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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Rivers Lawton McIntosh, Circuit Court Judge

Alexander S. Macaulay, Circuit Court Judge and Trial Judge

Civil Action No.: 2005-CP-37-00788

Tri-County Development, Inc. and Melinda Holbrooks,.....Respondents,

v.

Christopher A. Piercè, ...Appellant.

Christopher A. Pierce, ...Third Party Plaintiff,

v.

Jeff Gray, Third Party Defendant.

Record on Appeal

T. Jeff Goodwyn, Jr., Esquire
Rachel Gottlieb Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
Columbia, SC 29205
(803) 251-4517

Attorneys for Appellant

Thomas E. Dudley, III, Esquire
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899

Attorney for Respondents

SC Court of Appeals

INDEX FOR RECORD ON APPEAL

I. ORDERS/JUDGMENTS

Order Entering Default Judgment against Jeff Gray, filed September 26, 2006.....	1
Order Denying Jeff Gray's Motion to Set Aside Default, filed August 4, 2008.....	3
Order Vacating Entry of Default Judgment, filed May 5, 2009..... (As amended, Filed May 29, 2009)	4
Order of Court of Appeals Dismissing Appeal, filed July 8, 2009.....	11
Order Denying Pierce's Request to Quash, filed October 14, 2009.....	13
Order Denying Pierce's Motion to Alter or Amend, filed November 6, 2009.....	17
Order Granting Plaintiff's Motion for Summary Judgment, filed August 31, 2011...	20
Order Denying Request for Continuance, filed November 17, 2011.....	33
Form 4 Order Entering Judgment on Verdict, filed November 30, 2011.....	34
Form 4 Order Denying Motion for Reconsideration, filed December 6, 2011.....	37

II. PLEADINGS

Summons & Complaint and Lis Pendens.....	39
Answer and Counterclaim	43
Amended Answer & Counterclaim.....	51
Defendant Chris Pierce's Motion for Summary Judgment filed March 5, 2007....	86
Affidavit of Jeff Gray in Support of Motion to Set Aside Entry of Default.....	87
Plaintiff's Memorandum in Support of Motion for Summary Judgment	89

III. TRANSCRIPTS

Excerpts of Trial Transcript – pp. 1-24, pp. 38-40, pp. 45-98, pp. 103-113, pp. 117-178 (November 28 and 29, 2011).....	218
Transcript of Motions Hearing (April 6, 2009).....	372
Transcript of Motions Hearing (September 8, 2009).....	391
Excerpt of Plaintiff’s Summary Judgment Hearing (Nov. 1, 2010).....	423
Transcripts of depositions of Melinda Holbrooks and Jeff Gray- (both depositions).....	427

V. EXHIBITS AND DOCUMENTS

Construction Contract.....	440
Mechanic’s Lien Filing	451
Letter of the Honorable R. Lawton McIntosh dated December 21, 2010	454
Plaintiff’s Trial Exhibits Nos. 1, 2, 8, 9, and 10	455

VI. CERTIFICATE OF COUNSEL.....479

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Tri-County Development, Inc. and
Melinda Holbrooks,

Plaintiffs,

vs.

Christopher A. Pierce,

Defendant,

and

Christopher A. Pierce,

Third-Party Plaintiff,

vs.

Jeff Gray,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
C.A. No.: 2005-CP-37-788

ORDER FOR JUDGMENT
BY DEFAULT

JUDGMENT # 2005-CP-37-788

** oo to **

2006 SEP 26 P 12:33

FILED OCONEE, SC
SALLIE G. SMITH
CLERK OF COURT

IT APPEARING from the Affidavit of Chris B. Roberts, Esquire, attorney for the Defendant, that the Third-Party Defendant Jeff Gray, has been duly served with Defendant's Summons and Amended Answer to Complaint, Counterclaim and Third-Party Complaint and that more than thirty (30) days have elapsed since such service, during which time no responsive pleadings have been filed by the Third-Party Defendant and,

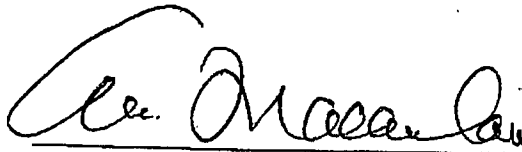
IT FURTHER APPEARING that a hearing to ascertain damages, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, should be held to determine the amount of relief due the Defendant.

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IT IS HEREBY ORDERED, that the Third-Party Defendant is in default and a judgment in an amount to be determined at the damages hearing shall be filed and entered in favor of the Defendant against the Third-Party Defendant.

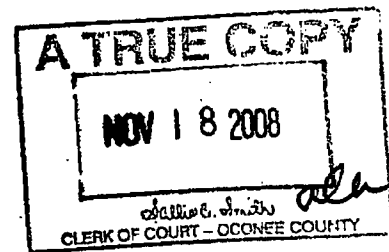
IT IS SO ORDERED.


Presiding Judge, Tenth Judicial Circuit

Walhalla, South Carolina

Dated: Sept 25, 2008

FILED O'CONNOR, SC
SALLIE G. SMITH
CLERK OF COURT
2008 SEP 26 PM 12:33



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STATE OF SOUTH CAROLINA)
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COUNTY OF OCONEE)
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Tri-County Development, et al,)
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Plaintiffs,)
)
v.)
)
Christopher Pierce,)
)
Defendant and)
Third Party Plaintiff,)
)
v.)
)
Jeff Gray,)
)
Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No. 2005-CP-37-788

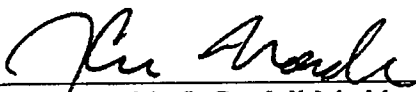
ORDER DENYING THIRD PARTY
DEFENDANT'S MOTION TO SET ASIDE
ENTRY OF DEFAULT

FILED OCONEE, SC
SALLIE G. SMITH
CLERK OF COURT
2008 AUG -4 A 11:45

This matter came before the Court through Third Party Defendant Jeff Gray's Motion to Set Aside Entry of Default. After careful consideration and review of the evidence before the Court, the Court finds that the Third Party Defendant's Motion should be denied.

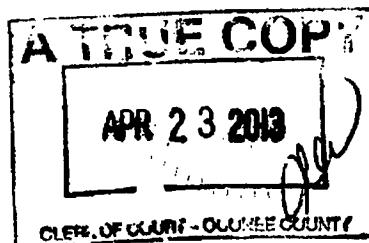
It is hereby ordered that Third Party Defendant Jeff Gray's Motion is denied.

IT IS SO ORDERED.


The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court Judge

Anderson, South Carolina

July 28, 2008



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-37-788

TRI-COUNTY DEVELOPMENT, ET AL

CHRISTOPHER A. PIERCE

PLAINTIFF(S)

DEFENDANT(S)

HEARING/MOTION: _____

DATE & TIME: _____

CHECK ONE:

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

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

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

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

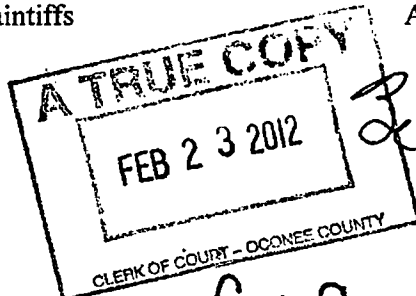
Dated at WALHALLA, South Carolina, this 4TH day of MAY, 2009.

COURT REPORTER: _____ /S/ ALEXANDER S. MACAULAY
PRESIDING JUDGE

This judgment/order was entered on the 5TH day of MAY 2009, and a copy mailed first class this 5TH day of MAY, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

THOMAS E. DUDLEY, III
Attorney for Plaintiffs

CHRISTOPHER A. PIERCE, PRO SE
Attorney(s) for Defendant



BEVERLY H. WHITFIELD
Clerk of Court

Cert Copy Mailed to Atty
Cert Copy Via Cert Mail to Pro Se Def

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Tri-County Development, Inc. and
Melinda Holbrooks,

C.A. No.: 2005-CP-37-788

Plaintiffs,

vs.

ORDER

Christopher A. Pierce,

Defendant.

and

Christopher A. Pierce,

Third Party Plaintiff,)

vs.

Jeff Gray,

Third Party Defendant.)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 MAY - 5 P 3:33

This matter was before the Court on April 6th, 2009 on various motions filed by Plaintiffs, Defendant, and Third Party Defendant. Attorney Thomas E. Dudley, III appeared on behalf of Plaintiffs, Tri-County Development, Inc. and Melinda Holbrooks and on behalf of Third-Party Defendant, Jeff Gray. Defendant/Third-Party Plaintiff, Christopher A. Pierce, appeared Pro-Se. Having heard the oral arguments, and having reviewed the documentary and other evidence submitted by the parties, this Court finds as follows:

The first motion was for Summary Judgment filed by Plaintiffs on Defendant's Counterclaim. Plaintiffs submitted that, despite discovery being served on Defendant's former counsel in 2007, no answers had been provided until 2009, but more importantly, no documents were produced or made available for inspection by

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Defendant. In support of their motion, Plaintiffs submitted letters from Defendant wherein Defendant stated no documents of damages would be produced until a court ordered him to comply. Plaintiffs argued Summary Judgment should be granted because Defendant produced no documents to support his counterclaim.

Plaintiffs' motion for summary judgment is denied, as it is really a motion to compel.

In the alternative, Plaintiff made a motion to compel. Defendant contended that since as the Third-Party Plaintiff, he had obtained a default judgment against Third-Party Defendant, he did not have to produce any such documentation.

Upon review of the court file, the Court determined that an entry of default had been entered, but not a default judgment, against Third-Party Defendant. Third-Party Plaintiff has never requested a damages hearing. Based on Rule 60 of the S.C.R.C.P., this court vacates the entry of default against Third-Party Defendant, based primarily upon Third-Party Plaintiff's refusal to provide documentation of his alleged damages, as these would be the same documents for Third-Party Defendant to prepare for a damages hearing and also for Plaintiffs' to defend against Defendant's counterclaim.

Defendant also filed a Rule to Show Cause claiming Plaintiffs' answers to discovery were incomplete. Included in the letter submitted into evidence by Plaintiffs to show Defendant's basis of refusal to produce documents was Plaintiffs' request in December 2008 for Defendant to specify the alleged deficiencies in Plaintiffs' answers to discovery. Defendant provided such specifications to Plaintiffs for the first time on the day of the hearing.

The court denies Defendant's motion for a rule to show cause, but directs Plaintiffs to supplement their discovery responses, if possible, to address Defendant's perceived inadequacies.

The Court finds as follows:

Plaintiff's Motion for Summary Judgment is DENIED.

Plaintiff's Motion to Compel is GRANTED.

Defendant's Rule to Show Cause is DENIED.

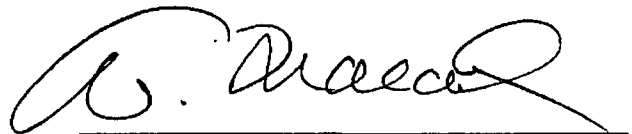
The entry of default against Third-Party Defendant is VACATED.

Plaintiffs will respond to Defendant's list of perceived inadequacies by Friday, April 17, 2009.

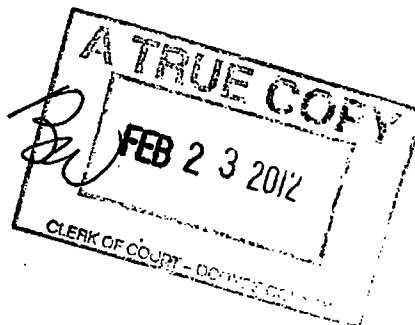
Defendant will produce to Plaintiffs all documents requested by Friday, May 1, 2009.

IT IS SO ORDERED.

Date: May 4, 2009



The Honorable Alexander S. Macaulay
Justice, Tenth Judicial Circuit



FILED MCCONE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2009 MAY - 5 P 3:33

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-37-00788

Tri-County Development, et al

Christopher A. Pierce, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (~~Formal order to follow~~)
☐ Statement of Judgment by the Court:

Dated at Walhalla, South Carolina, this 26th day of May, 2009.


PRESIDING JUDGE

This judgment was entered on the 29th day of May 2009, and a copy mailed first class this 29th day of May, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas E. Dudley, III, Esq. - 704 E. McBee Ave., Greenville, SC 29601

ATTORNEY(S) FOR PLAINTIFF

Christopher A. Pierce, Pro Se - 605 White Owl Ln., Seneca, SC 29679

ATTORNEY(S) FOR DEFENDANT

Beverly H. Whitfield

CLERK OF COURT

Cert Copies Mailed Atty Dudley
Cert Copies Via Cert Mail Pro Se Def.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Tri-County Development, Inc. and)
Melinda Holbrooks,)

CASE NO.: 2005-CP-37-0788

Plaintiffs,)

ORDER

v.)

Christopher A. Pierce,)

Defendant/Third Party Plaintiff,)

v.)

Jeff Gray,)

Third Party Defendant.)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 MAY 29 P 4: 39

THIS MATTER was before the Court on April 6, 2009 on various motions filed by Plaintiff, Defendant/Third-Party Plaintiff and Third-Party Defendant. Plaintiffs and Third-Party Defendant were represented by Thomas E. Dudley, III, Esquire. The Defendant/Third-Party Plaintiff was present and appeared *Pro Se*. Thereafter, an Order outlining this Court's rulings on said motion was entered May 5, 2009. Defendant/Third-Party Plaintiff submitted this Motion for Reconsideration, pursuant to Rule 59, SCRPC, on May 18, 2009.

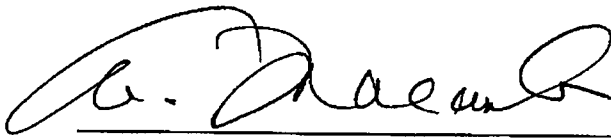
After careful consideration of the able argument and filings of Counsel and review of the record, the Court discovered an error in the Order dated May 4, 2009, inasmuch as the Rule relied on, when Vacating the Entry of Default, was listed as Rule 60(b), SCRPC when it should have been listed as Rule 55(c), SCRPC. As no Default Judgment has been entered, the standard of review used by this Court is "good cause" rather than the more rigorous standard set out in Rule 60(b), SCRPC. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). The Court hereby Amends its prior Order, only, to Vacate the Entry of Default pursuant to Rule 55(c), SCRPC, for good cause

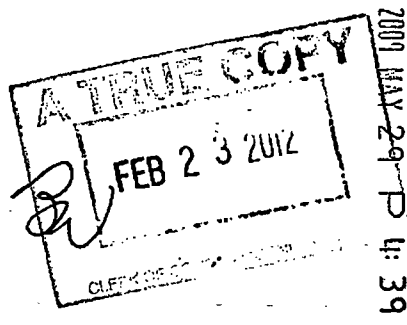
shown, *nunc pro tunc*. All remaining provisions of the Order dated May 4, 2009 remain in full effect and the Court accepts that there has been compliance with said provisions.

Failure to comply with this Order or any provision thereafter may result in dismissal of the case pursuant to Rule 41(b), SCRCP, and the inherent authority of the Court. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211, 493 S.E.2d 926, 832 (1997).

AND, IT IS SO ORDERED.

Walhalla, South Carolina
May 26, 2009


Alexander S. Macaulay, Presiding Judge



FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2009 MAY 29 P 4: 39

The South Carolina Court of Appeals

Tri-County Development, Inc. and
Melinda Holbrooks,

Respondent,

v.

Christopher A. Pierce,

Appellant

and

Jeff Gray,

Respondent.

The Honorable Alexander S. Macaulay
Oconee County
Trial Court Case No. 2005-CP-37-00788

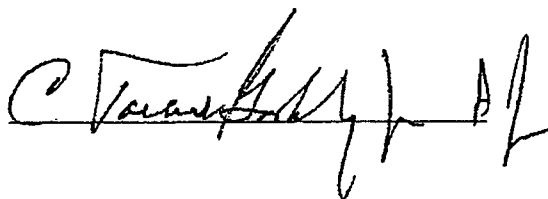
ORDER

On May 5, 2009, the circuit court issued an order that vacated an entry of default pursuant to Rule 60, SCRCP. The order also (1) denied a motion for summary judgment; (2) denied a rule to show cause; and (3) granted a motion to compel production of certain documents. On May 29, 2009, the circuit court issued an amended order which vacated entry of default pursuant to Rule 55(c), SCRCP. All other provisions of the order remained the same. Appellant filed a notice of appeal from the May 29, 2009 order.

After review, we find the orders are not immediately appealable. See Grosshuesch v. Cramer, 377 S.C. 12, 659 S.E.2d 112 (2008) (finding discovery orders are not immediately appealable); Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994) (finding a denial of a motion for summary judgment is not immediately appealable because it does not finally

determine anything about the merits or strike a defense); Ateyeh v. United of Omaha Life Ins. Co., 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987) (finding an order setting aside an entry of default is not appealable until after final judgment). Accordingly, the above-captioned appeal is dismissed.

AND IT IS SO ORDERED.



Columbia, South Carolina

July 8, 2009

cc: Christopher A. Pierce
Thomas Elihue Dudley, III, Esquire

FILED
7/8/09

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

JUDGMENT IN A CIVIL CASE

CASE NO.: 2005-CP-0788

Tri-County Development, Inc.
PLAINTIFF(S)

Christopher A. Pierce
DEFENDANT(S)

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

- ☒ See Attached Order.
☐ Statement of Judgment by the Court

Dated at Walhalla, South Carolina this 12th day of October, 2009.

Alexander S. Macaulay
Alexander S. Macaulay
PRESIDING JUDGE

This judgment was entered on the 14th day of Oct, 2009, and 14th day of Oct, 2009 to attorneys of record or to parties (w/

Thomas E. Dudley, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
ATTORNEY(S) FOR PLAINTIFF

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PS Form 3800, August 2006 See Reverse for Instructions

Mailed Cert Copy Atty Dud
Mailed Cert Copy Pro Se By

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Tri-County Development, Inc. and
Melinda Holbrooks,

C.A. No.: 2005-CP-37-788

Plaintiffs,

vs.

ORDER

Christopher A. Pierce,

Defendant.

and

Christopher A. Pierce,

Third Party Plaintiff,

vs.

Jeff Gray,

Third Party Defendant.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 OCT 14 A 10:09

This matter was before the Court on September 8th, 2009 concerning several motions filed by Defendant, who is representing himself and one motion filed by Plaintiffs, who are represented by Thomas E. Dudley, III of Kenison, Dudley & Crawford, LLC. All parties were present at the hearing. Having heard the oral arguments, and having reviewed the documentary and other evidence submitted by the parties, this Court finds as follows:

The first motion was Defendant's Request to Quash the subpoena served for a site inspection of Defendant's residence. Defendant contends Plaintiffs failed to comply with Rule 34 because it was not specified and the entire house was vague. Defendant contends Plaintiffs can only inspect the items for which he maintains in his counterclaim. Defendant fails to recognize that this is a mechanic's lien action and his

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COMPUTER

real property is the subject of this lawsuit, namely Plaintiffs' claim to be entitled to payment for the house built for Defendant. Defendant's Motion to Quash Plaintiffs' site inspection is denied. This Court orders Defendant to cooperate with Plaintiffs in scheduling and conducting the site inspection to include all portions of the house within the scope of Plaintiffs' contract with Defendant. Additionally, Plaintiffs will be entitled to be present during the entire inspection.

The second motion was Plaintiffs Motion to Quash Defendant's notice to inspect Plaintiffs' personal residences and places of business. Defendant could not articulate a reasonable basis to justify such inspections and it is clear Plaintiffs' residences and places of business are not subject to this matter. The Court grants Plaintiffs' Motion to Quash Defendant's notice to inspect and further denies Defendant the right to inspect Plaintiffs' personal properties and places of business.

The third motion was Defendant's Motion to Compel Plaintiffs to more fully respond to discovery requests. Prior to the hearing, Plaintiffs submitted additional answers to discovery. The Court takes this Motion under advisement until such time as Defendant has an opportunity to review what Plaintiffs have submitted.

The final motion was Defendant's Rule to Show Cause for sanctions against Plaintiffs for allegedly filing a motion in bad faith. Defendant contends that Third-Party Defendant, Jeff Gray, filed a motion in bad faith in that Mr. Gray's Affidavit, in support of relief from entry of default, he stated he was unaware that a default had been entered until after terminating his relationship with his prior counsel. Defendant contends that his prior lawyer submitted evidence that Mr. Gray had been served with notice of the entry of default. I first question the relevance of this motion as this Court has previously

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ordered the default be lifted against Mr. Gray. As to Defendant's allegations, I find that Mr. Gray stated he received numerous pleadings and he took them to his lawyer to handle. I do not find Mr. Gray's affidavit to be inaccurate and I deny Defendant's Motion for sanctions.

The Court finds as follows:

Defendant's Motion to Quash Subpoena for Site Inspection is DENIED.

Plaintiff's Motion to Quash Defendant's Request for Site Inspection of Plaintiffs' residences and places of business is GRANTED.

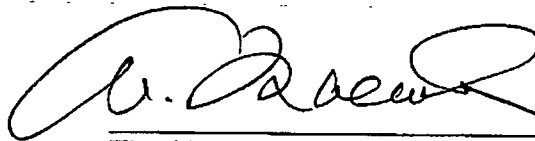
Defendant's Motion to Compel more complete answers to discovery is UNDER ADVISEMENT.

Defendant's Rule to Show Cause is DENIED.

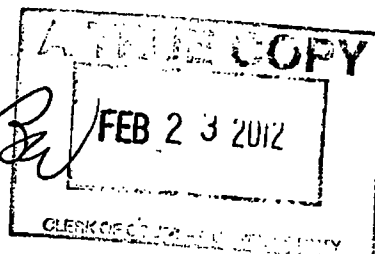
IT IS SO ORDERED.

Date:

October 12, 2009



The Honorable Alexander S. Macaulay
Justice, Tenth Judicial Circuit



FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2009 OCT 14 A 10:09

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

JUDGMENT IN A CIVIL CASE

CASE NO.: 2005-CP-0788

Tri-County Development, Inc.
PLAINTIFF(S)

Christopher A. Pierce
DEFENDANT(S)

CHECK ONE:

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- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

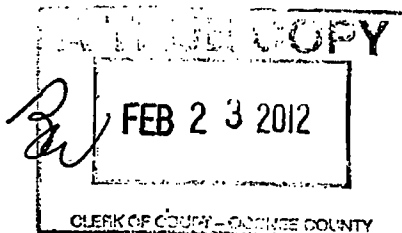
- ☒ See Attached Order.
☐ Statement of Judgment by the Court:

Dated at Walhalla, South Carolina this 5th day of November, 2009.

[Signature]

This judgment was entered on the 6th day of Nov, 2009, and
6th day of Nov, 2009 to attorneys of record or to parties (wh

Thomas E. Dudley, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
ATTORNEY(S) FOR PLAINTIFF



Christ
605 W
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ATTO
CLERK

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To Christopher A. Pierce	
Street, Apt. No., or PO Box No. 605 White Owl Lane	
City, State, ZIP+4 Seneca, SC 29678	
PS Form 3800, August 2006 See Reverse for Instructions	

Cert Copies Mailed To All Parties

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Tri-County Development, Inc. and,
Melinda Holbrooks,

Plaintiffs,

vs.

Christopher A. Pierce,
Defendant.

and

Christopher A. Pierce,
Third Party Plaintiff,

vs.

Jeffy Gray,
Third Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2005-CP-37-788

**ORDER DENYING DEFENDANT
CHRISTOPHER A. PIERCE'S MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(E)**

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2009 NOV - 6 P 4:55

Defendant, Christopher A. Pierce, timely submitted his Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC dated October 23, 2009 setting forth several arguments in support of his Motion to Alter or Amend.

After careful consideration of the able argument and filings of the Defendant and review of the record, the Court finds that the Order rendered on October 12, 2009, is supported by the record. Moreover, the Court is unable to discover any material fact or principle of law that either

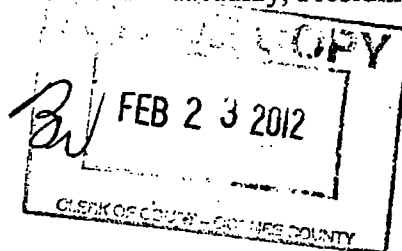
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has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendant's Motion, pursuant to Rule 59, SCRCP¹, is DENIED.

AND, IT IS SO ORDERED.


Alexander S. Macaulay, Presiding Judge



2009 NOV - 6 P 4: 55

FILED 00000000, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

Walhalla, South Carolina
November 3, 2009

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2005CP3700788

Tri-county Development-in vs. Christopher A Pierce

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Order

Dated at Walhalla, South Carolina, this 16th day of August, 2011.

Court Reporter:

S/ R. LAWTON McINTOSH

PRESIDING JUDGE - R Lawton McIntosh

Order
This judgment was entered on the 31st day of August, 2011, and a copy mailed first class this 31st day of August, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Elihue Dudley III Kenison & Dudley, LLC
704 E. McBee Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher A Pierce 605 White Owl Ln Seneca,
SC 296780000

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

Beverly H. Whitfield - Clerk of Court */h*

Mailed Cert Copies to All Parties

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON
) PLEAS

COUNTY OF OCONEE)

Tri-County Development, Inc. and
Melinda Holbrooks,

) C.A. No.: 2005-CP-37-788
)
)

) Plaintiffs,
)

ORDER

) vs.)

Christopher A. Pierce,

) Defendant.
)

Christopher A. Pierce,

) Third Party Plaintiff,
)

vs.)

Jeff Gray,

) Third Party Defendant.
)
_____)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2011 AUG 31 P 4:40

INTRODUCTION

These matters came before the Court on November 1, 2010 for hearing on cross motions for summary judgment by Tri-County Development, LLC, Melinda Holbrooks and Jeff Gray (hereinafter "Gray" or "Plaintiff" together "Plaintiffs") and Christopher A. Pierce (hereinafter "Pierce" or "Defendant"). Furthermore, Defendant, Pierce made the following additional motions: Motion for Relief from Judgment and Motion to Dissolve Mechanic's Lien. Thomas E. Dudley, III appeared on behalf of Plaintiffs and Third Party Defendant Gray and Christopher Pierce appeared Pro se.

FACTUAL BACKGROUND

The relevant facts are as follows:

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a) The Plaintiff, Tri-County Development, Inc. ("Tri-County"), along with Plaintiff Melinda Holbrooks ("Holbrooks") contracted with Pierce to construct a home. Holbrooks was the licensed residential builder on the project responsible for the construction of certain improvements on the property referred to as Parcel 9 Lot A, Coneross Point located in Seneca, South Carolina.

b) Defendant Pierce, at all times relevant, was the owner of the above referenced property. Andrew Pierce, Defendant's father and a lawyer, corresponded with Plaintiff on several matters on behalf of his son.

c) Third Party Defendant Gray is the sole owner of Tri-County Development, Inc.

This action arises out of a contract for the construction of a home in Oconee County, South Carolina (the "Project") for the amount of \$184,000.00. Pierce entered into a written contract with Plaintiffs for construction of a home on July 24, 2004.

The parties agreed to a schedule of allowances which only covered the cost of materials. The allowance sheet included plumbing fixtures, electrical fixtures, cabinets and counter tops, flooring, rock and the driveway. The contract also contained a list of four progress payments, with a list of the tasks to be completed in order to receive payment.

For purposes of this motion only Plaintiffs assumed that none of the allowance items are due, leaving a contract balance of \$15,000.00. There is no dispute that this final amount due on the contract remains unpaid.

On April 4, 2005 Andrew Pierce, Defendant's father and a lawyer, sent a letter to Tri-County, unilaterally attempting to modify the contract and delay or move payments until completion. Pierce and his father wanted to combine the last two progress payments and pay all of the monies due when the house was complete. Specifically, Pierce proposed the fourth payment would be due only upon completion of all of the work. Under the terms of the

29/12

contract, the fourth payment was due "[u]pon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl, ceramic tile, finish molding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring of the driveway. Plaintiffs never agreed to any modification of the contract as evidenced by the letter from Andrew Pierce on July 18, 2005.

Despite this attempt to change the contract, Plaintiffs continued working under the original contract. However, it became apparent to Plaintiffs that they were not going to be paid for the work under the original payment schedule of the contract despite never agreeing to any type of modification. On June 28, 2005, Christopher Pierce sent an email to Tri-County wherein Pierce stated, "[y]ou will be paid when you have fulfilled your contractual obligations as set forth under the contract and agreement with my father regarding the payment schedule compromise established in March/April. You will not be paid until all work is completed on the house regardless of the one year warranty you mentioned." Plaintiffs considered this statement to be a clear anticipatory repudiation of the contract. This Court agrees:

In early July of 2005, Pierce locked Plaintiffs out of the property and refused to allow them to complete the punch list work under the terms of the contract. Pierce then began moving in and doing work himself. At that time, Plaintiffs were locked out of the property the only work Pierce believed to be remaining were punch list items as evidenced by Defendant's chronology attached as Exhibit H to his memorandum. Plaintiff's asserted the project was ready for final inspection by the Oconee County Building Code's inspector Shannon Chambers as stated in Jeff Gray's affidavit. At the time Plaintiffs stopped work to resolve payment issues, the Contract balance was at most \$33,000.00 but not less than \$15,000.00. Pierce has failed to provide admissible proof that the cost to complete the Project exceeded the Contract balance.

On September 26, 2005, Plaintiffs filed their Notice of Mechanics Lien and Statement of Account and at the same time filed its foreclosure complaint for the unpaid portion of the contract.

On November 30, 2005, Pierce's Attorney filed an Amended Answer and Counterclaim, along with a Third-Party Complaint bringing Gray into the action. Gray failed to answer the Third-Party Complaint and was held in default on September 26, 2006. On April 16, 2007, Attorney Tom Dudley made his first notice of appearance on behalf of Plaintiffs and Third Party Defendant Gray and filed a Motion for relief from default for Gray, which was denied. Pierce's attorney never moved for a damages hearing to be scheduled and never produced evidence of the damages he suffered as a result of an alleged breach by Gray, individually. Numerous motions and hearings were filed throughout the next two years in order to properly complete discovery.

LAW AND ANALYSIS

Christopher Pierce's Motion for Relief from Judgment

Defendant's Motion for Relief from Judgment was denied at the hearing. Defendant requested the Court to overturn a previous Judges ruling to vacate the entry of default made on May 26, 2009 by the Honorable Alexander S. Macaulay. This Court determined that the Motion was not timely and the prior decision was a matter of judicial discretion. It is settled that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge. *Cook v. Taylor*, 272 S.C. 536, 252 S.E.2d 923 (1979); *Sheppard v. Kimbrough*, 282 S.C. 348, 318 S.E.2d 573 (Ct.App.1984); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 488, 334 S.E.2d 528, 529 (S.C. Ct. App. 1985)

4/12

Christopher Pierce's Motion to Dissolve Mechanic's Lien

Defendant's motions to Dissolve Mechanic's Lien, and Motion for Summary Judgment were taken under advisement at the hearing. At the hearing Defendant raised three grounds to support his Motion to Dissolve the Mechanic's Lien. Those grounds were 1) that the lien was untimely, 2) the Plaintiff failed to provide an accounting and 3) damages were in excess of work performed. Defendant's Motion to Dissolve the Mechanic's Lien based on Plaintiff's failure to provide an accounting was denied at the hearing as the parties entered into a lump sum contract and the Plaintiff filed a verification of account with its Mechanic's Lien.

The Court further finds that Defendant's Mechanic's lien was filed timely. On September 26, 2005, Plaintiffs filed their Notice of Mechanics Lien and Statement of Account. All parties agree the last date of work was June 29, 2005 when the portable bathroom was removed from the Project. Plaintiff produced an invoice showing the date of removal of the bathroom. The portable bathroom was a required part of the contract and therefore fell under work within the scope of the contract. Based on the aforementioned dates the Plaintiff filed its mechanics lien within 90 days of the last date of work. Therefore, Defendant's Motion to Dissolve the Mechanic's Lien based on Plaintiff's failure the timely file the lien is denied.

The Court also finds Defendant's argument that damages sustained by the Defendant exceeded the work performed must fail and therefore also denies Defendant's Motion to Dissolve the Mechanic's lien on those grounds.

5/9/20

Cross Motions for Summary Judgment

In resolving a motion for summary judgment, the court must consider all the evidence properly before it. *Saluda Motor Lines v. Crouch*, 386 S.E.2d at 292. The existence of some factual dispute is not enough to deny summary judgment; the disputed facts must be material. *Id.* Furthermore, as Justice Littlejohn has explained, while the evidence must be viewed in the light most favorable to the nonmoving party, a party opposing summary judgment is not entitled to every conceivable inference from the facts, but only every reasonable inference. *Trotter v. First Federal Savings and Loan Ass'n*, 298 S.C. 85, 378 S.E.2d 267, 268 (Ct. App., 1989).

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. On a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party; nonetheless, a court cannot ignore facts unfavorable to that party, and it must determine whether a verdict for that party would be reasonably possible under the facts. *Id.*; *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008), rehearing denied. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994).

6/12

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). *M & M Group, Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (S.C. Ct. App. 2008). Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence. See *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Moon v. Jordan*, 301 S.C. 161, 390 S.E.2d 488 (Ct.App.1990); *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 357 S.E.2d 25 (Ct.App.1987); see also *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct.App.1994), *aff'd*, 319 S.C. 79, 459 S.E.2d 850 (1995) ("A genuine issue of fact ... can be created only by evidence which would be admissible at trial.") (citing, *inter alia*, Rule 56(e), SCRCP). *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (S.C. Ct. App. 2002)

The well-established standard of review governing motions for summary judgment cannot be ignored. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994).

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In the case of *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 154-155, 226 S.E.2d 703, 704 - 705 (1976), the South Carolina Supreme Court was unequivocal in its holding:

If a material issue of fact can be created by a denial based on ignorance of the facts and neglecting to pursue discovery, the office of summary judgment would be mummified. Parties would be subjected to the burden of a trial merely because formal and pretended averments can not be separated from genuine factual controversies. Yet, the purpose of summary judgment was to expedite disposition of cases not requiring the services of a fact finder.

Motions for summary judgment, rather than succoring dilatory exploitations, impose additional demands upon counsel. 'The tools and devices of discovery are more than options and opportunities. Rule 56 (our Circuit Court Rule 44) expressly exacts them by negative compulsion on pain of judicial denouement-saying in effect, 'Meet these affidavit facts or judicially die.' Diligence in opposing a motion for summary judgment is required, for such a motion with supporting logistics and gear does not lose its thrust by an opponent's complacency.'

Bankers Trust, 267 S.C. at 154-155, 226 S.E.2d at 704 - 705 (internal citations omitted).

Christopher Pierce's Motion for Summary Judgment

At the hearing the Defendant offered three grounds to support his Summary Judgment Motion. Those grounds were 1) Plaintiffs were not properly licensed, 2) the Plaintiff Holbrook was paid in full and 3) the amount of damages is incorrect. Defendant's Motion for Summary Judgment is hereby denied on all three grounds.

The Court first notes that Defendant Pierce has already raised this in a previous motion for summary judgment and it was denied by Judge Macaulay.

Viewing the evidence in a light most favorable to the Plaintiffs, issues of fact exists as to whether the Plaintiffs were properly licensed. Therefore, Defendant's Motion for Summary Judgment on that ground is denied.

8 of 17

Defendant argues that Plaintiff Holbrooks was paid in full, however it is undisputed by Defendant that he has not paid the entire contract balance to Tri-County, therefore Defendant's Motion for Summary Judgment on that ground is denied.

Finally, Defendant is not entitled to Summary Judgment based on the allegation that the damages alleged by Plaintiff are incorrect. This Court determines the amount of damages is a factual issue for trial and therefore the Motion for Summary Judgment is also denied on those grounds.

Tri-County Development, Inc. and Jeff Gray's Motion for Summary Judgment

Despite more than three years passing since the Plaintiffs filed the underlying lawsuit, Defendant Pierce has not provided any evidence to prove that the cost to complete the Project exceeded the remaining undisputed contract balance of \$15,000.00.

The parties entered a lump sum contract for \$184,000.00. A portion of the contract balance included allowance items requiring Plaintiff to prove where the allowances were exceeded by Defendant or what the actual cost of allowances were. For purposes of this motion Plaintiff assumes none of the allowances could be proven even though they contend they will be able to prove some allowance costs.

Pierce still owes \$34,000.00 under the Contract. It is undisputed that Plaintiffs substantially completed the residence. It is undisputed that Defendant has had beneficial occupancy since August 2005.

The doctrine of substantial performance was conceived for the case where a plaintiff's partial performance has already given to a defendant substantially all that he bargained for and is of such a nature that it cannot be returned. e.g., 17A C.J.S. Contracts 508 (1963). Justice can best be achieved in such a case by a setoff against the contract price rather than by denial of recovery of the contract price.
Diamond Swimming Pool Co. v. Broome, 252 S.C. 379, 384, 166 S.E.2d 308, 311 (1969).

Pierce claims his damages are in excess of the contract balance of \$34,000.00. However, Pierce has failed to produce documentation that would be admissible in court to support his damages in excess of even the undisputed balance of \$15,000.00. Defendant Pierce has had more than adequate time to do so and numerous court orders requiring Pierce to provide proof of his alleged damages.

While Defendant Pierce has produced some documents, Plaintiff asserts the Defendant cannot produce admissible evidence establishing a material issue of fact that Defendant's damages exceed the contract balance, entitling him to a counterclaim. Based upon the record, Plaintiffs memorandum, response filed by Defendant and the argument of counsel at the hearings the Court agrees. Since the cost to complete as shown by Pierce clearly does not exceed the contract balance Pierce's counterclaims must be dismissed.

Pierce has been given four years to produce admissible evidence that would support his damages. As our Courts have repeatedly held, "[a] party opposing a properly supported motion for summary judgment ... may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495,496 (Ct. App. 1994).

Viewing the evidence in the light most favorable to the Defendant, no material issue of fact exists as to whether the Defendant breached its contract with Plaintiffs. The Court finds Pierce's attempt to unilaterally modify the Contract followed by the letters and emails that state Plaintiffs would not be paid until they followed the modified contract amounted to anticipatory repudiation of the Contract and entitled Plaintiffs to stop work.

Even if Defendant only proposed to alter the terms of the contract, which he did on three separate occasions, Defendant cannot escape the fact that he locked Plaintiffs out of the residence and prevented the completion of work. This constituted a material breach of the contract therefore Pierce was the breaching party by either repudiating the contract or locking Plaintiffs out of the premises and refusing to pay under the terms of the Contract.

A party who seeks to recover damages for breach of a contract must show that the contract has been performed on his part, or at least that he was, at the appropriate time, able, ready and willing to perform it. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (1999). *Int'l Wood Processors v. Power Dry, Inc.*, 593 F. Supp. 710, 728 (D.S.C. 1984) aff'd, 792 F.2d 416 (4th Cir. 1986)

Because Defendant was the first party to breach the contract, this court finds he must bear the liability for his nonperformance. "Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." *Willms Trucking Co., Inc. v. JW Constr. Co., Inc.*, 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App.1994); *see also Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 593-94, 658 S.E.2d 539, 543-44 (S.C. Ct. App. 2008). Because the allowance portion of the contract requires an element of proof beyond simply the unpaid contract balance the Court grants Plaintiff's Motion for Summary Judgment as to liability for breach of contract and Plaintiff's mechanic's lien, however the Plaintiff must prove the amount due under the contract at trial.

CONCLUSION

After hearing oral arguments and considering the brief and supporting documentation presented by both parties, the Court finds that there exist no genuine issues of material fact as to the breaching party and finds that the Defendant is liable for the breach and Plaintiffs are entitled to Judgment as a matter of law as to liability only with the following caveat: the

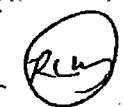
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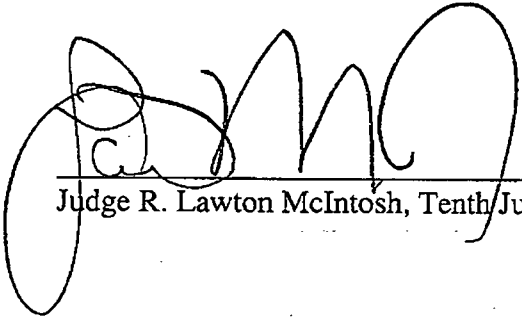
question of whether Defendant Holbrook and Tri-County Development, Inc. were properly licensed to enforce the contract. Furthermore, the monies owed to Plaintiff can be challenged at trial. Plaintiff will have to establish the amount of his damages at trial and Defendant shall be allowed to attempt to establish a right to a set-off and the issue as to whether Plaintiff's were properly licensed.

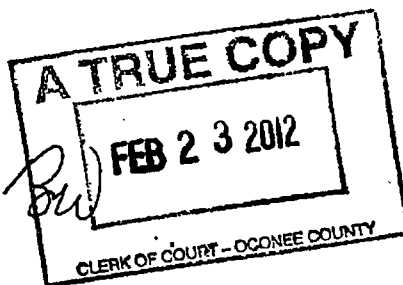
ACCORDINGLY, Tri-County, LLC, Melinda Holbrooks and Jeff Gray's Motion for Summary Judgment as to each of the Breach of Contract claims is **granted as to liability only**. Defendant's Motion for relief from Judgment, Motion to Dissolve Mechanic's lien and Motion for Summary Judgment are **denied**.

IT IS SO ORDERED.

Date: 8-16-11
Tenth Circuit
Wallhalla, SC

Andrew 


Judge R. Lawton McIntosh, Tenth Judicial



FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2011 AUG 31 P 4:40

12/12

REQUEST/MOTION AND ORDER

ATTORNEY SECTION:

Case name: Tri-County Development v. Christopher Pierce v. Jeff Gray

Case or Indictment Number 2005-CP-37-00788

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2011 NOV 17 PM 1 06

I am moving for a CONTINUANCE in the above-named case which is currently scheduled for the Court Roster November 28, for the reasons attached and my signature certifies the following, pursuant to Rule 11(a), SCRCP:

(1) I have communicated with all other attorneys involved in the case and that there are no objections to this request; or

If there is an objection to this request, please explain fully using additional pages as necessary; and

(2) I have filed a Motion for Continuance with the Clerk of Court and paid the appropriate filing fee, or, in criminal cases, notified the appropriate representative from the Office of Solicitor of this request and this case is not set trial at this term of court, S. C. Code Ann. SS 1-7-330.

Upon receiving the completed Request/Motion and Order, I will confirm that the original is filed with the Clerk of Court and that copies have been provided to all attorneys involved in the case..

Christopher A. Pierce

November 2, 2011

Counsel Self Represented Making Request
Christopher A. Pierce

COURT SECTION:

___ Request for Protection OR ☒ Motion For Continuance

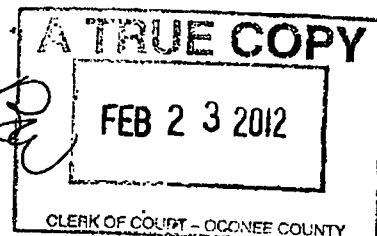
___ GRANTED ☒ DENIED

November 17, 2011

A. M. M. M.
Judge, Tenth Judicial Circuit

May 17, 2011 Status Conference

Discontinue



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-37-788

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

Tri-County Development, Inc.
and Melinda Holbrooks

Christopher A. Pierce

2011 NOV 30 P 12:31

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

Verdict of \$23,591.07 for the Plaintiff. See attached Form.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Tri-County Development, Inc. and Melinda Holbrooks	Christopher A. Pierce	\$23,591.07
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

Parcel #9, Lot A
Coneross Point
Seneca, SC 29678

(mailed copies to Both)

[Handwritten signature]

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

[Signature]
Circuit Court Judge

63
Judge Code

11/29/11
Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Nov, 20 11 and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of Nov, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas E. Dudley, III, Esquire

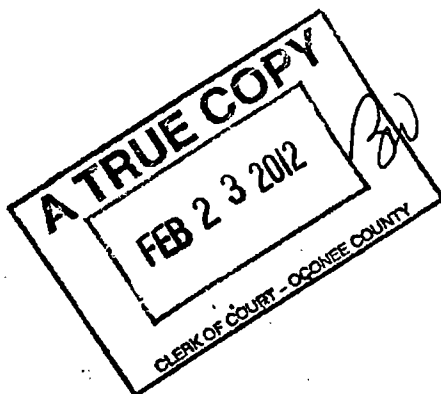
Christopher A. Pierce, Pro Se

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter: Robin Hild



FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2011 NOV 30 P 12:32

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE)

Case No. 2005-CP-37-788

Tri-County Development, Inc. and
Melinda Holbrooks,

Plaintiff,

v.

VERDICT

Christopher A. Pierce,

Defendant.

FILED OCONEE, SC
CLERK OF COURT
2011 NOV 29 P 12:32

We, the jury, unanimously find:

For the Plaintiff, Tri-County Development, Inc. and Melinda Holbrooks, damages in the amount of:

Twenty-three thousand five hundred ^{Dollars} Ninety-one and Seven cents (\$ 23,591.07) Dollars.

November 29, 2011
Walhalla, South Carolina

Jeffery M. Stewart
JEFFERY M. STEWART, Foreman

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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 2005-CP-37-788

Tri-County Development
PLAINTIFF(S)

Pierce
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's motion for reconsideration is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

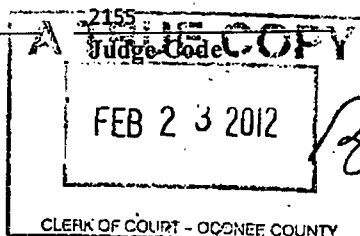
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge

SCRPC Form 4C (10/2011)



Date

Page 1 of 2

ENTERED
10
COMPUTER

For Clerk of Court Office Use Only

This judgment was entered on the ~~6th~~ day of ~~Nov.~~^{Dec.}, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this ~~6th~~ day of ~~Dec.~~^{Dec.}, 20 ~~11~~¹¹ to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Elihue Dudley, III
Kenison & Dudley, LLC
704 E. McBee Ave.
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher Pierce
605 White Owl Lane
Seneca, SC 29678

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF
COMMON PLEAS

2005-CP-37-788
(non-jury)

Tri-County Development, Inc. and)
Melinda Holbrooks,)

Plaintiffs,)

-VS-)

Christopher A. Pierce,)

Defendant.)

SUMMONS

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY **SUMMONED** and required to Reply to the Complaint of the Plaintiff(s) in this action, a copy of which is herewith served upon you, and to serve a copy of your Reply to the Plaintiff(s) upon the undersigned at his office at 1743 Blue Ridge Blvd., Post Office Box 4, Seneca, SC 29679-0004, within **THIRTY (30) DAYS** after service hereof, exclusive of the day of such service, and **if you fail to Answer** to the Complaint within that time, **Judgement against you will be rendered by default** for the relief sought in the Complaint.

TO INFANTS UNDER EIGHTEEN YEARS OF AGE, IMPRISONED PERSONS AND INCOMPETENT OR INSANE PERSONS:

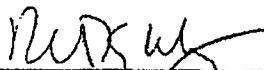
YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian *ad Litem* to represent you in this action within **THIRTY (30) DAYS** after the service of this Summons upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

YOU ARE FURTHER ADVISED of your right to have an attorney represent you in this matter. Should you retain legal counsel, (s)he is directed to advise this Court of such representation, forthwith.

Whitney Law Firm:

Seneca, South Carolina

September 26, 2005


Robert K. Whitney, S.C. Bar #6080
Attorney for the Plaintiff(s)
1743 Blue Ridge Boulevard
P.O. Box 4, Seneca, S. C. 29679-0004
(864) 882-1414 fax 864-885-0675

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF
COMMON PLEAS

2005-CP-37- 788
(non-jury)

Tri-County Development, Inc. and)
Melinda Holbrooks,)

Plaintiffs,)

-VS-)

Christopher A. Pierce,)

Defendant.)

COMPLAINT

FILED OCONEE SC
CLERK OF COURT
SMITH
2005 SEP 26 P 3:51

The Plaintiffs would show unto this Court the following:

1. The Plaintiffs are all residents or operate in this county, the real property is situate in this county, the parties contracted in this county, and the Defendant owns a residence in this county, and this Court has jurisdiction.

2. On or about July 24, 2005, the parties contracted to build a house for the Defendant in this county.

3. The Plaintiffs substantially completed the house.

4. The Defendant prevented the Plaintiffs from finishing the house, and the Defendant refused to pay the monies owed under the contract.

5. The Plaintiffs demanded payment, and the Defendant refused to pay for services rendered.

6. The Plaintiffs are entitled to foreclose upon and sell the premises to pay for services rendered in the construction of the house.

7. The Plaintiffs are entitled to the costs and attorney fees necessitated by the Defendant's breach of contract.

8. The real property which is the subject of this action is:
All that certain parcel of land known as Lot A containing 1.56 acres on a plat by Gary L. Eades, dated July 27, 2001, shown in Plat Book P-62, page 200, records of Oconee County, South Carolina.

9. The Defendant breached the contract, and the Plaintiffs are entitled to full payment for the construction work on the house and all costs associated with the construction not paid for by the Defendant.

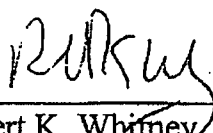
10. The Defendant refused to allow the Plaintiffs to finish the work soon before completion, but the house was substantially completed when he forced the Plaintiffs to withdraw from the construction.

Wherefore the Plaintiff pray for an order of this Court:

1. Granting them foreclosure and sale of the subject real property to pay for the funds due and owing to the Plaintiffs under the parties' agreement;
2. Granting judgement against the Defendant for the costs and attorney fees in this matter;
3. Requiring the Defendant to pay a reasonable attorney fee for the prosecution of this action as well as the costs of this action.

Whitney Law Firm:

Seneca, South Carolina
September 26, 2005



Robert K. Whitney
Attorney for the Plaintiff(s)
P.O. Box 4, Seneca, S. C. 29679-0004
(864) 882-1414 fax 885-0675

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF
COMMON PLEAS

COPY

Tri-County Development, Inc. and)
Melinda Holbrooks,)

Recorded this 26 day of Sept, 2005
Vol. I Page 300 and certified
Sallie C. Smith C.C.C.P.G.S.
Oconee County, S.C.

Plaintiffs,)

-VS-)

Christopher A. Pierce,)

Defendant.)

LIS PENDENS

2005 SEP 26 P 3:57

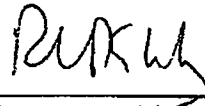
FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action is pending by the
Plaintiffs, against the Defendant above named for the collection of funds
due for construction.

The description of the premises is as follows:

All that certain parcel of land known as Lot A containing 1.56 acres
on a plat by Gary L. Eades, dated July 27, 2001, shown in Plat Book P-62,
page 200, records of Oconee County, South Carolina.

Whitney Law Firm



Seneca, South Carolina

September 26, 2005

Robert K. Whitney
Attorney for the Plaintiff
1743 Blue Ridge Boulevard
P.O. Box 14
Seneca, SC 29679-0014
(864) 882-1414

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
C.A. No.: 2005-CP-37-788
2005 OCT 31 P 12:34

Tri-County Development, Inc. and
Melinda Holbrooks,

Plaintiffs,

vs.

Christopher A. Pierce,

Defendant.

DEFENDANT'S ANSWER TO COMPLAINT
AND COUNTERCLAIM

JURY TRIAL DEMANDED

The Defendant, Christopher A. Pierce, answers the complaint of the Plaintiff and would respectfully show unto the Court as follows:

For a First Defense

1. All allegations of the Complaint not hereinafter specifically admitted, qualified or explained, are denied.
2. With respect to the allegations contained in paragraph 1, Defendant denies that he is a resident of Oconee County. It is admitted that the real property is located in Oconee County. The remaining allegations of paragraph 1, either express or implied, are denied and strict proof thereof is demanded.
3. With respect to the allegations of paragraph 2, Defendant admits, upon information and belief, that the parties entered into a Home Construction Contract (hereinafter referred to as "Contract" and attached herein as "Exhibit A") whereby Plaintiff agreed to construct a house for Defendant. Reference to the original Contract is requested to determine the specific terms of the agreement. The remaining allegations, either express or implied, are denied and strict proof thereof is demanded.
4. Defendant denies the allegations contained in paragraphs 3 through 7 and strict proof thereof is demanded.
5. With respect to the allegations contained in paragraph 8, Defendant

admits that the Contract describes the property in question as Parcel # 9, Lot A, Coneross Point, Seneca, SC 29678, and reference to said Contract is craved to determine the specific description contained therein. The remaining allegations, either expressed or implied, are denied and strict proof thereof is demanded.

6. Defendant denies the allegations contained in paragraphs 9 and 10 and strict proof thereof is demanded.

For a Second Defense
(Failure to State a Claim)

7. The allegations of the previous defense are incorporated herein as if restated, where consistent.

8. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action against Defendant for which relief can be granted. Therefore, the Plaintiff's Complaint should be dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

For a Third Defense and Counterclaim
(Breach of Contract)

9. Defendant reaffirms and reiterates all prior allegations set forth above as if fully incorporated herein.

10. On July 24, 2004, Defendant and Plaintiff entered into a binding, valid Contract wherein Plaintiff agreed to construct for Defendant a family residence in accordance with the terms of said Contract.

11. According to the Payment Schedule, Term G of said Contract, Plaintiff agreed that Defendant was to pay the fourth installment of \$30,000.00 "upon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl and ceramic tile, finish moulding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring the driveway."

12. Said payment schedule was modified by agreement on April 1, 2005 wherein both parties agreed to modify the Contract's pay schedule to provide for

payment of the fourth installment upon completion and inspection of all work on the premises. By letter dated April 4, 2005 (Attached herein as "Exhibit B"), Defendant's agent wrote to Plaintiff memorializing said agreement.

13. Subsequent to the verbal agreement of April 1, 2005, Plaintiff's agent, Mr. Jeffrey Gray, telephoned Defendant on June 28, 2005 and requested the fourth payment of \$30,000.00 prior to completion and inspection of all work.

14. During said conversation on June 28, 2005, Plaintiff also informed Defendant of its decision to cease all work in order to complete items outlined in a "punch list" drafted by Defendant (Attached herein as "Exhibit C").

15. To date, Plaintiff has failed to install all bathroom mirrors, shower doors, the master bath shower fixture(s) and the drain in the whirlpool tub. Plaintiff has further failed to correctly install the proper toilets in the correct bathrooms in conformity with the designated color scheme of each bathroom.

16. Plaintiff unjustifiably failed to complete both the work outlined in the punch list and unjustifiably failed to comply with its obligations to complete the construction of Defendant's residence pursuant to the Contract.

17. As a direct and proximate result of Plaintiff's breach, Defendant has suffered damages and incurred expenses, including the costs of completing the home, which Plaintiff has failed and refused to remedy.

18. Defendant is informed and believes he is entitled to recover reasonable attorney fees and costs pursuant to the Code of Laws of South Carolina and the parties' contractual agreements.

19. That Defendant is informed and believes he is entitled to judgment against Plaintiff in an amount to be determined by the trier of fact, plus reasonable attorney fees and costs.

For a Fourth Defense and Counterclaim
(Breach of Express Warranty)

20. The allegations of the previous defense are incorporated herein as if restated, where consistent.

21. Defendant contracted with Plaintiff and agreed to construct a single family residence with payments to be made as construction progressed. Specifically, Plaintiff agreed that Defendant would pay a fourth installment of \$30,000.00 upon completion and inspection of all work outlined in the Contract.

22. Exhibit A expressly described the residence as a "single family residence generally in accordance with the same quality standards as the speculation homes built by the contractor in the Winding Creek Subdivision in Seneca, SC" (208 Star View Drive and 401 Misty View Court and hereinafter referred to as "spec homes"). Said description and the description in Exhibit B formed part of the basis of the bargain and created an express warranty that the residence would conform to the description offered by Plaintiff.

23. Plaintiff breached the Express Warranty in that Plaintiff ceased all construction and failed to construct Defendant's residence to comport with the standard of the spec homes built in the Winding Creek Subdivision.

24. As a result of Plaintiff's breach, Defendant is entitled to damages in the amount equal to the cost to complete construction such that the residence is of comparable quality to that of the spec homes in Winding Creek Subdivision.

For a Fifth Defense and Counterclaim
(Breach of Implied Warranty of Fitness for a Particular Purpose)

25. The allegations of the previous defense are incorporated herein as if restated, where consistent.

26. Defendant entered into said Contract with Plaintiff for the ordinary, contemplated purpose of constructing a residence and said purpose was made known to Plaintiff.

27. The circumstances of the Contract and description of the construction

project were such that the Plaintiff had reason to know the purpose for which the residence was being constructed.

28. Defendant relied on Plaintiff's representations regarding the completion of the residence's construction and trusted Plaintiff to deliver a residence "with the same quality standards as the speculation home built by the contractor in the Winding Creek Subdivision."

29. An Implied Warranty of Fitness for a Particular Purpose was created whereby Plaintiff was obligated to provide a residence suitable for habitation and of comparable quality to the spec homes constructed by Plaintiff.

30. Plaintiff breached the Implied Warranty of Fitness for a Particular Purpose and failed to construct a residence fit for the particular purpose of habitation, or any other purpose, for that matter.

31. As a direct and proximate result of Plaintiff's breach, Defendant has suffered damages and incurred expenses, including the cost of completing construction, which Plaintiff has failed and refused to remedy.

32. That Defendant is informed and believes he is entitled to judgment against Plaintiff in an amount to be determined by the trier of fact, plus reasonable attorney fees and costs.

For a Sixth Defense and Counterclaim
(Breach of Implied Warranty of Merchantability)

33. The allegations of the previous defense are incorporated herein as if restated, where consistent.

34. Defendant is informed and believes Plaintiff routinely enters into Home Construction Contracts for the construction of residential homes, resulting in the creation of an Implied Warranty of Merchantability.

35. Defendant entered into said Contract for the ordinary, contemplated purpose of constructing a residence in which to live and said purpose was made known

to Plaintiff.

36. The circumstances of the Contract were such that the Plaintiff had reason to know the purpose for which the residence was intended.

37. Defendant relied on Plaintiff's representations regarding the completion of construction and trusted Plaintiff to construct a residence suitable for habitation and equal in quality to the spec homes in Winding Creek Subdivision.

38. An Implied Warranty of Merchantability was created whereby Plaintiff was obligated to construct a residence suitable for habitation and equal in quality to the spec homes in Winding Creek.

39. Plaintiff breached the Implied Warranty of Merchantability and failed to complete construction rendering the residence unfit for the particular purpose of habitation. Furthermore, Plaintiff falsely represented the amount and quality of the work actually completed on Defendant's residence.

40. As a direct and proximate result of Plaintiff's breach, Defendant has suffered damages and incurred expenses, including the price to complete construction, which Plaintiff has failed and refused to remedy.

41. That Defendant is informed and believes he is entitled to judgment against Plaintiff in an amount to be determined by the trier of fact, plus reasonable attorney fees and costs.

For a Seventh Defense and Counterclaim
(Breach of Unfair Trade Practices Act)

42. The allegations of the previous defense are incorporated herein as if restated, where consistent.

43. Plaintiff has engaged in unfair and deceptive acts in the conduct of trade or commerce in violation of S.C. Code Ann. Section 39-5-20, *et seq.*

44. By misrepresenting the amount and value of construction completed, Plaintiff's unfair and deceptive actions breached the Contract between the parties and

the Implied Warranty of Merchantability, Implied Warranty of Fitness for a Particular Purpose and Express Warranty.

45. Plaintiff's unfair, deceptive actions and misrepresentations as to extent of completed construction adversely affect the public interest and are capable of repetition.

46. Plaintiff's unfair, deceptive conduct and misrepresentations proximately caused Defendant's injuries.

47. As a result of Plaintiff's use of unlawful and unfair trade practices, Defendant has suffered actual, ascertainable damages in an amount to be determined by the trier of fact.

WHEREFORE, Defendant prays that this Court inquire into these matters and

1. Dismiss Plaintiff's complaint for failure to state facts sufficient to constitute a cause of action against the Defendant for which relief can be granted;
2. Deny Plaintiff's request that the Court grant foreclosure and sale of the subject property;
3. Deny Plaintiff's request for judgment against the Defendant for the costs and attorney's fees in this matter;
4. Award Defendant damages and costs incurred in completing the construction that Plaintiff failed to complete;
5. Award Defendant actual, consequential and punitive damages against Plaintiffs for its breaches of warranty as set forth herein;
6. Award Defendant costs, attorney's fees and damages incurred in defending himself in this proceeding; and
7. Award such other and further relief as the Court deems appropriate.

BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, P.A.

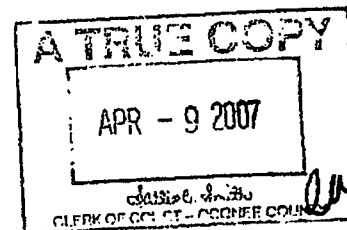


Chris B. Roberts
S.C. Bar No. 64999
Caroline M. Horlbeck
S.C. Bar No. 12100
Post Office Box 2464
Greenville, S.C. 29602
Attorneys for Defendant

Greenville, South Carolina

Date: 10/31/05

JURY TRIAL DEMANDED



STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
C.A. No.: 2005-CP-37-788

Tri-County Development, Inc. and
Melinda Holbrooks,

Plaintiffs,

vs.

Christopher A. Pierce,

Defendant,

and

Christopher A. Pierce,

Third-Party Plaintiff,

vs.

Jeff Gray,

Third-Party Defendant.

DEFENDANT'S AMENDED ANSWER
TO COMPLAINT, COUNTERCLAIM
AND THIRD-PARTY COMPLAINT
(JURY TRIAL DEMANDED)

1 2005 NOV 30 P 12:03

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

The Defendant, Christopher A. Pierce, answers the complaint of the Plaintiff and would respectfully show unto the Court as follows:

For a First Defense

1. All allegations of the Complaint not hereinafter specifically admitted, qualified or explained, are denied.
2. With respect to the allegations contained in paragraph 1, Defendant denies that he is a resident of Oconee County. It is admitted that the real property is located in Oconee County. The remaining allegations of paragraph 1, either express or

implied, are denied and strict proof thereof is demanded.

3. With respect to the allegations of paragraph 2, Defendant admits, upon information and belief, that the parties entered into a Home Construction Contract (hereinafter referred to as "Contract" and attached herein as "Exhibit A") whereby Plaintiff agreed to construct a house for Defendant. Reference to the original Contract is requested to determine the specific terms of the agreement. The remaining allegations, either express or implied, are denied and strict proof thereof is demanded.

4. Defendant denies the allegations contained in paragraphs 3 through 7 and strict proof thereof is demanded.

5. With respect to the allegations contained in paragraph 8, Defendant admits that the Contract describes the property in question as Parcel # 9, Lot A, Coneross Point, Seneca, SC 29678, and reference to said Contract is craved to determine the specific description contained therein. The remaining allegations, either expressed or implied, are denied and strict proof thereof is demanded.

6. Defendant denies the allegations contained in paragraphs 9 and 10 and strict proof thereof is demanded.

For a Second Defense
(Failure to State a Claim)

7. The allegations of the previous defense are incorporated herein as if restated, where consistent.

8. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action against Defendant for which relief can be granted. Therefore, the Plaintiff's Complaint should be dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

For a Third Defense
(South Carolina Code §§40-59-30 and 40-11-370)

9. The allegations of the previous defense are incorporated herein as if restated, where consistent.

10. The Plaintiff is barred from bringing an action pursuant to S.C. Code §40-59-30 which states that a non-licensed residential builder may not bring an action at law or equity to enforce any contract he entered into in violation of the statute; and by §40-11-370 which states that an entity which does not have a valid license as required by Chapter 11 of Section 40 may not bring an action either at law or in equity to enforce the provisions of a contract; and by other applicable South Carolina Statutes pertaining to license and requirements for general and specialty contractors.

For a Fourth Defense and Counterclaim
(Breach of Contract)

11. Defendant reaffirms and reiterates all prior allegations set forth above as if fully incorporated herein.

12. On July 24, 2004, Defendant and Plaintiff entered into a binding, valid Contract wherein Plaintiff agreed to construct for Defendant a family residence in accordance with the terms of said Contract.

13. According to the Payment Schedule, Term G of said Contract, Plaintiff agreed that Defendant was to pay the fourth installment of \$30,000.00 "upon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl and ceramic tile, finish moulding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring the driveway."

For a Third Defense
(South Carolina Code §§40-59-30 and 40-11-370)

9. The allegations of the previous defense are incorporated herein as if restated, where consistent.

10. The Plaintiff is barred from bringing an action pursuant to S.C. Code §40-59-30 which states that a non-licensed residential builder may not bring an action at law or equity to enforce any contract he entered into in violation of the statute; and by §40-11-370 which states that an entity which does not have a valid license as required by Chapter 11 of Section 40 may not bring an action either at law or in equity to enforce the provisions of a contract; and by other applicable South Carolina Statutes pertaining to license and requirements for general and specialty contractors.

For a Fourth Defense and Counterclaim
(Breach of Contract)

11. Defendant reaffirms and reiterates all prior allegations set forth above as if fully incorporated herein.

12. On July 24, 2004, Defendant and Plaintiff entered into a binding, valid Contract wherein Plaintiff agreed to construct for Defendant a family residence in accordance with the terms of said Contract.

13. According to the Payment Schedule, Term G of said Contract, Plaintiff agreed that Defendant was to pay the fourth installment of \$30,000.00 "upon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl and ceramic tile, finish moulding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring the driveway."

14. Said payment schedule was modified by agreement on April 1, 2005 wherein both parties agreed to modify the Contract's pay schedule to provide for payment of the fourth installment upon completion and inspection of all work on the premises. By letter dated April 4, 2005 (Attached herein as "Exhibit B"), Defendant's agent wrote to Plaintiff memorializing said agreement.

15. Subsequent to the verbal agreement of April 1, 2005, Plaintiff's agent, Mr. Jeffrey Gray, telephoned Defendant on June 28, 2005 and requested the fourth payment of \$30,000.00 prior to completion and inspection of all work.

16. During said conversation on June 28, 2005, Plaintiff also informed Defendant of its decision to cease all work in order to complete items outlined in a "punch list" drafted by Defendant (Attached herein as "Exhibit C").

17. To date, Plaintiff has failed to install all bathroom mirrors, shower doors, the master bath shower fixture(s) and the drain in the whirlpool tub. Plaintiff has further failed to correctly install the proper toilets in the correct bathrooms in conformity with the designated color scheme of each bathroom.

18. Plaintiff unjustifiably failed to complete both the work outlined in the punch list and unjustifiably failed to comply with its obligations to complete the construction of Defendant's residence pursuant to the Contract.

19. As a direct and proximate result of Plaintiff's breach, Defendant has suffered damages and incurred expenses, including the costs of completing the home, which Plaintiff has failed and refused to remedy.

20. Defendant is informed and believes he is entitled to recover reasonable

attorney fees and costs pursuant to the Code of Laws of South Carolina and the parties' contractual agreements.

21. That Defendant is informed and believes he is entitled to judgment against Plaintiff in an amount to be determined by the trier of fact, plus reasonable attorney fees and costs.

For a Fifth Defense and Counterclaim
(Breach of Express Warranty)

22. The allegations of the previous defense are incorporated herein as if restated, where consistent.

23. Defendant contracted with Plaintiff and agreed to construct a single family residence with payments to be made as construction progressed. Specifically, Plaintiff agreed that Defendant would pay a fourth installment of \$30,000.00 upon completion and inspection of all work outlined in the Contract.

24. Exhibit A expressly described the residence as a "single family residence generally in accordance with the same quality standards as the speculation homes built by the contractor in the Winding Creek Subdivision in Seneca, SC" (208 Star View Drive and 401 Misty View Court and hereinafter referred to as "spec homes"). Said description and the description in Exhibit B formed part of the basis of the bargain and created an express warranty that the residence would conform to the description offered by Plaintiff.

25. Plaintiff breached the Express Warranty in that Plaintiff ceased all construction and failed to construct Defendant's residence to comport with the standard of the spec homes built in the Winding Creek Subdivision.

26. As a result of Plaintiff's breach, Defendant is entitled to damages in the amount equal to the cost to complete construction such that the residence is of comparable quality to that of the spec homes in Winding Creek Subdivision.

For a Sixth Defense and Counterclaim
(Breach of Implied Warranty of Fitness for a Particular Purpose)

27. The allegations of the previous defense are incorporated herein as if restated, where consistent.

28. Defendant entered into said Contract with Plaintiff for the ordinary, contemplated purpose of constructing a residence and said purpose was made known to Plaintiff.

29. The circumstances of the Contract and description of the construction project were such that the Plaintiff had reason to know the purpose for which the residence was being constructed.

30. Defendant relied on Plaintiff's representations regarding the completion of the residence's construction and trusted Plaintiff to deliver a residence "with the same quality standards as the speculation home built by the contractor in the Winding Creek Subdivision."

