

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable Ellis B. Drew, Jr., Master-in-Equity

Case No.: 2007-CP-04-2785
(Appellate Case No. 2012-213225)

RECEIVED

JUN 03 2013

SC Court of Appeals

Moorhead Construction, Inc. Respondent,

v.

Pendleton Station, LLC, Enterprise Bank of South Carolina,
and Angelo Penza Defendants,

Of whom Enterprise Bank of South Carolina is the Appellant.

**RECORD ON APPEAL
VOLUME II OF II**

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

CRAFT CONSTRUCTION COMPANY, INC.)
OF STARR,)

PLAINTIFF,)

VS)

2007-CP-04-2784

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA, DIANA L.)
ZELLNER, TRUSTEE FOR THE DIANA L.)
ZELLNER REVOCABLE TRUST UAD, ANGELO)
PENZA, BOBBY BRYANT, URSULA LESSER,)
ROGER ROWE AND BENJAMIN L. DANIEL,)
SR.,)

DEFENDANTS.)

MOORHEAD CONSTRUCTION, INC.,)

PLAINTIFF,)

VS)

2007-CP-04-2785

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA, DIANA L.)
ZELLNER, TRUSTEE FOR THE DIANA L.)
ZELLNER REVOCABLE TRUST UAD, ANGELO)
PENZA, BOBBY BRYANT, URSULA LESSER,)
ROGER ROWE AND BENJAMIN L. DANIEL,)
SR.,)

DEFENDANTS.)

COPY

MILLER CONSTRUCTION COMPANY, INC.	)	
	)	
PLAINTIFF,	)	
	)	
VS	)	2007-CP-04-2786
	)	
PENDLETON STATION, LLC, ENTERPRISE	)	
BANK OF SOUTH CAROLINA, DIANA L.	)	
ZELLNER, TRUSTEE FOR THE DIANA L.	)	
ZELLNER REVOCABLE TRUST UAD, ANGELO	)	
PENZA, BOBBY BRYANT, URSULA LESSER,	)	
ROGER ROWE AND BENJAMIN L. DANIEL,	)	
SR.,	)	
	)	
DEFENDANTS.	)	

TRANSCRIPT OF TESTIMONY

BEFORE THE HONORABLE ELLIS B. DREW, JR.
MASTER IN EQUITY FOR THE TENTH JUDICIAL CIRCUIT
AT THE ANDERSON COUNTY COURTHOUSE, ANDERSON, SC
ON DECEMBER 8, 2011

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I N D E X

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1 THE COURT: THIS IS A HEARING BEING HELD ON
2 DECEMBER 8, 2011, IN REGARD TO THREE CASES. 2007-CP-04-
3 2784, CRAFT CONSTRUCTION COMPANY, INC. OF STARR VERSUS
4 PENDLETON STATION AND OTHERS; 2007-CP-04-2785, MOORHEAD
5 CONSTRUCTION, INC. VERSUS PENDLETON STATION AND OTHERS
6 AND 2007-CP-04-2786, MILLER CONSTRUCTION COMPANY VERSUS
7 PENDLETON STATION, LLC, AND OTHERS.

8 SO WE'VE GOT MILLER, MOORHEAD AND CRAFT
9 CONSTRUCTION VERSUS VARIOUS PARTIES.

10 I'M GOING TO ASK THE ATTORNEYS AT THIS TIME TO
11 STATE THEIR NAME FOR THE RECORD AND WHO THEY ARE
12 REPRESENTING.

13 MR. BROUSSEAU: THANK YOU, YOUR HONOR. DAVID
14 BROUSSEAU OF THE LAW FIRM OF MCINTOSH SHERARD SULLIVAN
15 AND BROUSSEAU HERE IN ANDERSON. I REPRESENT MOORHEAD
16 CONSTRUCTION. I'VE GOT THE PRINCIPAL OF MOORHEAD, KEVIN
17 MOORHEAD, SEATED RIGHT HERE. ALSO CRAFT CONSTRUCTION OF
18 STARR, AND I'VE GOT MR. CRAFT, THE PRINCIPAL OF THAT
19 BUSINESS, SEATED RIGHT OVER HERE. AND MILLER
20 CONSTRUCTION COMPANY. I'VE GOT THE PRINCIPAL FROM MILLER
21 SITTING BACK HERE, MIKE MILLER.

22 THE COURT: ALL RIGHT, THANK YOU.

23 MR. BROUSSEAU: THANK YOU, SIR.

24 MR. BARNETT: STAN BARNETT, YOUR HONOR.

25 THE COURT: THANK YOU.

1 MR. BARNETT: MR. LOGAN AND I REPRESENT
2 PENDLETON STATION, LLC AND MR. BEN DANIEL, SR., ALTHOUGH
3 I BELIEVE MR. DANIEL IS ABOUT TO BE DISMISSED AS AN
4 INDIVIDUAL PARTY DEFENDANT.

5 THE COURT: ALL RIGHT, THANK YOU.

6 MR. DUDLEY: TOM DUDLEY OF KENISON DUDLEY AND
7 CRAWFORD, ALONG WITH STOKELY HOLDER. WE REPRESENT
8 ENTERPRISE BANK. DAVID JOHNS, EXECUTIVE VICE PRESIDENT
9 OF THE BANK IS HERE.

10 THE COURT: ALL RIGHT. AND YOUR CO-COUNSEL?

11 MR. HOLDER: STOKELY HOLDER.

12 THE COURT: ALL RIGHT, THANK YOU.

13 MR. LAVERY: YOUR HONOR, NICK LAVERY ON
14 BEHALF OF ANGELO PENZA.

15 THE COURT: THANK YOU, MR. LAVERY.

16 MR. LAVERY: THANK YOU.

17 THE COURT: THE FIRST THING I'M GOING TO
18 PROCEED WITH IS ENTERPRISE BANK WHO HAS FILED A MOTION
19 FOR AN AWARD OF ATTORNEY FEES AND COSTS. THIS ARISES OUT
20 OF A SUMMARY JUDGMENT HEARING THAT WAS HELD BY JUDGE
21 MADDOX WHEREIN HE GRANTED ENTERPRISE BANK'S MOTION FOR
22 SUMMARY JUDGMENT AS TO EACH OF THE PLAINTIFFS' BREACH OF
23 CONTRACT CLAIMS AND ENTERPRISE BANK'S MOTIONS FOR SUMMARY
24 JUDGMENT AS TO EACH OF THE MECHANIC'S LIEN CLAIMS AS TO
25 ONLY THE THIRTY-EIGHT (38) ACRE TRACT WAS GRANTED,

1 HOWEVER, ENTERPRISE BANK'S -- I'M RECITING FROM JUDGE
2 MADDOX'S ORDER OF DECEMBER 31, 2010 -- THE BANK'S MOTION
3 FOR SUMMARY JUDGMENT AS TO EACH OF THE MECHANIC'S LIEN
4 CLAIMS AS TO TRACT A, TRACT B AND A TWO (2) ACRE TRACT
5 ARE DENIED. ALSO, ENTERPRISE BANK'S MOTION PERTAINING TO
6 THE PLAINTIFF'S QUANTUM MERUIT CLAIMS ARE DENIED.

7 NOW, MR. DUDLEY, YOUR MOTION FOR ATTORNEY FEES
8 AND THE COSTS THEN ARE BASED ON THE GRANTING OF THE
9 SUMMARY JUDGMENT AS TO THE THIRTY-EIGHT (38) ACRE TRACT?

10 MR. DUDLEY: YES, SIR, MR. HOLDER -- IF YOU
11 NEED ANYMORE ARGUMENT, MR. HOLDER WILL ADDRESS THAT FOR
12 YOU.

13 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR
14 FROM YOU.

15 MR. HOLDER: YOUR HONOR, THE BANK HAS MADE A
16 MOTION FOR THE AWARD OF COSTS AND ATTORNEY FEES UNDER
17 SOUTH CAROLINA CODE SECTION 29-5-10 WHERE THE COURT OF
18 APPEALS IN SOUTH CAROLINA DETERMINED THAT THE PREVAILING
19 PARTY'S PROVISION IS MANDATORY IN CASES LIKE THESE WHERE
20 A MECHANIC'S LIEN HAS BEEN DISMISSED ON THE MERITS AND IN
21 THIS CASE IT CLEARLY WAS PURSUANT TO THE PRIOR MOTION FOR
22 SUMMARY JUDGMENT.

23 THE COURT: ALL RIGHT, THANK YOU. MR.
24 BROUSSEAU, WHAT ABOUT THAT?

25 MR. BROUSSEAU: YOUR HONOR, MY UNDERSTANDING OF

1 THE STATUTE IS THAT THE TERM PREVAILING PARTY IS BASED ON
2 ONE VERDICT IN THE ACTION. THIS CASE HAS STILL NOT BEEN
3 DECIDED WITH FINALITY. WHILE THERE WAS AN ORDER GRANTING
4 SUMMARY JUDGMENT AS TO ONE PARTICULAR TRACT, WE STILL
5 HAVE FOUR DIFFERENT LIENS EXISTING ON FOUR (4) DIFFERENT
6 TRACTS. INCLUDED WITHIN THE STATUTE AS WELL IS ALSO
7 CONSIDERATION OF THE COMPULSORY COUNTERCLAIMS AND OTHER
8 MATTERS AS A WHOLE. AS YOUR HONOR STATED DURING THE
9 PRETRIAL STATEMENTS, A PREVAILING PARTY -- THERE'S A
10 NUMBER OF DIFFERENT FACTORS BUT THE PREVAILING PARTY
11 ITSELF IS LOOKING AT THE CASE AS A WHOLE AND SEEING WHICH
12 THE PREVAILING PARTY WAS SO WE WOULD ASK THAT YOU DENY
13 THEIR MOTION.

14 THE COURT: ALL RIGHT. MR. HOLDER, HAD
15 THERE NOT BEEN THESE CLAIMS AGAINST THESE OTHER SEVERAL
16 TRACTS THAT ARE STILL PENDING, I THINK YOU WOULD BE
17 CORRECT, BUT SINCE THEY HAVE NOT BEEN DETERMINED AS TO
18 THE OTHER THREE (3) CLAIMS, THAT IS, THE MECHANIC'S LIEN
19 ACTIONS, I'M GOING TO WITHHOLD RULING ON THAT MOTION AT
20 THIS TIME. IT'S PROBABLY GOING TO ULTIMATELY TURN ON HOW
21 THE MAIN ACTION IS DECIDED.

22 MR. HOLDER: YES, SIR. THANK YOU, YOUR
23 HONOR.

24 THE COURT: ALL RIGHT, NOW ANYTHING ELSE FOR
25 THE RECORD PRIOR TO TAKING TESTIMONY?

1 MR. BROUSSEAU: I'VE GOT A PENDING MOTION FOR
2 SUMMARY JUDGMENT, YOUR HONOR, ON THE PLAINTIFF'S QUANTUM
3 MERUIT CLAIM, IF YOUR HONOR WANTS TO TAKE THAT UP AT THIS
4 STAGE. IT'S BEEN OUT THERE PENDING FOR QUITE SOME TIME.
5 I FILED A BRIEF WITH THE COURT IN THAT REGARD AND
6 OBVIOUSLY, I'M REFERRING TO THE MECHANIC'S LIEN CAUSES OF
7 ACTION THAT MY CLIENTS FILED BUT WE ALSO FILED QUANTUM
8 MERUIT CLAIMS. ESSENTIALLY, AND WHAT THE TESTIMONY
9 IS GOING TO -- THIS IS REALLY, THERE IS NO DISPUTE ABOUT
10 THIS, IS THAT PENDLETON STATION OWNED THE PROJECT AND WAS
11 DEVELOPING THE PROJECT, MY CLIENTS WERE DOING THE WORK
12 FOR PENDLETON STATION. PENDLETON STATION THEN WENT BELLY
13 UP, SO TO SPEAK. THE BANK CAME IN, ACCEPTED A DEED IN
14 LIEU OF FORECLOSURE FROM PENDLETON STATION. THEN THERE
15 WAS SOME TIME FRAME THERE. WE FILED OUR LIENS BUT THEN
16 THERE WAS SOME TIME FRAME WHERE THE BANK DID NOT DO ANY
17 WORK ON THE PROJECT WHATSOEVER. IT HAD CLEAR NOTICE OR
18 IT HAD ACTUAL NOTICE AFTER A WHILE, BUT IT HAD NOTICE
19 THAT WE HAD DONE WORK ON THE PROJECT, WE HAD NOT BEEN
20 PAID FOR THAT WORK AND THEN AFTER THAT ---

21 THE COURT: MR. BROUSSEAU, I'M GOING TO
22 CONSIDER THAT AS AN ALTERNATE CLAIM. IN THE EVENT FOR
23 SOME REASON YOUR MECHANIC'S LIEN ACTION IS NOT
24 SUCCESSFUL, I'LL LET YOU THEN FURTHER ARGUE THE QUANTUM
25 MERUIT PORTION.

1 MR. BROUSSEAU: YES, SIR.

2 THE COURT: I THINK THE PRIMARY ACTION IS,
3 OF COURSE, BASED ON THE MECHANIC'S LIEN.

4 MR. BROUSSEAU: YES, SIR.

5 THE COURT: BUT I UNDERSTAND WHAT YOU ARE
6 SAYING. YOU ARE ALSO ALLEGING A CAUSE OF ACTION QUANTUM
7 MERUIT.

8 MR. BROUSSEAU: YES, SIR.

9 THE COURT: SO AT THIS TIME I'M GOING TO
10 TEMPORARILY DENY YOUR MOTION FOR SUMMARY JUDGMENT BUT I
11 WILL CONTINUE TO CONSIDER THE QUANTUM MERUIT CLAIM AS AN
12 ALTERNATIVE. ALL RIGHT?

13 MR. BROUSSEAU: YES, SIR.

14 THE COURT: ANYTHING ELSE?

15 MR. BROUSSEAU: OTHER THAN THE HOUSEKEEPING WE
16 DISCUSSED BEFORE ABOUT SOME OF THESE DEFENDANTS, LIKE MR.
17 DANIEL NEEDS TO BE DISMISSED.

18 THE COURT: ALL RIGHT, MR. DANIEL
19 INDIVIDUALLY HAS BEEN DISMISSED FROM THIS ACTION, IS THAT
20 CORRECT?

21 MR. BROUSSEAU: YES, SIR.

22 MR. DUDLEY: YOUR HONOR, AS A HOUSEKEEPING
23 MATTER, DAVE GAVE ME ALL OF HIS EXHIBITS WHEN WE WERE
24 GOING TO TRY THIS A COUPLE OF MONTHS AGO AND I HAVE
25 MARKED ALL OF MY EXHIBITS THAT I WOULD INTRODUCE. ONE

1 COPY IS FOR THE WITNESS, ONE IS FOR YOUR HONOR. IT HAD
2 ALREADY BEEN MARKED BUT YOU CAN TAKE THAT OFF AND MARK IT
3 FOR THIS HEARING.

4 THE COURT: HAS EVERYBODY GOT A COPY OF
5 THIS?

6 MR. DUDLEY: THEY ALL HAVE A COPY, YES, SIR.

7 THE COURT: THE COURT REPORTER WILL MARK
8 THEM FOR THE PURPOSES OF THIS HEARING.

9 MR. BROUSSEAU: YES, SIR, WE DO, YOUR HONOR.
10 (DEFENDANT ENTERPRISE BANK'S EXHIBITS 1-26
11 FOR IDENTIFICATION)

12 MR. BROUSSEAU: FOR THE RECORD, YOUR HONOR, WE
13 DON'T STIPULATE THAT THE DOCUMENTS IN HERE ARE
14 ADMISSIBLE. OBVIOUSLY, THOSE ISSUES WILL COME UP AS MR.
15 DUDLEY ATTEMPTS TO PUT THOSE IN.

16 THE COURT: LET ME MAKE ONE OTHER COMMENT.
17 I WANT TO FINISH THIS CASE TODAY IF POSSIBLE. I DON'T
18 BELIEVE IN AN HOUR OR HOUR AND A HALF LUNCH BREAK. WE'LL
19 BE LUCKY IF WE GET THIRTY (30) MINUTES. I WILL GIVE YOU
20 SHORT BREAKS AS THE NEED MAY ARISE, BUT WE ARE GOING TO
21 CONTINUE ON WITH THIS CASE AND I HOPE TO FINISH IT TODAY
22 EVEN IF WE HAVE TO KEEP THE COURTHOUSE OPEN A LITTLE
23 LATE. IF THERE IS NO CHANCE TO FINISH IT, I'LL EXPECT
24 YOU BACK HERE IN THE MORNING AT 9:30, BUT WE'LL COVER
25 THAT WHEN WE GET TO IT.

1 ALL RIGHT, MR. BROUSSEAU, I WANT TO PROCEED
2 FIRST ON THE MOORHEAD CASE. IN VIEWING THE DOCUMENTS
3 THAT SEEMS TO BE THE PRIMARY CASE. AS I RECALL, THEY
4 WERE THE GENERAL CONTRACTOR OR HAD A CONTRACT TO DO THIS
5 WORK.

6 MR. BROUSSEAU: YES, SIR.

7 THE COURT: AND MILLER CONSTRUCTION AND
8 CRAFT WERE SUBCONTRACTORS?

9 MR. BROUSSEAU: THAT'S CORRECT, AND YOUR HONOR,
10 FOR CLARIFICATION OR JUST FOR EASE AND CONVENIENCE, THE
11 FACTS INVOLVED IN THIS CASE ARE ALL BASICALLY THE SAME
12 AND SO I HAD INTENDED -- OBVIOUSLY, I HAD INTENDED TO
13 CALL THREE OF THE WITNESSES FROM THE DEFENDANT'S SIDE,
14 ACTUALLY, FROM THE BANK, VERY QUICKLY. AND THEN I'VE GOT
15 MY THREE CLIENTS AND I WAS GOING TO PUT MR. MOORHEAD UP
16 AFTER THE BANK'S WITNESSES.

17 THE COURT: ALL RIGHT, YOU MAY PROCEED.

18 MR. BROUSSEAU: THANK YOU. YOUR HONOR, I WOULD
19 CALL CHARLIE KERNAGHAN.

20 CHARLES KERNAGHAN, PLAINTIFFS' WITNESS, SWORN:

21 DIRECT EXAMINATION

22 BY MR. BROUSSEAU:

23 Q. MR. KERNAGHAN, WOULD YOU PLEASE STATE YOUR NAME AND
24 SPELL YOUR LAST NAME FOR THE COURT REPORTER?

25 A. CHARLES KERNAGHAN, K-E-R-N-A-G-H-A-N.

1 Q. OKAY. MR. KERNAGHAN, YOU WERE FORMERLY EMPLOYED BY
2 PENDLETON STATION, IS THAT CORRECT?

3 A. YES, SIR.

4 Q. AND THEN SUBSEQUENTLY YOU WERE ALSO EMPLOYED BY
5 ENTERPRISE BANK OF SOUTH CAROLINA, IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. YOU ARE NO LONGER EMPLOYED BY EITHER ONE OF THOSE,
8 THOUGH, AT THIS STAGE, IS THAT CORRECT?

9 A. THAT'S RIGHT.

10 Q. ALL RIGHT. WHAT WAS YOUR ROLE ON THIS PROJECT? IN
11 REGARDS TO THE PENDLETON STATION PROJECT, WHAT WAS YOUR
12 ROLE?

13 A. I WAS INITIALLY HIRED TO BE -- I WAS HIRED BY BROOKS
14 HARVEY AND BEN DANIEL TO BE A SALES AND RENTAL PERSON.
15 THEY HIRED ME -- I HAD TO GO GET MY REAL ESTATE LICENSE,
16 BUT MY BACKGROUND WAS IN CONSTRUCTION AND SO WHEN I
17 ACTUALLY STARTED THEY HAD ME AS JOHN TAYLOR'S ASSISTANT,
18 FOR LACK OF A BETTER WORD, AND HE WAS THE PROJECT MANAGER
19 AT PENDLETON STATION. SO -- WHICH WAS FINE WITH ME
20 BECAUSE I HAD A BACKGROUND IN CONSTRUCTION SO THAT'S KIND
21 OF WHERE I FELL IN AND I NEVER DID ANYTHING WITH THE REAL
22 ESTATE STUFF.

23 Q. AND YOU OVERSAW A LOT OF THE CONSTRUCTION THAT WAS
24 GOING ON AT PENDLETON STATION?

25 A. I WORKED FOR JOHN, YES.

- 1 Q. OKAY. AND AT SOME STAGE, AND WE'RE GOING TO GET TO
2 THIS IN JUST A SECOND, BUT AT SOME STAGE THE BANK TOOK
3 OVER. I'M REFERRING TO IT GENERALLY AS THE PENDLETON
4 STATION PROJECT. I KNOW IT'S CALLED SOMETHING ELSE
5 DIFFERENT NOW, BUT FOR EASE AND CONVENIENCE IT'S PROBABLY
6 BETTER TO DO THAT. AT SOME STAGE THE BANK TOOK OVER THE
7 PROJECT, RIGHT?
- 8 A. THAT'S CORRECT.
- 9 Q. ALL RIGHT. AND WERE YOU THE ONLY PERSON THAT
10 CONTINUED ON? WERE THERE SOME OTHER FOLKS THAT CONTINUED
11 ON WITH THE PROJECT AFTER THE BANK TOOK IT OVER OR WERE
12 YOU PRIMARILY THE ONLY ONE?
- 13 A. WHEN THE BANK TOOK OVER THEY HIRED BETTY HARRIS, BEN
14 WEEKS AND MYSELF.
- 15 Q. OKAY. SO BETTY WAS PART OF THE ORIGINAL PROJECT
16 WITH THE PRIOR OWNERS, CORRECT?
- 17 A. THAT'S RIGHT. BETTY WORKED THERE BEFORE ME.
- 18 Q. OKAY.
- 19 A. SO SHE'S BEEN THERE THE LONGEST.
- 20 Q. BUT YOU WERE REAL FAMILIAR WITH WHAT WAS GOING ON IN
21 REGARDS TO CONSTRUCTION AND EVERYTHING LIKE THAT OUT
22 THERE?
- 23 A. I FELT LIKE I WAS, YES.
- 24 (PLAINTIFFS' EXHIBIT 1 FOR IDENTIFICATION)
- 25 Q. OKAY. I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS

1 PLAINTIFFS' EXHIBIT NUMBER 1.

2 MR. BROUSSEAU: YOUR HONOR, THIS IS LISTED IN
3 MR. DUDLEY'S EXHIBITS AS TAB NUMBER 6 IN THIS NOTEBOOK.
4 ALSO, I HAVE ANOTHER COPY FOR THE COURT, TOO, IF YOU'D
5 LIKE TO SEE THAT.

6 THE COURT: ALL RIGHT. I HAVE MR. DUDLEY'S
7 EXHIBITS.

8 Q. NOW, MR. KERNAGHAN, YOU ARE FAMILIAR WITH THIS
9 DOCUMENT THAT'S IN FRONT OF YOU MARKED AS PLAINTIFFS'
10 EXHIBIT NUMBER 1, CORRECT?

11 A. I BELIEVE SO. I'M READING IT. IT'S A DEED IN LIEU,
12 I THINK.

13 Q. YES, SIR.

14 A. OKAY.

15 Q. NOW DO YOU AGREE WITH ME THAT -- WELL, FIRST OF ALL,
16 WHO IS ERVIN MATHIAS?

17 A. WELL, HE'S THE GENTLEMAN SITTING OVER THERE.

18 Q. HE'S HERE IN THE COURTROOM?

19 A. YES, SIR.

20 Q. OKAY. AND TO YOUR KNOWLEDGE, WHAT WAS MR. MATHIAS'
21 ROLE PRIOR TO THE BANK TAKING OVER THE PROJECT?

22 A. I DON'T KNOW OF HIS ROLE. HE DIDN'T WORK FOR
23 PENDLETON STATION THERE WITH ME, IF THAT'S WHAT YOUR
24 QUESTION WAS.

25 Q. OKAY.

1 A. HE HAD A JOB ELSEWHERE.

2 Q. OKAY.

3 A. HE WAS -- AFTER IT WAS ALL TAKEN OVER I UNDERSTOOD
4 THAT HE HELPED PUT TOGETHER THE LOANS AND STUFF TO HELP
5 PENDLETON STATION GET THEIR MONEY OR BEN AND BROOKS GET
6 THEIR LOAN AND STUFF.

7 Q. YOU DIDN'T REALLY SEE HIM THAT OFTEN PRIOR TO THE
8 BANK TAKING OVER?

9 A. JUST ONE TIME.

10 Q. OKAY. HE SHOWED UP SHORTLY AFTER THE DEED IN LIEU
11 BEING ACCEPTED, CORRECT?

12 A. THAT'S CORRECT.

13 Q. WOULD YOU SAY LIKE THE NEXT DAY?

14 A. IT WAS EITHER -- A DAY OR TWO, YEAH.

15 Q. ALL RIGHT. AND YOU AND MR. MATHIAS WENT THROUGH --
16 AT THAT STAGE, WHAT WAS GOING ON WITH THE PROJECT? WHAT
17 WAS GOING ON?

18 A. OKAY. WHEN THE DEED IN LIEU WAS GIVEN OR WHATEVER
19 OR FILED, BEN DANIEL CALLED ME THE DAY OF IT, I SUPPOSE,
20 AND TOLD ME THAT I WAS GOING TO GO WORK FOR THE BANK AND
21 THEY WOULD BE CALLING ME AND THAT THEY WERE GOING TO SEND
22 SOMEBODY UP TO PAY OFF ALL DEBTS AND THAT HE WOULD BE
23 BACK IN THIRTY (30) DAYS, SO JUST TO GET WITH THE BANK,
24 YOU KNOW, THEY WOULD CONTACT ME AND GET WITH THEM ABOUT
25 THE -- THEY'D START PAYING ME, I GUESS, THE NEXT WEEK. I

1 CAN'T REMEMBER HOW HE PUT IT. BUT WITHIN THIRTY (30)
2 DAYS HE WOULD BE BACK IF HE GOT ANOTHER BUYER OR LENDER.
3 SO I FELT, YOU KNOW, KIND OF A SHOCK I GUESS, BUT WE WERE
4 ALSO DOING NO WORK BECAUSE WE HAD NO MONEY. SO I MEAN IT
5 WASN'T A COMPLETE SHOCK. AND THEN ERVIN MAYBE CALLED ME
6 THE NEXT DAY. I KNEW MR. MATHIAS FROM WHEN I WAS A
7 LITTLE BOY.

8 Q. NOW I WANT TO STOP YOU RIGHT THERE.

9 A. OKAY.

10 Q. YOU SHOULD NOT TELL US WHAT MR. MATHIAS TOLD YOU.
11 HE'S HERE TODAY.

12 A. OKAY.

13 Q. BUT PRIOR TO THE BANK TAKING OVER THE PROJECT WERE
14 CONTRACTORS GETTING PAID?

15 A. NO.

16 Q. WHAT WAS LIFE LIKE FOR YOU AS THE OVERSEEING PERSON
17 FOR THIS CONSTRUCTION?

18 A. WELL, IT WAS PRETTY MISERABLE, YOU KNOW, THE LAST
19 FEW MONTHS BECAUSE CONTRACTORS WERE NOT GETTING PAID. WE
20 WERE BEING TOLD THAT MONEY WAS BEING DEPOSITED AND THEN
21 WE WOULD WRITE CHECKS AND THEY WOULD BOUNCE OR WE WOULD
22 TELL CONTRACTORS TO COME IN ON A CERTAIN DATE BECAUSE WE
23 WOULD HAVE MONEY AND THEN WE WOULDN'T HAVE IT AND WOULD
24 HAVE TO EXPLAIN TO THEM -- I HAD A FEW EVEN CALL ME AT
25 HOME, BUT I MEAN I DIDN'T HAVE ANYTHING TO DO WITH THE

1 MONEY SO IT WAS JUST FRUSTRATING ON MY BEHALF, YOU KNOW,
2 TRYING TO TELL THEM WHAT I KNEW BECAUSE I DIDN'T REALLY
3 KNOW MUCH AS FAR AS THE MONEY..

4 Q. THERE WERE A SIGNIFICANT AMOUNT OF FOLKS WHO WERE
5 OWED MONEY?

6 A. ABSOLUTELY.

7 Q. SO MR. MATHIAS SHOWS UP THE DAY AFTER THE DEED IN
8 LIEU IS ISSUED AND WHAT WAS YOUR UNDERSTANDING OF WHAT HE
9 WAS GOING TO BE DOING?

10 A. HE WAS GOING TO COME UP AND WE WERE GOING TO PAY THE
11 SUBCONTRACTORS THAT WERE OWED MONEY BECAUSE, LIKE I SAID,
12 WHEN MR. DANIEL CALLED HE TOLD ME THAT WAS WHAT WAS GOING
13 TO HAPPEN. MR. DANIEL ALSO SAID DON'T LET ANYBODY LIEN
14 US OR THEY WILL NEVER WORK FOR ME AGAIN. SO I FIGURED WE
15 HAD TO PAY THEM.

16 Q. AND SO MR. MATHIAS DID THAT -- WAS HE DOING THAT
17 WITH CHECKS FROM ENTERPRISE BANK?

18 A. YES, SIR.

19 Q. ALL RIGHT. AND DO YOU KNOW APPROXIMATELY HOW MUCH
20 THEY PAID YOUR UNPAID CONTRACTORS?

21 A. IT WAS OVER A MILLION (\$1,000,000.00) DOLLARS.
22 THERE'S A BALANCE SHEET SOMEWHERE, BUT I DON'T REMEMBER
23 THE EXACT TOTAL.

24 Q. AND YOU AGREE A DECISION WAS MADE AT SOME STAGE NOT
25 TO PAY MY THREE (3) CLIENTS, CORRECT?

1 A. IT WAS ONLY -- WE PAID OFF ALL THE OUTSTANDING
2 DEBTS. WE DIDN'T GET INVOICES FROM YOUR CLIENTS. THEY
3 WENT TO DUNN & ASSOCIATES. SO THE ONLY THING WE HAD FROM
4 THEM THAT WAS DUE WAS THE HUNDRED AND TWENTY-FIVE
5 THOUSAND (\$125,000.00) DOLLAR SETTLEMENT AND WE WEREN'T
6 SURE IF WE WERE GOING TO HAVE TO PAY THAT.

7 MR. BROUSSEAU: YOUR HONOR, I WOULD OBVIOUSLY
8 OBJECT TO HIM REFERRING TO SOME SETTLEMENT NEGOTIATIONS
9 THAT HAPPENED PRIOR TO THIS CASE AND GOING THROUGH
10 ANYTHING IN REGARDS TO THAT.

11 A. SORRY.

12 Q. YOU AGREE WITH THE STATEMENT, THOUGH, THAT MY
13 CLIENTS WERE OWED MONEY, CORRECT?

14 A. YES.

15 Q. OKAY. AND YOU AGREE THAT THEY WERE OWED MORE THAN
16 A HUNDRED AND TWENTY-FIVE THOUSAND (\$125,000.00) DOLLARS?

17 A. WHATEVER THEY SAID, YOU KNOW, WHATEVER DUNN &
18 ASSOCIATES APPROVED, YES, THEY WERE OWED BY PENDLETON
19 STATION.

20 Q. OKAY. HOLD ON JUST A SECOND.

21 A. YES, SIR.

22 Q. YOU ARE ALSO AWARE OF -- YOU ARE ALSO PERSONALLY
23 AWARE OF WHEN SOME OF THESE CONTRACTORS STOPPED WORKING,
24 CORRECT, ON THE PROJECT?

25 A. YES.

1 Q. WHAT DATES?

2 A. I DON'T KNOW DATES. I CAN GIVE YOU GENERAL IDEAS.

3 Q. WAS MIKE MILLER OR ANYBODY FROM HIS COMPANY WORKING
4 ON THE PROJECT AFTER THE DEED IN LIEU OF FORECLOSURE WAS
5 ISSUED? DID HE PERFORM ANY WORK AFTER THAT?

6 A. HE CAME AND WORKED FOR THE BANK.

7 Q. OKAY. WAS MR. CRAFT OR ANYBODY FROM HIS COMPANY OUT
8 THERE ON THE SITE ANYTIME AFTER THE BANK HAD TAKEN OVER
9 THE PROJECT?

10 A. I DON'T REMEMBER THAT.

11 Q. OKAY.

12 A. HE VERY WELL COULD HAVE, I DON'T KNOW. BUT THE DAY
13 AFTER THE BANK TOOK OVER WE DIDN'T HAVE ANYBODY WORK. NO
14 ONE WAS ALLOWED ON SITE. IF ANYBODY WENT OUT THERE -- I
15 DIDN'T GO TO THE SITE PHYSICALLY PROBABLY FOR A WEEK AND
16 WE PUT A FENCE UP AND A LOCK ON IT SO WE DIDN'T HAVE
17 ANYBODY WORKING. I DON'T REMEMBER EXACTLY WHEN THE FENCE
18 WENT UP BUT WITHIN A WEEK OR TWO BECAUSE WE WERE JUST
19 KIND OF STALLED WAITING ON THE THIRTY (30) DAYS TO COME
20 UP SO THAT WE COULD START BACK.

21 Q. OKAY. YOU REFERENCE THIS THIRTY (30) DAYS. THE
22 BANK ULTIMATELY MADE A DECISION TO PERFORM RECONSTRUCTION
23 OR TO RENEW THE PROJECT OUT THERE, IS THAT CORRECT?

24 A. YES. I REMEMBER AFTER THEY GAVE A THIRTY (30) DAY
25 EXTENSION SO I GUESS IT WAS SIXTY (60) DAYS MAYBE. AT

1 SOME POINT BEYOND THAT, THAT SUMMER OF '07, THE BANK
2 DECIDED TO FINISH IT BECAUSE THE DANIELS HAD, FOR ONE
3 REASON OR ANOTHER, DECIDED THEY WEREN'T GOING TO OR
4 COULDN'T GET THE LENDING OR WHATEVER.

5 Q. AND WHEN THE BANK STARTED THE RECONSTRUCTION THEY
6 HIRED ANOTHER FIRM TO COME IN AND DO THAT, IS THAT RIGHT?

7 A. THAT'S CORRECT.

8 Q. AND THAT RECONSTRUCTION, THAT OCCURRED APPROXIMATELY
9 NINE (9) MONTHS OR SO, SOMEWHERE IN THAT NEIGHBORHOOD,
10 AFTER THEY ACCEPTED THAT DEED IN LIEU OF FORECLOSURE?

11 A. THAT SOUNDS ABOUT RIGHT. THAT FALL.

12 Q. ALL RIGHT. AND TO YOUR KNOWLEDGE, MY CLIENTS, ALL
13 THREE OF THEM, STILL HAD NOT BEEN PAID AT THAT STAGE,
14 CORRECT?

15 A. THAT'S CORRECT.

16 Q. TO YOUR KNOWLEDGE, DID ANYBODY COMPLAIN ABOUT THE
17 WORK OF MILLER CONSTRUCTION OR MOORHEAD CONSTRUCTION?

18 A. NO.

19 Q. OKAY. SO THE BANK ENDED UP UTILIZING THE WORK THAT
20 HAD ALREADY BEEN IN THERE AND THAT HAD GONE UNPAID FOR,
21 CORRECT?

22 A. THE BANK FINISHED WHAT WAS NOT DONE AND KEPT ON
23 GOING, YEAH.

24 Q. OKAY. PRIOR TO -- I WANT TO BACKTRACK JUST A LITTLE
25 BIT. PRIOR TO THE BANK TAKING OVER THE PROJECT AND NOW

1 LET'S TALK JUST A COUPLE OF MONTHS THERE WHERE THINGS
2 SEEMED LIKE THEY WERE GOING BAD AS YOU PREVIOUSLY
3 DESCRIBED THEM. WERE YOU ALSO ASSISTING IN MAKING DRAW
4 REQUESTS AT THAT TIME?

5 A. I HELPED ON THE LAST TWO, I BELIEVE, DRAW REQUESTS
6 AFTER THERE WAS A MISHAP WITH SOME BUILDINGS THAT DIDN'T
7 EXIST OR SOMETHING, SO ELIZABETH WOULD SEND ME THE DRAW
8 REQUEST AND THE ARCHITECTS AT ENTASIS WOULD SEND THEM --
9 THEY WOULD COME OVER AND LOOK AT STUFF AND THEN SEND ME
10 WHAT THEY THOUGHT HAD BEEN DONE AND I WOULD HAVE TO SAY
11 YES OR NO AND I'D KIND OF GIVE THEM A -- WELL, BY THIS
12 FRIDAY WE HOPE TO BE AT THESE STAGES, YOU KNOW, AND THEN
13 I'D TRY TO GIVE THEM UPDATES BECAUSE A LOT OF TIMES WE'D
14 SAY, OKAY, BY FRIDAY WE'LL HAVE THE ROOFS ON THESE THREE
15 BUILDINGS BUT IT MIGHT RAIN SO SAY ON THURSDAY I'D SEND
16 THEM AN E-MAIL SAYING THAT DIDN'T HAPPEN, TO TRY TO KEEP
17 THEM IN THE LOOP. AND THERE WAS ONLY TWO, I BELIEVE,
18 THAT WE EVEN LOOKED AT BUT THE BIGGEST PROBLEM WAS
19 BECAUSE THE DRAW REQUESTS THEY SENT ME ALREADY HAD DRAWS
20 TAKEN OUT ON BUILDINGS THAT WE WEREN'T EVEN TO THOSE
21 STAGES ON. SO IT WAS VERY HARD, BECAUSE WE REALLY WERE
22 JUST LOOKING TO BACKTRACK BECAUSE WE REALIZED, WELL, THIS
23 BUILDING, FOR INSTANCE, JUST FOR AN EXAMPLE, I DON'T
24 REMEMBER THE EXACT BUILDINGS BUT SAY, BUILDING THREE
25 DOESN'T HAVE A ROOF BUT THEY HAD ALREADY DRAWN TO THE

1 ENTERPRISE BANK AND ITS VICE PRESIDENT, IS THAT RIGHT?

2 A. I HAVE A BANKING RELATIONSHIP WITH THEM, HAVE HAD
3 FOR SOME YEARS.

4 Q. OKAY. AND SO YOU WERE INSTRUMENTAL, I GUESS, IN
5 SETTING UP THE LOANS OR AT LEAST THE INITIAL LOAN FOR THE
6 FOLKS AT PENDLETON STATION WITH ENTERPRISE BANK?

7 A. I WAS ASKED BY BROOKS HARVEY, IN PARTICULAR, AND
8 REPRESENTING HIM AND BEN DANIEL, WHILE I WAS ACTUALLY
9 EMPLOYED AT WILD DUNES, TO CARRY A PACKAGE TO ENTERPRISE
10 BANK WHERE I WAS DOING MY BANKING BUSINESS AND ASK THEM
11 TO REVIEW A PACKAGE AND THAT'S WHAT I DID.

12 Q. AND THE BANK PRIMARILY LOANED THE MONEY BECAUSE THEY
13 KNEW THAT YOU WOULD BE INVOLVED ON IT, DOES THAT SOUND
14 CORRECT?

15 A. THEY BELIEVED THAT I WOULD. THAT'S WHAT THEY WERE
16 TOLD ALSO.

17 Q. OKAY. AND THAT'S WHERE THE TERM EYES AND EARS COMES
18 FROM?

19 A. THAT TERM WAS USED IN THE MEETING BETWEEN MR.
20 DANIEL, HIS OTHER REPRESENTATIVES, WHOEVER WAS THERE, MR.
21 HARVEY, MR. JOHNS, MR. VARN AND MYSELF. I DON'T REMEMBER
22 WHO ALL WAS IN THE BOARD MEETING AT THAT TIME, BOARD ROOM
23 AT THAT TIME.

24 Q. OKAY. PRIOR TO THE BANK TAKING OVER THE PROJECT, ON
25 HOW MANY OCCASIONS DID YOU GO UP THERE TO BE THE EYES AND

1 ROOF SO I'M PUTTING THE ROOF ON THIS FRIDAY, WELL, I
2 CAN'T DRAW ON THAT SO IT WAS MORE OF A REVIEW. I DIDN'T
3 ACTUALLY, YOU KNOW, I WAS JUST SENDING HER THIS IS WHAT
4 MY THOUGHTS ARE SO ---

5 Q. AND ON AT LEAST ONE OF THOSE DRAW REQUESTS YOU
6 COPIED PAULINE SMITH? DOES THAT SOUND RIGHT?

7 A. YES. LINDA WOULD SEND ME AN E-MAIL TO TELL ME WHO
8 TO SEND IT TO.

9 Q. AND PAULINE SMITH WORKS FOR WHO?

10 A. ENTERPRISE BANK, I GUESS. I HAVE NEVER MET HER.

11 Q. AND THIS IS PRIOR TO THE BANK TAKING OVER THE
12 PROJECT?

13 A. YES. THIS WAS IN THE FALL OF '06.

14 Q. TO YOUR KNOWLEDGE, WAS THE BANK AWARE, AT LEAST IN
15 SOME FORM OR FASHION, THAT FOLKS WEREN'T GETTING PAID OUT
16 THERE?

17 A. THAT I DON'T KNOW BECAUSE ON THE DRAW REQUESTS, I
18 MEAN, WE WOULDN'T WRITE ON THE E-MAIL, HEY, PEOPLE AREN'T
19 GETTING PAID. MY UNDERSTANDING FROM ELIZABETH WAS THAT
20 SHE HAD TOLD THEM THAT THERE WERE SUBCONTRACTORS NEEDING
21 TO GET PAID AND I GUESS WHEN THE DEED IN LIEU AND ALL
22 THAT, I'M SURE, YES, I'M SURE THEY KNEW, BUT I DIDN'T
23 EVER HAVE ANY DIRECT TALKS WITH ENTERPRISE ABOUT IT.

24 Q. OKAY. WITH THE EXCEPTION OF AN INDIVIDUAL NAMED
25 TODD, I THINK IT'S MECKLY, DOES THAT SOUND CORRECT?

1 A. TODD, YES.

2 Q. WITH THE EXCEPTION OF HIM, WERE YOU EVER DIRECTED BY
3 ANYBODY FROM PENDLETON STATION OR THE DANIELS OR ANYBODY
4 NOT TO ALLOW SOMEBODY ONTO THE SITE? THIS IS PRIOR TO
5 THE BANK TAKING IT OVER.

6 A. RIGHT. NO, NOT THAT I REMEMBER.

7 Q. SO IF A REPRESENTATIVE FROM ENTERPRISE BANK WHO HELD
8 THE MORTGAGE ON THE PROPERTY, HAD THEY SHOWED UP BEFORE
9 THEY TOOK OVER THE PROJECT THEY WOULD HAVE HAD FULL
10 ACCESS TO SEE WHAT WAS GOING ON, FULL ACCESS TO THE BOOKS
11 OR ANYTHING LIKE THAT, CORRECT?

12 A. YEAH, I WOULDN'T HAVE AN ISSUE WITH ANY OF THAT.

13 MR. BROUSSEAU: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: ALL RIGHT. MR. BARNETT, WE'LL
15 START WITH YOU. DO YOU HAVE ANY QUESTIONS OF THIS
16 WITNESS?

17 MR. BARNETT: I DO NOT HAVE ANY QUESTIONS OF
18 THIS WITNESS, YOUR HONOR.

19 THE COURT: MR. DUDLEY OR MR. HOLDER?

20 MR. DUDLEY: JUDGE, I DON'T HAVE ANY. HE WAS
21 TO BE A WITNESS IN MY CASE IN CHIEF AND I WOULD ASK TO
22 CALL HIM AS A WITNESS IN OUR CASE.

23 THE COURT: ALL RIGHT. SO YOU HAVE NO
24 QUESTIONS AT THIS TIME?

25 MR. DUDLEY: NO QUESTIONS AT THIS TIME. I'LL

1 CALL HIM LATER.

2 THE COURT: MR. LAVERY?

3 MR. LAVERY: NO QUESTIONS, YOUR HONOR.

4 THE COURT: YOU ARE VERY QUIET BACK THERE IN
5 THE BACK. ANYTIME YOU FEEL AGGRIEVED, YOU LET ME KNOW.

6 MR. LAVERY: YES, SIR.

7 THE COURT: THANK YOU, MR. KERNAGHAN. YOU
8 CAN STEP DOWN FOR NOW. LEAVE THAT EXHIBIT WITH THE COURT
9 REPORTER, PLEASE. ALL RIGHT, MR. BROUSSEAU?

10 MR. BROUSSEAU: I'D CALL ERVIN MATHIAS.

11 ERVIN MATHIAS, PLAINTIFFS' WITNESS, SWORN:

12 DIRECT EXAMINATION

13 BY MR. BROUSSEAU:

14 Q. MR. MATHIAS, WOULD YOU STATE YOUR NAME AND ACTUALLY,
15 I GUESS YOU NEED TO SPELL THAT AS WELL.

16 A. ERVIN MATHIAS, E-R-V-I-N M-A-T-H-I-A-S.

17 Q. THANK YOU. MR. MATHIAS, WHAT DO YOU DO FOR A
18 LIVING, SIR?

19 A. I'M INVOLVED IN FARMING AND AGRICULTURE AND WE HAVE
20 SPREADING, SPRAYING, ET CETERA, OTHER AGRICULTURAL
21 BUSINESSES OTHER THAN FARM. AND A HUNTING CLUB AND ALSO
22 REAL ESTATE.

23 Q. OKAY. YOU RESIDE DOWN IN THE LOWCOUNTRY, I BELIEVE,
24 DOES THAT SOUND RIGHT?

25 A. ULMER.

1 Q. OKAY. MR. MATHIAS, I'M GOING TO TALK TO YOU A
2 LITTLE BIT BRIEFLY ABOUT -- WHAT I WANT TO REFER TO FIRST
3 IN MY LINE OF QUESTIONING IS TO THINGS THAT WERE GOING ON
4 PRIOR TO THE DEED IN LIEU OF FORECLOSURE BEING ISSUED,
5 OKAY?

6 A. OKAY.

7 Q. WOULD YOU AGREE WITH ME THAT YOU CO-SIGNED ON THE
8 FIRST NOTE FOR THE FIRST MORTGAGE THAT ENTERPRISE BANK
9 HAD WITH THE PENDLETON STATION FOLKS, IS THAT CORRECT?

10 A. YES, SIR.

11 Q. ALL RIGHT. AND HOW MUCH WAS THAT FIRST NOTE FOR?

12 A. THREE MILLION (\$3,000,000.00) DOLLARS, I BELIEVE.

13 Q. ALL RIGHT. AND WHY WERE YOU ASKED TO CO-SIGN ON
14 THAT NOTE?

15 A. BECAUSE I WAS OFFERED A TWENTY (20) PERCENT INTEREST
16 IN THE COMPANY AT THE TIME AND WAS SUPPOSED TO BE GOING
17 TO WORK FOR PENDLETON STATION AND BECOME A PARTNER WITH
18 THEM, REPLACING A GENTLEMAN BY THE NAME OF PETE PENZA.

19 Q. OKAY. YOU WERE ALSO SUPPOSED TO BE THE EYES AND
20 EARS FOR THE BANK ON THAT PROJECT, IS THAT CORRECT?

21 A. I WAS SUPPOSED TO HAVE BEEN HIRED BY PENDLETON
22 STATION AND WAS TOLD THAT I WOULD BE WORKING THERE ON
23 SITE AS BASICALLY A GENERAL MANAGER, OVERSEEING THE
24 OPERATIONS THAT WERE GOING ON, YES, SIR.

25 Q. OKAY. YOU HAVE A REALLY CLOSE RELATIONSHIP WITH

1 ENTERPRISE BANK AND ITS VICE PRESIDENT, IS THAT RIGHT?

2 A. I HAVE A BANKING RELATIONSHIP WITH THEM, HAVE HAD
3 FOR SOME YEARS.

4 Q. OKAY. AND SO YOU WERE INSTRUMENTAL, I GUESS, IN
5 SETTING UP THE LOANS OR AT LEAST THE INITIAL LOAN FOR THE
6 FOLKS AT PENDLETON STATION WITH ENTERPRISE BANK?

7 A. I WAS ASKED BY BROOKS HARVEY, IN PARTICULAR, AND
8 REPRESENTING HIM AND BEN DANIEL, WHILE I WAS ACTUALLY
9 EMPLOYED AT WILD DUNES, TO CARRY A PACKAGE TO ENTERPRISE
10 BANK WHERE I WAS DOING MY BANKING BUSINESS AND ASK THEM
11 TO REVIEW A PACKAGE AND THAT'S WHAT I DID.

12 Q. AND THE BANK PRIMARILY LOANED THE MONEY BECAUSE THEY
13 KNEW THAT YOU WOULD BE INVOLVED ON IT, DOES THAT SOUND
14 CORRECT?

15 A. THEY BELIEVED THAT I WOULD. THAT'S WHAT THEY WERE
16 TOLD ALSO.

17 Q. OKAY. AND THAT'S WHERE THE TERM EYES AND EARS COMES
18 FROM?

19 A. THAT TERM WAS USED IN THE MEETING BETWEEN MR.
20 DANIEL, HIS OTHER REPRESENTATIVES, WHOEVER WAS THERE, MR.
21 HARVEY, MR. JOHNS, MR. VARN AND MYSELF. I DON'T REMEMBER
22 WHO ALL WAS IN THE BOARD MEETING AT THAT TIME, BOARD ROOM
23 AT THAT TIME.

24 Q. OKAY. PRIOR TO THE BANK TAKING OVER THE PROJECT, ON
25 HOW MANY OCCASIONS DID YOU GO UP THERE TO BE THE EYES AND

1 EARS OF WHAT WAS GOING ON UP HERE AT THE PENDLETON
2 STATION PROJECT?

3 A. I CAME UP ONE TIME AND WAS DISMISSED BY MR. DANIEL
4 AS NOT BEING NEEDED. WHEN HE FOUND OUT WHAT MY ROLE WAS
5 GOING TO BE AND WHAT I WAS GOING TO BE DOING, OVERSEEING,
6 SCRUTINIZING, INVOICES, BILLS, PAYMENTS, THINGS ON BEHALF
7 OF THE BANK, AND THAT I HAD ALSO CONTACTED AN ARCHITECT
8 BY THE NAME OF ALLEN FREEMAN WITH FREEMAN AND MAJOR IN
9 GREENVILLE TO REVIEW ALL THE DRAW REQUESTS AND HE WOULD
10 BE REVIEWING THE DRAWS ON BEHALF OF THE BANK AND MYSELF
11 BEFORE ANYTHING WAS APPROVED, I WAS DISMISSED AS WAS MR.
12 FREEMAN.

13 Q. IN THIS MEETING, THE ONE TIME YOU WENT UP THERE,
14 THIS IS APPROXIMATELY A YEAR BEFORE THE DEED IN LIEU WAS
15 ACCEPTED BY THE BANK, DOES THAT SOUND ABOUT RIGHT?

16 A. I'D HAVE TO LOOK AT A CALENDAR. I DON'T RECALL, BUT
17 THAT SOUNDS PROBABLY CLOSE.

18 Q. OKAY. AND DID YOU REPORT THE FACT THAT YOU HAD BEEN
19 DISMISSED TO THE BANK?

20 A. ALONG WITH MR. DANIEL. THERE WAS A MEETING AND,
21 ACTUALLY IT STARTED AT MY FARM IN OUR CLUBHOUSE WITH MR.
22 DANIEL, HIS CFO, I CAN'T REMEMBER, BROOKS HARVEY, MY SON
23 AND I AND WE TALKED THAT MORNING. HE TOLD ME THAT I
24 WOULD NOT BE NEEDED. LATER THAT SAME DAY WE WENT OVER TO
25 THE BANK AND MET WITH ENTERPRISE BANK AND HE TOLD THEM

1 THE SAME THING.

2 Q. THAT DIDN'T SHOCK THE BANK OR ANYTHING LIKE THAT?

3 A. IT SURPRISED THEM. IT SURPRISED THE BANK AND IT
4 SURPRISED ME.

5 Q. OKAY. DURING THIS TIME FRAME, I THINK THE
6 CONSTRUCTION ON THIS PROJECT AND CORRECT ME IF I'M WRONG,
7 BUT IT STARTED SOMETIME IN '05. DOES THAT SOUND ABOUT
8 RIGHT TO YOU?

9 A. I THINK THAT'S -- YES. WELL, I THINK THE PROJECT
10 HAD STARTED MAYBE IN '04 OR SOMETIME. I DON'T REMEMBER,
11 BUT ---

12 Q. OKAY. AND THE BANK ---

13 A. --- THE FIRST WE HEARD ABOUT IT THAT I KNEW THAT I
14 WAS ASKED TO BE INVOLVED WAS IN '05.

15 Q. OKAY. AND THE BANK TOOK IT OVER IN MARCH OF '07 AND
16 DURING THAT TIME PERIOD YOU ACTUALLY RECEIVED PAYMENTS
17 FROM PENDLETON STATION, IS THAT CORRECT?

18 A. NOT UNTIL AFTER THE ORIGINAL NOTE WHEN I WAS
19 SUPPOSED TO HAVE BEEN HIRED BY PENDLETON STATION. I WAS
20 QUOTED BY THEM A GUARANTEED SUM OF -- I THINK IT WAS TWO
21 HUNDRED AND FIFTY THOUSAND (\$250,000.00) DOLLARS THAT
22 WOULD REPRESENT MY TWENTY (20) PERCENT INTEREST IN THAT
23 COMPANY AND THEY WOULD BEGIN PAYING ME IMMEDIATELY, IN
24 WHATEVER MONTH, WHATEVER TIME FRAME IT WAS, AND THEY
25 WOULD PAY ME MONTHLY CHECKS. BUT AT THE END OF THE

1 CONSTRUCTION PERIOD, IF THE PROFIT WAS MORE THAN TWO
2 HUNDRED AND FIFTY THOUSAND (\$250,000.00) DOLLARS ON
3 TWENTY (20) PERCENT, I'D RECEIVE THE BALANCE. THEY
4 WANTED ME TO PUT MY NAME ON A NOTE OR CO-SIGN A NOTE FOR
5 THEM TO HELP MAKE IT POSSIBLE TO GET FINANCING.

6 Q. OKAY. AND IN FACT THEY PAID YOU TWO HUNDRED AND TEN
7 THOUSAND (\$210,000.00) DOLLARS, DOES THAT SOUND CORRECT?

8 A. I THINK THAT'S ABOUT THE AMOUNT THAT THEY PAID ME.

9 Q. FOR HELPING THEM OBTAIN A LOAN?

10 A. WELL, BASICALLY, I MEAN, I WAS SUPPOSED TO BE DOING
11 A JOB BUT THEN THEY DISMISSED ME FROM DOING THE JOB
12 BECAUSE IT WAS APPARENT LATER -- WE DIDN'T KNOW THEN, I
13 MEAN WE THOUGHT WE WERE STILL DEALING WITH HONEST PEOPLE
14 -- WE DIDN'T KNOW AT THE TIME THAT, YOU KNOW, WHAT WE
15 KNOW NOW BUT IT'S APPARENT NOW THAT THEY DIDN'T WANT MY
16 SCRUTINY OR THE SCRUTINY OF THE ARCHITECT THAT I WAS
17 BRINGING ON AND SO WHY, IN RETROSPECT, I THINK THAT I WAS
18 DISMISSED.

19 Q. OKAY. AND YOU JUST HEARD MR. KERNAGHAN TESTIFY AND
20 SO YOU DISAGREE WITH HIS TESTIMONY THAT YOU WEREN'T
21 ALLOWED ON SITE?

22 A. NO. I WAS NEVER TOLD I WASN'T ALLOWED ON SITE. I
23 WAS TOLD I WAS NOT NEEDED AND NO NEED FOR ME TO BE UP
24 THERE AS AN EMPLOYEE. I WAS NOT BARRED FROM GOING ON THE
25 SITE IN ANY WAY.

1 Q. OKAY.

2 A. BUT I HAD NO NEED TO BE THERE SO I DIDN'T GO BACK
3 ONCE I WAS TOLD NOT TO COME BACK.

4 Q. OKAY. AND WE JUST HEARD TESTIMONY ABOUT THE DEED IN
5 LIEU OF FORECLOSURE, YOU SHOWED UP APPROXIMATELY THE NEXT
6 DAY, IS THAT CORRECT?

7 A. I THINK IT WAS WITHIN THE NEXT DAY OR TWO. I DON'T
8 RECALL THE EXACT DATE, YES.

9 Q. AND YOU HAD WITH YOU A CHECKBOOK FROM ENTERPRISE
10 BANK?

11 A. CORRECT.

12 Q. AND YOU AND MR. KERNAGHAN SAT DOWN THE FOLLOWING DAY
13 AND PAID MANY OF THE UNPAID SUBCONTRACTORS ON THE
14 PROJECT, DOES THAT SOUND CORRECT?

15 A. I WAS AUTHORIZED TO GO START MAKING PAYMENTS TO THE
16 SUBCONTRACTORS WHO WERE THREATENING LIENS, WHO HAD NOT
17 BEEN PAID FOR SEVERAL MONTHS THAT WERE DIRECTLY INVOLVED
18 WITH THE CONSTRUCTION OF THE BUILDINGS. THERE WERE
19 SIXTY-ONE (61) UNITS THAT WERE UNDER CONSTRUCTION AND WE
20 WERE PAYING THE SUBCONTRACTORS THAT HAD LOANS IN
21 ENTERPRISE BANK THAT WERE TIED TO THE VERTICAL
22 CONSTRUCTION.

23 Q. OKAY. HOW MUCH DID YOU GUYS PAY TOTAL?

24 A. I BELIEVE IT WAS IN THE RANGE OF ABOUT ONE POINT TWO
25 (\$1,200,000.00) MILLION.

1 Q. OKAY. AND YOU WOULD AGREE THAT THREE OF THE PEOPLE
2 THAT HAD NOT BEEN PAID WERE MY CLIENTS SEATED BEHIND ME,
3 CORRECT? THEIR BUSINESSES?

4 A. I'M AWARE OF THAT NOW, YES.

5 Q. OKAY. THE BANK IMMEDIATELY STARTED PAYING YOU FOR
6 YOUR SERVICES THEN AT THAT STAGE, IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND THEY WERE PAYING YOU FIFTEEN THOUSAND
9 (\$15,000.00) DOLLARS A MONTH, DOES THAT SOUND RIGHT?

10 A. THAT'S CORRECT.

11 Q. AND HOW LONG DID THEY DO THAT FOR?

12 A. THROUGH THE CONSTRUCTION PERIOD AND THEN THE
13 ORGANIZATION RENTAL UP UNTIL LAST YEAR. THIS IS '11. I
14 THINK THE FINAL PAYMENT I RECEIVED FROM THE BANK WAS IN
15 THE -- TOWARD THE END OF 2010 WHEN I TURNED EVERYTHING
16 OVER BASICALLY TO AN OFFICE MANAGER, A MAINTENANCE PERSON
17 AND WE HAD EVERYTHING LEASED OUT AND I NO LONGER NEEDED
18 TO BE THERE.

19 Q. SO YOU STOPPED RECEIVING A CHECK FROM THEM SOMEWHERE
20 IN 2010?

21 A. I THINK IT WAS DECEMBER OF 2010, YES.

22 Q. OKAY. SO BASICALLY, MOST OF THE YEAR OF '07, THE
23 WHOLE YEAR OF '08 AND '09 AND THE YEAR 2010 IS WHEN YOU
24 RECEIVED THESE PAYMENTS?

25 A. DURING '07, '08, '09 AND '10, YES.

1 Q. OKAY. OTHER THAN YOUR ROLE, -- WHAT ELSE WAS YOUR
2 ROLE ON THE PROJECT IN ORDER TO BE EARNING THAT KIND OF
3 INCOME FROM THE BANK?

4 A. OTHER THAN AS GENERAL MANAGER OVERSEEING, HELPING
5 AND WORKING WITH CHARLIE KERNAGHAN DURING THE
6 CONSTRUCTION PERIOD, I WAS ALSO MANAGING A SALES TEAM FOR
7 A PERIOD OF TIME IN AN EFFORT TO SELL THE PROJECT. THE
8 BANK WAS NOT IN THE BUSINESS TO OWN IT, THEY DIDN'T WANT
9 IT AND I WAS WORKING WITH POTENTIAL BUYERS TO TRY TO
10 SELL. FIRST WE WERE TRYING TO SELL THE INDIVIDUAL UNITS
11 TO OTHER INDIVIDUALS AFTER THE PRESALES FELL OUT. I DID
12 A LOT OF WORK WITH THE REASSESSMENT APPRAISALS AND JUST A
13 LOT OF WORK THAT HAD TO BE DONE IN ORDER TO REPRESENT THE
14 PROPERTY FOR SALE. WHEN THE REAL ESTATE INDUSTRY DID NOT
15 SUPPORT SALES, WE HAD TO CONVERT IT, OUR MARKETING
16 PROGRAM, TO A LEASING PROGRAM. AND SO WE BEGAN WORKING
17 WITH CLEMSON AND TRI-COUNTY TECH AND OTHER AREAS OF
18 LEASING.

19 Q. OF COURSE, CHARLIE WAS STILL -- MR. KERNAGHAN WAS
20 STILL THERE BASICALLY OVERSEEING THE CONSTRUCTION AND
21 OVERSEEING THE FOLKS THAT CAME IN TO DO THE
22 RECONSTRUCTION, CORRECT?

23 A. YES, AND I DON'T -- UP UNTIL SOME POINT AND I DON'T
24 REMEMBER -- CHARLIE LEFT BEFORE I DID AND I DON'T
25 REMEMBER THE DATE.

1 Q. DO YOU RECALL TELLING THE BANK, WHEN THEY ACCEPTED
2 THE DEED IN LIEU OF FORECLOSURE, THAT THEY WOULD BE IN
3 THE DEVELOPMENT BUSINESS?

4 A. NO, I DIDN'T TELL THE BANK THAT.

5 Q. YOU DID NOT TELL THEM THAT?

6 A. NO.

7 Q. OKAY.

8 MR. BROUSSEAU: JUST ONE SECOND, YOUR HONOR.

9 THE COURT: YES, SIR.

10 MR. BROUSSEAU: I'D LIKE TO MARK THIS AS
11 PLAINTIFFS' EXHIBIT 2.

12 (PLAINTIFFS' EXHIBIT 2 FOR IDENTIFICATION)

13 Q. I BELIEVE YOU PREVIOUSLY TESTIFIED IN OTHER
14 DEPOSITIONS THAT YOU TAKE PRETTY DETAILED NOTES, IS THAT
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. I WANT TO SHOW YOU WHAT HAS BEEN MARKED AS
18 PLAINTIFFS' EXHIBIT NUMBER 2 AND IT APPEARS TO BE NOTES
19 FROM FEBRUARY 28TH OF 2007. DOES THAT SEEM CORRECT?

20 A. YES, SIR. THAT'S THE DATE ON HERE.

21 Q. OKAY. AND WHICH WAS ABOUT A WEEK OR SO BEFORE THE
22 BANK ACCEPTED THE DEED IN LIEU OF FORECLOSURE, IS THAT
23 RIGHT?

24 A. YES, SIR.

25 Q. OKAY. IF YOU SCROLL DOWN TO THE 9:45 AM ENTRY ---

1 A. RIGHT.

2 Q. --- AND THERE YOU MENTION THERE THAT THE BANK WOULD
3 THEN BE IN THE DEVELOPMENTAL BUSINESS, IS THAT CORRECT,
4 THE DEVELOPMENT BUSINESS, BY ACCEPTING THE DEED IN LIEU?

5 A. THAT'S CORRECT.

6 Q. OKAY.

7 A. THAT'S WHAT WAS WRITTEN DOWN. THAT WAS A QUOTE TO
8 ME FROM DAVID JOHNS.

9 Q. OKAY.

10 A. THAT'S NOT MY WORDS.

11 Q. OKAY.

12 A. I WAS TAKING NOTES WHILE I WAS ON A PHONE CALL.

13 Q. OKAY. SO THE BANK SAID THAT?

14 A. THE BANK --

15 Q. THEY SAID THAT THEY WOULD BE IN THE DEVELOPMENT
16 BUSINESS?

17 A. THE BANK, JUST OFF THE CUFF, AS AN ARBITRARY COMMENT
18 LIKE GO FLY A KITE. I MEAN, HE JUST ARBITRARILY SAID,
19 WELL, IT LOOKS LIKE, YOU KNOW, WE ARE GOING TO BE IN THE
20 DEVELOPMENT BUSINESS NOW IF WE HAVE TO GET THIS DEED
21 BACK.

22 Q. YOU AGREE ---

23 A. I JUST DIDN'T PUT IT IN QUOTATION MARKS BUT THAT'S
24 WHAT -- MANY OF MY NOTES, AND I'M SURE MAYBE IT MAY BE
25 MISCONSTRUED THAT I WRITE WHILE I'M -- I HAVE DYSLEXIA, I

1 HAVE A LEARNING DISABILITY SO I TAKE A LOT OF NOTES SO
2 THAT IF I DON'T RECALL THINGS I CAN GO BACK AND LOOK THEM
3 UP. THAT'S WHY I HAVE SO MANY NOTES.

4 Q. OKAY. YOU WOULD AGREE WITH ME THAT HAD YOU BEEN ON
5 SITE ON A MORE REGULAR BASIS PRIOR TO THE BANK TAKING
6 OVER THE PROJECT, THAT A LOT OF THE PROBLEMS THAT
7 OCCURRED OUT THERE WOULD NOT HAVE OCCURRED?

8 A. I BELIEVE THAT TO BE TRUE. IF THERE HAD BEEN PROPER
9 SCRUTINY ON BEHALF OF THE BANK, I DON'T THINK A LOT OF
10 THOSE PROBLEMS WOULD HAVE OCCURRED, THAT'S TRUE.

11 Q. OKAY. YOU WOULD ALSO AGREE THAT HAD YOU BEEN ON THE
12 SITE ON A MORE REGULAR BASIS THAT, IF THERE WAS UNPAID
13 SUBCONTRACTORS, YOU WOULD HAVE BEEN MAKING THE BANK AWARE
14 OF THAT, IS THAT CORRECT?

15 A. SIR?

16 MR. BROUSSEAU: NOTHING FURTHER FROM THIS
17 WITNESS, YOUR HONOR.

18 THE COURT: ALL RIGHT. MR. BARNETT?

19 MR. BARNETT: NOTHING FROM ME AT THIS TIME,
20 YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 MR. DUDLEY: YOUR HONOR, NO QUESTIONS AT THIS
23 TIME. WE'D ASK -- I'LL CALL HIM IN MY CASE IN CHIEF.

24 THE COURT: ALL RIGHT. MR. LAVERY?

25 MR. LAVERY: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. LAVERY:

Q. MR. MATHIAS, YOU TESTIFIED EARLIER THAT YOU CO-SIGNED A NOTE FOR THIS PROJECT, IS THAT CORRECT?

A. THAT'S CORRECT.

Q. DO YOU REMEMBER WHEN YOU SIGNED THAT NOTE?

A. NO, I DON'T. I MEAN, IT WAS SOMEWHERE IN THAT -- I THINK AUGUST, '05 TIME FRAME, BUT I'M NOT POSITIVE.

Q. OKAY. AND I THINK YOU TESTIFIED EARLIER THAT YOU REPLACED PETE PENZA, IS THAT CORRECT?

A. NO, SIR. THAT'S WHAT I WAS TOLD. I WAS TOLD BY BEN DANIEL AND BROOKS HARVEY THAT THEY HAD A PARTNERSHIP OF MR. DANIEL OF EIGHTY (80) PERCENT OWNERSHIP OF PENDLETON STATION AND A PARTNER BY THE NAME OF PETE PENZA WHO AT THAT TIME I'D NEVER MET, DID NOT KNOW, AND THAT MR. PENZA HAD TWENTY (20) PERCENT. WHEN THEY APPROACHED ME AND IN THE MEETING IN THE BANK, BEN DANIEL STATED THAT IF THIS LOAN WERE GRANTED THEY WOULD USE SOME OF THAT MONEY TO BUY OUT MR. PENZA'S INTEREST AND THEN I WOULD REPLACE HIM IN TWENTY (20) PERCENT OF THE OWNERSHIP OF PENDLETON STATION. THAT'S WHY I WAS OFFERED THE SUM OF MONEY I WAS, AS A PARTNER WHICH I PRESUME WOULD HAVE BEEN SOME OF WHAT MR. PENZA WOULD HAVE EXPECTED HAD HE REMAINED IN, WHICH HE DID, BECAUSE HARVEY AND DANIEL NEVER MADE GOOD ON THEIR PROMISE TO ME OR THE BANK TO MAKE ME A PARTNER

1 OR TO REPLACE MR. PENZA. I LATER FOUND OUT, IN SPEAKING
2 WITH BOBBY BRYANT, MR. PENZA'S REPRESENTATIVE, THAT THAT
3 PROPOSAL WAS NEVER EVEN MADE TO MR. PENZA BY DANIEL OR
4 HARVEY OR ANYBODY WITH PENDLETON STATION. IT WAS JUST AN
5 OUT AND OUT LIE, APPARENTLY, AND A WAY TO PERSUADE ME AND
6 ENTERPRISE BANK TO HELP THEM PROCURE FINANCING.

7 Q. OKAY. NOTHING FURTHER. THANK YOU, SIR.

8 THE COURT: YOU REFERRED TO A PETE PENZA.
9 IS THAT ANGELO?

10 MR. LAVERY: YES, SIR, IT IS.

11 THE COURT: ANGELO PENZA.

12 MR. LAVERY: YES, SIR.

13 THE COURT: ALL RIGHT. THANK YOU. ANY
14 OTHER QUESTIONS OF THE WITNESS AT THIS TIME?

15 MR. BROUSSEAU: NO, SIR.

16 MR. DUDLEY: NO, SIR.

17 MR. BARNETT: NONE, YOUR HONOR.

18 THE COURT: MR. MATHIAS, THANK YOU VERY
19 MUCH. YOU CAN STEP DOWN.

20 MR. BROUSSEAU: WE CALL DAVID JOHNS.

21 DAVID JOHNS, PLAINTIFFS' WITNESS, SWORN:

22 DIRECT EXAMINATION

23 BY MR. BROUSSEAU:

24 Q. MR. JOHNS, IF YOU COULD, PLEASE STATE YOUR NAME AND
25 SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

- 1 A. IT'S DAVID AND THEN JOHNS, J-O-H-N-S.
- 2 Q. OKAY. AND, SIR, WHAT DO YOU DO FOR A LIVING?
- 3 A. WORK IN A BANK.
- 4 Q. MORE SPECIFICALLY, WHICH BANK AND WHAT IS YOUR TITLE
- 5 WITH THAT BANK?
- 6 A. ENTERPRISE BANK OF SOUTH CAROLINA IN THE EHRHARDT
- 7 OFFICE AND I'M EXECUTIVE VICE PRESIDENT.
- 8 Q. OKAY. AND HOW LONG HAVE YOU BEEN IN THE BANKING
- 9 INDUSTRY?
- 10 A. SINCE I WAS ABOUT TWELVE (12) YEARS OLD.
- 11 Q. AND HOW OLD ARE YOU NOW?
- 12 A. FIFTY-SIX (56).
- 13 Q. OBVIOUSLY, YOU HAVE QUITE A BIT OF EXPERIENCE IN
- 14 CONSTRUCTION LOANS?
- 15 A. NO, SIR.
- 16 Q. NO?
- 17 A. NO, SIR.
- 18 Q. OKAY. YOU DON'T HAVE ANY EXPERIENCE IN CONSTRUCTION
- 19 LOANS?
- 20 A. I DIDN'T SAY THAT. I DON'T HAVE QUITE A BIT.
- 21 Q. OKAY. HOW LONG HAVE YOU BEEN WITH ENTERPRISE BANK?
- 22 A. SINCE PROBABLY 1970.
- 23 Q. OKAY. WAS IT NORMAL OR CUSTOMARY FOR THEM TO
- 24 PROVIDE CONSTRUCTION LOANS FOR A PROJECT SO FAR AWAY FROM
- 25 EHRHARDT OR THE LOWCOUNTRY?

1 A. WE'VE DONE A NUMBER OF THEM. I'M NOT SURE OF THE
2 DEFINITION OF NORMAL.

3 Q. OKAY. AND DID THIS PROJECT IN PARTICULAR, YOU HEARD
4 MR. MATHIAS JUST TALK ABOUT IT, AND HE CO-SIGNED ON THE
5 ORIGINAL NOTE, IS THAT CORRECT? ON THE ORIGINAL THREE
6 MILLION (\$3,000,000.00) NOTE?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND PART OF THE REASON WHY THIS LOAN WAS
9 MADE AND IT WAS SPECIFICALLY STATED AT SOME SORT OF BOARD
10 MEETING THAT MR. MATHIAS WOULD BE THE EYES AND EARS FOR
11 ENTERPRISE BANK UP HERE IN REGARDS TO THE PROJECT, DOES
12 THAT SOUND RIGHT?

13 A. I DON'T REALLY REMEMBER THAT AND WE NEVER DISCUSSED
14 IT AT A BOARD MEETING.

15 Q. OKAY. BUT ---

16 A. I THINK MR. MATHIAS SAID IN A BOARD ROOM WHICH WOULD
17 HAVE BEEN JUST A CASUAL BUSINESS MEETING WITH MR. DANIELS
18 AND THE OTHER PARTIES.

19 Q. ALL RIGHT. SO HE WASN'T SUPPOSED TO BE THE EYES AND
20 EARS FOR THE BANK IN REGARDS TO THIS PROJECT?

21 A. I THINK THE DANIELS USED THAT TERM, THAT HE WOULD BE
22 LOOKING OUT, YOU KNOW, HE WOULD BE ABLE TO REPORT BACK TO
23 THE BANK, BUT, I MEAN, THE BANK DIDN'T USE THAT TERM.

24 Q. BUT YOU AGREE THAT YOU GUYS HAVE A PRETTY GOOD
25 RELATIONSHIP WITH MR. MATHIAS, CORRECT?

1 A. HE'S A GOOD CUSTOMER.

2 Q. ALL RIGHT. AND HAD YOU ASKED HIM AT ANY POINT IN
3 TIME TO GO UP TO THE PROJECT AND GO LOOK AROUND AND SEE
4 WHAT WAS GOING ON, HE WOULD HAVE DONE SO?

5 A. I BELIEVE HE WOULD HAVE.

6 Q. I WANT TO SHOW YOU WHAT HAS BEEN MARKED AS
7 PLAINTIFFS' EXHIBIT NUMBER 1. THIS IS A DEED IN LIEU OF
8 FORECLOSURE FROM PENDLETON STATION OVER TO ENTERPRISE
9 BANK. YOU ARE FAMILIAR WITH THAT DOCUMENT, IS THAT
10 CORRECT?

11 A. I'M NOT REALLY FAMILIAR WITH IT, NO, SIR.

12 Q. OKAY. BUT YOU AGREE, THOUGH, THAT ENTERPRISE BANK
13 ACCEPTED A DEED IN LIEU OF FORECLOSURE IN REGARDS TO THIS
14 PROPERTY, IS THAT CORRECT?

15 A. NO, SIR.

16 Q. YOU DON'T AGREE WITH THAT?

17 A. NO, SIR.

18 Q. AT ANY POINT IN TIME DID YOU EVER FILE OR DIRECT ANY
19 ATTORNEY TO FILE ANYTHING IN THE COURTHOUSE CANCELLING
20 THAT DEED IN LIEU OF FORECLOSURE?

21 A. I SOUGHT LEGAL COUNSEL WHEN I LEARNED THAT A DEED IN
22 LIEU HAD BEEN SENT TO WHATEVER COUNTY TO GET RECORDED.

23 Q. OKAY. SO IF I'M UNDERSTANDING YOU CORRECTLY, YOU'RE
24 STATING HERE THAT YOU DID NOT -- Y'ALL DID NOT ACCEPT
25 THAT DEED IN LIEU?

1 A. NO, WE NEVER AGREED TO IT, NO, SIR.

2 Q. OKAY. SO IF YOU DID NOT ACCEPT IT, THEN IS IT
3 NORMAL THAT THE FOLLOWING DAY YOU SEND AN AGENT UP TO PAY
4 ONE POINT TWO (\$1,200,000.00) MILLION DOLLARS TO UNPAID
5 SUBCONTRACTORS?

6 A. I DON'T THINK IT HAPPENED THE VERY NEXT DAY, BUT WE
7 DID AT SOME POINT SEND MR. MATHIAS UP THERE TO STABILIZE
8 THE PLACE AND SEE -- ONCE IT HAD BEEN THROWN IN OUR LAPS.

9 Q. OKAY.

10 A. I MEAN, WE DIDN'T HAVE ANY CHOICE.

11 Q. SO IT'S YOUR TESTIMONY YOU HAD NO CHOICE IN REGARDS
12 TO THIS DEED IN LIEU OF FORECLOSURE?

13 A. I DIDN'T HAVE ANY CHOICE BUT TO PROTECT THE BANK'S
14 INTEREST AFTER IT WAS FILED WITHOUT OUR AGREEING TO IT.

15 Q. THE BANK NEVER FILED A FORECLOSURE ACTION IN THIS
16 CASE, DID IT?

17 A. NO, SIR. WE WROTE A DEMAND LETTER, I THINK, BUT NOT
18 A FORECLOSURE ACTION.

19 Q. AND NINE (9) MONTHS LATER THE BANK MADE A DECISION
20 TO RECONSTRUCT THE PROJECT, DOES THAT SOUND CORRECT?

21 A. NINE (9) MONTHS LATER THAN WHEN?

22 Q. NINE (9) MONTHS LATER AFTER THE ACCEPTANCE OF THE
23 DEED IN LIEU OF FORECLOSURE.

24 A. WOULD YOU ASK THE QUESTION AGAIN?

25 Q. THE DEED IN LIEU OF FORECLOSURE WAS ISSUED IN MARCH

1 OF 2007, AND I UNDERSTAND YOUR TESTIMONY IS THAT YOU
2 NEVER ACCEPTED IT, BUT NINE (9) MONTHS LATER THE BANK
3 THEN STARTED BEGINNING RECONSTRUCTION ON THE PROJECT, IS
4 THAT CORRECT?

5 A. NO, WE NEVER HAD ANY INTENTIONS OF STARTING
6 RECONSTRUCTION. WE GAVE MR. DANIELS AMPLE TIME TO -- HE
7 SAID HE WAS GOING TO TAKE BACK OVER OR GET AN INVESTOR OR
8 A LOAN AND WE WAITED AS LONG AS WE POSSIBLY COULD BEFORE
9 WE STARTED, REALLY TO TRY TO KEEP THE THING FROM WASHING
10 AWAY.

11 Q. BUT THE BANK DID HIRE AN OUTFIT TO COME IN AND DO
12 RECONSTRUCTION ON THE PROJECT, IS THAT CORRECT?

13 A. WELL, ULTIMATELY WE WERE FORCED TO, YES, SIR.

14 Q. THAT'S AN INTERESTING STATEMENT. YOU WERE FORCED
15 TO?

16 A. YES, SIR.

17 Q. SO THIS WASN'T A VOLUNTARY DECISION BY THE BANK?

18 A. WE HAD PROBABLY FIVE AND HALF (5 1/2) MILLION AT
19 STAKE. WE DIDN'T HAVE ANY CHOICE BUT TO DO IT.

20 Q. AND Y'ALL CONTINUED TO RECONSTRUCT THE PROJECT, IS
21 THAT RIGHT?

22 A. BY LAW WE'RE ONLY ALLOWED TO FINISH WHAT'S BEEN
23 STARTED, BY FEDERAL REGULATIONS, SO THAT'S WHAT WE DID,
24 YES, SIR.

25 Q. BY FEDERAL REGULATIONS?

1 A. YES, SIR. A BANK CAN'T BE IN THE DEVELOPMENT
2 BUSINESS.

3 Q. I UNDERSTAND THAT. YOU ENDED UP CREATING A
4 DIFFERENT COMPANY TO DO THAT, CORRECT? A HOLDING
5 COMPANY.

6 A. WE CREATED A DIFFERENT COMPANY BUT IT WASN'T FOR THE
7 PURPOSE OF DEVELOPMENT. IT WAS FOR THE PURPOSE OF
8 COMPLETING WHAT HAD BEEN STARTED BECAUSE WE WOULD BE
9 HARMED IRREPARABLY IF WE JUST LET IT WASH AWAY AND ROT.

10 Q. OKAY. AND AT THAT STAGE, NINE (9) MONTHS LATER, THE
11 BANK WAS AWARE THAT MY CLIENTS HAD NOT BEEN PAID,
12 CORRECT?

13 A. I'M NOT AWARE AT THIS POINT THAT THEY HAVEN'T BEEN
14 PAID ---

15 Q. OKAY.

16 A. --- OTHER THAN THE LAWSUITS THAT HAVE BEEN FILED
17 AGAINST US.

18 Q. OKAY. AND WOULD YOU AGREE WITH ME THAT SHORTLY
19 AFTER THE DEED IN LIEU OF FORECLOSURE, MECHANIC'S LIENS
20 WERE FILED IN THIS CASE?

