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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2008-CP-18-2565

Tim McGee.....Appellants,

v.

David Thornton & Thornton Brothers Construction.....,
Respondents.

RECORD ON APPEAL

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BROTHERS CONSTRUCTION

RECEIVED

NOV 14 2012

SC Court of Appeals

**TIM MCGEE V. DAVID THORNTON AND
THORNTON BROTHERS CONSTRUCTION**

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2008-CP-18-2565

TIM MCGEE,

Plaintiff,

v.

DAVID THORNTON and THORNTON
BROTHERS CONSTRUCTION,

Defendants.

ORDER

CERTIFIED COPY
2012 JAN -4 PM 4:54
Clerk of Court
DORCHESTER COUNTY

The instant action came on for trial before me on August 16, 2011. Plaintiff was represented at trial by Max G. Mahaffee, and Defendants by Zachary J. Closser. For the reasons that follow, I find that Plaintiff is barred by operation of law from instituting or proceeding with this action, and the case should be dismissed.

Plaintiff initially filed this action seeking damages from Defendants for the repair costs of certain construction alleged to have been improperly performed. The undisputed facts are that Plaintiff and Defendant, neither of whom has a proper contractor's license issued by the South Carolina LLR, were among those involved in the set-up of a modular home on property owned by Brent Shirts. Mr. Shirts, who was a witness at the trial, has no complaints about his house, and is not a party to this action. McGee alleged, generally, that he was required to make significant repairs to portions of the house after Defendants completed their work, as a direct result of Defendants' negligence and poor workmanship. Plaintiff further alleges that Defendants' bookkeeping was sloppy, and appears to allege that he incurred additional costs as a result. The net claim is for damages of \$29,928.95, along with interest, fees and costs, and treble damages.

Prior to addressing the merits of the claims, Defendants raised Plaintiff's lack of proper licensure as a defense, asserting that this creates an absolute bar to the maintenance of this action. This defense was not raised in the original answer, and Defendants subsequently sought leave to amend to assert it. That motion is GRANTED. The parties both briefed and argued the licensing issue prior to and at the conclusion of the trial, and it is properly raised and before the Court.

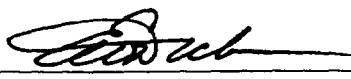
Section 40-59-30(B) provides that "a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanic's lien or bring an action in law or in equity to enforce the provisions of a contract for residential building or residential specialty construction which the person or firm entered into in violation of this chapter." There is no disagreement whatever about the fact that Plaintiff does not have a Residential Contractor's license. Although Plaintiff contends that he was not, in fact, the general contractor on this project – a position he asserts was held by Mike Robbins, who actually pulled the building permit – the evidence clearly shows that Plaintiff acted as, and was paid as, the general contractor. Plaintiff hired, supervised, and paid all of the subcontractors. A number of documents admitted into evidence demonstrate that Plaintiff had the authority to withdraw construction funds from the owner's account to make these payments. I believe that, regardless of the names or titles held by various people, Plaintiff Tim McGee was the *de facto* general contractor on the Shirts residence.

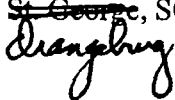
The Court has not found, and the parties have not cited, any case law interpreting the effect of S.C. Code § 40-50-30 on contractor-contractor disputes, as all of the cases involve contractor-owner litigation. However, the language of the statute itself is clear, and its meaning does not appear to require interpretation. The Code expressly provides that an unlicensed

contractor may not bring any suit arising from his unlicensed construction. As I find that Plaintiff Tim McGee was required to have a residential contractor's license in order to erect the Shirts house, and that he did not have a license, there is no choice but to dismiss this action in its entirety.

For the reasons set forth above, the Complaint of Plaintiff Tim McGee shall be DISMISSED with prejudice, and judgment shall be entered in favor of Defendants David Thornton and Thornton Brothers Construction.

IT IS SO ORDERED!


HONORABLE EDGAR W. DICKSON, JUDGE
FIRST JUDICIAL CIRCUIT

December 20, 2011
~~St. George~~, SC


STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED IN THE COURT OF COMMON PLEAS
RECORDED FOR THE FIRST JUDICIAL CIRCUIT
2012 FEB 18 AM 11:55 CASE NO. 2008-CP-18-2565

TIM MCGEE,

Plaintiff,

v.

DAVID THORNTON and THORNTON
BROTHERS CONSTRUCTION,

Defendants.

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY.

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER

The instant action is before me pursuant Plaintiff's motion to reconsider, which was filed January 6, 2012 and titled, Motion to Reconsider Under Rule 59(E). After thoroughly reviewing and considering Plaintiff's motion, the record and the filed memorandum, I hereby deny Plaintiff's motion to reconsider.

THEREFORE, IT IS ORDERED that Plaintiff's motion to reconsider is denied.

IT IS SO ORDERED!


HONORABLE EDGAR W. DICKSON, JUDGE
FIRST JUDICIAL CIRCUIT

February 2,
St. George, SC
Orangeburg, SC
_____, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-18-_____

TIM MCGEE,
Plaintiff,

v.

DAVID THORNTON AND
THORNTON BROTHERS
CONSTRUCTION

Defendants.

COMPLAINT
(COLLECTION/FRAUD/UTPA)
(Non-Jury)

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2008 OCT 13 AM 10:43
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff would allege and prove as follows:

1. The Plaintiff is a citizen and resident of the County of Berkeley County, South Carolina.

2. The Defendant David Thornton("Thornton") is a resident of Summerville, South Carolina and is and was the controlling person and agent of the Thornton Brothers Construction("Thornton Construction") and acted by and for Thornton Construction, which is an entity organized, existing and doing business in South Carolina and in Dorchester County, where venue is proper.

3. The Plaintiff was doing work on a home for Mr. Shirts at 149 Inspiration Drive in Round O, SC, and did make a contract and did further agree with the Defendants, such that a contractual and fiduciary relationship was established such that the Defendants would be handling the permitting, the foundation and the general

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OBTAINED WILL BE USED FOR THAT PURPOSE."**

Page 1 of 8

construction of a modular home at 149 Inspiration Drive in Round O, SC.

4. Because the Plaintiff later was out of the country in the Philippines, he had to put trust in the Defendants, which he did and the Defendants, their agents, servants and employees, did seek that trust and did accept the trust placed in them.

5. Thus, there existed confidence and trust from the Plaintiff to the Defendants and placed upon the Defendants a duty to use their best efforts on behalf of the Plaintiff. A fiduciary relationship was founded by the Plaintiff placing trust and confidence in the integrity and fidelity of the Defendants, who were thus bound to act in good faith and with due regard to the interests of the Plaintiff, who imposed confidence in the Defendants, but the Defendants did not so act.

6. The Plaintiff has made numerous attempts short of this litigation to have the Defendants pay for overcharges, double billing, payment for negligent acts and inaction by the Defendants, and other such damages proximately caused to the Plaintiff by the Defendants, but the Defendants have failed and refused, without cause or reason, to pay the Plaintiff the \$29,928.95 owed and owing by the Defendants.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

7. The Plaintiff repeats and realleges the preceding

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paragraphs as well as the other pertinent and relevant allegations of this Complaint as to the Defendants.

8. As a result of this fiduciary relationship and as a result of the self-dealing by the Defendants, and their lack of good faith, fair dealing, and their failure to act in the best interests of the Plaintiff and in a manner commensurate with the trust placed upon the Defendants, the Plaintiff was proximately damaged.

9. The Plaintiff is entitled to a judgment against the Defendants, jointly and severally, for such an award of actual and punitive damages as this court shall grant.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)

10. The Plaintiff repeats and realleges the preceding paragraphs as well as the other pertinent and relevant allegations of this Complaint as to the Defendants.

11. The Defendants were and are negligent, willful, wanton, reckless, careless, and grossly negligent regarding the Plaintiff and the Round O house in one or more of the following particulars:

- (a) In failing to make the work compliant with the applicable Building Codes (including CABO);
- (b) In working on the house with the result that it did not comply with the applicable statutes and regulations in this State and which did not comply with CABO, other applicable Building Codes and with good workmanship;
- (c) In making repairs, and doing work, when work was

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actually done on the house, which proximately damaged the real and personal property, which had to be corrected by the Plaintiff at great expense;

- (d) In not providing that which the Plaintiff contracted for and/or which the Plaintiff was promised;
- (e) In failing to properly protect the house and to properly seal and protect the house from moisture in inclement weather and otherwise not protecting the house as was promised;
- (f) In doing defective, improper, and uncorrected work;
- (g) In failing to keep proper account of matters paid by the Plaintiff, or if the Defendants did keep proper account, then failing and refusing to inform the Plaintiff; and
- (h) In failing to use that degree of care and caution that reasonable and prudent builder and construction professional should have used.

All of which are in violation of the statutes and common law in the State of South Carolina and were the direct and proximate cause of the damages to the Plaintiff who had to make repairs to the house at his expense, even though the Defendants promised that they would make the repairs and make it right, all of which shall be proved at trial and includes, but is not limited to, those matters set forth in this Complaint.

12. That as a direct and proximate result of the negligence, gross negligence, recklessness, willfulness, and wantonness of the Defendants, the Plaintiff has incurred property damage, attorney's fees, costs, adverse affects to the Plaintiff's business, has

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caused the Plaintiff loss of income and opportunities, and such other damages as will be shown at the trial of this case.

13. The Defendants have proximately damaged the Plaintiff and are jointly and severally liable to the Plaintiff for such actual and punitive damages as this court should award.

FOR A THIRD CAUSE OF ACTION
(CONTRACT/WARRANTIES)

14. The Plaintiff repeats and realleges the preceding paragraphs as well as the other pertinent and relevant allegations of this Complaint as to the Defendants.

15. The verbal and written contracts, including the express and implied warranties in fact and under the law, which are applicable and/or were entered into required, among other details, that the Defendants perform work in a workmanlike manner and in compliance with CABO, the Building Code and requirements of the work and of the Plaintiff; and that the work be completely, quickly and properly done, all of which have been breached, which has caused the Plaintiff damages of \$29,928.95, prejudgment interest and such other damages as are set forth in this Complaint and the further damages which will be proved at trial.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF CONTRACT/FRAUDULENT INTENT)

16. The Plaintiff repeats and realleges the preceding paragraphs as well as the other pertinent and relevant allegations

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of this Complaint as to the Defendants.

17. The Defendants entered into agreements, contracts and understandings with the Plaintiff, which the Defendants either did not intend to perform or which they breached and did breach with fraudulent intent, all without the Plaintiff's knowledge and which has proximately caused damages of \$29,928.95 to the Plaintiff, prejudgment interest and such other damages as are set forth in this Complaint.

FOR A FOURTH CAUSE OF ACTION
(FRAUD)

18. The Plaintiff repeats and realleges the preceding paragraphs as well as the other pertinent and relevant allegations of this Complaint as to the Defendants.

19. The Defendants represented to the Plaintiff certain things, including that bills had not been paid when in reality they had been paid by the Plaintiff.

20. The representations were material to the Plaintiff and to his handling of the work and the cost of that work, which the Defendants knew.

21. Unknown to the Plaintiff, who could not reasonably know, the representations were false at the time that the Defendants made them.

22. The Defendants knew or should have known that the representations were false.

**"THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
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Page 6 of 8

23. The Plaintiff reasonably relied upon the representations.

24. The representations turned out to be false, which has damaged the Plaintiff as set forth in this Complaint, entitling the Plaintiff to an award of actual and punitive damages, attorney's fees and costs, jointly and severally against the Defendants.

FOR A FIFTH CAUSE OF ACTION (UTPA)

25. The Plaintiff repeats and realleges the preceding paragraphs as well as the other pertinent and relevant allegations of this Complaint as to the Defendants.

26. The Defendants have engaged in unfair and deceptive activities in commerce which have been repeated or which are capable of repetition, which have proximately damaged the Plaintiff and others.

27. The Plaintiff is entitled to treble damages, attorneys fees and costs, jointly and severally against the Defendants.

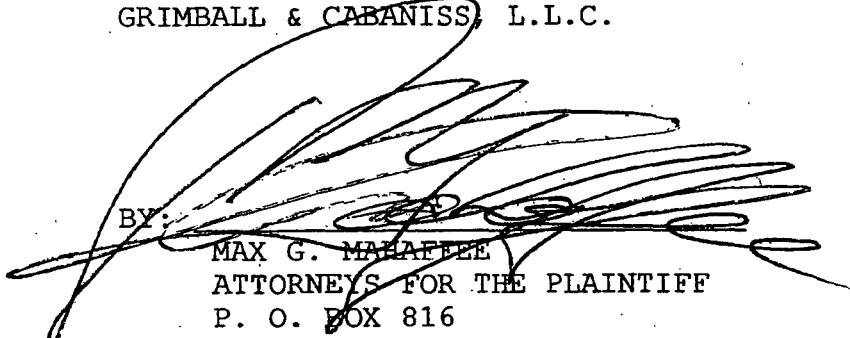
WHEREFORE, having set forth his allegations in the Complaint against the Defendants, the Plaintiff prays for judgement against the Defendants jointly and severally in such sums as will fully and fairly compensate him for his actual damages, and to award punitive damages in an appropriate amount to be determined by the court, for prejudgment interest, for attorney's fees and costs of this action, and for treble damages and attorney's fees under the UTPA cause of action and for such other and further relief as this Honorable

**"THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
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Court may deem just and proper, due to the Defendants having been negligent, willful, wanton, reckless, careless, and grossly negligent; having breached a contract; having breached their duties and obligations with fraudulent intent; having breached implied and express warranties; having committed fraud; and having violated the UTPA in this State, all of which have proximately damaged the Plaintiff.

GRIMBALL & CABANISS, L.L.C.

BY: 

MAX G. MAHAFFEE
ATTORNEYS FOR THE PLAINTIFF
P. O. BOX 816
CHARLESTON, SC 29402-0816
Tel: (843) 722-0311
Fax: (843) 722-1374

Charleston, South Carolina

October 8, 2008

**"THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE."**

Page 8 of 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2008-CP-18-2565
TIM MCGEE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	
DAVID THORNTON AND THORNTON	)	
BROTHERS CONSTRUCTION,	)	
	)	
Defendants.	)	
_____	)	

TO: MAX G. MAHAFFEE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendants, by and through its undersigned counsel, would answer the Complaint of the Plaintiffs as follows:

AS A FIRST DEFENSE

1. Each and every allegation not herein specifically admitted or denied is denied and strict proof is demanded thereof.
2. The Defendants deny the allegations contained in paragraphs 2, 3, 5, 6, 8, 9, 11, 12, 13, 15, 17, 19, 20, 21, 22, 24, 26, and 27 of the Plaintiff's Complaint.
3. The Defendants are without sufficient information to neither admit nor deny the allegations contained in paragraphs 1, 4, and 23 of the Plaintiff's Complaint.

**AS A FIRST AFFIRMATIVE DEFENSE
(Breach of Contract)**

4. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.
5. Plaintiff breached the contract of the parties, and therefore, cannot now enforce the terms thereof, and cannot seek the relief requested.

**AS A SECOND AFFIRMATIVE DEFENSE
(Estoppel)**

6. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

7. Defendants believe Plaintiff is estopped from claiming the relief claimed in the Complaint.

**AS A THIRD AFFIRMATIVE DEFENSE
(Acceptance)**

8. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

9. Defendants are informed and believes that the Plaintiff is barred from the requested relief by way of acceptance of the items now complained of.

**AS A FOURTH AFFIRMATIVE DEFENSE
(Contractual Responsibility Limited by Scope of Agreement)**

10. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

11. The conditions and deficiencies alleged to exist are not within the scope of the services which were requested of Defendants, whose responsibility is limited to those items set forth in the contract between the parties, and such constitutes a complete defense to all claims for breach of contract.

**AS A FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

12. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

13. Plaintiff has failed to mitigate his damages.

**AS A SIXTH AFFIRMATIVE DEFENSE
(Breach of Contract)**

14. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

15. Plaintiff breached the contract between the parties and cannot now enforce the terms thereof.

**AS A SEVENTH AFFIRMATIVE DEFENSE
(Failure of Consideration)**

16. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

17. The contract is not enforceable as Plaintiff has failed to pay the consideration as stated in the contract.

**AS AN EIGHTH AFFIRMATIVE DEFENSE
(Laches)**

18. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

19. Plaintiff has waived any non-performance by Defendants due to the equitable doctrine of laches.

**AS A NINTH AFFIRMATIVE DEFENSE
(Waiver)**

20. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

21. Defendants are informed and believe that Plaintiff has waived her rights under the contracts by hisr own conduct.

**AS A TENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

22. Defendants realleges the allegations of the preceding paragraphs as though fully restated herein

23. Plaintiff's complaint fails to state a claim upon which relief may be granted and should be dismissed pursuant to S.C.R.C.P. 12(b)(6).

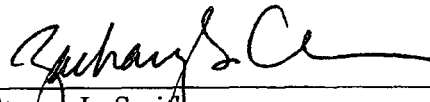
**AS AN ELEVENTH AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)**

24. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

25. Defendants hereby give notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants pray that this Court inquire into the matters set forth herein; dismiss the Complaint of the Plaintiff; for the costs and disbursements of this action; and an award for such other relief as the Court may deem just and proper.

SMITH & KOONTZ, P.A.



Steven L. Smith
Zachary J. Closser
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for the Defendants

Charleston, South Carolina
December 11, 2008
08-990

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2008-CP-18-2565

TIM MCGEE,)
)
Plaintiff,)
)
vs.)
)
DAVID THORNTON and THORNTON)
BROTHERS CONSTRUCTION,)
)
Defendants.)
_____)

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Answer was served by mailing or hand delivery on the following:

Max G. Mahaffee, Esquire
Grimball & Cabaniss, LLC
P.O. Box 816
Charleston, SC 29402-0816

Peggy M. Rochay

Charleston, South Carolina

December _____, 2008
08-990

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2008-CP-18-2565
TIM MCGEE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGMENT
	)	
DAVID THORNTON and THORNTON	)	
BROTHERS CONSTRUCTION,	)	
	)	
Defendants.	)	
	)	

TO: MAX G. MAHAFFEE, ATTORNEY FOR THE PLAINTIFF:

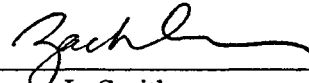
YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through the undersigned attorney, will move before the presiding Judge of the Court of Common Pleas at the Dorchester County Courthouse, St. George, South Carolina, on the tenth (10th) day of the date of this Motion, or as soon thereafter as may be heard, for Summary Judgment as to the Plaintiff's causes of action against the Defendants.

This Motion for Summary Judgment is based upon the fact that there is no genuine reason as to any material fact and the Defendant is entitled to judgment as a matter of law. This Motion will be supported by Rule 56, South Carolina Rules of Civil Procedure, affidavits to be subsequently filed and Memorandum of Law which may hereinafter be submitted.

I certify that, in accordance with Rule 11, SCRCP, I have attempted to resolve this matter through consultation with opposing counsel, or that consultation is not required.

(SIGNATURE BLOCK ON NEXT PAGE)

SMITH & KOONTZ, P.A.



Steven L. Smith
Zachary J. Closser
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for the Defendants

Charleston, South Carolina

February 8, 2011
08-990

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

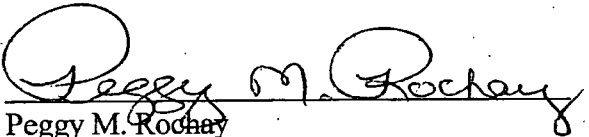
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2008-CP-18-2565

TIM MCGEE,)
)
Plaintiff,)
)
vs.)
)
DAVID THORNTON and THORNTON)
BROTHERS CONSTRUCTION,)
)
Defendants.)
_____)

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Summary Judgment was served by mailing or hand delivery on the following:

Max G. Mahaffee, Esquire
Grimball & Cabaniss, LLC
P.O. Box 816
Charleston, SC 29402-0816


Peggy M. Rochay

Charleston, South Carolina

February 8, 2011
08-990

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2008-CP-18-2565
 TIM MCGEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' MOTION FOR
	)	LEAVE TO AMEND
DAVID THORNTON and THORNTON	)	
BROTHERS CONSTRUCTION,	)	
	)	
Defendants.	)	

Defendants David Thornton and Thornton Brothers Construction respectfully request leave of Court to Amend their Answer in the above-captioned matter, pursuant to S.C.R.C.P. 15(a).

Plaintiff filed this case in his capacity as a building contractor, seeking payment for services alleged to have been performed in furtherance of construction.¹ Since the time of the filing of the initial Answer, Defendants have been made aware that Plaintiff lacks any form of licensure. Section 40-59-30(B) of the South Carolina Code of Laws specifically prohibits an unlicensed contractor from bringing any action, whether in law or equity, to enforce the provisions of a construction contract.

In *Earthscapes Unlimited, Inc. v. Ulbrich*, Opinion No. 26903 (December 13, 2010), the South Carolina Supreme Court held that the statutory scheme prohibiting an unlicensed contractor from seeking compensation under its construction contract provided an affirmative defense that was required to be pled in accordance with Rule 8(c) of the Rules of Civil Procedure. Defendants' amendment is intended merely to put forward this defense.

¹ Although Plaintiff advances a variety of theories he asserts entitle him to payment, the basic factual underpinning of the entire complaint is the assertion that he performed construction work pursuant to a contract with Defendants.

Rule 15 provides that leave to amend should be freely granted when justice so requires and so long as there is no prejudice to any other party. Permitting Defendants to present an affirmative defense relying on facts known to the Plaintiff but unknown to Defendants at the time of the filing of their Answer is clearly in the interest of justice, and, as the relevant facts were within the Plaintiff's possession at all times, cannot be said to prejudice him in any manner. Furthermore, although this action is scheduled for trial next month, the proposed amendment does not require that the trial be delayed in any manner, as no additional discovery would be required, and Defendants remain prepared to proceed with their case.

A copy of Defendants' proposed Amended Answer is attached hereto. Defendants would respectfully request leave of Court to file the Amended Answer, and raise as an affirmative defense to Plaintiff's Complaint his lack of the requisite license.

SMITH & KOONTZ, P.A.



Steven L. Smith
Zachary J. Closser
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for the Defendants

Charleston/South Carolina
2/8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

TIM MCGEE,

Plaintiff,

v.

DAVID THORNTON AND THORNTON
BROTHERS CONSTRUCTION,
Defendants.

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT
CASE NO. 2008-CP-18-2565

AMENDED ANSWER

TO: MAX G. MAHAFFEE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendants, by and through its undersigned counsel, would answer the Complaint of the Plaintiffs as follows:

AS A FIRST DEFENSE

1. Each and every allegation not herein specifically admitted or denied is denied and strict proof is demanded thereof.
2. The Defendants deny the allegations contained in paragraphs 2, 3, 5, 6, 8, 9, 11, 12, 13, 15, 17, 19, 20, 21, 22, 24, 26, and 27 of the Plaintiff's Complaint.
3. The Defendants are without sufficient information to neither admit nor deny the allegations contained in paragraphs 1, 4, and 23 of the Plaintiff's Complaint.

**AS A FIRST AFFIRMATIVE DEFENSE
(Lack of License, S.C. Code § 40-59-30(B))**

4. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.
5. Plaintiff lacks a Residential Builders License as required by Section 40-59-30 of the South Carolina Code of Laws.

6. Plaintiff is therefore barred from bringing the instant action.

**AS A SECOND AFFIRMATIVE DEFENSE
(Breach of Contract)**

7. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

8. Plaintiff breached the contract of the parties, and therefore, cannot now enforce the terms thereof, and cannot seek the relief requested.

**AS A THIRD AFFIRMATIVE DEFENSE
(Estoppel)**

9. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

10. Defendants believe Plaintiff is estopped from claiming the relief claimed in the Complaint.

**AS A FOURTH AFFIRMATIVE DEFENSE
(Acceptance)**

11. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

12. Defendants are informed and believes that the Plaintiff is barred from the requested relief by way of acceptance of the items now complained of.

**AS A FIFTH AFFIRMATIVE DEFENSE
(Contractual Responsibility Limited by Scope of Agreement)**

13. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

14. The conditions and deficiencies alleged to exist are not within the scope of the services which were requested of Defendants, whose responsibility is limited to those items set forth in

the contract between the parties, and such constitutes a complete defense to all claims for breach of contract.

**AS A SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

15. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

16. Plaintiff has failed to mitigate his damages.

**AS A SEVENTH AFFIRMATIVE DEFENSE
(Breach of Contract)**

17. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

18. Plaintiff breached the contract between the parties and cannot now enforce the terms thereof.

**AS AN EIGHTH AFFIRMATIVE DEFENSE
(Failure of Consideration)**

19. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

20. The contract is not enforceable as Plaintiff has failed to pay the consideration as stated in the contract.

**AS A NINTH AFFIRMATIVE DEFENSE
(Laches)**

21. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

22. Plaintiff has waived any non-performance by Defendants due to the equitable doctrine of laches.

**AS A TENTH AFFIRMATIVE DEFENSE
(Waiver)**

23. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

24. Defendants are informed and believe that Plaintiff has waived her rights under the contracts by his own conduct.

**AS AN ELEVENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

25. Defendants realleges the allegations of the preceding paragraphs as though fully restated herein

26. Plaintiff's complaint fails to state a claim upon which relief may be granted and should be dismissed pursuant to S.C.R.C.P. 12(b)(6).

**AS A TWELVTH AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)**

27. Defendants reallege the allegations of the preceding paragraphs as though fully restated herein.

28. Defendants hereby give notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants pray that this Court inquire into the matters set forth herein; dismiss the Complaint of the Plaintiff; for the costs and disbursements of this action; and an award for such other relief as the Court may deem just and proper.

(SIGNATURE ON FOLLOWING PAGE)

SMITH & KOONTZ, P.A.



Steven L. Smith
Zachary J. Closser
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for the Defendants

Charleston, South Carolina
2/8, 2011
08-990

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2008-CP-18-2565

TIM MCGEE,

Plaintiff,

vs.

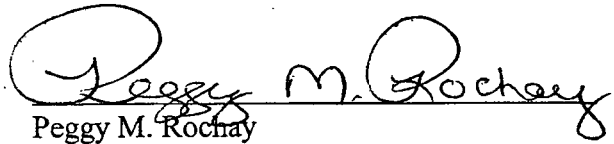
DAVID THORNTON and THORNTON
BROTHERS CONSTRUCTION,

Defendants.

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Leave
to Amend was served by mailing or hand delivery on the following:

Max G. Mahaffee, Esquire
Grimball & Cabaniss, LLC
P.O. Box 816
Charleston, SC 29402-0816


Peggy M. Rochay

Charleston, South Carolina

February 8, 2011
08-990

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO. 2008-CP-18-2565
TIM MCGEE,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S FILING IN
v.	)	OPPOSITION TO DEFENDANTS'
	)	MOTIONS
DAVID THORNTON AND THORNTON	)	
BROTHERS CONSTRUCTION,	)	
	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS AND THEIR ATTORNEY ZACHARY CLOSSER:

The Plaintiff files this Memorandum of Law and portions of relevant depositions in opposition to the Defendants' motions in this case.

PLAINTIFF'S LAWSUIT

The Plaintiff has sued the Defendants for work not done or done so negligently as to harm a house at 149 Inspiration Drive in Round O, SC, a house now owned by Brent Shirts. This was a modular home that came in pieces and needed to be lifted by crane onto a foundation and then joined together, all per the manufacturer's specifications and directions. The causes of action include Breach of Fiduciary Duty, Negligence, Breach of Contract/Warranties, Breach of Contract with Fraudulent Intent, Fraud and Violation of the South Carolina Unfair Trade Practices Act due to the damages caused to the house and thus to the Plaintiff. Defendants agreed with the Plaintiff that the Defendants would "set up" the house.

Defendants recently filed a Motion to Amend and, if that is granted, a Motion for Summary Judgment based upon the Plaintiff's failure to be licensed as a contractor. The Defendants do not address the fact that the Defendants have never been licensed.

OPPOSITION TO DEFENDANTS' MOTION TO AMEND

The Defendants filed their Answer in December 2008, about two years and two months before Defendants filed their Motion to Amend. The deposition of the Plaintiff took place on November 9, 2009. Such a length of time should constitute a waiver of the purported affirmative defense now sought to be raised.

Generally, affirmative defenses to a cause of action in any pleading must be asserted in a party's responsive pleading. Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007) (citing Wright v. Craft, 372 S.C. 1, 20-21, 640 S.E.2d 486, 497 (Ct. App. 2006)). Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled. Costa and Sons Const. Co. v. Long, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct. App. 1991) (citing Rule 8(c), SCRCP). "The failure to plead an affirmative defense is deemed a waiver of the right to assert it." Whitehead v. State, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002).

Madren v. Bradford, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008) (involving the same question regarding the licensing of contractors, but the Plaintiff in the Bradford case entered a contract to purchase from the unlicensed Defendant.) Also see Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010) (case cited by Defendants but that case allowed recovery under *quantum meruit*, an equitable cause of action).

"Waiver consists in that action of a person who possessed of

a known right or privilege, created by law or by contract or by other ways for his benefit, yet it is by him purposely ignored and set aside." Harrison v. Western Union Tel. Co., 55 S.E. 450, 451 (S.C. 1906). Waiver here is the time (well into the range of 15 months) that the Defendants sat and did nothing. Even if there were not waiver, and the Court allows amendment, Defendants are not entitled to summary judgment.

STANDARD FOR SUMMARY JUDGMENT

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, "[s]ummary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329, 673 S.E.2d 801, 802 (2009) (citation omitted). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Id. at 329-30, 673 S.E.2d at 802. More importantly, the January 26, 2009 Hancock decision specifically held as follows: "Accordingly, we hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Id. Thus, in this case all that the Plaintiff needs to show is a mere scintilla of evidence to withstand Defendants' Motion for Summary Judgment.

OPPOSITION TO SUMMARY JUDGMENT

First, it should be noted that the Defendants previously had filed a Motion for Summary Judgment, which was withdrawn. Later, Defendants' counsel made a Motion to Withdraw as Counsel, a motion also later withdrawn. Further, this case was ordered by Judge Goodstein to be tried in August 2010, much before Defendants' current motions, which did not occur due to a continuance because of Defendant David Thornton's mother being quite ill with cancer.

As to the substance of the Plaintiff's opposition to Defendants' motions, beginning on page 49 of the Plaintiff Tim McGee's deposition taken on November 9, 2009 is the following:

- Q. Is a permit required to set a modular home?
- A. Yes, it is.
- Q. Who pulled that permit?
- A. Mike Robbins.
- Q. Why did Mike Robbins pull that permit?
- A. Because he is the general contractor.
- Q. Do you have a contract with Mike Robbins?
- A. I do not.
- Q. Do you have a contract with Michael's Homebuilders?
- A. I do not.
- Q. Do you have an agreement with Michael's Homebuilders or Mike Robbins?
- A. Well, Mike was involved on the project. Dave and Mike are -- they said they could do the project. At the time, I had some other people that had set some homes for me and already had bids from them for the project, and Dave and Mike said they could do the project and save me some money. Hindsight, I would never have done this, but they gave me a good price on it, so I said why not.

Deposition of Tim McGee, page 49, line 10-page 50, line 5
(emphasis supplied).

Thus, whether the Plaintiff was a licensed contractor or not is irrelevant, as Mike Robbins was the contractor for this job and pulled the permit. Indeed, the Defendant David Thornton admitted in his deposition that Mike Robbins was the contractor: "Mike Robbins was the GC, and held the license, and pulled the permits. So, pretty much, I worked for him." Deposition of David Thornton, Page 20, lines 21-23. "A person who is not a licensed contractor may not even obtain a building permit for such work. See S.C.Code Ann. § 40-11-370(A)(B) (2001 & Supp. 2009)." Pilgrim v. Eaton, 391 S.C. 38, 43, 703 S.E.2d 241, 243 (Ct. App. 2010).

The attached pages 10-15 from C. Michael Robbins deposition clearly show that Mr. Robbins thought he was brought into this job by David Thornton as Mr. Robbins had the contractor's license. Specifically, he states "I assumed that he and Tim did not have a contractor's license, and that's why they needed somebody to go get the permit....I just assumed that since they asked me to get the permit for them. I never questioned it." Id., page 14, lines 11-17.

The attached Building Permit application was signed by Mr. Robbins. Someone has written on this that the Plaintiff was the developer. No law is applicable regarding the necessity of a developer being licensed when he hires a licensed residential home builder. Frankly, during the housing boom, that was done all the

time. Thus, as the developer, Plaintiff having retained and hired Mr. Robbins as the licensed residential home builder does not allow for the entry of summary judgment under S.C. Code § 49-50-30(B). See Burry & Son Homebuilders, Inc. v. Ford 310 S.C. 529, 532, 426 S.E.2d 313, 315 (S.C., 1992). Burry & Son cites and quotes as direct authority Spry v. Miller, 25 Wash. App. 741, 610 P.2d 931 (1980) in which it was "held unlicensed contractor substantially complied with similar statutory provision by hiring an independent licensed contractor who performed the work with no supervision or control by the unlicensed contractor." As Mr. McGee was in the Philippines for much of the time of the house being brought to the homesite in Round O, connected and pushed toward completion, the Plaintiff certainly was not supervising Mr. Robbins.

To the extent that the Defendants also seek to state, if they do, that there are no damages, the Plaintiff has attached an invoice from Defendant Thornton Brothers Construction showing that \$38,800.00 was billed to the Plaintiff (purportedly as agent of Mr. and Mrs. Shirts, for whom the house was assembled and completed) by the unlicensed Defendants. Also, other portions of the McGee and Robbins depositions plus a portion of the deposition of Brent Shirts, the homeowner are provided to the Court. As noted by the Defendants, the homeowner did not sue the Defendants, but that is because the Plaintiff made things right financially and with the condition of the home such that a lawsuit could not occur. For

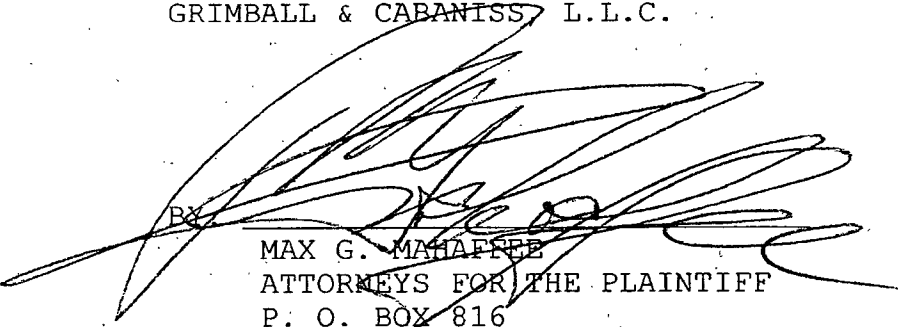
these damages, the Plaintiff also seeks a judgment against the Defendants, jointly and severally.

CONCLUSION

The Plaintiff opposes both of the Defendants' Motion, as the Motion to Amend is filed late and the defense has been waived due to, among other reasons, the passage of time. The Plaintiff has shown much more than a "mere scintilla" of evidence regarding the Plaintiff's right to recover under the applicable law in this state. Despite the Plaintiff not being licensed as a contractor, at least one or more versions of the evidence shows that he hired someone as the licensed contractor and that he acted only as a developer..

Defendants' motions should be denied.

GRIMBALL & CABANISS L.L.C.



MAX G. MAHAFFEE
ATTORNEYS FOR THE PLAINTIFF
P. O. BOX 816
CHARLESTON, SC 29402-0816
Tel: (843) 722-0311
Fax: (843) 722-1374

Charleston, South Carolina

March 10, 2011



BUILDING PERMIT APPLICATION
Colleton County Planning and Development
P.O. Box 98
31 Klein Street
Walterboro, SC 29488

(843) 549-1709 Fax (843) 549-9014 Inspection Line (843) 549-1844

Permit # BU 2007-325

Date 6/1/07

Application Type Residential Building Permit ☒ New ☐ Repair/Remodel ☐ Addition
Project Description Set A Modular Home

OWNER

Owners Name Brent J. Sheets Phone ()
Mailing Address 105 Elliott Dr
City Ladson, SC State SC Zip Code 29465

AUTHORIZED/LEGAL REPRESENTATIVE (if applicable)

Name _____ Phone ()
Mailing Address _____
City _____ State _____ Zip Code _____

LOCATION

Site Address 149 Inspiration Dr. Tax Map # 184-00-00-085
City Collegedale State SC Zip Code 29435
Directions To Site Location Hwy 17A, in COLLEGEVILLE, TR onto JACKSON BLVD
 go TL 3 miles onto HARMONY Hall Rd - TR onto Inspiration Dr
 property on Right
Name of Property Owner _____

CONTRACTOR

Contractor Name Charles Michael Robbins Phone (843) 532-2434
Company Name Michael's Home Builders License # SC 21887
Address 2951 Murrenwood Rd
City Johns Island State SC Zip Code 29455

Exp 6/30/08

SUB-CONTRACTORS

Contractor Name _____ Phone ()
Company Name _____ License # _____
Address _____
City _____ State _____ Zip Code _____

Contractor Name _____ Phone ()
Company Name _____ License # _____
Address _____
City _____ State _____ Zip Code _____

RECEIVED
JUN - 7 2007

Colleton County
Planning & Development

BUILDING INFORMATION

Use SFRConstruction Value \$ 276,000.00

TYPE OF FRAME (circle one)	TYPE OF FOUNDATION (circle one)	TYPE OF EXTERIOR (circle one)
Concrete/Steel	<u>Crawl Space</u>	Aluminum
Metal	Basement	Brick
Mixed Concrete/Wood	Earth	Glass
Heavy Timber	Slab	Heavy Timber
Masonry		Masonry
<u>Wood/Siding/Brick/Masonry</u>		Metal
		<u>Siding</u>

# of Stories <u>2</u>	# of Bedrooms <u>3</u>	# of Baths <u>3</u>

Wind Zone 100 <u>110</u> 120 130	Seismic Zone D1 <u>D2</u>

SEPTIC SYSTEM

Existing Septic Tank	New/Approved <u>X</u>	New/Pending <u>✓</u>	City Sewer

FLOOR AREAS

Living Space <u>2433</u> sq feet	Basement/Storage sq feet	Garage sq feet
Warehouse sq feet	Deck sq feet	Porch <u>180</u> sq feet
Shed sq feet	Carport sq feet	Other sq feet

Total Heated Area <u>2433</u> sq feet	Total Unheated Area <u>514</u> sq feet	Total Area <u>3947</u> sq feet

Sprinkler System: Yes <u>No</u>	Gas: Yes <u>No</u>	HVAC: <u>Yes</u> No

ELECTRICAL SERVICE

Underground Service	# of Amps	Aboveground Service	# of Amps <u>200</u>
Temporary Service	<u>Yes</u> No	# of Amps <u>100</u>	

POWER COMPANY

<u>Coastal Electric</u>	Member # <u>18617941</u>
SCE&G	Account #
Edisto Electric	Account #

Additional Information:

I hereby certify that the above information is correct and understand that if any of the information above is found to be incorrect that permits may be revoked. ☐ Owner ☒ Contractor ☐ Agent

Signed Charles F. HillDate

OFFICE USE ONLY

Flood Zone: A AE V <u>X</u>	Panel # <u>0365</u>	Elevation	Determined By <u>K.D.</u>
Zoning District: CC ID PDD RC RD RS <u>UD</u>	☐ Commercial ☐ Residential		
☐ Major Street (multilane)	☐ Major Street (two lane)	☐ Minor Street	
Setbacks: Front <u>25</u> Side <u>5</u> Rear <u>10</u>	Riparian Buffer <u>40</u>		
Hazard: ☐ None ☐ FH Flood Hazard	☐ AC Airport Compatibility ☐ COBRA ☐ Floodway		

*No objects found on
Flood ARC Map.

Statement

Thornton Brothers Construction
 137 Legend Oaks Way
 Summerville, SC 29485
 (843) 200-9987
 (843) 442-4038

Date
9/18/2007

To:
Tim McGee, Agent Brent & Margaret Shirts 149 Inspiration Lane Round O, SC 29474

4143
 part
 advance

		Amount Due	Amount Enc.			
		\$9,138.44				
Date	Transaction	Amount	Balance			
07/31/2007	Balance forward		0.00			
08/02/2007	INV #1404	7,000.00	7,000.00			
08/02/2007	INV #1405	3,000.00	10,000.00			
08/02/2007	INV #1406	3,500.00	13,500.00			
08/09/2007	INV #1413	2,500.00	16,000.00			
08/09/2007	INV #1414	3,400.00	19,400.00			
08/09/2007	INV #1415	600.00	20,000.00			
08/09/2007	INV #1416	4,600.00	24,600.00			
08/09/2007	INV #1417 - 5000	5,000.00	29,600.00			
08/15/2007	INV #1423	900.00	30,500.00			
08/15/2007	INV #1424	1,100.00	31,600.00			
08/15/2007	INV #1425	1,200.00	32,800.00			
08/15/2007	INV #1426	5,000.00	37,800.00			
08/15/2007	INV #1427	400.00	38,200.00			
08/15/2007	INV #1428	600.00	38,800.00			
09/09/2007	PMT	-10,000.00	28,800.00			
09/09/2007	PMT	-6,000.00	22,800.00			
09/09/2007	PMT	-5,000.00	17,800.00			
09/09/2007	PMT	-9,250.00	8,550.00			
09/09/2007	INV #1444	500.00	9,050.00			
09/18/2007	INV #FC 1 - Finance Charge	88.44	9,138.44			
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
88.44		500.00	8,550.00	0.00	0.00	\$9,138.44

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
: FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) Case No. 08-CP-18-2565

TIM MCGEE,)
))
Plaintiff,) DEPOSITION OF:
))
-vs-) DAVID FREDRIC THORNTON
))
DAVID THORNTON AND THORNTON)
BROTHERS CONSTRUCTION,)
))
Defendants.)
))

Given before G. Michael Alexander, Notary
Public and Registered Professional Reporter, at the law
offices of Grimball & Cabaniss, LLC, 473 Savannah
Highway, Charleston, South Carolina, on Monday, October
5, 2009, commencing at 11:08 o'clock, a.m.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
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821-6755 556-2923 252-6620 662-6729 626-2961

Toll Free 1-800-822-8711

"Serving the Legal Community Since 1957"

1 Q And you didn't have to serve any time in jail.

2 A Well, with the time I sat in jail, you know,
3 they called it time served. You know, some were longer
4 than others.

5 Q Okay. Do you remember any of the charges in
6 Charleston, Berkeley, and Dorchester?

7 A I formally don't. But, I mean, it would be
8 easy enough to find out.

9 Q And you say you voted last year. Was that the
10 first time you had voted?

11 A In my life.

12 Q Oh. And you have a South Carolina driver's
13 license, obviously.

14 A Uh-huh.

15 Q And what other licenses do you hold in South
16 Carolina?

17 A Uh, a fishing license, a hunting license.

18 Q Okay. Any licenses in any trades? Residential
19 homebuilder, carpenter --

20 A No.

21 Q -- or anything?

22 A No. No.

23 Q One of the defendants in this case is Thornton
24 Brothers Construction. Obviously there's another
25 Thornton in the mix, I guess.

1 A My little brother Jim. He was a, uh -- He came
2 from California, it was something we were gonna try.

3 It's not working out. Drugs and alcohol.

4 Q You say it's not working out?

5 A Well, now it's -- You know, after I had my
6 stroke.

7 Q When did you have that?

8 A Tomorrow will be one year.

9 Q Oh, my goodness. Now I kind of understand a
10 little better of why you can't remember things, if you
11 had a stroke.

12 A Yeah.

13 Q But you seem to have recovered well.

14 A Well, I'm 20 pounds lighter, and I kind of
15 appreciate that, because it was right here, you know, and
16 right here (pointing).

17 Q I'm about ten pounds there.

18 A Twenty. Well, now I'm just starting to pick it
19 up. But, uh ...

20 Q So, Thornton Brothers Construction, does that
21 still exist?

22 A No.

23 Q Okay. And when did that cease to exist?

24 A When I had the stroke.

25 Q Okay. You mentioned something about drugs and

1 alcohol. Are you talking about your brother?

2 A Well, no. I mean it was just ... I just
3 called -- He was not into doing anything while I was
4 down, you know. He could tell you what was on TV and
5 what not. And I, you know, I just think the worst of
6 people. I can't say anything, because I wasn't there.
7 That's just an assumption, you know. I just think the
8 worst of people.

9 Q Who else were the partners or other principals
10 in Thornton Brothers Construction?

11 A None.

12 Q Just you and your brother Jim.

13 A Yeah. Probably really me. He was just
14 somebody I was wanting to -- I had dreams of getting
15 something going. And we, you know, tried to build a
16 house and, you know, on the lake, and paid a lot of
17 money, and what not. And it just, you know, didn't work
18 out. And then the economy went away. And then I got
19 sick. Well, I got sick when we were chasing, we went to
20 Texas to go work Hurricane Ike, and that's when I had the
21 stroke. You know, we were just trying to do anything for
22 work. And ...

23 Q And did your brother hold any sort of
24 professional licenses in South Carolina? Residential
25 homebuilder, a contractor, whatever?

1 A I don't know. I don't believe so.

2 Q And you said Jim. I assume his formal name is
3 James?

4 A You know, I don't know. Because I was -- You
5 know, I was gone when he it was born, in the navy. And I
6 don't know if it's Jimmy or James or whatever.

7 Q All right.

8 A I just always call him Jim. Because, you know,
9 I have people in my family that have shorts for names.
10 Like my name Frederic, it's isn't Frederick it's
11 Frederic. My brother I grew up with, I know his name.
12 This is my second family, you know.

13 Q Okay. When you say second family, what do you
14 mean?

15 A My father -- When my little brother died, my
16 mother divorced my father, you know. She just went
17 through an episode where she thought it was, you know, it
18 was my father's fault. He died of a brain tumor. And,
19 you know, my dad was working for Ford Motor Company, in
20 Detroit, and he got transferred to California, and he
21 took it.

22 Q Let me just show you some things here. It will
23 probably help us to kind of get into the middle of this.
24 This is what's called "Defendants' Amended Responses to
25 Plaintiff's First Set of Interrogatories." And

1 interrogatory is fancy word for questions that lawyers
2 exchange between themselves. First off, have you seen
3 this, it looks like, ten-page document?

4 A I don't remember.

5 Q Okay. This would have been served, looks like,
6 the very last page, it was served by certified mail on
7 June 3rd of this year.

8 A Clueless.

9 Q Clueless?

10 A Clueless.

11 Q Okay. Well, let's go to the front page that
12 you have there. It says "David Thornton is the majority
13 partner of his construction business." Is that true?

14 A Yes.

15 Q What's the name of your construction business?

16 A Dave Thornton Construction.

17 Q Okay. And when did you start Dave Thornton
18 Construction?

19 A Uh, about 17 years ago.

20 Q Okay. And during the time that there was a
21 Thornton Brothers Construction, were you still operating
22 under the name of Dave Thornton Construction?

23 A Yes.

24 Q Okay. Before meeting Tim McGee, had you ever
25 worked -- Well, had you ever set up a modular home?

1 A Yes.

2 Q And was that with Thornton Brothers

3 Construction?

4 A On a couple of occasions, yes.

5 Q When you were working on the modular home,

6 which is the subject of this lawsuit, did you have

7 somebody assisting you with that?

8 A Yes.

9 Q And who was that?

10 A Uh, Mike Robbins.

11 Q And that's Robbins with two bs, right?

12 A I believe.

13 Q Okay. And anybody else that you had helping
14 you with the modular home, which is the subject of this
15 lawsuit?

16 A You mean as far as?

17 Q Helping you set it up. Not trim work and that
18 kind of stuff.

19 A Right. There's Limehouse Crane.

20 Q Okay.

21 A Mike Robbins was the GC, and held the license,
22 and pulled the permits. So, pretty much, I worked for
23 him.

24 Q Okay. Did you, in the name of Dave Thornton
25 and/or Thornton Brothers Construction, actually enter

1 into a contract or agreement with Tim McGee?

2 A I don't remember.

3 Q Do you know anybody who might remember, who
4 might have a better recollection of it?

5 A Tim McGee.

6 Q Okay. And I'm going to probably have to ask
7 you a number of times, and it may be that you're saying
8 you can't remember, because of the stroke, but I'm going
9 to need to ask you along the lines or along the line, a
10 couple of times, why you're unable to remember.

11 A Well, I'll tell you. Here, let me see your pen.
12 for a second.

13 Q Do you want some paper, too?

14 A This card will be fine, actually.

15 Q Okay.

16 A About this much is all I need. I can't
17 remember where it was, but we were in a restaurant, a
18 long time ago, and he was a good friend of mine, I helped
19 him a lot, I thought I was, through his divorce
20 proceedings. I gave him a place to stay, I let him drive
21 my car. On a piece of paper, about this big, it was a
22 napkin, for the record, one-by-two, or whatever they are,
23 looks pretty close to a one-by-two, he drew this thing
24 about like this (indicating). He said, "This is a
25 modular house, that's a little stairs, that's a little

1 come to some agreement on some sort of price?

2 A Well, he asked me, he goes, "What does it cost
3 to set a mod?" And I said, "It depends." He said,
4 "Well, on what?" And I said, "Well, the size of it, the
5 pitch of the roof, the location." There's a lot of
6 variances, if you have to drive a long ways. You know,
7 if you got a 76-foot box. Most of 'em are -- Most of 'em
8 are like 54 feet. And those are usually, uh,
9 twelve-pitch roofs, and with an unfinished upstairs, so
10 people can do what they want, make other rooms later.
11 But, you know, I mean, for me to do a ranch house, it
12 would be -- Back then, back at the time -- See, the
13 price, because Tim was just getting started, and I knew
14 if it was too good to be true, it probably was, that's a
15 lesson in life I learned. And the idea about that little
16 drawing, and what the house was.

17 But the houses that I set, basically, if you
18 were to just set a mod, a 54-foot house, and pull the
19 roof up, which is all the way shingled. The roof comes
20 up like this (indicating), the house is sitting flat, and
21 the main part -- the first section of the roof comes like
22 this, and underneath it there's a bottom section that
23 comes up like this, unless it's like a ranch, it just
24 comes up in one piece, boom, boom. And that's usually
25 about a five-twelve pitch. It's shingled up in the last

1 couple of rows, unless It's a ranch. To set a house like
2 that, means you have to be trained, you have to unpack
3 it, you have to unpackage it, drive the crane in, and
4 that's a big job, big, big job. You have to unpackage
5 the house. Because, I mean, they nail and plaster that
6 thing up for keeps. And it's going down the road. So
7 you unpack it, and then you have to bring the boxes on
8 location. And that's usually done by the -- that's
9 always done by the people who are supplying the house.

10 And to set, to answer your question, to set a
11 little ranch, I used to get \$5,000 for it. But I could
12 usually finish in two to three grueling days of hard
13 work. Usually, people sat one mod, that's all they will
14 set. You know? It's hard, very dangerous work.

15 Now, you know, like I said, I can't recall or
16 don't have any documents in front of me what it came down
17 to. And I don't know if I'm giving too much information
18 or not. But he wasn't -- He knew the size of the house.
19 And I had an idea, by looking at the foundation. But it
20 wasn't anything like this (pointing).

21 Q It wasn't anything like what is drawn on that
22 little piece of paper.

23 A No, no. It was like ridiculously humongous.
24 And, you know, it was from a brand that I never heard of
25 nor do I know of today. I don't know if it was local or

1 if it came from Virginia. A lot of Cherryville, North
2 Carolina, those are some nicer homes. This could be one,
3 and you wouldn't know the difference. You know? But
4 nice. But this one was, uh, was junk. To me it was
5 junk. It was very poorly built. It wasn't built to
6 code. Because, as far as code goes, it's supposed to be
7 nationwide, you know. And so the code books are similar.
8 Unless you have things like shingles, you know, and
9 you're in what they call a wind zone area. And this
10 particular area is considered hurricane wind zone two,
11 which instead of putting three nails on the roof, like
12 they might in Michigan, you know, or California, you
13 know, two nails in the cedar shake shingle, you have to
14 put what they call, on a composition asphalt shingle, six
15 nails in the blue line. And it didn't used to be that it
16 thought it was necessary in South Carolina, because it
17 was so hot here, that if you did a roof in the
18 summertime, the next day it would be one giant shingle,
19 it would melt together and be one giant shingle. Well,
20 since then, I guess, we've come on board, you know, as
21 far as I know, to the best of knowlege, we've come on
22 board with a, you know, with felt as being part of the
23 code.

24 Q And before that you wouldn't need any kind of
25 underlayment?

1 A Well --

2 Q Under the roof?

3 A I mean, I've never done a roof like that. That
4 was just, you know, what people said. I've always put
5 felt under a roof when I've done it. I've lost my train
6 of thought.

7 Q I'm sorry. You were talking about South
8 Carolina, felt wasn't necessary before, shingles, six
9 nails in a blue line, and the house was junk, poorly
10 built, not built to code, variations from one place to
11 another.

12 A Oh. I, I, I don't know, you know. Like I say,
13 this house -- I know where I was going. When I, you
14 know, when I first started to have experience with these
15 modulars, they actually made me tour the plant, stuff
16 like that, it was for an outfit called Ironell, nice
17 house. And what they had back then, you know, we're
18 talking eleven years ago, they were in Cherryville, North
19 Carolina, a quaint little town. And they had a South
20 Carolina code book. They had a West Virginia code book.
21 They had a Georgia code book. They had a Florida code
22 book. And, you know, and specific things, you know, like
23 roofs and, uh, bearing walls, and stuff like that, for,
24 uh, you know for shear, if you're in a flood plain, or
25 whatever, they would build that house, with the state of

1 South Carolina code in mind.

2 And, like I say, I don't know where this house
3 came from. But it had craft paper on the roof, in
4 eight-foot sheets. And, on a twelve-pitch, the first
5 time you step on it, it all comes out from underneath
6 you, because it was stapled with just a stapler, what we
7 call a hammer tacker. And, uh -- Well, I don't know if
8 they have a pneumatic tool for that at the plant, but I
9 know it was stapled. So the first time you step on it,
10 you're down and it's gone. And I didn't have -- Mike
11 Robbins, uh, pulled the permits for this job. Evidently
12 he got the foundation.

13 The house comes, and it's parked out on the
14 highway, and I don't remember the name of the highway, it
15 was a two-lane highway in Cottageville. And, uh, the
16 truck just stopped there. He said, "We can't make this
17 turn." And we're just there to show him or tell him
18 where to park the box. That's all we were there --
19 That's all I was there for, was to show him where to park
20 the box at. But it turned into a couple-day ordeal on
21 myself, you know, with -- And, you know, Tim, his first
22 house that he's gonna do, in his new business, I don't
23 know if he's still doing it or not, but I think, you
24 know, he might of wanted to be there for his first go
25 around. And the house has got dropped, and he had just

1 taken off to the Philippines, uh, with his brother's
2 girlfriend. And what business they have there, I don't
3 know. But it seemed like an odd time to me for them to
4 be gone. So, I mean, not only am I having to try to get
5 ahold of him, I've got a big time variance. You know,
6 three-quarters of the way around the world, I guess,
7 five-eighths, something like that. It's an international
8 phone call. And it was very hard to get ahold of him,
9 needless to say.