31. An Implied Warranty of Fitness for a Particular Purpose was created whereby Plaintiff was obligated to provide a residence suitable for habitation and of comparable quality to the spec homes constructed by Plaintiff.

32. Plaintiff breached the Implied Warranty of Fitness for a Particular Purpose and failed to construct a residence fit for the particular purpose of habitation, or any other purpose, for that matter.

33. As a direct and proximate result of Plaintiff's breach, Defendant has suffered damages and incurred expenses, including the cost of completing construction, which Plaintiff has failed and refused to remedy.

34. That Defendant is informed and believes he is entitled to judgment against Plaintiff in an amount to be determined by the trier of fact, plus reasonable attorney fees and costs.

For a Seventh Defense and Counterclaim
(Breach of Implied Warranty of Merchantability)

35. The allegations of the previous defense are incorporated herein as if restated, where consistent.

36. Defendant is informed and believes Plaintiff routinely enters into Home Construction Contracts for the construction of residential homes, resulting in the creation of an Implied Warranty of Merchantability.

37. Defendant entered into said Contract for the ordinary, contemplated purpose of constructing a residence in which to live and said purpose was made known to Plaintiff.

38. The circumstances of the Contract were such that the Plaintiff had reason to know the purpose for which the residence was intended.

39. Defendant relied on Plaintiff's representations regarding the completion of construction and trusted Plaintiff to construct a residence suitable for habitation and equal in quality to the spec homes in Winding Creek Subdivision.

40. An Implied Warranty of Merchantability was created whereby Plaintiff was obligated to construct a residence suitable for habitation and equal in quality to the

spec homes in Winding Creek.

41. Plaintiff breached the Implied Warranty of Merchantability and failed to complete construction rendering the residence unfit for the particular purpose of habitation. Furthermore, Plaintiff falsely represented the amount and quality of the work actually completed on Defendant's residence.

42. As a direct and proximate result of Plaintiff's breach, Defendant has suffered damages and incurred expenses, including the price to complete construction, which Plaintiff has failed and refused to remedy.

43. That Defendant is informed and believes he is entitled to judgment against Plaintiff in an amount to be determined by the trier of fact, plus reasonable attorney fees and costs.

For an Eighth Seventh Defense and Counterclaim
(Breach of Unfair Trade Practices Act)

44. The allegations of the previous defense are incorporated herein as if restated, where consistent.

45. Plaintiff has engaged in unfair and deceptive acts in the conduct of trade or commerce in violation of S.C. Code Ann. Section 39-5-20, *et seq.*

46. By misrepresenting the amount and value of construction completed, Plaintiff's unfair and deceptive actions breached the Contract between the parties and the Implied Warranty of Merchantability, Implied Warranty of Fitness for a Particular Purpose and Express Warranty.

47. Plaintiff's unfair, deceptive actions and misrepresentations as to extent of completed construction adversely affect the public interest and are capable of repetition.

48. Plaintiff's unfair, deceptive conduct and misrepresentations proximately caused Defendant's injuries.

49. As a result of Plaintiff's use of unlawful and unfair trade practices, Defendant has suffered actual, ascertainable damages in an amount to be determined by the trier of fact.

For a Ninth Defense and By Way of Third-Party Complaint

50. The allegations of the previous defenses are incorporated herein as if restated, where consistent.

51. The Third-Party Plaintiff, Christopher Pierce, is a citizen and resident of the County of Anderson, State of South Carolina.

52. The Third-Party Defendant, Jeff Gray, is upon information and belief, a citizen and resident of Oconee County, South Carolina and is a principal of Plaintiff, Tri-County Development, Inc.

53. That Third-Party Defendant Gray was a party to the Home Construction Contract which is attached hereto as Exhibit A, having signed the same as "Developer".

54. That Jeff Gray, individually and on behalf of Plaintiff, Tri-County Development, misrepresented to Defendant that Tri-County possessed the appropriate licensure and that Jeff Gray and Plaintiff Tri-County Development fraudulently induced Defendant to enter into a written contract in the following manner:

- a. That Jeff Gray represented to the Defendant that he and/or Plaintiff Tri-County possessed the appropriate license(s) to construct the

Defendant's home:

- b. That Jeff Gray further represented that the project would be complete within one (1) year of the date of the contract, as specified therein;
- c. That Jeff Gray also agreed to several modifications of the contract, which agreements were never honored, and upon which the Defendant and Third-Party Plaintiff relied to his detriment;
- d. That Jeff Gray's representations were false;
- e. That the aforementioned representations were material to the Defendant's decision to enter into the contract and to agree to the modifications thereof;
- f. That Jeff Gray knew that he was not and that Plaintiff Tri-County Development was not properly licensed;
- g. That Jeff Gray knew that the Defendant was relying on his representations regarding licensure, completion and other materials representations in making his decision to enter into the written contract with the Plaintiff;
- h. That the Defendant and Third-Party Plaintiff relied upon the representations of Jeff Gray in making his decision to enter into the contract with Plaintiff Tri-County Development, Inc.; and
- i. That the Defendant and Third-Party Plaintiff suffered great financial damage as a result of Jeff Gray's fraudulent misrepresentations

made both individually and on behalf of Plaintiff Tri-County
Development, Inc.

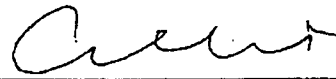
55. That the Defendant and the Third-Party Plaintiff suffered injury and damage as a direct and proximate result of Jeff Gray's fraud and the Defendant and Third-Party Plaintiff is entitled to actual and punitive damages from Jeff Gray in an amount to be determined by the trier of fact.

WHEREFORE, Defendant prays that this Court inquire into these matters and

1. Dismiss Plaintiff's complaint for failure to state facts sufficient to constitute a cause of action against the Defendant for which relief can be granted;
2. Deny Plaintiff's request that the Court grant foreclosure and sale of the subject property;
3. Deny Plaintiff's request for judgment against the Defendant for the costs and attorney's fees in this matter;
4. Award Defendant damages and costs incurred in completing the construction that Plaintiff failed to complete;
5. Award Defendant actual, consequential and punitive damages against Plaintiffs for its breaches of warranty as set forth herein;
6. Award Defendant costs, attorney's fees and damages incurred in defending himself in this proceeding;
7. Award Defendant and Third-Party Plaintiff actual, consequential and punitive damages against Third-Party Defendant, Jeff Gray, for his fraudulent misrepresentations; and

8. Award such other and further relief as the Court deems appropriate.

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, P.A.**



Chris B. Roberts, S.C. Bar No. 64999
Caroline M. Horlbeck, S.C. Bar No. 12100
P.O. Box 2464
Greenville, S.C. 29602
(864) 271-7424
Attorneys for Defendant and Third-Party
Plaintiff

Greenville, South Carolina

Date: 11/29/05

HOME CONSTRUCTION CONTRACT

OWNER: Christopher A. Pierce
532 Galloping Ghost Road
Anderson, SC 29626
(864) 231 8272

CONTRACTOR: TRI-COUNTY DEVELOPMENT INC.
~~209 S. Summit Drive~~ 202 S. Summit Drive
Seneca, SC ~~29678~~
(864) 247 0605 29672

LOT LOCATION: Parcel # 9, Lot A
Coneross Point
Seneca, SC 29678

A. GENERAL DESCRIPTION OF THE PROJECT

The Contractor to build and the lot owner to pay for the construction of a single family residence generally in accordance with the same quality standards as the speculation homes built by the contractor in the Winding Creek Subdivision in Seneca, SC (208 Star View Drive and 401 Misty View Court), as specifically modified and changed as stated herein.

B. TIME FOR CONSTRUCTION

The construction work to begin on Aug-15th +/- 2004 and to be completed by Aug-15 2004. The contractor agrees to a \$2500 per day penalty if not completed by the above due date. Time is of the essence of this contract.

EXHIBIT

"A"

C. CONSIDERATION

In consideration, the owner agrees to pay to the contractor \$1000.00 on the signing of this contract with a total balance due upon final completion (subject to amounts added or deleted for changes by written change order) of \$183,000.

D. CONTRACTOR RESPONSIBILITY

In consideration, the contractor agrees to build a family residence in accordance with the terms of this contract and in furtherance thereof to supervise and direct the work of all subcontractors and shall use his best skill and attention to detail and be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified herein, the contractor shall provide for and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other goods, facilities and services necessary for the proper execution and completion of the work. The contractor shall maintain order and discipline among employees and shall not assign anyone unfit for the task at hand. The contractor shall be responsible for and indemnify the owner against any acts and omissions of employees, subcontractors and their employees, or others performing the work under this contract and contracting with the contractor. The contractor warrants to the owner that all materials and equipment incorporated are new unless otherwise specified herein and that all work will be of good quality and free of defects. The contractor shall pay all sales, use and other taxes related to the work and shall secure and pay for all building permits and other permits, fees for water meter, electrical line hook up, telephone line, inspections, and licenses necessary for the completion of the work unless otherwise specified herein. The contractor shall comply with all rules, regulations, laws, ordinances, and orders of any public authority bearing upon the performance of the work relating to this contract.

E. DEFINITION OF TERMS

As used herein, the term "plan" shall refer to house plans made available to the contractor by the owner and prepared by Breland and Farmer Designers, Inc., numbered EE - 1710. Note well, that the house to be built is to be a mirror image of the plan as drawn.

F. DETAILED SPECIFICATIONS

Basement

12 inch wide concrete block walls with sufficient blocks to obtain a 9 foot high basement ceiling. Four inches of gravel under floor concrete slab with 6 mil polyethylene sheeting used as vapor barrier and termite shield. Framed walls to be framed using SPF, #2 BTR, 2" x 6" studs, 16" on center with 7/16 OSB sheathing and vapor barrier. One 3 foot wide, 9 light, metal door, one double wide window unit, and one triple wide window unit to be installed in the back (framed) wall to match the windows and door on the back wall of the upper level per the plan. Interior walls of the basement will be constructed with SPF, #2 BTR, 2" x 4" studs only as needed for support of the main level floor. Circuit breaker panel, electric water heater, and HVAC installed in basement. Plumbing roughed in for 3 piece bathroom. Electrical wiring will be installed as needed to pass the code. No separate heat pump to be installed for the basement. All exposed cement block outside walls to be covered with stucco. All exposed framed outside walls to be covered with vinyl siding.

Main level

Flooring to be 2 inch trusses with 3/4" tongue and groove plywood. Exterior walls on upper level to be framed using SPF, #2, BTR, 2" x 4" studs 16" on center with 7/16 OSB sheathing and vapor barrier. Roof system trusses to be 24" on center with 1/2" OSB, 30 lb felt, and 30 year architectural roof shingles. 50 Gallon electric hot water heater. Georgia Pacific vinyl siding except stone on front wall of master bedroom. Insulation for roof - R30 fiberglass; floor - R19 fiberglass; outer wall and all interior walls - R13. Interior doors - 6 panel Masonite with 2 1/4" door and window trim (moulding). All windows to be picture framed with 3 1/4" speed base.

Lot Clearing, Grading, and Septic tank and drain field Installation

Lot clearing and removal of debris, installation of septic tank in accordance with Oconee county permit, water line, telephone line, and electrical lines to house. Final smooth grading with no seeding or landscaping.

Allowances for cost of materials

Plumbing fixtures	\$2,000.00
Electrical fixtures	2,000.00
Cabinets (kitchen and bath) and counter tops	6,000.00
Flooring (carpets, vinyl and ceramic tile)	6,000.00
Stone natural or cultured (fireplace and partial front of house)	2,500.00

Concrete Driveway

Concrete Driveway over gravel base
(50 feet long x 12 feet wide 15' 11" wide)
for 25 feet then fan to 14 feet wide to garage.

POSSIBLE UPGRADE

Concrete Driveway 70 to 90 feet long x 20 feet wide over gravel base
Owner to pay required additional amount over contract price

Windows

Number, position, and approximate width per plan. Height on upper level to accomodate (lower) gable roof. Double hung, white, double glass, insulated, all vinyl windows throughout. Basement windows and door to match those on rear wall of upper level.

POSSIBLE UPGRADE

Vinyl casement windows throughout instead of double hung vinyl windows
Owner to pay required additional amount over contract price

Fireplace

48 inch wide insert with gas log, natural or cultured stone floor to ceiling facing with mantle

POSSIBLE UPGRADE

Wood burning fireplace, 60 inch insert, chimney at roof to be covered with vinyl siding
Owner to pay required additional amount over contract price

Interior doors

6 panel Masonite. Front double doors to be selected by owner and stained, not painted as are other interior doors, except rear doors on both upper and basement levels and garage side door to be 9 light metal doors. Double garage door with electric opener.

Interior and exterior door hardware

Polished brass lever type except exterior front door to be latch type.

Floor Covering

Vinyl floor covering in Kitchen, Eating Area, and Utility Room
Carpeting in Dining Room, Living Room, all Bed Rooms and Bed Room Closets
Ceramic Tile 5 feet x 13 feet front interior entrance and 6 feet x 14 feet front, outside porch

POSSIBLE UPGRADE

Ceramic floor tile instead of Vinyl floor coverings
Owner to pay required additional amount over contract price

Electrical

220 volt, circuit breaker electrical panel with space for expansion to accomodate basement wiring. Electrical panel to be installed in basement. 50 Gallon electric water heater wired to electrical water heater timer. HVAC to be installed with water heater in basement. Ceiling fans and electrical outlets per plan.

POSSIBLE UPGRADE

Electrical panel of rating sufficient to avoid dimming of lights upon HVAC start up.
Owner to pay required additional amount over contract price

Plumbing

All supply pipes to be 3/4" copper; all waste pipes to be PVC.

Attic

Pull down stairs to access attic over garage and to access attic over main level per plan.

TV and Telephone outlets

TV and telephone outlets in living room per plan and in all bedrooms. Note: Use "RG 6/U" TV lead in cable to allow Satellite TV reception. TV antenna to be located at roof location of chimney.

Stairway to basement

Per plan

Deck and rear patio

Wood deck (no external stairway to ground) and concrete slab patio per plan.

Bathrooms

Each bathroom to have painted or stained (at owner's option) wood, wall mounted, medicine cabinets, wall mirrors, and metal framed, clear glass shower door on polyester plastic shower enclosure. Centrally located skylight and whirlpool tub in master bath. Polyester plastic, tub surround bathtub with shower head, clear glass door and clear, fixed transom window in 2nd bath. Counter tops - cultured marble with integral basins. Toilets - siphon jet with elongated commodes.

Kitchen

Revise arrangement of units per Exhibit B

Integral oven and range to be self-cleaning, smooth top unit. Custom cabinets - stained finish. Double stainless steel 8 inch deep sink with Insinkerator disposal. Counter tops - formica. Dishwasher. Built in microwave unit with ventless fan and light above range. Ice maker hook up at refrigerator location.

Utility room

220 outlet and outside vented metal vent tubing for dryer. Set tub per plan.

Air conditioning and heating

TRANE Heat pump, 3 ton, 12 SEER rating.

POSSIBLE UPGRADE

Heat pump 3 1/2 ton, 12 SEER, 1 zone with basement ducting, or
Heat pump 3 1/2 ton, 12 SEER, 2 zone with basement ducting, or
Heat pump 2 1/2 ton, 12 SEER and heat pump 1 1/2 ton, 12 SEER (2 zone) with basement ducting
Owner to pay required additional amount over contract price

Exterior

Vinyl Siding with stone on front of Master Bed Room. Chimney - vinyl siding.

VIII

Front porch

Dimensions 6 feet x 14 feet, ceramic tile flooring, 4 columns only with brick steps on front of porch only (not on sides of porch).

Roof

Gable roof (not Mansard per plan) with 9 foot ceilings on both levels except cathedral ceiling in living room, dining room, and kitchen and tray ceiling in master bedroom. 4 inch seamless gutters with 3" x 4" aluminum downspouts. Roof over master bedroom and type window per plan.

Deck and patio

Treated Wood deck - partially covered by extension of gable roof.

Patio - concrete slab

G. PAYMENT SCHEDULE

Payments to be made as construction progresses in accordance with the following schedule:

1. Upon completion of clearing the lot, building the foundation concrete block wall and framing the basement walls: \$50,000.
2. Upon completion of house to the "dry-in" stage including exterior sheathing on framing with windows and doors set and black paper on the roof: \$50,000.

3. Upon completion of mechanical work and installation of HVAC, electrical wiring, plumbing and rough-in and pouring of garage floor: \$50,000.

4. Upon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl, and ceramic tile, finish moulding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring the driveway: \$30,000.

5. Upon final inspection when building code approval certificate is obtained and after all items are completed to the owner's satisfaction: \$3,000.

TOTAL CONTRACT PRICE: \$184,000

Developer/Contractor:

Developer

Jeff Gray
Jeff Gray

Date

7/24/04

Contractor

Melinda Holbrooks
Melinda Holbrooks

Date

7/24/04

Owner:

Christopher Pierce
Christopher Pierce

Date

7/24/04

X

161 McCracken Drive
Seneca, SC 29678
April 4, 2005

Mr. Nathan and Mrs. Mandy Holbrooks
716 Holbrooks Drive
Seneca, SC 29678

Mr. Jeff Gray
202 South Summit Drive
Seneca, SC 29672

RE: Chris Pierce house

Confirming our discussion on April 1, 2005, it has been agreed upon by the parties above, the undersigned, and Chris Pierce that the building contract dated July 24, 2004 be modified as follows:

1. Payment # 4 per contract will be due upon completion of all work on the premises by the builder in accordance with the contract and prior modifications thereto, providing completion of all work is confirmed by an inspection of the premises by Chris Pierce

2. Should there be any disagreement as to completion of all work on the premises, the parties agree to abide by the results of an inspection of the premises by a mutually agreed upon 3rd party, the cost of such inspection to be charged to Chris Pierce.

EXHIBIT "B"

3. Thereafter, payment # 5 per contract will be due upon the builder obtaining a certificate of occupancy from Oconee County. The amount of payment # 5 to be increased or decreased in accordance with a detailed accounting by the builder of:

- a. Added costs and credits on cost of materials in comparison with the various allowances for materials per contract and
- b. Added costs or credits for labor and materials for verbal modifications of the contract.

Other matters discussed are as follows:

1. It has been decided that during final grading, installation of a drain pipe in the ditch at the street will NOT be required at the street entrance to the back yard.

2. A concrete driveway upgrade to 18 feet wide x 25 feet from the garage entrance and 15 feet wide x 94 feet thereafter to the street has been decided. In order to decide whether it will be prudent to hire another contractor to install the concrete driveway, please provide the following information:

- a. Credit for concrete driveway per contract and
- b. Added amount for upgraded driveway as specified above.

3. The interior ceramic tile at the front entrance, 9 feet wide x 5 feet is to extend the full width of the entrance wall (NOT just to the width of the door frame) to include:

- a) the narrow strip between the front wall and the stair opening,
- b) all of the closet floor, and
- c) across to the stair opening.

4. We understand the light kits for the ceiling fans will be universal as to fit on fans.

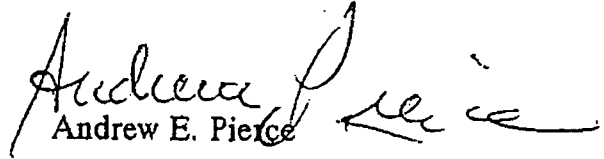
5. Selections (from Lowes, Anderson) for the pivot glass door for the shower and the sliding glass door for the tub shower enclosed.

6. Lighting fixtures in MBR closet and Hall between guest bedrooms to be changed, as discussed. A revised sheet, page 3, reflecting this change is enclosed.

7. Copy of Moon Brothers tile company calling card enclosed.

8. The cultured stone selection is confirmed to be that dated 3/25/05, page 8 (copy enclosed).

Enclosures


Andrew E. Pierce

cc: Chris Pierce

July 6, 2005

PUNCH LIST

1. Adjust ^{all} doors to shut and latch ^{and lock} correctly.
2. Fill holes ^{on inside of} rear doors to deck and patio.
3. Remove cultured stone and litter in front yard..
- ✓ 4. Install closet door handles in rear guest bedroom.
5. Smooth sand, stain, and varnish stair rails. Fill holes and install Bull Nose ends on each stair rail.
6. Clamp kitchen sink to avoid wobble of sink fixture.
- ✓ 7. Clean windows, remove paper stickers.
8. Adjust drawer in kitchen on right side of sink..
9. Install locks on all kitchen cabinet doors at floor level to prevent cats opening doors.
10. Adjust inside door to basement to close and properly latch.
11. Install appliances in kitchen - range, microwave and dishwasher.
12. Add ^{two additional in} ~~several~~ shelves to linen closet in eating area.
13. Install additional wire shelves for storage per plan.
14. Install medicine cabinets in both baths - Master bath - above back of toilet; guest bath - above back of toilet.
15. Install shower doors.
16. Install mirrors in both baths.
17. Install shower fixture in master bath shower.

EXHIBIT C

18. Install drain fixture in whirlpool tub.
19. Reinstall toilets - white in guest bath; tan in master bath.
- ~~20. Install doors on closet and at entrance in master bedroom.~~
21. Install door stops: utility room, entrance from garage, master bedroom entrance and closet, toilet area in master bath, small bath, front entrance, both bedrooms.
22. Install downspout splash plates *(5 ft each)*
23. Install 6' x 6' cement slab outside rear garage door.
24. Install cement step at house entrance from garage.
25. Remove dirt around drain pipe in basement floor and replace with cement.
26. ~~Garage door electrical controls inoperative - fix.~~
27. ~~Install black louver shutters on 3 windows in front of house.~~
28. ~~Paint garage door to match vinyl siding.~~
29. Clean up red dirt on lower parts of vinyl siding.
30. Provide credit for unused cultured stone.
31. Clean tile and granite especially at front entrance.
32. Clean up loose fibers on all carpeting.
33. Remove all trash from garage floor *and basement floor*
34. Install timer for water heater per contract.
35. Install ventless fan and light above range per contract.
36. Install gas log.

37. Paint ceiling over and adjacent to fireplace stone.

38. Master bedroom door and Master bedroom closet door - Cut off lower portion of door¹ to clear carpet. ^{enough of}

39. Install downspout at rear ^{corner} of garage.

40. Utility room light fixture flashes - fix.

3. The interior ceramic tile at the front entrance, 9 feet wide x 5 feet is to extend the full width of the entrance wall (NOT just to the width of the door frame) to include:

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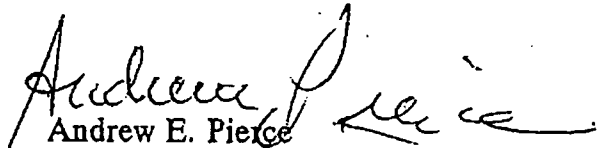
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Enclosures

cc: Chris Pierce


Andrew E. Pierce

July 6, 2005

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^

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^

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FROM : ANDREW E PIERCE PATENT ATTY

FAX NO. : 8649720360

Aug. 15 2012 01:56PM P1

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
C.A. No.: 2005-CP-37-788County Development, Inc. and
Ida Holbrooks,

Plaintiffs,

-vs-

NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT

Christopher A. Pierce,

Defendant,

And

Christopher A. Pierce,

Third Party Plaintiff

-vs-

Gray,

Third Party Defendant.

TO: ROBERT K. WHITNEY, ESQ., ATTORNEY FOR PLAINTIFFS:

You will please take notice that the Defendant, Christopher A. Pierce, will move the 10th day following service hereof, or soon thereafter as counsel may be heard, for order granting this Defendant judgment in its favor as a matter of law pursuant to Rule of the South Carolina Rules of Civil Procedure. This motion is based upon the grounds that the Plaintiffs are absolutely unable to bring an action at law or in equity against the Defendant to enforce the provisions of a contract for residential building. Further, there is absolutely no probative evidence that the Plaintiffs obtained a residential building license, in compliance with SC Code Ann. Section 40-59-30, prior to bringing above referenced action. The Defendant is therefore entitled to summary judgment on the Plaintiffs' causes of action.

2007 MAR -5 A 10:42

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

Reply

ANSWER

ENTERED
CLERK

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Tri-County Development, Inc. and
Melinda Holbrooks,

Plaintiffs,

vs.

Christopher A. Pierce,

Defendant.

and

Christopher A. Pierce,

Third Party Plaintiff,

vs.

Jeff Gray,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2005-CP-37-788.

AFFIDAVIT OF JEFFREY A. GRAY

2007 APR 19 A 10:45

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

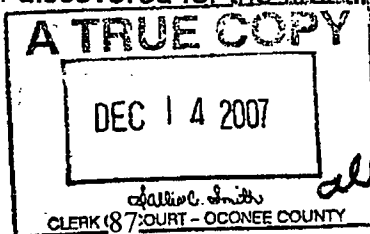
My name is Jeffrey A. Gray and have been sued herein as Third Party Defendant, Jeff Gray. I am also the Owner and President of Tri-County Development, Inc., one of the named Plaintiffs.

I retained Robert K. Whitney, Esq. to represent Tri-County Development, Inc. and Melinda Holbrooks in pursuing a claim for money owed by Defendant Christopher A. Pierce. Mr. Whitney filed a Complaint as well as the Reply to Defendant Pierce's Counterclaim.

I received many copies of pleadings related to this lawsuit. I understood that Mr. Whitney would respond to all of them.

I subsequently agreed for Mr. Whitney to be relieved as counsel.

Upon going to the courthouse, I discovered for the first time that Mr. Whitney had



ENTER
COMPUTER

not answered the Third Party Complaint filed by Defendant Pierce. Mr. Whitney never told me he would not be handling this or that I should seek separate counsel on the third party claim.

When I received the Order relieving Mr. Whitney as counsel, I met with another attorney who recommended Thomas E. Dudley, III, who is now my attorney. However, due to scheduling conflicts, Mr. Dudley was unable to meet with me until April 11th, 2007.

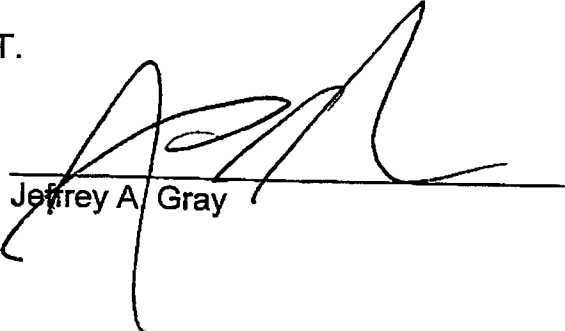
In anticipation of my meeting with Mr. Dudley, on April 9th, 2007, I made copies of the documents on file at the courthouse.

During the meeting with Mr. Dudley, he reviewed the court documents and it was discovered that an Order of Default had been entered against me on the Third Party Complaint. This was the first that I learned of the default. It was my understanding and belief that my prior attorney Mr. Whitney was representing me and would have responded to any pleading, including the Third Party Complaint.

I have valid defenses to Defendant Pierce's third party claims. Defendant Pierce owes \$30,000.00 and locked the builder out of the house, preventing Melinda Holbrooks from finishing the project.

FURTHER AFFIANT SAYETH NAUGHT.

Sworn to before me this 11
day of APRIL, 2007.


Jeffrey A. Gray


Notary Public, State of South Carolina
My Commission Expires: 1-29-2017

STATE OF SOUTH CAROLINA	)	
COUNTY OF OCONEE	)	IN THE COURT OF COMMON PLEAS
Tri-County Development, Inc. and	)	
Melinda Holbrooks,	)	C.A. No.: 2005-CP-37-788
Plaintiffs,	)	
vs.	)	
Christopher A. Pierce,	)	
Defendant.	)	
and	)	PLAINTIFFS' MEMORANDUM
Christopher A. Pierce,	)	IN SUPPORT OF THEIR MOTION
Third Party Plaintiff,	)	FOR SUMMARY JUDGMENT
vs.	)	
Jeff Gray,	)	
Third Party Defendant.	)	

Plaintiffs, Tri-County Development, Inc. ("Tri-County") and Melinda Holbrooks ("Holbrooks") (collectively "Plaintiffs"), along with Third Party Defendant Jeff Gray ("Gray"), submit this memorandum in support of their Motion for Summary Judgment as to Defendant/Third Party Plaintiff Christopher A. Pierce's ("Pierce" or "Defendant") counterclaims in the above-captioned matter. Despite five (5) years in litigation, Defendant cannot produce admissible evidence that his alleged damages exceed the contract balance. For this reason, Plaintiffs are entitled to have Defendant's counterclaim dismissed. As the then prevailing party based on the filed Offer of Settlement of \$0.00, Plaintiffs are also entitled to attorneys' fees. Tri-County Development, Inc. and Melinda Holbrooks, along with Third Party Defendant Jeff Gray are entitled to an Order granting their Motion for Summary Judgment.¹

¹ For purposes of this Memorandum, accompanying Motion, and ultimate oral argument, if granted, unless otherwise stated, Plaintiffs deem the allegations made in the Defendant's Answer and Counterclaim and Third Party Complaint and the testimony of the Defendant as truth. Plaintiffs expressly reserve the right to contest the truth of any and all of the allegations, not otherwise admitted, and the testimony of the Defendant at other times, including but not limited to the trial of this matter (if not otherwise disposed of).

I. FACTUAL BACKGROUND

The relevant parties are as follows:

a) The Plaintiff Tri-County contracted with Pierce to construct a home along with Plaintiff Holbrooks, who was the general contractor on the project responsible for the construction of improvements on the property referred to as Parcel 9, Lot A, Coneross Point located in Seneca, South Carolina. Plaintiff Holbrooks pulled the building permit.

b) Defendant Pierce, at all times relevant, was the owner of the above referenced property.

c) Third Party Defendant Gray is the sole owner of Tri-County Development, Inc.

This action arises out of a contract for the construction of a home in Oconee County, South Carolina (the "Project") for the amount of \$184,000.00. Pierce entered into a written contract with Tri-County for construction of the home on or about July 24, 2004. (See Exhibit "A"). Gray signed the contract as the developer for Tri-County and Holbrooks signed as the contractor. Pierce anticipatorily repudiated the contract by demanding that payment wouldn't be made until the entire house was completed in direct contravention of the written contract.

Pierce later changed the locks and further prevented Tri-County from completing the punch list. Pierce did not pay Tri-County in full. Tri-County filed a lien and this lawsuit. Pierce filed a counterclaim for damages for which he will not be able to prove with admissible evidence exceed the contract balance.

Pierce's father, Andrew Pierce, a lawyer, was part of the negotiation and drafting of the contract. (See Exhibit "B"). Andrew Pierce changed Tri-County's contract form regarding the schedule of allowances which was changed, unbeknownst to Gray on behalf of Tri-County to cover only the cost of materials, not both materials and labor. Gray did not catch this before he signed the contract. Clearly, labor would have to be expended to install these items. The

allowance sheet included plumbing fixtures, electrical fixtures, cabinets and counter tops, flooring, rock and the driveway. (Exhibit "A").

The contract also contained a list of progress payments with a list of the tasks to be completed. The first three payments were to be in an amount of \$50,000.00 each, the fourth payment was to be in the amount of \$30,000.00 and the final payment was to be \$3,000.00. (Exhibit "A").

On April 4, 2005 Andrew Pierce sent a letter to Tri-County, unilaterally attempting to modify the contract and delay final payment until completion. This was an anticipatory repudiation of the contract and a material breach. Pierce and his father wanted to combine the last two payments and pay all of the monies due when the house was complete. Specifically, Pierce proposed the fourth payment would be due only upon completion of all of the work. (See Exhibit "C"). Under the terms of the contract, the fourth payment was due "[u]pon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl, ceramic tile, finish molding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring of the driveway. (Exhibit "A"). Plaintiffs never agreed to any modification of the contract as evidenced by the letter from Andrew Pierce on July 18, 2005. (See Exhibit "D"). Gray never agreed to this.

Despite Pierce's attempt to change the contract, Plaintiffs continued working under what they believed was the original contract. However, it became apparent to Plaintiffs that they were not going to be paid for the work under the original payment schedule of the contract despite never agreeing to any type of modification. On June 28, 2005, Pierce sent an email to Tri-County wherein Pierce stated, "[y]ou will be paid when you have fulfilled your contractual obligations as set forth under the contract and agreement with my father regarding the payment schedule compromise established in March/April. You will not be paid until all work is completed on the house regardless of the one year warranty you mentioned." This further evidences the material

breach by Defendant. (See Exhibit "E"). Plaintiffs considered this statement to be a clear anticipatory repudiation of the contract. Plaintiffs stopped work in July (when they went to the house to do punch list work and learned that Pierce had changed the locks and had started moving into the house), since they had already been informed they would not be paid the fourth progress payment.

In early July of 2005, Pierce locked Plaintiffs out of the property and refused to allow them to complete the punch list work under the terms of the contract. (See Exhibit "F", deposition excerpt of Gray, p. 212, ll. 7-16). Pierce then began moving in and doing work himself on the house under the building permit of Holbrooks. Plaintiff Holbrooks reported Pierce to Oconee County for operating under Holbrooks' license and Oconee County issued a Cease and Desist Order. (See Exhibit "G", deposition excerpt of Holbrook, p. 22, ll.2-6; p. 24, ll.4-16). Pierce then obtained his own permit and completed the house. At that time, Plaintiffs were locked out of the property and the only work Pierce believed to be remaining was punch list items, as stated on Pierce's own Chronology. (See Exhibit "H"). The project was ready for final inspection by the Oconee County Building Code's inspector Channon Chambers. (See Exhibit "I", Affidavit of Jeff Gray).

II. PROCEDURAL HISTORY

On September 26, 2005, and within 90 days from Plaintiffs' last day of work, Plaintiffs filed their Notice of Mechanics Lien and Statement of Account. Said Mechanic's Lien was recorded in Volume 4 at page 78 of the Oconee County RMC office. (See Exhibit "J"). On that same day, Plaintiffs filed their Lis Pendens, Summons and Complaint to foreclose on the mechanics lien.

The case has an extensive procedural history which can be found in the attached case chronology. (See Exhibit "K"). In an effort to show the extensive difficulty with the discovery process that the Court is familiar with, some of the case chronology is discussed below.

In an effort to resolve the case and avoid further costs to the Plaintiffs, counsel for Plaintiffs made an offer of settlement to Pierce in the amount of \$0.00 on March 23, 2010. Pierce failed to accept the offer. This Offer of Settlement governs the prevailing party under the mechanic's lien statute regarding the award of attorneys' fees.

Pierce was finally deposed on April 9, 2010. At that point, the case was nearly five years old. Plaintiffs' counsel used the opportunity to discuss the details of the contractual arrangements between the parties and the details of the damages Pierce has made in his counterclaim, by using the documents produced by Pierce. Pierce has been given five years to provide proof of his cost of completion; said another way: prove his damages. Pierce has failed to provide any proof that his cost to complete the Project was in excess of the contract balance and therefore his defenses and counterclaim should be dismissed.

Throughout the history of the case, Pierce has relied on his position that he is entitled to damages because Plaintiffs breached the contract by failing to complete the Project pursuant to the terms of the contract, ignoring his own letters, materially breaching the contract first, or his burden to prove his actual damages exceed the contract balance. Plaintiffs believe that Pierce's attempt to unilaterally modify the contract followed by the letters and emails that state Plaintiffs would not be paid until they followed the modified contract amounted to anticipatory repudiation of the contract and entitled Plaintiffs to stop work.

Plaintiffs are seeking the contract balance due to Pierce's anticipatory repudiation of the contract. Pierce claims Plaintiffs breached the contract and seeks damages well in excess of the cost to complete. Based on Pierce's own failure to prove his damages, the counterclaim should be dismissed because there is no material issue of fact that the cost to complete the Project did

not exceed the contract balance as will be shown below. The case is now 5 years old. Plaintiffs have brought this Motion in attempt to narrow the issues and move the case forward.

Plaintiffs realize a factual dispute may exist in regards to the allowance issues. It is undisputed the work was done, but Tri-County has not been able to account for all its material costs. For purposes of this Motion, it is assumed that none of the allowance items are due, leaving a contract balance of \$15,000. Regardless of the breaching party, Plaintiffs are entitled to the balance of the contract less any proven cost to complete or repair by Defendant. If Pierce was determined to be the breaching party at trial, he would not be entitled to any type of offset.² Plaintiffs will detail further in this Memorandum.

Plaintiffs' Motion for Summary Judgment is based on the uncontradicted, sworn testimony of Pierce, along with evidence related to the cost of completion produced by Pierce.

III. STANDARD

Granting a motion for summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "Summary judgment is appropriate in those cases in which plain, palpable and undisputed facts exist on which reasonable minds cannot differ. It is not sufficient that one create

² An owner of a building under construction, under a contract providing for payment of the price of the completion of work, who refuses to permit the contractor to complete the work is liable for the contract price less payments made and cannot counterclaim for the amount paid for finishing the building. *Bensch v. Davidson*, 354 S.C. 173, 177, 580 S.E.2d 128, 130 (2003)

an inference which is not reasonable or an issue of fact that is not genuine." *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). Likewise, "[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994). Furthermore, "A party opposing a properly supported motion for summary judgment ... may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994).

IV. ARGUMENT

In the matter at hand, it is undisputed that:

(A) Plaintiffs expended labor, services, or materials under contract for the improvement of real property. (Exhibit "A");

(B) Pierce completed the Project after Plaintiffs were no longer working on the Project;

(C) Plaintiffs properly served and filed its notice of mechanics lien on September 28, 2010; (Exhibit "J");

(D) At the time Plaintiffs stopped work to resolve payment issues, the contract balance was \$33,000.00³; and

(E) Pierce has failed to provide admissible proof that the cost to complete the Project exceeded the contract balance.

³ Lien in the amount of \$34,000 did not include \$1,000 deposit paid; lien should have been for \$33,000. Additionally, to have an apples to apples comparison, it is agreed for this motion only that the allowances owed will be zero. So even assuming no allowance can be proven by Tri-County, Pierce still falls short of proving a material issue of fact exists about his damages exceeding the contract balance.

1. *Regardless of who the breaching party is determined to be, Pierce's damages, at best, are limited to the cost of completion.⁴ Pierce has failed to produce any admissible evidence to show that his damages exceed the contract balance owed to Plaintiffs, therefore, at a minimum, Plaintiffs are entitled to the contract balance in full with an offset based on the cost of completion.*

a. *Pierce's cost to complete the Project did not exceed the contract balance of \$33,000.00, or even the contract balance less allowances; therefore Plaintiffs are entitled to the difference.*

The parties entered a lump sum contract for \$184,000.00. Pierce still owes \$33,000.00 under the contract, but only for the purpose of this motion, Plaintiffs will use \$15,000 as the amount owed. It is undisputed that Plaintiffs substantially completed the residence, despite not being 100% complete with all contractual obligations. It is not necessary for Plaintiffs to have been 100% complete to be entitled to payment. Defendant could prove offsets of costs he incurred to offset the final payment. Defendant has only been able to show that he might be able to offer admissible evidence to offset a small portion of the final payment. It is undisputed that Defendant has had beneficial occupancy since August 2005. Plaintiffs reached substantial completion of the contract as evidenced by his own admission that Plaintiffs were only working on punch list items when Pierce locked them out.⁵

The doctrine of substantial performance was conceived for the case where a plaintiff's partial performance has already given to a defendant substantially all that he bargained for and is of such a nature that it cannot be returned. e.g., 17A C.J.S. Contracts 508 (1963). Justice can best be achieved in such a

⁴ The measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach. 15 Am.Jur., Damages, Section 43; *S. Carolina Fin. Corp. of Anderson v. W. Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960)

⁵ The purpose of the substantial performance doctrine is to prevent forfeiture by the contractor and unjust enrichment by the owner, and thereby to avoid injustice. For these reasons, it has been said that substantial performance by a contractor is readily found, despite the existence of a large number of defects in both material and workmanship, unless the structure is totally unfit for the purpose for which it was originally intended. Of course, a fully performing contractor is entitled to recover the contract price from the owner. A substantially performing contractor is entitled to recover the contract price minus the cost of repairing the defects or completing the unfinished part of the work so as to bring the construction up to the level required by the contract. 41 A.L.R.4th 131 (Originally published in 1985).

case by a setoff against the contract price rather than by denial of recovery of the contract price.

Diamond Swimming Pool Co. v. Broome, 252 S.C. 379, 384, 166 S.E.2d 308, 311 (1969).

The contract specifically states "if the cost of completion exceeds the contract balance, the difference as well as reasonable attorney's fees, if necessary shall be paid to the Owner by the Contractor." (See Exhibit "A"). Pierce must provide admissible evidence that his *actual* cost to complete the Project exceeded the contract balance. Pierce has failed to provide any such documentation.

Damages incurred to complete the contract following the owner's just termination of the contract for default or the contractor's wrongful repudiation of the contract or wrongful abandonment of the project, are recoverable to the extent that completion costs exceed the unpaid balance of the contract price. The damage measure is the reasonable cost to complete the contract in conformance with its terms, less unpaid contract funds. *If the contract can be completed within the unpaid contract funds remaining as of contract termination or abandonment, then the owner incurs no damages and must pay any balance finally remaining to the contractor.* (emphasis added).

6 Bruner & O'Connor Construction Law § 19:56

Pierce's Failed Attempt To Prove Damages

On May 8, 2009, Pierce created a document entitled "Unreimbursed costs Due to Builder Breach of Building Contract." In his deposition, Pierce specifically stated the list comprised his damages totaling \$75,244.84. (Exhibit B, excerpt of Pierce Deposition, p. 171, ll. 1-12). Pierce claims his damages are in excess of the contract balance of \$33,000.00, or, for this motion, \$15,000. However, Pierce has failed to produce documentation or affidavits that would be admissible in court to support his damages despite more than adequate time to do so and numerous court orders requiring Pierce to provide proof of his alleged damages. (See Exhibit "L"). The list of damages submitted by Pierce for the most part is not backed up by any admissible evidence and is unreliable, self-serving, and based solely on inadmissible hearsay. Furthermore, Pierce self performed much of the work, but is now attempting to rely on outside

estimates to compute his damage calculations after the work has already been completed. This is misplaced. Pierce never incurred the cost in his estimates because he completed the work. Courts have consistently held the best measures of damages are the *actual* cost of completion of the work. Even if we assume Plaintiffs breached the contract in an effort to view the facts in the most favorable light towards Pierce, Pierce is not entitled to the damages he has alleged.

If the contract is one for construction, including repair or similar performance affecting the condition of property, and the work is not finished, the injured party will usually find it easier to prove what it would cost to have the work completed by another contractor than to prove the difference between the values to him of the finished and the unfinished performance. Since the cost to complete is usually less than the loss in value to him, he is limited by the rule on avoidability to damages based on cost to complete. See § 350(1). *If he has actually had the work completed, damages will be based on his expenditures* if he comes within the rule stated in § 350(2).⁶ (*emphasis added*)

The following is a breakdown of Pierce's alleged damages. Pierce's actual list of damages are found in bold and can be seen on the May 8, 2009 document entitled "Unreimbursed costs Due to Builder Breach of Building Contract." (See Exhibit "M"). In order to resolve the dispute, Plaintiffs are willing to stipulate to certain amounts to be applied to offset the contract balance. (Stipulated damages are marked in bold as "stipulated" to differentiate from those damages not stipulated to.) Other damages are clearly not admissible based on multiple rules of evidence and contract law which are discussed below.

Damages claimed by Pierce (Exhibit "M") With Plaintiffs' Comments As To Why They Are Not Damages or Admissible Evidence

- Item 1
 - **\$700 Building license STIPULATED**
 - Pierce has not provided proof of payment. (Exhibit "B", excerpt of Pierce Deposition, p. 171, ll. 14-23)

⁶ (1) Except as stated in Subsection (2), damages are not recoverable for loss that the injured party could have avoided without undue risk, burden or humiliation.

(2) The injured party is not precluded from recovery by the rule stated in Subsection (1) to the extent that he has made reasonable but unsuccessful efforts to avoid loss. Restatement (Second) of Contracts §350 (1981)

- This amount would have been included in the contract and not a necessary expense) if Plaintiffs would have been allowed to finish the punch list.
 - Despite the lack of admissible evidence, Plaintiffs will Stipulate to this.
- Item 2
 - **\$650 Termite Letter STIPULATED**
 - Plaintiffs pre-treated the house for termites and were going to provide this letter, but for Pierce's breach, it would have been included in the contract had Plaintiffs been paid
 - Despite the lack of admissible evidence, Plaintiffs will Stipulate to this.
- Item 3
 - **Home Inspection \$275 STIPULATED**
 - Plaintiffs will Stipulate, although not necessary or required by the contract
- Item 4
 - **Appliances for the House – which includes washer, dryer, refrigerator, microwave, dishwasher, stove - \$1984.72**
 - However, the contract does *not* include washer, dryer, or refrigerator. (Exhibit "B", excerpt of Pierce Deposition, p. 175, ll. 1-23) and these figures are not damages or offsets.
- Item 5
 - **Time Spent completing the House- 149 hours, \$7,450.00**
 - Pierce has provided no documentation of hourly rates. (Exhibit "B", excerpt of Pierce Deposition, pp. 176, 177.) Pierce's only documentation of the hours spent consists of a one page list of handwritten time, with no description of what he was doing.
 - Pierce is not entitled to these damages as it is unsubstantiated, inadmissible hearsay.
- Item 6
 - **Additional Hours of Helper – 45 hours, \$2,250.00**
 - Pierce testified that amount related to time spent on the House by his father. (Exhibit "B", excerpt of Pierce Deposition, p. 177, ll. 16-24)
 - Pierce has provided no documentation to prove the description of what was done, the labor spent, or rate, or proof paid.
 - Pierce is not entitled to these damages as it is unsubstantiated, inadmissible hearsay
- Item 7 **Driveway Actual Cost \$2,500.00**
 - **Driveway – Harris Concrete estimate - \$6,000.00 -\$7,500.00** (Exhibit "B", excerpt of Pierce Deposition, p. 182, l. 25; pp. 183, 184; p. 185, ll. 1-13)
 - Despite claiming this as damages, Pierce testified he completed the driveway work himself. Once Pierce completed the work, he received verbal estimates for what it would cost to do the work and he believed he was entitled to the difference in the oral estimate and his actual cost.
 - Pierce testified the actual cost, "was around \$2500" (Exhibit "B", excerpt of Pierce Deposition, p. 184, l. 16)

- Pierce also testified that the labor for the driveway was included in Item 7 above. (Exhibit "B", excerpt of Pierce Deposition, p. 183, ll. 10-12)
 - Plaintiffs will stipulate to the \$2500.00 actual cost as admitted by Pierce since that is clearly the best evidence of the cost to complete.⁷
- Item 8
 - Road Repair - \$3,000.00 (Exhibit "B", excerpt of Pierce Deposition, p. 181, l. 6 to p. 182, l.17)
 - Pierce only provided an estimate of the repair work to be done for the road by Affordable Asphalt. (See Exhibit "N"). The work was *never* completed but the proposal submitted by Pierce states, "Repair Road \$1500.00 80 feet"
 - Pierce has provided no evidence that any road repair was ever done
- Item 9
 - Cabinet Work out of pocket Costs - \$700
 - Pierce exceeded the allowance, so this is not a valid offset because he would owe the excess to Plaintiffs
- Item 10
 - Unreimbursed out of Pocket Ceramic Tile - \$2,142.00
 - Pierce testified this amount consisted of work actually done by Steve Crooks, and it consisted of the labor for tile and countertops. (Exhibit "B", excerpt of Pierce Deposition, p. 185, ll. 20-25)
 - Pierce testified that himself and Gray reached an agreement where Pierce would pay for half and Gray would pay for half. (Exhibit "B", excerpt of Pierce Deposition, p. 186, ll. 1-4.)
 - Pierce exceeded the allowance so this amount is not recoverable (See Exhibit "O") and therefore, this is not a valid offset because he would owe the excess to Plaintiffs.
- Item 11 (For purposes of this Motion, Allowances owed to Tri-County will not be claimed)
 - Allowances – Pierce claims none of the \$18,000.00 is owed when he admits the work was done (Exhibit "B", excerpt of Pierce Deposition, p.186, ll. 5-25);
 - Allowance items per contract (Exhibit "A")
 - 1. Plumbing fixtures \$2,000.00 allowance
 - a. Spent \$1387.10
 - 2. Electrical Fixtures \$2,000.00
 - a. Pierce exceeded allowance for electrical as evidenced by invoices paid by Plaintiffs in the amount of \$2,265.30 (See Exhibit "P")
 - 3. Cabinets and Counter tops \$6,000.00 (the cabinet maker has been hospitalized in Augusta, GA for several months and Gray has

⁷ If the owner actually has the completion or repair work done, damages are limited to the amounts actually expended in good faith for completing or repairing the work, so that if the owner gets the work done cheaper than estimates, the saving is passed on to the breaching contractor.
41 A.L.R.4th 131 (Originally published in 1985)

been unable to get a break down between materials and labor because that is how Tri-County was billed. It is undisputed that the cabinets were installed.

4. Flooring (Carpet and Vinyl) \$6,000.00

- a. Pierce exceeded allowance for Flooring as evidenced by the recap in the amount of \$6,722.00; (Exhibit "O" as to Pierce's breakdown)

5. Rock (stone natural or cultured; not sure absent backup)
\$2,500.00

6. Driveway: 50' long and 12' wide for 25' fan to 14' into garage

- o Pierce testified in his deposition that the work constituting the allowance items are in his house; credit was given because Pierce self performed.
- o In addition Pierce agreed that "if he has records to show that he did pay for some of these things...then that figure will be offset" (Exhibit "B", excerpt of Pierce Deposition, p. 186, ll. 21-24).
- o Pierce exceeded the flooring allowance and the tile allowance
- o Pierce wanted to make upgrades on ceramic tile. Dixie Flooring Quote - \$9,239.19
- o This is not a valid offset, it may reduce the contract balance owed Tri-County only.

• Item 12

- o Defective insulation-\$12,815.00 (Exhibit "B", excerpt of Pierce Deposition, p. 188, ll.14-25; p. 189)
- o This amount came from an estimate provided Woods Restoration Services (See Exhibit "Q"). No work has been done.
- o Pierce testified that he called Guardian industries and was told the insulation was defective. (Exhibit "B", excerpt of Pierce Deposition, p.189, ll.13-17)
- o Pierce was also allegedly informed that Guardian would cover the cost to replace the material, however Pierce testified he told Guardian they would let the Plaintiffs take care of the insulation issue. (Exhibit "B", excerpt of Pierce Deposition, p. 190, ll. 14-25)
- o Pierce has provided no documentation confirming the material was defective.
- o Pierce testified that he never sent a letter to Plaintiffs informing them that Guardian admitted the insulation was defective. (Exhibit "B", excerpt of Pierce Deposition, p. 191, ll. 3-12).
- o Pierce has never replaced the insulation and never pursued a remedy by Guardian despite testifying Guardian would replace the insulation. (Exhibit "B", excerpt of Pierce Deposition, p. 192, ll. 2-14).
- o Pierce is limited by the rule on admissibility of damages and therefore regardless of whether the insulation was defective Pierce is not entitled to damages for defective insulation based on his own admission that he

failed to mitigate his damages by having the manufacturer pay for the replacement of the insulation.⁸

- Item 13
 - **Un-reimbursed material costs - \$3,277.80**
 - Pierce also produced a document called accounting dated August 22, 2005 which stated a list of materials in the amount of \$1194.00. (See Exhibit "R"). In his deposition, Pierce was asked why there was a difference in the amounts. (Exhibit "B", excerpt of Pierce Deposition, p. 197, l. 7 to p.198, l. 8)
 - The following was taken directly from the deposition. Q. "I've never seen anything else that says \$3,277.80. Do you think the \$1194.00 is included in the \$3,277.80?" A. "It could be. I honestly don't know." (Exhibit "B", excerpt of Pierce Deposition, p. 197, ll. 16-19)
 - The absolute uncertainty renders this as not being a valid offset.
- Item 14
 - **Punch List-\$5,000.00**
 - Damages list states, "Unable at present time to get estimate from handy man see list of items remaining. Best estimate is \$5,000.00." (Exhibit "R")
 - The damages list was created on May 8, 2009. The parties stopped work in July of 2005. The Punch List Pierce refers to was created on July 18, 2005 when work was stopped due to a payment dispute. (See Exhibit "S"). Pierce is required to produce an accounting of the actual costs to complete the work because if the work was legitimate punch list items they would have been repaired within 5 years.
- Item 15
 - **Legal Fees - \$8,500.00**
 - Legal Fees are not part of the cost of completion. Pierce will only be entitled to legal fees if he is determined to be the prevailing party.
- Item 16
 - **Concrete work labor cost landing and sidewalk - 20 hrs - \$1000.00**
 - Work was not part of the contract between the parties (Exhibit "A")
 - This was for a walkway and landing which was later added by Pierce.

Pursuant to the well established contractual remedies involving cost to complete and mitigation of damages, several of Pierce's alleged damages are clearly not allowable.

⁸ As a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts. Once a party has reason to know that performance by the other party will not be forthcoming, he is ordinarily expected to stop his own performance to avoid further expenditure...he is expected to take such affirmative steps as are appropriate in the circumstances to avoid loss by making substitute arrangements or otherwise. It is sometimes said that it is the "duty" of the aggrieved party to mitigate damages, but this is misleading because he incurs no liability for his failure to act. The amount of loss that he could reasonably have avoided by stopping performance, making substitute arrangements or otherwise is simply subtracted from the amount that would otherwise have been recoverable as damages.

Restatement (Second) of Contracts §350 (1981)

Furthermore, Pierce's accounting included items such as electrical fixtures, which under the contract are clearly allowance items. The list also included items such as door mats, blinds, paint for the basement floor, garage shelves which clearly were not part of the contract. (Exhibit "B", excerpt of Pierce Deposition, p. 198, l. 10 to p. 201, l. 17).

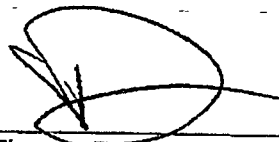
Therefore based on taking the admissible evidence produced over a four year period by Pierce, the most his offset damages could ever be are \$4,125.00. This is based on Plaintiffs stipulating to all admissible damages including the termite bill, the building license, the home inspection, the cost of the microwave and stove, the actual cost of the driveway repair, the estimated cost for the road repair. All other damages claimed by Pierce are based purely on inadmissible hearsay. Since the cost to complete as shown by Pierce clearly does not exceed the contract balance Pierce's counterclaims should be dismissed.

Pierce has been given four years to produce admissible evidence that would support his damages. As our Courts have repeatedly held, "[a] party opposing a properly supported motion for summary judgment ... may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495,496 (Ct. App. 1994).

Pierce has produced no admissible evidence that would show he incurred extra costs above the contract value. Pierce has underpaid on the contract. The payments were front loaded and the house was nearly complete as evidenced by the punch list sent by Pierce. When the stop work order was issued, the Project was ready for final inspection. Pierce cannot be allowed to assert damages which are not admissible and are based almost entirely on hearsay.

CONCLUSION

Plaintiffs' Motion for Summary Judgment is based on the uncontradicted sworn testimony of the Pierce along with damage figures produced by Pierce. That testimony establishes that the Pierce's claims rest on utter speculation and hearsay, are not documented, and have not resulted in damages in excess of the contract balance owed to Plaintiffs. For these reasons, Plaintiffs submit that Pierce's claims should be dismissed pursuant to S.C.R.C.P. 56 and a hearing be held to determine the amount of offset Pierce is entitled to based on the cost of completion as stipulated to. Plaintiffs held a perfected lien under the statute and, it is entitled to the protection which the statute provides. Plaintiffs should be determined to be the prevailing party based on its previous offer of settlement and should be granted a judgment in its favor against the Pierce



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Attorneys for Plaintiffs and
Third Party Defendant

October 28, 2010
Greenville, SC

HOME CONSTRUCTION CONTRACT

OWNER: Christopher A. Pierce
532 Galloping Ghost Road
Anderson, SC 29626
(864) 231 8272

CONTRACTOR: TRI-COUNTY DEVELOPMENT INC.

~~209 S. Summit Drive~~ 202 S. Summit Drive
Seneca, SC 29678
(864) 247 0605 72

LOT LOCATION: Parcel # 9, Lot A
Coneross Point
Seneca, SC 29678

A. GENERAL DESCRIPTION OF THE PROJECT

The Contractor to build and the lot owner to pay for the construction of a single family residence generally in accordance with the same quality standards as the speculation homes built by the contractor in the Winding Creek Subdivision in Seneca, SC (208 Star View Drive and 401 Misty View Court), as specifically modified and changed as stated herein.

B. TIME FOR CONSTRUCTION

The construction work to begin on Aug-15th +/- 2004 and to be completed by Aug-15, 2004. The contractor agrees to a \$25,000 per day penalty if not completed by the above due date. Time is of the essence of this contract.

C. CONSIDERATION

In consideration, the owner agrees to pay to the contractor \$1000.00 on the signing of this contract with a total balance due upon final completion (subject to amounts added or deleted for changes by written change order) of \$183,000.

D. CONTRACTOR RESPONSIBILITY

In consideration, the contractor agrees to build a family residence in accordance with the terms of this contract and in furtherance thereof to supervise and direct the work of all subcontractors and shall use his best skill and attention to detail and be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified herein, the contractor shall provide for and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other goods, facilities and services necessary for the proper execution and completion of the work. The contractor shall maintain order and discipline among employees and shall not assign anyone unfit for the task at hand. The contractor shall be responsible for and indemnify the owner against any acts and omissions of employees, subcontractors and their employees, or others performing the work under this contract and contracting with the contractor. The contractor warrants to the owner that all materials and equipment incorporated are new unless otherwise specified herein and that all work will be of good quality and free of defects. The contractor shall pay all sales, use and other taxes related to the work and shall secure and pay for all building permits and other permits, fees for water meter, electrical line hook up, telephone line, inspections, and licenses necessary for the completion of the work unless otherwise specified herein. The contractor shall comply with all rules, regulations, laws, ordinances, and orders of any public authority bearing upon the performance of the work relating to this contract.

E. DEFINITION OF TERMS

As used herein, the term "plan" shall refer to house plans made available to the contractor by the owner and prepared by Breland and Farmer Designers, Inc., numbered EE - 1710. Note well, that the house to be built is to be a mirror image of the plan as drawn.

F. DETAILED SPECIFICATIONS

Basement

12 inch wide concrete block walls with sufficient blocks to obtain a 9 foot high basement ceiling. Four inches of gravel under floor concrete slab with 6 mil polyethylene sheeting used as vapor barrier and termite shield. Framed walls to be framed using SPF, #2 BTR, 2" x 6" studs, 16" on center with 7/16 OSB sheathing and vapor barrier. One 3 foot wide, 9 light, metal door, one double wide window unit, and one triple wide window unit to be installed in the back (framed) wall to match the windows and door on the back wall of the upper level per the plan. Interior walls of the basement will be constructed with SPF, #2 BTR, 2" x 4" studs only as needed for support of the main level floor. Circuit breaker panel, electric water heater, and HVAC installed in basement. Plumbing roughed in for 3 piece bathroom. Electrical wiring will be installed as needed to pass the code. No separate heat pump to be installed for the basement. All exposed cement block outside walls to be covered with stucco. All exposed framed outside walls to be covered with vinyl siding.

Main level

Flooring to be 2 inch trusses with 3/4" tongue and groove plywood. Exterior walls on upper level to be framed using SPF, #2, BTR, 2" x 4" studs 16" on center with 7/16 OSB sheathing and vapor barrier. Roof system trusses to be 24" on center with 1/2" OSB, 30 lb felt, and 30 year architectural roof shingles. 50 Gallon electric hot water heater. Georgia Pacific vinyl siding except stone on front wall of master bedroom. Insulation for roof - R30 fiberglass; floor - R19 fiberglass; outer wall and all interior walls - R13. Interior doors - 6 panel Masonite with 2 1/4" door and window trim (moulding). All windows to be picture framed with 3 1/4" speed base.

Lot Clearing, Grading, and Septic tank and drain field Installation

Lot clearing and removal of debris, installation of septic tank in accordance with Oconee county permit, water line, telephone line, and electrical lines to house. Final smooth grading with no seeding or landscaping.

Allowances for cost of materials

Plumbing fixtures	\$2,000.00
Electrical fixtures	2,000.00
Cabinets (kitchen and bath) and counter tops	6,000.00
Flooring (carpets, vinyl and ceramic tile)	6,000.00
Stone natural or cultured (fireplace and partial front of house)	2,500.00

*allowance money
used? invest
money?*

Concrete Driveway

Concrete Driveway over gravel base
(50 feet long x 12 feet wide
for 25 feet then fan to 14 feet wide to garage.

POSSIBLE UPGRADE

Concrete Driveway 70 to 90 feet long x 20 feet wide over gravel base
Owner to pay required additional amount over contract price

Windows

Number, position, and approximate width per plan. Height on upper level to accommodate (lower) gable roof. Double hung, white, double glass, insulated, all vinyl windows throughout. Basement windows and door to match those on rear wall of upper level.

POSSIBLE UPGRADE

Vinyl casement windows throughout instead of double hung vinyl windows
Owner to pay required additional amount over contract price

Fireplace

48 inch wide insert with gas log, natural or cultured stone floor to ceiling facing with
mantle

POSSIBLE UPGRADE



Wood burning fireplace, 60 inch insert, chimney at roof to be covered with vinyl
siding
Owner to pay required additional amount over contract price

Interior doors

6 panel Masonite. Front double doors to be selected by owner and stained, not
painted as are other interior doors, except rear doors on both upper and basement levels
and garage side door to be 9 light metal doors. Double garage door with electric opener.

Interior and exterior door hardware

Polished brass lever type except exterior front door to be latch type.

Floor Covering

Vinyl floor covering in Kitchen, Eating Area, and Utility Room
Carpeting in Dining Room, Living Room, all Bed Rooms and Bed Room Closets
Ceramic Tile 5 feet x 13 feet front interior entrance and 6 feet x 14 feet front, outside porch

POSSIBLE UPGRADE

Ceramic floor tile instead of Vinyl floor coverings
Owner to pay required additional amount over contract price

Electrical

220 volt, circuit breaker electrical panel with space for expansion to accommodate basement wiring. Electrical panel to be installed in basement. 50 Gallon electric water heater wired to electrical water heater timer. HVAC to be installed with water heater in basement. Ceiling fans and electrical outlets per plan.

POSSIBLE UPGRADE

Electrical panel of rating sufficient to avoid dimming of lights upon HVAC start up.
Owner to pay required additional amount over contract price

Plumbing

All supply pipes to be 3/4" copper; all waste pipes to be PVC.

Attic

Pull down stairs to access attic over garage and to access attic over main level per plan.

TV and Telephone outlets

TV and telephone outlets in living room per plan and in all bedrooms. Note: Use "RG 6/U" TV lead in cable to allow Satellite TV reception. TV antenna to be located at roof location of chimney.

Stairway to basement

Per plan

Deck and rear patio

Wood deck (no external stairway to ground) and concrete slab patio per plan.

Bathrooms

Each bathroom to have painted or stained (at owner's option) wood, wall mounted, medicine cabinets, wall mirrors, and metal framed, clear glass shower door on polyester plastic shower enclosure. Centrally located skylight and whirlpool tub in master bath. Polyester plastic, tub surround bathtub with shower head, clear glass door and clear, fixed transom window in 2nd bath. Counter tops - cultured marble with integral basins. Toilets - siphon jet with elongated commodes.

Kitchen

Revise arrangement of units per Exhibit B

Integral oven and range to be self-cleaning, smooth top unit. Custom cabinets - stained finish. Double stainless steel 8 inch deep sink with Insinkerator disposal. Counter tops - formica. Dishwasher. Built in microwave unit with ventless fan and light above range. Ice maker hook up at refrigerator location.

Utility room

220 outlet and outside vented metal vent tubing for dryer. Set tub per plan.

Air conditioning and heating

TRANE Heat pump, 3 ton, 12 SEER rating.

POSSIBLE UPGRADE

Heat pump 3 1/2 ton, 12 SEER, 1 zone with basement ducting, or
Heat pump 3 1/2 ton, 12 SEER, 2 zone with basement ducting, or
Heat pump 2 1/2 ton, 12 SEER and heat pump 1 1/2 ton, 12 SEER (2 zone) with
basement ducting
Owner to pay required additional amount over contract price

Exterior

Vinyl Siding with stone on front of Master Bed Room. Chimney - vinyl siding.

Front porch

Dimensions 6 feet x 14 feet, ceramic tile flooring, 4 columns only with brick steps on front of porch only (not on sides of porch).

Roof

Gable roof (not Mansard per plan) with 9 foot ceilings on both levels except cathedral ceiling in living room, dining room, and kitchen and tray ceiling in master bedroom. 4 inch seamless gutters with 3" x 4" aluminum downspouts. Roof over master bedroom and type window per plan.

Deck and patio

Treated Wood deck - partially covered by extension of gable roof.

Patio - concrete slab

G. PAYMENT SCHEDULE

Payments to be made as construction progresses in accordance with the following schedule:

1. Upon completion of clearing the lot, building the foundation concrete block wall and framing the basement walls: \$50,000.
2. Upon completion of house to the "dry-in" stage including exterior sheathing on framing with windows and doors set and black paper on the roof: \$50,000.

3. Upon completion of mechanical work and installation of HVAC, electrical wiring, plumbing and rough-in and pouring of garage floor: \$50,000.

4. Upon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl, and ceramic tile, finish moulding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring the driveway: \$30,000.

5. Upon final inspection when building code approval certificate is obtained and after all items are completed to the owner's satisfaction: \$3,000.

TOTAL CONTRACT PRICE: \$184,000

Developer/Contractor:

Developer Jeff Gray Date 7-24-2004

Contractor Melinda Holbrooks Date 7-24-04

Owner: Christopher Pierce Date 7-24-2004

X

Answers to Interrogatories From Tom Dudley

All documents are available upon request. I will charge \$1 per copy and plus my time of \$100 per hour for all copying activity. There will be additional copying charges for graphics work above 8 x 10 size. Some documents may not be released due to proprietary nature, copyrights, or other legal requirements that supercede the discovery requirements.

1. Names of Witnesses - Mark Simone, Javier Gonzalez, Painters at Watson Painting, Edith and Andrew Pierce, Jeff Gray, Melinda and Nathan Holbrooks, Steve Crooks.
2. Photographs, plats, and sketches -
Plats available at Oconee County Assessors Office plats of lot where I live.
Photographs available upon request with special digitizing fee and color copying fee. Architectural drawings are the property of the architectural firm, Breland and Farmers Inc. and may not be distributed per copyright laws.
3. No insurance coverage for lawsuits on the house
4. See write up as attached file for damages
5. Expert Witnesses-
 - a.
 - A. Jeff Gray - Contract Disputes, Lack of planning and coordination of home building project., activities for amended contract, Breach of contract
 - B. Melinda Holbrooks- Validity of building license, purpose of her signing contract, her relevant activities on the building project. Her involvement with amended contract.
 - C. Nathan Holbrooks - construction methodologies, contract disputes business dealings with Jeff Gray, Contract disputes, locked out of house in July 2005. his state licensing credentials, his knowledge to conversations with Jeff Gary and Chris Pierce.
 - D. Edith Pierce- Contract negotiations, character witness, discussions of contract with plaintiffs, her knowledge of architecture and contract disputes and activities during home construction
 - E. Andrew Pierce - Contract preparation, disputes, amended contract, negotiations discussions, home construction activities., breach of contract, legal documentation. Character witness.
 - F. Javier Gonzalez- Character witness, construction methodologies, expert in tile and architectural plans, plus, building construction.
 - G. Steve Crooks- tiling and home construction methods.



- H. Mark Simone – architectural plans and home construction methodologies
- b. disputes with builder
- c. N/A
- d. Melinda and Nathan Holbrooks have building license
Other address information not currently available some available in phone book and
Also upon further request. Due to privacy issues I will have to discuss with court
Before releasing this information.
- e. see letter a.
- f N/A

6. Official Capacity of witnesses –

Andrew Pierce – attorney
Edith Pierce – homemaker, professional artist and architectural design expert
Mark Simone – Professional builder-
Javier Gonzalez – construction home builder
Steve Crooks – Tiling Expert
Jeff Gray – Developer
Nathan Holbrooks – licensed builder
Melinda Holbrooks – licensed builders

7. I have not been party to any other civil action in South Carolina except this one.
8. ??? Not disputing that builders signed the building contract. Need further clarification on this question.
9. Jeff Gray, Melinda Holbrooks, Chris Pierce signed building contract
10. See “amended contract” which Jeff Gray and Nathan Holbrooks should have.
11. A letter was sent by Andrew Pierce to the plaintiffs Holbrooks and Gray confirming a meeting and agreement of April 1, 2005 between Andrew Pierce (my agent), Melinda and Nathan Holbrooks, and Jeff Gray.
12. The letter that was sent confirmed the agreement that was established April 1, 2005.

