the laws of nature,

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reason, and causation to achieve and force truth.

"If it disagrees with experiment, it's wrong. In that simple statement is the key to science. It doesn't make a difference how beautiful your guess is. It doesn't make any difference how smart you are who make the guess, or what his name is; If it disagrees with experiment, it's wrong." - Richard Feynman

"Shallow men believe in luck or in circumstance. Strong men believe in cause and effect." - Ralph Waldo Emerson.

There may come a day in which you will make this line your wall (or aisle) of protection. It may be all you've got.

Introduction

Fiction.

I am not a professional writer, nor would I consider myself to be an avid reader. I rarely have the time. But I do enjoy classic, timeless fiction by gifted authors who create characters and situations so compelling that I assume the event actually occurred and I imagine the characters to be old acquaintances.

There are many exceptional authors who fill blank pages with their own unique writing style and write fiction worth reading, as F. Scott Fitzgerald did in the 1920s, or as Michael Chabon does today.

My favorite novel is Ayn Rand's *The Fountainhead*. I don't remember consciously choosing it as such. It just is. This is the moment when some knees jerk and some readers may say "oh, he is an Ayn Rand cult guy." No, I am too much of an individualist for that to be true. My rational mind reasons independently of who Ayn Rand was or what she reasoned to be *her* own philosophy.

I first read *The Fountainhead* during my college years when I was far too young to fully grasp it. My experience with reality was as brief as my wisdom and maturity.

It was only natural to follow up *The Fountainhead* with Rand's next novel *Atlas Shrugged*. I remember slogging through all 1,000 pages of *Atlas Shrugged* thinking that it was "okay," but wishing it were 500 pages. I had not yet experienced enough reality and known enough real-life

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Randian heroes or Randian antagonists to fully appreciate the symbolism of both of these works.

The Fountainhead and *Atlas Shrugged* are a major influence on the book which follows this introduction (mostly *The Fountainhead*). I make no apologies for writing with the assumption that the reader has already read them both.

At first glance, it may seem odd that my own nonfiction book - a tale of cold, hard reality - would be so strongly influenced by fiction novels. It is not so odd if you consider that the genius and popularity of Rand's fiction stems from how well her symbolism applies to the reality of her intended readers, including my own.

Introduction

The Fountainhead

"Howard Roark laughed."

So starts the first of 727 pages of *The Fountainhead*. I could not imagine a better introduction to Howard Roark and to the novel that I have never stopped rereading.

"He laughed at the thing which had happened to him that morning and at the things which now lay ahead." (That morning he had been expelled from the Stanton Institute of Technology on graduation day. What value was an architectural degree to someone like Howard Roark, anyway?)

He stood naked on a cliff above a small lake framed by granite and trees - raw materials he would one day shape. He had been expelled that morning for being too original and non-conforming.

He laughed, before diving head first.

Howard Roark is the ultimate *Randian Hero*. He would be self-made by his own merit and on his own terms - sans a safety net. He could have been an enormous financial success early on, if he wanted to be. The talent was certainly there. If only he had played along, used the "connections" he was offered - compromised his values.

Years later on page 710, Roark stands alone in front of a

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jury box - without a lawyer - with his life's work and very existence at stake. The jury hears, and we read, an anthem to all of the self-motivated and independent creators of human history.

In the end on page 727, Roark stands alone again on the edge of a cliff. But this is *his* cliff shaped *by* him from the raw materials of *his* choosing: girders and steel. The rest of Manhattan lies far below.

Twenty-five years after the publication of *The Fountainhead* in 1943, Ayn Rand wrote an introduction to a 1968 printing of the novel in which she stated:

"Let me stress this: my purpose is not the philosophical enlightenment of my readers. My purpose, first cause and prime mover is the portrayal of Howard Roark [or the heroes of Atlas Shrugged] as an end in himself."

"I knew only that it was a book that ought to live. It did."

"I write - and read - for the sake of the story. My basic test for any story is: 'Would I want to meet these characters and observe these events in real life? Is this story an experience worth living through for its own sake? Is the pleasure of contemplating these characters an end in itself?'"

Who did she expect would read her fiction and be entertained by it? *"It does not matter that only a few in*

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Introduction

each generation will grasp and achieve the full reality of man's proper stature—and the rest will betray it. It is those few that move the world and give life its meaning—and it is those few that I have always sought to address. The rest are no concern of mine; it is not me or The Fountainhead that they will betray: it is their own souls."

Google "Howard Roark laughed" and you will find tee shirts, mugs, and even tattoos with a phrase familiar only to those few for whom *The Fountainhead* was written. We the "few" do not read fiction such as the *The Fountainhead* to be philosophically enlightened. It is entertainment - *our* entertainment.

There is no Ayn Rand cult following to be found in this author, as I stated earlier. No one convinced me at a young age to embrace the merits of individualism over collectivism, reason over faked reality, or objective merit over situational ethics. My *own* talent, ambition, reason, love of life, and self-respect demanded that I settle for nothing less than who I am.

"Because I don't intend to build in order to serve or help anyone. I don't intend to build in order to have clients. I intend to have clients in order to build."

"...I don't intend to force or be forced. Those who want me will come to me."

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"But you see," said Roark quietly, "I have, let's say, sixty years to live. Most of that time will be spent working. I've chosen the work I want to do. If I find no joy in it, then I'm only condemning myself to sixty years of torture. And I can find the joy only if I do my work in the best way possible to me. But the best is a matter of standards—and I set my own standards. I inherit nothing. I stand at the end of no tradition. I may, perhaps, stand at the beginning of one."

Howard Roark and I agree.

Atlas Shrugged

In 1957, *The New York Times Book Review* panned Ayn Rand's follow up to *The Fountainhead* as a book "written out of hate." Alan Greenspan, an Ayn Rand devotee at the time, responded by letter to the *New York Times*: "*Atlas Shrugged is a celebration of life and happiness. Justice is unrelenting. Creative individuals and undeviating purpose and rationality achieve joy and fulfillment. Parasites who persistently avoid either purpose or reason perish as they should.*"

This is Rand's Magnum Opus. It is dystopian science fiction bursting with symbolism; society's brightest creators, producers, and innovators are crushed under the weight of the state and the looters who control it. They abandon their fortunes and the nation itself, and go on strike and create a new society at Galt's Gulch. The theme of *Atlas Shrugged*, as Rand described it, is "the role of man's mind in existence."

Thirty-four years after its first publishing, a 1991 survey done for the Library of Congress and the Book of the Month Club identified *Atlas Shrugged* as second only to the Bible as the book that most influenced the lives of the 5,000 individuals surveyed.

An extended video at the end of the 2011 film version of *Atlas Shrugged* features a large number of people of numerous backgrounds who appear individually on the

Introduction

screen and announce "*I am John Galt.*" Generations of readers have so closely identified with Rand's fictional characters and situations that they choose him to symbolically represent them - just as Rand intended.

Who is John Galt? No one knows for the first three quarters of the story. The phrase *Who is John Galt?* is nothing more than a cliched expression of helplessness and despair spoken by Rand's fictional public until John Galt appears and commandeers a national presidential broadcast and introduces himself.

Galt's "speech" is an anthem to the rational mind of the producer: those individuals who actually create and trade value by free will (honestly), and cause real progress. While much of the world reaches for anything other than reason (altruism, ideology, religious dogma, ...) to force an end that the merits of something would not otherwise afford them, Galt represents those who refuse to fake reality in any manner whatsoever.

"I am a trader. I earn what I get in trade for what I produce. I ask for nothing more or nothing less than what I earn. That is justice. I don't force anyone to trade with me; I only trade for mutual benefit. Force is the great evil that has no place in a rational world. One may never force another human to act against his/her judgment. If you deny a man's right to Reason, you must also deny your right to your own judgment. Yet you have allowed your world to be run by means of force, by men who claim that fear and joy

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are equal incentives, but that fear and force are more practical." (Galt's speech.)

John Galt is an inventor, engineer, and philosopher, but his character is intended to be more symbolic than real. He represents all individuals in every generation who refuse to embrace mediocrity in the name of egalitarianism. He represents the rational man's struggle against the collectivist social and economic structures that a rational mind cannot defend. *We* are John Galt because his character speaks for us and responds as we would.

The genius of *Atlas Shrugged* and the reason for its longevity and popularity lies not in the fact that much of it is a treatise for Rand's own philosophy which she named Objectivism. (Rand's "objectivism" espouses a non-sacrificial morality. Your life belongs to you and you are responsible for it. No one has a right to force sacrifices from you, and you have no right to sacrifice others. You interact with other men by your own free will, not by force, threat, or compulsion.) There is plenty of opportunity for intellectual debate on *all* of the merits of Objectivism, elsewhere. Let's just focus on the genius of free minds and free markets instead.

In all of Rand's novels there is one constant: every Randian hero reaches a point where he must seek the refuge of reality and a reasoning mind. For Howard Roark, the line of refuge was an aisle in a courtroom; for John Galt, it was a force field in the Colorado Rockies.

Nonfiction

A billionaire's goon has been given no budget and has no fear of consequence - just a job to be done as quickly as possible.

Two clients who also happen to be plaintiff's trial lawyers owe you money and they are in a real bind. The goon contacts the lawyers. The goon's boss has a domestic problem he needs fixed in a hurry. Time is running out for all three. Together they mix a lethal cocktail. A nice, controlled explosion should provide cover for their scam.

However, the explosion is anything but controlled and the trio becomes more desperate. You have been pushed into a rabbit's hole of fraud, corruption, and deceit where *everything* contradicts reality.

You are repeatedly threatened as hundreds of thousands of dollars are slowly stolen from you right before your eyes in a cheap, tawdry, white-collar, lawyer-assisted scam. A lifetime of hard-earned self-made capital is gone. You are suddenly broke.

What would you do?

There are specific legal remedies available to quickly recover the money lost in the scam; it is for this reason that the threats become more severe. One of the two lawyers brags that he "owns" the Pickens County Courthouse. And

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what kind of favors can deep pockets buy? A partner of the other lawyer corners you and threatens that you are going to jail. For what crime? It doesn't matter.

What this trio does is horribly depraved and it harms many good people. They leak to the public that *you* embezzled one million dollars and would soon be arrested. In this rabbit's hole of fraud, corruption, and deceit, the opposite is true; reality is just the opposite of what is faked. The public accusation will destroy you and there is no way of predicting what will happen next. If you do nothing, people will assume you really did embezzle \$1,000,000.

What would you do?

Time is short. Your only option is to get as much evidence placed into a public record - any record, anywhere - as quickly as possible. Leave a trail, should something happen to you. But the physical threats should have deterred you. You were supposed to just go away and be quiet.

Your only real option is the civil court system. But then what are you going to do, find a lawyer and sue them? Your pockets are empty and you have never been involved in any kind of legal matter before. Good luck finding a lawyer who will sue a billionaire's goon, his bosses, and two lawyers.

Doing nothing is not an option. You have no choice -

Introduction

you are fighting for survival! You are told that suing these people would be suicide. It would be a street fight and they will spend whatever it takes attacking you personally. But there is no other way to force everything into the public record other than under penalty of perjury through discovery.

What would you do?

Like someone taking a self defense course while being stalked, you had better quickly learn to be your own lawyer. But it would be suicide to sue everyone involved without a lawyer and with no experience as a litigator. The counter attack would be brutal.

What would you do?

I sued.

Eight years and twenty lawsuits later, the impossible became reality. The rabbit hole has been blown wide open. There are enough provable facts on the public record for me to safely expose it. This nonfiction first person account does not want or need to be told, it *ought* to be told.

Introduction

Published

Cold and Greedy is reality. It is my reality. It is first-person nonfiction written by one of the few that Rand sought to address by writing *The Fountainhead*.

Cold and Greedy is raw, unscripted reality that cannot be faked. It is written, read, and experienced entirely on the nonfiction (reality) side of the line between real and fake. I expose reality - nonfiction characters being themselves.

There is an urgency to *Cold and Greedy*. Most of it is written in real-time as events occur. The most significant and climatic of these events are occurring as this introduction is written.

The writing style is first-person nonfiction. It merges creative literature with research nonfiction. In other words, I am narrating events through the lens of my personal experience. It is a raw, compelling, and unscripted account of individual merit, character, courage, and perseverance. Together, we explore "the real."

We explore a world of multi-million dollar resort homes and extreme architecture. We explore the *real* legal world governed by deep pockets and corruption. The courtroom drama you see on TV is very different from what goes on behind the scenes. Trial lawyers can't write this. I can.

The significance that this is self-published in real-time and can be read by you, perhaps a stranger to these events,

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cannot be trivialized. It is not an exaggeration to say that, as you read, you will become part of this narrative in a way fiction would not allow. You can be as much of an eye witness to these events as you want to be. There is no "faking reality in any manner whatsoever" in the pages ahead.

Fiction is much easier. The writer exposes nothing real; symbolism only resembles or represents reality. There is not much courage there. Fiction is preferred because it is safe, subjective, and lacking in causation and consequence. Reality offers no such filter. Nonfiction requires provable truth that will withstand deep pocket threats.

I am not a professionally trained writer any more than I am a professionally trained lawyer or litigator. In the courtroom, I was not part of the deep pocket legal dance across the aisle. I made many mistakes. I was more like a bull in a china shop - but it worked and I did what had to be done.

As for these pages, there is no ghost writer. Every word is written with the raw first-person passion this story deserves. The clock is still ticking. If something happens to me, this is another way of leaving a trail.

Cold and Greedy would not exist if we were not living in the digital age of the internet. My writing has not been compromised by a need for commercial viability. There is no publisher to convince or please. There is no filter; it is

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just you and me.

A traditional publishing house would not touch this. They would deem it toxic because the pockets on the other side of the aisle are too deep. *Cold and Greedy* exists thanks to the digital age (and because threats from the other side of the aisle mean absolutely nothing to me).

The power and credibility of this narrative would be diminished if the ebook edition were not self-published and available free. I peddle nothing. This eliminates any skepticism regarding financial motivation that may needlessly diminish your reading experience. This is not how I earn a living - or how I need to, for that matter.

Cold and Greedy could not exist if individuals did not have the right to represent themselves in a court of law and force a room full of discovery. I could not have represented myself in a matter so large and complex as this against pockets so morally depraved and so deep if it were not for the internet. Everything I needed was a Google search away. Twenty years ago, *Cold and Greedy* could not have existed.

Cold and Greedy could not exist but for twenty legal actions spanning nine years. If the statements and actions of the antagonists were not public record supported by the provable truth of evidentiary matter, settlements, and verdicts, *Cold and Greedy* could not exist.

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If *Cold and Greedy* reads at times like a legal drama, it is not my intention. The legal process was merely the appropriate and lawful method to investigate and obtain the provable truth I needed to protect myself while exposing what happened. I have avoided focusing too much on complex legal terms and procedures.

The names of the antagonists have been changed because I would rather the focus be placed on the *type* of people we confront every day rather than any one specific individual. The actual names are presented in public court documents.

I did not come up with the phrase which gives title to this book, and you may be surprised to discover who did. The last few chapters have not been written because they have not yet occurred.

Cold and Greedy is a celebration of the spirit of youthful ambition, creativity, and perseverance. It celebrates earned achievement fueled by the personal self-interest of those men who get things done: the creators, producers, and innovators - the prime movers of the world.

It is a celebration of those men who deal with other men by trade and mutual respect - exchanging value for value.

It exposes and lays bare, with the brutal honesty of a nonfiction, first-person account, individual merit as man's only wellspring of self-respect.

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"Those few that move the world and give life its meaning..."

Makers, creators, producers, doers - individuals self-made-by-merit - you know who you are. This book is written for you.

You may be that man or woman who risked everything and worked 16 hour days before your tech start-up went public or was sold. Perhaps you have a drawer full of patents.

You may be that guy who doesn't get paid unless his truck starts up in the morning. You can't remember a time in which you were not tired. Your name and web address are on your truck door and your reputation is only as good as your last customer. Your wife does the company billing while taking care of the kids.

This book is written for you.

No one understands reality, merit, causality, reason, consequence, and economic liberty like you do. You depend on these things; in fact, you thrive on them. You are the "adult" that acts responsibly and *is* responsible. You ask nothing of anyone other than the freedom to exchange

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the value of what you have earned. You despise socialism not because you are cold and heartless, but because it is immoral. You give generously of the wealth you earn to charity and are the first to help those in genuine need. Without you, the left would have nothing to redistribute.

Politicians, "community organizers" for "social justice," union thugs, looters, moochers, crony capitalists, and (especially) schemers and trial lawyers won't get past this introduction. They, by force, fake reality. This story will mean nothing to them.

Chapter 1

Dandy Nerts and Rollie

I laughed.

Not because anything was funny. I laughed more out of a sense of accomplishment, and perhaps maybe a little bit out of disgust, that things had gotten to this point. Thanks to a couple of horrible “mistakes” by a couple of judges in South Carolina, four years had been wasted chasing a goon named Rollie.

Defendant Rollie was just days from trial four years earlier in 2009 when a judge gave him a stay he wasn’t entitled to. A year after that, his attorney, Dandy Nerts, convinced another judge to ignore South Carolina law altogether and dismiss my case against Rollie. Finally, on this spring morning in 2013, in a Court of Appeals courtroom, this was all about to change.

I had already spent an exhausting seven years exposing the others involved in this cheap, tawdry, white-collar, lawyer-assisted scam that needlessly harmed so many good

Dandy Nerts and Rollie

people. As for Rollie and his bosses, it all came down to this moment, in this courtroom.

This would all be much easier to write if it were fiction (and if I were a writer). But this is reality - my reality. The people, places, dates, and events I describe in these pages are all real. When I tell you about violent threats and the risk of exposing this, believe me, it was all very real – and remains so, even as you read this.

In March 2006, I was viciously pushed head first into a rabbit's hole of faked reality; someone else's very dark reality. I had crashed into heirs to a pyramid scheme and their deep pockets full of fraud, deceit, and corruption. Their scam instantly drained my pockets and left me no resources to fight back and climb out of the hole. My instincts told me that if I were to survive at all, I had better protect myself. I had better leave a trail of evidence.

Evidence is reality. I needed to force truth – provable truth. And to get that one must *force* the truth, the whole truth, and nothing but the truth under penalty of perjury.

I filed twenty lawsuits and conducted three jury trials during eight years of litigation to get the roomful of evidence I would need to expose them and protect myself while doing so (it was a very deep hole). I had no choice but to sue a billionaire's goon, his bosses, four lawyers, and anyone else related to the scam. Rollie was the last man

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standing. This may be a good time to mention that I am not a lawyer - I'll introduce myself later.

May 9, 2013

I sat alone on the appellant's side of the Court of Appeals courtroom in Columbia, South Carolina, waiting for a three-judge panel to enter and hear oral arguments. Written briefs had been submitted by me and Rollie's team of lawyers months earlier.

A court official approached me, perhaps sensing I was a novice, and explained how the light on the podium would alert me when my time was up, and that it would be another ten minutes before the judges entered. I had time to take in the moment.

Time had not discouraged me a bit - it had only steeled my resolve. This would be ten minutes tacked onto seven years. Dandy Nerts and his assistant were sitting on the respondent's side of the court room chatting quietly about other cases.

I noted to myself how that ole Nerts would be perfectly happy to tack on another seven years. Rollie's bosses' pockets are very deep indeed and I had been told that they would spend whatever it takes. Nerts and his law partner Weasely reeled in a big one.

The odds of a *pro se* litigant (someone without a lawyer)

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getting this case to this point were supposed to be overwhelmingly slim. Oral arguments before the Appellate Court? The moment seemed surreal.

I was years beyond being nervous or apprehensive in such new and unfamiliar situations. If anything, I felt enormous confidence as the judges entered the room and we all stood up. So quietly and mostly to myself, I laughed.

Time and Money Spent

Those two trial court judge "mistakes" that had gotten Rollie off of the hook for four years were so egregious that there really wasn't much that could be argued beyond the law and the written briefs already submitted. This appeal had to do with whether or not South Carolina allows the doctrine of collateral estoppel in cases of default - it never has. I know that sounds far too technical for this narrative and we are getting far too ahead of ourselves.

The point for now is that good lawyers and judges in South Carolina have long understood this law. These "mistakes" had left many legally-minded observers dumbfounded - they just *don't* happen.

The three Appellate Court Judges were all business and weren't there to hear speeches. They interrupted often with questions. As the podium clock was winding down, I pointed back to Nerts and his assistant behind me and

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argued: "If they had a single South Carolina case they could reference, they would have done so, but they don't." That was pretty much it. After all, objective merit isn't forced - it's quick and succinct.

Nert's assistant then gave Rollie's oral argument. She is relatively new to the VanGrab legal team and since arriving in recent years appears to be the one doing the talking and writing these days. Nert's specialty is emoting and shading the truth before abandoning it altogether - which works better in a jury trial than this type of hearing. She did the best she could with what she had. As I sat there listening, I pondered how many times in seven years I had sat on the left side of a court room listening to the same garbage.

All of this time and money spent avoiding what?

Me?

Why?

It is important to understand just how unique and almost impossible of a situation I have lived through these past eight years as a *pro se* litigant - for me, all of this is very personal. I am not part of a team of emotionally detached lawyers - legal whores saying or doing anything for a fee. I was fighting for *my own* survival.

I don't listen too intently when the lawyers on the right side of the room are giving their spiel. It is one of the ways

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that I have learned to cope with their stench. I used to take what they said too seriously and it would make me needlessly angry.

Lawyers are paid to play a legal game and dance in the stench of situational ethics. So in order to filter out the nonsense coming from the other side of the room, I would often focus on the court reporter typing away. It is truly amazing what they do. Other times, I'd just look around the room.

This was the first time I had ever been in a Court of Appeals courtroom, and I couldn't help but notice the familiar aisle down the middle that separates plaintiffs and defendants - or in this case, appellants and respondents. I sat there calculating how wide I thought it was. It looked like six feet perhaps - maybe a little more narrow than the average Circuit Court courtroom.

(Before the explosion of 2006, I had never even been inside of a court room, much less involved in any kind of litigation; At times, even eight years later, it all seems too surreal.)

Maybe I'm just hardwired to recognize spatial qualities, but this room-dividing aisle that separates the parties in a courtroom has acquired a deeper, symbolic meaning for me. It has come to represent more than the space between two supposed "sides" of an "issue."

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True, there have been raucous hearings and trials in which the aisle seemed more like a demilitarized zone. But I understand far better today that there are no genuine contradictions in nature. There are never "two sides" to a story. You may temporarily be in a process in which the objective truth is being sought out - but there is only *one* truth. There can only be one correct premise.

As I sat there listening to some of the exchange in which Rollie's attorney was being repeatedly badgered with questions from the panel of judges, the aisle separating us seemed to grow wider the more she spoke. From the moment this lawsuit was filed in December 2006 until this moment, this case has never been a process of seeking objective truth - Rollie's whole defense has been one of avoidance, and for good reason.

I was reminded yet again how those who sit on that side of the aisle "boundary" these many years somehow seem to belong over there - whether individually or as a group. Most of us have lived through enough experiences and have known enough people to understand that this boundary has always existed as part of nature. We notice it when people interact. It stands like a reinforced concrete wall when there is a conflict. One side is objective and the other side is situational.

This boundary is merit.

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The hearing was much shorter than I thought it would be. Rollie's case was first that morning and as I turned into the aisle to walk out, I noticed the teams of attorneys that had been sitting behind us on both sides of the aisle, listening, waiting for their turn. I settled into the car for the ninety minute drive back to Greenville.

Part of me was confident that the Appeals Court would ultimately rule in my favor - the law was clear. But a less naïve part of me opined from experience that this billionaire's goon and his boss's money were capable of *anything*. Would any judge *dare* rule in my favor?

There were also technical and procedural concerns that worried me. I am not a lawyer or a skilled litigator. Practically every situation such as this these past eight years has been new and impossibly complicated – full of pitfalls. Did I miss something? Did I file something improperly? Is there a small technicality I missed that would have the whole case thrown out?

Early on, back in 2007, a South Carolina Circuit Judge from the Low Country peered down from the bench of a Pickens County courtroom after I presented the *Lady of the Lake* disaster (which I will get to much later) and admonished me: “You are going to need a 'Philadelphia lawyer' for this. I recommend against you representing yourself.” He was right, but I had no choice.

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The other side of the aisle was about to spend seven figures in an attempt to quiet me. And my pockets were empty.

Back on the Hook

A few months after my oral argument before the Appellate Justices, the Appeals Court agreed unanimously with me and ruled that Rollie was back on the hook.

Celebrate?

No.

Shortly thereafter, Dandy Nerts and his team appealed the Appeals Court decision to the State Supreme Court. Another year would be wasted. I will tell you later what the State Supreme Court decided.

Rollie

Rollie is just your average middle-aged guy from Michigan. I would describe his appearance, but there is really nothing noteworthy to start from. He works for the VanGrab family of Atlanta. Rollie had previously worked as the "Executive Protection Administrator" for the elder VanGrab until his death in 2004. The elder VanGrab made billions as a founder of the product-based pyramid scheme Amway.

Also in 2004, the elder VanGrab's daughter in Atlanta

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and her husband embarked upon a resort home building spree. Somewhere along the way, Barb VanGrab inherited Rollie. Earlier that same year, the VanGrabs had asked me to design and build a \$3,000,000+ lake home in South Carolina. This project was 75% complete when Rollie came aboard. That's how I met Rollie.

The VanGrabs purchased or built little satellite homes in the neighborhood near my creation - one of them was for Rollie and his family.

When I first met Rollie, he was affable enough. Years later, whether I was questioning him on the witness stand or deposing him, I was continually frustrated at how ignorant he was about what he was supposed to be testifying to. It angered me that that had probably only made the harm he caused worse.

If you have the resources, which the VanGrabs do, then why would you not have the best and brightest people around you? Is that not what happens naturally by necessity on our self-made-by-merit side of the aisle? As an artist and entrepreneur who depends solely on individual merit, I have no choice but to seek out the best and brightest to assist me in what I do.

But you will soon learn that the VanGrabs are very comfortable on the other side of the aisle and are safely removed from the world of individual merit and

Dandy Nerts and Rollie

consequence. The business card Rollie handed me said "Executive Protection Administrator." He was there to provide "protection," all right. They needed protection. They needed cover. They needed a goon.

The term "goon" quickly came to mind as his role became clearer. I Googled goon to make sure I was using the term correctly. Let's just say that a goon by definition is not hired for his intellectual abilities; he is hired to terrorize or eliminate opponents with their resources. So then, it all fits. And if the scam doesn't go well, eight years later, the goon is the fall guy.

Rollie was still employed by the elder VanGrab's "Enterprises" at the time I met him, at the time of the explosion in March 2006, and thereafter.

Rollie had not been with the VanGrabs very long when his boss asked him to schedule a February 16, 2006 meeting with me to go over some "issues." Communications from Mr. VanGrab were getting stranger than usual (I had been asked to hide things from his wife) and were about to stop altogether. Somehow, I intuitively knew to have witnesses at this meeting. I sensed that there was pressure being placed on Rollie.

In a lighter moment, perhaps in an effort to relate to us, Rollie told us that during the time he worked closely for the elder VanGrab, his boss only thanked him once for

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anything. I found it significant that it was something he wanted to say, not that it might reflect negatively on the late VanGrab.

“They don't care about people.” You will understand the context of this Rollie quote describing the VanGrabs later. But for now, you could not have a better introduction to antagonist Rollie. He is describing the people *he* was willing to work for and provide cover for.

The late VanGrab was worth over \$2 billion according to published reports. One would think that his daughter could afford to exchange value for value and “care about people” in the process. On my side of the aisle it comes naturally.

I will say this about Rollie: he fits in very well with everyone on that side of the merit aisle. He's a second-hander. He works *for* someone. Second-handers achieve through someone else – through relationships.

If the second-hander is suddenly forced to seek his livelihood elsewhere in the free market, he is less likely to move laterally, much less, up - merit gets in the way. So he does *whatever* it takes to keep his job.

Dandy Nerts

Nerts is one of four lawyers we encounter ahead, but he is the only one without direct personal interest and involvement outside his role as a lawyer. The other three

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attorneys involved were defendants in multiple lawsuits filed by me or my design/build firm Kunstwerke.

I had attempted to sue Nerts for his early involvement with the VanGrabs at the time of the March 2006 explosion. He had written scores of fraudulent letters on their behalf in an attempt to wrestle control of the VanGrab project without the threat of liens and the delay that would cause. The same Circuit Court judge that let Rollie off of the hook for three years dismissed my case against Nerts, stating that he was merely acting as an "agent" on behalf of the VanGrabs.

No surprise.

I took note, however, that it should then follow that this "agent" relationship works both ways. Everything Nerts has said and done these past eight years on their behalf, the VanGrabs are personally responsible for.

"Nerts" is the fourth of five named partners of a law firm located on Pettigru Street in Greenville, South Carolina. Huey Weasely's name appears first. Huey and his lawyer wife Suzie are personally connected to much of what lies ahead.

Nerts and Rollie are more similar than they will ever admit. They have their own special place on the other side of the aisle.

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Nerts is not a goon because he is apparently bright enough to pass the bar. Otherwise, the roles of these two men are essentially the same. Without the Rollies and Nerts of the world, the VanGrabs among us can't do what they do. If it weren't for that connection, neither of these men would be worth a second thought to those of us who live and work on our side of the aisle.

Driving back to Greenville, I checked in with my parents who predictably asked: "How did it go?" I wondered aloud if there were ever instances in which Appellate Justices ruled from the bench. Probably not. I tried not to take the fact that they hadn't as a bad sign.

Indeed, the Appeals Court did rule in my favor a couple of months later in the form of a nine page opinion. *Kunst v. Loree* (Rollie) will probably be referred to in case studies as the new standard for collateral estoppel in South Carolina. (I would much rather be known for my own distinct and cutting-edge architecture.) Nonetheless, I could not escape the significance of this ninth day of May, 2013 - after eight long years, it all came down to this one hearing with Nerts defending Rollie.

And so once again, I laughed.

Chapter 2

A Hole in The Washtub

May 22, 1998

“I did it, I put a hole in the washtub!” my mother heard me announce proudly on my cell phone.

She knew exactly what I meant. Her youngest child had just figuratively put a hole in a perfectly good washtub - and that is precisely what she raised him to do.

It was May 22, 1998, my last day working *for* someone as an employee and my last hour-long commute from Greenville to home - up the mountain. A cardboard box sat beside me on the front seat of my little Nissan pickup truck. Inside were things from the office of a CPA and CFO - things I would no longer need. Now, all I needed was a tool belt and a truck full of tools.

I cannot adequately express the freedom I felt at that moment nor the pride in being able to announce that I actually “did it.”

There was a white envelope in the box containing a heartfelt letter from my former employer that said:

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Dear Scott:

It seems like yesterday that we were discussing the possibility of you joining the Agency. It is hard to believe that five years have passed. I am certain that I had no idea five years ago that your contributions to our organization would be so significant.

There is no way for me to enumerate all of the significant accomplishments that you have had over these years. Some are certainly more visible than others such as our technology improvements, the complete renovation of our facilities, and our new marketing identity and campaign. Most significant to me, though, is the consistent quality of your decisions, opinions, advice, and leadership.

You have given selflessly to [this organization] many times at the expense of your own personal interests, to guide us down a steady road. Words seem insufficient to express the personal regard and appreciation that we have for you and the work you have done during your stay here. On behalf of [all of the owners], please accept our genuine thanks for a job well done.

We'd like to have a business and personal relationship that continues into the future. We appreciate your offer to provide assistance during our transition and are grateful for your generosity in this regard.

Scott, please accept our best wishes to you for the

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future. You are most deserving of success and we look forward to following your business career. Thanks again for creating a better [organization]. As the Boy Scout motto notes, "you have left the campground in better shape than when you found it."

I read this letter a few days after it had been handed to me and thought how it might have served as a great recommendation letter to climb the ladder to another "job." It was now just a memento. My days of resumes and professional degrees were over – I had punched a particularly *large* hole in a perfectly good washtub.

My framed CPA certificate from the South Carolina Board of Accountancy that had hung on my office wall was sticking out of the box next to the letter. I would allow my license to expire on its own. The CPA exam is a grueling series of tests that lasts for days, and for me it hadn't come easy. My certificate was also now just a memento.

Eyes of Maturity

As far back as I can remember, someone in our family would ask at Christmas: "when are we going to watch Emmet?" I tend to be the sentimental one who makes certain that traditions never die - so it was usually me asking the question. After 37 years, we have all memorized the lines to Jim Henson's *Emmet Otter's Jugband Christmas* (1977).

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The story is about little Emmet and his widowed mother who ekes out a living taking in laundry. Emmet had heard that there was going to be local talent show with a \$50 grand prize, and he was absolutely convinced that if he and his friends formed a jugband, they would win.

It was almost Christmas and he wanted to buy his mother a special gift that year. Emmet was assigned washtub bass because his mother had a washtub. Should he take the risk and put a hole in the washtub to make an instrument without her knowledge?

He did.

Did they win? (You'll have to watch it on YouTube).

Traditions such as this are not just annual repetitions - they mean so much more. The experience is never the same. The tradition doesn't change - we do. We experience traditions through different eyes of maturity as the years pass.

