

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Wade H. Logan, III, Special Judge

Appellate Case No. 2019-001322
Common Pleas Case No. 2016-CP-10-2380

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SC Court of Appeals

Chicora Life Center, LC, ...Appellant,

v.

Fetter Health Care Network Inc.;
NBSC Corporation, and John and Jane Does 1-100, ... Defendants,

Of which Fetter Health Care Network Inc. is the Respondent.

**RECORD ON APPEAL
VOLUME I**

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Wade H. Logan, III, Special Master

Case No. 2016-CP-10-2380

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AUG 08 2019
SC Court of Appeals

Chicora Life Center, LC, ...Appellant.,

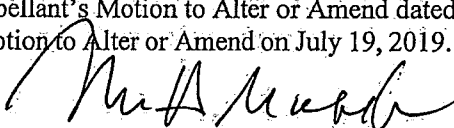
v.

Fetter Health Care Network Inc., ...Respondent.

NOTICE OF APPEAL

Chicora Life Center, LC appeals the order of Wade H. Logan, III, Special Master dated April 3, 2019 and the Order Denying Appellant's Motion to Alter or Amend dated July 15, 2019. Appellant received the Order Denying Motion to Alter or Amend on July 19, 2019. Copies of said orders are attached.

August 6, 2019


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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CIVIL ACTION NO.: 2016-CP-10-2380

Chicora Life Center, LC,)

Plaintiff,)

v.)

Fetter Health Care Network Inc.; NBSC)
Corporation; and John and Jane Does I-)
100,)

Defendants.)

ORDER

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SC Court of Appeals

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JULIE A. ARMSTRONG
CLERK OF COURT

This matter is before me for decision. By way of a "Consent Order of Reference to Special Master," dated Dec. 15, 2017, the Presiding Judge of the Ninth Judicial Circuit referred the case to me, as Special Master-In-Equity, for a full and final hearing on the issues. A hearing was held on April 23-24, 2018.

Appearing on behalf of Plaintiff, Chicora Life Center, LC ("Chicora"), was John A. Massalon, Esq. of Wills, Massalon & Allen. Appearing on behalf of Defendant and Counter-Claimant, Fetter Health Care Network, Inc. ("Fetter"), was Samuel A. Altman, Esq. of Derfner & Altman.

The Plaintiff acquired the property in question from the City of North Charleston and negotiated leases with various entities, including Fetter, the County of Charleston and the South Carolina Department of Mental Health. The issue before the Court is whether or not Chicora satisfied its obligation under a lease executed on August 4, 2014 ((and thereafter amended) by completing the Tenant Improvements in order that Fetter could move in and operate a health care facility.

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Chicora filed this action asserting several claims against Fetter. In its Answer, Fetter denied the material allegations of the Complaint, asserted several affirmative defenses and a counter-claim. At the lengthy hearing, every point was vigorously contested. The testimony was in conflict on all important issues.

I. CLAIMS OF THE PARTIES

Chicora asserts claims for breach of contract (a lease), a breach of the covenant of good faith and fair dealing and for negligent misrepresentation and declaratory judgment. In its First Cause of Action, it seeks relief in the form of compensatory damages resulting from Fetter's alleged breach of contract, for a declaratory judgment that the lease remains in full force and effect, for prejudgment interest and for attorneys' fees and costs. In its Second Cause of Action, it seeks general and compensatory damages. On its Third Cause of Action, it seeks compensatory damages, prejudgment interests and costs. On its Fourth Cause of Action, it seeks declaratory relief in the form of a ruling that Chicora is entitled to payment of the costs in excess of the "Budget Cap" and the amount of such costs.

In its Answer, Fetter asserts a qualified general denial of the allegations of the Complaint and certain affirmative defenses, including impossibility of performance as a result of a foreclosure filed by Plaintiff's lender and its subsequent filing of a bankruptcy petition under Chapter 11. It also asserts as defenses a breach of the covenant of quiet enjoyment, estoppel and waiver. Finally, it asserts a claim for Chicora's alleged breach of the lease. It seeks dismissal of Chicora's Complaint, an order determining that the lease has been breached and an award of attorneys' fees and costs.

II. PARTIES

Plaintiff is a limited liability company organized under the laws of South Carolina, with its principal place of business in North Charleston. It was formed for the purpose of owning and managing a commercial real estate building located at 3600 Rivers Avenue in North Charleston (the "Property"). Fetter is a non-profit corporation doing business in North Charleston. Fetter entered into a commercial lease (the "Lease") with Chicora for occupancy of a certain portion of the Property.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY CONCLUSION OF LAW

I find, preliminarily, that this Court has jurisdiction of the parties as well as subject matter jurisdiction. Venue of this case is proper in Charleston County.

B. FINDINGS OF FACT

Based on the testimony provided at the trial and a review of the transcript of record, I hereby make the following findings:

1. I FIND that the Lease (Exhibit F) executed between the parties contains the following provisions:

(a) Section 2 required "Tenant takes the Premises 'AS IS' except as described in Exhibit B, with Tenant to receive delivery of the Premises after satisfactory completion of the

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Tenant Improvements by Landlord.”

(b) Section 3 of the Lease, included the following language: “If Tenant’s failure to occupy the Premises is due to the Landlord’s failure to complete improvements or to perform any other obligation set forth herein, then Tenant’s obligation to pay interior finishing costs pursuant to this Section 3 shall be excused or waived.”

(c) Section 4 of the Lease states in part, “Upon completion of the Tenant Improvements as provided herein and the issuance of a certificate of occupancy the term of this Lease shall commence (the “Term Commencement”), which shall occur by November 1, 2014.”

(d) Section 6 of the Lease recognizes that the premises are to be used for healthcare services.

(e) Section 14 requires that both the Landlord and Tenant comply with all laws, statutes, and ordinances, and government rules and regulations.

(f) Section 46 acknowledges the obligation to work with the Tenant in obtaining any licensing necessary in order to satisfy requirements of the South Carolina Department of Health and Environmental Control and Department of Alcohol and other drug abuse services.

(g) Section 50 of the Lease repeats language that has been stated before and includes the following, “The Landlord shall deliver the Premises AS IS after the improvements contemplated on Exhibit B are completed and a certificate of occupancy is delivered to the Tenant, which shall occur no later than November 1, 2014.”

(h) Exhibit B to the Lease contains the following language: “Tenant shall contract with the Landlord or an approved general contractor to make any and all Tenant Improvements in accordance with the applicable building codes and craftsmanship standards to the satisfaction of Tenant, Landlord, and the City of North Charleston such that a Certificate of Occupancy will

be issued in a timely fashion.”

(i) Section 36 of the Lease is entitled “Corporate Agreement” amounts to a merger clause and states that there are no oral agreements effecting the lease. It further states that the terms of the agreement are the entire agreement.

2. I FIND that Chicora was unable to complete the improvements and obtain a certificate of occupancy by November 1, 2014 through no fault of or caused by Fetter.

3. I FIND that on April 15, 2015 an additional Lease for storage space was entered into between the parties in order that the Defendant could store medical records at CNH, which lease was to run concurrently with the original Lease for 1,776 rentable square feet at the rental rate of \$1,776.00 per month.

4. I FIND that Fetter took possession of the storage space and made payments in accordance with its obligations for a period of 12 consecutive months, but was forced to vacate the premises, removing the medical records, when leaks were discovered in the building. Thereafter, Fetter was advised that Chicora would not make any repairs. See Jones Page 350, lines 1-25; Page 351, lines 1-19.

5. I FIND that a First Addendum to the Lease was executed between the parties on April 16, 2015, which increased the square footage and included the following language: “Term Commencement, as defined in paragraph 4 of the Lease, as occurring upon completion of the Tenant Improvements and the issuance of a certificate of occupancy for the Premises, shall occur by June 1, 2015.” Chicora again was unable to deliver the Premises by the due date through no fault of Fetter.

6. I FIND that Fetter in an effort to honor its obligation under the Lease had obtained a grant from the Health Resources and Services Administration; had ordered computer equipment costing over \$100,000.00; and spent other monies in anticipation of moving into the CNH upon completion of the Tenant Improvements. See Jordan Page 252, Lines 1-25; Page 253 Lines 1-17.

7. I FIND that a Third Addendum to the Lease was executed by the parties dated November 23, 2015 which included in Section D the following terms: "Term Commencement of the Lease shall occur upon completion of the Tenant Improvements and issuance of a certificate of occupancy for the Premises, which shall occur on or before ninety (90) days from the date a Contract is executed between Contractor and Tenant, but no later than February 15, 2016."

8. I FIND that on December 22, 2015 a Temporary Certificate of Occupancy was issued by the City of North Charleston, which provided for the Tenant to move in furniture.

9. I FIND that on January 1, 2016, Chicora forwarded a letter to Fetter stating that the premises were ready for occupancy and providing the statement that the cost for upfitting and rent had become due and payable. See David Page 182, Lines 7-17.

10. I FIND thereafter on January 21, 2016, a final Certificate of Occupancy was issued by the City of North Charleston without any attempt being made by Chicora to determine whether or not the Tenant Improvements had been completed to the satisfaction of Fetter in accordance with the second paragraph of Exhibit B of the Lease. See David Page 190, Lines 3-7.

11. I FIND that multiple inspections of the premises took place before and after the issue of the Certificate of Occupancy by representatives of Fetter including Corbitt Hinson,

chairman of its Facilities Committee; Ruth Jordan, its interim Chief Executive Officer; Adrian Williams, a professional engineer and construction manager; and Aretha Jones, the present CEO of the Defendant, with each reaching the decision that the Tenant Improvements had not been completed.

12. **I FIND** that Corbitt Hinson as Chairman of the Facilities Committee indicated that he visited the premises on multiple occasions before and after the Certificate of Occupancy had been issued with other members of his committee, which included Leonard Brown and Antoine Sanders. Sanders is a local banker and Brown is local realtor. He testified that he was shocked at the condition of the premises and was concerned because Fetter was under a federal deadline to take advantage of a grant that had been obtained from a federal health services agency for the provision of health and medical services. His statement regarding the unsatisfactory condition of the Tenant Improvements was shared by the other members of his committee and reported to Fetter's Board. See Hinson Pages 145-149.

13. **I FIND** that Ruth Jordan, the interim CEO, testified in detail regarding her position as interim CEO and the ongoing negotiations that she had in having the leased premises available for use as a healthcare facility, and the delays in having the Tenant Improvements completed as required in the Lease. She provided the opinion that the Tenant Improvements were never completed. She testified that the items set forth on Exhibit R were not change orders or add-ons. She testified that she had visited the property on multiple occasions both before and after the issuance of a Certificate of Occupancy. She further testified that she had taken medical staff to the premises to inspect the property and concluded that the premises could not be occupied as a medical facility based on the condition of the property and the incompleteness of the

Tenant Improvements. The deficiencies are set forth in her testimony on Pages 272, lines 1-25; Page 273, lines 1-25; and Page 274, lines 1-13.

14. I FIND that Adrian Williams inspected the property on several occasions prior to the issuance of a Certificate of Occupancy and thereafter inspected the property between February 5 and February 9, 2016 utilizing the architectural drawings that were prepared for Fetter. He prepared what is known as "Exhibit R" based on those drawings. He provided the opinion that the condition of the leased premises would not permit Fetter to move in and operate a healthcare facility. He further testified that the items shown on "Exhibit R" were not related to any change orders. He advised that the bathrooms were not finished, sinks were not installed, the front desk was not set up, and there was no exit door, in addition to those items cited in the report. He provided the opinion that based on what he knew about the operation of Fetter, with the items set forth on Exhibit R, that Fetter could not have moved in and operated a healthcare facility. See Williams Page 324, lines 1-25 and Page 325, lines 1-25.

15. I FIND that the three page, single spaced list of items set forth on Exhibit R shows numerous defects in the existing condition of the leased premises, which include multiple rooms with missing sinks, rooms with missing toilets, walls that needed to be repaired or moved, floors and ceilings that needed repair, multiple problems with doors, latches, locks and misaligned doors, that with other defects placed the premises in a condition where it was unready for Fetter's use as a healthcare facility.

16. I FIND that Sections 6, 14, and 46 of the Lease place Chicora on notice that the premises were to be used for healthcare services and Fetter would have to comply with all legal requirements. Section 29 CFR 1910.1030 (d) sets forth standards for facilities providing

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outpatient care to have implanted basic infection procedures. These standard procedures include installation and maintenance of handwashing facilities inside examination rooms. Exhibit R reflected significant deficiencies in the subject premises including the following:

Room 1303	Peds missing sink
Room 1304	Peds Triage missing sink
Room 1305	Relocation of the sink is required in the plans
Room 1312	Peds Exam missing sink
Room 1313	Peds Exam missing sink
Room 1320	Adult Exam missing sink
Room 1323	Adult Exam missing sink
Room 1324	Adult Exam missing sink
Room 1346	OB Exam add sink
Room 1347	OB Exam add sink
Room 1350	OB Exam add sink

The installation of these items, as well as the other items set forth on Exhibit R, are required before a healthcare facility could legally commence its operation.

17. Based on the testimony and the Court's own review of the items on Exhibit R, I **FIND** that the Tenant Improvements were far from completed.

18. I **FIND** that Karl David was the construction supervisor for Chicora at CNH and was presented a copy of Exhibit R by Ruth Jordan shortly after its issue. See Jordan Page 274, Page lines 14-19.

19. I FIND that David testified that the items listed on "Exhibit R" were not add-ons or change orders, contradicting testimony that had been provided by both Durban and Blackburn. See David Page 194, lines 22-25 and Page 195, lines 1-3.

20. I FIND that the Certificate of Occupancy obtained by David was done without attempting to tell Fetter. Although Chicora may have had no legal or contractual obligation to advise Fetter that it was seeking the Certificate of Occupancy, the fact is that Fetter had no opportunity to provide input concerning the Tenant Improvements that had not been completed. See David Page 190, lines 3-7.

21. I FIND that the issuance of a Certificate of Occupancy does not establish that the separate requirement of completion of Tenant Improvements had been completed.

22. I FIND that Chicora sent Fetter a bill on January 1, 2016 (after issuance of the Temporary Certificate of Occupancy, but before issuance of the permanent Certificate), calling for Fetter to begin paying rent immediately.

23. I FIND that David had discussions with Ruth Jordan and Adrian Williams after the preparation of "Exhibit R", but only wanted to discuss beginning payment of rent and not the condition of the property.

24. I FIND that on February 23, 2016, Fetter offered a payment to Chicora for certain items (not Exhibit R items) that had been agreed to be upfit items.

25. I FIND that Chicora never accepted this offer and never did any further work of any sort on the projected Fetter premises.

26. I FIND that both Blackburn and David acknowledged by separate emails that the Tenant Improvements had not been completed. See David email (Exhibit T) sent March 2, 2016 at 7:41 a.m. and Blackburn email (Exhibit T) sent March 22, 2016.

27. I FIND that Darbis Briggman, head of the City of North Charleston Inspection Department, testified that in issuing a Certificate of Occupancy in an existing building, that the City is concerned only about code requirements rather than craftsmanship. He testified that he did not perform the inspection; that he provided no photographs related to the inspection; and he further testified that he was not the inspector from the City who actually inspected the property before the Certificate of Occupancy had been issued. See Briggman Page 317, lines 3-14.