13. A call was received at my residence in the evening hours of June 28, 2005. At this time Mr. Gray requested \$30,000 be paid by me for the 4th payment of the building contract. I informed him that he needed to finish the construction requirements for payment of the 4th payment in the construction contract before he could be paid as well as settle up on money I had spent for work that he was responsible for inclusive of the 4th payment. He indicated that I need not worry about the timing and that I had a one year warranty and he would gladly take care of any items listed in payment 4 not meeting my satisfaction. I told him that I would have to have all work completed as required in the payment schedule of the construction contract before I could make any payment. Then he stated to me that he would "Stop all work" if I did not pay him now. I told him stopping all work was not allowed based on the terms of the contract and that if he chose this path he would be in "breach of contract." He subsequently said, "I'm fucking tired of this" and hung up the phone.
14. ?? Plaintiff Jeff Gray indicated that he planned to stop all work if he was not paid June 28, 2005
15. Plaintiff needed to complete ALL items listed for the payment schedule of payment 4 and failed to complete them. He was informed of this on June 28, 2005 and refused to complete in defiance of the building contract. Therefore I was not contractually obligated to pay him until he completed the items listed for the 4th payment. Witnesses include myself Andrew Pierce, Edith Pierce, Javier Gonzalez, Mark Simone, and Steve Crooks.
16. Plaintiff Gray refused to do any further work on the house construction project after June 28, 2005. A "letter of intent" was sent to builder and developer for them to sign and indicate what their intentions were for the house project (whether to stop work or to restart work) and they refused to sign, so they were not allowed to restart building on the home project after their breach of the contract. I was under no obligation to allow them to restart the home building project after Mr. Gray had breached the contract by stopping work thereby ending my obligations to him and the construction contract.
17. see item 4

I have attempted to complete these questions to the best of my ability, however if further information is requested that is within the legal bounds of the discovery process I will be more than happy to comply with it upon written request. I may also need some clarifications on the exhibits cited including exhibit A referenced.

Very Truly Yours,

Chris Pierce

Partial Answer to Request for Discovery & Request from Plaintiff

Bank and Check Account Statements

Bank Statements for July 2004 - September 2005

July 2004 -	\$1,097.56
August 2004 -	\$1,771.13
September 2004-\$10,765.03	
October 2004 -	\$8,064.51
November 2004 -	\$7,002.08
December 2004 -	\$20,300.10
January 2005 -	\$26,423.43
February 2005 -	\$1,640.21
March 2005 -	\$8,663.11
April 2005 -	\$13,376.01
May 2005 -	\$7,333.00
June 2005 -	\$17,277.11
July 2005 -	\$46,097.66
August 2005 -	\$18,846.13
September 2005 -	\$37,833.40

Check Account Balance

1 could address, not me, because I think this is
2 either something maybe Jeff Gray gave to my
3 father. I honestly saw this and I don't know what
4 this is, either, I really don't. It may have been
5 the initial starting point for the contract
6 negotiations on my house, but it's not something I
7 know about, either. We have a different contract
8 apparently than this.

9 Q. And did you prior to entering the contract with
10 Tri-County and Melinda, did you -- had you seen
11 Exhibit 2 before?

12 A. I don't think I had. I mean, I went through my
13 files last night and I saw this thing and I was
14 like where did this come from.

15 Q. Well, you don't have a specific recollection if
16 you saw it before you signed it?

17 A. No, I don't recall seeing this, you know, either
18 that or my memory is going or something. I don't
19 know. I have here in my notes the actual contract
20 that we did sign, if that would help. Is this
21 something we could ask my father or is that not
22 allowed?

23 Q. He's not being deposed today.

24 A. But we could --

25 Q. Bring him back to take his deposition, if you want

1 A. Right. I do have a question. Is this the
2 document that you said I didn't send to you the
3 other week? Is this the same one?

4 Q. You know what, Mr. Pierce. Guess what? I'm going
5 to ask you the questions and you're going to
6 answer them. I'm sorry that you don't understand
7 and that's all right. I don't expect you to
8 understand. That's all right.

9 A. I just want to clarify things, that's all, so we
10 can move forward.

11 Q. Item one -- and this is what you contend your
12 damages are, isn't it? This is your damages list?

13 A. That's correct.

14 Q. Item one, "Building license permit required in
15 order to complete house, \$700."

16 A. Right.

17 Q. Now, I've seen a copy of the building permit you
18 pulled in your name.

19 A. Right.

20 Q. I didn't see a bill that said \$700, a check where
21 you paid it. Do you have that?

22 A. That's public record. You can go to building
23 codes and get it anytime.

24 Q. "Termite letter - required for final inspection,
25 Ocone County Building Codes." Now, you talked to

1 Q. Now, the contract does not apply -- does not call
2 for a washer, dryer or refrigerator, right, or
3 does it?

4 A. Where are you looking right now?

5 Q. My Exhibit 12, item number four, appliances for
6 the \$1984.72. I have seen that receipt. The
7 contract we just looked for does not include
8 washer, dryer or refrigerator, does it?

9 A. Let's see. Ice maker hookup at refrigerator
10 location. I guess that's just a hookup then. I
11 don't know. When I looked at that quickly, I saw
12 refrigerator. So if that's not included, then I
13 will have to revise that for you.

14 Q. And the washer and dryer are not included, right?

15 A. I don't see it listed here, but I don't know.

16 Q. Look at the contract.

17 A. I would say that if these items -- if the washer,
18 and dryer and the refrigerator are not included, I
19 will have to revise that, but if they are, then it
20 will stand. I will have to review the contract
21 with the author of the contract to find out if
22 there's another session that has reference. As
23 far as I know, these are the only references.

24 Q. And your dad drafted this contract, didn't he?

25 A. Correct. Yeah. But if that's the case, I will

1 make an amendment to that.

2 Q. The next item is time spent completing house, 149
3 hours and \$7,450?

4 A. Right.

5 Q. What is your hourly rate? I didn't have a
6 calculator handy.

7 A. My hourly rate?

8 Q. What did you use as your hourly rate?

9 A. I don't know. I will have to do the math on that.
10 What I had was I had calculations for both my dad
11 and me, and I would have to look at my time logs
12 to see. But normally for my business for what I
13 do -- oh, there it is.

14 Q. Is that your time log?

15 A. Yeah, that's some of it there. Normally, for what
16 I do --

17 MR. DUDLEY:

18 Hold on. Let me mark it and then and you will be
19 able to continue.

20 THE WITNESS:

21 All right.

22 (Whereupon, the court reporter marked Plaintiff's
23 Exhibit Number 13 for identification.)

24 THE WITNESS:

25 okay. I've got two items here. I have time spent

1 completing the house and I have additional hours
2 of helper.

3 EXAMINATION RESUMED BY MR. DUDLEY:

4 Q. Let's ask about the first one. Time spent
5 completing house is 149 hours. Can you look at
6 Exhibit 13? Is that your backup for the 149
7 hours?

8 A. Yeah, it's some of it. That's not the entire
9 list.

10 Q. Again, that's what you gave me.

11 A. Well, you said that the other day that that's what
12 I gave you and you didn't have this paper and you
13 found that, so I don't know. I'll review my
14 records. If you're missing something, I'll look
15 and see what I can find.

16 Q. Let's look at item six on Exhibit 12, "Additional
17 hours of helper." Who was your helper?

18 A. My helper was my father.

19 Q. So five and six are you and your dad?

20 A. Right.

21 Q. And I'll look through this and I'm going to make
22 these exhibits, but I didn't see anything else
23 that had an hours thing, but we will look and see
24 if we can find it.

25 Item number seven, the driveway, now, other

1 get back with me. He called me back and gave me
2 that number.

3 Q. Is that for the entire driveway?

4 A. Yeah, that's for just the driveway. That's the
5 entire driveway.

6 Q. Look at Exhibit 14.

7 A. Okay.

8 Q. Now, that is a cost. Did you pay this man,
9 Affordable Asphalt?

10 A. No, this is just an estimate.

11 Q. So this \$2650, that's not work that was ever done?

12 A. Correct.

13 Q. And the repair road, what was that?

14 A. Outside in the front. You've seen it when you
15 came into the house the other day. There is a
16 large section of the road that was destroyed. And
17 it's, you know -- it was felt that probably there
18 was some negligence on the part of the equipment
19 they brought in that damaged the road. And so
20 that should be included in the recovery on this
21 lawsuit that they pay for the proper repair of the
22 road and so I got this price. He did tell me that
23 probably when everything was said and done, it
24 would be \$3,000, so I just put down that, but I
25 got this for you.

1 Q. But there is not for your driveway, this is to
2 repair the road?

3 A. This is to repair the road, White Owl Road.

4 Q. And IT has never been repaired, has it?

5 A. No. In other words, I'm waiting for the money
6 before I repair it. And I got a lot of grief down
7 the road from people about that. They want it
8 repaired.

9 Q. So Exhibit 14 Affordable Asphalt, that's just AN
10 estimate?

11 A. Yes. In other words, this was a start. And he
12 told me, you know, that's just to do the road, but
13 he goes when all is said and done, it would be
14 around -- you know, orally he told me with every
15 little thing that you're going to want on it done,
16 it's going to be around \$3,000, so that's why I
17 put \$3,000 down there.

18 Q. Where did you get -- I didn't see -- where did you
19 get the actual concrete for your driveway?

20 A. I didn't provide any bills on that because I
21 didn't claim that because it was outside the spec.
22 Where did I get it?

23 Q. Yeah. You're trying to --

24 A. Okay. So you want to hear -- go ahead.

25 Q. Under item seven, you're claiming damages of

1 \$6,000 to \$7,000 credit for what it would have
2 cost you to do the driveway if you had to pay
3 somebody to do it, right?

4 A. Correct.

5 Q. But in what you've supplied to me, you've admitted
6 you did the driveway yourself, right?

7 A. Right.

8 Q. The labor part?

9 A. Yeah.

10 Q. But you have not submitted any backup data and
11 part of your the driveway is in your time spent
12 completing the house, right?

13 A. Correct.

14 Q. And you've got all your materials, too, about,
15 like, the cutting in the laundry room closet, you
16 got all the drywall and the sheetrock, the
17 molding, and all and the wire shelving for that,
18 you went to Lowe's or Home Depot to buy those
19 materials, right?

20 A. I'm trying to remember how that was handled.

21 Q. Well, you got them in. I'll show you a little bit
22 later. You've got those broke out.

23 A. Yeah. I mean, some of those materials were -- I
24 think a lot of that was handled by my folks here.
25 And yeah, they went out somewhere and they got the

1 materials. The guy that did it was, like I said,
2 Mark Simone. We got the materials for him. He
3 said, you get all the materials and then you pay
4 me \$700. So I'm not even including -- I think I
5 must have the materials included separately in
6 that other equation.

7 Q. For your labor is in item five for the driveway,
8 but I couldn't see where you had materials for
9 your driveway.

10 A. Okay. So what you're asking now is you want to
11 know what my actual costs were to do the driveway
12 myself, is that what you're asking?

13 Q. Yes.

14 A. The company name was Morgan Concrete. I did three
15 slab pours to complete the driveway, three
16 individual slabs. The total cost was around \$2500
17 to do that. And then I had some additional costs
18 for, like I said, doing the sidewalks and the
19 steps in the back. And, again, the step is just
20 like it's debatable. Mr. Gray is right. There's
21 no step in the contract, but because of the
22 modification to the contract, there needs to be a
23 step. So then the question becomes who pays for
24 -- who is responsible for that since it was a
25 modification.

1 My assertion is that he's responsible
2 because we had to modify because he bid the house
3 wrong. His assertion would be that no, you
4 decided to change it, so you have to pay. So it's
5 a debatable issue, too. I have not even included
6 the cost of doing the sidewalks or the step in
7 here at all.

8 Q. I think you did. We will get to it,

9 A. Where do you see it?

10 Q. I'll show it to you. But you have a bill
11 somewhere from Morgan Concrete for the actual
12 concrete that was poured for your driveway?

13 A. Yes.

14 Q. So item eight, "Road repair," that's Exhibit 14,
15 that's just an estimate. All right. Nine,
16 "Cabinet work out of pocket costs," who is that?

17 A. That was Mark Simone that did the laundry room.
18 When I say cabinet work, I mean cabinets, the
19 closet, all that, you know, inclusive.

20 Q. Number 10, "Unreimbursed out of pocket ceramic
21 tile, \$2142." Now, that's the Steve Crooks?

22 A. Yes.

23 Q. And that's labor for the tile and for the
24 countertops, right?

25 A. Right.

1 Q. And it's your position that that was the
2 compromise is you did half and Jeff Gray was to
3 supposed to pay for the other half?

4 A. Right.

5 Q. The allowances, now, there is no dispute that the
6 cabinets, the flooring and the other allowance
7 items, they're in your house. You don't dispute
8 that? You're just saying I need to have an
9 accounting to know plus or minus as a result of --

10 A. Yes. I spoke to you on the phone about this at my
11 house. I said, these are the allowance items. On
12 page 51, Bates page 51, and if you total those, I
13 mean, what do they come to, about \$18,500. So, in
14 other words, what I did, I don't even have it
15 right. I've got \$18,000. But anyway, those are
16 just the totals.

17 And I state on the back page here, if you
18 read it, "Figure is based upon the in contract
19 allowance costs. This figure will be adjusted
20 based on material cost discovery recently
21 submitted by Mr. Gray." In other words, if he has
22 records to show that he did pay for some of these
23 things -- some of these things, material costs,
24 then that figure will be offset by that if he
25 provides that. I didn't see anything, so I don't

1 responsibility and you will accept that, won't
2 you?

3 A. No, that last part is not true. He was supposed
4 to notify us if he went over that amount, we'd cut
5 back. As a matter of fact, we did throughout the
6 course of the contract have to modify things
7 because he said some things, like, I think the
8 plumbing, some of the bathroom fixtures and stuff,
9 we can't get that because it's going to be too
10 expensive, so we had to keep it within the budget.
11 That was the way we worked it. He would let us
12 know hey, you can't spend over that because you
13 only got this much.

14 Q. "Defective insulation," number 12, and \$12,815,
15 that's the wood?

16 A. Yeah, the cost of taking all that stuff out. We
17 went you through that on the phone that basically
18 I have a relationship, financial arrangement with
19 Mr. Gray. I don't have it with Guardian
20 Industries. If you want to go ahead and
21 countersue Harbin or Guardian, that's something
22 you could do, but I don't have any right. And we
23 argued that point that it was defective materials.
24 You could go directly to the manufacturer, but I'm
25 not really want to go get involved in all that.

1 So that's my position on that, you know.

2 As I said on the phone, the other part of it
3 is that you've got a contractor who, you know,
4 Nathan Holbrooks, we went to him after the
5 insulation was installed and we said, there seems
6 to be a problem here. There seems to be a very
7 bad smell. And he simply said to me and my
8 father, oh, that will all go away. And we said,
9 we never smelled nothing like that before. That
10 seems bad. Could you look into that? And he
11 said, oh, don't worry about it. It's just
12 natural.

13 So then we find out later with we call
14 Guardian Industries that was a defective batch, so
15 now we have this. And so he had a responsibility
16 to look into that and he didn't so, that's why
17 we're asking you guys to cover that cost.

18 (Whereupon, the court reporter marked Plaintiff's
19 Exhibit Number 15 for identification.)

20 EXAMINATION RESUMED BY MR. DUDLEY:

21 Q. Please look at Exhibit 15. This is the Woods
22 Restoration estimate. None of this work has been
23 done, has it?

24 A. No, it has not.

25 Q. Tell me how do you know -- what documentation have

1 I received that your insulation is defective?

2 A. I believe there was several phone calls that I had
3 placed and that my father had placed, and there
4 were some letters that were sent back and forth
5 with verification that the insulation was
6 defective. I think it was -- I forgot the
7 compound. I think it was urea-formaldehyde or
8 something that was somehow used improperly or
9 applied or something. I'm not a chemist.

10 This is probably an issue that you could
11 discover with my dad better than me. But the idea
12 was basically that they admitted responsibility at
13 the company.

14 Q. Do you have that in writing?

15 A. I believe it is somewhere. I would have to go
16 check my notes. My dad may have it in writing.
17 I'm not sure. I will have to go look into it, but
18 for sure we were both told by the individual,
19 Mr. Byrd, at the company that it was, indeed, a
20 bad batch and that they would cover it.

21 Q. And what did you do, if they said they were going
22 to cover it, what did you do to pursue that if
23 they said they would cover it?

24 A. Well, I told them I said we purchased, you know,
25 it through somebody else. We didn't have a direct

1 purchaser from you, so we'll let the vendor take
2 care of it.

3 Q. And when did you write a letter to Jeff Gray, or
4 Nathan or Melinda Holbrooks and tell them here is
5 the letter from Guardian Products, you need to
6 handle this? When did you do that?

7 A. I didn't do that because we had a breach of
8 contract and we weren't talking, so I never sent
9 out anything.

10 Q. You never sent it out?

11 A. Yeah. I figure it would all come up when this
12 matter came to court.

13 Q. What else do you have that Nathan, or Melinda
14 Holbrooks or Jeff Gray through that Guardian
15 Products if that is, in fact, the manufacturer of
16 the insulation, had a bad batch of urea or
17 whatever it is before they installed it?

18 A. As I said earlier, they installed it. Immediately
19 myself, my dad and my mother, we went to Nathan.
20 We said, the smell here is unbelievable. He said,
21 that was normal. And I said, we never smelled
22 that before. Could you please look into it? And
23 he apparently never did look into it. Had he
24 looked into it, we wouldn't be here now talking
25 about it because he would have replaced it with

1 the proper insulation.

2 Q. But you did look at it and you have not done
3 anything to pursue with Guardian to have them
4 replace it?

5 A. As of right now?

6 Q. Yes.

7 A. No, because it's a matter between the person I
8 purchased it from, which is Jeff Gray. I don't
9 have -- I told this to you on the phone. I do not
10 have a financial relationship with Guardian
11 Industries. My financial relationship is with
12 Mr. Gray. So what he can do, in turn, is
13 countersue them, but I don't have any standing and
14 so I'm going to approach it this way.

15 Q. Well, that's your choice, because you do have a
16 right to go after them, even though you're not a
17 contractual --

18 A. Yeah. I don't want to get suing everybody in this
19 contract. I just want to sue one person and be
20 done with it, you know. If I start going after
21 every little person here, I would be in court
22 forever. So I would rather have him take care of
23 it.

24 My feeling is will we not had Jeff Gray -- I
25 mean, Nathan Holbrooks tell us that it was fine

1 no longer fits, so we had a problem. Who is going
2 to pay for the extra? Should I pay or him?
3 That's where the issue came up. That's why
4 everything has changed. There is no allowance
5 there for driveway. It's just a specification on
6 page Bates 51.

7 Q. Item 13 on your damages is, "Unreimbursed
8 materials cost." It's \$3277.80, and I've got
9 Exhibit 16, which is the accounting for \$1194.

10 A. Okay.

11 Q. And I'm trying to figure out where the other -- I
12 mean, do you have an idea of where the other --
13 there is a lump sum of all these Home Depot and
14 Lowe's charges. Do you think that's the balance?

15 A. I don't know.

16 Q. Where did the -- I've never seen anything else
17 that says \$3277.80. Do you think the \$1194 is
18 included in the \$3277.80?

19 A. It could be. I honestly don't know. I mean, you
20 should have everything. Have you double-checked
21 your notes in discovery?

22 Q. Yes. This is an accounting. It's \$1194 and
23 there's not an \$1194 on your Exhibit 12.

24 A. Right.

25 Q. And there's nothing else that would add up to

1 \$3277.80. And I'm asking you do you know whether
2 or not when you put your damages together, is this
3 \$1194 included in the \$3277.80?

4 A. I don't know. I would have to review my notes.

5 Q. Did you compile Exhibit 16? Look at Exhibit 16.

6 A. Yeah, I compiled that.

7 Q. You typed it, not your dad?

8 A. I don't know. It could be my dad typed it. I'm
9 not sure.

10 Q. Item four, "Light fixtures/fans," that's an
11 allowance item, isn't it? Light fixtures is an
12 allowance item, isn't it?

13 A. Where are you now? I'm sorry.

14 Q. Exhibit 16, item four.

15 A. Light fixtures and fans.

16 Q. That's an allowance item on your contract, right?

17 A. I'm not sure of that. It might be in addition to
18 what was budgeted for the allowances. In other
19 words, that might be out-of-pocket costs that I
20 incurred for lighting and fans. I'm not sure. I
21 would have to find out the receipt to see exactly
22 what that is.

23 Q. Page 51 in your contract, electrical fixtures, is
24 an allowance, isn't it?

25 A. Right, it is, but if that's on there, that may be

1 something that was not reimbursed or something
2 that I purchased separately.

3 Q. The door mat, where is it in the contract that
4 you're supposed to get a door mat?

5 A. Where it is is that under this contract on the
6 front here it says, "Same quality standards as
7 specification homes and contractor Winding Creek
8 subdivision Seneca at this address." I believe at
9 that address there were door mats, so we expect
10 normally most houses have a door mat. It's part
11 of the house that you have that included.

12 Q. Did the house in the other subdivision have drapes
13 and blinds?

14 A. I don't recall.

15 Q. Did the house in the other subdivision have a
16 mailbox?

17 A. I don't know. I didn't look at that.

18 Q. But you think a door mat should have been included
19 in a construction contract?

20 A. Well, I mean, I don't know. I mean, it's
21 certainly something if you would like to dispute,
22 then feel free, but my understanding is that
23 normally these kind of finished things, like, a
24 step into the house and things, those are things
25 that are included, you know. Just like the step I

1 have in back. If I have no step, you would walk
2 off two or three feet, so you've got to make
3 something that works, something that's going to
4 be, you know, workable in the house.

5 Q. Item seven, "Lumber for broom closet," that's
6 what Mr. Simone did?

7 A. That must be that, yeah.

8 Q. The same with number nine, "Gypsum board for broom
9 closet," that's what Mr. Simone did?

10 A. Yeah.

11 Q. "Paint for broom closet," that's something
12 Mr. Simone did?

13 A. Right.

14 Q. "Paint for basement floor," that's not in the
15 contract, is it?

16 A. Paint for basement floor. I don't know, you know.
17 I'd have to consult with my father on that because
18 that might be an item he put in because he
19 actually did the painting on the floor and so I
20 would have to consult with him as to why that's
21 there.

22 Q. The same way with the garage shelves, the lumber
23 for the shelves in the garage, that's not in the
24 contract, but you need to consult with your dad?

25 A. Which one?

1 Q. The item 13. Do you need to ask your dad about
2 that?

3 A. One by two lumber for garage shelves.

4 Q. Is that in the contract?

5 A. That's confusing because there's not lumber on the
6 shelving, so it may be that that's something my
7 dad could explain. I just don't know. Master
8 bedroom bath -- well, go ahead. You're asking me
9 questions.

10 Q. That's the fixture you had to buy, right?

11 A. 14?

12 Q. Yes.

13 A. I believe so, you know. See, my dad did a lot of
14 work on those fixtures. And that's something that
15 you really need to talk to him about because I
16 didn't procure those, and so I'm getting into an
17 area that I don't have the knowledge on.

18 (Whereupon, the court reporter marked Plaintiff's
19 Exhibit Number 17 for identification.)

20 THE WITNESS:

21 This may very well have been prepared by my dad.
22 I'm not really sure, but some of it looks
23 familiar. I recognize what's on there, but if you
24 want verification for all the items, I would
25 have to get together in conference with my father

161 McCracken Drive
Seneca, SC 29678
April 4, 2005

Mr. Nathan and Mrs. Mandy Holbrooks
716 Holbrooks Drive
Seneca, SC 29678

Mr. Jeff Gray
202 South Summit Drive
Seneca, SC 29672

RE: Chris Pierce house

Confirming our discussion on April 1, 2005, it has been agreed upon by the parties above, the undersigned, and Chris Pierce that the building contract dated July 24, 2004 be modified as follows:

1. Payment # 4 per contract will be due upon completion of all work on the premises by the builder in accordance with the contract and prior modifications thereto, providing completion of all work is confirmed by an inspection of the premises by Chris Pierce

2. Should there be any disagreement as to completion of all work on the premises, the parties agree to abide by the results of an inspection of the premises by a mutually agreed upon 3rd party, the cost of such inspection to be charged to Chris Pierce.



3. Thereafter, payment # 5 per contract will be due upon the builder obtaining a certificate of occupancy from Oconee County. The amount of payment # 5 to be increased or decreased in accordance with a detailed accounting by the builder of:

- a. Added costs and credits on cost of materials in comparison with the various allowances for materials per contract and
- b. Added costs or credits for labor and materials for verbal modifications of the contract.

Other matters discussed are as follows:

1. It has been decided that during final grading, installation of a drain pipe in the ditch at the street will NOT be required at the street entrance to the back yard.

2. A concrete driveway upgrade to 18 feet wide x 25 feet from the garage entrance and 15 feet wide x 94 feet thereafter to the street has been decided. In order to decide whether it will be prudent to hire another contractor to install the concrete driveway, please provide the following information:

- a. Credit for concrete driveway per contract and
- b. Added amount for upgraded driveway as specified above.

3. The interior ceramic tile at the front entrance, 9 feet wide x 5 feet is to extend the full width of the entrance wall (NOT just to the width of the door frame) to include:

- a) the narrow strip between the front wall and the stair opening,
- b) all of the closet floor, and
- c) across to the stair opening.

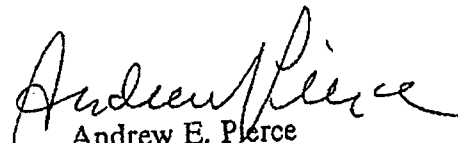
4. We understand the light kits for the ceiling fans will be universal as to fit on fans.

5. Selections (from Lowes, Anderson) for the pivot glass door for the shower and the sliding glass door for the tub shower enclosed.

6. Lighting fixtures in MBR closet and Hall between guest bedrooms to be changed, as discussed. A revised sheet, page 3, reflecting this change is enclosed.

7. Copy of Moon Brothers tile company calling card enclosed.

8. The cultured stone selection is confirmed to be that dated 3/25/05, page 8 (copy enclosed).


Andrew E. Pierce

Enclosures

cc: Chris Pierce

jpgcover.ltr

161 McCracken Drive
Seneca, SC 29678
July 18, 2005
By certified U.S. Mail

Mr. Jeff Gray
Tri-County Development, Inc.
202 South summit Drive
Seneca, SC 29672

copy to: Mr. Nathan and Mrs. Mandy Holbrooks
716 Holbrooks Drive
Seneca, SC 29672
Chris Pierce
Anderson, SC

RE: Chris Pierce house

Confirming our telephone discussion of July 11, 2005, it appears necessary to insure future amicable relations between the parties to the building contract of July 24, 2004 that you and Melinda Holbrooks sign and date the enclosed agreement and sign and date a second document indicating the proposed work necessary to complete the subject house.

1. You advised on July 11, 2005 that you did NOT agree to the oral "gentlemen's agreement" contract modifications made at the April 1, 2005 meeting, as recorded in my letter to you and the Holbrooks dated April 4, 2005.

2. You advised on July 11, 2005 that you have "stopped work (on the house) to resolve payment issues" which seemingly were resolved by the agreement entered into at the April 1, 2005 meeting. This confirms your June 28 talk with Chris Pierce (copy enclosed of e-mail confirmation). Accordingly, please confirm that you have stopped all future work, as requested in the July 6, 2005 letter of Chris Pierce or indicate what items you propose to complete and refuse to complete should you wish to resume work. For your convenience there is enclosed herewith a copy of the latest revision of the "punch list" of items considered necessary for completion of the building contract. If desired, please indicate directly on this list those items you will complete and those which you will not complete. After signing and dating this list, please return it to me together with the enclosed Modification Agreement after signing and dating (and having your signature witnessed or notarized).

(Note, a separate copy of the Modification Agreement is being sent to Mrs. Melinda Holbrooks for her signature.)

Enclosures


Andrew E. Pierce



modcontract

AGREEMENT

Agreement made as dated below between the parties: Developer, Jeff Gray, Contractor, Melinda Holbrooks, and Owner, Chris Pierce to modify the existing building contract, dated July 24, 2004, as follows:

In consideration of the willingness of the above parties to continue performance under the contract, dated July 24, 2004, it is agreed that:

1. Payment # 4 per said contract will be due upon completion of all work on the premises by said developer and contractor in accordance with said contract and modifications thereto, providing completion of all work is confirmed by an inspection of the premises by Chris Pierce. The amount of payment #4 to be increased or decreased in accordance with a detailed, specific item accounting of payments by said developer and contractor (including substantiating receipts, if required) of:

- a. Added costs and credits on cost of materials in comparison with the various allowances for materials per said contract and
- b. Added costs or credits for labor and materials for verbal modification of said contract.

2. Should there be any disagreement as to completion of all work on the premises, the parties agree to abide by the results of an inspection of the premises by a mutually agreed upon 3rd party, the cost of such inspection to be charged to Chris Pierce.

3. Thereafter, payment # 5 per contract will be due upon the builder obtaining a certificate of occupancy from Oconee Ccounty.

In Witness of the signature thereof
_____ date _____

Jeff Gray, date _____

In Witness of the signature thereof:
_____ date _____

Melinda Holbrooks, date _____

In Witness of the signature thereof:
_____ date _____

Chris Pierce, date _____

[Yahoo!](#) [My Yahoo!](#) [Mail](#)**YAHOO! MAIL**Welcome,
aepiercepat
[[Sign Out](#), [My Account](#)]Search
the Web[Mail Home](#) - [Mail Tutorials](#) - [Help](#)[Mail](#) ▾ [Addresses](#) ▾ [Calendar](#) ▾ [Notepad](#) ▾[Check Mail](#)[Compose](#)[What's New](#) - [Mail Upgrades](#) - [Mail Options](#)[Search Mail](#)[Search the Web](#)Great Card for
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This

message is not flagged. [[Flag Message](#) - [Mark as Unread](#)]**From:** "yoda" <chrispie@charter.net> [View Contact Details](#)**To:** "Jeff Grey" <slkgray1@aol.com>**CC:** "Andrew E. Pierce" <aepiercepat@yahoo.com>**Subject:** Discussion 6/28/05**Date:** Tue, 28 Jun 2005 03:42:43 -0400

Dear Jeff,

This E-mail is written to you regarding our discussion this morning.

First off let me explain that you work for me and I don't work for you, so don't call me up demanding anything from me. You will be paid when you have fulfilled your contractual obligations as set forth under the contract and the agreement with my father regarding the payment schedule compromise established in March/April. You will not be paid until all work is completed on the house regardless of the 1 year warranty you mentioned. I will hire a building inspector to review the work when completed and if it meets my satisfaction we can start talking about payments. In the past I paid you before you had completed a particular phase of the contract because I trusted you had done all the work specified when you had not. This will not happen at the end of this contract. Besides, it is my impression that the work effort has been rather casual since about the month of February and the last payment at that

What's your Credit
Score? See it FREE!Blockbuster Online
\$4.99 first monthWhy Free Ringtones
Pay? Get Yours Now!\$300k Loan
\$1190/mo. Go!**PLAINTIFF'S
EXHIBIT**

TCD-000051

time. There has not been a full time work effort at my home since this time. When I signed a contract with you, you indicated you planned to deliver a completed house to me in 6 months. Instead we are approaching 1 year. Beyond 1 month additional time for plan modifications and 3 hurricanes (weather) last September, there is no excuse for the delays on my home. This is my impression. The only reason I see for the delays is lack of work diligence, lack of planning, and poor scheduling.

Also regarding the \$30,000 payment, we need to settle up on all the allowances, debits and credits before the payment can be made. You need to send a FULL accounting for all your MATERIAL costs related to allowances, and any other costs or credits relevant to this project. No labor charges will be accepted in the allowance payments as SPECIFIED in the contract. If you are unclear as to the meaning of the allowance budget my lawyer will be happy to send you a letter stating your legal obligations. You will not be paid until you have completed this requirement as well.

Regarding legal matters, feel free to have your lawyer contact me or my attorney. I can be reached at 864.231.8272 and my lawyer Robert Deloche can be contacted at 803-506.4055. It is hoped this matter can be settled without the need for litigation. If you follow your obligations under the contract then that goal can be accomplished.

Very truly Yours,

Chris Pierce

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TCD-000052

6/28/05 7:58 PM

1 MR. DUDLEY:

2 I let her look at those, yeah. And she looked at
3 this one that I made an exhibit to your
4 deposition.

5 EXAMINATION RESUMED BY MR. PIECE:

6 Q. Are you ready?

7 A. Yeah, I'm ready.

8 Q. Okay. What I would like to know is that letter is
9 dated July 6th. And what I'm wondering is at that
10 time that's after the time that I'm stating that
11 you had asked for \$30,000 and told me that you
12 didn't want to do work and you -- I'm trying to
13 confirm that you stated that. And I also sent a
14 punch list of a lot of the things that are left to
15 do on the job, and I'm wondering what your
16 reaction to this letter was. What was your
17 response when you received this letter? Did you
18 contact me or my father?

19 A. I don't recall, but apparently one of my answers
20 was not to sign it.

21 Q. Okay. Did you call my father and tell him that
22 you were -- you wanted payment four, also?

23 A. I don't recall that conversation.

24 Q. Did you ever tell him that you would stop work
25 unless you received it?

1 with that document?

2 A. To put a stop work order.

3 Q. To put a stop work order on my house?

4 A. Correct.

5 Q. Okay. And why did you do that?

6 A. Because you locked us out of the house.

7 Q. So you in retaliation for me locking you out of
8 the house, you felt you needed to have a stop work
9 order against me?

10 MR. DUDLEY:

11 object to the form of the question.

12 EXAMINATION RESUMED BY MR. PIERCE:

13 Q. Was that the purpose of why you obtained -- you
14 were trying to obtain a stop work order is
15 retaliation, is that what you're testifying?

16 A. Because of lack of funds.

17 Q. Because of lack of funds now. So you're saying
18 that because you didn't have money that you felt a
19 need to do this?

20 A. We do it on all our jobs.

21 Q. When you say a lack of funds, what do you mean by
22 that? Can you be specific?

23 A. When the homeowner refuses to pay.

24 Q. When a homeowner refuses to pay what? Be more
25 specific.

1 that paperwork, is that correct?

2 A. Because you continued to work after we told you --

3 Q. Okay.

4 A. -- and he was working under my license.

5 Q. So it's three reasons. Is it three reasons that I
6 continued to work, that I did not pay schedule
7 four and that I locked the doors to the house?

8 A. Correct.

9 Q. Three reasons. Okay. In obtaining this
10 information that you have in those pictures, did
11 you on or around August 20th, 2005 enter my
12 property at 605 White Owl Lane in Seneca, South
13 Carolina for the purpose of taking those pictures?

14 A. To prove that you was moving furniture in under my
15 license when there is not supposed to be no
16 furniture moved in until the CO is received.

17 Q. Because I was moving furniture in. Okay. Did you
18 have permission from me to enter the property on
19 or around August 20, 2005?

20 A. I was the builder-contractor at the location.

21 Q. That's not what I'm asking. I'm asking did you
22 have permission from me to enter the property?

23 A. You give permission to me to contract your house,
24 so it was still under my contract.

25 Q. Did you see clearly posted no trespass signs on

CHRONOLOGY

- 6/28 J. Gray to Chris, telephone Request for 4th payment refused since not all requirements met, i.e., bathroom mirrors, all plumbing fixtures installed. No credit for driveway elected not to be installed per 7/24/04 contract. In addition, requirements of oral modification of contract agreed upon April 1, 2005 not met. J.G. advised will stop all work.
- 6/28 J. Gray to AEP, telephone advisory re telephone call to Chris. Will stop all work in view of conversation with Chris.
- 6/29 - 7/1 Portable toilet removed from job site.
- 7/5 M. Holbrook to AEP, request meeting to discuss punch list. Advised that J. Gray has stopped all work. M. H. advised that J.G. requested M. H. to make telephone call.
- 7/6 Letter from AEP to JG & Holbrooks requesting written confirmation of oral decision to stop all work.
- 7/8 Nathan H. to AEP by telephone. N.H. advised found house locked, could not work on punch list items. Advised check with J. Gray who has stopped all work.
- 7/11 J. Gray to AEP by telephone. AEP advised that need confirmation (written) as requested in 7/6 letter to J. Gray OR written indication of what items on punch list will or will not be completed.
- 7/18 J. Gray to AEP by telephone. J. Gray advised that he will not provide any written response as requested in 7/6 letter after consulting his attorney. He advised that he received letter from Columbia, SC attorney of Chris.
- 7/18 Certified Mail to J. Gray and Holbrooks. Request written confirmation that all work has been stopped OR written indication of punch list items to be completed or not to be completed per July 6 letter. In addition, requested that written agreement to essentially April 1 oral agreement be provided.

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Tri-County Development, Inc. and
Melinda Holbrooks,

C.A. No.: 2005-CP-37-788

Plaintiffs,

vs.

AFFIDAVIT OF JEFFREY A. GRAY

Christopher A. Pierce,

Defendant.

and

Christopher A. Pierce,

Third Party Plaintiff,

vs.

Jeff Gray,

Third Party Defendant.

FILED IN OCONEE, SC
CLERK OF COURT
2007 APR 19 A 10:46

My name is Jeffrey A. Gray and have been sued herein as Third Party Defendant, Jeff Gray. I am also the Owner and President of Tri-County Development, Inc., one of the named Plaintiffs.

I retained Robert K. Whitney, Esq. to represent Tri-County Development, Inc. and Melinda Holbrooks in pursuing a claim for money owed by Defendant Christopher A. Pierce. Mr. Whitney filed a Complaint as well as the Reply to Defendant Pierce's Counterclaim.

I received many copies of pleadings related to this lawsuit. I understood that Mr. Whitney would respond to all of them.

I subsequently agreed for Mr. Whitney to be relieved as counsel.

Upon going to the courthouse, I discovered for the first time that Mr. Whitney had



not answered the Third Party Complaint filed by Defendant Pierce. Mr. Whitney never told me he would not be handling this or that I should seek separate counsel on the third party claim.

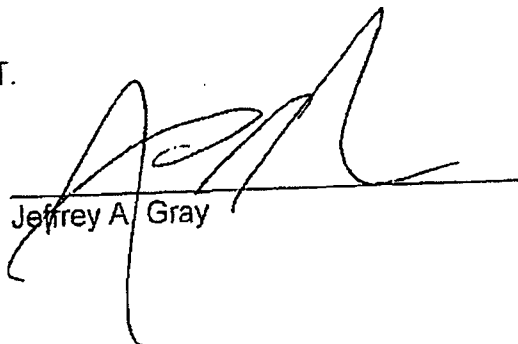
When I received the Order relieving Mr. Whitney as counsel, I met with another attorney who recommended Thomas E. Dudley, III, who is now my attorney. However, due to scheduling conflicts, Mr. Dudley was unable to meet with me until April 11th, 2007.

In anticipation of my meeting with Mr. Dudley, on April 9th, 2007, I made copies of the documents on file at the courthouse.

During the meeting with Mr. Dudley, he reviewed the court documents and it was discovered that an Order of Default had been entered against me on the Third Party Complaint. This was the first that I learned of the default. It was my understanding and belief that my prior attorney Mr. Whitney was representing me and would have responded to any pleading, including the Third Party Complaint.

I have valid defenses to Defendant Pierce's third party claims. Defendant Pierce owes \$30,000.00 and locked the builder out of the house, preventing Melinda Holbrooks from finishing the project.

FURTHER AFFIANT SAYETH NAUGHT.


Jeffrey A. Gray

Sworn to before me this 11
day of APRIL, 2007.


Notary Public, State of South Carolina
My Commission Expires: 1-29-2017

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Recorded this 26 day of
Sept 2005
Vol. #4 Pg. 78 and Certified
Register of Deeds, Oconee County

2005 SEP 26 P 4:23

NOTICE AND CERTIFICATE OF MECHANICS LIEN

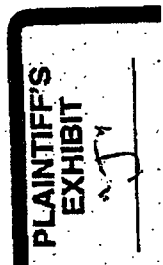
TO: CHRISTOPHER A. PIERCE

NOTICE IS HEREBY GIVEN, that TRI-COUNTY DEVELOPMENT, INC. AND MELINDA HOLBROOKS are due the sum of Thirty four thousand and 00/100 (\$34,000) Dollars less adjustments of approximately four thousand dollars from CHRISTOPHER A. PIERCE, a statement of a just and true account of said indebtedness, with all just credits given, being attached hereto and made a part hereof, together with interest thereon from the 11th day of July, 2005.

That the said debt is due the undersigned for labor performed or furnished, and/or for materials furnished and actually used in the erection, alteration or repair of buildings or structures situated on, or in otherwise improving, the real property hereinafter described, by virtue of an agreement with and/or by the consent of Christopher A. Pierce, the owner(s) thereof. That, as shown by the attached statement, the undersigned labored on, or have furnished labor and materials for, such buildings, structures, or improvements, within ninety (90) days of the date hereof.

That by virtue thereof, by the service and filing of this Notice and Certificate, and pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and costs of enforcing said lien upon the buildings or structures hereinabove mentioned, and upon the following described real estate:

ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Oconee, and being known and



designated as **Lot A, containing 1.56 acres**, on a plat prepared by Golden Corner Surveying, Inc., dated 7/27/01, and recorded in Plat Book P-62 at page 200, records of Oconee County of South Carolina.

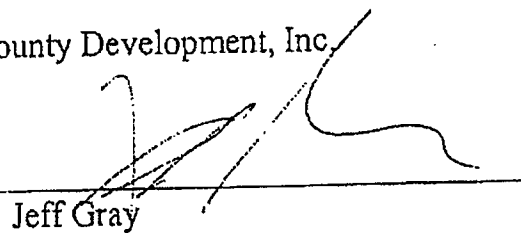
This being the identical property conveyed unto Christopher A. Pierce by deed of Andrew and Edith Pierce, Trustees dated 25 August, 2004, and recorded 8/25/04, in Deed Book 1366, Page 213, records of Oconee County, South Carolina.

Statement: Work commenced on or about July 24, 2004. The last work was done on or after June 28, 2005. Christopher A. Pierce stopped the contractors and sub contractors from going on or about the premises on nor around July 24, 2005 and indicated he would finish what was left to be done. The house was substantially completed by June 28, 2005, and Mr. Pierce chose to breach the contract, and he failed to pay the \$33,000.00 due under the contract for construction services rendered.

The unpaid part of the contract included \$30,000.00 due and owing and \$3,000.00 to be paid at the end of the agreement. Allowances of \$3,000.00 leave the balance due at \$30,000.00 under the contract for a substantially completed dwelling.

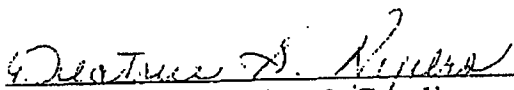
JP ~~Statement~~ ~~ATTACHED~~ THE FOREGOING IS TRUE OF MY OWN KNOWLEDGE; THE
CONSTITUTES A TRUE AND CORRECT ACCOUNTING
OF THE DEBT; AND NOTHING HAS BEEN PAID THEREON EXCEPT
AS HEREIN SET FORTH:

Tri County Development, Inc.

BY: 

Jeff Gray

SWORN TO BEFORE ME this
26th day of September 2005.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/15/08

Tri-County Development, et al. vs. Christopher Pierce v. Jeff Gray

Case Chronology

9.26.05 Lien filed and lawsuit to foreclose

9.28.05 Lawsuit served upon Pierce

10.31.05 Chris Roberts, Esq. files Answer and Counterclaim for Pierce

11.30.05 Chris Roberts files Amended Answer and Counterclaim and Third Party Complaint

12.6.05 Prior counsel for Tri County files Reply to Counterclaim

5.4.06 Chris Roberts files Certificate of Service of Personal Service and Amended Answer and Counterclaim and Third Party Complaint on Jeff Gray

9.19.06 Chris Roberts files Affidavit of Default (one year anniversary of date of filing)

9.26.06 Order of Default entered of record directing damages hearing never done by Pierce

1.30.07 Case continued

1.31.07 Tri County's attorney moves to be relieved

3.5.07 Chris Roberts files Motion for Summary Judgment

3.12.07 Order relieving Tri County's attorney granted

4.16.07 First appearance by KDC, also filed Motion for Relief for Default

5.29.07 Case continued - pending motions

12.18.07 Motion hearings on Defendant's Motion for Summary Judgment, Defendant's Motion to Compel, Third Party Defendant's Motion to Set Aside Default

4.11.08 Pierce files Motion for Change of Counsel

5.5.08 Pierce's Motion to act as own counsel granted

5.27.08 Formal Order releasing Chris Roberts as Pierce's attorney

8.4.08 Order denying Defendant's Motion for Summary Judgment
Order denying Plaintiff's Motion to Set Aside Default



- 1.16.09 Plaintiff's Motion for Summary Judgment based on Defendant's failure to produce discovery to support Defendant's defenses and Counterclaim. Plaintiff's Motion to Compel
- 4.9.09 Plaintiff's Motion for Summary Judgment denied. Plaintiff's Motion to Compel granted
- 5.22.09 Defendant's Motion for Reconsideration
Defendant mentions his lawyer from Merritt, Flebotte, out of Columbia
- 6.25.09 Pierce appeals Court's Order vacating default and Granting Motion to Compel
- 7.9.09 Court of Appeals dismisses appeal

Tom Dudley

From: Yodda Pierce [ntsl532@yahoo.com]
Sent: Tuesday, January 27, 2009 11:15 AM
To: Tom Dudley
Cc: ntsl532@yahoo.com; steve manley
Subject: Documentation to support Default Judgment on my Counterclaim

Hello Tom,

This Email is to confirm our conversation today regarding the documentation you requested yesterday for damages relating to my counterclaim won by default judgment. As indicated on the phone, my legal advisors have indicated I am not obligated to provide the above documentation because the counterclaim part of the case has been won by me through a default judgment and therefore the court has jurisdiction to determine whether the damages are just in a damages hearing. Had the case not been won by default I would have had an obligation to produce these documents to you. As I said on the phone, if you feel otherwise please file a motion to compel and if the court feels I should provide this documentation to you, I will be more than happy to comply provided you offer reasonable compensation for copy related fees or your staff is willing to copy the materials for you.

Also, I have reviewed the damages for my counterclaim and they are significant, around the 6 figure range, so that based on our previous conversation in December it might be prudent to get the other attorney's malpractice insurance company involved now. WHO know's maybe that might in fact prevent this legal action from progressing further. Realistically though, your client was served with default judgment papers and apparently chose to ignore them, so it is hard to imagine the blame would rest with his previous attorney.

Best Regards,

Chris Pierce

May 8, 2009

Un-Reimbursed Costs Due to Builder Breach of Building Contract

1. Building License (Permit) Required in order to complete house - \$700
 2. Permit Letter - Required for final inspection Oconee County Building Codes - \$650
 3. Home inspection - Also needed for Building Codes - \$275
 4. Appliances For House - which includes washer, dryer, refrigerator, microwave, dishwasher, stove - \$1984.72
 5. Time Spent Completing House - 149 hours - \$7450
 6. Additional Hours of Helper - 45 hours - \$2250
 7. *Driveway - \$6000 Harris Concrete and Cuthedge Concrete \$7500
 8. Road Repair for Builder damage - \$3000
 9. Cabinet work out of pocket cost \$700
 10. Un-reimbursed Out of Pocket Ceramic Tiling Costs - \$2142.32
 11. **Allowances - Allowances for materials in building contract - \$18,000
 12. Defective Insulation - Insulation installed was defective and needs replacement \$12,815
 13. Un-reimbursed Material Costs - \$3277.80 - See separate document
 14. Punch List or finishing items - Unable at present time to get estimate from handy man see list of items remaining. Best estimate is \$5000.
 15. Legal Fees - \$8500 Approx.
 16. Concrete work labor cost landing and sidewalk - 20 hours \$1000
- * May be adjusted based on different sizes of driveway



PERMIT #: 05-01518
 PROJECT #: 05- BFA
 BUILDING PERMITS
 DATE ISSUED 08/24/05
 OCONEE COUNTY
 MASTER PERMIT #: 05-01518
 REF #:
 JECT ADDRESS: WHITE OWL RD 605 SENECA SC 29678
 SUBDIVISION: CONERROSS POINT LOT A
 LOT #:
 BLK #:
 OWNER NAME: PIERCE CHRISTOPHER A
 ADDRESS: 532 GALLOPING GHOST RD
 CITY: ANDERSON
 PHONE: (864)-231-8272
 STATE: SC ZIP: 29678
 ONTRACTOR: SELF
 ADDRESS:
 CITY:
 PHONE: ()- -
 STATE: ZIP:
 ENGINEER:
 DESIGNER:

ROP. USE: 532 GALLOPING GHOST RD ANDERSON SC 29626

ORK: COMPLETE HOME AFTER SHEETROCK STAGE/ FINISH WORK/REF PERMIT 04-01467
ESC:

ALUATION:	185,000.00	FEES DUE:	700.00
		FEES PAID:	700.00
SPECIAL CONDITIONS:		WORK CLASS: SFH	SQ. FTG: 4,000
		FIRE ZONE: Y	OCCUP TYPE: R3
		USE ZONE:	CONST TYPE: VU
APPLICATION ACCEPTED BY		PLANS CHECKED BY	APPROVED FOR ISSUANCE BY

***** NOTICE *****

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED, OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT) 8/24/05
 DATE
8/24/05
 DATE
 (APPROVED BY)



The service that cares.

800-922-2596

www.limegreenpest.com

SUBTERRANEAN TERMITE BAITING SYSTEM AGREEMENT

THIS CONTRACT PROVIDES FOR RETREATMENT OF A STRUCTURE AND THE REPAIR OF DAMAGES CAUSED BY WOOD DESTROYING ORGANISMS WITHIN THE LIMITS STATED IN THIS CONTRACT.

Owner/Agent Chris Pierce Telephone 231-8272
Treating Address 605 W. 1st St. RE
City Secon State SC Zip 29678
Property Description _____
Mailing Address _____

COVERAGE

Commencing September 2005 through September 2006 and in exchange for the initial fee of \$ 650.00, Gregory will provide the owner the service necessary to protect the owner's property, described above and depicted in the attached graph (hereafter, the "Property"), against subterranean termites (hereafter, "termites"). The graph accompanying this agreement is part hereof. After the initial service period, Gregory will extend the service agreement on a quarter-to-quarter basis to the customer as long as they own the structure upon payment of the quarterly renewal fee of \$ 78.00 in accordance with the terms and conditions of this agreement. Gregory reserves the right to make adjustment to annual renewal fee after the third year. or 100% for 312.00

GUARANTEE

In the event of a new infestation during the coverage period, Gregory will provide the necessary treating services without additional charge. In the event of new damage to the Property during the coverage period, Gregory will, upon notification and verification, arrange for the necessary repairs (including labor and materials) to the Property and pay for same. Gregory is responsible only for the payment of cost of repairs approved by Gregory in advance of such repairs. In order for Gregory to be responsible for repair costs the owner must establish that the new damage was caused by termites after the initial treatment, and that there is active infestation in the area of the damage. "New damage" is defined as structural damage not existing before the initial guarantee period which is caused by an active infestation of termites. If no live activity is found in the damaged area, the damage shall be deemed to be old damage and will not be covered by this agreement. This guarantee is subject to the general terms and conditions set forth on the reverse side of this document.

SERVICE AGREEMENT

GREGORY WILL:

1. Install termite bait stations (the "Stations") in the soil around the outside perimeter on the structure specified above.
2. Monitor those stations every month or every quarter during the initial service period.
3. Add termite bait and/or stations as appropriate.
4. During the initial service period, inform the Customer of:
 - a. Any new or increased termite activity noted at the Stations;
 - b. Any addition or removal of termite bait; and
 - c. Any observed effect of the Termite Baiting System (the System) on termite activity.

CUSTOMER UNDERSTANDING OF PERFORMANCE OF THE TERMITE BAITING SYSTEM

1. The Termite Baiting System involves initial monitoring for termite activity, placement of bait where activity is noted, and subsequent monitoring for continuous protection from new termite activity.
2. Intervals of from a few weeks to a number of months should be expected between:
 - a. installation of the Termite Baiting System and sufficient termite activity to allow addition of termite bait; and
 - b. addition of termite bait and control of the termite colony; and therefore,
 - c. total time from initial installation to control may be from 12-24 months.
3. The Customer will allow Gregory to treat the interior and exterior of structure(s) during normal business hours of 8 a.m. to 5 p.m. Monday through Friday on the day if technician is in the service area.
4. The active ingredient in the Termite Baiting System is an insect growth regulator which prevents worker termites from molting (critical to colony survival). It is contained in a Baitube device which will be inserted in the system only when sufficient termite activity has been observed in the System Stations, and only for as long as is needed to control a termite colony.
5. Gregory will place the active ingredient only in Baitube devices in selected Stations in which worker termites are feeding.
6. Additional services such as spot applications of conventional termiticides are available for no additional fee to combat termite activity in a localized basis if determined to be necessary by Gregory.
7. Gregory reserves the right to modify treatment methods at its discretion.

PAYMENT TERMS

The customer agrees to pay the initial fee by the following method.

\$ 650.00 Paid with service agreement.

\$ _____ Paid each month for the following _____ months. Payment is due by the 20th day of each consecutive month following the date of the service agreement until paid in full.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. NOTICE: YOU, THE OWNER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT ON THE THIRD DAY AFTER THE DATE OF THIS TRANSACTION.

Owner or authorized agent * Christopher A. Pierce Date 9-8-05
Gregory, by D. Fuller Date 9-8-05
Branch Location Gre Telephone 1-800-922-2596

Day	Time	Activity	Notes
Aug 1	6 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 2	5 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 3	3 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 4	3 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 5	4 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 7	4 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 8	3 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 9	2-8 PM	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 10	4 hrs	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft
Aug 11	1:30-5:00	1. 1000 ft 2. 1000 ft 3. 1000 ft	1000 ft



AFFORDABLE ASPHALT

(864) 296-1549



934-3831

PROPOSAL

PROPOSAL SUBMITTED TO		PHONE	DATE
STREET		JOB NAME	
CITY, STATE AND ZIP CODE		JOB LOCATION	
ARCHITECT	DATE OF PLANS		JOB PHONE

We hereby propose to furnish materials and labor necessary for the completion of:

Grade & Compact Base

Gravel As Needed

Pave Complete Drive 2 1/2" Asphalt

Repair Road \$1500.00 80'

\$2650.00

WE PROPOSE hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

\$2650.00
dollars (\$)

Payment to be made as follows:

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

Authorized
Signature

Joel Reek

Note: This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions in _____ factory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance: _____

Signature _____

PIERCE-000019

12	...	\$ 10
3	...	\$ 10
4	...	\$ 10
5	...	\$ 70
6	File labor	\$ 2100
7	Business credit	\$ 1400

8	...	700
9	~~275~~ Inspector	275
10	...	\$ 1104

<u>Ref.</u>	<u>Company</u>	<u>Cost</u>	<u>Type</u>
11	Lunas	39.54	~~fish~~ Fishery
20.	L	5.11	Supply
21	Hb	42.17	bath mirror
22	L	65	barium
23.	Hb	143.50	mirror
24	L	43.29	Ve key
25.	L	39.57	6 Vtla meters
26	Hb	164	tools + mirrors
27.	L	15.67	garage side saw
28.	Waltmart	6	Foundation pen
29	Waltmart	37	Lighting
30	Hb	~~Waltmart~~	shelving
31.	Hb	12.59	couverts
32	Waltmart	11.91	Fiber
3	Waltmart Pet Center	12	
1	Adams Pet Center	650	pet food / etc.
1	Adams Pet Center	1194	bird food / etc.
1	Adams Pet Center	~~1194~~ 1971.72	
1	Adams Pet Center	~~1194~~ 355	door
1	Adams Pet Center	65.97	

Receipts Provided in Previous Disclaiming Run

1. Building Permit Fee 700
2. Material Expense Repairs 3277.80
3. Pest Control 650.80
4. Tile Labor 2142.32
5. Accounting Material August 23, 2015 1194
6. Wood Restoration - Repair Defective Insulation 12711

5/24/2005 From the desk of Steve Crooks

**Steve A. Crooks
251 Green Briar Road
Seneca, S.C. 29678
(864) 230-4319**

May 24, 2005

John Cananese Pointe

Summary of Materials and Labor:

Master Bath – 45 ½ square foot

***5 Backer Boards**

***45 Tiles**

***Grout ½ bag (beige)**

Total Labor \$270.00

Tub Surround

Total Labor \$150.00

Second Bath – 27 square foot

***2 backer boards**

***27 Tiles**

***Grout ½ bag (White)**

Total Labor \$120.00

5/24/2005 From the desk of Steve Crooks

Hall – 88 square foot

***4 Backer Boards**

***88 Tiles**

***Grout ½ bag (Sand Stone)**

Total Labor \$352.00

Front Entrance – 52 square foot

***4 Backer boards**

*** 52 Tiles**

Total Labor 300.00

Front Entrance Exterior – 154 square foot

***117 Tiles**

***Grout – 1 Bag & 2 Boxes (Grey)**

Total Labor 202.00

Counter Top & Back Splash – 110 square foot

***320 Tiles**

***70 Tiles**

***1 Bag Grout (Brisket)**

Total Labor 700.00

Other Expenses (out of pocket)

***Home Depot \$23.55**

***Lowes Home Improvement \$22.48**

***Tri-Star Imports \$2.29**

5/24/2005 From the desk of Steve Crooks

Itemization of Charges:

Labor \$2,094.00

Other \$48.32

Total Bill \$ 2,142.32

Please do a final walk though to insure that the work has been completed and it is to your satisfaction. Please remit payment in 5 days. Thank you for your business and I hope that you will recommend me to others. Please remit letter to Steve Crooks, c/o Paula Tribble, 311 Import Drive, Seneca, S.C. 29678.

Bank Routing information:

BB&T

Routing Number: 053201607

Account Number: 5122915591

August 22, 2005

ACCOUNTING

1. Wire Shelves and attachments	\$325.00
2. Shutters and mix to match garage door paint 134.91	
3. HardiBacker board 1/4 inch	179.69
4. Light fixtures/fans	186.86
5. Door entry hardware	22.00
6. Door mat	20.94
7. Lumber for broom closet	34.68
8. A/C filters	19.34
9. Gypsum board for broom closet	15.73
10. Whirlpool tub drain fixture	35.58
11. Paint for broom closet	18.00
12. Paint for basement floor (5 gallons)	60.00
13. 1 x 2 inch lumber for garage shelves	21.58
14. Master bedroom bath shower fixture	140.00
Credit for return of door casing (broom closet)	-20.00
TOTAL.....	\$1194

300 MID ATLANTIC 1303
5207 PEARSON LARRY RD
ANDERSON, SC. 29625
804-225-4538

Sale

Id: 0017340000800147024700
07/11/05 14:50:29

VISA

XXXXXXXX1338

Acct Code: 174481

Invoice#: 000005

Total:

\$ 49.30

Customer Copy
THANK YOU!

MONT MATERIALS
Imuel Road
urg, SC 29303

CUSTOMER ASSUMES RESPONSIBILITY FOR A SUITABLE ROADWAY FROM PUBLIC HIGHWAY TO POINT OF DELIVERY AND IS LIABLE FOR ANY DAMAGE TO OR BY SELLER'S TRUCK AFTER LEAVING THE HIGHWAY.
METROMONT MATERIALS IS NOT LIABLE OR RESPONSIBLE FOR CUSTOMERS' LOADS OR CUSTOMERS' VEHICLES WHILE ON COMPANY PROPERTY OR AFTER CUSTOMERS' LEAVE THE YARD.

PAGE #:

Printed 11-Jul-2005 02:49pm

CASH: 9007155
RD0VE:

TICKET #:

1471921

TICKET DATE:

11-JUL-05

PURCHASE ORDER CUSTOMER REFERENCE

NA

QUANTITY	PRODUCT CODE	UNIT	DESCRIPTION	PRICE	AMOUNT
1.00	210990011	EA	STEP TREADS CENTURY	46.95000	46.95
				PIERCE-000020	

SC-ANDERSON

CASH

2292431

PURCHASER DOES ☐ DOES NOT ☐ REQUEST MATERIAL DATA SHEETS FOR THE GOODS DESCRIBED ABOVE

SUB TOTAL	46.95
SALES TAX	2.35

CUSTOMER INVOICE

Phone: (864) 964-0820
Salesperson: WGA000
Reviewer:

Page 1 of 4 No. 1105-10596

VALIDATION AREA

and services printed below. This becomes an Agreement upon payment after validation.

HRIS		Home Phone:
		(864) 231-8272
Work Phone:		
() -		
Company Name:		
Job Description:		WILL CALL-TILE
26	County:	ANDERSON

*QUOTE is valid for this date: 02/05/2001

MERCHANDISE AND SERVICE SUMMARY

We reserve the right to limit the quantities of merchandise sold to customers.

REF #W02 SKU #515-664 Customer Pickup / Will Call

DESCRIPTION	TAX	PRICE EACH	EXTENSION
12X12 MYSTIQUE GRANITE-CA-5 SF	Y	\$9.36	\$421.20
MERCHANDISE TOTAL:			\$421.20
END OF CUSTOMER PICKUP - REF #W02			

MERCHANDISE & SERVICES

ORDER TOTAL	\$421.20
SALES TAX	\$21.06
TOTAL	\$442.26
BALANCE DUE	\$442.26

END OF ORDER No. 1105-105964

Proceed 22

FOR WILL CALL
MERCHANDISE PICK-UP
PROCEED TO WILL CALL OR
SERVICE DESK AREA
(Pro Customers: Proceed To The Pro Desk)

s only.

964

Custom. Copy



(9801) 1100100245

PIERCE-000021

User ID
107950 1063

Password:
105 1063-P

EBS INC.
Utility Products-Distributor
615 East River Street
ERSON, SOUTH CAROLINA 29624
(864) 224-0321

THE HOME DEPOT 11C
3427 CLEMSON BLVD
ANDERSON, SC 29621 (864)964-0821

1105 00005 42571 06/00
11 BJD645 12:4



LOWE'S

ANDERSON, SC
(864)964-9228

-SALE-

SALES #: S0728SF2 852003 05-29-05

105028 21" UNDERCAB LT DR 25.89
87769 (148807) 65W 130V 35.96
2 @ 17.98

SUBTOTAL: 62.84
TAX 32145: 3.14
INVOICE 13469 TOTAL: 65.98
BALANCE DUE: 65.98

DISC: 65.98
DISC XXXXXXXXXXXX8355 029047
AMOUNT: 65.98

0728 TERMINAL: 13 05/29/05 13:43:23

LOWE'S

ANDERSON, SC
(864)964-9228

-SALE-

SALES #: S0728CR1 897372 08-15-05

74752 3/4" WATER PRESSUR 35.64
23228 1/2FT DRYDEX SPAC 2.96
21668 JH PRESSURE GAUGE 8.67
57258 1/2X1-1/2 PHEW WOD 0.96
57359 1/2X3/4 SLRW WOOD 0.98
60404 SPRING ROLLER CAT 3.90
5 @ 0.78
25783 CARDBOARD SPRAY S 0.38
79221 20" CENTER UNDERHO 5.67

SUBTOTAL: 59.18
TAX 32145: 2.96
INVOICE 08727 TOTAL: 62.14

BALANCE DUE: 62.14
DEBIT VISA: 62.14

DEBIT VISA: 1338 AUTHCODE 331325
PURCHASE CASH BACK TOTAL DEBIT
62.14 0.00 62.14

0728 TERMINAL: 08 08/15/05 11:16:16

PIERCE-000024



THANK YOU
FOR SHOPPING LOWE'S

RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE NGR:

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL
BEAT IT BY 10%. SEE STORE FOR DETAILS

1151002431 24X80 BIFOLD 58.00
2 @ 29.00
1839277865 24X30 WALL 178.00
2 @ 89.00
1839277872 30X30 WALL 103.00
SUBTOTAL 339.00
SALES TAX 16.99
TOTAL \$355.99
STORE CREDIT 2.31
TA 0.00
XXXXXX8606 RD BALANCE
XXXXXX8205 STORE CREDIT 50.26
RD BALANCE 0.00
TA
XXXXXX4733 STORE CREDIT 68.68
RD BALANCE 0.00
TA
XXXXXX4731 - STORE CREDIT 103.95
RD BALANCE 0.00
TA
XXXXXX1338 DEBIT 100.00
CODE 361253



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TO WIN A \$5,000
HOME DEPOT GIFT
CARD!

Your Opinion Counts! We would like to
hear about your shopping experience.
Enter to win a \$5,000 Home Depot Gift
Card by completing a brief survey about
your store visit at:

www.HomeDepotOpinion.com

You will need the following to enter
on-line:

User ID:
86536 85436

Password:

LOWE'S

SENECA, SC
(864)882-0218

-SALE-

S1635TP2 13 07-12-05

545 14PC 1" BIT CORNE 6.17
750 RE-KEYING SERVICE 35.00
7 @ 5.00

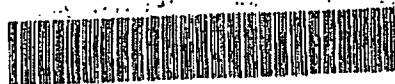
SUBTOTAL: 41.17
TAX 32279 : 2.06
INVOICE 14261 TOTAL: 43.23

BALANCE DUE: 43.23

DEBIT VISA : 43.23

BIT VISA: 1338 AUTHCODE 750517
PURCHASE CASH BACK TOTAL DEBIT
1.23 0.00 43.23

5 TERMINAL: 14 07/12/05 14:25:41



THANK YOU
FOR SHOPPING LOWE'S

RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE MGR: BUCKY SHOAF

LOWE'S

ANDERSON, SC
(864)964-9228

-SALE-

SALES #: S0728SR1 41553 08-06-05

11558 GUTTER ALUM ELBOW 2.19
75009 WTHO-WIREKIT RED 0.81
70937 METAL COVER FLAT 0.52
57254 6X1/2 PRFH WOOD 0.98
87302 COPR SPLT BOLT 1/2 X 2 1/2 0.64
45112 3/8" IN CLAMP CON 0.64
2 @ 0.32
74222 4" SQ BOX WELDED 0.92
13720 SEV WTHR GUTTER 1 22.35
4 @ 5.59
11557 GUTTER ALUM SPOUT 6.29

SUBTOTAL: 37.69

TAX 32145 : 1.88

INVOICE 06223 TOTAL: 39.57

BALANCE DUE: 39.57

DEBIT VISA : 39.57

DEBIT VISA: 1338 AUTHCODE 230822

PURCHASE CASH BACK TOTAL DEBIT
39.57 0.00 39.57

0729 TERMINAL: 05 08/06/05 09:34:00



THANK YOU
FOR SHOPPING LOWE'S

RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE MGR:

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BUY 10%. SEE STORE FOR DETAILS

Apply
Store
Add is
Value

THE HOME DEPOT 1105
3427 CLEMON BLVD
ANDERSON, SC 29621 (864)964-0820

1105 00005 39270 08/04/05
SALE 11 JS292K 10:43 AM



084305355546 HOMER BUCKET 3.98
762148981466 14 W SPIRAL 9.97
082354070113 SANDPAPER 5.47
082354070106 SANDPAPER 5.47
026000008396 WOOD FILLER 4.87
783786371822 BOLT 3.35
035781144018 JIG BLADE 1.99
076670998153 CAST MASKS 1.00
032886263125 WIFE 15.00
783786371859 RAIL 3.35
032076043988 STUD FINDER 5.00
750805140035 1X3 POP R/L
16 @ 1.00 16.00
750805180048 1X12 POP R/L
3 @ 4.65 13.95
043044220218 VAN MIRROR 44.67
081999496227 BOXES
5 @ 2.79 13.95
081999132071 3/8 2X4 BC 5.99
SUBTOTAL 157.11
SALES TAX 7.86
TOTAL 164.97
XXXXXXXXXXXX1338 DEBIT
AUTH CODE 761558



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PIERCE-000026

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You will need the following to enter:
on-line:

User ID:
79934 78834

Password:
5404 78829

HOME DEPOT 1105
3427 CLEMSON BLVD
SC 29521 (864) 964-0820

1105 00019 65433 08/04/05
22 JRP334 08:15 PM



CHRIS/8"
1.24
0249 VAN HIRSH
.6981 PIN
1.45
SUBTOTAL 42.17
SALES TAX 2.11
TOTAL 44.28
XXXX1338 VISA
IE 101145/0190684



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I need the following to enter
on-line:

User ID:
32260 131174

Password:
5404 131155

must be entered by 09/03/2005.
must be 18 or older to enter.
complete rules on website. No
purchase necessary.

Esta también se encuentra en
en la página del Internet.)