21 A. I DON'T HAVE ANY KNOWLEDGE OF THAT.

22 Q. OKAY. BUT YOU WOULDN'T DISPUTE THAT KNOWLEDGE IF I
23 TOLD YOU SO, IS THAT CORRECT?

24 A. NO, SIR. I'M SURE YOU KNOW.

25 Q. OKAY. AND SO IF THOSE LIENS WERE SENT TO THE BANK

1 AND THE BANK'S ATTORNEYS THEN THE BANK WOULD HAVE
2 KNOWLEDGE ABOUT UNPAID CONTRACTORS, IS THAT RIGHT?

3 A. I'M ASSUMING THAT WOULD BE CORRECT.

4 Q. AND SO NINE (9) MONTHS LATER ---

5 A. I THINK IT WAS ACTUALLY TWELVE (12) MONTHS OR MORE
6 LATER BEFORE WE WERE ABLE TO GET PERMITS TO RESTART OR TO
7 FINISH WHAT HAD BEEN STARTED. I DON'T THINK IT WAS NINE
8 (9) MONTHS.

9 Q. OKAY. A YEAR ---

10 A. A YEAR OR MORE. YOU KEEP SAYING NINE (9) MONTHS,
11 BUT IT WAS LONGER THAN THAT.

12 Q. OKAY. THAT'S FAIR. A YEAR LATER. A YEAR LATER YOU
13 THEN BEGAN RECONSTRUCTION ON THIS PROJECT THAT YOU
14 TESTIFIED THAT YOU WERE FORCED TO DO AND AT THAT STAGE MY
15 CLIENTS HAD STILL NOT BEEN PAID, TO YOUR KNOWLEDGE, IS
16 THAT CORRECT?

17 A. I DON'T KNOW THE STATUS OF YOUR CLIENTS. WE NEVER
18 GOT A BILL FROM THEM, TO MY KNOWLEDGE.

19 Q. ALL RIGHT. BUT IF THEY HADN'T BEEN PAID, THE BANK
20 BENEFITED FROM THE WORK THAT THEY HAD PUT IN PLACE OUT
21 THERE, IS THAT CORRECT?

22 A. I'M NOT REALLY SURE. I'M SURE -- I KNOW THEY DID A
23 CERTAIN AMOUNT OF WORK, BUT THE ENGINEERS CAN TESTIFY
24 WHETHER THEY COMPLETED ALL THEY WERE SUPPOSED TO OR
25 DIDN'T. I JUST DON'T HAVE THAT KNOWLEDGE.

1 MR. BROUSSEAU: I'D LIKE TO HAVE THIS MARKED,
2 PLEASE.

3 (PLAINTIFFS' EXHIBIT 3 FOR IDENTIFICATION)

4 MR. DUDLEY: YOUR HONOR, DAVID SHOWED ME WHAT
5 HE IS INTENDING TO SHOW THE WITNESS AND I DON'T -- THE
6 DOCUMENT IS A DOCUMENT THAT WAS PRODUCED IN DISCOVERY BUT
7 I DO OBJECT THAT IT'S NOT RELEVANT TO THIS MECHANIC'S
8 LIEN ACTION.

9 MR. BROUSSEAU: YOUR HONOR, IT GOES TO
10 CREDIBILITY. HE HAS PREVIOUSLY TESTIFIED THAT HE HAD NO
11 KNOWLEDGE OF AN ACCEPTANCE OF THE DEED IN LIEU OF
12 FORECLOSURE AND THIS E-MAIL RIGHT HERE, HE'S ABOUT TO
13 TESTIFY TO WHAT IT SAYS AND IT CLEARLY INDICATES
14 SOMETHING DIFFERENT. SO IT GOES TO THE CREDIBILITY
15 ISSUE.

16 MR. DUDLEY: THAT'S FINE. I'LL HANDLE IT ON
17 CROSS EXAMINATION.

18 THE COURT: ALL RIGHT. CONTINUE.

19 Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFF'S
20 EXHIBIT NUMBER 3 AND IS THAT AN E-MAIL FROM YOU TO A
21 ANGEL MARSHALL?

22 A. YES, SIR.

23 Q. OKAY. AND IN THAT E-MAIL DIRECTLY -- IF I'M NOT
24 MISTAKEN THAT E-MAIL DIRECTLY SAYS THAT YOU GUYS WON'T
25 ACCEPT THE DEED IN LIEU OF FORECLOSURE UNLESS THE RECORD

1 IS CLEAN OR FREE OF ANY OTHER KIND OF LIENS OR ANYTHING
2 LIKE THAT, IS THAT CORRECT?

3 A. THAT'S NOT WHAT I THINK IT SAYS.

4 Q. OKAY. TELL ME WHAT IT SAYS. TELL ME WHAT YOU THINK
5 IT SAYS.

6 A. I MEAN, A DEED THAT THEY HAD PROPOSED DIDN'T HAVE
7 ALL THE TRACTS OF LAND THAT WE THOUGHT WE HAD ON THE
8 MORTGAGE IS WHAT IT SAYS PRIMARILY.

9 Q. OKAY.

10 A. OF COURSE, IT ALSO GOES INTO THE FACT THAT IT WOULD
11 HAVE TO HAVE NO LIENS ON IT IF THE BANK EVER DECIDED TO
12 ACCEPT IT.

13 Q. AND ONCE AGAIN, AT LEAST A FEW DAYS AFTER THE BANK
14 TOOK THIS DEED IN LIEU THEY PAID ONE POINT THREE
15 (\$1,300,000.00) MILLION TO UNPAID SUBS, IS THAT CORRECT?

16 A. SAY THAT AGAIN. I DIDN'T HEAR YOU.

17 Q. A FEW DAYS -- YOU SAID YOU WEREN'T SURE IF IT WAS
18 THE NEXT DAY SO LET'S SAY A WEEK LATER THE BANK THEN PAYS
19 ONE POINT THREE (\$1,300,000.00) MILLION TO UNPAID SUBS,
20 IS THAT CORRECT, AFTER IT RECEIVES THIS DEED?

21 A. I WON'T ARGUE WITH YOU THAT WE PAID SOMETHING AFTER
22 WE GOT THE DEED IN LIEU OF FORECLOSURE, I JUST SAY WE
23 NEVER ACCEPTED THE DEED IN LIEU OF FORECLOSURE. NEVER
24 EXPECTED IT. IN FACT, I WAS TOLD THAT THEY WERE GOING TO
25 DO IT BY MR. DANIELS -- AND IT'S ONE OF THE FEW THINGS

1 THAT HE SAID HE WAS GOING TO DO THAT HE DID AND IT JUST
2 SURPRISED ME TO DEATH, BUT WE DIDN'T AGREE TO IT.

3 MR. BROUSSEAU: NOTHING FURTHER FROM THIS
4 WITNESS, YOUR HONOR.

5 THE COURT: MR. BARNETT?

6 MR. BARNETT: YES, YOUR HONOR.

7 CROSS EXAMINATION

8 BY MR. BARNETT:

9 Q. I DON'T RECALL IF THESE NOTES BY MR. MATHIAS WERE
10 ENTERED INTO EVIDENCE -- WELL, THEY ARE PLAINTIFFS'
11 EXHIBIT 2. DO YOU HAVE A COPY OF THIS IN FRONT OF YOU
12 THERE, MR. JOHNS?

13 A. NO, SIR.

14 Q. YOU WERE HERE AND YOU HEARD MR. MATHIAS TESTIFY
15 ABOUT THESE NOTES THAT HE MADE, JUST NOW?

16 A. YES, SIR, I THINK SO.

17 Q. DID YOU HEAR HIM TESTIFY ABOUT HIS NOTES?

18 A. YES, SIR.

19 Q. DID YOU HEAR HIM TESTIFY THAT HE MADE THIS
20 PARTICULAR NOTE ON PAGE, AT THE BOTTOM OF THIS PAGE
21 BEGINNING DAVID AND BOBBY BRYANT, TIMED AT 9:45 AM ON
22 FEBRUARY THE 28TH OF 2007, AS A RESULT OF THE
23 CONVERSATION HE HAD ON THE PHONE WITH YOU? DID YOU HEAR
24 HIM TESTIFY TO THAT?

25 A. YES, SIR.

1 Q. OKAY. ARE HIS NOTES AND HIS TESTIMONY CORRECT AS
2 FAR AS YOU CAN RECALL TODAY THAT YOU SAID THAT THE BANK
3 AND EMM, MEANING HIMSELF, MR. MATHIAS, WILL BE IN THE
4 DEVELOPMENT BUSINESS WHEN YOU EITHER FORECLOSED OR TOOK A
5 DEED IN LIEU OF FORECLOSURE?

6 A. I CAN'T REALLY REMEMBER THOSE EXACT WORDS BEING
7 USED. I'M SURE WE WERE SCARED TO DEATH THAT WE WERE
8 GOING TO HAVE TO FINISH THE PROJECT. I REALLY LOANED THE
9 PEOPLE TWO AND A HALF (2 1/2) MILLION MORE THAN I
10 INTENDED TO TO KEEP THE PROJECT FROM BEING THROWN IN MY
11 LAP. THAT'S WHAT I REMEMBER.

12 Q. I DON'T KNOW IF YOU ANSWERED MY QUESTION OR NOT.
13 I'LL TRY IT AGAIN.

14 A. THE ANSWER IS NO, I DON'T REMEMBER THAT.

15 Q. YOU DON'T? OKAY. BUT YOU DON'T QUESTION MR.
16 MATHIAS THAT HE MADE THESE NOTES THE DAY OF THE
17 CONVERSATION?

18 A. WELL, HE TESTIFIED THAT HE DID. I BELIEVE HIM.

19 Q. ALL RIGHT. THAT'S OVER FOUR (4) YEARS AGO, SO MAYBE
20 YOU CAN AGREE WITH ME THAT HIS CONTEMPORANEOUS NOTES
21 MIGHT BE BETTER THAN YOUR RECOLLECTION NOW FOUR AND A
22 HALF (4 1/2) YEARS LATER?

23 A. YEAH, BUT HE'S GOT BOBBY BRYANT'S NAME, TOO. I
24 MEAN, I DON'T KNOW WHO SAID WHAT BY HIS NOTES.

25 Q. HE TESTIFIED THAT YOU SAID THAT.

1 A. I HEARD THAT.

2 Q. HE JUST TESTIFIED THAT YOU SAID THAT.

3 A. I HEARD THAT HE SAID THAT.

4 Q. OKAY. AND YOU DON'T REMEMBER WHETHER YOU SAID IT OR
5 NOT?

6 A. I DON'T REMEMBER USING THAT EXACT TERM, NO, SIR.

7 Q. OKAY. BUT YOU DON'T REMEMBER?

8 A. I JUST SAID I DIDN'T.

9 Q. OKAY. SO YOU MIGHT HAVE SAID IT?

10 THE COURT: ALL RIGHT. THAT'S SUFFICIENT,
11 MR. BARNETT.

12 MR. BARNETT: ALL RIGHT, SIR.

13 THE COURT: HE SAID HE WOULDN'T PARTICULARLY
14 QUESTION THE NOTES THAT WERE MADE BY MR. MATHIAS. HE
15 JUST DOESN'T REMEMBER AT THIS TIME THAT HE SAID THAT, AND
16 THAT'S ---

17 MR. BARNETT: OKAY.

18 THE COURT: --- FOUR (4) YEARS AGO.

19 MR. BARNETT: I UNDERSTAND. I'LL GO TO
20 ANOTHER LITTLE POINT HERE.

21 THE COURT: ALL RIGHT.

22 Q. DO YOU REMEMBER ASKING BEN, MEANING BEN DANIEL, FOR
23 THE DEED IN LIEU OF FORECLOSURE AS THESE NOTES SAY THAT
24 YOU WERE GOING TO DO?

25 A. I HAVE NEVER ASKED HIM FOR A DEED IN LIEU OF

1 FORECLOSURE. THE ONLY THING I ASKED HIM I PUT IN WRITING
2 TO HIM.

3 Q. SO YOUR TESTIMONY TODAY IS THAT MR. MATHIAS' NOTES
4 HERE ARE INCORRECT? THAT ON FEBRUARY THE 28TH OF 2007,
5 YOU DID NOT SAY THAT YOU PLANNED TO ASK BEN FOR A DEED
6 TOMORROW?

7 A. I THINK MR. MATHIAS' NOTES SPEAK FOR THEMSELVES.
8 YOU CAN ASK ME ANY KIND OF QUESTION ON WHAT I DID AND
9 I'LL BE GLAD TO TRY TO ANSWER IT.

10 Q. I JUST DID. DID YOU MAKE THAT STATEMENT THAT THESE
11 NOTES SAY YOU MADE, OR NOT?

12 A. NO, SIR.

13 Q. OKAY. SO MR. MATHIAS IS JUST WRONG?

14 A. HE REMEMBERS WHAT HE REMEMBERS. I REMEMBER WHAT I
15 REMEMBER.

16 Q. OKAY, SIR. IN POINT IN FACT THE BANK DID GET A
17 DEED?

18 A. I MEAN, IT ENDED UP GETTING FILED WITHOUT US
19 APPROVING IT OR THE TERMS OR ANYTHING.

20 Q. YOU DON'T DISPUTE THAT THE BANK BECAME THE OWNER OF
21 THE PROPERTY WHEN THAT DEED WAS FILED, DO YOU?

22 A. NO, SIR. THE DEED WAS JUST DONE DIRTY AND
23 UNDERHANDED AND FILED WITHOUT EVER EVEN TELLING THE BANK
24 ABOUT IT UNTIL IT WAS ON THE WAY.

25 Q. IN SPITE OF YOUR E-MAILS TO MR. CUTCHIN, I HEAR WHAT

1 YOU'RE SAYING, BUT YOU GOT TITLE TO THE PROPERTY. YOU
2 DON'T DISPUTE THAT, DO YOU?

3 A. I DIDN'T GET TITLE TO ALL OF IT; NO, SIR.

4 Q. YOU GOT TITLE TO WHAT'S IN THE DEED?

5 A. I HAD TO PURCHASE SOME OF IT.

6 Q. YOU GOT TITLE TO WHERE THE PROJECT IS?

7 A. NO, SIR.

8 Q. OKAY.

9 A. MOST OF WHAT WAS UNDER CONSTRUCTION THEN WE GOT
10 TITLE TO. PART OF IT WAS ON THE OTHER LAND THAT WE DID
11 NOT HAVE TITLE TO AND WE SUBSEQUENTLY HAD TO PURCHASE.

12 Q. YOU TOOK TITLE TO WHAT WAS IN THE DEED, DID YOU NOT?

13 A. YES, SIR, BUT THAT DIDN'T INCLUDE THE ENTIRE
14 PROJECT.

15 Q. OKAY. JUST LISTEN TO MY QUESTION HERE. YOU
16 RETAINED OR YOU HIRED BETTY HARRIS, CHARLIE KERNAGHAN TO
17 STAY ON THE PROJECT, DIDN'T YOU?

18 A. I DON'T THINK I DID. I THINK MR. MATHIAS DID.

19 Q. MR. MATHIAS WAS WORKING FOR THE BANK WHEN HE DID
20 THAT?

21 A. WELL, MANAGERS HAVE THE AUTHORITY TO DO THINGS. I
22 MEAN, THAT'S WHY YOU SEND THEM UP THERE.

23 Q. BUT HE WAS WORKING FOR THE BANK?

24 A. I MEAN, ULTIMATELY, I GUESS WE COULD HAVE INFLUENCED
25 THAT.

1 Q. OKAY. ALL RIGHT. ARE YOU SUGGESTING THAT MR.
2 MATHIAS WAS A FREE AGENT, THAT HE WAS ABLE TO DO THINGS
3 ON THAT PROJECT ON HIS OWN?

4 A. HE HAD THE POWER TO HIRE OR DO WHATEVER HE NEEDED TO
5 DO TO STABILIZE THE PROJECT AND PROTECT THE BANK'S
6 INTEREST.

7 Q. ALL RIGHT, THERE YOU GO. WHAT HE WAS DOING WAS FOR
8 THE BANK. SO THE BANK, THROUGH MR. MATHIAS, HIRED THESE
9 PEOPLE TO CONTINUE THE PROJECT, ISN'T THAT CORRECT?

10 A. WELL, I THINK INITIALLY WE WERE JUST TRYING TO
11 STABILIZE THE PROJECT, WAITING TO SEE WHAT MR. DANIEL WAS
12 GOING TO DO BECAUSE HE HAD PROMISED US HE WAS GOING TO
13 GET AN INVESTOR OR ANOTHER LOAN AND TAKE OVER THE
14 PROJECT, SO WE GAVE HIM AMPLE TIME TO DO THAT.

15 MR. BARNETT: YOUR HONOR, THE WITNESS HAS
16 OBVIOUSLY GOT THINGS HE WOULD LIKE TO SAY, BUT I'D LIKE
17 HIM TO ANSWER MY QUESTIONS.

18 A. I THOUGHT I DID. I'M SORRY.

19 MR. BARNETT: I'VE BEEN CHASING HIM ALREADY
20 ONCE THIS YEAR.

21 THE COURT: IF YOU CAN ANSWER THE QUESTION,
22 YOU ARE WELCOME TO. YOU ALSO CAN EXPLAIN YOUR ANSWER.
23 IF YOU DON'T KNOW THE ANSWER YOU CAN SAY I DO NOT KNOW OR
24 DO NOT RECALL ---

25 A. I'LL START DOING THAT. I'M SORRY.

1 THE COURT: --- BUT WE'LL TRY TO ANSWER
2 QUESTIONS AS DIRECTLY AS WE CAN, BUT WITH THE
3 UNDERSTANDING THAT YOU HAVE THE RIGHT TO EXPLAIN YOUR
4 ANSWERS FURTHER.

5 A. OKAY.

6 Q. AND ULTIMATELY THE BANK HIRED APEX, A COMPANY CALLED
7 APEX, TO COMPLETE THE CONSTRUCTION, IS THAT CORRECT?

8 A. YES, SIR.

9 Q. AND THE BANK STILL OWNS THE PROJECT, ISN'T THAT
10 CORRECT?

11 A. YES, SIR.

12 Q. AND THE BANK IS OPERATING IT AS A RENTAL PROPERTY,
13 PRIMARILY AIMED AT CLEMSON AND OTHER UNIVERSITY STUDENTS
14 IN THIS AREA, ISN'T THAT CORRECT?

15 A. YES, SIR.

16 Q. AND IT IS NEARLY FULLY OCCUPIED, ISN'T THAT CORRECT?

17 A. I HOPE SO.

18 Q. THAT'S ALL I HAVE. THANK YOU.

19 MR. DUDLEY: NO QUESTIONS AT THIS TIME.
20 WE'LL RECALL HIM IN MY CASE IN CHIEF.

21 MR. LAVERY: NO QUESTIONS, YOUR HONOR.

22 THE COURT: MR. JOHNS, WHERE IS YOUR HOME
23 OFFICE WITH ENTERPRISE BANK?

24 THE WITNESS: IT'S IN EHRHARDT WHICH WE SAY IS
25 SEVENTY (70) MILES FROM EVERYWHERE; AUGUSTA, COLUMBIA AND

1 CHARLESTON AND SAVANNAH AND THE LAST PLACE THEY ARE GOING
2 TO MESS UP WITH DEVELOPMENT.

3 THE COURT: LIKE LAURINBURG, NORTH CAROLINA.

4 THE WITNESS: YES, SIR.

5 THE COURT: I HAVE A FRIEND THAT LIVES UP
6 THERE AND HE SAYS ----

7 THE WITNESS: IT'S GOT ABOUT FIVE HUNDRED
8 (500) PEOPLE IN IT.

9 THE COURT: HE SAYS LAURINBURG, NORTH
10 CAROLINA IS A HUNDRED MILES FROM EVERYWHERE.

11 THE WITNESS: YES, SIR.

12 THE COURT: DO YOU RECALL WHEN YOU FIRST
13 BECAME AWARE OF THIS DEED IN LIEU OF FORECLOSURE THAT
14 WE'VE BEEN DISCUSSING HERE?

15 THE WITNESS: I MEAN, THEY DISCUSSED DEEDING
16 IT TO ME IN LIEU OF FORECLOSURE AND SENT ME A NUMBER OF
17 STIPULATIONS AND I KEPT REJECTING IT. I COULDN'T -- I
18 MEAN, AND THEN THEY JUST TOOK IT AND FILED IT IN THE
19 COURTHOUSE. I NEVER AGREED TO ANYTHING.

20 THE COURT: NOW WHEN YOU SAY THEY, DO YOU
21 HAVE ANY PARTICULAR PERSONS ---

22 THE WITNESS: MR. CUTCHIN, THE LAWYER, AND
23 PEOPLE IN MR. DANIEL'S OFFICE.

24 THE COURT: ALL RIGHT.. I NOTICE IT WAS
25 PREPARED BY THIS WILLIAM J. CUTCHIN WHO IS DOWN IN MT.

1 PLEASANT AND HE NOTED ON HERE PREPARED WITHOUT TITLE
2 SEARCH.

3 THE WITNESS: YES, SIR. WE WOULD HAVE
4 REQUIRED TITLE INSURANCE IF WE HAD ACCEPTED IT OR AT
5 LEAST A TITLE SEARCH.

6 THE COURT: IT WAS FILED IN, I BELIEVE,
7 MARCH ---

8 THE WITNESS: MARCH THE 5TH, IT LOOKS LIKE.

9 THE COURT: CORRECT. 2007, HERE IN ANDERSON
10 COUNTY. I BELIEVE ONE OF THE ATTORNEYS ASKED YOU
11 EARLIER, THE BANK NEVER TOOK ANY ACTION TO QUESTION THAT
12 DEED OR HAVE IT SET ASIDE OR SUCH AS THAT?

13 THE WITNESS: NO, SIR. WE ACTED ON THE BANK'S
14 COUNSEL. WE IMMEDIATELY HIRED AN ATTORNEY TO HELP US
15 FIGURE OUT WHAT TO DO BECAUSE WE WERE GOING TO FORECLOSE
16 BECAUSE OF NON-PERFORMANCE IF -- IT'S WHAT PROMPTED HIM
17 TO DO THE DEED IN LIEU, I'M SURE.

18 THE COURT: THANK YOU, MR. JOHNS.

19 THE WITNESS: YES, SIR.

20 THE COURT: ANY FURTHER QUESTIONS OF THE
21 WITNESS?

22 MR. BROUSSEAU: I HAVE ONE QUESTION, YOUR
23 HONOR, BASED ON THE ANSWERS TO YOUR QUESTIONS.

24 THE COURT: ALL RIGHT, VERY BRIEFLY.

25 REDIRECT EXAMINATION

1 BY MR. BROUSSEAU:

2 Q. YOU JUST REFERRED TO TITLE INSURANCE. THE BANK DID
3 GET TITLE INSURANCE ON THE PROPERTY, DID IT NOT?

4 A. I DON'T THINK SO.

5 Q. THEY NEVER DID?

6 A. NOT WITH THE DEED IN LIEU, NO, SIR.

7 Q. OKAY. THANK YOU.

8 MR. BROUSSEAU: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: THANK YOU, SIR. WATCH YOUR STEP
10 WHEN YOU STEP DOWN THERE.

11 MR. BROUSSEAU: KEVIN MOORHEAD, YOUR HONOR.

12 THE COURT: ALL RIGHT. WE'LL FINALLY GET TO
13 YOUR WITNESSES.

14 MR. BROUSSEAU: YES, SIR.

15 THE COURT: COME AROUND, MR. MOORHEAD, AND
16 HAVE A SEAT, PLEASE.

17 KEVIN MOORHEAD, PLAINTIFFS' WITNESS, SWORN:

18 DIRECT EXAMINATION

19 BY MR. BROUSSEAU:

20 Q. KEVIN, IF YOU WOULD, STATE YOUR NAME AND SPELL YOUR
21 LAST NAME, PLEASE.

22 A. KEVIN MOORHEAD, M-O-O-R-H-E-A-D.

23 Q. OKAY. AND MR. MOORHEAD, WHAT DO YOU DO FOR A
24 LIVING?

25 A. CONTRACTOR.

1 Q. ALL RIGHT. AND SPECIFICALLY, ARE YOU A PRINCIPAL OF
2 MOORHEAD CONSTRUCTION?

3 A. YES, VICE PRESIDENT.

4 Q. ONE OF THE PLAINTIFFS IN THIS CASE, CORRECT?

5 A. YES, SIR.

6 Q. ALL RIGHT. TELL THE COURT BRIEFLY ABOUT YOUR
7 COMPANY'S ROLE IN THIS PROJECT.

8 A. WE WERE THE GENERAL CONTRACTOR IN PROVIDING THE
9 INFRASTRUCTURE FOR THE PROJECT.

10 Q. WHAT TYPE OF INFRASTRUCTURE OR WHAT TYPE OF
11 CONSTRUCTION?

12 A. WATER, SEWER, ROADS, CURBING.

13 Q. OKAY. SO IS IT COMMONLY REFERRED TO AS HORIZONTAL
14 CONSTRUCTION?

15 A. YES.

16 MR. BROUSSEAU: I'LL ASK THAT THESE DOCUMENTS
17 BE MARKED AS PLAINTIFFS' EXHIBITS 4, 5 AND 6.

18 THE COURT: YES, SIR.

19 (PLAINTIFFS' EXHIBIT 4, 5 AND 6 FOR
20 IDENTIFICATION)

21 Q. ALL RIGHT. AND I WILL HAND YOU WHAT'S BEEN MARKED
22 AS PLAINTIFFS' EXHIBIT NUMBER 4. THIS IS YOUR AGREEMENT
23 WITH PENDLETON STATION, LLC, IS THAT CORRECT?

24 A. YES.

25 Q. AND THAT GOVERNS THE TERMS AND CONDITIONS OF THE

1 CONSTRUCTION WORK?

2 A. YES.

3 Q. SO THAT IS THE TERMS AND CONDITIONS OF THE WORK THAT
4 YOU WERE TO PERFORM OUT THERE ON THE PROJECT, IS THAT
5 CORRECT?

6 A. YES, SIR.

7 Q. AND Y'ALL WERE GOING TO HAVE SOME SUBCONTRACTORS ON
8 THIS JOB, DOES THAT SOUND RIGHT?

9 A. THAT'S RIGHT.

10 Q. AND WHO WERE SOME OF YOUR SUBCONTRACTORS IN REGARDS
11 TO THIS PROJECT?

12 A. MILLER CONSTRUCTION AND CRAFT CONSTRUCTION.

13 Q. ALL RIGHT. AND WHAT WAS MILLER'S ROLE? WHAT DID HE
14 DO AS A SUBCONTRACTOR OF YOUR COMPANY?

15 A. GRADING, STORM DRAINS, SEDIMENT PONDS.

16 Q. OKAY. AND MR. CRAFT'S COMPANY, WHAT WAS THEIR ROLE
17 AS A SUBCONTRACTOR OF YOURS?

18 A. WATER AND SEWER.

19 Q. AT SOME STAGE DURING THIS PROJECT, AND I'M TALKING
20 LATER ON -- LET'S JUST BACKTRACK FOR A LITTLE BIT HERE.
21 WERE YOU GUYS BEING TIMELY PAID FOR A WHILE ON THIS
22 PROJECT?

23 A. IN THE BEGINNING, AFTER THEY GOT THEIR INITIAL LOAN.

24 Q. OKAY. AND LATER ON AS THE PROJECT WENT ON, DID
25 PAYMENTS START TO GET DELAYED SOME?

1 A. YES.

2 Q. THERE ALSO BECAME A NUMBER OF PROBLEMS ON THIS

3 PROJECT, IS THAT CORRECT?

4 A. YES, SIR.

5 Q. DO YOU WANT TO EXPLAIN TO THE COURT WHAT SOME OF

6 THOSE PROBLEMS WERE?

7 A. WE WERE HAVING ISSUES WITH THE CURB AND SIDEWALK

8 WHERE THEY WERE EXCAVATING THE BASEMENTS IN BUILDINGS

9 PRIOR TO THE ROADS BEING CONSTRUCTED. ON LEBANON ROAD

10 THERE WERE SOME STORM DRAIN ISSUES THAT WEREN'T ADDRESSED

11 ON THE PLANS AND A LOT OF DRAINAGE ISSUES AROUND THE

12 PROJECT.

13 Q. SO IF I'M UNDERSTANDING YOU CORRECTLY, THEY WERE

14 PUTTING IN VERTICAL CONSTRUCTION PRIOR TO THE HORIZONTAL

15 BEING COMPLETED?

16 A. THAT'S RIGHT.

17 Q. IS THAT NORMAL?

18 A. NO.

19 Q. IS THAT ADVISABLE?

20 A. NO, SIR.

21 Q. OKAY. AFTER A WHILE YOU STARTED SUBMITTING DRAW

22 REQUESTS AND WEREN'T GETTING PAID, IS THAT CORRECT?

23 A. YES, SIR.

24 Q. ALL RIGHT, AND AT SOME STAGE -- WELL, LET ME ASK YOU

25 THIS. AT SOME STAGE YOU ENDED UP FILING A MECHANIC'S

1 LIEN ON THIS PROJECT AFTER YOU CONTINUED TO GO UNPAID, IS
2 THAT CORRECT?

3 A. YES, SIR.

4 Q. AND IF YOU LOOK DOWN, I THINK IT'S PLAINTIFFS'
5 EXHIBIT NUMBER 6, IS THAT RIGHT? WHICH PLAINTIFFS'
6 EXHIBIT IS IT?

7 A. 5.

8 Q. 5? YOU FILED A MECHANIC'S LIEN IN REGARDS TO THIS
9 PROJECT, CORRECT?

10 A. YES, SIR.

11 Q. OKAY. AND HOW MUCH DID YOU FILE THAT LIEN FOR?

12 A. FOUR-O-ONE, SEVEN TWENTY-NINE (\$401,729.00).

13 Q. OKAY. AND THAT INCLUDES WORK THAT MR. CRAFT AND MR.
14 MILLER DID, AS WELL, OR THEIR COMPANIES?

15 A. YES.

16 Q. ALL RIGHT. AND IT STATES ON THERE THAT YOUR LAST
17 DATE OF WORK ON THE PROJECT WAS MARCH 6TH OF 2007.

18 A. I SEE THAT, YES.

19 Q. OKAY. AND DO YOU RECALL BEING ON THE SITE ON OR
20 AROUND MARCH 6TH OF 2007, WHICH WOULD BE YOUR LAST DAY?

21 A. YES.

22 Q. AND WHAT DO YOU RECALL WORKING ON THAT PARTICULAR
23 DAY OR ONE OF YOUR STAFF WORKING ON?

24 A. I THINK THE LAST THING WE DID WAS SOMETHING TO DO
25 WITH EROSION CONTROL.

1 Q. DID YOU SAY EROSION CONTROL? I'M SORRY, I COULDN'T
2 HEAR YOU.

3 A. YEAH, EROSION CONTROL.

4 Q. NOW I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
5 PLAINTIFFS' EXHIBIT NUMBER 6 AND THOSE ARE A SUMMARY OF
6 YOUR DAMAGES IN REGARDS TO THIS MATTER, CORRECT?

7 A. YES.

8 Q. ALL RIGHT.

9 THE COURT: EXCUSE ME. LET ME BACK UP TO A
10 PRIOR QUESTION, MR. BROUSSEAU.

11 MR. BROUSSEAU: YES, SIR.

12 THE COURT: YOU ASKED THE DATE OF THE LAST
13 SERVICE OR WORK HE PERFORMED ON THIS PROJECT AND I
14 BELIEVE YOU SAID IT HAD TO DO WITH EROSION CONTROL.

15 MR. BROUSSEAU: EROSION CONTROL, YES, SIR.

16 THE COURT: NOW WHAT DATE DID HE ---

17 MR. BROUSSEAU: HE TESTIFIED MARCH 6 OF 2007.

18 THE COURT: IS THAT CORRECT?

19 THE WITNESS: YES, SIR.

20 THE COURT: THAT'S THE LAST CONNECTION WITH
21 SERVICE OR WORK YOU DID WITH THIS PROJECT?

22 THE WITNESS: YES, SIR.

23 THE COURT: AND THAT WAS FOR EROSION
24 CONTROL?

25 THE WITNESS: YES, SIR.

1 THE COURT: MARCH 6, 2007?

2 THE WITNESS: YES, SIR.

3 THE COURT; AND YOUR LIEN WAS FILED?

4 MR. BROUSSEAU: APRIL -- I'M SORRY, I'LL HAVE
5 TO LOOK AT THE DOCUMENTS.

6 THE COURT: I HAVE THAT.

7 MR. BROUSSEAU: YOUR HONOR, I'LL --

8 THE COURT: ALL RIGHT. GO AHEAD WITH YOUR
9 QUESTIONS THEN.

10 Q. NOW ON THIS SUMMARY YOU HAVE ATTACHED TO THAT SOME
11 INVOICES BACKING UP SOME OF THESE DOCUMENTS, IS THAT
12 CORRECT?

13 A. YES, SIR.

14 Q. OR BACKING UP THE SUMMARY. AND IF YOU COULD, THERE
15 ARE TWO SEPARATE ACTIONS FOR DAMAGES THAT YOU HAVE,
16 RIGHT? ONE IS FOR THE MECHANIC'S LIEN ISSUE AGAINST THE
17 BANK BUT YOU ALSO HAVE A BREACH OF CONTRACT CLAIM AGAINST
18 PENDLETON STATION, LLC. YOU UNDERSTAND THAT, CORRECT?

19 A. UH-HUH (AFFIRMATIVE).

20 Q. OKAY. AND THE BREACH OF CONTRACT ACTION, YOUR
21 DAMAGES, IF YOU LOOK DOWN AT THE BOTTOM OF THAT SUMMARY,
22 YOUR DAMAGES ARE WHAT AS TO PENDLETON STATION ONLY?

23 A. THREE HUNDRED AND FOURTEEN, SIX THIRTY
24 (\$314,630.00).

25 Q. AND THAT IS LOST PROFITS FROM THE UNEXECUTED PORTION

1 OF THE CONTRACT THAT YOU WOULD HAVE GOTTEN?

2 A. YES.

3 Q. OKAY. YOU'RE NOT CLAIMING THAT AMOUNT AGAINST THE
4 BANK, CORRECT? THAT IS ONLY AGAINST PENDLETON STATION
5 WHO YOU HAD THE CONTRACT WITH, IS THAT CORRECT?

6 A. RIGHT.

7 Q. OKAY. NOW IN REGARD TO THE LIEN AMOUNT HERE, PLEASE
8 TELL THE COURT WHAT YOU BELIEVE YOUR DAMAGES TO BE.

9 A. THE RETAINAGE IS JUST RETAINED MONIES.

10 Q. OKAY. AND EXPLAIN WHAT RETAINAGE IS.

11 A. MONEY HELD OUT FROM PREVIOUS BILLINGS.

12 Q. OKAY. AND THAT'S RETAINAGE THAT IS OWED TO MOORHEAD
13 CONSTRUCTION AND NOT TO MILLER OR CRAFT OR ANYTHING LIKE
14 THAT, CORRECT?

15 A. THAT'S RIGHT.

16 Q. ALL RIGHT. SO NOTHING ON THIS LIST INCLUDES
17 ANYTHING THAT MILLER OR CRAFT ARE OWED, RIGHT?

18 A. RIGHT.

19 Q. YOU'VE EXCLUDED THAT FOR THE PURPOSES OF YOUR
20 TESTIMONY, RIGHT?

21 A. YES, SIR.

22 Q. ALL RIGHT. YOUR SECOND POINT ON THERE IS LOST HOME
23 OR OFFICE OVERHEAD. HOW DID YOU COME ABOUT WITH THAT
24 FIGURE?

25 A. THAT'S A FORMULA THAT YOU USE -- YOU TAKE THE TOTAL

1 BILLINGS FOR THE COMPANY THROUGHOUT THE TIME PERIOD OF
2 THE PROJECT AND THEN THE PERCENTAGE OF BILLINGS ON THE
3 PROJECT AND GET A PERCENTAGE OF OVERHEAD THAT'S DUE TO
4 THE PENDLETON STATION PROJECT, WHICH WAS, I THINK SIX
5 POINT ONE (6.1) PERCENT.

6 Q. OKAY. AND THAT'S HOW YOU CAME UP WITH A HUNDRED AND
7 NINETY-FOUR THOUSAND (\$194,000.00) NUMBER?

8 A. YES.

9 Q. ONE NINETY-FOUR, FOUR-0-FIVE (\$194,405.00)?

10 A. YES.

11 Q. AND THEN YOU ALSO HAVE ON HERE LOST BOND PREMIUMS.
12 WHAT IS THAT?

13 A. OUR BOND PREMIUMS ARE ROUGHLY ONE (1) PERCENT AND WE
14 COMPLETED ABOUT A MILLION TWO (\$1,200,00.00) IN THE
15 PROJECT AND WE PAID FOR THE WHOLE BOND AND THIS IS THE
16 PORTION THAT WE NEVER BILLED FOR.

17 Q. OKAY. THAT'S MONEY THAT YOU HAD TO PAY FOR THE BOND
18 THAT ULTIMATELY YOU REALLY DIDN'T NEED?

19 A. RIGHT.

20 Q. OKAY. YOU ALSO HAVE A FORMULA THERE FOR PREJUDGMENT
21 INTEREST. ARE YOU ASKING FOR YOUR PREJUDGMENT INTEREST
22 IN REGARDS TO THIS MATTER?

23 A. YES.

24 Q. OKAY. AND YOU'RE ALSO ASKING FOR YOUR ATTORNEY'S
25 FEES AND COSTS AS A RESULT OF THIS CASE, CORRECT?

1 A. YES, SIR.

2 Q. OKAY. MR. MOORHEAD, WERE YOU AWARE THAT THE BANK
3 HAD ACCEPTED A DEED IN LIEU OF FORECLOSURE ON THIS
4 PROJECT?

5 A. I MEAN, I FOUND OUT, OBVIOUSLY, BUT I DON'T REMEMBER
6 WHEN.

7 Q. OKAY. AND OBVIOUSLY THEY WERE ON NOTICE THAT YOU
8 HAD SOME WORK AND THAT YOU HAD NOT BEEN PAID FOR THAT
9 WORK WHEN THEY DID THE RECONSTRUCTION ON THIS, CORRECT?

10 A. YES.

11 MR. DUDLEY: I WOULD OBJECT. HE'S ASKING
12 WHAT THE BANK DID, OF THIS WITNESS.

13 MR. BROUSSEAU: NOTHING FURTHER FROM THIS
14 WITNESS, YOUR HONOR.

15 THE COURT: ALL RIGHT. MR. BARNETT?

16 MR. BARNETT: NOTHING FROM ME, YOUR HONOR.

17 THE COURT: MR. DUDLEY?

18 MR. DUDLEY: YES, SIR. JUST A COUPLE OF
19 QUESTIONS.

20 CROSS EXAMINATION

21 BY MR. DUDLEY:

22 Q. MR. MOORHEAD, IF YOU WOULD, CAN WE GET OUR EXHIBIT
23 1, THE BIG NOTEBOOK?

24 A. YES, SIR.

25 Q. MR. MOORHEAD, YOU AGREE THAT YOUR CONTRACT, MOORHEAD

1 CONSTRUCTION'S CONTRACT, WAS WITH PENDLETON STATION. YOU
2 DIDN'T HAVE A CONTRACT WITH THE BANK, DID YOU?

3 A. NO, SIR.

4 Q. AND YOU NEVER SENT NOTICE TO ENTERPRISE BANK THAT
5 YOU WERE OWED ANY MONEY, DID YOU?

6 A. NO, SIR.

7 Q. ALL RIGHT. AND YOU ADMIT THAT YOU CAN'T PROVIDE ANY
8 TESTIMONY THAT MOORHEAD GAVE ANY NOTICE TO THE BANK THAT
9 IT WAS OWED ANY MONEY PRIOR TO THE DEED IN LIEU OF
10 FORECLOSURE, CAN YOU?

11 A. THAT'S TRUE.

12 Q. ALL RIGHT. AND YOU PROVIDED -- AND YOU AGREE THAT
13 THE BANK DOESN'T OWE YOU ANY MONEY ON THE CONTRACT
14 BECAUSE YOU DIDN'T HAVE A CONTRACT WITH THE BANK, RIGHT?

15 A. THAT'S RIGHT.

16 Q. AND MOORHEAD CONSTRUCTION PROVIDED PAYMENT AND
17 PERFORMANCE BONDS TO PENDLETON STATION, DIDN'T IT?

18 A. THAT'S RIGHT.

19 Q. AND THE PAYMENT BOND, WHICH PROTECTS SUBCONTRACTORS
20 IF YOU DIDN'T PAY YOUR SUBCONTRACTORS, RIGHT?

21 A. YES, SIR.

22 Q. ALL RIGHT, AND MILLER AND CRAFT NEVER MADE PAYMENT
23 BOND CLAIMS AGAINST YOUR BOND, DID THEY?

24 MR. BROUSSEAU: YOUR HONOR, I WOULD OBJECT TO
25 THIS LINE OF QUESTIONING. IT'S IRRELEVANT AS TO WHETHER

1 OR NOT MY FOLKS HAVE BEEN PAID AND WHAT IT IS. THEY ARE
2 TALKING ABOUT SOMETHING COMPLETELY DIFFERENT.

3 THE COURT: THIS IS CROSS EXAMINATION. I'LL
4 ALLOW IT.

5 Q. MILLER AND CRAFT WERE YOUR SUBCONTRACTORS, RIGHT?

6 A. YES, SIR.

7 Q. THEY DID NOT HAVE DIRECT CONTRACTS WITH PENDLETON
8 STATION, CORRECT?

9 A. NO, SIR.

10 Q. THAT PAYMENT AND PERFORMANCE BOND THAT YOU PROVIDED
11 TO PENDLETON STATION WAS FOR THE BENEFIT OF
12 SUBCONTRACTORS LIKE MILLER AND CRAFT, CORRECT?

13 A. THAT'S RIGHT.

14 Q. AND MILLER AND CRAFT NEVER FILED BOND CLAIMS AGAINST
15 THE MOORHEAD PAYMENT BOND, DID THEY?

16 A. I'M NOT CERTAIN OF THAT.

17 Q. THEY NEVER SUED - NEITHER MILLER NOR CRAFT HAVE SUED
18 ON THAT PAYMENT BOND CLAIM, HAVE THEY? YOU KNOW THAT.
19 THEY DIDN'T DO THAT.

20 A. OKAY.

21 Q. YOU KNOW THAT, DON'T YOU? THERE ARE NO OTHER
22 LAWSUITS FROM MR. MILLER, WHERE MILLER ---

23 A. NOT THAT I'M AWARE OF.

24 Q. --- CONSTRUCTION OR CRAFT HAVE SUED UNDER THE
25 PAYMENT BOND CLAIM. THEY COULD HAVE DONE THAT BUT THEY

1 DIDN'T, RIGHT?

2 A. YES, SIR.

3 Q. ALL RIGHT. NOW YOU STARTED OR MOORHEAD CONSTRUCTION
4 STARTED ITS WORK ON THE PENDLETON STATION PROJECT PRIOR
5 TO ENTERPRISE BANK BEING INVOLVED, RIGHT?

6 A. THAT'S CORRECT.

7 Q. YOU WERE WORKING WITH PENDLETON STATION WELL BEFORE
8 YOU EVER KNEW THERE WAS A LOAN IN PLACE WITH ENTERPRISE
9 BANK, RIGHT?

10 A. YES, SIR.

11 Q. YOU WERE NOT RELYING ON THE ENTERPRISE BANK LOAN TO
12 ENTER INTO THE CONTRACT WITH PENDLETON STATION BECAUSE
13 YOU DIDN'T EVEN KNOW THEY EXISTED, DID YOU?

14 A. NO, SIR, BUT OUR CONTRACT WAS BASED ON THEM GETTING
15 A LOAN AND US FURNISHING PERFORMANCE AND PAYMENT BONDS
16 ONCE THEY DID.

17 Q. AND DID YOU KNOW WHO THE LOAN WAS GOING TO BE FROM?

18 A. NO, NO.

19 Q. OKAY. ALL RIGHT. NOW YOU SAID THAT PENDLETON
20 STATION STARTED WORKING ON THE BUILDINGS PRIOR TO THE
21 INFRASTRUCTURE BEING DONE AND THAT WASN'T NORMAL, WAS IT?

22 A. NO, SIR.

23 Q. AND THAT KIND OF MESSED UP HOW YOU GOT YOUR WORK
24 DONE BECAUSE THERE WERE PEOPLE WORKING ON THE BUILDINGS
25 WHERE YOU TRYING TO GET ROADS DONE, RIGHT?

1 A. RIGHT.

2 Q. ALL RIGHT. AND I THINK YOU TESTIFIED IN YOUR

3 DEPOSITION THAT NOTHING WENT SMOOTH ON THIS PROJECT, DID

4 IT?

5 A. NO, SIR.

6 Q. IN FACT, IN THE FALL OF 2006 YOU PULLED UP AND

7 STOPPED WORKING ON THE PROJECT, DIDN'T YOU? YOU WANTED A

8 CHANGE ORDER BECAUSE YOU WANTED ADJUSTMENTS TO YOUR

9 ASPHALT PRICING AND YOU WANTED SOME REDESIGN ON HOW YOU

10 WERE GOING TO ACTUALLY FINISH YOUR WORK, WEREN'T YOU?

11 A. YES, SIR.

12 Q. YOU WANTED THAT INFORMATION?

13 A. YES, SIR.

14 Q. AND IN NOVEMBER OF 2006 YOU STOPPED WORK ON THAT

15 PROJECT, DIDN'T YOU?

16 A. (NO RESPONSE)

17 Q. TURN TO EXHIBIT 15 OR TAB 15 IN MY NOTEBOOK.

18 THE COURT: I DON'T BELIEVE HE ANSWERED THE

19 QUESTION.

20 MR. DUDLEY: I'M THINKING OR HOPING THIS WILL

21 HELP REFRESH HIS RECOLLECTION.

22 THE COURT: ALL RIGHT, EXHIBIT WHAT?

23 MR. DUDLEY: LOOK AT EXHIBIT 15. I'M SORRY,

24 I THINK IT'S 13.

25 THE COURT: 13?

1 MR. DUDLEY: HAVING THESE NOTEBOOKS ARE GREAT
2 IF THEY ARE ---
3 Q. LOOK AT TAB 15 IN THAT EXHIBIT. ARE YOU WITH ME?
4 A. CHANGE ORDER DIRECTIVE?
5 Q. YES, SIR. DO YOU REMEMBER MR. KERNAGHAN FROM
6 PENDLETON STATION SENDING THIS TO YOU?
7 A. YES, SIR.
8 Q. AND DO YOU REMEMBER PRIOR TO THAT TIME, PRIOR TO
9 BEING SENT THAT, YOU WERE ASKING FOR A CHANGE ORDER FOR
10 INCREASE IN ASPHALT AND FOR A REDESIGN OF THE COMPLETED
11 PROJECT?
12 A. YES, SIR.
13 Q. DO YOU REMEMBER ASKING FOR THAT AND IN RESPONSE TO
14 THAT CHANGE ORDER YOU GOT THIS CHANGE ORDER DIRECTIVE
15 FROM PENDLETON STATION, DIDN'T YOU?
16 A. YES, SIR.
17 Q. OKAY. THEN YOU WROTE BACK -- LOOK AT TAB 16. YOU
18 WROTE BACK TO PENDLETON STATION AND SAID YOU HAD RECEIVED
19 A COPY OF THE CHANGE ORDER DIRECTIVE AND YOU REJECTED IT,
20 DIDN'T YOU?
21 A. YES, SIR.
22 Q. AND IN THE BOTTOM PARAGRAPH YOU START OUT, IT SAYS,
23 "MOORHEAD REMAINS READY TO PERFORM WORK REQUESTED BY
24 PENDLETON STATION IN A MUTUALLY AGREEABLE MANNER, ON A
25 MUTUALLY AGREEABLE SCHEDULE, AT A MUTUALLY AGREEABLE

1 PRICE." THAT'S WHAT YOU WROTE THEM, DIDN'T YOU?

2 A. YES, SIR.

3 Q. NOW IN THIS TIME, IN THE JANUARY, 2007 TIME, YOU HAD

4 HIRED AN ATTORNEY TO REPRESENT YOUR INTEREST ON THIS?

5 A. THAT'S CORRECT.

6 Q. DAVID RUTHERFORD OUT OF ATLANTA?

7 A. YES, SIR.

8 Q. OKAY. AND THERE WERE SOME NEGOTIATIONS THAT WERE

9 ENTERED INTO BETWEEN MOORHEAD AND PENDLETON STATION AT

10 THAT POINT?

11 A. THAT'S RIGHT.

12 Q. AND YOU WERE SEEKING A MUTUAL TERMINATION OF THE

13 CONTRACT, RIGHT?

14 A. YES, SIR.

15 Q. OKAY. LOOK AT EXHIBIT 17. THIS IS NOT IN

16 CHRONOLOGICAL ORDER. LOOK AT TAB 17, EXCUSE ME. WE NEED

17 TO REFER TO THESE AS TABS. DO YOU REMEMBER DUNN &

18 ASSOCIATES? THESE WERE THE ENGINEERS THAT WERE

19 OVERSEEING YOUR WORK OR WORKING WITH YOU ON THE

20 INFRASTRUCTURE, RIGHT?

21 A. YES, SIR.

22 Q. ALL RIGHT. AND DO YOU REMEMBER RECEIVING ON

23 FEBRUARY THE 6TH, 2007 A LETTER FROM GREG DAWKINS ABOUT

24 THE STATUS OF THE PROJECT?

25 A. YES, I SEE THIS.

1 Q. OKAY. AND HALFWAY DOWN -- WELL, LET'S -- I'M GOING
2 TO READ IT, "AS YOU ARE AWARE, THE SEDIMENT AND EROSION
3 CONTROL DEVICES SHOULD BE INSPECTED AFTER EACH RAINFALL".
4 AND THEN, LET'S TALK ABOUT THAT. YOU WERE NOT, MOORHEAD
5 CONSTRUCTION WAS NOT ON ANY DHEC PERMIT REGARDING
6 STORMWATER OR SEDIMENT, WERE YOU?

7 A. NO, BECAUSE THEY'D TAKE OUR SUBCONTRACTORS TO
8 COLUMBIA AND FINE THEM.

9 Q. OKAY, BUT Y'ALL WERE NOT ON THE PERMIT, WERE YOU?

10 A. NO, SIR.

11 Q. OKAY. AND HALFWAY THROUGH THE CONTRACT OR HALFWAY
12 THROUGH THIS PARAGRAPH, EXCUSE ME, IT SAYS, -- MR.
13 DAWKINS OF DUNN ENGINEERING IS WRITING TO YOU -- "BASED
14 ON THE MEETING WITH YOU ON 1-30-07 AND CONVERSATIONS WITH
15 THE OWNER, IT APPEARS YOU ARE NO LONGER PERFORMING ANY
16 WORK IN PHASE 1-A OF THE PROJECT." DID I READ THAT
17 CORRECTLY?

18 A. YES, SIR.

19 Q. AND YOU NEVER WROTE MR. DAWKINS BACK CORRECTING HIM,
20 OH, NO, WE'RE STILL WORKING ON THE PROJECT? YOU DIDN'T
21 DO THAT, DID YOU?

22 A. NO, SIR.

23 Q. ALL RIGHT. AND YOU HIRED MR. RUTHERFORD, THE
24 ATTORNEY IN ATLANTA, TO NEGOTIATE WITH -- IF YOU CAN TURN
25 TO EXHIBIT 18, SIR. THERE'S AN E-MAIL EXCHANGE BETWEEN

1 MR. RUTHERFORD AND THE ATTORNEY FOR PENDLETON STATION.

2 A. YES, SIR.

3 MR. BROUSSEAU: YOUR HONOR, THIS GOES STRAIGHT
4 TO THE HEART OF SOME SETTLEMENT NEGOTIATIONS. I REFERRED
5 TO IT EARLIER DURING SOMEBODY ELSE'S TESTIMONY. THERE
6 WERE SOME SETTLEMENT NEGOTIATIONS, RIGHT AROUND THE SAME
7 TIME THAT THE DEED IN LIEU WAS ISSUED, BETWEEN MR.
8 RUTHERFORD AND ACTUALLY, I THINK IT WAS BRIAN AUTRY,
9 THAT'S CORRECT, IN REGARDS TO ALLOWING MOORHEAD
10 CONSTRUCTION TO GET OUT OF THIS PROJECT. ULTIMATELY,
11 WHATEVER WAS AGREED TO WAS NEVER ENTERED INTO AND IT
12 ENDED UP BECOMING A NULL AND VOID CONTRACT THAT WAS NEVER
13 EXECUTED AND BECAUSE OF SETTLEMENT NEGOTIATIONS WE WOULD
14 OBJECT TO, NUMBER ONE, THE RELEVANCY OF IT AND, NUMBER
15 TWO, THAT SHOULDN'T COME IN UNDER THE ADR RULES.

16 MR. DUDLEY: YOUR HONOR, IF I MAY, THERE'S
17 NOTHING IN THIS E-MAIL THAT I'M GOING TO REFERENCE THAT
18 HAS ANYTHING TO DO WITH SETTLEMENT NEGOTIATIONS. IT'S
19 ABOUT DISCUSSIONS OF THE WORK ON THE PROJECT.

20 THE COURT: ALL RIGHT. NOW YOU FIRST
21 REFERRED TO EXHIBIT 18?

22 MR. DUDLEY: I'M REFERRING TO EXHIBIT 18.
23 IT'S AN E-MAIL.

24 THE COURT: ALL RIGHT. I DON'T SEE ---

25 MR. DUDLEY: MR. RUTHERFORD'S E-MAIL WHICH

1 I'M REFERRING TO STARTING AT THE BOTTOM OF THE FIRST
2 PAGE.

3 THE COURT: OKAY. I DON'T SEE -- WELL, HE
4 TALKS ABOUT SOME AGREEMENT. I'LL LET YOU ASK THAT. 19
5 SAYS ATTACHED IS A PROPOSED SETTLEMENT TERMINATION. THAT
6 MAY BE OBJECTIONABLE, BUT I'LL LET YOU ASK QUESTIONS
7 ABOUT THIS E-MAIL IN EXHIBIT 18.

8 MR. DUDLEY: ALL RIGHT.

9 Q. MR. RUTHERFORD WAS MOORHEAD'S ATTORNEY, CORRECT?

10 A. YES, SIR.

11 Q. ALL RIGHT. AND HE WAS AUTHORIZED TO MAKE
12 REPRESENTATIONS ON YOUR BEHALF?

13 A. THAT'S CORRECT.

14 Q. I JUST WANT TO DIRECT YOU TO THE BOTTOM OF THIS
15 FIRST PAGE 18 AND THIS IS MR. RUTHERFORD, ON MOORHEAD'S
16 BEHALF, TO THE PENDLETON STATION ATTORNEY. IT STARTS
17 WITH, "NO INFORMATION FROM DUNN OR THE OWNER WAS INCOMING
18 AND HENCE THE GRADING WORK DID NOT PROCEED. THAT
19 CRITICAL TO PERFORMANCE INFORMATION IS STILL OUTSTANDING
20 AS I EXPLAINED TO YOU YESTERDAY. SINCE OCTOBER THE 26TH,
21 2006, MOORHEAD HAS BEEN UNABLE TO PERFORM ANY GRADING
22 WORK AT THE SITE." I DROP DOWN TO, "AS YOU KNOW, SINCE
23 OCTOBER THE 26TH, 2006, THE OWNER HAS CONTINUED ITS
24 CONSTRUCTION ON BUILDINGS." I DROP DOWN TO THE LAST
25 SENTENCE OF THAT PARAGRAPH, "THE OWNER TOOK FULL CONTROL

1 AND RESPONSIBILITY FOR THE ENTIRE SITE AND THE OWNER
2 REMAINS IN CONTROL OF AND RESPONSIBLE FOR THE ENTIRE
3 SITE, INCLUDING, BUT NOT LIMITED TO, THE STABILIZATION
4 AND EROSION CONTROL TODAY." DID I READ THAT CORRECTLY?

5 A. YES, YOU DID.

6 Q. ALL RIGHT. NOW TURN TO EXHIBIT 19.

7 MR. DUDLEY: YOUR HONOR, EXHIBIT 19 THAT YOU
8 QUESTIONED CONCERNS ABOUT, THE ONLY REAL ISSUE I HAVE IS
9 IT HAS TO DO WITH THE CALCULATION OF HIS UNABSORBED HOME
10 OFFICE OVERHEAD. IT HAS NOTHING TO DO WITH THE
11 SETTLEMENT. THAT'S WHERE THIS NUMBER CAME FROM AND
12 THAT'S WHAT THEY'RE CLAIMING NOW TODAY.

13 THE COURT: WELL, ---

14 MR. DUDLEY: YOU KNOW WHAT I CAN DO, JUDGE, I
15 CAN HANDLE THAT WITHOUT ---

16 THE COURT: LET'S ASK MR. MOORHEAD ABOUT
17 THIS CLAIM FOR LOST HOME OFFICE OVERHEAD AND JUST LET HIM
18 EXPLAIN IT.

19 MR. DUDLEY: I'LL DO THAT.

20 THE COURT: NOW IF YOU'VE GOT SOME
21 CONFLICTING INFORMATION IN RESPONSE TO HIS ANSWER, I'LL
22 LET YOU ASK HIM ABOUT THAT.

23 MR. DUDLEY: YES, SIR.

24 THE COURT: BUT YOU CAN ASK HIM IS THAT A
25 CLAIM IN THIS MATTER.

- 1 Q. LOOK AT EXHIBIT 6 IN FRONT OF YOU, SIR.
- 2 A. ALL RIGHT, SIR.
- 3 Q. OKAY. THE TOP PART IS THE DAMAGES THAT YOU ARE
- 4 CLAIMING FOR YOUR MECHANIC'S LIEN, RIGHT?
- 5 A. YES, SIR.
- 6 Q. OKAY. AND THE FIRST ITEM IS RETAINAGE AND THAT IS
- 7 THE RETAINAGE THAT YOU ARE OWED BY PENDLETON STATION,
- 8 RIGHT?
- 9 A. YES, SIR.
- 10 Q. OKAY. ALL RIGHT. THE SECOND ONE, THE LOST HOME
- 11 OFFICE OVERHEAD. LOST HOME OFFICE OVERHEAD AS YOU WERE
- 12 DESCRIBING IT, DEALS WITH YOUR INTERNAL COSTS FOR RUNNING
- 13 YOUR HOME OFFICE AND YOUR EMPLOYEES AND THINGS LIKE THAT,
- 14 RIGHT?
- 15 A. THAT'S RIGHT.
- 16 Q. THAT'S NOT JOB SITE COSTS, IS IT?
- 17 A. NO, SIR.
- 18 Q. ALL RIGHT. AND THAT'S NOT LABOR AND MATERIALS
- 19 ACTUALLY PERFORMED ON THE SITE, IS IT?
- 20 A. NO, SIR.
- 21 Q. AND THE BOND PREMIUMS. YOU ARE SAYING THAT I PAID
- 22 FOR A BOND BUT I DIDN'T COMPLETE THE PROJECT AND SO I
- 23 OVERPAID FOR THAT PAYMENT AND PERFORMANCE BOND, RIGHT?
- 24 A. YES, SIR.
- 25 Q. AND THAT'S NOT LABOR AND MATERIALS PERFORMED ON THE

1 PROJECT, IS IT?

2 A. NO, SIR.

3 Q. ALL RIGHT. OKAY. LET'S GO BACK NOW TO MY NOTEBOOK.

4 LOOK AT EXHIBIT 14 OR TAB 14. I THINK THIS MAY BE THE

5 SAME AS ON YOUR EXHIBIT 6. YOU AGREE THAT YOU SUBMITTED

6 YOUR LAST PAY REQUEST TO PENDLETON STATION IN NOVEMBER OF

7 2006, RIGHT?

8 A. I DON'T RECALL ---

9 Q. ALL RIGHT.

10 A. --- IF THAT WAS THE LAST ONE OR NOT.

11 Q. ALL RIGHT. LET ME GET YOUR DEPOSITION.

12 MR. DUDLEY: YOUR HONOR, THIS IS THE ORIGINAL

13 OF MR. MOORHEAD'S DEPOSITION. IF YOU CAN UNSEAL IT OR IF

14 YOU'D LIKE ME TO.

15 THE COURT: I'LL DO IT.

16 (COURT UNSEALS MOORHEAD DEPOSITION)

17 THE COURT: ALL RIGHT, SIR, I'VE GOT IT

18 UNWRAPPED.

19 MR. DUDLEY: I'LL HAND THIS TO THE WITNESS,

20 PLEASE, SIR. I MAY NEED TO GET THE EXHIBITS THAT GO WITH

21 THIS.

22 Q. DO YOU RECALL YOUR DEPOSITION BEING TAKEN ---

23 A. YES, SIR.

24 Q. --- IN MY OFFICE?

25 A. YES.

1 Q. ALL RIGHT. IF YOU COULD TURN TO PAGE 75. I'M
2 SORRY, IT'S PAGE 74 AND IF YOU COULD LOOK AT LINE 20.

3 A. ALL RIGHT.

4 Q. I'M GOING TO READ THE QUESTION AND I WANT YOU TO
5 ANSWER WHAT YOU ANSWERED. QUESTION, "IT LOOKS LIKE BASED
6 ON MY REVIEW OF Y'ALL'S DOCUMENTS THE LAST TIME MOORHEAD
7 SUBMITTED A REQUEST FOR PAYMENT WAS ON NOVEMBER OF 2006."
8 AND WHAT WAS YOUR ANSWER.

9 A. "OKAY".

10 Q. ALL RIGHT. AND YOU CAN'T SHOW OR YOU HAVEN'T
11 OFFERED ANYTHING INTO EVIDENCE TO SHOW ANY REQUEST FOR
12 PAYMENT AFTER NOVEMBER OF 2006, CAN YOU?

13 A. NO.

14 Q. LOOK AT YOUR EXHIBIT 6, IF YOU WOULD, PLEASE, THAT'S
15 IN FRONT OF YOU. PLAINTIFFS' EXHIBIT 6. AND THIS IS TO
16 SUPPORT YOUR MECHANIC'S LIEN ACTION AND YOUR CONTRACT
17 ACTION AND THE PAYMENT REQUEST THAT YOU HAVE SUBMITTED IS
18 DATED NOVEMBER OF 2006, RIGHT?

19 A. RIGHT.

20 Q. OKAY. ALL RIGHT. TURN TO EXHIBIT 20, PLEASE. CAN
21 YOU IDENTIFY THIS DOCUMENT?

22 A. YES, SIR.

23 Q. AND THIS IS ONE YOU SENT TO MILLER, RIGHT, MIKE
24 MILLER?

25 A. YES, SIR.

1 Q. AND YOU DIDN'T SEND ONE TO CRAFT BECAUSE CRAFT :
2 WASN'T WORKING ON THE JOB AT THIS POINT, RIGHT?

3 A. I THOUGHT WE DID BUT I DON'T KNOW.

4 Q. AND YOU SENT THIS ON FEBRUARY THE 16TH, 2007, RIGHT?

5 A. YES, SIR.

6 Q. ALL RIGHT. "MIKE, AS OF TODAY OUR CONTRACT WITH
7 PENDLETON STATION HAS BEEN MUTUALLY DISSOLVED. PLEASE
8 CEASE ANY AND ALL WORK BEING DONE ON THIS PROJECT."
9 RIGHT?

10 A. YES, SIR.

11 Q. AND YOU WERE DONE? YOU WEREN'T GOING TO GO BACK,
12 RIGHT?

13 A. YES, SIR.

14 Q. THAT WAS WHAT YOU WANTED -- THAT'S WHAT YOUR
15 INTENTION WAS, YOU WEREN'T GOING TO GO BACK?

16 A. THAT'S RIGHT.

17 Q. THAT'S ALL THE QUESTIONS I HAVE.

18 THE COURT: ALL RIGHT, WE'LL GO BACK TO MR.
19 BROUSSEAU. ANY FURTHER QUESTIONS?

20 MR. BROUSSEAU: YES, SIR. JUST BRIEFLY.

21 REDIRECT EXAMINATION

22 BY MR. BROUSSEAU:

23 Q. MR. MOORHEAD, RETAINAGE, THAT REPRESENTS ACTUAL WORK
24 THAT YOU DID, YOU JUST WEREN'T PAID FOR, THIS TEN (10)
25 PERCENT, CORRECT?

- 1 A. YES, SIR.
- 2 Q. OKAY. NOW MR. DUDLEY JUST SHOWED YOU SOME OF THESE
3 OTHER DOCUMENTS REGARDING CEASING WORK AND DOING STUFF
4 LIKE THAT AND IN PARTICULAR SHOWED A FAX FROM YOU OVER TO
5 MIKE MILLER REGARDING CEASING ANY WORK TO BE DONE ON THE
6 PROJECT. DOES THAT CORRESPONDENCE NECESSARILY MEAN THAT
7 THE WORK WAS STOPPED ON THE PROJECT?
- 8 A. THAT E-MAIL WAS SENT -- OR FAX, WHATEVER IT WAS, WAS
9 SENT BASED ON THE AGREEMENT WE HAD WITH PENDLETON STATION
10 THAT WAS NEVER FOLLOWED THROUGH WITH.
- 11 Q. OKAY. TO YOUR KNOWLEDGE, AND YOU REFERENCED BEFORE
12 THAT YOU DID SOME EROSION CONTROL OUT THERE AT PENDLETON
13 STATION. DID THAT OCCUR AFTER THIS FAX TRANSMISSION
14 DATED FEBRUARY 16TH OF 2007?
- 15 A. YES, SIR.
- 16 Q. OKAY. AND WHO ELSE WAS OUT THERE PERFORMING THAT
17 EROSION CONTROL WITH YOU?
- 18 A. MILLER.
- 19 Q. MIKE MILLER?
- 20 A. YES.
- 21 Q. WERE ANY OF HIS OTHER EMPLOYEES OUT THERE, TOO?
- 22 A. YEAH, I DON'T KNOW WHO ALL THEY WERE.
- 23 Q. ALL RIGHT. BUT THERE WAS A PRETTY -- THERE WAS A
24 REASON WHY YOU HAD TO GO OUT THERE, CORRECT?
- 25 A. WELL, HE HAD BEEN TAKEN TO COLUMBIA ONE TIME ON THE

1 PROJECT ALREADY AND EVERYBODY WAS SCARED TO DEATH OF WHAT
2 COULD HAPPEN IF THEY, ---

3 Q. AND WHEN YOU SAY EROSION CONTROL, ---

4 A. --- DHEC CAME IN.

5 Q. --- I MEAN, WHAT ARE WE REFERRING TO? ARE WE
6 REFERRING TO A POND, A SEDIMENT POND, OR WHAT ARE WE
7 REFERRING TO THERE?

8 A. THE SEDIMENT POND AND THE SILT FENCES.

9 Q. OKAY. AND SO YOU AND MIKE HAD TO GO BACK OUT THERE
10 AND YOU RECALL IT BEING MARCH OF 2007, MARCH 6TH OF 2007,
11 YOU AND MIKE HAD TO GO BACK OUT THERE AND KIND OF FIX UP
12 THE EROSION CONTROL AND DO STUFF LIKE THAT?

13 A. YES, SIR.

14 Q. OKAY. AND HOW MUCH WORK DID THAT ENTAIL THAT DAY?

15 A. I CAN'T REMEMBER IF THAT WAS THE DAY THE POND BLEW
16 OUT OR -- I DON'T KNOW.

17 Q. OKAY. AND OBVIOUSLY YOU HAD A DUTY, AS DID MIKE, TO
18 MAKE SURE THAT THE WORK THAT YOU DID WAS KEPT IN GOOD
19 SHAPE, CORRECT?

20 A. YES, SIR.

21 Q. AND YOU WOULDN'T HAVE BILLED FOR GOING OUT THERE AND
22 FIXING SOMETHING THAT YOU GUYS ALREADY DID, CORRECT?

23 A. NO.

24 Q. SO JUST BECAUSE THERE WASN'T A BILLING INVOICE FOR
25 YOU GOING OUT THERE, THAT DOESN'T MEAN THAT YOU WEREN'T

1 OUT THERE, CORRECT?

2 A. RIGHT.

3 Q. ALL RIGHT.

4 MR. BROUSSEAU: NOTHING FURTHER FROM THE
5 WITNESS, YOUR HONOR.

6 THE COURT: ALL RIGHT. MR. BARNETT?

7 MR. BARNETT: NOTHING, YOUR HONOR.

8 THE COURT: MR. LAVERY, DO YOU HAVE ANYTHING
9 OF THIS WITNESS?

10 MR. LAVERY: NO, YOUR HONOR.

11 THE COURT: ANY RECROSS?

12 MR. DUDLEY: YES, SIR.

13 RECROSS EXAMINATION

14 BY MR. DUDLEY:

15 Q. MR. MOORHEAD, YOU DIDN'T GO OUT THERE ON MARCH THE
16 6TH, DID YOU? YOU WERE NOT OUT THERE WITH MR. MILLER
17 DOING THE WORK, WERE YOU?

18 A. WE HAVE A DIARY OR SOMETHING SOMEWHERE THAT SAID WE
19 WERE.

20 Q. YOU PERSONALLY WERE NOT OUT THERE, WERE YOU?

21 A. I DO NOT RECALL THAT.

22 Q. NOW YOU HEARD YOUR LAWYER STATE BACK IN JANUARY THAT
23 THE OWNER WAS IN CONTROL, INCLUDING SEDIMENT CONTROL AND
24 EROSION AND THAT YOUR LAWYER WAS SAYING IT WAS THE OWNER,
25 THE OWNER WAS IN CONTROL OF THE SITE AND IN FEBRUARY YOU

1 HAD SOME AGREEMENT THAT YOU'RE NOT GOING BACK OUT ON THE
2 SITE, BUT THE DAY AFTER THE DEED IN LIEU OF FORECLOSURE
3 YOU WENT BACK GRATUITOUSLY, IS THAT WHAT YOU WANT THIS
4 COURT TO BELIEVE?

5 A. YES, SIR.

6 Q. OKAY. AND HOW LONG WERE YOU GOING TO JUST
7 GRATUITOUSLY JUST GO OUT THERE?

8 A. LIKE I SAID, DHEC HAD TAKEN MIKE TO COLUMBIA EARLIER
9 IN THE PROJECT AND EVERYBODY WAS SCARED TO DEATH.

10 Q. NO FURTHER QUESTIONS.

11 MR. BROUSSEAU: YOUR HONOR, I HAVE ONE QUESTION
12 AS A FOLLOW-UP ON THAT.

13 THE COURT: YES, SIR.

14 RE-REDIRECT EXAMINATION

15 BY MR. BROUSSEAU:

16 Q. WERE YOU AWARE WHEN YOU WENT OUT THERE ON MARCH THE
17 6TH THAT THE BANK HAD TAKEN A DEED IN LIEU OF
18 FORECLOSURE?

19 A. UH-UH (NEGATIVE).

20 Q. OKAY. THAT'S A NO?

21 A. NO.

22 Q. OKAY.

23 MR. BROUSSEAU: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: ALL RIGHT. ANY FURTHER

25 QUESTIONS OF THE WITNESS?

1 MR. DUDLEY: JUST ONE, YOUR HONOR.

2 RE-RE-CROSS EXAMINATION

3 BY MR. DUDLEY:

4 Q. NO ONE SPECIFICALLY ASKED YOU TO GO OUT THERE ON THE
5 DAY YOU CLAIM WAS YOUR LAST DAY OF WORK, DID THEY?

6 A. I DON'T RECALL THE REASON WE WENT.

7 Q. OKAY.

8 MR. DUDLEY: THAT'S ALL I HAVE, YOUR HONOR.

9 THE COURT: THANK YOU, MR. MOORHEAD. WATCH
10 YOUR STEP WHEN YOU STEP DOWN.

11 THE WITNESS: DO YOU WANT ME TO DO SOMETHING
12 WITH ALL THIS?

13 THE COURT: JUST LEAVE IT THERE. ALL RIGHT,
14 MR. BROUSSEAU, HOW MANY OTHER WITNESSES DO YOU
15 ANTICIPATE?

16 MR. BROUSSEAU: I'VE GOT MR. MILLER AND MR.
17 CRAFT AND THAT'S IT.

18 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE
19 A TEN (10) MINUTE RECESS AND THEN I INTEND TO FINISH WITH
20 YOUR PRESENTATION.

21 MR. BROUSSEAU: YES, SIR.

22 THE COURT: WHILE WE'RE DISCUSSING THAT, MR.
23 DUDLEY OR MR. HOLDER, HOW MANY WITNESSES DO YOU
24 ANTICIPATE? I KNOW YOU ARE GOING TO RECALL SOME.

25 MR. DUDLEY: GREG DAWKINS WHO HAS NOT BEEN

1 CALLED WILL BE HERE. HE'S A VERY SHORT WITNESS. BASED
2 ON WHAT HAS ALREADY BEEN ASKED, I'M NOT GOING TO GO OVER
3 THAT A SECOND TIME SO I'LL HAVE MR. JOHNS AND MR. MATHIAS
4 AND MR. KERNAGHAN POTENTIALLY, BUT ---

5 THE COURT: I'M JUST TRYING TO GET SOME FEEL
6 OR IDEA OF WHERE WE ARE.

7 MR. DUDLEY: WE'LL BE DONE TODAY. WE'RE
8 DOING GOOD.

9 THE COURT: ALL RIGHT, I APPRECIATE YOUR
10 COOPERATION. WE'LL TAKE A TEN (10) MINUTE RECESS.

11 (COURT RECESS AT 11.50 AM)

12 (AFTER RECESS AT 12:05 PM)

13 THE COURT: ALL RIGHT, MR. BROUSSEAU. YOU
14 MAY PROCEED.

15 MR. BROUSSEAU: YES, YOUR HONOR. I'D CALL MIKE
16 MILLER.

17 MIKE MILLER, PLAINTIFFS' WITNESS, SWORN:

18 DIRECT EXAMINATION

19 BY MR. BROUSSEAU:

20 Q. MR. MILLER, IF YOU COULD, STATE YOUR NAME FOR THE
21 RECORD.

22 A. MY NAME IS MIKE MILLER.

23 Q. OKAY. AND WHAT DO YOU DO FOR A LIVING, MIKE?

24 A. I WORK FOR MY DAD WHICH OWNS MILLER CONSTRUCTION
25 COMPANY.

1 Q. AND YOU ARE A VICE PRESIDENT OF THE COMPANY?

2 A. I'M VICE PRESIDENT OF OPERATIONS.

3 Q. AND YOU PRIMARILY RUN THE COMPANY, IS THAT CORRECT?

4 A. THAT IS CORRECT.

5 Q. ALL RIGHT. MR. MILLER, WHAT WAS YOUR ROLE IN THE
6 PENDLETON STATION PROJECT? WHAT WAS YOUR COMPANY'S ROLE
7 IN THE PENDLETON STATION PROJECT?

8 A. WE WERE THE GRADING CONTRACTOR THAT DID THE GRADING,
9 CLEARING, EROSION CONTROL AND SITE PREP FOR THE PROJECT.

10 Q. ALL RIGHT. AND YOU HAD A CONTRACT WITH WHO, IN
11 ORDER TO PERFORM THOSE WORKS?

12 A. MY CONTRACT WAS WITH MOORHEAD CONSTRUCTION.

13 Q. SO YOU WERE A SUBCONTRACTOR OF KEVIN ---

14 A. I WAS A SUBCONTRACTOR.

15 Q. ALL RIGHT. HOW MUCH WORK DID YOU DO ON THIS
16 PROJECT? I MEAN, WAS IT A PRETTY BIG PROJECT FOR THE
17 COMPANY?

18 A. IT WAS, BUT TO DETERMINE THE SIZE OF IT, A LOT OF IT
19 WAS BROKEN OUT IN ESTIMATED QUANTITIES AND SO IT WAS
20 REALLY HARD TO SAY WHAT THE TOTAL VALUE CONTRACT WAS.

21 Q. OKAY. AND SO LET ME JUST ASK YOU THIS THEN. HOW
22 TYPICALLY DID YOU GET PAID ON THIS PROJECT? I MEAN, HOW
23 WAS THAT PROCESS?

24 A. I WAS PAID BY LINEAR FOOT OF STORM DRAINAGE
25 INSTALLED. I WAS PAID BY HOW MANY BUILDING PADS WERE

1 COMPLETED, HOW MANY LINEAR FEET OF CURB WE GRADED FOR,
2 HOW MANY CUBIC YARDS OF DIRT THAT WAS MOVED ON THE
3 PROJECT, AND THE ENGINEERING FIRM WAS THE ONE THAT WOULD
4 OKAY THE QUANTITIES THAT WE COMPLETED.

5 Q. OKAY.

6 THE COURT: WAS THAT DUNN & DUNN?

7 MR. BROUSSEAU: YES, SIR.

8 THE COURT: THE ENGINEERS?

9 MR. BROUSSEAU: DUNN & DUNN WERE THE ENGINEERS
10 FOR THE HORIZONTAL PART.

11 THE COURT: OKAY.

12 Q. AND DID YOU SUBMIT THOSE PAY REQUESTS TO MR.
13 MOORHEAD OR DID YOU SUBMIT THEM THROUGH MR. MOORHEAD TO
14 DUNN & DUNN OR DID YOU JUST SUBMIT THEM DIRECTLY TO DUNN
15 & DUNN?

16 A. MY PAY REQUESTS WERE SUBMITTED TO MOORHEAD
17 CONSTRUCTION MONTHLY.

18 MR. BROUSSEAU: COULD I HAVE THESE MARKED,
19 PLEASE?

20 THE COURT: YES, SIR.

21 (PLAINTIFFS' EXHIBIT 7 AND 8 FOR IDENTIFICATION)

22 Q. OKAY. MR. MILLER, I'M GOING TO SHOW YOU WHAT'S BEEN
23 MARKED AS PLAINTIFFS' EXHIBIT NUMBER 7. NOW AS WE
24 PREVIOUSLY HEARD AND YOU WERE IN THE COURTROOM WHEN YOU
25 HEARD MR. MOORHEAD TESTIFY REGARDING TROUBLES GETTING

1 PAID AND STUFF LIKE THAT. HOW MUCH TROUBLE WAS IT
2 GETTING PAID AT THE TAIL END OF THIS PROJECT?

3 A. IT WAS EXTREMELY -- ESPECIALLY WHEN YOU'RE TRYING TO
4 RUN A BUSINESS AND TRYING TO PAY SUBCONTRACTORS AND IT
5 GOT TO THE POINT WHERE, AS KEVIN STATED EARLIER, IT WAS
6 EASY TO GET MONEY TO START OFF WITH BEING THAT IF WE
7 BILLED ON THE 20TH THEN WE WERE GETTING PAID BY THE 1ST
8 OR BY THE 10TH, BUT AS THIS PROGRESS KEPT GOING THEN, YOU
9 KNOW, WE BILLED ON THE 20TH AND THEN IT MAY BE THE
10 FOLLOWING 20TH OR IT MAY WIND UP INTO THE FOLLOWING
11 MONTH, RUNNING THIRTY (30) TO FORTY-FIVE (45) DAYS BEFORE
12 ACTUAL PAYMENT WAS RECEIVED.

13 Q. AND THEN YOU ALSO HEARD MR. KERNAGHAN KIND OF TALK
14 ABOUT THE SAME THING. WOULD YOU AGREE WITH WHAT HE SAID
15 ABOUT THAT, THAT IT WAS GETTING PRETTY DICEY THERE AS FAR
16 AS PEOPLE GETTING PAID?

17 A. THAT IS CORRECT BECAUSE I REALLY WOULDN'T HAVE
18 WANTED TO HAVE BEEN IN HIS SHOES.

19 Q. OKAY. EVENTUALLY YOU ENDED UP -- LET ME ASK YOU
20 THIS. TO YOUR KNOWLEDGE, WHEN WAS YOUR LAST DATE ON THE
21 JOB? I'VE HANDED TO YOU PLAINTIFFS' EXHIBIT NUMBER 7,
22 WHICH IS A COPY OF YOUR MECHANIC'S LIEN.

