

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Joseph M. Strickland, Master in Equity

Case Tracking #: 2012-210746
Civil Docket No. 2009-CP-40-64

F.M. Haynie d/b/a Docwild's General Contractor, Appellant

v.

Paul E. Cash and Carole S. Cash, Respondent

RECORD ON APPEAL

Volume 1

F. M. Haynie
1469 Florawood Drive
Columbia, SC 29204
(803) 238-0757
APPELLANT *Pro Se*

Catharine Garbee Griffin, Esquire
POB 8057
Columbia, SC 29202
(803) 799-9091
Attorney for Respondents

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

FM Haynie dba DocWild's,

Plaintiff,

vs.

Paul E. Cash and Carole S. Cash,

Defendant

MECHANIC'S LIEN BOOK _____ AT PAGE _____

**NOTICE AND CERTIFICATE OF
MECHANIC'S LIEN**

Book 1476-3002

2008089783 11/18/2008 13.12.08:363

Fee:\$10.00 County Tax: \$0.00

Mechanics Lien

State Tax: \$0.00



2008089783 Richard W. Rodden

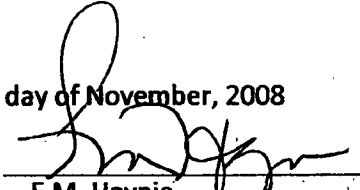
Richland County ROD

TO THE ABOVE-NAMED DEFENDANTS:

NOTICE IS HEREBY GIVEN that a Mechanic's Lien is claimed pursuant to *S.C. Code Ann. § 29-5-10 et seq.* (1976, as amended) by DocWild's, above-named, and is being filed in the Office of the Register of Deeds for Richland County, South Carolina on behalf of the above-named Plaintiff for labor and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in Exhibit A attached hereto and incorporated herein by reference, commonly known as 1501 Greenhill Dr., Columbia, South Carolina, and that the undersigned Plaintiff has furnished labor, services and materials in improving said real estate by virtue of an agreement with or the consent of the owner of said real estate. Plaintiff craves reference to Exhibit B attached hereto and incorporated herein by reference which is a just and true statement of account of monies due to the Plaintiff for such labor, services or materials provided at the request of or with the consent of the owner of said real estate or with their authorization.

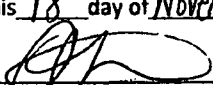
That by virtue thereof, by the serving and filing of this Notice and Certificate, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, the Plaintiff has and claims a lien to secure the payment of the debt so due and the cost of enforcing said lien upon the buildings or structures hereinabove mentioned and upon the real property described in Exhibit A attached hereto.

Dated this 18 day of November, 2008


F.M. Haynie

DocWild's
1469 Florawood Dr.
Columbia, SC 29204

Sworn to and subscribed before me
On this 18 day of November 2008


Notary Public for South Carolina

My Commission Expires July 19, 2016

EXHIBIT A

LEGAL DESCRIPTION

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the western side of Greenhill Road (formerly Crocker Road), in the City of Forest Acres, in the County of Richland, State of South Carolina, being shown and delineated on a plat prepared for Janie Daniel Detreville by William Wingfield, R.S., dated January 8, 1962, recorded in the Office of the RMC for Richland County in Plat Book 19 at page 74. Being more particularly shown and delineated on a plat prepared for James William Ward and Patricia Ann Ward by Cox and Dinkins, Inc., dated April 29, 1991, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 53 at Page 5214, said lot being bounded and measuring as follows: On the East by Greenhill Road (formerly Crocker Road), whereon it fronts and measures 130.25 feet; on the South by property now or formerly of Leonard L. Price, whereon it measures 275.70 feet; on the West by property now or formerly of Richard C. Strachan, whereon it measures 130.70 feet; and on the North by property now or formerly of Thomas P. Evans, whereon it measures 261.80 feet, be all measurements a little more or less as more fully shown on said plat.

Derivation: This being the same property conveyed to Paul E. Cash and Carole S. Cash by deed of James William Ward and Patricia Ann Ward dated April 29, 2005 and recorded May 2, 2005 in Deed Book 1048 at Page 2372 in the Office of the Register of Deeds for Richland County.

TMS #: 14009-02-07

Exhibit "B"

Statement of Account

Claimant/Mechanic Lienor: F. M. Haynie
dba Docwild's
1469 Florawood Dr.
Columbia, SC 29204

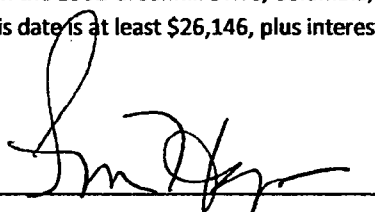
Owner: Paul E. Cash and Carole S. Cash

Contractor: Docwild's

Property Subject: See Exhibit "A" to Notice and Certificate of Mechanic's Lien
1501 Greenhill Drive
Forest Acres near Columbia SC

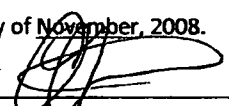
UNDISPUTED AMOUNT DUE: \$26,146

I hereby certify that the amount due to Docwild's on the 1501 Greenhill Drive, Columbia, South Carolina job after all just credits and debits as of this date is at least \$26,146, plus interest at the statutory prejudgment rate and attorney's fees.

By: 

SWORN TO before me this 18

day of November, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 19, 2016

Don
Don
Don
Don
Don

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
F.M. HAYNIE d/b/a DOCWILD'S)
GENERAL CONTRACTOR,)
)
Plaintiff,)
)
vs.)
)
PAUL E. and CAROLE CASH,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.:

COMPLAINT

C.C.C. & G.S.

2009 JAN -6 PM 1:22

FILED

Plaintiff herein, complaining of Defendants, would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Richland County, South Carolina and is engaged in business as a contractor.
2. Defendants are citizens and residents of Richland County, South Carolina and are the owners of real property located at 1501 Greenhill Road, Columbia, South Carolina, 29206 and more particularly described in Exhibit A attached hereto.
3. This Court has jurisdiction over the parties and subject matter herein and venue is proper in this Court.
4. On or about March 2, 2007, and with subsequent design, price and criteria modifications, Plaintiff and Defendants entered into a contract(s) for the construction of a structure on Defendants' property, as well as for certain

repairs to Defendants' property located at the same identified location set forth herein.

5. Pursuant to the contract(s), Plaintiff was to construct an addition (outbuilding) to Defendants' home at 1501 Greenhill Road on a cost plus 25% basis. In addition, and at a subsequent time(s), Plaintiff and Defendants contracted on the same cost plus 25% basis for Plaintiff to make certain repairs and improvements to Defendants' residence. Thereafter, Plaintiff performed and Defendants' made certain payments, but they have refused to pay all sums due, such that the sum of \$26,146.00 is and has been due since August 28, 2008.
6. Plaintiff has a contract with Defendants by the terms of which Defendants owe the sum of \$26,146.00 and demand for full payment has been made, but Defendants refuse to pay such as to be in breach of contract in the sum of \$26,146.00, plus interest.

FOR A SECOND CAUSE OF ACTION

7. Each and every allegation herein is repeated as if verbatim.
8. Plaintiff last performed construction at Defendants' address on or about November 11, 2008, after which Defendants (and Paul E. Cash in particular) announced that they had no intent to pay Plaintiff and would not pay Plaintiff the sums due for, *inter alia*, construction, supplies, labor or material and as a consequence, Plaintiff filed what is commonly known as a Mechanic's Lien on November 18, 2008, which Plaintiff intends to enforce by these proceedings, to include the sum of \$26,146.00 as well as interest, attorney's

fees, costs and such other relief as may be allowed by law, to include, if applicable foreclosure on and the sale of Defendants' residence so that Plaintiff may be paid all sums due.

FOR A THIRD CAUSE OF ACTION

(Breach of contract accompanied with fraudulent intent)

9. Each and every allegation herein is repeated as if verbatim.
10. As an inducement to entice Plaintiff to enter into the within contract(s) and continue to perform, Defendants (and Defendant Paul E. Cash in particular) represented that they would pay Plaintiff all sums due at the rate of cost plus 25%. However, since the time certain payments came due and particularly when the final payment became due, Defendants (and particularly Defendant Paul E. Cash) advised Plaintiff that they had no intention of paying Plaintiff and they made clear that they had purposefully and willfully misrepresented their intent to abide by their contract to pay so as to defraud Plaintiff, to his damage in the sum of \$26,146.00, plus punitive damages. Specifically, Plaintiff alleges that Defendants breached their contract, that they committed fraud in breaching the contract rather than in the making, that the fraudulent acts included representing that full payment would be made upon completion of certain work to be performed and the acts by Defendants were designed and intended to (and did) deceive, cheat and mislead the Plaintiff, inducing him to believe the truth of Defendants' misrepresentations and to act in good faith on those beliefs to his pecuniary damage.

FOR A FOURTH CAUSE OF ACTION

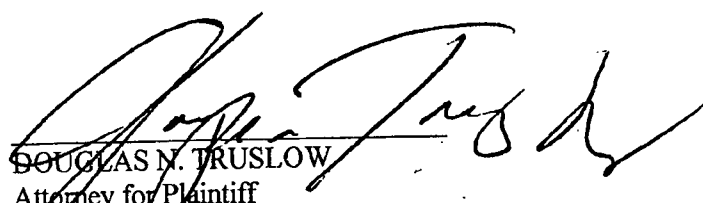
(Equitable claim)

11. Each and every allegation herein is repeated as if verbatim.
12. As an alternative claim and in the event it were determined that no actual contract(s) existed, Plaintiff alleges that he provided valuable services and made valuable improvements to Defendants' property for which he should be fairly compensated and that the sum of \$26,146.00 plus interest is a fair sum that is now due Plaintiff after deducting out payments that have been made.

WHEREFORE, having fully set forth the Complaint herein, Plaintiff seeks the following relief to wit:

1. As to the First Cause of Action, for the sum of \$26,146.00 plus interest;
2. As to the Second Cause of Action, for the sum of \$26,146.00 plus interest and all legal fees;
3. As to the Third Cause of Action, for the sum of \$26,146.00 plus interest and punitive damages in addition to the relief awarded alternatively under the first and/or Second Cause of Action;
4. As to the Fourth Cause of Action and in the alternative, for the sum of \$26,146.00, plus interest and/or as the Court finds to be equitable;
5. Plus the costs of this action and such other and further relief as may be proper.

(signature on following page)


DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, SC 29202
(803)256-6276

Columbia, South Carolina

12/31, 2008

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

FM Haynie dba DocWild's,) C. A. No. 2009-CP-40-00064

Plaintiff,)

v.)

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT AND
COUNTERCLAIM

Paul E. Cash and Carole S. Cash,)

(Jury Trial Demanded)

Defendants.)

Defendants, Paul E. Cash and Carole S. Cash, answer the plaintiff's complaint and counterclaim as follows:

FOR A FIRST DEFENSE

1. Deny each and every allegation of the complaint not herein specifically admitted, qualified or explained.
2. Admit, upon information and belief, the allegations of paragraph one (1) of the complaint.
3. Admit the allegations of paragraph two (2) of the complaint.
4. Admit the allegations of paragraph three (3) of the complaint.
5. Admit that the defendants entered into an agreement with F.M. Haynie to build a structure on the defendant's property, but deny the remaining allegations of paragraph four (4) of the complaint.
6. Deny the allegations of paragraph five (5) of the complaint.
7. Admit that plaintiff has made a demand and further admit that the plaintiff has been paid in full, but deny the remaining allegations of paragraph six (6) of the complaint.

RICHLAND COUNTY
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JEANETTE W. McBRIDE
C.C. & G.S.

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8. Reallege and reassert their responses to paragraphs one (1) through six (6) of the complaint in response to paragraph seven (7) of the complaint as if fully reiterated herein verbatim.

9. Admit that the defendants contend that the plaintiff is not owed any additional money, and further allege that the plaintiff has been paid in full, but deny the remaining allegations of paragraph eight (8) of the complaint.

10. Reallege and reassert their responses to paragraphs one (1) through eight (8) of the complaint in response to paragraph nine (9) of the complaint as if fully reiterated herein verbatim.

11. Admit that the defendants refused to pay any additional sums to the plaintiff because no additional sums were owed to the plaintiff, and, therefore, deny the remaining allegations of paragraph ten (10) of the complaint.

12. Reallege and reassert their responses to paragraphs one (1) through ten (10) of the complaint in response to paragraph eleven (11) of the complaint as if fully reiterated herein verbatim.

13. Deny the allegations of paragraph twelve (12) of the complaint.

FOR A SECOND DEFENSE

14. Plaintiff has failed to file a notice of their mechanic's lien within ninety (90) days of the time they stopped performing labor or furnished material; therefore, the plaintiff's claim should be dismissed.

FOR A THIRD DEFENSE

15. Plaintiff failed to file suit or foreclose a lien within six months of the time they ceased to perform labor or furnish materials to the defendant's property, therefore, the plaintiff's

action should be dismissed.

FOR A FOURTH DEFENSE

16. Defendants deny that any amount is owed to the plaintiff, therefore, the plaintiff has willfully and knowingly claimed money that is not due to them pursuant to the mechanic's lien statute; defendants therefore move to dismiss the lien and seek costs and attorney's fees for the wrongful filing of the lien.

FOR A FIFTH DEFENSE

17. Defendants have paid the plaintiff in full for all work done on the defendants' property.

FOR A SIXTH DEFENSE

18. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A SEVENTH DEFENSE

19. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR AN EIGHT DEFENSE

20. That the plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the

South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A NINTH DEFENSE

21. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
FOR A FIRST CAUSE OF ACTION

22. Reallege and reassert their responses to paragraphs one (1) through twelve (12) of the complaint and alleges as follows:

23. The parties entered into an agreement for the building of the Cashs' outbuilding with a price of thirty five thousand dollars (\$35,000.00) with the further agreement that a few items would be priced separately and then mutually agreed upon by both parties before the work commenced.

24. Paul Cash repeatedly asked the plaintiff whether he was staying within the agreed upon price of \$35,000.00. The plaintiff repeatedly reassured Cash that he was staying in the budget of \$35,000.00.

25. Plaintiff suggested modifications to the design of the defendants' outbuilding. Defendants assented to the modifications with assurances from the plaintiff that the modifications would not increase the cost of the building.

26. The defendants relied on the representations made by the plaintiff in agreeing to have the design modified with the understanding that it would not increase the price of the job.

27. Assuming that the plaintiff contends that the modifications increased the cost of

the building, which defendants deny, then the plaintiff negligently and/or fraudulently misrepresented that the modifications would not cost any additional money, thus inducing and misleading the Cashes into agreeing to the modifications to the design to the building.

28. The plaintiff had a pecuniary interest in making such statements to induce the Cashes to modify the design by misrepresenting the cost of the modification.

29. The plaintiff had a duty of care to see that truthful information was communicated to the defendants. The plaintiff breached this duty by failing to use due care in the representations made to the defendants.

30. The defendants justifiably relied on the plaintiff's representation in assenting to the modifications.

31. As a direct and proximate result, the defendants have suffered damage in defending this lawsuit, in having a demand made by the plaintiff for additional sums due, and potentially owing additional funds to the plaintiff because of the plaintiff's fraudulent and deceptive conduct.

32. Based on the foregoing, the defendants demand and are entitled to recover actual and punitive damages along with the costs of this action.

FOR A SECOND CAUSE OF ACTION

33. Recallege and reassert their responses and allegations as fully as if reiterated herein verbatim.

34. The plaintiff finished all the construction on the Cashes' property no later than April 11, 2008 when he was paid in full for his work.

35. In November of 2008, the plaintiff called the defendant Paul Cash representing that an additional \$9,000 was owed on the project at the property located at 1501 Greenhill Road,

Columbia, SC 29206. Cash denied that any additional monies were owed on the project.

36. The plaintiff did not do any additional work on the property after the afore-referenced telephone conversation.

37. On November 6, 2008, the plaintiff represented to the defendant Paul Cash that \$18,995.00 was owed on the job, doubling the amount demanded by the plaintiff days earlier.

38. Cash denied that any additional monies were owed on the project.

39. Thereafter, twelve days later, on November 18, 2008, again without doing any additional work on the Cashes' property, the plaintiff filed a notice of mechanic's lien claiming fraudulently in a statement, under oath, that he was owed \$26,146.00, a sum almost \$8000.00 more than what was represented twelve days earlier, and triple what was represented at the beginning of November.

40. The plaintiff has filed this action seeking sums pursuant to the mechanic's lien statutes with full and complete knowledge that the sums claimed are false.

41. Such actions by the plaintiff are willful and knowingly done.

42. As a result of the wrongful filing of the mechanic's lien against the defendants' property, the defendants therefore seek recovery of all their attorney fees and costs pursuant to South Carolina Code Annotated §29-5-10.

FOR A THIRD CAUSE OF ACTION

43. Reallege and reassert its allegations in paragraphs twenty-two (22) through forty-two (42) of the counterclaim as if fully reiterated herein verbatim.

44. Representations made by the plaintiff with respect to the amounts owed on the property are dishonest, unfair, and false and constitute fraud.

45. The plaintiff knew the representations were false or was made with reckless

disregard for its truth.

46. The plaintiff's actions are "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce."

47. The actions of the plaintiff affected the public interest because the acts or practices of the plaintiff have the potential for repetition.

48. The plaintiff's acts have a potential for repetition because, upon information and belief, the same types of actions of the plaintiff occurred in the past, thus making it likely that they will continue to occur absent a deterrent, or, the company's procedures create a potential for repetition of the unfair and deceptive acts.

49. As a result of the unfair and deceptive actions of the plaintiff, the defendants have been damaged in that defendants have been required to defend this lawsuit, incur attorney fees, special and consequential damages as the proximate result of the deceptive conduct of the plaintiff.

50. Furthermore, the actions of the plaintiff, in using unfair and deceptive methods, are a knowing and willing violation of the South Carolina Unfair Trade Practice Act. Therefore, the defendants request that the court award three times the actual damages sustained and other and further relief as it deems necessary or proper. The defendants also request that this court award reasonable attorney's fees and costs in the defense of this action.

FOR A FOURTH CAUSE OF ACTION

51. Reasserts and realleges its allegations in paragraphs eighteen (18) through forty-six (46) of the counterclaim as if fully reiterated herein verbatim.

52. The defendants own property located at 1501 Greenhill Road, Columbia, South Carolina 29206. The plaintiff, without the permission or the consent of defendants, entered onto

the defendants' property, upon information and belief, long after the construction project had been completed.

53. Plaintiff's entry onto the property was without the express or implied permission or consent of the defendants.

54. Plaintiff therefore has trespassed on the plaintiff's property causing the defendants actual damages.

55. As a result of the plaintiff willful, wanton and reckless disregard of the defendants' rights by the plaintiff trespassing on the defendants' land, defendants seek to recover punitive damages from the plaintiff.

WHEREFORE, having fully answered and counterclaimed, defendants demand a trial by jury, actual and punitive damages, attorneys fees and costs and for such and other further relief as the court deems proper.



Catharine Garbee Griffin
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
P.O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for defendants Paul Cash and
Carole S. Cash

February 4, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

FM Haynie dba DocWild's,

Plaintiff,

v.

Paul E. Cash and Carole S. Cash,

Defendants.

) IN THE COURT OF COMMON PLEAS

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C. A. No. 2009-CP-40-00064

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT AND
AMENDED COUNTERCLAIM

(Jury Trial Demanded)

JEANETTE W. McBRIDE
C.C.P. & S.S.

2010 OCT 22 PM 3:46

RICHLAND COUNTY
FILED

Defendants, Paul E. Cash and Carole S. Cash, answer the plaintiff's complaint and counterclaim as follows:

FOR A FIRST DEFENSE

1. Deny each and every allegation of the complaint not herein specifically admitted, qualified or explained.
2. Admit, upon information and belief, the allegations of paragraph one (1) of the complaint.
3. Admit the allegations of paragraph two (2) of the complaint.
4. Admit the allegations of paragraph three (3) of the complaint.
5. Admit that the defendants entered into an agreement with F.M. Haynie to build a structure on the defendant's property, but deny the remaining allegations of paragraph four (4) of the complaint.
6. Deny the allegations of paragraph five (5) of the complaint.
7. Admit that plaintiff has made a demand and further admit that the plaintiff has been paid in full, but deny the remaining allegations of paragraph six (6) of the complaint.

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8. Reallege and reassert their responses to paragraphs one (1) through six (6) of the complaint in response to paragraph seven (7) of the complaint as if fully reiterated herein verbatim.

9. Admit that the defendants contend that the plaintiff is not owed any additional money, and further allege that the plaintiff has been paid in full, but deny the remaining allegations of paragraph eight (8) of the complaint.

10. Reallege and reassert their responses to paragraphs one (1) through eight (8) of the complaint in response to paragraph nine (9) of the complaint as if fully reiterated herein verbatim.

11. Admit that the defendants refused to pay any additional sums to the plaintiff because no additional sums were owed to the plaintiff, and, therefore, deny the remaining allegations of paragraph ten (10) of the complaint.

12. Reallege and reassert their responses to paragraphs one (1) through ten (10) of the complaint in response to paragraph eleven (11) of the complaint as if fully reiterated herein verbatim.

13. Deny the allegations of paragraph twelve (12) of the complaint.

FOR A SECOND DEFENSE

14. Plaintiff has failed to file a notice of their mechanic's lien within ninety (90) days of the time they stopped performing labor or furnished material; therefore, the plaintiff's claim should be dismissed.

FOR A THIRD DEFENSE

15. Plaintiff failed to file suit or foreclose a lien within six months of the time they ceased to perform labor or furnish materials to the defendant's property, therefore, the plaintiff's

action should be dismissed.

FOR A FOURTH DEFENSE

16. Defendants deny that any amount is owed to the plaintiff, therefore, the plaintiff has willfully and knowingly claimed money that is not due to them pursuant to the mechanic's lien statute; defendants therefore move to dismiss the lien and seek costs and attorney's fees for the wrongful filing of the lien.

FOR A FIFTH DEFENSE

17. Defendants have paid the plaintiff in full for all work done on the defendants' property.

FOR A SIXTH DEFENSE

18. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A SEVENTH DEFENSE

19. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR AN EIGHTH DEFENSE

20. That the plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the

South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A NINTH DEFENSE

21. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A TENTH DEFENSE AND BY WAY OF AN AMENDED COUNTERCLAIM

22. Reallege and reassert their responses to paragraphs one (1) through twelve (12) of the complaint and alleges as follows:

23. The parties entered into an agreement for the building of the Cashes' shed for a price of thirty-five thousand dollars (\$35,000.00) with the further agreement that a few items would be priced separately and then mutually agreed upon by both parties before the work commenced. Haynie represented that he could build the shed for roughly \$35,000.00 greatly contingent upon finish choices as discussed.

24. Paul Cash repeatedly asked the plaintiff whether he was staying within the agreed upon price of \$35,000.00. The plaintiff repeatedly reassured Cash that he was staying in the budget of \$35,000.00 and that the cost would not exceed the agreed upon price.

25. Plaintiff suggested modifications to the design of the defendants' shed. Defendants assented to the modifications with assurances from the plaintiff that the modifications would not increase the cost of the building.

26. Haynie, the general contractor, constructed the outbuilding pursuant to the terms of their agreement. Haynie gave the Cashes a warranty of good workmanship which is implied

in law.

27. In approximately April of 2010, the defendants discovered that Haynie improperly installed a septic tank in their back yard to service the bathroom in the shed. Haynie failed to disclose to the Cashes that the installation of the septic tank violated DHEC regulations and the laws of the Town of Forest Acres. Haynie failed to have the septic tank approved by the Town of Forest Acres, knowing that the installation of the septic tank would not be approved. Haynie concealed the illegal installation of the septic tank from the Town of Forest Acres and the Cashes who did not know that the installation of the septic tank was improper. Haynie should have tied the sewage disposal for the bathroom into the public sewage system of Forest Acres. Haynie deliberately failed to follow the building requirements of the state and Town of Forest Acres.

28. In the summer of 2010, the defendants learned that Haynie failed to properly install the shingles on the outbuilding. The improper installation of the shingles has caused damage to the outbuilding. Defendants also discovered that Haynie failed to pour the foundation of the building correctly because it is uneven and cracking. Haynie also failed to have the building treated for termites.

29. In the Summer of 2007, Haynie requested that the Cashes allow him to use the shed to store his building supplies and equipment. Haynie also requested that he be able to work out of the shed. Haynie further requested that Bill Schmidt, one of his workers, be permitted to build cabinets and work on other projects in the Cashes' shed. For approximately nine months, Schmidt and Haynie used the Cashes' shed to benefit Haynie's business.

30. The Cashes agreed that if Haynie and Schmidt were using their premises that Haynie and Schmidt would exchange the work they did on the Cashes' shed for the value of the

use of the premises.

31. Haynie reneged on the deal and now seeks unjustly to be paid for work done by himself and Schmidt which should have been done without pay in exchange for the use of the premises.

32. If Haynie breached the oral agreement with the Cashes as set forth above, then the Cashes seek to be compensated for the fair rental value of the outbuilding for each month the plaintiff and his agents occupied the building.

FOR A FIRST CAUSE OF ACTION
(Negligent/Fraudulent Misrepresentation)

32. Reallege and reassert paragraphs twenty-two (22) through thirty-two (32) as if fully reiterated herein verbatim.

33. The defendants relied on the representations made by the plaintiff in agreeing to have the design modified with the understanding that it would not increase the price of the job.

34. Assuming that the plaintiff contends that the modifications increased the cost of the shed, which defendants deny, then the plaintiff negligently and/or fraudulently misrepresented that the modifications would not cost any additional money, thus inducing and misleading the Cashes into agreeing to the modifications to the design to the shed.

35. The plaintiff had a pecuniary interest in making such statements to induce the Cashes to modify the design by misrepresenting the cost of the modification.

36. The plaintiff had a duty of care to see that truthful information was communicated to the defendants. The plaintiff breached this duty by failing to use due care in the representations made to the defendants.

37. The defendants justifiably relied on the plaintiff's representation in assenting to the modifications.

38. As a direct and proximate result, the defendants have suffered damage in defending this lawsuit, in having a demand made by the plaintiff for additional sums due, and potentially owing additional funds to the plaintiff which these defendants deny, because of the plaintiff's fraudulent and deceptive conduct.

39. Based on the foregoing, the defendants demand and are entitled to recover actual and punitive damages along with the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Under S.C. Code Ann. §29-5-10)

40. Reallege and reassert paragraph twenty-two (22) through thirty-two (32) as if fully reiterated herein verbatim.

41. The plaintiff completed all the construction on the Cashes' outbuilding no later than April 11, 2008 when he was paid in full for his work.

42. In November of 2008, the plaintiff called the defendant Paul Cash representing that an additional \$9,000 was owed on the project at the property located at 1501 Greenhill Road, Columbia, SC 29206. Cash denied that any additional monies were owed on the project.

43. The plaintiff did not do any additional work on the property after the afore-referenced telephone conversation.

44. On November 6, 2008, the plaintiff represented to the defendant Paul Cash that an amount of \$18,995.00 was owed on the job, doubling the amount demanded by the plaintiff days earlier.

45. Cash denied that any additional monies were owed on the project.

46. Thereafter, twelve days later, on November 18, 2008, again without doing any additional work on the Cashes' property, the plaintiff filed a notice of mechanic's lien claiming fraudulently in a statement, under oath, that he was owed \$26,146.00, a sum almost \$8000.00

more than what was represented twelve days earlier, and triple what was represented at the beginning of November.

47. The plaintiff has filed this action seeking sums pursuant to the mechanic's lien statutes with full and complete knowledge that the sums claimed are false.

48. Such actions by the plaintiff are willful and knowingly done.

49. As a result of the wrongful filing of the mechanic's lien against the defendants' property, the defendants seek full recovery of all their attorney fees and costs pursuant to South Carolina Code Annotated §29-5-10.

FOR A THIRD CAUSE OF ACTION
(Violation of S.C. Unfair Trade Practices Act)

50. Reallege and reassert their allegations in paragraphs twenty-two (22) through thirty-two (32) of the counterclaim as if fully reiterated herein verbatim.

51. The representations made by the plaintiff with respect to the amounts owed by the Cashes for the construction of the outbuilding are dishonest, unfair, false and constitute fraud.

52. The plaintiff knew the representations were false or was made with reckless disregard for its truth.

53. The plaintiff's actions are "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce."

54. The actions of the plaintiff affected the public interest because the acts or practices of the plaintiff have the potential for repetition.

55. The plaintiff's acts have a potential for repetition because, upon information and belief, the same types of actions of the plaintiff occurred in the past, thus making it likely that they will continue to occur absent a deterrent, or, the company's procedures create a potential for repetition of the unfair and deceptive acts.

56. As a result of the unfair and deceptive actions of the plaintiff, the defendants have been damaged in that the defendants have been required to defend this lawsuit, incur attorney fees, suffer special and consequential damages as a proximate result of the deceptive conduct of the plaintiff.

57. Furthermore, the actions of the plaintiff, in using unfair and deceptive methods, are a knowing and willing violation of the South Carolina Unfair Trade Practice Act. Therefore, the defendants request that the court award three times the actual damages sustained and other and further relief as it deems necessary or proper. The defendants also request that this court award reasonable attorney's fees and costs in the defense of this action.

FOR A FOURTH CAUSE OF ACTION
(Trespass)

58. Reassert and reallege their allegations in paragraphs twenty-two (22) through thirty-two (32) of the counterclaim as if fully reiterated herein verbatim.

59. The defendants own the property located at 1501 Greenhill Road, Columbia, South Carolina 29206. The plaintiff, without the permission or the consent of defendants, entered onto the defendants' property, upon information and belief, long after the construction project had been completed.

60. Plaintiff's entry onto the property was without the express or implied permission or consent of the defendants.

62. Plaintiff therefore has trespassed on the plaintiff's property causing the defendants actual damages.

62. As a result of the plaintiff willful, wanton and reckless disregard of the defendants' rights by the plaintiff trespassing on the defendants' land, defendants seek to recover punitive damages from the plaintiff.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanship)

63. Reassert and reallege their allegations in paragraphs twenty-two (22) through thirty-two (32) of the counterclaim as if fully reiterated herein verbatim.

64. Haynie was the general contractor who constructed the Cashes' shed.

65. Haynie gave the Cashes a warranty of good workmanship which was implied in law.

66. Haynie breached that warranty when he failed to construct the shed with good workmanship, as detailed above. Haynie constructed the shed in a poor manner which deviated from good construction practices, including, but not limited to the failure to properly construct the roof and failure to properly pour and treat the foundation.

67. Haynie further breached that warranty by installing an illegal septic tank and failing to connect the waste system for the bathroom to the public sewer system as should have been done.

68. The Cashes have suffered damages as a proximate result of Haynie's breach of his implied warranties of workmanship because the Cashes will need to correct the defective workmanship of Haynie.

69. The Cashes are entitled to recover actual damages from Haynie.

FOR A SIXTH CAUSE OF ACTION
(Negligence)

70. Reassert and reallege their allegations in paragraphs twenty-two (22) through thirty-two (32) of the counterclaim as if fully reiterated herein verbatim.

71. Haynie owed the Cashes duties not to violate the standards in the construction industry, to construct the work in accordance with the building code, and/or to construct the

work in workmanlike manner, free of defect, and in conformity with all applicable building codes, using good construction practices.

72. Haynie breached the duty and was negligent, reckless, wanton and grossly negligent when he

(a) failed to build the shed in accordance with the Building and Dwelling Code;

(b) failed to build a shed in a careful, diligent and workmanlike manner;

(c) failed to disclose to the Cashes that the septic tank was unauthorized to be used with the shed; and

(d) such other matters as will be proved at trial;

thereby breaching the above-referenced duties, including, but not limited to the construction defects and omissions detailed above.

73. As a direct, foreseeable and proximate result of the negligence and gross negligence of Haynie, the defendants have suffered damage to their shed in an amount to be determined at trial.

74. Defendants are therefore entitled to judgment against the plaintiff for actual and punitive damages in an amount to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract)

75. Reassert and reallege their allegations in paragraphs twenty-two (22) through thirty-two (32) of the counterclaim as if fully reiterated herein verbatim.

76. Haynie and the Cashes entered into a contract for the building of the shed in the Cashes' back yard. The contract is described hereinabove.

77. Under the contract, Haynie had a duty to build the shed in a good and

workmanlike fashion.

78. Haynie breached the contract when he failed to properly construct the outbuilding according to applicable building codes.

79. Haynie's breach of the contract is a direct and proximate cause of damage caused to the outbuilding, including, but not limited to problems with the septic tank, foundation and the shingles.

80. Defendants are, therefore, entitled to a judgment against Haynie for actual and consequential damages resulting from a breach of contract in an amount to be proven at trial.

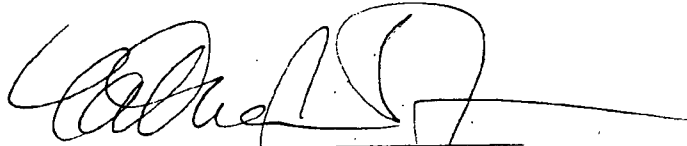
FOR A SEVENTH CAUSE OF ACTION
(Quantum Meruit)

81. Reassert and reallege their allegations in paragraphs twenty-two (22) through thirty-two (32) of the counterclaim as if fully reiterated herein verbatim.

82. In the event it is determined that no contract existed between the Cashes and Haynie for the exchange of services for the use of the shed, then defendants allege that they provided valuable services and conferred a benefit on the plaintiff by allowing him to use their shed for nine months, that the plaintiff realized that benefit, and than plaintiff retained that benefit under circumstances that make it inequitable for him to retain it without paying its value. Therefore, these defendants should be fairly compensated in an amount for the rent of the shed for nine months, plus interest.

WHEREFORE, having fully answered and counterclaimed, defendants demand a trial by jury, actual and punitive damages, attorneys fees and costs and for such and other further relief as the court deems proper.

(signature page to follow)



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(803) 799-9091
Attorneys for defendants Paul Cash and
Carole S. Cash

October 22, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
F.M. HAYNIE d/b/a DOC WILD'S)
GENERAL CONTRACTOR,)
)
Plaintiff,)
)
vs.)
)
PAUL E. and CAROLE CASH,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40-00064

**PLAINTIFF'S REPLY TO DEFENDANTS'
ANSWER AND AMENDED COUNTERCLAIM**

FILED
2011 JAN 12 AM 11:59
JEANETTE M. SKRIDE
C.C.P. & G.

Plaintiff, F. M. Haynie d/b/a Doc Wild's General Contractor, replies to Defendants' Answer and Amended Counterclaim as follows:

1. Plaintiff denies the material allegations of Defendants' Answer and Amended Counterclaim that are inconsistent with the claims of Plaintiff.

FOR A FIRST DEFENSE

AS TO ALL COUNTERCLAIMS

2. Plaintiff specifically denies all allegations contained in the Defendants' Answer and Amended Counterclaim which are inconsistent with the Complaint and realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
3. Plaintiff denies that Defendants have stated a claim upon which relief may be granted.

FOR A SECOND DEFENSE

AS TO THE TENTH DEFENSE AND AMENDED COUNTERCLAIM

(Consisting of seven (7) Causes of Action [sic])

4. Plaintiff specifically denies all allegations contained in the Defendants' Answer and Amended Counterclaim which are inconsistent with the Complaint and realleges and

SCANNED

incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.

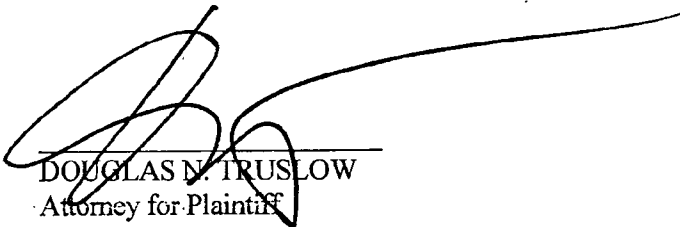
5. Paragraphs twenty-two through twenty-five (22-25) are denied as alleged.
6. Paragraph twenty-six (26) is admitted.
7. Paragraphs twenty-seven through thirty-two (27-32) are denied as alleged.
8. Paragraph thirty-two (32) [sic] is denied as alleged.
9. Paragraphs thirty-three through eighty-two (33-82) are denied as alleged.

FOR A THIRD DEFENSE

(As to the Sixth Cause of Action)

10. Plaintiff specifically denies all allegations contained in the Defendants' Answer and Amended Counterclaim which are inconsistent with the Complaint and realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
11. In the event Plaintiff were deemed negligent, which is denied, Defendants' comparative negligence was greater than Plaintiff's.

WHEREFORE having fully relied herein, Plaintiff prays that this Court dismiss Defendants' Answer and Amended Counterclaim, with costs, and grant the Plaintiff the relief requested in his Complaint.


DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax (803)-256-7659

Columbia, South Carolina

1/7, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
F.M. HAYNIE d/b/a DOC WILD'S)
GENERAL CONTRACTOR,)
Plaintiff,)
vs.)
PAUL E. and CAROLE CASH,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40-00064

**PLAINTIFF'S TRIAL
MEMORANDUM**

RICHLAND COUNTY
FILED
2011 SEP 20 AM 11:49
JEANETTE W. McBRIDE
C.C.P. & G.S.

This case involves a dispute between a contractor and a homeowner relative to the building of what started as the replacement of a shed with another and then became a "man cave", and ultimately a "cabana house". The project quickly grew and grew in size, scope and refinement as is readily apparent from the photographs attached (finished project).

Essentially, the original agreement was for work to be done on a "cost plus" basis for a building of approximately 380 square feet. It quickly changed, at Defendants' direction, to approximately 690 square feet, with a vaulted ceiling, bathroom, HVAC, balcony/loft, architecturally scored and painted flooring, room for future pool related equipment and entertaining, underground electrical wiring, computer and cable television outlets, etc. Further, Defendants had Plaintiff perform additional work on their house, building a child's play center, cutting trees, underground electrical services, replacing soffits, etc. Thus, the work expanded to cost approximately twice what was originally projected.

At the conclusion of the work, Defendants claimed that they did not "need" all of the work and Plaintiff responded that it was not a question of "need" but rather what Defendants had clearly said they wanted.

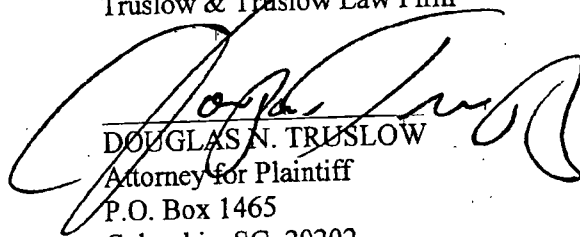
Approximately \$30,000.00 is in controversy (\$26,146.00 plus interest, due since November 11, 2008), plus punitive damages and attorney's fees.

Plaintiff anticipates calling two witnesses and presenting the contract, expense summaries, payment recaps and photographs.

The case is expected to take less than a day. No unusual questions of law are anticipated (although Defendants refused to produce financial records to refute Plaintiff's claims).

Respectfully Submitted,

Truslow & Truslow Law Firm



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No.: 2009-CP-40-00064
F.M. HAYNIE d/b/a DOC WILD'S	)	
GENERAL CONTRACTOR,	)	
	)	<i>Plaintiff</i>
Plaintiff,	)	<i>(Proposed)</i>
	)	ORDER
vs.	)	
	)	
PAUL E. and CAROLE CASH,	)	
	)	
Defendants.	)	

This matter came before me for trial commencing September 19, 2011 and concluding September 22, 2011. Plaintiff was represented by Douglas N. Truslow and Neal D. Truslow of Truslow & Truslow. Defendants were represented by Catherine Garbee Griffin of Baker, Ravenel and Bender.

PARTIES

1. Plaintiff is a citizen and resident of Richland County, South Carolina and does business under the name of Doc Wild's General Contractor. Plaintiff is a graduate of Georgia Institute of Technology with a degree in engineering and has been in the construction business for approximately forty (40) years.
2. Defendants are citizens and residents of Richland County, South Carolina and reside at 1501 Greenhill Road, which is in the City of Forest Acres area (basically a suburb of Columbia). Defendant Paul Cash is a graduate of Lander College and is employed as an investment advisor. Ms. Cash is employed on a part time basis at a local church day care center.

CLAIMS

3. Essentially, Plaintiff has made claims against Defendants based on contract, foreclosure of a mechanics lien, and *quantum meruit*. Essentially, Defendants have denied Plaintiff's claims and counterclaimed, alleging negligence, fraudulent representation, wrongful filing of a mechanic's lien, unfair trade practices, trespass, breach of implied warranty, breach of contract and *quantum meruit*. Plaintiff duly replied and essentially denied Defendants' counterclaims.

JURISDICTION

4. This case was referred to the undersigned for resolution; neither jurisdiction or venue have been contested and I find and conclude that this Court has jurisdiction over the parties and subject matter herein and that venue is proper.

ESSENTIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DISPOSITION

5. Defendants purchased their home at 1501 Greenhill Road in 2005 for approximately \$700,000.00.
6. Plaintiff and Defendants live within blocks of each other. Further, Plaintiff's daughter (who at relevant times worked with Plaintiff) lived a street away from Defendants.
7. In 2006, Defendants sought a proposal from Palmetto Construction, among other contractors, for construction of a separate structure on their property. The structure was projected to be approximately 392 square feet with a typical gable roof system, with four (4) windows and a door, a plywood floor and notably with the interior unfinished (without sheetrock or insulation) and mere exposed rafters. The cost quoted was \$39,847.73. Defendants did not accept that proposal.
8. Later, in late 2006 or early 2007, Defendant Paul Cash (hereinafter "Cash"), who was on a tennis team captained by Plaintiff, requested that Plaintiff provide a bid for construction of what Plaintiff understood was to be used as a shed in which to store tools. Plaintiff initially suggested that Defendants would be better served from a financial perspective to simply purchase a prebuilt/prefabricated shed from Lowes or Home Depot. Cash then indicated that Defendants wanted a recreational type structure that would be nicer than a mere shed or detached garage. Plaintiff then drew a rendering of what he referred to as a

“Man Cave” with a fire place, but Cash indicated that defendants wanted something nicer than that. Thereafter, Plaintiff drew several computer generated custom renderings which were not what Defendants wanted. Ultimately, Cash showed Plaintiff a photograph from a set of building plans he had¹ and then Plaintiff developed a computerized rendering of a custom built recreational structure (Exhibit 2) which Defendants ultimately found satisfactory. The recreational structure was initially envisioned, expected and established to be for 390 square feet.

9. Plaintiff submitted that drawing to the City of Forest Acres for approval and permitting for construction. Approval was granted and a permit issued on or about February 26, 2007 (Defendants’ Exhibit 24). As is readily apparent in comparing Defendants’ Exhibit 24 to Plaintiff’s Exhibit 1 (the as built photographs), it is similar, though markedly different in detail from what was ultimately constructed, including but not limited to front door(s), front and back windows and perhaps most significantly the pitch of the roof.
10. In conjunction with the drawing Defendants found satisfactory and which was submitted to the City of Forest Acres, Plaintiff furnished Defendants with a construction cost estimate of labor and material for the 390 square foot structure (Defendants’ Exhibit 20). The cost estimate reflects that was based on a total square footage of 390 square feet, and it also reflects that the Man Cave was to be built on a concrete slab (without architectural accent), with concrete side walls (but without architectural accent), with a flat ceiling with joists and rafters (i.e. without vaulting or a loft), without a transom, but with a finished, painted, insulated interior, with architectural grade shingles, a bead board porch ceiling and a brass deadbolt and lockset combination with a double cylinder. Fans were not included, nor was there any detailed provision for a bathroom, other than a “rough-in”. The exterior walls were projected to be of wood.
11. Plaintiff and his daughter referred to the structure constructed, throughout the proceedings, as being a “Man Cave”, “Cabana House” or “Cottage”, and it ultimately had an architecturally accented and stained front porch, as well as an outside covered area with a finished concrete at the rear for Defendants’ tools and riding lawn mower. Cash referred to the entire structure as being a mere “shed”, but at times in his testimony

¹ Without explanation, Defendants have failed to produce the building plans, specification or the photograph of the structure.

referred to it as the "Man Cave". I find and conclude that, regardless of characterization, it is obviously a very attractive, well built structure with many architectural accents and quality construction and that Plaintiff's characterization of the structure is more accurate than Cash's. For ease of usage it is hereinafter referred to as the "Man Cave".

12. I find and conclude that, in context, the project for construction of the Man Cave grew and grew in size, scope and enhancements from the inception. Further, Defendants had Plaintiff perform extra unrelated work (or approved of same) in their yard and on their home. Specifically, the Man Cave grew in size and scope to be between 660 square feet and 690 square feet with many high quality accents. The floor (concrete flooring) changed from merely being trowel finished to being artfully cut and etched with an architectural stain so as to appear to be tile; the exterior concrete walls were architecturally finished so as to appear to be granite block rather than mere concrete poured walls; the exterior siding was changed from wood to more expensive hardiplank, the front above the porch was changed to more expensive scalloped, hardiplank that appeared to be cedar shakes; the patio doors and windows were changed when Defendants selected higher grade products; two (2) additional windows and a transom were added; and a loft of at least 180 square feet was added along with an architecturally accented stairway when Defendants elected to change the interior ceiling from a flat ceiling to a vaulted ceiling. Furthermore, the covered area with a concrete pad was added for storage of Defendants' tool and their riding lawn mower. In that regard, Cash testified that Plaintiff had verbally agreed to add on a peg board system on which to store Defendants' tools. Essentially and significantly, the structure was improved, enhanced and changed to one with more square footage and a vaulted ceiling, and it was a major revision from a structural, square footage and cost point of view - that then required installation of an HVAC "central air" conditioning system to heat and cool the structure, as compared to a less expensive "motel type" electric heat pump unit that had originally been contemplated for the 390 square foot Man Cave with a traditional, flat ceiling. Also, underground electrical service was added to the Man Cave at an additional cost.
13. Plaintiff made clear in his cost estimate calculations provided to Defendants initially (Defendants Exhibit 20) that the plumbing was for a rough-in assembly only, without any provision for a septic tank or lift station for septage removal.

14. In the original, detailed calculation of costs provided to Defendants for a 390 square foot structure (Defendants' Exhibit 20), Plaintiff calculated labor at 367.7 hours², material at \$13,210.76, labor at \$11,309.44 and subcontractor costs of \$3,791.00 for a subtotal of \$28,311.20 plus projected taxes and profit for a total of \$38,264.89. Significantly, Plaintiff clearly set forth that overhead and profit of 25% would be factored into the estimate.
15. Additionally, Plaintiff provided Defendants (at the time before the proposal was accepted) with a letter dated March 2, 2007 (Plaintiff's Exhibit 5) confirming that his work would be done on a cost plus 25% basis, and he also detailed labor costs. He "guestimated" that the job would take two months and cost roughly \$35,000.00, depending on finish choices. Plaintiff indicated that a \$6,000.00 deposit was required if Defendants wished to accept Plaintiff's proposal. Plaintiff also made clear that Defendants were welcome to look at his "job book"³ at any time.
16. Cash kept notes of events and from them he testified and acknowledged that the Man Cave grew in size and scope. He also testified and acknowledged that he paid Plaintiff \$6,000.00 on March 9, 2007 as construction on the project was to commence and that he made thirteen (13) separate and distinct payments to Plaintiff totaling \$50,500.00 as the project progressed. Thus, it appears and is clear that both Plaintiff and Defendants initially contemplated and agreed that work was to be done on a cost plus 25% basis for a structure containing 390 square feet and/or they envisioned that the cost would exceed \$38,264.89 once additions and enhancements were made. The size, scope and cost of the project clearly grew as additions and enhancements were made. Defendants paid \$5,000.00 on April 17, 2007 and by May 7, 2007 an additional sum of \$5,000.00 was paid while Plaintiff provided for underground electrical service to Defendants' home and performed other work on Defendants' home, including the cutting of four (4) trees unrelated to the this project and assistance in decorating for a "prom party" hosted by Defendants.

² The work for Defendants ultimately exceeded 1000 hours.

³ Plaintiff's job book was essentially the details of hours worked and materials purchased, as entered on his palm pilot that he carried with him. Plaintiff testified that there was no need to maintain all (but that he had them in Court for inspection if needed) physical receipts once the labor and material costs were approved by Defendants.

17. In Plaintiff's June 10, 2007 invoice (Plaintiff's Exhibit 8), Plaintiff made clear that the sum then due was \$51,571.00 and the billing included a calculation of cost plus 25%.
18. Cash testified that he was assured by Plaintiff that the work to be performed on the project would approximate \$35,000.00 regardless of an increase in size, scope and enhancements and that the additional unrelated work was separate and distinct for set prices. However, it was never made clear by Defendants as to the precise costs of additional work, if separately agreed upon. I find and conclude that Cash is not credible as to Defendants' claim that the cost of the labor and materials was to remain static as the size and scope of the project increased and enhancements were made on the Man Cave. In that regard, the work on the Man Cave project and unrelated work was done in Defendants' yard and they could readily see what was being done on a daily basis. Certainly, Defendants could readily see and/or should have seen that the scope and complexity of the project had grown and grown (and was also taking additional time), and Defendants did not complain or seek clarification from Plaintiff although by June 10, 2007 the project was already invoiced at \$51,571.00, with a provision for 25% profit and overheard.
19. Plaintiff maintained his job book of labor and material on his palm pilot and regularly provided its content to Cash for inspection as work progressed and Cash made no complaints, while work on the Man Cave continued (until November 2008).
20. While I would have alternatively found that the parties agreed to have work performed on a cost plus 25% basis, I am persuaded and find that it would be most reasonable and equitable, and as a matter of fact and law, to resolve this matter on a *quantum meruit* basis by initially concluding that on Defendants' part there may have come about a fundamental misunderstanding as to the ultimate cost and the agreement(s) itself as the project increased in size and scope. In making such a finding and conclusion, I would infer that each of the parties is basically honest and truthful but that Defendants may have been mistaken and therefore not have had a complete meeting of the minds, despite Plaintiff's efforts – Plaintiff expected to be paid on a cost plus 25% basis for all work performed, while Defendants anticipated having all work performed on the Man Cave project for approximately \$35,000.00 regardless of whether additions and enhancements were made and other work was performed at some unspecific cost.

21. Additional work performed (and invoiced for) separate from the original scope of the Man Cave project, included work on Defendants' home and roof, burial of three phase electrical service, erecting a playhouse and removal of four (4) trees and assistance in clean up and decorating for a prom party for Defendants' daughter. Plaintiff paid for the costs of same and added them into his palm pilot for Defendants' inspection, expecting to be paid on a cost plus 25% basis, while Defendants expected to pay Plaintiff merely for the cost of the work that was projected.
22. From the testimony and evidence presented, I find and conclude that the work Plaintiff performed on the Man Cave did not initially encompass, much less contemplate, a vaulted ceiling and loft, as is readily ascertainable from a review of Defendants' Exhibit 20 as compared to Plaintiff's Exhibits 1 and 2 and Defendants' Exhibit 24. As well, the project did not initially include such enhancements as a wet bar, two (2) sets of computer and cable wirings, a tool bench, a loft or stairs to a loft and two (2) additional windows, amongst many other modifications that were made that have been noted within the body of this Order. However, these additions and enhancements were in fact made. Moreover, the work originally was anticipated to take approximately two (2) months to complete, where as it ultimately took well over a year.
23. Cash appeared to be an organized, educated, articulate, immaculately dressed man, with experience in the financial world and with an eye for quality and detail. He made thirteen (13) separate payments to Plaintiff under circumstances that reflect that he was regularly being provided with costs relative to the project as Defendants were invoiced. He initially paid Plaintiff without any apparent complaints. Further, he admitted that most of his exchanges with Plaintiff relative to the work and payment, especially for enhancements and extra work, were verbal (until or about November 6, 2008, when he refused to pay Plaintiff and stated that he never intended to do so).
24. I find and conclude that, while the scope of work for the Man Cave project changed many times -- almost if not from its inception, what remained constant was Plaintiff's expectation to be paid on a cost plus 25% basis and Cash testified that he was overall satisfied with the work done, as well as the enhancements and additional work performed. Defendants have clearly received a substantial benefit from Plaintiff's work and efforts on their behalf; that have realized the benefits; the benefits have been

accepted and retained under conditions that would make it inequitable for them to receive, realize and retain them without paying the reasonable value of benefits conferred under the circumstances. Earthscape v. Ulbrich, South Carolina Supreme Court opinion 26,903 filed December 13, 2010; OHG v. McCutcheon, opinion 3839, filed June 28, 2004 (see also U.S. v. Algernon Blair, Inc., 479 F.2d 638 (4th Circuit Court of Appeals 1973)).

25. One area where Cash testified he was not satisfied related to a provision for a septage “lift station” to remove sewage from the Man Cave to the municipal sewage line⁴. The testimony and evidence reflected that in the context of building the Man Cave, Ms. Cash had discussed her desire or intent to have a pool between her house and the Man Cave with Plaintiff. Plaintiff testified without contradiction and I find that the installation of a small septic tank for a wet bar, washroom sink and/or dog run was acceptable to meet “code”, but that the project would not be “to code” if a toilet was used. As reflected in Defendants’ Exhibit 20 and based on the testimony, I find that Plaintiff did not initially make a cost provision for removal of septage material by way of a septic lift station in that a) Defendants’ plans were changing often from the beginning and it was unknown if Defendants would ultimately want a toilet and (b) Ms. Cash had told Plaintiff she wanted to make provisions for a pool between her home and the Man Cave (so that the Man Cave would double as a pool cabana house) and c) that the best option under the circumstances was, as Plaintiff testified, to have a “temporary fix” until Defendants decided on the pool – that it would not be cost effective to initially install a lift station, only to tear it out and then replace it after the pool was constructed. Ms. Cash acknowledged that she and Plaintiff had discussed provisions for a pool, but she claims she thought they were “just joking”, while Plaintiff believed that what she had stated was Defendants’ desire or intent. Moreover, Plaintiff did not calculate a charge for a lift station when he did his initial cost estimate and merely provided for a “rough in” bathroom. Finally, he was never requested to install a lift station once Defendants felt an urge to install one.
26. After refusing to pay Plaintiff. Defendants had a lift station installed in 2011 at a cost of \$1,975.00 so as to meet “code” for the Man Cave. Thus, it appears that the Man Cave

⁴ If the project had truly been for a tool shed, as Cash suggested in his testimony, one has to wonder why a toilet much less lift station would have been required in the first instance or in the final analysis.

was anticipated to be used and/or is now expected to be used for more than a mere storage shed and/or a work bench area.

27. No evidence was presented reflecting that the City of Forest Acres authorities responsible for inspection ever rejected the installation of the septic tank as a "temporary fix", and no evidence was ever advanced as to whether a certificate of occupancy was ever required.
28. I reject Defendants' testimony that Plaintiff and Defendants agreed to "trade out" a subcontractor's use of the Man Cave for a variety of reasons including a) the subcontractor (Bill Schmidt) was a subcontractor independent of Plaintiff, b) he had his own shop on Main Street, a few blocks north of Elmwood Avenue, c) Bill Schmidt was doing very little work for Plaintiff at the pertinent times, and d) Bill Schmidt did not testify. Thus, I find and conclude that Cash's testimony in this regard is not credible, nor did he sustain his burden of proof.
29. Defendants testified (Ms. Cash in particular) that Defendants did not request or authorize Plaintiff to build a "tree house" for their eight (8) year old son and that Plaintiff must have, without explanation, elected to do it on his own. Plaintiff testified that he constructed it at Defendants' direction. Regardless of the issue of who made the decision, Defendants were certainly aware that it was or had been constructed, they accepted the benefit and ultimately approved of it, in addition to thereafter providing Plaintiff with a "zip line" to be affixed to the tree house for their son's amusement. Defendants' claim that Plaintiff should not be paid on a *quantum meruit* basis is thus rejected. The best evidence is that the cost was between \$500.00 and \$600.00, and I therefore accept the \$500.00 figure as being credible.
30. For a disposition of this case, it is not necessary to find and conclude that the parties had a meeting of the minds relative to terms of a contract, although I would alternatively have found same at cost plus 25%. Instead, I am reaching the ultimate conclusion and resolution of this matter based on *quantum meruit*. In doing so, I would conclude initially that each of the parties has acted in good faith and have firmly held, but disparate beliefs, although Defendants' understandings may not have been entirely reasonable. Therefore, I find and conclude that the most reasonable, equitable resolution of the case would be to address it under *quantum meruit*, a cause of action asserted by both Plaintiff and Defendants.

31. Plaintiff provided work and/or materials on the Man Cave within ninety days (90) of the date the mechanic's lien was filed and timely brought suit thereafter.⁵

DAMAGES (QUANTUM MERUIT)

32. In essence it appears that Defendants have relied on the hypothesis that they entered into a sum certain contract for \$35,000.00 (plus a series of independent oral additions) for a sum(s) certain, despite the increase in size, scope and enhancements and the extended time needed for completion of the Man Cave.
33. The parties agreed that Plaintiff had been paid a total of \$50,500.00 for the work performed by Plaintiff on the Man Cave and for the additional work on Defendants' home, in their yard and for the prom party.
34. Pursuant to the testimony presented for a ten (10) corner recreational structure of the type encompassed by the Man Cave, I find that the cost alone of labor and materials would have been between \$125.02 (minimum quality) and \$188.91 (average quality) per square foot, with low average quality being \$172.67 per square foot and \$159.25 per square foot being between low and low average quality⁶. I have considered the evidence and testimony relative to the high quality of workmanship but would note that it is without a formal, finished kitchen (but with a counter and wet bar) and was without a completely finished bathroom (but plumbed for same and roughed in with a sink and toilet facilities). Accordingly, I find and conclude that I should use the low cost structure figure of \$146.88 per square foot for the Man Cave (see Plaintiff's Exhibits 3 and 12).
35. I find and conclude that Plaintiff filed his mechanic's lien with ninety (90) days of the date services and labor were last provided and initiated this suit timely. Thus, I find that Plaintiff is the prevailing party and should be awarded a reasonable attorney's fee.
36. Giving Defendants the benefit of the doubt by using 660 square feet as the size of the Man Cave, less a regional deduction of 5% -- from quality as applicable under the National Building Cost Manual utilized and recognized by Plaintiff as an industry standard without conflicting testimony by Defendants and excluding any additional cost

⁵ Cash testified that he had allowed to retain keys to the Man Cave until November, 2008, but that once Plaintiff filed a Mechanic's Lien, he changed the locks.

⁶ "Quality" refers to the structural components, rather than quality of workmanship.

relative to the front, covered, and stained concrete porch as well as the open but covered concrete slab area for storage of Defendants' tools and riding lawn mower, that would mean that the reasonable value of the construction for labor and materials retained by Defendants, in a light most favorable to Defendants, would be \$146.80 per square foot cost x .95 regional differential = \$139.54 x 660 square feet = \$92,093.76 exclusive of the porch and covered area on the rear of the Man Cave.

37. Thus, I find and conclude that Plaintiff is and shall be entitled to a verdict in the sum of \$41,593.76 (\$92,093.76 less \$50,500.00). In addition, Plaintiff has clearly prevailed under his mechanic's lien claim and Plaintiff has incurred legal fees that exceeded forty (40) hours at the rate of \$295.00 per hour through the second day of trial and Defendants' fees exceeded \$14,000.00. Therefore, I am awarding Plaintiff the sum of \$14,000.00 in attorneys' fees in that the case took a third day to complete, exclusive of time expended to prepare the proposed Order in this case.
38. Prejudgment interest at the legal rate on the \$41,593.76 sum shall be calculated from November 12, 2008.

NOW THEREFORE, I FIND, CONCLUDE AND RULE as follows:

1. As to Plaintiff's claims, I find for Plaintiff in the sum of \$41,593.76 on a *quantum meruit* basis, plus I find for Plaintiff as to the mechanic's lien, plus legal fees in the sum of \$14,000.00, plus interest at the legal rate since November 12, 2008, plus for the costs of this action.
2. Plaintiff's remaining claims are and have been denied, as are Defendants' claims as set forth in the body of this Order.

AND IT IS SO ORDERED.

JOSEPH M. STRICKLAND
Presiding Judge/Master in Equity
Fifth Judicial Circuit

Columbia, South Carolina

_____, 2011

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-40-64

FM Haynie

Paul E. Cash, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Catharine G. Griffin Esq..

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
FM Haynie d/b/a DocWild's,	)	C. A. NO. 2009-CP-40-00064
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Paul E. Cash and Carole S. Cash,	)	
	)	
Defendants.	)	

The above-captioned matter came before the undersigned for a nonjury trial for which the court heard testimony and received evidence on September 19-20 and 22, 2011. Present and appearing at the three day trial were attorneys Douglas N. Truslow and Neal Douglas Truslow representing the plaintiff, FM Haynie d/b/a DocWild's, and Catharine Garbee Griffin representing the defendants, Paul E. Cash and Carole S. Cash. On January 6, 2009, the Plaintiff brought this action, seeking damages for breach of contract, foreclosure on a mechanic's lien, breach of contract accompanied with fraudulent intent, and quantum meruit. Defendants counterclaimed for fraudulent/negligent misrepresentation, violation of the Unfair Trade Practice Act, trespass, wrongful filing of a mechanic's lien, breach of implied warranty of workmanship, negligence, breach of contract, and quantum meruit.

The undersigned has carefully considered and reviewed all evidence presented by the parties, including the testimony of April "Sky" Haynie, F.M. "Doc" Haynie, Carole Cash, Paul Cash and the documents admitted into evidence. From the evidence, it is found as a fact that:

FINDINGS OF FACT

1. In early 2006, Mr. Cash sought bids from a number of contractors to construct a shed in his backyard according to certain specifications.

2. In January of 2006, Mr. Haynie presented a drawing to Mr. Cash of the proposed shed which was subsequently modified by the parties.

3. On February 26, 2007, Haynie submitted plans for the shed to the city of Forest Acres and the plans were approved by the Building Inspector, Tony Rivera, of the Forest Acres Building Department. (Defendants' Exhibit 3).

4. Haynie applied for a building permit for Cash's shed and indicated that the permit was for a storage/shop/doghouse with a value of \$21,000. (Defendants' Exhibit 2).

5. The building permit was issued by the City of Forest Acres on February 27, 2007 based on the information provided by Haynie. (Defendants' Exhibit 2).

6. Haynie never amended the amount he claimed to be the value of the cost of the construction of the Cashes' building with the City of Forest Acres.

7. On March 2, 2007, Haynie authored a letter and presented it, in person, to Mr. Cash. The letter provided, in relevant part, as follows:

Pursuant to our discussions, we will construct the subject addition (outbuilding) to your home at 1501 Greenhill generally according to the sketch we previously drew on a cost plus 25% basis. My direct labor will be billed at \$30 per hour and employees at \$18 per hour. All material discounts will pass through to your benefit. Heavy equipment (Bobcat or track hoe) will be billed based on actual use at \$30/hr.

We guesstimate the job to take 8 weeks and cost roughly \$35,000 greatly contingent upon finish choices as discussed. The actual cost normally is most affected by window, siding, & interior detail selections.

Initially, we require a \$6,000 deposit subsequently we will make bimonthly draws, typically in the near \$5-10,000 amounts congruent with the construction progress. You are welcome to look at the job book at any time; they are rarely more than a day or two behind the actual cost. Please make checks payable to F.M. Haynie.

(Plaintiff's Exhibit 5).

8. After receiving the letter dated March 2, 2007, Mr. Cash sought clarification as to the scope of the work referenced in the March 2, 2007 letter and requested that Mr. Haynie provide a written line by line estimate of the costs and labor associated with the building of the shed.

9. Within a couple of days after Cash sought additional information regarding the cost and scope of the project, Haynie prepared a line by line estimate of the costs associated with the project, including labor and materials, as well as an amount for overhead and profit. The line by line estimate for the project was introduced as Defendants' Exhibit 20 and was contained within the group of materials submitted as Plaintiff's Exhibit 9.

10. In the line by line estimate of the scope of the work prepared by Mr. Haynie, Haynie stated that the project would include 367.7 hours in man hours, \$13,210.76 in materials with a charge of fifteen (15) percent overhead and ten (10) percent for profit. It also provided for a five percent contingency amount. The total of the estimate was \$38,264.80. (Defendants' Exhibit 20.)

11. Haynie presented the line by line estimate to Mr. Cash as the scope of the work for the building of the shed.

12. The parties then orally agreed that the cost of the building would be \$35,000 with the cost of the windows and doors to be added to the overall cost once those items were selected. The parties agreed that if a change were made to the scope of work such as a substitution, addition, or modification, the amount would be negotiated between the parties and the amount subtracted if eliminated from the original scope of work, or added if additional costs were incurred.

13. In Plaintiff's Exhibit 9, bates stamped page number 57, Haynie handwrote that the estimate was for "38K," but he agreed to reduce "contract estimate because Cash would do painting;" "he was good at it and found it therapeutic."

14. At that time, Mr. Cash began to document the expenditures on the project by making notations on his spreadsheet. Cash noted that the cost of the project was \$35,000.00. The notations of Mr. Cash were made contemporaneous with the time of the entry throughout the project. (Defendants' Exhibit 5).

15. Mr. Haynie also made entries on his ledgers, documenting the project by stating that the contract price was \$35,000.00. The contract price of \$35,000.00 was referenced in Mr. Haynie's internal document from June of 2006. (Defendants' Exhibit 8).

16. The contract price of \$35,000 was referenced in Mr. Haynie's internal document prepared after August 9, 2008. (Defendants' Exhibit 9).

17. The contract price of \$35,000 was further referenced by Haynie on his "final spreadsheet." (Plaintiff's Exhibit 9).

18. Throughout the project, Mr. Cash made progress payments to Mr. Haynie for the work which was done.

19. Haynie failed to provide Cash with any bills, other than one at the beginning of the project in April of 2007, which Cash understood was to be considered to make a progress payment toward the sum certain contract of \$35,000.00.

20. The bill allegedly submitted on June 10, 2007 is inconsistent with what Haynie contended the agreement to be between the parties because it does not reflect the amount Haynie alleges that was to be billed under the contract of \$18 an hour, but instead used \$15 an hour as the amount to be billed. Cash never paid the precise amount shown on the alleged progress bills,

but paid draws according to the progress of the construction and toward the payment of \$35,000.00. Haynie continued to work on the project even though his alleged progress bills were not being paid in full.

21. Plaintiff's next alleged progress bill is almost ten months later although Haynie testified that he regularly submitted bills. This bill, at the end of the project when the work was completed, shows the cost of materials of \$35,824. Several months later, the cost of the materials increased to \$38,418 although limited additional materials were used on the completed project. The only materials purchased after April would have been the cost of the paint to paint the interior of the shed which was completed by August 8, 2008. This would not justify an increase in the materials of \$2,594.00. The change in the cost of materials calls into question the legitimacy of the numbers.

22. During the course of the building of the shed, the parties agreed orally to make changes to the initial scope of work as defined in Defendants' Exhibit 20.

23. The parties agreed on an amount for the windows and doors which totaled \$1,255.23. (Defendants' Exhibit 5).

24. During the framing of the roof, Haynie suggested to Cash that he change the pitch of the roof of the shed to allow for an eight foot ceiling for the loft area. The changing of the pitch of the roof added 180 square feet which became accessible by stairs rather than a ladder. Previously, the shed had a loft area which would have been accessible by a ladder. Cash testified that Haynie told him that the change to the pitch of the roof would not add any cost to framing of the shed.

25. When Cash agreed to change the pitch of the roof, he agreed with Haynie that there would be additional costs for the interior finish, including the handrail for the loft, the stairs to the loft and the floor in the loft. (Defendants' Exhibit 5).

26. The parties agreed to change the HVAC system from a hotel unit to a HVAC unit with duct work. The parties agreed that the additional total cost of the charge for the HVAC was \$2,000. (Defendants' Exhibit 5).

27. Cash also agreed that a recycled toilet and sink could be used in the bathroom so there was no cost for Haynie for the materials although a cost was initially provided in the estimate.

28. The parties further agreed that two windows would be eliminated from the scope of the work, thus reducing the cost of the project.

29. The parties also agreed to eliminate the beadboard ceiling on the front porch.

30. The project was essentially completed by July of 2007 with the building "dried in" with a roof on the shed, the electrical system completed, the heating and air system completed, and plumbing installed.

31. In July of 2007, Haynie approached Cash to ask him if one of the subcontractors, Bill Schmidt, could move his equipment and materials into the shed to do carpentry work for Haynie's other projects because Schmidt did not have a place to work.

32. Mr. Schmidt, who had a twenty year relationship with Haynie doing his carpentry work, brought his equipment and materials to Cash's shed and worked in the shed until the spring of 2008.

33. Mr. Haynie also moved his equipment and materials into the shed during this time and worked out of the shed. Mr. Haynie testified that the City of Forest Acres would not allow

him to operate a business from his house. He further testified that he was in the process of building a shed at his daughter, April "Sky" Haynie's house, but that the shed was not completed in the summer of 2007.

34. Mr. Cash testified that he allowed Mr. Schmidt and Mr. Haynie to use his shed because Haynie and Schmidt would trade out their services as they finished the shed.

35. Although Haynie denied that he was trading services to Cash, he testified in his deposition he "was going to take special care of Cash and not charge him for everything while he used his shed."

36. Haynie charged Cash for Schmidt's work in the amounts of \$600, \$1,250, \$300 and \$600.

37. Mr. Haynie did not pay any rent to Cash for his subcontractor which benefitted Haynie.

38. Cash testified that the value of the rental of the shed was \$400 per month.

39. In August of 2007, after the bathroom facilities were regularly used by Schmidt, the septic tank backed up. Mr. Haynie fixed the septic tank in August of 2007. At that time, Mr. Cash was not aware that the septic tank had been installed by Haynie without the proper permits from DHEC and the City of Forest Acres.

40. After discovering that the septic tank was installed in violation of DHEC regulations, the local building codes and zoning, the Cashes replaced the septic tank with a line connecting to the public sewage system. The cost to repair Haynie's work which was done not according to Code was \$1,995.00. Cash paid Capital City Plumbing for the cost of the repair. (Defendants' Exhibits 16 and 17). When the sewage line was laid by Capital City Plumbing to

correct the building code violation of Haynie, Cash spent \$1,590.00 to repair his irrigation system as a result of the laying of the sewage line. (Defendants' Exhibit 14).

41. In the Spring of 2008, Mr. Cash asked Mr. Schmidt and Mr. Haynie to move out of the shed because he wanted to have full use of his shed and Schmidt and Haynie were still occupying it with their equipment and working out of it.

42. The Cashes and fellow high school parents were planning a prom party for their daughter and her friends and needed to have access to the shed and backyard area in the Spring of 2008.

43. In April of 2008, Mr. Schmidt and Mr. Haynie moved their equipment and materials out of the shed, almost thirteen months after the project began, and nine months after they began using the shed.

44. At that time, in April of 2008, the shed was completed other than interior painting which Mr. Cash intended to do himself.

45. Mr. Cash and Mr. Haynie had a conversation on or about April 11, 2008 when Bill Schmidt was out of the shed as noted on Cash's spreadsheet as "Bill out." (Defendants' Exhibit 5). Mr. Haynie requested a final payment of \$5,000 for all of the work which had been done. Mr. Cash paid him \$5,000 as the final payment for all the work which had been performed by Haynie.

46. In the Summer of 2008, Mr. Haynie, who unbeknownst to Mr. Cash had been entering the shed to show it to potential clients, offered that he could have his painters paint the interior of the building because Mr. Cash had not had an opportunity to do so.

47. Mr. Cash agreed to have the interior painted and a tree removed and paid Haynie in full for that completed work on August 8, 2008.

48. At the beginning of November of 2008, Mr. Haynie placed a telephone call to Mr. Cash and informed him that he owed \$9,000 for additional costs associated with the project.

49. Mr. Cash told him that he would check his records, but he was certain that he did not owe any additional sums.

50. When Mr. Cash reported to the plaintiff that he did not owe any additional sums, Mr. Haynie sent him a letter on November 6, 2008, indicating that Mr. Cash now owed \$18,995 for the project. (Defendants' Exhibit 12).

51. Mr. Cash again told Haynie that he did not owe him any additional amounts on the project, but that Haynie had been paid in full.

52. After Haynie was told by Cash that he did not owe him any money, Haynie entered Cash's property, without Cash's consent, and nailed a 1"x4" piece of trim under the window on the left side of the shed.

53. The Cashes did not request that Haynie perform any work on the shed in November of 2008.

54. Haynie testified that Cash did not know that he was entering his property to replace the board and that he did not request permission to enter the property.