LOWE'S

ANDERSON, SC
(864) 964-9228

-SALE-

SALES #: S07208H1 216242 08-20-05

33907 AAA ENERGIZER 8PK 5.17
33314 JH 9V ENERGIZER 2 5.17
68959 8 X 1 1/4 PH PH 4.16
69729 10 X 1 1/4 PH PH 4.16
48187 PRELOADED EXP. 2.17
2 @ 20.91

SUBTOTAL: 61.90
TAX 32145 : 3.10
INVOICE 08874 TOTAL: 65.00

BALANCE DUE: 65.00

DEBIT VISA : 65.00

DEBIT VISA: 1338 AUTHCODE 931046
PURCHASE CASH BACK TOTAL DEBIT
65.00 0.00 65.00

0728 TERMINAL: 08 08/20/05 21:34:29



THANK YOU
FOR SHOPPING LOWE'S

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CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE HGR:

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BEAT IT. FREE STORE FOR DETAILS

PLEASE PRINT NAME AND ADDRESS
NAME ADDRESS CITY STATE ZIP
PHONE NO. E-MAIL ADDRESS

THE HOME DEPOT 1105
3427 CLEMSON BLVD
ANDERSON, SC 29521 (864) 964-0820

1105 00019 65391 08/04/05
SALE 22 JRP334 08:05



046677391232 HOWART12DX 6.5
043044220201 VAN MIRROR 69.0
2 @ 34.07 26.0
043044210271 MIRROR 26.0
051411261634 ITEM2HLST4PK 0.7
043044800014 PLMIRMTCLIP 11.4
4 @ 2.87 7.1
043044800366 MOUNT. CLIPS 7.1
2 @ 3.67 7.1
043044800373 MOUNT. CLIPS 7.1
078864010022 NS1BRSS/16 5.1
2 @ 2.98 5.1
05141121129 SS. CONN. 1.1
043044800076 MIRRORHASTIC 4.1
SUBTOTAL 143.9
SALES TAX 7.1
TOTAL 151.0
XXXXXXXXXXXX1338 VISA
AUTH CODE 160255/0190680



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PIERCE-000027

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your store visit at:

www.HomeDepotOpinion.com

You will need the following to enter
on-line:

User ID:
132176 131090

Password:
5404 131071

Entries must be entered by 09/03/2005.

ANDERSON, SC
(864)964-9228

-SALE-

SALES #: S0726EB2 708401 08-13-05

210157 HK-888X 29.68

DISHWASHER MASTERKIT
[LD]

3262 LER6620PQ 297.00

(68162)WP 29" ELEC D
[LD]

11765 LSR7010PQ 317.00

(171482)WP 3.2CF WAS
[LD]

174189 FEF364DW 376.20

HC FR ELEC-SM RNG FE
[LD]

148446 HH1140XHQ 198.00

VP OTR MICROWAVE HH1
[LD]

174624 RT21LHXXQ 427.00

(113295)REF ROPER 21
[LD]

75889 DUB50SUPQ 237.00

(60018)WPBUILT-IN DI

71261 RD628104 12.47
JH 4' 3 WIRE RANGE C
[LD]

40529 498P 7.97

(51611-51622)DRYER D
[LD]

215856 284 1.96

(51619)4" GLV WORN G
2 8 0.98
[LD]

53756 811 9.97

HOOKUP KIT /ICENKR P
[LD]

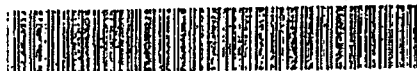
71268 RD100404 15.47

JH 4' 4 WIRE DRYER C
[LD]

2 55.00

DELIVERY FEE

INVOICE 98625 SUBTOTAL: 1,984.72



-SALE-

SALES #: S0726EB2 708401 08-13-05

59993 10.00 H

S.C. SOLID WASTE DI

LOWE'S

ANDERSON, SC
(864)964-9228

-RETURN-

SALES #: S0728LA1 808283 08-15-05

117731 4-YEAR EPP 3-PC H 199.97- N
ORIG.STORE: 728 DATE:081305 INV:98626

SUBTOTAL: 199.97-

TAX 38200: 0.00-

INVOICE 21143 TOTAL: 199.97-

BALANCE DUE: 199.97-

VISA : 199.97-

VISA XXXXXXXXXXXX1338

AMOUNT: 199.97-

0728 TERMINAL: 21 08/15/05 10:30:57

RECEIPT REQUIRED FOR CASH REFUND.

CHECK PURCHASE REFUNDS REQUIRE

15 DAY WAIT PERIOD FOR CASH BACK.

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ANDERSON, SC
(864)964-9228

-SALE-

SALES #: S0728EB2 768401 08-13-05

210157 HK-88BX 29.68

DISHWASHER MASTERKIT

[LD]

3252 FER6620PQ 237.00

(68162)WP 25" ELEC D

[LD]

14765 LSR7010PQ 317.00

(171482)WP 3.2CF VAS

[LD]

174189 FEF364DW 376.20

MC FR ELEC-SM RRG FE

[LD]

148446 HW1140XHQ 198.00

WP OTR MICROWAVE HWI

[LD]

174624 RT21LHXXQ 427.00

(113295)REF ROPER 21

[LD]

75889 OUB50SHPQ 237.00

(80018)WPDUILT-IN DI

[LD]

71261 RD828104 12.47

JH 4' 3 WIRE RANGE C

[LD]

40529 498P 7.97

(51611-51622)DRYER D

[LD]

215856 284 1.96

(51619)4" GLV WORM G

2 @ 0.98

[LD]

53756 811 9.97

HOOKUP KIT /ICEKKA P

[LD]

71268 RD100404 15.47

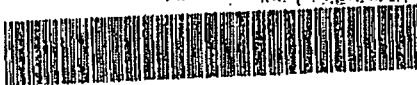
JH 4' 4 WIRE DRYER C

[LD]

2 55.00

DELIVERY FEE

INVOICE 98625 SUBTOTAL: 1,984.72



-SALE-

SALES #: S0728EB2 708401 08-13-05

59993

10.00-N

S.C. SOLID WASTE DI

5 @ 2.00

LOWE'S

ANDERSON, SC
(864)964-9228

-RETURN-

SALES #: S0728LA1 808283 08-15-05

117791 4-YEAR EPP 3-PC N 199.97-N

ORIG. STORE: 728 DATE: 08/13/05 INV: 98625

SUBTOTAL: 199.97-

TAX 38200: 0.00-

INVOICE 21143 TOTAL: 199.97-

BALANCE DUE: 199.97-

VISA: 199.97-

VISA XXXXXXXXXXXX1338

AMOUNT: 199.97-

0728 TERMINAL: 21 08/15/05 10:30:57

RECEIPT REQUIRED FOR CASH REFUND.

CHECK PURCHASE REFUNDS REQUIRE

15 DAY WAIT PERIOD FOR CASH BACK.

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PIERCE-000029

HOME DEPOT 1105
3427 CLEMSON BLVD
ANDERSON, SC 29621 (864) 964 0820

1105 00019 72264 08/08/05
22 KB652M 12:01 PM



SUBTOTAL 40.56
SALES TAX 2.33
TOTAL 42.89
STOCK CREDIT 47.89
BALANCE 20.55



1105 19 72264 08/08/2005 0712

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will need the following to enter
on-line:

User ID:
145222 144836

Password:
5408 144817

Must be entered by 09/07/2005.
Users must be 18 or older to enter.
Complete rules on website. No
purchase necessary.

LOWE'S

ANDERSON, SC
(864) 964-9228

-SALE-

SALES #: S0728SR1 41553 08-22-05

18561 6' 16/3-POWER SUPPLY 7.44
130357 1/2" LDD-EIGHT LWR 7.81
5 0 0.54

SUBTOTAL: 7.44
TAX 32145: 0.37
INVOICE 05097 TOTAL: 7.81

BALANCE DUE: 7.81

DEBIT VISA: 7.81

DEBIT VISA: 1338 AUTHCODE 830256
PURCHASE CASH BACK TOTAL DEBIT
7.81 0.00 7.81

0728 TERMINAL: 05 08/22/05 11:41:10



THANK YOU
FOR SHOPPING LOWE'S

RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
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MANAGER LARRY PRESN
(864) 964-1420

STR 0614 OPP 00003611 TE431 TR# 07
CAT FOOD 082927453031 2.9
TOOTH PASTE 006799000687 1.1
TOOTH PASTE 006799000687 1.1
MEN'S SHAMP 007124921153 2.2
HOSE REPAIR 007785523352 1.1
HOSE REPAIR 007785523352 1.1
PUREX POWDER 002420001915 2.5

SUBTOTAL 39.7
TAX 1 5.00
TOTAL 44.7
DEBIT TEND 41.2
TOTAL DEBIT PURCHASE 40.0
CHANGE DUE 40.0

DEBIT ACCOUNT PAY FROM PRIMARY
1338
41.21 PURCHASE
40.00 CASH BACK
81.21 TOTAL PURCHASE
REF # 519803572829
NETWORK ID, 0071 APPR CODE 185289
07/16/05 23:00:46

ITEMS SOLD 9

TC# 0657-0349-0964 9679



Visit walmart.com
07/16/05

PIERCE-000030

OWE'S

ANDERSON, SC
4354-9228
-SALE-
1 795631 08-17-05

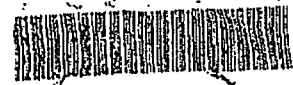
CLAMP CON 0:32

SUBTOTAL: 0.32
32145 : 0.02
9 TOTAL: 0.34

ANCE DUE: 0.34

CASH: 0.35
CHANGE: 0.01

26 08/17/05 19:28:20



FOR SHOPPING LOYALTY
CARD FOR CASH REFUND.
PLEASE REFUNDS REQUIRE
PERIOD FOR CASH BACK.
STORE MGR:

BEST PRICES, GUARANTEED!
OVER PRICE, WE WILL
SEE STORE FOR DETAILS

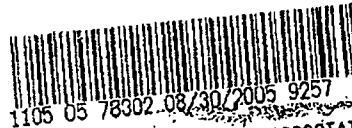
THE HOME DEPOT 1105
3427 CLEMSON BLVD
ANDERSON, SC 29621 (864)964-0820

SALE 1105 00005 78302 08/30/05
11 L841C1 05:20 PM



045899377055 3" B/W 5
045899377000 3" B/W 0
045899377062 3" B/W 6
045899334058 BRASS NUMBER
045899334003 BRASS NUMBER
045899334065 BRASS NUMBER
014005213273 123 BOOK

SUBTOTAL 1.59
SALES TAX 33.41
TOTAL 33.41
DEBIT
AUTH CODE 662128



1105 05 78302 08/30/2005 9257
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User ID:
157998 156898

Password:
5430 156893

Entries must be entered by 09/29/2005.
Entrants must be 18 or older to enter.
See complete rules on website. No
purchase necessary.

MART
LOW PRICES.

ST. E. R. C. E. N. T. E. R
MANAGER: LARRY BRESNELL
ANDERSON, SC

ST# 0644 DP# 000034222 TEN# 058
NO TRESSR 002906900104 1.97
NO TRESSR 002906900104 1.97
NO TRESSR 002906900104 1.97
DRYWALL SCR 005026724607 2.84
WIRE ROPE 004222805053 1.97
WIRE ROPE 004222805053 1.97
2PENCIL 007364022424 0.97
30 FT 1/8 WT 004222806798 3.54
DRYWALL SCR 005026724632 2.97
3V 1PK 068113181197 1.44

SUBTOTAL 21.41
TAX 5.000-x 1.07
TOTAL 22.48
DEBIT TEND 22.48
CHANGE DUE 0.00

EFT DEBIT PAY FROM PRIMARY
ACCOUNT : 1338
22.48 TOTAL PURCHASE
REF # 520917130473
NETWORK ID. 0071 APPR CODE 141763
07/28/05 15:18:14

ITEMS SOLD 10

TCH 7655 1112 5867 8277 4156



walmart.com for Vacation De
07/28/05 15:18:15

PIERCE-000031

LOWE'S

ANDERSON, SC
(864)964-9228

-SALE-

#1: S0728AJ1 900807 09-12-05

11 JH 9' GARAGE DR VE 14.92
2 G 7.45

SUBTOTAL: 14.92
TAX 32145 : 0.75
VOICE 14754 TOTAL: 15.67

BALANCE DUE: 15.67

MERCH/GIFT CARDS : 15.67

/GIFT CARD 6558 AUTHCODE 000074

1 BAL TRANSACTION AMT ENDING BAL
6.41 15.67 0.74

TERMINAL: 14 09/12/05 11:41:06



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MANAGER CHRISTOPHER LEE

(864) 885 - 0408

SENECA, SOUTH CAROLINA

ST# 1123 OP# 00003464 TE# 73 TR# 1912
TOMATO PLANT 071533910133 F 2.0 X
STRAWBRY YGRT 007874236925 F 1.7 T
SHRIMP/PASTA 071785410628 F 0.3 T
SHRIMP/PASTA 071785410628 F 0.3 T
3 CHS CHKN 071785410755 F 0.9 T
GV 3 MEAT PZ 007874211814 F 3.8 T
RSTD TURKEY 071785410756 F 0.9 T
3 CHS CHKN 071785410755 F 0.9 T
GV LINEADE 007874214595 F 0.56
AMERICAN TRA 002307502240 1.00
GV CNTRY OJ 007874243084 F 0.94
GV CNTRY OJ 007874243084 F 0.94
GV LINEADE 007874214595 F 0.56
STRAWBRY YGRT 007874236925 F 1.87 T
RSTD TURKEY 071785410756 F 0.98 T
GV FF MILK 007874235189 F 2.74 T
LAYS BKD REG 002840006753 F 3.00 X
MARS MLKY WA 004000015165 F 0.97 X
NESTL 100 GR 002800009480 F 0.97 X
MOUNDS 8 PK 003400004288 F 2.98 X
GV BEEF JRKY 007874204827 F 3.02 X
SUBTOTAL 54.24
TAX 1 5.000 % 2.71
TOTAL 56.95
DEBIT TEND 56.95
CHANGE DUE 0.00

RIVER ROCK 007421869017 2.97 X
RIVER ROCK 007421869017 2.97 X
GL PB MN NUG 004410636220 1.76 X
GL PB MN NUG 004410636220 1.76 X
GL PB MN NUG 004410636220 1.76 X
PINE NUGG 009179949023 1.76 X
PINE NUGG 009179949023 1.76 X
PINE NUGG 009179949023 1.76 X
SPAGH PEAT 003236700101 3.25 T
PINE STRAW 000007000138 3.47 X
SUBTOTAL 54.24
TAX 1 5.000 % 2.71
TOTAL 56.95
DEBIT TEND 56.95
CHANGE DUE 0.00

EFT DEBIT PAY FROM PRIMARY
ACCOUNT : 1338
56.95 TOTAL PURCHASE
REF # 616217896900
NETWORK ID. 0071 APPR CODE 194020
06/11/06 13:43:57

ITEMS SOLD 31

TC# 1193 2074 0883 7914 3070



Give Dad what he wants this Father's
Day: a Wal-Mart gift card.
06/11/06 13:43:59

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MANAGER CHRISTOPHER LEE

(864) 885 - 0408

SENECA, SOUTH CAROLINA

ST# 1123 OP# 00003887 TE# 07 TR# 02
HONEY DIJON 007320900098 F 1.9
GREEN BEAN 000000004066KF 1.19 lb & 1 lb /1.58 1.81
31-40 SHRIMP 020602950559 F 5.55
WAS 5.48/lb YOU SAVED 1.54
COCKTAIL SCE 002100064943 F 1.34
SIRLOIN STK 020195430426 F 4.26
LIGHT BULB 004316840870 3.96
DECOBULB 004316891805 1.67
LIGHTBULBS 068113173561 0.77
LIGHTBULBS 068113173561 0.77
VALANCE 002992722561 6.87
VALANCE 002992722561 6.87
10W30 OIL QT 007874210460 1.27
SC OIL FEE 007874230417 0.02
10W30 OIL QT 007874210460 1.27
SC OIL FEE 007874230417 0.02
STAPLES 068113140795 3.92
MOTION LIGHT 003920895203 15.84
SUBTOTAL 58.25
TAX 1 5.000 % 2.91
TOTAL 61.16
DEBIT TEND 61.16
CHANGE DUE 0.00

EFT DEBIT PAY FROM PRIMARY
ACCOUNT : 1338
61.16 TOTAL PURCHASE
REF # 608220425462
NETWORK ID. 0071 APPR CODE 140662
03/23/06 15:08:00

ITEMS SOLD 17

TC# 4173 2850 2123 7710 8000



Support America's Second Harvest
Wal-Mart matches the first \$5 million.
03/23/06 15:08:02

PIERCE-000032

THE HOME DEPOT 1130
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

1130 00012 48921 03/13/06
11 SJ660U 12:22 PM



3037990208 SHELIVING
2 @ 5.97

SUBTOTAL 11.94
SALES TAX 0.60
TOTAL \$12.54
CASH 20.55
CHANGE DUE 8.01



1130 12 48921 03/13/2006 7602

* 30 DAY RETURN POLICY ON ALL GASOLINE
POWERED EQUIPMENT AS OF 03-13-06
SEE RETURNS DESK FOR DETAILS

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www.HomeDepotOpinion.com

You will need the following to enter
on-line:

User ID:
95261 98143

Password:
6163 98131

Entrants must be entered by 04/1
Entrants must be 18 or older to enter.
See complete rules on website.
Purchase necessary.

Esta encuesta también se
encuentra en la página del

THE HOME DEPOT 1130
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

1130-00002 71882 10/04/06
61 AMX700 02:03 PM



764661102809 80W SAKRETE
3 @ 3.78

SUBTOTAL 11.34
SALES TAX 0.57
TOTAL 11.91
DEBIT 51.91
AUTH CODE 662980



1130 02 71882 10/04/2006 0528

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www.HomeDepotOpinion.com

You will need the following to enter
on-line:

User ID:
145183 144055

Password:
6504 144053

Entries must be entered by 11/03/2006.
Entrants must be 18 or older to enter.
See complete rules on website.
Purchase necessary.

(Esta encuesta también
está en la página del

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SUPERCENT
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MANAGER CHRISTOPHER
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SENECA, SOUTH CAROLINA

ST# 1123 DP# 00004164 TE#
48X84 FIBER 004788811655
48X84 FIBER 004788811655
EGGS 081390500061
GLAZED DONUT 007247000260
CASHEWS 007874209322
GV YOG MXBRY 007874236932
GV YOG MXBRY 007874236932
BREARD 004010001787
GV YOG PLAIN 007874222921
GV BEEF JRKY 007874209654
I/O THERM 007158903910
RAIN GAUGE 007239700810
GV FF MILK 007874235189
GB TOP SOIL 060538883403
GB TOP SOIL 060538883403
GB TOP SOIL 060538883403
GB TOP SOIL 060538883403
GB TOP SOIL 060538883403
PINE NUGG 009179949023

10 AT 1 FOR 1.76
SUBTOTAL
TAX 5.000 %
TOTAL
DEBIT TEND
CHANGE DUE

EFT DEBIT PAY FROM PRI
ACCOUNT 1338
61.01 TOTAL PURCHASE
REF # 615417802642
NETWORK ID. 0071 APPR CODE 11
06/03/06 13:56:55

ITEMS SOLD

TC# 0030 8414 6352 3648 0

hat he wants this
a Wal-Mart gift card
03/06 13:56:55

PIERCE-000033

HOME DEPOT 1130
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

1130 00012 48921 03/13/06
11 SJ660U 12:22 PM



37990208 SHELIVING
1 @ 5.97

SUBTOTAL 11.94
SALES TAX 11.94
TOTAL 23.88
CASH 20.55
CHANGE DUE 3.33



1130 12 48921 03/13/2006 7602

30 DAY RETURN POLICY ON ALL GASOLINE
POWERED EQUIPMENT AS OF 03-13-06
SEE RETURNS DESK FOR DETAILS

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User ID:
9261 98143

Password:
6163 98131

Must be entered by 04/1
must be 18 or older to
complete rules on website
purchase necessary.

Esta encuesta también se
puede completar en la página de

THE HOME DEPOT 1130
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

1130 00002 71882 10/04/06
61 AMX700 02:03 PM

ALC

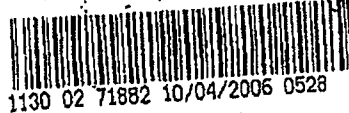


764661102809 80# SAKRETE
3 @ 3.78

SUBTOTAL 11.34
SALES TAX 11.34
TOTAL 22.68
CASH 20.55
CHANGE DUE 2.13

XXXXXXXXXXXX1338 DEBIT
AUTH CODE 662980

CHANGE DUE 2.13



1130 02 71882 10/04/2006 0528

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on-line:

User ID:
145183 144055

Password:
6604 144053

Entries must be entered by 11/03/2006.
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purchase necessary.

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SENECA, SOUTH CAROLINA

ST# 1123 OP# 00004164 TE# 74 TR# 062
48X84 FIBER 00478881655 3.96
EGGS 081390500061 F 0.87
GLAZED DONUT 007247000260 F 3.78
CASHEWS 007874209322 F 3.96
GV YOG MXBRY 007874236932 F 0.38
GV YOG MXBRY 007874236932 F 0.38
BREAD 004010001787 F 4.14
GV YOG PLAIN 007874222921 F 1.57
GV BEEF JRKY 007874209654 F 2.98
I/O THERM 007158903910 0.94
RAIN GAUGE 007239700810 1.64
GV FF MILK 007874235189 F 2.74
GB TOP SOIL 060538883403 1.04
GB TOP SOIL 060538883403 1.04
GB TOP SOIL 060538883403 1.04
GB TOP SOIL 060538883403 1.04
PINE NUGG 009179949023 1.04
10 AT 1 FOR 1.76
SUBTOTAL 58.10
TAX 1 5.000 % 2.91
TOTAL 61.01
DEBIT TEND 61.01
CHANGE DUE 0.00

EFT DEBIT PAY FROM PRIMARY
ACCOUNT 1338
61.01 TOTAL PURCHASE
REF # 615417802642
NETWORK ID. 0071 APPR CODE 165452
06/03/06 13:56:53

ITEMS SOLD 28

TC# 0030 8414 6352 3648 0666

hat he wants this Father's
a Wal-Mart gift card.
03/06 13:56:55

PIERCE-000034

THE HOME DEPOT 1130
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

1130 00011 60951 03/22/06
11 CS38T6 01:23 PM



457052931 SWING	99.00
168918534 40WFANWH2P	
3 @ 1.99	5.97
577168254 40WBLUNTC	1.79
577168025 25WBENTC	1.97
177131954 DIMMER TRIMA	4.95
189780146 WINGTWIST	1.99
SUBTOTAL	115.67
SALES TAX	5.78
TOTAL	\$121.45
XXXXXXXXXX1338 DEBIT	121.45
CODE 761420	

8 22



1130 11 60951 03/22/2006 1015

W HIRING SPRING SEASON ASSOCIATES
FT APPLY TODAY IN-STORE OR ON-LINE
STORECAREERS.HOMEDEPOT.COM/HOURLY

ENTER FOR A CHANCE
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You will need the following to enter
on-line:

User ID:
123321 122202

Password:
6172 122191

Names must be entered by 04/21/2006.
Participants must be 18 or older to enter.
See complete rules on website. No
purchase necessary.

La encuesta también se encuentra en
español en la página del Internet.)

THE HOME DEPOT
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

1130 00019 59535 09/17/06
41 BSA8HE 04:50 PM



044315478901 2X8 BRIDGING	
10 @ 0.31	3.10
048834000179 DRAINAGE STN	
2 @ 3.17	6.34
596019 D-21 CULL	
5 @ 0.20	1.00
7896796533531 TEMP PEGBD	10.88
SUBTOTAL	21.32
SALES TAX	1.23
TOTAL	22.55
XXXXXXXXXXXX1338 VISA	
AUTH CODE 145941/1196605	



1130 19 59535 09/17/2006 0212

CARPET CLEANING BY CHEM-DRY IS NOW
AVAILABLE THROUGH HOME DEPOT.
CALL TODAY: 1-800-HOMEDEPOT



LOWE'S HOME CENTERS, INC.
195 BILO PLAGE
SENECA, SC 29678
(864)882-0210

-SALE-

SALES #: S1635LK1 593756 10-05-06

10385 CONCRETE MIX 80# QUIKRET	22.68
6 @ 3.78	
1407 1X2X6 TOP CHOICE #2 WHITWD	7.32
6 @ 1.22	
147900 KOBALT STAINLESS STEEL ED	3.89

SUBTOTAL: 33.89

TAX 32278: 1.69

INVOICE 02220 TOTAL: 35.57

BALANCE DUE: 35.57

DEBIT VISA: 35.57

DEBIT VISA: 1338 AUTHCODE 831248

PURCHASE	CASH BACK	TOTAL-DEBIT
35.57	0.00	35.57

1635 TERMINAL: 02 10/05/06 13:39:59

OF ITEMS PURCHASED:
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEM

PIERCE-000035

HOME DEPOT 1130
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633
1130 00019 97196 10/20/06
41 1934 01:12 PM

1372

9634000049 MRBL CHIP WH
3-6-2-97

SUBTOTAL 8.91
SALES TAX 0.45
TOTAL \$9.36
XXXXXXXXXX1338 VISA 9.36
H CODE 191524/8197965



1130 19 97196 10/20/2006 2772

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www.HomeDepotOpinion.com

You will need the following to enter on-line:

User ID:
195811 194700

Password:
6520 19468

Entries must be entered by 11/1/2006. Entrants must be 18 or older to enter. See complete rules on purchase necessary.

LOWE'S

SENECA, SC
(864)882-0218
-SALE-

SALES #: S1635HMT 683211 05-29-06

222710 50# QUIKRETE CONC 11.88
6 8 1.90

SUBTOTAL: 11.88

TAX 32278 : 0.59

INVOICE 02901 TOTAL: 12.47

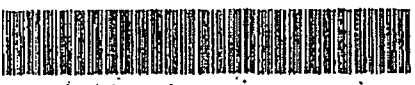
BALANCE DUE: 12.47

DEBIT VISA 12.47

DEBIT VISA: 1338 AUTHCODE 732288

PURCHASE	CASH BACK	TOTAL DEBIT
12.47	0.00	12.47

1635 TERMINAL: 02 05/29/06 12:30:02



THANK YOU
FOR SHOPPING LOWE'S

RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE NGR: BUCKY SHOAF

THE HOME DEPOT 11
1614 SANDIFER BLVD
SENECA, SC 29678 (864)886-0633

SALE 1130 00002 16713 10/
61 AMX700 08:



38508177104058
SALES TAX
TOTAL \$
XXXXXXXXXXXX1338 DEBIT
AUTH CODE 062160



1130 02 16713 10/21/2006 3921

FAMILY BY DAY, FRIGHT BY NIGHT
SIX FLAGS FRIGHT FEST
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CARD!

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You will need the following to enter on-line:

User ID:
34845 33717

Password:
6521 33715

Entries must be entered by 11/20/06. Entrants must be 18 or older to enter. See complete rules on purchase necessary.

encuesta también se encuentra en la página del Internet

PIERCE-000036



LOVE'S HOME CENTERS, INC.

3515 CLENSON BLVD.

ANDERSON, SC 29621

(864)964-9226

-SALE-

SALES #: S0720SR1 41553 10-19-06

60061 .5CF DRAINAGE ROCK	12.68
4 @ 3.17	
77605 POULTRY NETTING 24"X10'-2	2.84
12166 REBAR 1/2" X 10' (84)	3.81
197972 VERTICAL REBAR SAFETY CAP	1.45
10358 EXP JOINT 1/2"X4"X5'	1.99
10385 CONCRETE MIX 80# QUIKRET	37.80
10 @ 3.78	

SUBTOTAL: 60.57

TAX 32145 : 3.03

INVOICE 05118 TOTAL: 63.60

BALANCE DUE: 63.60

DEBIT VISA : 53.60

DEBIT VISA: 1338 AUTHCODE 731428

PURCHASE CASH BACK TOTAL DEBIT

63.60 0.00 63.60



LOVE'S HOME CENTERS, INC.

195 BILD PLACE

SENECA, SC 29678

(864)882-0210

-SALE-

SALES #: S1635R07 1011215 10-08-06

10385 CONCRETE MIX 80# QUIKRET

7 @ 3.78

142133 SPEC WASP & HORNET KILLER 2.97

SUBTOTAL: 29.43

TAX 32278 : 1.47

INVOICE 02912 TOTAL: 30.90

BALANCE DUE: 30.90

DEBIT VISA :

DEBIT VISA: 1338 AUTHCODE 230809

PURCHASE CASH BACK TOTAL DEBIT

30.90 0.00 30.90

OF ITEMS PURCHASED: 148

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU
FOR SHOPPING LOVE'S

RECEIPT REQUIRED FOR CASH REFUND.

CHECK PURCHASE REFUNDS REQUIRE

15 DAY WAIT PERIOD FOR CASH BACK.

STORE MGR: BUCKY SHOAF

HAVE A COMMENT OR FEEDBACK?

LET US KNOW AT

WWW.LOWES.COM/FEEDBACK

STORE CODE: 16351-06R06-02912

WAL*MART
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Always

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WE SELL FOR LESS

MANAGER CHRISTOPHER LEE

(864) 885-0408

SENECA, SOUTH CAROLINA

ST# 1123 OP# 00003464 TE# 74 TR#

VIT C BONUS 060538899943

SV ESTER C W 068113114496

SUN SHOE 20 003224717110

GARMENT BAG 078994462054

MARBLE CHIPS 074278690186

MARBLE CHIPS 074278690186

MARBLE CHIPS 074278690186

MUSH COMPOS 009179949145

MUSH COMPOS 009179949145

SUBTOTAL 69

TAX 1 5.000 % 3

TOTAL 72

DEBIT TEND 72

CHANGE DUE 0

EFT DEBIT PAY FROM PRIMARY

ACCOUNT 1338

72.74 TOTAL PURCHASE

REF # 627700274914

NETWORK ID. 0071 APPR CODE 364672

10/04/06 13:42:25

ITEMS SOLD 9

TC# 7226 3429 9827 4892 8695



It's Rollback Season

10,000 ways to save

10/04/06 13:42:25

PIERCE-000037



LOWE'S HOME CENTERS, INC.

3515 CLENSON BLVD.
ANDERSON, SC 29621

(864) 964-9228

-SALE-

SALES #: 00728SR1 41553 10-29-06

10385 CONCRETE MIX 80# QUIKRET 20.40
3.98 DISCOUNT EACH 0.79
6 @ - 3.40

10389 SAND MIX 60# QUIKRET 4.65
17265 12"X4" STEEL TROVEL 7.48
131016 KOBALT BRONZE GROOVER 15.88

SUBTOTAL: 48.41

TAX 32145: 2.42

INVOICE 05782 TOTAL: 50.83

BALANCE DUE: 50.83

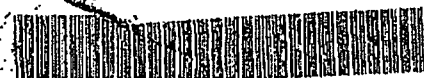
DEBIT VISA: 50.83

TOTAL DISCOUNT: 3.48

DEBIT VISA: 1338 AUTHCODE 832715
PURCHASE CASH BACK TOTAL DEBIT
50.83 0.00 50.83

0728 TERMINAL: 05 10/29/06 15:57:07

OF ITEMS PURCHASED: 9
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU
FOR SHOPPING LOWE'S

THE HOME DEPOT 113C
1614 SANDIFER BLVD
SENECA, SC 29678 (864) 886-0633

1130 00002 15129 1021/0
61 TA4632 1201 PL

SALE



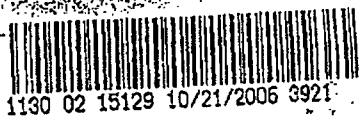
7896796533548 TEMP HDBD
533829 80# SAKRETE
10 @ 3.78

SUBTOTAL: 37.80

SALES TAX: 46.79

TOTAL: 2.34

XXXXXXXXXXXX1338 DEBIT
AUTH CODE 960503



1130 02 15129 10/21/2006 3921

FAMILY BY DAY, FRIHT BY NIGHT
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You will need the following to enter
online:

User ID:
31677 30549

Password:
6521 30547

Entries must be entered by
Entrants must be 18 or older
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purchase necessary

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THE HOME DEPOT 113C
1614 SANDIFER BLVD
SENECA, SC 29678 (864) 886-0633

1130 00002 12548 10/20/06
61 KCD9HA 01:02

SALE



533829 80# SAKRETE
15 @ 3.78

SALES TAX: 56.70

TOTAL: 2.84

DEBIT: 56.70

XXXXXXXXXXXX1338
AUTH CODE 660024



1130 02 12548 10/20/2006 7155

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www.HomeDepotOpinion.com

You will need the following to enter
online:

User ID:
26518 25387

Password:
6520 25385

must be entered by 11/19/2006
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encuentra en la página del Internet

CHILLS

503
777
4822 LNO 1/1222

Dixie Flooring, Inc.
160 Bi-Lo Plaza
Seneca SC 29678
864-882-4556
864-882-4553, fax

Customer Name:

Andrew Pierce

Jeff Gray 247-0606 call for Jeff

Date: 4/11/2005

Installer McQuaid

QUOTE - good for 30 days

Terms: Balance due upon completion of the work. A late charge of 1-1/2 % of the balance due, (APR 18%), will be added for each 30 days thereafter in which payment is not received.

Qty.	U/M	Description	Cost	Total
Materials				
76	sy	Southwind Arabesque color Desert Sands 15x45.6	11.99	911.24
36.8	sy	Mohawk Instant Winner Brushed Gold 12x27.6	12.50	460.00
18.67	sy	Starlight by Southwind color Potpourri 12x14	10.99	205.18
18.67	sy	Philadelphia Robust color Honeynut 12x14	10.99	205.18
400	sf	Edge Artistic Creekbed 40 ctns 1,600 (340)	4.69	1876.00
27	ea	Grout Cartridge	9.08	245.16
400	sf	underlayment for Edge	0.50	200.00
53.33	sy	#6 pad	2.50	133.33
91.67	sy	3/8 #8 pad for great room and Steps	2.99	274.09
		Tax		225.51
		Disposal fee		10.00
		Shipping		172.00
		Sub-total Materials		4917.69 - 4600
Labor				
94.67	sy	labor on berber	5.00	473.35
55.47	sy	labor on reg carpet	3.50	194.15
16	ea	steps	3.50	56.00
1	ea	landing	8.00	8.00
400	sf	labor to install Edge	4.00	1600.00
1	ea	labor on balance ceramic	1990.00	1990.00
		Sub-total Labor		4321.50
		Total		9239.19



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Client: Chris Pierce

Home: (864) 972-9638

Home: 605 White Owl Road
Seneca, SC 29678

Operator Info:

Operator: BENNY

Estimator: Benny Dodd

Business: (800) 572-9459 x24

Business: 4533 Highway 81
Anderson, SC 29621

Type of Estimate: Other

Dates:

Date Entered: 03/20/2006

Date Assigned: 03/03/2006

Date Est. Completed: 03/20/2006

Price List: SCGV4S5D
Restoration/Service/Remodel

Estimate: SC-PIERCE

Please note that we did not figure any door trim or base to be replaced. This may have to be done and would be figured as a extra cost.

PIERCE-000007



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

SC-PIERCE

Main Level

Room: BDRM 1

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	127.50	SF
Seal then paint the walls twice (3 coats)	361.33	SF
Paint baseboard - two coats	45.17	LF

Room: HALL

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Mask per square foot for drywall or plaster work	75.21	SF
Seal then paint the walls twice (3 coats)	371.56	SF
Paint baseboard - two coats	45.83	LF

Room: 1 BATH

Ceiling Height: 8'

Subroom 1: CLOSET

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	66.60	SF
R&R Batt insulation - 4" - R13	66.60	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	58.70	SF
Seal then paint the walls twice (3 coats)	302.67	SF
Paint baseboard - two coats	37.83	LF

Room: BDRM 2

Ceiling Height: 8'

Subroom 1: CLOSET

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	144.10	SF
Seal then paint the walls twice (3 coats)	478.67	SF
Paint baseboard - two coats	59.83	LF



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Room: LIVING

Subroom 1: CLOSET

Subroom 2: DINING

Subroom 3: BRKFAST

Ceiling Height: 8'

Ceiling Height: 8'

Ceiling Height: 8'

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	637.20	SF
R&R Batt insulation - 4" - R13	637.20	SF
Contents - move out then reset - Extra large room	1.00	EA
Mask per square foot for drywall or plaster work	629.93	SF
Seal then paint the walls twice (3 coats)	1,127.15	SF
Paint baseboard - two coats	140.28	LF

Room: KITCHEN

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	149.89	SF
Seal then paint the walls twice (3 coats)	301.74	SF
Paint baseboard - two coats	37.72	LF

Room: UTILITY

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	76.79	SF
Seal then paint the walls twice (3 coats)	281.33	SF
Paint baseboard - two coats	35.17	LF

Room: BDRM MSTR

Ceiling Height: 8'

Subroom 1: CLOSET

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	292.67	SF
Seal then paint the walls twice (3 coats)	735.03	SF
Paint baseboard - two coats	91.41	LF



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Room: MSTRBATH

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	62.54	SF
Seal then paint the walls twice (3 coats)	237.86	SF
Paint baseboard - two coats	29.26	LF

Room: Basement

Batt insulation - 6" - R19	1,224.00	SF

Grand Total

12,815.08

Benny Dodd

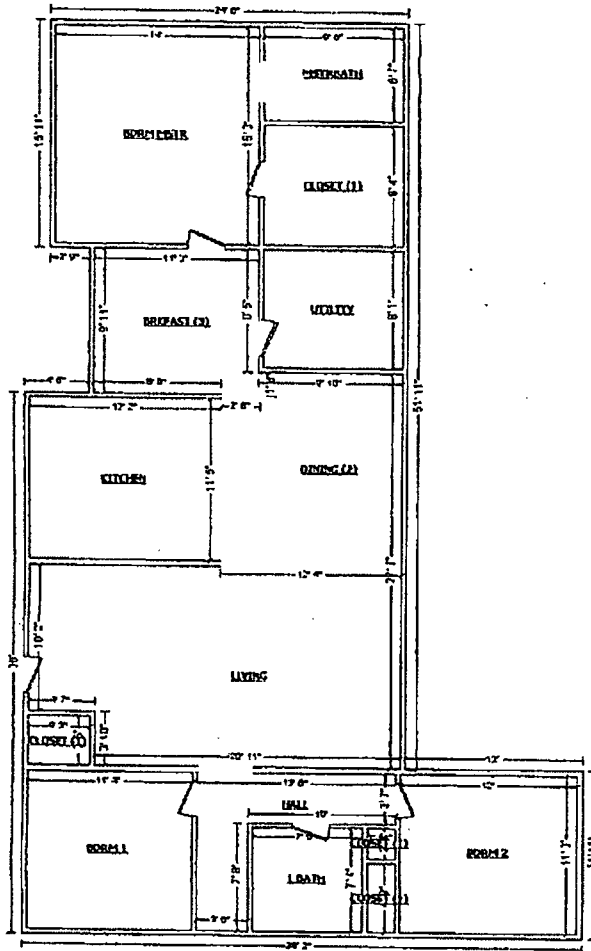
Grand Total Areas:

4,197.33 SF Walls	1,617.33 SF Ceiling	5,814.67 SF Walls and Ceiling
1,617.33 SF Floor	179.70 SY Flooring	522.50 LF Floor Perimeter
0.00 SF Long Wall	0.00 SF Short Wall	535.50 LF Ceil. Perimeter
1,617.33 Floor Area	1,742.83 Total Area	4,197.33 Interior Wall Area
1,676.00 Exterior Wall Area	209.50 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	

Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Main Level



SC-PIERCE



AFFORDABLE ASPHALT

(864) 296-1549



934-3831

PROPOSAL

PROPOSAL SUBMITTED TO		PHONE	DATE
STREET		JOB NAME	
CITY, STATE AND ZIP CODE		JOB LOCATION	
ARCHITECT	DATE OF PLANS		JOB PHONE

We hereby propose to furnish materials and labor necessary for the completion of:

Grade & Compact Base

Gravel As Needed

Pave Complete Drive 2 1/2" Asphalt

Repair Road \$1500.00 80'

\$2650.00

WE PROPOSE hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

dollars (\$

\$2650.00)

Payment to be made as follows:

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

Authorized Signature

Jack Reek

Note: This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as proposed. Payment will be made as outlined above.

Signature _____

Date of Acceptance: _____

Signature _____

PLAINTIFF'S
EXHIBIT

tabbies

W N H

CHILS

P13
 7794
 4822 LMO 14220

Dixie Flooring, Inc.
 160 Bi-Lo Plaza
 Seneca SC 29678
 864-882-4556
 864-882-4553, fax

Customer Name:

Andrew Pierce

Jeff Gray 247-0605 cell for Jeff

Date: 4/11/2005

Installer McQuaidQUOTE - good for 30 days

Terms: Balance due upon completion of the work. A late charge of 1-1/2 % of the balance due, (APR 18%), will be added for each 30 days thereafter in which payment is not received.

Qty.	U/M	Description	Cost	Total
Materials				
76	sy	Southwind Arabesque color Desert Sands 15x45.6	11.99	911.24
36.8	sy	Mohawk Instant Winner Brushed Gold 12x27.6	12.50	460.00
18.67	sy	Starlight by Southwind color Potpourri 12x14	10.99	205.18
18.67	sy	Philadelphia Robust color Honeynut 12x14	10.99	205.18
400	sf	Edge Artistic Creekbed 40 ctns 1,600 (240)	4.69	1876.00
27	ea	Grout Cartridge	9.08	245.16
400	sf	underlayment for Edge	0.50	200.00
53.33	sy	#6 pad	2.50	133.33
91.67	sy	3/8 #8 pad for great room and Steps	2.99	274.09
		Tax		225.51
		Disposal fee		10.00
		Shipping		172.00
		Sub-total Materials		4917.69 - 460
Labor				
94.67	sy	labor on berber	5.00	473.35
55.47	sy	labor on reg carpet	3.50	194.15
16	ea	steps	3.50	56.00
1	ea	landing	8.00	8.00
400	sf	labor to install Edge	4.00	1600.00
1	ea	labor on balance ceramic		
		Sub-total Labor	1990.00	1990.00
		Total		4321.50
				9239.19

PLAINTIFF'S
 EXHIBIT

FLOOR COVERINGS AND CERAMIC TILE

1. Master bath - ceramic tile, from Home Depot, Seneca-Himilaya Ivory 13 x 13

#510056 floor tile @ \$1.48 each. 54 square feet x \$1.48 = \$80.00. 54 square feet x \$7.00 installation = \$378.00

Whirlpool tub surround tile - 10 x 13 # 503643 @ \$1.34 each. 7 feet plus 8 feet = 15 feet. 18 tiles @ \$1.34 = \$24.00.

Deco tile 10 x 13 with diamond insert # 332441 @ \$4.34. 6 tiles (one every third tile, 6 x \$4.34 = \$26.00.

Decor strip 3 x 10 - # 109120 @ \$4.95 each x 18 = \$89.00

Bullnose 3 x 10 - # 106989 @ \$1.95 each x 18 = \$35.00

2. Second bath - Ceramic tile from Moon Brothers, Anderson, Wedgewood blue 1410-L, HF @ \$2.00 per square foot. 6 feet x 5 feet area = 30 square feet 30 x 9.0 (\$2.00 + \$7.00 installation = \$270.00

3. Kitchen, eating area and utility room

"Edge" Artistic Creekbed 535 gray Pebble from Dixie Floorcoverings, Seneca

@ \$4.25 per sq. ft. Underlay @ \$.50; installation @ \$3.50; grout @ \$9.25 per pkg. x 21;

Total = \$2731.00

- 88 sf + backer 4. Hall to garage and between two bedrooms
from Lowes Anderson. Ceramic tile, Mediterranean slate, (tan and grey) \$.98 per square foot #88230. $8 \times 88 = \$704.00$
- 45 sf + 3 backer 5. Front Entrance, Interior Granite supplied by owner. Installed, $9 \times 5 = 45 \times \$6.00 = \$270.00$. Exterior, from Lowes Anderson, Rhondine Paladiana - Quick Ship, Class 5, 13 inch x 13 inch tan and grey (stone appearance) 7 feet x 14 feet (98 sq.ft) @ \$2.92 = \$292.00.
- porch 185 sf

6. Totals:

- a) Master bath, $80 + 378 = \$458.00$
- b) Second bath = \$270.00
- c) Kitchen, eating area, utility room. "Edge" \$2774.00
- d) Labor for installation of granite @ entrance = \$405.00
- e) Front Entrance, exterior tile = \$292.00

Total: \$4119.00

7. Grand total: floor coverings

\$4119.00 (tile) + \$2603.00 (carpeting) = \$6722.00

PIERCE-000083



Classic Lighting & Design, Inc.

Anderson Showroom
P.O. Box 6157
516 Hwy 28 Bypass
Anderson, South Carolina 29625
Phone & Fax 864-224-9500
Toll Free (877) 708-9500
Email aclad@bellsouth.net

Seneca Showroom
P.O. Box 2079
1150 Frontage Road
Seneca, South Carolina 29672
Phone & Fax 864-885-1872
Toll Free (866) 656-8777
Email cladinc@bellsouth.net

www.classiclightinganddesign.com

June 28, 2010

Re: Tri County Development, Inc. Paid Invoices
Pierce Residence

To Whom It May Concern:

This is to confirm that Classic Lighting & Design, Inc. to Tri County Development, Inc., billed the following invoices for the Pierce job (and have been paid in full):

<u>DATE:</u>	<u>INVOICE#:</u>	<u>\$ AMT:</u>
01/13/2005	57229	\$322.46
02/24/2005	57647	\$216.88
02/21/2005	57616	\$206.01
05/19/2005	58436	\$963.80
06/03/2005	58580	\$185.96
06/03/2005	58581	\$ 12.50
06/07/2005	58630	\$311.48
06/07/2005	58633	\$ 46.21
TOTAL:		\$2,265.30

Susan H. McCoston
Susan H. McCoston
Office Manager

Enclosure(s): 8
/shm

PLAINTIFF'S
EXHIBIT



Classic LIGHTING AND DESIGN, INC.

■ LIGHTING SHOWROOM

■ ELECTRICAL SUPPLIES

 REMIT TO:
 P.O. BOX 2079
 SENECA, SC 29679

 1150 FRONTAGE RD
 SENECA, SC 29672

TEL: 864-885-1872

INVOICE

 Date: 01/13/05 Inv. No.: 57229
 Due Date: 02/10/05 Page No.: 1

 T003
 TRI COUNTY DEVELOPMENT, INC.
 JEFFREY A. GRAY
 202 S. SUMMIT DRIVE
 SENECA SC 29672

Ship To/Remarks

PIERCE

 SHIP VIA FOB TERMS YOUR # OUR # SALES REP
 0/OTH/N10TH SHM 12169 59

DESCRIPTION ITEM NUMBER	ORDERED UNIT MEASURE	SHIPPED BACKORDERED	UNIT PRICE ITEM DISCOUNT	EXTENDED PRICE
PRO P87ATQC RECESSED HOUSING	22.0	22.0	8.2500	181.50
HAB 6080 80 CFM FAN ONLY	2.0	2.0	62.8000	125.60

 SUB TOTAL 307.10
 TAX 15.36
 TOTAL 322.46

NET TO PAY 322.46

PACKED BY:

CARTONS & WEIGHT

 TERMS: ☐ C.O.D. ☐ CASH ☐ CHARGE
☐ MOSE. RETURNED ☐ QUOTATION

SUB-TOTAL

TAX

HANDLING AND / OR SHIPPING

MISC. CHARGES

TOTAL →

 Charge Sales are Net 30 Days.
 A Service Charge Of 1 1/2% Per Month Will Be Charged
 To All Over Due Invoices. Merchandise Cannot Be
 Returned Without Written Permission. 15% Minimum
 Restocking Charge.

WE APPRECIATE YOUR BUSINESS!

INVOICE



Classic LIGHTING AND DESIGN, INC.

■ LIGHTING SHOWROOM

■ ELECTRICAL SUPPLIES

REMIT TO:

P.O. BOX 2079

SENECA, SC 29679

1150 FRONTAGE RD

SENECA, SC 29672

TEL: 864-885-1872

Date: 02/24/05

Inv. No.: 57647

Due Date: 03/10/05

Page No.: 1

T003

TRI COUNTY DEVELOPMENT, INC.

JEFFREY A. GRAY

202 S. SUMMIT DRIVE

SENECA, SC 29672

Ship To/Remarks

PIERCE

SHIP VIA

FOB

TERMS

YOUR #

OUR #

SALES REP

0/0TH/110TH

SHH

12642

01

DESCRIPTION ITEM NUMBER	ORDERED UNIT MEASURE	SHIPPED BACKORDERED	UNIT PRICE ITEM DISCOUNT	EXTENDED PRICE
WIRE 6-2 NMB W/G	12.0	12.0	0.5900	7.08
WIRE ALUM SER 4/0 4 CONDUCTOR	45.0	45.0	2.4960	112.32
BIE WN2060 60AMP. AC DISC.	2.0	2.0	9.4500	18.90
SAT 90-480 KEYLESS LIGHT	7.0	7.0	3.9500	27.65
SAT 90-1310 WIRE BULB GUARD	7.0	7.0	3.9500	27.65
SAT 100A BULB 100WATTS3954	7.0	7.0	0.6000	4.20
PRO PB7ATQC RECESSED HOUSING	1.0	1.0	8.7500	8.75

pd by VISA
2/25/05

SUB TOTAL
TAX
TOTAL

206.55
10.33
216.88

NET TO PAY

216.88

PACKED BY:

CARTONS & WEIGHT

DELIVERY:

☐ PARTIAL

☐ COMPLETE

BACK ORDER NO.

DELIVERY BY:

DATE

RECEIVED IN GOOD CONDITION BY:

DATE

TERMS:

☐ C.O.D.

☐ CASH

☒ CHARGE

☐ MODEL RETURNED

☐ QUOTATION

Charge Sales are Net 30 Days.

A Service Charge Of 1 1/2% Per Month Will Be Charged To All Over Due Invoices. Merchandise Cannot Be Returned Without Written Permission. 15% Minimum Restocking Charge

WE APPRECIATE YOUR BUSINESS!

SUB-TOTAL

206.55

TAX

10.33

HANDLING AND / OR SHIPPING

MISC. CHARGES

TOTAL →

216.88



Classic LIGHTING AND DESIGN, INC.

■ LIGHTING SHOWROOM

■ ELECTRICAL SUPPLIES

REMIT TO:

P.O. BOX 2079

SENECA, SC 29879

1150 FRONTAGE RD

SENECA, SC 29672

TEL: 864-885-1872

INVOICE

Date: 05/19/05

Inv. No.: 58436

Due Date: 06/10/05

Page No.2

TRI-COUNTY DEVELOPMENT, INC.

JEFFREY A. GRAY

202 S. SUMMIT DRIVE

SENECA SC 29672

Ship To/Remarks

PIERCE

SHIP VIA

FOB

TERMS

YOUR #

OUR #

SALES REP

0/0TH/N10TH

SHH

GREEN

45

DESCRIPTION ITEM NUMBER	ORDERED UNIT MEASURE	SHIPPED BACKORDERED	UNIT PRICE ITEM DISCOUNT	EXTENDED PRICE
QUO-77525-2-6 PADDLE FAN PB/W	1.0	1.0	59.9500	59.95
CHD-2544-05 OUTDOOR LIGHT	2.0	2.0	121.1800	242.36
SAT 60A BULB 60 WATT 83952	9.0	9.0	0.5000	4.50
SAT 100A BULB 100WATT83954	10.0	10.0	0.5000	5.00

SUB TOTAL

917.90

TAX

45.90

TOTAL

963.80

NET TO PAY

963.80

TCO-000638



Classic

LIGHTING AND DESIGN, INC.

■ LIGHTING SHOWROOM

■ ELECTRICAL SUPPLIES

REMIT TO:
P.O. BOX 2079
SENECA, SC 29679

1150 FRONTAGE RD
SENECA, SC 29672

TEL: 864-885-1872

INVOICE

Date: 06/03/05
Due Date: 07/10/05

Inv. No.: 58580
Page No.: 1

T003
TRI COUNTY DEVELOPMENT, INC.
JEFFREY A. GRAY
20238 SUMMIT DRIVE
SENECA, SC 29672

SHIP TO/REMARKS
PIERCE

SHIP VIA: FOB TERMS: YOUR # YOUR # SALES REP

0/0TH/N10TH

SHH

2237

45

DESCRIPTION ITEM NUMBER	ORDERED UNIT MEASURE	SHIPPED BACKORDERED	UNIT PRICE ITEM DISCOUNT	EXTENDED PRICE
SAT 40A BULB 40 WATT	5.0	5.0	1.2500	6.25
SAT 65BR30/FL BULB S2808	8.0	8.0	3.9700	31.76
SYL 90PAR/CAP/FL 30 130V S496	12.0	12.0	6.7500	81.00
SAT F32T8/741 FLUOR. BULBS661	12.0	12.0	2.9500	35.40
BRK 9120B-GFD SMOKE DETECTOR	1.0	1.0	14.9500	14.95
SAT 40BC 40 WATT CLR BULBS328	6.0	6.0	1.2900	7.74

SUB TOTAL 177.10
TAX 8.86
TOTAL 185.96

NET TO PAY 185.96

PACKED BY:

CARTONS & WEIGHT

DELIVERY:

☐ PARTIAL ☐ COMPLETE

BACK ORDER NO.

DELIVERY BY:

DATE

RECEIVED IN GOOD CONDITION BY:

DATE

TERMS:

☐ C.O.D. ☐ CASH ☐ CHARGE
☐ M.O.E. RETURNED ☐ QUOTATION

Charge Sales are Net 30 Days.
A Service Charge Of 1 1/2% Per Month Will Be Charged
To All Over Due Invoices. Merchandise Cannot Be
Returned Without Written Permission. 15% Minimum
Restocking Charge.

SUB-TOTAL

TAX

HANDLING AND/OR SHIPPING

MISC. CHARGES

TOTAL →



Classic

LIGHTING AND DESIGN, INC.

■ LIGHTING SHOWROOM

■ ELECTRICAL SUPPLIES

REMIT TO:

P.O. BOX 2079

SENECA, SC 29679

1150 FRONTAGE RD
SENECA, SC 29672

TEL: 864-865-1872

INVOICE

Date: 06/03/05

Inv. No.: 58581

Due Date: 07/10/05

Page No. 1

T003

TRI COUNTY DEVELOPMENT, INC.

JEFFREY A. GRAY

202 S. SUMMIT DRIVE

SENECA SC 29672

SHIP TO/Remarks

PIERCE

SALES REP

SHIP VIA

FOB

TERMS

YOUR #

OUR #

0/0TH/N10TH

SHN

2113

45

DESCRIPTION ITEM NUMBER	ORDERED UNIT MEASURE	SHIPPED BACKORDERED	UNIT PRICE ITEM DISCOUNT	EXTENDED PRICE
QMD-234 GLASS	2.0	2.0	5.9500	11.90

SUB TOTAL
TAX
TOTAL

11.90
0.60
12.50

NET TO PAY

12.50

PACKED BY:

CARTONS & WEIGHT

DELIVERY:

☐ PARTIAL ☐ COMPLETE

BACK ORDER NO.

DELIVERY BY:

DATE

RECEIVED IN GOOD CONDITION BY:

DATE

TERMS:

☐ C.O.D.

☐ CASH

☐ CHARGE

☐ MOSE. RETURNED

☐ QUOTATION

Charge Sales are Net 30 Days.
A Service Charge Of 1 1/2% Per Month Will Be Charged
To All Over Due Invoices. Merchandise Cannot Be
Returned Without Written Permission. 15% Minimum
Restocking Charge.

WE APPRECIATE YOUR BUSINESS!

SUB-TOTAL

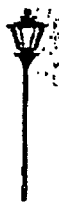
TAX

HANDLING AND / OR SHIPPING

MISC. CHARGES

TOTAL →

TAX 000000



Classic LIGHTING AND DESIGN, INC.

■ LIGHTING SHOWROOM

■ ELECTRICAL SUPPLIES

REMIT TO:

P.O. BOX 2079

SENECA, SC 29679

1160 FRONTAGE RD

SENECA, SC 29672

TEL: 864-885-1872

INVOICE

Date: 06/07/05

Inv. No.: 58630

Due Date: 07/10/05

Page No.: 1

TO:
TRI-COUNTY DEVELOPMENT, INC.
JEFFREY A. GRAY
2023 SUMMIT DRIVE
SENECA, SC 29672

Ship To/Remarks
PIERCE

SHIP VIA

FOB

TERMS

YOUR #

OUR #

SALES REP

0/OTH/N10TH

SHM

1226

59

DESCRIPTION ITEM NUMBER	ORDERED UNIT MEASURE	SHIPPED BACKORDERED	UNIT PRICE ITEM DISCOUNT	EXTENDED PRICE
PRK 91208 GRD SMOKE DETECTOR	7.0	7.0	14.9500	104.65
PRD P8075-28 WHITE BAFFLE TRI	10.0	10.0	5.9500	59.50
PRD P8076-28 EYEBALL TRIM	10.0	10.0	11.9500	119.50
LEV 40549-W MIO SIZE PHONE JAC	1.0	1.0	2.4960	2.50
CHD DR24PB POL BRASS DOWN ROD	1.0	1.0	10.5000	10.50

SUB TOTAL
TAX
TOTAL

296.65
14.83
311.48

NET TO PAY

311.48

PACKED BY:

CARTONS & WEIGHT

DELIVERY:

☐ PARTIAL

☐ COMPLETE

BACK ORDER NO.

DELIVERY BY:

DATE

RECEIVED IN GOOD CONDITION BY

DATE

TERMS:

☐ C.O.D.

☐ CASH

☐ CHARGE

☐ M.O.S. RETURNED

☐ QUOTATION

Charge Sales are Net 30 Days.

A Service Charge Of 1 1/2% Per Month Will Be Charged To All Over Due Invoices. Merchandise Cannot Be Returned Without Written Permission. 15% Minimum Restocking Charge.

WE APPRECIATE YOUR BUSINESS!

SUB-TOTAL

TAX

HANDLING AND / OR SHIPPING

MISC. CHARGES

TOTAL →



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Client: Chris Pierce

Home: (864) 972-9638

Home: 605 White Owl Road
Seneca, SC 29678

Operator Info:

Operator: BENNY

Estimator: Benny Dodd

Business: (800) 572-9459 x24

Business: 4533 Highway 81
Anderson, SC 29621

Type of Estimate: Other

Dates:

Date Entered: 03/20/2006

Date Assigned: 03/03/2006

Date Est. Completed: 03/20/2006

Price List: SCGV4S5D

Restoration/Service/Remodel

Estimate: SC-PIERCE

Please note that we did not figure any door trim or base to be replaced. This may have to be done and would be figured as a extra cost.





Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

SC-PIERCE

Main Level

Room: BDRM 1

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	127.50	SF
Seal then paint the walls twice (3 coats)	361.33	SF
Paint baseboard - two coats	45.17	LF

Room: HALL

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Mask per square foot for drywall or plaster work	75.21	SF
Seal then paint the walls twice (3 coats)	371.56	SF
Paint baseboard - two coats	45.83	LF

Room: 1 BATH

Ceiling Height: 8'

Subroom 1: CLOSET

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	66.60	SF
R&R Batt insulation - 4" - R13	66.60	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	58.70	SF
Seal then paint the walls twice (3 coats)	302.67	SF
Paint baseboard - two coats	37.83	LF

Room: BDRM 2

Ceiling Height: 8'

Subroom 1: CLOSET

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	144.10	SF
Seal then paint the walls twice (3 coats)	478.67	SF
Paint baseboard - two coats	59.83	LF



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Room: LIVING

Subroom 1: CLOSET

Subroom 2: DINING

Subroom 3: BRKFAST

Ceiling Height: 8'

Ceiling Height: 8'

Ceiling Height: 8'

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	637.20	SF
R&R Batt insulation - 4" - R13	637.20	SF
Contents - move out then reset - Extra large room	1.00	EA
Mask per square foot for drywall or plaster work	629.93	SF
Seal then paint the walls twice (3 coats)	1,127.15	SF
Paint baseboard - two coats	140.28	LF

Room: KITCHEN

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	149.89	SF
Seal then paint the walls twice (3 coats)	301.74	SF
Paint baseboard - two coats	37.72	LF

Room: UTILITY

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	76.79	SF
Seal then paint the walls twice (3 coats)	281.33	SF
Paint baseboard - two coats	35.17	LF

Room: BDRM MSTR

Subroom 1: CLOSET

Ceiling Height: 8'

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	292.67	SF
Seal then paint the walls twice (3 coats)	735.03	SF
Paint baseboard - two coats	91.41	LF



Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Room: MSTRBATH

Ceiling Height: 8'

R&R 1/2" drywall - hung, taped, with smooth wall finish	101.70	SF
R&R Batt insulation - 4" - R13	101.70	SF
Contents - move out then reset	1.00	EA
Mask per square foot for drywall or plaster work	62.54	SF
Seal then paint the walls twice (3 coats)	237.86	SF
Paint baseboard - two coats	29.26	LF

Room: Basement

Batt insulation - 6" - R19	1,224.00	SF
Grand Total	12,815.08	

Benny Dodd

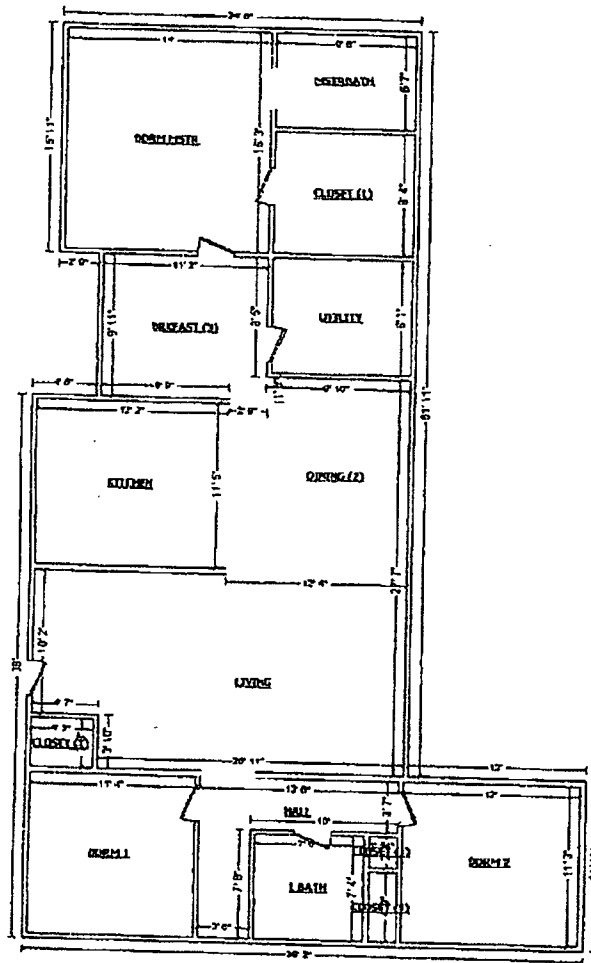
Grand Total Areas:

4,197.33 SF Walls	1,617.33 SF Ceiling	5,814.67 SF Walls and Ceiling
1,617.33 SF Floor	179.70 SY Flooring	522.50 LF Floor Perimeter
0.00 SF Long Wall	0.00 SF Short Wall	535.50 LF Ceil. Perimeter
1,617.33 Floor Area	1,742.83 Total Area	4,197.33 Interior Wall Area
1,676.00 Exterior Wall Area	209.50 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	

Woods Restoration Services, Inc.

4533 Highway 81 North
Anderson SC 29621
p; 800-572-9459
F; 864-261-8400

Main Level



SC-PIERCE

August 22, 2005

ACCOUNTING

1. Wire Shelves and attachments	\$325.00
2. Shutters and mix to match garage door paint 134.91	
3. HardiBacker board 1/4 inch	179.69
4. Light fixtures/fans	186.86
5. Door entry hardware	22.00
6. Door mat	20.94
7. Lumber for lbroom closet	34.68
8. A/C filters	19.34
9. Gypsum board for broom closet	15.73
10. Whirlpool tub drain fixture	35.58
11. Paint for broom closet	18.00
12. Paint for basement floor (5 gallons)	60.00
13. 1 x 2 inch lumber for garage shelves	21.58
14. Master bedroom bath shower fixture	140.00
Credit for return of door casing (broom closet)	-20.00
TOTAL.....	\$1194



chrispun.lst

PUNCH LIST

July 18, 2005

1. Adjust all doors to shut and latch and lock, if required, correctly.
2. Fill holes on inside of rear doors to deck and patio.
3. Remove cultured stone and litter in front yard..
5. Smooth sand, stain, and varnish stair rails. Fill holes and install Bull Nose ends on each stair rail.
6. Clamp kitchen sink to avoid wobble of sink fixture.
7. Remove "fish smell" from house.
8. Adjust drawer in kitchen on right side of sink..



9. Install locks on all kitchen cabinet doors at floor level to prevent cats opening doors.
10. Adjust inside door to basement to close and properly latch.
11. Install appliances in kitchen - range, microwave and dishwasher.
12. Install two additional shelves in linen closet in eating area.
13. Install additional wire shelves for storage per plan.
14. Install medicine cabinets in both baths - Master bath - above back of toilet;
guest bath - above back of toilet.
15. Install shower doors.
16. Install mirrors in both baths.
17. Install shower fixture in master bath shower.
18. Install drain fixture in whirlpool tub.

19. Reinstall toilets - white in guest bath; tan in master bath.
21. Install door stops: utility room, entrance from garage, master bedroom entrance and closet, toilet area in master bath, small bath, front entrance, both bedrooms.
22. Install downspout splash plates (five foot).
23. Install 6' x 6' cement slab outside rear garage door.
25. Remove dirt around drain pipe in basement floor and replace with cement.
29. Clean up red dirt on lower parts of vinyl siding.
30. Provide credit for unused cultured stone.
31. Clean tile and granite especially at front entrance.
32. Clean up loose fibers on all carpeting.
33. Remove all trash from garage floor and basement floor.

34. Install timer for water heater per contract.

35. Install ventless fan and light above range per contract.

36. Install gas log.

37. Paint ceiling over and adjacent to fireplace stone.

38. Master bedroom door and Master bedroom closet door - Cut off lower portion
of door to clear carpet.

39. Install water downspout at rear corner of garage.

40. Utility room light fixture flashes - fix.

Jeff Gray, date_____

Melinda Holbrooks, date_____

TCD-000171

1 State of South) In the Court of Common Pleas
2 Carolina)
3 County of Oconee) Case No: 2005-CP-37-00788
4)
5 Tri-County)
6 Development and)
7 Melinda Holbrooks)
8 Plaintiffs,)
9 -vs-) Transcript of Record
10 Christopher A.) Trial
11 Pierce,)
12 Defendant.)
13 November 28 and 29, 2011
14 Walhalla, South Carolina

15 B E F O R E:
16 The Honorable Alexander S. Macaulay, Judge; and a
17 Jury.
18

19 A P P E A R A N C E S:
20 Thomas E. Dudley, III, Esq.
21 Attorney for the Plaintiffs
22 Christopher A. Pierce
23 Pro Se Defendant
24

25 Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

1	Index of Witnesses	
2		
3	Witnesses	Page
4		
5	Jeff Gray	
6	Direct Examination by Mr. Dudley	50
	Cross-Examination by Mr. Pierce	71
7	Cross-Examination by Mr. Pierce (continuing)	77
	Redirect Examination by Mr. Dudley	97
8		
9	Christopher A. Pierce	
	Testimony of Mr. Pierce	117
10	Cross-Examination by Mr. Dudley	129
11		
12	Oral Pretrial Motions on behalf of Defendant	5
	Motions for Continuance by Mr. Pierce	14
13	The Court's Ruling on Defendant's Motions	14
	Defendant's next motion	24
14	The Court's Ruling on Defendant's Third Motion	24
	Jury Voir Dire and Selection	25
15	Preliminary Instructions to the Jury by the Court	36
	The jury was sworn	40
16	Further Preliminary Instructions by Court to Jury	41
	Opening Statement on behalf of the Plaintiffs	45
17	Opening Statement on behalf of the Defendant	48
	Motion to Dismiss by Defendant	103
18	The Court's Ruling on Defendant's Motion	106
	Motion for Directed Verdict on behalf of Jeff Gray	132
19	The Court's Ruling on Third-Party Defendant	
	Jeff Gray Removal Motion	132
20	Defendant's Motion	133
	The Court's Ruling on Defendant's Motion	134
21	Charge Conference	135
	Closing Argument on behalf of the Plaintiffs	140
22	Closing Argument on behalf of the Defendant	145
	Reply Closing Argument on behalf of Plaintiffs	148
23	The Court's Charge to the jury	149
	Verdict of the Jury	168
24	Post-Trial Motion re Interest and Attorney's Fees	149
25	Certificate of Court Reporter	178

1 ** Start of Requested Certified Transcript of Record **

2 THE COURT: All right. On the first case -- the
3 first case, of course, would be Tri-County Development,
4 Inc., and Melinda Holbrooks versus Christopher A.
5 Pierce, versus Jeff Gray -- Defendant, Third-Party
6 Plaintiff, versus Jeff Gray, Third-Party Defendant.