28. I FIND that the testimony of Aretha Jones further supported Fetter's position, as she testified that she had been, prior to accepting the position at Fetter, the Chief Executive Officer of the Community Health Center of Savannah for 17 years and had a Masters degree in Health Administration and a Masters degree in Public Administration. She testified that she had viewed the space initially in late January, 2016 during her initial interview with Fetter with the Board chairman at the time; the interim CEO, Ruth Jordan; and the Chief Medical Officer, Dr. Shantae Williams. She testified that what she saw was a disaster; water was pouring into back offices; five or six doors were placed up against the wall; sinks that were supposed to be positioned were hanging off the walls. She testified that she came back for a second interview and again walked the space at the CNH finding that no changes had taken place as to the condition of the proposed leased premises. She viewed the property several times thereafter including April, 2016, and during a recent visit in 2018, where she was invited to inspect the space by the County of Charleston, who had acquired the property from Chicora. She testified

that the condition of the property had not changed from her initial visit through the time of her last inspection. She further testified that she was concerned about the issue of the Certificate of Occupancy and attempted to reach Mr. Whitaker, the inspector who issued the Certificate. Whitaker, according to Jones, referred her to Darbis Briggman, who did not return her call. Her testimony echoed the statements made by Hinson, Williams, and Jordan that the premises could not be utilized as a healthcare facility, as Chicora had not satisfied its obligation to deliver completed Tenant Improvements. See Jones Page 348, lines 3-25; Page 349, lines 1-25; Page 350, lines 1-25; Page 351, lines 1-25; and Page 353, lines 1-9.

29. I FIND that Chicora attempted to raise an issue alleging that Fetter decided not to move in as a result of a decision made by the County of Charleston to terminate its lease. The testimony of both Ruth Jordan and Aretha Jones contradicts that statement. Even though both said there were misgivings about a decision to move in, both indicated that they believed Fetter had a legal obligation to do so, if Chicora had complied with its obligations under the Lease to provide a facility where the Tenant Improvements were completed so the premises could provide healthcare services in compliance with state and federal laws and regulations. See Jones Page 360, lines 18-24 and Jordan Page 277, line 25; Page 278, lines 1-7.

30. I FIND that the Lease was prepared by Douglas Durbano, a Utah lawyer who initially acted as the managing member of Chicora. As a lawyer, he was well aware that the lease imposed a dual obligation on the landlord, to obtain a Certificate of Occupancy *and* to complete the Tenant Improvements. He was also aware of the intended use of the premises as a healthcare facility, and was thus well aware of the highly regulated status of healthcare facilities.

31. I FIND that Durbano was not physically present during most of the relationship between the parties, but said he believed that "Exhibit R" included substantial change orders. Durbano's claim that Exhibit R included change orders was vague, unsupported, and was contradicted not only by Defendant's witnesses, but by Plaintiff's supervisor David. Moreover, the very nature of the defects shown on Exhibit R shows that they were integral to any initial plans and therefore were not change orders or add-ons. I THEREFORE FIND that this claim of Durbano's must be rejected. See Durbano Page 96, lines 6-23; Page 97, lines 6-25; Page 98, lines 1-3.

32. I FURTHER FIND that Durbano's testimony attempted to merge the terms "completion of tenant improvements" and "certificate of occupancy" with the testimony being provided: "so when we are talking about the term complete in the Lease, I believe it is my interpretation of the Lease and as my common dealings in the past, is that the tenant improvements are substantially completed and the capstone being the Certificate of Occupancy."

33. I FIND that Durbano's testimony referenced in Finding 32 is an attempt to utilize parol evidence in order to define the terms "Completion of Tenant Improvements" and "Certificate of Occupancy" and relies on language not included in the Lease.

34. I ALSO FIND that Chicora has attempted in its presentation to state that it has substantially complied with its obligations to provide completed Tenant Improvements. Section 15-3-630 of the South Carolina Code of Laws, as amended, provides the following definition of substantial completion, to wit: According to subsection (b) of the Code, *"that degree of completion of a project, improvement, or a specified area or portion thereof (in accordance with the contract documents, as modified by any change orders agreed to by the parties) upon*

attainment of which the owner can use the same for the purpose for which it was intended."

Emphasis added.

35. I FIND that it is significant that none of Plaintiff's witnesses ever expressed any understanding that the Tenant Improvements were for premises that the Lease specified was to be a healthcare facility.

36. I ALSO FIND that there is no indication that the Certificate of Occupancy in any way indicated that the premises were suitable or ready for occupancy and use as a healthcare facility.

37. I FIND that the terms set forth in the Lease, as amended, are express and do not provide the Court with the ability to interpret the Lease in accord with the position presented by Chicora. In the alternative, I find in accordance with South Carolina law Section 15-3-630 of the South Carolina Code provides a definition of substantial completion which appears to be the argument of Chicora in this matter

38. I FURTHER FIND that the preponderance of evidence supports the finding that the Tenant Improvements had not been completed.

IV. THE LAW

Chicora appears to make two arguments, neither of which is persuasive.

First, Chicora appears to argue that obtaining the Certificate of Occupancy amounted to a determination that the Tenant Improvements had been completed, the premises were ready for occupancy, and Fetter's failure to occupy and begin paying rent was a breach.

This argument is unsuccessful because the lease imposed two obligations on Chicora, and obtaining the Certificate of Occupancy met only one of those obligations. This was an express contract in that respect, and it must be viewed as such.

If an agreement is clear and capable of legal construction, a court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. *S.C. Dept. of Transp. v. M & T Enter. of Mt. Pleasant, LLC*, 667 S.E.2d 7, 379 S.C. 645 (Ct. App. 2008). Courts must construe and enforce contracts as written in order to preserve the fundamental rights of freedom of contract. *Id.* Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. See *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 127, 713 S.E.2d 799 (Ct. App. 2011). See *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Words cannot be read into a contract to impart an intent unexpressed when the contract was executed. *Davis, supra* and *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct.App.2009).

There are two requirements that trigger Defendant's obligation to begin making payments under the Lease which are clearly set forth in multiple sections of the Lease, as amended, which are completion of the Tenant Improvements and the issue of a Certificate of Occupancy. According to Black's Law Dictionary, the term "and" is "a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first." See *Black's Law Dictionary*, 5th Edition, Page 79. Plaintiff cannot separate the two requirements placed in this Lease.

As the terms of the Lease set forth express conditions to obligate the Defendant to make payment and to occupy the premises, Plaintiff has failed to comply with its obligations and have

no right to enforce this Lease. See *Ahrens v. McDaniel*, 287 S.C. 63, 336 S.E.2d 505 (Ct.App. 1985) and *Coastal Seafood Co., Inc. v. Alcoa S.C., Inc.*, 298 S.C. 466, 381 S.E.2d 502 (Ct.App.1989) and *Lach v. Cahill*, 138 Conn. 418, 85 A. (2d) 481 (1951). Plaintiff cannot rely on substantial performance as a basis for recovery because the doctrine of substantial performance does not apply to express conditions. Id.

Second, Chicora argues that if it had two obligations it did perform both of them. This is a question of fact as to which Chicora bears the burden of proof as any plaintiff does on ordinary questions of fact. Even if Chicora did not have the burden of proof, I would find that the evidence shows the Tenant Improvements were not completed. S.C. Code Section 15-3-630, although it applies literally to suits against engineers and architects, offers a good, workable definition of when Tenant Improvements are completed. The touchstone is not, as Durbano tried to claim, the issuance of a Certificate of Occupancy, but that point at which the premises are ready to be used *for the intended purpose*. It appears that these premises were not ready for any use, but as a healthcare facility, treating patients and having to comply with numerous state and federal regulations, the premises were certainly unready and the Tenant Improvements were by no means completed.

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). "The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impact

an intent unexpressed when the contract was executed.” Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009).

“The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.” Gilliland v. Elmwood Props., 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990); see also 11 Samuel Williston & Richard A. Lord, A Treatise on Law of Contracts § 33:1 (4th ed. 1999) (explaining the parol evidence rule “prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing”) (emphasis added). The parol evidence rule is particularly applicable where the written instrument contains a merger or integration clause. U.S. Leasing Corp. v. Janicare, Inc., 294 S.C. 312, 318, 364 S.E.2d 202, 205 (Ct. App. 1988).

“A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.” Wilson v. Landstom, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984); see also 11 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 33:21 (4th ed. 1999) (same); Black’s Law Dictionary 880 (9th ed. 2009) (defining an integration clause, also termed a merger clause, as “[a] contractual provision stating that the contract represents the parties’ complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract”).

“The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in writing.” Wilson, 281

S.C. at 266, 315 S.E.2d at 134. Furthermore, when the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term to the agreement, even when the writing is silent as to the particular term sought to be established. U.S. Leasing Corp., 294 S.C. at 318, 363, S.E.2d at 205; see also Blackwell v. Faucett, 117 S.C. 60, 65, 108 S.E. 295, 296 (1921) (noting if the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term thereto)...”

Since Chicora failed to meet its obligations as a landlord, Fetter was not called upon to meet its obligations as a tenant, and therefore, its failure to take occupancy and pay rent was not a breach of the lease by Fetter.

IT IS THEREFORE ORDERED AND DECREED, that the Complaint of the Plaintiff is hereby dismissed and the relief prayed for in the Counterclaim is hereby granted with the Plaintiff being ordered to refund the initial deposit of \$17,000.00, together with interest, and the Plaintiff being required to pay for the attorney's fees and costs incurred by the Defendant in litigating this matter.

IT IS SO ORDERED this 3rd day of April, 2019

Mt. Pleasant, South Carolina



Wade H. Logan, III
Special Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Chicora Life Center, LC,

Plaintiff,

vs.

Fetter Health Care Network Inc.,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-10-2380

**ORDER DENYING MOTION
TO ALTER OR AMEND**

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SC Court of Appeals

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Following the Court's decision, the Plaintiff filed a timely motion pursuant to Rule 52 and Rule 59, seeking reconsideration of the Order. The Court has carefully considered the arguments raised in the Plaintiff's Motion and has re-examined its initial determination in light of the Motion.

The crux of the decision was expressed in the Conclusion that, "There are two requirements that trigger Defendant's obligation to begin making payments under the Lease which are clearly set forth in multiple sections of the Lease, as amended, which are completion of the Tenant Improvements and the issue of a Certificate of Occupancy." Order, page 15.

The Plaintiff challenges that proposition in several ways, essentially by arguing that it did not fail to make the Tenant Improvements (third ground), and that completion of those Tenant Improvements was not essential to the tenant's obligations under the Lease (first and second grounds).

As to the Plaintiff's first and second grounds, the Court adheres to its finding that under the Lease, completion of the Tenant Improvements was essential to the Lease, without which the tenant was not obligated to proceed or perform.

As to Plaintiff's third ground, the Court paid the most careful attention to every witness

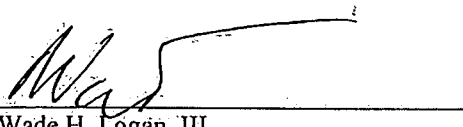
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and every exhibit provided by both parties, and adheres to its findings of fact based on careful review of all the evidence.

IT IS THEREFORE ORDERED AND DECREED, that the Plaintiff's Motion pursuant to Rules 52 and 59 is hereby denied

IT IS SO ORDERED this 15th day of July, 2019.

Charleston, South Carolina


Wade H. Logan, III
Special Judge

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON COURT OF COMMON PLEAS
3 CHICORA LIFE CENTER, LC,
4 Plaintiff,
5 vs. CASE NO. 2016-CP-10-2380
6 FETTER HEALTH CARE NETWORK, INC., NBSC
7 CORPORATION; AND JOHN AND JANE DOES 1-100,
8 Defendants.
9 TRIAL BEFORE: WADE H. LOGAN, III
10 VOLUME I
11 DATE: April 23, 2018
12 TIME: 10:10 a.m.
13 LOCATION: Law Offices of
14 BUIST BYARS & TAYLOR
15 652 Coleman Boulevard
Suite 200
Mount Pleasant, South Carolina
16 REPORTED BY: Julie L. Bonomo
17
18 A. WILLIAM ROBERTS, JR., & ASSOCIATES
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18 ALSO PRESENT:

19 Douglas Durbano
20 Jeremy Blackburn
21 Aretha Jones
22 Dallin Durbano

23 (INDEX AT REAR OF TRANSCRIPT)
24
25

1 P R O C E E D I N G S

2 THE COURT: I have met with the lawyers
3 ahead of time and we have agreed not to do opening
4 statements. Just go ahead and just get started.
5 So I'm ready to do that when you're ready,
6 Mr. Massalon.

7 MR. MASSALON: All right.

8 THE COURT: I've also, from a
9 housekeeping standpoint, we have decided to take a
10 lunch break, probably about an hour and a half, and
11 we may have to take some witnesses out of order
12 just due to the timing of things, but that will be
13 fine. So I'm ready to go if you are, Mr. Massalon.

14 MR. MASSALON: I am, and just one
15 housekeeping issue. I have marked a copy of the
16 exhibits that I plan to use or offer with the court
17 reporter. I have got a couple of extra copies of
18 the notebook here.

19 THE COURT: Okay.

20 MR. MASSALON: I gave one to Mr. Altman
21 and I'll pass one down to you if ou would prefer.

22 THE COURT: That's fine. That's great.
23 That would be very help. Thank you.

24 MR. MASSALON: So that's got the copy
25 of my pretrial brief.

1 THE COURT: Okay.

2 MR. MASSALON: And then the complaint
3 the answer and counterclaim and the reply, and then
4 the exhibits pick up after that.

5 THE COURT: Okay. All right. Fine. I
6 think I have seen all of these already, but that's
7 fine.

8 MR. MASSALON: I think you probably
9 have, but I just have them all over the place. All
10 right.

11 As our first witness, we would like to
12 call Mr. Douglas Durbano.

13 DOUGLAS DURBANO
14 being first duly sworn, testified as follows:

15 MR. MASSALON: How would you like us to
16 address you?

17 THE COURT: Mr. Logan will be find.

18 THE WITNESS: Mr. Logan.

19 THE COURT: I heard a lawyer story one
20 time that a Kentucky colonel had testified and the
21 judge said I'm interested if you're called the
22 colonel, how did that happen. He said, Judge, it's
23 like you being called Your Honor. It doesn't mean
24 anything. So Mr. Logan will be fine. Thank you.

25 THE WITNESS: Logan.

EXAMINATION

BY MR. MASSALON:

Q. All right. Mr. Durbano, where do you live?

A. In Utah.

Q. Where in Utah?

A. Layton, Utah all my life. Born and raised.

Q. What is your occupation?

A. I'm a licensed attorney in Utah, but we do away -- we have grown and do quite a bit of real estate development as well as some other business enterprises that we are involved in these days.

Q. Let me jump right into it. What is Chicora Life Center, LLC?

A. That is an entity that was established for the acquisition, management, and development of the Old Naval Hospital here in North Charleston, South Carolina.