55. Haynie testified that the lock on the shed, to which he previously had a key, was changed in the beginning November of 2008.

56. Haynie agreed that he performed the work because he knew he was trying to perfect a mechanic's lien on the defendants' property and knew that he had to perform work on the property within ninety (90) days of the filing of the mechanic's lien.

57. Thereafter, on November 13, 2008, Mr. Haynie sent another bill to Mr. Cash, claiming that the Cashes now owed \$26,146 for the balance due on the project. (Defendants'

Exhibit 13). The bill submitted by Mr. Haynie has a mathematical error in that Haynie indicated that 15% of the project was \$15,329 which is incorrect. Although Haynie did not include the mathematical error in the overall amount owed, the error is evidence of Mr. Haynie's poor and sloppy bookkeeping abilities.

58. Mr. Cash again disputed that he owed any additional amount and claimed that he paid Mr. Haynie in full for his work.

59. On November 18, 2008, Mr. Haynie filed a mechanic's lien in the amount of \$26,146. (Defendants' Exhibit 31).

60. Mr. Haynie delivered a copy of the mechanic's lien to Cash on November 20, 2008.

61. The parties agree there was additional "extra" work performed by Mr. Haynie for the Cashes during the time Haynie was building the shed. This "extra work" was outside the scope of the building of the shed.

62. The additional work consisted of the removal of pine trees, the removal of a hackberry tree, changing electrical service to the Cashes' house, building a tree house for Cash's son, and completing some repairs on the siding of the Cashes' house.

63. The additional work was separately negotiated and orally agreed to by the parties. The additional work was not a part of the initial contract between the parties.

64. The additional work totaled \$500 for the clubhouse, \$1,400 for the cutting and removal of the hackberry tree, \$2,000 for the electrical service, \$180 for the siding on the house and \$400 for the removal of the dead pine trees. (Defendants' Exhibit 5).

65. Mr. Haynie applied for a permit to change the electrical service to the Cash's main house. The permit was applied for on May 8, 2007 with a value of the work of \$1,500.00.

(Defendants' Exhibit 11). The work was approved by the City of Forest Acres on May 15, 2007.

(Plaintiff's Exhibit 9).

66. Of the extra work outside of the building of the shed, all amounts were paid for by Mr. Cash to Mr. Haynie as separately negotiated sums.

67. The Cashes made the following payments to Haynie:

03/06/07	6,000.00
04/17/07	5,000.00
05/07/07	5,000.00
05/15/07	3,000.00
05/25/07	5,000.00
06/16/07	4,000.00
07/09/07	3,500.00
07/19/07	2,500.00
10/03/07	2,000.00
11/06/07	1,500.00
11/13/07	2,500.00
12/21/07	2,000.00
04/11/07	5,000.00
08/09/08	3,000.00

68. The Cashes paid Haynie a total of \$50,500 for the building of the shed, the changes to the shed, and the additional work which was separately negotiated.

69. The testimony of the Cashes was more credible than the testimony of Mr. Haynie and his daughter, April "Sky" Haynie as to the history of the dealings between the parties.

70. Mr. Haynie claimed that he kept his records contemporaneous with the entries made on the records, but admitted that he made changes to the records which were not made contemporaneously with the purported entries.

71. Mr. Haynie could not explain the basis for the numbers he claimed the Cashes owed to him, but stated that he essentially "pulled them out of the air."

72. When testifying about the different calculations regarding the construction project, Mr. Haynie claimed that he was "confused" and not certain how he arrived at his numbers.

73. Haynie admitted that he changed the recorded number of hours he claimed both he and his employees spent on the Cashes' job to increase the number of hours and thus the amount allegedly owed by the Cashes.

74. Mr. Haynie admitted that he added 40 hours to the total of his claimed hours worked after he knew Mr. Cash disputed that he owed him any money. The time was added to Haynie's compilation which was admitted as Defendants' Exhibit 10.

75. Haynie also added hours to the labor cost in another iteration of his accounting for the Cashes' project in Plaintiff's Exhibit 9 which reflected additional hours for Mr. Haynie on April 3, (6 hours), April 11 (8 hours), April 17 (12 hours), and August 26 (16 hours). These hours were added to the compilation after the dispute arose.

76. The plaintiff failed to present any supporting documentation, including checks, time cards, and payroll records, which showed the amounts he paid his workers for the hours they allegedly worked.

77. Mr. Haynie, and his daughter, April "Sky" Haynie testified that Ms. Haynie worked three to four days a week at the Cashes' house for a number of months beginning in March of 2007, earning \$18 per hour. Mr. Haynie testified that she regularly was at the Cashes' property during the project. Mr. Haynie testified that April "Sky" Haynie's time would be included on the summary as worker hours. On her W-2 to her 2007 tax return, Ms. Haynie reported income from her father's business in the amount of \$882.00 for 2007. (Defendants' Exhibit 26), which would be approximately 40 hours of work for the year, not only for the

Cashes' project. Ms. Haynie claimed that she worked on other projects in 2007 for her father's business.

78. Mr. Haynie explained the discrepancy by claiming that he "paid" April "Sky" Haynie more than that reported on her W-2, prepared by Mr. Haynie for his business, but that Ms. Haynie owed him money so he did not report income payments to Ms. Haynie which were allegedly used to repay Mr. Haynie for a loan.

79. The "no charge" column of Haynie's spreadsheets were allegedly used to account for the reduction of hours of employees for poor workmanship or where he decided, for whatever reason, to "not charge" or "adjust" the hours.

80. In the first version of Haynie's spreadsheets, Plaintiff's Exhibit 9, bate stamp document 0016, Haynie reduced the amount of man hours by the "no charge hours." The reduction of the man hours by the "no charge" hours is evidenced by adding all the hours in the column labeled man hours which total 555 through June 8, 2007, the date of the alleged preparation of the document, and then reducing the amount by the 43 no charge hours which then calculates to be 512 hours. Haynie claimed that he billed 511 hours. The amount of 511 is reflected at the top of the column of the Exhibit, bate stamp document 0016.

81. Mr. Haynie acknowledged that he could remove "no charge" hours from his spreadsheet concerning the labor he tracked on the job. On Defendant's Exhibit number 10, Mr. Haynie billed 811 hours, as reflected at the top of the "man hour" column. This amount is the total amount of the hours the workers allegedly worked. Unlike the calculations in Exhibit 9, Mr. Haynie does not subtract the "no charge hours" of 246 hours from the total of man hours of 811 hours to have the "correct" or adjusted total at the top of the spreadsheet. Had Haynie used the same paradigm for the calculation of hours as he used in Exhibit 9, then the hours should be

811 hours minus 246 hours for a total of 565 hours on the job. Haynie included the "no charge" hours for Exhibit 9 in his total hours although he had previously reduced the amount owed by the Cashes by the "no charge" hours. Assuming that you calculate the hours to be 565 hours for man hours, then the total cost of labor for man hours alone would be reduced by $\$4,428 \times .25\%$ or \$5,535.00. Despite "no charging" 246 hours of time and reflecting that as an adjustment on Defendants' Exhibit 10, Mr. Haynie then changed the ultimate billing presented to the court to include the "no charge" hours.

82. Mr. Haynie agreed that the "no charge" hours were not subtracted from the accounting he presented to Mr. Cash in Defendants' Exhibits 12 and 13.

83. Mr. Haynie claimed that his change in amount owed included changing the hourly rate for laborers from \$15 to \$18 an hour because he rescinded his discount to Mr. Cash on Defendants' Exhibits 12 and 13.

84. The no charge hours on Exhibit 10 included hours Mr. Haynie did not charge for the work of Mr. Schmidt, but which he then tried to charge after the dispute arose.

85. Mr. Haynie also could not justify the increase in hours from 888 man hours in Defendants' Exhibit 12 to 1,068 hours in Defendants' Exhibit 13 which was created six days later after the project was completed and during which time no work was done. The additional 180 hours of man hours after the project was completed was not supported by any evidence.

86. Haynie also failed to present invoices of the amounts he allegedly spent for materials on the Cash shed, relying instead on his unsubstantiated summary of material costs.

87. Haynie failed to present checks evidencing payment to any subcontractors for the work performed on the shed, thus failing to prove the amount he paid to the subcontractors.

88. Mr. Haynie and Ms. Haynie testified that Haynie paid for the pine straw for the Cash's daughter's prom party. The evidence adduced showed that the Cashes paid for the pine straw, not Haynie:

89. Haynie calculated the reasonable value of his services by relying on the 2008 National Building Cost Manual which establishes "2008 Total In Place Costs for Residential, Commercial, Agricultural and Military Statutes."

90. The shed is not a residential dwelling nor is it a seasonal dwelling or vacation home.

91. The shed cannot be "occupied" as a residence in the City of Forest Acres because the zoning laws require that such a building be attached to the main residence; the shed is not attached to the main residence; therefore, it is not a residential dwelling.

92. Haynie's testimony regarding the square footage of the shed was also incorrect. Haynie first testified that the square footage was 690 square feet, but then testified that the square footage was 640 square feet. Mr. Haynie's submitted calculations use the wrong square footage. In Plaintiff's Exhibit 9, bate stamp document 4, Mr. Haynie handwrites that the square footage of the building is 640 square feet. The plaintiff's calculation further is incorrect because it failed to reduce the calculation by a reasonable sum for the lack of kitchen and minimal bathroom facilities.

93. The plaintiff's calculation of the value of the in place costs for the shed also failed to reduce the calculation by 5% as detailed in the manual for the cost of construction in Richland County, South Carolina.

94. Cash incurred costs of \$585.00 to correct deficiencies in the construction of the shed by Haynie. (Defendants' Exhibit 15).

CONCLUSIONS OF LAW

Based on the Findings of Fact, I make the following conclusions of law:

1. A contract is an obligation which arises from an actual agreement of the parties, manifested by words, oral or written or by conduct. *Roberts v. Gaskins*, 327 S.C. 478, 486 S.E.2d 771 (Ct.App. 1997). Mutual assent, or a meeting of the minds between the parties as to all essential terms of an agreement, is necessary to the formation of the contract. *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989). In order for a contract to be binding, certain terms, such as price, time and place, are considered indispensable and must be set out with reasonable certainty. *McPeters v. Yeargin Construction Co., Inc.*, 290 S.C. 327, 350 S.E.2d 208 (Ct.App. 1986). The parties entered into a contract for the building of the shed on the Cashes' property.

2. In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. The parties' intention, in the first instance, must be derived from the language of the contract. To discover the intention of a contract, the court must first look to its language – if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. *Ecclesiastes Prod. Ministries v. OutParcels Associates, LLC*, 374 S.C. 483, 649 S.E.2d 424 (Ct.App. 2007). If a contract's language is plain, unambiguous and capable of only one reasonable interpretation, no construction is required and this language determines the instrument's force and effect. *Ecclesiastes Prod. Ministries v. OutParcels Associates, LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct.App. 2007). The plaintiff's March 2, 2007 letter purporting to be a cost plus 25% contract between the parties is not clear and capable of legal construction; therefore, the language of the contract itself does not determine the instrument's force and effect.

3. The letter of March 2, 2007 upon which the plaintiff relies as forming the basis of the contract between the parties is ambiguous. A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct.App. 2004). A contract is ambiguous when the terms of the contract are inconsistent on their face, or reasonably susceptible of more than one interpretation. *Hawkins v. Greenwood Development Corporation*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997). Since the contract is ambiguous, the court has considered other evidence to reveal the intent of the parties as to their agreement. Parol evidence is admissible to ascertain the true meaning and intent of the parties. *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct.App. 1999).

Where multiple documents form the essential terms of the contract, the documents will be interpreted so as to give effect to all of their provisions, if practical. *Ward v. W Oil Company, Inc.*, 379 S.C. 225, 665 S.E.2d 618 (Ct.App. 2008, *vacated*, 387 S.C. 268, 692 S.E.2d 516 (2010) *vacating lower court's decision on grounds other than contract interpretation*.) In the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same party, for the same purpose and in the course of the same transaction, the courts will consider and construe the instruments together. *Klutts Resort Realty, Inc. v. Down 'Round Dev. Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977). Furthermore, ambiguous language in the contract should be construed most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in the contract, doubt or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage. *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423 (1981).

Since the plaintiff's March 2, 2007 letter allegedly confirming the agreement between the parties is ambiguous as to whether the parties agreed to a cost plus 25% contract or a sum certain contract of \$35,000.00, this court has considered other evidence regarding the intent of the parties to determine the terms of the contract. This court, thus, concludes based on the line by line estimate which detailed the scope of the project, the internal documents of Haynie, the ledger of Cash, and the oral agreement by Haynie that the cost of the project would be \$35,000.00, that the parties intended that the building of the shed would be for a sum certain of \$35,000.00 with additional costs for the doors and windows.

3. The parties agreed orally to amend the original scope of work and the original price of \$35,000.00 for the building of the shed by allowing changes to the scope of work by accepting new work and deleting other work. These amounts were both added to the contract amount and subtracted from the contract amount by Haynie proposing a sum certain to be paid for the changes and Cash agreeing to pay for the change or delete work from the scope of work for the change. Oral contracts are enforceable according to their terms. The existence of terms of an oral contract must be proved by evidence which is clear, specific, definite and convincing in nature. *Parr v. Parr*, 268 S.C. 58, 231 S.E.2d 695 (1977). The changes to the scope of work for the shed were made pursuant to oral agreements between the parties with the price agreed to by the parties and paid for by Mr. Cash. This court further concludes that the work which was done by Schmidt for which Haynie charged Cash \$2,750.00 plus 25% should not have been charged to Cash because the oral agreement between the parties was that Schmidt and Haynie would work out of the building in exchange for Schmidt and Haynie providing services to Cash. Alternatively, Mr. Cash would be entitled to the same sum Haynie charged for Schmidt's

services as the reasonable value for the rental of the building. Either way, the Cashes owe no further amount for the change orders under the contract.

4. This court rejects the plaintiff's argument that there was a contract in the form of a cost plus 25% agreement. Not only was the intent of the parties to build the shed for a sum certain of \$35,000.00 with oral change orders, subtracting and adding to the project, the plaintiff failed to meet his burden of proof in establishing a cost plus 25% agreement because the plaintiff failed to prove each and every cost and its reasonableness in light of Cashes challenge to the propriety of the alleged costs, and, therefore, the plaintiff's claim for a cost plus contract fails.

Although South Carolina courts have not yet spoken on the issue, the Court finds significant nationwide legal authority persuasive that the builder must prove the costs he incurred in a cost plus contract in order to be able to recover. A Louisiana court describes a contractor's on-the-job duty and later burden of proof for a cost plus contract as follows:

In any cost-plus contract there is an implicit understanding between the parties that the cost must be reasonable and proper. The contractor is under a duty of itemizing each and every expenditure made by him on the job and where the owner denies being indebted to the contractor the latter has the burden of proving each and every item expense in connection with the job. . . .

. . . Obviously, to meet this test a cost-plus contractor must show that his work was performed efficiently and with the necessity of recurring remedial work suggestive of poor workmanship, so that the owner is not faced with excessive labor cost.

Kerner v. Geagan Lumber Co., Inc., 296 So.2d 428, 431-32 (La App. 4th Cir. 1974). Also, a builder must show the costs he expended and the necessity of each in the following manner:

The rules of law controlling 'cost plus' contracts are well established. Upon reason and authority, where a person agrees to do work for another upon a cost plus basis, it is his duty to keep accurate and correct accounts of all material used and labor performed, with the names of the material men and laborers, so that the owner may check up the same. He must use the same skill and ability as is used in contract work for a gross sum. If the aggregate cost upon the face of the account is as excessive and unreasonable as to suggest gross negligence or fraud, the law

would impose upon the contractor the duty of establishing the bona fides of his performance of the work. The contractor does not have the right to expend any amount of money he may see fit upon the work, regardless of the propriety, necessity, or honesty of the expenditure, and then compel repayment by the other party, who has confided in his integrity, ability and industry.

Shaw v. Bula Cannon Shops, 205 Miss. 458, 470-71, 38 So. 2d 916, 918 (Miss. 1949) (internal citations omitted); *see also Freeman & Co. v. Bolt*, 132 Idaho 152, 968 P.2d 247 (Idaho Ct. App. 1998); *Wendel v. Maybury*, 75 So. 2d 379 (La. Ct. App. 1954).

The Plaintiff did not prove each and every cost which he claimed from the Cashes. The Plaintiff failed to keep accurate and correct records of the job. Haynie was unable to testify to his own calculations, having admitted to numerous changes, miscalculations, and additions. Plaintiff admitted to adding back "No Charge" costs, was unable to explain the methodology of his calculations, added material costs when minimal work was being done, and also added work hours which were "pulled out of the air." Plaintiff failed to support his claimed amounts owed with any documentation of invoices, amounts paid to contractors and amounts paid to laborers. Summaries of amounts allegedly owed were arbitrary, unsupported, and incalculable even for the Plaintiff. Plaintiff failed to meet his burden of proof for each itemized cost and its reasonableness. Even if this Court had found a cost plus 25% contract existed, which it does not, the Plaintiff would not be entitled to the costs he seeks in excess of the \$50,500 he has already received for the construction because he has failed to meet his burden of proof.

5. The work which was performed by Mr. Haynie for Mr. Cash which was outside the scope of the building of the shed, such as the removal of trees, the electrical service to the Cashes' main home, the tree house for the Cashes' son, and repair to the siding of the Cashes' house was subject to separate oral contracts between the parties. For each project, there was an offer made to do the work for a sum certain by Haynie which the Cashes accepted. This oral contract would not include an additional 25% for overhead and profit as Haynie always expressly

stated the actual cost to Cash. There was no agreement to pay an additional 25% for the work unrelated to the shed. No additional amount is owed to the plaintiff for any of the additional work.

6. Assuming alternatively, that there was not a contract in this case, and as a further sustaining ground, the plaintiff has failed to prove by a preponderance of the evidence that he is entitled to relief under a theory of quantum meruit based on the calculations which were introduced as Plaintiff's Exhibit 12. The plaintiff failed to meet his burden of proof for compensation under a theory of quantum meruit because he based his opinion as to the value of the building on the erroneous premise that the building was a residential, conventional, recreational dwelling, which this court finds it was not. Haynie also miscalculated the square footage of the building, failed to deduct a fair amount for the lack of a kitchen and the minimal bathroom facilities, and failed to reduce the construction costs for Richland County, South Carolina. Therefore, the plaintiff failed to meet his burden of proof to establish a claim for damages under quantum meruit.

7. At the close of the plaintiff's case, the defendants moved for a non-suit on the plaintiff's cause of action for breach of contract accompanied by a fraudulent act. "In order to establish its claim for breach of contract accompanied by a fraudulent act. . . [a party must] prove (1) a breach of contract; (2) fraudulent intent related to the breach; and (3) a fraudulent act directly connected to the breach." *Foxfire Village, Inc. v. Black & Veatch, Inc.*, 304 S.C. 366, 375, 404 S.E.2d 912, 918 (S.C. Ct. App. 1991). The Court continued, "The fraudulent act is an act characterized by dishonesty in fact, unfair dealing, or unlawful appropriation of another's property by design." *Id.* " [F]raud must be shown by clear, cogent, and convincing evidence". 28

S.C. Jur. *Fraud* § 31 (2011). The plaintiff failed to introduce any clear and convincing evidence of fraud in this case and the defendants' motion for a non-suit was granted.

8. The evidence established that the plaintiff wrongfully filed a mechanic's lien against Cashes' property. In order to establish a mechanic's lien, the plaintiff must strictly adhere to the literal requirements of the mechanic's lien statutes. *Shelley Construction Co. v. C. Barton Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App. 1985). In order to preserve the lien, a person wishing to assert it must, within ninety (90) days of ceasing to perform labor or to supply materials, file and serve a statement of account upon the owner. S.C. CODE ANN. §29-5-90 (2007). The ninety day limitation is strictly enforced. *Franke Associates v. Russell*, 295 S.C. 327, 368 S.E.2d 462 (1988). In *Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 131 631 S.E.2d 252, 257-58 (2006), the Supreme Court stated the following:

When an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion... If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien.

The majority of all the work on the shed was performed in the summer of 2007 with all the work being completed no later than April of 2008. In the summer of 2008, Haynie contracted with Cash to paint the interior of the shed and remove a tree. Cash paid Haynie for the work to paint the shed and take down the tree no later than August 12, 2008. Mr. Haynie contends that the last work he did was nailing the "1x4" piece of trim under the window on the left side of the shed. Haynie testified that he worked on the shed on November 5, 2008 after Mr. Cash announced that he had no intent to pay the plaintiff and would not pay the plaintiff for the sum due. This trivial work of nailing a small piece of trim under the window, done not at the request of the

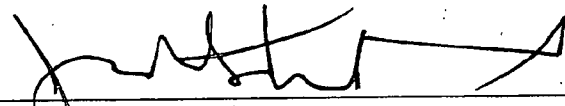
homeowner but after substantial completion of the building, was completed for the sole purpose of extending Haynie's time to perfect his mechanic's lien. Haynie admitted that he knew that he must do work within 90 days to perfect his lien and that he was aware of that requirement when he nailed the piece of trim on the shed. Because the work performed in November was trivial, this court considers when the last work was done. Although the building was completed in April of 2008, some work was done on the shed before August 12, 2008. Using the latest possible date for work having been done on the premises of August 12, 2008, the mechanic's lien was not timely filed because the mechanic's lien was filed on November 18, 2008, more than ninety days after the last work done on the premises. Therefore, this Court finds that the mechanic's lien was wrongfully filed, denies the plaintiff's request for the enforcement of a mechanic's lien and finds for the Defendants on their cause of action of wrongful filing of a mechanic's lien.

9. The prevailing party in an action to enforce mechanic's lien is the one who receives a favorable decision or verdict on liability and is entitled to attorneys fees under S.C. Code Ann. § 29-5-10. *Taylor, Cotton and Ridley, Inc. v. O'Katie Hotel Group, LLC*, 641 S.E.2d 459 (Ct. App. 2007); *see also* S.C. Code Ann. § 29-5-10(b) (2007). The defendants have made a claim against the plaintiff for their attorney fees in the amount of \$15,688.21. This court finds that the award of attorney fees is appropriate to the defendants in this case as they are the prevailing party on the mechanic's lien issue.

10. The defendants brought claims against the plaintiff for the improper installation of the septic tank and the faulty construction of the building. This court finds that the defendants are entitled to recover \$4,135.00 on their claims because Haynie knowingly installed a septic tank without the proper permits and failed to properly install shingles on the shed which caused the soffit and fascia to rot.

NOW, THEREFORE IT IS ORDERED, pursuant to the Order of Reference that this Court orders judgment in favor of the Defendants Paul E. Cash and Carole S. Cash, dismissing with prejudice all the Plaintiff's claims against Paul E. Cash and Carole S. Cash on the plaintiff's complaint. This is a final order and any appeal shall be to the South Carolina Supreme Court of the South Carolina Court of Appeals. This court further orders and judges that the Cashes be and hereby are the prevailing party in this matter and awards judgment against the plaintiff in the amount of \$15,688.21 for attorneys' fees. This court further orders and awards judgment against the plaintiff on the defendants' counterclaims in the amount of \$4,135.00. The Clerk of Court of Richland County is directed to enter judgment in favor of the defendants in the amount of \$19,823.21.

AND IT IS SO ORDERED, ADJUDGED AND DECREED.



Joseph M. Strickland
Presiding as Master-In-Equity, Richland County

Columbia, South Carolina

March 5, 2012
~~October 1, 2011~~

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-40-00064

FM HAYNIE d/b/a DOCWILD'S
GENERAL CONTRACTOR,

Plaintiff

V.

PAUL E. and CAROL CASH,

Defendants

PLAINTIFF'S MOTION FOR
RECONSIDERATION

2012 MAR 26 PM 12:34
JANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

TO: DEFENDANTS PAUL E. and CAROLE CASH and their attorney of record
CATHERINE GARBEE GRIFFIN, Esquire

I am the plaintiff in this cause of action and respectfully beg the courts indulgence in this matter since my attorney, Doug Truslow, Esquire, delivered the attached order to me on March 15, 2012, along with his notice that he was no longer representing me. As a result, I am required to precede Pro Se due to lack of time and funds to procure alternate council.

During the discovery process, my attorney gave up heavily notated versions of documents that should have been excluded by the Attorney Work Product Doctrine. These the defendant used to their benefit with great effect.

Pursuant to SCRCP 52(b) the judge should reconsider his decision to use the order offered by the defendant and adjust his decision because there are significant faults in the timeline being argued. Among other things, no drawing was offered in January of 2006. The first drawing was in December. The line item estimate said to be produced after the March 2 letter of agreement was produced January 30, 2007 based on an early version of the plan. The permit was applied for in mid-February in order to submit another iteration of the plan for review by the City of Forest Acres (standard procedure) and it was approved 2 weeks later. As testified to and

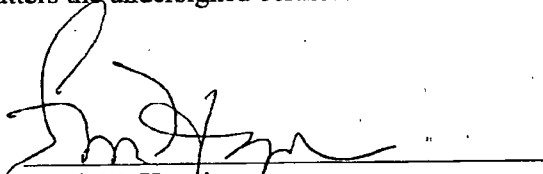
supported by evidence, yet another version of the plan existed when the agreement was drafted March 2, 2008, which was the reason behind the simple, explicit cost plus agreement. As indicated by the defendants payment of \$6000 on March 6, 2007, he accepted that letter as the sole contract. The defendant offered no evidence supporting his contention that other agreements existed for other work performed.

Further, I will argue there are grounds for relief that, more appropriately, would come under SCRCF 59(a) or 60(a). Not having access to the entire file held by my former Councilor, it is difficult, at this point to argue those issues but I will follow shortly with a more detailed brief.

I will provide more but I need a few days to study the law.

Upon hearing, I ask that the judge should reconsider his decision and ask for such other relief that the court deems equitable and proper.

Under the penalties as provided by law pursuant to SCRCF, the undersigned certifies that the statement set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true



Frank M. Haynie
1469 Florawood Dr.
Columbia, SC 29204
803-238-0757

Columbia, SC

March 26, 2012

Sworn to before me this 26th day
of March, 2012. County of Richland,
State of South Carolina.



MATTHEW CARBONE Notary Public State of South Carolina My Commission Expires November 1 2021

2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-40-00064

FM HAYNIE d/b/a DOCWILD'S
GENERAL CONTRACTOR,

Plaintiff
Pro Se

V.

PAUL E. and CAROL CASH,

Defendants

in support of
**PLAINTIFF'S MOTION FOR
RECONSIDERATION**

BRIEF

ANETTE W. McBRIDE
C.C.P. & G.S.

2012 JUL 23 PM 2:45

FILED

RICHLAND COUNTY

TO: DEFENDANTS PAUL E. and CAROLE CASH and their attorney of record
CATHERINE GARBEE GRIFFIN, Esquire

I am the plaintiff in this cause of action and respectfully beg the courts indulgence in this matter regarding timing though SCRCP allows little latitude for post-trial motions. My councilor, Doug Truslow, Esquire, delivered the attached order to me on March 15, 2012, along with his notice that he was no longer representing me. If receipt by council is held the only constructive receipt recognized then this motion is tardy since Truslow consumed the entire 10 day window making delivery to me. In anticipation this motion may be denied, I am this day filing notice of appeal.

Rule 59(e) of the South Carolina Rules of Civil Procedure require that the circuit court provide specific factual findings for its decision. I offer that Cash provided no tangible evidence at trial but, rather, his council drew unwarranted conclusions from my documentation. The facts were further obscured during the discovery process by Truslow giving up heavily notated versions of documents that should have been excluded by the Attorney Work Product Doctrine. These, councilor Griffin used to their benefit with great effect. I am further handicapped by Truslow's failure to return the case file. Some of the following items may, more aptly, be

covered by SCRCF 60(a). My affidavit is included. The evidentiary documents were produced in discovery, I have no way of knowing but believe they were entered into evidence at trial.

Though your honor explicitly instructed the councilors not re-litigate the case in their proposed orders, Griffin did re-litigate the case taking wide liberty with the evidence and testimony.

Pursuant to SCRCF 52(b) the judge should reconsider his decision to use the order offered by the defendant and adjust his decision because there are significant faults in the timeline being argued. *In Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335 (204) the court "strongly encourages trial judges to draft own findings"*. Among other things, no drawing was offered in January of 2006. The first drawing was in December 2006. The line item estimate said to be produced after the March 2, 2007 letter of agreement was produced January 30, 2007 based on an early version of the plan. The permit was applied for in mid-February in order to submit another iteration of the plan for review by the City of Forest Acres (standard procedure) and it was approved 2 weeks later. The date on all of the billing statement spreadsheets is February 7, 2007, which was when I made the first expense entry for the permit purchased based on a 380 square foot structure (shed) with nominal interior finish, no plumbing, a window AC unit and no painting. The \$35,000 contract amount entered at the time was a base for information only. It was not necessary to ever change either since the information was not relevant to anything in reality. The amount was history within days of penning and from that point on it was just used as a reference point from which we started. I explained to Griffin in deposition that I would roughly estimate extras and additions as a reference to gauge actual costs.

As testified to and supported by evidence, yet another version of the plan existed when the agreement was drafted March 2, 2008, which was the reason behind the simple, explicit cost plus agreement:

Pursuant to our discussions, we will construct the subject addition (outbuilding) to your home at 1501 Greenhill generally according to the sketch we previously drew on a cost plus 25% basis. My direct labor will be billed at \$30 per hour and employees at \$18 per hour. All material discounts will pass through to your benefit. Heavy equipment (Bobcat or trackhoe) will be billed based on actual use at \$30/hr.

We guesstimate the job to take 8 weeks and cost roughly \$35,000 greatly contingent upon finish choices as discussed. The actual cost normally is most affected by window, siding & interior detail selections.

Initially, we require a \$6,000 deposit subsequently we will make bimonthly draws, typically in near \$5-10,000 amounts congruent with the construction progress. You are welcome to look at the job book at any time; they are rarely more than a day or two behind the actual cost. Please make checks payable to FM Haynie.

As indicated by the Cash's payment of \$6000 on March 6, 2007, he accepted that letter as the sole contract. Cash offered no evidence supporting his contention that other agreements existed for other work performed. Being unable to define exactly what the scope of the project was, a cost-plus contract was a solution agreeable to both parties. I find no case law that allows construction of a sum certain contract ad-hoc, after the fact, to repair imagined faults in an existing contract. A "valid contract" is defined as "a contract that is fully operative in accordance with the parties' intent." Black's Law Dictionary 326 (7th ed. 1999). That definition recognizes the general principle of contracts that a contract is sufficiently definite and certain if a court using the proper rules of construction can ascertain the terms and conditions on which the parties intended to be bound. Am. Jur. 2d Contracts § 197 (2000). Reasonable, not absolute, certainty as to its terms is required. "A contract will not be held unenforceable for indefiniteness because its performance is, as to particular details, left open to subsequent agreement of the parties. Aperm of South Carolina v. Roof, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct. App. 1986) (citing Touche Ross & Co. v. DASD Corp., 162 Ga. App. 438, 292 S.E.2d 84 (1982)). "This is especially true where the contract provides the guidelines for the subsequent agreement." Aperm at 173.

There were 6 billing statements presented to the Cash, in person and before witnesses that were formatted specifically to comply with the contract (attached/in evidence):

Date	Material	Labor&Equip	25%PT&OH	Total	DUE
• 03/06/07	Acceptance of contract			6,000	0
• 04/30/07	8,774	6,765	3,885	19,424	8,424
• 06/10/07	27,952	13,305	10,314	51,571	27,017
• 09/29/07	unavailable				
• 04/04/08	35,824	16,748	13,143	65,715	23,215

o 11/06/08	38,418	17,178	13,899	69,495	18,995
• 11/12/08	38,418	22,899	21,461	76,646	26,146

All statements were submitted with a detailed statement of material & subcontractor costs, a log of the hours labor charged and all associated receipts.

Regarding the June 6, 2007 statement, at that point the project was roughly 55% complete by any normal measure of construction progress. To illustrate, I offer the attached bank Construction Progress Inspection Report which is a typical measure of progress. By it, we were 54% complete. The framing & roofing were complete, 2/3 of siding was installed and the HVAC, plumbing & Electrical were roughed in. Further, the drywall was up and the underground electrical service to the main house as well as the cabana and the storage shed was complete. The June 10, 2007 billing statement was presented to Cash, in person, was fully documented with all receipts attached and demand was made for the \$27,000 due nearly 18 months prior to the defendants notice they were not going to pay. The defendants never disputed, contested or disagreed with any part of the bill or the process at any time during the ensuing time when we continued to work. It seems this may have been beyond Truslow's ability to make that point.

There were no other side contracts or agreements regarding supplementary work or projects and no evidence of such was proffered at trial. That fact is made crystal clear in the billing statements. There is no need to read between the lines, all work was fully documented, extraneous notation was unnecessary because we were doing whatever the Cashes requested and they had full access to the books at all times as specified in the only contract of record.

Contrary to the Cash's assertion, Mr. Schmidt, the cabinet maker, did not start on the Cash project until September, 2007. There was no electricity in the building until July 29, 2007 and the painters and HVAC contractor were working during August, 2007, therefor it would have been impractical for Schmidt to be on the job. Prior to Schmidt beginning the Cash project, he was working on another of my projects, the Columbia College Library Modernization, and was building those cabinets in his shop on North Main St. He did not work on any of my other projects during 2007 because I had no other projects that required his services. I made no

agreement to rent the Cash's shop because I had no need and Schmidt had no need. The only reason for staying set up at Cash's site was so that we could devote our free time to his project. It did not benefit us but, rather, benefitted the Cashes greatly.

As testified to, there is an obvious error in the billing statements given April 4, 2008 and November 6, 2008. In April 4, 2008, I billed \$35,824 for materials and logged 878 man hours of labor which is \$7,872 and 195 man hours more than was billed in June 10, 2007. During that period, we installed the remainder of the siding, the soffit, entry doors & transom, stairs, flooring, closet, porch columns & ceiling, work bench, interior doors & trim, hand rails, finished the electrical, plumbing & HVAC, poured the shed concrete, installed the septic tank, built a play house, moved the pump station, painted the outside, took down another large pine & removed the stump, made significant repairs to the irrigation system and helped landscape and prepare for the graduation party. The fact is, it is not possible that my 3 man crew and myself could do that in 6 days. As I testified at trial, I did not discover the error until after I delivered the November 6, 2008 statement. It was a simple but large error in that the spreadsheet sum formula stopped adding labor beyond July 18, 2007. Basically the Cash job outgrew my spreadsheet.

During that same 9 month period I only logged 2 hours of personal labor. Everyone involved knows that is not correct. I was there working many many days, many times all day. One Saturday I remember working 5 or 6 hours and I had my Grand Children with me. They played with young Ethan Cash in the Cash home and Carol Cash watched over them. I didn't bother logging that time because I was helping my friend Paul Cash, my tennis partner. It is true, when I made the labor correction I added 40 personal hours that "I pulled out of the air". I also testified that the actual number of hours that I worked was very much higher so 40 hours was a very low guess. Paul Cash was the Merrill Lynch broker that I moved my mother's \$700,000 investment account to so he could make his bonus in a bad year. It was 2007, the year the Cash testified he was doing great. It is no secret that most Merrill brokers were in fear of their jobs that fall. That same fall Merrill wrote down a record \$8 billion worth of nonperforming mortgage assets and was ultimately taken over by Bank of America.

Regarding the septic tank, the original design was a graywater system for the shower; lavatory and bar sink which would be piped to the flower bed. The commode was added two days before we poured the slab by Cash, forcing abandonment of that plan. Cash knew from the beginning a lift-station was needed. He had us, instead, install the septic tank as a temporary measure fully aware it was improper under the circumstance. The tank was the same sort of waste disposal system that dog owners use for their dog kennels. It may have been improper but it was not an environmental hazard and did not contaminate groundwater or cause any sanitation issues. I suggested that when it was replaced by the lift-station he could use it for the dog pen, 15 feet away. Evidencing his full knowledge of the situation, Cash had us put a keyed lock on the bathroom door prior to the party to prevent Uncle Lee Holloway, the city attorney, from discovering a bathroom existed during the pending celebration.

Counter to opposing council's argument, a substantial amount of work was done after the April billing statement. A custom closet door was built and installed, the bathroom door was reversed & hardware replaced, the stair landing & handrail was completed, the bench top was installed, stained & finished, the transom windows were completed, interior window trim & chair rail was custom made and installed, the interior was painted and the exterior doors and porch, the huge 10 ton Hackberry tree was taken down and more repairs to the irrigation system made, the septic tank was repaired a second time and the Cash's brick driveway entrance was repaired. The \$3000 payment tendered in August 9, 2008 did not come close to covering the cost of the work done. Cash waited near exactly 90 days from that date to give notice that he was not making any further payments for the purpose of blocking a mechanic's lien.

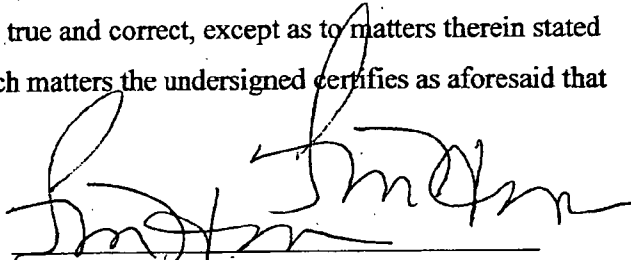
After that payment was made, Ray Lyerly finished the bench top 08/20 & 21st, 2008 (evidenced by the Sherwin Williams receipt of 08/18), Manuel Figuero and I dug up and repaired the septic tank at the defendant's request on August 21 & 22nd, 2008, Col. Stan Luellan (retired) assisted in repairing the irrigation, and Benjamin Rodrigues made the brick repairs sometime in October, 2008. It is true I installed the missing piece of window trim and returned to take the picture in order to document I was still working. However, by no means was the other work done in the 90 days prior to filing the mechanics lien trivial.

Truslow adequately argued the merits of a quantum meruit resolution in his proposed order. The 2008 National Building Cost Manual conservatively values the structure at \$92,094 with all appropriate discounts & allowances included. Counter to Griffin's assertion, it matters not the ultimate function or use of a building in determining its value on a construction cost basis. When appraising construction costs final valuation depends primarily on like construction types, there is no function factor to consider.

It took Cash over a year to finally, nearly pay the uncontested bill for a structure less than 60% complete. That structure was nearly double the size of the originally contemplated structure, had a second floor, 20 foot high cathedral ceiling, \$4000 of painting and \$6000 worth of underground power were added and \$4000 in tree removal and demolition. To hypothesize \$50,000 will cover the cost is fantasy in the nth degree.

Upon review, I ask that the judge should reconsider his decision and ask for such other relief that the court deems equitable and proper.

Under the penalties as provided by law pursuant to SCRCP, the undersigned certifies that the statement set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true



Frank M. Haynie
1469 Florawood Dr.
Columbia, SC 29204
803-238-0757

Columbia, SC

April 4, 2012

7011 0470 0003 1901 8857

U.S. Postal Service TM		
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Return Receipt Fee (Endorsement Required)	\$ 0.00	Postmark Here
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City, State, ZIP+4 [®] <u>Columbia SC 29202-0192</u>		
PS Form 3800, August 2006 See Reverse for Instructions		

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 HIGHLAND COUNTY
 JEANETTE M. McBRIDE
 C.C.P. & G.S.

7011 0470 0003 1901 8840

U.S. Postal Service TM		
CERTIFIED MAIL TM RECEIPT		
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For delivery information visit our website at www.usps.com		
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Certified Fee	\$ 2.95	16
Return Receipt Fee (Endorsement Required)	\$ 0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 4.65	04/04/2012
Sent To <u>Catherine Barber Griffin Esq.</u>		
Street, Apt. No., or PO Box No. <u>POB 8057</u>		
City, State, ZIP+4 [®] <u>Columbia SC 29203</u>		
PS Form 3800, August 2006 See Reverse for Instructions		

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-40-00064

FM HAYNIE d/b/a DOCWILD'S
GENERAL CONTRACTOR,

Plaintiff

V.

PAUL E. and CAROL CASH,

Defendants

**AFFIDAVIT OF
FRANK HAYNIE**

PERSONALLY APPEARED BEFORE ME, FRANK HAYNIE, who, being duly sworn
deposes and states as follows:

1. That I am above the age of eighteen (18), suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.
2. I have a Bachelor of Engineering degree from Georgia Institute of Technology.
3. I have been a licensed General Contractor in the state of South Carolina since 1973.
4. I received the decision by the court file March 6, 2012 via certified mail from Doug Truslow, Esquire on March 15, 2012. The order information states "this order does not end the case".
5. From the date of filing I received no communication whatsoever from Truslow until receipt of the certified letter of March 15, 2012.
6. By the same mailing, Truslow gave notice he was no longer representing me.

7. Truslow has not turned over the case file for this action.
8. During the discovery phase of the case Truslow provided the defendants privileged notated documents intended for his use only.
9. On December 5, 2006 I drew the first version of a shed construction project being proposed to Paul Cash.
10. On January 22, 2007 I drew another "cabana" version of the structure being proposed to Cash.
11. On January 30, 2007 I produced an estimate for the 360 square foot cabana structure in the amount of \$38,265.
12. On February 8, 2007 I had Ben McFadden remove 4 pine trees from the Cash property and submitted the 360 square foot cabana plan to the City of Forest Acres for review on or about the same time.
13. On March 2, 2007 I drew a 380sf version of the cabana to include a 140sf storage loft.
14. Also on March 2, 2007 I proposed the cost plus 25% construction agreement (presented in evidence at trial).
15. On March 3, 2007 I drew a 500sf version of the cabana including a 200sf loft.
16. On March 4, 2007 I drew a 660sf version of the cabana converting the previous loft to a second floor office with stair access. The front structure was changed to a cathedral ceiling style.
17. On March 6, 2007 Cash accepted the cost plus 25% construction agreement and paid the \$6000 deposit.
18. There were never any other agreements altering the cost or scope of the original agreement or the project.

19. On March 12, 2007, having removed the previous shed and slab, we began work on the new structure for Cash.

20. On March 21, 2007 Cash added a toilet to the washroom and I altered the below ground piping accordingly.

21. On April 4, 2007 I delivered to Cash, personally, the billing statement of the same date with receipts (Exhibit A which I believe has been entered into evidence at trial).

22. In May, 2007, Cash requested a 100sf shed be added to the rear of the building.

23. On June 10, 2007 I delivered to Cash, personally, the billing statement of the same date with receipts (Exhibit B which I believe has been entered into evidence at trial). At that point I believe the structure was 55% complete as shown in exhibit C.

24. Bill Schmidt started work on the project in mid-September.

25. On September 29, 2007 I delivered to Cash, personally, a billing statement of the same date like the previous statements with receipts but the copy is lost. The meeting was attended by Bill Schmidt and Sky Haynie.

26. In November 2007 I facilitated the transfer of Lydia Haynie's, my mother, \$700,000 investment account to Cash's care as a Merrill Lynch broker in order to aid him in making his yearly bonus/quota. Cash has never met Mrs. Haynie.

27. On April 4, 2008 I delivered to Cash, personally, the billing statement of the same date with receipts (Exhibit D which I believe has been entered into evidence at trial).

28. Between July 19, 2007 and November 6, 2008 I worked for Cash significantly more than the 42 hours shown on the final billing statement.

29. On August 18, 2008 I purchased paint from Sherwin Williams for use on the Cash project as shown by receipt I believe has been presented in evidence (Exhibit E).

30. On August 20 & 21, 2009 I had Ray Lyerly and Bernard Sinclair pickle (stain) the Cash workbench.

31. On August 21 & 22, 2008 Manuel Figueroa and I repaired the Cash septic tank as requested by Cash.

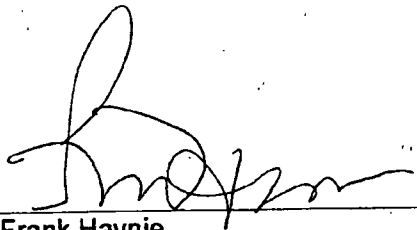
32. During September or October, 2008 Col. Stan Luellan assisted me in making repairs to the Cash irrigation system and Benjamin Rodriguez repaired Cash's brick entryway as requested by Cash.

33. On November 6, 2008 I delivered to Cashes door, the billing statement of the same date (Exhibit F which I believe has been entered into evidence at trial).

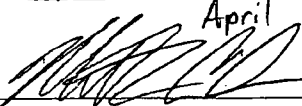
34. On November 12, 2008 I mailed the billing statement of the same date to Cash (Exhibit G which I believe has been entered into evidence at trial)

35. At no time prior to November 2008 did the Cashes dispute the charges, billing statements or receipts attributed to their project. The most significant feedback they offered was the request in the Fall of 2007 for us to slow down.

FURTHER THE AFFIANT SAYETH NOT.


Frank Haynie

SWORN to and subscribed before me
this 4th day of ~~March~~ ^{April}, 2012.


Notary Public of South Carolina, County of Richland
My Commission Expires: 11/01/2021

MATTHEW CARBONE
Notary Public State of South Carolina
My Commission Expires November 1 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-40-00064

FM HAYNIE d/b/a DOCWILD'S
GENERAL CONTRACTOR,

Plaintiff

V.

PAUL E. and CAROL CASH,

Defendants

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 JUL 23 PM 2:50
JEANETTE W. McBRIDE
Clerk, C.D.P. & G.S.

TO: DEFENDANTS PAUL E. and CAROLE CASH and their attorney of record
CATHERINE GARBEE GRIFFIN, Esquire

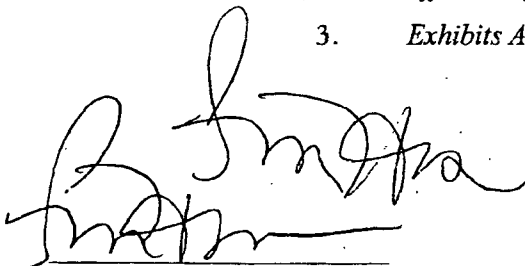
I, Frank M. Haynie, Plaintiff, certify I have this date served the foregoing
document(s) on the individual(s) listed below via electronic transmission or by placing a
copy in the United States Mail, postage prepaid to the following addresses:

The Honorable Joseph M. Strickland
POBox 192
Columbia, SC 29202-0192

OFFICE: (803) 576-1900

Catherin Garbee Griffin, Esquire
Baker Ravenel Bender, LLP
PO Box 8057
Columbia, SC 29203

- DOCUMENT(S):
1. *Motion for Reconsideration Brief*
 2. *Affidavit of Frank Haynie*
 3. *Exhibits A through G*



Frank M. Haynie
1469 Florawood Dr.
Columbia, SC 29204

4/4/12

Docs signed 11/15/07
Txfr 11/23/07

Online at: www.ml.com

Account Number: [REDACTED]

24-Hour Assistance: (800) MERRILL

TOTAL MERRILL®

LYDIA W HAYNIE
1204 WILDEWOOD DOWNS CIR
COLUMBIA SC 29223-4431

Net Portfolio Value:

\$742,727.01

Your Financial Advisor:

PAUL E CASH
P.O. BOX 11269
COLUMBIA SC 29211
paul_cash@ml.com
(803) 733-2171

CMA® ACCOUNT

October 27, 2007 - November 30, 2007

ASSETS

	November 30	October 26
Cash/Money Accounts	276,662.35	-
Fixed Income	459,025.40	-
Equities	-	-
Mutual Funds	-	-
Options	-	-
Other	-	-
Subtotal (Long Portfolio)	735,687.75	-
Estimated Accrued Interest	7,039.26	-
TOTAL ASSETS	\$742,727.01	-

LIABILITIES

Debit Balance	-	-
Short Market Value	-	-
TOTAL LIABILITIES	-	-
NET PORTFOLIO VALUE	\$742,727.01	-

CASH FLOW

	This Statement	Year to Date
Opening Cash/Money Accounts	-	-
CREDITS		
Funds Received	-	-
Electronic Transfers	-	-
Other Credits	286,569.13	286,569.13
Subtotal	286,569.13	286,569.13
DEBITS		
Electronic Transfers	-	-
Margin Interest Charged	-	-
Other Debits	(5,000.00)	(5,000.00)
Visa Purchases (debits)	-	-
ATM/Cash Advances	-	-
Checks Written/Bill Payment	(5,000.00)	(5,000.00)
Subtotal	(10,000.00)	(10,000.00)
Net Cash Flow	\$276,569.13	\$276,569.13
Dividends/Interest Income	93.22	93.22
Security Purchases/Debits	-	-
Security Sales/Credits	-	-
Closing Cash/Money Accounts	\$276,662.35	-
Securities You Transferred In/Out	458,789.50	458,789.50

Exhibit A

LYDIA W HAYNE

Account Number: [REDACTED]

24-Hour Assistance: (800) MERRILL

YOUR CMAI BANK DEPOSIT INTEREST SUMMARY

October 27, 2007 - November 30, 2007

Money Account Description	Opening Balance	Average Deposit Balance	Current Yield%	Interest on Deposits	Closing Balance
Merrill Lynch Bank USA	0	6,595	3.01	60.02	178,129
Merrill Lynch Bank Tr FSB	0	3,648	3.01	33.20	98,533
TOTAL ML Bank Deposit Program	0			93.22	276,662

YOUR CMAI ASSETS

CASH/MONEY/ACCOUNTS Description	Quantity	Total Cost Basis	Estimated Market Price	Estimated Market Value	Estimated Annual Income	Est. Annual Yield%
CASH	0.35	0		.35		
ML Bank Deposit Program	276,662.00	276,662	1.0000	276,662.00	8,327	3.01
TOTAL		276,662		276,662.35	8,327	3.01

CDs/EQUIVALENTS Description	Acquired	Quantity	Adjusted/Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain/(Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield%
CD DISCOVER BK GREENWOOD DEL 05.300% MAY 21 2008	N/A	100,000	N/A	100.0820	100,082.00	N/A	1,466.58	5,299	5.29
CD FIRSTBANK P R SANTURCE PR 05.300% AUG 21 2008	N/A	100,000	N/A	100.1300	100,130.00	N/A	1,466.58	5,299	5.29
TOTAL		200,000			200,212.00		2,933.16	10,599	5.29

MUNICIPAL BONDS Description	Acquired	Quantity	Adjusted/Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain/(Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield%
SPARTANBURG CNTY SC OID PRF10 APR00 05.375%APR01 16 MOODY'S: AA2 S&P: AA	N/A	35,000	N/A	105.6430	36,975.05	N/A	308.32	1,881	5.08
STH CAROLINA ST PUB SVC AT RV A OID MBIA PRF10 SEP99 05.500%JAN01 22 MOODY'S: AAA S&P: AAA	N/A	50,000	N/A	105.4140	52,707.00	N/A	1,138.19	2,749	5.21



026



725502920086950001

8524 0054884 008695

2 of 6

LYDIA W HAYNIE

Account Number [REDACTED]



TOTAL MERRILL

YOUR CMA ASSETS

October 27, 2007 - November 30, 2007

MUNICIPAL BONDS (continued)			Adjusted/Total	Estimated	Estimated	Unrealized	Estimated	Estimated	Current
Description	Acquired	Quantity	Cost Basis	Market Price	Market Value	Gain/(Loss)	Accrued Interest	Annual Income	Yield%
HILTON HEAD PSD#1 SC WYSS REV OID FSA PRF08 APR98 05.000%DEC01 23 MOODY'S: AAA S&P: AAA	N/A	25,000	N/A	101.6210	25,405.25	N/A	621.53	1,249	4.92
SPARTANBURG SC SAN SWR DT SSD REV B RFOID MBIA JUN99 05.125%MAR01 25 MOODY'S: AAA S&P: AAA	N/A	40,000	N/A	102.3440	40,937.60	N/A	506.81	2,049	5.00
UNIVERSITY SC UNIV REVS SER A OID FGIC PRF10 JUN00 05.625%JUN01 25 MOODY'S: AAA S&P: ***	N/A	50,000	N/A	105.6400	52,820.00	N/A	1,398.44	2,812	5.32
TOB SETTLMNT REV MGMT AT SC RV SER B OID MAR01 06.375%MAY15 30 MOODY'S: BAA3 S&P: BBB	N/A	50,000	N/A	99.9370	49,968.50	N/A	132.81	3,187	6.37
TOTAL		250,000			258,813.40		4,106.10	13,931	5.38
LONG PORTFOLIO			Adjusted/Total	Estimated	Unrealized	Estimated	Estimated	Current	
			Cost Basis	Market Value	Gain/(Loss)	Accrued Interest	Annual Income	Yield%	
TOTAL			276,662	735,687.76		7,039.26	32,858	4.47	

*** Rating currently unavailable or not rated/unrated as provided by Rating Agency or recognized industry wide third party vendor source.

Total values exclude N/A items



LYDIA W HAYNIE

Account Number: [REDACTED]

24-Hour Assistance: (800) MERRILL

YOUR CMA TRANSACTIONS

October 27, 2007 - November 30, 2007

DIVIDENDS/INTEREST INCOME TRANSACTIONS

Date	Transaction Type	Quantity	Description	Income	Income Year To Date
11/30	Bank Interest		BANK DEPOSIT INTEREST	.22	
	Income Total		ML Bank Deposit Program	93.00	
	Subtotal (Interest)			93.22	93.22
	NET TOTAL			93.22	93.22

SECURITIES YOU TRANSFERRED IN/OUT

Date	Description	Transaction Type	Quantity	Value of Securities	Year To Date
11/23	CD DISCOVER BK GREENWOOD DEL 05.300% MAY 21 2008	Cust Acct Trfr	100,000	100,067.00	
11/23	CD FIRSTBANK P R SANTURCE PR 05.300% AUG 21 2008	Cust Acct Trfr	100,000	100,098.00	
11/23	UNIVERSITY SC UNIV REVS SER A OID FGIC PRF10 JUN00 05.625%JUN01 25	Cust Acct Trfr	50,000	52,791.00	
11/23	SPARTANBURG CNTY SC OID PRF10 APR00 05.375%APR01 16	Cust Acct Trfr	35,000	36,955.45	
11/23	SPARTANBURG SC SAN SWR DT SSD REV B RF OID MBIA JUN99 05.125%MAR01 25	Cust Acct Trfr	40,000	40,920.80	
11/23	TOB SETTLMNT REV MGMT AT SC RV SER B OID MAR01 06.375%MAY15 30	Cust Acct Trfr	50,000	49,851.00	
11/23	STH CAROLINA ST PUB SVC AT RV A OID MBIA PRF10 SEP99 05.500%JAN01 22	Cust Acct Trfr	50,000	52,684.50	
11/23	HILTON HEAD PSD#1 SC WW-SS REV OID FSA PRF08	Cust Acct Trfr	25,000	25,421.75	

+

026



723302920086950002

8524 0054886 008695

4 of 6

LYDIA W HAYNIE

Account Number [REDACTED]



TOTAL MERRILL*

YOUR CMA TRANSACTIONS

October 27, 2007 - November 30, 2007

SECURITIES YOU TRANSFERRED IN/OUT (continued)

Date	Description	Transaction Type	Quantity	Value of Securities	Year To Date
	APR98 05.000%DEC01 23			458,789.50	458,789.50
	NET TOTAL				

CASH/OTHER TRANSACTIONS

Date	Transaction Type	Quantity	Description	Debit	Credit
11/20	Journal Entry		PROVISIONAL CREDIT		5,000.00
11/23	Journal Entry		ENT*TRF DEP CR CASH BAL		281,569.13
11/26	Journal Entry		PROV CREDIT REVERSAL	5,000.00	
			CHECK COMING THROUGH		
	Subtotal (Other Debits/Credits)			5,000.00	286,569.13
	NET TOTAL				281,569.13

CHECKS WRITTEN/BILL PAYMENT

Date Written	Date Cleared	Check Number	Description	Debit	Credit
11/16	11/20	1001	WACHOVIA BANK	5,000.00	
				5,000.00	
			NET TOTAL		

To report Lost or Stolen Visa Cards or Checks, please call (800) CMA-LOST.

YOUR CMA MONEY ACCOUNT TRANSACTIONS

Date	Description	Withdrawals	Deposits	Date	Description	Withdrawals	Deposits
11/26	ML Bank Deposit Program		276,569.00				
	NET TOTAL		276,569.00				

+

DocWild's ^{Exhibit A}
General Contractor

4/30/2007

Paul Cash
1501 Greenhill Rd
Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

Materials	\$	8,774
235mh @ \$15		3,525
92mh @ \$30		2,760
Bobcat 16h		<u>480</u>
Subtotal		15,539
+25% pft&OH		<u>3,885</u>
Total	\$	19,424
Less paid	-	<u>11,000</u>
Balance	\$	8,424

Thanks,

FM Haynie

(803) 738-2867

DocWild@Liaison.to
1469 Florawood Dr, Ste. 102
Columbia, South Carolina
29204

(803) 258-0757 cell

A2

2/7	\$ 19,424	\$ 6,765	Paid	11,000	Contract				
Doc	92	2760	3/6	6,000	Extra				
labor	235	3525	4/12	5,000	Total	19,424			
Equipment	16	480							
					Due	8,424			
					Current	-8,424			
COSTS	Descriptic	\$ 10,968							
Permit		434							
Lowes	2x6	36	59	21	-44				
RSG	Soffitt	63							
Lowes		618	170	153	49	246			
Lowes	Beam & f	555							
A1	Stone	189							
Hardaway	5y	607							
Titan		337							
Guaranteec	Pencil roc	74	30	44					
Titan	Pump	412							
Hardaway		1,335							
Sunbelt	Finisher	102							
Lowes		2,457							
Aaro	JumpJack	147							
Lowes		325	76	46	105	6	43	49	
Capitol Sup	Conduit	196							
Rental	Trencher	287							
McFaddin	Trees	600							

A₃

	CAT	Doc	MH	N/C	Job	Sub
Total	16	92	235	38		
2/7	4	6	3			
2/9			5			
3/12		4	10		Digging	
3/14	4	6	10			
3/21	4	6	8			
3/22	4	4	4	4		
3/26		4	14	4		
3/27		6	16		Concrete	
3/28			4	2		
4/2			10	4		
4/3		5	14			
4/4		5	16	3		
4/9		6	17	3		
4/10		6	16		Pour walls	
4/11			4	4	Pour walls	
4/12	2		8		Strip	
4/16			5	3		
4/17	2		3	11	Repair concrete	
4/18		6	14		Framing	
4/19	10		17		Loft	
4/23	3		5			
4/25		6	16		Wrap	
4/26		4	10			
4/29		1	6		porch sheating & drai	

DocWild's ^{Exhibit B,}
General Contractor

6/10/2007

Paul Cash
1501 Greenhill Rd
Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

Materials	\$	27,952
511mh @ \$15		7,665
172mh @ \$30		5,160
Bobcat 16h		<u>480</u>
Subtotal		41,257
+25% pft&OH		<u>10,314</u>
Total	\$	51,571
Less paid	-	<u>24,500</u>
Balance	\$	27,071

Thanks,

FM Haynie

(803) 738-2867

DocWild@Liaison.to
1469 Florawood Dr. Ste. 102
Columbia, South Carolina
29204

(803) 238-0757 cell

B2

2/7	\$ 52,104	\$ 13,305	Paid	24,500	Contract	35,000			
Doc	172	5160	3/6	6,000	Extra	0			
labor	511	7665	4/12	5,000	Total	35,000			
Equipment	16	480	5/7	5,000					
			5/12	3,500	Due	10,500			
			5/25	5000	Current	-27,604			
COSTS	Descriptic	\$ 35,473							
Permit		434							
Reyes	Drywall	1,300							
Bernard	Paint	150							
Lowe's	Stuff	235							
HomeDepo		36							
Dreher	Plumbing	735							
RSG	Shakes	369							
CK	Rock	777							
Boozer	Trim brds	233							
Lower		74							
Perry	A/C	2,060	??						
Boozer	Vent	29							
Lowe's	Misc	319	35	32	73	160	19		
Lowe's	Shed	745	201	24	96	203	80	32	109
Perry's	A/C	2,000							
GTG	Insulation	765							
Electrical S	Rough	1,000							
Electrical S	Service	2,040							
Lowe's	Stuff	58	42	16					
Lowe's	Siding	1,238							
Lowe's	Shingles	429							
Capitol Sup	Cable	271							
Lowe's	Moulding	597	488	50	59				
Lowe's	Rafters	266	246	20					
Lowe's	Windows	2661	1330	1331					
Perry Mann	Meter bas	471							
Lowe's	Truck & lt	658							
Lowe's	2x6	124	59	21	44				
RSG	Soffitt	63							
Lowe's		618	170	153	49	246			
Lowe's	Beam & fr	555							
A1	Stone	189							
Hardaway	5y	607							
Titan		337							
Guaranteed	Pencil roc	74	30	44					
Titan	Pump	412							
Hardaway		1,335							
Sunbelt	Finisher	102							
Lowe's		2,457							
Aaro	JumpJack	147							
Lowe's		325	76	46	105	6	43	49	
Capitol Sup	Conduit	196							
Rental	Trencher	287							
McFaddin	Trees	600							

B₃

	CAT	Doc	MH	N/C	Job	Sub
Total	16	172	511	43		
2/7	4	6	3			
2/9			5			
3/12		4	10		Digging	
3/14	4	6	10			
3/21	4	6	8			
3/22	4	4	4	4		
3/26		4	14	4		
3/27		6	16		Concrete	
3/28			4	2		
4/2			10	4		
4/3		5	14			
4/4		5	16	3		
4/9		6	17	3		
4/10		6	16		Pour walls	
4/11			4	4	Pour walls	
4/12		2	8		Strip	
4/16			5	3		
4/17		2	3	11	Repair concrete	
4/18		6	14		Framing	
4/19		10	17		Loft	
4/23		3	5			
4/25		6	16		Wrap	
4/26		4	10			
4/30		1	6		Porch sheating	
5/1		3	8			
5/2		9	10		Loft rafters	
5/3		6	18		Felt & barge (post ok)	
5/7		6	12		Rafters	
5/8		2	8			
5/9		5	12		Roofing	
5/10		6	12			
5/11			5			
5/16			5	5	Pipes	
5/17		5	9		Sprinkler	
5/21		7	19			
5/22		6	20			
5/23		10	20			
5/24		3	25		Shed	
5/25			4			
5/29			16			
5/30			20		Plaster	
5/31		4	26		Siding	
6/4		4	10			
6/5		4	17			
6/6			19			
6/7		6	19		Soffitt	
6/8			6			

Exhibit
C

**BB&T MORTGAGE
CONSTRUCTION PROGRESS INSPECTION REPORT**

Borrower: _____

Prop Add: _____ Builder: _____

Legal Desc: _____ Construction Cost: _____

Inspector: Don

		Date of Inspections:							
ITEMS COMPLETED	%	1st	2nd	3rd	4th	5th	6th	7th	8th
Clearing lot/rough grading/excavation/permits	3	3							
Public water taps or private well	1	1							
Public sewer taps or septic tank	1	1							
Concrete footings	2	2							
Foundation walls and piers	4	4							
Floor framing and subflooring	6	6							
Framing: Outside studs, inside studs, sheathing	6	6							
Roof framing: Truss, joists, sheathing, felt	6	6							
Plumbing rough-in/tubs set	4	4							
Electrical rough-in	4	4							
Heat/cool rough-in	3	3							
Window units set/outside doors	3	3							
Permanent roof shingles	1	1							
Insulation: Walls, ceilings, floors	2	2							
Exterior paint primed	2								
Siding and/or brick veneer	6	3							
Chimneys/flues/inserts	2								
Interior walls and ceilings (cheestock)	5	5							
Interior trim: Windows, doors, closets	4								
Plumbing complete: Sinks, toilets, faucets, water	2								
Millwork: Kitchen/bath cabinet, stairs	5								
Interior paint primed	1								
Bathroom tile: floors & walls	2								
Concrete: Basement, porch, walks, drive	4								
Exterior paint complete	2								
Interior paint/wallpaper complete	3								
Hardware: Doors, windows, cabinets	2								
Wiring complete: fixtures & trim	1								
Built-in appliances	1								
Floor finish: Carpet, vinyl, etc.	4								
Heat/air unit installed	2								
Outside finish: gutters, screens, garage door	2								
Finish grade & landscaping	2								
Miscellaneous:	2								
Total % Complete this Inspection									
Total % Complete to date		54							

DocWild's

General Contractor

Exhibit D

4/4/2008

Paul Cash

1501 Greenhill Rd

Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

Materials	\$	35,824
878mh		16,268
Bobcat 16h		<u>480</u>
Subtotal		52,572
+25% pft&OH		<u>13,143</u>
Total	\$	65,715
Less paid	-	<u>42,500</u>
Balance	\$	23,215

Thanks,

FM Haynie

(803) 758-2867

DocWild@Liatson.to
1469 Florawood Dr, Ste.102
Columbia, South Carolina
29204

(803) 258-0757 cell



SHERWIN-WILLIAMS.

SHERWIN-WILLIAMS
8907 TWO NOTCH RD
COLUMBIA SC 29223

Visit www.sherwin-williams.com
Store 2166 SHAWN
(803) 788-6728
Fax - (803) 788-6769

SALE
No. 4555-0

ACCOUNT: 2186-0928-7 JOB 01 COLUMBIA COLLEGE

PAGE 01 of 02
PO: REV HOUSE
ORDER: OE0060384Q2166
DATE: 08/16/08
TIME: 9:13 AM

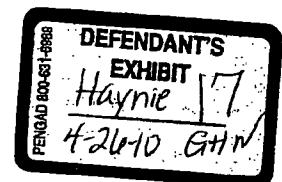
COLUMBIA COLLEGE
ATTN: FACILITIES MANAGEMENT
1301 COLUMBIA COLLEGE DR
COLUMBIA SC 29203 5949

2-4553
E71/11767 10

(803) 786-3012

SALES NUMBER	SIZE	PRODUCT	DESCRIPTION	QTY	PRICE	VALUE
6405-14931	GALLON A8W51	A100 LTX GL EXTRA		2	27.72	55.44
	Color: SW7008 ALABASTER					
	BAC Blend-a-Color	OZ 32 64 128				
	B1 Black	- - - 1				
	Y3 Deep Gold	- 1 1 -				
	Sher-Color Formula					
6403-89177	GALLON A82W151	A100 LTX SA EXTRA		2	25.43	50.86
	Color: SW6220 INTERESTING AQUA					
	BAC Blend-a-Color	OZ 32 64 128				
	B1 Black	- 44 - -				
	G2 New Green	- 21 1 -				
	Y3 Deep Gold	- 1 1 1				
	Sher-Color Formula					
1-33745	GALLON A8W51	A100 LTX GL DEEP		1	27.72	27.72
	Color: SW6223 STILL WATER					
	BAC Blend-a-Color	OZ 32 64 128				
	B1 Black	6 47 - -				
	G2 New Green	2 41 1 -				
	B1 Raw Umber	- 27 - 1				
	Y3 Deep Gold	- 11 1 1				
	Sher-Color Formula					
6403-53691	QUART A11W253	ASE OIL GL DEEP BS		1	13.23	13.23
	Color: SW6223 STILL WATER					
	BAC Blend-a-Color	OZ 32 64 128				
	B1 Black	- 55 - 1				
	G2 New Green	- 22 1 1				
	Y3 Deep Gold	- 1 1 1				
	Sher-Color Formula					

CONTINUED ON PAGE 02



000037

DocWild's

General Contractor

Exhibit
F

11/6/2008

Paul Cash
1501 Greenhill Rd
Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)
New work: tree, trim & paint

Materials	\$	38,418
888mh		16,578
Bobcat 20h		<u>600</u>
Subtotal		55,596
+25% pft&OH		<u>13,899</u>
Total	\$	69,495
Less paid	-	<u>50,500</u>
Balance	\$	18,995

Thanks,

FM Haynie

(803) 738-2867

DocWild@Liaison.to
1469 Florawood Dr. Ste. 102
Columbia, South Carolina
29204

(803) 238-0757 cell

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-40-00064

FM HAYNIE d/b/a DOCWILD'S
GENERAL CONTRACTOR,

Plaintiff

V.

PAUL E. and CAROL CASH,

Defendants

**AFFIDAVIT OF
FRANK HAYNIE**

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 JUL 24 AM 10:51

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, FRANK HAYNIE, who, being duly sworn
deposes and states as follows:

1. That I am above the age of eighteen (18), suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.
2. I have a Bachelor of Engineering degree from Georgia Institute of Technology.
3. I have been a licensed General Contractor in the state of South Carolina since 1973.
4. I received the decision by the court file March 6, 2012 via certified mail from Doug Truslow, Esquire on March 15, 2012. The order information states "this order does not end the case".
5. From the date of filing I received no communication whatsoever from Truslow until receipt of the certified letter of March 15, 2012.
6. By the same mailing, Truslow gave notice he was no longer representing me.

1
SCANNED

7. Truslow has not turned over the case file for this action.
8. During the discovery phase of the case Truslow provided the defendants privileged notated documents intended for his use only.
9. On December 5, 2006 I drew the first version of a shed construction project being proposed to Paul Cash.
10. On January 22, 2007 I drew another "cabana" version of the structure being proposed to Cash.
11. On January 30, 2007 I produced an estimate for the 360 square foot cabana structure in the amount of \$38,265.
12. On February 8, 2007 I had Ben McFadden remove 4 pine trees from the Cash property and submitted the 360 square foot cabana plan to the City of Forest Acres for review on or about the same time.
13. On March 2, 2007 I drew a 380sf version of the cabana to include a 140sf storage loft.
14. Also on March 2, 2007 I proposed the cost plus 25% construction agreement (presented in evidence at trial).
15. On March 3, 2007 I drew a 500sf version of the cabana including a 200sf loft.
16. On March 4, 2007 I drew a 660sf version of the cabana converting the previous loft to a second floor office with stair access. The front structure was changed to a cathedral ceiling style.
17. On March 6, 2007 Cash accepted the cost plus 25% construction agreement and paid the \$6000 deposit.
18. There were never any other agreements altering the cost or scope of the original agreement or the project.

19. On March 12, 2007, having removed the previous shed and slab, we began work on the new structure for Cash.

20. On March 21, 2007 Cash added a toilet to the washroom and I altered the below ground piping accordingly.

21. On April 4, 2007 I delivered to Cash, personally, the billing statement of the same date with receipts (Exhibit A which I believe has been entered into evidence at trial).

22. In May, 2007, Cash requested a 100sf shed be added to the rear of the building.

23. On June 10, 2007 I delivered to Cash, personally, the billing statement of the same date with receipts (Exhibit B which I believe has been entered into evidence at trial). At that point I believe the structure was 55% complete as shown in exhibit C.

24. Bill Schmidt started work on the project in mid-September.

25. On September 29, 2007 I delivered to Cash, personally, a billing statement of the same date like the previous statements with receipts but the copy is lost. The meeting was attended by Bill Schmidt and Sky Haynie.

26. In November 2007 I facilitated the transfer of Lydia Haynie's, my mother, \$700,000 investment account to Cash's care as a Merrill Lynch broker in order to aid him in making his yearly bonus/quota. Cash has never met Mrs. Haynie.

27. On April 4, 2008 I delivered to Cash, personally, the billing statement of the same date with receipts (Exhibit D which I believe has been entered into evidence at trial).

28. Between July 19, 2007 and November 6, 2008 I worked for Cash significantly more than the 42 hours shown on the final billing statement.

29. On August 18, 2008 I purchased paint from Sherwin Williams for use on the Cash project as shown by receipt I believe has been presented in evidence (Exhibit E).

30. On August 20 & 21, 2009 I had Ray Lyerly and Bernard Sinclair pickle (stain) the Cash workbench.

31. On August 21 & 22, 2008 Manuel Figueroa and I repaired the Cash septic tank as requested by Cash.

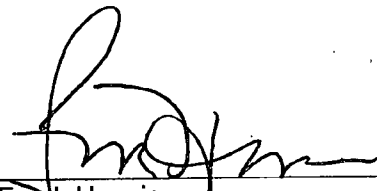
32. During September or October, 2008 Col. Stan Luellan assisted me in making repairs to the Cash irrigation system and Benjamin Rodriguez repaired Cash's brick entryway as requested by Cash.

33. On November 6, 2008 I delivered to Cashes door, the billing statement of the same date (Exhibit F which I believe has been entered into evidence at trial).