23 A. OUR LAST DAY WAS MARCH THE 6TH OF 2007.

24 Q. OKAY, AND OBVIOUSLY WE FILED THIS -- YOU ACTUALLY
25 WENT OUT ON THE JOB SITE AFTER THAT, THOUGH, TOO,

1 CORRECT?

2 A. YES, SIR, I DID. A LOT OF THE REASON BEING IS THAT
3 UNTIL YOU ACTUALLY FACE DHEC AND YOU ACTUALLY STAND ON
4 THE JOB SITE AND THEY TELL YOU WHAT BODILY FUNCTION THAT
5 THEY ARE GOING TO CUT OFF IF YOU DO NOT KEEP THIS THING
6 STRAIGHTENED OUT, THEN, YOU KNOW, I AM MORE SCARED OF
7 DHEC THAN I AM OF GOD. I'M BEING HONEST BECAUSE THEY
8 COME IN -- NORMALLY, ONE OF THE TIMES -- A LOT OF THESE
9 FINES ARE TEN THOUSAND (\$10,000.00) DOLLARS A DAY AND
10 THAT WAS SOMETHING THAT I COULD NOT AFFORD TO DO, OR
11 LOSE.

12 Q. AND SO YOU WERE OUT THERE, YOU HEARD MR. MOORHEAD
13 TESTIFY THAT YOU WERE OUT THERE DOING EROSION CONTROL ON
14 ONE OF THE SILT FENCES AND STUFF LIKE THAT. DO YOU
15 SPECIFICALLY RECALL BEING OUT THERE?

16 A. I WAS ON SITE. WE WERE ON SITE BEFORE THE LAST DAY
17 BECAUSE A BREACH OF ONE OF THE DAMS ON ONE OF THE PONDS
18 THAT SITTON HAD DESIGNED BLEW OUT AND WE ACTUALLY FLOODED
19 THE WETLAND AREA.

20 Q. OKAY. THAT'S PRETTY SERIOUS?

21 A. YES, SIR.

22 Q. OKAY. AND WAS IT PRETTY SIGNIFICANT WORK THAT YOU
23 HAD TO DO TO FIX THAT?

24 A. WE HAD A EXCAVATOR ON SITE MOVING DIRT AND CLEANING
25 OUT THE SILT FENCE AND ALSO CLEANING OUT THE FEDERAL

1 WETLAND.

2 Q. OKAY. DO YOU RECALL MR. MOORHEAD OR ANY OF HIS
3 STAFF BEING PRESENT ON THAT DAY?

4 A. I CAN'T, BUT KNOWING THAT WE WERE THERE AND KEVIN
5 HAD A -- KEVIN WAS TOLD WE WERE THERE. TO SAY THAT KEVIN
6 ACTUALLY PULLED UP, LOOKED OR GOT OFF OR WALKED ON THE
7 JOB, I COULD NOT SAY THAT.

8 Q. OKAY. I WANT TO SHOW YOU WHAT'S BEEN PREMARKED AS
9 PLAINTIFFS' EXHIBIT NUMBER 8. EVENTUALLY YOU MADE DEMAND
10 FOR PAYMENT TO THE FOLKS FROM -- ACTUALLY TO CHARLIE
11 KERNAGHAN, CORRECT?

12 A. THAT IS CORRECT.

13 Q. ALL RIGHT. AND DO YOU RECALL IF MR. MOORHEAD MADE A
14 FINAL PAYMENT DEMAND TO MR. KERNAGHAN AS WELL?

15 A. TO MY KNOWLEDGE IT WAS.

16 Q. ALL RIGHT. AND THAT'S AFTER THE BANK HAD TAKEN OVER
17 THE PROJECT, CORRECT?

18 A. THAT IS CORRECT.

19 Q. THAT YOU KNOW -- FOR INSTANCE, YOU STATE THAT YOUR
20 LAST DAY OF WORK WAS MARCH 6. ON THAT DATE WERE YOU
21 AWARE AS TO WHETHER OR NOT THE BANK HAD TAKEN OVER THE
22 PROJECT?

23 A. I WAS NOT AWARE OF THAT.

24 Q. ALL RIGHT. WHEN DID YOU BECOME AWARE THAT THE BANK
25 TOOK OVER THE PROJECT?

1 A. LATER, AFTER WE FILED THE MECHANIC'S LIEN.

2 Q. OKAY. AND YOU FILED THOSE SOMETIME IN EARLY APRIL
3 OR MID-APRIL, CORRECT?

4 A. I CAN'T REMEMBER THE DATE BUT IT WAS IN APRIL.

5 Q. MR. MILLER, IF YOU LOOK AT PLAINTIFF'S' EXHIBIT
6 NUMBER 8 IT HAS YOUR DAMAGES AS A RESULT OF THIS ACTION,
7 CORRECT?

8 A. THAT IS CORRECT.

9 Q. ALL RIGHT. AND WE'VE ATTACHED TO THAT SUMMARY ALL
10 OF THE UNPAID INVOICES, RIGHT?

11 A. CORRECT.

12 Q. BUT WE'VE ALSO PROVIDED ALL THE PAID INVOICES AND
13 THE CHECKS OVER TO THE BANK, CORRECT?

14 A. THAT IS ALSO CORRECT.

15 Q. ALL RIGHT. SO TELL ME HOW MUCH MILLER CONSTRUCTION
16 COMPANY IS OWED AS A RESULT OF THIS ACTION?

17 A. RETAINAGE AND UNPAID INVOICES, A HUNDRED AND ELEVEN
18 THOUSAND, ONE-0-THREE, THIRTEEN (\$111,103.13).
19 PREJUDGMENT INTEREST OF FORTY-TWO THOUSAND, NINE THIRTY-
20 SIX, EIGHTY-NINE (\$42,936.89), A TOTAL OF ONE HUNDRED AND
21 FIFTY-FOUR THOUSAND, FORTY DOLLARS AND TWO CENTS
22 (\$154,040.02).

23 Q. OKAY. AND IF YOU'RE SUCCESSFUL IN THIS CASE,
24 OBVIOUSLY YOU'RE ASKING FOR YOUR ATTORNEY FEES AND COSTS
25 AS WELL, CORRECT?

1 A. THAT IS ALSO CORRECT.

2 Q. ALL RIGHT. ON HERE YOU'VE LISTED RETAINAGE AS
3 SIXTY-NINE THOUSAND, FOUR HUNDRED AND FIFTY-ONE, EIGHTY-
4 THREE (\$69,451.83), AND YOU PREVIOUSLY HEARD MR. MOORHEAD
5 DESCRIBE WHAT RETAINAGE IS. TELL ME EXACTLY WHAT THAT
6 IS. TEN (10) PERCENT?

7 A. THAT RETAINAGE IS ACTUALLY WORK THAT WE HAVE
8 COMPLETED WITH A TEN (10) PERCENT HELD UNTIL THE PROJECT
9 IS COMPLETED.

10 Q. OKAY. AND THAT'S CUSTOMARY IN THE CONSTRUCTION
11 INDUSTRY, CORRECT?

12 A. THAT IS CORRECT.

13 Q. ALL RIGHT. AND THEN YOU ALSO HAVE THESE UNPAID
14 INVOICES AS WELL, TOTALING ABOUT FORTY-ONE THOUSAND, SIX
15 HUNDRED (\$41,600.00) DOLLARS?

16 A. THAT IS CORRECT.

17 Q. ALL RIGHT. AND ARE YOU ASKING FOR THESE DAMAGES,
18 INCLUDING THE PREJUDGMENT INTEREST AND FEES AS A RESULT
19 OF THIS LIEN?

20 A. YES, SIR.

21 Q. ALL RIGHT. THANK YOU.

22 MR. BROUSSEAU: NOTHING FURTHER FROM THIS
23 WITNESS, YOUR HONOR.

24 MR. BARNETT: NOTHING FROM ME, YOUR HONOR.

25 MR. LAVERY: NOTHING, YOUR HONOR.

1 MR. DUDLEY: YES, SIR.

2 THE COURT: PROCEED.

3 CROSS EXAMINATION

4 BY MR. DUDLEY:

5 Q. MR. MILLER, YOU AGREE THAT YOU DID NOT, MILLER
6 CONSTRUCTION DID NOT HAVE A CONTRACT WITH ENTERPRISE
7 BANK, DID THEY?

8 A. THAT IS CORRECT.

9 Q. THE ONLY CONTRACT WAS WITH MOORHEAD CONSTRUCTION,
10 RIGHT?

11 A. THAT IS CORRECT.

12 Q. ALL RIGHT. AND IN ADDITION TO THE WORK THAT YOU DID
13 FOR MOORHEAD CONSTRUCTION, YOUR BASIC SCOPE OF WORK,
14 THROUGHOUT THE PROJECT PENDLETON STATION, BEFORE THE BANK
15 EVER GOT INVOLVED, BEFORE THE DEED IN LIEU OF
16 FORECLOSURE, PENDLETON STATION HIRED MILLER CONSTRUCTION
17 TO DO WORK THAT WAS OUTSIDE OF THE INFRASTRUCTURE OR YOUR
18 CONTRACT WITH MOORHEAD, RIGHT?

19 A. THAT'S CORRECT.

20 Q. BECAUSE IF IT WAS WITHIN YOUR CONTRACT WITH
21 MOORHEAD, THEY WERE GOING TO PAY MOORHEAD TO PAY YOU BUT
22 THEY HIRED -- PENDLETON STATION HIRED MILLER CONSTRUCTION
23 TO PERFORM CERTAIN WORK, DO YOU REMEMBER THAT?

24 A. YES, SIR.

25 Q. AND WITH REGARD TO -- YOU'VE LOOKED AT THAT AND IN

1 FACT THAT OCCURRED UP UNTIL JANUARY OF '07. FOR THE TIME
2 THAT PENDLETON STATION HIRED YOU TO DO WORK YOU WERE PAID
3 IN FULL FOR THAT WORK, RIGHT?

4 A. PENDLETON STATION PAID ME?

5 Q. YES.

6 A. ARE YOU TALKING ABOUT CONTRACT VALUED WORK OR ARE
7 YOU TALKING ABOUT CHANGE ORDER WORK?

8 Q. NO, I'M TALKING ABOUT FOR NOT ANYTHING REGARDING TO
9 MOORHEAD.

10 A. RIGHT.

11 Q. YOU'VE GOT RETAINAGE AND UNPAID INTEREST OR INVOICES
12 ON THE MOORHEAD CONTRACT, RIGHT?

13 A. OKAY.

14 Q. AND THEN I'M TALKING ABOUT THE TIME THAT PENDLETON
15 STATION HIRED YOU DIRECTLY.

16 A. THAT I HAVE BEEN PAID FOR.

17 Q. YOU WERE PAID IN FULL FOR ALL THE TIMES THAT
18 PENDLETON STATION HIRED YOU DIRECTLY?

19 A. THAT I HAVE.

20 Q. OKAY. AND PRIOR TO THE DEED IN LIEU OF FORECLOSURE
21 YOU DID NOT SPEAK TO ANYONE WITH ENTERPRISE BANK, RIGHT?

22 A. NO, I DID NOT.

23 Q. AND PRIOR TO THE DEED IN LIEU OF FORECLOSURE YOU HAD
24 NO WRITTEN COMMUNICATION WITH ANYONE AT ENTERPRISE BANK,
25 DID YOU?

1 A. NO, I DID NOT.

2 Q. OKAY. AND THE FIRST TIME YOU KNEW THAT -- WELL, I'M
3 GOING TO SAVE THAT. AND THEN AFTER THE DEED IN LIEU OF
4 FORECLOSURE ENTERPRISE BANK HIRED YOU TO DO SOME WORK ON
5 THOSE PONDS?

6 A. THAT IS CORRECT.

7 Q. AND THEY PAID YOU DIRECTLY FOR THAT AND IN FULL FOR
8 THAT?

9 A. THAT IS CORRECT.

10 Q. THAT IS NOT A PART OF YOUR LIEN, RIGHT?

11 A. NO, SIR.

12 Q. AND THE WORK YOU DID FOR PENDLETON STATION DIRECTLY
13 IS NOT A PART OF YOUR LIEN?

14 A. NO, SIR.

15 Q. OKAY. AND YOU AGREE IN YOUR CONTRACT, IF YOU LOOK
16 AT YOUR EXHIBIT 8, YOUR BILLS AND YOUR INVOICES ARE TO
17 MOORHEAD CONSTRUCTION, THEY ARE NOT TO PENDLETON STATION,
18 RIGHT?

19 A. THAT IS CORRECT.

20 Q. AND THE PAYMENTS THAT YOU RECEIVED WERE FROM
21 MOORHEAD CONSTRUCTION, RIGHT?

22 A. THAT IS CORRECT.

23 Q. AND THE UNPAID INVOICES AND THE RETAINAGE THAT WAS
24 WITHHELD, THAT WAS IN YOUR CONTRACT WITH MOORHEAD
25 CONSTRUCTION?

1 A. THAT IS CORRECT.

2 Q. ALL RIGHT. AND MOORHEAD CONSTRUCTION OWES YOU THAT?

3 A. THAT IS CORRECT.

4 Q. ALL RIGHT. AND YOU KNEW THAT MOORHEAD HAD A PAYMENT
5 BOND ON THIS PROJECT AND YOU DID NOT FILE A CLAIM OR
6 LAWSUIT TO RECOVER, RIGHT?

7 A. THAT IS CORRECT.

8 Q. OKAY. AND IN YOUR CONTRACT WITH MOORHEAD, THE WORK
9 THAT YOU DID, I DON'T THINK THERE IS ANY DISPUTE THAT
10 Y'ALL DIDN'T COMPLETE YOUR WORK, WHAT YOU HAD ANTICIPATED
11 TO DO.

12 A. WE DID NOT FINISH OUR CONTRACT.

13 Q. ALL RIGHT. AND YOU ADMIT THAT WHOEVER FINISHED THE
14 WORK, IT WAS GOING TO COST A LOT MORE THAN WHAT YOUR
15 CONTRACT BALANCE WAS, RIGHT?

16 A. I DON'T KNOW WHERE YOU'RE GOING WITH THAT.

17 Q. THERE WAS A LOT MORE TO COMPLETE THAN WHAT Y'ALL
18 ORIGINALLY THOUGHT WAS GOING TO BE DONE FROM START TO
19 FINISH.

20 A. I DON'T REALLY UNDERSTAND THAT QUESTION.

21 Q. ALL RIGHT. MILLER CONSTRUCTION WAS NOT ON ANY DHEC
22 STORM WATER PERMIT, WERE YOU?

23 A. NO, SIR.

24 Q. OKAY. AND WHEN YOU WORKED ON THE BASE CONTRACT YOU
25 BILLED MOORHEAD FOR THAT, RIGHT?

1 A. THAT IS CORRECT.

2 Q. AND IF YOU LOOK AT YOUR EXHIBIT 8, THE LAST TIME YOU
3 BILLED MOORHEAD CONSTRUCTION FOR ANYTHING WAS NOVEMBER OF
4 2006, ---

5 A. THAT IS CORRECT.

6 Q. --- RIGHT?

7 A. YES.

8 Q. AND THE LAST INVOICE THAT WAS PAID WAS IN OCTOBER OF
9 2006?

10 A. THAT IS CORRECT.

11 Q. THAT'S THE LAST TIME YOU GOT PAID ON THIS?

12 A. RIGHT.

13 Q. ALL THE WORK THAT YOU'RE SEEKING PAYMENT FOR IN YOUR
14 MECHANIC'S LIEN WAS DONE PRIOR TO NOVEMBER OF 2006?

15 A. THE WORK THAT I'M SEEKING HERE, YES, IT IS.

16 Q. OKAY. ALL RIGHT. IF YOU CAN, LOOK AT THE NOTEBOOK
17 IN FRONT OF YOU. CAN YOU TURN TO TAB 20?

18 A. YES.

19 Q. OKAY. DO YOU REMEMBER RECEIVING THIS FAX?

20 A. I CANNOT SAY YES, I HAVE OR NO, I HAVE NOT.

21 Q. YOU DON'T REMEMBER RECEIVING THIS FAX?

22 A. IT WAS ADDRESSED TO ME AND IT WAS SENT TO OUR
23 OFFICE.

24 Q. OKAY. DO YOU REMEMBER BEING NOTIFIED ON FEBRUARY
25 THE 16TH, THAT MOORHEAD AND PENDLETON STATION HAD PARTED

1 WAYS? YOU AGREE WITH THAT, THAT YOU WERE NOTIFIED BY
2 KEVIN MOORHEAD TO CEASE WORK.

3 A. I SPOKE WITH KEVIN ABOUT THIS.

4 Q. AND HE TOLD YOU, CEASE WORK AND DON'T DO ANYMORE
5 WORK.

6 A. YES AND NO.

7 Q. ALL RIGHT. AND THEN YOU KNEW -- IN FACT, YOU KNEW
8 THAT AFTER FEBRUARY THE 16TH MOORHEAD WASN'T GOING TO GO
9 OUT THERE AND DO ANYMORE WORK AND Y'ALL WEREN'T GOING TO
10 GET PAID FOR DOING ANYMORE WORK OUT THERE, WERE YOU?

11 A. I DIDN'T UNDERSTAND THE QUESTION.

12 Q. YOU KNEW AFTER MOORHEAD SAID I'M DONE WITH PENDLETON
13 STATION, WE'RE NOT GOING BACK AND HE TOLD YOU TO CEASE
14 WORK THAT YOU WEREN'T GOING TO GET PAID FOR DOING ANYMORE
15 WORK ON PENDLETON STATION, ---

16 A. THAT'S CORRECT.

17 Q. YOU KNEW THAT, RIGHT?

18 A. RIGHT.

19 Q. OKAY. AND AFTER THAT POINT YOU DIDN'T GO BACK AND
20 DO ANY WORK, DID YOU?

21 A. I MOST CERTAINLY DID.

22 MR. DUDLEY: YOUR HONOR, IF YOU WOULD, --
23 THIS IS MR. MILLER'S DEPOSITION -- UNSEAL IT, PLEASE,
24 SIR.

25 THE COURT: YES, SIR.

1 (COURT UNSEALS MILLER DEPOSITION)

2 THE COURT: THE ENTIRE DEPOSITION WAS TAKEN
3 SEPTEMBER 14, 2009. IT HAS TWO VOLUMES. GO AHEAD.

4 Q. YOU REMEMBER GIVING THIS DEPOSITION, RIGHT?

5 A. THAT'S CORRECT.

6 Q. TURN TO PAGE 58.

7 A. OKAY.

8 Q. I'M GOING TO START AT THE BOTTOM OF PAGE 58,
9 STARTING AT LINE 24. I'M GOING TO READ THE QUESTION THAT
10 I ASKED AND I'M GOING TO ASK YOU TO READ YOUR ANSWER, IS
11 THAT FAIR, SIR?

12 A. THAT'S FAIR.

13 Q. OKAY. LINE 24. "ALL RIGHT. WHEN DID YOU LEARN
14 THAT MOORHEAD AND PENDLETON STATION HAD PARTED WAYS WITH
15 A MUTUAL DISSOLUTION OF THEIR CONTRACTUAL RELATIONSHIP?"
16 WHAT WAS YOUR ANSWER?

17 A. "I DO NOT REMEMBER THE DATE."

18 Q. QUESTION. "AFTER THAT POINT YOU KNEW THAT FOR ANY
19 WORK THAT WAS OUT THERE THAT YOU WEREN'T GOING TO GET
20 PAID FOR FROM MOORHEAD, WERE YOU?" ANSWER.

21 A. "THAT'S CORRECT."

22 Q. AND MY NEXT QUESTION WAS, "AND AFTER YOU LEARNED
23 THAT YOU DIDN'T DO ANYMORE WORK, DID YOU?" WHAT WAS YOUR
24 ANSWER.

25 A. "THAT'S CORRECT."

1 Q. NOW IF YOU WOULD, PUT THAT ASIDE, SIR, AND LOOK IN
2 YOUR BIG NOTEBOOK AND TURN TO EXHIBIT 25. ARE YOU AT 25,
3 SIR, TAB 25?

4 A. YES, SIR.

5 Q. ALL RIGHT. AND THIS IS AN INVOICE FROM MILLER
6 CONSTRUCTION TO ENGINEERED CONCRETE STRUCTURES IN JANUARY
7 OF 2007. DO YOU SEE THAT?

8 A. ON JANUARY ---

9 Q. ON JANUARY 11TH OF 2007 YOU SENT AN INVOICE TO
10 ENGINEERED CONCRETE STRUCTURES AND THAT'S WHO YOU SENT --
11 WHEN YOU DID WORK ON PENDLETON STATION DIRECTLY WITH
12 PENDLETON STATION, YOU BILLED ENGINEERED CONCRETE
13 STRUCTURES, RIGHT?

14 A. THAT IS CORRECT.

15 Q. AND THIS IS ONE OF THOSE INSTANCES WHERE YOU DID
16 WORK DIRECTLY FOR THE OWNERS OF PENDLETON STATION ---

17 A. THAT IS CORRECT.

18 Q. --- ON THE PENDLETON STATION PROJECT? ALL RIGHT.
19 AND ON JANUARY THE 11TH, 2007, THE WORK PERFORMED WAS
20 REWORKING A TEMPORARY DETENTION POND AND CLEANING OUT THE
21 STRUCTURE THAT HAD BUILDING MATERIAL IN IT, AND YOU
22 BILLED ENGINEERED CONCRETE STRUCTURES FOR DOING THAT
23 WORK, RIGHT?

24 A. THAT IS CORRECT.

25 Q. YOU BILLED THEM FOUR THOUSAND, THREE HUNDRED AND

- 1 TWENTY-FOUR (\$4,324.00) DOLLARS?
- 2 A. THAT'S WHAT IT SAYS.
- 3 Q. INVOICE 2-0-6-2-4. TURN TO THE NEXT PAGE. YOU GOT
- 4 PAID FOR THAT WORK, RIGHT, ON FEBRUARY THE 7TH, 2ND,
- 5 2007? IF YOU LOOK DOWN AT YOUR INVOICE OF JANUARY THE
- 6 11TH, THE P.O. FOR FOUR THOUSAND, THREE HUNDRED AND
- 7 TWENTY-FOUR (\$4,324.00) WAS PAID. DO YOU SEE THAT?
- 8 A. YES, SIR.
- 9 Q. OKAY. ALL RIGHT. YOU WERE DOING SOME WORK ON THE
- 10 DETENTION PONDS AND YOU BILLED PENDLETON STATION FOR
- 11 THAT, YOU BILLED THEM FOR THAT?
- 12 A. I BILLED ENGINEERED CONCRETE STRUCTURES, NOT
- 13 PENDLETON STATION.
- 14 Q. AND YOU KNEW ENGINEERED CONCRETE STRUCTURES WAS THE
- 15 GENERAL CONTRACTOR FOR THE WORK AT PENDLETON STATION?
- 16 YOU KNEW THAT, RIGHT?
- 17 A. YES, SIR.
- 18 Q. ALL RIGHT. TURN TO EXHIBIT 26. DO YOU RECOGNIZE
- 19 THIS DOCUMENT?
- 20 A. IT'S AN APPLICATION FOR PAYMENT.
- 21 Q. WHAT'S THE DATE?
- 22 A. MARCH THE 13TH, 2007.
- 23 Q. WELL, ---
- 24 A. IT'S NOTARIZED MARCH THE 13TH.
- 25 Q. LOOK AT THE UPPER RIGHT HAND CORNER. WHAT'S THE

1 DATE ON THIS?

2 A. 3-7-07.

3 Q. ALL RIGHT. AND THAT'S MILLER CONSTRUCTION, IS THAT
4 YOU THAT SIGNED IT ON THE BOTTOM?

5 A. THAT IS MY SIGNATURE.

6 Q. AND THIS WAS A PAY APPLICATION DIRECTLY TO PENDLETON
7 STATION FOR WORK?

8 A. THIS WAS A PAY APPLICATION AND A RELEASE OF LIEN FOR
9 EBSC PENDLETON STATION WITH ERVIN MATHIAS' SIGNATURE.

10 Q. ALL RIGHT. SO THE SECOND PAGE IS THE CHECK FROM
11 EBSC PENDLETON STATION AND MR. MATHIAS WROTE YOU THAT
12 CHECK?

13 A. AND THIS WAS FOR WORK THAT WAS DONE FOR THE BANK.

14 Q. AND THEN THE DATE OF THAT CHECK WAS MARCH THE 8TH,
15 2007?

16 A. THAT IS CORRECT.

17 Q. AND YOU'RE SAYING THIS IS FOR WORK THAT WAS DONE
18 DIRECTLY FOR THE BANK?

19 A. IF ERVIN MATHIAS SIGNED IT, I ASSUMED IT WAS.

20 Q. AND YOU KNEW MR. -- AND IT SAYS ON THE CHECK
21 ENTERPRISE BANK?

22 A. YES, SIR.

23 Q. YOU KNEW ENTERPRISE BANK, IN MARCH WHEN YOU GOT THIS
24 PAYMENT, YOU KNEW THE BANK WAS INVOLVED, THE BANK WAS
25 MAKING THIS PAYMENT TO YOU, RIGHT?

1 A. THAT'S CORRECT.

2 Q. ALL RIGHT. TURN TO THE NEXT PAGE. AND THESE ARE
3 THE INVOICES FOR WHICH THAT PAYMENT WAS BEING MADE,
4 RIGHT?

5 A. SIR?

6 Q. THE NEXT PAGES ARE THE INVOICES FOR WHICH PAYMENT
7 WAS BEING MADE, RIGHT? YOU WERE GETTING PAID ON MARCH
8 THE 7TH FOR WORK YOU HAD DONE ---

9 A. THE WORK THAT I WAS DOING ON THIS INVOICE IS BILLED
10 OUT TO ENGINEERED CONCRETE STRUCTURES, INCORPORATED. IT
11 IS NOT BILLED OUT TO EBSC PENDLETON STATION.

12 Q. BUT THAT'S WHO WROTE THE CHECK TO YOU WAS ENTERPRISE
13 BANK?

14 A. WELL, THAT BILLING IS TWENTY-ONE THOUSAND, SEVEN-0-
15 ONE, EIGHTY-SEVEN (\$21,701.87). THE CHECK AMOUNT IS
16 TWENTY-FIVE THOUSAND, TWO-0-TWO, TWELVE (\$25,202.12).

17 Q. IF YOU LOOK DOWN A LITTLE BIT FURTHER THERE'S
18 ANOTHER INVOICE FROM YOU FOR JANUARY THE 19TH FOR THREE
19 THOUSAND, FIVE HUNDRED AND TWENTY-FIVE (\$3,525.00).
20 DOLLARS THAT ROUNDS THAT NUMBER UP TO EXACTLY WHAT MR.
21 MATHIAS PAID YOU.

22 A. I DON'T SEE IT IN THE PACKET.

23 Q. ALL RIGHT.

24 MR. DUDLEY: MAY I APPROACH THE WITNESS TO
25 SHOW HIM THAT?

1 THE COURT: YES, SIR.

2 Q. I'M REFERRING YOU TO AN INVOICE FROM MILLER
3 CONSTRUCTION TO ENGINEERED CONCRETE STRUCTURES, JANUARY
4 THE 19TH, 2007, FOR THREE THOUSAND, FIVE HUNDRED AND
5 TWENTY-FIVE (\$3,525.00) DOLLARS.

6 A. SO WHAT YOU ARE TELLING ME IS THAT ERVIN MATHIAS WAS
7 WRITING CHECKS FOR THIS PROPERTY DATED JANUARY THE 19TH,
8 2007 ---

9 Q. YOU CAME IN ---

10 A. --- AND THE BANK HAD CONTROL OF IT AT THAT POINT IN
11 TIME?

12 Q. THIS IS A CHECK THAT THEY PAID YOU FOR WORK YOU HAD
13 DONE DIRECTLY FOR PENDLETON STATION, NOT THE WORK FOR
14 MOORHEAD, JUST LIKE YOU HAD DONE ON THE JANUARY PAYMENT
15 THAT YOU RECEIVED FROM PENDLETON STATION, NOT FROM
16 MOORHEAD. YOU GOT PAID IN MARCH FOR WORK YOU DID IN
17 JANUARY IN TAB 26, JUST LIKE YOU GOT PAID IN FEBRUARY FOR
18 THE WORK YOU DID IN JANUARY DIRECTLY FOR PENDLETON
19 STATION IN TAB 25. ISN'T THAT WHAT THE DOCUMENTS
20 REFLECT?

21 A. I CANNOT ANSWER THAT TRUTHFULLY.

22 Q. MR. MILLER, YOU KNEW AS OF MARCH THE 8TH OF 2007,
23 WHEN YOU RECEIVED THIS CHECK, THAT THE BANK WAS INVOLVED,
24 NOT WHEN YOU FILED YOUR MECHANIC'S LIEN?

25 A. RESTATE THAT QUESTION.

1 Q. YOU KNEW -- WHEN YOU GOT THE CHECK FROM ENTERPRISE
2 BANK ON MARCH THE 8TH, THAT'S WHEN YOU KNEW THE BANK WAS
3 INVOLVED, NOT WHEN YOU FILED YOUR MECHANIC'S LIEN?

4 A. YES, THAT IS CORRECT.

5 Q. OKAY. THAT'S ALL THE QUESTIONS I HAVE.

6 THE COURT: ALL RIGHT, MR. LAVERY?

7 MR. LAVERY: NOTHING, YOUR HONOR.

8 THE COURT: MR. BARNETT?

9 MR. BARNETT: NO, SIR.

10 THE COURT: MR. BROUSSEAU?

11 MR. BROUSSEAU: JUST A FEW FOLLOW-UPS, YOUR
12 HONOR.

13 REDIRECT EXAMINATION

14 BY MR. BROUSSEAU:

15 Q. MR. MILLER, DURING THE LINE OF QUESTIONS THAT MR.
16 DUDLEY JUST ASKED YOU, AT ONE STAGE REFERRING TO THAT
17 FAX, FACSIMILE MESSAGE FROM KEVIN TO YOU, TO YOUR
18 BUSINESS, BASICALLY TELLING YOU TO CEASE WORK, MR. DUDLEY
19 ASKED YOU DOES THAT MEAN THAT KEVIN ASKED YOU TO CEASE
20 WORK AND YOUR RESPONSE TO MR. DUDLEY'S QUESTION WAS YES
21 AND NO. CAN YOU EXPLAIN THAT FOR THE COURT, PLEASE?

22 A. ON THIS PARTICULAR JOB, KEVIN AND ALL SUBCONTRACTORS
23 WHO WAS ON THIS JOB WAS TIED IN WITH THIS DHEC PROBLEM.
24 IF WE PHYSICALLY WALKED OFF, I WAS JUST AS LIABLE AS THE
25 BANK, AS PENDLETON STATION AND ANYBODY THERE THAT WAS

1 WORKING. AND I FELT LIKE IT WAS MY BEST INTEREST TO
2 RESOLVE A ISSUE.

3 Q. AND BECAUSE, LIKE MR. MOORHEAD, YOU ALSO WARRANT
4 THAT THE WORK YOU DO IS OF WORKMANLIKE QUALITY, CORRECT?

5 A. THAT IS CORRECT.

6 Q. AND SO IF THERE IS A BREACH OF A SEDIMENT POND OR
7 EROSION CONTROL OR ANYTHING LIKE THAT, YOU HAVE A DUTY TO
8 FIX THAT, CORRECT?

9 A. THAT'S CORRECT.

10 Q. ALL RIGHT. SO JUST BECAUSE YOU BILLED FOR SOMETHING
11 IN NOVEMBER, THAT DOESN'T NECESSARILY MEAN THAT YOU
12 WEREN'T ON SITE IN MARCH DOING WORK, CORRECT?

13 A. THAT IS CORRECT.

14 Q. ALL RIGHT. IN FACT, THE BANK ACTUALLY HIRED YOU
15 LATER ON IN APRIL AND YOU WERE ON SITE IN APRIL DOING
16 WORK, CORRECT?

17 A. THAT IS CORRECT.

18 Q. YOU GOT PAID FOR THAT, THOUGH, BY THE BANK?

19 A. THAT IS CORRECT.

20 Q. ALL RIGHT. BUT YOU WERE ON SITE?

21 A. THAT IS CORRECT.

22 MR. BROUSSEAU: NOTHING FURTHER FROM THIS
23 WITNESS, YOUR HONOR.

24 THE COURT: MR. DUDLEY?

25 MR. DUDLEY: I'M NOT GOING TO BELABOR IT, BUT

1 I HAVE JUST A COUPLE OF FOLLOW-UPS.

2 THE COURT: YES, SIR.

3 RECROSS EXAMINATION

4 BY MR. DUDLEY:

5 Q. IF YOU WOULD, TURN TO TAB 25. LET ME KNOW WHEN
6 YOU'RE THERE.

7 A. OKAY.

8 Q. IN JANUARY THERE WAS AN ISSUE WITH THE TEMPORARY
9 DETENTION POND AND CLEANING OUT THAT STRUCTURE AND
10 BUILDING THAT POND -- WELL, I TAKE THAT BACK. STRIKE
11 THAT. THERE WAS A PROBLEM WITH THE TEMPORARY DETENTION
12 POND AND CLEANING OUT THAT STRUCTURE AND YOU DID THAT
13 WORK IN JANUARY AND YOU SOUGHT PAYMENT, NOT FROM
14 MOORHEAD, YOU SOUGHT THAT PAYMENT FROM PENDLETON STATION,
15 DIDN'T YOU?

16 A. THAT IS CORRECT.

17 Q. AND YOU SUBMITTED A BILL AND YOU GOT PAID FOR IT,
18 RIGHT?

19 A. THAT IS CORRECT.

20 Q. AND YOU CANNOT PRODUCE, AND HAVE NOT PRODUCED, THE
21 FIRST INVOICE RELATED TO SILT FENCING FROM NOVEMBER TO
22 MARCH, WHICH HAPPENED FROM NOVEMBER TO MARCH, YOU DIDN'T
23 SUBMIT ANY INVOICING OF ANYTHING ABOUT SILT FENCING OR
24 SOUGHT PAYMENT FOR THAT AND THE ONLY TIME YOU DID
25 ANYTHING REGARDING THE SILT FENCING WAS IN MARCH, FIVE

1 (5) MONTHS AFTER YOUR LAST INVOICE, IS THAT CORRECT?

2 A. CAN I EXPLAIN MYSELF?

3 Q. YOU CAN ANSWER MY QUESTION AND THEN YOU CAN EXPLAIN
4 IT ALL YOU WANT.

5 A. THAT IS CORRECT, BUT WHEN YOU BID A PROJECT THAT HAD
6 THAT AMOUNT OF SILT FENCE IN IT, THEN WHEN I BID IT THERE
7 ARE MAINTENANCE ISSUES THAT GO ALONG WITH IT AND THAT IS
8 IN THE INITIAL CONTRACT COSTS.

9 Q. AND YOU HAVE NOT BROUGHT ANY TESTIMONY ABOUT ANY
10 OTHER TIME THAT YOU WENT OUT AND DID THAT EXCEPT FOR THE
11 DAY AFTER OR TWO DAYS AFTER THE BANK TOOK OVER?

12 A. THEY ARE A DAILY LOG THAT MY ATTORNEY HAS OF MY
13 EMPLOYEES AND MY SUPERINTENDENT AND PEOPLE WORKING AND
14 HOW MANY PEOPLE IS THERE.

15 Q. THANK YOU.

16 MR. BROUSSEAU: ONE FOLLOW-UP, YOUR HONOR.
17 JUST ONE QUESTION.

18 THE COURT: ALL RIGHT. MR. BROUSSEAU, I'M
19 LOOKING AT MR. MILLER'S SUMMARY OF DAMAGES HERE.

20 MR. BROUSSEAU: YES, SIR.

21 THE COURT: NOW I'M ALSO -- IT'S BEEN
22 POINTED OUT THAT THESE INVOICES THAT WERE PAID EARLIER,
23 JANUARY 19TH, 2007 WAS PAID, FEBRUARY 2ND, 2007 -- THESE
24 INVOICES WERE SUBMITTED AND PAID. NOW WHERE DOES THE
25 UNPAID INVOICES COME FROM?

1 MR. BROUSSEAU: THOSE WERE WITH MOORHEAD
2 CONSTRUCTION, YOUR HONOR, THAT ARE RIGHT HERE ON THE TOP
3 RIGHT HERE, IF I'M ANSWERING YOUR QUESTION. I DON'T KNOW
4 IF I'M FOLLOWING YOUR QUESTION.

5 THE COURT: ALL RIGHT.

6 MR. BROUSSEAU: THE FIRST THREE PAGES OF THIS
7 EXHIBIT SHOW THE UNPAID INVOICES.

8 THE COURT: WELL, I LOOKED AT THAT AND THEY
9 GO BACK TO NOVEMBER 2ND, 2006.

10 THE WITNESS: MAY I EXPLAIN?

11 THE COURT: I'M JUST ASKING YOUR LAWYER FOR
12 SOME INFORMATION AND HE'S GOING TO ASK YOU ABOUT IT.

13 MR. BROUSSEAU: YES, YOUR HONOR. THESE ARE
14 UNPAID. THESE ARE THE UNPAID INVOICES FROM NOVEMBER OF
15 '06. I MEAN, HE DID WORK LATER ON, OBVIOUSLY.

16 THE COURT: ALL RIGHT. THESE INVOICES,
17 ACCORDING TO YOUR CLIENT HIMSELF, THEY DO NOT INCLUDE
18 THESE PAID INVOICES FOR THE WORK DONE IN ---

19 MR. BROUSSEAU: I'M SORRY. I DIDN'T HEAR YOU,
20 YOUR HONOR.

21 THE COURT: THESE INVOICES SUBMITTED THAT
22 YOU ARE REFERRING TO DID NOT INCLUDE ANY CLAIM FOR THE
23 WORK DONE IN FEBRUARY OF 2007?

24 MR. BROUSSEAU: THAT'S CORRECT. THAT'S
25 CORRECT. THOSE HAVE BEEN PAID AND THEY ARE NOT INCLUDED

1 IN THIS PACKET RIGHT HERE.

2 THE COURT: ALL RIGHT, THANK YOU. YOU MAY
3 PROCEED.

4 RE-REDIRECT EXAMINATION

5 BY MR. BROUSSEAU:

6 Q. MR. MILLER, ---

7 THE COURT: EXCUSE ME. I THINK HE WANTED TO
8 EXPLAIN SOMETHING AND YOU CAN ASK HIM ABOUT THAT.

9 Q. I WILL. MR. DUDLEY JUST REFERRED TO -- YOU PROVIDED
10 YOUR DAILY LOG TO ENTERPRISE BANK, WITH ALL THE EMPLOYEES
11 THAT HAVE BEEN ON THE SITE THROUGHOUT THIS PROJECT,
12 CORRECT?

13 A. THAT IS CORRECT.

14 Q. OKAY.

15 A. IT'S OVER EIGHT HUNDRED (800) PAGES.

16 Q. OKAY. WHEN JUDGE DREW WAS TALKING TO ME YOU SAID
17 YOU WANTED TO EXPLAIN SOMETHING AND SO I'M GOING TO GIVE
18 YOU THAT OPPORTUNITY. I DON'T KNOW WHAT YOU WERE
19 REFERRING TO BUT GO AHEAD AND EXPLAIN IT.

20 A. I DIDN'T KNOW IF HE WAS LOOKING AT THE INTEREST, I
21 MEAN, THE RETAINAGE, OR WHAT HE WAS ASKING AND I THAT'S
22 ALL I WAS ASKING.

23 THE COURT: I WAS ASKING ABOUT THE SUMMARY
24 WHERE YOU INCLUDE RETAINAGE AND UNPAID INVOICES AND
25 PREJUDGMENT INTEREST. I DON'T KNOW IF YOUR EXHIBIT HAS

1 ALL THAT.

2 MR. BROUSSEAU: YES, SIR. I THINK IT'S
3 PLAINTIFF'S 8 AND THE UNPAID INVOICES ARE THE FIRST THREE
4 PAGES AND THEN WHAT WE DID WAS WE HAD THE CHECKS FROM
5 PRIOR INVOICES, WHERE THEY WERE PAID, AND THEY WITHHELD
6 THE TEN (10) PERCENT RETAINAGE AND THAT'S WHAT THOSE
7 NUMBERS ARE OUT THERE. THOSE OBVIOUSLY DATE BACK TO 2005
8 OR WHENEVER THE PROJECT STARTED.

9 THE COURT: ALL RIGHT. ANY OTHER QUESTIONS?

10 MR. BROUSSEAU: NO, SIR.

11 MR. DUDLEY: NO, YOUR HONOR.

12 MR. BARNETT: NO, SIR, YOUR HONOR.

13 THE COURT: THANK YOU, MR. MILLER. WATCH
14 YOUR STEP, PLEASE, WHEN YOU STEP DOWN THERE. ALL RIGHT,
15 MR. BROUSSEAU.

16 MR. BROUSSEAU: I'D CALL WILLIAM CRAFT.

17 THE COURT: ALL RIGHT. COME AROUND, PLEASE.

18 WILLIAM CRAFT, PLAINTIFF'S WITNESS, SWORN:

19 DIRECT EXAMINATION

20 BY MR. BROUSSEAU:

21 Q. SIR, WOULD YOU PLEASE STATE YOUR NAME FOR THE
22 RECORD?

23 A. WILLIAM CRAFT.

24 Q. ALL RIGHT, AND MR. CRAFT, WHAT DO YOU DO FOR A
25 LIVING?

1 A. I DID RUN CRAFT CONSTRUCTION. NOW I DO NOTHING.

2 Q. OKAY. SO YOUR BUSINESS IS NO LONGER VIABLE?

3 A. CORRECT. I HAD TO CLOSE IT DOWN IN MARCH OF 2009.

4 Q. ALL RIGHT. NOW CRAFT CONSTRUCTION COMPANY, ARE YOU
5 THE PRESIDENT AND THE AGENT ON BEHALF OF CRAFT
6 CONSTRUCTION COMPANY?

7 A. YES, I AM.

8 Q. ALL RIGHT. TELL ME WHAT YOUR COMPANY'S ROLE WAS IN
9 THIS PROJECT. FIRST OF ALL, YOU HAD A CONTRACT WITH
10 KEVIN MOORHEAD AND HIS COMPANY, CORRECT?

11 A. YES, I DID.

12 Q. ALL RIGHT. AND WHAT WAS YOUR ROLE IN THE PROJECT,
13 SIR?

14 A. INSTALLING WATER AND SEWER.

15 Q. OKAY. MR. CRAFT, THROUGHOUT THIS PROJECT -- WERE
16 THINGS GOING FAIRLY WELL AT THE START OF THIS?

17 A. WHEN IT STARTED IT WAS.

18 Q. OKAY. AND YOU HEARD MR. MILLER PREVIOUSLY TESTIFY
19 THAT AT THE START OF THIS PROJECT YOU GUYS WOULD MAKE PAY
20 REQUESTS AND THEN YOU WOULD GET A CHECK PRETTY QUICKLY,
21 CORRECT?

22 A. CORRECT. WE WERE BEING PAID IN A TIMELY MANNER.

23 Q. ALL RIGHT. AND YOU ALSO HEARD MR. MILLER TESTIFY AS
24 TO THE PROCESS OF HOW YOU GUYS GOT PAID, WOULD YOU AGREE
25 WITH THAT, THAT YOU WOULD SUBMIT AN INVOICE, THAT MR.

1 MOORHEAD WOULD THEN SEND IT OVER TO DUNN & DUNN?

2 A. CORRECT.

3 Q. ALL RIGHT. NOW YOU HEARD MR. MILLER TESTIFY THAT HE
4 ALSO DID SOME STUFF OUTSIDE OF THE SCOPE OF THE MOORHEAD
5 CONTRACT THAT WAS ON BEHALF OF EITHER ENTERPRISE BANK
6 AND/OR PENDLETON STATION ITSELF. DID YOU EVER DO
7 ANYTHING LIKE THAT?

8 A. I DID ONE THING BUT I DON'T KNOW IF IT WAS OUTSIDE
9 LIKE THAT OR NOT. IT WAS REDOING SOME SEWER SERVICES
10 WHERE THEY CAME IN AND INSTALLED THE PADS BELOW THE GRADE
11 THEY SHOULD HAVE HAD.

12 Q. OKAY.

13 A. BUT I BELIEVE THAT DID GO THROUGH MOORHEAD, BUT I'M
14 NOT POSITIVE.

15 Q. OKAY. NOW EVENTUALLY YOU STOPPED GETTING PAID ON
16 THIS, CORRECT?

17 A. YES.

18 Q. ALL RIGHT. AND WERE YOU STILL OUT THERE PERFORMING
19 WORK EVEN THOUGH YOU WEREN'T GETTING PAID?

20 A. WE INSTALLED THE FORCE MAIN LAST AND I HADN'T BEEN
21 PAID WHEN I INSTALLED IT.

22 Q. ALL RIGHT. AND WHEN WAS THE FORCE MAIN INSTALLED?

23 A. I'M JUST TAKING A GUESS AT IT -- I THINK Y'ALL HAVE
24 A COPY OF MY TIME SHEETS, BUT I'M THINKING IT WAS MARCH
25 17TH OF 2007. I'M NOT SURE. I DON'T REMEMBER.

1 THE COURT: AND WHAT DID YOU CALL THAT, MR.
2 CRAFT?

3 THE WITNESS: SIR?

4 THE COURT: WHAT DID YOU CALL THAT WORK THAT
5 YOU DID?

6 THE WITNESS: WATER AND SEWER. WE WAS
7 INSTALLING A FORCE MAIN.

8 THE COURT: FORCE? F-O-R-C-E?

9 THE WITNESS: YES, SIR. IT'S WHERE THE SEWAGE
10 GOES INTO A PUMP STATION AND THEN IT'S PUMPED FROM THERE
11 UPHILL. SINCE IT CAN'T RUN UPHILL THEY PUMP IT UPHILL.

12 THE COURT: IT'S A FORCE MAIN?

13 THE WITNESS: YES, SIR.

14 THE COURT: M-A-I-N?

15 THE WITNESS: YES, SIR.

16 THE COURT: THANK YOU.

17 MR. BROUSSEAU: YOUR HONOR, I'D LIKE TO MARK
18 THESE AS PLAINTIFFS' EXHIBITS, PLEASE.

19 THE COURT: YES, SIR.

20 (PLAINTIFFS' EXHIBITS 9, 10 AND 11 FOR
21 IDENTIFICATION)

22 Q. MR. CRAFT, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
23 AS PLAINTIFF'S EXHIBIT NUMBER 11 AND THAT'S A TIME SHEET
24 FOR MR. HOLBROOKS. DOES THAT SOUND RIGHT?

25 A. DO WHAT NOW?

1 Q. THAT'S A TIME SHEET FOR MR. HOLBROOKS WHO IS AN
2 EMPLOYEE OF YOURS, CORRECT?

3 A. CORRECT.

4 Q. OKAY. DOES THAT INDICATE WHEN THIS FORCE MAIN WORK
5 WAS BEING DONE OUT THERE AT PENDLETON STATION ---

6 MR. DUDLEY: I'M SORRY, DID HE SAY THAT WAS
7 HIS?

8 MR. BROUSSEAU: HIS EMPLOYEE, RANDY HOLBROOKS.

9 MR. DUDLEY: IS MR. HOLBROOKS GOING TO BE
10 HERE? IF NOT, IT WILL BE HEARSAY.

11 THE COURT: WHO IS MR. HOLBROOKS NOW? HE
12 WORKS FOR MR. CRAFT?

13 MR. BROUSSEAU: YES, SIR. YOUR HONOR, THIS IS
14 A TIME SHEET. I CAN OBVIOUSLY LAY A BETTER FOUNDATION
15 THAN THAT -- IT'S A TIME SHEET THAT'S KEPT IN THE REGULAR
16 COURSE OF THE BUSINESS -- IN ORDER TO GET IT IN UNDER THE
17 BUSINESS ---

18 THE COURT: WELL, YOU CAN ESTABLISH A BASIS
19 FOR THAT.

20 MR. BROUSSEAU: YES, SIR, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 Q. MR. CRAFT, DO YOUR EMPLOYEES ROUTINELY KEEP TIME
23 SHEETS WHEN THEY ARE DOING WORK ON DIFFERENT PROJECTS?

24 A. YES, THEY DO.

25 Q. OKAY. AND HAVE THEY BEEN DOING THAT FOR YEARS?

1 A. YES, THEY HAVE.

2 Q. AND DO YOU KEEP RECORDS OF ALL THOSE TIME SHEETS?

3 A. YES, WE DO.

4 Q. AND YOU HAD TO DO THAT FOR PAYROLL PURPOSES, FOR THE
5 IRS AS WELL AS THE DEPARTMENT OF REVENUE?

6 A. WELL, MAINLY FOR THE INSURANCE COMPANY.

7 Q. OKAY.

8 A. WORKER'S COMP ON SEWER IS HIGHER THAN WORKER'S COMP
9 ON WATER SO WE HAD TO SEPARATE IT.

10 Q. OKAY. AND SO THIS ISN'T A TIME SHEET THAT WAS
11 CREATED FOR THE PURPOSES OF THIS LITIGATION OR ANYTHING
12 LIKE THAT. THIS IS SOMETHING YOU KEEP FOR WORKER'S COMP,
13 CORRECT?

14 A. CORRECT.

15 Q. ALL RIGHT. AND IT'S SOMETHING THAT YOU ROUTINELY
16 KEEP IN YOUR BUSINESS?

17 A. YES.

18 Q. ALL RIGHT. IN ANY EVENT, GETTING TO THAT, ON THERE
19 MR. HOLBROOKS PUT THE CONNOTATION AS TO MARCH 7TH OF
20 2007, IS THAT CORRECT?

21 A. CORRECT.

22 MR. DUDLEY: YOUR HONOR, I CONTINUE TO OBJECT
23 TO THE ADMISSIBILITY OF THIS DOCUMENT.

24 THE COURT: ALL RIGHT. MR. HOLBROOKS WAS AN
25 EMPLOYEE OF MR. CRAFT?

1 MR. BROUSSEAU: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: AND HE WORKED ON THIS JOB?

3 MR. BROUSSEAU: YES, SIR.

4 THE COURT: AND ACCORDING TO WHAT YOU
5 PROPOSE TO INTRODUCE, THIS WAS A TIME SHEET PREPARED BY
6 MR. HOLBROOKS?

7 MR. BROUSSEAU: YES, SIR.

8 THE COURT: AT THE DIRECTION OF MR. CRAFT?

9 MR. BROUSSEAU: YES, SIR.

10 THE COURT: ALL RIGHT, I'M GOING TO ALLOW
11 IT. I THINK IT'S PART OF HIS BUSINESS RECORDS.

12 MR. DUDLEY: JUST FOR THE RECORD, SIR, THIS
13 IS GOING TO A CRITICAL ISSUE OF WHAT THEY CLAIM THEIR
14 TIMING OF THE LAST THING AND NOT HAVING MR. HOLBROOKS
15 HERE TO CROSS EXAMINE HIM ON ABOUT WHAT HE DID AND WHAT
16 HE OBSERVED, I THINK I'M PRECLUDED FROM DOING THAT AND
17 I'M UNDULY PREJUDICED FROM THAT.

18 THE COURT: I'LL LET YOU CROSS EXAMINE THE
19 WITNESS ON THIS AND STILL PRESERVE YOUR OBJECTION.

20 MR. DUDLEY: THANK YOU, SIR.

21 THE COURT: ALL RIGHT, PROCEED.

22 MR. BROUSSEAU: THANK YOU, YOUR HONOR.

23 Q. AND SO, MR. CRAFT, WHAT DOES THAT TIME SHEET
24 INDICATE?

25 A. IT INDICATES THE DATE, THE PLACE THE WORKERS WORKED

1 AND HOW MANY HOURS THEY WORKED AND THE EMPLOYEES THAT
2 WORKED UP UNDER THIS WOMAN.

3 Q. OKAY. SO ON MARCH 7TH OF 2007, WHAT DOES THAT
4 INDICATE?

5 A. IT INDICATES THAT EIGHT (8) HOURS WERE WORKED AT
6 PENDLETON STATION.

7 Q. BY MR. HOLBROOKS?

8 A. CORRECT.

9 Q. ALL RIGHT. DID YOU PERFORM ANY WORK AFTER MARCH 7TH
10 OF 2007 ON SITE?

11 A. I BELIEVE THAT WAS THE LAST DATE BECAUSE WE LAID ALL
12 THE FORCE MAIN, WE LAID UP TO THE MANHOLE THAT IT WAS
13 GOING TO TIE INTO BUT WE COULD NOT TIE INTO IT UNTIL ALL
14 THE SEWER HAD PASSED INSPECTION.

15 Q. OKAY. AND EVENTUALLY YOU CONTINUED TO GO UNPAID FOR
16 THE WORK THAT YOU PERFORMED OUT THERE, CORRECT?

17 A. CORRECT.

18 Q. ALL RIGHT. IF YOU LOOK IN YOUR EXHIBIT, I THINK
19 IT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT NUMBER 9, YOU
20 EVENTUALLY FILED A MECHANIC'S LIEN FOR THE UNPAID BALANCE
21 THAT YOU WERE OWED, CORRECT?

22 A. CORRECT, I DID.

23 Q. ALL RIGHT. AND YOU LISTED ON THAT MECHANIC'S LIEN
24 AN AMOUNT OF A HUNDRED AND ONE THOUSAND (\$101,000.00)
25 DOLLARS, CORRECT?

1 A. CORRECT.

2 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT'S NOW BEEN
3 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 10. IS THAT A
4 SUMMARY OF WHAT YOU ALLEGE THAT YOUR DAMAGES IN THIS
5 MATTER ARE, INCLUDING THE UNPAID INVOICES?

6 A. CORRECT.

7 Q. ALL RIGHT. AND OBVIOUSLY THAT NUMBER IS DIFFERENT
8 THAN THE ONE-0-ONE (\$101,000.00) THAT YOU FILED, CORRECT?

9 A. YES.

10 Q. AND THIS IS A NUMBER AFTER DOING QUITE A BIT OF
11 RESEARCH, YOU FINALLY CAME UP WITH AS BEING WHAT YOU
12 BELIEVE THE MOST CORRECT AND CONSERVATIVE NUMBER THAT YOU
13 CAN GET?

14 A. YES, IT IS.

15 Q. ALL RIGHT. AND INCLUDED IN THAT YOU ALSO PUT AN
16 AMOUNT -- IF YOU COULD, PLEASE TELL THE COURT WHAT THAT
17 AMOUNT IS, THE PRINCIPAL BALANCE? WHAT IS THAT? IS THAT
18 THE EIGHTY-SIX (86) NUMBER THERE AT THE TOP?

19 A. UNPAID INVOICES, EIGHTY-FIVE THOUSAND, FOUR HUNDRED
20 AND NINETY-NINE DOLLARS AND SIXTY-SEVEN CENTS
21 (\$85,499.67).

22 Q. OKAY. AND YOU ARE ALSO SEEKING PREJUDGMENT INTEREST
23 AND YOUR ATTORNEY'S FEES AS WELL, IS THAT RIGHT?

24 A. CORRECT.

25 MR. BROUSSEAU: NOTHING FURTHER FROM THIS

1 WITNESS, YOUR HONOR.

2 THE COURT: MR. BARNETT?

3 MR. BARNETT: NO QUESTIONS, YOUR HONOR.

4 THE COURT: MR. LAVERY:

5 MR. LAVERY: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT, MR. DUDLEY.

7 CROSS EXAMINATION

8 BY MR. DUDLEY:

9 Q. MR. CRAFT, WHAT DO YOU CONTEND THAT MR. HOLBROOKS
10 DID ON MARCH THE 7TH, 2007? WHAT DID HE DO?

11 A. INSTALLED AN EIGHT (8) INCH FORCE MAIN.

12 Q. HE INSTALLED THE FORCE MAIN?

13 A. RIGHT.

14 Q. ALL RIGHT. CAN I SEE THAT? I DIDN'T GET A COPY OF
15 THAT, WHAT YOU CONTEND IS HIS TIME SHEET. ALL RIGHT.

16 I'M LOOKING AT PLAINTIFF'S EXHIBIT 11 AND SO THERE WERE
17 FIVE (5) EMPLOYEES IN ADDITION TO HIM OR THERE WERE FIVE
18 (5) EMPLOYEES TOTAL, THAT WORKED EIGHT (8) HOURS ON THAT
19 DAY AT PENDLETON STATION?

20 A. WELL, IT WOULD BE RANDY, TIM, MARCIANO, CAMILLIO AND
21 TONY. THEY WORKED EIGHT (8) HOURS EACH.

22 Q. IN ADDITION TO MR. HOLBROOKS?

23 A. NO, HE WAS THE FIRST ONE ON THE LINE.

24 Q. HE WAS THE FIRST ONE.

25 A. RIGHT.

1 Q. OKAY. SO THERE WERE FIVE (5) PEOPLE WHO WORKED
2 EIGHT (8) HOURS A DAY ON THAT SITE ON MARCH THE 7TH,
3 2007, THAT'S WHAT YOU CONTEND?

4 A. YES.

5 Q. AND THE WORK THEY DID WAS INSTALLING THE FORCE MAIN?

6 A. NOT ALL OF IT, BUT, YEAH, INSTALLING THE FORCE MAIN.

7 Q. NOW YOU HAD BEEN PAID FOR THAT FORCE MAIN MONTHS
8 PRIOR TO THAT, HADN'T YOU?

9 A. DO WHAT?

10 Q. YOU HAD BEEN PAID FOR THAT FORCE MAIN, HADN'T YOU?

11 A. NO, IT'S IN THIS BILLING RIGHT HERE.

12 Q. ALL RIGHT. WE'LL JUST GET TO THAT. LET ME ASK YOU
13 THIS. INITIALLY, WHEN YOU WERE ASKED TO COMPILE YOUR
14 DOCUMENTS IN DISCOVERY, YOU WERE NOT ABLE TO COMPILE
15 THEM, YOU HAD TO GO AND SEARCH THROUGH A STORAGE UNIT OR
16 SOMETHING, RIGHT? DO YOU REMEMBER THAT?

17 A. THAT IS CORRECT. I HAD TO SHUT MY BUSINESS DOWN IN
18 MARCH, 2009. ALL FILES WERE STACKED IN A BUILDING, YES.

19 Q. BUT SOMEHOW YOU FOUND THESE HANDWRITTEN TIME SHEETS?

20 A. NOT SOMEHOW. THEY WERE IN A FILE IN THERE.

21 Q. LET'S GO BACK. LET'S ESTABLISH SOME DATES. YOU,
22 CRAFT CONSTRUCTION, DID NOT HAVE A CONTRACT WITH
23 ENTERPRISE BANK, RIGHT?

24 A. CORRECT.

25 Q. YOU ONLY HAD A CONTRACT WITH MOORHEAD?

- 1 A. CORRECT.
- 2 Q. IN FACT, IT WAS SPLIT INTO TWO PARTS. THE SEWER WAS
- 3 ONE?
- 4 A. YES.
- 5 Q. AND THE WATER WAS THE OTHER?
- 6 A. CORRECT.
- 7 Q. AND THE WATER WAS COMPLETELY DIFFERENT AND THAT WAS
- 8 THROUGH SANDY SPRINGS AND YOU WERE PAID IN FULL FOR THAT,
- 9 WEREN'T YOU?
- 10 A. CORRECT.
- 11 Q. OKAY. AND THAT'S NOTHING IN REGARDS TO THE WATER
- 12 LINE -- WATER DIDN'T HAVE ANYTHING TO DO WITH YOUR
- 13 MECHANIC'S LIEN, RIGHT?
- 14 A. CORRECT.
- 15 Q. OKAY. AND YOU AGREE THAT MOORHEAD CONSTRUCTION,
- 16 THAT'S WHO YOU WORKED FOR, THAT'S WHO YOU AGREED TO WORK
- 17 FOR, THAT'S WHO OWES YOU, RIGHT?
- 18 A. CORRECT.
- 19 Q. ALL RIGHT. AND YOU KNEW THAT MOORHEAD HAD A PAYMENT
- 20 BOND AND YOU MADE THE CLAIM ON IT BUT YOU NEVER FILED A
- 21 SUIT WITH THAT TO RECOVER UNDER MOORHEAD'S PAYMENT BOND,
- 22 RIGHT?
- 23 A. CORRECT.
- 24 Q. YOU COULD HAVE DONE THAT AND BEEN PAID BUT YOU CHOSE
- 25 NOT TO?

1 A. WELL, I AIN'T GOING TO SAY I CHOSE NOT TO, I JUST
2 DIDN'T THINK ABOUT DOING THAT.

3 Q. YOU JUST DIDN'T. OKAY. NOW DURING THE ENTIRE TIME
4 YOU DID WORK YOU HAD NO IDEA WHO ENTERPRISE BANK WAS,
5 RIGHT?

6 A. CORRECT.

7 Q. ALL RIGHT. AND THE FIRST TIME YOU LEARNED
8 ENTERPRISE BANK WAS INVOLVED WAS AFTER THE DEED IN LIEU
9 OF FORECLOSURE, IS THAT CORRECT?

10 A. YES, IT WAS AFTER.

11 Q. OKAY. YOU HAD NO CONVERSATION WITH ANYBODY AT
12 ENTERPRISE BANK PRIOR TO THAT DEED IN LIEU OF
13 FORECLOSURE, RIGHT?

14 A. WELL, I DON'T KNOW WHEN THEY HIRED CHARLIE.

15 Q. YOU ADMITTED YOU HAVE NOTHING IN WRITING COMPLAINING
16 ABOUT NOT GETTING PAID. YOU SAID NOTHING TO THE BANK
17 COMPLAINING ABOUT NOT GETTING PAID, RIGHT?

18 A. THAT'S CORRECT.

19 Q. ALL RIGHT. IN FACT, YOU SUBMITTED NOTHING IN
20 WRITING TO PENDLETON STATION THAT YOU WEREN'T GETTING
21 PAID, DID YOU?

22 A. THAT'S CORRECT.

23 Q. NOW IN OCTOBER OF 2006 YOU DID SOME SEWER TESTS FOR
24 GREG DAWKINS. DO YOU REMEMBER THAT? DO YOU REMEMBER WHO
25 GREG DAWKINS WAS?

1 A. OH, YEAH, I KNOW GREG.

2 Q. HE WORKED WITH DUNN & ASSOCIATES.

3 A. YEAH.

4 Q. OKAY. IF YOU COULD TURN IN MY BIG NOTEBOOK IN FRONT
5 OF YOU TO TAB 21. OKAY, THE FIRST IS A DUNN & ASSOCIATES
6 FIELD OBSERVATION REPORT OF MR. -- AND DO YOU REMEMBER
7 THERE BEING A SEWER LINE PRESSURE TEST IN APRIL OF 2006?

8 A. YES.

9 Q. YOU WERE THAT FAR ALONG THAT YOU WERE ABLE TO DO
10 PRESSURE TESTS OF SOME OF THE SEWER, RIGHT?

11 A. ON THE GRAVITY SEWER.

12 Q. OKAY. NOW TURN TO THE NEXT PAGE. LIKE THE NEXT DAY
13 YOU DID ANOTHER SEWER LINE TEST. YOU DID THE SECOND HALF
14 OF THE PRESSURE TEST BACK IN APRIL, 2006, THE NEXT DAY.
15 DO YOU REMEMBER THAT?

16 A. CORRECT.

17 Q. ALL RIGHT. NOW FLIP FORWARD TO EXHIBIT OR TAB 22
18 AND PART OF THIS IS IN YOUR EXHIBIT 10 AND THIS WAS YOUR
19 PAY APPLICATION NUMBER FOUR (4) AND YOU SUBMITTED IT AND
20 THIS WAS THE LAST PAY APPLICATION YOU SUBMITTED TO
21 MOORHEAD, WASN'T IT? THAT WAS THE LAST PAY APPLICATION
22 YOU MADE TO MOORHEAD --

23 A. YES.

24 Q. -- ON THIS AND THAT WAS IN MAY OF 2006. ALL RIGHT.
25 NOW FLIP FORWARD ON THAT AND YOU HAVE YOUR BREAKOUT OF

1 THE DIFFERENT THINGS THAT YOU'RE SEEKING PAYMENT FOR ON
2 THAT SECOND PAGE, DO YOU SEE THAT?

3 A. YES.

4 Q. ALL RIGHT. AND IF YOU LOOK DOWN AT THE BOTTOM, THE
5 PUMP STATION, THAT WAS A BIG TICKET ITEM, WASN'T IT?

6 A. YES, IT WAS.

7 Q. AND THAT'S THE FORCE MAIN, RIGHT?

8 A. YES.

9 Q. PUMP STATION. AND YOU WERE BILLING EIGHTY-SIX
10 THOUSAND (\$86,000.00) DOLLARS FOR THAT?

11 A. PUMP STATION, IT LOOKS LIKE FIFTY-ONE THOUSAND,
12 EIGHT HUNDRED (\$51,800.00) TO ME.

13 Q. I'M SORRY. EIGHTY-SIX (\$86,000.00) WAS FOR THE
14 FORCE MAIN AND THEN INSTALLING IT, RIGHT? AND YOU'RE
15 RIGHT. YOU WERE ONLY BILLING FIFTY-ONE THOUSAND, NINE
16 HUNDRED (\$51,900.00) DOLLARS AS OF THAT PAY APPLICATION,
17 CORRECT?

18 A. CORRECT.

19 Q. OKAY. NOW PAY APPLICATION FOUR (4) GOT PAID IN
20 FULL, WASN'T IT? YOUR PAY APPLICATION FOR -- IF YOU FLIP
21 FORWARD, AND YOU HAVE THIS IN YOUR DOCUMENTS, PAY
22 APPLICATION FOUR (4), THERE WAS A PARTIAL LIEN WAIVER FOR
23 SIXTY-EIGHT THOUSAND, FIVE HUNDRED AND FOUR DOLLARS AND
24 SEVEN CENTS (\$68,504.07). IT'S THE SECOND TO THE LAST
25 PAGE.

1 MR. DUDLEY: MAY I APPROACH THE WITNESS TO
2 HELP HIM FIND IT?

3 THE COURT: YES, SIR. THAT'S IN HIS SUMMARY
4 OF DAMAGES.

5 MR. DUDLEY: YES, SIR, IT IS, BUT I WANTED TO
6 TIE IN MY EXHIBIT. I'VE GOT THE FULL PAY APPLICATION AND
7 EVERYTHING BECAUSE THE DATES ARE A LITTLE BIT -- ON WHAT
8 THESE DATES WERE.

9 Q. BUT YOU SUBMITTED A PAY REQUEST -- LOOK DOWN AT THE
10 BOTTOM -- ON MAY THE 17TH, 2006. DO YOU SEE THAT AT THE
11 BOTTOM?

12 A. UH-HUH (AFFIRMATIVE).

13 Q. AND THE PAY REQUEST FOR PAYMENT NUMBER FOUR (4) FOR
14 SIXTY-EIGHT THOUSAND, FIVE HUNDRED AND FOUR DOLLARS AND
15 SEVEN CENTS (\$68,504.07). DID I READ THAT CORRECTLY?

16 A. WELL, IT DON'T JIVE WITH THE FIRST PAGE OF THE PAY
17 REQUEST.

18 Q. THIS IS YOUR DOCUMENT. YOU SUBMITTED THIS, DIDN'T
19 YOU? THE PAY REQUEST ---

20 A. YES.

21 Q. --- WITH A LIEN WAIVER, RIGHT?

22 A. YES, I DID.

23 Q. AND THEN THE NEXT PAGE SHOWS THAT MOORHEAD PAID YOU
24 THAT SIXTY-EIGHT THOUSAND, FIVE HUNDRED AND FOUR DOLLARS
25 AND SEVEN CENTS (\$68,504.07) ON MAY THE 17TH. DO YOU SEE

1 THAT IN YOUR CHECK?

2 A. YEAH.

3 Q. SO WITH REGARDS TO THE PUMP STATION AND THAT FORCE
4 MAIN, FIFTY-ONE THOUSAND (\$51,000.00) OF THE DOLLARS THAT
5 YOU'RE SAYING, THAT YOU WERE SEEKING FOR THAT FORCE MAIN
6 GOT PAID BACK IN MAY, 2006. THAT'S WHAT THESE DOCUMENTS
7 REFLECT, RIGHT?

8 A. WHAT WAS THAT QUESTION AGAIN?

9 Q. YES, SIR. THE FORCE MAIN THAT YOU SAY GOT INSTALLED
10 IN MAY OF '07, YOU BILLED FOR AND GOT PAID FIFTY-ONE
11 THOUSAND (\$51,000.00) DOLLARS TOWARDS THAT FORCE MAIN
12 BACK IN MAY OF 2006, ISN'T THAT TRUE?

13 A. THOSE DATES DON'T JIVE THERE.

14 Q. YES, SIR. THE DATES ON YOUR PRINTOUTS DON'T. THE
15 DATES OF THESE CHECKS AND THESE LIEN WAIVERS SURE SHOW
16 CONSISTENTLY IT WAS MAY, 2006.

17 A. YES.

18 Q. YOU WOULDN'T HAVE GOTTEN PAID MONTHS IN ADVANCE OF
19 INSTALLING THAT, WOULD YOU?

20 A. NO, BUT I DO REMEMBER THIS IS ONE OF THE PAY
21 REQUESTS I HAD TROUBLE GETTING PAID ON BECAUSE THAT
22 FIFTY-ONE THOUSAND, NINE HUNDRED (\$51,900.00) DOLLARS IS
23 WHAT THE STUPID PUMP COST.

24 Q. OKAY. BUT YOU SUBMITTED THE LIEN RELEASE ON MAY THE
25 17TH AND THAT SAME DAY YOU GOT A CHECK FOR THAT SIXTY-

1 EIGHT THOUSAND (\$68,000.00) DOLLARS?

2 A. RIGHT.

3 Q. IN MAY OF 2006. AND YOU DID NOT BILL MOORHEAD AGAIN
4 ON THIS PROJECT.

5 A. I BELIEVE I DID AFTER BECAUSE I PUT IN THE FORCE
6 MAIN.

7 Q. YOU DIDN'T SUBMIT THAT TODAY, DID YOU? YOU HAVEN'T
8 SUBMITTED THAT -- YOU HAVE NOT SUBMITTED ANY OTHER PAY
9 APPLICATIONS?

10 A. I BELIEVE WE HAVE GOT THAT SOMEWHERE, BUT I'M NOT
11 SURE WHERE. NOPE, I BELIEVE YOU'RE WRONG.

12 Q. ALL RIGHT. SHOW ME WHERE YOU HAD OTHER PAY
13 APPLICATIONS.

14 A. WELL, ALL RIGHT. WHAT I'M GOING TO SAY IS THE
15 SIXTY-EIGHT THOUSAND, FIVE HUNDRED AND FOUR DOLLARS AND
16 SEVEN CENTS (\$68,504.07) ---

17 Q. YES, SIR.

18 A. --- DOES NOT MATCH UP TO THE PAY REQUESTS OF SEVENTY
19 THOUSAND (\$70,000.00).

20 Q. YES, IT'S ABOUT TWO THOUSAND (\$2,000.00) DOLLARS
21 OFF.

22 A. OKAY. THEN YOUR DATE SAYS 5-10 AND A DATE ON HERE
23 IS 2-12 ---

24 Q. THE DATE ON YOUR PAY REQUEST. YES, IT'S FEBRUARY OF
25 2006.

1 A. WELL, IT SHOULD HAVE BEEN 1-27-2007. THAT DATE
2 DIDN'T GET CHANGED THERE.

3 Q. BUT MR. CRAFT, YOU WOULD NOT HAVE GOTTEN PAID IN MAY
4 OF 2006 FOR WORK YOU DID IN JANUARY OF 2007. YOU DIDN'T
5 GET PAID SEVEN (7) OR EIGHT (8) MONTHS IN ADVANCE OF
6 DOING THE WORK, DID YOU?

7 A. NO.

8 Q. BUT YOUR PAY REQUESTS SHOW IT WAS WORK DONE UP UNTIL
9 FEBRUARY OF 2006, YOU BILLED MOORHEAD, AND IT LOOKS LIKE
10 MOORHEAD DIDN'T PAY YOU UNTIL MAY OF '06, RIGHT? YOU
11 HAVEN'T SUBMITTED ANY DOCUMENTATION OF ANY OTHER PAY
12 REQUESTS THAT YOU SUBMITTED TO MOORHEAD AFTER MAY OF
13 2006, HAVE YOU?

14 A. I BELIEVE YOU'RE WRONG.

15 Q. ALL RIGHT. IF YOU CAN FIND IT THAT WOULD BE GREAT.
16 MY LAST QUESTION TO YOU IS THIS. TELL ME HOW YOU ARRIVED
17 AT EIGHTY-FIVE THOUSAND, FOUR NINETY-NINE, SIXTY-SEVEN
18 (\$85,499.67). WHERE IS THAT IN EXHIBIT 10? HOW DID YOU
19 ADD THAT NUMBER UP?

20 A. I ADDED THAT NUMBER UP FROM THE FORCE MAIN
21 INSTALLATION.

22 Q. WHERE WAS THAT?

23 A. SIR?

24 Q. WHAT PAGE ARE YOU ON?

25 A. IN YOUR THING, 22.

1 Q. ALL RIGHT. WE'RE LOOKING AT THE SAME THING. THE
2 FORCE MAIN INSTALLATION. ALL RIGHT. WHERE DOES THAT
3 NUMBER COME FROM?

4 A. ALL RIGHT. THE SIX-INCH FORCE MAIN, IF YOU LOOK ON
5 THIS BILLING RIGHT HERE, IT WAS ONLY THIRTY (30) PERCENT
6 COMPLETE.

7 Q. ALL RIGHT.

8 A. WE COMPLETED THE REST OF IT. THE PUMP STATION, I'M
9 THINKING WE DID A LITTLE BIT MORE ON IT, BUT I'M NOT
10 SURE. THE ROAD BORE WAS DONE AND THEN ---

11 Q. WELL, THE ROAD BORE IN '06 EXCEEDED WHAT YOUR
12 ESTIMATES WERE. AGAIN, I'M TRYING TO FIGURE OUT WHERE
13 YOU ARRIVED AT YOUR NUMBERS.

14 A. WE'VE GOT THAT, I BELIEVE.

15 Q. I'M ASKING YOU HERE TODAY. I KNOW THIS IS NOT --

16 A. RIGHT HERE I DON'T SEE IT.

17 Q. WALK ME THROUGH IT. CAN YOU WALK ME THROUGH IT AND
18 TELL ME HOW YOU GOT TO YOUR NUMBER?

19 A. NOT THIS ONE BECAUSE IT'S NOT RIGHT. SOMETHING IS
20 NOT RIGHT THERE.

21 Q. ALL RIGHT. YOU CAN SET MINE ASIDE. TAKE YOUR
22 EXHIBIT 10 AND WALK ME THROUGH HOW YOU ARRIVED AT YOUR
23 NUMBER. AND YOU AGREE YOU ARRIVED -- YOU TESTIFIED AT
24 YOUR DEPOSITION THAT YOU ARRIVED AT YOUR MEAN AMOUNT BY
25 LOOKING AT YOUR PAY REQUESTS, RIGHT?

1 A. CORRECT.

2 Q. I'M ASKING YOU TODAY, HOW DID YOU ARRIVE AT THIS
3 EXHIBIT 10, EIGHTY-FIVE THOUSAND (\$85,000.00) DOLLARS? I
4 DON'T SEE ANY DOCUMENT IN THIS EXHIBIT THAT TAKES ME TO
5 EIGHTY-FIVE THOUSAND (\$85,000.00) DOLLARS. YOU'VE GOT A
6 PAY APP FOR SEVENTY (\$70,000.00). IT LOOKS LIKE YOU GOT
7 PAID SIXTY-EIGHT (\$68,000.00) OF THAT, ALL BUT TWO
8 THOUSAND (\$2,000.00) DOLLARS. OTHER THAN SOME RETAINAGE,
9 I DON'T SEE HOW YOU ARRIVED AT IT.

10 A. WELL, IF YOU GET ME A CALCULATOR, I'LL ARRIVE AT IT
11 RIGHT QUICK.

12 Q. HOW ABOUT YOU JUST TELL ME HOW YOU DID IT?

13 A. YOU CAN LOOK AT IT.

14 Q. OKAY.

15 A. ALL RIGHT. ON THE FORCE MAIN, THE SIX-INCH DIT
16 FORCE MAIN.

17 Q. IT'S YOUR TESTIMONY THAT YOU, IN MARCH OF '07, YOU
18 FINISHED THAT FORCE MAIN?

19 A. YEAH.

20 Q. AND THIS IS AFTER -- YOUR LAST PAYMENT WAS IN MAY OF
21 '06, BUT YOU ARRIVED BACK IN MARCH OF '07 TO FINISH THIS
22 WORK UP?

23 A. CORRECT. WE FINISHED THE FORCE MAIN.

24 Q. AND WHO CALLED YOU TO DO THAT WORK?

25 A. HUH?

1 Q. WHO CALLED YOU TO DO THAT WORK?

2 A. IT WAS PART OF THE CONTRACT.

3 Q. BUT THAT WOULD HAVE BEEN MOORHEAD. MOORHEAD CALLED
4 YOU UP TO DO THAT WORK IN MARCH OF '07?

5 A. NO, THEY DIDN'T CALL ME UP TO DO THAT WORK. I GOT A
6 LETTER, I THINK, FROM GREG DAWKINS -- IT MIGHT HAVE BEEN
7 FROM KEVIN -- WANTING TO KNOW WHEN THE CONTRACTOR WAS
8 GOING TO BE BACK ON SITE.

9 Q. BECAUSE Y'ALL WEREN'T ON THE SITE, WERE YOU?

10 A. NOT UNTIL WE CAME BACK ON THERE AND FINISHED THE
11 FORCE MAIN.

12 Q. NOT UNTIL YOU CAME UP AND FINISHED THAT IN MARCH OF
13 '07. OKAY. I WANT TO MAKE SURE THAT LINE A AND B, THE
14 SIX-INCH DIT AND THE PUMP STATION, THAT'S WHAT YOU
15 CONTEND THAT YOU FINISHED IN MARCH AND YOU JUST BILLED
16 HIM FOR THE BALANCE OF WHAT THOSE PERCENTAGES WERE?

17 A. PLUS RETAINAGE.

18 Q. ALL RIGHT. AND THEN WHERE'S YOUR RETAINAGE? IF YOU
19 LOOK ON YOUR THIRD -- SORRY. IF YOU LOOK ON THIS PAGE 3,
20 IT APPEARS TO BE JANUARY --

21 A. YOU ---

22 Q. HOLD ON. IT APPEARS TO SAY JANUARY THE 24TH, 2007,
23 IT SAYS YOUR RETAINAGE IS ZERO, AND THAT IS THE THIRD
24 PAGE FROM THE BACK OF YOUR EXHIBIT 10. CAN YOU EXPLAIN
25 WHY YOU HAD ON YOUR BILLING ----

1 A. I CAN'T EXPLAIN WHY I HAD ZERO RIGHT THERE BECAUSE I
2 HAVE NOT BEEN PAID FOR RETAINAGE. THAT'S JUST LIKE THIS
3 PAY REQUEST FOUR (4) RIGHT HERE, RETAINAGE, TWENTY-FOUR
4 THOUSAND, TWO HUNDRED AND THIRTY-FOUR DOLLARS AND TWENTY-
5 FOUR CENTS (\$24,234.24).

6 Q. THAT'S WHAT IT WAS IN MAY OF '06, BUT IN JANUARY OF
7 '07 YOU SUBMITTED THIS BILL FOR ZERO.

8 A. NO, I HAVE NOT BEEN PAID RETAINAGE.

9 Q. WHY DOES IT SAY ZERO?

10 A. I COULD NOT TELL YOU WHY IT SAYS ZERO. LIKE I TOLD
11 YOU, I CLOSED DOWN IN MARCH, MY COMPUTER WENT DOWN ON ME,
12 I HAD ALL THESE FILES PACKED ---

13 Q. YOU DON'T REMEMBER WHO CALLED YOU TO COME BACK AND
14 DO THAT WORK IN MARCH OF '07?

15 A. I'M NOT SURE.

16 Q. IT WASN'T THE BANK, WAS IT?

17 A. HUH?

18 Q. IT WAS NOT THE BANK, WAS IT?

19 A. NO, I AIN'T GOT NOTHING OUT OF THE BANK.

20 Q. I THINK I'M DONE. THAT'S ALL I HAVE. THANK YOU.

21 REDIRECT EXAMINATION

22 BY MR. BROUSSEAU:

23 Q. MR. CRAFT, WOULD YOU LOOK AT, I THINK IT'S
24 PLAINTIFFS' EXHIBIT NUMBER 10? IT'S THAT SUMMARY SHEET
25 THAT WE HAVE THERE?

1 A. OKAY.

2 Q. AND THE FIRST PART OF THAT IS AN INVOICE THAT YOU
3 WERE ACTUALLY PAID ON. AFTER THE PORTION ON THAT SUMMARY
4 THAT HAS THE CHECK FROM MOORHEAD CONSTRUCTION, THERE'S
5 TWO MORE INVOICES ON THERE, CORRECT? WOULD YOU LOOK AT
6 THE DOCUMENT?