Q. Okay. Do you know when or about when that was formed?

A. Oh.

Q. I will --

A. '14, 2014-ish.

Q. Okay. All right.



1 MR. ALTMAN: Just do the best you can.
2 Don't look at somebody else for an answer.

3 THE COURT: I can't remember what I had
4 for lunch the other day, let --

5 MR. ALTMAN: That's not a big issue.

6 THE WITNESS: That's a hard question.

7 MR. MASSALON: If you can't remember,
8 don't worry about it. I'm not trying to cross you
9 up.

10 BY MR. MASSALON:

11 Q. Was Chicora formed for the purpose of
12 renovating the Naval Hospital?

13 A. Yes, it was.

14 Q. All right. Tell us briefly how it was
15 that Chicora got involved in that project or got
16 interested in it?

17 A. I'll keep it brief, but one of the
18 projects that we had in Utah with Durbano
19 properties is a -- we call it the Social Security
20 building where we acquired a building and put in a
21 Social Security group of government employees and
22 they occupied the building for 10-12 years,
23 actually 13 before they were all done. But through
24 that process, we became a, at least an
25 acknowledged, we like to think a preferred landlord

1 for the Government Services Administration, GSA.

2 Because of that, we would get
3 notification of when properties were coming up for
4 acquisition. I have had a relationship with Jeremy
5 Blackburn for many years. He lives here in South
6 Carolina for about this time and we see and Jeremy
7 has also been aware of through the mayor, I think,
8 that the Naval Hospital was going to come up for an
9 auction. So we spent some time looking into it and
10 ultimately started bidding on it.

11 Q. Okay.

12 A. We lost out though to the City of North
13 Charleston. They bid it and bought the building.

14 Q. How was it that after that Chicora
15 acquired it?

16 A. The mayor recognized that we were
17 bidding behind him so to speak. This is Mayor
18 Keith Summey. We made a connection there, we
19 chatted, our group. And the city said, well, we
20 would like to sell the one to control not only what
21 happens on the Naval Hospital, but across the
22 street. We own another 25 acres. Let's put
23 together a deal and you be the developers and we'll
24 sell it to you. The city took an uptick on the
25 price by several million dollars. They wanted to

1 see a grocery store. They committed that they
2 would do some things to help this redevelopment
3 agency. It's an RDA, could even be some tax
4 benefits to help, et cetera. Normal kind of
5 redevelopment after a military facility closes.

6 Q. Got you. Were you the initial manager
7 of Chicora?

8 A. I was.

9 Q. All right. This is probably a loaded
10 question, but other than everything, what was your
11 responsibility or duty as the manager of Chicora?

12 A. Well, I'll call it mostly for direction
13 and financing is probably my main responsibilities.

14 Q. Okay. Now as far as direction, what
15 was the concept or the plan for the property?

16 A. It evolved, of course. Initially, we
17 had some ideas about actually putting in another
18 hospital. The building was built to very high code
19 standards that allowed for that, but ultimately
20 settled on what we called the social services hub.

21 And I kind of remember the day when
22 that concept evolved. I think Jeremy was on the
23 phone with me and we brainstormed in how to move in
24 the right direction. The concept of a social
25 services hub just evolved. The building itself

1 would qualify for overnight stays. So
2 hospital-type.

3 So with that, and frankly, from an
4 economic standpoint the rates, we'll call it square
5 footage rental rates were higher if you were
6 involved in the medical aspect. We were able to
7 provide what we thought were competitive rates even
8 though we are in the medical arena and so that is
9 what we started to pursue.

10 Q. Okay.

11 A. Initially, it was a big success.

12 Q. Now, was the purchase meaning
13 acquisition of the property itself financed?

14 A. Yes.

15 Q. And again, briefly tell Mr. Logan about
16 that.

17 A. The initial purchase from the city was
18 financed through a company called Antion Financial.
19 It's a company in Utah that I have a relationship
20 with. And they financed the initial purchase price
21 plus some from the city over to Chicora.

22 Q. Okay. Was that initial financing
23 enough to allow for the renovation for you-all to
24 execute your plan?

25 A. It was not.

1 Q. Okay.

2 A. It was just sufficient to acquire.

3 Q. All right. And so was there some
4 additional financing that Chicora obtained for the
5 purpose of fixing the building up and renovating?

6 A. Yes.

7 Q. Okay. Tell us about that.

8 A. The development had progressed
9 sufficiently so that we had obtained our anchor
10 tenant which was Charleston County. Mr. Logan
11 probably is familiar. We're in the news apparently
12 I understand.

13 Q. That's true.

14 A. And so Chicora acquired the building,
15 but it did it almost contemporaneously with getting
16 a 25-year triple-net lease from Charleston County,
17 identifying the county as the anchor tenant. With
18 that lease in hand, we were able to go to the
19 typical lenders that we know of back east. In this
20 case it was in Boston through UC Funds. It was a
21 well-known commercial lender, bank, nonbank type
22 company that agreed to finance the development,
23 improvements, and renovations of this Old Naval
24 Hospital.

25 Q. Okay. And when you identified the

1 lender that is letter U letter C?

2 A. Yes.

3 Q. Correct? Okay. Got you UC. Now how
4 much? How much did y'all borrow to acquire this
5 space?

6 A. This was moving so I'm just going to
7 give you just a quick one.

8 Q. Okay. Good.

9 A. It started off I think at -- I'll give
10 you round numbers, too, at 10 million, and then it
11 escalated to 12, and it finally finished at around
12 15. And again, each of those were a result of
13 adding a new tenant or a new dimension to the
14 development.

15 Q. Okay.

16 A. Worked on improvements, et cetera.

17 Q. And as part of your role as manager,
18 one of the things you did was work on financing and
19 arranged and secured all of that?

20 A. Yes.

21 Q. Okay. Now, on the leasing side, who
22 was handling the discussions, negotiations, with
23 prospective tenants?

24 A. Jeremy Blackburn was, I called him the
25 point man on that locally here as far as at the

12
1 time we had just -- we had just finished the lease
2 commitment through a letter of intent with the
3 county and were finalizing their lease. Fetter's
4 lease was also in this process of being finalized,
5 and the state mental health, Dorchester Mental
6 Health State of South Carolina, those three leases
7 were in the final stages and we hired Lee and
8 Associates to assist us with some additional
9 leasing.

10 Q. Okay. And so would it be accurate to
11 understand as far as the Fetter lease goes, on the
12 Chicora side, you and/or Mr. Blackburn were the
13 people that were dealing with it?

14 A. Yes. Jeremy had the -- I'll call it
15 the onsite relationship kind of aspects associated
16 with negotiating, meeting, walkthroughs,
17 architectural kind of meetings to design
18 improvements, hands on.

19 Q. Got you.

20 A. And in Utah we handled the legal
21 aspects. Obviously, we have the law office and so
22 we're drawing up the standard lease that we use
23 almost exclusively and handling, if you will, the
24 drafting of documents.

25 (PLF. EXH. 1, Cover and Table of

1 Contents, was marked for identification.)

2 (PLF. EXH. 1A, Plaintiff's Pre-Trial
3 Brief, was marked for identification.)

4 (PLF. EXH. 1B, Summons and Complaint,
5 were marked for identification.)

6 (PLF. EXH. 1C, Answer, Affirmative,
7 Defenses and Counterclaim of Fetter Health Care
8 Network, Inc., was marked for identification.)

9 (PLF. EXH. 1D, Answer to Counterclaims,
10 was marked for identification.)

11 (PLF. EXH. 1E, Deposition of Ruth
12 Jordan, was marked for identification.)

13 BY MR. MASSALON:

14 Q. Okay. If you don't mind, there is a
15 notebook just over here that's been marked as
16 Exhibit 1, and just for the record and everyone's
17 benefit we have itemized these as A, B, C, all the
18 way through V. And if it's okay with you,
19 Mr. Logan, I'll just refer to these Exhibits as 1A,
20 1B?

21 THE COURT: That will be fine.

22 MR. MASSALON: That will work? Okay.

23 (PLF. EXH. 1F, Basic Lease Information,
24 was marked for identification.)

25 BY MR. MASSALON:



1 Q. So I would like for you, if you would,
2 to take a look for us at Exhibit 1F. Let's take a
3 look here. I've already mixed it up.

4 A. I know how to assist in these matters.

5 Q. Oh, boy. All right. Sorry about that.
6 I'll let you do that.

7 A. Been here, done that.

8 Q. Yes.

9 A. I think I've got it. Good.

10 Q. Good. Okay. Exhibit 1F in the
11 notebook. What is that document?

12 A. That is the lease that we entered into
13 with Chicora. It's a copy, obviously.

14 Q. Okay.

15 A. Dated August 4, 2014. And the first
16 page is what we refer to as the basic lease
17 information which attempts to summarize a 30-page
18 document to one page.

19 Q. Got you. Now, is this a document that
20 you either drafted or in discussions with Fetter
21 drafted?

22 A. Yes.

23 Q. Okay. I would like to move this one
24 into evidence, please?

25 MR. ALTMAN: Without objection.



1 THE COURT: Okay.

2 BY MR. MASSALON:

3 Q. Now who or with whom were you dealing
4 on the Fetter side when we were talking about?

5 A. Pettiford.

6 Q. For the court reporter I'll try to
7 spell it and tell me if I'm wrong. I think it's
8 P-E-T-T-I-F-O-R-D.

9 THE COURT REPORTER: Thank you.

10 BY MR. MASSALON:

11 Q. What was your understanding of
12 Mr. Pettiford's role or job at Fetter?

13 A. He was the president of the
14 organization and the CEO. He may have been the
15 chairman of the board.

16 Q. Okay. All right. And so with that, I
17 would like to, if we could, go through a few of the
18 terms?

19 MR. MASSALON: And Mr. Logan and
20 Mr. Altman, I'll try not to be too tedious about
21 this. I don't know how you want me to publish
22 these, but I a few of them I would just like to
23 highlight. So I'll try doing that. If it gets too
24 tedious, let me know and I'll speed up.

25 BY MR. MASSALON:



1 Q. If you would, take a look at paragraph
2 1 of the lease and the premises is what?

3 A. The premises is a term of art within
4 the document. And so in paragraph 1, we're
5 attempting to define the, quote, premises which is
6 the property starting with the Naval Hospital, the
7 Old Naval Hospital which we now call Chicora and
8 we're giving the address here and identifying it
9 more specifically in the Exhibit A because the
10 actual premises for the lease is a small portion of
11 the entire 400,000 square foot building.

12 Q. So Fetter wasn't leasing the entire
13 hospital, just a piece of it.

14 A. That is correct.

15 Q. Okay.

16 A. In this case we start with 8,700 square
17 feet.

18 Q. Okay. A little later on we'll see some
19 documents that refer to Suite 1300 and ultimately
20 would that become the name of the area that Chicora
21 and Fetter would negotiate over and contracting
22 over and leasing?

23 A. Yes. That's true. If you look at that
24 back exhibit, don't even turn there because it's
25 been copied so many times. They're very small

1 architectural drawings, but on the original I went
2 back and double checked and it start off at 1300
3 and finished it life at 1300.

4 Q. All right.

5 A. It's still 1300 today. So Suite 1300
6 would be the Fetter space.

7 Q. Now going down paragraph 2, there is a
8 reference. How is the term of the lease defined in
9 this first?

10 A. The term of the lease is left a little
11 nebulous here in this paragraph referring rather to
12 the basic terms up front and giving some general
13 language as to when the term will start.

14 Q. When you say up front, you mean that
15 summary that?

16 A. Thank you.

17 Q. That very first page?

18 A. Yeah. The summary where we refer to
19 term and commencement and then it goes back and
20 says see article 4.

21 Q. All right.

22 A. A little circular here, but it
23 eventually gets there.

24 Q. Okay. 2 refers to the first page which
25 refers to 4?

1 A. Exactly. Goes back to 4.

2 Q. So if you would tell us and point out
3 to Mr. Logan how the term of the lease is defined
4 in this initial lease.

5 A. The term of the lease really is
6 triggered by the rental and the rental is triggered
7 by completion of the tenant improvements. So that
8 is why 2 starts really with a reference that the
9 building is as is, but in this case we're going to
10 do some tenant improvements. We know that. The
11 tenant can do them, we can do them, but they're
12 going to get done. And then the rental will start
13 which then starts the term.

14 Q. Got you. So no specific date then
15 provided in this initial agreement?

16 A. Correct.

17 Q. Now, as far as how that commencement is
18 defined or determined, if you look again at the
19 front page at the very bottom there it says article
20 50, tenant improvements as specified in Exhibit B?

21 A. Yes. B.

22 Q. So if you flip this over to Exhibit B
23 of the lease. Now, and that is titled what?

24 A. Exhibit B are, quote, improvements to
25 the premises. Exhibit B I'll call it becomes the

1 meat of the commencement of the lease which is the
2 tenant improvements.

3 Q. Okay.

4 A. So the language that is in Exhibit B
5 offers us the more detailed information that we
6 need to see when the lease starts.

7 Q. Okay.

8 A. That's what we were attempting to do
9 here.

10 Q. Okay. Let's go over a couple of that.

11 A. Okay.

12 Q. First of all, did the lease contain a
13 landlord allowance or contribution to the tenant
14 improvements?

15 A. First paragraph of Exhibit B,
16 improvements to the premises identifies a, quote,
17 budget cap. Pretty standard in these kind of
18 arrangements. I think it was roughly \$5 a square
19 foot. This is a round number in my mind, totalling
20 \$45,000 for your tenant improvements.

21 Q. Okay.

22 A. The building was already improved and
23 as you'll see in the very -- well, there is another
24 paragraph that talks about they will want to use as
25 much of the tenant improvements as we can that are

1 already on the premises.

2 Q. Okay. Now as far as how the
3 improvements would happen, what does Exhibit B tell
4 us about that?

5 A. Second paragraphs is critical here.
6 "The tenant shall contract with the landlord or an
7 approved general contractor to make all of their
8 tenant improvements. They're to be done obviously
9 in accord with applicable building codes,
10 craftsmanship standards to the satisfaction of the
11 tenant, the landlord, the City of North
12 Charleston," and here in the important, I'll call
13 it a capstone. "Such that a certificate of
14 occupancy will be issued in a timely fashion."
15 That being the, if you will, the final event that
16 occurs that confirms objectively rather than
17 subjectively.

18 So we now have an objective third party
19 that will capstone this process and say here is
20 your certificate of occupancy issued by a
21 government entity that's disinterested. Only
22 interested, if you will, that the plans which were
23 on the previous pages were filled pursuant to the
24 permit and done in accordance with code.

25 Q. Okay. Now, you started to tell us

1 something about existing improvements, and so now
2 seems to be good time to tell us all about that.
3 So tell us that part.

4 A. The building was originally a hospital.
5 So much of the infrastructure in the building would
6 accommodate particularly Fetter's needs, Fetter
7 being a medical clinic. So the goal was to keep,
8 and it says right here in the very last paragraph
9 that, "The current expectation on the part of the
10 lease that the current or existing improvements at
11 the premises may be utilized to the fullest extent
12 possible with emphasis to reduce the costs of the
13 tenant improvements. Any tenant improvements
14 requested by the tenant which exceed the budget cap
15 shall be the sole responsibility of and paid for by
16 the tenant."

17 There was some hope that the building
18 could be used almost in its current condition some
19 dusting off and some cleaning and utilization of
20 the stuff that was there. But if the tenant wanted
21 to make it a little nicer, and ultimately they did.
22 They wanted some new fixtures, some new walls, some
23 automatic opening and closing doors, bringing it
24 up, if you will, to the modern standards. Those
25 would be at the sole cost and responsibility of

1 Fetter, the tenant.

2 Q. And the landlord under the initial
3 version of the lease would contribute up to \$45,000
4 for that and then anything over and above that
5 would be the responsibility of Fetter?