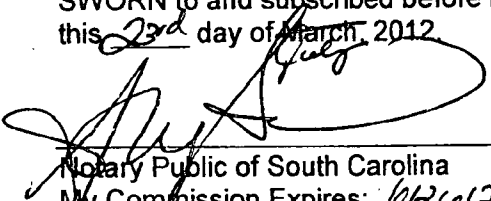
34. On November 12, 2008 I mailed the billing statement of the same date to Cash (Exhibit G which I believe has been entered into evidence at trial)

35. At no time prior to November 2008 did the Cashes dispute the charges, billing statements or receipts attributed to their project. The most significant feedback they offered was the request in the Fall of 2007 for us to slow down.

FURTHER THE AFFIANT SAYETH NOT.


Frank Haynie

SWORN to and subscribed before me
this 2nd day of March 2012


Notary Public of South Carolina
My Commission Expires: 6/26/2017

This document replaces a
duplicate that was signed &
notarized on April 4, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-40-00064

FM HAYNIE d/b/a DOCWILD'S
GENERAL CONTRACTOR,

Plaintiff
Pro Se

V.

PAUL E. and CAROL CASH,

Defendants

**PLAINTIFF'S MOTION FOR
RECONSIDERATION
ADDENDUM**

JEANETTE M. McBRIDE
C.C.P. S.

2012 AUG -6 PM 3:16

RICHLAND COUNTY
FILED

TO: DEFENDANTS PAUL E. and CAROLE CASH and their attorney of record
CATHERINE GARBEE GRIFFIN, Esquire

I am submitting this addendum to my MOTION FOR RECONSIDERATION in order to proffer as to the relative veracity of the documents in the record pursuant to SCRE 403(b)(4), 607 & 608 and Federal Rules of Evidence 103(e).

The defendants rearranged the timing and nature of the evidence in a collage to better suit their case and subsequently offered findings of fact (which the court affirmed in its judgment) that don't have even a scintilla of resemblance to actual fact or reality. Since relative veracity, plainly stated by opposing council, is the sum total of their case (for which there is no prima facia evidence offered), they have presented, in lieu of, evidence they prejudicially characterized to cast dispersion via presentation of a non-contemporaneous journal and assertions of the plaintiff's lack of proffered evidence.

In *Old Chief v. United States*, 519 US 172 -Supreme Court 1997, though it pertains to criminal issue, a fascinating read with its intricate, even artistic logic, argues: *when a given evidentiary item has the dual nature of legitimate evidence of an element and illegitimate evidence of character: "No mechanical solution is offered. The determination must be made whether the*

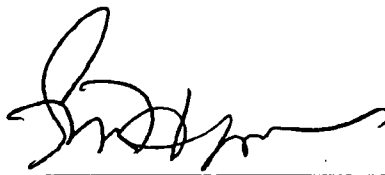
danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under 403. Prior, If, then, relevant evidence is inadmissible in the presence of other evidence related to it, its exclusion must rest not on the ground that the other evidence has rendered it "irrelevant," but on its character as unfairly prejudicial, cumulative or the like, its relevance notwithstanding. The same logic may be applied in a civil matter, chronology outweighs presentation, especially when the collage presentation effectively impeached the plaintiff.

In our case, the defendant adamantly averred he never received a billing statement from his contractor for the 18 month duration of his project. That is an incredible stretch to think a 40 year veteran contractor (financially stressed by the economy), the same contractor who managed the multi-million dollar Riverbanks Botanical Garden construction project, never submitted a bill.

In the interest of the truth of the matter I proffer for the record:

1. Quid pro quo, my journal likely created near the same time as the defendant's (after the fact, 2010).
2. Clean copies of the drawings and documents admitted into evidence with proof of the date they were created and less the notations, objected to by defense, that were made much later (2009) as explanation for my councilor (current evidentiary docs should have properly been excluded as privileged –both councilors had non-notated copies).
3. The original building permits and inspection records contradicting defendant's journal entries and testimony
4. Date-verified drawing of Tom Salane's cabinets contradicting defendant's journal entries and testimony
5. Clearer copies of pictures admitted in evidence allowing clear view of wiring and prep for the theater and wet-bar denied in testimony.

Under the penalties as provided by law pursuant to SCRCP, the undersigned certifies that the statement set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true



Frank M. Haynie
1469 Florawood Dr.
Columbia, SC 29204
803-238-0757

August 2, 2012

Original Jul
7/20/2010
Compiled to aid Truslow

Most important: the analysis of where money went & the questions are BS. A bill with full detail was presented 6/07 for \$51k. When Cash disclosed he wasn't going to pay, 15mos later, he still had not payed that bill or questioned it's validity.

- **1/22** 388sf cottage modeled after a much larger plan Cash found in mag (no cathedral ceiling or loft)
- **1/30** 2nd detailed estimate based on above \$38k w/full bath (\$98/sf). This include trim & paint but used well water & existing electrical service
- **2/15±** mid Feb did a budget sketch w/o bath (only sink & dog wash area) & no loft. This also was 388sf but more like shed (no interior finish) with retained cottage look exterior. We applied for permit with this version.
- **2/27** Plan approved by Tony Rivera (Forest Acres)
- **3/3** 480sf version & back to fancy w/vaulted ceiling & storage loft with very limited head rm. Front gable window open to attic area. No written estimate but based on previous work, would have come in around \$47k.
- **3/2** While revising drawing again, agreed to cost +25%. The 35k guestimate assumed Cash would handle painting (min trim, no fixtures, no plumbing and no fancy).
- **3/12** New 640sf plan changed vaulted ceiling in major way to allow gable window open to interior and loft was now an office w/stair. The bathroom was back & we started talking wet bar. & big screen theater. Projected cost \$64k.
- **4/1** started work by removing old slab & cutting down 2 or 3 big pines (never in an estimate). 4/6 billing was for that work, note there is no mention of a "shed"
- **4/30** billed \$19.4k for slab and framing. During slab prep commode got taken out of plan but was added back before we poured concrete. I don't remember any early discussion about sewer, when it was clear water waste we were planning draining into french drain around footing. We did talk about how that would help irrigate the plants. He owed \$8k at this point.

4/5 - rough plumb

- **5/15** added 120sf shed on back
- **6/10** billed \$51.6k: dried in, roofing on, rough ins done, elec. service changed out, & sheetrock up; siding bought but no siding, soffit or interior trim installed. This was day he woke up to reality & started applying brakes. He owed \$27k at

this point & paid \$ 4000. We finished siding & soffit & Cash even added the very expensive gable siding & entry doors knowing he was over budget.

- **9/28** For next 3 months, we continued to work while his payments were cut sharply. Bill started the trim work while we built kid space, septic tank, stairs, flooring, siding, ets. We had a confrontation about 9/28 because he hadn't made a payment in 2 months and he now owed about \$36k. Since previous bill we had done about \$16k more work and he had only paid another \$6k ..we were backing up!) Sky & Bill witnessed. It wasn't a screamer but I showed him where money was spent and he was well aware we had been hard at work. He wrote a ck for \$2k and we agreed to go away for a bit. He later told me his biz was way off and he wasn't going to make bonus unless he brought in a major client. He specifically asked if I would help him land Coley's account. I trusted him but not enough to do that.
- **10/28** Mom was already out of market and parked in fixed income stuff . Not much risk involved with her account so I moved about \$600k over to ML (Cash) (ps: SEC regards that as unethical method, in the old days you got fired for it) He did as expected (well) with her account and I assumed he made his bonus but none trickled down to me.

Black (original) created 7/20/2010

This version recorded w/motion

Timeline from docs:

Most important: the analysis of where money went & the questions are BS. A bill with full detail was presented 6/07 for \$51k. When Cash disclosed he wasn't going to pay, 15mos later, he still had not paid that bill or questioned it's validity.

*Note: green items added 7/24/12 taken from daytimer (calendar) notes & ck records
Red items were taken from Cash's journal*

- **1/22** 388sf cottage modeled after a much larger plan Cash found in mag (no cathedral ceiling or loft)
- **1/30** 2nd detailed estimate based on above \$38k w/full bath (\$98/sf). This include trim & paint but used well water & existing electrical service
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- **3/2** While revising drawing again, agreed to cost +25%. The 35k guestimate assumed Cash would handle painting (min trim, no fixtures, **no plumbing** and no fancy).
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- **4/30** billed \$19.4k for slab and framing. During slab prep commode got taken out of plan but was added back before we poured concrete. I don't remember any early discussion about sewer, when it was clear water waste we were planning draining into french drain around footing. We did talk about how that would help irrigate the plants. He owed \$8k at this point.
- **5/7** electric service buried SCEG-new panel *Note: service permit made next day, 5/8, no one starts work without permit, absolutely not SCEG*

- 5/15 added 120sf shed on back
- 5/25 add rented(???) Elec box main house cost=\$3255.23 *Note::Panel was changed, SCEG did swap & City did inspection on 5/15, everything approved (rough-in only). This is only finite amount entered in journal??*
- 6/10 billed \$51.6k: dried in, roofing on, rough ins done, elec. service changed out, & sheetrock up; siding bought but no siding, soffit or interior trim installed. This was day he woke up to reality & started applying brakes. He owed \$27k at this point & paid \$ 4000. We finished siding & soffit & Cash even added the very expensive gable siding & entry doors knowing he was over budget.
- 7/9 Cash: Rock & siding going up (*Rock actually complete 6/18*)
- 7/19 Cash: Schmidt started work & we made deal to use Cave for outside work, rent in trade?? (*he first met Schmidt 2mos later, no reason for "a deal"*)
- *The Judgment Order (offered by Cash) states I repaired septic tank in Aug after it failed due to use by Schmidt. Cash's ledger makes no mention, Schmidt was not yet on job & I don't think commode was yet installed. I did make a repair in 07 (much later) which, it seems, would be worthy of notation (unless you were trying to obscure the facts at the time because it was known that the tanks presence was problematic)*
- 8/7 Cash: We are 90% complete, notes I am working on Brentwood shop (*not possible. Forest Acres inspected foundation trenches 10/25/07*)
- 8/26 *ColumbiaCollege Library job (\$67k) ended, deposited last draw, \$22k, & paid Schmidt on 8/30 for his work on that job*
- 9/07 Cash: Schmidt doing other work in Cave (*Actually, he hasn't even met Schmidt yet*)
- 9/10 *Electricity turne on in ManCave*
- 9/24 *1st Ck \$600, to Schmidt for work done on ManCave (he started a week earlier*
- 9/28 For next 3 months, we continued to work while his payments were cut sharply. Schmidt started the trim work while we built kid space, septic tank, stairs, flooring, siding, etc. We had a confrontation about 9/28 because he hadn't made a payment in 2 months and he now owed about \$36,000. Since previous bill we had done about \$16k more work and he had only paid another \$6k ..we were backing up!) Sky & Schmidt witnessed. It wasn't a screamer but I showed him where money was spent and he was well aware we had been hard at work (we met him twice a day for prior 3mos). He wrote a ck for \$2k and we agreed to go away

for a bit. He later told me his biz was way off and he wasn't going to make bonus unless he brought in a major client (ML was in a state of flux). He specifically asked if I would help him land Coley's account. I trusted him but not enough to do that.

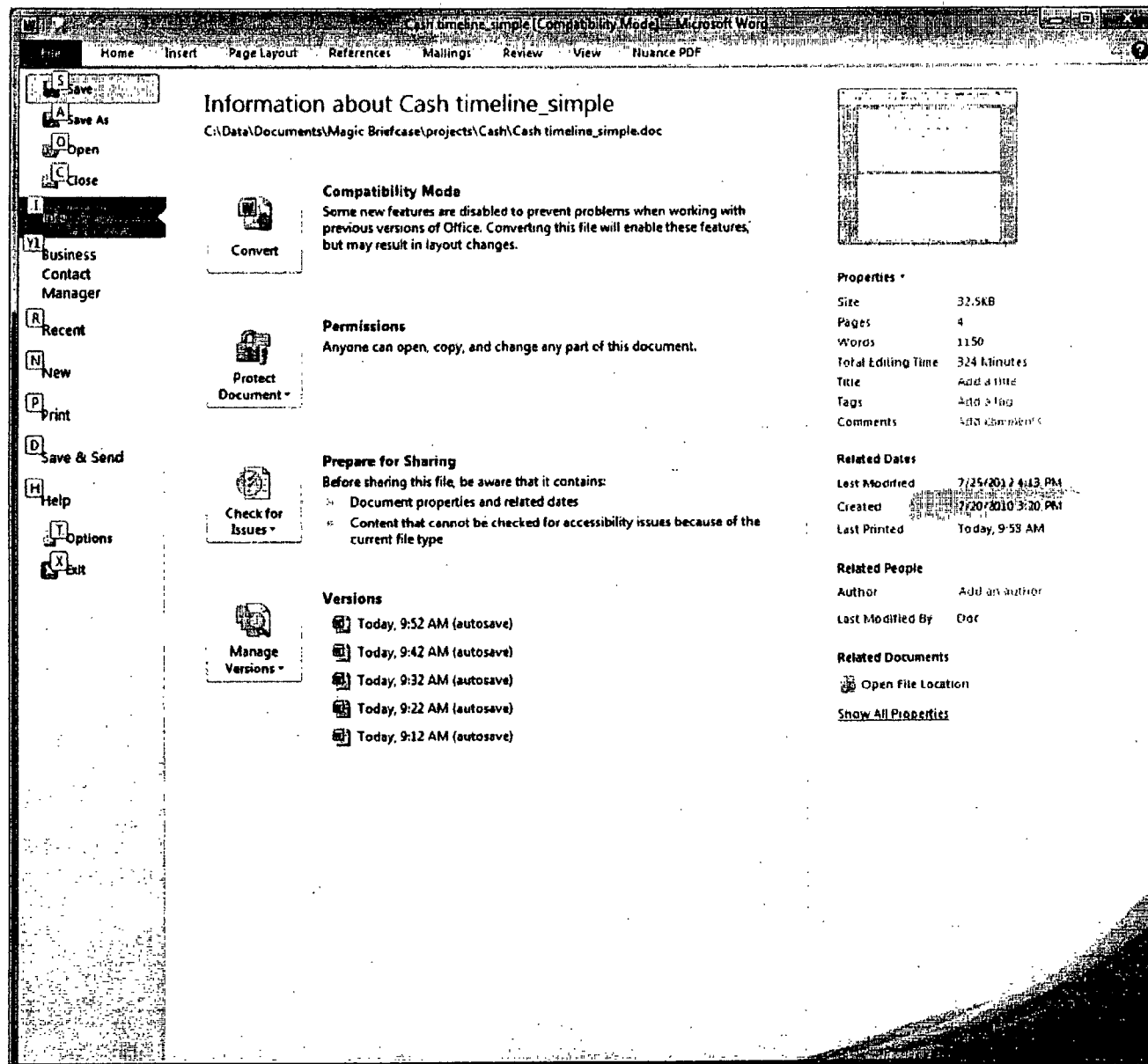
- 10/3 Cash: I gave him bid on cutting HackBerry \$1400 *(not possible since Saulo, who priced & cut the tree in 08, could not have seen it before 11/11, when he cut the pine tree)*
- 10/28 Mom was already out of market and parked in fixed income stuff. Not much risk involved with her account so I moved about \$700k over to ML (Cash) *(ps: SEC regards that as unethical method, in the old days you got fired for it)* He did as expected (well) with her account and I assumed he made his bonus but none trickled down to me.
- 11/6 Cash: Tree house \$1200 *(testified he knew nothing of tree house until after it was built)*
- 11/13/07 Cash: Schmidt working on outside project *(not until 2mos later, 1/08)*
- 11/7/07 Picture taken *(filed)*, note slim column configuration *(which Cash did not like)*
- 4/08 Presented bill that understated labor by 200 hours *(due to spreadsheet error, in testimony)* Shut down & cleared out for prom party.
- 4/11/08 Schmidt out, \$5000 pmt *(we returned after party to finish columns, transom, stair, workbench etc. & take down Hackberry)*
- 7/08 Had outside painted
- 8/08 Pickled (stained) loft floor & workbench. Cash requested we repair tank again, which I did in late Aug (he watched). We were back several times later to work on irrigation (front yard) and repair the brick entry damaged in auto collision.
- 11/04/08 ??showed house to Rivers (Vanderwater witnessed), I think I showed interior.
- 11/6 hand delivered billing *(that had error)*
- 11/11 installed trim
- 11/12 Cash called to say he's not paying anything

- *11/13 Repaired spreadsheet error & prepared Lien docs*
- *11/18 went to pick up ladder, took picture & discovered locks changed*

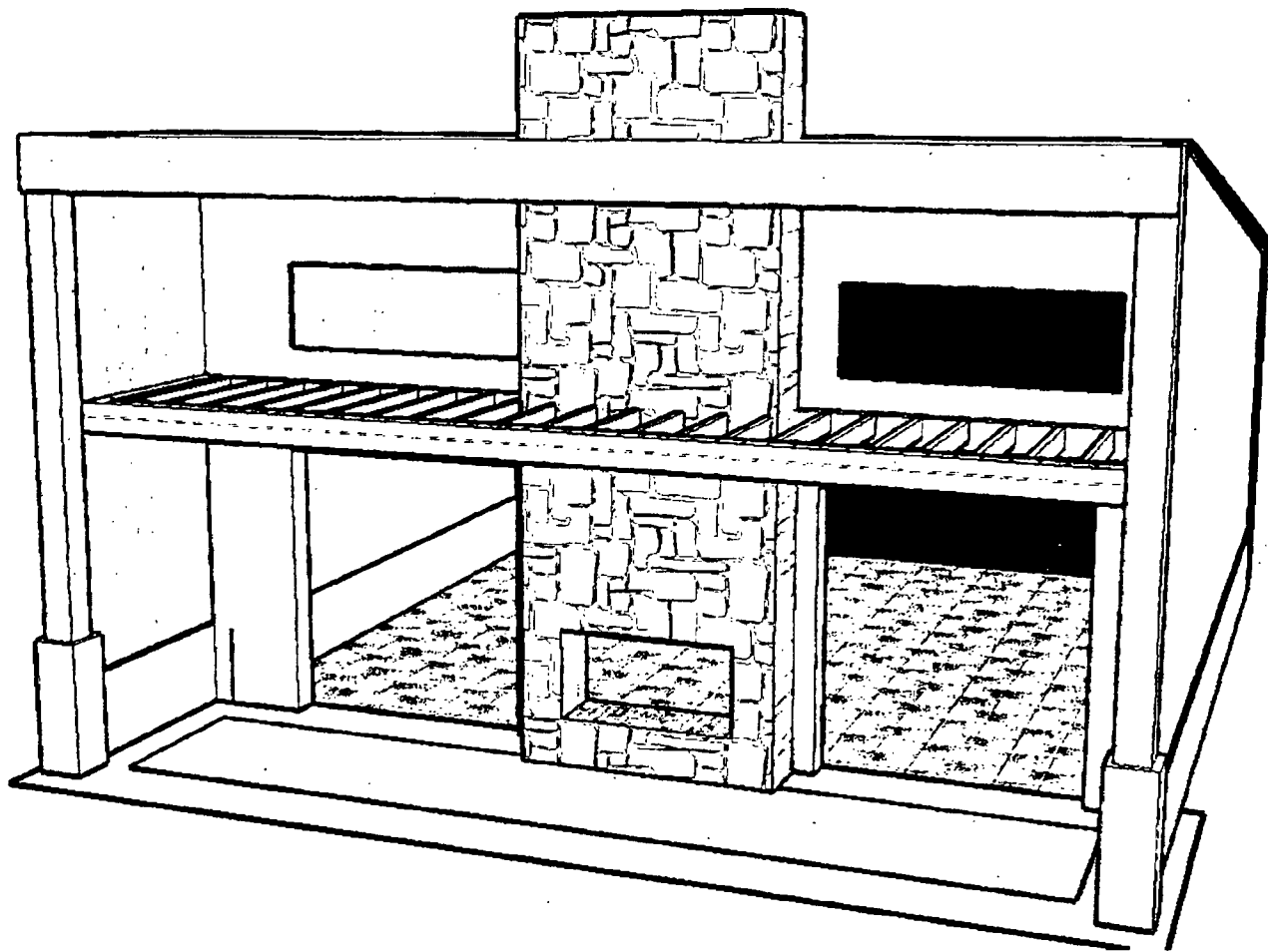
ClipMate Report (Image)

Title: Graphic:8/2/2012 10:00:12 AM

Date: 8/2/2012 10:00:12 AM



1st drawing printed 12/5/06



ClipMate Report (Image)

Title: Graphic:7/30/2012 2:47:36 PM

Date: 7/30/2012 2:47:36 PM

Document Properties

Description Security Fonts Custom Advanced

Description

File: cash shed

Title: cash

Author: FM Haynie

Subject:

Keywords:

Created: 12/5/2006 7:54:00 AM

Modified:

Application: cash.skp

Advanced

PDF Producer: DocuCom PDF Driver 5.00 for NT(Trial)

PDF Version: 1.3 (Acrobat 4.x)

Location: C:\Data\Documents\Magic Briefcase\projects\Cash\

File Size: 453.43 KB (464,313 Bytes)

Page Size: 8.50 x 11.00 in

Number of Pages: 1

Tagged PDF: No

Fast Web View: No

OK Cancel

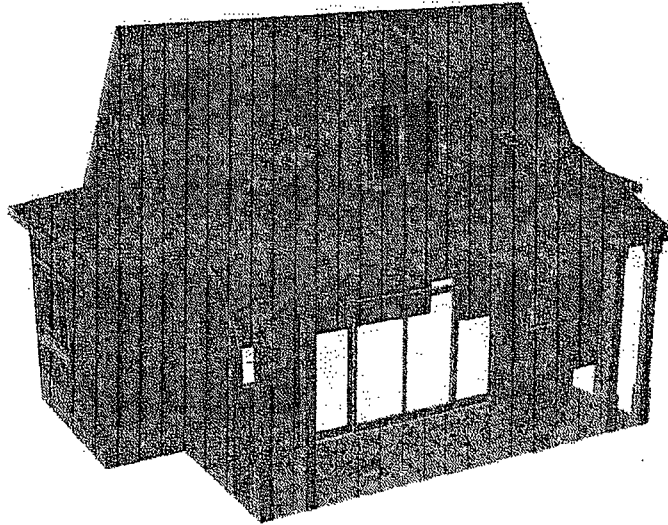
Dwg # 3 or 4 printed 1/22/07

360 sf version used for permit

Man House

Paul Cash

(Created with the trial version of 3D PDF Exporter v1.0 [trial] 7A16, by Render Plus Systems -
www.renderplus.com)



..Man house

ClipMate Report (Image)

Title: Graphic:7/30/2012 2:56:24 PM

Date: 7/30/2012 2:56:24 PM

Document Properties

Description Security Fonts Custom Advanced

Description

File: cash ManHouse

Title: cash2

Author: FM Haynie

Subject:

Keywords:

Created: 1/22/2007 3:01:59 PM

Modified:

Application: cash2.skp

Advanced

PDF Producer: DocuCom PDF Driver 5.00 for NT(Trial)

PDF Version: 1.3 (Acrobat 4.x)

Location: C:\Data\Documents\Magic Briefcase\projects\Cash\

File Size: 300.65 KB (307,861 Bytes)

Page Size: 8.50 x 11.00 in

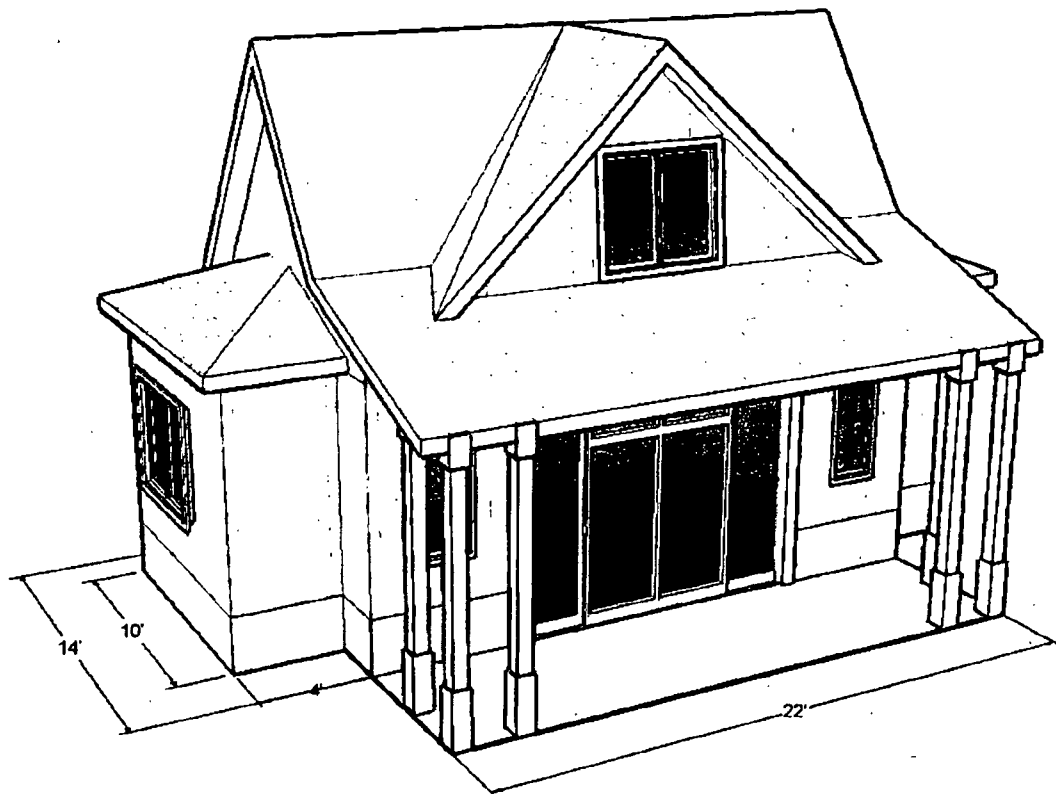
Number of Pages: 1

Tagged PDF: No

Fast Web View: No

OK Cancel

Germit Rendering



388 sf

ClipMate Report (Image)

Title: Graphic:7/30/2012 2:56:24 PM

Date: 7/30/2012 2:56:24 PM

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Author: FM Haynie

Subject:

Keywords:

Created: 1/22/2007 3:01:59 PM

Modified:

Application: cash2.skp

Advanced

PDF Producer: DocuCom PDF Driver 5.00 for NT(Trial)

PDF Version: 1.3 (Acrobat 4.x)

Location: C:\Data\Documents\Magic Briefcase\projects\Cash\

File Size: 300.65 KB (307,861 Bytes)

Page Size: 8.50 x 11.00 in

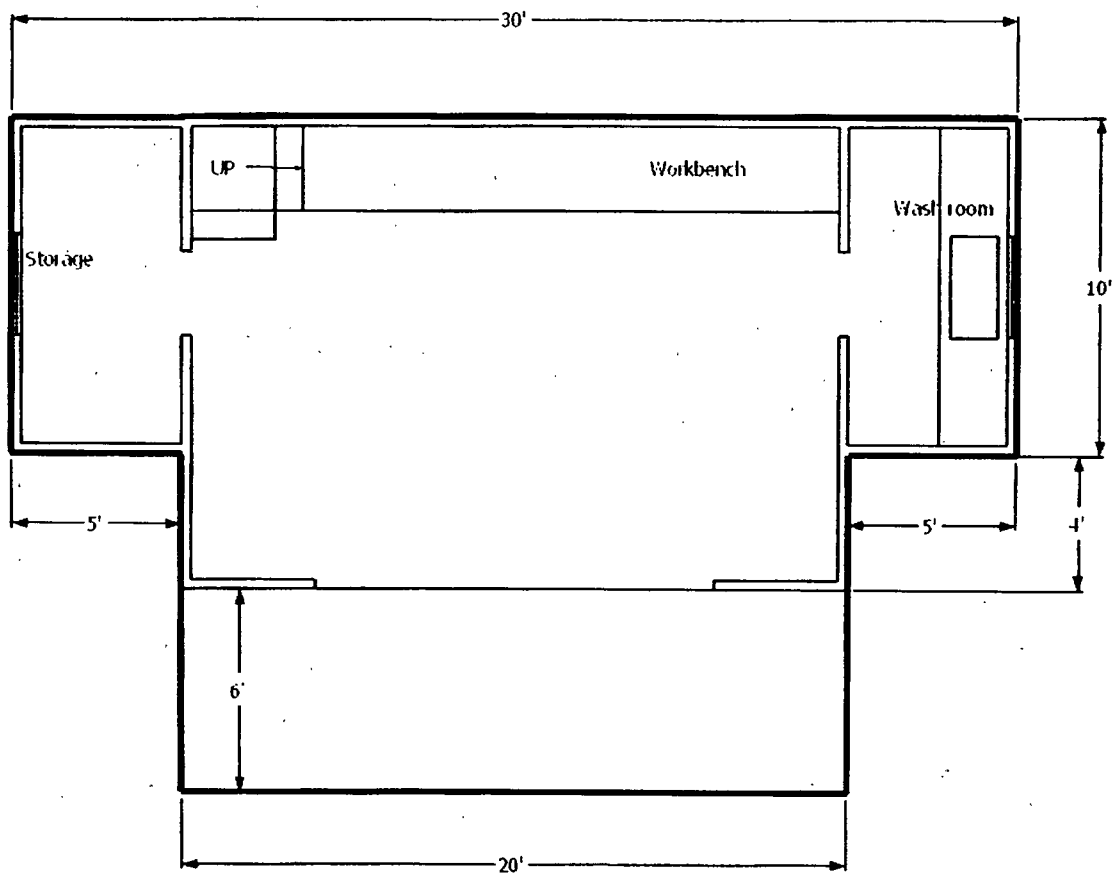
Number of Pages: 1

Tagged PDF: No

Fast Web View: No

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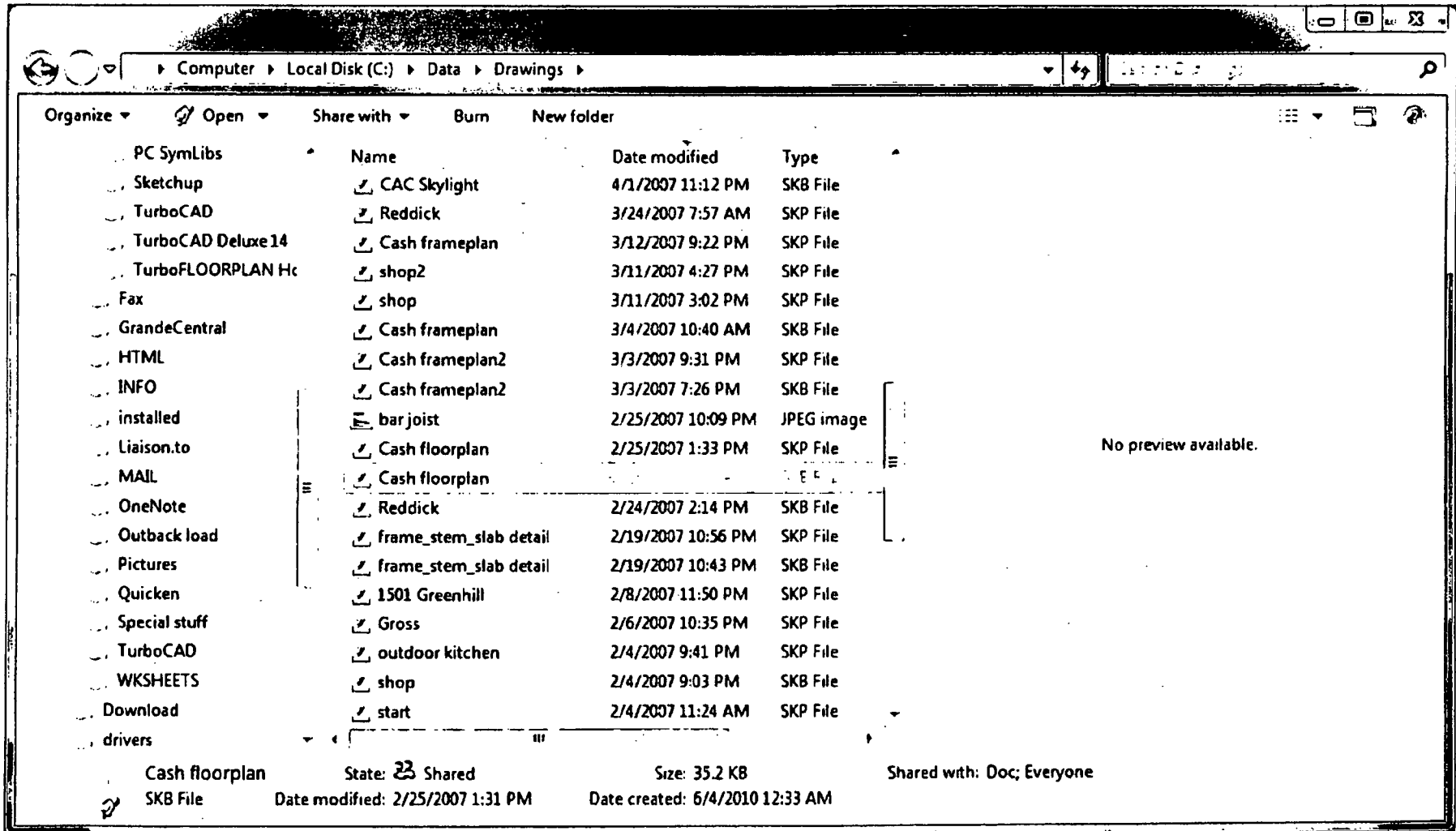
8/25/07 Drawing 380 sf Bathroom out & estimate reduced
to \$35000



ClipMate Report (Image)

Title: Graphic:7/30/2012 10:02:32 PM

Date: 7/30/2012 10:02:32 PM



Estimate printed 1/30/07 produced prior based of 1/22 drawing

Construction Estimate
File Name: Cash manhouse.est

Page 1

Qty	Craft@Hours	Unit	Material	Labor	Equipment	Total
Cash Manhouse						
Footing excavation by hand						
6" deep x 12" wide (1.85 CY per CLF)						
120.00	BL@4.080	LF	0.00	109.20	0.00	109.20
Slab on grade edge forms to 6" high						
1 use						
160.00	B1@10.40	LF	192.00	305.60	0.00	497.60
4" slab poured over earth, hand trowel finish						
Fine grading						
550.00	BL@.5500	SF	0.00	16.50	0.00	16.50
Concrete placement and finishing						
550.00	B6@14.85	SF	841.50	423.50	0.00	1,265.00
**Subtotal: SLAB						
	29.9		1,033.50	854.80	0.00	1,888.30
2' high wall						
6" concrete walls with 1 No. 4 at 36" on center, each way, 18" high						
Reinforcing steel						
170.00	RI@4.080	SF	202.30	125.80	0.00	328.10
6" concrete walls						
Forms						
170.00	B2@22.78	SF	309.40	690.20	0.00	999.60
6" concrete walls						
Concrete						
170.00	B3@5.100	SF	351.90	144.50	0.00	496.40
**Subtotal: Stemwall						
	32.0		863.60	960.50	0.00	1,824.10
the outside face.						
2" x 4" studs, 1/2" foam and wood siding						
Cost per square foot of wall						
800.00	B1@54.40	SF	1,560.00	1,600.00	0.00	3,160.00
2" x 8" ceiling joists						
16" centers (1.17 BF per SF)						
400.00	B1@8.800	SF	304.00	260.00	0.00	564.00
2" x 6" rafters						
16" centers (1.02 BF per SF)						
750.00	B1@17.25	SF	487.50	510.00	0.00	997.50
OSB roof sheathing						
1/2"						
1000.00	B1@13.00	SF	370.00	380.00	0.00	750.00
2" x 4" fireblocks						
16" OC members (.67 BF per LF)						
140.00	B1@3.500	LF	58.80	102.20	0.00	161.00

Qty	Craft@Hours	Unit	Material	Labor	Equipment	Total
Regular core drywall						
1/2" x 4' x 8', walls						
1000.00	D1@18.00	SF	380.00	560.00	0.00	940.00
T-astragal molding						
1-1/4" x 2" x 7', pine						
1.00	BC@.5290	Ea	22.10	16.98	0.00	39.08
Install door trim						
Door casing, two sides, power nailed						
1.00	BC@.3330	Ea	0.00	10.69	0.00	10.69
Aluminum thermal door sill						
Install 56" to 72" aluminum threshold						
1.00	BC@.6230	Ea	28.90	19.99	0.00	48.89
Deadbolt and lockset combo						
Brass, double cylinder						
1.00	BC@.7500	Ea	53.20	24.07	0.00	77.27
**Subtotal: Lockup						
	54.3		3,057.70	1,656.94	0.00	4,714.64
Primed finger joint colonial casing						
No. 442, 1 1/16" x 2-1/4"						
100.00	BC@1.500	LF	98.00	48.00	0.00	146.00
White extruded polymer molding						
No. 49, 1/2" x 3-5/8", crown						
160.00	BC@7.040	LF	228.80	225.60	0.00	454.40
White extruded polymer molding						
No. 623, 9/16" x 3-1/4", base						
100.00	BC@3.200	LF	105.00	103.00	0.00	208.00
**Subtotal: trim						
	11.7		431.80	376.60	0.00	808.40
Plumbing						
Total washroom group rough-in assembly						
1.00	P1@5.850	Ea	180.20	184.30	0.00	364.50
Floor mounted tank type water closet						
Water closet, trim and valves (add rough-in)						
1.00	P6@2.100	Ea	225.00	93.32	0.00	318.32
Countertop mounted enameled steel lavatory						
Lavatory, trim and valves (add rough-in)						
1.00	P6@2.000	Ea	242.00	88.88	0.00	330.88
Painting rule of thumb						
Economy, 1 or 2 coats, little brushwork						
700.00	--@.0000	SF	0.00	0.00	0.00	1,386.00
Electrical work rule of thumb						
All wiring and fixtures						
500.00	--@.0000	SF	0.00	0.00	0.00	2,405.00

Qty	Craft@Hours	Unit	Material	Labor	Equipment	Total
Packaged split system electric heat pumps 8 MBtu cooling, 5 Mbtu heating						
1.00	PM@10.90	Ea	818.00	396.20	0.00	1,214.20
Packaged split system electric heat pumps Add for electrical connections						
1.00	PM@14.00	LS	169.00	508.90	0.00	677.90
**Subtotal: Subs						
	34.9		1,634.20	1,271.60	0.00	6,696.80
Total Manhours, Material, Labor, and Equipment:						
	367.7		13,210.76	11,309.44	0.00	24,520.20
Total Only (Subcontract) Costs:						
						3,791.00
						Subtotal:
						28,311.20
						15.00% Overhead:
						4,246.68
						5.00% Contingency:
						1,627.89
						10.00% Profit:
						3,418.58
						Estimate Total:
						37,604.35
						5.00% Tax on Materials:
						660.54
						Grand Total:
						38,264.89

ClipMate Report (Image)

Title: Graphic:7/30/2012 3:02:51 PM

Date: 7/30/2012 3:02:51 PM

Document Properties

Description Security Fonts Custom Advanced

Description

File: Cash manhouse2

Title: Cash manhouse

Author: FM Haynie

Subject:

Keywords:

Created: 1/30/2007 1:46:40 PM

Modified:

Application: Cash manhouse.est

Advanced

PDF Producer: DocuCom PDF Driver 5.00 for NT(Trial)

PDF Version: 1.3 (Acrobat 4.x)

Location: C:\Data\Documents\Magic Briefcase\projects\Cash\

File Size: 21.85 KB (22,370 Bytes)

Page Size: 8.50 x 11.00 in

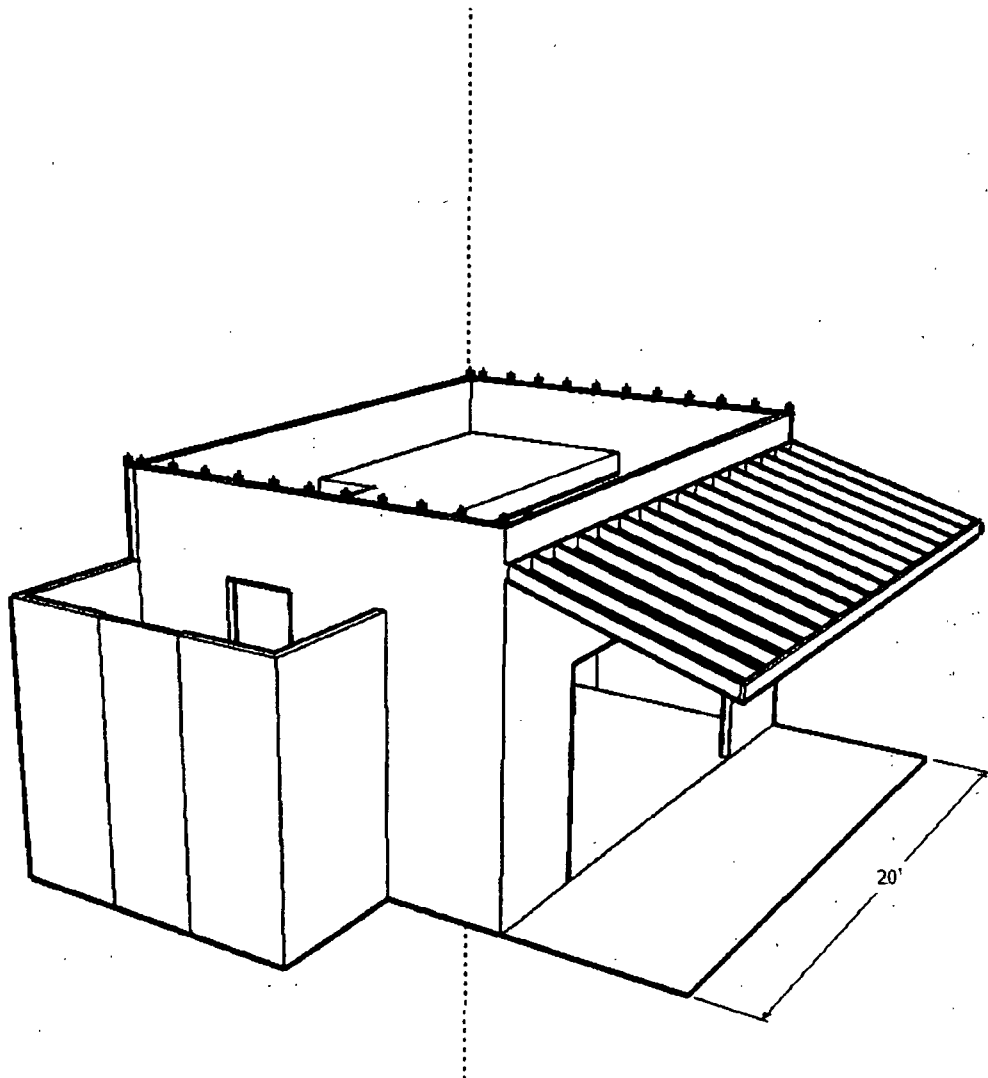
Number of Pages: 4

Tagged PDF: No

Fast Web View: No

OK Cancel

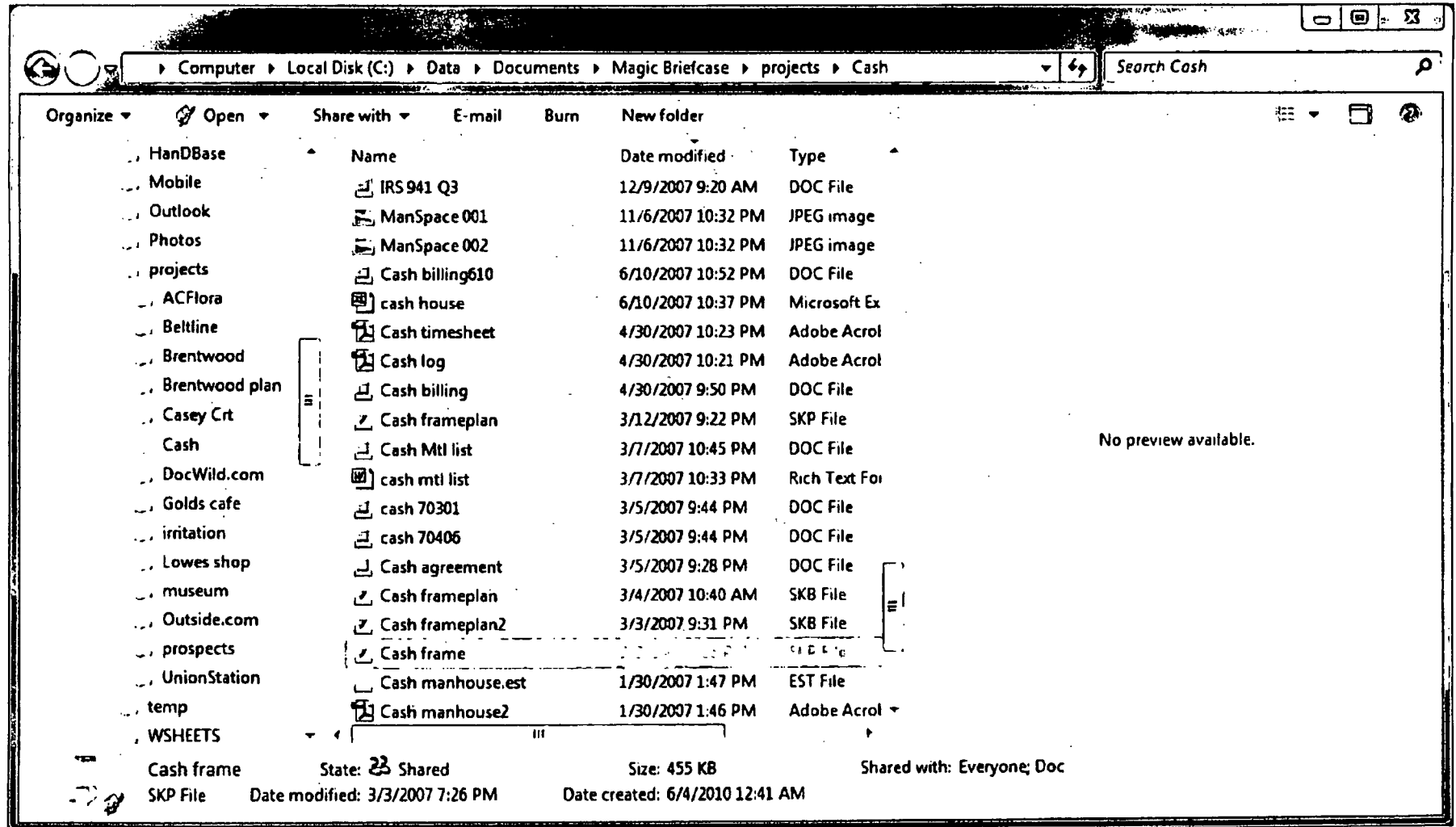
3/3/07 version of drawing (@time agreement was drafted)
480 st version with obvious head room problem in loft.



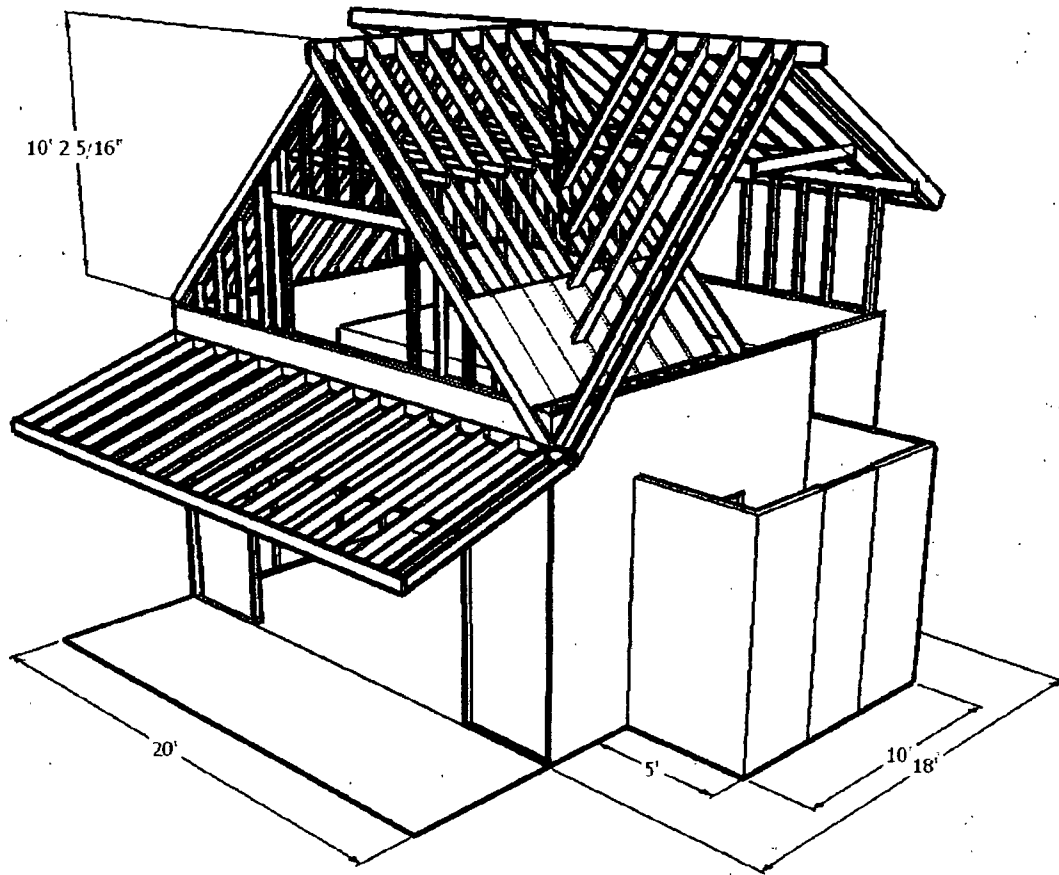
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Date: 7/30/2012 3:15:58 PM



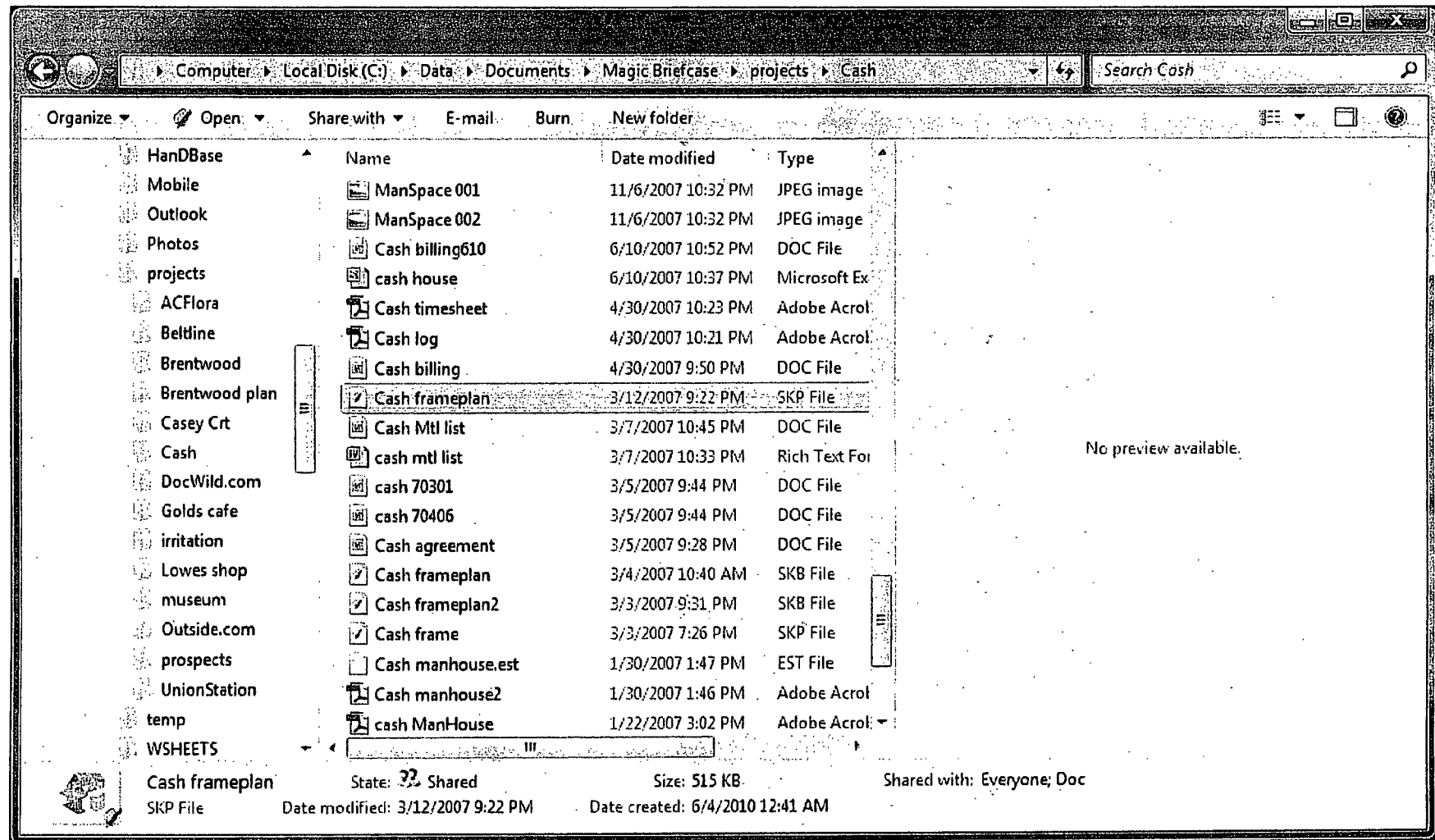
3/12/07 version of drawing (the day we started digging footings)
640 sf (not counting porch)



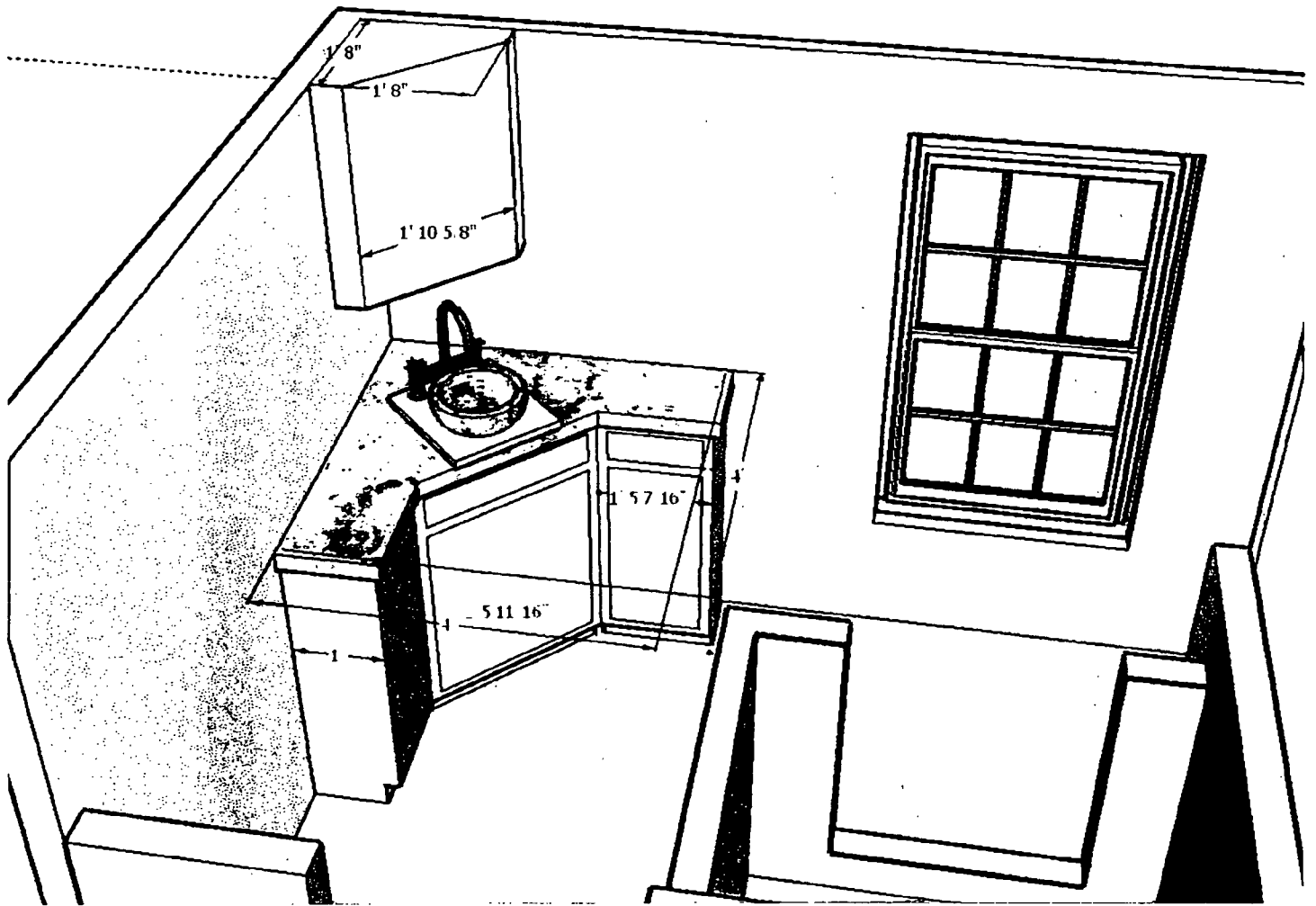
ClipMate Report (Image)

Title: Graphic:7/30/2012 3:28:09 PM

Date: 7/30/2012 3:28:09 PM



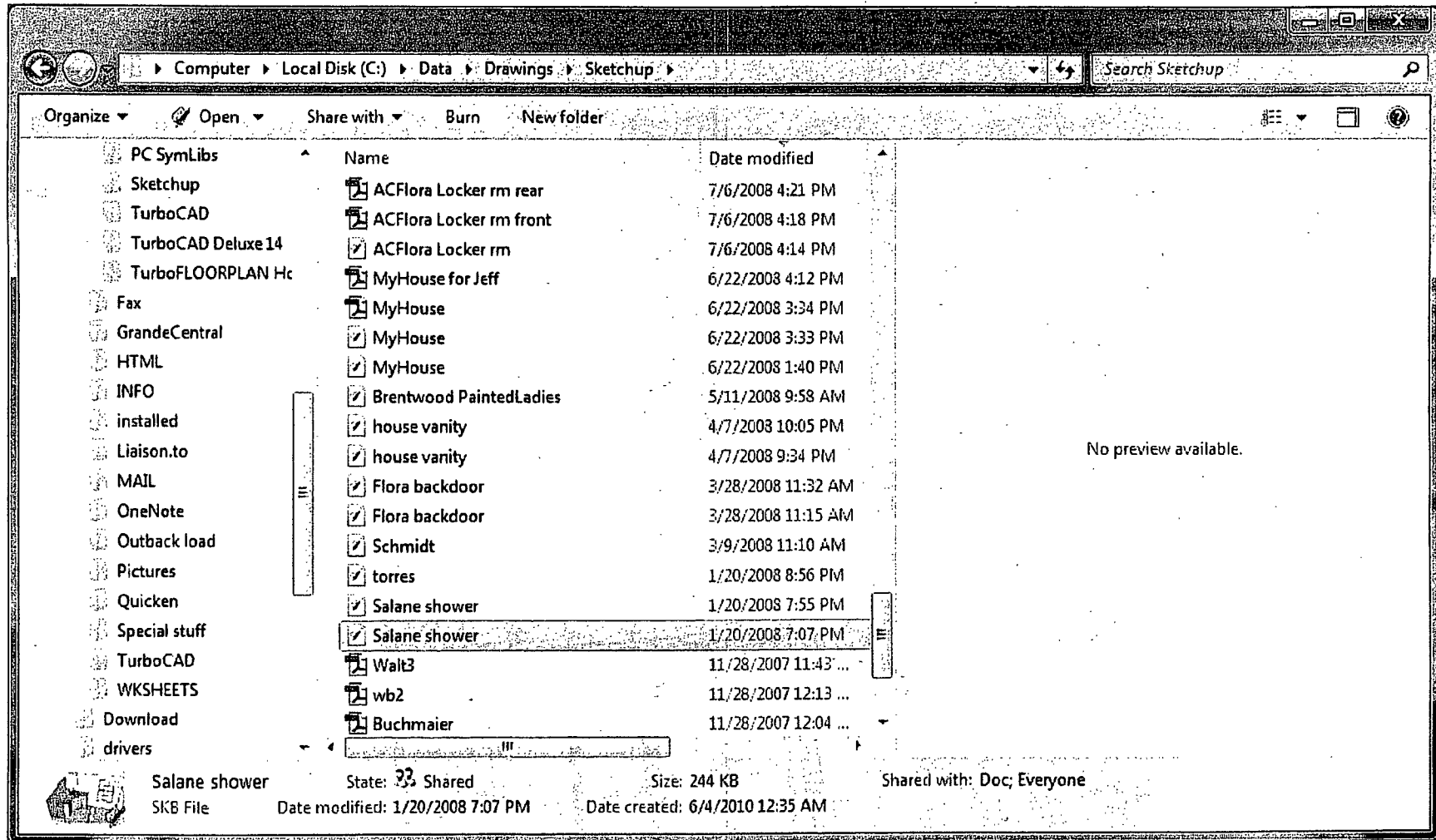
12/08 Cabinet dwg for Tom Salane's bathroom (The cabinets Schmidt built in Cash's Man house)



ClipMate Report (Image)

Title: Graphic:7/30/2012 10:07:05 PM

Date: 7/30/2012 10:07:05 PM



DOCVILD'S

5/8/07

1469 FLORAWOOD DR STE 102
COLUMBIA SC 29204
DOCVILD'S LIAISON TO
803-788-2867
CELL 803-288-0787
DOCVILD.COM

To: **Paul Cash....**
1501 Greenhill Rd, Columbia, SC 29206

From: **Doc Haynie**
Subject: **Construction Costs accrued on Manhouse**

General work included:

trees & demolition, & permitting

• Material & sub	\$ 1,034
• Equipment	120
• 8mh @\$15	120
• 6mh @\$40	240

Subtotal	\$ 1,514
+25%	\$ 379

DUE \$ 1,893

(please make payable to FM Haynie)

THANKS,
DOC

00013

DocWild's

General Contractor

4/30/2007

Paul Cash

1501 Greenhill Rd
Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

Materials	\$	8,774
235mh @ \$15		3,525
92mh @ \$30		2,760
Bobcat 16h		<u>480</u>
Subtotal		15,539
+25% pft&OH		<u>3,885</u>
Total	\$	19,424
Less paid	-	<u>11,000</u>
Balance	\$	8,424

Thanks,

FM Haynie

(803) 758-2867

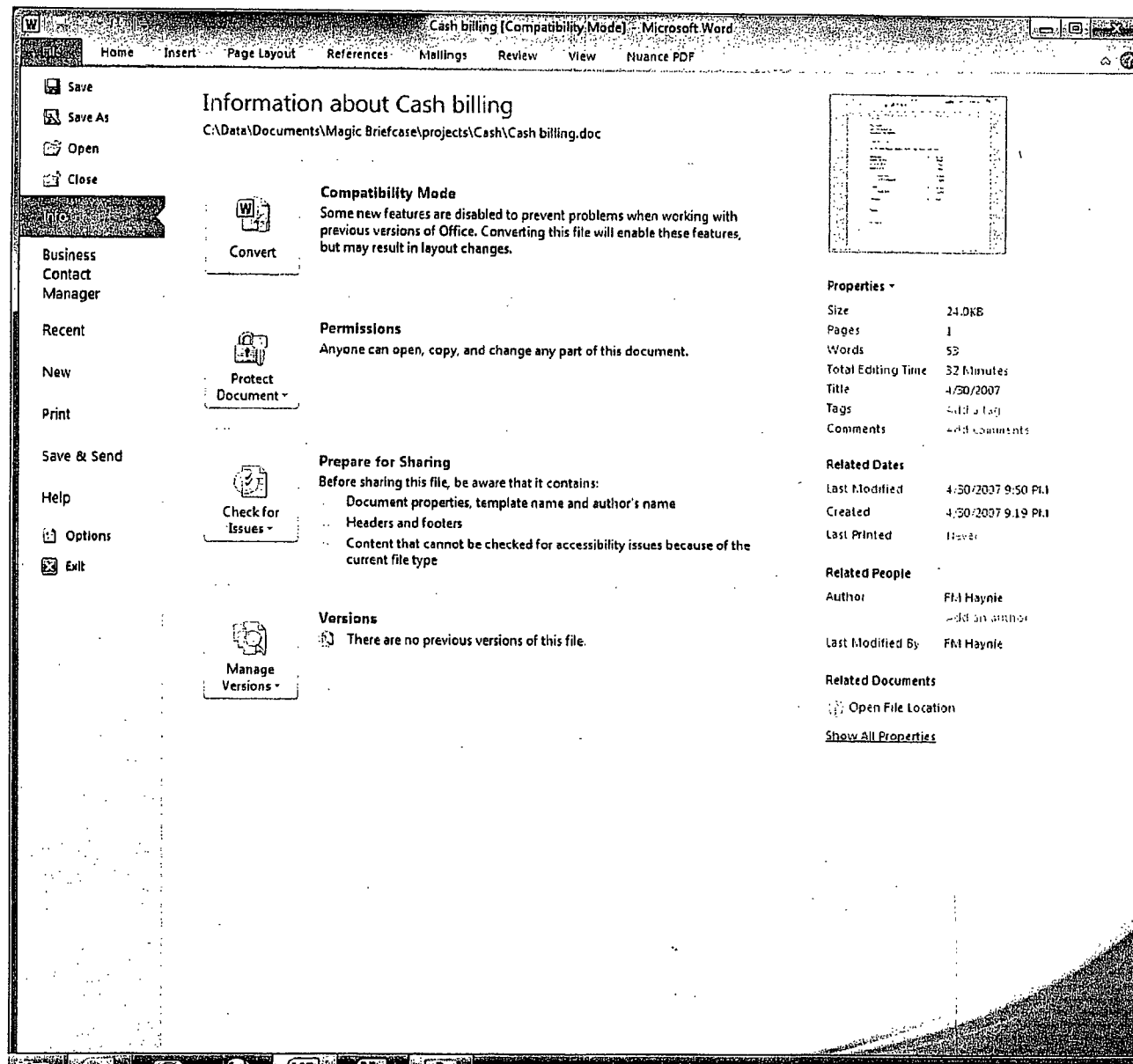
DocWild@Liaison.to
1469 Florawood Dr. Ste.102
Columbia, South Carolina
29204

(803) 258-0757 cell

ClipMate Report (Image)

Title: Graphic:8/2/2012 8:25:57 AM

Date: 8/2/2012 8:25:57 AM



4/30/07

2/7	\$ 19,424	\$ 6,765	Paid	11,000 Contract	
Doc	92	2760	3/6	6,000 Extra	
labor	235	3525	4/12	5,000 Total	19,424
Equipment	16	480			

				Due	8,424
				Current	-8,424

COSTS	Descriptic	\$ 10,968					
Permit		434					
Lowe	2x6	36	59	21	-44		
RSG	Soffitt	63					
Lowe		618	170	153	49	246	
Lowe	Beam & f	555					
A1	Stone	189					
Hardaway	5y	607					
Titan		337					
Guaranteec	Pencil roc	74	30	44			
Titan	Pump	412					
Hardaway		1,335					
Sunbelt	Finisher	102					
Lowe		2,457					
Aaro	JumpJack	147					
Lowe		325	76	46	105	6	43
Capitol Sup	Conduit	196					49
Rental	Trencher	287					
McFaddin	Trees	600					

	CAT	Doc	MH	N/C	Job	Sub
Total	16	92	235	38		
2/7	4	6	3			
2/9			5			
3/12		4	10		Digging	
3/14	4	6	10			
3/21	4	6	8			
3/22	4	4	4	4		
3/26		4	14	4		
3/27		6	16		Concrete	
3/28			4	2		
4/2			10	4		
4/3		5	14			
4/4		5	16	3		
4/9		6	17	3		
4/10		6	16		Pour walls	
4/11			4	4	Pour walls	
4/12		2	8		Strip	
4/16			5	3		
4/17		2	3	11	Repair concrete	
4/18		6	14		Framing	
4/19		10	17		Loft	
4/23		3	5			
4/25		6	16		Wrap	
4/26		4	10			
4/29		1	6		porch sheating & drai	

DocWild's

General Contractor

6/10/2007

Paul Cash

1501 Greenhill Rd

Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

Materials	\$	27,952
511mh @ \$15		7,665
172mh @ \$30		5,160
Bobcat 16h		<u>480</u>
Subtotal		41,257
+25% pft&OH		<u>10,314</u>
Total	\$	51,571
Less paid	-	<u>24,500</u>
Balance	\$	27,071

Thanks,

FM Haynie

(803) 738-2861

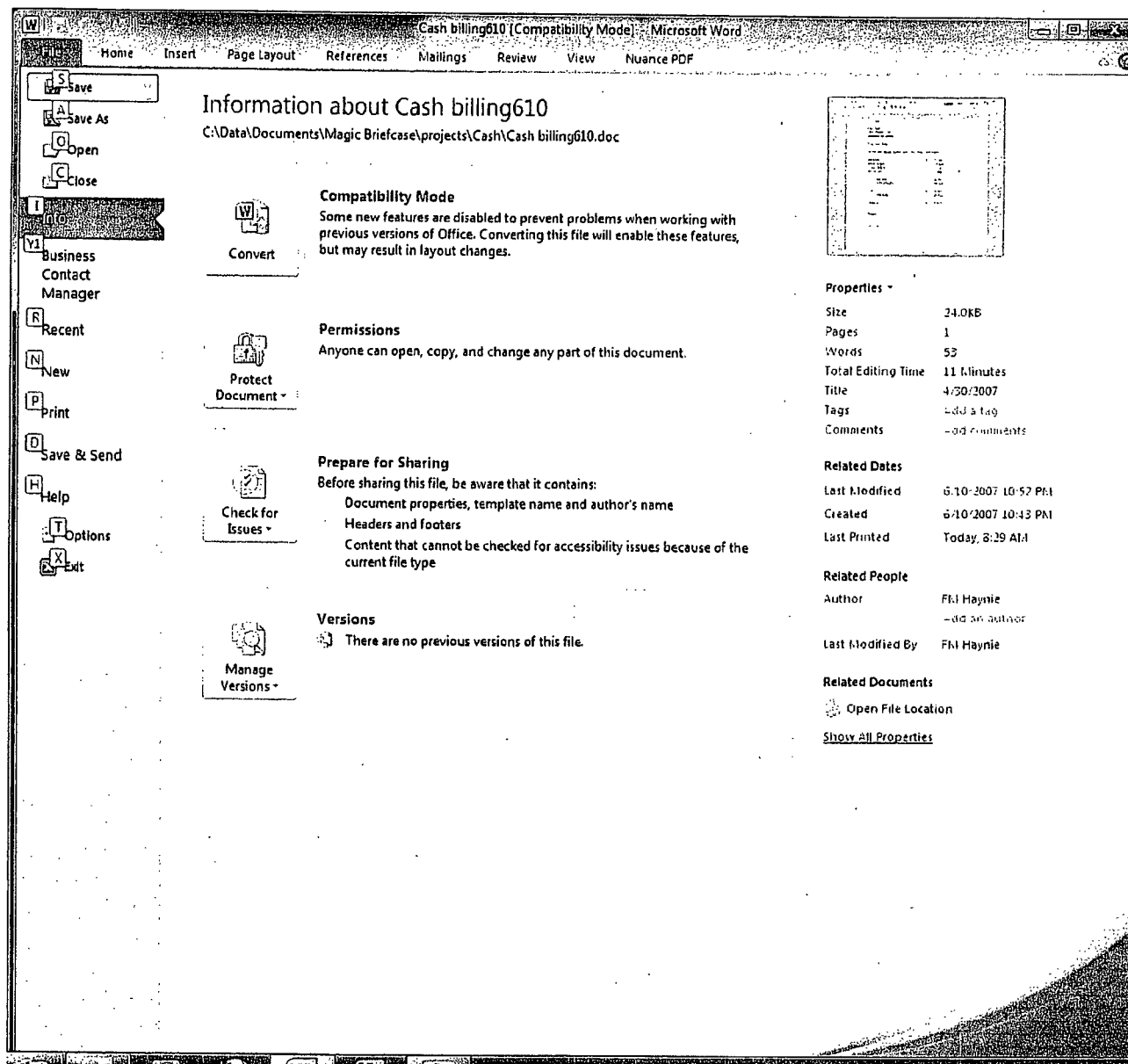
DocWild@Liaison.to
1469 Florawood Dr. Ste.102
Columbia, South Carolina
29204

(803) 238-0757 cell

ClipMate Report (Image)

Title: Graphic:8/2/2012 8:29:46 AM

Date: 8/2/2012 8:29:46 AM



6/10/07

	CAT	Doc	MH	N/C	Job	Sub
Total	16	172	511	43		
2/7	4	6	3			
2/9			5			
3/12		4	10		Digging	
3/14	4	6	10			
3/21	4	6	8			
3/22	4	4	4	4		
3/26		4	14	4		
3/27		6	16		Concrete	
3/28			4	2		
4/2			10	4		
4/3		5	14			
4/4		5	16	3		
4/9		6	17	3		
4/10		6	16		Pour walls	
4/11			4	4	Pour walls	
4/12		2	8		Strip	
4/16			5	3		
4/17		2	3	11	Repair concrete	
4/18		6	14		Framing	
4/19		10	17		Loft	
4/23		3	5			
4/25		6	16		Wrap	
4/26		4	10			
4/30		1	6		Porch sheating	
5/1		3	8			
5/2		9	10		Loft rafters	
5/3		6	18		Felt & barge (post ok)	
5/7		6	12		Rafters	
5/8		2	8			
5/9		5	12		Roofing	
5/10		6	12			
5/11			5			
5/16			5	5	Pipes	
5/17		5	9		Sprinkler	
5/21		7	19			
5/22		6	20			
5/23		10	20			
5/24		3	25		Shed	
5/25			4			
5/29			16			
5/30			20		Plaster	
5/31		4	26		Siding	
6/4		4	10			
6/5		4	17			
6/6			19			
6/7		6	19		Soffitt	
6/8			6			

2/7	\$ 52,104	\$ 13,305	Paid	24,500	Contract	35,000			
Doc	172	5160	3/6	6,000	Extra	0			
labor	511	7665	4/12	5,000	Total	35,000			
Equipment	16	480	5/7	5,000					
			5/12	3,500	Due	10,500			
			5/25	5000	Current	-27,604			
COSTS	Descriptic	\$ 35,473							
Permit		434							
Reyes	Drywall	1,300							
Bernard	Paint	150							
Lowe's	Stuff	235							
HomeDepot		36							
Dreher	Plumbing	735							
RSG	Shakes	369							
CK	Rock	777							
Boozer	Trim brds	233							
Lower		74							
Perry	A/C	2,060	??						
Boozer	Vent	29							
Lowe's	Misc	319	35	32	73	160	19		
Lowe's	Shed	745	201	24	96	203	80	32	109
Perry's	A/C	2,000							
GTG	Insulation	765							
Electrical S	Rough	1,000							
Electrical S	Service	2,040							
Lowe's	Stuff	58	42	16					
Lowe's	Siding	1,238							
Lowe's	Shingles	429							
Capitol Sup	Cable	271							
Lowe's	Moulding	597	488	50	59				
Lowe's	Rafters	266	246	20					
Lowe's	Windows	2661	1330	1331					
Perry Mann	Meter bas	471							
Lowe's	Truck & lt	658							
Lowe's	2x6	124	59	21	44				
RSG	Soffitt	63							
Lowe's		618	170	153	49	246			
Lowe's	Beam & ft	555							
A1	Stone	189							
Hardaway	5y	607							
Titan		337							
Guaranteed	Pencil roc	74	30	44					
Titan	Pump	412							
Hardaway		1,335							
Sunbelt	Finisher	102							
Lowe's		2,457							
Aaro	JumpJack	147							
Lowe's		325	76	46	105	6	43	49	
Capitol Sup	Conduit	196							
Rental	Trencher	287							
McFaddin	Trees	600							

DocWild's

General Contractor

4/4/2008

Paul Cash
1501 Greenhill Rd
Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

Materials	\$	35,824
878mh		16,268
Bobcat 16h		<u>480</u>
Subtotal		52,572
+25% pft&OH		<u>13,143</u>
Total	\$	65,715
Less paid	-	<u>42,500</u>
Balance	\$	23,215

Thanks,

FM Haynie

(803) 738-2867

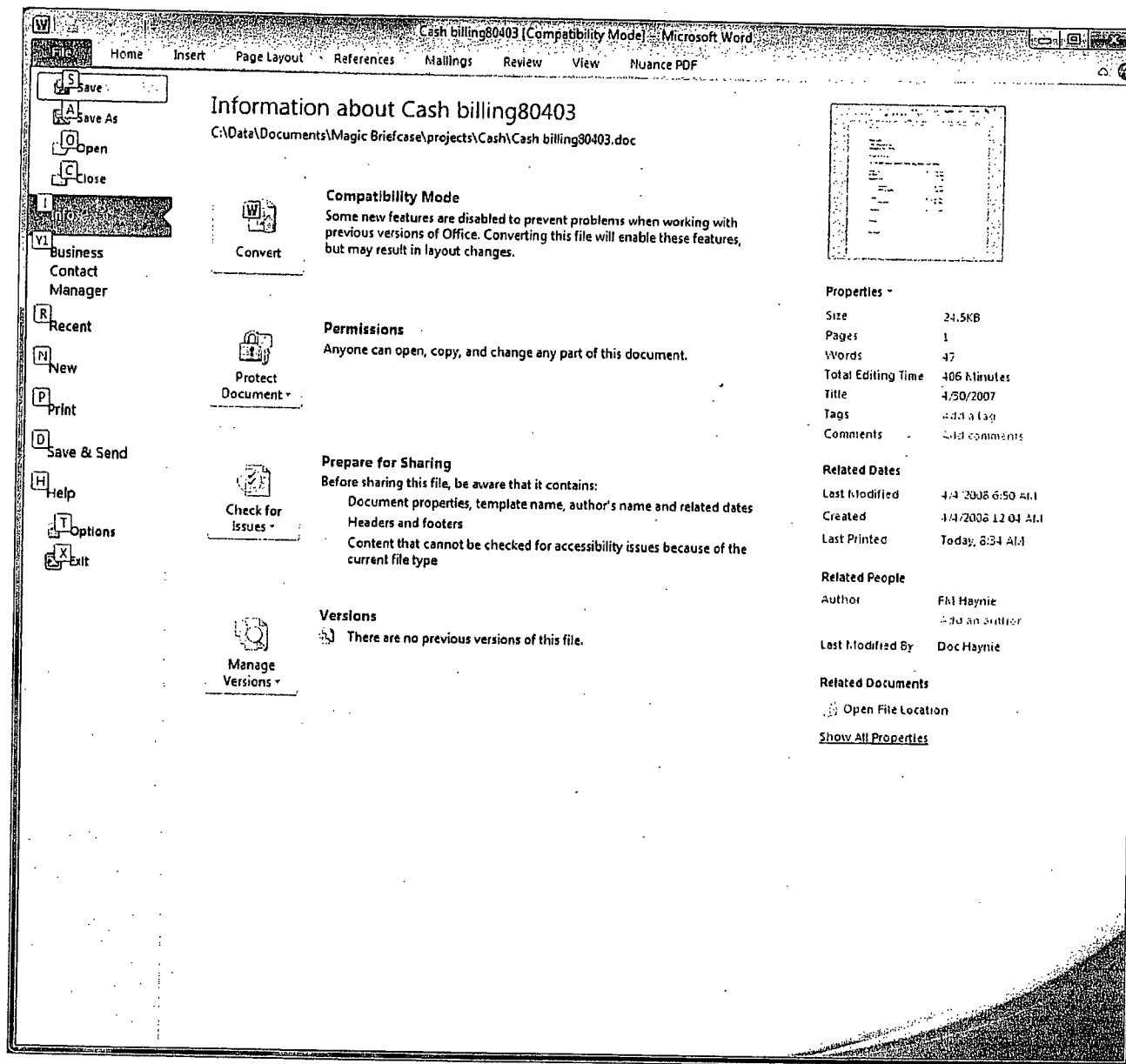
DocWild@Liaison.to
1469 Florawood Dr. Ste.102
Columbia, South Carolina
29204

(803) 238-0757 cell

ClipMate Report (Image)

Title: Graphic:8/2/2012 8:34:59 AM

Date: 8/2/2012 8:34:59 AM



DocWild's

General Contractor

11/12/2008

Paul Cash

1501 Greenhill Rd
Columbia, SC 29206

Progress billing:

On the Man Palace (poker shack, dog house, pool house...)