Emmet and the boys had better be exceptional - no, the best. The moment Emmet hammered a hole in his mother's washtub (complete with cheesy sound effects), there was no turning back. It wasn't a gamble or a blind risk, it was calculated and based on merit. He didn't make a hole his individual merit couldn't fill.

As a teenager I understood the entry quote by Ayn Rand

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to The American Adventure at Walt Disney's Epcot which says: "*Throughout the centuries there were men who took first steps down new roads armed with nothing but their own vision.*" When I was younger, I understood Emmet when he quoted his father: "*A person's got to take some chances or life will never come to anything.*"

I don't remember a time in which I had any problem seeing through the garbage on the other side of the merit aisle. To me, it is common sense and the natural order of things that humanity does *not* advance because a law school somewhere graduated a larger class of trip and fall lawyers, or because a government bureaucracy grew larger, or because two men sitting in a boat came up with a pyramid scheme.

Caesar's Head

I was commuting home one last time to Caesar's Head Mountain, South Carolina, to the resort community that would one day be home to my first six *extreme* projects/houses.

This had been the plan all along. Even so, I had punched a particularly *large* hole. I was still in my twenties and supposedly set for life - if I wanted to be - as a financial executive with initial stock incentives in a telecommunications start-up.

The employer who wrote the above letter had arranged,

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through connections, an offer from the telecommunications start-up. He advised that I should accept the offer and delay things until I had more capital and was better set to do my projects on the mountain.

No, it was time to get things going.

Looking back, I should have punched a hole in the washtub much sooner. That is usually the only regret most people have. I had been too cautious. Through blood, sweat, and construction loans, I did eventually get to that higher level on my own and without connections. *That* feeling is indescribable.

An offer letter from the venture capitalist behind the start-up was folded away in my wallet as a souvenir as I drove home that evening. I kept it there for years afterward, until enough trips through the washing machine made it unrecognizable. I was pouring that offer, and my eight year CPA career, down the drain.

For what?

100% hardcore, entrepreneurial merit - designing and crafting my own style of extreme resort houses on a speculative basis in a mountain-top gated community in which houses did not sell and lots were almost free.

This had indeed been my plan all along, but the break was not quite as cold turkey as I describe above. I had

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already designed and built two houses in this community on a "part-time" basis. Both were successful and had sold before completion. But I was still employed with a CPA's salary and had the option to live in a project if it didn't sell.

After May '98, there was no turning back - I was determined to be self-employed doing what I wanted to do. My part-time tool belt became a full-time tool belt. No more salary - just a construction loan for a project that *had* to eventually sell.

Mom and Dad

None of these early projects were financially feasible unless I did most of the physical work myself. I became a licensed builder by necessity and built my own designs. It was the only way my early houses could be affordable.

My father had been retired for a few years and volunteered a lot of time working alongside me on the mountain. Neither of us had ever built a house before, but it never occurred to us that we couldn't.

I have been blessed with the most remarkable parents that a person like me could ask for. I've been punching holes in perfectly good washtubs since my teen years and, through this very moment as I write, my parents have never once questioned my judgment or attempted to steer my ambitions.

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To be blessed with loving and devoted parents is not all that unusual – I know. For that love to be reciprocated by a grateful son is not that unusual, either. But mere words on these pages cannot convey why these two people who have been married for 55 years are so special.

I have been given a lifetime of unconditional support that I have never had to ask for. My support has been more than a shoulder to lean on or an ear to listen. Often, it has been another hammer pounding nails or another paint brush painting, or a daily lunch tray for an entire building site.

1969 Mustang Convertible

“How did you learn to do *this*?” my father asked me in 2007 when I handed him the first of many deposition transcripts. I laughed and replied “the same way you learned to saw two Mustangs in half and make one better Mustang.”

I was a little taken aback that he asked, because it has been he who has told all of his children: “You’re a Kunst, you can do anything.”

My father supervised the production of large electric generators at a sprawling Westinghouse plant in Pittsburgh for thirty-five years. I have a hard time keeping up with him intellectually – he is one of those people who can converse about anything.

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Thirty years ago he purchased a dilapidated 1969 Ford Mustang convertible. The engine was gone - he rebuilt it. The back end of the car was rusted out from Pittsburgh winter road salt - he bought another Mustang from a junk yard, cut both cars in half, and fused the good parts together. All of this was done in our own garage without any of the tools you would expect would be needed.

He had never done anything like this before, but it never occurred to him that he couldn't. He painted it light green, installed a new white convertible top, and drove it for another 100,000 miles.

Thirty-five years ago, a large piece of machinery was shipped to the Westinghouse plant from France in a huge wooden crate. He thought the wood was salvageable. He brought it home and built me the coolest clubhouse a kid could ask for. It was a perfectly crafted, little 10 foot by 10 foot house with a hip roof. The back side hung off of a cliff on stilts. No one was quite sure where he learned carpentry.

I was raised with a tacit assumption that I was expected to be able to do anything -- just pick what made me happy. This may explain why he has always had a quiet confidence in all of my endeavors and has never interfered or attempted to control. One does not accomplish the many things that he has accomplished in his life without having self-confidence backed by individual merit.

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I don't think that anything I have accomplished has genuinely surprised him. I am *his* son.

Eyelashes on Baby Dolls

My mother was a stay-at-home mom. Growing up, I never needed to worry, she was always there. She still is. My father often says, "all that creative stuff – you get that from her." He is right.

I learned from her an enthusiasm to stay productively busy. She always has to be doing something productive. For many years, she had her own kiln and hand-crafted porcelain dolls. These were the high-end type of dolls that are historical replicas. She could hand paint amazing life-like eyelashes on a doll with a brush with bristles too small to see.

Her hands are no longer as steady for this kind of work, and she has given me many of her tools. I use some today making architectural models. Some tools I refuse to use and are now keepsakes.

She, more than anyone, expected me to put a hole in a perfectly good wash tub each time I did it. "People do what they want to do," she always told me. "Just try."

When I was twelve, I came up with the idea of crafting

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little buildings for miniature railroad displays and selling them through a hobby store in a local mall. I made four different models and their packaging. It was never going to be feasible for a twelve-year-old to provide these models profitably to a store, but she didn't say a word. I got all dressed up and she drove me to the mall to meet the store owner. She probably had better things to do, but she was there.

I don't think that my portfolio of work today has surprised her in any way. I am *her* son.

Pyramid Scheme Funded Lawyers

My hour-long daily commute down the mountain to Greenville had not been as much fun in the weeks leading up to May 22nd. I had traded my screaming black-on-black BMW 540i for practicality – a little Nissan pickup - and the possibility of lean times ahead.

But I am just as happy in a pickup truck. Only when money or material possessions are not the end which justify the means is anyone truly happy and free.

Any looters, moochers, second-handers, and schemers who stumbled upon this story have all likely stopped reading by now. Even if they got past the introduction, all of this talk of individual merit and situational ethics in these first 25 pages confuses them. It's just us.

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The only readers from the other side of the aisle may be a team of pyramid scheme funded lawyers scouring in vain for anything libelous. Good day, gentlemen.

(I am not joking.)

The Stanton Institute of Technology

The creative work that I do today is not something that can be taught by an individual or institution, and is no different than how the Stanton Institute of Technology had nothing to teach Howard Roark.

So, when it was time for college, I decided that a business degree would help me the most. I majored in accounting because it offered the most potential.

I accepted an offer from one of the "Big Six" firms, Deloitte and Touche, in New York City right out of college. I took the CPA exam with 2,000 other New Yorkers in a long building on a pier on the Hudson River. After two years of public accounting experience, I became a CPA.

After a few years, I moved back to South Carolina where I had attended college (in the upper part of the State where the Blue Ridge Mountains rise from the orange dirt of the Upstate, as far from the coast as you can get) and to where my parents had retired. I was transitioning as planned into

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my life's work, but I still needed to earn a salary for a while to build up capital and mitigate risk.

From 1993 to 1998, I worked sixteen hour days. For eight hours I wore a white collar and crunched numbers in Greenville, followed by eight hours wearing a tool belt on the mountain pounding nails.

A magazine editor named Margaret Pridgen came by one day while I was working on my fourth mountain project. I was on the roof. (In those early years, visitors were always finding me working on a roof, it seems.) She was intrigued by my story and published an article entitled "Scott Kunst: Living a Dream" (friends and family refer to me by my middle name, Scott). In the "from the publisher" section of the July 2001 Builder/Architect magazine she wrote the following:

These are a Few of My Favorite Things

Headers on jack studs and hearths under mantels.

Chair rails on wainscot and load-bearing lintels.

Foundation batter boards tied up with string.

These are a few of my favorite things.

Guys in white pickups, in jeans and sunglasses.

Cheerful oak floorboards and wood window sashes.

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Houses that grow from the red dirt in spring.

These are a few of my favorite things.

"I guess you can tell I love my work!

With apologies to Julie Andrews and Oscar Hammerstein, I think I was inspired to flex my creative muscles this month by our cover story on CPA/designer/builder/craftsman Scott Kunst.

This is an unusual story for us, because Scott is an unusual guy. He may even be unique.

His projects are not so much houses as works of art – large, hand-made, expensive, all-wood-and-stone sculptures that people inhabit, on the weekends, at least.

'If I build it, they will come,' has been his unconventional business plan, but so far it has worked. You have to admire someone who is willing to risk everything in order to craft the kind of life he wants to lead, doing the work he wants to do.

Scott is passionate about the architecture of the Blue Ridge and Rocky Mountains. He vacations every year in Jackson Hole, WY, which he reaches after four days on the road on his BMW motorcycle.

I would not be surprised to get a postcard from him someday telling me he just sold a lodge home in Telluride

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to Brad and Jennifer. Actually, I would be shocked, but only that Brad and Jennifer are still married. Scott I have more faith in."

The author, Beth Jarrard, chose the title of the article, and she was right. My early work featured there is boxy and rustic because it was restricted by community guidelines. The organic architecture and kinetic perception would come later. These were the early steps.

Risk

And they were all risky steps. Once an excavator knocked down trees and dug a foundation hole, whatever grew out of that hole would be publicly visible and permanent - and linked professionally to me. It would become part of my portfolio. I was creating something tangible, artistic, and uniquely mine which did not resemble anything else in the neighborhood. But if it didn't sell, I couldn't afford to buy it.

My financial risk grew as did the construction loan, as foundation, framing, roofing, window, mechanical, and hundreds of other invoices came pouring in.

If just one project failed, I would be wiped out. And it would take years to earn back capital working again *for* someone. (Good luck ever getting another construction loan, too.) The last thing I wanted to do was to dust off my box of office stuff and type a resume. If you are self-made,

your individual merit is your only safety net.

But entrepreneurial risk in a free market is not blind risk or a gamble. It is the natural order of things. It is an acceptable and anticipated risk, calculated and governed by merit. It is true that "throughout the centuries there were men who took first steps down new roads armed with nothing but their own vision." But those "visions" that actually succeeded and changed the world occurred through the prism of reason, causality, and merit.

Emmet Otter's risk was calculated based on the merit of the jug band's talent which he reasonably calculated would succeed - excluding any unforeseen circumstances. When the time came, the jug band simply had to perform.

Beware of the risk you cannot control or mitigate. At the end of the day, it matters little what nice things are written about you by others. Take it with a grain of salt. Find your own well-spring of self-respect and keep a wary eye on the other side of the aisle.

We Thought You Fried

Chapter 3

We Thought You Fried

Boooooom!

"We thought you fried!"

At least that's what I think I heard.

My ears were still ringing from the explosion as two teenagers came running across Forbes Avenue toward my hot dog stand asking "you alright?"

I nodded and one of them said "we thought you fried!" It was a bit disconcerting that they were the only ones who made an effort to run over and check on me - I was convinced that half of Pittsburgh heard the explosion.

Most people just walked by - and around - the relish and onions on the sidewalk. Oddly enough, there was no chili on the sidewalk - it went straight up and covered the underside of the umbrella. The force had blown me back onto the knee wall immediately behind me. This was a busy and highly visible street corner on Forbes Avenue in front of the old Schenley Hotel.

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Back when Forbes Field was across the street, the hotel housed visiting baseball players. Many baseball legends such as Babe Ruth, Ty Cobb, Casey Stengel, and Roger Hornsby could be seen relaxing on the Schenley's broad porch on summer evenings in the early 1900s. Long before I was born, the hotel had become the University of Pittsburgh Student Union. On this day, the corner was as busy as ever.

I was sixteen and the \$6,000 hot dog stand I had just financed through the manufacturer a few months before was now covered in dents - all of them pushing out.

I was the type of sixteen-year-old who really did not want to work *for* someone else. Why should I, when there were so many other opportunities out there? I didn't care much for school, either, so I worked hard and graduated high school early. This gave me a couple of years to earn some income before I started college, paying my own way (no student loans).

A few months earlier, I had discovered an ad in an Auto Trader Magazine placed by a man in Maryland who manufactured really nice, top-of-the-line hot dog push carts. A phone call and loan application later, and there it was in our family driveway, complete with a flat bed trailer for traveling. Like a caravan, my hot dog stand and I headed out every morning from burbs to the city.

We Thought You Fried

I remember a perfect spring Thursday morning. In my first two weeks, I had built a little business on this corner and had a regular lunch crowd. I was busily preparing for a new day.

The grill ran on propane from a tank that was housed inside. Apparently, a gas leak had developed inside the sealed compartment. Just before 11:00 a.m., as the first hot dogs cooked and just when the chili was piping hot ...

BOOOOOM!

Like the chili, the grill also went straight up carrying with it the first dozen dogs - my brain recorded it all in slow motion. Unlike the chili, the grill fell straight back down, which accounted for the second loud bang heard by half of Pittsburgh.

My first reaction was embarrassment: "this can't be good for business." I needed to clean up, pack up, and get out of there quickly. The bun cabinet was still full of the bags of hot dog buns I had purchased at Giant Eagle earlier that morning. My little metal money box sat alongside the buns in the cabinet with my usual eleven dollars of starting change.

The two boys who thought I had "fried" hung around and helped me retrieve things. They were both about sixteen as well, and probably lived nearby. It would have been obvious to anyone that they were from a very different

background than me.

Most of my sixteen-year-old peers out in the burbs were mired in the teenage angst of the 11th grade and were still a year or two away from being "counseled" toward a career path. You may think me strange, but I didn't consider other sixteen-year-olds to be peers. I felt nothing in common with them.

In a real-world kind of way, my Forbes avenue helpers were probably more interesting and entertaining. I will never know why they, like me, were not in school at 11:00 a.m. on this spring morning in the late 1980s.

Reagan

These were great years to be a teen in America. Reagan was in his second term and I understood enough to admire him greatly. He was self-made-by-merit and I was determined to be one day, too.

Cities like Pittsburgh contradicted the national mood at that time and was not the most optimistic place to be. Heavy industry driven by government-forced unionization had finally confronted free market reality. 150,000 Pittsburgh industrial jobs were lost, seemingly overnight. But it didn't appear to effect hot dog sales.

The name Carter and the leftist, regressive swill he represented was a bad word in our house when I was very

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young. I can remember the explosion of optimism when Reagan was elected. Carter and the Republican establishment of Nixon, Ford, and Bush had finally been defeated, and...

Boooooom!

It was morning in America.

When Reagan was a teen, he dug foundations at local construction sites for twenty-five cents an hour. He saved four hundred dollars - enough to pay for tuition, room, and board for college. No entitlement, no silver spoon, and no safety net - just individual merit.

Reagan's personal reading list included the deeply intellectual works of Mises, Bastiat, and Hayek. He studied these men extensively and they shaped his economic thought. Today, it is hard to imagine that there could have ever been a time in which Milton Friedman was considered a rock star. Friedman had a special series on PBS (of all networks) in 1980 called "Freedom to Choose." These were good, optimistic years.

Now, the smell and taste of an all-beef hot dog with relish races me back to those years standing under a yellow and white umbrella with a mild breeze blowing down Forbes Avenue.

Sometimes, the smell of diesel fuel also takes me back.

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Buses from downtown stopped on the corner across the street, as they still do today. Forbes is a one-way street moving east. The sign on the front of each bus announced different eastern neighborhoods or suburbs. Bus after bus belched diesel fumes taking people home to "Squirrel Hill, Wilkinsburg, Monroeville..."

The knee-high wall behind me became a bench much of the day. I occasionally made eye contact with bus passengers as their buses idled at the bus stop. I probably looked very *sixteen* to them. I was six feet tall and skinny. My hair back then was the color of a ripe orange rind.

It had already been a difficult week

Parking was always a challenge. Every morning I circled Oakland, the city's busiest neighborhood, looking for a space big enough to parallel park both my car and hot dog cart trailer. I often unhitched the trailer and slid as much as I could under the back of the car, so that I only had to feed one parking meter. Every two hours, I took quarters from the money box and ran to feed the meter (leaving my stand unattended).

On the Monday before the explosion, I returned to my old 1976 white Ford Granada to discover that someone had pushed the trailer way up under my car with their bumper while parking. I could not dislodge it. Four or five Pitt college guys helped me lift the back of the car and pull the

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trailer out.

I noticed that the car's gas tank had a big dent in it after that. From then on I was convinced that it only took half as much gas to fill up the tank.

My Forbes Avenue Helpers

I handled Monday's setback and showed up Tuesday – and paid two parking meters. But Thursday's explosion was out of my control. It would be my last day in business in Oakland.

I had tightened all of the valves properly. Perhaps the sealed compartment should have been vented, but the manufacturer did not intentionally cause it.

It took only a few minutes for me and my Forbes Avenue helpers to retrieve things and clean up. Many of the hot dogs were still sitting on or around the grill and the ketchup and mustard surprisingly had not traveled all that far.

I got out a package of buns and said "Help yourselves, if you want." They loaded up and walked off.

It wasn't until I had loaded the cart back onto to the trailer and put the money box on the front seat beside me that I noticed that my "helpers" had also helped themselves to my eleven dollars in change money.

We Thought You Fried

"Now that's low," I said to myself, taking advantage of a guy when he's down - and I offered them lunch for helping me, too. I had already forgotten about the petty theft by the time I got home.

I called the hot dog cart man in Maryland, and before I could say much, he repeatedly asked "Are you okay?" "Don't worry about me," I forced into the conversation, "what about the machine?" He retrieved the machine in a matter of days and had it as good as new in a matter of weeks.

The Big Z

After that experience I decided to switch to electric (go ahead and laugh if you want) and rent space with an electrical outlet in a department store in front of the cash registers. It was a Zayre department store; we all called it the "Big Z" because the big A, Y, R, and E on the sign out front had burned out.

I added a profitable popcorn machine, and at Christmas when the Big Z was open 24/7, I had to hire help. The more popcorn that sold, the more the machine would pop. After a while, the entire Big Z smelled like fresh popcorn and the cash register filled up.

I worked 12 hours a day, 7 days a week, for 16 months before leaving for college in South Carolina. I sold the business where it sat.

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It didn't occur to me until some years later that the reason the manufacturer was so panicky and so attentive is that he probably feared a lawsuit. The thought of finding a Dandy Nerts or Mickey Tripinfal (whom you'll meet later) and a neck brace had never crossed my mind.

I don't remember at sixteen making a conscious decision as to which side of the merit aisle I belonged. The university I attended in South Carolina has a reputation for pounding character into its students. But I'm still not convinced it is something that can be taught. Individuals will do what they want and will choose on which side of the aisle they are most comfortable.

An Intentional Explosion

Twenty years later an *intentional* explosion followed by theft in the hundreds of thousands of dollars plunged me into a rabbit's hole of fraud, corruption, and deceit where *everything* contradicted reality. I became entangled in the personal problems of a client that escalated beyond my control. I had no choice but to use the legal system to expose reality – my reality.

Chapter 4

Pump Jacks

My father peered out of the hole in the tower and yelled to me and Nicholas four floors below: "Here, grab this rope and tie it onto the window just in case the wind wants to take it, and I'll try to control it from here." He had his tape measure and more than once he checked the window opening size - the window had better fit because we had one shot to pop it in once we got up there.

1998

It was Saturday on Caesar's Head Mountain, the busiest construction day of the week. I was typically free on weekends from my day job and it was the only day of the week in which Nicholas, my regular helper (who was still in high school) was available. So, a heavy window install like this waited for a Saturday.

In a few years we would have the resources to hire a crane, but for now we had to use what we had - pump jacks.

For my 2nd project, I designed a rustic shingled cottage

Pump Jacks

that looked like two stories on the front from the street, but opened up to four levels of panoramic views on the back, cliff-side.

And because it was Saturday, my future wife Trace was on the mountain spending the weekend at her parents' house and hanging out at my latest project. To say the least, someone needed to get a picture of this, so she climbed down the hill with her camera.

At this point, I was still only four years removed from auditing foreign banks on Wall Street. So my construction worker resume would not impress, but I was learning quickly. I had seen pump jacks used at other construction sites and marveled that something so simple could function so well.

A pump jack is basically a metal jack with a foot lever and an extended arm to hold the walkboard you stand on. With each press of the foot lever, you and everything else on the walkboard scale a few inches up a 4x4 post. After a while you develop the skill to move up rather fast by pumping the lever quickly. You cannot find 4x4 posts four stories high, of course, so we nailed a bunch of 2x4s together, staggering them as high as we needed to go.

A typical three-section 5 foot x 6 foot window is heavy. This was a metal clad, high-end, Pozzi brand window which was extremely heavy. Nicholas and I would be able

Pump Jacks

to lift it off of the walkboards a little when we get up there, but not for very long. It had better fit.

And so with one foot pumping the lever and our hands holding the window upright, up we went. This construction site was not the place for those afraid of heights. As we climbed, we didn't have the luxury of gauging how high we were based on the ground extended to a horizon. The view behind us was the entire Upstate of South Carolina - 2,000 feet below.

Caesar's Head (elevation 3,200) is along the front wall of the Blue Ridge Mountains. On a clear day such as this, you would swear that you could see the Carolina Coast 200 miles away, if it weren't for the curve of the earth.

We stopped climbing when the walkboard was level with the bottom of the window opening. All we had to do now was lift the window across the one foot gap between the walkboard and the house. "On the count of 3: 1, 2, 3..." There is a certain *thud* and a certain feel when a window fits perfectly - this one did.

My father had grabbed onto the window from the inside to keep it in place. Once he determined that the gap around the window was uniform, he yelled: "quick, nail it!"

It is surprising how much work goes into a house this complex. There was always plenty for me to do alone on weeknights. The key to working alone at night is a safety

Pump Jacks

harness. I bought one.

My goal from the very beginning has always been to design and craft each of my projects on a speculative basis. In other words, create a structure with full creative license, without a customer involved, and sell only a completed house. In 1998 I was not yet at the point where I could afford to complete a project 100% before selling it. The construction loan I had on this project was not enough to finish.

It sounds extremely risky, I know, but once my early projects got out of the ground and the design was apparent, I always had a lot of interest. And this was in a community where nothing else was selling.

All of my banking was with Greenville National Bank (later bought out by Regions Bank), a one branch privately owned bank. It was owned by very respected local businessmen who apparently had a tremendous amount of faith in me and what I was doing.

If you have ever been involved in any type of construction financing, you know that loan officers frequently visit sites to inspect them and make certain their money is spent on the project and that it is on schedule. Greenville National never once inspected my projects.

All they knew was that every year and a half or so, there would be a real estate closing in which a family from

Pump Jacks

somewhere like Atlanta or Texas would purchase their mortgaged property and pay off the construction loan. They also knew that shortly thereafter, I would come walking in with a pre-construction appraisal and some sketches - ready to do it again.

I was their banking customer on the mountain range they could see 30 miles in the distance who called up occasionally asking for construction draws. I do recall that at one point they insisted that I take out a key-man life policy in case something happened to me.

My six mountain projects were all successful, but it wasn't easy. Most of the time I rode the pump jacks by myself - walking from end to end pumping each side a few inches at a time.

At 3,200 feet, the climate is more like Pittsburgh than what you would expect in South Carolina. That made working weeknights during the winter difficult, because it was always dark and cold. For that reason, we had made sure that project #2 was excavated, framed, and covered in plastic by winter.

Winter

As we headed in to winter, I can remember being more worried about this project than I would be about any of those that would follow. The construction loan was starting to get tight, and I hadn't even purchased the windows yet.

Pump Jacks

Part of me felt confident that, with this design and that view, someone will come along and buy it early. But then, my market was very limited.

Stone and mortar was relatively inexpensive, so I focused on interior stone work during that winter. I hung a light on a tree and mixed my mortar outside.

When our emotions are strongest, our memories seem to be most vivid. On one winter night, moonlighting on the mountain doing my tool belt job, I remember being especially exhausted and worried. It was very cold and I could have easily convinced myself to take a night off.

My hose kept freezing up on me when I tried to mix the mortar. As I started up the plank to go inside with a full, heavy bucket, I slipped off and fell in the icy mud, spilling my mix. My pants were soaked; I just sat there without even attempting to get up. My eyes welled up – mostly from exhaustion.

Feeling more discouraged than I ever would at any time thereafter, I sat staring at the lights of Greenville and Spartanburg in the distance. The woods around me were every quiet. In the summer, there is too much haze to see that far; but on a cold winter night such as this, every street light sparkled. I doubted whether it would ever be worth all of the hard work and risk.

(It would be.)

Pump Jacks

Within a few months, the ultimate purchaser came along and helped make my \$250,000 rustic cottage into a million dollar showplace. After that, anything I could scrounge together went toward buying the next of three more mountain lots and three more construction loans.

This would be a good time to mention that all six of my mountain project "patrons" were exceptionally good people. I never had a contract of any type, just a handshake. Their word was good enough for me, and apparently they felt the same way. In fact, of my total 17 projects to date, only five have had written contracts, and only because it was required by their lending institution.

In the business world of multi-million dollar extreme resort homes, this kind of trust usually doesn't exist. Long-term reputations can only thrive on merit. Families purchasing multi-million dollar second or third homes are willing to spend what it takes to get what they want - but nobody wants to be gouged or throw money away.

Once I sold these not yet completed houses, I incurred the cost of construction as it went along and billed after the fact - I extended credit out of respect and convenience. This, too, never happens. I developed my own spreadsheet based weekly "progress billing" system to account for the thousands of invoices processed through complex construction. This system and a lone checking account processed twenty million dollars over a decade without a

Pump Jacks

single issue. That, too, never happens.

Every client was provided sufficient paperwork to have a quick independent audit of their account at any time. It never occurred to anyone to do that. The reputation I had earned did not exist because nothing bad happened to cause anyone concern; it existed because it was earned.

My most vivid memories of these mountain houses seem to include some element of physical exhaustion. These years were more brawn and less design. I lived with my parents on the mountain and so it was a short walk to shower and sleep on those late nights. My mother brought lunch over for the crew on Saturdays and me dinner at night.

After six projects, I maxed out my potential on Caesar's Head. In 2001, it was time to head down the mountain to Lake Keowee, focus more on design, and take that next big step - a really big step.

Chapter 5

Plaintiff's Exhibit L

Greenville Orthodontist Tom Atkinson - or Dr. Tom as he's known to his patients, colleagues and friends - tells the story of the former patient who ultimately became the architect and builder of the Atkinson family's Lake Keowee dream home.

"In his first life he was a CPA," Atkinson says of Greenville resident Scott Kunst. "I remember the day he came into my office and told me it was the happiest day of his life because he had just quit his job to build one-of-a-kind spec homes on Caesar's Head. I thought he was crazy."

But when the two men's paths crossed again a few years later, it didn't take Atkinson long to realize Kunst was more than just your average builder.

It all came together quite ironically.

Atkinson and his wife Cathy had been enjoying the mountain views near Caesar's Head State Park when they

Plaintiff's Exhibit L

stopped to dine at a local restaurant. There, they came across one of Kunst's brochures.

"I thought to myself, Hey, I know this guy," Atkinson remembers, as excited as if he were seeing the brochure again in his mind. "So, I called him up. When I saw the houses he had built on Caesar's Head, I knew he was the one, I didn't want anyone else to build it."

(The above is an excerpt of a 2005 issue of At Home Magazine.)

I am certain that this article never expected to be dusted off, scanned, printed on Kunstwerke's large color printer (typically used for architectural drawings), glued to big pieces of foam board, and labeled "**Plaintiff's Exhibit L.**"

It was at most something to use as a marketing tool or stow away somewhere as a memento.

In trial after trial I handed the full magazine to a court reporter who slapped a sticker on it and wrote "**Plaintiff's Exhibit L.**" The "Living a Dream" article from 2001 I mentioned earlier typically became "**Exhibit K.**"

One of the awkward things about representing yourself in a civil trial is that at some point you have to call yourself as a witness and question yourself on the witness stand. Moreover, in every case, I was my own main witness. Normally, a plaintiff such as I would have a lawyer who would call him to the stand and ask softball questions so that he could get the plaintiff's background and story across

Plaintiff's Exhibit L

to the jury. This is usually the time when media such as "Exhibit L" get placed into evidence for a jury to consider.

In response to my unique situation, judges usually allowed me to be sworn in, take the stand, and just talk to the jury. As I testified, I worked my way through a large stack of exhibits - sharing them with the jury. I would pause occasionally in order to make a motion to have an item submitted into evidence. If there were no objections, I would hand it to the court reporter who would then label it and keep it. After I had finished "questioning" myself, Dandy Nerts would take his turn and cross-examine me.

This was an awkward tight-rope walk because a jury would not be receptive if I came across as someone with an over-sized ego sitting up there bragging about myself for hours. The real purpose of this type of exhibit was to contrast the person I am with the character of the defendants on the other side of the aisle. It was critically important to describe the type of person that *they* were willing to cause unjust harm to.

The same is true here.

Exhibit L and others were submitted in order to create a chronological perspective of the months and years before and after the VanGrab explosion in March 2006.

Other unsolicited correspondence which became exhibits include this note from the interior decorator on the

Plaintiff's Exhibit L

VanGrab project. She wrote this just before the explosion:

Scott,

Every now and then it's nice to pause and reflect on what we are truly thankful for. I was doing just that this morning and wanted to drop a note to say thank you for allowing us to put the 'icing on your cakes.' I have always told you that I think you are a wildly gifted artist and over time I am learning you are also a really neat person who is sensitive and gentle in spirit.

I look forward to working with you on many projects over the coming years as we both develop our art. Thank you for the chance to help create something that will last long beyond ourselves. That's the good stuff! The stuff that is really fulfilling. Artist to artist. Tracy [Fowler], Fowler interiors. (You will later find her deposition after the explosion fascinating.)

I always made it a practice to provide the contact information of my past project owners to new prospective clients and encouraged them to contact them in order to get a better understanding of how I did things. This is an email from a new client that I received ten months before the explosion - this was her response to her research:

Scott,

Such accolades I've received from your clients!!! They all

Plaintiff's Exhibit L

confirm our feelings about you, your talent and the quality of your work. We are very excited to be honored to work with you.

Two months after the explosion, I received this email from a client who is a retired lawyer. His house had just been completed a few months before:

Scott,

I don't know how you got yourself into the current jam and am sorry you didn't talk to me early on as I used to help people avoid situations like yours. I am not writing about that, however. With all the grief you now face, I just wanted you to know that [...] and I love the house. It looks spectacular and we love living here. We have been in the [Johnny Rocco] house and it is great also. Frankly, your houses have the best look on the lake. I know you will have more grief before you are done, but I wanted you to know this and hope you get back to designing.

And as one last example, I received this note shortly after the above email - it had a sketch of the house the owner had commissioned:

Scott!

Thought you might enjoy seeing our wonderful house. We still love it! I am in need of your vision! I would love to talk to you and would love for you to come by and see for

Plaintiff's Exhibit L

yourself. I am here full time – finally!

We need a deck - and it needs to be yours!

For me, the tangible merit of my work or my reward is not dependent upon or enhanced by being written about or acknowledged. My reward is the work itself done my way. Those that purchase my work are served by the merit of that work - not by me. Howard Roark could not have said it better: "*I don't intend to build in order to have clients; I intend to have clients in order to build.*"

At the time Dr. Tom called, I was wrapping up my sixth project on the mountain and had two lots remaining to build on. The market potential for the neighborhood meant that I would have to continue to remain conservative on these last two. I had already maxed-out my potential in that location. There was, however, much more opportunity and money being spent at several new gated resorts on Lake Keowee located in the foothills below. This might be an exception to my spec-only policy worth making - if it opened other doors.

I knew that Dr. Tom could be trusted with a handshake. So I said yes.

His property was on a point surrounded by water on three sides, so there was enormous design potential. It only took a few months to design something and break ground.

Plaintiff's Exhibit L

I was also motivated to make an exception to my spec-only rule by the fact that I had decided to pursue a program at an architectural school in Savannah, Georgia which added a master's degree in architecture to my accounting degree. I didn't need it, it was just something I wanted to do. If I accepted a few more projects like this (without speculative risk) I could structure my business so that I could be away in Savannah a couple of days a week.

My nine non-spec projects

Between 2002 and 2005 I accepted a total of nine special non-speculative projects before returning as planned to creating my own projects on my own land exclusively. The VanGrab house, commissioned in 2004, was number eight. Some of these nine projects were so large and complex that the design and construction took more than two years.

