

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case Tracking No. 2012209587
Civil Action No. 2009-CP-32-3870

Chris Phillips and Chris
Phillips Builders, Inc.,

Appellants,

v.

Frank Ferez and Suzie Ferez,

Respondents.

RECORD ON APPEAL

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Attorneys for Respondents

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JAN 11 2013

SC Court of Appeals

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ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

CHRIS PHILLIPS, ET AL.,

Plaintiffs,

-vs-

FRANK FEREZ and SUZIE FEREZ,

Defendant.

FILED

2011 JAN 19 P 4:30

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

IN THE COURT OF COMMON PLEAS

ORDER DENYING SUMMARY JUDGMENT

Case Number: 2009-CP-32-03870

The defendants seek summary judgment. The motion is denied because there are genuine issues of material fact and the case should not be summarily dismissed when discovery is in such early stages.

The defendants submitted a very detailed memorandum in support of their motion. Attached to the document are affidavits, a form signed under oath for First Citizens Bank, a copy of a check from the closing, a copy of pleadings, a written contract, and a recitation of various legal arguments.

First, the defendants object to the affidavit of Chris Phillips. They claim that it is only submitted on behalf of the individual defendant, not the corporate entity, so that there is no affidavit in opposition to the motion that could benefit the corporate entity. The court finds no merit to that position. The source of evidence is not the determining factor in evaluating whether there are genuine issues of material fact. The existence of evidence is the determining factor. The defendants also argue that the affidavit is inadequate on a number of grounds, specifically alleging that it fails to state that it is made upon awareness of the penalty of perjury and does not

specifically address what genuine issues of material fact exist. The court does not believe that the degree of technicality asserted by the defendants is necessary.

Rule 56, SCRCR, sets forth certain provisions regarding affidavits related to motions for summary judgment.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

WPC
#2
(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

So, if affidavits are insufficient, the court knows how to evaluate the insufficiencies.

That includes the ability of the court to allow additional submissions. If affidavits are submitted in bad faith, there is a specific rule dealing with that issue. This court finds nothing in the form or contents of the affidavits submitted in this case that is out of the ordinary. The statements are

made under oath, thus subjecting the affiant to perjury. The affidavit of Chris Phillips is made by a party. The rule does not state that the affidavit must "state" that it is made by someone who is competent to testify. It reads that it must "show" that it is made by someone competent to testify. It ^{is} recognizes that the affidavit submitted by Chris Phillips contains a general assertion that the affidavits of the defendants are untrue. While that is overly broad and non-specific in many respects, it is not fatal. The court declines to find that the affidavit of Chris Phillips should not be considered, and declines to determine that the affidavit of the individual fails to support the position of the corporate entity.

As for the issue of the Statute of Limitations, there is an issue of fact related to the triggering date for the statute to begin. The defendants want the court to accept that it had to have been by an earlier date than the plaintiffs claim. The plaintiffs are also arguing estoppel. The record needs to be developed, and there is a dispute at this point as to fact and law.

The defendants believe that the court must grant summary judgment because the contract required on its face that any alterations or additions be made pursuant to a written instrument. The plaintiffs assert that there was an agreement outside the written contract. The law is clear that a written agreement can be modified orally. There are issues of fact as to the agreement of the parties.

It is also asserted that the court must grant summary judgment because the plaintiffs signed a statement, under oath, with the bank that indicated that the defendants did not owe any additional sums. There is a dispute as to what actions and communications and understandings there were between the parties, and the court does not summarily decide an issue, without an

opportunity for discovery, based on one document. The plaintiff must be given an opportunity to develop evidence.

The most overriding basis for the denial of summary judgment is that the discovery in this case is in its infancy. The plaintiffs attempted to take the depositions of the defendants, but plaintiffs' counsel argues that he was not allowed to take the depositions because defense counsel insisted that this motion for summary judgment be heard first. According to plaintiffs' counsel, defense counsel believed that the bank document is the "smoking gun" that would require the court to grant summary judgment, thus obviating the need for discovery. As this order explains, the court does not agree. It is clear in this State that courts should not summarily dismiss a case where there has not been a reasonable opportunity to perform discovery. This is particularly true where, as here, there appear to be factual disputes that must be explored.

LEGAL STANDARDS

WAC #4
Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

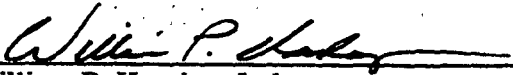
Furthermore, "[s]ummary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Id., citing Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In

determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. White v. J. M. Brown Amusement Company Inc., 2004 WL 1773746 (Ct.App. 8-9-04). See also, Horton v. Darby Electric Co., Inc., 2004 WL 1553558 (S.C. 7-6-04). "At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied." Hill v. York County's Sheriff's Department, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993)(cert. den. 1994).

THEREFORE, IT IS ORDERED that the motion for summary judgment is denied.

AND IT IS SO ORDERED.

#5
January 19, 2011


William P. Keesley, Judge

ORIGINAL
FILED

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

CHRIS PHILLIPS, ET AL.,)

Plaintiffs,)

-vs-)

FRANK FEREZ and SUZIE FEREZ,)

Defendant.)

IN THE COURT OF COMMON PLEAS
2011 FEB 25 A

BETH A. CARRI
CLERK OF COURT
LEXINGTON S

**ORDER DENYING MOTION
UNDER RULE 59, SCRCP**
Case Number: 2009-CP-32-03870

*Wp
#1*

The defendants have filed a motion seeking to have the court reconsider and alter or amend the denial of their motion for summary judgment. Pursuant to Rule 59(f), SCRCP, the court advised the attorneys that the motion would be decided on written submissions, setting forth deadlines for the filing of those documents. The court has received a detailed brief from defense counsel. Having read it, the court sees no further need for continued briefing and denies the Rule 59 motion.

Basically and respectfully, there is a fundamental difference in what the court understands the law and the procedural rules to be, and what defense counsel insists that the law requires. The court has carefully reviewed the assertions that the court excused or overlooked 8 different issues or principles of law, and that there are 6 particulars as to what the plaintiffs failed to do.

All of those issues were known to the court at the time of its initial ruling. The court does not share the defendants' beliefs as to the degree of precision and technicality demanded by the rules of civil procedure and precedent.

The court has read and interpreted Rule 56, SCRPC, hundreds of times. Acknowledging that not all of those interpretations were correct, the court believes that it has properly applied the rule in this case. The major dispute revolves around subsection (e). Rule 56(e) reads, as follows:

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

WPA #2
The brief makes use of footnotes to explain, in part, the various assertions. The first footnote is the argument that there is no affidavit submitted on behalf of the corporate defendant. Apparently, this is based on the belief that a motion for summary judgment must be granted if it is supported by an affidavit and the specific entity (here, the specific corporate plaintiff) does not file a responsive opposing affidavit. Seemingly, this would require that each plaintiff submit a separate affidavit or that the affidavit specifically state that it is submitted on behalf of both plaintiffs. There is nothing in the law or the procedures that require such.

It is well known that the Rule states that the opposing party cannot rely upon mere allegations in the pleadings. Here, the plaintiffs did not rely upon mere allegations in the pleadings. An affidavit was submitted. But, genuine issues of fact may come from things other than an affidavit. The Rule provides that the response may be by affidavits or otherwise. As the court attempted to explain previously, its understanding is that the source of the genuine issue

of material fact is not the question, as long as it is sworn or based on sworn statements. The question is the existence of the genuine issue of material fact, and South Carolina has the mere-scintilla rule.

More to the point, the court does not accept the suggestion that the affidavit of Chris Phillips does not meet the requirements of the Rule and does not amount to a counter-affidavit for the corporate defendant. The Rule requires that the affidavit "show" that the affiant is competent to testify as to matters contained in the affidavit. It strains credulity to believe that the affidavit here does not meet that standard, when it relates to Chris Phillips himself and a company denominated as Chris Phillips Builders, Inc. His affidavit states that he is the sole shareholder of the corporation and refers to that corporation as "his" company. There is no requirement that there be two separate affidavits submitted: one on behalf of the individual and one on behalf of the corporation. There is an affidavit that contests the material issues and discusses specific facts. The affidavit recites alleged facts that support the determination that the original written contract is not the complete agreement; that there is a dispute as to the contract(s); that there is a question as to whether there an enforceable modification; and, that there is an issue of fact concerning the alleged breach.

On the statute of limitations issue, it may be that after further development of the evidence, a court could summarily dismiss this case on that ground. However, at this point, there is a sworn statement from Mr. Phillips related to a subsequent acknowledgement of the debt, and the court cannot at this point definitively set the triggering date of the statute of limitations, as explained in the previous order, because of the acknowledgement and the additional work that was claimed to be done.

The affidavit states that additional work was done, which was a modification of the contract. The defendants believe that the parol evidence rule can be used to summarily dismiss this case because the written contract stated that change orders were required to be in writing. The court knows of the existence of the parol evidence rule and respects the defendants' interpretation that the written contract cannot be modified, except in writing. However, at this stage, the court is also aware of dozens of cases that have gone to trial under very similar circumstances and believes that it is inappropriate to summarily dismiss this case. This is based, at least in part, on the possible application of law to the contrary that allows written contracts to be amended orally and enforced as amended, even where the written contract provides that the changes must be written. Ultimately, the parol evidence may be excluded and a dismissal granted. However, the blanket assertion that there is no way to orally amend this contract is not, in the court's view, supported by South Carolina law, and it is premature to dismiss the case.

WPK
#4

The court has no disagreement with most of the general statements of law that are advanced by the defendants; but, the attempted application of those principles is the problem, particularly at the summary judgment stage. For example, it is a correct general principle of law that, in the absence of other factors, ambiguities in a written document are to be construed against the party who prepared it. That does not necessarily mean, however, that disputed issues of fact are to be resolved summarily simply by applying that principle.

The Phillips affidavit states that there was an acknowledgement of the amended agreement and of the overage that the plaintiffs claim to be due. Again, this raises genuine issues of material fact, in the court's view. The allegations are fact-specific. So, while the court agrees with the defendants that it is insufficient merely to assert, as Chris Phillips did in

Paragraph 7 of his affidavit, that the contents of the affidavits of the defendants are untrue, the remainder of the affidavit submitted by Mr. Phillips is sufficient to deny summary judgment. Also, the court could allow supplementation of the affidavit when generalizations are made.

The brief indicates the position that the plaintiffs have failed to "defend," in several particulars. One relates to the assertion that the "Bank Affidavit" is a complete bar to the litigation. Another claim is that the Phillips' affidavit fails to defend against the missing change orders. For reasons stated in this and the previous order, it appears that the defendants are seeking to have the court weigh evidence and decide issues of fact that are in dispute, both of which are impermissible at this stage.

Wise #5
The defendants make an assertion that the court has overlooked precedent dealing with the technical requirements of an affidavit. The court has read *State v. Dunbar*, 603 S.E.2d 615, 361 S.C. 240 (Ct.App.2004), which the defendants believe the court ignored or excused. Other than general principles that would apply to any sworn statement, that case seems to have little applicability to the issue at hand because it deals with an evaluation of what constitutes an "oath or affirmation" sufficient under the federal and state constitutions, and state statutes, to obtain a search warrant or arrest warrant.

It appears that the interpretation being given by the defendants to that case is that an affidavit is defective if it does not contain an affirmation of awareness of the penalties of perjury. The court disagrees. In fact, the following language is contained in *Dunbar* at page 247, which is the page where the court is directed by defendants' brief:

Both federal and state constitutions require that the search warrant be issued upon probable cause supported by "oath or affirmation." An "oath" is a solemn pledge, swearing to a higher power, that one's statement is true and

subjects one to penalties for perjury if the statement is false. See Black's Law Dictionary 1099 (7th ed.1999). An "affirmation" is a pledge that one's statement is true and subjects the person to the penalties of perjury, but does not require the swearing to a higher power. Black's Law Dictionary 59. Neither federal nor state constitutions proscribe a particular method to be used in obtaining an "oath or affirmation."

Accepting for the moment that the *Dunbar* case has any significance here, the affidavit of Chris Phillips is sworn. By definition, a statement under oath that is false subjects the person making it to perjury charges. There is no requirement that an affidavit recite that it is made with knowledge of the penalties of perjury, even when it is going to involve seizing someone's person or property.

WPC
#6

Likewise, the court does not accept the defendants' other arguments about the Phillips affidavit being excluded because of alleged technical deficiencies.¹ There is no requirement that the body of the affidavit reflect a statement that the affiant is competent to testify to the matters stated. Here, it may be implied by such things as the inclusion of a statement that the affiant is the sole shareholder of the company, and was a party to the agreement in dispute, and has been in the construction industry for decades. If there is a challenge to the competency of the affiant or whether his statements are based on personal knowledge, a challenge may be raised, and the court would consider it. The court may even raise the issue itself; or disregard some or all of an affidavit that does not appear to be based on personal knowledge; or disregard some or all of an affidavit that does not appear to have been made by a person competent to make it. But, unless

¹ Even if it did, because of the strong preference against summary dismissal, the court can give the affiant an opportunity to correct a technical mistake.

there is some reason to do so, the affidavit is not disregarded just because it does not contain a recitation that recites the wording contained in Rule 56. It might be a better practice to include such a recitation, but it does not render the affidavit invalid. The Rule states that the affidavit must "show" that it is sufficient under the Rule, not necessarily that the language in the Rule about the sufficiency of the affidavit be recited in the affidavit. An affidavit by its very nature must be under oath or affirmed to true. Whether or not there has been compliance with Rule 56 may be based on things that are logically implied.

Wax #7
Finally, the defendants claim that the court is misguided in its interpretation of the law related to denying summary judgment when discovery is incomplete. They cite a case of *Plantation A.D., LLC v. Gerald Builders*, 687 S.E.2d 714 (SC Ct.App.2009) for the proposition that "The Supreme Court of South Carolina has held otherwise. In a case where Discovery was not complete, the Supreme Court found that if a [document] was complete and unambiguous as to the agreement between the parties, Parol Evidence is not admissible and Summary Judgment was appropriate even with pending Discovery and Motions." (Capitalizations and brackets contained in the original brief.) The court understands the use of this citation if it is advancing an argument concerning parol evidence; but, has some difficulty in comprehending how the case cited reflects the principle for which it was advanced - the proposition that summary judgment was appropriate when there is pending discovery.

Plantation is a case from the Court of Appeals that reversed the trial court's decision granting summary judgment. In the court's view, it includes far more principles of law that disfavor the defendants' argument than those that would support it. For example, it refers to the "mere scintilla" rule and also states that construction of an ambiguous contract is a question of

Page | 7

fact. (The court recognizes that the defendants do not feel that there is any issue of fact and that the contract is unambiguous as a matter of law.)

In any event, the court is convinced that the law heavily favors or requires denial of summary judgment where discovery is incomplete. The standard is explained in *Jones v. Enterprise Leasing Company*, 383 S.C. 259, 678 S.E.2d 819 (SC Ct.App. 2009), which quotes from *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.* Once a Rule 56 motion has been made, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.* at 115, 410 S.E.2d at 545. A court must then apply the standard set out in Rule 56(c), SCRPC:

Wpa
#8

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

[383 S.C. 264] *Id.* at 116, 420 S.E.2d at 545-46 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

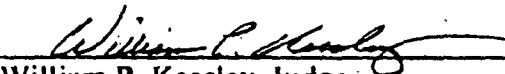
In *Jones*, there was a claim of negligent entrustment. However, the pleadings themselves and the affidavits indicated that no genuine issue of fact could be created through discovery to establish one of the essential elements of negligent entrustment: ownership and control of the vehicle by the particular defendant in question. So, while this court recognizes that the Court of

Appeals in *Jones* upheld the circuit court's decision to grant summary judgment, despite the claim that discovery was incomplete, it did so because further discovery would be unnecessary and unavailing. This court has granted summary judgment before in much the same circumstances as are set forth in *Jones*. While the court recognizes that the defendants here would take a similar position regarding the lack of need for further discovery, this court disagrees that this case should be summarily dismissed without giving the plaintiffs the opportunity for further discovery.

THEREFORE, IT IS ORDERED that the motion under Rule 59, SCRCP, is denied.

AND IT IS SO ORDERED.

February 23, 2011


William P. Keesley, Judge

#9

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-32-3870

ORIGINAL

Chris Phillips, et al.

Frank Perez, et al.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

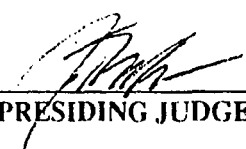
IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)

☒ Statement of Judgment by the Court: Defendant's Motion to

Compel was resolved by the parties at the hearing on June 14, 2011. Plaintiff agreed to amend his answers and responses to Defendant's discovery requests and Requests for Admission. Defendant's Motion for Sanctions/Expenses under SCRPC 37 is denied. Defendant's Motion to Strike Plaintiff Chris Phillips from the pleadings and the request for punitives from the pleadings is denied.

Dated at Lexington, South Carolina, this Fifteenth day of June, 2011.


PRESIDING JUDGE

This judgment was entered on the 15th day of June 2011, and a copy mailed first class this 24th day of June 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Stanley L. Myers
ATTORNEY(S) FOR PLAINTIFF

Richard Lee Whitt
ATTORNEY(S) FOR DEFENDANT

BETH A. CARRIGG

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Chris Phillips and Chris Phillips Builders, Inc.,
Plaintiff(s)

vs.

Frank Ferez and Suzie Ferez,
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009 AUG 24 PM 1:42

BETH A. CARRIGG
CLERK OF COURT

2009CP3203870

(Please Print)
Submitted By: Stanley L. Myers
Address: 1700 Sunset Boulevard, West Columbia, SC 29169

SC Bar #: 71110
Telephone #: (803) 796-9160
Fax #: (803) 791-8410
Other:
E-mail:

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

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOJ (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex/Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699)

Submitting Party Signature: _____

Date: August 20, 2009

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

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Chris Phillips and)
Chris Phillips Builders, Inc.,)

Plaintiff,)

v.)

Frank Ferez and)
Suzie Ferez,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FILED
2009 AUG 24 PM 1:42

SETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

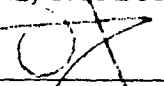
SUMMONS

2009CP3203870

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE, TAYLOR & THOMAS, P.A.

By: 

Stanley D. Myers
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiff

West Columbia, South Carolina
August 20, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

FILED
2009 AUG 24 PM 1:42

Chris Phillips and)
Chris Phillips Builders, Inc.,)
Plaintiffs,)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Frank Ferez and)
Suzie Ferez,)
Defendants.)

COMPLAINT
(Jury trial demanded)

2009CP3203870

Plaintiffs Complain of the above named Defendants as follows:

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

1. Plaintiff Chris Phillips is a resident and citizen of Lexington County, South Carolina. He is a licensed general contractor and owner of Chris Phillips Builders, Inc.
2. Defendant Chris Phillips Builders, Inc. is a business entity licensed to construct residential homes throughout South Carolina.
3. Defendants Frank and Suzie Ferez are residents and citizens of Lexington County, South Carolina. Defendants were husband and wife at the time of the incidents complained of herein. Upon information and belief, they are now divorced.
4. This Court has jurisdiction over the parties and subject matter herein. Venue is proper in Lexington County, South Carolina.
5. The parties entered into a contract on March 10, 2005, wherein Plaintiffs were to construct Defendants residence located at 325 Bent Oak Drive, Chapin, South Carolina ("the residence") for the contract price of \$550,000.00.

6. As part of the contract, Plaintiffs gave Defendants certain allowances to construct various portions of "the residence". Defendants exceeded the allowances in the amount of \$22,908.73.

7. Plaintiffs last performed work at "the residence" under the contract on March 12, 2007. Plaintiff Chris Philips last spoke with Defendant Suzie Ferez in August of 2008, who acknowledged owing the Plaintiffs an additional amount of money. Defendants never indicated there were defects in construction. As a matter of fact, both Defendants informed Plaintiffs they were going through a divorce, and that the debt would be equally divided at the time of the divorce.

8. Plaintiffs have performed all their obligations under the contract. Defendants breached their obligations under the contract, among other things, by failing to honor the terms of the contract and refusing to pay for services rendered.

9. As a direct and proximate result of the Defendants breach of contract, Plaintiffs have lost the benefit of their bargain; have suffered harm to their reputation; have been aggravated and humiliated; have incurred unnecessary expenses; and have been harmed all to their detriment.

10. Plaintiffs are entitled to actual and consequential damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Action accompanied by Fraudulent Acts)

11. Plaintiffs reassert and reallege each and every paragraph above as if set forth herein verbatim.

12. Defendants statements to the Plaintiffs in August of 2008 that they would pay Plaintiffs the debt out of their divorce was untrue and made with the intent to deceive the Plaintiffs. Their conduct constituted breach of contract accompanied by fraudulent acts.

13. As a direct and proximate result of Defendants breach of contract accompanied by fraudulent acts, Plaintiffs have been harmed as alleged above.

14. Plaintiffs are entitled to actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment and Quantum Meruit)

15. Plaintiffs reassert and reallege each and every paragraph above as if set forth herein verbatim.

16. As a result of Plaintiffs work, Defendants received a non-gratuitous benefit. Defendants gained significantly when the home was sold.

17. Plaintiffs are informed and believe it would not be equitable if Defendants were to retain the benefits bestowed upon them as a result of the refusal to pay for Plaintiffs labor.

18. Defendants conduct constitutes unjust enrichment.

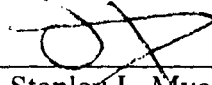
19. As a result of the unjust enrichment, Plaintiff has been harmed as alleged above.

20. Plaintiffs are entitled to actual and consequential damages

WHEREFORE, having complained of the Defendants herein, Plaintiffs pray for judgment against the Defendants for actual, consequential, and punitive damages; costs associated with having to litigate this matter; and for such other and further relief as this Court might deem just and proper.

MOORE, TAYLOR & THOMAS, P.A.

By: _____


Stanley L. Myers
1700 Sunset Boulevard (29169)
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
Attorney for Plaintiffs

West Columbia, South Carolina
August 20, 2009.

CONTRACT
CHRIS PHILLIPS BUILDERS, INC.
Residential Construction & Repairs
Post Office Box 555
Swansea, South Carolina 29160
Phone (803) 955-9030 Fax (803) 568-8717

Date: March 10, 2005

Proposal Submitted to: Frank and Suzie Ferez

Address: Lot #137; 335 Bent Oak Drive Phone (803) 359-0403
Chapin, SC 29036

We hereby submit specifications and estimates for:

2302 square feet of brick, Hardiplank, and stone home with 10 foot slick ceilings on first floor
988 square feet of second floor with 8 foot slick ceilings
1486 square feet of basement to be finished with 9 foot slick ceilings
816 square feet of basement unfinished
370 square feet of deck with Trex decking
1027 square feet of garage
40 square feet of front porch

Wood cornish per plans
Anderson 200 series pre-finished inside insulated glass with tilt sash windows
Anderson 200 series for all french doors
House insulated to good cents standards with cellulose insulation
30 year architectural Elk Prestique shingles with shingle over ridge vent
Hardwood floors in foyer, great room, nook, den, dining room, kitchen, powder room, balcony,
and hallways to be oak plank flooring or equal
Ceramic tile in utility, mud room, and all bathrooms including master shower
Cultured marble for all vanity tops
Granite tops for kitchen and bar area downstairs
Four color paint scheme
Three piece crown moulding in dining room, kitchen, nook, great room, foyer, master
bedroom, and rec room downstairs
One piece crown moulding in bedroom 2, 3, and 4 and all bathrooms
Oak stairs with wood rail system per our discussion
Weiser locks interior and exterior or equal
Built in bookcases on each side of ventless fireplace in great room with television box above

Tray ceiling in master bedroom
Built in bookshelves on one side of ventless fireplace in basement with television box above
Coffered ceiling and wains coating in den to be oak
Fireplace in nook was omitted
Columns to be 10" for great room entry
Exterior of house to be designed per plans
Will install transfer switch and electrical wiring
Kitchen cabinets to be painted with a faux finish
All vanities to be painted
Formica on utility room counter

ALLOWANCES

Clearing and excavating - \$2300.00
Brick - \$250.00 per thousand with buff mortar or equal
Stone - \$13.50 per square foot for material and labor
Granite - \$4500.00
Light fixture - \$6000.00
Appliance - \$5000.00
Carpet - \$20.00 per yard installed
Ceramic tile - \$3.00 per square foot material only
Outside concrete - \$6500.00
Lift station for sewer and sewer line to the road - \$4500.00
Plumbing fixture (i.e. toilets, tubs, sinks, and fixtures) - \$6000.00
Hardwood flooring - \$3.50 material only
Hardware (i.e. all locks, cabinet knobs, towel bars, etc.) - \$2500.00
Shower door and mirrors - \$1800.00
Faux finish - \$15.00 per opening

Dumpster and porta-jon to be on job site from start to finish
No water or sewer tap allowances
No landscaping allowances
Transfer switch included but not the generator

Builder to carry builder's risk insurance

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: Five Hundred Fifty Thousand and 00/100ths dollars (\$550,000.00).
Payment to be made as follows: 5% at signing of contract (\$27,500.00), remaining draws to be paid as work progresses per lenders draw schedule.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized
Signature:

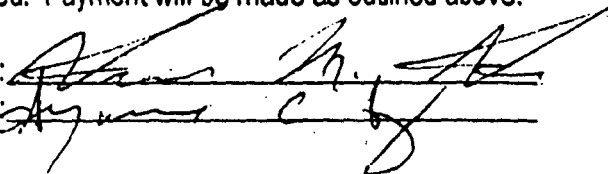


Note: This contract may be withdrawn by us if not accepted within 30 days.

Acceptance of Contract - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.

Signature:

Signature:



Date of Acceptance:

3/10/2005

C:\My Files\Chris\Foras.mpd

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Chris Phillips and Chris Phillips Builders,
Inc.,

Plaintiff,

v.

Frank Ferez and Suzie Ferez,

Defendants.

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-32-03870

**ANSWER AND
COUNTERCLAIMS**
(Amended)
(Jury Trial Demanded)

FILED
2011 FEB 28 AM 11:51
CLERK OF COURT

INTRODUCTION

Defendants Francis M. Ferez (hereinafter as, "Mr. Ferez"), incorrectly denominated hereinabove as, "Frank Ferez", and Suzanne C. Ferez (hereinafter as, "Ms. Ferez"), (hereinafter together as, "Defendants"), incorrectly denominated hereinabove as, "Suzie Ferez", hereinafter Amend their Answer to the Complaint of Chris Phillips (hereinafter as, "Phillips") and Chris Phillips Builders, Inc. (hereinafter as, "Phillips Inc."), (hereinafter together as, Plaintiffs), pursuant to the Order of the Honorable William P. Keesley filed April 13, 2011, and also pursuant to that Order amend their Counterclaims, as follows:

COURSE AND PATTERN OF DEALINGS BETWEEN THE PARTIES

The Defendants and Plaintiff Phillips Inc., entered into a Contract on or about March 10, 2005, for the construction by Plaintiff Phillips Inc., of a residence, located at 325 Bent Oak Drive, Chapin, Lexington County, South Carolina (hereinafter as the, "Residence") for \$550,000.00 to be paid to Plaintiff Phillips Inc. (hereinafter as the, "Contract").

Affidavit and Release

On February 1, 2006, Plaintiff Phillips Inc., executed an Affidavit and Release (see Exhibit "A", attached hereto). The Affidavit and Release conclusively shows that Plaintiffs' filing of this litigation is in violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. section 15-36-10, (1976, as amended) an Abuse of Process, and a Malicious Prosecution. (Defendants recently discovered the Affidavit and Release. Plaintiffs did not provide the Affidavit and Release to Defendants, despite (i) a spoliation letter to Stanley L. Myers, dated September 4, 2009 and (ii) a First Request for Production sent to Mr. Myers, on or about September 28, 2009.)

The Affidavit and Release contained, *inter alia*, the following language:

"Francis M. Ferez & Suzanne C. Ferez... has (*sic*) paid in full all overages. All total obligations in connection with said construction improvements have been paid in full. The undersigned [Plaintiff Phillips Inc.] hereby affirms that all sub-contractors, materialmen and laborers have been paid in full for settlement of all claims and there are non claims outstanding which would entitle the holder thereof to claim a lien against the said property."

The Affidavit and Release is conclusive proof that Plaintiffs' litigation is without a proper foundation.

Contract Construed Against Plaintiffs

The Contract was drafted by the Plaintiff Phillips Inc., or someone acting on Plaintiff Phillips Inc.'s behalf. The Defendants paid \$550,000.00 in consideration to the Plaintiff Phillips Inc., and Defendants fully performed all responsibilities required under the Contract.

Missing "Change Orders"

The Contract required, *inter alia*, that, "Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate" (emphasis not in original). No such "written orders" were ever drafted and presented to Defendants, as required in the Contract which was drafted by the Plaintiff Phillips Inc., or someone acting on Plaintiff Phillips Inc.'s behalf.

The, "March 12, 2007" reference in Plaintiffs' Complaint was for *de minimis* re-painting in one room, completed at the Residence by a third party, and not for Contract related work by Plaintiff Phillips Inc.

Plaintiffs are attempting to, after the Contract was fully performed and payment in full was tendered to Plaintiff Phillips Inc., to obtain under duress, additional payments under the Contract from Defendants, when such payments are not lawfully due and owing to Plaintiffs.

Important Dates

Important dates in this litigation are (i) the Contract for construction of the Residence was executed in **March 2005**; (ii) the Residence was substantially completed in **December 2005**, which was the date by which Plaintiff Phillips Inc., knew or should have known, that they had the alleged claim against Defendants (i.e., no further monetary payments were forthcoming from Defendants); (iii) the Defendants occupied the residence in **December 2005**; (iv) Plaintiffs executed the Affidavit

and Release document described hereinabove on February 1, 2006¹ (v) the Defendants separated in December 2006; (vi) the Defendants divorced in June 2008; (vii); an Invoice, without proper documentation and without proper "written change orders" as support, was presented to Defendant Ms. Ferez, only, in August 2008 who rejected the same, because the Invoice was without proper documentation and support; (viii) the Residence was sold in September 2008; (ix) almost 1 year elapsed and on or about July 30, 2009, Defendant Mr. Ferez, only, received correspondence from an attorney representing the Plaintiffs; and (ix) litigation was finally filed against the Defendants in late August 2009, which is some 44 months after the Residence was completed and Plaintiff Phillips Inc., knew or should have known, that it had the alleged claim against Defendants.

ANSWER

1. Defendants deny all allegations of the Complaint not hereinafter specifically admitted, qualified, or explained and demands strict proof thereof.

ADMISSIONS

2. Defendants admit the allegation of Paragraphs 4 and so much of Paragraph "3" of the Complaint that alleges that Defendant Ms. Ferez is a resident of Lexington County, South Carolina and that Defendants were Husband and Wife during a portion of the time relevant to this litigation and that the Defendants are now divorced, but Defendant Mr. Ferez denies he is a resident and citizen of Lexington County, South Carolina and Defendants admit so much of Paragraph 5 that alleges that the Defendants entered into a Contract with Plaintiff Phillips Inc.

DENIALS

3. Defendants deny the allegation in Paragraph 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Complaint.

QUALIFICATIONS

4. As to Paragraphs 1 and 2 of the Complaint, Defendants lack knowledge and information sufficient to form a belief as to this allegation, therefore the same is denied.

¹ Plaintiff Phillips filed an Affidavit with this Court on January 14, 2011, which admits that the Defendants closed on the residence in dispute herein, "...on or near February 1, 2006", which means this litigation was filed more than three years from that date and the Statue of Limitations had expired.

FOR A FIRST DEFENSE
(Performance under the Contract)

5. Defendants re-allege the contents of 1 through 4 hereinabove and both re-allege the Course and Pattern of Dealings Between the Parties as is set forth herein verbatim.

6. Defendants fully performed all responsibilities under the Contract and paid all consideration due under the Contract.

FOR A SECOND DEFENSE
(Affidavit and Release)

7. Defendants re-allege the contents of 1 through 6 hereinabove and both re-allege the Course and Pattern of Dealings Between the Parties as is set forth herein verbatim.

8. As set forth hereinabove, the Affidavit and Release document is a bar to this litigation.

FOR A THIRD DEFENSE
(Requirement for Written Change Orders)

9. Defendants re-allege the contents of 1 through 8 hereinabove and both re-allege the Course and Pattern of Dealings Between the Parties as is set forth herein verbatim.

10. As set forth hereinabove, the contractual requirement for written change orders is a bar to this litigation.

FOR A FOURTH DEFENSE
(Statute of Limitations)

11. Defendants re-allege the contents of 1 through 10 hereinabove.

12. Plaintiffs' Phillips Inc., claims are barred by the applicable Statute of Limitations, in that three years have elapsed since Plaintiff Phillips Inc., knew, or should have known, that it had the alleged Complaint against the Defendants.

FOR A FIFTH DEFENSE
(Punitive Damages Claim Unsupported)

13. Defendants re-allege the contents of 1 through 12 hereinabove.

14. Plaintiffs have, "double pled" the single alleged breach of contract alleged herein, in a frivolous attempt to claim a fraudulent act, in order to allege a claim for punitive damages.

15. Therefore, Plaintiffs have no valid claim for punitive damages and such must be struck from this Complaint.

FOR A SIXTH DEFENSE

(No Privity with Phillips)

16. Defendants re-allege the contents of 1 through 15 hereinabove.

17. The Defendants were not in privity of Contract with Plaintiff Phillips and Plaintiff Phillips has no standing to bring litigation against the Defendants. Defendants deny that they owe any damages to Plaintiff Phillips and Defendants deny all allegations herein, as to Plaintiff Phillips and Defendants reserve all rights and defenses as to Plaintiff Phillips.

**FOR A SEVENTH DEFENSE AND
BY WAY OF A FIRST COUNTERCLAIM**

(Breach of Contract by Plaintiff Phillips Inc.)

18. Defendants re-allege the contents of 1 through 17 hereinabove.

19. Plaintiffs Phillips Inc., failed to perform under the Contract and breached the Contract by failing to support and document the claimed charges by drafting and presenting written "change orders" to the Defendants as expressly required by the Contract drafted by the Plaintiff Phillips Inc., or someone acting on the behalf of Plaintiff Phillips Inc.

20. Defendants fully performed all of their duties under the Contract.

21. Defendants did not excuse Plaintiff Phillips Inc.'s failure to perform its duties under the Contract.

22. Defendants were damaged by Plaintiff Phillips Inc.'s breach of the Contract.

23. Defendants are informed and believe that they are entitled to judgment against the Plaintiff Phillips Inc., for its actual damages suffered due to the Plaintiffs breach of the Contract, in an amount to be determined at trial.

**FOR A EIGHTH DEFENSE AND
BY WAY OF A SECOND COUNTERCLAIM**

(Breach of the Covenant of Good Faith and Fair Dealing)

24. Defendants re-allege the contents of 1 through 23 hereinabove.

25. In every Contract executed in South Carolina, there is a covenant of Good Faith and Fair Dealing.

26. Plaintiff Phillips Inc., breached its covenant of Good Faith and Fair Dealings by its failure to perform under the Contract, and its demand for an unearned monies and acts of omission outlined hereinabove.

27. Defendants suffered damages because of Plaintiff Phillips Inc., breach of the covenant of Good Faith and Fair Dealings, in an amount to be determined at trial.

FOR A NINTH DEFENSE AND
BY WAY OF A THIRD COUNTERCLAIM AGAINST PLAINTIFFS
(VIOLATION OF UNFAIR TRADE PRACTICES ACT)
(Section 39-5-10, et. seq.)

28. Defendants re-allege the contents of 1 through 27 hereinabove.

29. The Acts alleged hereinabove are in violation of the South Carolina Unfair Trade Practices Act.

30. The Acts of Plaintiffs complained of herein, affect the commerce of the State of South Carolina and are capable of repetition.

31. Defendants' damages are ascertainable and Defendants were damaged by the actions described hereinabove in an amount to be determined at trial.

32. Defendants are entitled to receive treble damages of the base damages, reasonable attorney's fee, for total damages to be determined at trial.

DEMAND FOR JURY TRIAL

33. Defendants re-allege the contents of 1 through 32 hereinabove.

34. Defendants demand that the Plaintiffs' claims and Defendants counterclaims herein be tried before a jury.

WHEREFORE, having fully answered the Complaint, Defendants pray that the Complaint against them be dismissed with costs and pray for such other and further relief as the Court may deem appropriate;

AS TO DEFENDANTS COUNTERCLAIMS, a Judgment against the Plaintiffs, individually and/or jointly and severally where applicable, for actual and consequential damages on all causes of action in an amount to be determined by a jury;

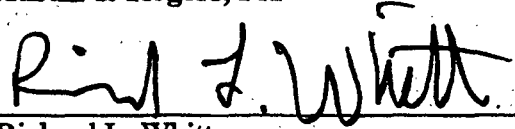
An award of treble actual damages, costs, and attorney's fees pursuant to the South Carolina Unfair Trade Practices Act;

An award of attorney's fees and costs of this action as provided by law or contract; and

Such other and further relief as is equitable in the circumstances and this Court deems just and appropriate.

[Signature Page Follows]

Respectfully Submitted,
Austin & Rogers, PA

A handwritten signature in black ink, appearing to read "Richard L. Whitt", written over a horizontal line.

Richard L. Whitt
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 256-7442
(803) 252-3679 fax

April 27, 2011
Columbia, South Carolina

Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE CIRCUIT COURT FOR THE
) ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-32-03870

Chris Phillips and Chris Phillips Builders,
Inc.,

Plaintiff,

vs.

Frank Ferez and Suzie Ferez,

Defendants/Third Party Plaintiffs,

**NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT**

FILED
2009 NOV 15 P 2:17
CLERK OF COURT
JANICE L. CHESNUTT

TO: CHRIS PHILLIPS AND CHRIS PHILLIPS BUILDERS, INC., AND THEIR ATTORNEY
ON RECORD, STANLEY L. MYERS,

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that the Defendants, Frank and Suzie Ferez (hereinafter, "Ferez's"), by and through its undersigned attorneys, will move before a Judge of the Court of Common Pleas for the Eleventh Judicial Circuit, on the tenth (10th) day after service hereof, or as soon thereafter as counsel can be heard, for an Order of Summary Judgment pursuant to Rule 56(b)&(e) of the South Carolina Rules of Civil Procedure, as to Defendants Frank and Suzie Ferez.

MOTION FOR SUMMARY JUDGMENT

The grounds for this Motion are as follows: (i) that there are no genuine issues of material fact in dispute, (ii) the Plaintiff is entitled to Summary Judgment as a matter of law and (iii) further inquiry into the facts of this case are not desirable to clarify the application of the law.

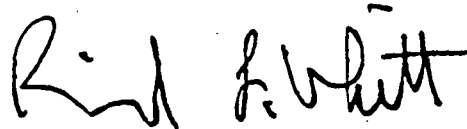
1. Plaintiff has alleged a breach of contract in the Complaint against the Ferez's.
2. There is no evidence to show that Defendants the Ferez's were presented with written change orders to the Contract between the parties to substantiate a breach of contract, there is no evidence to show a separate predicate act to substantiate a fraudulent act, unjust Enrichment and Quantum Meruit do not apply as matter of law, there is incontrovertible evidence that the Statue of Limitations has run and that there was no breach of contract.
3. Appropriate discovery has been completed in this matter.

CONCLUSION

Discovery has been completed in this matter and Defendant Ferez's respectfully requests that this Court grant its Motion for Summary Judgment based on the Pleadings, Discovery Responses, Applicable Law and the Affidavits of Francis M. Ferez and Suzanne C. Ferez, each with an exhibit and grant Such Other and Further Relief as is Appropriate.

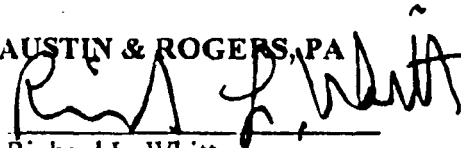
ATTORNEY CERTIFICATION

Defendant's counsel did not discuss this dispositive Motion with Plaintiff's counsel prior to filing, as doing so would have served no useful purpose.



Richard L. Whitt

AUSTIN & ROGERS, PA



Richard L. Whitt

Jefferson D. Griffith, III

508 Hampton Street, Suite 300

Columbia, South Carolina 29201

(803) 256-7442

(803) 252-3679 (f)

Attorney for Defendants Frank and Suzie Ferez

Columbia, South Carolina

November 11, 2010

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

COPY

Civil Action No: 2009-CP-32-03870

Chris Phillips and
Chris Phillips Builders, Inc.,

Plaintiff,

v.

Frank Ferez and Suzie Ferez

Defendants.

**NOTICE OF MOTION
AND
MOTION TO RECONSIDER,
REHEAR, ALTER
OR
AMEND JUDGMENT**

**TO: TO STANLEY L. MYERS, ATTORNEY FOR PLAINTIFFS, CHRIS PHILLIPS
AND CHRIS PHILLIPS BUILDERS, INC.:**

NOTICE

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e), SCRPC, Defendants Frank Ferez and Suzie Ferez herein by and through their undersigned attorney, will move the Court on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order reconsidering, rehearing, altering or amending Judgment, Namely, the Court's Order denying Motion for Summary Judgment (hereinafter as, "Order"), Defendants received a copy of the Court's filed Order via U.S. Mails on January 25, 2011, Defendants respectfully request reconsideration, rehearing, alteration or amendment of the Order on the following grounds.