New work: tree, trim & paint

Materials	\$	38,418
1068mh		22,299
Bobcat 20h		<u>600</u>
Subtotal (direct cost)		61,317
+10% OH expenses		6,132
+15% profit		<u>15,329</u>
Total	\$	76,646
Less paid	-	<u>50,500</u>
Balance	\$	26,146

Thanks,

FM Haynie

(803) 738-2867

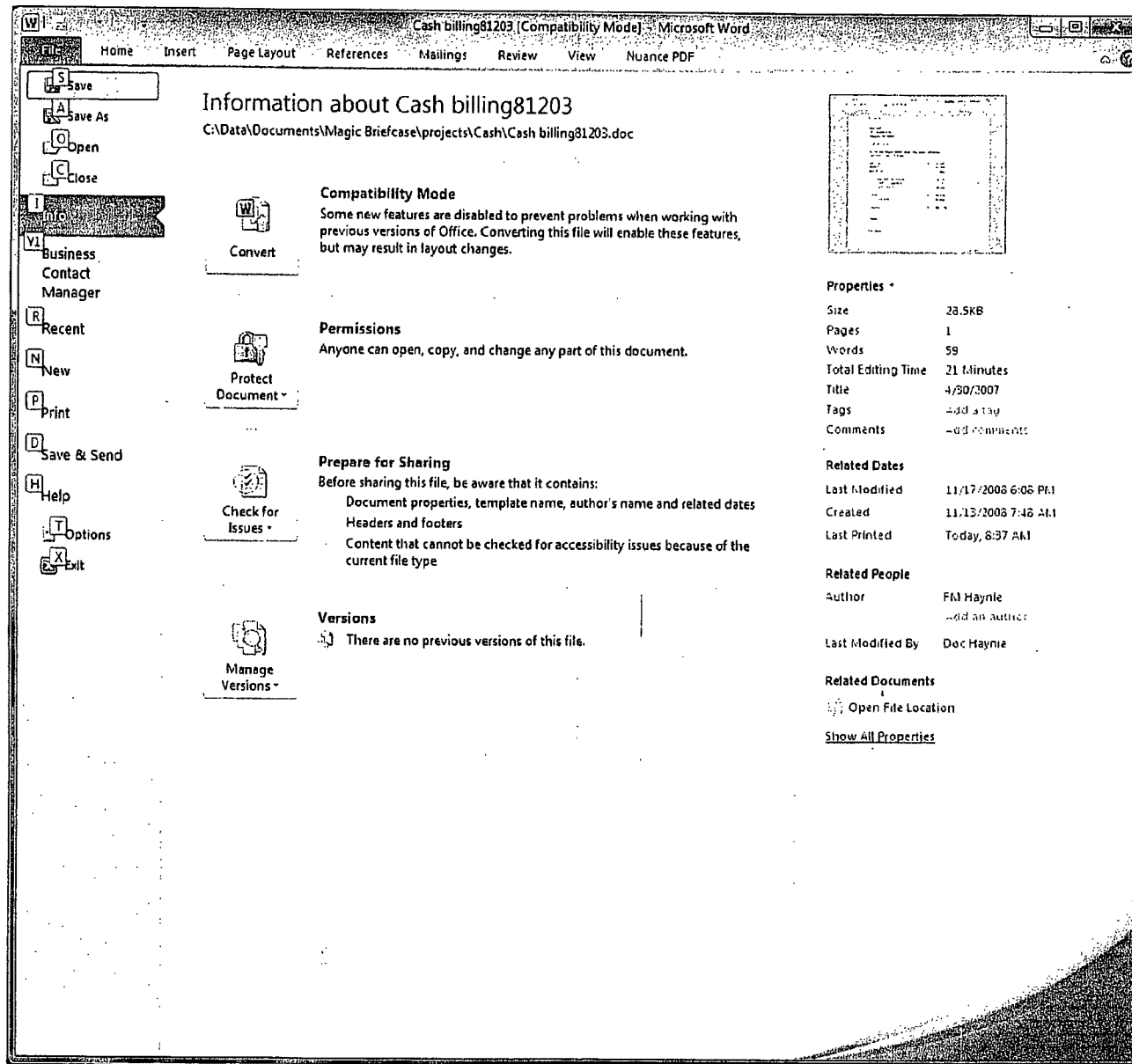
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Columbia, South Carolina
29204

(803) 238-0757 cell

ClipMate Report (Image)

Title: Graphic:8/2/2012 8:38:34 AM

Date: 8/2/2012 8:38:34 AM



2/7	\$ 77,396	\$ 23,499	Paid	50,500 Contract	35,000
Doc	257	7710		3/6	6,000 Extra 44,800
labor	811	14589		4/12	5,000 Total 79,800
Equipment	40	1200		5/7	5,000
				5/12	3,500 Due 29,300
COSTS	Descriptic	\$ 38,418		5/25	5000 Current -26,896
Permit		434		6/14	4000
James	Paint	690	8/28/08	8/9/08	3000
Shrwn Wm	bench sta	48	8/16/08		
Lowe's	Paint	96	7/31/08		
Schmidt	Trim	600	4/23/08		
Luelan		100			
Red Box		619 ?			
Saulo	Tree	550			
Schmidt	7newel pc	1,250	10/20		
Lowe's		437			
Schmidt		300			
Ray	Paint	127		7/9	3500
Yandle	Stump	50		7/18	2500
Boozer	Rail	269			
Boozer	Flooring	561			
Dump	3t	90		9/28	2000
Schmidt	Columns	600	9/24	11/14	2500
Ray	Paint x	600	9/10	11/7	1500
Saulo	Tree	130		12/21	2000
Ray	Paint	600		4/11/08	5000
Boozer	Norboard	440			
Lowe's	Lights	227			
Lowe's	White wd	629			
Lowe's	Tree deck	233			
Elec.Sys.	Finish	1,640	9/10		
Lowe's	Glass blo	598			
Lowe's	R-doors	-553			
Boozer	Doors	597			
Boozer	Aztec	493			
Lowe's	Door	34			
Reyes	Drywall	1,300	6/18		
Bernard	Paint	150			
Lowe's	Stuff	235			
HomeDepo		36			
Dreher	Plumbing	735	6/6		
RSG	Shakes	369			
CK	Rock	777			
Boozer	Trim brds	304			
Lower		74			
Perry	A/C	2,400			
Boozer	Vent	29			
Lowe's	Misc	173			
Lowe's	Shed	553			
GTG	Insulation	765	6/7		
Electrical S	Rough	1,000			
Electrical S	Service	2,040			
Lowe's	Stuff	58			
Lowe's	Siding	1,238			
Lowe's	Shingles	429			

Capitol Sup Cable	271
Lowes Moulding	597
Lowes Rafters	266
Lowes Windows	2,661
Perry Mann Meter bas	471
Lowes Truck & lt	658
Lowes 2x6	36
RSG Soffitt	63
Lowes	618
Lowes Beam & fi	555
A1 Stone	189
Hardaway 5y	607
Titan	337
Guaranteed Pencil roc	74
Titan Pump	412
Hardaway	1,335
Sunbelt Finisher	102
Lowes	2,457
Aaro JumpJack	147
Lowes	325
Capitol Sup Conduit	196
Rental Trencher	287
McFaddin Trees	600

	CAT	Doc	MH	N/C	Job	Sub
Total	40	257	811	##		
2/7	4	6	3			
2/9			5			
3/12		4	10		Digging	
3/14	4	6	10			
3/21	4	6	8			
3/22	4	4	4	4		
3/26		4	14	4		
3/27		6	16		Concrete	
3/28			4	2		
4/2			10	4		
4/3		5	14			
4/4		5	16	3		
4/9		6	17	3		
4/10		6	16		Pour walls	
4/11			4	4	Pour walls	
4/12		2	8		Strip	
4/16			5	3		
4/17		2	3	11	Repair concrete	
4/18		6	14		Framing	
4/19		10	17		Loft	
4/23		3	5			
4/25		6	16		Wrap	
4/26		4	10			
4/30		1	6		Porch sheathing	
5/1		3	8			
5/2		9	10		Loft rafters	
5/3		6	18		Felt & barge (post ok)	
5/7		6	12		Rafters	
5/8		2	8			
5/9		5	12		Roofing	
5/10		6	12			
5/11			5			
5/16			5	5	Pipes	
5/17		5	9		Sprinkler	
5/21		7	19			
5/22		6	20			
5/23		10	20			
5/24		3	25		Shed	
5/25			4			
5/29			16			
5/30			20		Plaster	
5/31		4	26		Siding	
6/4		4	10			
6/5		4	17			
6/6			19			
6/7		6	19		Soffitt	
6/8			6			
6/11		6	14	6		
6/12			18			
6/13		6	14	20		
6/20			10	10		
6/21		7	5	12		
6/27		2	6	8		

6/28	2	19	21	
7/10	2	6	8	
7/18	2	8	10	
7/19		8	8	
8/16		18	18	
9/6		8	8	
9/24		20	20	
9/25		22	22	
9/27		10	10	
10/9		8		
				Adjustment
10/17		6		
10/20		6		
11/15		8		
1/16	2	22		Bench
3/20			4	Bs
3/24		8	6	Bs
4/1				
4/2		12	6	Bs+straw
4/3			6	
4/11	4	3		tree
4/16		3		
4/17		4		Irr
	20	40		

City of Forest Acres

BUILDING INSPECTIONS

☒ **MAY PROCEED**
☐ **CORRECTIONS and REINSPECTION**
 REQUIRED

TYPE INSPECTION

Footer

NOTICE OF RESULT OF INSPECTION

Permit#

2007R-262

Date:

3/22/07

Location:

1501 Greenhill

Contractor/Owner:

Doc Winston / Paul Nash
TONY RIVERA
 Inspector

City of Forest Acres Building Inspections

5205 North Trenholm Road • Forest Acres, SC 29206

(803) 782-4245

REMARKS:

FOOTER HAS BEEN APPROVED FOR
POOL

Monday (3/26/07)

[Signature]
3/26/07





CITY OF FOREST ACRES

WORK PERMIT

5205 N TRENHOLM ROAD FOREST ACRES, SC 29206

Phone: 803-782-4245 FAX: 803-782-8737

DATE ISSUED: 05/08/2007

PERMIT #: 2007- 915

LOCATION	PAUL CASH	DISTRICT	TAX MAP PARCEL#
	1501 GREENHILL	LOT	ZONING DISTRICT
OWNER:	PAUL CASH		
CONTRACTOR:	1424		TOTAL VALUATION
	DOCWILD CONSTRUCTION		\$ 1,500
	1469 FLORAWOOD DR		
	COLUMBIA, SC 29204		
	PHONE: 803-738-2867		
	<u>SUBCONTRACTOR ID/NAME</u>		<u>SUBCONTRACTOR TYPE</u>

TYPE CONSTRUCTION: N/A

OCCUPANCY GROUP: WORK

FEE CODE

FEE

ELECTRICAL/RESIDENTIAL MINIMUM FEE

15.00

TOTAL PAID: 15.00 **PAID IN FULL**

TOTAL AMOUNT: 15.00

REMARKS: SERVICE CHANGE

THIS PERMIT MUST BE CONSPICUOUSLY DISPLAYED IN FRONT OF THE PREMISES UNTIL COMPLETION OF WORK.

(SIGNATURE OF CONTRACTOR/OWNER)

(DATE)

(ISSUED BY)

(DATE)

WORK PERMIT



NO. 2007R - 9/5

DATE 5/8/07

STREET 1501 Greenhill

Docwild's
CONTRACTOR

Cash
OWNER

2007-2119
LICENSE

NOTE: This work permit must be displayed in front of premises until completion of work.

Remarks: Service Charge Out

MP
Clerk
City of Forest Acres SC

City of Forest Acres
CASH RECEIPT

RECEIPT NO: 4765

DATE: 05/08/2007

RECEIVED FROM: DOCWILDS

AMOUNT: \$ 15.00

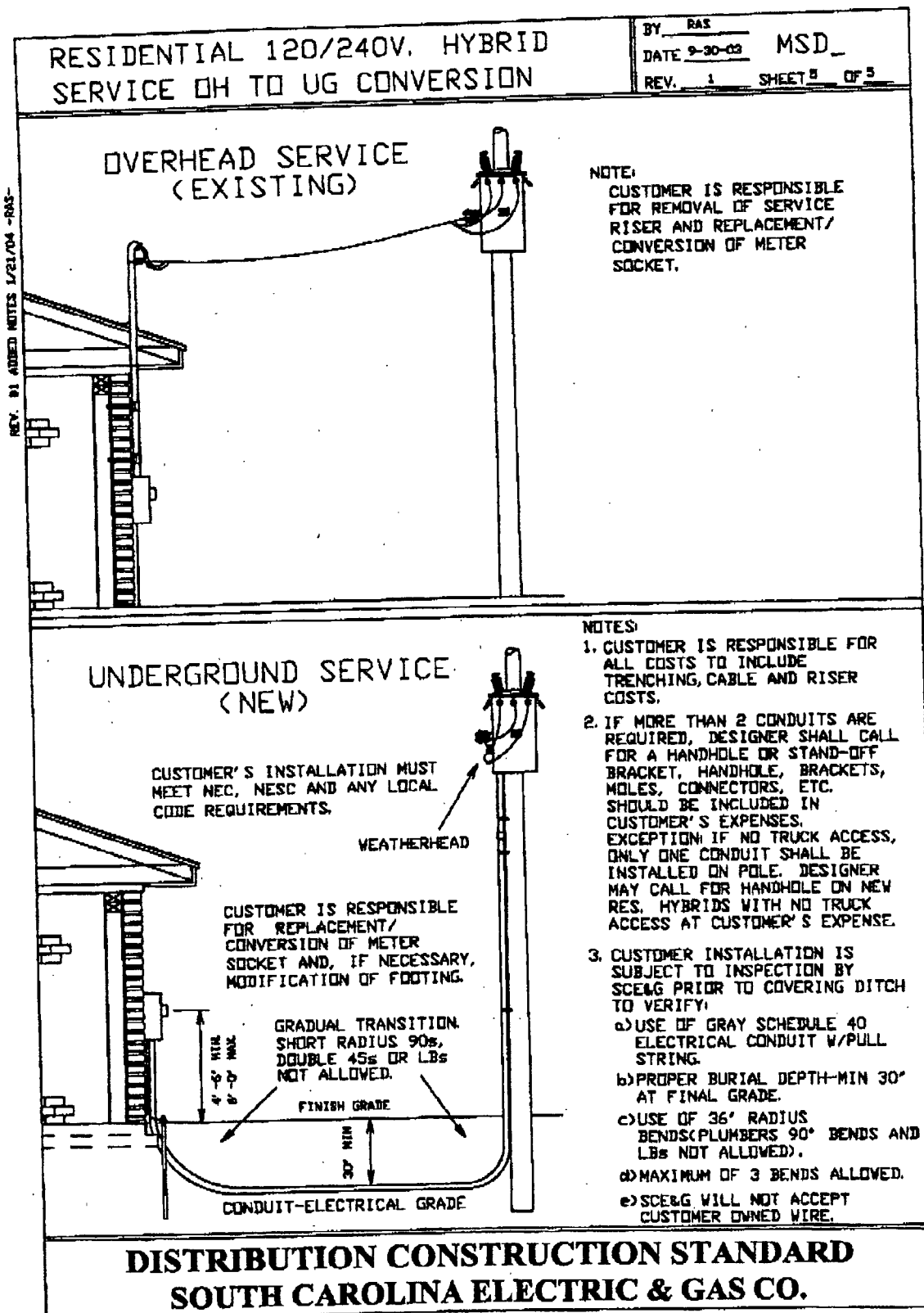
WP WORK PERMIT

15.00

WORK PERMIT FOR 1501 GREENHILL / CASH

RECEIVED BY: MMP

MCARD: 15.00



City of Forest Acres

BUILDING INSPECTIONS



MAY PROCEED



**CORRECTIONS and
REINSPECTION**

REQUIRED

TYPE INSPECTION

Electrical Service

NOTICE OF RESULT OF INSPECTION

Permit#

20072-262

Date:

5/15/07

Location:

1501 Greenhill

Contractor/Owner:

Doc Wild / Cash

TONY RIVERA

Inspector

City of Forest Acres Building Inspections

5205 North Trenholm Road • Forest Acres, SC 29206

(803) 782-4245

REMARKS: CHANGE OF SERVICE HAS BEEN APPROVED

DOC 238-0707

[Signature]
5/15/07

City of Forest Acres

BUILDING INSPECTIONS



MAY PROCEED



**CORRECTIONS and
REINSPECTION**

REQUIRED

TYPE INSPECTION

Electrical Permit

NOTICE OF RESULT OF INSPECTION

Permit#

2007B-762

Date:

5/15/07

Location:

1501 GREENHILL

Contractor/Owner:

DOE WILCO / CASH

TONY LIVELLA

Inspector

City of Forest Acres Building Inspections

5205 North Trenholm Road • Forest Acres, SC 29206

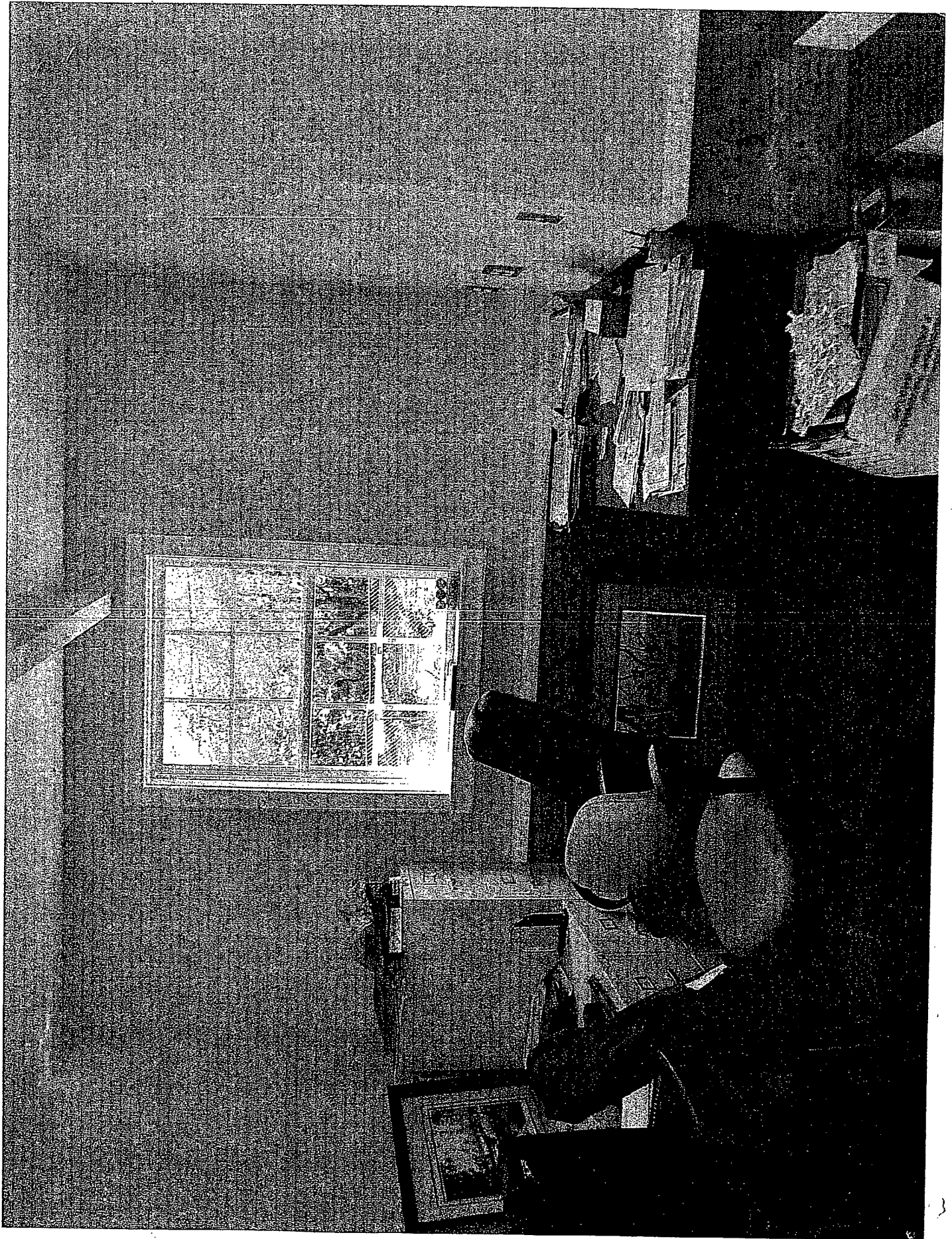
(803) 782-4245

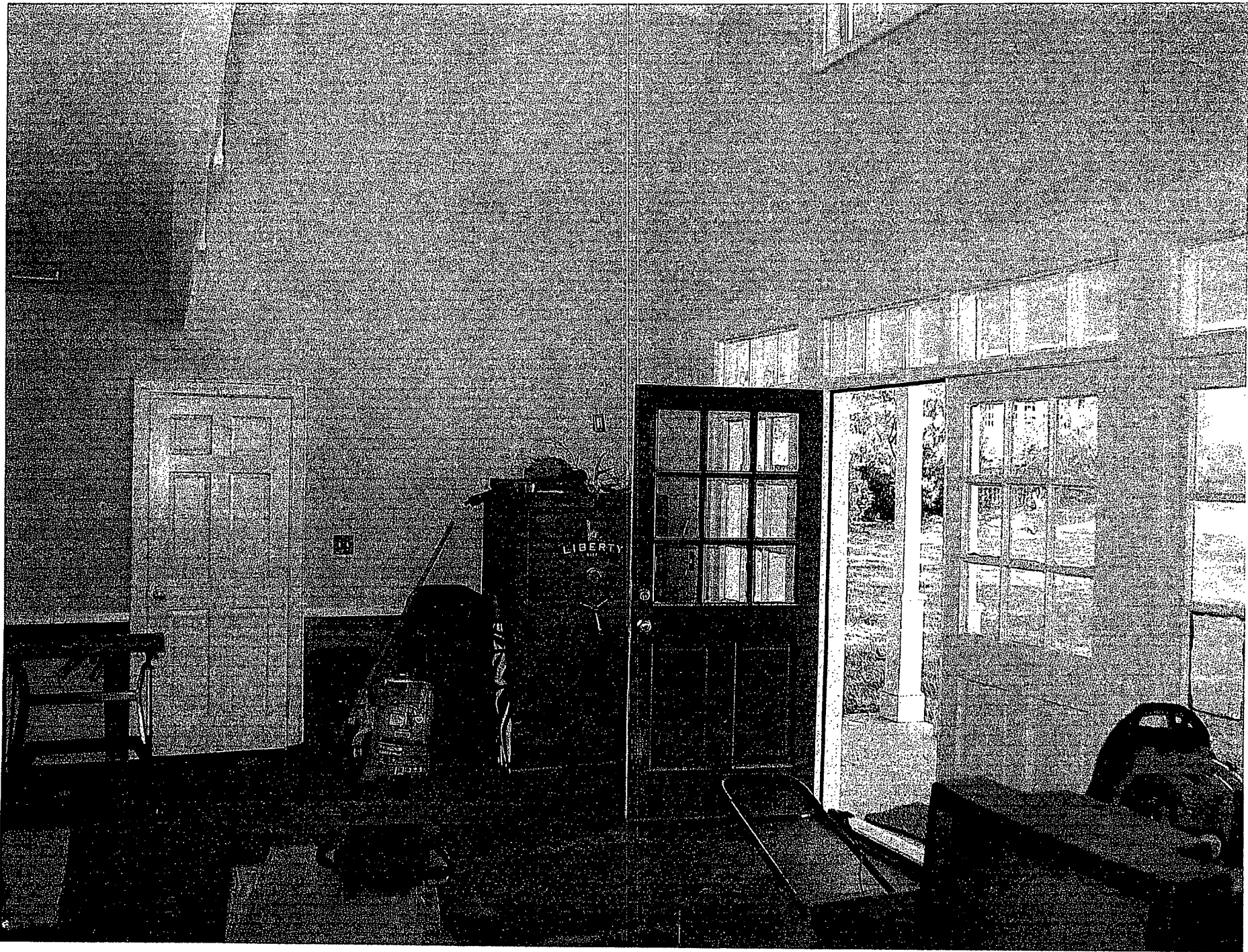
REMARKS:

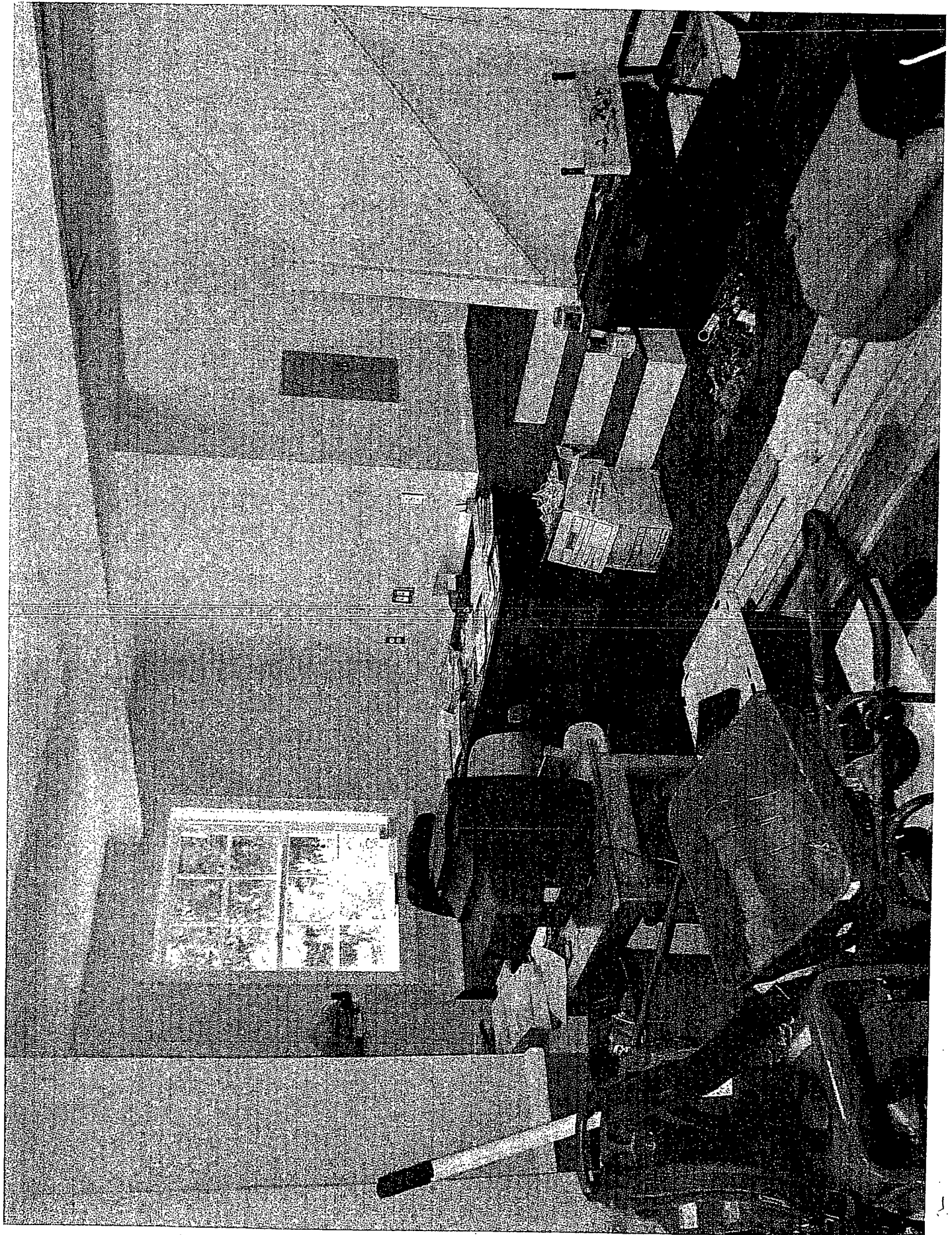
ROUGH ELECTRICAL HAS BEEN

APPROVED.

[Signature]
5/15/07







DocWild

General Contractor

August 8, 2012
Honorable Joseph M. Strickland
Master in Equity
PO Box 192
Columbia, SC 29202-0192

Re: FM Haynie v. Paul Cash and Carole Cash
2009-CP-40-64

Your Honor:

The first defense in a malpractice action is the clients underlying case is without merit (*which were Truslow's very words in his cover letter to me when delivering your order in March*). Not knowing how to approach the subject, I'm inclined to think the discussion should be done in confidence. In all probability I will be pursuing a malpractice action against Douglas Truslow.

The following would be irrelevant were it not for Truslow's peculiar handling of the case at hand. This trial was immediately after my discovery that Truslow had mishandled the following case and our relations were strained.

This past December, Truslow petitioned the court to be relieved as counsel in another case, Haynie v. Richland One School (you recently heard motions regarding that case). I learned about 'in camera' when Truslow was allowed a private discussion with the Judge Benjamin. Truslow emerged from that meeting with his motion to be relieved granted. The record was then sealed so I have no idea what was said about me, my family, or the case but can assure you it wasn't the truth.

In summary of that case:

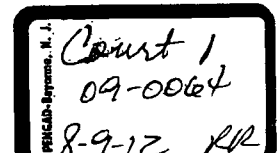
- *Truslow filed the original complaint in April 10*
- *He then dropped that case and neglected to file a replacement for nearly a year, subjecting us to a statute of limitations problem*
- *He omitted an expert affidavit in the replacement case filed Feb 11*
- *As a result, June 11, Powers Engineering, the most culpable party, was granted summary judgment with prejudice without our knowledge and without a hearing*
- *Truslow petitioned to be relieved Dec 11*

I would like to discuss how the prosecution of the above or lack thereof would prejudice his handling the prosecution of the instant case. I feel this is relevant but I am unsure of the proper procedure.

I learned just yesterday the actual status of the evidence in question for my case at hand. I am still without copies of evidence of record which complicates my filing since pertinent details appear to be known to all but me. My motion would be unchanged but admissibility of some evidence may change. Please bear in mind that I am at a distinct disadvantage not having counsel and I am quite unable to argue these points verbally on the fly.

F. M. Haynie

DocWild@Liaison.to
1469 Florawood Dr
Columbia, South Carolina
29204
(803) 258-0757 cell



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2009-CP-40-0064

F.M. Haynie d/b/a Doc Wild's)
General Contractor,)

Plaintiff,)
v.)

Paul E. and Carole Cash,)

Defendants.)

COPY
ORIGINAL

HEARING

DAY ONE OF THREE

Monday, September 19, 2011
10:56 a.m. to 4:43 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, commencing on the 19th day of September, 2011, and concluding on the 22nd day of September, 2011, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

APPEARANCES

Douglas N. Truslow, Esquire

Neal D. Truslow, Esquire

Truslow & Truslow Law Firm
914 Richland Street, Suite B-102
Columbia, South Carolina 29201
Attorneys for the Plaintiff

Catharine H. Garbee Griffin, Esquire

Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
Attorney for the Defendants

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EXHIBITS

Marked:

Entered:

Plaintiff's Exhibit Number One A-L	5	17
(Photos of Outbuilding)		
Plaintiff's Exhibit Number Two	5	106
(Plan - Version Two, 1/22/07)		
Plaintiff's Exhibit Number Three	5	92
(Excerpt National Building Cost Manual)		
Plaintiff's Exhibit Number Five	5	137
(3/2/07 Agreement, dupl. Def. Ex. 25)		
Plaintiff's Exhibit Number Six	5	106
(Drawing Revisions/Changes)		
Plaintiff's Exhibit Number Eight	5	145
(Haynie Progress Billing)		
Plaintiff's Exhibit Number Nine	5	145
(Haynie Backup - Cost and Hours Spreadsheets)		
Plaintiff's Exhibit Number Ten	5	410
(Notice of Lien)		
Plaintiff's Exhibit Number 12	448	448
(Haynie Quantum Meruit Rebuttal Calculation)		
Defendants' Exhibit Number One A-J	5	263
(Photos)		
Defendants' Exhibit Number Two	5	189
(Building Permit Application)		
Defendants' Exhibit Number Three	5	187
(Plan - Version Two, 1/22/07)		
Defendants' Exhibit Number Five	5	336
(Cash Ledger Page)		
Defendants' Exhibit Number Seven	5	264
(Haynie Billing Hours, Feb to April, dupl. Def. Ex. 27)		
Defendants' Exhibit Number Eight	5	239
(Haynie Spreadsheet - \$52,104)		
Defendants' Exhibit Number Nine	5	152
(Haynie Spreadsheet - \$63,948)		
Defendants' Exhibit Number Ten	5	60
(Haynie Billing Hours, Feb to Nov)		
Defendants' Exhibit Number 11	5	266
(Work Permit)		
Defendants' Exhibit Number 12	5	167
(Haynie Progress Billing, Bal \$18,995)		
Defendants' Exhibit Number 13	5	181
(Haynie Progress Billing, Bal \$26,146)		
Defendants' Exhibit Number 14	5	398
(Cash Check to Agape)		

3

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

Defendants' Exhibit Number 15	5	399
(C&C Contracting Invoice)		
Defendants' Exhibit Number 16	5	396
(Capital Plumbing Invoice)		
Defendants' Exhibit Number 17	5	396
(Cash Check to Capital Plumbing)		
Defendants' Exhibit Number 19	40	40
(April Haynie Time Sheet)		
Defendants' Exhibit Number 20	46	46
(Haynie Estimate)		
Defendants' Exhibit Number 21	83	83
(Lowe's Statement)		
Defendants' Exhibit Number 22	160	161
(Photo of Missing Siding)		
Defendants' Exhibit Number 23	162	162
(Photo of Repaired Siding)		
Defendants' Exhibit Number 24	187	
(Haynie Drawing)		
Defendants' Exhibit Number 25	190	190
(3/2/07 Agreement, dupl. Pl. Ex. 5)		
Defendants' Exhibit Number 26	218	218
(April Haynie W-2)		
Defendants' Exhibit Number 27	230	
(Haynie Billing Hrs, Feb to April, dupl. Def. Ex. 7)		
Defendants' Exhibit Number 28	259	259
(Photo of Missing Siding)		
Defendants' Exhibit Number 29	265	265
(Haynie Extra Costs)		
Defendants' Exhibit Number 30 A-C	385	
(Photos of Tree House)		
Defendants' Exhibit Number 31	437	437
(Mechanic's Lien)		
 Joint Exhibit Number One	 263	 264
(Plan Approved by Tony Rivera)		

1 (Prior to the hearing, Plaintiff's Exhibit Numbers One
2 through Eleven were marked for identification, and
3 Defendants' Exhibit Numbers One through 18 were marked for
4 identification.)

5 **THE COURT:** This is Civil Action Number 2009-CP-40-0064.

6 F.M. Haynie, etcetera, against Paul Cash and others.
7 We've scheduled this for a hearing on the merits.
8 Let me announce at the beginning, for anybody who's
9 in the courtroom, anybody who needs a break for any
10 reason just let me know. Some people I've had in
11 other cases will sit and have to go to the bathroom
12 and afraid to say anything. If it's something like
13 a bathroom trip, or you need to check on a child or
14 anything, for any reason at all, just let me know
15 and we'll take a break. This morning I'd like to
16 work until about 1:00 if we could, and take a lunch
17 break until about 2:30, and then come back and work
18 until about 5:00 this afternoon. And we have a
19 hearing on the merits, same case, scheduled again
20 for tomorrow morning at 10:00. We could actually
21 start tomorrow morning at 9:00. And now, the
22 lawyers are telling me it probably won't take all
23 that time, but we have it available if we need to.
24 And also, if it takes more than that time, we can
25 certainly schedule it and come back another day. Is

1 everyone ready? Both sides?

2 MR. TRUSLOW: Plaintiff is ready, Your Honor.

3 MS. GRIFFIN: Yes, Your Honor.

4 THE COURT: All right. Let's proceed with opening
5 statements.

6 MR. TRUSLOW: Your Honor, I'm reminded of the benefits
7 of brevity. I submitted a pretrial brief that says
8 everything that I would say at this point in time
9 that we think is appropriate. And we've previewed
10 the case, so I don't know that there's any reason to
11 say anything else. We expect to present two
12 witnesses. My son, my partner, is going to call the
13 first witness, and then I'll do the second witness.
14 I expect, although I can't commit, but I think the
15 defense will have either one or two witnesses. And
16 if it goes like I would hope, we ought to be able to
17 finish today, but we'll see. Thank you.

18 MS. GRIFFIN: Your Honor, Catharine Griffin for the
19 defendants in this case. And just briefly to
20 explain our position, this is a dispute over a
21 payment for an outbuilding that was built in the
22 backyard of the Cashes' home over in Forest Acres.
23 The dispute arises because Mr. Haynie, the
24 contractor, misapprehends the nature of the
25 contract. In this case, what we intend to show is

1 that there was a contract for a sum certain. It was
2 for \$35,000. That contract was entered into between
3 these two men. Ms. Cash is an owner of the
4 property, so she's also here as a defendant. And it
5 was modified. It was ... things were subtracted and
6 things were added. During the time of the contract,
7 Mr. Cash will testify that he kept a spreadsheet,
8 which will be in evidence, regarding what the
9 modifications were, what the additions and the
10 subtractions were. As the project went along he was
11 making periodic payments to Mr. Haynie and ended up
12 paying him a total of \$50,500 for this project.
13 Now, in addition to the core project, and that is
14 what there is a contract for, that is a letter and
15 then as defined in this estimate, there were
16 additional extra things that were asked for by the
17 Cashes. They needed some trees taken down, and they
18 asked for some electrical service to be changed at
19 their house. Those amounts were separately
20 contracted for with Mr. Haynie, there was a separate
21 price for those, and those were paid for by the
22 Cashes. Now, the evidence will also show that Mr.
23 Haynie, in entering into this contract, he's going
24 to claim it's a cost plus 25 percent contract. So
25 his cost, his labor, plus 25 percent. Once you look

7

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Columbia, South Carolina 29201

1 at these documents you'll see that Mr. Haynie was a
2 very poor record keeper at best and that the numbers
3 move all over the place. There are different
4 numbers for the materials, there are different
5 numbers for the labor. And, in fact, when this
6 dispute arose, Mr. Haynie called Mr. Cash, the
7 testimony will show, and asked for \$9000 in payment.
8 When Mr. Cash said no, I don't owe you anything, he
9 wrote a letter and asked for \$18,000. When Mr. Cash
10 again said I don't owe you anything, he wrote
11 another letter and said you owe me \$26,000. So
12 there's a big dispute over the amount that he is
13 owed. There's no dispute that we've paid \$50,500.
14 On the other side of the equation is the defendant's
15 have filed a counterclaim, and they're asking for
16 amounts to be paid to them for poor workmanship.
17 One of the things that Mr. Haynie did, unbeknownst
18 to the Cashes that it was illegal, is he put a
19 septic tank in their backyard. When he testified in
20 his deposition, the Cashes learned that that was not
21 supposed to be in their backyard, and they've had it
22 fixed. And in fixing that they incurred costs to
23 fix that. They also incurred costs for their
24 irrigation system. They also incurred some costs
25 for changing ... fixing a soffit on the shed that

1 rotted in the past few years. In addition to that,
2 there's another issue in the case, and it involves
3 Mr. Haynie's request to allow his carpenter to use
4 the shed. Originally, the Cashes will tell you,
5 they understood he was going to be there for a
6 month, and then he changed it and just stayed, and
7 stayed, and stayed, and didn't leave for about nine
8 months. The Cashes will tell you that they were
9 trading out services for that. And Mr. Haynie
10 denies that. So we have a counterclaim for the
11 value of the use of the shed, a quantum meruit
12 counterclaim that we're asking that you consider.
13 Finally, we're taking the position that the
14 mechanic's lien was not properly filed because it
15 wasn't timely filed within 90 days after the work
16 was substantially completed. The evidence will show
17 that it was not filed correctly and that the
18 mechanic's lien should be dissolved. Thank you,
19 Your Honor.

20 **THE COURT:** You're welcome.. Mr. Truslow, please call your
21 first witness.

22 **MR. TRUSLOW:** Thank you, Judge. The plaintiff calls April
23 Haynie.

24 (Witness is sworn.)

25 **APRIL HAYNIE,** having been duly sworn, testifies as

1 follows:

2 MS. HAYNIE - DIRECT EXAMINATION BY MR. NEAL TRUSLOW:

3 Q: Good morning.

4 A: Good morning.

5 Q: I'm standing over here for a couple of reasons.
6 One, I want to make sure you know that you need to
7 speak loud enough for everybody to hear you. Is
8 that okay?

9 A: That's great.

10 Q: All right. And you can hear me just fine, even
11 though my voice sounds awful. Is that okay?

12 A: Yes, I can.

13 Q: Okay. Please state your full name for the record.

14 A: April Sky Haynie.

15 Q: And where do you live?

16 A: 1469 Florawood Drive, with my parents.

17 Q: How long have you lived there?

18 A: Roughly the last year and a half, two years.

19 Q: Where did you grow up? Where are you from
20 originally?

21 A: From Columbia.

22 Q: Okay. And how long have you lived here?

23 A: My whole life. Well, I moved for college for four
24 years.

25 Q: And where did you go to college?

1 A: Lander University.
2 Q: And that's in Greenwood?
3 A: Yes.
4 Q: And you've moved back and you've been in Columbia
5 ever since?
6 A: Correct.
7 Q: Do you have any other family other than your mom and
8 dad?
9 A: I have my children at the house with us also;
10 they're eight and nine. And aunts and uncles and
11 cousins throughout the state.
12 Q: And what kind of work do you do now?
13 A: I'm a firefighter with Columbia Fire Department.
14 Q: And how long have you been doing that?
15 A: Five years now.
16 Q: And does that entail you doing anything else,
17 hobbies to keep fit for the fire department?
18 A: Yes. I've been training for a marathon. I've
19 already ran my first half marathon. I'm working to
20 get up to my full marathon.
21 Q: That's great. Okay. I'm going to ask you to
22 explain kind of what is your background in
23 construction. You said you're a firefighter.
24 What's your background in construction?
25 A: Well, my dad's always done construction, so I've

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1 always been around it. And then before I became a
2 firefighter he allowed me to work for him also. So
3 I've been doing that since 2004. 2003, 2004.
4 Q: And a little bit about your dad, he went to Georgia
5 Tech?
6 A: Yes. He went to Georgia Tech. Got an engineering
7 degree.
8 Q: Okay. And your experience in construction, I just
9 want to ask you a couple of things and you tell me
10 if you've done these or not. You've operated some
11 heavy equipment?
12 A: Yes.
13 Q: A Bobcat?
14 A: Yes.
15 Q: You drive nails?
16 A: Yes.
17 Q: Do you pour concrete?
18 A: Correct.
19 Q: Framing?
20 A: Yes.
21 Q: Finishing?
22 A: Yes.
23 Q: Cleanup work?
24 A: All of the above, yes.
25 Q: You do some general oversight of the project, kind

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1 of like a manager? .
2 A: Yes. I worked my way up to being a foreman on a job
3 site, so yes.
4 Q: Okay. And have you ever dealt with or overseen the
5 finances of any projects?
6 A: Yes.
7 Q: Okay. Now, let's turn specifically to this project
8 at the Cashes' home. Were you handling the finances
9 on this project?
10 A: No.
11 Q: Were you doing any of the books for this project?
12 Bookkeeping?
13 A: No.
14 Q: Except for giving your hours, were you handling
15 anyone's hours on this project?
16 A: No.
17 Q: Okay. Were you ordering supplies for this project?
18 A: Not ordering.
19 Q: Were you picking them up?
20 A: Yes.
21 Q: Okay. And where were you mostly picking those up
22 from?
23 A: Lowe's.
24 Q: And on this project specifically, all those things
25 we talked about earlier, Bobcat, framing, driving

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1 nails, pouring concrete, you were doing those things
2 on this job as well?
3 A: Yes.
4 Q: Okay. Now, again, you said you're a firefighter but
5 you've got this background in construction. How is
6 it that you're doing both at the same time? Can you
7 tell us a little bit about your schedule?
8 A: Yes. As a firefighter, once you graduate from
9 recruit school, I work a 24 hours on and 40 hours
10 off, so it allows me to have a second job. Not just
11 a second part-time job.
12 Q: So again, in regards to this project, what was your
13 ... your schedule was that same thing, the 24 ...
14 A: When this project began I was in recruit school for
15 10 weeks, and that started January 22nd. But after
16 that, yes. I was ... every day during ... Monday
17 through Friday that I was off from the fire
18 department I was working for my father.
19 Q: And when is it your understanding that this project
20 began? I think you said you were in recruit school.
21 A: Yeah, February. Because I was gone pretty much all
22 the time. It was between January and March that it
23 began.
24 Q: And what were you doing mainly when you were in the
25 recruiting school?

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1 A: Monday through Friday, 8:00 to 5:00, hands-on hard
2 work practicing. So I was pretty wore out after
3 that, so.
4 Q: Did you talk to your dad about this project at all
5 while you were in recruiting school?
6 A: Oh, yes. Yes.
7 Q: And what did you all talk about?
8 A: He would tell me what projects he had going on in
9 relation to this project, what it looked like. He
10 got to the point in our relationship with his
11 business of asking my opinion, what I thought and
12 things like that. So we were discussing how it ...
13 how the project kept waffling back and forth.
14 Q: Had you seen any renderings of what the project was
15 going to look like?
16 A: Yes.
17 Q: When did you see those, or what did you see?
18 A: I saw originally it was going to be a shed, a work
19 shed. And it looked just like a work shed would
20 look and ... with some tweaks to it. But then it
21 grew; it became a larger more cottage-style
22 building.
23 Q: Did you assist at all in putting the bid together
24 for the project?
25 A: No.

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1 Q: But you say you were there for ... can you estimate
2 what percentage of the project you might have been
3 there for?
4 A: Probably half to two-thirds of it.
5 Q: Okay. And you said you understood at first it was
6 to be a shed and then it changed. Could you explain
7 that a little bit?
8 A: Yeah. Originally it was going to be a replacement
9 for the work shed that had rotted and needed to be
10 replaced. And it grew from there to a man cave.
11 And in my opinion it became what appears to be a
12 cottage.
13 MR. NEAL TRUSLOW: Judge, permission to approach the
14 witness?
15 THE COURT: Yes, sir.
16 MR. NEAL TRUSLOW: Thanks.
17 Q: Ms. Haynie, I'm handing you what's been pre-marked
18 for identification purposes as Plaintiff's Exhibit
19 1-A through L. Please take a second to look through
20 those and let me know when you've had a chance to
21 look at them.
22 A: Okay.
23 Q: First let me ask you, do you recognize those photos?
24 A: Yes, I do.
25 Q: Are you familiar with the scene that they depict?

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1 A: Yes.

2 Q: And how are you familiar with that scene?

3 A: This is the building that we built for the Cashes in
4 their backyard. This is what was supposed to be a
5 shop and is now an actual home, in my opinion.

6 Q: Would you say that those pictures fairly and
7 accurately represent that that's the home ... the
8 building y'all built on the Cashes' property?

9 A: Yes.

10 MR. NEAL TRUSLOW: Judge, at this time I'd like to offer
11 Plaintiff's Exhibit One for identification, 1A
12 through L, into evidence.

13 MS. GRIFFIN: No objection.

14 THE COURT: All right. Your motion is granted.
15 (Plaintiff's Exhibit Number 1A through 1L is entered into
16 the record.)

17 Q: All right. Ms. Haynie, can you kind of take us
18 through ... I guess I'd better approach and start
19 doing these one by one. Plaintiff's Exhibit 1A, can
20 you kind of explain to the judge and to the Court,
21 what exactly is this? What is everything about
22 this? Can you tell us a little bit about the
23 picture, what all's ... what all's involved in this
24 house, in this building?

25 A: Well, if you notice, originally, because he had rot

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1 with the way his yard slopes, in the original
2 building, we built ... we built walls up in concrete
3 for the first couple of feet at the base so there
4 that would eliminate the rot from water runoff
5 in the yard. And then we built up from there.

6 Q: So, I'm sorry, about the rot, there was a previous
7 building there?

8 A: There was a previous shop that rot ... it had
9 rotted, so it needed to be taken down.

10 Q: Okay. And so you all did that work also?

11 A: They did that. I was not there for that.

12 Q: Okay. When were you first present on the scene?

13 A: Pouring of the concrete walls.

14 Q: Okay. And then can you talk a little bit about what
15 the ... some of the materials are in there? For
16 example, the roof. What kind of shingles are those,
17 if you know?

18 A: They're just regular ... they're architectural
19 shingles.

20 Q: And how about the front around the window, what is
21 that material right here?

22 A: This area right here?

23 Q: Uh-huh (affirmative response.)

24 A: He's got a gable up front. He's got different
25 pitches throughout the entire structure.

1 Q: And are those cedar planks around the window? I
2 can't ... I don't know the exact words.
3 MS. GRIFFIN: Your Honor, I object to him leading her.
4 THE COURT: Sustained.
5 MR. NEAL TRUSLOW: I'll rephrase.
6 Q: Do you know what the material is around the windows
7 up front?
8 A: Yes. Those are cedar planks that we ... they
9 installed. I did not install those.
10 Q: And do you know what kind of material this is for
11 the siding?
12 A: I believe it's Hardiboard, but it might be cedar.
13 Q: Okay. Moving on. Let me hand you ... make sure I
14 keep these in order. Plaintiff's 1D. Can you kind
15 of tell us a little bit about what 1D is showing?
16 A: It's showing the concrete walls that I just
17 discussed about that we built. We designed them to
18 look like stone, slate stone.
19 Q: And when you say designed them, what all did that
20 entail?
21 A: When it was poured, we poured it normally and then
22 we took ... we had pads to make it look like slate,
23 and then we cut ... we scored lines to make it look
24 like separate slabs.
25 Q: State, if you know, is that painted with anything at

1 all or ...

2 A: I don't believe it is, no.

3 Q: All right. Let me hand you Plaintiff's 1E, and tell
4 me a little bit about what 1E is showing.

5 A: This is the front porch of this house that was built
6 ... that we built. It's got designed columns; it's
7 not just normal four-by-four columns. It's got
8 slats up on the roof ... I mean, on the ceiling that
9 we put in. We installed electricity for the ceiling
10 fans, as well as the lights. The slab is also part
11 of the slab that we also scored to look like tile
12 instead of just a plain concrete slab.

13 Q: Okay. Thank you. And let me also show you Exhibit
14 ... Plaintiff's Exhibit 1G. Can you kind of explain
15 what that's depicting?

16 A: This is showing that it's got a loft area upstairs.
17 It's got an upstairs to it. It's not just as you
18 walk in a normal shop. It's a living area plus a
19 loft. Originally it was supposed to be just storage
20 space up top, but as you can see in this picture he
21 needed ... he wanted more architectural definition
22 in the railing to make it more of a living space ...
23 office space upstairs.

24 Q: And I see outlets and an electrical box. Can you
25 explain, is there any significance about those?

1 A: Yes. He requested that he have not just electricity
2 but cable run throughout the building, so it's got
3 Internet, cable and electricity.
4 Q: Okay. And Plaintiff's 1H, can you explain that?
5 A: The flooring is the concrete slab again, but what we
6 did is we scored it. We stained it so it looked
7 like ... and sealed it so it would look just like it
8 had been tiled, but cheaper.
9 Q: Now, which direction ... if you're standing in the
10 front of the house, in the doorway, what direction
11 are you looking for Plaintiff's 1G?
12 A: This is to the left side of the structure from the
13 front door.
14 Q: And the same for 1H; is that correct?
15 A: Yes.
16 Q: I'm going to hand you Plaintiff's 1I. Can you
17 explain what that is, please.
18 A: This would be the workbench, the wooden parts of the
19 workbench, and the same ... and the door leads to a
20 restroom.
21 Q: And where ... if you're standing again in the
22 doorway of the house, what side of the building is
23 this?
24 A: This would be the right-hand side in the rear, part
25 of the rear.

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1 Q: All right. Ms. Haynie, I'm going to hand you
2 Plaintiff's 1J and 1K. Can you explain those and
3 any significance in that ... those pictures?
4 A: Yes. This is the vaulted ceiling he requested, and
5 ... in the front, so the loft would be ... we would
6 be looking at this from the loft area, this ... K.
7 Q: Is there anything special about the fan?
8 A: He wanted it lowered. Instead of just up at the
9 ceiling he wanted it lowered so you could see it
10 from the lower level.
11 Q: Okay. And you're telling me a lot about what Mr.
12 Cash wants. How did you know these sorts of things?
13 Did you ... I guess, let me rephrase. How would you
14 know what Mr. Cash wanted?
15 A: I was present for a lot of the conversations between
16 him and my father, as well as Mr. Cash was there
17 every day on the job requesting stuff and asking
18 questions. He was present throughout the entire
19 project.
20 Q: Okay. I'm also going to hand you, lastly,
21 Plaintiff's 1L. And can you explain what that is,
22 please.
23 A: This is the ceiling of the front porch that we put
24 one-bys to make it look ... one-by-fours to make it
25 look ... or 1x2s to make it look like it would ...

1 more architecturally, a more esthetically pleasing
2 design, instead of just this regular flat roof, or
3 flat ceiling. And we also put in two ceiling fans.
4 Q: And was that also at Mr. Cash's request?
5 A: Yes.
6 Q: Thank you. Ms. Haynie, you stated earlier that this
7 project grew from a shed into what you said was a
8 cottage. Can you explain a little bit more as to
9 how we got from a shed to what we see in those
10 pictures?
11 A: Well, originally it was just ... it's like I said,
12 it was to replace the existing shed with a little
13 more space, a work space. And it became this
14 cottage. To my understanding it was to be ... there
15 was a possibility of them ... they have a really
16 large yard.
17 **MS. GRIFFIN:** Your Honor, I object to her saying it's my
18 understanding, because she's obviously going on
19 hearsay by saying that. Unless she's got direct
20 knowledge of it.
21 **THE COURT:** Overruled.
22 Q: Please go ahead.
23 A: Yes. From listening to Mr. and Ms. Cash, their plan
24 was to put in a pool and this would be a pool house.
25 Q: Okay. Now, you also stated you were first on the

1 scene for the pouring of the concrete. For somebody
2 who is an attorney and doesn't know necessarily
3 about that, what exactly does that entail? You said
4 walls and a slab. What is that?
5 A: Yes. You pour the slab first and then you erect the
6 walls on the exterior of the slab. The slab's the
7 floor, and then the walls are the sides, so.
8 Q: Approximately how big was that slab?
9 A: Originally it was supposed to be 200-plus square
10 feet, and it ended up being, I think, almost 400
11 square feet.
12 Q: And do you know ... state whether you know how many
13 square feet the building is approximately now.
14 A: Six hundred-plus square feet.
15 Q: Okay. You talked earlier about fans and columns,
16 and you said you also spoke with Ms. Cash. What did
17 that ... what in those conversations did you learn
18 about the house and their intentions with the house,
19 the building?
20 A: Well, the ... with the fans, Ms. Cash had gone and
21 purchased fans, and apparently she had not purchased
22 the correct ones. And Mr. Cash made her take them
23 back, and he ... he wanted all white.
24 Q: And did you all incur expenses putting those up and
25 taking them down?

1 A: Yes.

2 Q: We didn't see a picture of it, but is there a
3 bathroom in that structure?

4 A: There is.

5 Q: Okay. And you also mentioned earlier something
6 about a pool. Is there a reason the bathroom was
7 designed one way, because of a pool? Can you
8 explain that?

9 A: Yes. It was originally ... the reason the design
10 for the bathroom did not have a lift station, it
11 only had a tank, a temporary tank to put in for him
12 to be able to have a bathroom with a shower and a
13 toilet, was because if they end up putting in a pool
14 they would have to take that lift station out and
15 put it back in. So we were trying to save them a
16 cost.

17 Q: Let me ask you this. State whether you know, was a
18 bathroom part of the initial plan, the original
19 plan?

20 A: No. It was just supposed to be a sink, like a
21 washbasin sink.

22 Q: Okay. And do you know what that would have been
23 used for?

24 A: In my experience, most washbasin sinks are for
25 paints and things like that, stuff you don't want to

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1 put in your home sink.

2 Q: Okay. Now, looking again through plaintiff's
3 pictures, Plaintiff's Exhibit One, could you explain
4 a little bit about the loft area. Why was there a
5 loft there?

6 A: Originally it was just to be sort of like an easy
7 access attic space. It wasn't really supposed to be
8 a loft. It was supposed to be storage space, and it
9 turned into ... he wanted it to be an open air loft,
10 so that it could be an office, he could put a desk
11 up there if he so chose to.

12 Q: And if it was going to be an office, as you're
13 saying, what did that necessarily entail
14 additionally installing?

15 A: Instead of doing a ladder or an ... like an attic
16 ladder that you would normally have for a space like
17 that, we ended up having to have stairs with a
18 railing to meet code.

19 Q: And was that in the original plan, to your
20 knowledge, stairs and ...

21 A: No.

22 Q: ... a railing?

23 A: No.

24 Q: I want to ask you a little bit about that fan that
25 we can see in the pictures. It was ... seems to be

1 dropped down. Was there air conditioning in this
2 building?
3 A: Yes.
4 Q: Okay. And can you explain to me a little bit about
5 why the fan was the way it was with the air
6 conditioning system set up?
7 A: The fan was the way it was, was just to allow for
8 ... circulate the air better lowered like that. But
9 the air unit we originally were going to install
10 would not accommodate the amount of livable area, so
11 we ended up having to install a bigger, better AC
12 unit to cover up the square footage.
13 Q: When you said the original unit you wanted to
14 install, what do you mean? It was like a window
15 unit or ...
16 A: Similar to a window unit, yes.
17 Q: Ms. Haynie, who was it that was picking up the
18 materials for this project?
19 A: Mostly myself, but sometimes my father.
20 Q: And how were they ... and you said earlier you went
21 to Lowe's for the majority of it?
22 A: Yes.
23 Q: And I'm going to assume that they gave you receipts;
24 is that fair?
25 A: Yes.

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1 Q: Okay. And what did you do with the receipts after
2 you purchased the materials?
3 A: Well, if it was just for the Cash building, then I
4 would hand it to my father and let him know which
5 account it went to, and he would immediately enter
6 it into his Palm Pilot.
7 Q: How do you know that he would do that?
8 A: He had his Palm with him everywhere he went.
9 Q: Had you ever done anything like that before on the
10 prior projects?
11 A: Yes. We did that on every project.
12 Q: Ms. Haynie, let me ask you this. What was your
13 understanding of how your dad and Mr. Cash, or the
14 Cashes knew each other?
15 A: As far as I knew, they were friends. They seemed
16 very ... they were friends prior to this job.
17 That's how it came about that my father got the job
18 was that they were friends.
19 Q: They had talked about it and ...
20 A: Yes.
21 Q: ... your understanding is that he asked him to build
22 this building?
23 A: Correct.
24 Q: I think you said earlier that Mr. Cash was onsite
25 every day. Did you talk to ... or every day that

1 you were there. Did you talk to Mr. Cash?

2 A: Regularly, yes.

3 Q: Okay. And how often regularly?

4 A: There wasn't really a day that went by that I was on

5 the job site that he didn't come out and speak at

6 some point.

7 Q: Were you ever there when Mr. Cash and your dad were

8 there?

9 A: Yes.

10 Q: And did Mr. Cash speak with you and your dad?

11 A: Yes.

12 Q: Do you remember what they ... what you were there

13 ... I'm sorry. Let me ask it this way. What do you

14 remember about those conversations?

15 A: Well, it was a long time ago, but I do remember a

16 lot of the conversations were wanting improvements

17 on, say, the columns. He didn't want just four-by-

18 four straight columns. He wanted them to look more

19 ... he wanted them to kind of emulate his original

20 house, the house that was there.

21 Q: Okay. So let's ... let me ask it you this way.

22 That was specifically to the columns, what you

23 remember about those conversations ...

24 A: Yes.

25 Q: ... with the columns. What do you remember about

1 those conversations with regard to the loft, for
2 example?

3 A: The railing. The way the railing was going to be is
4 we were ... we were trying to help with keeping the
5 cost down, but we ... by having just pickets, which
6 we could paint and cut to look nicer than what they
7 were. But he requested the solid panels like you
8 see.

9 Q: And what do you remember about those conversations
10 with regard to the HVAC unit?

11 A: Originally it was the window unit. When Perry
12 Refrigeration came onto the scene they said that ...

13 MS. GRIFFIN: Your Honor, I object to the hearsay
14 testimony.

15 THE COURT: Sustained.

16 Q: You can't talk about what Perry might have said.

17 A: Okay.

18 Q: What was ... again, what do you remember about the
19 conversations that your dad and Mr. Cash had when
20 you were there for them?

21 A: That he needed ... he wanted the whole area cooled,
22 heated and cooled.

23 Q: And do you recall any conversations specifically
24 about ... I know you talked about the outdoor fans.
25 Any of the other fans in the building, do you

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1 remember anything about any of those conversations?
2 A: Whether or not to have the ... the ceiling fan
3 that's lowered inside the building, whether or not
4 to have it up at the ceiling, like you would
5 normally do, which would have helped with just the
6 loft area. But he wanted it lower.
7 Q: Was Mr. Cash at any time, in any of those
8 conversations, telling you or your dad that he
9 didn't want any of those things?
10 A: No. The opposite..
11 Q: What do you mean by the opposite?
12 A: He seemed to always want something more.
13 Q: Ms. Haynie, let me ask you this. Was there any ...
14 other than just being there, was there any other
15 reason that you were there for those conversations
16 between your father and Mr. Cash?
17 A: About ... late in the job I became wary of whether
18 or not he was taking advantage of my father. So
19 yes, I started making myself ... making sure, if I
20 could be there, I was there for those conversations.
21 And if I wasn't there for the conversations, I made
22 sure to communicate with my dad on a daily basis to
23 find out what was going on.
24 Q: And what made you wary about your dad getting taken
25 advantage of?

1 A: Took it ... my father finally came clean with me to
2 tell me that he was ... Mr. Cash was very behind in
3 payments. I knew he wasn't caught up, but I didn't
4 know how bad it was.
5 Q: And what is your understanding of how he became
6 behind in payments?
7 A: He had excuses having to do with the market, his
8 job, his wife's spending, as well as their
9 daughter's prom party that they were planning, and
10 car which they were purchasing for her.
11 Q: About the prom party, what was your involvement with
12 this prom party?
13 A: We had to help clean up the yard, get our stuff out
14 of the building, clean the building up to have it
15 ready for the party.
16 Q: And who was telling you to do that?
17 A: Mr. Cash..
18 Q: And what all did you do for ... what all did the
19 cleanup entail other than removing your stuff?
20 A: Removing all of the excess material, as well as all
21 of our tools, saw dust. Getting all the dust and
22 all of our stuff ... debris that we had left behind,
23 as well as they requested us to put pine straw out
24 in the bushes and things like that.
25 Q: What did you see about the ... you were there that

1 day ... let me ask you this. You were there that
2 day cleaning up?
3 A: Yes.
4 Q: Okay. And what did you see was going on for this
5 prom party in terms of setup, what did it look like?
6 A: It looked like they were putting up one of those
7 wedding style tents. It was a pretty big tent.
8 They were cleaning up the yard. They put sand out
9 for the ... where the grass had died in certain
10 spots. Planting plants, things like that. Making
11 everything look like it was finished.
12 Q: And you mentioned something about a car?
13 A: Yes.
14 Q: Can you explain that, please?
15 A: They got her a 4Runner, a Toyota 4Runner.
16 Q: When you say they got a her 4Runner, could you ...
17 A: The parents. Her parents. The daughter. And that
18 cost was not anticipated by Mr. Cash, I don't
19 believe.
20 Q: And again, how did you come to understand all this?
21 How did you come to know all of this?
22 A: We were all on a pretty friendly basis. I mean, my
23 kids would go over and play with their kids. We
24 would have conversations out by the job site
25 regularly. It wasn't necessarily about the job

1 site; it was about other things as well.

2 **MR. NEAL TRUSLOW:** I beg the Court's indulgence for one

3 moment, please.

4 **THE COURT:** Yes, sir.

5 **MR. NEAL TRUSLOW:** Thank you, Judge.

6 Q: Ms. Haynie, I want to go back to your comment about

7 the vaulted ceiling. Was that an original part of

8 the plan, to your understanding?