The creative process for all my houses (spec or non-spec) was wide open and fluid. There was no translation from architect to builder to construction worker. Even though I used the latest architectural software, 3-D imaging, and handcrafted full-color scaled models of every project, nothing was fixed - each project was expected to evolve. My process and mode of construction was specifically designed to allow a project to evolve and change significantly on the spot if that's what it took to get the look I wanted,

Plaintiff's Exhibit L

I only accepted a non-spec design-build client if they agreed to the same process through which I had created my spec projects. In every instance, as a structure began to take form, each owner made significant changes - usually some type of expansion. It was my job to make it all work and fit within the same aesthetic form.

There was no fixed budget and no fixed timeline. Unless their lending institution required it, there was no contract. There was no builder 15% markup or 10% architectural fee. My company charged a small fixed monthly fee for design and construction management. This was the only way to keep these open-ended projects affordable.

I disclosed the finished costs and budget categories of all previous houses to current clients in order to minimize any surprises. The cost of the subcontractors and suppliers who did the work and supplied the materials was passed on at cost, without markup.

Normally, a builder maintains a sizable construction deposit in a construction account from which he pays the subcontractors and suppliers. If there is bank financing, the bank draws usually go directly to the builder. I insisted that bank draws go to the client - I did not want to be responsible for handling fiduciary money.

I incurred the cost of subcontractors and suppliers through my company Kunstwerke and billed after-the-fact.

Plaintiff's Exhibit L

All nine contracts were reimbursement contracts. I used the same Regions bank account and weekly progress billing system that had been used since my very first project.

Many of you reading this who are familiar with residential construction will understand that all the above is excessively generous and not typical. But creating houses like this is anything but typical. The relationship by necessity was unique and informal. The VanGrabs understood this.

I created an S Corp. named Kunstwerke to handle these nine special projects. Coincidentally, my last name translates "art" in German. Kunstwerke translates to "works of art."

(I have taken the time in this sub-chapter to describe the business details of my four year non-spec client window of time because these details will become very important later.)

A very big step back to spec only

The house referenced in the note featured above (#3), which included a sketch, sits on a hillside above Brevard, North Carolina. The couple who own the property are exceptionally good people. They were determined to have me design and craft something for them even though I was not a licensed builder in North Carolina. They agreed to acquire the building permit themselves and be listed as their own builder. They wanted *my* work and knew I could

Plaintiff's Exhibit L

be trusted. The relationship by necessity was unique and informal.

In 2005, while five of the nine were still under various stages of construction, I stopped accepting any more. It was time once again to take that next step - a new door had indeed opened. I would now design and craft spec-only buildings until completion; these would be large, extreme houses on a scale I never imagined.

I partnered with an investor with the resources that would allow me to complete a project without worry and without client interference. At the time of the VanGrab explosion, two projects were underway. So, after a decade of hard work, it had all come together.

You could say that the Chili was piping hot.

Cold

Chapter 6

Cold

A small red, rusty pickup suddenly appeared in my rear view mirror out of nowhere - practically touching my back bumper. Trace and I were on our way to The Reserve at Lake Keowee driving on Highway 183 - a two lane country road between Greenville and Pickens.

The truck then raced beside us and swerved as if attempting to run us off the road, and then just disappeared. We should have chosen a car we wouldn't be recognized in. It was April 2006 and the VanGrab explosion had just occurred weeks before.

My Reserve access card still worked and got us in a back gate - I was still a property owner after all. Luke, my site manager at the Weasely (partner of Dandy Nerts) project, wanted to talk.

Luke was not involved in any way with the VanGrab project and had become a good source of information for us. So we met him along a deserted street in The Reserve,

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far away from other houses. The Reserve is remote and hilly and was mostly undeveloped back then.

Bronson, my site manager at the VanGrabs, had recently confronted Luke on a Reserve street and said "why are you lying about Scott?" Bronson believed Rollie when he said that I was long gone and on my way to prison. Bronson also believed Dandy Nerts when he told him that he was going to make sure that I did "jail time." And old Tripinfal threatened Bronson with the same jail time if he didn't "cooperate."

Luke appeared more concerned about the truth and had been telling subcontractors a very different version of events than Bronson was. Bronson was site manager at both the VanGrab and Tripinfal project, so he was at ground zero.

Luke relayed "rumors" to us that he had heard around the Reserve. Any information we could get from him would eventually be critically important. He mentioned as an aside that Huey Weasely told him that the VanGrabs were "*cold and greedy*."

I laughed.

And shook my head in disgust.

Of course Huey was right, but how low do you have to be for a plaintiff's trial lawyer to opine that you, a client of

Cold

his firm, are *cold and greedy*? And that's not cold and greedy as you and I would define it, it's *cold and greedy* from the perspective of an injury trial lawyer!

Perhaps *cold and greedy* might be a top level in the VanGrab pyramid somewhere above "Diamond" - I don't know. Nonetheless, the phrase stuck with me, and I remembered two years later at Luke's deposition.

From my own *self-made-by-merit* perspective, I would use much harsher terms to describe the VanGrabs. On the other hand, I would describe the vast majority of those that I ordinarily do business with as warm and generous.

As for the "cold," "dog-eat-dog," "greed is good," "cut-throat," "whatever you can get away with" business ethic - that's for the other side.

Weasely didn't mind his firm doing the dirty work for the VanGrabs (for a fee), and the VanGrabs didn't mind using a firm whose lead partner considered them both *cold and greedy*. (you will discover that *and* is the key word.)

Yep, as I said before, everyone on that side of the aisle just seemed to me to belong together.

The Weaselys

Huey Weasely's name appears first in a list of five names of a law firm in Greenville, South Carolina which

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specializes in personal injury cases. "Nerts" appears fourth. It is hard to explain exactly why, but Huey reminds me of John Edwards, the former VP candidate - except without the hair, smile, and silver tongue. Huey is a bit raspy. Come to think of it, there is no physical resemblance whatsoever - but they both leave me with the same gut feeling.

His second wife Suzie is also an attorney. I am not certain of the exact reason, but she is not part of her husband's firm. She has her own law office in a little house on Augusta Street in Greenville where she primarily does real estate closings. Through connections, she closes most of the lot sales at the Reserve.

She handled most of the property closings related to this story. If, for financial reasons, you are having trouble closing a property mortgage, and your own attorney is refusing to do it (and your builder is refusing to sign off on it), I highly recommend her. She'll get it done.

The Weasely's House

Dr. Tom recommended me to a friend, an eye surgeon, who had property in a new resort community not too far from his own property called The Reserve at Lake Keowee (The Reserve). Individual lots there are priced in the \$400,000 to \$1,000,000+ range. It boasts amazing golf courses and club facilities.

The house I designed and built for the eye surgeon (non-

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spec project #2) was one of the first houses built in The Reserve and had become popular with the sales staff. Suzie Weasely was already closing lot sales for The Reserve at this time and she and her husband also purchased a lot in one of the first sections to open.

Suzie heard about me from the sales staff. This is how I met the Weaselys. She asked me to come up with some ideas for their lot and so after numerous sketches and meetings at their home and her office, by April 2003, we were ready to go.

I disclosed the full cost of my previous projects and my funding process which included the absence of typical builder and architect percentage fees. I knew that this appealed to them more than any specific design work I had done. Suzie had very specific ideas of what she wanted. My clients in all of the other eight non-spec projects had specific requests for living space and amenities, but beyond that, they all said "do what you would do."

Suzie was adamant about a French chateau/ storybook look. The design process evolved into the final front and back sketch featured in the photo gallery provided for this chapter. She took these sketches and the first set of architectural prints to the sales office in April 2003 and made quite a scene about how excited she was.

This may be a good time to mention that by 2004 I had

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developed a significant presence and reputation in The Reserve. I had six multi-million dollar resort homes under construction. I knew the entire sales staff personally and was a regular at architectural approval meetings. I was very selective as to which projects I accepted and; if you were to look at a map of The Reserve in March 2006 and mark my projects, you would notice that they were located mostly on the prime \$1,000,000+ "point" lots surrounded by water.

There are strict architectural guidelines in a community such as this, so nothing here could be considered 100% uniquely mine. I did, however, earn a reputation for nestling structures into very steep or difficult terrain. The sales staff would regularly ask me as a favor to visit a site with them along with prospective buyers to discuss site placement, even knowing they were not clients I would be interested in.

(This is why when the VanGrabs in 2004 needed someone to create something for their multiple lot site, the sales staff gave them two main recommendations: me and a large architectural firm in Atlanta.)

Back to the Weaselys - the square footage of the house in the initial plans as shown in the sketches and model was only about 2,500 sq. ft. The initial construction cost projection was \$750,000 and was raised to \$900,000 before construction. This was in line with my previous nine projects.

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When I compare the initial look with the finished project, I am reminded just how much the project evolved over time. The open-ended process ultimately allowed the Weaselys to control cost and timing. It is really the only way an *extreme* house like this could be built.

Over two years of construction the initial \$750,000 estimate grew to a whopping \$2,300,000 actual. To say the least, it evolved.

For example, during excavation, it was decided to add an underground wine cellar in the hillside across the courtyard from the main entrance which would eventually cost \$120,000.

In June 2003, I was asked to add a guest apartment above the parking area which had a final cost of \$140,000. Another \$130,000 would be added for an edge-less reflecting pool with underground storage. And so by the time the framing began, the cost projection had already exceeded \$1.2 million.

In December 2003, as the roof system was being framed, I was asked to use the clay tile Suzy had seen at the entrance of a nearby community, rather than the tile originally planned. The tile eventually chosen was handcrafted in Provence. It was purchased through an importer named Northern Roof Tiles. My own crew made custom slats to give the roof a sagging, aged look. The

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project was delayed three months waiting for the tile.

Much of the artistic brick and stone work you see was done by the project's remarkably gifted *resident* mason and crew. All of the brick was handmade and the mortar was a special mix from sea sand - all to make the exterior appear authentic and hundreds of years old. The masonry work ultimately governed the two and a half year timeline of construction.

The tile roof was not complete until August 2004, and then we could focus on the interior. This is where the real time and dollars were spent. Every ceiling in every room was crafted as a dome and artistically painted. A furniture maker handcrafted cabinets to resemble furniture.

I now had a landscape architect who spent his time mostly on my projects. Special grasses and other plantings were chosen to resemble a Provincial countryside. We teamed up with a professor from Clemson University to install a state of the art shoreline erosion control system which avoided using large pieces of gravel (or rip rap as it is often called). That wasn't cheap, either.

Bigger and bigger

I can design anything and my crew could build anything. The fact that I had done the physical craft myself in the past helps me explain what I want and understand what is possible. So whatever the Weasleys wanted, they got. This

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may be the only house in the Southeast with flying buttresses. The dome in the underground wine cellar is a work of art. All of the stone and brick arches are genuine structural arches.

It was a long, long project. I had other houses which began a year after this one finish months before. \$2,400,000+ in supplier and contractor billing was processed as a courtesy through my company Kunstwerke's spreadsheet based -progress billing system. All invoices were passed along at cost without markup.

The average builder percentage fee in The Reserve was 15% and architectural fees in the 10% range. So there would have normally been another \$575,000 tacked on to the \$2,400,000. My total fee for both was \$48,000. Too warm and generous, you say? No, I charged what I wanted to - I'll explain later.

The most generous aspect of this relationship was Kunstwerke's weekly billing system which allowed the Weaselys to avoid a construction account or a construction deposit. This is where our attention should be focused. Kunstwerke provided credit funding to cover subcontractor and supplier costs until the Weasely's reimbursement caught up.

At the end of any project, there is a full reconciliation in which cash paid in by the property owner must equal cash

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paid out by Kunstwerke. Otherwise, Kunstwerke or subcontractors can place a lien and foreclose on the property. This can be a significant legal issue, especially if there is a construction loan on the property. It may prevent a permanent mortgage.

Final account reconciliations have always resulted in a cash balance due Kunstwerke. On a project this long in duration, it can be a sizable balance.

In February 2006, as the project was wrapping up, I received a fax from Suzie Weasley's office stating that they needed an attached builder's affidavit signed and returned for their closing. The affidavit is used to ascertain that everything is paid up and that there is no possibility of liens. I didn't sign it.

Until now, the Weaselys had never missed paying a weekly progress billing and they had a large final reconciliation about to be due. Suddenly, two February weekly reimbursement billings piled up without response.

Something was up. I just didn't know it yet. Somehow Rollie, the VanGrabs, Nerts, and the Weasleys already knew what was happening. Did anyone else?

As of February 24, 2006, the total cost of all subcontractors and suppliers to date was \$2,540,319. The total reimbursed by the Weaselys at that date was \$2,402,685. That is a \$137,634 deficit in legally restricted

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funds due subcontractors and suppliers.

If I had only listened hard enough, I probably could have heard a clock ticking. We were just days from the VanGrab explosion.

Mickey Tripinfal

Chapter 7

Mickey Tripinfal

The Meeting in the Barn

“Where’s my money?” Mickey Tripinfal asked angrily. He sounded like a fifty-eight year-old bully demanding someone’s school lunch money.

Bronson sat quietly in his chair and didn’t say a word. I sat to his right - directly across the table from Tripinfal. It was July 26, 2005 and Tripinfal had demanded a meeting in his red barn. “The barn” sat on acreage on a bluff in Six Mile, South Carolina and had a view of Caesar’s Head 20 miles away.

“The barn” had been built in a lower part of the property a few years before Suzie Weasely phoned me asking that I call a lawyer friend who was looking for someone to design and build a house. After a couple months of design meetings with Mr. and Mrs. Tripinfal around a large conference room table at his law firm in Greenville, we

Mickey Tripinfal

broke ground on top of the bluff in January 2004.

The barn is actually an air conditioned facility which houses vehicles and equipment in one half and has a livable area in the other. Tripinfal regularly hosted Clemson football parties in a large gathering room. We were sitting at a table in the big room.

The house on the bluff above the barn was in its 17th month of construction. The little farm house the Tripinfals had once envisioned had evolved into an 9,500 sq ft. stone mansion. The project was roughly 70% complete and had just broken the \$2,000,000 mark.

Why did Mickey demand a meeting?

Why was he demanding money?

I was unaware of any grievances he might have had regarding his project. There was no waste in the \$2,000,000 cost of construction. And there were no delays or timing issues other than those caused by a cast stone supplier in Dallas - we were both frustrated over that. I had made two trips to Dallas at my own expense to resolve that issue.

Did he have a gripe about his Kunstwerke fees? Tripinfal had been paying Kunstwerke's old design/build rate from 2003 of \$4,000 monthly for the past twenty-one months - totalling \$84,000 (21 x \$4,000). In July 2005, other clients were paying between \$6,000 and \$9,000 depending on the

Mickey Tripinfal

project.

Based on average local rates, he would have paid any other design/build firm \$500,000 at this point, not \$84,000 - so he definitely had no gripe that the fees were excessive. He was getting a lot of *warm and generous* value.

Van, the Tripinfal law firm's bookkeeper, had phoned me approximately a week before and said that Tripinfal had noticed that in some of his early weekly billings, the \$4,000 fee description stated that it would be limited to 16 months (the estimated timeline of the original, smaller "farmhouse"). The "16 month" language had disappeared after a few months when it became obvious that the scope of the project was expanding rapidly at Tripinfal's request. Tripinfal insisted that the fee was capped at \$64,000 (16 x \$4,000) and demanded a \$20,000 refund.

This really angered my father who advised me: "don't refund that man a dime." I had not yet refunded the \$20,000 and was not sure if I would. That's why he demanded the meeting.

What Tripinfal was doing was underhanded and dirty, but my gut told me he was capable of far worse (trust your gut).

By July 2005, the last few of my nine special non-spec projects were winding down and my first investor-financed spec project was well underway. I had finally made it to

Mickey Tripinfal

where I wanted to be, and I really didn't want any trouble. It is important to recognize when there is much more at stake than money. So, I handed him a check.

Bronson remained quiet. I am glad he was there as a witness because this was the type of event that would later be enormously helpful when confirmed under oath - whether in the pages of a legal brief for a judge to read or eventually here for you to read.

After handing Tripinfal the check, I sat there staring at him, making direct eye contact. This must have unnerved him because his face turned red and he said "is there a problem?" He then blurted out: "because if there is, we can just part ways right now." I didn't react - I just kept staring.

Then suddenly, as if turning a switch, Tripinfal calmed down and apologized. He then made a remarkably candid and accurate admission to us, perhaps in an effort to explain away his behavior. He said that he was "just an old trial lawyer" and that there were only two men he respected: "the man in the robe and the man upstairs."

Okay, the obnoxious bully just admitted he didn't respect us nor anyone else, as well. He wasn't telling *us* anything new, he was stating the obvious. Truth is, I had no respect for him, either - but *my* opinion was based on merit.

The aisle which separates us is very wide indeed.

Mickey Tripinfal

The Tripinfals

Mickey's name appeared first in the name of a three-partner law firm in Greenville, SC which specialized in product liability and personal injury. It was mostly *his* firm. He dabbled once in state politics and described himself as a "yellow-dog" Democrat.

The "D" after his name alone would earn him a lifetime seat on the other side of the merit aisle - exclusive of his career choice. Don't get me wrong - there are lots of "R"s over there as well. (It's much harder to find any "L"s - individual merit is just another way of defining natural liberty.)

Mrs. Tripinfal was always pleasant and polite to me and everyone in my organization. Unlike Huey Weasely, Mickey was not married to a lawyer.

The Tripinfal House

After the meeting in the barn concluded, there were typical construction issues, such as samples, to approve up at the house. So we agreed to meet again up there. Tripinfal got in the ATV that he used to drive around the property and drove up.

Bronson and I took our time walking up the hill, discussing our options. This memory is so vivid to me, I can remember how high the grass in the field was as we

Mickey Tripinfal

walked.. Bronson reminded me, as he had at least once a week for months now, how much he hated Tripinfal, but that he would stay on if I wanted him to. We could conceivably negotiate a departure and be rid of him. The house was far enough along that Tripinfal could act as his own builder and have the subs finish it.

It was about to be mostly interior work now, and the decorators were mostly managing this aspect. I should mention that Tripinfal hired Fowler Interiors. This is how I met Tracy Fowler.

I was determined to stick it out, because my reward is the creation of something extraordinary and tangible - not serving Tripinfal.

Early in construction, as the house was beginning to be framed, Tripinfal asked me to come up with a pool design which flowed with the initial plan. I spent a few weeks, at no additional charge, designing a two-level pool with a pool house. It would be trimmed with the same cast stone, so my manufacturer in Dallas had to price those pieces, as well. For budgetary reasons, the pool idea was cancelled before it began.

Kunstwerke also agreed to manage the construction of a one-acre man-made lake on the property. The dam construction and engineering coordinated with my landscape architect was an enormous undertaking.

Mickey Tripinfal

Kunstwerke handled the financing and billed after-the-fact. All of this was included in the \$4,000 monthly fee.

The interior of the house is as grand as the exterior. The grand entry hall features a twenty foot dome and a sweeping curved stairway. A steel bridge trimmed in wood crosses the second floor of the main hall. Oversized elaborate trim moldings kept two trim crews busy for months. It is also the location of my first residential elevator.

Bronson was by far my best site manager, and he managed this project as well as the VanGrabs at the same time. What was unusual about the meeting in the barn was that this was the first and last time Tripinfal showed himself to me. Unfortunately for guys like Bronson or the Mexican masonry crew, this was just a typical day.

A couple of years later, after I sued Tripinfal (and Kunstwerke sued Tripinfal six months after that), he made certain that he and the bulk of his firm traveled to every deposition, even out of state. It was probably meant to intimidate.

Bronson's deposition occurred in a little office in Brevard, North Carolina. Tripinfal sat as close as he could to Bronson and glared. It is not enough to just read Bronson's deposition where I ask him to confirm his past statement that "I hate the man," you had to be there.

1

Mickey Tripinfal

I guess that I was supposed to be intimidated or nervous when I walked into Tripinfal's law office and deposed him at the same conference table where the design meetings had occurred years before. This time it was surrounded by his law partner and staff.

This quote was ringing in my head: *"A creative man is motivated by the desire to achieve, not by the desire to beat others."* - Ayn Rand

A fictional novel was becoming too real for me. No one creates, produces, or innovates by force or intimidation. We need causality and merit as the determining factors of value. Producers achieve only through the meritorious exchange of value for value.

No one should have expected Tripinfal to act any differently than an injury lawyer in his personal business. He didn't suddenly start respecting other human beings the minute he left his law office.

"The verdict you pronounce upon the source of your livelihood is the verdict you pronounce upon your life." - Rand.

Since that July 2005 meeting in the barn until January 2006, Kunstwerke hadn't charged a fee and was losing money at the Tripinfal project. Kunstwerke's own cost of managing a project of this size was \$3,000 a month, excluding any compensation for my time and effort.

Mickey Tripinfal

Since Tripinfal threatened that the language of the billing was the dominant agreement, I placed a line in the 1/23/06 weekly billing stating that I needed to reinstate the \$4,000 monthly fee and recover those months lost, and I billed for \$4,000 in that statement. To my surprise, he paid it without comment. So great - contractually I was back to at least recovering my cost.

But wait, it was not yet February. Just like the Weaselys, Tripinfal's last payment would also be February 15th. Mickey didn't mind paying one of the \$4,000s because he was convinced that in a few weeks, he would be able to sneak out the back door and not pay anything more.

As of February 24, 2006, the total cost of all subcontractors and suppliers to date was \$2,445,448. The total reimbursed by the Tripinfals at that date was \$2,374,542. That is a \$70,906 deficit in legally restricted funds due subcontractors and suppliers. If you bring a Dandy Nerts-like dance home from the office and use it to avoid your own personal debts, you may get yourself in trouble. And Tripinfal did.

You have now met Dandy Nerts, Rollie, the Weaselys, and Mickey Tripinfal - all of the individuals from the other side of the aisle who somehow knew about the VanGrab explosion in advance.

Trace

Chapter 8

Trace

K1200

Trace leaned forward, lifted her visor, and yelled "It doesn't feel like a hundred if you put your head down!"

I yelled back "that's German engineering!"

It was date night, and there was a 1200 CC four-cylinder canary yellow BMW motorcycle between our legs that could leap from 0 to 60 mph in 3.55 seconds with just a slight twist of the wrist.

We were on the straight, two mile stretch in Cedar Mountain, North Carolina off of Highway 276 near the Dupont Plant on our way from Caesar's Head to Asheville. There are not many remote stretches in the Blue Ridge Mountains this straight for this long where you could put your head down and have a blast.

I had made sure I was at the dealership a few months before when they opened the crate from Munich. It was now July 1998 and I had already run it out to Wyoming

78

Trace

where the roads are much longer and straighter - the type of place where it is engineered not to feel like 125 mph. So, 100 in Cedar Mountain didn't feel that much different than 60 - if you put your head down...

From 1998 to 2005, every Friday and Saturday night on Caesar's Head was date night. Once construction work ended, Trace and I would take off on an hour long trip to Hendersonville or Asheville. We let the weather decide if it would be motorcycle or truck. On Sunday nights, Trace would head back down the mountain for another work week in Greenville.

These seven years were crazy busy - there were 16 projects starting with a \$149,000 cottage on Caesar's Head and ending with extreme multi-million dollar resort mansions on Lake Keowee.

Later in 1998, when I was worried about project #2 and started driving the little Nissan pickup, I also sold the K1200 - you do what you have to do. Saturday nights were getting too cold for the bike, anyway.

When the cold winter of '98 ended and project #2 sold in the spring, the first thing I did was go to the BMW motorcycle dealer in Greenville and buy another canary yellow K1200.

These years seemed to race by. Our leisure time was compressed into weekends and a couple of trips a year. We

had no reason not to expect that each new year would be better than the last, and each year was. We started a tradition of ushering in each new year somewhere special - a favorite spot.

For New Year's Eve '99, we stood for six long hours in Time's Square waiting for the ball to fall. It was so cold that we wore hotel towels under our clothes. The NYPD corrals each block with barricades and the crowd gravitates towards the end closest to the ball. We were packed like sardines against a young Asian couple and a large group from Bucharest who spent the whole night singing what may have been the Romanian Anthem. Whatever it was, they were swaying back and forth - so we and the Asian couple had no choice but to sway as well. We had a blast.

For 2000, we decided we wanted to be in Jackson, Wyoming and Yellowstone to usher in the new millenium. There is nothing quite like snowmobiling in Yellowstone and the Gros Ventre Forest when the traffic and tourists are gone. Slide Lake sits on the edge where Jackson Hole ends and the Gros Ventre wilderness begins. The rental agency delivered our snowmobiles right to the cabin. We stood on the narrow bridge which crosses the creek that feeds into Slide Lake and watched the sky light up with fireworks from the other side of the butte in Jackson.

We returned to Jackson and Times Square a few more times.

Trace

December 31, 2005 was a bit more simple - we drove up to the 'Burgh and took in a Steeler's game and watched the fireworks from a bench under the Andy Warhol Bridge, away from the crowds. This New Year's Eve was different - Trace was now wearing a ring with a princess cut diamond. Plans were being made to make 2006 very special.

As we watched the fireworks shoot skyward from a barge near The Point, we could relax and enjoy the fact that two decades of hard work and risk had paid off. This success was not measured in money, however, it was measured in those factors which further secured my freedom to do my own thing and prosper solely on merit.

The 12/7 work weeks handing popcorn and hotdogs over the counter at the Big Z, the months of study and the two long days sitting with 2,000 other New Yorkers in a building on a Hudson River pier struggling with the CPA exam, the late nights alone on a roof with a rope around my waist struggling with a sheet of plywood. It was all worth it. If I could go back in time, I wouldn't change a thing.

But I wasn't alone. Every success and accomplishment belonged to my parents, as well - and since 1998, Trace, too.

Perseverance combined with merit will always be a winning ticket. Professionally, I could not have been more happy and proud of my portfolio of work. I can't explain

Trace

exactly how or why, but Trace meant more than all of this and made me even happier. I think that is how it is supposed to work.

Trace

Some guys who share my reading taste might opine that a beautiful, determined, independent, highly intelligent, and rational - yet loving and devoted - woman like Dagny Taggart is pure fiction. Not so.

Add sky blue eyes and natural hair that is either blond or red depending on the sunshine, and you would have met Trace.

The fact that she knows tonight's Pirate starting line-up and could give the manager a suggestion or two, or the fact that she rarely misses a Penguin puck drop, or the fact that, usually, when I start the car after she has been driving, sports radio is blaring from the speakers - that is all just a bonus.

We met when we were both 25 years old during one of her weekend visits on the mountain. We just clicked. She is not the type of woman that you need to make an effort to get along with. She has a refreshing rational perception of reality, which means she is the polar opposite of Lillian Rearden.

She is also a well-educated and hardworking woman who

Trace

asks nothing of anybody else other than to exchange the value of what she has earned. When I met her, she was already having her first house built in a neighborhood in Greenville.

Obviously, Trace is not a lawyer, but she can study a legal text for the first time and have a better conceptual understanding of collateral estoppel than a South Carolina 13th circuit court judge who has been on the bench for years.

A couple of seasons ago, there was a controversial call at homeplate that went in the Pirate's favor late in a game. Trace turned to me and said emphatically: "Oh no! I don't want us to win *that* way. We would have won otherwise." I just smiled. Life is so much sweeter with someone so comfortable on this side of the aisle.

If eyes are the window of the soul, every day I see a soul utterly incapable of harming another creature and a heart full of love. These same eyes remind me every day that I am blessed beyond description.

Barcelona

In September 2005, Trace and I took off from Atlanta for a special week in Barcelona. I am a great admirer of the Catalan architect Antoni Gaudi and had visited Barcelona once before in order to study his work. We rented a car and toured the south of France and the Mediterranean coastline

Trace

for two days. The rest of the time we stayed in the city and did all of the typical tourist Gaudi-related stuff. There was no safe place to hide the ring that I had purchased in Greenville two weeks before and so I kept it in my front pant's pocket with loose change the whole time.

I already had the perfect spot in mind. Parc Guell is a garden complex with architectural elements designed and built by Gaudi in the early 1900's. The park climbs a steep hillside and offers spectacular views of the city from the top. There is a series of stone balconies at different levels of the park designed to blend in with the natural landscape. We made it to the top and to an ideal balcony just as the sun began to set. We stood for a moment reminiscing about the past week as though it were already an old memory worthy of a scrapbook.

Trace had no idea. We had never even discussed it. I will never forget the look in her sky blue eyes the moment I knelt down and asked her to marry me.

If anyone ever deserved a special moment and a special memory, she did.

We didn't want a long engagement, so once we got back home, we began planning a small family-only destination wedding somewhere in New York. We set a date for March 2006.

Chapter 9

The VanGrabs

“Do you have time to meet some people today? I’ve got two couples coming in, one in the morning and another in the afternoon around one.” A Salesman at The Reserve had contacted me with this request early on an April 2004 morning. It was unusual to ask for two appointments in one day.

He knew that my plate was full and that I wasn’t really accepting any more projects. I agreed to meet and assumed that he was just asking for a favor. Any prospective land purchasers or existing property owners driving around in The Reserve were not going to miss my six projects. I had more finished houses or houses under construction than anyone else and mine didn’t look anything like the other houses.

As early as April 2004, you could already find many examples of nasty, boxy houses scattered around The Reserve that appeared “forced” onto sites they weren’t

designed for.

The Salesman added: "The afternoon couple are real [heavy hitters]. They manage their own private island in the Carribean." This was his way of telling me that I may be particularly interested in this meeting. He never mentioned that they were involved with Amway and I am not sure if "heavy hitters" was the actual term used. I just remember a phrase with a similar meaning.

Because I was in The Reserve seven days a week, I was accessible to the sales staff. They knew by experience that I was adept at quickly sizing up a building site and "selling" my vision. It helped them to have someone there who had repeatedly found successful solutions for seemingly steep and impossible terrain. They were tapping into my imagination and creative vision.

These "heavy hitters" were, of course, the VanGrabs. They later told me at a meeting at their house in Atlanta that the salesman had given them two contacts - me and an architectural firm in Atlanta which had designed many of the Reserve's common buildings. Since they chose me, I guess I was plan A.

Plan B most likely would have resulted in a "builder" driving around the Reserve with a set of house plans rolled up on the dashboard that contained design details an architect drafted a year before. This builder would charge

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15% of construction costs and would likely keep a running list of questions to ask the architect next time he saw him in order to clarify what the plans intended.

Plan B would also include an architect in Atlanta or Greenville who would draft plans for the builder and then visit the site occasionally - perhaps weekly or monthly. This firm would charge another 10% minimum and, if asked, wouldn't know what to charge for an open-ended project that is allowed to evolve - "that's just not feasible." They'd ramble on about something called "change orders." Plan B also would NOT include a scaled, full color, exact replica model of this \$3,000,000 dollar investment. That's why he has a roll of paper and a printer, for goodness sake.

Plan A

I was introduced to the VanGrabs in the parking lot of The Reserve sales office. The three of us hopped in my SUV and took a tour of my projects. I was no longer driving a pickup truck at this time. I had given that to one of my site managers who needed a truck.

I was now on the road for 100+ miles a day and was making weekly trips to Atlanta to meet with clients, so Kunstwerke leased me a Silver BMW X5 SUV. It was especially needed for a day like today.

The VanGrabs had a two-lot site that would eventually be expanded to three. I used my existing projects as examples

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of how I did things. Most of my nine non-spec clients were older and had grown children. This project was going to be for a large family with relatively young children. I was determined to make it a fun place to be.

The private university where I got my accounting degree is a non-denominational Christian university. There are some people I meet who might view its religious tradition negatively. The VanGrabs recognized the school right away and said that it was a huge positive for them.

They never mentioned Amway - instead they said that they managed a private island called Peter's Island. They seemed like a nice couple, and we got along well. I think that Mrs VanGrab was sold on my entrepreneurial spirit. I don't think that they fully understood my artistic approach or fully appreciated how unique my business was.

This first meeting and impression was pleasant and positive in every way. I can only portray the above to you in a positive light, yet I must admit that the above was difficult to write. For me, it was the beginning of the kind of nightmare which starts out as a pleasant dream, but then wakes you up screaming at the end.

This feeling may be rooted in the helplessness I felt in February and March 2006. The explosion the VanGrabs caused was intentional and, in hindsight, inevitable. For me, it has never been a question of blame. Their behavior

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and a roomful of discovery exposed the VanGrabs and their goon right away. But I still can't help going back in time to search for anything along the way that might have prevented the explosion which caused so much devastation and changed the lives of so many people I care about. It all comes crashing back to this day in April 2004.

What if I had said I was not accepting any more clients? What if their decision had gone differently? What if my phone had never rung at all? These thoughts still haunt me.

September 2004

It was at the final design meeting at their home in Atlanta that I took along a copy of the contract that Wachovia Bank required for my other clients when providing them a construction loan. My business was too different to use Wachovia's standard contract that anticipated a typical, formal process in which construction funds were held in deposit - waiting to be disbursed to pay vendors and subcontractors. In all five instances in which I had a written contract, I removed all of the construction funding language and added a simple line which required the client to "reimburse" Kunstwerke for "costs" it had already "incurred."

I knew that a bank would not be involved, but I took a contract with me just in case. When the subject came up, neither of us were insistent on a contract, but we signed one

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anyway. Ultimately this contract would be as worthless as Rick VanGrab's and Barb VanGrab's handshake.