10 Well, these trucks couldn't make this turn off
11 of this two-lane highway, because this house is 76 feet
12 long, plus the rig. We're talking about a two-lane
13 highway on a one-lane dirt road. And then it had to make
14 another hard right, with pine trees to the street, in an
15 opening just wide enough for my pickup truck, and the
16 trailer could barely get through there. So we had to
17 pull the stop sign. We had to, uh, we had to move all --
18 There's other signage around there, street signage, we
19 had to pull that. We had to get a tractor in there to
20 backfill the ditches, the storm drain ditches on the
21 sides of the two-lane highway. We had to backfill those
22 so that the truck, after a lot of maneuvering, could make
23 that turn. Okay? So we got one and, actually, I think,
24 I don't remember, I think we had to pull it with a
25 bulldozer, because it was just a shorter rig. It had the

1 capacity to pull that big, long box. It was just a
2 shorter pivot point up in front. So we got the trailer
3 out of the road. Well, now we've got to make that hard
4 right, with the ditches, of course, South Carolina
5 ditches. We had to make that hard right, through this
6 guy bought this land, and he had a pine forest, and he
7 cleared an area for his house.

8 Q Well, before you said, "Yeah, I'll do it," did
9 you ask "Where is it going to be?" Did you know how long
10 the house was going to be?

11 A No.

12 Q Did you know any details?

13 A No, I did not.

14 Q So before the house came, as you were just
15 describing, did you and Tim McGee come to any sort of
16 agreement about how much you were or Thornton Brothers
17 Construction was going to charge?

18 A I could say, you know, I don't remember or I
19 don't know. But I can just tell you this about Tim. He
20 asked me how much it was to set a mod, and I told him it
21 was a different price. It's different prices. Just like
22 I explained to you. A ranch for me would be three days,
23 with a crew of guys, hard work. I don't pay for the
24 foundation and I don't pay for the crane. I set the
25 house up and I tie it together. It doesn't include

1 interior trim, nothing. I just tie the house together.
2 Which is a lot. It's a lotta, lotta work, and it's
3 running a lot of lags. They never sit square. There's
4 always humps and bumps, you have to have chain-fall
5 come-alongs, that I could literally move this house, you
6 know, with two of 'em, on its foundation. You gotta jack
7 it around, you gotta get it square, you gotta get it
8 plumb. Sometimes you gotta jack it from the top,
9 sometimes from the bottom, the sides, whatever you gotta
10 do to marry 'em up. Sometimes it goes easier than
11 others. Sometimes it's like, "Man, that's a quick five
12 grand." Another one is like, "I'll never do another
13 one."

14 Well, Tim, what he did, he went to this, when I
15 was referring to a ranch, he thought I could set that
16 house for \$5,000. Because that's all he wanted to
17 remember. Remember when I went back and said if I hung
18 that chandelier on the ceiling, or if I hung it on the
19 floor, you say, "Can you put it on the floor?" It's
20 like, "Yeah." Well, he took can you do it -- He didn't
21 say, "Can you put it on the floor for free?" When I
22 built the garage, the customer says, "It's low to the
23 ground, the house is up off the ground." And when you
24 build on a slab, your bottom plate is treated lumber,
25 because it's meeting concrete, and then the rest is

1 regular building. He goes, well, he goes, "Can you build
2 it out of treated studs?" And I said, "Yeah. You can
3 build it out of treated two-by-sixes, you can build it
4 out of two-by-twelves, if you want to." But what he
5 would automatically say, by asking me that question, "Can
6 you build it with treated two-by-fours?" I say, "Yeah, I
7 can." So he meant to say, "Can you do it for free, Dave?
8 You know, it's more money for treated two-by-fours, make
9 it ten foot tall, and can do you it for nothing?" That's
10 what he was trying to say. But he said, "Can you build
11 it with treated two-by-fours?" I said, "Yeah."
12 Actually, you can. Am I going to pay for the treated
13 lumber over the non-treated? No.

14 Q Did you ever tell him that?

15 A Yes.

16 Q Did you tell the owner that or did you tell Tim
17 or Mike?

18 A I told 'em both. See, the owner had a deal..
19 See, what I would do is I would tell Tim how much I would
20 build the garage for. And I was giving him prices that
21 were eight, nine years old, because he was my friend.
22 Let me tell you. There's this guy I used to work for,
23 that was so tight-fisted with a dollar, that if he had a
24 McDonald's straw in this hand, and you had both your
25 hands on his hand, you couldn't pull that straw out of

1 his hand. That's how tight this guy was. But I gave Tim
2 the same prices they gave that I did that guy's jobs for.
3 So it was reasonable, very, very reasonable.

4 When you say, "Dave, can you build a deck?" I
5 say, "Yeah, I can build a deck. Can you do stairs? Yes,
6 I can. Can you do rafters? Yes, I can. Do you do them
7 for free? No."

8 Q Well, all the time that you're having this
9 discourse, this conversation, back and forth, did you
10 ever tell him, "By the way, I'm not licensed"?

11 A Yeah. He knew I wasn't licensed. We had a
12 license. We had a general contractor.

13 Q Okay.

14 A I haven't found it necessary, after 28 years of
15 doing this stuff, or 27, I don't remember, but I haven't
16 found it necessary to need a license. Let me tell you
17 what licenses and permits are. They don't come and check
18 my work. Any engineer will tell you, "You want it done
19 right, Dave will do it, and it will get done right." Any
20 of the engineers around here will tell you that. But
21 what a permit is, it isn't that they're checking my
22 workmanship, it's all about heated square footage that
23 you get to pay taxes on. That's what it is.

24 Q Oh, yeah.

25 A And, you know, and as far as my licensing goes,

1 what that opens the door for is just, you know, to get
2 shanked by money. You know, I just don't ... You know,
3 if I do a job in the city, that I don't work in before,
4 that I have to, I don't know, I'm doing someone a favor,
5 I don't see where I need to, you know, have a ... I don't
6 know -- I just never saw it necessary to have a building
7 license. Could I pass a test? I don't know. Probably.

8 Q Well, when you were sitting down with Tim, and
9 I guess we're going to have to mark that little thing as
10 an exhibit, and him saying, "Can you do this? Here's the
11 tiny little drawing," did you tell him that you were
12 licensed?

13 A No.

14 Q Wouldn't that be part of "Can you do it?" In
15 other words, "Yes, I can do it, but it would not be legal
16 for me to do it, because I'm not licensed."

17 MR. CLOSSER: Object to the form.

18 MR. MAHAFFEE: You can answer.

19 MR. CLOSSER: You can answer.

20 THE WITNESS: Could you repeat the
21 question?

22 Q Yes.

23 A Because he lost me kind of.

24 Q That's okay. When y'all were sitting down, and
25 we've got this little drawing here, and Tim says, "Can do

1 you that?" Did you think that part of "Can you do it?"
2 would be that he was wanting or needing to know if you
3 were licensed to do that?

4 MR. CLOSSER: Objection to the form.

5 THE WITNESS: No.

6 Q Did you ever tell Tim that you weren't
7 licensed?

8 A Yes.

9 Q When?

10 A I've known Tim for many, many, many years.

11 Q How many?

12 A Uh, I would say 13.

13 Q Okay.

14 A About 13. That's a pretty long time.

15 Q And you have done work for him before? Before
16 this, in other words?

17 A Uh, I don't recall. I know he was doing some
18 remodeling on his house once. Oh, was that before or
19 after? I think I -- I mean, I've worked on his mom's
20 house. I've worked on his brother's house. This was
21 after, you know, this incident's happened, you know, that
22 he brought the lawsuit against me, and I knew it, I
23 worked on his mother's house, and his brother's house. I
24 just don't recall if I worked on 'em before this lawsuit.

25 Q Okay.

1 A But I know I worked on his brother's and
2 mother's house after I knew I was being sued by him.

3 Q And Tim got you to do the work on his mother's
4 and brother's house or was that directly between you and
5 his mom and brother?

6 A Well, it was directly -- The first job that Tim
7 wanted to do from me was, uh, to put floor joists under
8 his mother's house, because they were rotten and he was,
9 "How much can you do it for?" And I told him, I said,
10 "Well, I can do it for about \$9,000." Well, he told his
11 mother it was \$17,000. And then, uh, he had, uh, Mike
12 Robbins do the job. He just used me to crawl under there
13 and give them a price, a professional's price. Mike was
14 the superintendent on the job I worked for. He got his
15 GC license when he got fired.

16 Q But he's got a license, right?

17 A Huh?

18 Q But he's got a license, right?

19 A Yeah.

20 Q Okay. Do you know how long Mike Robbins has
21 had a license?

22 A I don't know if he's had one, you know -- He
23 was a lot of things. He was manager for a Coca-Cola
24 distributing plant, he was a police officer in North
25 Carolina. Uh, he had a lot of, a lot of jobs.

1 Construction knowledge? I mean, if you wanted to, you
2 could spend \$600, and you could be a general contractor
3 tomorrow. Do a little trip up to Myrtle Beach, and they
4 will teach you how to handle those things. Yes, sir. He
5 had some knowledge of construction. And uh, of,
6 electrical. Because I worked on his house with him, you
7 know. Although, you know, he jerry-rigged everything,
8 you know, plugs got heat to 'em, and lights got heat to
9 'em, and he did it himself. And that was impressive,
10 because I don't do electrical. You know, I know what can
11 happen when something goes south on you. You get fried.

12 Q Okay. Was the foundation the proper size for
13 this house out there --

14 A No.

15 Q -- in Cottageville?

16 A No. No.

17 Q What had to change?

18 A I told Mike, when he told me he had the
19 foundation, because I just thought it was a regular set,
20 a two-box set. I told him, I said, "You need to add
21 three-quarters of an inch per box." It turned out it was
22 three boxes that needed to be an inch and a half. And
23 out of all the mods I set, if that isn't number one, it's
24 number two, as far as perfect set goes. As far as
25 there's not a place you can pull a rug back and slide a

1 playing card down between those two boxes and it will go
2 through. You know, it's up to and touching. It's a
3 perfect set. And the frigging foundation is an inch and
4 a half short in the front. He didn't add the
5 three-quarters of an inch per box. That's elementary in
6 the business. When you're setting up a mod foundation,
7 it's elementary, three-quarters inch per box.
8 Doublewide, three boxes, three-quarters of an inch.
9 Because you're asking for two hugh things come slam
10 together and be perfect. This was real, real, real close
11 to perfect on this, on the set. You know? I was really
12 proud of the set. I mean, if you came to the house, and
13 you were interested in a mod, I would show you the set.
14 I was very proud of it.

15 Q And when you're talking about this set, you're
16 talking about the one in Cottageville?

17 A Yeah. Yeah.

18 Q Okay.

19 A Except for, you know -- Yeah. It was a
20 sculpted block. So that product means it's finished.
21 It's not getting stuccoed over. You can't hide it with
22 brick. It was a sculpted block, so it was a finished
23 product, it was a block form. So it was done. I mean,
24 you couldn't add an inch and a half block to the front of
25 it to hide it. It was just a lip.

1 Q Right.

2 A And he, uh, he ran out of concrete, when he was
3 filling the cells.

4 Q You're talking about Mike Robbins.

5 A Yeah.

6 Q Okay.

7 A And he placed it anyway. So that means there's
8 some cells there that are, uh, you know, you can take a
9 hammer to, and hit that block, and it would be empty.

10 Q And when you say the concrete or cells in the
11 block, how high up was it?

12 A That's another thing. It was a -- You know,
13 when you talk about a standard set, a standard set,
14 that's what he said, standard set, talking about three
15 foot, between 34 and 36 inches. Now, this guy was pretty
16 smart, who bought this house. Even though he was small,
17 as far as height and size, he's thin. Uh, he wanted some
18 crawl-around spot under there. He wanted not to be able
19 to do the sniper crawl under there, he wanted to get it
20 elevated a little bit. Which, for one, takes the
21 foundation costs up, it takes the labor costs up on decks
22 and stairs. Not only is it more money for the materials,
23 to go up higher than standard set, you're out of the
24 eight-foot goods range. It's just hard to do, when it's
25 eye level or whatever. You're not working right there on

1 the ground, you're working off ladders. If you step
2 between two joists, you're not going to hit the ground,
3 you're gonna hit your privates (indicating). It's
4 dangerous, the price goes up.

5 It's like you say, "Dave, could you build me a
6 deck on my house?" And I could say, "Sure, Max, I
7 could." And you would say, "Well, what are you getting a
8 square foot? Well, Max, I can put you a deck on there
9 for 18 bucks a square feet. That's length, times width,
10 times 18, for material and labor." I don't have to see
11 it, you know. It's the regular set. You could say,
12 "Yeah, it's regular." I get there, and it's regular,
13 right off your second floor, right out your master
14 bedroom window, and it's two stories high, that ain't
15 regular. To you it's regular, but to me it isn't. You
16 know, there's a whole different -- they're a whole
17 difference circumstance involved. Now I'm dealing with a
18 guy, international phone call, that I never could get
19 ahold of, and tell him, look --

20 Q You never could?

21 A Maybe three or four times.

22 Q Okay.

23 A You know? Whenever I told him what it was
24 wrong, he said, "Do it, do it, do it, do it." You know,
25 he didn't care. Do it." Mike Robbins had the

1 foundation, the interior finish, the interior paint, and
2 the roof. Mike and I had been friends for awhile. I had
3 worked for him, he was superintendent for, uh --

4 Q Al Espey?

5 A Huh?

6 Q Al Espey?

7 A Yeah. Meridian.

8 Q Yes.

9 A And Mike had some personal problems, you know.
10 And, uh, you know, he confided in me with a lot of 'em,
11 you know. And he's really going through some rough
12 stuff. So when we finally got that, after we made the
13 other right, had to cut trees down, and stuff like that,
14 you know, to get that thing on the lot, we were shot out.
15 I mean, he was probably worn out, from just walking in
16 the heat, because he's a little overweight. But I said,
17 "Get in, fat boy. I'll give you a ride to the boxes
18 there." And he got in, and he's looking behind my seat.
19 And I said, "What are you looking for?" He said, "I'm
20 looking for a hammer or something to hit you with. You
21 called me fat boy." And I felt bad. I said, "Dude, I'm
22 sorry." I was just glad, I was kind of -- kind of happy,
23 you know, that we got those boxes, those big boxes, in
24 this small turn. And I felt really, really bad that I
25 called him that. I said, "I'm sorry, I'm sorry." And he

1 goes, he said, "You know, I don't feel like I'm getting
2 the fair end of the stick here." And I go, "What's the
3 matter?" And he goes, "Well, seems like you're getting
4 to do everything." And I go, "Well, you got the
5 foundation, and stuff, and the permits, and you're the
6 general. What do you want?" And, uh, he goes, "Well,
7 should I do the roof and the interior finishing?" And I
8 go, "Yeah, sure." He goes, "What about the paint?" I
9 go, "I'm not a painter." I can paint, I can paint that
10 picture right there, I'm an artist. You know? But I
11 don't like to do it, as far as a house goes. I mean, you
12 should see mine. So Mike had the roof, the GC, the
13 interior finish, trim, uh, and the, uh, paint. And the
14 foundation.

15 Q Okay. And when the house first got there, as
16 you say, turning off that two-lane road, down there in
17 Cottageville, was Tim already in the Philippines?

18 A Yeah.

19 Q Did you know he was going to the Philippines?

20 A Not until the last minute. Well, I can't
21 remember. I can't remember. I mean, he was just like,
22 "I'm going to the Philippines." And I think it was like,
23 I don't remember, it was real close, it was like "What?
24 Your first set, and you're gonna miss it?" I was
25 dumfounded. I did not know that box -- that house was

1 gonna be put up, and he was not gonna be there. I did
2 not know that. Even if I was on vacation, I would put
3 that trip off. I mean, if it was my business, and
4 somebody entrusted me, to sell me a house and to, you
5 know, to build it, and it was my first one, on my journey
6 to be, uh, Tim the house builder, you know, I would of --
7 My first one? You couldn't of given me a Club Med cruise
8 for free, or a mountain fishing trip, or anything, not
9 even one day. I would of been there, I would of forseen
10 everything.

11 Q But he trusted you enough to --

12 A He trusted Mike enough.

13 Q When y'all were talking about can you do it, et
14 cetera, et cetera, did you know that Mike Robbins was
15 going to be involved at all?

16 A Yeah.

17 Q Okay.

18 A Because he said, you know -- In fact, I think
19 that's, you know, where he goes, "Well, you don't have a
20 license." And I go, "Well, you know, I know someone who
21 does." And, you know, I mean, it's no big deal to find
22 someone with a license.

23 Q Do you know how much you charged Tim McGee for
24 this house, all the work?

25 A No. I don't recall, no.

1 Q Do you know if -- Well, did you send him bills?

2 A Uh, yes.

3 Q Okay.

4 A Yeah. I mean I had a few -- We had a rough
5 idea, you know, and when we would talk, I would tell him
6 over this, this, this and this, and "I'm not doing it for
7 that." And the garage height, come to find out, because
8 of the extra height the guy made it, for his crawling
9 around under the house, required longer studs, so that the
10 ceiling of the garage didn't hit the back door as it
11 opened. You know? I mean, that's stuff that's not a
12 general garage. It's not a 93-and-a-quarter-inch studs,
13 regular garage. "I can't build this garage without, you
14 know, if you wanted a ceiling on it, without the back
15 door hitting the, the, the ceiling trusses, the joist,
16 the ceiling joist part of the truss." You know, I can't
17 absorb that. And he would say, "Do it."

18 Q Did you ever put a mechanic's lien on this
19 house or on the property of Mr. and Mrs. Shirts?

20 A I don't know if I did or not. I don't
21 remember.

22 Q Did you at least threaten to put one on there?

23 A I don't recall.

24 Q Some of the documents I'm going to show you
25 have been highlighted. I didn't know you wouldn't kind

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

DEPOSITION OF BRENT SHIRTS

TIM MCGEE,

Plaintiff,

vs.

CASE NO. 2008-CP-18-2565

DAVID THORNTON and THORNTON

BROTHERS CONSTRUCTION,

Defendants.

DEPONENT: BRENT SHIRTS

DATE: DECEMBER 2, 2009

TIME: 1:00 P.M.

LOCATION: SMITH & KOONTZ

7455 Cross County Road, Suite 1

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ON BEHALF OF THE PLAINTIFF:

GRIMBALL & CABANISS
BY: MAX G. MAHAFFEE
473 Savannah Highway
Charleston, SC 29407

ON BEHALF OF THE DEFENDANTS:

SMITH & KOONTZ
BY: ZACHARY J. CLOSSER
7455 Cross County Road, Suite 1
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E X H I B I T S

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14

1 TWO COLOR PHOTOS OF CRANE, ETC.

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2 BLACK AND WHITE PHOTOS, SOME WITH

81

15

HANDWRITTEN DATE AND TIME

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1 BRENT SHIRTS,
2 being first duly sworn, was examined and testified as
3 follows:

4 EXAMINATION

5 BY MR. CLOSSER:

6 Q Mr. Shirts, if you would, please state
7 your full name for the record.

8 A It's Brent John Shirts.

9 Q Okay. A couple things. Have you ever
10 had your deposition taken before?

11 A I have, yes.

12 Q What occasions?

13 A About eight years ago, a case brought
14 against me from DIRECTV.

15 Q Against you by DIRECTV?

16 A Yes.

17 Q What for?

18 A Well, they assumed since I bought a
19 circuit card from someplace in Florida that I was
20 stealing cable when, in fact, I was paying \$104 a
21 month.

22 Q Okay. You were not stealing cable?

23 A No.

24 Q Was that the only occasion?

25 A Yeah.

1 Q All right.

2 A I was thinking about my divorce, but we
3 didn't do depositions.

4 Q Are those the only two lawsuits you've
5 been involved in?

6 A Yes.

7 Q Okay. A couple things I need to tell
8 you. If at any point -- and just to be clear,
9 you're not represented by Mr. Mahafee, correct?

10 A Correct.

11 Q If at any point during the deposition we
12 take a break and you do consult your attorney -- I
13 don't know if you have one or not -- but I would
14 just instruct you not to discuss the substance of
15 your testimony with your attorney or anyone, for
16 that matter, because it is discoverable.

17 Also, if you don't understand one of my
18 questions, you need clarification, direct that
19 misunderstanding to myself, rather than Mr. Mahafee.
20 If Mr. Mahafee asks you any questions, direct
21 whatever clarification you have to Mr. Mahafee. You
22 understand?

23 A Right.

24 Q Okay. As you can see, we are writing
25 everything we say down, so I would ask that you not

1 talk over me, and I'll afford you the same courtesy
2 just for ease of use. And when you do respond,
3 respond verbally by saying yes or no or whatever's
4 appropriate as opposed to uh-huh and huh-uh. It's
5 hard to tell what you mean.

6 A Okay.

7 Q That being said, do you have an
8 understanding of the lawsuit here today?

9 A Yes.

10 Q What is that understanding?

11 A I understand that Tim is suing Dave for
12 an overrepresentation of money spent to do the
13 house.

14 Q Okay. Do you have any opinion one way or
15 the other as to the truth of that?

16 A Yes, I do.

17 Q What is that?

18 A As I went out to my site at a minimum of
19 once a week and on several occasions when I was told
20 there would be work done out there maybe two or
21 three times a week to check on the status of
22 anything in most cases not being done.

23 Q Let me just make sure I understand what
24 you just said. You would visit the site at a
25 minimum of once a week?

1 A Yes.

2 Q Period?

3 A Yes.

4 Q Okay.

5 A To check on -- I'm sorry.

6 Q Go ahead.

7 A Was just checking on whether anything was
8 being damaged or stolen because the house was
9 basically sitting out there by itself in the
10 country, and it could have been vandalized.

11 Q And on some of those occasions, work was
12 not being done?

13 A I can only think of about three occasions
14 that I actually went out there and work was being
15 done while I was out there. I usually went after
16 work.

17 Q At the end of the workday?

18 A At the end of the workday.

19 Q How does that statement or those
20 statements affect your understanding of the
21 truthfulness of either party's claim in this matter?
22 I mean, do you believe that one party owes the other
23 some money?

24 A Yes, I do.

25 Q Can you be more clear?

1 A Well, I believe that Dave was charging
2 Tim for services not even provided. I know
3 personally that Dave had told me he would do certain
4 things, such as put in a couple of windows that he
5 would get from another -- he had some left over from
6 another job site, two smaller windows, above the
7 garage, in the room that's next to the garage, the
8 end of the house, and that he wanted to charge him
9 for installing them or something before he even got
10 the windows there.

11 And then he wanted to charge him when, in
12 fact, Tim had never said anything about buying these
13 windows. They were offered by Dave.

14 Dave let my house get completely soaked,
15 wet, brought the ceiling down. The entire living
16 room was completely ruined, as when a modular is
17 delivered it's delivered pretty much ready to move
18 in except for assembling it, meaning it's got carpet
19 down. And if you have a stick-built house, carpet
20 is usually the last thing that goes in before you
21 move in.

22 So it's pretty much in ready state, and
23 he put it in on a Friday, and we had four inches of
24 rain between Friday and Monday, and I know that
25 because I work for the National Weather Service.

1 A I was told if everything goes okay, 60
2 days. If they have problems, it may be as long as
3 90.

4 Q That was told to you by whom?

5 A That was told to me by Tim, but he didn't
6 give me, you know, a guarantee on 90. That was just
7 an estimate.

8 Q Okay.

9 A And that was made to me in April, and I
10 didn't move in until the end of December.

11 Q That would have been April of '07?

12 A Yes.

13 Q Is that when you signed or entered into
14 the agreement with Tim, when that was told to you?

15 A Yes. But like I said, it wasn't a
16 guarantee. It was just, I -- he says, well, you
17 know, I can't give you a move-in date, but usually,
18 it takes 60 to 90 at the most.

19 Q Okay. I'm showing you what's been marked
20 as Exhibit 4 to Mr. McGee's deposition. Is that the
21 first page of the agreement that you signed with
22 Mr. McGee?

23 A Yes, it looks like it. Yes.

24 Q Do you have a copy of that agreement in
25 this file that you've brought with you?

1 A I believe I do, but I'm not sure if I got
2 a copy of this because we didn't have a computer or
3 a scanner at the time, and he was going to get back
4 with me on it.

5 Q Okay.

6 A And to be honest, now that I think of it,
7 I don't know that I do have a copy of this.

8 Q All right. Were you present when Tim
9 McGee hired or contracted with David Thornton?

10 A No.

11 Q When did you first meet David Thornton?

12 A Right before the -- right before -- no.
13 Actually, now that I think about it, the day that I
14 got back from Key West, which was on a -- I believe
15 it was Friday, the 16th, or Saturday, whatever day
16 the 16th of July was of 2007 because I took some
17 pictures there.

18 And at that point, I didn't know that --
19 I stayed away from the site because they were
20 craning the dormers onto the roof.

21 Q Okay.

22 A I'll show you which one, this one here.
23 And I wrote those dates way back then. There's the
24 20th. Damage to the roof from the smoking gun right
25 there.

1 Q Where's that?

2 A When you raise anything that's as heavy
3 as half of a house -- and it's 76-feet long -- to
4 give you some -- 76 by about 13-and-a-half feet, I
5 believe, if you have it anywhere off of level,
6 you're bound to either slide a cable or come off any
7 type of protection you have for that cable as it
8 goes down the roof of the house.

9 And if you look at that picture, it is
10 way off level because the foundation is level.

11 Q What is off level?

12 A The house being craned on.

13 Q Okay.

14 A There's no way you're going to get it
15 exactly level pulling it up and then setting it
16 down, but that is quite a ways off of level.

17 Q That's a problem why?

18 A That's a problem because you've got a
19 house full of heavy things in it that -- well, it'll
20 pretty much tighten down. If you do have appliances
21 in there that aren't fastened to the floors, they
22 have some sort of a strap on them, but they can tip
23 side to side because it came full of appliances,
24 ready to go.

25 But the main thing that you worry about

1 is the strap that has to go over the edge of the
2 house, edge of the roof, and then down to the bottom
3 of the trailer, and you can see in these pictures
4 that that is my siding all crunched up at the
5 bottom.

6 Q Uh-huh.

7 A And when you've got it at an angle like
8 this, it's bound for those straps to slide off
9 whatever protection they put on over the edge of the
10 roof.

11 Q Okay.

12 A And the appearance of the damage is that
13 that's what happened.

14 Q What damage are you referring to? What
15 we were just referring to for the record is two
16 photographs on top of each other on a single page
17 both with photos of the crane, and it looks like the
18 first modular unit being placed or set.

19 What are we looking at now? We're
20 looking at --

21 A We're looking at where the straps came
22 across the roof.

23 Q By the dormer?

24 A By the dormer, cut into the side. Of
25 course, the dormer was put in afterwards as evidence

1 of that.

2 Q In a photograph labeled Monday 16 July
3 '07, 3:30 p.m. And this is a photograph in the same
4 packet that you were just referring to.

5 A Well, that's damage from something else.
6 I know what that was too.

7 Q The damage that you described in this
8 photograph, the upper left-hand --

9 A As it pertains to this is cutting through
10 the roof here.

11 Q Does that damage still exist?

12 A No. That was repaired.

13 Q When?

14 A Probably -- I want to say August. But
15 I've got a whole bunch of pictures on CD that all
16 have time and date stamps that will tell me -- it's
17 basically a chronological order. I took my camera
18 every time I went out there to document either what
19 was done or what was not or the fact that everything
20 looked exactly the same as the last week that I was
21 out there.

22 Q Who repaired that damage?

23 A I'm not sure who repaired it. I believe
24 Mike Robbins saw to it that it was repaired, but --

25 Q But you don't know?

1 a couple years.

2 Q It's not in your documents? I mean, take
3 a look.

4 A I will look, but I believe it's not. I
5 believe that was one that I gave Tim, and he was
6 going to give me a copy of, and I never did get one
7 back from him. But I'll look. It would have been
8 handwritten.

9 MR. MAHAFFEE: Can we go ahead and
10 have that crane -- he made an extra copy for us.
11 Can we get the court reporter to mark that?

12 MR. CLOSSER: That's fine.

13 THE WITNESS: That's not the greatest
14 copy in the world, so if you've got a better
15 scanner, we could redo the original.

16 (Exhibit No. 1 was marked for
17 identification.)

18 Q Mr. Shirts, what I'd like to do is
19 actually make a copy of your file, and then I'll
20 give it back to you. And I can do that a number of
21 ways. I can send it to you, or send it to
22 Mr. Mahafee, or however you want to do it. We can
23 talk about that later.

24 A Okay.

25 Q But just for the record, what's been

1 marked as Exhibit 1 to your deposition is the two
2 photographs of the crane setting that first modular
3 unit, correct?

4 A Yes.

5 MR. CLOSSER: And then if it's okay
6 with you, I'm just going to refer to these four as
7 McGee?

8 MR. MAHAFFEE: Oh, yeah. No sense of
9 putting them back in the record.

10 A A lot of these are just notes and things
11 that may have also pertained to the mortgage itself
12 with SunTrust. Here is a typed out -- I didn't do
13 this. Michaels Home Builders did a punch list when
14 they did a home inspection. I didn't order the home
15 inspection. That was one ordered by the mortgage
16 company, SunTrust.

17 And this was one of the punch lists that
18 was given -- I don't know if those two pages are the
19 same. Nope, different amounts.

20 Q What's the date of that document?

21 December 17, '07?

22 A Yes. Which this was the document that we
23 did the day that we moved in or took possession of
24 the keys, I should say. We started moving in that
25 afternoon. So that's one of them.

1 These documents right here have nothing
2 to do with this case, and I would like to pull them
3 if I could.

4 Q What are they?

5 A They are pay-offs to some credit card
6 companies that I made prior to even knowing Tim.

7 Q That's fine.

8 A Oh. I also have some mechanic's liens by
9 Martin & Son Drywall.

10 Q Have those been satisfied, or are you
11 still under litigation?

12 A No. Those were dropped as soon as they
13 were paid. It's just they hadn't been paid by Tim.
14 There's also an amount here when we got a larger air
15 conditioner. This is the \$80 check to Mike Robbins
16 for the florescent lights.

17 Some of these you'll find the piece of
18 paper has nothing to do with it. I just might have
19 grabbed it off my desk at work and starting writing
20 it down as I took the phone call.

21 I don't think I have it. It's possible
22 that the punch lists got thrown away. They were
23 certainly given to Tim so he knew what to do, but my
24 copy might have been thrown away as the items were
25 repaired because I don't have anything to do with it

1 other than the SunTrust mortgage paperwork that
2 wasn't put in this folder. So I do not have them.

3 Q Okay. Let me ask you about this group of
4 photographs that's written on in what I understand
5 to be your handwriting.

6 A Yes.

7 Q Monday 16 July '07, 3:30 p.m. How long
8 was it -- or when did the house -- when was the
9 first house set, or what is your understanding?

10 A We left on -- I believe we left on Monday
11 or Tuesday. The house was originally supposed to be
12 set on the 9th, and then there was a problem getting
13 the crane, so that was delayed to the 10th.

14 And I believe it rained on the 10th, and
15 they had to wait until the ground would be dry
16 enough to bring a however-many-thousand-ton crane on
17 to the wet, soggy, you know, dirt, mud. They had to
18 wait so many days after it rained before they could
19 actually set it.

20 So we ended up leaving for Key West I
21 believe on the night of the 10th because we weren't
22 there when it was set. It wasn't set -- I called
23 from Key West several times to Dave to find out when
24 it was actually being set, and a couple times I
25 couldn't get ahold of Dave, so I talked to Mike, as

1 Mike, as I understood it, was the general
2 contractor.

3 Then it wasn't until the Friday --
4 because every day that I called he says, it should
5 be good tomorrow, and we'll do it because it's not
6 supposed to rain. And he set it on the Friday
7 afternoon. And the reason I know it's afternoon is
8 because the sun is shining on the front of the
9 house.

10 Q Okay.

11 A And on Saturday and Sunday and I believe
12 half of -- part of Monday, we got four inches of
13 rain. In this picture, I didn't walk up to the
14 house and look inside so I had no idea that there
15 was damage until the 20th because I didn't want to
16 get in anybody's way for insurance purposes for the
17 contractors and such.

18 On the 20th was the day that I walked up
19 and looked through a window and saw the ceiling
20 sitting on the living room floor.

21 Q The drywall?

22 A Actually, I couldn't see drywall because
23 the --

24 Q Drywall ceiling?

25 A Yes. The drywall ceiling because all the

1 blown-in insulation was even splattered up the
2 walls. It was on the carpet. It was -- up the
3 sides of the walls, you can see splatter marks in a
4 few places. The prints don't come out near as good
5 as the digitals, JPGs.

6 Q Okay.

7 A Plus you can zoom way in. This was a six
8 megapixel camera.

9 Q Were you on site between the 16th and the
10 20th of July?

11 A Let's see. If that was a Monday -- if I
12 was, I would have a record of it on the creation
13 date of the pictures because I believe I went out
14 there every day for the first couple of days -- no,
15 no. I didn't go out there until the 20th because I
16 thought the house was -- as far as I knew,
17 everything was going fine.

18 Q Okay.

19 A I didn't know the ceiling had come down
20 until the 20th.

21 Q Do you have any understanding or
22 recollection of an issue with the way the roof was
23 manufactured by anyone?

24 A Yeah. Well, I know a little bit.

25 Q What do you know?

1 Mike, as I understood it, was the general
2 contractor.

3 Then it wasn't until the Friday --
4 because every day that I called he says, it should
5 be good tomorrow, and we'll do it because it's not
6 supposed to rain. And he set it on the Friday
7 afternoon. And the reason I know it's afternoon is
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4 few places. The prints don't come out near as good
5 as the digitals, JPGs.

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10 20th of July?

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12 was, I would have a record of it on the creation
13 date of the pictures because I believe I went out
14 there every day for the first couple of days -- no,
15 no. I didn't go out there until the 20th because I
16 thought the house was -- as far as I knew,
17 everything was going fine.

18 Q Okay.

19 A I didn't know the ceiling had come down
20 until the 20th.

21 Q Do you have any understanding or
22 recollection of an issue with the way the roof was
23 manufactured by anyone?

24 A Yeah. Well, I know a little bit.

25 Q What do you know?

1 A Well, I knew that I ordered a 45 pitch
2 roof so I could put a pool table in there and go
3 around all sides with a cue stick. I remember Dave
4 saying that the roof was all wrong. It didn't have
5 any underlayment or it just had some paper down
6 underneath the shingles.

7 And I believe he ripped all the shingles
8 off and started putting some other type. It was
9 either paper, or it was the asphalt-filled paper or
10 asphalt -- some type of paper. I don't know what
11 it's called. I also then found out -- I looked into
12 that to find out why they would just put paper up
13 there rather than asphalt-impregnated paper is what
14 it really is, and found out that if you have a 45
15 pitch roof, it's not a requirement.

16 It's only if it's less than 45 inches
17 because when rain -- it's at such a steep angle that
18 the water doesn't weep or soak back up -- have a
19 chance to soak back up underneath the house. So
20 there actually wasn't any problem with just putting
21 paper up there.

22 Q Are you aware of any other problem with
23 the roof?

24 A Besides the obvious damage that the
25 cables did to it --

1 Q And that would be along the drip edge?

2 A Along the drip edge where the cables --
3 either the cables came off or slipped off whatever
4 was protecting the drip edge, and cut into the house
5 about eight inches. I don't believe there was
6 anything else wrong that I was aware of or that I
7 was even made aware of.

8 Q Okay. So Mike Robbins was involved
9 during the set?

10 A I don't know. I wasn't there for the
11 set.

12 Q Right. You called Mike Robbins while it
13 was being set, correct?

14 A Yes.. Yeah, I called him from Key West
15 just because I couldn't get ahold of Dave. He
16 wasn't answering his phone.

17 Q Did you call Tim from Key West?

18 A No.

19 Q Why not?

20 A Tim was in the Philippines, I believe.

21 Q Do you know how long he was there?

22 A He left, I believe, about the same time
23 that I left. In fact, I think we were both out
24 there -- let me think. I might be thinking about
25 the day that I got back instead of the day before it

1 was set.

2 No. I knew that he was leaving somewhere
3 around the 8th, I believe, because I left -- I want
4 to say I was there five days, so I left
5 approximately the 10th because we also stopped and
6 saw -- we had tickets for a concert in Miami on our
7 way down.

8 Q Who'd you see?

9 A Sting and the -- I can't think of the
10 name of them.

11 Q That's all right.

12 A Good band though.

13 Q All right. So Tim had left a couple days
14 before you did?

15 A Yes.

16 Q And he wasn't there during the set. Do
17 you know when he came back?

18 A Yes.

19 Q When?

20 A Approximately the -- I want to say
21 between the 22nd and the 24th.

22 Q Okay. Had you met Mike Robbins prior to
23 going down to Key West?

24 A I believe I was introduced to him when --
25 yes, I did meet Mike Robbins when the foundation was

1 being set.

2 Q Was Mike overseeing the construction of
3 the foundation?

4 A Well, he was supposed to be. But what
5 actually happened is the day before they were going
6 to pour, I went out with my wife that time and
7 took -- you'll see on the CD that there are several
8 photographs, and you'll notice that they had the
9 foundation dug out and all the rebar in ready to
10 pour the concrete the next morning, and the house
11 was actually facing the wrong direction.

12 So they got out there that night and
13 first thing that next morning and had to pull all
14 the rebar back up, bulldoze the entire foundation
15 again, which all that does is loosen the soil so
16 it's not as strong of foundation, and redig all the
17 trenches so that the house was actually -- they had
18 the back of the house to my driveway.

19 So it was 180 degrees out, and if we
20 hadn't have noticed that -- I was actually thanked
21 by the foreman of the company that put the concrete
22 in because it would have cost him a lot more money
23 had he poured it and then had to pull it out.

24 Because I called Tim as soon as I
25 realized it and took a bunch of pictures. And then

1 I took more pictures when it was done right.

2 Q Are all those pictures on the CD?

3 A They are on the CD. But that had nothing
4 to do with Dave that I knew of.

5 Q Who hired Mike Robbins?

6 A As far as I know, Tim only made a
7 contract with Dave, and I believe Dave brought in
8 Mike. I don't know if they started out together or
9 if he did the bid and then got out there and saw
10 what -- or realized how much there was to do and
11 then asked Mike. I don't know.

12 Q Is it fair to say you just don't know?

13 MR. MAHAFFEE: Objection.

14 Q Do you know?

15 A I do know that Tim didn't hire him.

16 Q Okay.

17 A Tim's contract was with Dave.

18 Q You testified earlier that it was your
19 understanding that Mike was the general contractor.
20 What is your understanding as far as what David
21 Thornton's role was?

22 A My understanding of David Thornton's role
23 was that he was going to do the majority of the --
24 he was going to do the set, the placement, and then
25 he was going to do the fitting everything together,

1 joining the -- erecting the roof, putting the roof
2 up.

3 He actually -- I actually went out and
4 bought the flooring myself that went upstairs
5 because I was going to do that anyway right after I
6 moved in so that I wouldn't be working on -- I was
7 going to do the upstairs all myself. I had to have
8 the wood delivered before they set the roof or you
9 couldn't get the 50 or 60 sheets of plywood up
10 there.

11 So I bought that before I went to Key
12 West, and then when I came back and after we
13 realized what damage was done and the fact that
14 the -- when they were constructing the roof, they
15 punched through the ceiling in a few places because
16 you can't put ladders across trusses and expect to
17 be able to not come down through the ceiling.

18 Some of the interior pictures show holes
19 poked through the ceiling. And so it was to Dave's
20 advantage that he go ahead and put my flooring down,
21 but he didn't purchase the flooring, and I don't
22 know if he tried to bill for the flooring. It was
23 something like that. When, in fact, I purchased it.

24 Q But you know he did install it?

25 A He did install about 80 percent. He

1 didn't put the whole thing down. Only enough to get
2 his ladders and get the trusses all put together.
3 He didn't do the edges. There was either two or
4 three feet left all around the outside.

5 Q That was just the plywood subfloor?

6 A That was the subfloor that I had bought.

7 Q So David Thornton's scope of work, to
8 your knowledge, was to set the home and to erect the
9 roof?

10 A Well, and whatever -- I don't know what
11 they call it, but whatever they do on the inside
12 when they -- when it comes -- you've got sections of
13 drywall out where the house is joined together, and
14 depending on the layout of the homes, there can be
15 various things that aren't hooked up.

16 I know that the electrical is pretty much
17 done underneath the house just by plugging -- it's
18 like plugging two extension cords together only they
19 lock into place. So when you do the drywall,
20 there's also huge sections of the crown molding that
21 aren't put in because you try to have one piece of
22 crown molding instead of putting a six- or
23 eight-inch piece, although that's what I got was
24 crown molding with cuts with one foot left on the
25 edge, and of course, cracks and everything else. It

1 looks -- it was not done professionally.

2 My brother-in-law actually came in March
3 after we moved and helped me fix a lot of the
4 problems that -- a lot of the punch list items and
5 things that we didn't even bother -- by then we were
6 so disillusioned about asking Tim or Mike to do
7 anything because I would then have to take off work,
8 and if it was for a cover plate on a light switch or
9 something that was broken, it wasn't worth -- I make
10 \$50 an hour. It wasn't worth \$50 an hour to spend
11 two hours driving, waiting there for three hours,
12 and then not having them show up for a \$10 repair
13 job.

14 So I did a lot of that stuff myself and
15 still do -- there's still some things that I never
16 did get to like the crooked doors, doorjambs.

17 Q Who wasn't showing up?

18 A Well, when it was being finished and
19 after we moved in, Mike was the only one on the job.

20 Q Okay.

21 A Dave didn't show up the first couple
22 months after he initially put the roof up and turned
23 my living room into a sauna.

24 Q After August?

25 A After August, I don't believe I saw Dave.

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

DEPOSITION OF C. MICHAEL ROBBINS

TIM MCGEE,

Plaintiff,

vs.

CASE NO. 2008-CP-18-2565

DAVID THORNTON and THORNTON

BROTHERS CONSTRUCTION,

Defendants.

DEPONENT: C. MICHAEL ROBBINS

DATE: DECEMBER 2, 2009

TIME: 3:13 P.M.

LOCATION: SMITH & KOONTZ

7455 Cross County Road, Suite 1

North Charleston, South Carolina 29405

REPORTED BY:

TERI L. HORIHAN

NCRA Registered Professional Reporter

CLARK & ASSOCIATES, INC.

P.O. Box 73129

North Charleston, SC 29415

(843) 762-6294

WWW.CLARK-ASSOCIATES.COM

1 like June the year prior, so I had had it about six
2 months before I left Meridian.

3 Q What year would that have been? How long
4 were you with Meridian?

5 A Well, the whole thing, about twelve
6 years. Meridian, I guess, was about six or seven
7 years. And that would have been -- I'm trying --
8 well, when did -- do you remember when we did
9 Shirts' house? Because it was right in the middle
10 of that, I think. It would have been about 2006, I
11 think.

12 Q '7, I think.

13 A 2007, maybe, when I left Meridian. I
14 don't know exactly what the date was.

15 Q 2007?

16 A Uh-huh. Because I was working for
17 Meridian when we started Shirts' house.

18 Q And you left while Shirts' was under
19 construction?

20 A Right after that, yeah.

21 Q So you left Meridian. You started
22 working on the Shirts job. Did you have any other
23 jobs going on at that time?

24 A I did some jobs right in there, but I
25 don't remember exactly which jobs were during that

1 particular time.

2 Q Okay. Were you still with Meridian at
3 the beginning of the Shirts job?

4 A Yes.

5 Q Were you with Meridian when the house was
6 being set?

7 A I don't remember.

8 Q Okay. So is it your testimony that you
9 would have got your -- was it your residential
10 builder's license?

11 A Yes.

12 Q -- in June of '06?

13 A I recollect that being around the time,
14 yes.

15 Q And you're still licensed as a
16 residential builder, correct?

17 A I kept my license for about a
18 year-and-a-half, and then let it just -- I haven't
19 renewed it after that, so it's actually not renewed.
20 It's renewable, but not renewed right now.

21 Q What are you doing now?

22 A I'm unemployed right now.

23 Q What did you do right after it lapsed?

24 A I did some little odd jobs, you know,
25 deck and remodeling and stuff and finally decided to

1 get out of that and went to work for a friend of
2 mine running a vending company. Ran it for about a
3 year-and-a-half until about two months ago and then
4 left there.

5 Q Why did you leave?

6 A Issues with the family --

7 Q The owner?

8 A -- that owned the vending company. Left
9 on good terms though.

10 Q So you were licensed as a builder for how
11 long?

12 A About a year to year-and-a-half, I think.

13 Q Were you licensed as a builder at the
14 time this job was complete, the Shirts job?

15 A Yes, I think so. I think I still had my
16 license at the end of that job.

17 Q All right. How did you get involved with
18 the Shirts job?

19 A I was building houses in Westfield
20 Subdivision on Secessionville Road in James Island.
21 Dave was doing work underneath the houses and on the
22 porches and stuff.

23 Dave came to me one day and said, I've
24 got a job for us. And I said, what is that? And he
25 said, I've got a guy that's doing modular homes, and

1 he's going to do a whole bunch of them, and we need
2 to get in on the ground floor with him.

3 And he said, he is coming over to meet
4 with us, and we'll talk about what we're going to
5 do. And I said, okay. He said, what I need to do
6 is, he said, I need for you, since you've got a
7 license, to get the permit for us so we can set the
8 home.

9 And then you can sub out some of the
10 jobs, and I'll sub out some of the jobs, or I'll do
11 some of the jobs. And then anything we make off of
12 those jobs is what we'll make out of the deal.

13 Q Okay.

14 A So a couple days after that I met with
15 Dave and Tim. That was the first time I had met
16 Tim. We met over at kind of like a grill or a pub
17 over on James Island, and basically, what we worked
18 out is I'd go get the permit for him, and then we
19 would split up and do different subcontractor parts
20 of the job. Dave would do some of them, and I would
21 do some of them.

22 Q All right. Of the same job, you'd
23 basically divide up the scope?

24 A Correct.

25 Q So you knew at that point that Dave was

1 not licensed as a builder?

2 A I did not know Dave was not licensed. I
3 didn't know he was not licensed in anything. I knew
4 Dave had workers' comp and liability insurance
5 because he had to have that for Meridian Builders to
6 pay him. But we did not, as Meridian Builders,
7 require any license.

8 Q Okay. You knew that he didn't have a
9 license and he needed you for that reason for this
10 modular job, correct?

11 A I assumed that he and Tim did not have a
12 contractor's license, and that's why they needed
13 somebody to go get the permit.

14 Q Okay. Is that what they told you?

15 A No. I just assumed that since they asked
16 me to get the permit for them. I never questioned
17 it.

18 Q All right. Was your relationship with
19 Dave at this point a partnership?

20 A No nothing formally. Nothing in writing.

21 Q Fair enough.

22 A Not that I'm aware of. I mean, I don't
23 know if it would be considered a partnership or not.

24 Q The way you described your getting
25 involved with the Shirts project -- and correct me

1 if I'm wrong, please -- Dave came to you, said, I
2 know a guy who's going to be setting all these
3 modular homes. We need to get in on the ground
4 floor was what you said.

5 A Uh-huh.

6 Q Was there an agreement at that point that
7 you would -- you know, you would take part of the
8 job and Dave would take part of the job, or not?

9 A Yeah, yeah. Dave said, I tell you what,
10 you do the foundation, and I will set the house.
11 And then we'll split up and decide who's going to do
12 the roofing and the interior trim and the painting
13 and all this stuff.

14 We'll just, you know -- and he said, what
15 you did is, you know, if it costs you X amount of
16 dollars to get somebody in to do the painting, then
17 you just charge Tim X plus a small amount, and then
18 that's the money that you'll make. And I said,
19 okay.

20 Q So you weren't profit-sharing?

21 A No, huh-uh.

22 Q Your money was coming from the work you
23 did?

24 A That's correct.

25 Q How did you divide up the work? What was

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

DEPOSITION OF TIMOTHY MCGEE

TIM MCGEE,

Plaintiff,

vs.

CASE NO. 2008-CP-18-2565

DAVID THORNTON AND THORNTON BROTHERS CONSTRUCTION,
Defendants.

DEPONENT: TIMOTHY MCGEE

DATE: NOVEMBER 9, 2009

TIME: 11:00 AM

LOCATION: Smith and Koontz, P.A.
7455 Cross County Road
North Charleston, South Carolina

REPORTED BY: Darah L. Nekola, Court Reporter
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

1 back on the paperwork.

2 Q. Please do. Defendants' Exhibit 2 is David
3 Thornton's note?

4 A. My handwriting and his handwriting.

5 Q. Please circle in blue pen what is your
6 handwriting.

7 A. I'm not sure about that one. It looks like
8 it could be mine, but I'm just not positive.

9 Q. You're not sure about includes 850 --

10 A. I'm not sure if that's mine or not. It
11 looks like my handwriting, but -- I know this one
12 is and this one is.

13 Q. Is that it?

14 A. That's it.

15 Q. Okay. So just for the record, you have
16 circled 2,000 crane --

17 A. Uh-huh.

18 Q. -- plus sign -- or five boxes, plus sign,
19 shingles and siding, 30 bundles.

20 A. Right. When we were talking, I was asking
21 him questions on how much this would be and how
22 much that would be and what I needed to include.
23 In other words, he wrote it and then I -- we were
24 working on this piece of paper together. So he had
25 said the crane would be 2,000, so I wrote crane.

1 Because I told him I wanted the total amount that
2 it would cost to do this. And he said, well, it
3 would be 2,000. So we did that. And then -- and
4 it looks like he added it up afterwards and then I
5 -- he had told me I need to get the five boxes of
6 shingles and the 30 bundles of siding. And that's
7 when I wrote that down below. The number he --
8 when he wrote the total.

9 Q. Okay. When was Exhibit 2 prepared?

10 A. I don't remember the date, but it was before
11 any work started.

12 Q. Okay. That was what I was getting at. This
13 16 per square foot deck. Whose handwriting is
14 that?

15 A. I really can't tell. That Q is not mine.
16 So I think that's Dave's from what I am seeing. I
17 just don't --

18 Q. Are these dimensions up here at the top?
19 8-by-40?

20 A. I think that was for the porch.

21 Q. Okay.

22 A. Yes. That was -- because there's the
23 numbers for the -- yeah, that's the porch. We
24 didn't do a porch. That was just a quote he gave
25 me for that, which was 12,800.

1 Q. And 10,000 for the garage?

2 A. For the garage.

3 Q. And what's this 34,500?

4 A. I think that's when he added the house set
5 and the porch and the garage. I think he was just
6 giving a total if he did all of that.

7 Q. Okay.

8 A. David added that up, but I'm assuming he was
9 just adding set, porch, garage.

10 Q. The house set was 6,500?

11 A. 6,500.

12 Q. What is this 28,000 figure circled at the
13 top?

14 A. I would not know what that is. That's
15 something Dave wrote before we started.

16 Q. Okay. This include, i-n-c, period, this may
17 be your handwriting?

18 A. It looks like it, but I don't want to tell
19 you wrong.

20 Q. That's fine. Do you know what it's
21 referencing include 850, paren, up to, end paren?

22 A. I just don't remember.

23 Q. \$36,500 what does that represent?

24 A. I think it's including -- this is Dave's
25 handwriting. The house set, the porch, and the

1 garage.

2 Q. Is this the only document that either one of
3 you prepared prior to any work being performed at
4 the Shirts?

5 A. Yes. That I remember. This is the only one
6 that I remember.

7 Q. Okay. What -- how did David come up with
8 these numbers?

9 A. Well, he has been building for many years.
10 And he works -- he was working for Meridian Homes
11 at the time, so that's all he does all day long is
12 build. So that would be something he could answer
13 because he's the one figuring it. I am just taking
14 what he tells me, and I'm assuming he's -- with all
15 of the work he's doing -- he had several crews that
16 he was running. He showed me the trailers -- all
17 of the equipment and all of the trailers and all
18 the people he was using, and I met a lot of the
19 guys that worked for him. And, you know, I figured
20 he knew what he was doing. You can't work for
21 Meridian Homes and be running several crews and not
22 know how to figure.

23 Q. Okay. What information did you give him to
24 come up with those numbers?

25 A. You have a picture of the --

1 Q. Is that what you're referring to?

2 A. That's one thing that he had. And this is
3 an old one. This is just showing where the garage
4 was going and the set backs and the porch and the
5 deck. There is --

6 Q. What else did he have?

7 A. Well, we had met with Mr. Shirts and
8 discussed the garage verbally with Mr. Shirts. So
9 a lot of it was on the job looking at the project
10 and discussing where he wants the door and how he
11 wants it positioned.

12 Q. Where was this document prepared, Exhibit 2?

13 A. I think we met at a restaurant.

14 Q. So you weren't on site when this was
15 prepared?

16 A. Not that I remember. I don't remember doing
17 that on site at all. I'm confident that that was
18 not on site.

19 Q. Do you know, had Mr. Thornton been out to
20 the site prior to this document being prepared,
21 Exhibit 2?

22 A. I don't know.

23 Q. You weren't out there with him prior to this
24 document being prepared, Exhibit 2?

25 A. I think I was -- I was already working with

1 Mr. Shirts on the project, so I would say I would
2 have been out there prior to this paper.

3 Q. I think I misstated my -- or misspoke when I
4 asked the question. Were you out there with Mr.
5 Thornton at the site prior to Exhibit 2 being
6 created?

7 A. I wouldn't remember.

8 Q. You don't remember being out there with him?

9 A. I do not remember. That was -- getting that
10 date involved on that paper, unless I had a date on
11 that paper -- knew the date I met with him, I
12 couldn't give you an honest answer.

13 Q. Aside from the hand drawing which appears to
14 be an overview of the property and the house
15 location on the property that has the word old
16 written at the top and the tax map number of
17 184-00-00-085, what other information did you give
18 Mr. Thornton prior to coming up with Exhibit 2?

19 A. I would need to look in the folder and see
20 if there's anything that I may have shown him, and
21 I will give that to Mr. Mahaffee and he can forward
22 it to you, and I can look over that and give you
23 any information that I can remember.

24 Q. Okay. Sitting here today, you don't
25 remember of any other documents that you showed Mr.

1 Thornton prior to his coming up with Exhibit 2, do
2 you?

3 A. I feel like I have shown him some other
4 documents, but until I look at it, I won't
5 remember. It's like a visual thing. I will
6 remember it and then a lot of times your memory
7 comes back and you remember, yeah, me and Dave
8 spoke about this. So I would need to look in the
9 folder itself at each particular paper, and see if
10 I would remember.