9 A: Not to my understanding, no.

10 Q: And what all does that ... what all does putting in

11 a vaulted ceiling entail?

12 A: Well, you have to change the roof line, to start

13 with, to get that vault, because we were only

14 originally putting in a storage area for ... it was

15 supposed to be like attic space. It didn't need to

16 be an open area. So we had to do some ... it was

17 major changes.

18 Q: It was not a minor change?

19 A: No.

20 Q: Okay. Did you do any other work on the Cashes'

21 property?

22 A: I was not there for the changing of their electrical

23 at their ... the original ... the home. But yes,

24 they did ... we did the home. They did change the

25 electrical over at the home also.

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1 Q: What about, was there any ... did you have any
2 involvement with tree removal?
3 A: Yes. I was not hands-on for the tree removal, but I
4 was there. I had to oversee. My father couldn't be
5 there for one of the tree removals.
6 Q: Was there anything that dealt with a tree house?
7 A: Yes. There was a tree right beside the dog pen that
8 the kids would use, and we upgraded the playhouse
9 onto that. It was a platform around the tree. So
10 we upgraded the tree house, as well as put a zip
11 line in.
12 Q: And what about with regards to house soffits, did
13 you do anything on the house with their soffits?
14 A: I didn't have any hands-on on the soffits.
15 Q: Okay. Was it ever your understanding that there was
16 to be a bar inside of this outbuilding?
17 A: Yes. There was going to be a bar, entertainment
18 center, the works. It was going to be a man cave.
19 Q: Okay. And again, with regards to the original plan
20 versus what you have in front of you there, did you
21 all do anything else with regards to closing in any
22 additional spaces or ...
23 A: It doesn't show on this picture, but there is a rear
24 slab that ... after we began the walls and
25 everything, they requested an area for their ...

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1 here it is. I believe it ... I think it's C. Yeah,
2 A, B, C.
3 Q: Plaintiff's 1C.
4 A: If you see the extended roof line in the rear, we
5 needed ... they requested an area for their yard
6 tools. They decided they didn't want their yard
7 tools inside, they wanted an exterior area to put
8 the yard tools. So we had to pour an additional
9 slab for that area, as well as a roof line.
10 Q: So that was extra work that you all had to do?
11 A: Yes.
12 Q: Now, the part where the tools are that you're
13 talking about; is that ... that's on the backside of
14 the house; is that correct?
15 A: Yes.
16 Q: Okay. Ms. Haynie, in your experience in
17 construction, what would be the typical cost for a
18 project like this?
19 A: In my experience this would be considered a home, so
20 you're looking at between 80 to \$120,000.
21 Q: Can you break that down into maybe a cost per square
22 foot, something that we can ...
23 A: I would say 100 to ...
24 MS. GRIFFIN: Your Honor, I object to her giving an
25 opinion on this. She hasn't been qualified as an

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1 expert in this area. She's not qualified to give an
2 opinion.

3 **THE COURT:** Okay. Mr. Truslow?

4 **MR. NEAL TRUSLOW:** Judge, I would say that her eight years
5 of experience in construction, doing this work with
6 her father, including past financial experience,
7 would qualify her to give an opinion in this area.

8 **THE COURT:** Objection overruled.

9 Q: Please go ahead and state what you think your
10 opinion might be for a cost per square foot.

11 A: Between 100 and 150 a square foot.

12 Q: Okay. And again, state if you know, how large is
13 this building in square feet?

14 A: Six hundred-plus ... I believe it's 680 square feet.

15 Q: I believe that's all I have. Please answer any
16 questions Ms. Griffin might have for you.

17 **MS. GRIFFIN:** May it please the Court, Your Honor.

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

19 **MS. HAYNIE - CROSS-EXAMINATION BY MS. GRIFFIN:**

20 Q: Ms. Haynie, you testified that you were working
21 full-time for the fire department back in the months
22 of January and February and March of 2007; is that
23 right?

24 A: Correct.

25 Q: And so your knowledge of this project during those

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1 months would be very limited; is that correct?
2 A: Correct.
3 Q: What you're relying on is what your father told you,
4 correct?
5 A: Correct.
6 Q: Because you are the daughter of the plaintiff in
7 this case; isn't that right?
8 A: Correct.
9 Q: And you live with your father; is that right?
10 A: At that time I was not living with my father.
11 Q: Well, you do right now; is that right?
12 A: Yes.
13 Q: And he provided support for you; is that correct?
14 A: Correct.
15 Q: Now, back at that time you said that you were
16 involved in these conversations with Mr. Cash; is
17 that correct?
18 A: Correct.
19 Q: January, February, March, when the project was being
20 considered?
21 A: No.
22 Q: Okay. So you have no knowledge, no independent,
23 direct knowledge of what Mr. Cash's conversations
24 were with your father back at the time the project
25 was being developed; is that fair?

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1 A: That's fair.

2 Q: And then you said, I believe, that you were at the
3 project three or five days out of the week; is that
4 right?

5 A: Correct. Roughly, yes.

6 Q: Now, if ... I've got for you, and I'll hand you a
7 copy. Do you recognize this document as being time
8 records from the fire department?

9 A: Yes.

10 Q: And would you agree with me that you were at the
11 fire department working for at least a third of the
12 days that people were over at this project?

13 A: Yes.

14 Q: So your time was spent a third of the time at the
15 fire department, and then the other time you're
16 claiming you were always at the Cashes' house. Is
17 that what you're telling me?

18 A: I was always at work with my father, yes.

19 Q: Always at work with your father. And that included
20 not just being at the Cashes' house; isn't that
21 correct?

22 A: Correct.

23 Q: That included working on other projects?

24 A: Not necessarily. That would include going ...
25 making runs to get materials.

1 Q: You were working on a project in Camden; is that
2 right?
3 A: I don't recall if it was during that beginning time.
4 MS. GRIFFIN: Well, before I forget. Your Honor, I'd like
5 to mark that as an exhibit.
6 MR. NEAL TRUSLOW: I don't have any objection to it.
7 (Defendants' Exhibit Number 19 is marked and entered into
8 the record.)
9 Q: And, Ms. Haynie, going back, you say that your
10 father was paying you for the work that you were
11 doing for him; is that correct?
12 A: Yes.
13 Q: And you said that you were there three to four days
14 a week working for your father; is that correct?
15 A: Yes.
16 Q: And your amount was \$15 an hour; is that correct?
17 A: Yes.
18 Q: And you were working for him the entire year of
19 2007; is that correct?
20 A: Yes.
21 Q: I'm going to show you a W2 form. Did you bring your
22 own W2 with you?
23 A: I brought my tax returns.
24 Q: And does your tax return have the W2 attached to it?
25 A: No.

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1 Q: And is there a reason you don't have the W2 any
2 longer?
3 A: I couldn't find that. I couldn't locate it. I
4 could locate the tax returns for you.
5 **MS. GRIFFIN:** Your Honor ...
6 Q: ... let me show you a copy of a W2 and see if you
7 can recognize this. Let me ask you a couple of
8 questions first. Is your Social Security number at
9 the top of this page, and I won't put it on the
10 record; does it end in 2910?
11 A: Yes.
12 Q: And is this your name, April S. Haynie?
13 A: Yes.
14 Q: And your address at the time was 1325 Brentwood,
15 Columbia, 29204?
16 A: Yes, except for the ... it's 29206..
17 Q: Okay. And this is a document that has your
18 employer, F.M. Haynie, Doc Wild; is that correct?
19 A: Yes.
20 Q: And would you read over in this box. It has your
21 total income for the year of 2007 at \$882.
22 A: Yes.
23 Q: Is that correct?
24 A: Yes.
25 Q: And that is what you've reported to the federal

1 government; is that right?

2 A: Yes.

3 Q: And so the \$882 is the total amount of wages that

4 you earned working for your father for that entire

5 year?

6 A: Not total that I earned. I owed him money, so he

7 kept most of the money that I owed him.

8 Q: So if you owed him money, wouldn't you then have to

9 tell the government that you had earned money and

10 then you paid your father back?

11 A: I don't believe so, no.

12 Q: Okay. So this is what you paid taxes on; is that

13 right, the \$882?

14 A: Yes.

15 Q: And you can't give me any documentation as to how

16 much you would have owed your father that he paid

17 you and then you had to pay him back?

18 A: No. I don't have any documents.

19 Q: And you don't have any documentation that you can

20 provide to me that shows me how many hours you claim

21 you were working over at that project; isn't that

22 correct?

23 A: I don't have any documents, no.

24 Q: And you don't have any documentation showing me how

25 many checks you were paid from your father; isn't

1 that correct?

2 A: Correct.

3 Q: So the only thing we have is this W2 form that

4 showed that you were paid for the entire year \$882,

5 correct?

6 A: Correct.

7 Q: All right. Now, isn't it true that when you

8 testified in your deposition that you told me that

9 you made in the mid 20s working for him?

10 A: Yes.

11 Q: And now which number is right, the mid 20s or the

12 \$882?

13 A: Well, I ... I made the money. I worked the hours.

14 That would be the income that I would have had, but

15 I owed him money. He purchased my home, as well as

16 paid for my ... the childcare for my children so I

17 could work.

18 Q: Okay. So what you're saying is, you may have earned

19 that amount of money, but the W2 amount is the

20 amount you reported to the government?

21 A: Yes.

22 Q: And is that what you reported the following year

23 too, in 2008?

24 A: I don't believe so. I believe I was doing mostly

25 fire department, but I was also working for my dad

1 some.

2 Q: So the fire ... when you were working for the fire
3 department in 2008 did you make more than \$882
4 working for your father?

5 A: Yes. He was still paying for childcare, as well as
6 I was paying off the amount that he paid down on my
7 house.

8 Q: So that was an income to you, correct? He's paying
9 things on your behalf and you're working; it's
10 income to you?

11 A: Yes.

12 Q: And that wasn't reported to the government. Is that
13 fair to say?

14 A: Yes.

15 Q: And that was something that your father did; is that
16 correct?

17 A: Correct.

18 Q: So if I took the \$882 that you claimed to the
19 government that you worked and earned from your
20 father, that would be 58 hours during an entire
21 year; is that right?

22 A: Yes.

23 Q: Now, did you also work on Ms. Stansill's project?

24 A: Yes.

25 Q: And did you work on Mr. Epps's project?

1 A: Only a little bit, yes.
2 Q: Mr. Salane's project?
3 A: I don't believe so.
4 Q: Mr. Duncan?
5 A: No.
6 Q: Did you work on anything for Rivers Scarborough?
7 A: I helped a little bit, but not
8 Q: Coley Brown?
9 A: No.
10 Q: Now, let's talk about what you were testifying to
11 earlier. You don't have firsthand knowledge of the
12 estimate that was provided by your father to Mr.
13 Cash; is that right?
14 A: Right.
15 Q: And you weren't involved in looking at that estimate
16 to determine what the scope of the work was; is that
17 correct?
18 A: Correct.
19 **MS. GRIFFIN:** Your Honor, I believe I pre-marked it, but I
20 don't see it in my group, so I'll show it to you.
21 Your Honor, I'm just going to mark this and ask that
22 we remove the information off the back of this page,
23 because the exhibit apparently has gone missing.
24 We'll mark it as Exhibit Number 20.
25 **MR. NEAL TRUSLOW:** No objection.

1 **MS. GRIFFIN:** We'll just ask the Court if we can remove
2 the back page and copy the back page so that there's
3 no writing on the back.
4 **THE COURT:** That's fine.
5 **MR. NEAL TRUSLOW:** Without objection to the copy.
6 **(Defendants' Exhibit Number 20 is marked and entered into**
7 **the record.)**
8 Q: Ms. Haynie, you testified earlier that there was no
9 bathroom called for within the original scope; is
10 that correct?
11 A: Correct.
12 Q: Now, if you look at this document, which is
13 Defendants' Exhibit Number 20, do you see where it
14 says Plumbing?
15 A: Yes.
16 Q: Total washroom group rough-in assembly?
17 A: Yes.
18 Q: Floor mounted tank type water closet?
19 A: Yes.
20 Q: Is that a toilet?
21 A: Yes.
22 Q: And then, Countertop mounted enameled steel
23 lavatory, trim and valves. Is that the sink?
24 A: Yes.
25 Q: All right. So are you incorrect then in saying that

1 there was no bathroom within the original scope of
2 the work?
3 A: I don't believe so. In the original scope of work
4 there was no bathroom.
5 Q: So now, Ms. Haynie, do you understand that this
6 estimate was part of the original scope of the work?
7 A: I do recall saying that the plan waffled back and
8 forth. There were several estimates for the job,
9 and originally there was no bathroom.
10 Q: And this estimate, is it your understanding that
11 your father and Mr. Cash were working off of this
12 estimate?
13 A: I guess so. I've never seen that estimate before.
14 Q: You've never looked at it before?
15 A: No, ma'am.
16 Q: So now, within this estimate, are you aware of any
17 of the other things that your father and Mr. Cash
18 had agreed to?
19 A: As far as estimate?
20 Q: Correct.
21 A: Yes. It was supposed to be cost plus 25 percent.
22 Q: And did you have that conversation with Mr. Cash?
23 A: I was not there for that conversation, no.
24 Q: And so, your understanding is what your father told
25 you as to what the terms of the contract were; is

1 that correct?

2 A: Yes. That was a normal way of his contracts went
3 was cost plus.

4 Q: Well, let's talk about ... assume it's cost plus 25
5 percent. You agree with me that that would include
6 your overhead?

7 A: Yes.

8 Q: And so, if there were any tools that were being
9 purchased by your father, that that wouldn't be
10 something you would expect the Cashes to pay for; is
11 that right?

12 A: Correct.

13 Q: And the cost plus 25 percent, your direct labor was
14 billed separately; is that correct?

15 A: My direct labor?

16 Q: The direct labor of your employees.

17 A: I don't recall.

18 Q: You don't recall ...

19 A: I don't know.

20 Q: Have you ever seen the March 2nd letter between you
21 and ... I mean, between your father and Mr. Cash?

22 A: March 2nd letter. I don't see it. I don't see it
23 now. I don't know what ...

24 Q: Did you review it in preparation for your testimony
25 today?

1 A: I have no idea what you're talking about, a March
2 2nd letter.
3 Q: So then it's fair to say you've never looked at it?
4 A: Correct.
5 Q: And let's talk about the way labor worked with you
6 and your father. You hired employees; is that
7 right?
8 A: Do what?
9 Q: There were people who worked for your father; is
10 that correct?
11 A: Correct.
12 Q: And those people were men who were working directly
13 for him?
14 A: Yes. Some of them were and some of them were
15 subcontractors.
16 Q: And those employees were paid by the hour; is that
17 right?
18 A: Correct.
19 Q: And they were paid \$10 an hour, \$12 an hour?
20 A: I don't know for sure.
21 Q: And is that ... well, do you know if that's the
22 amount that you charged Mr. Cash?
23 A: I believe that it should have been \$18 an hour no
24 matter the hours worked, except by my father. And
25 that would pay more.

1 Q: And is ... do you recall when you gave your
2 deposition in this case that you testified that the
3 client would have been charged the amount that you
4 paid the employee?
5 A: Yes.
6 Q: And that was your testimony just about 10 days ago?
7 A: Yes.
8 Q: And your testimony was that if he paid Manuel, one
9 of your workers, \$12 then the client would get
10 charged the \$12; isn't that right?
11 A: No. That the employee would get ... would get paid
12 \$12 an hour. If that's what his rate was, that's
13 what he would get paid.
14 Q: And then you testified that the client would be
15 charged the \$12; isn't that correct?
16 A: I don't recall if I said that.
17 Q: You're familiar with your father's bookkeeping
18 practices, right?
19 A: Somewhat, yes.
20 Q: So let's look at ...
21 MS. GRIFFIN: Your Honor, I'd like to show her her
22 deposition testimony.
23 Q: Ms. Haynie, I'm going to show you your deposition, a
24 copy of the transcript, and if you would turn to
25 page 47.

1 A: Okay.

2 Q: And look at line two. My question to you then was,
3 so if Manuel got paid \$12 an hour then the client
4 gets charged \$12 an hour; is that right. And your
5 answer was?

6 A: Correct.

7 Q: Okay. Now ...

8 MR. NEAL TRUSLOW: Your Honor, I'd ask that she, in the
9 interest of completeness, go ahead and read the
10 next four lines as well. That's only fair at this
11 time.

12 THE COURT: Well, I'll give you a chance to redirect.

13 MR. NEAL TRUSLOW: I understand. Thank you, Judge.

14 THE COURT: All right.

15 Q: Let's talk about your costs since we just looked at
16 that testimony. Do you know of any records that
17 show the time, the hours that the employees worked?

18 A: Any records?

19 Q: Correct.

20 A: I wouldn't know if he still has the records. But
21 yes, he was keeping track in the Palm Pilot along
22 with the cost.

23 Q: The Palm Pilot ...

24 A: Yes.

25 Q: ... is the record? And do you have any time cards

1 at your all's house ...

2 A: No.

3 Q: ... of the time that these men allegedly were

4 working?

5 A: No.

6 Q: Do you have any checks that you're aware of where

7 the men were paid?

8 A: I don't have it, no.

9 Q: Do you know if they were paid in cash?

10 A: No, they were not.

11 Q: So there should be some checks somewhere showing the

12 amount of time that they worked; is that right?

13 A: Yes.

14 Q: And these hours ... you're talking about what he put

15 in his Palm Pilot. You mentioned that earlier. You

16 said that was something he would do

17 contemporaneously; is that right?

18 A: Yes.

19 Q: So when it happened, he'd put it in his Palm Pilot?

20 A: Yes.

21 Q: And he wouldn't modify it later on; is that right?

22 A: Correct.

23 Q: Your dad would not go back and change anything,

24 would he?

25 A: If it was incorrect, yes.

1 Q: Well, if it's incorrect he would change it
2 immediately?
3 A: As soon as he realized it was incorrect, yes.
4 Q: Okay. So can you explain to me why employees would
5 have hours added after the project was completed?
6 A: I don't know.
7 Q: And we know the hours that your dad kept, but he
8 also had no-charge hours; is that fair?
9 A: Yes.
10 Q: You were aware of that?
11 A: Yes.
12 Q: And no-charge means that the client wasn't going to
13 get charged for those labor hours; is that correct?
14 A: Correct.
15 Q: And in this project you were aware that when you
16 poured the concrete, and you testified about that
17 earlier, that there as a mistake done when you
18 poured the concrete; is that right?
19 A: Correct.
20 Q: And that mistake you all had to fix, correct?
21 A: Correct.
22 Q: And those hours were no-charged; is that correct?
23 A: Correct.
24 Q: Now, are you aware if those hours were no-charged
25 when your father presented the bill to Mr. Cash?

1 A: Those hours should have been no-charged.
2 Q: Should have been?
3 A: If it was no-charged, that's what no-charge means;
4 the client was not charged for those hours.
5 Q: So if the no-charge hours throughout the entire
6 accounting by your father, they add up to 246 or 247
7 hours, then you would expect that that would be
8 subtracted from the total number of hours that he
9 billed; is that fair?
10 A: That's fair.
11 Q: And there would be no reason that once he no-charged
12 the hours, that he would go back and put them in and
13 ask the client to pay for them; is that right?
14 A: There would be no reason, correct.
15 Q: And you're not aware of any reason that your
16 father's told you that he would have no-charged
17 hours and then uncharged them?
18 A: No, no reason.
19 Q: No reason at all? So if the records that your
20 father created showed no-charge hours, then that's
21 what they should be. Is that fair?
22 A: That's fair.
23 Q: And are you familiar with those records which show
24 the no-charge hours?
25 A: Only from when you showed me in my deposition.

1 Q: Are you familiar enough to testify as to how that
2 document is created?
3 A: I should be able to, yes.
4 Q: I'm going to show you what has been pre-marked as
5 Defendants' Exhibit Number Ten.
6 A: Okay.
7 Q: Do you recognize that document?
8 A: Only from you showing me at the deposition, yes.
9 Q: But do you recognize that as a document of your
10 father's business?
11 A: Yes.
12 Q: And do you recognize that that is the way that your
13 father maintained the hours of the employees who
14 would be working for his company?
15 A: Yes.
16 Q: And just to help the Court understand it, the
17 document has in the left column, it says the date,
18 correct? And then the next column is Cat. That
19 would be the Bobcat; is that correct?
20 A: Correct.
21 Q: And that essentially is what you would do for your
22 father, isn't that right, you were the Bobcat
23 operator?
24 A: Correct.
25 Q: And so those hours would essentially be yours?

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1 Those 16 hours?

2 A: Those are hours that it cost to run the Bobcat.
3 Those are Bobcat hours. Those are ... you have to
4 counter in as the Bobcat as being an employee,
5 because you have to fuel it, maintain it, and
6 transport it.

7 Q: All right. And then the next column, it says Doc,
8 correct?

9 A: Correct.

10 Q: And that would be your father, Doc Haynie. Those
11 are his hours, correct?

12 A: Correct.

13 Q: And then the next one is titled MH, correct?

14 A: Correct.

15 Q: And that would be man hours?

16 A: Correct.

17 Q: And then the final one is no-charge, correct?

18 A: Correct.

19 Q: So on Exhibit Number Ten is it fair to say then that
20 the total man hours are 811, your father's hours are
21 257, on this document, and that the no-charge hours
22 should be subtracted; is that correct?

23 A: No. That's the no-charge hours. That's the amount
24 of hours that they were not charged for is 246.

25 Q: And that should be subtracted from the total of the

1 other hours?

2 A: No. There are three separate columns. They're all
3 separate columns.

4 Q: How do you no-charge if those hours are not being
5 applied against the hours over here?

6 A: Because those ...

7 **MR. NEAL TRUSLOW:** Your Honor, I'm going to go ahead and
8 object under 403. I don't think she's the right
9 witness for these questions.

10 **THE COURT:** Okay. Ms. Griffin?

11 **MS. GRIFFIN:** Well, Your Honor, she said she was familiar
12 with the document. If she's going to say she
13 doesn't know how the document works, she's welcome
14 to tell me she doesn't know how it works.

15 **THE COURT:** Objection overruled.

16 Q: Okay. Do you know how this document works?

17 A: As far as understand it, yes.

18 Q: And you understand that the no-charge would be a
19 separate column, right?

20 A: Correct.

21 Q: Two hundred and forty-six hours. And then what you
22 would do to reconcile this is that you subtract that
23 amount from the hours that have been charged off; is
24 that correct?

25 A: No.

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1 Q: Okay. Explain to me how you think you do it?

2 A: If you'll ... can I see the ... the hours, as you go

3 down through here, there were four Bobcat hours,

4 four Doc hours, four man hours, and then on top of

5 that four hours were not charged for. People did

6 not just work four hours. This is an eight-hour

7 day. So that's why it's its own column. Therefore,

8 it should be 811, plus 256, plus 246, minus 246.

9 That's the way you want to do it. These hours

10 should have never had their own column is what

11 you're saying.

12 Q: Okay, what I'm asking is when ... when there are

13 hours that are no-charged for and they don't match

14 the man hours, aren't those just those hours that

15 your father says he's not paying for for some

16 reason?

17 A: There are different hours. This would be, right

18 here, four hours for man hours and two hours for no-

19 charge. That's a six-hour day. Therefore, six

20 hours that people ... the man hours. That would be

21 six man hours, and then you subtracted the two. So

22 total.

23 Q: All right. So explain to me then, when you go to

24 the second page of this where it has 20 man hours

25 and there are 20 man hours where they're working,

1 are you saying people worked at the Cashes' house
2 for 40 hours in one day?
3 A: No. What I'm saying is that's a ... you're looking
4 at the wrong column. That is not even a no-charge.
5 That's only the third column. The fourth column is
6 the no-charge. That's actually the man hours,
7 that's Doc hours, and this is Bobcat hours.
8 Q: So where it has here the adjustment, would you
9 understand what that is?
10 A: No.
11 Q: And just so I can make sure your testimony is
12 correct, if we're looking at columns and we're
13 looking for four columns and not three columns,
14 would you agree with me if you look at April 11th
15 there are four hours that are in the Bobcat column,
16 and then there's a second column for your father,
17 and then the man hours, and then this column is the
18 no-charge column; is that correct?
19 A: Correct.
20 Q: And so these are no-charge hours, not just man
21 hours, correct?
22 A: I don't believe that's correct.
23 Q: All right.
24 **THE COURT:** Ladies and gentlemen, let's take a break for
25 about 15 minutes and come back at 12:15.

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1 MS. GRIFFIN: Thank you, Your Honor. Your Honor, I ask
2 that you instruct the witness that she's not
3 permitted to talk to anybody about her testimony.
4 MR. TRUSLOW: We understand the rules, Your Honor.
5 THE COURT: Okay. Thank you. Back at 12:15.
6 (Off the record from 12:00 p.m. to 12:20 p.m.)
7 MS. GRIFFIN: Your Honor, I'd like to move into evidence
8 Exhibit Number Ten.
9 MR. NEAL TRUSLOW: No objection.
10 THE COURT: Okay. Your motion's granted.
11 (Defendants' Exhibit Number Ten is entered into the
12 record.)
13 Q: Ms. Haynie, I'm going to show you what's been marked
14 for identification as Defendants' Exhibit Number
15 Nine.. Do you recognize that document?
16 A: No.
17 Q: You're not familiar with the financial books that
18 your father keeps; is that fair?
19 A: That's fair.
20 Q: And you didn't help him in any way prepare any
21 documentation in order to let the Cashes know what
22 he believed they owed him; is that fair?
23 A: Fair.
24 Q: Okay. Let's talk about your experience as a
25 construction person. Do you have any formal

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1 education in construction?

2 A: No.

3 Q: And what was your degree from at Lander?

4 A: A business degree with an emphasis in healthcare.

5 Q: That was a two-year degree?

6 A: That was supposed to be a four-year. I did not

7 finish my last semester.

8 Q: So you've never graduated from college?

9 A: No.

10 Q: And what college education you have is business with

11 an emphasis in healthcare?

12 A: Yes.

13 Q: Do you have any training outside of what your father

14 has given you in the last eight years in

15 construction?

16 A: No training.

17 Q: Have you taken any courses in construction?

18 A: No.

19 Q: Do you have a contractor's license?

20 A: No.

21 Q: Do you have any type of specialty license in

22 contracting?

23 A: No.

24 Q: Essentially you're just his helper; is that fair?

25 A: Yes.

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1 Q: And you testified earlier that you weren't involved
2 in estimating this job; is that right?
3 A: Yes.
4 Q: And is it fair to say that you don't estimate jobs
5 for your father?
6 A: Correct.
7 Q: He does all the estimating?
8 A: Correct.
9 Q: So you don't have any knowledge what he tells
10 customers about what things will cost to build; is
11 that fair?
12 A: That's fair.
13 Q: And you testified that in the last eight years that
14 you've been doing work for your dad is it mainly
15 renovations, and docks and small projects?
16 A: We've had a couple big projects. Usually we do one
17 big and run some little ones alongside it.
18 Q: And the big projects involve renovating existing
19 buildings?
20 A: And adding ... doing additions.
21 Q: Additions. Have you ever built a house from the
22 ground up?
23 A: No.
24 Q: And your testimony earlier about the cost per square
25 footage, that's just a number that you pulled out of

1 the sky. Is that fair?
2 A: No.
3 Q: And where did you get that number from?
4 A: From listening to my father do bids and listening to
5 him talk about the way he bids jobs.
6 Q: So it's based upon what your father has told you?
7 A: What he has taught me, yes.
8 Q: Taught you?
9 A: Yes.
10 Q: But you have no experience that that number would be
11 a number that's out in the marketplace; is that
12 fair?
13 A: That's fair.
14 Q: And you didn't do any research to come up with the
15 number, correct?
16 A: Correct.
17 Q: All right. Now, let's talk about that fort that you
18 said that y'all built for the Cashes' son. Do you
19 know anything about whether or not your father had
20 permission to build the fort?
21 A: I believe he wouldn't have done it if he hadn't had
22 permission, so yes.
23 Q: So he would never have just started building it
24 based upon the statement of an eight or nine-year-
25 old child; is that right?

1 A: That's correct.
2 Q: He would have just gone to the Cashes and asked the
3 Cashes if it was okay if he put a fort in the
4 backyard; is that right?
5 A: I don't think it would have ever worked that way. I
6 think it would have worked that they came to him to
7 request the fort.
8 Q: So do you have any direct knowledge of how that
9 worked?
10 A: No.
11 Q: And what your recollection is, there was already a
12 platform there; is that correct?
13 A: Correct.
14 Q: And you think your father just built up around an
15 existing platform; is that correct?
16 A: I wasn't there for that.
17 Q: So you don't have any knowledge about the fort. Is
18 that fair?
19 A: Correct.
20 Q: Now, you were talking about moving out of the shed
21 and that it was around the time they were having a
22 party for the prom for their daughter; is that
23 right?
24 A: Correct.
25 Q: And that was a party that was put on by a number of

1 families; is that right?
2 A: Not from my understanding, no.
3 Q: Okay. You don't have any understanding that there
4 were a number of people who were participating in
5 that party together?
6 A: Correct.
7 Q: And that was around the time that you and your
8 father started discussing that you believe that Mr.
9 Cash owed you money; is that right?
10 A: No.
11 Q: Sometime in April?
12 A: It was prior to that, yes.
13 Q: Was it just slightly prior to that?
14 A: Yeah. It wasn't too far in advance of that.
15 Q: Sometime in April of 2008, Is that fair?
16 A: I guess so, yes.
17 Q: Spring of 2008?
18 A: Spring, yes.
19 Q: And that's when your father first mentioned to you
20 that he thought that he was owed some money; is that
21 right?
22 A: No, that's when he first mentioned to me that he was
23 owed money.
24 Q: And from March of 2007 until the spring of 2008, you
25 never had any conversation with him about any

1 amounts that were owed; is that correct?

2 A: Well, I understood that he had bills and he was
3 getting checks in return, but I didn't recall that
4 he was getting behind on his payments.

5 Q: You didn't recall that Mr. Cash allegedly was
6 getting behind on his payments; is that right?

7 A: Correct.

8 Q: So that was sometime about a year after the project,
9 correct?

10 A: Correct.

11 Q: And at that time it was around April of 2008. Is
12 that fair?

13 A: That's fair.

14 Q: And that was when the prom was about to happen; is
15 that correct?

16 A: Yes.

17 Q: And the stuff that you were moving out of the shed,
18 it was Bill Schmidt's stuff; is that right?

19 A: It was Bill Schmidt's as well as my fathers.

20 Q: And Bill Schmidt is a carpenter ...

21 A: Correct.

22 Q: ... who works with your father; is that right?

23 A: Correct.

24 Q: And he's worked with your father for about 20 years?

25 A: Yes.

1 Q: And he put his stuff in the shed in order to work on
2 other peoples' projects; isn't that right?
3 A: It was also to work on Mr. Cash's project.
4 Q: Well, in addition to trading out services with Mr.
5 Cash, he put stuff in the shed to work on other
6 people's projects; is that right?
7 A: I don't recall it that way, no.
8 Q: You don't recall that he did work for other people
9 while he was in Mr. Cash's shed?
10 A: I do recall him doing work for other people while he
11 was in Mr. Cash's shed, but I do not recall it being
12 a negotiation that they did it that way.
13 Q: You don't recall that they agreed he could move in
14 if he would do work for them. Is that what you're
15 telling me?
16 A: Yes.
17 Q: So your recollection is Mr. Schmidt could move in
18 there and stay for nine months without any benefit
19 to the Cashes, is that what you're saying?
20 A: I don't understand what you're trying to ask me.
21 Q: What I'm asking you is, your understanding was what?
22 Why did Mr. Schmidt move into the shed in July of
23 2007?
24 A: He did not move into the shed. It's just like any
25 contractor. When you use your tools on a job site,

1 it's easier to leave them there than transport them
2 every day. And yes, he was doing work for ... it
3 was easier to cut ... if your saw is at Mr. Cash's
4 house, then yes, you go there to make cuts for other
5 jobs. So yes.

6 Q: Ms. Haynie, he wasn't just working on Mr. Cash's
7 shed; isn't that right?

8 A: Mr. Schmidt?

9 Q: Correct.

10 A: Yes.

11 Q: Are you aware he was working on a number of other
12 projects while he was using the shed?

13 A: I never kept track of his work.

14 Q: So you weren't over there every day checking on what
15 Mr. Schmidt was doing?

16 A: No.

17 Q: And you don't even know how many days a week he was
18 there?

19 A: No.

20 Q: And you don't know what Mr. Schmidt ultimately did
21 for the Cashes; is that fair?

22 A: I know he did a lot of work for the Cashes, yes.

23 Q: But do you know the specifics of what he did for the
24 Cashes?

25 A: No.

1 Q: You didn't observe it yourself; is that right?
2 A: I observed some of it, yes.
3 Q: You observed some of it. But you don't know what
4 the conversations were between your father and Mr.
5 Cash regarding what Mr. Schmidt's role was in the
6 shed; is that right?
7 A: Correct.
8 Q: And you agree with me the reason you weren't over
9 there after July of '07 is essentially the shed was
10 done; isn't that right?
11 A: Excuse me?
12 Q: Essentially in July of 2007 that building was
13 completed; is that right?
14 A: No.
15 Q: What was left to be done after July of 2007?
16 A: The building was erected by then, but it was not
17 finished. You have a lot of finish work that has to
18 go into it. It's just ... he built a house in his
19 backyard, so you have to finish it just like you
20 would a house.
21 Q: Ms. Haynie, my question is ... well, we'll go
22 through it. In July of 2007 was the electricity in
23 there?
24 A: I don't know.
25 Q: Was the HVAC in there?

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1 A: I don't know. I don't have anything in front of me
2 to tell me the time line.
3 Q: Well, what's your recollection of the project at
4 that point?
5 A: That we had to slow down in finishing it.
6 Q: Well, do you recall looking at your father's
7 document that you identified, Exhibit Number Ten
8 (sic)? Let's look at that. Do you see that all
9 this work, plaster, siding, shed, loft, wrap, that's
10 all done before June 12th of 2007; is that fair?
11 A: That's fair.
12 Q: And ...
13 A: I will say that that doesn't mean it's done. That
14 means that's what we did on that day. Nothing tells
15 me in here that it says it was completed that day.
16 Q: But you were there every day, correct?
17 A: Correct.
18 Q: That's what you said. You testified ...
19 A: Not every day. Every day I was off work, yes.
20 Q: Every day you were off work, but ... three days a
21 week, correct?
22 A: Correct.
23 Q: And let's look ... I mean, just look at your Exhibit
24 Number Ten. Do you see that there's a big gap of
25 time from June 28th through July 10th where there's

1 not much work going on? There are three days in
2 July when people from your company is working there;
3 is that correct?
4 A: Correct.
5 Q: And then there's one day in August?
6 A: Correct.
7 Q: And allegedly four days in September?
8 A: Correct.
9 Q: And a couple of days in October, three?
10 A: Correct.
11 Q: One in November. So, is it fair to say that the
12 building was essentially completed in July of 2007?
13 A: I don't feel I can say that, no.
14 Q: Okay. Would it help if you were able to see the
15 costs that were incurred on the building? If the
16 majority of the costs are incurred by July of 2007,
17 would you agree with me that it was essentially
18 completed?
19 A: No.
20 Q: Okay. Now, would this have been something that you
21 would have called the City of Forest Acres to ask
22 them to come and give a final inspection to the
23 building?
24 A: I wouldn't have called Forest Acres to get it, no.
25 Q: That wasn't part of your job?

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1 A: No.
2 Q: That was part of your father's job?
3 A: Yes.
4 Q: Well, you mentioned something in your earlier
5 testimony about the railing; is that correct?
6 A: Yes.
7 Q: And you said that there was some contention between
8 Mr. Cash and your dad about the railing; is that
9 right?
10 A: Correct.
11 Q: Were you there for that conversation?
12 A: Some of it, yes.
13 Q: And did you hear Mr. Cash saying that he did not
14 want that railing in his shed?
15 A: He didn't want pickets. He wanted something nicer.
16 Q: Well, he said that he wanted something nicer than
17 what was being put up, not that he wanted something
18 simpler?
19 A: Correct.
20 Q: And you're not aware, or do you recall him saying he
21 wanted 2x4s?
22 A: Two-by-fours for what?
23 Q: The railing over the loft area.
24 A: I've never seen 2x4s used as pickets.
25 Q: What about as a handrail?

1 A: I could see using a 2x4 for a handrail, yes.
2 Q: All right. Let me just show you what's been marked
3 for identification as 1D. Do you recognize that?
4 A: Yes.
5 Q: And what is that?
6 A: That is a handrail and another bar. It's basically
7 to meet code to allow that as a back really, but
8 that's not a railing. That is upstairs, trying to
9 allow for no one to fall down the stairs, because
10 originally he wanted nothing there.
11 MS. GRIFFIN: Your Honor, I'd like to move to introduce
12 this into evidence.
13 MR. NEAL TRUSLOW: Without objection.
14 THE COURT: All right. Your motion's granted.
15 (Defendants' Exhibit 1D was entered into the record at
16 this time.)
17 Q: Now, looking at Exhibit 1D, you agree with me that
18 that is a 2x4 railing ...
19 A: Correct.
20 Q: ... up at the top? And that's what Mr. Cash wanted
21 across the front of the loft area; is that correct?
22 A: Originally, no. I just knew that he didn't want the
23 pickets.
24 Q: Okay. Now, that's something that your dad would
25 know about, not you, correct?

1 A: Correct.

2 Q: Now, you testified a little bit about the changing
3 of the roof line in the lofting. You weren't
4 involved in that, were you? The conversations
5 related to that?

6 A: No.

7 Q: That was a telephone conversation that took place
8 between your father and Mr. Cash; isn't that right?

9 A: I would assume so, yes.

10 Q: And so you have no direct knowledge of anything that
11 they discussed about the changing of the roof line;
12 is that fair?

13 A: That's fair.

14 Q: And you don't know if they had discussed before this
15 project began that it would always be a cathedral
16 ceiling, do you?

17 A: I can pretty much ... no, I was not there for that
18 conversation.

19 Q: Okay. And you testified earlier that you knew that
20 there was going to be a storage area, and you
21 mentioned something about a ladder. Now, that
22 storage area, that would have been half of the shed,
23 was going to be accessed by Mr. Cash with a ladder;
24 isn't that correct?

25 A: Yes. Similar to an attic pull.

1 Q: Similar to an attic pull. And that area always was
2 going to be like a shelf so he could put things up
3 there; isn't that right?
4 A: Like a storage area.
5 Q: Storage area. And it was going to be half of the
6 shed. It was never going to be the entire shed;
7 isn't that right? The entire ceiling of the shed
8 area?
9 A: Yes. I assume so, yes.
10 Q: You assume, so. There was always going to be a
11 vaulted cathedral ceiling in there if half of the
12 shelf ... or half of the shed was going to be a
13 shelf; isn't that right?
14 A: No, there was not always going to be a vaulted
15 ceiling.
16 Q: Okay. You agree with me there was always going to
17 be a shelf?
18 A: Yes.
19 Q: And the shelf was going to be open to be accessed by
20 an extension ladder coming into that shed; isn't
21 that right?
22 A: Similar to an attic, yes.
23 Q: Similar to an attic. And that the area next to the
24 shelf would have been open to the roof line,
25 correct?

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1 A: No, the loft was added later. It became a loft
2 later. It was only attic space to begin with. It
3 was storage space.
4 Q: And that was based on your conversation with your
5 father; is that right?
6 A: Yes.
7 Q: Okay. I don't think I've heard you talking about
8 the septic tank. Now, you have been in building for
9 a while and you know that it would be your father's
10 responsibility to follow code if he's building a
11 building; isn't that correct?
12 A: Correct.
13 Q: And his responsibility to follow code required that
14 he not put in anything that would be illegal or
15 against code, correct?
16 A: Correct.
17 Q: And you agree with me that that septic tank required
18 a permit from DHEC in order to put it in the
19 backyard; is that right?
20 A: I don't know that much about ...
21 Q: You don't know that much about construction that you
22 would know that it would need to be permitted?
23 A: Correct.
24 Q: And what you testified to in your deposition is that
25 you could not install a septic tank in the backyard

1 unless it was draining a dog pen; is that right?
2 A: Similar to draining a dog pen.
3 Q: Similar to draining a dog pen. And you believed
4 that installing that septic tank was against the
5 rules; isn't that right?
6 A: Only because you said so, yes.
7 Q: Ms. Haynie, you said you told your father to be
8 careful and you weren't comfortable with him doing
9 that; isn't that correct?
10 A: I was not comfortable with him cutting corners
11 because Mr. Cash wanted him to.
12 Q: And you're not comfortable because you're saying it
13 was Mr. Cash's responsibility to know what the
14 permitting process was when he was dealing with a
15 licensed builder?
16 A: No. It was his responsibility to understand that
17 his friend was asking him to do something he
18 shouldn't, and he should be wary because it would
19 fall on him.
20 Q: Right. And the friend didn't tell him he wasn't
21 allowed to do that; is that right?
22 A: No, I don't believe that that was the way it went.
23 I do know that he was told.
24 Q: Well, you do know that your father installed the
25 septic tank in the backyard; isn't that correct?

1 A: Correct. With ...
2 Q: You do know that ...
3 A: With knowing that he was going to put in a lift
4 station at a later date when he could afford it.
5 Q: So it was only going to be temporarily done
6 incorrectly, that's what you're saying?
7 A: It was a fix so that he could use the facilities
8 until he could get a lift station in there.
9 Q: And you only know that based upon what your father
10 has told you, correct?
11 A: Correct.
12 Q: Because Mr. Cash never told you anything like that;
13 isn't that correct?
14 A: Correct.
15 Q: And so your direct knowledge is only what your
16 father's explanation is now, since this lawsuit's
17 been filed; isn't that correct?
18 A: No. Me and my father speak on a daily basis, even
19 before this lawsuit was filed.
20 Q: So when he told you he was going to put a septic
21 tank illegally in the backyard, you said be careful,
22 Dad?
23 A: Yes.
24 Q: But don't ... you didn't tell him don't do it?
25 A: He's an adult.

1 Q: Okay. And he doesn't listen to what you tell him;
2 is that right?
3 A: He has his very own opinion. He can do ... it's his
4 business, not mine.
5 Q: Okay. Let's go back to you moving out equipment.
6 We talked about you moving out Mr. Schmidt's
7 equipment in April of 2008. You're moving out your
8 father's equipment; is that correct?
9 A: Correct.
10 Q: And he was storing things over there, like
11 construction materials for his own business; isn't
12 that correct?
13 A: No. He was storing his equipment that he was using
14 on the Cash site.
15 Q: But you can't tell us what he was doing on the Cash
16 site up through April 2008; is that right?
17 A: He was working on the Cash site. But it was only in
18 between him working on other job sites. It was just
19 like I told you earlier. Wherever the tools are is
20 where you go to make those cuts. Instead of moving
21 table saws and things to every single little job
22 that you go to, you leave your equipment on the big
23 job.
24 Q: So you don't have any knowledge that the Eppses
25 didn't want Mr. Schmidt to have his equipment over

1 at their house?

2 A: I'm not aware of that.

3 Q: Not aware of that. Okay. And when you went in to

4 move all that equipment out, then everything was out

5 of that shed in April of 2008; is that right?

6 A: By the prom party it was all out.

7 Q: Everything was gone? All the construction

8 materials, everything was done; is that correct?

9 A: I don't recall if it was ... the place was complete,

10 but it was able to work for the prom party.

11 Q: Able to work for the prom party. Well, what is it

12 that you don't recall that's not complete about it

13 in April of 2008?

14 A: I'm not sure. But I'm just saying that it was

15 complete to a point where they could use it.

16 Q: Well, when you moved all that equipment out and you

17 moved all the construction materials out, was there

18 anything you were intending to do yourself to that

19 house?

20 A: No.

21 Q: And were you aware of any work that needed to be

22 done that was part of the scope of work that had

23 been initially agreed to that had not been completed

24 by April of 2008?

25 A: Not that I recall.

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1 Q: Now, once you moved out, then you never returned to
2 that site; is that right?
3 A: Correct.
4 Q: You never went back there. So that would be April
5 of 2008, the last time you ever were there; is that
6 correct?
7 A: I believe so, yes.
8 Q: Now, you talked a lot about ... you talked about
9 buying stuff at Lowe's. Do you have all those
10 Lowe's receipts that relate to the Cashes' project?
11 A: No.
12 Q: And where are those?
13 A: I'm pretty sure they were thrown away once they were
14 entered into the computer.
15 Q: Is there any other documentation that you have that
16 relates to the purchasing of materials?
17 A: No.
18 Q: Okay. What about any documentation from Boozer?
19 Did you go there and buy anything for the Cash
20 project?
21 A: I'm not sure for the Cash project. But, yes, I did
22 shop at Boozer.
23 Q: Okay. For the Cash project?
24 A: I don't know.
25 Q: And would you not keep a separate file of all the

1 invoices that related to any one project?

2 A: Invoices, I assume that, yes, my father kept a file.

3 Q: You assume that he has invoices that he could show

4 us which would match up to whatever he put on his

5 Palm Pilot; is that right?

6 A: It all depends ... I don't know how long he keeps

7 his records. That's for him to understand better

8 than me.

9 Q: Now, you testified about helping with the prom

10 party, and you said that you put out pine straw?

11 A: Right.

12 Q: Are you taking the position that you bought the pine

13 straw anymore, or did you decide that that wasn't

14 correct?

15 A: We did. I went to Lowe's and purchased the pine

16 straw.

17 Q: You went to Lowe's and purchased the pine straw?

18 A: Yes.

19 Q: So if I could give you your Lowe's credit card

20 receipt from that month, would you show me where you

21 purchased it?

22 A: If it was the receipt that it was on there. There's

23 got to be more than one receipt for ...

24 **MS. GRIFFIN:** Your Honor, I beg the Court's ...

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

1 MS. GRIFFIN: ... indulgence.
2 Q: Okay. I'm asking you if you can identify this
3 document.
4 A: It looks like a bill ... a statement from Lowe's.
5 Q: Okay. And tell me the dates of the statement.
6 A: Are they all the same, or ... the top copy is from
7 3/18 to 4/05.
8 Q: Okay. Now, if you would ...
9 MS. GRIFFIN: Let me move to introduce this into evidence
10 first. Twenty-one.
11 MR. NEAL TRUSLOW: No objection.
12 (Defendants' Exhibit Number 21 is marked and entered into
13 the record.)
14 Q: Ms. Haynie, I want you to look at Defendants'
15 Exhibit Number 21, which is the Lowe's bill from
16 March 18th through April 5th, 2008 ... actually,
17 through April 17th, 2008, and show the Court where
18 you purchased the pine straw at Lowe's for the
19 Cashes' party.
20 MR. NEAL TRUSLOW: I don't know if it expedites matters,
21 but we could stipulate that there isn't going to be
22 a pine straw charge on there.
23 MS. GRIFFIN: Your Honor ...
24 Q: Ms. Haynie, do you agree with ... your father's
25 lawyer has stipulated that there's no pine straw

1 purchased on the Doc Haynie account at Lowe's during
2 the time frame of the middle of March through the
3 middle of April. Is that fair?
4 A: Yeah. I only made it to page seven, so yes.
5 Q: I want you to be comfortable. That's what your
6 attorney ... your father's attorney says. You're
7 welcome to look through it. If your recollection is
8 you purchased the pine straw at Lowe's during that
9 time frame for the Cashes, I want you to be able to
10 find that receipt.
11 A: I'll just go with what he said. If it's not on
12 here, then it's not on here.
13 Q: So you were incorrect then about it being purchased
14 at Lowe's; is that right?
15 A: Yes.
16 Q: Okay. We talked about other projects you were
17 working on, and I failed to ask you about a project
18 back in late 2006 and the spring of 2007 when you
19 were working on Mr. Cash's project. Isn't it true
20 that your father was also building a shed of his own
21 in the backyard of your house?
22 A: I don't believe that started until 2007, but yes.
23 Q: So in 2007, at your Brentwood house you were
24 building a shed behind the house; is that right?
25 A: Yes.

1 Q: And that shed, you were using the same labor; is
2 that right?
3 A: Yes.
4 Q: Same people. And you were buying materials from the
5 same places; is that correct?
6 A: Correct.
7 Q: And your time would have been devoted to both
8 projects simultaneously; isn't that right?
9 A: No, not necessarily. No. The job that was paying,
10 which would have been the Cash job, that was our
11 primary job. Only on ... when we had free time did
12 we work on the shed in my backyard.
13 Q: And that shed in your backyard cost how much to
14 build?
15 A: I don't know.
16 Q: You don't have any idea?
17 A: No.
18 Q: And how many square feet is it?
19 A: I couldn't tell you off the top of my head.
20 Q: And what is the value of the shed in your backyard
21 at your house?
22 A: The value of it?
23 Q: Uh-huh (affirmative response.)
24 **MR. NEAL TRUSLOW:** Objection, Judge. Irrelevant.
25 **THE COURT:** Why is this relevant, Ms. Griffin?

1 MS. GRIFFIN: Your Honor, because she testified earlier as
2 to the value of sheds and square footage, and I'm
3 trying to find out what she knows about the value of
4 her own property.
5 A: There's a difference ...
6 THE COURT: I'm sorry. Objection overruled. Please
7 proceed.
8 A: There's a different between the two. To start with
9 is, the square footage price I gave you would have
10 been for a home. This is a shed that was built in
11 my backyard, which would not be at the same value;
12 as well as it was built differently than that
13 structure so ...
14 Q: But it's ... is it much bigger? Is that fair?
15 Twice as big?
16 A: Possibly, yes.
17 Q: And cost about \$30,000?
18 A: Yes. But there's a huge difference.
19 Q: And what's the huge difference?
20 A: My ... the building built in my backyard is just a
21 plain slab of concrete built with like a shed roof,
22 with siding front wall and concrete back walls. And
23 there's no plumbing ... well, there is plumbing, but
24 there is no interior walls built with sheetrock and
25 so forth. It's just a shed. It's an enclosed shed.

1 Q: So the difference is there's no sheetrock inside
2 your shed?
3 A: There's no sheetrock, there's no scored concrete,
4 there's no stained concrete, there's no vaulted roof
5 or vaulted ceiling, there's no different pitches.
6 It's just a flat roof. A huge difference between a
7 shed and a house.
8 Q: And you don't have any opinion as to what the value
9 of that is; is that what you're saying?
10 A: No.
11 Q: But would it be 100 to \$150 a square foot?
12 A: No.
13 MS. GRIFFIN: All right, Your Honor. That's all I have.
14 THE COURT: All right. We can resume ... we can start
15 with redirect if you have any, but I was thinking
16 why don't we do it after lunch. Does that suit
17 everyone?
18 MR. TRUSLOW: Certainly, Your Honor.
19 THE COURT: All right. We'll stand in recess until about
20 2:30.
21 MS. GRIFFIN: Thank you, Your Honor.
22 (Off the record from 12:53 p.m. to 2:35 p.m.)
23 THE COURT: Start your redirect. You may begin.
24 MR. NEAL TRUSLOW: Briefly, Your Honor. Thank you.
25 MS. HAYNIE - REDIRECT EXAMINATION BY MR. NEAL TRUSLOW:

1 Q: Ms. Haynie, do you recall Ms. Griffin asking you
2 some questions about your deposition in her cross-
3 examination?
4 A: Yes.
5 Q: Specifically she was asking you about page 47, and I
6 believe she asked you about lines two through four.
7 A: Correct.
8 Q: Would you please read for the Court ... I'm sorry.
9 I could read in lines two through eight. I could
10 read the question and you can tell me the answer, if
11 that's all right.
12 A: Okay.
13 Q: "So if Manuel got paid \$12 an hour, then the client
14 gets charged \$12 an hour; isn't that right." And
15 what was your response?
16 A: "Correct."
17 Q: And the next question was, "Then don't you charge
18 overhead and profit on top of the direct labor
19 cost," and what was your answer?
20 MS. GRIFFIN: That wasn't the way the question was asked.
21 You said, Don't you. Do you.
22 MR. NEAL TRUSLOW: I beg your pardon.
23 MS. GRIFFIN: That's all right.
24 MR. NEAL TRUSLOW: Thank you. I stand corrected.
25 Q: The question was, "Then do you charge overhead and

1 profit on top of the direct labor cost," and what
2 was your response?
3 A: "I don't know all that. My dad does all the
4 finances."
5 Q: Okay, thank you. Next, she asked you briefly about
6 your tax returns. Do you prepare your own tax
7 returns?
8 A: No. Well, I do ... we do it through Turbo Tax.
9 Q: All right. So you submit it to somebody else to
10 prepare?
11 A: To my father, yeah.
12 Q: Next I wanted to ask you ... Ms. Griffin asked you
13 about the estimate she had you look over that your
14 dad provided. What was your understanding of what
15 the contract was between Mr. Cash and your father?
16 A: Cost plus 25 percent.
17 Q: Okay. And you also said that based on that the
18 plans that are in that initial estimate, I believe
19 you said that they had changed?
20 A: Yes.
21 Q: And they had changed in size; is that fair?
22 A: That's fair.
23 Q: Okay. Approximately how much had they changed in
24 size?
25 A: They doubled.

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1 Q: Okay. And so, I wanted to ask you regarding those
2 changes, you said you had spoken to Mr. Cash.
3 That's right?
4 A: Yes.
5 Q: You spoke to him almost every day you were out
6 there. That's what you testified, right?
7 A: Correct.
8 Q: Okay. Now, did Mr. Cash ever say to you that he was
9 displeased with the work?
10 A: No.
11 Q: Did he ever say he was displeased with the price?
12 A: No.
13 Q: State, if you know, how long has your dad been in
14 this business, construction?
15 A: Well, I'm 33 and he's been in it longer than I've
16 been here, so.
17 Q: Okay. And you've seen him do estimates before?
18 A: Yes.
19 Q: You've been working with him for about eight years?
20 A: Yes.
21 Q: You've spoken with him about estimates; is that
22 right?
23 A: Yes.
24 Q: Are you familiar with any tools or books that your
25 dad might use to prepare estimates?

1 A: He has several books. And if he doesn't have the
2 books he goes to the library and gets them.
3 Q: Are you familiar with the ... him using the National
4 Building Cost Manual?
5 A: Yes.
6 Q: I'm going to hand you what's been marked as
7 Plaintiff's Exhibit Three for identification. Did
8 you bring with you ... can you identify that
9 document, please.
10 A: This would be the cover page of the book that he
11 uses.
12 Q: Would your dad have a copy of that at the house that
13 you'd seen before?
14 A: Yes.
15 Q: Okay. And is it ... is that a copy of the cover
16 page and some pages from it?
17 A: Yes, and a couple pages with it.
18 Q: And you've seen that document before ...
19 A: Yes.
20 Q: ... that book before?
21 A: Yes.
22 Q: Okay. And there's a copy over here in the
23 courtroom; is that right?
24 A: That's correct.
25 Q: If you could please flip to the back page of that.

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1 A: Okay.

2 Q: I'd like you to look at that and tell me for ...

3 please remind the Court, approximately how big is

4 the house that y'all built on the back of the

5 Cashes' property?

6 A: Roughly 680 square feet.

7 Q: Okay. So if you were to look somewhere between 600

8 and 700 square feet, could you tell me what the

9 average high estimate is and the average low

10 estimate is, please, for price per square foot?

11 A: For 600 average high is 220.29, and average low is

12 184.01. And for 700 square feet it is 206.66, and

13 for the average low it's 172.67.

14 **MR. NEAL TRUSLOW:** Your Honor, at this time we'd move to

15 put Plaintiff's Exhibit Number Three into evidence.

16 **MS. GRIFFIN:** Your Honor, I object to it as being an

17 incomplete document. And it's something that they

18 can rely on, but I don't think it's a proper exhibit

19 in the trial.

20 **THE COURT:** Okay. Objection overruled.

21 **MR. NEAL TRUSLOW:** Thank you, Your Honor.

22 **(Plaintiff's Exhibit Number Three is entered into the**

23 **record.)**

24 Q: And, Ms. Haynie, just to refresh our memory, your

25 estimate for the price per square foot was what

1 range?

2 A: Between 100 and 150 per square foot.

3 MS. GRIFFIN: And, Your Honor, I continue to object to her
4 testimony as being outside of her expertise.

5 THE COURT: Okay. Do you want to lodge a continuing
6 objection, or do you want to stand up every time?

7 MS. GRIFFIN: Yes, Your Honor. Just a continuing
8 objection ...

9 THE COURT: We'll note your objection.

10 MS. GRIFFIN: ... to all her testimony regarding any
11 opinion about the estimated cost.

12 THE COURT: All right. Duly noted. Thank you.

13 MR. NEAL TRUSLOW: Thank you, Judge.

14 Q: Just two more points, Ms. Haynie, and I promise I'll
15 be done. And Ms. Griffin asked you about July of
16 2007. From July of 2007 on, she said there wasn't a
17 lot of work done. There was a slowdown, I believe,
18 is the word she used.

19 A: Correct.

20 Q: What was your understanding of why there was a
21 slowdown?

22 A: He was having ... Mr. Cash was having trouble with
23 money and requested us to kind of slow down work.
24 So what we did is we put him as one of our side jobs
25 instead of our primary job.

1 Q: So is that an explanation of why there seemed to be
2 less hours worked from July 2007 on?
3 A: Yes.
4 Q: And lastly about the pine straw. Is it possible
5 that Mr. Cash might have paid in advance and you'd
6 gone and picked that up at Lowe's? Has that ever
7 happened?
8 A: No, that's never happened.
9 Q: Have you ever been to Lowe's and they've been out of
10 pine straw and you had to go somewhere else?
11 A: Yes.
12 MR. NEAL TRUSLOW: All right. That's all I have. Thank
13 you, Judge.
14 THE COURT: Recross?
15 MS. GRIFFIN: Yes, Your Honor.
16 MS. HAYNIE - RECROSS-EXAMINATION BY MS. GRIFFIN:
17 Q: Ms. Haynie, earlier you testified you've never done
18 any estimating yourself; isn't that correct?
19 A: Correct.
20 Q: And this book that you just looked at, I think you
21 were quoting from the first page out of the book.
22 Is that ...
23 A: The third ... well, based off the cover ...
24 including the cover page, the third page.
25 Q: Conventional Recreational Dwellings?

1 A: Yes.
2 Q: And this says 10 corners; is that correct?
3 A: Yes.
4 Q: What does that mean?
5 A: Exactly what it says. It has 10 corners. A
6 building with 10 corners on it.
7 Q: Okay. Does this building, the shed that you built,
8 have 10 corners on it?
9 A: Yes.
10 Q: And is it identified as a conventional recreational
11 dwelling?
12 A: Yes.
13 Q: You can live in this building?
14 A: Yes.
15 Q: And show me where it has the definition of
16 conventional recreational building on there.
17 A: It doesn't have it on here.
18 Q: Okay. And do you have that anywhere within this
19 document?
20 A: No.
21 Q: Okay. So you don't know if a conventional
22 recreational dwelling is what this building is; is
23 that fair?
24 A: No, I wouldn't say that's fair. I would say that
25 what we built would be considered a conventional

1 recreational dwelling.

2 Q: Well, would it be a Class 1 or Class 2, like on the

3 document that you referred to?

4 A: I would probably go with the Class 2, based on the

5 pictures.

6 Q: Based on the pictures?

7 A: I wouldn't know between the classes. But yes, based

8 on the this ... the conventional recreational

9 dwelling, yes, I would say that falls into that

10 category.

11 Q: But you don't know what the definition is under that

12 National Building Cost Manual; is that fair?

13 A: That's fair.

14 Q: Okay. Now, you said earlier that this pine straw,

15 perhaps you went somewhere else to get the pine

16 straw? Are you still contending to this Court that

17 you paid for the pine straw?

18 A: I'm not saying that I paid for the pine straw. But

19 I am saying that Mr. Cash did not provide the pine

20 straw.

21 Q: And are you saying that somebody from your dad's

22 business paid for this pine straw?

23 A: Yes.

24 MS. GRIFFIN: That's all I have.

25 THE COURT: All right. This is the part that drives the

1 lawyers crazy, but sometimes in non-jury cases the
2 judge will ask questions, and I don't ... I don't
3 allow them to follow up on my questions. But, and I
4 may be jumping ahead too much. I know that in
5 residential building at some point the county
6 government, I believe, issues what's called a
7 certificate of occupancy.

8 A: I believe so.

9 **THE COURT:** Okay. Is there anything like that issued in
10 this type of construction by the County, or any
11 other governmental entity?

12 A: I don't believe there is. But my father could
13 answer that better.

14 **THE COURT:** Okay. All right. Thank you very much. Watch
15 your step coming down.

16 **MR. TRUSLOW:** We call Mr. Haynie.

17 (Witness is sworn.)

18 **F.M. HAYNIE**, having been duly sworn, testifies as follows:

19 **MR. HAYNIE - DIRECT EXAMINATION BY MR. TRUSLOW:**

20 Q: Do you mind, for the purposes of this case, if I
21 just call you Doc ...

22 A: Yeah, that's fine.

23 Q: ... rather than Mr. Haynie?

24 A: That's what everybody else calls me.

25 Q: You're known as Doc Haynie?

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1 A: Yeah.

2 Q: And just so we can get this out of the way and move
3 forward, the way you and I first met each other is
4 when our children were in, I guess, in grammar
5 school?

6 A: Yeah.

7 Q: All right. For your background, you live near AC
8 Flora High School?

9 A: Right across the street.

10 Q: Right across the street. And you're a graduate of
11 Georgia Tech?

12 A: Yes.

13 Q: Okay. In engineering?

14 A: Yes, sir.

15 Q: And you've been ... when did you graduate?

16 A: 1969.

17 Q: Were you a mechanical engineer?

18 A: No. I was a systems engineer.

19 Q: Systems engineer. Do you have considerable
20 experience in the construction business?

21 A: Around 40 years' worth.

22 Q: All right. I'm not talking about summer jobs or
23 work that you did during college. Let's just start
24 since graduation from college, have you been in the
25 construction business?

1 A: It's not quite 40; I started in 1972.
2 Q: 1972?
3 A: Yeah.
4 Q: All right. And the way you know Mr. Cash, how did
5 you all ... you live in the same neighborhood? He
6 lives near AC Flora High School also?
7 A: Yeah. He's a block away.
8 Q: And were y'all on the same tennis team?
9 A: Yes. He ... that's where I met him was on the
10 tennis team. One of his friends asked if he could
11 join our team. I've been the captain for 10 years.
12 And I said yeah, and he was on the team.
13 Q: Now, I want to go to ... just jump ahead and talk
14 about how you became involved with Mr. Cash. Did
15 you approach him about building something or did he
16 approach you about it?
17 A: He approached me. He just said he was wanting to
18 build a shed in the backyard and could I do it, and
19 I said yeah.
20 Q: When he first described what he wanted you to do
21 what did you tell him ... what did you suggest to
22 start with?
23 A: Well, we had a little disagreement on his shed.
24 When he said shed, I said, well, you can buy a
25 prefab something.

1 Q: You mean an argument or a misunderstanding?
2 A: No, no. I just didn't ... he meant ... shed, to me,
3 is a real simple ... a shed is in my backyard.
4 Okay?
5 Q: All right.
6 A: And that's what I ... when he said shed, that's what
7 I thought. Well, he had to clarify that that wasn't
8 really what he meant, he ...
9 Q: Well, what did you ... okay. What did you ... I cut
10 you off and I didn't mean to, but I'm trying to ...
11 I'm mindful of everybody's time. What was your
12 first ... when he said he wanted a shed, what did
13 you first suggest to him?
14 A: Get a prefab package deal. You know, they're cheap.
15 They ... you know, he had a rotten, falling down
16 shed in the back and I thought he was wanting to
17 replace it.
18 Q: Okay. So did you tell him to go to Lowe's or ...
19 A: Yeah. I suggested something. I don't even
20 remember.
21 Q: And then apparently you misunderstood because he
22 said he wanted something nicer?
23 A: Yeah. He wanted a place to drink beer and watch
24 movies with his buddies.
25 Q: Nothing wrong with that.

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1 A: Yeah.
2 Q: Some football hopefully.
3 A: Yeah. That was the thing. It was man cave. That's
4 what he ... I think he called it that almost from
5 the start.
6 Q: All right. And did you try ... did you have
7 discussions with him and did you try to give him
8 some renderings, some drawings of what you ...
9 A: Well, my first drawing, which I think y'all have,
10 looked like a shed. And it ... but it had a couple
11 of nice ... the front of it had nice doors, and it
12 had a fireplace in it. So it was my idea of a shed
13 that you could drink beer in and watch TV. He
14 didn't like that.
15 Q: Okay. And so how did it ... he's the one that's in
16 charge, because he's the one that's supposed to be
17 paying the money.
18 A: He is in charge, yeah.
19 Q: So how did it progress?
20 A: Well, he tried to explain ... he tried to explain
21 what he wanted. And then he brought me a picture
22 out of one of these plan books of something he
23 liked. And so I went ... I set forth designing ...
24 this picture was bigger than what he was intending.
25 So I went to design a building that looked like the

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1 picture he had.

2 Q: At that point in time had he made any
3 representations to you about what he did for a
4 living?

5 A: Yeah. He was the Merrill Lynch big shot
6 stockbroker.

7 Q: Okay. So he said he worked for Merrill Lynch?

8 A: Merrill Lynch. He was a big boy.

9 Q: Is that what he told you or what you inferred?

10 A: That's just the way, you know, he carried himself.

11 Q: And did you ... when he showed you the picture from
12 a set of, I guess, plans or a photograph ...

13 A: It was a plan book. He just showed me a picture out
14 of ... he gave me the whole book.

15 Q: Okay. So he showed you a picture. And how big a
16 space was he looking for at that point in time?

17 A: Well, he ... his budget was somewhere around 40 ...
18 and I'm not sure that we ever talked about, I guess,
19 a number for a budget. But we settled on something
20 that came up around \$40,000. And it was ... that
21 was a size constraint.

22 Q: At that point in time did you know that he had
23 already had ... had gotten a bid for a man cave, if
24 we will, at that point in time, that came in around
25 \$40,000?

1 A: No. No. I never ... never even had any
2 conversation about that.
3 Q: Okay. So you said you did a drawing, and we've got
4 a copy. And then did you do another drawing?
5 A: I did quite a few drawings.
6 Q: All right. Why were you doing the drawings?
7 A: Well, when the ... the 380 square foot ... the first
8 thing, the one we got the permit for, you couldn't
9 fit ... because of the size, if you put a loft up
10 there you couldn't stand up in it. And you couldn't
11 get that window in the front. And so it was just a
12 ... it looked like the building he had, but it was
13 just the first floor.
14 Q: All right. So tell the Court, just in your own
15 words, how did work progress and whether it went
16 from a shed, man cave, cabana ...
17 A: Well, it ...
18 Q: ... to a ...
19 A: It just kept on getting fancier. I mean, we started
20 off it was kind of a concrete floor where you could
21 throw beer and stuff on the floor, to a nice place
22 where they had a big screen TV, an entertainment
23 center, a wet bar. I mean, it became a very nice
24 man cave. And it kept on getting bigger, because he
25 couldn't get the stuff he wanted to fit into the

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1 small space. So we vaulted the ceilings, and the we
2 figured out we could put this ... the loft in. It
3 was a moving target. It just ... it just kept on.
4 It wouldn't sit still long enough to think about it.
5 Q: Whose decision was it to go from 380 feet or so to
6 680 feet?
7 A: That's all his. I don't control that. I do ...
8 he's the client. I do what the client wants.
9 Q: With the type of work that you do, do you typically
10 do these on a cost plus basis?
11 A: Cost plus. When you can't ... when you can't define
12 exactly what you want, it's a cost plus. Always.
13 Q: So the ... I guess the client, if you will, decides
14 how much ... what he's going to have ...
15 A: He's in the driver's seat. He gets to look at all
16 the numbers and he can put the brakes on whenever he
17 wants.
18 Q: So when you started ... when you ... I'm getting you
19 up to, say, end of February, end of March, start of
20 March of 2007. When you started, did you have a
21 vaulted ceiling, or did you have just ...
22 A: Okay. By the time we started, yes. We had gotten
23 to a plan with a vaulted ceiling. Because the ...
24 see, you have to lay the concrete out to fit the
25 plan. So we were already up to, I think, about 550

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1 square feet on the floor area. And it did have a
2 vaulted ceiling with ... there's a drawing in there,
3 and that was about March.

4 Q: Okay. I'm going to go ahead and show you these
5 documents. Do you have a series ... and I'm going
6 to show you Plaintiff's Exhibits Two and ... what
7 have been marked for identification as Two and Six.
8 And ask you first, can you recognize these?

9 A: This would be the first conceptual drawing where I
10 was trying just to copy his picture.

11 Q: All right. We're looking at Number Two. Can you
12 ... can you tell ... do you recognize it?

13 A: Yes.

14 Q: All right. And ...

15 A: I did ...

16 Q: ... looking at Six, can you ...

17 A: This would be the floor plan of that version.

18 Q: All right. Do you recognize these? Let me try to
19 cut to the chase.

20 A: Yeah. Yeah.

21 Q: Do you recognize these as being the iterations that
22 you went through ...

23 A: Right, yeah. We go ...

24 Q: ... at Mr. Cash's request?

25 A: Uh-huh (affirmative response.) We just ... I'm not

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1 sure what changed on this one, but yeah. They're my
2 drawings. I mean, it's ... this was where we had
3 the vault going ...
4 Q: Let me stop you before we get to that point and do
5 some housekeeping ...
6 A: Okay.
7 Q: ... if we will.
8 **MR. TRUSLOW:** We offer these into evidence at this time,
9 Your Honor.
10 **MS. GRIFFIN:** Your Honor, I don't object to the drawing
11 part. I object to all the narrative that's on the
12 documents, assuming that those are the drawings I
13 saw earlier.
14 **MR. TRUSLOW:** Your Honor, that would be ... that's
15 satisfactory. Your Honor is sitting as a judge
16 alone; under 403, you can separate out that.
17 There's some writings on here that are ... some are
18 contemporaneous, some aren't. And I'll have my
19 client identify.
20 **THE COURT:** Objection overruled.
21 **MR. TRUSLOW:** We offer these into evidence at this time.
22 **(Plaintiff's Exhibit Numbers Two and Six are entered into**
23 **the record.)**
24 Q: All right. I want to show you Plaintiff's Number
25 Two. This is from January 22nd, 2007. Is that one

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1 of the ... that's the second drawing that you did?
2 A: That's the second one. This is the first conceptual
3 drawing after the picture he had.
4 Q: All right. And then as we look at Six, which
5 consists of one, two, three, four, five, six, seven,
6 eight pages, does this go through the series of
7 drawings and iterations and reiterations?
8 A: Can I look at the pictures?
9 Q: All right.
10 A: Yes. They're in order, too.
11 Q: All right. Now, had it gone to ... had it gone, by
12 the time you get to the last drawing ...
13 A: We're up to 600 and ...
14 Q: Eighty feet?
15 A: ... 80 square feet, yeah.
16 Q: And had the concrete pad increased in size also?
17 A: From the original, yes, but not ... in some of those
18 iterations the pad is the same.
19 Q: All right. And are you providing this information
20 to Mr. and/or Mrs. Cash for them to see what you
21 were doing?
22 A: Yeah. In fact, I showed it to him. I showed him
23 how we could do it.
24 Q: And did you get their approval?
25 A: Yes. To get his loft in there, this is how we did

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1 it.

2 Q: Okay. So when we're looking at what's plan two,
3 which is on the second page, plan three, are you
4 having to move plan four ...

5 A: Yeah. We had to move that back wall out to get the
6 ...

7 Q: Okay. So by then, by plan four, you'd gone up to
8 640 square feet?

9 A: Yeah, because ... yeah. I'm not sure about the 640,
10 but that's ... we picked up the back roof to change
11 the pitch on it so you could stand up in the loft.

12 Q: Okay. So you had gone from when you started in
13 February, and by March the 2nd to something that you
14 couldn't stand up in, to change the pitch of the
15 roof so you'd have more room and you could vault it?

16 A: Yeah. You had a big vaulted ceiling. I mean, it
17 was really nice.

18 Q: When you change ...

19 A: And almost twice the square footage, but not quite.

20 Q: All right. And this is Exhibit Six. When you began
21 to change and you had to change the pitch of the
22 roof, does that allow somebody to stand there, to
23 stand up now?