7 A. YES.

8 Q. ALL RIGHT. AND WHAT WERE THOSE INVOICES FOR AND HOW
9 DID YOU ARRIVE AT -- IS THIS HOW YOU CAME UP WITH THE
10 NUMBER THAT IS LISTED ON YOUR SUMMARY?

11 A. YEAH. THE 00267 PAGE ---

12 Q. I'M SORRY, I CAN'T SEE IT.

13 A. IT WOULD BE THE NEXT TO THE LAST PAGE.

14 Q. IT'S RIGHT AFTER THE COPY OF THE CHECK FROM MOORHEAD
15 CONSTRUCTION. IT STARTS THERE.

16 A. LET'S GO ON PAST THAT.

17 Q. OKAY.

18 A. GO TO THE NEXT TO THE LAST PAGE.

19 Q. OKAY.

20 A. ALL RIGHT. THIS RIGHT HERE SHOWS ALL THE FORCE MAIN
21 THAT WE PUT IN AND COMPLETED.

22 Q. OKAY.

23 A. THAT'S FIFTY-ONE THOUSAND, EIGHT HUNDRED AND FIFTY-
24 FIVE DOLLARS AND FIFTY-FOUR CENT (\$51,855.54). THEN IF
25 YOU GO TO THE LAST PAGE YOU'VE GOT -- THIS IS JUST

1 RETAINAGE ON THE FORCE MAIN NOW, IT'S FIVE THOUSAND, ONE
2 HUNDRED AND EIGHTY-FIVE DOLLARS AND FIFTY-FIVE CENTS
3 (\$5,185.55).

4 Q. OKAY. AND TELL ME HOW THESE FOUR PAGES, AFTER THAT
5 COPY OF THE CHECK FROM MOORHEAD CONSTRUCTION, TELL ME HOW
6 THOSE FOUR PAGES ARE DIFFERENT THAN THE PRIOR INVOICE.

7 A. NOW WHAT DO YOU MEAN THERE NOW?

8 Q. EXPLAIN TO THE COURT HOW YOU ARRIVED AT YOUR NUMBER
9 FOR THE EIGHTY-FIVE THOUSAND (\$85,000.00). IF YOU LOOK
10 AT THE LAST FOUR PAGES OF THIS DOCUMENT, HOW DID YOU GET
11 TO THAT NUMBER? IS IT DIFFERENT THAN THE FIRST ESTIMATE?
12 WHAT'S THE STORY?

13 A. Y'ALL ARE GOING TO HAVE TO BEAR WITH ME. MY HANDS
14 DON'T WORK GOOD. OKAY. YOU'VE GOT THE, LIKE I SAY, THE
15 FORCE MAIN OF FIFTY-ONE, EIGHT FIFTY-FIVE (\$51,855.00).
16 THE RETAINAGE WHICH -- AND ALL THAT COMES UP TO FORTY-
17 SIX, SIX SIXTY-NINE, NINETY-NINE (\$46,669.99). THEN YOU
18 TAKE THE RETAINAGE FROM THE LAST PAY REQUEST OF TWENTY-
19 FOUR THOUSAND, TWO HUNDRED AND THIRTY-FOUR (\$24,234.00).
20 I DON'T HAVE A CALCULATOR TO ADD ALL THIS UP.

21 Q. OKAY. IS THAT HOW YOU CAME UP WITH THAT NUMBER
22 THEN, THE EIGHTY-FIVE THOUSAND (\$85,000.00)?

23 A. YEAH. THERE'S ANOTHER ONE WHERE I MOVED THE,
24 LOWERED THE SEWER SERVICES FOR THEM. I DON'T EVEN SEE
25 THAT INVOICE.

1 MR. BROUSSEAU: NOTHING FURTHER FROM THE
2 WITNESS, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. DUDLEY: I JUST HAVE ONE QUESTION.

5 RECROSS EXAMINATION

6 BY MR. DUDLEY:

7 Q. MR. CRAFT, WILL YOU GET PLAINTIFF'S EXHIBIT 10 BACK
8 OUT IN FRONT OF YOU?

9 A. YEAH.

10 Q. LOOK AT THAT LAST PAGE. I'M HAVING A HARD TIME
11 BELIEVING THIS, MR. CRAFT. YOU SAID YOU DID THE WORK IN
12 MARCH OF '07?

13 A. CORRECT.

14 Q. BUT YOUR DOCUMENT HERE ON THE LAST PAGE, YOU'RE
15 PURPORTING TO BILL FOR THIS A HUNDRED PERCENT COMPLETE
16 ABOUT A WEEK OR TWO PRIOR TO YOU EVEN PERFORMING THE
17 WORK. THE DATE BELOW YOUR NAME ON THAT VERY LAST PAGE OF
18 THIS EXHIBIT 10 SAYS THE PERIOD OF FEBRUARY THE 28TH,
19 2007 AND YOU SAID YOU DID THE WORK --

20 A. YEAH, BUT ---

21 Q. YOU DIDN'T DO THE WORK UNTIL MARCH THE 6TH OR 7TH.

22 A. YEAH. WE WENT OUT THERE AND WE WORKED EIGHT (8)
23 HOURS ON THAT FORCE MAIN ON THAT DAY.

24 Q. AND YOU BILLED THIS BEFORE YOU DID IT? THAT'S WHAT
25 YOUR DOCUMENTS SAY. NEVER MIND.

1 MR. DUDLEY: THAT'S ALL THE QUESTIONS I HAVE
2 OF MR. CRAFT.

3 MR. BARNETT: NOTHING, YOUR HONOR.

4 MR. LAVERY: NO QUESTIONS, YOUR HONOR.

5 MR. BROUSSEAU: NOTHING FURTHER.

6 THE COURT: THANK YOU, MR. CRAFT. WATCH
7 YOUR STEP, PLEASE. ALL RIGHT, MR. BROUSSEAU?

8 MR. BROUSSEAU: THAT'S IT, YOUR HONOR. THAT'S
9 OUR CASE IN CHIEF.

10 THE COURT: YOU SAID YOU HAD A WITNESS
11 COMING?

12 MR. DUDLEY: I'LL PROBABLY HAVE THREE.

13 THE COURT: NO, DID YOU SAY SOMEONE WAS
14 GOING TO BE HERE?

15 MR. DUDLEY: HE'LL BE HERE AFTER LUNCH. MR.
16 DAWKINS WILL BE HERE AFTER LUNCH.

17 THE COURT: ALL RIGHT. I'M GOING TO ASK
18 THAT THE ATTORNEYS BE BACK AT TWO O'CLOCK. WE'VE HAD A
19 LONG MORNING. I'LL GIVE YOU A BREAK SINCE WE'RE MAKING
20 GOOD PROGRESS. I ANTICIPATE WE'LL CONTINUE TO MAKE GOOD
21 PROGRESS.

22 MR. DUDLEY: ABSOLUTELY. YES, SIR.

23 THE COURT: THEREFORE, I'LL GIVE YOU A
24 FORTY-FIVE (45) MINUTE BREAK INSTEAD OF THIRTY (30)
25 MINUTES. I WILL TELL YOU THIS. WE WILL LOCK THIS DOOR

1 INTO THE COURTROOM. I KNOW Y'ALL HAVE A LOT OF PAPERS.
2 NOW IF YOU NEED TO GET BACK IN, WE'LL OPEN THE DOORS AT
3 QUARTER 'TIL TWO. IF YOU NEED TO GET BACK IN EARLIER,
4 COME DOWN THIS HALL AND KNOCK ON THAT BACK DOOR WHERE IT
5 SAYS NO ADMITTANCE. BUT WE WILL REOPEN THE COURTROOM AT
6 QUARTER 'TIL, AT LEAST. YOU MAY LEAVE YOUR DOCUMENTS
7 HERE IF YOU LIKE. THANK YOU VERY MUCH.

8 MR. DUDLEY: THANK YOU, SIR.

9 (COURT RECESS AT 1:15 PM)

10 (AFTER RECESS AT 2:00 PM)

11 THE COURT: OKAY. I BELIEVE WE ARE READY TO
12 PROCEED.

13 MR. DUDLEY: YOUR HONOR, I THINK IT'S
14 APPROPRIATE BEFORE I START MY CASE, I HAVE TWO VERY BRIEF
15 DIRECTED VERDICT MOTIONS ---

16 THE COURT: ALL RIGHT.

17 MR. DUDLEY: --- ON BEHALF OF THE BANK. I
18 THINK AS TO THE MECHANIC'S LIEN ACTIONS, THE TESTIMONY,
19 THE CREDIBLE TESTIMONY IS THAT THESE LIENS WERE NOT
20 TIMELY. BASED ON THE DOCUMENTS THAT ARE IN EVIDENCE AND
21 THE CROSS EXAMINATION OF THE WITNESSES, THAT THEY STOPPED
22 THIS PROJECT IN NOVEMBER OF 2006 AND IT'S SIMPLY NOT
23 CREDIBLE THAT THEY UNILATERALLY AND GRATUITOUSLY SHOWED
24 UP AFTER THE BANK GOT THE DEED IN LIEU OF FORECLOSURE TO
25 DO SOME MORE WORK. SO I THINK A MOTION FOR A DIRECTED

1 VERDICT AS TO THE BANK ON THE MECHANIC'S LIEN ACTION IS
2 THAT THE LIENS WERE NOT TIMELY.

3 AND SECONDLY, I MAKE A MOTION FOR A DIRECTED
4 VERDICT AS TO THE APPLICATION OF THE MECHANIC'S LIENS, IF
5 AT ALL, THAT BASED ON 29-5-40 THAT MILLER AND CRAFT'S
6 LIEN RIGHTS ARE ONLY AS GOOD AS MOORHEAD'S LIEN RIGHTS
7 AND BASED ON THE TESTIMONY OF MOORHEAD, THE ONLY THING
8 THAT THEY COULD HAVE A MECHANIC'S LIEN ON WOULD BE ON
9 THAT RETAINAGE, THE THIRTY-THREE THOUSAND (\$33,000.00).
10 THE UNABSORBED HOME OFFICE OVERHEAD IS CLEARLY NOT LABOR
11 AND MATERIALS AND NOT LIENABLE. THE BOND COST IS NOT
12 LABOR AND MATERIALS AND IS NOT LIENABLE. SO I THINK THAT
13 THE MECHANIC'S LIENS AS TO CRAFT AND MILLER BE LIMITED TO
14 THE THIRTY-THREE THOUSAND (\$33,000.00) DOLLARS THAT
15 MOORHEAD'S -- THAT CLEARLY THE RETAINAGE IS LABOR AND
16 MATERIALS ON THE PROJECT. IF IT'S TIMELY, THEN THEIR
17 LIENS WOULD BE LIMITED TO THAT.

18 FINALLY, AS TO THE QUANTUM MERUIT ACTION, THE
19 ONLY TESTIMONY THAT'S BEEN SO FAR FROM DAVID JOHNS IS
20 THAT THE BANK FULLY ADVANCED THE LOAN FOR THE
21 INFRASTRUCTURE AND THERE'S BEEN NO EVIDENCE THAT THE
22 VALUE OF WHAT THE BANK RECEIVED IN THE DEED IN LIEU OF
23 FORECLOSURE WAS MORE THAN WHAT THE BANK HAD LOANED OUT
24 ALREADY.

25 FOR THOSE REASONS, I'D ASK FOR A DIRECTED

1 VERDICT.

2 MR. BROUSSEAU: YOUR HONOR, WE WOULD ASK THAT
3 THOSE DIRECTED VERDICT MOTIONS BE DENIED. FIRST OF ALL,
4 OBVIOUSLY, AT THIS STAGE THE EVIDENCE IS SUPPOSED TO BE
5 TAKEN IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING
6 PARTIES, THAT WOULD BE MY CLIENTS. ALL THREE OF THEM
7 TESTIFIED THAT THEIR LAST DAY OF WORK WAS ON MARCH THE
8 6TH OF 2007. CREDIBILITY WOULD OBVIOUSLY BE AN ISSUE FOR
9 YOU TO DECIDE AT THE CONCLUSION OF THE ENTIRE TRIAL AS A
10 WHOLE.

11 IN REGARDS TO THE APPLICATION AND MR.
12 MOORHEAD'S LIEN, WE ARE PRETTY CLEAR IN THERE THAT THE
13 THIRTY-TWO THOUSAND (\$32,000.00) OF RETAINAGE FOR MR.
14 MOORHEAD WAS MR. MOORHEAD'S. OBVIOUSLY, MR. CRAFT AND
15 MR. MILLER ALSO HAVE THEIR LIENS AS WELL. THE LIEN
16 AMOUNT ITSELF FOR MR. MOORHEAD INCLUDED WHAT HE WOULD OWE
17 HIS SUBCONTRACTORS AS WELL. WE THINK THAT WE'VE
18 SUFFICIENTLY PROVIDED THAT, AS FAR AS, YOU KNOW, THE LIEN
19 WAS FOR FOUR HUNDRED AND ONE THOUSAND (\$401,000.00)
20 DOLLARS THAT MR. MOORHEAD ADDRESSED AND, OF COURSE, THAT
21 IS INCLUSIVE OF WHAT HIS DAMAGES ARE, PLUS WHAT HE WOULD
22 OWE HIS SUBCONTRACTORS, MILLER AND CRAFT. YOU KNOW, HIS
23 TESTIMONY AS TO WHAT HE WAS DAMAGED, WE WANTED TO MAKE
24 SURE TO SEPARATE THE TWO SO IT DOESN'T SEEM LIKE WE WERE
25 DOUBLE DIPPING OUT THERE.

1 BUT IN REGARDS TO THE LAST DIRECTED VERDICT
2 MOTION, I DON'T THINK IT MATTERS AND I HAVEN'T SEEN ANY
3 CASE LAW -- THAT IT DOESN'T MATTER HOW MUCH THE BANK
4 LOANED OUT THERE. YOU KNOW, THE FACT OF THE MATTER
5 REMAINS THAT A DEFENSE TO A QUANTUM MERUIT CLAIM IS THAT
6 THE OWNER PAID THE CONTRACTORS IN FULL. IN THIS
7 PARTICULAR CASE, THERE'S BEEN CLEAR EVIDENCE BY ALL THREE
8 PARTIES, INCLUDING MR. KERNAGHAN, THE PROJECT MANAGER,
9 THAT ALL THREE OF THE CONTRACTORS WERE NOT PAID IN FULL.
10 I THINK MR. KERNAGHAN TESTIFIED THAT THEY WERE OWED AT
11 LEAST OVER A HUNDRED AND TWENTY-FIVE THOUSAND
12 (\$125,000.00) DOLLARS. THAT IS ONE OF THE BANK'S
13 EMPLOYEES. AND THEY CERTAINLY GOT THE BENEFIT OF THAT
14 WORK THAT WAS UNPAID FOR AND THAT'S THE END OF THE STORY
15 ON THAT AS FAR AS I SEE IT. I THINK WHAT THE BANK HAS
16 TRIED TO DO AND AS A DEFENSE OF THE QUANTUM MERUIT CLAIM,
17 OBVIOUSLY I'VE HEARD THIS FROM THE BANK FOR QUITE SOME
18 TIME, IS ANALOGOUS TO AN OWNER PAYING A CONTRACTOR IN
19 FULL, HOWEVER, THEY WEREN'T THE OWNER UNTIL AFTER THEY
20 TOOK OVER THE PROJECT. AT THAT STAGE THEY STEPPED INTO
21 THE SHOES OF THE PRIOR OWNER BY ACCEPTING THAT DEED IN
22 LIEU OF FORECLOSURE.

23 SO ON THAT BASIS WE BELIEVE THAT THE DIRECTED
24 VERDICT MOTIONS SHOULD BE DENIED AT THIS STAGE WITH
25 OBVIOUSLY EVERYBODY HAVING A RIGHT TO RENEW THEIR MOTIONS

1 AT THE END OF THE TRIAL.

2 THE COURT: ALL RIGHT.

3 MR. DUDLEY: JUDGE, VERY BRIEFLY.

4 THE COURT: YES, SIR.

5 MR. DUDLEY: WHAT MR. BROUSSEAU JUST SAID WAS
6 THE LAW ON QUANTUM MERUIT IS NOT IT AT ALL. THE WHOLE
7 IDEA IS THAT WOULD IT BE UNJUST FOR THE DEFENDANT TO
8 RETAIN THE BENEFIT WITHOUT HAVING GIVEN VALUE. THAT HAS
9 NOTHING TO DO WITH PAYMENTS OR ANYTHING LIKE THAT. I
10 THINK THE COURT KNOWS WHAT THE FACTS ARE AND THE LAW IN
11 THAT REGARD.

12 THE COURT: ALL RIGHT. AS TO THE TIMELINESS
13 OF THE CLAIMS, THE MAJORITY OF THIS WORK WAS PERFORMED,
14 ACCORDING TO THESE INVOICES, BACK SOMETIME IN 2006 AND
15 PERHAPS BEFORE. HOWEVER, MR. MOORHEAD, MR. MILLER AND
16 MR. CRAFT, THEY TESTIFIED THEY WENT BACK ON OR ABOUT
17 MARCH 6 -- BOTH OF THEM SAID SOMETHING ABOUT THEY WERE
18 SCARED TO DEATH OF DHEC WHO APPARENTLY MADE SOME
19 INSPECTION THERE ABOUT A DAM AND WHAT NOT. AND MR. CRAFT
20 SAID HE INSTALLED THIS FORCE MAIN, SOME TYPE OF PUMP. HE
21 HAD TIME SHEETS THERE SUBMITTED BY HIS WORKER HOLBROOK.
22 AT ANY RATE, ACCEPTING THAT AS IT IS, AND IT'S THEIR
23 TESTIMONY, IF THEY WENT BACK AND RENEWED SOME WORK AND
24 LABOR ON THIS PROJECT, AS I UNDERSTAND IT, IT WOULD
25 REVIVE THEIR MECHANIC'S LIEN CASES, EVEN THOUGH THEY MAY

1 GO BACK AND JUST MAKE MODERATE IMPROVEMENTS, THAT'S MY
2 UNDERSTANDING. QUANTUM MERUIT, I'M NOT GOING TO COMMENT
3 ON THAT AT THIS TIME. I'M GOING TO DENY YOUR MOTIONS.
4 WE'VE GONE THIS FAR, MR. DUDLEY, AND I'LL BE HAPPY TO
5 HEAR FROM YOUR WITNESSES.

6 MR. DUDLEY: YES, SIR. ENTERPRISE WOULD CALL
7 GREG DAWKINS. WELL, YOUR HONOR, DO YOU WANT US TO GO OR
8 DO YOU WANT TO ASK MR. BARNETT IF HE HAS ANY WITNESSES HE
9 WANTS TO CALL. HE'S THE GENERAL CONTRACTOR. IT WOULD
10 SAVE TIME, I BELIEVE.

11 MR. BARNETT: IT WOULD SAVE TIME, I BELIEVE,
12 IF THE BANK WENT FIRST. I HAVE A COUPLE OF QUESTIONS I'D
13 LIKE TO ASK THE BANK'S FOLKS, MR. JOHNS ---

14 MR. DUDLEY: ALL RIGHT.

15 MR. BARNETT: IF HE PUTS THEM UP THAT MAY ---

16 THE COURT: ALL RIGHT, MR. LAVERY, HOW ABOUT
17 YOU?

18 MR. LAVERY: NO, YOUR HONOR.

19 THE COURT: SO YOU ALL DEFER?

20 MR. LAVERY: YES, SIR.

21 MR. DUDLEY: DO I UNDERSTAND THAT MR. BARNETT
22 IS NOT GOING TO PUT UP ANY INDEPENDENT WITNESSES BUT JUST
23 ASK QUESTIONS OF OUR CLIENT?

24 MR. BARNETT: I DO. MY INDEPENDENT WITNESSES
25 WOULD BE MR. MATHIAS AND MR. JOHNS. YOU SAID YOU WERE

1 GOING TO PUT THEM BACK UP SO IT MAKES NO SENSE FOR ME TO
2 PUT THEM UP NOW AND THEN YOU PUT THEM BACK UP.

3 MR. DUDLEY: JUST TELL ME TO GO NEXT AND I'LL
4 GO NEXT.

5 THE COURT: YES, SIR, THEY DEFERRED.

6 MR. DUDLEY: YES, SIR. GREG DAWKINS.

7 THE COURT: COME AROUND AND BE SWORN, SIR.

8 DIRECT EXAMINATION

9 BY MR. DUDLEY:

10 Q. MR. DAWKINS, WHO DO YOU WORK FOR?

11 A. I WORK FOR DUNN & ASSOCIATES ENGINEERING.

12 Q. DO YOU STILL WORK FOR THEM NOW?

13 A. YES, SIR.

14 THE COURT: WHAT WAS HIS NAME? HIS FULL
15 NAME.

16 THE WITNESS: GREG DAWKINS.

17 THE COURT: THANK YOU.

18 MR. DUDLEY: I APOLOGIZE, YOUR HONOR.

19 THE COURT: ALL RIGHT, GO AHEAD.

20 Q. AND WHAT WAS YOUR ROLE WITH DUNN & ASSOCIATES ON THE
21 PENDLETON STATION PROJECT?

22 A. DUNN & ASSOCIATES WERE THE DESIGN ENGINEERS AND
23 DURING CONSTRUCTION WE WERE NOT OUT THERE FULL TIME BUT
24 WE PROCESSED PAY REQUESTS WITH THE ASSISTANCE OF CHARLIE
25 AND THAT CROWD.

1 Q. AND YOU WERE THE DESIGN ENGINEERS FOR THE CIVIL AND
2 THE INFRASTRUCTURE, ---

3 A. YES, SIR.

4 Q. --- NOT THE BUILDINGS?

5 A. NO, SIR.

6 Q. THE ARCHITECTS DID THAT?

7 A. CORRECT.

8 Q. ALL RIGHT. NOW IF YOU COULD, THERE'S A BIG OLD
9 NOTEBOOK IN FRONT OF YOU. I JUST HAVE A COUPLE OF
10 QUESTIONS ABOUT SOME DOCUMENTS. IF YOU COULD TURN TO TAB
11 13, PLEASE.

12 A. YES, SIR.

13 Q. ALL RIGHT. ON THE FIRST PAGE OF TAB 13 THERE ARE
14 SOME HANDWRITTEN NOTES. IS ANY OF THAT YOUR NOTES?

15 A. ALL OF IT IS MINE.

16 Q. OKAY. AND CAN YOU TELL ME WHAT THE DATE IS AND WHAT
17 YOU WERE DOING AT THIS POINT?

18 A. BOTH SETS OF COMMENTS?

19 Q. YES. WHAT'S THIS ON THE LEFT --

20 A. FRITZ WEAVER WORKS FOR DOT AND IT WAS ON OCTOBER
21 26TH OF '06. MY NOTE WOULD MAKE ME BELIEVE THAT WE WERE
22 STILL DEALING WITH THE FORCE MAIN ENCROACHMENT PERMIT TO
23 BE INSIDE THE DOT RIGHT OF WAY AND FRITZ WAS GOING TO GET
24 THAT PROCESSED THAT DAY.

25 Q. DO YOU KNOW WHEN THAT EVER GOT TAKEN CARE OF?

1 A. I DON'T HAVE THAT IN FRONT OF ME, NO, SIR.

2 Q. ALL RIGHT. LOOK ON THE RIGHT HAND SIDE. WHAT DO
3 YOUR NOTES REFLECT THERE?

4 A. THAT WOULD BE IN REGARDS TO PAY ESTIMATE NUMBER 12.

5 Q. IS THAT MOORHEAD'S PAY ESTIMATE NUMBER 12?

6 A. YES. MOORHEAD BEING THE GENERAL CONTRACTOR.

7 Q. RIGHT.

8 A. THE TOTAL COMPLETED WITH WORK AND MATERIALS TO DATE
9 WAS ONE POINT THREE MILLION (\$1,300,000.00). THE TOTAL
10 CONTRACT WITH CHANGE ORDERS WAS THREE POINT FOUR MILLION
11 (\$3,400,000.00) AND THEY WERE APPROXIMATELY THIRTY-NINE
12 (39) PERCENT COMPLETE, WITH NO UNPAID BILLS THAT WE WERE
13 AWARE OF.

14 Q. WHAT DID YOU UNDERSTAND THAT -- WHY DID YOU WRITE
15 THAT DOWN?

16 A. THAT THEY HAD BEEN PAID ALL THAT THEY HAD BEEN ASKED
17 FOR.

18 Q. THAT MOORHEAD HAD BEEN PAID BY PENDLETON STATION FOR
19 ALL THEY HAD ASKED FOR?

20 A. AS FAR AS WE WERE CONCERNED. WE APPROVED THE PAY
21 REQUESTS AND RECOMMENDED PAYMENT TO PENDLETON STATION AND
22 WE NEVER SAW CHECKS OR, YOU KNOW, WE NEVER SAW PROOF OF
23 PAYMENT BUT THERE WERE NONE THAT I WAS AWARE OF.

24 Q. LOOK AT THE NEXT EXHIBIT 14. CAN YOU IDENTIFY WHAT
25 THIS IS?

1 A. 14?

2 Q. YES.

3 A. IT'S A LETTER OF TRANSMITTAL FOR PAY ESTIMATE NUMBER
4 FIVE (5). I WROTE ON NOVEMBER 29TH OF '06 THAT WE DID
5 NOT NEED TO PROCESS, KEVIN WAS STILL ADJUSTING HIS
6 NUMBERS BECAUSE THE EARTH WORK NUMBERS HAD GOTTEN MESSED
7 UP. I DON'T REMEMBER THE EXACT CAUSE OF THE EARTH WORK
8 NUMBERS BEING MESSED UP BUT WE DID NOT PROCESS FIFTEEN
9 (15) AT THIS TIME.

10 Q. I THINK YOU SAID PAY ESTIMATE FIVE (5), BUT IT WAS
11 PAY ESTIMATE FIFTEEN (15), RIGHT?

12 A. OH, I'M SORRY. YES, FIFTEEN (15).

13 Q. AND DID YOU RECEIVE ANY OTHER PAY ESTIMATES FROM
14 MOORHEAD AFTER THIS?

15 A. I DON'T HAVE THAT PAPERWORK IN FRONT OF ME BUT
16 YOU'VE BEEN THROUGH OUR PAPERWORK AND IF YOU DIDN'T SEE
17 IT THEN, NO, SIR, IT WAS NOT THERE.

18 Q. OKAY. TURN TO EXHIBIT OR TAB 17, PLEASE.

19 A. YES.

20 Q. OKAY. AND IS THIS YOUR LETTER? DID YOU WRITE THIS?

21 A. YES, SIR.

22 Q. YOU SENT IT TO MR. MOORHEAD?

23 A. YES.

24 Q. ALL RIGHT. I DIRECT YOUR ATTENTION TO THE MIDDLE OF
25 THE PARAGRAPH WHERE IT SAYS BASED ON A MEETING WITH YOU,

1 MOORHEAD, ON JANUARY THE 30TH, 2007, AND A CONVERSATION
2 WITH THE OWNERS IT APPEARS YOU ARE NO LONGER PERFORMING
3 ANY WORK ON PHASE 1-A. WHAT MEETING DID YOU HAVE IN
4 JANUARY? IT REFERENCES A MEETING.

5 A. I COULDN'T EVEN TELL YOU IF IT WAS ON SITE OR IN OUR
6 OFFICE, BUT IT WAS DURING THIS TIME, FROM TALKING WITH
7 THE OWNER BECAUSE WE WERE NOT THERE EVERY DAY, MOORHEAD
8 WAS NO LONGER DOING WORK IT WOULD APPEAR AND THERE ARE
9 REQUIREMENTS FROM DHEC WHO Y'ALL REFERENCED EARLIER. WE
10 DO HAVE TO KEEP THE SITE STABILIZED AND IF THE SITE WAS
11 NOT BEING WORKED ON THEN THERE ARE REQUIREMENTS OF THAT
12 DHEC PERMIT. THAT'S WHERE THAT FOURTEEN (14) DAYS COMES
13 IN, OTHERWISE YOU COULD HAVE SEDIMENT LEAVING THE SITE
14 WHICH IS A PROBLEM.

15 Q. AND IT SAYS BASED ON THE MEETING WITH YOU AND
16 CONVERSATIONS WITH THE OWNER. SO DO YOU RECALL AT THAT
17 MEETING IN JANUARY THAT MOORHEAD TOLD YOU THAT THEY
18 WEREN'T WORKING ON THE SITE?

19 A. BASED ON THIS LETTER, THAT IS WHAT I RECALL. I
20 DON'T RECALL THAT EXACT MEETING. WE HAD A LOT OF
21 MEETINGS.

22 Q. YOU DON'T RECALL EVER RECEIVING A LETTER FROM
23 MOORHEAD CONTRADICTING THAT, SAYING OH, NO, NO, WE REALLY
24 ARE ON SITE?

25 A. NOT THAT I RECALL, NO, SIR.

1 Q. THAT'S ALL THE QUESTIONS I HAVE, MR. DAWKINS.

2 THE COURT: MR. BROUSSEAU?

3 MR. BROUSSEAU: YES, SIR, YOUR HONOR.

4 CROSS EXAMINATION

5 BY MR. BROUSSEAU:

6 Q. MR. DAWKINS, ARE YOU PERSONALLY AWARE OF WHETHER OR
7 NOT MR. MOORHEAD OR MR. MILLER OR ANYBODY LIKE THAT WENT
8 OUT THERE TO STABILIZE THE SITE?

9 A. LIKE I SAID, WE WERE NOT HIRED TO BE OUT THERE ON A
10 DAILY BASIS AND SO UNLESS MOORHEAD INFORMED ME OF THAT OR
11 CHARLIE AND HIS CROWD INFORMED ME OF THAT, NO, THERE
12 WOULD BE NO WAY FOR ME TO KNOW.

13 Q. HOW LONG HAVE YOU BEEN WITH DUNN & ASSOCIATES?

14 A. ABOUT EIGHT (8) YEARS, SINCE '03 OR SO.

15 Q. OKAY. AND YOU'VE HAD A NUMBER OF DEALINGS WITH
16 KEVIN MOORHEAD, CORRECT?

17 A. CORRECT.

18 Q. AND NOT JUST ON THIS PROJECT BUT ON MULTIPLE OTHER
19 PROJECTS?

20 A. CORRECT.

21 Q. YOU'VE HAD NUMEROUS DEALINGS WITH MIKE MILLER?

22 A. CORRECT.

23 Q. ON NOT JUST THIS PROJECT BUT OTHER PROJECTS?

24 A. CORRECT.

25 Q. AND WHAT ABOUT BILLY CRAFT?

1 A. YES.

2 Q. OKAY. YOU'VE HAD A LOT OF DEALINGS WITH HIM, NOT
3 JUST ON THIS PROJECT BUT OTHER PROJECTS?

4 A. YES. NOT SO MUCH DIRECTLY WITH BILLY, BUT HE'S DONE
5 A LOT OF WORK FOR PROJECTS THAT DUNN & ASSOCIATES IS
6 INVOLVED WITH.

7 Q. OKAY. SO IF THEY SAY THAT THEY WENT OUT, AND BASED
8 UPON YOUR DEALINGS WITH THEM, HAVE THEY EVER COME ACROSS
9 AS BEING DISHONEST OR ANYTHING LIKE THAT WITH REGARDS TO
10 YOUR DEALINGS?

11 A. NO, SIR.

12 Q. HAVE THEY EVER SEEMED LIKE THEY WERE MAKING CLAIMS
13 FOR MONEY ON PRIOR PROJECTS WHERE THEY WEREN'T
14 NECESSARILY OWED MONIES?

15 A. NO, SIR. THERE'S ALWAYS DISAGREEMENTS OVER CHANGE
16 ORDERS AND STUFF LIKE THAT BUT WE ALWAYS WORK IT OUT IN
17 THE END.

18 Q. AND SO BASED UPON YOUR EXPERIENCE OVER DIFFERENT
19 PROJECTS -- CAN YOU EVEN PUT A GUESS ON THE NUMBER OF
20 PROJECTS WITH THESE GUYS?

21 A. YOU KNOW, MOORHEAD, THREE (3) OR FOUR (4) THAT I'VE
22 PERSONALLY BEEN INVOLVED WITH AND MILLER, WE FINISHED ONE
23 UP LAST YEAR AND SO IT'S A -- IT'S A HANDFUL.

24 Q. OKAY. AND SO BASED UPON YOUR EXPERIENCE TO YOU
25 THEY'VE ALWAYS SEEMED HONEST AND CREDIBLE?

1 A. YES, SIR.

2 Q. ALL RIGHT. AND IF THEY SAID THEY WENT OUT THERE AND
3 DID WORK ON THIS SILT FENCING OR WHATEVER IT WAS BACK IN
4 MARCH OF '07, YOU WOULD HAVE NO REASON TO DOUBT THEM, IS
5 THAT CORRECT?

6 A. CORRECT.

7 Q. ALL RIGHT. AND YOU ALSO HAVE NO PERSONAL KNOWLEDGE
8 OF WHETHER OR NOT PENDLETON STATION EVER ACTUALLY PAID
9 MOORHEAD AFTER THE DATES THAT ARE IN QUESTION IN THESE
10 DOCUMENTS, CORRECT?

11 A. NO, SIR. WE DON'T HAVE PRIVY TO THAT INFORMATION.

12 Q. OKAY. THANK YOU.

13 MR. BROUSSEAU: NOTHING FURTHER, YOUR HONOR.

14 MR. BARNETT: NOTHING FROM ME, YOUR HONOR.

15 MR. LAVERY: NOTHING, YOUR HONOR.

16 REDIRECT EXAMINATION

17 BY MR. DUDLEY:

18 Q. MR. DAWKINS, NONE OF THE PROJECTS YOU'VE WORKED ON,
19 OTHER THAN THIS PROJECT, WITH MILLER AND MOORHEAD AND
20 CRAFT WERE ANYTHING LIKE THE PENDLETON STATION PROJECT,
21 WERE THEY?

22 A. CORRECT.

23 Q. NONE OF THEM WERE?

24 A. NO.

25 Q. YOU DON'T KNOW WHAT DESPERATE PEOPLE WOULD DO, DO

1 YOU?

2 A. NO, SIR.

3 Q. THANK YOU VERY MUCH. THAT'S ALL I HAVE.

4 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,
5 SIR. WE APPRECIATE YOUR HELP. YOU WOULD PROBABLY AGREE
6 THAT THIS WAS A UNIQUE PROJECT.

7 THE WITNESS: YES, SIR.

8 MR. DUDLEY: ENTERPRISE BANK CALLS DAVID
9 JOHNS.

10 THE COURT: ALL RIGHT. GOOD AFTERNOON.
11 AGAIN.

12 MR. JOHNS: GOOD AFTERNOON TO YOU.

13 THE COURT: MR. JOHNS, YOU HAVE PREVIOUSLY
14 BEEN SWORN AND YOU REMAIN UNDER OATH.

15 DAVID JOHNS, DEFENDANT ENTERPRISE BANK'S
16 WITNESS:

17 DIRECT EXAMINATION

18 BY MR. DUDLEY:

19 Q. DAVID, WE'RE GOING TO GO THROUGH THIS NOTEBOOK AND
20 WE'RE GOING TO GO THROUGH THESE DOCUMENTS KINDA QUICKLY.
21 TURN TO EXHIBIT OR TAB 1, IF YOU CAN. DOES THIS REFLECT
22 WORK ---

23 THE COURT: YOU'RE NOT GOING THROUGH THE
24 WHOLE NOTEBOOK, ARE YOU?

25 MR. DUDLEY: NO, SIR. WELL, I AM, BUT I'M

1 NOT GOING THROUGH IT -- I'M HITTING THE HIGHLIGHTS.

2 THE COURT: OKAY.

3 Q. THIS IS A PLAT THAT SHOWS THE CONSTRUCTION THAT WAS
4 IN PROGRESS WHEN THE BANK GOT THE DEED IN LIEU OF
5 FORECLOSURE?

6 A. YES, SIR.

7 Q. OKAY. TURN TO EXHIBIT 2. ALL RIGHT. CAN YOU
8 IDENTIFY WHAT THIS IS, THESE DOCUMENTS ARE?

9 A. IT'S THE ORIGINAL THREE MILLION (\$3,000,000.00)
10 DOLLAR NOTE TO COMPLETE THE INFRASTRUCTURE OF PENDLETON
11 STATION.

12 Q. AND THIS WAS FOR THE INFRASTRUCTURE?

13 A. YES, SIR.

14 Q. ALL RIGHT. TURN TO THE NEXT PAGE OR THE NEXT
15 EXHIBIT 3. CAN YOU TELL ME WHAT THIS DOCUMENT IS?

16 A. 3?

17 Q. TAB 3, YES, SIR. IS IT A LOAN REQUEST FROM
18 PENDLETON STATION?

19 A. YES, SIR.

20 Q. AND AT THE TOP OF THE SECOND PAGE IT SAYS THE
21 DEVELOPMENT LOAN PROCEEDS WERE GOING TO BE USED TO COVER
22 SITE IMPROVEMENT?

23 A. YES, SIR.

24 Q. THANK YOU. TURN TO THE NEXT PAGE OR THE NEXT TAB,
25 EXCUSE ME. CAN YOU IDENTIFY WHAT THIS DOCUMENT IS?

1 A. THE NEXT TAB?

2 Q. THE NEXT TAB, YES, SIR.

3 A. IT'S A LETTER FROM MR. DANIELS AND MR. HARVEY, I
4 PRESUME.

5 Q. THIS WAS OUTLINING WHAT THAT THREE MILLION
6 (\$3,000,000.00) DOLLAR LINE OF CREDIT WAS FOR?

7 A. YES, SIR.

8 Q. AND AT THE BOTTOM OF THE PAGE, IT SAYS THE PURPOSE
9 OF THE LINE OF CREDIT IS TO PROVIDE FOR SITE UNDER
10 DEVELOPMENT COSTS AT PENDLETON STATION?

11 A. YES, SIR.

12 Q. OKAY.

13 MR. BROUSSEAU: YOUR HONOR, IF I COULD, I DON'T
14 KNOW HOW TO ADDRESS THIS. OBVIOUSLY, I HAVE AN OBJECTION
15 TO SOME OF THESE DOCUMENTS. I DON'T KNOW IF WE NEED TO
16 ADDRESS THEM AFTER HE KIND OF PROFFERS OR WHAT WE WANT TO
17 DO IN THAT REGARD.

18 MR. DUDLEY: HE'S IDENTIFYING THESE DOCUMENTS
19 AND THEY ARE DOCUMENTS FROM THE BANK'S RECORDS. I MEAN
20 THEY ARE BASED ON THEM. I'M NOT SURE WHAT HIS OBJECTIONS
21 ARE.

22 THE COURT: ALL RIGHT. YOU CAN ASK HIM FROM
23 THE BANK'S RECORDS. THAT'S SORT OF A WORK PRODUCT.

24 Q. WE'LL TAKE A BREAK FROM THE DOCUMENTS. TELL ME HOW
25 -- YOU SAID THERE WAS A LOAN FOR THE INFRASTRUCTURE.

- 1 TELL ME HOW THE BANK WAS INVOLVED WITH THE CONSTRUCTION
2 LOANS FOR THE TOWNHOUSES.
- 3 A. OKAY. PENDLETON STATION HAD SOLD EACH TOWNHOUSE,
4 PRESOLD IT TO ROUGHLY AN 800 BEACON SCORE PERSON THAT
5 QUALIFIED FOR THE LOAN. THEY WERE PREQUALIFIED BY A
6 MORTGAGE COMPANY NOT RELATED TO THE BANK AND ONCE WE GOT
7 A PERMANENT TAKEOUT FROM THAT COMPANY THEN WE WOULD MAKE
8 A CONSTRUCTION LOAN FOR THAT INDIVIDUAL UNIT.
- 9 Q. AND WHEN THE CONSTRUCTION WAS COMPLETED WHAT WAS
10 GOING TO BE THE BANK'S INVOLVEMENT?
- 11 A. IN WHAT REGARDS?
- 12 Q. IN THE TOWNHOUSES. WERE THEY GOING TO BE THE
13 PERMANENT LENDER?
- 14 A. THE BANK WOULD BE TAKEN OUT BY THE PERMANENT LENDER.
- 15 Q. AND THAT'S SOMEBODY THAT PENDLETON STATION HAD
16 ALREADY -- THEY HAD ALREADY GOTTEN THAT AS A PART OF THE
17 DEAL ---
- 18 A. YES, SIR.
- 19 Q. --- WHEN IT CAME TO Y'ALL?
- 20 A. YES, SIR. WE HAD A PERMANENT LETTER FOR EACH ONE OF
21 THEM, PERMANENT TAKEOUT LETTER.
- 22 Q. ENTERPRISE WASN'T GOING TO BE A LONG TERM LENDER ON
23 THIS PROJECT?
- 24 A. NO, SIR.
- 25 Q. OKAY. ALL RIGHT. AND WHO OVERSAW THE CONSTRUCTION

1 LOAN PAY APPLICATIONS FOR THE TOWNHOUSE CONSTRUCTION?

2 A. ENTASIS ARE THE ARCHITECTS.

3 Q. ARCHITECTS. OKAY. DID ENTERPRISE HAVE TO LOAN ANY
4 OTHER MONEY AFTER THE FIRST LINE OF CREDIT TO PENDLETON
5 STATION?

6 A. WE DID. AFTER THEY DIDN'T GET IT COMPLETED IN TIME
7 THEY CAME BACK TO US AND SAID THEY NEEDED MORE MONEY TO
8 FINISH IT AND WE MADE THEM AN ADDITIONAL TWO MILLION
9 (\$2,000,000.00) DOLLAR LOAN IN AUGUST OF '06, I THINK.

10 Q. WHEN DID THEY SAY THEY WERE GOING TO GET DONE AT
11 THAT POINT?

12 A. THEY GUARANTEED US WE WOULD BE OUT OF IT BY THE END
13 OF THE YEAR, WHICH WOULD HAVE BEEN DECEMBER '06.

14 Q. DID THEY GET DONE AT THAT TIME?

15 A. NO, SIR.

16 Q. ALL RIGHT. TURN TO TAB 5. COULD YOU IDENTIFY WHAT
17 THIS IS?

18 A. YES, SIR. IT'S THE DEMAND LETTER THAT I SENT TO
19 PENDLETON STATION AND EACH ONE OF THE GUARANTORS CALLING
20 THE LOAN DUE IN FULL AND GIVING THE REASONS WHY.

21 Q. AND THE NOTE NUMBER 1101013, WHAT WAS THAT?

22 A. THAT WAS PROBABLY THE NOTE NUMBER OF THE ORIGINAL
23 THREE MILLION (\$3,000,000.00) DOLLAR LINE OF CREDIT.

24 Q. AND WAS THAT FULLY ADVANCED BY THE BANK TO PENDLETON
25 STATION?

1 A. YES, SIR. IT WAS FULLY ADVANCED BEFORE WE MADE THE
2 SECOND LOAN.

3 Q. OKAY. YOU SAID YOU UNDERSTAND THE FOLLOWING HAS
4 OCCURRED. WHAT'S THAT SECTION 5? WHAT DOES THAT SAY?

5 A. I WAS REPEATEDLY TOLD THAT WORK HAD CEASED, NO WORK
6 WAS GOING ON. I KNEW FIRST HAND THE PROPERTY TAXES
7 HADN'T BEEN PAID. THE DELIVERY DATE OF THE UNITS WERE
8 BEHIND SCHEDULE, PLUS OR MINUS FIVE (5) MONTHS. WHEN I
9 MADE THE SECOND LOAN I FOUND OUT THEY HAD TEN (10) UNITS
10 THAT THE BANK DIDN'T AUTHORIZE THAT WERE CONSTRUCTED AND,
11 OF COURSE, I WAS SHOCKED THAT THE ROADS WEREN'T COMPLETE
12 AND THEN THEY STILL WEREN'T COMPLETE.

13 Q. ALL RIGHT. AFTER THE DEMAND LETTER WHAT DID BEN
14 DANIEL TELL YOU ABOUT WHAT HE WAS GOING TO -- HOW HE WAS
15 GOING TO ADDRESS IT?

16 A. HE WAS GOING TO GET SOMEBODY ELSE TO ---

17 MR. BROUSSEAU: YOUR HONOR, I WOULD OBJECT TO
18 THE HEARSAY.

19 MR. DUDLEY: PENDLETON STATION IS A
20 DEFENDANT.

21 MR. BROUSSEAU: I'M SORRY. I'M SORRY.

22 Q. ON BEHALF OF PENDLETON STATION, WHAT DID BEN DANIEL
23 TELL YOU HE WAS GOING TO DO ABOUT THAT?

24 A. WELL, HE WAS GOING TO GET AN INVESTOR OR EITHER
25 ANOTHER LOAN AND TAKE US OUT.

1 Q. OKAY. EVENTUALLY YOU GOT THE DEED IN LIEU OF
2 FORECLOSURE?

3 A. YES, SIR.

4 Q. TELL ME WHAT DID YOU DO AFTER THE DEED IN LIEU OF
5 FORECLOSURE TO DETERMINE THE STATUS OF THE CONSTRUCTION
6 ON THE PROJECT?

7 A. HIRED AN ENGINEER. I FELT LIKE I HAD A DUTY TO THE
8 UNIT OWNERS AND, OF COURSE, TO PROTECT THE INTEREST OF
9 THE BANK WE HIRED AN ENGINEER, H2L, I THINK IS THE NAME
10 OF THEM, TO DETERMINE WHAT CONSTRUCTION PROGRESS WAS MADE
11 AND WHAT THE PROJECT WAS WORTH.

12 Q. CAN YOU TURN TO TAB 7 AND IDENTIFY WHAT THAT IS?

13 MR. BROUSSEAU: YOUR HONOR, TABS 7 AND 8 ARE,
14 ONE IS AN H2L REPORT SUBMITTED BY ANOTHER PERSON WHO I
15 DON'T BELIEVE IS HERE TO TESTIFY. NUMBER 8 IS AN
16 APPRAISAL OF THE PROPERTY AND I DON'T THINK THE APPRAISER
17 IS HERE TO TESTIFY. QUITE FRANKLY, I DON'T KNOW HOW THEY
18 ARE EVEN RELEVANT TO THE CASE AS WELL.

19 THE COURT: WELL, YOU DIDN'T HAVE MR.
20 HOLBROOKS HERE AND I LET YOUR MAN TESTIFY.

21 MR. BROUSSEAU: YES, SIR.

22 THE COURT: MR. HOLBROOKS WAS AN EMPLOYEE.
23 I'LL LET HIM PROCEED. YOU'RE GOING TO BE ABLE TO CROSS
24 EXAMINE HIM IF YOU HAVE QUESTIONS ABOUT THE ACCURACY OR
25 ANY QUESTIONS ABOUT THESE DOCUMENTS. BUT, GO AHEAD, MR.

1 DUDLEY.

2 MR. DUDLEY: THANK YOU, SIR.

3 Q. EXHIBIT OR TAB 7 IS THE H2L CONSULTING ENGINEERS
4 REPORT, IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND WHAT DID THAT -- WHAT DID YOU LEARN FROM H2L?

7 A. THE PERCENTAGE OF COMPLETION WAS A LOT LESS THAN THE
8 ARCHITECTS HAD TOLD US.

9 Q. AND WAS IT LESS THAN THE MONEY THAT HAD BEEN
10 ADVANCED BY THE BANK ON THOSE LOANS?

11 A. A LOT LESS THAN THE MONEY THAT HAD BEEN ADVANCED,
12 YES, SIR.

13 Q. OKAY. TURN TO EXHIBIT 8. HOW DID YOU HAVE TO --
14 WHEN THE BANK GOT THE DEED IN LIEU OF FORECLOSURE, HOW
15 DID YOU HAVE TO HOLD THIS ON YOUR BOOKS FOR REGULATION
16 PURPOSES?

17 A. ANYTIME A BANK GETS ANY KIND OF PROPERTY BACK, IT
18 GOES INTO A CATEGORY CALLED OTHER REAL ESTATE OWNED AND
19 THE FIRST THING WE HAVE TO DO IS GET AN APPRAISAL OF IT
20 AND CHARGE THAT DOWN TO THAT APPRAISAL AMOUNT.

21 Q. ALL RIGHT. AND IS EXHIBIT 8 THE APPRAISAL THAT WAS
22 DONE ON THE PROPERTY THAT WAS RECEIVED IN THE DEED IN
23 LIEU OF FORECLOSURE?

24 A. YES, SIR.

25 Q. AND I THINK IT'S DATED OCTOBER OF '07?

1 A. YES, SIR.

2 Q. ALL RIGHT. AND IS THE THIRD PAGE THE VALUATION OF
3 PARCELS? THE THIRD PAGE OF THE APPRAISAL. ACTUALLY, I
4 THINK IT'S THE FOURTH PAGE.

5 A. I THINK IT'S THE FOURTH PAGE. IT SAYS PAGE 2 AT THE
6 TOP BUT IT'S THE FOURTH PAGE.

7 Q. YES, SIR. AND YOU HAD TO CHARGE THAT DOWN?

8 A. YES, SIR.

9 Q. AND DID YOU GIVE -- YOU HAD TO GIVE PENDLETON
10 STATION THE CREDIT ---

11 A. I GAVE PENDLETON STATION CREDIT FOR THE DIFFERENCE.

12 Q. OKAY. ALL RIGHT. DID BEN DANIEL EVER GET AN
13 INVESTOR TO COME IN AND TAKE YOU OUT AND CONTINUE THE
14 PROJECT?

15 A. NO, SIR.

16 Q. ALL RIGHT. DID YOU HIRE SOMEONE TO FINISH THE
17 PROJECT?

18 A. YES, SIR.

19 Q. BRIEFLY, TELL ME ABOUT HOW THAT PROCESS TOOK PLACE.

20 A. BETWEEN CHARLIE AND REALLY THE ATTORNEY'S OFFICE, WE
21 FOUND DIFFERENT BUILDERS IN THE AREA AND GOT FINANCIAL
22 STATEMENTS FROM THEM AND GOT THEIR QUALIFICATIONS AND
23 CONSIDERED ALL OF THEM AND FINALLY CHOSE APEX.

24 Q. AND DID THE BANK COMPLETE WHAT WAS STARTED ON THE
25 PROJECT?

1 A. THAT'S ALL WE WOULD EVER BE ABLE TO DO SO THAT'S
2 WHAT WE DID.

3 Q. YOU DIDN'T DO ANY NEW CONSTRUCTION?

4 A. NO, SIR.

5 Q. ALL RIGHT.

6 MR. BARNETT: YOUR HONOR, WHILE HE'S TAKING A
7 BREATH I'D JUST LIKE TO JOIN IN MR. BROUSSEAU'S OBJECTION
8 ON RELEVANCE GROUNDS TO THE EXHIBITS.

9 THE COURT: YOUR OBJECTION IS NOTED.
10 OVERRULED. GO AHEAD, MR. DUDLEY.

11 MR. DUDLEY: THESE GO DIRECTLY TO THEIR
12 QUANTUM MERUIT DEFENSE, SIR.

13 THE COURT: YES, SIR.

14 Q. OKAY. DID THE BANK SPEND ADDITIONAL MONEY TO
15 COMPLETE IT, BEYOND WHAT WAS LEFT ON THE CONSTRUCTION
16 LOAN?

17 A. WELL, YES, SIR, IT TOOK AT LEAST SIX MILLION
18 (\$6,000,000.00) DOLLARS FOR APEX TO COMPLETE THE UNITS.

19 Q. AND THE INFRASTRUCTURE?

20 A. THE INFRASTRUCTURE WAS PROBABLY MORE THAN THAT.

21 Q. ALL RIGHT. WELL, WHAT HAPPENED TO THE UNIT OWNERS?
22 YOU HAD PEOPLE THAT HAD DEEDS TO THE REAL ESTATE. WHAT
23 HAPPENED TO THEM ULTIMATELY?

24 A. WE HAD -- EACH UNIT WAS INDIVIDUALLY OWNED AND, OF
25 COURSE, WE JUST HAD A MORTGAGE ON IT AND WE HAD PARTIALLY

1 ADVANCED CONSTRUCTION LOANS AND ONE REASON WE DID THAT
2 H2L REPORT WAS TO TRY TO PROTECT OURSELVES AND THEM FROM
3 WHATEVER PERCENTAGE OF CONSTRUCTION WAS DONE AND
4 ULTIMATELY, BECAUSE IT WAS TAKING SO MUCH TIME THE UNIT
5 OWNERS LOST INTEREST OR EITHER IT WAS STARTING IN THE
6 MIDDLE OF THE REAL ESTATE CRASH, TOO, AND THEY GOT WHERE
7 THEY WEREN'T QUALIFIED AND ALSO IN THE MIDDLE OF THAT THE
8 MORTGAGE COMPANY THAT WE HAD THE PERMANENT TAKEOUT
9 LETTERS FROM WAS THE FIRST MORTGAGE COMPANY THAT WENT
10 BROKE WHEN THE REAL ESTATE MARKET CRASHED, I GUESS. SO
11 WE GAVE THEM A CHOICE, I GUESS, OF DEEDING IT TO US IN A
12 DEED IN LIEU OF FORECLOSURE OR ULTIMATELY WE WOULD HAVE
13 TO FORECLOSE ON THEM IF THEY WEREN'T MAKING THE PAYMENTS.

14 Q. DID YOU ACCEPT DEEDS IN LIEU OF FORECLOSURE ON SOME
15 OF THOSE?

16 A. WE DID.

17 Q. AND DID YOU HAVE TO FORECLOSE ON SOME OF THEM?

18 A. I THINK SO.

19 Q. THAT'S ALL THE QUESTIONS THAT I HAVE. THANK YOU.

20 THE COURT: ALL RIGHT, MR. BROUSSEAU, WE'LL
21 START WITH YOU.

22 MR. BROUSSEAU: YES, SIR.

23 CROSS EXAMINATION

24 BY MR. BROUSSEAU:

25 Q. MR. JOHNS, IF YOU COULD FLIP OVER TO, I THINK IT'S

1 TAB NUMBER 5. THAT'S YOUR DEMAND LETTER?

2 A. YES, SIR.

3 Q. THERE AT THE BOTTOM THE REASON WHY YOU WERE MAKING
4 THE DEMAND, YOU PUT ABOUT FIVE DIFFERENT REASONS; THAT
5 WORK HAD CEASED, PROPERTY TAXES HADN'T BEEN PAID, THERE
6 WERE SOME UNAUTHORIZED UNITS THAT WERE CONSTRUCTED, AND
7 THE ROADS WERE SUPPOSED TO BE COMPLETED. HOW EXACTLY DID
8 YOU DISCOVER THAT THAT WAS GOING ON IF THE BANK WASN'T ON
9 NOTICE OF ANYTHING THAT WAS HAPPENING ON THIS PROJECT?

10 A. WELL, THE FIRST THING WAS THE LOANS WERE PAST DUE.
11 MR. DANIEL HIMSELF TOLD ME THAT WORK HAD CEASED. WE KNEW
12 THE PROPERTY TAXES HADN'T BEEN PAID BY, I GUESS, CHECKING
13 THE RECORD OR GETTING NOTICE SOMEHOW. MR. DANIEL AND MR.
14 HARVEY BOTH TOLD ME THAT WE WERE PLUS OR MINUS FIVE (5)
15 MONTHS OUT AND, OF COURSE, THEY WERE SUPPOSED TO BE
16 FINISHED WHEN THE FIRST -- BEFORE THE FIRST LOAN CAME DUE
17 AND WE GAVE THEM WHAT THEY ASKED FOR WHICH WAS ANOTHER
18 SEVERAL MONTHS PLUS TWO MILLION (\$2,000,000.00) DOLLARS
19 MORE IN MONEY AND WE COULDN'T SEE WHERE ANY OF THAT HAD
20 BEEN SPENT ON THE PROJECT. I HAD PICTURES THAT ELIZABETH
21 HAD SENT ME SHOWING THE PROJECT, INCLUDING THE UNPAVED
22 ROADS. AND OTHER PEOPLE WENT BY AND TOLD ME THE
23 CONDITION OF IT.

24 Q. YOU COULD HAVE SENT PEOPLE UP THERE AT ANY STAGE
25 LIKE YOU DID HERE AROUND JANUARY 25TH OR GOT NOTICE

1 SOMEHOW OF WHAT KIND OF PROGRESS THE PROJECT WAS TAKING
2 ON, CORRECT?

3 A. I NEVER FELT LIKE -- IT'S PRETTY STANDARD PRACTICE
4 TO HAVE ARCHITECTS SUBMIT THE REQUESTS. I NEVER FELT
5 LIKE I HAD A NEED TO SEND ANYBODY UP THERE.

6 Q. YOU STATED THAT AFTER THIS FIRST THREE MILLION
7 (\$3,000,000.00) DOLLAR LOAN THEY WERE ALREADY BEHIND
8 SCHEDULE AND SO YOU GUYS GAVE THEM AN EXTENSION, CORRECT,
9 AND THERE WAS SOMETHING ALONG THOSE LINES ---

10 A. WE TOOK MORE COLLATERAL AND GAVE THEM MORE MONEY.

11 Q. OKAY. AND YOU DID THAT VOLUNTARILY?

12 A. WELL, THEY BEGGED AND ROLLED IN THE FLOOR AND
13 THREATENED TO THROW THE PROJECT IN OUR LAP IF THEY DIDN'T
14 GET THE MONEY.

15 Q. BUT YOU COULD HAVE STILL SAID NO WHEN THEY ASKED FOR
16 MORE MONEY, CORRECT?

17 A. I WISH I HAD.

18 Q. ALL RIGHT. YOU THEN ALSO TESTIFIED THAT IT COST YOU
19 -- AND I'M SORRY, IT COST YOU SIX MILLION (\$6,000,000.00)
20 PLUS MORE TO COMPLETE THIS PROJECT?

21 A. YES, SIR. I IMAGINE THE BANK HAS A TWENTY
22 (\$20,000,000.00) OR THIRTY MILLION (\$30,000,000.00)
23 DOLLAR LOSS IN THE WHOLE PROJECT.

24 Q. OKAY. NOBODY FORCED YOU TO COMPLETE THE PROJECT,
25 THOUGH, CORRECT?

1 A. WE'VE ALWAYS TRIED TO DO THE RIGHT THING BY THE
2 COMMUNITY AND WE THOUGHT WE WOULD BE BETTER OFF
3 COMPLETING IT AND, REALLY, IF WE COULD HAVE COMPLETED IT
4 AND KEPT THE UNIT OWNERS IN THAT WOULD HAVE BEEN WHAT WE
5 THOUGHT WAS THE WAY FOR THE BANK TO LOSE THE LEAST MONEY.

6 Q. WHY WASN'T A FORECLOSURE ACTION FILED?

7 A. BASICALLY BECAUSE SOMEBODY THREW A DEED IN LIEU
8 TITLE AT US AND WE HIRED OUR ATTORNEYS AND THEY
9 INVESTIGATED IT AND MR. DANIEL SAID HE WAS GOING TO TAKE
10 US OUT WITH AN INVESTOR OR SOME OTHER MEANS OR COMPLETE
11 IT HIMSELF. OF COURSE, WE DID FILE A LAWSUIT AFTER WE
12 EXHAUSTED ALL THAT AND IT WAS REALLY ON THE ADVICE OF
13 COUNSEL.

14 Q. YOU'VE BEEN DOING THIS QUITE SOME TIME AND I KNOW
15 YOU'RE PROBABLY EXPERIENCED IN FORECLOSURE MATTERS AND
16 STUFF LIKE THAT. FILING A FORMAL FORECLOSURE ACTION
17 WOULD HAVE KIND OF STOPPED A LOT OF THIS STUFF, WOULD IT
18 NOT HAVE?

19 A. I WAS PREPARED TO DO THAT, AS THE LETTER INDICATES.

20 Q. BUT YOU DIDN'T DO THAT?

21 A. I DIDN'T. THEY FILED THE DEED IN LIEU BEFORE I HAD
22 A CHANCE.

23 Q. YOU NEVER FILED AN ACTION TO SET ASIDE THAT DEED,
24 CORRECT?

25 A. NO, BUT I CONTACTED MY ATTORNEY. I WOULD HAVE NEVER

1 ACCEPTED THE DEED IN LIEU WITHOUT AN ATTORNEY APPROVING
2 IT.

3 Q. PREVIOUSLY, WHEN YOU TESTIFIED EARLIER, YOU TALKED
4 ABOUT THAT YOU HAD NEVER RECEIVED TITLE INSURANCE ON THIS
5 PROPERTY, CORRECT?

6 A. YES, SIR.

7 MR. BROUSSEAU: I'D LIKE TO HAVE THIS MARKED,
8 PLEASE.

9 (PLAINTIFFS' EXHIBIT 12 FOR IDENTIFICATION)

10 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
11 AS PLAINTIFFS' EXHIBIT NUMBER 12. WOULD YOU IDENTIFY
12 THAT FOR ME?

13 A. IT LOOKS LIKE A TITLE INSURANCE POLICY BUT I DIDN'T
14 HAVE IT WHEN THE DEED IN LIEU WAS FILED AND THE DEED IN
15 LIEU SAYS NO TITLE INSURANCE.

16 Q. IN ACTUALITY, I THINK THE DEED IN LIEU IS ON TAB 6,
17 CORRECT?

18 A. YES, SIR, BUT I DON'T KNOW WHEN I GOT THIS REALLY.
19 YES, THIS IS OUR TITLE INSURANCE POLICY FOR THE DEED IN
20 LIEU SO MY STATEMENT I MADE EARLIER IS CORRECT.

21 Q. SO THIS IS NOT TITLE INSURANCE FOR -- I WANT YOU TO
22 LOOK ON SCHEDULE C, IT DESCRIBES PARCEL 1 AND YOU NEED TO
23 FLIP OVER TO, I GUESS, LIKE THE THIRD PAGE. IT DESCRIBES
24 PROPERTY LOCATED IN THE TOWNSHIP OF PENDLETON CONTAINING
25 THIRTY-EIGHT POINT SIX ONE (38.61) ACRES AND ALSO

1 DESCRIBED PROPERTY CONTAINED WITHIN THE TOWNSHIP OF
2 PENDLETON CONTAINING APPROXIMATELY THIRTY-ONE POINT THREE
3 ONE (31.31) ACRES SHOWN AS TRACT A, LESS AND EXCEPTING
4 CERTAIN UNITS THAT HAD ALREADY BEEN PURCHASED BY OTHER
5 INDIVIDUALS. THAT IS THE PROPERTY INVOLVED IN THIS CASE,
6 ISN'T IT?

7 A. THAT'S NOT THE PROPERTY THAT WAS DEEDED IN THE DEED
8 IN LIEU.

9 Q. OKAY. I WOULD ASK THAT YOU FLIP THIS TO TAB NUMBER
10 SIX, PLEASE. ON SCHEDULE A OF THE DEED IN LIEU ON PAGE 3
11 IT'S ALL THAT PIECE OF PROPERTY OF THIRTY-EGHT POINT
12 SOME (38.+) ACRES IN THE TOWNSHIP OF PENDLETON; THAT
13 PARCEL 1 AND PARCEL 2 BEING THIRTY-ONE POINT THIRTY-ONE
14 (31.31) ACRES KNOWN AS TRACT A IN THE TOWNSHIP OF
15 PENDLETON. THAT IS THE SAME PROPERTY THAT IS LISTED ON
16 THIS TITLE INSURANCE, CORRECT?

17 A. I DON'T KNOW HOW YOU MATCH IT UP, TO BE HONEST WITH
18 YOU. WHAT I SHOULD HAVE GOTTEN IS A PRELIMINARY TITLE
19 INSURANCE POLICY AHEAD OF TIME SO I COULD DECIDE WHETHER
20 I WANTED TO ACCEPT THE DEED IN LIEU OR NOT.

21 Q. OKAY. AND IF YOU LOOK AT THE TOP OF THE TITLE
22 INSURANCE DOCUMENT WHERE THE FAX RECEIPT IS, IT SAYS
23 MARCH 7TH OF 2007, ENTERPRISE BANK? IF YOU LOOK AT THE
24 TOP OF THE DOCUMENT THAT I JUST HANDED TO YOU.

25 A. I DIDN'T HEAR A QUESTION.

1 Q. I'M SORRY. IF YOU LOOK AT THE TOP OF THE DOCUMENT
2 IN PLAINTIFF'S NUMBER 12 THAT I JUST HANDED TO YOU, THE
3 TITLE INSURANCE, AT THE VERY TOP OF IT THERE'S SOME
4 FACSIMILE NOTES UP THERE, CORRECT?

5 A. YES, SIR.

6 Q. OKAY. AND ONE OF THOSE IS FROM MARCH 7TH OF 2007
7 AND IT REFERENCES ENTERPRISE BANK UP HERE, CORRECT?

8 A. YES, SIR.

9 Q. WOULD YOU AGREE WITH ME THAT IF MY CLIENTS DID WORK
10 ON THAT PROPERTY THAT YOUR INSTITUTION, YOUR BANK, REAPED
11 THE BENEFITS OF THAT, CORRECT?

12 A. YES, SIR, I THINK WHATEVER THEY DID WAS THERE WHEN
13 WE TOOK THE PROPERTY, YES, SIR, OR GOT THE PROPERTY
14 HANDED TO US.

15 MR. BROUSSEAU: NOTHING FURTHER FROM THE
16 WITNESS, YOUR HONOR.

17 THE COURT: MR. BARNETT?

18 MR. BARNETT: THANK YOU, YOUR HONOR.

19 CROSS EXAMINATION

20 BY MR. BARNETT:

21 Q. I'VE HANDED YOU PLAINTIFFS' EXHIBIT NUMBER 3. IT'S
22 THAT E-MAIL WE LOOKED AT SOME THIS MORNING. ALL RIGHT,
23 MR. JOHNS, IN YOUR E-MAIL, AT THE TOP OF PLAINTIFFS' 3,
24 YOU SAY THAT THE DEED IS SHORT A FORTY (40) ACRE TRACT,
25 RIGHT?

- 1 A. YES, SIR.
- 2 Q. NOW THE DEED IN LIEU OF FORECLOSURE THAT MR.
- 3 BROUSSEAU JUST ASKED YOU ABOUT REFERENCES TWO PARCELS,
- 4 CORRECT? PARCEL 1 AND PARCEL 2, ISN'T THAT RIGHT?
- 5 A. IT'S GOT THREE ENTRIES. ONE OF THEM SAYS ONE, ONE
- 6 OF THEM SAYS TWO AND ONE OF THEM SAYS ONE AND TWO.
- 7 Q. ON SCHEDULE A ON THE DEED IN LIEU OF FORECLOSURE,
- 8 DOESN'T IT DESCRIBE TWO PARCELS, PARCEL 1 AND PARCEL 2?
- 9 A. YES, SIR. IT DOES ON THE BACK PAGE. I'M SORRY.
- 10 Q. ALL RIGHT. OF COURSE, THAT'S THE PROPERTY THAT'S
- 11 BEING DEEDED BACK, PARCEL 1 AND PARCEL 2.
- 12 A. THAT DOESN'T MATCH WHAT THEY TOLD ME I HAD.
- 13 Q. ALL RIGHT, SIR. YOU STATED YOU SHOULD HAVE GOTTEN
- 14 ANOTHER FORTY (40) ACRE TRACT?
- 15 A. YES, SIR.
- 16 Q. BUT ISN'T IT TRUE THAT THE ONLY MORTGAGES THAT THE
- 17 BANK HAD WERE ON PARCEL 1 AND PARCEL 2?
- 18 A. YES, SIR, BUT IT'S STILL NOT WHAT THEY TOLD ME I
- 19 HAD, WHAT THEY MORTGAGED.
- 20 Q. YOU'VE EXPLAINED IT IN YOUR TESTIMONY, BUT YOU AGREE
- 21 WITH ME ---
- 22 A. YES, SIR.
- 23 Q. --- THAT THE DEED IN LIEU CONVEYED TO THE BANK THE
- 24 ENTIRETY OF THE PROPERTY OVER WHICH IT HELD MORTGAGES?
- 25 A. I THINK AT THE END WHEN SOMEBODY FINALLY DETERMINED

1 WHAT WAS ON THE MORTGAGE, BUT IT WAS NOT WHAT WAS ON THE
2 NOTE OR WHAT THEY TOLD ME I HAD A MORTGAGE ON.

3 Q. IS IT YOUR TESTIMONY THAT THE NOTES -- THERE WERE
4 THREE NOTES, OF COURSE, ISN'T THAT CORRECT?

5 A. YES, SIR.

6 Q. THE NOTE MR. DUDLEY ASKED YOU ABOUT, THE THREE
7 MILLION (\$3,000,000.00) DOLLAR NOTE FROM 2005. AND THEN
8 THERE WAS A TWO MILLION (\$2,000,000.00) DOLLAR NOTE FROM
9 AUGUST OF 2006, ISN'T THAT CORRECT?

10 A. SAY THAT AGAIN.

11 Q. WASN'T THERE A TWO MILLION (\$2,000,000.00) DOLLAR
12 NOTE IN AUGUST OF 2006?

13 A. YOU SAID TWO MILLION (\$2,000,000.00)?

14 Q. YES, SIR.

15 A. YES, SIR.

16 Q. AND WASN'T THERE A FINAL FIVE HUNDRED THOUSAND
17 (\$500,000.00) DOLLAR NOTE IN THE MIDDLE OF DECEMBER OF
18 2006?

19 A. YES, SIR.

20 Q. OKAY. AND WE'VE ESTABLISHED NOW, I THINK, THAT THE
21 ONLY MORTGAGES THE BANK TOOK WERE ON THESE SAME TWO
22 PARCELS, FOR ALL THREE OF THOSE NOTES. YOU HAD TWO
23 MORTGAGES, ONE ON PARCEL ONE, ONE ON PARCEL TWO AND
24 YOU'RE TELLING THE COURT THAT SOMEWHERE IN THESE THREE
25 NOTES THERE WAS A MENTION OF ANOTHER PIECE OF PROPERTY?

1 A. NO, SIR. WE WERE SUPPOSED TO HAVE A MORTGAGE ON
2 SIXTY-FOUR (64) ACRES OF LAND.

3 Q. ALL RIGHT. HOW LONG HAVE YOU BEEN IN THE BANKING
4 BUSINESS?

5 A. I'VE DONE TOLD YOU A LONG TIME.

6 Q. ALL RIGHT. YOU KNOW HOW TO GET MORTGAGES ON
7 PROPERTY YOU LOAN MONEY ON, DON'T YOU?

8 A. YES, SIR. YOU ASK A LAWYER TO DO IT. HE DON'T
9 ALWAYS DO WHAT HE SAYS.

10 Q. OKAY. ALL RIGHT. IS IT THE LAWYER'S FAULT
11 SOMEWHERE THAT YOU DIDN'T GET ---

12 A. YES, SIR. I BELIEVE IT IS IN THIS CASE.

13 THE COURT: ALL RIGHT. THIS IS NOT
14 PARTICULARLY ENLIGHTENING TO THE COURT.

15 MR. BARNETT: ALL RIGHT, SIR. WE'LL MOVE ON.

16 Q. NOW IN YOUR E-MAIL, YOU'VE EXPLAINED WHAT YOU MEANT
17 BY THE FORTY (40) ACRE TRACT AND I APPRECIATE THAT. YOU
18 TOLD MR. CUTCHIN THAT YOU NEEDED A PRELIMINARY OWNER'S
19 TITLE POLICY OR A PRELIMINARY OPINION AND THAT'S WHAT YOU
20 JUST TOLD MR. BROUSSEAU, THAT'S SOMETHING YOU WOULD HAVE
21 LIKE TO HAVE GOTTEN, CORRECT?

22 A. AHEAD OF TIME, YES, SIR.

23 Q. OKAY. YOUR LAST SENTENCE, THOUGH, YOU SAY I GUESS
24 ALTERNATIVELY YOU COULD CHECK THE RECORD AND FILE THE
25 DEED IF NO LIENS ARE ON THE RECORD AND THEN ISSUE A

1 OWNER'S TITLE POLICY REFLECTING THE SAME. THAT WAS YOUR
2 FINAL MESSAGE TO MR. CUTCHIN, CORRECT?

3 A. YEAH. I HADN'T AGREED TO ONE YET, THOUGH, BUT I
4 MEAN IF HE WAS GOING TO FILE ONE ANYWAY I CERTAINLY
5 DIDN'T WANT ONE THAT HAD OTHER LIENS AND DEFECTS ON IT.

6 Q. OKAY.

7 MR. DUDLEY: I WOULD OBJECT TO THIS LINE OF
8 QUESTIONING. IT HAS NOTHING TO DO WITH THE MECHANIC'S
9 LIEN ACTION WE HAVE TODAY.

10 MR. BARNETT: YOUR HONOR, THERE'S BEEN AN
11 AWFUL LOT OF TESTIMONY FROM THIS WITNESS ABOUT THIS
12 PROPERTY BEING DUMPED ON THE BANK. I COULD ONLY ASSUME
13 THEY MUST THINK IT'S RELEVANT AND I THINK THE RECORD IS
14 CLEAR AND I'M TRYING ---

15 THE COURT: THE DEED IS ON RECORD, THE DEED
16 IN LIEU OF FORECLOSURE. WHY THEY DID IT OR WHO DID IT,
17 IT'S THERE AND IT'S BEEN THERE SINCE 2007. IT DESCRIBES
18 CERTAIN PARCELS IN THERE AND AS FAR AS I'M CONCERNED,
19 THAT'S WHAT WE ARE CONCERNED WITH. MOVE ON, SIR.

20 MR. BARNETT: YES, SIR. THANK YOU.

21 Q. MR. JOHNS, ONE LAST LINE OF QUESTIONS. WE'VE LOOKED
22 AT MR. MATHIAS' NOTES EARLIER AND I WON'T ASK YOU ABOUT
23 THOSE NOTES AGAIN, BUT I WANT TO ASK YOU A GENERAL
24 QUESTION THAT'S RELATED TO THE SUBSTANCE OF THOSE NOTES.
25 ISN'T IT TRUE THAT FOR AT LEAST A WEEK OR MAYBE MORE, YOU

1 TELL ME, BEFORE THE DEED IN LIEU, MR. MATHIAS, AT THE
2 BANK'S REQUEST, FOR THE BANK, WAS DOING THINGS LIKE
3 ASSEMBLING INFORMATION ABOUT HOW MUCH MONEY PENDLETON
4 STATION OWED CONTRACTORS AND SUPPLIERS?

5 A. NOT TO MY KNOWLEDGE.

6 Q. BUT IF HIS NOTES REFLECT OTHERWISE, WOULD YOU
7 DISAGREE WITH THEM?

8 A. HIS NOTES WILL HAVE TO STAND ON THEIR OWN. I CAN'T
9 TELL YOU ANYTHING ABOUT HIS NOTES OR THE ACCURACY
10 THEREOF.

11 Q. BUT YOUR TESTIMONY IS THAT YOU DON'T REMEMBER HIM
12 REPORTING ANY OF THIS INFORMATION TO YOU?

13 A. IF HE WAS DOING IT, HE CERTAINLY WASN'T DOING IT AT
14 THE REQUEST OF THE BANK. I MEAN, AT THAT POINT I DIDN'T
15 CARE. I THOUGHT THE BANK WASN'T GOING TO END UP WITH IT.

16 Q. SO THAT'S YOUR TESTIMONY?

17 A. YES, SIR. ABSOLUTELY.

18 Q. THANK YOU. THAT'S ALL.

19 THE COURT: ALL RIGHT, MR. LAVERY?

20 MR. LAVERY: NO QUESTIONS, YOUR HONOR.

21 THE COURT: ALL RIGHT. ANY REDIRECT?

22 MR. DUDLEY: VERY BRIEF.

23 REDIRECT EXAMINATION

24 BY MR. DUDLEY:

25 Q. IN THIS EXHIBIT 8, NO, EXHIBIT 12, THE TITLE POLICY,

1 AND I DON'T MEAN TO -- IN THE BANKING BUSINESS YOU GET A
2 TITLE BINDER, DON'T YOU?

3 A. YES, SIR. WE SHOULD GET A PRELIMINARY ONE AHEAD OF
4 DOING ANY KIND OF DEED OR MORTGAGE.

5 Q. NOT A FAX?

6 A. NO, SIR. I MEAN, ---

7 Q. DID YOU EVER GET A TITLE INSURANCE BINDER FOR THIS
8 PROPERTY?

9 A. NO, SIR.

10 Q. DID YOU LEARN LATER THAT IN FACT NO PREMIUM WAS EVER
11 DONE AND THIS WAS NEVER SUBMITTED SO THAT COULD BECOME A
12 POLICY?

13 A. YES, SIR.

14 Q. DID YOU MAKE A CLAIM AGAINST MR. CUTCHIN ABOUT THAT?

15 A. YES, SIR.

16 Q. ALL RIGHT. YOU RESOLVED THAT ISSUE WITH HIM?

17 A. YES, SIR.

18 Q. THANK YOU. THAT'S ALL I HAVE.

19 THE COURT: ALL RIGHT. ANY FURTHER
20 QUESTIONS OF THE WITNESS?

21 MR. BROUSSEAU: NO FOLLOW UP.

22 MR. BARNETT: NOTHING, YOUR HONOR.

23 THE COURT: MR. JOHNS, THANK YOU AGAIN.

24 WATCH YOUR STEP.

25 MR. DUDLEY: THE BANK CALLS CHARLIE

1 KERNAGHAN.

2 THE COURT: GOOD AFTERNOON. MR. KERNAGHAN,
3 YOU'VE PREVIOUSLY BEEN SWORN AND YOU REMAIN UNDER OATH.

4 CHARLES KERNAGHAN, DEFENDANT ENTERPRISE BANK'S
5 WITNESS:

6 DIRECT EXAMINATION

7 BY MR. DUDLEY:

8 Q. CHARLIE, A LOT OF WHAT -- I'M NOT GOING TO REHASH
9 WHAT I'VE GOT IN HERE. I'M GOING TO CONDENSE THIS DOWN,
10 ALL RIGHT?

11 A. OKAY.

12 Q. DID YOU MAKE ANY REPRESENTATIONS TO MILLER, MOORHEAD
13 AND CRAFT PRIOR TO THE DEED IN LIEU OF FORECLOSURE BEING
14 FILED, ABOUT THE BANK WAS GOING TO PAY THEM OR SOMETHING
15 LIKE THAT?

16 A. NO.

17 Q. WHEN DID YOU FIRST BECOME AWARE THE BANK WAS
18 INVOLVED IN THE PROJECT?

19 A. THE MORNING MR. DANIEL CALLED ME AND TOLD ME HE HAD
20 DEEDED IT.

21 Q. ALL RIGHT. DID HE ENCOURAGE YOU TO WORK FOR THE
22 BANK?

23 A. HE TOLD ME I WAS GOING TO WORK FOR THE BANK. HE
24 SAID THEY HAVE GIVEN YOU A POSITION AND HE WANTED ME TO
25 DO IT BECAUSE IN THIRTY (30) DAYS HE'D BE TAKING BACK

1 OVER.

2 Q. ALL RIGHT. AND YOU HIRED MILLER TO DO CLEANUP WORK
3 AND Y'ALL PAID HIM DIRECTLY?

4 A. ABSOLUTELY.

5 Q. ALL RIGHT. NOW I WANT TO ASK YOU ABOUT -- MR.
6 BROUSSEAU ASKED YOU IF YOU HAD ANY COMPLAINTS ABOUT
7 MOORHEAD AND MILLER'S WORK ON THE PROJECT. WERE THERE
8 ANY PROBLEMS WITH MR. CRAFT'S WORK ON THE PROJECT?

9 A. THERE WERE PROBLEMS WITH THE SEWER LINES. WHEN WE
10 WENT TO DO A AIR TEST ON ALL THE SEWER LINES AFTER APEX
11 HAD COME IN AND WE HAD A NEW GC ON SITE, WE COULDN'T GET
12 ANY AIR TESTS ON THEM AND WE HAD TO DIG THEM ALL BACK UP
13 ON -- THERE'S NINETEEN (19) BUILDINGS, SORRY, THERE'S
14 EIGHTEEN (18) BUILDINGS AND WE HAD TO DIG UP THREE (3) OR
15 FOUR (4) OF THE BUILDING'S WORK AND THEN THEY HAD
16 IMPROPER SADDLES ON THEM. I'M NOT A SEWER EXPERT, BUT
17 THAT'S WHAT I WAS TOLD BY THE COMPANY AND BY THE COUNTY,
18 OR THE CITY MANAGER THAT CAME AND LOOKED AT IT, SO WE HAD
19 TO REDO ALL OF THAT AND PUT IT BACK TOGETHER.