In the absence of a written contract, the actions of the parties over time is binding, and I would have still been okay. But right now on this page you are reading words and words have meaning. For our purposes here, it is helpful to have the word "reimburse" and its simple meaning confirmed by both Rick and Barb's signature.

With the VanGrab's initial input as to the functional use of their house (number of rooms, amenities, etc.), I started as I always do - with a blank sketch pad, a blank computer screen, and a table full of model making materials.

Actually, that is not entirely true. The very first thing I do when I get the go-ahead is to order a full topographical survey of the property from a land surveyor. This was a big site, so the cost was \$2,620. I received a file which indicated the elevation changes in great detail. From that I sculpt, using foam board and plaster, a 1/8" = 1' scale model of the site as it exists before any excavation.

The creative process has been described as "wresting order from chaos" and "dancing in a land of ambiguity." As imagination turns into something tangible and workable, it takes a keen ability to juggle all of the aesthetic form and function needs and shape them into one sculpture. It requires the ability to visualize and wrestle with countless

possibilities before they even exist.

This visualization could not begin without a thorough knowledge of the site. I studied the site using 3D graphic software, my topo model, and countless visits there. This design was going to be particularly difficult. The living space requested, which included seven bedrooms and other large recreational areas, would need to be 9,000+ square feet. However, the spot where the house really needed to be - which is always as close and accessible to the water as possible - was the steepest part of an already very steep hillside.

At the first design meeting, the VanGrabs told me that the Atlanta architectural firm (Plan B) that they had contacted told them it would be an eight month process before plans could be completed and submitted for Reserve approval. The design ticket price by that point would likely be six figures.

On September 13, 2004, just three months after the first meeting, I walked into The Reserve's September architectural review meeting and presented the VanGrab house - I was carrying a roll of prints, graphics, and the model. Gravely Excavation moved onto the site almost immediately and began digging. Bronson was named site manager and everyone was excited to get started. At this point, the VanGrabs had paid a total of \$20,000 in Kunstwerke fees (imagine that!).

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I was determined to make the house a fun place for the VanGrab's kids, and it certainly is. 9,000 square feet required at least three levels. I placed all seven bedrooms on the top level within the sloping roof structure. Winding, curvy hallways connect odd-shaped rooms and a large bunkroom. My design work had by this point become much more complex, and I no longer designed square rooms (I'll explain later).

It is fun to navigate vertically, as well. The hallways on the children's bedroom side of the third floor funnel to a spiral stairway "silo" which takes them down to the busiest part of the kitchen on the mid-level, and then down to the playroom on the lowest level which puts you outside feet from the water.

Outside the master suite is a sweeping stairway which lands in the largest living area. Each end of this mid-level has outdoor living spaces. The rambling kitchen area is the hub.

The steep driveway swoops down on one side and through the mid-level itself before climbing the hill on the other side. This drive-through at mid-level allows carloads to get out and enter the hub of the house sheltered from the elements. There is an underground parking area dug into the hillside across from this hub entry.

Digging Dirt

Once construction had begun, the VanGrabs requested a large family/office room and covered porch added to the left side of the mid-level. There were numerous other design evolutions and additions which occurred right up to March 2006. No problem, this was expected and the process specifically allowed for this.

The lowest level is mostly underground except for the bank of doors which open to the lake. There is a gym, 2nd kitchen, play area, and underground theater on this level. The photo gallery which accompanies this chapter presents this house far better than I can with mere words.

All of my projects are professionally engineered by a structural engineering firm. There is an enormous amount of steel supporting the concrete floor of the mid-level hub. The foundation is a curving maze of poured concrete walls with very few right angles. You have to be driving through the structure before you notice the under three-car garage.

In March 2006, just 14 months after the first concrete was poured, the house was 75% complete and the cost up to that point was \$2,385,060. Given the complexity of the structure and the open-ended process, the timing and cost was simply miraculous.

A 9,000 sq. ft. square box with the same amenities would be priced in the \$500+ per sq. ft. range in The Reserve.

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This is a five million dollar house. The builder and architectural fees of Plan B would have exceeded \$800,000. As of March 2006, the VanGrabs had been charged by Kunstwerke a total of \$128,000 in design/build fees.

I was being very *warm and generous* with *cold and greedy* non-spec client number 8, as I had been with all prior non-spec clients. In January 2006, I was unaware of any grievances the VanGrabs might have had other than the usual concerns over cost and timing. So what could have possibly happened? The next chapter answers that question.

Creativity

Allow me to inject here a quick comment about creative work. One of the biggest misconceptions about the creative process is that it is not really "work," or that it is easy. Truth is, wresting with ambiguity can be a hard and tortured process. It is far easier to merely process what is already present or to assemble some clearly predefined output - this is what goes on in the non-creative world. Working on the edge of your competence in a perpetual state of question in a land of ambiguity is not always pleasant - but the reward of a successful creation is indescribable.

Design work causes a different type of mental exhaustion. When I am converting imagination into a tangible and

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workable aesthetic, and I am struggling with the myriad of issues each option creates, I project how long it will take to resolve these issues not by hours in a day, but rather by how many night's sleep. That is when your right brain reboots.

With the VanGrab project, I was not starting with any particular design premise or architectural style. I was restricted, however, by The Reserve's strict architectural guidelines which require historical influences and steep roof pitches, for example.

So, one could not say that I had 100% creative license with this project. The curving walls and flowing hallways are not random gimmicks. All of this was carefully calculated for human movement and perception while moving. Creating all of this within the exterior look that The Reserve required complicated the design process further.

My admiration for Gaudi stems from the fact that he approached his work as an artistic sculptural form. He crafted physical models as part of his trial-and-error design process. He built what he designed. He saw no separation of roles between designer and builder. My process is no different.

I have written three essays: Gaudi, Organic Architecture, and Kinetic Perception, which can all be found on the

homepage of my website studiojakobkunst.com. I explain in these a natural design process pioneered by Gaudi but not seen again until this century. There is a new world of design made possible by technology and a new generation of highly sophisticated designers. You may find that these essays enhance your understanding of my architectural philosophy and your appreciation of the narrative going forward.

There was a point in 2004 in which the building inspectors in Pickens County stopped inspecting my projects as they do everyone else's and as they had my older projects. One inspector said to Bronson: "This is just too unique. I have no idea where to start. Just have Scott send us the stamped engineering prints of this." Later that same year, the entire inspection team made a special field trip of my projects for fun. I really got a kick out of that.

I had helped finance and nurture numerous tradesmen to create a large organization capable of doing this special work.

What the VanGrabs did, they did to someone who had just achieved something in residential design with free-flowing forms and kinetic perception that no one else was doing anywhere.

Chapter 10

What The VanGrabs Did

"I'm concerned about the burn rate." I read these words in an email from Rick VanGrab with a bit of my own concern as to what he might be up to. We had just finished December 2005 and the one-year construction mark. For most of the first year, the weekly average wire of money from the VanGrabs to the Kunstwerke checking account was roughly \$30,000. The average wire had shot up to \$60,000 in December and we had just hit the \$2,000,000 total mark.

Every week, for the past sixty weeks, I had written the amount that needed to be reimbursed in an email to Rick; I also attached to the email his weekly spreadsheet statement and budget summary.

Rick must have looked back on the past sixty wires and noticed a spike upward in the weekly amount of money he was wiring – this may explain the "burn rate" comment. This showed a man who was being prudent and was looking ahead, but it also showed a man who wasn't

looking at the supporting details.

In the September Atlanta meeting in 2004 when we signed the contract, I described the weekly progress billing system. I described how these weekly statements were thick because each one included a copy of the dozens of invoices submitted by subcontractors and suppliers making up the weekly total. I explained how Kunstwerke kept a copy of this thick weekly statement, the site manager also got a copy, and that one copy would be mailed to their home in Atlanta. The original paper invoices themselves were kept in a box.

Rick made an unusual request in September 2004, asking: "Just keep our copy there with you and send me the total, I don't want all of that paperwork." I assured Rick that I would maintain a box of his copies of the weekly statements and that he could have them at any time. None of the other previous thirteen Kunstwerke projects spanning a decade were this hands-off. Most clients carefully reviewed each billing and often had questions.

I later learned from Rollie in a meeting on February 16, 2006 that Rick had trouble with the format of the spreadsheet attached to his weekly email and was unable to read it. He simply wired the amount I requested in the text of the email.

I understand that construction billing and contractual payments may be confusing and boring to you the reader. The important thing for you to take away from all of this is

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that, as of February 16, 2006, Rick VanGrab had made 70 weekly wire transfers totaling \$2.3+ million dollars without any specific knowledge as to where any of this money went, because he – like all thirteen clients before him – trusted me.

At the time, I did not think it that unusual - it never occurred to me that I couldn't or shouldn't be trusted. Kunstwerke had processed close to \$20,000,000 without any issues for ten years. Nonetheless, in the business world of multi-million dollar open-ended extreme house construction, wiring \$2.3 million to a bank account as described above - I'll say it again - never happens.

Consider also that two month's prior to the VanGrab's first payment back in June 2004, I was a complete stranger to them. How did they know that their trust was well placed? They must have heard something from someone.

Things Cost What They Cost

In those early months of the project in late 2004, Barb VanGrab commented to me that they had never given someone so much freedom and control over something like this [project] before.

So, it should be no surprise that fourteen months into the project, Rick VanGrab would be concerned that the "burn rate" was scorching along at \$60k weekly. But there was going to be no possible way to keep the house they *wanted*

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under \$3,000,000. Things cost what they cost, and the VanGrabs were getting a steal.

Every one of my early spec houses were a success because I kept my extreme houses affordable. The same was true for my special nine non-spec projects like the VanGrab's. At any point from early design to completion, the cost of all of these projects was hundreds of thousands of dollars lower than any other design/build firm could have done with a similar scope of project.

Because they were all open-ended and continually expanding at the owners' request, I was often asked for updates as to where I thought the total cost might end up. The earliest projections during the design meetings with the VanGrab's in Atlanta were in the \$1.8 million range and started climbing from there.

Barb VanGrab didn't visit the building site more than a handful of times during construction - I saw Rick VanGrab there a little more often. On their first visit to the site after much of the foundation walls had been poured in February or March 2005, they both expressed amazement at the footprint and the size of the project.

Barb and I were walking on the orange excavated dirt along the lake side of the foundation when she asked me where I thought the cost projection was, and I said: "We are well past \$2 million." I think that she was taken aback by my bluntness.

What advantage would there be for me to sugar coat my

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projection or to over-promise? If anything, it helped Kunstwerke financially to keep the scope of a project at a minimum and to finish as soon as possible because its fees were fixed.

She replied that "the cost needed to be kept under control" and they didn't want it to become a "free-for-all." Then she added something I thought was rather odd: "otherwise my husband will be upset." I already knew based on my own observation those first six months that she was the one tighter with money.

Maybe she had heard about the extravagance of the Weasely project and the excessive amount of time it was taking to construct. Just as her husband was concerned about the "burn rate" a year later, she was just being prudent - in her own way.

At that moment, I was reminded of a situation they referenced during our early design meetings about a design/build firm doing work on Peter's Island that they fired. The story seemed odd to me at the time and I wasn't quite sure why it was something they wanted me to know about. Someday I'll find out more.

I also remember one of them mentioning early on that this house was going to cost more than the one in Atlanta and that they loved it so much that they may want to make it their full-time residence.

After visiting the house in Atlanta, I would predict that the cost would be *much* more. You can't stick a big, easy-

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to-build box like the Atlanta house on a cliff on Lake Keowee. The rambling, clay tile roof system with hand-cut custom rafters of the house on Keowee alone may equal the cost of the Atlanta house. The huge and complex foundation of poured concrete walls and underground parking alone may also equal the cost of the Atlanta house.

Things cost what they cost.

Some of my nine non-spec clients had come to me after experiencing the sticker shock of what it costs to build at The Reserve with other firms. If the VanGrabs had pursued Plan B a little further, then perhaps they might have been better informed as to what most people were paying as well as construction timelines. Things cost what they cost.

Long after we broke ground, Rick mentioned in an email the square footage cost of another "guest" house they were building in a "planned" part of The Reserve. He was surprised that The Reserve charged so much.

As for my open-ended projects, the only real option to reduce cost and speed up construction is to scale back (something that never happened with *any* of my Reserve projects).

When my VanGrab project expanded from \$2 million to \$3, were the VanGrabs getting less value? No. Was the cost per square foot of living space ever going to exceed the Reserve average?

No. Things cost what they cost.

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Two Small, Strange Eruptions

At 9 PM on November 30, 2004, I received a strange voice mail from Rick VanGrab. It was the evening after their morning visit to the site during which I told Barb that the project would exceed \$2 million. They were back at their house in Atlanta. Rick left a long angry tirade on my phone about how they were not going to be taken advantage of and how that the project was not going to become a "free-for-all." I had heard that phrase earlier in the day. The message was bizarre and completely unnecessary – there was no reason to be angry.

I responded politely the next morning by voicemail and email (I never dreamed that one day my email records would become so important.) My email starts:

"Hello Rick and Barb:

I left a message on your voicemail this morning and am emailing too, just in case. We need to get together soon and rethink the size and scope of your house. I am very concerned about the message I received Tuesday night..."

Size and scope also affects timing, and that would ultimately become the real issue.

The project had already been halted for a couple of weeks early on by the VanGrabs in order to "reassess

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costs.” (making the overall progress as of March 2006 that much more miraculous). It is impossible to assess the cost of an open-ended project in which the VanGrabs would be making new decisions up until the end. I could only make projections. Ultimately, nothing was ever scaled back. In fact, the scope continued to expand. I later understood this minor stoppage and small eruption for what it was - mostly for show.

Later on, there was another, stranger, eruption.

By late 2004, the interior decorators were on board. I recommended Fowler Interiors and Tracy Fowler who was currently working on the Tripinfal project. The VanGrabs eventually used Fowler for a new ski house in Colorado built concurrently with my project as well as their other “satellite” houses in the neighborhood around my creation that also needed furniture. Like I said earlier, the VanGrabs were suddenly on a resort home buying spree in 2004.

I wouldn’t use a decorating firm for my spec projects. My design process approaches all of this as one whole with the structure, inside and out. But the VanGrabs requested one, and they were going to need a lot of furniture to fill 9,000 square feet.

There was a meeting in a common room at The Reserve Club at which Tracy Fowler submitted her initial proposal to decorate and furnish. Both VanGrabs were there, as well as Tracy’s staff. We were all sitting around a large table when Tracy handed her proposal to Rick. I understood that

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it was a typical decorating proposal with a retail mark-up. Beyond that, I wasn't privy to anything else.

Rick must have felt that something was too high. I am not sure if it was the total or the percentage used. He got up, stormed out, and went out to the parking lot and sat in his white Mercedes sedan.

I laughed.

Because I thought it was funny. I was the only one who did. It was the type of thing that everyone was *supposed* to laugh at in order to shame him into not doing it again - it's all part of helping him grow up. In a few years, I would see this kind of behavior often from Dandy Nerts.

Who needs these little eruptions? If you have a genuine issue, hang around and deal with it.

This little eruption, too, was mostly for show. I was beginning to understand the dynamics - the show was for his wife. Apparently, that was his role. Nothing wrong with that. Most men are in the wife pleasing business. Similarly, Dandy Nerts is in the VanGrab pleasing business. Apparently, for pockets this deep, Nerts will sing, dance, emote, and say or do almost anything all day long - for a fee.

It would have been irresponsible for me to ignore this dynamic, so I paid attention and just worked with it. Rick had told me that he grew up with very modest means. She brought the pyramid - MLM money to the table. Got it.

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As someone self-made-by-merit, I already knew that the aisle between us was very wide. His approach to “deal making” and business in general was completely different than mine. Rick VanGrab can justify Amway - I cannot. I wouldn’t marry into his position, and he couldn’t do what I do. Just saying...

Keep It Under Your Hat

This may be a good time for a little bit of perspective. The \$60,000 weekly “burn rate” sounds like a large amount of money for most of us. Let’s just say that \$60,000 is your entire year’s income. If you do the math, this \$60,000 for the VanGrabs is similar to roughly \$6 for you and me - basically the price of an extra value meal at McDonalds.

Even so, the VanGrabs should never have to pay a dime more than anyone else for the same value. The decorator’s fee issue was resolved and everyone was happy. My monthly fee was still fixed at \$6,000, which was the same for every project started in 2004. There was no other financial incentive for me. Most of my value is derived from yet another really cool house for my portfolio and another step up the ladder. Value comes in many forms other than money.

The VanGrab house was to be used only four weeks a year and they wanted a hard move-in date in June 2006 for

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their first summer visit. (This ultimately would be the *real* reason behind the explosion.) Everything that occurred in March 2006, as dishonest and vile as it was, was just the means to that end.

It was rare for Barb to email me, nonetheless, in late 2005 she sent me an email admonishing me about the time it was taking to build the big Keowee house. She made a reference to how her father took great pride in delivering products on time and how important this was in business. I responded politely, but I also knew it was an apples to oranges comparison. I could read between the lines and tell that there was trouble brewing.

This was an open-ended, multi-million dollar, extreme resort house evolving at *their* discretion. As late as January 2006, we were still modifying interior walls and ordering new windows based on the decorator's request. This was not an MLM scheme and I was not delivering a bar of soap.

The entire VanGrab project timeline is presented in a footnote. There were no excessive delays or timing issues. I required all of my site managers to keep detailed records of weekly progress, and I did, too. Her email was a good reminder of why I was returning exclusively to the speculative design/build business.

Not too long after Rick's "burn rate" email, I was asked in another email to "keep it [the rising costs] under your hat and don't tell Barb." He may have been protecting her from unnecessary stress - I don't know. I thought to

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myself: "this can't be good." It was beginning to feel as though I were in some dysfunctional faked reality where everyone was just pretending to *play* business.

Inertia

Lastly, leading up to March 2006, there came a final, strange, and ominous series of emails. In January 2006, Rick VanGrab was concerned as to why a cabinet deposit of \$60k to Paul Anderson Designs, which had appeared in a December weekly statement, had not yet been paid out as of January. (I preferred that these types of large ticket items not be run through Kunstwerke's checking account. It would have been much easier for VanGrab to just pay Paul Anderson directly.) I responded with my explanation as to why I held it back. There were issues still being resolved with the order and, in early January, I began to become worried, for the first time, about cash flows from the VanGrabs.

Imagine, if you would, the level of construction activity that would cost \$10,000 dollars a day. Kunstwerke was incurring the cost of this activity *prior* to VanGrab being billed for it. So, I had to make certain that funds were available for current needs such as disbursements made at the site by the site manager or the daily automatic debits. On any given day, there was far more work done at the lake house than the VanGrabs had reimbursed Kunstwerke for.

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For example, if a VanGrab payment wire were delayed a day, that's an extra \$10,000 pushing through and piling on. A delay of a week would be \$60,000 of funding inertia pushing forward. If I ever detected a red flag or "issue," it was my job to slam on the brakes in order to protect Kunstwerke, the subcontractors, and the suppliers.

The concern over the "burn rate" was followed by a ten day delay in the expected 12/29/05 wire. That's not one week, but rather *ten* days. You can do the math in your head. I had responded politely to his inquiry about the cabinet deposit and I also explained to him yet again the contractual credit he was granted and how difficult cash flows in January suddenly were.

And here is where it starts. Rick threatened not to pay any of the February 2006 weekly progress billings and asked why money requested on a weekly statement did not go directly to the items listed there. Why was it being "diverted?" I don't expect you to fully understand the legal and contractual significance of his use of the term "diverted," but this question contradicted the nature and premise of the reimbursement contract he signed.

His contractual relationship with Kunstwerke (the only contract Kunstwerke ever offered anyone was a generous *reimbursement* contract) was based on a completely different legal premise. Why was he suddenly pretending that he had earmarked money on deposit that *he* was somehow directing? It was too absurd and I knew that he

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wasn't *that* stupid. Something was up.

Maybe January is when it hit the fan in the VanGrab household and it was no longer "under our hats" - I don't know. But VanGrab was due for an eruption and a show, and this one would be huge. I will connect the dots to Tripinfal and Weasely later.

Allow me to explain the legal significance of what VanGrab was trying to do by using a simple analogy. It would be like the difference between a debit card and a credit card. VanGrab suddenly began to claim that he had what amounted to a debit card that he made deposits into to pay specific items.

The problem was, he contractually and legally had a *credit* card on which he had run up a huge balance that he was about to just walk away from. Not that he needed the money or could not afford to pay his bills - this scheme had a darker purpose.

The VanGrab Debit Card Scam

At this point, Rollie entered the scene and asked for a meeting on February 16, 2006 at The Reserve. VanGrab was no where to be found by this point - it was all Rollie from now on. I took Trace and my father along as witnesses because something smelled very bad.

Rollie asked that I bring the box of the VanGrab's copies of the weekly statements. This was good because it gave

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me a chance to have a pleasant meeting with Rollie and go over the entire contractual billing process. There were invoices piling up fast that I needed to be reimbursed for.

It was good that I had witnesses, because I spent most of the time demonstrating to Rollie that it was a credit relationship and that even as we were meeting, there were costs being incurred. I showed him two weekly statements that the VanGrabs had not paid that I desperately needed to be reimbursed for. This was cash Kunstwerke had already paid out. His last words at the meeting were "I think that I can get these paid." If Rollie was now our contact, it at least appeared that *he* understood that it wasn't a debit card relationship and that I desperately needed to be reimbursed.

Rollie was going to start handling disbursements to subcontractors and suppliers after February 16 and Kunstwerke would no longer have to be bothered by it. This was always their option and very good news for Kunstwerke. So, all we had to do was reconcile the account and the VanGrabs pay the balance and we move forward. Right?

Wrong. Rick and Rollie didn't *want* the box so that they could reconcile the full account and see what they owed. A few years later, Rollie would testify under oath that he intentionally did not even look at the statements which piled up (unpaid) in February.

In order to properly reconcile a client's account like the VanGrab's, the accounting records are designed to allow a

What The VanGrabs Did

quick and easy, five component reconciliation. Instead, they dug around the seventy statements looking for anything they could fabricate to make it appear that there was some kind of impropriety with their account.

Rick would need one more eruption; he would pretend to be shocked to find that his project was over budget. He would also pretend to "discover" something awry with the handling of subcontractor and supplier disbursements and that hundreds of thousands of dollars had been embezzled from the project.

He wanted Rollie to take over the project immediately – scale it way back – and be done by Barb's deadline. This meant avoiding a full account reconciliation and the lien process which would have caused months of delay if they were to change "builders" and terminate their Kunstwerke contract. This also meant that the VanGrabs would need to take over as their *own* builder and convince my entire organization (Kunstwerke subcontractors, equipment, tools, infrastructure, etc.) to stay and finish.

If I remained, I would not have allowed the project to finish as it sits today (the exterior looks like a stuccoed asylum) and I would have moved my entire organization to another site if the contractual relationship with Kunstwerke were terminated. If I remained associated with the VanGrab project, it would have taken two or three months longer to finish the project as it needed to be finished.

Two years later, Rollie would testify that if they had not

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discovered "embezzlement" in the box of billings he took back to Atlanta on February 16, 2006, then I would have continued on with the project. On December 5, 2014, Rick VanGrab could not remember any other reason for my termination other than "embezzlement." I say this to emphasize that there were no other "issues." It was all an orchestrated scam.

By every benchmark, the project was an enormous success; I could have not been more proud of it. But the VanGrab's first four week summer stay had already been scheduled and these particular deep pockets thrive on the "ends justifies any means" ethics.

So Rollie contacted 240 Kunstwerke contractors and suppliers, and all of my clients and business associates, posing as an investigator investigating my financial dealings.

Rollie spread a rumor that I was about to be arrested for embezzling hundreds of thousands of dollars. Some rumors had it at a million. He described the kind of embezzlement that would lead the nightly news and the front page of newspapers.

It would be a year or more before my own investigation through civil discovery revealed what he was actually telling those subcontractors and suppliers whose cooperation he desperately needed.

Rollie stated I had "embezzled money from all of my

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clients.”

Rollie stated I was “going to jail.”

Rollie stated I was “a criminal.”

Rollie stated I had “taken \$400,000 from The VanGrab project.”

Rollie stated I had created “dummy invoices from dummy companies.”

There is much more, but I think you have gotten the picture. Anything that sounded bad enough to scare everyone in my organization was repeated to whomever would listen.

Reader, perhaps you are a stranger to me or these events. Perhaps you are a stranger to my character. In this rabbit's hole of fraud, deceit, and corruption, I was forced to prove a negative, which I did, easily. At some point, in the chapters ahead, it will become clear to you that the “truth” of the above statements was never even a consideration on the other side of the aisle. Rollie knew it was all a lie when he said it, and he never really cared, either. He still doesn't.

Nerts was hired to give Rollie's claims “legal” credibility. In March and April of 2006, Nerts was very busy on the VanGrab's behalf.

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Nerts told Bronson that Nerts was "going after jail time" for me. Tripinfal told Bronson that he would share a similar fate if he did not cooperate. Rollie needed Bronson to stay and supervise the project. There could not be a day's delay. Rick's eruption appeared to work. Barb VanGrab was about to open the purse strings very wide. Whatever it took - just get it done.

The explosion spread like wildfire as everyone began protecting themselves financially and distancing themselves from me (just to "play it safe," of course). The story from here only gets darker.

A year later, on March 13, 2007, during a civil hearing that I refer to later as the *Dandy Nerts and Rollie Show*, the public was waiting to see what "proof" the VanGrabs supposedly had to back up what Rollie had said. I wanted to know why they lit the fuse that caused so much damage.

You will learn that they had nothing – and they never really cared, either. They still don't.

Two years later in 2009, Dandy Nerts stood before Judge Miller of the 13th Circuit Court of South Carolina in a hearing in which he was attempting to get defendant Rollie out of my defamation suit against him on a technicality called collateral estoppel. Nerts stated: "For the purposes of this hearing, we admit to the defamation."

It took me eight years and a special order from a South Carolina judge and the threat of a new lawsuit in Georgia to finally force both VanGrabs to sit across a table and face

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me and be deposed. On December 5, 2014, both VanGrabs sat at a conference room table on the 18th floor of a swanky Atlanta law office and answered my questions with a court reporter and their own attorney present. For the first time they both gave sworn testimony about this event. You will soon be able to read their entire transcript, and it will disgust you.

Chapter 11

Pyramid

NBC Announcer: "They are true believers in a golden promise."

Idiot in tux screaming into microphone: "This is the best opportunity that exists - in the world - period!"

NBC Announcer: "A dream of wealth. They buy into it with all their hearts. But a year long Dateline investigation found a disturbing reality. Behind the dream. What will our hidden cameras reveal."

"This may look like an old-fashioned revival meeting, packed with the faithful. But this crowd is worshipping the almighty dollar. Tonight, the inside story of the business behind these elaborate events which attract hundreds of thousands of people every year. With the promise of easy money selling products like vitamins, cosmetics, and home appliances. Dateline's year-long investigation found a whole trail of false promises and broken dreams. Here is Chris Hansen with a Dateline hidden camera investigation."

Chris Hansen: "Out of the darkness of a crowded coliseum, a rally cry. Thousands of true believers gathered in celebration in arenas like this across the country. All convinced they have found the true path to success and wealth beyond their wildest dreams."

Idiot in tux screaming into microphone: "This is the best opportunity that exists - in the world - period! Period! Period! It's not second, it's not third, it's number 1!"

Video of someone on a bus from New Jersey to Greenville: "Lord we ask you for a spirit of openness so that we might go down to Greenville, South Carolina and Lord that we might be changed, in Jesus' mighty name" (*Quixtar "Spring Leadership Conference"*).

Good grief.

And so goes the first two minutes of a YouTube video of a Dateline NBC episode. In those post-explosion months in mid 2006, before my work space began to look more like a law office, I watched this video for the first time.

Most educated professionals would never give any notice to these kinds of product-based pyramid schemes or MLMs (multi-level marketing). They are embarrassingly silly. If an MLM is engaged in illegal activity such as fraud, there are plenty of district attorneys across the country eager to pounce on these people. Otherwise, what this arena full of people do voluntarily is none of my business.

Pyramid

My Libertarian bent makes me wary of government interfering with or outlawing such MLMs as Quixtar or its parent Amway. Can you pass enough stupid laws to keep stupid people from doing stupid things? I normally would have far better things to do with my time than to give these people a moment's thought.

I was forced to learn everything that I could as quickly as possible about the behavior of a couple at the top of the pyramid. So I read everything I could find.

I already understood trial lawyers like Weasely, Nerts, and Tripinfal all too well. The fact that they would take advantage of the VanGrab explosion never really surprised me, it was almost expected. It is who they are.

But trial lawyers are low-hanging fruit. You get no extra credit for predicting their behavior. It should be obvious why they vote the way they do and why they are so comfortable on the other side of the aisle.

Some time in 2005, I was listening to Rush on the radio while driving to The Reserve to check on my projects, and I heard him bragging about an achievement award he had just received from the Heritage Foundation. He played a sound clip and noted that the woman giving him the award was Mrs VanGrab - a trustee of the Heritage Foundation. I later exchanged emails with her about the event and about being "conservative."

I personally prefer the term "classical liberal" because I believe in individual self-ownership and natural liberty as understood by the founding fathers and the philosophers of the Enlightenment. In the light of the entirety of human history, we are the true "progressives," not the leftist, collectivists of today who run screaming from the mere whisper of the term "individual merit." F.A. Hayek also had a problem with the term "conservative" and wrote a popular essay entitled "why I am not a conservative." I recommend it.

I enjoy reading economists and philosophers such as Milton Friedman, Hayek, Mises, and Rand because I believe that they have a firm grasp on individual liberty and merit. Good luck finding a trial lawyer who lists these names among his favorite authors.

I am telling you all of this to emphasize that the VanGrabs at first glance would seem to be more comfortable on our side of the aisle, rather than cuddled up next to Nerts, Weasely, and Tripinfal. If someone is a trustee or a supporter of the Heritage Foundation along with Steve Forbes or the late Richard Mellon Scaife (both men I admire), then my opinion of them should be positive.

Today, the Heritage Foundation's website has a section where they list trustees and give brief bios. If you scroll down far enough you find a mother of six and a member of the *Perimeter Church* of Atlanta who home schools her

children.

Wow! That sounds like the type of character reference that would encourage me to accept her as a client and feel secure with a firm handshake.

The Weaselys and Tripinfals appear to be loving and committed parents as well as the VanGrabs. I've been a guest in all three homes. So the Heritage bio wasn't going to explain anything to me in 2006, nor would it help predict what was ahead.

This trustee of the Heritage Foundation and her husband had just done something to me and those I care about that was so vile that it begged for any kind of explanation.

Perhaps as self-prescribed therapy, I picked up my old dog-eared copies of *Atlas Shrugged* and *The Fountainhead* and read them again. But this time it was as if I were reading them for the first time. Those eyes of maturity I mentioned earlier, which view traditions differently were much older - aged years by the experience of just a few months. My new perspective caused fiction to crash into reality. I used up my highlighter and wrote a stack of notes.

"The verdict you pronounce upon the source of your livelihood is the verdict you pronounce upon your life" and *"A creative man is motivated by the desire to achieve, not by the desire to beat others."* Those two quotes stuck with me the most.

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As I watched the YouTube video of the chants and the emoting speakers I imagined how cool it would be if fictional Francisco walked out and crashed the stage of the Bi-Lo Center arena in Greenville and gave his "money speech."

"Did you get your money by fraud? By pandering to men's vices or men's stupidity? By catering to fools, in the hope of getting more than your ability deserves? By lowering your standards?" *Atlas Shrugged*

I could imagine half the crowd slowly walking out in quiet embarrassment and starting real businesses. I know, I'm dreaming.

Merchants of Deception

The crowd in the video then begins a chant which I guess is their anthem: "flush that stinkin job!"

Not quite the same as putting a hole in the washtub, but it works if their aspirations are entrepreneurial. If they want to sell products like soap or whatever, then I say great! Be merchants then. But be merchants of value - exchanging value for value - not deception.

The video turned me on to a book by former Amway distributor Eric Sheileber entitled *Merchants of Deception*. I contacted Eric and described what had happened and we agreed that the pattern was the same. Obviously, my

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situation had nothing to do with Amway, but just as Mickey Tripinfal didn't have a second set of ethics away from his law office, the VanGrabs apparently didn't, either. That was all I was interested in.

"The verdict you pronounce upon the source."

After they flushed their "stinkin jobs," a top level guy named Bill Brit (now deceased) got up and declared: "I got into this business for 5 reasons. Good reasons. The first reason was money. The second reason I got in was for money. In fact that is all five of my reasons" (crowd cheers).

No, Billy boy, you have to create value to exchange first. When you focus five times on the ends before the means, you are going to get yourself into trouble. So these pyramid schemers and plaintiff trial lawyers share situational ethics.

Got it.

I read where Bill Brit was booted out of Amway for a host of scams. Any kind of scheme or deliberate design has a tendency to breed corruption. The merit of anything is exposed by greater amounts of freedom and transparency.