24 A: Yeah. Yeah. It's a room ... it's eight foot tall
25 ceiling back there.

1 Q: And so, instead of having just an eight foot ...
2 A: Yeah, with the walls caving in on you. It's a room.
3 Q: So what impact does that have on the air
4 conditioning ability to cool it?
5 A: Well, both the loft and the vault, you can't ... the
6 original configuration was to use what they call a
7 motel unit, where it was all one floor and you just
8 blow air into one room. But once you put this big
9 old 20-foot high ceiling in there, you know, that
10 won't work anymore. And I had to rely on Dennis
11 Perry. He's the air condition/refrigeration guy.
12 He's never done me wrong. He sat down with us and
13 said, no, it will not work the way we were thinking.
14 Okay. And so he designed ... did a very good job of
15 designing a system where we didn't have to put all
16 the duct work inside.
17 Q: Did you explain that to Mr. Cash ...
18 A: Yes. He was in the conversation.
19 Q: ... and/or Mrs. Cash?
20 A: He was in this conversation.
21 Q: All right. Did he approve or not approve?
22 A: Yes, he approved.
23 Q: So you were able to put the, I guess, the duct work
24 out in the back where nobody would see it?
25 A: Right. The main duct work was on the back of the

1 building.

2 Q: And would that ... since he now had ... instead of a

3 flat ceiling, you had a vaulted ceiling, did it

4 require extra heating and cooling?

5 A: Yeah. First, it's bigger, and just a whole lot more

6 volume of air.

7 Q: So whose decision was it to vault the ceiling?

8 A: It was his. I mean, ultimately it's always his

9 decision. I just make suggestions.

10 Q: Now, as you all were talking about this one, you

11 said that it ... and maybe I'm paraphrasing, but it

12 had grown from a shed, to man cave, to a cabana ...

13 I'm at the point of cabana house.

14 A: Yeah. It's really nice.

15 Q: How did it go from ... what was the ... I'm using

16 the word cabana house for a reason. Was there ever

17 any discussion about a pool?

18 A: Yeah. Yeah, it was ... Mrs. Cash.

19 Q: Mrs. Cash?

20 A: Yeah. She ...

21 Q: And did you try and accommodate their wishes in that

22 regard?

23 A: I kind of did that all along. That's what I was

24 there for.

25 Q: Okay. To do what they wanted?

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1 A: That's what my job is.

2 Q: At some point while the plans were being ... were

3 progressing, or when you started construction, was

4 the provision for a toilet and a sink ... not a

5 sink, but for a toilet taken out?

6 A: Yes. Because when we ... it was taken out early on

7 because it was an expense. A bathroom is an

8 expense. Okay? And we wanted to hold the expense

9 down. Well, before we poured the concrete it was

10 put back in, because I I personally had to cut

11 the pipes and run the waste line for the toilet.

12 Q: Whose decision was it to put it back in?

13 A: It was his.

14 Q: And I just want to talk about this for a second and

15 then move on to something else. You're going to put

16 in ... you're going to put in, say, a toilet.

17 You've got a sink. What ... how are they going to

18 get the effluent to the ... we're in Forest Acres,

19 so ...

20 A: Well, since we're downhill you'd have to have a pump

21 station. You know, it's just a ... it won't ... it

22 won't go uphill.

23 Q: Okay. So as far as ... did you ever charge them for

24 a pump station?

25 A: No. No. That was going to be in the future.

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1 Q: Okay. If you put in a pump station at that point in
2 time, and then put a pool in, what would happen to
3 the pump station and the ...
4 A: You've got to redesign and redo it.
5 Q: So you'd have to tear it out and it'd be an extra
6 cost?
7 A: Yeah.
8 Q: So did you suggest that they could have a temporary
9 fix until they built the pool?
10 MS. GRIFFIN: Your Honor, I object to him leading him,
11 because I think this is ...
12 MR. TRUSLOW: I'll go ahead and ...
13 MS. GRIFFIN: ... important testimony that he should be
14 stating his own narrative.
15 MR. TRUSLOW: ... I'll restate it, Your Honor. I'll ...
16 THE COURT: Hold on a second. She can't take it down if
17 you're both talking at the same time. What were you
18 saying, Ms. Griffin?
19 MS. GRIFFIN: Your Honor, I said he's been leading him
20 throughout, and that was fine in the beginning. But
21 as we're getting into the important details of the
22 project I ask that he just ask direct questions.
23 THE COURT: All right. Please proceed.
24 Q: What would happen if you put in a lift station and
25 then a pool was put in, what would happen to the

1 lift station?

2 A: The lift station would have to be redesigned.

3 Q: State whether or not that would cost additional

4 money to the Cashes.

5 A: Yes. It's just like when we ran the electrical

6 underground to the house, we tore up the whole

7 irrigation system. I mean, as you get all ... you

8 dig up a hole, you tear everything up.

9 Q: All right. Putting the electrical underground, is

10 that an addition?

11 A: Yes. That was not part of ... when we started there

12 was a power pole right where the building was, and

13 we ended up making his ... his main house, which is

14 three phase power, that's a big deal, went

15 underground, and underground service to the cabana.

16 Q: Whose decision was that to ...

17 A: That was his.

18 Q: And who was supposed to pay for that?

19 A: Him.

20 Q: Was that originally anticipated?

21 A: No. No. That was ... that just ... he said he was

22 going to eventually going to put a carport or a

23 garage up there where the power came in, so he

24 wanted to go ahead and put the underground, and that

25 was a big job..

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1 Q: Okay. So if for just ... if I could be oriented for
2 a second. If the house is looking out towards you,
3 towards the road, would the cottage be over here to
4 my right?
5 A: If I'm looking out towards the road?
6 Q: Yes.
7 A: I'm left/right disadvantaged.
8 Q: Okay.
9 A: It would be on the right. And the power pole was on
10 the left.
11 Q: And was there room in the ... in between the house
12 and the cabana ... then cabana house for a pool?
13 A: Yeah. It's a big yard.
14 Q: Okay. And what was the ... I think you mentioned
15 ... somebody mentioned a temporary fix.
16 A: Well, we have put in ... when we just had the bar
17 sink and a wash sink and a shower, that's called
18 clean water. Okay. We were going to basically
19 water the flowers with this clean water. As soon as
20 you get a waste facility in there, you've got to do
21 something. Now, we've put in what we call dog ...
22 dog run septic tank, which is a little 50 gallon
23 drum. They work just fine. They don't ... they're
24 not a problem. But it was a temporary fix. And so
25 he ... and I said, look, you can't just ... you

1 can't have a hundred people down here and start
2 doing in the toilet. This is just to get you
3 through, and it'll do fine. It's a ... it will do
4 fine.

5 Q: And was there a plan to put in a lift station once
6 he finished with all his construction?

7 A: It wasn't ... that was ... basically it was ... that
8 was somewhere in the future that didn't involve me,
9 and we were ... he knew exactly that it was not to
10 code, because we hid it from his Uncle Lee and
11 everybody ... I mean, he knew ... he ... I said,
12 listen ...

13 Q: Well, I don't mean to cut you off but we're going
14 kind of far afield on things that maybe it might be
15 related to and that doesn't matter. Okay?

16 A: Okay.

17 Q: Let's go back to the issue. Did you do it the way
18 he wanted it ...

19 A: That's what ...

20 Q: ... given what he was telling you he was going to do
21 ...

22 A: I did it the way he wanted it.

23 Q: ... related to a pool? My next question and then
24 we'll be done with this. Regardless of anything
25 else, whether to code, not the code, did the City of

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1 Forest Acres approve it as it was built and give a
2 certificate of occupancy?
3 A: They did not give a certificate of occupancy.
4 Q: Okay. What did they give you?
5 A: Well, they should give a certificate of occupancy.
6 But when we left the job he knew that you couldn't
7 get the certificate of occupancy without the lift
8 station. And that was for him to get. When he had
9 the lift station, then they would approve for the
10 certificate.
11 Q: Okay. But did the County or the City of Forest
12 Acres come in and inspect ...
13 A: They inspected. They inspected all the work and
14 they approved it.
15 Q: And did they complain about what you had done?
16 A: No.
17 Q: That was my I guess that was my question.
18 A: Okay. No. They didn't complain. We passed all the
19 inspections.
20 Q: Including the one with the dog run, septic tank, 50
21 gallon?
22 A: I'm not even ... I don't know they knew it was
23 there.
24 Q: Well, was the place open for them to look at
25 whatever they needed to ...

1 A: Yeah, he went in and inspected it. Yeah, it was
2 there.
3 Q: Was there any complaint made by Forest Acres?
4 A: No.
5 Q: Okay. Now, we're at the cabana house, and now we're
6 going to cottage. Okay?
7 A: Uh-huh (affirmative response.)
8 Q: You've got a vaulted ceiling. We've got underground
9 electrical work.
10 A: And cable.
11 Q: Cable. What do you mean?
12 A: Had to have the entertainment center. We had to cut
13 all ... all the wires had to go in, too. We had to
14 run conduit for the cable, too.
15 Q: So he wanted it to ... state whether he wanted it to
16 be capable of handling cable and ...
17 A: Cable TV ...
18 Q: ... computer?
19 A: ... and computer in two locations in the house.
20 Q: Are you able to show the Court in Exhibit One that,
21 in fact, you did provide for cable and for a
22 computer?
23 A: This is it here. Now, I can show you.
24 Q: Yeah.
25 A: I can show you where they are, but I haven't looked

1 at Exhibit One.

2 Q: Keep going.

3 A: Okay. There's one.

4 Q: All right.

5 A: If you did 180 and look back this way, there's

6 another one over here.

7 Q: So you put two of them in?

8 A: Yeah.

9 Q: All right. And this ... we're on page one, two,

10 three, four, five, six, page seven. The seventh.

11 And where I'm pointing, they're here?

12 A: Yeah. You can see the connectors right there.

13 MR. TRUSLOW: I think, for the record, is he pointing to

14 those?

15 THE COURT: Have you seen this, Ms. Griffin?

16 MS. GRIFFIN: Yes, Your Honor. Thank you.

17 Q: Did you use ... on the exterior did you use

18 Hardiplank?

19 A: Hardiplank.

20 Q: Is that less expensive, a better product, or ...

21 A: Better product and more expensive.

22 Q: All right. And it looks like ... I'm going to call

23 them ... whether they're Hardiplank or cedar, I

24 can't tell. But architectural cedar.

25 A: Up in the gable, that's real fancy Hardiplank.

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1 That's expensive.

2 Q: So this is ... up here you're using the

3 architecturally expensive ...

4 A: Yeah. That's to look like shakes.

5 Q: All right. On the floor on the inside, did you ...

6 we don't seem to have a real good picture. But did

7 you, I will call it diamond-cut it to make it look

8 like tile?

9 A: We scored it and stained it, and it's to look like

10 big ... it's to give it a ... it's a real nice

11 looking floor. I mean, you can always tile if you

12 want to, if you've got the money. But if you just

13 want a nice look, you score it and stain it.

14 Q: And is that an architectural type of stain that you

15 ...

16 A: Yeah. It takes a good bit of effort to do that.

17 Q: All right. And on the outside, I'm going to call it

18 ... I don't know whether to call it curtain wall,

19 what ... the walls on the side of the building, was

20 it actually concrete?

21 A: Yeah. Yeah. We built a ... that's concrete. It's

22 about 30 inches high all the way around the whole

23 building.

24 Q: But it looks like ...

25 A: It's called a curtain wall.

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1 Q: It looks like it's either slate or Italian stone.
2 A: We were getting creative, to make it look like ...
3 you've seen the building here, where they make it
4 look like stone. That's what we're trying to do is
5 make it look like big stones.
6 Q: That's really concrete, but you ...
7 A: It's concrete.
8 Q: ... can form it to look like ...
9 A: Yeah.
10 Q: All right. The pictures of the doors, the front
11 doors, were they ... any comment about those?
12 A: The pictures ... well, you've got the glass, the
13 transom glass wall. We did have a budgetary
14 constraint here, because the first price we got for
15 the full doors was about \$3000, and he couldn't do
16 that so we came up with ... I think this might have
17 cost about \$1800, something like that.
18 Q: All right. So did you suggest that rather than
19 going with the \$3000 item that you put ...
20 A: Yeah. That was ...
21 Q: ... in transoms and four doors in the front rather
22 than going to that extra expense?
23 A: Yeah.
24 Q: Did the Cashes ...
25 A: Yeah, they ...

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1 Q: ... agree?

2 A: I was saving money.

3 Q: All right. Now, as the project was going along, did

4 the Cashes ask you to do even ... we talked about

5 vaulting, we've talked about putting electrical work

6 underground. We've talked about taking out the

7 commode, putting it in. The doors.

8 A: We had to move the pump, the pump station.

9 Q: Windows?

10 A: We added windows upstairs. It never ... it never

11 backed up. It always went forward.

12 Q: All right.

13 A: The only time it backed up was when we had to

14 replace the fans.

15 Q: Tell me about that.

16 A: Well, Carole picked out a real nice fan.

17 Q: Carole is Mrs. Cash?

18 A: His wife, yeah. And he got ... he's a black and

19 white guy, and he wanted white fans. So we had to

20 take them down and put white fans in.

21 Q: Okay. Then for the house did he ask for an extra

22 ... what other work did you do?

23 A: For the house we did ... there was a rotten place on

24 the ... we just did whatever he wanted, I mean. But

25 we fixed some soffit. We took trees down. We fixed

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1 his brick up at the entrance. We did the power.
2 It's whatever he wanted, that's what we ... we built
3 his son a fort. You know, whatever he wanted.
4 Q: And did you expect to do that just out of the
5 goodness of your heart for free?
6 A: No.
7 Q: Did you expect to get paid?
8 A: Yeah.
9 Q: Did he ... did Mr. Cash understand that?
10 A: Yeah.
11 Q: When he was asking you to do extra work, you were
12 going to get paid?
13 A: I never said I was doing it for free. And he always
14 said he was going to pay me.
15 Q: Okay. We're going to come to that in just a second.
16 He always said he was going to pay you. Did he say
17 he was happy with the work?
18 A: Yes.
19 Q: Did he ever complain about any of the work?
20 A: No.
21 Q: On his house you mentioned that you had some
22 soffits. I guess I might call them eaves ...
23 A: Yeah.
24 Q: ... on his house that you had to do some work on?
25 A: Yeah. He's got aluminum ... he's got, what you call

1 clad soffits. And I can't remember exactly what was
2 going on up there, but I had to go up there and ...
3 I did it. I fixed it.

4 Q: All right. Had he had a roof put on about five,
5 five and a half years before that, that caused ...
6 what had caused the soffits on his house to have
7 rotten spots?

8 A: It's probably because his shingles split. Someone
9 put a ladder ... but frankly, I can't remember.

10 Q: All right.

11 A: That was like a little, tiny ...

12 Q: Did you ... but you did that. Additions again, you
13 mentioned a wet bar?

14 A: Yeah. The wall where the shower is, it's plumbed.
15 If you want to put a wet bar in, right now the
16 plumbing is there for a wet bar.

17 Q: All right. Did there come a time when you began ...
18 well, I'm going to use July because I think that's
19 when Ms. Griffin used. By July was there a
20 slowdown? And we're now in 2008. And explain to
21 the Court, June or July what happened and what Mr.
22 Cash said that caused a slowdown?

23 A: Well, it evolved. It started off that, you know,
24 basically he was behind some \$20,000 on paying, and
25 I needed to be paid. And so, we ... we just kind of

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1 cooled our jets a little bit. We just started ...
2 we slowed down. And when Bill got in there to do
3 the trim we kind of struck a ... he arranged a job
4 with one of his clients where we could go over there
5 and do for his clients. But basically when Bill was
6 there it was easier, it was more cost effective to
7 leave Bill alone, to leave him setup ...
8 Q: I'm sorry. You didn't understand my question, ...
9 A: Okay.
10 Q: ... what I first asked.
11 A: Okay.
12 Q: I was asking you if there was a slowdown in June or
13 July of 2008.
14 A: Yes.
15 Q: And did you talk to Mr. Cash at that point in time
16 about why ...
17 A: No, let me ...
18 Q: About what his problems were having regarding
19 paying?
20 A: Okay, there wasn't a real problem. That doesn't ...
21 that's not really a slowdown. That's when we were
22 putting sheetrock in, and other subcontractors were
23 in there working. So we were slow. We don't ...
24 Q: I made a mistake. I meant 2007.
25 A: 2007, okay. Well, that's ... I'm talking about ...

1 I'm sorry. I was talking about 2008.

2 Q: Okay. Did Mr. Cash owe you money?

3 A: Yes.

4 Q: Did he appear to have a problem paying?

5 A: Yes.

6 Q: Did you talk to him?

7 A: Yes.

8 Q: What did he say about the reasons ...

9 A: He ...

10 Q: ... whether it was economy or anything?

11 A: Yeah. He was going through ... you know, Merrill

12 Lynch was being taken over by Bank of America, and

13 they were having ... he was ... we could go on a ...

14 builders were having trouble, so were stockbrokers.

15 Okay? And I understood that to be a problem. He

16 was a friend. Okay? But he was having problems

17 with his work and he couldn't ... he bit off more

18 than he could chew, you know. His eyes got ... he

19 was just too aggressive with what he wanted, and ...

20 Q: Is that what he said? Did he use those words?

21 A: I'm not sure about that.

22 Q: That he bit off more than he could chew?

23 A: To that effect. I can't tell you exactly what the

24 words were. But we were friends. I mean, that's

25 the way we talked. We were friends. And I ... you

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1 know, we have a problem, you know. Because at that
2 time, I don't remember exactly where it was, but he
3 owed me \$20,000 and I couldn't float \$20,000.

4 Q: Did he say anything about the economy?

5 A: Yeah, it was all ... economy, Bank of America
6 related. I mean, his world was kind of getting all
7 crumbly.

8 Q: Did he say that he had a project going on in
9 Greenville where he was having some problems?

10 A: Yeah. He was ... he had some problems in
11 Greenville. As a matter of fact, we had some words
12 about him using ... he said I held 30 percent back
13 and said ... he was ... he was bragging about it.
14 How you can get a contractor to do anything when you
15 owe over 30 percent. It worked on me.

16 Q: So you're behind ... you know, you're owed money,
17 and he's saying he's having ... he bit off more than
18 he could chew?

19 A: Uh-huh (affirmative response.)

20 Q: Is he saying, no pun intended at all, but cash flow
21 problems?

22 A: Yes.

23 Q: What was your understanding about ... was he trying
24 to build this ... I use the expression ...

25 A: Out of pocket. It was out of pocket.

1 Q: Okay. And did you ... did he have a suggestion on
2 something he could do so you could keep going ...
3 A: Something ...
4 Q: ... in your business? Did he refer some business to
5 you?
6 A: Yeah. Sally Stansill was a client of his. He lined
7 up that ... I was actually the subcontractor on the
8 job. It was a nice little job. It ran about two,
9 three months or so.
10 Q: And did you agree to slow down on his project
11 because you were ...
12 A: Yeah, he ...
13 Q: ... getting paid?
14 **MS. GRIFFIN:** Your Honor, I'm going to continue to object
15 to him leading him.
16 **THE COURT:** Sustained.
17 **MR. TRUSLOW:** I'll restate it.
18 Q: What, if anything, did you do regarding work on his
19 house?
20 A: He became the second job. He was not the primary
21 focus anymore. Just like Sky said. He was not the
22 primary job. Because usually we get in there that's
23 what we do, that's all we do until we finish.
24 Q: And state whether ... was that what he wanted?
25 A: Yeah. Yeah, that was ... I mean, he was the one who

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1 referred the job. He brought me the work because I
2 said I need to do something.
3 Q: All right. Now, were you okay with that at that
4 time?
5 A: Yeah.
6 Q: And there was some mention of somebody named Bill
7 Smith.
8 A: He was the trim and cabinet guy.
9 Q: That's the inside guy?
10 A: Yeah.
11 Q: And was the ... were the stairs built inside then,
12 when the loft changed, or not?
13 A: No. The stairs were on the latter part of the trim.
14 Well, I'm not real sure exactly where they were.
15 Bill's older than me. Okay? And he ...
16 Q: My question was when it occurred.
17 A: I'd have to look at the ... when the payments were
18 made to him. I'm guessing ... I'd have to look to
19 see, but ...
20 Q: Let me go on to something else.
21 A: There was a ... if you look ... I remember, if you
22 look in the payments it says, Seven Newel Posts or
23 something. That's when he was working on that.
24 Q: Let me ask, in your business is it unusual to ...
25 when the table saws and all the equipment is on one

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1 job, to cut ... to cut your wood there, or do you
2 take ... do you pick up everything and move it to
3 another site? How's that done?
4 A: You try, because that's the efficient way to do it,
5 you try to finish this and go to the next one with
6 your stuff. The set for ... especially someone ...
7 if you seen his setup, he's got this big table he
8 sets up. It takes a day for him to set it up.
9 Okay? It's knocking down ... you know, breaking
10 down and setting up. It's a pain. And that's why
11 it was agreeable that he could stay in the shop. He
12 ... Paul knew everywhere we were working. He knew
13 we were working for Sally. He knew we were working
14 for two other ... two or three other people, and
15 that we were doing stuff there. And it was okay by
16 him, because we were saving the money.
17 Q: All right. Did he agree?
18 A: Yeah.
19 Q: Given that the project wasn't finished, was it
20 usable for him at that point in time? Did he ...
21 A: No, no, no. It needed to be ... I mean, basically
22 you're not going to get a certificate of occupancy
23 with those 2x4 handrails.
24 Q: Was he agreeable with this?
25 A: Yes.

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1 Q: Did he ever ...
2 A: All the way.
3 Q: ... complain?
4 A: Never complained once.
5 Q: I want to move forward but before I do, at that
6 point in time, except for him having some cash flow
7 problems, or ability to pay, did he ever express
8 that he was dissatisfied with any of the work that
9 had been done ...
10 A: No. He had us out there doing everything.
11 Q: ... other than saying ...
12 A: Spreading pine straw.
13 Q: ... that perhaps his eyes got bigger than his
14 stomach?
15 A: Yeah.
16 Q: Did he have any concerns?
17 A: Well, yeah. It was pretty obvious he was having
18 trouble paying, and then ... but in hindsight, I'm
19 not sure that that was a big problem for him.
20 Q: Okay. As the project was progressing, were you
21 giving him, him being Mr. ... the Cashes, were you
22 giving them the documentation that ... as to what
23 the costs were, what the time was and everything?
24 A: Yes. He got ... you've got the spreadsheets
25 floating around here. I keep it all on a Palm

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1 Pilot. When I give him a bill it spells out this is
2 the materials and subcontract labor, this is the man
3 hours worked for my employees, this is man hours I
4 worked, the Bobcat. You add it all up and you apply
5 25 percent to it, get your bottom line. And
6 attached to that would be the printout of the
7 spreadsheet.

8 Q: And did he ever ... he, Mr. Cash, ever express any
9 dissatisfaction with the invoices?

10 A: He ... never, no.

11 Q: And are these ... I'm not going to burden the record
12 with these, but you mentioned a Palm Pilot. You've
13 got it in your pocket?

14 A: I've got it in my pocket.

15 Q: And you have this basically on your Palm Pilot?

16 A: Yeah. Yeah. My Palm Pilot, it's got a little
17 spreadsheet program. I keep my time records for my
18 employees and the job records. And I made a promise
19 to him that on any given day I could tell him within
20 a couple hundred dollars exactly where he was.

21 Q: And did you do that?

22 A: Yes.

23 Q: And did he ever express any dissatisfaction?

24 A: No.

25 Q: Did you have backup documentation?

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1 A: I'm not real big on paper, but that's mine.
2 Q: All right. And have you made this available to ...
3 A: Yes.
4 Q: ... the defense?
5 MS. GRIFFIN: Your Honor, I ask that we introduce it into
6 evidence rather than just show it to the Court.
7 MR. TRUSLOW: I think it's my case. If she wants to go
8 through these things and be here for ... like that
9 case we had forever. I don't intend to do that if I
10 don't have to, unless the Court wishes me to.
11 THE COURT: Can I look at it briefly?
12 MR. TRUSLOW: Sure.
13 THE COURT: And all these relate to ... I'm holding a ...
14 it looks like a stack of invoices, and one's called
15 a sale of order. Describe for me again what this
16 is, Mr. Truslow.
17 MR. TRUSLOW: Your Honor, they asked ... the defense asked
18 for all receipts for a variety of jobs. We provided
19 them with the receipts we had, in addition to what
20 my client had on his Palm Pilot. They're in there.
21 You'll see his tax return is one of the documents in
22 there. There are things for paint. There's some
23 reference to this job. But the essence is, what he
24 keeps on ... just as his daughter said and my client
25 is saying, he keeps everything ... when he gets a

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1 receipt he puts it on a Palm Pilot. He may have
2 records, he may not have records, but he does it
3 contemporaneously.

4 **THE COURT:** Why is the tax return ...

5 **MR. TRUSLOW:** Because they wanted his tax return. And
6 rather than object regarding his tax return, we
7 provided it. I would note that we asked for theirs
8 and ...

9 **THE COURT:** Ms. Griffin, have you seen this?

10 **MS. GRIFFIN:** Your Honor, what I've seen is a whole stack
11 of documents that are very difficult to match up to
12 anything that's on his Palm Pilot spreadsheet, which
13 is why I said if he's going to represent to the
14 Court that here's a whole stack of documents that
15 matches the Palm Pilot then show us how it matches,
16 because it's my contention it doesn't match. Some
17 of it may match, but not all of it does.

18 **THE COURT:** So you've seen it and it really hasn't done
19 you any good is basically what you're saying?

20 **MS. GRIFFIN:** That's exactly right, Your Honor.

21 **THE COURT:** But you're hoping that it be introduced into
22 evidence, so.

23 **MS. GRIFFIN:** Well, Your Honor, that's because they said
24 broadly, this is our supporting documentation for
25 our summary of the invoices. And if it's not

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1 accurate, if that's not the supporting
2 documentation, then his spreadsheet is not accurate
3 that he's going to try to introduce into evidence.
4 And so what I was asking is, well, match it up for
5 us then.

6 **MR. TRUSLOW:** Your Honor, what I did was ... my client's
7 testimony is that he ... he get receipts, puts it on
8 his Palm Pilot, shows Mr. Cash what it is, Mr. Cash
9 is either satisfied or not. He said he was
10 satisfied. The defense then asked for whatever
11 backup documentation we had. We gave them whatever
12 backup documentation we had to correspond. But,
13 Your Honor, why I think this is maybe a side issue
14 is that they're ... I think they ... they're not
15 going to bring in an expert to say that you can do a
16 job like this for \$50 or \$75 a square foot. My
17 client's prepared to testify about how, you know,
18 how costs are estimated, what the documents are.
19 And Your Honor, as sitting as a judge alone, is
20 certainly familiar with what general construction
21 costs are. And I think this is maybe a distraction
22 from what's really important, which there's ...
23 construction cost is about I think \$125, according
24 to what's in evidence, and that's not even including
25 the ... any 25 percent profit. So that's my input.

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1 **THE COURT:** Go ahead, Ms. Griffin.

2 **MS. GRIFFIN:** Your Honor, with respect to that is cost ...

3 if the contention of the plaintiff is that this is

4 not a sum certain contract, which is our contention,

5 if it's cost plus 25 percent then cost means the

6 cost of the materials that he used to build this

7 project, not that he can pull a number out of the

8 sky from an estimating book saying that square

9 footage cost is this. He's got to show us ... his

10 burden of proof is to show us the costs that he

11 spent, the materials he put in that house, what he

12 charged us for, and how many hours he spent in labor

13 by each of his employees, if he chooses to do it

14 that way. We believed that this was a sum certain

15 contract with modifications to the contract. So

16 it's very important, in our opinion, that his burden

17 of proof is either met or not met by whether or not

18 there is backup documentation for what he's going to

19 put up as his spreadsheets.

20 **MR. TRUSLOW:** Your Honor, that goes ... that goes into ...

21 that segues right into my next exhibit. It's been

22 argued in opening statement and just now that this

23 was for a sum certain. The next document, which is

24 going to be Plaintiff's Exhibit Three, indicates ...

25 it's going to say that this is going to be done ...

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1 the work is going to be done on a cost plus 25
2 percent basis. It indicates what the labor costs
3 are going to be billed. It's guesstimated what it's
4 going to cost. It's contingent upon final choices
5 as discussed. It was for 380, 390 square feet, and
6 it ends up being over 600. So it's not a sum
7 certain, it's a cost plus 25 percent. And this will
8 be my next exhibit.

9 **THE COURT:** Ms. Griffin, are you ready to go on?

10 **MS. GRIFFIN:** Yes, Your Honor.

11 **THE COURT:** Please proceed.

12 Q: I want to show you the next document that we were
13 referring to, and it's been identified as
14 Plaintiff's Exhibit Number Three (sic). Do you
15 recognize this?

16 A: Yes.

17 Q: What is it?

18 A: It's our contract.

19 Q: All right.

20 **MR. TRUSLOW:** We're going to offer this into evidence at
21 this point in time, Your Honor.

22 **THE COURT:** Ms. Griffin, you've seen this, right?

23 **MS. GRIFFIN:** Yes, Your Honor. No objection.

24 Q: You've seen it and you know what it is, so I'm going
25 to give it to the Court at this point in time.

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1 THE COURT: I'll hand it back.
2 MR. TRUSLOW: Oh, no. That's fine.
3 (Plaintiff's Exhibit Number Five is entered into the
4 record.)
5 Q: I know you've hurt your back. If you need to stand
6 from time to time I'm sure the Court will allow you
7 to.
8 THE COURT: That's fine. You can come down and stand on
9 the ...
10 A: Okay, yeah. Because I have trouble sitting a long
11 time.
12 THE COURT: Yes.
13 Q: Now, you're talking with Mr. and Ms. Cash about the
14 construction. And from the beginning you said it
15 was kind of a moving target and grew and grew.
16 A: A moving target, yeah.
17 Q: Did it even grow from the time that you had come up
18 with what you thought was the final plan ...
19 A: Oh, yes.
20 Q: ... of 380 feet?
21 A: Yeah. Because the loft, which was going to be for
22 ... you know, we added the window later. We added a
23 shed on the back, but that was when it became ...
24 when we saw how much room, then it was going to be
25 his office.

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1 Q: Okay.

2 A: We talked about doing barrister paneling up there so

3 he had a really nice office. He would be looking

4 down over the thing. It was ... you know, I'm very

5 proud of it, okay? It was a ...

6 Q: Okay. Did you ... once you thought you had an

7 understanding, with the caveat that it was a moving

8 target, that things were getting nicer and nicer,

9 did you write to the Cashes to confirm what the

10 terms of the engagement were?

11 A: Yes.

12 Q: That's Exhibit Five?

13 A: That's it right there.

14 Q: All right. And did Mr. Cash tell you that he

15 accepted that?

16 A: He signed it, I think. I think I have a signed

17 copy.

18 Q: Okay.

19 A: Somewhere in that pile of paper.

20 Q: Did he continue to ... when you sent bills from the

21 beginning did he acknowledge those?

22 A: Yes. Yeah, they were ... it was always documented.

23 Every time we ... and every hour that was worked,

24 every piece of material that was brought on the job,

25 it was always there for him to examine.

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1 Q: Okay. And did he complain?
2 A: No.
3 Q: Was this ... did this ever change from being cost
4 plus to a fixed ...
5 A: No.
6 Q: ... sum certain cost?
7 A: It was never a sum certain cost.
8 Q: Okay. Ms. Griffin said in her opening statement to
9 the Court that there was some modifications and
10 additions for extra work. Do you agree with that?
11 A: They were always under the same contract. We just
12 did whatever they wanted.
13 Q: And you heard her say that this was a contract for a
14 sum certain for \$35,000?
15 A: That's wrong.
16 Q: Do you agree with that?
17 A: No. That's wrong.
18 Q: Okay. There was ... and you may have it up there.
19 Is there something called a National Cost
20 Calculator?
21 A: Right here, yeah.
22 Q: And that's your daughter's ...
23 A: If you use this, you come up with \$124,000.
24 Q: And your daughter introduced ... I can't remember
25 what the number is, but we put an exhibit in. It

1 looks like it's Exhibit Three. Let me see. This
2 one right here?

3 **COURT REPORTER:** This is Exhibit Three, and the one that
4 you're talking about is actually Five, I believe.

5 **MR. TRUSLOW:** I'm sorry. Your Honor, when I had the
6 contract it actually ... if you look at it, it
7 looked like a three to me, but I was looking out of
8 the wrong side of my bifocals. It's Exhibit Five.
9 This is Five, this is Three.

10 **THE COURT:** All right.

11 **Q:** So you have the actual book, the 2008 National
12 Building Cost Manual?

13 **A:** Uh-huh (affirmative response.)

14 **Q:** And these are the pages from it?

15 **A:** Those pages came out of it.

16 **Q:** So for a ... for just the minimum quality class,
17 minimum quality class for 600 ... and I can show you
18 here. For 600 feet, for a recreational building
19 with 10 corners, what is the ... if you're building
20 the minimum ...

21 **A:** \$133 a foot.

22 **Q:** For ...

23 **A:** Yeah.

24 **Q:** Okay. And for ...

25 **A:** Seven hundred ...

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1 Q: ... something for good ...
2 A: You'd be closer to this one right here, 125 ...
3 Q: No. For 600 ...
4 A: Oh, \$338.
5 Q: \$338.
6 A: Yeah.
7 Q: So ...
8 A: He got a deal.
9 Q: Okay. You were giving him a deal?
10 A: A real ... a good buddy, friends of the family deal.
11 Q: And had you shown Mr. Cash the original work up that
12 you had done?
13 A: On the 380 square foot? Yeah. There's one ... it's
14 right there.
15 Q: But then it changed also?
16 A: Yes. This was 380 square feet, which is that second
17 ... third drawing that you have. And it had a
18 bathroom in it. And this \$35,000 guesstimate that's
19 in there, that's the bathroom from here.
20 Q: Did Mr. Cash indicate to you at some point in time
21 that he could do the painting?
22 A: Yes.
23 MS. GRIFFIN: Your Honor, I have to object to him
24 continuing to lead him.
25 MR. TRUSLOW: That didn't call for ...

1 THE COURT: Sustained.

2 MR. TRUSLOW: Didn't call for a yes or no, but I'll

3 rephrase it anyway.

4 Q: What did Mr. Cash say to you, if anything, about

5 wanting to paint?

6 A: He was going to paint.

7 Q: What did he do later?

8 A: We painted.

9 Q: Did he ... what did he say?

10 A: I don't think he ... I don't think he ever did any

11 painting.

12 Q: All right.

13 A: As a matter of fact, it was sometime in the summer

14 of '08, when he was supposed to be painting inside,

15 that he had my guys back to paint the inside.

16 Q: Okay. Forest Acres for building inspections, would

17 you regularly get building inspections?

18 A: Yeah.

19 Q: And were they approved?

20 A: Yeah. Whenever they required them, we got them.

21 They were all approved.

22 Q: You have those documents?

23 A: Yeah. There here ... there somewhere in this pile.

24 Q: And there's some writing on here. Referring to

25 Plaintiff's Exhibit Number Eight, which consists of

1 two, three, four, five, six ... six pages, with the
2 exception of any handwritten notes on here, were you
3 providing Mr. Cash with the summaries? And I'm
4 going to ask ...
5 A: This would be the April '08 summary. This was the
6 summary. And here's April 4th, April 30 ... I mean,
7 these are them.
8 Q: And looking at Exhibit Number Nine, which consists
9 of 12 pages, was this the backup documentation that
10 you also ...
11 A: Those are spreadsheets that would go with these.
12 Q: And did you give those to Mr. Cash as well?
13 A: Yes.
14 Q: Did he ever express any dissatisfaction or
15 disagreement ...
16 A: No.
17 Q: ... at all? Did he say he was going to pay you, he
18 just needed time?
19 A: Yeah.
20 **MR. TRUSLOW:** We offer Plaintiff's Exhibits Eight and Nine
21 into evidence at this time.
22 **MS. GRIFFIN:** Your Honor, can I look at those? Because
23 I'm not quite sure which ones they are on the stack
24 that Mr. Truslow gave me. Your Honor, with respect
25 to Eight, which is six pages, on each of these ...

1 or on five of the six pages there's handwriting. I
2 think I heard Mr. Truslow say he was offering them
3 but without the handwriting to be considered by the
4 Court. Is that ...
5 **MR. TRUSLOW:** Yes.
6 **MS. GRIFFIN:** ... what you said?
7 **MS. TRUSLOW:** She said she objected. I said, Your Honor,
8 under Rule 403 you can ... you can consider this
9 since we're not with a jury. And I'm saying ...
10 asking the Court, any of the handwritten notes don't
11 need to be considered. It's only what's in hard
12 copy. In most businesses we write on documents from
13 time to time, and these are our ... these are what
14 we have. If they've got the same documents without
15 anything, we can use those instead. It doesn't make
16 one bit of difference, I don't think.
17 **THE COURT:** Okay.
18 **MS. GRIFFIN:** And then, Your Honor, with respect to
19 Exhibit Number Nine, the same objection. There's
20 handwriting on these documents that has never been
21 produced to us. I think it must have been added
22 very recently, with his notations within the
23 documentation. So to the extent that that's on
24 there, we object to that information and ask that
25 Your Honor not consider it.

1 **THE COURT:** Objection overruled.
2 **(Plaintiff's Exhibit Numbers Eight and Nine are entered**
3 **into the record.)**
4 Q: Before I go on to something else. On the rotted out
5 shed that Mr. and Mrs. Cash had, who hauled it off?
6 A: I think we hauled it off.
7 Q: Are you asking to be paid?
8 A: Yes.
9 Q: And are you asking for the sum of \$126,146? I'm
10 sorry, \$26,146.
11 A: I wish I was doing the first number, but the second
12 number is right.
13 Q: Twenty-six thousand ...
14 A: Twenty-six thousand.
15 Q: ... one forty-six?
16 A: Yeah.
17 Q: Plus interest?
18 A: Plus interest for two years.
19 Q: As of November of 2008?
20 A: Yeah.
21 Q: All right. Now, when is the last time you did work
22 ... any work at the Cashes' ?
23 A: The last work I did was in October of '08.
24 Q: How about anything to repair any work?
25 A: That wasn't a repair. It was ... I took a friend

1 over there to show ... to show it ... I'm showing it
2 off. I'm proud of it. Okay? It turned out real
3 good. And while we were there I noticed there was a
4 little one-inch piece of Hardiboard that was missing
5 under one of the windows, so I went and got one and
6 came back and ... and put it up.

7 Q: At that time ... so had you been paid in full at
8 that point?

9 A: No, we weren't.

10 Q: All right. So that was the last time you did any
11 work?

12 A: Yeah.

13 Q: Was when?

14 A: October of '08.

15 Q: Was it within 90 days of the time that you ...

16 A: We had to dig. I'm not paying ...

17 Q: Was it within 90 days of the date that you filed the
18 mechanic's lien?

19 A: Yes.

20 Q: Now, have you incurred legal fees in this case?

21 A: Yes, I have.

22 Q: Are you aware that I've spent more than 40 hours on
23 this case?

24 A: Absolutely.

25 Q: You understand that my normal rate is \$295 an hour?

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1 A: Painfully aware.
2 Q: All right.
3 MR. TRUSLOW: Just a second, Your Honor.
4 Q: I do have one thing for you while he's looking.
5 When you last talked with Mr. Cash after he said
6 that he was ... had been satisfied with your work,
7 wasn't complaining about the bills, was happy with
8 the work but had money problems, did you ask to be
9 paid?
10 A: From ...
11 Q: And what did he say?
12 A: You mean the last time?
13 Q: You said before that he said that he was going to
14 pay you, he just had money problems.
15 A: Yeah. All the time he was going to pay me. Okay?
16 The last ... our last conversation, which was the
17 first time we had a heated discussion, he said, what
18 have you been smoking. I was standing in the
19 parking lot of W.P. Law engineering.
20 Q: And what did he say?
21 A: He says, I ain't paying you and I never intended to
22 pay you.
23 Q: He said he never intended to pay you?
24 A: Yeah. He said I was off the chart. It was a ... it
25 was a heated discussion.

1 Q: What ... when he ... okay. I'm trying to understand
2 you. He said he was going to pay you, now he's
3 saying I never intended to pay you.
4 A: He went ...
5 Q: And what did you say to him?
6 A: Overnight he went from my friend to my enemy.
7 Q: And what did you say when he said, I never intended
8 to pay you?
9 A: Well, I said, you're going to one way or the other.
10 I said, I'm not walking away from this.
11 Q: Did he say anything to you in this discussion about
12 ... what, if anything, did he say about needing this
13 or wanting this?
14 A: Oh, it was like somehow or another I was the one ...
15 it's like I was an artist in his backyard, just
16 doing stuff. I think he used the words, I was
17 unauthorized to be in ... I was in his backyard
18 every day just about for almost two years, and I was
19 unauthorized to be in his backyard.
20 Q: Did he say anything about needing what he had or
21 wanting it?
22 A: He got need and confused (sic) all ... it all
23 confused.
24 Q: All right. Explain that.
25 A: It was what he wanted. He said he didn't need what

1 he got. But I said he wanted what he got.
2 Q: And what was his response?
3 A: It was like it was my gift to him. I don't know. I
4 can't ... I don't ... I'm not real good at
5 remembering arguments.
6 Q: Okay. Well, let me go on to something else to put
7 that in context, and then I'll be done. All right.
8 Y'all live in the same ... I say y'all. You and the
9 Cashes live in the same neighborhood near AC Flora
10 High School in ...
11 A: Uh-huh (affirmative response.)
12 Q: ... basically Forest Acres?
13 A: Uh-huh (affirmative response.)
14 Q: And you're working on the house and there every day,
15 or somebody from your family's there about every day
16 while the majority of the work was done?
17 A: And my grandkids. Yeah, we're ... we're over there
18 a lot.
19 Q: And is Ms. Cash seeing the work that you're doing?
20 A: Yeah. We were friends.
21 Q: Is she satisfied?
22 A: Yeah. She ...
23 Q: Has Mr. Cash seen everything that's going on as it's
24 progressing?
25 A: Yes. It's hard to build in your backyard without

1 being seen.
2 Q: And did he say he was satisfied?
3 A: Yes.
4 Q: Did he ever voice a complaint?
5 A: Never.
6 MR. TRUSLOW: Thank you.
7 THE COURT: Let's stand in recess until five minutes after
8 4:00.
9 (Off the record from 3:49 p.m. to 4:10 p.m.)
10 THE COURT: Ms. Griffin?
11 MS. GRIFFIN: Yes, Your Honor.
12 MR. HAYNIE - CROSS-EXAMINATION BY MS. GRIFFIN:
13 Q: Mr. Haynie, good afternoon.
14 A: Good afternoon.
15 Q: Can you find your exhibit ... it's Eight or Nine,
16 with your summary? The spreadsheet. Well, let's
17 start with this one. This is Defendants' Exhibit
18 Number Nine. I'm going to show you that document.
19 Can you identify that for the Court?
20 A: It is a spreadsheet. It comes off my Palm.
21 Q: And is that an accurate reflection of the hours that
22 you had in the job and the materials in the job?
23 A: You don't have any hours here. You don't have the
24 sheet, but ...
25 Q: At the top of the page does it have a summary of the

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1 hours that you were cleaning ...
2 A: Yes.
3 Q: ... that were the hours that were worked by your
4 workers?
5 A: Uh-huh (affirmative response.)
6 Q: And then it has a summary of the materials?
7 A: Yeah.
8 Q: And is that accurate?
9 A: As far as I know, yes. Like I said, it's not
10 guaranteed accurate, but it probably is.
11 Q: Not guaranteed accurate?
12 A: No. Because you don't know ... I explained to you
13 how I got these, and you keep on avoiding that.
14 Q: What I'm asking you is just very simple. Are the
15 labor numbers up here accurate?
16 A: Probably so, yes.
17 Q: And is the material number right here, and let me
18 just read it, \$28,259. Is that accurate?
19 A: For whatever ... for this particular moment, yes.
20 Q: Okay. Now, if you would just help me out and look
21 at this document.
22 MS. GRIFFIN: First, do you have any objection to this
23 document, Exhibit Number Nine for the defendant?
24 MR. TRUSLOW: No.
25 MS. GRIFFIN: Your Honor, I move to introduce Exhibit

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1 Number Nine into evidence.

2 **THE COURT:** Your motion is granted.

3 **(Defendants' Exhibit Number Nine is entered into the**

4 **record.)**

5 Q: Mr. Haynie, for the Court, can you just read off the

6 payments that were made by Mr. Cash using your

7 documentation?

8 A: Six thousand, 5000, 5000, 3500, 5000, 4000, 3500,

9 2500, 2000, 2500, 1500, 2000, 5000, 3000.

10 Q: Okay. And on your documentation do you have the

11 dates?

12 A: Yes.

13 Q: Could you tell the Court ... and let's just go

14 through them again. I'll help you out so that we

15 can get it straight. The first payment was made on

16 March 9th, 2007; is that correct?

17 A: March the 6th.

18 Q: Okay. March 6th, 2007. And that is the \$6000

19 payment; is that right?

20 A: Yes.

21 Q: And that was the payment that was called for as ...

22 A: That was the first payment.

23 Q: ... your deposit?

24 A: Yes.

25 Q: Is that correct?

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1 A: Yes, that's correct.
2 Q: All right. And then the second payment is April
3 17th, 2007, and that is in the amount of \$5000; is
4 that correct?
5 A: April the 12th in '07 for 5000.
6 Q: 4/12/07. And then the next payment is what date?
7 A: It was May the 7th.
8 Q: Okay. May 7th in the amount of \$5000; is that
9 correct?
10 A: Yeah.
11 Q: And then the next payment is about two weeks later;
12 is that right?
13 A: Yes. Well, a week later.
14 Q: A week later, so what is that date?
15 A: Wait a minute. Two weeks. You're right. Two weeks
16 later, May 25th.
17 Q: Was there a payment on May 15th of \$3000?
18 A: May what?
19 Q: 15th.
20 A: Oh, I thought it was ... yeah, May the 12th for
21 3500.
22 Q: And then May 25th in the amount of what?
23 A: May the 25th for 5000.
24 Q: So we're about, what, six weeks into the project
25 now?

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1 A: Yes.
2 Q: And what is the total amount that's been paid?
3 A: You want me to add it all up?
4 Q: \$24,000?
5 A: If you say so.
6 Q: Okay. And then the next payment is in the middle of
7 June; is that right?
8 A: Yes.
9 Q: And that amount is how much?
10 A: Four thousand.
11 Q: And then the next payment is the beginning of July?
12 A: July, 3500.
13 Q: And then July 19th. So two weeks later?
14 A: 18th, for 2500.
15 Q: And then when is the next payment?
16 A: September the 28th.
17 Q: And what is that amount?
18 A: Two thousand.
19 Q: And then the next payment is what?
20 A: November the 14th for 2500.
21 Q: And when is the next payment?
22 A: November the 7th for 1500.
23 Q: Is that just out of order?
24 A: Huh?
25 Q: There's are ... chronologically that was just out of

1 order?

2 A: Yes. It must be.

3 Q: And then the next payment?

4 A: December 21st for 2000.

5 Q: Okay. And then when is the next payment?

6 A: April the 11th for 5000.

7 Q: And does that correspond with the date that you

8 moved your equipment out of the shed?

9 A: Probably real close to it.

10 Q: Sometime within a few days, around April 11th?

11 A: Well, we cleaned up. It was... it would correspond

12 with when I gave him the bill for this, and I ... I

13 don't know when we moved out of the shed. But it's

14 in the neighborhood, yeah.

15 Q: Around that time, around April 11th, 2008; you

16 wouldn't dispute that, correct?

17 A: That's correct.

18 Q: That that would have been the last payment that was

19 made and all of your equipment is moved out of the

20 shed at that time; is that right?

21 A: Temporarily, yes.

22 Q: Temporarily moved out of the shed?

23 A: Yeah.

24 Q: And then the next work that was done was separately

25 contracted for; is that correct?

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1 A: No.

2 Q: You hired a subcontractor to come in there and paint
3 the interior the building?

4 A: No. No. Actually ... I don't think we were
5 finished with everything, so we came back and did
6 some stuff. We cleaned up for the party.

7 Q: Well, the next payment, would you agree with me, is
8 in August of 2008, after the paint takes place?

9 A: Wait a minute. I've got to look. August of '08, 8
10 of '08. Yes. Well, that's the paint and the big
11 tree. Actually there are two trees. Maybe one
12 tree. Big tree.

13 Q: Okay. The paint and the tree were down when you
14 were paid; is that correct?

15 A: Yes.

16 Q: So all that work was done; is that correct?

17 A: Yes.

18 Q: And that was done by, you said, August 8th, 2008?

19 A: That was in August of 8th, yeah.

20 Q: August 8th, 2008?

21 A: Yeah.

22 Q: And that's the last work that you did until ...

23 A: No, that's not the last work I did. No, it's not.

24 Q: Let me finish ... let me finish my sentence. That
25 was the last work you did until you were showing

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1 Rivers Scarborough the shed ...
2 A: No.
3 Q: ... is that correct?
4 A: No.
5 Q: No?
6 A: We came back to fix the septic tank. And this was
7 the last ... I complained vociferously about this
8 payment, because all it paid was the expenses, just
9 the cash expenses from April till then. It didn't
10 pay for anything else.
11 Q: The septic tank, wasn't that fixed in the prior
12 year, when Bill Schmidt was in the shed?
13 A: No.
14 Q: It wasn't fixed because Bill Schmidt had been using
15 it regularly in the summer ...
16 A: It was ... it was something ...
17 Q: ... of 2007?
18 A: He called ... he called me and asked me to come
19 over. We dug it up and repaired it, and I could ...
20 I'd have to go to my notes to find out when that
21 was. Sometime ... you've got a ... there's a paint
22 receipt in here somewhere were Ray Lowerly and
23 Bernard were over there painting. That was in that
24 neighborhood sometime. You know, I don't ... we
25 were doing ... and we came back and fixed the brick

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1 on his pillar. On the front, by his driveway.
2 Q: The brick on the pillar by his driveway?
3 A: Yeah.
4 Q: And when was that?
5 A: I don't know.
6 Q: I guess what your contention is, is that you would
7 have been doing work on the septic tank in August of
8 2008. Is that what you're telling me?
9 A: I don't know exactly when we were doing it. I'd
10 have to go look. I mean, I don't remember.
11 Q: And is it possible that you were doing that work in
12 August of 2007, when there was still ongoing work in
13 the shed?
14 A: No.
15 Q: You're absolutely certain of that?
16 A: We ... I don't know when we actually put the septic
17 tank in, but I don't think it was that early. That
18 was when we installed the septic tank.
19 Q: You don't think it was installed by August of 2007?
20 Is that what you're saying?
21 A: I don't know. That was not ... the septic tank was
22 not a big deal.
23 Q: Okay. Well, can you look at any of your
24 documentation and show me where it was installed,
25 what date it was installed?

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1 A: No.

2 Q: And your recollection is not that Bill Schmidt

3 called you and told you that the septic tank was

4 backing up in the shed?

5 A: No.

6 Q: You think Mr. Cash called you?

7 A: He did call.

8 Q: And that would have been for certain in ...

9 A: Sometime in '08.

10 Q: In '08?

11 A: Yeah.

12 Q: But you're not sure which month; is that fair?

13 A: I'm not sure which month.

14 Q: And it could have been back at the time you were

15 cleaning up the shed for ...

16 A: No, no.

17 Q: ... the prom party?

18 A: No, no. It wasn't then. Everything was ready and

19 operational. When we prepared for the party,

20 everything was good to go.

21 Q: So there was no problem at all with the septic tank

22 at that point?

23 A: No.

24 Q: Correct?

25 A: Correct.

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1 Q: Well, let's talk about what you said earlier about
2 the work you did sometime in November. I think you
3 said October of '08. Could it have been November of
4 '08?
5 A: November ... oh, you mean the little piece on the
6 house?
7 Q: Correct.
8 A: That was in ... it was the end of October.
9 Q: The end of October?
10 A: Yeah. I've got ...
11 Q: You're certain of that?
12 A: ... a note somewhere. Because I talked to the
13 neighbor when we were over there. I can't remember
14 the name, but I saw him when we were over there.
15 MS. GRIFFIN: All right. Let's mark this as the next
16 defendants' exhibit.
17 COURT REPORTER: Twenty-two.
18 MS. GRIFFIN: Twenty-two?
19 COURT REPORTER: Yes.
20 (Defendants' Exhibit Number 22 is marked for
21 identification.)
22 Q: I'm going to show you Defendants' Exhibit 22. Can
23 you identify that document?
24 MR. TRUSLOW: May I see it? Can I have a copy?
25 MS. GRIFFIN: It's your Bates stamp number 48.

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1 A: Okay. So it must have been that day.
2 MS. GRIFFIN: Hold on and let me show it to your attorney.
3 Your Honor, I move to introduce Defendants' Exhibit
4 Number 22.
5 MR. TRUSLOW: Without objection.
6 THE COURT: Your motion's granted.
7 (Defendants' Exhibit Number 22 is entered into the
8 record.)
9 Q: All right. So in reviewing your document, that's
10 your handwriting, and the actual date that you were
11 over there is November 5th; is that right?
12 A: It appears to be so, yeah.
13 Q: And that was the time that you were over there with
14 Mr. Scarborough and showing him the project; is that
15 correct?
16 A: I don't remember ... I was showing him one time,
17 which was about a week in between, and then I came
18 back to install this. And then I don't know if this
19 is the day that I installed it. Let's see. It must
20 have been a few days after this when I installed it.
21 Q: A few days after that?
22 MS. GRIFFIN: And let me mark that as Defendants' Exhibit
23 Number 23. Your Honor, I move to introduce Exhibit
24 23 into evidence if it's without objection.
25 THE COURT: All right. Your motion's granted.

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1 (Defendants' Exhibit Number 23 is marked and entered into
2 the record.)

3 Q: All right. Looking at Defendants' Exhibit Number
4 23, would you agree with me that that's a photograph
5 that you took back at Mr. Cash's shed after you
6 replaced that piece of trim; is that correct?

7 A: Looks like to me.

8 Q: And you had your camera with you on that day; is
9 that right?

10 A: If I took the ... yeah, I took this picture, I
11 think.

12 Q: Did you go prepared to take pictures of your repair
13 to this shed?

14 A: I carry it with me all the time.

15 Q: And on Defendants' Exhibit Number 23, at the bottom
16 of the page, it says Tada; is that correct?

17 A: Yeah.

18 Q: And that meant what? You have it fixed now?

19 A: It's fixed. Now, this could have been taken after
20 we had a fight.

21 Q: Could it have been taken after you had the fight
22 about payment; is that right?

23 A: Yeah.

24 Q: And that would have been sometime at the beginning
25 of November of 2008; isn't that right?

1 A: Actually no, it would be later in November.
2 Q: Later in November you had a fight with ...
3 **THE COURT:** Wait a minute. Hold on. Mr. Cash, you can't
4 ... you'll get a chance to testify. You can't ...
5 you were saying something and I got distracted, so.
6 Please proceed.
7 Q: You had a fight with Mr. Cash at the end of November
8 of 2008?
9 A: It was somewhere ... I can't go from memory, but it
10 was somewhere, yeah, at the end of 2008. It was ...
11 I remember where I was, but I don't remember the
12 date.
13 Q: All right. But from what you just said, it's
14 possible that you had a discussion with Mr. Cash on
15 the telephone where he told you he did not believe
16 he owed you any more money, and then you went over
17 to the house and took the pictures of the house
18 after you showed it to Mr. Scarborough?
19 A: Yeah. I mean, that's possible.
20 Q: And is that the likely scenario of what happened;
21 you talked to Mr. Cash, you disagreed about payment
22 being owed, then you went over to his yard, went
23 into his backyard, and took some photographs?
24 A: If I remember right, the locks were changed when I
25 was there, and we were now not friends anymore.

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1 Q: And you went over there after you had this argument
2 with Mr. Cash. For what purpose was that?
3 A: Well, I do know about the doing work in 90 days. I
4 had several other things, but that was ... I did do
5 that work, so I took a picture of it.
6 Q: And when you mean ... when you're saying doing work
7 within 90 days, you're referring to the mechanic's
8 lien statute; is that right?
9 A: Yeah.
10 Q: And you know that in order to perfect your
11 mechanic's lien statute, that you have to do some
12 repair work at the place within 90 days before you
13 file the mechanic's lien; isn't that right?
14 A: No. I had done this before. I took a picture
15 after. Just as proof.
16 Q: Well, Mr. Haynie, just so we've got it right. You
17 knew that there was a piece of Hardiplank siding
18 missing on 11/5; is that correct?
19 A: I was going back to my note. That was when I was
20 there. That's when I found it.
21 Q: Right. And you were there ...
22 A: The story is, I went and saw it was needed, then I
23 went and repaired it. This was before we had the
24 fight. Okay? Then we had the fight and I ... I
25 know I need to prove that I was there.

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1 Q: You know you need to prove that you had done work
2 ...
3 A: Yeah.
4 Q: ... within 90 days before you filed the mechanic's
5 lien ...
6 A: Yes.
7 Q: ... is that correct?
8 A: Uh-huh (affirmative response.)
9 Q: And so the work that you did, which would have been
10 in November ... well, November 5th. Is that fair
11 when you did it? November 5th, 2008?
12 A: Yeah.
13 Q: And that would have been work that you chose to do;
14 is that right?
15 A: It was ... I was always doing it.
16 Q: Mr. Haynie, it was your choice to do that, correct?
17 A: Yes.
18 Q: Mr. Cash didn't ask you to come back to his house
19 and do any repair work to his shed on November 5th,
20 2008?
21 A: I don't think he even knew about it.
22 Q: He didn't even know anything about it; is that
23 correct?
24 A: No.
25 Q: And so you voluntarily went in there and you put

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1 that piece of trim up on the house.

2 A: Uh-huh (affirmative response.)

3 Q: And you took the photographs and put, Tada; isn't

4 that correct?

5 A: Yeah.

6 Q: And that was in reference to making certain that you

7 had your mechanic's lien date so you could file the

8 mechanic's lien within 90 days; is that right?

9 A: You're getting it a little backwards, but if you

10 want to go that way, it's okay.

11 Q: You get to go backwards?

12 A: Yes. I just told you that I did the work. We

13 hadn't had the fight. I didn't know we'd ... that's

14 what I do. When I see something wrong, I fix it.

15 It's called the broken fence syndrome. When you

16 walk through the fence and it's broken, you fix it.

17 Q: Okay. Well, you had not had the fight, but would

18 you agree with me that you wrote a letter to Mr.

19 Cash the next day demanding that he make payment on

20 this account?

21 A: I guess so, yeah. I mean, you've probably got ...

22 it's in your hand right there.

23 Q: We'll talk about it in a second. But before you

24 wrote your first letter ... because there are two

25 letters, correct?

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1 A: Yeah.

2 Q: Two letters to Mr. Cash. You had had a telephone
3 conversation with him; isn't that correct?

4 A: When I ... when I wrote the letters, yes.

5 Q: You had already talked to him, and he had already
6 told you he didn't believe he owed you any money; is
7 that right?

8 A: Right.

9 Q: And so that conversation had to have been before
10 your first letter. And I'll show it to you, and we
11 can go ahead and get it admitted. It's Defendants'
12 Exhibit Number 12. Do you recognize that as being
13 the letter that you wrote to Mr. Cash?

14 A: Yeah.

15 Q: And it's dated November 6th, 2008; is that correct?

16 A: Uh-huh (affirmative response.)

17 MS. GRIFFIN: Your Honor ... let me show it to Mr.
18 Truslow. Your Honor, I move to introduce
19 Defendants' Exhibit Number 12 into evidence.

20 THE COURT: Your motion is granted.

21 (Defendants' Exhibit Number 12 is entered into the
22 record.)

23 Q: Okay. So now, your time line, you know the
24 conversation took place and you had a disagreement
25 with Mr. Cash about the payment. Now, in that

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1 conversation, when you first talked to Mr. Cash
2 before November 5th, 2006, did you ask him to pay
3 you \$9000?
4 A: No.
5 Q: Do you recall the amount that you asked him to pay
6 you on that day?
7 A: No. No, I don't know the amount. It was probably
8 that.
9 Q: It was probably the number that's on Exhibit Number
10 12?
11 A: Yes.
12 Q: So you think it was about \$19,000, \$18,000?
13 A: Yeah. I went home madder than hell and just ripped
14 off the letter and sent it out.
15 Q: So is it possible that your first conversation with
16 him you asked for \$9000 and he said no?
17 A: No. I was never that low.
18 Q: Okay. Never that low. Well, let's go back to this
19 work that you did, because I want to make sure I've
20 got it straight. That work where you nailed up that
21 piece of trim was not at the direction of the
22 Cashes; is that correct?
23 A: No.
24 Q: It was for your own ... your own purposes, because
25 if something needs to be fixed you're going to fix

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1 it, right?

2 A: Yeah.

3 Q: And you didn't charge him for nailing that trim up;

4 is that correct?

5 A: No.

6 Q: They didn't even know you were in the yard; is that

7 correct?

8 A: Yeah, right. That's fine.

9 Q: Let's talk about these letters. Let's first look at

10 Exhibit Number 12. You said you were mad as hell

11 and you wrote that letter to Mr. Cash; is that

12 correct?

13 A: Uh-huh (affirmative response.)

14 Q: And that was a yes? Yes?

15 A: Say your question again?

16 Q: You were mad as hell, and you wrote the letter to

17 Mr. Cash asking to be paid; is that correct?

18 A: Obviously the night of the conversation.

19 Q: Excuse me?

20 A: Obviously the night of the conversation.

21 Q: But the same day?

22 A: Same day, yes.

23 Q: So now there's a conversation that took place on

24 November 6th, the day after you were in the yard?

25 Not that the conversation took place beforehand?

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1 A: Say that again.
2 Q: Mr. Haynie, I believe your testimony earlier was
3 that the conversation took place before you went
4 over to his house to replace the trim; is that
5 correct?
6 A: The conversation took place before I went over ...
7 no. No. That's not what happened. I didn't say
8 that.
9 Q: You didn't say that?
10 A: No.
11 Q: So you said the conversation ...
12 A: I said I repaired it before the conversation.
13 Q: Okay. So you repaired it before the conversation,
14 in the morning?
15 A: I don't know. That probably was, yeah.
16 Q: And when was the conversation then?
17 A: Huh?
18 Q: When did you have the conversation with Mr. Cash?
19 A: It was ... I think it was either the day of the
20 election or the day after the election. I was ... I
21 know where I was, and I know it was real close to
22 the election.
23 Q: You had a conversation with him election day of
24 2008?
25 A: Uh-huh (affirmative response.)

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1 Q: You have to say yes.
2 A: Yes.
3 Q: Just so we can keep the record straight. And then
4 you're saying that the repair is the day after the
5 election or some later date; is that right?
6 A: No. The repair was before that.
7 Q: Okay. The conversation is election day, then the
8 repair, and then you write this 11/6/2008 letter?
9 A: It might have been ... you know, it was a little
10 piece of wood this long. I don't know. I don't
11 know. I don't know.
12 Q: Well, you do know. Because isn't it true, Mr.
13 Haynie, that you just testified that you replaced it
14 on 11/5/08, or soon thereafter, correct?
15 A: Yeah, I ... yeah. I mean, you're throwing pictures
16 at me and ... and my notes, and again ...
17 Q: Mr. Haynie, are these your pictures that you took?
18 A: They are my pictures. They are my pictures.
19 Q: And these are notes that you made on the pictures,
20 correct?
21 A: Uh-huh (affirmative response.)
22 Q: And the notes are in your handwriting and they say,
23 Fixed, and, Tada ...
24 A: Yeah.
25 Q: ... correct?

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1 A: Yeah.

2 Q: And so, all I'm asking you is ... I'm trying to get

3 the sequence of did you fix the trim before or after

4 you had the argument with Mr. Cash on the telephone?

5 A: I'm just thinking. I'm thinking it was before,

6 because I was there with Rivers a week before. And

7 so sometime shortly thereafter I fixed it. And I

8 can't ... I just don't remember.

9 Q: So on your note where it says you were showing

10 siding on 11/5, that's when you were there with

11 Rivers; is that correct?

12 A: No. I don't think this would be right.

13 Q: So your notes on your picture is incorrect?

14 A: I think so, yeah.

15 Q: Okay. Are these pictures date stamped?

16 A: Some are.

17 **MS. GRIFFIN:** Your Honor, I ask if the plaintiff's lawyers

18 can show me the original picture, because my copy of

19 the date stamp is obliterated by the copying.

20 **MR. TRUSLOW:** Your Honor, I'm not sure what she's asking.

21 But pursuant to discovery we put some Bates stamps

22 on some documents. I'll try to look ...

23 **MS. GRIFFIN:** I said date stamp. Date.

24 **MR. TRUSLOW:** Date stamps?

25 **MS. GRIFFIN:** Date. It's has a date on it.

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1 MR. TRUSLOW: Oh, not Bates stamps. I don't even think we
2 go there. I don't know, I thought she said Bates
3 stamp.
4 THE COURT: Right.
5 MR. TRUSLOW: I don't know that I ... I don't know that I
6 date stamped anything.
7 MS. GRIFFIN: Your Honor, the photograph itself, you can
8 look at the exhibit and see ...
9 MR. TRUSLOW: There's some of them ...
10 MS. GRIFFIN: ... you can see a date on them.
11 MR. TRUSLOW: I don't have it in front of me. That's my
12 ... I'm at a disadvantage. What I would have done
13 is give him whatever I had. I don't think I can do
14 any better, but I'll try. What is the ... does it
15 have a Bates stamp or just a date stamp?
16 A: A date stamp. It's got a date stamped on it.
17 MS. GRIFFIN: It's Bates stamped 48 and 49.
18 MR. TRUSLOW: Okay. I don't think I would have any better
19 copy, but I'll try to ... here's mine. And that ...
20 actually, that copy is better than the one I have.
21 Well, I don't have anything on that one. Your
22 Honor, all I can ... all I can do is tell you that
23 the copies that she has are actually better than the
24 ones that I have. And, Your Honor, on the thing
25 that says, Tada, is when I asked my client to send

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1 me a copy of whatever he has. He already talked
2 about notes that were put on there to me, and I
3 think Your Honor, sitting as judge alone, can
4 separate the wheat from the chaff in that regard.

5 **THE COURT:** Ms. Griffin, I think what you're driving at
6 ... make sure I understand what's going on. You're
7 trying to pin down the date that work was completed;
8 is that correct?

9 **MS. GRIFFIN:** Your Honor, I'm trying to pin down the date
10 that he came on the property, because he had a
11 conversation with Mr. Cash that made him angry. So
12 it's our position that he came on the property
13 purposefully to try to make certain he had his
14 mechanic's lien perfected within the 90 days,
15 because he didn't have the timing. He was off the
16 property, and he was substantially completed a long
17 time earlier. So I'm trying to show precisely when
18 he was on the property to show the sequence of
19 events that had to do with his response to Mr. Cash.
20 But if we don't have another copy of the photograph,
21 then we'll leave it as it is.

22 **THE COURT:** All right. Please proceed.

23 **Q:** Mr. Haynie, we were looking at the November 6th
24 letter; is that correct? And this is the letter
25 that has some handwriting on it. That's your

1 handwriting; is that correct?

2 A: Yes.

3 Q: And that's something that you provided to your

4 attorney, where you added those amounts on there; is

5 that correct? I mean, those words, Cost has barley

6 moved?

7 A: I think so.

8 Q: All right. Your handwriting. And in this letter,

9 just so we can try to understand what you were

10 asking for on November 6th, you have materials of

11 \$38,418; is that correct?

12 A: Yeah.

13 Q: And then you have man hours of \$16,578 ...

14 A: Uh-huh (affirmative response.)

15 Q: ... 888 man hours; is that right?

16 A: Yeah.

17 Q: And the Bobcat of 20 hours ...

18 A: Yeah.

19 Q: ... correct?

20 A: Uh-huh (affirmative response.)

21 Q: Now, can you explain to me, if you look at Exhibit

22 Number Nine, which is a summary of your materials

23 and costs, and look at where it has description, and

24 it has \$28,259, why is your material amount up to

25 \$38,418 when that document which ...

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1 A: That's easy. That's easy. I'll tell you. Because,
2 this is what I told you in the deposition, this Palm
3 I have to port it. It's not a spreadsheet. It's in
4 my Palm Pilot. When I send it over to Excel, Excel
5 doesn't add up all these numbers right here. So if
6 you were to go back and add all these columns, you
7 will come up with the same number.

8 Q: All right. So what you're saying is, this document
9 ... is this something you would have presented to
10 Mr. Cash, Defendants' Exhibit Number Nine?

11 A: Yeah. I could ... it's ... do you know when this
12 one was made?

13 Q: Well, it's your document. It appears that you have
14 an entry on there that's August 9th, 2008. So would
15 it be fair to say it was made after August 9th,
16 2008?

17 A: Yeah.

18 Q: And what you're telling me is that the document is
19 incorrect because your Palm Pilot didn't convert the
20 numbers correctly?

21 A: No, no. What I did, when I ... usually when I give
22 him this, is I have to hand ... usually what I'll do
23 is I'll put them all out to the side and then put a
24 formula to compress it, and then it adds up. And I
25 will show you one. Here's what it looks like when

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1 they've all been added up, because I think it was
2 one of these in there somewhere.

3 Q: Explain to us what you mean by you've repaired the
4 damage that had been done.

5 A: I took out the discount.

6 Q: All right. Can you walk us through the discount
7 that you applied ...

8 A: No. No, I can't.

9 Q: ... to come up with the 888 man hours?

10 A: I can't do that.

11 Q: Well, let me show you something. This is your
12 Exhibit Number Nine, and look at Bates stamp 22 and
13 23. All right? That is where the man hours
14 allegedly were contemporaneously entered onto your
15 Palm Pilot; isn't that correct?

16 A: What's the date on these? Yeah, that ...

17 Q: Well, just look ... if you could look at that
18 document for me. That's your document; isn't that
19 right?

20 A: Yeah, that's my document, yeah.

21 Q: You've introduced it into evidence. And if you
22 could switch to the second page of that document.
23 It's at the ... the second page.

24 A: This is the second page.

25 Q: And on that second page, at the bottom of the page

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1 ... second page. That's the first page.
2 A: This is the second. This is the first page right
3 here.
4 Q: Can you flip it over? It's Bates stamped 16 and
5 then Bates stamped 22. So what I'm asking you to do
6 is, this document, which is the first page, begins
7 on 2/7 and it ends on 6/8.
8 A: Uh-huh (affirmative response.)
9 Q: And then this document goes 2/7 to 6/13.
10 A: Uh-huh (affirmative response.)
11 Q: So is this the first page and this the second page?
12 A: There's something wrong with it.
13 Q: Something's wrong with it?
14 A: Yeah, something's wrong with it.
15 Q: Well, let's assume this is a whole new document,
16 number 22. Okay?
17 A: Sure looks like it, yeah.
18 Q: And if you flip to Bates stamp number 23, would you
19 agree with me that you added 40 hours to your time
20 on 11/15/2008?
21 A: And do you see it's for my time, right? Yes, I did.
22 Q: And you added that in after you got mad at Mr. Cash;
23 is that right?
24 A: That was the discount. I was working for free. I
25 was working for free for a year.