20 Q. WHEN APEX WAS INVOLVED WHAT WAS YOUR JOB FOR THE
21 BANK IN DEALING WITH APEX?

22 A. WELL, BASICALLY, I WORKED HAND IN HAND WITH APEX AND
23 THEN ALSO CHUCK PETERSON WHO WAS THEIR MAN ON THE SITE.

24 Q. FOR APEX?

25 A. FOR APEX, I'M SORRY. YES. HE AND I WOULD REVIEW

1 PAY REQUESTS AND STUFF AND ALSO MAKE SURE THE WORK WAS
2 PERFORMED THAT WE WERE CONTRACTING OUT BECAUSE WE HAD TO
3 KIND OF GO BACK AND START OVER. WE USED A LOT OF THE
4 SAME CONTRACTORS, BUT, YOU KNOW ---

5 Q. A LOT OF THE SAME CONTRACTORS THAT Y'ALL HAD USED
6 FOR PENDLETON STATION?

7 A. YES.

8 Q. ALL RIGHT. TURN TO TAB 11 OF THE NOTEBOOK. WHILE
9 YOU ARE TURNING THERE WAS ONE OF YOUR ROLES TO REVIEW THE
10 PAY REQUESTS AND THE BILLS OF THE SUBCONTRACTORS? THE
11 BANK WAS PAYING THEM, THE SUBS, DIRECTLY, RIGHT?

12 A. THAT'S CORRECT.

13 Q. APEX WAS THE CONSTRUCTION MANAGER?

14 A. THAT'S CORRECT. THE BANK WAS WRITING THE CHECKS.

15 Q. OKAY. CAN YOU IDENTIFY WHAT THE COLLECTION OF
16 EXHIBITS ARE UNDER TAB 11?

17 A. THIS IS PAY REQUESTS AND CHECKS TO UPSTATE UTILITIES
18 TO FINISH THE FORCE MAIN AND AIR TESTS ON THE SEWER
19 LINES, I BELIEVE, BUT FOR SURE THE FORCE MAIN.

20 Q. ANY REPAIR WORK? WAS THERE ANY REPAIR WORK A PART
21 OF THIS, WHAT YOU JUST DISCUSSED?

22 A. YES. THERE WAS REPAIR WORK. WE HAD TO GO PURCHASE
23 MATERIALS AND THAT'S IN THE ACCOMPANYING DOCUMENTS.

24 Q. EXHIBIT 11 IS THE COST TO REPAIR THE WORK THAT CRAFT
25 DID THAT YOU TALKED ABOUT?

1 A. YES, SIR. WELL, THIS IS JUST THE FORCE MAIN. THIS
2 WASN'T EVERYTHING.

3 Q. ALL RIGHT.

4 A. JUST TO FIX THE FORCE MAIN ---

5 Q. ALL RIGHT.

6 A. --- THAT WAS NOT INSTALLED PROPERLY ACCORDING TO THE
7 PEOPLE THAT CAME AND INSPECTED IT.

8 Q. WAS THE FORCE MAIN INSTALLED AND HOOKED UP BY BILLY
9 CRAFT?

10 A. THE FORCE MAIN WAS ONLY INSTALLED PARTIALLY. IT WAS
11 NOT HOOKED UP.

12 Q. ALL RIGHT. AND A PERCENTAGE, HOW MUCH WAS IT HOOKED
13 UP?

14 A. SEVENTY (70) PERCENT.

15 Q. OKAY. ALL RIGHT. WHEN WAS THAT DONE?

16 A. IT WAS DONE AFTER -- OH, GOSH, IT WAS PROBABLY FALL
17 OF '07, MAYBE EARLY '08.

18 Q. BY SOMEBODY ELSE?

19 A. YEAH. JULIAN LANGSTON, J. L. CONSTRUCTION, CAME IN
20 AND DID THE PUMP STATION AND HAD TO HOOK IT ALL UP
21 BECAUSE, LIKE BILLY SAID, HE COULDN'T TIE IT IN BECAUSE
22 HE DIDN'T HAVE AN AIR TEST ON IT BECAUSE HE HADN'T
23 FINISHED THE REST OF IT.

24 Q. YOU HEARD MR. CRAFT SAY THAT HE INSTALLED THE FORCE
25 MAIN AND SIX (6) INCH DIT. YOU WERE ON SITE IN MARCH.

1 DID THAT HAPPEN?

2 A. IN MARCH?

3 Q. MARCH OF '07.

4 A. THAT I DON'T -- I DON'T REMEMBER ANYBODY, I DON'T
5 REMEMBER BILLY'S GUYS BEING OUT THERE DOING THE FORCE
6 MAIN. I KNOW HE DID INSTALL THE FORCE MAIN ON THE
7 OPPOSITE SIDE ON LEBANON ROAD.

8 Q. WHEN?

9 A. BUT I DON'T KNOW THE DATES. BUT I DON'T REMEMBER IT
10 BEING IN MARCH BECAUSE NOBODY WAS WORKING THEN. WE WOULD
11 HAVE A FENCE UP. I DON'T KNOW WHY THEY WOULD HAVE BEEN
12 WORKING OUTSIDE THE FENCE.

13 Q. CAN YOU GIVE ME A SEASON OR MONTH WHEN HE DID THIS
14 WORK? THE LAST TIME YOU SAW CRAFT ON THE PROJECT.

15 A. THE LAST TIME I SAW HIM WORKING ON THE SEWERS WAS
16 THE SPRING ---

17 Q. OF WHAT?

18 A. I'M SORRY. IN THE FALL OF '06 PROBABLY. AND THEN
19 HE DID THE WATER LINE. HE CAME OUT AND PUT SOME METERS
20 IN MAYBE EARLY WINTER OF '07 THAT I REMEMBER, BUT, I --
21 YOU KNOW.

22 Q. OKAY. ALL RIGHT. CAN YOU TURN TO EXHIBIT 10? CAN
23 YOU IDENTIFY WHAT THAT COLLECTION OF BILLS ARE FOR? APEX
24 NOT ONLY WAS DOING INFRASTRUCTURE BUT ALSO DOING THE
25 TOWNHOUSES?

1 A. THAT'S CORRECT. THESE ARE TO KENNEBROOK CONCRETE.
2 THEY HAULED IN ALL THE STONE THAT WE NEEDED TO FINISH THE
3 ROADS.

4 Q. ROCK PAVING?

5 A. FOR ROCK PAVING AND GRADING. ROCK PAVING AND
6 GRADING IS WHO ACTUALLY FINISHED THE CURBING AND
7 INSTALLED ALL THE ROADS.

8 Q. EXHIBIT 10, HOW MUCH WAS THAT FOR FINISHING THE
9 INFRASTRUCTURE? DO YOU REMEMBER WHAT THAT NUMBER WAS?

10 A. I WANT TO SAY IT WAS LIKE A HUNDRED AND SOMETHING
11 THOUSAND (\$100,000.00+) DOLLARS.

12 Q. DO YOU WANT TO LOOK THROUGH THAT AGAIN?

13 A. I'D HAVE TO ADD THEM UP, TOM. I USED TO KNOW IT OFF
14 OF THE TOP OF MY HEAD, SORRY.

15 Q. IF YOU HOLD ON ONE SECOND. I THINK THAT'S ALL THE
16 QUESTIONS THAT I HAVE.

17 MR. DUDLEY: THANK YOU. THAT'S ALL I HAVE,
18 YOUR HONOR.

19 THE COURT: MR. BROUSSEAU?

20 MR. BROUSSEAU: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION

22 BY MR. BROUSSEAU:

23 Q. DO I NEED TO WAIT? I DON'T KNOW IF YOU WERE STILL
24 ANSWERING HIS LAST QUESTION.

25 A. NO, NO. I WAS THINKING THAT WE HAD PAID FIFTY-FOUR

1 THOUSAND (\$54,000.00) FOR FINISHING ONE AREA AND I
2 COULDN'T REMEMBER THE OTHER.

3 Q. OKAY. I DIDN'T WANT TO MESS YOUR TRAIN OF THOUGHT
4 UP ON WHAT YOU WERE DOING, MR. KERNAGHAN.

5 A. YOU DIDN'T.

6 Q. MR. KERNAGHAN, IN REGARDS TO THE SEWER AND WHAT YOU
7 TESTIFIED AS BEING REPAIR WORK, I WANT TO DRAW YOUR
8 ATTENTION TO TAB NUMBER 11. THERE'S A NUMBER OF
9 DIFFERENT INVOICES HERE. IT LOOKS LIKE THEY START IN
10 MARCH OF '08, SOMEWHERE AROUND THERE. SO WE'RE TALKING
11 ABOUT A YEAR AFTER THE BANK TOOK OVER THE PROJECT?

12 A. THAT'S CORRECT.

13 Q. ALL RIGHT. HAD ANYBODY DONE ANY KIND OF WORK ON THE
14 SEWER LINE BETWEEN MARCH OF '07 AND MARCH OF '08?

15 A. NOBODY WORKED ON THE SEWER LINE FOR A LONG TIME, NO.

16 Q. ALL RIGHT. DO YOU HAVE ANY EXPERIENCE AS TO HOW
17 THAT AFFECTS THAT KIND OF WORK IF IT'S JUST SITTING IDLE
18 AND NOT BEING TESTED AND NOT BEING ---

19 A. NO, BUT ALL THE BUILDINGS TESTED PROPERLY THAT HAD
20 THE RIGHT HOOKUPS AND THE ONES THAT DIDN'T, DIDN'T, SO
21 WHEN WE DUG THEM UP THE INSPECTOR SAID THEY WOULD NOT
22 HAVE (UNCLEAR) IN THE GROUND IN THE FIRST PLACE SO WE HAD
23 TO CUT THEM ALL OUT ANYWAY AND THE ONES THAT DIDN'T HAVE
24 THOSE SADDLES TESTED PROPERLY AND DIDN'T HAVE AN ISSUE AT
25 ALL.

1 Q. SO THIS COULD HAVE BEEN A RESULT OF BASICALLY THE
2 WORK NOT BEING COMPLETED, CORRECT?

3 A. IT WAS FIFTEEN (15) FEET IN THE GROUND. I GUESS IT
4 COULD HAVE BEEN. THEY BURIED IT UNDER THE ROAD. WE HAD
5 TO DIG UP THE WHOLE ROAD AND EVERYTHING. IT COULD HAVE
6 BEEN INCOMPLETE.

7 Q. AND YOU WENT ON TO TESTIFY AS TO ALL THE INVOICES
8 REGARDING GRADING AND STUFF LIKE THAT. THAT WAS DONE A
9 YEAR LATER AS WELL, CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND THAT WASN'T REPAIR WORK AT ALL, CORRECT?

12 A. THAT'S CORRECT.

13 Q. THAT WAS JUST MONIES IN ORDER TO FINISH WHATEVER
14 WORK IT WAS --

15 A. RIGHT. THE SOILS AND STUFF OUT THERE, WE --
16 EVERYTHING THAT MIKE HAD DONE, YOU KNOW, IN THAT YEAR,
17 LIKE YOU SAID, HAD ERODED OR WHATEVER OR WAS ALREADY
18 ERODING BEFORE -- I MEAN, WHEN THE BANK TOOK OVER WE
19 ALREADY HAD -- WE HAD ALREADY TALKED TO KEVIN ABOUT
20 HAVING TO REPLACE THE ENTIRE CURBING BECAUSE NO ONE HAD
21 BEEN WORKING AND ALL THE WATER HAD BEEN WASHING UNDER IT
22 AND STUFF SO WE WERE GOING TO HAVE TO RIP EVERYTHING OUT,
23 WHICH WE DID. WE PRETTY MUCH RIPPED MOST OF THE CURBING
24 THEY HAD PUT IN OUT, YOU KNOW.

25 Q. IT CERTAINLY WASN'T THE FAULT OF ANY OF MY CLIENTS,

1 CORRECT?

2 A. NO. I DIDN'T SAY THAT.

3 Q. YOU WERE TESTIFYING AS TO THE BEST THAT YOU CAN
4 RECALL WHEN MR. CRAFT WAS OUT THERE WORKING AND I THINK
5 YOU PREVIOUSLY TESTIFIED -- WHEN DID THE FENCE GO UP?
6 THE FENCE WENT UP ABOUT A WEEK OR TWO AFTER THE BANK TOOK
7 OVER?

8 A. THAT'S WHAT I WAS TRYING TO REMEMBER EXACTLY. I
9 KNOW THERE IS AN INVOICE SOMEWHERE THAT WOULD TELL US
10 THAT OR GIVE US A BETTER IDEA. AGAIN, IT WAS PRETTY
11 QUICK BECAUSE THERE WAS SOME CONCERN ABOUT SAFETY,
12 SOMEBODY GETTING IN, FALLING, GETTING HURT, YOU KNOW, WE
13 HAD EXPOSED REBAR AND WE HAD OTHER ISSUES THAT WE HAD TO
14 --WHICH WE DID. WE WERE MAINTAINING THOSE THE BEST WE
15 COULD BUT AT THE SAME TIME, WITH SUCH A BIG SITE AND
16 NOBODY WORKING OUT THERE AT ALL WE PUT THE FENCE UP. SO
17 PROBABLY, IT WAS WITHIN A WEEK OR TWO I WOULD THINK.

18 Q. OKAY.

19 A. VERY SOON.

20 Q. BUT IT WASN'T UP ON MARCH 6TH OF 2007, JUST A DAY OR
21 TWO AFTER THE BANK ACCEPTED THE DEED IN LIEU OF
22 FORECLOSURE, CORRECT?

23 A. THAT'S CORRECT.

24 Q. HOW MUCH DEALING DID YOU HAVE WITH BILLY, MIKE AND
25 KEVIN WHEN YOU WERE INVOLVED ON THE PROJECT? OBVIOUSLY,

1 YOU HAD BEEN INVOLVED SINCE '05 OR SOMETHING LIKE THAT.

2 A. YES. PROBABLY BILLY, JUST A HANDFUL OF TIMES, I
3 MEAN, BUT WE DID COMMUNICATE. USUALLY IF I NEEDED --
4 BILLY WAS DOING ALL THE WATER FOR SANDY SPRINGS SO I
5 DIDN'T HAVE TO DO ANYTHING WITH THAT. WHAT KEVIN SAID
6 EARLIER, THE BUILDINGS GOING UP BEFORE THE ROADS, IT WAS
7 COMPLETELY INSANE. I AGREE WITH HIM. SO MY
8 CONVERSATIONS WITH KEVIN WERE USUALLY INVOLVING THE FACT
9 THAT ONE COMPANY WAS IN THE OTHER COMPANY'S WAY AND I
10 HAVE NO ISSUE WITH HIS ARGUMENT ON THAT. BUT MIKE I
11 PROBABLY SAW THE MOST OUT OF THE THREE OF THEM. I'D SEE
12 KEVIN MORE LIKE AT FOOTBALL GAMES AND STUFF LIKE THAT AND
13 WE'D TALK AND HE'D COME BY TO MEET WHEN I'D E-MAIL HIM OR
14 CALL HIM OR SOMETHING.

15 Q. AND IN YOUR DEALINGS, WITH YOUR MULTIPLE DEALINGS
16 WITH THEM, DID THEY EVER STRIKE YOU AS DISHONEST OR NOT
17 CREDIBLE PEOPLE?

18 A. NO.

19 Q. SO YOU HAVE NO REASON TO DOUBT THAT IF THEY SAID
20 THEY WERE OUT THERE ON MARCH 6TH OF 2007, YOU DON'T HAVE
21 ANY REASON TO DOUBT THAT, CORRECT?

22 A. I DON'T HAVE ANY REASON -- MY ONLY THING IS NOBODY
23 WAS WORKING THEN. I MEAN, IF THEY CAME OUT AND LOOKED AT
24 IT, I KNOW THEY COULD HAVE, BUT I DON'T REMEMBER ANYBODY
25 WORKING BECAUSE THE DAY THE DEED IN LIEU WAS FILED AND

1 BEN DANIEL CALLED ME WE ONLY HAD MORALES CONCRETE
2 WORKING. THEY WERE THE ONLY GROUP THAT WOULD EVEN WORK
3 BECAUSE WE HADN'T PAID ANYBODY IN SO LONG AND THEY DIDN'T
4 COME THE NEXT DAY BECAUSE I TOLD THEM TO GO HOME. SO,
5 YOU KNOW, ALL WE DID WAS DRIVE THOUGH THE SITE IN THE
6 MORNING TO MAKE SURE -- AND DRIVE THOUGH THE SITE IN THE
7 AFTERNOON TO MAKE SURE NOBODY WAS THERE. WE WEREN'T OUT
8 THERE BECAUSE WE WERE AT THE OFFICE TRYING TO GO THROUGH
9 ALL THE BILLS TO SEE WHAT WE NEEDED TO DO.

10 Q. AND DO YOU RECALL DHEC GETTING ON EVERYBODY ABOUT
11 THAT POND?

12 A. THERE'S NEVER ONCE BEEN ANYBODY FROM DHEC OUT THERE.
13 NO, I KNOW THAT MIKE AND THEM DID BUT I NEVER PERSONALLY
14 EVER DID.

15 Q. OKAY. AND SO YOU RECALL MIKE AND THEM MEETING WITH
16 DHEC OUT THERE AT SOME STAGE?

17 A. YEAH. EARLY ON I KNOW THAT THEY HAD HAD SOME ISSUE
18 AND MIKE DID TELL THE STORY ABOUT THE DHEC GUY
19 THREATENING THEM SO I KNOW HE WOULD ALWAYS TELL THAT HE
20 WAS WORRIED ABOUT THEM BUT DHEC NEVER CAME WHEN -- IN THE
21 LAST, SAY FOUR OR FIVE MONTHS FOR SURE, EVER ON SITE THAT
22 I KNOW. IF THEY CAME AND INSPECTED OR SOMETHING I NEVER
23 WAS NOTIFIED.

24 Q. AND OBVIOUSLY THE BANK REAPED THE BENEFIT OF THE
25 WORK THAT MY CLIENTS DID IN THIS MATTER, CORRECT?

1 A. PARTIALLY. I MEAN, WE HAD TO REDO A LOT OF IT.

2 Q. BUT IT HAD BEEN DONE?

3 A. OH, YEAH.

4 Q. OBVIOUSLY, REDOING IT WAS A CHOICE OF THE BANK, IS
5 THAT NOT CORRECT?

6 A. THAT'S TRUE.

7 Q. AND IN FACT, THE PROJECT WAS SIGNIFICANTLY CHANGED,
8 WAS IT NOT? IS THAT HOW IT WENT?

9 A. HOW DO YOU MEAN?

10 Q. IT LOOKED LIKE ONE THING BACK IN MARCH OF '07,
11 CORRECT? HOW MUCH DID IT CHANGE AFTER THAT?

12 A. WELL, I MEAN, ACTUALLY AESTHETICALLY AND STUFF WE
13 HAD TO KEEP ALL THE COLOR SCHEMES AND STUFF THE SAME
14 BECAUSE THE CITY REQUIRED US TO. AS FAR AS ROADS, WATER,
15 SEWER, THEY ALL -- THE SAME AMOUNT OF UNITS ARE IN. YOU
16 KNOW, WE DIDN'T HAVE TO CHANGE ANY OF THOSE SORT OF
17 THINGS.

18 Q. SO MAINLY THE ONLY CHANGES WERE BECAUSE OF THE TIME
19 THAT PASSED BETWEEN ---

20 A. YES.

21 Q. OKAY.

22 MR. BROUSSEAU: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: MR. BARNETT?

24 MR. BARNETT: YES, YOUR HONOR. THANK YOU.

25 CROSS EXAMINATION

1 BY MR. BARNETT:

2 Q. TURN TO THE EXHIBIT UP THERE THAT LOOKS LIKE THAT,
3 MR. KERNAGHAN. IT'S THE ONLY HANDWRITTEN ONE, I BELIEVE.

4 THE COURT: WELL, YOU'LL HAVE TO COME UP AND
5 SHOW IT TO HIM. I DON'T THINK HE CAN SEE IT BACK THERE.

6 MR. BARNETT: I BEG YOUR PARDON. SORRY.

7 Q. IT'S NUMBER 2.

8 A. OKAY.

9 Q. MR. KERNAGHAN, THESE ARE NOTES THAT MR. MATHIAS
10 TESTIFIED WERE HIS NOTES THAT HE MADE AT THESE DATES THAT
11 ARE WRITTEN IN THE CORNER. HAVE YOU EVER SEEN THESE
12 BEFORE?

13 A. PROBABLY SOMEONE SHOWED THEM TO ME AT ONE TIME.
14 MAYBE. I DON'T EVEN KNOW.

15 Q. OKAY. I WOULD SUGGEST TO YOU AND I CAN SHOW YOU
16 WHERE IT IS, BUT MR. MATHIAS MENTIONS IN HERE SPEAKING TO
17 YOU.

18 A. OKAY.

19 Q. OKAY. ON THE THIRD PAGE IN THAT'S YOUR NAME RIGHT
20 THERE AT 10:30 AM FEBRUARY 28, CHARLIE KERNAGHAN.

21 A. OKAY.

22 Q. DO YOU REMEMBER TALKING TO MR. MATHIAS IN THE FINAL
23 DAYS OF FEBRUARY, 2007 ABOUT THE PENDLETON STATION
24 PROJECT?

25 A. NO, BUT I MEAN I COULD HAVE.

1 Q. OKAY.

2 A. I MEAN, I DO REMEMBER HIM CALLING AND TALKING AT
3 SOME POINT.

4 Q. OKAY. SO YOU DO REMEMBER THAT HE CALLED YOU AND YOU
5 TALKED?

6 A. YEAH, BUT I WAS THINKING IT WAS AFTER BEN HAD CALLED
7 BUT, OKAY.

8 Q. DO YOU HAVE ANY REASON TO DOUBT THE VERACITY OF HIS
9 NOTES?

10 A. NO.

11 Q. OKAY. SO YOU ARE NOT SURE ABOUT, OF YOUR OWN
12 KNOWLEDGE, IF I'M UNDERSTANDING YOUR TESTIMONY, YOU'RE
13 NOT SURE ABOUT THE TIME BUT YOU DO REMEMBER HAVING THESE
14 CONVERSATIONS?

15 A. YEAH. I MEAN, HE TOUCHED BASE WITH ME ABOUT
16 BALLPARK, WHAT WAS LEFT TO FINISH AND WHAT WERE THE
17 SUBCONTRACTORS OWED.

18 Q. SO HE DID ASK YOU WHAT THE SUBCONTRACTORS WERE OWED?

19 A. YEAH. WE KIND OF BROKE DOWN THE VERTICAL
20 CONSTRUCTION SUBCONTRACTORS.

21 Q. I COULDN'T QUITE HEAR YOU.

22 A. I BROKE DOWN THE -- I JUST KIND OF GAVE HIM A
23 BALLPARK. I MEAN, I DIDN'T HAVE EVERYTHING SO I JUST
24 GAVE HIM A RUNDOWN OF THE VERTICAL BECAUSE AT THE TIME WE
25 STILL HAD TO DEAL WITH KEVIN AND THEM SO I DIDN'T KNOW

1 HOW ALL THAT WAS HAPPENING.

2 Q. OKAY. ON THE SECOND PAGE IN MR. MATHIAS HAS A
3 NUMBER ONE POINT EIGHT "M" PAYABLES DUE SINCE FIRST WEEK
4 OF JAN, THAT'S JANUARY, I ASSUME. DOES THAT NUMBER SOUND
5 LIKE WHAT YOU MIGHT HAVE TOLD HIM WAS DUE?

6 A. IT CERTAINLY WASN'T FAR OFF.

7 Q. OKAY. THAT'S THE ANSWER TO MY QUESTION. DO YOU
8 REMEMBER IF MR. MATHIAS ---

9 A. BUT THAT SAYS BROOKS CALLED.

10 Q. I'M SORRY?

11 A. THAT'S TALKING ABOUT BROOKS CALLED. BROOKS HAD
12 CALLED ME FOR SURE AND ASKED ME WHAT WAS OWED, I KNOW,
13 BEFORE THE DEED IN LIEU SO IT SAYS BROOKS CALLED AT 9:15
14 SO MAYBE HE GOT THAT FROM BROOKS BECAUSE I WOULD HAVE
15 PROBABLY TOLD BROOKS BECAUSE I THOUGHT HE WAS AN OWNER.

16 Q. OKAY. AND YOU'RE TALKING ABOUT BROOKS HARVEY?

17 A. BROOKS HARVEY, I'M SORRY.

18 Q. AND BROOKS HARVEY WAS MR. DANIEL'S PARTNER?

19 A. YES.

20 Q. OKAY. NOW DO YOU REMEMBER IF MR. MATHIAS TOLD YOU
21 WHY HE WAS ASKING YOU ALL THESE QUESTIONS?

22 A. I MEAN, HE TOLD ME THAT THERE WAS CONCERN THAT THEY
23 WEREN'T GOING TO -- WHEN I REMEMBER TALKING TO HIM WAS
24 AFTER THE DEED IN LIEU AND THAT THEY WERE GOING TO HAVE
25 TO COME UP THERE AND FINISH, OR NOT FINISH, SORRY, THEY

1 WERE GOING TO COME UP THERE AND PAY BECAUSE BEN WAS
2 COMING BACK TO FINISH BUT HE WAS TRYING TO SECURE A LOAN
3 TO TAKE OUT THE BANK AND THE BANK ONLY WANTED TO PAY WHAT
4 WAS DUE ON THE NOTES THAT THEY HAD, I GUESS.

5 Q. ALL RIGHT, THANK YOU, SIR.

6 THE COURT: ALL RIGHT. MR. LAVERY?

7 MR. LAVERY: NOTHING, YOUR HONOR.

8 THE COURT: ALL RIGHT. MR. DUDLEY?

9 MR. DUDLEY: NO, SIR.

10 THE COURT: THANK YOU. MR. BROUSSEAU, ANY
11 OTHER QUESTIONS?

12 MR. BROUSSEAU: NONE FROM ME, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU, MR.

14 KERNAGHAN.

15 MR. DUDLEY: THAT'S ALL. THAT'S THE BANK'S
16 CASE.

17 THE COURT: THANK YOU. ANY REPLY TESTIMONY?

18 MR. BROUSSEAU: YOUR HONOR, I WOULD LIKE TO PUT
19 BILLY CRAFT UP REAL QUICK TO ADDRESS THE REPAIR WORK ON
20 THE PROJECT.

21 THE COURT: HAS HE NOT TESTIFIED TO THAT?

22 MR. BROUSSEAU: WHAT'S THAT, YOUR HONOR?

23 THE COURT: HAS HE NOT TESTIFIED TO THAT?

24 MR. BROUSSEAU: ON THE REPAIR WORK, THEY RAISED
25 IT. MR. KERNAGHAN RAISED THAT THEY HAD TO DO SOME REPAIR

1 WORK ON THE SEWER LINE. I MEAN, IT WOULD JUST BE REAL
2 BRIEF. IT'S ONLY GOING TO BE ABOUT TWO OR THREE
3 QUESTIONS TO HAVE MR. CRAFT ADDRESS THAT.

4 THE COURT: TWO OR THREE QUESTIONS?

5 MR. BROUSSEAU: YOU CAN HOLD ME TO IT.

6 THE COURT: ALL RIGHT. YOU CAN CALL MR.
7 CRAFT BRIEFLY. GOOD AFTERNOON, MR. CRAFT. YOU HAVE
8 PREVIOUSLY BEEN SWORN. YOU REMAIN UNDER OATH.

9 WILLIAM CRAFT, PLAINTIFFS' WITNESS, SWORN:

10 DIRECT EXAMINATION

11 BY MR. BROUSSEAU:

12 Q. MR. CRAFT, YOU JUST HEARD MR. KERNAGHAN TESTIFY AS
13 TO SOME ALLEGED REPAIR WORK THAT HAD TO BE DONE OUT THERE
14 AT THE PROJECT. FIRST OF ALL, DID YOU GET ANY NOTICE
15 ABOUT THAT REPAIR WORK?

16 A. NO, I DIDN'T.

17 Q. OKAY. AND WHAT, IN YOUR OPINION, -- BASED UPON WHAT
18 HE TESTIFIED TO, WHAT, IN YOUR OPINION, OCCURRED?

19 A. I DON'T KNOW BUT WE DID THE PRESSURE TEST ON THE
20 SEWER LINE. THE ENGINEERS HAD A REPRESENTATIVE OUT THERE
21 AND THAT PASSED AND NOW THEY ARE SAYING THAT THEY TRIED
22 TO TEST IT AND IT WOULDN'T PASS AND IT HAD BEEN A YEAR
23 SINCE IT HAD BEEN IN THE GROUND SO UNDOUBTEDLY SOMEBODY
24 ELSE HAD DAMAGED IT.

25 Q. ALL RIGHT.

1 MR. BROUSSEAU: THAT'S IT, YOUR HONOR.

2 THE COURT: ALL RIGHT. ANY QUESTIONS?

3 MR. DUDLEY: NO, SIR.

4 MR. BARNETT: NOTHING, YOUR HONOR.

5 THE COURT: THANK YOU, MR. CRAFT. THAT'S
6 ALL.

7 MR. BARNETT: YOUR HONOR, I HAD INTENDED TO
8 ASK MR. MATHIAS SOME QUESTIONS, BUT I DON'T NEED TO DO
9 THAT IN LIGHT OF MR. KERNAGHAN'S TESTIMONY.

10 THE COURT: ALL RIGHT.

11 MR. LAVERY: NO QUESTIONS, YOUR HONOR.

12 THE COURT: ALL RIGHT. AS I STATED EARLIER
13 THIS MORNING, EACH SIDE HAD EXCELLENT ATTORNEYS, ALL THE
14 PARTIES, WHICH I APPRECIATE.

15 NOW, MR. BROUSSEAU, I WANT YOU TO GIVE ME A
16 SHORT SUMMARY OF WHAT YOUR CLIENTS ARE SEEKING. I'M
17 GOING TO START WITH MOORHEAD.

18 MR. BROUSSEAU: YES, SIR, YOUR HONOR.

19 THE COURT: AND I'M LOOKING PRIMARILY AT
20 THIS SUMMARY OF DAMAGES THAT WAS SUBMITTED.

21 MR. BROUSSEAU: YES, SIR.

22 THE COURT: I'M NOT GOING THROUGH THE
23 NOTEBOOK AGAIN AT THIS TIME.

24 MR. BROUSSEAU: YES, SIR.

25 THE COURT: ALL RIGHT.

1 MR. BROUSSEAU: IN REGARDS TO MR. MOORHEAD'S
2 CLAIM, YOUR HONOR, AS ON THAT SUMMARY OF DAMAGES, HE IS
3 REQUESTING HIS RETAINAGE WHICH IS OBVIOUSLY UNPAID WORK,
4 TEN (10) PERCENT OF UNPAID WORK, THAT HE HAD PREVIOUSLY
5 DONE AS HIS OWN. THAT DOES NOT INCLUDE MILLER AND CRAFT,
6 OBVIOUSLY. HE IS SEEKING HIS LOST HOME OVERHEAD.

7 THE COURT: ALL RIGHT.

8 MR. BROUSSEAU: YES, SIR.

9 THE COURT: HOW WOULD THAT BE RECOVERABLE
10 UNDER A MECHANIC'S LIEN? I HAVE NO DOUBT HE MAY HAVE
11 LOST SOME MONEY DURING THIS PROJECT BECAUSE HE WASN'T
12 PAID ON TIME, ET CETERA, BUT NOW TELL ME HOW LOST HOME
13 OFFICE OVERHEAD FITS UNDER A MECHANIC'S LIEN CLAIM.

14 MR. BROUSSEAU: YOUR HONOR, I WOULD AGREE THAT
15 IT'S DEFINITELY A STRETCH.

16 THE COURT: PARDON? A STRETCH?

17 MR. BROUSSEAU: A STRETCH, YES, SIR. AND
18 CERTAINLY, YOU KNOW, THE ARGUMENT IS THAT OBVIOUSLY HE
19 HAD QUITE A BIT OF ---

20 THE COURT: OVERHEAD.

21 MR. BROUSSEAU: YES, SIR. AND ---

22 THE COURT: I DON'T DOUBT THAT.

23 MR. BROUSSEAU: AND HE LOST THAT AS A RESULT OF
24 THE WORK THAT WAS NOT PAID FOR IN THIS MATTER.

25 THE COURT: ALL RIGHT. THANK YOU. NOW YOU

1 HAVE DOWN HERE ADDITIONAL DAMAGES, A BREACH OF CONTRACT
2 CLAIM AS TO PENDLETON STATION, LLC. HAVE I HEARD
3 ANYTHING ABOUT THAT?

4 MR. BROUSSEAU: YES, YOUR HONOR. HE TESTIFIED
5 BRIEFLY ABOUT THAT. OBVIOUSLY, WE PUT IN THE CONTRACT
6 THEY HAD WITH THAT. HIS LOST PROFITS, WHICH WOULD BE THE
7 TOTAL CONTRACT PRICE, MINUS WHAT HIS COSTS WOULD BE,
8 UNDER THAT. THAT WAS HIS LOST PROFITS.

9 THE COURT: ALL RIGHT. WHAT DOES PENDLETON
10 STATION SAY ABOUT THAT?

11 MR. BARNETT: AS TO THE BREACH OF CONTRACT,
12 YOUR HONOR?

13 THE COURT: YES, SIR.

14 MR. BARNETT: PENDLETON STATION DOES NOT
15 DISPUTE THAT THESE GENTLEMEN ARE OWED THE SUMS THAT THEY
16 CLAIM.

17 THE COURT: ALL RIGHT. THEY ARE ASKING FOR
18 ADDITIONAL DAMAGES FOR BREACH OF CONTRACT AGAINST
19 PENDLETON STATION OF THREE HUNDRED AND FOURTEEN THOUSAND
20 (\$314,000.00) DOLLARS. YOU DON'T DISPUTE THAT?

21 MR. BARNETT: I DISPUTE THAT THERE WAS A
22 BREACH OF CONTRACT. I'D STATE THAT THEY LOST PROFIT. I
23 THINK THAT WOULD NOT BE A BREACH OF A CONTRACT.
24 PENDLETON STATION WAS FORCED TO LOSE THE PROPERTY AND
25 THEY LOST THE ABILITY TO CONTINUE.

1 THE COURT: ALL RIGHT.

2 MR. BARNETT: BUT AS TO THE SUMS, WE DON'T
3 DISPUTE THAT.

4 THE COURT: ALL RIGHT. THANK YOU. NOW, MR.
5 BROUSSEAU, TELL ME ABOUT MILLER. TELL ME BRIEFLY ABOUT
6 YOUR MILLER CLAIM.

7 MR. BROUSSEAU: CERTAINLY, YOUR HONOR. MILLER
8 IS ACTUALLY PRETTY STRAIGHTFORWARD. OBVIOUSLY, WE HAVE
9 THE RETAINAGE FOR EACH AND EVERY SINGLE INVOICE THAT WAS
10 RETAINED. YOU KNOW, IT'S TEN (10) PERCENT THAT WAS
11 RETAINED ON PRIOR INVOICES AND THAT'S PRETTY
12 STRAIGHTFORWARD AND OBVIOUSLY WE ATTACHED THE CHECKS THAT
13 SHOW THE RETAINAGE ON THERE.

14 THE COURT: OKAY.

15 MR. BROUSSEAU: AND THEN, OF COURSE, WE ALSO
16 HAVE THE UNPAID INVOICES WHICH ARE THESE THREE INVOICES
17 HERE.

18 THE COURT: ALL RIGHT. UNDER ALL THESE, AS
19 I UNDERSTAND THE STATUTE, YOU WOULD BE ENTITLED, IF YOU
20 RECOVER ANYTHING, TO SOME PREJUDGMENT INTEREST.

21 MR. BROUSSEAU: YES, SIR.

22 THE COURT: I DON'T THINK THERE'S ANY DOUBT
23 ABOUT THAT. ALL RIGHT. NOW I'M GOING TO GO TO CRAFT.
24 HE'S A LITTLE PROBLEMATICAL.

25 MR. BROUSSEAU: YES, SIR. I KNOW MR. CRAFT HAD

1 TROUBLE ON THE STAND. THE MAIN THING IS TO LOOK -- AND
2 THE REASON WHY THIS WAS PUT TOGETHER IS DURING HIS
3 DEPOSITION THERE WAS QUITE A BIT OF CONFUSION IN REGARDS
4 TO SOME OF THESE INVOICES AND THE DATES THAT WERE ON
5 THERE.

6 THE COURT: ALL RIGHT.

7 MR. BROUSSEAU: AND SO THE PURPOSE OF THE
8 ATTACHMENT THAT WE PUT TO THIS SUMMARY WAS TO SHOW THIS
9 FIRST PAY ESTIMATE WHERE HE WAS THEN PAID UNDER THAT PAY
10 ESTIMATE AND THEN TO SHOW WHAT HAD HAPPENED WAS IS
11 PREVIOUSLY THERE WAS SOME CONFUSION BECAUSE OF THE SAME
12 PAY ESTIMATE NUMBER OUT THERE, A PAY ESTIMATE NUMBER
13 FOUR. AND SO REALISTICALLY THE DAMAGES ON MR. CRAFT ARE
14 THE INVOICES THAT FOLLOW THE CHECKS WRITTEN AND SIGNED BY
15 KEVIN MOORHEAD WHICH IS THE FORTY-SIX, SIX NINETY-NINE
16 (\$46,699.00) AND THEN THE THIRTY-THREE THOUSAND, SIX
17 HUNDRED AND FORTY-FOUR (\$33,644.00). THAT WAS FOR WORK
18 HE DID MUCH LATER IN THE PROJECT WHEN, I GUESS, A LOT OF
19 PEOPLE WEREN'T GETTING PAID.

20 THE COURT: OKAY. THAT'S SORT OF WHERE YOU
21 GET SOME EIGHTY THOUSAND (\$80,000.00) DOLLARS?

22 MR. BROUSSEAU: YES, SIR.

23 THE COURT: AND THEN YOU HAVE THE
24 PREJUDGMENT INTEREST. DO ANY OF THE ATTORNEYS ON THIS
25 SIDE OF THE ROOM HAVE ANY COMMENTS ON THESE REQUESTED

1 DAMAGES BY THE CONTRACTORS?

2 MR. BARNETT: NOT FROM PENDLETON STATION, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR
5 FROM YOU, MR. DUDLEY, ON THE OVERALL CLAIMS. NOW YOU'VE
6 MADE ARGUMENTS ABOUT FAILURE TO FILE ON TIME. YOU MADE
7 SEVERAL IN YOUR MOTION FOR A DIRECTED VERDICT. WHAT
8 WOULD BE -- GIVE ME A LITTLE SHORT STATEMENT OF YOUR
9 CLIENT'S POSITION. AND WHEN I SAY YOUR CLIENT,
10 PRIMARILY, OF COURSE, FORTUNATELY OR UNFORTUNATELY,
11 ENTERPRISE BANK.

12 MR. DUDLEY: WELL, YOUR HONOR, MY CLIENT
13 COMES IN AND GETS THE DEED IN LIEU OF FORECLOSURE AND
14 THEN HAS THESE MECHANIC'S LIENS FILED. SO WHAT WE HAVE
15 TO LOOK AT, BECAUSE WE'RE NOT THE GENERAL CONTRACTOR AND
16 WE'RE NOT THE OWNER THAT DEALT WITH THESE PEOPLE, AND SO
17 WE GO BACK AND WE LOOK AND SAY WERE THESE LIENS TIMELY OR
18 NOT. I THINK WHAT THE EVIDENCE SHOWS, THE DOCUMENTARY
19 EVIDENCE SHOWS, THE CROSS EXAMINATION SHOWS, THESE GUYS
20 STOPPED WORKING IN THE FALL OF '07 (SIC) AND I THINK,
21 BASED ON THE DOCUMENTS EVEN AFTER THAT THAT IT IS NOT
22 CREDIBLE THAT THEY GRATUITOUSLY WENT BACK IN MARCH OF '07
23 BECAUSE THEY STOPPED IN THE FALL OF '06, SORRY.

24 THE COURT: YES.

25 MR. DUDLEY: FALL OF '06. AND SO I THINK THE

1 TIMELINESS ISSUE IS WHETHER OR NOT YOU BELIEVE, BASED ON
2 THE DOCUMENTARY EVIDENCE AND THEIR DEPOSITION TESTIMONY I
3 CROSS EXAMINED THEM ON, IS TO WHETHER OR NOT THEY TIMELY
4 FILED THEIR LIENS. THAT'S THE TIMELINESS OF LIEN ISSUE.

5 THE COURT: RIGHT.

6 MR. DUDLEY: NOW THE ONLY OTHER ISSUE HAS TO
7 DO WITH THE MECHANIC'S LIEN OF MOORHEAD AND HOW THAT
8 IMPACTS MILLER AND CRAFT. DID YOU WANT ME TO GO THERE
9 AND ADDRESS THAT ISSUE, SIR?

10 THE COURT: THAT WILL BE FINE.

11 MR. DUDLEY: YES, SIR. AND I THINK THE CASE
12 LAW IS CLEAR, THE STATUTE IS CLEAR, IS THAT THE LIEN
13 RIGHTS OF THE SUBS ARE ONLY AS GOOD AS THE GENERAL AND
14 THE ONLY TESTIMONY HAS BEEN IS THAT THE RETAINAGE,
15 BECAUSE OF THE CONTRACT, THE RETAINAGE THAT MILLER AND
16 CRAFT WERE OWED IS OWED BY MOORHEAD. THAT THAT'S NOT --
17 THAT'S WHERE THAT GOES, IS THAT MOORHEAD OWES THEM THAT
18 RETAINAGE, THAT IS NOT RETAINAGE THAT THE OWNER OF
19 PENDLETON STATION OWED MOORHEAD OR OWED MILLER AND CRAFT.
20 AND SO MILLER AND CRAFT'S MECHANIC'S LIENS ARE LIMITED TO
21 WHAT DEBT IS OWED BY THE OWNER OF PENDLETON STATION TO
22 THE CONTRACTOR MOORHEAD IF THEY ARE TIMELY AND THAT'S THE
23 THIRTY-THREE THOUSAND (\$33,000.00) OR THIRTY-TWO THOUSAND
24 (\$32,000.00) DOLLARS. I THINK THAT'S THE BEST THEY COULD
25 DO ON THAT. AND I WILL AGREE THAT IF IT'S TIMELY,

1 RETAINAGE IS LABOR AND MATERIALS. THE OTHER TWO ARE NOT.
2 SO THAT'S THE CONTRACTUAL ISSUE BETWEEN MILLER AND CRAFT
3 AND THEIR RETAINAGE. THAT'S NOT ON TOP OF IT BECAUSE
4 THEY DIDN'T HAVE A CONTRACT. SO THE MAXIMUM RECOVERABLE
5 ON THE LIEN I THINK IS THE THIRTY-TWO THOUSAND
6 (\$32,000.00) DOLLARS AND THEN THAT HAS TO BE SPLIT
7 BETWEEN MILLER AND MOORHEAD AND CRAFT BECAUSE THAT'S THE
8 LABOR AND MATERIALS.

9 THE COURT: ALL RIGHT.

10 MR. DUDLEY: THANK YOU, SIR.

11 THE COURT: DOES THE MECHANIC'S LIEN STATUTE
12 NOT PROVIDE FOR REMEDIES TO SUBCONTRACTORS, AS WELL AS
13 SOMEONE OR AN ENTITY THAT HAS A CONTRACT, THE PRIMARY
14 CONTRACT I'LL SAY? DOES IT NOT PROVIDE FOR THOSE CLAIMS
15 OF SUBCONTRACTORS WHICH WERE NOT PAID?

16 MR. DUDLEY: WELL, YOU'VE GOT 29-5-10 FOR
17 CONTRACTS. YOU HAD A CONTRACT WITH THE OWNER AND YOU
18 HAVE 29-5-20 THAT ALLOWS SOMEONE THAT DOESN'T HAVE IT.

19 THE COURT: RIGHT.

20 MR. DUDLEY: BUT EVEN IF YOU LOOK AT 29-5-40
21 IT SAYS NOTHING HEREIN SHALL INCREASE THE AMOUNT THAT IS
22 DUE BY THE OWNER TO MORE THAN WHAT IS OWED BY THE
23 CONTRACTOR AND THAT IS THE STOUDEMIRE CASE. IT'S VERY
24 LIMITING ON THAT AND SO WHAT A SUBCONTRACTOR HAS TO DO IS
25 GET A LIEN BEFORE ---

1 THE COURT: ALL RIGHT. NOW WHEN YOU REFER
2 TO OWNER, YOU ARE REFERRING TO PENDLETON STATION?

3 MR. DUDLEY: YES, SIR.

4 THE COURT: AT THE TIME THESE LIENS WERE
5 FILED IT WOULD SEEM TO ME ENTERPRISE THEN BECAME THE
6 OWNER.

7 MR. DUDLEY: YES, SIR.

8 THE COURT: AND IF SO, WOULD THEY NOT REAP
9 THE BENEFIT AS WELL AS THE LIABILITY THAT THE OWNER HAD?

10 MR. DUDLEY: NO, SIR, BECAUSE THE WORK WAS
11 PERFORMED PRIOR TO THEM BECOMING THE OWNER AND ALSO, THE
12 LIENS WERE FILED -- THAT THE WHOLE IDEA IS STILL IT GOES
13 THROUGH, IT HAS TO GO THROUGH MOORHEAD.

14 THE COURT: ALL RIGHT.

15 MR. DUDLEY: AND SO I THINK THAT'S THE
16 CRITICAL ISSUE IS THE LIENS HAVE TO GO THROUGH MOORHEAD
17 AND AFTER THE LIENS WERE FILED THE OWNER DID NOT GO AND
18 PAY MOORHEAD MONEY. THAT'S THE WHOLE IDEA OF -- THAT IF
19 THE OWNER HAD PAID MOORHEAD AND THEN THE OWNER COULD ASK
20 FOR THEM TO GO AND PAY THE SUBCONTRACTORS, TOO, ONCE THEY
21 HAD NOTICE. THE SUBCONTRACTOR GIVES THE OWNER NOTICE AND
22 THAT SAYS, OWNER, DON'T GO AND PAY THE GENERAL CONTRACTOR
23 ANY MORE MONEY. IT'S UNDISPUTED ENTERPRISE BANK NEVER
24 PAID OR ADVANCED ANY MONEY TO MOORHEAD SO THAT WOULDN'T
25 APPLY TO THEM.

1 THE COURT: ALL RIGHT. ANYTHING FURTHER ---

2 MR. DUDLEY: NO, SIR, EXCEPT FOR ---

3 THE COURT: --- ON THIS POINT?

4 MR. DUDLEY: NO, SIR.

5 THE COURT: ALL RIGHT, THANK YOU.

6 MR. DUDLEY: THANK YOU, SIR.

7 THE COURT: MR. BROUSSEAU, UNDER THE
8 MOORHEAD CONSTRUCTION CLAIMS, YOU SAY THIS DOES NOT
9 INCLUDE AMOUNTS OWED TO MILLER AND CRAFT BY VIRTUE OF
10 SUBCONTRACTORS?

11 MR. BROUSSEAU: THE LIEN DOES AND MOORHEAD DOES
12 OWE THEM THAT. WHAT I TRIED TO DO -- WE DIDN'T WANT IT
13 TO APPEAR WHEN WE WERE DOING THESE SUMMARIES AS THOUGH WE
14 WERE DOUBLE DIPPING. THE RETAINAGE RIGHT HERE, THAT
15 THIRTY-TWO THOUSAND (\$32,000.00) DOLLARS, IS WHAT IS OWED
16 TO MOORHEAD AS RETAINAGE. OBVIOUSLY, MR. MOORHEAD ALSO
17 OWES MR. CRAFT AND MILLER. HE OWES MILLER A HUNDRED AND
18 ELEVEN THOUSAND (\$111,000.00) AND ALSO OWES CRAFT EIGHTY-
19 FIVE THOUSAND (\$85,000.00). SO THOSE AMOUNTS WERE
20 INCLUDED IN THE LIEN THAT WAS FILED ORIGINALLY BY
21 MOORHEAD. I THINK THERE IS SOME CONFUSION ABOUT MILLER
22 AND CRAFT'S LIEN RIGHTS WERE ONLY AS GOOD AS WHAT
23 MOORHEAD'S IS BECAUSE HE FILED, INCLUDING WHAT HE OWED
24 TO THEM IN HIS LIEN AS WELL.

25 THE COURT: SUPPOSE HIS RECOVERY IS NOT

1 SUFFICIENT?

2 MR. BROUSSEAU: EXCUSE ME, YOUR HONOR?

3 THE COURT: SUPPOSE MOORHEAD'S RECOVERY IS
4 NOT SUFFICIENT TO PAY THE CLAIMS OF THE SUBCONTRACTORS.

5 MR. BROUSSEAU: WELL, THAT WAS PART OF THE
6 REASON WHY WE FILED THESE AS THREE SEPARATE CASES. I
7 MEAN, REALLY OUT OF AN ABUNDANCE OF CAUTION, QUITE
8 FRANKLY. BUT WE CERTAINLY, DURING THE TESTIMONY AND
9 DURING THE TRIAL, WE DIDN'T WANT IT TO APPEAR -- THAT'S
10 WHY WE KIND OF TRIED TO SEPARATE THE DAMAGES OF ALL
11 THREE, OBVIOUSLY WITH THE UNDERSTANDING THAT MOORHEAD WAS
12 THE GENERAL CONTRACTOR AND MOORHEAD'S DAMAGES INCLUDE
13 MILLER AND CRAFT.

14 THE COURT: AS I MENTIONED EARLIER, HERE'S
15 MY PROBLEM WITH MOORHEAD'S DAMAGES. I MENTIONED THIS
16 LOST HOME OFFICE OVERHEAD. THAT'S A HUNDRED AND NINETY-
17 FOUR THOUSAND (\$194,000.00) DOLLARS. IF I DON'T ALLOW
18 THAT, HIS RECOVERY IS GOING TO BE DOWN TO SOME HUNDRED
19 AND SIXTY-SEVEN THOUSAND (\$167,000.00). OF COURSE, HE'S
20 GOT THIS BREACH OF CONTRACT CLAIM OF PENDLETON STATION.
21 EVEN IF I GRANTED THAT, I DOUBT VERY SERIOUSLY THAT WOULD
22 BE COLLECTIBLE.

23 MR. BROUSSEAU: YES, SIR. WE UNDERSTAND THE
24 BREACH OF CONTRACT CLAIM IS UNCOLLECTIBLE. WE UNDERSTAND
25 THAT AND THAT'S WHY THERE REALLY WASN'T A WHOLE LOT OF

1 TESTIMONY.

2 THE COURT: I TOLD YOU MECHANIC'S LIEN CASES
3 WERE HARD TO TRY ---

4 MR. BROUSSEAU: YES, SIR.

5 THE COURT: AND DIFFICULT TO DECIDE. I'LL
6 GIVE YOU A LITTLE BACKGROUND. I HOLD COURT IN OCONEE
7 COUNTY EVERY WEDNESDAY AND I HAVE DONE THAT FOR SOME
8 TWENTY (20) YEARS OR MORE BUT MY COURT REPORTER AND I --
9 SHE HAS TO GO AND TAKE THE MATTERS THAT ARISE IN OCONEE
10 COUNTY. ANYWAY, RATHER THAN GETTING ON CLEMSON BOULEVARD
11 THERE'S A BACK WAY WHICH TAKES US UP TOWARD PENDLETON AND
12 WE WENT BY THIS PROJECT EVERY WEEK FROM THE TIME THEY
13 STARTED UNTIL TODAY WHERE NOW THEY'VE GOT PRETTY RED
14 ROOFS AND A GRAND ENTRANCE AND YOU WOULDN'T RECOGNIZE IT
15 BECAUSE WE SAW IT WHEN IT FIRST STARTED AND IT LOOKED
16 LIKE THERE WERE SOME TYPE OF CEMENT BLOCKS OR SOMETHING
17 THERE AND THEN ALL OF A SUDDEN EVERYTHING SORT OF
18 STOPPED. IT DID SIT THERE FOR QUITE A WHILE AND I OFTEN
19 WONDERED WHAT WAS GOING TO HAPPEN, IF ANYTHING. NOW I
20 UNDERSTAND THAT PART OF THE PROBLEM WAS THAT IT WAS BUILT
21 PROBABLY ORIGINALLY TO TRY TO RENT TO CLEMSON STUDENTS OR
22 TRI-COUNTY TECH OR OTHERS AND ORIGINALLY, AND I DON'T
23 KNOW, THIS IS SORT OF HEARSAY BUT THE TOWN OF PENDLETON
24 APPROVED THAT THEN THE TOWN CHANGED THE RULES AND SAID
25 THEY COULDN'T HAVE MORE THAN ONE FAMILY LIVING THERE. I

1 DON'T KNOW WHETHER IT'S TRUE OR NOT. ANYWAY, WHETHER OR
2 NOT THAT HAD ANY AFFECT ON IT I DO NOT KNOW.

3 ALL RIGHT, HERE'S WHAT I THINK. NOW ON THE
4 CONTRACTOR, THERE'S NO QUESTION A MAJORITY OF THE WORK
5 WAS DONE IN 2006. THEY DID TESTIFY, AND I DON'T HAVE
6 ANYTHING REALLY TO DISPUTE THAT EXCEPT SOME QUESTIONS
7 WERE RAISED ABOUT IT, THAT THEY WENT BACK THERE SOMETIME
8 IN MARCH OF 2007 AND DID A LITTLE MORE WORK. AS I SAID
9 EARLIER, THEY SAID THEY DID THAT AND I HAVE NO REASON TO
10 DOUBT THEIR TESTIMONY AT THIS TIME, OTHER THAN THE GATES
11 WERE LOCKED FOR A WHILE. NOW I ABSOLUTELY DON'T RECALL
12 WHAT PERIOD OF TIME THAT WAS BUT THEY WERE LOCKED FOR A
13 WHILE. ANYWAY, THAT'S WHAT THEY SAID. IF SO, THEY
14 REVIVED THEIR MECHANIC'S LIEN AND IF THAT'S SO THEY WERE
15 FILED TIMELY.

16 NOW I'M GOING TO START WITH MOORHEAD. HIS
17 CLAIM OF THIRTY-TWO THOUSAND (\$32,000.00) DOLLARS IS
18 FINE. I THINK THE CLAIM FOR THE BOND PREMIUM, I THINK
19 THAT'S ALLOWABLE. I DO NOT THINK HOME OFFICE OVERHEAD IS
20 ALLOWABLE. I'M DEDUCTING THAT HUNDRED AND NINETY-FOUR
21 THOUSAND, FOUR HUNDRED (\$194,400.00) DOLLARS FROM HIS
22 TOTAL CLAIM OF THREE SIXTY-ONE, NINE-TEN (\$361,910.00)
23 AND GOING TO GET SOME HUNDRED AND SIXTY-SEVEN THOUSAND,
24 FIVE HUNDRED (\$167,500.00) DOLLARS.

25 NOW I'M ALSO GOING TO ALLOW THESE

1 SUBCONTRACTORS TO RECOVER. THE MILLER CLAIM, THAT'S THE
2 ONLY REALLY SORT OF CLEAN ONE I'VE SEEN. HE'S GOT
3 RETAINAGE AND UNPAID INVOICES AND THERE WASN'T TOO MUCH
4 CROSS EXAMINATION ABOUT MR. MILLER'S CLAIM, A HUNDRED AND
5 FIFTY-FOUR THOUSAND, FORTY DOLLARS AND TWO CENTS
6 (\$154,040.02). I'M GOING TO APPROVE THAT.

7 MR. CRAFT'S IS PROBLEMATICAL AND THE ONLY THING
8 I'M GOING TO ALLOW ON THIS FIRST PAGE UNDER HIS SUMMARY
9 OF DAMAGES, IT'S THE FIRST PAGE OF EXHIBIT 21. HE SHOWS
10 SOME TYPE OF INVOICE THAT GOES FROM 9-26-2005 TO FEBRUARY
11 27, 2006 AND THERE'S ANOTHER DATE HERE -- THE OTHER CLAIM
12 THAT HE REFERRED TO WAS AFTER THIS CHECK WAS GIVEN AND
13 THOSE CLAIMS WERE MADE, ACCORDING TO THIS, FEBRUARY 28,
14 2007. ONE OF THEM WAS MADE IN JANUARY, I BELIEVE IT WAS.
15 YES, JANUARY 24, 2007. I HAVE A LITTLE DIFFICULTY
16 RECONCILING BOTH OF THESE CLAIMS FILED SO CLOSELY
17 TOGETHER. I'M GOING BACK TO SORT OF A ROUND NUMBER. I'M
18 GOING TO ALLOW MR. CRAFT SEVENTY THOUSAND (\$70,000.00)
19 DOLLARS. I JUST DON'T THINK I HAVE ENOUGH TO GO ON. I
20 DO THINK HE'S ENTITLED TO BE PAID.

21 I DON'T THINK ANY OF THESE CONTRACTORS WERE
22 PAID FOR WHAT THEY DID.

23 THE PREJUDGMENT INTEREST IS GOING TO HAVE TO BE
24 RECOMPUTED ON HERE. THE PREJUDGMENT INTEREST ON MR.
25 MOORHEAD'S WILL HAVE TO BE RECOMPUTED. AS I SAID, MR.

1 MILLER'S CLAIM IS CLEAN AND I MAKE NO CHANGES TO IT.

2 NOW I'M NOT GOING TO TAKE THE TIME TODAY TO GO
3 INTO THE QUESTION OF WHAT ATTORNEY FEES, IF ANY, MIGHT BE
4 AWARDED.

5 NOW I'M GOING TO REQUEST MR. DUDLEY AND MR.
6 HOLDER AND MR. BROUSSEAU AND ANY OTHER ATTORNEYS
7 INTERESTED, I WANT TO SET UP ANOTHER RATHER PROMPT
8 HEARING AT WHICH TIME I'M GOING TO HAVE TO TAKE INTO
9 ACCOUNT THE FACTORS PERTAINING TO ATTORNEY FEES, AS I
10 MENTIONED THIS MORNING AND THAT DEPENDS ON SEVERAL
11 FACTORS.

12 WELL, I DON'T KNOW WHETHER I SHOULD DO AN ORDER
13 WITHOUT SETTING FEES OR NOT BECAUSE THAT WOULD JUST
14 REQUIRE A SUPPLEMENTAL ORDER. I WANT TO SET A HEARING
15 RATHER PROMPTLY WITH THE ATTORNEYS ON THE QUESTION OF
16 FEES, IF ANY, TO BE AWARDED. I'LL EXPECT Y'ALL TO
17 CONTACT MY COURT COORDINATOR AND SET THAT UP. NOW I
18 WOULD SUGGEST THAT YOU WOULD TRY DO IT -- WELL, WE'RE
19 GETTING INTO THE HOLIDAYS AND I KNOW EVERYONE HAS PLANS.

20 I'LL MAKE ONE MORE COMMENT. MR. JOHNS WAS
21 PROBABLY PRETTY ACCURATE AND CANDID, AS I THINK ALL THE
22 WITNESSES WERE, ABOUT THE QUESTION ABOUT THIS DEED IN
23 LIEU OF FORECLOSURE. IT WAS PREPARED BY THIS LAWYER
24 CUTCHIN AND I'VE SEEN HIS NAME HERE AND THERE. AS Y'ALL
25 KNOW WE'VE GOT ANOTHER CASE DEALING WITH FORECLOSURES. I

1 THINK MR. PENZA IS STILL MAKING A CLAIM TO FORECLOSE
2 CERTAIN PROPERTY HE HAD AN INTEREST IN. THAT HASN'T BEEN
3 DECIDED EXCEPT I THINK I EXCLUDED ONE OF THE TRACTS HE
4 CLAIMED ON SOME MOTION. ANYWAY, I SAY THAT BECAUSE SOME
5 OF THESE LIENS, EVEN IF GRANTED, MAY BE SUBJECT TO THE
6 OUTCOME OF PENZA'S CLAIM AS TO A MORTGAGE ON THE
7 PROPERTY.

8 ALL RIGHT, BACK TO THE DEED IN LIEU OF
9 FORECLOSURE. I'M SORT OF LIKE MR. JOHNS IN THAT I DON'T
10 UNDERSTAND EXACTLY WHY IT WAS DONE BUT ON THE OTHER HAND,
11 I THINK THE BANK, IF THEY DIDN'T WANT IT, DIDN'T KNOW
12 ABOUT IT, THEY SHOULD HAVE TAKEN STEPS TO HAVE THAT DEED
13 SET ASIDE. THEN THE BANK, IT WOULD REINSTATE THEIR
14 MORTGAGE. AS THESE LAWYERS WILL TELL YOU, IF YOU TAKE A
15 DEED IN LIEU OF FORECLOSURE YOUR SECURITY INTEREST MERGES
16 BECAUSE NOW YOU'VE GOT TITLE AND YOUR MORTGAGE SORT OF
17 MERGES INTO THAT AND IT'S A BIG QUESTION WHETHER OR NOT
18 THE BANK WOULD LOSE IT'S SECURITY BUT THIS IS ALL
19 HINDSIGHT, AS MR. JOHNS PROPERLY POINTED OUT.

20 WELL, I WON'T GO INTO WHAT IF, BUT ANYWAY --
21 AGAIN I WANT TO THANK THE ATTORNEYS AND THE PARTIES.
22 YOU'VE DONE A GOOD JOB PRESENTING THIS CASE TO THE COURT.
23 I'M SURE THERE WILL BE SOME FUTURE HEARINGS, PARTICULARLY
24 ON THE QUESTION OF FEES. TO DO THAT, I'LL NEED TO KNOW
25 WHO DID WHAT AND ET CETERA.

1 THANK YOU, GENTLEMEN.

2 MR. BROUSSEAU: THANK YOU, YOUR HONOR.

3 MR. DUDLEY: THANK YOU, YOUR HONOR.

4 THE COURT: MAKE SURE THE COURT REPORTER HAS
5 ALL OF THE EXHIBITS BEFORE YOU LEAVE. THANK YOU.

6

7 END OF HEARING.

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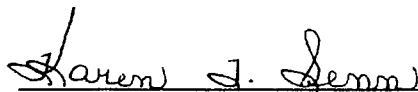
25

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF ANDERSON)

3 C E R T I F I C A T E

4 I, KAREN T. SENN, CERTIFIED COURT REPORTER FOR THE
5 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
6 FOREGOING PAGES CONSTITUTE A TRUE, ACCURATE AND COMPLETE
7 TRANSCRIPT OF THE HEARING HELD BEFORE THE HONORABLE ELLIS
8 B. DREW, JR., MASTER IN EQUITY FOR THE TENTH JUDICIAL
9 CIRCUIT ON DECEMBER 8, 2011 IN DOCKET NUMBERS 2007-CP-04-
10 2785, MOORHEAD CONSTRUCTION, INC. V PENDLETON STATION,
11 LLC, ET AL; 2007-CP-04-2786, MILLER CONSTRUCTION COMPANY,
12 LLC V PENDLETON STATION, LLC, ET AL; AND 2007-CP-04-2784,
13 CRAFT CONSTRUCTION CO., INC. OF STARR V PENDLETON
14 STATION, LLC, ET AL.

15 
16 _____

17 ANDERSON, SC

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

CRAFT CONSTRUCTION COMPANY, INC.)
OF STARR,)

PLAINTIFF,)

VS)

2007-CP-04-2784

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA, DIANA L.)
ZELLNER, TRUSTEE FOR THE DIANA L.)
ZELLNER REVOCABLE TRUST UAD, ANGELO)
PENZA, BOBBY BRYANT, URSULA LESSER,)
ROGER ROWE AND BENJAMIN L. DANIEL,)
SR.,)
DEFENDANTS.)

MOORHEAD CONSTRUCTION, INC.,)

PLAINTIFF,)

VS)

2007-CP-04-2785

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA, DIANA L.)
ZELLNER, TRUSTEE FOR THE DIANA L.)
ZELLNER REVOCABLE TRUST UAD, ANGELO)
PENZA, BOBBY BRYANT, URSULA LESSER,)
ROGER ROWE AND BENJAMIN L. DANIEL,)
SR.,)
DEFENDANTS.)

1/24/12
Heaving

MILLER CONSTRUCTION COMPANY, INC.	)	
	)	
PLAINTIFF,	)	
	)	
VS	)	2007-CP-04-2786
	)	
PENDLETON STATION, LLC, ENTERPRISE	)	
BANK OF SOUTH CAROLINA, DIANA L.	)	
ZELLNER, TRUSTEE FOR THE DIANA L.	)	
ZELLNER REVOCABLE TRUST UAD, ANGELO	)	
PENZA, BOBBY BRYANT, URSULA LESSER,	)	
ROGER ROWE AND BENJAMIN L. DANIEL,	)	
SR.,	)	
	)	
DEFENDANTS.	)	

TRANSCRIPT OF TESTIMONY

BEFORE THE HONORABLE ELLIS B. DREW, JR., MASTER IN
EQUITY FOR THE TENTH JUDICIAL CIRCUIT AT THE ANDERSON
COUNTY COURTHOUSE, ANDERSON, SC ON JANUARY 24, 2012.

APPEARANCES

FOR PLAINTIFFS CRAFT CONSTRUCTION,
MOORHEAD CONSTRUCTION AND MILLER
CONSTRUCTION:

DAVID J. BROUSSEAU
MCINTOSH SHERARD
SULLIVAN & BROUSSEAU
PO BOX 197
ANDERSON, SC 29622
864-225-0001 (O)
864-225-0004 (F)

FOR DEFENDANT PENDLETON
STATION, LLC AND BENJAMIN
L. DANIEL, SR.:

STANLEY E. BARNETT
SMITH BUNDY BYBEE &
BARNETT, PC
PO BOX 1542
MT. PLEASANT, SC
29465-1542
843-881-1542

APPEARANCES (CONT'D)

FOR DEFENDANT ENTERPRISE BANK
OF SOUTH CAROLINA:

THOMAS E. DUDLEY, III
M. STOKELY HOLDER
KENISON DUDLEY &
CRAWFORD, LLC
704 E. MCBEE AVENUE
GREENVILLE, SC 29601
864-242-4899 (O)
864-242-4844 (F)

COURT REPORTER:

KAREN T. SENN
CIRCUIT COURT REPORTER
406 DOVE TREE LANE
ANDERSON, SC 29621
864-226-8170 (H)
864-260-4052 (O)

I N D E XWITNESSES:DIRECT CROSS REDIRECT RECROSS

NONE

EXHIBITSFOR PLAINTIFFS:IN EVD.

NONE

FOR DEFENDANTS:

NONE

1 THE COURT: THIS IS ANOTHER HEARING BEING
2 HELD IN REGARD TO THREE CASES. THE PLAINTIFFS ARE CRAFT
3 CONSTRUCTION COMPANY, INC. OF STARR, MOORHEAD
4 CONSTRUCTION, INC. AND MILLER CONSTRUCTION COMPANY. THE
5 DEFENDANTS IN ALL THREE CASES ARE PENDLETON STATION, LLC,
6 ENTERPRISE BANK OF SOUTH CAROLINA, AND VARIOUS OTHERS.

7 I WANT THE ATTORNEYS TO STATE THEIR NAME FOR
8 THE RECORD AND WHO THEY ARE REPRESENTING IN THESE
9 MATTERS.

10 MR. BROUSSEAU: THANK YOU, YOUR HONOR. DAVID
11 BROUSSEAU OF MCINTOSH, SHERARD, SULLIVAN AND BROUSSEAU
12 HERE IN ANDERSON AND I'M REPRESENTING MILLER
13 CONSTRUCTION, MOORHEAD CONSTRUCTION AND CRAFT
14 CONSTRUCTION.

15 THE COURT: THANK YOU.

16 MR. HOLDER: YOUR HONOR, STOKELY HOLDER,
17 ALONG WITH TOM DUDLEY, OF KENISON DUDLEY AND CRAWFORD ON
18 BEHALF OF THE DEFENDANT ENTERPRISE BANK OF SOUTH
19 CAROLINA.

20 THE COURT: THANK YOU.

21 MR. BARNETT: YOUR HONOR, I'M STAN BARNETT AND
22 I REPRESENT PENDLETON STATION.

23 THE COURT: I'M SORRY?

24 MR. BARNETT: I REPRESENT PENDLETON STATION.

25 THE COURT: YOUR NAME?

1 MR. BARNETT: STAN BARNETT. JIM LOGAN AND I
2 REPRESENT PENDLETON STATION.

3 THE COURT: THANK YOU. A HEARING IN THESE
4 THREE CASES WAS SET FOR THE COURT TO DETERMINE WHAT
5 ATTORNEY FEES, IF ANY, ARE APPLICABLE.

6 MR. BROUSSEAU, I'M GOING TO START WITH YOU. IN
7 THE MILLER CONSTRUCTION COMPANY CASE, IF YOU WILL REFRESH
8 MY MEMORY, WHAT WAS THE AWARD BY THE COURT?

9 MR. BROUSSEAU: YOUR HONOR, THE COURT AWARDED
10 MILLER A HUNDRED AND ELEVEN THOUSAND, ONE -0- THREE, AND
11 THIRTEEN CENTS (\$111,103.13), ALONG WITH ITS PREJUDGMENT
12 INTEREST OF JUST SHY OF FORTY-TWO THOUSAND, NINE THIRTY-
13 SIX (\$42,936.00).

14 THE COURT: WERE THERE ANY -- AND I'LL ASK
15 THE DEFENSE ATTORNEYS ALSO, WERE THERE ANY OFFERS MADE IN
16 THESE CASES?

17 MR. BROUSSEAU: THERE WERE OFFERS MADE NOT
18 FILED WITH THE COURT. I MEAN, THERE WAS OBVIOUSLY
19 SETTLEMENT NEGOTIATIONS.

20 THE COURT: WERE THERE ORAL OFFERS?

21 MR. BROUSSEAU: YES, SIR. THERE WAS ORAL AND
22 THERE MIGHT HAVE EVEN BEEN SOME WRITTEN ONES EARLY ON IN
23 THE CASE.

24 THE COURT: WELL, IF YOU'D LIKE TO TELL ME
25 I'D BE GLAD TO HEAR WHAT THEY WERE.

1 MR. BROUSSEAU: AT THE START OF THE CASE, YOUR
2 HONOR, I THINK THE BANK HAD MADE A WRITTEN OFFER TO OUR
3 CLIENTS, ALL THREE OF THEM COMBINED, FOR A TOTAL
4 SETTLEMENT OF A HUNDRED AND TWENTY-FIVE THOUSAND
5 (\$125,000.00) DOLLARS FOR ALL THREE. PRIOR TO THE TRIAL
6 IN THIS CASE THE LAST OFFER FROM THE BANK WAS FOR ALL
7 THREE TO RECEIVE A TOTAL OF FIFTY THOUSAND (\$50,000.00)
8 DOLLARS.

9 MR. HOLDER: YOUR HONOR, JUST TO ADD, THE
10 FIRST OFFER INCLUDED THE ABILITY OR THE OPTION FOR ALL OF
11 THE PLAINTIFFS TO COME BACK TO THE PROJECT AND FINISH
12 THE, YOU KNOW, COMPLETION OF THE PROJECT AND BE PAID BY
13 THE BANK.

14 THE COURT: THAT WAS A CONDITION TO THAT?

15 MR. HOLDER: WELL, IT WASN'T A CONDITION.
16 IT WAS AN ADDITIONAL OPTION.

17 THE COURT: WELL, THE LAST OFFER WAS FIFTY
18 THOUSAND (\$50,000.00) DOLLARS FOR ALL THREE CASES?

19 MR. BROUSSEAU: FROM THE BANK, YES, SIR.

20 THE COURT: WERE THERE ANY OFFERS FROM ANY
21 OTHER PARTIES?

22 MR. BROUSSEAU: OUR CLIENTS MADE AN OFFER, YOUR
23 HONOR -- MY CLIENTS DECIDED TO REDUCE SOME OF THEIR
24 PRINCIPAL BALANCE. WE WERE WILLING TO WAIVE PREJUDGMENT
25 INTEREST AND ATTORNEY'S FEES AND WE MADE, AS A GROUPING,

1 AS A TOTAL WHOLE FOR ALL THREE OF THEM, THE FINAL OFFER
2 FROM US WAS AROUND ABOUT TWO TWENTY-FIVE (225) OR TWO
3 HUNDRED AND THIRTY THOUSAND (\$230,000.00) DOLLARS. IF
4 I'M NOT MISTAKEN, THAT WOULD HAVE BEEN EIGHTY (80) ON MR.
5 CRAFT, ---

6 THE COURT: ALL RIGHT.

7 MR. BROUSSEAU: --- FIFTY (50) ON MR. MOORHEAD
8 AND A HUNDRED (100) ON MR. MILLER.

9 THE COURT: ALL RIGHT. AS TO THE MILLER
10 CASE, THERE WERE NO DIRECT OFFERS AS TO THAT CASE ONLY.
11 IT WAS FIFTY THOUSAND (\$50,000.00) DOLLARS FOR ---

12 MR. BROUSSEAU: YES, SIR. THERE WAS NEVER --
13 THE BANK NEVER MADE A DIRECT OFFER AS TO EACH SEPARATE
14 CASE. BASICALLY, THERE WAS ALWAYS A GROUP OFFER.

15 THE COURT: ALL RIGHT. I'LL GET BACK TO
16 THAT. LET'S NOW GO TO THE MOORHEAD CONSTRUCTION.

17 MR. BROUSSEAU: YES, SIR.

18 THE COURT: WHAT WAS THE AWARD IN THAT BY
19 THE COURT?

20 MR. BROUSSEAU: THE PRINCIPAL WAS SIXTY-SIX
21 THOUSAND, SIX HUNDRED AND TWENTY-SEVEN DOLLARS AND
22 EIGHTY-ONE CENTS (\$66,627.81), ALONG WITH RECALCULATED
23 PREJUDGMENT INTEREST. THAT TOTALS TWENTY-SIX THOUSAND,
24 TWO HUNDRED AND THIRTY-FOUR DOLLARS AND SEVENTY CENTS
25 (\$26,234.70).

1 THE COURT: ALL RIGHT. AGAIN, AS IN THE
2 FIRST CASE, WAS THERE A DIRECT OFFER MADE AS TO THIS
3 CASE?

4 MR. BROUSSEAU: NO DIRECT OFFER AS TO MOORHEAD.
5 IT WAS THE SAME -- WELL, REFERENCING AS BEFORE, IT WAS
6 THE TOTAL AMOUNT FOR ALL THREE CASES. RIGHT BEFORE
7 TRIAL, AS I STATED, I THINK OUR OFFER FOR MOORHEAD WAS A
8 TOTAL OF -- I WANT TO SAY FIFTY THOUSAND (\$50,000.00)
9 DOLLARS. IT MIGHT HAVE EVEN BEEN A LITTLE BIT LOWER THAN
10 THAT, QUITE FRANKLY.

11 THE COURT: ALL RIGHT.

12 MR. HOLDER: YOUR HONOR, IN THIS CASE I THINK
13 IT'S IMPORTANT TO POINT OUT THE AMOUNT OF THE ACTUAL
14 MECHANIC'S LIEN WAS ORIGINALLY FOUR HUNDRED AND ONE
15 THOUSAND, SEVEN HUNDRED AND TWENTY-NINE DOLLARS AND NO
16 CENTS (\$401,729.00) FOR MOORHEAD.

17 MR. BROUSSEAU: I THINK THIS BECAME AN ISSUE AT
18 THE TRIAL, YOUR HONOR. MOORHEAD'S CLAIMS WERE ALSO
19 CONSIDERING WHAT HE OWED TO HIS SUBCONTRACTORS. IF YOU
20 RECALL, WHEN HE WAS TESTIFYING REGARDING HIS DAMAGES, WE
21 WERE TAKING OUT -- EVEN THOUGH HIS LIEN AMOUNT INCLUDED
22 WHAT HE OWED TO MILLER AND CRAFT WHICH WAS ORDERED IN
23 YOUR DECISION, HE WAS TAKING THOSE OUT DURING HIS
24 TESTIMONY IN REGARDS TO WHAT HIS SPECIFIC DAMAGES
25 DIRECTLY TO HIM WERE.

1 THE COURT: ALL RIGHT.

2 MR. HOLDER: AND, YOUR HONOR, IF I MAY JUST
3 ADD THAT THERE WAS NEVER AN AMENDED OR CORRECTED
4 MECHANIC'S LIEN FILED WITH RESPECT TO THE AMOUNT OF THE
5 LIEN. IN FACT, IT'S PRETTY CLEAR, IT SAYS IN THE STATUTE
6 THAT IF THE PLAINTIFF MAKES NO WRITTEN OFFER OF
7 SETTLEMENT THE AMOUNT PRAYED FOR IN THE COMPLAINT IS
8 CONSIDERED TO BE HIS FINAL OFFER OF SETTLEMENT. SO THE
9 AMOUNT HE'S PRAYED FOR OF FOUR HUNDRED AND ONE THOUSAND
10 (\$401,000.00) DOLLARS IS TO BE, PURSUANT TO THE STATUTE,
11 HIS FINAL OFFER OF SETTLEMENT, UNLESS AND UNTIL HE AMENDS
12 THAT AND HE NEVER DID.

13 MR. BROUSSEAU: THEN, YOUR HONOR, OUR ARGUMENT
14 WOULD BE THAT TRUTHFULLY, IF HIS PRINCIPAL WAS SIXTY-SIX
15 THOUSAND, SIX HUNDRED AND TWENTY-SEVEN (\$66,627.00)
16 DOLLARS, IF MILLER WAS GRANTED A HUNDRED AND ELEVEN
17 THOUSAND (\$111,000.00) DOLLARS AND CRAFT WAS GRANTED
18 SEVENTY THOUSAND (\$70,000.00) DOLLARS, THAT THEN PUTS
19 MOORHEAD'S TOTAL CLAIM ABOVE TWO HUNDRED AND FORTY-SEVEN
20 THOUSAND, SEVEN HUNDRED AND THIRTY (\$247,730.00) DOLLARS
21 WHICH IS MORE THAN HALFWAY BETWEEN ---

22 THE COURT: ALL RIGHT.

23 MR. HOLDER: YOUR HONOR, THIS IS SOMETHING
24 THAT'S BEEN AN ISSUE DURING THE THREE AND A HALF TO FOUR
25 YEARS THAT THIS CASE HAS BEEN GOING ON. WE HAVE

1 CONDUCTED A LOT OF DISCOVERY BASED ON THIS VERY ISSUE AND
2 YET -- SO IT WAS APPARENT TO THE PLAINTIFF THROUGHOUT
3 THIS LITIGATION THAT THERE WERE ISSUES AROUND THE AMOUNT
4 THEY HAVE ALLEGED AND YET AGAIN, THEY'VE NEVER AMENDED
5 THEIR MECHANIC'S LIEN.

6 THE COURT: ALL RIGHT. CRAFT CONSTRUCTION
7 COMPANY OF STARR.

8 MR. BROUSSEAU: YOUR HONOR, YOUR DECISION IN
9 THAT ONE WAS A PRINCIPAL BALANCE OF SEVENTY THOUSAND
10 (\$70,000.00) DOLLARS AND THAT INCLUDED RECALCULATED
11 PREJUDGMENT INTEREST WHICH WAS TWENTY-SEVEN THOUSAND,
12 FIVE HUNDRED AND SIXTY-TWO DOLLARS AND FIFTY CENTS
13 (\$27,562.50).

14 THE COURT: THAT INCLUDED INTEREST?

15 MR. BROUSSEAU: OH, NO, NO. I WAS TELLING YOU
16 WHAT THE RECALCULATED INTEREST WAS. THE PRINCIPAL WAS
17 SEVENTY THOUSAND (\$70,000.00) DOLLARS.

18 THE COURT: PLUS ---

19 MR. BROUSSEAU: PLUS RECALCULATED PREJUDGMENT
20 INTEREST.

21 THE COURT: OF HOW MUCH?

22 MR. BROUSSEAU: IT'S TWENTY-SEVEN THOUSAND,
23 FIVE HUNDRED AND SIXTY-TWO DOLLARS AND FIFTY CENTS
24 (\$27,562.50).

25 THE COURT: ALL RIGHT. MR. BARNETT,

1 ANYTHING ON BEHALF OF PENDLETON STATION?

2 MR. BARNETT: NO, YOUR HONOR.

3 MR. HOLDER: YOUR HONOR, IF I MAY -- IF I MAY
4 APPROACH, WE HAVE A MEMO IN SUPPORT OF OUR POSITION.

5 THE COURT: THANK YOU.

6 MR. HOLDER: THERE'S A MEMO FILED UNDER EACH
7 CASE. DUE TO THE SIMILARITIES OF THE ISSUES BETWEEN THE
8 CRAFT AND MILLER MATTERS, THOSE MEMOS ARE PRETTY MUCH A
9 REPEAT OF ONE ANOTHER EXCEPT FOR THE AMOUNTS. THE
10 MOORHEAD MEMO IS ENTIRELY DIFFERENT AS TO THE AMOUNT AND
11 THE LEGAL ARGUMENT. IF I MAY PROCEED FIRST WITH THE
12 MILLER AND CRAFT MATTERS?