MOTION

Strict Requirements of Rule 56, SCRPC

The South Carolina Lawyer Magazine, Volume 21, issue for January, 2010, contains an article, "Attacking Affidavits: Maintaining the Integrity of the Process".

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2011 FEB - 4 A 9:24

ED

Strict Requirements of Rule 56, SCRC (Cont.)

The first page of that article reads,

"Even at a preliminary stage of trial, courts should not permit admission of documents that do not strictly comply with procedural rules. It is imperative that a party's sworn submission be sufficient in execution and substance, as well as consistent with prior assertions, to ensure the integrity of the process." (page 38)

Also,

"Technical requirements for a sworn statement are critical but often not met. The mere signing of a statement in the presence of a notary, or a notary's placement of an "acknowledgment" on a statement, does not constitute a sworn statement or affidavit." (page 38)

Also,

"The plaintiffs' failure to present proper statements, made under penalty of perjury, warranted the court's disregard of the proposed "affidavits" and its granting of summary judgment in favor of the defendants. Courts throughout the country unanimously agree with the Nissho-Iwai court's holding, that the mere signing of a statement in the presence of a notary or the notary's placement of an acknowledgment on the statement does not then render the document a sworn statement admissible as evidence." (page 40)

Also,

"In Tishcon, [citation omitted] the plaintiff submitted a statement in which he incorporated the phrase, "hereby declares under penalties of perjury the following," but neglected to declare his statement "true and correct." (page 40)

Also,

"Affidavits submitted by a party must be made on personal knowledge and must set forth facts that would be admissible in evidence. Rule 56(e)(1), FRCP. Just as the requirements for the form of a statement should not be relaxed, evidentiary requirements also should be strictly enforced." (page 41) In the Order *sub judice*, this Court found that the Statement (the Bank Affidavit) signed under oath by the Plaintiffs, which indicated that the Defendants did not owe the Plaintiffs any additional monies was not dispositive, because an additional inquiry or discovery could bear on the import of the signed Statement (the Bank Affidavit). Counsel will respectfully submit that overlooking the signed Statement (the Bank Affidavit) would violate the Parol-Evidence Rule. Also, in the case *sub judice*, this Court overlooked the requirement in the Contract drafted by the Plaintiffs requiring written Change Orders, which were never drafted. The Parol-Evidence Rule would also apply to the Contract.

Also,

"Sworn statements and affidavits must be consistent with prior submissions and statements. Too often practitioners believe that they can correct or contradict prior testimony by way of affidavit and therein create an issue of fact. This practice often takes the role of advocate a step too far and can undermine the integrity of the process. Where a party submits an affidavit to the court that contains information inconsistent with the party's prior deposition testimony or other sworn submission, courts hold that these contradictory affidavits should be disregarded as "shams" or "competing affidavits." (page 43) And "Essentially, this doctrine provides that a plaintiff cannot submit an affidavit in which he alleges new or different facts from those previously asserted in an attempt to create a material issue for trial." (page 43)

Also,

"Affidavits that fail to comply with the Rules of Procedure "should be stricken and disregarded." [citation omitted] And "The proper avenue by which counsel should seek such exclusion on pending motion for summary judgment is by motion to strike pursuant to Rule 56(e) of the Rules of Civil Procedure or, alternatively, by raising a more general objection to the admissibility of the contents of the submission." (page 44)

The Single Affidavit Submitted Does Not Factually Dispute, Within its Four Corners, Defendants' Two Affidavits Concerning the Signed Statement (the Bank Affidavit) and The Lack of Change Orders, as Required by Plaintiffs' Contract.

The two Affidavits submitted on behalf of the two Defendants contain factual allegations concerning the signed Statement (the Bank Affidavit) and the lack of Change Orders, as required by Plaintiffs' Contract. Rule 56 of the SCRCF required Plaintiffs to dispute Defendants' allegations by way of its Affidavit, which was not done.

Plaintiffs sole Affidavit Does Not Contain an Affirmation That the Affidavit is Made Upon Awareness of the Penalties of Perjury. State v. Dunbar, 603 S.E.2nd 615, 361 S.C. 240, 247 (Ct. App. 2004)

A Court has abused its discretion, if it reaches a conclusion without reasonable factual support and it prejudices a party. Dunn v. Dunn, 298 S.C.499, 381 S.C.499, 381 S.E.2d 734 (1989), and Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974): The Court herein failed to address several inconsistencies resulting by the Court, either overlooking or misapprehending them.

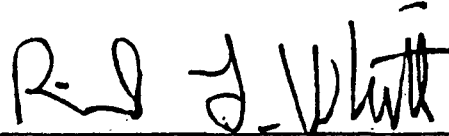
Case No: 2009-CP-32-03870
February 3, 2011
Page 4 of 4

WHEREFORE, based on the foregoing, Defendants respectfully request that this Court to reconsider its Order, grant the relief requested, and for such other and further relief that this Court deems just and appropriate.

Respectfully submitted,

AUSTIN, & ROGERS, P.A.

By:

A handwritten signature in black ink, appearing to read "R. L. Whitt", written over a horizontal line.

Richard L. Whitt.
508 Hampton Street, Suite 300
Post Office Box 11716
Columbia, SC 29211
(803) 256-4000 (phone)
(803) 252-3679 (fax)

Attorney for Defendants Frank Ferez and Suzie Ferez

Columbia, South Carolina
February 3, 2011

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-32-03870

**NOTICE OF MOTION
AND
MOTION TO STRIKE
(Rule 12 (f), SCRCP)**

Defendants.

NOTICE OF MOTION

MOTION TO STRIKE

Chris Phillips is named as a Plaintiff in this case.

1. There is no evidence to show that Chris Phillips qualifies as a Plaintiff in this case.
2. Appropriate discovery has been completed in this matter.

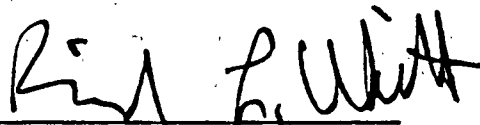
1. There is no evidence to show that punitive damages have been properly plead in this case.
2. Appropriate discovery has been completed in this matter.

CONCLUSION

The Defendants, based on the discovery and depositions in this case are entitled to have (i) Chris Phillips struck as a Plaintiff and (ii) Plaintiffs' demand for punitive damages should be struck.

ATTORNEY CERTIFICATION

Defendants' counsel did not discuss this dispositive Motion with Plaintiff's counsel prior to filing, as doing so would have served no useful purpose.


Richard L. Whitt

AUSTIN & ROGERS, PA

Richard L. Whitt
Jefferson D. Griffith, III
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 256-7442
(803) 252-3679 (f)

Attorneys for Defendants Frank and Suzie Ferez

Columbia, South Carolina
May 16, 2011

FILED

COPY

2011 JUL 15) A 8: 10

Civil Action No.: 2009-CP-32-03870

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
Plaintiffs,)

**NOTICE OF MOTION
and
MOTION FOR
SUMMARY JUDGMENT**

v.

Frank Ferez and Suzie Ferez,

Defendants.

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that the Defendants, Frank and Suzie Ferez (hereinafter, "Ferez's"), by and through its undersigned attorneys, will move before a Judge of the Court of Common Pleas for the Eleventh Judicial Circuit, on the tenth (10th) day after service hereof, or as soon thereafter as counsel can be heard, for an Order of Summary Judgment pursuant to Rule 56(b)&(e) of the South Carolina Rules of Civil Procedure, as to Defendants Frank and Suzie Ferez.

INTRODUCTION

A previous Motion for Summary Judgment in this matter was filed and heard on January 18, 2011. A decision denying Summary Judgment was issued on January 19, 2011.

MOTION FOR SUMMARY JUDGMENT

The grounds for this Motion are as follows: (i) that there are no genuine issues of material fact in dispute, (ii) the Plaintiff is entitled to Summary Judgment as a matter of law and (iii) further inquiry into the facts of this case are not desirable to clarify the application of the law.

1. Please consider the following:
2. Plaintiff has alleged a breach of contract in the Complaint against the Ferez's.
3. Also, (i) there is no competent evidence to show that Defendants the Ferez's were presented with written change orders to the Contract between the parties to substantiate the claimed breach of contract (ii) the Statute of Limitations has run and (iii) On February

1, 2006, Plaintiff Phillips Inc., executed an Affidavit and Release, which undermines Plaintiffs' Complaint.

4. Appropriate discovery has been completed in this matter.

CONCLUSION

Discovery has been completed in this matter and Defendant Ferez's respectfully requests that this Court grant its Motion for Summary Judgment based on the Pleadings, Discovery Responses, Applicable Law and the Affidavits of Francis M. Ferez and Suzanne C. Ferez, each with an exhibit and grant Such Other and Further Relief as is Appropriate.

ATTORNEY CERTIFICATION

Defendants' counsel did not discuss this dispositive Motion with Plaintiff's counsel prior to filing, as doing so would have served no useful purpose.


Richard L. Whitt

AUSTIN & ROGERS, PA

Richard L. Whitt
Jefferson D. Griffith, III
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 256-7442
(803) 252-3679 (f)

Attorneys for Defendants Frank and Suzie Ferez

Columbia, South Carolina
July 15, 2011

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Chris Phillips and Chris Phillips Builders, Inc. v. A) 8: Civil Action No.: 2009-CP-32-03870

v

BETH A. GARRIGG
CLERK OF COURT
LEXINGTON, SC

**AFFIDAVIT OF FRANCIS
MICHAEL FEREZ**

Frank Ferez and Suzie Ferez,

Defendants.

Personally appeared before me Francis M. Ferez, who on oath says, deposes and says that he is over the age of twenty-one (21) years and makes this Affidavit based on his personal knowledge, Affiant is competent to testify as to the matters stated herein, and hereby declares under the penalties of perjury, and states as follows:

1. My name is Francis M. Ferez and I am the Co-Defendant, named in the above mentioned case, and my current residence is at 521 Congaree Avenue, Columbia, South Carolina, 29205.
2. We entered into a Contract on or about March 10, 2005, for the construction by Chris Phillips and Chris Phillips Builders, Inc., (hereinafter, as "Plaintiffs") of our residence, located at 325 Bent Oak Drive, Chapin, Lexington County, South Carolina (hereinafter as the, "Residence") in consideration of \$550,000.00 to be paid to Plaintiffs (hereinafter as the, "Contract").
3. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that we had paid the Contract in full. Specifically, we paid \$550,000.00 to the Plaintiffs in completion of the Contract (see Exhibit "A" hereto, which is incorporated herein, by reference).
4. Construction of the residence by Plaintiffs, was completed by February 1, 2006, which was affirmed and sworn to be true, by Plaintiff (see Exhibit "A" hereto, which is incorporated herein, by reference).
5. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that we had paid in full all overages, (see Exhibit "A" hereto, which is incorporated herein).

6. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that all total obligations in connection with the residence had been paid in full as of February 1, 2006 (see Exhibit "A" hereto, which is incorporated herein, by referenced).

7. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that all sub-contractors, materialmen and laborers who worked on the Residence were paid in full as of February 1, 2006 (see Exhibit "A" hereto, which is incorporated herein, by reference).

8. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that there were no claims outstanding as to the Residence (see Exhibit "A" hereto, which is incorporated herein, by reference).

9. The Contract was drafted by the Plaintiffs or someone acting on Plaintiffs' behalf.

10. We paid \$550,000.00 in consideration to the Plaintiffs and Defendants fully performed all responsibilities required under the Contract.

11. The Contract required, *inter alia*, that, "Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate". No such "written orders" were ever drafted and presented to Defendants, as required in the Contract which was drafted by the Plaintiffs.

12. We occupied the residence in December 2005. The Residence was substantially completed in December 2005.

13. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that the Contract between the Plaintiffs and Defendants was performed, which was the date by which Plaintiffs knew or should have known, that they had the alleged claim against Defendants (i.e., no further monetary payments were requested from or forthcoming from Defendants), (see Exhibit "A" hereto, which is incorporated herein, by referenced)).

14. Litigation was finally filed against us in late August 2009, which is over 42 months after our Residence was completed and Plaintiffs knew (see Exhibit "A" hereto, which is incorporated herein, by reference) that they had the alleged claim against us, but failed to act in a timely matter.

[Signature page follows]

SWORN TO BEFORE ME THIS

14 day of July, 2011

Carol Schuy
Notary Public (SEAL)

My commission expires: 4/1/2021

Francis M. Ferez
Francis M. Ferez

CONTRACTOR'S / BORROWER'S
AFFIDAVIT AND RELEASE

CONTRACTOR

Chris Phillips Builders, Inc. is the general contractor in connection with the construction of the improvements on property located at 325 Bent Oak Drive, Lot #13 The Oaks at Oakbrook Landing, Phase 1, Lexington County, Chapin, SC 29036. That said construction improvements have been fully completed. Upon receipt of a final advance of \$104,500.00 from First Citizens, the building contract amount of \$550,000.00 will be paid in full. Also, if applicable, receipt of payment from Francis M. Ferez & Suzanne C. Ferez in the amount of \$ - 0 - has paid in full all overages. All total obligations in connection with said construction improvements have been paid in full. The undersigned hereby affirms that all sub-contractors, materialmen and laborers have been paid in full for settlement of all claims and there are no claims outstanding which would entitle the holder thereof to claim a lien against the said property. The undersigned hereby waives and releases his right to file a mechanic's lien against said property.

2/1/06
Date

Chris Phillips Builders Inc.
(SEAL)
CHRIS PHILLIPS BUILDERS, INC. -Contractor

Executed, subscribed, and sworn to before me the day and year above written.

Patricia A. Masarik
Notary Public for the State of South Carolina
My commission expires: 6-30-15

BORROWER

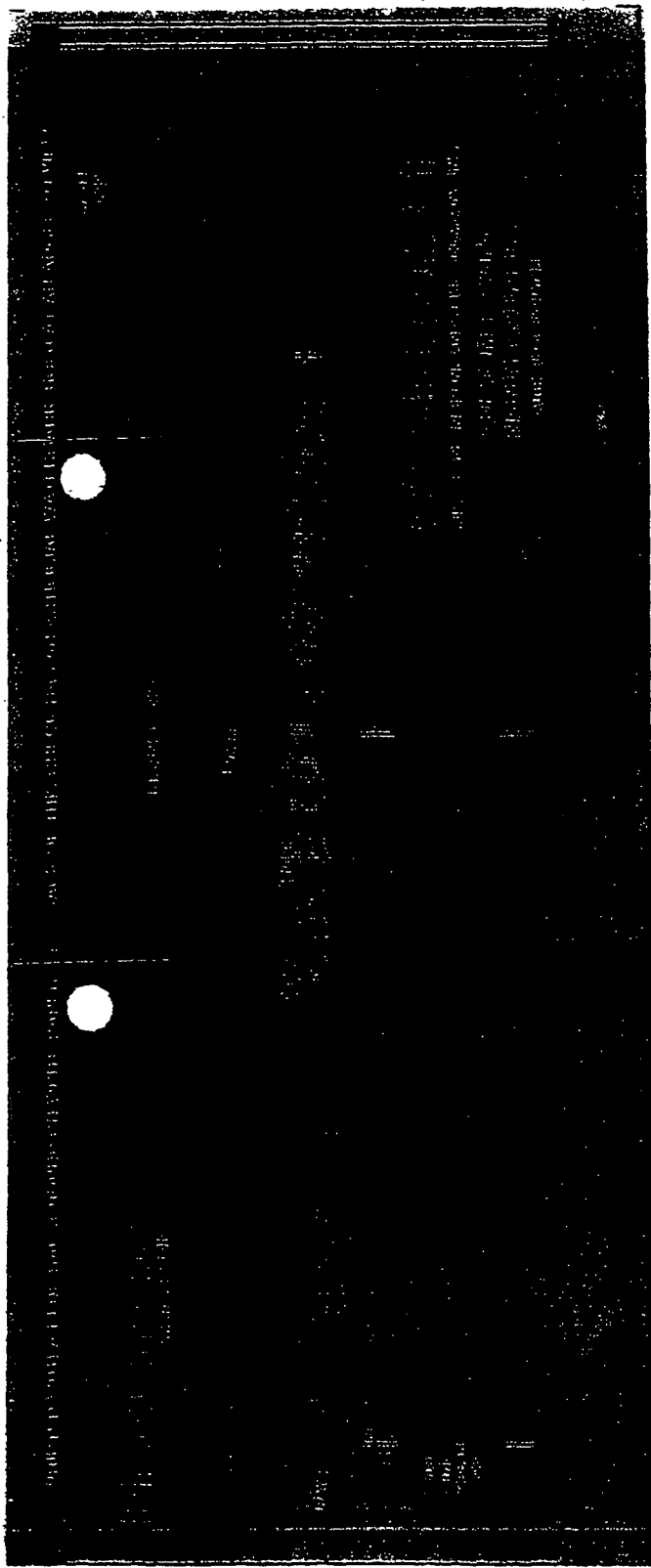
I/We, Francis M. Ferez & Suzanne C. Ferez, Borrower(s) for loan number 30017929 have examined the premises located same as noted in above section and the repairs and/or improvements performed by same as noted in above section are complete to my/our satisfaction and according to the contract with the above named. I/We have received no notice for unpaid sub-contractors, materialmen, or laborers. I/We hereby acknowledge that the building contract amount as noted above plus overages, if applicable, have been paid in full by me/us and has settled my/our total obligations in connection with said construction improvements.

2/1/2006
Date
2/1/2006
Date

Francis M. Ferez (SEAL)
FRANCIS M. FEREZ -Borrower
Suzanne C. Ferez (SEAL)
SUZANNE C. FEREZ -Borrower

Executed, subscribed, and sworn to before me the day and year above written.

Patricia A. Masarik
Notary Public for the State of South Carolina
My commission expires: 6-30-15



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

COPIES

Chris Phillips and Chris Phillips Builders, Inc., et al. vs. Action No.: 2009-CP-32-03870

v.

BEATRICE CARRIGG
CLERK OF COURT
LEXINGTON SC

AFFIDAVIT OF SUZANNE C.
WILSON

(Formally known as Suzanne C. Ferez)

Frank Ferez and Suzie Ferez,

Defendant.

Personally appeared before me Suzanne C. Wilson (F/K/A Suzanne C. Ferez), who on oath says, deposes and says that she is over the age of twenty-one (21) years and makes this Affidavit based on her personal knowledge, Affiant is competent to testify as to the matters stated herein, and hereby declares under the penalties of perjury, and states as follows:

1. My name is Suzanne C. Wilson and I am the Co-Defendant, named in the above mentioned case, and my residence is at 1113 Sugar Hill Drive, Moncks Corner, South Carolina, 29461.
2. We entered into a Contract on or about March 10, 2005, for the construction by Plaintiffs of a residence, located at 325 Bent Oak Drive, Chapin, Lexington County, South Carolina (hereinafter as the, "Residence") for \$550,000.00 to be paid to Plaintiffs (hereinafter as the, "Contract").
3. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that we had paid the Contract in full. Specifically, we paid \$550,000.00 to the Plaintiffs in completion of the Contract (see Exhibit "A" hereto, which is incorporated herein, by reference).
4. Construction of the residence by Plaintiffs, was completed by February 1, 2006, which was affirmed and sworn to be true, by Plaintiff (see Exhibit "A" hereto, which is incorporated herein, by reference).
5. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that we had paid in full all overages, (see Exhibit "A" hereto, which is incorporated herein).
6. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that all total obligations in connection with the Residence

had been paid in full as of February 1, 2006 (see Exhibit "A" hereto, which is incorporated herein, by referenced).

7. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that all sub-contractors, materialmen and laborers who worked on the Residence were paid in full as of February 1, 2006 (see Exhibit "A" hereto, which is incorporated herein, by reference).

8. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that there were no claims outstanding as to the Residence (see Exhibit "A" hereto, which is incorporated herein, by reference).

9. The Contract was drafted by the Plaintiffs or someone acting on Plaintiffs' behalf.

10. We paid \$550,000.00 in consideration to the Plaintiffs and Defendants fully performed all responsibilities required under the Contract.

11. The Contract required, *inter alia*, that, "Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate". No such "written orders" were ever drafted and presented to Defendants, as required in the Contract which was drafted by the Plaintiffs.

12. We occupied the Residence in December 2005. The Residence was substantially completed in December 2005.

13. As of February 1, 2006, it was agreed by Plaintiffs, affirmed by Plaintiffs and sworn to be true, by Plaintiffs that the Contract between the Plaintiffs and Defendants was performed, which was the date by which Plaintiffs knew or should have known, that they had the alleged claim against Defendants (i.e., no further monetary payments were requested from or forthcoming from Defendants), (see Exhibit "A" hereto, which is incorporated herein, by referenced)).

14. Litigation was finally filed against us in late August 2009, which is over 42 months after our Residence was completed and Plaintiffs knew (see Exhibit "A" hereto, which is incorporated herein, by reference) that they had the alleged claim against us, but failed to act in a timely matter.

[Signature page follow]

SWORN TO BEFORE ME THIS

14 day of July, 2011

Carrie Schweg
Notary Public (SEAL)

My commission expires: 4/1/2021

Suzanne C. Wilson
Suzanne C. Wilson

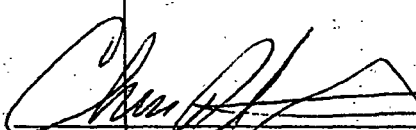
CONTRACTOR'S / BORROWER'S AFFIDAVIT AND RELEASE

CONTRACTOR

Chris Phillips Builders, Inc. is the general contractor in connection with the construction of the improvements on property located at 325 Bent Oak Drive, Lot #13 The Oaks at Oakbrook Landing, Phase 1, Lexington County, Chapin, SC 29036. That said construction improvements have been fully completed. Upon receipt of a final advance of \$104,500.00 from First Citizens, the building contract amount of \$550,000.00 will be paid in full. Also, if applicable, receipt of payment from Francis M. Ferez & Suzanne C. Ferez in the amount of \$ - 0 - has paid in full all overages. All total obligations in connection with said construction improvements have been paid in full. The undersigned hereby affirms that all sub-contractors, materialmen and laborers have been paid in full for settlement of all claims and there are no claims outstanding which would entitle the holder thereof to claim a lien against the said property. The undersigned hereby waives and releases his right to file a mechanic's lien against said property.

2/1/06

Date



for Chris Phillips
Builders Inc.
(SEAL)

CHRIS PHILLIPS BUILDERS, INC. - Contractor

Executed, subscribed, and sworn to before me the day and year above written.

Patricia A. Masarik

Notary Public for the State of South Carolina

My commission expires: 6-30-15

BORROWER

I/We, Francis M. Ferez & Suzanne C. Ferez, Borrower(s) for loan number 30017929 have examined the premises located same as noted in above section and the repairs and/or improvements performed by same as noted in above section are complete to my/our satisfaction and according to the contract with the above named. I/We have received no notice for unpaid sub-contractors, materialmen, or laborers. I/We hereby acknowledge that the building contract amount as noted above plus overages, if applicable, have been paid in full by me/us and has settled my/our total obligations in connection with said construction improvements.

2/1/2006

Date



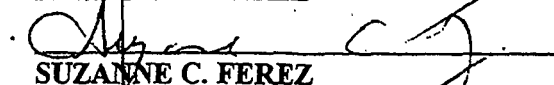
(SEAL)

FRANCIS M. FEREZ

-Borrower

2/1/2006

Date



(SEAL)

SUZANNE C. FEREZ

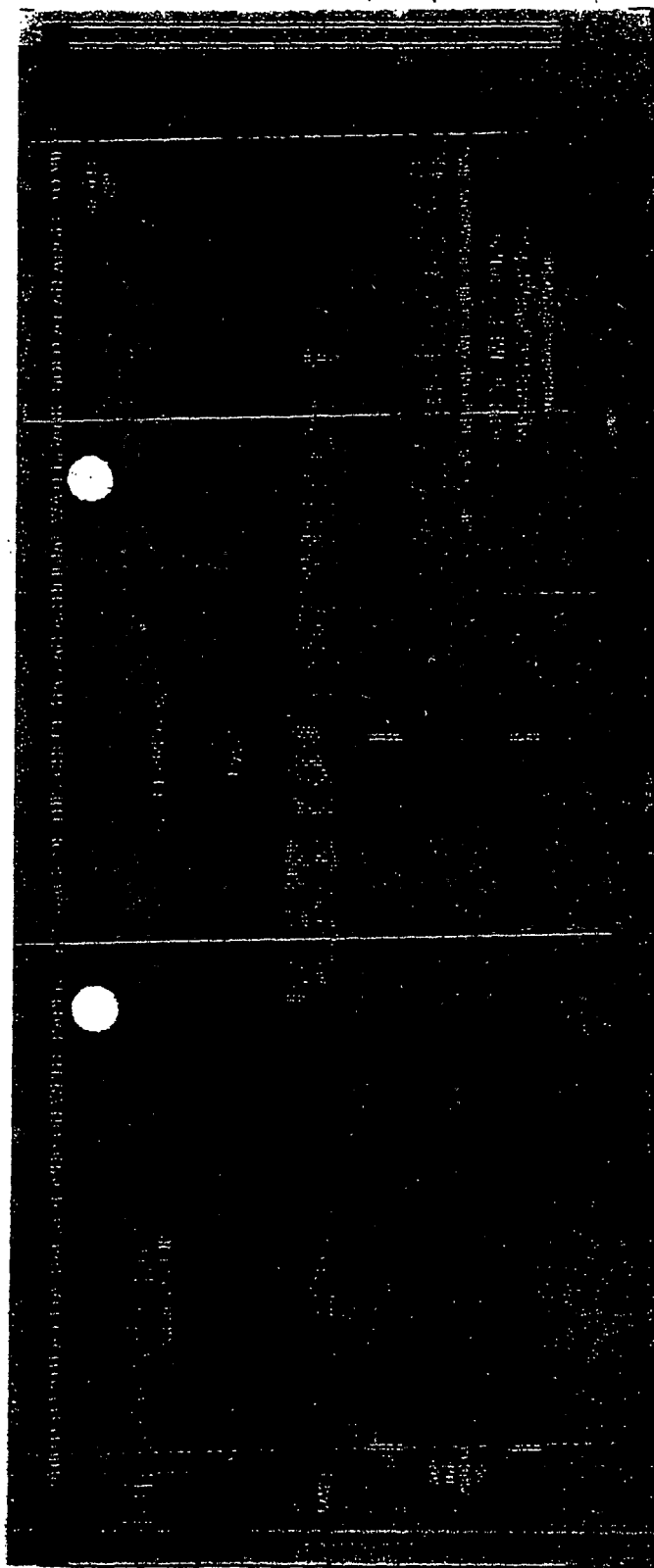
-Borrower

Executed, subscribed, and sworn to before me the day and year above written.

Patricia A. Masarik

Notary Public for the State of South Carolina

My commission expires: 6-30-15



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

RECEIVED

MAR 15 2012

Doyet A. Early, III, Circuit Court Judge

SC Court of Appeals

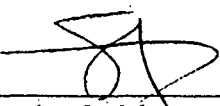
Case No. 2009-CP-32-3870

Chris Phillips and Chris Phillips Builders, Inc.....Appellants,
v.
Frank Ferez and Suzie Ferez.....Respondents.

NOTICE OF APPEAL

Chris Phillips and Chris Phillips Builders, Inc. hereby appeal the Order of the Honorable Doyet A. Early dated March 13, 2012. Counsel for Appellants received oral notice of this Order on March 13, 2012, but have not yet received written notice of this Order.

March 13, 2012


Stanley L. Myers
M. Brooks Biediger
Moore, Taylor, & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29169
Telephone: (803)-796-9160
Facsimile: (803)-791-8410
Attorneys for Appellant

Other Counsel of Record:
Jefferson D. Griffith, III, Esq.
Richard L. Whitt, Esq.
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, SC 29211
Telephone: (803) 256-4000
Attorneys for Respondents

Stanley Myers

From: Early, Doyet A. Law Clerk (Austin H. Crosby) [dearlylc@sccourts.org]
Sent: Thursday, March 22, 2012 2:36 PM
To: Stanley Myers; Jeff Griffith (jdg8750@gmail.com); rlwhitt@austinrogerspa.com
Subject: Phillips v. Ferez: 09-CP-32-3870

Gentlemen,

Judge Early has received notice of the appeal and wanted to make you aware that he does not intend to issue a written order. He will stand by his oral order issued from the bench.

Thanks,
Austin

Austin H. Crosby
Law Clerk to the Honorable D.A. Early, III
The Circuit Court of the 2nd Judicial Circuit
PO Box 90
Bamberg, SC 29003
Telephone: 803.245.4004
Fax: 803.245.2983
dearlylc@sccourts.org

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

Doyet A. Early, III, Circuit Court Judge

Case No. 2009-CP-32-3870

Chris Phillips and Chris Phillips Builders, Inc.....Appellants.
v.
Frank Ferez and Suzie Ferez.....Respondents.

SECOND NOTICE OF APPEAL

Chris Phillips and Chris Phillips Builders, Inc. hereby appeal the Order of the Honorable Doyet A. Early dated March 13, 2012. On this date, counsel for Appellants received oral notice of Judge Early's order granting directed verdict in favor of Respondents on the basis the original lawsuit was filed outside the statute of limitation. On March 22, 2012, Judge Early indicated he would not be issuing a written order, but would stand by his oral order on the bench. See Exhibit 1.

April 10, 2012.

Stanley L. Myers
M. Brooks Biediger
Moore, Taylor, & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29169
Telephone: (803)-796-9160
Facsimile: (803)-791-8410
Attorneys for Appellant

Other Counsel of Record:
Jefferson D. Griffith, III, Esq.
Richard L. Whitt, Esq.
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, SC 29211
Telephone: (803) 256-4000
Attorneys for Respondents



CONTRACT
CHRIS PHILLIPS BUILDERS, INC.

Residential Construction & Repairs
Post Office Box 555
Swansea, South Carolina 29160
Phone (803) 955-9030 Fax (803) 568-8717

Date: March 10, 2005

Proposal Submitted to: Frank and Suzie Ferez

Address: Lot #137; 335 Bent Oak Drive Phone (803) 359-0403
Chapin, SC 29036

We hereby submit specifications and estimates for:

2302 square feet of brick, Hardiplank, and stone home with 10 foot slick ceilings on first floor
988 square feet of second floor with 8 foot slick ceilings
1486 square feet of basement to be finished with 9 foot slick ceilings
816 square feet of basement unfinished
370 square feet of deck with Trex decking
1027 square feet of garage
40 square feet of front porch

Wood cornish per plans
Anderson 200 series pre-finished inside insulated glass with tilt sash windows
Anderson 200 series for all french doors
House insulated to good cents standards with cellulose insulation
30 year architectural Elk Prestique shingles with shingle over ridge vent
Hardwood floors in foyer, great room, nook, den, dining room, kitchen, powder room, balcony,
and hallways to be oak plank flooring or equal
Ceramic tile in utility, mud room, and all bathrooms including master shower
Cultured marble for all vanity tops
Granite tops for kitchen and bar area downstairs
Four color paint scheme
Three piece crown moulding in dining room, kitchen, nook, great room, foyer, master
bedroom, and rec room downstairs
One piece crown moulding in bedroom 2, 3, and 4 and all bathrooms
Oak stairs with wood rail system per our discussion
Weiser locks interior and exterior of equal
Built in bookcases on each side of ventless fireplace in great room with television box above

Tray ceiling in master bedroom
Built in bookshelves on one side of ventless fireplace in basement with television box above
Coffered ceiling and wains coating in den to be oak
Fireplace in nook was omitted
Columns to be 10" for great room entry
Exterior of house to be designed per plans
Will install transfer switch and electrical wiring
Kitchen cabinets to be painted with a faux finish
All vanities to be painted
Formica on utility room counter

ALLOWANCES

Clearing and excavating - \$2300.00
Brick - \$250.00 per thousand with buff mortar or equal
Stone - \$13.50 per square foot for material and labor
Granite - \$4500.00
Light fixture - \$6000.00
Appliance - \$5000.00
Carpet - \$20.00 per yard installed
Ceramic tile - \$3.00 per square foot material only
Outside concrete - \$6500.00
Lift station for sewer and sewer line to the road - \$4500.00
Plumbing fixture (i.e. toilets, tubs, sinks, and fixtures) - \$6000.00
Hardwood flooring - \$3.50 material only
Hardware (i.e. all locks, cabinet knobs, towel bars, etc.) - \$2500.00
Shower door and mirrors - \$1800.00
Faux finish - \$15.00 per opening

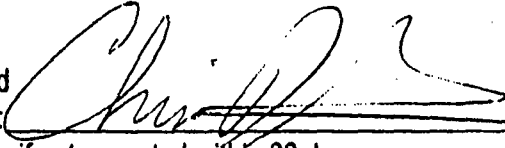
Dumpster and porta-jon to be on job site from start to finish
No water or sewer tap allowances
No landscaping allowances
Transfer switch included but not the generator

Builder to carry builder's risk insurance

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: Five Hundred Fifty Thousand and 00/100ths dollars (\$550,000.00).
Payment to be made as follows: 5% at signing of contract (\$27,500.00), remaining draws to be paid as work progresses per lenders draw schedule.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized
Signature:

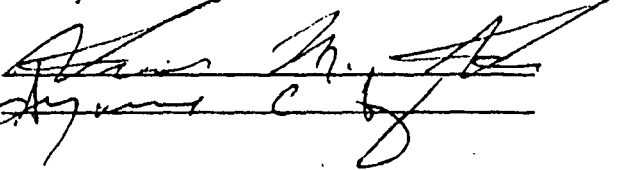


Note: This contract may be withdrawn by us if not accepted within 30 days.

Acceptance of Contract - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.

Signature:

Signature:



Date of Acceptance:

3/10/2006

C:\MyFiles\Chris\Fire2.wpd

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Chris Phillips and)
Chris Phillips Builders, Inc.,)
)
Plaintiffs,)

Case No. 2009-CP-32-3870

v.)

**PLAINTIFFS SUPPLEMENTAL ANSWERS
TO DEFENDANTS SUPPLEMENTAL
INTERROGATORIES**

Frank Ferez and)
Suzie Ferez,)
)
Defendants.)

To: Richard L. Whitt, Esquire, Attorney for the Defendants above named:

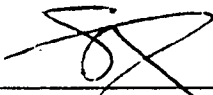
Pursuant to the Order of the Honorable Knox McMahon and Rule 33 of the South Carolina Rules of Civil Procedure, the Plaintiffs hereby submit their supplemental answers to the Defendants Supplemental Interrogatories. The Plaintiffs reserves the right to supplement or amend these answers at any time.

2-1. Because you contend that the Ferezs did not pay you \$550,000.00 for the construction of the Residence, set forth the dollar amount that you contend the Ferezs paid you for construction of the Residence.

ANSWER: Plaintiffs object to this interrogatory on the grounds that it requests information subject to privilege – specifically attorney work product – by requesting the basis of Plaintiffs’ contentions. Plaintiffs further object on the grounds that the request is ambiguous, contains multipart questions, assumes facts not in evidence, and calls for speculation. Without waiving these privileges or objections, Defendants paid Plaintiffs \$550,000.00.

Please see the following page for signature block.

MOORE, TAYLOR & THOMAS, P.A.

By: 

Stanley L. Myers
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
Attorney for Plaintiffs

West Columbia, South Carolina
July 15, 2011.

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

C.A. NO. 2009-CP-32-3870

CHRIS PHILLIPS AND CHRIS
PHILLIPS BUILDERS, INC.,

PLAINTIFFS,

VS.

FRANK FERREZ AND SUZIE FERREZ,

DEFENDANTS.

DEPOSITION

OF

CHRISTOPHER PHILLIPS

THE DEPOSITION OF CHRISTOPHER PHILLIPS, TAKEN BEFORE
JILL BISHOP EDWARDS, PROFESSIONAL VERBATIM REPORTER AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA,
COMMENCING AT THE HOUR OF 1:54 P.M., WEDNESDAY, THE 27TH DAY
OF APRIL, 2011, AT THE OFFICES OF AUSTIN AND ROGERS, P.A.,
508 HAMPTON STREET, SUITE 300, COLUMBIA, SOUTH CAROLINA.

COPY

5
1 Q So, just direct all questions to me. I will ask you
2 these questions and I'll repeat them if I need to. I'm
3 going to assume if you answer them that you understood
4 them, but if you have any questions you can ask me.
5 A Okay.
6 Q All right. For the record, just state your name, your
7 full name.
8 A Christopher David Phillips.
9 Q And your address?
10 A Is 200 Possum College Road, Swansea, South Carolina, 29
11 ---
12 Q And your date - I'm sorry.
13 A 29160. That's all right.
14 Q Date of birth?
15 A 10-14-70.
16 Q And Social Security number?
17 A 251-15-2687.
18 Q And you're married?
19 A Yes, sir.
20 Q Your wife's name?
21 A Jolynne, J-o-l-y-n-n-e, R. Phillips.
22 Q Okay. And the contract that's at dispute herein is
23 between Chris Phillips Builders and the Ferezes. It's
24 not you individually.
25 A Right.

6
1 Q And you don't mingle your money back and forth between
2 the company and your private business dealings, I
3 assume?
4 A No, sir.
5 Q You keep a separate account.
6 A Yes, sir.
7 Q In fact, I noticed the checks were payable to Chris
8 Phillips Builders, Inc.?
9 A Yes, sir.
10 Q So, the money from this would have gone to them and
11 that was the title to the contract, so you built the
12 house as Chris Phillips Builders.
13 A Yes, sir.
14 Q All right. All right. Well, we'll switch to talking
15 about Chris Phillips Builders, then. And I've got a
16 document here that we can mark for identification, and
17 I can just give you a copy, also. It's the contract.
18
(MARKED FOR IDENTIFICATION, DEFENDANT'S
19 EXHIBIT NUMBER 1, CONTRACT, ATTACHED.)
20 BY MR. WHITT:
21 Q I want you to look at it, see if you recognize it, and
22 if that's the document you signed.
23 A Yes, sir.
24 Q All right. I'll call your attention to the contract,
25 down at the bottom, and see if yours has a highlighted

1 section in it.
2 A Yes, sir.
3 Q Can you read that for me?
4 A Any alteration or deviation from above specifications
5 involving extra costs will be executed only upon
6 written orders and will become an extra charge over a
7 above the estimate.
8 Q Okay. And I think that we've done some discovery on
9 this case, and you've admitted in your discovery that
10 you didn't execute these formal written change orders.
11 Is that correct?
12 A That's correct.
13 Q Okay. So, we don't have any of those. All right. So,
14 and I guess for the record, the amount of the contract
15 was \$550,000. Is that your understanding?
16 A Yes, sir.
17 Q All right. And it was signed by you as authorized
18 signature for Chris Phillips Builders?
19 A Yes, sir.
20 Q Okay. All right. I've got another document that we
21 want to mark, and I can just hand you a copy.
22
(MARKED FOR IDENTIFICATION, DEFENDANT'S
23 EXHIBIT NUMBER 2, QUICKBOOKS REPORT, ATTACHED.)
24 BY MR. WHITT:
25 Q And this is your document. This came from your

1 company.
2 A Yes, sir.
3 Q Can you look at it and see if you recognize it?
4 A Yes, sir.
5 Q It came from QuickBooks Pro, or ---
6 A Yes, sir.
7 Q And this is called a QuickReport?
8 A Yes, sir.
9 Q Okay. If you look at that, and I've highlighted on
10 mine, but you can see it on yours, too, that you've
11 the payments listed on there.
12 A Uh-huh.
13 Q And they are listed one right after another, and the
14 start on March 10, 2005?
15 A Yes, sir.
16 Q And look and tell me the date of the last payment do
17 there.
18 A 2-2-2006.
19 Q Right. And subject to checking my math later, these
20 total \$553,375?
21 A Yes, sir.
22 Q So, accepting that, subject to check, what was the
23 amount of the contract?
24 A \$550,000.
25 Q \$550,000. And your internal records show that you

9

1 received a little over \$550,000, correct?

2 A That's correct.

3 Q \$553,375. Okay. And you've got that marked. Okay.

4 Next document marked ---

5

6 (MARKED FOR IDENTIFICATION, DEFENDANT'S

7 EXHIBIT NUMBER 3, AFFIDAVIT AND RELEASE, ATTACHED.)

8 BY MR. WHITT:

9 Q Okay. I'll show you that to make sure you recognize

10 it.

11 A Yes, sir.

12 Q All right. And can you read the part that's

13 highlighted in yellow for me, please?

14 A That said construction improvements have been fully

15 completed. Upon receipt of a final advance of \$104,500

16 from First Citizens, the building contract amount of

17 \$550,000 will be paid in full. Also, if applicable,

18 receipt of payment from Francis M. Ferez and Suzanne C.

19 Ferez in the amount of zero has been paid in full all

20 overages. All total obligations in connection with

21 said construction improvements have been paid in full.

22 Q Okay. And you recognize this document and you

23 recognize your signature?

24 A Yes, sir.

25 Q And it's for Chris Phillips Builders, Inc., by you?

26 A Yes, sir.

10

1 Q And it's dated when?

2 A 2-1 of '06.

3 Q Okay. And you remember signing this document?

4 A Yes, sir.

5 Q And you didn't have this document in your file, a copy

6 of this document in your file at your office? The

7 reason I ask you that is we ---

8 A I did not.

9 Q --- asked for copies of all documents related to this,

10 and we didn't get that document. So, do you know if it

11 was in your file or not?