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1 Q: You'd been working for free and not putting any of
2 your time down; is that right?
3 A: Pretty close.
4 Q: Well, if you look just at your very own document,
5 don't you see that you're charging hours in June?
6 A: Yeah. You see where ... you see where it stops in
7 July and there's almost nothing here? I mean, I
8 spent ... during this period right here, I spent ...
9 probably spent 24 hours over there just working on
10 that stupid tree and the sprinkler system.
11 Q: Okay. Now, you would agree with me that these
12 records that you kept on your Palm Pilot, that you
13 testified earlier you would keep contemporaneous
14 with whatever event was happening, that they're not
15 accurate?
16 A: I took the 40 out of the air. I just guessed. I
17 did more than 40 hours.
18 Q: You pulled it out of the air ...
19 A: Yes.
20 Q: ... and added it to your time, and then charged Mr.
21 Cash for it ...
22 A: Yes.
23 Q: ... is that right?
24 A: Uh-huh (affirmative response.)
25 Q: Now, what you're telling us is that you were keeping

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1 him apprised of your hours along and along, but then
2 you changed them in the end; is that right?
3 A: When he didn't pay, yeah. When I discovered I was
4 being cheated.
5 Q: When you discovered you were being cheated, then you
6 changed the hours, correct?
7 A: He's not a friend anymore.
8 Q: And so you decided that you were going to change the
9 hours and make them more favorable to you; is that
10 right?
11 A: Yes, ma'am.
12 Q: Okay. So let's look at the next document I have.
13 Can you identify this one, Exhibit Number 13.
14 A: This is when I had made the repairs.
15 Q: That's when you made the repairs?
16 A: Yeah.
17 Q: To what?
18 A: That all discounts were off.
19 Q: Oh, you mean you made the changes?
20 A: Yeah.
21 Q: So Exhibit Number Six ... I mean ... let me see what
22 exhibit number it is. The November 6th letter,
23 which is somewhere on your ...
24 A: It's not here.
25 Q: The November 6th letter, which is Exhibit Number 12,

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1 is the discounted letter.
2 A: Uh-huh (affirmative response.)
3 Q: And then the November 12th letter, six days later,
4 is the full price letter, is that what you're
5 telling me?
6 A: If you ... these are both the same. Where's your
7 letter? Yeah.
8 Q: So six days later you write him another letter?
9 A: Yeah.
10 Q: And in the next letter the price has gone up another
11 \$8000?
12 A: Yes.
13 **MS. GRIFFIN:** Your Honor, I move to introduce Exhibit 13
14 into evidence.
15 **MR. TRUSLOW:** No objection.
16 **MS. GRIFFIN:** Without objection.
17 **THE COURT:** All right. Your motion's granted.
18 **(Defendants' Exhibit Number 13 is entered into the**
19 **record.)**
20 Q: Mr. Haynie, in looking at Exhibit Number 13, your
21 hours increased from Exhibit Number 12 ...
22 A: The hours on 12 ... let me just see it. What's 40
23 times 35? Yeah. I just added in ... back in what I
24 was ...
25 Q: You added back in what ... what you thought you were

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1 entitled to?

2 A: Yeah.

3 Q: And that amount added the 40 hours ...

4 A: If you go back to one of them, on one of the sheets

5 there was a ... this is a letter that I take from

6 this. On one of the sheets there was a wrong number

7 on it. The math is the same, but the number of

8 hours was wrong. And I think this might be the one.

9 It's ... because basically what I did was, is ...

10 this might not be the right number of hours, that

11 might be without me. If you add me into that, that

12 might ... that might be just other man hours. But

13 what I did, this is ... the difference in here, I

14 think if you multiply it out, the difference here is

15 going from \$15 an hour to \$18 an hour.

16 Q: All right. So, Mr. Haynie, you just said that the

17 difference between the \$18,000 bill and the \$26,000

18 bill is that you changed the man hours from \$18 ...

19 from \$15 an hour to \$18 an hour?

20 A: Fifteen dollars to \$18 an hour.

21 Q: And that number then increased it to \$22,299; is

22 that right?

23 A: You'd have to multiply that out. I think so.

24 Q: Well, let me ask you a question before I do the

25 math. How do you account for the fact that you go

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1 from 888 man hours to 1068 man hours?
2 A: Well, probably because ... it's 888?
3 Q: Yeah. On November 6th, 2008, you have 888 man
4 hours.
5 A: Do you have all the other spreadsheets? Okay. This
6 one shows 811 hours for other people. Not me. It
7 looks like I didn't add me into that figure.
8 Q: Into the 888 hours?
9 A: Right.
10 Q: And so what you did is, you didn't just add in your
11 40 hours, correct?
12 A: No, I corrected the hours. Okay?
13 Q: You manually corrected it?
14 A: Yeah.
15 Q: So no longer do we have the reassurance that this is
16 correct on your Palm Pilot; is that right? You're
17 correcting things after the fact?
18 A: No. I typed this from my Palm Pilot, I just
19 mistyped the wrong number for the hours.
20 Q: You mistyped the ...
21 A: Divide ... I can't do that. It's just the letter's
22 the wrong number. The Palm never changed.
23 Q: So the letter dated November 6th is wrong, and what
24 you did is you came back on November 12th and you
25 increased the hours by 180 hours; is that right?

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1 A: No.

2 Q: Well, you ... let's look. Exhibit 13 ...

3 A: I increased it by 40 hours.

4 Q: Well, let me just show you. Exhibit 13, you agree

5 with me that says 1068 man hours; is that correct?

6 A: Uh-huh (affirmative response.)

7 Q: Right there on your document that you sent to Mr.

8 Cash.

9 A: Uh-huh (affirmative response.)

10 Q: And then here's on Exhibit Number 12, you see 888

11 man hours, right?

12 A: Uh-huh (affirmative response.)

13 Q: If you subtract the 888 from the 1068, then it's 180

14 man hours that you increased it from November 6th to

15 November 12th.

16 A: Uh-huh (affirmative response.)

17 Q: And what you're saying is, oh no, you only meant to

18 increase it 40 hours; is that right?

19 A: I don't know.

20 Q: You don't know?

21 A: I mean, you know, you're getting me confused.

22 Q: Well, Mr. Haynie, the reason we're here today is

23 because your numbers changed throughout ...

24 A: That's not why we're here.

25 Q: ... the project.

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1 A: That's not why we're here.
2 Q: Mr. Haynie, you just answer my questions about your
3 man hours. Is it fair to say that you increased it
4 by 180 hours in six days?
5 A: No. No.
6 Q: No?
7 **THE COURT:** Excuse me. If it's possible to put a pin in
8 it right here, I'm willing to stand in recess until
9 9:00 a.m. in the morning, and then we'll resume
10 cross-examination, Mr. Haynie.
11 A: Okay.
12 **MS. GRIFFIN:** All right. Thank you, Your Honor.
13 **THE COURT:** All right, thank you.
14 **MR. TRUSLOW:** Thank you.
15 (There being nothing further, the hearing was adjourned at
16 4:43 p.m. and resumed at 10:00 a.m. on Tuesday, September
17 20, 2011.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2009-CP-40-0064

F.M. Haynie d/b/a Doc Wild's)
General Contractor,)
Plaintiff,)
v.)
Paul E. and Carole Cash,)
Defendants.)

COPY

ORIGINAL

HEARING

DAYS TWO AND THREE

Tuesday, September 20, 2011
10:01 a.m. to 4:28 p.m.

Thursday, September 22, 2011
9:46 a.m. to 12:12 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, commencing on the 19th day of September, 2011, and concluding on the 22nd day of September, 2011, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

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1 **F.M. HAYNIE**, having been duly sworn, hereby testifies as
2 follows:

3 **MR. HAYNIE - CROSS-EXAMINATION RESUMED BY MS. GRIFFIN:**

4 Q: Mr. Haynie, good morning.

5 A: Good morning.

6 Q: I want to go back to when you initially started
7 meeting with Mr. Cash. That would have been
8 sometime in January of 2007; is that correct?

9 A: Yes.

10 Q: And at that time you were aware that he had been
11 discussing this project with a number of other
12 people; is that correct?

13 A: No.

14 Q: You weren't aware that there were any other
15 estimates out there?

16 A: Huh-uh (negative response).

17 Q: All right. Your first diagram, and I do not believe
18 it's been admitted yet, but I want you to take a
19 look at that, Defendants' Exhibit Number Three. Can
20 you identify that?

21 A: It's not the first, but I can identify it, yes.

22 Q: Okay. It's not the first?

23 A: No.

24 Q: Can you tell the Court what that is?

25 A: This is the first plan after he gave me the picture

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1 that he wanted to copy.

2 Q: That's a schematic of ...

3 A: Yeah.

4 Q: ... of the floor plan; is that right?

5 A: Yeah.

6 **MS. GRIFFIN:** Your Honor, we need to introduce Defendants'

7 Exhibit Number Three without objection.

8 **THE COURT:** All right. Motion's granted.

9 **(Defendants' Exhibit Number Three is entered into the**

10 **record.)**

11 Q: Now I'm going to show you what has not been marked

12 yet, and I'd like to have marked for identification.

13 **COURT REPORTER:** That's 24.

14 **(Defendants' Exhibit Number 24 is marked for**

15 **identification purposes.)**

16 Q: That's Exhibit Number 24. And can you identify this

17 document?

18 A: Actually, I'm not sure about that one. It's my

19 drawing, but I don't remember getting this back from

20 the inspectors. I just don't remember.

21 Q: You never received ...

22 A: But it is my drawing.

23 Q: ... it back from Mr. Rivera?

24 A: I don't know.

25 Q: And is Mr. Rivera the city inspector for the City of

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1 Forest Acres ...

2 A: He was ...

3 Q: ... back in ...

4 A: He was ...

5 Q: ... 2007?

6 A: He was a contract inspector.

7 Q: A contractor inspector. And the person who is now

8 in charge of that is Mr. Frady?

9 A: Yeah.

10 Q: Is that correct?

11 A: Yeah.

12 Q: And you're familiar with Mr. Frady?

13 A: Yes.

14 Q: All right. I'm going to show you another document,

15 Defendants' ... it's marked as Defendants' Exhibit

16 Number Two. Can you identify that document for the

17 record?

18 A: Do you know the date is?

19 Q: It's a building permit; isn't that correct?

20 A: I'm just looking for the date. Yeah, it's a

21 building permit.

22 Q: And it's a building permit for Mr. Cash's project at

23 1501 Greenhill; isn't that right?

24 A: Yes.

25 Q: And it has your signature at the bottom; is that

1 correct?

2 A: Yes.

3 Q: And this document is dated February 27, 2007; isn't

4 that correct?

5 A: Yes.

6 MS. GRIFFIN: Your Honor, I need to introduce this into

7 evidence. This is Exhibit Number Two for the

8 defendant.

9 MR. TRUSLOW: No objection.

10 THE COURT: Okay. Motion's granted.

11 (Defendants' Exhibit Number Two is admitted into the

12 record.)

13 Q: And, Mr. Haynie, if you look at this document,

14 Defendants' Exhibit Number Two, this is something

15 that you filled out in your handwriting; is that

16 correct?

17 A: Yes. Uh-huh (affirmative response).

18 Q: And in this document that you presented to the

19 building officials at the City of Forest Acres on

20 February 27, 2007, you stated that you were going to

21 build a building/storage/shop/doghouse for \$21,000;

22 is that correct?

23 A: Yeah.

24 Q: And you recognize that you were the general

25 contractor as Doc Wild and that you were intending

1 to use electrical systems; is that correct?
2 A: Uh-huh (affirmative response).
3 Q: And so at that point ...
4 A: What's the date on this?
5 Q: February 27, 2007. Is that a fair characterization
6 of what the sequence of events were? So the next
7 thing that occurred is I believe there was a
8 document that's marked in the plaintiff's case with
9 some handwriting on it. I'd like to mark this in
10 the defendants' case as Exhibit 25.
11 **(Defendants' Exhibit Number 25 is marked for**
12 **identification purposes.)**
13 Q: Can you identify this document for the Court?
14 A: Yeah.
15 Q: Okay. Tell us what that is.
16 A: That's our agreement.
17 Q: That's your agreement. It's Defendants' Exhibit
18 Number 25.
19 **MR. TRUSLOW:** No objection.
20 **MR. GRIFFIN:** Your Honor, without objection.
21 **THE COURT:** Motion is granted.
22 **(Defendants' Exhibit Number 25 is entered into the**
23 **record.)**
24 Q: This Exhibit Number 25 you would agree with me that
25 you were the author of that letter; is that correct?

1 A: Yes.

2 Q: You drafted all the language within the letter?

3 A: Yes.

4 Q: And that is language that you've used on other jobs
5 or just on Mr. Cash's job?

6 A: Probably just on his, yeah.

7 Q: Just on his job?

8 A: Well, this was a first, doing one of these backyard
9 man caves.

10 Q: And this language, you agree with me that you told
11 him that it would take approximately eight weeks to
12 complete; is that right?

13 A: Uh-huh (affirmative response).

14 Q: You have to say yes to help the court reporter out
15 here.

16 A: Yes.

17 Q: And that the cost would be roughly \$35,000; is that
18 right? And that meant cost, the total cost ...

19 A: Yeah.

20 Q: ... of the project; is that right?

21 A: Yes.

22 Q: And then you say also that ...

23 A: And that was a guesstimate. It says on there
24 guesstimate.

25 Q: We guesstimate the job to take eight weeks and cost

1 roughly \$35,000?

2 A: Right.

3 Q: So you're saying guesstimate refers to cost, roughly

4 \$35,000?

5 A: It's a guesstimate, it's not an estimate.

6 Q: So guesstimate, and what you contend is or what you

7 contend that this letter says is that you're going

8 to do it on cost plus 25 percent; is that right?

9 A: That's the main part, yes.

10 Q: And that your direct labor is going to be billed at

11 \$30 an hour and employees at \$18 an hour; is that

12 correct?

13 A: That's correct.

14 Q: And that was outside of the 25 percent or within the

15 25 percent?

16 A: I don't understand your question.

17 Q: Well, when it says direct labor, that's your own

18 employees that you're paying money to; is that

19 correct?

20 A: Yes.

21 Q: And that money would already have a profit built

22 into it; isn't that correct?

23 A: No. What I do is I take materials and labor cost,

24 then I add 25 percent.

25 Q: Okay. And where does that say on your letter

1 agreement with Mr. Cash that you take the materials
2 and then the labor costs and you add the 25 percent?
3 A: It says cost plus 25 percent.
4 Q: Okay. And doesn't it say that in the first line,
5 and then in the second line it says a different
6 agreement on the labor?
7 A: No, that's how you get the cost. That's the labor
8 cost.
9 Q: All right. Now, Mr. Haynie, isn't it true that
10 after you sent this letter on March 2nd, 2007, that
11 Mr. Cash asked you for clarification because he
12 didn't understand precisely what you were setting
13 forth in that letter?
14 A: No.
15 Q: Okay. Well, explain to me the origin of Defendants'
16 Exhibit Number 20, which already has been entered
17 into the record at this time.
18 A: That's the estimate that was based on that drawing
19 right there.
20 Q: The estimate based upon the drawing?
21 A: This floor plan right here.
22 Q: In January? And that estimate ...
23 A: Yes.
24 Q: ... is something that you prepared from your home;
25 is that correct?

1 A: Yes.

2 Q: And this was based on a trial program; is that
3 correct, where it says across here Driver Trial?

4 A: Yeah. Yeah.

5 Q: It wasn't something that you regularly used; is that
6 correct?

7 A: No, I did not regularly use it.

8 Q: You just used it because ... who asked you to give a
9 line item estimate? Mr. Cash?

10 A: Yeah. I was trying to get a handle on what it was
11 going to cost, yeah.

12 Q: You were trying to answer his question that he
13 wanted it to be itemized; is that correct?

14 A: Yeah.

15 Q: That's what you were trying to do?

16 A: That's what I was trying to do.

17 Q: Is he wanted a line item estimate, and so you
18 prepared a line item estimate for him?

19 A: Yes.

20 Q: And that was done after the March 2nd letter; isn't
21 that correct?

22 A: After the March 2nd letter? No.

23 Q: Do you have date on that?

24 A: This was done with this drawing; it would be before
25 this day right here, whatever that is, February. It

1 says February something.

2 Q: Does your estimate have a date on it?

3 A: I don't see it. Do you see it? I don't see it.

4 Q: All right. Now, Mr. Haynie, looking at that

5 estimate, which is Defendants' Exhibit Number 20,

6 which you now agree that Mr. Cash wanted to see more

7 detail for this project, correct?

8 A: Yeah.

9 Q: And he had given you details that you included

10 within that estimate; isn't that correct?

11 A: The best I could, yes.

12 Q: As best you could, because you were having a

13 conversation with him as to what the scope of the

14 work would be, correct?

15 A: And that was a moving target.

16 Q: And well that estimate though was not a moving

17 target; is that fair?

18 A: No, this lasted about as long as it took to print

19 it.

20 Q: The estimate lasted as long as it took to print it?

21 A: It changed. It changed almost immediately.

22 Q: So let's look at it. Can you hand it back to me and

23 we can look at it together. You're saying it

24 changed immediately, and let's look and see what the

25 total of this estimate is. The total that you

1 provided to Mr. Cash as the cost estimate for this
2 job was \$38,264.89; is that correct?
3 A: (Nods head affirmatively.)
4 Q: Can you say yes?
5 A: Yes.
6 Q: And that number is the number that you and Mr. Cash
7 agreed that you were going to do this project for;
8 is that correct?
9 A: No.
10 Q: No?
11 A: No.
12 Q: Okay. Was the number \$35,000?
13 A: No.
14 Q: Were there things that were taken out of this
15 contract so that you said, all right, ...
16 A: The first thing that happened ...
17 Q: ... we're going to do it?
18 A: ... was we took the bathroom out of that. That's
19 why you've got the \$35,000 guesstimate.
20 Q: Okay. So you ... all right. Now, let me just get
21 this straight. You agree that this document with
22 the \$38,264, what your contention is is that the
23 bathroom was taken out first, correct?
24 A: It was in that process, yes, it was taken out.
25 Q: And the cost of that bathroom would be about \$3000;

1 is that correct?

2 A: We were just ... it's a guess. We were not nailing
3 stuff down.

4 Q: Well, let's look. If you took the bathroom out of
5 this, let's just look at it. It would be \$364 for
6 the washroom group rough-in assembly, \$318 for the
7 water closet, and \$330 for the countertop mounted
8 steel lavatory, so that's about \$1000; is that
9 correct?

10 A: Yeah.

11 Q: And even if you add 25 percent on top of that,
12 you're not anywhere near \$3000; isn't that fair?

13 A: We weren't ... I wasn't using that. That was just
14 given to him as an estimate.

15 Q: As an estimate. Now, this estimate that you weren't
16 using, isn't it fair that you were following
17 portions of it?

18 A: That's ... when I switched to guesstimate, I was
19 not.

20 Q: Well, Mr. Haynie, did you follow the way that the
21 foundation was put down?

22 A: Follow the way the foundation ...

23 Q: The estimate, is this the way the foundation was put
24 in?

25 A: Pretty much. I did that with all faith that I was

1 producing a document, but as it turned out that was
2 almost worthless. But that was the first document
3 based on this drawing right here.
4 Q: You were producing a document that you intended to
5 abide by; is that correct?
6 A: Yes.
7 Q: And so essentially the foundation and the way the
8 walls were formed up, that was all part of this
9 document; isn't that correct?
10 A: Yes.
11 Q: And the way the outside of the building was going to
12 be ... or the way it was to be framed up is part of
13 this document; is that correct?
14 A: Yes.
15 Q: And then the fact that it was going to have porch
16 support posts, which are columns, that was part of
17 the original ...
18 A: Yes.
19 Q: ... contract? Architectural shingles, that was part
20 of the original contract?
21 A: There was no contract. It was ...
22 Q: Okay. Part of the original estimate; is that right?
23 A: Estimate. And that one there, yes.
24 Q: And in this one here there were a certain number of
25 windows called for; is that correct?

1 A: Yes.

2 Q: And there were amounts allotted for electrical,
3 plumbing and the other systems within the house;
4 isn't that right?

5 A: As best I could, yes.

6 Q: HVAC?

7 A: Yes, as best I could.

8 Q: As best you could according to your abilities as a
9 builder, using your estimating system that was on a
10 trial basis; is that right?

11 A: I suppose.

12 Q: All right. Now, Mr. Haynie, you say that you and
13 Mr. Cash never had an agreement that the contract
14 price was going to be \$35,000; is that what you just
15 testified to?

16 A: There was never a definite this is what we're going
17 to do it for.

18 Q: Okay. I think we previously marked Exhibit Number
19 Eight and it's entered into the record at this time.
20 I'm going to show it to you and if you would look at
21 that, that's a document that you've prepared; is
22 that correct?

23 A: Yes.

24 Q: And that's a document that is one of your
25 spreadsheets?

1 A: Yes.
2 Q: Is that fair?
3 A: Yes.
4 Q: And if you look in the upper left hand corner of
5 that document you'll see where it says Contract,
6 correct?
7 A: Yeah.
8 Q: And the contract price on the document that you
9 prepared is \$35,000; isn't that right?
10 A: No.
11 Q: Well, it says right there ...
12 A: That's not part of the ... I just stick that in
13 there because we use it as a ... in here, see
14 there's no extras, that's the starting point. That
15 has nothing to do with the building.
16 Q: Okay. Well, you say the \$35,000 that you put on
17 your document is what you call a starting point?
18 A: It's just ... that's a spreadsheet that's printed
19 out from my Palm Pilot, and in my Palm Pilot it says
20 Contract. And I usually put some sort of target pro
21 forma thing I'm aiming at.
22 Q: And the target pro forma that you were aiming at
23 based upon our estimate and your conversations with
24 Mr. Cash was \$35,000?
25 A: We started out aiming at \$35,000.

1 Q: And your contract that you were starting out at
2 aiming at \$35,000, isn't it true that you continued
3 to aim at that number throughout the project and
4 continue to use that ...
5 A: No.
6 Q: ... \$35,000 ...
7 A: No. No. No. The problem is I never changed that
8 number. Immediately after all this was done it
9 changed drastically.
10 Q: Well, your documentation that ... did you testify
11 earlier that this was documentation that you
12 provided to Mr. Cash or didn't provide to Mr. Cash?
13 A: I did provide this to Mr. Cash, this right here.
14 Q: You provided it to Mr. Cash, and so at the top of
15 the page it said that the contract price was
16 \$35,000?
17 A: Yes. But that was never intended to be used. The
18 purpose for this was to show him the cost.
19 Q: And you also contend you provided Defendants'
20 Exhibit Number Nine to Mr. Cash; is that right?
21 A: Yes.
22 Q: And that would show that the contract price was
23 \$35,000 ...
24 A: Yes. Yes.
25 Q: ... isn't that right?

1 A: Yeah.

2 Q: And throughout the documentation that you allegedly
3 provided to Mr. Cash, you continued to use \$35,000
4 ...

5 A: I didn't use ...

6 Q: ... as the amount?

7 A: It's just printed out.

8 **THE COURT:** I'm sorry. Let her finish asking the question
9 before you answer it.

10 A: Okay.

11 **THE COURT:** Could you repeat the question, please?

12 Q: Throughout the documentation that you provided to
13 Mr. Cash allegedly, that you said you gave to him,
14 at the top of the page it says that the contract
15 price, it says Contract ...

16 A: It says Contract ...

17 Q: ... \$35,000?

18 A: ... \$35,000.

19 Q: And if we're looking at your Plaintiff's Exhibit
20 Number Nine where we see it on Cash Final, and at
21 the top it still says contract \$35,000; is that
22 correct?

23 A: That's what it says.

24 Q: All right. Now, when the project got started, let's
25 talk about that. You told us that you understood

1 that you were going to have electricity, HVAC,
2 plumbing, a sink and a toilet, and that the man
3 hours that were going to go into this project would
4 be 367 man hours; is that correct?
5 A: Wait a minute. Say ... say what?
6 Q: The original estimate on this project, Defendants'
7 Exhibit ...
8 A: We never used that.
9 Q: ... Number 20.
10 A: We never used it.
11 Q: Okay. You provided it to Mr. Cash but you never
12 used it?
13 A: That was, you know, that was rendition number two.
14 Q: And under rendition number two, you would agree that
15 the hours that you estimated as a builder ...
16 A: I have no idea what that says.
17 Q: You have no idea what it says?
18 A: I did the drawing, it was for his purposes. I don't
19 know how many hours is in there.
20 Q: It was for his purposes as a homeowner because he
21 wanted to understand what the scope of his project
22 would be; is that fair?
23 A: But you're talking about something we didn't build.
24 Q: Well, this document you provided to Mr. Cash; is
25 that right?

1 A: Early in the game, yes.
2 Q: Early in the game. And this amount of \$38,000 you
3 would agree with me is very close to the \$35,000
4 that is in your Defendants' Exhibit Number 25,
5 correct?
6 A: It is close, yes.
7 Q: So we're not in two different ballparks; is that
8 right?
9 A: Actually I think we are, but I'm in one and you're
10 in the other.
11 Q: Okay. Well, as far as percentage wise, do you agree
12 with me we're talking a ten percent difference
13 between the estimate that you prepared for your
14 client of \$38,264 and this letter ...
15 A: Yes, they're close.
16 Q: ... that says \$35,000? So we're not in two
17 different ballparks, correct?
18 A: I still think we are, but ...
19 Q: Well ... okay, Mr. Haynie, let's continue to look at
20 what your professional opinion was when you prepared
21 this estimate and gave it to Mr. Cash for his use in
22 understanding what his costs would be with this
23 project. You also told him that the materials would
24 be \$13,210.76; is that correct?
25 A: I never used that.

1 Q: You used it to the extent that you gave it to your
2 client; is that fair?
3 A: And it's on the wrong drawing.
4 Q: And you used it ... he relied on it as something
5 that was going to be the scope of the work that was
6 going to be done ...
7 A: No, it wasn't ...
8 Q: ... in his backyard?
9 A: ... even close. It wasn't even close.
10 Q: Not even close?
11 A: The reason we went to the cost plus was because we
12 couldn't pin down what we were going to build.
13 Q: Now, Mr. Haynie, just for the Court's understanding,
14 let me just make sure I understand what this
15 estimate was that you claim Mr. Cash didn't rely on.
16 The labor charges were supposed to be a total of
17 \$11,309; is that fair, what your ...
18 A: Whatever it says.
19 Q: ... estimator says?
20 A: You can read it off. That's what it says.
21 Q: And then the subtotal of the project would have been
22 the \$28,000; and you had overhead; a contingency
23 amount of \$1,600; and profit; for the total of, and
24 then you add tax, estimated five percent tax, for a
25 total of \$38,000?

1 A: I was trying to give him a ballpark price.
2 Q: You were trying to give him a price that he would be
3 willing ...
4 A: A ballpark price.
5 Q: ... that he would be willing to hire you to do this
6 project, correct?
7 A: No.
8 Q: All right. Now, after that document, you agree with
9 me that things changed?
10 A: Yes.
11 Q: And there's some things within that document, the
12 original estimate, that were taken out; is that
13 fair?
14 A: They were taken out and put back in.
15 Q: Taken out. For instance the bead board ceiling
16 that's on there, that was taken out, correct?
17 A: Yeah.
18 Q: And that was never put back in?
19 A: No.
20 Q: And let's see, there were six windows called for
21 within the estimate and it was reduced to four, and
22 there never six windows put in; is that right?
23 A: I never related back to that document. You just ...
24 you can tell me what it is.
25 Q: You never looked back at that document that you ...

1 A: No.
2 Q: ... had provided to your client, ever again?
3 A: No.
4 Q: Okay. And so in the document where it calls for
5 these bathroom fixtures, you agree with me that you
6 didn't even use materials that were purchased for
7 the bathroom; isn't that right?
8 A: Say that again?
9 Q: You didn't use materials that you went and purchased
10 anywhere for the bathroom?
11 A: I didn't use materials that I purchased for the
12 bathroom?
13 Q: That's what I asked. Let me help you out. You got
14 them from somebody else's house; isn't that right?
15 You recall in your deposition testimony that you
16 said you recycled fixtures from another bathroom, it
17 is not a fancy bathroom.
18 A: Yeah, yeah. With the commode, yeah.
19 Q: Right. And the sink, correct?
20 A: Yeah, the sink because it was temporary.
21 Q: The sink was temporary?
22 A: Yeah.
23 Q: So you never finished off the commode or the ...
24 A: The bathroom wasn't finished. The bathroom was
25 never finished.

1 Q: All right. Let's ... I'm going to show you two
2 photographs that I'd like for you to identify for
3 the record. One is marked as Defendants' Exhibit
4 Number 1H. Can you identify that exhibit?
5 A: Yeah...
6 Q: And what is it?
7 A: That's the bathroom.
8 Q: And what part of the bathroom is that?
9 A: That's the sink.
10 Q: And that sink is mounted on what?
11 A: It's hung on the wall, it's on 2x4s. It's
12 temporary.
13 Q: It's hung on the wall, it's temporary, and that's
14 the way you left it when you left; is that right?
15 A: I don't remember the exact condition, but it was
16 temporary.
17 Q: But you never went back and made it permanently
18 affixed ...
19 A: No.
20 Q: ... to the bathroom?
21 A: We didn't finish the bathroom.
22 **MR. TRUSLOW:** Without objection.
23 **MS. GRIFFIN:** All right. Your Honor, without objection
24 defendant moves to introduce Exhibits 1G and 1H.
25 **THE COURT:** Motion's granted.

1 (Defendants' Exhibit Numbers 1G and 1H are entered into
2 the record at this time.)
3 Q: Okay. Both these exhibits, 1G and 1H, you agree
4 with me that they fairly represent the condition of
5 the bathroom in Mr. Cash's house, or his shed house,
6 when you left the project?
7 A: Yeah, pretty close.
8 Q: And do you see any differences from the time you
9 left until these pictures were taken?
10 A: Well, it's got a cooler there. Do you know when
11 they were taken? I mean, that's the way I remember
12 it because we didn't finish the bathroom.
13 Q: Okay. And those fixtures that were estimated for
14 within your estimate were never paid any money ...
15 A: No.
16 Q: ... to use those; is that right? They were just
17 freebies?
18 A: And I didn't charge him for them either.
19 Q: Okay. But you didn't subtract anything off the
20 estimate that you had given him, correct?
21 A: Like I said, I wasn't using that estimate..
22 Q: Now, would you agree with me that there was nothing
23 in writing between you as the contractor and Mr.
24 Cash as the homeowner for any change orders to this
25 project?

1 A: They weren't necessary. I was building whatever he
2 wanted.
3 Q: And you never believed that you should put in
4 writing anything ...
5 A: How do you do a change order; if you don't have a
6 contract, you don't have a defined scope of what
7 you're doing, how do you do a change order?
8 Q: So you never did any change orders?
9 **THE COURT:** Excuse me. You said you don't have a contract?
10 A: We have a cost plus contract. He's paying for
11 whatever we do. And so there's nothing ... it's
12 never defined exactly what we're doing. We're
13 working all over the yard, I mean, we were taking
14 down trees, we were working on the sprinkler system.
15 A change order, when you've got a fixed contract a
16 change order is to alter that fixed contract. We
17 were cost plus 25 percent.
18 **THE COURT:** Okay. I'm sorry to interrupt. I'm sorry.
19 Please proceed.
20 Q: Mr. Haynie, you understand that when you have
21 something in writing, that in order to make changes
22 that the best way to document it would be to have a
23 change order?
24 A: How would you relate it to ... what would it changed
25 from?

1 Q: Well, let's assume that the contract is the
2 estimate.
3 A: That's not the estimate. That was never used. It
4 wasn't used.
5 Q: All right. Now, you mentioned that you did other
6 things in the yard, did you ever put that in
7 writing?
8 A: No. We were there ... he paid me man hours and
9 materials and we did whatever he wanted.
10 Q: And, Mr. Haynie, now, you understand that the scope
11 of the work that you were hired to do initially was
12 the shed; isn't that right?
13 A: Yeah, that lasted about ten minutes.
14 Q: About ten minutes? Well, in those ten minutes you
15 didn't take any time to write any other
16 documentation about what the scope of the work would
17 be?
18 A: I'd be still writing.
19 Q: Okay. So you didn't do anything in writing. Now,
20 let me look at the language you chose to use on the
21 letter you wrote to Mr. Cash. It says, We will
22 construct the subject addition outbuilding to your
23 home at 1501 Greenhill generally according to the
24 sketch we previously drew on a cost plus 25 percent
25 basis. Now, that language that you chose to use is

1 only with respect to the shed; isn't that correct?

2 A: No.

3 Q: Well, show me language ...

4 A: Do you understand the word "generally"?

5 Q: ... in the document ... "generally" modifies

6 "according to the sketch", correct? That's your

7 language?

8 A: Yes.

9 Q: My question for you is this. If other work was

10 being requested by the Cashes that you've testified

11 to, taking down trees, changing out the electrical

12 service to their house, that is not subject to this

13 letter agreement; isn't that correct?

14 A: You attorneys would have to figure that one out. He

15 was a friend, I was working. That's the basis I was

16 working.

17 Q: And so you as a contractor would figure out that you

18 need to separately quote the things that were being

19 done at his house; isn't that fair?

20 A: No.

21 Q: And so if Mr. Cash wants a tree to be taken down,

22 then what you would do is you would give him the

23 price; isn't that right?

24 A: No.

25 Q: You didn't give him a price?

1 A: No.
2 Q: Never during the entire time ...
3 A: No, no, I would give ...
4 Q: ... he was ...
5 A: I would guesstimate what it would cost to do
6 something, and that was always good enough.
7 Q: You never were asked specifically by Mr. Cash what
8 would this cost be if I want to take down this pine
9 tree?
10 A: He probably did ask.
11 Q: And he probably asked you and you probably told him
12 a specific amount; isn't that right?
13 A: No, I said about.
14 Q: About?
15 A: Yeah.
16 Q: About \$600?
17 A: Yeah, a rough estimate.
18 Q: Okay. And that about \$600 never told Mr. Cash when
19 he would ask to take down the tree that you were
20 going to add another 25 percent on top of the \$600;
21 isn't that right?
22 A: That's not right.
23 Q: No, Mr. Haynie, show me where anything you have that
24 says if Mr. Cash asks you what is the cost of taking
25 down the tree, that you then add 25 percent on top

- 1 of that?
- 2 A: Okay. If I say, let's say ... we took down a pine
3 tree, and we're guessing you're talking about the
4 one that probably cost him in the neighborhood of
5 \$600. I say this is about what it'll cost because I
6 know what it will cost me to pay Saulo to cut it
7 down, and then I've got to haul it off. But when I
8 figure the bill up, it's always going to be the cost
9 plus 25 percent.
- 10 Q: You never explained that to Mr. Cash, did you?
- 11 A: He knew ... he got ... he looked at it every minute.
12 That's the way we proceeded. That's the way the job
13 progressed from start to finish.
- 14 Q: Mr. Haynie, now, if you told Mr. Cash for instance
15 that the hackberry, the cost would be, the hackberry
16 tree to take it down would be \$800 plus the cost of
17 the dumpster. Now, that was a sum certain price
18 that you gave to Mr. Cash, correct?
- 19 A: No.
- 20 Q: You didn't tell him that?
- 21 A: No.
- 22 Q: Okay. Now, all of these extras, all the things that
23 are not constructing the shed, those are things that
24 are on the side; is that right?
- 25 A: I was working on the basis of this contract.

1 Q: And those things that were not within this contract,
2 within your letter agreement ...

3 A: There was nothing that I did ...

4 Q: ... and within the estimate ...

5 A: ... over there that was not within that contract.

6 Q: So your position is whatever you did was subject to
7 your letter of March 2nd, 2007, which says we will
8 construct the subject addition outbuilding to your
9 home at 1501 Greenhill; is that right?

10 A: That's how we did from the time we started working,
11 the very first bill was presented that way and the
12 last bill was presented that way.

13 Q: Now, let's talk a little bit about the progress of
14 this job, because there was some testimony earlier
15 about when it was completed and I want to make sure
16 I understand this. There is certain documentation
17 that you've provided that is just a summary, and
18 it's Plaintiff's Exhibit Number Nine, and this
19 documentation shows the hours that you claim that
20 your men/woman worked at the project; isn't that
21 right?

22 A: Yeah.

23 Q: And those hours are not supported by any time cards;
24 is that correct?

25 A: They didn't do time cards.

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1 Q: Didn't do any time cards?
2 A: No.
3 Q: And, in fact, some of these employees were paid in
4 cash; isn't that right?
5 A: No.
6 Q: No?
7 A: They ... they ... I would pay Isauro, and he split
8 the money with Manuel.
9 Q: So there was a payment made to one ...
10 A: There was always ...
11 Q: ... person ...
12 A: There was always a check associated. They weren't
13 paid with cash out of my pocket. There was always a
14 check associated with it.
15 Q: And those hours also were not paid for allegedly for
16 your daughter; is that correct?
17 A: I don't understand what you're saying.
18 Q: Well, what I'm trying to do is find out what
19 evidence do you have for this Court that you
20 actually had people working on the job for the hours
21 that you put on your summary. Where is your
22 supporting documentation?
23 A: At the time, I had it. I keep the time. On every
24 week I keep it and then I log it in there. Okay,
25 then I give it to him. There's no discussion. He

1 doesn't dispute anything, he says okay, he knows we
2 were there, we were always there. So there's no
3 reason for me to make backup copies and what have
4 you. I write the checks.
5 Q: Mr. Haynie, let me show you Defendants' Exhibit
6 Number 18. Can you identify this document?
7 A: Yes. Turbo Tax tax return for it looks like me.
8 Q: All right. And if I just ask you to go to the back
9 of that document, is that the W-2 form that you
10 prepared for your daughter?
11 A: Yeah.
12 Q: And that amount is \$882?
13 A: That's right.
14 Q: And that's the amount that you paid her in 2007 for
15 the work that she did on all the jobs for the entire
16 year; is that correct?
17 A: No.
18 Q: No? That's not the amount you paid her?
19 A: No.
20 Q: Well, let me just mark this as Defendants' Exhibit
21 Number 26.
22 **MR. TRUSLOW:** No objection.
23 **MS. GRIFFIN:** Your Honor, may I introduce Defendants'
24 Exhibit 26 into the record?
25 **THE COURT:** Motion is granted.

1 (Defendants' Exhibit Number 26 is marked and entered into
2 the record.)
3 Q: Now, Mr. Haynie, that document which reflects your
4 report to the government of what you paid your
5 daughter shows that you paid her \$882; is that
6 right?
7 A: In wages, yes.
8 Q: In wages. And that would be what you would report
9 to the government as her income for working for you;
10 is that right?
11 A: That was what it was, yes.
12 Q: And that's what it was? And so any other amounts
13 you paid to her would not be wages?
14 A: I suppose.
15 Q: You suppose? And so, I don't have any documentation
16 that can support your daughter's ...
17 A: Her hours are on there.
18 Q: Her hours are on here?
19 A: Yes.
20 Q: And her hours don't exceed the \$882?
21 A: Oh yes, they absolutely exceed that.
22 Q: Absolutely exceed that?
23 A: Yeah. Here would be the rest of it, \$7000 to child
24 care.
25 Q: So what you did is you paid your daughter's expenses

1 and then you

2 A: And I paid for her house.

3 Q: Paid for her house?

4 A: Yeah. About roughly ... I mean, it was a lot of

5 money.

6 Q: And so that was income that was to your daughter

7 that you, as the tax preparer of these tax returns,

8 didn't tell the IRS about; isn't that right?

9 A: No, and I should have because she could have gotten

10 more money back.

11 Q: But you didn't do it? You chose not ...

12 A: I didn't.

13 Q: ... to do that?

14 A: I didn't do that. I'm not a CPA.

15 Q: But you prepare your own taxes?

16 A: Yes.

17 Q: And you choose to prepare your own taxes?

18 A: Yes.

19 Q: Now, on your tax return you agree with me that you

20 were working on projects other than Mr. Cash's

21 projects in the year 2007; isn't that right?

22 A: Yes.

23 Q: So your gross receipts were \$271,000?

24 A: If that's what it says. I'm not looking at it.

25 Q: That's what it says, correct?

1 A: Yes.

2 Q: And then the amounts that ...

3 **THE COURT:** Excuse me. Yes, sir?

4 **MR. TRUSLOW:** Your Honor, I believe if she's going to
5 cross-examine the witness about the document, she
6 can put it in and we wouldn't have an objection.
7 But I don't think there's going to be a record ...
8 or it's proper to cross-examine him about it without
9 it being a part of the record.

10 **THE COURT:** Ms. Griffin?

11 **MR. GRIFFIN:** Your Honor, I may put it in eventually but I
12 was just asking leave of Court to cross-examine him
13 and then maybe I'll put it in, maybe I don't want to
14 put it in.

15 **THE COURT:** All right. Mr. Truslow?

16 **MR. TRUSLOW:** Because I don't think the rules work that
17 way, with all respect, Your Honor. I think if she's
18 going to cross-examine, the process is can you
19 identify this document, yes, what is it, he
20 identifies it; you can't then start cross-examining
21 somebody about a document without making it a part
22 of the record. Among other reasons, for
23 completeness.

24 **THE COURT:** Objection overruled.

25 Q: Mr. Haynie, your gross profit was, I mean your gross

1 receipts were \$271,000. So in that year, that would
2 mean that you were doing a substantial amount of
3 other work for customers ...
4 A: We did that, yes.
5 Q: ... other than Mr. Cash; isn't that correct?
6 A: That wasn't our only job, yeah.
7 Q: Wasn't your only job? You had a number of jobs?
8 A: Yes.
9 Q: And if Mr. Cash paid you about \$50,000 ... \$50,500
10 and some of that was paid in 2008, then
11 substantially ...
12 A: Wait a minute. Say that again? And some of that
13 was paid in 2008?
14 Q: Right. I think ...
15 A: In 2007 he paid me, I gave him a bill for \$50,000
16 and I think he paid about \$30,000 of it.
17 Q: Okay. Well, that's my question is, part of the
18 payment was made in 2007, and we talked about it
19 yesterday, and I think your documents reflect the
20 dates of when payments were made to you, and part of
21 it was made in 2008. So if \$30,000 was paid to you
22 by Mr. Cash in 2007, then that means you had
23 \$240,000 worth of other work that you were doing
24 that year; is that right?
25 A: Yes, that's the math. Yes.

1 Q: And the math is that your workers were in a lot of
2 different places, correct?
3 A: Yes. Yes.
4 Q: And you only had a finite number of workers; it was
5 just the three people, correct?
6 A: Yes ...
7 Q: Sky, Manuel and ...
8 A: Yes, yes.
9 Q: ... Isauro, correct?
10 A: Yeah. And then later on Mark.
11 Q: All right. But during the time that Mr. Cash's
12 project was ongoing there were three people,
13 correct?
14 A: Yeah.
15 Q: All right. Let's talk about the labor that you and
16 your workers did at this direct labor cost; not
17 subcontractors, but the labor costs.
18 **THE COURT:** Let me interrupt you. Now, are you counting
19 April as an employee as well?
20 **MS. GRIFFIN:** Yeah, Sky.
21 Q: Sky, your daughter is your employee, correct?
22 A: Yeah, she's an employee, yes.
23 Q: So it's Sky, Isauro, and Manuel?
24 A: Right. And at first there was another guy, Robert
25 something, he's dead now.

1 Q: Mr. Robert Boyt; was that his name?
2 A: Yeah.
3 Q: And ...
4 **THE COURT:** I want to make sure I have the names. I wrote
5 down the witness's name as April.
6 A: Well, we call her Sky.
7 **THE COURT:** You call her Sky? Okay. So April and Sky are
8 the same person?
9 A: Yeah. Uh-huh (affirmative response).
10 **MR. GRIFFIN:** Yes.
11 **THE COURT:** All right. Thank you. I'm sorry.
12 **MS. GRIFFIN:** I'm sorry.
13 Q: Mr. Haynie, the initial pouring of the foundation
14 over at this project, it had a problem; isn't that
15 right?
16 A: The initial pouring, we ... with the wall we had a
17 problem, yes.
18 Q: And you had to go back and fix it; isn't that
19 correct?
20 A: Yes.
21 Q: And in doing that you created another column of
22 hours ...
23 A: At no charge.
24 Q: ... on your Plaintiff's Exhibit Number Nine, and
25 that would be called a no-charge hour?

1 A: Right.
2 Q: And those were hours that you didn't expect Mr. Cash
3 to pay for; isn't that right?
4 A: Right.
5 Q: And those hours would have been backed out of the
6 man hours that you were asking ...
7 A: They weren't even ...
8 Q: ... Mr. Cash to pay for?
9 A: No, they weren't even included in the man hours.
10 Q: Not even included?
11 A: Yeah.
12 Q: All right. Well let me ask you about an exhibit
13 that's already in, Defendants' Exhibit Number Ten.
14 And it's Bates stamped 40 and 41.
15 A: Uh-huh (affirmative response).
16 Q: What you're telling me is that these columns would
17 be for the Bobcat use, your hours and the man hours,
18 and then a whole group of no-charge hours; is that
19 right?
20 A: That column never gets over to page one.
21 Q: Well, let me finish asking ...
22 A: Okay.
23 Q: ... my question. And on the second page of this
24 document you've no-charged a number of hours from
25 June through September of 2007; isn't that right?

1 A: No, no, no. No, that's not right. That's an error
2 right there, I was looking for something.
3 Q: You were looking for something?
4 A: Yeah.
5 Q: All right. Well, let me ask you, you say it's an
6 error that you no-charged hours on June 13th ...
7 A: There's no way I would ...
8 Q: ... June ...
9 A: See, all this is is a total with those hours. See
10 14 and 6, 20; this is just a total of everything in
11 the other two columns.
12 Q: Okay. Well, let me just make sure we've got it
13 right. You made a mistake for June 13th, the 20th
14 ...
15 A: No, I didn't make a mistake. No, I did not make a
16 mistake. I was doing something separate from the
17 calculations of the costs.
18 Q: All right. And in doing something separate, this
19 document which you represent to be the accurate
20 record of the man hours on the job has a column
21 that's not accurate?
22 A: Actually it's a column I probably should have just
23 taken it out. It's not supposed to be there.
24 Q: It's not supposed to be there?
25 A: No.

1 Q: Because what it has is a number of hours, and I
2 think I added them up, it's over 200; isn't that
3 right?
4 A: Yeah. Yes, it is.
5 Q: Over 200 hours that you no-charged ...
6 A: No, I did not no-charge.
7 Q: Well, that you put in the no-charge column.
8 A: Okay.
9 Q: Is that fair? Let's just check.
10 A: Like I said earlier, when I port it over to Excel,
11 it doesn't port. Some of the garbage stays in
12 there, and that's what this ... the only two columns
13 that matter to anybody are these two columns. This
14 does not go to the top line.
15 Q: And so when you no-charge hours ...
16 A: They're not no-charge hours, they're just not.
17 They're not.
18 Q: Although they're in that column?
19 A: I'm telling you, they're not no-charge hours.
20 Q: All right. Well, explain to me then why is this
21 word Adjustment, adjustment under the bottom ...
22 A: Because ...
23 Q: Let me just ask the question. We have all these no-
24 charge hours and then it says Adjustment, and that
25 was an adjustment that would allow you to do what?

1 A: I'll show you. Can you give ... now, you've got
2 these things laying all over. Can you get me the
3 April billing statement and the first ...
4 Q: You can explain it to me. I'm not going to go find
5 documents.
6 A: Well, in the April statement it shows that there's
7 878, something, 870-something hours billed. Okay.
8 If you were to add up all the numbers that are in
9 here, it's over 1000. That 800 was a mistake.
10 Q: All right. Well, let me show you something, because
11 I did add them all up.
12 A: Okay.
13 Q: And I'm going to show you a little adding machine
14 tape, and I want you to compare it to your man hour
15 column. Okay? Just go ahead and compare it.
16 A: What am I doing now?
17 Q: Comparing it to the man hour column.
18 **MR. TRUSLOW:** Judge ...
19 **THE COURT:** One moment. Hold on a second.
20 **MR. TRUSLOW:** I don't know what she's providing to him or
21 what the source or authentication of it is.
22 **MS. GRIFFIN:** Well, Your Honor, I could hand him a
23 calculator, and I'm glad to do that.
24 A: Okay. It's like 811, that appears that could be
25 close.

1 **MR. TRUSLOW:** I don't know what he's looking at, but I
2 still ...
3 **THE COURT:** Why don't you come look at it? Come around.
4 **MR. TRUSLOW:** Is this your tape? That's what I was trying
5 to find out.
6 **MS. GRIFFIN:** That's correct.
7 **MR. TRUSLOW:** This is yours?
8 **MS. GRIFFIN:** That is my tape that I ran of the numbers in
9 the columns.
10 **A:** Okay, yeah, 811.
11 **Q:** And I'm just asking to verify does this tape appear
12 to be correct?
13 **A:** Okay. Yeah.
14 **Q:** And so that column is 811 and it's not inclusive of
15 the no-charge hours; isn't that right?
16 **A:** Right.
17 **Q:** And so the no-charge hours are going to be separate?
18 **A:** They're never included in this. They're just for
19 reference, that we were working and we weren't
20 getting paid.
21 **Q:** So the no-charge hours, you admit you were working
22 and you were not getting paid or you were no-
23 charging them?
24 **A:** We were not getting paid, we were just ... he was
25 never charged for those.

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1 Q: Never charged for them?
2 A: No.
3 Q: Well, Mr. Haynie, isn't that what you did back here
4 when you sent him a letter that says there are 1068
5 hours that you were charging?
6 A: No. No. If you ...
7 Q: That number doesn't match?
8 A: No, it doesn't match. You're right. This is the
9 ... this is what I was telling you. This 1068, what
10 this is right here is my program when you ... this
11 column right here is the sum of all, just like your
12 tape, the sum of all these numbers. Okay. 811,
13 that's what you've got on your ticket. Okay. Then
14 you've got my hours, 257 hours. You add those
15 together and that is, in fact, the sum. The problem
16 with the program, the reason this was wrong on the
17 first two, April and the first one in November, was
18 because my program had the sum ... I don't normally
19 do two pages of ... they don't go that long. My
20 program was fixed, it says the sum of the numbers
21 from this sale to this sale. Well, down here was
22 where it quit. So you've got the wrong number in
23 there. And all I did was go in and fix it so it
24 summed all the numbers up. That's all I did.
25 Q: You went in there and changed it. But let me ask

1 you because I don't, I still don't understand this.
2 If these are all hours you're not paid for, then ...
3 A: These, what these were right here was when I was
4 looking for where ... if you look at the April,
5 there's a ten hour difference, okay, from April
6 until November. Okay. We did 100 and something, we
7 did way more time, and I knew when I saw that there
8 was a mistake. This was my attempt to find the
9 mistake.
10 Q: Your attempt to find the mistake was to add in hours
11 ...
12 A: No, no, no.
13 Q: ... and then no-charge them back out?
14 A: No, no, no. All I did ... what I'm trying to do is
15 I'm trying to back up and see where the point is
16 that it's not adding correctly. That's all I was
17 doing, just looking for the error. And I found it.
18 And basically when you look at this program, this
19 one right here, 257 plus 811, that will get you to
20 these numbers right here, they're all documented.
21 Q: All right. Now, Mr. Haynie, the no-charge hours,
22 you agree with me that there were hours ...
23 A: If you keep using the word no-charge, I will not
24 agree with you because ...
25 Q: Mr. Haynie, didn't you create the no-charge column?

1 A: As a reference.
2 Q: As a reference?
3 A: Uh-huh (affirmative response).
4 Q: And let me show you something that ... as a
5 reference, we'll mark as the next exhibit,
6 Defendants' Exhibit Number 27.
7 (Defendants' Exhibit Number 27 is marked for
8 identification.)
9 Q: Can you identify this document?
10 A: Yeah.
11 Q: And that is what?
12 A: That was a reference. I was explaining what those
13 were, the 38 hours.
14 Q: And you were explaining that the no-charge ...
15 A: To repair concrete, that's what that ... there I was
16 just giving him documentation; we were there working
17 but he didn't get paid for it ... he didn't pay for
18 it.
19 Q: Now, Mr. Haynie, please just allow me to ask you the
20 question. That on this document, Defendants'
21 Exhibit Number 27, in your no-charge column it says,
22 Hours I paid for but didn't charge, these mostly
23 because we had a worker sleeping on the job, fired;
24 is that correct?
25 A: Yes.

1 Q: So this is, in fact, a column of no-charge hours;
2 isn't that right?
3 A: On that ... up there it is. That's what it is.
4 Q: Up there it is. But when you move to Exhibit Number
5 Ten, it no ...
6 A: You either accept my explanation ...
7 Q: ... longer is?
8 A: ... or you don't.
9 Q: Well, Mr. Haynie, my question still is that all
10 these hours that you had, you essentially wiped them
11 out; isn't that right?
12 A: No.
13 Q: No?
14 A: No.
15 Q: So when they end up in the no-charge column you ...
16 A: That is ...
17 Q: ... charged ... you charged Mr. Cash ...
18 A: It wasn't no-charge. No, it's not ...
19 Q: ... for the no-charge?
20 A: It wasn't no-charge. We worked all those hours. I
21 was looking for an error. That's what those got
22 there for. I had to go backwards and find where the
23 mistake was. And the adjustment, the line for
24 adjustment, that was my notation that this was about
25 where it was.

1 Q: So you adjusted it, and now the no-charge hours are
2 no longer no-charge hours?
3 A: I didn't adjust anything. The hours were always the
4 hours worked.
5 Q: Okay. But we don't have any documentation to
6 support ...
7 A: Yes, you do.
8 Q: ... it other than ...
9 A: Yes, you do. They're right there.
10 Q: It's just right here?
11 A: Right there.
12 Q: This is it?
13 A: Yeah. And he looked at it, he saw it.
14 Q: And your documentation that you charged him, then
15 no-charged him, the program didn't do it correctly;
16 is that right?
17 A: It's just ... in Excel you've got to sum from this
18 range to this range. I had the wrong bottom range,
19 that's all it was.
20 Q: All right. Now, on this document, this is another
21 one we already talked about you went back and
22 modified and you added the 40 hours; isn't that
23 right?
24 A: That's the 40, yeah.
25 Q: And those are 40 hours you just pulled out of the

1 sky?

2 A: I didn't pull it out of the sky, okay? We took down

3 that monster hackberry tree. I had ... and

4 repairing the irrigation and working the Bobcat.

5 The Bobcat was there working, I was there working, I

6 probably had 80 hours.

7 Q: Eighty hours?

8 A: Eighty hours. But I couldn't because I didn't log

9 them, I couldn't document those hours.

10 Q: Eighty hours to take down one tree?

11 A: No, no ...

12 MR. TRUSLOW: Excuse me. I believe he was still answering

13 the question about the 40 hours. She asked him did

14 he pull those out of the air and he was explaining

15 the calculation of the hours, and he got cut off I

16 believe.

17 THE COURT: Okay. Let's do this. Ms. Griffin, why don't

18 you re-ask the question and then, Mr. Haynie, you

19 can answer the question.

20 A: Okay.

21 Q: Did you say that you spent 80 hours taking down the

22 hackberry tree?

23 A: No.

24 Q: Okay. What you said was you spent 80 hours within

25 this time frame that's not recorded ...

1 A: Do you see ...
2 Q: ... on Exhibit Number ...
3 A: Do you see ...
4 Q: ... Ten?
5 A: Do you see from July of '07 to April of '08 I've got
6 logged 12 hours? Guess what, I was there a lot more
7 than that.
8 Q: And so you added in 40 hours; isn't that right?
9 A: Yes.
10 Q: And you did that after the fact?
11 A: Yes.
12 Q: Well, I'm going to show you another document. We've
13 looked at Exhibit Number Ten that you prepared
14 yourself, correct? And now I want you to look at
15 your Plaintiff's Exhibit Number Nine. And on this
16 document you agree with me that the numbers are
17 different again?
18 A: I don't know. You've got to show it to me.
19 Q: I'm showing it to you.
20 A: Yeah, they're a little bit off.
21 Q: They're a little bit different again?
22 A: Yeah.
23 Q: And these numbers are different because?
24 A: There's no ... we're missing some hours.
25 Q: What you did is, the last entry on Exhibit Number

1 Ten is for April 17th, isn't that correct, April
2 17th?
3 A: Uh-huh (affirmative response).
4 Q: And then we know what you said is you added the 40
5 hours after Mr. Cash made you mad and said he's not
6 going to pay you any money because he had already
7 paid you \$50,000 ...
8 A: No.
9 Q: ... correct?
10 A: No. That's not, no.
11 Q: The 40 hours were not added in November of 2008?
12 A: No. When I found this error and, let me see your
13 statement right there. Okay. I can't explain it.
14 They are different, but it's very little difference.
15 Q: All right, Mr. Haynie. The accurate record that you
16 prepared back in 2008, because it's after April 17th
17 of 2008, and then I believe your testimony was it
18 was after Mr. Cash said he wasn't going to pay you
19 that you added the 40 hours on Defendants' Exhibit
20 Number Ten?
21 A: No. Actually, I corrected the problem, that's what
22 I did.
23 Q: You corrected the problem by adding 40 hours of your
24 time, fair?
25 A: Yeah, the 40 hours was due. It wasn't as a result

1 of.

2 Q: So you added a week of time. And then when I look

3 at your Plaintiff's Exhibit Number Nine, not only do

4 you add hours and you back them up into April and

5 November, it's different; you add in four hours on

6 November 15th, you add in two hours on January 16th;

7 is that right?

8 A: Hold on. Let me look. Okay. Notice the no-charge

9 stuff is not there.

10 Q: Well, in fact, no-charge is there but it's only 106

11 hours in that document; is that right? So it's been

12 changed?

13 A: Well, no, actually here it's not no-charge but ...

14 okay, now I'm just going to take a guess. But in

15 repairing this thing, I repaired it, this was before

16 I did the adjustment, before I ... the hours are

17 close, you know, but I was trying to find out what

18 the problem was.

19 Q: And so ...

20 A: They're four hours off.

21 Q: ... in trying to find out the problem, you added

22 hours for yourself and those hours included hours

23 for a septic tank that aren't anywhere on Exhibit

24 Number Ten; isn't that right?

25 A: Yeah, on the septic we were there in August. Myself

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1 and Manuel were there in August repairing the septic
2 tank.
3 Q: And ...
4 A: August the ... hold on a second, I can tell you the
5 date that Paul called. We were there on August the
6 22nd repairing the septic tank.
7 Q: August 22nd of 2007?
8 A: Eight, 2008.
9 Q: And do you have some documentation that will show us
10 that you were there on August 22nd, 2008?
11 A: Well, the painters were there and Paul was there.
12 Q: And ...
13 A: Manuel was there.
14 Q: ... do you have some documentation?
15 A: That's what that is. That's what that is. That's
16 ...
17 **THE COURT:** Let me interrupt, and I apologize. Let's stand
18 in recess until 11:15. Does that suit everyone?
19 **MS. GRIFFIN:** Yes, Your Honor.
20 **(Off the record from 11:00 a.m. to 11:25 a.m.)**
21 **MS. GRIFFIN:** Your Honor, earlier we had been looking at
22 Defendants' Exhibit Number Eight, and I failed to
23 introduce it into evidence. I think it was without
24 objection, but I just want to be certain.
25 **MR. TRUSLOW:** No objection.

1 THE COURT: All right. Your motion is granted.
2 (Defendants' Exhibit Number Eight is entered into the
3 record.)
4 Q: Mr. Haynie, before we took that break you were
5 telling me about how you know you fixed the septic
6 tank on August of 2008 and not 2007, and I believe
7 yesterday you testified that you knew that because
8 you had an invoice from the painters in some
9 documentation that you had produced to me; is that
10 fair?
11 A: Yeah, the painters were there, yeah.
12 Q: And was it your testimony that you had an invoice
13 that would show when they were at the premises
14 working?
15 A: Not an invoice, I wrote a check to James ... it's on
16 a list like this, right at the top of the list.
17 It's on there.
18 Q: Okay. So they were there and that check was written
19 back on August 9th, 2008; is that right?
20 A: I'd have to look at that. James the painter, that's
21 the paint and that's the painter.
22 Q: And that is on a document that says Cash Final at
23 the top, Plaintiff's Exhibit Number Nine.
24 A: Yeah.
25 Q: And Mr. Cash made the payment to you for the paint

1 and the tree on August 9th, 2008; is that right?

2 A: That was a payment to me.

3 Q: Right.

4 A: I complained that it didn't even cover what we had

5 spent.

6 Q: Well, he made a payment on August 9th, 2008,

7 correct?

8 A: Yes.

9 Q: Now, ...

10 A: The painters weren't finished. It couldn't have

11 covered ... the painters weren't finished. We were

12 there after that check. The painters were there

13 after that check.

14 Q: That's what your recollection is?

15 A: They were there. I've got a ... there's a receipt

16 somewhere in there.

17 Q: You have a receipt that you could show us which

18 would show ...

19 A: Somewhere ...

20 Q: ... when the painters were there?

21 A: ... in this big stack of papers there's a Sherwin

22 Williams receipt. We pickled the floor and the

23 counter, and there was a special stain we had to get

24 from Sherwin Williams and Ray got it from, and he

25 found the receipt, it's somewhere in that stack.

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1 Q: Now, Mr. Haynie, looking at Defendants' Exhibit
2 Number Ten, there are no hours in August of 2008, is
3 that correct, on your man hours?

4 A: This is one ... yes, this is ...

5 Q: Let's go back to the project itself. We were
6 talking about how you poured the foundation and that
7 one of your documents that has the man hours on it,
8 and we'll just look at Exhibit Number Ten,
9 throughout the document you identify essentially
10 what's going on at the project; isn't that right?

11 A: There's some notes so I would know where we were.

12 Q: There are some notes. And then, like on the second
13 page, there are hardly any notes other than
14 Adjustment and then it has Bench which was part of
15 the original project, correct?

16 A: No.

17 Q: Well, is the bench not present right here?

18 A: We didn't do that. We didn't do it.

19 Q: Well ...

20 A: We didn't do that.

21 Q: Okay. But it was originally drawn ...

22 A: We didn't do that plan.

23 Q: If you would just let me ask the question. It was
24 originally drawn on Defendants' Exhibit Number
25 Three; is that right?

1 A: It was drawn on that plan, yes.
2 Q: And this document shows me, if it's accurate, right,
3 and the narrative next to it, you did this
4 contemporaneously, right?
5 A: Yeah, you've got so many of them up here I'm getting
6 a little confused.
7 Q: Well, the documents that I've showed you are
8 documents that you prepared; isn't that right?
9 A: Yes.
10 Q: And so you prepared them, and my question is when
11 you made notations regarding what the job was did
12 you write it at the time of the date? So on May 3rd
13 did you write down Felt and barge.
14 A: Yes.
15 Q: So it essentially would show me the progress of the
16 job, right?
17 A: Those are notations for my purposes, yes.
18 Q: Notations for your purposes. And what this tells me
19 is that the framing is completed sometime between
20 April ...
21 A: No ... go ahead.
22 Q: ... and the middle of May; isn't that right? You're
23 welcome to look at your document.
24 A: It looks like we were putting rafters on in May, so
25 yeah, between April and the middle of May.

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1 Q: And so the house was completely dried in by the
2 middle of May; isn't that right?
3 A: It was close to that.
4 Q: Completely almost dried in; is that right?
5 A: You're saying things in absolutes, and that was
6 three years ago.
7 Q: So you don't really remember?
8 A: It was pretty close. At some point it was close to
9 dried in.
10 Q: So your document, and I believe you marked it, it's
11 Plaintiff's Exhibit Number Eight, and the document
12 is April 30th, 2007, and it has your handwriting on
13 there, right?
14 A: Yes.
15 Q: And your handwriting on April 30th, 2007, is that
16 this outbuilding had been framed and dried in; is
17 that right?
18 A: Okay. Now, this was made after. It wasn't ... this
19 note was not made when this was done.
20 Q: Well, you put the note, Framed and dried in ...
21 A: I was trying to ...
22 Q: ... on April ...
23 A: ... establish a time line for when stuff was done.
24 Q: Well, you agree with me though, no later than the
25 middle of May it's completely framed and dried in;

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1 is that right?

2 A: It's probably real close to that.

3 Q: And then your inside work would have started,
4 correct?

5 A: We had to sheetrock. We were ... yeah, we was ...
6 it looks like we had to sheetrock, we had to get the
7 electrician in and the HVAC guys. There was a lot
8 more work to do before we could get in there and
9 trim.

10 Q: Well, wasn't your testimony with respect to
11 Plaintiff's Exhibit Nine and document Bates stamped
12 at the bottom 15, which is the \$52,000 number at the
13 top, that that was a June of 2007 document?

14 A: June of 2007, yes, uh-huh (affirmative response).

15 Q: And so in June of 2007, what you are telling us is
16 that you had incurred \$35,000 in costs as of that
17 date; isn't that right?

18 A: Yes. Uh-huh (affirmative response).

19 Q: And so the building was substantially completed; is
20 that right?

21 A: No, not even close.

22 Q: Not even close?

23 A: Not even close.

24 Q: Now, that document shows that all the subcontractors
25 are listed on there, correct?

- 1 A: Okay. We've done the rough-in. At this point we've
2 done the drywall. If remember right, we were
3 working on the shakes. The roofing was ... the
4 insulation was done, paid a portion of the air-
5 conditioning. Yeah, it looks like we dried-in and
6 we were ready to start, if I remember right, we were
7 working on the soffit, trying to finish the soffit
8 and those shakes on the front.
- 9 Q: Okay. So essentially the building is done; isn't
10 that right?
- 11 A: No.
- 12 Q: All right. Well, it was done enough that your
13 friend, Bill Schmidt, moved in; is that correct?
- 14 A: Huh?
- 15 Q: It was done enough that in June, July of 2007, your
16 friend, your subcontractor, Bill Schmidt, moved into
17 this building with his equipment and his
18 construction materials to help you out; isn't that
19 right?
- 20 A: He was trim, he was the cabinet and trim guy, yes.
21 At some point in there he moved in, yeah.
- 22 Q: He was the cabinet and trim guy for you, correct?
- 23 A: Yeah.
- 24 Q: And he wasn't building cabinets for Mr. Cash?
- 25 A: Well, he was working for Mr. Cash. He was doing

1 whatever Mr. Cash wanted.
2 Q: He was building cabinets for people for whom you had
3 contracts with, correct?
4 A: Yes, he was. There was two of them.
5 Q: And he was building some cabinets for the Epps?
6 A: No. Windows, two windows.
7 Q: Windows. Okay, for the Salanes?
8 A: Actually one window. Cabinets were for Salanes.
9 Q: And some bookcases for the Duncans?
10 A: Maybe so.
11 Q: Well, what we know is he was doing work to benefit
12 ...
13 A: Yes, yes ...
14 Q: ... your business; isn't that right?
15 A: Yes, he was. Yes.
16 Q: And that work was work that helped you out?
17 A: It helped him out, too.
18 Q: Well, it helped Bill Schmidt out?
19 A: It helped Paul out, too.
20 Q: Helped Paul out?
21 A: Yeah.
22 Q: And ...
23 A: It didn't really help Bill Schmidt out because it
24 would have just cost more if Bill Schmidt had left
25 and gone somewhere else.

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1 Q: So primarily it was helping you out?
2 A: Primarily it was helping Paul out.
3 Q: Okay. Well, let's talk about it. At the time ...
4 A: I have a place to build stuff.
5 Q: Well, back in the summer of 2007 did you have a
6 place to build anything?
7 A: Have you been to my house?
8 Q: Mr. Haynie, just you can answer yes or no.
9 A: Yes, I did.
10 Q: All right. And in the summer of 2007, you agree
11 with me that you were building a shed on Brentwood
12 Drive ...
13 A: Yes.
14 Q: ... is that right? And it wasn't completed yet;
15 isn't that right?
16 A: Summer of '07?
17 Q: Correct.
18 A: That's correct.
19 Q: It was not completed? So you couldn't build
20 anything there?
21 A: No.
22 Q: Correct? And isn't it true that your neighbors were
23 complaining to the City of Forest Acres ...
24 **MR. TRUSLOW:** Objection, Your Honor.
25 Q: ... about you conducting ...

1 **MR. TRUSLOW:** Objection, Your Honor.

2 **THE COURT:** Let her finish the question. Don't answer
3 until she finishes the question and I give you the
4 sign. Start all over again.

5 **Q:** Isn't it true that your neighbors were complaining
6 to the City of Forest Acres that you were conducting
7 business out of your shed at your house and that you
8 needed to find an alternative place to work?

9 **THE COURT:** All right, Mr. Haynie, stop right there. You
10 had an objection, Mr. Truslow?

11 **MR. TRUSLOW:** Yes.

12 **THE COURT:** Okay. Please ...

13 **MR. TRUSLOW:** It's irrelevant and also under 403.

14 **THE COURT:** Okay.

15 **MR. TRUSLOW:** Maybe you need to hear ... maybe you need to
16 hear more, but if I could have a continuing
17 objection, because I think I understand where she's
18 going. But regardless, I would object to the
19 hearsay part of this.

20 **THE COURT:** Ms. Griffith, how is this relevant and how is
21 it an exception to the rules against hearsay?

22 **MS. GRIFFIN:** Your Honor, it's relevant because it was the
23 reason he couldn't work at his own premises, is he
24 was being requested by his neighbors and by the City
25 of Forest Acres to not work on his premises. So he

1 had to find another place to work, and he found Mr.
2 Cash's house which was about a block away or a block
3 over or a street over, a couple blocks away from his
4 house.

5 **THE COURT:** And how does that get around what's hearsay?
6 Mr. Truslow had two grounds for his objection; one
7 was relevancy and one was, like you said, it was
8 hearsay.

9 **MS. GRIFFIN:** Because it's not offered for the truth of
10 what those people are saying, it's offered for the
11 reasons that he had to move his equipment and his
12 business over to Mr. Cash's property.

13 **THE COURT:** All right. Objection overruled. Mr. Truslow,
14 you wanted a continuing objection, is that ...

15 **MR. TRUSLOW:** If she's saying she's not offering for this,
16 offering this for the truth of the matter asserted,
17 then perhaps her argument on relevant to hearsay
18 would be a valid explanation.

19 **THE COURT:** Did you still want to note a continuing
20 objection?

21 **MR. TRUSLOW:** Well, we're going to see where it goes.

22 **THE COURT:** Okay.

23 **MR. TRUSLOW:** All right.

24 **THE COURT:** Thank you.

25 **A:** Can you say it again?

1 Q: Mr. Haynie, isn't it true that the reason that you
2 were moving your equipment and your operations from
3 your yard on Florawood Drive over to Mr. Cash's shed
4 on Greenhill was because your neighbors had been
5 complaining that you were operating a business out
6 of your residence and that you needed to find a
7 place to continue to operate your business?
8 A: No, it's not true.
9 Q: And, Mr. Haynie, do you recall giving that testimony
10 in your deposition?
11 A: I don't recall what I said in my deposition. You'll
12 have to remind me.
13 MS. GRIFFIN: Your Honor, I'd like to hand up Mr. Haynie's
14 deposition.
15 Q: Now, Mr. Haynie, let me just make sure I've got it
16 straight. The shop that the neighbors were
17 complaining about, that was the shop on Brentwood,
18 not the shop on Florawood; is that correct?
19 A: Yes.
20 Q: And so the shop on ...
21 A: And it wasn't even ...
22 Q: ... Florawood ...
23 A: It wasn't built in '07.
24 Q: It wasn't built. So in your testimony where you
25 said that the neighbors were complaining about the

1 shop, it's the shop on Brentwood not on Florawood?
2 A: Brentwood, yeah.
3 Q: Is that correct?
4 A: Yes.
5 Q: And so the shop on Florawood was available for you
6 to use for Mr. Schmidt?
7 A: But he had his own place. He could have gone home
8 and built it.
9 Q: Well, he didn't have his own shed at that point;
10 isn't that right?
11 A: No, he didn't have his own shed. But he could have
12 come over to my carport and built them. There's any
13 number of things he could have done.
14 Q: Well, didn't you testify that Mr. Schmidt couldn't
15 work out of his house because his wife said he
16 wasn't allowed to work there?
17 A: No. Because he has a shop.
18 Q: He has a shop as of a couple years after this
19 incident, right?
20 A: It was right about almost, about the time we shut
21 down here we built his shop.
22 Q: About the time you finished Mr. Cash's project you
23 built a shop for Mr. Schmidt, correct?
24 A: I think it was the fall of '08.
25 Q: So before that time Mr. Schmidt didn't have a place

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1 where he could operate out of?

2 A: No, he could do in his driveway.

3 Q: In his driveway?

4 A: He could. Or in my carport.

5 Q: His driveway in Lexington?

6 A: Or in my carport.

7 Q: And your carport in the city of Forest Acres ...

8 A: Yes.

9 Q: ... where it would be against ...

10 A: Where I have been doing it for 20 years.

11 Q: Okay. But where the City of Forest Acres does not

12 permit it to be done; is that fair?

13 A: I just recently it's come to my attention, yes.

14 Q: That the City of Forest Acres won't let you operate

15 a business out of your home?

16 A: Yeah.

17 Q: And so with that background, that's when Mr. Schmidt

18 moves into this shed, correct? It's the summer of

19 '07?

20 A: He moved into this shed to do this work.

21 Q: To do work for you?

22 A: No, to do work for Paul.

23 Q: Well, you told me earlier that he was doing work for

24 you; is that right?

25 A: That was later.

1 Q: Later?

2 A: Later.

3 Q: But during the time that he was there?

4 A: During the time he was there, yes.

5 Q: And let's talk about it. You approached Mr. Cash,

6 correct; Mr. Cash didn't approach you?

7 A: I don't know what we're approaching about.

8 Q: Oh, well, about Mr. Schmidt.

9 A: You've still got to give me more information.

10 Q: Okay. Mr. Haynie, isn't it true that you approached

11 Mr. Cash at the end of June, beginning of July, in

12 the hot summer months, said Mr. Schmidt needed a

13 place to work to help you with the projects that you

14 were undertaking ...