6 A. That's right. John.

7 Q. Okay.

8 A. It's simply you work these things
9 backwards. You start with the lease rate really is
10 where you start. So if this is the lease rate that
11 is within the financial capability or the desires
12 of the parties, and this makes it work, then how
13 much of that tenant improvement budget can we give
14 to the tenant whether it's \$5 or \$30, it all boils
15 back down to the lease rate.

16 In this case Fetter received the --
17 we'll call it a very favorable lease rate, so I
18 worked with the county and had the responsibility
19 for much of their own tenant improvements.

20 Q. Again, what is -- what was the intent
21 of this as far as the trigger date for the starting
22 the lease?

23 A. Clearly, the issuance of the
24 certificate of occupancy is the capstone that
25 starts the lease.



1 Q. Okay. Now if I can, let me get you to
2 flip back and I'll ask you about just a couple of
3 other paragraphs. If you would, go to paragraph --
4 I mean page 1 of the lease, paragraph 3. What is
5 that?

6 A. That is the non-occupancy of improved
7 space paragraph.

8 THE COURT: I'm sorry. What paragraph
9 are we on now?

10 MR. MASSALON: No. 3 page 9. So you
11 would go to other direction. I just flipped back
12 from Exhibit B to there.

13 BY MR. MASSALON:

14 Q. All right.

15 A. Where the landlord had provided a
16 budget applicable for the tenant improvements, if
17 for some reason the tenant does not occupy the
18 entire space or some portion of it, then all of
19 these budget dollars applicable to that space would
20 become due and payable by the tenant to the
21 landlord on their non-occupancy of that space.

22 Q. Okay. Now, if you would, flip over to
23 page -- I'm looking for paragraph 19?

24 A. Okay.

25 Q. I think it's on page 11. And that is a

1 really long, dense paragraph, but to everyone's
2 relief, I don't want you to tell us all about it.
3 Just look at subparagraph A and tell us how
4 subparagraph A defines an event of default under
5 the lease.

6 A. I think paragraph A is the one that's
7 applicable here and it's defined as a default, an
8 event of default is a breach of this lease if the
9 tenant, A, fails to pay rental or other sums when
10 and as the same become due and payable. Fairly
11 standard language, and they continue in default for
12 more than ten days after written notice of such
13 failures received by the tenant from the landlord.

14 Q. Now, flip over, if you would, to
15 paragraph 24 for me which was on page 13, and that
16 paragraph provides what?

17 A. That is the standard, not necessarily
18 standard, but that is the attorney's fees clause.
19 So enforceability of the contract by either party
20 could allow for the payment of attorney's fees as
21 an additional cost awarded. And in this case, the
22 very last sentence I think after explaining
23 attorneys fees and costs, et cetera, the prevailing
24 party is defined by the party determined by the
25 court to most nearly prevail.

1 Q. Now, something that we will I'm sure be
2 talking about today is number 26. What is that?

3 A. It's subordination of non-disturbance
4 and attornment.

5 Q. Attornment?

6 A. Yes. Thank you. Again, a fairly
7 standard clause in a commercial lease where the
8 tenant has the right to receive from the landlord's
9 lender a commitment that the lender will not
10 disturb the tenant's tenancy.

11 Q. Okay. All right.

12 A. So if the tenant wants such a thing,
13 they can get it. We're obligated to provide that.

14 Q. All right. Now, next I would like to
15 look at paragraph 38 which is on page 16. And what
16 earlier I think you reviewed paragraph 3 which says
17 that non-occupancy doesn't excuse failure to pay
18 for the tenant improvements. What does paragraph
19 38 tell us?

20 A. In fact, I think this paragraph 38
21 emphasizes the point that, yes, under paragraph 3
22 if you breach you get to pay all of the tenant
23 improvements back including the budget cap. But
24 under 38, you're not released from your lease
25 obligations or rental that's due. So the tenant

1 actually guarantees that upon completion of the
2 improvements and the delivery of the certificate of
3 occupancy that it will occupy the premises as
4 specified in here and that any failure to occupy
5 the premises does not release the tenant from its
6 obligation to pay rent or any other provisions
7 therein.

8 Q. All right.

9 A. In other words, you can't simply
10 repudiate your lease, pay your tenant improvements,
11 and walk away.

12 Q. Okay. Now the next paragraph 39 and
13 again it's long and dense, but if I can direct your
14 attention to the sentence that begins at the bottom
15 with all amounts. Do you see that?

16 A. I do. I will point out that it does
17 have it in the first -- this is the miscellaneous
18 and it starts off with time is of the essence, a
19 fairly standard clause in a lease, so timing is of
20 the essence. So we have these 30 day events that
21 are having to occur, completion has to occur,
22 certificate of occupancy has to occur, and time is
23 of the essence. We recognize that.

24 And then it -- not concludes, but it
25 gets into all amounts of money payable by tenant to

1 the landlord, not paid when due, shall bear
2 interest from the date that it's due at the rate of
3 18 percent per annum. So there is the default
4 interest rate.

5 Q. Okay. Over on page 28, paragraph 48,
6 what is that?

7 A. A clause that we put in the lease so
8 that everyone agrees and understands that to no
9 representation or recommendations have been made by
10 the landlord or the Durbano Law Firm or real estate
11 brokers involved herein as to the legal effects or
12 consequences of this transaction. So no one was
13 looking to the drafter of the lease or the broker
14 on the deal as their legal advisor, each party
15 having their own.

16 Q. Now, you mentioned earlier you were
17 dealing with Mr. Pettiford in discussing this
18 lease, negotiating this lease, were you dealing
19 with anybody else on the Fetter side at that time?

20 A. I don't think so. I'm going to maybe
21 look over there at Sam a little bit, but I don't
22 remember having conversations with Mr. Altman at
23 the time. I remember hearing his name, but I don't
24 recall having a conversation with him.

25 Q. If Mr. Pettiford was conferring or



1 consulting with anybody on the board or anybody
2 else, that was something he was doing, but not any
3 direct contact between you and anybody else?

4 A. That's correct.

5 Q. Okay. Now, a couple of other things.
6 Paragraph 50, also titled Tenant Improvements, what
7 is that?

8 A. This is, if you will, a confirmation of
9 Exhibit B and specifically drawing Exhibit B into
10 the terms of the lease. So here the landlord again
11 confirms that the premises are as is, in capitals.
12 After the improvements completed -- or contemplated
13 -- excuse me -- on Exhibit B are completed and the
14 capstone of a certificate of occupancy is delivered
15 to the tenant. There's a date here. It's
16 anticipated that will occur by November 1st. There
17 is an amendment that changes that date. And then,
18 the landlord will use all reasonable diligence to
19 complete off repairs for improvements and obtain
20 the certificate of occupancy. At which time, the
21 lease term shall commence.

22 So I will testify that in my opinion
23 reasonable diligence was used to complete the
24 tenant improvements in a timely fashion and the
25 certificate of occupancy was actually obtained.



1 Q. Now before we get to that part, let me
2 walk you through the timeline a little bit more.
3 After this original lease was signed -- well, I
4 guess I probably should round this out. On the
5 next page there are a couple of signatures for
6 Chicora. Do you know whose signature that?

7 A. Yes. That is my signature.

8 Q. Okay. How about for Fetter? Do you
9 know whose signature that is?

10 A. I understand that's Reuben Pettiford's.

11 Q. Okay. Now if you would, tell Mr. Logan
12 after the lease was signed, did Fetter actually
13 contract with someone to do the tenant improvements
14 in Suite 1300?

15 A. Yes.

16 Q. And did the cost or the expected cost
17 of those tenant improvements exceed the budget cap?

18 A. Yes.

19 Q. Who, if you recall, was initially
20 contracted with who was the contract that was hired
21 by Fetter to do the tenant improvements?

22 A. Well, initially, the contractor was
23 Double D Construction, but that quickly evolved and
24 changed into Bennett Hofford.

25 Q. It probably won't escape anyone's

1 notice that your name has two Ds in it. And so,
2 what if any relationship did you have or at that
3 time had with Double D Construction?

4 A. Well, the fact is that Double D does
5 not stand for Doug Durbano, but I know that is a
6 common assumption. But the Double D Construction
7 was a company created where Tom Wood was the
8 general contractor here from South Carolina and --

9 Q. Okay.

10 A. Yeah, that's about all. Tom got
11 started and he hired Karl David and. . .

12 Q. Did eventually Mr. David come to work
13 for Chicora?

14 A. Eventually Karl David came to work
15 directly for Chicora.

16 Q. You said after Double D worked on the
17 suite for a while, Bennett Hofford came in and did
18 the rest of the work?

19 A. It's kind of easy to designate how that
20 happened if it's helpful. Double D did really a
21 significant amount of demolition. As it turned
22 out, and you'll see in the subsequent amendments
23 and changes of the architectural drawings, Fetter
24 made some decisions to upgrade their space to a
25 fairly high level of finish.

31
1 Double D's function really was to clean
2 up, remodel, paint, patch. So when it came to do a
3 more detailed and thorough, I'll call it a scrape
4 and build, Bennett Hofford was hired to put in the
5 new HVAC and really a higher level of construction
6 contracting.

7 (PLF. EXH. 1G, Lease Agreement, was
8 marked for identification.)

9 BY MR. MASSALON:

10 Q. I've got you. Okay. Thanks. Now next
11 in the notebook would be Exhibit 1G, and you can
12 look at mine here if you want to. What is that
13 document, if you know?

14 A. That is the -- just double checking it.
15 That is the lease that was referred to as a storage
16 space in the building that Fetter Health leased,
17 and they started storing medical records I
18 understand in the building before the tenant
19 improvements were finished.

20 Q. Okay. And the date of that is April
21 15, 2015?

22 A. Yes.

23 Q. Okay. I would like to move that one
24 into evidence.

25 MR. ALTMAN: Without objection.



1 MR. MASSALON: All right.

2 (PLF. EXH. 1H, Executive Summary of
3 Addenda to Lease, was marked for identification.)

4 BY MR. MASSALON:

5 Q. Next is Exhibit 1H and --

6 A. All right.

7 Q. -- that is just single-page document.

8 What is that document?

9 A. This is an executive summary of the
10 addenda to lease. So we identify in this document,
11 I have to go into more detail. We identify this
12 document as the, if you will, the new summary
13 because there has been a first addendum and some
14 other changes that have been going on between the
15 parties. This is where we're starting to see an
16 increase in the rentable square footage that Fetter
17 would like to have. We're starting to see now the
18 new architectural drawings that Fetter would like
19 to have done for the retrofit. And so we're making
20 some fairly significant amendments to the lease
21 here.

22 Q. Now, down in the text above the
23 signature I'll just publish it. It says, "The
24 foregoing executive summary illustrates the changes
25 to the lease as a result of the first and second



1 addendum?

2 Did I read that right?

3 A. Yes, that's correct.

4 Q. Now, why were there two addendums
5 executed at one time?

6 A. They really deal with, if you will, two
7 bundles of rights that need to be -- we thought
8 better to the separated, and that is the tack we
9 took. And this is more of the timeframe when we're
10 starting to have one-on-one interaction with the
11 counsel for Fetter and there was some things
12 changing that were significant.

13 (PLF. EXH. 1I, First Addendum to Lease,
14 was marked for identification.)

15 (PLF. EXH. 1J, Second Addendum to
16 Lease, was marked for identification.)

17 BY MR. MASSALON:

18 Q. Okay. If you could, would you look at
19 Exhibits 1I and 1J for us? 1I is the first
20 addendum. 1J is the second addendum.

21 A. I have it.

22 Q. Can you identify those as the first and
23 second addendum that is referred to in the
24 executive summary?

25 A. Can, and I they bear my signature on

1 both of those documents as the manager for Chicora,
2 and I believe that's Reuben Pettiford's signature
3 CEO of Fetter on both documents.

4 Q. Okay.

5 A. And initials.

6 MR. MASSALON: If I can, I would like
7 to move Exhibits 1H, I, and J.

8 MR. ALTMAN: John, for the purposes of
9 -- excuse me for interrupting -- I believe that we
10 can go through and if you want to go ahead and you
11 don't have to move them in.

12 MR. MASSALON: Okay.

13 THE COURT: I was about to make that
14 same suggestion.

15 MR. MASSALON: Yeah.

16 THE COURT: I know some of us get paid
17 by the hour.

18 MR. MASSALON: Well, I want to do it
19 right. If I don't, I --

20 MR. ALTMAN: I understand. I'm sorry
21 for interrupting you.

22 THE COURT: I literally was about to
23 say the same thing.

24 MR. MASSALON: That's fine.

25 THE COURT: You have no objection to

1 any of these documents?

2 MR. ALTMAN: I don't think I do. If I
3 do, if you hit them, we'll go ahead and object at
4 that time we hit them.

5 BY MR. MASSALON:

6 Q. Excellent. Now again, if you could,
7 the first addendum starting with that one, can you
8 hit the highlights of the first addendum and why it
9 was amended?

10 A. On first addendum the one of April 16,
11 2015, the space was amended to increase the square
12 footage up to -- I'm going to start using round
13 numbers, 11,000 square feet. So fairly significant
14 space increase and we're having a new plan sheet
15 now drafted and finalized by the architect which
16 shows how the space will be laid out with some
17 offices, an open entryway, some exam rooms, et
18 cetera, et cetera.

19 Q. Okay.

20 A. So we're seeing much more detail there.
21 And we talked about the monthly rental. It's
22 obviously going up.

23 Q. Okay.

24 A. The commencement, we changed the date
25 to be an anticipated date of June 1, 2015, when the

1 a certificate of occupancy for the premises shall
2 be obtained.

3 Q. Okay.

4 A. The tenant improvement costs obviously
5 going up.

6 Q. Why did the tenant improvement
7 allowance go up?

8 A. The square footage went up so the
9 landlord agreed that the \$5, \$5.13 it appears,
10 would be a number that they would apply to the rest
11 of the tenant improvements as well. And that was
12 consistent with the original lease. So the budget
13 cap for the landlord went up to 56,000 rounded.
14 There is a rental projected operating expense, et
15 cetera. That goes up slightly because your square
16 footage went up, hence your percentage of common
17 area expenses are going to go up and that's --

18 Q. All right.

19 A. -- the first addendum.

20 Q. Okay. Good. Attached to that is a
21 sketch?

22 A. A couple of drawing for what their new
23 space will look like and some up fit, and that's
24 when a certificate -- I'm sorry -- a permit was
25 obtained on that new architectural drawing.

1 Q. All right. Second addendum, if you
2 would -- well, let me ask you first about the first
3 addendum. I think you mention that that one was
4 also signed by Mr. Pettiford for Fetter?

5 A. It was and I remembered it took a
6 little while. That's why one of these is such a
7 dark color to get some of them initialed because we
8 wanted the architectural drawings to actually be
9 initialed by the parties as well to confirm that's
10 what the tenant improvements would look like and
11 cost, et cetera.

12 Q. Got you. Now, the next, as a second
13 addendum, tell us if you would, or summarize for us
14 the content of that. What was changed on that
15 document?

16 A. It's just one paragraph as you can see.
17 So the focus here is really on how to deal with the
18 cost of tenant improvements. They're, as I
19 mentioned, they're going up and significantly at
20 this juncture.