12 A Honestly, I do not know.

13 Q But the day you - do you remember going to the bank?

14 A Yes, sir.

15 Q You remember signing?

16 A Yes, sir.

17 Q Do you remember the Ferezes being there? Did the

18 banker give you a copy of it that day?

19 A I would have to assume so, but I don't know for sure.

20 Q Okay. All right. I'm going to go through some more of

21 these documents and get them marked, and then we're

22 going to come back to them.

23 A Okay.

24 Q So, we've got one more.

25

(MARKED FOR IDENTIFICATION, DEFENDANT'S

1 EXHIBIT NUMBER 4, PLAINTIFF'S RESPONSES TO DEFENDANTS

2 REQUESTS FOR ADMISSIONS, ATTACHED.)

3 BY MR. WHITT:

4 Q Let me show you that. That's a document that you

5 should have seen as part of the discovery process. I

6 you flip to the second page, you can see it's signed

7 your legal counsel on October the 19th.

8 A Yes, sir.

9 Q Okay. What does question number five say on that

10 document?

11 A Admit that the consideration for the contract was

12 \$550,000 and the Defendants paid the Plaintiff

13 \$550,000.

14 Q And what was your response below?

15 A Response: Denied.

16 Q Why would that response be denied? If we've already

17 determined that, based on your internal records that

18 you gave to me, they paid you \$550,000, plus \$3,375

19 more?

20 A Why was it denied?

21 Q Yes.

22 A Honestly, I - I would have to defer that one to

23 Stanley, because I don't ---

24 Q Well, do you remember discussing this question with

25 him, question number five on Exhibit 4?

1 A Well, I'm sure we did, yes, sir.

2 Q But do you recall discussing it with him?

3 A I - no, sir, I don't recall, but I mean, it's a ---

4 Q Well, based on your, what you know now and what we've

5 covered by looking at your Exhibit Number 2, or the

6 Exhibit Number 2 to this deposition, which was your

7 QuickBooks report ---

8 A Uh-huh.

9 Q --- is there any reason why you would deny now that

10 at least received \$550,000?

11 A No, sir. I mean, they paid me the 550.

12 Q Okay. Okay. And so, that answer should be changed,

13 your opinion?

14 MR. MYERS: Object to form. You can answer.

15 BY MR. WHITT:

16 Q Yeah. That answer should be changed to admitted ---

17 A Yes, sir. I received 550.

18 Q Okay. All right. One more.

19

(MARKED FOR IDENTIFICATION, DEFENDANT'S

20 EXHIBIT NUMBER 5, PLAINTIFFS ANSWERS TO DEFENDANTS

21 SUPPLEMENTAL INTERROGATORIES, ATTACHED.)

22 BY MR. WHITT:

23 Q All right. Look at that, please. The title at the

24 is that - you're the plaintiff in this case, and this

25 is answers to interrogatories. This document is st

13

1 as Plaintiffs Answers to Defendants Supplemental
2 Interrogatories, and it's question 2-1. I'll give you
3 a chance to look at that.
4 A Okay.
5 Q Okay. If you would, read 2-1 to me, please.
6 A Because you contend that the Ferezes did not pay you
7 550 for the construction of the residence, set forth
8 the dollar amounts you contend the Ferezes paid you for
9 construction of the residence.
10 Q And read me your answer.
11 A Answer: Defendants paid \$31,000 to Plaintiff.
12 Q Can you explain that answer to me?
13 A No, sir.
14 Q Okay. Well, in light of looking back at your report,
15 Number 2, where your records tell us, subject to you
16 doing the math, checking the math, that you received
17 \$553,375 and you've got each date you did it?
18 A Right:
19 Q Then that answer is incorrect?
20 A Yes, sir, that would - because they paid me the 550.
21 Q Okay. Do you remember discussing that with your
22 counsel, your legal counsel?
23 A I - honestly, no, sir.
24 Q Okay. And once again, just like the previous document,
25 do you think that that answer should be amended to

1 A Uh-huh.
2 Q Now, we've already read this, you've already published
3 the sentence at the bottom of the page that indicated
4 that any alteration or deviation from above
5 specifications involving extra costs will be executed
6 only upon written orders and will become an extra
7 charge over and above the estimate. So, we've already
8 read that that's in this contract.
9 A Right.
10 Q And that none exist, that you didn't do them.
11 A Right.
12 Q Oh, and the other thing is who drafted this contract?
13 Did you draft it, or someone on your behalf?
14 A Yes, sir.
15 Q This isn't the Ferezes' contract they presented to
16 Chris Phillips Builders. This is your contract.
17 A Right.
18 Q Okay. So, you drafted this contract up, and you said
19 it's going to be 550, and by your own terms of your
20 contract, if it exceeds 550, you said we're going to
21 give you some change orders. Is that correct?
22 A That's - yes, sir.
23 Q And then, that wasn't done.
24 A Right.
25 Q Okay. And then, the other things, I think we can

14

1 reflect the amount that they did pay you, whether it's
2 553,075, or somewhere in that area?
3 A Right.
4 Q That answer should be changed?
5 A Yes, sir.
6
7 (MARKED FOR IDENTIFICATION, DEFENDANT'S
8 EXHIBIT NUMBER 6, PLAINTIFFS' RESPONSES TO DEFENDANTS
9 REQUESTS FOR ADMISSIONS, ATTACHED.)
10 BY MR. WHITT:
11 Q Okay. All right. If you will, please read that. And
12 you can see at the top, it's addressed to Richard L.
13 Whitt, as Attorney for the Defendants. And this is
14 another discovery response and this is a request to
15 admit, also. So, if you look at number three and read
16 that for me, please.
17 A Admit that there are no written change orders to the
18 contract, extant, which were executed by the Plaintiffs
19 and acknowledged in writing by the Defendants.
20 Q And then, your response to that is?
21 A Admit.
22 Q You admit it, okay, good. Thank you. All right.
23 Let's go back to the contract, which is Exhibit Number
24 1. Do you still have your copy there?
25 A Yes, sir.
Q It says Chris Phillips at the top?

1 establish by looking at the, your report, which you
2 have a copy of there, which is your Exhibit Number 2
3 It's your QuickBooks report.
4 A Yes, sir.
5 Q We've established that they paid you over \$550,000.
6 And we've established that the only way you could have
7 gotten more than that was with a written change order
8 and we don't have any. Is that correct?
9 A Well, yeah.
10 Q Well, it says \$550,000 they were supposed to pay you
11 and they paid you that, correct?
12 A Correct.
13 Q And then, your contract that you drafted said if it
14 will go anything above this specifications, or these
15 numbers or what's set forth, there will be a written
16 order and then you've admitted in discovery and today
17 you didn't have one.
18 A Right.
19 Q So, those two things are what I'm establishing.
20 A Yes, sir.
21 Q Okay. So, there's no written orders and that was the
22 amount. All right. We'll come back to these
23 documents, but let's just talk in generalities now.
24 How many people besides the Ferezes has Chris Phillips
25 brought litigation against in the last three years?

17
1 A None.
2 Q Not a single one? Are the Ferezes the only people that
3 you brought an action against on Chris Phillips
4 Builders?
5 A Yes, sir.
6 Q Okay. Let's go back to the affidavit, which I believe
7 is Number 3. You can correct me, please, if I get any
8 of these wrong. Let's go back to the affidavit. All
9 right. I think we've - have you got your copy there?
10 A Uh-huh.
11 Q Oh, by the way, there's a check on the back. There's
12 an exhibit on the back. Could you look at that and
13 tell me what it appears to be?
14 A The 104,500.
15 Q And when is it dated?
16 A February 1, 2006.
17 Q And among, besides being payable to the Ferezes, is
18 this payable to Chris Phillips Builders, Inc.?
19 A Yes, sir.
20 Q You got this check? You remember getting it?
21 A I'll be honest with you. That's been - I've got it,
22 yes, sir.
23 Q Okay.
24 A And deposited it, so.
25 Q Well, if you look at the entry, let's go back to your

18
1 report, which is Exhibit 2. If you look down there on
2 February 2nd, the day after this ---
3 A Yes, sir.
4 Q It shows you received a payment of how much?
5 A \$104,500.
6 Q All right. So, apparently, you got this check about
7 that time?
8 A Right.
9 Q Tell me why we're here today if the Ferezes were
10 supposed to pay you \$550,000 to build a house, and they
11 paid you \$550,000 to build a house, and you said you
12 don't owe me anything extra unless I give you a change
13 order, and there are no change orders, why are we here
14 today?
15 A Well, to be honest with you, I mean, I - a lot of this
16 is done on a gentleman's agreement, too, I mean, in my
17 opinion. I mean, Frank told me he wanted these things
18 done. I did them. Yes, it's in the contract, but I
19 did not execute change orders, I mean, in trying to get
20 it done so they can get moved in or get finished with
21 the home. He brought these things, you know, like the
22 sauna room downstairs, that was all above and beyond.
23 I mean, that wasn't anything talked about in the
24 beginning. In the contract, it states three-fifty a
25 square foot for tile allowance, and the allowance is

1 under the contract. Ceramic tile, excuse me, three
2 dollars per square foot for material only. And if you
3 all the bills that was given to you in the beginning,
4 all the Tile Center bills, when I went through and
5 added everything up, I mean, some of the tile was, I
6 don't remember. I think some of it was ten, 11, 12
7 dollars a square foot ---
8 Q Well, didn't your contract require you at that time to
9 issue a change order, give it to them and make Frank
10 and Suzie sign it?
11
12 MR. MYERS: Object. He was in the middle of
13 answering your question.
14 BY MR. WHITT:
15 Q Well, that's fine.
16 MR. MYERS: Finish answering the question, Chris..
17 BY MR. WHITT:
18 Q You can finish your answer.
19 A Well, it was, I mean, yes, it's in the contract, but
20 mean, same token, they wanted the stuff done. We did
21 the work. I mean, I had no - I had no idea that he
22 would not pay me. I mean, they were - they're great
23 people. They were good homeowners to work for, and I
24 never would have dreamed that they wouldn't have paid
25 me. I mean, I did what they asked me to do.
Q Well, let me ask you about this affidavit again, and

1 that's going to be Exhibit Number 3. If you will, go
2 back to this exhibit.
3 A Yes, sir.
4 Q If they still owed you money, then they still owed you
5 money on February 1, 2006, which is the date of this
6 document.
7 A Uh-huh.
8 Q As you just said.
9 A Yes, sir.
10 Q Why did you sign this document and say they don't - let
11 me finish this time. Why did you sign that document on
12 that date and you say they paid me in full, none of the
13 subs are unpaid, and you say specifically that they
14 paid in full all overages, and overages is what's
15 referenced in the contract. Why would you sign this
16 document?
17 A They had to get it closed. That was the closing date
18 to get, to get moved in. And I signed that. We still
19 had a few things to do yet, I mean, touch-up things
20 do. I mean, I - that was done just so they could close
21 the loan and get everything settled.
22 Q That doesn't make sense to me. Are you saying that you
23 signed the document, and are you in the habit of
24 signing documents that aren't true and aren't correct
25 that don't reflect the actual situation in the

21

1 documents?

2 A I've never been not paid. I mean, that's a ---

3 Q That's not my question. You said you signed this even

4 though it wasn't accurate. You still had things

5 unpaid. Have you signed other documents like that?

6 A No. No, I mean, not that I can recall, no, sir.

7 Q So, this is the only time in, that you've signed on

8 behalf of Chris Phillips Builders, and that Chris

9 Phillips Builders has ever, ever, since you've been in

10 business, signed a document that wasn't true?

11 MR. MYERS: Object to form.

12 BY MR. WHITT:

13 Q You can still answer.

14 A I mean, I may have - we may have done that before so

15 they could - I mean, you've got to close the loan to

16 get the people in the house.

17 Q Well, do you know that in South Carolina, that it's a

18 crime to sign a document in a business transaction

19 that's false and you know it's false?

20 A Well, no, I didn't, but ---

21 Q Well, do you know it's a crime, under federal law, to

22 give a document to a bank that's, whether there's a

23 closing that's, by a federally chartered bank in which

24 you give them a document you know is not correct and

25 false?

22

1 MR. MYERS: Objection. Richard, are you charging

2 him of a crime, or are you accusing him of a crime?

3 MR. WHITT: I'm not a prosecutor.

4 MR. MYERS: That's not your question.

5 MR. WHITT: I'm not charging him with anything.

6 I'm asking him if he knows it's a crime and he can

7 answer.

8 MR. MYERS: That's not your question, though. Ask

9 him the question and he can answer. He'll answer if

10 there's a question, but if you're accusing him of a

11 crime, he can't answer.

12 MR. WHITT: I'm not accusing him of a crime, and

13 you know, we can have her play it back and I think you

14 know what she's going to play back.

15 BY MR. WHITT:

16 Q I asked you are you aware it's a crime to give a

17 federally chartered bank a false document.

18 A No.

19 Q Okay. Well, isn't that what you did?

20 A Well, yes, sir. I mean, we signed it so they could get

21 it closed.

22 Q Well, tell me what part of this document that you

23 signed, looking at your copy, what part of this

24 document is false?

25 A That they don't owe me any more money.

1 Q Is there any other part of it? Is that the only part

2 that's not true?

3 A Not that I'd be aware of, no, sir.

4 Q Well, is the part true on here that they've paid in

5 full all overages?

6 A No, sir, because they still owed me money. I didn't

7 know what they owed me at that time.

8 Q So, there's two false statements on here, the total

9 amount and the overages?

10 A The total amount, what you mean?

11 Q The \$550,000 and then the overages?

12 A What, are you saying the 550 is a false statement?

13 Q Well, I'm not - I'm not testifying. I'm not trying to

14 say anything. I thought you said - I asked you what

15 was false about this form, and you said the fact that

16 they've paid me in full. Then, I asked you about the

17 overages and you said they haven't paid me the

18 overages, or haven't paid me in full. So, there would

19 be two things that are wrong on here. First, that th

20 didn't pay you the overages, or you don't consider th

21 payment in full. So, it's in here twice.

22 A Well, they paid the 550.

23 Q Yeah, but it says will pay you, will pay you in full.

24 It means they'll pay the transaction in full. I

25 understand they paid the 550, but not the part about

1 paying in full. You maintain that's not paying in

2 full, because the overage is the second statement.

3 A Because of the overages, it wouldn't be paid in full.

4 Q Right. So, there's two statements, they didn't pay yo

5 in full and there's why.

6 A The overages.

7 Q Okay. All right. Did you ever go back to the bank an

8 correct this statement?

9 A No, sir.

10 Q Did you ever go back and say, look, I've given you a

11 document which I now admit is not true, that you're

12 closing the loan on?

13 A No, sir.

14 Q Well, whose idea was it to submit the document with

15 these statements on there?

16 A Honestly, I do not know. I mean, it was - that was

17 closing date that was set up, and ---

18 Q Okay. All right.

19 A And we went there and closed it.

20 Q All right. All right. Let's move on from that for a

21 while. Now, we've got some affidavits, and this is

22 going to be kind of consuming to do. I've got three

23 affidavits I need to put in and see if we can then -

24 you can help me figure out which one is which. One is

25 Mr. Phillips or Chris Phillips, Inc., and then one is

25

1 Suzie Ferez and one's the husband. See which one is
2 seven, eight, and nine.

3

4 (MARKED FOR IDENTIFICATION, DEFENDANT'S
5 EXHIBIT NUMBER 7, AFFIDAVIT, ATTACHED; DEFENDANT'S
6 EXHIBIT NUMBER 8, AFFIDAVIT, ATTACHED; AND DEFENDANT'S
7 EXHIBIT NUMBER 9, AFFIDAVIT, ATTACHED.)

8 THE COURT REPORTER: Number 7 is Suzie Ferez.

9 MR. WHITT: Okay.

10 THE COURT REPORTER: Number 8 is Francis Michael
11 Ferez, and Number 9 is Chris Phillips.

12 BY MR. WHITT:

13 Q So, 9 is Phillips, okay. I'm going to give you a copy
14 of Exhibits 7, 8, and 9, which is your affidavit and
15 Frank's affidavit and Suzie Ferez's affidavit. I'll
16 give you copies of all of them.

17 A Okay.

18 Q And you can look at Frank Ferez first, so it would be
19 Exhibit Number 8, Frank Ferez. Actually, it's on there
20 as Francis Michael, but it's - okay. Just have those,
21 and have I given you a copy of Suzie's, Suzanne's?
22 Yes.

23 A Affidavit of Chris Phillips ---

24 Q Okay. All right. So, kind of look, just have 7 and 8
25 handy, and now I want you to go to your affidavit,
Number 9.

26

1 A I've got three affidavits of Chris Phillips.

2 Q All right. Let me see what we've got here. All right.
3 Who do you have there?

4 A I've got ---

5 Q You should just have just one of yours ---

6 A That's mine, right.

7 Q And yours is so skinny, they all went together.

8 A All right.

9 Q Let's look at your number, your affidavit on paragraph
10 number seven, and just read the first two sentences to
11 me from seven from your affidavit.

12 A I read Frank and Suzie's affidavits. They are untrue.
13 At all times ---

14 Q That's sufficient. I just wanted you to read the first
15 two. Keeping that in mind, I want you to look at
16 Suzie's affidavit, Suzanne's affidavit and Frank's, and
17 let's go through those paragraphs, and tell me, and
18 I'll follow along. Just tell me which one you're going
19 to do first, Frank or Suzanne. I'll follow along, and
20 tell me everything that's untrue in these affidavits
21 because your statement is that they're completely
22 untrue. You don't say part of them in your affidavit.
23 You say they are untrue. So, go through - you want to
24 start with Suzie or you want to start with Frank?

25 A I've got Frank in my hand.

1 Q All right. Let's do Frank. Tell me what's untrue.

2 A Bear with me to read through it.

3 Q Take your time.

4 A The part that I see that would not be true would be the
5 part that they had - well, Exhibit A says ---

6 Q Can you - can you give me a number? I'm going to ---

7 A I'm sorry. Number five, where it said - well, like,
8 the one I signed where they had paid overages, but I
9 mean, that was the only thing that I could say that was
10 not ---

11 Q Okay.

12 A Because they hadn't paid the overages.

13 Q All right. So, in his affidavit, it's just number
14 five?

15 A Well, five and six, I think, is the same thing pretty
16 much, but ---

17 Q All right. Five and six? All right. Can we do the
18 same thing on Suzie's if you're done, if you're
19 finished?

20 A Five and six are the same thing with hers, then.

21 Q Okay. All right. Okay. Going back to your affidavit,
22 which is Exhibit Number 9, and your number seven,
23 having read those affidavits, as you say there, do you
24 think that statement is still accurate that they are
25 untrue, or do you think it should have said there are

1 parts of it that are untrue?

2 A Well, I mean, I would have to say that parts of it are
3 untrue.

4 Q Okay. Let me go back to the affidavit, which is
5 Exhibit Number 3, just for clarity's sake. If you will
6 get your copy and make sure we're on the right one. At
7 the top, it says First Citizens Bank,
8 Contractor's/Borrower's Affidavit and Release. Do you
9 have that document?

10 A Yes, sir.

11 Q We talked about you signing it earlier, and that it
12 wasn't accurate. Do you think it was wrong to do that?

13 A I - well, it got everything closed for them so they
14 could close everything out. I don't ---

15 Q Well, can you answer yes or no? Do you think it's
16 wrong?

17 A Yeah.

18 Q All right. And the final question about the affidavit
19 which is Exhibit Number 3, do you think this document
20 misled the bank that day? Doesn't it - if I'm the
21 banker sitting there, doesn't the banker look at this
22 and say everything's fine between these folks and
23 everything's fine on this transaction. There's no suit
24 going to come in here and try to put in liens and
25 everybody's paid everybody. Do you think it misled

29

1 them?

2 A Honestly, no, sir.

3 Q You don't think it misled them? Well, do you think it

4 gave to them an accurate picture of the situation that

5 day, when you said that you knew there were unpaid

6 monies the day you sat in the bank?

7 A When I said it sitting in the bank office and the lady

8 said she didn't want to hear it ---

9 Q What lady said she didn't want to hear it?

10 A I don't remember her name, but I ---

11 Q Well, this is the first we're hearing about that. Are

12 you saying that the day that you tendered this to the

13 bank, that you orally told the banker this document is

14 incorrect? Just explain your answer.

15 A We were in the office and she said that's between you

16 and Frank.

17 Q Well, what ---

18 A Or the Ferezes.

19 Q What did she look like?

20 A Honestly, I don't - I don't remember.

21 Q Well, what race was she?

22 A White.

23 Q Was she old or young?

24 A If it's - I'm working off memory. That was a long time

25 ago.

30

1 Q I understand.

2 A Young to middle age. I mean, she wasn't a ---

3 Q And she was an employee of First Citizens Bank. What

4 role do you think she played in this transaction? Was

5 she the banker that came on in to do the closing with

6 you?

7 A Well, she had to have been, to have been in there, or

8 had something to do with ---

9 Q What's your memory?

10 A I'm not a hundred percent sure. I really - I really

11 don't remember.

12 Q Well, think back to that day. You remember you were

13 standing there talking at the bank, and you don't

14 remember what happened after that, where you went,

15 where she went? Did she go with you?

16 A Go with me where?

17 Q Did she go with you to the closing? You said I was

18 standing there talking to her and she didn't want to

19 hear about it. Then, what happened?

20 A No, we were in the, in the bank doing the closing.

21 Q And but when you left that conversation, the place

22 where you had the conversation, you went to the

23 closing. Where did that lady go? Did she come on in

24 the closing with you, or did she go off and you didn't

25 see her any during that day?

1 A No, we were - we were in the room.

2 Q You were in the closing?

3 A Right.

4 Q So, it's your testimony that the Ferezes were there and

5 heard your attempt to tell the bank, hey, this document

6 is no good, and the banker lady says on the record

7 don't tell me about it?

8 A We just made it in conversation. She said that's

9 between you and Frank because ---

10 Q But - but ---

11 A --- I don't want to hear it.

12 Q Well, then, let's back it up a little bit. Who's in

13 the room when this conversation took place?

14 A Well, Frank and Suzie, and of course, myself.

15 Whatever, whoever she was. And I guess his closing

16 attorney, whoever it was that did the closing for -

17 Q Well, you mean the bank? The closing was done here at

18 this law firm. Were you at this law firm, or were you

19 at the bank?

20 A The closing was done here?

21 Q Uh-huh.

22 A Well, it had to have been here, then.

23 Q So, the banker lady came to the closing at Austin and

24 Rogers? And subject to check, the closing was here.

25 That's my understanding. I don't have definite

1 knowledge about that.

2 A I mean, it's been quite a few years ago, so I don't

3 remember all the exact details, but ---

4 Q All right. Well, to the best of your memory and

5 recollection now, tell me what happened that day, the

6 conversation from the time you - did you have this

7 conversation right after you signed the document? You

8 said I want to tell you something? What happened?

9 A No, it wasn't I want to tell you something. It was

10 just conversation, like we were sitting at a table -

11 Q Well, just tell me from your memory what happened.

12 A It was just blown off, pretty much. I mean it ---

13 Q No, no. I mean, right after you signed the document,

14 then you get in a conversation with the banker and tell

15 me what your memory is that you remember saying.

16 A I don't remember if I said that before all of this was

17 done or after or ---

18 Q Well, just tell me what your memory is then, what you

19 remember saying, whether you remember when you said it

20 or not, then.

21 A That's what I said, what I said, and then it was kind

22 of like, well, that's ---

23 Q But ---

24 A --- between you and Frank. I don't want to hear it

25 Q Mr. Phillips, what I want you to do is we've had a lot

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) CIVIL ACTION NO.: 2009-CP-32-3870
CHRIS PHILLIPS AND CHRIS)
PHILLIPS BUILDERS, INC.,)
PLAINTIFFS,) DEPOSITION
VS.) OF
FRANK FEREZ AND SUZIE) FRANK FEREZ
FEREZ,)
DEFENDANTS.)

DEPOSITION OF FRANK FEREZ, TAKEN BEFORE LORI

A. BOGGS, PROFESSIONAL VERBATIM REPORTER, AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE
HOUR OF 12:21 P.M., THURSDAY, THE 17TH OF MARCH, 2011,
AT THE LAW OFFICES OF AUSTIN & ROGERS, PA, 508 HAMPTON STREET,
COLUMBIA, SOUTH CAROLINA.

COPY

APPEARANCES
FOR THE PLAINTIFF
STANLEY L. MYERS, ESQUIRE
MOORE, TAYLOR & THOMAS, P.A.
1700 SUNSET BOULEVARD
COLUMBIA, SOUTH CAROLINA 29169
FOR THE DEFENDANT
TIMOTHY R. ROGERS, ESQUIRE
AUSTIN & ROGERS
508 HAMPTON STREET
SUITE 300
COLUMBIA, SOUTH CAROLINA 29211

ALSO PRESENT
CHRIS PHILLIPS

REPORTED BY
LORI BOGGS REILLY
VERBATIM, INC.
2418 DEVINE STREET, SUITE 3
COLUMBIA, SOUTH CAROLINA 29205

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CERTIFICATE-----60

EXHIBITS

PLAINTIFF'S EXHIBIT NUMBER 3
CHRIS PHILLIPS BUILDERS, INC. INVOICE-----35

STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR THE
RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED
UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE
QUESTION.

THIS DEPOSITION IS BEING TAKEN PURSUANT TO THE
SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

THE READING AND SIGNING OF THIS DEPOSITION IS
RESERVED BY THE DEPONENT AND COUNSEL FOR THE
RESPECTIVE PARTIES.

WHEREUPON, FRANK FEREZ, BEING DULY SWORN
AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS FOLLOWS:

MR. ROGERS: Mr. Ferez, as you know, I'm one
of your lawyers. Under the rules for taking oral
depositions in South Carolina you have the right to
read and sign a transcript which is furnished to you at
the conclusion of the preparation of the transcript,
which takes several days after the conclusion of the
deposition, and you've got 30 days to read it over,
make any additions, corrections, edits, changes that,
upon review, occur to you as appropriate.

And even though the original things that you said
remain in the transcript, the additional changes,

deletions, additions and edits, et cetera, are added
to clarify whatever mistake -- if you thought something
happened on June the 1st and it turns out July 1st and
you want to clarify the record, it gives you an
opportunity to do that. And those changes become a
matter of permanent record of the transcript for
whatever use it's put to whenever.

And we always recommend that you exercise that
right and do that, particularly in a case like this,
where you have dates and so forth that are -- that you
may not have precise recall on.

But you also have -- you may also waive that right
by merely saying here on the record this morning that
you waive it.

If you don't waive it, which I advise you not to
do, you need to tell the court reporter an address to
which you want the transcript sent directly from her
with instructions, and you've got 30 days to do it and
get it back to her. And, of course, if you have any
questions about it, you can call us.

So if you would like to -- would you like to read
and sign then?

THE WITNESS: I want to have the 30 day to
look at it.

MR. ROGERS: Okay, all right. Well, give

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1 if we were billed by the interior designer, we got a
 2 copy of that invoice because that's something we did
 3 directly with the interior designer.
 4 Q When you moved in the home, and before you left, what
 5 upgrades, if any, did you make?
 6 A When I moved into the home, what upgrades did we make?
 7 Q Did you make any?
 8 A Well, I'm trying to remember. It's been a while.
 9 I don't recall making any upgrades to the exterior
 10 of the home. I don't recall making any upgrades to the
 11 construction of the home. In other words, we didn't
 12 expand anything or move anything. We certainly made
 13 upgrades in terms of the furnishings of the home.
 14 Q Do you know if Ms. Ferez made any changes?
 15 A I take that -- let me -- let me go back. Obviously
 16 there was an upgrade in the fact that we put
 17 landscaping in, because that was not present at the
 18 time that Chris was building the house. He didn't
 19 provide that.
 20 So if you consider that an upgrade, which I don't
 21 know if you do or if you don't, we definitely put grass
 22 and shrubs out there.
 23 Q Okay. So at the time that you entered into closing,
 24 your testimony is that Mr. Phillips was not owed a
 25 dime, correct?

(OFF THE RECORD)
 1 MR. MYERS: A couple more.
 2 BY MR. MYERS:
 3 Q Mr. Ferez.
 4 A Yes, sir.
 5 Q There was a bar put in your home, right?
 6 A A bar, yes.
 7 Q Okay. There was an adult bar, which contained adul
 8 beverages, in the basement; is that correct?
 9 A That's correct.
 10 Q And there was also a bar in the kitchen, correct?
 11 A I don't recall a bar in the kitchen.
 12 Q Do you recall one evening sitting around the bar, w
 13 Mr. Phillips was present, discussing the constructi
 14 of the home?
 15 A I don't.
 16 Q Do you recall ever telling Mr. Phillips that I know
 17 owe you money, just let us know what it is so that
 18 can get it to you.
 19 A I don't.
 20 Q You do not recall that conversation?
 21 A I do not recall that conversation.
 22 Q And you do not recall telling him, making a further
 23 statement, that I do not like owing anyone money?
 24 A I don't recall that. No, sir.

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1 A That's correct.
 2 Q And do you recall him -- do you recall a conversation
 3 with Mr. Phillips, telling him that he needed to sign a
 4 document to allow you and your wife to close?
 5 A No.
 6 Q He never said that?
 7 A No.
 8 Q Or you never said that?
 9 A No.
 10 Q Okay. So prior to February 1st, 2006, it's your
 11 testimony then that you never told Mr. Phillips that I
 12 need you to sign a document in order for us to close
 13 our loan?
 14 A That's correct.
 15 Q And the only individuals that were at -- that were
 16 present at closing was Mr. Eubanks, yourself, Suzie,
 17 and possibly Mr. Phillips?
 18 A That I recall.
 19 Q That you recall?
 20 A Right.
 21 Q Where did the closing take place?
 22 A Here, as I recall.
 23 MR. MYERS: Okay. Frank, I think I'm about
 24 done. Let me consult with Mr. Phillips, and I will be
 25 right back.

1 Q And as a businessman --
 2 A I don't like owing anyone money, but I don't rec
 3 that.
 4 Q Sure. And as a businessman, you don't like the fa
 5 that people got to owe you money, right?
 6 A That's correct.
 7 Q And you certainly don't like owing other individua
 8 money?
 9 A That is correct.

10 MR. MYERS: No further questions.
 11 MR. ROGERS: I have none.
 12 (WHEREUPON, THE DEPOSITION CONCLUDED AT 1:26 P.M.)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2009-CP-32-3870
CHRIS PHILLIPS AND CHRIS	)	
PHILLIPS BUILDERS, INC.,	)	
	)	
PLAINTIFFS,	)	DEPOSITION
	)	
VS.	)	OF
	)	
FRANK FEREZ AND SUZIE	)	SUZIE FEREZ
FEREZ,	)	
	)	
DEFENDANTS.	)	

DEPOSITION OF SUZIE FEREZ, TAKEN BEFORE LORI
A. BOGGS, PROFESSIONAL VERBATIM REPORTER, AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE
HOUR OF 10:17 A.M., THURSDAY, THE 17TH DAY OF MARCH, 2011,
AT THE LAW OFFICES OF AUSTIN & ROGERS, PA, 508 HAMPTON STREET,
COLUMBIA, SOUTH CAROLINA.

ORIGINAL

1 by --

2 Q I just want to know if -- how many times you talked to
3 him, whether it was just to say hello, or whether it
4 was about coming back to repair something.

5 A I can't give you an accurate answer on that.

6 Q Okay. Now, the water problem, was it fixed?

7 A Yeah.

8 Q Do you know if he charged you for it?

9 A When the guy came to fix it, I said, what do I owe you,
10 and he said, don't worry about it, and I said, okay.

11 And then there was a stain on the wall, and I
12 think -- I think -- the painters came out, and what I
13 can't remember is whether Chris saw it before. I know
14 he saw it after the painters came out, because they
15 were supposed to paint the whole wall and they only
16 painted a section, and you could tell the difference in
17 the paint, because you could see where they painted and
18 the other one. And I saw it every morning when I
19 looked at it, but, you know.

20 And I asked the painters what do I owe you, and
21 they said don't worry about it. So I never saw any
22 paperwork.

23 Q Okay. Now, how long did you and Mr. Ferez and your
24 children live in that home?

25 A Mr. Ferez lived in that home until December two-

- 1 Q Who had -- who negotiated the sale of the house between
2 you and the Kitchens?
- 3 A The real estate agent.
- 4 Q Okay. Did the real estate agent come back and ever
5 tell you that there were problems with the house?
- 6 A To the best of my knowledge, no.
- 7 Q Okay. So the money that you received after the
8 division was roughly how much?
- 9 A I want to give you an exact number, but roughly, you
10 know, I think I got maybe 100,000.
- 11 Q All right. So that would mean that Frank also got
12 roughly 100?
- 13 A I think so.
- 14 Q Did you all ever discuss using any of the monies to
15 cover what Mr. Phillips claimed that was owed to him?
- 16 A We didn't know about this money.
- 17 Q So you didn't know about the money even after the sale
18 of the home?
- 19 A No. The house had sold. I mean, the house had sold.
20 We hadn't signed the paperwork. The house had sold
21 before Chris came by and just dropped off a bunch of
22 receipts.
- 23 Q Well, ma'am, tell me how did you all have the
24 conversations about the screens, and the conversation
25 was had about owed money, that the house had been sold

11:08 AM

06/01/10

Chris Phillips Builders, Inc.
Customer QuickReport
 January 1, 2005 through June 1, 2010

Type	Date	Num	Memo	Account	Clr	Split	Amount
Ferez							
Invoice	3/10/2005	222		Accounts Receivable		Sales	27,500.00 ✓
Payment	3/10/2005			Undeposited Funds	X	Accounts Rec...	27,500.00
Invoice	4/22/2005	235		Accounts Receivable		Sales	16,500.00 ✓
Payment	4/22/2005			Undeposited Funds	X	Accounts Rec...	16,500.00
Invoice	5/20/2005	238		Accounts Receivable		Sales	49,500.00 ✓
Payment	5/20/2005			Undeposited Funds	X	Accounts Rec...	49,500.00
Invoice	6/20/2005	244		Accounts Receivable		Sales	77,000.00 ✓
Payment	6/20/2005			Undeposited Funds	X	Accounts Rec...	77,000.00
Invoice	8/2/2005	258		Accounts Receivable		Sales	55,000.00 ✓
Payment	8/2/2005			Undeposited Funds	X	Accounts Rec...	55,000.00
Invoice	10/21/2005	283		Accounts Receivable		Sales	132,000.00 ✓
Payment	10/21/2005			Undeposited Funds	X	Accounts Rec...	132,000.00
Invoice	12/5/2005	274		Accounts Receivable		Sales	38,425.00 ✓
Payment	12/5/2005			Undeposited Funds	X	Accounts Rec...	38,425.00
Invoice	12/30/2005	275		Accounts Receivable		Sales	27,425.00 ✓
Payment	12/30/2005			Undeposited Funds	X	Accounts Rec...	27,425.00
Invoice	1/13/2006	278		Accounts Receivable		Sales	21,925.00 ✓
Payment	1/13/2006			Undeposited Funds	X	Accounts Rec...	21,925.00
Invoice	1/20/2006	271		Accounts Receivable		Sales	3,600.00 ✓
* Payment	1/20/2006			Undeposited Funds	X	Accounts Rec...	3,600.00
Invoice	2/2/2006	277		Accounts Receivable		Sales	104,500.00 ✓
Payment	2/2/2006			Undeposited Funds	X	Accounts Rec...	104,500.00

553,375.00

* After January 2010

p.2

(803) 568-8717

73

Chris Phillips Builders

Jun 25 10 11:31a

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Chris Phillips and)
Chris Phillips Builders, Inc.,)
Plaintiffs,)

Case No. 2009-CP-32-3870

v.)

**PLAINTIFF'S ANSWERS TO
DEFENDANTS INTERROGATORIES**

Frank Ferez and)
Suzie Ferez,)
Defendants.)

To: Richard L. Whitt, Esquire, Attorney for the Defendants above named:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Plaintiff hereby answers the Defendants Interrogatories. The Plaintiffs reserves the right to supplement or amend these answers at any time.

1. Give the names and addresses of persons known to Plaintiffs or counsel to be witnesses concerning the facts of this case and please indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a) **Chris Phillips**
Post Office Box 955
Swansea, South Carolina
No statement.
- b) **Frank Ferez**
1308 Pulaski Street
Columbia, South Carolina
No statement.

- c) **Suzie Ferez**
104 Vista Springs
West Columbia, South Carolina
No statement.

2. For each person known to Plaintiffs or their counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform Defendants of the important facts known to or observed by such witnesses, or provide a copy of any written and recorded statements taken from such witnesses.

ANSWER:

a) Chris Phillips is the Plaintiff in this action. He will testify as to his knowledge of the facts of this case.

b) Defendant Frank Ferez is the Defendant in this action. It is anticipated Frank Ferez will testify as to his knowledge of the facts of this case.

c) Defendant Suzie Ferez is the Defendant in this action. It is anticipated that Suzie Ferez will testify as to her knowledge of the facts of this case.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Plaintiff or Plaintiff's counsel that relate to Plaintiffs' claims in this case.

ANSWER: Contract between Chris Phillips Builders, Inc. and Frank and Suzie Ferez dated March 10, 2005; Stier Supply Company invoice; Hughes Supply Co. invoice; Land Clearing & Excavating, Inc. invoices; Homestyle Painting, LLC invoice; Scott's Elegance Plus invoice; Tile Center, Inc. invoices; Ashmore Concrete Contractors, Inc. invoices; The Lite House invoice invoices; Builder's Hardware, Inc. invoices; Cutters Point Glass invoice; Collard's Custom Cabinets invoice; and, Melba Jackson Interiors.

4. List the names and addresses of any expert witnesses whom Plaintiffs propose to use as a witnesses in support of Plaintiff's claims.

ANSWER: None at this time. However, Plaintiff reserves the right to identify an expert as this case progresses.

5. In connection with each expert witness identified in Defendants' Answer to Interrogatory No. 4, please provide the following information:

- a) State the expert's qualifications;
- b) State the subject matter on which the expert is expected to testify;
- c) State the substance of the facts and opinions to which the expert is expected to testify; and
- d) A summary of the grounds of each opinion.

ANSWER: None at this time.

6. Specifically identify any documents in Plaintiffs' possession that they contend supports Plaintiffs' claims in this case.

ANSWER: Contract between the parties.

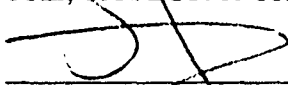
7. List the name, address, and telephone number of every individual or entity in which Plaintiffs are engaged in a formal adversarial relationship, arbitration, claimed violation of local, state, or federal law or regulation, or contract or litigation of any kind, in any forum, now or within the last three calendar years.

ANSWER: Edward Milner, Jr. v. Chris Phillips Builders, Civil Case No. 070271, Lexington County Magistrate's Court, The Honorable William Shockley. Filed in approximately March 2007 and settled approximately September 2007.

8. Please list the date(s) of all written "change orders" executed by the Plaintiffs and acknowledged in writing by the Defendants.

ANSWER: None.

MOORE, TAYLOR & THOMAS, P.A.

By: 

Stanley L. Myers
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
Attorney for Plaintiffs

West Columbia, South Carolina
October 28, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Chris Phillips and)
Chris Phillips Builders, Inc.,)
Plaintiffs,)

Case No. 2009-CP-3273870

v.)

**PLAINTIFFS' RESPONSES
TO DEFENDANTS REQUESTS
FOR ADMISSIONS**

Frank Ferez and)
Suzie Ferez,)
Defendants.)

To: Richard L. Whitt, Esquire, Attorney for the Defendants above named:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Plaintiffs hereby respond to the Defendants Request for Admissions.

1. Admit that Plaintiffs' or someone acting on Plaintiffs behalf, drafted the so-called "Contract" and attached it to Plaintiffs' Complaint.

RESPONSE: Admit.

2. Admit that the following verbiage appeared in Plaintiffs' Contract.:

"Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate."

RESPONSE: Admit.

3. Admit that there are no written "change orders" to the Contract, extant, which were executed by the Plaintiffs and acknowledged in writing by the Defendants.

RESPONSE: Admit.

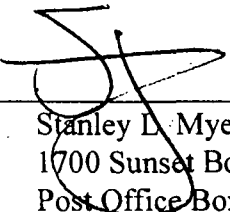
4. Admit that the Residence was substantially completed, on or about December 2005.

RESPONSE: Denied.

5. Admit that the consideration for the Contract was \$550,000.00 and that the Defendants paid the Plaintiffs' \$550,000.00

RESPONSE: Denied.

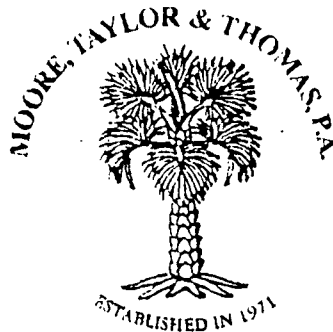
MOORE, TAYLOR & THOMAS, P.A.

By: 

Stanley L. Myers
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
Attorney for Plaintiffs

West Columbia, South Carolina
October 19, 2009.