11 Q. So that's a no? I mean, sitting here right
12 now you don't specifically remember any document
13 that you showed David Thornton prior to coming up
14 with Exhibit 2?

15 A. I would say no without looking.

16 Q. Do you know whether or not this hand drawing
17 was shown to Mr. Thornton --

18 A. Yes.

19 Q. -- prior to him coming up with Exhibit 2?

20 A. I think at the same time Mr. Shirts had this
21 prepared, so I could show him the project because
22 that was the only way he could figure that I would
23 show him the position of the garage and the porch.
24 That's why it has old on it because that was the
25 original one. And, again, it was revised. And

1 Dave and Mike received the revised ones when we
2 made the modifications on them.

3 Q. Okay.

4 A. But I'm going to say that would be one paper
5 that he would have to see with this paper to be
6 able to do the figuring.

7 Q. Who prepared this document?

8 A. Mr. Shirts.

9 Q. This is Mr. Shirts' drawing. Okay.

10 A. And as you see here, it had the specs
11 showing a hundred foot for the home and the garage
12 was approximately what the dimensions would be. I
13 think the garage is approximately 20 feet and the
14 home is 70-some feet approximately. I think it was
15 76 when I spoke with Mr. Mahaffee.

16 Q. At this initial meeting, was there any
17 discussion with regard to the preparation of the
18 front porch? What I'm referring to is Exhibit 2.

19 A. Initially when I showed Dave the information
20 on the porch, it was -- we did plan to do it. But
21 later on Mr. Shirts changed and opted not to do the
22 porch. And then we opted to do -- finish the
23 upstairs.

24 Q. Take me through that again.

25 A. When I spoke with Dave initially about doing

1 the porch, he did give me a price on doing the
2 porch. Later we opted not to do the porch, and Mr.
3 Shirts wanted to do -- or complete the upstairs and
4 finish it. The upstairs was initially not to be
5 finished, but when we ran into all the problems
6 with the water leaks, Dave had promised him many
7 things that he did not provide, and I ended up
8 changing to accommodate Mr. Shirts to keep him, you
9 know, happy because it was the right thing to do.

10 Q. Okay. What water leaks are you referring
11 to?

12 A. I was in the Philippines, so this was what I
13 heard from Mike Robbins and Mr. Shirts and from
14 Dave. When Dave was setting the house, he did not
15 have anything to cover it in case it rained. It
16 rained and caused a severe amount of damage. In
17 your paperwork you will see where I had to pay for
18 all of the materials even though while Dave was
19 setting it, it was damaged because of his
20 negligence. He did not have any proper stuff. You
21 know, all of these trailers with what he told me 40
22 to \$60,000 in each trailer of equipment had nothing
23 to cover it. I thought that was kind of strange.
24 You work for a big company like Meridian, and you
25 don't have anything to protect the house. And it

1 was -- I don't remember how much it was to repair
2 it, but it was a substantial amount of money that I
3 had to pay out-of-pocket. You will have the -- in
4 your paperwork, it will show receipts for all of
5 the damage.

6 Q. Okay.

7 A. I had to replace carpet and Sheetrock and
8 insulation and many things. And Dave neglected not
9 to pay them, so I paid the bills.

10 Q. Is a permit required to set a modular home?

11 A. Yes, it is.

12 Q. Who pulled that permit?

13 A. Mike Robbins.

14 Q. Why did Mike Robbins pull that permit?

15 A. Because he is the general contractor.

16 Q. Do you have a contract with Mike Robbins?

17 A. I do not.

18 Q. Do you have a contract with Michael's
19 Homebuilders?

20 A. I do not.

21 Q. Do you have an agreement with Michael's
22 Homebuilders or Mike Robbins?

23 A. Well, Mike was involved on the project.

24 Dave and Mike are -- they said they could do the
25 project. At the time, I had some other people that

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO. 2008-CP-18-2565
TIM MCGEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION TO
	)	RECONSIDER UNDER RULE 59(E)
DAVID THORNTON AND THORNTON	)	
BROTHERS CONSTRUCTION,	)	
	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS AND THEIR ATTORNEY ZACHARY J. CLOSSER:

The Plaintiff, by and through his undersigned attorney, moves this Court pursuant to Rule 59(e), SCRCF regarding the Order of the Honorable Edgar W. Dickson which was signed on December 20, 2011 and was received by Plaintiff's undersigned attorney on December 27, 2011.

FACTUAL SUMMARY

The Plaintiff Tim McGee was involved in the setup of a modular home for Brent Shirts, had hired a licensed residential contractor Mike Robbins and also hired the Defendants who the Plaintiff thought were licensed. A modular home comes to the site in pieces, where it is joined together, which the Defendants represented they had done and could do. At trial, Mike Robbins testified that he pulled the building permit for the Shirts' house and that he had to do repairs to the Shirts house which the Defendants had damaged, including the sheetrock being wet and falling in due to an open

roof being left unprotected when expected rain fell. Further, there were allegations of overcharges and even double charges to the Plaintiff by the Defendants. The Plaintiff sued for a total of \$29,928.95 for various causes of action: negligence, breach of contract and warranties, breach of fiduciary duty, fraud, and UTPA violation.

On the eve of trial, the Defendants moved to amend their Answer to assert S.C. Code Ann. § 40-59-30(B), and then moved for summary judgment alleging that the Plaintiff being unlicensed precluded him from recovery in this case. A hearing was held prior to trial, but it was after the trial and all of its testimony that the Court issued its Order of December 20, 2011 dismissing the Plaintiff's Complaint, ruling that as "Plaintiff Tim McGee was required to have a residential contractor's license in order to erect the Shirts house, and that he did not have a license, there is no choice but to dismiss this action in its entirety."

APPLICABLE LAW

S.C. Code Ann. § 40-59-30(B) reads in pertinent part as follows: "a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter."

The Defendants allege that, whether or not the Plaintiff hired a licensed residential contractor (Mike Robbins), the Plaintiff under the law in South Carolina, would not have been able to sue to enforce the contract with the Defendants. Left conspicuously out of their rationale is whether this is a lawsuit to enforce a contract or whether it is more a negligence cause of action (or any of the other causes of action not involving a suit to enforce a contract), to which S.C. Code Ann. § 40-59-30(B) does not speak.

"Residential homebuilders are...prohibited from undertaking the business of home building without first obtaining a license. However, S. C. Code Ann. § 40-59-130 (1986) specifically prohibits unlicensed home builders from bringing any action to enforce the provisions of any contract entered into without a valid license." W & N Construction Company, Inc. v. Williams, 322 S.C. 448, 449, 472 S.E.2d 622, 623 n3 (1996). Of particular note in the statute quoted above is the restriction of enforcing a contract, whereas in this case the Plaintiff Tim McGee was suing the unlicensed Defendants who damaged a house through the Defendants' negligence, which then required the Plaintiff to expend funds for the repair of the house and for further payments to his licensed residential contractor Mike Robbins.

In Columbia Pools, Inc. v. Moon, 284 S.C. 145, 146-47, 325 S.E.2d 540, 541 (1985), the supreme court held a general contractor licensed in Michigan, but not licensed in South Carolina at the time he entered into a contract, could not enforce the contract

pursuant to section 40-59-10 of the South Carolina Code (2009), which prevents unlicensed residential homebuilders from enforcing a contract.

C-Sculptures, LLC v. Brown, 394 S.C. 519, 525, 716 S.E.2d 678, 681 (Ct. App. 2011). All of the case law reviewed precludes the enforcing of a contract, yet no case has been found which prevents suing for negligence, the crux of the Plaintiff's case here.

In its Order, the Court notes that "Mr Shirts, who was a witness at the trial has no complaints about his house and is not a party to this action." Left out of this statement is the fact that the Plaintiff expended funds unnecessarily to ensure that the damage negligently and recklessly done by the Defendants was corrected. Thus the reason why "Mr. Shirts...has no complaints about his house" is that the Plaintiff made it right, paying for repairs to the house that were occasioned by the neglect of the Defendants.

Through literary gymnastics, it was examined whether or not the Plaintiff was the *de jure* or "*de facto* general contractor on the Shirts residence," resulting in a finding of the latter. Despite there being a licensed contractor Mike Robbins very much involved in the Shirts project, the fact that payments were made to sub-contractors by the Plaintiff and such subs were hired by the Plaintiff lead this Court in error to rule that the negligence and other causes of action proved by the Plaintiff against the Defendant cannot be allowed under the law in this state.

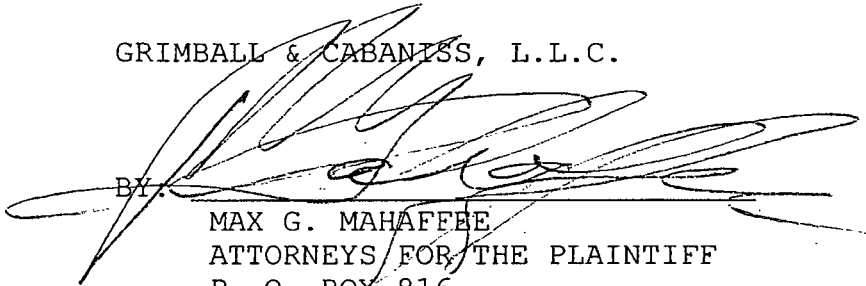
CONCLUSION

The case should not be dismissed, but rather restored, with a judgment for the Plaintiff for a minimum award of \$29,928.95 in actual damages, plus costs and such other and punitive damages as the Court deems appropriate.

RULE 11 CERTIFICATION

Pursuant to Rule 11, (SCRCP), I affirm that I have not communicated with opposing counsel because of my belief that such consultation would serve no useful purpose.

GRIMBALL & CABANISS, L.L.C.

BY: 

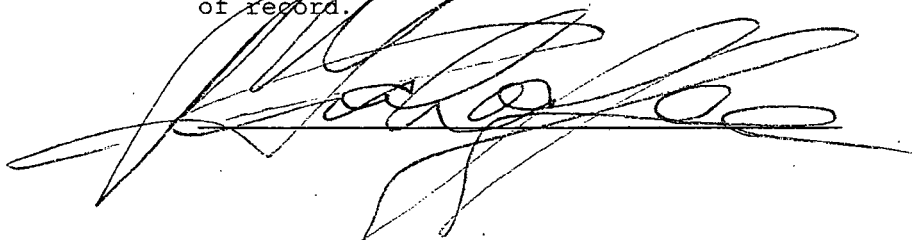
MAX G. MAHAFFEE
ATTORNEYS FOR THE PLAINTIFF
P. O. BOX 816
CHARLESTON, SC 29402-0816
Tel: (843) 722-0311
Fax: (843) 722-1374

Charleston, South Carolina

January 4, 2012

CERTIFICATE OF SERVICE

I certify that on January 4, 2012
I mailed or delivered a true copy of the
foregoing pleading(s) to each counsel
of record.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2008-CP-18-2565
 TIM MCGEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' MEMORANDUM
	)	IN OPPOSITION TO MOTION TO
DAVID THORNTON and THORNTON	)	RECONSIDER
BROTHERS CONSTRUCTION,	)	
	)	
Defendants.	)	

Following a trial in this matter, the Court entered an Order dismissing Plaintiff's Complaint, on the grounds that Plaintiff, an admittedly unlicensed contractor, was barred by the operation of S.C. Code § 40-59-30 from maintaining this action. As the Court noted in its Order, the cases are silent as to the effect of this statute on contractor-contractor disputes; the statute does, however, make it clear on its face that its intent and purpose is to ensure that an unlicensed contractor may not profit from his work. Plaintiff has now filed a Motion to Reconsider, asserting that his complaint does not seek to enforce a construction contract entered into by an unlicensed contractor, but to recover from Defendants for Defendants' negligence, which caused him to have to pay a third party to make repairs. While this is an interesting and novel approach, it is nothing more than an attempt to sidestep the clear statutory language. Defendants would respectfully request that the Motion to Reconsider be denied.

There are, of course, several significant problems with Plaintiff's argument. First, of course, is the fact that regardless how strenuously Plaintiff wishes to argue otherwise, most of the specific complaints making up his damages are contractual in nature. For instance, Plaintiff himself reiterates in his Motion that "there were allegations of overcharges and even

doublecharges...” Such charges arise, by definition, from the existence of a contractual relationship between the party charging and the party receiving the charges. Any challenge to any portion of that contract is absolutely barred by Section 40-59-30. The statutory language does not differentiate between contractual actions brought against property owners and contractual actions filed against other contractors. Any action seeking to enforce the contract is prohibited. Given the impossibility of finding that excessive charges have been billed in the absence of some contractual relationship, and the fact that no suit may be maintained to enforce the contract, there is no possibility that Plaintiff can recover for the ostensible overcharges.

Furthermore, despite the characterization of this action as one sounding in negligence, it is obvious that no matter what the case is called it stems from Plaintiff's having contracted to act as general contractor for the construction of the Shirts residence. Although Plaintiff does state, again, that he disagrees with this conclusion, emphasizing that Mike Robbins pulled the building permit, his principal claim remains one for the costs of construction, construction he agreed to perform, pursuant to a contract and in violation of the statute. As a purely practical matter, Plaintiff would have had no duty to make repairs to the Shirts residence but for the existence of a contract requiring him to build, and deliver, a well-constructed home. Once again, but for the existence of a construction contract between the unlicensed Plaintiff and a homeowner, there would be no damages.

Plaintiff continues to contend that he was not the general contractor. Although the Court's conclusion that he was acting in this role is well supported by the testimony and evidence at trial, it is frankly immaterial what the title of Plaintiff's role was. Plaintiff clearly entered into some type of contractual relationship with Mr. Shirts, pursuant to which Plaintiff bore the responsibility of ensuring that the final product was suitable for habitation. Had he not

borne the ultimate responsibility of ensuring that the house was properly built, he would never have incurred the expenses for which he now seeks compensation, expenses incurred in the course of completing that construction project. Whether Plaintiff was technically the general contractor or not, not only the testimony but his own arguments demonstrate that the Court correctly concluded that he was acting in that capacity.

Finally, as Defendants have previously noted, because of the existence of the contract, claims that purport to sound in tort are barred by the economic loss rule. Whether it is Plaintiff's property or the property of another that is claimed to have been damaged, the Rule bars recovery in tort for damages suffered to nothing more than the property encompassed by the contract. Plaintiff had a contract for the construction of a house. He claims that the house – the property that was the subject of the contract – required repair after the construction was completed. He alleges he had to pay a third party to repair that property. He does not claim that there were any injuries suffered by, or damages incurred to, any property other than the house itself. “[T]ort liability only lies where there is damage done to other property or personal injury.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009).

The statute does not differentiate between claims brought against owners and claims brought against any other party. It merely provides that no action, whether in law or equity, may be maintained if the contractor seeking to enforce a contract was unlicensed at the time he entered into the contract. Plaintiff does not dispute that he was unlicensed. Claims that this case involves pure negligence, or that the statute does not address claims against subcontractors, or that somehow the contractor paying for and managing the construction is not the general contractor, make no difference to the outcome of this action. Plaintiff had a construction contract with Mr. Shirts. He did not have a license at the time he entered into that contract. As a

result of his agreement to perform the construction contract, he now alleges that he has suffered some economic loss. Section 40-59-30(B) of the South Carolina Code of Laws absolutely bars any recovery, under any legal theory, given these fundamental facts.

Defendants would respectfully request that Plaintiff's Motion to Reconsider be denied.

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Charleston, South Carolina
11/10/12, 2012
08-990

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2008-CP-18-2565

Tim McGee,

Plaintiff,

vs.

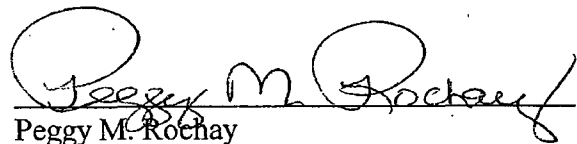
David Thornton and Thornton Brothers
Construction,

Defendants.

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Defendants' Memorandum in
Opposition to Motion to Reconsider was served by mailing or hand delivery on the following:

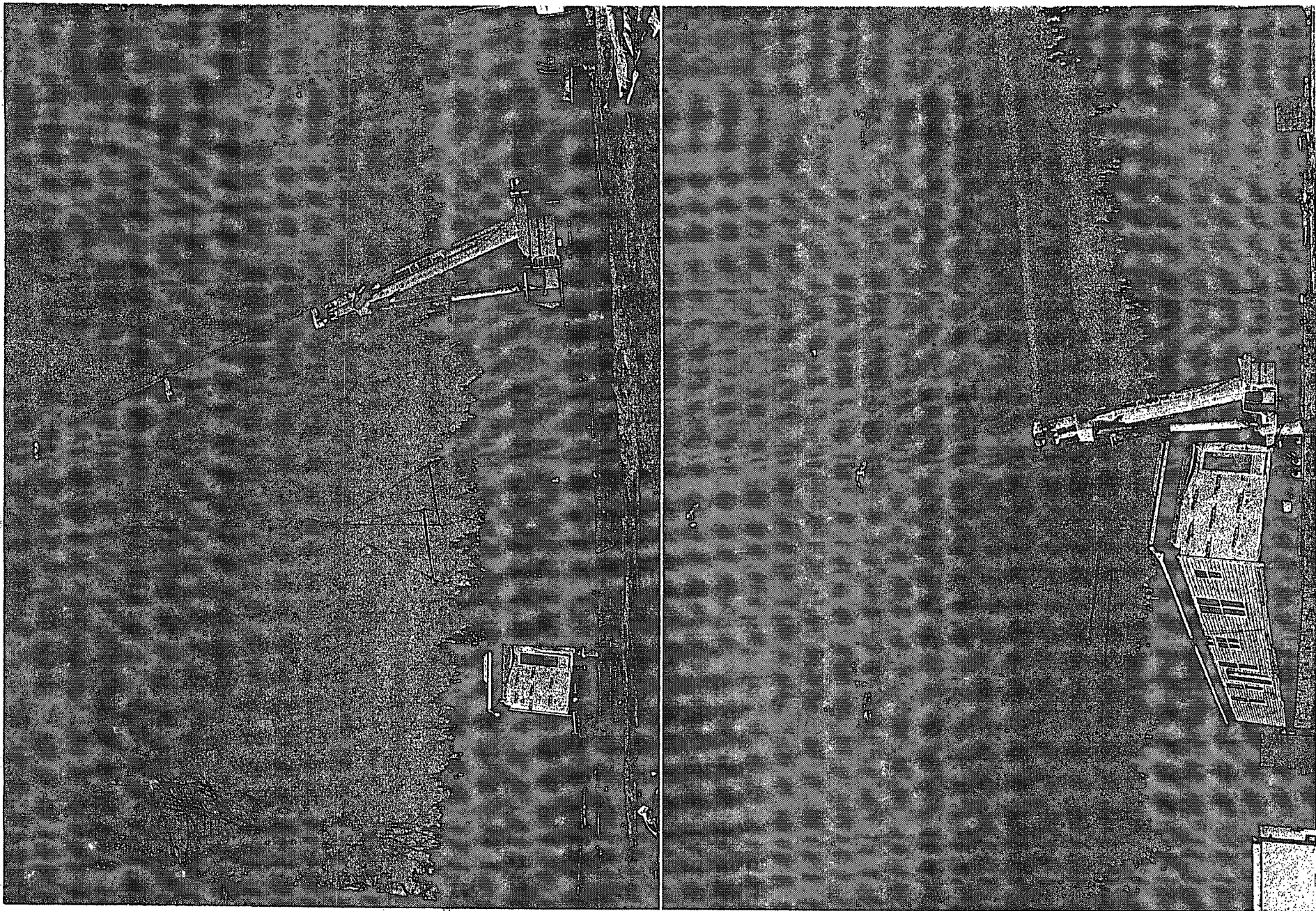
Max G. Mahaffee, Esquire
Grimball & Cabaniss, LLC
P.O. Box 816
Charleston, SC 29402-0816

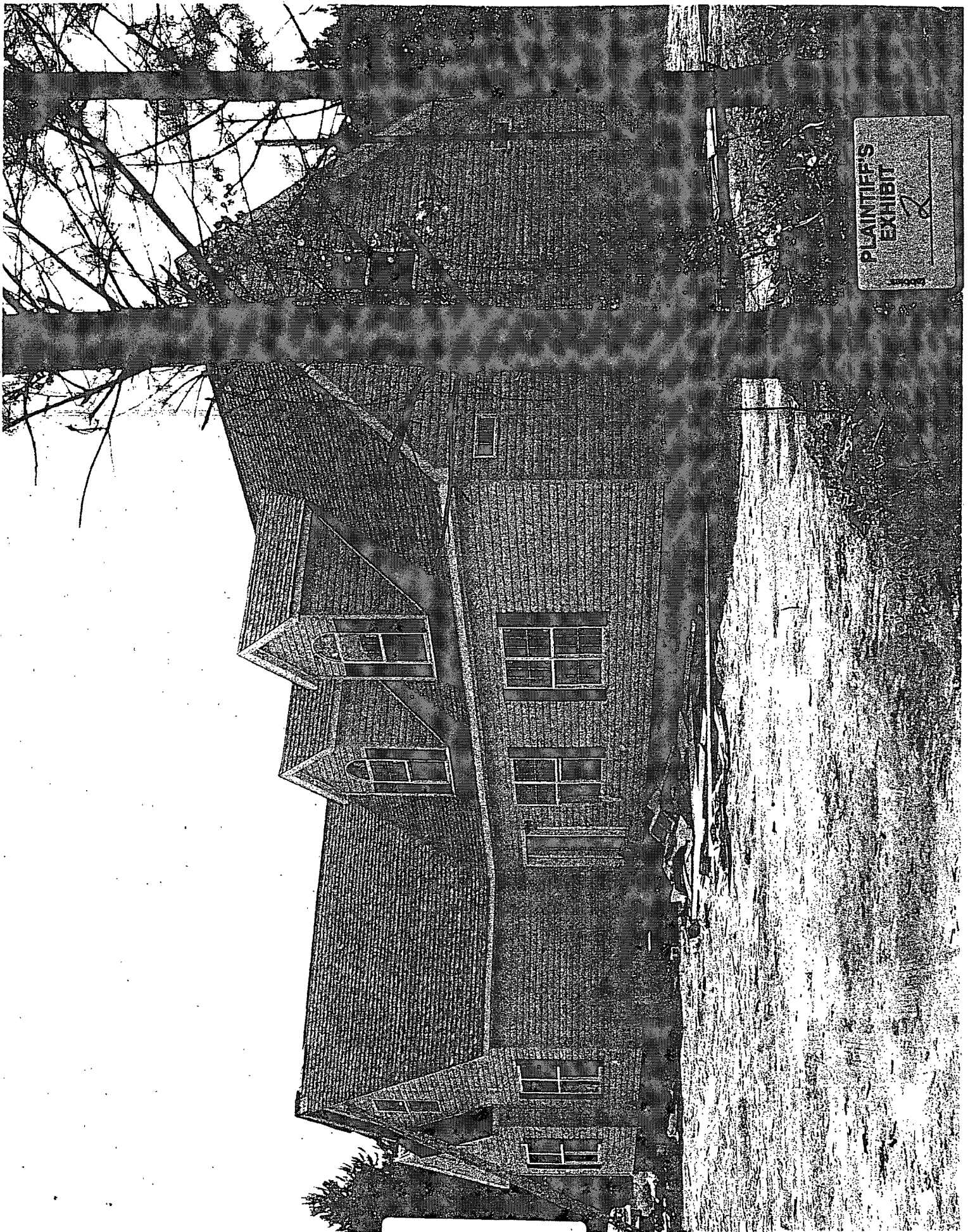

Peggy M. Rochay

Charleston, South Carolina

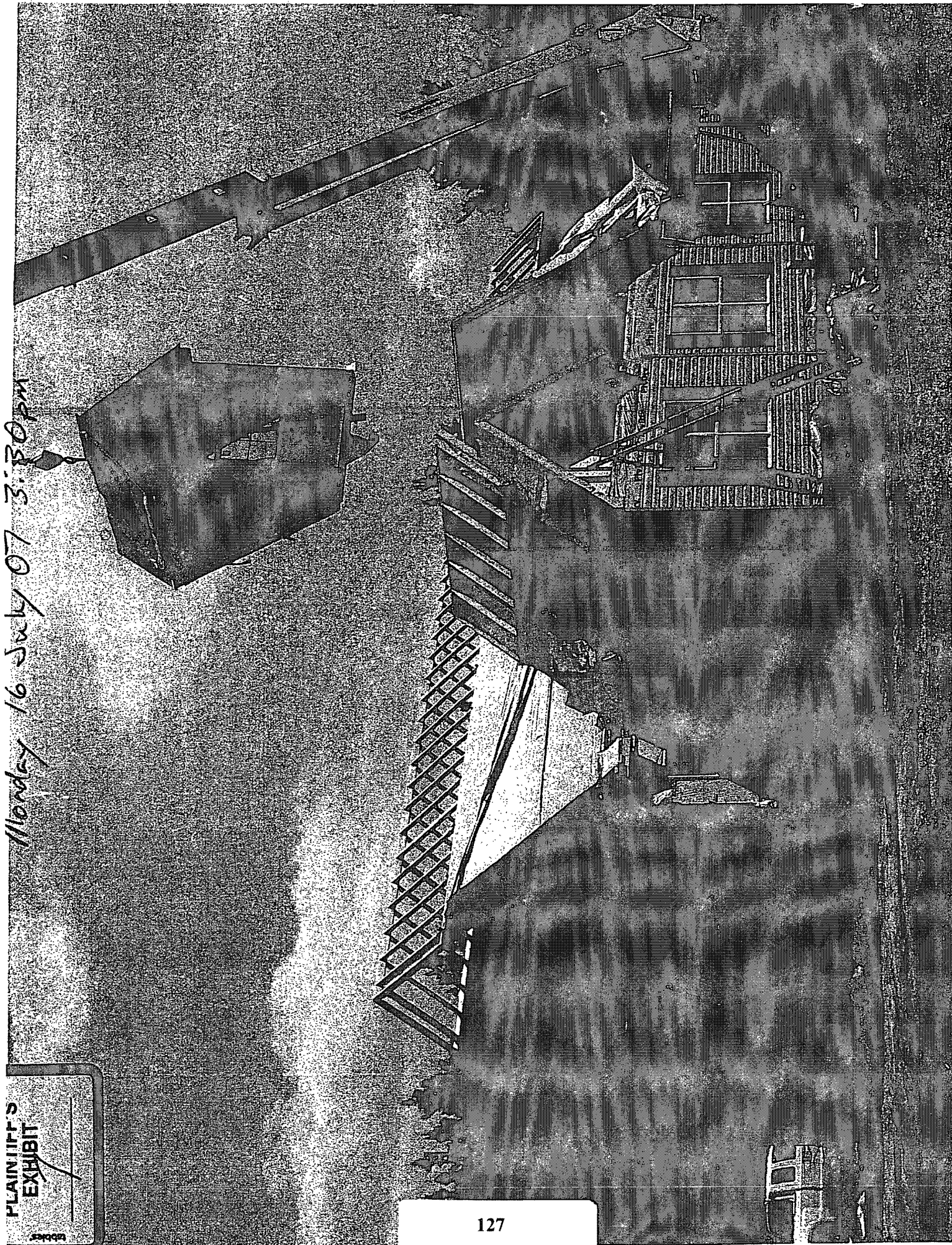
January 2, 2012
08-990

PLAINTIFF'S
EXHIBIT
1
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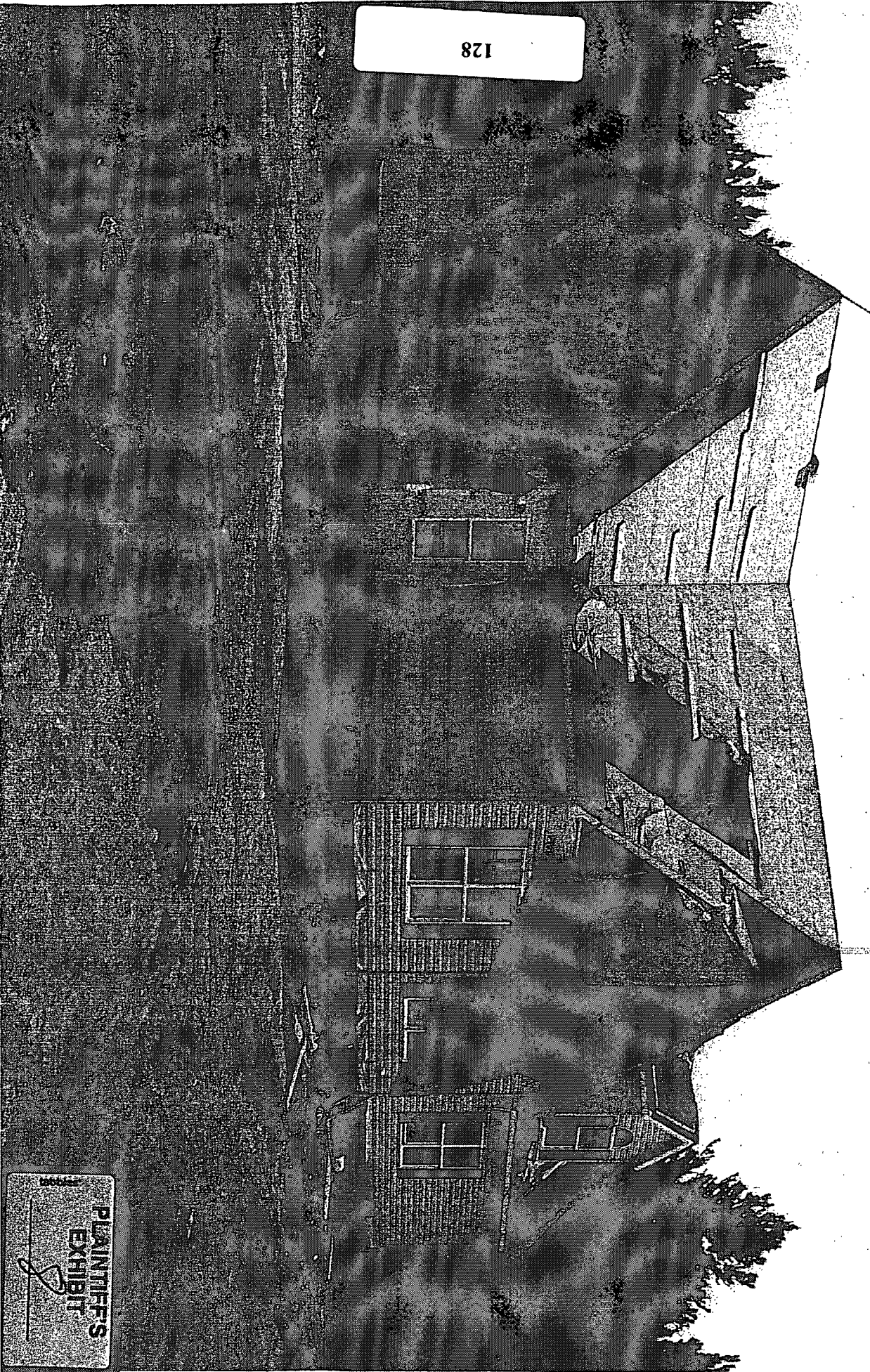


Monday 16 July 07 3:30 pm



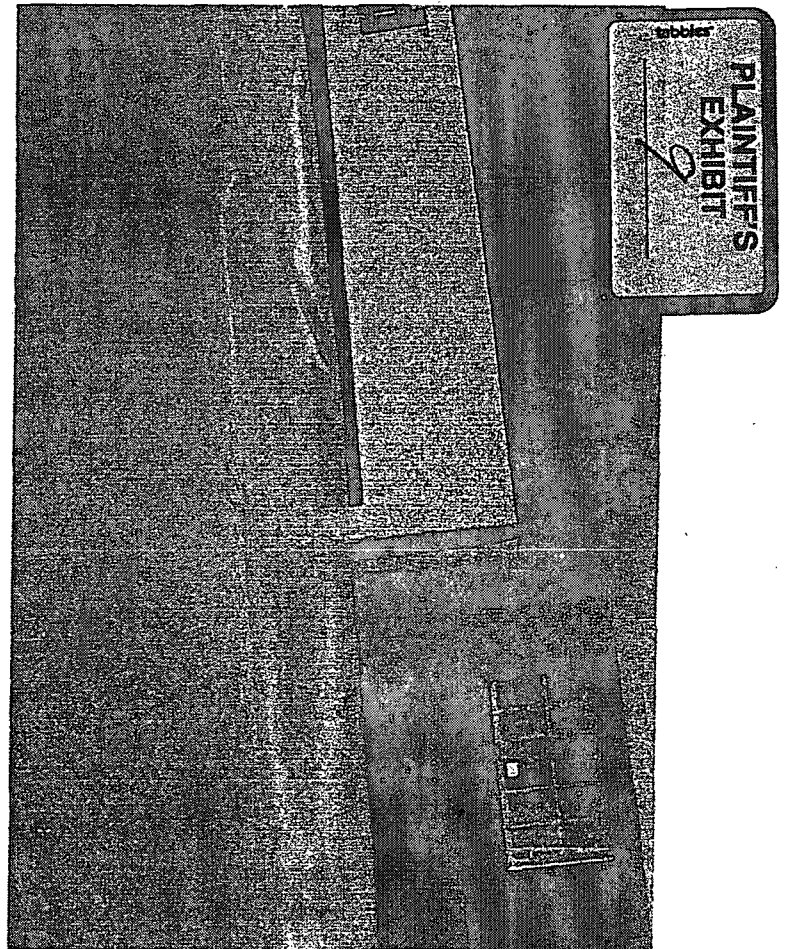
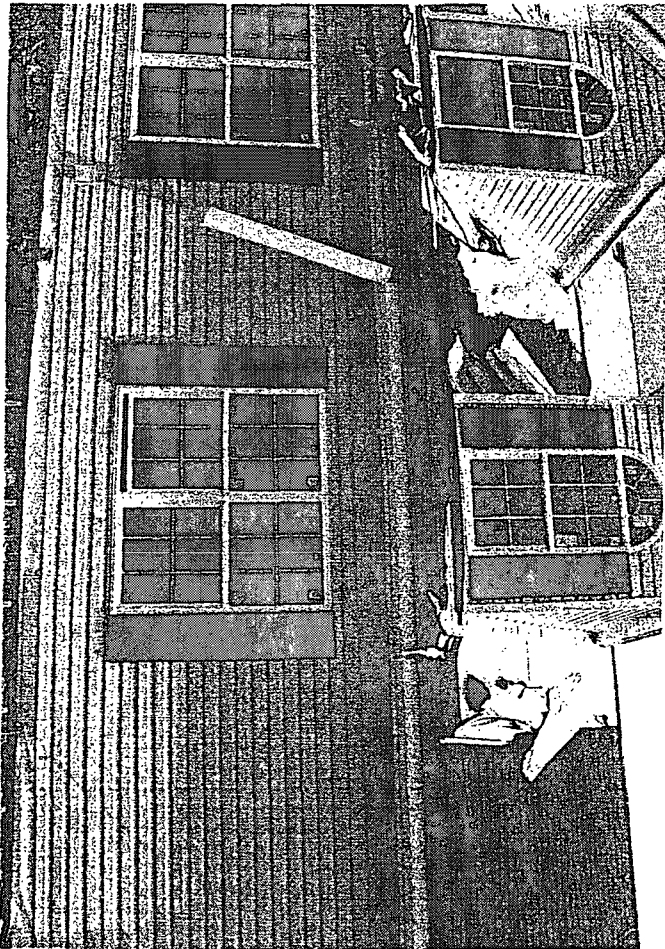
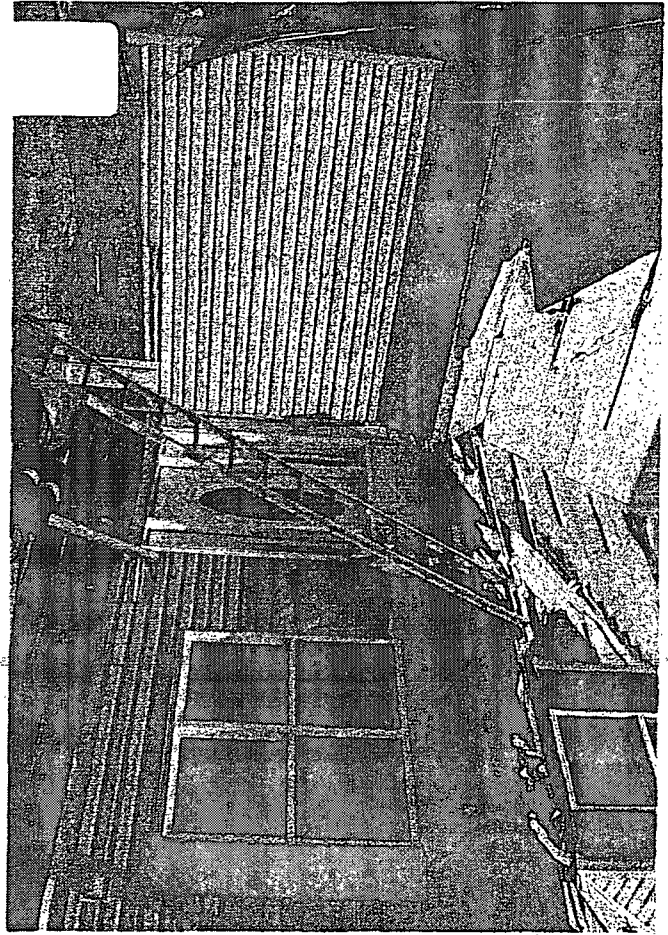
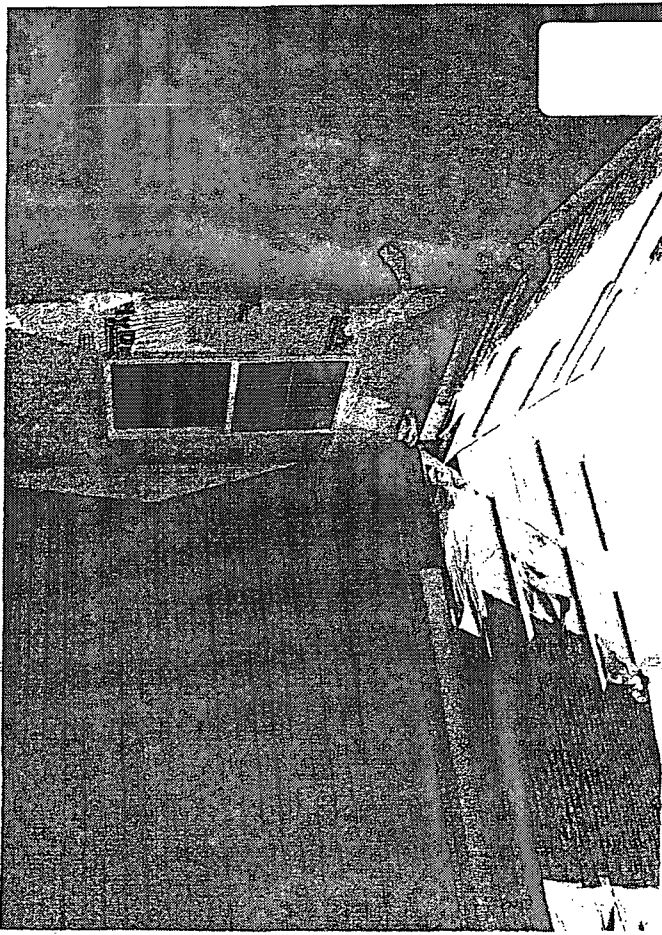
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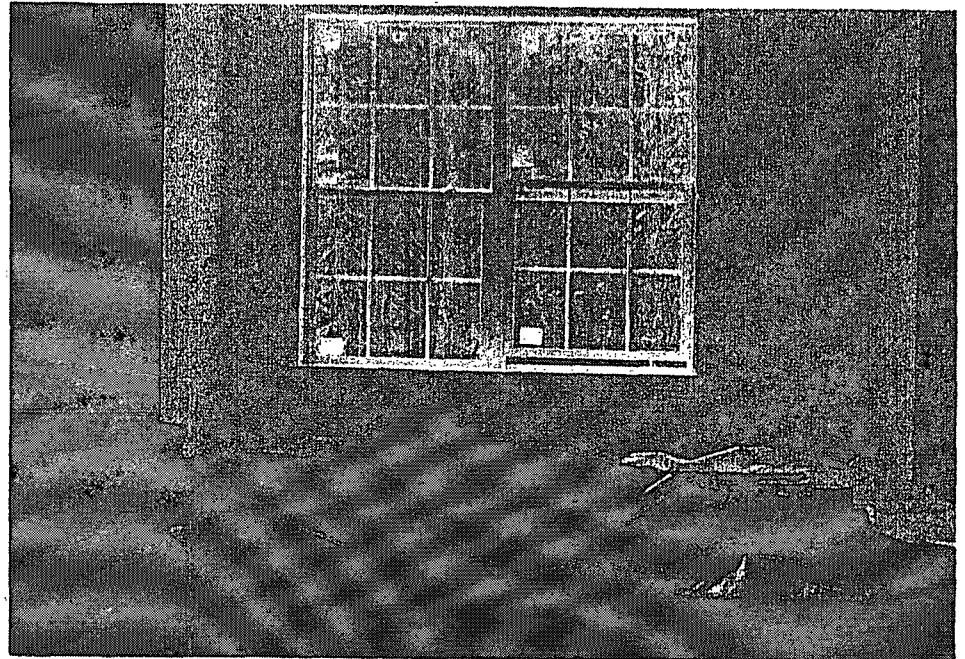
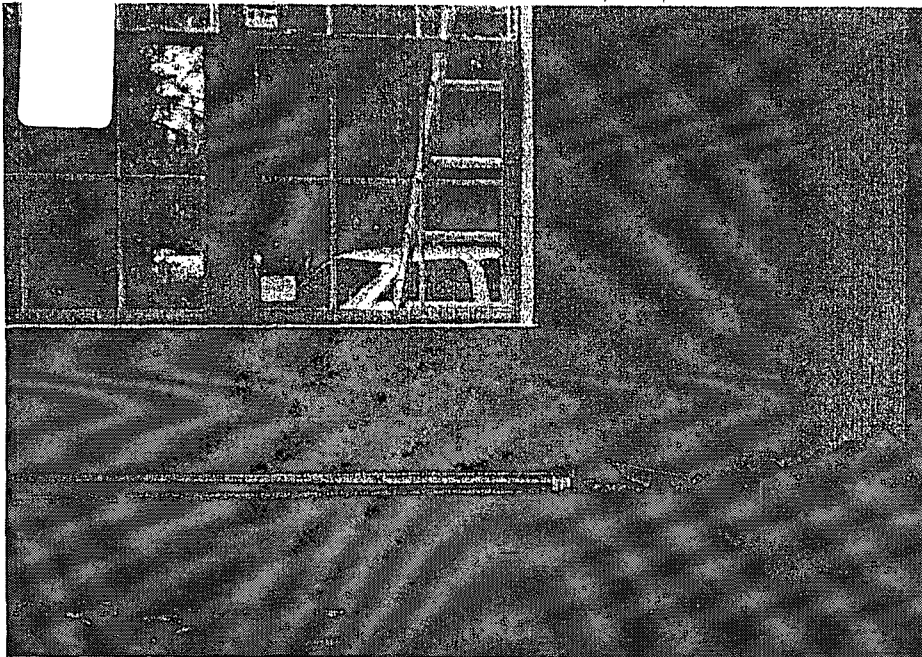
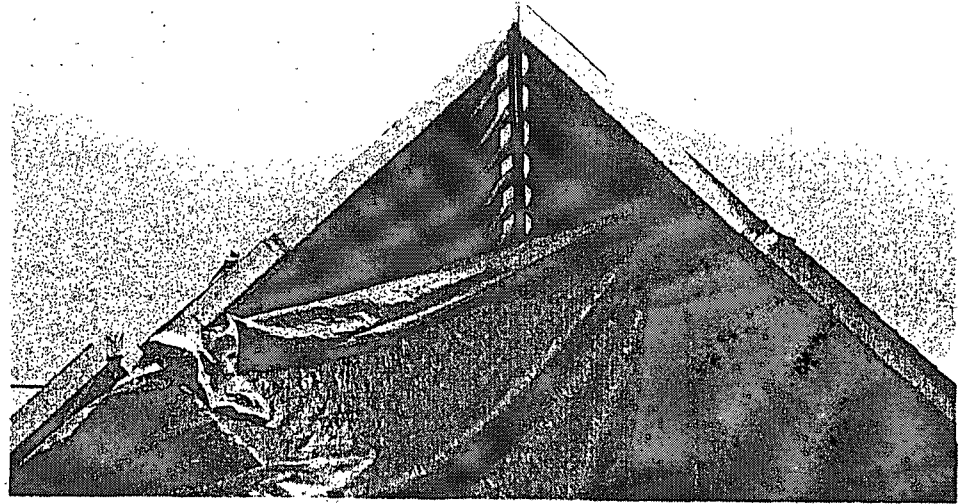
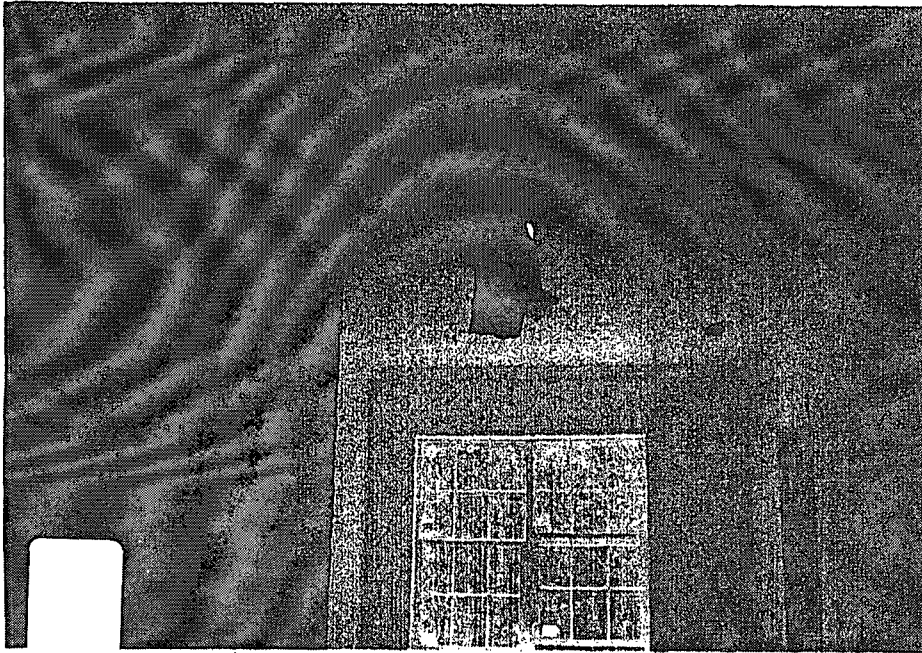


PLAINTIFF'S
EXHIBIT

8



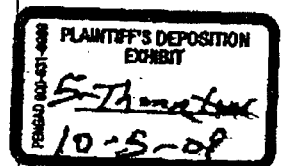
PLAINTIFF'S
EXHIBIT
9



Over Charge

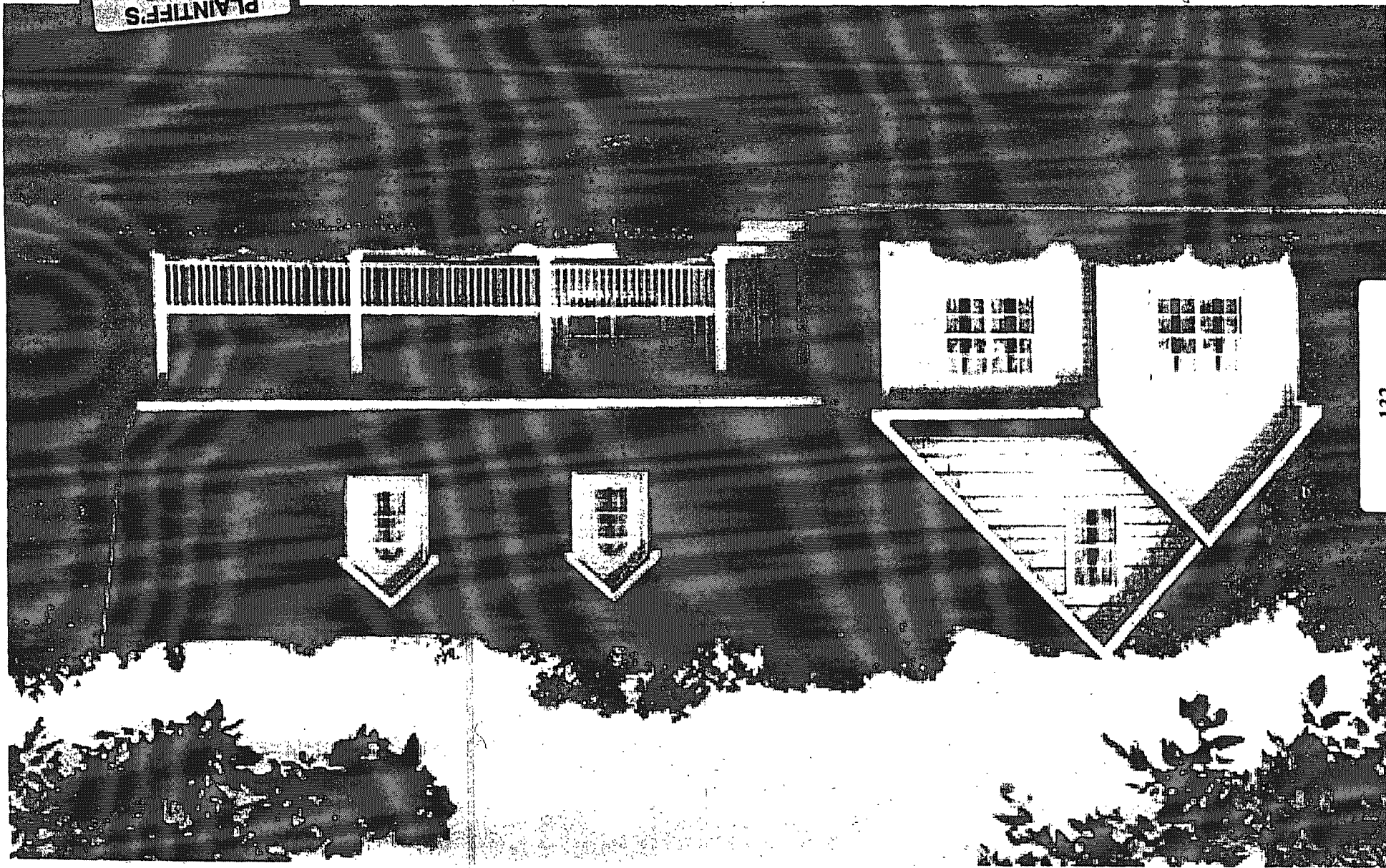
149 Inspiration Lane, Round O, SC 29474

Inv. #1389	Roof Damage Two Inv. #'s 1389 & 1406?	3500.00
Inv. #1389	Subfloor	2500.00
Inv. #1389	Ceiling upstairs W/cat walk	400.00
Inv. #1415	Ceiling upstairs & frame door wall	600.00
Inv. #1427	Blow-in-insulation	400.00
Inv. #1416	Sheet rock & finish main house	4600.00
Ck # 1654	A 2 Z Advanced Home Inspection	150.00
Ck # 4130	A 2 Z Advanced Home Inspection final	425.00
Ck # 1652	Carpet repair	250.00
Visa	Carpet - Mescons	728.73
Visa	Rebond - Mescons	86.00
Inv. 7290	Re-stretch carpet	125.00
Inv. #1444	Sheilah Lake dba Two Lakes - 3 tarps & treated studs	500.00
Inv. #1404	Second charge for home set	7000.00
Ck # 4211	AC outlet for garage	225.00
Ck # 4159	Charged twice for permit	1160.00
~~Inv. #1428~~	Charged twice for interior trim	600.00
Ck #1672	Windows Dave promised	276.00
Visa	Acme Doors inv. # 3706 Garage door Dave didn't pay for	1397.00
Ck # 1692	Labor to install windows paid to Mike Robbins	500.00
Ck # 1692	Fix drip edge & siding paid to Mike Robbins (Dave would not fix)	125.00
Ck # 4127	Over charge for crane-was quoted \$2000.00 paid \$4764.00	2764.00
Ck # 1424	Garage drywall was included in price, but charged again	1100.00
Misc.	Lowes, Home depot, Ace, and Dollar General	517.22
	Total	\$29928.95



PLAINTIFFS
EXHIBIT
43

V6508



STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

TIM McGEE,

PLAINTIFF

versus

DAVID THORNTON AND THORNTON
BROTHERS CONSTRUCTION,

DEFENDANTS

CASE NO. 2008-CP-18-2565

TRANSCRIPT OF RECORD

DATE:

AUGUST 16, 2011

BEFORE:

HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE

APPEARANCES:

MAX G. MAHAFFEE, ESQUIRE

ATTORNEY AT LAW

FOR THE PLAINTIFF

ZACHARY CLOSSER, ESQUIRE

ATTORNEY AT LAW

FOR THE DEFENDANTS

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

<u>EXAMINATION OF:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
BRENT SHIRTS				
MR. MAHAFFEE	7			
MR. CLOSSER		25		
CHARLES MICHAEL ROBBINS				
MR. MAHAFFEE	54		94	
MR. CLOSSER		73		99
TIMOTHY VAN MCGEE				
MR. MAHAFFEE	101		181	
MR. CLOSSER		126		185
DAVID FREDERICK THORNTON				
MR. MAHAFFEE	187			
MR. CLOSSER		222		

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PL. 2	THREE PHOTOGRAPHS		10
PL. 3	SURVEY PLAT		10
PL. 4	DIAGRAM OF LOT		10
PL. 5	PLAT FROM COLLETON COUNTY COURTHOUSE		10
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1 DATE:

2 AUGUST 16, 2011

3 THE COURT: Alright, this is Case Number 2008-CP-18-
4 2565, Tim McGee, Plaintiff, versus David Thornton and
5 Thornton Brothers Construction, Defendants. This is a
6 Dorchester County case. We are hearing it in Orangeburg
7 County, non-jury, by agreement of the parties. Is that
8 correct, Mr. Mahaffee?

9 MR. MAHAFFEE: I'm sorry, Your Honor?

10 THE COURT: I'm sorry. We're hearing this case in
11 Orangeburg County by agreement of the parties?

12 MR. MAHAFFEE: Yes, sir, yes, sir.

13 THE COURT: Okay. Mr. Closser, is that your ...

14 MR. CLOSSER: Yes, Your Honor.

15 THE COURT: Okay. Alright. Are y'all ready to begin?

16 MR. MAHAFFEE: Yes, Your Honor.

17 THE COURT: Okay. Alright, sir. Call your first
18 witness.

19 MR. MAHAFFEE: We would call Mr. Brent Shirts.

20 THE COURT: Okay. Mr. Shirts, if you would come on up
21 here, please sir, and that is the witness chair right over
22 there. If you'd come on in there and put your left hand on
23 the Bible and raise your right hand, please, sir.