21 Q. Okay.

22 A. So we have got a budget cap of 56,000
23 that the landlord has promised, but we also agree
24 that so long as the work performed by either
25 Double D because they had done some of the work,

1 that the landlord will finance any of the tenant
2 improvements. I emphasize the word finance because
3 you'll see later that and as this document refers
4 to that there is a promissory note that will be
5 executed by the tenant, in this case Fetter, and
6 that promissory note will be secured by a mortgage
7 on the tenant's existing real property.

8 Q. That was where?

9 A. That was at their 51 Nassau Street in
10 Charleston.

11 Q. Nassau Street. Okay.

12 A. So the tenant contemplates that that
13 property would be sold in the near future and there
14 was significant discussion about they will be using
15 the proceeds from the sale of the building to
16 improve the Chicora building. And so, if we would
17 finance that construction for them, they would
18 appreciate it, and that's what we did.

19 Q. Okay. And if you would, flip over to
20 Exhibit M for me?

21 THE COURT: M as an in mother?

22 MR. MASSALON: M as in mother.

23 (PLF. EXH. 1M, Promissory Note, was
24 marked for identification.)

25 BY MR. MASSALON:

1 Q. What is Exhibit M?

2 A. That appears to be the promissory note
3 secured by a mortgage, and at the time the amount
4 was \$248,641. That amount was based upon an
5 anticipated contract for tenant improvements from
6 Bennett Hofford, partially Double D. And so this
7 is a -- I'll call it a fairly standard financing
8 arrangement where there is an interest rate
9 principal interest to be paid back, cost, fees,
10 prepayments allowed. So a fairly standard
11 promissory note coupled with right behind that, is
12 that the next exhibit, John, where we have a
13 mortgage.

14 Q. Before you leave that one, if you
15 would, on page 4, does that look like it's signed
16 for Mr. Pettiford for Fetter?

17 A. It appears to be the same signature of
18 Reuben Pettiford CEO.

19 Q. Again, it won't escape anybody's
20 attention that this has got the word cancelled
21 written in bold letters across it and dated October
22 23, 2015?

23 A. Yes. And I can tell you that is my
24 scribbling and initial at the bottom with the date
25 on it.

1 Q. Got you.

2 (PLF. EXH. 1N, Mortgage/Deed of Trust
3 Cancellation and Release, was marked for
4 identification.)

5 BY MR. MASSALON:

6 Q. If you look now at Exhibit N, what is
7 that?

8 A. This is the original mortgage or deed
9 of trust cancellation where we released the
10 mortgage that was on the Fetter Clinic.

11 Q. Okay. So if you would, tell Mr. Logan
12 why you got a note and mortgage to secure payment
13 for the tenant improvements and then you cancelled
14 it and released the mortgage.

15 A. I know that seems odd, but we did.
16 From what we know, Mr. Pettiford, Reuben Pettiford,
17 had fallen in somewhat disfavor with the company.
18 I don't know all the details, but I think that the
19 mortgage and note on the building might have been
20 part of the equation and he was terminated as I
21 understand or at least resigned. Through that
22 process, now I'm getting fairly heavy involved with
23 Mr. Altman.

24 That is when we really got to know each
25 other, and Mr. Altman was animated was the word I

1 would like to use about how this promissory note
2 and mortgage, and I can smile now because I can
3 understand his animation. This note was
4 inappropriate. Pettiford did not have authority to
5 do so to put a lien on my client's building, and
6 darn it, you better release that. And it was our
7 desire at the time to continue in good graces.
8 This is our tenant. We have hopefully a very
9 long-term relationship. And Mr. Altman offered I
10 thought some reasonable accommodations which were
11 we have a line of credit that's available to us.
12 We can pay our bills and he gave us some assurances
13 that the promissory note and mortgage on the
14 property was not necessary so we voluntarily
15 released it.

16 (PLF. EXH. 1K, Third Addendum to Lease,
17 was marked for identification.)

18 BY MR. MASSALON:

19 Q. If you would now, and sorry to everyone
20 for jumping around, if you flip back to Exhibit K
21 for me. So go back a couple of exhibits.

22 A. The third one, yes.

23 Q. Okay. What is that?

24 A. That is the third addendum to the lease
25 with Fetter and Chicora dated November 23, 2015.



1 Q. Okay. And to summarize some
2 communication you had with Mr. Altman as counsel
3 for Fetter about cancelling the notes and mortgage
4 and was this third addendum the result of those
5 discussions?

6 A. It was. This is where we write in the
7 opening paragraph, identify in a format whereas
8 that we agree to avoid the aforementioned second
9 addendum as it was executed without the
10 authorization of the tenant's board of directors.

11 Q. Got you. Also, just to clear up a few
12 things that is something that Chicora did
13 voluntarily?

14 A. We did so, yes.

15 Q. And I note that the rentable square
16 footage was amended in B to 9,108 square feet?

17 A. Yes.

18 Q. What is that about?

19 A. So taking from the language, I can give
20 you some background. The actual rentable square
21 feet is hereby amended. Now rentable is a term of
22 art within the lease, different from usable. And
23 so, through some architectural calculations, at
24 this time we have discovered that it looks like the
25 actual rentable square footage is 9,108 square

1 feet. Where before we had indicated that it was
2 more than that. So we're recognizing the math that
3 the architects have shown us that the square
4 footage is 9,108. So, again, in accommodation to
5 the tenant, we have reduced the square footage to
6 equal the mathematical calculations.

7 Q. Okay. And going down midway in
8 paragraph C after the number, I'll publish this.
9 It says, "Tenant will timely make payment to
10 landlord for the agreed upon amount in excess of
11 the budget cap, provided the landlord delivers lien
12 waivers from the contractors, subcontractors, or
13 material men that have performed work on the
14 tenant's premises. Upon receipt of the detailed
15 accounting, it's acknowledged that all future
16 tenant improvements will be made pursuant to a
17 contract already executed with Bennett Hofford
18 Construction Charleston, LLC, but to be reviewed
19 and confirmed by the tenant."

20 Did I read that right?

21 A. You did.

22 Q. Okay.

23 A. So at this point now we have got a firm
24 contract with Bennett Hofford Construction to do
25 the tenant improvements as drawn up in the

1 architectural drawings that are attached. The
2 square footage has now been calculated and
3 confirmed, and the tenant is here once again
4 confirming that they will make payment for the
5 amounts above the budget cap to the contractor,
6 subcontractors or material men who perform work on
7 the leased premises of the tenants.

8 Q. Again, just for clarity, this third
9 addendum is dated November 23, 2015?

10 A. That's correct.

11 Q. Okay. And next in D there is a
12 paragraph that is entitled term commencement?

13 A. So we're close enough now that we have
14 a fairly solid contractor who has given us some
15 deadlines, too, that they're being bound to as
16 well. We have tightened everything down tight at
17 this juncture. We're past any of the question
18 marks as far as being able to clean up whatever
19 clean up was necessary to rehabilitate this
20 building, was there HVAC in place and working.

21 So we actually obtained from the
22 contractor Bennett Hofford and we are able to make
23 a commitment to the tenant that the tenant
24 improvements will be done by a date certain, and we
25 confirm that here in paragraph D that, "The term

1 commencement shall occur upon completion of the
2 tenant improvements and the issuance of the
3 certificate of occupancy which shall occur on or
4 before 90 days from the date a contract is executed
5 between the contractor and the tenant," contractor
6 being Bennett Hofford, but no later than February
7 15, 2016.

8 Q. Okay. This is signed by you for
9 Chicora; is that right?

10 A. That's correct.

11 Q. It appears this one is signed by Ruth
12 Jordan and not Mr. Pettiford?

13 A. That's my understanding. She was the
14 new interim CEO at that time.

15 Q. Now if we could flip next to the L,
16 Exhibit 1L, what is that?

17 A. This is a tenant estoppel certificate.
18 If I remember right it was dated about the same
19 time November 24, 2015, so I can give you the
20 background on that.

21 Q. Yes. If you would, that would be
22 great.

23 A. So we're still financing now with UC
24 Funds. You'll see them at the top indicated that
25 they are the lender. So UC Funds out of Boston is

1 increasing their construction loan so that we can
2 finish the Fetter space in accordance with the
3 contract. So identify the premises, there is 9,000
4 some odd feet. The landlord is Chicora and the
5 tenant is Fetter, and UC Funds wants confirmation
6 from Fetter that their lease is still in place, so
7 hence the estoppel certificate.

8 Q. Okay.

9 A. Fairly standard in these kind of
10 arrangements.

11 Q. If you would, look in -- and do you
12 know who generated this document or where it came
13 from?

14 A. Yes. I have a recollection. My
15 recollection is that document was prepared by the
16 lender UC Funds and because it's got the initial
17 language which is very important to them, but
18 paragraph 6 is the key which is that, "The tenant
19 nor the landlord are in default under the lease and
20 that the tenant no offset, defense, deduction, or
21 the claim against the landlord.

22 Q. Okay. Now, if you would go ahead and
23 publish paragraph 11 for.

24 A. Paragraph 11 is also an important
25 paragraph. The tenant of course wants this. This

1 is the non-disturbance language that the lender
2 says that if the landlord were ever to come into
3 default, then the lender agrees it will not disturb
4 the tenancy of the tenant so that hence the
5 non-disturbance as long as the tenant is not in
6 default of any of the terms and conditions of the
7 aforementioned lease.

8 Q. Okay.

9 A. And then there is see Exhibit B of the
10 lease acknowledgement and so forth.

11 Q. This one appears to be signed by
12 Ms. Jordan on November 24, 2018?

13 A. Correct.

14 Q. Now, on the lender acknowledgement
15 there is not a signature?

16 A. This copy does not bear the signature.
17 Though I understand the lender received it and
18 signed all the documents that they to signed on
19 their side when they made the uptick construction
20 loan.

21 Q. All right. I am about to shift gears a
22 little bit and I wouldn't mind just a quick comfort
23 break if we could take five?

24 THE COURT: Not a problem.

25 MR. MASSALON: Thank you.

1 (A brief recess was taken.)

2 THE COURT: Mr. Massalon, let's go.

3 MR. MASSALON: Okay. Thanks.

4 BY MR. MASSALON:

5 Q. Now let's see. After the third
6 amendment was signed, would it be accurate to say
7 that you were not day-to-day involved in the
8 dialogue about this for a while?

9 A. Again, I'm out of state so we've got
10 Bennett Hofford on site. He has got a Kevin and
11 another fellow as project manager, Karl David, our
12 project manager on site. And I've testified that
13 they worked in all due diligence and I know that
14 any time I was receiving a report I always finished
15 with get her done.

16 Q. I've got you.

17 A. It's something my dad always said.
18 Just get her done.

19 Q. Now, we marked as Exhibit T a series of
20 e-mails about this starting in February of 2016.
21 So this would have been a few months after the
22 third amendment was signed. Is this when or about
23 when you remember getting back engaged about the
24 space?

25 A. I'm going to look over yours.

1 Q. Go ahead this is an extra one.

2 A. Okay. So now we're into the February
3 timeframe after we got the certificate of
4 occupancy. I see these e-mails now, and after this
5 date of February, we have already sent out the
6 certificate of occupancy as well as the invoice for
7 tenant improvements and the monthly rent.

8 Q. Okay. Initially, sort of as far as the
9 person on the ground, was that you getting the
10 certificate of occupancy or somebody else at Fetter
11 -- or Chicora? Forgive me.

12 A. Well, obviously it came from the city
13 and Karl David was our project manager on site.

14 Q. Okay.

15 A. So he was one that was physically here
16 interacting with the city and the tenant at this
17 juncture, Karl David.

18 Q. Got you. Okay. But it's your
19 understanding by this time in February of 2016,
20 City of North Charleston had already done and
21 issued COs?

22 A. That's right, and I know that a letter
23 had gone out from Chicora to Fetter saying space is
24 completed, certificate of occupancies are done,
25 pick up the keys, take occupancy if you want, but

1 for sure start paying your rent. We have got to
2 pay these contractors now, you guys start writing a
3 check.

4 Q. Okay. And so in February when you were
5 communicating with Mr. Altman, had Fetter moved in,
6 paid any rent, paid any contractors?

7 A. None of the above.

8 Q. None of the above. Okay. If I can and
9 for everybody?

10 A. About that last comment, they were
11 renting the space downstairs with their medical
12 records.

13 Q. Okay. Got you. For everyone's
14 benefit, I'm not going to go through all of these,
15 but just highlight a few of these e-mails. You
16 mentioned the CO and I'll direct your attention to
17 the e-mail of February 12, 2016 to Mr. Altman that
18 indicates that the CO is attached to that e-mail.
19 Is that what you recall?

20 A. That's correct. This is, the first
21 document of course is a string of e-mails that go
22 back starting February 4th where we're getting some
23 communication from Fetter to begin with, and I'm
24 having some back and forth with Mr. Altman. And
25 then I actually attached the C of O to an e-mail on

1 February 12th again and said, hey, your client can
2 move in whenever they want, but for sure they need
3 to start paying these bills.

4 Q. Okay. And so throughout the month of
5 February did you continue, February 2016, to
6 communicate with Mr. Altman about Fetter occupying
7 the space and paying the rent?

8 A. That's correct. A little back and
9 forth going here.

10 Q. Okay. Now, is it your understanding
11 that at sometime in February that representatives
12 of Fetter went through the space and looked at the
13 condition?

14 A. My understanding is that Fetter was
15 reviewing and going through the space, looking at
16 its condition throughout the course of
17 construction, but you're probably referring to a
18 time when a representative of Fetter, Adrian
19 Williams, I believe was hired as a kind of a
20 construction project manager on behalf of Fetter to
21 come and go through the space and create a punch
22 list or some additional improvements if they want
23 it.

24 Q. Okay. Do you recall getting a copy of
25 the punch list before this lawsuit got served?

1 A. No, I never received it.

2 Q. But it is your understanding one was
3 prepared?

4 A. I do understand that today, that one
5 was prepared in February.

6 Q. Okay. Now, again, if I can refer you
7 to an e-mail and I should have numbered these pages
8 to make them easy to find, but the -- there is an
9 e-mail February 29th from you to Mr. Altman that
10 says, and I'll just publish it for the record.
11 "Sam, we got your letter and have been trying to
12 figure out the disconnect between your numbers and
13 ours. Who is the project manager your letter
14 references who established the value of the work to
15 be completed at \$118,894. We need to get this
16 person connected with Hank Hofford and/or our
17 project manager Karl David and sort this out."

18 Did I read that right?

19 A. Uh-huh, yes.

20 Q. Okay. Now, there is also a reference
21 down that, it says, "As to the new TIs your client,
22 we are happy to accommodate that by way of
23 amendment, but need to resolve the outstanding
24 bills first and establish how the new TIs will be
25 paid for in a timely manner."

1 What is that about?

2 A. It was becoming clear that Fetter was
3 wanting some additional upgrades to their space.
4 My vague recollection was that they now wanted
5 automatic sinks versus manual faucet sinks, a few
6 things like that. So they were coming up with a
7 list of additional things that they wanted to have
8 done as well as they had some touch up things,
9 touch up paint, a doorstop, a door handle, things
10 like that that Hofford probably should come back or
11 the painter should come back and do.