13 THE COURT: YES, SIR.

14 MR. HOLDER: YOUR HONOR, I THINK IT'S
15 IMPORTANT TO ADDRESS THE FACT THAT THE PLAINTIFFS IN EACH
16 OF THESE MATTERS FILED A MECHANIC'S LIEN THAT ENCUMBERED
17 FOUR PIECES OF PROPERTY.

18 THE COURT: ALL RIGHT. YOU'RE GETTING NOW
19 TO A QUESTION OF WHAT, IF ANYTHING, WOULD BE AVAILABLE TO
20 FORECLOSE ON SHOULD THE MECHANIC'S LIENS PROCEED, WHAT
21 PROPERTIES?

22 MR. HOLDER: WELL, I'M ACTUALLY JUST GETTING
23 TO THE AMOUNT OF THE ACTUAL AWARD OF ATTORNEY'S FEES AND
24 COSTS.

25 THE COURT: I THOUGHT YOU STARTED OFF BY

1 SAYING SOMETHING ABOUT THE TRACTS AVAILABLE.

2 MR. HOLDER: WELL, THE REASON I BRING THAT UP
3 IS BECAUSE THERE WAS A PRIOR RULING WHERE ONE OF THESE
4 TRACTS, IT WAS ORDERED THAT THE LIS PENDENS BE CANCELLED
5 ON IT BECAUSE THE MECHANIC'S LIEN WAS NOT PROPER OR FOUND
6 NOT TO BE PROPER AGAINST WHAT IS KNOWN AS THE THIRTY-
7 EIGHT (38) ACRE TRACT.

8 THE COURT: BUT THERE'S A QUESTION OF A
9 MORTGAGE ON THE THIRTY-EIGHT (38) ACRE TRACT?

10 MR. HOLDER: THERE IS STILL A MORTGAGE ON
11 THAT TRACT AND THERE'S STILL A MORTGAGE ON TRACT A AS
12 WELL. THAT WAS ANOTHER ISSUE WE WERE GOING TO BRING UP.
13 PURSUANT TO SOUTH CAROLINA CODE SECTION 29-5-70 THE
14 MECHANIC'S LIENS FILED BY THE PLAINTIFFS, EACH OF THEM IS
15 NOT ENFORCEABLE AGAINST THE MORTGAGES OF RECORD AND WAS
16 OF RECORD PRIOR TO THE MECHANIC'S LIENS BEING FILED ON
17 TRACT A AND THE THIRTY-EIGHT (38) ACRE TRACT. OBVIOUSLY,
18 THE THIRTY-EIGHT (38) ACRE TRACT ---

19 THE COURT: WHAT MORTGAGE NOW ARE YOU
20 SPEAKING OF, PENZA OR ENTERPRISE?

21 MR. HOLDER: ENTERPRISE BANK'S MORTGAGE.

22 THE COURT: ALL RIGHT. ENTERPRISE TOOK A
23 DEED IN LIEU OF FORECLOSURE.

24 MR. HOLDER: THAT'S RIGHT, WHICH IS IN
25 DISPUTE ---

1 THE COURT: SIR?

2 MR. HOLDER: WHICH IS STILL IN DISPUTE

3 BECAUSE ---

4 THE COURT: NO, SIR. I DON'T THINK IT'S IN
5 DISPUTE. AT THE LAST HEARING -- THIS IS ANOTHER ISSUE.
6 AT THE HEARING ON THAT Y'ALL HAD A GENTLEMAN UP HERE FROM
7 ENTERPRISE BANK. HE DIDN'T PARTICULARLY CONTEST IT. HE
8 SAID WELL, THEY DID IT AND I KNEW ABOUT IT AND SUCH AND
9 SUCH. THAT HAD TO DO WITH -- I DON'T KNOW WHETHER AN
10 ORDER HAS BEEN FILED ON THAT OR NOT, BUT THAT'S -- AS I
11 INDICATED THEN, ENTERPRISE HAS GOT A SERIOUS PROBLEM, IN
12 MY OPINION, BY TAKING A DEED IN LIEU OF FORECLOSURE. BUT
13 THAT'S ANOTHER MATTER. ON THE PENZA CASE -- AND THESE
14 ARE ALL SORT OF RELATED -- I FOUND THAT HE DID NOT HAVE A
15 MORTGAGE ON -- IT WAS EITHER TRACT A OR B, I DON'T
16 REMEMBER WHICH.

17 MR. HOLDER: TRACT A.

18 THE COURT: SIR?

19 MR. HOLDER: TRACT A.

20 THE COURT: TRACT A. OKAY.

21 MR. HOLDER: WHICH HE'S APPEALED.

22 THE COURT: THAT'S FINE. I EXPECTED THAT
23 BUT I HAVEN'T HAD ANY NOTICE OF APPEAL.

24 MR. HOLDER: THE ONLY REASON I BROUGHT THAT
25 UP IS FOR PURPOSES OF THE FORECLOSURE SALE.

1 THE COURT: ALL RIGHT. GO AHEAD.

2 MR. HOLDER: YOUR HONOR, THE BANK, DESPITE
3 THE FACT THAT THE DEED IN LIEU WAS UNILATERALLY FILED,
4 THEY OVER THE COURSE OF TIME HAVE CONDUCTED AN EXTENSIVE
5 INVESTIGATION AS TO WHAT WAS PERCEIVED AT THE TIME TO BE
6 A MASSIVE FRAUD THAT HAD BEEN CONDUCTED AGAINST THEIR
7 INTEREST. DURING THAT INVESTIGATION THEY, OF COURSE,
8 WANTED TO HAVE THE RIGHT TO MAINTAIN THE PROPERTY WITHOUT
9 FURTHER DAMAGE AND COMPLETION BEING DONE TO THAT PROPERTY
10 AS IT WAS THE ONLY COLLATERAL FOR THE LINE OF CREDIT.

11 THE COURT: I DON'T DOUBT THAT.

12 MR. HOLDER: RIGHT. SO WHAT STILL IS AT
13 ISSUE IN THE BANK'S CASE AGAINST PENDLETON STATION, LLC
14 IS WHETHER OR NOT MERGER HAS OCCURRED AND I THINK THAT'S
15 WHAT YOUR HONOR IS REFERENCING. IN THAT CASE THERE HAVE
16 BEEN MULTIPLE MOTIONS FOR SUMMARY JUDGMENT THAT HAVE BEEN
17 ARGUED BEFORE THE COURT WHICH HAVE BEEN DENIED AND I
18 WOULD LIKE TO POINT OUT, IF I MAY, YOUR HONOR, THE ORDER
19 OF MAY 13TH, 2008, ISSUED BY JUDGE NICHOLSON IN THAT
20 CASE. IF I MAY APPROACH, I'LL HAND YOU A COPY OF THAT
21 ORDER.

22 THE COURT: YES, SIR.

23 MR. HOLDER: YOUR HONOR, IF I MAY DIRECT YOUR
24 ATTENTION TO PAGE 4 UNDER PARAGRAPH NUMBER ONE. THERE
25 WAS A LOT OF DISCUSSION AND ARGUMENT IN THIS CASE ABOUT

1 WHAT LAW ACTUALLY APPLIED WITH RESPECT TO THE ISSUE OF
2 MERGER AND THAT ---

3 THE COURT: I UNDERSTAND THAT, BUT HASN'T
4 THAT BEEN ARGUED AT A PRIOR HEARING?

5 MR. HOLDER: WELL, IT'S BEEN ARGUED BUT IT
6 HASN'T GONE TO TRIAL YET. IT'S STILL AN ISSUE BECAUSE
7 THE MOTIONS HAVE BEEN DENIED ON THAT SPECIFIC ISSUE SO
8 IT'S GOING TO TRIAL BUT AS I MENTIONED EARLIER IT HAS
9 STILL YET TO BE DETERMINED BY A JURY.

10 THE COURT: BY A JURY?

11 MR. HOLDER: RIGHT. I WANTED TO JUST POINT
12 OUT THE LAW BECAUSE ---

13 THE COURT: ALL RIGHT.

14 MR. HOLDER: --- I DON'T THINK IT'S --

15 THE COURT: GOOD. THAT WOULD BE FINE TO
16 HAVE A JURY TRIAL. THAT WOULD RELIEVE ME OF SOME BURDEN
17 ON ---

18 MR. HOLDER: RIGHT. BUT I BRING THAT CASE
19 LAW UP TO POINT OUT THAT THERE HAS NOT BEEN A
20 DETERMINATION MADE AS TO WHETHER THE DEBT HAS MERGED WITH
21 THE TITLE.

22 THE COURT: YOU THINK THAT'S A JURY
23 DETERMINABLE ISSUE RATHER THAN ---

24 MR. HOLDER: NO, YOUR HONOR, IT'S OUR
25 POSITION THAT IT'S CLEARLY A LEGAL ISSUE. UNFORTUNATELY,

1 WE DID NOT PREVAIL IN OUR ARGUMENT.

2 THE COURT: OKAY.

3 MR. HOLDER: SO THE REASON I BRING THAT UP IS
4 BECAUSE, YOU KNOW, WE WERE DISCUSSING WHETHER OR NOT
5 ENTERPRISE BANK'S MORTGAGE IS STILL OF RECORD AND WE
6 CONTEND THAT IT IS AND WE CONTEND THAT IT'S VALID.

7 THE COURT: I UNDERSTAND THAT.

8 MR. HOLDER: THEY SUBSEQUENTLY FILED THE
9 MECHANIC'S LIENS ---

10 THE COURT: AS I EXPLAINED TO THAT BANKER
11 Y'ALL HAD UP HERE, I HAVE NO DOUBT ENTERPRISE BANK HAS A
12 LOT INVESTED IN THAT PROJECT UP THERE. I THINK IT WAS
13 POORLY HANDLED SOMEWHERE ALONG THE LINE AND, THEREFORE,
14 WE'VE GOT THIS PROBLEM. ALL ENTERPRISE HAD TO DO, AND I
15 THINK I MENTIONED THIS BEFORE, IS FORECLOSE ON THAT
16 MORTGAGE. THAT WOULD DO AWAY WITH THESE MECHANIC'S LIENS
17 AND ALL OF YOUR OTHER PROBLEMS. THAT DIDN'T HAPPEN. I
18 DON'T KNOW WHY IT DIDN'T HAPPEN. WHETHER THEY DIDN'T --
19 WELL, I WON'T GO INTO ALL THAT. OKAY. GO AHEAD.

20 MR. HOLDER: WELL, I APPRECIATE THAT, YOUR
21 HONOR, BUT IF YOU COULD ACTUALLY GET INTO THE FACTS OF
22 THAT CASE WHICH AGAIN HAS BEEN LITIGATED IN FRONT OF
23 ANOTHER JUDGE IN THE CIRCUIT, THERE ARE MULTIPLE REASONS
24 AS TO WHY THE BANK DID NOT FORECLOSE ON THIS PROPERTY.

25 THE COURT: OKAY.

1 MR. HOLDER: YOU KNOW, IF YOU TOOK A CURSORY
2 REVIEW OF THE ---

3 THE COURT: IF THAT'S NOT BEFORE ME I DON'T
4 NEED TO HEAR ANYTHING ABOUT IT.

5 MR. HOLDER: OKAY. I DIDN'T KNOW IF YOU
6 WANTED ME TO ADDRESS IT.

7 THE COURT: THAT WAS DICTUM. CONSIDER IT
8 DICTUM.

9 MR. HOLDER: ALL RIGHT, THANK YOU, YOUR
10 HONOR. GETTING BACK TO THESE MECHANIC'S LIENS AND
11 NOTWITHSTANDING THE ISSUE REGARDING WHETHER THEY ENFORCED
12 THEIR LIEN AGAINST THE THIRTY-EIGHT (38) ACRE TRACT AND
13 TRACT A IN LIGHT OF THE BANK'S PRIOR FILED MORTGAGE, THE
14 COURT HAS ALREADY RULED IN THIS CASE THAT, AS I STATED
15 EARLIER, THE MECHANIC'S LIENS THE PLAINTIFFS FILED
16 AGAINST THE THIRTY-EIGHT (38) ACRE TRACT WAS IMPROPER.
17 IT'S OUR POSITION UNDER THE DISCRETION THAT'S PROVIDED IN
18 THE STATUTE FOR THIS PARTICULAR MECHANIC'S LIEN,
19 PARTICULARLY WITH RESPECT TO THE PREVAILING PARTY ISSUE,
20 THAT THE AMOUNT THAT ENTERPRISE BANK INCURRED OVER THE
21 COURSE OF THE THREE AND A HALF YEARS THEY TRIED TO GET
22 THIS MECHANIC'S LIEN REMOVED FROM THIS PROPERTY, THAT
23 AMOUNT SHOULD BE OFFSET AGAINST ANY AWARD THE COURT
24 DETERMINES THE PLAINTIFFS SHOULD BE GRANTED IN THIS CASE
25 WITH RESPECT TO THE OTHER LIENS ON THESE OTHER

1 PROPERTIES.

2 IN ADDITION, YOUR HONOR, UNDER THAT SAME
3 INTERPRETATION OF THE STATUTE WHERE AGAIN IT'S BEEN WELL
4 ESTABLISHED IN THIS STATE THAT THE AMOUNT OF THE AWARD,
5 WHILE THE ACTUAL DETERMINATION OF THE PREVAILING PARTY IS
6 MANDATORY IN THIS STATE, THE ACTUAL AMOUNT OF THE AWARD
7 IS LEFT TO THE DISCRETION OF THE COURT.

8 THE COURT: CORRECT.

9 MR. HOLDER: YOUR HONOR, I'D JUST LIKE TO
10 REFERENCE THE CASE LAW OF THIS STATE WITH RESPECT TO THAT
11 EQUITABLE PRINCIPLE INsofar AS THE DISCRETION THAT THE
12 COURT SHOULD APPLY. IN THE CASE OF CEDAR CREEK
13 PROPERTIES THE COURT OF APPEALS IN THIS STATE RULED THAT
14 CLEARLY THE INTENT OF THE LEGISLATURE IN ALLOWING THE
15 PREVAILING PARTY IN AN ACTION BROUGHT UNDER THE
16 MECHANIC'S LIEN STATUTE TO RECOVER ATTORNEY FEES AND
17 COSTS STEMS FROM A DESIRE TO DETER BOTH WRONGFUL FILING
18 OF LIENS AND UNJUSTIFIED REFUSAL TO PAY DEBTS SUBJECT TO
19 MECHANIC'S LIENS. IN THIS CASE, YOUR HONOR, AS IT WAS
20 EVIDENCED DURING THE TRIAL, THERE HAS BEEN NO CLAIM
21 WHATSOEVER AGAINST ENTERPRISE BANK FOR WRONGLY OR
22 UNJUSTIFIABLY REFUSING TO PAY ANY DEBT THAT'S SUBJECT TO
23 THIS MECHANIC'S LIEN. IN FACT, AS THE COMPLAINT MADE
24 CLEAR AND AS THE EVIDENCE THAT WAS PRESENTED AT TRIAL
25 MADE CLEAR, IT IS UNDISPUTED THAT PENDLETON STATION, LLC

1 IS THE ONE WHO UNJUSTIFIABLY REFUSED TO PAY THE DEBTS
2 ASSOCIATED WITH THE MECHANIC'S LIENS. IN FACT, THERE WAS
3 NO DEFENSE EVEN PUT UP AT TRIAL WITH RESPECT TO THAT
4 ISSUE. I THINK IT CERTAINLY IS A POINT THAT IS
5 UNDISPUTED AND IN LIGHT OF THAT, YOU KNOW, IN LIGHT OF
6 THE EQUITABLE PRINCIPLES THAT HAVE BEEN WELL ESTABLISHED
7 IN THIS CASE OR IN THIS STATE, WE WOULD ASK THAT THE
8 AMOUNT OF ATTORNEY'S FEES IN THE MILLER AND CRAFT MATTERS
9 ONLY BE LIMITED TO A NOMINAL AMOUNT. I THINK THE
10 EQUITABLE MAXIM THAT COMES TO MIND IN APPLYING YOUR
11 DISCRETION TO THIS ISSUE, YOUR HONOR, IS A WELL
12 ESTABLISHED MAXIM THAT A PARTY SHOULD NOT BE MADE TO BEAR
13 A LOSS THAT RIGHTFULLY BELONGS TO ANOTHER. I THINK IT'S
14 PRETTY CLEAR FROM ALL OF THE EVIDENCE THAT ANY KIND OF
15 EQUITABLE PROSPECTIVE OF THE ISSUES THAT ARE BEFORE THE
16 COURT AND THE FACTS THAT HAVE BEEN PRESENTED TO THE COURT
17 ARE THAT AGAIN, ENTERPRISE BANK, AS YOU POINTED OUT, HAS
18 BEEN PUT IN A POSITION WHERE THEY HAVE INCURRED A
19 SUBSTANTIAL AMOUNT OF DAMAGES THAT GREATLY EXCEED ANY
20 DAMAGES THAT HAVE BEEN INCURRED BY THESE PLAINTIFFS AND
21 ALL OF THE DAMAGES INCURRED BY THE PLAINTIFFS HERE AND BY
22 ENTERPRISE BANK ARE DUE TO THE SOLE ACTS OF PENDLETON
23 STATION, LLC WHICH, AGAIN, YOUR HONOR, IN THIS CASE IS
24 UNDISPUTED.

25 I CAN GO AHEAD AND ADDRESS THE MOORHEAD ISSUE

1 IF YOU LIKE. I DON'T KNOW HOW YOU WANT TO GO ABOUT IT.
2 DO YOU WANT TO ADDRESS THESE TWO ISSUES FIRST AND THEN DO
3 MR. MOORHEAD?

4 THE COURT: WELL, IF YOU HAVE OTHER MATTERS
5 YOU MIGHT AS WELL CONTINUE.

6 MR. HOLDER: OKAY. YOUR HONOR, WITH RESPECT
7 TO THE MOORHEAD CASE, AS WE DISCUSSED EARLIER, THE AMOUNT
8 OF THE MECHANIC'S LIEN WAS FOUR HUNDRED AND ONE THOUSAND,
9 SEVEN HUNDRED AND TWENTY-NINE (\$401,729.00) DOLLARS. THE
10 AWARD AT TRIAL WAS SIXTY-SIX THOUSAND, SIX HUNDRED AND
11 TWENTY-SEVEN DOLLARS AND EIGHTY-ONE CENTS (\$66,627.81).
12 CLEARLY, IN LIGHT OF THE PREVAILING PARTY PROVISION IN
13 THE MECHANIC'S LIEN STATUTE THAT IS AT ISSUE HERE AND THE
14 MANDATORY LAW OR THE LAW THAT MANDATES THAT THE
15 PREVAILING PARTY AWARD BE ISSUED, ENTERPRISE BANK CLEARLY
16 IS THE PREVAILING PARTY. WITH RESPECT TO THE LAW THAT I
17 TOUCHED ON EARLIER OR ACTUALLY THE STATUTES HAVE MADE
18 CLEAR THAT THE PARTY WHOSE OFFER IS CLOSEST TO THE
19 VERDICT REACHED IS CONSIDERED THE PREVAILING PARTY IN ITS
20 ACTION AND THAT THE PLAINTIFF, IF HE MAKES NO WRITTEN
21 OFFER OF SETTLEMENT, THE AMOUNT PRAYED FOR IN THE
22 COMPLAINT IS CONSIDERED TO BE HIS FINAL OFFER OF
23 SETTLEMENT. IN LIGHT OF THAT LAW AND IN LIGHT OF THE
24 FACT THAT THE AMOUNT PRAYED FOR BY THE PLAINTIFFS IN THIS
25 CASE IS LESS THAN HALF THE AMOUNT OF THE ACTUAL -- I'M

1 SORRY, THE AMOUNT THAT WAS AWARDED IN THIS CASE IS LESS
2 THAN HALF THE AMOUNT THAT THE PLAINTIFF PRAYED FOR, IT'S
3 CLEAR THAT ENTERPRISE BANK IS THE PREVAILING PARTY IN
4 THIS CASE. THAT'S WITH RESPECT TO ALL FOUR TRACTS OF
5 PROPERTY. OBVIOUSLY, THE THIRTY-EIGHT (38) ACRE TRACT
6 HAS ALREADY BEEN DETERMINED, AS I'VE STATED EARLIER, BUT
7 THIS ALSO SHOULD APPLY TO THE REMAINING THREE TRACTS,
8 TRACT A, TRACT B AND THE TWO (2) ACRE TRACT.

9 AGAIN, FOR THE VERY SAME EQUITABLE PRINCIPLES
10 THAT ARE ADDRESSED BY THE COURTS IN THIS STATE WITH
11 RESPECT TO THE ACTUAL AMOUNT OF THE AWARD, ENTERPRISE
12 BANK, IT IS OUR POSITION, THAT THEY SHOULD BE AWARDED ALL
13 THE ATTORNEY'S FEES AND COSTS THAT HAVE BEEN INCURRED
14 OVER THE COURSE OF THE LAST THREE AND A HALF PLUS YEARS
15 IN DEFENDING THIS CASE BECAUSE, AGAIN, THEY WERE NEVER
16 SUBJECT TO PAYING ANYONE THIS DEBT WITH RESPECT TO THESE
17 CLAIMS OF THE PLAINTIFFS. IN FACT, AS I'VE ALSO GONE
18 OVER, IT IS UNDISPUTED THAT IT WAS PENDLETON STATION'S
19 UNJUSTIFIABLE REFUSAL TO PAY THE DEBT SUBJECT TO THE
20 MECHANIC'S LIENS WHICH BROUGHT ALL OF THIS ON TO BEGIN
21 WITH.

22 YOUR HONOR, WE WOULD ASK THAT THE AMOUNT OF
23 ATTORNEY'S FEES AND COSTS THAT ARE REFERENCED IN THE
24 AFFIDAVIT ATTACHED TO OUR MEMO BE AWARDED TO OFFSET THE
25 AMOUNT OF SIXTY-SIX THOUSAND, SIX HUNDRED AND TWENTY-

1 SEVEN AND EIGHTY-ONE CENTS (\$66,627.81) AWARD PREVIOUSLY
2 PROVIDED BY THE COURT. THANK YOU, YOUR HONOR.

3 THE COURT: MR. BROUSSEAU, IF YOU FOLLOWED
4 ALL THAT, DO YOU HAVE ANY RESPONSE?

5 MR. BROUSSEAU: I DON'T KNOW IF I FOLLOWED IT
6 ALL, YOUR HONOR, BUT I WOULD POINT OUT TO THE COURT, AND
7 I KNOW THE COURT IS WELL AWARE OF THE STATUTE. THE
8 PREVAILING PARTY ASSUMES ONE VERDICT IN THE ACTION AND
9 ONE VERDICT ASSUMES SOME ENTITLEMENT TO THE MECHANIC'S
10 LIEN. THE SECKINGER CASE, SECKINGER V THE VESSEL,
11 EXCALIBUR IS CLEAR IN ITS DEFINITION OF PREVAILING PARTY
12 AND THAT IS ONE WHO SUCCESSFULLY PROSECUTES AN ACTION OR
13 DEFENDS AGAINST IT, PREVAILING ON THE MAIN ISSUE EVEN
14 THOUGH NOT TO THE EXTENT OF THE ORIGINAL CONTENTION AND
15 IN WHOSE FAVOR JUDGMENT IS RENDERED. A PARTY NEED NOT BE
16 SUCCESSFUL AS TO ALL ISSUES IN ORDER TO BE FOUND TO BE
17 THE PREVAILING PARTY. ALSO, YOUR HONOR, YOU ALSO HEARD
18 IT IN REGARDS TO THE OFFERS THAT WERE MADE IN THIS
19 MATTER. CLEARLY IN THE MILLER MATTER, MILLER WAS THE
20 PREVAILING PARTY. CLEARLY IN THE CRAFT MATTER, CRAFT WAS
21 THE PREVAILING PARTY.

22 IN REGARDS TO MR. HOLDER'S ARGUMENT AS TO
23 MOORHEAD, AS I PREVIOUSLY STATED TO THE COURT, MR.
24 MOORHEAD'S LIEN, HIS ORIGINAL LIEN AMOUNT, OBVIOUSLY
25 INCLUDED WHAT HE OWED TO HIS SUBCONTRACTORS, CRAFT AND

1 MILLER, WHICH IF YOU INCLUDE THOSE TWO IN WHAT THE
2 ULTIMATE DECISION WAS BY THE COURT, IT'S WELL OVER HALF
3 OF WHAT THE COURT ULTIMATELY RENDERED TO MR. MOORHEAD.

4 IN EITHER EVENT, THAT'S BASICALLY MY ARGUMENT.
5 I THINK THE LAW IS CLEAR, I THINK THE STATUTE IS CLEAR AS
6 TO WHO THE PREVAILING PARTY IS. OBVIOUSLY YOUR HONOR
7 ALSO HEARD WHAT THE OFFERS WERE AND BASED UPON YOUR
8 DECISION BACK IN DECEMBER, I THINK ALL THREE PARTIES, ALL
9 THREE OF MY CLIENTS WERE THE PREVAILING PARTIES AND ARE
10 ENTITLED TO THEIR ATTORNEY'S FEES IN THIS MATTER.

11 THE COURT: ALL RIGHT, THANK YOU. ANYTHING
12 FURTHER, GENTLEMEN?

13 MR. HOLDER: YOUR HONOR, IF I MAY BRIEFLY
14 RESPOND. IF I UNDERSTAND MR. BROUSSEAU CORRECTLY, HE'S
15 CLAIMING THAT THE COURT'S PRIOR GRANTING OF THE
16 PLAINTIFFS', I'M SORRY, THE DEFENDANT ENTERPRISE BANK'S
17 MOTION FOR SUMMARY JUDGMENT IS NOT TO BE CONSIDERED A
18 VERDICT, PER SE. THAT FRANKLY SHOCKS THE CONSCIENCE IN
19 LIGHT OF THE COURT'S RULING AND IN LIGHT OF THE FACT THAT
20 I WOULD JUST LIKE TO DRAW BRIEFLY THE COURT'S ATTENTION
21 TO THE ACTUAL ORDER WHICH WAS SIGNED BY JUDGE MADDOX
22 WHERE HE SAYS THE EVIDENCE PRODUCED BY ENTERPRISE BANK,
23 WHICH INCLUDES, WITHOUT LIMITATION, THE ABOVE REFERENCED
24 TESTIMONY OF THE PLAINTIFFS THEMSELVES, AFFIDAVIT
25 TESTIMONY FROM ONE OF THE PROJECT MANAGERS AS TO THE

1 ACTUAL CONSTRUCTION THAT TOOK PLACE ON THE THIRTY-EIGHT
2 (38) ACRE TRACT AS WELL AS THE ACTUAL PLATS AND ACTUAL
3 PLANS THAT SHOW THE PROJECT OVERLAID ON ALL OF THE
4 REFERENCED TRACTS OF PROPERTY, MAKES IT ABUNDANTLY CLEAR
5 THAT NO WORK WAS EVER COMPLETED ON THE THIRTY-EIGHT (38)
6 ACRE TRACT BY PENDLETON STATION, THE PLAINTIFFS, OR
7 ANYONE ELSE. HE GOES ON TO SAY THAT DESPITE MORE THAN
8 THREE YEARS PASSING SINCE THE PLAINTIFF FILED THE
9 UNDERLYING LAWSUIT, THE PLAINTIFFS HAVE NOT PROVIDED ANY
10 EVIDENCE TO PROVE THAT THEY COMPLETED ANY WORK ON THE
11 THIRTY-EIGHT (38) ACRE TRACT. THEREFORE, ENTERPRISE
12 BANK'S MOTION IS GRANTED AS TO THE THIRTY-EIGHT (38) ACRE
13 TRACT.

14 YOUR HONOR, THE CASE LAW IN THIS STATE IS
15 ABUNDANTLY CLEAR THAT THE TERM PREVAILING PARTY INCLUDES
16 THE SUCCESSFUL DEFENSE OF THE MECHANIC'S LIEN, WHETHER
17 IT'S VIA MOTION TO DISMISS, MOTION FOR SUMMARY JUDGMENT
18 OR EVEN VOLUNTARY DISMISSAL OF THE LIEN. THE CASE OF
19 KEENY'S METAL ROOFING, INC., WHICH I HAVE A COPY OF, YOUR
20 HONOR, MAKES THAT ABUNDANTLY CLEAR, AS DOES THE CEDAR
21 CREEK PROPERTIES CASE.

22 THE COURT: ALL RIGHT. THAT RULING PERTAINS
23 TO A PARTICULAR TRACT THAT ENTERPRISE --

24 MR. HOLDER: I'M SORRY, YOUR HONOR. I
25 COULDN'T HEAR YOU.

1 THE COURT: THAT RULING PERTAINS TO A
2 PARTICULAR TRACT?

3 MR. HOLDER: RIGHT. THAT RULING PERTAINS TO
4 THE THIRTY-EIGHT (38) ACRE TRACT. THAT'S WHAT I
5 UNDERSTOOD FROM MR. BROUSSEAU'S ARGUMENT IS THAT HE
6 DIDN'T CONSIDER THAT TO BE A VERDICT UPON WHICH WOULD
7 ALLOW THE PREVAILING PARTY PROVISION TO KICK IN.

8 THE COURT: OKAY. ALL RIGHT.

9 MR. HOLDER: WHICH WE DISAGREE WITH.

10 THE COURT: ALL RIGHT. ANYTHING FURTHER?

11 (NO RESPONSE)

12 THE COURT: THERE'S NO QUESTION IN MY MIND
13 THAT THE PLAINTIFFS IN THESE CASES WERE THE PREVAILING
14 PARTIES. AS SUCH, THE COURT HAS NO OPTION BUT TO AWARD
15 FEES. THE ONLY RESTRICTION SEEMS TO BE THAT THE FEE AND
16 COSTS MAY NOT EXCEED THE AMOUNT OF THE LIEN. BEYOND
17 THAT, OF COURSE, IT'S IN THE DISCRETION OF THE COURT.

18 I DON'T FIND THAT ANY VALID OFFER WAS MADE BY
19 THE PARTIES. THE FACT THAT THE MECHANIC'S LIENS PERHAPS
20 ORIGINALLY WERE FILED IN EXCESS OF THE AWARD, ACCORDING
21 TO THIS SECKINGER V THE VESSEL, EXCALIBUR CASE, A
22 PREVAILING PARTY MEANS A PARTY WHO SUCCESSFULLY
23 PROSECUTES OR DEFENDS AN ACTION PREVAILING ON THE MAIN
24 ISSUES, EVEN THOUGH NOT TO THE EXTENT AS INITIALLY
25 SOUGHT. I DON'T SEE ANY CONFLICT IN THAT.

1 ALL RIGHT, AS TO THE MILLER CASE. THE COURT'S
2 AWARD IS ATTORNEY FEES OF FORTY-FIVE THOUSAND
3 (\$45,000.00) DOLLAR AND COSTS.

4 AS TO THE MOORHEAD CASE, THIRTY-NINE THOUSAND
5 (\$39,000.00) DOLLARS AND COSTS.

6 AS TO THE CRAFT CASE, THIRTY-TWO THOUSAND
7 (\$32,000.00) DOLLARS AND COSTS.

8 THAT WILL BE ADDED TO THE JUDGMENT AMOUNT.

9 NOW, MR. BROUSSEAU, I WANT AN ORDER COVERING
10 THESE MATTERS AND I WANT YOU TO SEND THAT TO ALL OF THE
11 ATTORNEYS OF RECORD.

12 YOUR NEXT POTENTIAL STEP WOULD BE TO SEEK TO
13 FORECLOSE ON THE PROPERTIES AND THAT WILL REQUIRE, OF
14 COURSE, ANOTHER SUMMONS AND COMPLAINT OR SOMETHING OF
15 THAT NATURE.

16 NOW THE COURT EXPRESSES NO OPINION AT THIS TIME
17 ON WHAT PROPERTIES MAY BE AVAILABLE FOR THE PLAINTIFFS TO
18 FORECLOSE ON. I UNDERSTAND THERE IS SOME CONFLICT ABOUT
19 SOME OF THESE PROPERTIES. MR. BROUSSEAU, YOU PUT IN
20 THERE WHAT YOU WANT TO FORECLOSE ON AND WE'LL PROBABLY
21 HAVE FURTHER DISCUSSIONS ABOUT THAT, BUT I THINK EVERYONE
22 HAS SOME IDEA ABOUT MAYBE WHAT PROPERTIES ARE AVAILABLE.

23 MR. BROUSSEAU: YES, SIR.

24 THE COURT: SO YOU CAN PREPARE IT EITHER AS
25 A PROPOSED ORDER OF FORECLOSURE -- THAT MIGHT SAVE TIME.

1 A PROPOSED ORDER OF FORECLOSURE AND SALE, SETTING OUT
2 THESE AMOUNTS. NOW THESE CASES, I BELIEVE, HAVE BEEN
3 COMBINED, HAVE THEY NOT? WELL, I'VE GOT THREE FILES BUT
4 I'VE GOT ONE FILE WITH ALL THREE OF THESE CASE NUMBERS.
5 THE REASON I'M ASKING IS DOES IT TAKE A SEPARATE SUMMONS
6 AND COMPLAINT IN EACH CASE?

7 MR. BROUSSEAU: YES, SIR, IT DOES. WE FILED IT
8 ALL AS THREE SEPARATE CASES.

9 THE COURT: ALL RIGHT. I DIDN'T KNOW TO
10 WHAT EXTENT THEY HAD BEEN CONSOLIDATED. OKAY. LET'S DO
11 IT THAT WAY THEN. THAT MIGHT BE CLEANER. PROVIDE THESE
12 LAWYERS WITH COPIES OF THOSE PAPERS WHEN YOU SEND THEM TO
13 THE COURT.

14 MR. BROUSSEAU: YOUR HONOR, DID YOU TELL ME TO
15 CONSOLIDATE ALL OF THEM IN THE ORDER?

16 THE COURT: NO. I THINK YOU ARE RIGHT.
17 THERE ARE APPARENTLY THREE SEPARATE CASES. I THINK IT
18 WOULD BE A LITTLE CLEANER PERHAPS TO SEEK FORECLOSURE AS
19 MILLER VERSUS SO AND SO.

20 MR. BROUSSEAU: YES, SIR.

21 THE COURT: ANOTHER FORECLOSURE OR SUMMONS
22 AND COMPLAINT AS TO MOORHEAD, ET CETERA. THREE SEPARATE
23 MATTERS ---

24 MR. BROUSSEAU: YES, SIR.

25 THE COURT: --- OR THREE SEPARATE CASES.

1 MR. HOLDER: YOUR HONOR, FOR CLARIFICATION
2 PURPOSES, IN LIGHT OF THE FACT THAT THESE CASES ARE
3 SEPARATE, JUST CONFIRM THAT YOUR RULING IS THAT MOORHEAD
4 IS THE PREVAILING PARTY IN HIS CASE?

5 THE COURT: YES, SIR.

6 MR. HOLDER: OKAY. THANK YOU, YOUR HONOR.

7 THE COURT: AS IS MILLER AND CRAFT. LET'S
8 GO OFF THE RECORD A MINUTE WHILE I LOOK AT SOMETHING.

9 (OFF THE RECORD)

10 THE COURT: MY FIRST THOUGHT WAS THAT THE
11 BEST WAY TO EXPEDITE THE MATTERS WOULD BE TO GO AHEAD AND
12 FILE A SUMMONS AND COMPLAINT FOR FORECLOSURE.

13 NOW IF THE DEFENDANT'S ATTORNEYS WANT TO APPEAL
14 THAT AND STOP THE FORECLOSURE PROCEEDING THEY'VE GOT TO
15 POST ALL SORTS OF BONDS AND STUFF LIKE THAT TO STOP A
16 SALE.

17 IT STRIKES ME THAT MAYBE FIRST WE SHOULD HAVE
18 AN ORDER IN EACH CASE, AN ORDER OF JUDGMENT SETTING FORTH
19 THE AMOUNT OF THE LIEN AND THE FEES AND COSTS AWARDED IN
20 EACH CASE. IF WE HAD AN ORDER OF JUDGMENT THE
21 DEFENDANT'S ATTORNEYS WOULD HAVE A RIGHT, I THINK, THEN
22 TO FILE AN APPEAL ON THOSE SEPARATE ORDERS.

23 IF WE GO AHEAD AND PUT ALL THAT GOOD STUFF IN A
24 FORECLOSURE COMPLAINT, IN ORDER FOR THEM TO STOP IT THE
25 BOND REQUIREMENTS AND WHAT NOT -- IT'S DIFFICULT TO STOP

1 A FORECLOSURE SALE UNDER NORMAL CIRCUMSTANCES BECAUSE OF
2 THE REQUIREMENTS OF WHAT THE DEFENDANTS WOULD HAVE TO DO
3 TO STOP IT. I'M SURE Y'ALL ARE FAMILIAR WITH THAT, TOO.

4 ALL RIGHT, LET'S FIRST DO AN ORDER OF JUDGMENT
5 IN EACH CASE. SEND THOSE ORDERS TO THE ATTORNEYS OF
6 RECORD WHEN YOU SEND THEM TO THE COURT.

7 MR. BROUSSEAU: YES, SIR.

8 THE COURT: ALL RIGHT. THEY WILL HAVE TIME
9 TO FILE ANY NOTICES, ET CETERA. IF NOT, YOU CAN PROCEED.

10 ALL RIGHT, THANK YOU, GENTLEMEN.

11 MR. HOLDER: THANK YOU, SIR.

12 MR. BROUSSEAU: THANK YOU, YOUR HONOR.

13

14 END OF HEARING.

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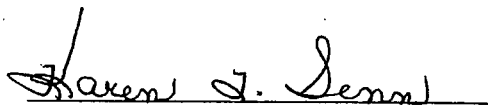
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON)
3

4 C E R T I F I C A T E

5 I, KAREN T. SENN, CERTIFIED COURT REPORTER FOR THE
6 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
7 FOREGOING PAGES CONSTITUTE A TRUE, ACCURATE AND COMPLETE
8 TRANSCRIPT OF THE HEARING HELD BEFORE THE HONORABLE ELLIS
9 B. DREW, JR., MASTER IN EQUITY FOR THE TENTH JUDICIAL
10 CIRCUIT ON JANUARY 24, 2012 IN DOCKET NUMBERS 2007-CP-04-
11 2785, MOORHEAD CONSTRUCTION, INC. V PENDLETON STATION,
12 LLC, ET AL; 2007-CP-04-2786, MILLER CONSTRUCTION COMPANY,
13 LLC V PENDLETON STATION, LLC, ET AL; AND 2007-CP-04-2784,
14 CRAFT CONSTRUCTION CO., INC. OF STARR V PENDLETON
15 STATION, LLC, ET AL.

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19 ANDERSON, SC
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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS

CRAFT CONSTRUCTION COMPANY, INC.)
OF STARR,)

PLAINTIFF,)

VS)

2007-CP-04-2784

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA AND ANGELO)
PENZA,)

DEFENDANTS.)

MOORHEAD CONSTRUCTION, INC.,)

PLAINTIFF,)

VS)

2007-CP-04-2785

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA AND ANGELO)
PENZA,)

DEFENDANTS.)

MILLER CONSTRUCTION COMPANY, INC.)

PLAINTIFF,)

VS)

2007-CP-04-2786

PENDLETON STATION, LLC, ENTERPRISE)
BANK OF SOUTH CAROLINA AND ANGELO)
PENZA,)

DEFENDANTS.)

ANDERSON, SC
AUGUST 21, 2012

TRANSCRIPT OF TESTIMONY

BEFORE THE HONORABLE ELLIS B. DREW, JR., MASTER
IN EQUITY FOR THE TENTH JUDICIAL CIRCUIT

APPEARANCES

FOR PLAINTIFFS CRAFT CONSTRUCTION,
MOORHEAD CONSTRUCTION AND MILLER
CONSTRUCTION:

DAVID J. BROUSSEAU
MCINTOSH SHERARD
SULLIVAN & BROUSSEAU
PO BOX 197
ANDERSON, SC 29622
864-225-0001 (O)
864-225-0004 (F)

FOR DEFENDANT PENDLETON STATION,
LLC:

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ANDERSON, SC 29622
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864-226-1931 (F)

FOR DEFENDANT ENTERPRISE BANK OF
SOUTH CAROLINA:

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FOR DEFENDANT ANGELO PENZA:

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COURT REPORTER:

KAREN T. SENN
CIRCUIT COURT REPORTER
406 DOVE TREE LANE
ANDERSON, SC 29621
864-226-8170 (H)
864-260-4052 (O)

I N D E X

WITNESSES:DIRECT CROSS REDIRECT RE CROSS

NONE

EXHIBITSFOR PLAINTIFFS:IN EVD.

NONE

FOR DEFENDANTS:

NONE

1 THE COURT: THIS IS A SERIES OF MECHANIC'S
2 LIEN CASES. I'LL RECITE THE CASE NUMBERS. IT'S 2007-CP-
3 04-2784 WHICH IS CRAFT CONSTRUCTION COMPANY, INC. OF
4 STARR VERSUS PENDLETON STATION, LLC, ENTERPRISE BANK OF
5 SOUTH CAROLINA AND ANGELO PENZA. THE SECOND CASE IS
6 2007-CP-04-2785 WHICH IS MOORHEAD CONSTRUCTION COMPANY,
7 INCORPORATED VERSUS THE SAME THREE DEFENDANTS. THE THIRD
8 CASE IS 2007-CP-04-2786 WHICH IS MILLER CONSTRUCTION
9 COMPANY, INCORPORATED VERSUS THE SAME THREE DEFENDANTS.

10 IN EACH OF THESE CASES THE DEFENDANT ENTERPRISE
11 BANK, AFTER AN ADVERSE RULING BY THE COURT AT A PRIOR
12 HEARING, HAS FILED A MOTION TO RECONSIDER. THAT MOTION
13 IS BEING HEARD THIS MORNING, AUGUST 21, 2012.

14 AT THIS TIME I'M GOING TO ASK THE ATTORNEYS TO
15 STATE THEIR NAME FOR THE RECORD AND WHO THEY ARE
16 REPRESENTING. MR. BROUSSEAU?

17 MR. BROUSSEAU: YES, SIR, YOUR HONOR. DAVID
18 BROUSSEAU OF MCINTOSH, SHERARD, SULLIVAN AND BROUSSEAU
19 AND I REPRESENT ALL THREE PLAINTIFFS, MOORHEAD, MILLER
20 AND CRAFT.

21 THE COURT: THANK YOU.

22 MR. HOLDER: THANK YOU, YOUR HONOR. STOKELY
23 HOLDER AND TOM DUDLEY ON BEHALF OF THE DEFENDANT
24 ENTERPRISE BANK AND WE ARE WITH THE FIRM OF KENNISON,
25 DUDLEY AND CRAWFORD.

1 THE COURT: ALL RIGHT, GENTLEMEN. I'LL BE
2 GLAD TO HEAR FROM YOU.

3 MR. HOLDER: THANK YOU, YOUR HONOR.

4 THE COURT: EXCUSE ME, MR. HOLDER. ARE YOU
5 EXPECTING ANY OTHER ATTORNEYS OR PARTIES TO APPEAR?

6 MR. BROUSSEAU: NO, SIR. IT'S TEN O'CLOCK. I
7 TALKED WITH MR. LOGAN YESTERDAY AND HE SAID HE MAY APPEAR
8 BUT THAT DIDN'T NECESSARILY MEAN THAT HE WAS GOING TO SO
9 SINCE IT'S TEN O'CLOCK I ASSUME HE'S NOT GOING TO.

10 THE COURT: ALL RIGHT, THANK YOU. MR.
11 HOLDER?

12 MR. HOLDER: THANK YOU, YOUR HONOR. MAY IT
13 PLEASE THE COURT, WE FILED MEMOS IN SUPPORT OF OUR MOTION
14 IN EACH OF THESE CASES. I KNOW THEY ARE LENGTHY AND SO
15 WITH THE LIMITED AMOUNT OF TIME WE HAVE TODAY WE'LL JUST
16 TOUCH ON THE MAIN SUBSTANCE OF THOSE MOTIONS AND
17 INCORPORATE THE REST OF THEM BY REFERENCE.

18 THE FIRST ISSUE WE'D LIKE TO ADDRESS -- AND
19 THESE FIRST ISSUES PERTAIN TO EACH OF THESE THREE CASES.
20 THE FIRST ISSUE WE'D LIKE TO ADDRESS IS IN THE ORDER IN
21 EACH CASE THERE APPEARED TO BE A PERSONAL JUDGMENT
22 ENTERED AGAINST ENTERPRISE BANK IN EACH OF THE CASES
23 DESPITE THE FACT THAT THE ONLY CAUSE OF ACTION THAT WAS
24 PENDING AGAINST THE BANK OR AT LEAST RULED UPON BY THE
25 COURT IS THE MECHANIC'S LIEN FORECLOSURE CAUSE OF ACTION

1 AGAINST THE BANK. WE THINK IT'S PRETTY WELL ESTABLISHED
2 IN THIS STATE THAT THERE IS NO BASIS FOR AN ENTRY OF
3 PERSONAL JUDGMENT AGAINST THE PARTIES IN A MECHANIC'S
4 LIEN CAUSE OF ACTION.

5 IF YOU'D LIKE TO ADDRESS EACH ISSUE WE'LL BE
6 GLAD TO OR WE CAN GO THROUGH IT AND THEN COME BACK AND
7 ADDRESS THEM ALL IF YOU'D LIKE TO ADDRESS THEM THAT WAY.

8 THE COURT: I'LL BE GLAD TO HEAR FROM YOU ON
9 ANY PARTICULAR ISSUES OTHER THAN THAT THAT YOU WOULD LIKE
10 TO TELL ME ABOUT.

11 MR. HOLDER: OKAY. THANK YOU, YOUR HONOR.
12 THE BASIS FOR THAT ARGUMENT, IN THE ORDER THERE WAS NEVER
13 A FINDING THAT THERE WAS A UNDERLYING DEBT WHICH COULD
14 OTHERWISE SUPPORT THAT MECHANIC'S LIEN. IT'S UNDISPUTED
15 AT TRIAL AND I THINK PLAINTIFFS' COUNSEL WOULD AGREE THAT
16 THESE DEBTS THAT FORM THE BASIS OF THE MECHANIC'S LIEN
17 AND REALLY THE BASIS OF THE LAWSUIT WERE FORMED FROM THE
18 AGREEMENT BETWEEN MOORHEAD CONSTRUCTION AND PENDLETON
19 STATION AND I BELIEVE IT WAS UNDISPUTED AT TRIAL THAT
20 THAT DEBT WAS IN FACT OWED BY PENDLETON STATION TO
21 MOORHEAD AND YET IN THE ORDER THERE WAS NO FINDING THAT
22 WOULD INCORPORATE THOSE FACTS AND WITHOUT THAT, YOUR
23 HONOR, IT'S OUR POSITION THAT UNDER THE MECHANIC'S LIEN
24 STATUTE THERE HAS NOT BEEN A FINDING THAT AN ACTUAL DEBT
25 OR A PROPER DEBT, IS DUE THE PLAINTIFF. AND WITHOUT THAT

1 IT'S OUR POSITION THAT THE MECHANIC'S LIEN MUST FAIL AS A
2 MATTER OF LAW.

3 THE NEXT ARGUMENT, YOUR HONOR, IS THAT THE
4 MECHANIC'S LIEN STATUTES ALSO MAKE CLEAR THAT THE TOTAL
5 AMOUNT OF THE LIENS FILED AGAINST THE PROPERTY CANNOT
6 EXCEED THE AMOUNTS THAT ARE DUE BY THE OWNER AT THE TIME
7 THE LIENS WERE FILED. IN THIS CASE, AS IT WAS UNDISPUTED
8 AT TRIAL, THE LIENS, EACH OF THE LIENS WERE FILED AGAINST
9 THE PROPERTY SAVE THE TWO ACRE TRACT, AFTER THE DATE IN
10 WHICH ENTERPRISE BANK BECAME THE OWNER OF THE PROPERTY.
11 FOR THE PURPOSES OF THE TRIAL THAT WAS THE PROPERTY KNOWN
12 AS TRACT A AND THE 38 ACRE TRACT. SO FROM THAT
13 STANDPOINT, AGAIN THE LAW IS CLEAR THAT THE AMOUNT OF THE
14 LIENS CANNOT EXCEED THE AMOUNT DUE THE OWNER. IT'S
15 UNDISPUTED THAT THE OWNER ENTERPRISE BANK AT THE TIME THE
16 LIENS WERE FILED AGAINST THOSE TRACTS DID NOT OWE THE
17 MONEY TO ANY PARTY, ESPECIALLY TO THE PLAINTIFFS HERE.
18 SO AGAIN, PURSUANT TO THE STATUTE, THE MECHANIC'S LIEN
19 STATUTE, THE LIENS MUST FAIL ON THOSE POINTS AS WELL.

20 ANOTHER ARGUMENT IS, YOUR HONOR, THAT THE TRACT
21 A, THE PROPERTY KNOWN AS TRACT A WHICH I'M SURE YOU'RE
22 FAMILIAR WITH SINCE IT'S AT ISSUE IN A NUMBER OF CASES --

23 THE COURT: YES, SIR.

24 MR. HOLDER: IT'S THE BANK'S POSITION THAT
25 THE MECHANIC'S LIEN, THE PLAINTIFFS' MECHANIC'S LIENS

1 HERE MUST ALSO FAIL AGAINST THAT TRACT FOR TWO REASONS,
2 ONE OF WHICH IS THE LIENS ON TRACT A WERE FILED AFTER THE
3 DEED IN LIEU OF FORECLOSURE WAS TRANSFERRED, THAT TRACT
4 A, TO ENTERPRISE BANK AND TWO, A MECHANIC'S LIEN IS NOT
5 ENFORCEABLE PER STATUTE AGAINST A PRIOR RECORDED MORTGAGE
6 OF ENTERPRISE BANK. I'LL TOUCH ON THAT SHORTLY. THAT
7 KIND OF DOVETAILS INTO THE MERGER ISSUE THAT WE WILL
8 RAISE HERE IN A MINUTE.

9 ANOTHER ARGUMENT, YOUR HONOR, FOR THE BANK IS
10 THAT ALL THE PLAINTIFFS' MECHANIC'S LIENS WE FEEL, AS
11 EVIDENCE WAS PRESENTED AT TRIAL, FAIL ALSO BECAUSE THEY
12 WERE EITHER NOT FILED AND/OR WERE NOT PERFECTED IN A
13 TIMELY MANNER PURSUANT TO THE STATUTE. ALL THE EVIDENCE
14 AT TRIAL SHOWS THAT THE WORK, IF ANY, THAT WAS DONE BY
15 THE PLAINTIFFS WAS TRIVIAL AND WAS NOT SOLICITED BY
16 ANYONE. IF PLAINTIFF ACTUALLY PERFORMED THE ALLEGED
17 WORK, IT'S THE BANK'S POSITION AND EVIDENCE SHOWS IT WAS
18 CLEARLY A CONTRIVED ATTEMPT TO REVIVE THEIR LIEN RIGHTS.

19 ALSO, YOUR HONOR, AS I MENTIONED EARLIER, THERE
20 WAS A LENGTHY RULING ON THE ISSUE OF MERGER CONTAINED IN
21 EACH OF THE ORDERS DESPITE THE FACT THAT AT TRIAL, AND AS
22 THE TRANSCRIPT CLEARLY REFLECTS, YOUR HONOR MADE IT CLEAR
23 THAT ANY COLLOQUY THAT WAS INITIATED DURING TRIAL WAS
24 PURELY DICTUM. HOWEVER, AS I SAID, THE ORDER GOES INTO
25 GREAT DETAIL ABOUT WHAT THE LAW PURPORTS TO BE ON THE

1 ISSUE AND THEN IN FACT APPLIES FACTS THAT REALLY WEREN'T
2 TRIED DURING THE TRIAL IN ORDER TO FORM A BASIS OF THE
3 RULING THAT STATED THAT MERGER ACTUALLY APPLIES HERE.
4 ENTERPRISE BANK WOULD TAKE ISSUE TO THE RULING, FIRST
5 BASED ON THE MERE FACT THAT IT WAS NOT LITIGATED AT
6 TRIAL. IT WAS ALREADY RULED UPON BY ANOTHER JUDGE IN A
7 DIFFERENT LAWSUIT IN THE SAME CIRCUIT HERE WHEREIN HE HAD
8 ISSUED AN ORDER MAKING IT CLEAR THAT THE FACTUAL ISSUES
9 BE DETERMINED BY THE JURY IN THAT CASE. HOWEVER, ALSO
10 THE LAW THAT WAS CITED IN THE COURSE OF THE RULING IN THE
11 ORDER IS IN FACT NOT THE LAW UNDER MERGER IN THIS STATE
12 ANY LONGER SUCH THAT WHEN YOU ACTUALLY APPLY THE FACTS,
13 EVEN THE LIMITED FACTS THAT WERE PRESENTED AT TRIAL IN
14 THIS CASE, VIA THE TESTIMONY OF A REPRESENTATIVE OF THE
15 BANK, IT REMAINS CLEAR THAT THE MERGER WAS NOT IN THE
16 BEST INTEREST OF THE BANK AT THE TIME BEFORE THE DEED WAS
17 TRANSFERRED, AT THE TIME THE DEED WAS TRANSFERRED AND
18 CLEARLY AFTER THE DEED WAS TRANSFERRED SUCH THAT UNDER
19 ANY INTERPRETATION OF THE MERGER LAW, MERGER IN THIS CASE
20 DID NOT OCCUR.

21 AND THEN, YOUR HONOR, ANOTHER ISSUE WE'VE
22 RAISED WITH THE ORDER IN EACH OF THESE DIFFERENT CASES IS
23 THAT THE AMOUNT OF THE ATTORNEY'S FEES IN EACH OF THE
24 MATTERS IS NOT SUPPORTED BY THE LAW OR THE FACTS.

25 IN EACH CASE, YOUR HONOR, AT TRIAL THERE WERE

1 ABSOLUTELY NO FINDINGS MADE ON THE RECORD OR ANY EVIDENCE
2 PRESENTED ON THE RECORD REGARDING THE AMOUNT OF FEES
3 BEING INCURRED BY THE PLAINTIFFS. THERE WAS NO EVIDENCE
4 OF THE TIME SPENT BY COUNSEL ON ANY OF THESE MATTERS OR
5 ANY EVIDENCE OF THE ACTUAL FEES CHARGED BY COUNSEL. IN
6 ADDITION, YOUR HONOR, THE LAW MAKES CLEAR THAT IN CASES
7 SUCH AS THIS THE FEES AWARDED MUST BE REPRESENTATIVE OF
8 JUST THOSE FEES INCURRED WITH RESPECT TO THEIR
9 PROSECUTION OF ONLY THE MECHANIC'S LIEN CAUSES OF ACTION.
10 THERE WAS NO EVIDENCE PRESENTED, NO FINDINGS MADE WITH
11 RESPECT TO THE AMOUNT OF ATTORNEY'S FEES THAT WERE
12 INCURRED, AS I SAID EARLIER, WITH RESPECT TO ANY PORTION
13 OF THE PLAINTIFFS' CASE. THEN ACTUALLY THERE'S BEEN
14 RECENT CASE LAW WHICH WE CITED IN OUR MEMO THAT MAKES
15 CLEAR THAT IN CASES SUCH AS THIS WHERE THE ATTORNEY'S FEE
16 IS AWARDED UNDER THE PREVAILING PARTY'S PROVISION IN THE
17 STATUTE, THE FEES THAT ARE AWARDED CANNOT BE BASED ON A
18 CONTINGENCY ASPECT. IT HAS TO BE PROVEN PURSUANT TO THE
19 FACTORS THAT ARE LAID OUT IN THE COLLINS CASE AND WHICH
20 WE'VE REFERENCED IN OUR MEMO, YOU HAVE TO ADDRESS EACH OF
21 THOSE FACTORS BUT MORE THAN ANYTHING YOU HAVE TO HAVE
22 SOME EVIDENCE OF RECORD THAT ACTUALLY PROVES THE AMOUNT
23 OF FEES INCURRED BY THE PARTIES. WITHOUT THAT, NATURALLY
24 YOU CAN'T SATISFY THE LAW THAT STATES, WHICH AGAIN MAKES
25 CLEAR THAT YOU CAN'T AWARD CONTINGENCY AMOUNTS OF

1 ATTORNEY'S FEES.

2 THE OTHER ISSUE, YOUR HONOR, WITH RESPECT TO
3 EACH OF THESE THREE CASES IS THE PREJUDGMENT INTEREST
4 AWARD THAT WAS PROVIDED IN THE ORDER AND MADE WHAT
5 APPEARS OR WHAT WAS MADE ALSO AS A PART OF THE PERSONAL
6 JUDGMENT AGAINST ENTERPRISE BANK, NOT ONLY ON ITS OWN BUT
7 ALSO IT LOOKED LIKE PREJUDGMENT INTEREST WAS INCLUDED IN
8 THE MECHANIC'S LIEN AMOUNT AWARDED BY THE COURT AGAINST
9 ENTERPRISE BANK IN A PERSONAL MANNER. IT IS ENTERPRISE
10 BANK'S POSITION THAT PREJUDGMENT INTEREST SHOULD NOT BE
11 AWARDED AT ALL AGAINST ENTERPRISE BANK IN THIS CASE
12 BECAUSE, PURSUANT TO THE STATUTES AND THE WELL
13 ESTABLISHED LAW IN THE CASE IN THIS STATE, PREJUDGMENT
14 INTEREST WAS NEVER DEMANDABLE OF ENTERPRISE BANK. THERE
15 WAS NEVER AN AGREEMENT BETWEEN ENTERPRISE BANK AND THESE
16 PARTIES AT ANY TIME THROUGHOUT THE COURSE OF THE EVENTS
17 THAT ARE THE SUBSTANCE OF THIS CASE, SUCH THAT THE
18 AMOUNTS CLAIMED WERE NEVER LIQUIDATED OR UNLIQUIDATED
19 WITH RESPECT TO ENTERPRISE BANK. NOW IT'S CERTAINLY THE
20 POSITION OF ENTERPRISE BANK AND I THINK OF ALL PARTIES
21 THAT IT'S UNDISPUTED THAT PREJUDGMENT INTEREST WOULD
22 APPLY TO THE ACTUAL UNDERLYING DEBT HERE WHICH, AS I
23 STATED EARLIER, IS WITHOUT DISPUTE CHARGEABLE AGAINST
24 PENDLETON STATION. YET, AS I ALSO EXPRESSED EARLIER,
25 THERE'S NO JUDGMENT BEEN MADE IN THE CASES AGAINST

1 PENDLETON STATION. MORESO, WHEN YOU TAKE INTO ACCOUNT
2 THE PREJUDGMENT INTEREST THAT WAS -- THIS ALSO DOVETAILS
3 INTO THE ATTORNEY'S FEES ARGUMENT, THE APPLICATION OF THE
4 PREVAILING PARTY'S PROVISION WITH RESPECT TO ATTORNEY'S
5 FEES IN EACH CASE, THE COURT IN ITS ORDER MADE CLEAR THAT
6 IT WAS ALLOWING ATTORNEY'S FEES TO BE AWARDED TO THE
7 PLAINTIFFS WITH RESPECT TO, ESPECIALLY MOORHEAD, IN SO
8 FINDING THAT THE COURT DETERMINED THAT MOORHEAD'S
9 MECHANIC'S LIEN WHICH WAS IN THE AMOUNT OF OVER
10 \$400,000.00, WHEN YOU CONSIDER THAT, THE PREVAILING
11 PARTY'S PROVISION AS IT APPLIES WITH THE MOORHEAD CASE,
12 THE JUDGMENT AWARDED TO MOORHEAD UNDER THE MECHANIC'S
13 LIEN CAUSE OF ACTION WAS FIFTY-SIX (56) SOME ODD THOUSAND
14 DOLLARS. IN LIGHT OF THE PREVAILING PARTY'S PROVISION
15 AND THE WELL ESTABLISHED LAW IN THIS STATE, ON THAT
16 PROVISION WITH RESPECT TO MECHANIC'S LIEN CASES IS
17 CLEARLY THE CASE WHEN IT'S APPLIED CORRECTLY THAT IT'S
18 CLOSEST TO THE PIN. THERE WERE NO OFFERS OF SETTLEMENT
19 HERE WHEN YOU CONSIDER THE BANK'S FAILURE TO MAKE A
20 COUNTERCLAIM AND THEIR OFFER OF SETTLEMENT IS DEEMED ZERO
21 AND, OF COURSE, IN THIS CASE MOORHEAD FILED A LIEN
22 WITHOUT AMENDING IT FOR THE AMOUNT OF OVER \$400,000.00
23 WHEN THE JUDGMENT WAS \$56,000.00. UNDER THE CASE LAW IN
24 THIS STATE, AS THEY HAVE INTERPRETED THE STATUTE HERE,
25 CLEARLY ENTERPRISE BANK'S OFFER OF SETTLEMENT OF ZERO IS

1 CLOSER TO \$56,000.00 AS COMPARED TO THE UNAMENDED LIEN
2 AMOUNT OF MOORHEAD'S \$400,000.00.

3 WHAT THE COURT OPINED IN IT'S ORDER TO SUPPORT
4 ITS JUDGMENT IS DESPITE THE FACT THAT EACH OF THE
5 PLAINTIFFS FILED A SEPARATE LIEN, MOORHEAD SHOULD BE
6 CONSIDERED THE PREVAILING PARTY BECAUSE HIS LIEN AMOUNT
7 ALSO INCLUDES, PROPERLY INCLUDES THE AMOUNT ALLEGED TO
8 HAVE BEEN OWED TO MILLER AND CRAFT.

9 NOW THERE ARE SEVERAL REASONS, WHEN YOU APPLY
10 THAT ANALYSIS IN A PRACTICAL MANNER UNDER THE STATUTES,
11 THAT THAT SHOULD FAIL AS A MATTER OF LAW. PREJUDGMENT
12 INTEREST AND THE ATTORNEY'S FEES IS ONE. IT IS REALLY
13 INEQUITABLE TO FIND THAT IN THESE THREE SEPARATE CASES
14 WHERE YOU DETERMINED THAT THE MOORHEAD CASE INCLUDED ALL
15 THREE LIENS AND YOU PROVIDE AN ATTORNEY FEE AMOUNT AND A
16 PREJUDGMENT INTEREST AWARD AMOUNT BASED ON THAT, THE
17 MOORHEAD LIEN, AND THEN YOU TURN AROUND AND ALSO PROVIDE
18 AN ATTORNEY FEE AWARD AND PREJUDGMENT INTEREST AWARD.
19 UNDER SEPARATE LIEN AMOUNTS WHEN YOU'VE ALREADY
20 DETERMINED IN YOUR ORDER THAT THE MOORHEAD LIEN
21 INCORPORATES THOSE OTHER TWO. SO IT'S NOT A DUPLICATIVE
22 RECOVERY, IT'S ACTUALLY RECOVERY TIMES THREE.

23 WITH RESPECT TO THE MOORHEAD LIEN THERE WAS A
24 BOND PREMIUM, A LOST BOND PREMIUM AMOUNT AWARDED TO
25 MOORHEAD UNDER THE MECHANIC'S LIEN IN THE AMOUNT OF

1 \$33,642.00. THAT'S ACTUALLY HALF OF THE \$66,000.00 THAT
2 WAS AWARDED TO MOORHEAD UNDER THE MECHANIC'S LIEN CAUSE
3 OF ACTION.

4 I THINK IT'S IMPORTANT TO NOTE THAT WITHIN THE
5 ORDER THE COURT MADE CLEAR THAT MOORHEAD'S CLAIM FOR LOST
6 PROFITS AND OVERHEAD WERE PRECLUDED BY THE COURT BASED ON
7 THE LAW AS PROVIDED IN THE ZEPSA AND SENTRY CASES. IN
8 THOSE CASES THE COURTS IN THIS STATE MADE CLEAR THAT
9 UNLESS THE ITEMS WERE INCLUDED IN THE CONTRACT THAT IT
10 WOULD NOT BE LIENABLE BECAUSE IN THESE CASES OF OVERHEAD
11 AND LOST PROFITS AND BOND PREMIUMS, IT'S CLEARLY THE CASE
12 THAT THOSE ITEMS ARE NOT BEING REPRESENTATIVE OF LABOR
13 PERFORMED OR MATERIALS FURNISHED ON THE PROJECT WHICH IS
14 THE UNDERLYING BASIS FOR THE MECHANIC'S LIEN. THE LOST
15 BOND PREMIUM IN THIS CASE IN THE CONTRACT THAT WAS PUT
16 INTO EVIDENCE BY THE PLAINTIFF DOES NOT PROVIDE FOR
17 PAYMENT OF A LOST BOND PREMIUM, ESPECIALLY IN THIS CASE
18 WHERE THE LOST BOND PREMIUM AMOUNT IS REPRESENTATIVE OF
19 WORK THAT WAS NEVER DONE. SO IT'S ENTERPRISE BANK'S
20 POSITION THAT THAT AWARD WAS NOT SUPPORTED BY LAW.

21 I'VE TOUCHED ON THE PREVAILING PARTY ANALYSIS
22 WITH RESPECT TO THE MOORHEAD CASE. AGAIN, I THINK IT'S
23 PRETTY CLEAR WHEN IT COMES TO THE STATUTORY PREVAILING
24 PARTY PROVISION THAT GOES TO CASE LAW IT'S INTERPRETED
25 THAT ENTERPRISE BANK IS IN FACT THE PREVAILING PARTY IN

1 THAT MOORHEAD CASE.

2 THAT'S ALL I HAVE, YOUR HONOR.

3 THE COURT: THANK YOU VERY MUCH. ALL RIGHT,
4 MR. BROUSSEAU.

5 MR. BROUSSEAU: THANK YOU, YOUR HONOR. I'M
6 JUST GOING TO TOUCH ON SOME OF THE MAJOR POINTS, YOUR
7 HONOR. I RECEIVED THIS BRIEF YESTERDAY AND I'VE HAD A
8 CHANCE TO REVIEW IT, NOT IN GREAT DETAIL YET, BUT I'VE
9 HAD A CHANCE TO REVIEW IT.

10 YOUR HONOR, OF COURSE, IT'S OUR POSITION THAT
11 AT THE TRIAL IN THIS MATTER THERE WAS SUFFICIENT EVIDENCE
12 PRESENTED TO THIS COURT TO SUPPORT THIS COURT'S FINDINGS
13 THAT, NUMBER ONE, ALL OF THE THREE PLAINTIFFS' LIENS WERE
14 FILED IN A TIMELY BASIS.

15 IT'S ALSO OUR POSITION THAT THERE WAS
16 SUFFICIENT EVIDENCE TO PRESENT THE COURT'S FINDINGS ON
17 THE AMOUNTS THAT WERE OWED TO ALL THREE OF THE
18 PLAINTIFFS.

19 THAT BEING SAID, YOUR HONOR, UNDER THE
20 PREVAILING PARTY STATUTE, IT'S ALSO OUR OPINION AND OUR
21 POSITION THAT THIS COURT PROPERLY FOUND THAT THE AMOUNT
22 OR -- THAT OUR CLIENTS WERE THE PREVAILING PARTY AND THIS
23 COURT AWARDED AN AMOUNT OF FEES PURSUANT TO THE STATUTE
24 THAT SAYS THAT THE COURT IS TO SET THE AMOUNT OF FEES AND
25 AT THAT TIME THE DEFENDANTS RAISED NO OBJECTION. NOW, OF

1 COURSE, WE HAVE THE RULE 59(E) MOTION BUT AT THE TIME OF
2 THE HEARING THERE WAS NO OBJECTION MADE AT THAT TIME. OF
3 COURSE, IT'S OUR POSITION ON THAT THAT ANYTHING ON THAT
4 WOULD BE WAIVED.

5 IN REGARDS TO THE DISCUSSION OF MERGER, YOUR
6 HONOR, THAT WAS INCLUDED IN THE ORDER, YOUR HONOR'S FINAL
7 ORDER, AND TO ME IT'S FOR FUTURE TITLE SEARCHERS AND FOR
8 STUFF LIKE THAT. I THINK IT'S VERY IMPORTANT AND OF
9 COURSE IT'S THE LAW. IT'S THE LAW IN THIS STATE IN
10 REGARDS TO THE DISCUSSION ON THE MERGER.

11 IN EITHER EVENT, QUITE FRANKLY WE THINK THIS
12 COURT'S ORDER COMPLIED WITH THE EVIDENCE THAT WAS
13 PRESENTED AT THE FINAL HEARING AND WE'D JUST ASK THAT
14 YOUR HONOR DENY THE DEFENDANT'S MOTION.

15 I CAN CERTAINLY ANSWER ANY QUESTIONS THAT THE
16 COURT MAY HAVE FOR ME IN REGARDS TO SOME OF THE OTHER
17 POINTS THAT THEY BROUGHT OUT BUT, YOU KNOW, QUITE
18 FRANKLY, I THINK THAT THE EVIDENCE FULLY SUPPORTED YOUR
19 HONOR'S ORDER IN THIS MATTER.

20 THANK YOU.

21 THE COURT: ALL RIGHT, THANK YOU, SIR. THE
22 COURT NOTES THAT MR. JIM LOGAN APPEARED AFTER THE HEARING
23 STARTED. MR. LOGAN, DO YOU HAVE ANYTHING TO ADD AT THIS
24 TIME?

25 MR. LOGAN: THANK YOU, YOUR HONOR. JUST

1 BRIEFLY. IT APPEARS THAT THE BANK IS JUST SIMPLY TRYING
2 TO RELITIGATE AT THIS STAGE ISSUES THAT WERE BEFORE THE
3 COURT AND THE COURT HAS ALREADY RULED ON. I HAVEN'T
4 HEARD ANYTHING NEW NOR DID I SEE ANYTHING NEW WHEN I HAD
5 A CHANCE TO REVIEW THEIR MOTION. I CAN'T THINK OF ANYONE
6 MORE QUALIFIED TO RULE ON THE REAL ESTATE ISSUES,
7 INCLUDING THE DOCTRINE OF MERGER AND THE FACTS APPLICABLE
8 TO THAT THAN YOUR HONOR. YOU'VE DEALT WITH THESE ISSUES
9 IN YOUR PRACTICE AND YOU'VE DEALT WITH THEM THROUGHOUT
10 YOUR JUDICIAL CAREER. THE LAW IS WHAT IT IS. IT'S
11 APPLICABLE. THAT WAS THE ISSUE BEFORE THE COURT. THE
12 FACTS WERE DEVELOPED ON THAT ISSUE AND TO THE EXTENT THAT
13 THERE IS SOME DEFICIENCY IN THE FACTS FROM THE BANK'S
14 POINT OF VIEW THAT'S THEIR PROBLEM AND NOT THE COURT'S
15 PROBLEM.

16 SO ALL OTHER ISSUES ARE ISSUES OF FACT AS THE
17 COURT HAS FOUND AND WERE APPROPRIATE TO BE INCLUDED IN
18 THE COURT'S ORDER BECAUSE THERE ARE PILLARS AND
19 FOUNDATIONS TO THE RULINGS THAT THE COURT MADE AND THOSE
20 ARE PART OF THOSE FOUNDATIONS, SO WE ASK THAT THE COURT'S
21 ORDER STAND AND THE CASE PROCEED ACCORDINGLY.

22 THE COURT: THANK YOU. ALL RIGHT, MR.
23 LAVERY, DO YOU HAVE ANYTHING TO ADD AT THIS TIME?

24 MR. LAVERY: I HAVE NOTHING TO ADD, YOUR
25 HONOR.

1 THE COURT: ALL RIGHT. GENTLEMEN, ANY REPLY
2 OR ANYTHING FURTHER FOR THE MOTION?

3 MR. HOLDER: NO, YOUR HONOR.

4 THE COURT: I CERTAINLY CONCEDE THAT THE
5 TRIAL OF THESE CASES PRESENTED SOMEWHAT SIMILAR BUT ALSO
6 SOMEWHAT DIFFICULT MATTERS THAT YOU DON'T ALWAYS SEE IN
7 THE AVERAGE MECHANIC'S LIEN CASES. NEARLY ALL OF THEM
8 ARE SOMEWHAT EMBROILED. THIS ONE HAS HAS EXCELLENT
9 ISSUES PRESENTED BY BOTH THE PLAINTIFFS' ATTORNEY AND THE
10 VERY ABLE DEFENDANTS' ATTORNEYS.

11 THE CASE WAS EXTENSIVELY TRIED AND I DIDN'T
12 ISSUE THESE ORDERS IN EACH OF THESE CASES LIGHTLY. I
13 TRIED TO APPLY THE PROPER LAW TO THE FACTS AS I SAW THEM.

14 YOU MADE EXCELLENT ARGUMENTS ON YOUR MOTION TO
15 RECONSIDER. THEY ARE NOTED FOR THE RECORD.
16 UNFORTUNATELY, I'M GOING TO HAVE TO DENY THE MOTION AT
17 THIS TIME. THE PRIOR ORDER WILL BE AFFIRMED. THAT ORDER
18 WAS FILED ON OR ABOUT JUNE THE 7TH, 2012.

19 I APPRECIATE THE PRESENTATIONS BY BOTH
20 ATTORNEYS ON BOTH SIDES. THEY ARE VERY ABLE LAWYERS AND
21 HANDLE CASES WELL. IT WILL BE INTERESTING TO SEE IF
22 THERE ARE ANY FURTHER DEVELOPMENTS.

23 NOW, MR. BROUSSEAU, YOU SUBMIT JUST A SHORT
24 ORDER DENYING THESE GENTLEMEN'S MOTIONS TO RECONSIDER IN
25 EACH CASE AND AFFIRM THE PRIOR ORDER OF THE COURT.

1 PLEASE SEND A COPY OF THAT ORDER TO EACH OF THE ATTORNEYS
2 OF RECORD PRIOR TO SENDING IT TO THE COURT.

3 MR. BROUSSEAU: YES, SIR. THANK YOU, YOUR
4 HONOR.

5 MR. HOLDER: THANK YOU, YOUR HONOR.

6 THE COURT: THANK YOU, GENTLEMEN.

7
8 END OF HEARING.

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON)

3 C E R T I F I C A T E
4

5 I, KAREN T. SENN, CERTIFIED COURT REPORTER FOR
6 THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
7 FOREGOING PAGES CONSTITUTE A TRUE, ACCURATE AND COMPLETE
8 TRANSCRIPT OF THE HEARING HELD BEFORE THE HONORABLE ELLIS
9 B. DREW, JR., MASTER IN EQUITY FOR THE TENTH JUDICIAL
10 CIRCUIT, ON AUGUST 21, 2012 IN DOCKET 2007-CP-04-2784
11 ENTITLED CRAFT CONSTRUCTION COMPANY VERSUS PENDLETON
12 STATION, ET AL; 2007-CP-04-2785 MOORHEAD CONSTRUCTION,
13 INC. VERSUS PENDLETON STATION, ET AL AND 2007-CP-04-2786
14 MILLER CONSTRUCTION COMPANY, INC. VERSUS PENDLETON
15 STATION.
16

17 
18

19
20 ANDERSON, SOUTH CAROLINA

21 OCTOBER 30, 2012
22
23
24
25

FILED-CLERK'S OFFICE
ANDERSON SC

David Johns

2011 DEC -9 P 1:57

From: "David Johns" <djohns@ebanksc.com>
To: "Angel Marshall" <angel@cutchinlaw.com>
Cc: "William J Cutchin" <bill@cutchinlaw.com>
Sent: Friday, March 02, 2007 6:51 PM
Subject: Re: Deed

COMMON PLEAS AND
GENERAL SESSIONS

The deed is short a forty acre tract. There are suppose to be three tracts on the deed. The bank will not accept this 'deed in lieu of foreclosure' unless the record is clean or free of liens other than the bank's mortgages. We need a preliminary owners title policy or preliminary opinion to determine if we will accept the deed followed up with a final owners title policy. I guess alternatively you could check the record and file the deed if no liens are on the record and then issue a owners title policy reflecting same.

David
David L. Johns
Enterprise Bank of SC
PO Box 8
Elmhurst SC 29081
Phone 803-267-3191
Fax 803-267-2316
djohns@ebanksc.com

----- Original Message -----

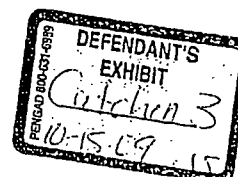
From: Angel Marshall
To: 'David Johns'
Cc: 'Elizabeth Daniel'
Sent: Friday, March 02, 2007 4:25 PM
Subject: Deed

David:

Per Ben's instructions, we are over-nighting the original signed deed to be recorded Monday. Once it's recorded we will write the title policy on the property. I have attached for your records a copy of the signed deed.

Angel

Angel Marshall
Head Paralegal/Off. Mgr.
Cutchin Law Firm
Phone: 843/216-0809
Fax: 843/216-0828
angel@cutchinlaw.com



EBSC 000393

4/2/2007

AGREEMENT

FILED-CLERK'S OFFICE
ANDERSON SC

2011 DEC -9 P 1:57

THIS AGREEMENT is dated as of the 2 day of March in the year 2005 by and between Pendleton Station, LLC (hereinafter called Owner) and Moorhead Construction, Inc. (hereinafter called Contractor).

GENERAL SESSIONS

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents and generally described as follows:
Completion of all necessary road grading, storm sewer systems, potable water systems, sanitary sewer systems, and all other general grading.

Article 2. ENGINEER

The Project has been designed by Dunn & Associates Engineering, Inc. who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

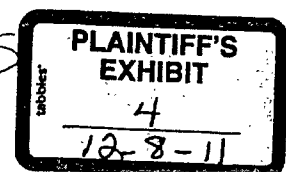
Article 3. CONTRACT TIMES

- 3.1 The Work will be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within a specified period of time as determined by the owner and developer. See Notice to Proceed for contract start/stop dates.
- 3.2 Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$ 0.0192% of contract price per day for each day that expires after the time specified in paragraph 3.1 until the Work is complete and ready for final payment.

Article 4. CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount equal to the total sum of
as indicated in the Bid Form.

As provided in paragraph 11.9 of the General Conditions, *estimated quantities* are not guaranteed, and determinations of actual quantities and classification are to be made by Engineer as provided in paragraph 11.10 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9.2 of the General Conditions.



MOORHEAD 038

Article 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 Progress Payments; Retainage: Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 25th of each month during construction as provided in paragraph 5.1.1 below. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions and in the case of Unit Price Work based on the number of units completed, or in the event there is no schedule of values, as provided in the General Requirements.

5.1.1 Prior to completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.7 of the General Conditions.

90% of Work completed (with the balance being retainage) if Work has been 50% completed as determined by Engineer.

90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by the Engineer as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

7.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

7.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

7.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.

7.5 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.6 Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

KTM
2/3/05

00520-2

AMH
3/22/05

2/8/05
R

MOORHEAD 039

Article 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consists of the following:

- 8.1 This Agreement.
- 8.2 Notice of Award.
- 8.3 Notice to Proceed.
- 8.4 General Conditions.
- 8.5 Supplementary Conditions.
- 8.6 Specifications.
- 8.7 Drawings as identified in the List of Drawings.
- 8.8 Addenda. (If applicable.)
- 8.9 Contractor's Bid.
- 8.10 Change Orders delivered after execution of this Agreement.

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer.

KTM

3/8/05

00520-3

[Signature] 3/22/05

[Signature]
3/8/05

MOORHEAD 040

This Agreement will be effective on March 2, 2005.

Owner: Pendleton Station, L.L.C.

By: [Signature]
(Signature)
Benjamin L. Pearl
(Please print name)

3/8/05

(SEAL)

Contractor: Moorhead Construction, Inc.