S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS†
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY††
C. DAVID SAWYER, JR.††
WILLIAM H. EDWARDS
STANLEY L. MYERS



1700 SUNSET BOULEVARD (HWY. 178)
POST OFFICE BOX 5709
WEST COLUMBIA, SOUTH CAROLINA 29171
TELEPHONE (803) 796-9160
FAX (803) 791-8410

BARRY L. THOMPSON, II
MELISSA K. MOORE
S. JAHUE MOORE, JR.

OF COUNSEL:
JANE H. DOWNEY**

RETIRED:
BILLY C. COLEMAN††

July 28, 2009

PERSONAL & CONFIDENTIAL

Mr. Frank Ferez
Colonial Life & Accident Insurance
1308 Pulaski Street
Columbia, South Carolina 29201

Re: Property located at 325 Bent Oak Drive, Chapin, South Carolina 29036

Dear Mr. Ferez:

Please be advised this law firm represents Mr. Chris Phillips and Chris Phillips Builders. It is my understanding that Mr. Phillips contracted with you and your ex-wife, Suzie Ferez, in 2005 to construct your home located at 325 Bent Oak Drive, Chapin, South Carolina 29036. The contract was for \$550,000.00, which included several allowances for specific items/work. Based on several conversations you had with Mr. Phillips, you and your ex-wife have acknowledged that an additional \$22,908.73 is owed.

According to my client, he spoke with your wife in 2007, who promised to make payment on the above amount. To date, no attempt to pay the outstanding balance has been made, and you have continuously avoided Mr. Phillips' phone calls.

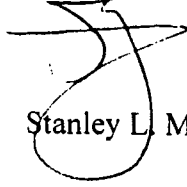
Based on the law, you and your wife have breached your contract with Mr. Chris Phillips and Chris Phillips Builders. Please accept this letter as a demand for the entire payment of \$22,908.73. Please remit that amount no later than August 11, 2009. If I do not hear from you or your attorney within that time frame, I will assume you have no plans fulfill your obligation to my client. Consequently, I will advise my client to seek legal action.

*Fellow of the American Academy of Matrimonial Lawyers
**Certified Specialist in Bankruptcy & Debtor/Creditor Law
††Saluda Office: (864) 445-4544 or (866) 604-4544
†Greenville Office: (864) 271-6371

Mr. Frank Ferez
July 28, 2009
Page Two

I look forward to hearing from someone in your office as quickly as possible.

Yours very truly,

A handwritten signature in black ink, appearing to be 'S. Myers', with a large loop at the bottom.

Stanley L. Myers

SLM/kbk

cc: Mr. Chris Phillips

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas

3
4 Docket No: 2009-CP-32-03870

5
6 Chris Phillips and)
7 Chris Phillips Builders, Inc.,)
8 Plaintiff,)

 **ORIGINAL**

9 vs.)

TRANSCRIPT OF
RECORD

10 Frank Ferez and Suzanne Ferez,)
11 Defendants.)

12
13 March 12-13, 2012
14 Lexington, South Carolina

15 B E F O R E:

16 The Honorable Doyet A. Early III, Judge and a jury.

17
18 A P P E A R A N C E S:

19 Stanley L Myers, Esquire
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1 MONDAY, MARCH 12, 2012

2 JURY VOIR DIRE

3 THE COURT: Good afternoon, ladies and gentlemen.
4 My name is Jack Early, E-a-r-l-y, and I am the resident
5 judge of the Second Circuit, which is Bamberg, Barnwell,
6 and Aiken. I've been assigned to hold court up here this
7 week in Lexington which is, what --

8 THE CLERK: Eleventh.

9 THE COURT: Eleventh Circuit. And I apologize for
10 you having to wait. I was ready to go at 9:30 this
11 morning, quarter to ten, and I -- we had some breakdown and
12 miscommunication. What we had wanted to do was grab
13 twenty-five of you from that panel up there and move you
14 down here so we could have started our trial around 10:00
15 or 10:15, but there was some miscommunication and so ---

16 Anyway, here we are and here's what we're going to
17 do.

18 We have as -- our task this afternoon, is to draw
19 the jury in the first civil case that we have on store.
20 We'll start doing that in just a few seconds. Once we
21 complete that selection of jurors, then those of you who
22 are not drawn will be released and their instructions are
23 --

24 To what, ma'am?

25 THE CLERK: Call back.

1 THE COURT: What time?

2 THE CLERK: After 6.

3 THE COURT: Your instructions will be to call back
4 after 6 on the number you have.

5 The way we draw a jury in a civil case is that we
6 will -- once we ask a few questions to make sure none of
7 you are related to the lawyers or the parties, we'll put
8 twenty names on a piece of paper. The Plaintiff has four
9 strikes; the defendant has four strikes, leaving us with
10 twelve.

11 Gentlemen. Would y'all go to verdict with less
12 than twelve if we should waive the alternates?

13 MR. MYERS: Yes, sir, Your Honor.

14 MR. GRIFFITH: The defense agrees, Your Honor.

15 THE COURT: We'll go with twelve and as I
16 understand it, the first case is a -- from a time
17 standpoint is a relatively short case. If we get started
18 this afternoon, we'll probably be finished by lunch
19 tomorrow, so that's sort of where we are with that
20 situation.

21 Have they been -- they've already been sworn over
22 in the other courtroom; have they not?

23 THE CLERK: Yes.

24 THE COURT: So y'all are under oath. Please listen
25 carefully. We're about to begin the case of Chris Phillips

1 and Chris Phillips Builders Incorporated. That is the
2 Plaintiff -- that's the party bringing the suit against
3 Frank --

4 Somebody help me -- Ferez?

5 MR. MYERS: That's correct, Your Honor.

6 THE COURT: Didn't mean to butcher it.

7 -- Frank and Susie Ferez.

8 Listen carefully as I ask these questions and if
9 any of these answers -- if any of the questions apply to
10 you, please stand and let's discuss your situation.

11 Do I have any member of the jury panel who is
12 related by blood or marriage or do you now or have you in
13 the past had a close personal or social relationship with
14 Mr. Chris Phillips?

15 Mr. Phillips, would you stand, please?

16 Or his business, Chris Phillips Builders
17 Incorporated.

18 You may have a seat.

19 Or with the defendants, Frank Ferez and Susie
20 Ferez.

21 Would y'all please stand.

22 Thank you. You may be seated.

23 Any member of the jury panel related by blood or
24 marriage or do you now or have you in the past had a close
25 personal or social relationship with any of these parties;

1 if so, please stand.

2 (WHEREUPON there was no response from the jury
3 venire.)

4 THE COURT: Gentlemen, do I have a voir dire from
5 y'all?

6 MR. MYERS: Yes, sir, Your Honor.

7 THE COURT: Gentlemen, as I understand it, the
8 witnesses are just the parties; is that correct?

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

10 MR. PHILLIPS: Yes, sir.

11 THE COURT: Ladies and gentlemen, in this case we
12 have lawyers from the area here in Columbia and West
13 Columbia. The Plaintiff is represented by Mr. Stanley
14 Myers. Mr. Myers and Mr. Brooks -- help me Brooks --

15 MR. BIEDIGER: Biediger, Your Honor.

16 MR. MYERS: Biediger, Your Honor.

17 THE COURT: And they work in West Columbia with --
18 which law firm, Mr. Myers?

19 MR. MYERS: Moore, Taylor, and Thomas.

20 THE COURT: Okay.

21 And the defendants, if y'all would stand and
22 introduce yourselves, gentlemen, please.

23 MR. GRIFFITH: I'm Jeff Griffith and I'm a partner
24 in the law firm of Austin and Rogers in Columbia.

25 MR. WEBB: I'm Richard Webb and I'm also with

1 Austin and Rogers in Columbia.

2 THE COURT: Now, my question is this, any member of
3 the jury panel now or in the past have had legal services
4 performed by any of these lawyers or members of their
5 firms. If so, please stand.

6 Sir, in the blue shirt, to my right, your name
7 please?

8 THE JUROR: Robert Dilworth. Robert Dilworth.

9 THE COURT: And Mr. Dilworth, who represented you?

10 THE JUROR: Jake Moore, Jr.

11 THE COURT: Okay. And is that something he did in
12 the past or is he presently representing you?

13 THE JUROR: Past.

14 THE COURT: And the fact that Mr. Moore, Jr.
15 Represented you in the past, would that in any way keep you
16 from being a fair and impartial juror in the trial of this
17 case?

18 THE JUROR: No, sir.

19 THE COURT: Thank you. You may be seated.

20 Yes, ma'am?

21 MR. MYERS: Number?

22 THE COURT: Number please. Your name and number?

23 THE JUROR: Sixty-six.

24 THE BAILIFF: Sixty-six, Your Honor.

25 THE COURT: Six-six?

1 THE JUROR: Yes, sir.

2 THE COURT: And ma'am, your name, please?

3 THE JUROR: Lynne Mack.

4 THE COURT: Number please?

5 THE JUROR: One forty.

6 THE COURT: And?

7 THE JUROR: Dan Strickland was representing me.

8 THE COURT: Was, in the past?

9 THE JUROR: Yes, sir.

10 THE COURT: And the fact that Mr. Strickland
11 performed services for you in the past, ma'am, would that
12 keep you or preclude you from being a fair --

13 THE JUROR: No, sir.

14 THE COURT: -- and impartial juror in the trial of
15 a case?

16 Thank you, ma'am. You may be seated.

17 Ladies and gentlemen, this lawsuit is -- arises out
18 of a dispute concerning a home that was built by -- for the
19 defendants. They contracted with Mr. Phillips and or his
20 company to build a home. The home has been completed and
21 there is some dispute over a -- an alleged amount of money
22 still owed to the builder.

23 And the home or the house is located where?

24 MR. WHITT: It's in Lexington County on 335 Bent
25 Oak Drive.

1 THE COURT: Okay. Is that a subdivision?

2 MR. WHITT: And that's in Chapin.

3 THE COURT: That's in Chapin. Bent Oak Drive in
4 Chapin and the home was built back in --

5 MR. MYERS: 2005, Your Honor.

6 THE COURT: 2005. Anybody know anything about this
7 case? Read anything about it? Anybody discussed it with
8 you? Seen anything on TV or heard of it anywhere? I
9 wouldn't think you would, but -- anybody know anything
10 about the facts in the case? Please stand.

11 (WHEREUPON there was no response from the jury
12 panel.)

13 THE COURT: Any member of the jury panel currently
14 employed with a builder or contractor? If so, please
15 stand.

16 (WHEREUPON there was no response from the jury
17 panel.)

18 THE COURT: Any member of the jury panel currently
19 working as a builder or a contractor? If so, please stand.

20 (WHEREUPON there was no response from the jury
21 panel.)

22 THE COURT: Any member of the jury panel employed
23 in the construction industry? Or your spouse employed in
24 the construction industry? If so, please stand.

25 Yes, ma'am, your name?

1 THE JUROR: Linda Hallman.

2 THE COURT: Number, please, Ms. Hallman.

3 THE JUROR: Ninety-one.

4 THE COURT: And husband works in the construction
5 business?

6 THE JUROR: My husband and his brothers are all
7 carpenters in construction and my brother-in-law's family
8 owns a construction; my husband works with him, as well.

9 THE COURT: Okay. The fact that some of your
10 family members are employed in the construction industry,
11 ma'am, would that in any way keep you from being a fair and
12 impartial juror?

13 THE JUROR: No, it actually will help me a little
14 bit because I know what goes on behind the scenes.

15 THE COURT: Thank you.

16 And sir, your name?

17 THE JUROR: Troy Bliese.

18 THE COURT: You may be seated ma'am.

19 And what is your situation.

20 THE JUROR: I'm in plumbing.

21 THE COURT: You are a plumber?

22 THE JUROR: Yes, sir. For Clearwater Pump and Gas.

23 THE COURT: The richest man in Bamberg is a
24 plumber. I swear he gets everybody's money. (Laughter).

25 The fact that you're in the plumbing business, sir,

1 would that in any way keep you from being a fair and
2 impartial juror?

3 THE JUROR: No, sir.

4 THE COURT: Thank you, you may be seated.

5 THE CLERK: Your number, sir?

6 THE JUROR: Twenty-three.

7 THE COURT: Thank you.

8 Thank you, ma'am.

9 Any member of the jury panel ever had a dispute
10 with a builder or contractor in the past? If so, please
11 stand.

12 (WHEREUPON there was no response from the jury
13 panel.)

14 Any member of the jury panel ever been sued for
15 breach of contract? If so, please stand.

16 (WHEREUPON there was no response from the jury
17 panel.)

18 Ladies and gentlemen, one of my main duties as a
19 judge wherever I'm holding court across the state is to
20 ensure in civil court that the parties receive a fair
21 trial. In civil court, the Plaintiff is the person or the
22 entity bringing the lawsuit against the defendant. In this
23 case, he's bringing a lawsuit for breach of contract;
24 that's a civil action. And one of my main responsibilities
25 is to make sure that both the Plaintiff and the defendant

1 receive a fair trial and the way that is done in our system
2 is that actually we have two judges in the courtroom.

3 My position makes me the judge of the law in the
4 case. I will tell you or instruct you what the law is
5 dealing with civil cases and in particular with a breach
6 of contract case. So I am the judge of the law in the
7 case.

8 But more importantly, we have twelve jurors who sit
9 and collectively act as one judge, that is the judges of
10 the facts in the case. You're the fact finders. And what
11 you are asked to do is to sit here and listen to testimony
12 from the -- both sides and their witnesses and determine
13 what the true facts are in the case. In other words, you
14 are the judges of the facts in the case. Once you
15 determine what those true facts are, then you apply it to
16 the law as I give it to you and you will be in the position
17 to render a true and just verdict. That's how the system
18 works.

19 So you being the judges of the facts, I think your
20 position and your judgeship is much more important than
21 mine because as you go -- as I go around the state and try
22 cases day in and day out. It -- unbearably we hear a
23 different set of facts from different witnesses and it's up
24 to you to determine what those true facts are.

25 So my question is this, in order to accomplish

1 that, I have to have an impartial jury and that jury has to
2 make that determination from the facts they hear in the
3 courtroom and from the law as I give it to you. My
4 question is this, does anyone know of any reason why thy
5 cannot perform that function as a juror in this case? Any
6 political reasons? Religious beliefs? Personal beliefs?
7 Any kind of beliefs that would keep you from performing
8 that -- performing that civic duty as serving as a juror in
9 the trial case. Let me know now please.

10 (WHEREUPON there was no response from the jury
11 panel.)

12 THE COURT: Anybody know of any reason whatsoever
13 why he or she should not serve as a juror in this case with
14 particular emphasis being placed on your ability to be fair
15 both to the Plaintiff and the defendant. If so, please
16 stand.

17 (WHEREUPON there was no response from the jury
18 panel.)

19 THE COURT: Any additional questions by the
20 Plaintiff?

21 MR. MYERS: No, sir, Your Honor.

22 THE COURT: By the defendant?

23 MR. GRIFFITH: No, sir, Your Honor.

24 THE COURT: All right. Give me twenty.

25 THE CLERK: The first twenty? So you can use the

1 top twenty.

2 JURY SELECTION

3 THE COURT: All right. Gentlemen, we're going to
4 do like an -- we can "Hit Parade" through the top twenty.

5 What they'll do is they got -- your names were put
6 on a random strike sheet through the computer system.

7 Have I got twenty-five in there.

8 THE CLERK: Uh-huh.

9 THE COURT: So twenty-five of you were randomly put
10 on the strike sheet. The lawyers -- the Plaintiff has four
11 strikes; the defendant has four strikes. That'll leave us
12 with twelve and then we'll select those and then we'll get
13 started.

14 MR. MYERS: Thank you, Your Honor. The Plaintiff
15 strikes --

16 THE COURT: Hold on one second. One second.

17 You ready?

18 MR. GRIFFITH: Yes, sir.

19 THE COURT: Y'all?

20 THE CLERK: Yes, sir.

21 THE COURT: Y'all are Johnny-on-the-spot.

22 Go ahead.

23 MR. MYERS: The Plaintiff strikes No. 18 --

24 THE COURT: All right. Y'all strike with numbers
25 on the left; is that correct?

1 MR. MYERS: Yes, sir.

2 THE COURT: All right. Eighteen. Thank you.
3 Stricken.

4 MR. GRIFFITH: Defendant strikes No. 24.

5 THE COURT: Top twenty.

6 THE CLERK: Top twenty.

7 MR. GRIFFITH: Huh?

8 THE COURT: The first twenty.

9 MR. GRIFFITH: The defendant strikes No. 12.

10 MR. MYERS: Plaintiff strikes No. 17.

11 MR. GRIFFITH: The defendant strikes No. 2.

12 THE COURT: Mr. Myers?

13 MR. MYERS: Plaintiff strikes No. 7.

14 THE COURT: Stricken.

15 MR. GRIFFITH: The defendant strikes No. 15.

16 MR. MYERS: Plaintiff strikes No. 6.

17 MR. GRIFFITH: Defendant strikes No. 9.

18 THE COURT: All right. Gentlemen, listen. As the
19 clerk reviews the strikes, make sure we're all in
20 agreement, okay?

21 THE CLERK: For the Plaintiff, I have No. 6, No. 7,
22 17, and 18.

23 MR. MYERS: Correct.

24 THE CLERK: For the defendant, I have No. 2, No. 9,
25 No. 12, and No. 15.

1 MR. GRIFFITH: That's correct.

2 THE COURT: Ladies and gentlemen, if your name is
3 called, if you have any personal belongings, please grab
4 those or get whatever and come forward and the bailiff will
5 show you where to be seated.

6 THE CLERK: All right. I need No. -- Juror No. 61,
7 Kofi Daniels.

8 THE COURT: If you'll come right up this way, Mr.
9 Daniels. Just make your way around and the bailiff will
10 show you where to sit. Thank you.

11 (WHEREUPON the juror took a seat in the jury box.)

12 THE CLERK: No. 85, Monique Griffin.

13 (WHEREUPON the juror took a seat in the jury box.)

14 THE CLERK: No. 194, Thomas Sellers, Jr.

15 (WHEREUPON the juror took a seat in the jury box.)

16 THE CLERK: No. 244, Amy Wilson.

17 (WHEREUPON the juror took a seat in the jury box.)

18 THE CLERK: No. 10, Nolan Auld.

19 (WHEREUPON the juror took a seat in the jury box.)

20 THE CLERK: Two twenty, Christina Tackett.

21 (WHEREUPON the juror took a seat in the jury box.)

22 THE CLERK: Two twenty-seven, Robert Tobias.

23 (WHEREUPON the juror took a seat in the jury box.)

24 THE CLERK: Fifty-five, Jimmy Cox.

25 (WHEREUPON the juror took a seat in the jury box.)

1 THE CLERK: One thirty-seven, Jared Long.

2 (WHEREUPON the juror took a seat in the jury box.)

3 THE CLERK: Two twenty-three, Wayne Tesh Tush.

4 (WHEREUPON the juror took a seat in the jury box.)

5 THE CLERK: Sixty-six, Robert Dilworth.

6 (WHEREUPON the juror took a seat in the jury box.)

7 THE CLERK: And twenty-three, Troy Bliese.

8 (WHEREUPON the juror took a seat in the jury box.)

9 THE COURT: Any motions by the Plaintiff in
10 connection with the selection of the jury?

11 MR. MYERS: Not by the Plaintiff, Your Honor.

12 THE COURT: By the defendant?

13 MR. GRIFFITH: None from the defendant, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, those
15 of you who were not drawn, I'm going to now excuse you for
16 the balance of the day.

17 Is that correct, ma'am.

18 THE CLERK: Yes.

19 THE COURT: Call back after six. Do you have your
20 call back number?

21 (WHEREUPON there was an affirmative reaction from
22 the jury panel.)

23 THE COURT: Okay. Call back after six and you'll
24 receive a message for tomorrow. Thank you very much.

25 (WHEREUPON the remainder of the jury panel was

1 excused.)

2 THE COURT: All right. Madame -- ladies and
3 gentlemen of the jury, the next thing we have to do is
4 please stand and raise your right hand. The clerk will
5 swear you in for this particular case.

6 (WHEREUPON the jury panel was sworn.)

7 THE COURT: Thank you, you may be seated.

8 **OPENING REMARKS BY THE COURT**

9 THE COURT: Ladies and gentlemen, let me tell you a
10 little bit about what you can expect. This is a civil
11 case. I know some of you sat through a selection this
12 morning of a criminal case in general sessions. Now, a
13 civil case, this is our side of the courtroom where -- or
14 side of the law -- where when people have a dispute between
15 themselves and they cannot resolve it then they can come
16 into this courtroom and ask twelve citizens from their
17 community to listen to the facts and determine what the
18 true facts are and apply it to the law as I told you
19 earlier and render a verdict.

20 It may sound corny, but it's absolutely the best
21 system in the world as far as justice goes. We see on TVs
22 and watch things where people settle their disputes with
23 guns in the streets and riots and dictators and all that.
24 In the United States, we have a system that when two
25 individuals have a dispute, they come in and ask y'all to

1 listen to the evidence and decide.

2 As I said, this is a civil case. Unlike a criminal
3 case. In a criminal case, the defendant who was -- a jury
4 was drawn for this morning, he, under the constitution is
5 presumed to be innocent. So when he comes into the
6 courtroom, the scales of justice are tipped way in his
7 favor. He has that presumption of innocence and for the
8 State to prove him guilty, they must prove his guilt beyond
9 a reasonable doubt that those were the scales of justice.

10 In a civil setting, these parties come in on equal
11 footing, so the scales are equal. For the Plaintiff to
12 prevail, he has to prove his case by what we call the
13 preponderance or greater weight of the evidence. In other
14 words, he has to tip the scales ever so slightly in his
15 favor. If he is able to do that, then he is entitled to a
16 verdict. However, after you hear all of the evidence and
17 you feel like the parties are still on equal footing or the
18 scales tip in favor of the defendant, then the defendants
19 would be entitled to a verdict, so the burden of proof,
20 which is on the Plaintiff, is by the preponderance or the
21 greater weight of the evidence.

22 And the way we do that is, obviously since the
23 Plaintiff has the burden of proof, they go first. He will
24 call his witnesses first, put up his testimony and tell his
25 side of the story. After that is done, then the defendant

1 has the right to put up their side of the story and tell
2 you what their side is.

3 Obviously there will be some discrepancies in those
4 two sides and you will have to decide what is the correct
5 set of facts, apply those facts to the law as I give it to
6 you, and you'll be in a position to render a true and just
7 verdict.

8 In order to do that, obviously you have to -- you
9 have to judge what we call the credibility or the
10 believability of the witnesses who testify in the case. So
11 I'd ask you to pay close attention. Don't leave your
12 common sense at home. We all know how to deal with people;
13 we deal with wives, husbands, children, employees,
14 employers on a daily basis judging the believability or
15 credibility of what people tell us. So use that same
16 common sense today in listening to this testimony.

17 I don't think the testimony -- we may get through
18 with the testimony this afternoon, maybe through with the
19 whole case this afternoon. It just depends on how involved
20 we get. But surely we'll be through by lunch time
21 tomorrow.

22 So I ask that you pay close attention and the
23 lawyers have put in a lot of time and effort in getting the
24 case ready for y'all to hear today so please pay close
25 attention.

1 Now, I like to run an efficient courtroom. I don't
2 like to waste time. So we'll be moving right along this
3 afternoon, but on the other side of the coin, I'm not
4 trying to run an endurance race up here. So if any time
5 during the trial of this case, you become uncomfortable,
6 you need to use the restroom, you get tired of listening to
7 me, you need to take a break, you need to stretch,
8 whatever, do not get uncomfortable. Raise your hand, we'll
9 take a quick break and come on back in and then we'll
10 continue on; but don't get uncomfortable, please. We're
11 not trying to make you sit over there and squirm. It's not
12 like church. (Laughter) So please don't get uncomfortable.

13 We will take a break this afternoon. We normally
14 take a break in the afternoon and break in the morning when
15 we're trying these cases. When we take a break, I'll ask
16 you that you please do not discuss the case. Do not start
17 any type of deliberating until we've completed all of the
18 evidence and you've heard me instruct you on the law of the
19 case. I will ask that at that first break that you pick or
20 chose between the twelve of you a spokesperson. That's the
21 foreperson for the jury. If you're able to do that, get me
22 one person that can serve as the spokesperson on the jury.
23 If you can't do that, I'm just going to go down the list
24 randomly and choose somebody.

25 In just a few minutes, the lawyers will make their

1 opening statements; that's how we start the trial. The
2 Plaintiff will make an opening statement followed by the
3 defendant. Please bear in mind that what the lawyers tell
4 you in opening statements is not evidence in the case.
5 Obviously, they will be telling you what they intend to
6 prove, but what they tell you is not evidence. The only
7 evidence you can consider comes from the witness stand,
8 from sworn testimony and/or relevant exhibits that may be
9 introduced during the trial of the case.

10 So having said all that, I'm going to turn it over
11 now to the lawyers. Once they complete their opening
12 statements, we'll get right into the testimony and once
13 again, if anyone gets uncomfortable, please raise your hand
14 so we can take a break.

15 Any objections to my opening remarks by the
16 Plaintiff?

17 MR. MYERS: No, sir, Your Honor.

18 THE COURT: By the defendant?

19 MR. GRIFFITH: None from the defendant, Your Honor.

20 THE COURT: All right. You may make a brief
21 opening statement. Or just as long as you need.

22 MR. MYERS: May it please the Court?

23 THE COURT: Yes, sir.

24 MR. MYERS: Thank you, Your Honor.

25 ///

OPENING STATEMENTS

MR. MYERS: Ladies and gentlemen, we're here because my friend and homeboy Chris Phillips has been wronged. We're here because we believe that you individuals and fine folks of Lexington County can make this wrong right.

I introduced myself to you a few moments ago, but I'm going to expound on it just a little bit. My name is Stanley Myers and I'm a partner over at the law firm of Moore, Taylor, and Thomas in West Columbia. I'm here with Brooks Biediger, who is one of our newest associates. You can say that Brooks is going to be my lawyer throughout the trial of this case. We're here because we have the absolute pleasure and privilege in representing Chris Phillips.

I call him my homeboy because we both grew up over in the Horse's Neck area of Lexington County down in Swansea, basically, where the three counties merge. You've got Lexington County, Orangeburg County, and Calhoun County; that's where Chris and I are from.

Chris is a builder. He builds houses for a living. Chris makes it possible for us to do what the world has deemed, achieve the American dream, which is to build a house, live in the house, to be safe and secure from all outside forces. You know, it takes someone special to be

1 in the heat, the cold, to put those pieces together; to put
2 the glue on the wood to hold it together, but he does that
3 because that's his wellbeing. That's what he's been doing
4 for a number of years.

5 You're going to hear from Chris. You're going to
6 hear that we're here today because back in 2005-2006, he
7 built a house for Frank and Suzie Ferez. He built that
8 house over in the Chapin area of Lake -- the Chapin side of
9 Lake Murray. We believe the evidence is going to show that
10 this neighborhood, which is an exclusive neighborhood, only
11 had certain builders. Only certain individuals could build
12 a house in that area.

13 We believe the testimony is going to show that Mr.
14 and Mrs. Ferez contacted Chris about building them a house.
15 We believe the evidence is going to show that Chris, in
16 fact, built that house.

17 You're going to see the contract that all three of
18 those individuals signed. You're going to see something in
19 the contract where Chris says, Well, I can build you this
20 house for X amount of dollars, but I'm going to give you a
21 budget. So long as you don't exceed that budget,
22 everything is going to be fine. If you exceed the budget,
23 then you're going to owe additional money.

24 Now, the contract price was for \$550,000. Nice
25 house, no doubts about it. You're going to see blueprints

1 of this house. The testimony is going to show that Mr. and
2 Ms. Ferez went to the bank and took out a construction
3 loan. Chris, the way he was paid as part of that
4 construction loan was on a draw. He finished a certain
5 part of the house, he went to the bank and he asked for
6 those draws. That's how he was paid.

7 We believe the testimony is going to show that not
8 only did Mr. and Ms. Ferez exceed their budget, they also
9 had this man do some additional things to the house.
10 You're going to hear that testimony. We believe that when
11 you hear that testimony, we're going to come before you and
12 say that, you know, the fact that Chris -- that they
13 exceeded their budget, the fact that he did some things
14 outside of the original contract that were -- that were not
15 on the blueprint, that he is owed additional money.

16 We believe that evidence is going to show that
17 these parties sat down a loan closing with the bank in
18 February 2006. We're going to show you a document that
19 Chris signed saying there are no more liens on the house,
20 yet knowing that he was owed some more money, but I want
21 you to listen to the reasons behind him saying why he
22 signed that affidavit and why he signed that piece of
23 paperwork.

24 We're not going to hide a single thing from you,
25 ladies and gentlemen. We're not going to try and withhold

1 any information. We're not going to try and pull any sort
2 of wool over your eyes. We're going to tell you the
3 reasons behind why Chris Phillips is owed this money from
4 the Ferezes, why he did what he did; and then we're going
5 to ask that you return a verdict in Chris's favor.

6 You know, I know that one of the most invasive
7 things is for someone to say, Hey, give me some money or
8 let me borrow some money. That's an invasive thing, but
9 we're the Plaintiff and in order for Chris Phillips to be
10 made whole, in order for him to be made whole according to
11 the terms of the law, the only way that you can compensate
12 him is by way of monetary compensation.

13 We have the opportunity of trying this case before
14 one of the finest circuit court judges in the State of
15 South Carolina. Thankfully, Judge Early is here for this
16 term of court from down in Bamberg. He is going to give
17 you the law. We believe that what he is going to tell you
18 is what Chris is sued under. He's sued under breach of
19 contract. He said, you know, look, these folks signed a
20 piece of paper. They promised that they will pay me in
21 addition -- pay me on the contract and pay me for the
22 overages and for the work that I did and they failed to do
23 that.

24 Judge Early is going to tell you all about the law.
25 He's going to tell you a little bit about a written

1 contract and little about a oral contract. I ask that you
2 pay close attention to what he says. He's already given
3 you an indication of what our burden of proof is, what we
4 have to prove, what we have to show; that the scales of
5 justice, right now, they're even. And by the end of
6 testimony, what we believe the evidence is going to show
7 that those scales are going to tip ever so slightly in
8 Chris' favor. And when they do, you will award a verdict
9 in his favor.

10 You know, I've only been doing this for about seven
11 years; I haven't been doing this for very long, but you
12 know, it doesn't take being a lawyer to know that when you
13 make a promise to someone, when you give them your word to
14 do something, that you don't go back on it, that you don't
15 come up with any sort of reasons or any sort of excuses as
16 to why you shouldn't have to do something that you gave a
17 word for. And I say seven years, fifteen months of that
18 was spent in Afghanistan because I got deployed with my
19 National Guard Unit. And no other place in this fine
20 country can an individual know that regardless of what
21 happens, regardless of their race, their color, or their
22 creed that when they're wronged, they can come into this
23 courtroom and let a jury of twelve individuals -- a jury of
24 twelve individuals, their peers, decide whether or not they
25 can make that wrong right.

1 No one's going to disturb your verdict; no one's
2 going to bother your verdict. When you hear the testimony
3 of this case, when you hear how he constructed this home,
4 the instances behind building this home, then we're
5 confident that because you don't have an enemy to punish or
6 a friend to reward that you're going to return the verdict
7 in Chris Phillip's favor.

8 Thank you, ladies and gentlemen.

9 MR. GRIFFITH: May it please the Court, Your Honor.

10 Good afternoon. I'm Jeff Griffith. I'm a partner
11 in Austin and Rogers in Columbia and this is Rich Whitt
12 here with the beard; he's my partner. And this is Frank
13 Ferez and his former wife. This is our paralegal, Carrie
14 Schurg. And that's the team that's going to be
15 representing the Ferezes in this case; they're the
16 defendants.

17 And so much of what Mr. Myers said to you is right
18 on the money. We had a contract to build a house; we had a
19 contract that everybody signed, Mr. Phillips and the
20 Ferezes. Signed, sealed, delivered; something you can see;
21 something you can put your hand on.

22 It says that he's going to build the Ferezes' house for
23 \$550,000. Beautiful home; nice home; but a home that when
24 you break it down, you know what you're going to pay. You
25 know how much it's going to cost you.

1 And in the contract that Mr. Phillips drew up and
2 presented to my clients, in that contract, you're going to
3 see language in there that says, we gave you -- Mr.
4 Phillips says, we gave you some allowances. If you want a
5 nice tile then you can spend this much money, but if you
6 want something nice, it's going to cost you a little bit
7 more. But something specific in that contract says every
8 time that we change, every time that there's something
9 different than what you see here, I'm going to give you
10 something in writing. I'm going to give you a written
11 change order.

12 I want you to listen and I want you to look for the
13 written change orders. I want you to listen and see how
14 many times we're presented with a written change order.

15 In January 2006, the house is completed, my clients
16 move in. And on February 1st, 2006, they go to the bank
17 and I -- I'm sure that everybody here has closed a loan,
18 but if you -- if you've never built a house, as a house is
19 constructed, the builder gets draws from the bank; it's
20 called a construction loan. But when you get to the end of
21 the line, you want permanent financing. Generally over
22 thirty years, sometimes over fifteen.

23 If you make a representation to the bank as opposed
24 to the person who is having the home built for them and the
25 builder and you say I don't owe anybody anything else,

1 there are no subcontractors that I owe, I've been paid in
2 full. And there will be a written document. Not only is
3 he -- are they representing that to each other, but they're
4 representing that to a bank who's lending them money based
5 on what the written document says; on the written document.
6 And in that written document he says, I'm owed nothing
7 more, zero. You'll see it, in his own hand writing. Zero,
8 I'm owed nothing.

9 In December 2006, the Ferezes marriage is
10 deteriorating and they separated. March 2007, Mr. Phillips
11 comes out there and does a little work, di minimus work,
12 punch list work. In 2008, the Ferezes get divorced.
13 Periodically, Mr. Phillips would come by and talk to him.
14 The work's getting done, no changes are being made,
15 nothing's happening. And then in August of 2008, he shows
16 up with an invoice that says, you owe me this money. You
17 owe me money. Not so much.

18 In September 2008, because of their divorce, they
19 sell the home. Okay. In 2009, they receive the first
20 correspondence from Mr. Myers who's representing Mr.
21 Phillips and forty-two months -- forty-two months after the
22 February 1st, 2006 document is signed that says, I'm not
23 owed anything, he sues my client for in excess of \$22,000.

24 And I listened to Mr. Myers in his opening
25 statement. Testimony is going to show -- testimony is

1 going to show. Talk, talk, talk. What I'm going to show
2 you is written. And why we write stuff down, so that no
3 mistake about what we mean, so there's no mistake about how
4 we got here, about what we owe, about what we're going to
5 do. Write it down. Our testimony is going to be in
6 writing.

7 We don't agree when he says he told us or what was
8 told to him and what we want you to do is when you get this
9 case, when Judge Early gives you this case to make a
10 decision on, we want you to go back there and use what he
11 told you, use your common sense. When you use your common
12 sense, when you see the things in writing that are blown
13 up, you see everybody's signature on them and then you see
14 this stupendous amount of time that passes between, you
15 don't owe me anything and you owe me \$22,000, I want you to
16 use your common sense and I want you to return a verdict
17 for the defendant. Thank you.

18 THE COURT: You may call your first witness.

19 MR. MYERS: Thank you, Your Honor. Your Honor, we
20 call Ms. Suzie Ferez.

21 THE COURT: Come around, ma'am, please.

22 THEREUPON,

23 SUZANNE WILSON (FEREZ)

24 after being duly sworn, testified as follows:

25 THE CLERK: Have a seat and state your name for the

1 record, please.

2 THE WITNESS: My name is Suzanne Wilson.

3 THE COURT: And so the record is clear, I assume
4 from what they said in opening statements that when all
5 this was taking place, you were Suzanne Ferez?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 THE WITNESS: That's correct.

9 THE COURT: Hold on a second. Can y'all see this?
10 Can you see that? Do you need to see that?

11 MR. MYERS: Not yet, Your Honor. I haven't put
12 anything up there just yet.

13 THE COURT: Okay. Well, I was just watching them
14 all. So just put it down until you get ready to put
15 something up so they can remain at counsel table.

16 No problem. Thank you.

17 MR. MYERS: Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 By Mr. Myers:

20 Q Good afternoon, Ms. Wilson, I believe?

21 A Yes.

22 Q Okay. Now, as the judge just clarified, you were
23 originally Ms. Ferez because you were married to Frank,
24 correct?

25 A That's correct.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q And now at the time you were married to Frank, the
2 two of you were living here in Lexington County; is that
3 correct?

4 A Yes.

5 Q And you and Frank, y'all have three children
6 together?

7 A Yes.

8 Q And you currently have custody of those three
9 children; is that correct?

10 A Yes.

11 Q And you -- the two of you separated in December of
12 2006; is that correct?

13 A Yes.

14 Q And the divorce was final in 2008; is that correct?

15 A Yes.

16 Q All right. I know this is a bad question for a
17 lady, but how old are you, Ms. Wilson?

18 A I'm forty-one.

19 Q Okay.

20 A I'll be forty-two in May.

21 Q Okay. Now, I'm assuming --

22 THE COURT: That is a bad question.

23 MR. MYERS: It is, Judge.

24 THE COURT: You know, the older you get, the worse
25 that question is. Don't you ask me how old I am.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 MR. MYERS: Don't worry, I won't, Judge.. Now --

2 THE COURT: Forty-two.

3 By Mr. Myers:

4 Q Ms. Wilson, you -- forgive me if I go back and
5 forth between Ms. Wilson and Ferez, okay?

6 Now, you and I, we met last year about this time
7 when we were over in our -- in your lawyer's office, right?
8 For a deposition. Correct?

9 A Yes. It doesn't seem like it was a year ago, but
10 yeah.

11 Q Okay. And I asked you some questions while you
12 were under oath?

13 A Uh-huh.

14 Q And I'm assuming -- is that a yes? The court
15 reporter has to --

16 A I'm sorry, yes.

17 Q Okay. Now, I'm assuming that you still only have
18 that arts degree that you had before at the -- at last year
19 at this time, right?

20 A It's a media arts degree, yes.

21 Q Okay. Now, during the time that you and Frank were
22 married, you were a stay-at-home mom; is that correct?
23 Your primary function was to stay at home with the
24 children, right?

25 A During some of the time I was married, I worked.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q Okay. During the last parts, during 2005, 2006,
2 you were a homemaker; correct?

3 A I was a homemaker.

4 Q And Frank -- Frank actually had his own insurance
5 company at the time, right?

6 A I -- he -- he worked under the umbrella of
7 Colonial. I -- I don't understand what you mean.

8 Q No, I just want to know, was he working at the
9 time?

10 A He had his own company, but it was kind of doing
11 business as Colonial.

12 Q Okay. So is it fair to say that he was the
13 breadwinner of the family during this time?

14 A Yes.

15 Q Okay.

16 A Yes.

17 Q Okay. Because you were at home taking care of the
18 kids. Not minimizing that, I mean, but you had a
19 substantial role as well. But he was the breadwinner of
20 the family; correct?

21 A He was responsible for the financial end of it,
22 yes.

23 Q Okay. Now, you know why you're here, Ms. Wilson,
24 because Chris Phillips and his company has sued you and
25 Frank for the house they built for you in 2005, 2006,

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 correct?

2 A Yes.

3 Q And you understand that what Chris is asking this
4 jury to do is to find for him against you and Frank,
5 correct? You understand that?

6 A Yes.

7 Q All right. Now, this house -- let's go back.
8 Now, let's put this thing in perspective for the
9 jury. This neighborhood, the address was 335 Bent Oak
10 Court, correct?

11 A I thought it was 325 Bent Oak Drive.

12 Q Okay.

13 A I mean, it has -- it's been a while. I think
14 that's right.

15 Q Sure. I understand. Let me --

16 MR. MYERS: If I may approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 By Mr. Myers:

20 Q I'm going to hand you this contract that we're
21 going to talk about in a second that's been marked as
22 Plaintiff's Exhibit No. 2. What is the address on that
23 contract?

24 A This is 335 Bent Oak Drive.

25 Q Okay. So it is 335, not 325 as you previously

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 thought?

2 A That's right. That's what it says.

3 Q Okay. So the contract for this house was for 335
4 Bent Oak Drive?

5 A Uh-huh.

6 Q Correct? Yes?

7 A Yes.

8 Q And this lot -- or this area was in a subdivision,
9 correct?

10 A Yes.

11 Q Before you had met Chris Phillips, you and Frank
12 had just owned a lot in this neighborhood, right?

13 A We had previously purchased the lot, yeah.

14 Q And this lot is over on the Chapin side of Lake
15 Murray, correct?

16 A Yes.

17 Q In fact, the lot itself is on the lake, right?

18 A Yes.

19 Q And this is an -- it's an exclusive neighborhood,
20 right? It has a homeowner's association?

21 A It -- it does, yes.

22 Q So when you're looking to build a house in this --
23 on this lot, you've got to have the approval of a
24 homeowner's association, correct?

25 A Yes.

1 Q And you also have to have the approval of an
2 architectural review board. Meaning, not just any house
3 can be built in this neighborhood, right?

4 A They -- if I remember correctly, they had
5 architectural standards, yes.

6 Q Okay. And Chris Phillips was one of the approved
7 builders in this neighborhood, right?

8 A He was.

9 Q And I believe based on your testimony last year at
10 this time that you and Frank -- y'all were referred to
11 Chris and his company by your real estate agent, right?