12 Q. Uh-huh.

13 A. Now, I think we recommended that some
14 of those things ought to be done after they move
15 their furniture in because better to get your touch
16 up done after you have banged up the walls just a
17 little more with that furniture. So that is what
18 is going on here. But the real emphasis of that
19 e-mail is, if you read between the lines, come on
20 guys, you have got to start paying something.

21 Q. Okay.

22 A. We've delayed long enough on this.

23 Q. Was Chicora getting a lot of pressure
24 from the contractor to get paid?

25 A. The contractor, as is their right, and

1 while they're friendly, if they're not getting
2 paid, they're filing liens. You start filing liens
3 on a project like this, the press picks up on it,
4 number one, very embarrassing to us. It suggests
5 that we're not paying our bills. Two, the lender,
6 the legal term evades me, but they go berserk
7 because the mechanics lien will predate their lien.
8 It puts them in jeopardy.

9 So everything bad start to happen, and
10 the contractor knows and so yeah, the contractor is
11 saying, look, I've got to file a lien in a timely
12 fashion or I have got to get paid. So we're trying
13 to push that pressure back to where, in my opinion,
14 it belonged.

15 Q. Now what, if anything, did you or try
16 to do to resolve that impasse, kind of move it
17 beyond the back and forth about what needed to be
18 done and when the payment would be made to the
19 contractor?

20 A. I think we just sort of wrote some
21 e-mails. I don't think they got too nasty.

22 Q. Did somebody try to get Fetter
23 representatives and the contractor representatives
24 together to talk about that?

25 A. As I mentioned in the other e-mail you

1 previously referred to was that, let's get the
2 parties together to talk. If you've got a new
3 project manager that's coming in now pretty late in
4 the game with an eleventh-hour opinion on what
5 these tenant improvements should have cost versus
6 what they actually cost.

7 Q. Uh-huh.

8 A. He deserves an audience, but let's get
9 it done quick because I don't think it's going to
10 carry a lot of weight. We're past this stage. We
11 have made a commitment under a contract with
12 Bennett Hofford to do these tenant improvements.
13 He gave us a bid in advance, Hank Hofford did, and
14 you're obligated to pay him. If you don't our
15 building gets lienied.

16 Q. Okay.

17 A. Come on, let's knock it off so to
18 speak.

19 Q. To your knowledge, did that meeting or
20 summit meeting ever occur between representatives
21 of Fetter and the contractor?

22 A. I understand it did not occur.

23 Q. Okay. Do you know why?

24 A. Yes. I think I do.

25 Q. Okay. Tell us, if you will.

1 A. Our manager, carrying if you will the
2 company line, kept saying we'll have a meeting but
3 bring your checkbook.

4 Q. That would be who?

5 A. Karl David.

6 Q. Mr. David?

7 A. And I don't disagree with his position
8 by the way.

9 Q. All right. And so would it be fair for
10 us to understand that Fetter never made a
11 commitment to pay anything for the tenant
12 improvements, and the contractor and Fetter never
13 had a meeting.

14 MR. ALTMAN: Objection. Leading.

15 MR. MASSALON: That is leading. I'll
16 agree with you. Let me ask it another way.

17 THE WITNESS: I want to answer that
18 leading question because they did make a commitment
19 to pay their tenant improvements.

20 MR. ALTMAN: You owe me one. Okay.

21 MR. MASSALON: All right.

22 THE COURT: I'm sorry. I trained him
23 better than that.

24 MR. MASSALON: All right. I'll skip
25 the leading question.

1 BY MR. MASSALON:

2 Q. Do you know why that meeting never
3 happened?

4 A. I do.

5 Q. Okay.

6 A. At least in my opinion. The company
7 line, and Karl David was carrying it was, guys,
8 quit moving the goal post on us.

9 Q. Okay.

10 A. Show up with your checkbook. You have
11 got to pay what you owe. We're happy to get
12 together with you and talk about some additional
13 changes. You want different sinks, we can do that,
14 but today the discussion is get a check to Bennett
15 Hofford like right now. I think Karl may have even
16 had some emphasis language.

17 Q. Some colorful language?

18 A. He is a color fellow. You know how
19 contractors are.

20 Q. I agree with that. Now, if I can, let
21 me refer you to just a couple more of these. Did
22 this discussion extend beyond February into March?

23 A. It did.

24 Q. And did you receive an inquiry from
25 Fetter or Mr. Altman for Fetter about the decision

1 Charleston County had made about its lease?

2 A. Yes.

3 Q. What do you remember about that?

4 A. All right. So sometime in this same
5 timeframe February/March you have got a -- you have
6 got the same kind of a -- how can I say this?
7 Crazy mindset going on at the county and I think it
8 was due to some, and I'll put this on the record, I
9 think it was due to some corruption and that is a
10 fact, in my opinion. That a certain member of
11 county council wanted to see if he couldn't with
12 his group of investors buy this building and him
13 become the landlord and he would be able to buy it
14 from the lender. And if they could put poor
15 Chicora in a financial bind, they being a certain
16 member of county council had already met with a
17 representative of the lender, first lienholder, and
18 started discussions of what they could buy that
19 lien for and foreclose.

20 Q. So what did county council do?

21 A. Okay. Sorry. County council started
22 talking of cancelling the lease.

23 Q. Okay.

24 A. And buying the building.

25 Q. All right. Now did that produce or

1 provoke some concern or questions from Fetter?

2 A. It did.

3 Q. So at that point, did Fetter indicate
4 they were still planning to move in, they weren't
5 going to move in, anything like that?

6 A. My recollection is the initial e-mail I
7 got from Mr. Altman was something to the effect
8 that either there has been some discussion with a
9 member of county council and Ruth Jordan, where the
10 county is discussing acquiring the building and
11 cancelling their lease. Fetter may want to be part
12 of that team so to speak, what do you know about
13 that, Doug.

14 And I think then a newspaper article
15 came out and something was published about the
16 county's actions and Mr. Altman wrote to me and
17 said have you seen this newspaper article. And I
18 had. And so yes, some discussions started
19 happening between Fetter, and as you might expect,
20 some discussion were being had between Chicora and
21 the county in terms of Joe Dawson.

22 Q. Now at some point after that did UC
23 file a foreclosure case against Fetter?

24 A. They did. No, not against Fetter, but
25 UC filed against Chicora.

1 Q. Chicora. That was a mistake. Against
2 Chicora. And so if you would, I'll refer you to an
3 e-mail April 4, 2016 to Mr. Altman or you can tell
4 us what you recall about that if you need to
5 refresh your recollection about it and I'll --
6 again, I didn't number these pages, but I'll hold
7 this up?

8 MR. ALTMAN: Give us a chance to get
9 there.

10 MR. MASSALON: If you can find that
11 one, it looks like that, April 4th. Okay.

12 BY MR. MASSALON:

13 Q. You've got it okay. So you got an
14 inquiry about the foreclosure case that UC Capital
15 filed, and again, for the record that was about
16 when?

17 A. So I'm responding to on April 3rd to
18 Sam. He has written to me he got my voicemail.
19 And I want to emphasize to Mr. Logan that I thought
20 our relationship was always very cordial and
21 professional. True, we can both get animated when
22 appropriate, but he wrote to me and said he is
23 meeting with his client, they're going to discuss
24 the status of the lease and the important -- and
25 the import of the foreclosure which has made the

1 headlines of the front page of the newspaper last
2 week. In development on your side as far as
3 resolution of issues between your company and the
4 county, as far as the purchase, question mark,
5 because that has also been in the newspaper and
6 been out there so to speak that the county says
7 maybe we want to buy this building instead of rent
8 it from Chicora.

9 Q. Okay.

10 A. So whatever information you get would
11 be most helpful. Appreciate it. I write back,
12 Sam, your question is spot on. Here is an update
13 so that your current relatively ongoing so that
14 you can advise your client at your upcoming
15 meeting. The first lienholder did file a
16 foreclosure action. I will add, as I'm sharing
17 this, we believe and we did at that time, and we
18 actually asserted legally that the foreclosure
19 action was filed in a collusive fashion with the
20 county. I used the word corrupt, and I'll use it
21 again today, but they did. They filed the
22 foreclosure action.

23 By the way, UC Funds was current on its
24 payments. That's a very important point that came
25 out in the action. So their basis of the

1 foreclosure action was not for nonpayment.

2 Q. Okay.

3 A. So they started their foreclosure
4 action. They did call us in advance to discuss the
5 protocol. They wanted us to know that they had to
6 move forward based upon their regulators and
7 investors or the some kind of -- it's all a baloney
8 thing to get --

9 Q. For the record, did they -- who called
10 you up?

11 A. Oh, this is UC Funds.

12 Q. UC Funds. Okay.

13 A. By the way, the fellow who was
14 orchestrating this back in Boston is no longer with
15 the company. Happy to report.

16 Q. All right.

17 A. So they're moving forward with their
18 foreclosure and --

19 Q. What did you, if anything, did you tell
20 them about your view of the effect of that on the
21 lease?

22 A. Well, we were very clear in our opinion
23 that, one, the foreclosure was invalid. Two, that
24 their foreclosure would not affect the validity of
25 the lease. That was important to UC Funds by the

1 way. They wanted the lease to be valid in place.

2 MR. ALTMAN: Excuse me.

3 (Cell phone rings.)

4 (A brief pause transpired.)

5 BY MR. MASSALON:

6 Q. All right. And I think where we left
7 off was I had asked you about the effect of the --
8 your view of the effect of the foreclosure by UC
9 Funds on the lease.

10 A. Right.

11 Q. And so, after that, did you get any
12 request from Fetter for any non-disturbance
13 reassurance, anything else from the lender that the
14 lender was not going to disturb or interfere with
15 Fetter's lease or planned lease?

16 A. The report from UC Funds, the lender,
17 was always that they would not disturb the tenants,
18 just opposite.

19 Q. My question, if you would is, did
20 Fetter after learning about the foreclosure ask you
21 for any additional reassurance or information that
22 that would not happen?

23 A. No. Referencing the non-disturbance
24 clause of the lease.

25 Q. Yes.

1 A. No, in fact, I don't recall a single
2 piece of correspondence or a verbal request on the
3 part of Fetter for the non-disturbance agreement
4 other than it was placed in the estoppel
5 certificate. So it was never made an issue.

6 Q. All right. Now let me ask you if I can
7 to take a look at a letter starting with this here.

8 A. I may have a copy of that.

9 (PLF. EXH. 1S, Letter, 4-26-16, was
10 marked for identification.)

11 BY MR. MASSALON:

12 Q. This would be Exhibit S, April 26,
13 2016?

14 A. Yes.

15 Q. That is from Mr. Altman. And what is
16 the import of that letter? What is the
17 significance of that?

18 A. After the last e-mail you had just
19 referenced me to, it had become known that the
20 county was going to go down this road of attempting
21 to repudiate their lease.

22 Q. Okay.

23 A. And see if they could legally get away
24 with that. And then, of course, without a lease in
25 place, the Chicora was going to go into default,

1 foreclosure would occur. Certain members of county
2 council, at least one member, was able to maybe buy
3 that note on the building.

4 Q. So as far as Chicora goes and its
5 relationship with Fetter?

6 A. I'm sorry.

7 Q. That's all right?

8 A. I had to introduce that subject because
9 I believe that information was communicated to
10 Fetter through Ruth Jordan and Teddie Pryor.

11 Q. Okay.

12 A. That seemed to be the contact. It
13 appears by the time Sam now met with his client and
14 had a board meeting. So on April 26th, Sam, I mean
15 Mr. Altman, excuse me, writes back to me.

16 MR. ALTMAN: You can call me Sam.

17 THE WITNESS: Well, you referred to me
18 as Mr. Durbano, so all due respect. Mr. Durbano,
19 he says, Fetter is basically going to go down the
20 same road as the county it appears. He references
21 that the County of Charleston has moved to take
22 action to terminate its lease. This is a major
23 concern. It sends a clear message to Fetter
24 requiring that Fetter take immediate action. So
25 the question is, well, what action is he referring

1 to and the action he refers to is they're going to
2 cancel their lease to. There is a potential
3 foreclosure. My client has declared that Chicora
4 is now default though I don't see the details of
5 what that default is nor do I see a period of time
6 to cure in default. This says you're in default
7 and we will immediately begin to search for another
8 location.

9 So there is no reference here to what
10 the essence of our conversations have been which
11 is, Fetter, you're in default, it's time for you to
12 pay your bills, both rent as well as tenant
13 improvements. So quite to our chagrin and
14 surprise, Fetter takes the -- there is nothing like
15 a good -- the best defense is a good offense.
16 Fetter takes the offense and says, hey, you guys
17 are in default now that we think about it. We're
18 not sending you any money and not giving you any
19 time to cure. We're going to go ahead and cancel
20 the lease and league up so to speak on the team of
21 the county.

22 At this juncture, Fetter has now put
23 themselves in the same category as the county did.
24 They have repudiated their lease so this is at
25 minimum an anticipatory breach and changes its mind

1 and says, hey, we're not going to be involved
2 anymore.

3 Q. Was there any term of any of the lease
4 or any of the amendments that made Fetter's lease
5 obligations contingent on the county occupying the
6 space or fulfilling its lease obligation?

7 A. That's a good point. The answer is no.
8 Their lease was not contingent in any way upon the
9 county or any other tenant being present in that
10 building.

11 Q. Okay. Now, I just note just for the
12 record and for the timeline that this lawsuit was
13 filed about May 6, 2016, so a week or two after
14 this letter?

15 A.. That's correct.

16 Q. Now after that, did Chicora file
17 bankruptcy?

18 A. Yes, but not in the traditional sense.
19 Chicora did file for Chapter 11 protection which
20 was, in my opinion, an excellent strategic move.

21 Q. Okay.

22 A. And that Chicora utilized the
23 reorganization provisions of the United States code
24 to not only obtain a forum which was appropriate
25 for the resolution of this dispute with the county,

1 but also was able to move in a more expeditious
2 fashion.

3 Q. Was the end -- was an end result of the
4 bankruptcy that the former Naval Hospital was
5 purchased by the County of Charleston?

6 A. That was that outcome, but it was not
7 -- I emphasize, Mr. Logan, that was not the purpose
8 that's not where we started it's unfortunate that
9 we -- we felt it was unfortunate that the county
10 ultimately threatened its eminent domain ability
11 and did go ahead and buy the building.

12 Q. Okay. And when or about when was that
13 that the building was sold by Chicora to the
14 county?

15 A. I'll add the word forced sale from
16 Chicora to the county if that would be all right as
17 a qualifier. That forced sale occurred in November
18 of 2016, so middle of November last year.

19 Q. Just for clarity, you said November of
20 '16, but you said November of last year?

21 A. Oh, I'm sorry, '17. It occurred just
22 six months ago.

23 Q. Got you. Okay. Now, the contractor
24 that performed the tenant improvements in the
25 Fetter space, suite 1300, did Chicora pay that

1 contractor either before the bankruptcy or as part
2 of the bankruptcy.

3 A. Yes. Chicora paid Bennett Hofford and
4 all the contractors and subcontracts in full.
5 Thank you for asking that question. It's an
6 important question. There were no lien claims as
7 part of the Chapter 11 reorganization.

8 Q. So I don't know enough about bankruptcy
9 to know the answer to this question. Does that
10 mean that the contractors were paid prebankruptcy
11 or as part of the bankruptcy?