By: [Signature]
(Signature)
Kevin Moorhead
(Please print name)

(CORPORATE SEAL)

Attest: _____

Address for giving notices:

Attest: _____

Address for giving notices:

Miller's Construction Inc. LLC

By: [Signature]

Title: VP on S

Date: 3/22/05

00520-4

3/8/05
ICR

MOORHEAD 041

Adm'l Invt'd: Carroll, Inc.
1813 Anderson Street
Burlington, North Carolina 28607

Project: Foundation Station
Owner: Paratrend Station, LLC
Engineer: Dunn & Associates
Bid Date: 1/1/05
Bid Time: 2:00

Task	Start Date	End Date	Status
Work Completed	10/1/2023	10/1/2023	Completed
Work Delayed	10/1/2023	10/1/2023	Delayed
Work Based on Others	10/1/2023	10/1/2023	Based on Others

Impressed Schwartz

[illegible]

11-27 AM

Ann 3/22/00

**Moorhead Construction, Inc.,
Summary of Damages**



(Does NOT include amounts owed to Miller & Craft by virtue of sub-contracts)

1.	Retainage	\$	32,985.81
2.	Lost Home Office Overhead		194,405.00
3.	Lost Bond Premiums		33,642.00

Sub Total \$ **261,032.81**

Prejudgment Interest

(261,032.81 x .0875 = \$22,840.37 per year)

(22,840.37 / 12 months = \$1,903.36 per month)

\$1,903.36 per month x 53 months = \$ **100,878.08**

Total \$ **361,910.89**

Additional Damages - Breach of Contract (as to Pendleton Station, LLC only)

1.	Lost Profit	\$	314,630.00

FILED-CLERK'S OFFICE
ANDERSON SC
2011 DEC -9 P 1:57
COMMON PLEAS AND
GENERAL SESSIONS

CONTRACTOR'S APPLICATION & CERTIFICATION FOR PAYMENT

PROJECT NAME: Pendleton Station Phase I

PAYMENT APPLICATION: Fifteen

PERIOD: thru 10-25-06

CONTRACT DATE:

Application is made for payment as shown below in connection with the contract.
See continuation sheets attached for additional breakdowns

OWNER: Pendleton Station LLC
ENGINEER: Dunn & Associates Engineering Inc.
CONTRACTOR: Don Moorhead Construction, Inc.
1513 Anderson St.
Belton, SC 29627

1. ORIGINAL CONTRACT SUM	\$3,364,721.34
2. NET CHANGE BY CHANGE ORDERS	\$80,913.31
3. CONTRACT SUM TO DATE	\$3,445,634.65
4. TOTAL OF COMPLETED WORK AND MATERIALS STORED TO DATE	\$1,266,718.80
5. LESS RETAINAGE. 10%	\$126,671.88
6. TOTAL EARNED LESS RETAINAGE	\$1,140,046.92
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$1,242,366.05
8. BALANCE DUE THIS PAYMENT	-\$102,319.13
9. BALANCE TO FINISH PLUS RETAINAGE	\$2,305,587.73

CONTRACTOR'S CERTIFICATE FOR PAYMENT

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for the work which previous Certificates for Payment were issued and payments received from the Owner, and that current Payment were issued and received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Don Moorhead Construction Inc.

By: Kevin Moorhead Date: 13-Nov-06

Notary Public: [Signature]

ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the date comprising the above application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

This Certificate is not negotiable. The Amount Certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner under this Contract.

AMOUNT RECOMMENDED \$ _____

ENGINEER: Dunn & Associates Engineering Inc.

By: _____ Date: _____

INSPECTOR:

By: _____ Date: _____

OWNER'S APPROVAL FOR PAYMENT

By: _____ Date: _____

AGENCY'S APPROVAL FOR PAYMENT

By: _____ Date: _____

Dunn As .es Inc. '
 Pay Est # 15 -

Description	Original Estimate							This Estimate					To Date				
	1 A	1 B	Unit of Measure	Cost per Unit	1A Total	1B Total	Revised Total	1A Quantity This Estimate	1A Total This Estimate	1B Quantity This Estimate	1B Total This Estimate	Total This Estimate	1A Quantity To Date	1A Total To Date	1B Unit Quantity To Date	1B Total To Date	Total To Date
	Quantity	Quantity						Estimate	Estimate	Estimate	Estimate	Estimate	To Date	To Date	To Date	To Date	To Date
1 Clearing & Grubbing	15.97	14.11	ac	1,240.00	51,742.80	45,716.40	97,459.20										
2 Grassing													15.97	51,742.80	14.11	45,716.40	97,459.20
a Temporary	10	10	ac	1,320.00	13,200.00	13,200.00	26,400.00										
b Permanent	10	10	ac	1,800.00	18,000.00	18,000.00	36,000.00						3.70	4,224.00	7.00	9,240.00	13,464.00
3 Temporary Construction Entrance	2	0	ea	900.00	1,800.00		1,800.00						2.50	4,500.00	8.50	15,300.00	19,800.00
4 Curb & Gutter	6243	2892	lf	9.77	60,994.11	28,254.84	89,248.95	1	900.00			900.00	2.00	1,800.00			1,800.00
5 Storm Sewer Piping													978.00	9,555.06			9,555.06
18" RCP																	
a 0-6	909	505	lf	21.06	19,143.54	10,635.30	29,778.84										
b 6-8	973	496	lf	22.26	21,658.98	11,040.96	32,699.94						909.00	19,143.54			19,143.54
c 8-10	305	289	lf	23.46	7,155.30	6,779.94	13,935.24						770.00	17,140.20			17,140.20
d 10-12	163	0	lf	24.66	4,019.58		4,019.58										
e 12-14	55	0	lf	25.86	1,422.30		1,422.30										
24" RCP																	
a 0-6	17	44	lf	78.28	480.42	1,243.44	1,723.86										
b 6-8	160	43	lf	29.46	4,713.60	1,266.78	5,980.38						17.00	480.42			480.42
c 8-10	0	94	lf	30.66		2,882.04	2,882.04						160.00	4,713.60			4,713.60
d 10-12	0	128	lf	31.86		4,078.08	4,078.08										
e 12-14	0	76	lf	33.06		2,512.56	2,512.56										
30" RCP																	
a 0-6	145	7	lf	37.98	5,507.10	265.86	5,772.96										
b 6-8	101	7	lf	39.18	3,957.18	274.26	4,231.44						145.00	5,507.10			5,507.10
c 8-10	56	82	lf	40.38	2,261.28	3,311.16	5,572.44						101.00	3,957.18			3,957.18
d 10-12	107	14	lf	41.58	4,449.06	582.12	5,031.18						56.00	2,261.28			2,261.28
e 12-14	0	191	lf	42.78		8,170.98	8,170.98						107.00	4,449.06			4,449.06
36" RCP																	
a 0-6	20	3	lf	46.50	930.00	139.50	1,069.50										
b 6-8	142	81	lf	47.70	6,773.40	3,863.70	10,637.10						20.00	930.00			930.00
c 8-10	76	75	lf	48.90	3,716.40	3,667.50	7,383.90						142.00	6,773.40			6,773.40
d 10-12	254	18	lf	50.10	12,725.40	901.80	13,627.20						76.00	3,716.40			3,716.40
e 12-14	0	0	lf	56.70									254.00	12,725.40			12,725.40
42" RCP																	
a 0-6	14	0	lf	61.74	864.36		864.36										
b 6-8	6	0	lf	62.94	377.64		377.64						16.00	987.84			987.84
c 8-10	302	0	lf	64.14	19,370.28		19,370.28						8.00	503.52			503.52
d 10-12	176	0	lf	65.34	11,499.84		11,499.84						304.00	19,498.56			19,498.56
e 12-14	32	0	lf	66.54	2,129.28		2,129.28						176.00	11,499.84			11,499.84
7 Storm Sewer Structures													32.00	2,129.28			2,129.28
Headwalls																	
0-6	2	2	ea	1,020.00	2,040.00	2,040.00	4,080.00	1	1,020.00			1,020.00	1.00	1,020.00			1,020.00
Junction Box																	
a 0-6	0	2	ea	840.00		1,680.00	1,680.00										
b 6-8	1	0	ea	960.00	960.00		960.00						1.00	960.00			960.00
c 8-10	2	1	ea	1,080.00	2,160.00	1,080.00	3,240.00						2.00	2,160.00			2,160.00
d 10-12	1	2	ea	1,620.00	1,620.00	3,240.00	4,860.00						1.00	1,620.00			1,620.00
e 12-14	0	1	ea	1,740.00		1,740.00	1,740.00										
f 14-16	0	0	ea	2,491.00													
Grate Inlet																	
a 0-6	4	3	ea	1,020.00	4,080.00	3,060.00	7,140.00						4.00	4,080.00			4,080.00
b 6-8	0	0	ea	1,260.00													
c 8-10	0	0	ea	1,500.00													
d 10-12	0	0	ea	1,740.00													

Pendleton
Phase I

613

Description	Original Estimate							This Estimate					To Date				
	1 A	1 B	Unit of	Cost per	1A	1B	Revised	1A	1A	1B	1B	Total	1A	1A	1B Unit	1B	Total
	Quantity	Quantity	Measure	Unit	Total	Total	Total	Quantity	Total	Quantity	Total	This Estimate	Quantity	Total	Quantity	Total	To Date
a 12-14	0	0	ea	1,980.00													
f 14-16	0	0	ea	2,220.00													
SWCB																	
a 0-6	16	12	ea	1,380.00	22,080.00	16,560.00	38,640.00										
b 6-8	8	4	ea	1,500.00	12,000.00	6,000.00	18,000.00										
c 8-10	8	5	ea	1,620.00	12,960.00	8,100.00	21,060.00						19.00	26,220.00			26,220.00
d 10-12	3	3	ea	2,220.00	6,660.00	6,660.00	13,320.00						2.00	3,000.00			3,000.00
e 12-14	2	0	ea	2,340.00	4,680.00		4,680.00						4.00	6,480.00			6,480.00
f 14-16	0	2	ea	2,580.00		5,160.00	5,160.00						6.00	13,320.00			13,320.00
DWCB																	
a 0-6	5	1	ea	1,380.00	6,900.00	1,380.00	8,280.00										
b 6-8	1	1	ea	1,500.00	1,500.00	1,500.00	3,000.00										
c 8-10	0	0	ea	2,118.00									5.00	6,900.00			6,900.00
d 10-12	2	0	ea	2,358.00	4,716.00		4,716.00						1.00	1,500.00			1,500.00
e 12-14	0	0	ea	2,598.00													
f 14-16	0	0	ea	2,838.00									2.00	4,716.00			4,716.00
8 Paving																	
Public Road																	
a Asphalt Surface 2"	12380	0	sy	17.40	215,412.00		215,412.00										
b Asphalt Binder 2 1/2"	12380																
c Stone Base 6"	12380																
Private Road																	
a Asphalt Surface 2"	23403	19525	sy	15.35	359,470.08	299,904.00	659,374.08										
b Asphalt Binder 3 1/2"	23403	19525															
9 Silt Fence	3847	3819	lf	2.52	9,694.44	9,623.88	19,318.32										
10 Silt Check Dams	0	9	ea	180.00		1,620.00	1,620.00										
11 Rip Rap (Misc. Outlet Structures)	150	50	sy	31.20	4,680.00	1,560.00	6,240.00						6,644.00	16,742.88	6,349.00	15,999.48	32,742.36
12 Temporary Sediment Trap (Inc. F)	3	3	ea	4,620.00	13,860.00	13,860.00	27,720.00						10.00	1,800.00			1,800.00
13 Rock Excavation	200	200	cy	57.50	11,500.00	11,500.00	23,000.00						106.00	3,307.20			3,307.20
14 Earthwork													6.00	27,720.00			27,720.00
4" Subgrade Cut W/ 4" Slope AS requested																	
Mass Grading	1	0	ls	401,015.00	401,015.00		401,015.00										
Building Pads to Grade	1	0	ls	122,250.00	122,250.00		122,250.00										
Grade Roadways	1	0	ls	125,439.00	125,439.00		125,439.00						47.00%	188,477.05	40.00%	160,406.00	348,883.05
Grade & Backfill Curb	1	0	ls	53,765.00	53,765.00		53,765.00						27.5%	33,618.75	15.00%	18,337.50	51,956.25
Grade Main Road Asphalt	1	0	ls	29,045.00	29,045.00		29,045.00						43%	53,311.58	15.00%	18,815.85	72,127.43
Grade Interior Road Asphalt	1	0	ls	16,332.00	16,332.00		16,332.00	10	5,376.50			5,376.50	0.25	13,441.25			13,441.25
Grade & Backfill Sidewalk	1	0	ls	19,863.00	19,863.00		19,863.00	11	3,194.95			3,194.95	0.21	6,099.45			6,099.45
Fine Grade Site	1	0	ls	57,033.00	57,033.00		57,033.00	15	2,449.80			2,449.80	0.15	2,449.80			2,449.80
AS P 4" Conduit Crossings	1	0	ea	425.00	425.00		425.00	10	5,703.30			5,703.30	16%	9,125.28			9,125.28
AS R Tensar	1	0	sy	2.95	2.95		2.95										
AS R Crusher Run Stone Stabiliz	1	0	tn	16.50	16.50		16.50										
AS R 3" Surge Stone Stabiliz	1	0	tn	19.50	19.50		19.50										
15 Remove Unsuitable Material	200	200	cy	9.00	1,800.00	1,800.00	3,600.00										
16 Concrete																	
a Sidewalk	3337	3781	sy														
b Crosswalk	TBD	TBD	sy														
17 Road Improvements (Lebanon & Westinghouse)																	
Grading	1900	0	lf	33.17	63,023.00		63,023.00										
Pave Asphalt Surface 2"	2540	0	sy	17.40	44,196.00		44,196.00										
Asphalt Binder 2 1/2"	2540	0	sy														
Stone Base 6"	2540	0	sy														

Dunn A Construction Inc
1513 Anderson Street
Belton SC 29627

Pend Station
Phase I

Dunn A Construction Inc
Pay Est # 15

Description	Original Estimate							This Estimate					To Date				
	1 A	1 B	Unit of	Cost per	1A	1B	Revised	1A	1A	1B	1B	Total	1A	1A	1B Unit	1B	Total
	Quantity	Quantity	Measure	Unit	Total	Total	Total	Quantity	Total	Quantity	Total	Estimate	Quantity	Total	Quantity	Total	To Date
Resurface Old Road	5070	0	sy	6.50	33,462.00		33,462.00										
Striping & Traffic Control	1	0	ls	14,400.00	14,400.00		14,400.00										
18 Erosion Control & Water Quality	1	0	ls	83,522.00	83,522.00		83,522.00										
19 Retaining Walls	By Others																
20 Bridges	TBD	TBD															
21 Temporary Creek Crossing	1	0	ls	3,000.00	3,000.00		3,000.00						0.41	34,244.02			34,244.02
1 Manholes																	
a 0-6	1	4	ea	1,108.00	1,108.00	4,432.00	5,540.00										
b 6-8	15	5	ea	1,355.00	20,325.00	6,775.00	27,100.00						1.00	1,108.00			1,108.00
c 8-10	8	6	ea	1,663.20	13,305.60	9,979.20	23,284.80						15.00	20,325.00			20,325.00
d 10-12	1	2	ea	1,908.48	1,908.48	3,816.96	5,725.44						8.00	13,305.60			13,305.60
e 12-14	2	2	ea	2,217.60	4,435.20	4,435.20	8,870.40						1.00	1,908.48			1,908.48
f 14-16	0	1	ea	2,464.00		2,464.00	2,464.00						2.00	4,435.20			4,435.20
2 8" Diameter PVC																	
a 0-6	879	882	lf	12.48	10,969.92	11,007.36	21,977.28										
b 6-8	2027	1859	lf	15.84	32,107.68	29,446.56	61,554.24						679.00	10,969.92			10,969.92
c 8-10	672	432	lf	19.20	12,902.40	8,294.40	21,196.80						2,027.00	32,107.68			32,107.68
d 10-12	502	335	lf	23.68	11,887.36	7,932.80	19,820.16						672.00	12,902.40			12,902.40
e 12-14	138	246	lf	28.17	3,887.46	6,929.82	10,817.28						502.00	11,887.36			11,887.36
f 14-16	57	49	lf	32.64	1,860.48	1,599.36	3,459.84						138.00	3,887.46			3,887.46
g 16-18	56	36	lf	37.12	2,078.72	1,336.32	3,415.04						57.00	1,860.48			1,860.48
3 4" Sewer Service	119	115	ea	516.18	61,425.42	59,360.70	120,786.12						56.00	2,078.72			2,078.72
4 Rock Excavation	100	100	cy	57.50	5,750.00	5,750.00	11,500.00						119.00	61,425.42			61,425.42
5 Force Main																	
a 6" DIP	1650	0	lf	16.11	26,581.50		26,581.50										
b Pump Station	1	0	ls	96,880.00	96,880.00		96,880.00										
c Road Bore 12"	78	0	lf	77.28	6,105.12		6,105.12						0.60	58,128.00			58,128.00
d Connect to Existing MH	1	0	ls	1,064.00	1,064.00		1,064.00										
Waterline																	
1 Waterline																	
a 6" PVC CI 200	8400	4600	lf	6.04	50,736.00	27,784.00	78,520.00										
2 Connect To existing	1	0	ea	2,875.00	2,875.00		2,875.00										
3 Fire Hydrant	10	5	ea	2,242.00	22,420.00	11,210.00	33,630.00										
4 6" GV	31	20	ea	569.75	17,646.75	11,385.00	29,031.75										
5 Valve Markers	46	35	ea	42.55	1,957.30	1,489.25	3,446.55										
6 Blow-Off Assembly	5	5	ea	569.75	2,848.75	2,848.75	5,697.50										
7 Rock Excavation	0	0	cy	57.50													
8 Water Service	119	115	ea	530.15	63,087.85	60,967.25	124,055.10										
Total					2,520,624.81	844,096.53	3,364,721.34		18,644.55			18,644.55		886,881.46		283,815.23	1,170,696.69
CO # 1 Relocate Sewer Line A	1		ls	31,548.53	31,548.53		31,548.53										
CO # 2 Upgrade Building Pads	1		ls	36,656.25	36,656.25		36,656.25						1.00	31,548.53			31,548.53
CO # 3 Additional basements 1B	1		ls	8,731.60	8,731.60		8,731.60	21	7,697.81			7,697.81	1.00	36,656.25			36,656.25
Place Surge Stone				23.75													
Change Order Request	1		ls	3,976.93	3,976.93		3,976.93						593.28	14,090.40			14,090.40
Re-working inlet protection													1.00	3,976.93			3,976.93
Rework parking lots	1		ls	8,449.63	8,449.63		8,449.63						1.00	8,449.63			8,449.63
TOTAL					2,601,538.12	844,096.53	3,445,634.65		26,342.36			26,342.36		973,153.57		283,815.23	1,256,968.80

Don N. Lead Construction, Inc.

STORING SERIAL LOG
Pay Estimate # 15

Pendle, station

[illegible]

615

Miller Construction Company, LLC,
Summary of Damages



1. Retainage	\$	69,451.83
2. Unpaid Invoices	\$	41,651.30
Sub Total	\$	111,103.13
Prejudgment Interest		
(111,103.13 x .0875 = \$9,721.52 per year)		
(9,721.52 / 12 months = \$810.13 per month)		
\$810.13 per month x 53 months =		
	\$	<u>42,936.89</u>
Total	\$	154,040.02

FILED-CLERK'S OFFICE
J. WILSON SC
2011 DEC -9 P 1:58
COMMON PLEAS AND
GENERAL SESSIONS

Miller's Construction Company, LLC.
225 Thompson Road
Anderson, SC 29624

Date	Invoice #
11/02/2006	20513

Bill To
Moorhead Construction, Inc. 1513 Anderson Street Belton, SC 29627

		P.O. No.	Terms	Job Site
		Pendleton St.	Net 10th.	Phase 1A
Itemized Service	Description	Amount		
% Completed	Payment Application#11			
% Completed	100% Completion of installing second temporary construction entrance	750.00		
% Completed	100% Completion of installing Headwall 0-6	850.00		
% Completed	15% Completion of grade and backfill curb	5,802.00		
% Completed	15% Completion of grade main road asphalt	3,134.40		
% Completed	15% Completion of grade interior road asphalt	1,762.50		
% Completed	10% Completion of fine grade site	4,103.10		
Retainage	10% Retainage withheld	-1,640.20		
Thank you for your business.		Total		
		\$14,761.80		

Phone # 864-296-3301

Fax # 864-296-8700

Email Address:
mconstco@bellsouth.net

Miller's Construction Company, LLC.
225 Thompson Road
Anderson, SC 29624

Date	Invoice #
11/02/2006	20514

Bill To
Moorhead Construction, Inc. 1513 Anderson Street Belton, SC 29627

		P.O. No.	Terms	Job Site
		Mr. Moorhead	Net 10th.	Pendleton St.
Itemized Service	Description	Amount		
Change Order Retainage	Change Order# 1-Relocation of topsoil (See attached breakdown invoice billed on 5/30/06) 10% Retainage withheld	14,551.25 -1,455.13		
Thank you for your business.		Total \$13,096.12		

Phone # 864-296-3301

Fax # 864-296-8700

Email Address:
mconstco@bellsouth.net

Miller's Construction Company, LLC.
225 Thompson Road
Anderson, SC 29624

Date	Invoice #
11/02/2006	20515

Bill To
Moorhead Construction, Inc. 1513 Anderson Street Belton, SC 29627

		P.O. No.	Terms	Job Site
		Mr. Moorhead	Net 10th.	Pendleton St.
Itemized Service	Description	Amount		
Change Order	Change Order#2-Re-grading building pads	6,158.25		
Retainage	100% Completion 10% Retainage withheld	-615.83		
Thank you for your business.		Total	\$5,542.42	

Phone # 864-296-3301

Fax # 864-296-8700

Email Address:
mconstco@bellsouth.net

013784

Vendor: MILLER'S CONSTRUCTION CO

Check: 13784

Check date: 08/10/2005

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
19812X	05/26/2005	MILLER'S CONSTRUCTIO	65,246.62	0.00	65,246.62

Retainage Due: 7249.63

013992

Vendor: MILLER'S CONSTRUCTION CO

Check: 13992

Check date: 09/14/2005

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
JLY 05	07/31/2005	MILLER'S CONSTRUCTIO	26,807.91	0.00	26,807.91

Retainage
\$ 6780.73

ORHEAD CONSTRUCTION, INC.

1513 ANDERSON STREET
BELTON, SOUTH CAROLINA 29627
(864) 338-0888

014277

INVOICE NO.	INVOICE DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
		Pay Reg # 06	Retainage 12,255.30		
Check Amount			*****110,297.72		

PLEASE DETACH AND RETAIN THIS PORTION

013263

endor: MILLER'S CONSTRUCTION CO

Check: 13263

Check date: 04/13/2005

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
9691	03/22/2005	MILLER'S CONSTRUCTIO	17,469.68	0.00	17,469.68
9692	03/22/2005	MILLER'S CONSTRUCTIO	16,037.42	0.00	16,037.42

Retainage Due:

\$ 1941.07

\$ 1781.83

33,507.10
0

013439

or: MILLER'S CONSTRUCTION CO

Check: 13439

Check date: 06/03/2005

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
#2	05/05/2005	MILLER'S CONSTRUCTIO	116,829.13	0.00	116,829.13

Retainage Due: 12,981.02

0

Vendor: MILLER'S CONSTRUCTION CO

013872

Check: 13872

Check date: 08/18/2005

Invoice #	Invoice Date	
19869X	06/24/2005	MILLER'S CONSTRUCTIO
19870X	06/24/2005	MILLER'S CONSTRUCTIO
ADJUSTMENT	06/24/2005	MILLER'S CONSTRUCTIO

Gross Amount	Retn Amount	Net Amount
90,957.69	0.00	90,957.69
75,311.19	0.00	75,311.19
-7,626.95	0.00	-7,626.95 ??

Retainage \$10,106.41
Retainage \$8367.91

Mike
What this
for you need to
call back
\$158,641.93 ^{ps} this
Mike

014633

Vendor: MILLER'S CONSTRUCTION CO

Check: 14633

Check date: 02/16/2006

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
12/0520112	12/23/2005	MILLER'S CONSTRUCTIO	11,084.85	0.00	11,084.85
12/0520113	12/23/2005	MILLER'S CONSTRUCTIO	8,001.43	0.00	8,001.43
GRAVEL	12/06/2005	MILLER'S CONSTRUCTIO	2,381.84	0.00	2,381.84

Retainage
\$ 2120.70

\$121,468.12

015242

dor: MILLER'S CONSTRUCTION CO

Check: 15242

Check date: 06/28/2006

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
154	10/25/2005	MILLER'S CONSTRUCTIO	27,031.81	0.00	27,031.81
154-CORR	10/25/2005	MILLER'S CONSTRUCTIO	-13,536.60	0.00	-13,536.60
154CORR2	10/25/2005	MILLER'S CONSTRUCTIO	1,353.66	0.00	1,353.66

Retainage
\$ 1649.88

14848.87

Vendor: MILLER'S CONSTRUCTION CO

Invoice #

20309

Invoice Date

05/30/2006

MILLER'S CONSTRUCTIO

Check: 15404

Check date: 07/28/2006

015404

Gross Amount

15,984.00

Retn Amount

0.00

Net Amount

15,984.00

Retainase
1776.00

Vendor: MILLER'S CONSTRUCTION CO

Invoice #

0357

Invoice Date

06/28/2006

MILLER'S CONSTRUCTIO

Check: 15633

Check date: 09/13/2006

015633

Gross Amount

21,972.17

Retn Amount

0.00

Net Amount

21,972.17

Retain
2441.35

RHEAD CONSTRUCTION, INC.

1513 ANDERSON STREET
BELTON, SOUTH CAROLINA 29627
(864) 338-0888

015969

VOICE NO.	INVOICE DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
		Invoice #	20470		
Check Amount			*****9 750.00		
PLEASE DETACH AND RETAIN THIS PORTION					

Vendor: MILLER'S CONSTRUCTION CO

Check: 15711

015711

Check date: 10/04/2006

Invoice #	Invoice Date		Gross Amount	Retn Amount	Net Amount
20210	07/24/2006	MILLER'S CONSTRUCTIO			
20310	05/30/2006	MILLER'S CONSTRUCTIO	10,848.00	0.00	10,848.00
20310CORR	09/01/2006	MILLER'S CONSTRUCTIO	3,112.38	0.00	3,112.38
			345.82	0.00	345.82

Retain

14306.20

**Craft Construction Co., Inc., of Starr,
Summary of Damages**

FILED-CLERK'S OFFICE
ANDERSON SC



1. Unpaid Invoices

DEC -9 P 1: 58
\$ 83,499.67

Prejudgment Interest

COMMON PLEAS AND
GENERAL SESSIONS

$(83,499.67 \times .0875 = \$7,481.22 \text{ per year})$

$(7,481.22 / 12 \text{ months} = \$623.44 \text{ per month})$

$\$623.44 \text{ per month} \times 53 \text{ months} =$

\$ 33,042.32

Total

\$ 118,541.99

Pendleton Station Sewer Phase 1A

Contractor:
Craft Construction Co.,
Inc. of Starr

ESTIMATE

4

9/25/2005

2/27/2006

Number	Approval Date	Additions	Deductions
#3	3/1/2006	72737.4	64005.8
#4	4/4/2006	10597.08	7118.33
	Totals	83,334.48	71,124.13
	Net Change	12,210.35	

1 Original Contract		280,770.09
2 Change Orders		12,210.35
3 Revised Contract (1+2)		292,980.44
4 Work Completed		242,342.44
5 Stored Materials		
6 Subtotal(4+5)		242,342.44
7 Retainage	0.1	24,234.24
9 Previous Payment		147,357.47
10 Amount Due (6-7-8)		70,750.73

- "Detailed breakdown attached"

No

Remaining:

Projected Completion:

Engineer's Certification:

The undersigned certifies that to the best of their knowledge and belief, the Quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

(Signature):

By:

Date:

(Signature):

By:

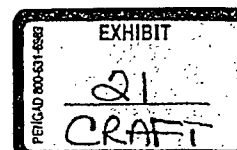
Date:

(Signature):

By: William F. Craft President

Date:

Approved
by Owner



Craft 00247

Moorhead Construction
1513 Anderson Street
Belton, SC 29827

Pendleton Station Sewer Phase 1A

Project No.:
Partial Payment No.:
Period of Estimate:
From:
To: 3/25/2006
1/27/2007

4

629

Item	Description	Contract				This Period		Total to Date		%
		Qty.	Unit	Unit Price	Amount	Qty.	Amount	Qty.	Amount	
1	4' dia. Manholes									
a.	0' - 6' Depth	1	ea.	990.00	990.00					
b.	6' - 8' Depth	15	ea.	1,210.00	18,150.00			1	990.00	100.00%
c.	8' - 10' Depth	8	ea.	1,485.00	11,880.00			15	18,150.00	100.00%
d.	10' - 12' Depth	1	ea.	1,704.00	1,704.00			8	11,880.00	100.00%
e.	12' - 14' Depth	2	ea.	1,980.00	3,960.00			1	1,704.00	100.00%
f.	14' - 16' Depth	0	ea.	2,200.00	0.00			2	3,960.00	100.00%
2	8" dia. PVC sewerline									
a.	0' - 6' Depth	879	lf.	11.14	9,792.08			0		
b.	6' - 8' Depth	2,027	lf.	14.14	28,661.78			879	9,792.08	100.00%
c.	8' - 10' Depth	672	lf.	17.14	11,518.08			2,027	28,661.78	100.00%
d.	10' - 12' Depth	502	lf.	21.14	10,612.28			672	11,518.08	100.00%
e.	12' - 14' Depth	138	lf.	25.15	3,470.70			502	10,612.28	100.00%
f.	14' - 16' Depth	57	lf.	29.14	1,660.98			138	3,470.70	100.00%
g.	16' - 18' Depth	56	lf.	33.14	1,855.84			57	1,660.98	100.00%
3	4" Sewer Service	119	ea.	461.23	54,886.37			56	1,855.84	100.00%
4	Rock removal	100	cy.	50.00	5,000.00			119	54,886.37	100.00%
5	Force Main							100	5,000.00	
a.	6" DIP	1,650	lf.	14.38	23,727.00					
b.	Pump Station	1	LS.	86,500.00	86,500.00			500	7,190.00	30.30%
c.	Road Bore 12"	79	lf.	69.00	5,451.00			0.6	51,800.00	60.00%
d.	Connect to existing manhole	1	LS.	950.00	950.00			100	6,900.00	126.58%
6	Change Order # 3	1	LS.	8,731.60	8,731.60					
7	Change Order # 4	1	LS.	3,478.75	3,478.75			1	8,731.60	100.00%
8								1	3,478.75	100.00%
9										
					292,980.44				\$242,342.44	

Typical stored materials at end of this pay period				
Description	Quantity		Unit Price	Amount
Subtotal work completed & stored materials this pay period				242,342.44
Retainage			0.1	24,234.24
Previous payments				147,357.47
Amount Due				\$70,750.73

Remit To: Craft Construction Co., Inc. of Starr
P.O. Box 129
Starr, SC 29684

By: William F. Craft, President

Date: 1/24/2007



MOORHEAD CONSTRUCTION INC.

1613 Anderson Street
Belton, South Carolina 29627
(864) 338-0888 Fax (864) 338-1444

Utility Construction

Partial Release and Waiver of Lien by Subcontractor / Supplier

For and in consideration of the payment of \$68504.07 which amount is represented as being currently due as detailed by Payment Request # 4, the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned through 5/10/06 (date), the effective date of this Waiver and Release in connection with construction of Pendleton Station (the project).

This Waiver and Release applies to all facts, acts, events and circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the effective date hereof, excepting only any claims currently unresolved for which written notice has been provided to Moorhead Construction Inc. as follows:

Except as specifically described above, and except for retainage, if any, held under the Subcontract, Subcontractor (or Supplier) expressly waives all claims against Moorhead Construction Inc. as herein above described. This Waiver and Release is intended to apply to and protect Moorhead Construction Inc.'s payment and performance bond surety, if any, as well as anyone claiming by or through Moorhead Construction Inc., the Owner, or the surety in connection with any claim, demand, lien, claim for relief, cause of action and the like waived, release and relinquished by the terms of this Waiver and Release.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for payment recited above.

The undersigned further represents that all employees, laborers, material men and subcontractors employed by the undersigned in connection with the Project and all bills currently due for labor, materials, supplies and taxes furnished by others to the undersigned in connection with construction of improvements upon the Project have been fully paid and that no obligations, legal, equitable or otherwise, are owned by the undersigned in connection with its work on the Project. With respect to this representation and warranty, the undersigned does hereby agree to indemnify and hold harmless Moorhead Construction Inc., its payment and performance bond surety, if any, the Owner and any others by or through them from any and all claims, damages, losses, expenses and the like, including attorney's fees, incurred by reason of any claim that the undersigned has not fully paid for all labor, materials and expenses incurred in connection with its work on the Project.

The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and the other obligations of the undersigned to Moorhead Construction Inc.

In Witness Hereof, on behalf of the undersigned, with full authority, I have executed this Instrument under seal effective the 17th day of May, 2006.

State of South Carolina
County of Anderson
Sworn and subscribed to me this the
17th day of May, 2006

Shannon Willian
Notary Public My commission expires 9-12-2015

Subcontractor / Supplier

Signature and Title

076-845-902
P1418
\$548.00

68,504.07

Moorhead Construction
1513 Anderson Street
Belton, SC 29627

Pendleton Station Sewer Phase 1A

Page 1

Project No.:
Partial Payment No.: 4
Period of Estimate:
From: 3/25/2006
To: 1/27/2007

Craft 00255

Item	Description	Item	Contract				This Period		Total to Date		%
			Qty.	Unit	Unit Price	Amount	Qty.	Amount	Qty.	Amount	
1	4' dia. Manholes										
a.	0' - 6' Depth		1	ea.	990.00	990.00			1	990.00	100.00%
b.	6' - 8' Depth		15	ea.	1,210.00	18,150.00			15	18,150.00	100.00%
c.	8' - 10' Depth		8	ea.	1,485.00	11,880.00			8	11,880.00	100.00%
d.	10' - 12' Depth		1	ea.	1,704.00	1,704.00			1	1,704.00	100.00%
e.	12' - 14' Depth		2	ea.	1,980.00	3,960.00			2	3,960.00	100.00%
f.	14' - 16' Depth		0	ea.	2,200.00	0.00			0		
2	8" dia. PVC sewerline										
a.	0' - 6' Depth		879	lf.	11.14	9,792.06			879	9,792.06	100.00%
b.	6' - 8' Depth		2,027	lf.	14.14	28,661.78			2,027	28,661.78	100.00%
c.	8' - 10' Depth		672	lf.	17.14	11,518.08			672	11,518.08	100.00%
d.	10' - 12' Depth		502	lf.	21.14	10,612.28			502	10,612.28	100.00%
e.	12' - 14' Depth		138	lf.	25.15	3,470.70			138	3,470.70	100.00%
f.	14' - 16' Depth		57	lf.	29.14	1,660.98			57	1,660.98	100.00%
g.	16' - 18' Depth		56	lf.	33.14	1,855.84			56	1,855.84	100.00%
3	4" Sewer Service		119	ea.	461.23	54,886.37			119	54,886.37	100.00%
4	Rock removal		100	cy.	50.00	5,000.00			100	5,000.00	
5	Force Main										
a.	6" DIP		1,850	lf.	14.38	23,727.00					
b.	Pump Station		1	LS.	86,500.00	86,500.00					
c.	Road Bore 12"		79	lf.	69.00	5,451.00			0.6	51,900.00	30.30%
d.	Connect to existing manhole		1	LS.	950.00	950.00				0.00	60.00%
6	Change Order # 3		1	LS.	8,731.60	8,731.60					126.58%
7	Change Order # 4		1	LS.	3,478.75	3,478.75			1	8,731.60	100.00%
8									1	3,478.75	100.00%
9											
						292,980.44			\$228,252.44		

Typical stored materials at end of this pay period			
Description	Quantity	Unit Price	Amount
Subtotal work completed & stored materials this pay period			228,252.44
Retainage			0.00
Previous payments			194,608.31
Amount Due			\$33,644.13

Remit To Craft Construction Co., Inc. of Starr
P.O. Box 129
Starr, SC 29684

By:

William F. Craft, President

Date:

1/24/2007

Pendleton Station

Pendleton Station Sewer Phase 1A

Project No.: _____
 Partial Payment No.: 4
 Period of Estimate:
 From: 1/1/2007
 To: 2/28/2007

Item	Description	Contract				This Period		Total to Date		%
		Qty.	Unit	Unit Price	Amount	Qty.	Amount	Qty.	Amount	
1										Complete
a.										
b.										
c.										
d.										
e.										
f.										
2										
a.										
b.										
c.										
d.										
e.										
f.										
g.										
3										
4	Rock removal	100	cy.	50.00	5,000.00		0		0.00	
5	Force Main									
a.	8" DIP	1,650	lf.	16.11	26,581.50	1,150	18,526.5	1,550	24,970.50	93.94%
b.	Pump Station	1	LS.	38,752.00	38,752.00		0			
c.	Road Bore 12"	79	lf.	77.28	6,105.12	100	7,728	100	7,728.00	128.58%
d.	Connect to existing manhole	1	LS.	1,064.00	1,064.00		0			
6	Change Order # 3	1	LS.	8,731.60	8,731.60	1	8,731.6	1	8,731.60	100.00%
7	Change Order # 4	1	LS.	3,478.75	3,478.75	1	3,478.75	1	3,478.75	100.00%
8	Invoice CRA-1141	1	LS.	8,948.69	8,948.69	1	8,948.69	1	8,948.69	100.00%
9										
					96,659.68		\$46,411.54		\$51,855.54	

635

Typical stored materials at end of this pay period				
Description	Quantity		Unit Price	Amount
Subtotal work completed & stored materials this pay period				51,855.54
Retainage		0.1		5,185.55
Previous payments				
Amount Due				\$48,669.99

Remit To: Craft Construction Co., Inc. of Starr
P.O. Box 129
Starr, SC 29684

By: William F. Craft, President

Date: 2/28/2007

636

Rx Date/line MAR-07-2007(WED) 18:01
FROM Mar 7 2007 6:18PM ENTERPRISE BANK

18032672316
(WED)MAR 7 2007 3:08/ST.13NO.6932750P. 3515 P 2 P.003



Investors Title Insurance Company

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27516-2687

Owner's Policy of Title Insurance

Policy Number: OR-A 088580

Schedule A

File Number: ENTERPRISE BANK

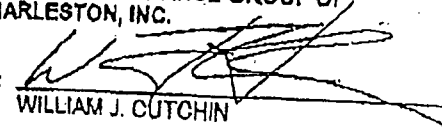
Date of Policy: March 5, 2008 at 08:00 AM

Amount of Insurance: \$ 5,600,000.00

1. Name of Insured:
Enterprise Bank
2. Your interest in the land covered by this policy is:
FEE SIMPLE
3. The land referred to in this policy is described in the attached Schedule C.



PALMETTO INSURANCE GROUP OF
CHARLESTON, INC.

By: 
WILLIAM J. CUTCHIN

CLERK'S OFFICE
JANUARY 10, 2008
DEC - 9 P 1:58
GENERAL SESSIONS

Note: This Policy consists of insert pages labeled as Schedule A, Schedule B-Part 1 and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(PENDLETON DEED.PFD/PENDLETON DEED/10)

EBSC 000008



637

Rx Date/Time MAR-07-2007(WED) 18:01
FROM Mar. 7. 2007 6:13PM ENTERPRISE BANK

18032572316 P.004
(WED)MAR 7 2007 13:08/ST.13No.6932760P. 4515 P 3

Owner's Policy of Title Insurance

Policy Number:

Schedule B - Part 1

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes for the year 2007, not yet due, and for the year 2006.
2. Such state of facts as would be disclosed by an accurate survey and inspection of the premises.
3. Any facts, rights, interests or claims which are not shown by the public record but which could be ascertained by an accurate survey of the land or by making inquiry of persons in possession thereof.
4. Pending such time as the improvements under construction on insured premises shall be completed, liability under this policy is limited to the purchase price paid for the land; but as and when the erection of such improvements shall be commenced, liability hereunder shall increase, as the improvements progress, in the amount of cost thereof, up to the face amount of this policy.
5. PARCEL "1": Rights of others in and to the use of the common areas as shown on map recorded in Book 61577, Page 2, and as contained in the Declaration, Covenants, Restrictions, and By-Laws
6. PARCEL "2": Restrictive covenants dated 11/22/05 and recorded 11/23/05 in Book 7078, Page 171, and as amended in Book 7078, Page 171, at the Anderson County RMC Office; but this Company insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of title.
7. All conditions, covenants, easements, restrictions, and rights of way indicated by instruments, including plats of record
8. All applicable zoning and other land use regulations or restrictions of any political subdivision in which the subject property is situated.
9. PARCEL "1": Roadways, streams or easements, or claims of easements, if any, not shown by the public records, riparian rights and the title to any filled-in lands.
10. PARCEL "1": Rights, if any, of the property owners abutting the creek, in and to the waters of the creek, and in and to the bed thereof, also boating and fishing rights of property owners abutting the creek or stream of water leading thereto or there from.
11. PARCEL "1": Matters of survey shown on plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al. prepared by Marathon Engineering, LLC, dated December 2, 2006 and recorded December 5, 2006 in the Office of the Register of Deeds for Anderson County in Book S1577, at page 2, but not limited to the following:
 - (a) Old road runnign across a portion of the property;
 - (b) Center of creek and bridge run; and
 - (c) Fencing.
12. PARCEL "2": Rights of others in and to the use of the common areas as shown on map recorded in Book 1401, Page 3 in Anderson County Clerk's Court.
13. Easements, liens or encumbrances or claims thereof, which are not shown by the public record.

Note: This Policy consists of insert pages labeled as Schedule A, Schedule B-Part 1 and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(PENDLETON DEED.PFD/PENDLETON DEED(S))

EBSC 000009

Rx Date/Time: MAR-07-2007(WED) 18:01
FROM: 7. 2007w 6:19PM ENTERPRISE BANK

18032F7316
(WED)MAR 7 2007, 18:09/ST. 1: No. 6932 75C... 515 P 4 P. 005

Owner's Policy of Title Insurance

Policy Number:

Schedule B - Part 1

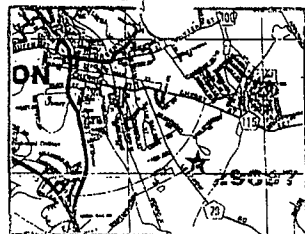
(Continued)

14. PARCEL "1": Mortgage from Pendleton Station, LLC to Enterprise Bank of SC, dated September 1, 2006 and recorded September 13, 2006 in the Office of the Register of Deeds for Anderson County in Book 7585, at page 143, in the principal sum of \$2,000,000.00.
15. PARCEL "2": Mortgage from Pendleton Station, LLC to Enterprise Bank of SC, dated August 10, 2005 and recorded October 25, 2005 in the Office of the Register of Deeds for Anderson County in Book 7024, at page 247, in the principal sum of \$3,000,000.00.
16. PARCEL "1 & 2": Mortgage from Pendleton Station, LLC to Enterprise Bank of SC, dated December 11, 2006 and recorded December 18, 2006 in the Office of the Register of Deeds for Anderson County in Book 07780, at Page 00194, in the principal sum of \$500,000.00.
17. The Company insures the Insured as to the location of the boundary lines of the land, but does not insure the engineering calculations in computing the amount of acreage contained therein.

Note: This Policy consists of insert pages labeled as Schedule A, Schedule B-Part 1 and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(PENDLETON DEED, PFD/PENDLETON DEED/S)

EBSC 000010



LOCATION MAP NOT TO SCALE

NR
JOHN H. LUSK
TMR 40-00-02-6

FUTURE
DEVELOPMENT
PHASE 1-B

AREA
OF
REARVIEW POND

LM. 3/8
REMARK
1094.14'

FUTURE
DEVELOPMENT

NR
ROBERT ETHRIDGE
TMR 40-00-02-4

N 31°42'23" W
R7.82

N 34°08'58" W
112.62'

WESTINGHOUSE ROAD
S-4-1056
66' R/W

Tract B - Zellner

Tract A - Enterprise Bank

I 2c - DANIEL

Units w/ loans - Under Construction

Units w/ loans - Never Built

BANK OWNED - NO LOAN - Under Construction

UNDER Construction - NO LOAN - Not on Bank Property

0' 100' 200' 300'

PENDLTON STATION SECTION 1-A

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH REQUIREMENTS OF THE SURVEYING STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY AFFECTING THE PROPERTY OTHER THAN SURVEYING.

FLOOD FLOOD HAZARD MAP CONFORMITY PANEL 42011-0173 R

I HEREBY CERTIFY THAT THE MEASUREMENTS AS SHOWN ARE CORRECT; THAT THE RELATIVE ERROR OF THIS SURVEY IS LESS THAN 1:10,000; THAT THIS AREA WAS REPERMITS BY DALLS, METHOD; THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS EXCEPT AS SHOWN; AND THAT A PORTION OF THIS PROPERTY IS LOCATED IN A DESIGNATED FLOOD HAZARD AREA.

S.C. REG. L.R. NO. 18714

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
TOWNSHIP OF PENDLTON
CITY OF PENDLTON
TAX MAP NO. 83-00-01-C08 & 007

PLAT OF 19.21 ACRES OF LAND SURVEYED AT THE REQUEST OF
PENDLTON STATION, LLC

PLAT SHOWN 1401 B 3
REFERENCE: RECD 1987-11-24 SCALE: 1" = 120' DATE: OCTOBER 13, 2005

MARATHON ENGINEERING, LLC
1513 ANDERSON STREET
BELTON, SOUTH CAROLINA 29627
(803) 338-0088



PLAINTIFF'S
EXHIBIT

1-6-Daniel

9-27-08 JC

Pendleton Station, LLC 451 Jessen Lane, Suite C Charleston, SC 29482	Enterprise Bank of SC (01) P. O. Box 8 Ehrhardt, SC 29081	Line of Credit No. 1101013 Date 08-10-2005 Max. Credit Amt. 3,000,000.00 Loan Ref. No. 1101013

BORROWER'S NAME AND ADDRESS
 *I includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
 *You means the lender, its successors and assigns.

You have extended to me a line of credit in the
 AMOUNT of three million and no/100

You will make loans to me from time to time until 12:00 p.m. on 08-10-2008 \$ 3,000,000.00. Although the line of credit expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the terms of this agreement, as evidenced by any note or notes I have signed promising to repay these amounts.
 This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by direct payment, reliance for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

- ☐ **OBLIGATORY:** You may not refuse to make a loan to me under this line of credit unless one of the following occurs:
 a. I have borrowed the maximum amount available to me;
 b. This line of credit has expired;
 c. I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
 d. I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;

☒ **DISCRETIONARY:** You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed one and no/100 \$ 1.00

Subject to the obligatory or discretionary limitations above, this line of credit is:

- ☐ **OPEN-END (Business or Agricultural only):** I may borrow up to the maximum amount of principal more than one time.
☐ **CLOSED-END:** I may borrow up to the maximum only one time.

2. **PROMISSORY NOTE:** I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on 08-10-2005, or any note(s) I sign at a later time which represent advances under this agreement. The note(s) set(s) out the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:
Development progress, all terms current, discretion of loan officer.

3. **RELATED DOCUMENTS:** I have signed the following documents in connection with this line of credit and note(s) entered into in accordance with this line of credit:

- ☐ security agreement dated _____
☒ mortgage dated 08-10-2005
☒ guaranty dated 08-10-2005

4. **REMEDIES:** If I am in default on the note(s) you may:
 a. take any action as provided in the related documents;
 b. without notice to me, terminate this line of credit;
 By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I default, you do not waive your right to later consider the event a default, if it happens again.

5. **COSTS AND FEES:** If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also pay your costs and costs of collection, where permitted by law.

6. **COVENANTS:** For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the following:
 a. maintain books and records of my operations relating to the need for this line of credit;
 b. permit you or any of your representatives to inspect and/or copy these records;
 c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;
 d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

7. **NOTICES:** All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective when deposited in the mail, first class, or delivered to me in person.

8. **MISCELLANEOUS:** This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation.

FOR THE LENDER

J L. Johns

Title Vice President

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I HAVE RECEIVED MY COPY ON TODAY'S DATE.

Benjamin L. Daniel, Sr., Managing Member



Pendleton Station, LLC
451 Jessen Lane, Suite C
Charleston, SC 29492

Enterprise Bank of S.C. (01)
P. O. Box 8
Ehrhardt, SC 29081

Loan Number 1101013
Date 08-10-2005
Maturity Date 08-10-2008
Loan Amount \$ 3,000,000.00
Renewal Of _____
Loan Off: DLJ-120

BORROWER'S NAME AND ADDRESS
includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of three million and no/100

- ☐ Single Advance: I will receive all of this principal sum on _____ Dollars \$ 3,000,000.00
☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 08-10-2005
I will receive the amount of \$ 500,000.00 and future principal advances are contemplated.
Conditions: The conditions for future advances are Development progress, all terms current, discretion of loan officer.

- ☒ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on 08-10-2008
☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).
INTEREST: I agree to pay interest on the outstanding principal balance from 08-10-2005 at the rate of 7.250% per year until 08-11-2005

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 1.000 percent above _____ the following index rate: FBSC Prime Rate. The result of this calculation will be rounded to the nearest 0.125

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
☒ Frequency and Timing: The rate on this note may change as often as every day beginning 08-11-2005

A change in the interest rate will take effect On the same day
☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %
Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

- ☒ The amount of each scheduled payment will change.
☒ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

- ☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).
☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with min of \$10.00 and a max of \$200.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: Origination (Annually) \$15,000.00 Doc. Prep. \$140.00 Appraisal \$1,500.00

PAYMENTS: I agree to pay this note as follows:

On demand, but if no demand is made then quarterly payments of accrued interest calculated on the amount of credit outstanding beginning on 11-10-2005 and principal due on 08-10-2008.

FBSC 000014

ADDITIONAL TERMS: Secured by real estate mortgage dated 8-10-05 on two tracts of land totaling approximately 64 acres, more or less, located at Lebanon Road @ Westinghouse Road, Pendleton, SC & recorded in R.M.C. Office for Anderson County in Book No. _____ at Page No. _____

No insurable property.

☒ SECURITY: This note is separately secured by (describe separate document by type and date): Real Estate Mortgage dated 8-10-05.

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is Op. cost of Pendleton Station

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.
Pendleton Station, LLC

Benjamin L. Dwyer, Sr., Managing Member

Signature for Lender

Johns, Vice President

SOUTH CAROLINA - UNIVERSAL NOTE

Expend® © 1984, 1991 Bankers Systems, Inc., St. Cloud, MN Form UN-SC 3/7/2002

(page 1 of 2)

GUARANTY

Elkhart
(City)

South Carolina
(State)

August 10, 2005

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Enterprise Bank of S.C. (07) (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Pendleton Station, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Note dated 8-10-05 in the amount of \$3,000,000.00 and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

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4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 3,000,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____;
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Benjamin S. Harris Sr.

Ervin M. Mathies

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.



This document was prepared by (name, address, phone):
 Cutchin Law Firm, PC
 985-B Johnnie Dodds Blvd.
 Mt. Pleasant, SC 29464
 (843) 216-0809

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 08-10-2005 and the parties and their addresses are as follows:

MORTGAGOR: Pendleton Station, LLC, Business
 451 Jessen Lane, Suite C
 Charleston, SC 29492

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Enterprise Bank of S C (01)
 Organized and existing under the laws of the state of South Carolina
 P. O. Box 8
 Ehrhardt, SC 29081

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
 See Exhibit A.

The property is located in Anderson (County) at Lebanon Road @ Westinghouse Road
Pendleton (City), South Carolina 29670 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments, or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FINRA, FRMAC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)
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3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 3,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
 A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):

Noted dated 8-10-05 to Pendleton Station, LLC for \$3,000,000.00 with a maturity dated of August 10, 2008.

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
- 6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
- 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 691), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor; that has been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right title and interest in the following Property:

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property (including but not limited to, any extensions, renewals, modifications or replacements (Leases)).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

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Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

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any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. **DEFAULT.** Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable upon the occurrence of a default or anytime thereafter, and Lender shall be entitled to all remedies provided by law. The Evidence of Debt, other evidences of debt, this Mortgage and any related documents, all remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

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characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property; in such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit or cause any tenant to permit Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response, and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. **INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

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Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing) under a form of policy acceptable to Lender.

22. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, or any agreement related to the Secured Debt that conflicts with applicable law will not be enforceable unless the law expressly or impliedly permits the variation by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- ☒ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☒ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

EBS# 000044

- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

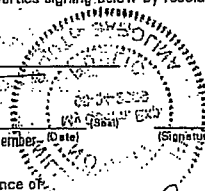
- ☒ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH-BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

- ☐ Actual authority was granted to the parties signing below by resolution signed and dated June 2005

Entity Name: Pendleton Station, LLC

[Signature]
(Signature) Benjamin L. Daniel, Sr., Managing Member (Date)



[Signature] (Seal) (Date)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

[Signature]
(Witness)

- ☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

EBSC 000045

PROBATE:

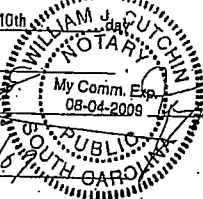
STATE OF South Carolina, COUNTY OF Charleston) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 10th

of August, 2005

[Signature]
Notary Public for South Carolina



My commission expires: 8/4/09

EBSC 000046

Schedule A

Legal Description

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is a portion of the same property conveyed to Coastal Plains Development Co., Inc. by deed of Lebanon Road, LLC dated August 29, 2003 and recorded on November 26, 2003 at Book 5877, Page 139 in the RMC Office of Anderson County.

Being the same property conveyed to the Mortgagor by Deed of Coastal Plains Development Co., Inc. dated August 10, 2004, and recorded at Book 6429, Page 302 in the RMC Office for Anderson County.

Grantee's address: 451 Jessen Lane, Suite C, Charleston, SC 29492

TMS # 063-00-01-006

Responsible Lawyer: RLB

050034628 10/25/2005 01:39:40 PM
FILED, RECORDED, INDEXED
8k: 07024 Pg: 00247 Pages:009
Rec Fee: 15.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

EBSC 000047

PENDLETON STATION, LLC

Summary of Development Loan Request

The following summarizes the Pendleton Station, LLC development loan request:

Borrower: Pendleton Station, LLC (a SC limited liability company)
451 Jessen Lane, Suite C
Charleston, SC 29492

Members of Pendleton Station, LLC: Coastal Plains Development Co., Inc.
451 Jessen Lane, Suite C
Charleston, SC 29492

Angelo Penza
P.O. Box 923
Medford, NJ 08055-0923

Development:

The loan request is for Phase I of Pendleton Station, a townhouse development located in Pendleton, SC, being marketed principally as a community for Clemson University students, faculty and alumni. Phase I of Pendleton Station is segmented into Phase I-A and I-B (see enclosed *Site Plan* and *Projections*), as follows:

	Phase I-A	Phase I-B	Total
Number of Townhouse Units	119	115	234
Number of Commercial Lots	6	4	10

Amount and Use of Development Loan Proceeds:

The development loan proceeds requested are to cover site improvement and costs related to the land and loan. Land costs, architectural, engineering, overhead and other costs are not included in the development loan request. The amount and projected uses of the development loan are as follows:

	Phase I-A	Phase I-B	Total Phase I
Site Development:			
Roads & Drainage	\$2,498,520	\$904,511	\$3,403,031
Sanitary Sewer	\$319,284	\$168,320	\$487,604
Waterlines & Appurtenances	\$161,574	\$115,684	\$277,258
Landscaping	\$150,000	\$50,000	\$200,000
Exterior Lighting	\$97,158	\$48,579	\$145,737
Exterior Signage	\$60,000	\$30,000	\$90,000
Total Site Dev	\$3,286,536	\$1,317,094	\$4,603,630
Other Development Costs:			
Appraisal-Land	\$6,000		\$6,000
Survey & Impact Fees	\$238,000		\$238,000
Permits	\$17,850		\$17,850
Legal Fees & Loan Closing Costs	\$60,000		\$60,000
Interest Expense-A&D Loan	\$87,902	\$84,927	\$172,829
Total Other Development Costs	\$409,752	\$84,927	\$494,679
TOTAL DEVELOPMENT LOAN	\$3,696,288	\$1,402,021	\$5,098,309

Repayment of Development Loan:

Pendleton Station Townhouse Units are being sold to buyers under individual permanent/construction loan arrangements. Included in each Unit sale is an allocated land cost of 10% of the sales price, which will be payable upon closing of the individual construction loan for the Unit. Pendleton Station, LLC will allocate 80% of the land release payment to repayment of the development loan with such payment also being made at the closing of the individual construction loans (see *Projections*).

Collateral & Guarantors:

Phase I of Pendleton Station includes approximately 34 acres of land. Coastal Plains Development Co., Inc purchased the original tract on July 1, 2003 at a purchase price of \$414,719 and transferred 32 acres of land to Pendleton Station, LLC. In addition, approximately two acres of adjacent land was purchased by Pendleton Station, LLC on August 16, 2004 at a purchase price of \$146,065. The land will be collateralized by a first mortgage to the lender as security for the development loan.

The guarantors of the development loan will be:

Pendleton Station, LLC
Coastal Plains Development Co., Inc.
Angelo Penza

Mr. Penza's guarantee of the development loan is limited in an amount up to \$5.2 million (see Pendleton Station, LLC *Operating Agreement*).

Pre-sale Requirement:

Pendleton Station, LLC has established a pre-sale requirement of 55 Units of Phase I-A (see *Schedule of Sales Reservations*).

Development Costs Paid by Pendleton Station, LLC:

The following is a summary of costs previously paid and projected costs to be paid by Pendleton Station, LLC:

Pendleton Station, LLC Capital Contributions			
	Previously Paid	To be Paid	Total
Land Acquisition	\$560,244		\$560,244
Appraisals-Unit Sales (I-A)	\$0	\$12,500	\$12,500
Insurance (I-A)	\$0	\$15,000	\$15,000
Survey & Impact Fees (I-A)	\$26,600		\$26,600
Marketing (I-A)	\$18,138	\$81,862	\$100,000
Architectural Fees (I-A)	\$94,970	\$14,530	\$109,500
Engineering Fees	\$54,897	\$15,103	\$70,000
Development Overhead (I-A)	\$23,550	\$246,450	\$270,000
Contingencies & Other (I-A)	\$22,624	\$77,376	\$100,000
Legal Fees & Loan Closing Costs	\$4,415		\$4,415
Total	\$805,438	\$462,822	\$1,268,259

Ervin
822-562-7453 Ext 4816
843-886-4896 Desk
803-686-1243 Call

3 years, Haman
1/2 of Origination
P + I
\$140.00 per Reg.
Quarterly Int.
Elizabeth Daniels

August 5, 2005

David L. Johns
Vice President
Enterprise Bank of South Carolina
PO Box 8
Ehrhardt, SC 29081-0008

RE: Pendleton Station Townhomes

Dear David:

This letter is intended to outline my understanding of the credit to be extended by your bank to Pendleton Station, LLC.

LINE OF CREDIT - You will extend a revolving line of credit to Pendleton Station, LLC in the amount of \$3,000,000.00. This means the company can have outstanding at any time up to \$3,000,000.00 and, if repayments are made on the line, that money can be re-borrowed.

TERM - It is anticipated that the line will continue for less than ^{three} two years.

COLLATERAL - You will have a first mortgage on approximately 62.62 acres of land in Anderson County on which Pendleton Station Townhomes are to be constructed.

PERSONAL GUARANTEES - You will have the personal guarantees of Ervin M. Mathias and Benjamin L. Daniel, Sr. for the amount of the line of credit.

DEPOSIT ACCOUNTS - Any deposit accounts of Pendleton Station, LLC are to be opened and maintained in your bank.

TRUST ACCOUNT - Our law firm, Cutchin Law Firm, has agreed to open and maintain an IOLTA deposit account with your bank for all money received by it to be held in trust for any of the Pendleton Station transactions.

PURPOSE OF LINE OF CREDIT - To provide for the site and other development costs of Pendleton Station Townhomes project and for necessary working capital for Pendleton Station, LLC.

EBSC 000205

ANTICIPATED DRAWS - You have been given projections from Max Glenn, CPA for the costs for the development and a schedule of Projected Loan Funding. We anticipate draws to be in a similar amount and with similar timing to those projections.

REPAYMENT SOURCE - The source of repayment for the advances under the line will be from the earnest money paid on the contracts and on the land release from the sale of the units. For example, when a contract has been pre-approved for the construction/permanent loan for a unit, 10% of the sales amount of the unit will be in the form of an earnest money deposit which can be used immediately by Pendleton Station, LLC. This money would be used to reduce the line of credit. In addition, once the unit has been closed on the construction loan, Pendleton Station will receive 20% of the sales price as a land release. One half of this amount will already have been received by Pendleton Station in the form of the earnest money, so it will have a similar amount which will be used to reduce the line of credit. Therefore, on a unit with a \$227,000.00 sales price, the line will be reduced by \$22,700.00 from the earnest money and by another \$22,700.00 at the time the construction loan is closed.

DRAWS AND PAYMENTS - Draws and payments on the line of credit will be made on a weekly basis. Money received by Pendleton Station from any sources will be deposited in the deposit account it maintains with your bank.

Sincerely,

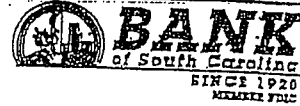
B. Brooks Harvey

8/9/05

Benjamin L. Daniel

EBSC 000206

ENTERPRISE



Demand Letter

January 25, 2007
Certified Mail

Borrower: Pendleton Station, LLC
PO Box 965
Mt Pleasant, SC 29465

Guarantors: Benjamin L. Daniel
PO Box 965
Mt. Pleasant, SC 29465

Ervin M. Mathias
837 Wells Branch Rd
Ulmer, SC 29849-2335

Brooks Harvey
451 Jessen Lane, Suite C
Charleston, SC 29492



Gentlemen:

Enterprise Bank of SC hereby serves notice that all loans (Note#1101013, Note#1184873, Note#1207784) are immediately due and payable in full.

The payoffs as of today are as follows:

NOTE NUMBER	PAYOFF
1101013	\$3,055,226.14
1184873	2,016,109.05
1207784	505,766.18
TOTAL DUE	\$5,577,101.37

It is our understanding that the following has occurred:

1. Work has ceased.
2. Property Taxes have not been paid.
3. Delivery date of Units is behind schedule +/- five months.
4. Ten unauthorized units were constructed misusing development funds.
5. Roads were suppose to be completed out of first three million development loan & are still not complete.

"We

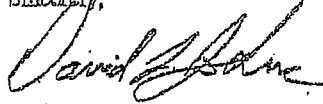
PO B
(803



DEMAND LETTER - Page Two

If the above loans are not paid in full by February 5, 2007, the bank will turn the loans over to our attorney for collection. To avoid additional legal fees, please make arrangements to pay the loans in full by February 5, 2007.

Sincerely,



David L. Johns
Senior Vice President

DLJ/AB

Copy: Mr. Angelo Penza, Member
Pendleton Station, LLC
3301 South Galloway St., Unit 69
Philadelphia, PA 19148

After Recording, Please Return to:

William J. Cutchin
CUTCHIN LAW FIRM, PC
985-B Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF ANDERSON) *Prepared Without Title Search*

KNOW ALL MEN BY THESE PRESENTS, THAT WE, Pendleton Station, LLC, by its authorized representative, in the State aforesaid, for and in consideration of the sum of Five Dollars and No Cents (\$5.00) and other good consideration, to us in hand paid at and before the sealing of these presents by Enterprise Bank, in the State aforesaid, for which the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell, and release unto the said Enterprise Bank, its heirs and assigns, forever, in fee simple, the following described real property to wit:

See Schedule "A" attached hereto and incorporated by reference herein.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Enterprise Bank its Heirs, Successors, and Assigns forever.

AND we do hereby bind our Administrators, Successors, and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said Enterprise Bank, its Heirs and Assigns, against our Heirs, Successors, and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.



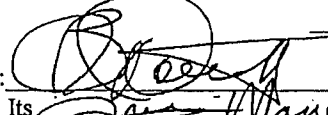
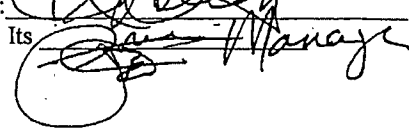
WITNESS our Hand and Seal by our representative, this 2nd day of March in the year of our
Lord Two Thousand Seven (2007) and in the Two Hundred Thirtieth year of the Sovereignty and
Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

PENDLETON STATION, LLC


(Witness # 1)

By:


Its  Manager


(Witness # 2 who is also a Notary Public)

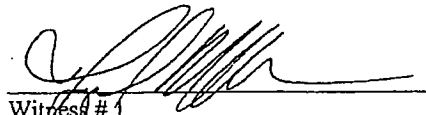
STATE OF SOUTH CAROLINA)

)

PROBATE

COUNTY OF ANDERSON)

PERSONALLY appeared before me Angel M. Marshall (Printed Name of
Witness #1) and made oath that (s)he saw the within named **Pendleton Station, LLC**, by its
authorized representative, sign, seal, and as its act and deed, deliver the within written Deed, and
that (s)he with William T. Cochran (Printed Name of Witness #2 who is also a Notary
Public) witnessed the execution thereof.


Witness # 1

SWORN TO before me, this
March 2, 2007.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/4/09

Schedule A

**Legal Description
(Deed)**

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Grantor by deed of Clint Wright, Jr., Lorri Wright and David W. Hanger dated December 15, 2005 and recorded on December 16, 2005 at Book 07113, Page 00310 in the RMC Office of Anderson County.

TMS #62-00-08-009

ALSO

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS 1A, 1B, 1C, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 7C, 7D, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 11B, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 15B, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C.

This is the same property conveyed to Grantor by deed of Coastal Plains Development Co., Inc. dated August 10, 2004 and recorded on October 25, 2004 at Book 6429, Page 302 in the RMC Office of Anderson County.

TMS # 063-00-01-006

Grantee's address: PO Box 8, Ehrhardt, SC 29081

AFFIDAVIT

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
 COUNTY OF ANDERSON) March 2, 2007

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by **Pendleton Station, LLC**, by its authorized representative, to **Enterprise Bank**, ON **March 2, 2007**.
3. Check one of the following: The DEED is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) XX _____ EXEMPT from the deed recording fee because (exemption# 13) (Explanation if required) Deed in Lieu of Foreclosure (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **\$5.00**.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES _____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (a) _____ the amount listed in item 4 above.
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

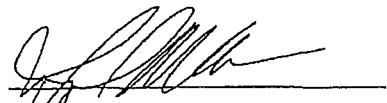
Check one:

☐ Grantee

☐ Grantor

☒ Legal Representative connected with this transaction

Sworn to before me this
 March 2, 2007



Notary Public for South Carolina

My Commission Expires: 2/25/11

070007083 3/05/2007 03:19:23 PM
 FILED, RECORDED, INDEXED
 Bk: 07886 Pg: 00110 Pages: 004
 Rec Fee: 10.00 St Fee: EXEMPT
 Co Fee: EXEMPT
 REGISTER OF DEEDS, ANDERSON CO, SC
 Shirley McElhannon

Stokely

From: Stokely
Sent: Tuesday, July 31, 2007 5:39 PM
To: 'Woody Keels'
Subject: RE: Enterprise Bank of SC (TED) - Pendleton Station, LLC;

The following is a breakdown of the Development Payoff. Note that the payoffs are increasing daily due to interest and collection expenses.

Note No. 1101013	\$3,167,908.03
Note No. 1184873	\$2,109,797.06
Note No. 1207784	\$ 529,275.89
Note No. 1239341 (Spence)	\$ 227,792.36
Collection/Attorney Fees	\$ 109,381.32
12L Fees	\$ 25,000.00
Total Payoff	\$6,169,154.66

A. Stokely Holder, Esq.
KENISON, DUDLEY & CRAWFORD, LLC
104 E. McBee Avenue
Greenville, SC 29601
Tel. 864.242.4899
Fax 864.242.4844
aholder@conlaw.com

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

From: Woody Keels [mailto:keelslaw@yahoo.com]
Sent: Tuesday, July 31, 2007 11:09 AM
To: Stokely
Subject: Re: Enterprise Bank of SC (TED) - Pendleton Station, LLC;

Please break down what the development loans payoff include. We are concerned about values and credit for properties already transferred by our client.

Stokely <aholder@conlaw.com> wrote:
Pendleton Station and Lake Murray payoffs per your request:

Pendleton Station Payoffs:

Construction Loans Payoff	\$ 9,960,615.63
Development Loans Payoff	\$ 6,169,154.66



LETTER OF TRANSMITTAL

Date: 11/13/2006

To: Greg Dawkins
Dunn & Associates Engineering Inc
PO Box 1120
Andersn SC 29622
864-222-0339 864-222-0833 Fax

From: Kevin Moorhead
MOORHEAD CONSTRUCTION, INC.
1513 ANDERSON STREET
BELTON, SC 29627
864-338-0888 864-338-1444 FAX

Subject: Pendleton Station
Phase I

Talked to Kevin
11-29-06

No need to process - Kevin is
still adjusting his numbers and
trying to get back on track
from where the earthwork
numbers were messed up.

Grey



COPIES	DESCRIPTION
1	Pay Estimate # 15

NANCY PAGE

Miller
2513
0515
0514

CONTRACTOR'S APPLICATION & CERTIFICATION FOR PAYMENT

PROJECT NAME: Pendleton Station Phase I

PAYMENT APPLICATION: Fifteen

PERIOD: thru 10-25-06

CONTRACT DATE:

Application is made for payment as shown below in connection with the contract.
See continuation sheets attached for additional breakdowns

OWNER: Pendleton Station LLC
ENGINEER: Dunn & Associates Engineering Inc.
CONTRACTOR: Don Moorhead Construction, Inc.
1513 Anderson St.
Belton, SC 29627

1. ORIGINAL CONTRACT SUM	\$3,364,721.34
2. NET CHANGE BY CHANGE ORDERS	\$80,913.31
3. CONTRACT SUM TO DATE	\$3,445,634.65
4. TOTAL OF COMPLETED WORK AND MATERIALS STORED TO DATE	\$1,286,718.80
5. LESS RETAINAGE: 10%	\$128,671.88
6. TOTAL EARNED LESS RETAINAGE	\$1,140,046.92
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$1,242,366.06
8. BALANCE DUE THIS PAYMENT	-\$102,319.13
9. BALANCE TO FINISH PLUS RETAINAGE	\$2,305,687.73

CONTRACTOR'S CERTIFICATE FOR PAYMENT

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for the work which previous Certificates for Payment were issued and payments received from the Owner, and that current Payment were issued and received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Don Moorhead Construction Inc.

By: Karin Moorhead Date: 13-Nov-05Notary Public: Nancy Poff

ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

This Certificate is not negotiable. The Amount Certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner under this Contract.

AMOUNT RECOMMENDED \$ _____

ENGINEER: Dunn & Associates Engineering Inc.

By: _____ Date: _____

INSPECTOR:

By: _____ Date: _____

OWNER'S APPROVAL FOR PAYMENT

By: _____ Date: _____

AGENCY'S APPROVAL FOR PAYMENT

By: _____ Date: _____

Don Mo Construction Inc
1513 Anderson Street
Belton SC 29627

Pending
Phase I

Dunn & Les Inc.
Pay Est # 15

[illegible]

Dunn As ¹des Inc.
Pay Est # 15

666

Don Mc [redacted] Construction Inc
1513 Anderson Street
Bellevue WA 98007

Perditation
Phase I

Dunn A. ... Inc.
Pay Est # 15

[illegible]

NC 177 00007 107 177

STORERIAL LOG
Pay Estimate # 15

Pendle Station

[illegible]

PENDLETON STATION

PO BOX 99 - 100 VANCE STREET - STE 1

PENDLETON, SOUTH CAROLINA 29670

PHONE 864-646-7777

FAX 864-646-7200

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

Kevin Moorhead

Charlie Kernaghan

DATE:

1-12-07

FAX NUMBER:

TOTAL NO. OF PAGES, INCLUDING COVER:

864-338-1444

5

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

YOUR REFERENCE NUMBER:

Work Change Directive

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS

Kevin,

This is what I've been authorized to give you in response to your Change Order. It is a Work Change Directive that is stipulated in the contract and will make both our lives a lot easier. It gives you the authority to get everything complete, following the guidelines laid out with the understanding that billing will change from the original contract in some areas. However, it also means that you have to get started as soon as possible. I will have you the release you need hopefully by Monday. If you have any questions please call me Monday morning so that I can pass them on and we can get going with finishing this thing up. I'll talk to you soon,

Charlie Kernaghan



PENDLETON STATION - CHANGE ORDER DIRECTIVE #1 (DATED 1-12-07)

PLENTERTON STATION - CHANGE ORDER DIRECTIVE #1 (DATED 1-12-07)

In response to the change order request from Kevin Moorhead dated January 3, 2007, the following Change Order Directive will be issued to address the increase in material costs since the signing of the contract. Quantities revised or added are due to the revised entrance design on Lebanon and Westlinghouse Roads, poor soil conditions, revised curb quantities and the increase in material costs for asphalt and concrete. To simplify the change order from Moorhead Construction and in an attempt to focus on a smaller portion of the project, phase 1A has been broken up into two (2) sub-phases. They are Phase 1A-1 and 1A-2. For the purposes of change order directive #1, only the items in the change order from Kevin Moorhead dated 1-3-07 within Phase 1A-1 apply. Phase 1A-1 consists of Units 1-18, including Illusion Street (sta 0+00 to 7+00), Peabody Street, Chillingworth Street, Festival Street, Rebecca Alley, Peelo Place, Iron Gate Park, Quaker Street, Sawgrass Lane, Empire Street and the entrance improvements to Lebanon and Westlinghouse Roads. In order to establish a revised unit cost, Moorhead Construction must perform the work and submit a breakdown of costs (including invoices to support the increase in material costs) as shown below. The invoices should include any documentation to show and support the increase in material costs. Once the revised unit costs are verified, a change order will be issued in the amount approved to show the net change in the total contract amount.

Description		Revised Estimate (1A-1) w/ original unit cost			Change Order Directive Breakdown Phase 1A-1					
		1A Revised Quantity	Unit of Measure	Cost per Unit-original	Installed Quantities	Original Unit Material & Labor Cost-No OHP	Current Unit Material & Labor Cost-No OHP	Contractors OHP-15% 7 (6*1.15)	Total Current Revised Unit Price	Total Cost 9 (8*4)
		1	2	3	4	5	6	7 (6*1.15)	8	9 (8*4)
1.	Earthwork Undercutting parking lot areas****									
2.	AS REQUIRED ***** Tensor	16,363	sy	2.95						
3.	AS REQUIRED ***** Crusher Run Stone Stabilization **	7,200	tn	10.50						
4.	Storm Sewer Piping									
	18" RCP added extra 16" of Line B									
	a. 0-8	16	lf	21.06						
	18" RCP Line G									
	a. 0-8	271	lf	21.06						
	24" RCP Line G only									
	a. 0-8	43	lf	28.25						
	b. 0-8	35	lf	20.48						
	c. 8-10	364	lf	30.66						
	d. 10-12	23	lf	31.86						
	Storm Sewer Structures Line G ***									
	Headwalls									
	a. 0-6' cut	1	ea	1,020.00						
	Junction Box									
	a. 8-10' cul	2	ea	1,080.00						
	Grate Inlet									
	a. 0-6' cul	1	ea	1,020.00						
	SWCB									
	a. 8-10' cul	1	ea	1,020.00						
	b. 12-14' cul	1	ea	2,340.00						
5.	Curb & Gutter	9,492	lf	9.77						
7.	Paving									
	Public Road									
	a. Asphalt Surface 2"	6,876	sy	17.40						
	b. Asphalt Binder 2 1/2"									
	c. Stone Base 6"									
	Private Road									
	a. Asphalt Surface 2"	9,487	sy	18.38						
	b. Asphalt Binder 3 1/2"									
	Road Improvements (Lebanon & Westinghouse)									
	Grading	1,578	sy	33.17		33.17	n/a	n/a	33.17	n/a
	Asphalt Surface 2"	1,935	sy	17.40						
	Asphalt Binder 2 1/2"	1,935	sy							
	Stone Base 6"	1,935	sy							
	Resurfaced Old Road	7,125	sy	6.80						
	Striping & Traffic Control	1	sy	14,400.00		14,400.00	n/a	n/a	14,400.00	

*Revised unit cost must have an invoice showing MATERIAL COST increase to justify increased unit cost.

"Assume 8" depth of crusher run over entire phase 1A-1

***Note On line - B only one catch basin B11 changed from a grate inlet to a single wing catch basin-at a depth of 10-12', this constitutes a unit price increase from \$1740 to \$2220 resulting in an increase of \$480.

***There is no unit price for this description of work. If required, payment will be made under Change Order Directive, that states the contractor must provide invoices for work performed, then 15% will be added to that number for overhead and profit.

----- As directed by the owner or engineer.

PENDLETON STATION

Revised Phase 1A (1-10-07)

PHASE 1A STREETS	LENGTH (FT)	WIDTH (FT)	PARKING 9'X20'	SQ FT	SQ YDS
PHASE 1A-1					
ILLUSION STREET (TO 7+00)	700.00	42	10	31200.00	3466.67
CHILLINGSWORTH STREET	788.76	22	58	27792.72	3088.08
FESTIVAL STREET	504.83	22	42	18666.26	2074.03
REBECCA ALLEY	281.00	12	10	5172.00	574.67
PEELE PLACE	234.60	22	33	11101.20	1233.47
IRON GATE PARK	88.63	22	7	3209.86	356.65
QUAKER STREET	309.64	22	40	14012.08	1556.90
SAWGRASS LANE	67.15	22	8	2917.30	324.14
EMPIRE STREET	113.99	22	0	2507.78	278.64
PEABODY STREET	730.71	42	0	30689.82	3409.98
TOTAL PHASE 1A-1	3,819.31		208	147269.02	16363.22

PHASE 1A-2					
DOYET DRIVE	933.21	22	86	36010.62	4001.18
TWEEDSMUIR CIRCLE	292.79	22	26	11121.38	1235.71
POTTERSTONE WAY	327.43	22	21	10983.46	1220.38
BANYON WOOD ROAD	113.33	22	8	3933.26	437.03
CORONATION STREET	203.33	22	22	8433.26	937.03
HAVENBROOK WAY	172.38	22	14	6312.36	701.37
SNOWSHIRE LANE	309.51	12	19	7134.12	792.68
LAMPLIGHTER LANE	96.32	22	12	4279.04	475.45
MINT JULIP LANE	89.79	22	10	3775.38	419.49
YORKWOOD CIRCLE	247.13	22	0	5436.86	604.10
PUMP STATION RD (NO C&G)	171.09	22	0	3763.98	418.22
RETAIL RDS	207.3	22	28	9600.60	1066.73
TOTAL PHASE 1A-2	3,163.61		246	110784.32	12309.37

TOTAL PHASE 1A	6,982.92		454	258053.34	28672.59

PENDLETON STATION

Phase 1A Change Order dated 1-3-07 from Kevin Moorhead

SUMMARY OF LENGTHS FOR STORM DRAINAGE

DESCRIPTION	PIPE SIZE (IN) - LENGTHS(FT)		
	18"	24"	30"
SD-G6		54	
SD-G5		111	
SD-G4	271		
SD-G3		46	
SD-G2		175	
SD-G1		78	
TOTAL	271	464	0

CATCH BASINS - PHASE 1A			
TYPE	LINE B-ORIG	LINE B-REV	LINE G
SWCB	10	9	2
DWCB	0	0	0
JB	2	2	2
GI	2	3	1
HW	1	1	1
TOTAL	15	15	6
TOTAL	TOTAL		21

PHASE 1A (LINES G) -Total

RCP	UNIT	QUANTITY
0'-6' Cut	EACH	314
6'-8' Cut	EACH	35
8'-10' Cut	EACH	364
10'-12' Cut	EACH	23
		736.00

NO DEPTHS CHANGED FROM LINE B-ONLY CHANGED
CATCH BASIN TYPES FROM GRATE INLET OR JUNCTION
BOX TO SINGLE WING CATCH BASINS.

PHASE 1A (LINE G) -18" RCP

RCP	UNIT	QUANTITY
0'-6' Cut	EACH	271
6'-8' Cut	EACH	0
8'-10' Cut	EACH	0
10'-12' Cut	EACH	0
		271

FROM PICKENS CULVER AND PIPE ON 1-10-07 - MATERIAL COST PER LINEAR F
FOR HDPE PIPE

SIZE	UNIT OF MEASURE	COST
18"	LF	\$9.75
24"	LF	\$15.25

PHASE 1A (LINE G) -24" RCP

RCP	UNIT	QUANTITY
0'-6' Cut	EACH	43
6'-8' Cut	EACH	35
8'-10' Cut	EACH	364
10'-12' Cut	EACH	23
		465

DEPTH OF CATCH BASINS				
CB	THROAT	TOP	SUMP	DEPTH
SWCB G6	789.87	790.37	781.79	8.58
CB G5	799.00	799.50	795.00	4.50
SWCB G4	791.57	792.07	779.69	12.38
JB G3	788.00	788.50	779.23	9.27
JB G2	777.00	777.50	768.77	8.73
HW G1	770	770.00	768	2

PHASE 1A (LINE G) -Total Catch Basins		
CB	UNIT	QUANTITY
0'-8' Cut	EACH	2
6'-8' Cut	EACH	0
8'-10' Cut	EACH	3
10'-12' Cut	EACH	0
12'-14' Cut	EACH	1

01/04/2007 11:27 8642228833
01/03/2007 17:04 8643381444

DUNNASSOC
MOORHEAD CONSTRUCTION

PAGE 02/04
PAGE 02/04



MOORHEAD CONSTRUCTION INC.