24 (Whereupon, Brent Shirts
25 is duly sworn.)

1 THE COURT: Alright, sir. Have a seat, please, sir.

2 COURT REPORTER: Spell your name, please, sir.

3 WITNESS: B-R-E-N-T S-H-I-R-T-S.

4 THE COURT: Alright, Mr. Mahaffee. Are you ready, Ms.
5 Harry Dot?

6 COURT REPORTER: Yes, sir.

7 THE COURT: Are you ready?

8 MR. MAHAFFEE: Yes, sir. I was just bringing it to the
9 court reporter.

10 THE COURT: Okay. Thank you, sir, I appreciate it.

11 (NOTE: Blank lines on this page do not indicate any part of
12 record has been omitted. Headers on testimony pages and
13 hard page breaks between testimony are now required by the
14 Court. See next ensuing page for sequential continuation of
15 record.)

1 BRENT SHIRTS - DIRECT EXAMINATION

2 BY MR. MAHAFFEE:

3 Q. Mr. Shirts, where do you work?

4 A. I work at the National Weather Service.

5 Q. Okay. And that's in Charleston, North Charleston?

6 A. Yes.

7 Q. And where do you live?

8 A. I live in Round-O, in the county of Colleton County.

9 Q. Okay. What's the address?

10 A. It's One forty-nine Inspiration Drive.

11 Q. And is it your understanding that it's your house that's
12 the subject of this law suit?

13 A. Yes.

14 Q. Okay. Do you know one way or the other as to the truth
15 of whether or not Dave Thornton and/or Thornton Brothers
16 Construction was charging Tim McGee for things or services
17 that were not done by Mr. Thornton?

18 A. Yes.

19 Q. Okay. And tell us about that, sir?

20 A. Well, he, I guess because he didn't show up a lot of the
21 times, and he was, well, as far as I was concerned things
22 were turned in on this job.

23 Q. And were you on the site of what was to be your future
24 home at the time that it was being brought in and built?

25 A. I was at various times.

1 Q. Okay. And is that what's called a modular home?

2 A. Yes.

3 Q. Not a mobile home but it's built in the factory in
4 various sections and it becomes the look, at least, of what
5 some people refer to as a stick built home?

6 A. Yes.

7 Q. Okay. And do you have any idea -- well, let me ask you
8 a question, let me show you some exhibits, they are already
9 marked. This is what's been premarked as Plaintiff's
10 Exhibit Number One, and ask if you can identify that for the
11 Court, please?

12 A. Yeah, this is my house being put on the foundation, part
13 of the house being put on the foundation.

14 Q. And is that the crane that was lifting it up?

15 A. Yes.

16 Q. Okay. And let me show you Exhibit Two, which consists of
17 three photographs, and ask if you can identify those?

18 A. Yes, that's my house.

19 Q. And there's some dates written on those, do you know who
20 wrote those dates on there, and whether or not those dates
21 are accurate?

22 A. I wrote this one, and that doesn't look like my writing,
23 -- no, I guess it is, and I put these dates on them. Those
24 were dates that I had taken those pictures.

25 COURT REPORTER: What is the number of that exhibit?

1 MR. MAHAFFEE: Two.

2 A. Two.

3 Q. And let me show you what's been marked, premarked as
4 Exhibit Three, can you identify that?

5 A. Yes, this is my lot.

6 Q. Is that a survey plat?

7 A. Yes.

8 Q. Okay. And Number Four as well as Number Five, I guess,
9 to move things along a little bit, could you describe those
10 and whether or not you can identify them?

11 A. Yes, I made this up, where to place the house in the
12 lot, where to put the road.

13 THE COURT: Is that Number Four for the plaintiff?

14 A. That is Number Four.

15 THE COURT: Okay.

16 MR. MAHAFFEE: Your Honor, may I look over the
17 witness's shoulder at the exhibits?

18 THE COURT: Yes, if you don't -- yeah.

19 Q. Mr. Shirts, if you could just speak up a little, I'm --
20 -

21 A. Okay.

22 Q. --- my hearing's not the best in the world at my age.

23 THE COURT: Yeah, and I'm closer and I'm having a hard
24 time.

25 A. Okay.

1 THE COURT: Okay?

2 Q. Okay, continue on, please, sir.

3 A. Alright. I drew up this plot to, or plat myself, to
4 position the house where I wanted it and where the road was
5 to be put in and the driveway, and the dimensions.

6 Q. Okay. And the next exhibit, what is that?

7 A. That is a plot or a plat that I got from the Colleton
8 County Courthouse showing my lot.

9 Q. Alright, sir. And Exhibit Six is a collective exhibit,
10 there are a number of things in there. If you would look at
11 those and see if you can identify those?

12 A. These are invoices of things that were done to my house,
13 garage door, carpeting, sheetrock, interior doors.

14 MR. MAHAFFEE: And Your Honor, just so I don't forget -
15 - I'm sorry, that's Exhibit One through Six, and I would
16 move those into evidence.

17 THE COURT: Alright, any objection?

18 MR. CLOSSER: No objection.

19 THE COURT: Alright. Those exhibits, One through Six,
20 are in evidence.

21 (Plaintiff's Exhibit One through Six
22 marked and filed.)

23 Q. The next one is Exhibit Seven, a photograph, can you
24 identify that?

25 A. Yes, this is for the, one of the dormers on my roof, and

1 it also shows some damage to the roof.

2 Q. Okay. That dormer, was it provided by the home
3 manufacturer or was that stick built or hand built by Mr.
4 Thornton?

5 A. That was part of the manufacturer's dormer.

6 Q. Okay. And the date on that, is that your handwriting?

7 A. Yes.

8 Q. Okay, sir. And Number Eight, what is that?

9 A. This is where I took this right after it had rained, and
10 it's a picture of the roof partially done with blue tarps
11 hanging over the openings but not very well. They weren't
12 shielding it.

13 Q. And do you know who was supposed to make sure that the
14 place was waterproof?

15 A. Yes, Mr. Thornton, as far as I know.

16 Q. And do you know whether or not he's the one that put
17 those blue tarps on there in an attempt to make it
18 waterproof?

19 A. His crew or himself did it.

20 Q. Alright, sir. And Exhibit Number Nine, if you could
21 identify those four photographs for the Court, sir?

22 A. These are places where the roof was damaged and where
23 the dormers sat, next to the dormer, in a corner of the unit
24 where it was damaged, and the other one is just another
25 picture of the same damage.

1 Q. Okay. And do you know how that damage occurred?

2 A. Part of it was when they were lifting the house onto the
3 foundation, I think the straps slipped.

4 Q. Okay. And who was it that was directing the crane
5 operator and handling that being placed on the foundation?

6 A. That I don't know.

7 Q. Alright, sir. And Number Ten, those four photographs if
8 you can identify those for the Court?

9 A. These are the inside of my house, three of them are the
10 inside of my house with most of the ceiling and the filler
11 insulation laying on the carpet, they are water damaged.
12 And the other picture is the tarp showing the roof being
13 open at the crest.

14 Q. And did you ever speak with Mr. Thornton about that
15 water damage?

16 A. Yes, I did.

17 Q. Now, describe that for the Court, please?

18 A. I asked him what he was going to do about it, and he
19 said that he would replace the ceiling and the carpet, redo
20 all the sheetrock that needed to be done on certain portions
21 of it, and it was a couple of other rooms that had amounts
22 of mold, there were, and that he would finish the roof off.

23 Q. Did he ever do that?

24 A. No, another company came in and did the sheetrock.

25 Q. Okay. And that other company coming in to do the

1 sheetrock, was that Martin and Sons Drywall?

2 A. Yes.

3 Q. Okay. Let me show you Exhibit Eleven and ask if you can
4 identify that?

5 A. This is where a lien was put on my house for non-payment
6 of part of the work that was done with, by Martin And Sons
7 Drywall.

8 Q. And did you ever ask Mr. Thornton to pay that, since he
9 had promised to correct the problems in your living room?

10 A. I had asked him who was going to pay for it, that it
11 wouldn't be me.

12 Q. Yes, sir. Did he offer any help or assistance in view
13 of determining who he expected in any way to pay that?

14 A. Yes, he said that he would pay for it.

15 Q. Did he ever pay it?

16 A. As far as I know he didn't.

17 Q. Okay. And did you ever discuss with him how it was that
18 the living room ceiling fell in, brought all the insulation
19 down and ruined the carpet due to the moisture?

20 A. Yes.

21 Q. Tell us about that?

22 A. Well, the house was set on a Friday and the forecast was
23 for rain that weekend, and we had four inches of rain in two
24 days, and the tarp that he had put over the partially
25 finished roof fell in right above the living room, and

1 that's what, how the water got in and brought down the
2 ceiling.

3 Q. And do you know whether or not Mr. Thornton knew of that
4 forecast of heavy rain that was coming?

5 A. I don't know if he knew the forecast.

6 Q. Okay. And when a modular home like that comes in do you
7 know whether or not yours already had the carpet in it?

8 A. Yes, it was already in.

9 Q. Okay. And describe the roof, how it would come in at
10 the time?

11 A. The roof is lifted up on one side and then they brace it
12 up, and at the very top of the roof there is a, there's a
13 big gap, but I don't think that the section that was over my
14 house was even finished, and there was tarps over it and
15 they had fallen in.

16 Q. Okay. And when the modular home comes from, I guess
17 we'll call it the factory, does it have the shingles already
18 on it?

19 A. No.

20 Q. Okay. And on -- did Mr. Thornton stay on the job the
21 entire time, I mean, to completion?

22 A. No.

23 Q. What happened?

24 A. Well, I would go out there several days a week and would
25 see no activity from day to day. Then he would come out and

1 do a few items, and then it might be another week or even
2 two weeks before I'd see anymore activity or any
3 accomplishment of work.

4 Q. Did he ever just walk off the job before it was
5 completed?

6 A. Yes.

7 Q. And about when was that?

8 A. I want to say that was around October.

9 Q. And since he walked off the job before completing it,
10 who actually completed the house for you?

11 A. Michael Robbins.

12 Q. Robbins?

13 A. Robbins, yes.

14 Q. Okay. And did Mike Robbins and Tim McGee see to it that
15 your house was finished?

16 A. Yes, they did.

17 Q. Okay. Do you know at what cost that was to Tim McGee to
18 do the work that Mr. Thornton either had not done or did and
19 messed up such as the roof you were talking about?

20 A. I believe it was around Thirty thousand dollars.

21 Q. Okay. And I've asked you a number of questions, I'm
22 just going through them real quickly. And you talked about
23 the carpet being soaked. Was that carpet able to be saved?

24 A. No, they had to replace the carpet in the living room.

25 Q. And how quickly did Mr. Thornton begin working to get up

1 the debris, the insulation, the ceiling, out of your living
2 room, if you know?

3 A. It was longer than two weeks before he started.

4 Q. As a result of that two weeks -- well, during those two
5 weeks was the wet material that you described in the
6 photographs still there?

7 A. Yes.

8 Q. Okay. As a result of that two weeks of wet material
9 still staying in your living room, what, if any, effect did
10 that have to your living room?

11 MR. CLOSSER: Objection, Your Honor, this witness has
12 not been qualified as any kind of expert with regard to
13 construction or resulting damages, this is an opinion.

14 THE COURT: Okay. Sustained.

15 Q. The wet materials stayed in your living room?

16 A. Yes.

17 Q. Okay. And how often would you go out there after the
18 wet materials had fallen in, after, say, that photograph was
19 taken?

20 A. I was going out nearly daily.

21 Q. Okay. And what, if any, thoughts did you have regarding
22 the wet materials staying in your living room?

23 A. Well, I knew it was going to destroy the carpet and
24 possibly warp the subflooring underneath it, and all that
25 caused mildew as the temperature was in the nineties that

1 week, or those two weeks.

2 Q. And did you ever see any signs of mildew?

3 A. Yes, I saw some on the ceiling mainly in the corners and
4 the subfloor had mildew on it.

5 Q. Did the subfloor actually warp?

6 A. It did slightly, yes.

7 Q. And was that also repaired by Tim McGee and/or Mike
8 Robbins?

9 A. Yes.

10 Q. Okay. And the ceiling where it had the mildew, did the
11 rest of the living room ceiling have to be taken down or
12 were they able to salvage that?

13 A. No, they took the rest of the whole ceiling down and had
14 to re-insulate it.

15 Q. The deal -- what, if any side deal, for lack of a better
16 word, did you have with Mr. Thornton regarding extra work
17 that you contracted with him for?

18 A. Well, on a couple of occasions, one occasion was to
19 remove a side door, or remove a window and put a door in the
20 side, and there were two windows above where the garage was
21 attached, there was one single window and I asked him to put
22 two smaller windows in because the way the garage was built
23 it would have covered part of the window itself, and he told
24 me that that would be no problem.

25 Q. Did he tell you what he was going to charge you for

1 that, if anything?

2 A. He never mentioned any kind of money or compensation.

3 Q. Did he ever present you with a bill for any of that
4 work?

5 A. Not me.

6 Q. Do you know if he presented a bill to someone else for
7 that work that you had requested?

8 A. I understand he presented it to Tim McGee.

9 Q. Okay. And the garage itself, who built that, was that
10 part of the modular set up?

11 A. No, that was a separate part of our contract.

12 Q. And when you say, our contract, you and who?

13 A. Me and Tim McGee.

14 Q. Okay. And who was the one that built the garage?

15 A. Dave Thornton, I think, and Mike Robbins, but I'm not
16 certain about that.

17 Q. And do you know whether or not that garage required a,
18 quote, firewall, to be put between the garage and your
19 house?

20 A. Yes.

21 Q. Okay. And who built that firewall?

22 A. Mike Robbins.

23 Q. And the overall workmanship of Dave Thornton, were you
24 satisfied with it?

25 A. No, I wasn't.

1 Q. Okay. And did you ever hear Tim McGee and Dave discuss
2 money?

3 A. No.

4 Q. Did Mr. Thornton ever tell you that he was going to
5 provide work or materials for free and then turned around
6 and billed someone for them?

7 A. He never said for free, because nothing was discussed
8 about the money. He just said that he would do the work.
9 And then as far as I know he gave the bills to Mr. McGee.

10 Q. Okay. And an upstairs floor, was there ever a
11 discussion with Mr. Thornton about that?

12 A. Yes, he was to put in a subfloor which I purchased the
13 materials for, and to build a room around where the stairs
14 went up, and then put walls between, to create two other
15 rooms up there, a bedroom and a, I use it as a storage room
16 right now.

17 Q. And was that Mr. Thornton that you had that discussion
18 with?

19 A. Yes.

20 Q. Okay. And what, if any, amount did Mr. Thornton say
21 that he would build it for, or do the work for?

22 A. I didn't discuss money, any kind of money with him.

23 Q. Do you know how much that ultimately cost someone for
24 doing that?

25 A. I believe Twenty thousand, thereabouts.

1 Q. And that roughly Twenty thousand or thereabouts, was
2 that work done by Mr. Thornton?

3 A. No.

4 Q. Who ultimately completed the work?

5 A. The, Martin and Sons did the drywall and Mr. Robbins did
6 the framing and electrical.

7 Q. And if I understand your testimony, that's something Mr.
8 Thornton had promised you he would do?

9 A. We were going to have an unfinished upstairs at first,
10 and then the, the appraisal on the house had been appraised
11 with a finished upstairs so we had to get it finished.

12 Q. Certainly. And that upstairs ultimately was completed?

13 A. Yes.

14 Q. Okay. And in fact, your entire house was completed and
15 you moved into it, you and your wife?

16 A. Yes.

17 Q. Okay. And going back to kind of the beginning of it,
18 the setting of the house, the roof and those kinds of things
19 when the house first came in and was set on the foundation,
20 who was to do that?

21 A. Mr. Thornton.

22 Q. Okay. And the, I hate to jump on you there, but as far
23 as the floor upstairs, the unfinished portion that was part
24 of the appraisal, was that, was there ever any discussion
25 with Mr. Thornton as to any sort of trade off for what he

1 did to your living room with the rain coming in, or did to
2 your house?

3 Q. Well, that's what I assumed when he said he would put
4 the windows in, add the two smaller windows, and I'm trying
5 to think if there was something else, but I can't recall it.

6 Q. Was there ever a problem relating to the screen door and
7 an opening not being the right size?

8 A. Yes. And that was on the back, the back door of the
9 house.

10 Q. Okay. Was that part of the garage built?

11 A. That was on the garage that was added in.

12 Q. And do you know who was handling that?

13 A. I believe it was Mr. Thornton.

14 Q. Okay. And do you know whether or not Mr. Thornton did
15 any of the crown molding in your house?

16 A. A lot of the crown molding was already up, and then the
17 crown molding had to be re-installed in the living room, and
18 the joints between the two halves had to be done.

19 Q. Okay. And who was to put those crown molding joints, if
20 you will, up, do you know?

21 A. Mr. Thornton, or his crew.

22 Q. Did he have any difficulty with doing that, joining the
23 portions of the modular house together?

24 MR. CLOSSER: Objection, Your Honor, I mean, we've got
25 the same objection, he's not an expert in construction, he's

1 asking if Dave had any difficulty in that, that would
2 require an expert opinion as to construction.

3 THE COURT: I'll sustain the objection. If you'll just
4 rephrase the question, did he notice anything or anything
5 like that.

6 Q. Were you ever there when Mr. Thornton was doing any of
7 this joinder work?

8 A. I wasn't there while it was being done.

9 Q. Did you see the results of the work?

10 A. Yes, I did.

11 Q. Were you satisfied with that work?

12 A. I was not.

13 Q. Did you discuss that with Mr. Thornton?

14 A. No, I think I talked to Tim about that.

15 Q. And what were the problems that you saw with the pieces
16 being joined?

17 A. Well, we had several sections on one wall, or one
18 ceiling corner, and the joints were very loose, gaps in
19 them, there was an attempt made to putty them up but it
20 wasn't even sanded after that, and there were several joints
21 that didn't need to be there. It was just, he just took
22 several scraps and cut them and put them up there to make a
23 finished ceiling crown.

24 Q. And was there ever a time when you and Tim McGee and
25 Mike Robbins and Mr. Thornton sat down later on into the

1 project and spoke?

2 A. I recall speaking outside in front of the house.

3 Q. What, if anything, was said about Mr. Thornton finishing
4 or not finishing the house?

5 A. He had told me that he would finish it.

6 Q. And was ...

7 A. It was shortly thereafter that he walked off the job.

8 Q. And just so I've got the time straight, when did he tell
9 you he was going to finish the house, in that meeting,
10 before or when?

11 A. It was in that meeting.

12 Q. And you said shortly after that he walked off the job.
13 About when was that?

14 A. That would have been around October.

15 Q. Well, I guess I asked a bad question. How much time
16 between the meeting and when he walked off and didn't come
17 back?

18 A. It was only a few minutes, I believe.

19 Q. Okay. And let me ask you if you've ever seen Exhibit
20 Number Twelve?

21 A. Yes, I made this. This is my own punch list, or not my
22 punch list, -- no, this is what I was shown by Mr. McGee, I
23 believe.

24 Q. Okay. Do you know whether or not that overcharge
25 document that you're holding is accurate?

1 A. It looks accurate to me.

2 MR. MAHAFFEE: Okay. I would move in, I think I did
3 One through Six, Your honor. Anyway, I would move in all
4 the exhibits through Plaintiff's Number Twelve.

5 THE COURT: Any objection?

6 COURT REPORTER: So, it would be Seven through Twelve?

7 THE COURT: Seven through Twelve.

8 MR. CLOSSER: No.

9 THE COURT: Okay. Alright, Seven through Twelve are in
10 evidence.

11 (Plaintiff's Exhibits Seven through Twelve
12 marked and filed.)

13 MR. MAHAFFEE: Thank you, Mr. Shirts, if you'd answer
14 any questions that opposing counsel might have, sir.

15 THE COURT: Mr. Closser, your witness.

16 MR. CLOSSER: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 (NOTE: Blank lines on this page do not indicate any part of
19 record has been omitted. Headers on testimony pages and
20 hard page breaks between testimony are now required by the
21 Court. See next ensuing page for sequential continuation of
22 record.)

1 BRENT SHIRTS - CROSS-EXAMINATION

2 BY MR. CLOSSER:

3 Q. Mr. Shirts, my name is Zach Closser, we met before, how
4 are you?

5 A. I'm fine.

6 COURT REPORTER: Judge, I need a minute to cut this PA
7 system on. I don't think you can adjust that, but I'll see.

8 THE COURT: Okay. The PA system for?

9 MR. CLOSSER: Do you want me to hit the power button
10 here?

11 THE COURT: Okay. Can you hear him?

12 COURT REPORTER: I can hear him, but I just wanted to,
13 I thought it would help, I'm not sure.

14 THE COURT: Oh, you mean the one down there?

15 COURT REPORTER: Yeah. Have you got it?

16 MR. CLOSSER: I think so. Maybe not.

17 COURT REPORTER: The light's on. There you go.

18 THE COURT: Alright. Thank you, ma'am. Thank you,
19 sir. That's so Mr. Closser can hear, he's the youngest
20 person here. Okay.

21 MR. CLOSSER: I appreciate it.

22 THE COURT: Alright, Mr. Closser, your witness.

23 MR. CLOSSER: Alright.

24 THE COURT: Yes, sir.

25 Q. Mr. Shirts, I'm going to -- well, let me ask you a

1 question, who did you hire to build your home?

2 A. Tim McGee.

3 Q. Okay. And how did that come about? Tell the Court.

4 A. I had talked to him, he had, I had talked to him about a
5 year earlier, right after I had purchased the land, and I
6 had gone and talked to somebody else about modular homes,
7 and then I came back to Tim because I had pretty much talked
8 to him about having him build my home.

9 Q. You purchased the property in, at what time, if you
10 recall?

11 A. Two thousand and six, approximately November.

12 Q. Okay. And you spoke with Tim about building the home
13 some time after that?

14 A. Yes. It would have been November, Two thousand five,
15 I'm sorry.

16 Q. When you purchased?

17 A. Yes.

18 Q. Okay. And you spoke to Tim in Two thousand and six?

19 A. Yes.

20 Q. And why did you talk to Tim about building a home?

21 A. He had told me that, you know, what kind of home, and he
22 showed me all the different plans, and I liked, you know,
23 what he told me about how he could fix it and he could get
24 me in within about three months, because we didn't want to
25 wait a long time.

1 Q. What did you understand Mr. McGee's role to be in
2 building your home, what was he going to do for you?

3 A. Basically, he was going to handle all the coordination
4 of the different contractors that he hired, that he would
5 hire to do the job. There was only a couple of things that
6 I had to do myself, which was like the garage door, and I
7 can't remember the other thing, it was something else I had
8 to do.

9 Q. Did you maybe drill a well or get some DHEC permits out
10 there for septic?

11 A. Yes, yes, I had to do that, but he got all the building
12 permits.

13 Q. Did Mr. McGee agree to coordinate and supervise the
14 construction?

15 A. Yes.

16 Q. And he offered to construct your home?

17 A. Well, he offered, yeah, to have it done.

18 Q. Right. He said he was going to hire everyone and make
19 sure it got built correctly, correct?

20 A. Correct.

21 Q. This was a two story house?

22 A. Yes.

23 Q. Alright. And it was a single family home?

24 A. Yes.

25 Q. Alright. I'm going to show you what's been premarked as

1 Defendant's Exhibit Six.

2 MR. CLOSSER: Your Honor, would you like a copy?

3 THE COURT: Oh, yeah, if you've got a copy. Thank you,
4 sir.

5 Q. Do you recognize that document, sir?

6 A. Yes, it's the purchase contract for the construction.

7 Q. And are those your and your wife's signatures down at
8 the bottom?

9 A. Yes.

10 Q. And do you recognize that to be Mr. McGee's signature as
11 well?

12 A. Yes. It's hard to tell, it's a couple of lines.

13 Q. If you could, I'm hoping you -- and this is dated when,
14 the first part of ...

15 A. February Tenth, O-seven.

16 Q. And if you would, the second two pages there are two
17 pages that show what you owe, and there are some
18 duplications on there, and they're dated about two months
19 apart and I was wondering if you could shed some light on
20 that?

21 A. I believe this was after we had first talked about
22 building the house and then we decided on which house we
23 were going to have built, and these were some additional
24 things that would be added to the price of the house.

25 Q. Okay. So, you were going to have them clear the lot?

1 A. Yes.

2 Q. Build a driveway?

3 A. Yes.

4 Q. Drill a well?

5 A. Yes.

6 Q. Hook up the electric?

7 A. Yes.

8 Q. Build a deck, a back deck as well as a twenty-four by
9 twenty-four foot garage?

10 A. Yes.

11 Q. You were going to have them do, he was going to have the
12 HVAC installed?

13 A. Yes.

14 Q. Clear future driveway, what's that?

15 A. I, to start with I only had a partial driveway, and then
16 I decided to finish the whole -- it's like an L shaped
17 driveway.

18 Q. Okay. He was also going to install the septic tank, add
19 a four by four front deck?

20 A. Yes, they were going to have it done but we decided not
21 to do the front deck.

22 Q. Okay. So far had he done everything that we've
23 discussed, with the one exception?

24 A. He had it done, yes.

25 Q. Correct. He wasn't out there swinging a hammer?

1 A. Correct.

2 Q. And when you say, had it done, what do you mean, he
3 hired someone to do it?

4 A. He hired different subs to do the work.

5 Q. If he was hiring subcontractors, did that make him the
6 general contractor?

7 MR. MAHAFFEE: Objection, Your Honor.

8 THE COURT: Are you asking him to make -- your
9 objection is based on?

10 MR. MAHAFFEE: Oh, I'm sorry, Your Honor, I get so used
11 to just objecting.

12 THE COURT: Okay. I'm just kind of curious.

13 MR. MAHAFFEE: Legal capability to say that, assumed a
14 few facts not in evidence.

15 THE COURT: Okay. Okay, well, I'll sustain it. I
16 sustain the objection. You can rephrase the question.

17 MR. CLOSSER: That's fine.

18 THE COURT: Okay.

19 Q. He was hiring subcontractors, those are your words,
20 correct?

21 A. Well, he was hiring the contractor to, as far as I know
22 he hired his own general contractor which I understood to be
23 Mr. Thornton.

24 Q. Okay. How do you understand that?

25 A. Because he was the one that also hired some of the subs

1 to do different parts of the portions that he did.

2 Q. Mr. Thornton had his own subs?

3 A. Yes.

4 Q. Do you know who those were?

5 A. I don't.

6 Q. Okay. So, you don't know whether or not Martin and Sons
7 Drywall was a sub of Mr. Thornton's?

8 A. As far as I know that wasn't.

9 Q. Who hired Martin and Sons as far as you know?

10 A. As far as I know I did. I called them up after talking
11 to Mr. McGee about various ones.

12 Q. Okay. And what did you have Martin and Sons Drywall do?

13 A. We had them do the upstairs drywall, and I believe they
14 did the interior and roof of the living room, but I didn't
15 hire them for that portion.

16 Q. Okay. When you say the roof and the living room, you
17 mean the ceiling?

18 A. The ceiling, yes.

19 Q. Okay. So, just so I understand your testimony, you had
20 Martin, you hired Martin and Sons to do the upstairs?

21 A. Just to do the upstairs, I had made the phone call.

22 Q. Okay. And at the same time they were on the job they
23 also did the downstairs?

24 A. No, I believe the downstairs was done prior to doing the
25 upstairs.

1 Q. Okay.

2 A. And so, they were at separate times.

3 Q. Okay. But you didn't hire them to do the downstairs?

4 A. No.

5 Q. You didn't pay them to do the downstairs?

6 A. No.

7 Q. You don't know who paid them to do the downstairs?

8 A. I don't.

9 Q. Back to Defendant's Exhibit Six, additionally, Mr. McGee
10 to install transom in the kitchen, one double, what does
11 that mean?

12 THE COURT: Just, and I don't mean to interrupt you, is
13 that on the third page? Oh, the third page.

14 MR. CLOSSER: Yes, sir. Halfway down.

15 THE COURT: Okay, I'm sorry.

16 A. I'm not sure what transom you're talking about, what is
17 a transom?

18 Q. It says, transom in kitchen, dash, one double, on
19 Exhibit Six, flip over to the next page, just go on down the
20 list.

21 A. I believe those were the lights that are hanging down,
22 I'm not sure what a transom is.

23 Q. Okay. Whose handwriting is this?

24 A. I'm not sure, it's not mine, I just initialed it.

25 Q. Okay. Two transoms in master bath room over tub and

1 shower, does that help? That's the next item.

2 A. I still don't know what a transom is, I can't remember.

3 Q. At any rate, you knew at the time and agreed to it,
4 those are your initials next it, correct?

5 A. Yes, yes.

6 Q. Alright. What is this next line item for One thousand
7 five hundred ninety-five Dollars? Is that an upgrade for
8 appliances?

9 A. That is an upgrade for appliances.

10 Q. Okay. Additionally, you agreed to have Mr. McGee have
11 recess can lights installed in the kitchen?

12 A. Yes.

13 Q. A Calcutta back splash in the kitchen as well?

14 A. Yes.

15 Q. Ceiling lights in the family room, correct?

16 A. In the, yeah, I guess you would call it the family room.

17 Q. Okay. And then, two wire and brace for fan in living
18 room?

19 A. Yes.

20 Q. And he also agreed, and you agreed, that is, Mr. McGee
21 and yourself, for two stem lights over the island, correct?

22 A. Yes.

23 Q. And these, by your own testimony, were in addition to
24 the main contract, correct?

25 A. Yes, but they were, most of these were ordered when the

1 house was ordered.

2 Q. Okay. I mean, this was the first document you signed
3 with Tim McGee?

4 A. Correct.

5 Q. And he used this to purchase the home from the factory?

6 A. Correct.

7 Q. Right. So, these were, you had your standard floor
8 plan, your standard home, your no options, and then you
9 added these options?

10 A. Yes.

11 Q. Okay. What did the standard no options house come with,
12 what was Tim going to do for you when you signed this
13 contract?

14 A. He was just going to get, you know, like the color of
15 carpets, the, add a few things on that we wanted the house
16 to have.

17 Q. Well, what does this contract mean to you, I mean, ...

18 A. It means this was our agreement between he and I.

19 Q. Agreement for what?

20 A. To have the house delivered with these items.

21 Q. Okay. And that's all, it was just going to be delivered
22 and not set up?

23 A. Well, set up, I mean, added if it, if it, like, I
24 couldn't clear a driveway, it wasn't delivered, it was
25 actually done.

1 Q. I want to know what Tim was responsible for in your mind
2 as far as what this contract encompasses. You just said
3 that includes setting up the home. Okay?

4 A. All of these things, all of these things.

5 MR. MAHAFFEE: Your Honor, I object, that's been asked
6 and answered a couple of times.

7 Q. Well, let me ask a more specific question.

8 THE COURT: Yeah, I'm going to -- if you'll ask a more
9 specific question.

10 MR. CLOSSER: Yes, Your Honor.

11 THE COURT: Go ahead.

12 Q. Did this include the building of the foundation, this
13 contract?

14 A. I assumed it was for the foundation as well, otherwise
15 you wouldn't be able to set up the house.

16 Q. And it assumed setting the house and tying it together?

17 A. Correct.

18 Q. And it included putting the roof on?

19 A. Yes.

20 Q. And putting up all the walls?

21 A. Yes.

22 Q. And it included plumbing it in?

23 A. Yes.

24 Q. And it included hooking it up to electricity?

25 A. Yes.

1 Q. It included any additional wiring that was needed?

2 A. Correct.

3 Q. In short, you had a raw piece of land, and you were
4 hiring Tim McGee to come and build you a home, correct?

5 A. Correct.

6 MR. MAHAFFEE: Objection, Your Honor. He keeps trying
7 to say that Mr. McGee is the contractor.

8 THE COURT: I'm overruling that objection.

9 MR. MAHAFFEE: Alright, sir.

10 THE COURT: Okay. Thank you. Can I get one
11 clarification if you're through with that? I just want to
12 make sure, on Page Number Two, the front porch was never
13 done, is that, or did I miss that?

14 A. Correct. We decided not to do that.

15 THE COURT: Okay. So, the Fifteen thousand for the
16 front porch you never did?

17 A. Correct.

18 THE COURT: And that's the only changes in this?

19 A. I believe so, yes.

20 THE COURT: Okay. Alright, I just want to make sure.
21 Thank you. I'm sorry to interrupt you.

22 MR. CLOSSER: No, that's fine.

23 Q. Alright, he -- you testified when Mr. Mahaffee was
24 asking you questions about extra work that Dave was going to
25 do for you - - -

1 A. Yes.

2 Q. --- and you assumed that that extra work was a trade for
3 the roof leak?

4 A. Yes.

5 Q. Okay. But that was never discussed, that was just your
6 assumption, correct?

7 A. Yes.

8 Q. Alright. And I believe it was your testimony that Dave
9 always said, yeah, he can do that work, but no money was
10 ever discussed?

11 A. Correct.

12 Q. Alright. What did you think was happening, did you
13 think that he was talking with Tim about that, or do you
14 know?

15 A. Well, I don't know if he was talking with Tim about it
16 but he had told me a couple of times in the presence of Tim.

17 Q. What did he tell you, that he could do that?

18 A. That he could do that.

19 Q. Do you know what documents were shown to Dave Thornton
20 when he was bidding this house to Tim McGee?

21 A. No, I don't.

22 Q. You don't know if any of those plats or drawings were
23 shown to Mr. Thornton, do you?

24 A. No, I don't.

25 Q. Did you tell Dave Thornton about the forecast of rainy

1 weather?

2 A. No, I was in Key West.

3 Q. And you, how did you know it was going to be raining?

4 A. Because I work for the weather service and I keep up
5 with the forecast.

6 Q. But you didn't bring that to anyone's attention?

7 A. I didn't -- I did call Tim and got him, I believe I got
8 him to call me while I was in Key West when I heard it had
9 rained.

10 Q. When were you in Key West, for how long?

11 A. I believe I left on the Tenth, and I came back on the
12 Sixteenth.

13 Q. Okay. So, were you there when they were actually
14 setting the home?

15 A. Yes, I was.

16 Q. You were there for that?

17 A. Yes.

18 Q. Okay. Was Tim there?

19 A. No, he wasn't.

20 Q. Where was Tim?

21 A. As far as I know he was in the Philippines.

22 Q. Okay. Did that give you any concern?

23 A. It did give me a little bit of concern, yes.

24 Q. Why?

25 A. Because he wasn't there to supervise or to see what was

1 going on, such as when the roof fell in.

2 Q. Do you think he should have been there to supervisor?

3 A. Oh, I thought he should have been, yes.

4 Q. And why is that, is that because of the contract that he
5 signed with you?

6 A. Yes.

7 Q. Did he tell you when he was going to the Philippines, or
8 that he was going to the Philippines?

9 A. Yes, he did tell me that.

10 Q. And when did he tell you that?

11 A. I want to say a few weeks before the house was to be
12 set.

13 Q. Was it a last minute thing, was he on his way out the
14 door when he told you?

15 A. No.

16 Q. When did he tell in proximity to when he actually left?

17 A. I believe it was about a week or two weeks.

18 Q. Did you express any concern to him about that, his not
19 being there for the set up?

20 A. I don't think I expressed it but I thought it to myself,
21 I thought that he probably should have been there.

22 Q. You testified quite a bit about the manufacturing of
23 modular homes, at least how they arrive on the site?

24 A. Yes.

25 Q. Do you recall that?

1 A. Yes.

2 Q. You testified that roof shingles were not installed,
3 correct?

4 A. Correct.

5 Q. Do you have any other experience beyond this one model
6 home site, your own home, with modular construction?

7 A. No.

8 Q. Okay. So, when you say, when Mr. Mahaffee asked you,
9 are roof, are shingles installed on modular home units, you
10 said, no, you're referring specifically just to your unit,
11 correct?

12 A. To my unit, yes.

13 Q. You don't know whether that's typical or standard within
14 the industry?

15 A. I don't.

16 Q. Would it surprise you one way or the other to learn that
17 shingles typically are installed?

18 A. Yes.

19 Q. Just because?

20 A. Just because mine didn't.

21 Q. Correct. After you came back from Key West you were
22 around for the duration of the project, correct?

23 A. Yes.

24 Q. You did not go on vacation?

25 A. No.

1 Q. When did Mr. McGee come back from the Philippines?

2 A. I believe it was about two weeks after I got back from
3 Key West.

4 Q. So, was the house dried in by the time he got back?

5 A. No.

6 Q. Do you know what I mean by dried in?

7 A. I know it was soaked and wet inside.

8 Q. It was wet inside because of what, because of the
9 material still in there?

10 A. Material still in there and there was plastic over some
11 of the materials that had water droplets on it, and I took
12 pictures of those.

13 Q. Okay. Was the roof completed when Mr. McGee returned?

14 A. No.

15 Q. Okay. And do you have -- let me back up a little bit.
16 What is your understanding of Mr. Robbins's scope of work on
17 this job?

18 THE COURT: And I'm sorry, is it Robbins or Robinson?

19 A. Robbins.

20 MR. MAHAFFEE: Robbins, R-O-B-B-I-N-S.

21 THE COURT: Okay. I'm sorry, I just needed to --
22 because I thought we had a new player here.

23 MR. CLOSSER: Robbins, Mike Robbins.

24 THE COURT: Okay. Okay. You're asking about Robbins'
25 scope of work.

1 Q. Yes, sir. Do you recall what Robbins' scope of work is,
2 or did you have an understanding of what Robbins' scope of
3 work was?

4 A. Well, I know that after Mr. Thornton left that he took
5 over basically as a general contractor and saw to it that
6 all the work was done.

7 Q. Okay. And when you say, took over as general contractor
8 to see that all the work was done, did, was he working for
9 you, did you hire Mr. Robbins to do that?

10 A. No, I didn't.

11 Q. Who was he working for?

12 A. He was working, as far as I know he was working
13 originally for Mr. Thornton, I thought he was a sub of Mr.
14 Thornton.

15 Q. And who was Mr. Thornton working for?

16 A. Tim.

17 Q. Okay. And did Tim McGee ever own this raw land, this
18 piece of real property?

19 A. No.

20 Q. You didn't buy it from him?

21 A. No.

22 Q. And he didn't sell it to you?

23 A. Correct.

24 Q. Alright. Are you aware that Mike Robbins actually
25 poured the foundation?

1 A. Now that you mention it, yes. He poured the foundation
2 for the drive and the garage, as far as I know.

3 Q. What about the foundation for the home, itself?

4 A. I believe that was another contractor.

5 Q. What other scopes of work are you familiar with as far
6 as Mike Robbins is concerned, what other responsibilities
7 did he have? You've got the foundation for the garage?

8 A. I know he did electrical work.

9 Q. And he did electrical work. Did he do any plumbing
10 work?

11 A. That I don't know.

12 Q. Do you know who did the plumbing work?

13 A. I don't know who did the plumbing.

14 Q. Any other scopes of work or responsibilities that Mr.
15 Robbins had on this job aside from what you mentioned, he
16 came in after Dave left in October, right?

17 A. Yes.

18 Q. Okay. Anything else that Mr. Robbins did?

19 A. Not, I mean, I'm not aware of what else he was doing.

20 Q. So, did I understand your testimony earlier correctly
21 when you said that Mr., or that you were not present for
22 any interior trim work, you did not see that actually
23 performed?

24 A. I didn't see it actually being performed.

25 Q. Did you ever see any painting done?

1 A. Yes, I did see some painting done.

2 Q. Who did you see painting?

3 A. I believe the painting was Mr. Robbins.

4 Q. Okay. So, he was responsible for painting, as well?

5 A. Well, he took over that responsibility as far as I know.

6 Q. As far as you know?

7 A. As far as I know.

8 Q. And you're not aware of any agreements between Mr.

9 Robbins and Dave Thornton with regard to who was going to
10 handle what scopes of work, are you?

11 A. No.

12 Q. And you're not aware of any agreements between Tim McGee
13 and Mike Robbins or Dave Thornton as to who was to handle
14 what scopes of work, are you?

15 A. Only what Mr. McGee would tell me.

16 Q. And what did he tell you?

17 A. Like, he would tell me who was setting the house, and
18 was going to be assembling the house basically, that that
19 was Mr. Thornton - - -

20 Q. Okay.

21 A. --- and/or his crew.

22 Q. Okay. How do you know that Mr. McGee is out Thirty
23 thousand Dollars in damages?

24 A. Well, I know that when we had to have the addition put
25 on the house that we didn't have the money to do it, and

1 that he paid the Twenty thousand to have that done, and - -
2 -

3 Q. Remind me what Twenty thousand Dollars you're speaking
4 of?

5 A. The, adding the rooms and finishing off the upstairs.

6 Q. Okay. I'm glad you mentioned that. Before when you
7 were testifying you said that initially that was not going
8 to be included, it was going to be unfinished, the upstairs,
9 correct?

10 A. Correct.

11 Q. And you decided, due to the appraisal, including that as
12 finished base, that you had to go ahead and finish it,
13 correct?

14 A. Yes.

15 Q. And that cost Twenty thousand Dollars?

16 A. Yes, as far as I know.

17 Q. And as far as you know there was not enough money left
18 in the contract to complete that work, correct?

19 A. Correct.

20 Q. Okay. And that, and it was at the beginning or the
21 inception of this, the contract, Defendant's Exhibit Six,
22 the upstairs was not contemplated to be finished, correct?

23 A. Correct.

24 Q. Okay. So, wouldn't it make sense that the original
25 contract price wouldn't have enough money for that Twenty

1 thousand Dollar renovation?

2 A. Yes.

3 Q. Why do you believe that the screen door we discussed, or
4 you discussed earlier, or testified about earlier was
5 included in Dave Thornton's scope of work?

6 A. Because when I talked to him about pulling it, taking it
7 down, taking a window out on the side where the garage door
8 could fit, and told him to go ahead and take the screen door
9 off and he could use it on the back door of the garage.

10 Q. Alright.

11 A. It's about six inches too tall for the opening.

12 Q. So, you had a screen door in the house that was too big,
13 and you asked Dave to move it to the garage?

14 A. No, it wasn't, it wasn't too big, I just didn't want the
15 screen door basically in a, going from the house into the
16 garage, I didn't need a screen door for that portion.

17 Q. I understand. I wasn't, it was nothing to keep out, it
18 was a closed garage?

19 A. Correct.

20 Q. And you wanted that on the exterior of the garage?

21 A. Yes.

22 Q. And Dave said he would do that for you?

23 A. Yes.

24 Q. Did he say it would cost more money?

25 A. No.

1 Q. Okay. And the screen door was installed by the
2 manufacturer, presumably?

3 A. Yes, originally.

4 Q. When did you move in?

5 A. I moved in on the Seventeenth of December.

6 Q. Was that the earliest you could possibly move in, was
7 the CO issued, the Certificate of Occupancy issued before
8 that?

9 A. That was the earliest I could move in. In fact, it was
10 earlier than they wanted me to move in because they hadn't
11 quite finished painting.

12 Q. Who is they, Mr. Robbins?

13 A. Mr. Robbins wasn't done yet, yes.

14 Q. I'm going to show you what's been marked for
15 identification, or premarked as Defendant's Exhibit Eight,
16 do you recognize that, sir?

17 A. Yes.

18 Q. What is it?

19 A. This is, during the construction loan it was with Sun
20 Trust Mortgage, I would have to agree to the funds being
21 transferred to Mr. McGee.

22 Q. And why were the funds being transferred from Sun Trust
23 to Mr. McGee?

24 A. Because my loan contract was with Sun Trust and they
25 were to pay Mr. McGee.

1 Q. And why were they to pay Mr. McGee?

2 A. That was part of the construction loan.

3 Q. Okay. And who did Sun Trust, or who did you lead Sun
4 Trust to believe Mr. McGee was?

5 A. Coordinator.

6 Q. Coordinator?

7 A. Yeah, he coordinated everything.

8 Q. You didn't, he wasn't, you didn't represent him to be
9 the contractor for the construction loan contract?

10 A. No.

11 Q. Okay. Let me show you what's been marked as Number
12 Nine, Defendant's Nine. This is another one of those
13 letters, isn't it?

14 A. Yes.

15 Q. And again, you're telling them to disburse the funds to
16 Mr. Tim McGee in accordance with the construction loan
17 contract, correct?

18 A. Right.

19 Q. Another one, Number Ten, same thing, correct, more of
20 the same?

21 A. Yes.

22 Q. Do you know whether or not Mr. McGee ever represented
23 himself to Sun Trust Bank to be the contractor, do you know
24 whether or not he had to sign any lien waivers or
25 affidavits?

1 A. I don't know whether he did.

2 Q. He never showed you anything?

3 A. No.

4 Q. How did Mr. McGee represent himself to you, what did he
5 tell you he was going to do, what did he call himself, did
6 he call himself a developer, a coordinator, a general
7 contractor, a builder?

8 A. Like a developer.

9 Q. Did he ever say that or you're just surmising?

10 A. I'm just surmising, I didn't actually know what to call
11 him for a long time.

12 Q. As far as you were concerned, though, he was building
13 your home?

14 A. Yes, he was having it built.

15 Q. This is a cumulative exhibit, let me staple it, Number
16 Eleven. These are a series of checks written by you, aren't
17 they?

18 A. Yes.

19 Q. They're written to Tim McGee, and one to Mike Robbins,
20 correct?

21 A. Yes.

22 Q. And it appears that the first page, Check Number Eight O
23 Five, for One thousand two hundred and fifty Dollars is for
24 an appliance upgrade, correct?

25 A. Correct.

1 Q. The second check, Number Nine O Two, for Nineteen
2 thousand sixty-four Dollars, that is Twenty thousand
3 Dollar, roughly Twenty thousand Dollar payment for the
4 upgrade for the finishing upstairs, correct?

5 A. Yes.

6 Q. And you paid Tim McGee that?

7 A. Yes.

8 Q. Did Tim McGee perform the work?

9 A. He had it done.

10 Q. Who did he hire to have it, to perform it?

11 A. I believe the framing was done by Mr. Robbins, and the,
12 Martin and Sons did the drywall.

13 Q. Okay. Is that all that was done up there, was there any
14 trim work done?

15 A. Everything but the baseboard that goes around, and there
16 was carpet put down by First One or something, I forgot the
17 name of them.

18 Q. Some other subcontractor?

19 A. Yes.

20 Q. And who performed the trim work?

21 A. Upstairs, I believe that was Mr. Robbins.

22 Q. Okay. And Tim McGee had hired all those people to do
23 that work, correct?

24 A. Yes, as far as -- well, yes.

25 Q. And you paid him to do it?

1 A. I paid him to do it.

2 Q. And he got it done, didn't he?

3 A. He got that done.

4 Q. I've got another payment, Check Number Thirteen Fifty-
5 nine, the second to the last page, for Two thousand five
6 hundred and twenty-nine Dollars, it looks like the balance
7 on the upstairs and then a payment towards the AC?

8 A. Yes.

9 Q. That's accurate?

10 A. Yes, we upgraded the AC after it was pointed out that we
11 should get a higher BTU unit for the amount of space we had.

12 Q. And you paid Tim McGee to do that?

13 A. Yes.

14 Q. And he got that done?

15 A. Yes.

16 Q. Do you know who he hired to do that?

17 A. I can't think of the name of them but -- I can't
18 remember the name of the guys that put it in.

19 Q. Alright. This last check written to Mike Robbins for
20 Eighty Dollars?

21 A. Yes.

22 Q. It says, florescent lights. Do you recall what that was
23 for?

24 A. Yes.

25 Q. What?

1 A. So he could put some lights up in the garage, because we
2 had it wired for the outlets but we had no lights in there.

3 Q. And you just asked him to do that?

4 A. Yes.

5 MR. CLOSSER: Your Honor, at this time I'd like to move
6 to admit Exhibits, or Defendant's Exhibits Six, Eight, Nine,
7 Ten and Eleven into evidence.

8 MR. MAHAFFEE: No objection, Your Honor.

9 THE COURT: Alright. Those are all in evidence.
10 (Defendant's Exhibits Six, Eight,
11 Nine, Ten and Eleven
12 marked and filed.)

13 MR. CLOSSER: If the Court will give me one minute I
14 think I'm done.

15 THE COURT: Okay. Take your time, Mr. Closser.

16 MR. CLOSSER: Thank you.

17 COURT REPORTER: Mr. Closser, would you give me all the
18 exhibit numbers that you have in?

19 MR. CLOSSER: Six, Eight, Nine, Ten, and Eleven.

20 COURT REPORTER: Thank you.

21 MR. CLOSSER: Nothing further.

22 THE COURT: Okay. Anything on redirect?

23 MR. MAHAFFEE: No, Your Honor, we would ask that Mr.
24 Shirts be released from his subpoena.

25 THE COURT: Any objection to that?

1 MR. CLOSSER: None.

2 THE COURT: Okay. Mr. Shirts, you may step down.
3 Thank you, sir.

4 We're going to take about a ten minute break just to
5 stretch for a minute and we'll come right back. Okay?
6 Thank y'all, appreciate it. We're in recess for ten
7 minutes.

8 (Recess)

9 THE COURT: Ms. Harry Dot, are you ready?

10 COURT REPORTER: Yes, sir.

11 THE COURT: Alright, Mr. Mahaffee, do you want to call
12 your next witness?

13 MR. MAHAFFEE: Yes, Your Honor, I call Mike Robbins.

14 THE COURT: Okay. Hey, Mr. Robbins. If you'd come up
15 here, get up there and put your left hand on the Bible and
16 raise your right hand, please, sir.

17 (Whereupon, Charles Michael Robbins
18 is duly sworn.)

19 THE COURT: Alright, sir, if you'd get comfortable in
20 that chair, and then once you get good and comfortable I
21 want you to state your full name for the record.

22 WITNESS: Charles Michael Robbins.

23 THE COURT: Alright, thank you, sir.

24 Your witness, Mr. Mahaffee.

25 MR. MAHAFFEE: Thank you, Your Honor.

1 CHARLES MICHAEL ROBBINS - DIRECT EXAMINATION

2 BY MR. MAHAFFEE:

3 Q. Mike, what experience do you have in the construction
4 field?

5 A. I started working with a gentleman that was building
6 houses back in, like, Nineteen ninety-five, and I started
7 working in the office drawing plans and changing plans, and
8 then I went out in the field and became a supervisor and
9 started supervising all his construction.

10 Q. Okay. Have you ever been licensed as a residential home
11 builder?

12 A. I have, yes, sir.

13 Q. Okay. Were you licensed as a residential home builder
14 at the time Mr. Shirts' house was built and constructed?

15 A. Yes, I was.

16 Q. Okay. Do you have an idea of how many homes you've
17 built from start to finish?

18 A. All the homes that I've built from start to finish were
19 under another contractor's license, but I've built probably
20 a hundred and fifty houses in the last ten to fifteen
21 years.

22 Q. Okay. And when did you first become familiar with David
23 Thornton?

24 A. Gosh, it was several years ago, he did subcontract work
25 for me for probably four years I'm guessing, something like

1 that, in different houses.

2 Q. What kind of subcontracting work?

3 A. He was, he'd, like, build porches and build decks and,
4 or his crews would, and he would help sometime, did a lot of
5 trim for me on the inside, would do a lot of outside trim,
6 and screen porches and steps and that type stuff.

7 Q. Was there ever a time that you quit using him as a
8 subcontractor at some point?

9 A. Yes, when I finished a subdivision over in West Ashley I
10 wasn't building anymore houses there at that time and so I
11 quit using him for a while, and I went and started building
12 some houses on James Island.

13 Q. When you quit using him what, if anything, did that have
14 to do with his building practices?

15 MR. CLOSSER: Objection.

16 A. Well, he did fantastic - - -

17 THE COURT: Hold on one minute.

18 MR. CLOSSER: Speculation. What, if anything, did that
19 have to do with his building practices?

20 THE COURT: He said he was a supervisor of the job,
21 right?

22 MR. CLOSSER: He said he didn't hire him after that.

23 THE COURT: Okay. Well, I'm going to overrule your
24 objection. I believe, unless I'm misunderstanding the
25 question, you're asking him what in his building practices

1 caused him to quit using him?

2 MR. MAHAFFEE: Yes, sir.

3 THE COURT: Or was the only thing just that he moved?

4 MR. MAHAFFEE: I asked him what, if anything, did him
5 no longer using him as a subcontractor have to do with Mr.
6 Thornton's building practices.

7 THE COURT: Yeah, I'm going to allow him to answer
8 that question for whatever it's worth. Okay?

9 A. Dave and I would struggle several times in that, you
10 know, I'd tell him that I've got Twelve hundred Dollars to
11 do a certain thing, and when I got the bill it would come in
12 at, you know, Two thousand or something. Sometimes,
13 whenever I'd ask him to do something and not get a price
14 from him up front, when the price came in it was a lot more
15 than I thought it was going to be or should be. And there
16 was just a lot of struggles in that area. So, when I went
17 to a new subdivision I just didn't call him to come over
18 there.

19 Q. And using your example of him telling you it would cost
20 Twelve hundred Dollars and then he would turn in a bill for
21 Two thousand, what would you do?

22 MR. CLOSSER: Objection, that wasn't his testimony.

23 THE COURT: Yeah, I believe he stated that he thought
24 it would be Twelve hundred he would end up getting a bill
25 for Two thousand. Is that correct?

1 MR. CLOSSER: He said that there was no discussion of
2 money. He assumed it should be less and when he got the
3 bill it was higher.

4 THE COURT: Okay. Well, I understand what we're
5 getting at. Okay. Thank you. Go ahead with your question,
6 Mr. Mahaffee, I'm sorry.

7 MR. MAHAFFEE: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 Q. He would tell you something would cost Twelve hundred
10 Dollars and he'd turn in a bill for Two thousand?

11 MR. CLOSSER: Same objection.

12 THE COURT: I understand, and I overrule the objection.
13 Go ahead. I know where we're going.

14 A. Well, I would tell him that I had Twelve hundred Dollars
15 to do a particular job, to build a porch, build a deck,
16 whatever, and that's what I had budgeted, and then by the
17 time I would get the invoice it was, you know, Two thousand
18 Dollars or something. And he'd come in and say that, you
19 know, he had to do extra work, and that type of stuff, but I
20 didn't, you know, I was of the opinion that it was going to
21 be Twelve hundred because that's what I told him that, you
22 know, I had to spend.

23 Q. Okay. And in such an instance the bill came in at Two
24 thousand Dollars and you had to - - -

25 MR. CLOSSER: Objection as to relevance. I'm sorry,

1 but just because he did it in the past doesn't mean he did
2 it now. I don't see what this has to do with the job at
3 hand.

4 THE COURT: Yeah, tell me, I would, I am curious about
5 what this has to do with the job at hand. What are we
6 getting at?