15 A: No, no.

16 Q: ... because it was hot for him to work outside?

17 A: No.

18 Q: And isn't it true that the other reason that Mr.

19 Schmidt was coming in was because there was no

20 bathroom facility at these other projects ...

21 A: No.

22 Q: ... and the homeowners didn't want him to be using

23 the bathroom inside? All right. So you never said

24 any of that to Mr. Cash?

25 A: No.

1 Q: Now, when Mr. Schmidt moved in, you agree with me
2 that you were going to take special care of Mr. Cash
3 and not charge him for everything while you used his
4 shed?
5 A: And not charge him for everything what?
6 Q: Mr. Haynie, just can you answer the question?
7 A: We were going to charge him for what he did on Mr.
8 Cash's behalf, but not what we did on someone else's
9 behalf.
10 Q: Okay. So you were ... this is the agreement; if Mr.
11 Schmidt works in Mr. Cash's property for somebody
12 else, you wouldn't charge Mr. Cash for the work he
13 was doing for Mr. Duncan or Mr. Epps or Mr. Salane;
14 is that right?
15 A: Yeah, I wasn't going to charge him for the work I
16 did for someone else.
17 Q: No, no, you wouldn't do that. But what I'm asking
18 you is, did you tell Mr. Cash that you're going to
19 take special care of him and not charge him for
20 everything?
21 A: No. I don't know what you're talking about really.
22 Q: All right. Well, let's look at your deposition
23 again, and just switch to page 130. Okay. And then
24 look at the middle of the page. It says what Mr.
25 Schmidt said and you agreed to, line 13. "He said

1 that we are giving him ... we're taking special care
2 of him and we're not charging for everything."
3 Isn't that what your testimony was when you gave
4 your testimony under oath in this deposition?
5 A: That's what I said. That sounds like what I would
6 say, yes.
7 Q: That's what you said?
8 A: Uh-huh (affirmative response).
9 Q: And so you agree with me that when Mr. Schmidt got
10 to use the space that was owned by Mr. Cash, that
11 you agreed that you were going to not charge him for
12 everything and take special care of him? Your
13 words?
14 A: Yeah. Okay.
15 Q: You agree to that?
16 A: Yeah, and we did.
17 Q: Okay. Well, tell me exactly how you did that.
18 A: Well, in this we were talking about the handrail.
19 Mr. Cash was worried ... the handrail was beautiful,
20 and it had to have specific things that Mr. Cash
21 requested. It had to be able to take down so he
22 could put his furniture up there, and we did it.
23 What we did was we hand-selected a bunch of 2x4
24 studs and we put forth a lot of effort, more effort
25 than he was charged for, but we spent a lot of

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1 effort trying to make this thing really good. And
2 he got a deal. We took good care of him.
3 Q: Okay. And so that handrail in which you're
4 referring to is at the top of the loft area; is that
5 right?
6 A: Yeah.
7 MS. GRIFFIN: Your Honor, I'd like to introduce Plaintiff's
8 Exhibit 1G, I think it's without objection.
9 MR. TRUSLOW: They're already in evidence.
10 MS. GRIFFIN: They're already in? All of them are in?
11 MR. TRUSLOW: Uh-huh (affirmative response).
12 MS. GRIFFIN: Okay.
13 Q: Looking at 1G, that would be the handrail that
14 you're referring to; is that right?
15 A: Yeah. Uh-huh (affirmative response).
16 Q: Now, that handrail, that was something that Mr. Cash
17 was upset about; isn't that right?
18 A: Well, he would look at it ... it looks expensive.
19 Q: And what he told you is he didn't want to have
20 anything fancy up there, he wanted some 2x4s; isn't
21 that right?
22 A: We couldn't do that.
23 Q: Isn't that what he told you?
24 A: I don't know. This was just too fancy.
25 Q: So you ...

1 A: It looked too expensive.

2 Q: And what you did is you told him that you didn't
3 spend that much money on it?

4 A: That's right.

5 Q: And then you charged him \$1250 for it; isn't that
6 right?

7 A: I don't know. \$1250 covered a lot of stuff. I
8 don't know, I'd have to go back and look at the
9 checks. Bill, I don't know if his document is in
10 there that says, he itemized what he did. But
11 whatever it was, it was good.

12 Q: Do you recall that you were going to not charge all
13 Bill Schmidt's hours?

14 A: No.

15 Q: You never said that?

16 A: Why would I say that?

17 Q: On your document, going back to Plaintiff's Exhibit
18 Number Nine, it has BS, which you identified for me
19 earlier as Bill Schmidt; is that right?

20 A: Bill Schmidt is real good of self-policing himself.
21 I've been working with him, he's slow and he's very
22 good. Okay? He is very meticulous, not ...
23 because, because he does, he takes breaks, he's just
24 slow. And what you get, what you spend for Bill
25 Schmidt is invariably a very good deal.

1 Q: Okay. Well, that's my question is, how do I know
2 how many hours Mr. Schmidt was working?
3 A: I was keeping a few notations at the end because we
4 were doing a bunch of odds and ends, but in the
5 first part I didn't. I've known him for 40 years, I
6 trust him.
7 Q: And you haven't provided us with any documentation
8 from Mr. Schmidt as to how many hours he worked in
9 the shed; is that right?
10 A: No. I wasn't paying him by the hour.
11 Q: Your testimony wasn't that you were paying him \$30
12 an hour?
13 A: That's what he ... basically that's what I say, but
14 it never ends up I'm paying him by the hour. It
15 always works out to less than that. Bill would give
16 me a bill, and I was never unhappy with it.
17 Q: But you would never present that to your customers;
18 is that right?
19 A: He was a subcontractor.
20 Q: But if he's a subcontractor, why are you keeping
21 track of his hours on your hourly employee report?
22 A: We were just fiddling around. I like to know where
23 ... how the costs are going, and that's my way of
24 guesstimating how the costs are going.
25 Q: That's a guesstimate of how much time Mr. Schmidt is

1 spending working on the project?

2 A: On, I think on the end, and it was because we were

3 doing some other stuff. I don't really remember.

4 Q: Well, let's talk about something that you charged

5 Mr. Cash for. You charged him for some columns, and

6 let me just show you ... let's mark this as the next

7 defendants' exhibit.

8 **MS. GRIFFIN:** Any objection?

9 **MR. TRUSLOW:** No.

10 **MS. GRIFFIN:** No objection, Your Honor.

11 **THE COURT:** All right. Your motion is granted.

12 **(Defendants' Exhibit Number 28 is marked and entered into**

13 **the record.)**

14 Q: Mr. Haynie, if you would look at Defendants' Exhibit

15 Number 28, you agree with me that that is picture of

16 the shed that you took on November 5th, 2007; is

17 that right?

18 A: Seven, yeah.

19 Q: And it says you're still working on it and it's

20 obviously not finished. What is it about that

21 photograph that shows it's obviously not finished?

22 A: Well, the columns aren't finished.

23 Q: Well, let's talk about ...

24 A: You can see where we're working over here, the doors

25 aren't finished, the glass blocks aren't finished.

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1 See the things up there, the roof, there was
2 something that we were working on up there, the
3 soffit. We're still working.
4 Q: The glass blocks aren't in there by that time?
5 A: No.
6 Q: All right. This photograph, it shows four, six,
7 columns, how many columns are there?
8 A: Actually there's two posts over here, so they're not
9 done yet. There are two that are started over here.
10 Q: And you started those; isn't that right?
11 A: Yes.
12 Q: And you were satisfied with the way they looked,
13 weren't you?
14 A: No.
15 Q: You weren't satisfied with it?
16 A: No.
17 Q: Well, isn't it true that what Mr. Schmidt wanted to
18 do was try a new product on those columns?
19 A: No.
20 Q: You don't recall that?
21 A: No.
22 Q: And that he asked and you asked Mr. Cash for
23 permission to try this new product on the columns?
24 A: No.
25 Q: Now, let's talk about some things that were done by

1 you, and let me ask you about whether you had
2 authority. Did you request permission to build the
3 fort for the Cashes' son?
4 A: No, it was requested of me to build the fort.
5 Q: It was requested of you by which of the Cashes?
6 A: Actually it was between Carole and Ethan.
7 Q: Carole and Ethan?
8 A: Yeah.
9 Q: So wasn't Ethan, the child?
10 A: No, he doesn't have the authority to tell me to
11 build the fort.
12 Q: So you're saying that Ms. Cash requested that you
13 ...
14 A: Yeah.
15 Q: ... build that fort?
16 A: Yeah, it was the boy cave.
17 Q: And you're certain of that?
18 A: Yeah.
19 Q: You don't recall Ms. Cash came home and was
20 surprised to see it in the back yard and told you to
21 stop building it?
22 A: She ... I didn't hear that.
23 Q: And you don't remember that you were going to put a
24 roof on it and you had to stop what you were
25 planning to do?

1 A: No. What she did do is she brought out a zip line
2 so I could put that up.
3 **THE COURT:** Let me interrupt. First of all, let me
4 apologize. I'm not going to make it to 12:30 this
5 morning.
6 **MS. GRIFFIN:** Okay.
7 **MR. TRUSLOW:** Neither am I.
8 **THE COURT:** So we could break now and come back at 1:30.
9 Now, the lawyers, do you think we're going to finish
10 today or do we need to go ahead and plan ...
11 **MS. GRIFFIN:** Your Honor, I'm not much further ... I'm
12 almost done with him, and then ...
13 **THE COURT:** Redirect if you want to.
14 **MR. TRUSLOW:** I tend to find that ... well, I find that
15 redirect is very limited.
16 **THE COURT:** Okay, that's fine. And I want to remind the
17 parties also if we can't finish today, we can always
18 come back another day and do it. One of the
19 advantages of appearing before the Master-In-Equity
20 is that we have complete control of our schedule and
21 we also get a date certain for everything, so you'd
22 know ahead of time when we're coming back. All
23 right. Thank you so much. I'll see you at 1:30.
24 (Off the record from 11:56 a.m. to 1:42 p.m.)
25 **THE COURT:** You may proceed.

1 **MS. GRIFFIN:** Thank you, Your Honor. Your Honor, during
2 the break the plaintiff's attorneys and myself
3 agreed on a few exhibits, and so we've agreed to
4 admit all of the exhibits that are marked as
5 Defendants' Exhibit Number One.

6 **(Defendants' Exhibit Number One A through J is entered**
7 **into the record.)**

8 **Q:** And we have agreed to admit jointly Defendants'
9 Exhibit Number 24 to avoid the necessity of bringing
10 in the custodian from Forest Acres to have them
11 identify the document.

12 **MR. TRUSLOW:** Your Honor, that was one we offered into
13 evidence, they objected. I think they've seen the
14 wisdom of both sides putting it in. I would think
15 it should be a joint exhibit under the
16 circumstances.

17 **MS. GRIFFIN:** Your Honor, that would be fine.

18 **MR. TRUSLOW:** I don't think it matters. I don't know that
19 it matters at all.

20 **THE COURT:** Okay. You want a joint, or we could make it a
21 Court exhibit, either way. Technically we've never
22 done joint exhibits so we can make it a Court
23 exhibit or, I mean, I guess there's no reason we
24 can't do a joint exhibit. So she'll put both
25 stickers on there.

1 **MS. GRIFFIN:** You can put a plaintiff on there.

2 **COURT REPORTER:** I have a joint exhibit sticker.

3 **THE COURT:** Oh, I'm sorry, we do have a joint exhibit
4 sticker. I stand corrected. It's Joint Exhibit
5 One.

6 (Joint Exhibit Number One is marked for identification
7 purposes and entered into the record.)

8 **MS. GRIFFIN:** And then, Your Honor, earlier I discussed
9 Defendants' Exhibit Number Seven with Mr. Haynie but
10 I did not move to introduce it into evidence, and so
11 I would like to introduce it into evidence.

12 **MR. TRUSLOW:** No objection.

13 **MS. GRIFFIN:** Yes, ma'am. Your motion is granted.

14 (Defendants' Exhibit Number Seven is entered into the
15 record.)

16 **Q:** Mr. Haynie, in your Plaintiff's Exhibit Number Nine,
17 I just want to clarify this for the Court. There's
18 a document in the back and at the top of the page it
19 is something called Xtras ...

20 **A:** Yeah.

21 **Q:** ... is that correct?

22 **A:** Yeah.

23 **Q:** And that is a document that has no bearing to any of
24 the documents we've been talking about earlier as to
25 the value under a contract or the value under your

1 time and materials; is that right?

2 A: Yes. It's a way to justify where we are so far.

3 Q: As a way that you justified the number; is that

4 right?

5 A: Yeah.

6 Q: And that number was increased from an earlier number

7 where you had created a sheet of extras; is that

8 fair?

9 A: I don't know, let me see.

10 Q: All right. I'll show you. Let's mark this as

11 Defendants' Exhibit Number 29.

12 **MS. GRIFFIN:** Defendants' Exhibit 29 without objection,

13 Your Honor.

14 **THE COURT:** Your motion's granted.

15 **(Defendants' Exhibit Number 29 is marked for**

16 **identification purposes and entered into the record.)**

17 Q: Mr. Haynie, these two documents, is it fair to say

18 that they are just your impression of what you think

19 this service that you provided may have been worth;

20 is that right?

21 A: That's pretty much it, yeah.

22 Q: And it changed. So from Defendants' Exhibit Number

23 29 till Plaintiff's Exhibit Number Nine, you would

24 just alter the numbers depending upon what you

25 decided on that particular the day the value of the

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1 services may have been; is that fair?
2 A: It was a guesstimate. Yeah.
3 Q: So the guesstimate, for instance, on Exhibit 49 for
4 the paint is \$1500 and the guesstimate on Exhibit
5 Nine would be \$5000; is that right?
6 A: Yeah, because we did a lot more.
7 Q: And the guesstimate for the shakes, the gable
8 shakes, that increased too, didn't it? Or it was
9 taken off? Well, Mr. Haynie, let me just ask this.
10 This document was just some vague assessment of what
11 you thought the extras were for the project, but
12 there's nothing to support that; isn't that right?
13 A: Yes.
14 Q: And that's both of those documents? Let me show
15 you, this has been marked as Defendants' Exhibit
16 Number 11. Can you identify that record for me?
17 A: Let me see, that's for the change of service.
18 Q: Okay.
19 **MS. GRIFFIN:** Your Honor, I'd like to move to introduce
20 this into evidence.
21 **MR. TRUSLOW:** No objection.
22 **THE COURT:** Motion is granted.
23 **(Defendants' Exhibit Number 11 is entered into the**
24 **record.)**
25 Q: Okay. Mr. Haynie, for the service change for the

1 house, this is a document that you prepared and gave
2 to the City of Forest Acres; isn't that right?
3 A: Yes, before we did it.
4 Q: And that was dated on May 8th, 2007?
5 A: Yeah.
6 Q: And the value of that service was \$1500; isn't that
7 right?
8 A: That's what it says, yes.
9 Q: And that's what it was; is that right?
10 A: No, that's not what it was, that's what it says.
11 Q: So you told the City of Forest Acres it was one
12 amount and it was more than that; is that what
13 you're saying?
14 A: When I did this I had no idea it was ... it turns
15 out it was a three phase power system, which is a
16 big, big difference, and I didn't know.
17 Q: Okay. Going back to the extra page, you have on
18 there, on both extras, the 41,000 and the 53,000,
19 party prep, on one it's \$500 and one it's \$750.
20 Now, is it true that you did not buy the pine straw
21 for this party?
22 A: Well, what I'm told and I ... I wasn't there. I
23 came in late. But they unloaded the pine straw from
24 my truck, from the back, and I couldn't tell you
25 where we bought it. I don't know who bought it.

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1 Q: So you think it was on your truck?
2 A: Well, that's what I was told, yes.
3 Q: Okay. But you don't have any direct knowledge of
4 that?
5 A: No, I don't remember that.
6 Q: Now, yesterday you testified that you hauled off the
7 old shed; is that what your testimony was?
8 A: I vaguely remember that. I don't, really.
9 Q: You don't really remember it because it didn't ...
10 A: No. No, I don't.
11 Q: So you didn't do that?
12 A: I don't know..
13 Q: Okay.
14 A: We graded the area and I remember seeing the pile of
15 stuff, but it was three years ago.
16 Q: Now, part of your earlier testimony had to do with
17 the framing of the roof line; is that right?
18 A: Of the what?
19 Q: The roof.
20 A: Yeah.
21 Q: And isn't it true that you made the decision to
22 change the framing of the roof?
23 A: Well, I did the design.
24 Q: You suggested to Mr. Cash that you switch it around;
25 isn't that right?

1 A: Well, the one that you keep going to has no vaulted
2 ceiling, no nothing. He wanted the vaulted ceiling.
3 Q: Mr. Haynie, I'm talking about when you changed the
4 roof design on the back of the building, that was a
5 decision that you made to change the framing of that
6 roof; isn't that right?
7 A: No. He ... I did the design, he looked at the
8 design and said yes.
9 Q: Mr. Haynie, isn't it true you called him at his
10 office and asked him if he would be willing to do
11 that, that you suggested that you swing it around 90
12 degrees because it would be easier to frame and then
13 you would tie it into the back?
14 A: Say that last part you said?
15 Q: You suggested that you swing around the framing by
16 90 degrees because it would be easier ...
17 A: It did work out that way, yes.
18 Q: ... for you to frame it? It was easier, correct?
19 A: No, it wasn't ... but we could get his window in
20 there with the skylight going down. It solved some
21 problems. It solved some structural difficulties.
22 Q: You tied it onto the back so it was easier for the
23 work that you were intending to do; isn't that
24 right?
25 A: It was ... no.

1 Q: Did you not tell him that it would cost any more
2 money?
3 A: It would cost more money because we were adding the
4 loft.
5 Q: But the actual framing of the roof, when you
6 switched around the angles of the joists, that
7 didn't change the cost of the labor or the cost of
8 the lumber; isn't that right? Isn't that what you
9 told him?
10 A: The cost of the ... I'm not following what you're
11 trying to say.
12 Q: When you changed the framing of the roof, isn't it
13 true that it didn't change the cost of framing up
14 the building but what it changed is what you just
15 said is ...
16 A: Well, yeah, it did change the cost of framing up the
17 building because when you normally do what he had,
18 you've got ceiling joists you can walk on and you
19 can put them up and it's easy. This is a vaulted
20 ceiling, you have to do that off of a scaffolding.
21 We had to have a huge scaffold inside to put this
22 thing up. It's a two-story vaulted ceiling.
23 Q: Is it your testimony that you were having trouble
24 going one way on the framing, and you suggested that
25 you could switch it around because he wanted a

1 vaulted ceiling and it started out it was going to
2 be a flat ceiling and then it says, you know, no
3 vaulted anything, there was just going to be an
4 attic. But then he wanted that vaulted part, and in
5 framing that it became apparent that it needed to be
6 reversed so it was swung around 90 degrees because
7 basically it was easier to frame. Is that not your
8 testimony?

9 A: You've got to be real careful how you say easier.
10 It wasn't easy to frame, but it was easier than ...
11 first off, you couldn't vault it the way it was.

12 Q: Then do you agree with me that then you said then
13 you had to tie it on the back, So it made sense
14 since we're doing all that work to go ahead and put
15 that loft in; isn't that right?

16 A: The part about getting the loft, that was pretty
17 easy.

18 Q: And that was something that you recommended to him?

19 A: Well, you're throwing it away if you didn't.

20 Q: Excuse me?

21 A: If you didn't, you've got a little shelf to put crap
22 on; you can't use it.

23 Q: So ...

24 A: It's a story ... like my daughter said, you can't
25 stand up, it's just an area that you can throw stuff

1 up there. It's an attic.
2 Q: Which is what Mr. Cash told you he wanted; isn't
3 that right?
4 A: No.
5 Q: Okay. Now, let's talk about the septic tank.
6 A: His original ... never mind.
7 Q: The septic tank, you agree with me that as a general
8 contractor you have a duty to follow the building
9 codes?
10 A: Yes.
11 Q: And that you knew that when you put that in that
12 that was against the code?
13 **MR. TRUSLOW:** Your Honor, this has been ... this is
14 repetitive, she's already gone through this I think.
15 **THE COURT:** She's gone through it with this witness or with
16 the other witness?
17 **MR. TRUSLOW:** With this witness.
18 **THE COURT:** Ms. Griffin, is that accurate?
19 **MS. GRIFFIN:** Your Honor, I don't recall going through
20 this.
21 **THE COURT:** I recall it, but I don't remember which witness
22 it was.
23 **MR. TRUSLOW:** I think both. But maybe some leeway, I'm
24 just ...
25 **MS. GRIFFIN:** Your Honor, I'll ask him a couple more

1 questions and I'll be through.

2 Q: You knew that when you put it in that that was
3 something that you should not have put in; isn't
4 that right?

5 A: It was temporary, it was just temporary.

6 Q: And it was just temporary; you would come back and
7 fix it?

8 A: If I ... he knew what a lift station cost. I gave
9 him a price of a lift station. It's about \$3000.
10 He didn't want to pay that right then and also it
11 didn't fit in with the old plan. So this was a
12 temporary ... because we added a commode. If it had
13 been just the water we wouldn't need it, but because
14 of the commode you needed something. And until he
15 got to the point where he could do a lift station,
16 it was a temporary fix.

17 Q: Mr. Haynie, you testified earlier that 2007 was a
18 tough time for the stock market; is that right?

19 A: Yeah. It was a tough time for builders too.

20 Q: And you, back in, well, back before 2007 were a
21 stock broker yourself; isn't that right?

22 A: Yeah, a long time ago. Yeah.

23 Q: A long time ago. Now, isn't it accurate that the
24 tough time for the stock market generally was in the
25 fall of 2008 and not the summer of 2007?

1 A: No.

2 Q: You don't recall that?

3 A: No.

4 Q: All right. That's all ...

5 A: It was the summer of '07.

6 **MS. GRIFFIN:**

7 Q: That's all I have, Your Honor.

8 **THE COURT:** Any redirect?

9 **MR. HAYNIE - REDIRECT EXAMINATION BY MR. TRUSLOW:**

10 Q: Okay. Going in reverse order. She was asking you

11 about hard economic times based on, I think she'd

12 asked you about you once being a stock broker. You

13 follow the Wall Street Journal for financial

14 guidance and listen to the news; is that correct?

15 A: Yes.

16 Q: Isn't it a fact that in the fall of 2007 a full-

17 blown recession had been announced?

18 A: Yes, it had. We were up to our fannies in

19 recession.

20 Q: And it had officially been declared by the winter by

21 the government?

22 A: Yeah.

23 Q: All right. And prior to that time is that when Mr.

24 Cash was telling you that he was having some

25 financial problems with his cash flow, if you will?

1 A: Yes, and he wasn't going to make his bonus.
2 Q: Okay. Now, are you aware that the recession ended
3 in 2009?
4 A: I'm not sure it's ended yet. Well, for builders it
5 hasn't yet.
6 Q: Going on to something else. Have you kept track of
7 the difficulties that Merrill Lynch has had vis-à-
8 vis Bank of America and ...
9 A: Taken over by Bank of America.
10 Q: ... buying derivatives where they lost a lot of
11 money?
12 A: Yeah.
13 Q: All right. Now, still going in reverse order. A
14 question was asked to you about a septic tank.
15 Okay. As long as somebody has a sink and a bar, is
16 a septic tank perfectly acceptable?
17 A: You don't even need one.
18 Q: Okay.
19 A: You can just run it out in the yard.
20 Q: So what you put in was a temporary fix?
21 A: Just for the commode, yes.
22 Q: And if the Cashes' house was where the picture is
23 and the cottage, or as they call it the shed, is
24 over here, was there room for the pool in between?
25 A: Plenty of room, yeah.

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1 Q: Okay. And if you put in a lift station, what would
2 happen when a pool was built, if one was built?
3 A: You've got to redo the lift station.
4 Q: So you'd have to tear it back out?
5 A: I'm not sure about the actual lift station, but
6 you've got to tear all the plumbing out.
7 Q: And would that be an additional expense?
8 A: That would be an additional expense. And we wired
9 for the lift station. There's wire back there.
10 Q: Did you explain to Mr. Cash that this was a
11 temporary fix and before ...
12 A: He knew ... he knew it all along, the whole way.
13 Q: And before he could bring it up to code for using
14 the bathroom he was going to have to put in a lift
15 station?
16 A: Yeah. Yeah.
17 Q: Last thing on this and then I'll go onto something
18 else. On the plumbing ... did Mr. Rivera, the
19 building inspector, come and check this project out
20 over a series of months?
21 A: Yeah, he made the standard inspections. Yes.
22 Q: Okay. Before you put in, poured the concrete for a
23 slab, what is something elementary that you do?
24 A: You've got to put your plumbing in.
25 Q: You've got to put your plumbing in before you put in

1 your concrete?

2 A: Right.

3 Q: Did you do that in this case?

4 A: Yes.

5 Q: Was it ... did the City then have a chance or Mr.

6 Rivera have a chance to see it?

7 A: They saw it.

8 Q: Did they approve it?

9 A: Yeah. It was all approved. They didn't comment.

10 Q: Okay. The loft. Who was it that wanted the loft?

11 A: That would be his office.

12 Q: It was who?

13 A: His office, that was his office. It wasn't a store

14 room, it was where his office was going to be.

15 Q: Okay. But who wanted it; was it your decision or

16 his?

17 A: No, Paul wanted it. He wanted it.

18 Q: Could he see it every day while you were doing work?

19 A: Every day.

20 Q: Did you discuss it with him before?

21 A: Yeah.

22 Q: Who was it that told you to put it in?

23 A: Him.

24 Q: When you get to the ... when you start ... when you

25 started with this project was there a crawl space

- 1 for the attic or was it a loft that somebody could
2 stand up in?
- 3 A: Well, we had already graduated ... the plan for the
4 loft was done before we actually formed the
5 concrete, because the footprint of the concrete
6 matches the loft.
- 7 Q: All right. I'm going back to the point where the
8 decision was made to vault the ceiling.
- 9 A: All right.
- 10 Q: I want to go back before that.
- 11 A: Okay.
- 12 Q: Before that was it to be just an eight foot ceiling?
- 13 A: Eight foot ceiling. It was attic, it was a regular
14 ole ...
- 15 Q: And could somebody stand up inside like an attic?
- 16 A: Like an attic.
- 17 Q: It would be like a crawl-in?
- 18 A: Yeah.
- 19 Q: Okay. And when the decision was made to vault the
20 ceiling, who made that decision?
- 21 A: That was his. He wanted that vaulted ceiling.
- 22 Q: About how far does that vaulted ceiling go up?
- 23 A: It was three scaffolds, so it's right at probably 16
24 feet, 15 or 16 feet.
- 25 Q: Okay. So then would you have, would there be the

1 capability of somebody having that as an office or a
2 second story?
3 A: Well, actually the vault is like this.
4 Q: Right.
5 A: The loft, the step is back ... you stand on the
6 balcony and you're looking out at the vault. Okay.
7 The vaulted ceiling is like this and your little
8 loft is back over here and you just look out, you
9 look out over the edge. It's really neat.
10 Q: And did you suggest to Mr. Cash that if he wanted to
11 be able to stand up in the loft that he was going to
12 need to have it redesigned?
13 A: That was the whole point of the redesign because
14 that's what he wanted.
15 Q: Did he agree?
16 A: Yes.
17 Q: Did he see the work?
18 A: Yes.
19 Q: Did he say he was satisfied?
20 A: Always.
21 Q: All right. So I think you've already said this but
22 it was asked. When a decision is made to vault the
23 ceiling rather than adding, you know, walls at a 90
24 degree angle and an eight foot ceiling, when you
25 decide to vault does that affect the structure and

1 make it more expensive?

2 A: Yes.

3 Q: And when you vault it so that you can have standing

4 up room in the loft, does that change the pitch of

5 the roof?

6 A: On the vault part it didn't, but back here it did,

7 up on the loft part, because that's not quite as

8 steep a pitch.

9 Q: So you have to make a sharper pitch ...

10 A: Actually a little flatter pitch. For the loft it's

11 a flatter pitch.

12 Q: Okay. And did he want a window so he could see?

13 A: He added the window.

14 Q: Was that added as well?

15 A: Yes, it was added.

16 Q: Okay.

17 A: And the shed on the back.

18 Q: All right. And the shed on the back?

19 A: Yeah.

20 Q: So the question was asked to you in context about a

21 390, 383, 390 square foot building, once it's

22 vaulted, shed on the back, did you end up with some

23 690 square feet?

24 A: Yeah, we ended up with 690 square feet, and that's

25 not counting the shed on the back.

1 Q: Not counting the shed on the back?
2 A: Or the porch on the front.
3 Q: Okay. And the porch on the front?
4 A: Yeah.
5 Q: The question was asked to you about ... and I'm
6 going to ask it in context again. You have been
7 cross-examined about your deposition at page 130.
8 Just a short portion of that was read to you. Okay.
9 MR. TRUSLOW: Your Honor, if I can, I think it will be
10 quicker if I publish this and Ms. Griffin can read
11 along with me. I want to publish the rest of this.
12 Q: Question, and this is where Mr. Haynie was asked
13 these questions. Question, "Okay, did Mr. Schmidt
14 ... are you aware that he told Mr. Cash that he was
15 not charging for any of the work he did in his
16 shed?" Answer, "No, what he was ... that is not
17 what he said." Question, "What did he say?" "He
18 said we are giving him ... we're taking special care
19 of him and we're not charging him for everything.
20 It's like Paul got upset because we ... Bill built a
21 beautiful handrail that appears to be very expensive
22 and Paul was worried about the budget and what Paul
23 did was ..."
24 MS. GRIFFIN: What Bill did.
25 Q: "What Bill did was, is that we handpicked a bunch of

1 studs, common studs, and we built this handrail. It
2 turned out great and we were trying to assure Paul
3 that we didn't actually spend that much money."
4 Question, "You were trying to assure him that you
5 were staying in your budget, is that right?"
6 Answer, "No, we weren't staying ... we were never
7 staying in the budget, but these things ... you have
8 to have a ... you can't get an inspection without a
9 handrail." Question, "But there's a handrail that's
10 basic and a handrail that's more elaborate, right?"
11 "Yeah, and this one ... this one was a pretty one
12 and it was done without the ... the ... the
13 parameters of a more plain one." Question, "So you
14 didn't charge him for the pretty one, you charged
15 him for the plain one?" Answer, "We charged him
16 what it cost." Question, "Well, if he only wanted
17 the plain one and Mr. Schmidt decided to build some
18 elaborate one, then what is it that it cost? His
19 time or his materials or what?" Answer, "The time
20 and the materials, the same ... the same as we
21 charged ... billed everything." Question, "And, if
22 Mr. Cash expressed concerns to you that he didn't
23 want something that elaborate, did you tell him,
24 well, don't worry, we're not charging you for that?"
25 Answer, "Nope." Question, "Never said that?"

1 Answer, "Nope." Question, "And Mr. Schmidt never
2 said that?" Answer, "Nope." Question, "He never
3 agreed that you were trading services to allow Mr.
4 Schmidt to do your projects out of Mr. Cash's ..."
5 Answer, "No." "... shed?" Answer, "No." Question,
6 "Never agreed to that?" Answer, "No." Here's the
7 deposition. Now, if we put this, again, keeping
8 this in context so the ... looking at Exhibit One,
9 what we're talking ... I'm just going to put this
10 here for a second. What you did, I'm looking at 1H,
11 ...
12 A: Uh-huh (affirmative response).
13 Q: ... you built a rail; is that correct?
14 A: Yes.
15 Q: I think you can see a part of this in 1H. And then
16 you finished, one of the pictures, it will be a
17 defense picture or one of ours. Here it is, that's
18 what I was looking for. This is 1G, this is 1G,
19 this is the rail?
20 A: Yes.
21 Q: So what you did was get common 2x4s, plywood, and
22 put a design ...
23 A: He did great. It was ... it was ... I was happy
24 with it.
25 Q: And did Mr. Cash say he was ultimately happy with

1 it?

2 A: Yes, he was.

3 Q: Did he voice any complaints once he saw ...

4 A: His fear was that it cost. It looks like it cost a

5 bloody fortune, and it didn't.

6 Q: All right. Some of these exhibits are sort of mixed

7 around here and I'm going to kind of ... so please

8 forgive me as I go through this. A question was

9 asked of you about Mr. Schmidt and the quality of

10 his work on cross-examination. How long have you

11 known Mr. Schmidt?

12 A: Actually, I trained him 35 years ago.

13 Q: And you've been in business 40 years?

14 A: Forty years, yeah.

15 Q: And over those 40 years have you had an opportunity

16 to observe his work?

17 A: He's the best.

18 Q: And his charges?

19 A: It's very he is well worth what you, you know,

20 if you ask me, he's a deal.

21 Q: He's a what?

22 A: He's a deal. He's a good deal.

23 Q: Okay. So somebody gets the benefit of a bargain

24 with Mr. Schmidt?

25 A: Yes, they do.

1 Q: He's not overcharging?
2 A: No.
3 Q: In context, you were asked questions about trees at
4 the Cashes' and that you had quoted a charge; do you
5 recall?
6 A: Yes.
7 Q: For this ... to put it into context, when you
8 started with the Cashes did you think you were going
9 to build a shed, a cabana, what turned out to be a
10 ...
11 A: No.
12 Q: Did you think you were ...
13 A: No, I had no way of knowing where we were going.
14 But I did recognize we were going somewhere I didn't
15 know.
16 Q: It was getting bigger and bigger?
17 A: It kept on getting bigger and bigger and better and
18 more stuff. I mean, just ... it's what we call
19 scope creep. It just keeps on adding.
20 Q: And did that include doing work on the house, on the
21 soffits?
22 A: Yes.
23 Q: On their ... a problem with the roof?
24 A: Yeah. Just whatever they wanted, we did.
25 Q: So are you in the tree business?

1 A: No.
2 Q: Is that ...
3 A: No.
4 Q: So as a, I want to say a general, a do-all, you were
5 doing what the Cashes were asking you to do?
6 A: The first set of trees we got Ben McFadden to do.
7 He was in the tree business.
8 Q: My question is, you were getting people to do some
9 of the specialty work that was needed?
10 A: Yeah. I don't cut down trees, yeah.
11 Q: Okay. So you said you got Ben McFadden?
12 A: Yeah.
13 Q: I know Ben McFadden, he's a tree guy?
14 A: He's the Forest Acres tree guy.
15 Q: So you guesstimated what it would cost?
16 A: Well, actually on that one I think he came out and
17 told us and he did it.
18 Q: Okay. And you gave them a ... told them what the
19 price would be?
20 A: Yeah.
21 Q: Who would find Mr. ... who would be the person who
22 would find Mr. McFadden, who's the tree guy in
23 Forest Acres, so to speak; would it be the Cashes,
24 or did you locate him?
25 A: Well, they could. But usually people ask me to do

1 it.
2 Q: So you arranged that and saw what was going on?
3 A: Yeah.
4 Q: And do they ... they had a pine tree taken out; is
5 that correct?
6 A: Yeah.
7 Q: Did there come a time when there was a bigger tree,
8 a much, much bigger tree?
9 A: A much bigger tree.
10 Q: How big a tree? I know what kind it was.
11 A: It was a hackberry that was this big. It was huge.
12 Biggest hackberry you ever saw.
13 Q: Okay. Where was it located?
14 A: Right next to the house, right at the back corner.
15 Q: Did that cause any problems?
16 A: Big problems.
17 Q: Did you have to have tree people come do that, or
18 did you sort of ...
19 A: We got in a fight over that one.
20 Q: Did you guesstimate or estimate that one?
21 A: I guesstimated that one. I mean, I took a shot at
22 ... I knew what Saulo was going to charge to put it
23 on the ground. Then I estimated how many tons it
24 was going to weigh and how much it was going to be
25 ...

1 Q: How many tons was it?
2 A: It turned out, I think around 16 tons of tree.
3 Q: And did it require the use of a Bobcat to get it
4 out?
5 A: It worked the Bobcat to pieces. I mean, the Bobcat
6 had trouble.
7 Q: So not only did you cut down the tree and keep it
8 from falling on the house ...
9 A: Yeah.
10 Q: ... limb it up, drop it ...
11 A: The big pieces, the three big base sections, the
12 Bobcat had trouble picking it up.
13 Q: Okay. Now, while all this was going on, whether it
14 was underground service, whether it was underground
15 service for the house and ...
16 A: And for the shed.
17 Q: And the what?
18 A: The ... for the cabana.
19 Q: Okay..
20 A: That's the underground service.
21 Q: Did you discuss the underground service for the
22 cabana with the Cashes? Or Mr. Cash?
23 A: That's what they wanted.
24 Q: And did, well, were they pleased with the work?
25 A: They didn't say they weren't pleased. We did it.

- 1 Q: How about underground service for their house?
- 2 A: They ... we did it. It was a way bigger undertaking
- 3 than I thought, and they were happy.
- 4 Q: Okay. I'm going to go into some more detail, but
- 5 when ... was it mostly Mr. Cash you were dealing
- 6 with?
- 7 A: Mostly Mr. Cash, yes.
- 8 Q: Okay. I'll come back to that in a minute. With
- 9 Mrs. Cash, did there come a time when she asked you
- 10 to build a playhouse, an outdoor playhouse for their
- 11 son?
- 12 A: Yes, we ... yes.
- 13 Q: Did it take you approximately two days to build it?
- 14 A: All together, yes.
- 15 Q: Two people?
- 16 A: Yeah.
- 17 Q: And did you build it in stages, not on two
- 18 consecutive days?
- 19 A: Yeah, we built the deck one time, and then we came
- 20 back later, we were asked to build the walls.
- 21 Q: Okay. And were you asked to do this?
- 22 A: Yes.
- 23 Q: Did you expect to be paid?
- 24 A: Yes.
- 25 Q: Was there ever a complaint after you did the first

1 stage where you built the deck?
2 A: No.
3 Q: Did they ask you to come do more?
4 A: Yes.
5 Q: And what was that?
6 A: Well, to build the walls and add the zip line.
7 Q: And did you do so?
8 A: Yeah.
9 Q: Who gave you the zip line?
10 A: She did, Carole did. Ms. Cash.
11 Q: All right. Did she ever complain that you were
12 doing work that they didn't want done?
13 A: My impression was she was just as happy as she could
14 be.
15 Q: My question was whether she ever expressed ...
16 A: She never complained.
17 Q: ... that she was dissatisfied that you were doing
18 work that she didn't want done.
19 A: No.
20 Q: Okay. Now, I want to go back to this, again in
21 context. As all the changes were going on, whether
22 it's vaulted ceiling, window outside the vaulted
23 ceiling, rails, a back, more concrete, everything
24 that was done, putting in the plumbing, not putting
25 in the plumbing, were you discussing this with Mr.

1 Cash on almost a daily basis?

2 A: Yes.

3 Q: It was in his yard?

4 A: Yes. He ... my promise, like I said I think

5 earlier, was that on any given day, see I carry the

6 Palm with me, I could tell him within a couple

7 hundred dollars exactly where he was.

8 Q: All right, my question was whether he directed you

9 to do the work and did you do what he directed.

10 A: I did what he directed.

11 Q: And did he say he was satisfied?

12 A: Yes, every time.

13 Q: Did he ever tell you he was dissatisfied with any

14 work?

15 A: He never complained about the work.

16 Q: Okay. Now we come to the Palm Pilot, and this is

17 where there was some confusion. You have a Palm

18 Pilot?

19 A: Right here.

20 Q: You still have it in your pocket?

21 A: It's the same one.

22 Q: And it's the same, with the exception of some

23 writings, do you have all the raw data on your Palm

24 Pilot?

25 A: Yeah.

1 Q: On the Cashes' case even now?
2 A: Yes.
3 Q: Now, there's something, and my son thinks I wasn't
4 as computer literate as I'm really not, but are you
5 familiar with something ...
6 **MR. TRUSLOW:** And, Judge, tell me if you know about this
7 and we can move on, but are you familiar with Excel?
8 **THE COURT:** I am, yeah.
9 **MR. TRUSLOW:** Okay. All right. Well, Judge, you're
10 probably better ... you're a step ahead of me.
11 Q: Excel, explain to the judge what ... a Palm Pilot is
12 where you can punch in your data?
13 A: Yeah. It's actually a little spreadsheet is in the
14 Palm, okay, but it's not quite the same.
15 Q: I'm asking about what a Palm Pilot is.
16 A: Yeah. Put them all in.
17 Q: And then Excel is an accounting software ...
18 A: Spreadsheet.
19 Q: ... spreadsheet; is that correct?
20 A: Yes.
21 Q: And, just so you can, can you explain to the judge
22 how it works? And you can use this wall if it'll
23 help you. Does it have columns?
24 A: Yeah. It's got columns. It's this big sheet of
25 columns, and you just add the numbers in. I mean,

1 you put them in, in the cells that they belong to,
2 and you'll get this real long bunch of numbers.
3 Then you have formulas. You make formulas, and at
4 the top of the columns it says, I don't know if
5 you're interested, it says you sum the numbers from
6 this cell to this cell.

7 Q: Okay.

8 A: And whenever you write numbers in, it keeps a
9 running tally. You don't have to do an adding
10 machine.

11 Q: When I took accounting and we had debits and
12 credits, we did it by pages.

13 A: Yeah.

14 Q: What happens if you're punching it in on your, and
15 you mentioned a formula, if you go beyond one page,
16 what happens on the interaction between your Palm
17 Pilot ...

18 A: If you don't tell that formula at the top that
19 you've got more down here, it don't add it. That's
20 basically what it did. We went too many pages, and
21 it went ... the numbers I was adding down here at
22 the bottom, well the little formula up here wasn't
23 picking them up.

24 Q: So when we went from the intricacy of what you had
25 anticipated to what you ended up with, did it take

1 more pages of entries when it went from ...

2 A: Yes, this would be, this would be the longest one I

3 ever did.

4 Q: So when it goes from 300-some feet to 600-some feet,

5 it takes more room?

6 A: Right.

7 Q: You buy more material?

8 A: Yes.

9 Q: You do more work?

10 A: And you tell your formula to change.

11 Q: So if we've got ... I use, I think in terms of

12 columns over here. You've got a column for say

13 labor, a column for supplies. If you've only got

14 ... if your Excel spreadsheet is set up like a sheet

15 of paper, with debits and credits, when you get to

16 the bottom of the page it'll total it up, correct?

17 A: Well, it'll total ... yeah, pretty correct.

18 Q: But if you run over and you're more than ... and it

19 runs over more than one ...

20 **MS. GRIFFIN:** Your Honor, I'm going to object to him

21 leading him through all this information. He's not

22 testifying what happened.

23 **MR. TRUSLOW:** Okay. I'll back up. That's fine.

24 Q: State whether or not you, because of the scope of

25 the work and that it was bigger than what was

1 anticipated, did you exceed the formula for the
2 Excel, when materials ...
3 A: Yeah, yes.
4 Q: ... transferred from your Pilot to your ...
5 A: See, the big difference is, see, you're thinking ...
6 you old guys are thinking you're adding at the
7 bottom here. Well, you're not. The answer, you're
8 adding up here, and you're adding everything you had
9 to the bottom. But when you went off the chart down
10 here, it didn't add all that stuff down here.
11 Q: So did you realize that, did you find that out as
12 you were going back and looking at the ...
13 A: That's what I was trying to say. That's what I
14 discovered, that it was, it was ... it just did not
15 add those numbers.
16 Q: Okay. So that's why you had to go back and ...
17 A: That is why. That was, that's the difference in the
18 hours.
19 Q: But, for example, if we were going to look at
20 Defendants' Exhibit Number Eight, is this something
21 that would ultimately be generated on Excel?
22 A: Yeah.
23 Q: And what Mr. Cash was getting by comparison would be
24 what was on these sheets, your Exhibit Eight; is
25 that correct?

1 A: Yeah, yeah.
2 Q: All right.
3 A: I usually provide these as backup for that.
4 Q: And was he satisfied with your backup?
5 A: On one occasion where we didn't print it out ... he
6 could always look at this, okay. But we printed out
7 this on every couple, I think I did four or five
8 times, but he ... these were ... he had these. He
9 had this. He could look at every hour we spent,
10 every dollar we spent, everything we did was right
11 in front of him. And he's a financial guy.
12 Q: And did he say he was going to pay you?
13 A: Yeah.
14 Q: Now, I want to look, if I can, at Exhibit Eight.
15 There's some writing on here, and we indicated to
16 the Court that you had some extra writing on the
17 billing sheets that you ...
18 A: That was me trying to explain to you.
19 Q: Okay. So you had your copy of your billing, that
20 was given to Mr. Cash. And then you made copies,
21 here, once we got started with the litigation?
22 A: Yeah.
23 Q: Okay. So, for example, there was a question
24 yesterday by Ms. Griffin about Tada, do you remember
25 that?

1 A: Yeah, I remember that.
2 Q: On, I can't remember which exhibit it is, but it's
3 T-A-D-A written on it.
4 A: It was pictures of ... that were having problems
5 with dates.
6 Q: Okay. You indicated the picture was taken in
7 November of 2007?
8 A: Yeah.
9 Q: All right.
10 A: '08.
11 Q: '08.
12 A: Yeah.
13 Q: And you employed me on December the 30th of '08?
14 A: Okay, I'm not ...
15 Q: Is that correct?
16 A: You're going to have to tell me that one.
17 Q: All right. So the pictures were taken before you
18 employed me?
19 A: Yes.
20 Q: And then after you employed my services, I asked for
21 your pictures?
22 A: Yes.
23 Q: And you just put Tada?
24 A: Yeah. I was explaining to you what ... the chain of
25 events.

1 Q: All right. Now, if we look at ... if we took all of
2 these, we're taking Defendants' Exhibit 12, we can
3 take Seven, we can go through all these, all these
4 pictures, but once we come to 680-some feet, is it
5 easy ... or, as a backup, can you corroborate that
6 this would have been a job that would have taken at
7 least \$1.24 a square foot to build?

8 A: Yes. By the book, it would come out \$124,400 and
9 you would have to deduct for the kitchen and the
10 bathroom.

11 Q: Okay.

12 A: You deduct about \$5000 or \$6000 for ... because by
13 the book it's ten linear feet of cabinet space;
14 that's roughly \$3000. You've got appliances, that's
15 another couple thousand; so you deduct \$5000. And
16 then the bathroom, maybe \$4000. So maybe it's worth
17 \$115,000.

18 Q: And if Mr. Cash had not been a friend, I'm not
19 talking about what you started with but what you
20 ended up with and what he said he approved, if ...

21 A: That's what I would ... if it would have been a
22 fixed price thing, that's what it would have been.

23 Q: All right. A question was asked to you about,
24 listen carefully, a question was asked to you about
25 there was no contract. What did you mean?

1 A: There was a contract. It wasn't that fixed
2 contract.
3 Q: Okay, it wasn't a fixed price ...
4 A: It was cost plus, that was the contract. I do the
5 work, this is how we added ... he knew how we added,
6 he saw how we added, he paid us.
7 Q: Regularly, as reflected in Exhibit Eight, when you
8 would give Mr. Cash the invoices to pay, did it
9 indicate on there that it was a cost plus 25?
10 A: That's exactly how it was figured. I mean, if you
11 look at the letters, they're all done exactly the
12 same way.
13 Q: And did he complain about any of that?
14 **THE COURT:** Excuse me one second. Let's stand in recess
15 until 2:35.
16 (Off the record from 2:25 p.m. to 2:36 p.m.)
17 **THE COURT:** Mr. Truslow, are you ready to proceed?
18 **MR. TRUSLOW:** I think I have four brief areas to follow up
19 on in context based on cross-examination, and then
20 I'll be done.
21 Q: Whether or not there's a contract, what is the value
22 of the work that you did for Mr. and Ms. Cash?
23 A: About \$115,000.
24 Q: Is it more than the amount that you're owed, at a
25 minimum?

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- 1 A: Oh, yeah, much more.
- 2 Q: Second question. When you said Mr. Cash was
3 assuring you that you were going to be paid and he
4 was satisfied, and then ultimately indicated that he
5 wasn't going to pay anything anymore ...
- 6 A: At the very last minute.
- 7 Q: Did he say why?
- 8 A: Not really. It was just he ... he made some comment
9 about it was unauthorized.
- 10 Q: And when he said that he was going to pay you and
11 continue to work, did you rely on his
12 representations that he would pay?
- 13 A: Yes.
- 14 Q: One other thing in that regard and then I'll go to
15 the, I think it's the last thing that I wanted to
16 ask. You'd been to their house many times before,
17 correct?
- 18 A: Yes.
- 19 Q: Your daughter's home is in the next street over?
- 20 A: Yeah, it's about ... as the crow flies, about 150
21 yards away.
- 22 Q: All right. You're aware that the Cashes have a
23 house in the \$700,000 range?
- 24 A: Yes.
- 25 Q: Then the last thing. There was a question about

1 some 40 hours of work that you hadn't added in.

2 A: Right.

3 Q: Okay. And I think you started to say ... at one
4 point you said, well, you pulled that ...

5 **MS. GRIFFIN:** Your Honor, I'm going to object to him
6 leading him. He asked an indirect question on
7 whatever his explanation is.

8 **THE COURT:** Sustained.

9 Q: On cross-examination you had indicated at one point,
10 you had either agreed or said that you had pulled
11 the figure out of the air. What did you mean by
12 that?

13 A: That was ... I could not definitively document which
14 hour of any given day that I had done, but I knew I
15 had been there much more than that.. So I picked a
16 number that wouldn't be ... no one would contest it,
17 and no one did contest it.

18 Q: Okay. For example, did you ... had you and your
19 wife gone on a vacation in the spring of 2008?

20 A: Yes.

21 Q: And tell the Court what happened and what you did as
22 a consequence.

23 A: I was on the phone every day with Mr. Cash. Bill
24 Schmidt and my daughter were there. She'd send me
25 pictures over the phone to say what's going on with

1 this. It was a ...

2 **THE COURT:** I'm sorry. Schmidt and your daughter were

3 where, with you on vacation or back in Columbia?

4 A: They're in Columbia.

5 **THE COURT:** Okay. I'm sorry.

6 Q: And where were you?

7 A: I was in Hunting Island, at the beach down there,

8 with my grandkids and my wife.

9 Q: On vacation?

10 A: On vacation. First vacation in I don't know how

11 long.

12 Q: Was the essence of it that Mr. Cash wanted you to

13 come back?

14 A: Yeah. Because they had the party coming and

15 Schmidt, he's slow, he wanted him to hurry. And I

16 ultimately did come back. I came ... quit and came

17 back.

18 Q: All right. And left your grandchildren and your

19 wife ...

20 A: Left my grandchildren with my wife.

21 Q: Was the party important to Mr. Cash, or did he say

22 it was important?

23 A: That was the big ... it was like the social event of

24 Forest Acres.

25 Q: All right. And did you assist in dismantling all of

1 Mr. Schmidt's ...

2 A: I assisted with dismantling Mr. Schmidt's stuff and
3 putting up the tent. I was there when we got it all
4 ready for the party, put the lights up.

5 Q: And then later, after the party, did you go back?

6 A: Well, after the party we went back, which means we
7 had to dismantle everything and get out. Then we
8 came back, set up Schmidt's equipment, because we
9 still had work to do, had a lot more work to do.

10 Q: And what do you estimate the amount of time that you
11 spent that you didn't record, such as putting up the
12 tent ...

13 A: What I estimate the time I spent is probably 100
14 hours plus.

15 Q: And you're asking 40?

16 A: Forty.

17 **THE COURT:** Any recross?

18 **MS. GRIFFIN:** Yes, sir. Just a few.

19 **MR. HAYNIE - RECROSS-EXAMINATION BY MS. GRIFFIN:**

20 Q: Mr. Haynie, with respect to that party, you
21 testified earlier that you did not get there early
22 on, when they were putting out the pine straw; isn't
23 that right?

24 A: There ... the pine straw I remember was Isauro was
25 putting the pine straw down. Now, I'm told they put

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1 pine straw in the front yard and all over the place.
2 I wasn't there for that.
3 Q: You didn't see any of that?
4 A: No.
5 Q: And the tent in fact was erected by a private
6 company; isn't that right?
7 A: I must have been hanging ... I was doing something
8 with the tent. I was in the tent with Ms. Cash.
9 Q: You didn't put it up though, right?
10 A: No.
11 Q: Okay. Now, your Excel spreadsheet computer program
12 that you and Mr. Truslow spent a lot of time talking
13 about, that can be changed, isn't that right, by
14 your manual additions or subtractions from that
15 program?
16 A: Yes. And that causes problems.
17 Q: And that's what causes problems, when you alter the
18 information that you say you put in your Palm Pilot
19 and then different numbers come out; isn't that
20 right?
21 A: Say that again?
22 Q: You told Mr. Truslow that you put everything in your
23 Palm Pilot, ...
24 A: Yeah.
25 Q: ... then you download it onto an Excel spreadsheet

1 and then Excel does the work, except when you change
2 it; isn't that right?
3 A: Yes. If I change it, then it's forever.
4 Q: And that's what you did?
5 A: Yeah.
6 Q: You changed it. Now, with respect to the labor
7 costs, here today in this courtroom you do not have
8 any evidence of any checks that you paid to any
9 employee that was working for you; isn't that right?
10 **MR. TRUSLOW:** Your Honor, if I can ...
11 A: You didn't ask for any checks.
12 **MR. TRUSLOW:** If I can, Your Honor, under Rule 611 this is
13 not permissible. It's not something that I raised
14 for the first time on redirect. She's going out of
15 her ... this is not new material. It's nothing new
16 that I brought up, and I think under Rule 611 she'd
17 be limited.
18 **THE COURT:** Well, let's see. Okay, now, this is cross.
19 And ...
20 **MR. TRUSLOW:** Re-cross.
21 **THE COURT:** Yes.
22 **MS. GRIFFIN:** Your Honor, my understanding of his redirect
23 was he asked him about everything, including the
24 entire scope of the project again, and I'm just
25 going back to ... he was trying to bolster his

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1 testimony on the documentation that he had, which
2 opens the whole issue of, so where is the
3 documentation. He only has a summary, and his
4 explanation was the Excel spreadsheet makes a
5 mistake on the summary, and I'm trying to get into,
6 well, what's behind the Excel spreadsheet.

7 **THE COURT:** Let me explain the rule that I usually apply.
8 The rule I apply is that there's no new matter
9 allowed on redirect. But on cross the cross-
10 examining attorney may ask questions regarding any
11 relevant matter.

12 **MR. TRUSLOW:** But this is not cross, this is recross, Your
13 Honor. And under Rule 611, in fact, if I may ...

14 **THE COURT:** This is the Rules of Evidence?

15 **MR. TRUSLOW:** It says, Re-examination and Recall?

16 **THE COURT:** Right.

17 **MR. TRUSLOW:** And what it says, I'm looking under
18 subsection D. The recross is limited to new matter
19 brought out. And also under Rule 403, Your Honor.

20 **THE COURT:** Okay. Objection's overruled.

21 **MS. GRIFFIN:** Thank you, Your Honor.

22 **Q:** With respect to the documentation that is in
23 evidence in front of you today, these are all
24 summaries based upon documents that we don't have in
25 this courtroom; isn't that right?

1 A: You gave him a big stack of them somewhere, I saw.
2 Q: Well, they're not in evidence; is that right?
3 A: I wasn't keeping track of that.
4 Q: And there's no backup documentation for any of the
5 hours; isn't that right?
6 A: Not for the hours because they weren't necessary.
7 Q: And no backup documentation for any of the materials
8 that are on any of your spreadsheets that you've
9 provided to this Court?
10 A: Yes, there is for the materials.
11 Q: Well, within these documents that are on the stand
12 in front of you?
13 A: No, there's nothing here. No.
14 Q: Nothing on the stand in front of you that's been
15 entered into the record at this time; is that right?
16 A: All right, now I'm not the lawyer. Where'd the
17 stack of bills go?
18 Q: Now, Mr. Haynie ...
19 A: I don't understand.
20 Q: I understand. You agree with me that this is about
21 a contract that you and Mr. Cash had; isn't that
22 right?
23 A: Right.
24 Q: There is a contract, and it's for this Court to
25 decide the interpretation of the contract; is that

1 right?

2 A: I'll have to take your word for it, I'm not ...

3 y'all are doing the legal. I don't know.

4 **MS. GRIFFIN:** That's all I have, Your Honor.

5 **THE COURT:** All right, thank you. Now, this is the part

6 that drives lawyers crazy because I'll ask questions

7 and I won't let them follow up. Now, keep in mind,

8 Mr. Haynie, as far as construction is concerned I'm

9 a layperson and I'm kind of learning as we go along.

10 You drew an important distinction earlier this

11 afternoon, you said there was a difference between a

12 normal contract and a cost plus contract, and that's

13 what you're talking about, is that ...

14 A: Right.

15 **THE COURT:** All right, there's a distinction? Okay. Do

16 you have anything signed by Mr. Cash?

17 A: Well, I thought this was signed. I don't know where

18 it is. It was ... I thought it was signed.

19 **THE COURT:** You thought ... you said this, you mean ...

20 A: One of these sheets up here is the con- ... this one

21 that doesn't have any signatures on it, this one I

22 thought I had a signed copy, where he signed it.

23 **THE COURT:** Okay. Which exhibit number is that you're

24 holding?

25 A: That is ...

1 **THE COURT:** Plaintiff's Exhibit ...
2 A: Five.
3 **THE COURT:** May I look at it?
4 A: Yeah.
5 **THE COURT:** All right. So I guess we'll have to hear from
6 Mr. Cash about that. But you're saying somewhere
7 there's a ... he signed it and expressed that he
8 agreed to do that, he agreed ...
9 A: Yes.
10 **THE COURT:** ... to the terms of that? Okay.
11 A: And that was the way we operated the entire time.
12 **THE COURT:** And you did confirm that Mr. Cash did pay you
13 something?
14 A: Yes, he did pay me something. He paid me \$50,500.
15 **THE COURT:** And that's how much you've been paid so far?
16 A: That's how much I've been paid so far.
17 **THE COURT:** And you're still owed ...
18 A: \$27,000 ...
19 **THE COURT:** Roughly.
20 A: I don't know the number.
21 **THE COURT:** In the complaint I think it's spelled out,
22 \$26,146; is that right?
23 A: Okay.
24 **MR. TRUSLOW:** Yes, sir.
25 **THE COURT:** And that's how much he still owes you?

1 A: Yes, sir.

2 **THE COURT:** All right. Thank you, sir. You can come
3 down. Watch your step coming down. Mr. Truslow?

4 **MR. TRUSLOW:** That's the plaintiff's case, Your Honor.

5 **THE COURT:** All right. The plaintiff rests. Any motions
6 at this time?

7 **MS. GRIFFIN:** The defendants move for a directed verdict
8 on the plaintiff's causes of action. The plaintiff
9 has pled first for a breach of contract and says
10 that Mr. Cash didn't pay him pursuant to the terms
11 of the contract. In the light most favorable to the
12 plaintiff, he claims it's a cost plus 25 percent
13 contract. If that's true, he's failed to meet his
14 burden of proof because he has to show this Court
15 not just that there's a contract, but he's got to
16 prove that the cost plus 25 percent was ... that the
17 cost plus 25 percent demands that Mr. Cash pay more
18 than \$50,500. The law in other states, I can't find
19 anything in South Carolina, is that the burden of
20 proof is on the plaintiff to make very specific
21 proof of each and every item. It may be very
22 onerous, it may be very difficult, but if that's his
23 choice, if he says it's a cost plus 25 percent, then
24 he's got to show you each invoice that he claims was
25 expended or used for this job. He's got to show you

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1 where he paid for it. He's got to show you the
2 hours that these people worked, the amount he paid
3 to the people, and then he shows you the 25 percent.
4 He hasn't done any of that. He has given you a
5 summary that is subject to a lot of questions as to
6 its veracity and asked the Court to make a ruling on
7 a cost plus 25 percent contract, that his evidence
8 is sufficient for you to make a decision. And it's
9 our position, and we ask Your Honor to rule right
10 now, that he hasn't met his burden of proof on the
11 contract claim if it's a cost plus 25 percent
12 contract. Now, if that's true, then his mechanic's
13 lien also falls because he wouldn't be entitled to
14 any mechanic's lien against the Cashes' property.
15 The last cause of action he has is breach of
16 contract with a fraudulent act. There is no
17 evidence of that. He's got to prove clear and
18 convincing evidence of some type of fraud. He
19 hasn't made any attempt to do that; that cause of
20 action should be stricken. Then finally, he's got
21 this quantum meruit cause of action, but that cause
22 of action falls because he claims there's a
23 contract. So he can't have it all ways. He's got
24 to take one position on this issue, and he's taken
25 the position it's an express contract, it's a cost

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1 plus 25 percent. If that's true, he's got to meet
2 his burden of proof in showing the Court what we owe
3 him under that cost plus 25 percent contract, and
4 they failed to do that.

5 **THE COURT:** Okay. Now, technically this is a motion for a
6 non-suit, under Rule 41. Ms. Griffin, now, do you
7 believe that if the case was submitted now and your
8 client prevailed, do you believe though however, or
9 do you agree with ... I'm sure Mr. Truslow's going
10 to argue that they've offered enough evidence to get
11 past your motion for a non-suit at this stage. It
12 doesn't mean they're going to win on the merits
13 necessarily, but they've got enough evidence to get
14 past the motion; do you agree with that, or ...
15 well, obviously you disagree with that.

16 **MS. GRIFFIN:** Your Honor, if the ...

17 **THE COURT:** Do you refute what they're about to say?

18 **MS. GRIFFIN:** Yeah, if the standard is, under a cost plus
19 25 percent contract he's got to prove his amounts
20 that he claims that we owe them, then they haven't
21 met that standard. That's our position on that.

22 **THE COURT:** And that's from South Carolina?

23 **MS. GRIFFIN:** No, Your Honor, there is nothing in South
24 Carolina that talks about the burden of proof for a
25 contractor on a cost plus 25 percent contract.

1 There are cases from out of state. Louisiana, for
2 instance. There's an Am. Jur. article on it where
3 it talks about the burden of proof is on the
4 plaintiff in establishing the time that he spent on
5 the job and the materials that he spent on the job,
6 and he can't just summarize it, present it to the
7 Court in a summary fashion. He's got to show you
8 exactly what happened.

9 **THE COURT:** Okay. All right. Who's going to argue the
10 motion? Mr. Truslow, Senior, I guess.

11 **MR. TRUSLOW:** The brains are over here, but I stood up
12 first I suppose, Your Honor. Construing the
13 testimony in the light most favorable to the
14 plaintiff, we believe we've submitted sufficient
15 proof for that non-suit; defendant should go ahead
16 and present his case. I think a lot of this is
17 going to, unfortunately may come down to, on some
18 level, a credibility issue. On others, it may not.

19 **THE COURT:** Let me ask you though, Mr. Truslow, about this
20 breach of contract. Let me make sure I'm stating it
21 accurately. Breach of contract, accompanied with
22 fraudulent intent. Do you believe you offered any
23 evidence of fraudulent intent or any evidence of
24 fraud on Mr. Cash's behalf?

25 **MR. TRUSLOW:** That's not as strong as the others, quite

1 frankly. And I think you're asking a good question
2 but, Your Honor, the testimony was that he had
3 agreed, that he relied ... representations were
4 made, he relied; he relied to his detriment; and the
5 defendant had, or Mr. Cash had ultimately indicated
6 that he never intended to pay. So if you consider
7 it in that light, that a representation was made
8 that I will pay, and then later when it came time to
9 pay, well, I never intended to pay but I needed the
10 job done, so to speak. That would ... it'd be a
11 closer question, but we believe that that would
12 survive a non-suit, based on the testimony.

13 **THE COURT:** Yes, sir. The lawyers know that fraud is
14 incredibly difficult to prove. Maybe I'm
15 exaggerating how hard it is, but it's harder to
16 prove than a lot of other things. For example,
17 people will sometimes throw in an Unfair Trade
18 Practices Act claim because that's a little easier
19 to prove than fraud. Mr. Truslow, tell me, you've
20 indicated that there was a representation of fraud,
21 at least a misrepresentation made by Mr. Cash
22 according to your client. Now, if I'm not mistaken,
23 there are nine elements you have to prove.

24 **MR. TRUSLOW:** Yes, sir.

25 **THE COURT:** All right. Show me the elements of fraud

1 that's been proven by your client.

2 **MR. TRUSLOW:** That a representation ... some people say

3 seven, some nine, because you wrap them up together.

4 But, a representation was made; ignorance of the

5 falsity. In other words, that you think that

6 they're going to ... you don't have a reason to

7 believe they're not going to do what they say. And

8 Mr. Haynie was regularly giving billing that showed

9 the 25 percent. That representations were made

10 that, I'm going to pay. When he got behind and

11 things got slow and there were problems with the

12 economy and some personal problems, he said he was

13 satisfied, satisfied with the work, that he was

14 going to pay, it was just slow pay, could he refer

15 you to somebody else to keep his cash flow going,

16 Mr. Haynie. That Mr. Haynie relied on that. He

17 relied on it to his detriment because he hadn't been

18 paid. Those are seven or nine, depending on how you

19 want to look at it. And we think that is

20 sufficient. Now, in all candor, the defendants may

21 be able to overcome this in their case and satisfy

22 you that that burden hadn't been met, but right now

23 we have ... it's not just ... it doesn't appear at

24 this point in time to just be a simple contract

25 where somebody says I'm going to pay and then they

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1 don't pay. The affirmative representation was, I'm
2 going to pay, I'm going to pay, I just need some
3 more time, can I have you do some more work, can I
4 refer you to a customer, I think it was Ms.
5 Stansill. And, I'm going to pay you. And then at
6 the end say, when he gets the ... time to finally
7 settle up, I never intended to pay you, and words to
8 the effect of, you must be smoking something, or
9 something like that. So we think that that's
10 sufficient. And then the last element is, of
11 course, damages, and that was ... I didn't mention
12 that because it's already been abundantly clear that
13 my client says that he's been damaged in the sum of
14 \$26,000 by the defendants.

15 **THE COURT:** All right. And in the alternative ... and you
16 also put a last cause of action, pleading the
17 alternative. You say as a matter of equity, if
18 there's no contract your client should be able to
19 recover. Now, is that an either/or type of thing or
20 you want that only if I rule that there's actually
21 no contract?

22 **MR. TRUSLOW:** Your Honor, if you ... and I think Ms.
23 Griffin is correct on this. If you find that there
24 never was ... it never was a cost plus 25 percent,
25 what they've gotten is somewhere between \$80,000 and

1 \$120,000 worth of work that they paid \$50,000 for.
2 That would be an inequity; that's where we'd go.
3 Now, I think ... where I think Ms. Griffin was
4 correct is, if you found based on a quantum meruit
5 basis rather than I think under contract, I believe
6 she's ... I need to do some more research and
7 consult with my brains, but I believe if you find on
8 a quantum meruit basis, I believe that would quite
9 frankly do away with the mechanic's ... it may do
10 away with the mechanic's lien claim for legal fees.
11 That would be the distinction.

12 **THE COURT:** Okay.

13 **MR. TRUSLOW:** So you could find based on the contract.
14 And if you find the contract and that the work was
15 done, met the requisites, then it would be basically
16 \$26,147 plus interest, plus the fees. If you find
17 out ... if you base this on quantum meruit, based on
18 reasonable value, then it may ... her argument may
19 be correct, and we would deal with that in our
20 proposed orders that we would submit.

21 **THE COURT:** Okay. Let me ... and I don't want to take up
22 too much time dwelling on this, but I'm a little
23 concerned that, as you said, Mr. Truslow, it's not
24 like a regular contract; they owe me this and they
25 didn't pay, so there you have it. I got from your

1 client's testimony that it was kind of a casual type
2 of ... Mr. Cash and Mr. Haynie were such good
3 friends, you know, there was really no dispute until
4 it came time to pay for everything. Is that an
5 accurate statement?

6 **MR. TRUSLOW:** I think that's what my client contends, is
7 that Mr. Cash had approved everything, said he was
8 happy with it. Your Honor can see the pictures.
9 It's lovely. They've got a lovely a home. And it's
10 kind of like the old adage that you and I might have
11 heard when we were in law school about holding off
12 on your billing and the value in the recipient's
13 eyes goes down the more time that goes by. And the
14 converse, which is no good deed goes unpunished. So
15 if it hadn't been a friend and somebody that Mr.
16 Haynie respected, when he got behind and had tough
17 times, the economy went south, Merrill Lynch was
18 having problems, if he'd just said too bad, so sad;
19 I'm walking away, give me my money, and sued him
20 then. But he didn't do that.

21 **THE COURT:** With regard to your motion for non-suit, the
22 motion is granted in part. The motion is granted
23 with regard to the plaintiff's third cause of
24 action, which is breach of contract accompanied with
25 fraudulent intent. That's it as far as ... the rest

1 of the motion is denied at this time. Now, at the
2 close of the defendants' case she can certainly
3 renew it, and I'll allow Ms. Griffin to renew her
4 motions. Of course, it would not be a motion for
5 non-suit at that stage, it would be a motion for
6 judgment, which may be redundant because she's
7 asking me to rule in her favor all along. Okay. I
8 would ... in your proposed order that you submit,
9 I'm going to ask that, as I said in chambers, I'm
10 going to ask both sides to submit proposed orders
11 when we're finished. Remember to include the fact
12 that we did grant a non-suit as to the third cause
13 of action. Okay. Do you need a break before you
14 start your case, Ms. Griffin, or can you ...

15 **MS. GRIFFIN:** If we could just take five minutes.

16 **THE COURT:** Okay.

17 **MS. GRIFFIN:** And, Your Honor, I'm intending to put up
18 both of the Cashes. I would expect Mr. Cash is
19 going to be a longer witness. I can put Mrs. Cash
20 up first.

21 **THE COURT:** Okay.

22 **MS. GRIFFIN:** If there's anything about the order of
23 witnesses that could help the Court, I'm glad to ...

24 **THE COURT:** No. And I'm a little concerned. I hope your
25 clients don't think that they're being pressed for

1 time, because the truth is we're not pressed for
2 time. We frequently do this, we can come back
3 another time to make sure all the testimony of the
4 defendants is in. So I know it's getting late in
5 the afternoon, but I want your clients to
6 understand. Of course, they're conflicted because
7 they want to get this over with, I'm sure. Both
8 sides do. But I do want them to understand that
9 they're not under time constraints. And I guess,
10 Mr. Truslow, you should feel the same way, Mr.
11 Haynie.

12 **MR. TRUSLOW:** I do. In fact, I was just thinking for Ms.
13 Cash, since I understand she's going to be a
14 relatively short witness, we might be willing to
15 stipulate to her testimony. Not to the truth of the
16 matter asserted, but that her testimony would be the
17 same as her husband's I suppose.

18 **THE COURT:** Well, I'll step out and y'all can talk about
19 that.

20 **MS. GRIFFIN:** Your Honor ...

21 **THE COURT:** Now ... I'm sorry, yes, ma'am?

22 **MS. GRIFFIN:** One other question. If Mrs. Cash, she'll be
23 short, and then I expect that Mr. Cash is going to
24 be a longer witness. And it could be that I get
25 through his direct today, but there won't be

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1 sufficient time to cross unless you're really fast.
2 If that happens and we're going to have to break for
3 a number of months and I'm not going to be able to
4 talk to my client, do you have any suggestions about
5 how we could handle that?
6 **THE COURT:** Well, actually it won't be a number of months.
7 For example, we may have some time later this week
8 as a matter of fact. Now, on the other hand, some
9 of the time may be Friday afternoon. But I can ...
10 we'll work with you on that. In fact, we're willing
11 to even bump somebody else.
12 **MS. GRIFFIN:** Thank you, Your Honor.
13 **THE COURT:** We take pride in doing everything as a date
14 certain, so. Of course, we have to rearrange
15 everybody's schedule as well, so.
16 **MS. GRIFFIN:** I know I'm out of town on Friday.
17 **THE COURT:** Oh, you're not going to be here on Friday?
18 **MS. GRIFFIN:** So is Mr. Truslow, so.
19 **MR. TRUSLOW:** And Thursday. No, I can be here until about
20 3:00 on Thursday.
21 **THE COURT:** Okay. All right. During the break I'll go
22 ahead and set that, okay?
23 **MS. GRIFFIN:** Okay. Thank you, Your Honor.
24 (Off the record from 3:06 p.m. to 3:33 p.m.)
25 **MS. GRIFFIN:** Your Honor, you want us to proceed as long

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