In business, only an open and free marketplace dictates and exposes merit. MLM schemes, in a way, are similar to crony-capitalism in that they are not free markets like Walmart or Target. They are mostly closed networks. By

Pyramid

some kind of agreement or force they corrupt the basic exchange of value between two self-interested parties.

If it is not value for value, then trade is done at someone's expense. Someone is not getting full value. A natural piece of the equation is missed somewhere in the "down market." There is a "winning side" where someone receives more value than their own merit could afford them. For me - and everyone else on our side of the self-made-by-merit aisle - to achieve, someone else does not have to lose.

The Blakey Report

I was able to get my hands on a copy of an expert witness report by a professor named Robert Blakey who was retained as part of Procter & Gamble v. Amway in 1998. Amway has been trying to keep this report private for years and even obtained a protective order - but it can be found as a pdf file if you do a Google search and look hard enough.

The report is rather lengthy, but there is an excellent article which summarizes it written in 2005 by Evelyn Pringle, entitled Organized Crime Expert - Amway Just Like Mafia.

She describes the trouble that Amway had when the internet came along and "details about the company's pyramid schemes began appearing online." The Blakey

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report, in particular, really bothered them because as she states "he is one of the nation's foremost experts on organized crime."

The report describes the family members which comprise the "Amway Policy Board" (including Mrs VanGrab). It also notes how two of her siblings were given positions that "outweighed their capability." Blakey reports that their deposition testimony "reflected a complete lack of knowledge and business experience. It was obvious that neither obtained their position on merit." In any context, *merit* is a powerful word.

I was reminded of this as Barb VanGrab answered by deposition questions. It was the last of dozens of depositions in this nine year sordid event and was by far the least coherent.

I was particularly interested in those parts of the report which dealt with mafia-like "omerta" (secret code) and the threat of violence within the organization.

It now appeared that Huey Weasely was being too kind in his "cold and greedy" description. I could deal with and expose even *his* standard of cold and greedy rather easily.

My research had now warned me that if I sued, I could expect something far worse than March 2006.

Chapter 12

800 lb Gorilla

The Fairfax, Virginia police press release said he "pushed her down and laid on top of her." The Fairfax prosecutor told a judge the next day that he "laid on top of her and thrust his pelvis into her." This was the worst of the accusations that got Sean Lanigan, a Centre Ridge Elementary teacher, arrested. This accusation would soon crumble away as would every lesser accusation which followed until his 12-year-old student accuser recanted. Despite all this, the prosecutor still forced it to trial.

The girl had gotten into trouble in school and had been chastised by Lanigan. Trial witnesses quoted the girl as saying: "Mr. Lanigan's a jerk," and "I'm going to make him pay." He was arrested before the girl was even interviewed. The police published his picture and home address. TV trucks crowded his neighborhood and school. He was in prison for four days.

"There was no evidence," said Jacklyn West, who wept in the jury box as the lawyers made their closing arguments, later explaining that the 12-year-old accuser had "no idea of the consequences" of her allegations. "This

poor man. That's why I cried." The jury did not deliberate long. Lanigan was fully acquitted.

"Emotionally, a part of me has died inside." In 2010 when this happened, he was a 43-year-old father of three. He is quoted in the Washington Post: "We try to teach them to do the right thing," he said about his kids, "and I had to tell them that Daddy was going to jail and my name was going to be on the news. It was heartbreaking." "I just hope that one day I can put this whole mess behind me," Lanigan said, "and outlive the dark cloud over my name and reputation from this false allegation."

Child abuse is as hideous a crime as there is and this girl has made it more difficult for genuine victims to come forward in the future. Beyond the child abuse aspect, there are remarkable parallels and comparisons that can and ought to be drawn to the VanGrab explosion. When you consider the magnitude of the Lanigan situation - the devastation suffered by Lanigan and his family and their struggle to persevere - and compare it to the VanGrab explosion, you gain a better perspective of what I was up against.

One of my biggest worries in March 2006 was keeping Rollie's slander out of the media until I could respond forcefully with the facts and expose what he did - in that order. The existing damage was bad enough. How much media coverage would a million-dollar heist get where you

live?

It took one legal action to expose and correct the Lanigan situation and the legal fees were counted in the tens of thousands. Here, it took twenty law suits and legal costs which blew past the million dollar mark early on for me to expose the whole scam. I could leave a hole for the other side of the aisle to slither away through. So many families and small businesses were financially devastated by the VanGrab scam. The income lost and the business value destroyed can also be measured in the millions. And as emotionally devastating as the Lanigan situation was, no one committed suicide. Yes, read on.

Ignorance and Malice

I highlighted: *"Learn to distinguish the difference between errors of knowledge and breaches of morality. An error of knowledge is not a moral flaw, provided you are willing to correct it. But a breach of morality is a conscious choice of an action you know to be evil, or a willful evasion of knowledge, a suspension of sight and thought. That which you do not know, is not a moral charge against you; but that which you refuse to know, is an account of infamy growing in your soul."* - Ayn Rand.

I couldn't help but highlight most of John Galt's speech in *Atlas Shrugged*. But this part, where Galt demonstrates the clear and rational moral thinking which enables us to

800 lb Gorilla

distinguish between breaches of morality and errors of knowledge, is why the merit aisle seems so wide at times. Trip and fall lawyers earn a living by blurring the distinction, and the VanGrabs simply can't be bothered with it - they are zeroed-in on the ends, not the means.

We are better than that. Never assign malice where you find only ignorance, and never excuse malice as ignorance. The bulk of my effort these past nine years has been publishing records and data in a way that is easily understood. I have always given the VanGrabs the benefit of the doubt that their actions may have occurred out of ignorance or error of knowledge and not malice - just to play it safe. (Even though I personally believe it was all malicious.) Errors of knowledge and ignorance, however, are a temporary condition - it was my job to make it very temporary.

I knew that eventually I would need to demonstrate to you today that they had been placed on notice with full knowledge and opportunity to do the right thing, time and again - every step of the way. I can now say today that by default, everything the VanGrabs have done has been, and continues to be, intentional.

Lanigan's 12-year-old pupil acted out of malice from the very start. Of course, there was a thread of stupidity running through all of it. She may have been too stupid to understand the full consequences, as the quoted juror

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suspected. I am certain that the majority of girls in her class were brighter, more mature, and utterly incapable of doing what she did.

If Rick VanGrab had at one time erroneously thought that he had a Kunstwerke debit card and not a credit card, he could not have been mistaken for long.

Rick VanGrab may have at one time erroneously believed that his contractual funding was set up like a fiduciary cash trust account. No big deal. That type of funding system is the most typical in home construction and is far less generous to the property owner. He may have not have given it much thought. However, in February 2006, when the truth mattered most and the consequences were enormous, he knew.

By the time Rick and Rollie were digging through the box of billing statements in February 2006, they knew what they were doing and what they needed to avoid. You can only consciously avoid an 800 lb gorilla.

Feigned ignorance is the most common refuge of a coward. When backed into a corner while testifying, many on the other side would start their response to me by saying: "all I know is..." Huey Weasely's deposition is full of this kind of stuff. Suspension of sight and thought in a willful evasion of what you are morally obligated to know is cowardice.

800 lb Gorilla

The law says that you must have *provable* truth (not just truth) before you make such statements about another person. For example, the law demands that you have the kind of truth that takes eight years of litigation to acquire - the kind of truth you would be willing to put in writing in pages like these - without fear.

The law is more strict if false statements are about a person's business or profession. Malice and damage is automatically assumed. That's a wise law when you think about it. Why else would someone make defamatory statements about someone's business behavior if they didn't have malicious intent? Someone is attempting to gain an advantage the truth could not afford them.

The VanGrabs

When the VanGrabs sat across from me and commissioned one of my expensive creations, their understanding of business, money, and the real world of merit was vastly different from someone, for example, who was wealthy because they invented a new kind of steel or had invented a motor that ran on ambient electricity. The money they brought to the table was from a very different source and from a different generation.

"Only the man who does not need it, is fit to inherit wealth—the man who would make his own fortune no

matter where he started. If an heir is equal to his money, it serves him; if not, it destroys him." "Money will not buy intelligence for the fool, or admiration for the coward, or respect for the incompetent." Francisco's Money Speech

I could be wrong, and you may form a different opinion, but it didn't seem to me that I was sitting across from a couple of rocket scientists at their home in Atlanta, if you get my drift.

One would think that it would have some effect on someone like Mrs. VanGrab to be reared in a business that is featured on Dateline NBC and depicted as a "scam" that preys on good people and destroys them. A feature which, when aired, was not a great shock to the general viewing public! I can't relate to this business world of constant attacks, excessive litigation, and unusually large political donations - I just create and produce.

We know that enormous pressure was on Rick and Rollie to get the house done by May 2006. There were honest options available to them.

Five years into this struggle, Bronson finally saw the light and contacted me and volunteered to help me in my efforts in any way possible. After all I had experienced and observed, I was still shocked by what he revealed. He was the main targeted recipient of Rollie's slander and would become my key witness.

800 lb Gorilla

The public is quick to blame the whole Sean Lanigan event on just the unnamed adolescent. The Washington Post, however, features prominently the many adults who could have helped stop the girl's accusation from getting very far and could have prevented the whole episode. They name names.

These VanGrabs pretending to play business without care of consequence could have been stopped early on. My legal efforts should not have taken ten years. I too will name names.

Rollie told subcontractors and suppliers that they had traced down the "stolen" money that was intended for them and discovered that it was spent on luxury cars, foreign trips, and jewelry. It probably sounded good when he said it. He may have even gotten a bonus - I don't know.

800 lb Gorilla

The first problem Rollie and the VanGrabs encountered was that you could not suddenly represent a reimbursement based pass-through funding account as a debit card rather without the whole financial structure collapsing and the credit items crashing forward demanding to be accounted for. Those hundred+ invoices totaling over \$150,000 paid for by Kunstwerke but never reimbursed by VanGrab didn't go away. They could not even exist in the fake debit card scam, *so they were ignored.*

800 lb Gorilla

If the VanGrabs were ever to acknowledge this 800 lb gorilla, it would be tantamount to the Lanigan's accuser recanting - their whole premise would collapse. I was careful to gather, sort, and protect these original invoices early on. They come in all different sizes and types of papers. Some even have construction dirt on them.

They are the real thing - cash paid out but never reimbursed. They are typical invoices from small companies in North and South Carolina who had submitted similar invoices in the past. None have been contested or even questioned - they are all legitimate.

Someone gave the VanGrabs some very bad legal advice regarding the legal consequences of the fake debit card scam. Tripinfal began using the fake debit card scam at his project at the exact same time as VanGrab and we have learned only recently just how desperate Tripinfal was at the time. I conclude Tripinfal's involvement in another chapter.

Tripinfal was in contact with Rollie in February and March 2006 and recommended that the VanGrabs hire Nerts when concern arose over the legal issue of liens. Nerts wrote a general letter to suppliers and subcontractors on the VanGrab's behalf stating that money intended for them was stolen by me and that SC law banned them from filing liens. This scared the subs into silence and caused many who did not understand to turn their anger on me.

800 lb Gorilla

The letter also stated that the VanGrabs had fulfilled their contract with Kunstwerke and had reimbursed everything. I can't even begin to describe in the space here how fraudulent this letter was.

I attempted to sue Nerts individually for defamation for his reference that I had stolen money intended for subs. Our favorite judge dismissed the case, stating that Nerts was acting as an agent for the VanGrabs.

Occam's Razor

When you don't have objective merit, you have situational ethics and moral relativism. And if you have read and agree with Hayek, then you know that that means no ethics. The other side of the merit aisle almost always corrupts a factual premise by replacing it with a conclusion that they reached somewhere along the way that suits them - this becomes their new premise. No conclusion is factual unless the basic premise is factual.

The debit card/credit card contradiction is the basic premise contradiction in this whole VanGrab mess. In the theory of Occam's Razor, you have to go back to the simplest premise - the one with the fewest assumptions - if you are genuinely seeking the truth. Once you have reduced two conflicting basic premises down to their simplest forms, one is easily falsifiable.

"Contradictions do not exist. Whenever you think you

800 lb Gorilla

are facing a contradiction, check your premises. You will find that one of them is wrong." Ayn Rand

(People on the other side of the aisle hate the simple and moral logic of this quote. It is too objective and absolute, it leaves no room for faking reality, scheming, excuse making, pandering, nor some elusive "other side of the story.")

There was not a single lawsuit that I desperately did not want to file. I was forced into the nearly impossible position of having to disprove a negative based on a premise that didn't even exist. It would be like forcing Lanigan to prove that he didn't molest a particular girl in a particular school where he has never been.

If they acknowledge the 800 lb gorilla, then they are forced to acknowledge that their debit card premise was false and they become the legal "but for" in all that has happened. *But for* what the VanGrab's deep pockets did, so many small business would still be around and thriving and someone would still be alive.

These two diametrically opposed premises are black and white. They both can't exist together. There is not a gray area between debit and credit. There are not two interpretations of the VanGrab contract. Most scams such as this occur with a fraudulent manipulation of contractual details most people would not even understand.

800 lb Gorilla

There has never been two sides to this issue. I am the one writing and forcing the truth into the public domain through litigation for the past eight years with nothing to hide. They are the ones cowering behind pyramid money thrown at lawyers.

Honorable and Civilized People

The assumption in a civilized society is that there are just certain things that you *really* don't lie about. There are certain accusations that you don't make if there is a chance you may be wrong. Sean Lanigan had a little warning about what to expect. I had no idea from one day to the next. I was dealing with morally depraved, very deep pockets capable of doing anything.

In March 2006, Trace and I were holed up in my Greenville live/work studio. We expected the door to come crashing down at any time. The kitchen counter began to pile up with legal letters and threats.

I began to receive emails that stated that the pervasive rumor at the VanGrab site was that I was actually seen in the Pickens County Jail. Others said that I had simply disappeared with a million dollars and they couldn't find me. Another said that if I did disappear, I would probably be found at the bottom of the lake. Oh, yes, and someone wanted to break my legs. And it was about to get worse.

Chapter 13

The Dandy Nerts and Rollie Show

March 13, 2007

Kunstwerke attorney: "As part of your investigation, did you attempt to find out whether there were receipts or invoices that Mr. [VanGrab] did not pay?"

Rollie: "Did I look for receipts that Mr. [VanGrab] had not paid?"

Kunstwerke attorney: "Yes, that's my question."

Rollie: "No, sir."

Kunstwerke attorney: "So you don't know whether, when you weighed what Mr. Kunst might have paid that Mr. [VanGrab] didn't pay him for against what Mr. [VanGrab] paid for, you don't know whether in truth Mr. [VanGrab] owes Mr. Kunst and Kunstwerke or Kunstwerke owes Mr. [VanGrab], do you?"

The Dandy Nerts and Rollie Show, Part 1

Rollie: "Sir, I am" --

Kunstwerke attorney: "You don't know that do you?"

Rollie: "I do know that, sir. I am in" -- "I mean, there is no question that the finances and the math that I have done, supported by Mr. [Nert's] people, fully support that the funds owed are to Mr. [VanGrab], not to Mr. Kunst related to this project."

Kunstwerke attorney: "Supported by Mr. [Nert's] people, what do you mean by that?"

Rollie: "Mr. Bill Larkin, who will testify I think in a little bit. The accountant that looked at everything."

Kunstwerke attorney: "But what you were looking for is duplicate payments and overpayments, right?"

Rollie: "I was looking to get the house completed and found those through contacting vendors and subcontractors, yes, sir."

Kunstwerke attorney: "But you weren't looking to make any sort of comprehensive reconciliation about who owed whom, isn't that true?"

The Dandy Nerts and Rollie Show, Part 1

Rollie: "No, sir, that's not the truth."

Kunstwerke attorney: "Where is your reconciliation then?"

Rollie: "as I" --

Kunstwerke Attorney: "You got one?"

Rollie: "Actually the stack of documents and the databases and everything I have created, I certainly was looking to find out where the money went related to what was paid by Mr. [VanGrab] to build his home and what money was actually spent to subcontractors and vendors to build this home."

Kunstwerke attorney: "But isn't it true that just a minute ago you testified that you didn't look for things that Mr. Kunst might have paid that Mr. [VanGrab] didn't pay him for? Isn't that what you testified to a few minutes ago?"

Rollie: "I don't know if you are trying to confuse me, sir. I don't believe" --

Kunstwerke Attorney: "No sir, I'm trying to get to the truth."

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Booom!

The Kunstwerke attorney had the first crack at Rollie early in the Show. Finally, after a long year of waiting, Rollie was the first person from the other side of the aisle to be compelled to answer questions under oath about the explosion.

I was amazed at how easy it was to expose him as a bumbling idiot who hadn't "looked at everything" - namely the 800 lb. gorilla - and who supposedly understood even less. Rollie had no choice - he was stuck - he had to continue the debit card scam *a year later and even under oath.*

Rollie is still stuck today. His options remain: recant, or be stuck sounding like a bumbling idiot - and his boss won't allow the former. Weasely and Tripinfal, who attempted the false debit card scam under the cover of the VanGrab explosion, have long since been sued and settled by writing the Kunstwerke attorney a check. Poor Rollie the goon stands today very much alone - he is the *last* man standing - as they had planned all along.

Rick or Barb VanGrab certainly weren't going to take the witness stand on this March afternoon in 2007 and be subjected to questions under oath. This Show was all Rollie (and Nerts).

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The Box

When Rick and Rollie dug through the box that Rollie took back to Atlanta on February 15, 2006, half of the 800 lb. gorilla that had accumulated to that point was sitting right on top. If their intentions were honorable, they would have started there.

When the Kunstwerke attorney questioned Rollie thirty minutes earlier in the Show, Rollie denied saying anything to me about the invoices sitting on top at the meeting that day. But we went over each line of these invoices together. They were the main thrust of the meeting, and Rollie's last words were "I think I can get these paid." So on February 15, 2006, very early in Rollie's new career with new bosses, he was already aware of at least a 400 lb. fast-growing gorilla. Error of knowledge or breach of morality?

So while he was on the witness stand, and as the court reporter typed, I asked him about it:

Me: "Mr. [Rollie], you just said under oath that you did not make a comment in a 2-15-06 meeting, in which I attended with my father and Trace? Do you recognize Trace in the room?"

Rollie: "I didn't until I saw her sitting there. I don't recognize her, no."

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Me: "In that meeting you stated, or you don't recall stating, under oath, that you did not look at at least two of the progress billings that [VanGrab] has defaulted on, that I told you were prepaid by me, that I needed to retire so I could retire the other debt? You told me that 'I could get these paid,' exact quote, did you say that or not?"

Rollie: "I do not believe so. I did not say" --

Me: "You don't believe, yes or no?"

Rollie: "I don't believe I said that, sir."

Me: "You did not say that?"

Rollie: "I do not believe I said that."

Me: "You are not sure?"

Rollie: "Unsure."

This line of questioning wasn't just about taking him from denial to being "unsure." Of course he said it - there were witnesses. But for my own purposes, I wanted to establish this date (pre-explosion) as yet another instance along the way that he was made aware of a growing 400 lb. gorilla. Remember that no gorilla can exist if it were debit

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card-like funding. Error of knowledge or breach of morality?

Five questions later....

Me: "You are not aware again of any e-mails that I sent to Mr. [VanGrab] explaining my cash crisis?"

Rollie: "Mr. [VanGrab] had told me that you had sent him e-mails asking for funds, and he had very little patience with that, once he found out that his house was not being done in a timely fashion, because the contractors were not being paid in a timely fashion. He had the e-mails, but I don't know they were going to go too far."

Me: "You are speaking of two things, scheduling and the finances. We will get to the scheduling at some point, but the finances, did he tell you that I was having a cash crisis and that I e-mailed him and told him that items like windows, cabinets, which are just deposits, can be held back for the current cash needs of the site?"

Rollie: "No sir."

The Black Binder

In July 2006, just four months after the explosion, I had

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sent out fifty large black three-ring binders to those involved with the VanGrab project who had likely been lied to by Rollie and the VanGrabs. It was full of financial data including the 800 lb. gorilla. The VanGrabs got one, too. That was eight months before this hearing. Error of knowledge or breach of morality?

So while he was on the witness stand, and as the court reporter typed, I asked him about it:

Me: "When you read it, did you -- in the progress billing section, you just admitted there was a progress billing section -- did you get to the last three billings?"

Rollie: "No, sir."

Me: "You didn't go that far, but you spent a lot of time with Mr. Larkin trying to reconcile my account, and you admit that you had an 800 page binder reconciling every disbursement I made to the project?"

Rollie: "Yes."

You will recall that a little while ago, when questioned by the Kunstwerke attorney, Rollie introduced us to someone new whom he assured us *had* looked at everything.

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Kunstwerke attorney: "Supported by Mr. [Nert's] people, what do you mean by that?"

Rollie: "Mr. Bill Larkin, who will testify I think in a little bit. The accountant that looked at everything."

Expert Witness

The clock was ticking for poor Rollie because we were hours into a hearing in which he was supposed to provide a whole lot of provable truth to explain a whole lot of defamation. The sheet he handed the judge earlier entitled "Damages Computation," which included the NNN Paving ruse, would have better value at the bottom of a bird cage. (We will look at it in the next chapter.)

But what about Bill Larkin, the expert witness and "accountant that looked at everything?" Larkin was added to the VanGrab team at the last minute by Nerts on the Friday before this Tuesday hearing (which they had had six months to prepare for). This was the biggest ruse of the day, and a good example of the type of dirty tricks I would encounter from the attorneys on the other side of the aisle in the years to come.

Nerts attempted to introduce an expert witness to the case to try to give their position some credibility, but then gave him limited material to look at and a limited time to do it so that he could legally only testify to generalizations.

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The other side of the aisle then held their breath and hoped that the judge wouldn't notice. Larkin never looked at the 800 lb. gorilla, nor did he do any kind of audit or reconciliation.

Fortunately, the judge did notice, and Larkin's testimony was disallowed for consideration. Suddenly, Rollie became the only witness. Sorry Rollie, it's all on you. Nert's people "supported" nothing.

As I sat comfortably at the table next to the Kunstwerke attorney on the left side of the aisle, Rollie reminded me of Vilmer the goon in *The Maltese Falcon* - he didn't know that he was being set up to be the fall guy until it was too late.

Where was Rollie's boss during all of this? Rick was there in the Greenville courtroom in the third row sitting next to Huey Weasely. Tripinfal sat a little further back. I noted how they all seemed to belong together on that side of the aisle. All three men desperately needed this hearing to go a certain way for different personal reasons. This was the first time that I really noticed the stench emanating from the other side of the aisle.

Kunstwerke Attorney

I should mention that the reason there was an attorney representing Kunstwerke is that after the explosion, Kunstwerke was owed a tremendous amount of money

from VanGrab, Weasely, Tripinfal, Johnny Rocco, and the D'Roccas. (Johnny Rocco and the D'Roccas are clients Suzie Weasely had recommended who found themselves stuck in the middle of this whole mess.) Because Kunstwerke is an S Corp., it is a separate legal entity, and in South Carolina corporations must be represented by an attorney. I could not represent it since I am not an attorney. Six of the twenty lawsuits were Kunstwerke contract cases.

These corporate cases were a great asset for me. As I said before, I was placed in the difficult position of having to prove a negative, as was Sean Lanigan. In a civil society, the burden of proof is supposed to be on the individual who posits a statement, but as you have already seen, Rollie had nothing from the beginning. The fact that all six corporate contract cases were settled in my favor (with a settlement check) disproved Rollie's slander that there had been any embezzlement or theft.

If there had been *any* truth to anything posited by Rollie to the witnesses who gave sworn statements, the contract cases would have gone nowhere. In my room full of depositions, there is not one statement by any client who said they shared any detailed financial information with Rollie from which he could even make a conjecture.

It was an all-day hearing. The Kunstwerke attorney was there to collect, I had different motives. The testimony that I referenced above was all I needed. For my purposes, Rollie and the VanGrabs were toast.

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Panic

Up until March 3rd, 2006, the bulk of my time was spent with the hourly complexity of constructing my extreme houses. Six sculptures which I imagined and crafted into models were rising out of orange clay at different spots around Lake Keowee. Each was at a different stage of completion. The last of my special, non-spec houses like the VanGrabs were wrapping up - it was an exciting time.

For the most part, I didn't need to worry too much about the construction funding processed through Kunstwerke. The men on the job site and I were doing the hard part - the clients main responsibility was to simply pay for it. These pass-through funding accounts ran themselves as long as the clients reimbursed the costs incurred - and for ten years and twenty million dollars, they always had.

The law gave me significant priority over other creditors to file a lien and foreclose if a client didn't pay. But obviously that was never needed. Processing a finite number of known invoices with known dollar amounts is a simple process. It should have been difficult to create a theft scandal within a simple and transparent funding account that can be easily reconciled and audited.

These funding accounts were also strictly autonomous and the funds could only be used to pay subcontractors and

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suppliers. These accounts reconciled a certain way to make certain that every sub was made whole and their right to file liens was protected. My personal draws from the S Corp. came from net income derived from the fees collected and had nothing to do with these autonomous accounts. So theft was impossible. Do you think Rollie or Rick are capable of understanding any of this? Did they even care? Of course not.

How could Rick and Rollie get it so wrong, unless they intentionally wanted to? The project's funding was simple and automatic, but it became the easiest and most expedient means to force an end the truth would not afford them. There was definitely a thread of stupidity running through their scam just as there was in the case of Lanigan's twelve-year-old pupil.

Rick's latest eruption became a full-blown explosion practically overnight. The last thing they ever expected was that after eight years they would still be cowering and avoiding the truth. They never expected that I would amass a room full of public records, and then tell you about them.

I received in the mail a "notice of termination" from Rollie on March 3rd, 2006 for "failure to pay subcontractors." What that means is anyone's guess. The VanGrabs had a credit card-like pass-through account with Kunstwerke which they funded "after-the-fact." It was completely voluntary and they could pay anything directly

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if they wished. If they funded their Kunstwerke account, then subs got paid, if not, they didn't - no more complicated than that.

I learned from Bronson much later in 2009 that Tripinfal had threatened him by declaring that since he was my site manager, and handled disbursements at the site, that they could "go after him" as well if he didn't cooperate. Bronson had been with me for five years and had worked his way up to being my top site manager. He had been with me almost from the beginning - we worked side by side on my fourth mountain house. Bronson had a new house he had just built in Brevard, NC and a new baby. His options were limited.

Everything that happened at the VanGrab site was mirrored at the Tripinfal site - Bronson's other project. Bronson's cooperation was secured before Tripinfal or VanGrab acted. I was unaware of any of it. Bronson was pressured to keep it quiet until the termination occurred. Tripinfal's exact words were: "Scott is going down." I suspect that Tripinfal had practiced that one in the mirror since I starred him down in the red barn. The VanGrab termination triggered the explosion and Tripinfal sneaked out the back door.

Based on the witness affidavits provided, Rollie fed Bronson the most garbage. Bronson would later repeat it to the construction workers who were equally concerned as

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to what was going on and by that point, it might as well have been on the evening news. Bronson was genuinely scared. This is why he stopped Luke on the side of the road. Rollie had told him I had "embezzled money from all of his (my) clients," "the money was hidden somewhere and it is my (Rollie's) job to investigate," "some of it went to a luxury car and foreign trips," and I "was going to jail." Rollie also stated: "I would just like to get my hands on him."

When Bronson asked Nerts what was going to happen to me, Nerts declared that he (Nerts) "was going to go after jail time."

Rick and Rollie knew that they were feeding their garbage through Bronson to a job site of gossiping construction workers, most of whom just wanted to work and get paid.

The more intelligent hearers were more skeptical. My twenty year reputation and left side of the merit aisle credentials were hard for Rick and Rollie to overcome. There were a few honorable men who spoke up. One such man named Kerry was ostracized and his business was removed from the VanGrab project for simply stating that the rumors needed to die down until the facts were known.

In his deposition, Kerry describes threats of violence against me and the pervasive rumor at the VanGrab site that

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I had actually been seen in jail. Honorable men attempted to quell conjecture and rumor and calm things down, while Rick, Rollie, Tripinfal, and Nerts encouraged and stoked it.

Kerry testified in a deposition: "I mean the number of subs and the situation going on at The Reserve with all the rumors. It quickly became evident to me that the last you wanted to do was to get caught up in the buzz, in the rumor mill, and have any negative stuff stick on you or your business long-term. And it was quite a panic situation in The Reserve for a while."

Amway Ethics

If the VanGrabs had any genuine issue with me, it could have been addressed openly and ethically. Why wasn't that their first natural inclination? Conservative, Republican, family values... Don't count on labels - they are meaningless. It is the merit aisle that separates. It is the population of Galt's Gulch versus the other side of the courtroom that should guide you. I can Google all kinds of right-wing political contributions by these VanGrabs. It is not politics that separates, it's character - it's on which side of the merit aisle you are most comfortable.

"'Character' means a man's nature or identity insofar as this is shaped by the moral values he accepts and automatizes. By 'moral values' I mean values which are volitionally chosen, and which are fundamental, i.e.,

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shape the whole course of a man's action, not merely a specialized, delimited area of his life So a man's character is, in effect, his moral essence—his self-made identity as expressed in the principles he lives by." - Rand

On March 3rd, 2006, we were only a few months from completion. If I had stayed, the project would have taken a little longer. I charged so little for my own efforts because most of my value was in the finished structure done right - my way.

"'Value' is that which one acts to gain and keep, 'virtue' is the action by which one gains and keeps it." - Rand

In June 2004, the VanGrabs had agreed to do it my way. Houses are bought and sold, but the designer's name remains, and his work is critiqued in perpetuity. I was not working for or serving the VanGrabs. They wanted the value of my creative production. The contract was so open-ended that they could have terminated our relationship for any reason. But I would have then moved my crew to another site — a crew comprised of unique artisans hand-picked by me.

"But you see, I have, let's say, sixty years to live. Most of that time will be spent working. I've chosen the work I want to do. If I find no joy in it, then I'm only condemning myself to sixty years of torture. And I can find the joy only if I do my work in the best way possible to me. But the best

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is a matter of standards—and I set my own standards. I inherit nothing. I stand at the end of no tradition. I may, perhaps, stand at the beginning of one.” - Howard Roark

Remember, Barb wanted in the house by May 2006. Rick and Rollie needed Bronson to stay on board with the rest of the Kunstwerke organization - tools, vehicles, all of it. I had no way of recovering anything. The money damn burst open and Barb finally got her free-for-all as crews worked around the clock to get it done. The exterior look was scaled back drastically to where much of the structure looks like a stuccoed institution or asylum (it is hideously bad) – but Rick and Rollie got it done.

A few threats and a criminal slander to create a panic and voila, a goon's job is done. But why would the VanGrabs do something so vile and dirty when other options were available? The same could be asked about the entirety of The Dandy Nerts and Rollie Show a year later (or the next six years of litigation). People simply choose on which side of the merit aisle they are most comfortable. After that, everything else is predictable.

Halfway

You are precisely at the midway mark of this story. The serious and grave nature of what has happened should be evident to you by now. No one makes a \$400,000 embezzlement statement of fact without first going to the

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authorities. It would be a defamation minefield. The only provable truth one could ever have is a criminal guilty verdict. In some English common law countries, such an slander without a guilty verdict is considered criminal defamation and people have been prosecuted for it. Rick or Rollie didn't go to the authorities because the authorities would have looked at *everything* and the scam would have been over.

Instead, all of the threats and criminal accusations fest-
ered in the public arena for an entire year until the Dandy
Nerts and Rollie Show. I had been told nothing and had
been provided no specifics. The closest thing I ever got to
any "proof" was Rollie's Damages Computation which was
handed to me as we sat down for the Dandy Nerts and
Rollie Show a year later - cheap and tawdry.

The moment Nerts handed the sheet of paper to us, the
Kunstwerke attorney and I huddled together at the table.
Anything above \$0 would have to be a fabrication - that
much I knew. I was able to destroy their computation with
handwritten notes as I thumbed through the actual
Kunstwerke accounting records - it took about five
minutes. I handed it to the Kunstwerke attorney so he
could use it as he questioned Rollie. My heart sank as the
stench from the other side of the aisle grew. Were they
really this desperate? What else could possibly be going on
here?

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Basic human decency required that they either show up with provable truth or recant and apologize, not put Rollie up there like a bumbling idiot still pretending it was a debit card, or attempt an expert witness ruse which went nowhere. But this was a default hearing in which Rollie could not be contested with evidence and witnesses. There was a much bigger purpose behind all of this, as you will see in the next chapter.

The aisle which separates us is very wide, indeed. Why didn't Rick testify at the hearing? Why didn't they call me to the stand? Rick could have done a lot of things these past night years to set things right. But just like that day when he sat in the third row cowering next to Huey Weasely, he has done nothing, Error of knowledge, or breach of morality?

Chapter 14

The Dandy Nerts and Rollie Show, Part 2

Rick's last eruption ... that fizzled

It may appear that the VanGrabs lit a fuse and ran. What may surprise you is that at one time, a few months after the explosion, they apparently were willing to testify and litigate their account.

The VanGrabs were *first* to file a lawsuit, shortly after the explosion and long before I was ready to do the same, but it fizzled. This is the case that brought us The Dandy Nerts and Rollie Show. There was a brief thirty-day period in which they must have been willing to testify - if you are a named party, you have no choice. Something happened to change all of that. Read on.