7 Mr. Dudley -- Mr. Pierce is *pro se*.

8 And, Mr. Dudley, I think you represent both of
9 them, the Plaintiff and the Third-Party Defendant?

10 MR. DUDLEY: Yes, sir.

11 THE COURT: All right. First of all, I need any
12 Voir Dire that you have.

13 MR. DUDLEY: My pretrial brief, Voir Dire, and jury
14 charges -- proposed jury charges (handing).

15 THE COURT: All right. Any Voir Dire, Mr. Pierce?

16 MR. PIERCE: No.

17 MR. DUDLEY: It's right behind the pretrial brief.
18 It's just one page about five or six back.

19 THE COURT: All right. How about your witness
20 list?

21 MR. DUDLEY: Just Mr. Gray.

22 THE COURT: All right. Do you have a witness list,
23 Mr. Pierce?

24 MR. PIERCE: Well, it was gonna be Mr. Gray and
25 Melinda Holbrooks.

1 THE COURT: All right.

2 Oral Pretrial Motions on behalf of Defendant:

3 THE COURT: Now, at the roster call this morning,
4 when we did not have a record, apparently certain
5 matters were brought up about Ms. Holbrooks. All right.
6 Now, you've stated that you had some motions to make?
7 Now, these are not written motions, they are oral
8 motions being made on the morning of the trial, right?

9 MR. PIERCE: Right.

10 THE COURT: Okay. In other words, you haven't
11 filed any motions?

12 MR. PIERCE: No, I haven't.

13 THE COURT: All right. And so this would be the
14 first time that I'll hear them. I understand -- I
15 explained to you at the time you brought them up at the
16 roster call that I didn't have a record and I was gonna
17 wait to hear all motions that might be had when we did
18 have a record. So now you may make your motions.

19 Motion for Continuance by Mr. Pierce:

20 MR. PIERCE: I would like to make a motion for a
21 continuance based on four reasons.

22 THE COURT: All right. Well, let me ask you. Have
23 you filed an affidavit to the following effect, what the
24 testimony of the witness appears material to your
25 support of the action, being a third-party action

1 against the defense; that you have made due diligence to
2 cure the testimony of the other witness, and whether a
3 subpoena has been issued for that witness? Have you
4 filed anything ---

5 MR. PIERCE: I didn't ---

6 THE COURT: --- that's required by Rule 40(i)(2)?

7 MR. PIERCE: I didn't file a subpoena because I --

8 THE COURT: I mean, did you file an affidavit that
9 says that you...

10 MR. PIERCE: I filed a discovery notice with
11 Mr. Dudley that I would be expecting to call her as a
12 witness quite a while ago, like two years ago.

13 THE COURT: But you didn't subpoena the witness?

14 MR. PIERCE: I didn't --

15 THE COURT: Did you depose the witness?

16 MR. PIERCE: I'm sorry?

17 THE COURT: Did you depose the witness?

18 MR. PIERCE: I did have some deposition with her,
19 yes.

20 THE COURT: Well, then you did depose her. You had
21 her deposition?

22 MR. PIERCE: Yes.

23 THE COURT: All right. Well, the deposition might
24 be used in the absence of the witness. This is your --
25 as I understand, again, just recall -- it has to do with

1 Ms. Holbrooks; is that correct?

2 MR. DUDLEY: Yes, sir.

3 THE COURT: And she's not here?

4 MR. DUDLEY: She's not here.

5 THE COURT: Why is she not here?

6 MR. DUDLEY: Frankly, I don't know. We talked to
7 her a month ago. She knows about to be here and we were
8 talking about --

9 THE COURT: Well, when did you talk to her?

10 MR. DUDLEY: My assistant called her and talked to
11 her on the phone.

12 THE COURT: Where is she?

13 MR. DUDLEY: I don't know, sir.

14 THE COURT: Where did your assistant talk to her?

15 MR. DUDLEY: We have her cell phone. Jeff tried to
16 reach her with several messages on her cell phone.

17 THE COURT: You don't know her address, know her
18 physical location?

19 MR. DUDLEY: No, sir, I don't. We've been trying
20 to ---

21 THE COURT: Is she outside?

22 MR. DUDLEY: No, sir. She's -- well, she, she knew
23 she was supposed to be here today. This was a month ago
24 my assistant talked to her. When it got close to the
25 trial, my client, Jeff Gray, tried to call and left

1 numerous messages for us to get together. I know she
2 has got a job. She has got a job.

3 THE COURT: Where is her job?

4 MR. DUDLEY: I don't know.

5 MR. PIERCE: She said she was unemployed in her
6 deposition.

7 MR. DUDLEY: That was recently.

8 THE COURT: Well, I hope that she's gotten a job
9 recently. I hope that we all have jobs.

10 MR. DUDLEY: I wish she were here. It was not
11 anything I manufactured. I would rather her be here,
12 but --

13 THE COURT: I was just saying, any attorney that
14 goes forward in the absence of their client assumes
15 certain responsibilities or could assume certain
16 responsibilities.

17 All right. Well, do you dispute the fact that she
18 could be a hundred miles away?

19 MR. DUDLEY: No, sir.

20 THE COURT: Listen, Mr. Dudley. The reason I'm
21 asking, if he has a deposition and she's more than a
22 hundred miles away, out of state, then he could use the
23 deposition in her absence.

24 MR. DUDLEY: Yes, sir. That's fine, sir.

25 THE COURT: All right. Very good.

1 Now, what else in her testimony would be material?

2 MR. PIERCE: I'm sorry?

3 THE COURT: What is the materiality of her
4 testimony? What's relevant?

5 MR. PIERCE: The materiality, the materiality is
6 for the licensing issue that's going to be addressed
7 during the trial today. I had an extensive list of
8 questions for her. Half of my case was based on that.

9 THE COURT: Well, do you want to submit the
10 questions to the Court for the Court's record?

11 MR. PIERCE: Yes, sir.

12 THE COURT: All right. Have you got them with you?

13 MR. PIERCE: Yes, sir.

14 THE COURT: All right. Have them marked as Court's
15 Exhibit 1.

16 MR. PIERCE: I consider it a surprise that I was
17 just notified that she would not be here when I walked
18 in and met Mr. Dudley today. I didn't get a phone call,
19 any notification whatsoever. And I consider it a
20 surprise ---

21 THE COURT: Well, that's why we have subpoenas, and
22 that's why the Rule requires subpoenas.

23 MR. PIERCE: I'm aware of the subpoena rule, but I
24 didn't think that ---

25 THE COURT: Well, then you should have subpoenaed

1 her.

2 MR. PIERCE: Excuse me -- I didn't think I needed
3 to because she was one of the Plaintiffs that I had
4 already ---

5 THE COURT: He's not on your side, I can assure
6 you.

7 MR. PIERCE: All right.

8 THE COURT: All right. But the thing is you did
9 not subpoena. You knew she was gonna be a witness. You
10 have even listed her as a potential witness for you;
11 right? On your witness list.

12 MR. PIERCE: Yes. He told me that ---

13 THE COURT: Listen to me, please, Mr. Pierce.
14 We've got a long day if we're gonna have to get to it,
15 if we get to your case at all.

16 MR. PIERCE: Okay.

17 THE COURT: You knew that she was going to be a
18 witness. You put her on your witness list?

19 MR. PIERCE: Yes.

20 THE COURT: You did not subpoena her?

21 MR. PIERCE: No.

22 THE COURT: All right. Now, and you were going to
23 submit the questions that you were going to ask her as a
24 court's exhibit. Do you have them with you right now?

25 MR. PIERCE: Yes. They're in my notes here.

1 THE COURT: Well, could you proffer them for the
2 Court to examine?

3 MR. PIERCE: Maybe. They're sort of integrated
4 with questions for Mr. Gray, so I'm not sure I can...

5 THE COURT: Well, you only have them one witness at
6 a time.

7 MR. PIERCE: Okay. I'll give it to you.
8 Should I just submit these questions?

9 THE COURT: Let's -- if you would, please.

10 MR. PIERCE: Okay. Let's tear off this center.
11 (Mr. Pierce tears portion of piece of paper off
12 document.)

13 THE COURT: Have these marked as Court Exhibit 1,
14 please.

15 We'll go off the record while the court reporter
16 marks the exhibit.

17 (Marked for identification was Court's Exhibit 1,
18 list of Holbrooks questions by Mr. Pierce.)

19 THE COURT: All right. I have been presented and
20 have been provided a document entitled "Holbrooks
21 Questions" that's been marked as Court's Exhibit Number
22 1.

23 It contains several series of questions. The first
24 series is 1 through 12 having to do with whether or not
25 the individual is a licensed builder, and as to the

1 damages that the plaintiffs have suffered as to whether
2 or not she's authorized to represent the plaintiff,
3 Tri-County Development, and asking her to read South
4 Carolina Section 40-11-330, Joint Venture Bid, to the
5 Court.

6 And then the final question, number 12 -- there are
7 other questions in between -- Have you ever been cited
8 or will be -- will you be cited by LLR, by the LLR for
9 violation of state law involving the Pierce building
10 project?

11 And then there's a second series of 15 questions,
12 applications, lying, or fraud. Apparently one question
13 is about the deposition, or at least some of the
14 questions are about the deposition.

15 And then there's a question about being arrested
16 for simple assault and battery in the nineties.
17 Obviously that would not be relevant or even admissible.
18 In fact, that's the whole series.

19 And then also an arrest in 2009 for assaulting.
20 Arrest is not relevant or admissible. Only if there is
21 a conviction and if the punishment could be over a year
22 within the last ten years.

23 And something about reading C of application.
24 That, of course, if it's admissible, it will be admitted
25 into evidence.

1 And then there are 16 and 17 about explanation of a
2 judgment against you in 1994 from GMAC and about having
3 lied or committed application fraud. (Reading):

4 Did you lie in order to receive a residential
5 building license?

6 Apparently the questions are not whether the
7 license was in existence at the time. (Reading):

8 Do you believe that if you told the truth, you
9 would not receive a residential building license?

10 Again, it acknowledges a residential building
11 license be in existence at the time of the contract.

12 Would anyone want to be your customers knowing
13 these criminal situations and judgments?

14 Which is obviously an irrelevant and inadmissible
15 matter before this Court.

16 All right. Anything else? Any question of the
17 absence of the witness?

18 MR. PIERCE: Oh. Not on that issue.

19 THE COURT: Again, referring to Rule of Civil
20 Procedure Rule 40(i)(2) (reading):

21 No motion for continuance of trial
22 shall be granted on account of the
23 absence of a witness without the oath of
24 the party, his counsel or agent, to the
25 following effect, to wit. That the

1 testimony of the witness is material to
2 the support of the action or defense of
3 the party moving; that the motion is not
4 intended for delay; but is made solely
5 because the party cannot go safely to
6 trial without such testimony; that there
7 has been due diligence to procure the
8 testimony of the witness or of such
9 other circumstances as will satisfy the
10 Court that the motion is not intended
11 for delay.

12 In all such cases where a subpoena
13 has been issued, the original shall be
14 produced, with proof of service, or the
15 reason why not served.

16 A party applying for such
17 postponement on account of the absence
18 of a witness shall set forth under oath
19 in addition to the foregoing matters
20 what fact or facts he believes a witness
21 if present would testify to, and the
22 grounds for such belief.

23 The Court's Ruling on Defendant's Motion:

24 Pursuant to Rule 40(i)(2) the Court denies the
25 defendant's motion for continuance.

1 All right. Next?

2 MR. PIERCE: I also would like to make a motion for
3 continuance based on the fact that there is outstanding
4 complaints with the LLR, there's three to four
5 complaints, and there's been one partial ruling in which
6 both Holbrooks and Gray received a citation for alleged
7 billing activities, and there's other, the other
8 complaints could materially impact this trial on this
9 case.

10 And Judge McIntosh actually in his letter that I
11 sent to the Court earlier in the month indicated that he
12 wanted us to go to the LLR and have them research this
13 as to whether they were a joint venture. And so that's
14 what I've done. And the problem is it's taken a while
15 for them to process these complaints.

16 But we shouldn't rush -- I don't believe we should
17 rush justice here by having a trial before those
18 complaints are resolved.

19 THE COURT: I understand this is a 2005 case. This
20 is not rushing to --

21 MR. PIERCE: Right. But I -- there -- there ---

22 THE COURT: I'm sorry. I didn't mean to interrupt
23 you.

24 MR. PIERCE: I was just gonna add that I feel as
25 far as the timing of the issue, that the delay in this

1 case has nothing to do with me and is primarily that of
2 the plaintiff, and I shouldn't be penalized because of
3 that delay that they have caused.

4 I'm sorry that -- I am sorry that it's taken six
5 years. I would like it processed in a year. But I'd
6 say 95 percent of the delays in this case are from the
7 plaintiff, and I should not be punished for that.
8 That's how I feel.

9 THE COURT: Very good. So, your motion is that
10 because there might be some matters pending before the
11 LLR about violations of their residential homebuilders
12 license?

13 MR. PIERCE: Well, because those complaints have a
14 material effect on this trial.

15 THE COURT: I mean, that's what you allege. But
16 I'm saying that would be --

17 MR. PIERCE: That would be --

18 THE COURT: Excuse me.

19 MR. PIERCE: Yes, I am alleging that.

20 THE COURT: All right. So, you are saying that the
21 matters being considered about, by the LLR having to do
22 with an existing residential homebuilder's license by
23 the plaintiffs is material to this case?

24 MR. PIERCE: Absolutely. And, in fact, what's
25 already happened is, according to the investigator,

1 Benjamin Page, at the LLR --

2 THE COURT: Is he gonna testify -- first of all,
3 let me just submit to you that the question about -- and
4 I guess that's the defense that you are using, which is
5 Section 40-59-30 (reading):

6 The person ... who first has not
7 procured a license or registered with
8 the commission, as required to do so by
9 law, may not file a mechanic's lien or
10 bring an action at law or in equity to
11 enforce provisions of a contract for
12 residential building.

13 Is that correct?

14 MR. PIERCE: Absolutely, Your Honor.

15 THE COURT: And that's what you are relying on?

16 MR. PIERCE: This is absolutely being investigated
17 right now ---

18 THE COURT: Please, sir. I tried to read it to
19 you. I wish you would listen. Section 40-59-30 says
20 (reading):

21 A person or firm who ... first has
22 not procured a license or registered
23 with the commission.

24 You have acknowledged that they do have a license
25 or registered with the commission because that's what

1 they are bringing their sanctions about, if any. And
2 the order that I am to proceed under and the one which
3 you received and has been appealed to the Court of
4 Appeals provides that it's a question of licensure, not
5 the status of that licensure or anything of that nature,
6 because that's something between the LLR and your
7 licensee.

8 So, go ahead, please. Have a full record.

9 MR. PIERCE: Melinda Holbrooks is apparently
10 licensed with the LLR. Mr. Holbrooks has -- I mean
11 Mr. Gray -- is not licensed. And then there's an issue
12 of the combination of them as a joint venture.

13 THE COURT: And that's what is being taken up right
14 now, so you can pursue it. I hope that you can ---

15 MR. PIERCE: And it's also ---

16 THE COURT: Excuse me, sir.

17 MR. PIERCE: I'm sorry.

18 THE COURT: I hope that you will appear there when
19 the commission takes these infractions up -- alleged
20 infractions up, and then let the law take its course
21 there. But that's a licensing matter. It's not having
22 anything to do --

23 I think there is also a statute that provides --
24 there's a separate statute that provides in the
25 licensure statute that says that penalties are separate

1 and apart from any other penalties dealing with
2 complaints, separate and apart from any other
3 requirements of the statute.

4 So, I'm gonna have to deny your motion for a
5 continuance on that ground.

6 Anything else?

7 MR. PIERCE: Yes. There is also a motion for
8 reconsideration with Judge McIntosh involving this case
9 that --

10 THE COURT: Well, I think you took care of that
11 when you filed your notice of appeal to the Court of
12 Appeals.

13 MR. PIERCE: Well, we heard -- Mr. Dudley and I
14 heard by email that the motion was being denied, but
15 there was some Form 4 or something to that effect that
16 was gonna be sent out in the mail, but I never received
17 anything.

18 THE COURT: I'm sorry, sir. But they grade my
19 papers at the Court of Appeals. They are the ones that
20 grade my papers. So, I'm not gonna reverse the Court of
21 Appeals. They can reverse me, which if I'm in error, I
22 hope they do.

23 MR. PIERCE: I'm not asking that.

24 THE COURT: Well, that's just it. But I think
25 there was an order that was filed this morning with the

1 Clerk's Office that was dated November 17th.

2 THE CLERK: I haven't had it down there yet.

3 THE COURT: Well, I mean, it is an order from
4 the --

5 THE CLERK: It is.

6 THE COURT: I have a fax dated November the 17th
7 from the Court of Appeals where it says the appeal is
8 dismissed, and the Court declines to act on the motion
9 to stay. So, that, sir, is the final authority on your
10 appeal.

11 MR. PIERCE: That's not what I'm asking about is
12 the Appeals Court. What I'm asking about is the motion
13 for reconsideration with Judge McIntosh.

14 THE COURT: You had a choice to do that and
15 apparently you've abandoned your motion to reconsider.
16 And I don't even know if it was timely made. At least
17 it looks like it was made more than 16 or 17 days after
18 the --

19 MR. PIERCE: It was timely made.

20 THE COURT: Well, I'm glad that you say that. But
21 I looked at it and I saw that it was mailed to you on
22 August the 31st, that it was filed on the 16th. And
23 even with mailing you have five additional days to the
24 ten, and that's 15 days. And so it should have been
25 filed on September the 15th, not the 16th. The 16th is

1 one day too late.

2 MR. PIERCE: I actually got the motion --

3 THE COURT: Sir, again, I hate to do things like
4 quote the law to you. But I think it's -- oh,
5 gracious --

6 MR. PIERCE: I reviewed the requirements and I met
7 the ten-day requirement.

8 THE COURT: I know you did, except that you didn't.
9 Which is that a motion for reconsideration is Rule 59,
10 and I think it requires it has to be done in 10 days.

11 MR. PIERCE: Right.

12 THE COURT: And Rule -- I want to say it's 3.

13 MR. PIERCE: Are you referring to Rule 6?

14 THE COURT: It could be.

15 MR. PIERCE: The time?

16 THE COURT: Right. Well, I don't know. It's the
17 one about service by mail. All right. It's Rule 6(e),
18 you're right. See, that's what I like. All right. Go
19 ahead.

20 MR. PIERCE: Okay. And when I actually received
21 it?

22 THE COURT: No, sir, that's not what we are saying.
23 The rule is that it has to -- you get an extra five
24 days. The Rule is ten days ---

25 MR. PIERCE: Right.

1 THE COURT: --- and it has to be done within ten
2 days. Except if the service is by mail.

3 MR. PIERCE: Uh-huh.

4 THE COURT: And the Clerk's service on you was
5 August the 31st. Whenever a party has a right or is
6 required to do some act or take some proceedings within
7 a prescribed period after the service of another paper
8 upon him, a notice of paper was served upon him by mail
9 or by a person designated to accept service, five days
10 shall be added to the prescribed period --

11 MR. PIERCE: Right.

12 THE COURT: -- which would make it 15 days.

13 MR. PIERCE: Yes.

14 THE COURT: 15 days from August the 31st would be
15 September the 15th, not counting the date of service.

16 MR. PIERCE: Unfortunately, I didn't receive it
17 until later. I didn't -- I believe that's referring to
18 the time that I receive it, five days, not the time it
19 was mailed.

20 THE COURT: Well...

21 MR. PIERCE: Because anybody could send anything
22 out and get it various times.

23 THE COURT: Well, our Clerk of Court is not
24 anybody. Our Clerk of Court follows the Rules and, in
25 fact, her service of the Order of Judge McIntosh was

1 done by I think the Form 4 that's required to be
2 submitted. I might note that your service was the 16th,
3 so apparently you got it sometime before the 16th.

4 MR. PIERCE: Right.

5 THE COURT: All right. Is there anything else?

6 MR. PIERCE: I was just gonna say, as far as the
7 timeliness, it was -- I believe I made an error in my
8 appeal when I put down the 5th was when I received it,
9 but the actual time that I first had it in my hand and
10 viewed it was the 6th.

11 THE COURT: But you did, in your filings with the
12 Court you did note that it was the 5th?

13 MR. PIERCE: Yeah. I've since updated that.

14 THE COURT: Which would probably be the reason we
15 have the five-day rule for mail. Because it was mailed
16 on August the 31st and five days would be the 5th.

17 I understand. Anything else?

18 MR. PIERCE: I was just making the point that I
19 absolutely met the requirements, as I always have, for
20 filing all motions with Circuit Court; I file them on
21 time, within ten days or less.

22 The Court's Ruling on Defendant's Motion:

23 THE COURT: And I find that the record does not
24 support your assertion and overrule your motion.

25 Anything else?

1 Defendant's next motion:

2 MR. PIERCE: Well, the last point is that the
3 discovery in this case has not been completed due to
4 delays by Mr. Dudley. And I sent you -- in my letter I
5 sent you an example of where I had asked some questions.
6 And he actually answered, or his client refused to
7 answer, saying he was refusing to cooperate with
8 discovery.

9 And I've had this problem ongoing, you know. Not
10 all the time with Mr. Dudley. But at times he will
11 refuse to cooperate in the discovery process, so it's
12 delayed my preparation of my case.

13 The Court's Ruling on Defendant's Third Motion:

14 THE COURT: Well, fortunately, we have rules that
15 provide for people who do not -- or parties who do not
16 cooperate with discovery, and it's not taken up by the
17 trial court on the day of trial.

18 MR. PIERCE: Right. The motion ---

19 THE COURT: So, it's an untimely motion and it's
20 oral and it's obviously intended for delay, and so I'm
21 going to have to overrule you.

22 MR. PIERCE: Thank you. That's all I have.

23 THE COURT: Very good. Thank you.

24 All right. So, and all that we need is to qualify
25 the jury panel on this case, right?

AFTERNOON PROCEEDINGS

2:56 P.M.

THE COURT: All right. We're back on the case of Tri-County Development, Inc., and Melinda Holbrooks v. Christopher A. Pierce versus Jeffery Gray, 2005-CP-37-788. I understand the parties have been able to make headway as far as exhibits?

MR. DUDLEY: Yes, sir. I've shown all of my exhibits to Mr. Pierce, and as I understand, he stipulates to those. There were some, in my calculations, where he showed me where I had stipulated in earlier pleadings, and I agreed to those and I have taken those off my damages calculations. So, I think we've made good progress in that.

THE COURT: All right. How many exhibits are there?

MR. DUDLEY: I think I have, I think, 12 in all.

THE COURT: All right. Well, let's have the court reporter mark them now. Let's go off the record while we do that.

(Discussion off the record.)

(Plaintiffs' Ex. # 1, home construction contract, was marked for identification.)

(Plaintiffs' Ex. # 2, building permit dated 10-21-04, was marked for identification.)

1 (Plaintiffs' Ex. # 3, DHEC permit, was marked for
2 identification.)
3 (Plaintiffs' Ex. # 4, email dated 4-23-05, was
4 marked for identification.)
5 (Plaintiffs' Ex. # 5, letter to Robert Whitney from
6 Christopher Pierce dated 9-7-05, was marked for
7 identification.)
8 (Plaintiffs' Ex. # 6, compilation, was marked for
9 identification.)
10 (Plaintiffs' Ex. # 7, LLR printout, was marked for
11 identification.)
12 (Plaintiffs' Ex. # 8, inspection schedule - permit
13 # 0401657, was marked for identification.)
14 (Plaintiffs' Ex. # 9, inspection schedule - permit
15 # 0501518, was marked for identification.)
16 (Plaintiffs' Ex. # 10, letter dated 5-11-99 to
17 Melinda Holbrooks, was marked for identification.)
18 (Defendant's Ex. # 1, letter dated 6-28-05, was
19 marked for identification.)
20 (Defendant's Ex. # 2, painting bill, was marked for
21 identification.)
22 (Defendant's Ex. # 3, plumbing labor bill/proposal,
23 was marked for identification.)
24 (Defendant's Ex. # 4, Classic Lighting
25 invoice/receipt, was marked for identification.)

1 (Defendant's Ex. # 5, Woods Restoration invoice,
2 was marked for identification.)

3 (Defendant's Ex. # 6, cabinet materials estimate,
4 was marked for identification.)

5 (Defendant's Ex. # 7, Alexander Concrete driveway
6 estimate, was marked for identification.)

7 (Defendant's Ex. # 8, tiling labor, half-house, was
8 marked for identification.)

9 (Defendant's Ex. # 9, Home Depot tile material, was
10 marked for identification.)

11 (Defendant's Ex. # 10, road repair estimate, was
12 marked for identification.)

13 (Defendant's Ex. # 11, price
14 quote/invoice/statement, was marked for
15 identification.)

16 THE COURT: Anything from the plaintiff?

17 MR. DUDLEY: No, sir.

18 THE COURT: Anything from defense?

19 MR. PIERCE: Ready to go.

20 THE COURT: Very good. Ask the jury to join us.

21 (The jury entered the courtroom at approximately
22 3:30 p.m.)

23 THE COURT: If you would please -- let the record
24 reflect the jury and alternate are in the jury-box.

25 (Whereupon, the jury was sworn.)

1 evidence, and then if there is a question about what was
2 said or occurred, rely on the joint discussion of the
3 other jurors to determine what would be the most
4 accurate account of what was said or heard.

5 Now, having said that, I do take notes. It's not
6 one of those things, Do as I say, not as I do. As I've
7 mentioned earlier, we have entirely different purposes
8 in this courtroom. You and you alone are the only ones
9 that can determine the facts in the case. You are the
10 only ones that can weigh or evaluate the evidence. I am
11 not concerned about the importance or the weight or the
12 value of evidence. I am only concerned about things
13 that need to be done according to our procedure. So,
14 I'm jotting down what occurs, not the significance of
15 it; that is for you to do. Therefore, I suggest that
16 you do not take notes.

17 And the trial will now begin. I recognize the
18 plaintiff for his opening statement.

19 Mr. Dudley?

20 MR. DUDLEY: May it please the Court.

21 Opening Statement on behalf of the Plaintiffs:

22 MR. DUDLEY: Good afternoon. What a wonderful way
23 to start our Monday afternoon. As I said, I'm Tom
24 Dudley and I practice law in Greenville, and all I do is
25 construction law. And this is Jeff Gray, who is the

1 owner of Tri-County Development.

2 And I do not harbor any thoughts that when you were
3 celebrating your holiday, and you were talking about
4 having jury duty, that you thought you would be deciding
5 a construction dispute or a mechanic's lien. I
6 understand that. Your role today is to decide this
7 dispute between Tri-County and Jeff Gray and Mr. Pierce.
8 And, as the Judge said, you are the sole determiner of
9 the facts.

10 And the good part about this is that through some
11 leading up to this case, we have narrowed some of the
12 issues down to what your role is today. I would love to
13 say that we're gonna finish within X number of hours. I
14 can't predict that. But I know that it's not gonna take
15 a long time.

16 But still, it's very important for you to listen to
17 what Mr. Gray and Mr. Pierce are gonna testify also and
18 review those documents, as the Court said.

19 Now, very briefly, I want to get you up to speed.
20 Jeff lived here in Oconee County all his life. He had a
21 development company. It's hard to remember it, but a
22 couple years ago construction in this part of the
23 country was actually pretty good. And during that time
24 Jeff, there were a lot of people moving into this area,
25 Jeff in connection with Nathan and Melinda Holbrooks,

1 who were married, both licensed residential builders,
2 who are now divorced from each other, but they were
3 building houses for speculation, spec houses. Jeff and
4 Tri-County Development would buy the property, be the
5 bank, essentially, and either Nathan or Melinda would
6 build these houses. And that's what they did. They
7 would use a spec builder, did not build as a custom
8 builder, did not have a buyer, they built for
9 speculation.

10 Well, Mr. Pierce, actually through his parents,
11 Mr. Pierce and his parents, approached, the evidence
12 will show that they approached Mr. Gray about building a
13 house for him on Mr. Pierce's property. And that's how
14 they handled it. Jeff, Tri-County, and Melinda handled
15 it just like they did their spec houses. And Jeff still
16 handled just the finances part. Melinda, who was a
17 licensed builder, did the building.

18 And things rocked and rolled along fine until
19 towards the end a dispute arose between Mr. Pierce and
20 Jeff about the final two payments, and that's what we
21 are here about. Ultimately, Mr. Pierce changed the
22 locks, he took the building permit over himself and
23 finished the house and has been living in it since about
24 October 2005.

25 The issue we're dealing with here today is what

1 amount is owed, of those last two payments of \$33,000,
2 what amount does he owe Tri-County for the house he's
3 living in? And that's what we're here to discuss today
4 and that's what we're here -- We think we need to put up
5 evidence of what, what those damages are and what those,
6 what the costs were that Mr. Pierce owes Tri-County for
7 the house.

8 So, today again I appreciate your attention. At
9 least we're inside and not out in the weather. But I
10 just ask you to keep an open mind and listen to all the
11 evidence, and at the end I'll ask you to render a
12 verdict in favor of my client.

13 And at this time Mr. Pierce will go and then we'll
14 put up the evidence. Thank you very much.

15 THE COURT: Mr. Pierce?

16 Opening Statement on behalf of the Defendant:

17 MR. PIERCE: Yes. In this case Jeff Gray, an
18 unlicensed residential building contractor --

19 THE COURT: Mr. Pierce, this is not argument. Like
20 I say, you save the argument till the final matter.
21 Also, do not interject anything that's not in the
22 record. If you have proof of it, then, of course, you
23 can do that once it's proved in court, but not for just
24 argument.

25 By the way, I will remind you of this. That you

1 will hear testimony, but that will be sworn witnesses.
2 And so the argument of counsel or even questions by
3 parties is not evidence. You must make your
4 determination based on sworn testimony and other
5 admitted evidence.

6 You may proceed.

7 MR. PIERCE: Okay.

8 This is a contract dispute and it involves, as
9 Mr. Dudley said, the last two payments on the contract.
10 And what I'd like to do is discuss with you, as
11 Mr. Dudley said, who owes who what and, and give you
12 details on that. And, as well as we are also here to
13 discuss the licensing situation involved in this case.

14 And we are also going to be discussing two aspects:
15 A mechanic's lien, which is, has to do with the actual
16 work that they did that they were not paid for, and an
17 actual contract claim dispute, breach of contract.

18 And I will show you today the plaintiffs also
19 discussed the claim of joint venture. They're asserting
20 a claim of joint venture. And I will show you in court
21 that this is -- that this actually doesn't really exist,
22 that they cannot operate properly as a joint venture or
23 individually. Thank you.

24 THE COURT: All right. Mr. Dudley, you may call
25 your first witness.

1 MR. DUDLEY: The plaintiffs call Jeff Gray.

2 Whereupon,

3 Jeff Gray;

4 after first having been duly sworn, testified as
5 follows:

6 Direct Examination by Mr. Dudley:

7 Q. Jeff, tell us where you are from.

8 A. My name is Jeff Gray. I live in Seneca, South
9 Carolina. I grew up in the Carolinas. Been here, been
10 in Seneca probably the last 15, 20 years.

11 Q. Can you explain your relationship with Tri-County
12 Development?

13 A. I'm the, the owner of Tri-County Development.

14 Q. Okay. What does Tri-County do or what did it do
15 back in 2005?

16 A. We procured property, bought property and built
17 spec homes.

18 Q. And can you explain to the jury what your work
19 history was with Nathan and Melinda Holbrooks, who were
20 they, and what was your relationship with them?

21 A. They were -- my relationship with them actually
22 started when they did some grading for me way before the
23 house building got going. And then later on they were
24 the ones that would pull the permit to perform the work
25 based on a set of plans that we had generated to build a

1 spec home.

2 Q. Who did -- did you do any construction work, did
3 Tri-County do any?

4 A. No.

5 Q. Who actually did the construction work of building
6 the houses?

7 A. Holbrooks Construction.

8 Q. And that was Nathan and Melinda?

9 A. Yes.

10 Q. And were they both licensed residential home
11 builders?

12 A. Yes.

13 Q. Okay. And are they, are they still married?

14 A. As far as I know, they're not. But they're both
15 still licensed builders.

16 Q. Okay. All right. Now, can you explain how you met
17 Mr. Pierce, the plaintiff?

18 A. I met Mr. Pierce I guess through his father, which
19 his father, I met his father through my father, he just
20 happened to be at a project we were building together,
21 me and my father, when he -- I guess he rode by and saw
22 the house and the quality and approached me later maybe
23 via telephone.

24 Q. Okay. How did you -- and what were the results of
25 your discussions with Mr. Pierce's father?

1 A. That he wanted to I guess basically use my services
2 to build his son a home.

3 Q. Okay. All right. Then how did you and Melinda
4 Holbrooks plan to build this house for Mr. Pierce, the
5 younger Mr. Pierce?

6 A. We planned to build it the same way we did it as
7 the spec homes.

8 Q. All right. And what was that?

9 A. Where I would put up the money and they would
10 perform the work.

11 Q. All the construction work?

12 A. Yes.

13 Q. Okay. And I've got some exhibits that we've
14 already marked, and I'll ask you, Jeff, if you can look
15 at Exhibit 1 and tell me, can you identify what that
16 document is?

17 A. This is a home construction contract.

18 Q. Okay. And is this the contract between Tri-County,
19 Ms. Holbrooks, and Mr. Pierce?

20 A. Yes.

21 Q. Who drafted this contract?

22 A. To my knowledge, Andrew Pierce, Christopher's
23 father.

24 Q. All right. And if you could just turn to the last
25 page.

1 A. Okay.

2 Q. All right. And is that the signature page?

3 A. Yes.

4 Q. All right. And who was listed as the developer?

5 A. Jeff Gray.

6 Q. And who was listed as the contractor?

7 A. Melinda Holbrooks.

8 Q. All right. And is that, is that your signature?

9 A. Yes.

10 Q. Is that Melinda's signature?

11 A. Yes.

12 Q. If you would turn that aside, please. And let's
13 now look at Plaintiffs' Exhibit 2. And, Your Honor, as
14 I understand it, these exhibits have already been
15 admitted?

16 THE COURT: All right. Again, for the record,
17 Plaintiffs' Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11
18 and 12 have been admitted without -- excuse me. It's
19 not 12, then, it's 11 -- Plaintiffs' Exhibits 1, 2, 3,
20 4, 5, 6, 7, 8, 9, and 10 have been admitted without
21 objection and Defense Exhibits 1, 2, 3, 4 have been
22 admitted without objection.

23 MR. DUDLEY: Yes, sir.

24 THE COURT: All right.

25 (Plaintiffs' Exhibits Numbers 1, 2, 3, 4, 5, 6, 7,

- 1 8, 9, and 10 were received in evidence.)
- 2 (Defendant's Exhibits Numbers 1, 2, 3 and 4 were
- 3 received in evidence.)
- 4 By Mr. Dudley:
- 5 Q. Jeff, if you could identify what Plaintiffs'
- 6 Exhibit 2 is.
- 7 A. This is a building permit for Oconee County..
- 8 Q. All right. And a building permit for whose house?
- 9 A. For Andrew and Edith Pierce.
- 10 Q. But whose house was it, whose house was this
- 11 building permit for?
- 12 A. Christopher Pierce.
- 13 Q. Okay. And was that the location where you built
- 14 the house for Mr. Pierce?
- 15 A. Correct.
- 16 Q. Chris Pierce?
- 17 A. Yes.
- 18 Q. Okay. Who was the contractor for the house?
- 19 A. Melinda Holbrooks.
- 20 Q. And this is the building permit that in Oconee
- 21 County you have to submit your license to pull the
- 22 building permit?
- 23 A. Right.
- 24 Q. All right. Okay. Put that to the side, please.
- 25 A. (Complies.)

1 Q. Now let's look at Exhibit 3. As a part of the
2 building permit process, and this house in particular,
3 do you recall the necessity for a septic tank?

4 A. Yes.

5 Q. Okay.

6 A. This house did not have a septic system on it.

7 Q. Okay. And can you identify what Plaintiffs'
8 Exhibit 3 is?

9 A. It is the application for a septic tank permit.

10 Q. All right. And in the upper kind of right hand,
11 does it show a sketch of where the house is to be
12 located?

13 A. Correct.

14 Q. All right. And does this house sit on a corner
15 lot?

16 A. Yes.

17 Q. Okay. Between Loblolly Pine and White Owl?

18 A. Lane.

19 Q. Right, okay. And the DHEC permit, where does it
20 show where the driveway was to go?

21 A. It showed it coming off White Owl Lane.

22 Q. Okay. And, ultimately, did it get built on White
23 Owl Lane?

24 A. No.

25 Q. All right. And did you and Mr. Pierce have

1 discussion about who would be building the driveway?

2 A. Yes.

3 Q. All right. And what was that, what did you all
4 agree?

5 A. That I would just give him an allowance and let him
6 do his own driveway.

7 Q. Did you agree on a dollar amount to credit him?

8 A. Correct.

9 Q. What was that?

10 A. \$2,500.

11 Q. Okay. You can put Exhibit 3 aside.

12 A. (Complies.)

13 Q. Okay. How often -- let me ask you this.

14 How did you communicate with Chris Pierce on this
15 project?

16 A. My only communication with Chris Pierce on this
17 project was via phone calls and maybe some mail to,
18 arrangements for payment.

19 Q. How often did you meet him on site?

20 A. I never saw him on site.

21 Q. Who did you coordinate the construction with? Who
22 did Ms. Holbrooks coordinate the construction with,
23 then?

24 A. Andrew Pierce.

25 Q. And did, did Mr. Pierce's parents live around the

1 corner?

2 A. Yes.

3 Q. Looking at Exhibit 4 real quick, I'm asking, can
4 you identify what is this?

5 A. This is I guess an email sent to me.

6 Q. All right. From who?

7 A. From Chris Pierce.

8 Q. Okay. If you could -- I'm gonna have you read the
9 first paragraph, if you can.

10 A. (Reading): It occurred to me today as I visited
11 the house project that the construction is proceeding
12 well and soon the house project will be complete. I am
13 very pleased with the quality of work being done on the
14 site. Do you have any completion time estimates for the
15 home, May, June? Question mark. Do you also have a
16 list of tasks left to be done in order to complete the
17 house? Question mark. When do you expect a need for
18 the next payment?

19 Q. Okay. That's good. Now, what was the third
20 paragraph in that email about?

21 A. The third paragraph is (reading): Thank you for
22 your efforts in obtaining additional upgrade information
23 anyway ---

24 Q. I'm not asking you to read it. Can you just
25 summarize what the third paragraph was about?

1 A. That we agreed on the \$2,500 for the driveway on
2 the house.

3 Q. The driveway, all right. And what was the date of
4 that email?

5 A. April 23rd, 2005.

6 Q. Thank you. I show you what's been marked as
7 Plaintiffs' Exhibit 5 and ask you to identify that
8 document.

9 A. This is a letter sent to Robert Whitney by Chris
10 Pierce.

11 Q. Okay. Before we actually get to this exhibit,
12 let's talk about the progression here. On
13 Mr. Chris Pierce's house, what was Melinda's role? We
14 saw that she pulled the building permit. What was her
15 role?

16 A. To obtain subcontractors and to, for scheduling,
17 and perform some of the duties of construction.

18 Q. What was Tri-County? What was your role on this?

19 A. To make sure that the work was performed and
20 everyone got paid.

21 Q. Did you supervise any construction?

22 A. No.

23 Q. Did you superintend any construction?

24 A. No.

25 Q. Did you do any quality control of any construction?

1 A. No.

2 Q. Okay. Ultimately, how -- ultimately, did you have
3 any disputes with Mr. Pierce towards the end of the
4 project?

5 A. Yes.

6 Q. Can you tell me what those were, briefly? We don't
7 need to go into a lot of detail.

8 A. That he had called me and he determined that
9 instead of paying me the, a third draw, as the contract
10 stated, he just wanted to pay the third and fourth draw
11 at the completion of the home.

12 Q. And did you agree to that?

13 A. No.

14 Q. All right. And then ultimately, when you walked
15 out, did he change the locks?

16 A. Yes.

17 Q. All right. And he changed -- he got his own
18 building permit --

19 A. Yes.

20 Q. -- is that right?

21 A. Yes.

22 Q. And he finished the house himself?

23 A. Correct.

24 Q. Okay. Now, with regards to the driveway, you agree
25 that he's entitled to a credit off a \$33,000 contract

- 1 balance for the driveway that --
- 2 A. We both did.
- 3 Q. -- that he did that you agreed you didn't have to
- 4 do, right?
- 5 A. Correct.
- 6 Q. And were there some other items that you agree that
- 7 were credits, the termite letter, inspections, and some
- 8 of that, you agreed -- he paid for the appliances
- 9 directly?
- 10 A. Correct.
- 11 Q. And you agree that whatever the dollar figure is,
- 12 you agree --
- 13 A. Yes, sir.
- 14 Q. -- that those were credits, also, too?
- 15 A. Yes.
- 16 Q. Now, looking briefly at Exhibit 5, can you identify
- 17 this for me?
- 18 A. This is a letter from Chris Pierce to Robert K.
- 19 Whitney.
- 20 Q. And who is Mr. Whitney?
- 21 A. He's an attorney in West Union.
- 22 Q. He was your original attorney?
- 23 A. Yes.
- 24 Q. Okay. And I just want to be, I just want to draw
- 25 your attention to the second paragraph. Can you read

1 that for me? What's the date of this letter?

2 A. The date of this letter is September 7th, 2005.

3 Q. Okay. Just read the second paragraph, please,
4 starting with "second."

5 A. (Reading): Second, you stated the amount in
6 question is \$34,000. My records indicate that the
7 fourth, the fourth and fifth payment, in parentheses,
8 30,000 and 3,000, are what Mr. Gray disputes.
9 Therefore, please explain the additional \$1,000 claim.

10 Q. Now, ultimately, did you file a mechanic's lien in
11 this matter?

12 A. Yes.

13 Q. All right. And was that what Mr. Whitney put it
14 for, 34,000?

15 A. Yes.

16 Q. Do you know what that \$1,000 difference was?

17 A. He did not take in consideration Mr. Pierce had
18 given me a one-thousand-dollar deposit to start
19 construction.

20 Q. Okay. But you, it's your contention that the
21 contract balance that you were owed was \$33,000 before
22 any offsets --

23 A. Correct.

24 Q. -- for concrete and some of the other items that
25 you agreed on?

- 1 A. Yes, sir.
- 2 Q. Okay. Jeff, if you can look at Exhibit 6.
- 3 Actually, hand me the last two letters.
- 4 A. Do you want the permit?
- 5 Q. Hand them all to me.
- 6 A. (Complies.)
- 7 Q. I'll let the jury look at these.
- 8 A. Okay.
- 9 Q. Exhibit 6, can you identify what this is?
- 10 A. Tri-County Development allowance versus actual
- 11 cost.
- 12 Q. Now, you had a lump-sum contract, right?
- 13 A. Yes, sir.
- 14 Q. All right. But there were certain items for which
- 15 Mr. Pierce had an allowance?
- 16 A. Yes.
- 17 Q. And, if he went over that allowance, he had to pay
- 18 that difference?
- 19 A. Correct.
- 20 Q. But if he went under that allowance, he only paid
- 21 what the actual costs were?
- 22 A. He got credit.
- 23 Q. In your -- did you -- what did you understand the
- 24 allowances, how those were gonna be based immediately
- 25 when you were doing the contract?

1 A. Well, I thought they would be done like we always
2 do them, that the allowance would include everything we
3 needed to do the job.

4 Q. Labor and materials?

5 A. Absolutely.

6 Q. At some point you were directed that the contract
7 you signed was for materials only?

8 A. Yes. And that would be my mistake.

9 Q. And you stand by that answer, it's with materials
10 only?

11 A. Correct.

12 Q. Okay. If you can, let's step through -- so, what
13 I've got on that front page is the contract allowance
14 column, and then to the far left is your actual material
15 cost?

16 A. Yes, sir.

17 Q. All right. Let's take these one at a time. The
18 first one is cabinets. Who did your cabinets?

19 A. Smith Cabinetry.

20 Q. All right. Have you done business with him before?

21 A. Yes.

22 Q. All right. And can you identify that he -- what
23 did he bill you for building the cabinets?

24 A. He, back to the front page, he billed me for
25 \$5,630.

1 Q. All right. And what did you consider to be the
2 materials on your calculation for the cabinets?

3 A. \$6,000.

4 Q. All right. And what did he estimate the labor
5 would be to actually install those cabinets?

6 A. \$350.

7 Q. All right. And so you were gonna deduct \$350 from
8 that --

9 A. Yes, sir.

10 Q. -- and arrive at whatever that number was?

11 A. Correct.

12 Q. Okay. Let's switch to the next one, the plumbing.
13 What did you, what was included in the plumbing
14 allowance? That wasn't just the pipes, was it?

15 A. No.

16 Q. What was the plumbing allowance?

17 A. It was, it was, the allowance was \$2,000.

18 Q. What was that for, toilets and showers and tubs?

19 A. Yes.

20 Q. Okay.

21 A. Fixtures.

22 Q. All right. And you bought that from Community
23 Supply?

24 A. Yes.

25 Q. And based on your analysis the plumbing fixtures

1 was 1,899.30?

2 A. Yes, sir.

3 Q. All right. Let's switch forward to the next one,
4 the electrical. What were the electrical fixtures, what
5 was that allowance?

6 A. That was for the lighting fixtures, fans, can
7 lights.

8 Q. That wasn't for the outlets and the wiring
9 throughout the house, was it?

10 A. No, sir.

11 Q. Okay. And the documents that we have here for
12 Classic Lighting Design, was that materials, the
13 fixtures and the materials?

14 A. It was \$2,000.

15 Q. And you paid an electrician to actually install
16 those, but that's not an allowance?

17 A. Correct.

18 Q. Okay. Flip forward. There's several on that one.
19 The flooring, the Dixie Flooring. Can you tell me what,
20 what was the issue on flooring in the house? He had a
21 \$6,000 allowance for flooring.

22 A. Correct.

23 Q. How was that done?

24 A. That was to provide the materials.

25 Q. All right. And tell me how, explain to me how, was

- 1 any of the part of the flooring done by himself?
- 2 A. Yes. After --
- 3 Q. Just explain to me how that was done.
- 4 A. He, after we did some tile work in there, he
- 5 decided he wanted to extend and put more tile in other
- 6 places that we had an allowance for carpet or vinyl.
- 7 Q. All right. And so how did you all handle that?
- 8 A. That he would, he would pay for it.
- 9 Q. He just did it himself and pay for it?
- 10 A. Yes.
- 11 Q. The Dixie floor bill here, that's for the work that
- 12 you paid Dixie flooring to do --
- 13 A. Correct.
- 14 Q. -- is that right?
- 15 And that was \$2,507.44?
- 16 A. Yes.
- 17 Q. And then the last item there is stone. What was
- 18 the stone work that was done?
- 19 A. Originally it was gonna be stone steps and a stone
- 20 entryway, basically.
- 21 Q. So, he had a \$2,500 allowance for stone?
- 22 A. Yes.
- 23 Q. And what was the, the General Shale, what was the
- 24 actual bill for that?
- 25 A. \$945 for the material.

1 Q. Ultimately, he filed a lien in this lawsuit to
2 recover?

3 A. Yes, sir.

4 Q. All right. And did Mr. Pierce ultimately get the
5 certificate of occupancy for this house?

6 A. Yes.

7 Q. He's been living in it since 2005?

8 A. Yes.

9 Q. And there's a dispute on what you're owed since
10 2005?

11 A. Correct.

12 Q. And you are asking the jury to award you a contract
13 balance of \$33,000, less the \$2,500 for concrete, and
14 the underage of this Exhibit 6 to show what that is on
15 allowances, how much he was under on his allowances, and
16 then whatever offsets he has that he can prove?

17 A. Correct.

18 Q. Just a couple of more things, then, and then we'll
19 be through. Can you identify what Exhibit 7 is?

20 A. It's a verification of Melinda Holbrooks' licensing
21 information.

22 Q. Okay. And let's look briefly at Exhibit 8. What
23 is Exhibit 8?

24 A. It's an inspection schedule that the County
25 performs on construction.

1 Q. Is that one under Melinda's license?

2 A. Yes.

3 Q. Okay. And were all the inspections done up to that
4 point?

5 A. Correct.

6 Q. All right. And Exhibit 9, is that the building
7 permit after Mr. Pierce pulled the permit?

8 A. The previous permit, yes.

9 Q. All right. And what is the only inspection that
10 had to be done then?

11 A. Final.

12 Q. All right. Okay. When he locked you out, how
13 close was the house to being completed?

14 A. Three days.

15 Q. And then Exhibit 10, can you identify what that is?

16 A. This is a South Carolina Residential Builders
17 Commission, this is where she had allegedly passed the
18 South Carolina Residential Home Builders exam and her
19 score.

20 Q. Melinda had been a home builder and you worked
21 together before. I want to wrap it up with this. On
22 the contract that we saw and we entered into evidence,
23 it had Tri-County on the front page and it had your name
24 as the developer and Melinda as the contractor. Did you
25 all operate under any fictitious name?

1 A. No, sir.

2 Q. Had you done that before where you built for
3 somebody that already had a customer to buy the house?

4 A. No, sir.

5 Q. And so, why did you operate it, why did you operate
6 the way you did with Mr. Pierce?

7 A. It's the way we'd always, I operated as a
8 developer.

9 Q. And then, so you handled this house like you did a
10 spec house?

11 A. Yes.

12 Q. And you did not do any construction yourself as
13 Tri-County?

14 A. Right.

15 MR. DUDLEY: Okay. That is all the questions I
16 have. I'm sure Mr. Pierce will have some.

17 THE COURT: All right. Cross-Examination?

18 MR. PIERCE: Your Honor, could I take a short
19 recess to use the rest room?

20 THE COURT: Certainly.

21 All right. Mr. Foreman, ladies and gentlemen of
22 the jury, I'm gonna ask you to retire to the jury room
23 just for a moment, and then we'll take a short break and
24 come back continue with the trial.

25 Again, do not undertake discussion of the case

1 among yourselves.

2 Everyone remain seated while the jury retires from
3 the courtroom.

4 Oh, and do leave any exhibits you have in the
5 courtroom. Yes, sir. In other words, don't take
6 anything with you. Just put it in your chair. All
7 right. If you would please go with the bailiff.

8 (Whereupon, the jury left the courtroom at
9 approximately 4:00 p.m.)

10 THE COURT: All right. Let me see that last
11 exhibit, please.

12 THE WITNESS: (Handing).

13 THE COURT: Anything from the plaintiff?

14 MR. DUDLEY: No, sir.

15 THE COURT: Anything from the defendant?

16 MR. PIERCE: No.

17 THE COURT: Mr. Gray, you can step down, but you
18 understand you are under oath so you can't discuss your
19 testimony with anyone, including your lawyer.

20 THE WITNESS: Yes, sir.

21 (Witness leaves stand.)

22 (A recess was taken.)

23 THE COURT: Anything from the plaintiff before I
24 bring the jury back?

25 MR. DUDLEY: No, sir. Ready to go.

1 THE COURT: Anything from the defense?

2 MR. PIERCE: I'm ready.

3 THE COURT: All right. Ask the jury to join us.

4 (The jury entered the courtroom at approximately
5 4:10 p.m.)

6 THE COURT: The reason we don't use that last chair
7 is because we want to get you as close to the witness as
8 possible so we start on the ... if you will notice, the
9 jury-box has more than just the 12 seats that we
10 normally have on a petit jury panel. The reason for
11 that is this courtroom is also used for the grand jury
12 where you have a total of 18, and then we have two extra
13 seats for those that might need other type of seating.
14 So, that's why we have more than just 12 or 13 seats in
15 the box.

16 All right. With that, you do understand you are
17 still under oath?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Very good. We'll proceed
20 with Cross-Examination.

21 Cross-Examination by Mr. Pierce:

22 Q. Mr. Gray, I have \$1,899.30 for plumbing fixture
23 offset. Is that what you're, you and your attorney are
24 claiming, that that's how much you spent?

25 A. Correct.

1 Q. Okay. Is that from Bates Number 237, is that the
2 documentation? The reason I ask is because there is --
3 I received 235 through 239 from your attorney and
4 there's, there's quotations, statements, and other
5 invoices in there, as well. And I'm wondering which of
6 those is correct if you have gone through and verified
7 those.

8 A. Bates Number what?

9 Q. Bates Number 235 through 239.

10 A. No. I have Bates Number 237.

11 Q. Okay.

12 MR. PIERCE: Can I admit these to evidence, then?

13 THE COURT: What is it?

14 MR. PIERCE: These are additional plumbing
15 discovery.

16 THE COURT: Is it to authenticate them?

17 MR. PIERCE: Yes. This is what I was provided.

18 And I've got what he has, but I've got all these others
19 as well.

20 THE COURT: You know --

21 Again, Mr. Foreman, ladies and gentlemen of the
22 jury, I'm going to have to ask you to retire to the jury
23 room for a moment. We need to take up a matter of law.
24 So, again, do not undertake discussion of the case among
25 yourselves. We'll do this as quickly as we can. So,

1 retire to the jury room.

2 (Whereupon, the jury left the courtroom at
3 approximately 4:16 p.m.)

4 THE COURT: All right. Let me see what you have.
5 Give me everything you plan to get in somehow.

6 MR. PIERCE: I'm sorry, Your Honor. I thought it
7 was included in this pack here that Mr. Dudley
8 submitted, and I find that it was not.

9 THE COURT: Well, do you have -- have you shown it
10 to Mr. Dudley?

11 MR. PIERCE: He's the one who provided it to me.

12 THE COURT: I didn't ask you that, Mr. Pierce.
13 Please understand. Have you shown them to Mr. Dudley?

14 MR. PIERCE: I have not shown them today.

15 THE COURT: Why don't you show them to him and see
16 if he objects to them. If not, then we'll get them in.

17 MR. PIERCE: Thank you.

18 THE COURT: Please.

19 MR. PIERCE: Sorry.

20 THE COURT: Mr. Dudley, can you come forward?

21 MR. DUDLEY: Yes, sir. They're Bates-numbered
22 documents.

23 THE COURT: Well, that's just it. You've got to
24 help Mr. Pierce because it will help this Court and
25 particularly this jury.

1 MR. DUDLEY: These were documents that were
2 produced. But I just -- I don't understand what
3 he's ---

4 THE COURT: Well, that's not it. Did you produce
5 them to him? That came from your files?

6 MR. DUDLEY: Yes, sir.

7 THE COURT: This is a statement by a party
8 opponent?

9 MR. DUDLEY: These are our documents, yes, sir.

10 THE COURT: These are statements by a party
11 opponent, so they are admissible.

12 MR. DUDLEY: They are, yes, sir.

13 THE COURT: All right. So, let's go ahead and have
14 them marked..

15 MR. DUDLEY: But we didn't -- these are not ones we
16 talked about beforehand.

17 THE COURT: I'm not asking you about that.

18 MR. DUDLEY: Okay.

19 THE COURT: I have gotten so sick and tired of
20 hearing what's happened in the last five years when I'm
21 trying to try a case today. Whatever happened before is
22 gone. We're trying this case now. Do you understand?
23 Under the, and also under the ruling of Judge McIntosh.

24 MR. DUDLEY: Yes, sir.

25 THE COURT: Let's be sure. Now, have you got

1 something else -- first of all, let's see what you have
2 there.

3 MR. PIERCE: Yeah. I mean, these are all the
4 plumbing.

5 THE COURT: All right. I understand that. I told
6 you it's gonna be admitted.

7 MR. PIERCE: Okay.

8 THE COURT: Now, what else do you have? I just
9 want to get it in. I want to do it now.

10 MR. PIERCE: Okay.

11 THE COURT: That's what you do. You consult with
12 each other. And I told you to do that before lunch.

13 MR. DUDLEY: We did, Judge, but the only things he
14 showed me --

15 THE COURT: I don't care.

16 MR. DUDLEY: I'm sorry.

17 THE COURT: If I want to get in an argument, I go
18 to a kindergarten.

19 MR. PIERCE: I'm sorry, Your Honor. I thought that
20 this was included in his pack, and I ---

21 THE COURT: Well, I don't want to hear an argument.
22 I want you to get done what I've asked you to do, and
23 that is to agree on those you can agree with, and those
24 you can't, then I'll listen to you.

25 MR. PIERCE: Okay.

1 MR. DUDLEY: Chris, is there --

2 THE COURT: Tell him what you want to get in.

3 MR. DUDLEY: Is there anything else that you want
4 to --

5 MR. PIERCE: That's all.

6 THE COURT: I mean, you're not gonna come up again
7 and ask another "I've got a stack of documents here I
8 want you to admit."

9 MR. PIERCE: Okay.

10 THE COURT: Is that right?

11 MR. PIERCE: Yes.

12 THE COURT: If you've got anything else you want to
13 admit, get it admitted. It's been a long day.

14 MR. PIERCE: That's all.

15 THE COURT: You're sure, now? Because I --

16 MR. PIERCE: I'm sorry.

17 THE COURT: Because I am not gonna send the jury
18 out. The next time I send them out, it will be with my
19 blessing, I guess. Okay. But if you have anything that
20 you want to get in, ask Mr. Dudley to look at them. If
21 he has any objection, then we'll hear the objection; if
22 there's no objection, then we'll have them admitted,
23 okay?

24 MR. PIERCE: Okay.

25 THE COURT: Very good. Any question about it?

1 MR. PIERCE: No.

2 THE COURT: All right. Well, ask the jury to join
3 us --

4 Well, wait. Let's go off the record while the
5 court reporter marks it.

6 (Discussion off the record.)

7 (Defendant's Exhibit Number 11, price
8 quote/invoice/statement, was marked for
9 identification.)

10 THE COURT: All right. Defendant's Exhibit Number
11 11 is admitted.

12 (Defendant's Ex. # 11 was received in evidence.)

13 THE COURT: Anything before we bring the jury?

14 MR. DUDLEY: No, sir.

15 THE COURT: From the Defense?

16 MR. PIERCE: No, sir.

17 THE COURT: Very good. Ask the jury to join us,
18 please.

19 (The jury entered the courtroom at approximately
20 4:24 p.m.)

21 THE COURT: Let the record reflect the jury and
22 alternate are in the jury-box.

23 We will now proceed with the Cross-Examination.

24 Mr. Pierce?

25 Cross-Examination by Mr. Pierce (continuing):

1 Q. Mr. Gray, I would like to ask you about those
2 plumbing receipts, and actually they are invoices and
3 statements and price quotations. And what I was gonna
4 ask you is why you have from your lawyer here \$1,899 on
5 Bates Number 237, and then there's all these additional
6 invoices, quotes, and statements. What are those?

7 THE COURT: Why don't you show those to the
8 witness.

9 THE WITNESS: I don't have those. I'm sorry.
10 (Hanging).

11 THE COURT: I think that's Defendant's Exhibit
12 Number 11?

13 MR. PIERCE: Yes.

14 THE COURT: Very good. Thank you.

15 By Mr. Pierce:

16 Q. Can you also look at Bates Number 239 and identify
17 why there is a customer identification of Salon on
18 there, if that has any significance? Is that a
19 different customer than --

20 A. That's a different customer.

21 Q. Okay. Did I obtain discovery for a different
22 customer, then, instead of myself? Is that what that
23 is?

24 A. Yes.

25 Q. Is it possible the other ones are for another

1 customer, too?

2 A. No. They have your name on them.

3 Q. Okay. What are the other ones, other documents you
4 have in there, if that one is the only valid one?

5 A. There's only one that's not valid. It just got in
6 the file by mistake. We were building several homes at
7 the same time.

8 Q. Okay. So, so then what is --

9 A. This was a spec home.

10 Q. Okay. What are Bates Number 235, 236, and 238 if
11 they're not for me?

12 A. They are for you.

13 Q. Okay. Then why is there, 238 is for 1,899.33 and
14 all the others ones are different amounts? What are
15 those?

16 A. That's additional plumbing supplies that it took
17 for your home.

18 Q. Okay. Rough-in materials?

19 A. Correct.

20 Q. Okay, thank you.

21 And why was I given the one for Salon, Bates Number
22 239?

23 A. It got in the file by mistake.

24 Q. Okay.

25 A. But as you can tell, the price is over \$2,000.

1 Q. Okay. Do you have any receipts to verify payment
2 as invoices or bills, do you have any actual receipts to
3 show that you actually made a payment like, such as a
4 cancelled check or any actual receipt from the Community
5 Supply in Anderson?

6 A. Most of these I paid with a Visa, and I wrote the
7 date on them and circled it. That's how I normally did
8 business.

9 Q. That's just a personal notation for yourself?

10 A. Yes, for my accountant.

11 Q. Did you receive anything from Community Supply
12 indicating that you made a payment?

13 A. No.

14 Q. Okay. Thank you.

15 A. That I was able to call them back and order more
16 stuff is how they knew I made a payment.

17 Q. Okay. Thank you.

18 THE COURT: By the way, ladies and gentlemen of the
19 jury, you will have these exhibits in the jury room, but
20 we need the trial to move on, so the parties need the
21 exhibits for the time being.

22 By Mr. Pierce:

23 Q. Mr. Gray, I'd like you to look at Exhibit Number 4.
24 This is something I received from your lawyer regarding
25 \$6,692 from a Classic Lighting invoice along with a

1 receipt from them. What I was gonna ask you about that
2 is, are those materials for my home?

3 A. Yes, sir.

4 Q. And what are they used for like in the home?

5 A. The wires, the boxes, the plates to put the
6 fixtures up with --

7 Q. Okay.

8 A. -- the cans, the rough-in, what we call rough-in
9 wiring.

10 Q. Okay. And can you explain what this other exhibit
11 that you have here for \$2,265, what that was for, what
12 that includes versus this other one for \$6,692?

13 A. Well, based on the contract, we agreed for fixtures
14 only, and that was the price of the fixtures in the
15 home, not the stuff to mount them to, just the fans and
16 the lights and the bulbs.

17 Q. Okay. And so you are saying that \$6,692 was spent
18 on electrical rough-in materials?

19 A. Correct.

20 Q. Okay.

21 A. Plus labor.

22 Q. Okay. I received this other, this other invoice
23 from Classic Lighting for \$2,265.30, which your attorney
24 has noted as a cost to you and allowances. And I was
25 wondering about the accounting in this invoice because

1 there seems to be things that are outside the realm of
2 fixtures, electrical fixtures.

3 For example, there are things in there such as
4 glass, rods, breakers, wire, and bulbs that are either
5 electrical materials or electrical accessories and are
6 not fixtures. Have you had a chance to review this?

7 A. Yes. I guess a fixture would include the bulbs.
8 It's not very good without bulbs.

9 Q. Is that considered a fixture, a bulb, or an
10 electrical accessory?

11 A. I don't know the terminology.

12 Q. Okay. Would you --

13 A. I'm not an electrical engineer.

14 Q. Would you consider electrical wire to be an
15 electrical fixture or electrical rough-in material?

16 A. It could be either. It depends on what the wire is
17 used for. If it's used for a dining room light, a
18 hanging down, a hanging light, it would be part of the
19 fixture.

20 Q. Is wire normally considered to be an electrical
21 fixture?

22 A. It could be in the example I just gave you.

23 Q. Would the wiring throughout the house be considered
24 an electrical fixture?

25 A. No.

1 Q. Would 4/0 conductors, the third page of that
2 invoice, be considered to be an electrical fixture?

3 A. I don't know. I don't know what that is.

4 Q. Okay.

5 A. I'm not an electrician.

6 Q. (Hanging.)

7 A. What am I looking at?

8 Q. This right here, aluminum wire, service wire.

9 A. Apparently it couldn't just be a fixture itself
10 because it's \$7.08. I don't think that's to wire the
11 home.

12 Q. Okay. And I would like you to look at Bates Number
13 638 here that has a total of \$933 -- \$963.80. And then
14 I would like you to look at the entries, the itemized
15 entries above and ask you, do those entries total to
16 933?

17 A. These entries on this page do not total that. But
18 this was page 9 of something else. So, I don't know
19 where we started to gather this total. I don't have
20 page 8.

21 Q. I don't, either. And I'm unclear and confused as
22 to why there's several hundred dollars on that page and
23 900 for a total, and if you can explain why since it's
24 your receipt -- I mean your invoice.

25 A. Well, I have about, in the, in this exhibit that

1 Mr. Dudley presented. I have about nine pages from
2 Classic, and I probably have another nine pages of stuff
3 that are not admissible because they were part of the
4 rough-in.

5 Q. Okay. But what I'm concerned about is the
6 accountability that, and what I would like to understand
7 is why there's \$200 on that page itemized and there's
8 900 at the end of the accounting.

9 A. There's over \$300, but it's just a continuation of
10 the same invoice, and this is the grand, this is the
11 total. I need the other page to get to this total.

12 Q. Right. And I don't have the other page, either.
13 So, what I'm asking you is, is there a possibility of
14 some kind of error in this invoice --

15 A. No.

16 Q. -- that this is inaccurate?

17 Because I have a listing of two or three hundred
18 dollars and at the bottom it totals to 900. So, I'm
19 concerned about that. I would like you to give me an
20 explanation as to why that would happen because I don't
21 see any other pages here that tally to that. So...

22 A. I don't have a calculator here, but there's two
23 other pages over this that total \$200, and this one is
24 \$300, so ---

25 Q. Okay. Do these pages have tallies?

1 THE COURT: Just a moment. Let him answer the
2 question.

3 A. But I don't know the sequence of these pages. I
4 did not put this together. But, as far as I know their
5 system, it just runs, and then at the end of the page it
6 give you down here net to pay. But it necessarily does
7 not have to be all on this page. It's just a
8 continuation of other pages.

9 Q. Could there be an error in that page because the
10 other pages tally to the correct amounts and that page
11 doesn't? And I'm wondering if there's a possibility of
12 an error.

13 A. I don't know.

14 Q. Because I don't know.

15 A. I can't imagine it being an error since it's all
16 computer generated, but I guess it can be because --

17 Q. But earlier I had a bill for \$66.92 here that
18 wasn't for electrical fixtures, that was for something
19 else. So, I'm wondering if there was another error
20 here --

21 A. I thought we answered your question about the \$66
22 is for rough-in wiring --

23 Q. Right.

24 A. -- to operate the fixtures that go into the home.

25 Q. Right. And what I'm asking is, if there was an

1 error there --

2 A. That's not an error.

3 Q. -- with the rough-in materials and the electrical
4 material --

5 THE COURT: Just a moment. This is examination,
6 not argument.

7 MR. PIERCE: Okay.

8 THE COURT: If you don't get the answer you want,
9 that's unfortunate. You might need to restate your
10 question. We've been here on this matter for some time,
11 so let's move on.

12 MR. PIERCE: Move on.

13 By Mr. Pierce:

14 Q. Okay. Well, in concluding, could there have been
15 an error in that accounting?

16 A. I guess anything is possible. But I've, I've never
17 had -- I've been dealing with these people for years and
18 never had a problem or an error. I think we just have a
19 page out of sequence.

20 Q. And would you and your attorney be willing to
21 adjust the balance to reflect electrical fixtures versus
22 electrical rough-in and accessories?

23 A. I believe we already have done that to where we're
24 at a \$2,000 allowance, and we spent \$2,265.30.

25 Q. Okay. Let me ask you, is a breaker considered a

1 fixture or a, a rough-in material?

2 A. It's actually a fixture because it's probably a
3 GFI -- I'm guessing here -- it's probably a GFI
4 receptacle in the bathroom or the kitchen, whatever the
5 counter required.

6 Q. Okay. An area here for glass?

7 A. It could be the glass in a bowl, it could be glass
8 in a light fixture.

9 Q. Okay.

10 A. I apologize, but it's been six years ago.

11 Q. Yeah. Okay. Let's move on.

12 Your attorney has specified \$5,630 for the cabinet
13 materials; is that correct?

14 A. Yes.

15 Q. Okay. And do you have any, any receipt to show the
16 actual materials that were purchased to make these
17 custom cabinets?

18 A. No.

19 Q. Okay. All you have is a receipt for total labor
20 and materials, correct?

21 A. Correct.

22 Q. Okay. And -- okay. And so that figure is based
23 upon the total, the total bill minus 350 in labor; is
24 that right? You said earlier, your attorney specified?

25 A. \$350 I believe in installation..

1 Q. Okay. So that figure doesn't take into account the
2 construction of the cabinets since they are custom,
3 they're not constructed; is that right?