12 A Yes.

13 Q In fact, your real estate agent spoke very highly
14 of Chris, right?

15 A He built her house.

16 Q Yep.

17 A Yes.

18 Q And he also built several other houses in that
19 neighborhood, right?

20 A I can't say that he did -- I assume he did.

21 Q Okay.

22 A Yes.

23 Q But going into meeting Chris, you and your husband
24 knew that Chris was a good builder?

25 A Yes.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

- 1 Q Okay. And your real estate agent referred him to
2 you?
- 3 A We walked through her house.
- 4 Q All right.
- 5 A Yes.
- 6 Q Now, at some point, you and Frank actually met
7 Chris, correct?
- 8 A Yes.
- 9 Q Do you recall when that meeting was, the first time
10 you met Chris Phillips?
- 11 A No, not the very first time we met him.
- 12 Q Okay. Is it safe to say it was sometime in 2005?
- 13 A Yes.
- 14 Q Okay. And when you met him, you had a good
15 impression about him, right? You thought he was a good
16 guy?
- 17 A Yes.
- 18 Q Nothing to indicate he was deceitful, right?
- 19 A No.
- 20 Q Nothing to indicate that he was a bad guy, right?
- 21 A No.
- 22 Q Nothing to indicate that he was a bad person?
- 23 A No.
- 24 Q And you had never heard anything bad about his
25 company, right?

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

- 1 A Never.
- 2 Q Never heard anything bad about Philip's Builders,
3 right?
- 4 A Never.
- 5 Q All right. All you knew was that he could build
6 you a nice house, right?
- 7 A That's correct.
- 8 Q When you met -- when you and your husband met with
9 Chris, y'all had already owned the lot, right? The lot was
10 in your and Frank's name?
- 11 A Yes.
- 12 Q Right? 335 belonged to y'all?
- 13 A We had a loan --
- 14 Q Okay.
- 15 A -- but yes.
- 16 Q And when you met with Chris, the two of you had
17 already had a set of blueprints for the construction of
18 your house, correct?
- 19 A That's correct.
- 20 Q Chris Phillips had absolutely nothing to do with
21 that blueprint. He didn't draw it up himself, right?
- 22 A No.
- 23 Q I mean, you and Frank had previously paid for the
24 blueprint and y'all already had it, right?
- 25 A That's right.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q All right. Ms. Ferez, I'm going to get you to step
2 down if you will.

3 MR. MYERS: With the Court's permission, I would
4 like to move this so the jury can see a little better.

5 By Mr. Myers:

6 Q Ms. Ferez, I'm going to show what has been
7 previously marked as Plaintiff's Exhibit 1A. Does this
8 appear to be the house, or the blueprints of the house that
9 you and Frank approached Chris Phillips about in 2005?

10 A It looks like it, yeah.

11 Q Okay. This appears to be -- well, you're going to
12 have to help me out here. This is -- this says front
13 elevation of the house. So this would be the front of the
14 house, right?

15 A Uh-huh.

16 Q Yes?

17 A Yes.

18 Q This says rear elevation, so this would be the rear
19 of the house, right?

20 A Yes.

21 Q This is the left side of the house, correct?
22 Because this says left elevation?

23 A Yes..

24 Q And this is right elevation so this is the right
25 side of the house?

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 A Uh-huh.

2 Q Yes?

3 A Yes.

4 Q Okay. Now, this part then would have been
5 facing --

6 THE COURT: Can everybody see?

7 Mr. Myers, you're blocking off two down on that end
8 and let's --

9 MR. MYERS: I'm sorry, Judge.

10 THE COURT: -- back it up just a tad.

11 MR. MYERS: I'm sorry.

12 THE COURT: That's okay.

13 By Mr. Myers:

14 Q Now, this house sat on the lake -- or it's still in
15 existence, right? I mean, no one's torn it down to your
16 knowledge?

17 A No, it's actually owned by someone else.

18 Q Okay. So this part of the house, the rear, faces
19 the lake, correct?

20 A Yes.

21 Q Now, I'm going to hand -- I'm going to show you
22 what's been marked as Plaintiff's Exhibit 1B. Does this
23 appear to be the main floor of your house?

24 A Yes.

25 Q All right. And would you agree with me that the

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 main floor consisted of about 2274 square footage?

2 A Yes.

3 Q I mean, that's what this says, right?

4 A It does.

5 Q And the second floor, which -- does this appear to
6 be a blueprint of the second floor of your house?

7 A Yes..

8 Q And would you agree with me, the second floor was
9 950 square feet?

10 A Yes.

11 Q Now, the last one, the Plaintiff's Exhibit 1D, I
12 believe this is a lower-level finish. I guess, common
13 slang for basement, right? There was a basement on this
14 house?

15 A Yes.

16 Q All right. And the basement was 1152 square feet?

17 A Yes.

18 Q So if I'm doing my old Swansea math right, your
19 house was about 4300 square feet or a little over, right?

20 A Yes.

21 MR. MYERS: Your Honor, at this time, I would move
22 into evidence what has been previously marked as
23 Plaintiff's Exhibit 1 -- 1A through 1D?

24 THE COURT: Any objections?

25 MR. GRIFFIN: No objection, Your Honor.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE COURT: Without objection.

2 (WHEREUPON Plaintiff's Exhibits 1A through 1D were
3 entered into evidence.)

4 By Mr. Myers:

5 Q Thank you, Ms. Ferez. You may have a seat.

6 A Okay.

7 Q We're going to come back to this, if you don't
8 mind, Ms. Ferez.

9 MR. MYERS: Judge, is it okay for me to leave this
10 right here.

11 THE COURT: They can't see from over there. Just
12 slide it up there a little bit.

13 MR. MYERS: Okay. Thank you, Judge.

14 THE COURT: And anytime you need it, it's over
15 there.

16 MR. MYERS: Thank you, Your Honor.

17 By Mr. Myers:

18 Q Now, when you and Frank showed Chris that house,
19 y'all were asking him to build y'all's house, right?
20 Correct?

21 A Correct.

22 Q And as you testified, you didn't have any reason to
23 not like Chris. He didn't give you any reason for
24 dishonesty, right?

25 A No.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q And after y'all sat down and looked at those
2 blueprints, Chris then gave you an estimate of what he
3 thought it would take to build that house, correct?

4 A Yes.

5 Q Now --

6 MR. MYERS: If I may approach, Your Honor?

7 THE COURT: You may.

8 By Mr. Myers:

9 Q Ms. Ferez, I'm going to hand to you what I just
10 showed you about five minutes ago, what has previously been
11 marked as Plaintiff's Exhibit No. 2. Do you recognize that
12 as the contract between you, Frank, and Chris Phillips, and
13 Chris Phillips' Builders?

14 A Yes.

15 Q Is your signature on that contract?

16 A It is.

17 Q Who's other -- who others -- who else signed that
18 contract?

19 A Chris and my ex husband.

20 Q At the time you signed that contract, was there
21 anything you didn't understand about the terms of that
22 contract?

23 A No.

24 Q I mean, the language in the contract is pretty
25 simple. Were there any words in that contract that you

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 just didn't know or didn't understand?

2 A No.

3 Q And you will agree with me --

4 MR. MYERS: Your Honor, I would like to move into
5 evidence what has previously been marked as Plaintiff's
6 Exhibit 2.

7 MR. GRIFFIN: No objection..

8 THE COURT: Without objection.

9 (WHEREUPON Plaintiff's Exhibit No. 2 was entered
10 into evidence.)

11 By Mr. Myers:

12 Q Now, Ms. Ferez, the contract writes that -- after
13 looking at the blueprints, after realizing what he could
14 build that house for, he gave to you and Frank an estimate,
15 correct?

16 A Yes.

17 Q And what he told you he could build that house for
18 was \$550,000, correct?

19 A Yes.

20 Q Now, even as financially well off as y'all were,
21 you and Frank didn't have \$550,000 --

22 MR. GRIFFITH: Objection.

23 THE COURT: Hold on.

24 MR. GRIFFIN: Objection.

25 THE COURT: Sustained.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 MR. GRIFFIN: Thank you.

2 THE COURT: That's not a proper...

3 MR. MYERS: Okay. I'll move on.

4 By Mr. Myers:

5 Q Now, Suzie, could y'all just pay \$550,000 to Chris
6 Phillips?

7 A No.

8 Q All right. In fact, y'all had to go to a bank
9 for -- for a finance -- or for financing, correct?

10 A That's correct.

11 Q And the bank that y'all chose to use was First
12 Citizens, correct?

13 A Yes.

14 Q Over in Columbia?

15 A That's correct.

16 Q And -- and the loan that y'all got from the bank
17 was what's called a construction-to-perm loan, correct?

18 A Yeah.

19 Q And what that means is that the bank is telling --
20 or you're telling the bank that, Hey, we want to build our
21 house. We don't have the money and the bank is going to
22 allow financing to construct your home, correct?

23 A Yes.

24 Q And because the loan was done that way, the way
25 that Chris Phillips and his company were paid were through

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 the bank draws, correct?

2 A That's correct.

3 Q And you would agree with me that the way it was set
4 up was that he would -- he would basically complete a
5 certain part of the house and then he would go to the bank
6 and the bank would basically give him money on what he had
7 actually done, correct?

8 A They would send somebody out to make sure that he
9 had met where he needed to be; and then they would release
10 the next amount of money --

11 Q Okay.

12 A -- so, yes.

13 Q And both your name and Frank's names were on the
14 contract with the bank, correct?

15 A Yes.

16 Q All right. Who was the primary contact at the
17 bank; do you recall?

18 A No.

19 Q Long time ago?

20 A It was a long time ago.

21 Q Okay. So you don't know exactly who you dealt with
22 at the bank, you just can't remember?

23 A I can't remember his name. I think my ex-husband
24 does. He -- I think my ex-husband knew him a little or had
25 known him from somewhere else.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q Okay.

2 A I can't remember his name.

3 Q But you yourself can't remember, right?

4 A That's correct.

5 Q Now, going back to that contract, do you see the
6 part in there that says allowances?

7 A Yes.

8 Q Did you understand what the term allowance meant
9 when you signed that contract?

10 A Yes.

11 Q Tell this jury what your understanding of the term
12 allowance was at the time you executed that contract?

13 A The allowance is given to you and you can do one of
14 two things: You can go to where you're going to purchase
15 the items and if you're going to go over the amount, you
16 can go ahead and pay them or they can bill it directly to
17 Chris Phillips' Builders.

18 Q So when you signed that, it -- Chris Phillips was
19 in essence telling you that, I can build this house for
20 \$550,000, but you have to stay within the allowance if you
21 do not want to exceed \$550,000; is that correct?

22 MR. GRIFFIN: Your Honor, the contract speaks for
23 itself.

24 THE COURT: Well, it does but she can -- he can ask
25 for explanations of it. I'll allow that.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 By Mr. Myers:

2 Q Do you understand my question?

3 A Could you repeat it.

4 Q Yes, ma'am. Sure. At the time and in effect that
5 allowance was what Chris Phillips -- was what Chris
6 Phillips was saying to you and Frank was that, I can build
7 this house for \$550,000 so long as you do not exceed the
8 allowances?

9 A We were not supposed to exceed the allowances.

10 Q Correct. Because if you exceeded the allowances,
11 there would be additional monies owed, correct?

12 A Yes.

13 Q Okay. And the additional monies, since it was a
14 house being built for you and for Frank, it would basically
15 be money that the two of you would have owed, correct?

16 A Correct.

17 Q Okay. Now, at some point after that contract --
18 and that contract is dated when, Ms. Ferez?

19 A 3/10/2005.

20 Q March 10th, 2005.

21 Do you recall when Chris Phillips actually started
22 working on your home?

23 A The exact date?

24 Q Yes.

25 A No.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q Do you recall when he first started digging dirt?

2 A No.

3 Q Okay. Can't recall, can't remember? All right.

4 Well, at some point, you know he started building
5 your house, right?

6 A Yes.

7 Q And during the construction process, did you ever
8 go out to see the construction of the house?

9 A Yes.

10 Q You went out several times; is that correct?

11 A Yes.

12 Q And there was nothing that troubled you about the
13 way the house was being built?

14 A No.

15 Q There was nothing that Chris Phillips was doing or
16 not doing that you didn't -- that you thought was bad?

17 A Huh-uh.

18 Q Yeah or no?

19 A No.

20 Q Is it fair to say he was doing a pretty good job
21 throughout the construction of the house?

22 A Yes.

23 Q Now, do you recall a set of circular stairs being
24 put on the house, Ms. Ferez?

25 A Yes.

1 Q Now, where were these circular stairs?

2 A Outside.

3 Q Where though?

4 A The top porch to the bottom porch.

5 Q Do you mind stepping down for me one more time?

6 Just want to make sure we're clear.

7 We're going back to Plaintiff's Exhibit 1A.

8 A Uh-huh.

9 Q Yes?

10 A Yes.

11 Q Now, you -- circular stairs. Were there a set of
12 circular stairs put on this house?

13 A Yes.

14 Q Can you show the jurors where the circular stairs
15 were placed?

16 A I believe they were right here.

17 Q Now, you're having difficulty with that because
18 it's clear there were no circular stairs drawn on this
19 blueprint at the time you showed it to Chris Phillips?

20 A No, I'm having difficulty because I have trouble
21 reading these. It's from the top porch to here and it was
22 either here or here, but it's been a while.

23 Q Okay. Would you agree with me that circular stairs
24 were not drawn in on this blueprint?

25 A Yes.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q You would agree with me. So at the time, when
2 y'all gave these blueprints to Chris Phillips --

3 A Uh-huh.

4 Q -- he did not have a set of circular stairs to give
5 you and estimate on it, right?

6 A That's correct.

7 Q They were done throughout the course of
8 construction, correct?

9 A Yes.

10 Q So at the time he -- I'm sorry?

11 A But this was missing too.

12 Q That was missing too?

13 A Well, this --

14 Q It's drawn in here?

15 A It's drawn in here, but that was never constructed.

16 Q Okay. So is it your testimony that even though it
17 was drawn here, it just wasn't constructed?

18 A It wasn't construct -- no, that --

19 Q What is that?

20 A I think -- I think that's a fireplace.

21 Q Well, what is that -- is that not a chimney there?
22 How many fireplaces are in this house?

23 A Two.

24 Q Two? Okay.

25 So you're saying -- now this doesn't depict to be a

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 fireplace, as a matter of fact, it stops there, does it
2 not? Do you know whether or not that's a fireplace Ms.
3 Ferez?

4 A Is this -- this is the left side of the house,
5 correct? It says left, so this is the left side of this
6 house. And if that's the case, that was smooth.

7 Q Okay.

8 A The whole left side of the house was smooth, so
9 whatever this was that's kicked out, it was not there.

10 Q Okay. But can you show this jury on these set of
11 plans whether or not circular stairs were drawn in?

12 A No. There are no circular stairs here.

13 Q Okay. Because, in fact, circular stairs were
14 something that were agreed upon after Chris Phillips
15 started building, correct?

16 A Yes.

17 Q All right. And you may have a seat, I'm sorry.

18 A Thank you.

19 Q And now going back to the --

20 (WHEREUPON Mr. Myers paused in his questioning to
21 move the easel.)

22 By Mr. Myers:

23 Q -- well, now going back to these circular stairs?

24 A Yes.

25 Q Was it something that y'all all agreed on that

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 would be apart of the house that would be added on to the
2 house?

3 A They were put on there so I'm -- yes.

4 Q Okay. So y'all all agreed that Chris Phillips
5 would put these -- these circular stairs on there, right?

6 A Yes.

7 Q All right. I mean -- and y'all didn't tell them to
8 stop when you saw them being built?

9 A They -- no.

10 Q So it's fair to say that y'all authorized the
11 construction of the circular stairs?

12 A Yes.

13 Q Okay. Now, how about a sauna? Do you remember a
14 sauna being put in the home?

15 A Yes.

16 Q In fact, the sauna was not a part of the original
17 contract either, was it?

18 A No.

19 Q And -- but Chris Phillips put a sauna in your home,
20 correct?

21 A He put the sauna that we purchased in the home,
22 yes.

23 Q Okay. And -- but at the time that he looked at
24 those blueprints, a sauna was not in the original estimate,
25 correct?

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 A That's correct.

2 Q It was something that y'all agreed upon later,
3 correct?

4 A Right. It was something that we had purchased and
5 he put it in the house, yes.

6 Q And he put it in, correct?

7 A Yes.

8 Q To your satisfaction. To the best --

9 A There was -- there was a problem with the sauna,
10 but --

11 Q All right. We'll get to that in a second. But he
12 put it in, right?

13 A Yes.

14 Q You approved it, right?

15 A Yes.

16 Q Just as the circular stairs you approved, right?

17 A Yes.

18 Q Now, the media room. Was there a -- was there a
19 media room added to the house during construction?

20 A There was a media room in the house.

21 Q Blueprints don't show a media room either, does it?

22 A No.

23 Q The media room was contemplated after Chris
24 Phillips started building the house, right?

25 A I believe we discussed a media room before the

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 construction of the house.

2 Q And this media room was Frank's idea, right? He
3 wanted a media room, right?

4 A I think so, yes.

5 Q Chris put the media room in, right?

6 A There was another contractor involved in the media
7 room.

8 Q A general contractor or a sub-contractor, Ms.
9 Ferez?

10 A No, we -- that media room -- the media room was
11 designed and wired by a company that does audio visual
12 media rooms.

13 Q Okay. But during the time that it was put in, it
14 was while the house was being constructed by Chris Phillips
15 and Phillips' Builders correct?

16 A They had to do it at that point because they had to
17 run the wiring.

18 Q And the media room was not originally contemplated
19 in the agreement, correct?

20 A I want to say that we discussed a media room before
21 we agreed on the contract.

22 Q So before March 10th, 2005, is it your testimony
23 that y'all told Chris that, Hey we want a media room put
24 in?

25 A I think so, yeah.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q Okay. Can you show the jury in that contract where
2 media room appears?

3 A I mean, it's not on here.

4 Q Okay. Now, do you recall, during the course of
5 construction, a change to your front door?

6 A No.

7 Q You don't recall it or was there not a discussion?

8 A I don't recall a change to the front door.

9 Q Okay.

10 A The front door looks -- from the plans that you
11 showed me, the front door looks like the front door that's
12 on the house now. I mean, I don't have a picture of the
13 house, but --

14 Q Okay. So you just can't remember if there was ever
15 a change or construction to the front door -- change to the
16 front door. Is that your testimony?

17 A I --

18 MR. GRIFFIN: Asked and answered, Your Honor.

19 THE COURT: And ma'am, if you can't remember,
20 that's a perfectly acceptable answer.

21 THE WITNESS: I can't -- I can't -- I can't
22 remember if there was a change to the front door.

23 By Mr. Myers:

24 Q Okay. Let's go back a little bit.

25 Does the name, Melba Jackson ring a bell to you?

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 A Yes.

2 Q In fact, Melba Jackson was an interior decorator,
3 correct?

4 A Yes.

5 Q Melba Jackson was called in through the course of
6 construction to help you decorate the home, correct?

7 A Yes.

8 Q And at the time that Melba Jackson came in, she
9 made suggestions as to what you needed to do to the
10 interior of the house, correct?

11 A Yes.

12 Q And in fact, her suggestions caused those
13 allowances to go over a little bit; isn't that right?

14 A Most of what Melba helped me with was -- helped me
15 with was paint color -- selecting paint colors for the
16 home, trying to figure out placement of things, like
17 furniture, where things were going to go. I think at one
18 point she wanted to have like electrical outlets put in the
19 floor and I remember thinking that was odd and anyway, but
20 yes, Melba was there.

21 Q Okay. So she came in and she made some changes to
22 what the original contract may have called for, right?

23 A Yes.

24 Q Okay. Now, this -- at some point, Chris Phillips
25 finished or substantially finished building your house,

1 correct?

2 A Yes.

3 Q And up until him -- up until Chris Phillips and
4 Phillips' Builders substantially completed your house, he
5 was getting paid on his draw system, correct?

6 A That's correct.

7 Q And at some point, y'all sat down with the bank and
8 closed -- or attempted to close your loan, correct?

9 A Yes.

10 Q Now, a loan closing, do you recall telling me last
11 year that it took place at your lawyer's office?

12 A Yes.

13 Q And it took place in February, 2006, correct?

14 A Correct.

15 Q Now, what you were essentially saying to the bank
16 was that we're ready to move into this house, correct?

17 A Yes.

18 MR. GRIFFIN: Objection.

19 THE COURT: Hold on.

20 MR. GRIFFIN: These documents speak for themselves.

21 The documents say what they say and asking her to say what
22 I'm telling the banker, what I told somebody, or what the
23 documents mean is not an appropriate line of questioning.

24 The documents say what they say.

25 MR. MYERS: Your Honor, I haven't even shown --

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1 THE COURT: I'm going to allow -- I'm going to
2 allow the questioning.

3 MR. MYERS: Ms. Brenda, can you go back and read
4 that last question for me, I can't remember, I'm sorry.

5 THE COURT REPORTER: What you were saying to the
6 bank?

7 MR. MYERS: Yeah, just the very last questions.

8 THE COURT REPORTER: I would have to listen.

9 By Mr. Myers:

10 Q I think the question was, Ms. Ferez, that at
11 closing, you were telling the bank that y'all were ready to
12 move into the house, right?

13 A Yes.

14 Q That y'all were satisfied with construction, right?

15 A Yes.

16 Q And at the loan closing, you didn't say Chris
17 Phillips had did -- had done anything wrong during the
18 construction of the house?

19 A No.

20 Q You were quite satisfied with the house, right?

21 A Yes.

22 Q You were very pleased with the house?

23 A Yes.

24 Q He had built y'all a fine house, correct?

25 A Yes.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q Now, at the loan closing, would you agree with me
2 that there were a bunch of documents that must be signed
3 during a loan closing?

4 A Yes.

5 Q In fact, the average loan closing lasts about
6 forty-five minutes to an hour, right?

7 MR. GRIFFIN: Objection.

8 THE COURT: That's sustained.

9 By Mr. Myers:

10 Q Do you know how long the average the bank loan
11 closing --

12 THE COURT: That's irrelevant; that's not relevant.
13 How long did yours last?

14 MR. MYERS: Forty-five minutes, Your Honor.
15 Approximately.

16 THE COURT: No, I mean -- About how long did it
17 last, ma'am?

18 THE WITNESS: Thirty -- thirty, forty-five minutes.

19 By Mr. Myers:

20 Q Okay. And during this time, you're being asked to
21 sign a bunch of documents, right?

22 A Yes.

23 Q Now, when y'all originally went to the bank at the
24 very beginning, y'all had qualified for \$550,000, correct?

25 A That's -- that's how much we asked for, yes, and we

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 qualified for it.

2 Q Do you know, Ms. Ferez, what would have happened at
3 the bank had you told them that we need more than \$550,000?

4 A No.

5 Q Would you agree with me that they would have had to
6 do a loan modification?

7 MR. GRIFFIN: Objection.

8 THE COURT: Sustained. Calls for speculation.

9 Move on.

10 By Mr. Myers:

11 Q You don't know?

12 THE COURT: Sir, I sustained that objection. Move
13 along.

14 MR. MYERS: I am, Your Honor. I'm just making sure
15 I -- Ms. Ferez --

16 THE COURT: Ask another question.

17 MR. MYERS: Yes, sir.

18 THE COURT: Thank you.

19 By Mr. Myers:

20 Q So, Ms. Ferez, at the time that y'all signed these
21 documents, you were saying to the bank that everything that
22 Chris Phillips had done was to y'all's satisfaction,
23 correct?

24 A Correct.

25 Q All right. Now, I'm going to hand to you a

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 document.

2 MR. MYERS: If I may approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 By Mr. Myers:

6 Q -- what has been previously marked as Plaintiff's
7 Exhibit No. 5. Do you recognize that document?

8 A Just for the record, this says 325 Bent Oak Drive.
9 Oops, I'm sorry. I thought that was right; I didn't think
10 this was right.

11 THE COURT: Well we're not -- we're not squabbling
12 over the numbers of the house, are we?

13 THE WITNESS: Okay. No, no. I just -- but I
14 thought that I was going -- I thought I remembered that
15 right.

16 THE COURT: All right.

17 By Mr. Myers:

18 Q All right. Is it fair to say that there was a
19 discrepancy in the contract in that document there Ms.
20 Ferez?

21 THE COURT: They put the wrong address on the
22 form --

23 THE WITNESS: They -- they put the wrong address on
24 it, but that's okay. That's not a big deal.

25 THE COURT: But that's not what this lawsuit --

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE WITNESS: I just -- All right. What was the
2 question? I'm sorry.

3 By Mr. Myers:

4 Q I was asking a question as to whether or not you
5 recognized that document?

6 A Yes.

7 Q What does that appear to be?

8 A This is the contractor's/borrower's affidavit and
9 release.

10 Q All right. Who appeared -- who appeared to have
11 drafted that document?

12 A First Citizens.

13 Q Okay. It wasn't a document you made?

14 A No.

15 Q Wasn't a document that Chris Phillips and Phillips'
16 Builders made?

17 A No.

18 THE COURT: Can you stipulate that's a bank's
19 document? We'll all agree to that?

20 MR. MYERS: That's not the question, Your Honor.
21 At this point, Your Honor, I would move into evidence what
22 has been previously marked as Plaintiff's Exhibit No. 5.

23 THE COURT: Well, the question was, who drafted it?

24 MR. MYERS: Yes, sir. But it wasn't for purposes
25 of what the document was.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE COURT: I understand. Without objection; put
2 it in.

3 (WHEREUPON Plaintiff's Exhibit No. 5 was entered
4 into evidence.)

5 By Mr. Myers:

6 Q Now, how much money on that document does -- does
7 it say that Chris Phillips and Phillips' Builders was owed
8 as the final invoice?

9 A Final advance, a hundred and four thousand, five
10 hundred from First Citizens. The building contract amount,
11 five hundred and fifty thousand will be paid in full.

12 Also, if applicable receipt of payments from Francis M.
13 Ferez and Suzanne C. Ferez in the amount of zero has paid
14 in full all overages. All total obligations and connected
15 with said construction improvements have been paid in full.

16 Q And it says something else in there, too. What was
17 the last sentence?

18 A The undersigned hereby affirms that all
19 sub-contractors, material laymen and laborers have been
20 paid in full for their -- full for settlement of all claims
21 and there are no claims outstanding which would entitle the
22 holder, thereof to claim a lean against the said property.

23 Q Okay. Now, Ms. Ferez, at the time that y'all
24 executed that document -- at the time that y'all sat down
25 for that loan closing, circular stairs had been put on the

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 house, right?

2 A Yes..

3 Q That were not a part of the original contract or
4 the blueprint, correct?

5 A That's correct.

6 Q A sauna had been done, correct?

7 A Correct.

8 Q That was not a part of the original contract or
9 plan, correct?

10 A Correct.

11 Q And a media room, correct?

12 A Correct..

13 Q And there were changes to the front door, correct?

14 A I don't remember the changes to the front door, but
15 it -- okay.

16 Q All right. And in fact, certain allowances had
17 been exceeded at the time that y'all executed that
18 document, right?

19 MR. GRIFFIN: Objection, Your Honor.

20 THE COURT: What's the objection?

21 MR. GRIFFIN: The objection is he's going into a
22 matter that is within the four corners of the contract and
23 within the four corners of this document.

24 THE COURT: Sustained.

25 ///

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 By Mr. Myers:

2 Q Ms. Ferez, at some point after y'all -- after the
3 loan closing, you and Frank and your family, your three
4 kids, you moved into the house, right?

5 A That's correct.

6 Q Now, everything had appeared to be in order in the
7 house, correct?

8 A Yes.

9 Q Do you recall conversations with Chris Phillips
10 about owing additional overages?

11 A Chris would come by. I was pregnant, I think,
12 during much of the construction of the house, okay, so I
13 didn't really have my three children yet. I had two and
14 one on the way. So, we moved in. I think Chris had a
15 baby, we bought his family a baby gift. He would stop in,
16 we would chit chat and he mentioned in passing there might
17 be some monies owed and my response to him was get the
18 invoices together and -- bring us the invoices.

19 Q Okay. Now, I take it -- let's back up a little
20 bit. Were you telling the jury that about the pregnancy
21 and about Chris because it was a stressful time for you?
22 Is that the purpose of --

23 A Well, it's -- his wife --

24 Q I'm just trying to make sure --

25 A His wife --

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q I just want to make sure?

2 A His wife had had a baby. What I'm trying to stress
3 is there's a lot going on.

4 Q Sure.

5 A His wife had had a baby. I had had a baby. We
6 knew -- you know, he had popped in and out, checked on
7 things, taken care of a punch list and you develop a
8 relationship, so yeah. I mean -- his wife had a baby and I
9 bought a baby gift and he came by -- and he came by not
10 just once, but, I mean, he came by several times.

11 Q Okay.

12 A He had other homes that he was building in the
13 neighborhood around that area and, so, yeah.

14 Q Okay.

15 A I mean, he popped in a good bit.

16 Q Okay. And when he popped in, you remember him
17 talking to you about overages, correct?

18 A He came in and he said, you know, there's some
19 money, but, you know -- and I said bring us the invoices.

20 Q Is the answer to my question yes?

21 A Yes. Bring us the invoices.

22 Q Okay. So -- and your last baby was born when?

23 A June 2006.

24 Q Okay. So there were times -- your testimony is
25 that he came in, he talked to you about these overages?

1 MR. GRIFFIN: Objection, Your Honor. Again, this
2 is going beyond the four corners of the contract and the
3 four corners of the release. It's a direct contradiction
4 to what the release says that there were no overages.

5 THE COURT: I'm going to allow it.

6 THE WITNESS: What was the question?

7 By Mr. Myers:

8 Q Yes, ma'am. The question was, was that at some
9 point, your child was born on what day, I believe you
10 already answered the question for the objection, but
11 your -- your third child was born when?

12 A July 31st, 2006.

13 Q Okay. So that would have been after the loan
14 closing, correct?

15 A Yes.

16 Q Now, at some point, you and Frank started having
17 marital problems, correct?

18 A Yes.

19 Q And in fact, about ten months after moving into the
20 house, Frank left, correct?

21 A Yes.

22 Q And he wasn't at the house -- he never came back to
23 the house after December 26th, 2006, correct?

24 A He did not live at the house after December 26th.

25 Q You were still living there, correct?

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

- 1 A (Witness nodded head.)
- 2 Q Yes, ma'am?
- 3 A Yes.
- 4 Q With the three children?
- 5 A Yes.
- 6 Q And when Frank left, he wasn't around to do
- 7 anything at the house, correct?
- 8 A That's correct.
- 9 Q But in fact, Chris Phillips actually showed back up
- 10 at the house even after Frank had left, correct?
- 11 A Chris came by the house and I informed him -- I
- 12 informed him that, you know, yes, Frank was gone.
- 13 Q Okay. So --
- 14 A He was out of the house.
- 15 Q And in fact, let's talk about this. In March of
- 16 2007, you called Chris back because you were having a
- 17 problem with leakage behind one of the walls, correct?
- 18 A There was a leak from upstairs that had come
- 19 through and it was dripping from one of the lights over the
- 20 island in the kitchen.
- 21 Q Now --
- 22 A Not the island -- I think it was the bar.
- 23 Q And would you agree with me that that was around
- 24 March 2007? Do you remember?
- 25 A I don't remember the exact date.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q All right. Do you remember it being in March?

2 A I remember it being warm.

3 Q Okay. Now, prior to March, two -- or whenever
4 Chris came back and you noticed that leak, you had never
5 noticed that leak before, correct?

6 A That's correct.

7 Q All right. And when you called Chris, Chris came
8 up and he looked at the problem, right?

9 A Yes.

10 Q And, in fact, he diagnosed the problem and he fixed
11 it, right?

12 A Yes.

13 Q He didn't charge you anything for coming up there,
14 did he?

15 A No.

16 Q And during that time, do you recall having any
17 conversations with him about excess on the contract?

18 MR. GRIFFIN: Objection.

19 THE COURT: The objection is what?

20 MR. GRIFFIN: The objection is that again, it goes
21 beyond the four corners of the contract. The contract is
22 over, Your Honor, in February 2006.

23 THE COURT: Well, this may go to some other issues
24 that are in the pleadings that we need to -- I need to look
25 at. I'll allow it.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 MR. GRIFFITH: Thank you.

2 By Mr. Myers:

3 Q In fact, when Chris came back to look at that leak
4 and fix that leak, he talked to you about the overages on
5 that contract, right?

6 A We talked about the leak because I was very
7 paranoid and I remember distinctly from a previous house I
8 owned about the problem some water damage had caused. So
9 my memory of that entire event was, Is this going to create
10 mold behind the wall.

11 Q Okay.

12 A Is this something that has been happening for a
13 long time? Is this something that, you know, just
14 happened, and I had a stain on the wall? And is this going
15 to cause permanent damage. You know, do I need to watch
16 out for something. I remember distinctly being very
17 worried about that.

18 I do not recall anything else about that visit
19 except for, Am I going to have a mold issue.

20 Q Okay. Now, he fixed the problem, didn't he?

21 A The seal that should have been caulked around the
22 tub was not there and he fixed the problem.

23 Q Okay. So the answer to my question is, yes, he
24 fixed the problem?

25 A He caulked the seal and it fixed the problem.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q Okay. And that would have been over into 2007,
2 correct?

3 A I don't remember the exact date that he came out
4 there.

5 Q Okay.

6 A I do not remember the exact date.

7 Q Now, at some other point, Chris came back even
8 after that water leak because there was an issue regarding
9 screens for the windows, correct?

10 A The screens were never put on the windows --

11 Q Okay.

12 A -- when they installed the windows.

13 Q And you called Chris?

14 A Yes.

15 Q All right. And this would have been even after the
16 leak incident, correct?

17 A I called to ask if we had screens.

18 Q Okay. And you felt comfortable calling Chris?

19 A Yes.

20 Q I mean, Frank was gone, so you couldn't call him,
21 right?

22 A I could've called him. If we had screens, he would
23 have come out and put screens on the house.

24 Q Okay. Do you remember testifying during your
25 deposition that the reason you didn't call Frank was

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 because y'all weren't talking at the time?

2 A We weren't talking, but if I would have said there
3 is a safety issue and the children might fall out of the
4 window, he would have come to put the screens on -- he was
5 not a negligent person.

6 Q Okay.

7 A We were not talking and I did not want to call him.

8 Q Okay. So but you called Chris?

9 A Yes.

10 Q Chris showed up, right?

11 A Yes.

12 Q And he talked to you about the screens, didn't he?

13 A Yes. He said the screens were in the basement
14 or -- they were either in the basement or they were in the
15 garage. I -- one of the two.

16 Q Isn't it true that when Chris came back, the
17 screens were just on the front porch and you just wanted
18 Chris to move them down to the basement?

19 A We didn't have a front porch.

20 Q So it wasn't that you wanted to move -- wanted
21 Chris to move the screens, you wanted him to put the
22 screens up. Is that your testimony?

23 A I don't remember. All I remember was that I said,
24 Chris, we have not screens on the windows and he said no,
25 no, no, let me double check or something like that; and you

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 know, some time went by and he called me back and he said
2 the screens are there, they're somewhere at the house.

3 Q Okay.

4 A And I said, I have no idea where they are. Are
5 they in the basement or are they in the garage, you know,
6 where did they drop them off. And he ended up coming out
7 and I said, well -- I mean, it was a three car garage and I
8 think the screens were in the garage and he carried them to
9 the basement. Anyway, but that's -- that was the screens.

10 Q Okay. And during that time that he came in about
11 the screens, he talked to you again about the allowances
12 and the overages, didn't he?

13 A I do not remember what the conversation consisted
14 of.

15 Q In fact, you told him that -- that Frank would be
16 returning with the boys and for him to get something to you
17 so that you and Frank could talk about getting him paid for
18 those overages?

19 A No, I do not remember that.

20 Q Okay. Now, I'm going to hand you a document, Ms.
21 Ferez, that's been previously marked as Plaintiff's Exhibit
22 No. 6. You've seen that document before, haven't you?

23 A Yes.

24 Q In fact, that was the document that Chris Phillips
25 provided to you when you told him to get those items

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 together so that you and Frank could talk about paying him
2 for the overages.

3 A No.

4 Q So he just -- is it your -- what's the date of that
5 document, Ms. Ferez?

6 A August 13th, 2008.

7 MR. MYERS: Your Honor, at this time we would move
8 into evidence what has been previously marked as
9 Plaintiff's Exhibit No. 6. I don't think there's any
10 objection to it.

11 MR. GRIFFIN: There is an objection.

12 THE COURT: Well. She can't identify it, number
13 one. You're going to have to get it in through someone
14 else.

15 MR. MYERS: That's fine, Your Honor, thank you.

16 THE WITNESS: Well --

17 THE COURT: Ma'am --

18 MR. MYERS: I just thought that you stipulated to
19 it.

20 THE COURT: Well, if you have, that's fine, but he
21 objected. Put it in through your -- your --

22 MR. MYERS: Yes, thank you.

23 By Mr. Myers:

24 Q Ms. Ferez, you would agree with me that the date of
25 this document --

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE COURT: It's not in evidence, sir.

2 By Mr. Myers:

3 Q At some point, you received a correspondence from
4 Chris Phillips, right?

5 A Chris came to the house like a month before -- we
6 had gotten the contract on the house. As far as I knew,
7 the closing date had been set and we were ready to close
8 and I was outside. I remember when he showed up, I can't
9 tell you the date, but I remember the events of him showing
10 up because my mouth hit the floor.

11 I was outside with my daughter and my two sons and
12 Chris pulled up in his truck. He told me, he's like, you
13 know, he came over like he always does and he said, I've
14 got those invoices, and I said, all right, hand me the
15 invoices, you know. I had been asking for them, you know,
16 and when he kind of intimated in a conversation before, you
17 know, that we had owed him money.

18 I said, Well, get us the invoices, I mean that's
19 fine. We had already closed. I -- I thought that if we
20 had owed him anything, it's inconsequential. I mean, get
21 us an invoice and we'll pay it, I don't want to owe you
22 money.

23 So he shows up and this isn't like, Oh, they're,
24 you know, there's a little bit of money that, you know,
25 we'll settle up, we'll settle up or you know, something

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 like that. This was \$22,000 and it floored me. I mean, I
2 was totally thunderstruck when he pulled up and I -- I just
3 remember looking at the invoices and thinking, where did
4 all this come from. And that's what I remember, being
5 shocked because yes, your right, Chris is a nice guy. He
6 was coming by the house, he was very helpful and when he
7 dropped off those invoices, I almost hit the floor.

8 Q Sure. But let's go back to what you said. You
9 said that prior to that day, you had been asking for the
10 invoices, right?

11 A He had come by and, you know, anytime he --anytime,
12 and I don't remember the particulars and the framing --

13 MR. MYERS: Your Honor, at this point --

14 THE COURT: Hold on, she's answering the question.

15 THE WITNESS: I don't remember the framing of the
16 conversations. In other words, was it when he came by to
17 drop off screens or to show me where the screens were or
18 anything like that. But anytime he kind of said, you know,
19 there's some money, I said, Well that's fine show -- give
20 me the invoices. I mean, we had a good relationship.

21 By Mr. Myers:

22 Q Okay.

23 A Show me the invoices.

24 Q So let's do it this way, Ms. Ferez. I will let you
25 explain however you want to --

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE COURT: Sir. Please answer -- ask the
2 questions, she'll respond.

3 By Mr. Myers:

4 Q The fact that you said that you had asked for them,
5 there were previous discussions about overages, right?

6 A They weren't discuss -- it depends on how you say
7 discussion. There were comments made, and yes, there were
8 comments made. And my response to him, and that is the
9 frame of the discussion from start to finish. There's some
10 money owed, bring me the invoices.

11 Q Okay. At some point as a result of the divorce
12 that you and Frank had, y'all had to sell the house, right?

13 A Yes.

14 Q Y'all put it on the market, right?

15 A Yes.

16 Q Someone had to come in and appraise the home,
17 correct?

18 A Yes.

19 Q There were no corrections or modifications done to
20 the home before you sold it, right?

21 A No.

22 Q Nothing needed to be done that Chris Phillips
23 failed to do or didn't do, correct?

24 A No.

25 Q Now, do you recall testifying or telling me that

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 the contract -- when y'all sold the house, the sales price
2 for the house was roughly \$800,000?

3 A Yes.

4 Q So the house that y'all built for \$550,000, y'all
5 sold it as a part of y'all's divorce for a --

6 MR. GRIFFITH: Your Honor...

7 THE COURT: Yes, sir?

8 MR. GRIFFIN: It's not relevant.

9 THE COURT: Sustained. What they sold it for
10 hasn't got a thing to do with this. Sustained.

11 Disregard that ladies and gentlemen?

12 By Mr. Myers:

13 Q Ms. Ferez, whatever the price was --

14 THE COURT: Sustained. Go to something else.

15 MR. MYERS: Your Honor, may I approach?

16 THE COURT: You may. Where do y'all approach over?
17 Over here?

18 MR. MYERS: Wherever is convenient for the Court.

19 (WHEREUPON there was a bench conference out of the
20 hearing of the jury and the court reporter.)

21 THE COURT: Y'all ready for a break? Can y'all go
22 another ten minutes?

23 Ladies and gentlemen of the jury, let's take a --
24 we've been going an hour and a half. I know the court
25 reporter needs a little break. Let's take about a ten.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 minute break to stretch, bathroom. So if y'all would
2 select me a foreperson and we'll start back in just a few
3 minutes.