7 MR. MAHAFFEE: Well, as the testimony will develop,
8 Your Honor, Mr. Robbins was the general contractor, Mr.
9 Thornton was working for him. The case that we've got
10 before you, among other things is, Mr. Thornton was
11 overcharging Mr. McGee.

12 THE COURT: Okay. Well, you can -- he can just testify
13 to that directly as it relates to this. I don't need to go
14 into ...

15 MR. MAHAFFEE: Alright, sir.

16 THE COURT: Okay. Just go to what happened with this
17 one.

18 Q. How did you get involved with the Brent Shirts job up in
19 Round O?

20 A. David come over to James Island eventually and started
21 doing work for me again, and he came to me one day and said,
22 I've got a job for us, you know, an outside job for us to
23 do. We just, you know, what we'll do is, we'll just, you get
24 the permit and then we'll just do little sections of the
25 job. You know, one of us will take care of the -- he said,

1 I can set it up, it's a modular home, he said, I've set up a
2 lot of modular homes and I can do that, and then, you know,
3 you can do one part, you can take care of the painting and
4 you can take care of the ventilation and you can take care
5 of this and we'll make a little bit of money off of those
6 areas.

7 Q. And at that time when Mr. Thornton was telling you that
8 he could set the modular home, did you know whether he was
9 licensed as a builder or anything in the construction trade?

10 A. No.

11 Q. Okay. And as far as the foundation, who was to do that?

12 A. I was to do that.

13 Q. Okay. And the clearing of the land, who did that?

14 A. It was already done at some point in time, I don't know
15 who did that.

16 Q. The first work that was done after the clearing was what
17 type of work?

18 A. Putting in foundation, and at some point in time near
19 there they dug a well and put a driveway in.

20 Q. And did Mr. Thornton ever express to you any problems or
21 difficulties with the foundation that you had constructed?

22 A. No, not that I'm aware of. Maybe he, you know, he said
23 it was, I remember something about it being a little bit off
24 at some place but he adjusted it to where it worked okay.

25 Q. Okay. And you said he came to you and asked you to pull

1 the permit. Who actually pulled the permit as the builder
2 for the Brent Shirts project?

3 Q. I had just gotten my contractor's license, and I went
4 and pulled the permit for the Shirts project.

5 Q. And when you and Mr. Thornton were talking about
6 splitting up the work, who was to do the roofing?

7 A. At first I was supposed to do the roofing, he was going
8 to set the modular up and put the thing together and then I
9 was going to call the roofer that used to do work for me and
10 have him go over and blend the roof in and everything, but
11 then I kept checking with Dave about, you know, when the
12 roof was going to be ready to get done, when it was going to
13 be ready to have somebody come put the shingles on, and
14 finally he said, well, I'll just take care of the roof. And
15 I said, okay. So, he did the actual roofing part.

16 Q. Okay. How about the interior trim, who was supposed to
17 that?

18 A. I was supposed to do the interior trim.

19 Q. How about the painting?

20 A. I was supposed to do the painting.

21 Q. Okay. Was this any sort of profit sharing relationship
22 that you and Mr. Thornton had?

23 A. No, it was just the, you know, you just determine, just
24 like you go out and do any particular job, I mean, I wasn't
25 big in knowing how to price things and do things because I

1 had never gone out to do things on my own, I just supervised
2 other construction. But, you know, I mean, if it costs you
3 Five hundred Dollars to do you just add two or three hundred
4 to it and that's how you make your profit.

5 Q. Okay. And after you finished the foundation who did you
6 turn the setting of the house over to?

7 A. Well, I told, I can't remember if I told Dave or whether
8 I told Tim, but I mean, I told them that the foundation was
9 ready to go and they could, you know, have the house
10 delivered and put it on at anytime.

11 Q. Okay. And the building, the modular home, was it
12 supposed to come in at a certain time?

13 A. Yes, I think so.

14 Q. Okay. Did it come in on time?

15 A. I think it did, yes.

16 Q. Okay. And do you know whether or not Tim was going to
17 be out of the country for a while?

18 A. Yes.

19 Q. Okay. And when they said that the modular home was going
20 to be in did that drag out from what they originally had
21 said?

22 A. I don't remember.

23 Q. And at that time was it Dave Thornton, you, or somebody
24 else that was supposed to be doing the work and handling the
25 house while Tim was in the Philippines?

1 A. It was my understanding Dave was going to take over and
2 set the modular.

3 Q. Were you at the site when the trucks actually delivered
4 the house sections?

5 A. I was.

6 Q. Okay. And we've already identified a number of exhibits
7 here through Mr. Shirts, let me get some of those if I
8 could. Now, here is Exhibit Seven, what is that crane
9 lifting there?

10 A. It's lifting one of the dormers for the front of the
11 house.

12 Q. Okay. That dormer, was it stick built or did it come
13 from the factory like that?

14 A. That came from the factory like that.

15 Q. Exhibit One, does that show the, among other things,
16 does that show the foundation that you had built?

17 A. It does.

18 Q. Okay. And is photograph, or Exhibit, Plaintiff's Number
19 One, does that show the crane lifting a portion of the
20 modular home into place?

21 A. Yes, it does.

22 Q. Okay. And the, who recommended that the crane company
23 that was lifting the house into place and also lifting the
24 dormers onto the house?

25 A. If I'm not mistaken, Dave mentioned the crane company

1 and then Tim said, yeah, I've used them before I think, or
2 they both decided between the two of them which crane
3 company to use.

4 Q. And after the house was, or the pieces were set, let me
5 show you Exhibit Number Two, which is multiple photographs,
6 and were you there on site at the time that the house looked
7 like that?

8 A. Yes, that's about, or a little bit after that is when I
9 came in to do some work. I think the job I was supposed --
10 the next job I was supposed to do was, once he got it tied
11 together was to put the trim on and, you know, touch up the
12 painting and stuff.

13 Q. Okay. Did you ever see the house when it looked like
14 this, which is Plaintiff's Exhibit Number Ten, which are
15 four photographs?

16 A. Yes, I did.

17 Q. Okay. What had caused that condition inside the house?

18 A. I was supposed to be there to watch how they put the mod
19 together, so I told them I had never put a mod together, and
20 I just wanted to see how to do it, and when the mod got
21 there it was, we had a real struggle all day long to get the
22 mod turned into the street and into the road to get it be
23 able to get it back to where it was. And then, we were
24 supposed to set it on a particular day and I had scheduled
25 time to be there to watch it be set so I would know how to

1 do one. And that particular day they, the crane that they
2 had sent was the wrong size crane and the crane operator
3 decided he couldn't lift it. And at that point in time I
4 had another job come up that I was working on and so I
5 didn't get to come back and watch them set it or anything
6 like that. It was like, I can't remember, like three or
7 four days after it was supposed to be set that I came back
8 over there.

9 Q. Okay. And who was handling the setting of the house
10 while you were away?

11 A. Dave was taking care of that.

12 Q. Okay. And when you came back was the interior of the
13 house in the condition it was in Exhibit Ten there?

14 A. Yeah, it was my understanding that they had lifted the
15 roof up and put the roof together and then a thunder storm
16 came up and soaked the whole thing, and I remember something
17 about Dave saying that he was going to get some tarps to put
18 over the top to close it all up so it would, you know, it
19 wouldn't anymore damage in it. And then I remember him
20 saying something about how much the tarps cost, it was a
21 bunch of money. But yes, it's like, once it got to that
22 point I just happened to drop by to see what was going on of
23 the construction and I saw all that in the floor, and told
24 Dave that we needed to get that up before Tim or the
25 homeowner came back, that the homeowner would have a fit if

1 he saw that in his house. And Dave said he'd get his guys
2 to clean it all up and take care of it.

3 Q. And do you know how many days it was after you had that
4 conversation with Mr. Thornton before you came back to the
5 house?

6 A. I don't know exactly, I'm, you know, it was like two,
7 three, four days, probably four days after that that I came
8 back to the house.

9 Q. Had Mr. Thornton gotten his crew to clean everything up
10 and to dry the house in?

11 A. They were working on drying the house in but they had
12 not cleaned up the stuff, and I asked Dave if he wanted me
13 to, you know, find somebody to come in there and just clean
14 it up, it wouldn't take but a couple of hours to get all
15 that stuff out, just needed to get the wet stuff up off the
16 floor, and he said, no, no, he'd take care of it, so I
17 didn't do anything about that.

18 Q. Okay. And the ceiling, was that just the living room
19 ceiling or was that the entire downstairs ceilings?

20 A. Just the living room ceiling.

21 Q. Okay. And at some point was there a meeting with Mr.
22 Thornton, you and Tim about money and invoices?

23 A. Yeah, we met at Dave's house one day about all the
24 invoices and where we stood and that type of stuff.

25 Q. And what do you recall Tim saying to Mr. Thornton about

1 the invoices that he was turning in?

2 A. I don't remember a lot of it because at that point in
3 time I only had one invoice that I, you know, was wanting to
4 talk to Tim about, but I can't remember any, you know, any
5 exact conversations between the two of them.

6 Q. Well, in generalities did Tim ever discuss with Mr.
7 Thornton that Mr. Thornton was turning in invoices for
8 damages that he had caused?

9 A. Yeah, I remember them talking about, you know, Tim
10 saying that he shouldn't have to pay for the costs of when
11 the ceiling fell in and all that stuff, that that should
12 have been Dave's responsibility since it was, you know,
13 extra. And I think Tim kind of blamed Dave for not getting
14 the roof covered in time.

15 Q. And did Mr. Thornton accept responsibility?

16 A. Oh, I don't remember him saying that, you know, that's
17 my responsibility, or that, anything like that. I don't
18 remember what the outcome was, I just remember that general
19 conversation.

20 Q. And the, as a result of the living room coming in, what
21 effect did that have on the carpet, sheetrock, and the
22 insulation?

23 A. Well, when the ceiling fell, of course, all of the
24 insulation was just blown insulation so it fell with it.
25 And all of it being wet, it just kind of sat on top of the

1 carpet and eventually ruined the carpet over a period of
2 time, and warped the subfloor a nominal amount but, you
3 know, the key was, you wanted to get it up off the subfloor
4 because, you know, before it did warp it.

5 Q. Do you know who paid to fix the slightly warped
6 subfloor, the carpet, the sheetrock, the insulation?

7 A. I think Tim paid for all that.

8 Q. Okay. To your knowledge did Dave Thornton ever pay for
9 any damage to the house that you believe that he caused?

10 A. Not that I'm aware of.

11 Q. Did Dave Thornton cause damage to this house?

12 A. Well, the rain caused the damage to the house, and, you
13 know, Dave could have gotten the material up off the floor
14 on a timelier manner. I don't know that even getting it up
15 off the floor would have saved the carpet at that point in
16 time, it was probably ruined anyway, so ...

17 Q. Well, when the, I mean, let's see if -- oh, yeah, that
18 right top exhibit there, - - -

19 A. Uh-huh.

20 Q. --- are those two pieces of the roof meeting?

21 A. They, yes, they appear to be.

22 Q. Okay.

23 A. Well, I mean, they meet like they're supposed to, and
24 then there's a gap across the ridge of the roof that you're
25 supposed to put a ridge cap on so the interior of the roof

1 can breathe.

2 COURT REPORTER: What was that exhibit?

3 MR. MAHAFFEE: Number Ten.

4 A. Ten.

5 Q. And was there a ridge cap put on that?

6 A. It doesn't show on yet, huh-uh. That's usually the last
7 thing to go on after you put the shingles on.

8 Q. And could temporarily, say, tar paper or something like
9 that have been put over that hole?

10 A. It could have, or yeah, some more tarpaulins could have
11 been draped over it and tacked down.

12 Q. And the dormers which were done by the factory and
13 lifted in by the crane as we talked about, who was in charge
14 of installing those dormers?

15 A. That was, I'm assuming that was part of the setting of
16 modular home.

17 Q. And were the dormers installed correctly by Mr.
18 Thornton, who was in charge of setting the home?

19 A. Yeah, they were installed correctly. They were, they
20 didn't, I think one of them didn't fit exactly right and he
21 had to do a bunch of adjusting to get it to work, but yeah,
22 I think they were set correctly.

23 Q. And what, if anything, do you recall about the swirl
24 ceilings in the house?

25 A. Well, it was, I remember it being an issue in that it

1 was a hard thing to get that particular swirl to match the
2 rest of the house because you do it with a type of brush.
3 At that point in time I didn't have the slightest idea how
4 you put the swirl in the ceiling, but I had never seen, you
5 know, swirl ceiling like that, it had been popcorn ceilings
6 and stuff, but you do it with some kind of a brush. I
7 remember that being an issue, not being able to get it to
8 match with the rest of the house.

9 Q. And who was handling the swirl ceiling?

10 A. I'm assuming that was between Dave and the Martin and
11 Sons that, I mean, I don't know who was supposed to do it
12 but it was between Dave and Martin and Sons that was going
13 to get it done.

14 Q. And are you saying that Dave actually hired Martin and
15 Sons, the drywall folks?

16 A. I assume he did, I don't know for sure, but I know that
17 Martin and Sons used to do work for us in the subdivision
18 that Dave did work for, so I'm sure Dave knew them. But who
19 actually picked them out of the phone book and called them,
20 I don't know.

21 Q. Okay. And what do you recall about David Thornton
22 telling you about how much he charged to set a modular home
23 of whatever size?

24 A. Dave said that, you know, it really, it wasn't really
25 difficult to set a modular home, and you could normally set

1 them for about Five thousand Dollars.

2 Q. Okay. Normally, do you know if he thought that this one
3 was an abnormal home for some reason?

4 A. Well, the argument was, just in hearing conversation
5 between him and Tim, is that Tim said that he actually
6 showed him a picture of the house and Dave said that he
7 could, yeah, set that house for Five thousand Dollars. Dave
8 said that he didn't see a picture of the house, and that
9 this house was a lot more involved with the two big pieces
10 and the dormers and all that stuff, so he would have to
11 charge him more than Five thousand Dollars.

12 Q. Do you know how that discussion ended?

13 A. I, I know that, I don't know exactly how it ended but I
14 know that Dave turned in some bills for setting the home
15 that Tim thought were too high, and I know that was a bone
16 of contention between them.

17 Q. And the garage, did someone stick build that garage?

18 A. Dave's crew stick built the garage.

19 Q. And do you know how much he charged to stick build that
20 garage?

21 A. I do not.

22 Q. Okay. And since you're a residential builder would you
23 know whether there's a firewall which is necessary between
24 the garage and the house when they are joined together; in
25 other words, not a garage out in the back yard, so to speak?

1 A. Correct, yes.

2 Q. Is a firewall required?

3 A. Yes.

4 Q. Okay. Do you think that would be part of Mr. Thornton
5 having to stick build the garage that he would put a
6 firewall in between the garage and the house?

7 A. I would assume so, yes.

8 Q. Okay. Does the building, the code which was applicable
9 at that time, the building code, did it require such a
10 firewall?

11 A. Yes.

12 Q. Okay. Do you know whether or not Mr. Thornton had
13 strapped the house correctly so the crane could lift it, or
14 did the wires and the cables from that crane actually cut
15 into the house and do damage to it?

16 A. I remember seeing some damage to the house and I
17 remember somebody saying that one of the straps had slipped,
18 but I wasn't there whenever they strapped it all together,
19 so I don't know.

20 Q. Do, so do you know whether Mr. Thornton was the one over
21 whomeve3r was doing that?

22 A. Yeah, yeah, Dave was taking care of setting the modular.

23 Q. Okay. And to your knowledge did Mr. Thornton ever
24 threaten to put a mechanic's lien on the house?

25 A. I don't remember him ever saying anything about putting

1 a lien on the house.

2 Q. Okay. One moment. Do you know whether David Thornton
3 actually heard the thunder right before it started raining
4 and caused the damage which is shown in Exhibit Ten?

5 A. I'm not aware of anything like that.

6 MR. MAHAFFEE: Alright, Mr. Robbins, I think that's all
7 I have. Answer any questions that opposing counsel might
8 have.

9 A. Okay.

10 THE COURT: Alright, Mr. Closser, your witness..

11 MR. CLOSSER: Alright, thank you, Your Honor.

12 THE COURT: Yes, sir.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and
15 hard page breaks between testimony are now required by the
16 Court. See next ensuing page for sequential continuation of
17 record.)

CHARLES MICHAEL ROBBINS - CROSS-EXAMINATION

BY MR. CLOSSER:

Q. How are you doing today, sir?

A. I'm doing good.

Q. I'm going to jump around - - -

A. Okay.

Q. --- and touch on some points that Mr. Mahaffee made, so if you don't understand one of my questions or you need me to clarify, please let me know so I understand, so that you understood, rather.

A. Okay.

Q. First I want to understand your understanding of the relationship between the three players, the three people working on the house. You've got Tim McGee, David Thornton and yourself?

A. Uh-huh.

Q. Was there anyone else that would be responsible for any work on that home?

A. Not that I'm aware of.

Q. Okay. What is your understanding of Mr. McGee's involvement?

A. Like I said, Dave came to me and said he had a friend that had a job and we'd go in together and, you know, just put it together, and that we met at a restaurant in James Island and Tim said he had a modular he wanted to put

1 together and, you know, Dave and I, while we were there,
2 worked out that, you know, he'd do some things and I'd do
3 some things and be responsible for getting things done.

4 And, I mean, it was just kind of a mutual thing, I think.

5 Q. Do you specifically recall the conversation at that
6 restaurant?

7 A. No specifically, I mean, I might could get some,
8 remember some general stuff, but ...

9 Q. At that restaurant did you decide or did Mr. McGee ask
10 you, or tell you that he didn't have a builder's license and
11 that he needed you to pull the permit on the job?

12 A. I don't know that he told me that he didn't have a
13 license, but they did, I remember discussing the fact that I
14 needed to get the permit for the job, yes.

15 Q. And they were going to pay you for that service, weren't
16 they, One thousand Dollars?

17 A. Not originally, not originally. I was just going to get
18 the permit, and they were going to pay for the permit to be
19 purchased, but - - -

20 Q. The fee?

21 A. Yeah, the fee to Colleton County, but I wasn't going to
22 get anything for the permit.

23 Q. Okay. So, initially, that's the only scope of work they
24 were going to utilize you for was just to pull that permit?

25 A. Pull the permit and do some of the, some of the sub-

1 work.

2 Q. Okay. And initially was it just the foundation?

3 A. No, Dave and I pretty much was splitting up the
4 different things to do, and I was going to do, like I said,
5 I was going to do the foundation, I was supposed to take
6 care of the roof, I was supposed to take care of the trim,
7 maybe not the trim originally but then the painting I was
8 supposed to do.

9 Q. The finish work inside?

10 A. Right, right.

11 Q. Alright. The foundation was a little bit off, you
12 testified earlier?

13 A. Uh-huh.

14 Q. Is there a photograph that depicts that condition?

15 A. No, I just, and I mean, the house sat well on the
16 foundation, and the only reason I knew it was off or think
17 it was off is that Dave said when he was setting the house
18 down on the foundation it was like a half inch off or
19 something, but he adjusted it and made it work.

20 Q. But you weren't there for the set, correct?

21 A. I was not there for the set, no.

22 Q. And just so I understand your presence on the site, they
23 drop the boxes in - - -

24 A. Uh-huh.

25 Q. --- the modular units, and it took you quite a bit of

1 time, you had to get a bulldozer and everything to get
2 around that corner to get them in the - - -

3 A. Correct.

4 Q. --- get them in the, actually on the property. And just
5 so the Court understands, you actually had to move dirt and
6 make a wider turn - - -

7 A. Correct.

8 Q. --- and that, how many hours did that take?

9 A. Oh, gosh, it was, it was pretty much all day.

10 Q. Okay.

11 A. I mean, they arrived probably sometime around, you know,
12 nine, ten o'clock in the morning, and it was, you know, five
13 or six o'clock before we got the things on the site.

14 Q. So, the site conditions delayed the setting of the units
15 about a day?

16 A. Right.

17 Q. And then you didn't come back again until after the rain
18 event?

19 A. That's correct.

20 Q. So, by that time the units were set, pulled together,
21 and the roof framing numbers were up?

22 A. Correct.

23 Q. Not all the shingles on?

24 A. Correct.

25 Q. And did you see Dave go out to the home and put tarps

1 over the home?

2 A. No, I did not.

3 Q. If it was going to rain and your house wasn't shingled
4 and you had a finished interior like you do with a modular
5 home and you didn't have time to put the shingles on, in
6 your opinion as a builder, would that be a reasonable thing
7 to do, to put tarps over it to protect the interior?

8 A. Yes.

9 Q. Is there anything else that you could do?

10 A. Not at that point, with that limited amount of time,
11 that's the only thing you could have done was to put tarps
12 on it to keep it from raining in.

13 Q. And in your opinion was Dave negligent in doing so?

14 A. Negligent in putting tarps on or ...

15 Q. Yeah, in putting them on. I mean, what else was he,
16 what else should he have done?

17 A. As long as, I mean, that's exactly what I would have
18 done, would have been put tarps over the roof and covered
19 all the holes so that water didn't get in.

20 Q. Now it wasn't at this point -- up until this point it
21 was your responsibility to do the roof?

22 A. That's correct, Dave was going to get the roof all put
23 up and get the dormers put on, and then he was going to tell
24 me when that was done, and I was going to call a roofer that
25 was doing work for us, doing work for me to come over and

1 tie in all the roof and stuff.

2 Q. And you weren't at the job during this setting period
3 because you were at another project, is that correct?

4 A. That's correct.

5 Q. Okay. And where was that project?

6 A. I don't remember exactly which project it was that I was
7 at, I just remember I couldn't be there.

8 Q. Was it in the Cottageville area?

9 A. No, huh-huh.

10 Q. Back down in Charleston somewhere? Is that a yes for
11 the record?

12 A. Yes.

13 Q. About how far away is that, about an hour drive?

14 A. About, yeah, about an hour, fort-five minutes, something
15 like that.

16 Q. Okay. You don't know who ordered that crane, do you?

17 If I show you invoices that has your signature on it ...

18 A. The situation about the crane was, is that they asked me
19 to call around and see about getting a crane, and I told
20 them that I used to use Maxim Crane Company, and so I called
21 Maxim Crane Company and asked them to go out and look at the
22 job site, and I think, if I'm not mistaken, that the mods
23 were out there, the mod units were out there when the crane
24 guy went out there to look at it, I think they were. But
25 the crane guy went out and looked at the area and everything

1 to make sure he could get a crane in there and what size
2 crane he needed and everything, and he sent me a quote of
3 Twenty, I think it was like Twenty-six hundred Dollars to
4 send a crane in there and to pick it up and to move it. So,
5 and then I think there was some delay as to when the thing
6 was going to be put together, and then I remember me and
7 Dave and Tim, I think right before Tim left, talking about
8 who we were going to use for a crane company, and I don't
9 remember who mentioned it first whether Dave mentioned
10 Limehouse first or whether Tim mentioned Limehouse first,
11 but they had discussed Limehouse and I think, I don't know,
12 I don't remember Limehouse to order the crane, but then the
13 crane was ordered. After that time Tim left for the
14 Philippines, the crane company came out, sent a crane out
15 there and said that it was, said that it wasn't big enough,
16 and then, I can't remember if it was that same afternoon or
17 the next day, I think it was the next day that they sent out
18 a larger crane, and since nobody had an account with the
19 crane company, the crane company wanted payment immediately
20 before he would set the mod. Tim wasn't around so I put the
21 crane bill on my credit card just to, you know, just to
22 keep things going.

23 Q. Okay. So, the undersized crane, do I understand your
24 testimony correctly to infer that that is the fault of the
25 crane company?

1 A. Yes, I mean, I would think it would be the fault of the
2 crane company. I mean, they, unless Dave knows, or somebody
3 knows what size crane you need to set what size mod, but
4 yeah, it was the fault of the crane company.

5 Q. And since you weren't on the site during the set, you
6 weren't aware of any delays due to manufacturer's
7 construction of the home that would have delayed or caused
8 the crane to be there for more than one day?

9 A. Right, I am not.

10 Q. Do you know how long it takes to set a home with a crane
11 on site, do you only need the crane for one day, two days,
12 three days?

13 A. I don't have, I don't know, I've never set a mod, never
14 seen it set.

15 Q. Okay. And you testified earlier that Dave could
16 normally set a mod for Five thousand Dollars?

17 A. That's what he told me originally when we first started
18 discussing all of this.

19 Q. And do you have an understanding of what a normal
20 modular home is?

21 A. No. No, I assume a normal modular home would be just
22 two pieces fit together, and what size that is, I don't
23 know.

24 Q. Two boxes, like a pair of boxes?

25 A. Yeah, two boxes put together, yeah.

1 Q. Alright. And was, using that definition of a normal
2 mod, was this project a normal modular home?

3 A. It had some extras, I think it was maybe even a little
4 bit larger, it was L shaped rather than the two boxes, I
5 think it was three boxes that had to go together, and then
6 it had dormers on it. I'm assuming that's what made it
7 different than normal.

8 Q. Okay. And so, in your opinion as a builder would you
9 expect to charge more than the Five thousand Dollars for
10 this larger home?

11 MR. MAHAFFEE: Objection, Your Honor, he said he's
12 never set a mod.

13 THE COURT: I'm going to let him answer the question.

14 A. Yeah, I don't know, I don't know, I mean, I'm going by
15 Dave's discussion of Five thousand Dollars to set a regular
16 mod. I don't have the slightest idea how much it would take
17 to set a regular mod. I would assume, as just knowing
18 construction, that if it takes Five thousand Dollars to set
19 a regular mod, with this being un-regular, as people say,
20 then I'm assuming it would maybe cost more, I don't know how
21 much or what, I'm just not familiar with it.

22 Q. And as far as the garage price, it was a stick built
23 garage, correct?

24 A. Uh-huh.

25 Q. That was a yes?

1 A. Yes. I'm sorry.

2 Q. That's alright. And Dave built that?

3 A. Yes, he did.

4 Q. Or his men did?

5 A. Yes, he did.

6 Q. And do you know if Ten thousand Dollars is a low price,
7 do you have an opinion as to that?

8 A. When I was building garages, separate garages, not
9 connected to the house but completely separate garages for
10 individuals, we were charging, it was costing us about
11 Ninety-five hundred Dollars to build a two car garage and -

12 - -

13 Q. That was your cost?

14 A. --- that was our cost, and at that time we were selling
15 them to the homeowners for Twelve thousand.

16 Q. Okay. And what, what, you're talking about a detached
17 garage?

18 A. That's correct.

19 Q. So, is the only difference that one layer of exterior
20 sheeting inside that one side?

21 A. Correct, correct, but you did have to complete -- yeah,
22 you do have to put sheetrock on that wall. So, I mean, it's
23 three walls plus that, putting sheetrock on that one wall.

24 Q. Okay. But you weren't present for any conversation
25 between Dave and Tim, or when Dave quoted Tim the price of

1 Ten thousand Dollars, were you?

2 A. No.

3 Q. And you don't know what was included in that Ten
4 thousand Dollar scope of work?

5 A. No.

6 Q. You testified just a moment ago that Mr. Shirts went to
7 the Philippines, correct?

8 A. No. Tim.

9 Q. I'm sorry, Mr. McGee?

10 A. Yes.

11 Q. When did you become aware that he was going to the
12 Philippines?

13 A. I don't, I don't remember.

14 Q. Do you know in relation to when he told you when he
15 left?

16 A. It was pretty soon. I don't remember if it was a couple
17 of days or a week, but it was pretty soon that I knew, and
18 then he left right after I knew.

19 Q. Okay. Did that give you any concern?

20 A. The concern was, is that, you know, if something came up
21 like this crane, Tim paid all the bills and had, you know,
22 the money, so it was, yeah, it was a concern that something
23 would come up and who's going to pay for it, that was an
24 issue.

25 Q. That's what I'm trying to understand. You understand

1 what the term, general contractor means?

2 A. Right.

3 Q. If you would, please tell the Court what you believe a
4 general contractor is, in a nutshell?

5 A. Well, the general contractor to me is somebody that has
6 knowledge of building, that hires the subs and fires the
7 subs, has control over who does what work, monitors the work
8 that's being done to make sure it's done correctly, and
9 makes sure that all the bills are paid and that there's
10 nothing owed at the end.

11 Q. And is it your testimony that you were the general
12 contractor on this job?

13 A. I went and got the, I went and got the permit so I'm
14 assuming that that makes me the general contractor, but I
15 didn't determine who was hired and who was fired and pay any
16 of the bills.

17 Q. You didn't act as a general contractor on this job, did
18 you?

19 A. No.

20 Q. All you did, as far as Colleton County was concerned,
21 you were the general contractor?

22 A. Correct.

23 Q. They had your license number, and you paid the fees?

24 A. Correct.

25 Q. Who was the general contractor, was it Tim McGee?

1 A. I don't know, I mean, I guess you could call him the
2 general contractor, it just, I mean, he kind of coordinated
3 everything..

4 Q. He acted as a general contractor would, correct?

5 A. Parts, yeah, parts of his job.

6 Q. He coordinated subs?

7 A. Yeah.

8 Q. And he paid the bills?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. He controlled all the money?

13 A. Yes.

14 Q. Alright. And he actually entered the contract with the
15 homeowners to build the job?

16 A. Yes.

17 Q. You didn't enter any kind of contract with the Shirtses,
18 did you?

19 A. No, sir.

20 Q. Do you know, you just said that at least one of the
21 dormers didn't fit?

22 A. Yeah, I remember, I remember it being off a little bit
23 and they had to actually bolt it together and do some, a
24 little bit of manipulating with the construction to get it
25 to fit.

1 Q. Dave had to do that?

2 A. Yes.

3 Q. Had to manipulate the manufacturer's construction?

4 A. Right.

5 Q. So, is it fair to say that the manufacturer built the
6 dormer that didn't fit on the home it sold?

7 A. Yeah. What caused it not to fit I don't know, I wasn't
8 there, so, but yeah, I remember a conversation from Dave,
9 and I remember looking at it when we went to put the
10 sheetrock on, or when they went to put the sheetrock on that
11 it had to have some sheetrock things, something nailed on
12 there to nail the sheetrock to, the sheetrock nailers.

13 Q. And do you have an understanding of whether or not that
14 should have happened as a modular home?

15 A. Yeah, I mean, you would think as a modular home it would
16 fit exactly.

17 Q. Okay. The swirl work on the ceiling - - -

18 A. Uh-huh.

19 Q. --- Dave attempted to bring that altogether, didn't he?

20 A. Uh-huh.

21 Q. That's a yes, right?

22 A. Yes.

23 Q. And do you recall telling him that he was a miracle
24 worker with that trowel that he was using?

25 A. I don't remember saying those exact words, but I had

1 never seen that done, I had only done smooth ceilings and
2 popcorn ceilings and I didn't even have the slightest idea
3 how they did it. Dave's the one that came up with the tool
4 that you have to use, and yeah, he was doing the swirl work,
5 but yeah, I guess maybe I was pretty impressed with that.

6 Q. Did he do a sufficient job in your opinion, of blending
7 those surfaces.

8 A. I don't remember, I remember the majority of it looked
9 good, but then I remember it was some places that didn't
10 look so good. I know there was one section somewhere, I
11 can't remember where, that just didn't turn out right.

12 Q. Who did you work for before?

13 A. It was SAL Properties originally, Al Estes, and then Al
14 turned it over, sold it to his son and turned it into
15 Meridian Builders, and that was, it was all the same company
16 but two different names.

17 Q. And you were a superintendent for them?

18 A. I was a superintendent for them.

19 Q. When you left?

20 A. Yes.

21 Q. And correct me if I'm wrong, but I thought I understood
22 your testimony before to be that you never had done full
23 blown GC work, you had only supervised work as a
24 superintendent prior to this project?

25 A. I did not have a general contractor's or a residential

1 contractor's license. The company that I worked for would
2 have, would go in and buy X amount of lots and they would
3 hand me a plan and say, put this plan on Lot Five, and then
4 I would go through the whole process of doing everything,
5 even going downtown and getting the permit on somebody
6 else's license number, and then I'd hand them the keys. So,
7 yeah, I worked through it completely.

8 Q. I understand. Had you done any independent work on your
9 own prior to this Shirts project?

10 A. No.

11 Q. Okay. When -- Okay, I'm going to show you a document
12 that's been marked Defendant's Exhibit Number Thirteen.

13 A. Uh-huh.

14 Q. Is that the building permit application that you filled
15 out?

16 A. It is.

17 Q. And that's your signature on there somewhere?

18 A. Yeah, it's on the back.

19 Q. Your first name is Charles?

20 A. It is.

21 Q. And you identified yourself to Colleton County as the
22 contractor, correct?

23 A. I did.

24 Q. And did you write, Tim McGee, Developer?

25 A. No, that's not my handwriting.

1 Q. So, that wasn't on there when you turned in this permit
2 application?

3 A. No.

4 Q. Do you know who put that on there?

5 A. I do not.

6 Q. Do you know when that was put on there?

7 A. I do not.

8 Q. And this is Defendant's Exhibit Number Fourteen, the
9 actual permit that was issued?

10 A. It is.

11 Q. And then finally, let me show you Defendant's Fifteen,
12 do you recognize that letter?

13 A. Yes.

14 Q. You wrote this on June Eighteenth, Two thousand and
15 seven, correct?

16 A. Yes.

17 Q. And this was right after the permit was issued, wasn't
18 it?

19 A. No, I think it was - - -

20 Q. Was it right before?

21 A. Right before, yes. You, -- the contractor that applies
22 for the permit has to physically come and pick up the permit
23 when it's ready, and so, if somebody else is going to pick
24 up the permit then you have to write a letter that allows
25 them to go and actually pick it up.

1 Q. Okay. Why was Tim McGee going to pick up the permit?

2 A. Just, it's, just because I, you know, I didn't know when
3 it was ready. I want to say maybe I was out of town or
4 going somewhere or something, but I remember having the
5 conversation with Tim that he could go by and pick it up,
6 because he just would.

7 Q. Did he want to get started?

8 A. I don't, I mean, I'm sure it was for that reason because
9 it had been a lot of time, you know, waiting on the permit.
10 It took the permit, like, several weeks for them to give us
11 a permit for it, I think, but I don't know, I think it was
12 just that he was willing to go by and pick it up and pay all
13 the fees and everything rather than me going and getting a
14 check from him and then me going and picking it up and
15 everything.

16 Q. They didn't need you on the site to perform any work,
17 did they?

18 A. No.

19 Q. I say, they, Tim McGee, the Shirts, David Thornton,
20 anyone, you weren't necessary, were you?

21 A. No.

22 Q. To reiterate, your scopes of work were foundation, trim,
23 finish work inside, painting, and the roof?

24 A. The roof originally, yes.

25 Q. Okay. And we'll hash that out exactly when it changed

1 hands.

2 A. Okay.

3 Q. Alright. So going into it, going into the set, it was,
4 the roof was your scope of work?

5 A. That's correct.

6 Q. After the home was set it was still your scope of work,
7 like that day?

8 A. The day that -- yes, I was waiting on Dave to tell me
9 that he had the roof completely ready, and that the dormers
10 were on and everything was ready to tie the shingles in, and
11 then at that point in time I was going to call my roofing
12 guy and have him come over and put the shingles on.

13 Q. And it didn't become, Dave said he -- and then after the
14 rain event Dave said he would go ahead and put the roof on?

15 A. Yes.

16 Q. And why did he say that?

17 A. Because I would call him and say, you know, are you
18 ready for me to have the roofer come over, and he would say,
19 no, not quite yet, you know, we're still doing the -- and I
20 think I called him maybe a couple more times and said, you
21 know, are you ready for the roofer? And he said, no. And
22 rather than me just coordinating, trying to coordinate
23 somebody to get them to do the roof he said, you just want
24 me to do the roof? And I said, yeah, you go ahead and take
25 care of the roof and I'll do something else.

1 Q. Is there something else that you did?

2 A. I think, no, I can't remember tying anything to that,
3 but ...

4 MR. CLOSSER: Your Honor, I would like to move to admit
5 Defendant's Thirteen, Fourteen and Fifteen.

6 THE COURT: Alright. Any objection?

7 MR. MAHAFFEE: No, Your Honor.

8 THE COURT: Alright, they are admitted.

9 (Defendant's Exhibits Thirteen, Fourteen
10 and Fifteen marked and filed.)

11 MR. CLOSSER: And I believe I'm done if you'll just let
12 me confer with my client for one minute.

13 THE COURT: Yes, sir.

14 Q. Do you ever recall - - -

15 COURT REPORTER: One moment, please.

16 MR. CLOSSER: I'm sorry.

17 COURT REPORTER: Alright.

18 Q. Do you recall Dave ever calling you to put the roof on,
19 saying it's ready?

20 A. No, I don't.

21 Q. Is it possible that he did and you just don't remember
22 it?

23 A. It could be possible, yes.

24 Q. Alright. One last Exhibit Defendant's Seven, this is
25 the Certification of Occupancy. It was issued under your

1 permit, or your license and permit. The date on that, or
2 the issue date is the end of October, the Twenty-ninth. Is
3 that accurate?

4 A. I don't remember.

5 Q. Have you ever seen that document before?

6 A. I don't think so.

7 Q. Okay.

8 A. I don't remember seeing it.

9 Q. Alright.

10 MR. CLOSSER: Do you mind if I move that into evidence?

11 MR. MAHAFFEE: Number Seven? No, no objection.

12 THE COURT: Alright, it's in evidence.

13 (Defendant's Exhibit Seven
14 marked and filed.)

15 MR. CLOSSER: Those are all the questions I have, thank
16 you.

17 THE COURT: Okay. Alright, anything on redirect?

18 MR. MAHAFFEE: Yes, Your Honor.

19 THE COURT: Okay.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and
22 hard page breaks between testimony are now required by the
23 Court. See next ensuing page for sequential continuation of
24 record.)

1 CHARLES MICHAEL ROBBINS - REDIRECT EXAMINATION

2 BY MR. MAHAFFEE:

3 Q. The Certificate of Occupancy, the person whose permit is
4 in their name, are they the ones who call the County and
5 say, we're ready for a Certificate of Occupancy to be
6 issued?

7 A. Yes, sir.

8 Q. Okay. Do you know if that was the case on the Shirts
9 home?

10 A. I don't remember, I don't remember who called in for the
11 Certificate of Occupancy.

12 Q. Now, you talked about the tarps and the way to keep the
13 water out was to put the tarps on. Describe for the Court
14 the top right photograph on Plaintiff's Exhibit Number Ten,
15 where that tarp is on the end of the house, is that put on
16 properly so as to keep water out?

17 A. No, sir, you would need to take it up and -- it looks
18 like it was nailed on the inside rafters rather than up on
19 the roof, and it should have gone up on the roof and been
20 nailed.

21 Q. So, when you talk about the tarps, did Mr. Thornton put
22 the tarps on properly?

23 A. Based on this picture, no.

24 Q. Okay. And as far as the -- you talked about Tim leaving
25 for the Philippines, did you have conversations with Tim

1 when he was in the Philippines?

2 A. Yes.

3 Q. Okay. Did Tim ever talk to you about Mr. Thornton
4 returning his calls or not?

5 A. I don't remember him saying, I don't remember any
6 conversation about not being able to get in touch with Dave,
7 or getting in touch with Dave. I just remember wanting to
8 get it all cleaned up before Tim got back.

9 Q. And to get it all cleaned up before Tim got back you had
10 to take over from Mr. Thornton?

11 A. No, eventually Dave took care of it.

12 Q. Okay. Including getting the ceiling put back up that
13 was caused by the tarps not on properly?

14 A. Well, that was a long period of time, but yeah, he got
15 all of the stuff out, and then they had the ceilings fixed,
16 yes, sir.

17 Q. Yeah. Did he charge Tim for that?

18 A. As far as I know -- I don't know for sure, I did not see
19 any invoices, but I remember conversations about Tim saying
20 that, yes, he had charged him for that work.

21 Q. Normally would the invoices come through you and then
22 you would give them -- in other words, come from Mr.
23 Thornton to you and then you would give them to Tim?

24 A. No, they directly went from Dave to Tim.

25 Q. Okay. And you talked about one of the dormers being

1 slightly off, that's part of construction, isn't it,
2 something's a little bit off and you have to correct?

3 A. It happens a lot, yes.

4 Q. Okay. And is the, let's see, you filled out the forms
5 for the County that you were the contractor?

6 A. That's correct.

7 Q. Okay. And as the contractor would you be the one who
8 would be looking at the work and seeing if it was slightly
9 off, and those kinds of things?

10 A. A normal contractor doing that, yes, he would.

11 Q. And would you have expected Mr. Thornton, if he was
12 having difficulty, to call you?

13 A. That, I mean, if he needed some help or something, or
14 some people or something he would call me, but it was a, I
15 mean, it was pretty much a friendly type, let's just all get
16 this done thing, and I don't know that there was -- there
17 was never any chain of command put together or anything.
18 Dave would have gone directly to Tim if he would have needed
19 something, or he would have come to me if he needed help.

20 Q. You say it was a friendly situation, did it ever turn
21 not so friendly between Mr. Thornton and Mr. McGee?

22 A. Yes, it did.

23 Q. Okay. Tell us about that.

24 A. Dave was turning in invoices and Tim, well, I remember
25 Dave was telling Tim that he, how much money he needed, and

1 Tim kept asking him for invoices, that he wanted invoices
2 that he could hold in his hand, and he was having problems
3 getting the invoices from Dave. And then, whenever he would
4 get an invoice from Dave, you know, Dave was saying that
5 this was invoices for work that he had done, and Tim was
6 saying that this was invoices caused by the damage of the
7 roof, and then I know that Tim had some arguments with Dave
8 in that he felt like Dave was turning in invoices that were
9 too high, and that's, I think that's about all my knowledge
10 of it.

11 Q. Well, did Mr. Thornton in his conversations with you
12 ever make any threats against Mr. McGee, in a not so
13 friendly manner?

14 A. He just said several times that he would get his money,
15 he was having a hard time getting money from Tim. He would
16 turn in an invoice and Tim would pay him either part of it
17 or they would struggle over the cost of it, and he wouldn't
18 get anything. So, but he was having some trouble getting,
19 getting money from Tim.

20 Q. And when Mr. Thornton was saying how they would struggle
21 over it, what kind of struggle was he talking about?

22 A. Just that I think conversationally, you know, Dave
23 wanted the money and he was having trouble with Tim paying
24 it.

25 Q. And you were present for some of those discussions

1 between the two?

2 A. Somewhat. You know, if it was on Friday and we were
3 supposed to get paid, then I, myself, and Dave and Tim would
4 meet in a parking lot some place and, you know, hand Tim the
5 invoices and he would pay them.

6 MR. MAHAFFEE: Alright, sir. I think that's all I've
7 got, Your Honor.

8 THE COURT: Anything on recross?

9 MR. CLOSSER: Real brief.

10 THE COURT: Okay.

11 (NOTE: Blank lines on this page do not indicate any part of
12 record has been omitted. Headers on testimony pages and
13 hard page breaks between testimony are now required by the
14 Court. See next ensuing page for sequential continuation of
15 record.)

CHARLES MICHAEL ROBBINS - RECROSS-EXAMINATION

BY MR. CLOSSER:

Q. I just want to talk about the tarps.

A. Okay.

MR. CLOSSER: If I can approach the witness?

THE COURT: Sure.

Q. Is this the picture that you referenced earlier?

A. Yes.

Q. On redirect?

A. Yes.

Q. Plaintiff's Exhibit Ten. Can you tell what the weather is like in Plaintiff's Exhibit Ten, does it appear sunny?

A. I can't, it appears like maybe this is an edge of a cloud, maybe partly cloudy, but I don't know what the weather was.

Q. You didn't take that picture, did you?

A. No, I didn't take that picture.

Q. And you weren't there during the rain event to see the tarps over the house, or not over the house?

A. No, sir.

Q. And so, you don't know whether they took this off to do work on the roof and had it stapled there?

A. I don't, I'm not aware.

MR. CLOSSER: Alright. That's all the questions.

THE COURT: Alright.

1 MR. MAHAFFEE: Can this witness be excused?

2 MR. CLOSSER: Yes, sir.

3 THE COURT: Okay. Thank you, Mr. Robbins, I appreciate
4 it.

5 Alright, it's a little after Twelve, do you want to
6 take a break for lunch, or have y'all got somebody, what do
7 y'all want to do? Y'all tell me.

8 MR. MAHAFFEE: That's up to you, Your Honor, we've got
9 two more witnesses.

10 MR. CLOSSER: I'd like to keep going.

11 THE COURT: Okay. Call your next witness.

12 MR. MAHAFFEE: We'd call Tim McGee to the stand, Your
13 Honor.

14 THE COURT: Okay. Place your left hand on the Bible
15 and raise your right hand.

16 (Whereupon, Timothy Van McGee
17 is duly sworn.)

18 THE COURT: Alright, Mr. McGee, if you would sit down
19 and get comfortable and then tell the court reporter what's
20 your full name.

21 WITNESS: Timothy Van McGee.

22 THE COURT: Okay. Alright, Mr. Mahaffee.

23 MR. MAHAFFEE: Thank you, Your Honor.

24 (NOTE: Blank lines on this page do not indicate any part of
25 record has been omitted.)

1 TIMOTHY VAN MCGEE - DIRECT EXAMINATION

2 BY MR. MAHAFFEE:

3 Q. Are you a licensed contractor or an engineer?

4 A. No.

5 Q. Okay. What experience do you have with selling modular
6 homes, let's talk about that?

7 A. I worked for several of them for many years. I was a
8 general manager for one.

9 Q. Okay. Have you ever set a modular home like that of Mr.
10 Shirts?

11 A. I've never set a home.

12 Q. Okay. Have you ever set any modular home?

13 A. No, sir.

14 Q. Okay. And what was the first modular, or manufactured
15 home company that you worked for?

16 A. I was with, Southern Homes was the first one.

17 Q. And it was, when you say, the first one, were there
18 others that you worked for also?

19 A. Yes, sir, I worked for Champion, I worked for Low Cost
20 Homes, this was over a span of approximately eight or ten
21 years. Accent Homes is another one.

22 Q. And how would you describe your role in Mr., in the case
23 of Mr. Shirts?

24 A. I, from meeting with Mr. Shirts he knew that I was in
25 the business, and had asked me about the mods, and looked at

1 some of the floor plans that I used to sell, and asked me if
2 I could assist him with it, and I told him I'd be happy to.

3 Q. Did you ever tell him that you were going to construct
4 this house?

5 A. No, sir.

6 Q. Did you ever tell him you were going to be the
7 contractor over this house?

8 A. No, sir.

9 Q. Had you ever worked with David Thornton before the
10 Shirts project?

11 A. I worked with him when I worked in the auto business,
12 that was fourteen years ago, I would guess.

13 Q. And was he going under the name of David Thornton back
14 then?

15 A. It was David Lake at that time.

16 Q. David Lake?

17 A. Yes, sir.

18 Q. Is that L-A-K-E?

19 A. I think so.

20 Q. Okay. Do you know why this man changed from Lake to
21 Thornton, or Thornton to Lake?

22 A. He had told me he had problems with the IRS. I read the
23 deposition it said it was something else, but ...

24 Q. Had he done any work on a home before the Shirts home,
25 or your home, or somebody else's?

1 A. Yes, he worked on a home for me on Katie, built the
2 decks for me, and I think a couple of other things.

3 Q. How did you come to work with Mr. Thornton on this
4 project, Brent Shirts's home?

5 A. I was in a store one day and he happened to be in the
6 same store, and it had been many years since I had seen him.
7 I'm guessing it was probably eight years since I had seen
8 him, maybe it could be five or six years, it was just a long
9 time span, and he had told me what he was doing, and I gave
10 him a call when I had the project on Katie, and he came out
11 and looked at it and he completed the job as far as building
12 the decks on the front and the back.

13 Q. And when you said that he told you what he was doing,
14 what did he tell you he was doing?

15 A. He was working, this is many years ago, but I believe my
16 understanding was, he worked for Meridian Homes, and he did
17 a lot of different works and had several crews that he ran,
18 and told me the different types of work that he was able to
19 do, and I know it was the trim and building and maybe some
20 other things.

21 Q. And Mr. Shirts' property, the actual dirt real estate,
22 who was the owner back when Mr. Shirts came to you?

23 A. Mr. Shirts.

24 Q. Okay. And how did he come to, to purchase this home
25 from you as far as, in other words, his house in Round-O?

1 A. When he decided he liked the home he asked me for my
2 assistance on purchasing the home, and developing on the
3 property. That was his intentions to put a home on it.

4 Q. Okay. Had he ever seen a modular home that you had sold
5 to somebody else?

6 A. I don't remember.

7 Q. Okay. And the modular home that was done in this case,
8 who was the manufacturer of this modular home, do you
9 recall?

10 A. I think Vanderbuilt was the main company that the home
11 came through. I don't remember what name they had on it,
12 but I'm pretty sure it was Vanderbuilt.

13 Q. And what was your understanding that Mr. Thornton was
14 going to do regarding the Shirts home?

15 A. Dave was going to handle the setup of the home. And the
16 meeting we had on James Island, basically Mike was going to
17 handle certain parts and Dave was going to handle certain
18 parts of the project. I don't remember the exact details of
19 what they worked out among them, I just remember the
20 discussion that we had.

21 Q. And what's your understanding, from having sold modular
22 homes, that is involved in the setting up of a modular home
23 that Mr. Thornton said he would do?

24 A. That would be to crane the home onto the foundation, to,
25 if it's a hinge roof he will lift the hinge roof into

1 position and complete it, and to finish the inside as far as
2 setting the doors and the, the main part of the house. The
3 rest of the home as far as finishing carpet, that would be
4 different people that might do certain aspects. As far as
5 sheetrock, Dave used Martin and Sons for that.

6 Q. And you talked about lifting the roof, do you know
7 whether this was the type of roof that would need to be
8 lifted to be set?

9 A. Yes, it's normal.

10 Q. Okay. And the, were you there when the house came in?

11 A. I was there to inspect it.

12 Q. Okay. When it was lifted and set were you there?

13 A. I was not.

14 Q. Okay. And tell the Court why you were not there?

15 A. I was scheduled to go to the Philippines, my brother was
16 finishing a hotel there and wanted me to inspect the final,
17 handle the last part of it. We had many delays that delayed
18 us, as Mike stated, almost two weeks just to get the permit
19 to set the house, and other delays we had that were, one,
20 getting the home, we had some changes and modifications,
21 that was another delay. I was not anticipating being gone
22 at the time, and that was, I think it was just shortly after
23 that I left, a few days after, or before the home was set I
24 had to leave, from what I remember, this is approximately
25 four years ago.

1 Q. Right. And but for those delays would you have been
2 there when the house was craned in and set?

3 A. If they didn't have the delays.

4 Q. Okay. The, how are the two pieces, or in this case,
5 three pieces, how are they joined together, did they just
6 come in and you just stick them next to each other, do you
7 nail them, bolt them, what do you do?

8 A. I'm not an expert in that category, that would be
9 something Dave could answer.

10 Q. And the conversation that went on over there on James
11 Island that you were talking about, did Dave say that he
12 would handle the setup of it?

13 A. Yes.

14 Q. Okay. Did he say how much he would charge for setting
15 it up?

16 A. Yes, I think one of the exhibits shows the drawing of
17 the house and the price that he quoted.

18 Q. Okay. And the, was he shown pictures of the house - - -

19 A. Yes, and the floor plan.

20 Q. --- and where it was to be? Okay.

21 A. And there was a drawing on that piece of -- it was just
22 a work sheet, it was a drawing of the home, how it would be
23 just the basic design of it.

24 Q. Okay.

25 A. I don't think anybody's going to quote without having

1 enough information.

2 Q. Right. And what was the amount of the quote that he
3 gave you to set this particular home?

4 A. I would need to look at the paper. Again, that was many
5 years ago.

6 Q. Which paper do you need? I'll be glad to provide it.

7 A. The one with the handwriting on it.

8 Q. This may be Mr. -- let me hand that to you.

9 THE COURT: If you need for him to step down and go
10 through his papers he's welcome to do that.

11 MR. MAHAFFEE: I'm trying to avoid it, Your Honor, but
12 he might have to.

13 Q. Let me ask you if there are any of these documents,
14 which are documents to Thornton's deposition?

15 A. That's one of them.

16 Q. Okay. I'm going to mark that as Exhibit Thirteen, which
17 originally was Number Three out of his deposition. Alright.

18 A. There's another one with my handwriting and Dave's
19 handwriting that has a scribble of the house.

20 Q. Let's see, and that one I can't tell from looking at it,
21 it's just a ...

22 A. That's not it.

23 Q. Okay. Now, when was Exhibit, Plaintiff's Exhibit Number
24 Thirteen, when was that created?

25 A. That was the beginning, because I was getting quotes on

1 it, at the very beginning. I don't remember the date when
2 we first met, but that was, I used his quote along with the
3 other quotes I had.

4 Q. And the, was some of those marked on that paper the
5 result of the conversation y'all had over there on James
6 Island?

7 A. Yes.

8 Q. Okay. And does that show the Five thousand Dollars on
9 there?

10 A. Five thousand for what?

11 Q. For the quote that Mr. Thornton gave you?

12 A. House set, Sixty-five hundred.

13 Q. Okay. And what was that house set to include?

14 A. The normal setup, you put it on the foundation, you lift
15 the roof up, you set the doors, adjust them, and....

16 Q. Okay. And what, if any, responsibility did Mr. Thornton
17 have regarding the electrical being joined together?

18 A. That's normal to plug it up, it's just a matter of
19 connections underneath. That's part of the setup.

20 Q. Okay. Just like male/female connections?

21 A. Most of them, I'm not saying they're all like that, I
22 just, but they do connect them.

23 Q. And was there a time when there was a problem with some
24 water leaks in the house?

25 A. Yes.

1 Q. Okay. And when you ran into the problems with the water
2 leaks, what, if any, promises did Mr. Thornton make about
3 accommodating Mr. Shirts, making him happy, making you
4 happy?

5 A. Well, my conversation with him, he apologized many
6 times, he said for me not to worry about it, he would take
7 care of it. And when he was assuring Mr. Shirts of things
8 he would do for him I assumed that was because of the damage
9 he caused, he was doing that out of the kindness of his
10 heart because of what Mr. Shirts witnessed. I didn't know
11 that he was promising it to give me the bill, that was a
12 very big shock for him to apologize but then at the same
13 time give me a bill. I don't, it didn't make sense to me.

14 Q. Who actually brought Mike Robbins into this Brent Shirts
15 project?

16 A. Dave did.

17 Q. And when you were in the Philippines did you ever
18 attempt to contact Mr. Thornton when you were there?

19 A. Many times.

20 Q. Okay. Did you ever reach him?

21 A. I could not speak to him, that's why I had to call Mike.

22 Q. Okay.

23 A. At least, I don't remember speaking to him, but again,
24 this is four years ago.

25 Q. Okay. And when you spoke with Mike what were you

1 talking to Mike Robbins about?