After Rollie took the box of billing statements back to Atlanta on February 16, 2006, and Rick made it clear that he was not going to pay for the 400 lb. gorilla stack of invoices, it was just a matter of time before something had to give.

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I had been sitting on the cabinet and window deposits, waiting for some acknowledgment from VanGrab as to how the 400 lb. growing gorilla would be resolved. Because these were restricted funds that could only be used to pay suppliers and laborers, there were only two legal options: Either pay Kunstwerke for the gorilla per the contract, thus giving Kunstwerke the ability to release the cabinet and window payments, or Kunstwerke would simply refund the cabinet and window wires back to VanGrab by crediting them against the growing gorilla account balance.

But as Rollie said in his testimony during the Show, his boss wasn't going to pay any more. So the latter option happened by default. I was in the middle of a VanGrab debit card scam, but just didn't know it yet.

In the days before the March 3rd explosion, I was becoming increasingly vocal about the gorilla and was threatening a lien. I was unaware that they had already secured Bronson's cooperation and that the rumors on the job site had just begun to circulate. I began to get calls from clients and business associates telling me that some guy named [Rollie] had contacted them.

Once the explosion occurred and Kunstwerke was no longer associated with the VanGrabs, I became even more vocal about the now 800 lb. gorilla. Bronson later told me that this made the VanGrabs very angry. A new rumor began to spread in late March that the VanGrabs were going

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to sue me. It sounded like a hint of another showy eruption, but this time the audience was the construction site.

I was legally obligated to place a lien on both the VanGrab and Tripinfal projects, and force an account reconciliation for the sake of the subcontractors and suppliers. Even though Kunstwerke had not been terminated from the Weasely, Johnny Rocco, and D'Rocco projects, these clients nonetheless stopped paying their Kunstwerke credit card-like accounts because of the VanGrab situation. Most of these projects were finishing up, so it was time for them to take over disbursements and close out their Kunstwerke account, anyway. But if any of these clients refused to honor their reconciled account balances like VanGrab and Tripinfal, then I was legally obligated to file liens on these as well.

Privately, I was told that if I filed liens, Tripinfal would go to the authorities and create a public theft scandal. Tripinfal was the most desperate, and he claimed to have the connections. He told Bronson that he "owned the Pickens County Courthouse."

Could they use the debit card scam to make it appear to a "friendly" DA or prosecutor that theft had occurred? What was the VanGrab money really capable of? What if I were unsuccessful at responding and clearing it all up before it hit the front page of the paper? How much control did Sean Lanigan have over that?

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Of course no one, especially attorneys who are supposed to be "officers of the court," would publicly announce a million dollar theft scandal without reporting it to the proper authorities first. It was a cheap shot to use the debit card scam and withhold payments to make it falsely appear to the workers (who didn't know any better) that theft had occurred. It is tantamount to intentionally planting evidence to make it appear that a crime had occurred.

It was supposed to be just a bully threat – a controlled explosion. All three knew that they all had 800 lb. gorillas in their closets. They It apparently hit a snag when Rollie and Bronson talked too much to too many people.

In their scam's scenario, Kunstwerke was supposed to just declare bankruptcy and I was supposed to go away and hide from the angry subs who would never get paid. I was supposed to have been sufficiently threatened and bullied. Rick and Rollie had not missed a day of construction work, and Tripinfal and Weasely could now close their loans.

The threat over liens became lien fraud when Tripinfal and VanGrab declared to contractors and suppliers that they had paid their Kunstwerke accounts in full and warned them not to file liens. There was no way I could file liens with this overwhelming threat to me and others. I was up against even more than I have told you.

By this point, Trace was helping me reconcile accounts and collect what we could. We started with the Weaselys

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because they owed by far the most. She sent a note to Weasely telling him that based on all that was going on, his account was being reconciled and that there were balances owed by him. Weasely recognized the collection threat and pounced. He threatened to report even her, of all people, to the "proper authorities."

I was reminded of this threat and its cowardly stench as I watched Weasely six years later slouch in his chair in a Pickens court room and agree to write Kunstwerke's attorney a check. I must admit that sometimes it's hard to tell if he is actually slouching - he is such a small man.

Such was March 2006. Everyone was trying to protect themselves, waiting to see what was going to happen. Some of those that Nerts wrote and told that their intended money was stolen by me were making threats about how they were going to get that money back. The stone mason from Clemson wanted to break my legs. Johnny Rocco told Luke that if I were missing, they would probably find me at the bottom of the lake.

Oh yes, and I was *supposedly* no longer even allowed in The Reserve. Did I mention that Rollie contacted my investor from Florida? As bad as all of this sounds so far, the worst scandal of this entire story and some of my most desperate efforts involved Suzie Weasely and my investment property (in a later chapter). In the midst of all of this, I now had to frantically reconcile five 800 lb. gorillas.

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I was supposed to be like a "contractor" on Peter's Island that is fired one day and off the island the next. But I didn't go away. I got louder and publicly disclosed a bunch of gorillas. I sent out cease and desist letters to those I knew were committing slander. I warned clients that there would be civil actions if Kunstwerke account deficits weren't made whole.

When I didn't go away, I was handed an Amway-like VanGrab "slapper" lawsuit in May (Rick's last eruption that fizzled) intended to shut me up and make me go away like a disgruntled "down market" distributor who dared to expose a Quixtar scheme. I was a long way from being able to sue anyone in May 2006. In fact, I was doing everything I could to avoid having to sue.

Trace and I frantically traveled to client living rooms trying to explain what was going on. Some wives cried, other sent emails of encouragement. But no one settled their construction accounts. Someone was telling them not to.

None of the clients who avoided liens would have been sued if they that would have simply agreed to an independent audit and paid the resulting account balance. I had to sue everyone to prove the negative that there was NO "embezzlement from all of my clients." That, a jury in a defamation case against Rollie.

No one who repeated the VanGrab slander would have

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been sued if they would have simply named their sources. I waited nine months, until December 2006, before I sued anyone.

And so Rick erupted with a civil lawsuit against me and Kunstwerke in May 2006. I frankly don't believe he had a choice, at that point. I sometimes forget that this whole eight year legal mess actually started with me as a defendant. Mostly because Rick only erupted for thirty days, and fizzled.

Zolof

My family practitioner scribbled a prescription on his pad for something that would help me "get up and do what I needed to do." No one was going to fight my battle for me and fix this. I knew what was ahead.

As Trace and I sat in one of his examination rooms, he asked me questions about how I was coping. It was mid-March 2006 and he knew that I had been sucker-punched hard and I was down - and my family was worried. He offered sage advice: "There have been lesser men who have survived far worse."

It is impossible to lose so much so quickly without feeling down and being in shock. Financially, I would lose everything I had worked so hard to earn for sixteen years - those precious few self-made dollars which allowed me to

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do my own work my way were gone. Self-made capital is the rarest form of business capital there is, and it earns you an automatic front row seat and lifetime membership on this side of the aisle. Bonus points are awarded if that business capital is derived from and benefits the actual creation and production of a tangible good - as opposed to the service or "deal making" sector.

It would have been different if a washtub-hole risk failed and I had taken a loss on merit. I would have just pulled up my bootstraps and charged ahead. No, this money was stolen - in a cheap, tawdry, white-collar, lawyer-assisted way. There are some losses you simply cannot protect yourself from (ask Sean Lanigan).

The debit card scam was not just used to create a fake embezzlement scandal, it was also used to fraudulently avoid the critically important legal process of liens. This would stick me with the accumulated debt of five projects totaling almost a million dollars. There would eventually be five full-grown 800 lb. gorillas! If you had told me then that it would take ten years to untangle the legal mess the VanGrabs had created, I would not have been surprised.

Needless to say, our March 2006 wedding was postponed indefinitely. I now had almost a million dollars of someone else's debt fraudulently placed on my balance sheet - which now had no assets. When it became apparent that the VanGrabs were going to force a procedural default and end

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their lawsuit without litigating it(explained later), we received strongly worded lawyer advice: "postpone the wedding." I had to protect Trace. The life we had earned was stolen. I no longer had the capital that would allow me to continue doing my own thing. I no longer even had the ability to start over again with another little \$149,000 mountain spec-house as a worst case scenario.

Rather than planning a wedding and a new exciting life, Trace now found herself having to worry about me and deal with the vermin that I had let into my circle of clients. We lived for weeks fully expecting someone to come crashing through our door in the middle of the night.

Only a few who read this will fully grasp that much of my grief had nothing to do with the financial devastation - as horrific as it was. My "profession" is not just a means to make a living - it is who I am. My creative nature and talent had not diminished between February 2006 and April 2006. When you create and nurture something with the passion it takes to succeed artistically at this level, you can't just walk away, or describe how it feels to be kept away.

I was only on meds for a couple of months until I transitioned from grief to anger and asked to be taken off. I have always been a tremendously upbeat and positive person and I had never been on *any* kind of medication before. I am not the type of person that ever gets down and

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so something even this bad didn't keep me down for long.

I didn't need a psychologist to help me *understand* what had happened, anger was a natural and positive response. In fact, when that anger is directed toward righting a wrong, it is the strongest motivator there is.

My family practitioner was a great help. He gave good advice and recommended the lawyer who became the Kunstwerke attorney. There wasn't some other "side" of a "conflict" I needed to consider or some kind of psycho-babble "conflict resolution" to be reached. There was only one truth and one premise. All I needed to do was put one of my self-made boots on a few necks and keep it there (for at least eight years).

Sean Lanigan was unexpectedly pulled out of a classroom and found himself sitting in a jail cell nine days later. Both Lanigan and the girl knew the objective truth. There was no "other side" or compromise for him. It happened or it didn't. His life was either to be destroyed or it wasn't. His only option was to force her to recant. I had many options and means to right this wrong and The Dandy Nerts and Rollie Show was key to all of it.

Silver Platter

As I describe the VanGrab lawsuit to you and the way it

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eventually ended, some may think that it was the worst outcome imaginable and that it placed me in an impossibly deep hole before I could even begin to fight back. But that would be the "legal" situational perspective from the other side of the aisle. My motives were completely different and yours probably would have been too, if you were in my shoes. In time, I would come to see it as the best thing that could have possibly happened. It was a gift handed to me on a silver platter.

The fact that the VanGrabs sued first cemented them in place as the legal "but for" in this event. I didn't see it as a positive at the time, and if you read my correspondence in the footnotes, you would see that I was incredulous that they sued me. I knew that they lit the fuse and I knew that "but for" what the VanGrabs did, March 2006 would have been just another typical month for me, my family, and my entire organization.

When something this unnecessary and this horrendous occurs which harms so many, there is a lot of finger pointing and blame. There is a tremendous amount of cowardice and avoidance - no one wants to take responsibility for their part. Tripinfal sneaked out the back door, Weasely kept repeating "all I know," and on and on. It was not enough that I personally understood exactly how and why it was happening as it was happening, I would not persevere unless I could amass sufficient public records to prove it. Once I became the plaintiff in December 2006,

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the facts surfaced and wrote their own narrative.

The objective financial records and the resolution of the Kunstwerke contract cases went a long way toward placing the blame where it belonged. Moreover, the legal process of discovery in the defamation lawsuits I filed became even more crucial. My single biggest legal expense was the cost of taking so many depositions. The most effective way to present the full picture was asking everyone involved in the event questions under oath. Toward the end, Trace and I sold what little property we had left (furniture, etc.) in order to pay for the last few depositions.

On my key chain there is a padlock key which opens my storage room of depositions. I have already visited that room several times and dusted off several during these first 180 pages. I forget sometimes just how many people have raised their right hand and testified with a court reporter present.

There is one objective truth consistent throughout this large group: no one actively avoided the process. No one refused to appear. There are only two names missing. The two people whose testimony should be the most valuable in resolving this mess are nowhere to be found. The VanGrabs did not appear and give testimony until December 5, 2014 -- nine years after the event. I can tell you that they sure weren't happy about it either. It wasn't voluntary.

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Choppy Patterson

Back to Rick's lawsuit that fizzled. On May 3rd, 2006, while our counter-top continued to pile up with legal threats and other notices, I was not in the best of shape. I received a call from a process server who said that they had some papers for me. I agreed to meet them outside my live/work studio in downtown Greenville. It was the VanGrab complaint with a summons that required that I "answer" the complaint within thirty days.

Kunstwerke was also listed as a defendant. There was no possible way that I could afford an attorney for myself, much less Kunstwerke, and it is difficult for me to explain how bad things were at that moment, but I responded by email within thirty days and I somehow managed to answer within thirty-six days with an excellent letter (copy provided in footnotes) which notified the VanGrabs yet again of the 800 lb. gorilla, what was needed to legally reconcile their account, and I warned Rick VanGrab and Rollie about a much more serious action that I intended to take against them.

I had never been sued before, and apparently my "answer" did not conform and was not what Nerts and the VanGrabs wanted to hear. They filed a motion claiming that I was in "default" for not having answered properly

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within the thirty day period. At this point we were forced to find a lawyer who could help us argue against the default and prepare a conforming answer for me and Kunstwerke.

We were able to scrape together enough money to hire a young attorney in Greenville to represent us at a hearing requested by Nerts to enforce the default. He told us that based on my sincere efforts to answer the complaint, my extenuating circumstances, and the fact that my counterclaims were much more substantial than their claims, the default request should be denied and the case should be allowed to proceed.

We were told that such defaults were at the discretion of the judge and that nine times out of ten a defendant like me would be let out of default. South Carolina courts will make every effort to allow a case to be heard on its merits. In the years following this hearing, I sat waiting in many courtrooms and observed many *genuine* default situations much older than six days in which there was never an answer even filed be allowed to proceed without default.

Our attorney was a little concerned when he discovered that the judge who would hear our request was going to be Judge Patterson. Our attorney said that Patterson was a little less predictable than other judges and had been given the nickname of "Choppy Patterson" by fellow attorneys.

This was my first time in a courtroom. Weasely and Tripinfal sat in the very back row of the Greenville courtroom and were not representing anyone. The

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courtroom was packed for a busy day of hearings. Before the judge began the hearing, he acknowledged that both Weasely and Tripinfal in the back row had taken time off to attend in their casual "civilian clothes." We were toast.

The judge then said "now lets get to why everybody is here." Again, we knew we were toast. At the end, before he ruled, he addressed my attorney, whom he apparently also knew personally and said that "he will probably not talk to me in church on Sunday" and he enforced the default. This was my first taste of what I was up against. I was angry and didn't know I had just been handed a gift.

Set the stage and turn on the lights

A default meant that the case was essentially over. The only thing left to do was to hold a "damages hearing" in which they presented what "evidence" they had. (Remember, neither I nor the public had seen anything to support Rollie's slander until this "damages hearing" a year after the explosion.) Their main cause of action was "breach of contract accompanied by fraudulent acts" for "not paying subcontractors." They provided no specifics when the lawsuit was filed in May, so I had no idea what to expect. I did know that any damages over \$0 would be a fabrication.

There were a few other causes of action but they were dropped. By the VanGrabs. The rules governing default

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damages hearings required that it begin with the assumption that the "breach of contract accompanied by fraudulent acts" had occurred, but that the "damages" were \$0. The VanGrabs simply needed to present their damages under oath and the party in default could not submit evidence or call witnesses to refute it.

A default damages hearing is basically a one-sided trial that is not decided on the merits of the case. My counterclaims for breach of contract were dismissed. The VanGrabs thought that they had won quite a prize.

This is key: The hearing occurred in March 2007, three months after I had personally sued the VanGrabs and Rollie for defamation in December 2006. As a result, they choreographed the default damages hearing to influence the defamation case. Rollie's back was against the wall and he needed to make up something for his \$400,000 theft slander. It didn't matter how he got to that number - it was all a fabrication anyway.

Days before the damages hearing, the Kunstwerke attorney who was recommended by my doctor officially came on board and was making things happen. He filed an appeal to have the default removed and filed full counterclaims. This wouldn't stop the hearing from happening, however.

You have already read some of transcript of his questions to Rollie.

So the stage was set for an uncontested environment in

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which the VanGrabs would be forced to present exactly what caused them to act in March 2006 - whatever was worth lighting the fuse over.

It went so badly for them that you may want to accuse me of operating a sting operation. Some may think that I intentionally defaulted so that I could entrap them in some way. But the truth is, I wanted to litigate the case on its merits and I instructed the Kunstwerke attorney to appeal the default all the way to the State Supreme Court.

The stage was set to present individual merit, self-respect, and moral depravity in a credible, real-life event in a way that fictional *Atlas Shrugged* or *The Fountainhead* could not. Rollie was about to hand us a single sheet of paper that supposedly would explain everything with provable truth. This single sheet of paper would become an invaluable gift, as if Rollie were holding a silver platter.

Chapter 15

Faked Reality

The camera zoomed in on John Galt as he said to Dagny: “Nobody stays here [in the Gulch] by faking reality in any manner whatsoever.” I whispered to Trace, “Wow, is that quote timely.” The theater was dark, but I still lit up my phone and emailed myself the quote so I would remember it tonight as I write this.

Dagny had crashed her plane into the gulch while chasing Galt’s plane, and she suddenly found herself surrounded by all of the others who had “gone Galt.” She finally discovered where everyone went, and why. But she wasn’t sure she wanted to stay. She was still convinced that she could reason and work with the characters on the other side of the aisle and “fix things.” Her eyes would eventually be opened, but for now, she was still faking reality.

Nobody stays on this side of the aisle by faking reality in any manner whatsoever. “Choppy” Patterson’s procedural penalty of default which did not allow me to challenge the Dandy Nerts and Rollie Show performance

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should not have been a free pass for the VanGrabs to fake their own reality.

Would the now retired Judge Patterson be angry if he knew that Nerts and the VanGrabs used the default he granted to stage a ruse and scam his Court (in exactly the same way they scammed Bronson and the other eighty-five businesses associated with their project in March 2006)? Would he even care?

Rollie and the VanGrab's sworn oath to tell the WHOLE truth was not suspended for a default Show. In fact, the highest moral obligation imaginable was placed on the VanGrabs to get it right, because they knew that I could not contest anything with actual evidence or witnesses. In fact, Nerts jumped up and vehemently objected anytime I tried.

And it wasn't just me they scammed - they scammed a corporate entity. They directly harmed dozens of honest, hard-working entrepreneurs and producers associated with their project. Would it matter to Bronson, Trace, or my parents if the VanGrabs chose to get it right or not?

Do lawyers ever fake reality for a living? Is telling Amway distributors that they are "individual business owners" and entrepreneurs not faking reality just a bit? Would legal expediency ever trump moral clarity and objective truth on that side of the aisle? All facts are objective, and when they are knowable, there can be no excuse for not doing the right thing.

The Dandy Nerts and Rollie Show was not a complex

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trial and there was no jury. It was just a breach of contract, default damages hearing before a judge. The Show was supposed to be about objective, finite, auditable, and complete accounting records governed by a clear and objective contract. There was no room for subjectivity or opinion. There was a finite number of transactions - all knowable. Anything beyond this would be intentional deception.

Accounting records of large companies are tested in audits by taking samples and extrapolating the results to come within a high percentage of certainty based on statistical sampling. The little VanGrab Kunstwerke account had 980 transactions totalling \$2,513,060. The VanGrabs had full subpoena power from their lawsuit and could have easily done a 100% audit of every transaction. The Kunstwerke attorney would have gladly cooperated.

Did Rollie and the VanGrabs walk in to the Greenville County Courthouse on March 13, 2007 with an account reconciliation or audit? No, nor did I expect them to. Did it shock me that they would instead throw an "expert witness" ruse at the judge and hope for the best? Of course not.

I already knew that the explosion a year earlier was not about me, nor was it based in fact or reality. Of course, the VanGrabs would do the exact same thing a year later and it didn't matter that a court reporter was recording it all. Why not? Because they were already sitting comfortably on the

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other side of the aisle long before they met me.

"The success of a man who deals with reality augments his self-confidence. The success of a con man augments his panic." - Galt's Speech

As I said before, I have no need or desire to convince anyone of anything. I write to expose reality – my reality.

Galt's Gulch

Before 2006, I had never been involved in any kind of litigation whatsoever. I knew very little about the process other than the old adage: "if you need to hire a lawyer, you have already lost."

I could not imagine making a career as a legal whore paid to "respect only the man in the black robe." Who would choose to dance in the stench of situational ethics - for a fee - as their life's profession? For the one life they are given, for a brief speck of time on this planet, *that* is the reason they wake up in the morning.

"One of the common failings among honorable people is a failure to appreciate how thoroughly dishonorable some other people can be, and how dangerous it is to trust them." - Thomas Sowell

Look over at the other side of your own merit aisle. You've known enough people and have lived through enough experiences to fill the benches with your own

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antagonists. Strip them down to their individual merit and you will find a common thread of cowardice throughout the whole lot of them. Courage, like every other positive character trait, is commensurate with individual merit.

When the symbolism and the analogies of the fictional *Atlas Shrugged* crashed into my reality and applied so well, I could not help but create a reverse analogy. If you haven't picked up on it yet, "the aisle" is indeed a border that separates. Which side is most likely to be comprised of the real-life population of Galt's Gulch? Let's just say that I don't see Francisco, Ragnar, or Galt actively recruiting Weasely, Nerts, Tripinfal, Rollie, or VanGrab for the Gulch.

The libel attorneys who have hung on for 179 pages now are completely lost with this analogy. Good day, gentlemen.

Looters, moochers, thieves, schemers, statisticians, crony-capitalists, trip and fall lawyers, socialists, etc. only plunder the wealth of someone else's productive effort. They have always *followed* wealth creation since the beginning of recorded history - like a snake oil salesman arriving on the dusty street of a western town that had just hit it big. He did not arrive to produce and trade value.

At times I wish that the aisle came with a force field keeping the stench out completely. Life sure is sweeter

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inside the gulch than it is outside. In my opinion, the population on the other side of the aisle are the most miserable, self-loathing people you will ever meet.

Having witnessed so much predictable cheap and tawdry behavior from the other side of the aisle for eight years and smelling that familiar stench day after day, I now have a deeper and more mature understanding of what it means to say: "I am John Galt."

Rollie's Single White Sheet of Paper

Rollie's single white sheet of paper was a year late. It's a shame that it was, too. It could have saved young entrepreneurs and young families. It could have saved hundreds of thousands of dollars wasted on attorneys. It could have saved a life.

But Rick and Rollie were not going to "put up" until the last possible minute - until they were forced to. Rick wasn't going to be the one to do it, either. That was Rollie's job. Rick was in the audience - in the third row next to Huey Weasely.

It was Rollie's job to submit a document into evidence, under oath, that would explain everything. It would be their first and only explanation as to why they lit the fuse.

Finally! After a long and painful year, a single white sheet of paper with actual numbers that would be their first

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and final (never to be modified) explanation as to why they announced to the world that \$400,000 had been embezzled from them.

Nerts handed me my copy moments before the Show as I sat down next to the Kunstwerke attorney at the table on our side of the aisle. The VanGrabs were *legally* obligated to give it to me twenty days *prior* to the Show. They were *morally* obligated to give it to me a year before the Show and *before* the explosion.

The default they forced and won meant that they were on their own. They had no choice but to force the default. It was the only way that they could make the debit card scam last one more day - March 13, 2007 -- that's all they needed.

These numbers were raw and uncontested. There still had not been an actual reconciliation or audit of the account as there should have been a year *before* the Show and *before* the explosion. There had been no exchange of accounting records in discovery as the Appeals Court would note years later. This was a pure reflection of why they they acted.

Rollie's single white sheet of paper is the VanGrab's supposedly bullet-proof document that a prosecutor could take and get a criminal conviction on - beyond a reasonable doubt. This is the sheet of paper that Rollie attempted to add credibility to by declaring on the witness stand that the "accountant" had looked at everything - until the judge

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found out he hadn't.

Why?

For me, and everyone on my side of the aisle, Rollie's single white sheet of paper was their first and final answer to the only question I had and my only reason for being at the Show: "Why?"

Why did Rollie tell Bronson, the site manager, that I had "embezzled money from all of [my] clients" and was "going to jail?"

Why did Nerts tell Bronson that he (Nerts) would be "going after jail time?"

Why did Rollie tell Alfonso, a contractor, that I had done "criminal things?"

Why did Rollie tell Kevin, a window supplier, that I had embezzled \$400,000 from the VanGrabs and had created "dummy invoices?"

The VanGrabs knew my background, reputation, character, and self-made-by-merit credentials. They knew how warm and generous I had been: a free Kunstwerke credit card, a \$6,000 monthly fee for the design and build of an architectural masterpiece, and a design-to-move-in

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time frame of less than two years? I'll say it again: In this business, that never happens.

"I am not a driven businessman, but a driven artist. I never think about money. Beautiful things make money." - Lord Acton

The slander they leaked to the public through the job site was the worst possible thing they could have done to someone like me, and they picked the worst possible time to do it. Scheme artists, as could be said of everyone else on that side of the aisle, are cowards. So I wasn't given the single white sheet of paper beforehand. I had to investigate on my own to find out what they were actually saying. I had obtained the \$400,000 dollar figure from a witness, but I still had no details. I had nothing to publicly refute or respond to for an entire year.

Try to imagine how anxious I was to get Rollie's single white sheet of paper. I wasn't anxious to get it for the five minutes I needed to prepare the Kunstwerke attorney - I dread every second in a courtroom with the legal whores across the aisle and those that pay them. I was anxious and excited about my plans *after* the Show. I had come to pick up the golden ticket that I knew Rollie would give me on a silver platter. Once the Show was over, I raced home beaming like Charlie Bucket with Wonka's last golden ticket.

I already knew that any dollar amount over \$0 would be

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a fabrication. Once Nert's handed the sheet to me, it only took me five minutes to destroy it while sitting at the table writing notes and thumbing through the actual Kunstwerke accounting records.

I put on my old Deloitte & Touche hat, took one sniff, and realized it was a worthless piece of paper. It was nothing but a cheap and tawdry scam. It wasn't based on their actual account or contract. It had no beginning or ending balance. It reconciled nothing. It was just a series of numbers listed like a script in a play. Each item was carefully selected to handcuff a judge restricted by default procedures (like the NNN Paving ruse). It was "whatever you can get away with" ethics - the standard script for that side of the aisle.

Rollie's single white sheet of paper was a year late for the same reason that they didn't go straight to the authorities. Apparently, Rick fakes all of his eruptions.

Their answer to my "why?" was: "expediency." It was the quickest way to get the house done without any interruption once whatever was "under our hats" hit the fan.

They knew that I was more intimate with all of the numbers than they were, and they knew about my Deloitte & Touche hat. The VanGrabs may not be very bright, but they knew I could see right through Rollie's single white sheet of paper. They were admitting to me that it had been a scam all along and that they were taking my defamation

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suit very seriously. They were hoping to use any default "damages" awarded as a firewall against my defamation suit.

When the Kunstwerke attorney reminded Rollie during the Show that he had not looked at everything and had not done a comprehensive account reconciliation, Rollie had no answer. But he did reveal his primary motivation: "I was looking to get the house completed."

Rollie: "Mr. Bill Larkin, who will testify I think in a little bit. The accountant that looked at everything."

Kunstwerke Attorney: "But what you were looking for is duplicate payments and over-payments, right?"

Rollie: "I was looking to get the house completed and found those through contacting vendors and subcontractors, yes, sir."

Rollie was only looking for those unpaid workers or suppliers that they needed *going forward* to throw money at so they would cooperate. But this would leave many other workers and suppliers unpaid. How could Rick and Rollie explain that? Easy, just say that the money intended for them was embezzled.

Rollie knew that the sheet of paper he submitted under oath in a default setting had better not be a comprehensive

reconciliation or an audit report based on the contract. And it had better not include the 800 lb. gorilla!

On this single white sheet of paper were objective numbers, and if no evidence could be submitted to contradict them, then the judge was obliged to rule that way based on default hearing procedures. They just needed someone to swear under oath to them. That was Rollie's job. As long as Rollie swore to the accuracy of the whole sheet, they would be awarded whatever damages were listed there.

The VanGrabs and Rollie submitted to a court of law this sheet of paper which claims that \$353,993.91 had been embezzled from them. Nerts immediately began to use Rollie's sheet of paper as "proof" that I was an "adjudicated embezzler." He would introduce me as an "adjudicated embezzler" at the beginning of almost every hearing over the next seven years, even in the cases not involving the VanGrabs. If you had been a casual observer in one of these courtrooms, you may have thought that it actually meant something. But this was just a civil default case...

After the Appeals Court ruling in 2013 which stated otherwise, Nerts won't be doing that little dance anymore.

To an audit or accounting expert, Rollie's sheet is completely worthless. The \$353,993 amount is a complete fabrication. In reality, nothing had been embezzled from the VanGrabs. Each item listed by the VanGrabs was designed (like the NNN Paving ruse) to make it appear that

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they had overpaid or paid twice for something when they hadn't. They could only get away with each deception if the actual accounting records or an audit were barred as they were in this default setting.

"Kunstwerke allocation"

One of the items that disgusted me the most when I first glanced at the sheet is their "Kunstwerke Allocation" of \$32,000. This item told me that Tripinfal was involved. The VanGrabs had been paying \$6,000 monthly in Kunstwerke fees. They were now suddenly claiming in a default setting that the last six months of Kunstwerke's involvement should have been free.

They supposedly didn't "mean" to pay for these six months when they were billed for each of them. They presented the original contract as support, and I was barred from presenting any later modification to it. It was a dirty shakedown.

The worst part of it all is that it reduced the total that they paid for all design and general contracting from \$128,000 down to \$96,000. The Reserve average at that point of construction would have been \$625,000. The late VanGrab was worth \$2.9 billion when he passed away in 2004. One would think that his daughter could afford to exchange value for value. Even Huey Weasely sitting next to Rick VanGrab in the audience probably thought this

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particular shakedown was a bit cold and greedy.

The two items which surprised me the least were the large cabinet and window deposits which were refunded to them to pay directly. Since the 800 lb. gorilla was barred from the room, they made it appear as if this money was actually "missing."

How could so much stench emit from a single white sheet of paper?

Mitsubishi Bank

There is an old joke told in business school that sophomore, "Intermediate Accounting" is responsible for the greatest number of new "Business Administration" or "Marketing" majors. Accounting classes get smaller each year as you advance. A small group within the senior class get offers from one of the "Big Six" (there were six in my day) international firms that recruit on campus early in their senior year. The ideal career path is to pass the CPA exam and stay with the firm long enough to transition into an executive position with a large company.

The value of an accounting degree is enhanced immensely if you can secure such a "Big Six" offer. I wasn't your typical accounting student and I definitely wasn't popular. But when the recruitment process ended, I received five of six potential offers - tied for the most in my graduating class. There were many classmates who had

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much better grades who received no offers whatsoever. The firms were looking for more than just grades.

I picked Deloitte & Touche and requested New York City. Deloitte had offices in both Midtown and in the original One World Trade Center (floors 93-101). Most of the time, we worked in the offices of the clients we were auditing. I happened to be working at a client in Midtown the day of the first World Trade Center bombing. I later saw the faces of friends who had climbed down the fire escape stairwells covered in soot.

Earlier, in my first year there, we had a false fire alarm and we ran down all 94 flights of stairs for fun - it took forever. I can only imagine how horrific it must have been on 9-11. The Deloitte partners decided after the first bombing that they had better find space elsewhere in lower Manhattan and the World Trade Center office never reopened.

The New York office was so big that new recruits were often encouraged to specialize within the audit practice from the start. I ended up in the banking group. Within the banking group, I worked mostly with foreign banks with operations in the United States. My clients included Bank Austria, Mitsubishi Bank, and Bank Leumi (Israeli). Within the foreign banking group, I was part of a smaller group that studied and audited the loans that these banks participated in, such as loans to developing countries or to large international companies. We didn't do much number

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crunching, we functioned more as analysts. We had to determine if the loans were as collectible as the bank said they were, and explain it in writing.

In the summer of my second year out of college, during the slow season, my senior handed me a folder containing the previous year's audit papers of one of Mitsubishi bank's pension plans. He told me to follow last year's papers and gave me the business card of a contact at Mitsubishi's human resources. He said to "call this guy and set up a meeting to get the documents you need."

I arranged to meet my new contact at Mitsubishi the next morning. I only needed a few documents and I expected to meet him in his office or in a small conference room. Instead, I walked into a large conference room surrounded by a dozen Mitsubishi human resource executives who all stood up and nodded as I walked in. I hoped that my face was not as red as it felt.

Something must have been lost in the translation. They must have expected a Deloitte partner and a team of audit professionals with some other purpose. Instead, in walks a twenty-three year old who only needed a few documents to audit a small pension plan he knew little about.

I can't remember exactly what I said - I somehow conducted a respectably long enough formal meeting without really saying much more than "where can I find these reports?" We all nodded and I walked out.

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At that moment, my school grades and accounting acumen did not matter. So much of the real world of business and human interaction depends on natural instincts and character. You don't really know what you are capable of until the unexpected hits you hard - out of nowhere - and you don't have time to think about your reaction.

My three-year Deloitte & Touche career occurred before the age of twenty-five. Those were tough and very competitive years. Half of my fellow first-year New York recruits did not survive that first year. It was the ultimate business boot camp.