4 I've got a couple of things I need to talk over
5 with the lawyers about. It's a good time to do it.

6 (WHEREUPON the jury left the courtroom at 2:29
7 p.m.)

8 THE COURT: All right. Ms. Wilson, you're right in
9 the middle of your testimony. Don't discuss it with
10 anybody, but you can take a break. Thank you.

11 THE WITNESS: Can I use the restroom?

12 THE COURT: Absolutely.

13 THE WITNESS: Okay.

14 MR. MYERS: Your Honor, are we in recess where I
15 can use the restroom?

16 THE COURT: Yeah, but let's -- let's go -- let's
17 tell Terry to come back in and let's discuss this
18 counterclaim and where we're going with this resale value.

19 MR. GRIFFITH: Yes, sir.

20 (WHEREUPON a brief recess was observed by the
21 Court.)

22 THE COURT: All right. Mr. Griffith, anything? We
23 make a decision on those counterclaims?

24 MR. GRIFFIN: If we could talk to you just a little
25 bit more, Judge?

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE COURT: Go ahead.

2 MR. GRIFFITH: Judge, these counterclaims don't say
3 anything about the quality of this house. They don't go to
4 the worth of the house, they go to the claims that have
5 been made about the overages that we say are not
6 sustainable; and it is an unfair and deceptive trade
7 practice for them to have engaged in that. It is capable
8 of repetition and any kind of contract to be entered into
9 the future, and it is clearly a violation of the
10 contractual obligations of good faith and a fair dealing.

11 They have -- it has nothing to do with the
12 construction of the house; it has everything to do with
13 these claims.

14 THE COURT: Anything else?

15 MR. GRIFFIN: No, sir.

16 THE COURT: Anything, Mr. Myers?

17 MR. MYERS: Your Honor --

18 THE COURT: I just don't see where -- you know --
19 when she fortunately or unfortunately had a divorce quickly
20 on the heels of moving in, quickly on the heels of the
21 birth of that third baby and they probably sold it at a
22 good time. If they tried to sell it today, I suspect it
23 wouldn't bring anything near that. I just don't see how
24 that's relevant.

25 We're trying to collect on a few overages -- well,

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 alleged overages. I'm going to not allow it -- but I'm not
2 real excited about your counterclaim either, but we'll deal
3 with that motion first.

4 MR. GRIFFITH: I understand, Your Honor.

5 MR. MYERS: Your Honor, if I just may be heard just
6 very briefly.

7 THE COURT: Uh-huh.

8 MR. MYERS: The first counterclaim is labeled
9 breach of contract by Plaintiff Phillips. The second one,
10 breach of contract of the covenant of good faith and fair
11 dealing. And the third one is violation of unfair trade
12 practices act.

13 So, Your Honor, the fact that they have a breach of
14 contract against Mr. Phillips, you know, it would stand to
15 reason, what exactly are they saying that he did wrong?
16 Did he build them a bad house? How bad was the house?
17 That's --

18 THE COURT: If they get into all of that in their
19 case in chief, then on reply, I'll let you go into all of
20 that, but not -- not right now. You will be -- if they --
21 if it stands and if they allow it to go into all of that
22 which I seriously doubt it will be, then you will obviously
23 have a right to recall this witness or any witness you want
24 to about the resale of the house.

25 At the present time I'm going to deem it to be not

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 relevant.

2 MR. MYERS: Thank you, Your Honor.

3 THE COURT: You okay down there?

4 THE CLERK: Yes, sir.

5 (WHEREUPON the jury entered the courtroom at 2:47
6 p.m.)

7 THE COURT: Where's Ms. -- Ms. Auld? Mr. All.

8 THE JUROR: Yes, sir.

9 THE COURT: All right. First time you've ever been
10 elected to anything --

11 THE JUROR: Yes.

12 THE COURT: -- of tremendous importance?

13 THE JUROR: Yes, sir.

14 THE COURT: All right. So we'll see if we can't
15 get you to run for office after today; you're such a
16 likeable candidate. Thank you for doing that.

17 THE JUROR: No problem.

18 THE COURT: All right. Mr. Myers, you may
19 continue.

20 MR. MYERS: Thank you, Your Honor.

21 By Mr. Myers:

22 Q Ms. Ferez, as I was apologetic about asking you how
23 old you are, let's go back to that. You understand that
24 promises can be made orally and or written, right?

25 A Yes.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 Q That somebody can put a promise in writing or they
2 can make a verbal promise, right?

3 A Yes.

4 Q And it's not that you cannot go back on an oral
5 promise, it's just that sometimes people just put things in
6 writing just to be sure, right?

7 A No. I mean, I am not a -- I don't understand
8 contractual law.

9 Q Okay.

10 A But I -- and I don't know the nuances around them,
11 but, yes, people can say things but it -- but if you want
12 things handled correctly, you put it in writing, exactly
13 what your expectations are and sign them.

14 Q Okay. So even though someone were to give their
15 word to do something, your testimony is that they wouldn't
16 have to do it just simply by giving their word if it's not
17 in writing. Is that your testimony?

18 MR. GRIFFITH: Objection, Your Honor.

19 THE WITNESS: No, that --

20 THE COURT: What's the objection?

21 MR. GRIFFITH: That's legal conclusion; she can't
22 possibly know that.

23 THE WITNESS: I --

24 THE COURT: Hold on, hold on, hold on. I'll
25 sustain that.

Suzanne Wilson (Ferez) - Direct Examination by Mr. Myers

1 THE WITNESS: I don't know what you're asking --

2 THE COURT: No, ma'am. No, ma'am, when I sustain
3 something, that means that he shouldn't ask it.

4 THE WITNESS: Oh, oh.

5 THE COURT: Okay.

6 MR. MYERS: Ms. Ferez --

7 THE COURT: Not that he shouldn't have asked it,
8 it's just not -- that doesn't mean -- that didn't sound
9 right. It's just that it's not a proper question in this
10 litigation.

11 By Mr. Myers:

12 Q Ms. Ferez, you understand what Chris Phillips and
13 Chris Phillips' Builders have sued you and your husband --
14 ex-husband over, right?

15 A Yes.

16 Q You understand that a jury could disagree with your
17 position and compensate Mr. Phillips, right?

18 A Yes.

19 Q You understand that they cannot believe what you're
20 saying and decide which side --

21 MR. GRIFFITH: Objection.

22 THE COURT: Yeah, that's -- that's --

23 MR. MYERS: No further questions, Your Honor.

24 THE COURT: Thank you. Just disregard all of that.

25 I'll tell you what y'all's function is, my function is,

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 what decisions you can and can't make.

2 MR. GRIFFITH: May it please the Court, Your Honor?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 By Mr. Griffith:

6 -Q- Well, this isn't where you thought you'd be --

7 A No, sir.

8 Q -- at this point.

9 I've got just a couple of questions in relation to
10 the questions that Mr. Myers asked you.

11 A Okay.

12 Q Let's go back to the beginning. He says, your
13 husband was the breadwinner -- primary breadwinner and you
14 were a stay-at-home mom.

15 A Yes.

16 Q Now, when you all decided to build this house --
17 when you decided to build the house, did you go to the bank
18 together and get the loan? It was a joint loan?

19 A Yes.

20 Q So your name was on the loan and Frank's name was
21 on the loan?

22 A Yes.

23 Q So the decisions to spend money or not spend money
24 or talk to the bank about draws were decisions that the two
25 of you made?

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 A Yes.

2 Q So any conversation between you and Mr. Phillips
3 would have to be discussed with Frank, correct?

4 A Yes.

5 Q So any -- you couldn't engage in any unilateral
6 promises --

7 A No.

8 Q -- with Frank could you? I mean, with Mr.
9 Phillips, could you?

10 A No.

11 Q And who had the most experience between the two of
12 you in dealing with builders? You or Frank?

13 A Probably Frank.

14 Q And I want to point out -- let's look -- do you
15 still have, I think, the contract and --

16 A That's Exhibit 2.

17 MR. GRIFFITH: May I approach?

18 THE WITNESS: Yes. Oh, sorry. (Laughter.)

19 Of course, you can. I'm sorry.

20 THE COURT: Some things never change. At home,
21 it's the same way.

22 I got elected to the judgeship eight years ago. My
23 wife said, you better take that robe off when you come in
24 this house. And I do.

25 So yes, you may proceed. You may approach.

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 MR. GRIFFITH: Thank you, Your Honor.

2 By Mr. Griffith:

3 Q Now, this is Plaintiff's Exhibit No. 2 and it's the
4 contract between Chris Phillips' Builders, Inc. and Frank
5 and Suzie Ferez, correct?

6 A Yes.

7 Q All right. And this is the contract that you and
8 Frank entered into with Mr. Phillips, correct?

9 A Correct.

10 Q And you said previously that you understood the
11 terms of the contract, correct?

12 A Correct.

13 Q And I want you to read this sentence and -- for the
14 Court and for Mr. Myers, it's the --

15 A Second.

16 Q -- second sentence on the -- I mean the -- in the
17 last paragraph on page two beginning, any.

18 A Any alteration or deviation from above
19 specification involving extra costs will be executed only
20 upon written orders and will become an extra charge over
21 and above the estimate.

22 Q And what does that mean to you?

23 A That if we went over, there would be a write-up and
24 I would assume an estimate over how much it would be over
25 the cost.

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 Q And those would be presented to you prior to making
2 any of these changes?

3 A And then we would make a -- you could make a
4 decision as to whether you wanted to proceed.

5 Q Okay. And who -- who prepared this contract? Was
6 it you?

7 A No, sir.

8 Q Was it Frank?

9 A No, sir.

10 Q Who was it?

11 A Chris Phillips' Builders..

12 Q All right. So Chris Phillips' Builders knew and as
13 he's pointed out a number of times that Phillips has been
14 in the building business for a number of years and built
15 good houses, and presented you with a contract in which he
16 says, If we're going to make any changes that mean that
17 you're going to owe me more money, I'm going to give you a
18 change order in writing.

19 A Correct.

20 Q Did you ever receive a change order in writing from
21 Mr. Phillips?

22 A No.

23 Q Has he ever shown you a change order in writing
24 prior to doing any of the construction?

25 A No.

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 Q Has he ever shown you a change order period?

2 A Never.

3 MR. GRIFFITH: May I approach again, Your Honor?

4 THE COURT: You may.

5 By Mr. Griffith:

6 Q Now, let's look at this document that's been
7 prepared by First Citizens. This is a document that's --
8 what's the caption on that document?

9 A Contractors Borrowers Affidavit and Release.

10 Q Do you understand what an affidavit is?

11 A I don't know -- I probably couldn't tell you the
12 legalese behind it, but --

13 Q Tell me what your understanding is.

14 A It's a statement saying that this is true.

15 Q Is it -- does it have any formalities? Does it --
16 are you signing in from of the notary public?

17 A Yes.

18 Q So it is a sworn statement?

19 A Yes.

20 Q And in this sworn statement dated February the 1st,
21 2006, whose signature appears under the paragraph labeled
22 contractor?

23 A Chris Phillips, or Chris Phillips' Builders, Inc.

24 Q And this is -- the house is finished at this point?

25 A The house is finished.

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

- 1 Q Are you -- you're living in the house at this
2 point. You moved in in January?
- 3 A On February 1st, yes.
- 4 Q So on February the 1st, you were living in the
5 house?
- 6 A Yes.
- 7 Q Okay. You're living in the house and you've gone
8 to get the last payment from the bank?
- 9 A So that Chris can be paid, yes.
- 10 Q So that Chris can be paid.
- 11 Now, Chris was owed what amount?
- 12 A A hundred --
- 13 Q At closing?
- 14 A A hundred and four thousand, five hundred dollars.
- 15 Q All right. And he was paid that amount that day?
- 16 A Yes.
- 17 Q And how much did Chris Phillips say on that day
18 after you had moved into the house -- after the
19 construction was done -- how much did he say that you and
20 Frank owed him in writing? Not in conversation, but in
21 writing?
- 22 A Zero.
- 23 Q Zero. Where did that number come from? Is it
24 typed in?
- 25 A No, it's written in.

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 Q And it's written in by Chris Phillips?

2 A I -- I don't know who wrote it in, but it's -- it's
3 written in.

4 Q Okay. Now, Mr. Phillips came by your house after
5 you had moved in and after you and Frank had separated?

6 A Yes.

7 Q And he made some repairs to a tub?

8 A He caulked the tub upstairs that he -- he didn't
9 physically do it, but it was caulked and it was fixed, yes.

10 Q And that caulking was a result of something you all
11 had done or was it a result of the construction process?

12 A I don't think it had been done, so it may have been
13 left out.

14 Q So it was not the unusual for a builder to come by
15 after a house is completed and perform minor repairs to a
16 house to make sure that his customers are satisfied?

17 A I -- I would operate that way; I would think that
18 that would be common, yes.

19 Q In fact, they have a term for it called a punch
20 list, right?

21 A Yes.

22 Q And punch list items are items that you discover
23 after you move in. The window is cracked, a corner is not
24 painted, some small item like that. So it's not unusual --
25 you've built houses before, have you not?

1 A Yes.

2 Q And have builders always come back and done punch
3 list items?

4 A Yes.

5 Q And Mr. Phillips came back and did similar things?

6 A Yes.

7 Q When you moved into the house in January of 2006,
8 was the major construction done on that house?

9 A Oh, yes.

10 Q Was the house finished?

11 A Yes.

12 Q Nothing else got done after February the 1st, 2006?

13 A No.

14 Q Now, you were asked to look at this drawing on a
15 couple of different occasions and point out specific rooms?

16 A Uh-huh.

17 Q Now, did the interior of the house change at all
18 from the -- from these plans to what you folks built?

19 Did -- were the rooms changed at all?

20 A No.

21 Q So rooms that are identified on this document --
22 excuse me, on Plaintiff's Exhibit 1A through 1D, they might
23 say bedroom, but they became something else?

24 A Yes.

25 Q So a bedroom may have become a media room or a

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 laundry room may have become something else?

2 A Yes.

3 Q But it wasn't anything unusual with the house, it
4 was just, Gee, we changed the name of it and had something
5 else done to it during the construction?

6 A Yes.

7 Q Do you all owe any additional funds?

8 MR. MYERS: Objection, Your Honor, may we approach?

9 (WHEREUPON there was a bench conference out of the
10 hearing of the jury and the court reporter.)

11 MR. MYERS: I withdraw the motion, thank you.

12 THE COURT: Withdraw the motion. Thank you.

13 Anything else?

14 MR. GRIFFITH: No, sir.

15 THE COURT: Mr. Myers, anything on redirect?

16 MR. MYERS: Very briefly, Your Honor.

17 **REDIRECT EXAMINATION**

18 By Mr. Myers:

19 Q Ms. Ferez, do you know what the word promise means?

20 MR. GRIFFITH: Objection.

21 THE COURT: Sustained.

22 MR. MYERS: Do you know --

23 THE COURT: I'm going to define all of these terms
24 for the jury.

25 ///

Suzanne Wilson (Ferez) - Cross-Examination by Mr. Griffith

1 By Mr. Myers:

2 Q Ms. Ferez, these change orders -- at anytime when
3 Chris Phillips and Chris Phillips' Builders put those
4 circular stairs in, put the media room in, put the sauna
5 in, in the front door, did you ever stop him from doing
6 them?

7 A No.

8 Q Did you ever say, Chris don't do that, you don't
9 have a written change order for that?

10 MR. GRIFFITH: Objection, Your Honor.

11 THE COURT: What's the objection?

12 MR. GRIFFITH: He is -- he is to provide the
13 written change order.

14 THE COURT: I'll allow the question.

15 THE WITNESS: My understanding was that if it was
16 going to impact our cost, we would be provided a change
17 order so we could make a decision as to whether or not to
18 proceed. So when -- so no, I didn't stop them.

19 By Mr. Myers:

20 Q Okay. So your testimony is, is that things that
21 were not a part of the contract, they wouldn't increase the
22 cost of construction? Is that your testimony?

23 A I don't --

24 MR. GRIFFITH: Your Honor --

25 THE COURT: Hold on.

Francis M. Ferez - Direct Examination by Mr. Myers

1 MR. GRIFFITH: Your Honor, he's going outside the
2 scope of cross-examination.

3 THE COURT: He's right. Sustained.

4 MR. MYERS: No further questions, Your Honor.

5 THE COURT: All right. You may step down.

6 THE WITNESS: Do I leave these here?

7 THE COURT: Just hand them back to the court
8 reporter.

9 THE COURT REPORTER: Thank you.

10 THE COURT: Mr. Myers, you may call your next
11 witness, please.

12 MR. MEYERS: Your Honor, we call Mr. Frank Ferez.

13 THEREUPON,

14 FRANCIS M FEREZ,
15 after being duly sworn, testified as follows:

16 THE CLERK: Have a seat. State your name for the
17 record, please.

18 THE WITNESS: My name is Francis Michael Ferez.

19 **DIRECT EXAMINATION**

20 By Mr. Myers:

21 Q How are you Frank?

22 A Fine.

23 Q Frank, I believe you and I have known each other --
24 we knew each other before this litigation, right?

25 A That's correct.

Francis M. Ferez - Direct Examination by Mr. Myers

- 1 Q If I go back and forth between Frank and Mr. Ferez,
2 will you take offense to me going by Frank?
- 3 A I don't.
- 4 Q All right. Frank, you've heard the testimony from
5 your wife, right? You were sitting there the whole time?
- 6 A From my ex-wife.
- 7 Q And you do not disagree that y'all built the house
8 in the Oaks?
- 9 A That's correct. We don't disagree.
- 10 Q You don't disagree that the two of you went to the
11 bank and got a loan for \$550,000?
- 12 A Correct.
- 13 Q And this was a construction-to-perm loan, right?
- 14 A That's right.
- 15 Q And the reason it was a -- and the reason that's
16 important is that that's how Chris Phillips and Phillips'
17 builders got paid, right?
- 18 A That's right.
- 19 Q All right. And you've seen the contract that we've
20 talked about that's been admitted as Plaintiff's Exhibit
21 No. 2?
- 22 A I have.
- 23 Q And this appears to be that contract?
- 24 A It does.
- 25 Q Frank, you're an intelligent man without us going

Francis M. Ferez - Direct Examination by Mr. Myers

1 into the facts of it. Do you understand the definition of
2 allowances -- don't you?

3 A I understand the definition of allowances.

4 Q All right. And allowances meaning that that's what
5 Chris Phillips was giving to you to build this house,
6 right?

7 A Allowances would be guidelines for which the house
8 would be built.

9 Q Okay. And he was also saying that if those
10 allowances were exceeded, there would be additional monies
11 owed on that contract, right?

12 A That is incorrect.

13 Q What did allowances mean, then?

14 A What the contract says is that any overage into the
15 amount of the allowances would only be executed or
16 considered an overage if accompanied by written order.

17 Q All right. Now, you've seen the photographs. This
18 wasn't your first time looking at these blueprints of this
19 house, is it?

20 A I have not seen the photograph of it.

21 Q All right. Step on down for me, if you don't mind?

22 (WHEREUPON Mr. Myers was repositioning the easel.)

23 MR. MYERS: Judge, this thing is a weapon.

24 By Mr. Myers:

25 Q If you don't mind, Frank, I'm going to slide it up

Francis M. Ferez - Direct Examination by Mr. Myers

1 here --

2 THE COURT: I thought you played football at one
3 time in your life.

4 MR. MYERS: I did, Your Honor.

5 THE COURT: And a little piece of paper is whipping
6 you?

7 MR. MYERS: These little small things are cutting
8 me. (Laughter).

9 By Mr. Myers:

10 Q Frank, does this appear to be the house that you
11 and Suzie had built in 2005, 2006?

12 A Right. That was the initial set of plans.

13 Q The initial set? So there's another set?

14 A It seems like I recall that there was some
15 alterations that we had to make with a local architecture
16 and the plans that we purchased, but I may be mistaken on
17 that; we've built three houses.

18 Q Okay. Well, three houses -- two more houses
19 outside of this one?

20 A That's correct.

21 Q Before this one, I'm assuming?

22 A That's correct.

23 Q And you're saying that you think that there is
24 another set of plans for this house?

25 A I'm saying I don't recall.

Francis M. Ferez - Direct Examination by Mr. Myers

1 Q Okay. You don't recall?

2 A Right.

3 Q All right. Can you show me a set of circular
4 stairs on this plan?

5 A I can't.

6 Q On this set of plans. Can you show me where the
7 media room was put in?

8 A Well, there's no interior plan here.

9 Q Hang on. That was unfair to you. For the record,
10 you were just looking at Plaintiff's Exhibit 1A. I'm going
11 to hand to you Plaintiff's Exhibit 1B.

12 Is -- does this appear to be a depiction of the
13 main floor of the house?

14 A That's correct.

15 Q Let me speed this thing up a little bit. What
16 floor was the media room on?

17 A The lower floor.

18 Q The basement?

19 A That's correct.

20 Q Let me get that one for you. Okay.

21 We're looking at Plaintiff's Exhibit 1D. Where was
22 the media room in this house?

23 A You see where this access door is? This area that
24 was already constructed was converted into the media room.

25 Q Now, there is no media room depicted on this set of

Francis M. Ferez - Direct Examination by Mr. Myers

1 plans, is it?

2 A There's a room.

3 Q It's not labeled media room, right?

4 A Correct. But this was a gym and it's not labeled
5 gym, either.

6 Q Yes. Well, it's called exercise room?

7 A Right.

8 Q Well, you go to the gym to exercise, don't you?

9 A Yeah.

10 Q So the fact that it's called an exercise room, it
11 would be a gym, right?

12 A Or a bedroom.

13 Q All right. So, here it says exercise?

14 A It says exercise or bedroom.

15 Q All right. But it is depicted on these plans?

16 A Correct.

17 Q Here, there is no depiction of a media room, right?

18 A There's no labeling of a media room, but there's a
19 room that's clearly depicted.

20 Q All right. The fact that when Chris Phillips built
21 this house or finished building this house, it contained
22 those stairs and the media room, right?

23 A Correct.

24 Q Now, there was also a sauna put in this room,
25 right?

Francis M. Ferez - Direct Examination by Mr. Myers

1 A No.

2 Q There was no sauna?

3 A Not in that room.

4 Q Where was it? I mean, I just want to make sure
5 there was a sauna somewhere in this house, right?

6 A The sauna was adjacent to this room.

7 Q Okay. I don't see it -- I don't see a sauna
8 labeled here; do you see one?

9 A No.

10 Q Okay. So a sauna was not labeled in this contract
11 at the time Chris Phillips got it, right?

12 A Correct.

13 Q Now, you may have a seat Frank. Thank you.

14 Now, Frank, you heard your ex-wife testify that
15 despite those things not being in the contract, they were
16 actually done, correct?

17 A That's correct.

18 Q Did you at any time tell Chris Phillips not to put
19 those stairs in?

20 A I did not.

21 Q Did you at any time tell him to not to put a media
22 room in?

23 A I did not.

24 Q Or a sauna?

25 A No.

Francis M. Ferez - Direct Examination by Mr. Myers

1 Q And there were some changes to the front door,
2 right?

3 A I don't recall those.

4 Q You don't know?

5 A I don't recall those.

6 Q All right. You were around during this time. You
7 hadn't left the house yet, right?

8 A That's correct.

9 Q Now, when y'all did move into the house, that would
10 have been after February 1st, 2006, correct?

11 A Right around that time.

12 Q And you left because of the accusations from your
13 wife from December 26th, 2006, correct?

14 A I left because we agreed to separate on December
15 26th.

16 Q All right. But you were gone out of the house on
17 December 26th, 2006, correct?

18 A That's correct.

19 Q So is it fair to say that you were only in this
20 house for about ten months?

21 A That's correct.

22 Q You, yourself, Frank Ferez, were only there for ten
23 months?

24 A That's correct.

25 Q So when Chris Phillips would have come back after

Francis M. Ferez - Direct Examination by Mr. Myers

1 December 26th, 2006, you weren't there, right?

2 A That's correct.

3 Q So anything that may have happened between Ms.
4 Suzie and Chris, you weren't there to know whether or not
5 the conversation took place or not, were you?

6 A That's correct.

7 Q All right. And you understand that this lawsuit is
8 filed on behalf of Chris Phillips, Chris Phillips'
9 Builders, Frank Ferez and Suzie Ferez, correct?

10 A Correct.

11 Q So there is no -- there is really nothing you can
12 tell this jury about what happened after December 26th,
13 2006, correct?

14 A That's correct.

15 Q Now, there was a time --

16 A Not --

17 Q There was a time --

18 A -- not first hand.

19 Q -- that before you left the house that Chris
20 Phillips did -- do you recall a bar being put in your
21 house?

22 A I recall two bars being put in my house.

23 Q All right. Where were they?

24 A One in the kitchen and one downstairs.

25 Q Now, do you recall a conversation with Chris

Francis M. Ferez - Direct Examination by Mr. Myers

1 Phillips around that bar regarding the overages that were
2 owed?

3 A I do not.

4 Q You just don't recall?

5 A That's correct.

6 Q Now, Frank, if a contract is signed, do you know
7 whether or not the terms of that contract can ever be
8 modified?

9 MR. GRIFFITH: Objection, Your Honor.

10 THE COURT: Sustained. That calls for legalese.

11 MR. MYERS: Your Honor, I have no further
12 questions.

13 THE COURT: Thank you.

14 Cross.

15 **CROSS-EXAMINATION**

16 By Mr. Griffith:

17 Q Mr. Ferez, when you signed a document on February
18 1st, 2006, you read the document, did you not?

19 A Yes, sir.

20 Q And it's in front of you now if you need to look at
21 it.

22 A This is a copy of the contract.

23 MR. GRIFFITH: May I approach, Your Honor?

24 THE COURT: You may.

25 ///

Francis M. Ferez - Direct Examination by Mr. Myers

1 By Mr. Griffith:

2 Q I'm going to hand you Plaintiff's Exhibit 5, can
3 you tell me what that is for the record?

4 A It's First Citizen's Contractors Borrowers
5 Affidavit and Release.

6 Q And was the house complete on that day?

7 A That's correct.

8 Q Had you moved into that house by then?

9 A Yes, sir.

10 Q And although -- all right.

11 And on that contract, it says that you owe Frank
12 Ferez more money?

13 A On the affidavit.

14 Q Yes.

15 A No, sir.

16 Q There's no affidavit there that says you owe Frank
17 Ferez more money as of that day?

18 A Owe Frank --

19 Q Frank Ferez, I'm sorry, Mr. Phillips, as of that
20 day?

21 A No, sir. It says that on that day he would have
22 been paid a hundred and four thousand, five hundred at
23 which time the building contractor had the five hundred and
24 fifty thousand that had been paid in full.

25 Q Okay. So as of that day, you owed him about

Francis M. Perez - Direct Examination by Mr. Myers

1 \$104,000?

2 A That's correct.

3 Q All right. And were there any change orders
4 outstanding? Did you ever receive a written change order?

5 A We never received a single written change order.

6 Q And does that document say -- where Mr. Phillips
7 has signed it, does it say that Mr. Phillips is owed any
8 more money?

9 A It says that Mr. Phillips is paid in full on this
10 day.

11 Q So you moved into the house then at the end of
12 January 2006, and that document was signed February 1st,
13 2006; is that correct?

14 A That's correct.

15 Q You moved out of the house on December 26th, 2006,
16 correct?

17 A That's correct.

18 Q Did you periodically go by that house after
19 December the 26th, 2006 until it was sold?

20 A I wouldn't say that I periodically went by, I went
21 by to get clothes and a couple of items at some point.

22 Q Okay. But you saw the house after -- after it was
23 completed and after you had moved out?

24 A That is correct.

25 Q And had there been any giant changes made to the

1 house?

2 A None.

3 Q Had there been anymore construction work done to
4 the house?

5 A None.

6 Q Who was responsible for the note payments to the
7 bank? Who was on the note to the bank, First Federal
8 (sic)?

9 A Both Suzie and myself.

10 Q So any promises to pay would have been an
11 obligation of both of you?

12 A That's correct.

13 Q Who owned the house?

14 A Both Suzie and myself.

15 Q So the house couldn't be sold without your consent?

16 A Correct.

17 Q The house couldn't be mortgaged without your
18 consent?

19 A Correct.

20 Q And additional work could not have been done to the
21 house without your consent?

22 A That's correct.

23 Q Did you ever give your consent to Mr. Phillips for
24 any additional work after February the 1st, 2006?

25 A No.

Francis M. Ferez - Direct Examination by Mr. Myers

1 Q All right. This -- this business here with the
2 rooms. Was anything structurally done to the house in
3 order to put in your media room?

4 A Not structurally done to the outside of the house,
5 no.

6 Q Right. So as far -- who put the media room in?

7 A Sub-contractors and -- yeah, I guess the media
8 sub-contractor that Suzie was referring to, which was AV,
9 used to be on Divine Street.

10 Q Did you pay them or did Mr. Phillips pay them?

11 A I paid AV.

12 Q So they came in and did the work that you requested
13 to do to turn a room labeled something else on this --

14 A To do the electronic work.

15 Q Okay. But the room was going to be built under any
16 circumstance so there's not real extra work for Mr.
17 Phillips to do?

18 A The room was going to be finished.

19 Q And again, never received a change order in
20 writing?

21 A Never received a change order in any form.

22 Q During the course of building this house, are there
23 instances where things change, not that cost more, but
24 things change that cost less?

25 A I would imagine so.

Francis M. Ferez - Direct Examination by Mr. Myers

1 Q All right. And so were you concerned when this
2 circular stairway went in and when this sauna went in that
3 you were not receiving a written change order?

4 A No, I wasn't. You know, a builder builds a house
5 for profit, not altruistically, and I would have assumed
6 that there were some things that came in under profit --
7 under allowance and some things that came over and that
8 would have mitigated the total profit line and he was
9 making money because, you know, he signed this document
10 saying he wasn't owed anything.

11 I would assume that if he was owed something, he
12 would have said it upon closing.

13 Q Okay.

14 MR. GRIFFITH: May we approach, Your Honor.

15 THE COURT: Sure.

16 By Mr. Griffith:

17 Q Mr. Ferez, will you look at that and tell me what
18 that is, please?

19 A It's a timeline for the construction of the house.

20 MR. GRIFFITH: We would move that into evidence,
21 Your Honor.

22 THE COURT: Any objections, sir?

23 MR. MYERS: Absolutely none, sir.

24 THE COURT: Without objection.

25 MR. GRIFFITH: That is Plaintiff's No. --

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE COURT REPORTER: Defense 1.

2 THE COURT: Should be Defendant's No. 1.

3 MR. GRIFFITH: It'd be Defendant's 1.

4 (WHEREUPON Defendant's Exhibit No. 1 was entered
5 into evidence.)

6 MR. GRIFFITH: That's all I have.

7 THE COURT: Anything on redirect?

8 MR. MYERS: No, sir, Your Honor.

9 THE COURT: All right. Mr. Ferez, you may step
10 down.

11 Next witness, please.

12 MR. MYERS: Your Honor, we call Chris Phillips.

13 THE COURT: Mr. Phillips, if you would, come
14 around.

15 THEREUPON,

16 CHRISTOPHER D. PHILLIPS, SR.,
17 after being duly sworn, testified as follows:

18 THE CLERK: Have a seat and state your name for the
19 record.

20 THE WITNESS: Christopher David Phillips, Sr.

21 **DIRECT EXAMINATION**

22 By Mr. Myers:

23 Q Chris, the only reason I moved the podium over here
24 is I want you to make sure -- I want to make sure the jury
25 hears your testimony, okay?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

- 1 Chris, where do you live?
- 2 A In Swansea, South Carolina.
- 3 Q What is your address?
- 4 A 200 Possum College Road.
- 5 Q How old are you?
- 6 A Forty-one.
- 7 Q Are you married?
- 8 A Yes, sir.
- 9 Q Do you have any children?
- 10 A Two.
- 11 Q How old are they?
- 12 A Twelve and six.
- 13 Q What's your wife's name?
- 14 A Jolynn.
- 15 Q Does she work?
- 16 A Yes, sir.
- 17 Q What does she do?
- 18 A She's a schoolteacher.
- 19 Q Now, is this area you live, is it commonly referred
- 20 to as the Horse's Neck?
- 21 A Yes, sir.
- 22 Q Did -- which high school -- did you graduate from
- 23 high school?
- 24 A Yes, sir.
- 25 Q Which high school did you go to?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

- 1 A Calhoun Academy.
- 2 Q What year did you graduate?
- 3 A '88.
- 4 Q Did you go to any other schooling beyond high
- 5 school?
- 6 A I went to Carolina for two years.
- 7 Q What did you major in?
- 8 A Business.
- 9 Q Chris, you're in construction, right?
- 10 A Yes, sir.
- 11 Q And do you own your own company?
- 12 A Yes, sir.
- 13 Q What is the name of your company?
- 14 A Chris Phillips' Builder's, Incorporated.
- 15 Q How long have you had your own company?
- 16 A Since 1999.
- 17 Q How long have you been in construction?
- 18 A Really, my whole life.
- 19 Q When you say your whole life, what's that?
- 20 A My dad's a contractor and I've been around
- 21 construction my entire life.
- 22 Q Got any brothers?
- 23 A One brother.
- 24 Q Is he also in construction?
- 25 A Yes, sir.

- 1 Q Is it safe to say your daddy taught you how to
2 build houses?
- 3 A Yes, sir.
- 4 Q And you enjoy it?
- 5 A I do.
- 6 Q You nervous today?
- 7 A A little.
- 8 Q All right. Don't worry, you're among friends.
9 What time does your typical day start?
- 10 A Doing what I have to do, usually around 6:30 or 7
11 o'clock.
- 12 Q Do you have any individuals who work for you and
13 Chris Phillips' Builders?
- 14 A Yes, sir.
- 15 Q How many do you have working for you?
- 16 A I have three.
- 17 Q Now, this Chris Phillips' Builders, it is -- is it
18 incorporated?
- 19 A Yes, sir.
- 20 Q So the official name is Chris Phillips' Builders,
21 Inc.?
- 22 A Chris Phillips' Builders, Inc.
- 23 Q What business -- do you guys build just
24 residential, commercial, or both?
- 25 A Both.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q How long have you been doing both?

2 A Really ever since I started the business.

3 Q Now, do you have a contractor's license?

4 A Yes, sir.

5 Q How long have you had a contractor's license?

6 A Since I've been in business in '99.

7 Q Has that license ever been revoked?

8 A No, sir.

9 Q You ever got in any sort of trouble with your
10 license?

11 A No, sir.

12 Q Since you've started your own corporation, do you
13 have any idea how many houses you've built or participated
14 in building?

15 A No. Well, over a hundred.

16 Q Have you ever had to file a lawsuit based on the
17 construction of any home?

18 MR. Griffith: Objection.

19 THE COURT: Objection to what?

20 MR. Griffith: I don't see how it's relevant.

21 THE COURT: It's not. Sustained. Let's move to
22 this one, please.

23 By Mr. Myers:

24 Q Now, Chris, I'm going to call your attention to the
25 lawsuit you filed in this case.

1 Do you recall when you first met Frank and Suzie
2 Ferez?

3 A Yes, sir.

4 Q When did you meet them?

5 A I would have met them in the first part of '05,
6 latter part of '04.

7 Q How did you come about to meeting them?

8 A They were referred to me -- I was on a builder
9 program in the Oaks and they were referred to me for
10 building -- to be a contractor and give them a price on
11 building the house.

12 Q Had you ever built any houses in the Oaks before?

13 A Yes, sir.

14 Q Now, when you met Frank and Suzie, I'm assuming
15 they came to you because they wanted you to build their
16 house.

17 A Yes, sir.

18 Q And did they have a set of blueprints, Chris?

19 A Yes, sir.

20 Q Did you have an opportunity to look at those
21 blueprints?

22 A I did.

23 Q I'm going to have you step down for a second,
24 Chris.

25 Does this appear to be the front, left, side, and

1 rear elevation of the house --

2 A Yes, sir.

3 Q -- that you built? And that's Plaintiff's Exhibit
4 1A.

5 I'm showing you now Plaintiff's Exhibit 1B. Does
6 this appear to be the main floor of the house?

7 A Yes, sir.

8 Q Can you orient the jury as to where the front door
9 is, how you walk in, and just in general orient them to
10 this first floor.

11 A This is the front porch, coming to the front door.

12 THE COURT: Mr. Phillips, can you move back a
13 smudge.

14 THE WITNESS: Oh, I'm sorry.

15 THE COURT: Thank you.

16 THE WITNESS: Front porch, front door, you come to
17 the foyer. And you go down the stairs to the basement or
18 up the stairs to the second floor. Through the great room
19 into what I call the nook. The kitchen come out to the ---
20 door next to the garage. Then the master bedroom, master
21 closet, master bath, the library or den here.

22 By Mr. Myers:

23 Q All right. Would that include the first floor of
24 this residence?

25 A Yes, sir.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q How much square footage is the first -- was on the
2 first floor?

3 A On the plan, it's 2,274.

4 Q All right. I'm going to hand you this, Plaintiff's
5 Exhibit 1D -- well, let's go to 1C first. Does this appear
6 to be the second floor of the house?

7 A Yes, sir.

8 Q How about explaining the second floor of the house
9 to the jury?

10 A This is coming up the stairs to the main floor.
11 You have a bedroom on the right and two bedrooms on the
12 left and a shared bath. This was over from the open
13 railing down to the main -- great room down stairs.

14 Q All right. Does that conclude everything that's on
15 the second floor?

16 A Yes, sir.

17 Q All right. I'm going to hand you Exhibit 1D. Does
18 this appear to be the lower level?

19 A Yes, sir.

20 Q All right. Kind of tell the jury a little bit
21 about the lower level.

22 A Well, this is like coming from the main level
23 downstairs and went into the rec room. This is where the
24 bar was built. This is the exercise room, this is the
25 closet where the sauna was put in.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 This is the bathroom downstairs and this is where
2 the media room's at, in line with this wall all the way
3 across. And this is the section where the media room was.

4 Q All right. Now, you heard Mr. Ferez testify that
5 there were two bars in the house. Do you know where the
6 other -- where's the bar here on this floor?

7 A There was a bar built here.

8 Q All right.

9 A Cabinets along --

10 Q How about the second bar?

11 A It's upstairs in the kitchen.

12 Q When you say kitchen, you're going back to the
13 first floor?

14 A Yes, sir.

15 Q Where was that bar?

16 A Right here.

17 Q What's -- what was the total square footage of the
18 entire house, Chris?

19 A The total square footage is around forty --
20 forty-four hundred.

21 Q Okay. Did you just get that just by adding in the
22 main floor, the second floor and then the --

23 A Yes, sir.

24 Q -- and the bottom floor?

25 A Right.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q You can have a seat, Chris. We're going to come
2 back to this, but the courtroom isn't big enough for me to
3 talk about it right now.

4 A Yes, sir.

5 Q You okay?

6 Now, Chris, prior to -- first of all, were these --
7 was this the only set of plans to this house?

8 A Yes, sir.

9 Q Had you ever seen any other set of plans to this
10 house?

11 A No, sir.

12 Q Prior to contacting the Ferezes, had you ever built
13 a house like this before?

14 A Not identical, but I mean --

15 Q Did you have experience in building a similar
16 house?

17 A Oh, yes, sir.

18 Q Now, was this a custom built -- what is commonly
19 referred to as a custom-built house?

20 A Yes, sir.

21 Q All right. And by custom, what does custom built
22 mean?

23 A Built to the owner's specifications.

24 Q Now, after you first met with Frank and Suzie, did
25 they ask you to build them this house?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Yes, sir.

2 Q Explain the process from when you met them and when
3 you took the plans to -- and the events leading up to
4 getting in -- setting up the contract?

5 A Well, we met and talked and found out what kind of
6 materials they wanted inside, hardwood floors or granites
7 or tiles or culture model; getting all the particulars for
8 the inside. Worked the price up based on when I figured
9 for the allowances and come up with the total price to
10 build the house.

11 Q Now, how long after getting the plans did you
12 figure up how much it would cost to build a house?

13 A Honestly, I'm not sure. Probably three weeks to a
14 month or somewhere.

15 Q Did you eventually enter -- did you eventually
16 present Mr. and Ms. Ferez with a contract?

17 A Yes, sir.

18 Q I'm going to hand you Plaintiff's Exhibit No. 2.
19 Does this appear to be the contract you presented to them?

20 A Yes, sir.

21 Q What is the date of that contract, Chris?

22 A March the 10th, 2005.

23 Q And that -- did all the parties sign that contract?

24 A Yes, sir.

25 Q Were there any questions regarding that contract?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Not that I can recall, no, sir.

2 Q All right. Now, did you enter into that contract
3 just as Chris Phillips or did you enter into it as Chris
4 Phillips and Chris -- and Phillips' Builders?

5 A Chris Phillips' Builders.

6 Q Now, did -- did Suzie or Frank ask you to clarify
7 any of the terms of that contract?

8 MR. Griffith: Objection, Your Honor. The
9 contract's been signed. Anything that went before the
10 contract is contained within the contract and filed into
11 parole evidence.