2 A. To try to get the problems fixed.

3 Q. I'm sorry?

4 A. To try to get the problems fixed.

5 Q. Okay. And what problems were occurring at that time?

6 A. The leak.

7 Q. Okay. And ...

8 A. That's why I'm not sure at the time if I spoke to Dave,
9 but I remember I could not get him to do, to go out and fix
10 it, is what I remember.

11 Q. Okay. And as far as the leaks and the other problems
12 that you had with the house, did you ever calculate how much
13 overcharges, other charges were occasioned by you?

14 A. Yes, sir.

15 Q. I want to show you Exhibit Twelve.

16 A. Yes, sir.

17 Q. Exhibit Twelve, is that something you drew?

18 A. Yes, sir.

19 Q. Okay. What's the total on that?

20 A. Twenty-nine thousand nine hundred and twenty-eight
21 Dollars and Ninety-five Cents.

22 Q. Is that, tell the Court what that represents?

23 A. The roof damage, the subfloor that needed to be
24 completed, the upstairs cat walk, the, that's stuff that
25 Dave had promised Mr. Shirts and that I ended up paying the

1 bill for. Dave was not to complete the upstairs, he was
2 only going to do the subflooring and set the cat walks and
3 Mr. Shirts can utilize it to finish it later. That ended up
4 changing during the construction. Blowing the ceiling is
5 because the ceiling, the insulation had so much mold in it
6 that it had to be removed, and the sheetrock and finishing,
7 it had to be replaced. The advanced inspections, they had
8 to come out and test and make sure there was no mold spores
9 or bacteria once the house was repaired. That was just a
10 certification that it was repaired correctly. The carpet
11 was because the carpet was damaged and could not be used.
12 Normally, there's people that can come out and extract the
13 water out of carpet if it's done properly, and that was my
14 problems with Dave. I had, many times I could not get him
15 to do things in a timely manner, and that's why I had to get
16 Mike more involved in it, to help do things that Dave wasn't
17 going to do. And that's why, again this is four years ago,
18 that's why I'm trying to remember, in the Philippines, you
19 know, the problems I was having trying to get it done
20 because it was urgent to do it then, not wait weeks to start
21 on it. The rebarn had to be replaced also. And I got a
22 bill from Dave's wife for the tarps that he put up there,
23 that's Sheila Lake, D/B/A Two Lakes. And then, there's a
24 second charge for the home which was Seven thousand Dollars
25 that was not discussed. The AC, the AC outlet in the

1 garage, those are things that Dave was supposed to put in
2 the house. The garage doors were another thing that was
3 supposed to be included in the garage. The drip edges,
4 those are things that Dave would not come back out and fix,
5 I had to pay Mike to come back out and fix. Those are
6 things that he did. The overcharge on the train, and the
7 drywall in the garage I had to pay because Dave would not do
8 it.

9 Q. Let's start with that, the drywall in the garage, let's
10 start there and move backwards. Tell us about that. You
11 said that he, Dave wouldn't do it?

12 A. He refused to do it. I told him that he had to, that's
13 code, you know, you've got to put the firewall up on it and
14 to finish it. Another thing - - -

15 Q. Did he ever do that, that firewall, that fire resistant
16 sheetrock?

17 A. From what I remember I paid Mike to do that.

18 Q. Alright.

19 A. And he was supposed to install the windows, he said he
20 had a couple of windows that he told Mr. Shirts he had from
21 another job that he was going to bring and put in for him.
22 He never brought the windows. I bought a set of windows,
23 and now that I'm looking at this, the first set were stolen,
24 I had to buy a second set, and pay Mike to install those
25 windows that Dave said he would do.

1 Q. Okay. Dave said he would do as in installing the
2 windows?

3 A. Yes. He said he had some from another job. I don't
4 know what job it was, but he said to Mr. Shirts, don't
5 worry, I've got a set from another job I'll bring and put
6 upstairs for you.

7 Q. Okay. And did Mr. Thornton bring those windows to the
8 site?

9 A. He did not.

10 Q. Okay. The, what are the windows that you're talking
11 about that got stolen?

12 A. When Dave did not bring the windows I bought a set of
13 windows to have installed. They were stolen so I had to go
14 to repurchase them and have Mike install those.

15 Q. Okay. And you talked about the drip edge. That's a
16 portion of the roof?

17 A. Yes, sir.

18 Q. Okay. And who was supposed to do that?

19 A. That was part of the stuff Dave was doing, and was
20 supposed to fix, but he did not, so Mike said he would do
21 it.

22 Q. Okay. And do you know what, if anything, happened to
23 the house because of it being lifted incorrectly to be set
24 by Mr. Thornton?

25 A. I was not there to witness it, I just know that it was

1 damaged when he was setting it.

2 Q. And were you there when the house looked like this,
3 which is Exhibit Eight, Plaintiff's Number Eight?

4 A. I don't remember the exact date of this but I do
5 remember this, viewing the house like this.

6 Q. You talked about a modular home comes to the site, the
7 roof has to be folded together?

8 A. Uh-huh.

9 Q. Okay. At that point were you there when the roof itself
10 was folded together by Dave when he was setting it?

11 A. I was not. And part of the roof is to finish in the
12 roof. That means to put the shingles up, that's part of the
13 setup. And I notice here the shingles were not finished.

14 Q. And Exhibit Seven, the crane lifting the dormer, was
15 that dormer part of the package which you purchased for the
16 Shirts residence?

17 A. Yes, sir.

18 Q. Okay. Did Mr. Thornton have to stick build that, in
19 other words, build it on site?

20 A. No.

21 Q. Okay. And what, if anything, did Mr. Thornton and/or
22 his company tell you about the roof and what needed to be
23 done to it due to some alleged manufacturing defects?

24 A. Dave told me about that. I asked him for the pictures
25 and the proof to send to the factory so they can take and

1 evaluate it if there was anything defective with it. I
2 could never get any pictures, any documentation to send, to
3 forward to the factory. I did speak to the factory, but
4 they would not do anything unless I had some type of
5 documentation, and then they would -- I don't know if they
6 would have come to investigate it or just, you know, accept
7 the pictures. I never got to that point.

8 Q. And without the pictures were you able to recover
9 anything for these alleged manufacturing defects?

10 A. No, sir.

11 Q. And was Mr. Thornton ever paid for any extra roof work?

12 A. Yes, he billed me for additional roof work when it was
13 supposed to be part of the setup.

14 Q. Okay. And how much was that extra roof work that he
15 billed you for?

16 A. Thirty-five hundred.

17 Q. And constructing the garage, who was the one who
18 contracted to build that for the Shirts project?

19 A. Dave was.

20 Q. How much did he say he was going to build it for?

21 A. I think it was Ten thousand is what he had quoted me.

22 Q. And did you discuss with him exactly what it should be
23 involved in other than it would be attached to the house?

24 A. Yes.

25 Q. Did you talk with him further about that?

1 A. Yes. He said he would complete the garage and the,
2 build it, shingle it, vinyl it, windows, in other words,
3 complete other than the fact that he wanted, he gave me a
4 credit, I don't remember what the credit was for the for the
5 garage doors, he said for Mr. Shirts to go pick that, and
6 something else for Mr. Shirts -- yeah, it's the garage doors
7 because it shows it on here. And there was something else
8 that he was supposed to pick that Dave included in the
9 price that I ended up paying for.

10 Q. And the cost of the garage that Mr. Thornton said would
11 be Ten thousand Dollars, did that include the roof materials
12 also as well as the shingles?

13 A. From what I remember, I got the, I got the shingles for
14 it from the factory. But then, again, this is for years
15 ago.

16 Q. Sure, how about the vinyl cladding, the cladding on the
17 side of the garage?

18 A. I think I got that from the factory also.

19 Q. Okay. And did you ever pay for that a second time?

20 A. I don't remember.

21 Q. And the, what's the total amount of damages that you are
22 claiming were caused you personally by Mr. Thornton and his
23 company?

24 A. Well, this is just receipts, the total damage is hard to
25 estimate when you factor things like your time, the interest

1 I pay when I put these on a charge card, there's a lot of
2 factors I can't put on paper. You know, you always have to
3 think about lost time. Many times I've come to Court and
4 just to try to recoup the money that I lost.

5 Q. Let's talk about the finance, do you know how much of
6 this -- excuse me a second -- the Twenty-nine thousand nine
7 hundred and twenty-eight Dollars and Ninety-five Cents shown
8 on Exhibit Twelve was put on a credit card. Did you have to
9 pay interest on it?

10 A. I remember I put them on cards because it's easier to do
11 that when you're dealing over the phone. Some of them that
12 I didn't, like the roof, now that was to Dave, I would have
13 to look back at it. I mean, many times when you're doing a
14 project that's what you will do. And when you don't recoup
15 the money you can't pay the bill back because you've lost
16 Thirty thousand Dollars, the interest escalates.

17 Q. And the damage because of the rain coming in, is that
18 itemized on there also?

19 A. I just put a total of what the repair cost that I
20 incurred on repairing it.

21 Q. And what was the total for that?

22 A. I would need to add them up, there's several of them
23 here. Because of steps that was promised I end up with the
24 bills, the subfloor, the insulation, the sheetrock, the
25 carpet, the rebarn to stretch the carpet. The home

1 inspection is another one that I had to pay, carpet repair.

2 Q. You talked earlier about the overcharge on the crane,
3 how much was that overcharge on the crane?

4 A. Twenty-seven hundred and forty-six Dollars.

5 Q. And explain to the Court why you believe that Mr.
6 Thornton or his company is liable for that?

7 A. Well, the crane company that he recommended, he had a
8 deal with them, and it shows on this paper, Two thousand
9 Dollars for the crane. He made it seem like he had a good
10 deal with them, and, because he sets mods, I trusted he knew
11 more about it than I did.

12 Q. And you talked earlier about second charge for the home,
13 Seven thousand Dollars?

14 A. Yes.

15 Q. What is that, explain that?

16 A. I -- he charged me again for the setup. I paid him for
17 the setup initially, and then I got another bill for Seven
18 thousand Dollars. I said, what is this for? You know,
19 that's a lot of money to pay someone to take a couple of
20 days to set a house, to charge you twice on it.

21 Q. And did you ever get any explanation from Mr. Thornton?

22 A. No, we had some very heated discussions, and that almost
23 became physical. And I had a lot of difficulty because he
24 was trying to have me write him checks with no receipts, and
25 I cannot write a check, I explained to him, I have to attach

1 a check number to that receipt for my taxes. I cannot issue
2 checks without a receipt, and I need to see what you're
3 charging me for to be able to write a check. And that's
4 where we did not come to terms on that. He just kept
5 wanting me to give him money without any proof of what he
6 was doing.

7 Q. The, was there any way to collect this money from Mr.
8 Thornton other than to file this law suit?

9 A. I tried many times to speak with him, and that's why I
10 ended up coming to this point.

11 MR. MAHAFFEE: One moment, let me check something.

12 Q. You talked earlier about the modular home set and then
13 you got one for Seven thousand Dollars. Let me show you an
14 invoice from Thornton Brothers Construction which I've
15 marked as Exhibit Fourteen, and this is showing, "Modular
16 home set, Six thousand Dollars." Did you receive that?

17 A. Yes.

18 Q. And then later you received one for Seven thousand?

19 A. Yes, sir.

20 Q. Okay. Let me see here, Fifteen from Thornton Brothers
21 Construction, did you receive that one?

22 A. Yes, I did.

23 Q. Okay. The firewall that is shown on that invoice, was
24 that ever installed by Mr. Thornton or Thornton Brothers?

25 A. I don't remember. I remember seeing the bill, but I

1 don't remember.

2 Q. Exhibit Sixteen, is that first off an invoice which you
3 received from Thornton Brothers?

4 A. Yes, it is.

5 Q. Okay. The handwriting on there, whose is that?

6 A. That's my handwriting.

7 Q. And what does the handwriting state?

8 A. It says, "Charged to set home twice, invoice Thirteen
9 eighty-nine on Seven/twenty-five, for Six thousand, but I
10 received another bill for setting home again, which was on
11 Eight/two of Two thousand seven, for Seven thousand."

12 Q. Did you ever discuss that second bill with him?

13 A. Oh, yes.

14 Q. Did he have any explanation of why there was two charges
15 totaling Thirteen thousand Dollars for setting the home,
16 when it was supposed to be some Six thousand?

17 A. He claimed he had a very hard time setting this house,
18 and I told him I understand the damage that was caused to
19 the house, but I didn't cause it, that this has nothing to
20 do with the setup of the home, I paid you for the setup of
21 the home, and he wanted me to pay him Seven thousand
22 Dollars. And ...

23 Q. Okay. And let me show you Exhibit Number Seventeen, is
24 that an invoice from Thornton Brothers Construction?

25 A. Yes, that's for the roof.

1 Q. For the roof?

2 A. For the roof material and shingles that he had put on
3 the roof.

4 Q. Okay. And did those shingles come from the factory or
5 did they have to go out and be bought or purchased by
6 someone?

7 A. He claimed he went and bought those, but I could never
8 get the receipt for the shingles.

9 Q. Okay. Did you ever pay that one?

10 A. I had to pay it.

11 Q. Okay. Why did you have to pay it?

12 A. Martin and Sons, one of the contractors that he used,
13 put a lien on the house when I did not pay for them to fix
14 the repairs, the damage that was done to the home.

15 Q. Number Eighteen, is that something from Thornton
16 Brothers Construction?

17 A. Yes, it is.

18 Q. Okay. And what is that allegedly for?

19 A. Install ceiling, frame upstairs door wall, labor and
20 materials. In other words, that was some of the repairs,
21 from what I'm seeing here on the receipt.

22 Q. Okay. And when it says on there to install ceiling,
23 which ceiling was that?

24 A. I'm assuming that's the repairs on there.

25 Q. Okay. And ...

1 A. He doesn't specify, he just puts it on there.

2 Q. Did he actually do the repairs to that ceiling that came
3 in because of the rain?

4 A. From what I remember, Martin and Sons did the ceiling.

5 Q. Okay. Number Nineteen, is that an invoice from Thornton
6 Brothers?

7 A. Yes, it is.

8 Q. What is that for?

9 A. It's for insulation.

10 Q. Alright. And what does it actually say on there, the
11 full wording?

12 A. "Cottageville Shirts home blown in insulation."

13 Q. Was there any portion of the house that needed to have
14 blown in insulation?

15 A. The damaged part.

16 Q. Okay. Number Twenty, is that an invoice which you
17 received from Thornton Brothers Construction?

18 A. Yes, it is.

19 Q. Okay. And what is that for?

20 A. That's for sheetrock and finish main home, labor and
21 materials.

22 Q. Did Mr. Thornton say that he had finished the sheetrock
23 there?

24 A. From what I remember.

25 Q. Okay. And Exhibit Twenty-one, which I've got clipped

1 together there, it's two pages, you had mentioned something
2 earlier about the house having to be checked out. What, if
3 anything, does that have to do with it?

4 A. They had to inspect it and some kind of machine to test
5 the air to make sure there was no mold spores or bacteria in
6 the subfloor or in the walls or in the carpet, they
7 basically have some way of testing with this machine. And,
8 of course, they still do a visual inspection.

9 Q. Okay. And you mentioned earlier getting an invoice from
10 Sheila Lake, d/b/a Two Lakes, - - -

11 A. Yes.

12 Q. --- Exhibit Twenty-one, what is that?

13 A. They billed me for the tarps they bought to cover the
14 damaged roof.

15 Q. Anything else shown on there other than the tarps?

16 A. Treated studs, they charged me for the studs for the
17 garage, they had that on there also.

18 THE COURT: That was Twenty-two?

19 MR. MAHAFFEE: That is Twenty-one. I'm sorry.

20 THE COURT: I thought Twenty-one was the bill for the
21 machine.

22 A. Yeah, this is Twenty-one.

23 MR. MAHAFFEE: Alright, well I'll have to change that
24 to Twenty-two ur Honor.

25 THE CC Alright, if you don't mind. So, Twenty-two

1 is for the tarps, is that correct?

2 MR. MAHAFFEE: Yes, sir.

3 THE COURT: Okay. Thank you.

4 MR. MAHAFFEE: I'm rushing too much.

5 Q. And did you end up paying all of these?

6 A. Yes, sir.

7 Q. Okay. Did you have any choice but to pay them?

8 A. I didn't want them to put a lien on the house.

9 MR. MAHAFFEE: Alright, sir, I think that's all the
10 questions I have, I'll turn you over to opposing counsel.
11 Thank you, sir.

12 THE COURT: Alright, now, gentlemen, I hate to do this,
13 but I'm going to take a break for lunch. Okay? And what
14 we're going to do is, Mr. McGee, you've already been sworn
15 in, you've already began your testimony, you cannot talk to
16 your attorney about the testimony you've given or any
17 testimony that you're going to give later on. But other
18 than that caution, everybody is excused for lunch. If y'all
19 will be back here at two o'clock we'll pick back up. Okay?

20 MR. MAHAFFEE: Two o'clock? Yes, sir.

21 THE COURT: Two o'clock. Okay? Thank y'all.

22 COURT REPORTER: Do you want the courtroom locked
23 during lunch, since you've got all the exhibits?

24 MR. MAHAFFEE: That would probably be good, yes, ma'am,
25 we've got exhibits all over the place. Because those

1 exhibits I want to show them to Mr. Closser.

2 COURT REPORTER: I'm going to have the courtroom
3 locked, Mr. Closser.

4 MR. CLOSSER: Yes, ma'am.

5 COURT REPORTER: And if it's locked, when you come back
6 if you'll just walk down to the first door, not this one but
7 the next one on the left, it will be open and you can walk
8 right back into the courtroom. Okay?

9 MR. CLOSSER: Oh, okay.

10 (Recess)

11 THE COURT: Alright, Mr. Closser, are you ready for
12 your cross-examination?

13 MR. CLOSSER: Yes, Your Honor.

14 THE COURT: Okay. Before we go, you know, Mr. McGee,
15 you are still under oath?

16 MR. MCGEE: Yes, sir.

17 THE COURT: Okay. Thank you, sir.

18 Alright, Mr. Closser, your witness.

19 MR. CLOSSER: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 (NOTE: Blank lines on this page do not indicate any part of
22 record has been omitted. Headers on testimony pages and
23 hard page breaks between testimony are now required by the
24 Court. See next ensuing page for sequential continuation of
25 record.)

1 TIMOTHY VAN MCGEE - CROSS-EXAMINATION

2 BY MR. CLOSSER:

3 Q. Mr. McGee, it's good to see you again. Did you
4 construct or superintend the Shirts residence?

5 A. Construct? I'm not a ...

6 Q. Or superintend the construction of the Shirts residence?

7 A. I didn't understand the question.

8 Q. What don't you understand, the word, construct?

9 A. I didn't construct it, I hired people to construct it.

10 Q. Okay. Who did you hire to construct it?

11 A. Dave Lake and also Mike for a different pro -- some
12 things that he did on the house.

13 Q. Okay. And when you say Dave Lake, you're referring to
14 the defendant, Dave Thornton?

15 A. I'm sorry, Dave Thornton.

16 Q. Did you offer to construct the Shirts this home by
17 entering into this contract agreement?

18 A. Yes.

19 Q. And it was a single family residential home, correct?

20 A. Yes, it is.

21 Q. Alright. Two stories?

22 A. Two stories.

23 Q. And did you see that offer through to completion?

24 A. Yes, I did.

25 Q. So, you did, in fact, construct the Shirts a home?

1 A. Well, when you say construct, that means that I did the
2 construction.

3 Q. I'm not, you either construct or had constructed at your
4 direction?

5 A. He hired me to help him to put a home on the property.

6 Q. Okay. Now, you said that earlier, that you were there
7 to assist the Shirts with the project?

8 A. Yes.

9 Q. Was it the Shirts's project, were they overseeing the
10 construction?

11 A. No, he asked me to, if I would help him develop the home
12 that he chose on that property.

13 Q. Okay. I'm just trying to make sure that you're not the
14 agent for the Shirts and that these claims properly lie with
15 the home owners rather than yourself?

16 A. I understand, but ...

17 Q. And your testimony to that effect, if I understand it,
18 is that no, you're not their agent, insofar as it was their
19 project they weren't overseeing the construction?

20 A. Right.

21 Q. But you were there to make sure the house was completed?

22 A. Yes, I was.

23 Q. Okay. And to do that you say that you hired Dave
24 Thornton and Mike Robbins?

25 A. And some mother contractors to help complete it.

1 Q. Who else?

2 A. Martin and Sons, there was ...

3 Q. What did you hire Martin and Sons to do?

4 A. Sheetrock.

5 Q. Where?

6 A. I hired them for the downstairs to complete the
7 sheetrock t here, and I assisted Mr. Shirts, you know, if he
8 had any questions or problems when he wanted the upstairs
9 completed.

10 Q. So, you contracted Martin and Sons to perform the
11 sheetrock work downstairs and upstairs?

12 A. I contracted them for downstairs and assisted Mr. Shirts
13 with them on the upstairs because he wanted, the upstairs
14 needed to be completed, and Mr. Shirts was comfortable with
15 using them again for the upstairs?

16 Q. And didn't Mr. Shirts pay you Nineteen some odd thousand
17 dollars, maybe more than that with the AC and everything,
18 somewhere in the neighborhood of Twenty-one, Twenty-two
19 thousand Dollars?

20 A. Yes.

21 Q. He paid you directly the Twenty-two thousand Dollars for
22 the upstairs, correct?

23 A. To assist him to do it, yes.

24 Q. Okay. And what did you do to assist him?

25 A. Just to do framing, to electrical, to air conditioning,

1 to carpet.

2 Q. Specifically with regard to each of those trades what
3 did you actually do to earn that money?

4 A. Oh, I didn't do physically any of it.

5 Q. Okay. What did you do, did you pick up a phone?

6 A. Picked up the phone, called them.

7 Q. And you called these trades and scheduled them and made
8 sure they were there, correct?

9 A. Yes, I did.

10 Q. Okay. Were you there to watch them do their job?

11 A. Some of them I did, some of them I just inspected when
12 they completed it.

13 Q. Okay. Alright, you said Martin and Sons, who else did
14 you hire?

15 A. I would need to look at those receipts. That was again
16 four years ago.

17 Q. You don't remember?

18 A. There was one for clearing the property, it was Todd,
19 and I don't have the information. Todd, I think it's T-O-D-
20 D.

21 Q. Was that Edisto Clearing and Construction?

22 A. Edisto Clearing, yes.

23 Q. Okay. So, you hired Edisto Construction to come out
24 there and clear the lot, correct?

25 A. Yes.

1 Q. Did Edisto also install the septic pump, the septic
2 system, rather?

3 A. I would need to look at the receipts.

4 Q. Okay. Do you know whether or not you hired a portable
5 toilet to be on the site?

6 A. Yes.

7 Q. That was Nature's Calling?

8 A. I think so.

9 Q. As far as you know, to the best of your memory?

10 A. Yes.

11 Q. Okay. You hired a plumber as well, didn't you?

12 A. You may have the receipt in front of you there.

13 Q. Do you recall hiring a plumber?

14 A. If you say the name I probably would remember.

15 Q. Coast Plumbing? I mean, do you ...

16 A. Can I see it? That might help me.

17 Q. Sure, yeah. This has been marked as Defendant's Four,
18 it is a cumulative exhibit of invoices that are all billed
19 to Mr. McGee. The plumber invoice, if we can address that
20 before we move on I'll let you say whatever you want to say,

21 - - -

22 Okay.

23 --- is on the second to last page of Exhibit Four.

.. Okay.

Do you recognize or recall, does this help refresh your

1 recollection?

2 A. Well, I believe that's my handwriting below so I would
3 say that I would probably remember.

4 Q. I mean, this house needed plumbing work to be performed
5 didn't it?

6 A. Yes, I remember this receipt.

7 Q. Okay. Okay. Did the house need plumbing work?

8 A. Yes, it did.

9 Q. And did you hire anyone to do that work?

10 A. From what I see here it was Coast Plumbing.

11 Q. Okay. You believe that to be accurate?

12 A. I can't say for sure, I just see my check and my
13 handwriting at the bottom.

14 Q. So, you don't know whether or not you hired anyone to do
15 plumbing work?

16 A. I'm sure I did, I'm just not positive ...

17 Q. It was that person?

18 A. Right. To me it appears that this is the one.

19 Q. Okay.

20 A. But I don't remember the company.

21 Q. Very good. Did you hire anyone to do some heating and
22 air work, air conditioning work?

23 A. Yes, I did.

24 Q. And is that reflected on the next, or the last page of
25 the sequence?

1 A. It's Northwoods Assembly, I remember that.

2 Q. Have you had an opportunity to look at all the documents
3 in Exhibit Four?

4 A. No, I have not.

5 Q. Please take your time.

6 A. Okay.

7 Q. Do you believe, or do you recognize those documents?

8 A. Yes, I do.

9 Q. Please identify them?

10 A. Number Four is Venture Engineering, they did the
11 preparation of structural detail sheets for the home.

12 Q. And you had that done?

13 A. Yes.

14 Q. And these others we've already talked about, correct?

15 A. I believe so.

16 Q. Okay.

17 MR. CLOSSER: I'd like to move to admit Defendant's
18 Four into evidence.

19 THE COURT: Any objection?

20 MR. MAHAFFEE: No, sir.

21 THE COURT: Alright, Number Four is in evidence.

22 (Defendant's Exhibit Four
23 marked and filed.)

24 MR. CLOSSER: We'll put that aside. Thank you.

25 Q. Mr. Shirts, I'm going to hand you a series of documents.

1 The first one's been marked as Defendant's One.

2 THE COURT: You called him Shirts.

3 MR. CLOSSER: I did. I'm having a heck of a time with
4 names in this case. I apologize, Mr. McGee. Shirts-McGee.

5 Q. Do you recognize Defendant's One, sir?

6 A. Yes, I do.

7 Q. What is it?

8 A. It's a release for a draw from the bank.

9 Q. And you didn't sign this one that I have. Did you ever
10 sign Defendant's Exhibit One?

11 A. I would say I did.

12 Q. Okay. Then did you read it when you signed it?

13 A. Yes. I see at the top where it says, General
14 Contractors. And I asked the bank about it because Mike was
15 the general contractor, but they said because the checks go
16 to me I have to sign it. I said, well, this form is, I know
17 it's a generic form but it still says I'm the contractor.
18 I'm not licensed. And they told me at Sun Trust Bank, they
19 said that this is just a release form, it states whoever the
20 person is that receives the money has to sign it.

21 Q. And in this general contractor's affidavit you were
22 representing and swearing and affirming that you were, in
23 fact, the general contractor on the Shirts project at One
24 Forty-nine Inspiration Drive?

25 A. I didn't swear, I just signed the contract to release

1 the funds.

2 Q. Okay. So, you were, you didn't agree with what was said
3 on here when you signed it?

4 A. Well, no, because I'm not a general contractor.

5 Q. But you signed it anyway?

6 A. Like I said, the bank said this is normal paperwork that
7 they require when they release the funds.

8 Q. I'm showing you what's been marked as Defendant's Two,
9 it's another, more of the same, different amount, different
10 draw, you take the same position on this one, too?

11 A. Yes, it's the same form, it just has my signature on it.

12 Q. And it says down here at the bottom, the notary section,
13 Sworn to and subscribed before me on the Twenty-sixth of
14 November.

15 A. That's where the notary signed it, I didn't sign there,
16 I just signed for the release.

17 Q. Did Ms. Washington witness your signature, did you have
18 this notarized?

19 A. I don't know who Ms. Washington is.

20 Q. She's the notary.

21 A. Okay. Again, I ...

22 Q. Did you have this notarized?

A. I wouldn't remember, it's been four years ago.

Naturally it was notarized, so I'm assuming that she had to
be. I just don't remember her.

1 Q. This is the final draw request which has been marked as
2 Defendant's three, it states that, "Before me, the
3 undersigned authority, personally appeared Timothy Van
4 McGee, who after being duly sworn deposes and says of his
5 knowledge that he does business in the State of Florida,
6 hereinafter referred to as the contractor, pursuant to the
7 contract with Margaret and Bret Shirts," blah, blah, blah,
8 "furnished labor, materials and services." And why would
9 you fill out and swear to something that isn't true?

10 A. Like I stated before - - -

11 COURT REPORTER: I'm sorry, I didn't hear you.

12 A. As I stated before, the bank, which is Sun Trust, said,
13 this is their basic generic paperwork that has to be signed.

14 Q. So, the bank required that the funds go to the general
15 contractor?

16 A. Well, no, they didn't care who it went to, they just
17 needed a signature for the release of funds. It didn't
18 phase them or mean anything to them when I told them I have
19 a general contractor, they just wanted the form signed.
20 They said, we can release to Mike if you want to release it
21 to Mike, but you know, it's whoever you want the money
22 released to.

23 Q. Then, why didn't you do that, why didn't you have it
24 released to Mike if the bank didn't care?

25 A. Because he was not the one that, that was handling

1 paying the bills, I was.

2 Q. Because you were the general contractor?

3 A. No, Mike's the general contractor. I know you want me
4 to be the general contractor, but I'm not. I had to hire one
5 because I did not have a license. I cannot do a lot of the
6 things that a contractor does.

7 Q. I agree.

8 A. That's why I cannot do an attorney's job, I have to, you
9 know, sign an oath of affirmation, I can't do it, so I have
10 to hire someone.

11 Q. Alright, we'll move on. You were not the owner of the
12 home or the property at any point, correct?

13 A. I was not.

14 Q. No. And you were hired by the owners of the property to
15 build this house?

16 A. Yes. And they trusted me to handle it, they did not --
17 you know, I dealt with Mr. Shirts for a period of time and
18 had the trust with him. If I tried to tell him to release
19 the money to Dave or somebody else he would, that would be
20 an uncomfortable feeling for myself, and it may be an
21 uncomfortable position for him.

22 Q. Sure, I mean, you signed this contract, Defendant's
23 Exhibit Six - - -

24 A. Right, that I'm responsible.

25 Q. --- that he's going to pay you Three hundred and twenty-

1 one - - -

2 A. Thousand Dollars.

3 Q. --- Thousand Dollars, I mean, that's a lot of money.

4 A. Yes, sir.

5 Q. That makes sense. So, to go one step further, at that
6 point you hired Dave and Mike to do the work on the home?

7 A. Yes.

8 Q. And what was your understanding of Mike's scope of work?

9 A. He would do the foundation and from what I understand
10 the roofing, and I knew about the painting, and I knew he
11 was going to do some of the trim.

12 Q. Okay.

13 A. And the foundation.

14 Q. Right. Did he pour the grout line?

15 A. I would need to look on the receipts.

16 Q. You don't know?

17 A. I'm, I'm - - -

18 Q. From your recollection you don't know?

19 A. I don't know.

20 Q. That's fair. And what was Dave going to do, he was
21 going to set the house?

22 A. Yes, he was, his job was to set the house and to, and
23 initially he was supposed to do the roof but him and Mike
24 worked out a deal and I was not involved with that.

25 Q. Okay. And you just testified that you understood Mike's

1 responsibility to be the roof?

2 A. Initially they had worked that out, I was not involved
3 with that. I don't know how they worked it out.

4 Q. Okay.

5 A. But Dave was initially there, he could sub it out to
6 anybody he chooses, he doesn't have to do any of that work.

7 Q. Okay. And what does it mean to set the house?

8 A. To supervise the crane lifting the home onto the
9 foundation, to secure the house to the foundation, to raise
10 the roof, finish the roof and dry it in, the trim out inside
11 like setting the doors and various things like that to
12 secure the house. That's they way of, I guess, completing
13 the house to where it's secure for a storm or an earthquake
14 or ...

15 Q. Alright. So, initially, you understood prior to set,
16 prior to the home being set that Mike was going to do the
17 roofing, the shingles?

18 A. Again, they discussed that. I heard it in the
19 testimony, I'm only going by what I observed.

20 Q. I'm asking you what you knew at the time, and before you
21 said, I asked you what Mike's scope of work was, and you
22 said, foundation, roofing, painting and trimming.

23 A. I knew that Mike was going to do the foundation a
24 hundred per cent, and I do remember talking about him doing
25 some of the paint work in there.

1 Q. Okay.

2 A. --- but I'm not positive. The roofing, I didn't have
3 the knowledge of it, but from what I heard during the
4 testimony is that ...

5 Q. That's based on what you heard today?

6 A. Yes.

7 Q. You didn't have any knowledge of the roofing at the
8 time?

9 A. I don't remember, it's four years ago, that's why I had
10 to go by what I heard today.

11 Q. Okay. So, there was never any discussion way back when
12 prior to this house getting put down ...

13 A. They did discuss it, I did listen to them talk about it,
14 but I don't ...

15 Q. Do you remember what that conversation entailed?

16 A. I do not remember all of that. I knew Mike was good at
17 doing the foundation and he had a guy, I think the company
18 was McCracken, that worked with him on the foundation, that
19 he knew that well and could handle that. But as far as all
20 the negotiating that Mike and Dave did I didn't, you know,
21 pay as much attention to that because they were working that
22 out between themselves, because when Dave asked Mike to work
23 on the project they were worked out that. That wasn't part
24 of what I worked out, I got bids and, on what it is, and if
25 the ... me a good price they did the work. If they

1 didn't, then I would use somebody else. And there was times
2 when they would give me a price and I would say, well, I can
3 already have it done for this, if you don't want to do this
4 job I can have these people do it.

5 Q. That's what you would tell them?

6 A. Yes.

7 Q. Okay.

8 A. If you get a quote, I mean, I had quotes before I met
9 with them, this was a guideline of how much I could have it
10 set for, and Dave gave me some good prices on setting a
11 home.

12 Q. What were those prices?

13 A. Well, from what I saw in that paperwork, to set a home
14 is Sixty-five hundred.

15 Q. And what, I know Mr. Mahaffee had asked you some
16 questions about drawings that you apparently or allegedly
17 had showed Dave when he was giving you this quote - - -

18 A. Yes, it was with that paper.

19 Q. --- and do you have the drawings?

20 A. Not here, I mean, I have a copy at home.

21 Q. Oh, okay. Who prepared the drawings?

22 A. It was just a handwritten paper like that, that Dave and
23 myself wrote on.

24 Q. You drew it the drawing of the house?

25 A. Dave -- of it I did, some of it he did.

1 Q. How does Dave know what the house looks like?

2 A. Well, I gave him what the floor plan design was.

3 Q. Okay.

4 A. And that paper even showed the porch at the time that
5 was on the house.

6 Q. Did you give him a hand drawing of the house to prepare
7 a bid or was it a floor plan?

8 A. Both.

9 Q. Okay. And this - - -

10 A. It was scribbled on the paper from the floor plan to
11 talk about the numbers. So, the numbers, the quotes for
12 what was done was written on that paper.

13 Q. Well, what are those numbers, then?

14 A. That's part of it.

15 Q. Now, let's just be clear, we're referring to Plaintiff's
16 Exhibit Thirteen, so there's additional numbers on a piece
17 of paper at your house that reflect a quote from Dave
18 regarding the set of this house?

19 A. It has a little scribbling of the house on it, not a
20 good one like a floor plan but it's still a generic plan.

21 Q. And was the floor plan shown to Dave at the same time
22 the little scribble was shown to Dave?

23 A. He saw it, I don't remember at the point -- in order for
me to give me a quote you have to give information. The
same as if you're going to build a deck how big is it? If

1 you're going to build a porch, how big is it?

2 Q. I understand, I understand, I'm just trying to - - -

3 A. He had the information prior to giving me that quote .

4 At the time he gave it that's four years ago, I cannot pull
5 that out and answer it because I would be lying if I tried
6 to answer questions from four years ago.

7 Q. So, you don't know when Dave saw the floor plan, if
8 ever?

9 A. Yes, he saw it prior to giving me a quote.

10 Q. But it wasn't necessarily at that first meeting?

11 A. My thinking, he would have seen it before the meeting.

12 Q. But you're not sure?

13 A. I'm only giving you what I think.

14 Q. So, are you sure or not?

15 A. Oh, I'm not sure.

16 Q. Okay. The ceiling in the living room that was damaged
17 from the water, do you know what Mike was talking about when
18 he was talking about the swirls in the ceiling?

19 A. Yes.

20 Q. Okay. And that was what was installed by the
21 manufacturer, correct?

22 A. Yes, it was.

23 Q. Okay. And that was damaged, and Dave repaired that,
24 correct? Maybe not satisfactorily - - -

25 A. Right, not satisfactorily.

1 Q. --- but he did perform repair work to that?

2 A. He did, but I had to have it redone.

3 Q. Okay. And, in fact, didn't Mr. Shirts want the whole
4 ceiling redone so it would be a nice smooth flat finish
5 without texture?

6 A. The room that had to be completely redone he wanted just
7 to leave it plain, he didn't want the stuff in there. So, I
8 told him, no problem, we would do what it took to make it
9 happen.

10 Q. And that's an upgrade, wouldn't it be?

11 A. I would say it would be an upgrade because the finishing
12 work takes more time.

13 Q. Sure. You didn't anticipate being gone during the set
14 of this home?

15 A. Did not.

16 Q. When did you find out that you were going to be gone
17 during the set of this home?

18 A. I'm going to -- t his if four years ago, so I - - -

19 Q. I don't need a date, I just need some sort of relative
20 point to work off of.

21 Q. Well, it would need to be more than a month, because the
22 delay in the accounting office was, from what I understand,
23 a couple of weeks, and I knew it was delayed, and I knew it
24 was delayed getting the home and getting it set and getting
25 it finished. That is normal with a home here, you're going

1 to have setbacks, you really can't stop that. I anticipated
2 having it done before I left, to having it set and to be
3 involved with hit, but I felt comfortable with Mike because
4 I knew he worked for Mariotte Homes, it's a very large
5 company, and I knew he couldn't be a supervisor if he didn't
6 know what he was doing, so I did feel comfortable. I knew
7 Dave, from my feelings, that he would have taken care of any
8 problems. I did not anticipate what happened to happen.
9 And when I did speak to Dave, and that's why I can't
10 remember the time frame because many times he would say he
11 would go out but he would not, he would no show. And that's
12 when I started - - -

13 Q. How would you know that from the Philippines?

14 A. I don't remember the time frame. As I stated, I don't
15 remember if I spoke to Dave at all during the Philippines.
16 I could have but I don't remember exactly. I remember I had
17 a hard time getting him to do the repairs and the work.
18 What I remembered is trying to reach him many times and not
19 being able to get the house fixed. That was the main thing
20 that needed to be done. When I spoke to Mike he told me
21 that it was not being fixed, and that was a big concern.

22 Q. Okay.

23 A. And another problem I had is, I can't just hire another
24 contractor because once I hire a contractor to do a specific
25 job, if I can't, I can't take them off the job or they have

1 a right to put a lien for the work on the property. In
2 other words, you can't just switch, it's not that easy just
3 to switch contractors.

4 Q. If you weren't, if you weren't happy with Dave's work
5 why didn't you just not pay him and back charge him, and
6 hire someone else to come in, or to have Mike do it?

7 A. I eventually did, but I had to make sure I gave Dave
8 enough opportunities in case it became a legal battle of him
9 repairing the house and doing the work.

10 Q. Alright.

11 A. And, you know, when you have enough times that someone
12 does not come, then you have justification that they're not
13 going to do the work.

14 Q. So, you don't really, you don't specifically remember
15 speaking to Dave one way or the other about the water
16 damage?

17 A. Oh, yes, I remember speaking to him about it, it's only
18 the time frame.

19 Q. I'm speaking, from the Philippines.

20 A. I can't say for sure.

21 Q. And you don't specifically remember speaking to Dave
22 from the Philippines during the house set up, him describing
23 problems with the large home, incorrect dormer sizes,
24 incorrect manufacturing?

25 A. I could h . Like I said, the time frame I'm not

1 positive. If this didn't take four years I would have had a
2 better memory of the time. My deposition probably would
3 show it more clearly as far as answering that question,
4 because that was taken within a reasonable amount of time.
5 You know, you forget things after so long.

6 Q. Alright. Did you review your deposition prior to your
7 testimony today?

8 A. I did not.

9 Q. When, when you first approached -- and I apologize for
10 jumping around, and if you need me to set up a question
11 more, just let me know. When you first approached Dave
12 about this job did you have a larger idea of what this was
13 actually possibly going to turn into, was it a referral
14 system that you had worked out and then you had an
15 opportunity to do lots of modular home sets, do you recall
16 that?

17 A. I had a company that I had offered to that I had offered
18 to, for me to do all their homes for the State of South
19 Carolina.

20 Q. What was that company?

21 A. I don't remember.

22 Q. Go on.

23 A. There was no contract or anything, they just, they
24 suggested that if I did a good job that there would be an
25 opportunity to do all of them, and they would refer people

1 to me.

2 Q. Okay. And was this job a part of that?

3 A. No.

4 Q. Okay. And did you discuss that referral opportunity
5 with Dave?

6 A. Yeah, I told him the company had offered that they, when
7 I went there and spoke with them, they had expressed
8 interest, they didn't have someone there to handle it, would
9 I be interested.

10 Q. Okay.

11 A. And I told Dave, there's an opportunity here, which was
12 what they offered. And you never know what will happen with
13 it. The problems I had with the house I would think stopped
14 that process from happening.

15 Q. Sure. Was this discussion you had with Dave about the
16 referral opportunity before or after the Shirts project?

17 A. I'm not positive but I would think it would have been
18 before or during the Shirts project.

19 Q. And why did you -- did you approach Dave about this
20 opportunity because of his experience in setting homes, and
21 you wanted him to help you with it?

22 A. I wanted to know his interest and if he would be
23 interested if this does happen.

24 Q. So, if it were going to happen you would want Dave along
25 for the ride, to set the homes?

1 A. If he did the work right, of course, I would have no
2 problems.

3 Q. Okay. And did you guys talk about money, about, Dave,
4 how much does it cost to set a house?

5 A. Yes.

6 Q. Okay. And is that where he gave you the Five thousand
7 Dollar number?

8 A. I think it's showing Sixty-five hundred on here for the
9 - - -

10 COURT REPORTER: I think what? I'm sorry, I did not
11 hear you..

12 A. I think it shows Sixty-five hundred on here, on the
13 paper for the set of the home.

14 Q. And you're referring to Plaintiff's Thirteen?

15 A. Exhibit Thirteen.

16 Q. And so, when you had the meeting about the referral
17 opportunity, this is when Exhibit Thirteen was produced?

18 A. I think it was during that time, or I'm -- again, this
19 is four years ago.

20 Q. I understand.

21 A. Because it shows both of our handwritings on there.

22 Q. Could you identify what is your handwriting? Let me
23 give you a pen, a blue pen.

24 THE COURT: Do you want, is that alright?

25 MR. CLOSSER: Sure.

1 THE COURT: Wait one second. Hold on one second.

2 A. Okay.

3 MR. CLOSSER: Thank you, Judge.

4 THE COURT: I'd rather you use a highlighter.

5 Q. Just highlight your handwriting.

6 A. Okay.

7 Q. So, you've highlighted, the abbreviation includes Eight
8 hundred and fifty, in the parenthesis, up to, what does that
9 mean?

10 A. That was for the garage door that he was installing on
11 the garage.

12 Q. Okay.

13 A. It was an allowance he was giving me.

14 Q. And what was the garage price?

15 A. The garage door. I believe I spent more money on the
16 garage door.

17 Q. I see.

18 A. Yeah, the allowance -- the cost to build the garage was
19 Ten thousand, and it included the garage door.

20 Q. Of Eight hundred and fifty?

21 A. Allowance up to Eight fifty.

22 Okay. So, anything about that?

23 I had to spend.

24 And then you got Two thousand Dollars for a crane?

That's what, when we were writing on this I wrote that

1 so I would keep track of it.

2 Q. And what is this Thirty-six five, Thirty-six thousand
3 five hundred?

4 A. It was the total of these numbers.

5 Q. Okay. And five boxes, shingles, what is all that in
6 reference to?

7 A. He told me how much I would need for the garage, so I
8 wrote it down as I was writing.

9 Q. Okay. And Thirty bundles of siding for the garage, is
10 that right?

11 A. Yes, he said I would need Thirty bundles, and I had
12 asked him a price for building the decks, and that's what he
13 quoted me was Thirteen Dollars per square foot for the
14 decks, I mean, Sixteen Dollars per square foot.

15 Q. Okay. So, this exhibit Number Thirteen is not specific
16 to the Shirts residence?

17 A. Yes, it is.

18 Q. It is?

19 A. Yes, that's the Shirts residence.

20 Q. Oh, I thought you said that it was in reference to the
21 referral business, just generally speaking?

22 A. No, no, that's Mr. Shirts's home.

23 Q. Okay. But you were talking about this all at the same
24 time?

A. Yes.

1 Q. The referral business and Mr. Shirts's home?

2 A. I don't remember we spoke about the referral, it could
3 have been before or during, I don't remember the time.

4 Q. Alright. Were the shingles and the siding included in
5 the garage price?

6 A. I believe I had to get those from the factory, so I
7 would say, no.

8 Q. Okay. The only thing that's included in the garage
9 price is the Eight hundred fifty Dollars for the garage
10 door?

11 A. For the garage door.

12 Q. Okay.

13 A. And I thought there was something else and I can't --
14 again, I remember the garage door, I just don't remember if
15 there was anything else with it.

16 Q. So, it didn't include electricity or any plumbing or
17 anything?

18 A. No plumbing, but it was supposed to have some outlets
19 and a light, and it did not.

20 Q. Okay. But that's not reference on there?

21 A. It is not.

22 Q. What else was it supposed to have that's not reference
23 on there?

24 A. I don't see anything else that I can remember at this
25 time.

1 Q. How do you know there was supposed to have a light and
2 some outlets?

3 A. Well, because we had talked about it and - - -

4 Q. When?

5 A. Talking about the date, it - - -

6 Q. Was that the same time you made this exhibit or was it
7 later on?

8 A. The problem you have is, is the time. I can't answer
9 questions because you're trying to remember a conversation
10 four years ago, it's very difficult.

11 Q. Then just say you don't remember. I don't need you to
12 explain that it was four years every time.

13 A. I don't.

14 Q. When did you discuss the outlets and the electricity and
15 the light for the garage of the Shirts residence, was it at
16 that time or after, or don't you remember?

17 A. I don't remember.

18 Q. Okay. During your testimony with Mr. Mahaffee you did
19 talk about a normal setup fo a modular home, referencing the
20 Six thousand Dollars, do you recall that?

21 A. No, I do not.

22 Q. Okay. So, you don't know what you meant by normal setup
23 versus abnormal?

24 A. Normal, in other words, it may have been, my
25 interpretation is just an average home.

1 Q. Okay.

2 A. And this home was not an average one, but it's still a
3 mod.

4 Q. Sure, sure. So, would you expect it to cost more if it
5 were abnormal, or not average?

6 A. It was slightly more, but it's not like it was anything
7 different. If it was a home that, that had, you know,
8 twelve, twelve pitch roof and a lot of custom work that
9 needed to be done in it, then you're going to spend more
10 money for that. But a normal home like this one, the only
11 difference was that it had one extra box that needed to be
12 set, and it was two bedrooms, and I'm assuming that box was
13 probably ten by ten or, I mean, ten by twenty or maybe a ten
14 by twenty-two box that was the additional to what a normal
15 mod would be.

16 Q. Tell me what, in your mind, a normal mod is, how long is
17 it, how wide is it, is it two boxes, a normal mod?

18 A. A normal mod would be two boxes. Some of them still
19 come with a separate box. That's, many of the plans might
20 have a, it is a kitchen, or they might have a porch
21 attachment, and some of them will have a dormer that's on
22 it. So, there's, I don't if there's such a thing as just a
23 normal.

24 Q. Fair enough, but typical would be two boxes come
25 together, no dormers, no other additions, just the two

1 boxes, correct?

2 A. Yes, but - - -

3 Q. I mean, that's, isn't that the most frequent occurrence
4 of modular?

5 A. The most basic, the most basic, if that's what you're
6 referring to.

7 Q. And about how long is each box, forty feet?

8 A. That would be a very small home. Most boxes, I don't
9 know the average that the box length would be, but I'm
10 guessing anywhere from Fifty to Seventy feet should be the
11 average. Now, people still order a very small home, excuse
12 me, but the ones that I mostly was involved with would have
13 been Fifty to Seventy.

14 Q. Okay.

15 A. It doesn't mean I wouldn't set a small home, I typically
16 stay away from them because the time and cost to build that
17 house is not, it's not very cost effective to build a small
18 one versus the bigger ones.

19 Q. Had you ever built a modular home prior to this one, the
20 Shirts home?

21 A. I managed companies and did many of them over the years.
22 I worked for Low Cost Homes as a general manager.

Q. Were they modular homes or were they manufacture or - -
-

A. Both manufacture and modular.

1 Q. And by manufactured you mean like a mobile home or
2 trailer?

3 A. Yes. And they, we sold both. And with Champion Homes
4 and Accent Homes, and Southern Life Styles, I think is what
5 it is, we sold both manufactured and modulars also.

6 Q. In the past have you ever hired someone to clear the
7 land and build a foundation and run the wiring and put in a
8 septic tank and all that good stuff, and hire someone to set
9 the home, or were you just selling the units?

10 A. Oh, I hired it, I hired people to set the homes and do
11 the foundations.

12 Q. This wasn't the first one?

13 A. No.

14 Q. Okay.

15 A. I didn't do it for an individual, I did it for myself.

16 Q. I understand. Oh, you built your own homes?

17 A. Right.

18 Q. Okay. How many times have you done that?

19 A. I probably developed -- oh, I do, there was one I did
20 for a client but this was years ago. So, it's one, two,
21 three, I think four.

22 Q. Okay. And do you know how long or how large the boxes
23 were for the Shirts home?

24 A. I think that home was Seventy or Seventy-six.

25 Q. So, it was above average?

1 A. Fifty to Seventy is average, and I'm just guessing.

2 Q. Would you be surprised to learn it was Eighty feet long?

3 A. It can't, there's no Eighty feet, because they count the
4 tongue, it would be Seventy-six.

5 Q. Okay. Okay. This set of documents I'm showing you has
6 been marked as Defendant's Five. It's a bunch of checks
7 that I believe were written by you. If you'd please confirm
8 that, whether you recognize them with your signature? Mr.
9 McGee, I've handed you Defendant's Exhibit Five, have you
10 had a chance to review it?

11 A. Yes, I have.

12 Q. Do you recognize those checks?

13 A. I do.

14 Q. And they're all checks written by you, correct?

15 A. From what I see.

16 Q. And this is a, kind of a complete accounting from your
17 bank account, so it spans both personal and business checks,
18 correct?

19 A. Okay. I think so.

20 Q. But in essence, these are checks written to both Mike
21 Robbins, Dave Thornton, as well as various other
22 subcontractors that you hired, correct?

23 A. Yes, it is.

24 Q. I want to draw your attention to one check in
25 particular, Check Number Sixteen Thirty-eight, which is on a

1 page - - -

2 A. I see it.

3 Q. --- marked in the upper right hand corner,
4 Eight/Sixteen/Two thousand seven, Page Three of Three. And
5 in the memo line there it reads, "Advance on set for
6 Shirts", is that accurate?

7 A. Yes, it is.

8 Q. What does that mean, why did you write that?

9 A. I didn't want to write an advance. I don't like writing
10 advances because I have no way to tag a check to it, it
11 makes my paperwork a mess when you can't put a check number
12 to a receipt. He wanted a check, so he wanted an advance
13 to, to, for whatever reason he just wanted me to start
14 giving him money without receipts. It was a big problem.
15 We had many arguments over that, and I told him, I don't
16 advance without a check written on it, or a check number, I
17 apologize.

18 Q. When you say, check, you mean an invoice?

19 A. An invoice, yes, sir.

20 Q. The Six thousand Dollars was an advance for the set of
21 the modular home, is that right?

22 A. Part of set, that doesn't mean set up, just part of the
23 set. In other words, he wanted the money so I had to put
24 down what it was because he was in charge of setting it. It
25 didn't mean - - -

1 Q. It was just part of it.

2 A. --- it was part of setting it, but he's not, it's not,
3 you're looking at two different things. Set means he's
4 setting it. Set up of the home means like setting the
5 modular. There's - - -

6 Q. What does this mean here?

7 A. He wanted an advance on part of the set that he was
8 doing. It's a generic thing. I didn't have anything else
9 to put there but - - -

10 Q. What did you mean by set?

11 A. Because he was the one I hired to set the home.

12 Q. Okay.

13 A. So, he wanted an up front advance. Not specific, he
14 wanted an advance, because he's the one setting it. So,
15 that's the only way I knew to write it. I can't write it,
16 Dave Lake advance, I just -- because he's, again, I hired
17 him to handle the set of the home.

18 Q. And this was before any of the boxes or units, modular
19 units were delivered to the site, correct?

20 A. I don't remember.

21 Q. Well, it was an advance?

22 A. I don't remember the date of the boxes and the day I
23 wrote the check.

24 Q. Okay. You don't know how long it took to actually set
the home?

1 A. From what I remember they told me it took, it was either
2 two days or three days.

3 Q. And some of these photos in here have dates on them?

4 A. Uh-huh.

5 Q. If you looked at those and found the date do you think
6 you could tell how that check was written in advance to the
7 modular units arriving on site, that one in particular, the
8 one where they craning in the dormer, what's that number?

9 A. That would be July Sixteenth.

10 Q. And that's Plaintiff's Exhibit Seven, correct?

11 A. Yes, it is.

12 Q. And that is a picture of the ongoing setting of the
13 modular units, isn't it, that would have taken place - - -

14 A. Yes.

15 Q. --- in those two to three days?

16 A. Right, he wanted me to give him advances. He apparently
17 has other companies that just will advance him money to do
18 jobs.

19 Q. Alright, I get it. And do you know how long before they
20 set the homes, how, how long the units, the modular units
21 sat there before they actually started craning them up and
22 setting them on the foundation?

23 A. I do not know.

24 Q. No one told you anything?

25 A. I do not remember that they told me.

1 Q. Okay. Alright. You wanted, didn't you -- you wanted to
2 be there to witness this, the setting of this home, didn't
3 you?

4 A. Yes, I planned to be there when they set up the home.

5 Q. And was that because you'd never seen it done before?

6 A. No, it was just, I wanted to -- it's just normal, if
7 it's possible, which is not always possible, you may have
8 something else you have to do but, it's not like I didn't,
9 you know, if something happened there's insurance to cover
10 it, but I would like to have been there with Mr. Shirts
11 because I liked him. It didn't mean I needed to supervise
12 it because I don't set homes, it just meant that I would
13 have liked to have been there because my client would have
14 preferred it, and the timing did not work to the way I had
15 planned.

16 Q. The buck ultimately stopped with you, and you were
17 ultimately responsible for this project?

18 A. Oh, yes.

19 Q. The damages sheet, the tally that sums to Twenty-nine
20 and change, Twenty-nine thousand Dollars, can we find that
21 in the mess of exhibits in front of you, have you got it
22 right there? What exhibit is it?