4 A. If they're not constructed, they're not a cabinet;
5 they're just a piece of wood.

6 Q. Right. But they're constructed out of raw
7 materials such as wood, nails or screws, right, as is
8 custom?

9 A. But to assemble them, then you have a cabinet.

10 Q. Okay. But the labor for that assembly, was that
11 also included in that \$5,630?

12 A. I'm sure it is.

13 Q. Okay. Is that appropriate given this material,
14 this allowance?

15 A. I believe so because I don't think you, I don't
16 know how you will put your dishes up in wood on the
17 floor. I mean, it had to be assembled.

18 Q. Okay. The allowance, the allowances are only for
19 materials, correct?

20 A. Yeah. That's what's on the contract.

21 Q. Okay. So, wood, screws, varnish and things like
22 that would be materials that would be used to assemble a
23 cabinet?

24 A. Yes, sir.

25 Q. Thank you. Now, with regards to the flooring,

1 flooring allowance, you have \$2,507.47 specified --

2 A. Okay.

3 Q. -- is that right?

4 And that's from a receipt from Dixie Flooring?

5 A. Yes.

6 Q. Can you explain on that receipt TCD 233 where the
7 entry is for \$2,507.47? I don't see it. I see entries.
8 I'm asking you -- I see entries for \$3,174.97, \$2,243.

9 Can you identify where on that page there's an entry for
10 \$2,507.47?

11 A. I'm not understanding you. Can you repeat the
12 question?

13 Q. Sure. Sure. There's an entry here from your
14 attorney on this allowance versus actual costs. Do you
15 have that in front of you?

16 THE COURT: Are you referring to Plaintiffs'
17 Exhibit Number 6?

18 MR. PIERCE: Yes.

19 THE COURT: Okay.

20 By Mr. Pierce:

21 Q. And what I'm asking you is, there's an entry next
22 to flooring that says \$2,507. And I'm looking at the
23 Bates Number for Dixie Flooring PCD 233, I don't see a
24 2,507.47 entry here, so I'm confused. Can you identify
25 how you arrived at \$2,507.47?

1 A. The invoice I'm looking at has labor included and
2 tax on the labor. So, I think Mr. Dudley subtracted out
3 the labor and prorated the labor portion on it to come
4 up with a \$2,500 figure.

5 Q. Okay. Would, would the correct figure be \$2,443.47
6 listed under materials here? It says \$6,205 on that
7 page. Would that be the correct amount for materials
8 instead of \$2,507.47? Is that what you are reading,
9 Mr. Gray?

10 A. Well, I assume the taxes would be different because
11 of the grand total. I don't know what the number would
12 actually come out to. I think Mr. Dudley made an
13 adjustment in that number prior to today. I'm not sure.

14 Q. Okay. Mr. Gray, if you would look further up on
15 the page, it says tax of \$109.45, so I guess tax is
16 included. I still would like to ask you, is there some
17 explanation of that or do you not know?

18 A. I don't know.

19 Q. Okay. Thank you.

20 Now, with regards to the rock and stone, I have a
21 valid receipt from you for \$945 dated May 27th, '05,
22 Bates Number 216. And -- okay. I also sent you a
23 letter June 28th, '05, Bates Number 52, asking to settle
24 up on allowances. And did you reply to that letter?

25 A. I don't know. May I see the letter?

1 Q. Sure (handing). If you could read to yourself the
2 second page on that paragraph, please.

3 THE COURT: Is that an exhibit?

4 COURT REPORTER: Defense 1.

5 By Mr. Pierce:

6 Q. What does that mean to you, that paragraph?

7 A. It's stating that you want to settle up all the
8 credit that you believe that you are due before we
9 settle up on the \$30,000 draw, or you're going to -- I
10 can contact your attorney and be happy to get me a
11 letter stating my legal obligations, and I will not be
12 paid until you have completed this requirement as well.

13 Q. Okay. Now what I would like to ask you is, did you
14 make any attempt to reach me to try to settle up on any
15 of these allowances after receiving that letter?

16 A. I believe either at the same time or prior to
17 receiving this letter you had already locked us out of
18 the home.

19 Q. That's not what I'm asking. I'm asking you, did
20 you attempt to contact me?

21 THE COURT: Listen to this. The way we do it is he
22 asks the question, you answer the questions, but then
23 you can explain them.

24 THE WITNESS: Okay.

25 THE COURT: Very good.

1 Ask the question again, please.

2 THE WITNESS: No.

3 By Mr. Pierce:

4 Q. Okay. Did you ever contact me and ask me if I had
5 an excess amount of stone at my house?

6 A. No.

7 Q. Okay.

8 THE COURT: Do you want to explain your answer?

9 You can if you want to. You don't have to.

10 THE WITNESS: I didn't feel there was a need to for
11 the excess stone because I'm only paying for the
12 material, so I paid for it, so...

13 By Mr. Pierce:

14 Q. Did you ever attempt to try to obtain that material
15 and take it back, the unused portion, for a credit?

16 A. No. They won't do that once a pallet is broken.

17 So, I'm sure that's probably -- maybe we were in between
18 pallet sizes or quantity, so I had to get another pallet
19 for cost.

20 Q. Were you aware that you ordered three times as much
21 as needed?

22 A. No. Because I didn't order it. No.

23 Q. Okay. And do you feel I should have to pay \$945
24 when it was only about a third used?

25 A. Do I believe -- yes. Did you use it all?

1 Q. No.

2 A. You did not.

3 Q. So, should I, should I be required to pay for three
4 times as much as what I used? That's what I'm asking.
5 Given that I asked you --

6 A. I'm not a stone mason. But according to the people
7 that do it for Melinda and Nathan, when you get a
8 pallet, you don't know about broken rocks. Or they have
9 some order that they stack these rocks in, so you're
10 gonna have -- so, that's not uncommon.

11 Q. Would you and your attorney be willing to reach an
12 agreement with me to settle on \$300 versus \$945 because
13 I only used one third?

14 A. No.

15 Q. Okay. Thank you.

16 I have a couple more questions for you.

17 You testified earlier here to your attorney that it
18 was three days to complete the project in June when you
19 got locked out?

20 A. That's a rough estimate.

21 Q. Okay. And could you, could you please look at
22 Exhibit Number 1 on page Roman Numeral X and read, and
23 read to me the items on number 4.

24 A. (Reading):

25 Upon completion of installation,

1 installation of cabinets, bathroom
2 mirrors, countertops, carpeting, vinyl,
3 and ceramic tile, finishing moldings
4 around doors and windows, painting,
5 insulation of all electrical and
6 plumbing fixtures, and pouring the
7 driveway, \$30,000.

8 Q. And were all those complete at the time, that you
9 said you had three days left to complete?

10 A. All were completed I think except for the agreement
11 we came to on the driveway that you would get a credit
12 for.

13 Q. Did you have bathroom mirrors installed?

14 A. I can't recall.

15 Q. Did you have vinyl and ceramic tile installed?

16 A. We had it -- as far as I can remember, we had it
17 installed with the original contract. Then you decided
18 to, you wanted tile in more places and you were gonna do
19 it yourself.

20 Q. So, you didn't have that installed?

21 A. I didn't know where you wanted to install it. We
22 were confused. We were not clear. So, I think I ended
23 up giving you some credit on that.

24 Q. Okay. And did you have the countertops completely
25 installed?

1 A. No. Because instead of doing the countertops
2 originally agreed upon, you decided you wanted ceramic
3 tile countertops and you were gonna do that. You asked
4 me how far I was away from completion.

5 Q. Is it true that you didn't have all these items
6 installed at the time you just mentioned that you had
7 three days to complete?

8 A. Is it true? Yes.

9 Q. Okay. And would you have been able to complete the
10 rest of these, including phase 5, in three days?

11 A. Yes.

12 Q. You would have been able to pour a driveway in
13 three days?

14 A. I think prior to this we had already agreed that
15 you were gonna take care of the driveway and I was gonna
16 issue a credit for it since the driveway had been moved
17 from the first site it was to be placed.

18 Q. Okay. Now, for item 5 there, phase 5, there was a
19 lengthy punch list that was sent to you with many tasks
20 to do. Can you honestly tell me that you could have had
21 that done in three days?

22 A. Yes.

23 Q. And could you have installed all the appliances in
24 the house required in three days?

25 A. Yeah. They were already purchased.

- 1 Q. Okay.
- 2 A. I had to cancel the order.
- 3 Q. Okay. Can you tell me what your job function was
- 4 on this project? You are specified as a developer. Was
- 5 that your actual job function on the job, developer?
- 6 A. I guess I was more of a financier.
- 7 Q. Would you consider yourself to be a general
- 8 contractor?
- 9 A. No, sir.
- 10 Q. Why not?
- 11 A. Because I don't perform any general contracting
- 12 work.
- 13 Q. Can you describe what type of work you were doing?
- 14 A. Writing checks.
- 15 Q. Did you hire any people, subcontractors?
- 16 A. No.
- 17 Q. You paid them, though, right?
- 18 A. I paid them.
- 19 Q. Who hired them?
- 20 A. Melinda or Nathan Holbrooks.
- 21 Q. Earlier you testified that phase 3, phase 3 and 4
- 22 were not completed. Is that what you testified earlier?
- 23 A. I misspoke.
- 24 Q. Okay.
- 25 A. I didn't have this form. It was actually 4 and 5.

1 MR. PIERCE: Thank you. That's all I have. Thank
2 you, sir.

3 THE COURT: Re-exam?

4 MR. DUDLEY: Very briefly.

5 Redirect Examination by Mr. Dudley:

6 Q. Jeff, if you could pull out Exhibit 6, that's the
7 allowances. If you go to the Classic Lighting, the
8 electrical tab, the very first is like a compilation
9 letter. Do you see that?

10 A. Yes, sir.

11 Q. June 28, 2010?

12 A. Yes, sir.

13 Q. Does it list all the invoices -- can you tell me
14 what this was, how this was pulled together?

15 A. I believe this was pulled together, you, you asked
16 me to go there to get a list of the invoices on fixtures
17 at Classic Lighting.

18 Q. This is what Classic Lighting gave you?

19 A. Yes. It's an overall summary of fixtures.

20 Q. They may not have created all of the pages of this
21 invoice?

22 A. Correct.

23 Q. All right. And then if you look briefly on the
24 bottoms of all of these invoices, is that Melinda's,
25 Melinda Holbrooks's signature on some of these invoices

1 for receipt of these on the site?

2 A. I see Melinda's on several and Nathan's on the
3 others.

4 MR. DUDLEY: That's all the questions I have.
5 Thank you.

6 THE COURT: All right. You may step down.

7 (Witness leaves stand.)

8 THE COURT: All right. You may call your next
9 witness.

10 MR. DUDLEY: Sir, that is the Plaintiffs' case.

11 THE COURT: All right. Let me see counsel at
12 side-bar, please.

13 (Discussion at sidebar.)

14 THE COURT: All right. Mr. Foreman, ladies and
15 gentlemen of the jury, the plaintiff has rested his
16 case, which means that's the total of his testimony and
17 exhibits and other evidence, and now we'll go forward
18 with the defense case. The only thing is I need to take
19 up some matters with the attorneys. And then, of
20 course, that case and then the argument, and then it
21 will finally be given to you.

22 It is exactly 5:00 at this time. My experience is
23 that we have two worlds. One begins early in the
24 morning and goes on to 5:00, and then we've got one that
25 starts at five and seems to go on forever. So, what I

1 MR. DUDLEY: Yes, sir.

2 THE COURT: The second thing is you're not gonna
3 leave the courthouse or the courthouse yard until you
4 have had, you consulted on any additional exhibits you
5 want, so that when you come in tomorrow morning, I'll
6 rule on either their admissibility or lack of
7 admissibility. All right?

8 MR. DUDLEY: Yes, sir.

9 MR. PIERCE: Yes, sir.

10 THE COURT: Anything else?

11 MR. PIERCE: Should I present the licensing issue,
12 then, tomorrow?

13 THE COURT: This is the time.

14 MR. PIERCE: The time is right now?

15 I call Jeff Gray to the stand.

16 THE COURT: Well, as your witness, but the
17 plaintiff has rested. Do you have any motions to make?
18 In other words, it's called a directed verdict as to
19 certain things or so. And license is one of the things
20 that was in Judge McIntosh's Order. If you want to make
21 a motion or move as to that issue, you can.

22 Motion to Dismiss by Defendant:

23 MR. PIERCE: Yes. I would like to make a motion to
24 dismiss their case based on the fact that Jeff Gray is
25 an unlicensed builder and unless he's a licensed

1 builder. And under Section of Law 40-59-30, that a --
2 section (b), it says that (reading):

3 A person or firm who has not procured a
4 license or registered with the commission and
5 is required to do so by law may not file a
6 mechanic's lien or bring an action at law or in
7 equity to enforce provisions of a contract for
8 residential building or residential specialty
9 contracting which the person or firm entered
10 into in violation of the chapter.

11 THE COURT: All right. If you would please start
12 at the first comma in 40-59-30 (b) beginning with "a
13 person."

14 MR. PIERCE: Or another provision of law --

15 THE COURT: No, no, no. Start with "A person."

16 MR. PIERCE: Okay. (Reading): A person or a firm
17 who -- has not procured --

18 THE COURT: Who has first -- who first has not
19 procured --

20 MR. PIERCE: Right.

21 THE COURT: -- a license or registered with the
22 commission.

23 Is that correct?

24 MR. PIERCE: Yes.

25 THE COURT: All right. Exhibit number, Plaintiffs'

1 Exhibit Number 10, I think, shows the residential home
2 building renewals up through August the 1st, 2005. And
3 what was this contract? 2004, wasn't it?

4 MR. PIERCE: August, August or July.

5 THE COURT: August 24th of 2004. And it shows her
6 registration or renewals on July the 12th, 2004, and
7 June the 16th, 2005. Plus, you had referred to the
8 question of whether or not she is subject to -- as to
9 whether she is not subject to certain violations of her
10 license. I think it's 40-59-140.

11 Well, we're gonna take a short break. I'll be
12 right back.

13 No. There we are. I'm sorry. It's 40-59-105.
14 Dealing with administrative remedies or penalties to be
15 assessed violations against someone who does have a
16 licenseship. Administrative -- this is 40-59-105,
17 Subsection (c). (Reading):

18 Administrative abilities authorized under
19 this section are separate from and in addition
20 to all other remedies, either civil or
21 criminal.

22 So, the fact that she's being considered, as been
23 mentioned more than once, for a violation of the
24 requirements of her license admits that she was licensed
25 at the time. Otherwise, it wouldn't have anything to

1 act on.

2 The Court's Ruling on Defendant's Motion:

3 THE COURT: So, again, I find as a matter of law
4 that there's no genuine issues of material fact as to
5 whether or not the builder in this case -- excuse me --
6 the contractor in this case was Melinda Holbrooks on
7 July 24th, 2004, was a residential home, residential
8 home builder under Section 40-59-30 (b). And because
9 the plaintiff, Mr. Gray, is not a residential home
10 builder, he wouldn't have been subject to the sanctions
11 under Section 40-59-105, I believe it is.

12 All right. Next?

13 So, that would no longer be an issue in this case
14 for the jury's determination. The Court has ruled as a
15 matter of law. Next?

16 MR. PIERCE: It's undisputed that, that Melinda
17 Holbrooks is a licensed builder. But I'm trying to
18 ascertain as to whether the joint venture between them
19 is valid. And under, under 40-11-330, joint venture
20 bids (Reading):

21 Two or more licensed contractors may
22 combine bids and submit a joint venture bid if
23 the contract does not exceed the highest
24 license group limitations of the members in the
25 joint venture.

1 And then it says (reading): Unlicensed
2 contractor may not be party to a joint venture.

3 **THE COURT:** Well, he has not indicated that he was
4 a contractor. In fact, he signed a home construction
5 contract, Plaintiff's Exhibit 1, as the developer. And
6 the contractor was Melinda Holbrooks. And you signed
7 right beneath her as owner.

8 **MR. DUDLEY:** Your Honor, also 40-11 is governing
9 general contractors and not residential builders and
10 those are two different statute sections.

11 **THE COURT:** Well, I know. But I think that will be
12 determined as a matter of law that it is not relevant.
13 Very good. Next?

14 **MR. PIERCE:** It's...

15 **THE COURT:** But again, Mr. Pierce, that's matters
16 for the licensing board. And if you want to appear
17 before them and report that violation, you certainly
18 can. But that is a separate proceeding unaffected by
19 the requirements of 40-59-30 where they have to have, be
20 licensed or registered prior to entering into a
21 contract.

22 **MR. PIERCE:** Both Melinda Holbrooks and Jeff Gray
23 either have been or will be cited by the LLR.

24 **THE COURT:** Well, you can be there that day and I
25 wish you well. But that is irrelevant to this

1 proceeding, and I so rule.

2 MR. PIERCE: Can I say further?

3 THE COURT: You can say whatever.

4 MR. PIERCE: Is that your final order right there,
5 or can I address other laws?

6 THE COURT: You can address anything you want
7 that's relevant. And I've ruled that the joint venture
8 that you've provided deals with another licenser
9 altogether.

10 MR. PIERCE: Okay.

11 THE COURT: Plus, even 40-59-30, which does provide
12 for enforcement of contracts and restraining orders,
13 that that is not relevant to the registration provision.

14 MR. PIERCE: I would just add one other thing on
15 that issue. And that is that it's my understanding from
16 his work description that he was performing as a general
17 contractor on the job and Melinda Holbrooks was the
18 actual builder. That's, that's the job function that
19 they were doing. He signs as the developer, but it's a
20 big term.

21 THE COURT: Well, there are a lot of differences of
22 opinion about what things are. And I appreciate your
23 assistance on that matter. And, as I say, I find that
24 you are pretty much bound by the contract that we sign
25 as to what capacity it was signed in.

1 MR. PIERCE: Also, as far as licensing
2 requirements, under 40-11-30, (reading):

3 No entity or individual may practice
4 as a contractor by performing or
5 offering to perform contracting work for
6 which the total cost of construction is
7 greater than five thousand dollars for
8 general contracting or greater than five
9 thousand dollars for mechanical
10 contracting without a license issued in
11 accordance with this chapter.

12 THE COURT: Now, Chapter 11 --

13 MR. PIERCE: And --

14 THE COURT: -- deals with general contractors.

15 MR. PIERCE: Right.

16 THE COURT: And we are in Chapter 59, residential
17 home builders.

18 MR. PIERCE: It's, it's my --

19 THE COURT: I'm just taking the language of the
20 statute. It says that it applies to the contractors in
21 the Chapter 11.

22 MR. PIERCE: It's my understanding that --

23 THE COURT: I know what your understanding is.
24 I've heard it.

25 MR. PIERCE: Okay.

1 THE COURT: I'm sorry. It just does not apply to
2 the provisions of chapter 59 regulating residential home
3 builders.

4 MR. PIERCE: And it's the Court's understanding
5 that section (e) out of 40-59-30 does not apply to
6 Mr. Gray?

7 THE COURT: I don't know if it does or not. I
8 mean, it's a separate thing. You'll have to take that
9 up with the commission. I think that would be a good
10 place to do it. They are the ones that have the
11 authority to enforce contracts and restraining orders
12 and also to provide the penalties.

13 MR. PIERCE: Yes. And that's what I did, Your
14 Honor. I have taken it up and I am awaiting their
15 decision; and, as I said to you earlier, their decision
16 could have a material affect at this time.

17 THE COURT: Their decision has no effect. Once
18 the, once they are licensed, a residential home builder
19 is either -- I'll read the statute again one more
20 time (reading):

21 A person who first has not procured a
22 license or registered with the
23 commission and is required to do so by
24 law may not file a mechanic's lien.
25 Now, she was registered.

1 MR. PIERCE: Right.

2 THE COURT: And, if I remember, I don't even think
3 Mr. Gray was on the caption of the case until you joined
4 him. Is that not correct? He is a third-party
5 defendant, he's not a plaintiff.

6 MR. DUDLEY: Yes, sir, he is a third-party
7 defendant.

8 THE COURT: If you've brought him in, that's for
9 you to defend or tell the commission that's why you
10 brought him in.

11 MR. PIERCE: Tri-County Development is his company.

12 THE COURT: I don't know what it is. All I know is
13 that this requires Section 40 -- and I'm tired of
14 arguing with you if you don't mind -- Section 40-59-30,
15 (reading):

16 A person who has not procured a
17 license or registered with the
18 commission and is required to do so --
19 our law -- may not file a mechanic's
20 lien or bring action in law or in equity
21 to enforce the provisions of the
22 contract.

23 And I looked at the caption in this case and it
24 doesn't say anything about Mr. Gray. It says Melinda
25 Holbrooks. And I trust that's the name on the

1 mechanic's lien on which this action was sought to
2 enforce.

3 MR. PIERCE: It's actually both their names on
4 there.

5 THE COURT: I have no idea. Very good. Go ahead.
6 Please make your record complete. But maybe it would be
7 good to go a little bit further down the road somewhere
8 where we might find something relevant.

9 All right. Go ahead. Anything else?

10 MR. PIERCE: That's all.

11 THE COURT: All right. Just so there is no
12 question about it: Licensure has not been -- has now
13 been decided as pursuant to the law of the case being in
14 Judge McIntosh's Order as well as the record in this
15 particular case as supported by the record. So, the
16 only thing that we have left will be the amount owed on
17 the, of some contract and any set-offs by reason of
18 substantial completion not being completed.

19 MR. DUDLEY: Yes, sir.

20 THE COURT: All right. Any question now,
21 Mr. Dudley?

22 MR. DUDLEY: No, sir.

23 THE COURT: Mr. Pierce?

24 MR. PIERCE: No. (Mr. Pierce starts to leave the
25 courtroom.)

1 THE COURT: Very good. I look to see you at 8:30
2 in the -- oh, Mr. Pierce -- morning.

3 MR. PIERCE: I'm sorry?

4 THE COURT: At 8:30 in the morning I look forward
5 to seeing you ready to go.

6 MR. PIERCE: Okay.

7 THE COURT: You may plead your case at that time.

8 (Court adjourned at 6:20 p.m. on November 28, 2011,
9 to resume on November 29, 2011, at approximately
10 8:30 a.m.)

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1 Mr. Pierce?

2 (There was no response.)

3 THE COURT: You are to testify?

4 MR. PIERCE: Yes.

5 THE COURT: Madam Clerk, if you would please swear
6 Mr. Pierce.

7 (Whereupon, the witness, Christopher A. Pierce, was
8 sworn by the Clerk of Court.)

9 THE COURT: Give us your full name for the record.

10 THE WITNESS: Christopher A. Pierce.

11 THE COURT: You may proceed.

12 Whereupon,

13 Christopher A. Pierce,
14 after first having been duly sworn, testified as
15 follows:

16 THE WITNESS: Okay. I'd like to make a summary of
17 the damages involved in this case. First of all, this
18 case is a contract dispute involving a building for my
19 home, and it involves payments four and five, that's
20 where we had a problem with our dispute.

21 And at that point Mr. Gray and Melinda Holbrooks
22 had completed a certain portion of four and none of
23 five. And what I would like to try to do is go through,
24 based on the testimony yesterday of Mr. Gray, what, in
25 fact, had actually been completed on that testimony and

1 to ask, ask you in your deliberations to determine what
2 the value of that work and materials furnished was.

3 THE COURT: No, just a moment. I'm not sure if you
4 were asking the jury to determine the amount of work.

5 THE WITNESS: To determine work and materials
6 furnished.

7 THE COURT: By you?

8 THE WITNESS: Um, no, by actually the plaintiffs,
9 what they contributed.

10 THE COURT: No, that's not the element of damages
11 in a lump-sum contract.

12 THE WITNESS: It's for the mechanic's lien, for the
13 mechanic's lien part of it. Work and materials
14 furnished.

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, I'm gonna have to ask you to retire to the
17 jury room for a moment. I need to take up a matter of
18 law, please.

19 (Whereupon, the jury left the courtroom at
20 approximately 9:03 a.m.)

21 THE COURT: All right, Mr. Dudley.

22 MR. DUDLEY: I believe this has been dealt with in
23 another hearing. But, as I understand, there's a
24 lump-sum contract for which we are seeking the contract
25 balances, our damages, less offsets that he has, that we

1 stipulate to some of those. Where I thought he was
2 headed was what his contentions what the differences on
3 the allowances or what his offsets were. But there's no
4 requirement for us to prove what our costs were. The
5 value of our work is the contract balance less the
6 offsets.

7 THE COURT: I understand, and that's what I
8 thought, too. That's why we have lump-sum contracts
9 rather than cost-plus contracts of that nature where you
10 have to establish whether the costs were reasonable or
11 not because the parties at the time of the contract
12 agreed to what would be a reasonable amount if
13 performed.

14 Now, I'm looking at your, the notice and
15 certificate of mechanic's lien, and it set out the
16 amount that I understood was the amount originally asked
17 for, which was \$34,000. I understand that that was an
18 error, it was a stated lump sum, was error by \$1,000,
19 which the testimony gave you credit for. And then, in
20 fact, it speaks to the unpaid part of the contract
21 including due and owing, and the \$3,000 to be paid at
22 the end of the agreement, as to the balance being
23 \$30,000.

24 No, sir, the mechanic's lien doesn't change it from
25 being a lump-sum contract. You are seeking what's due

1 under that contract, and not from a mechanic's lien or
2 cost plus or some other theory of contract.

3 MR. PIERCE: So then it has to be adjustments from
4 there? Like, for example, you adjusted the driveway,
5 the concrete minus \$2,500, I would take off other items
6 that were not completed?

7 THE COURT: Whatever is under the contract, if they
8 did not complete and that you had to complete, and the
9 value of whatever you paid for that.

10 MR. DUDLEY: I think we stipulated to that already,
11 the driveway and the offsets, that you said we
12 stipulated to that.

13 MR. PIERCE: But the problem is vinyl and ceramic
14 tile were never stipulated, and that's included in here.

15 THE COURT: Well, you do that. But again, you are
16 not changing the terms of the contract to make it
17 something other than a liquidated amount.

18 MR. PIERCE: Okay. I just understood it was two
19 parts: the claim and the mechanic's lien.

20 THE COURT: No. The mechanic's lien had to be
21 filed in order to have the opportunity to have this case
22 tried, and then it had to be foreclosed within a certain
23 time. And it can be foreclosed -- well, of course, the
24 mechanic's lien is limiting itself to the amount owed
25 under the contract.

1 MR. PIERCE: Okay. But with the mechanic's lien
2 there is not a duty for them to prove damages?

3 THE COURT: No, sir. You proved it when you signed
4 the contract. You said a hundred and...

5 MR. PIERCE: \$184,000.

6 THE COURT: \$184,000. And you have admitted you
7 haven't paid the last two, which is \$33,000.

8 MR. DUDLEY: Yes, sir.

9 MR. PIERCE: Correct.

10 THE COURT: So, I mean, that's the contract. We're
11 not talking about what the value of it is. If we had to
12 do more labor or provide for materials under the
13 contract than for the price they agreed to, in other
14 words, then they would have to live with it. They can't
15 get any more than \$184,000 less the payments made and
16 any set-offs.

17 MR. PIERCE: Okay. But I'm allowed to challenge as
18 far as, you know --

19 THE COURT: Anything under the contract but not the
20 value of it. Because that would be entirely different.
21 That's why the parties agreed on a lump-sum payment so
22 they won't have to debate how much the item is worth or
23 how much labor was done. They agreed beforehand that
24 I'm going to pay this amount for this project.

25 MR. PIERCE: Okay. So, there's, like he provided

1 the \$2,500 for the driveway, and I can ask for an offset
2 of \$3,000 for the phase five?

3 THE COURT: If you agreed to the \$2,500.

4 MR. PIERCE: Yeah, we, we did.

5 THE COURT: And you said he would no longer be
6 responsible for the \$2,500 -- I mean for the driveway.

7 MR. PIERCE: Uh-huh. And he agreed in testimony
8 that certain of these other things were not completed
9 and I thought it would get --

10 THE COURT: You can do that. That's exactly what
11 you can do.

12 MR. PIERCE: Okay.

13 THE COURT: But that's not the value as much as
14 what you had to pay in --

15 MR. PIERCE: In offsets.

16 THE COURT: -- offsets.

17 MR. PIERCE: Okay. Very good.

18 THE COURT: Okay. Perfect.

19 MR. PIERCE: Okay. Got it.

20 THE COURT: All right. Thank you. Anything else?
21 I'm trying to keep the case --

22 MR. PIERCE: Focused.

23 THE COURT: -- in line with the what the rulings
24 have been and what the law is.

25 And with that, is there anything else?

1 MR. DUDLEY: No, sir.

2 THE COURT: Anything else?

3 MR. PIERCE: No, sir.

4 THE COURT: All right. Ask the jury to join us,
5 please.

6 (The jury entered the courtroom at approximately
7 9:11 a.m.)

8 THE COURT: All right. Mr. Pierce, you may
9 proceed.

10 By Mr. Pierce (Resuming):

11 THE WITNESS: Okay. The remaining balance due on
12 this contract of payments four and five combined was
13 \$33,000. Mr. Dudley and his client, Jeff Gray, adjusted
14 an offset of \$2,500 for the driveway yesterday. I have
15 submitted that also adjustments should take place,
16 offsets for the fact that payment, or phase five was not
17 completed by plaintiffs, as well as other items such as
18 ceramic tile was not complete, vinyl tile was not
19 complete, bathroom mirrors and kitchen countertops were
20 items that were also not completed by plaintiffs, and I
21 respectfully ask that you consider providing offsets for
22 this. And, also, that the actual value of what was done
23 there was probably about half of 30,000, roughly, just
24 in my opinion. That's up for you to decide.

25 Now, moving onto the allowance of items that were

1 discussed yesterday, there is, there was plumbing,
2 plumbing fixtures, electrical fixtures and cabinet,
3 cabinet allowances. The evidence that was submitted for
4 the plumbing, the plumbing fixtures was in my opinion
5 ambiguous in that there was quotes, statements, as well
6 as invoices that had different clients' names on them,
7 and I submit to you that that evidence that was produced
8 is questionable as to its credibility and reliability.

9 MR. DUDLEY: Judge, I have, I hate to object. This
10 is getting more like argument than testimony and facts,
11 and I ask it be left to facts.

12 THE COURT: All right. Let's do, if we could. We
13 can argue the case at the end. But let's have the facts
14 upon which you rely.

15 THE WITNESS: The amount in question that was
16 submitted was I believe \$1,899 for the plumbing, and
17 that, that is in dispute as far as I could see. It's
18 not reliable.

19 And he also produced -- it's also an invoice and
20 it's not a receipt. And an invoice is a bill and a
21 receipt is actual proof of payment. And I'm not sure if
22 they ever purchased it.

23 As far as for the electrical items, there was
24 several different invoices produced, one for \$6,600 and
25 some, around \$6,600; and then another one for \$6,265

1 produced. And then, as far as I can tell, the one for
2 \$6,600 is outside of what happened in my contract. It's
3 somebody else's materials.

4 The one for \$2,265 that was submitted contains
5 erroneous information of things that are not electrical
6 fixtures. I consider them electrical accessories or
7 rough-in materials. That's, that's your determination.
8 But I consider many of those things rough-in materials
9 as electrical infrastructure materials that are not
10 electrical fixtures and, therefore, should not be
11 included.

12 And finally, again, that was an invoice that was
13 produced. And the plaintiffs never produced any valid
14 receipt or cancelled check or anything to verify
15 payment. So, again, I think that there should not be
16 any credit issued to the plaintiffs for that because of
17 the unreliability of that.

18 As for the cabinets, the cabinets were, the actual
19 materials that went into custom cabinets are raw
20 materials, such as wood, screws, nails, and things of
21 that nature. And I, I received some receipts from the
22 plaintiffs, but those receipts were not specific as to
23 materials. Those, those receipts included materials and
24 labor as given in testimony by Mr. Gray.

25 I've asked them repeatedly for materials, specific

1 material, raw materials, and they never furnished it.
2 Therefore, I ask that you give them zero credit for that
3 because I have, I never received any discovery related
4 to raw materials on cabinets.

5 There was also a tile and flooring allowance for
6 \$6,000, and I stipulate to \$2,243, which is the actual
7 materials from Dixie Flooring that were used. There was
8 an erroneous, some entry from the plaintiffs for
9 \$2,507.47. I asked Mr. Gray during, in testimony
10 yesterday what that was. He couldn't identify it. I
11 don't know where that came from. I would be happy to
12 stipulate as to \$2,243 which is in that Dixie Flooring
13 receipt that they have provided.

14 Lastly, there was the allowance for stone. And in
15 that allowance for stone, plaintiffs produced a valid
16 receipt for \$945. However, with testimony yesterday I
17 asked Mr. Gray if he used all that stone --

18 MR. DUDLEY: Objection. That's again not facts.
19 He's pitting a witness.

20 THE COURT: Well, he can -- he's not pitting
21 against a witness. He can amplify the testimony or
22 explain the testimony.

23 MR. DUDLEY: Withdrawn.

24 THE COURT: Very good.

25 MR. PIERCE: Thank you.

1 THE COURT: You may proceed.

2 THE WITNESS: I produced a letter to show that I
3 had, on June 28, 2005, I notified Mr. Gray that we
4 needed a set-off on the allowances which included the
5 stone because I had excess stone, about two to three
6 times as much as I required, and I wanted him to take
7 that back for a credit, and he never contacted me for
8 that.

9 And, therefore, I respectfully ask the jury to
10 consider that my actual cost for the stone should be
11 about one third of the 945, and that I would be happy to
12 work out arrangements with Mr. Gray to return the unused
13 portion of the stone to see if he could return it at
14 this point. I'm not sure.

15 And, so, what I find is, after considering this
16 information, is a total adjustment to the plaintiffs out
17 of the allowances for 2,543, 2,543 dollars, which
18 includes \$2,243 from the Dixie Carpeting materials, plus
19 \$315 from the general shale stone contractor, and that
20 offset from \$18,500 for the total allowances provides me
21 a credit that I should, that I feel I should be entitled
22 to, \$15,957 that should be deducted from the balance of
23 \$33,000 that the plaintiffs are requesting.

24 Lastly, I, I had some stipulated items with, with
25 Mr. Dudley, the plaintiffs' counsel, and we had agreed

1 that the stipulated items, for which I provided receipts
2 in discovery, were for a building permit that I had
3 purchased to finish the work for \$700, and a termite
4 letter that I had to get for \$650, an inspection report
5 for \$275, and the cost of appliances that I had to
6 purchase to finish the house project for 10-, \$1,031.

7 And, after doing that, the math on that comes out
8 to \$2,656 for stipulated items from plaintiffs. And
9 combining both the allowance credit and the stipulated
10 items, I come to a credit of \$18,613 that should be
11 adjusted from the \$33,000 total that plaintiffs contend
12 is owed.

13 And so, I believe that if you determine, if you
14 also make the adjustments I earlier mentioned, based on
15 partial completion of four and not completing five, if
16 you adjust these, you will find the plaintiffs actually
17 incurred costs in the range of 15- to \$17,000, and if
18 you deduct the \$18,613, that actually nothing is owed by
19 me on this contract, and that I've actually, in fact,
20 incurred more expense myself than Mr. Gray has.

21 And that's, I ask that the case be dismissed
22 because of the fact that this is zeroed out and I owe
23 nothing. And that's all I have for testimony.

24 THE COURT: All right. Cross-Examination?

25

1 Cross-Examination by Mr. Dudley:

2 Q. I wasn't going to ask any questions, but now I have
3 to. Can you -- I need to get Exhibit 1 in front of you.
4 Mr. Pierce, that's the contract you entered into to have
5 your house built. Right?

6 A. Correct.

7 Q. It is a lump-sum amount, \$184,000, for your house.
8 Correct?

9 A. Correct.

10 Q. And there were allowance items in there?

11 A. Yes, there were.

12 Q. For the contract you listed \$18,500 for allowance
13 items. Correct?

14 A. Right.

15 Q. And you knew that if you spent more than the \$2,000
16 on your plumbing fixtures, that you would owe that
17 addition, whatever it was above the \$2,000. Right?

18 A. Yes. But I had to be contacted by, you know,
19 warned by the plaintiffs. If I were to go over that
20 amount, they would warn me so that I would not.

21 Q. Absolutely. And, if you spent less than the
22 \$2,000, you would, you would get a credit for how much
23 was less?

24 A. Correct.

25 Q. And that \$18,500, that was an estimate of what, it

1 was an allowance that you had to spend on these various
2 items of allowances, and that \$18,500 is actually in the
3 \$184,000, isn't it?

4 A. When you say it's in the \$184,000, I'm not sure
5 what you mean by that.

6 Q. The \$184,000 was for a completed house, and if you
7 spent more than your allowance items -- well, let's give
8 an example. If you spent a thousand dollars more on
9 plumbing fixtures, and all the other ones were within
10 the allowance, that you would owe \$185,000 for your
11 house. Did you understand that was how, the way the
12 allowance items would be handled?

13 A. Yes. If I exceeded that, if I exceeded \$19,500, I
14 would owe --

15 Q. \$18,500.

16 A. Right.

17 Q. But if you exceeded a thousand dollars on the, for
18 the plumbing fixtures and everything else was equal, you
19 would only pay \$183,000 for your house. Did you
20 understand that to be the case?

21 A. Yes. I understood that the amount that was unused
22 would be deducted off.

23 Q. And, if you went over, that amount would be added
24 to the \$184,000, right?

25 A. Correct.

1 MR. DUDLEY: Okay. That's all the questions I
2 have.

3 THE COURT: Anything else, Mr. Pierce?

4 MR. PIERCE: No, Your Honor.

5 THE COURT: Very good. You may step down.

6 (Witness leaves stand.)

7 THE COURT: You may call your next witness.

8 MR. PIERCE: Your Honor, I'm finished. I'm ready
9 for a closing statement.

10 THE COURT: So, the defense rests?

11 MR. PIERCE: Yes..

12 THE COURT: Any reply?

13 MR. DUDLEY: No, sir. I have some post-trial
14 motions.

15 THE COURT: I understand. We'll do those.

16 All right. Mr. Foreman, ladies and gentlemen of
17 the jury, that completes the testimony and evidence in
18 the case, and so we now have the argument by counsel and
19 then also the charge on the law. Then it will be given
20 to you for your determination.

21 I'm gonna ask you to retire one more time. In
22 fact, it might take a few minutes, so you might want to
23 take a break. All right. But, when I finish with the
24 matters of law, I'll call you back and we'll complete
25 the case, that will be the charge and the arguments.

1 Again, do not undertake discussion of the case as
2 of yet. You may retire to the jury room.

3 Everyone else remain seated.

4 (Whereupon, the jury left the courtroom at
5 approximately 9:26 a.m.)

6 **THE COURT:** All right. Anything from the
7 plaintiff?

8 Motion for Directed Verdict on behalf of Jeff Gray:

9 **MR. DUDLEY:** Yes, sir. I have a motion for a
10 directed verdict. Your Honor, Jeff Gray was named as a
11 third-party defendant, and in the defendant's case,
12 there have been no claims or allegations --

13 **THE COURT:** Well, I thought your motion had already
14 been granted as far as removing him from the case.

15 **MR. DUDLEY:** I don't think as to the third-party
16 defendant. I think all of his counterclaims were
17 dismissed. I think the third-party -- my recollection,
18 we can look and see, but --

19 **THE COURT:** That's all right. Reading Judge
20 McIntosh's Order, I thought that he had been.

21 **MR. DUDLEY:** I can go back and look.
22 The Court's Ruling on Third-Party Defendant Jeff Gray
23 Removal Motion:

24 **THE COURT:** All right. Anyway, I would grant your
25 motion.

1 MR. DUDLEY: Thank you, sir.

2 THE COURT: So, in other words, I've already
3 prepared the verdict form and it is only Tri-County
4 Development, Inc., and Melinda Holbrooks versus
5 Christopher A. Pierce.

6 MR. DUDLEY: Yes, sir. I think there's a factual
7 issue as to the damages, and that's the only directed
8 verdict.

9 THE COURT: And I think that goes to the jury.

10 MR. DUDLEY: Yes, sir.

11 THE COURT: All right. Anything, Mr. Pierce?
12 Defendant's Motion:

13 MR. PIERCE: Yes, Your Honor. What I would like to
14 say is that plaintiffs have willfully claimed more than
15 is due them under Mechanic's Lien Statute 29-5-100 by
16 completing only part of item four and none of item five.
17 And, since they willfully claimed more than is due, and
18 clearly are aware that they have claimed more than is
19 lawfully due, their lien should be dissolved.

20 THE COURT: Well, it will be dissolved once a
21 judgment, if any, is satisfied.

22 MR. PIERCE: Thank you.

23 MR. DUDLEY: In response to that. I think that
24 Statute is clear. 29-5-100 says that an inaccuracy does
25 not invalidate the claim.

1 THE COURT: I understand.

2 MR. DUDLEY: Okay.

3 MR. PIERCE: Your Honor?

4 THE COURT: Yes, sir.

5 MR. PIERCE: It's not an inaccuracy. The
6 inaccuracy was \$30,000, \$33,000 and \$34,000 in their
7 lien. What I'm talking about is willfully claiming more
8 than is due under the lien. That they dramatically have
9 not completed item five whatsoever on the contract, and
10 they've completed only six items on phase four out of a
11 total of 11. Automatically, they know that their lien
12 is gonna be below \$33,000.

13 THE COURT: Well, the only thing is, if you will
14 forgive me, one, I'm not sure if that's an issue in this
15 case under the pleadings that have been, were the
16 subject of Judge McIntosh's Order.

17 But, more importantly, if what you say is correct,
18 that is a matter for the jury to determine whether or
19 not it was completed, and if so, how much and things of
20 that nature.

21 But it's been decided that you breached the
22 contract.

23 MR. PIERCE: I'm sorry?

24 The Court's Ruling on Defendant's Motion:

25 THE COURT: I say, that the law of this case at

1 this point is that you breached the contract, so you can
2 argue whatever you would like as long as it is within
3 the facts. I do not find that the, that provision of
4 the mechanic's lien law is applicable to this particular
5 case, so I overrule your motion.

6 MR. PIERCE: Thank you.

7 THE COURT: Yes, sir. Anything else?

8 MR. DUDLEY: No, sir. We're ready.

9 THE COURT: All right. Open fully on the law and
10 the facts, Mr. Dudley.

11 And then you will argue, Mr. Pierce.

12 And then you will close, Mr. Dudley.

13 MR. DUDLEY: Yes, sir.

14 MR. PIERCE: Yes, sir.

15 Charge Conference:

16 THE COURT: Oh, by the way, let me go over your
17 requests for charge. You have given Mr. Pierce a copy?

18 MR. DUDLEY: Yes, sir.

19 THE COURT: Plaintiffs' request for charge number 1
20 I don't find applicable as to it might exceed the amount
21 of the lump-sum contract. In other words, these are
22 economic losses that will be charged. In fact, the
23 charge I will have -- all right. The charge that I will
24 have is (reading):

25 The parties to a construction

1 contract may agree upon a sum which in
2 their judgment is ample compensation for
3 the contract. This is considered a
4 lump-sum contract. That amount is the
5 amount the builder is entitled to be
6 paid in the event of a breach by the
7 owner.

8 In this case it has already been
9 determined that the defendant breached
10 his contract with the plaintiff. It is
11 up to you, the jury, to determine the
12 amount that the defendant owes to the
13 plaintiff.

14 You must also determine the amount of
15 set-offs, if any, due the Defendant.
16 The set-off would reduce the amount owed
17 to the plaintiff. A set-off is the
18 discharge or reduction of one demand by
19 an opposite one or represents a right of
20 one party as against another to use his
21 claim as full or partial satisfaction of
22 what he owes the other.

23 Set-off or recoupment may be revoked
24 if the defendant has sustained damages
25 by reason of either the plaintiff's non

1 conformance on his part of the contract
2 or by the plaintiff's deviation of the
3 contract not induced by the defendant as
4 to both the manner and the time of the
5 performance.

6 A set-off becomes a part of a single
7 controversy between the parties
8 requiring only one verdict and one
9 judgment according to the facts.
10 Generally, if an established set-off is
11 less than the plaintiffs' demand, the
12 plaintiff has the balance for the
13 judgment.

14 MR. DUDLEY: That's fine, Your Honor.

15 THE COURT: I decline to request to charge 1, 2,
16 and 22.

17 MR. DUDLEY: That's fine.

18 THE COURT: All right. And, inasmuch as the
19 defendant has submitted to the Court certain references
20 to the statutory law of South Carolina, particularly
21 Section 29-5-15, frivolous liens; and Section
22 40-59-30 -- well, first of all, frivolous liens, as I
23 say, I've already ruled that that would not be relevant
24 to this particular cause of action.

25 Section 49-59-30, I've also ruled that the

1 proscription against bringing actions, one whom has not
2 been licensed or registered does not apply because there
3 was a finding that the contractor, Melinda Holbrooks,
4 was registered and licensed throughout the conduct of
5 this contract.

6 And the other section, 49-59-200, apply to actions
7 by the board or commission and do not affect the
8 contract action here.

9 As far as Section 40-11-330 and 40-11-30, those
10 requirements apply to the contractors. So, that's an
11 entirely different area of regulation. In fact, they
12 have their own commission that everything else that
13 considers them. So they are irrelevant, as well, so I
14 will not charge those.

15 I really haven't charged anything on the mechanic's
16 lien, because as I understand, your mechanic's lien was
17 based on the lump-sum contract, and that was the only
18 thing that was sought. It was not *quantum meruit* or
19 anything else that would go to value or cost.

20 MR. DUDLEY: That's correct, sir.

21 THE COURT: All right.

22 MR. PIERCE: The only thing I would add, Your
23 Honor, as far as 40-11, the LR specifically identifies
24 those sections as applying to the Plaintiffs in my case.
25 I was advised by them that they did. That's all I would

1 have to say on that.

2 THE COURT: Well, thank you very much.

3 MR. PIERCE: Thank you.

4 THE COURT: All right. Anything else?

5 MR. DUDLEY: No, sir.

6 THE COURT: All right. You are ready to go to the
7 jury?

8 MR. DUDLEY: Yes, sir.

9 THE COURT: All right. See if the jury will join
10 us.

11 And, Mr. Pierce, you are ready, too? I'm sorry.

12 MR. PIERCE: Yes, Your Honor.

13 THE COURT: I just have to have that for the
14 record.

15 Well, wait a minute.

16 MR. DUDLEY: Briefly. There is an issue of
17 interest, we were requesting interest, but I think
18 that's a legal issue.

19 THE COURT: No, that's a matter for the Court.

20 MR. DUDLEY: Yes, sir. And the attorney's fees are
21 a matter for the Court.

22 THE COURT: Always. That's first getting a
23 judgment.

24 (A recess was taken.)

25 MR. DUDLEY: Plaintiff is ready.

1 THE COURT: Defense ready?

2 MR. PIERCE: Yes.

3 THE COURT: Ask the jury now to join us, please.

4 (The jury entered the courtroom at approximately
5 9:49 a.m.)

6 THE COURT: All right. Let the record reflect the
7 jury and alternate are in the jury-box.

8 Mr. Foreman, ladies and gentlemen of the jury, we
9 will now have argument by counsel. The plaintiff will
10 go first and the defendant will argue and then the
11 plaintiff will close.

12 Following that I'll give you the charge on the law
13 applicable to the case after it is given to you for your
14 deliberations.

15 I recognize Mr. Dudley for his argument.

16 MR. DUDLEY: May it please the Court?

17 THE COURT: Mr. Dudley.

18 Closing Argument on behalf of the Plaintiffs:

19 MR. DUDLEY: Ladies and gentlemen, yesterday I was
20 this close to saying I was gonna guarantee we were gonna
21 get through last night and I'm glad I didn't do that,
22 But I'm gonna make it really quick this morning to
23 summarize what we contend the evidence has shown and
24 what we're gonna ask you guys to come back with a
25 verdict for.

1 Again, I appreciate your attention. I know I'm no
2 *Matlock* and this isn't gonna be the trial of the
3 century. It's not gonna be on the news. It's very
4 important to Jeff and it's very important to Mr. Pierce,
5 and I appreciate your attention.

6 As was said from the beginning, this was kind of a
7 narrowed issue down from what brought us here, and I
8 think the Judge will direct you as to the plaintiff
9 proving their damages, that Mr. Pierce has already been
10 held to breach the contract, and the issue for you all
11 to determine this morning is the damages.

12 And what I would like to do is, you're gonna have
13 these exhibits back to go over in the jury room, and I
14 want to just bring out some highlights. Now, the one
15 thing is, if there is anything I say and if you remember
16 it differently, go with your memory. There's probably
17 math errors in here. I am fallible, I am not good at
18 math. That's why I went to law school, and yet I still
19 have to deal with numbers.

20 You looked at the contract. And in the contract I
21 wanted to point out that I think Mr. Pierce has it
22 completely wrong on how you allocate or how you analyze
23 damages at the end, and allowances. The contract calls
24 for a lump sum. And on page 4 of this contract you're
25 gonna look and see there were allowances for different

1 items. And what I think he was trying to say in his
2 evidence was that he admitted that there's about \$15,000
3 owed my client, but then there was \$18,000 in offsets
4 which includes us not proving our allowances. And I
5 think the math is just wrong.

6 If you start with the 33 -- and I'm gonna go
7 through this in just a minute, I've kind of done a
8 spreadsheet. You start with 33 and you deduct things
9 that we agree that we didn't finish and he's entitled to
10 a credit. But we're not gonna ask for anything that
11 we're not entitled to. And that's what it comes to.
12 You don't -- because I think what he's trying to say is
13 with the allowances we only proved \$22,000 in
14 allowances, but there's been no testimony that the
15 toilets, tubs, and showers aren't in his house and he
16 essentially wants to get those for free.

17 And, again, the contract if you look at it has the
18 allowances spelled out, and it has that lump sum of how
19 it's to be done. The email that he sent my client
20 saying the quality of work was fine in April, so we
21 didn't have any testimony of people saying that the work
22 was bad. And again, his letter to my client's attorney
23 saying that it's the \$33,000, those last two payments
24 that are in dispute, I don't think that's really a big
25 issue.

1 This allowance package has the invoices of what we
2 contend went into his house. As my client said,
3 normally allowances are labor and materials. It says
4 materials. He owns that mistake. That's kind of why it
5 took him so long to get all this information together
6 because it kind of deviates from that norm. If there's
7 a math error, count it against me. That's fine. Do
8 your math and make sure. I think that this is the
9 evidence that shows what was actually for materials for
10 the allowance.

11 Now, Mr. Pierce also makes this argument about the
12 cabinets. The materials aren't the cabinets themselves.
13 And what I think the allowances, by culling out the
14 materials, is that the installation labor should have
15 been included in the lump sum, and the materials are
16 what he wanted to just pay for. And I guess it would
17 cost the name to put in an entry-level refrigerator as a
18 subzero thousand-dollar refrigerator. That was what I
19 think they have here.

20 But to say that the materials for the cabinets are
21 screws and the plywood, that doesn't make sense because
22 what we did hear from Mr. Pierce was with regards to the
23 tile, that he wanted red clay and sand material, raw
24 material costs. So, I think I would ask you to use your
25 common sense when you make that determination.

1 The last issue is -- and I'm gonna go over just the
2 numbers. And again, you use your own judgment, and this
3 is a factual issue for you all to determine. We start
4 with the contract balance of \$3,000. There's a driveway
5 credit that's in Exhibit 2 that he agreed, Mr. Pierce
6 agreed, and my client agreed to it. We had billed it,
7 we are not entitled to that. We agreed with that.

8 If you look at Exhibit 6, if you take the \$18,500
9 in the contract and what we have been able to prove,
10 there is about \$13,000 and some change and so he's
11 entitled to a credit of \$5,252.93. And that's all in
12 Exhibit 6, that difference is on there. You can do that
13 math.

14 And then Mr. Pierce agreed there were some things
15 about termite letters and some other things and his
16 appliances that he bought that he installed that he
17 didn't have to buy, miscellaneous offsets of \$2,656, and
18 that's what, he's entitled to that credit. Again, we
19 are not asking for anything we are not entitled to or
20 owed. And what we would ask is that when you go back to
21 your deliberations, consider all that testimony and
22 evidence, that you would return a verdict in favor of
23 Tri-County and Melinda Holbrooks in the amount of
24 \$23,591.07, or whatever you, using your common sense,
25 you think the damages are. Thank you very much.

1 THE COURT: Mr. Pierce?

2 Closing Argument on behalf of the Defendant:

3 MR. PIERCE: Plaintiffs were given almost six years
4 in which to submit discovery relating to the allowances,
5 and I repeatedly asked them to submit valid receipts. I
6 even asked them to sit down with me and discuss it. I
7 was declined. Now he's expecting you to accept an
8 invoice or bill as a valid purchase. It's not.

9 And, yes, there are things in my house that are
10 valid, such as he mentioned. But I don't know what they
11 are. And that's his burden to prove that to you. And I
12 don't know what they are. I repeatedly asked in
13 discovery, on the phone; he's not cooperated in that
14 regard. I even asked to come to his office and sit
15 down. He refused.

16 And so I ask that, considering that, on that that I
17 should not, they should not get any credit for those
18 invoices because they didn't prove their case at all.
19 They've never provided a valid receipt or a check.
20 Anything like that. And so, that's where I am with
21 that.

22 And there are various errors, too, with math.
23 Mr. Dudley said he had problems with math. Yes, there
24 are, and I asked him about those. And I even asked
25 Mr. Gray about that with regards to the Dixie Carpet

1 issue. I don't even know where that number came from,
2 that \$2,507 that they had in there. So, yes, we have to
3 be concise and submit a valid, a valid bill so that you
4 can render a correct verdict here, a correct damages
5 amount.

6 And, as far as the cabinet issue he discussed.
7 There's various ways of building cabinets. I hired a
8 custom cabinet builder. A custom cabinet builder builds
9 from raw materials. Then they have installation costs.
10 Those costs, those, they have labor to build the
11 cabinets. That's where most of the money is in building
12 them. And then they have the installation. Mr. Dudley
13 wants you to forget about the labor to bill him. That's
14 not, that's not relevant to say that.

15 It's absolutely relevant if the cabinets were
16 purchased stock, then what he's saying, that would be
17 true. But the cabinets were custom and assembled from
18 raw materials. So, absolutely, the costs to assemble
19 those cabinets should not be included as he would want
20 you to conclude.

21 So, in closing, I would say to you that it is
22 undisputed that Jeff Gray, the plaintiff here, is an
23 unlicensed residential building contractor. Jeff Gray
24 owns unlicensed Tri-County Development --

25 MR. DUDLEY: Objection.

1 THE COURT: Just a moment. That's not in the
2 record and that's not true.

3 Disregard it, Mr. Foreman, ladies and gentlemen of
4 the jury.

5 MR. PIERCE: Jeff Gray seeks to avoid his violation
6 of state law --

7 MR. DUDLEY: Objection.

8 THE COURT: Again, please, that matter has already
9 been resolved. Stay within the record and the issues in
10 this case, please.

11 By the way, these rules requiring parties to stay
12 within the record and not to bring up matters that are
13 no longer involved have been resolved, applies to not
14 only the Defendant but also the Plaintiff.

15 MR. PIERCE: Okay. Regarding the damages again,
16 there were three, as was stated, it's a contract price,
17 \$33,000, which is essentially \$30,000 from four and
18 \$3,000 from five. And, as I testified earlier, I ask
19 that you consider offsets from that in what's listed in
20 the contract.

21 Mr. Dudley has already offered a \$2,500 credit for
22 the driveway, but he's not offered credits for other
23 things that have not been completed at all. I have had
24 no offers for anything. I ask that you consider those
25 things that were not completed as testified to and

1 supply me a credit for those. I think when you do, you
2 will find that the actual, the actual amount due, as I
3 said, would be between fifteen and seventeen thousand,
4 not thirty-three. And, when you deduct off these
5 allowances that came to a total of \$15,957, and you
6 deduct the stipulated items plus the concrete, that the
7 actual, those amounts are \$21,000.

8 And, when you take into account the adjustment for
9 the amount that actually was done in payment in phase
10 four and five, then you will find that I owe zero, and,
11 in fact, I would actually be entitled to recover money
12 if I didn't have the Court rule against me earlier. I
13 would actually have a balance due me. So, I ask you to
14 consider that.

15 And I also ask you to consider that by virtue of
16 them claiming \$33,000 when they've only completed part
17 of four and five, they have violated the Mechanics'
18 Liens Statute by asking for more than is due under the
19 law, and that you consider that and dismiss their case
20 accordingly. That's all. Thank you.

21 **THE COURT:** Any reply?

22 **MR. DUDLEY:** Very briefly.

23 Reply Closing Argument on behalf of Plaintiffs:

24 **MR. DUDLEY:** This case isn't about attacking me.
25 You all are very smart people. You all can apply the

1 math and look at the evidence, and I trust that you will
2 be able to do that. Thank you very much.

3 Twenty-three-five, \$23,591.07, we contend and we
4 ask that you return a verdict in that amount for my
5 client. Thank you very much.

6 The Court's Charge to the jury:

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the jury, it now becomes my duty to charge you, which
9 simply means to instruct you as to the law which is
10 involved in this case.

11 This is an action on a building contract that the
12 defendant breached for which the plaintiff alleges he is
13 responsible in damages.

14 By the Constitution and the law in South Carolina,
15 you, the jury, are the fact-finders in this case, and
16 for this reason I am not permitted to intimate any
17 feeling I may have as to the facts and evidence, nor am
18 I permitted to indicate how I feel about the merits of
19 the case or which party should prevail, and I do not do
20 so. Moreover, you are the sole judges of what the
21 testimony was and not the argument of counsel.

22 In determining what the facts in the case are you
23 must necessarily pass upon the credibility, which simply
24 means the believability of the witnesses and the value
25 or weight to be given their testimony. You alone must

1 decide the force and effect and the truth of the
2 testimony. In making this decision there are many
3 things you may and should take into consideration, such
4 as the appearance and manner of the witness on the
5 stand, sometimes referred to as the demeanor of the
6 witness.

7 Was the witness forthright or hesitant? Was the
8 witness's testimony consistent with other testimony and
9 statements of the witness or did it contain
10 discrepancies? What was the ability of the witness to
11 know the facts about which he or she testified? Did the
12 witness have a cause or reason to be biased or
13 prejudiced in favor of the testimony he or she gave?
14 Was the testimony of the witness corroborated or made
15 stronger by other testimony and evidence or was it made
16 weaker or impeached by such other testimony and
17 evidence?

18 As jurors you have a right to believe a small part
19 of a witness's testimony and discard the larger, or vice
20 versa, you may believe all of the witness's testimony or
21 none. You may believe the testimony of a single witness
22 against that of other witnesses or the other way around.

23 But most certainly you do not determine the matter
24 of credibility or believability by counting up the
25 number of witnesses who may have testified on behalf of

1 the parties. Throughout this entire process you have
2 but one single objective, and that is to seek the truth,
3 regardless of what witness's testimony that may have
4 come from.

5 I remind you that during the trial you and I have
6 certain duties to perform. As the trial judge it is my
7 responsibility to preside over the trial of this case
8 and I also have the duty to rule on the admissibility of
9 the evidence offered during the trial. You are to
10 consider only the evidence before you. If there was any
11 testimony ordered stricken from the record during that
12 trial, you must disregard that testimony. You are to
13 consider only the testimony which has been presented
14 from the witness stand and any exhibits which have been
15 made a part of the record in this case and any
16 stipulations of counsel.

17 I have the additional duty to charge you on the law
18 applicable to this case. It is your duty as jurors to
19 accept and apply the law as I state it to you. If you
20 think you have any idea as to what the law is or what
21 the law ought to be, and it does not agree to what I
22 tell you the law is, you must disregard that idea
23 because you are sworn to accept the law and apply the
24 law exactly as I state it to you. In every case tried
25 in court before the jury, the jury becomes the sole and

1 exclusive judge of the facts. A trial judge cannot
2 comment or make any statement about the facts in this
3 case.

4 And I do regret that a matter outside of this case
5 was brought up and observations were made which perhaps
6 I want you to also disregard, because anything that was
7 not a part of the record, regardless of from what source
8 it came, is to be disregarded.

9 Do not think by anything I have said during the
10 trial that I have any opinion about the facts in this
11 case. The law does not allow me to have an opinion
12 about the facts and I do not do so.

13 Now, the burden of proof in this case is by a
14 preponderance of the evidence. Preponderance of the
15 evidence simply means the greater weight of the
16 evidence. It is evidence which as a whole shows that a
17 fact sought to be true is more likely true than not
18 true.

19 Of course, there is no way to weigh evidence,
20 except for the exercise of your good common sense and
21 judgment. It is entirely a mental process. The
22 evidence to which you should give the most weight is
23 that which convinces you of its truth, regardless of
24 from whom or what source it comes. Preponderance of the
25 evidence is not determined by the number of witnesses.

1 Instead, it must be determined by the greater weight of
2 all the evidence.

3 Now, parties to a construction contract may agree
4 upon a sum which in their judgment is ample compensation
5 for the contract. This is considered a lump-sum
6 contract. That amount is the amount the builder is
7 entitled to be paid in the event of a breach by the
8 owner.

9 In this case it has already been determined that
10 the defendant breached his contract with the plaintiff.
11 It is up to you, the jury, to determine the amount the
12 defendant owes to the plaintiff. You must also
13 determine the amount of any set-offs due the
14 plaintiff -- or due the defendant. A set-off would
15 reduce the amount owed to the plaintiff. A set-off is
16 the discharge or reduction of one demand by an opposite
17 one or represents the right of one party against another
18 to use his claim as full or partial satisfaction of what
19 he owes the other.

20 A set-off or recoupment may be revoked when the
21 defendant has sustained damages by reason of either the
22 plaintiffs' non performance on his part of the contract
23 or by the plaintiffs' deviation from the contract not
24 induced by the defendant as to both the manner and time
25 of performance. Set-off becomes a part of a single

1 controversy between the parties requiring only one
2 verdict and one judgment according to the facts.
3 Generally, if an established set-off is less than the
4 plaintiffs' demand, the plaintiff has judgment for the
5 balance only.

6 Now, Mr. Foreman, ladies and gentlemen of the jury,
7 you have been selected as fair and impartial jurors
8 sworn to impartially try and determine the facts of this
9 case, and when you comply with your oath to do so, then
10 no one will have a right to criticize your verdict, and
11 you will have fully discharged your duty as jurors. You
12 should not be influenced by opinions or expressions of
13 opinions, if any, that you may have heard on the
14 outside. But you are to decide this case according to
15 the testimony that you heard from the lips of the sworn
16 witnesses along with the evidence that may have been
17 introduced.

18 You must not consider as evidence any statement of
19 counsel made during the trial. However, if counsel for
20 the parties have stipulated to any fact, or any fact has
21 been admitted by counsel or the parties, you will then
22 regard that fact as being conclusively proved as to the
23 party or parties making the stipulation or admission.

24 Now, as to those questions to which an objection
25 has been sustained, you must not speculate as to what

1 the answer might have been or as to the reason for the
2 objection. You must not consider for any purpose any
3 offer of evidence that was rejected or any evidence
4 which was stricken by the Court. Such matter is to be
5 treated as though you had never known it.

6 You must never speculate to be true any insinuation
7 suggested by a question asked of a witness. The
8 question is not evidence, and may be considered only as
9 it supplies meaning to the answer. As I said earlier,
10 you are the judges of the facts in this case and you are
11 to determine whether the burden of proof has been met as
12 to the claims made by the plaintiff and/or as to the
13 defenses raised by the defendant.

14 Based upon the testimony and evidence presented in
15 the trial and after applying the law as I have given it
16 to you, under the oath you took you swore to try this
17 case based only and solely on the testimony and evidence
18 and law presented and heard in this courtroom. It is
19 your duty to lay aside all bias or prejudice or sympathy
20 you have in reaching your verdict. You have no friends
21 to reward or enemies to punish in this case. The word,
22 I might note, verdict, is taken from the Latin term
23 "*veredicto*," which means to speak the truth. Abide by
24 your oath and return a verdict which speaks the truth.

25 Now, Mr. Foreman, I have prepared a verdict form

1 for you for your use during your deliberations. Now,
2 whatever verdict you reach must be unanimous. That
3 means all 12 members of the jury must agree to that
4 verdict. And although you will be the one that writes
5 the verdict, Mr. Foreman, as I say, everyone else has to
6 be, would have to agree to that verdict.

7 And, as you will notice, the verdict is on one
8 form. We, the jury, unanimously find for the Plaintiff,
9 Tri-County Development, Inc., and Melinda Holbrooks
10 damages in the amount of blank dollars. And whatever
11 that amount that you agree to unanimously, you all agree
12 to the same amount, you must write the amount in words,
13 not figures, like you do a check. And you can put the
14 numbers within parentheses there. But once you
15 completed the verdict form, you will sign your name,
16 knock on the door and return and we'll receive your
17 verdict at that time.

18 Now, I might note that we've got two juries working
19 at the same time, so we'll have to ask you to go to
20 the -- the bailiff will take you to the grand jury room
21 so that will be the jury room that you will be using.
22 If you left anything in the other jury room, you need to
23 pick that up.

24 I'll tell you what. It might be good, Mr. Bibb, if
25 you take them by this jury room and then around the hall

1 to the other jury room so they can pick the things up
2 they have in the jury room.

3 All right. With that, now, again, Mr. Foreman, I'm
4 gonna ask you to retire to the jury room that you will
5 be using, but do not begin your deliberations until I
6 send in the verdict form together with the exhibits. As
7 soon as the bailiff brings those things to you, then you
8 will begin your deliberations; and then once you've
9 reached a verdict, fill out the form, knock on the door,
10 and we'll receive your verdict.

11 All right. If you would please retire, except you,
12 Mr. Alexander.

13 THE ALTERNATE JUROR: May I get my jacket?

14 THE COURT: Yes, sir. You can go that far and then
15 come on back.

16 THE ALTERNATE JUROR: Okay, sir.

17 (Whereupon, the jury left the courtroom at
18 approximately 10:13 p.m.)

19 THE COURT: All right. Are there any exceptions or
20 requests from the plaintiff?

21 MR. DUDLEY: No, sir.

22 THE COURT: From the defense?

23 MR. PIERCE: No, sir.

24 (Whereupon, the Alternate Juror returned to the
25 courtroom.)

1 THE COURT: Very good. Thank you.

2 All right. Let's collect the exhibits. Now, be
3 sure only those exhibits that have been admitted go back
4 and the ones that have not, of course, don't.

5 MR. DUDLEY: Yes, sir.

6 THE COURT: If you would, please, the parties look
7 over those exhibits.

8 (Discussion off the record among the court
9 reporter, counsel for the plaintiffs, and
10 Mr. Pierce.)

11 (The Court conferred with the Alternate Juror,
12 Mr. Alexander, off the record, after which the
13 Alternate Juror was excused.)

14 THE COURT: That completes the, quote, trial of the
15 case. Now it's up to the jury to reach their verdict.
16 It's in the hands of the jury.

17 I do want to thank both of you for not only your
18 patience with the Court but also, I know it wasn't easy
19 and that's one of the reasons we usually get somebody
20 else to represent us. But if you live with a case, you
21 know more about it than anybody else. Sometimes, a lot
22 of times it's difficult to get focused on just what is
23 necessary.

24 And, of course, this case had been sort of
25 distilled down and your agreements and stipulations

1 helped that and I want to thank you for your
2 cooperation.

3 MR. PIERCE: Thank you, Your Honor, for your
4 patience, too.

5 THE COURT: Oh, no, sir. By the way, I appreciate
6 your help yesterday on the Rules.

7 But, no. You really -- both of you did. I want to
8 thank you both. The only thing is, it's in the jury's
9 hands and they will return their verdict.

10 MR. DUDLEY: Yes, sir. Thank you, sir.

11 MR. PIERCE: Thank you, Your Honor.

12 THE COURT: I would ask, though, that we put your
13 things somewhere else because we have another trial
14 starting.

15 MR. PIERCE: Okay. What should we do as far as
16 waiting for the verdict? Stay here?

17 THE COURT: If you leave the building, or leave --
18 in other words, when the jury comes back or if they have
19 a question or something, I need you to come back to hear
20 the question.

21 MR. PIERCE: Oh, okay.

22 THE COURT: Stay available, out in the lobby or
23 somewhere like that. If you need to leave, leave your
24 number with the court reporter -- not the court
25 reporter -- the clerk or someone like that so they can

1 reach you. But stay close.

2 MR. PIERCE: Okay.

3 MR. DUDLEY: I'll stay right here.

4 (Whereupon, the jury began their deliberations at
5 approximately 10:15 a.m., during which time the
6 Court heard other matters.)

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1 (Whereupon, the Court was considering other
2 matters, and a note from the jury was received by
3 the Court at approximately 11:16 a.m.)