Sniff

There was a forty-hour billable time budget to audit this Mitsubishi pension plan. It was just a small engagement intended to keep me billable during the slow season. Even so, this plan was being audited by one of the top accounting firms in the world and my manager expected the audit to be done right. Deloitte spent enormous resources training us to detect errors or misstatements, and even sniff out theft or fraud. The investing public and those vested in the plan depended on us.

Plans like these are contractually detailed and very specific. What if there was a fraction of a percentage point being skimmed from a multi-million dollar account by somebody? If it were hidden well, the stench may be barely detectable. I was trained and expected to detect it.

The defined terms of the plan and the actual dollars and percentages used were not subjective and dependent on what one of the parties to the plan thought it should be. If there were a risk, it would be embedded in the details, and undetectable by the average observer.

Scams like the VanGrab's scam usually occurs hidden in the minute details of a contract (debit/credit or reimbursement/deposit). The construction workers weren't privy to all of this and some may not have understood. That was the whole point.

Most of the theft and fraud that occurs in the real world is much more sophisticated than a liquor store robbery and for that reason you may never hear about it. Odds are, I should have never been able to bring this scam out into the open as a *pro se* litigant with empty pockets. There have been so many times these past nine years when I have wanted to give up (I am so glad I didn't).

The science of accounting is made up of self-balancing accounts and objective terms. Accounting records only have value if they are objective and complete, because so many parties depend on them.

The entire Kunstwerke corporate structure and the contractual terms that every party depended on were objective and clearly defined. The VanGrab debit card scam was not a highly sophisticated, white-collar, Wall Street scam conceived by a rocket scientist. It was just a cheap and trashy scam intended to fool a few construction

The Dandy Nerts and Rollie Show, Part 3

workers, maybe a bank, and maybe a judge or two - for a short while.

What the VanGrabs did is not a subjective matter of opinion. The objective facts and accounting records have been there all along. I am not positing an argument, nor do I feel a need to convince anyone of anything. I am writing from the standpoint that the facts have already been proven.

I developed the 800 lb. gorilla and debit card analogy to make these financial and contractual matters more understandable. A few years ago, I created a succinct, eight-page graphic which explains the scam well. Because I have had success using it to explain the scam to various individuals, I have a link to it at ColdandGreedy.com. Look for the "VanGrab Debit Card Scam" in this chapter's gallery. This will inform the narrative of the remainder of The Dandy Nerts and Rollie Show.

Chapter 16

A Motivated Goon

“I’m not supposed to be telling you this, but to give you an idea of some of the criminal things Scott has been doing...” Alfonso was quoting Rollie, and Trace was taking notes. “[Rollie] then referenced an insurance policy for the VanGrab project and claimed that Scott took out the policy, billed the [VanGrabs], and intentionally canceled the policy the next day so that he could keep the money.”

Alfonso is a contractor who crafted ornamental copper roofing for the VanGrab project. His business is called New Creations. Trace and I were still contacting dozens of potential witnesses like Alfonso as late as July 2008. Our plate had been full putting out more urgent post-explosion fires like the “Lady of the Lake” disaster (explained later).

On this day, we were focused on making certain that Rollie’s case would survive any attempt by Nerts to have it dismissed. Affidavits such as the one we secured from Alfonso in July 2008 would help that effort.

We were in Alfonso’s family room sitting on a sofa. He sat across from us in a chair. It had been two years since the VanGrab house was completed and Alfonso seemed

surprised that we were still pursuing Rollie and the VanGrabs. He asked me "could you not just earn your money back quicker by working rather than spending time on this (lawsuit)." He didn't fully grasp the scope of what had happened and what we were up against. Nonetheless, he was candid and told us what he remembered.

When he brought up Rollie's "insurance policy" allegation on his own, I wanted to jump out of my seat. I was the only one in the room who realized what a bombshell it was, but I didn't let on. I thought to myself as Trace wrote down Alfonso's quote, "that dirty, rotten goon."

There were 14 items on Rollie's single white sheet of paper. 12 of them were simple cut and dried disbursements that depended on the debit card scam. Remove the debit card scam premise and those 12 melted away.

But there were two items that were not part of the debit card scam that jumped off of the page the moment my eyes first focused on Rollie's single white sheet of paper: "NNN Paving" and "Johnston Insurance." These two items submitted by Rollie and the VanGrabs under oath in a court of law will grab your conscience and shine a bright light on the moral depravity of the other side of the aisle.

This is why the aisle that separates is so very wide. *This* is something you and I would never dream of doing. *This* is why the Dandy Nerts and Rollie show as an uncontested hearing was so important — they were truly being themselves.

A Billionaire's Goon

During the year before the Show, before I filed any lawsuits, I spent my time, day and night, reviewing four years of Kunstwerke transactions. I was forced to do an early formal account reconciliation of all five clients who stopped paying at the time of the explosion. I hand sorted and reviewed over 10,000 invoices and ran various spreadsheet analyses of every account so that I could present account data in ways that would inform.

I wasn't preparing for an honest back and forth negotiation and settlement of an account with a client who was sitting comfortably on my side of the aisle – honestly exchanging value for value. I was preparing to battle VanGrab ethics.

Rollie had not been required to first have provable truth before acting - as long as he was achieving their desired end. Who would sue a billionaire's goon, anyway? Besides, there is plenty of pyramid money and *other ways* of dealing with that unlikely event.

I probably shouldn't use the word battle. If someone is willing to fabricate "truth" (until someone else proves it false), then you are swatting at flies in the air.

Swat one and he'll make up another. That vicious cycle has no end and no limit. It is the very essence of situational ethics and moral relativism. This is why I was so anxious to get something finite and tangible like a single white sheet of paper with actual words and numbers - filed publicly in a court of law - that I could respond to, and

expose Rollie and the VanGrabs.

Rick was a motivated boss and Rollie was a motivated goon. Together they were desperate to fabricate and broadcast *anything*. Johnston Insurance (\$3,750) and NNN Paving (\$7,100) are petty in amount, but explosive in their slanderous impact. Rollie had gotten far too desperate and far too careless with these two - he went way beyond the debit card scam.

Alfonso told us that Tripinfal had talked to him for a long time and used a lot of legal terminology.

But these 2 items on Rollie's single white sheet of paper reveal a desperately motivated goon, not just an ignorant or mistaken one. These 2 out of 14 items (2 out of 980 total VanGrab transactions) required that Rollie fabricate a series of criminal steps. According to Rollie, it was supposedly more difficult for me to embezzle this \$3,750 and \$7,100 than it was the \$340,000 from the other 12 items. He fabricated a narrative that could not possibly be true. He fabricated a narrative that might fool a judge if it no evidence could be submitted to refute it.

Together, these two items and the debit card scam became the VanGrab "truth" defense - vehemently defended with pyramid money - for eight years without *any* retraction.

If Rick and Rollie had honorable intentions in March 2006, and if Rick wasn't forced to erupt, they could have simply asked me *before* the explosion about NNN Paving

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and Johnston Insurance. I would have gladly directed them to the independent sources that would have given them 100%, Deloitte & Touche quality, fact-checked, reality-based assurance. Rick and Rollie have *never* asked me about these two items, they waited for an uncontested hearing in which I couldn't answer. Everything that occurs on the other side of the aisle requires some form of cowardice.

But Rollie's single white sheet of paper was a year late. It's a shame that it was, too. It could have saved all of the heartache and devastation I witnessed in the eyes of people I love.

NNN Paving

Reader, you've heard the old adage that character is what you would do if you thought that you would get away with it? This test is nature's most powerful tool for exposing what someone is truly capable of. A year after the explosion, I was handed this tool via the Dandy Nerts and Rollie Show.

One of the reasons the population on our side of the aisle loath most trial lawyers is because many are willing to suspend real world ethics and causality in the name of client advocacy. For us, the morality of reason, causality, and merit does not disappear in the "legal process." We use the legal system to force truth; they use it to manipulate, threaten, and avoid truth altogether. There is no "legal

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world" and no "dog-eat-dog business world" separate from the rest of our existence. I despise the phrase "that's just business." There is just reality, and one morality.

Nert's lead role in the NNN Paving dance is a great example of a lawyer dancing any dance for a fee. Client Rollie needed some explanation for his dummy invoice slander. Nert's and Rollie's NNN Paving dance is a bit long, petty, and not particularly skilful, but I present it in its entirety because it is vitally important to this narrative.

Rollie's statement about "dummy invoices" was not only false, but obviously defamatory. Because I could not challenge the dance, the judge relied on the fact that Rollie and the VanGrabs were under oath and he assumed they were telling the truth.

Because they didn't have any actual evidence of "dummy invoices" from "dummy companies," Rollie needed to come up with something for the Show. He scoured all seventy of the VanGrab's weekly billing statements from my company, looking for anything that might fool a judge.

In the VanGrabs weekly 11/10/05 reimbursement statement, there was a charge of \$7,100 for an early construction paving job that allowed construction vehicles to navigate the steep terrain. A company named CMC had done drainage work at the project, but a company named NNN Paving did the actual paving. The check was written on site by my project manager,

Bronson, for \$7,100 to NNN Paving on 11/9/05.

I was unaware who had done the actual paving until long after the VanGrabs 11/10/05 statement was issued and Bronson had mailed in the invoice and check stub. The \$7,100 billed to the VanGrabs was simply put on the CMC budget line of the 11/10/05 statement with the word "asphalt" (not capitalized) because it was believed that CMC had lined up these pavers. Nothing awry here, just a typical and proper way of collecting the \$7,100 the VanGrabs owed.

Here is the court reporters' transcript of Nerts examining Rollie on the stand during the Show where they attempt to make the judge believe that the VanGrabs were billed for a dummy company named CMC Asphalt and that they had paid twice ($\$7,100 \times 2 = \$14,200$). They even go through a whole charade of checking "licensing" agencies for this "CMC asphalt."

Nerts: "Now then, I want to talk about the CMC Asphalt. Do you have that \$7,100 as overpayment?"

Rollie: "Yes, sir."

Nerts: "Are you familiar with this?"

Rollie: "I am."

Nerts: "Let me ask you this. Did you - have you looked at any of the checks from the Region's Bank account?"

Rollie: "Yes."

Nerts: "And did you locate a check that Mr. Kunst or Kunstwerke paid to the company called CMC Asphalt?"

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Rollie: "No sir."

Nerts: "And did you cause to be investigated or did you investigate whether, in fact, there was a company called CMC Asphalt?"

Rollie: "I did, sir."

Nerts: "Is there a company called CMC Asphalt?"

Rollie: "No sir."

Nerts: "And did the VanGrabs, in fact, pay \$7,100 to Kunstwerke on the strength of a representation that he paid a bill from CMC Asphalt?"

Rollie: "It appeared on a monthly — or a weekly progress billing requesting \$7,100. There was no invoice attached with that progress billing to support that." "I have looked on the internet and queried state licensing in Georgia, South Carolina, and North Carolina, and I can't find CMC Asphalt."

Nerts: "And have you looked, checked with the South Carolina Department of Labor, Licensing, and Regulation to determine whether or not as any kind of contractor there is an entity called CMC Asphalt?"

Rollie: "Did with your assistance, yes."

Nerts: "And I want to show you an affidavit from LLR. And what does that affidavit state?"

(There was a series of objections as to whether the affidavit was admissable which is irrelevant here, so we pick up after.)

Nerts: "Now then, so to the best of your knowledge

and your investigation, is there an entity called CMC Asphalt?"

Rollie: "I've not been able to locate one."

Nerts: "Okay. And do you know what happened to that money?"

Rollie: "No sir."

Nerts: "Do you know who actually did asphalt work on the [VanGrab] project?"

Rollie: "It was several vendors. The early construction pavement was a company out of Easley, South Carolina, called NNN Paving."

Nerts: "Do you know if, in fact, sometime shortly before the submission of this application for payment there was an invoice from NNN Paving?"

Rollie: "I talked to the owner of the business who told me he did the paving and that he had submitted a bill, and the check substantiates the payment of that from Kunstwerke to NNN Paving for doing the driveway."

Wait!

What did Rollie just say?

Nerts abruptly moved on to something else because Rollie the goon was stupidly close to giving it all away there at the end. He was supposed to just say "yes."

In his last question, Nerts was attempting to set it up so that the judge would think that there had already been an invoice reimbursed or paid by the VanGrabs "shortly before" (a dummy invoice from a dummy company).

But they had no other statement for this paving and no other invoice. The VanGrabs were billed once and paid once. The transaction was typical, proper, and complete. The budget was adjusted later to show NNN Paving as the payee.

Since I was not allowed to submit into evidence the actual NNN Paving invoice and accounting records refuting Rollie's lie, the judge was obliged to grant this line of his single sheet of paper. This went on for thirteen more lines, and none of this was about the money, either! It was about trying to provide legal cover for Rollie's "dummy invoice" slander.

Even after the ruse ultimately failed as a defamation defense in the Appeals Court, Rollie and the VanGrabs never amended, clarified, or corrected this or any of the other fabrications on Rollie's single white sheet of paper, despite my repeated (and very public) demands that they do so. I never expected them to. Why? This default damages award gained a new purpose as a settlement offer bargaining chip and threat.

If they had come to me before the explosion, I would have researched the accounting records and said: "Here, Bubba Nettles of NNN Paving's phone number is at the top of his invoice and Bronson wrote the check number on it. You have the Regions Bank statement confirming the payment and you know that you were billed once and paid once." Done.

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For a Jay VanGrab Enterprises paycheck Rollie attested under oath that I intentionally created a "dummy company" name (CMC Asphalt) so that I could fraudulently bill them and "pocket" the \$7,100, even though their own records showed that they had paid only once. (Nerts loves the term "pocketing" - it sounds good in his legal briefs.)

Only someone who intentionally caused the explosion a year before, which harmed so many good people, could so casually lie about it a year later under oath.

The aisle which separates us is very wide indeed.

Johnston Insurance

It is a shame that Rollie was a year late with his Johnston Insurance ruse, too. Rollie testified during the Show that I intentionally took out two identical builder's risk insurance policies on the VanGrab project with The Maryland Insurance Company on the same day. He swore that I intentionally canceled one of them the next day but billed the VanGrabs for both and "pocketed" the \$3,750 difference. He created a detailed narrative, assigning specific individual actions and motivations. Rollie's support for all of this was that he "called" The Maryland Insurance Company.

Rick and Rollie may not have known that the Greenville company where I worked for five years after Deloitte & Touche was an insurance agency. I was CFO,

administrator, and I ran their computer network. So I have practical knowledge of how insurance agencies interact with insurance companies and how policies are issued. A former colleague of mine had started his own agency and so I obtained my builder's risk policies from him. Rollie should have called the Johnston Insurance Agency and not The Maryland Insurance Company and simply asked why two policies were issued.

Such policies are obtained through the *agent* who has authority to bind coverage over the phone. I could not obtain two policies directly. The only way that two identical policies could be issued is through an agent error or a company underwriting error.

Dean, my colleague's wife, told me later that she inadvertently submitted two through their system, but then later corrected it. Two policies were automatically billed to Kunstwerke and this invoice was automatically included in the next VanGrab Kunstwerke weekly statement.

This error would not have been detected in the VanGrab account until the policy renewed or if there were an additional premium added or credit issued. This is why Kunstwerke maintained "sub-accounts" of each subcontractor and vendor. Such account adjustments were a regular occurrence. This June 2005 error was not detected until the final account reconciliation after the explosion and a credit entry was made to the account.

This is an excellent example of why a full construction

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account reconciliation would have been so crucial. Any assertions or conclusions without one would be worthless and intentionally deceptive.

Reader, are you getting the picture? None of this mattered. The VanGrabs spent a fortune winning the right to have the uncontested Dandy Nerts and Rollie Show and by December 2006, Rollie was a desperate goon looking for *anything* unusual out of 908 transactions that might fool a judge in an uncontested hearing.

Anything that was a typical everyday business world account adjustment became criminal intent by the company's owner; Even though this was all a civil matter, they were more concerned about attempting cover for Rollie's slander. Everyday business items that reconciled the other way in Kunstwerke's favor were missing from Rollie's single white sheet of paper.

A fortune was spent so that I would be barred from introducing the other side of the ledger during the Dandy Nerts and Rollie Show. Rollie swore under oath that I intentionally obtained two policies and fraudulently billed them so I could "pocket" half, and Barb VanGrab funded and approved of his efforts.

Flies, Lots of Flies

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There is not a more disgusting waste of time for someone like me than swatting at flies and proving negatives. Why was *I* the one who had to collect the facts that would disprove *their* slander?

Rick and Rollie's audience assumed they were speaking the truth - otherwise, who could be *that* depraved? Most people unconsciously project their own character on others and assume honorable intentions. A civil society demands that the accuser have the facts *before* he speaks. My time would have been better spent creating, producing, and achieving on merit instead of wasting time disproving a motivated goon and his boss - goodness knows they had nothing better to do.

What kind of man would be this motivated to act this way against another man? What self-respecting man would treat the reputation of another man with such careless neglect? If Nerts is motivated by his fee and Rollie is motivated by his Jay VanGrab Enterprises paycheck, what motivates a billionaire? The merit aisle which separates us is very wide indeed.

Slander

I had no choice but to waste my time swatting flies. On one of those dark days in mid 2006, I downloaded a book on defamation written for someone without a lawyer. Trace and I took a crash course on defamation law long before we learned anything about civil procedure, motions, hearings,

trials, etc. I saw it as similar to an urgent self-defense course for someone being stalked.

The first chapter nailed it. The first and most urgent need of anyone being genuinely slandered is to silence the defamers. An actual civil lawsuit is the very last resort. No one would file such a lawsuit, without a lawyer, against deep pockets expecting to win money damages.

So if my investigation identified a slanderer, I sent him a cease and desist letter. If that didn't work, they were sued. My primary motive was to identify the source and expose it. I dropped any defamation suit if a defendant simply identified his source. I settled for affidavits, not money. As I counted down the resolution of twenty lawsuits, the real perpetrators were gradually exposed. It is not as if I didn't already know the perps; I still needed provable truth that could withstand their counter attack once I exposed them.

Once litigation began, I knew that legal briefs, hearings, or trials were exempt from defamation law. The other side of the aisle would be given a defamation "pass" until the litigation was over. This is another reason why a nine year defamation case is outrageous.

The book warned that sometimes it is better not to sue because it may do more harm by further publicizing the slander. My situation was too extreme for that to matter. The slander was too severe and explosive, and had already destroyed everything. It had been broadcast so widely that

placing it in public court records would not make it any worse.

I knew that the moment I sued, my life would never be the same, and that there would be no turning back. I wouldn't have the option to change my mind or give up.

Sean Lanigan's name will always be sullied by the fact that he was forced to defend himself against the girl's slander. What is said cannot be unsaid. I can point to my twenty year reputation or a court verdict, but there will always be someone who will say: "there must have been something more to cause all of this, there has got to be two sides to this story..."

Even if Rollie and the VanGrabs fully recanted tomorrow, I will never be able to fully wash their stench off of me.

When I sued Rollie and the VanGrabs in December 2006, I genuinely believed that I was fighting for my life. I had experienced enough threats since the explosion and I had read the Blakey report. If I told you how much has been spent by them in an effort to avoid actually litigating Rollie's single white sheet of paper, it would frighten you.

If there is so little virtue attached to the source of VanGrab money that they are willing to spend it forcing a default on an artist and entrepreneur like me, and publishing that I was an "adjudicated embezzler" based on their forced default, what else is their money capable of?

When Johnny Rocco said to Luke that I may be found

"at the bottom of the lake," he wasn't referring to something *he* might do.

My situation in 2006 could not have been more dangerous. The pervasive rumor at the VanGrab site in the week following Kunstwerke's termination was that I had stolen \$1,000,000 and had taken off with it, and that it was just a matter of time before I was arrested. Nerts had told Bronson that he was going to see to it that I did "jail time." Rollie and the VanGrabs did nothing to quash any of this. They paid for it!

You can also imagine what The Reserve Sales office was talking about.

Rollie even told the workers how I spent the embezzled money that was supposedly intended for them. Rollie fabricated extravagant purchases that would inflame construction workers the most: "luxury cars," "foreign trips," or "jewelry." If they were willing to mislead workers with something that could be so easily disproved, what else are they capable of?

For a VanGrab fee, Nerts was willing to stop Trace and me in the doorway of a Pickens County courtroom during a hearing in late 2007 and say loud enough to be overheard: "you are going to prison." Aside from the lack of legal ethics of an officer of the court threatening criminal action in a civil case, why was he making this threat in late 2007? Why didn't he go straight to a prosecutor in early 2006?

Trace glared at Nerts and said: "you are the lowest of

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the low." Life is so much sweeter with someone so comfortable on this side of the aisle.

Reality exists independently of how much the VanGrabs spend or how often Nerts makes threats. There was indeed money "missing" from five construction accounts, but the trail did not lead to me. By 2013, Weasley, Tripinfal, Rocco, and D'Rocco all wrote Kunstwerke's attorney checks, not the other way around. Enough said.

Like a flash in March 2006, both the reputation and money I had earned by merit for twenty years had been stolen. Since then, and up until this very moment as I type, I've been in a mad dash to get as much as possible on the public record. If something happens to me, I want to leave a trail.

Chapter 17

4,000 lbs of Screaming Gorillas

If you know where to look in the clerk's office of the Pickens County, South Carolina courthouse, you will find volumes and volumes of my personal and corporate financial records. It is all out there for anyone to see. You will find bank statements, medical records - everything. That is the price one pays to prove a negative. Any privacy I may have been entitled to had gone up in smoke in March 2006 (like everything else in the explosion).

These types of records are fair game for a civil subpoena in a defamation lawsuit. And if the pockets of the party you sue are deep, each and every page will be scrutinized.

I probably handed over more than I was legally obligated to. There was probably an objection or two I could have made if I were a skilled litigator. Nonetheless, I had nothing to hide.

Rollie's single white sheet of paper had been submitted long before they had access to these records. This is why the 2007 Dandy Nerts and Rollie Show was so raw and so invaluable. It confirmed that the 2006 explosion was not

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an honest mistake or just an error of knowledge. It confirmed on which side of the aisle the VanGrabs belonged, and predicted where they would be sitting for the next six years.

But this moment, another year later in 2008, was just as huge. I had finally gotten every possible financial detail out there. All five 800 lb. gorillas were now roaming freely. Of course the facts had always been knowable, but now they were published publicly under oath in a format easy to understand - screaming for attention.

From my perspective, my legal efforts were essentially done. These records guaranteed that the corporate cases would all settle in my favor, and they all did. Each case eventually settled quietly with a check - you could have heard crickets.

All of the construction projects had long ago finished. The construction site panic and the flames that consumed everything were distant memories for some. No gossiping construction workers, nor anyone else for that matter, contacted me to say: "oh, you were right." I expected nothing.

My self-respect is not predicated on what anyone thinks, so recognition or apology would have had no effect. The other side of the aisle lost a chunk of their *pretense* at self-respect, which had no value to start with.

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If my motivation for exposing my reality in these pages was to prove a depraved allegation false or to seek exoneration, this would be a good place to come up with a clever ending - perhaps something about merit and perseverance - and be done with it.

But I was not screaming for exoneration in March 2006 as I struggled to awaken from this nightmare. My first scream was not "slander!", it was "theft!" In this rabbit hole I was thrown into, everything was upside down. Every time the other side of the aisle accused me of being a thief, not only was it false, the opposite was true.

The settlement of the corporate cases did what needed to be done. It took this whole tawdry scam and flipped it completely upside down, exposing its seedy underbelly of deceit and corruption. It exposed real theft.

Pocketed

So, as expected, the VanGrabs and their agents did not treat my financial records any differently than they did the box of billing statements Rollie took back to Atlanta in February 2006. Indeed, these new records became just a much bigger box for Rollie and the VanGrabs to rummage through desperately looking for *anything* they thought they could use against me.

If you are willing to spend a few days digging through the case files in the clerk's office, you could probably

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determine how many times I picked up breakfast at McDonalds during 2002 through 2006 and precisely how much I spent. That would not be a juicy detail worthy of these pages and would definitely not inform this narrative.

But this would: How much money did I make designing and building all of those extreme multi-million dollar resort mansions on Lake Keowee in South Carolina? How much cash did I personally draw from my only source of income: my wholly owned S Corp., Kunstwerke? The average income for a designer/builder/owner of a firm with this portfolio would be approximately \$300,000 to \$400,000 per year.

There is a thousand page exhibit of accounting records entitled *Plaintiff's Exhibit A*, filed for the public to see, which has a detailed summary of all of my cash draws from Kunstwerke on page 94.

During the three years I had the grave displeasure of being associated with the VanGrabs (2004, 2005, and 2006), my personal draws from the S Corp. were \$76,986, \$89,596, and \$13,757 respectively. That is only \$180,339 cash taken out of the company in three years. (This cash came from the monthly design/build fees Kunstwerke collected and had nothing to do with client construction funding accounts. The construction funding accounts were pass-through accounts that had no income effect and reconciled to \$0 at the end of each project. It would have been impossible to embezzle or pocket any funds from

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these transparent accounts without causing a permanent imbalance.)

For those same three years, Kunstwerke generated total net fee income of \$313,609. This \$313,609 flowed as income directly to my personal tax returns and became my own property. I only withdrew \$180,339 of this \$313,609 cash that was available to me. This means that I actually contributed additional capital to Kunstwerke to be loaned out to my clients in the amount of \$133,270 (\$313,609 - \$180,339).

If that weren't enough of a bombshell for the gossiping construction workers, I also permanently contributed an additional \$167,000 of my own money to Kunstwerke in early 2006 during the cash crisis (caused by these clients nonpayment) to cover client construction account debt and to make certain that these same gossiping construction workers got paid weekly.

So, during the three years I had the grave displeasure of being associated with the VanGrabs, I contributed \$300,270 total cash to Kunstwerke. If I had contributed \$500,000 more, it would not have mattered. There would have still been a faked/embezzlement/ debit card scam.

My personal draws are done and cannot be changed or modified. The bank statements and all of the accounting records are printed and have been filed publicly in the clerk of court's office for seven years. The cash record has always been there, available to be audited. As sick and

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perverted as this sounds, not only wasn't there \$350,000 pocketed from the VanGrabs or a million from all of my clients, I actually *contributed* \$300,270 cash to the company to loan to these same client construction funding accounts. In this rabbit hole of a scam, everything was just the opposite of what Rollie and the VanGrabs represented.

Rarely is so much income left in a wholly owned S Corp. - it is usually all drawn out at the end of the year. I was better capitalized and in better financial shape than I had ever been in March 2006. I was living well within my means and being very cautious because I had just put a hole in another perfectly good washtub.

I had already taken on the risk of two speculative projects and was months away from relying solely on that income again. This capital was already an asset supporting my speculative projects as the VanGrab type non-spec projects were winding down.

I could have continued a successful design/build career creating for clients on their land. I was charging more for that service every year. But that is not who I am and not what I do. And so a project named Lady of the Lake was rising out of the orange dirt of the greatest lot ever sold on Lake Keowee.

March 2006 was also to be the month I would finally settle down and start a family. I felt more financially secure than I ever had.

How many people reading this narrative make less than

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\$100,000 a year and invest half of it? My investment in Kunstwerke was supposed to be well-protected by lien laws. It would require lien fraud and a lot of help from attorneys and judges for anyone on the *other* side of the aisle to pocket *my* money and just walk away.

The Expert Witness (again), (and again)

The science of accounting is comprised of individual accounts which must balance against another account within a logical system of checks and balances. If a skilled auditor were asked to detect or prove embezzlement, there is more than one way to make a determination.

A quick audit of any cash draws from an S. Corp. is one way. If it hadn't been Rick's time to erupt and if Rollie had not been a motivated goon, they would have approached me first in February 2006, and we would have agreed on an independent auditor. I suspect that a real CPA would have started with cash draws.

If I told you how much the VanGrabs spent to have an expert witness rummage through my entire subpoenaed financial history, without doing an actual audit or reconciliation of their own VanGrab construction account, you would not believe me.

They paid the same expert witness (from the Dandy Nerts and Rollie Show ruse) to issue a report for Rollie's defamation defense. It is as worthless as Rollie's single

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white sheet of paper. It, too, was forced to stay within the debit card premise and *still* ignored the 800 lb. gorilla. I am not sure why the report was even done. Their least expensive option would have been to do an actual account reconciliation and independent audit by a *real* CPA like the one they were morally obligated to do *before* the explosion. That option would have saved all of the parties harmed by the explosion millions of dollars.

The VanGrab expert witness wrote a note on a report indicating what he was asked to look for and *not* look for in my records, and this note was very recently discovered when one of the Kunstwerke attorneys deposed this same expert in an unrelated case. I cannot disclose what the note said while my own litigation is pending, but it is damning.

In fact, there are many things that I have yet been unable to tell you here because Rollie's case is still pending. Stay tuned. I can only disclose what is currently available as public record.

Because I act as my own attorney, I have participated in off-the-record negotiations, I have huddled with judges and opposing counsels in hallways outside courtrooms while juries wait, and I have heard the things that lawyers don't even tell their own clients. If you knew what I know, it would make you physically ill.

Looter or Producer

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Amway is a scheme that preys on religious people with entrepreneurial aspirations (in my opinion). The elder VanGrab apparently had no moral issue with pastor's wives peddling over-priced soap to their captive congregations in the 1970s (and then came the Bill Brit era). Republican politicians from Newt Gingrich to Rick Santorum (and many others you can Google) line up for an Amway check. Between 1989-2010, Amway political contributions were equal to that of General Motors.

Jim DeMint is the president of the Heritage Foundation and a fellow trustee of Mrs. VanGrab. He was also a South Carolina Senator in March 2006. I sometimes wonder how he would react to my reality? He espouses small government and entrepreneurial zeal, and is known as a "businessman." But I can't say with certainty on which side of the aisle he would be most comfortable if exposed to this conflict.

I would imagine that a think-tank would be a frustrating place for a real creator, producer, or innovator to spend his time. I often wonder why DeMint didn't return to South Carolina to his own business when he resigned from the Senate. (Perhaps if he had not married into that business, he may have returned to it.)

There is an eye surgeon/Senator whom I strongly suspect would go back to his practice if he doesn't become President. My highlighted, dog-eared copies of my two favorite fiction novels reinforce what I guess I've always

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known: the merit aisle is a far more significant demarcation within the real world of creators, producers, and innovators than any political party, faith, or creed. Ayn Rand didn't care for either major political party and she is hated today by politicians because she was too objective - too black and white. Sometimes you need to pick a side and not a paycheck: looter or producer.

*A simple pass-through account offered as a voluntary
courtesy*

Rollie confirmed that if they were "satisfied" with what they had found in the box, Kunstwerke and I would have continued on the project. Rick confirmed that he couldn't remember any other reason. Got it.

I needed to establish that there were no other reasons for Kunstwerke's termination other than what they supposedly found in the box. I wanted to confirm that the single white sheet of paper was the difference between nine years of hell or not nine years of hell.

Otherwise, I was not going to get a definitive, objective, and truthful premise from the other side of the aisle, unless I forced a definitive and objective answer. Such is the world of situational ethics and moral relativism. Once I swatted any "money issues" out of the air and exposed their debit card scam, they would have just come back with a new premise or excuse for lighting the fuse - some other

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fabricated situational stench.

I have learned not to project my own character and self-made-by-merit credentials onto anyone on the other side of the aisle. I never expected an honest resolution through litigation - they survive inside and outside of the courtroom by corrupting reason, causality, or merit.

It is difficult to describe how awful it has been having to work within their rotten litigious world of slander and deception. Typing these words night after night in this Grant Street window is just another way of hosing off the stench.

If it weren't for the items presented on Rollie's single white sheet of paper, no eruption then? It is all very sick.

I may be just projecting myself on them when I shouldn't, but I often wonder, why make a public issue over \$300,000 - for them, relatively six happy meals? Even if it were true, I would handle it privately, just for the sake of others who may be indirectly harmed by such a scandal (and don't deserve to be). What if you find out later you were wrong? It is all too white-trashy and dysfunctional for me.

Orange Dirt

There was something special rising out of the orange dirt of the three combined VanGrab lots in The Reserve, and it was almost finished. They were getting an artistic structure

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that would forever have my signature on it. I often wonder how they explain to their children what happened to the designer that designed their fun and crazy house. My houses are too unique and easily identified as mine. How can they spend a single night there in good conscience knowing what they've done? Again, I need to stop projecting myself onto them.

How do they explain the Dateline NBC expose to their kids?

What do they tell visitors who ask "who designed this?" Perhaps they just tell people that Barb had a May 1, 2006 deadline and show them Rollie's single white sheet of paper. Apparently for the VanGrabs it is a tough, bottom-line, dog-eat-dog business world of "any means justifies your end" and sometimes you simply have to be cold and greedy.

Self-Respect

Rollie thought it was significant that the late VanGrab only thanked him once for anything. Neither Rick nor Barb ever showed any gratitude to me or my organization, but I didn't care. I didn't want or need it - I wasn't working *for them*. There is rarely a day that goes by, however, that I don't consider the utter lack of respect that they have shown me, Trace, my parents, everyone associated with their project, the court system, and even

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Rollie. All people project who they really are onto others. Just sit back, let them be themselves, *uncontested*, and observe.