23 A. Exhibit Twelve.

24 Q. Okay. I just want to go through those real briefly.
25 The first one, roof damage, Thirty-five hundred Dollars.

1 Why does my client owe you that money?

2 A. Well, he damaged it.

3 Q. Your -- and it refers to Invoice Number Thirteen Eighty-
4 nine.

5 A. Alright.

6 Q. Your attorney went through all those with you, so, all
7 those items.

8 A. Hold on a minute. And I think this was the one that he
9 was billing me for the roof when it was part of the set, is
10 why I remember, but I'll look at the receipt to make sure.
11 Yes, that's where he was billing me for the roof and the
12 materials, Thirty-five hundred. That's the one I could not
13 get the receipts for to send to the factory for the damage.
14 I didn't get it. He said the roof was, something about the
15 felt underneath was not the right felt.

16 Q. Didn't he say it was craft paper, just that brown paper
17 backing?

18 A. I -- I don't remember exactly what the wording was, he
19 just said - - -

20 Q. It wasn't the right felt?

21 A. Well, it was. Come to find out, there was nothing wrong
22 with it, but he claimed it was, but he never produced
23 anything for me to give to the factory, no pictures, no
24 receipt, no documentation.

25 Q. So, you don't dispute that he did this work for the

1 Thirty-five hundred, you just don't know whether the work
2 was done in this area?

3 A. I never saw what he did. He just told me this had to be
4 done, and I found it hard to believe that it needed to be
5 replaced, and that's why I contacted the factory, because
6 they would have been responsible for it and paid the bill
7 had it, if it was incorrect. And that where I learned that
8 it did not need to be changed.

9 Q. And how did you learn that?

10 A. From the factory. That's how they do all of them. And
11 they get COs every day and they would be sued had it been
12 the wrong material.

13 Q. Did you ever tell Dave Thornton that you needed him to
14 reproduce invoices that were acceptable for the bank for
15 draws?

16 A. I don't remember what you -- I don't understand what you
17 mean.

18 Q. If, let's say, for example, he gave you an invoice that
19 just said, total, Nineteen thousand Dollars, did you ever
20 tell him to break it out, itemize it, or anything like that?

21 A. For advances you must break down what work's done.

22 That's my biggest problem, I needed each bill to reflect
23 what work was done and how much was done so when I write a
24 check, most banks require me to fax them a copy of the work
25 so they can do advances.

1 Q. So, you don't know what was wrong with the roof that
2 required the Thirty-five hundred Dollars?

3 A. From what I learned, it was nothing wrong with the roof.

4 Q. Okay. Dave didn't tell you otherwise?

5 A. Well, he didn't tell me -- he insisted that he was
6 right, but never gave me any proof.

7 Q. And what -- okay. Subfloor, Twenty-five hundred
8 Dollars, the second line item?

9 A. Yes.

10 Q. What is that in reference to?

11 A. That's I believe upstairs where the subfloor was going
12 to -- that was being installed.

13 Q. And that was never part of the original installation,
14 the upstairs was going to be unfinished, wasn't it?

15 A. From what I remember. I remember that was done after
16 the damage was done.

17 Q. The third line item, ceiling upstairs with catwalk. Now
18 correct me if I'm wrong, are we referring to this area way
19 up here in the very pitch of the roof?

20 A. I don't know.

21 Q. You don't know. So, how do you know that he owed you
22 money for it if you don't even know what it is?

23 A. Do you have which invoice that's on so I can look at it?

24 Q. I do, it's Thirteen Eighty-nine, the same one we've been
25 looking at.

1 A. Okay. I did not know, I just assumed what he was
2 telling me, and when your conversations are not at a calm
3 level it makes it difficult to, to get the correct
4 communication.

5 Q. So, you don't know what that's referring to?

6 A. I do not.

7 Q. Okay. The fourth line item, Invoice Number Fourteen
8 Fifteen, ceiling upstairs and frame door wall, why does Dave
9 owe you Six hundred Dollars for that?

10 A. That's part of the set when he finished it. You've got
11 to have access. That's setting the home.

12 Q. That should have been included in the ...

13 A. Yes.

14 Q. And how much were you paying him to set the home?

15 A. Sixty-five hundred, I think, I have on that paper.

16 Q. Okay. And that includes, in your mind, setting the
17 home, tying it together, putting the roof on?

18 A. Yes.

19 Q. Shoring up all the walls?

20 A. Yes. Most of it's just labor, and most of the cost of
21 the materials are there, so most of it you don't need to do
22 it. He's really being paid that much just for his labor
23 time, which is a fair amount of money. It's not like he --
24 he didn't buy the stairs, he just installs them, and he
25 doesn't, you know, buy the shingles, he just installs them.

1 The house comes with that.

2 Q. So, what, you think Six hundred Dollars is too much
3 money to pay him for his labor?

4 A. It was included with the set up of the home.

5 Q. And how do you know what was included with the set up of
6 the home?

7 A. Knowing you have a two story, you don't set the home and
8 not give a client stairs going upstairs. So, it's just a,
9 it's a normal thing when you do something. It's like you
10 set the doors in the frames, you level them to make sure
11 they open and close, that's a normal -- now, he may do it
12 differently, but I made it very clear what I do and what I
13 pay for.

14 Q. And how was that made clear?

15 A. When we sat down and talked about what my quotes were
16 and what he could do for the home, what his set ups are, how
17 he got paid, we discussed what he thought a set up was, and
18 I told him what my feeling is of a set up, and these are the
19 quotes that I have to do these set ups from these companies.

20 Q. Do you have those with you?

21 A. I do not.

22 Q. Do you still have them?

23 A. I'm sure I could look and see, I would assume I would
24 have those.

25 Q. But you did not produce those to your attorney, though?

1 A. I didn't know if it would have anything to do with it,
2 just like I don't know why the copy of that plan with our
3 handwriting is not in here, I don't know why that's not
4 here. And I don't know where it was lost, but I did not
5 provide that that I'm aware of.

6 Q. So, there was no written agreement delineating what all
7 was included in a set up, correct?

8 A. No, I could never get a written one from him. Now,
9 there was one job that I asked Dave for, and I'm pretty sure
10 it was given, and I don't see it in the paperwork. He had
11 written me an estimate for another job because I told him I
12 need a handwritten estimate for another one -- not that one,
13 that's for Mr. Shirts's home. I wanted a handwritten quote
14 for another project from him.

15 Q. This Thirty-six thousand five hundred Dollars as shown
16 on Plaintiff's Exhibit Thirteen?

17 A. Yes.

18 Q. And that was the total amount of the set up?

19 A. No.

20 Q. Along with the garage?

21 A. It's showing porch, garage, it looks like house set, and
22 the crane is what it looks like.

23 Q. But you anticipated paying Dave Thornton Thirty-six
24 thousand five hundred Dollars to do the Shirts project?

25 A. No, I only paid him for certain parts that he did. He

1 didn't do the porch, we elected not to do that, that's
2 Twelve thousand eight hundred that we did not install.

3 Q. Okay.

4 A. That's just, this is the very beginning paper, it showed
5 what he would do and what he would be paid for, Ten thousand
6 for the garage with allowance of Eight fifty for the garage
7 door, Sixty-five hundred for the set, and again, the porch
8 was omitted, that was not installed.

9 Q. Okay. Blown in insulation, that along with the next
10 one, two, three, four, five, six, seven, you've - - -

11 A. Which invoice are you looking at?

12 Q. Starting at blown in insulation.

13 A. Oh, okay, on my - - -

14 Q. And re-stretch carpet.

15 A. Okay.

16 Q. I'm sorry, yeah, back on Twelve.

17 A. Yes, sir.

18 Q. Those you've identified in your testimony as being
19 attributable to water damage?

20 A. Yes, sir, from what I remember that was insulation that
21 was damaged that I needed to replace.

22 Q. Okay. That, along with the sheetrock work that was done
23 to the tune of Forty-six hundred Dollars, the home
24 inspection by HUD, carpet repair, including the re-bond and
25 re-stretch, correct, that was all attributable to water

1 damage?

2 A. I am not sure if it's all attributable, the sheetrock
3 work was, from what I remember, for the room. I don't
4 remember if there was any other work they did, I just
5 remember - - -

6 Q. So, you don't know what the sheetrock work is for?

7 A. I'd have to look at the invoice, that would help me to
8 remember.

9 Q. Okay. Go ahead, is it in this evidence?

10 A. I don't have the - - -

11 Q. Alright.

12 A. --- invoice for Martin and Sons.

13 Q. That's fine. Sheila Lake, three tarps and treated
14 studs, Five hundred Dollars.

15 A. He's billing me for the tarps he bought for Mr. Shirts's
16 house, and he had his wife bill me, and for some studs for
17 the garage he was building for me that, and I discussed that
18 with him, why are they giving me a bill for something they
19 should have already had. If he sets mods he should have
20 some type of protection. I don't set mods so I don't carry
21 tarps. You know, he set homes, he set mods, he knows you
22 should have tarps with you. That's a normal thing for
23 anybody that's going to set a mod to have some type of
24 protection or tentative protection because you never know in
25 South Carolina when a storm will pop up. And I told him, I

1 didn't do the damage, you did the damage, why am I paying
2 for tarps and why am I paying your wife for tarps?

3 Q. Whoever was supposed to do the roof is the party at
4 fault here, correct, whether that's Dave Thornton, you or
5 Mr. Robbins?

6 A. Well, I would assume anybody doing a roof would take
7 charge of that.

8 Q. Well, I mean, that's the issue about the water, all the
9 water damage is because the roof wasn't dried in?

10 A. From what I was told.

11 Q. Okay. The treated studs for the garage, did Dave say
12 that he was going to build a garage out of treated studs?

13 A. He came back to me during the process and said he needed
14 to do that, so I think it was something to do with code.

15 Q. Do you know whether or not mr. Shirts requested the
16 garage be built out of treated studs?

17 A. My memory, what I remember is that there was something,
18 if you didn't do treated studs you had to do something else
19 outside, and again, this is a long time ago, so I'm only, I
20 can't answer that one exactly because I don't remember.

21 Q. So, you don't know whether or not treated studs were
22 discussed in the Ten thousand Dollar price for the garage?

23 A. Again, I don't remember.

24 Q. Alright. The second charge for the home set, Seven
25 thous Dollars, you do not remember authorizing Dave

1 Thornton to go ahead and just do what needs to get done
2 while you're in the Philippines because this house was
3 abnormal or above average with regard to the set?

4 A. No, what we talked about was getting the house complete,
5 which was already his job. Getting the damage fixed was
6 another priority. I don't remember exactly when that phone
7 call took place, but that's a normal thing to problem solve,
8 you know, to come out and complete the job, to fix the
9 problem. You know, if you have water, -- the belly board
10 was so full of water from sitting, that's another reason why
11 it had to be replaced. The belly board is the underneath of
12 the subfloor. The water was holding in the belly board and
13 it had to be drained.

14 Q. What did that have to do with the Seven thousand
15 Dollars?

16 A. It's just, what I'm telling you is, it was the damage,
17 the stuff that I had already expressed interest and Mike had
18 expressed to him, that this needed to be handled quickly.

19 Q. Okay. But that belly board damage isn't reflected
20 anywhere on here, is it, this Twenty-nine thousand Dollars?

21 A. Some of the receipts I forgot, just like the extra set
22 of windows I had to buy that were stolen. I just, you know,
23 -- and there may be other things I forgot to put on here.

24 Q. Okay. And we've already talked about the outlet in the
e, correct?

1 A. Yes, sir.

2 Q. Alright. Charged twice for the permit. Why is that
3 Dave's responsibility?

4 A. I paid for it, but I was billed again for it, and Dave
5 was the one that - - -

6 Q. Did you pay Mike Robbins for it on both occasions?

7 A. Yes, but that's because had insisted that he get paid
8 for the permit.

9 Q. Dave didn't get paid, Mike Robbins got paid.

10 A. I understand.

11 Q. So, why is Dave responsible, why aren't you getting that
12 back from Mike Robbins?

13 A. Well, it's just like, I didn't want to write a check to
14 Dave for an advancement, but given the argument that we had,
15 you'd have to be there for the argument, and I think in Mike
16 Robbins's testimony he even stated that Dave had stated to
17 him that he had threatened my life, I think it was with a
18 hand gun. So it - - -

19 Q. You don't remember whether it was hand gun or not?

20 A. I just remember he said he threatened my life.

21 Q. You remember he said that he threatened my life?

22 A. Yes.

23 Okay.

and as aggressive as he was with me during our meetings,
concern.

1 Q. Okay. Charged twice for interior trim, Six hundred
2 Dollars, Invoice Number Fourteen Twenty-eight.

3 A. I don't have Fourteen Twenty-eight.

4 Q. Okay. It's your understanding that Mr. Robbins was to
5 perform the trim work in the home, correct?

6 A. It ultimately ended up with him doing it. There was
7 many things I ultimately had him do because Dave had walked
8 off the job.

9 Q. Did you know whether or not Mr. Robbins had
10 inadvertently missed a section of trim in the master bath
11 room and master closet?

12 A. I don't know anything about it.

13 Q. So, you don't know whether or not that Six hundred
14 Dollars for that work that Dave performed for Mike Robbins?

15 A. I don't remember anything like that.

16 Q. Okay. I want to back up real quick with this water
17 damage. The A to Z Advanced Home Inspection, that was a
18 mold inspector that came in?

19 A. Well, he inspected the mold and inspected for water
20 damage and certified that it was, the condition was good. I
21 don't know how you would classify it, I just needed someone
22 to state it was habitable.

23 Q. And you couldn't do that because you're not qualified to
24 test for mold - - -

25 A. No.

1 Q. --- or identify the mold?

2 A. I could not. And I'm not going to ask him to trust me
3 that it was fixed.

4 Q. Okay.

5 A. So, I paid the money to insure that it was fixed.

6 Q. Okay. And he didn't find anything?

7 A. He did not.

8 Q. Okay.

9 A. But the problem was, we had to make sure he checked the
10 subfloor and the walls. We could not just arbitrarily open
11 them up to look, and he had the machine to test, so it was a
12 way to make sure that there was no future problem that Mr.
13 Shirts would have.

14 Q. Alright. Two hundred and seventy-six Dollars for
15 windows Dave had promised?

16 A. Twice. I had to get the windows.

17 Q. I'm sorry?

18 A. I had to purchase the windows twice.

19 Q. Because they were stolen off of your project?

20 A. Yes, sir.

21 Q. Alright. Garage doors, Invoice Number Thirty-seven O
22 garage door Dave didn't pay for. So, why does he owe
23 it? Shouldn't he owe Thirteen ninety-seven less
24 fifty at a max?

25 A. Well, I mean, of course, he's only going to take the

1 least amount of responsibility, but with Mr. Shirts I paid
2 the money because anybody that goes through such an
3 experience as that, you know, you want to try to make it
4 right for them.

5 Q. Didn't Brent Shirts pay that money?

6 A. No, I had to pay Mr. Shirts for it. He paid it but I
7 had to reimburse him.

8 Q. And you did that with what, with a VISA?

9 A. I'd have to look back, I don't remember, I just, I think
10 I did pay him with a VISA, it's a long time ago. Mr. Shirts
11 -- I'm pretty sure I paid for it.

12 Q. Okay. But, I mean, you agree that you just testified
13 that Dave gave you an Eight hundred and fifty Dollar
14 allowance?

15 A. He did.

16 Q. So, Thirteen ninety-seven would be above that, and any
17 overage he would not be responsible for?

18 A. Yes.

19 Q. Labor to install windows paid to Mike Robbins. Why, and
20 where were those windows, upstairs?

21 A. Upstairs.

22 Q. And those weren't included in the original scope of work
23 contemplated by Dave in setting the house?

24 A. They were not.

25 Q. So, you're not entitled to that either, are you?

1 A. Well, yes, because Dave had promised the work but billed
2 me for it.

3 Q. But you didn't pay him anything for it, did you?

4 A. Dave?

5 Q. Yeah.

6 A. I had to pay Mike because he would not come back to do
7 it.

8 Q. Alright.

9 A. He would not bring the windows that he promised him also
10 that he had from another job, we never received those.

11 Q. So, if Dave had done that, brought the windows and
12 installed them you would owe him some money?

13 A. No. If he billed them, yes, but he offered it, not me.

14 Q. So, Dave never installed anything, never furnished
15 anything, in fact, Mike did it?

16 A. He offered stuff to Mr. Shirts and I'm assuming because
17 of the experience Mr. Shirts had gone through and the amount
18 of damage done because of just neglect, to me the
19 conversation was, Mr. Shirts, you know, I'm going to take
20 care of this, don't worry about it. He never talked about
21 money, but he gave me the bill for the work he did.

22 Q. Fix drip edge and siding paid to Mike Robbins, One
23 hundred and twenty-five Dollars?

24 A. Dave would not come back and finish it.

25 Q. Okay. And where was that on the home?

1 A. I would have to look back at the pictures. I remember
2 taking a picture of it.

3 Q. Do you have it in there? Do you know where or not Dave
4 actually repaired crane damage done to the modular?

5 A. I do not know. There's no picture in here of it. It's,
6 it would be on the disc.

7 Q. Okay. And did you provide that disc to your attorney?

8 A. Yes, sir.

9 Q. Alright. Overcharge for crane. You were quoted -- it
10 says you were quoted Two thousand Dollars but paid Forty-
11 seven sixty-four?

12 A. Yes.

13 Q. So, you want the Two thousand seven sixty-four?

14 A. You know, there's, when someone gives you a quote you go
15 by the quote, and I didn't feel like I should pay
16 considering that it was delayed -- once the home was damaged
17 the crane still charges, they don't care if you damage it or
18 not, they're going to charge you until you get it fixed and
19 set.

20 Q. What if it's the manufacturer's fault that the home was
21 delayed?

22 A. Well, then I would try to collect from them and bill
23 them.

24 Q. But not Dave?

25 A. If there was a defect. You'd have to show me a defect

1 and then I would need to turn the pictures in to the
2 factory, and the factory may need to come out and inspect
3 it. If there was something like that I would need to
4 provide that so I could be reimbursed. The factory will
5 reimburse you but you must show proof and they need to
6 document it.

7 Q. You testified earlier that delays are going to be a
8 natural thing in building a home.

9 A. Yes, you will have delays.

10 Q. And you're aware that things change during a
11 construction project and that's normal, right?

12 A. Yes.

13 Q. And if there were things that weren't Dave's -- that
14 were not Dave's fault that caused the delay, he wouldn't be
15 responsible for those, would he?

16 A. I would need to see proof of that.

17 Q. Let's say the proof exists. If he's not responsible - -
18 -

19 A. I would have to see the proof to know if he's
20 responsible.

21 Q. Alright, that's fine. Garage drywall was included in
22 price but charged again. You're referring to the firewall,
23 correct?

24 Q. Which invoice is that?

Seems to last one, it references Check Number Fourteen

1 Twenty-four, but I will tell you that it is invoice -- it's
2 Invoice Fourteen Twenty-four, not Check Fourteen Twenty-
3 four.

4 A. Yes, I remember this one. As I stated, I'm not
5 positive, I just remember that this was supposed to be
6 included with the garage and I paid it, and it looks
7 like I paid Dave for something that he was supposed to
8 include.

9 Q. Okay. So, you're not certain about that one?

10 A. No, sir.

11 Q. Alright. And the Lowes, Home Depot, Ace, and Dollar
12 General receipts totaling Five Seventeen Twenty-two, what
13 are they for?

14 A. I need to see the receipt and then I can ...

15 Q. So you don't know what those are for?

16 A. No, sir, I would have to see the receipt.

17 MR. CLOSSER: Alright. I think I'm done, let me confer
18 with my client real quick. The Court's indulgence.

19 Q. Mr. McGee, were you aware that the house that you built
20 for the Shirts is actually a twelve pitch roof, is a twelve
21 pitch roof?

22 A. Yes. I think ...

23 COURT REPORTER: Is a what?

24 MR. CLOSSER: Twelve pitch.

A. I think it's Nine/twelve on certain parts and

1 Twelve/twelve on another part. It's not, all of it is not
2 Twelve/twelve.

3 Q. Do you know the square footage of the home?

4 A. Approximately Four thousand.

5 Q. Okay. Is that an above average size home, modular or
6 otherwise?

7 A. When you finish upstairs. It was not intended to finish
8 upstairs. That changed during the process.

9 Q. How much did that add?

10 A. The first floor I think is Twenty-two hundred square
11 feet, and I guess that's approximately Twelve hundred
12 upstairs.

13 Q. So that would put it somewhere in the Three thousand
14 range?

15 A. Hold on a minute, no, there's another room that he
16 finished. Downstairs should be, again, Twenty-two is my
17 guess on the first floor. I would need to look at the
18 floor plan, I can tell you. That's typical for a house,
19 first floor. And it could be Twenty-four, but it should
20 be somewhere between that. The upstairs was not
21 anticipated, and that's something that we -- that was an
22 additional cost, and I think that was around Twenty
23 thousand Dollars.

24 Q. Do you know how much money you paid Dave Thornton?

25 A. I did not add up the total amount.

1 MR. CLOSSER: Alright. That's all the questions I
2 have. Thank you.

3 THE COURT: Anything on redirect?

4 MR. MAHAFFEE: Just a real quick couple, Your Honor.

5 THE COURT: Okay.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and
8 hard page breaks between testimony are now required by the
9 Court. See next ensuing page for sequential continuation of
10 record.)

TIMOTHY VAN MCGEE - REDIRECT EXAMINATION

BY MR. MAHAFFEE:

Q. Let me hand you a group of documents and ask you whether or not any of those were shown to Mr. Thornton prior to him giving you a quote. And if you did, pull it out and hand it to me as soon as you see it.

A. He would have seen this because the porch that I quoted, he would have seen that picture.

Q. Okay.

MR. MAHAFFEE: And unfortunately, I've lost track of the exhibit numbers. Twenty-four? What number am I? I'm sorry.

COURT REPORTER: I only have Twelve checked off, so I don't know how many you had.

MR. MAHAFFEE: Okay.

THE COURT: I think you're on Twenty-three.

MR. MAHAFFEE: This would be Twenty-three then.

THE COURT: Okay.

MR. MAHAFFEE: I apologize.

THE COURT: If it turns out I'm wrong it will be Twenty-three A.

MR. MAHAFFEE: Alright, sir.

(Plaintiff's Exhibit Twenty-three,
Drawing/floor plan,
marked for identification.)

1 A. This is the original paper that Mr. Shirts had drew
2 showing the front porch, the additional room on the front,
3 and the back deck. I don't know if he saw -- there's two of
4 them here, I don't know if he saw this one, this is a
5 revised one.

6 A. Okay. I'm marking this one that you said is Mr.
7 Shirts's as Number Twenty-four.

8 COURT REPORTER: Twenty-four.
9 (Plaintiff's Exhibit Twenty-four,
10 Drawing/floor plan,
11 marked for identification.)

12 A. And it shows Twenty-four Thirty-three for the first
13 floor.

14 MR. MAHAFFEE: Here, let's mark that one.

15 A. No, there's three floor plans here, I don't know which
16 one he saw, but it would have been one of these floor plans.
17 They look like the same floor plan. Just, this one shows
18 upstairs and these two just the first floor. And it could
19 be any one of those three.

20 COURT REPORTER: Number Twenty-four is in?

21 MR. MAHAFFEE: We're getting ready to move them in,
22 yes, ma'am.

23 COURT REPORTER: I'm sorry.

24 MR. MAHAFFEE: That's alright. I'm marking this one,
25 which is close to that is - - -

1 A. Yes, sir.

2 MR. MAHAFFEE: --- as Number Twenty-five.

3 (Plaintiff's Exhibit Twenty-five,

4 Drawing/Floor plan,

5 marked for identification.)

6 A. I'm not sure about the revised one.

7 Q. Okay. Well, I'll take these back then.

8 MR. MAHAFFEE: I would just move the remainder of my
9 exhibits in, Your Honor.

10 THE COURT: Twenty-three, Twenty-four and Twenty-five?

11 MR. MAHAFFEE: Yes, I think the court reporter's last
12 one that she has is Number Twelve.

13 COURT REPORTER: Twelve.

14 MR. MAHAFFEE: So, Thirteen through Twenty-four.

15 A. If Mike Davis looked at those he could probably tell you
16 which ones he saw also.

17 THE COURT: Okay. Thirteen through Twenty-five, is
18 that correct?

19 COURT REPORTER: Well, you said, Twenty-four, and the
20 Judge said Twenty-five.

21 MR. MAHAFFEE: Oh, yeah, yeah, Twenty-five, yes, sir.

22 THE COURT: Okay. No objection, is that correct?

23 MR. CLOSSER: No objection.

24 THE COURT: Okay. They're all in evidence.

25 COURT REPORTER: Thirteen through Twenty-five?

1 THE COURT: Yes, ma'am.

2 (Plaintiff's Exhibits Thirteen through Twenty-five
3 marked and filed.)

4 MR. MAHAFFEE: And that's all I have for him, Your
5 Honor.

6 THE COURT: Okay. Anything on recross?

7 MR. CLOSSER: Yeah.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and
10 hard page breaks between testimony are now required by the
11 Court. See next ensuing page for sequential continuation of
12 record.)

1 TIMOTHY VAN MCGEE - RECROSS-EXAMINATION

2 BY MR. CLOSSER:

3 Q. Who is Mike Davis?

4 A. Mike Robbins, I'm sorry, I apologize.

5 Q. Okay.

6 A. He was there when I showed him.

7 MR. CLOSSER: And I would like to move in Defendant's
8 One through Four.

9 THE COURT: Sure.

10 MR. MAHAFFEE: No objection.

11 THE COURT: Alright, Defendant's One through Four.

12 COURT REPORTER: Four was already in, Mr. Closser.

13 MR. CLOSSER: Thank you, ma'am.

14 (Defendant's Exhibits One through Three
15 marked and filed.)

16 MR. CLOSSER: And Number Five, any objection to Five?

17 MR. MAHAFFEE: One Number Five, I have no objection,
18 but it's got his checking account number on it, and if it
19 gets into the Clerk of Court's records, I just want to
20 redact it.

21 THE COURT: Well, we'll be glad to redact any ...

22 MR. MAHAFFEE: Alright, sir.

23 MR. CLOSSER: That's fine.

24 COURT REPORTER: So, what number is it?

25 THE COURT: Number Five.

1 COURT REPORTER: Defendant's Number Five?

2 THE COURT: Yes, ma'am.

3 (Defendant's Exhibit Five
4 marked and filed.)

5 MR. CLOSSER: And that's all I have for Mr. McGee, Your
6 Honor.

7 THE COURT: Okay. Alright, Mr. McGee, thank you, sir,
8 you may step down.

9 MR. MAHAFFEE: We'd call our last witness, David
10 Thornton.

11 THE COURT: Okay. Hey, Mr. Thornton. Place your left
12 hand on the Bible and raise your right hand.
13 (Whereupon, David Frederick Thornton
14 is duly sworn.)

15 THE COURT: Thank you. You can sit down, please, sir.
16 And if you'd please state -- after you get comfortable,
17 please state your full name for the record, please, sir.

18 WITNESS: David Frederick Thornton.

19 THE COURT: Alright, Mr. Thornton. Alright, Mr.
20 Mahaffee, your witness.

21 MR. MAHAFFEE: Thank you, Your Honor.

22 (NOTE: Blank lines on this page do not indicate any part of
23 record has been omitted. Headers on testimony pages and
24 hard page breaks between testimony are now required by the
25 Court.)

DAVID FREDERICK THORNTON - DIRECT EXAMINATION

BY MR. MAHAFFEE:

Q. Have you ever gone by any other name, sir?

A. Yeah.

Q. What was that?

A. Dave, no middle name, Thornton, that's actually my, really should be my name, I changed it when I was Eighteen going in the Navy.

Q. How about last names?

A. Lake.

Q. Why did you use the name, Lake?

A. Because when I came here from California I had a DUI, and then I got sober Fourteen years ago, and when I got sober I faced the music.

Q. Okay.

A. That's how Tim knows me as that name, we worked at McElveen.

Q. And you worked with Tim McGee at McElveen about ten years ago when you were going with the name David Lake, correct?

A. No, wrong.

Q. Okay.

A. It would be closer to Fourteen years ago.

Q. Let's see, in our deposition, have you reviewed your deposition?

1 A. Yeah, you know it, now that I think about it, I was two
2 and a half years sober when I did that.

3 Q. Oh, okay. And your wife's name is Sheila Lake?

4 A. Uh-huh, yes.

5 Q. Okay. And you went by the name, David Lake, also
6 because of being, as you said, questioned by the IRS, but
7 you didn't know if you had been in trouble?

8 A. No, that's, that false, that is all false. That would
9 be his family, I'm afraid.

10 Q. Have you ever been in trouble with the IRS?

11 A. I've been audited by them.

12 Q. Okay. You've got an accountant but you don't know,
13 quote, where I'm at with them?

14 A. Yeah, I know exactly where I'm at with them now.

15 Q. Now?

16 A. Yeah. We just had to catch up a couple of things, a
17 couple of years.

18 Q. Okay. And at one time you went under the name of Dave
19 Thornton Construction, then you changed it to Thornton
20 Brothers, is that right?

21 A. Yeah.

22 Q. And your business is with your little brother?

23 A. Yes.

24 Q. Okay. And you're the person with Thornton Brothers
25 Construction who is the most knowledgeable about what went

1 on out there at Brent Shirts's house, correct?

2 A. That's, I guess I could say that, yeah.

3 Q. Okay. Well, that's what you said in your deposition
4 under oath, - - -

5 A. Yeah.

6 Q. --- do you want to change that?

7 A. No.

8 Q. Okay. And you also said in your deposition that you had
9 never had any felonies, is that correct?

10 A. That's correct.

11 Q. Okay. Now, David Thornton, date of birth,
12 Two/Five/Nineteen Sixty?

13 A. Correct.

14 Q. Financial transaction fraud, I think it says?

15 A. No, I wasn't charged with any felony, nor found guilty
16 of any felony. I can buy a gun and vote.

17 Q. Under what name?

18 A. David Thornton.

19 Q. And this says you were convicted of financial identity
20 fraud, received a sentence of one year, suspended on five
21 years probation?

22 A. That's false.

23 Q. Your SLED record is false?

24 A. Oh, I don't, I don't, didn't do any five years probation
25 ever, in my life.

1 MR. MAHAFFEE: Your Honor, I'd mark his public record,
2 arrest record Number Twenty-six.

3 THE COURT: Plaintiff's Number Twenty-six?

4 MR. MAHAFFEE: Yes, sir.

5 THE COURT: Okay.

6 MR. CLOSSER: May I see that, Max, I've never seen it.
7 Okay.

8 (Plaintiff's Exhibit Twenty-six
9 marked and filed)

10 A. You know, I believe what that was was, is I had to pay a
11 fine, and I was to be on probation until the fine was paid,
12 and I paid it that day, and then I had to be on probation
13 for, like, six months for that check I wrote to clear, and
14 you know, I had to go and check in with probation for, like,
15 for six times or something like that, just, but I mean, I
16 was, it was just until the check cleared. They sent it to
17 Columbia six months.

18 Q. But if the parole record said five years probation, you
19 disagree with that?

20 A. Yes, I would, because it would, they gave me five years
21 to pay it.

22 Q. Regarding the Brent Shirts job, did you keep a notebook?

23 A. I kept several, I'm pretty bad at notes, but I'm good
24 with receipts.

25 Q. And you don't know if you lost the notebook regarding

1 this job or not?

2 A. I don't know.

3 Q. Okay. But whatever happened to it, you haven't seen it?

4 A. I, not that I can recollect.

5 Q. And you don't remember if in your name or in the name of
6 Thornton Brothers Constructions you actually entered into a
7 contract or agreement with Mr. McGee, is that correct?

8 A. Could you repeat the question?

9 Q. You don't remember if in your name or in the name of
10 Thornton Brothers Constructions if you actually entered into
11 a contract with Mr. McGee?

12 MR. CLOSSER: Objection. This is his witness, he's
13 leading pretty heavily here.

14 THE COURT: I think he's going to probably say he's not
15 his witness. He may have called him, but I'm sure he's
16 going to say he's an adverse witness, but I'll let him ...

17 A. I entered, I entered into a verbal agreement, what he
18 was talking about that James Island meeting was, is him and
19 this friend named Keith and I were at a restaurant, and I
20 told him that I'd set a mod about a mile from there for Five
21 thousand Dollars. It took me two days. It was about Fifty-
22 four feet long, a five pitch roof, and I had shingles on it
23 that night.

24 MR. MAHAFFEE: To the extent necessary, Your Honor, I
25 would like to treat him as a hostile witness, as he is an

1 adverse witness, and I would like to lead him as if on
2 cross-examination.

3 THE COURT: Alright, sir. I'm going to allow you to do
4 that.

5 MR. MAHAFFEE: Thank you, Your Honor.

6 Q. Do you remember in your deposition you said you didn't
7 remember if you entered into any kind of contract or
8 agreement with Mr. McGee, and that he would have a better
9 recollection of that than you would? Yes or no, and then
10 you can explain, of course.

11 A. I don't have any recollection.

12 Q. Okay. You don't have any recollection of having said
13 that in your deposition under oath in this case?

14 A. No, I had four strokes last year, and a lot of my memory
15 is shot, it's in and out, but, you know, some of the
16 lengthier stuff I do remember. I'm sure I could probably do
17 better than the other people that were testifying today.

18 MR. MAHAFFEE: Your Honor, do I have the Court's
19 permission to open his original deposition?

20 THE COURT: You may.

21 Q. I'm going to hand you your deposition, your original
22 deposition, and just tell you that the page numbers are in
23 the upper right, and then it's got line numbers down there.
24 And I would ask you to turn to Page Twenty of your
25 deposition.

1 A. I broke my glasses, I might be able to see it. What
2 line?

3 Q. Well, how are we going to do this? Since you don't
4 remember, I'm going to read you the question and then when
5 it comes to, it says, A, which means answer, you are to read
6 exactly what's down there. I'm going to start - - -

7 THE COURT: Hold on just one second. Can you read that
8 okay without your glasses?

9 A. I believe so, I mean, I can - - -

10 THE COURT: Because there they are, right there.

11 A. Yeah. Just, they kind of, I just broke them when I sat
12 down, so ...

13 THE COURT: Okay. Well, see if you can put them on
14 there, and is that easier?

15 A. Yeah, if you hold on to them. But I'll go ahead and
16 long arm it, yeah.

17 THE COURT: Okay. Alright, I'm sorry, go ahead.

18 MR. MAHAFFEE: No problem, Your Honor, at all.

19 Q. Page Twenty, Line Twenty-four, my question -- and it
20 goes on to the next page, "Okay, did you in the name of
21 Dave Thornton and/or Thornton Brothers Construction actually
22 enter into a contract or agreement with Tim McGee?" Read
23 your answer at Page Twenty-one, Line Two.

24 A. Twenty-one, Line Two, "I don't remember."

25 Q. Okay. Continuing on, Question: "Did you know anybody

1 who might remember, who might have a better recollection of
2 it?" Read your answer the Court, please.

3 A. I said, "Tim McGee."

4 Q. Okay. Now, this was a fixed price contract, or deal
5 that Thornton Brothers and you had with Mr. McGee, correct?

6 A. No.

7 Q. It wasn't?

8 A. No.

9 Q. Okay. Let's see, let's try Page Fifty-five.

10 A. Okay.

11 Q. We were talking about the quote, etcetera. Let's start
12 at Page Fifty-five, Line Nine. My question: "Do you have
13 anything in writing which would refresh your memory about
14 how much you quoted Tim to do this?" Read your answer,
15 please.

16 A. "No, I don't recall."

17 Q. Question: "Well, it wasn't cost, plus, was it?"

18 A. My answer says, "No." But actually, one of the things
19 was.

20 Q. So, what you said under oath before was, no, but you're
21 changing it now to what?

22 A. Well, the roof that Mike Robbins was supposed to do, I,
23 you know, I called a roofer and, you know, what they would
24 charge a contractor is what Tim paid.

25 Q. And so you, - - -

1 A. So, Mike, I gave Tim the direct cost, cost to cost. I
2 didn't make a penny on it, I just said, you know, Mike
3 wasn't coming, I was begging him to come, I called him five
4 times a day. When I was in distance, I had to go to the
5 store to call the Philippines or Mike.

6 Q. Well, how is that cost, plus, then, since you just gave
7 the bill directly to Tim?

8 A. That's what the Thirty-five hundred Dollars is.

9 Q. Okay. Well, my question was, "Well, it wasn't cost,
10 plus, was it?" And you said your answer was, no, but that
11 wasn't for all of the transaction?

12 A. No, right, right. The fixed price - - -

13 Q. And I asked you what was cost, plus, and you started
14 talking about the roof. So, I just made the natural
15 assumption that that's what it was.

16 A. Well, what is cost, plus, would be cost of material plus
17 the labor. That's what cost, plus, is.

18 Q. Profit and overhead?

19 A. Yeah, gas.

20 Q. Okay. And you don't know if you ever turned in invoices
21 to Tim for reimbursement on the building materials, do you?

22 A. No.

23 Q. Okay. And all you did was just give him a price that
24 included materials, is that right?

25 A. Well, I gave him a square foot price, and that's, and

1 you know, then when I came to the job and I saw what the
2 house was, it was like, this was like the biggest beast I'd
3 ever seen. The front part of the roof, this part right here
4 was only three studs that came up, everything else back here
5 had to be hand framed. They delivered a unit of lumber, and
6 this house came with two skids of shingles on the trailer,
7 that was approximately Thirty-six squares of singles, that
8 was going to be to go on that house. It's about a whole roof
9 job.

10 Q. Well, let's - - -

11 A. That would be about Seventeen thousand Dollars if I was
12 to do that for a customer.

13 Q. But you didn't do the roof, - - -

14 A. Right.

15 Q. --- you had somebody else to do it?

16 A. Right. But what the thing was, is Mike had the roof,
17 and this whole issue is about why these are in here is, is I
18 was done with this, you can see it's all buttoned up, the
19 dormers are on it. These were, these are covering, these
20 were all cupping. They're covering the ends and cupping to
21 go out this back of the house right here, and the one on the
22 top is because the roofers were going to be coming that day.

23 Q. But the roofers - - -

24 A. This is, this is - - -

25 Q. --- don't bother you because you just passed on directly

1 - - -

2 A. I had to.

3 Q. --- the roofer's bill.

4 A. I had to.

5 Q. So, that was -- whether or not the roof was - - -

6 A. Mike lost out.

7 Q. Whether or not the roof was big, small or indifferent,
8 you didn't do it.

9 A. No.

10 Q. And, but you contracted with a roofer to do it, correct?

11 A. No, I didn't contract with a roofer, I just told, you
12 know, it was Mike's job and that, you know, he just wasn't
13 going to get paid for it. The guys paid, you know, Forty
14 bucks a square to take it up and put it on.

15 Q. Okay. Well, let me ask it this way, - - -

16 A. Did I contract it, no, I didn't, I had verbal, a verbal
17 contract with them.

18 Q. With the roofer?

19 A. Yeah. And that's - - -

20 Q. You don't have, you don't have any licenses, do you?

21 A. No, no.

22 Q. And your brother doesn't have any licenses?

23 A. No.

24 Q. And y'all are the only two in Thornton Brothers
25 Construction, correct?

1 A. Now it's just me.

2 Q. Okay. But at the time it was just the two of you,
3 correct?

4 A. As best partners, no, there was - - -

5 Q. In Thornton Brothers Construction.

6 A. Oh, no, we had employees.

7 Q. Okay. Any of those employees have licenses?

8 A. No, I mean, none of my employees did.

9 Q. Alright. The aspect of this -- you had talked with Tim
10 about how much you were going to charge but, at least in
11 your deposition, you just didn't recall how much that was,
12 right?

13 A. Well, we didn't have a -- we were talking vaguely, you
14 know, he drew a little, a piece of paper about that big, a
15 house and the garage from an oversight, and he goes, about
16 how much would that cost? And I told, him, you know, about
17 what it would cost, but I mean, it was vague, I never saw
18 any floor plans of this house, I never -- I didn't see this
19 beast of a house until I came up on it.

20 Q. Okay. And you told him you could set for Five thousand?

21 A. No.

22 Q. No?

23 A. No, that's a double box five pitch set.

24 Q. Okay. And this is a three box?

25 A. This is a three box, twelve pitch, high elevation in the

1 back, you know, I mean, prices change after three foot,
2 that's common in construction, because you've got to buy
3 bigger materials to go up, and you would have to work off
4 ladders.

5 Q. Now, you had also talked about having to stick build the
6 dormers, didn't you, in your deposition?

7 A. No, not the dormers. This big dormer right here, I mean,
8 this big gable end right here, this came with a unit of
9 lumber that, you know, ordinarily when you get a, when you
10 get a kit for a modular, for the ones that I've done
11 anyways, you get a kit for the rafters, and you just, you
12 know, you put your plywood down in the rafters, you just
13 drop them in order, according to length. You pop a line at
14 the outset.

15 Q. So, you didn't build the dormers?

16 A. Not the dormers, no, I had, I had to build around the
17 dormers. The dormers were too big, that one picture that
18 shows this dormer in the air, this was a classic picture,
19 that was there like that for a reason, for a long time
20 because I was over here enlarging the hole, because it was
21 too, this dormer was too big for the hole on the roof, and
22 it wouldn't be stable to tack it in there. And so, I was on
23 the saws, all I had to cut the front, I had to cut the front
24 out, I had to re -- I had to re-wall it underneath. If it's
25 too small, if a dormer is too small you can always add, you

1 know, you can, you know, get two by sixes, and bang, bang,
2 you can add, but when you have to cut out and you have to
3 move the wall back that supports the weight of this, it
4 just, I was going as fast as I possibly could.

5 Q. Do you recall in your deposition that you stated that
6 you built the dormers?

7 A. That was a mistake, obviously, I mean, they come on
8 trailers. It's a mistake. I didn't, I never, you know,
9 that's obviously not, I didn't build that dormer.

10 Q. So, - - -

11 A. So, it's a mistake.

12 Q. --- in your deposition you made a mistake and that
13 mistake was under oath, is that what your saying?

14 A. Yes.

15 Q. Okay. How is that different from not telling the truth,
16 when you say, a mistake?

17 A. I must have misinterpreted your question. You were - -
18 -

19 Q. Well, why don't we turn to Page Forty-eight, then, and
20 let's let the Court determine that. Have you got Page
21 Forty-eight, sir?

22 A. Yes.

23 Q. Okay. It's kind of lengthy, but let's see what we can
24 do with it. Page Forty-eight, Line Twenty-one, "So, you
25 called the roofer. What other areas of construction did you

1 do on the house, not whether you had originally agreed to,
2 but what you ended up in the end of the game doing?" Read
3 your answer to the Court.

4 A. "I don't recall everything. I don't, I set the house,
5 obviously."

6 Q. Then I said, "Okay."

7 A. "And I built, you know, built the dormers."

8 Q. "Built the dormers?"

9 A. "Yeah."

10 Q. So, what about my, my ques - - -

11 A. What I meant by that, what I meant by that was these
12 fronts - - -

13 Q. Excuse me, you're interrupting me.

14 A. Well, you're - - -

15 THE COURT: Okay.

16 A. I'm a hostile witness, you know, you quote this in, - -
17 -

18 THE COURT: Okay. Wait just one second, both of y'all.
19 Just wait one second. Okay? He's going to ask the
20 question, you're going to let him finish answering the
21 question. And once he's finishes answering the question,
22 you can follow back up. Okay?

23 MR. MAHAFFEE: Yes, sir.

24 THE COURT: So, we're not going to -- it's hard for Ms.
25 Harry Dot to keep up with us. Okay?

1 MR. MAHAFFEE: Yes, sir.

2 THE COURT: Okay. Alright, so, we left off with your
3 deposition you stated that you built the dormers.

4 A. Yeah, by mistake, I'm sorry. I apologize.

5 Q. Did you bill Mr. McGee for building the dormers?

6 A. No.

7 Q. Was that part of the extraordinary part of this house
8 that was just much more than you envisioned?

9 A. The extraordinary part was the extra day on the crane.

10 Q. My question regarding the dormers, was that part of the
11 extraordinary part of this house that you just didn't expect
12 having to build the dormer?

13 A. No, oh, no, the actual build -- what I was explaining to
14 be the dormers, it actually was, yes, where I had to have a
15 scaf -- build a plank scaffold system thirty feet off the
16 ground to build the gable ends is what I call the dormers,
17 on the front of the house. I had to stick build that, I had
18 to stick build the ends where those walls usually come
19 intact.

20 Q. And you had set modular homes before you had ever met
21 Tim McGee regarding the Brent Shirts job, right?

22 A. Not before I ever met Tim McGee.

23 Q. No, before meeting him regarding the Shirts job?

24 A. Oh, yes, yes.

25 Q. And at the time you set up these modular homes you

1 weren't licensed then either, were you?

2 A. No, I worked for a licensed contractor - - -

3 Q. Okay.

4 A. - - -as a sub.

5 Q. So, when you say that you had set them, set a modular
6 home, was that you or was that the other company doing that?

7 A. I guess it would be the other company.

8 Q. Okay. But in your deposition where you said you had set
9 up modular homes on a couple of occasions with Thornton
10 Brothers Construction, is that a mistake?

11 A. I guess in the interpretation of watching the prior
12 witness, you know, answer the question, yes, that would be a
13 mistake in the statement, but I physically did a lot of the
14 work.

15 Q. Okay. Mike Robbins was the GC on this job, correct?

16 A. I don't know.

17 Q. Well, let's go to your deposition, at Page Twenty and
18 see what you said back then.

19 A. What line?

20 Q. Page Twenty, Line Twenty, we were talking about modular
21 homes, and at Line Twenty, I just -- you had said something,
22 I just said, okay. Read what you've got down there, what
23 you said under oath at Line Twenty-one?

24 A. "Mike Robbins was the GC, and he held the license and
25 pulled the permits, so pretty much I worked for him."

1 Q. Okay. So, Mike Robbins was the GC, or is that a
2 mistake?

3 A. He had the license.

4 Q. Okay. And he was the GC on the job?

5 A. That's questionable. I believe he was, personally, I
6 mean, if he pulled the permits then he would be the general
7 contractor.

8 Q. Okay. And you're proud of this, the setting up of the
9 Shirts home, is that correct?

10 A. Yes.

11 Q. Are you proud of the fact that you left the top of the
12 roof open so that the rain could come down, knock the
13 ceiling down, knock the insulation down, and all of that had
14 to be redone?

15 A. No, I'm not proud of that. I'm proud of the set, I'm
16 proud of the expediency I was going through the house, just
17 the guy who had the roof wasn't there, you know. That's
18 Ninety, that's a hundred and eight bundles, Ninety pound
19 shingles up Thirty-five feet up a Twelve pitch roof.

20 Q. When a mod comes in the roof is folded down, two pieces,
21 you lift one side up, you lift the other side up, and bring
22 them together, it's simplified, right?

23 A. Wrong, yeah, that's not even close.

24 Q. Not even close. Well, tell us how it's done, and what
in the process to make sure that if it rains

1 overnight that something doesn't happen to the interior of
2 the house, which is already carpeted?

3 A. Okay.

4 Q. Go ahead.

5 A. Okay. On a normal mod, which this is not, it's shingled
6 all the way to the last layer. Okay. Well, this obviously
7 couldn't have been shingled because it was folded under and
8 we were standing on the plywood, which had to be cut off
9 because if we would have flipped it up it would have been
10 upside down. So, we had to take and we had to cut the
11 plywood up that was stapled and screwed to this whole top
12 section, all the way across the house so we could get these,
13 both front and back, to get them on, and that would have
14 been -- it's plywood, it would have been shingled to there
15 and I could have easily have shingled that, the top of that
16 roof myself in two or three hours with one other person's
17 help.

18 Q. So, on Exhibit One that shows the house there with the
19 crane lifting one of the dormers, the upper portion of the
20 pitched roof had plywood on it when you took it off?

21 A. No, no -- yeah, it was under -- it was rolled back and
22 we were standing on the plywood. So, had we rolled it
23 forward as it was hinged the plywood would have been upside
24 down.

25 Q. And you said you had to, I forget, unscrew it and take

1 the nails out?

2 A. Well, you can cut it off with the saws, or -- it was
3 screwed and glued.

4 Q. So, it came from the factory - - -

5 A. Backwards. Yeah, ordinarily a good factory that I
6 toured Arnell in Cherryville, North Carolina, they test
7 their houses to make sure that the roof lines come up, make
8 sure the shingles don't bend, and to make sure that their
9 new walls will pull out. This didn't even have any ropes on
10 it, we had to actually go underneath this house as it was
11 coming up, where you're supposed to -- that's the human
12 mouse trap, you're never supposed to be under there, they're
13 supposed to have guide ropes to pull out these new walls.
14 We had to go in there and pull these out by hand, because
15 the house was so long it bowed, and you know, the outsides
16 were erect and the insides weren't. So, you know, we had to
17 physically go in there and force it up by hand. It - - -

18 Q. How long -- I'm sorry.

19 A. It took a long time, the crane couldn't do it.

20 Q. How long did it take you to do the set?

21 A. Two days.

22 Q. Two days. And for that how much did you want to get
23 paid, just for the set, Thirteen thousand Dollars, Five
24 hundred?

25 A. Well, no, we were done with, we were done with the crane

1 in two days.

2 Q. That's why I asked you how long did the entire set take?

3 A. Oh, no, I mean, we were done with the crane in two days.

4 Then this, the, what I call the dormer, what I meant, front
5 gable, and actually, it's a double gable with an eye brow,
6 took another three days with the plywood, it took about five
7 days. And just at bare cost, you know, Eight hundred
8 Dollars a day, giving myself Two hundred Dollars a day,
9 which I made Twenty-five years ago. You know, it put me out
10 about Eight hundred Dollars a day with expenses.

11 Q. Eight hundred Dollars a day times five would be Four
12 thousand Dollars?

13 A. Right.

14 Q. How much did you turn in to Tim McGee for just the set,
15 those five days, as you described it, how much did you turn
16 in to him?

17 A. I don't recall, I know that I gave him invoices and he
18 made me resubmit invoices to coincide with the money that he
19 needed to get from the draw checks from the money supplier,
20 I guess, the banker, I don't know where he got the money
21 from, the banker, or Mr. Shirts.

22 Q. Well, how much would you say - - -

23 A. I'd say to set a house like that I'd say would be, with
24 a single dormer I'd set an R and L for Twelve thousand
25 Dollars.

1 Q. Now, are you still doing this?

2 A. If it comes, yeah, if it comes my way, I'd still do it.

3 Q. Working for yourself or for a company?

4 A. I'd work for a company.

5 Q. Which company?

6 A. Quality Housing.

7 Q. Quality Housing?

8 A. Yeah.

9 Q. How long have you worked for them?

10 A. On and off, I don't know, eight years maybe.

11 Q. Did you ever threaten to lien this house, put a lien on
12 it?

13 A. I, not for myself, it was for the drywall, it was for
14 Martin's Drywall so they could get paid.

15 Q. So, you threatened the lien the house on behalf of
16 somebody else?

17 A. Yeah. I knew I couldn't lien the house.

18 Q. Okay. Well, why didn't you tell Martin's to just go do
19 it themselves rather than you getting there and saying, I'm
20 going to lien the house?

21 A. Well, because I felt foolish that I invited them to the
22 job, because Mike couldn't do the drywall, that's part of
23 the interior trim is, you've got to do the marriage walls,
24 that means the baseboard, the crown molding, chair rail, and
25 the drywall.

1 Q. And if you get into a job and find there's some changes,
2 some upgrades, you would talk with somebody to get approval
3 before proceeding, wouldn't you?

4 A. Absolutely, and I did. I called the international
5 number, I called his cell phone, and I called his brother's
6 significant other's phone.

7 Q. Okay.

8 A. I was in contact with him every day when he was in the
9 Philippines.

10 Q. Every day?

11 A. Every day.

12 Q. So, were you in contact with him every day, did you also
13 tell him, hey, the living room ceiling just fell in?

14 A. It didn't fall in. The living room ceiling was pulled
15 down because Tim McGee promised the customer, it had a
16 corner half the size of that picture right there that was
17 wet, and he promised Mr. Shirts that he would pull that
18 whole ceiling down so that he could have a happy customer,
19 and he wouldn't have to have that gaudy texture on the great
20 room. So, my guys, we had to pull it down for free, bag the
21 insulation, throw it away, and then to repurchase it and
22 blow it back in.

23 Q. So, you disagree with Mr. Shirts that there was all this
24 wet material in his living room?

25 A. I do, I mean, this is -- I've been doing this probably

1 as long as you've been an attorney, you know, and I could
2 have done that drywall patch in a couple or three days.

3 Q. You've been doing this for Twenty-seven years?

4 A. Twenty-five.

5 Q. But do you recall Mike Robbins also talking about the
6 ceiling falling in?

7 A. Mike Robbins doesn't, he didn't say the ceiling falling
8 in, he said that we pulled the ceiling down, I thought.

9 Q. Pulled the rest of the ceiling down.

10 A. Mike Robbins wasn't ever on the job.

11 Q. Never did anything?

12 A. He didn't, I saw him, I saw him with some, a girl and a
13 guy painting, they were rolling the walls with no drop
14 cloths, and I seen him one time late, he came late and he
15 had a can of white paint and was painting the baseboards.

16 Q. Do you remember giving promises to Mr. Shirts in that
17 meeting with the four of y'all, and then you just walked
18 out, and you were never seen again, do you remember that?

19 A. I knew that when I got paid I was done, I was done with
20 the game.

21 Q. So, even though you promised him you were going to do
22 more - - -

23 A. I didn't promise anybody anything, this is all hearsay,
24 I didn't promise anybody any -- the windows he's talking
25 abc nothing. About the two by four, the treated studs,

1 it's one of those things Mr. Shirts said, well, I think I
2 want the studs treated. And Tim asked me if I could do them
3 in treated, and I said, yeah, I can do them, but I wasn't
4 going to pay for them. You know, structurally, it was a
5 structural question, yeah, you could do it structurally.
6 And I still did the two foot treated plywood and then the
7 rest LSB, and sided it, and purchased the shingles and put
8 them on.

9 Q. You don't remember ultimately, what was the cost of the
10 house set, not the trim, the painting, the roof, or
11 whatever, just the set?

12 A. No. No. It became, it became more of a, more of a
13 project. It was just, it just wasn't like anything I had
14 ever set, it was more of a stick build than a mod. Other
15 than the body of the house, the whole upper structure was
16 like what I used, what they called stacking in the union, I
17 mean, top plates and above, up, you know, hand cut, hand
18 built upper structures. That's not anything that your
19 average carpenter can do.

20 Q. Well, and you said you called the roofer. And then, in
21 your deposition you were talking about the underlayment, you
22 know, you boys put felt underneath it. Why did you even get
23 involved in the roofing and say the roof had to come off
24 because all they had was craft paper under there?