4 (Marked for identification was Court's Exhibit 4,
5 jury note, We need Mr. Gray's spreadsheet and how
6 much they are asking. Jeffery Stewart.)

7 THE COURT: All right. We're back on the case of
8 Tri-County Development, Inc., and Melinda Holbrooks
9 versus Christopher A. Pierce, 2005-CP-37-788. I have
10 received a question from the jury (reading):

11 We need Mr. Gray's spreadsheet and how much they
12 are asking. Signed, the foreperson.

13 Now, Mr. Dudley, what do you say?

14 MR. DUDLEY: I'd be happy to give it to them.

15 THE COURT: Mr. Pierce, what do you say?

16 MR. PIERCE: Yeah, sure.

17 THE COURT: You're sure, now? Because, as I say,
18 that was not introduced in the evidence.

19 MR. PIERCE: Is that a spreadsheet? What exactly
20 is it?

21 MR. DUDLEY: All it is was the contract balance
22 which was entered into evidence, the \$2,500 credit for
23 the driveway which was entered into evidence, the
24 difference in the allowance which is in Exhibit 6
25 entered into evidence, and the stipulations that we

1 have. It's just a mathematical calculation of that.

2 MR. PIERCE: This is an accounting, not really a
3 spreadsheet.

4 THE COURT: Well, if you object to it. It hasn't
5 been admitted. What I can do, though, is play back the
6 testimony.

7 MR. PIERCE: Yeah. Just play back the testimony.

8 MR. DUDLEY: Judge, all of the numbers are straight
9 from the evidence. There's nothing in there that has --
10 he's stipulated. He's stipulated to all of this.

11 THE COURT: Let's do this. Because really we're in
12 a little different situation than most cases in that we
13 have two juries, two cases going. And, now, that is
14 really a summary of your --

15 MR. PIERCE: Yeah. It's an accounting. It's an
16 accounting, it's not a spreadsheet.

17 THE COURT: Well, what I'm asking, then, is
18 summaries are admissible.

19 MR. DUDLEY: And that's what this is. I was saying
20 contract amounts.

21 THE COURT: I'm surprised you didn't move for its
22 admission.

23 MR. PIERCE: Well, you didn't allow me to admit
24 mine.

25 THE COURT: You got a summary, too?

1 MR. PIERCE: I had my summary, too, but he declined
2 to let me admit it.

3 MR. DUDLEY: His summary had, it had paragraphs of
4 explanations that he testified to. This is just a
5 summary of what we introduced into evidence. You can
6 just tell them to use their best recollection of what it
7 was.

8 THE COURT: That is obviously what I'm gonna have
9 to do.

10 MR. PIERCE: Your Honor?

11 THE COURT: Yes.

12 MR. PIERCE: Is it possible they are asking for
13 something different if they are asking for a
14 spreadsheet? Because that's an accounting.

15 MR. DUDLEY: This is what I referred to in my
16 closing as a spreadsheet.

17 MR. PIERCE: I'm just wondering. Spreadsheets --

18 THE COURT: All right. Let's bring the jury out,
19 if you would please, and we'll find out.

20 (The jury entered the courtroom at approximately
21 11:20 a.m.)

22 THE COURT: Mr. Foreman, I've got a copy -- rather,
23 I have your note to the Court (reading):

24 We need Mr. Gray's spreadsheet and how much they
25 are asking.

1 Now, you use the word "spreadsheet." Exactly what
2 do you mean by that?

3 **THE FOREMAN:** Mr. Gray's attorney said that he had
4 a spreadsheet there that, that had everything listed
5 out. I thought that's what he said. And --

6 **THE COURT:** Well, did he, did he show you
7 something? I understand you do have a summary. In
8 other words, Mr. Dudley, show the foreman and ladies and
9 gentlemen of the jury. Is that what you are talking
10 about?

11 **THE FOREMAN:** Yes, sir. And the exact amount that
12 they were asking, too.

13 **THE COURT:** All right. I'm going to -- inasmuch as
14 it was referred to in the testimony and under our Rules
15 that it could have been admitted as a summary of
16 voluminous testimony, I'm going to admit it as an
17 exhibit to be considered. And that is what you wanted?

18 **THE FOREMAN:** Yes, sir.

19 **THE COURT:** All right. Very good. I'll send it
20 back to you as soon as we have it marked. But don't
21 begin your deliberations until you get it, if you could,
22 please.

23 **THE FOREMAN:** Yes, sir.

24 **THE COURT:** All right. Thank you very much. If
25 you would please retire to the jury room.

1 (Whereupon, the jury left the courtroom at
2 approximately 11:23 a.m.)

3 THE COURT: All right. Rule 1006, of course,
4 provides (reading):

5 The contents of voluminous writings,
6 recordings or photographs that cannot
7 conveniently be examined in court may be
8 presented in the form of a chart, summary, or
9 calculation providing the underlying data that
10 are admissible into evidence.

11 Even though the record was closed in this case --
12 and I will say this. This is one of the reasons that I
13 asked, and I think I even mentioned the reason that I
14 asked counsel at the close of their case, "Is there
15 anything else?" Because that is the time that you are
16 supposed to see if there is anything that you need to,
17 you should.

18 And, Mr. Pierce, I understand your objection.
19 However, I am exercising I hope the discretion I do have
20 in order to enable the jury to make an informed decision
21 in the case based on the specific item they wanted which
22 would be admissible, I'm going to overrule your
23 objection and I'll permit it to go to the jury.

24 Now I'm going to -- let's do this. I'm gonna have
25 it marked as a Court's exhibit but submit it to the

1 jury. All right. Well, I don't know. We'd best not.
2 It's like somebody said, it might have emphasis of "the
3 Court" on it. Let's just do a Plaintiffs' Exhibit and
4 the record will reflect that Plaintiffs' Exhibit --

5 What would be the sequential exhibit number be?

6 THE COURT REPORTER: It would be sequentially
7 Plaintiffs' Exhibit 11.

8 THE COURT: All right. Plaintiffs' Exhibit 11 is
9 in evidence introduced over the objection of the
10 defendant and at the direction of the Court. Very good.

11 MR. PIERCE: Thank you.

12 MR. DUDLEY: Thank you, sir.

13 (Marked for identification and received in evidence
14 was Plaintiffs' Exhibit 11, spreadsheet,
15 plaintiffs' damages summary, and was sent in to the
16 jury room at approximately 11:26 a.m., and the jury
17 continued their deliberations while the Court
18 considered other matters.)

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1 (Whereupon, a verdict was reached by the jury at
2 approximately 11:40 p.m.)

3. THE COURT: And, by the way, we have a verdict in
4 the first case.

5 **THE CLERK:** That would be another problem. Because
6 I received an email from the Clerk of Court stating that
7 Mr. Pierce told them that he was going to lunch for 30
8 minutes and left. I have no phone number for him. He
9 did not leave us a number, unless someone else has a
10 number for him.

11 THE SHERIFF'S DEPUTY: We're not able to locate him
12 in the courthouse. He must be gone.

13 THE COURT: Call Martha's or Pete's or Kay's.

14 All right. Well, the only thing is, we'll just ask
15 the jury to be patient with us, that we have a
16 scheduling problem right now and we'll be with them as
17 soon as possible. Also, see if somebody could locate
18 him maybe at Martha's.

19 (Discussion off the record.)

20 (Whereupon, the Court considered other matters
21 while awaiting the return of Mr. Pierce.)

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1 (The following occurred at approximately 12:18
2 p.m.)

3 **THE COURT:** Now, we have a jury verdict. Is
4 everybody here?

5 (To attorneys involved in other trial): You can
6 leave your things on the table there if you like. We're
7 just gonna receive the verdict, they're not going to...

8 (Discussion off the record.)

9 **THE COURT:** All right. We're back on the case of
10 Tri-County Development, Inc., versus -- et al., versus
11 Pierce, 2005-CP-37-788.

12 Is there anything from the -- I understand the jury
13 has reached a verdict. Anything from the plaintiff
14 before we bring the jury back?

15 **MR. DUDLEY:** No, sir, Your Honor.

16 **THE COURT:** Anything from the defendant?

17 **MR. PIERCE:** No, sir.

18 **THE COURT:** Very good. Ask the jury to join us,
19 please.

20 Verdict of the Jury:

21 (The jury entered the courtroom at approximately
22 12:20 p.m.)

23 **THE COURT:** All right. Mr. Foreman, I apologize,
24 but we had a little problem getting everybody back
25 together in time, and I do apologize for that. But I

1 understand you have reached a verdict?

2 THE FOREMAN: Yes, sir.

3 THE COURT: If you would, please, hand it up to the
4 bailiff.

5 Thank you, sir.

6 THE BAILIFF: Yes, sir.

7 THE COURT: Madam Clerk, do you want to publish the
8 verdict?

9 THE CLERK: Yes, sir.

10 In the matter of Tri-County Development,
11 Incorporated, and Melinda Holbrooks versus Christopher
12 A. Pierce, Case Number 2005-CP-37-788, we, the jury,
13 unanimously find for the plaintiff, Tri-County
14 Development, Incorporated, and Melinda Holbrooks in the
15 amount of \$23,591.07.

16 Ladies and gentlemen of the jury, if this was your
17 verdict and remains your verdict, please indicate by
18 raising your right hand.

19 Let the record reflect that all members of the jury
20 have raised their right hand.

21 THE COURT: All right. Is there anything for the
22 jury from the plaintiff before I dismiss them?

23 MR. DUDLEY: No, sir.

24 THE COURT: Anything from the defendant?

25 MR. PIERCE: No, sir.

1 THE COURT: Very good.

2 Mr. Foreman, ladies and gentlemen of the jury, the
3 Court is never interested in a verdict, only how that
4 verdict is reached. And I'm satisfied -- although it
5 looks like I'm doing everything else up here except
6 paying attention, I keep up with everything going on in
7 the courtroom, or try to do so.

8 But I noticed that all of you paid very careful and
9 close attention to all of the testimony and evidence,
10 the arguments of counsel, and the testimony of the
11 witnesses as well as the exhibits. I noticed several
12 times when they were being circulated, you were looking
13 at them, you were trying to see what they represented;
14 and, of course, you asked for the particular summary
15 that had been testified to.

16 All of this indicates that obviously you have given
17 both the plaintiff and defendant a very fair trial, and
18 I thank you for it. As I say, the only thing I'm
19 interested in is how that verdict is reached, not the
20 verdict itself. And, having done so, you have performed
21 your duties as jurors in a very admirable fashion, and
22 not only is Oconee County indebted to you, but also our
23 system of justice here in South Carolina, and I do thank
24 you.

25 I wish I could say go and not have to worry, but we

1 still have some work we might be able to do, so I have
2 to ask all the jurors to call back after 6:00 this
3 afternoon. Now, do you have that paper that we had with
4 the telephone number on it? Anybody that does not have
5 the paper with the telephone number, raise your hand and
6 we'll give it to you. All right. We need one, Madam
7 Clerk. Two. Three.

8 The reason that's important is there will be a
9 message at that number put on after 6:00, and you will
10 call that number and they will give you instructions
11 either to call back tomorrow and come in tomorrow or it
12 might be that your service has been completed because we
13 are in the middle of trying -- not even in the middle,
14 but getting ready to start another case.

15 The thing is, your clerk has made it possible that
16 you don't have to report every day. In other words, if
17 there is nothing for you to do that day, then you will
18 be asked just to call back late in the day and not have
19 to come in. So, you understand now that you are to call
20 this number that you have there after 6:00. It's an
21 answering machine. It will be on all night. And,
22 unfortunately, if you don't get the message from the
23 answering machine tonight after 6:00, you will have to
24 get it from me tomorrow morning at 8:30. I thank you
25 for your patience and I look forward to continue working

1 with you this week.

2 Everyone else remain seated while the jury retires
3 from the courtroom.

4 And I do thank you for your patience, though.
5 Thank you very much.

6 (Whereupon, the jury left the courtroom at
7 approximately 12:26 p.m.)

8 THE COURT: All right. Anything from the
9 plaintiff?

10 Post-Trial Motion re Interest and Attorney's Fees:

11 MR. DUDLEY: Yes, sir. Post-trial motions about
12 interest and attorney's fees pursuant to the statute.

13 THE COURT: All right. Very well. All right.
14 Anything from the defendant?

15 MR. PIERCE: No, sir.

16 THE COURT: All right. Very good. All right.
17 We'll schedule the post-trial motions. I'll tell you
18 what. If you want to file your motions, I'll give you
19 ten days for that.

20 MR. DUDLEY: I can do it just now.

21 THE COURT: All right, very good.

22 MR. DUDLEY: Your Honor, according to the -- we are
23 entitled to prejudgment interest. There is a case,
24 *Butler Contracting v. Court Street, LLC*, 631 S.E.2d 252.
25 That's a 2006 Supreme Court case which unfortunately I

1 know very well because I was on the losing side of that.

2 THE COURT: Butler versus --

3 MR. DUDLEY: -- Court Street, LLC, 631 S.E.2d --

4 THE COURT: Have you got the South Carolina cite by
5 any chance?

6 MR. DUDLEY: I can get it.

7 THE COURT: No, that's all right.

8 MR. DUDLEY: But that case holds for the
9 proposition that even if the amount in controversy is
10 not known at the time, it's still liquidated and the
11 Plaintiff is entitled to prejudgment interest, and we
12 would ask for prejudgment interest in the amount of
13 eight, eight and three quarters percent. And based on
14 the filing of the mechanic's lien, it's about six years.
15 I have that as \$12,385.31.

16 This action is a foreclosure mechanic's lien
17 action, and pursuant to South Carolina Code 29-5-10
18 (reading): The prevailing attorney shall be awarded
19 attorney's fees.

20 We filed an offer of settlement, with which the
21 Court should have a copy in its file, in March of 2010
22 that we would accept zero from the plaintiff and we
23 would pay zero on his counterclaims. I think that makes
24 us the prevailing party pursuant to 29-5-10. And I have
25 an affidavit of attorney's fees, and I want to take just

1 a second talking about them.

2 THE COURT: Have they been served on the defendant?

3 MR. DUDLEY: Well, I'm getting ready to serve them.

4 THE COURT: Okay. They're being served now.

5 MR. DUDLEY: Here is the original (handing to
6 Court).

7 This is in my affidavit of attorney's fees. I was
8 not the original attorney on this matter. I was brought
9 in in 2008 -- I'm sorry -- in April 2007 after almost a
10 year and a half of this proceeding. And my hourly rate
11 has been basically the same the entire time.

12 And, what's interesting, if you look the very end
13 of this thing, in the statute it limits the amount of
14 attorney's fees to the length. And I would, I would
15 contend and I would say that this is one of those times
16 that in the Court's discretion that it consider getting
17 or going around that, and I think it's established.

18 Since half the fees, which you might notice
19 Mr. Gray has paid our firm \$35,000 in attorney's fees
20 and there is another \$36,000 that is owed. Half of that
21 amount has been incurred since the offer of settlement
22 of zero was filed in March of 2010. And I think the
23 statute has it as a so- -- as a shield, excuse me -- so
24 that no one just inadvertently runs up or no one
25 intentionally runs up the attorney's fees, knowing

1 there's an attorney's fees statute and that protects
2 lien claimants and it also protects defendants in that
3 respect.

4 Here is, we've got -- and I think the record is
5 clear. The Court has been involved in numerous motions
6 regarding, and the affidavit is very clear. There's
7 nothing in there that is just out of, out of kilter, and
8 it was directly in response to the plaintiff, who had
9 the luxury of representing himself and not having
10 attorneys' fees to pay on a monthly basis since April of
11 2008 when he relieved his prior counsel. And I think
12 that Tri-County didn't have the option of proceeding *pro*
13 *se* and they had to have an attorney.

14 If the Court reviews the attorney's fees, that I
15 think the Court should strongly consider, that again
16 Mr. Pierce used his *pro se* status as not having
17 attorneys' fees to kind of decide his strategies, and
18 that ran the attorney's fees up so high in this matter.
19 And, of course, I leave that to the sound discretion of
20 the Court.

21 THE COURT: Well, let me ask you. Have you a set
22 an amount that you are seeking for attorney's fees?

23 MR. DUDLEY: I'm sorry. That's not what I thought
24 it was. It's sixty -- it's \$71,622.65.

25 THE COURT: Seventy-one thousand --

1 MR. DUDLEY: -- six twenty-two sixty five.

2 And that includes costs. There was about \$5,000 in
3 costs.

4 And then finally, sir, as this is a mechanic's lien
5 prayed for in the Complaint, we ask this Court I guess
6 this matter be sent to the Master and proceed with
7 foreclosure to satisfy the lien.

8 THE COURT: All right. I'll tell you, Mr. Pierce,
9 I'm going to give you ten days to file your reply to the
10 petitions and the motions today, so you don't have to do
11 it at this time. Do you understand?

12 MR. PIERCE: Yes, sir.

13 THE COURT: And that would ten days from today, not
14 counting today, which would be -- where is my calendar?
15 Today is the 29th, so that would be 10 plus 10.

16 (Discussion off the record between the Court and
17 the Law Clerk.)

18 THE COURT: All right. So, it would be Monday, the
19 12th. Do you understand?

20 MR. PIERCE: Yes.

21 THE COURT: Monday, the 12th of December. All
22 right?

23 MR. PIERCE: Yes, sir.

24 THE COURT: Very good. All right. And I'll give
25 you five days after that if you want any reply.

1 MR. DUDLEY: That would be fine. Thank you, sir.

2 MR. PIERCE: Could I add something right now?

3 THE COURT: Well, you don't have to. And if you do
4 so, it will be to your prejudice because it will be used
5 against you. When I say that, I'm talking about, in
6 other words, don't say anything you don't have to
7 without reflection. If you want to, that's fine.

8 I'm leaving the matter open until I get your reply,
9 your response to the motions and petitions, and then his
10 reply. You can say anything, but I would advise you not
11 to. Of course, I'm not supposed to advise parties.

12 MR. PIERCE: Okay. I'll wait to see the written
13 motion.

14 THE COURT: Very good. Thank you.

15 Thank you, gentlemen. And I will look forward to
16 hearing from you on December the 12th.

17 MR. DUDLEY: Thank you, sir.

18 MR. PIERCE: Thank you.

19 (Whereupon, Court's Exhibits 2, and 3 were marked
20 for identification and received in Court's Evidence
21 at the conclusion of trial. See Index for
22 descriptions.)

23 (The trial of Tri-County Development, Inc., and
24 Melinda Holbrooks versus Christopher A. Pierce was
25 concluded at approximately 12:35 p.m.)

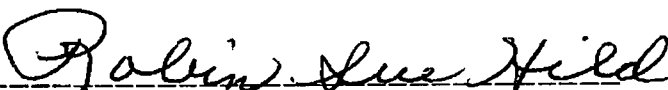
1 ** End of Requested Certified Transcript of Record **
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR,
Official Court Reporter for the Tenth Judicial Circuit
of the State of South Carolina, do hereby certify that
the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Oconee County, South Carolina, on the 28th day and 29th
day of November, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 18, 2012


Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

1 State of South) In the Court of Common Pleas
2 Carolina)
3 County of Oconee) Case No: 2005-CP-37-00788

4 Tri-County)
5 Development and)
6 Melinda Holbrooks,)
7 Plaintiffs,)

8 -vs-)

9 Christopher A.) Transcript of Record
Pierce,) Motions Hearing

10 Defendant/Third-)
11 Party Plaintiff,)

12 -vs-)

13 Jeff Gray,)
14 Third-Party)
Defendant.)

April 6, 2009
Walhalla, South Carolina

B E F O R E:

The Honorable Alexander S. Macaulay, Judge.

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

Thomas E. Dudley, Esq.
Attorney for the Plaintiff and Third-Party Defendant

Christopher A. Pierce,
Pro Se Defendant/Third-Party Plaintiff

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

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Index

Witnesses

Page

No witnesses were called.

Exhibits

No. Description

ID/EV

No exhibits were handed to court reporter to mark for
identification.

1 ** Start of Requested Transcript of Record **

2 (Whereupon, the hearing commenced, with all parties
3 being present, at approximately 3:02 p.m.)

4 **THE COURT:** The next action is Tri-County
5 Development, Inc., and Melinda Holbrooks versus
6 Christopher A. Pierce, defendant, versus Jeffrey Gray,
7 third-party defendant.

8 Mr. Dudley represents the plaintiff.

9 Mr. Pierce, are you representing yourself?

10 **MR. PIERCE:** Yes.

11 **MR. DUDLEY:** I also represent Mr. Gray, too, and
12 Ms. Holbrooks. Everybody but Mr. Pierce.

13 **THE COURT:** What is the matter before the Court
14 today?

15 **MR. DUDLEY:** Three motions, two of which are mine
16 and most important to Mr. Pierce's counterclaim.

17 To let the Court know historically, Jeff Gray is
18 the owner of Tri-County Development. Back before the
19 economy turned south, he would buy land and build spec
20 homes. He would hire Melinda Holbrooks to build the
21 homes, and then he would offer them for sale.

22 In this instance Mister -- Tri-County Development
23 built a house. Mr. and Mrs. Andrew Pierce drove by a
24 home they were building and they liked the house. The
25 Pierces said they would like him to build a house for

1 Mr. Chris Pierce, their son, on Mr. Pierce's property.
2 For the first time they, Tri-County Development, built a
3 custom house as opposed to a house for speculation
4 without an intended buyer, Tri-County Development, and
5 Melinda Holbrooks as the home builder.

6 Ultimately there was a dispute for the last payment
7 of the \$34,000 that Mr. Pierce owed Tri-County. The
8 substance of the claims here today have nothing to do
9 with the lien. They filed the same in September. They
10 filed their *lis pendens* and foreclosure. The plaintiffs
11 were Tri-County Development and Melinda Holbrooks
12 against Chris Pierce. There was a third-party action
13 filed.

14 I failed to mention that they were represented by
15 another lawyer in Oconee County. The first Answer was
16 filed, and Mr. Roberts of the Brown Massey firm in
17 Greenville was representing Mr. Pierce. They filed a
18 third-party action against Mr. Gray. They served
19 Mr. Gray and there was a default because the attorney
20 representing him at the time did not file an Answer.

21 And about a year after the third-party action was
22 filed. And the claims having to do with the
23 construction of the house and not being built, they had
24 to do with the house that Tri-County and Melinda
25 Holbrooks built for Mr. Pierce. When Jeff Gray signed

1 the contract, he just signed his name for the developer,
2 Tri-County. They brought those claims individually.
3 They filed a default against him.

4 There was a motion to be relieved of counsel. He
5 was relieved in April of '07. Mr. Gray came to me to
6 represent he and Ms. Holbrooks. At that time Mr. Pierce
7 was represented by himself. Later Mr. Roberts filed a
8 motion for summary judgment as to the licensing issue
9 and then I filed a motion for relief from Jeff Gray. He
10 denied both. So, the default on the third-party action
11 against Mr. Gray remained and Mr. Pierce through
12 Mr. Roberts, so that was denied.

13 The challenge on the licensing issue was denied by
14 Judge Maddox. In May of '08 Mr. Pierce consent
15 relief...

16 What led me to file this motion for summary
17 judgment, my discovery requests were never answered.
18 And Mr. Pierce, his father, a lawyer, obviously very
19 well educated to have such a nice house. He says he has
20 no damages to prove because he won by default. Those
21 same damages would be responsive for the counterclaim.

22 I did two things. I filed a motion to compel and I
23 filed a motion for summary judgment. The reason for the
24 motion for summary judgment is when Mr. Gray -- as any
25 *pro se* litigant chooses to -- we have to sit in the same

1 shoes as a lawyer. I have an obligation if the rules
2 will allow to get affidavits, to produce documentation
3 to respond to that claim for summary judgment. No
4 affidavits, no documents, nothing from Mr. Pierce at
5 all, even though his lawyer is about two blocks from my
6 office.

7 I filed a motion for summary judgment and I also
8 filed a motion to compel, but I think it's clear based
9 on the rules of evidence that the Defendant cannot rest
10 on lawyers when judgment is filed, that ours is based on
11 a mechanic's lien, a statement of account for Mr. Gray
12 and Melinda Holbrooks. Once he receives that motion he
13 has to take some action to establish a material issue or
14 a legal issue here. Nothing was filed in that very
15 fundamental basic instance.

16 That doesn't mean we automatically get the money.
17 We've still got to prove our case. Any document, any
18 affidavit or anything to counter our motion for summary
19 judgment I think as a matter of law we are entitled to
20 that. And that's the first argument that I have is on
21 summary judgment. There's been nothing produced.

22 And what I would like to do. This is some letters
23 and emails that he and I have gone through starting back
24 in December of '08, the issues about dealing with
25 documentation. In the first letter I'm asking -- he

1 first was gonna file a motion against me because our
2 discovery was inadequate. I wrote him, tell me what you
3 think is inadequate. I never heard anything prior to
4 this morning. He thinks the paragraphs are incomplete
5 or evasive. I asked him what particulars he needs me to
6 address. One was easy. One named his mother as his
7 wife. That's an easy one to fix. The first opportunity
8 I had to do that was today.

9 The bottom paragraph, I never received any
10 discovery action to correct what was wrong or incomplete
11 about your house. I got a response back again dealing
12 with how he's dealing with his counterclaim when then
13 the documentation...

14 In January I stated I still haven't received any
15 answers to my request for production. And the Judge
16 tells you to produce such documentation. He wrote me an
17 email saying his legal advisers he got indicated because
18 part of the case was won by me through default.

19 I filed two things. I filed a motion for summary
20 judgment and a motion to compel. I go back to, I got
21 answers from -- never ever received any documentation.
22 Two days after I received his Answers to
23 Interrogatories, the items I thought deficient in
24 answering he named as an expert...

25 This has been a long, tortured case. Issues with

1 third-party complaints. For me to prepare for trial I
2 needed documentation of what his claims were on his
3 counterclaim. He wouldn't produce. I filed a motion
4 for summary judgment. The case law is very clear that
5 he cannot rest on his pleadings, he has to come forward
6 with something, deposition testimony, documentation to
7 establish a material issue of fact, but he hasn't done
8 that. I'm entitled to summary judgment as to his
9 counterclaim.

10 As to deficiencies, I asked what he thought was
11 deficient or was not correct or not complete or evasive
12 or incomplete, and I'm getting that for the first time
13 today. That's where we stand and that's our position on
14 dealing with it in his counterclaim.

15 THE COURT: Mr. Pierce?

16 MR. PIERCE: In starting, to address comments
17 earlier about my house. That's my mother now, not my
18 wife, as they had in the answers they had.

19 And as far as responses, I actually provided
20 responses to his discovery requests and I have a letter,
21 he received those, dated January 27th that I'd like to
22 show the Court.

23 THE COURT: Have you seen these?

24 MR. DUDLEY: I've seen his Answers to
25 Interrogatories.

1 MR. PIERCE: I sent them immediately. They
2 immediately went out to him within several days. And
3 the dispute that we're having here is not about that.
4 What we're having a dispute about is he would like me to
5 produce discovery which I won by default and as he
6 indicated to me he wanted me to respond with discovery
7 to a matter that has already been ruled by this Court
8 default judgment, and my legal advisers told me that is
9 inappropriate and not done.

10 So I told him that on the phone and he still
11 insisted on that. I said, Let's let the Court rule on
12 that. So it's my understanding that's not appropriate
13 to provide discovery for a case that has already been
14 adjudicated.

15 If the Court determines that's incorrect, I would
16 be more than happy to provide the damages amounts. But
17 the damages I have that he's requesting are only for my
18 counterclaim, nothing to do with his claim. That's
19 where the dispute gets involved here. They have nothing
20 to do with this claim and he doesn't seem to understand
21 that.

22 Also, this year --

23 THE COURT: Wait a minute. I don't understand.
24 This all didn't arise out of the same transaction --

25 MR. PIERCE: It did arise out of the same

1 transaction, but there are a separate claim and
2 counterclaim. There's two separate parts to this case.

3 THE COURT: You finish and then I'll talk.

4 MR. PIERCE: The counterclaim, I won it by default.

5 THE COURT: You haven't won it by default. You
6 only got judgment by default. Part of it says damages
7 pursuant to Rule 55 of the State of South Carolina Rules
8 of Civil ---

9 MR. PIERCE: I have to present my damages to the
10 Court.

11 THE COURT: How do you compare ---

12 MR. PIERCE: Between me and the Court, not from
13 him.

14 THE COURT: What's the case? Even an individual or
15 party in default is entitled to contest the damages.
16 Are you denying that? Right?

17 MR. PIERCE: No, I'm not.

18 THE COURT: Why haven't you done it? You are your
19 legal adviser.

20 MR. PIERCE: He told me on a case that had already
21 been decided I was only required to produce on the
22 claim, and so that's why I had not. I said I would be
23 happy to produce if the Court decides that's necessary.

24 THE COURT: What the Court instructs people to do
25 has already been decided. The Courts don't make up law,

1 they only apply the law. This Court is not going to
2 decide anything other than what you are required to do.

3 Just a second.

4 Since you said that I'm supposed to create law on
5 any particular, it appears I'm reminded by looking at
6 the rules that until a damages hearing has been held and
7 decided, the default is not final, that I could hold it
8 again. So, if you are pressing it, I guess maybe that's
9 what you want me to do -- by the way, that also applies
10 to plaintiff, third-party defendants, defendant,
11 third-party defendants.

12 MR. PIERCE: I'd be happy to offer him --

13 THE COURT: You are operating under some sort of
14 understanding from your legal advisers that judges can
15 do things that the law doesn't permit them to do.

16 (Reading): (Transcribed as read by the reader):

17 It is well settled by suffering a default the
18 defaulting party is deemed to admit the truth of the
19 plaintiff's allegations and conceded liability, though a
20 defaulting party may be entitled to notice of the
21 damages hearing; that is, if relating to only noting
22 witnesses and objecting to evidence of the hearing is
23 pertinent and relevant to a party who possessed or
24 received notice.

25 He doesn't know what he's answering to. Is there

1 anything you are suggesting? Summary judgment as to
2 what?

3 MR. DUDLEY: I want summary judgment as to his
4 counterclaim.

5 THE COURT: On what basis?

6 MR. DUDLEY: The fact he has produced no
7 documentation indicating we didn't build the house right
8 or my client owes him the money. He doesn't have a
9 default on the counterclaim. The third-party action
10 recites the same things as the counterclaim of why, why
11 he shouldn't pay the \$34,000. That's all it is. Good
12 faith and fair dealing, the U.T.P.A., the U.T.P.A.
13 claim. This hiding between the technical default on the
14 third-party complaint that is all about our
15 complaints ---

16 THE COURT: Gentlemen, let me just find out. You
17 insist on your rights, quote, unilaterally?

18 MR. PIERCE: No.

19 THE COURT: Why don't you give him the information
20 he wants?

21 MR. PIERCE: I was told by -- my attorney is a law
22 firm that I have, Legal Service. We've called Merritt,
23 Flebotte, Webb, Wilson, and Caruso.

24 MR. DUDLEY: They are in Columbia.

25 MR. PIERCE: Since I wasn't in default, in other

1 words, his claim I was required to, but not for the
2 counterclaim.

3 THE COURT: Do you understand that default is not
4 final until the damages determination?

5 MR. PIERCE: I understand that now.

6 THE COURT: Why didn't they understand that?

7 Somebody told me there might be a rule to show
8 cause in this action.

9 MR. PIERCE: Yeah, I filed that.

10 THE COURT: Do you know what a rule to show cause
11 is for? Contempt. Do you want to hold Mr. Dudley in
12 contempt?

13 MR. DUDLEY: For naming his mother as his wife.

14 THE COURT: What I'm saying, I have a very
15 difficult time with it. You are trifling with things
16 that are very important, ill-advised, or without advice,
17 I'm not sure which. Either way it doesn't present a
18 very good presence in this court. One, you are
19 responsible to amend your complaint.

20 MR. DUDLEY: I had a motion to compel.

21 THE COURT: Did you tell him what you want him to
22 have?

23 MR. DUDLEY: Just the documents ---

24 MR. PIERCE: But ---

25 THE COURT: Gentlemen, please. This lady takes

1 down everything that is being said. And she has a hard
2 enough time taking down what I say. And when two or
3 three talk at the same time, she can't take it down.
4 So, to one another, let's at least be courteous.

5 MR. DUDLEY: I have not received any document
6 production.

7 THE COURT: Does he have a request with the
8 information you need?

9 MR. DUDLEY: That was the basis of our motion to
10 compel.

11 MR. PIERCE: No. I'll give it to him.

12 THE COURT: You will. Now, as far as your summary,
13 judgment, I think if I had a motion to open the default,
14 because that seems to be the cause because you've been
15 denied access to the damages, I would vacate that.

16 MR. Pierce: I have plenty of documentation as to
17 good faith.

18 THE COURT: You don't even have to have good faith
19 until there's a determination of the damages in this
20 case. Since I was the issuing judge, I want to vacate
21 the default. In other words, I'm trying to get the
22 matter resolved as it is.

23 Anybody else need anything?

24 MR. DUDLEY: No, sir. This may be the
25 technicality. I think it would be wise once I do the

1 documentation to do a site inspection, just because he's
2 *pro se*, that that's a valid thing that I can ask for.

3 THE COURT: Site inspection by agreement of the
4 parties at a mutually convenient time.

5 MR. PIERCE: Inspect my house?

6 MR. DUDLEY: And take pictures for trial.

7 MR. PIERCE: I do have an objection to that.

8 THE COURT: Just -- go ahead.

9 MR. DUDLEY: I'll serve the subpoena. It's been
10 contentious and so I think we should have a police
11 officer there. I'll do the inspection. But if that
12 will make him feel more comfortable with a police
13 officer there so there is someone, a third party to
14 maintain order, we're gonna maintain order. I can
15 understand that being a concern.

16 THE COURT: All right. That's gonna require
17 something more unless y'all can agree to it. Notice of
18 motion to compel, inspection of the premises, and if you
19 can't agree to the terms and conditions -- actually,
20 what the Court wants to do is avoid problems. Anything
21 comfortable to you?

22 MR. PIERCE: I can call him to work something out.

23 THE COURT: I don't have anything in front of me at
24 this time. But I do find that there would be prejudice
25 to the defendant/third-party plaintiff if the default

1 was vacated other than would have the damage or the
2 default liability. So I'm going to vacate the default
3 order. If you proceed with the damages hearing, you
4 would have to show just and good cause.

5 MR. DUDLEY: Thank you, sir.

6 MR. PIERCE: I had planned to move ahead with the
7 damages, but because I was *pro se* I was still getting up
8 to speed on the case in the last year, I hadn't
9 proceeded with that. I intend to.

10 THE COURT: Yeah. Do.

11 MR. PIERCE: My motion is the rule to show cause.
12 That's my motion.

13 THE COURT: You haven't answered their
14 interrogatories?

15 MR. DUDLEY: I have answered them. Back in
16 December, one of the things I was addressing in this
17 letter was he thought some of my answers were incomplete
18 and evasive.

19 Send me the specifics, what your specifics are and
20 I'll fix them. And my first notice of deficiencies was
21 today.

22 THE COURT: How long do you need?

23 MR. DUDLEY: Ten days.

24 THE COURT: That would be the 16th. How does that
25 work out on the calendar? That is a Thursday.

1 **MR. PIERCE:** Can I address in more detail what's
2 going on here? The plaintiff failed to complete,
3 partially completed, provided depletive, evasive answers
4 to my interrogatories. Rule 37(a)(3), that he violated
5 that section of the Court Order from March 23rd, 2007,
6 and since the answers were partial answering, and that's
7 been over two years ago that that Court Order was
8 issued.

9 And according to the answers, as a result of Rule
10 37, Rule 37 allows for a dismissal of plaintiff's claim.
11 And Court Order requires it be done again. I ask the
12 Court, it took two and a half years for them to respond
13 to my interrogatories, and plaintiff Jeff Gray has
14 produced an affidavit in bad faith. I ask the Court to
15 dismiss the claim with prejudice.

16 **THE COURT:** Denied? Judge Nicholson ordered it on
17 March 29th. He probably regrets it more than you do.

18 Let's hope that we've reached an epiphany, but
19 we'll get rid of that question about default because
20 apparently the damages hearing has been settled and
21 heard obviously because the information hasn't been
22 provided. Let's go forward from here. I'm going to
23 deny your motion.

24 **MR. DUDLEY:** Thank you, sir.

25 **MR. PIERCE:** Thank you.

1 **THE COURT:** Mr. Dudley, since you are the one that
2 did all the damage today, you will have to prepare the
3 Order and give a copy to Mr. Pierce.

4 (Whereupon, the above hearing was concluded at
5 approximately 3:35 p.m.)

6 ** End of Requested Transcript of Record **

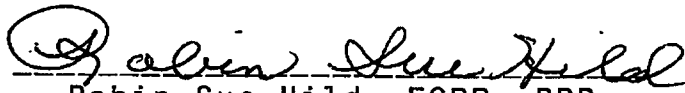
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had, to the best of my ability due to malfunctions of both steno data card and audio-magnetic tape, and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Oconee County, South Carolina, on the 6th day of April, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 18, 2012


Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

) In the Court of Common Pleas
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) Case No: 2005-CP-37-00788
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1 Index of Witnesses

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3 Witnesses

Page

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No witnesses were called.

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8 Certificate of Court Reporter

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Index of Exhibits

16

No.

Description

ID/EV

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No exhibits were introduced.

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1 ** Start of Requested Certified Transcript of Record **

2 THE COURT: This is Tri-County Development, Inc.,
3 and Melinda Holbrooks, v. Christopher A. Pierce,
4 Defendant/Third-Party Plaintiff, versus Jeff Gray,
5 Defendant, Third-Party. 2005-CP-37-788.

6 Mr. Dudley, you represent both Plaintiffs?

7 MR. DUDLEY: Yes, sir, and the Third-Party
8 Defendant.

9 THE COURT: Mr. Pierce, are you still *pro se*?

10 MR. PIERCE: Yes, I'm still self-represented.

11 THE COURT: All right. I understand from the
12 Clerk's Office that you have a certain complaint about
13 their hours of operation?

14 MR. PIERCE: No, it wasn't a complaint. It was a
15 clarification on what the court hours were. Because
16 there was a rule there that said that court was always
17 open, and so I thought I could maybe file another
18 motion.

19 THE COURT: Are you talking about Rule 77?

20 MR. PIERCE: Let me take a look at that. Yes. In
21 Rule 77(a).

22 THE COURT: Did you read Rule 77(c)?

23 MR. PIERCE: I did see, Your Honor. I did see
24 both. But I wasn't ---

25 THE COURT: Then why did you say that they weren't

1 open? They were open.

2 MR. PIERCE: Because I wasn't --

3 THE COURT: Business hours except Saturdays,
4 Sundays and holidays.

5 MR. PIERCE: I wasn't sure how to interpret the
6 Rule.

7 THE COURT: Do you want to apologize to them now?

8 MR. PIERCE: Do I want to apologize to the Clerk of
9 Court?

10 THE COURT: Did you not accuse them about not being
11 open according to the Rules?

12 MR. PIERCE: No. I asked for a clarification as
13 to --

14 THE COURT: Well, the clarification was there.

15 MR. PIERCE: There's two separate sections, (a) and
16 (c), and I didn't know which one applies, so I --

17 THE COURT: Which one applies --

18 MR. PIERCE: Okay.

19 THE COURT: -- which one applies to the Clerk's
20 Office and Orders by the Clerk? Which one applies, do
21 you think, (a) or (c)?

22 MR. PIERCE: I interpreted (a) would be all
23 encompassing for the whole court. And so I didn't know
24 if, if that meant those were stating the hours there or
25 I could still drop something off and get it stamped on

1 Saturday. I didn't know, so that's why I asked.

2 THE COURT: So, you didn't read -- you mean you
3 just don't believe what you read? Now, it doesn't say
4 you can stop by on Saturdays and even Sundays and legal
5 holidays and get things stamped, does it?

6 MR. PIERCE: I didn't know, so I asked. I didn't
7 accuse anybody.

8 THE COURT: Well, what does it say? What does it
9 say?

10 MR. PIERCE: Well, when I read this section, it
11 said courts always open. Courts of this state shall be
12 deemed always open for purposes of filing -- which I was
13 filing a motion -- and pleading or any other proper
14 paper, or issuing and returning mesne, which I'm not
15 sure what that is --

16 THE COURT: "Means".

17 MR. PIERCE: -- and final process for making,
18 directing interlocutory motions, orders, and rules.

19 So, I didn't know if that included them or not; so
20 I asked and they said no.

21 THE COURT: Well, why don't you see if it does, if
22 there's something that does, though?

23 MR. PIERCE: Right. That's what I did.

24 THE COURT: And what does it say?

25 It's just that I'm having a little problem because

1 our clerks work very hard, and they try to provide the
2 services that not only our Rules provide but also our
3 laws provide.

4 MR. PIERCE: Uh-huh.

5 THE COURT: And when somebody comes in and, after
6 taking advantage of the services they provide, to
7 suggest they're not, and then not even have the
8 politeness to just say, Well, I made a mistake.

9 Obviously Rule 77(a) has to do with courts can only
10 be suspended during times of emergency. Otherwise, they
11 are considered open at all times. We don't, we aren't
12 closed. In other words, we only have courts with people
13 we like or people that pay us. Courts are always open
14 unless there is a Constitutional emergency. That's what
15 that Rule says.

16 MR. PIERCE: Okay. I don't have any need to
17 apologize. I was just asking ---

18 THE COURT: You don't.

19 MR. PIERCE: I was just asking about it. And now
20 the matter has been cleared up, so --

21 THE COURT: Okay. I was just curious if you would.

22 MR. PIERCE: No. I'm happy to have it corrected
23 and straightened out, and that's fine.

24 THE COURT: Okay. Great.

25 MR. PIERCE: Okay.

1 THE COURT: Let's proceed. All right. What is the
2 first motion?

3 MR. DUDLEY: Your Honor, there are four that I'm
4 aware of, and I've handed up to the Court, which I think
5 is in a logical order, or you could say an order of
6 filing.

7 There is a motion by Mr. Pierce to quash my,
8 subpoena for a site inspection. ①

9 The second one is a motion for my, Mr. Pierce's
10 request to have a site inspection of my client's
11 personal residence and his business property. ②

12 The third one has to do with the subpoena, a motion
13 to compel discovery is answers, which we have supplied. ③

14 The fourth one is a motion on bad-faith affidavit
15 having to do with the default that Your Honor has
16 already ruled undone back in April. ④

17 That was the order. I'm willing to go with
18 whatever order the Court desires. But in logical order
19 it was back when we were before this Court in April, we
20 mentioned the part about a site inspection. And what we
21 did is I tried to work with Mr. Pierce about a site
22 inspection.

23 Just briefly. My client usually builds spec
24 houses. This was a custom house built for Mr. Pierce.
25 There was a dispute -- my clients finished 95 percent of

1 the house. There was a dispute about completing the
2 house. My clients filed a mechanic's lien for \$34,000,
3 which is just a straight contract balance. He has filed
4 a counterclaim and third-party action.

5 I didn't get involved in this matter until May of
6 two-thousand- -- or April of 2007. But the issue up and
7 until April had to do with he had not produced any
8 documentation of his damages on his counterclaim, and
9 then Your Honor ordered that the default be lifted as to
10 Jeff Gray individually who is a third-party defendant.

11 I wanted to have a site inspection to conduct an
12 analysis of the work in place. I suggested that we
13 share and split the costs, if he was worried about my
14 client being on his property, that we would share the
15 costs of a Sheriff's Deputy and split that cost.

16 He countered with saying, Well, why don't you just
17 hire -- he said he would hire or we'll hire a home
18 inspector to come and do it. The key is in my first, on
19 April 14th, shortly after the hearing, I made mention of
20 the site inspection, and then we filed, filed a request
21 for entry in the land pursuant to Rule 34. And he said
22 specifically, If you guess you still wish to push the
23 subpoena about the site inspection, I'll file a motion
24 to quash and let the Judge rule on it.

25 So, I tried my hardest to avoid being here, but

1 what I did under this --

2 THE COURT: Do you want to take up the motion to
3 quash the site inspection?

4 MR. DUDLEY: That's the first one I'd like to
5 answer.

6 THE COURT: All right, Mr. Pierce.

7 MR. PIERCE: So, do you want me to proceed with my
8 motion to quash?

9 THE COURT: Right.

10 MR. PIERCE: Okay.

11 THE COURT: Go ahead.

12 MR. PIERCE: Basically, the reasons why I filed the
13 motion to quash is because his, his request was overly
14 vague and did not comply with Rule 34(b) that requires
15 specificity in the request. He left it vague and he
16 wanted to inspect the areas that were not relevant to
17 the counterclaim.

18 And I asked him repeatedly to please have his
19 request meet those requirements under that Rule, 34(b),
20 and he did not do it. And the section I'm referring to
21 is the section that says (reading):

22 The request shall set forth the evidence
23 to be inspected either by individual item or by
24 category and describe each item and category
25 with reasonable particularity.

1 Instead, he left the request open to the whole
2 house, and he also specified items that were not even
3 relevant to the lawsuit, such as a porch and a deck and
4 things that are not under dispute at all. And I asked
5 him to please, you know, things like driveways certainly
6 are. And I said, that's fine. But he continued to
7 leave the request open and said in his memorandum that
8 he filed that, that he believes that the entire house is
9 relevant to the lawsuit, the claim and the counterclaim.

10 And I have to say that could not be true because
11 the counterclaim that I have is only on disputed items
12 from section four, payment four on. It does not include
13 the other phases, one through three, that I'm completely
14 satisfied with, such as decks, porches, foundations, and
15 things of that nature. So, I've, I filed a motion to
16 quash based on that basis.

17 And then the other basis is that -- I asked and I
18 talked to him about this in May -- that we have an
19 inspection with a building inspector because of the
20 problems that I've had with his clients. Specifically,
21 they have trespassed on my property in July of 2005. I
22 filed trespass notices about them.

23 And I've -- he recently told me that the trespass
24 notices were not current or not on file. So, I went
25 ahead and re-filed those trespass notices. And because

1 of that background I would like to have the -- you know,
2 when he does meet the requirements of 34(b), that I
3 would like him to have the building inspector come by
4 with him instead of his clients because of what they've
5 done.

6 He said that's a burden on his clients. But then
7 it's a burden on me to have somebody on my property that
8 trespassed as well as potentially stole items off my
9 property.

10 So, I would like to submit to you my documentation
11 to that. There's a letter in here and there is my
12 request as well as the actual trespass notices, and then
13 there's items highlighted just so you can get right to
14 it.

15 I'd also like to submit this outline of some of the
16 relevant facts relating to the motion to quash.

17 THE COURT: All right. Let me ask you: Does the
18 Court have a request for an Order requiring inspection?

19 MR. DUDLEY: Judge, what we did was I filed it
20 first as a -- and that's what the request for entry upon
21 the land --

22 THE COURT: Mr. Pierce, sit down when Mr. Dudley is
23 speaking.

24 Mr. Dudley, you sit down when Mr. Pierce is
25 speaking.

1 MR. DUDLEY: Yes, sir.

2 THE COURT: That way I know who I'm supposed to be
3 addressing.

4 MR. DUDLEY: Yes, sir. I did it as a, under Rule
5 34, no different than a request for production of
6 documents.

7 THE COURT: Has the Rule, the request been made,
8 though, for an Order under --

9 MR. DUDLEY: Well, Judge, I think what it is --

10 THE COURT: -- under 37(a)?

11 MR. DUDLEY: What it is, I guess, is his motion to
12 quash my response to his motion to quash is in effect
13 since I've sent a subpoena.

14 THE COURT: All right. But in other words, that's
15 what his response is. All right. So, now I'm supposed
16 to decide.

17 MR. DUDLEY: Yes, sir. And so I think that --

18 THE COURT: All right. The objections that you
19 have to the request for inspection is what?

20 MR. DUDLEY: He's the one that has the objection.

21 THE COURT: I know. I'm asking Mr. Pierce now, so
22 you can sit down.

23 MR. PIERCE: The objections are that it is overly
24 vague, too ---

25 THE COURT: What do you find vague?

1 MR. PIERCE: The, the fact that he wants to inspect
2 the entire house, and --

3 THE COURT: Is the house not the subject of the --

4 MR. PIERCE: No, it's not.

5 THE COURT: It's not?

6 MR. PIERCE: What the subject is is the work that
7 was not -- that I had to complete.

8 THE COURT: No. That's yours, that's your amended,
9 that's your counterclaim.

10 MR. PIERCE: Right. And his, in his claim, his
11 contention is that I breached the contract. Nothing --

12 THE COURT: All right. I don't find that the house
13 is vague.

14 MR. PIERCE: Okay.

15 THE COURT: If it is based on claimed defects to
16 the house, then obviously the house is relevant.

17 MR. PIERCE: Okay.

18 THE COURT: What else?

19 MR. PIERCE: In section (b) here, 34(b), it
20 states --

21 THE COURT: What is your complaint? I know what
22 34(b) says. What is your complaint?

23 MR. PIERCE: Okay. Well, he wants to inspect
24 things that are not relevant.

25 THE COURT: (Reading): Set forth the items to be

1 inspected, the individual item or by category.

2 And I find that the house in a mechanic's lien case
3 is the subject of the action and so, therefore, it's a
4 category.

5 MR. PIERCE: But the entire house is not relevant.
6 Only the work that he's --

7 THE COURT: Sir, thank you. You are overruled. Go
8 ahead. No. Go ahead. Tell me what else you are saying
9 that you found that was in violation of 34(b).

10 MR. PIERCE: Well, in the paper I handed to you he
11 wants to inspect decks and porches. They're not
12 relevant at all.

13 THE COURT: I thought that the porches and decks
14 and all were not part of the contract?

15 MR. PIERCE: They're not part of my counterclaim
16 alleging --

17 THE COURT: But it is a part of his mechanic's
18 lien.

19 MR. PIERCE: He's claim-, he's alleging breach of
20 contract.

21 THE COURT: Right.

22 MR. PIERCE: So, he doesn't need -- I'm not, I'm
23 not stating --

24 THE COURT: What is a contract to build a house --

25 MR. PIERCE: I'm not saying there is any --

1 THE COURT: Excuse me, sir. The contract is to
2 build a house, which included decks and porches.

3 MR. PIERCE: Right. But I'm not --

4 THE COURT: Okay. Now, what else? Move on.

5 MR. PIERCE: -- alleging any defects in those.

6 THE COURT: He's not exactly claiming a defect.
7 He's claiming that you didn't pay for the decks and
8 porches. You've got a separate counterclaim for
9 defects.

10 MR. PIERCE: Right.

11 THE COURT: He's trying to collect on a contract
12 that was properly performed.

13 MR. PIERCE: On his claim he's just claiming breach
14 of contract.

15 THE COURT: That's right.

16 MR. PIERCE: Right.

17 THE COURT: A properly performed contract that
18 hasn't been paid for.

19 MR. PIERCE: I'm not disputing --

20 THE COURT: You are. Listen. I'm sorry, sir. I
21 don't need argument. There's Rule 43(1) since you --
22 let's see, excuse me -- or is it 43(i)? (Reading):

23 Counsel shall not attempt to further
24 argue any matter after he has been heard
25 and the ruling from the court has been

1 pronounced.

2 Thank you. Now, all right. Let's go on. Now
3 what?

4 MR. DUDLEY: So, the next what one is --

5 THE COURT: No. I want to find out what, what
6 other matter he finds that is not reasonable.

7 MR. PIERCE: That's basically it, what I just said
8 already, so I don't need to say more. But I would say
9 and just add to what I said earlier, that his clients
10 have trespassed on my property, they have trespass
11 notices against them.

12 THE COURT: That's not for me to decide at this
13 time. If you want to bring a criminal action for
14 trespass or if you want to bring a civil action for
15 trespass, that will be fine. I don't have that before
16 me right now.

17 MR. PIERCE: May I request --

18 THE COURT: He's going to, he's going to -- the
19 Plaintiffs are going to perform their inspection without
20 violation of the Rules. There's no question about that.
21 And, of course, it sounds like you all can't even agree
22 on permitting an inspection.

23 MR. PIERCE: Could I ask, sir?

24 THE COURT: Yes, sir, you can ask; but once it has
25 been answered, don't...

1 MR. PIERCE: Okay. Originally in May I met with
2 Mr. Dudley in his office, and I discussed with him
3 satisfaction. I said, I'd like you to come by. I
4 realize you need to do that. And I said, Could you
5 bring a building inspector as opposed to your clients?
6 Since we have a poor relationship. And he said at the
7 time that he in theory agreed to that.

8 And then at a later time I wrote him an email, and
9 I told him, Okay, it's great. We agree to a principle
10 of reciprocity where we both agree to do the same. I
11 thought that was a great idea.

12 THE COURT: Reciprocity to what?

13 MR. PIERCE: Where we both, like, in other words,
14 he does the site inspection on my place and I do one on
15 his.

16 THE COURT: Why would you want to do one on his?
17 Where does that have anything to do other than just for
18 vindictiveness?

19 MR. PIERCE: No.

20 THE COURT: What relevance does anybody else's
21 residence have to this?

22 MR. PIERCE: Well, that's, that's what I was going
23 to read.

24 THE COURT: Well, read it.

25 MR. PIERCE: Okay. Basically, the, there's a

1 section of the, of the building contract for allowances;
2 and in that section there are different sections laid
3 out for allowances such as plumbing fixtures,
4 electrical, cabinets, flooring and stone, and those
5 items have to be accounted for in order to do a
6 complete -- for my damages in my counterclaim, I'd have
7 to know how much was used of each of those to deduct off
8 for a total on that.

9 So, for me right now I'm not sure of all, where all
10 the -- I don't have a full accounting of all of this.
11 And I believe that there's, it's possible that his
12 clients may have some of those materials at their home.
13 So, I would like to inspect and find out if they do.

14 THE COURT: Denied.

15 MR. PIERCE: Okay. And the other reason, too, is
16 that if they do have stolen materials at their house,
17 then that would be ---

18 THE COURT: That's why we have Magistrates to issue
19 warrants.

20 MR. PIERCE: Okay. But I, I would think that would
21 speak to the credibility of --

22 THE COURT: If it's true. If they are found -- if
23 they are arrested, indicted, and found guilty of it,
24 then it would be relevant. It would be a conviction
25 that would attack their credibility.

1 MR. PIERCE: But it would help for my prosecution
2 of my case in trial to determine if they had, in fact,
3 stolen the materials, so...

4 THE COURT: I don't find that that's relevant.

5 MR. PIERCE: Okay.

6 THE COURT: I mean, you, as I say, a Magistrate
7 might find probable cause to issue a warrant, but I
8 don't think that I have anything to issue it on here.

9 MR. PIERCE: And the last item I was just gonna say
10 is that my filing that, that motion was not intended to
11 escalate his client's legal costs at all or harass them
12 whatsoever. I just felt that it was relevant for me to
13 gather evidence for my ---

14 THE COURT: Well, I trust this will put that to an
15 end.

16 All right. What's next?

17 Draw an order to provide for the inspections of the
18 premises subject to the contract.

19 MR. DUDLEY: Yes, sir. And then an order granting
20 a motion to quash the...

21 THE COURT: The motion to quash Ms. Holbrooks'
22 home?

23 MR. DUDLEY: And Mr. Gray's home.

24 THE COURT: Yes, sir.

25 MR. DUDLEY: The only things that are left are his

1 two motions.

2 THE COURT: Which are, Mr. Pierce?

3 MR. PIERCE: I have a motion to compel and a motion
4 to --

5 THE COURT: Motion to compel what? I'm sorry.
6 There are so many motions.

7 MR. PIERCE: Right. It's a lot.

8 THE COURT: It took me a while just to find out
9 what I'd already done.

10 MR. PIERCE: Right. What it has to do with is a
11 motion to compel discovery that was not completed from
12 the original request.

13 THE COURT: And which was that? You're...

14 MR. PIERCE: I'm trying to get him to complete my
15 request to him.

16 THE COURT: All right. So, in other words, he
17 hasn't responded to your request?

18 MR. PIERCE: He hasn't completed -- completely
19 responded.

20 THE COURT: All right. Do you know if -- have you
21 made any response?

22 MR. DUDLEY: Yes, sir. I served him, I served him
23 with additional ones a while back, but then I sent
24 additional responses to him Friday, Thursday or Friday.

25 THE COURT: So, he hasn't gotten it?

1 MR. DUDLEY: Well...

2 THE COURT: We didn't have mail delivery --

3 MR. DUDLEY: Yes, sir.

4 THE COURT: -- Saturday, Sunday, or Monday.

5 MR. DUDLEY: Yes, sir.

6 Did you, did you get them?

7 MR. PIERCE: No. I got nothing in the mail.

8 THE COURT: All right. Thank you. I'll continue
9 that motion depending on the satisfaction with this.

10 MR. PIERCE: Can I finish what I started here?

11 THE COURT: Well, I was going to hopefully put a
12 satisfactory conclusion to what you'd requested. He
13 says he now has and he's going to provide you with them.

14 MR. PIERCE: Okay.

15 THE COURT: Now, go ahead. You can talk on for a
16 while.

17 MR. PIERCE: But I would just, just add that in the
18 last hearing I asked for some of this, too, and he
19 didn't complete it.

20 THE COURT: Well, he's doing it now.

21 MR. PIERCE: Right. But shouldn't there be
22 sanctions assessed against him?

23 THE COURT: You mean like the frivolous motion to
24 inspect somebody's home that's not relevant to the
25 issues in this case? That's kind of a two-edged sword.

1 I'm trying to treat people like gentlemen. But, if you
2 want to, if that's where you want to go, I'll be glad to
3 hear about sanctions. I would like to think that I'm
4 not gonna have to consider sanctions until there is a
5 further hearing.

6 MR. PIERCE: Okay.

7 THE COURT: If there is no further hearing, then we
8 don't have to consider sanctions.

9 MR. PIERCE: Okay.

10 THE COURT: But I'll tell you right now,
11 Mr. Pierce. I, I find some conduct very unfortunate,
12 and if I'm going to sanction somebody for conduct, to
13 include frivolous pleadings and motions and all, then I
14 probably would start with you. So, let's don't go
15 there.

16 MR. PIERCE: Okay.

17 THE COURT: Unless you've got something. Now, if
18 you, if you find that his delay in responding to your
19 interrogatories is something that you feel is so
20 egregious that it does deserve sanctions, I'll consider
21 it.

22 MR. PIERCE: Well, if he's, if he's seriously
23 committed right now to responding, then there won't be a
24 need. However, I would just ask you to consider that
25 I've asked him repeatedly for the address of his client.

1 THE COURT: I, I have looked at this rather
2 voluminous file, and apparently cooperation is not the
3 key word.

4 MR. PIERCE: Right. Exactly. That's an
5 understatement, sir.

6 THE COURT: All right. So, we put it -- we hope
7 you're gonna have it.

8 MR. PIERCE: Okay.

9 THE COURT: Very good.

10 MR. PIERCE: I'll move on to my next motion.

11 THE COURT: Please.

12 MR. PIERCE: Thank you.

13 THE COURT: Thank you.

14 MR. PIERCE: Okay.

15 (There was a pause in the proceedings.)

16 THE COURT: Let me ask you: Have there been
17 depositions in this?

18 MR. DUDLEY: No, Your Honor. But I submitted dates
19 to Mr. Pierce of our availability sometime last month.

20 THE COURT: The reason I ask that, Mr. Pierce, of
21 course, depositions is a way of determining if there is
22 anything to investigate further. So, maybe if y'all do
23 have a, can develop a schedule for deposing the parties,
24 then you might have some of your questions answered
25 without -- well, for one thing, depositions are meant to

1 lead to discovery, not invasions, like you say. I'm
2 just being facetious. All right.

3 MR. PIERCE: As a matter of fact, I, I did request
4 dates that he was available for depositions about a week
5 or two ago.

6 THE COURT: Okay.

7 MR. PIERCE: And actually in August I did, and
8 we're hoping to do that sometime in October.

9 THE COURT: That sounds good. Again, I
10 congratulate both of you.

11 MR. PIERCE: Thank you. And we would like to
12 complete the discovery process so we can move on because
13 it's been four years.

14 THE COURT: That's something this Court wants.
15 Yes, sir.

16 MR. PIERCE: Yes, okay.

17 Well, I'd like to address my motion to show cause,
18 And this is, has to do with an affidavit that was filed,
19 in bad faith in support of a motion that Mr. Dudley had
20 filed to set aside the entry of default. He filed this
21 in April of 2007, and there was a hearing in December.

22 THE COURT: Well, haven't I ruled on that twice?

23 MR. PIERCE: Have you ruled on the affidavit?

24 THE COURT: No. I ruled on the --

25 MR. PIERCE: Yes, you did. You ruled on the entry

1 of default.

2 THE COURT: Right.

3 MR. PIERCE: But this issue is involving the
4 affidavit that was filed in bad faith under Rule 56(g).

5 THE COURT: Well, what was the bad faith?

6 MR. PIERCE: It was a false affidavit. If I could
7 present this to you?

8 THE COURT: Certainly. I mean, any time that the
9 court is violated, I want to know; and a false affidavit
10 is about as violative as anything I know.

11 MR. PIERCE: Right. (Hanging.)

12 THE COURT: Thank you, sir.

13 THE BAILIFF: Yes, sir.

14 MR. PIERCE: That's the affidavit in question.

15 THE COURT: You are talking about Jeffrey A. Gray's
16 affidavit?

17 MR. PIERCE: Yes. That's his client. And he filed
18 that affidavit stating that he was unaware that, of a,
19 of a notice of default in this case. Yet, as part of
20 the court record and case records, there's records that
21 show he was served properly. Mr. Dudley used this as a
22 basis for filing his motion to set aside the default by
23 saying that, basically that his client was not aware and
24 he was not aware of these things that were going on,
25 this default, and that, therefore, they should be -- the

1 entry of default should be set aside. So, they used
2 that as a basis. That was actually filed in bad faith
3 because --

4 THE COURT: What was the bad faith?

5 MR. PIERCE: The bad faith was that Jeff Gray knew
6 before that time that he had been served with that.

7 THE COURT: And he turned it over to an attorney?

8 MR. PIERCE: No. I mean, he knew that he had been
9 served already with a certified letter saying that he,
10 that he had an entry in default against him; yet he
11 claims in that affidavit that he was unaware of it in
12 April. It's an obvious lie. And, also --

13 THE COURT: Why would he be meeting with lawyers if
14 he didn't know he'd been served? (Reading):

15 I received many copies of pleadings
16 relating to this lawsuit. I understood
17 that Mr. Whitney would respond to all of
18 them.

19 Where is the lie?

20 MR. PIERCE: The lie is saying that he was unaware.

21 THE COURT: He was unaware that --

22 MR. PIERCE: He was unaware that he had been, had a
23 default judgment against him.

24 THE COURT: Exactly.

25 MR. PIERCE: When, yet, when he was aware, because

1 he had been served by Certified Mail in September of
2 2006 that he had a default judgment or entry against him
3 at that time. So, that's false to say that.

4 And, also, Mr. Dudley should have been well aware
5 of that, too, having reviewed the case record that that
6 was the case, and he went ahead and filed this motion to
7 set aside a judgment based on the fact that his client
8 didn't know what was going on, when he did know. He was
9 fully aware and knew about this.

10 THE COURT: Well, let me ask you something,
11 Mr. Pierce, since you -- and this is kind of coming full
12 circle.

13 MR. PIERCE: Okay.

14 THE COURT: You told me that you had read Rule 77,
15 (a) and (c), and for some reason you didn't think that
16 (c) applied to the Clerk's Office and orders by Clerk.

17 MR. PIERCE: I didn't know.

18 THE COURT: Now, did you lie to me or were you just
19 saying, Well, I don't quite understand all of this
20 because these are rules governing courts, not something
21 that a private citizen might be interested in or aware
22 of. I don't think you were lying to me. I think you
23 just misconstrued something ---

24 MR. PIERCE: Right, exactly. Yes.

25 THE COURT: Well, let me -- why don't you just for

1 once listen to somebody else and then you might find
2 that you have a lot less difficulty in understanding.

3 He says (reading):

4 I received many copies of pleadings
5 related to this lawsuit. I understand
6 Mr. Whitney would respond to all those.

7 Now, when he got notice of a default judgment, he
8 probably thought the same thing. But there was no
9 judgment, as I found. In other words, it wasn't a
10 judgment, it was just a notice of default.

11 And I'm sorry, sir, if you don't understand that.
12 I gave you two orders to explain that. I think I had to
13 do an amended order so you would understand what the
14 ruling was.

15 So I guess -- no. Now that, this is the type of
16 thing that really does invite sanctions. If you want to
17 argue with me, fine. But I've ruled on the issue. I
18 don't find that the affidavit of Jeffrey A. Gray dated
19 April the 11th, 2007, is an inaccurate affidavit.

20 Now, anything else? So, I deny your motion. Or
21 what was your motion about the affidavit? You want to
22 set aside my Order?

23 MR. PIERCE: No, no. My motion was that I, I
24 should receive reimbursement for my lawyer's time to
25 defend that motion, which was...

1 THE COURT: Which lawyer?

2 MR. PIERCE: My lawyer, Chris Roberts, that
3 represented me before I became self-represented; he was
4 representing me at that time. So, I incurred a lot of
5 costs to defend that motion which --

6 THE COURT: Well, what motion did you -- I don't
7 remember -- my Order reflects on May the 26th that you
8 appeared *pro se*. My Order of May the 4th reflects that
9 you appeared *pro se*.

10 MR. PIERCE: Right. I mean ---

11 THE COURT: Well, let me give you a case since you
12 like the law so much. *Calhoun v. Calhoun*. (Reading):

13 An attorney cannot get attorney's
14 fees when they represent themselves.

15 That applies to attorneys. Now, I don't know if
16 *pro se* litigants are entitled to do something lawyers
17 aren't.

18 MR. PIERCE: I don't think so.

19 THE COURT: Okay. I don't, either.

20 All right. Next?

21 MR. PIERCE: Okay. That's all I have.

22 THE COURT: All right. I hope that we have kind of
23 resolved these issues. And let's get on with them, the
24 main thing. As apparently both of you all agree, let's
25 get the depositions out of the way and see if there is

1 anything that can, any further discovery needs.

2 I would like a scheduling order.

3 MR. DUDLEY: Yes, sir.

4 THE COURT: And, of course, I don't want you to
5 incur any more *pro se* attorney's fees, so I'm going to
6 require Mr. Dudley to prepare a proposed Order and, of
7 course, he sends it to you pursuant to Rule 5.

8 MR. DUDLEY: Yes, sir.

9 THE COURT: But let's see if you can include, if
10 possible, a scheduling order, something that you can
11 agree to.

12 MR. DUDLEY: Good enough. Thank you, sir.

13 MR. PIERCE: May I say one other thing --

14 THE COURT: Yes, sir.

15 MR. PIERCE: -- in closing?

16 THE COURT: In closing, all right.

17 MR. PIERCE: I'm not trying to incur any *pro se*
18 fees. The fees I referred to in those previous motions
19 were from April 2007 to December 2007 when my attorney
20 represented me. I wasn't asking for anything for
21 myself. It's not in the rules.

22 THE COURT: Very good. Your attorney should have
23 moved for a judgment if he had a default order. But he
24 didn't, so maybe he didn't properly serve you. I don't
25 know. Maybe fully serve you. It's kind of like, you

1 know, crossing a chasm. You don't do it a step at a
2 time.

3 MR. PIERCE: Okay.

4 THE COURT: Thank you.

5 MR. DUDLEY: Thank you, sir. I apologize for being
6 late.

7 THE COURT: There's no apology necessary.

8 Well, I do want to, I do want to thank you. I
9 trust your patience with me, and maybe it's not all
10 that. But the thing is I do want to thank you for
11 trying to work these things out, and let's do, let's
12 move forward.

13 MR. DUDLEY: Thank you, sir.

14 MR. PIERCE: Thank you.

15 THE COURT: Thank you, sir.

16 ** End of Requested Certified Transcript of Record **

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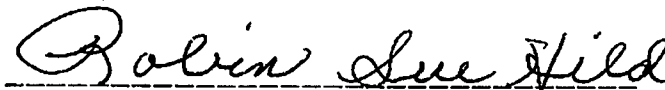
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR,
Official Court Reporter for the Tenth Judicial Circuit
of the State of South Carolina, do hereby certify that
the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned
case, relative to appeal, in the Court of Common Pleas
for Oconee County, South Carolina, on the 8th day of
September, 2009.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 18, 2012

A handwritten signature in cursive script that reads "Robin Sue Hild". The signature is written in dark ink and is positioned above a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
) CASE NO: 2005-CP-37-788

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BEFORE:

APPEARANCES:

Christopher A. Pierce
Pro Se Defendant

based on a \$1,000.00 deposit that Mr. Pierce paid and Mr. Tri-County and Holbrooks did a bunch of work and then got a draw for \$50,000.00 and they didn't realize that \$1,000.00 wasn't in there. And so, the Mechanic's Lien says it is for \$34,000.00 and there is a discussion about a \$3,000.00 credit so it ended up being \$30,000.00. So the math in it, the Mechanic's Lien, is not right. There is also a statute in the Mechanic's Lien provision that says an error in the accounting doesn't invalidate the Mechanic's Lien. Here is where we are. The contract balance where all the allowances to be proven would be \$33,000.00. For purposes of this motion is that we are assuming that all of those allowances, eliminating any issue of fact, that we are only entitled to \$15,000.00. That is the \$33,000.00 minus the \$18,000.00. And the reason, again, I really wish -- We could go on for a couple of hours as to the background of this case but the bottom line is there is a contract balance owed on this. In April and attached -- I assume you don't have my motion or do you? My memo?