12 A. Prebankruptcy.

13 Q. Prebankruptcy.

14 A. And they were not considered a
15 preferred or preferential payment. They were paid
16 and there was no dispute with their liens or
17 claimed amounts through the bankruptcy.

18 (PLF. EXH. 1V, Summary of Damages, was
19 marked for identification.)

20 BY MR. MASSALON:

21 Q. Now at Exhibit V we have a summary of
22 some damage claims and I would like just to review
23 these for the record.

24 MR. ALTMAN: What exhibit is that,
25 John?

1 MR. MASSALON: That is the very last
2 one, V.

3 THE COURT: V.

4 MR. MASSALON: Yeah.

5 BY MR. MASSALON:

6 Q. The first page of that is just a
7 summary, but this sheet. But if we could, let me
8 look or ask you to look at Fetter cost through and
9 there is a hole punched through the word Fetter.
10 Sorry about that. Fetter cost through 12/22/15.
11 Got that?

12 A. I do.

13 Q. Okay. And if you could, just explain
14 that to Mr. Logan, what that calculation is and
15 what your total Fetter costs claim by Chicora are?

16 A. We have got two columns and this
17 Exhibit V, vector, that you're referring to, was an
18 earlier summation of our checking accounts and
19 business records that showed the payments. You can
20 see over here to B and H, Bennett Hofford, in the
21 middle column, as well as the demo of Fetter space
22 and some basic tenant improvements done by Double D
23 in the early part of the exhibit.

24 Q. And the recipient is listed under the
25 vendor line; is that right?

1 A. That's correct. So some payments --
2 two payments Double D, several payments there to
3 various subcontractors. MC Dean there is
4 electrical and has an indication of what the work
5 was generally associated with. A couple more
6 general conditions that Double D was able to do.
7 And then Bennett Hofford kicks in and picks up the
8 -- we'll call that the new work that was requested.

9 Q. Okay.

10 A. You'll note then moving to the far
11 right of the exhibit that we have got the Fetter
12 Healthcare numbers and they total \$311,000.

13 Q. Okay.

14 A. Right below that number we have the TI
15 budget of 56,000.

16 Q. That is from the lease?

17 A. Per the addendum, No. 3, 2 and 3. The
18 remaining balance that was billed then to Fetter at
19 that time, land when I point to that time this was
20 back in August of 2017.

21 Q. Okay.

22 A. At that time their bill would have been
23 \$254,000. In addition to the -- we'll call it the
24 typical tenant improvements -- we also had Bennett
25 Hofford install or do some work that we felt

1 initially would have been outside of typical tenant
2 improvements and that would have been though
3 beneficial to the tenant, something that the
4 landlord should be responsible for. This
5 specifically is the HVAC stuff. We call those
6 capital improvements and not necessarily tenant
7 improvements.

8 This particular HVAC system was
9 installed from the ceiling of the Fetter space. So
10 it was an improvement to their space specifically,
11 and those totalled \$326,000 call it rounded 327.
12 So if you round the 311 or sum the 311 with the
13 326, you'll get 640 some odd thousand dollar total
14 cost of tenant improvements which have on another
15 sheet. It's \$638,000.

16 Q. Okay. Now --

17 A. So total tenant improvements for Fetter
18 space without any budget for tenant improvements
19 from the landlord is \$638,000.

20 Q. Now, you mention when you were going
21 down the Fetter HVAC column that those are expenses
22 -- you said something like normally paid by the
23 landlord or something like that?

24 A. Yes.

25 Q. If that's so, why are they on this

1 lease?

2 A. Under paragraph 3 of the lease, if they
3 don't ever take possession, there was no need for
4 the landlord to have put in those new capital
5 improvements because they are improvements. There
6 was an HVAC system at the building that worked at
7 the Naval Hospital for umpteen years. Of course,
8 it was umpteen years old, too.

9 So to now put in these VAV boxes,
10 variable air flow boxes actually in a tenant's
11 space, it's a nice improvement, but it is a capital
12 improvement that will exceed the life of their
13 lease. So the theory is that that's perhaps on the
14 landlord's side of ledger to put in.

15 Q. Okay.

16 A. So we did that.

17 Q. All right. Now, if you turn over to
18 the next page for me, there is a table titled
19 Fetter Clinic Lost Rent. Do you see that?

20 A. I think I have a copy of that as well.

21 Q. All right. If you could, just explain
22 that to Mr. Logan how that calculation was done.

23 A. We calculated the rent from January of
24 2016, when the final completed certificate of
25 occupancy was issued, and brought it forward using



1 a 2 percent CPI increase that occurred in January
2 2017, per the terms of the lease, and ended it on
3 November 2017, when we sold the building.

4 Q. Okay.

5 A. Now, as you know, John, there are good
6 legal arguments that the lease once repudiated
7 should be calculated as a present value of the
8 lease payments for the entire lease and that is a
9 different calculation, but this calculation simply
10 shows what we would say would be the rent that
11 should have been paid to Chicora while it owned the
12 building.

13 The lease continues in effect, in
14 theory, and the rent could or should be paid to the
15 county after that if the county was enforcing the
16 lease, which apparently they're not at this time.
17 We don't know what the deal is between the county
18 and Fetter right now. But that totals up. I'm
19 getting too -- I apologize.

20 Q. That's all right. You're doing fine.

21 A. We did calculate the interest. I will
22 indicate that that interest is at the contract rate
23 of 18 percent and that we think we have done an
24 accurate job with the spreadsheet.

25 Q. Okay.



1 A. I have looked at it closely, and you
2 can see what the totals are there. We have made
3 some monthly rent calculations at the bottom to
4 show where these numbers came from. But the
5 summation is \$646,000 in lost rent just between the
6 certificate of occupancy and the date of sale.

7 Q. Okay. Now that number is different
8 frankly than the one that's in my notebook so I'll
9 ask you to explain. It looks like the sheet you're
10 looking at is dated after the one I'm looking at.
11 And I know Mr. Altman will ask you that, so I'll go
12 ahead and ask you now.

13 A. Let me see.

14 Q. If you would, just take a second and
15 compare those two because I want to get that.

16 A. I see. I know now exactly what the
17 difference is.

18 Q. What is the difference?

19 A. My sheet has the 10 percent late fee
20 included, your sheet does not.

21 Q. Okay.

22 A. That is the difference.

23 Q. So including the 10 percent late fee,
24 the total is what?

25 A. \$646,000 rounded.

1 Q. Got you. And there is a little bit of
2 math there below that by your thumb, and if you
3 would, just explain what that is.

4 A. This is the, if you will, the footnotes
5 to how the monthly rent is calculated so that we
6 can verify the accuracy of the data above. So
7 we're looking at the original lease, the first
8 addendum, second, the storage lease, the third
9 addendum and the storage. So it gives the per
10 square footage plus the cam. \$12 per square foot,
11 plus a cam of I think it was \$5 something per
12 square foot per the lease. 5.60, or it went up to
13 6.50 that year. So that gives, if you will, the
14 proof of the accuracy of the numbers above.

15 The 10 percent late fee that my exhibit
16 has is contained in the lease and I believe it's
17 paragraph 3, but we can go back and double check.

18 Q. For Mr. Logan's benefit, would it be
19 accurate for him to understand that the lost rent
20 calculation includes the 18 percent contract
21 interest rate, but that the calculation of the TI
22 cost, the improvement cost does not?

23 A. That is correct.

24 Q. Okay.

25 A. So TI cost we have not calculated the

1 interest. That could have been after the fact on a
2 sum certain. The calculation of the lease payment
3 is done because we think that has to be done on a
4 monthly basis and continue as it goes.

5 Q. Got you.

6 A. Because that was due -- obviously, the
7 interest in November is only \$99 compared to the
8 interest being charged in January 2016.

9 Q. Got you.

10 A. So that would do that more accurately.

11 Q. Okay. And then we mentioned earlier,
12 looked at early area a provision in the lease that
13 allowed for a recovery of attorney's fees, and do
14 you know what those are to date?

15 A. Reasonable.

16 Q. Fine.

17 THE COURT: I would be disappointed if
18 that were true.

19 THE WITNESS: What else can I say on
20 that?

21 MR. MASSALON: I understand. I would
22 like to take a moment if we could at some point and
23 copy the updated spreadsheet.

24 THE COURT: That's fine.

25 MR. MASSALON: With the late fees, but

1 other than that, I'll turn the questioning over to
2 Mr. Altman.

3 THE COURT: Mr. Altman, what is your
4 pleasure. Do you want to do a lunch break now or
5 do you want to cross?

6 MR. ALTMAN: Can we start.

7 THE COURT: Sure. Absolutely.

8 EXAMINATION

9 BY MR. ALTMAN:

10 Q. Mr. Durbano, I had asked Mr. Blackburn
11 in his deposition as to the existence of an
12 executed estoppel agreement and he said he was not
13 aware that there was one. Where is the executed
14 estoppel agreement by the lender?

15 A. With the lender.

16 Q. Did you ever forward a copy of that to
17 Fetter?

18 A. I don't have a copy of it. It's a
19 lender document that was submitted to the lender.
20 It's part of -- you may recall, it's part of the
21 estoppel certificate that the lender required at
22 the time of closing of the transaction. So we
23 would sign the documents on our side and send in
24 our signature. We only presume that they signed
25 documents on their side, but honestly don't get a

1 copy of it.

2 Q. But did you know that that estoppel
3 agreement had been modified?

4 A. No.

5 Q. You do not?

6 A. I don't.

7 Q. If I told you that the provision in
8 there related to the non-disturbance agreement was
9 inserted by Fetter and it was not in the original?

10 A. That is contrary to my knowledge. I
11 understood that the document that was signed by
12 Fetter was the lender's document and they had
13 approved that for the closing of the additional
14 construction loan.

15 THE COURT: For my purposes, what are
16 you handing him, Mr. Altman?

17 MR. ALTMAN: I don't know if I even
18 have enough copies of this.

19 THE COURT: You can make copies on the
20 break.

21 MR. ALTMAN: This is a tenant's
22 estoppel letter. Why don't we go ahead and compare
23 this with the one that this is L, Exhibit L.

24 THE COURT: So Exhibit L in here.
25 Okay.

1 (PLF. EXH. 1L, Tenant Estoppel
2 Certificate, was marked for identification.)

3 BY MR. ALTMAN:

4 Q. Do you see any differences between that
5 and the --

6 A. Yes, I do. The document that you have
7 handed me appears to have 13 paragraphs and the one
8 that we have been referring to previously has only
9 12.

10 Q. Okay. And this required the signature
11 of -- the changes were made by Fetter apparently
12 and given to a representative of your company as it
13 relates to the non -- does that have a
14 non-disturbance provision in there, the document I
15 just gave you?

16 A. Well, the document that's in my right
17 hand we'll say:

18 Q. Sure.

19 A. Let me take a quick peek.

20 Q. Of course.

21 A. I see the non-disturbance is in
22 paragraph 11 the one that we have been using
23 previously that bears the signature. In this
24 paragraph 11 of the new document you have handed
25 me, it does not have the same paragraph 11.

1 THE COURT: Mr. Altman, for purposes of
2 the record, that is not going to reflect what he is
3 looking at and so could we just make that Court's
4 Exhibit No. 1 or something.

5 A. I'll write it on there.

6 THE COURT REPORTER: What are we making
7 this?

8 MR. ALTMAN: Defendant's.

9 THE COURT REPORTER: Defendant's.

10 (DFT. EXH. 1, Tenant Estoppel
11 Certificate, was marked for identification.)

12 THE WITNESS: I have Defendant's No. 1
13 now.

14 BY MR. ALTMAN:

15 Q. Did you process that with the lender or
16 did someone else process it with the lender?

17 A. When you're saying it, are you
18 referring to Defendant's Exhibit No. 1?

19 Q. Yeah. As far as Defendant's Exhibit
20 No. 1, did you handle that or was somebody down
21 here handling that for you?

22 A. The financing was handled at our office
23 and Defendant's Exhibit No. 1 appears to be a form
24 with I'll cull it at least four blanks. Perhaps it
25 was a document, and I'm speculating here.

1 Q. Uh-huh.

2 A. That was produced early on as a form
3 that the lender liked.

4 Q. Uh-huh.

5 A. But I do not recognize Defendant's
6 Exhibit 1 as the form that was used in the closing
7 of the transaction for the lender back in October
8 or November when we took the loan. I think it was
9 November.

10 Q. All right. There is some language put
11 in there for the benefit of Fetter regarding the
12 non-disturbance provision because it's not in
13 Exhibit No. 1, is it?

14 A. That is correct. I do not see the
15 language found in paragraph 11 of the previous
16 Exhibit L, Lima.

17 Q. Uh-huh.

18 A. In Defendant's Exhibit 1.

19 Q. Okay.

20 A. But I could look a little closer. I
21 assume you have looked at it and it's not there.

22 Q. It's not what I think. I'm trying to
23 get it from you?

24 A. I haven't read it.

25 Q. Okay.



1 A. The document, Defendant's Exhibit 1, I
2 don't recall seeing this document until you handed
3 it to me today I'm trying to get up to speed.

4 Q. What is the importance of a
5 non-disturbance agreement as it relates to a
6 tenant?

7 A. I think a tenant has a desire and a
8 rightful desire to receive a confirmation from a
9 lender that they won't disturb their tenancy so
10 long as the tenant is not in breach of their lease.
11 So is it an important document? I can tell you
12 that, oh, in my experience probably the only time
13 I've seen a tenant request, a non-disturbance, is
14 one time and that happens to be in this case after
15 the lawsuit was filed. And I have done a lot of
16 leases.

17 Q. Would you look at exhibit -- this is F
18 -- and this is the original lease, and this is
19 section 26. In section 26, whose obligation is it
20 to go ahead and obtain a non-disturbance agreement
21 for a tenant, in this particular situation Fetter?

22 A. Well, the tenant I think has the
23 obligation to request. It's the landlord that's in
24 contractual privity with the lender, and therefore
25 the request should be made to the landlord and the

1 landlord then would make the request to the lender.
2 That would be the appropriate protocol.

3 Q. In the language down here, it says the
4 landlord shall provide the tenant?

5 A. Yes.

6 Q. Okay. And shall is the same thing in
7 here as shall pay the rent, shall honor the terms
8 of the lease, correct?

9 A. It's mandatory, yes.

10 Q. It's mandatory. And you don't have any
11 document to prove that y'all did obtain the
12 non-disturbance from the lender?

13 A. Respectfully, I have to disagree. The
14 estoppel certificate does contain a non-disturbance
15 language that apparently Fetter must have inserted
16 or requested and that was agreed to by the lender.

17 Q. Where is the document to show that?

18 A. With the lender. If you don't have it,
19 it's with the lender.

20 Q. I don't have it. That's why I'm asking
21 you.

22 A. It's with the lender then.

23 Q. It says that the lender shall provide,
24 and so the lender has not provided Fetter -- the
25 landlord shall provide. So you have not provided

1 Fetter with a non-disturbance agreement?

2 A. I don't think we have ever received a
3 request for a non-disturbance agreement to provide
4 any letter.

5 Q. When you use the word shall, and you
6 said it's mandatory, it's not up to Fetter to have
7 to demand it, it's up to you to go ahead and
8 provide it. Am I correct?