12 THE COURT: Sustained.

13 MR. MYERS: Your Honor, if I may be heard just very
14 briefly. One of the issues -- or may we approach, Your
15 Honor --

16 THE COURT: Go ahead. I'll give you a little
17 leeway.

18 MR. MYERS: Your Honor, one of the issues that
19 they're raising is about the contract and some of the
20 conversations that were -- were about the law specific
21 is --

22 THE COURT: I know what the law is.

23 MR. MYERS: Yes, sir. So what -- I believe that
24 these questions are relevant regarding whether or not the
25 party's understood or whether or not it was ambiguous.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE COURT: I'm going to sustain the objection.

2 Move along.

3 By Mr. Myers:

4 Q Now, do you recall --

5 THE COURT: Sustained the objection.

6 MR. MYERS: I'm sorry?

7 THE COURT: Sustain the objection, not my
8 objection.

9 By Mr. Myers:

10 Q Chris, do you recall when you started work on this
11 house?

12 A Around March the 13th or 14th.

13 Q Now, is there a section in that contract entitled
14 allowances?

15 A Yes, sir.

16 Q Explain to the jury what allowances mean.

17 A Allowances are -- that's how you come up with the
18 total money to build a house. I mean, you have to have
19 parameters to come up with a total price. The allowances
20 were as follows on the plans. I mean that's -- that's how
21 you -- if you don't set an allowance, I mean, you can go
22 spend \$20,000 on lights and -- but you still could -- if
23 you want -- like in this instance, a six thousand light
24 fixture allowance, they spend twenty, I mean, that blows
25 my -- the total price of the house.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q Now, in addition to the light fixtures, what were
2 the other allowances in the contract?

3 A Starting from the top? It was clearing and
4 excavating.

5 THE COURT: Hold on a second.

6 MR. GRIFFITH: Your Honor, the contract says what
7 the contract says. It's -- it's in evidence as plain as it
8 can be and what the allowances are, are in the contract.
9 He doesn't need to read those.

10 THE COURT: Where we going with this? I mean, the
11 allowances are what they are.

12 MR. MYERS: Yes, sir, Your Honor, the fact that
13 this whole contract is about exceeding the allowances. I'm
14 going to ask the client --

15 THE COURT: The allowances or the change orders?
16 Which one is it?

17 MR. MYERS: Both, Your Honor.

18 THE COURT: I'll allow the question.

19 MR. GRIFFITH: Thank you, Your Honor.

20 By Mr. Myers:

21 Q Tell the jury about what you allowed in this
22 contract?

23 A The clearing and excavating, \$2,300; had 250 per
24 thousand for brick; 13.50 per square foot material and
25 labor for the stone work; \$4,500 granite allowance; \$6,000

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 light fixture allowance; five thousand appliance allowance;
2 \$20 per yard for the carpet installed; \$3 per square foot
3 material only of ceramic tile; \$6,500 for outside concrete;
4 \$4,500 for the lift station for the sewer and running the
5 line to the road; six thousand for plumbing fixtures;
6 three, fifty material only for hardwood floor; 2500 for
7 hardware; 1800 for shower door and mirrors; and \$15 per
8 opening for faux finish.

9 Q Okay. Thank you, Chris.

10 MR. MYERS: Your Honor, at this time, I would like
11 to ask permission to publish the contract to the jury.

12 THE COURT: Well, you know, Mr. Myers, normally the
13 way I do it, if you're going to continue to ask questions,
14 it's hard for them to listen and look and -- let's just
15 wait. All of that's going back to them in just a little
16 while --

17 MR. MYERS: Yes, sir.

18 THE COURT: Strike that. When they start
19 deliberating. Unless there's something specifically --
20 I'm feeding you out of the same spoon I feed all lawyers.

21 MR. MYERS: Yes, sir. Yes, sir, I understand.
22 I'll withdraw the request.

23 By Mr. Myers:

24 Q Now, Chris, were you the general contractor for
25 this project?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Yes, sir.

2 Q And by general contractor, would subcontractors
3 have been working for you?

4 A Yes, sir.

5 Q And subcontractors, I'm assuming would be instances
6 like framing?

7 A The framing is my employees.

8 Q The flooring?

9 A Yes, sir.

10 Q Okay. Now, Chris, did Mr. And Ms. Ferez exceed the
11 allowances in the contract?

12 MR. GRIFFITH: Objection.

13 THE COURT: What's the objection?

14 MR. GRIFFITH: Your Honor, on February 1st, he said
15 they did not -- well --

16 THE COURT: I'm going to allow that.

17 By Mr. Myers:

18 Q Did they, in fact, exceed the allowances?

19 A Yes, sir.

20 MR. MYERS: If I may approach, Your Honor?

21 THE COURT: You may.

22 By Mr. Myers:

23 Q Chris, I'm going to hand you what has been marked
24 as Plaintiff's Exhibit No. 3. Do you identify these
25 documents?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Yes, sir.

2 Q What are -- tell the jury what those documents are?

3 A That is the cost which is exceeding the allowances.

4 Q All right. Tell the jury what -- about how much
5 the Ferezes -- Mr. And Ms. Ferez exceeded the terms of the
6 contract.

7 MR. GRIFFITH: Objection, Your Honor.

8 THE COURT: I'm going to allow it. Obviously, you
9 get to cross-examine him. He made that statement.

10 Go ahead.

11 THE WITNESS: The -- each one or the total?

12 By Mr. Myers:

13 Q Each one.

14 A Each one. On the clearing and excavating, we had
15 an allowance of 2,300. The actual cost was 5,220. That's
16 a difference of 2,920.

17 The light fixture allowance was 6,000. The total
18 cost was 6,206.81.

19 The ceramic --

20 THE COURT: Hold on a second.

21 Mr. Foreman, ladies and gentlemen, y'all step back
22 in your jury room for just a second, please.

23 (WHEREUPON the jury left the courtroom at 4:34
24 p.m.)

25 THE COURT: Mr. Myers, isn't your lawsuit based on

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 the change orders, i.e., the spiral staircase, the sauna
2 and the media room? Where have we talked about -- where is
3 there any evidence about allowances --

4 MR. MYERS: Your Honor, it is both, essentially.
5 That's what this entire contract -- this entire suit is
6 about, that he provided them a contract and he allowed them
7 or gave them certain allowances. They exceeded those
8 allowances. And, Your Honor, in paragraph six of the
9 plaintiff's complaint --

10 THE COURT: I see it. You cover it. Allowances is
11 covered in --

12 MR. GRIFFITH: Your Honor?

13 THE COURT: Yes, sir?

14 MR. GRIFFITH: If we may, while the jury is out, I
15 don't want to beat this horse any harder, but if we -- as
16 we discussed in Your Honor's chambers, we've got a contract
17 and we've got an affidavit.

18 THE COURT: Yes, sir. The affidavit says you don't
19 owe me anymore money.

20 Now, after he signs the affidavit, he brings a
21 lawsuit saying you exceeded the allowances and you made
22 these change orders. I don't think the affidavit is a
23 contract, but it certainly is a sworn statement saying they
24 don't owe anymore money and now he's saying they do owe
25 more money. So obviously, he's got to explain that to the

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 jury. He may have to explain it to me. But, I don't think
2 that precludes him from testifying and trying to prove his
3 allegation that \$22,000 and change is a result of overages
4 on the allowances as well as the change order. But the
5 affidavit is pretty strong evidence, to me.

6 MR. GRIFFITH: It --

7 THE COURT: But I don't think it precludes him from
8 saying they still owe me money. I mean that's like telling
9 somebody, you don't owe me, but then out of the other side
10 of the mouth saying you do owe me.

11 MR. GRIFFITH: Well, all of these -- and the vast
12 majority of these --

13 THE COURT: Overages --

14 MR. GRIFFITH: Overages, these changes -- the
15 bills --

16 THE COURT: Allowances.

17 MR. GRIFFITH: Well, the bills that you get from
18 the folks where you're buying the material, the invoices,
19 all of them are dated prior to the Ferezes moving into the
20 house and certainly they're all dated prior to February
21 1st, 2006. I don't see --

22 THE COURT: And he could have presented that to
23 them.

24 MR. GRIFFITH: He could have. But he did not and
25 made the representation, not only to the Ferezes, but made

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 the representation to the bank and did so under oath. So I
2 would respectfully suggest to Your Honor that it is a
3 contract and that there is a third-party beneficiary and
4 that is the bank.

5 THE COURT: Well, I'm going to allow him to go into
6 it, but, you know, he's certainly not very tasteful up
7 here, listening to it as the judge to allow someone to
8 build a house, go to the bank and say, you don't owe me
9 another dime, and then sue them for over \$2200 (sic). I
10 think we'll have to get around a directed verdict on all of
11 that, but I'll --

12 MR. GRIFFITH: Thank you, Your Honor.

13 THE COURT: I'm going to let him --

14 MR. MYERS: Your Honor, if I may be just briefly
15 heard just based on --

16 THE COURT: I'm going to let you do it.

17 MR. MYERS: Yes, sir, and I understand that, Your
18 Honor, and I think that the Court is correct that it goes
19 to the weight of the evidence and not the admissibility.

20 THE COURT: Exactly what I just said. I just said
21 you'll have to -- at the directed verdict stage, you're
22 going to have to argue pretty hard to me. That doesn't
23 mean I'm going to do anything. I'll just make you argue
24 hard.

25 Go ahead, bring them back.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 (WHEREUPON the jury entered the courtroom at 4:38
2 p.m.)

3 THE COURT: Who has a child situation at 5:30?

4 (WHEREUPON a juror raised her hand.)

5 THE COURT: What time do you have to pick her or
6 him up?

7 THE JUROR: I'd probably have to leave here at
8 5:30.

9 THE COURT: Leave here at 5:30?

10 THE JUROR: Yes, sir.

11 THE COURT: We're good to go. I'm going to make
12 sure that we leave here before 5:30.

13 THE JUROR: Someone said five.

14 THE COURT: Who said five?

15 THE JUROR: I don't know, I heard it.

16 THE COURT: Is 5:30 okay with you?

17 THE JUROR: Yes, sir.

18 THE COURT: I'll have you out of here before 5:30.

19 THE JUROR: Okay. Thank you.

20 THE COURT: Mr. Myers?

21 MR. MYERS: Thank you, Your Honor.

22 By Mr. Myers:

23 Q Chris, we left off, you were telling the jury about
24 how Mr. And Ms. Ferez exceeded the allowances. How about
25 pick back up where you left off.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A The ceramic tile allowance was \$3 per square foot
2 and that varied drastically with all the invoices -- we had
3 a big range of numbers. I'd have to pull the invoices to
4 see, but --

5 Q Do you have the invoices with you?

6 A Yes, sir.

7 Q All right. How about -- are they here right now?
8 How about pull those invoices out.

9 A The total difference is \$5,272.98.

10 Q And is that an invoice with that?

11 A That's all the invoices added up. I went through
12 and gave them a credit for everything that was less than \$3
13 per square foot and everything they picked out was over \$3
14 a square foot, I added up and that's where the total number
15 came up along with the extra labor of putting the tile in
16 the bathroom.

17 Q And that was just for the tile?

18 A Yes, sir.

19 Q Wasn't any other item?

20 A The outside concrete, we had a \$6500 allowance and
21 it was \$7,745.

22 Q Is there an invoice for that?

23 A Yes, sir.

24 Q All right. Are they in that packet?

25 A Yes, sir.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

- 1 Q All right. Did they exceed anything else?
- 2 A Putting the lift station in. There was a 4500
- 3 allowance and the total cost was 5396.40, a difference of
- 4 896.40.
- 5 Q Is there an invoice for that?
- 6 A Yes, sir.
- 7 Q Is it in that stack of documents?
- 8 A Yes, sir.
- 9 Q Did they exceed anything else?
- 10 A The plumbing fixtures. There was a 6,000 allowance
- 11 and the total price was \$7,723. That would be a difference
- 12 of \$1,723.
- 13 Q You have an invoice for that?
- 14 A Yes, sir.
- 15 Q Is it in those documents?
- 16 A Yes, sir.
- 17 Q Did they exceed anything else?
- 18 A Hardware. There was a 2500 allowance and it was
- 19 2523.32, a difference of 23.32.
- 20 Q Is there an invoice in there for that?
- 21 A Yes, sir.
- 22 Q And did they exceed anything else?
- 23 A The shower door and mirrors. There was an 1800
- 24 allowance and the total cost was 2565.15.
- 25 Q Now, those invoices, who incurred the additional

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 amount over the allowances?

2 A The Perezes.

3 Q All right. Who paid the difference?

4 A I did.

5 Q Have you been reimbursed for that difference?

6 A No, sir.

7 MR. MYERS: Your Honor, at this time we would move
8 into evidence what has been previously marked as
9 Plaintiff's Exhibit 3.

10 THE COURT: Subject to the objections you made
11 earlier?

12 MR. GRIFFITH: Yes, sir.

13 THE COURT: And your cross-examination.

14 MR. GRIFFITH: Thank you, Your Honor.

15 (WHEREUPON Plaintiff's Exhibit 3 was entered into
16 evidence.)

17 By Mr. Myers:

18 Q Now, Chris, going back to the allowances, the ones
19 that you just named, were there any objections to any of
20 the work that you did?

21 A No, sir.

22 THE COURT: What's the total on the allowances
23 overages.

24 THE WITNESS: The total on the allowances was
25 \$13,048.66.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 By Mr. Myers:

2 Q Now, did they ever complain to you about the tile?

3 A No, sir.

4 Q Did they ever complain to you about the light
5 fixtures?

6 A No, sir.

7 Q Did they before complain to you about anything
8 that's in Plaintiff's Exhibit 3?

9 A No, sir.

10 Q Did they authorize this work?

11 A Yes, sir, they picked it out.

12 Q Now, Chris, the contract called for change orders?

13 A Yes, it did.

14 Q Now, tell the Court -- tell this jury what change
15 orders mean?

16 A A change order is, if you do something that's not
17 within the contract, you write a change order up with the
18 price and stuff on it.

19 Q Now, was any part of the contract modified?

20 A Yes, sir.

21 Q Did you have to do any additional work that was not
22 originally contemplated in the contract?

23 A Yes, sir.

24 Q What did you have to do?

25 MR. GRIFFITH: Objection, Your Honor.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE COURT: I'm going to overrule it. Go ahead.

2 THE WITNESS: Well, we put in a set of circular
3 stairs off of the back deck. That was from a discussion --
4 originally it was not on the plan and we weren't going to
5 put it in and then once they thought about it, being able
6 to get in the backyard in case something happened to the
7 kids a lot quicker, they wanted to put in a set of stairs
8 off the back deck.

9 MR. MYERS: If I may approach, Your Honor?

10 THE COURT: You may.

11 By Mr. Myers:

12 Q Chris, I'm going to hand to you what has been
13 previously marked as Plaintiff's Exhibit No. 4. Outside or
14 beyond the circular stairs, was there any other things that
15 were not originally contemplated or in the contract?

16 A Yes, sir.

17 Q What are they?

18 A The front door cost was 891.-- \$800.91. The doors
19 in the kitchen, she decided to put a -- it's called like a
20 double bead is what you call it, they modified the doors.
21 The hood in the kitchen, it was like a big -- not barrel
22 shape, but it was a big hood over the stove. And then the
23 cabinet we did in the hall, that was originally a closet, a
24 coat closet and then Melba Jackson, they got her to help
25 her pick things out, she suggested to turn that into a

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 cabinet with glass shelves with a light in it to display
2 things instead of having a coat closet because they had one
3 in another part of the house coming in from the garage.

4 It was three additional paint colors in the house
5 than what we allowed. The -- all the drywall patches in
6 the media room, the A.V., the company that he had hired to
7 do all the audio video work, they had to go in and knock
8 some holes and stuff to get the wires pulled after it was
9 done, so we had to get those patched in.

10 And then in the media room itself, he wanted to
11 raise the floor once they got everything laid out with the
12 TV and chairs and everything. We built the floor up and
13 then we had to build cabinets. The A.V. guy asked and we
14 had to do cabinets in the -- in the media room to
15 accommodate all their speakers and everything and their
16 equipment racks and the sauna, they bought the sauna and
17 asked me if we could put it in as an afterthought.

18 And the -- gave them -- instead of putting columns
19 in the great room, I gave them credit for it. And the
20 display center is a charge of 432.48.

21 Q Now, Chris, were these things above and beyond the
22 initial contract?

23 A Yes, sir.

24 Q Did -- who paid for this additional work?

25 A I did.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q So you were -- your testimony is that you incurred
2 a cost for doing that additional work?

3 A Yes, sir.

4 Q Are there invoices to show the jury for the
5 additional work that you did on the contract?

6 A Yes, sir.

7 Q What amount did the additional work come to?

8 A \$9,883.39.

9 MR. MYERS: Your Honor, at this time, we would move
10 into evidence what has been previously marked as
11 Plaintiff's Exhibit 4.

12 MR. GRIFFITH: Objection.

13 THE COURT: I'll allow it.

14 MR. MYERS: Thank you.

15 (WHEREUPON Plaintiff's Exhibit 4 was entered into
16 evidence.)

17 By Mr. Myers:

18 Q Now, Chris, at any time when the additions to the
19 front door were made, did Frank or Suzie ever stop you?

20 A No, sir.

21 Q Did they ever tell you not to make those additions?

22 A No, sir.

23 Q Did they approve the additions?

24 A Yes, sir.

25 Q Now, the circular stairs, I believe you heard Suzie

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 testify, maybe you can clarify what she says was not done
2 on the house.

3 How about step down for me one more time. I'll try
4 to make this as painless as possible.

5 THE COURT: Number, please.

6 By Mr. Myers:

7 Q Chris, I'm showing you Plaintiff's Exhibit 1A.

8 Where were the circular stairs put on this house?

9 A They were added on this deck off of this corner
10 straight down.

11 Q Now, what -- was there a conversation about adding
12 the circular stairs?

13 A Yes, sir.

14 Q Now, did you do those unilaterally or did you do it
15 with their permission?

16 A With their permission.

17 Q Was there a reason behind putting circular stairs
18 on the house?

19 A Yes, sir, because that would be the only -- the
20 kitchen was behind the doors labeled -- they're looking at
21 the -- if kids were in the yard and something happened, she
22 would have so go through the great room, down two flights
23 of stairs, and through the basement to come out. So they
24 asked me to get prices on putting the stairs in. And I had
25 checked around and had prices ranging from 7,000, 4,000 and

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 it came up to \$1,800.

2 Q So explain what these circular stairs are. What
3 were they made of?

4 A Wrought iron.

5 Q All right. And they were just a set of circular
6 stairs just coming down from the deck?

7 A Came off of this corner and it's just a round set
8 of stairs. They come off of that corner and straight down.

9 Q Now, you were here when Ms. Ferez testified. She
10 said that she doesn't recall this being on the house.

11 First of all, what is this?

12 A That is a fireplace in the breakfast nook.

13 Q Okay. Now, so, when you factored in or you added
14 up your cost, did you add -- did you add on for this?

15 A No, that was over here. That wasn't to be built in
16 the house.

17 Q Thank you, Chris, you can have a seat.

18 Now, this media room, Chris, what kind -- what are
19 you saying -- what are you telling this jury about
20 reimbursing you or paying you for the media room. Was
21 there a media room contemplated in the original contract?

22 A The -- we finished a section off in the basement,
23 but it had no -- no provisions for speakers or -- it was
24 just drywall and studs in that section. I told you where
25 it was walled off in that section of the plan, and all that

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 was brought to me after the fact that once the A. V. People
2 got involved and so much space and stuff they had, they
3 wanted to raise the floor and they had an equipment rack
4 out of metal -- I mean it was a nice media room.

5 A lot of equipment and had a metal rack that had to
6 be built -- we had to cut a hole out and put it in another
7 part of that basement that's unfinished. We had to put all
8 the speaker boxes in, had to build DVD and movie holders in
9 the closet that was in the corner; build a shelf for a
10 microwave, all of that cost was incurred for the media
11 room.

12 Q Now, at any time did -- when you did this
13 additional work, even to the media room, did you believe it
14 was authorized?

15 A Yes, sir. I mean, we stood right there and he -- I
16 gave him a price on doing the floor just on it's on.

17 Q Based on that work, do you believe the terms of the
18 written contract were modified?

19 A Yes, sir.

20 Q Was there anything put in writing about the
21 additional work?

22 A No, sir.

23 Q Now, you understand the contract called for written
24 change orders?

25 A Yes, sir.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q But your testimony is that there were no written
2 change orders, correct?

3 A It was not. I did not write a single one.

4 Q Did Frank or Suzie ever complain to you about the
5 work or over all construction of this house?

6 A No, sir.

7 Q Did they appear to be happy with your work?

8 A Yes, sir.

9 Q Did you ever have to go back to fix anything,
10 Chris?

11 A Yes, sir.

12 Q When did you have to go back to fix -- or to do
13 work?

14 A Around the first -- the first of March in '07, it
15 was -- Suzie called me. She noticed a dark spot on the
16 side of the house. It was a hardy plank siding, stone and
17 brick foundation home and she said she noticed a dark spot
18 on the side and I went back to look. And when I did, I
19 could tell it was damp and after a little -- just looking
20 and thinking about where the water lines and stuff were, we
21 put the hardy plank siding on the sub -- put the hardy on,
22 or nailed it, come through a side of the stud and punctured
23 the water line, but the nail had sealed the hole when it
24 happened. It never leaked.

25 When it rusted -- basically after a year, it rusted

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 out and started leaking and that was the reason the water
2 was -- it was a spread -- it was causing a leak. And when
3 I got the plumber there and we cut the slect rook out of
4 the kitchen, that was what happened. A nail had punctured
5 a half inch CVPC line and they were still in the
6 neighborhood, so they secured it and we had to patch the
7 sheetrock and repaint.

8 Q Now, did you go back after the closing to do this
9 work? Just talking about the leak? Was this before or
10 after the closing on February 1st, 2006?

11 A Absolutely.

12 Q Now, we're going to get into the closing, but I
13 just want to know right now, did you ever -- was that after
14 you -- after the closing that you went back for the leak?

15 A That was a little over a year.

16 Q Now, you've heard a characterization of a punch
17 list stuff. That repairing of the leak, was that
18 considered to be punch work?

19 A No, sir, that was just something that happened that
20 no one had a clue about.

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

22 THE COURT: You may.

23 By Mr. Myers:

24 Q Chris, I'm going to hand to you Plaintiff's Exhibit
25 No. 6. Do you recognize this document?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Yes, sir.

2 Q What is that?

3 A That is the repair bill from the leak in the wall.

4 Q What is the date of that repair bill?

5 A March 2nd, 2007.

6 Q Now, did you incur that bill?

7 A Yes, sir.

8 Q Did you charge Mr. and Ms. Ferez for doing that

9 repair work?

10 A No, sir.

11 Q Why didn't you?

12 A That was something that happened under -- under my

13 watch. I had to fix it. It wasn't anything to do with

14 them.

15 Q How about the second document? What is that?

16 A That's the paint bill for painting the spots in the

17 kitchen.

18 Q All right.

19 MR. MYERS: Now, Your Honor, at this time, we would

20 move into evidence what has previously been marked as

21 Plaintiff's Exhibit 6.

22 MR. GRIFFITH: No objection.

23 (WHEREUPON Plaintiff's Exhibit 6 was entered into

24 evidence.)

25 ///

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 By Mr. Myers:

2 Q So, Chris, should the jury consider the amounts on
3 that exhibit when considering what you are alleging your
4 damages to be?

5 A No, sir.

6 Q You're not looking to recover for going in to do
7 that work?

8 A No, sir.

9 Q Now, let's go to this closing. Do you recall --

10 MR. MYERS: Your Honor, I don't --

11 By Mr. Myers:

12 Q Do you recall the loan closing?

13 A Yes, sir. I mean, with all the work we've been
14 doing lately.

15 Q Okay. Do you recall -- would you agree with the
16 testimony that the loan closing took place on February 1st,
17 2006?

18 A Yes, sir.

19 Q Where did it take place?

20 A Originally, I thought it was at the bank, but after
21 all the work we've been doing, it was done at their
22 attorney's office.

23 Q Who was present for the loan closing?

24 A Frank and Suzie and myself and honestly, I don't
25 remember. Their attorney had to be in there.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 Q Did you have an attorney?

2 A No, sir.

3 Q Now, let me ask you this, when you went in to the
4 loan closing -- well, we'll get to that in a second.
5 Scratch that.

6 Going back to the terms of the contract, how were
7 you paid on this contract?

8 A I was paid by First Citizen's Bank as the work
9 progressed -- work was completed, I called and requested a
10 draw. They sent out an inspector. He would check off the
11 percentage of the work done and they would write me a
12 check.

13 Q All right. Can you explain this draw system to the
14 jury?

15 A The houses -- a draw system is set up on a 100
16 percent scale and as you complete work on the house, an
17 inspector goes through and checks off each item. He may
18 give you a partial percentage instead of a full if it's not
19 completely done. Or he will check off the entire item and
20 give you a full percentage. And say 10 percent after the
21 work's done when they come out and look, the house cost
22 550,000, you'd get 10 percent of 550, that would be 55,000
23 they would pay me for the work we've done.

24 Q Now --

25 A And that's continuing and went through the whole

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 course of it all.

2 Q Do you recall how many draws you had gotten before
3 the loan closing on February 1st, 2006?

4 A Honestly, I do not without looking at the --

5 Q Was it more than one?

6 A Yes, sir.

7 Q More than two?

8 A Yes, sir.

9 Q Fair to say it was several draws before you closed?

10 A It was probably six.

11 Q Now, at the time of closing, were you owed
12 additional monies under the \$550,000 contract?

13 MR. GRIFFITH: Objection.

14 THE COURT: What's the objection?

15 MR. GRIFFITH: The objection is that it is beyond
16 the four corners of the document that he signed on February
17 6th -- February 1st, 2006, in which he says he was not owed
18 any additional money.

19 THE COURT: I'm going to let you cross-examine him
20 on that.

21 MR. GRIFFITH: All right.

22 By Mr. Myers:

23 Q Chris, at the time of the loan closing, was
24 there -- just talking about the 550,000, Chris, was there
25 an additional draw owed to you under that contract?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Yes, sir.

2 Q Now, there's been a lot of talk, Chris, so let's
3 talk about it. This Plaintiff's Exhibit No. 5. Do you
4 recognize this document?

5 A Yes, sir.

6 Q What is that?

7 A A Contractor's Borrowers Affidavit and Release.

8 Q Who signed that document, Chris?

9 A I did.

10 Q Does it show the final invoice that you were owed
11 under the \$550,000?

12 A The -- 104,500.

13 Q Now, Chris, you understand that this lawsuit is all
14 about allowances or overages on allowances and additional
15 work, do you not?

16 A Yes, sir.

17 Q At the time you signed this contract, is it your
18 testimony that you were owed an additional amount for
19 overages?

20 A Yes, sir.

21 Q Is it your testimony that you were allowed an
22 additional amount for the extra work regarding the media
23 room, the staircase, the sauna?

24 A Yes, sir.

25 Q Now, Chris, you see that there's a zero in this

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 affidavit?

2 A Yes.

3 Q Why -- if additional monies were owed, why did you
4 sign this affidavit?

5 A Because they had to get the loan closed so they
6 could get moved in. That's the big thing.

7 Q So, were there any other reasons why you signed
8 this affidavit?

9 A No, sir.

10 Q Did they ever express to you that they knew that
11 you were owed overages?

12 A Say that again, Stan.

13 Q Did Suzie or Frank ever indicate to you that they
14 knew they owed you an additional amount of money?

15 A Yes, sir.

16 Q So can you read the very last sentence above this
17 Contractor's affidavit, Chris?

18 A The undersigned hereby waives and releases their
19 right to file a mechanic's lien against said property.

20 Q At the time that you signed this Contractor's
21 Affidavit, what was your understanding of the purpose of
22 this affidavit?

23 A That they had paid me to -- their note for the bank
24 was paid in full.

25 Q And when you say the note to the bank, what amount

1 are you referring to?

2 A The 550,000.

3 Q Did you ever -- did you -- did they ever insinuate
4 to you that they knew they owed you additional monies?

5 A Yes, sir.

6 Q So at the time you signed this affidavit and
7 release, were you indicating to the bank that there was no
8 liens from any third party that you were aware of?

9 A Yes, sir.

10 Q You understand -- but you're telling this jury that
11 you were owed some overages; is that correct?

12 A Yes, sir.

13 Q And you're telling this jury that you were owed
14 additional money, correct?

15 A That's correct.

16 Q Now, let's talk about the overages -- you testified
17 that there were conversations and the defendants insinuated
18 to you that they owed you additional money?

19 A Yes, sir.

20 Q Tell the jury about those conversations. How many
21 conversations were there, first of all?

22 A It was -- I recall two. One with Frank and one
23 with Suzie.

24 Q Tell this jury about the conversation you had with
25 Frank?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A It was after they had moved in. The sauna -- Frank
2 had called me one evening, the sauna wasn't working. And
3 once we talked about or thought about what was probably
4 going on, we felt it was an electrician issue and it was a
5 breaker situation; and he got it fixed and the sauna
6 worked. While we were there, he made the statement, he
7 said, I know we owe you some extra money. He said, Get it
8 figured up so I can get you paid because I don't like owing
9 anybody any money.

10 Q Now, Chris, was this after the loan closing on
11 February 1st, 2006?

12 A Yes, sir.

13 Q Now, the sauna, was it something that was wrong
14 with the sauna?

15 A It was a breaker that -- I forget the details, the
16 electrician fixed it. It was a breaker that wasn't put in
17 for one of the wirings in the sauna. I'm not sure exactly
18 what the detail was, but --

19 Q That's conversation number one. You said that
20 there was another conversation --

21 THE COURT: When was that conversation, number one?

22 THE WITNESS: That was -- I'm sorry.

23 That would have been -- of course, I don't know an
24 exact date.

25 THE COURT: Just approximate.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE WITNESS: Pretty close to after they moved in.

2 THE COURT: Close to after they moved. And when
3 was their move in?

4 THE WITNESS: Probably around the first -- first
5 week of February or so after the closing.

6 THE COURT: About mid-February of two thousand
7 and --

8 THE WITNESS: Six.

9 THE COURT: All right.

10 By Mr. Myers:

11 Q Now, the next conversation, tell the jury about
12 that conversation.

13 A Suzie had called me about the screens. And I went
14 by to take care of it for her and when we were on the
15 phone, she told me, she said, I know we owe you some extra
16 money. She said, Would you get us the invoices so we can
17 get you paid out of our money -- they were going to
18 court -- before we have to split everything. And I told
19 her I would.

20 It still took me a few months to get it to her, but
21 I did get it figured up.

22 Q Now, at the time Suzie called you, was Frank in the
23 house at this time?

24 A No, sir.

25 Q Did you ever have any conversations with Frank when

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 you went back about the screens?

2 A No, sir.

3 Q Did you, in fact, get the numbers figured up?

4 A Yes, sir.

5 Q Did you ever -- did you provide something to Suzie
6 about the additional amount that was owed?

7 A I did.

8 MR. MYERS: Your Honor, I'm going to ask to
9 approach to hand him -- hand Mr. Phillips Plaintiff's
10 Exhibit 7. Do you recognize this document?

11 A Yes, sir.

12 Q What is that, Chris?

13 A That's the invoice for all the overages.

14 Q Now, who did you -- did you give that document to
15 Frank or Suzie?

16 A I gave it to Suzie.

17 Q When did you give that document to her?

18 A About, within -- on or around August 13th of '08.

19 Q And is this a document, the representation that
20 you're making about the additional monies that were owed,
21 the allowances and the additional work?

22 A Yes, sir.

23 THE COURT: August 13 of what?

24 THE WITNESS: '08.

25 THE COURT: '08?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE WITNESS: Yes, sir.

2 MR. MYERS: Now, Your Honor, at this time, we would
3 move into evidence Plaintiff's Exhibit 7.

4 MR. GRIFFITH: I object, Your Honor.

5 THE COURT: All right. I'm going to allow it in.

6 (WHEREUPON Plaintiff's Exhibit 7 was entered into
7 evidence.)

8 By Mr. Myers:

9 Q Now --

10 THE COURT: When did you talk to her about the
11 screens?

12 THE WITNESS: Probably a few months prior to this
13 date. I don't remember the exact date.

14 THE COURT: Go ahead.

15 By Mr. Myers:

16 Q Now, Chris, prior to that document, had you had any
17 conversation with Frank or Suzie about that amount of
18 money?

19 A Not the total amount, no, sir, because I hadn't had
20 it figured up yet.

21 Q Why did it take you -- if the loan closing took
22 place on February 1st, 2006 -- you agree with me on that,
23 right?

24 A Yes, sir.

25 Q And that document is dated August 13, 2008,

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 correct?

2 A Yes, sir.

3 Q Why did you wait so long to get that to them, to
4 get it in writing to them?

5 A Well, I -- I work by myself. I don't have a
6 superintendent. I do the majority of it myself, all the
7 running, office work. We were busy, we were building too
8 many houses and they had promised to pay me. We'd had
9 conversations about it and they're good people. I mean, we
10 got along real well. I never thought they wouldn't have
11 paid me. I mean it just never crossed my mind they
12 wouldn't pay me. I never had that feeling about them or
13 from them. I mean they were -- everything went well the
14 whole time.

15 Q Now, Chris, so it is your testimony that before
16 August 13, 2008, Frank and/or Suzie promised to get you
17 paid?

18 A Yes, sir.

19 Q And did you --

20 THE COURT: Hold on -- when -- now you said you
21 only had two conversations, one with Frank in mid-February
22 '06, shortly after they moved in when the fuse was out on
23 the sauna, that was the one with him. And Suzie when the
24 screens were put up.

25 THE WITNESS: Yes, sir.

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE COURT: So those are the two promises.

2 THE WITNESS: That was the two conversations, yes,
3 sir.

4 THE COURT: That was it?

5 THE WITNESS: Yes, sir.

6 By Mr. Myers:

7 Q And let me clarify this, Chris, at the time --
8 let's go back first to 2006, at the time of the closing.
9 Was there any indication from Suzie or Frank that you would
10 get paid your overages?

11 A Say that again.

12 Q Prior to -- I'm trying to go back to address a
13 concern here. February 1st, 2006, was the closing date,
14 correct?

15 A Yes, sir.

16 Q That was also the date that you signed the
17 affidavit, correct?

18 A Yes, sir.

19 Q And you previously testified that at the time you
20 signed that affidavit, there was conduct from -- on the
21 part of Frank and/or Suzie that you believed you would be
22 paid your overages?

23 A Yes, sir.

24 Q Now, when you talk about these two conversations,
25 are you now talking about after the loan closing?

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 A Those two conversations were after, yes, sir.

2 Q So, is it your testimony, Chris, that there were
3 conversations at or around the time of closing and then two
4 conversations after the loan closing?

5 A After the loan closing --

6 Q That's what I'm asking.

7 A Yes, sir.

8 Q Now, these -- the conversations that you had, these
9 promises to pay, did you rely on those promises?

10 A I mean, I took them for their word. We never had
11 any issues before. I mean, I would have never thought it
12 would have been an issue.

13 Q If you didn't think that -- well, first of all,
14 let's go back. You filed this lawsuit in August of 2009.
15 You recall that?

16 A Yes, sir.

17 Q Why did it take so long before you filed the
18 lawsuit?

19 A When I gave this invoice to Suzie, she said that
20 Frank was bringing the boys back that afternoon and she
21 would talk to him and they would call me. And I never
22 heard from them after that point.

23 I called and left Frank numerous messages on his
24 cell phone.

25 I called his office and left one with his

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 secretary. He was on a conference call. She said that she
2 would give him the message and have him call me. I never
3 heard from him and I just -- I mean I -- I didn't want to
4 go -- I didn't want to have to get into a court situation.
5 Like I said, they were -- they're still good people. I
6 mean, we worked great together. I hated to have to go this
7 route.

8 Q So is it your testimony that you waited to file the
9 lawsuit based on them promising to pay you?

10 A Yes, sir.

11 Q Had they not made those promises to you, would you
12 have filed the suit sooner?

13 A Yes, sir.

14 Q Chris, how is your company doing right now?

15 A Kind of like everybody else in construction, it's
16 really slow.

17 Q Now, you know, as a builder that you have the right
18 to what's called a mechanic's lien?

19 A Yes, sir.

20 Q Did you ever think to file a mechanic's lien
21 against the house?

22 A No, sir.

23 Q Why not?

24 A I didn't think I would have to. Like I said,
25 they -- I really and truly felt like they were going to pay

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 me.

2 MR. MYERS: Beg the Court's indulgence.

3 Thank you, Your Honor. No further questions.

4 THE COURT: One question I have: Was the money
5 owed to you at the time of closing? Is that your -- is
6 that your testimony?

7 THE WITNESS: Yes, sir, it was owed. I just didn't
8 have it figured up. I didn't know what the total amount
9 was.

10 THE COURT: That was early February of 2006 and you
11 didn't file the lawsuit until August 20, 2009?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. Thank you.

14 Mr. Foreman, ladies and gentlemen, we're going to
15 recess for the evening. Please don't discuss the case,
16 don't deliberate.

17 All right. Let's start at 9:45 in the morning.
18 I've got a 9:15, thirty-minute hearing. I don't want y'all
19 to sit in there and wait.

20 Let's start at ten o'clock. That gives you a few
21 extra minutes, gives me a few extra. So we'll start at ten
22 o'clock in the morning, we'll complete the testimony of
23 this witness and that's probably it, huh?

24 MR. GRIFFITH: Probably is, Your Honor. We may
25 have to put him up for a question or two, but --

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

1 THE COURT: Once he completes his testimony, there
2 will be very very little testimony left and then we'll be
3 in a position to do the arguments and instructions to you
4 and you'll have the case early tomorrow.

5 So ten o'clock. Everybody got a ride? Anybody
6 need a ride? Everybody okay?

7 (WHEREUPON there was no response from the jury.)

8 THE COURT: All right. Thank you. Everybody else
9 remain seated and y'all can step out.

10 (WHEREUPON the jury left the courtroom at 5:12
11 p.m.)

12 THE COURT: All right. Anything for the record
13 before we break for the evening by the Plaintiff?

14 MR. MYERS: No, sir, Your Honor.

15 THE COURT: How about the defendants?

16 MR. GRIFFITH: No, sir, Your Honor.

17 THE COURT: Mr. Phillips, you're right in the
18 middle of your testimony so it will be improper for you to
19 discuss your testimony with your lawyers or anyone else
20 tonight. So do not, please. We'll see you back in the
21 morning. We'll start right at ten o'clock.

22 Gentlemen, see y'all in chambers please.

23 (WHEREUPON court was in recess until the following
24 day.)

25 ///

Christopher D. Phillips, Sr. - Direct Examination by Mr. Myers

TUESDAY, MARCH 13, 2012

1
2 THE COURT: All right. Mr. Phillips, you want to
3 come have a seat right here?

4 Anything for the record by the Plaintiff before we
5 start back.

6 MR. MYERS: No, sir, Your Honor.

7 THE COURT: By the defendant?

8 MR. GRIFFITH: Only Ms. Ferez has a sick child this
9 morning; she is on the way. She got a late start on
10 account of the child, but she will be here.

11 MR. WHITT: And she's coming from Charleston

12 THE COURT: What's her new name?

13 MR. GRIFFITH: Wilson.

14 THE COURT: Wilson?

15 MR. GRIFFITH: Yes, sir.

16 THE BAILIFF: Judge, are you ready for them?

17 THE COURT: Yes, sir.

18 (WHEREUPON the jury entered the courtroom at 10:10
19 a.m.)

20 THE COURT: Good morning, good morning. Y'all
21 please be seated. You cold ma'am? You okay? Third juror
22 off, ma'am, the one that was shivering. (Laughter).

23 THE JUROR: Yeah.

24 THE COURT: Please don't get cold. If you get
25 cold, raise your hand, I'll make one of these bailiffs give

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 you his coat, how about that?

2 I hope everyone had a pleasant evening, I had a
3 good trip home. Got up early and came back this morning.
4 We've been going since about 9:15. We had some motions in
5 some other cases; so we're running just a few minutes late
6 and I apologize for that.

7 So we're going to continue on with the
8 cross-examination of the Plaintiff.

9 Mr. Griffith, if you'll do that and then we'll see
10 where we stand.

11 MR. GRIFFITH: Thank you, Your Honor.

CROSS-EXAMINATION

12
13 By Mr. Griffith:

14 Q Mr. Phillips?

15 A Yes, sir.

16 Q How are you this morning?

17 A Pretty good.

18 Q Good. Mr. Phillips, yesterday was a long day for
19 everybody and I just want to review a couple of things with
20 you. You said yesterday that you had some negotiations
21 with the Ferezes prior to entering to the contract to build
22 the house; is that correct?

23 A Yes, sir.

24 Q And then you entered into a written contract with
25 the Ferezes to build a house?

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 A Yes, sir.

2 Q I'm going to hand you --

3 MR. GRIFFITH: If I may approach, Your Honor?

4 THE COURT: You may.

5 Oh, ladies and gentlemen of the jury, I forgot to
6 mention one thing. Ms. Suzie Ferez, the codefendant, she
7 had some issues with a sick child this morning. That is
8 why she is not here. She is on the way, but don't hold
9 that -- that's the reason she's not here yet. Something
10 beyond her control.