The Court: This is a voluminous file that is for sure.

Mr. Dudley: Yes sir. We sent that out there, we Fed-ex that ---

The Court: Mr. Pierce, did you get a copy?

Mr. Pierce: I did but I got it very late. I got it Friday evening and I was out of town most of the weekend so I didn't have a fair opportunity to review it. I object to it because I feel it is a violation of the South Carolina Rules of Court and time. I didn't get time. And also if you look at the Summary Judgment Motion you will see that it does not meet the qualifications of Rule 7(a)(1) (phonetic), state with particulars and grounds thereof. What he did was he filed a memorandum. This memorandum is very detailed ---

The Court: Stop. I am going to let you do this but I want to keep this in order. Let me just tell you this. I know I have seen you in the Courtroom while I did it. It is my standard practice. I am going to let you submit it. You will have until Friday of next week, not this week, to submit anything in response to his memorandum with regard to his motion.

Now you will have to let me know no later than 5:00 p.m. this Friday if you intend to exercise your right to do that. And that is just a tracking mechanism for me, okay? Do you understand?

Mr. Pierce: Yes sir. Thank you.

The Court: I will let you do your argument in just a minute but I wanted to make sure we were clear on that part of it.

Mr. Pierce: Okay. Thank you.

The Court: Go ahead.

Mr. Dudley: Okay. Thank you. In my memo, there is attached a copy of the contract. And in the contract it has a payment provision. And it says that you are going to do this much work and get this much. And the whole issue is the first 3 payments my client got is payment 4 and 5 of the ones that are an issue. Payment 4 was \$30,000.00 and there was a laundry list of items that needed to be done. The last \$3,000.00 was to be paid upon completion. In April, and in my memo, in April 4, 2005, Mr. Pierce's father wrote a letter to my client saying, "Hey, we reached this agreement and you are not going to paid the balance of the contract until everything is done." So, we contended an anticipatory repudiation in April. In June, my client, he continued to work. He didn't agree with that and he continued to work. And then in June 28, 2005, exhibit M to my memo, June 28th, Mr. Pierce the Defendant, writes an email to my client and says, "You will not be, you will not paid until all work is completed in the house regardless of the one year warranty you mentioned." And that is when my client pulled off that project and stopped working. A couple of days later they went back in early July to look to do work on punch lists or to just see what was going on, on the property and he had changed the locks. So, we got an anticipatory repudiation in April, reaffirmed in June and we were locked out of the project in July. Now all of that being said and really it is irrelevant as to who breached this contract. What I am talking about here, after

Mr. Pierce: All right sir. Can I explain a little bit more about this?

The Court: No sir. I will let you write your argument to me in a brief. I don't want to prevent you from giving factual evidence but I am giving you a chance to turn in a brief with documentation -- You had a Court chance to put it forth in arguments but I don't want to rehash something I already denied a motion on.

Mr. Pierce: Okay.

The Court: I am pretty sure that I won't change my mind on that. I don't think I have jurisdiction to do that -- I cannot change another Judge's Order.

Mr. Pierce: Actually your exact statement is in my motion. It talks about Judge Macaulay changing Judge Maddox's view on setting aside their motion saying he can't reverse it.

The Court: Well, you know what? You may be right and that may be a ground for you to appeal later if the Courts say that is an interlocutory order. It seems to me that would change your trial but that is why I am trial level and they are at appellant level.

Mr. Pierce: Okay.

The Court: But it goes under the category of 2 wrongs, if that is in fact the case, don't make a right. I just don't think I can. Argue your basis in your memorandum to me and if I read it and I am convinced that I can do so then I might grant you that relief. But I tell you right now as I see it I doubt very seriously that I will. With regard to your Motion for Relief of Judgment, okay?

Mr. Pierce: But I can send you a brief?

The Court: Absolutely, yes, that is what we are talking about.

Mr. Pierce: Okay.

The Court: Documentation, admissible evidence, as well as your memorandum, okay?

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE CASE NO. 2005-CP-37-788

TRI-COUNTY DEVELOPMENT,
INC., and MELINDA HOLBROOKS,
Plaintiffs,

VS.

CHRISTOPHER A. PIERCE,
Defendant.

and

CHRISTOPHER A. PIERCE,
Third-Party Plaintiff,

VS.

JEFF GRAY,
Third-Party Defendant.

DEPOSITION OF MELINDA ANN HOLBROOKS

DATE TAKEN: April 22, 2010

TIME BEGAN: 10:18 a.m.

TIME ENDED: 11:30 a.m.

LOCATION: Oconee County Courthouse
 415 South Pine Street
 Walhalla, South Carolina

REPORTED BY: Eileen Thompson, CCR
 Gallagher Court Reporting
 864-234-5744

1 A. what do you mean by represent?

2 Q. Represent in a business context as far as were you
3 -- what's your relationship with Tri-County? Are
4 you considered to be an employee, for example, of
5 Tri-County or a subcontractor of Tri-County?
6 what's your actual relationship to them?

7 A. I guess I would be considered partners.

8 Q. You're partners? Do you have any actual
9 agreement, a partnership agreement or any kind of
10 paperwork that shows you're a partnership?

11 A. No.

12 Q. okay. You're not an employee of Tri-County
13 development?

14 A. No.

15 Q. So you don't receive W-2s?

16 A. No.

17 Q. okay. would you consider yourself a
18 subcontractor? Do you receive 1099s?

19 A. Yes.

20 Q. You do. Okay. Thank you. Was J & H Builders the
21 company that you have?

22 A. It was my company.

23 Q. That's your company or is that your company and
24 your husband's company? I wasn't sure on that.

25 A. It's my company.

1 Q. Your company. Okay. And was J & H Builders a
2 subcontractor of Tri-County Development?

3 A. No.

4 Q. No. So you did not receive any 1099s? Your
5 company didn't receive any 1099s from Tri-County?

6 A. We did.

7 Q. You did. Okay. So then -- all right. But you
8 don't consider yourself to be -- you don't
9 consider yourself to be a subcontractor? What do
10 you consider yourself to be then if J & H -- what
11 I'm trying to identify is the relationship of J &
12 H Builders to Tri-County Development, what kind of
13 business relationship they have.

14 A. I'm the building contractor and he is the money
15 behind the company.

16 Q. The contractor. All right. When you received
17 payments from Tri-County Development, how are the
18 checks endorsed to you?

19 A. J & H Builders.

20 Q. When you were working on this project, this Pierce
21 building project, were you paid by Tri-County
22 Development or Jeff Gray for all work you did on
23 the project?

24 A. Yes.

25 MR. PIERCE:

1 total of \$29,861 total paid for J & H Builders.
2 Does that sound about right to you or do you have
3 any accounting at home that we could verify that
4 that you could submit to Mr. Dudley as additional
5 discovery, like, a billing summary statement? Do
6 you have any accounting like that?

7 A. No.

8 Q. No. Okay. I'm just trying to understand how much
9 -- where the money went. And it looks like about
10 \$29,000, almost \$30,000, \$29,861 for a total of
11 those bills. So that looks like all the work that
12 was done and you were paid for all of that by Jeff
13 Gray and Tri-County Development?

14 A. Yes.

15 Q. Okay. And there is not any work outstanding that
16 you haven't been paid for?

17 A. No.

18 Q. Okay. When was the last day that you performed
19 work or furnished the services for this project?

20 A. I just can't remember. That's been too long ago.

21 Q. It's been too long. Okay. Would any of those
22 bills refresh your memory? There's different
23 invoice numbers on those bills and there's dates
24 that it was paid, too. Would any of those dates
25 help you to refresh your memory?

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE NO. 2005-CP-37-788

TRI-COUNTY DEVELOPMENT,
INC., and MELINDA HOLBROOKS,
Plaintiffs,

VS.

CHRISTOPHER A. PIERCE,
Defendant.

and

CHRISTOPHER A. PIERCE,
Third-Party Plaintiff,

VS.

JEFF GRAY,
Third-Party Defendant.

ORIGINAL

DEPOSITION OF JEFFREY A. GRAY

DATE TAKEN: April 20, 2010

TIME BEGAN: 10:20 a.m.

TIME ENDED: 4:20 p.m.

LOCATION: Oconee County Courthouse
415 South Pine Street
Walhalla, South Carolina

REPORTED BY: Eileen Thompson, CCR
Gallagher Court Reporting
864-234-5744

1 account.

2 Q. There was work being paid at that time is what
3 you're telling me?

4 A. Absolutely.

5 Q. Was work being paid or was work charges being
6 incurred? In other words, were people doing work,
7 but you had not actually paid them up until I paid
8 you?

9 A. If you'll go back and look at the checking
10 account, you'll see. But as you'll see right here
11 --

12 Q. I don't see that. What I see -- let me ask you
13 these questions. At that time there were several
14 contractors working on the house, such as I
15 believe his name is Ira Webb. He did all the
16 clearing and excavation on the project, right?
17 Was he paid before I deposited that check to you?

18 A. Yes.

19 Q. He was?

20 A. Yes, sir.

21 Q. Is that in this record here?

22 A. Absolutely.

23 Q. Okay. Do you recall what time he was paid?

24 A. No.

25 Q. Okay. Were any other vendors paid besides

1 Mr. Webb?

2 A. Prior to that \$50,000 being paid to me?

3 Q. Right.

4 A. Absolutely, yes.

5 Q. Can you name them?

6 A. J & H Builders.

7 Q. Okay. Any others?

8 A. I don't recall. Whoever laid the block for your
9 basement, they were paid.

10 Q. Would that be -- is that AAA Masonry?

11 A. It says right here on number one under payment
12 schedule, "Upon completion of clearing the lot,
13 building the foundation concrete block wall and
14 framing the basement walls." I received a check
15 for \$50,000. I assume all those people were paid
16 prior to me getting the \$50,000 from you.

17 Q. You assume that?

18 A. Yes.

19 Q. Why would you assume that? Do you have a receipt
20 to prove that?

21 A. Yes.

22 Q. You do?

23 A. I'm sure I do.

24 Q. Okay. Let's take a look at that then.

25 MR. DUDLEY:

1 A. Never.

2 Q. Okay. Now, the last line, the last sentence in
3 that says, "The contractor shall comply with all
4 rules, regulations, laws, ordinances and orders of
5 any public authority bearing upon the performance
6 of the work related to this contract." Now, does
7 this mean that you would expect to follow the
8 building code regulations?

9 A. I did not prepare this document, so I don't know
10 what they're implying here.

11 Q. What I'm asking you is that rules and regulations
12 by a public authority, would building codes be one
13 of those authorities? They do regulate building
14 in this county, correct?

15 A. Yes.

16 Q. So you would have to comply with those rules and
17 you were following those rules during the
18 construction of this house?

19 A. If that's the way that paragraph or that sentence
20 is intended, yes.

21 Q. Okay. So you would expect to follow the rules
22 relating to all aspects of building code
23 regulations that were included in that document
24 that I provided to you earlier, the residential
25 building code rules?

1 A. I don't believe I have a copy of that.

2 Q. You don't have a copy?

3 A. I'm not a licensed builder. You would need to
4 refer to the contractor of record.

5 MR. PIERCE:

6 Well, let's enter this document. This is the
7 residential checklist for building in Oconee
8 County.

9 (Whereupon, the court reporter marked Defendant's
10 Exhibit Number 15 for identification.)

11 EXAMINATION RESUMED BY MR. PIERCE:

12 Q. And, again, I want you to take a look at this line
13 five, what that says there. I think we have been
14 through this, but I want you to take a look at it
15 again and I want to know if you felt obligated to
16 comply with that rule on site.

17 A. Yes.

18 Q. So you had removed the portable bathroom on site.
19 And then if you had removed it, you couldn't do
20 work, could you?

21 A. Yes.

22 Q. You could do work?

23 A. Yes.

24 Q. And why was that?

25 A. Because you had workable plumbing fixtures in the

1 home.

2 Q. We went through that already. The plumbing was
3 not workable. It was overpressured.

4 MR. DUDLEY:

5 That's your comments.

6 THE WITNESS:

7 In section 15, line item 5 it says, "Porta-John,
8 in parentheses, toilet facilities must be provided
9 for construction workers." It doesn't say it has
10 to be provided the whole time during the
11 construction process. It doesn't state in here
12 when I can remove it or not remove it, but it's to
13 my knowledge as a developer that the portable
14 bathroom can be removed once there's workable
15 plumbing fixtures in the home.

16 EXAMINATION RESUMED BY MR. PIERCE:

17 Q. But you say you're not a builder, but that's your
18 understanding?

19 A. That's my interpretation.

20 Q. You don't have an actual building license?

21 A. No.

22 Q. Have you ever consulted building codes about that
23 requirement?

24 A. No.

25 Q. Did you consult them prior to removing the

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE NO. 2005-CP-37-788

TRI-COUNTY DEVELOPMENT INC.,
and MELINDA HOLBROOKS,
Plaintiffs,

VS.

CHRISTOPHER A. PIERCE,
Defendant.

and

CHRISTOPHER A. PIERCE,
Third-Party Plaintiff,
VS.

JEFF GRAY,
Third-Party Defendant.

ORIGINAL

DEPOSITION OF JEFFREY ALAN GRAY
VOLUME 2

DATE TAKEN: May 3, 2011

TIME BEGAN: 10:32 a.m.

TIME ENDED: 1:11 p.m.

LOCATION: Pickens County Courthouse
214 East Main Street
Courtroom 4
Pickens, South Carolina

REPORTED BY: Eileen Thompson, CCR
Gallagher Court Reporting
864-234-5744

1 Q. No. The question was why did you not write to
2 anybody about this?

3 A. Why would I?

4 Q. Because you were concerned.

5 MR. DUDLEY:

6 Object to the form of the question.

7 THE WITNESS:

8 Your father insinuated that this was his project.
9 He was there at the contract signing, you were
10 not.

11 EXAMINATION RESUMED BY MR. PIERCE:

12 Q. Okay. So since I wasn't there and he was managing
13 it, you felt it was not --

14 A. He was not managing it, he was in charge of it.

15 Q. Okay. So you felt you didn't need to notify --

16 A. You didn't need to know anything.

17 Q. Okay. That's your position. Okay. Thank you.
18 What value did you offer with the work you
19 performed on this project? In other words --

20 MR. DUDLEY:

21 Object to the form of the question.

22 EXAMINATION RESUMED BY MR. PIERCE:

23 Q. -- what were your job tasks that you felt offered
24 value added to this project?

25 MR. DUDLEY:

1 Object to the form of the question. You need to
2 answer.

3 THE WITNESS:

4 My value was to line up subcontractors, and to pay
5 them and to oversee to make sure the work was
6 performed before they got paid.

7 EXAMINATION RESUMED BY MR. PIERCE:

8 Q. All work was done. Okay. I would like you to
9 turn to page 46 of the deposition right there.

10 A. (So complied with request of counsel.)

11 MR. DUDLEY:

12 Can you identify what that is?

13 MR. PIERCE:

14 It's the deposition of Jeff Gray as of the first
15 round.

16 MR. DUDLEY:

17 Can we get the date? Are you going to make this
18 as an exhibit?

19 THE WITNESS:

20 46?

21 MR. PIERCE:

22 No, I'm not going to make this an exhibit. There
23 is no need.

24 MR. DUDLEY:

25 It's the April 20th, 2010. You need to identify

HOME CONSTRUCTION CONTRACT

OWNER: Christopher A. Pierce
532 Galloping Ghost Road
Anderson, SC 29626
(864) 231 8272

CONTRACTOR: TRI-COUNTY DEVELOPMENT INC.
~~209 S. Summit Drive~~ 202 S. Summit Drive
Seneca, SC 29678
(864) 247 0605

LOT LOCATION: Parcel # 9, Lot A
Coneross Point
Seneca, SC 29678

A. GENERAL DESCRIPTION OF THE PROJECT

The Contractor to build and the lot owner to pay for the construction of a single family residence generally in accordance with the same quality standards as the speculation homes built by the contractor in the Winding Creek Subdivision in Seneca, SC (208 Star View Drive and 401 Misty View Court), as specifically modified and changed as stated herein.

B. TIME FOR CONSTRUCTION

The construction work to begin on Aug-15th + 1/- 2004 and to be completed by Aug-15 2004. The contractor agrees to a \$2500 per day penalty if not completed by the above due date. Time is of the essence of this contract.

C. CONSIDERATION

In consideration, the owner agrees to pay to the contractor \$1000.00 on the signing of this contract with a total balance due upon final completion (subject to amounts added or deleted for changes by written change order) of \$183,000.

D. CONTRACTOR RESPONSIBILITY

In consideration, the contractor agrees to build a family residence in accordance with the terms of this contract and in furtherance thereof to supervise and direct the work of all subcontractors and shall use his best skill and attention to detail and be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified herein, the contractor shall provide for and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other goods, facilities and services necessary for the proper execution and completion of the work. The contractor shall maintain order and discipline among employees and shall not assign anyone unfit for the task at hand. The contractor shall be responsible for and indemnify the owner against any acts and omissions of employees, subcontractors and their employees, or others performing the work under this contract and contracting with the contractor. The contractor warrants to the owner that all materials and equipment incorporated are new unless otherwise specified herein and that all work will be of good quality and free of defects. The contractor shall pay all sales, use and other taxes related to the work and shall secure and pay for all building permits and other permits, fees for water meter, electrical line hook up, telephone line, inspections, and licenses necessary for the completion of the work unless otherwise specified herein. The contractor shall comply with all rules, regulations, laws, ordinances, and orders of any public authority bearing upon the performance of the work relating to this contract.

E. DEFINITION OF TERMS

As used herein, the term "plan" shall refer to house plans made available to the contractor by the owner and prepared by Breland and Farmer Designers, Inc., numbered EE - 1710. Note well, that the house to be built is to be a mirror image of the plan as drawn.

F. DETAILED SPECIFICATIONS

Basement

12 inch wide concrete block walls with sufficient blocks to obtain a 9 foot high basement ceiling. Four inches of gravel under floor concrete slab with 6 mil polyethylene sheeting used as vapor barrier and termite shield. Framed walls to be framed using SPF, #2 BTR, 2" x 6" studs, 16" on center with 7/16 OSB sheathing and vapor barrier. One 3 foot wide, 9 light, metal door, one double wide window unit, and one triple wide window unit to be installed in the back (framed) wall to match the windows and door on the back wall of the upper level per the plan. Interior walls of the basement will be constructed with SPF, #2 BTR, 2" x 4" studs only as needed for support of the main level floor. Circuit breaker panel, electric water heater, and HVAC installed in basement. Plumbing roughed in for 3 piece bathroom. Electrical wiring will be installed as needed to pass the code. No separate heat pump to be installed for the basement. All exposed cement block outside walls to be covered with stucco. All exposed framed outside walls to be covered with vinyl siding.

Main level

Flooring to be 2 inch trusses with 3/4" tongue and groove plywood. Exterior walls on upper level to be framed using SPF, #2, BTR, 2" x 4" studs 16" on center with 7/16 OSB sheathing and vapor barrier. Roof system trusses to be 24" on center with 1/2" OSB, 30 lb felt, and 30 year architectural roof shingles. 50 Gallon electric hot water heater. Georgia Pacific vinyl siding except stone on front wall of master bedroom. Insulation for roof - R30 fiberglass; floor - R19 fiberglass; outer wall and all interior walls - R13. Interior doors - 6 panel Masonite with 2 1/4" door and window trim (moulding). All windows to be picture framed with 3 1/4" speed base.

Lot Clearing, Grading, and Septic tank and drain field Installation

Lot clearing and removal of debris, installation of septic tank in accordance with Oconee county permit, water line, telephone line, and electrical lines to house. Final smooth grading with no seeding or landscaping.

Allowances for cost of materials

Plumbing fixtures	\$2,000.00
Electrical fixtures	2,000.00
Cabinets (kitchen and bath) and counter tops	6,000.00
Flooring (carpets, vinyl and ceramic tile)	6,000.00
Stone natural or cultured (fireplace and partial front of house)	2,500.00

? allowances may
be used? invest
program?

Concrete Driveway

Concrete Driveway over gravel base
(50 feet long x 12 feet wide
for 25 feet then fan to 14 feet wide to garage.

POSSIBLE UPGRADE

Concrete Driveway 70 to 90 feet long x 20 feet wide over gravel base
Owner to pay required additional amount over contract price

Windows

Number, position, and approximate width per plan. Height on upper level to accommodate (lower) gable roof. Double hung, white, double glass, insulated, all vinyl windows throughout. Basement windows and door to match those on rear wall of upper level.

Floor Covering

Vinyl floor covering in Kitchen, Eating Area, and Utility Room
Carpeting in Dining Room, Living Room, all Bed Rooms and Bed Room Closets
Ceramic Tile 5 feet x 13 feet front interior entrance and 6 feet x 14 feet front, outside porch

POSSIBLE UPGRADE

Ceramic floor tile instead of Vinyl floor coverings
Owner to pay required additional amount over contract price

Electrical

220 volt, circuit breaker electrical panel with space for expansion to accomodate basement wiring. Electrical panel to be installed in basement. 50 Gallon electric water heater wired to electrical water heater timer. HVAC to be installed with water heater in basement. Ceiling fans and electrical outlets per plan.

POSSIBLE UPGRADE

Electrical panel of rating sufficient to avoid dimming of lights upon HVAC start up.
Owner to pay required additional amount over contract price

Plumbing

All supply pipes to be 3/4" copper; all waste pipes to be PVC.

Attic

Pull down stairs to access attic over garage and to access attic over main level per plan.

TV and Telephone outlets

TV and telephone outlets in living room per plan and in all bedrooms. Note: Use "RG 6/U" TV lead in cable to allow Satellite TV reception. TV antenna to be located at roof location of chimney.

Stairway to basement

Per plan

Deck and rear patio

Wood deck (no external stairway to ground) and concrete slab patio per plan.

Bathrooms

Each bathroom to have painted or stained (at owner's option) wood, wall mounted, medicine cabinets, wall mirrors, and metal framed, clear glass shower door on polyester plastic shower enclosure. Centrally located skylight and whirlpool tub in master bath. Polyester plastic, tub surround bathtub with shower head, clear glass door and clear, fixed transom window in 2nd bath. Counter tops - cultured marble with integral basins. Toilets - siphon jet with elongated commodes.

Kitchen

Revise arrangement of units per Exhibit B

Integral oven and range to be self-cleaning, smooth top unit. Custom cabinets - stained finish. Double stainless steel 8 inch deep sink with Insinkerator disposal. Counter tops - formica. Dishwasher. Built in microwave unit with ventless fan and light above range. Ice maker hook up at refrigerator location.

Utility room

220 outlet and outside vented metal vent tubing for dryer. Set tub per plan.

Air conditioning and heating

TRANE Heat pump, 3 ton, 12 SEER rating.

POSSIBLE UPGRADE

Heat pump 3 1/2 ton, 12 SEER, 1 zone with basement ducting, or

Heat pump 3 1/2 ton, 12 SEER, 2 zone with basement ducting, or

Heat pump 2 1/2 ton, 12 SEER and heat pump 1 1/2 ton, 12 SEER (2 zone) with basement ducting

Owner to pay required additional amount over contract price

Exterior

Vinyl Siding with stone on front of Master Bed Room. Chimney - vinyl siding.

VIII

Front porch

Dimensions 6 feet x 14 feet, ceramic tile flooring, 4 columns only with brick steps on front of porch only (not on sides of porch).

Roof

Gable roof (not Mansard per plan) with 9 foot ceilings on both levels except cathedral ceiling in living room, dining room, and kitchen and tray ceiling in master bedroom. 4 inch seamless gutters with 3" x 4" aluminum downspouts. Roof over master bedroom and type window per plan.

Deck and patio

Treated Wood deck - partially covered by extension of gable roof.

Patio - concrete slab

G. PAYMENT SCHEDULE

Payments to be made as construction progresses in accordance with the following schedule:

1. Upon completion of clearing the lot, building the foundation concrete block wall and framing the basement walls: \$50,000.
2. Upon completion of house to the "dry-in" stage including exterior sheathing on framing with windows and doors set and black paper on the roof: \$50,000.

IX

3. Upon completion of mechanical work and installation of HVAC, electrical wiring, plumbing and rough-in and pouring of garage floor: \$50,000.

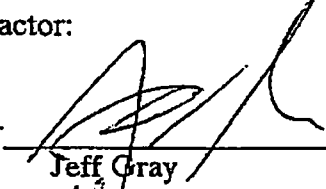
4. Upon completion of installation of cabinets, bathroom mirrors, counter tops, carpeting, vinyl, and ceramic tile, finish moulding around doors and windows, painting, installation of all electrical and plumbing fixtures and pouring the driveway: \$30,000.

5. Upon final inspection when building code approval certificate is obtained and after all items are completed to the owner's satisfaction: \$3,000.

TOTAL CONTRACT PRICE: \$184,000

Developer/Contractor:

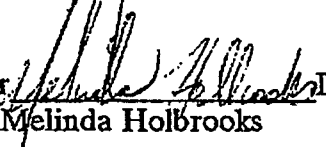
Developer


Jeff Gray

Date

7-24-2004

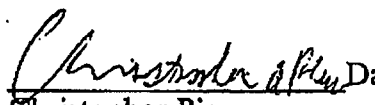
Contractor


Melinda Holbrooks

Date

7-24-04

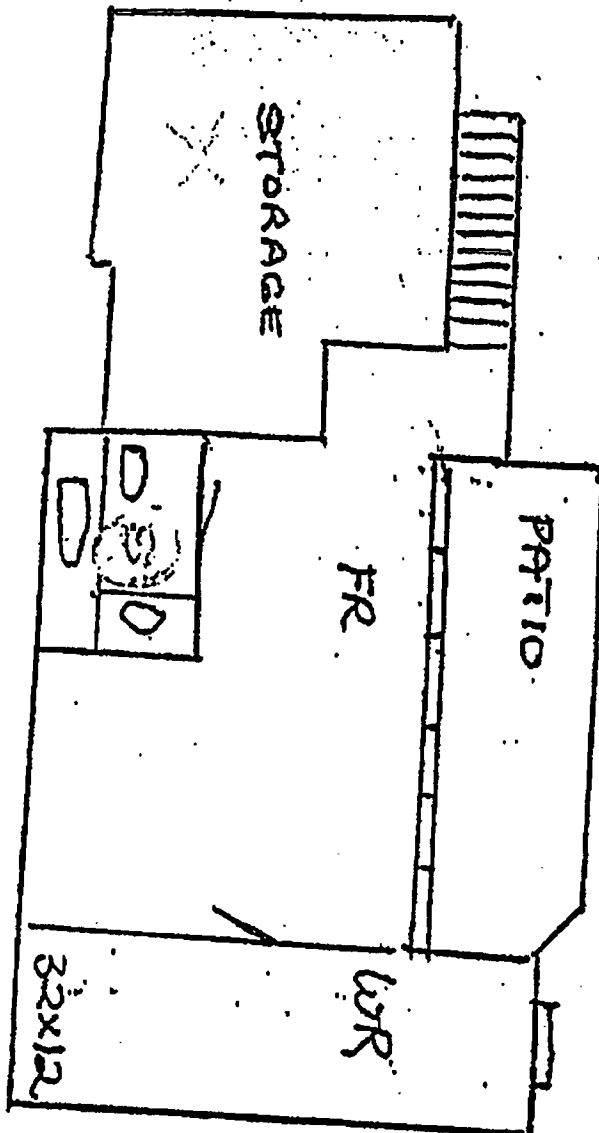
Owner:


Christopher Pierce

Date

7-24-2004

X



1792

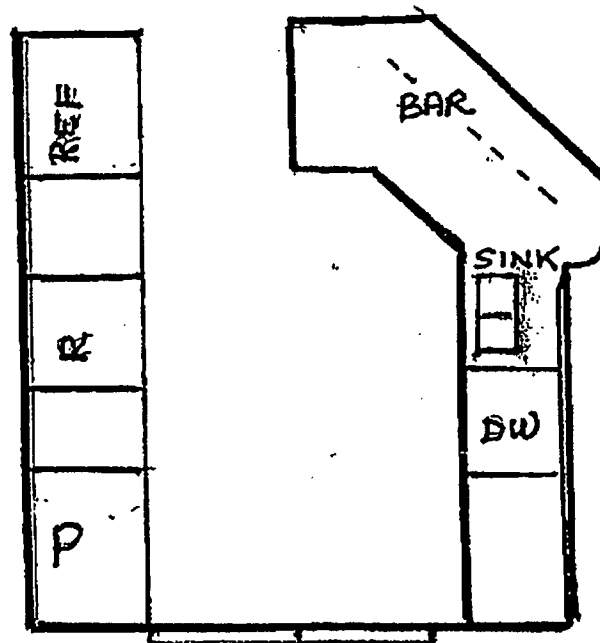
SQ. FT.

LOWER LEVEL

EXHIBIT A

KITCHEN

12x13



R- RANGE
P- PANTRY

Exhibit B

XII

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

2005 SEP 26 P 4:23

Recorded this 26 day of
Sept 2005
Vol. #4 Pg. 78 and Certified
Register of Deeds, Oconee County**NOTICE AND CERTIFICATE OF MECHANICS LIEN**

TO: CHRISTOPHER A. PIERCE ✓

NOTICE IS HEREBY GIVEN, that TRI-COUNTY DEVELOPMENT, INC. AND MELINDA HOLBROOKS are due the sum of Thirty four thousand and 00/100 (\$34,000) Dollars less adjustments of approximately four thousand dollars from CHRISTOPHER A. PIERCE, a statement of a just and true account of said indebtedness, with all just credits given, being attached hereto and made a part hereof, together with interest thereon from the 11th day of July, 2005.

That the said debt is due the undersigned for labor performed or furnished, and/or for materials furnished and actually used in the erection, alteration or repair of buildings or structures situated on, or in otherwise improving, the real property hereinafter described, by virtue of an agreement with and/or by the consent of Christopher A. Pierce, the owner(s) thereof. That, as shown by the attached statement, the undersigned labored on, or have furnished labor and materials for, such buildings, structures, or improvements, within ninety (90) days of the date hereof.

That by virtue thereof, by the service and filing of this Notice and Certificate, and pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and costs of enforcing said lien upon the buildings or structures hereinabove mentioned, and upon the following described real estate:

ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Oconee, and being known and

designated as Lot A, containing 1.56 acres, on a plat prepared by Golden Corner Surveying, Inc., dated 7/27/01, and recorded in Plat Book P-62 at page 200, records of Oconee County of South Carolina.

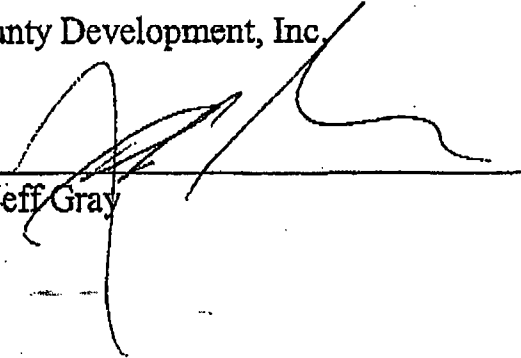
This being the identical property conveyed unto Christopher A. Pierce by deed of Andrew and Edith Pierce, Trustees dated 25 August, 2004, and recorded 8/25/04, in Deed Book 1366, Page 213, records of Oconee County, South Carolina.

Statement: Work commenced on or about July 24, 2004. The last work was done on or after June 28, 2005. Christopher A. Pierce stopped the contractors and sub contractors from going on or about the premises on or around July 24, 2005 and indicated he would finish what was left to be done. The house was substantially completed by June 28, 2005, and Mr. Pierce chose to breach the contract, and he failed to pay the \$33,000.00 due under the contract for construction services rendered.

The unpaid part of the contract included \$30,000.00 due and owing and \$3,000.00 to be paid at the end of the agreement. Allowances of \$3,000.00 leave the balance due at \$30,000.00 under the contract for a substantially completed dwelling.

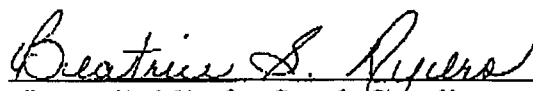
~~STATEMENT~~ THE FOREGOING IS TRUE OF MY OWN KNOWLEDGE; THE
~~ATTACHED~~ **Statement** CONSTITUTES A TRUE AND CORRECT ACCOUNTING
OF THE DEBT; AND NOTHING HAS BEEN PAID THEREON EXCEPT
AS HEREIN SET FORTH:

Tri County Development, Inc.

BY: 

Jeff Gray

SWORN TO BEFORE ME this
26th day of September 2005.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 7/15/08

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF
COMMON PLEAS

COPY

Tri-County Development, Inc. and
Melinda Holbrooks,

Recorded this 26 day of Sept, 2005
Vol. I Page 300 and certified
Sallie C. Smith, C.C.C.P.G.S.
Oconee County, S.C.

Plaintiffs,

-VS-

LIS PENDENS

Christopher A. Pierce,

Defendant.

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT
2005 SEP 26 P 3 56

NOTICE IS HEREBY GIVEN that an action is pending by the
Plaintiffs, against the Defendant above named for the collection of funds
due for construction.

The description of the premises is as follows:

All that certain parcel of land known as Lot A containing 1.56 acres
on a plat by Gary L. Eades, dated July 27, 2001, shown in Plat Book P-62,
page 200, records of Oconee County, South Carolina.

Whitney Law Firm

Robert K. Whitney

Seneca, South Carolina

September 26, 2005

Robert K. Whitney
Attorney for the Plaintiff
1743 Blue Ridge Boulevard
P.O. Box 14
Seneca, SC 29679-0014
(864) 882-1414



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
 Judge

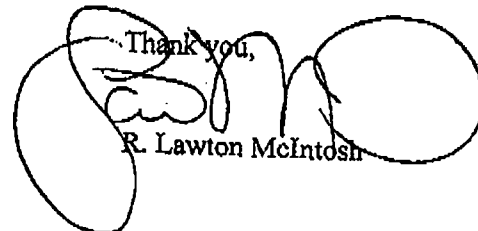
Post Office Box 8002
 100 South Main Street
 Anderson, SC 29622-8002
 Phone: (864) 260-4059
 Fax: (864) 224-6320
 lmcintosh@sccourts.org

December 21, 2010

Gentleman,

There were four motions before me at the hearing on November 1, 2010. The Defendant had three motions: 1) A Motion for Relief from Judgment, 2) A Motion to Dissolve Mechanic's Lien, and 3) A Motion for Summary Judgment. The Defendant's Motion for Relief from Judgment was denied at the hearing. The Defendant asserts three grounds for his Motion to Dissolve Mechanic's Lien. Those grounds were 1) that the lien was untimely, 2) the Plaintiff failed to provide an accounting, and 3) damages were in excess of work performed. I denied Defendant's motion at the hearing for failure to provide an accounting and took the other grounds under advisement. I am denying the Defendant's motion based on timeliness and that damages exceeded work performed. Lastly, the Defendant asserts three grounds for his Summary Judgment Motion. Those grounds are 1) Plaintiff[s] were not properly licensed, 2) that Plaintiff Holbrook was paid in full, and 3) the amount of damages. I am denying Defendant's Motion for Summary Judgment on all three grounds.

The Plaintiff had one motion, a Motion for Summary Judgment. I am granting the Plaintiff's motion as to Defendant's liability only, with the following caveat: the question whether Defendant Holbrook and Tri-County Development are in a joint venture with regard to this project and whether Defendant Holbrook was properly licensed with the LLC may be properly challenged at trial as well as to the monies owed to the Plaintiff. Therefore, the Plaintiff will have to establish the amount of his damages at trial and Defendant shall be allowed to establish the right to a set-off, if any, to challenge the existence of a joint venture and licensure. I ask that Mr. Dudley draft an Order with regard to all motions and to provide a copy, via US Mail to Mr. Pierce prior to sending the proposed Order to my law clerk and to me by e-mail.

Thank you,

 R. Lawton McIntosh

HOME CONSTRUCTION CONTRACT

OWNER: Christopher A. Pierce
532 Galloping Ghost Road
Anderson, SC 29626
(864) 231 8272

CONTRACTOR: TRI-COUNTY DEVELOPMENT INC.
~~209 S. Summit Drive~~ 202 S. Summit Drive
Seneca, SC 29678
(864) 247 0605 72

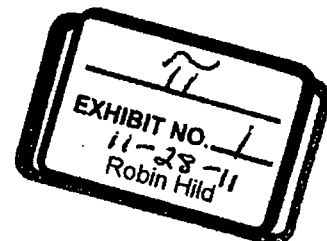
LOT LOCATION: Parcel # 9, Lot A
Coneross Point
Seneca, SC 29678

A. GENERAL DESCRIPTION OF THE PROJECT

The Contractor to build and the lot owner to pay for the construction of a single family residence generally in accordance with the same quality standards as the speculation homes built by the contractor in the Winding Creek Subdivision in Seneca, SC (208 Star View Drive and 401 Misty View Court), as specifically modified and changed as stated herein.

B. TIME FOR CONSTRUCTION

The construction work to begin on Aug-15th + / - 2004 and to be completed by Aug-15 2004. The contractor agrees to a \$2500 per day penalty if not completed by the above due date. Time is of the essence of this contract.



C. CONSIDERATION

In consideration, the owner agrees to pay to the contractor \$1000.00 on the signing of this contract with a total balance due upon final completion (subject to amounts added or deleted for changes by written change order) of \$183,000.

D. CONTRACTOR RESPONSIBILITY

In consideration, the contractor agrees to build a family residence in accordance with the terms of this contract and in furtherance thereof to supervise and direct the work of all subcontractors and shall use his best skill and attention to detail and be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified herein, the contractor shall provide for and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other goods, facilities and services necessary for the proper execution and completion of the work. The contractor shall maintain order and discipline among employees and shall not assign anyone unfit for the task at hand. The contractor shall be responsible for and indemnify the owner against any acts and omissions of employees, subcontractors and their employees, or others performing the work under this contract and contracting with the contractor. The contractor warrants to the owner that all materials and equipment incorporated are new unless otherwise specified herein and that all work will be of good quality and free of defects. The contractor shall pay all sales, use and other taxes related to the work and shall secure and pay for all building permits and other permits, fees for water meter, electrical line hook up, telephone line, inspections, and licenses necessary for the completion of the work unless otherwise specified herein. The contractor shall comply with all rules, regulations, laws, ordinances, and orders of any public authority bearing upon the performance of the work relating to this contract.

E. DEFINITION OF TERMS

As used herein, the term "plan" shall refer to house plans made available to the contractor by the owner and prepared by Breland and Farmer Designers, Inc., numbered EE - 1710. Note well, that the house to be built is to be a mirror image of the plan as drawn.

F. DETAILED SPECIFICATIONS

Basement

12 inch wide concrete block walls with sufficient blocks to obtain a 9 foot high basement ceiling. Four inches of gravel under floor concrete slab with 6 mil polyethylene sheeting used as vapor barrier and termite shield. Framed walls to be framed using SPF, #2 BTR, 2" x 6" studs, 16" on center with 7/16 OSB sheathing and vapor barrier. One 3 foot wide, 9 light, metal door, one double wide window unit, and one triple wide window unit to be installed in the back (framed) wall to match the windows and door on the back wall of the upper level per the plan. Interior walls of the basement will be constructed with SPF, #2 BTR, 2" x 4" studs only as needed for support of the main level floor. Circuit breaker panel, electric water heater, and HVAC installed in basement. Plumbing roughed in for 3 piece bathroom. Electrical wiring will be installed as needed to pass the code. No separate heat pump to be installed for the basement. All exposed cement block outside walls to be covered with stucco. All exposed framed outside walls to be covered with vinyl siding.

Main level

Flooring to be 2 inch trusses with 3/4" tongue and groove plywood. Exterior walls on upper level to be framed using SPF, #2, BTR, 2" x 4" studs 16" on center with 7/16 OSB sheathing and vapor barrier. Roof system trusses to be 24" on center with 1/2" OSB, 30 lb felt, and 30 year architectural roof shingles. 50 Gallon electric hot water heater. Georgia Pacific vinyl siding except stone on front wall of master bedroom. Insulation for roof - R30 fiberglass; floor - R19 fiberglass; outer wall and all interior walls - R13. Interior doors - 6 panel Masonite with 2 1/4" door and window trim (moulding). All windows to be picture framed with 3 1/4" speed base.

Lot Clearing, Grading, and Septic tank and drain field Installation

Lot clearing and removal of debris, installation of septic tank in accordance with Oconee county permit, water line, telephone line, and electrical lines to house. Final smooth grading with no seeding or landscaping.

Allowances for cost of materials

Plumbing fixtures	\$2,000.00
Electrical fixtures	2,000.00
Cabinets (kitchen and bath) and counter tops	6,000.00
Flooring (carpets, vinyl and ceramic tile)	6,000.00
Stone natural or cultured (fireplace and partial front of house)	2,500.00

*allowance in
used? invest
amount?*

Concrete Driveway

Concrete Driveway over gravel base
(50 feet long x 12 feet wide
for 25 feet then fan to 14 feet wide to garage.

POSSIBLE UPGRADE

Concrete Driveway 70 to 90 feet long x 20 feet wide over gravel base
Owner to pay required additional amount over contract price

Windows

Number, position, and approximate width per plan. Height on upper level to accommodate (lower) gable roof. Double hung, white, double glass, insulated, all vinyl windows throughout. Basement windows and door to match those on rear wall of upper level.

POSSIBLE UPGRADE

Vinyl casement windows throughout instead of double hung vinyl windows
Owner to pay required additional amount over contract price

Fireplace

48 inch wide insert with gas log, natural or cultured stone floor to ceiling facing with mantle

POSSIBLE UPGRADE

Wood burning fireplace, 60 inch insert, chimney at roof to be covered with vinyl siding
Owner to pay required additional amount over contract price

Interior doors

6 panel Masonite. Front double doors to be selected by owner and stained, not painted as are other interior doors, except rear doors on both upper and basement levels and garage side door to be 9 light metal doors. Double garage door with electric opener.

Interior and exterior door hardware

Polished brass lever type except exterior front door to be latch type.

Floor Covering

Vinyl floor covering in Kitchen, Eating Area, and Utility Room

Carpeting in Dining Room, Living Room, all Bed Rooms and Bed Room Closets

Ceramic Tile 5 feet x 13 feet front interior entrance and 6 feet x 14 feet front, outside porch

POSSIBLE UPGRADE

Ceramic floor tile instead of Vinyl floor coverings

Owner to pay required additional amount over contract price

Electrical

220 volt, circuit breaker electrical panel with space for expansion to accomodate basement wiring. Electrical panel to be installed in basement. 50 Gallon electric water heater wired to electrical water heater timer. HVAC to be installed with water heater in basement. Ceiling fans and electrical outlets per plan.

POSSIBLE UPGRADE

Electrical panel of rating sufficient to avoid dimming of lights upon HVAC start up.

Owner to pay required additional amount over contract price

Plumbing

All supply pipes to be 3/4" copper; all waste pipes to be PVC.

Attic

Pull down stairs to access attic over garage and to access attic over main level per plan.

TV and Telephone outlets

TV and telephone outlets in living room per plan and in all bedrooms. Note: Use "RG 6/U" TV lead in cable to allow Satellite TV reception. TV antenna to be located at roof location of chimney.

Stairway to basement

Per plan

Deck and rear patio

Wood deck (no external stairway to ground) and concrete slab patio per plan.

Bathrooms

Each bathroom to have painted or stained (at owner's option) wood, wall mounted, medicine cabinets, wall mirrors, and metal framed, clear glass shower door on polyester plastic shower enclosure. Centrally located skylight and whirlpool tub in master bath. Polyester plastic, tub surround bathtub with shower head, clear glass door and clear, fixed transom window in 2nd bath. Counter tops - cultured marble with integral basins. Toilets - siphon jet with elongated commodes.

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220 outlet and outside vented metal vent tubing for dryer. Set tub per plan.

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TRANE Heat pump, 3 ton, 12 SEER rating.

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Exterior

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Roof

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Treated Wood deck - partially covered by extension of gable roof.

Patio - concrete slab

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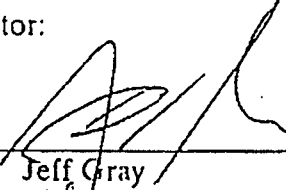
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5. Upon final inspection when building code approval certificate is obtained and after all items are completed to the owner's satisfaction: \$3,000.

TOTAL CONTRACT PRICE: \$184,000

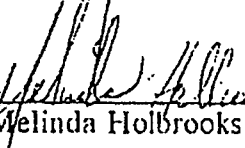
Developer/Contractor:

Developer


Jeff Gray

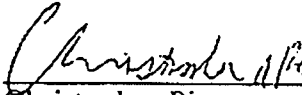
Date 7-24-2004

Contractor


Melinda Holbrooks

Date 7-24-04

Owner:


Christopher Pierce

Date 7-24-2004

X

BUILDING PERMITS

PERMIT #: 04-01657

MASTER PERMIT #: 04-01657

DATE ISSUED 10/21/04

PROJECT #: 04- BKJ

REF #:

OCONEE COUNTY

PROJECT ADDRESS: WHITE OWL LN 605 SENECA SC 29678

SUBDIVISION: CONERROSS POINT

LOT #:

BLK #:

OWNER NAME: PIERCE ANDREW & EDITH

PHONE: (864)-287-0603

ADDRESS: 161 MCCracken DR

CITY: SENECA

STATE: SC ZIP: 29678

CONTRACTOR: HOLBROOKS MELINDA

PHONE: (864)-972-3784

ADDRESS: 716 HOLBROOKS DR

CITY: SENECA

STATE: SC ZIP: 29678

ENGINEER:

DESIGNER:

PROP. USE: 161 MCCracken DR SENECA SC 29678

WORK: NEW HOME CONSTRUCTION

DESC:

VALUATION: 179,180.00

FEES DUE:

700.00

FEES PAID:

700.00

SPECIAL CONDITIONS:

WORK CLASS: SFH

SQ. FTG: 4,200

FIRE ZONE: Y

OCCUP TYPE: R3

USE ZONE:

CONST TYPE:

APPLICATION ACCEPTED BY

PLANS CHECKED BY

APPROVED FOR ISSUANCE BY

***** NOTICE *****

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED, OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

(SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT)

DATE

(APPROVED BY)

DATE

EXHIBIT NO. 2

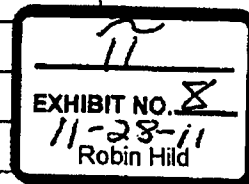
11-25-11
Robin Hild

TCD 000481

~~2005-08-08~~
 OK at Final. *Need Nailboards on both sides of top Plate ^{above} Panel Box in BSMT.
 *Needs Flashing or Air gap B/W Untreated wood + Concrete (BSMT)

INSPECTION SCHEDULE- PERMIT# 0401657

Initiated By	Inspection Type	Pass- Y or N	Date	Insp. Init.	Re-Insp. Fee- Y or N
	FOOTING	yes	10-22-04	SDH	NO
	SLAB	yes	11/15/04	SDH	NO
	PLUU	yes	11/15/04	SDH	NO
	ELEU				
	MECU				
	GAS/DUCT U.G.	Yes	12-24-05	SAM	NO
	FRAMING		2-24-05		
	ELER				
	PLUR				
	MECR	yes	↓		
	BUILDING FINAL				
	ELECT. FINAL				
	PLUMBING FINAL				
	GAS FINAL				
	HVAC FINAL				
contractor	MISC. SWO		7/19/05	FCC	YES
FIC	pull meter furniture + work bench, done by owner w/o permit + own SWO FIC				
FIC	VOID	Contractor let go by owner			
		New permit # 05-01518			
					8/25/05
	MOBILE HOME				FCC
	INITIAL INSP.				
	FINAL INSP.				



Hwy 24, Lt on Coneross Point Dr. Rt on Loblolly Pine Dr. Will be 1st Rt on Lt.

ADDRESS: 605 White Owl Ln Sen.

TCD 000475

Prev Permit

0401657

INSPECTION SCHEDULE- PERMIT# 0501518

Initiated By	Inspection Type	Pass- Y or N	Date	Insp. Init.	Re-Insp. Fee- Y or N	Date Paid
	FOOTING					
	FOUNDATION					
	SLAB					
	PLUU					
	ELEU					
	FRAMING					
	ELER					
	PLUR					
	MECR					
	GASR					
	BUILDING FINAL	yes	9-13-05	SDH	no	
	ELECT. FINAL					
	PLUMBING FINAL					
	GAS FINAL					
	HVAC FINAL					
	MISC.					
	MOBILE HOME					
	INITIAL INSP.					
	FINAL INSP.					

EXHIBIT NO. 9
11-28-11
Robin Hild



South Carolina Residential Builders Commission

Koger Office Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4696
FAX: (803) 896-4656

May 11, 1999

MELINDA HOLBROOKS
716 HOLBROOKS DR
SENECA SC 29678

Dear MS. HOLBROOKS:

Congratulations!!!! You have passed the South Carolina Residential Home Builders exam. Your scores were as follows:

Book Portion: 077

Material Take-Off Portion: 071

Upon receipt of both items listed below, your license will be issued:

1. Certified Check, Cashier's Check, or Money Order in the amount of \$100.00
2. An Original Surety Bond, signed, with Power of Attorney attached in the amount of \$15,000.00.

You have three (3) years in which to activate your license. If you do not obtain a license within the period of time, the files will be destroyed.

If I can be of any further assistance, you may call me at 803-896-4617.

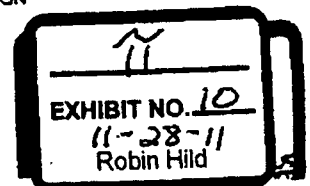
Sincerely,

Wanda H. Brasington
Wanda H Brasington

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

Jim Hodges
Governor

Rita M. McKinney
Director



South Carolina Residential Builders Commission

License Application

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING, AND REGULATION
P. O. Box 11329, Columbia, SC 29211-1
Koger Office Park, Kingstree Bldg., 110 Centerview Drive

BB# 17070

Credit
Acceptable

T 4/14/99
South Carolina
Dept. of Labor, LICR

For Office Use Only

Fees

EXAMINATION FEE	\$100.00
RETAKES EXAM FEE	\$100.00
HOME BUILDERS LICENSE	\$100.00

RECEIVED

APR 15 1999

RESIDENTIAL
BUILDERS COMMISSION

DATE RECEIVED	_____
CONTROL #	_____
AMOUNTS	_____

DATE: 3-29-99

CC
4-14-99
ND ✓

1. APPLICANT INFORMATION (To be answered by the applicant).

Applicant: MELINDA HOLBROOKS Social Security #: [REDACTED]
Exact Name to be Listed on License

Business Name: Holbrooks Construction Business Telephone # (864) 230-6877

Business Address: 716 Holbrooks de Seneca SC 29678 OCONEE
Street City State Zip County

Mailing Address: Same P.O. Box City State Zip County

Home Telephone # (864) 972-3784 Race White Sex F Date of Birth 09-08-70

2. WORK EXPERIENCE INFORMATION (Must show a minimum of one year for a licensed builder).

EMPLOYER NAME	LICENSE # OF EMPLOYER	DATES OF EMPLOYMENT	POSITION TITLE	TYPE OF WORK PERFORMED
Pinion Builders	02377	11-96 to 12-98		

(Continued on back)



South Carolina Residential Builders Commission

Koger Office Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(SC) 596-4696
FAX: (SC) 596-4636

TO : All applicants applying to take the Residential Builders Examination.

FROM: John T. Watkins

RE : Amendment to State Residential Builders Law in regard to examination requirements:

There has been an amendment to the law in regard to the experience a person must have before taking the examination for a Residential Builders License. SECTION 40-59-80 states in part:

A prerequisite for the taking of an examination for a residential builders license is a minimum of one year of actual experience under the supervision of a licensed residential builder who is engaged in residential building construction involving the trades or crafts which the license is desired.

AFFIDAVIT

I, Charles M. Dixon, license no. 012377 do
solemnly attest and affirm that Melinda Hollenbeck
applicant, meets the above stated requirement of Section 40-59-80.
Sworn to before me this 29 Charles M. Dixon
day of March, 1999. Builders Signature

Rubert Rochest
Notary Public

Melinda A. Hollenbeck
Applicants Signature

My Commission Expires: 10-23-99

Residential Builders

Tuesday, January 17, 2006

[Licensee Lookup Home](#)

Last Name:

First name:

License number:

City:

Company name:

License Type:

Your search returned: 1 record(s).

CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

Lic #	Last	First	Middle	Company	City	State	Type
<u>12377</u>	PINION	CHARLES		PINION BUILDERS	SENECA	SC	Home Builders

Search Tip:

For more results, only type in the first few characters of your search.

1/17/06 9:14 AM

Home Builders

<https://verify.infonine.com/License.aspx?license=12377>

CHARLES PINION
PINION BUILDERS
319 PETTY ROAD
SENECA, SC 29672

License number: 12377
License type: Home Builders
Expiration: 06/30/2008

1/17/06 9:15

SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION

Department of Labor, Licensing & Regulation

Post Office Box 11329, Columbia, SC 29211-1329

Koger Office Park, Kingstree Building, 110 Centerview Drive

Phone: (803) 896-4696 - Fax: (803) 896-4656

RECEIVED

JUN 18 2000

SC DEPT OF LABOR LICENSING AND
REGULATION
RESIDENTIAL BUILDERS COMMISSION

RESIDENTIAL BUILDER RENEWAL APPLICATION

2000-2001

Name MELINDA HOLBROOKS 017070
 Business Name HOLBROOKS CONSTRUCTION
 Address 716 HOLBROOKS DRIVE
 SENECA SC 29678

Renewal Fee - 100.00
 Late Renewal Fee - 150.00
 (After July 31, 1999)
 Lapse License Fee - 250.00
 (Lapse for one year or more)

1a. Indicate any change of address or company name below (Please Print)

Business Name: HOLBROOKS CONSTRUCTION

Address: 716 HOLBROOKS DRIVE-SENECA SC 29678
 P O Box/Street City State Zip
 County: 37 Phone: (803) 230-6877 Fax: ()
 Number

1b. Please complete the information requested below (Please Print)

Home Address: 716 Holbrooks Drive Seneca SC 29678
 P O Box/Street City State Zip
 Home Phone: (803) 972-3784 E-Mail Address: meholbrooks@holbrooksconstruction.com

2. Answer the following questions. (If your answer to any of these questions is yes, please explain on a separate sheet)

- A. Since your last application for renewal of your license, have you been denied a license as a home builder, specialty contractor or general contractor in this state or any other state? Yes ☒ No, If yes, which state _____
- B. Have you been arrested, indicted, convicted, pled guilty or nolo contendere for violation of any federal, state, or local law (other than a minor traffic violation)? Yes ☒ No
- C. Have there been any judgments, liens or claims filed against you or any businesses with which you have been associated? Yes ☒ No
- D. Are you currently delinquent with child support payments? Yes ☒ No
- E. Is any complaint pending, under investigation, or has any action been taken against your license in any jurisdiction? Yes ☒ No

3. Signatures

I certify that all statements contained herein are true and correct to the best of my knowledge. I further understand that false or incorrect information provided by me may result in the cancellation of any license issued pursuant to this application and the institution of appropriate civil and criminal proceedings.

Melinda Holbrooks Owner 6-8-00
 Signature of Applicant Title Date

Sworn and Subscribed before me this 26 day of June, 2000 year.
Notary Public

MY COMMISSION EXPIRES APRIL 26, 2003
 My Commission Expires

SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION

Department of Labor, Licensing & Regulation
Post Office Box 11329, Columbia, SC 29211-1329
Phone: (803) 896-4696 - Fax: (803) 896-4404

**RESIDENTIAL BUILDER RENEWAL APPLICATION
2001-2002**

Name	MELINDA HOLBROOKS 017070	Renewal Fee -	110.00
Business Name	HOLBROOKS CONSTRUCTION	Late Renewal Fee -	160.00
Address	716 HOLBROOKS DRIVE	(After July 31, 2001)	
	SENECA SC 29678	Lapse License Fee -	260.00
		(Lapse for one year or more)	

1. Indicate any company name or address change below (Please Print) SS#

Business Name: _____

Address: _____

County: _____ Phone: _____ Fax: _____

2. Answer the following questions. (If your answer to any of these questions is yes, please explain on a separate sheet)

- A. Since your last application for renewal of your license, have you been denied a license as a home builder, specialty contractor or general contractor in this state or any other state? ☐ Yes ☒ No
If yes, which state _____
- B. Since your last renewal have you been arrested, indicted, convicted, pled guilty or not contended for violation of any federal, state, or local law (other than a minor traffic violation)? ☐ Yes ☒ No
- C. Since your last renewal has there been any judgments, liens or claims filed against you or any businesses with which you have been associated? ☐ Yes ☒ No
- D. Are you currently delinquent with child support payments? ☐ Yes ☒ No
- E. Is any complaint pending, under investigation, or has any action been taken against your license in any jurisdiction? ☐ Yes ☒ No

3. Signatures

I certify that all statements contained herein are true and correct to the best of my knowledge. If I provide false or incorrect information provided by me may result in the cancellation of any license issued pursuant to this application and the institution of appropriate civil and criminal proceedings.

Melinda Holbrooks Owner 7-17-01
Signature of Applicant Title Date

Sworn and Subscribed before me this 17th day of July, 2001 year

Notary Public: [Signature]

JUL 25 2001

SC DEPT OF LABOR LICENSING AND
REGULATION
RESIDENTIAL BUILDERS COMMISSION
3-16-2010

My Commission Expires

NOTE: DO NOT DETACH AT PERM. PLEASE RETURN BOTH HALVES OF FORM.

SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION
Department of Labor, Licensing & Regulation
Post Office Box 11329, Columbia, SC 29211-1329
Phone: (803) 896-4696 - Fax: (803) 896-4404

RECEIVED
AUG 01 2002
RESIDENTIAL BUILDER RENEWAL APPLICATION
2002-2003

Name **MELINDA HOLBROOKS 017070**
Business Name **HOLBROOKS CONSTRUCTION**
Address **716 HOLBROOKS DRIVE**
SENECA SC 29678

Renewal Fee - 110.00
Late Renewal Fee - 160.00
(After July 31, 2002)
Lapsed License Fee - 260.00
(Lapsed for one year or more)

1. Indicate any company name or address change below (Please Print) SS#

Business Name: _____

Address: _____

County: _____

Phone: _____

Fax: _____

2. IF YOU ANSWER YES TO QUESTION A, B, C, OR D, ATTACH AN EXPLANATION ON A SEPARATE SHEET OF PAPER AND RETURN IT WITH YOUR RENEWAL APPLICATION.

- A. Since your last application for renewal, have you been denied a license as a home builder, specialty contractor or general contractor in this state or any other state?
- B. Since your last renewal have you been arrested, indicted, convicted, pled guilty or not guilty for a violation of any federal, state or local law (other than minor traffic violations)?
- C. Since your last renewal has there been any judgments, lien or claims filed against you or any business with which you have been associated?
- D. Is any complaint pending, under investigation, or has any action been taken against your license in any jurisdiction?

3. Signatures

I certify that all statements contained herein are true and correct to the best of my knowledge. I further understand that false or incorrect information provided by me may result in the cancellation of any registration issued pursuant to this application and the institution of appropriate civil and criminal proceedings.

Melinda Holbrook
Signature of Applicant

7-28-02
Date

NOTE: DO NOT DETACH AT PERMITS. PLEASE RETURN BOTH HALVES OF FORM.

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JUL 31 2002

SC DEPT OF LABOR LICENSING AND
REGULATION
RESIDENTIAL BUILDERS COMMISSION

SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION
Department of Labor, Licensing & Regulation
Post Office Box 11329, Columbia, SC 29211-1329
Phone: (803) 896-4696 - Fax: (803) 896-4404

RESIDENTIAL BUILDER RENEWAL APPLICATION
2003-2004

Name	MELINDA HOLBROOKS 017070	Renewal Fee -	110.00
Business Name	HOLBROOKS CONSTRUCTION	Late Renewal Fee -	160.00
Address	716 HOLBROOKS DRIVE	(After July 31, 2003)	
	SENECA SC 29678	Lapsed License Fee -	260.00
		(Lapsed for one year or more)	

1. Indicate any company name or address change below (Please Print) SS#

Business Name: _____

Address: _____

County: _____

Phone: _____

Fax: _____

2. IF YOU ANSWER YES TO QUESTIONS A, B, C, OR D, ATTACH AN EXPLANATION ON A SEPARATE SHEET OF PAPER AND RETURN IT WITH YOUR RENEWAL APPLICATION.

- A. Since your last application for renewal, have you been denied a license as a home builder, specialty contractor or general contractor in this state or any other state?
- B. Since your last renewal have you been arrested, indicted, convicted, pled guilty or nolo contendere for violation of any federal, state, or local law (other than minor traffic violations)?
- C. Since your last renewal has there been any judgements, liens or claims filed against you or any business with which you have been associated?
- D. Is any complaint pending, under investigation, or has any action been taken against your license in any jurisdiction?

3. Signatures

I certify that all statements contained herein are true and correct to the best of my knowledge. I further understand that false or incorrect information provided by me may result in the cancellation of any registration issued pursuant to this application and the institution of appropriate civil and criminal proceedings.

Melinda Holbrooks
Signature of Applicant

7-15-03
Date

If you choose not to renew your license, after 3 years you will be required to take the examination again to obtain your license.

RECEIVED

JUL 18 2003

SC DEPT OF LABOR LICENSING AND
REGULATION
RESIDENTIAL BUILDERS COMMISSION

NOTE: DO NOT DETACH AT PERP.
PLEASE RETURN BOTH HALVES OF FORM.

SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION
Department of Labor, Licensing & Regulation
Post Office Box 11329, Columbia, SC 29211-1329
Synergy Business Park, Kingstree Building, 110 Centerview Drive
Phone: (803) 896-4696 - Fax: (803) 896-4404

RESIDENTIAL BUILDER RENEWAL FORM

2004-2005

RECEIVED

RBB . 17070
MELINDA HOLBROOKS
HOLBROOKS CONSTRUCTION
716 HOLBROOKS DRIVE
SENECA SC 29678

JUL 12 2004

SC DEPT OF LABOR LICENSING AND
REGULATION
RESIDENTIAL BUILDERS COMMISSION

Renewal Fee \$110
Late Renewal Fee \$160
(After July 31, 2004)
Lapsed License Fee \$260
(Lapsed for one year or more)

You may renew your Residential Builders License online by going to <http://renewals.llronline.com> (Do not use www.) You will need your USER ID NUMBER and PASSWORD that may be found below. Please enter credit card number only, with no spaces or dashes included. There is a \$1.25 processing charge added to your renewal fee. To renew on line you must have completed your requirements and your license status must remain active.

USERID: HOLB1734378

PASSWORD: 31158

For mail in renewals, write your Social Security Number on your check and return it with the form to:
LLR - RESIDENTIAL BUILDERS COMMISSION
P O BOX 11329
COLUMBIA SC 29211-1329

1. Indicate any company name or address change below (Please Print) SS#

Business Name: J & H Builders

Address: 716 Holbrooks Dr

County: Colonee

Phone: 804-972-3784 Fax: 804-972-3784

2. IF YOU ANSWER YES TO QUESTIONS A, B, C, OR D, ATTACH AN EXPLANATION ON A SEPARATE SHEET OF PAPER AND RETURN IT WITH YOUR RENEWAL APPLICATION. ANY QUESTIONS LEFT BLANK WILL INDICATE THAT YOUR ANSWER IS NO.

- A. Since your last application for renewal, have you been denied a license as a home builder, specialty contractor or general contractor in this state or any other state?
B. Since your last renewal have you been arrested, indicted, convicted, pled guilty or nolo contendere for violation of any federal, state, or local law (other than minor traffic violations)?
C. Since your last renewal has there been any judgements, liens or claims filed against you or any business with which you have been associated?
D. Is any complaint pending, under investigation, or has any action been taken against your license in any jurisdiction?

3. SIGNATURES

I certify that all statements herein are true to the best of my knowledge. I further understand that false or incorrect information provided by me may result in the cancellation of any license issued pursuant to this application and the institution of appropriate civil and criminal proceedings.

Melinda Holbrooks

Signature of Applicant

5-30-04

Date

If you choose not to renew your license, after 3 years you will be required to take the examination to obtain your license.

NOTE: DO NOT DETACH AT PERM.
PLEASE RETURN BOTH HALVES OF FORM.

SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION
Department of Labor, Licensing & Regulation
Post Office Box 11329, Columbia, SC 29211-1329
Synergy Business Park, Kingstree Building, 110 Centerview Drive
Phone: (803) 896-4696 - Fax: (803) 896-4404

RESIDENTIAL BUILDER RENEWAL FORM
RECEIVED

2005-2006

017070

MELINDA HOLBROOKS
J & H BUILDERS
716 HOLBROOKS DRIVE
SENECA SC 29678

JUN 16 2005

OPEDACS

Renewal Fee \$110
Late Renewal Fee \$160
(After June 30, 2005)
Lapsed License Fee \$260
(Lapsed for one year or more)

You may renew your Residential Builder's license online by going to <http://renewals.llronline.com> (Do not use www.) You will need your USER ID NUMBER and PASSWORD that may be found below. Please enter credit card number only, with no spaces or dashes included. There is a \$1.25 processing charge added to your renewal fee. To renew on line you must have completed your requirements and your license status must remain active.

PROCESSED

AUG 01 2005

USERID: HOLB1734378

PASSWORD: 31158

For mail in renewals, write your Social Security Number on your check and return it with the form to:
LLR - RESIDENTIAL BUILDERS COMMISSION
P O BOX 11329
COLUMBIA SC 29211-1329

1. Indicate any company name or address change below (Please Print) SS# [REDACTED]

Business Name: _____

Address: _____

County: _____ Phone: _____ Fax: _____

2. IF YOU ANSWER YES TO QUESTIONS A, B, C, OR D, ATTACH AN EXPLANATION ON A SEPARATE SHEET OF PAPER AND RETURN IT WITH YOUR RENEWAL APPLICATION. ANY QUESTIONS LEFT BLANK WILL INDICATE THAT YOUR ANSWER IS NO.

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C. Since your last renewal has there been any judgements, liens or claims filed against you or any business with which you have been associated?
D. Is any complaint pending, under investigation, or has any action been taken against your license in any jurisdiction?

3. SIGNATURES

I certify that all statements herein are true to the best of my knowledge. I further understand that false or incorrect information provided by me may result in the cancellation of any license issued pursuant to this application and the institution of appropriate civil and criminal proceedings.

Melinda Holbrooks
Signature of Applicant

6-15-05
Date

If you choose not to renew your license, after 3 years you will be required to take the examination to obtain your license.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Rivers Lawton McIntosh, Circuit Court Judge

Alexander S. Macaulay, Circuit Court Judge and Trial Judge

RECEIVED

OCT 25 2013

SC Court of Appeals

Civil Action No.: 2005-CP-37-00788

Tri-County Development et. al.

Jeff Gray and Melinda Holbrooks,.....Respondents.

v.

Christopher A. Pierce,.....Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-4517

JGoodwyn@Goodwynlaw.com

Attorney for the Appellant

Columbia, South Carolina

October 25, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Civil Action No.: 2005-CP-37-00788

Tri-County Development et. al.
Jeff Gray and Melinda Holbrooks,.....Respondents.

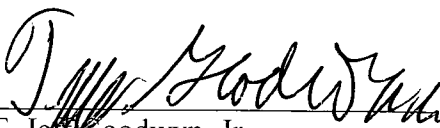
v.

Christopher A. Pierce,.....Appellant

PROOF OF SERVICE

I certify that I have served the **Record on Appeal** on Thomas E. Dudley, III, Esquire, Counsel for the Respondents at the address below by depositing a copy of same in the United States Mail, postage prepaid, on October 25, 2013.

Thomas E. Dudley, III, Esquire
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601


T. Jeff Goodwyn, Jr.
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, South Carolina 29205
(803) 251-4517
(803) 251-4527 fax
Attorney for Appellant

October 25, 2013

RECEIVED

OCT 25 2013

SC Court of Appeals