1513 Anderson Street • Belton, South Carolina 29827
(864) 338-0888 • Fax (864) 338-1444

Utility Construction

January 3, 2007

Greg Dawkins
Dunn & Associates
PO Box 1120
Anderson, SC 29622

Re: Pendleton Station Change Order Request

Dear Mr. Greg Dawkins;

Per your request please find attached change order request for Pendleton Station Division 1-A. Asphalt prices are based on the liquid index on 9/22/06 and curbing prices are based on revised concrete prices as of January 2007 and will be adjusted accordingly upon change.

~~Greg Dawkins~~
Due to the changes, instructions and delays encountered on project to date, it is impossible for Moorhead Construction to predict the time necessary to complete this work.

Moorhead Construction will perform this work in a reasonable, efficient and productive manner. Owner agrees that Moorhead Construction will be provided that time necessary to complete the work in the foregoing manner.

Sincerely,

MOORHEAD CONSTRUCTION, INC.

Kevin Moorhead
Vice President



MOORHEAD CONSTRUCTION INC.

1513 Anderson Street • Belton, South Carolina 29627
(864) 338-0888 • Fax (864) 338-1444

Utility Construction

Charlie Kernaghan
Pendleton Station
P.O. Box 99
100 Vance Street, Suite 1
Pendleton, South Carolina 29670

Re: Pendleton Station Changes

Dear Charlie:

I write in response to your January 12, 2007 fax responding Moorhead's requests for changes to the Pendleton Station contract (the "Contract").

First, Moorhead's Contract does not provide for "Work Change Directives." Please see Moorhead's October 25, 2006 letter in this regard.

Second, your proposed method of specifying the work to be done, and the amounts to be paid for such work, are unacceptable to Moorhead. Essentially what you propose is that Moorhead do the work, and then at some future, unspecified date, Moorhead will be paid some unspecified amount, which amount will be that "approved" by some unspecified entity (presumably the Owner), regardless of whether such amount is acceptable to or reasonable for Moorhead or bears any relationship to the actual costs and time necessary for the performance of such work. Moorhead has provided proposed rates and amounts for the various items of work specified. Moorhead has provided backup and justification, as requested, for all such items. For obvious reasons, one of which is the manner in which this project has been conducted by the Owner, proceeding with changed work in the absence of an agreement as to what Moorhead will be paid for that work is not acceptable to Moorhead.

Moorhead remains ready to perform work requested by Pendleton Station in a mutually agreeable manner, on a mutually agreeable schedule, at a mutually agreeable price. Please let us know what, if any, additional information is necessary to assist you in discussing this further so that Moorhead and Pendleton Station can reach agreement on the foregoing points. I look forward to hearing from you so that we can move forward in the most expeditious and economical manner possible.

Yours very truly,

DON MOORHEAD CONSTRUCTION INC.

Kevin Moorhead
Kevin Moorhead
Vice President



MOORHEAD 193



OFFICE
102 GILES STREET
ANDERSON, SC 29621

Dunn & Associates Engineering, Inc.

CIVIL ENVIRONMENTAL LAND PLANNERS SURVEYING WATER/WASTEWATER
P.O. BOX 1120
ANDERSON, S.C. 29622-1120

TELEPHONE: (864) 222-0339
FAX: (864) 222-0833

February 6, 2007

(VIA FACSIMILE: 864-338-1444 AND BY MAIL)

Kevin Moorhead
Moorhead Construction, Inc.
1513 Anderson Street
Belton, SC 29627

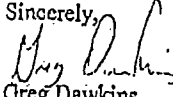
Attn: Mr. Kevin Moorhead

Re: Pendleton Station
Temporary Stabilization

Dear Kevin:

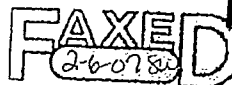
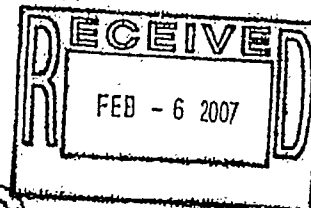
As you are aware, all sediment and erosion control devices should be inspected after each rainfall event to ensure that all devices remain effective. Also, any area left undisturbed for more than 14 days must be stabilized. Based on the meeting with you on 1-30-07 and conversations with the owner, it appears you are no longer performing any work in Phase 1A. This being the case, then you are required to temporarily stabilize Phase 1A. Since it is the owner's desire that you be working, any cost associated with stabilizing Phase 1A will be your responsibility. We understand you are in the middle of trying to re-negotiate prices with the owner, but that does not relieve your responsibility to maintain sediment and erosion control onsite.

Thank you very much and should you have questions please do not hesitate to contact us at 864-222-0339.

Sincerely,

Greg Dawkins



/gd
Cc: Charlie Kernaghan



D. Rutherford
MOORHEAD 232

FAX MESSAGE

Dunn & Associates Engineering, Inc.

CIVIL AND ENVIRONMENTAL ENGINEERS

P.O. BOX 1120

ANDERSON, SOUTH CAROLINA 29622-1120

PHONE (864) 222-0339

FAX (864) 222-0833

DATE: February 6, 2007

JOB: 03060

PROJECT: Pendleton Station

FAX TO: Mr. Charlie Kernaghan
FAX #: 864-646-7200

FAX TO: Mr. Kevin Moorhead
FAX #: 864-338-1444

FROM: Greg Dawkins

NUMBER OF PAGES (inclusive) 2

COMMENTS:

See attached letter dated 2-6-07.

IMPORTANT: This transmission (including all attached pages) is intended only for the use of the named addressee (s) and may contain information that is privileged or exempt from disclosure under applicable law. If you are not a named addressee, you are hereby notified that any use, dissemination, distribution, or copying of this transmission is strictly prohibited. If you received this transmission in error or if fax is not received in entirety or is illegible, please destroy all copies and notify us immediately at 864-222-0339.

MOORHEAD 233

Greg Dawkins

From: "Autry, Brian A." <BAutry@nexsenpruet.com>
"Charlie Kernaghan" <charliek76@bellsouth.net>; "Bill Dunn" <bill@dunnengineering.com>; "Greg Dawkins" <greg@dunnengineering.com>
Sent: Friday, February 09, 2007 10:06 AM
Subject: FW: Dunn Letter

uys:

elow is an e-mail that Moorhead's attorney sent me this morning. Please review and send me an e-mail responding the first three paragraphs. The last paragraph is what we discussed this morning. Thanks.

ian

ian A. Autry
nexsen Pruet, LLC
41 Main Street, Suite 1500
olumbia, SC 29201
803.540.2010
ll Free: 1.800.825.6757
803.540.2103
utry@nexsenpruet.com
ww.nexsenpruet.com

EXSEN PRUET



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From: David Rutherford [mailto:david_rutherford@viningslaw.com]
Sent: Friday, February 09, 2007 9:48 AM
To: Autry, Brian A.
Subject: Dunn Letter

an -

Further to our conversation late yesterday afternoon, here is the information I promised to give you regarding site stabilization.

10/26/06 Moorhead met with Dunn, SCDOT and grading contractor. At that time, Moorhead had approximately 3000' of curb out installed, and Moorhead requested the meeting to discuss problems with things such as the lack of retaining walls, curbs too close to buildings, elevated parking areas which changed the grading and paving plans and requirements, entrances to below specified parking lot and roadway elevations (an obvious problem), roof drains with no planned termination point, the lack of room to install utilities behind curb per the then-current plans. No information from Dunn or the Owner was forthcoming and hence, the grading work could not and did not proceed. That critical-to-performance information is still outstanding I explained to you yesterday.

Since October 26, 2006, Moorhead has been unable to perform any grading work at the site. Moorhead did install an off site force main that runs on the opposite side and parallel to the existing Lebanon Road. As you know, since October 26, 2006, the Owner has continued its construction on buildings and the Owner has elected to install utilities in the roadway areas (contrary to the original agreement and the subject of correspondence last month). All of Moorhead's grading layout and preparation to proceed with roadway and building construction has been destroyed. The Owner took over full control and responsibility for the entire site, and the Owner remains in control of, and responsible for the entire site, including but not limited to stabilization and erosion control, today.

Consistent with the agreement reached January 30, 2007, the Owner must specify the scope of work to be performed, based upon the existing conditions created and maintained by the Owner to date in order for Moorhead to price and schedule that specified scope of work. I look forward to hearing from you later today. I will be out of the office reviewing and assembling documents in another matter, but you can reach me on my cell phone: 404-285-8349.

Thank you.

David A. Rutherford

Johnson Hobgood Rutherford LLC

10 Galleria Parkway, Suite 950

Atlanta, GA 30339

Telephone: 770-333-9933

Cell: 770-563-8330

Email: david_rutherford@viningslaw.com

Kevin Moorhead

From: David Rutherford [david_rutherford@viningslaw.com]
Sent: Wednesday, February 14, 2007 8:41 AM
To: 'Kevin Moorhead'
Subject: Pendleton Station
Importance: High

Kevin -

Attached is a proposed settlement/mutual termination proposal for the Owner. Please review it and give me your comments. I'm in the process of drafting the Settlement Agreement to be attached. Thank you.

<<...>>

David A. Rutherford

Johnson Hobgood Rutherford LLC

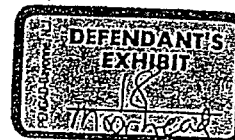
600 Galleria Parkway, Suite 950

Atlanta, GA 30339

Telephone: 770-333-9933

Facsimile: 770-563-8330

Email: david_rutherford@viningslaw.com



2/14/2007

MOORHEAD 218

JOHNSON
HOBGOOD
RUTHERFORD LLC

600 GALLERIA PARKWAY
SUITE 950
ATLANTA, GEORGIA 30339

David A. Rutherford
Direct Dial: 770.563.8333
Direct Fax: 770.563.8330
david_rutherford@viningslaw.com

February 14, 2007

Via Facsimile (803-540-2103) and First Class Mail

Brian A. Autry, Esq.
Nexsen Pruet, LLC
1441 Main Street, Suite 1500
Columbia, South Carolina 29201

Re: Pendleton Station, LLC and Moorhead Construction, Inc.

Dear Brian:

I write on behalf of Moorhead Construction, Inc. ("Moorhead") and in response to your February 13, 2007 email on behalf of Pendleton Station, LLC (the "Owner") requesting Moorhead's proposal for a mutual termination of the March 2, 2005 contract (the "Contract") for work at the Pendleton Station development (the "Project"). Please recall that in our first telephone conversation on January 26, 2007, I suggested the possibility of a mutual termination. Moorhead attended the January 30, 2007 meeting prepared to discuss a mutual termination. However, at the outset of that meeting, the Owner unequivocally declared that it desired Moorhead continue to work on the Project. Pursuant to the Owner's desire, Moorhead, in good faith, proceeded to negotiate and agree to the terms of the January 30, 2007 agreement. Moorhead has since proceeded to respond immediately to every communication and request made by Owner. In a further good faith effort to be responsive to Owner's desires, Moorhead submits this proposal for a mutual termination as an offer of settlement and compromise of a disputed matter.¹

¹ Please note that some of the information contained herein is confidential and proprietary business information, and it is submitted to you, as the Owner's attorney, with the understanding that all such information will be kept confidential and not disclosed to persons other than your client for use in negotiating the requested mutual termination. Please let me know immediately if you do not agree to keep such information confidential.

MOORHEAD 219

Brian Autry, Esq.
February 14, 2007
Page 2 of 4

BACKGROUND

Moorhead's original Contract amount was \$3,364,257. The Project was to be performed over a seven (7) month period: March to October 15, 2005. Moorhead timely commenced work on the Project, and to the extent it was permitted by the Owner and its engineer, efficiently performed its work on the Project. However, as a result of defects in the plans and specifications, changes desired by the Owner, re-sequencing of the Project components to meet the Owner's requirements, and compensable weather delays, Moorhead's work on the Project was delayed, interfered with, and ultimately halted. At all times Moorhead was fully responsive to the Owner's requests and directives. As a result, Moorhead incurred damages entitling it to an equitable adjustment of the Contract in the form of both time and money. You have acknowledged that entitlement in our conversations; the fact of entitlement is undisputed. In order to effect a mutual termination it is necessary to quantify those entitlements in a single sum.

MOORHEAD'S DAMAGES

Moorhead has billed a total of \$1,266,718 on the Project to date. Moorhead's anticipated profit under the Contract was 15% of the Contract amount, or a total of \$504,639. It has recognized only \$190,008 of that anticipated amount. Thus, Moorhead's lost anticipated profit is \$314,630.

As a result of the Owner's (and its engineer's) delay, disruption and re-sequencing, the Moorhead's work on the Project remains uncompleted today. Moorhead has incurred unabsorbed home office overhead delay and disruption damages beginning October 16, 2005 and extending through today, a period of 486 days. Moorhead's delay and disruption damages are best quantified using the Eichleay Formula. See *Eichleay Corp.*, ASBCA No. 5183, 60-2 BCA ¶ 2688, reheard and affirmed at 61-BCA ¶ 2894. I assume you are familiar with the Eichleay Formula, the fact that today it is the *mandatory method* for calculating unabsorbed home office overhead on federal projects, See *E. R. Mitchell Construction Co. v. Danzig*, 175 F.3d 1369, 1372 (Fed. Cir. 1999), and its application to private projects such as the Project.

You should note that the Owner's (and its engineer's) delays and disruptions were substantial (486 days on a 212 days Project schedule), and effectively of indefinite duration. During that period, Moorhead was

MOORHEAD 220

Brian Autry, Esq.
February 14, 2007
Page 3 of 4

ready at all times to immediately resume work, and in fact, Moorhead responded immediately to the Owner's requests multiple times during that period. During the delay period, the vast majority if not all of Moorhead's work was suspended while the Owner (and its engineer) decided how to proceed, re-sequenced aspects of the Project and performed work which precluded any work by Moorhead.

Moorhead's total company billings during the Project period were \$20,856,000. Thus, the actual Project billings constituted 6.1% of Moorhead's total billings, and under the Eichleay Formula, 6.1% of Moorhead's home office overhead is allocable to the Project.

Moorhead's home office overhead during the 486 day delay period totaled \$3,186,969. Thus, the 6.1% allocable to the Project totals \$194,405. Under the Eichleay Formula, Moorhead is entitled to recover \$194,405 in unabsorbed home office overhead.

Moorhead, in accordance with the Owner's requirements, provided performance and payment bonds for the full Contract amount, \$3,364,257. Moorhead's cost of those bonds was 1% of the Contract amount, or \$33,642.57. Yet, as of a mutual termination, the adjusted Contract amount totals \$1,266,718. Hence, bond premiums of only \$12,667.18 were actually required. Thus, Moorhead expended an unnecessary \$20,975.39 for bonds at the Owner's request. Moorhead is entitled to recover the unnecessary additional bond premiums actually paid, i.e., \$20,975.39.

Moorhead has also incurred \$ 8,040.50 in attorney's fees and expenses associated with the Owner's delays and disruption. These expenses would not have been incurred by Moorhead but for the Owner's actions. Moorhead is entitled to recover \$ 8,040.50 for its attorneys fees and expenses.

SETTLEMENT OFFER

Moorhead proposes to effect a mutual termination of the Contract on the following terms:

MOORHEAD 221

Brian Autry, Esq.
February 14, 2007
Page 4 of 4

1. The Owner pays Moorhead \$ 158,618.89 in certified funds² within seven (7) days of the parties executing a Settlement Agreement in the form attached hereto.
2. As set forth more fully in the attached Settlement Agreement, the parties waive and release all claims between and among them arising out of or relating to the Project, and they agree to defend, indemnify and hold each other harmless from the claims of third parties arising out of each indemnitor's actions relating to the Project against such third parties.
3. The parties agree, as more fully set forth in the attached Settlement Agreement, to keep the terms and amounts of their settlement confidential.
4. The Owner agrees as a condition of settlement that Moorhead has fully performed on the Project, and that the Owner has no claims on, under or relating to the performance and payment bonds, and the Owner affirms that it will not make any demand upon said bonds or the respective bonding company(s).

Please let Moorhead know if the foregoing is acceptable to Owner. In continuation of Moorhead's good faith efforts under the Contract and the Project, Moorhead will give due consideration to any alternative settlement and mutual termination proposal by Owner. In that regard, Moorhead looks forward to your timely response. Moorhead expressly reserves all of its rights.

Thank you,

David A. Rutherford

Attach.

² This amount is calculated as follows: Moorhead's lost anticipated profits are fully discounted; Moorhead's unabsorbed home office overhead is discounted by 33.3%; Moorhead's actual costs of unnecessary bond premiums and attorney's fees and expenses are not discounted as they are direct costs.

MOORHEAD CONSTRUCTION, INC.

1513 Anderson Street
Belton, SC 29627
864-338-0888
864-338-1444 FAX



Fax Transmittal Letter

To: Mike Miller
Miller Construction Co

Phone: 296-3301
Fax: 296-8700

Moorhead Construction, Inc.
Kevin Moorhead / Nancy Page

Date: 02/16/2007

Re:

Pages: Including coversheet

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply Attached

Mike,

As of today, our contract with Pendleton Station has been mutually dissolved.
Please cease any and all work being done on this project.

Thanks
Kevin Moorhead



FAXED
2-16-07

12:00pm 2/16/07
MOORHEAD 006

Dunn & Associates Engineering, Inc.
P. O. Box 1120
Anderson, SC 29622
(864) 222-0339

**DAILY FIELD
OBSERVATION REPORT**

Project: Pendleton Station Project No.: 03060
Date: April 12, 2006 Time: 8:00am-11:00am

Weather (A.M.)		Weather (P.M.)		Site Conditions		Day	
☒ Clear	☐ Snow	☐ Clear	☐ Snow	☒ Clear	☒ Dusty	☐ Monday	☐ Thursday
☐ Overcast	☐ Foggy	☐ Overcast	☐ Foggy	☐ Muddy	☐	☐ Tuesday	☐ Friday
☐ Rain	☐	☐ Rain	☐ Stormy	Temp. Range: 70 - 80 °F		☒ Wednesday	☐ Saturday

Persons Contacted:

Randy w/ Craft Construction

Work Observed:

- Sewer Line Pressure Test (First Half of Pressure Test A1-A4, B1-B3, C1-C3, D1)

Items Noted:

- Discussed lines being clear in reference to canceled test last week.
- City representative not present. Asked Randy about this, not known why he is absent.
- Some work had been done to manholes (removing roughness inside) as requested by city.
- Requested silt fence be put around manholes without silt fence or damaged silt fence.

GENERAL NOTE:

Second half of Testing will be done tomorrow on the 13th. All Lines passed to this point. Mentioned using 2 air pressure pumps tomorrow to test two lines (from single manhole) at once.

☐ Attachments

Signed By: Andy Nifong
Copies: ☐ Owner ☐ Project Manager ☐ Contractor ☐ Chip Polk ☐ John Taylor ☒ File



Dunn & Associates Engineering, Inc.
P. O. Box 1120
Anderson, SC 29622
(864) 222-0339

**DAILY FIELD
OBSERVATION REPORT**

Project: Pendleton Station Project No.: 03060
Date: April 13, 2006 Time: 8:00am-11:30am

Weather (A.M.)		Weather (P.M.)		Site Conditions		Day	
☒ Clear	☐ Snow	☐ Clear	☐ Snow	☒ Clear	☐ Dusty	☐ Monday	☒ Thursday
☐ Overcast	☐ Foggy	☐ Overcast	☐ Foggy	☒ Muddy	☐	☐ Tuesday	☐ Friday
☐ Rain	☐	☐ Rain	☐ Stormy	Temp. Range: 65 - 75 °F		☐ Wednesday	☐ Saturday

Persons Contacted:

Randy w/ Craft Construction

Work Observed:

- Sewer Line Pressure Test (Second Half of Pressure Test A5-H1)

Items Noted:

- Checked lines to see if mud/dirt was present. Lines appear clear.
- Pressure tests were done using 2 compressors and sets of plugs.
- 2 lines were tested at a time from a single manhole.
- Again requested that silt fence be placed around manholes. Especially the manholes within sewer lines E, F, and G due to very muddy conditions.

GENERAL NOTE:

All lines passed. No second attempts were needed.

☐ Attachments

Signed By: Andy Nifong
Copies: ☐ Owner ☐ Project Manager ☐ Contractor ☐ Chip Polk ☐ John Taylor ☒ File



SECTION 00607 . 3

APPLICATION FOR PAYMENT

Pendleton Station Sewer Phase 1A

Owner

Moorhead Construction
1513 Anderson Street
Belton, SC 29627

Contractor:
Craft Construction Co.,
Inc. of Starr

CDBG Project No.:

Contract Number:

Pay Estimate No. 4

Period of Estimate

From:

9/25/2005

To:

2/27/2006

ESTIMATE

1 Original Contract	280,770.09
2 Change Orders	12,210.35
3 Revised Contract (1+2)	292,980.44
4 Work Completed	242,342.44
5 Stored Materials	
6 Subtotal(4+5)	242,342.44
7 Retainage 0.1	24,234.24
9 Previous Payment	147,357.47
10 Amount Due (6-7-8)	70,750.73

CONTRACT CHANGE ORDER SUMMARY

Number	Approval Date	Additions	Deductions
#3	3/1/2006	72737.4	64005.8
#4	4/4/2006	10597.08	7118.33
Totals		83,334.48	71,124.13
Net Change		12,210.35	

*Detailed breakdown attached

Contract Time

Original (Days):

On Schedule

Yes

Revised:

No

Remaining:

Starting Date:

Projected Completion:

Contractors Certification:

The undersigned certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts due subcontractors and suppliers have been paid by the contractor for work for which previous payment estimates were issued and payments received from the owner, and the current payment shown herein is now due.

(Signature):

By: William F. Craft President

Date: _____

Approved
by Owner

Engineer's Certification:

The undersigned certifies that to the best of their knowledge and belief, the Quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

(Signature):

By: _____

Date: _____

(Signature):

By: _____

Date: _____



Craft 00247

Moorhead Construction
1513 Anderson Street
Belton, SC 29827

Pendleton Station Sewer Phase 1A

Project No.:
Partial Payment No.: 4
Period of Estimate:
From: 3/25/2006
To: 1/27/2007

Item	Description	Contract				This Period		Total to Date		%
		Qty.	Unit	Unit Price	Amount	Qty.	Amount	Qty.	Amount	
1	4' dia. Manholes									
a.	0' - 6' Depth	1	ea.	990.00	990.00			1	990.00	100.00%
b.	6' - 8' Depth	15	ea.	1,210.00	18,150.00			15	18,150.00	100.00%
c.	8' - 10' Depth	8	ea.	1,485.00	11,880.00			8	11,880.00	100.00%
d.	10' - 12' Depth	1	ea.	1,704.00	1,704.00			1	1,704.00	100.00%
e.	12' - 14' Depth	2	ea.	1,980.00	3,960.00			2	3,960.00	100.00%
f.	14' - 16' Depth	0	ea.	2,200.00	0.00			0		
2	8" dia. PVC sewerline									
a.	0' - 8' Depth	879	lf.	11.14	9,792.06			879	9,792.06	100.00%
b.	6' - 8' Depth	2,027	lf.	14.14	28,661.78			2,027	28,661.78	100.00%
c.	8' - 10' Depth	672	lf.	17.14	11,518.08			672	11,518.08	100.00%
d.	10' - 12' Depth	502	lf.	21.14	10,612.28			502	10,612.28	100.00%
e.	12' - 14' Depth	138	lf.	25.15	3,470.70			138	3,470.70	100.00%
f.	14' - 16' Depth	57	lf.	29.14	1,660.98			57	1,660.98	100.00%
g.	16' - 18' Depth	56	lf.	33.14	1,855.84			56	1,855.84	100.00%
3	4" Sewer Service	119	ea.	461.23	54,886.37			119	54,886.37	100.00%
4	Rock removal	100	cy.	50.00	5,000.00			100	5,000.00	
5	Force Main									
a.	6" DIP	1,650	lf.	14.38	23,727.00			500	7,190.00	30.30%
b.	Pump Station	1	LS.	86,500.00	86,500.00			0.6	51,800.00	60.00%
c.	Road Bore 12"	79	lf.	69.00	5,451.00			100	6,900.00	126.58%
d.	Connect to existing manhole	1	LS.	950.00	950.00					
6	Change Order # 3	1	LS.	8,731.60	8,731.60			1	8,731.60	100.00%
7	Change Order # 4	1	LS.	3,478.75	3,478.75			1	3,478.75	100.00%
8										
9										
					292,980.44				\$242,342.44	

Typical stored materials at end of this pay period				
Description	Quantity		Unit Price	Amount
Subtotal work completed & stored materials this pay period		Stored Materials		242,342.44
Retainage		0.1		24,234.24
Previous payments				147,357.47
Amount Due				\$70,750.73

Remit To: Craft Construction Co., Inc. of Starr
P.O. Box 129
Starr, SC 29684

By: William F. Craft, President

Date: 1/24/2007

Moorhead Construction
1513 Anderson Street
Belton, SC 29827

Pendleton Station Sewer Phase 1A

Project No.: _____
Partial Payment No.: 4
Period of Estimate:
From: 3/25/2006
To: 1/27/2007

Page 1

Craft 00255

Item	Description	Item	Contract				This Period		Total to Date		% Complete
			Qty.	Unit	Unit Price	Amount	Qty.	Amount	Qty.	Amount	
1	4' dia. Manholes										
a.	0' - 6' Depth		1	ea.	990.00	990.00			1	990.00	100.00%
b.	6' - 8' Depth		15	ea.	1,210.00	18,150.00			15	18,150.00	100.00%
c.	8' - 10' Depth		8	ea.	1,485.00	11,880.00			8	11,880.00	100.00%
d.	10' - 12' Depth		1	ea.	1,704.00	1,704.00			1	1,704.00	100.00%
e.	12' - 14' Depth		2	ea.	1,980.00	3,960.00			2	3,960.00	100.00%
f.	14' - 16' Depth		0	ea.	2,200.00	0.00			0		
2	8" dia. PVC sewerline										
a.	0' - 6' Depth		879	lf.	11.14	9,792.06			879	9,792.06	100.00%
b.	6' - 8' Depth		2,027	lf.	14.14	28,661.78			2,027	28,661.78	100.00%
c.	8' - 10' Depth		672	lf.	17.14	11,518.08			672	11,518.08	100.00%
d.	10' - 12' Depth		502	lf.	21.14	10,612.28			502	10,612.28	100.00%
e.	12' - 14' Depth		138	lf.	25.15	3,470.70			138	3,470.70	100.00%
f.	14' - 16' Depth		57	lf.	29.14	1,660.98			57	1,660.98	100.00%
g.	16' - 18' Depth		56	lf.	33.14	1,855.84			56	1,855.84	100.00%
3	4" Sewer Service		119	ea.	461.23	54,886.37			119	54,886.37	100.00%
4	Rock removal		100	cy.	50.00	5,000.00			100	5,000.00	
5	Force Main										
a.	6" DIP		1,850	lf.	14.38	23,727.00				0.00	30.30%
b.	Pump Station		1	LS.	86,500.00	86,500.00			0.6	61,900.00	60.00%
c.	Road Bore 12"		79	lf.	69.00	5,451.00				0.00	126.68%
d.	Connect to existing manhole		1	LS.	950.00	950.00					
6	Change Order # 3		1	LS.	8,731.60	8,731.60			1	8,731.60	100.00%
7	Change Order # 4		1	LS.	3,478.75	3,478.75			1	3,478.75	100.00%
8											
9											
						292,980.44				\$228,252.44	

Typical stored materials at end of this pay period			
Description	Quantity	Unit Price	Amount
Subtotal work completed & stored materials this pay period			228,252.44
Retainage			0.00
Previous payments			194,608.31
Amount Due			\$33,644.13

Remit To Craft Construction Co., Inc. of Starr
P.O. Box 129
Starr, SC 29684

By: William F. Craft, President

Date: 1/24/2007

Pendleton Station

Pendleton Station Sewer Phase 1A

Project No.: _____
 Partial Payment No.: _____ 4
 Period of Estimate:
 From: 1/1/2007
 To: 2/28/2007

Item	Description	Contract				This Period		Total to Date		% Complete
		Qty.	Unit	Unit Price	Amount	Qty.	Amount	Qty.	Amount	
1										
a.										
b.										
c.										
d.										
e.										
f.										
2										
a.										
b.										
c.										
d.										
e.										
f.										
g.										
3										
4	Rock removal	100	cy.	50.00	5,000.00		0		0.00	
5	Force Main									
a.	8" DIP	1,650	lf.	16.11	28,581.50	1150	18526.5	1,550	24,970.50	93.94%
b.	Pump Station	1	LS.	38,752.00	38,752.00		0			
c.	Road Bore 12"	79	lf.	77.28	6,105.12	100	7728	100	7,728.00	126.58%
d.	Connect to existing manhole	1	LS.	1,064.00	1,064.00		0			
6	Change Order # 3	1	LS.	8,731.60	8,731.60	1	8731.6	1	8,731.60	100.00%
7	Change Order # 4	1	LS.	3,478.75	3,478.75	1	3478.75	1	3,478.75	100.00%
8	Invoice CRA-1141	1	LS.	8,946.69	8,946.69	1	6946.69	1	8,946.69	100.00%
9										
					96,659.68		\$45,411.64		\$51,855.54	

Typical stored materials at end of this pay period			
Description	Quantity	Unit Price	Amount
Subtotal work completed & stored materials this pay period			51,855.54
Retainage		0.1	5,185.55
Previous payments			
Amount Due			\$46,669.99

Remit To: Craft Construction Co., Inc. of Starr
P.O. Box 129
Starr, SC 29684

By: William F. Craft, President

Date: 2/28/2007



MOORHEAD CONSTRUCTION INC.

1813 Anderson Street
Belton, South Carolina 29827
(804) 338-0865 Fax (804) 338-1444

Utility Construction

Partial Release and Waiver of Lien by Subcontractor / Supplier

For and in consideration of the payment of \$68504.07 which amount is represented as being currently due as detailed by Payment Request # 4, the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned through 5/10/06 (date), the effective date of this Waiver and Release in connection with construction of Pedicleton Station (the project).

This Waiver and Release applies to all facts, acts, events and circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the effective date hereof, excepting only any claims currently unresolved for which written notice has been provided to Moorhead Construction Inc. as follows:

Except as specifically described above, and except for retainage, if any, held under the Subcontract, Subcontractor (or Supplier) expressly waives all claims against Moorhead Construction Inc. as herein above described. This Waiver and Release is intended to apply to and protect Moorhead Construction Inc.'s payment and performance bond surety, if any, as well as anyone claiming by or through Moorhead Construction Inc., the Owner, or the surety in connection with any claim, demand, lien, claim for relief, cause of action and the like waived, release and relinquished by the terms of this Waiver and Release.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for payment recited above.

The undersigned further represents that all employees, laborers, material men and subcontractors employed by the undersigned in connection with the Project and all bills currently due for labor, materials, supplies and taxes furnished by others to the undersigned in connection with construction of improvements upon the Project have been fully paid and that no obligations, legal, equitable or otherwise, are owned by the undersigned in connection with its work on the Project. With respect to this representation and warranty, the undersigned does hereby agree to indemnify and hold harmless Moorhead Construction Inc., its payment and performance bond surety, if any, the Owner and any others by or through them from any and all claims, damages, losses, expenses and the like, including attorney's fees, incurred by reason of any claim that the undersigned has not fully paid for all labor, materials and expenses incurred in connection with its work on the Project.

The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and the other obligations of the undersigned to Moorhead Construction Inc.

In Witness Hereof, on behalf of the undersigned, with full authority, I have executed this instrument under seal effective the 17th day of May, 2006.

State of South Carolina

County of Anderson

Sworn and subscribed to me this the

17th day of May, 2006.

Shanna Wilkin
Notary Public My commission expires 9-12-2015

Subcontractor / Supplier

Signature and Title

Craft 00244

Vendor: CRAFT CONSTRUCTION

Check: 15063

Check date: 05/17/2008

Invoice #	Invoice Date

Gross Amount

Retn Amount

Net Amount

PSSEWER4 05/10/2006 CRAFT CONSTRUCTION

68,504.07

0.00

68,504.07

MOORHEAD CONSTRUCTION, INC.

1513 ANDERSON STREET
BELTON, SOUTH CAROLINA 29627
(864) 338-0888

015063

[illegible]

PLEASE DETACH AND RETAIN THIS PORTION



MOORHEAD CONSTRUCTION, INC.

1513 ANDERSON STREET
BELTON, SOUTH CAROLINA 29627
(864) 338-0888

$$\frac{67.1}{532}$$

CHECK DATE

CHECK NUMBER.

05/17/2006

15083

Wachovia

015063

Sixty Eight Thousand Five Hundred Four Dollars and Seven Cents

PAY TO THE ORDER OF CRAFT CONSTRUCTION
PO BOX 129

MOORHEAD CONSTRUCTION, INC.

~~STARR, SC 28884~~

015063 10532000191 5000 54424

Craft 00245

Miller's Construction Company, LLC.
225 Thompson Road
Anderson, SC 29624

Date	Invoice #
01/11/2007	20624

Bill To
Engineer Concrete Structures, Inc. P.O. Box 99 Pendleton, SC 29670

P.O. No.	Terms	Job Site
1480	Net 10 days	Pendleton St

Itemized Service	Description	Amount
	Work Performed: Re-working temporary detention pond/cleaning out structure that had building materials in and around pond.	
	Work Performed on January 2, 2007.	
Trash Pump	#1-3" Trash Pump with hoses: Daily rental rate	150.00
Trash Pump	#2-3" Trash Pump with hoses: Daily rental rate	150.00
Labor Hand	#1 Labor Hand: 8 hours @ \$18.50 per hour	148.00
Labor Hand	#2 Labor Hand: 8 hours @ \$18.50 per hour	148.00
Labor Hand	#3 Labor Hand: 8 hours @ \$18.50 per hour	148.00
Supervisor	Supervisor: 8 hours @ \$22.00 per hour	176.00
	Work Performed on January 3, 2007.	
Mini Excavator	Mini Excavator: 8 hours @ \$75.00 per hour	600.00
Track Loader	Track Loader: 8 hours @ \$110.00 per hour	880.00
Labor Hand	#1 Labor Hand: 8 hours @ \$18.50 per hour	148.00
Labor Hand	#2 Labor Hand: 8 hours @ \$18.50 per hour	148.00
Labor Hand	#3 Labor Hand: 8 hours @ \$18.50 per hour	148.00
	Work Performed on January 4, 2007.	
Mini Excavator	Mini Excavator: 8 hours @ \$75.00 per hour	600.00
Track Loader	Track Loader: 8 hours @ \$110.00 per hour	880.00
Total		\$4,324.00

EBSC-PS 003605

Thank you for your business.

Phone # 864-296-3301

Fax # 864-296-8700

Email Address:
mconstco@bellsouth.net

ENTERED
1-19-07

PAID
C# 1067
2/2/07
BBA-ECB

ENGINEERED CONCRETE STRUCTURES, INC.
CONSTRUCTION ACCOUNT
451 C. JESSEN LANE
CHARLESTON, SC 29402
PH: 843-881-7352

ENTERPRISE BANK
167-287/532

1068

2/2/2007

PAY TO THE ORDER OF Miller's Construction Company, LLC

\$ 14,336.95

Fourteen Thousand Three Hundred Thirty Six and 95/100

DOLLARS

MEMO

Miller's Construction Company, LLC
225 Thompson Road
Anderson, SC 29624

001068 0532028710511 12171

ENGINEERED CONCRETE STRUCTURES, INC.

1068

Miller's Construction Company, LLC

Date	Type	Reference	Original Amt.	Balance Due	2/2/2007 Discount	Payment
1/5/2007	Bill	PO #1414 - 20612	797.42	797.42		797.42
1/11/2007	Bill	PO 1480 - 20624	4,324.00	4,324.00		4,324.00
1/11/2007	Bill	PO #1479 - 20620	575.00	575.00		575.00
1/11/2007	Bill	PO #1428 - 20619	3,375.19	3,375.19		3,375.19
1/11/2007	Bill	PO #1475 - 20618	5,265.34	5,265.34		5,265.34
				Check Amount		14,336.95

Enterprise Bank

14,336.95

ENGINEERED CONCRETE STRUCTURES, INC.

1068

Miller's Construction Company, LLC

Date	Type	Reference	Original Amt.	Balance Due	2/2/2007 Discount	Payment
1/5/2007	Bill	PO #1414 - 20612	797.42	797.42		797.42
1/11/2007	Bill	PO 1480 - 20624	4,324.00	4,324.00		4,324.00
1/11/2007	Bill	PO #1479 - 20620	575.00	575.00		575.00
1/11/2007	Bill	PO #1428 - 20619	3,375.19	3,375.19		3,375.19
1/11/2007	Bill	PO #1475 - 20618	5,265.34	5,265.34		5,265.34
				Check Amount		14,336.95

Enterprise Bank

14,336.95

EBSC-PS 003619

LMP12 M/P CHECK

ENTRUSTED TO YOUR HANDS

APPLICATION FOR PAYMENT

Submitted by: Miller's Construction Co., LLC Date: 3-7-07

Address: 225 Thompson Rd Phone: _____

Fast No.: _____ Job Name/Project: _____ Job #: _____

Submitted To: EBSC, Pendleton Station Agreement No.: _____

The undersigned requests payment for work completed during the period from _____ to _____ in accordance with the terms of our contract with you for the above referenced project as shown in detail on the schedule attached and summarized as follows:

A. Original Contract Amount	<u>25,202.12</u>
B. Approved Change Orders through No. _____	_____
C. Total Contract Amount (A + B)	_____
D. Value of Work Completed to Date (total of column D on rear)	_____
E. Stored Materials to Date (total of column E on rear)	_____
F. Total Completed & Stored to Date (D + E)	_____
G. Less: Amount Retained _____ % of F (total)	_____
H. Total to Date Less Retainage (F - G)	_____
I. Less: Amount Previously Paid	_____
J. Amount Due this Request	<u>25,202.12</u>

* Must agree with detail following.

AFFIDAVIT AND RELEASE OF LIEN

The undersigned hereby certifies that the above summary and attached schedule represent an accurate accounting of the status of payments to date and value of work performed and materials supplied to date under the terms of the contract relating to the above referenced project and to which the undersigned contracting party.

I, undersigned further certifies and affirms under the penalty of perjury and violation of the Laws of the State of in which the Project is located that materials, labor, services, and all applicable taxes furnished by him prior to the above-mentioned pay period have been paid in full and any which occur during the above pay period will be paid from the proceeds of this draw (except as listed on the attached schedule) and upon payment above, the premise bond for the above named job cannot be made subject to any valid lien or claim by anyone who furnished materials, labor, services, and all applicable taxes to the undersigned for use in said job. The undersigned hereby releases and indemnifies the Contractor and its surety, if applicable, and the owner from further liability in connection with all materials, labor, services, and all applicable taxes furnished by the undersigned through the above-mentioned period.

THIS RELEASE IS GIVEN TO INDUCE PAYMENT IN THE AMOUNT OF \$ 25,202.12 AND ON RECEIPT OF SAID PAYMENT THE UNDERSIGNED, THIS RELEASE BECOMES IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the undersigned has duly caused these presents to be signed and attested by its owner, officer, or duly authorized representative on the 13th day of March, 2007.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13th DAY OF March, 2007.

Notary Public: Betty R. Adams

State of: South Carolina
My Commission Expires: My Commission Expires February 20, 2011

Miller's Construction Co., LLC
NAME OF CONTRACTOR OR SUPPLIER

G. Michael Miller
(Signature)

G. Michael Miller
(Printed Name)

(Title - Owner, Officer or Duly Authorized Representative)



EBSC
4/4/07

PD alt #113
3/8/07
EBSC, PD

EBSC. PS-
32856

E.B.S.C.
PENDLETON STATION
100 VANCE ST STE 1
PENDLETON, SC 29670
PH. 864-648-7777

113
67-287/532

Date 3/8/2007

The Miller's Construction Company, LLC \$ 25,202 ¹²
twenty-five thousand two hundred two & $\frac{12}{100}$ Dollars  Security
Features
Printed on
Demand

 **ENTERPRISE BANK**
EHRHARDT, S.C. 29081

Inv. 20635 + 20645

E. M. Mathias AP

⑈000113⑈ ⑆053202871⑆1511 15243⑈

Miller's Construction Company, LLC.
225 Thompson Road
Anderson, SC 29624

Date	Invoice #
01/29/2007	20645

Bill To
Engineer Concrete Structures, Inc. P.O. Box 99 Pendleton, SC 29670

P.O. No.	Terms	Job Site
1517	Net 10 days	Pendleton SC

Itemized Service	Description	Amount
	Work Performed on January 15, 2007.	
Mini Excavator	Mini Excavator: 4.50 hours @ \$75.00 per hour	337.50
Motorgrader	Motorgrader: 7 hours @ \$120.00 per hour	840.00
Blade Dozer	750 Blade Dozer: 7 hours @ \$115.00 per hour	805.00
Labor Hand	#1 Labor Hand: 9.50 hours @ \$18.50 per hour	175.75
Labor Hand	#2 Labor Hand: 9.50 hours @ \$18.50 per hour	175.75
Labor Hand	#3 Labor Hand: 9.50 hours @ \$18.50 per hour	175.75
Gravel	Crusher run stone: 496.15 tons @ \$18.75 per hour	9,302.81
	Work Performed on January 16, 2007.	
Mini Excavator	Mini Excavator: 5 hours @ \$75.00 per hour	375.00
Blade Dozer	750 Blade Dozer: 5 hours @ \$115.00 per hour	575.00
Motorgrader	Motorgrader: 4 hours @ \$120.00 per hour	480.00
Skid Steer Loader	Skid Steer Loader: 8.50 hours @ \$65.00 per hour	552.50
Labor Hand	Labor Hand: 8.50 hours @ \$18.50 per hour	157.25
Gravel	Crusher Run Stone: 210.09 tons @ \$18.75 per ton	3,939.19
	Work Performed on January 17, 2007.	
Skid Steer Loader	Skid Steer Loader: 3.50 hours @ \$65.00 per hour	227.50
Blade Dozer	750 Blade Dozer: 3.50 hours @ \$115.00 per hour	402.50
Vibatory Packer	Smooth Drum Vibatory Packer: 2 hours @ \$95.00 per hour	190.00
	Work Performed on January 23, 2007.	
Skid Steer Loader	Skid Steer Loader: 4.50 hours @ \$65.00 per hour	292.50
Mini Excavator	Mini Excavator: 4.50 hours @ \$75.00 per hour	337.50
Labor Hand	#1 Labor Hand: 4.50 hours @ \$18.50 per hour	83.25
Labor Hand	#2 Labor Hand: 4.50 hours @ \$18.50 per hour	83.25
Gravel	3" Surge Stone: 104.47 tons @ \$21.00 per ton	2,193.87
Thank you for your business.		
Total		\$21,701.87

Phone # 864-296-3301
Fax # 864-296-8700

Email Address:
mconsteel@bellsouth.net

PAID
1-29-07

PENDLETON STATION, LLC451 Jassen Lane, Suite C
Charleston, SC 29492☐ Development
☐ Construction
☐ Office/AdminPurchase Order No. 15171/23/07**PURCHASE ORDER****Vendor**Name Mella Construction
Address _____
City _____ St _____ ZIP _____
Phone _____**Ship To**Name _____
Address _____
City _____ St _____ ZIP _____
Phone _____

Qty	Units	Description/Item Number	Unit Price	TOTAL
		Stone for Construction Site Crusher Run for Illumination St.		
SubTotal				<u>21,701.87</u>
Shipping & Handling				
Taxes State				
TOTAL				<u>21,701.87</u>

Shipping Date**Approval**Date _____
Order No _____
Ordered By _____
Ship Via _____**Comments:**

Pendleton Station

70# 1517

1/17/07	SKID STEER	7:00 - 11:30	3.50 H @ 65°	# 227
	750 Dozer	8:00 - 11:30	3.53 H @ 115°	# 402.50
	Smooth Drum Roller	8:00 - 10:00	2.0 H @ 95°	# 190

2/3/07	SKID STEER	1:00 - 5:30	4.50 H @ 65°	# 292.50
	Mini Excavator	1:00 - 5:30	4.50 H @ 75°	# 337.50
	Labon Haul	1:00 - 5:30	4.50 H @ 18°	# 83.25
	Labon Haul	1:00 - 5:30	4.50 H @ 18°	# 83.25

3" Super Stone

5 Loads Total

104.47 Tons @ 21°

2193.27

Total # 21,701.87

Pendleton Station

PO # 1517

ILLUSION ST STONE

Under Cut ETC

1/15/07	Mini EX CAVAYOL	7:30 - 12:00	4.50 lb @ 75 ⁰⁰	# 337 ⁵⁰
	MOTOR GRADER	10:00 - 5:30	7.0 lb @ 120 ⁰⁰	# 840 ⁰⁰
	750 DOZIE	10:00 - 5:30	7.0 lb @ 115 ⁰⁰	# 805 ⁰⁰

LABOR HAND	7:30 - 5:30	9.50 lb @ 18 ⁷⁵	# 175 ⁷⁵
LABOR HAND	7:30 - 5:30	9.50 lb @ 18 ⁵⁰	# 175 ⁷⁵
LABOR HAND	7:30 - 5:30	9.50 lb @ 18 ⁵⁰	# 175 ⁷⁵

Crush Run Stone

24 Loads Total

496.15 Tons @ 18⁷⁵ per Ton

9302 ²¹

1/16/07	Mini EX	8:00 - 1:00	5.0 lb @ 75 ⁰⁰	# 375 ⁰⁰
	750 DOZIE	8:00 - 1:00	5.0 lb @ 115 ⁰⁰	# 575 ⁰⁰
	MOTOR GRADER	1:00 - 5:00	4.0 lb @ 120 ⁰⁰	# 480 ⁰⁰
	SKID STEER	8:00 - 5:00	8.50 lb @ 65 ⁰⁰	# 552 ⁵⁰
	LABOR HAND	8:00 - 5:00	8.50 lb @ 18 ⁵⁰	# 157 ²⁵

Crush Run Stone

10 Loads Total

210.09 Tons @ 18⁷⁵

3939 ¹⁹

DAILY JOB REPORT

DATE 1-15-67 WEATHER _____
TEMPERATURE _____ AM _____ PM _____

EMPLOYEES	EMPLOYEE/CLASSIFICATION		RATE	HOURS	WORK PERFORMED
	Realty				Repaired Silt Fence
	H.S.				"
	Tim				Run Digger
	Jason				Silt Fence & checked Grade
	Lane				Worked on Illusion St
	Hugh				Painting Stone Down

	QTY	MATERIAL RECEIVED	QTY	MATERIAL USED
MATERIAL		used 50' Silt Fence		
		Pebbles		

[illegible][illegible][illegible]

ADDRESS

DATE 1-16-67

WEATHER

TEMPERATURE

AL:

PL

EMPLOYEES

MATERIAL

EQUIPMENT

SUBCONT.

CHANGES/ETC.

711

Category	Amount	Subtotal	Total
Food	10.00	10.00	10.00
Alcohol	10.00	10.00	10.00
Entertainment	10.00	10.00	10.00
Transportation	10.00	10.00	10.00
Utilities	10.00	10.00	10.00
Insurance	10.00	10.00	10.00
Medical	10.00	10.00	10.00
Education	10.00	10.00	10.00
Other	10.00	10.00	10.00
Total	100.00	100.00	100.00

ANDERSON CHARLES R JR
Rt 1111 HAYES RD, ANN ARBOR, MI 48106-9312
TEL NO 1498345

1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365</

THL No 1498335

[illegible]

171. No 1498333

[illegible]

711. No 1498354

Page No.	
Date	
Name	
Roll No.	
Section	
Subject	
Teacher	
Class	
Topic	
Chapter	
Unit	
Lesson	
Activity	
Assessment	
Feedback	
Signature	
Stamp	
Remarks	

ANDERSON CLARRY R
10115 HAYES RD, ANN ARBOR, MI 48106
844-574-7113
TUL. No 1490336

1. Name of the person: _____ 2. Address: _____ 3. City: _____ 4. State: _____ 5. Zip: _____ 6. Date: _____ 7. Signature: _____ 8. Printed Name: _____ 9. Title: _____ 10. Company: _____ 11. Phone: _____ 12. Fax: _____ 13. E-mail: _____ 14. Web: _____ 15. Other: _____ 16. _____ 17. _____ 18. _____ 19. _____ 20. _____ 21. _____ 22. _____ 23. _____ 24. _____ 25. _____ 26. _____ 27. _____ 28. _____ 29. _____ 30. _____ 31. _____ 32. _____ 33. _____ 34. _____ 35. _____ 36. _____ 37. _____ 38. _____ 39. _____ 40. _____ 41. _____ 42. _____ 43. _____ 44. _____ 45. _____ 46. _____ 47. _____ 48. _____ 49. _____ 50. _____ 51. _____ 52. _____ 53. _____ 54. _____ 55. _____ 56. _____ 57. _____ 58. _____ 59. _____ 60. _____ 61. _____ 62. _____ 63. _____ 64. _____ 65. _____ 66. _____ 67. _____ 68. _____ 69. _____ 70. _____ 71. _____ 72. _____ 73. _____ 74. _____ 75. _____ 76. _____ 77. _____ 78. _____ 79. _____ 80. _____ 81. _____ 82. _____ 83. _____ 84. _____ 85. _____ 86. _____ 87. _____ 88. _____ 89. _____ 90. _____ 91. _____ 92. _____ 93. _____ 94. _____ 95. _____ 96. _____ 97. _____ 98. _____ 99. _____ 100. _____	1. Name of the person: _____ 2. Address: _____ 3. City: _____ 4. State: _____ 5. Zip: _____ 6. Date: _____ 7. Signature: _____ 8. Printed Name: _____ 9. Title: _____ 10. Company: _____ 11. Phone: _____ 12. Fax: _____ 13. E-mail: _____ 14. Web: _____ 15. Other: _____ 16. _____ 17. _____ 18. _____ 19. _____ 20. _____ 21. _____ 22. _____ 23. _____ 24. _____ 25. _____ 26. _____ 27. _____ 28. _____ 29. _____ 30. _____ 31. _____ 32. _____ 33. _____ 34. _____ 35. _____ 36. _____ 37. _____ 38. _____ 39. _____ 40. _____ 41. _____ 42. _____ 43. _____ 44. _____ 45. _____ 46. _____ 47. _____ 48. _____ 49. _____ 50. _____ 51. _____ 52. _____ 53. _____ 54. _____ 55. _____ 56. _____ 57. _____ 58. _____ 59. _____ 60. _____ 61. _____ 62. _____ 63. _____ 64. _____ 65. _____ 66. _____ 67. _____ 68. _____ 69. _____ 70. _____ 71. _____ 72. _____ 73. _____ 74. _____ 75. _____ 76. _____ 77. _____ 78. _____ 79. _____ 80. _____ 81. _____ 82. _____ 83. _____ 84. _____ 85. _____ 86. _____ 87. _____ 88. _____ 89. _____ 90. _____ 91. _____ 92. _____ 93. _____ 94. _____ 95. _____ 96. _____ 97. _____ 98. _____ 99. _____ 100. _____

7711. No. 149833

[illegible]

THE. NO 1498357

[illegible]

THE NO 1498355

1. Name: _____ 2. Address: _____ 3. City: _____ 4. State: _____ 5. Zip: _____ 6. Phone: _____ 7. E-mail: _____ 8. Date: _____ 9. Signature: _____ 10. _____	1. Name: _____ 2. Address: _____ 3. City: _____ 4. State: _____ 5. Zip: _____ 6. Phone: _____ 7. E-mail: _____ 8. Date: _____ 9. Signature: _____ 10. _____

[illegible]

1. Name of the person 2. Date of birth 3. Place of birth 4. Nationality 5. Religion 6. Education 7. Occupation 8. Marital status 9. Address 10. Contact details	11. Signature 12. Stamp

DATE: 10/10/1983
TIME: 14:00

ANDERSON QUARRY #109
RT.6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 1:12:28PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
Tkt. No 1498720

Product: 030059 3" Surge	Pounds	Tons	Metric
Gross	67,400	33.70	30.57
Tare	25,400	12.70	11.52
Net	42,000	21.00	19.05
Pendleton Station Job	* Product Weight = 21.00 Ton		
UNIT TOTALS	Ordered:	0.00	
Material:	Received:	21.00	
Freight:	Remaining:	-21.00	
Tax:	Today:	21.00	Loads: 1
Total:			

Carrier: Vehicle: ARTH7 McHauling
Received: B Megala
Weighmaster:

Copy 3

ANDERSON QUARRY #109
RT.6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 12:53:32PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
Tkt. No 1498722

Product: 030059 3" Surge	Pounds	Tons	Metric
Gross	66,640	33.32	30.23
Tare	25,300	12.65	11.70
Net	41,340	20.67	18.53
Pendleton Station Job	* Product Weight = 20.67 Ton		
UNIT TOTALS	Ordered:	0.00	
Material:	Received:	41.42	
Freight:	Remaining:	-41.42	
Tax:	Today:	41.42	Loads: 2
Total:			

Carrier: Vehicle: MCH21 McHauling
Received: B Megala
Weighmaster:

Copy 3

ANDERSON QUARRY #109
RT.6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 1:15:12PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
Tkt. No 1498731

Product: 030059 3" Surge	Pounds	Tons	Metric
Gross	68,800	34.40	31.21
Tare	25,810	12.92	11.72
Net	42,990	21.48	19.49
Pendleton Station Job	* Manual Weight = 21.48 Ton		
UNIT TOTALS	Ordered:	0.00	
Material:	Received:	82.56	
Freight:	Remaining:	-82.56	
Tax:	Today:	82.56	Loads: 4
Total:			

Carrier: Vehicle: MCH20 McHauling
Received: B Megala
Weighmaster:

Copy 3

ANDERSON QUARRY #109
RT.6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 1:12:28PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
Tkt. No 1498723

Product: 030059 3" Surge	Pounds	Tons	Metric
Gross	65,900	32.95	29.71
Tare	26,150	13.08	11.88
Net	39,750	19.87	17.84
Pendleton Station Job	* Product Weight = 19.87 Ton		
UNIT TOTALS	Ordered:	0.00	
Material:	Received:	61.65	
Freight:	Remaining:	-61.65	
Tax:	Today:	61.65	Loads: 3
Total:			

Carrier: Vehicle: ARTH7 McHauling
Received: B Megala
Weighmaster:

Copy 3

ANDERSON QUARRY #109
RT.6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 4:00:22PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
Tkt. No 1498761

Product: 030059 3" Surge	Pounds	Tons	Metric
Gross	69,660	34.83	31.60
Tare	25,340	12.67	11.72
Net	44,320	22.16	19.88
Pendleton Station Job	* Product Weight = 22.16 Ton		
UNIT TOTALS	Ordered:	0.00	
Material:	Received:	104.47	
Freight:	Remaining:	-104.47	
Tax:	Today:	104.47	Loads: 5
Total:			

Carrier: Vehicle: MCH20 McHauling
Received: B Megala
Weighmaster:

Copy 3

ANDERSON QUARRY #109
RT. 6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 12:51PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
P.O.:

Tkt. No 1498720

	Pounds	Tons	Metric
Gross	67,400	32.75	30.47
Tare	25,400 *	12.70 *	11.52 *
Net	42,000 *	21.00 *	18.95 *

UNIT	TOTALS
Material:	Ordered: 21.00 Ton
Freight:	Ordered: 0.00
Tax:	Received: 21.00
	Remaining: -21.00
Total:	Today: 21.00 Loads: 1

Carrier: MCH17 McHauling
Received: 11 Megab
Weightmaster:

Copy 3

ANDERSON QUARRY #109
RT. 6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 12:53:12PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
P.O.:

Tkt. No 1498722

	Pounds	Tons	Metric
Gross	66,640	33.32	30.23
Tare	25,800 *	12.90 *	11.70 *
Net	40,840 *	20.42 *	18.52 *

UNIT	TOTALS
Material:	Ordered: 20.42 Ton
Freight:	Ordered: 0.00
Tax:	Received: 41.42
	Remaining: -41.42
Total:	Today: 41.42 Loads: 2

Carrier: MCH21 McHauling
Received: 11 Megab
Weightmaster:

Copy 3

ANDERSON QUARRY #109
RT. 6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 1:45:12PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
P.O.:

Tkt. No 1498731

	Pounds	Tons	Metric
Gross	65,800 *	34.40 *	31.21 *
Tare	25,840	12.92	11.72
Net	42,960	21.48	19.49

UNIT	TOTALS
Material:	Ordered: 21.48 Ton
Freight:	Ordered: 0.00
Tax:	Received: 82.56
	Remaining: -82.56
Total:	Today: 82.56 Loads: 4

Carrier: MCH20 McHauling
Received: 11 Megab
Weightmaster:

Copy 3

ANDERSON QUARRY #109
RT. 6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 1:17:28PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
P.O.:

Tkt. No 1498723

	Pounds	Tons	Metric
Gross	65,500	32.75	29.71
Tare	26,180 *	13.09 *	11.88 *
Net	39,320 *	19.66 *	17.84 *

UNIT	TOTALS
Material:	Ordered: 19.66 Ton
Freight:	Ordered: 0.00
Tax:	Received: 61.05
	Remaining: -61.05
Total:	Today: 61.05 Loads: 3

Carrier: MCH11 McHauling
Received: 11 Megab
Weightmaster:

Copy 3

ANDERSON QUARRY #109
RT. 6 1413 HAYES RD. ANDERSON, SC 29624
864-296-9242

1/23/2007 4:01:23PM
Location: 10912 Anderson Quarry
Customer: 634476 Miller Const Co (3) (Hauler)
Order: 7117945 Pendleton Station Job
P.O.:

Tkt. No 1498761

	Pounds	Tons	Metric
Gross	69,660	34.83	31.60
Tare	25,840 *	12.92 *	11.72 *
Net	43,820 *	21.91 *	19.88 *

UNIT	TOTALS
Material:	Ordered: 21.91 Ton
Freight:	Ordered: 0.00
Tax:	Received: 104.47
	Remaining: -104.47
Total:	Today: 104.47 Loads: 5

Carrier: MCH20 McHauling
Received: 11 Megab
Weightmaster:

Copy 3

2-15-07

Miller's Construction Company, LLC.
225 Thompson Road
Anderson, SC 29624

Date	Invoice #
01/19/2007	20635

Bill To
Engineer Concrete Structures, Inc. P.O. Box 99 Pendleton, SC 29670



RECEIVED

1/22/07

P.O. No.	Terms	Job Site
1347	Net 10 days	Pendleton St.

Itemized Service	Description	Amount
Loader Off Road Truck Labor Hand	Work Performed: Undercutting and Adding Stone. Work Performed on December 5, 2006. Track Loader: 7.50 hours @ \$110.00 per hour Off Road Truck: 7.50 hours @ \$125.00 per hour Labor Hand: 7.50 hours @ \$18.50 per hour Stone Billed out on a separate invoice.	825.00 937.50 138.75
Loader Off Road Truck Skid Steer Loader Labor Hand	Work Performed on December 6, 2006. Track Loader: 4 hours @ \$110.00 per hour Off Road Truck: 4 hours @ \$125.00 per hour Skid Steer Loader: 9 hours @ \$65.00 per hour Labor Hand: 4 hours @ \$18.50 per hour	440.00 500.00 585.00 74.00
		
Thank you for your business.		Total \$3,500.25

Phone # 864-296-3301

Fax # 864-296-8700

Email Address:
mconstco@bellsouth.net

RECEIVED
1-22-07

DAILY JOB REPORT

DATE 12/5/44 WEATHER _____
TEMPERATURE _____ AM _____ PM _____

	EMPLOYEE / CLASSIFICATION	DATED	HRS.	WORK PERFORMED
EMPLOYEES	High #			9536 load on C = RD driver L =

	QTY	MATERIAL RECEIVED	QTY	MATERIAL USED
MATERIAL		9/10/82 Sigsbee Dial & Cylinder		

EQUIPMENT	EQUIPMENT PROJECTED COSTS		EQUIPMENT EXPENDED COSTS	
	ESTIMATE	ACTUAL	ESTIMATE	ACTUAL
4550 P. Hammer			9.00	6.50
4550 P. Hammer			"	"
			"	"
			3.00	1.00

SUBCOM		
CHANGES/ETC.	1. CHANGE ORDERS; ADDITIONAL WORK; ETC.	2. VISITORS TO SHELBY WAREHOUSE

CHANCE ORDER NO. _____

THE UNIVERSITY OF CHICAGO PRESS

JOB NAME JOHN BILLY D. BILLY
JOB NO. 1347
ADDRESS _____
SUPERVISOR H. H. H.

DAILY JOB REPORT

DATE 12/6/62 WEATHER _____
TEMPERATURE _____ AM _____ PM _____

	EMPLOYEE / CLASSIFICATION	RATE	HRS.	WORK PERFORMED
EMPLOYEES	Mumtaz		955	Cutting out M-A-T Papers 2 nd / ₃
	Saleem		Laborer	
	Gani		nearly 20 hours	
	Pirun G		Skilled Solder - Operation Supervisor	
			Planning Machine	

[illegible][illegible]

STATION	DATE	TIME	REMARKS
1	10/10/50	10:00	CHANGING OVER TO NEW WORK
2	10/10/50	10:05	CHANGING OVER TO NEW WORK
3	10/10/50	10:10	CHANGING OVER TO NEW WORK
4	10/10/50	10:15	CHANGING OVER TO NEW WORK
5	10/10/50	10:20	CHANGING OVER TO NEW WORK
6	10/10/50	10:25	CHANGING OVER TO NEW WORK
7	10/10/50	10:30	CHANGING OVER TO NEW WORK
8	10/10/50	10:35	CHANGING OVER TO NEW WORK
9	10/10/50	10:40	CHANGING OVER TO NEW WORK
10	10/10/50	10:45	CHANGING OVER TO NEW WORK
11	10/10/50	10:50	CHANGING OVER TO NEW WORK
12	10/10/50	10:55	CHANGING OVER TO NEW WORK
13	10/10/50	11:00	CHANGING OVER TO NEW WORK
14	10/10/50	11:05	CHANGING OVER TO NEW WORK
15	10/10/50	11:10	CHANGING OVER TO NEW WORK
16	10/10/50	11:15	CHANGING OVER TO NEW WORK
17	10/10/50	11:20	CHANGING OVER TO NEW WORK
18	10/10/50	11:25	CHANGING OVER TO NEW WORK
19	10/10/50	11:30	CHANGING OVER TO NEW WORK
20	10/10/50	11:35	CHANGING OVER TO NEW WORK
21	10/10/50	11:40	CHANGING OVER TO NEW WORK
22	10/10/50	11:45	CHANGING OVER TO NEW WORK
23	10/10/50	11:50	CHANGING OVER TO NEW WORK
24	10/10/50	11:55	CHANGING OVER TO NEW WORK
25	10/10/50	12:00	CHANGING OVER TO NEW WORK
26	10/10/50	12:05	CHANGING OVER TO NEW WORK
27	10/10/50	12:10	CHANGING OVER TO NEW WORK
28	10/10/50	12:15	CHANGING OVER TO NEW WORK
29	10/10/50	12:20	CHANGING OVER TO NEW WORK
30	10/10/50	12:25	CHANGING OVER TO NEW WORK
31	10/10/50	12:30	CHANGING OVER TO NEW WORK
32	10/10/50	12:35	CHANGING OVER TO NEW WORK
33	10/10/50	12:40	CHANGING OVER TO NEW WORK
34	10/10/50	12:45	CHANGING OVER TO NEW WORK
35	10/10/50	12:50	CHANGING OVER TO NEW WORK
36	10/10/50	12:55	CHANGING OVER TO NEW WORK
37	10/10/50	1:00	CHANGING OVER TO NEW WORK
38	10/10/50	1:05	CHANGING OVER TO NEW WORK
39	10/10/50	1:10	CHANGING OVER TO NEW WORK
40	10/10/50	1:15	CHANGING OVER TO NEW WORK
41	10/10/50	1:20	CHANGING OVER TO NEW WORK
42	10/10/50	1:25	CHANGING OVER TO NEW WORK
43	10/10/50	1:30	CHANGING OVER TO NEW WORK
44	10/10/50	1:35	CHANGING OVER TO NEW WORK
45	10/10/50	1:40	CHANGING OVER TO NEW WORK
46	10/10/50	1:45	CHANGING OVER TO NEW WORK
47	10/10/50	1:50	CHANGING OVER TO NEW WORK
48	10/10/50	1:55	CHANGING OVER TO NEW WORK
49	10/10/50	2:00	CHANGING OVER TO NEW WORK
50	10/10/50	2:05	CHANGING OVER TO NEW WORK
51	10/10/50	2:10	CHANGING OVER TO NEW WORK
52	10/10/50	2:15	CHANGING OVER TO NEW WORK
53	10/10/50	2:20	CHANGING OVER TO NEW WORK
54	10/10/50	2:25	CHANGING OVER TO NEW WORK
55	10/10/50	2:30	CHANGING OVER TO NEW WORK
56	10/10/50	2:35	CHANGING OVER TO NEW WORK
57	10/10/50	2:40	CHANGING OVER TO NEW WORK
58	10/10/50	2:45	CHANGING OVER TO NEW WORK
59	10/10/50	2:50	CHANGING OVER TO NEW WORK
60	10/10/50	2:55	CHANGING OVER TO NEW WORK
61	10/10/50	3:00	CHANGING OVER TO NEW WORK
62	10/10/50	3:05	CHANGING OVER TO NEW WORK
63	10/10/50	3:10	CHANGING OVER TO NEW WORK
64	10/10/50	3:15	CHANGING OVER TO NEW WORK
65	10/10/50	3:20	CHANGING OVER TO NEW WORK
66	10/10/50	3:25	CHANGING OVER TO NEW WORK
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68	10/10/50	3:35	CHANGING OVER TO NEW WORK
69	10/10/50	3:40	CHANGING OVER TO NEW WORK
70	10/10/50	3:45	CHANGING OVER TO NEW WORK
71	10/10/50	3:50	CHANGING OVER TO NEW WORK
72	10/10/50	3:55	CHANGING OVER TO NEW WORK
73	10/10/50	4:00	CHANGING OVER TO NEW WORK
74	10/10/50	4:05	CHANGING OVER TO NEW WORK
75	10/10/50	4:10	CHANGING OVER TO NEW WORK
76	10/10/50	4:15	CHANGING OVER TO NEW WORK
77	10/10/50	4:20	CHANGING OVER TO NEW WORK
78	10/10/50	4:25	CHANGING OVER TO NEW WORK
79	10/10/50	4:30	CHANGING OVER TO NEW WORK
80	10/10/50	4:35	CHANGING OVER TO NEW WORK
81	10/10/50	4:40	CHANGING OVER TO NEW WORK
82	10/10/50	4:45	CHANGING OVER TO NEW WORK
83	10/10/50	4:50	CHANGING OVER TO NEW WORK
84	10/10/50	4:55	CHANGING OVER TO NEW WORK
85	10/10/50	5:00	CHANGING OVER TO NEW WORK
86	10/10/50	5:05	CHANGING OVER TO NEW WORK
87	10/10/50	5:10	CHANGING OVER TO NEW WORK
88	10/10/50	5:15	CHANGING OVER TO NEW WORK
89	10/10/50	5:20	CHANGING OVER TO NEW WORK
90	10/10/50	5:25	CHANGING OVER TO NEW WORK
91	10/10/50	5:30	CHANGING OVER TO NEW WORK
92	10/10/50	5:35	CHANGING OVER TO NEW WORK
93	10/10/50	5:40	CHANGING OVER TO NEW WORK
94	10/10/50	5:45	CHANGING OVER TO NEW WORK
95	10/10/50	5:50	CHANGING OVER TO NEW WORK
96	10/10/50	5:55	CHANGING OVER TO NEW WORK
97	10/10/50	6:00	CHANGING OVER TO NEW WORK
98	10/10/50	6:05	CHANGING OVER TO NEW WORK
99	10/10/50	6:10	CHANGING OVER TO NEW WORK
100	10/10/50	6:15	CHANGING OVER TO NEW WORK

CHANGE ORDER NO. _____

SEC 0457455 DATE 07/28/2009 12:00 PM - 2009

PENDLETON STATION, LLC451 Jessen Lane, Suite C
Charleston, SC 29492☐ Development
☐ Construction
☐ Office/AdminPurchase Order No. 1347**PURCHASE ORDER****Vendor**Name Miller's Construction
Address _____
City _____ St _____ ZIP _____
Phone _____**Ship To**Name _____
Address _____
City _____ St _____ ZIP _____
Phone _____

Qty	Units	Description/Item Number	Unit Price	TOTAL
		Stone & undercutting roads		
				SubTotal <u>3500.00</u>
				Shipping & Handling _____
				Taxes State _____
				TOTAL <u>3500.00</u>

Shipping Date**Approval**Date _____
Order No _____
Ordered By _____
Ship Via _____**Comments:**

WITNESS our Hand and Seal by our representative, this 2nd day of March in the year of our Lord Two Thousand Seven (2007) and in the Two Hundred Thirtieth year of the Sovereignty and Independence of the United States of America.

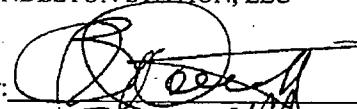
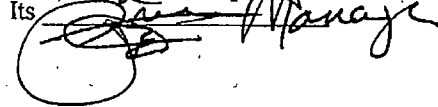
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

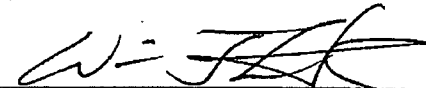
PENDLETON STATION, LLC


(Witness # 1)

By:

Its


(Witness # 2 who is also a Notary Public)

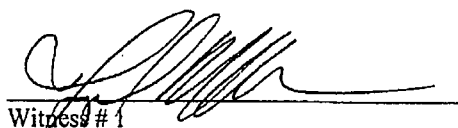
STATE OF SOUTH CAROLINA)

)

PROBATE

COUNTY OF ANDERSON)

PERSONALLY appeared before me Angel M. Marshall (Printed Name of Witness #1) and made oath that (s)he saw the within named **Pendleton Station, LLC**, by its **authorized representative**, sign, seal, and as its act and deed, deliver the within written Deed, and that (s)he with William T. Chelton (Printed Name of Witness #2 who is also a Notary Public) witnessed the execution thereof.


Witness # 1

SWORN TO before me, this
March 2, 2007.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/4/09

Schedule A

**Legal Description
(Deed)**

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Grantor by deed of Clint Wright, Jr., Lorri Wright and David W. Hanger dated December 15, 2005 and recorded on December 16, 2005 at Book 07113, Page 00310 in the RMC Office of Anderson County.

TMS #052-00-08-009

ALSO

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS 1A, 1B, 1C, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 7C, 7D, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 11B, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 15B, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C.

This is the same property conveyed to Grantor by deed of Coastal Plains Development Co., Inc. dated August 10, 2004 and recorded on October 25, 2004 at Book 6429, Page 302 in the RMC Office of Anderson County.

TMS # 063-00-01-006

Grantee's address: PO Box 8, Ehrhardt, SC 29081

AFFIDAVIT

STATE OF SOUTH CAROLINA)

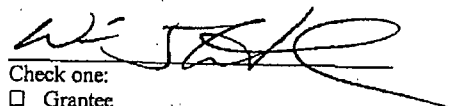
) Date of Transfer of Title

COUNTY OF ANDERSON)

) March 2, 2007

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

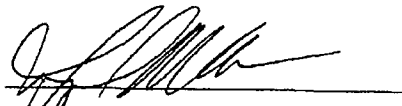
1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by **Pendleton Station, LLC**, by its authorized representative, to **Enterprise Bank**, ON **March 2, 2007**.
3. Check one of the following: The DEED is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) XX _____ EXEMPT from the deed recording fee because (exemption# 13) (Explanation if required) Deed in Lieu of Foreclosure (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **\$5.00**.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES _____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording Fee is computed as follows:
 - (a) _____ the amount listed in item 4 above.
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative.
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



Check one:

☐ Grantee☐ Grantor☒ Legal Representative connected with this transaction

Sworn to before me this
March 2, 2007



Notary Public for South Carolina

My Commission Expires: 2/25/11

070007083 3/05/2007 03:19:23 PM
FILED, RECORDED, INDEXED
Bk: 07886 Pg: 00110 Pages: 004
Rec Fee: 10.00 St Fee: EXEMPT
Co Fee: EXEMPT
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

Env.
RETURN TO: KENISON, DUDLEY & Crawford, llc
704 E. McBee Avenue
Greenville, SC 29601
Attn.: Thomas E. Dudley, III

(Title Not Examined and Not Certified)
STATE OF SOUTH CAROLINA) QUITCLAIM
COUNTY OF ANDERSON) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that PENDLETON STATION, LLC, (hereinafter termed "Grantor") for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, to Grantor paid at and before the sealing of these presents by ENTERPRISE BANK OF SOUTH CAROLINA (hereinafter termed "Grantee") has remised, released and forever quit claim, and by these presents does remise, release and forever quit claim unto ENTERPRISE BANK OF SOUTH CAROLINA, its successors and assigns forever all its interest, if any, in and to, the following described property, to wit:

All that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, more or less, as shown on plat recorded in the RMC Office for Anderson County in Plat Book 87 at Page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993 of record in the aforesaid office in Plat Slide 399 at Page 9-A. The metes and bounds, courses and distances as upon said plat appear which is incorporated herein by reference thereto and made a part hereof.

Being the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman, dated August 16, 2004 and recorded in the RMC Office for Anderson County in Book 6323, Page 196.

Grantee's Address: P.O. Box 8, Earhardt, SC 29081

TMS # 040-00-02-005

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND HOLD, all and singular the premises before mentioned unto the Grantee, ENTERPRISE BANK OF SOUTH CAROLINA, its successors and assigns forever, so that neither it, the said Grantor, nor its successors and assigns, nor any other person or persons, claiming under it or them, shall at anytime hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises or appurtenances or any part or parcel thereof, forever.

WITNESS the Grantor's Hand and Seal this 24 day of
July, 2007.

Signed, Sealed and Delivered
in the presence of:

Meredith Hine

Heather R. Kearson

STATE OF SC

COUNTY OF Berkeley

PENDLETON STATION, LLC

BY: [Signature]
ITS: Managing Agent

ACKNOWLEDGEMENT

PERSONALLY appeared before me Heather R. Kearson,
the undersigned Notary Public, Grantor who upon oath acknowledged
that she signed the within Title to Real Estate this 24 day of
July, 2007.

Heather R. Kearson
Notary Public for SC
My Commission Expires: 2/4/15

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
 2. The property being transferred is located in Anderson County, Tax Map Number 040-00-02-005, and was transferred by Pendleton Station, LLC to Enterprise Bank of South Carolina on , 2007.

3. Check one of the Following: The Deed is

- (a) Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 (b) Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 (c) ✓ Exempt from the deed recording fee because (See Information section of this affidavit);

 #1
 (If exempt, please skip items 4-7, and go on to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 (b) The fee is computed on the fair market value of the realty which is
 (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes or No XX to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: N/A.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$
 (b) Place the amount listed in item 5 above here: \$
 (If no amount is listed, place zero here.)
 (c) Subtract line 6(b) from line 6(a) and place result here: \$

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is: \$.8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Pendleton Station, LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 24 day of July, 2007

Heather P. Pearson
 Notary Public for South Carolina
 My Commission Expires: 2/4/15

Dan Johnson
 Responsible Person Connected with the Transaction

Dan Johnson (Daniel E.)
 Print or Type the above name here

070023731 7/26/2007 Bk: 08158 Pg: 00074

070023731 7/26/2007 03:17:00 PM
FILED, RECORDED, INDEXED
Bk: 08158 Pg: 00071 Pages:004
Rec Fee: 10.00 St Fee: EXEMPT
Co Fee: EXEMPT
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

THIS DEED MEETS THE STATUTORY
REQUIREMENTS NECESSARY FOR RECORDING,
BUT MAY NOT BE SUFFICIENT TO PROPERLY
TRANSFER TITLE ON COUNTY TAX RECORDS.
ALL RIGHTS, RESPONSIBILITIES AND
OBLIGATIONS ULTIMATELY REMAIN WITH
THE GRANTOR.

Grantee's Address: Post Office Box 8, Ehrhardt, SC 29801

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that **Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD**, said trust being more correctly named Diana L. Zellner Revocable Trust UAD June 6, 2000 (hereinafter referred to as "Grantor"), for and in consideration of the sum of **Four Hundred Thousand and No/100ths (\$400,000.00) Dollars** and no other consideration, the receipt of which is hereby acknowledged, has granted, bargained, sold, released and quit-claimed, and by these presents do grant, bargain, sell, release and quit-claim unto **Enterprise Bank of South Carolina**, its successors and/or assigns, forever, all of Grantor's right, title and interest in and to the following described real property:

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC, Anderson County, South Carolina," by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219, dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina, in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD, by deed of Coastal Plains Development Co., Inc., dated August 29, 2003, recorded on November 26, 2003 in the Office of the Register of Deeds for Anderson County, South Carolina, in Deed Book 5877 at Page 144.

Tax Map # 063-00-01-001 AND 062-00-08-003

TOGETHER with, all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining;

TO HAVE AND TO HOLD, all and singular, the premises before-mentioned unto the said Grantee, its heirs and assigns, forever, so that neither the said Grantor, nor her heirs, successors and/or assigns, claiming under her, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS the Hand and Seal of the Grantor this 11th day of February, 2008.

Signed, Sealed and Delivered
In the Presence of:

Diana L. Zellner, Trustee for the
Diana L. Zellner Revocable Trust UAD
a/k/a Diana L. Zellner Revocable Trust
UAD June 6, 2000

Elaine H. Fowler
Amy E. Strickland

By: Diana Zellner
Its: Trustee

STATE OF SOUTH CAROLINA)
) SS
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Amelia E. Strickland, Notary Public for the State of South Carolina, do hereby certify that the above named Grantor personally appeared before me this 11th day of February, 2008, and acknowledged the due execution of the foregoing instrument.

Amelia E. Strickland
Notary Public for South Carolina

My Commission Expires: 1-23-2017

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 31.31 Acres, Tract B, Pendleton Township, Plat Bk 1401 Pg 3,
bearing Anderson County Tax Map Number 063-00-01-001 & 062-00-08-003; was transferred
by Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD to
Enterprise Bank of South Carolina on February, 2008

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$400,000.00
- (b) _____ The fee is computed on the fair market value of the realty which is _____
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is: _____

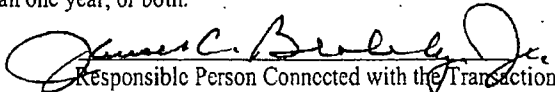
6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	<u>\$400,000.00</u>
(b) Place the amount listed in item 5 above here:	<u>0.00</u>
(If no amount is listed, place zero here.)	
(c) Subtract Line 6(b) from Line 6(a) and place result here:	<u>\$400,000.00</u>

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: _____

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney at Law

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction

SWORN to before me this 12th
day of February, 2008

James C. Blakely, Jr.
Print or Type Name Here

Notary Public for South Carolina
My Commission Expires: 6-8-15

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. @ Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, Avalue@ means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

MAIL TO
J. Blount
104 E. Main St
Greenville, SC 29601

080004135 2/15/2008 03:41:04 PM
FILED, RECORDED, INDEXED
Bk: 08503 Pg: 00166 Pages:005
Rec Fee: 10.00 St Fee: 1040.00
Co Fee: 440.00
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

THIS DEED MEETS THE STATUTORY
REQUIREMENTS NECESSARY FOR RECORDING,
BUT MAY NOT BE SUFFICIENT TO PROPERLY
TRANSFER TITLE ON COUNTY TAX RECORDS.
ALL RIGHTS, RESPONSIBILITIES, AND
OBLIGATIONS ULTIMATELY REMAIN WITH
THE GRANTOR.

cc: Kenyon Rindley & Crawford

Certificate of Counsel

The undersigned hereby certified that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 23, 2013



M. Stokely Holder (SC Bar # 73892)
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Attorneys for Appellant Enterprise Bank
South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable Ellis B. Drew, Jr., Master-in-Equity

Case No.: 2007-CP-04-2785

Moorhead Construction, Inc. Respondent,

v.

Pendleton Station, LLC, Enterprise Bank of South Carolina,
and Angelo Penza Defendants,

Of whom Enterprise Bank of South Carolina is the Appellant.

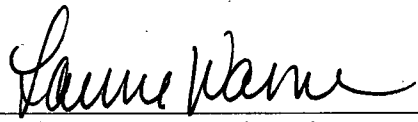
PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Appellant's Record on Appeal in the above-referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 31st day of May, 2013, addressed as follows:

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RECEIVED

JUN 03 2013

SC Court of Appeals