11 By Mr. Griffith:

12 Q This is marked as Plaintiff's Exhibit No. 2; can
13 you identify that for the jurors please?

14 A That is the contract between my company and Frank
15 and Suzie Ferez.

16 Q All right. And in that contract, you told us
17 yesterday, that you had given certain allowances to the
18 Ferezes; is that correct?

19 A Yes, sir.

20 Q And on page two of that contract, the allowances
21 are listed?

22 A Yes, sir.

23 Q And is that all of the allowances that are given to
24 the Ferezes in this contract?

25 A Yes, sir.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 Q Okay. Now, on that same second page, down toward
2 the bottom, there is a -- and I'm going to read it if
3 you'll read along with me to make sure that I'm reading it
4 correctly. Any alteration or deviation from above
5 specifications involving extra costs will be executed only
6 upon written orders. Period. Did I read that correctly?

7 A Yes, sir.

8 Q All right. Now, yesterday you told us that there
9 are no written change orders?

10 A That's correct.

11 Q And you didn't issue written change orders although
12 there were changes to the allowances; is that correct?

13 A We basically went over them, everything we listed
14 before.

15 Q All right. And when you put something in a -- this
16 is your contract; this is not Ferezes contract; is that
17 correct?

18 A Yes, sir.

19 Q You drew this contract or had a lawyer draw it for
20 you?

21 A That's correct.

22 Q All right. And you handed it to them?

23 A Yes, sir.

24 Q Now, when you asked for a written change order,
25 that protects both you and the person that you're building

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 the house for, does it not?

2 A Yes, sir.

3 Q Because when you have something in writing, there's
4 no question you know what you're getting. And so that's
5 why this written change order is in here.

6 A Yes, sir.

7 Q But yet you did not have any written change orders
8 and you're asking for \$22,000 in changes?

9 A In addition to what they went over, yes, sir.

10 Q Okay. But we don't have anything in writing, so
11 it's simply your word versus their word?

12 A Well, the -- like the bills, I mean they show --

13 Q But you don't have any written change orders --

14 THE COURT: Hold on a second. Whoa. Whoa.

15 THE WITNESS: No, sir.

16 MR. GRIFFITH: Okay.

17 THE COURT: Hold on a second. You were explaining
18 your answer, go ahead and finish explaining about the
19 bills.

20 THE WITNESS: Like the tile for instance. I mean,
21 you had \$3 a square foot for tile and some of the tile was
22 anywhere from ten, eleven, twelve, thirteen, fifteen --
23 numerous numbers, so that would have been an overage, but
24 no, sir, it's not any change orders written.

25 ///

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 By Mr. Griffith:

2 Q Okay. So they didn't know in advance in writing
3 that these overages were occurring, did they?

4 A Well, when they picked them out at like the Tile
5 Center, they would have known that was the price of it,
6 but --

7 Q In writing from you, they did not know they were
8 going over their allowances, did they?

9 A No, sir.

10 Q So it would have been somewhat of a surprise to
11 them to get a bill from you after you had closed on this
12 loan almost three years later to show that there were
13 overages; were there not?

14 A Yes, sir, but it's like the -- like -- I hate to
15 keep saying tile, but the tile was picked out and put in
16 before I even had the bills. I mean, I didn't know what
17 the tile cost.

18 Q Okay.

19 MR. GRIFFITH: May I approach Your Honor?

20 THE COURT: You may.

21 By Mr. Griffith:

22 Q Mr. Phillips, I'm going to hand you Plaintiff's 3
23 and Plaintiff's 4?

24 A Okay.

25 Q Can you tell me what they are, please, sir?

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 A Exhibit 3 is the cost of exceeding the allowances
2 and Exhibit 4 is the additions to the contract, work that
3 we did that was not discussed prior to the contract.

4 Q Can you tell me what the total of the Exhibits 3
5 and 4 is? You need a piece of paper and pen?

6 MR. GRIFFITH: May I approach?

7 THE COURT: You may.

8 THE WITNESS: \$22,931.05.

9 By Mr. Griffith:

10 Q Give me that again, please, sir?

11 A \$22,931.05.

12 Q \$931.05. Have I got it written correctly up here?

13 A Yes, sir.

14 Q Okay. I'll put a comma here.

15 MR. GRIFFITH: One more time, Your Honor?

16 THE COURT: Sure.

17 By Mr. Griffith:

18 Q Now, I'm going to hand you Plaintiff's Exhibit No.
19 7, and if you'll tell me what that is, please, sir?

20 A That's the invoice that I presented to them with
21 all the bills that come up with this number.

22 Q All right. What's the total on that, please?

23 A \$22,908.73.

24 Q Which one of these figures is correct, sir?

25 A The invoice that I presented them.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 Q Now, I'm not an adding genius, but because there's
2 a lot of numbers there, I added those numbers up last night
3 and I'm going to hand you a piece of paper.

4 MR. GRIFFITH: I beg the Court's indulgence for one
5 second, Your Honor.

6 By Mr. Griffith:

7 Q I added those numbers up on that invoice that you
8 gave them and I came up with \$22,163.73. Do you want to
9 take a second and add those up?

10 A I can, yes, sir.

11 Q All right. There's your pen and there's your
12 paper.

13 MR. MYERS: Your Honor, is there a calculator or
14 something that might be of some benefit as well?

15 THE COURT: It's Mr. Griffin's witness; he can
16 handle it however he wants.

17 By Mr. Griffith:

18 Q I'm going to let you look at my computer, Mr.
19 Phillips?

20 THE COURT: Hold on. Hold on one second.

21 MR. GRIFFITH: May I approach Your Honor?

22 THE COURT: You may.

23 By Mr. Griffith:

24 Q There's a new calculation Mr. Phillips. If you
25 want to check your -- actually check your numbers on the

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 bill against those numbers.

2 THE COURT: May I have the calculator?

3 MR. GRIFFITH: That's an Excel spreadsheet.

4 THE COURT: Do we have a calculator in the
5 courtroom? He needs one; let him have it.

6 Thank you ma'am. Thank you.

7 By Mr. Griffith:

8 Q So you are correct?

9 A \$21,663.73.

10 Q Yes, sir. So the bill that you gave to the Ferezes
11 in 2008 was incorrect by that amount of money?

12 A By the math, yes, sir.

13 Q May I approach Your Honor?

14 THE COURT: Yeah.

15 By Mr. Griffith:

16 Q Mr. Phillips, were you billing a lot of houses in
17 2006? What was the total houses you were building? 2005,
18 I'm sorry.

19 A I had -- yes, it was more than one going.

20 Q Okay. And if there was more than one going at that
21 time, you had bills coming in for various jobs, correct?

22 A Yes, sir.

23 Q From various suppliers and various subcontractors?

24 A Yes, sir.

25 Q How did you determine which bill went to which job?

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 A The job address or name is on the invoices.

2 Q Okay. And it's on all of the invoices that you
3 have there in front of you?

4 A Yes, sir.

5 Q All right. And I want to point one out to you and
6 ask you if you can tell me about that one. There is an
7 invoice. I believe it is in Plaintiff's Exhibit No. 3 from
8 Triumph Auto Glass. Can you see if you can find that one
9 for me, please?

10 A Yes, sir. Yes, sir.

11 Q And can you tell me where on Triumph Auto Glass it
12 shows the Ferez's address or the Ferez's name?

13 A That's not an invoice. That was a tablet I was
14 using to add up the differences in the tile.

15 Q Okay.

16 A It was a notepad that I had that I made my notes on
17 to come up with the total of the credits and overages for
18 the tile.

19 Q So this thirty-one, seventy-two, ninety-eight
20 figure is noted there on 3C on the top of Exhibit 3. Look
21 on the top of Exhibit 3.

22 A Yes, sir.

23 Q You see 3C?

24 A Uh-huh.

25 Q So that's the number that's added up there?

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 A Yes, sir.

2 Q Okay. And those tile invoices, specific tile
3 invoices, where will I find them?

4 A Attached to Exhibit 3C in Exhibit 3.

5 Q Okay. So this is just a notepad that you worked
6 with to show the total --

7 A This was --

8 Q -- not a separate invoice?

9 A No, sir. That was just what I added up the numbers
10 on.

11 Q Now, I want to call your attention to Exhibit 3C --
12 3, the gains, on the cover sheet; and look at 3.C?

13 A Yes, sir.

14 Q Now, we've established thirty-one, seventy-two,
15 ninety-eight is the tile cost?

16 A Right.

17 Q And you've added \$2,100 there in for additional
18 labor. Can you look at your contract and tell me where
19 labor is an allowance that's an overage?

20 A It's not in it.

21 Q So it should not be counted in the overages then,
22 should it?

23 A That is what the tile -- the tile guy charged me
24 for doing the extra work from all the extra tile that they
25 got. The pencils and whatnot to put the stuff in the

1 bathroom.

2 Q But labor's not included in any of your overages
3 and listed in your contract. Please take a chance -- take
4 a minute and look.

5 A No, sir, it's not.

6 Q So really, that \$2,100 shouldn't be a part of it,
7 should it?

8 MR. MYERS: Objection, Your Honor, that's --

9 THE COURT: Hold on. Whoa. What's the objection?

10 MR. MYERS: Mischaracterization of the testimony.

11 THE COURT: Overruled. Should the \$2,100 be
12 included?

13 THE WITNESS: I mean, in my opinion, yes, sir.

14 That's not material but it was --

15 By Mr. Griffith:

16 Q Okay.

17 A -- part of the tile work.

18 Q All right. Now, did you give any credits to the
19 Ferezes for any of the work that you did that was less than
20 the amount that you were -- on the charges?

21 A Yes, sir. Like the tile, I went through the tile
22 bills, that's what the Triumph Auto Glass is and I gave
23 them -- every square foot of tile they bought that was
24 under allowance, I gave a credit for.

25 Q Okay.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 A And everything that was over \$3 a square foot, I
2 added to that number..

3 Q So the allowances go both ways?

4 A Yes, sir.

5 Q Okay. Now, the Ferezes, when they paid you the
6 final payment on the final bill and you totaled everything
7 up. There was an overage that they had paid you, correct?

8 A No, sir.

9 Q Okay.

10 MR. GRIFFITH: May I approach Your Honor?

11 THE COURT: You may.

12 By Mr. Griffith:

13 Q I am going to hand you what's been marked
14 Defendant's Exhibit No. 2; and if you could tell me what
15 that says, please.

16 A Five, fifty-three, three, seventy-five.

17 Q What is that?

18 A That was the deposits that I made including the
19 bank wires and -- they gave me a check for \$3,600 for the
20 overage on the granite.

21 Q So that's not an overage that they paid you just in
22 general? That's not money that they paid you more than you
23 were entitled to under the \$550,000?

24 A No, sir.

25 Q All right.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 MR. GRIFFITH: Let's have this marked as Exhibit --

2 I move it into evidence.

3 MR. MYERS: Absolutely. No objection, Your Honor.

4 THE COURT: Entered with no objection, then.

5 (WHEREUPON Defendant's Exhibit No. 2 was entered
6 into evidence.)

7 By Mr. Griffith:

8 Q So that's been accounted for in this \$21,000?

9 A The --

10 Q That \$3,500 that's in Exhibit 2?

11 A No. That was -- that money is what they went over
12 on everything that they owe me for.

13 Q Okay. All right. Now, on February the 1st, 2006,
14 that was the day of the closing, right?

15 A Yes, sir.

16 Q And on February the 1st, 2006, you were finished
17 building this house?

18 A We had some punch things to do, yes, sir.

19 Q But you were finished building the house?

20 A Overall, yes, sir.

21 Q Okay. And punch items -- punch list items are just
22 minor corrections, minor paint jobs, minor little fixes?

23 A Right.

24 Q So, in fact, the Ferezes had moved into this house
25 prior to February the 1st, 2006?

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 A No, sir.

2 Q Really? When did they move in?

3 A I don't know the exact date, but we -- we were
4 still doing some work at the house to the best of my
5 recollection, the day of the closing.

6 Q Okay. But they moved in, according to your
7 knowledge, shortly thereafter?

8 A Yes, sir.

9 Q Okay. And on February the 1st, 2006, you signed a
10 Contractors and Borrowers Affidavit and Release, correct?

11 A Yes, sir.

12 Q And in that release, you said that you had been
13 paid in full?

14 A As far as the bank's money, yes, sir.

15 Q Well, it doesn't say as far as the bank's money
16 here in Plaintiff's Exhibit No. 5, does it?

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

18 THE COURT: You may.

19 By Mr. Griffith:

20 Q I want you to read starting right there, Also.

21 A Also, if applicable, receipt of payment from
22 Francis M. Ferez and Suzanne C. Ferez in the amount of zero
23 has been paid in full, all overages.

24 Q Okay. So it wasn't just the bank's money, it was
25 Mr. and Mrs. Ferez's money according to that affidavit,

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 right?

2 A Yes, sir.

3 Q That's what it says.

4 And so on that date, they didn't owe you any more
5 money according to what the affidavit that you signed and
6 swore to, correct?

7 A Yes, sir.

8 Q And you said yesterday that you signed that so you
9 could get them in the house?

10 A Get the loan closed and they could get moved in,
11 yes, sir.

12 Q So you were willing to tell a lie under oath to get
13 the Ferezes in their house?

14 A Well, in my opinion, I mean, they knew they owed me
15 for the stairs, they knew they owed me for a lot of
16 things --

17 Q No, sir. That was not my question.

18 MR. MYERS: Your Honor, he can have an opportunity
19 to explain that.

20 THE COURT: Well, he didn't answer the question.
21 Answer the question yes or no and you may explain.

22 By Mr. Griffith:

23 Q The question is, you were willing to tell a lie
24 under oath on the day of the closing that the Ferezes
25 didn't owe you anymore money when somehow or another you

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 thought that they did. Yes or no?

2 A Yes, sir.

3 Q And you said yesterday, I believe, that the whole
4 reason, your motivation for telling this lie under oath,
5 was to get the Ferezes in their house?

6 A Yes, sir, to get the loan closed so they could get
7 moved in.

8 Q Okay. Now, wasn't there a little bit of additional
9 motivation in there, Mr. Phillips? For telling that lie
10 under oath?

11 A What are you referring to?

12 Q I'm referring to the fact that on February 1st
13 2006, you got a check for a \$104,500?

14 A Yes, sir.

15 Q And if you hadn't signed this affidavit, you
16 weren't going to get that money, were you?

17 A That's -- that's correct.

18 Q So that's a pretty good motivator to tell a lie
19 under oath to get that \$104,500, wasn't it?

20 A Well, that was part of the -- that was the final
21 advance from the house, yes, sir.

22 Q Okay. But it also wasn't going to come to you if
23 you didn't sign this thing, was it?

24 A That's correct, yes, sir.

25 Q So it wasn't just for moving the Ferezes into the

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 house, it was, I'm going to get \$104,500 that motivated you
2 to tell this lie under oath?

3 A No, sir.

4 Q No, sir?

5 A We -- I wanted to get the loan closed for them. I
6 mean, that was a big thing. And plus, yeah, I mean, I get
7 to draw a check, too.

8 Q Yeah, \$104,500. Yeah, I don't know about you, but
9 that's pretty big money to me?

10 A It's money to anybody, yes, sir.

11 Q Okay. So it wasn't just out of the goodness of
12 your heart that you were telling this lie under oath?

13 A I was trying to get the loan closed. And yes, I
14 was getting a draw check, too.

15 Q Okay. Now, all the work had been done except the
16 punch list as of two -- as of February 1st, 2006?

17 A Yes, sir, overall.

18 Q Okay. Yesterday, you testified that you had two
19 conversations, one with Mr. Ferez and one with Mrs. Ferez
20 about, Hey, you owe me a little money; is that correct?

21 A Yes, sir. And it was also said at the closing.

22 MR. GRIFFITH: Your Honor, that's not responsive to
23 my question.

24 THE COURT: Well, he can explain. You can question
25 him about it.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 MR. GRIFFITH: Okay.

2 By Mr. GRIFFITH:

3 Q And who was it that said that at the closing?

4 A I don't remember the lady's name, but it was --

5 MR. GRIFFITH: Now that's hearsay, Your Honor.

6 THE COURT: Well, it -- if he said it, it's not.

7 Who said it? You or her?

8 THE WITNESS: I did, Your Honor.

9 THE COURT: There you go, that's not hearsay.

10 By Mr. Griffith:

11 Q And you said it to a lady, not to Mr. Ferez or not
12 to Mrs. Ferez?

13 A Well, it was made in general conversation at -- at
14 the closing. I mean, it was the money owed. I didn't know
15 how much it was at that time. I hadn't had a chance to
16 figure it up and I just made a statement that she said.
17 That's when -- that's when you --

18 Q Whoa. Now, that's --

19 THE COURT: Whoa. Now, you can't testify what
20 somebody else says, only what you say.

21 By Mr. Griffith:

22 Q Okay. So you were incorrect yesterday when you
23 said it was just twice that you mentioned it?

24 A Forgive me, yes, sir.

25 Q And yet, knowing that, in your mind that you were

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1 owed more money. You went ahead with the closing, willing
2 to lie under oath, and move ahead with this closing and
3 pick up that \$104,500 -- \$104,500 check?

4 A Well, I was under the assumption that -- like we
5 had talked, I mean, they were going to pay me.

6 Q Okay. And is there anything in writing that
7 indicates that they were going to pay you anything?

8 A No, sir.

9 Q So just what you say, just what you believed. And
10 everything else in writing says otherwise?

11 A And what they told me.

12 Q Okay. But they didn't -- you don't have any of
13 that in writing?

14 A No, sir.

15 Q Okay. No further questions.

16 THE COURT: Redirect?

17 MR. MYERS: Very briefly, Your Honor.

18 THE COURT: Yes, sir.

19 **REDIRECT EXAMINATION**

20 By Mr. Myers:

21 Q Chris, on yesterday, you testified about the
22 additional work, about the stairway, correct?

23 A Yes, sir.

24 Q Now, when you did the work regarding the stairwell,
25 was it an agreement between you and the Ferezes that you

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 would put that stairway in?

2 A Yes, sir. They wanted it put in so she could get
3 to the backyard quicker in case something happened to the
4 boys.

5 Q So in your -- was there a meeting of the minds when
6 you put that stairway in?

7 MR. Griffith: Objection.

8 THE COURT: Sustained. That's a thought. The jury
9 can determine that.

10 By Mr. Myers:

11 Q Did they -- how about for the sauna? Did they
12 agree to let you do the sauna?

13 A They purchased the sauna online, it was delivered
14 to the house; and we totes it to the basement; and we
15 installed it; and it had to be put in piece by piece.

16 Q The media room, did they agree on that?

17 A Yes, sir.

18 Q Now, these allowances, going back, who was
19 responsible for going to the store to pick out the
20 allowances that are in the contract? Who went to pick out
21 the tile?

22 A The materials?

23 Q Yes, sir.

24 A The homeowners.

25 Q All right. So would they have been aware of the

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 price of those items --

2 MR. GRIFFITH: Objection, Your Honor.

3 THE COURT: Sustained.

4 By Mr. Myers:

5 Q Did you know that they were --

6 MR. GRIFFITH: Objection.

7 THE COURT: Sustained. He can't testify about what
8 they know.

9 By Mr. Myers:

10 Q Have you ever gone into any of these facilities
11 prior to ever sending the Ferezes in there?

12 A Yes, sir.

13 Q Are the prices listed?

14 A Some of them are.

15 Q So the time that you went in, the prices were
16 listed on the items?

17 MR. GRIFFITH: Objection, Your Honor. That's a
18 mischaracterization of what he said.

19 THE COURT: Overruled.

20 By Mr. Myers:

21 Q At the time that you went in to do business with
22 these facilities, was the prices on those items?

23 A To the best of memory, yes, sir.

24 Q Now, Chris, during the course of construction,
25 before individuals can move into a house, is there a

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 document called a certificate of occupancy?

2 A Yes, sir.

3 Q Do you remember when the certificate of occupancy
4 was given on this house?

5 A Towards the end of January.

6 Q All right: So this --

7 THE COURT: Two thousand -- 2006?

8 THE WITNESS: 2006, yes, sir.

9 By Mr. Myers:

10 Q What is a certificate of occupancy?

11 A That is a letter from the county saying that all
12 the work has been completed, final inspection is done, and
13 it's okay to move in.

14 Q Okay. And you're sure that that -- so a matter of
15 weeks going back from February 1st, 2006, about how many
16 weeks prior to that did they had a certificate of
17 occupancy?

18 A Just a few days.

19 Q Okay. Now, you were asked questions about
20 Plaintiff's Exhibit 3 which should be up there in front of
21 you; do you see it?

22 A Yes, sir.

23 Q And you were also asked questions about Plaintiff's
24 Exhibit 7; do you see that up there?

25 A Yes, sir.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 Q Do you see anywhere on Plaintiff's Exhibit 7 where
2 it references outside concrete?

3 A No, sir.

4 Q Now, Exhibit -- Defense Exhibit No. 2, where Mr.
5 Griffith talked to you about granite; do you recall seeing
6 that exhibit?

7 A Yes, sir.

8 Q Are you asking this jury to compensate you for any
9 overages regarding the contract?

10 A No, sir.

11 Q So any figure that would be in reference to granite
12 on the Defense Exhibit No. 2, should that be included in
13 the jury's deliberation?

14 A No, sir.

15 Q Now, when you gave -- when you talked -- and let's
16 go back.

17 Is it your testimony that after the closing that
18 you only had two conversations with Mr. and Ms. Ferez about
19 the overages?

20 A Yes, sir.

21 Q All right. So when you were talking about the
22 conversation which Mr. Griffith indicated at the closing,
23 were you including that when you were asked yesterday about
24 the conversations you had?

25 A No, sir.

Christopher D. Phillips, Sr. - Cross-Examination by Mr. Griffith

1 Q All right. So when you had that final conversation
2 with Mrs. Ferez, you recall testifying that was in 2007?

3 A Yes, sir.

4 Q And your testimony is that you gave to her that
5 invoice?

6 A Yes, sir.

7 Q Did she ever respond back to you and tell you that
8 she had any discrepancies about the bill?

9 A No, sir. When I gave it to her, she said Frank was
10 bringing the boys home and they would discuss it and be
11 back in touch with me and I --

12 Q So after that date, did Frank ever call you to say,
13 Chris, I've got a problem with your invoices?

14 A No, sir.

15 Q Did they even give you any other alternate numbers?

16 A No, sir.

17 Q Did they even call you to tell you that they had a
18 problem with your numbers?

19 A No, sir.

20 Q Did you try and contact Mr. or Ms. Ferez after you
21 gave Ms. Ferez that invoice?

22 A I made numerous calls to Frank and left voicemails
23 on his cell phone and called the office. The secretary
24 said he was in a conference call and she'd give him the
25 message and have him call me and I never -- never heard

1 from him.

2 Q Now Chris, I want to make sure -- yesterday, we
3 went over testimony about you going back about this water
4 leak.

5 A Yes, sir.

6 Q Was that for punch-list work, Chris?

7 A Which --

8 Q When you fixed the water leak?

9 A The water leak she called me about when it was
10 dripping out the -- the off the pendant light was from
11 the -- what had happened was the water was getting splashed
12 out of the tub and it was running down the front of the tub
13 and getting in the floor and that's what was causing the
14 leak in the kitchen. The water leak that we fixed was when
15 the nail was in the pipe on the side of the house and she
16 called and it was a dark spot on the side of the house.

17 I went back and looked, assessed it and a nail had
18 been shot through the siding and penetrated the pipe. It
19 wasn't leaking at the time because it had the hole sealed
20 up and when it rusted out, it started spraying and that's
21 where the dark spot came from. We had to cut the sheetrock
22 out on the inside to access the pipe. As soon as we did,
23 you know, that was -- the nail was in the pipe, we knew
24 exactly what was going on, we fixed it and had to patch the
25 sheetrock and paint the walls and stuff to fix it.

1 Q Okay. Thank you, Chris.

2 MR. MYERS: No further questions.

3 THE COURT: All right. You may step down.

4 Next witness.

5 MR. MYERS: Plaintiff's case, Your Honor.

6 THE COURT: Mr. Foreman, ladies, and gentlemen of
7 the jury, that concludes the testimony on behalf of the
8 Plaintiff. I need to spend about five or ten minutes with
9 the lawyers before we move forward. So please step in the
10 jury room; we'll be right back out in a few minutes. Don't
11 discuss the case or deliberate. Thank you.

12 (WHEREUPON the jury left the courtroom at 10:50.)

13 THE COURT: Anything by the Plaintiff?

14 MR. MYERS: Nothing from the Plaintiff, Your Honor.

15 THE COURT: By the defendant?

16 **MIDTRIAL MOTIONS**

17 MR. GRIFFITH: Yes, Your Honor. We move for a
18 directed verdict please on all causes of action. First of
19 all, the Plaintiff is barred by the statute of limitations.
20 The final act was conducted on February 1st, 2006, and
21 according to his own testimony -- which we dispute -- but
22 according to his testimony, he knew they owed him
23 additional items as of February the 1st, 2006. He says
24 that we had two passing conversations; that it was no
25 lulling into a sense of, we're going to do something, we've

1 got to do something.

2 There are cases out there that say, Oh well, we're
3 going to get you papers that we can't find. There are
4 cases out there that say we're going to do different
5 things. There's no lulling into a sense of false security
6 and especially -- there's nothing to indicate that two
7 people agreed that they owed him any money. He says, I owe
8 you money, they say, get us the bills, let's see what we're
9 talking about. So there's no lulling here, there's no
10 opportunity for Mr. Phillips to rely on the fact that
11 time's passing, I'm not seeing any money; he's demanding
12 charge of collecting his own funds, and therefore,
13 forty-two months pass from the date of the closing to the
14 date that they bring this action and the statute of
15 limitations has run on their part.

16 THE COURT: Anything else?

17 MR. GRIFFITH: I have some other -- do you want to
18 piece-meal them, Your Honor, or -- you want to hear them
19 all?

20 THE COURT: Go ahead.

21 MR. GRIFFITH: They allege a fraudulent act. There
22 has been no presentation of a fraudulent act by anyone;
23 there has been no evidence of a fraudulent act; and we
24 would ask that if the case continues that Your Honor not
25 instruct the jury and dismiss the action based on a

1 fraudulent act.

2 THE COURT: Anything else?

3 MR. GRIFFITH: Finally, Your Honor, they have
4 alleged quantum meruit and based on the -- based on the
5 testimony, we are here simply dealing with this contract.
6 We have case law to give Your Honor, if you'd like to see
7 it, that says you don't -- you cannot have an action for
8 quantum meruit when you have an action for breach of
9 contract.

10 THE COURT: Thank you.

11 MR. GRIFFITH: Thank you.

12 THE COURT: All right, sir.

13 MR. MYERS: Yes, sir, Your Honor.

14 THE COURT: Mr. Myers.

15 MR. MYERS: If I may approach. I do have just a
16 memorandum of law for the Court.

17 Your Honor, in regards to this stage of the
18 proceeding, the Court is fully aware without me going into
19 very much detail the standard that is applicable here.
20 When examining a directed verdict, the Court is to examine
21 it in a light most favorable to the non-moving party, in
22 this case, obviously, Mr. Phillips and Phillips' Builders.

23 With regards to the statute of limitations, Your
24 Honor, the law is discovery of the breach, not the fact
25 that just --

1 THE COURT: Discovery of the breach?

2 MR. MYERS: Discovery of the breach, yes, sir.

3 THE COURT: He knew that -- he says that they -- he
4 knew they owed him more money when he closed the loan.

5 MR. MYERS: No, sir, Your Honor. If I may -- if I
6 may continue. Your Honor, the argument here is that from
7 the testimony of these witnesses, you heard Mr. Phillips
8 say that there was a conversation about the out -- the
9 overages and the additional work. You heard Ms. Ferez
10 testify that even into 2007, she said that, Yeah, I was
11 asking for the invoices, I was asking for them.

12 THE COURT: Wait a minute. Does it come upon the
13 defendants to beg him to tell him how much he owes when
14 the -- he alleges the contract has been breached?

15 MR. MYERS: It's not, Your Honor, but we believe
16 that that certainly is an act -- is a fact for the jury or
17 for the jury to determine.

18 The triggering event here -- we know that he went
19 back in 2007 to perform work under the contract. Mr.
20 Griffith on yesterday indicated that it was something that
21 he negligently did. The fact that they said that it was
22 something he negligently did, it would stand to reason that
23 the defendants would then have had a cause of action for
24 negligence against him. The law certainly does not operate
25 to give them the opportunity to file a suit for negligence

1 and then bar him.

2 THE COURT: This is not a negligence cause of
3 action; this is a breach of contract.

4 MR. MYERS: Your Honor, I'm not saying that it is a
5 negligent cause of action.. I'm simply saying --

6 THE COURT: Breach contract statute runs when the
7 contract has been breached or he should have known it was
8 breached. He closed the loan out on February 1, 2006 and
9 said they still owe me money. He didn't get them a bill
10 until 3/2/07.

11 MR. MYERS: Yes, sir. And Your Honor, they
12 reaffirmed the obligation even after December -- February
13 1st, 2006. They reaffirmed the debt over into 2007. The
14 fact that they reaffirmed the debt basically means that
15 there is a triggering event from 2007 which would allow the
16 statute of limitations to run in 2010, not 2009.

17 THE COURT: Give me some law that says that.

18 MR. MYERS: Your Honor, the -- if you read the --
19 the memorandum.

20 THE COURT: I have.

21 MR. MYERS: We handed up to the Court -- on page --
22 or Argument Number 3, the second full paragraph, it says
23 that -- and this is citing Santee Portland Cement Company
24 versus Daniel International Company -- Incorporation. If
25 there is conflicting evidence as to whether a claimant knew

1 or should have known he or she had a cause of action, the
2 question is, one, for the jury.

3 Your Honor --

4 THE COURT: Mr. Myers, he testified he had the
5 contract, he closed it out on February 1, 2006, and they
6 still owed him money; i.e., the breach of the contract. Or
7 at least he should have known to go in there and figure out
8 the bill.

9 MR. MYERS: And Your Honor, our simple argument is
10 that's one for the jury to determine.

11 THE COURT: Thank you.

12 Anything else by the Plaintiff?

13 MR. MYERS: No, sir, Your Honor.

14 THE COURT: Mr. GRIFFITH?

15 MR. GRIFFITH: Your Honor, there is a Supreme Court
16 of South Carolina case.

17 THE COURT: What's the name of it?

18 MR. GRIFFITH: Gaymon, G-a-y-m-o-n, versus Richland
19 Memorial Hospital. That case stands for the proposition
20 and it overrules some of the cases that we talked about
21 yesterday. It says that this is not a jury question, a
22 question of -- of lulling, if you will, is not a question
23 for the jury; it is a question of law for the Court.

24 THE COURT: And that case was reaffirmed in the
25 case of Black versus Lexington School District Number Two.

1 MR. GRIFFITH: That's correct, Your Honor.

2 THE COURT: All right. You know, gentlemen --
3 ladies, gentlemen, I have been on the bench eight years and
4 I can't remember directing a verdict, but we are all aware
5 that Section 15-3-5-30 subsection 1 states that an action
6 or breach of contract must be brought within three years
7 from the date it accrued. It further goes on to say that
8 under the discovery rule, the breach of contract accrues on
9 the date the entering party, the Plaintiff here, either
10 discovered the breach or should have discovered the breach
11 through the exercise of reasonable diligence. So I find as
12 a matter of law that the statute ran -- started running or
13 on the date that it was closed out, February 1, 2006; and
14 that he thought that they owed him some more money, or he
15 claims that they owe him some more money. He asserts that
16 they owed him more money. He was under a duty to exercise
17 reasonable diligence in determining the amount. He waited
18 until February -- strike that -- March 2, of 2007 -- strike
19 that, that might be wrong. He waited until -- strike that,
20 strike that.

21 He waited until August 13, 2008 to provide an
22 invoice; clearly, not exercising reasonable diligence. The
23 Court is also cognizant of the fact that there has been a
24 line of cases that say that a party can waive a statute of
25 limitations defense and that's when we start talking about

1 the equitable estoppel issue and they talk about waiving
2 the statute of limitations may be shown by words or
3 conduct. Waiving that may result from an expressed
4 agreement.

5 Well, we have no expressed agreement here. Or from
6 the failure to claim the defense or by any action or
7 inaction manifestly inconsistent with an intention to
8 insist on the statute. The defendant may be estopped from
9 claiming the statute of limitations as a defense if the
10 delay would -- otherwise would give operation to the
11 statute had been induced by the defendant's conduct.

12 And then in the case you cited, the Gaymon,
13 G-a-y-m-o-n, versus Richland Memorial and then affirmed or
14 more expounded upon in Black versus Lexington School
15 District, it says our Supreme Court is clarifying that the
16 equitable estoppel -- equitable estoppel, is an equitable
17 issue to be determined by the judge rather than by the
18 jury. And then in that case, it has a law review of cases
19 dealing with where there were some settlement negotiations
20 or perhaps a statement expressing interest in the
21 settlement; and they rule in that case that mere settlement
22 negotiations or statements expressed an interest in a
23 settlement are insufficient to give rise to a claim that a
24 defendant is equitably estopped from asserting the statute.

25 And then they go on to site cases out of Alabama

1 which states ...find that engaging in settlement
2 negotiations does not estop the party from asserting the
3 statute of limitations as to the defense, absent some
4 affirmative inducement to the Plaintiff to delay bringing
5 the actions. They cite Georgia cases; they cite cases out
6 of Illinois, mere pendency of negotiations conducted in
7 good faith insufficient to estop the defendant in relying
8 on the statute of limitations.

9 Out of New York, The mere fact that settlement
10 negotiations have been ongoing between parties is
11 insufficient to estop the party from asserting the statute
12 as a defense. It goes on to cite cases out of -- I'm not
13 sure where this one is from, Darion Management Public
14 Schools reported in the Atlantic -- out of Pennsylvania.
15 The party did not undertake negotiations with the Plaintiff
16 nor admit liability. The Plaintiff cannot argue the
17 defendant was equitably estopped from asserting the
18 statute. Mere negotiations toward an amicable settlement
19 afford no basis for estoppel of statutes of limitations and
20 that's out of Texas.

21 Absence of bad faith or fraud, settlement
22 negotiations between the Plaintiff and the defendant do not
23 constitute a waiver of defendant's right to assert the
24 statute of limitations and our supreme court in that case
25 says these cases that I just talked about, expressed our

1 new position on the law dealing with that.

2 So I find that the matter of law case was filed
3 outside of the statute of limitations. That the two
4 conversations in passing is insufficient to invoke their
5 estoppel defense and I grant your motion for directed
6 verdict for failure to comply with the statute of
7 limitations.

8 All right. Bring the jury in.

9 MR. MYERS: Your Honor, there is the matter of
10 counterclaim. But I'll --

11 THE COURT: I assume they'll withdraw those.

12 MR. GRIFFITH: Yes, Your Honor, but we do have a
13 offer of judgement that was --

14 THE COURT: We'll deal with that outside the
15 presence of the jury.

16 MR. GRIFFITH: Thank you, Your Honor.

17 THE BAILIFF: Bring them in.

18 (WHEREUPON the jury entered the courtroom at 11:04
19 a.m.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, the Plaintiff has concluded his or her case or
22 its case. The defendant has a right to raise certain legal
23 issues saying that they have failed to comply with all the
24 law and in this particular case, dealing with breach of
25 contract, and under our law in this state, it's codified by

1 the legislature and -- I don't see any codes up here, but
2 we have statutes that deal with everything from A to Z. We
3 have statutes that deal with procedures that you must
4 follow in dealing with bringing a lawsuit. And when you
5 have an issue dealing with a contract, like we had in this
6 case, the party's entered into a contract to build this
7 house, so -- and the Plaintiff is claiming that they breach
8 the contract because they still owe him money.

9 Well, to bring an action under a breach of
10 contract, the law says that an action for breach of
11 contract must/shall be brought within three years from the
12 date it accrues. And the date it accrues means when the
13 breach occurred; and if you don't know when the breach
14 occurred, you have to use reasonable diligence in
15 discovering that breach has occurred.

16 Well, I have ruled as a matter of law that this
17 lawsuit was brought on August 20, 2009. I rule as a matter
18 of law that the contract -- it's a work breach and if they
19 do -- if they did owe him more money, that breach took
20 place when they closed the loan out on February 1, 2006, or
21 at least, he should have used reasonable diligence in
22 ascertaining if, in fact, they owed him more money and how
23 much it was.

24 He did not present a bill to them, an invoice,
25 until August 13th, 2008, so that would be from February two

1 thousand -- February '06 to 2008, but he didn't bring the
2 lawsuit until 2009 which is beyond the three years statute
3 of limitations. So I have ruled as a matter of law that he
4 has failed to institute his action within the statute of
5 limitations. Therefore, I have dismissed the suit.

6 Your responsibilities in this case end as of now.
7 I'm going to dismiss you now for the balance of the day.
8 We have another jury coming in at 1:30 for the next case.
9 I'm not going to make y'all come back for that one since
10 you've been here yesterday and today, but you do need to
11 call back after six tonight to receive any additional
12 information that we may have.

13 So having said all that, I thank you. Obviously, I
14 do this with a great deal of considering both sides of the
15 situation. I've reviewed a number of cases that deal with
16 these various issues of the statute of limitations and
17 whether or not the statute can be waived because the
18 defendants have induced him not to bring the lawsuit on
19 time, and I have concluded based on a number of cases that
20 our state supreme court has ruled on dealing with issues
21 similar to this that are based on the facts presented in
22 this case; the lawsuit was brought outside the statute of
23 limitations.

24 So often in legal matters, there's always statutes
25 of limitations which means that you have to bring your

1 action within a certain period of time and I rule this case
2 was brought outside of it.

3 So thank you very, very much.

4 And if you will show them their way out.

5 If you'll call back after six, I'm not sure we're
6 going to have anything more on the civil side. I think
7 this next case I'm starting at two o'clock will probably
8 last until Friday so -- we're not going to start a case
9 Thursday afternoon or Friday morning. At 11:30, I'm trying
10 a case nonjury so that'll take us up to 1:30; we're not
11 wasting any time. We're utilizing your tax money well.

12 So thank you very much. The clerk -- if you don't
13 get called back, she'll send you a huge --

14 How much do you pay them up here, \$100 a day?

15 THE CLERK: Oh yeah. I think it's \$13 a day.

16 THE COURT: That's horrible.

17 THE CLERK: I know.

18 THE COURT: Anyway. Whatever the going rate is,
19 they'll send you a check. I thank you.

20 You know, we can't -- we can't resolve disputes
21 without having jurors ready, willing, and able to serve and
22 we do live by a rule of law we're all -- have to comply our
23 actions and conform our actions to the rule of law and it
24 makes for a much more orderly society. Sometimes we may
25 not think that, but it does and we have rules we have to

1 follow and even if you get involved in the legal system,
2 it's still complicated rules that you have to follow in
3 order to preserve your rights and this is one where the
4 statute was not followed.

5 Thank you very much. Y'all have a pleasant day.

6 Everybody else remain seated. Call back after six,
7 please.

8 (WHEREUPON the jury was dismissed at 11:10 a.m.)

9 THE COURT: All right. Anything else by the
10 Plaintiff?

11 MR. MYERS: No, sir, Your Honor.

12 THE COURT: I give you ten days to file a
13 post-trial or whatever. Well, I don't know -- it was a
14 directed verdict, I don't guess there's any post-trial
15 motions you have to take otherwise.

16 Mr. Griffith?

17 MR. GRIFFITH: Your Honor, we have an offer of
18 judgement and we'd just simply like the Court to retain
19 jurisdiction long enough for us to provide you with our
20 costs.

21 THE COURT: Thank you. Do it by way of affidavit.
22 Give it to Mr. Myers.

23 Mr. Myers, if you need a hearing on it, I'll be
24 back up here in a month and we can have a hearing on it at
25 that time. Give everybody time to look at it.

1 MR. MYERS: Your Honor, the only exception is that
2 if he's indicating that an offer of judgement under Rule
3 68, I would like to see the certificate of service. I've
4 never seen anything. Before we started trial.

5 THE COURT: Well, you will be provided with all
6 that.

7 Provide him with all that. Comply with the rules
8 obviously, and if he has -- we'll look at it and if he
9 hasn't, we'll dismiss it.

10 MR. MYERS: Okay. Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. GRIFFITH: Thank you, Judge.

13

14 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken)

Certificate of Reporter

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5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the days of the 12th and 13th of March, 2012.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 205 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this day of the 25th of August, 2012.

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Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included any of the parties and not any other material.

January 10, 2013.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case Tracking No. 2012209587
Civil Action No. 2009-CP-32-3870

Chris Phillips and Chris
Phillips Builders, Inc.,

Appellants,

v.

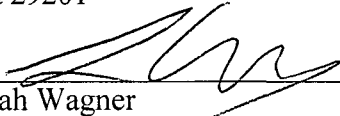
Frank Ferez and Suzie Ferez,

Respondents.

CERTIFICATE OF HAND SERVICE

I, Sarah Wagner, law clerk to Stanley L. Myers, attorney for Appellants, certify that I have on this day had service of the foregoing **Appellants Record on Appeal**, upon all counsel of record in this action by having a copy of same hand delivered and addressed as follows:

Richard Whitt, Esquire
Jefferson D. Griffith, Esquire
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, South Carolina 29201



Sarah Wagner
Law Clerk to Stanley L. Myers

West Columbia, South Carolina
January 11, 2013

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JAN 14 2012

SC Court of Appeals