James Taggart projected himself onto John Galt and it filled him with rage, envy, and spite. He wanted Galt's physical torture to continue indefinitely and he flew into a violent rage.

"Ask anything of men. Ask them to achieve wealth, fame, love, brutality, murder, self-sacrifice. But don't ask them to achieve self-respect. They will hate your soul."

"self-respect is something that can't be killed. The worst thing is to kill a man's pretense at it." - Rand

How cheaply would someone sell their pretense at self-respect? The Dandy Nerts and Rollie Show was an uncontested hearing, but it was still under oath. For seven and a half years, Rollie's single white sheet of paper has stood without a dime's revision as Rollie, Rick, and Barb's sworn *truth and nothing but the whole* sworn truth. And for 3,000 mornings, everyone on the VanGrab team has awakened and concluded, either consciously or unconsciously, "yep, I'm still OK with it."

Res Judicata

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Why spend so much money forcing a default and putting on a fraudulent Show that could be so easily exposed later outside of court? The answer is Res Judicata. It is a legal concept which means that "a matter has already been judged." It is often referred to as "claim preclusion." It is a mechanism that the courts use to prevent a claim or counter-claim from being litigated more than once and clogging the courts.

The VanGrabs successfully used this doctrine to have themselves removed from my defamation lawsuit which had listed them and Rollie as defendants. Because of my technical default, my counter-claims to the original VanGrab suit were dismissed. The court also determined that my defamation lawsuit filed six months later in December 2006 was related to the same event (explosion) and would have been a counter-claim. As expected, the VanGrabs were removed as defendants in my defamation suit. There was no reason to appeal.

For my own purposes explained earlier, it didn't matter who the named defendants were as long as the case survived. I wasn't playing a legal game.

In other words, the VanGrabs determined that the cost of forcing the default would be a safer bet than the potential risk of damages from a defamation verdict.

"They don't care about people" - Rollie

Of course, if they had provable truth for the slander part

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of their scam as they were morally obligated to have, they would not have needed to force the default and their case would have sailed right through to victory. But legal expediency will *always* trump moral clarity across the aisle.

Rollie, on the other hand, was in trouble. He was not part of the VanGrabs short-lived lawsuit, so it was not a counter-claim against him, it was a new claim with merit. He was left high and dry. That was the plan all along. That was his job.

The Collateral Estoppel Scam

Collateral estoppel is a similar but weaker doctrine to res judicata. It is applied when someone is not a party to an older lawsuit that has already been decided, but wants to use that decision to influence their own case. For example, if it were determined that a person was found guilty of a crime, courts would prefer not to waste time proving that same exact fact again in a later lawsuit involving another plaintiff. It is rarely applied and has many limitations.

Rollie was a *very* motivated goon when he took the stand during the Dandy Nerts and Rollie Show. He had just been sued for defamation three months earlier and he had no provable truth. He was told by Nerts to swear under oath to his single white sheet of paper and it would become his own "provable truth" to use later. As outlandish as it sounds, Rollie fabricated his own truth in an uncontested

hearing!

But it gets worse. And I didn't see this coming. Nerts attempted to have the defamation case against Rollie dismissed in 2009 by stating that the "truth" of all of those things that Rollie said to witnesses was decided by the Dandy Nerts and Rollie Show and Rollie's single white sheet of paper. Nerts was trying to get Rollie off of the hook based *solely* on the doctrine of collateral estoppel.

I thought it was a Hail Mary pass just before trial. Rollie had already lost two previous attempts to have the case dismissed. Among the many limitations to collateral estoppel is that all of the facts need to have been *actually litigated* and necessary to the earlier lawsuit. It should never have even been a consideration for Rollie, because nothing was actually litigated during the Dandy Nerts and Rollie Show. It was an uncontested hearing!

Moreover, South Carolina law specifically does not allow collateral estoppel to be derived from default cases for the very reason that nothing is actually litigated. But Nerts got the "right" judge and boom! Rollie's case was dismissed in 2010 based on collateral estoppel.

If this were not enough of a shock, there is a dirty little secret that occurs in some civil proceedings that shouldn't. Judges in civil court are very busy and apparently do not always have time to write their own orders, so they often ask an attorney who wins a motion to write the order and the judge later signs it.

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Judges should *never* allow an attorney to write an order against an individual representing himself in court. Lay people cannot possibly anticipate all of the dirty tricks and lies that lawyers like Nerts will sneak into an order. Lucky for me, none of it got by me.

Nerts wrote the order dismissing the case against Rollie. It is the foulest thing you have ever read from a legal standpoint. And the judge actually signed it! It attempted to state that a civil court made criminal findings, and a whole host of lies that Rollie might use later to defend himself, despite the fact that there can be no such "findings" in a civil default hearing. The language even benefited Nert's law partner Weasely, so he could use it in his Kunstwerke contract case.

This order was so bad that the Kunstwerke corporate attorneys stepped in and wrote the judge notifying him how factually incorrect and bad it was. The Kunstwerke attorneys also reminded the judge what the obvious law in South Carolina is regarding collateral estoppel and default judgments.

I also wrote the judge complaining that in cases like this, judges should write their own orders. I also filed a lengthy motion asking him to reconsider - again quoting the law. The judge had a second opportunity to Google "collateral estoppel in default cases in South Carolina" and get it right. The judge did absolutely nothing. He didn't even correct the obvious factual errors in the order. He sat

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on my "Motion to Reconsider" for an entire year and did nothing but eventually scribble "denied." I reminded him that the case was already three years old and that time is crucial in defamation cases.

I'm sure that Rollie and the VanGrabs celebrated the cases dismissal. Now the VanGrabs would not have to face me in a deposition.

It took three years to appeal and fix what the judge had done. Many *pro se* litigants would not know how to even attempt to have it reversed. During that time, I lost my main witness and a little child lost his father. The order was so bad that it *had* to be appealed, not just to put Rollie back on the hook, but some of the language could harm me later when I exposed all of this. How does a judge sign an order with so much stench emanating from it?

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For 3,000 mornings, Barb VanGrab (the only deep pocket and funder of all of the above - the legal "but for" of this sordid event) has been perfectly comfortable with Nerts announcing to the world in every available venue that I am an "adjudicated embezzler." By using the word "adjudicated," Nerts hopes that the average person would think that embezzlement had actually occurred and had actually been found by a criminal court.

Nerts doesn't mention his own involvement in sub-

mitting a fraudulent damages computation to a court of law in an uncontested hearing to obtain that "adjudication." There is also that pesky issue of lien fraud that he facilitated on behalf of his clients as well. I am also missing hundreds of thousands of dollars which would not be missing today if a lawyer had not assisted his client.

Weasely - the lead partner of the firm charging her so much in fees, was grateful, I'm sure, for the help in his own personal defense against Kunstwerke's lawsuit against him. It made it ten times more difficult for the Kunstwerke attorneys to collect the full balance the other five accounts with the VanGrabs default damages out there.

The US judicial system should *never* allow a defamation suit to drag on for ten years. In many common law countries where defamation is governed by criminal code, Rollie might be sitting in a jail cell right now. Here, Rollie and the VanGrabs have been free to argue a "truth" defense without provable truth for a decade further defaming me. But for deep pocket corruption, this would have all been resolved quickly.

For 3,000 mornings, Barb VanGrab has been perfectly comfortable with Nerts using her forced default judgment and Rollie's single white sheet of paper, that she spent so much pyramid money on, to aid every other case in which I have desperately attempted to recover funds that were due subcontractors and suppliers.

Does Barb VanGrab have the moral discernment to

Adjudicated Embezzler

comprehend how vile it was to force a default in a matter so serious in the lives of so many good people? I can't say.

She would be the first to tell you that she is a Christian conservative Republican, homeschooling mother of six; but we know that those adjectives offer no moral assurances and are no gauge of character.

A better gauge of character is the hard 'line drawn by Howard Roark's and John Galt's author. When in doubt, draw that line; only then you will find your real antagonists.

I asked Barb VanGrab under oath if she had any proof of embezzlement or whether she even asked for an audit or reconciliation of her account in all these years. She said no. But yet she spent a fortune manipulating and forcing a lie through the court system.

Read the last paragraph again and let it sink in for a while before you read on.

Send your money to the Cato Institute until you've heard that Barb VanGrab has resigned from the Heritage Foundation.

The aisle which separates us is very wide indeed.

Chapter 18

Bronson

“Sorry I’m late, I had to climb up and fasten the ridgepole over at the spec house for the framers while the crane was still there.” Bronson was a little out of breath as I met him at the VanGrab project in late 2004. I asked: “Why did *you* have to do it?” He just shrugged it off saying “everyone else was afraid to climb up there.”

A ridgepole is the top roof beam upon which all of the rafters rest. The “spec house” (project name: Lady of the Lake) was my first project with an investor and Bronson was filling in as site manager until framing was complete and until I designated a permanent full-time manager. When I needed someone to take on an added responsibility, Bronson was my go-to guy. His plate was already full with the Tripinfal and VanGrab project.

Someone needed to straddle the ridgepole and fasten it to the post below once the crane dropped it into place. It is a scary thing to do. There was a time Bronson and I were the only ones around to do this kind of thing, but now he had much bigger responsibilities - someone from the framing

Bronson

crew should have done it.

There were so many situations such as this that reinforced why Bronson was my go-to guy. Of all of the memories that swirl in my head here in the middle of another Grant Street night, the spec house ridgepole memory seems the most vivid.

Bronson had come so far from the first time I met him in 2002 when he appeared at Idyll Cottage (project #5) on Caesar's Head looking for a job. He had been let go as a laborer from a builder named Brent we both knew. (Brent's brother Chad eventually became my first subcontractor and in time founded his own electrical contracting company.)

Bronson was hired before I had multiple projects and before I needed site managers. He worked harder than anyone else and earned my trust. He was ambitious and wanted to do more than haul wooden shingles up a steep roof.

He became one of my first site managers on Lake Keowee and it wasn't an easy job. These guys weren't "Plan B" builders driving around The Reserve with plans on their dashboard. They were chosen specifically because they did not have that kind of experience or pre-conceived notion of "building." They were essentially my representative at the site when I wasn't there.

My site managers were a key part of my open-ended creative process that had no translation from architect to

Bronson

builder to craftsmen. The only plans they had to work with were professionally prepared structural engineering plans from the structural engineers. My own design plans were open ended and were reprinted sometimes daily. For this reason, I bought every site manager a laptop to use at the site for real-time current plans shared online.

No one designs and crafts a structure like I do - the process by which I convey the physical craft (that I used to do myself) to others is wholly unique. Often I would sketch something at the site or point to a part of the model and say "make it look like that" - and Bronson did.

I don't suspect that Bronson ever got involved in an MLM Amway-like scheme. He was too busy actually producing something tangible and noteworthy. And because he was an independent contractor venturing solely by merit, he was a true entrepreneur and should have been a good example to all of the Barb VanGrab's of the world of a real producer. Perhaps my self-made-by-merit definition of an entrepreneur is a bit narrow, but in my opinion, two guys who come up with a pyramid scheme sitting in a boat aren't entrepreneurs, they are just schemers.

Bronson should have also been a good example of male courage - apparently something Barb saw little of firsthand. Imagine Rick VanGrab sliding out to the edge of a ridgepole, much less knowing what to do once he got out there. I never had to worry about Bronson feigning eruptions or hiding behind voice mails or his father-in-law's

Bronson

goon. He was too busy actually producing something tangible and noteworthy through his own individual merit.

My site managers were independent contractors who billed Kunstwerke like everyone else. You may think this unbelievable, but he charged only \$38 an hour. In hindsight I regret that I didn't have him charge more. Did I say that Rick and Barb VanGrab were getting a steal?

Few of the people who were involved with these projects were aware at the time of the things I did at my own expense to show my gratitude to my site managers. I only mention this now because I think that it is important for understanding the narrative ahead. Anything "extra" that I did for them came out of Kunstwerke fee income, which was essentially my income after expenses. You will discover later how little my own income and personal draws from the company were.

I would buy an occasional work trailer, tools, or even a pickup truck for my site managers. For one, I even designed a house. But for Bronson I did the most, and for good reason.

In January 2006, I had earned a trip to Cancun from my biggest supplier, Jennings Builder Supply. I gave my trip to Bronson and his wife. At about the same time, Bronson said that he needed a heavier duty pickup for the VanGrab site, and I gave him \$7,000 toward a down payment. A year before that, he needed a co-signor for a new Bugati motorcycle, and I was glad to sign. In fact, I wish I could

Bronson

have done more. Both I and my Kunstwerke clients were receiving tremendous value from him and I was grateful.

Bronson was the one who suggested and coordinated the site managers' Christmas gift to me every year. For one of our last Christmases together as an organization before the explosion, my site managers gave me a summer BMW motorcycle suit.

I attended his wedding and shared his pride in his first child and the house he built himself in Brevard, NC. His father had been killed in an industrial accident at the old Brevard paper mill when Bronson was young. He told me often that no one had ever put as much faith in him as I did. He knew that as long as I was around, he had work.

Bronson often had to play the role of unpopular boss on the construction site. He was my representative and often had to do my ugly work when there was a problem. It will be clearer later that he never had a full understanding of the contractual payment process or the legal significance of liens and he had no answer to the debit card scam.

My world was going to be destroyed whether or not Bronson had agreed to stay beforehand. I would have no work for him, anyway. The scam was specifically intended to fool guys like him - for a while. He had no answers, and he had a family to support.

He witnessed the attack and was told he would share the same fate. He later admitted to me that he didn't fully understand what was going on and how awful he thought

Bronson

the VanGrabs really were (he eventually had a falling out with the VanGrabs a few months after the explosion).

Bronson was not the originator of a single lie or rumor, he merely repeated things he was told. I am not making excuses for March 2006 - he should have listened to men like Kerry and kept his mouth shut until the truth was known.

The residential market tanked later in 2007, and once the projects he was involved with were finished, he was pretty much out of work. He would eventually fall on hard times himself. It makes me angry to write this because, but for the VanGrabs, we would have survived.

These are the moments that I question myself: What if I had been more selective and careful? Avoiding 'Amway' people should have been a no-brainer. Haven't scores of people done just that for fifty years? Who did I really think I was entrusting my financial health and reputation to? Why does nothing that they did back then and nothing that they continue to do today surprise me? Would I have been shocked if I read *Merchants of Deception* or watched the Dateline NBC expose back in 2004? I have to honestly say, probably not.

Even though there was much that he did not understand about the financial scam that was perpetrated on us, Bronson's eyes were eventually opened. Common sense told him that I would not have sued a billionaire's goon and his bosses if I didn't have a rock-solid case. The VanGrab

Bronson

response to my suit opened a lot of eyes and confirmed what I was trying to tell everyone in March 2006.

The Kunstwerke lawsuit against Tripinfal also had a significant impact on him. For all of Tripinfal's threats and bully tactics, *he* was a lawyer and *he* was sued and *he* was never able to make the lawsuit go away - *he lost*.

Bronson contacted me in January 2009 and wanted to talk. He initiated the contact. I had not seen him since 2007 at his deposition in the little room in the Transylvania County Courthouse where Tripinfal made a fool of himself. Trace and I met him at the little cafe on the corner of Main Street and Highway 64 in Brevard, NC.

He apologized and described how bad his situation had become. He really just wanted to talk - he knew that I had nothing I could offer him. He attributed some of his problems to karma. I told him that there was a lot of karma going around but it wasn't on our side.

He told us that he wanted to make things right and wanted to help. I told him that it would help us tremendously if he just spilled the beans and told us everything he was told back in 2006. Trace took notes. I asked him if he would be willing to sign an affidavit and he said yes. I counted at least seven things he said that would be tremendously helpful in a defamation trial. I told him we would type up those things in formal affidavit and meet him in a few days to have his signature notarized.

Bronson knew that the moment he signed it, he would

Bronson

become the target he avoided being in 2006. He would immediately become the main witness in the Rollie case, and Nert's would be paid a chunk of money to attack him and destroy him on the witness stand.

He signed the affidavit on February 2, 2009, during a break from his job at the Pisgah Fish Camp. He was employed as kitchen help frying fish. He came out into the back parking lot covered in batter and smelling like grease. I will never forget the smell of the grease.

I barely recognized the man who drove around The Reserve with one of my crazy architectural models next to him on the front seat, or the man who rode the pump jacks at Idyll Cottage and physically worked his way to the top managing the most unique construction in the Southeast, or the man who walked up the hill after the meeting in the barn and was willing to put up with Tripinfal, if I simply asked him to.

There have been a handful of moments thus far in these 239 pages when the recollection of certain events is so overwhelming and make me so angry that I have to get up and walk around this old building for a while to cool off and refocus. This is one of those moments.

May 23, 2011

I could list for you here contractors, an interior decorator, a deacon, and a missionary who witnessed

almost as much as Bronson did but have yet to do the moral thing and offer the kind of help Bronson eventually did.

An honest man who reasons and observes reality knows that faith does not guarantee moral discernment nor can it truly enforce it. At that moment in 2009 when Bronson signed the affidavit, he demonstrated far greater self-respect and moral clarity than a self-described homeschooling mother of six, member of the Perimeter Church of Atlanta, and trustee of the Heritage Foundation.

When Bronson signed the affidavit, the Rollie case was heating up and it looked like it was about to go to trial. A judge would deny a motion to dismiss it in March, 2009. The only thing left to do was force the VanGrabs to testify under oath.

Then the unthinkable happened. Nerts got a couple of favors from a couple of judges and Booom! Rollie's case was dismissed. It would be four years before I won the right to appear in the Court of Appeals Courtroom in Columbia, South Carolina and argue the law and have the other judges reversed. (There is so much more here that I cannot tell you until after Rollie's trial is over) Not everyone survived this four year delay.

In May 2011, things were heating up again. I expected the Appeals Court ruling any day putting Rollie back on the docket (although it would still be another two years). This was also the month of Johnny Rocco's defamation trial (which he settled mid-trial with a check). So Nerts, too,

Bronson

was heating up his efforts on Rollie's behalf.

No civil case should take five years to see a jury. I knew that things had not improved any for Bronson anymore than they had for us during this two year delay. Bronson confided in me much and told me that there were times when he was really down.

I was busy contacting witnesses and preparing for the Johnny Rocco trial when Chad emailed me on the morning of May 24th giving me the news. Bronson was dead.

Stench

Chapter 19

Stench

August 21, 2014

My phone rang at 10:45 Saturday night while I was driving down Centre Avenue in Shadyside. I looked at the number and became worried as to why my parents would call this late. My father announced: "We just checked the mail and there is a letter from The Supreme Court of South Carolina." He read aloud the simple statement dated August 21, 2014: "Petitioner (Rollie) is denied."

I phoned Trace to give her the news while I stood in line to pay for the large coffee that helps keep me up all night. In moments like this, there is not much to celebrate because it only ushers in the reality that the nasty legal process is about to heat up again. It has been exactly a year since the Appeals Court put Rollie back on the hook. His appeal to the State Supreme Court was just another year wasted on avoidance and cowardice.

Years ago, I decided to work as a night watchman in an old historic landmark building in downtown Pittsburgh so I could write these pages at night undisturbed (and get paid

Stench

for it). I have also found that it is a great place and time to do design work. It is three on Sunday morning as I write this and the city is as quiet as it gets.

This is when food delivery trucks and garbage trucks rumble along the bricks of Grant Street free of traffic. If you happen to look in the right window, you would find me typing away on my laptop. My memories of the last nine years are most vivid and my recollections seem to spring to life the most while everyone else is asleep.

Most of these first 242 pages were likely written while you were asleep.

Now that the State Supreme Court has refused to consider Rollie's last minute petition, the case will be placed back on the trial docket. On December 5, 2014, the VanGrabs were forced to sit and give testimony. There is nothing left for me to do but to prepare for one last jury trial.

April 26, 2015

Rollie's trial is a month away. It will likely require four more chapters to conclude this. There are many bombshells that I would have liked to have included in these first 242 pages; It would be best to wait until this summer, after its all over. For now I will play it safe and just end it here.

Defense Trial Exhibit 23

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

CASE NO. : 2006CP2302943

JUDGMENT IN A CIVIL CASE

Richard Gaby vs. Kunstwerke Corporation

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

SEE ATTACHED ORDER

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

Court Reporter: _____

PRESIDING JUDGE - _____

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Paul B. Wickensimer - Clerk of Court

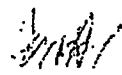
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CASE NO. 2006-CP-23-2943
Richard Gaby and Barbara Van	)	
Andel Gaby,	)	
Plaintiffs,	)	
Vs.	)	ORDER
Kunstwerke Corporation and	)	
J. Scott Kunst,	)	
Defendants.	)	

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCDONALD

2007 APR -2 A 11:40

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

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

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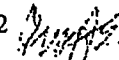
[See Doe v. S.V.M., 327 S.C. 352, 488 S.E.2nd 878 (1997)]. In addition, Plaintiffs offered into evidence several exhibits.

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

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

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

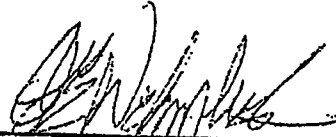
¹ The Court has deliberately not considered the testimony of witness Bill Larkin. While certainly well qualified as an expert to render his opinion, he did testify as to the limited time he had to examine the financial information to which he was testifying, and further indicated that his investigation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

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

Upon election by Plaintiffs, judgment shall be entered accordingly.

IT IS SO ORDERED.



G. Edward Welmaker
Presiding Judge, Thirteenth Judicial Circuit

DATE: March 26, 2007
Greenville, South Carolina

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

Defense Trial Exhibit 24

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

J. Scott Kunst,

Plaintiff,

v.

David Loree,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CASE NO. 2006-CP-39-1826

ORDER

2010-09-25 P 2:12

COURT
OF COMMON PLEAS
COUNTY OF PICKENS
SOUTH CAROLINA

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

Undisputed Facts

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

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

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

A lengthy hearing on damages in the Greenville action was held on March 13, 2007. On May 16, 2007, the court entered judgment against Kunst and Kunstwerke on all causes of action for actual damages in the amount of \$353,993.91¹ together with punitive damages of \$70,798.00 and attorney's fees and costs in the amount of \$35,807.41. The testimony at the hearing established and the court adopted at least the following facts:

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

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

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

(See Order of Judge Welmaker, page 2)

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

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

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

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

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

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

Conclusions of Law

Standard of Review

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Kunst v. Gene and Susan Covington, C.A. No. 2006-CP-23-7047
(Directed Verdict for Defendants)
2. Kunst v. Michael Parham, C.A. No. 2006-CP-23-7897
(Summary Judgment for Defendant Parham)
3. Kunst v. Steve and Julie DeBacco, C.A. No. 2006-CP-39-1787
(Jury Verdict for Defendants)
4. Kunst v. the Reserve at Lake Keowee, C.A. No. 2007-CP-39-293
(Summary Judgment for Defendants)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

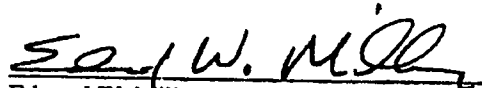
precluded by collateral estoppel, the court also held that circumstances could arise in which issues raised in a default judgment might be barred in later litigation. The Massachusetts Court stated that if a party in a default judgment had been given a full and fair opportunity to argue his position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

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

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

CONCLUSION

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


Edward W. Miller
Presiding Judge, Thirteenth Judicial Circuit

Greenville, South Carolina _____

October 19, 2010

Defense Trial Exhibit 25

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Richard Gaby and Barbara Van
Anchel Gaby, Respondents,

v.

Kunstwerke Corp. and J. Scott
Kunst, Appellants.

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge
G. Edward Welmaker, Circuit Court Judge
Larry R. Patterson, Circuit Court Judge

Unpublished Opinion No. 2009-UP-028
Submitted November 1, 2008 – Filed January 14, 2009

AFFIRMED

J. Scott Kunst, Pro Se, of Simpsonville.

(holding although the appellants' late answer amounted to a pleading filed prior to entry of default, it did not comply with the time requirements of Rule 12(a), SCRCP, and thus, the court's entry of default was proper because it was not a valid pleading or defense as provided by the Rules of Civil Procedure); Roberson, 365 S.C. at 9-10, 615 S.E.2d at 114 (finding the standard for granting relief from an entry of default is good cause under rule governing default judgments, while the standard is more rigorous for granting relief from a default judgment under rule governing relief from judgment); Hill v. Dotts, 345 S.C. 304, 309, 547 S.E.2d 894, 897 (Ct. App. 2001) (providing the relevant factors in determining whether a default judgment should be set aside are (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties); Stark Truss Co., 360 S.C. at 510, 602 S.E.2d at 103 (affirming the circuit court's refusal to set aside the entry of default when one of the appellants informed the circuit court he had no good reason, other than depression, for failing to act when he was served with the summons and complaint); McCall v. A-T-O, Inc., 276 S.C. 143, 146, 276 S.E.2d 529, 530 (1981) ("This Court has never held a layman to a lesser standard than attorneys."); Goodson v. Am. Bankers Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney."); and Issue 4: Howard v. Holiday Inns, Inc., 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978) (holding that at the damages hearing in a default judgment proceeding, the defendant may only participate by cross-examining witnesses and objecting to evidence); Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 311, 594 S.E.2d 867, 873 (Ct. App. 2004) (finding that in reviewing a damages award, this court does not weigh the evidence, but determines if any evidence supports the award).

AFFIRMED.

HEARN, C.J., and SHORT and KONDUROS, JJ., concur.

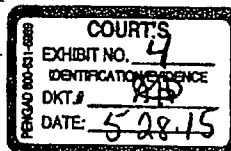
If guilty, can we
stipulate where the
funds will go. (For examples
i.e. vendors, contractors labors).

A. King

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NO.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 27 2016

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

SC Court of Appeals

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

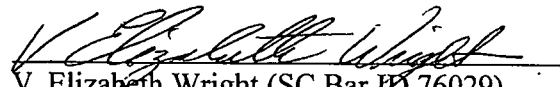
J. Scott Kunst Respondent,

v.

David Loree Appellant.

CERTIFICATE OF COUNSEL

Appellant's counsel hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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Appx 770

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

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MAY 16 2016

SC Court of Appeals

J. Scott Kunst Respondent,

v.

David Loree Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Scott Kunst, Appellant,

v.

David Loree, Respondent.

Appellate Case No. 2011-199507

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

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

REVERSED AND REMANDED

J. Scott Kunst, pro se, of Simpsonville.

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

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

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FACTS/PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

LAW/ANALYSIS

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

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

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

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

We have previously adopted the general rule of collateral estoppel as set forth in the Restatement (Second) of *Judgments* § 27 (1982) in *South Carolina Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Section 27 states: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim." See also *Palm v. General Painting Co., Inc.*, 302 S.C. 372, 396 S.E.2d 361 (1990) (citations omitted) ("Under the doctrine of collateral estoppel, . . . the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues actually and necessarily litigated in the first suit.").

In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation. 50 C.J.S. *Judgments* § 797 (1997).

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

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

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

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

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

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

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

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

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

Second, we find the circuit court erred in holding that *Bacote* and the current case were factually distinguishable. The circuit court found that, unlike *Bacote* in which the State did not participate in the administrative hearing resulting in default, Kunst actively took part in the damages hearing in the Gaby Action. The

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circuit court determined this participation in the damages hearing afforded him a "full and fair opportunity to be heard." We disagree.

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

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

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

³ Kunst raises several additional arguments on appeal. However, because we find his first issue dispositive of this appeal, we decline to address his remaining issues.

CONCLUSION

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

REVERSED AND REMANDED.

HUFF and KONDUROS, JJ., concur.

See Fitch v McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

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B

Re: Kunst v. Loree Record on Appeal

V. Elizabeth Wright

Defense Exhibit 25 in the Record on Appeal is correct. Mr. Kunst: If you take a look at the section of the trial transcript where the Exhibit is moved into the record, you will see that Mr. Smith moved the Gaby v. Kunstwerke and Kunst opinion into evidence when it appeared that your testimony was that this opinion had been overruled. And if you think about it, there would be no reason to make the opinion reversing Judge Miller's Order part of the record. We did not question the opinion because we did that when we petitioned for cert with the Supreme Court. You certainly would not question that opinion. Defense Ex. 25 is the Gaby v. Kunst and Kunstwerke opinion and the Record on Appeal is correct. Beth Wright

On Tue, Apr 26, 2016 at 11:10 PM, J. Scott Kunst <scottkunst@aol.com> wrote:
Ms. Wright,

I noticed this evening that in your Record on Appeal, the last exhibit is incorrect. Defendant's Exhibit 25 should be the Court of Appeals Order and Opinion Reversing and remanding Judge Miller's Order (exhibit 24) and this present case for trial. It will not affect my final brief references (other than that it is the wrong exhibit), but needs to be corrected.

statements.

C
Loree begins his brief by stating "This case is Kunst's attempt to retry the Gaby action." Loree apparently forgets that the Appeals Court has already ruled on that false notion. The simple truth of the matter is that Loree's present appeal is nothing more than an attempt to re-appeal his failed collateral estoppel argument and to avoid what has now become the *actual result* of "actually litigating the veracity of Loree's statements to others" (R. p. 78).

Even after the finders of fact found that David Loree is a defamer and awarded \$1,000,000 in damages. Loree attempted yet again, through a JNOV motion, to have a trial judge summarily determine that a civil default judgment "is a public record that affirms that all of the alleged defamatory statements are true" (Page 7 of Loree's brief).

There is a blatant falsehood in *footnote 5* on page 7 of Loree's brief that needs to be addressed because it exposes the deceptive nature and the fatal flaw of Loree's substantive truth argument. Loree's footnote 5 attempts to have this court believe that Kunst stated on cross-examination that Judge Welmaker's order in the Gaby action of March 26, 2007 "had been overturned by the Court of Appeals" when the trial transcript clearly shows Kunst did not state this.

Loree's attorney Smith submitted Welmaker's order as trial Exhibit 23 (R. p. 739) as described on pages 454 and 455 (R. p. 199) of the trial transcript. At the bottom of page 455, Smith approaches the bench with Judge Miller's order of October 19, 2010 in the *present* case (R. p. 743) granting summary judgment based solely on the doctrine of collateral estoppel. Page 456 of the transcript could not be more clear. Smith hands Miller's order to Kunst who immediately identified the order as having been overturned

by the Appeals Court and objected to its use as evidence (R. pp. 199-201). The trial judge took judicial notice that it had been overturned by the court (R. p. 199) and allowed Kunst to submit the Appellate opinion reversing it (R. p. 199). These two became Exhibits 24 and 25 respectively.

Loree's footnote 5 "mistake" is relevant because it exposes how much Loree's substantive truth argument is just a rerun of his failed collateral estoppel attempt. Loree *still* depended on Judge Miller's overturned order to make his substantive truth argument appear credible at trial. So much so that attorney Smith made certain that the jury heard him imply that it wasn't overturned by stating: "if it was overturned by the Court" (R. p. 199).

One of the exhibits attached to Kunst's pretrial motions is a letter by Kunstwerke attorneys objecting to Judge Miller's order when it was still just a draft. It is a thorough and well-deserved critique based on law and remains relevant to this appeal (R. p. 88). In direct contravention of Welmaker's order, this outrageous order makes factual findings from the damages hearing that Judge Welmaker did not make. It is broad, argumentative, misstates facts, finds that *criminal* findings were found in another *civil* case, references only out-of-state precedent to grant issue preclusion to a default judgment, and was written by an attorney whose law partner stood to personally gain from its "findings." The judge was made aware of all of these problems while the order was still in draft form, yet he signed it without a single correction. Furthermore, the judge did not rule to deny Kunst's motion to reconsider for an entire year, further delaying this case. This order, which was ultimately overturned by the Court of Appeals (R. p. 71), is responsible for a four year delay in this case.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

J. Scott Kunst.

Respondent.

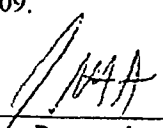
v.

David Loree,

Appellant.

PROOF OF SERVICE

I, J. Scott Kunst, Respondent *pro se*, hereby certify that I have served a **Motion to Compel Correction to the Record on Appeal** on the Appellant by depositing a copy in the United States Mail, postage prepaid, on April 27, 2016, addressed to the Appellant's counsel of record as follows: V. Elizabeth Wright, V. Elizabeth Wright, P.A., 217 E. Park Avenue, Greenville, SC 29601, and Gregory K. Smith, King & Spaulding, LLP, 1180 Peachtree Street, Atlanta, GA 30309.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

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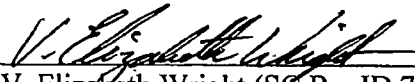
J. Scott Kunst Respondent,

v.

David Loree Appellant.

CERTIFICATE OF COUNSEL

Appellant's counsel hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

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SC Court of Appeals

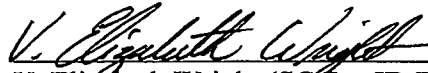
David Loree Appellant,

v.

J. Scott Kunst Respondent.

PROOF OF SERVICE

I certify that I have served the **Supplemental Record on Appeal** on *pro se* Respondent at his last-known address of 130 Arabian Way, Simpsonville, SC 29681, by depositing it into the U.S. Mail, first class postage prepaid on May 13, 2016.



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