25 A. Well you can see, it's right here.

1 Q. Why did you get involved with that, you weren't doing
2 the roof?

3 A. Because it was only, it was half on.

4 Q. You weren't doing the roof?

5 A. I knew what was wrong.

6 Q. You weren't doing the roof, why did you pull the roof
7 off?

8 A. The roof wasn't all the way -- this is the only part of
9 the shingles that were on. This paper right here just came
10 off and they pulled shingles and we put felt.

11 Q. But you already talked about taking a saw and cutting
12 off the plywood, couldn't you just as easily have taken off
13 that, those shingles before that picture was taken?

14 A. I needed it for traction.

15 Q. I'm sorry?

16 A. I needed it for traction.

17 Q. Okay. So, you took, you did take the shingles off?

18 A. Yes.

19 Q. Okay. It came with shingles but you took some of them
20 off?

21 A. Just -- yeah, they're just, as you can see, there's none
22 on the front, and there's a few here, and we had to stick
23 build the rest. All that stuff under the plywood right
24 there all had to be hand framed.

25 Q. So, part, at least, of what the roofer had to do was you

1 having taken some of the shingles off. Right?

2 A. To be done correctly, yeah, maybe a dozen shingles, so
3 that there is felt under it instead of craft paper. And
4 craft paper is not code.

5 Q. How do you know about it if you don't have a license,
6 hearsay?

7 A. Just been -- well, how do you know about hearsay, if
8 you're not a lawyer?

9 THE COURT: If you would just answer the question,
10 please, sir. How do you know about the craft, the other
11 kind of paper?

12 A. It's just my knowledge of the roof specs and the
13 Hurricane Wind Zone One area.

14 THE COURT: Okay. Thank you, sir.

15 Q. And the garage, you built that?

16 A. Yeah.

17 Q. Ten thousand Dollars?

18 A. Yes.

19 Q. Okay. And that was just you, not some company, but you
20 and/or Thornton Builders, right?

21 A. Myself and my crew.

22 Q. Okay. Your unlicensed crew?

23 A. Hired hands.

24 Q. Okay. Unlicensed hired hands?

25 A. Unlicensed, yeah, they have a license to drive a

1 vehicle.

2 Q. Okay. Well, I mean, licensed in the trade of building,
3 as is required is what I was talking about. And let's talk
4 just a short amount of time on the crane. Who called for
5 the crane?

6 A. I don't recall, I know that I worked with Limehouse and
7 I knew, I worked with a few of their operators, the crane
8 operators on different jobs, so I knew the signals with
9 Limehouse. A lot of the outfits I worked for used them.

10 Q. Do you recall the sling breaking loose, catapulting,
11 knocking a hole which had to be fixed in the house?

12 A. Yes.

13 Q. Okay. Who rigged that up for the crane, you and your
14 crew?

15 A. The sling?

16 Q. Uh-huh.

17 A. No, the sling was built from a mechanical engineering
18 outfit out of up Ashley-Phosphate for raising roofs on mods.
19 There's several ways to do it.

20 Q. Who set it on the house, who slid that on there to make
21 sure that it was level so as it came up it would not tilt
22 and cause the damage to the roof eave?

23 A. That, we set, we set those things on there, there's,
24 those had never been on a house that long, never worked on
25 a house that long.

1 Q. Okay. So, when you say, we set, are you talking about
2 you and your crew?

3 A. Yes.

4 Q. Okay. And they weren't set properly?

5 A. They were set properly.

6 Q. And so, what, is it the crane operator's fault in
7 lifting it?

8 A. The slings, the slings worked on one side, they didn't
9 work on the other. There was obviously a -- there was no
10 plywood on the end to hold it up and it pulled loose. Stuff
11 happens. People, you know, get off balance and step through
12 the sheetrock. Stuff happens, I mean, that happens on any
13 construction.

14 Q. And some of your guys stepped through the roof, correct?

15 A. I think one foot went through.

16 Q. When stuff happens, who had to fix for that stuff
17 happening, Tim McGee:

18 A. I did.

19 Q. You did?

20 A. Yeah.

21 Q. How much did that cost you, do you have a receipt?

22 A. It cost me nothing. I had to drywall and mud a small
23 piece of sheetrock. I did a blow out patch on them and I
24 mudded them.

25 Q. How about the - - -

1 A. I did the three steps to insure the patch was strong and
2 I topped it with the, the trowel that makes the texture
3 match the rest of the house.

4 Q. Uh-huh. And how about the sling, where that slipped on
5 one side. Did you fix that, too, or did that bill get
6 turned in to Tim McGee by somebody?

7 A. We had to fix it so we could raise the roof.

8 Q. You fixed it at no cost?

9 A. Yeah.

10 Q. No cost?

11 A. Yeah. It just took a few pieces of two by six nailed in
12 and nailed back to the plate to strengthen the plate up so
13 that it could hold the slings again. We put them exactly in
14 the same place and it helped. It pulled up one side, the
15 other side broke.

16 Q. Why did you let the roof leak and damage occur to the
17 inside of the house, since you've set mods before - - -

18 A. Well, that called my - - -

19 Q. --- and you know that stuff will happen and rain comes
20 up?

21 A. I called Mike and I told him we were done with the roof,
22 I said, you need to get roofers out here, we are working on
23 the end walls. It wasn't my responsibility. I was home, I
24 heard the thunder rolling, and this had been a week after,
25 you know, we had been off the face of the roof, you know.

1 And I heard thunder rolling and my brother was over at my
2 house, and I said, you know what, we're going to have to get
3 our butts out to Cottageville. And so, we didn't have any
4 tarps, I mean, that house's second floor, you could have put
5 a six lane bowling alley in there, it was that big. So, it
6 required massive tarps. And when we got out there it hadn't
7 started raining yet, and it was getting dark, so I pulled my
8 truck up on some rocks so it was pointing up, and we went up
9 the ladder and we walked that twelve pitch and we draped the
10 tarps over the roof, covering the entire house, tied it down
11 with ropes to the ground to stakes that we drove and then
12 drove nails into the house, you know, just through the, not
13 through any siding but just through the raw plywood, and we
14 tied the house down the best we could possibly do it. And
15 in the picture you can see four tarps. I had, myself, I had
16 three of my own, and at the end when I was done I was
17 folding -- when Tim was there, on the last day I was there,
18 I said, what do you want me to do with the tarps? And he
19 said, throw them away. So, I did.

20 Q. Exhibit Ten, is that a tarp that you put on the end of
21 the house, not over the edge of the roof, but actually on
22 the, I guess you would call it the inside?

23 A. Yeah, this part, it's like this because it's not
24 finished yet. This part right here isn't built yet. So,
his was just pulled back. It was up there, but this part

1 right here had to be built, and then these walls had to be
2 built inside here. This was just, this was just prior to
3 working on this part of the roof, because you see, there's
4 two sections missing here. This is the, actually, a rafter
5 and an overhang, an eave.

6 Q. Let me ask you a question, since you don't know how much
7 the original bid was, let me ask you about what's in
8 Plaintiff's Exhibit Twenty-seven, which is Exhibit B, which
9 is something you drew up, correct?

10 A. I don't know about the original bid, I do know about the
11 tarps and the studs.

12 Q. Is that something that you drew up?

13 A. This is, no, this isn't something I drew up. I didn't
14 draw this up.

15 Q. Where did it come from?

16 A. I don't know. I have no idea, I imagine your office.

17 Q. No, sir. A bad imagination.

18 A. Well, it says, Exhibit B, and then -- huh? Well, I
19 mean, this exhibit isn't something I've ever seen before.

20 COURT REPORTER: What number?

21 MR. MAHAFFEE: Plaintiff's Exhibit Number Twenty-seven.

22 (Plaintiff's Exhibit Twenty-seven

23 marked and filed.)

24 And up at the top, what does it say, Exhibit B from
25 Thornton deposition?

1 A. Right.

2 Q. So, you have seen it before, haven't you?

3 A. I don't recognize it, - - -

4 Q. Okay.

5 A. --- that I recall.

6 Q. So, when we go back to your deposition and we're talking
7 about Exhibit B, Balance due, you're saying you don't know
8 where that figure got there, original bid price, Thirty-
9 eight thousand eight hundred Dollars, did that just come
10 from someone else?

11 A. It came from -- what it came from was, that was, I mean,
12 I don't usually pay for work. I mean, as far as the vinyl
13 sheets that Tim required. It was, just a total of all the
14 work that had been done. It wasn't -- the original bid
15 price was something that I didn't -- but, I mean, I wouldn't
16 have known unless that was something with that, in the
17 original bid of what Tim came up with as far as the roof, I
18 mean, a covered porch went. You know, if it was fictitious
19 bid, I don't know.

20 Q. You don't know?

21 A. I'm not sure, I don't know what the numbers are.

22 Q. Well, I asked you if you had drawn that up, do you know
23 if your wife, Sheila Lake, had drawn that up based upon what
24 you told her?

25 A. I don't know because all I see is, original bid price,

1 and then it just says, Thirty-eight eight, and then it said,
2 you know, and then it said, required extras and changes, and
3 it just has just the two things. This whole job was changes
4 and extras. So, that looks like it was just written in
5 short to the end of a total, of a total.

6 Q. Okay. Well, I'm just trying to - - -

7 A. It would be parting total is what it looks like to me.

8 Q. Well, I'm just trying to figure out where that figure of
9 the original bid price, since there was no bid?

10 A. Yeah, I don't know, it's like that other one that you
11 guys were looking at, I think seven or whatever, it came to
12 Thirty-eight thousand or something. Well, I don't know,
13 wherever that came from, I don't - - -

14 Q. Well, let me ask you a question, did you ask for that
15 amount, next to, Balance due, Nine thousand fifty Dollars,
16 did you ask for that from Tim McGee, and did you receive it?

17 A. I don't recall. I probably did and probably didn't
18 receive it.

19 Q. Okay. But you're saying you didn't overcharge him,
20 double charge him or anything?

21 A. No, absolutely, positively not.

22 MR. MAHAFFEE: Thank you, sir, I think that's all the
23 questions I have of you at this time.

THE COURT: Alright. We're going to take another about
five minute break. Okay. Mr. Thornton, you're under oath,

1 you can't talk to anybody about your testimony, but you can
2 stand down and stretch your legs for about five minutes, go
3 the restroom if you need to.

4 MR. THORNTON: Okay.

5 THE COURT: Thank you, sir.

6 (Rest)

7 THE COURT: Alright. I mean, you're on cross?

8 MR. CLOSSER: Yes, Your Honor.

9 THE COURT: Okay. And Mr. Thornton, remember, you are
10 still under oath.

11 MR. THORNTON: Yes, sir.

12 THE COURT: Okay, thank you, sir. Alright.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and
15 hard page breaks between testimony are now required by the
16 Court. See next ensuing page for sequential continuation of
17 record.)

1 DAVID FREDERICK THORNTON - CROSS-EXAMINATION

2 BY MR. CLOSSER:

3 Q. Mr. Thornton, one of the first things Mr. Mahaffee had
4 to do was open up your deposition to page Fifty-five, where
5 we were talking about a cost, plus, contract. I just want
6 to make the record complete. Page Fifty-five, Line Fifteen,
7 are you there?

8 A. Uh-huh.

9 Q. He reads, "Well it wasn't a cost, plus, was it?" And
10 you say, "No." "So it was fixed price contract. Was the
11 fixed price is the question?" And your answer was?

12 A. "I don't recall."

13 Q. Go on.

14 A. "I didn't see the house, like I said, I mean, I couldn't
15 give him a fixed price on something like that. On a drawing
16 like that I can't give a fixed price. Sorry it turned out
17 to be three boxes, and it turned out to be a five foot set.
18 I can't give back the price -- I can't give you a price on
19 something like coming and doing a deck for you and you tell
20 me it's Sixteen Dollars a square foot, and no, it doesn't
21 include stairs down to the ground from the second floor, nor
22 does it count" -- I must have missed a page here.

23 Q. No, you didn't, "Because I have to use six by sixes."

24 A. Yeah, I mean, I went to Page Fifty-seven. These pages
25 are stuck together, I still can't get it. There it goes.

1 "Yeah, because I have to use six by sixes and brace them
2 off, you know. And it's dangerous. You get to work faster
3 when you're working on the ground, you just don't get to
4 blow and go. If you drop a hammer, what a drag, you have to
5 go down the ladder and get it."

6 Q. Alright, the first part of your answer there, what are
7 you talking about, the drawing, "On a drawing like that I
8 can't give a fixed price." What are you referring to?

9 A. You just, you can't, I have no idea of its size, I have
10 no idea of where it's going to be at, how high it's going to
11 be.

12 Q. What drawing?

13 A. The one that was, like, the drawing was a half of a book
14 of match size. You know, I couldn't give anybody a price on
15 that.

16 Q. Well, what was it, it was an overhead?

17 A. Yeah, it was an overhead. It was just a straight gable,
18 with a straight gable, a little garage, a little smaller,
19 you know, it's like a rectangle with a smaller rectangle
20 lined down the middle. You can't give a price on something
21 like that.

22 Q. Did it reflect the L-shaped footprint of the Shirts
23 home?

24 A. No, nothing like it.

25 Q. And were you shown anything else before you were giving

1 a price on the Shirts home to Mr. McGee?

2 A. No.

3 Q. There was also a line of questioning about Mr. Robbins
4 being the general contractor, do you recall that?

5 A. Yes.

6 Q. Did Mr. Robbins ever pay you a dime on this job?

7 A. No.

8 Q. Did he hire you?

9 A. No.

10 Q. Who hired you?

11 A. Tim.

12 Q. Who paid you?

13 A. Tim.

14 Q. Alright. Mr. Mahaffee went into your background a
15 little bit. I just want you to tell the Court, you know,
16 you said you had been at this for Twenty-five years, what
17 does that include?

18 A. This actually was, sorry to go over, actually last year
19 would have been my Thirtieth year really if I would have had
20 the four strokes. So, really, this is my Thirtieth year.

21 Q. Let me, let me interrupt you right there and talk about
22 your strokes real quickly and put that to bed. How many
strokes have you had?

1. Well, four that I was hospitalized for, I believe I had
one this year, when I was in Joplin, Missouri, - - -

1 Q. Okay.

2 A. --- working the tornado..

3 Q. And are you on any medication regarding this?

4 A. Yes.

5 Q. And does that medication affect your ability to testify
6 truthfully?

7 A. I wouldn't know. To be honest with you, I don't know,
8 I've never been on this kind of medication before, so, I
9 wouldn't think so.

10 Q. You don't believe it to be?

11 A. No.

12 Q. And - - -

13 A. I drove here.

14 Q. --- when -- all of your strokes happened last year, did
15 you have one before that?

16 A. No, they were all Two thousand ten, except for, I think
17 I, I don't know, just Joplin, I don't know, I just, it was
18 just a weird feeling, you know, I felt sick and threw up
19 maybe because I was out for three days in a row working.

20 Q. Okay. So, you didn't have the stroke at the time you
21 gave this deposition?

22 A. No.

23 Q. Okay. And you were not on any medication at this time?

24 A. No.

25 Q. I'm sorry to interrupt you. You were going to tell us

1 about your work experience.

2 A. I started in construction right out of high school, and
3 then I went into the Navy and I took a short break, and when
4 I got out of the military in Eighty-one - - -

5 Q. Honorable discharge?

6 A. It was other than honorable. I have a record second to
7 nobody else's that I've ever met and that's ever been active
8 service. If you want to hear it, it was Twelve NJPs and a
9 special court marshal. I liked to fight and I liked to
10 drink. You know, that's why I don't do it anymore, it
11 caused me a lot of trouble in my life, and you know, and I
12 think I paid society, you know, for being sober and on the
13 side of the law for the last Fourteen years, I don't really
14 appreciate the character assassination. You know, I didn't
15 know anything about that probation, it's news to me. I'll
16 find out about it, because I have, you know, ways to do
17 that, and I will, you know get to the bottom. I don't have
18 a felony. Like I said, I bought, I purchased a hand gun,
19 and you know, and I can vote. So - - -

20 Q. Do you know if perhaps you were charged and then pled to
21 a lesser felony, or a lesser misdemeanor, do you know what
22 the circumstances surrounding any of that were?

23 A. It was, it was a whole bunch of stuff, it was when I had
24 the other name I, it was, you know, it wasn't, it wasn't on
25 the books yet, you know, as the laws are now, you know.

1 They're different. They call it identity theft, and that's
2 not, you know, what I did. And I didn't take anything from
3 anybody, maybe somebody's -- got a little out of wack, but
4 everything was paid. You know, I paid my dues.

5 Q. Okay. And your work, how long have you been in the
6 business?

7 A. Seventeen years.

8 Q. Not Twenty-five?

9 A. I've been Seventeen years in business for myself.

10 Q. I see, I see. And then you've been in the construction
11 industry for how long?

12 A. Twenty-five years -- Thirty years, this will be my
13 Thirtieth, this is my Thirtieth year.

14 Q. And what kind of work do you do for yourself, say you're
15 in business for yourself?

16 A. I do everything from foundation to finish.

17 Q. Okay.

18 A. Sidewalks to roof tops.

19 Q. And during that experience have you obtained some
20 knowledge regarding code requirements and things like that?

21 A. When I started in construction I started on the west
22 coast in California. I came up union. And it was a
23 requirement that we went to school quarterly, and we got
24 paid our normal wage, and you know, and we had to go to
25 school for four years. And that was generally carpentry,

1 drywall, interior finish.

2 Q. Yeah. After that when did you finally move out to South
3 Carolina?

4 A. I've been in South -- I think I'm going on Seventeen
5 years here, Sixteen or Seventeen years here.

6 Q. Okay.

7 A. I was just briefly in business in California.

8 Q. Alright. And what did your work include when you moved
9 to South Carolina?

10 A. Pardon me?

11 Q. What kind of work did you do when you moved to South
12 Carolina?

13 A. I was a builder.

14 Q. Okay. A residential builder?

15 A. Yeah, and commercial.

16 Q. And, you know, were those trades that you just
17 mentioned, carpentry, finish, foundation, all that?

18 A. Yeah.

19 Q. When you worked with Mike Robbins what were you doing?

20 A. Actually, what Mike Robbins didn't tell you was that
21 once they found out the skills that I had on the job, both
22 jobs I spent fixing all the screw-ups on the job, anything
23 that got messed I fixed. The job, when I got there none of
24 the house had stairs, I put all the stairs in the houses and
25 on the porches. And actually, when we went to the next job

1 Mike Robbins actually got fired and I was still there. I
2 outlasted Mike Robbins by a couple of months, and then the
3 company pulled the plug and went bankrupt.

4 Q. You're talking about Meridian?

5 A. Yeah.

6 MR. MAHAFFEE: Your Honor, can I object to things which
7 are going way beyond the scope of this case? We're talking
8 about the next job for Mike Robbins and all that. If we
9 could limit it - - -

10 THE COURT: Again, we don't do that, I think you're
11 going on relevancy just like you did earlier, so if you just
12 want to -- giving me some of his background was good, but
13 now we're ready to move on to ...

14 A. I'm sorry.

15 THE COURT: Thanks.

16 MR. CLOSSER: That's fine.

17 Q. Let's move on right into this project. How did it start
18 and how did you become involved in it?

19 A. I, like Tim said, I ran into him after not seeing him
20 in years and years and years, at a pharmacy, CVS Pharmacy it
21 was over by my house, and I learned that he was getting
22 separated from his wife. And so, I let him stay with me, I
23 let him drive my cars, I took him to bike week, let him ride
24 one of my bikes, you know, and we'd be friendly to each
25 other again. And - - -

1 MR. MAHAFFEE: Your Honor, could I object to all this
2 extraneous stuff and, as far as relevance?

3 THE COURT: Well, you can object to the relevance, and
4 I think he was just following up on how they met.

5 But if you would just go ahead and pick back on up with
6 this job.

7 A. Right. And then, and Tim and I had conversations about
8 setting modulars, about building a house of my own, and him
9 and his friend came out and they wanted to get involved in
10 building. I don't know what they were doing for employment
11 at the time or if they were doing anything. That's how I
12 learned of this outfit that was going to give him leads to
13 close land home deals and be a part of, I guess, the sales
14 of the house and the land and/or any building, you know, I
15 didn't know. And I didn't know that he knew Shirts from
16 anybody as other than a lead. And in conversation we met at
17 a restaurant.

18 Q. Did you discuss Shirts at that time?

19 A. No.

20 Q. The Shirts project?

21 A. No.

22 Q. Alright. You met at a restaurant.

23 A. Yeah, and that was at James Island, and I said, you
24 know, I set a little modular less than a mile away from here
25 for Five thousand Dollars, I was done in two days.

1 Q. Now, what were you talking about, what was that Five
2 thousand Dollars in reference to?

3 A. That was, that was doing the, setting the two boxes,
4 pulling up the roof, which was just a five/twelve pitch, and
5 shingling and siding the ends.

6 Q. Was it in reference to Brent Shirts's home?

7 A. No.

8 Q. So you were talking about ...

9 A. We was just talking about did I have the knowledge to
10 set modular houses.

11 Q. Okay.

12 A. And I had set probably about Fifteen.

13 Q. Okay. And you told you had just set one down the road?

14 A. Right.

15 Q. And were numbers, money, was that ever discussed at this
16 time?

17 A. Yeah, well, I said I'd set it in two days, and I made
18 Five thousand Dollars.

19 Q. Okay.

20 A. That's what they paid, and that's before interior finish
21 or stairs or anything like that.

22 Q. So, at that point you had not discussed Brent Shirts or
23 that project?

24 A. No.

25 Q. When did you first discuss the Brent Shirts project?

1 A. I guess, I don't recall exactly when, whenever he closed
2 the deal. It was kind of fast the way it kind of went.
3 It's like he kind of had this deal way in the works before
4 he involved Mike or I. Like I said, I was building a house
5 out at the lake of my own, and you know, they came out and
6 saw the project, and you know, he kind of told me about this
7 deal and it was like next thing I know the boxes are there
8 and Mike's pulling the permit.

9 Q. Okay. Did he ever show you any drawings - - -

10 A. No.

11 Q. --- of the home?

12 A. Nope.

13 Q. When did you first discover the layout, or the footprint
14 or the size of the home?

15 A. When I saw them in a package unit showing up on the job
16 that morning Mike described. When I saw that there was
17 actually four trailers, one of the trailers carried the
18 third tag, what they call a tag unit, and that was two
19 bedrooms actually in that tag unit, so it was a pretty good
20 size. That's all it was. And then there was another
21 trailer with two dormers on it, and it had two skids of
22 shingles, and it had a full skid of two by sixes, twelve
23 foot.

24 Q. Okay. And that was the first day you were on the site?

25 A. Yeah.

1 Q. Alright. And the foundation was up and ready for the
2 set?

3 A. The foundation was up, Mike was finishing pouring it,
4 and you know, I, actually, the first thing you do in a set
5 is you go ahead and plate it. And that was another thing
6 that I don't recall what I charged him, it was a standard
7 fee, but I had to purchase the two by eights to go over the
8 blocks and I had to plate it so that we could, so that it
9 actually had a foundation bolted to, I mean, it had a plat
10 bolted to the foundation that we, that we lagged the house
11 to the plate that ties into the foundation.

12 Q. But wood on top of the brick?

13 A. The brick that Mike did, yeah.

14 Q. Okay.

15 A. And he said it was crooked, I told him, I told him, I
16 said, you need to add three quarters of an inch per box, per
17 set, and he didn't do it and he came up an inch and a half
18 short on the front.

19 Q. Alright.

20 A. That wasn't wrong with the set, it wasn't anything out
21 of crooked or anything like that, he just blew it.

22 Q. A little short?

23 A. Yeah.

24 Q. Alright. The scopes of work between you and Mike, how
25 was that determined?

1 A. Mike was, as far as I know, was going to do the
2 foundation and a thousand dollars for pulling the permit,
3 and that's what people do when they don't have licenses.

4 Q. And what were you going to do?

5 A. I was going to set the house. I was going, I was going
6 to set the house, I was going to do the roof, I was going to
7 do the interior finish, porches, stairs, whatever, anything
8 that needed to be done, but at the end of the day when we
9 helped get these -- Mike and I showed up to meet these
10 trailers and we had a guy with a tractor show up, and we had
11 to take out street signs, stop signs, fill in ditches so
12 that we could get this gigantic trailers around this corner.
13 And then we had to down trees to get them around another
14 corner onto his lot. That day was all for free, we worked
15 all day, and Mike was really bombed out that, you know, that
16 was it for him, you know. The foundation was done, the
17 boxes were there, and I felt for him because I'd known him
18 for a couple of years, and he had gone through some really
19 horrific stuff family-wise. And I said, Mike -- and I made
20 a comment to him about his weight, and I didn't feel real
21 good about that either, it was a kind of a joke but he
22 didn't take it to be a joke. And I said, listen, I said,
23 why don't you do the roof, interior finish, interior paint.
24 You know, I said there's plenty of stuff for me to do.

25 Q. So, that was determined on the day that the boxes were

1 delivered?

2 A. Yeah.

3 Q. Alright.

4 A. And he said, and he was ecstatic, and he said, that
5 would be great.

6 Q. Okay. And so, when was it determined, when did you
7 actually meet with Tim and decide that you were going to be
8 -- how did you know to be out there for this set?

9 A. We met, we met about a week, a week prior to him going
10 to the -- I think, I don't know, maybe the check had to be
11 sent for presetting or whatever that was, I think if you
12 look at the date on that check and what, you know, the
13 actual setting coincides, it must mean that he wrote it
14 before he left to the Philippines. I couldn't believe that,
15 if I were to, if that was my job and that was my first
16 modular set, there ain't no way I would have went to the
17 Philippines, I don't care under any circumstances. If that
18 was my job I would have been there.

19 Q. Why do you say it was his first modular set?

20 A. It was his first modular set.

21 Q. How do you know what?

22 A. Well, I would just, just by talking to him. He was a
23 salesman for trailer lots. You know, modulars haven't been
24 out really that long, you know, and he had been in the car
25 business, you know, way back then when modulars were first

1 starting. So, you know, I just figured that he'd never had
2 any experience with them.

3 Q. He never told you - - -

4 A. Because I - - -

5 Q. --- he never told you that one way or the other?

6 A. No, no. I just figured that he didn't know anything
7 about construction.

8 Q. Okay. Alright. And did he tell you that this was his
9 first set?

10 A. I don't recall.

11 Q. Okay. Alright, so about a week prior you met with Tim
12 McGee and said, yeah, I'll set the house for you?

13 A. Yeah.

14 Q. And was a price discussed at that point?

15 A. Yeah, the price, I think we discussed a price is when he
16 told me it was three boxes. And I think that's when I said
17 it would be Sixty-five hundred, I was thinking it would just
18 be regular set, just a tag in and it would be three days and
19 out. And when I saw this house I called him, I called him
20 on that, it was a zero one, some other three digits, and
21 then -- to call the Philippines, I got a hold of him and I
22 said, there's no way I'm going to do this house for Sixty-
23 five hundred Dollars, there's no way. And he goes, listen,
24 he goes, I'm sorry I'm not there because I know you just
25 came into this blind, he goes, just do what it takes, just

1 do it, get it on the foundation, and I did. And then I
2 called him that night and I told him, I said, the pieces, I
3 said, there's nothing to the tag unit, it has no roof to it
4 at all, it all has to be tied back into the very top of the
5 ridge. I said, I mean, that's working Thirty-five, Forty
6 feet off the ground and walking on a two by eight. And like
7 I said, if you did drop a tool you're done, or especially if
8 you fell, you're done.

9 Q. Alright. You had mentioned that there were not, there's
10 no framing on this tag unit or this front part of the home?

11 A. Yeah, that's just floating into space there on the front
12 right there. And three quarters of an inch on these two
13 boxes, but a full inch and a half on that. And what that is
14 is that's actually bands to actually, to build the floor
15 system, it's a two by ten band system doubled because walls
16 are going to be going over it, and there's an inch and a
17 half of it floating free. You didn't see that.

18 Q. What were some of the defects, the manufacturing defects
19 we'll call them, when the boxes arrived?

20 A. The dormers being the wrong size were, that's the first
21 time I'd ever experienced anything like that. I've set
22 dormers before and dormers are difficult just because
23 they're dangerous. You know, you're standing up there,
24 there's -- if you get any flooring on a good house it's the
25 first two rungs. They put that on for safety for the person

1 that's setting the house and they also put it on to give it
2 side shear when it's going down the road, you know, to give
3 it side, you know, just like the plywood on the sides to
4 keep it from rocking this way and that way, and the top
5 gives it, you know, top shear, top and bottom shear which
6 does coincide with the nailing on the floor system.

7 Certainly, once you're out on the rafters and you've got
8 this thing coming at you that weighs about, probably about
9 nine hundred, a thousand pounds, you know, fully dressed,
10 and I didn't build it, it came on the trailer just like
11 this, and there's actually just one belt in the middle of
12 it, so it's the same belt as they make seat belts out of,
13 and that's hooked onto the crane. And you've got to stand
14 in the rafters, in the hole there, and you'd got to line it
15 up, get it in, nail gun between your legs, and you've got to
16 get a couple of shots in it before they can take the tension
17 off with the crane. Then all the ones I've did have gone
18 good. This one, they were too big. If they're too small,
19 like I said, it's easy to add. There was no shingles up
20 here at that time, and you could always pack it and then
21 stack the wall, and pack the wall that's holding it up. You
22 can't just have this laying on plywood, you have -- these
23 are laid out and cut out in the rafter system, and then
24 there's a wall built underneath them that I had to build
25 because these -- and then you have the wall underneath them.

1 Q. What do you need the wall underneath it for?

2 A. To, you can't put t his much weight on just these two by
3 eight rafters right here going up the roof. I mean, it's
4 spanned so far, and you know, they're in multiple pieces,
5 and they just can't take the weight of that dormer. And
6 then you have to also be able to stand up in that dormer and
7 look out the window. So, you have to, you know, have a wall
8 to carry through to the, you know, from the floor to the
9 bottom floor to the roof to carry the weight of that dormer.

10 Q. And that wasn't done by the manufacturer?

11 A. No, no. And like I said, and I was with the saws-all on
12 the front cutting this, because at first I thought just the
13 front didn't fit, you know. And so, I backed it, I backed
14 the dormer off and then I got, you know, and I cut the front
15 out and brought it back, it didn't fit and it was too wide,
16 and I told them, just get it away from me, you know, and I'd
17 have to do some work. And that was the result of that one
18 picture where it's just dangling, and the roof is done. I
19 am proud of this set. This set, you couldn't take these
20 three pages and push it between any crack of that house, all
21 eighty foot of it. And that's bulk head units. The house
22 came out level, the only thing that was wrong with it, the
23 foundation was short. A couple, you know, incidents happen,
24 they happen, but this was by far the tightest set I ever
25 set. I never tried so hard for somebody to get a house

1 crammed together, trying to get off of that short
2 foundation. I mean, this card, you couldn't drop a playing
3 card anywhere in it. And yeah, I was proud of the job I did
4 on that house.

5 Q. Okay. So, we've got the dormers being too big.

6 A. Yes.

7 Q. Did they delay or require the crane to be there for more
8 than one day?

9 A. Absolutely, yeah. Yeah, I mean, it was hours worth of
10 work.

11 Q. Alright. Were there any other problems with the
12 manufactured condition?

13 A. When the house, when the corner broke, threw out in that
14 one it took, you know, forty-five minutes to fix, which is
15 really nothing, but when you figure, once you get started,
16 the crane gets there, he's got to get his legs out and his
17 pads down, it takes him an hour just to get his crane ready
18 to start picking something up while we're unwrapping the
19 boxes and, you know, forty-five minutes is almost an hour
20 and you don't have very many hours that you can do in a day.
21 You know, the crane driver calls it an hour before dark so
22 he can get his crane all put back together so it can be road
23 worthy. He said he had to come back. And we still had, you
24 know, we still had another dormer to put on and the rest of
25 that room to fix.

1 Q. What portions, if any, had to be hand built that, in
2 your opinion, shouldn't have been as a manufactured home.

3 MR. MAHAFFEE: Your Honor, I'm going to object to a man
4 whose not licensed to do anything giving opinions regarding
5 the building trade. Despite his Twenty-five years of
6 experience he's still not licensed, nobody with his company
7 is licensed as we have found out.

8 THE COURT: Well, I understand that, but I think the
9 question was, what else did you have to do. So, he's just
10 testifying, as I understand it, as to what he did. Is that
11 the question?

12 MR. CLOSSER: I'm just asking what he had to hand
13 build.

14 THE COURT: That was all - - -

15 MR. MAHAFFEE: He asked him an opinion is what I was
16 talking about.

17 MR. CLOSSER: Let me rephrase the question.

18 THE COURT: Okay.

19 MR. MAHAFFEE: Okay.

20 Q. What did you have to hand build that you didn't
21 anticipate having to hand build?

22 A. Ordinarily in modular home you got walls - - -

23 THE COURT: Just tell him what you had to build.

24 A. The end walls come pre-made, they're in three pieces. I
25 had to hand build those, frame the window. Everything, this

1 eyebrow was, one side was there, two feet of these shingles
2 were there for about four feet and the rest of this stuff
3 all the way back to the top of the ridge of this house I had
4 to stick build, which entailed me to have to make a walk
5 system up right about thirty-five feet up here so I could
6 put my own ridge back to the ridge across this roof. So, I
7 had, these are ordinarily cut and come in a package because
8 as you come down a twelve/twelve pitch matching a
9 twelve/twelve pitch, if you use a framing square when you're
10 measuring them they come down exactly eight and three
11 quarters inch shorter every time. So, it's just like
12 fitting puzzle pieces.

13 Q. You testified about - - -

14 A. And I had to cut those, and that takes a long time.

15 Q. You testified about having to shingle. Why was that a
16 problem?

17 A. Having to shingle?

18 Q. Yes.

19 A. Because you had to get the roof on it so it wouldn't
20 leak.

21 Q. And in your experience, are modular homes shingled?

22 A. Up to the last four feet.

23 Q. Alright.

24 A. The last, about four or five foot, the last flip is
25 usually, is papered and it's plywooded up, nailed up, ready

1 to shingle.

2 Q. Alright. And so, all of these problems, all of these
3 manufacturing problems like you just testified to, the
4 dormers, the hand building of the eyebrow area, the front
5 roof and the sheeting that you testified to with Mr.
6 Mahaffee being on the wrong side, the sheeting, that
7 increased your cost?

8 A. And also, like I said, this thing was the size of a six
9 lane bowling alley inside. This house was huge. And Tim
10 wanted us to deck the whole floor. And so, I said, well,
11 why, you know, we'll buy the tongue and groove plywood and
12 when the crane's there, when we have the first layers up
13 we'll have them bring that in so it will be on the floor,
14 and I charged Forty Dollars a sheet to put it in. That's
15 what I've been paid for the last ten years from the cheapest
16 guy in the market. And that cost he thought, I guess,
17 because it was so convenient to be up there, he didn't think
18 that he should have to pay for it. But that's definitely in
19 a set, or ever in a set, or if you wanted, you know, space
20 in your garage and you wanted plywood, it's the same thing
21 as the upper catwalk part.

22 Q. When you quoted Tim Sixty-five hundred Dollars for the
23 set did that include the second floor?

24 A. No.

25 Q. What did it include?

1 A. Well, what I, what I quoted in the blind would be, would
2 have been a small, a small single dormer house that had,
3 like a five/twelve pitch on it, fifty-four feet, well, maybe
4 a fifty-four foot box, and like you said, a small tag porch
5 or a tag kitchen.

6 Q. Tell me about the garage, how did you come to do that
7 work?

8 A. That, he asked me how much I charged for garages, and I
9 charged Tim the same thing as I charged people six years
10 back, which was a break, Ten thousand bucks. I never buy a
11 garage door, I don't buy the slab, and I don't do the
12 firewalls for free because they're always different sizes.
13 This happened to be a huge, a nice size garage, Twenty-four
14 by Twenty-four, and in some of the pictures you can see how
15 actually how far up the house the garage goes, and that's
16 why, you know, I had to take this window out up there, and
17 then, you know, he was talking about putting smaller windows
18 in, but by then, you know, this had already been roofed and
19 the drywall incident had already come to a head, and I
20 wasn't getting paid, and I left. And I didn't take any
21 windows with me.

22 Q. And how would Mr. McGee know what is included in the Ten
23 thousand Dollar drywall package, was that ever discussed?

24 A. No.

25 Q. So, Tim didn't know what he was getting for Ten thousand

1 Dollars?

2 A. Oh, I mean, yeah, he knew that it was three walls, all
3 of the siding and the roof, stick built, you know, you get a
4 garage. You get a man door, that's a thirty-six inch metal
5 exterior door, and one window.

6 Q. And you didn't - - -

7 A. And I do the, and I do the, I frame it, I make the
8 rafters, sometimes if they want a truss, you know, they can
9 have a truss because it works out the same, it's easier for
10 me. And I do a Twelve inch eave all the way around it.

11 Q. And that was - - -

12 A. And I break my own fascia and vinyl soffits. I think
13 that's probably an excellent price today like it was Seven
14 years ago.

15 Q. So, you ended up charging Tim and extra Eleven hundred
16 Dollars for the firewall, correct?

17 A. Right. That has to be done, that has to be sheetrocked.
18 And with the incident that they're complaining about, that
19 they never -- you see, he's not complaining that I did the
20 firewall, what Mike and Tim was complaining about, that it
21 wasn't pull finished tight like these walls here. A
22 firewall is just fire taped, like the house I live in, the
23 garage, you have to have a one hour fire barrier between gas
24 motors, like if a car is in the garage or a motorcycle or a
25 lawn mower. So, the one wall or sometimes the wall and the

1 ceiling if a garage is built, you know, with a frog the
2 ceiling will have to be done. It just fire taped. That
3 means you run the mud, the bed the tape, and that's it. You
4 cover the nails once, boom, that's a one hour fire hold. It
5 doesn't mean that it's finished like these walls right here.
6 And that's what their complaint was when I was out there,
7 that I needed to finish, like these walls, those garage
8 walls, and that wasn't in -- that whole fire tape issue
9 thing wasn't about the cost, it was about me finishing it.

10 Q. As far as you knew they were okay with the cost?

11 A. Absolutely. They were fine with it, they just wanted me
12 to finish it. And Mike made an attempt to do it and it was
13 just horrible. I mean, that's a -- to finish drywall is an
14 art, you know. And I look at it as an artist. It's not for
15 anybody to do. I mean, I went to school for it for four
16 years.

17 Q. Alright. Let's take a look at Plaintiff's Twelve, the
18 damages, it's right there in front of you. These are what
19 Mr. McGee thinks you owe him money for.

20 A. Uh-huh.

21 Q. The roof damage, Thirty-five hundred Dollars. You had
22 invoiced him on Thirteen eighty-nine, Thirty-five hundred
23 Dollars for roof labor and materials, five square, what was
24 that for?

25 A. That says Thirty-five square, doesn't it?

1 Q. It says five square in the invoice.

2 A. There's - - -

3 Q. Is that a mistake?

4 A. Yeah, there's Thirty-five or Thirty-seven square of
5 shingles on the trailer. Alright. Today, if I take on and
6 off a roof I get Two hundred Dollars a square. I just did a
7 job up in New York, they're getting Four hundred a square up
8 there. To put it on the contractor, if the roof is ready we
9 get a hundred dollars a square. Tim paid Forty Dollars a
10 square, and I paid the guys Forty Dollars a square.

11 Q. That you passed on to Tim?

12 A. I passed the cost straight on to Tim, I didn't make five
13 cents on it. And Mike lost out on it.

14 Q. Okay.

15 COURT REPORTER: Just one moment, I've got to get
16 another short hand pad.

17 THE COURT: Okay. Go ahead.

18 COURT REPORTER: Okay, I'm ready.

19 Q. That same invoice you charged Twenty-five hundred
20 Dollars, subfloor installation, purchased Thirteen sheets,
21 is that the upstairs that you did mention before?

22 A. That was labor for the sheets that we packed in there,
23 and what it was short.

24 Q. Alright. The next line item on there is ceiling with
25 catwalk upstairs.

1 A. The ceiling, when you pull together a mod like that,
2 with the upstairs supposedly vacant, and they do that a lot
3 of times square footage to do it afterwards, after everybody
4 leaves and they get the CO so they don't have to pay taxes
5 on that extra Sixteen hundred square feet.

6 Q. Tell me about that.

7 A. There's a collar tie that is involved to tie the ceiling
8 together, it has to be every rafter now, hurricane,
9 everything east of I-Ninety-five. Well, it doesn't
10 including a ceiling height because they could an eight --
11 seven foot, eight foot, nine foot ceiling. Mr. Shirts
12 wanted an eight foot ceiling in it, so I had to put rafters
13 the whole, ceiling rafters the whole length of the house,
14 and in the catwalk so that he could it for storage, and you
15 could actually stand up at that eight feet, you know.

16 Q. And that wasn't contemplated in your original Sixty-five
17 hundred Dollar scope of work?

18 A. No, you always get paid extra for that.

19 Q. Alright, ceiling upstairs and frame door wall, Six
20 hundred Dollars.

21 A. Yeah, that was, also too with a modular home you'll get
22 - - -

23 Q. Just tell me what that is?

24 A. It's, it's like the phone booth going up the stairs.
25 The stairs go up to nowhere, and you, and it comes with

1 walls and you're supposed to assemble the walls and
2 sheetrock them on both, or on one side, on the inside, five-
3 eighths inch sheetrock. Well, they didn't have any of that
4 there. So, I had to build that structure and put a door on
5 it so it makes the lower capsule fireproof from the upper
6 capsule.

7 Q. Okay.

8 A. And I built that.

9 Q. Alright. And that is not, was that anticipated in your
10 Sixty-five hundred Dollar scope of work?

11 A. No, no, it wasn't there but it needed to be.

12 Q. Okay. Alright, do you agree with Mr. McGee that the
13 blown in insulation, the sheetrock and finish main house,
14 the A to Z Advanced Home Inspection, carpet repair was all
15 related to the water leak?

16 A. No, I don't.

17 Q. Okay. Tell me about it.

18 A. For one thing, the carpet -- the ceiling they made us
19 tear down. It had, like I said, a small of it was wet, I
20 could have cut it out and fixed it.

21 Q. Okay. And there you're referring to the sheetrock - - -

22 A. Right.

23 Q. --- and finish the main house, the Forty-six hundred
24 Dollars?

25 A. That's the big, that's a big amount, right.

1 Q. Is that a change order, what is that?

2 A. It was a change order.

3 Q. Alright.

4 A. Mr. Shirts wanted something, like Tim said, something
5 nicer, he wanted the slick finished ceiling, and Tim did
6 that to appease him for the carpet getting wet. And the
7 carpet, all you had to do was run a rug shampooer on it and
8 then the little corner wold have been fine. There was no,
9 there was no subfloor bubbling.

10 Q. And the blown in insulation directly related to the
11 ceiling?

12 A. Yes, because when we pulled the ceiling down we had to
13 cut all the way around it and then pull the sheets down, and
14 so down came the blown in insulation.

15 Q. Alright.

16 A. And we did that free.

17 Q. Okay. Alright, let's move on to the Sheila Lake line
18 item, three tarps and treated studs, Five hundred bucks.

19 A. We used her credit card to get the extra tarps, and the
20 studs.

21 Q. Okay. The treated studs, what were those for?

22 A. For the garage walls, upon Mr. Shirts's request.

23 Q. Okay. You don't normally put treated studs in a garage?

24 A. Absolutely not. It's a waste of money.

25 Q. Alright. And you put those in there, why?

1 A. Customer's request.

2 Q. That was Mr. Shirts?

3 A. And Tim McGee.

4 Q. Okay. And finally, we've got this big ticket item for
5 Seven thousand Dollars, a second charge for the home set.

6 A. Well, the Seven thousand Dollars, how it was broke down
7 was, is again, because of all of the construction costs for
8 all the framing that we had to do, Tim had, couldn't and
9 wouldn't accept my invoices in the order that I was trying
10 to charge him, because I guess he couldn't get his draws. We
11 had to do invoices over and over and over again. Sometimes
12 maybe that's why he might have two of them. I never gave
13 him a fresh one and said, give me that old one back. But he
14 would tell me how, you know, he'd tell me how he wanted it
15 written and then we'd have to, you know, write it back
16 again. And that's how I had to get paid. I had to get paid
17 two times to get the total amount for the framing that I
18 did.

19 Q. And that second charge for the home set, or the total
20 charge of Thirteen thousand Dollars contemplates all the
21 extra work that we just discussed?

22 A. Half stick built, half modular.

23 Q. Alright. AC in the garage, would that, would AC or
24 electric be included in a garage?

25 A. No. Absolutely not ever. I don't even plug in the

1 modulars. I never have. That's for an electrician to do, a
2 licensed electrician.

3 Q. Alright. Did you tell Tim that when you quoted to him
4 the Ten thousand Dollars?

5 A. I didn't know anything about the plumbing or electrical,
6 nothing about it.

7 Q. Did you tell him that you weren't going to do the
8 electrical in the garage?

9 A. It was never a question, it was never asked of me to do.

10 Q. Alright. Charged twice for permit, we don't have to
11 talk about that... Charged twice for interior trim, Six
12 hundred Dollars. Why did you charge Tim Six hundred Dollars
13 for interior trim?

14 A. After the sheetrock was done and the shoe mold was up,
15 and the baseboard and chair railing, and the crown mold was
16 up, Mike forgot an area in the very, very back of the house,
17 the last section of the house was all master bedroom,
18 bathroom. The last window all the way over, and it had two
19 bathrooms actually, one room had two bath rooms, a his and
20 hers, and they were both set up a little different. And
21 then they went and they joined inside this long closet that
22 was wider on her side and narrow on the guy's side, you
23 know, for her bigger bathroom area. And all that area up
24 there had to be sheetrocked, had to be done, and it all had
25 to be done. The shoe mold had to be put up, and the outside corner

1 had to be put on, it had to be taped, and I did all of that.

2 Q. And that was what the Six hundred Dollars was for?

3 A. Yes.

4 Q. Alright. And that was within Mike's scope of work?

5 A. Yeah, yeah, that was in the interior trim. He just
6 didn't, he just missed it.

7 Q. Can you shed any light on the windows you allegedly
8 promised, Two seventy-six?

9 A. Well, you see, one window had to come out for the garage
10 to go, for the garage to be -- first off, the garage was
11 supposed to be an eight foot -- a regular garage built is an
12 eight foot wall. This house was so high that I agreed to do
13 it ten foot, so that when you came out of the door from the
14 kitchen down the stairs you weren't eye level with -- the
15 door wasn't eye level with the ceiling, so we could get a
16 higher ceiling. And then, that window, so that window had
17 to be, had to come out because the roof from the garage hit
18 right about in the middle of that window. And if you would
19 have put a window above that, then if you're standing on the
20 floor the window would start right about here and go up.
21 Could you put a little window there? I don't know if they
22 did or not, I wouldn't, it would be too close to the roof.
23 And could I do it? Absolutely, I could. There's one thing
24 that I hate about construction, when somebody says, can you
25 do a roof for me? Yeah. Can you do a dormer for me? Yeah.

1 Well, then when you finish the roof they go, where's my
2 dormer? I said, I can do it, you didn't tell me to do it or
3 how much I could do it. It's like the same thing with the
4 windows. Can you do it? Yeah, I can put them in there
5 diamond shaped if you want. But no money was, was, no
6 window were mentioned except for one coming out, and I did
7 that for nothing.

8 Q. So, you didn't promise to install any windows?

9 A. No. And I didn't have any extra windows from a job. I
10 do not ever carry anything extra from a job, no lumber, any
11 shingles, nothing, it goes to the dumps.

12 Q. Alright. Did you agree to an Eight hundred and fifty
13 Dollar allowance on the garage door?

14 A. Never. I've never purchased, I've purchase two garage
15 doors in my life, and they're on a house that I built at the
16 lake. I've got people that deals with Acme Doors. The last
17 job I did I got a guy half price on a door.

18 MR. MAHAFFEE: Objection, Your Honor.

19 THE COURT: Okay. We don't need to go into that. Just

20 - - -

21 A. Okay. I don't ever buy garage doors, I don't.

22 THE COURT: Okay. Thank you.

23 If someone wanted them - - -

24 THE COURT: Okay. That's the answer.

25 A. Okay.

1 THE COURT: Okay. Thanks.

2 Q. Alright. Fixed drip edge. Were you aware of any drip
3 edge that had a problem?

4 A. No, no. I actually had a sider on the job.

5 Q. Were there any problems with the straps or, and damage
6 done to the soffit of this - - -

7 A. Absolutely. You plan for it, and when the straps go on,
8 if you put two by fours along the existing fascia, and yeah,
9 when the cables, you know, they've got to come under the
10 house and up, you know, they're going to hit, so you put
11 two by fours up there to block it, and if any - - -

12 Q. Did you do that?

13 A. Yeah. And if one comes loose, sometimes it does, and if
14 something gets banged, you replace it. It's a Three Dollar
15 piece of drip edge, ten foot, three bucks a section.

16 Q. And did you fix any damage that was caused by the cable?

17 A. We fixed it, we fixed all four sides that was hit.

18 Q. Okay.

19 A. That's, four cables came through it.

20 Q. Alright. And we've already discussed why the crane was
21 there for an extra day, correct?

22 A. Yes.

23 MR. CLOSSER: Alright, sir, those are the questions I
24 have for you.

25 THE COURT: Anything on redirect?

1 MR. MAHAFFEE: No, sir. The plaintiff would rest, and
2 technically, I'm supposed to make directed verdict motions,
3 I'm doing it. And I'll be glad to do as much as the Court
4 would want, or as little as the Court wants.

5 THE COURT: I, the Court wants you to do very little.
6 I've heard everything I need to hear, I think.

7 Okay. You may step down, Mr. Thornton, thank you, sir.

8 MR. THORNTON: Thank you, sir.

9 THE COURT: Okay. What I do want y'all to do, okay,
10 is, you know, I've heard all the testimony here today and
11 like that. I want y'all to, if you'd send me an E-mail,
12 fine, you know, nothing too formal, of what you think this
13 testimony that I heard today proved. Okay? Y'all just get
14 it together. It would be essentially like a closing
15 argument, though you don't have to, may it please the Court
16 or anything like that. I just want you -- y'all all heard
17 what the testimony was, I want y'all to tell me what y'all
18 think it proved.

19 MR. MAHAFFEE: Alright, sir.

20 THE COURT: Okay?

21 MR. CLOSSER: Yes, sir.

22 THE COURT: And y'all send it to me. How much time do
23 y'all need?

24 MR. CLOSSER: Can I get it to you next week?

25 THE COURT: Next week will be fine.

1 MR. MAHAFFEE: Yeah, that's fine.

2 MR. CLOSSER: I'm swamped. I appreciate it.

3 THE COURT: Okay. If y'all will get it to me next
4 week, I'll be looking over these exhibits and things like
5 that. Okay?

6 MR. CLOSSER: I do want to preserve for the record a
7 directed verdict motion on the same motions that were raised
8 in my motion for summary judgement.

9 THE COURT: Okay. Okay, Number One, I'm denying the
10 directed verdict motions for both of y'all. Okay? Okay,
11 thank y'all. Okay, that way you don't have to reserve them,
12 you don't have to say anything else about them.

13 COURT REPORTER: Judge, please ask the lawyers to give
14 me all of the exhibits before they leave.

15 THE COURT: Yeah, before you leave make sure that we've
16 got all of the exhibits. Okay?

17 MR. MAHAFFEE: I'll put them in order for you.

18 THE COURT: Okay. And the only exhibits, -- Number
19 Twenty-six was the record you had not moved to put it into
20 evidence. Any objection to that?

21 MR. CLOSSER: No, no objection.

22 THE COURT: Alright, Number Twenty-six is in evidence
23 as well.

24 MR. CLOSSER: These are defendant's.

25 COURT REPORTER: These are defendant's?

1 MR. CLOSSER: Yes, ma'am.

2 THE COURT: Gentlemen, I appreciate it. Thank y'all.

3 MR. MAHAFFEE: Yes, sir.

4 MR. CLOSSER: Thank you, Your Honor.

5 COURT REPORTER: I had already put Twenty-six as in.

6 THE COURT: Oh, you're right, thank you, ma'am.

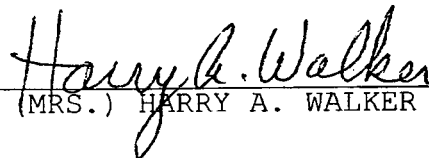
7

CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of Rowesville, South Carolina, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of Common Pleas for Dorchester County, South Carolina, held in Orangeburg County on the Sixteenth day of August, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATE: June 4, 2012


(MRS.) HARRY A. WALKER

IN THE STATE OF SOUTH CAROLINA
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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2008-CP-18-2565

Tim McGee.....Appellant,

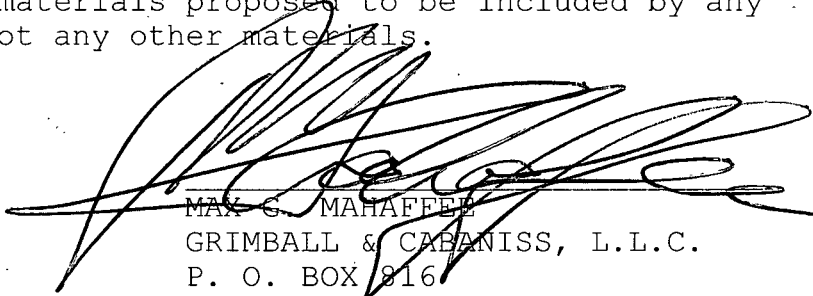
v.

David Thornton & Thornton Brothers Construction.....,
Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other materials.

November 13, 2012



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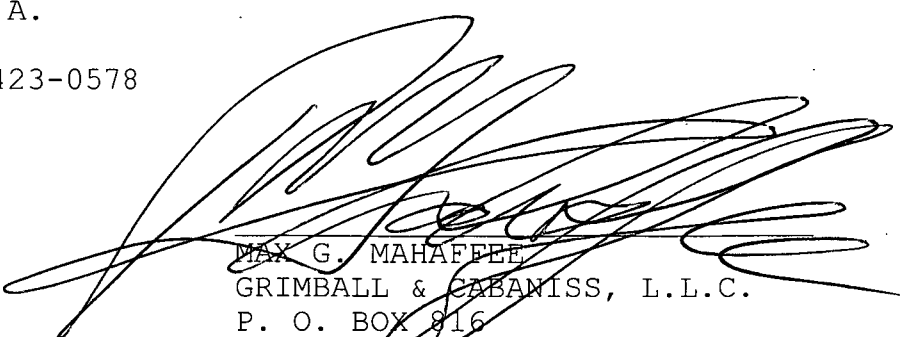
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PROOF OF SERVICE

I certify that I have served the Respondents David Thornton & Thornton Brothers Construction with the Record On Appeal by depositing a copy of it in the United States Mail, postage prepaid on November 13, 2012 to Respondents' counsel of record, whose name and address appear below:

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November 13, 2012



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