9 A. Well, under that theory, then I suppose
10 that there is no need to demand rent. I think it's
11 fairly typical, common to while impute a term
12 within the lease that when it's time to pay rent,
13 that the landlord sends an invoice or a demand, the
14 same thing. I think the imputed understanding in
15 this document would be if you want a
16 non-disturbance agreement, we provided it, if you
17 will, through the estoppel certificate process.
18 The lender gave the confirmation, acknowledgement
19 of it, accepted the language that Fetter wanted.

20 Q. Where is the proof that the lender did
21 do that?

22 A. With the lender, I guess, if you don't
23 have it.

24 Q. I don't have it.

25 A. I don't know why you don't.

1 Q. I'm asking if you have it?

2 A. I don't have it, no.

3 Q. No? Okay.

4 A. I have the same document that you have.
5 How is that?

6 Q. Okay. Tell me what you know about
7 Franklin Fetter Healthcare Network. What kind of
8 business is it and what kind of client tell is
9 served?

10 A. I assume sick or other folks in need of
11 medical, medical clinic-type help. Is that what --

12 Q. No. I'm just asking you if you know.
13 Tell me who the members of Chicora are.

14 A. Chicora Life Center is a single-member
15 LLC and it's owned by Chicora Garden Holdings, LLC.

16 Q. Who are the members of Chicora Garden
17 Holdings?

18 A. Chicora Garden Holdings has originally
19 four members. That's changed subsequently.
20 Durbano Properties is one of the members. BB&T
21 Properties was another member. QSTBLC was another
22 member, and the fourth member I have forgotten
23 their name. It was another company name that I
24 have forgotten.

25 Q. Okay.



1 A. They relinquished their membership
2 sometime early on.

3 Q. What kind of percentages did each hold?

4 A. 60 percent for Durbano Properties,
5 10 percent BB&T, and 30 percent for QSTB, but
6 2 percent of that was with the other one that I
7 can't remember. But that 2 percent went to -- it
8 was -- maybe it was divided among everybody. But
9 I'm rounding that, okay? 30 percent, 10 percent,
10 and 60 percent.

11 Q. Okay. What kind of contributions did
12 each make to this project?

13 A. Initially, they made equal
14 contributions based on their percentage. I can't
15 recall the exact dollar amounts.

16 Q. How much capital did y'all start off
17 with?

18 A. I would have to look at the records to
19 be able to testify.

20 Q. Give me a ballpark figure.

21 A. I can't even ballpark today.

22 Q. When do you think you would be able to
23 ballpark?

24 A. Well, I suppose if it's important I
25 could find out with a phone call. How's that?

1 Q. All right. Who did you -- you
2 mentioned that you obtained leases for a number of
3 agencies. Who were they?

4 A. As to Chicora?

5 Q. Yeah.

6 A. The leases were with the County of
7 Charleston.

8 Q. All right. The county terminated or
9 tried to cancel?

10 A. Yeah. They took a stab at it. It
11 didn't work out for them.

12 Q. All right. Who else?

13 A. Fetter.

14 Q. Okay.

15 A. I'm just using first names here. State
16 of South Carolina Dorchester Mental Health.

17 Q. Okay. They had a lease with you?

18 A. Yes.

19 Q. Okay. And what is the status of that
20 lease?

21 A. Currently in negotiation with Attorney
22 Drew -- I just lost his last name. May I?

23 THE WITNESS: If you can help me?

24 MR. MASSALON: I can if you would like
25 me.

1 THE WITNESS: Yes, sir.

2 MR. MASSALON: Butler.

3 THE WITNESS: Drew Butler.

4 BY MR. ALTMAN:

5 Q. Has a lawsuit been filed?

6 A. A lawsuit not been filed. The State of
7 South Carolina has engaged in solid negotiations
8 and we've agreed to mediate prior to filing of a
9 lawsuit.

10 Q. The issue involved in that, is it
11 similar to what you have in this lawsuit?

12 A. Very similar if not exactly the same as
13 lawsuit and the county.

14 Q. Is it as to the question as to whether
15 or not tenant the improvements were completed?

16 A. No. That's not really a question.
17 They haven't raised that defense which I believe a
18 red herring. Tenant improvements in both Fetter as
19 well as state mental health, and the county for
20 that matter, all had certificates of occupancies
21 were completed substantially and were done in a
22 manner in accordance with what the parties wanted.

23 The defense that the state is putting
24 forth really is that just like Franklin L. Fetter
25 put forth which is, you know, if the county is not

1 moving in, we didn't want to move in either.

2 Q. Well, you --

3 A. But now it looks like the county is
4 moving in so you ought to get on going here.

5 Q. You used an interesting word,
6 "substantial." Substantial completion, is that
7 what you're talking about?

8 A. In regards to?

9 Q. Completion of improvements?

10 A. Oh, the tenant improvements. The
11 document states that the tenant improvements will
12 be complete, but we all know from the case law or
13 just we'll call it common dealings that tenant
14 improvements are an ongoing thing. Even after the
15 tenant moves in, there is punch lists that occur as
16 I have suggest. It's always wise to do the touch
17 up paint, patch, some of door adjustments, light
18 fixture placements, outlets, are often done after
19 the tenant moves in. The lease contemplates that
20 other repairs will be done.

21 So when we're talking about the term
22 "complete" in the lease, I believe and it's my
23 interpretation of the lease and it's my common
24 dealings in the past, is that the tenant
25 improvements are substantially completed and the

1 capstone being the certificate of occupancy, which
2 is a third-party objective confirmation that you
3 built these tenant improvements accordance with the
4 drawings and the permit that was issued.

5 Q. I believe that most of the language
6 that's in the lease is, and the changes, talk about
7 completion of the tenant improvements and the issue
8 of a CO?

9 A. Yes. In fact, Exhibit B is the one
10 that really I think emphasizes that.

11 Q. The CO was issued and the CO, there are
12 apparently two Cos. One was done as late as
13 January 16th or 17th; is that correct?

14 A. I think so. We can look at the
15 document if that helps.

16 MR. ALTMAN: John, do you have it?

17 MR. MASSALON: Yeah, I do. It is if
18 you look at exhibit.

19 THE WITNESS: I've got it here if that
20 helps.

21 BY MR. ALTMAN:

22 Q. Sure.

23 A. I see the certificate of occupancy
24 representing Fetter space was issued it's dated
25 January 21, 2016, certifying that pursuant to the

1 building code it looks Darbis Briggman, building
2 official, has signed off on it that suite 13 is
3 certified for occupancy.

4 Q. All right. Does the tenant have any
5 input into deciding whether or not the tenant
6 improvement is completed?

7 A. Sure, yes.

8 Q. Didn't the tenant in this situation go
9 ahead and have Adrian Williams go ahead and issue a
10 list of changes or modifications that needed to be
11 made?

12 A. Well, I need to answer your question
13 with a little more detail. I understand today that
14 Adrian Williams prepared what is commonly referred
15 to as a punch list. We received a copy of that
16 after the lawsuit was filed sometime I think in
17 October, so nearly 10 months after the certificate
18 of occupancy was issued. We reviewed the punch
19 list and note that nearly 80 percent of the items
20 are paint and patch or move a doorstop. I'll call
21 these aesthetic kinds of things that are routinely
22 done after the tenant takes occupancy.

23 I also note that earlier on, before the
24 January 21st certificate of occupancy was issued,
25 that the City of North Charleston had issued what

1 is referred to as a temporary or partial
2 certificate of occupancy or certificate of
3 completion, whereby the tenant can take occupancy
4 and begin moving in their furniture which is the
5 normal and ordinary course of these kinds of
6 things.

7 So after, if you will, the destructive
8 event of the furniture movers we can come in and
9 ask the contractor and subcontractor painter to do
10 the painting, patching, if we need to replace some
11 doorplates, move a doorstop, or, in fact, remove a
12 door so furniture can get in. It's better to do
13 that after you've moved your furniture in, and the
14 city recognized that as well.

15 Q. Mr. Durbano, you mentioned something
16 about Mr. Williams being late to the table sort of
17 inspector on this situation. Am I correct in what
18 I heard from you?

19 A. I think I mentioned that, yes.

20 Q. Did you know Mr. Williams actually
21 worked for your company when this whole thing
22 started?

23 A. I don't recall that.

24 Q. Okay. And you are -- that is Exhibit
25 number -- I'm referring to Exhibit No. R, if you

1 want to take a look at it?

2 MR. MASSALON: That is this right here.

3 THE WITNESS: That's it. Okay. I have
4 that.

5 BY MR. ALTMAN:

6 Q. And you have reviewed this entire list,
7 am I correct?

8 A. We have now, yes.

9 Q. I'm not talk about "we," I mean have
10 you?

11 A. Yes, I have.

12 Q. I don't know mean to be short with you.

13 A. Yes, I have.

14 Q. And if Mr. Williams says that this
15 property was not suitable to move in based on these
16 shortfalls as of his inspection, you would disagree
17 with that?

18 A. Yes, strongly.

19 Q. Okay. Was an offer to make payment to
20 you of some money to go ahead and cover some of the
21 expenses involved?

22 A. Yes. And I think it's important to
23 make that distinction from. That's a good
24 question. The lease doesn't anticipate that the
25 tenant pays rent when they move in. The lease



1 anticipates that they pay rent and pay for tenant
2 improvements on certain events occurring. The
3 tenant can move in, frankly, prior to a certificate
4 of occupancy. They can move in six months after a
5 certificate of occupancy. The point is that
6 payments are to be made at intervals as specified
7 in the lease.

8 So we ought not to disconnect the, I'll
9 call it the punch list of Mr. Williams from their
10 obligation to pay rent or --

11 Q. Well --

12 A. -- yeah, I see --

13 Q. -- that is the question. Because, you
14 know, you're saying the triggering here is the CO,
15 but the triggering here is it not both the
16 completion of the tenant improvements and the CO?

17 A. The CO is evidence that the tenant
18 improvements have been substantially completed.

19 Q. Show me in the lease where it says
20 that?

21 A. Well, the paragraph that I think
22 emphasizes that more than anything other is
23 Exhibit B to the lease. Let me just share that
24 with you so we can emphasize that with you because
25 I think it's important.

1 Q. Let's do that?

2 A. So if you turn to the very first
3 exhibit, I think it was -- if John will find it in
4 the exhibit book, but it's page 22 of the lease.

5 MR. MASSALON: And it's Exhibit F.

6 THE WITNESS: Okay. This is the
7 specific language dealing with improvements to the
8 premises. This page follows the architectural
9 drawings. This was the original architectural
10 drawing of what the tenant Fetter wanted. Then we
11 have these four paragraphs, and the second
12 paragraph that I think is critical here, "The
13 tenant shall contract with the landlord or an
14 approved general contractor to make all of the
15 tenant's improvements." These improvements are
16 really the responsibility of the tenant. And,
17 "They're to be done accordance with applicable
18 building codes, craftsmanship standards, to the
19 satisfaction of the tenant, landlord, City of North
20 Charleston," and here is the capstone, such that --
21 "So all of these things added up will equal such
22 that a certificate of occupancy is issued in a
23 timely fashion.

24 So it's the certificate of occupancy is
25 it's the culmination of all of these building



1 codes, craftsmanship standards, satisfactions of
2 the parties per the drawings and an objective third
3 party who has no stake in the game issues the
4 certificate of occupancy.

5 BY MR. ALTMAN:

6 Q. Let's talk about that paragraph, to the
7 satisfaction of the tenant. Did you get a signoff
8 in any way from the tenant that the improvements
9 had been -- they were satisfied with the
10 improvements?

11 A. There is nothing that I know of that
12 requires a signoff of a document. I don't see that
13 as a requirement here. I see the signoff being
14 City of North Charleston issues the certificate of
15 occupancy.

16 Q. No, but it says, to the satisfaction of
17 the tenant. How do you gauge that? How does this
18 fit into the formula?

19 A. If the tenant is involved in the tenant
20 improvement choices of colors, contractor that
21 they're using, they're directing the work and it
22 has completed to the point of a certificate of
23 occupancy being issued, it's presumed that the
24 tenant has given their approval.

25 Q. It's presumed?



1 A. I think the document not only -- I take
2 that back, it's not presumed. The document
3 requires it. The document states it, confirms it.

4 Q. To the satisfaction -- to the
5 satisfaction of the tenant it's implied, but
6 there's no write-off. Do you know whether the City
7 of North Charleston requested from Fetter a signoff
8 saying are you satisfied?

9 A. I'll answer your question as clearly as
10 I can. We make the lease as clear as possible that
11 it is not subject to a subjective point of view of
12 one party saying either like or don't like because,
13 boy, beauty is in the eye of the beholder. And
14 what one may like someone else may dislike --

15 Q. Would you --

16 A. -- or vice versa. So we make it a very
17 objective standard so the banks, landlords, other
18 parties that risk capital in this transactions can
19 rely upon an objective third party to confirm that
20 the tenant improvements are complete when the
21 certificate of occupancy is issued.

22 Q. What you're telling me and telling the
23 Court today is that you -- there is a -- this was
24 done in a fashion where it's totally the language
25 in here doesn't mean anything as far as

1 satisfaction of the tenant?

2 A. No. I'm not saying that at all. I
3 understand the facetiousness of that point. That's
4 not what I'm saying.

5 Q. I'm not trying to be facetious with you
6 because I'm looking at the language in which you're
7 trying to go ahead and tell us that even though the
8 language is there to the satisfaction of the
9 tenant, the tenant, this is a unilateral matter. I
10 thought a contract was a mutual agreement.

11 A. Is there a question that I'm supposed
12 to?

13 Q. Yes. Is a contract, is it something
14 where it's a mutual agreement, it's not unilateral
15 where it's --

16 A. The contract is a mutual agreement, and
17 I can tell you that the mutual agreement is that if
18 the tenant has selected the contractor, if they
19 have participated actively in designing and
20 approving the placement of tenant improvements over
21 the last year, some odd, and it meets the
22 applicable building codes such that the City of
23 North Charleston issues certificate of occupancy,
24 then we have what my old law professor called a
25 zap. It's a done deal. It's an objective event

1 occurs that neither party can subjectively say
2 which is what I think your client is trying to say
3 today. Well, you know, I didn't like the way it
4 looked or it wasn't satisfying to me and so I'm not
5 obligated to live up to the terms of this lease,
6 and that is simply not what this language provides
7 for. If they wanted that, they could have put that
8 language in. We would never have agreed to it.

9 Q. Okay. Let's look at K. We have term
10 commencement on K Section D. So this is an
11 amendment to previous documents?

12 A. Yes.

13 Q. And what does this say in here about
14 the commencement of the lease?

15 A. It will occur upon the completion of
16 the tenant improvements, a capitalized term now
17 becoming a term of art, and the issuance of a
18 certificate of occupancy for the premises.

19 Q. It doesn't have the same language that
20 it did in the original document, does it not?

21 A. It does not.

22 Q. It does not? This is the third
23 addendum. Are there any other addendums?

24 A. Not that I know of, no.

25 Q. Okay. Why don't we go back to R. Why

1 don't you take a look at this document and I'm
2 going to ask you couple of questions about how many
3 sinks were missing. How many -- this is the
4 inspection done by Mr. Williams. How many toilets
5 needed to be installed. If you would just glance
6 at that?

7 A. Okay. I have it here in front of me.
8 As I glance at it, I can confirm my previous
9 testimony that --

10 Q. I'm not asking you about confirming
11 your testimony. I'm asking you about how many
12 sinks were missing, how many toilets were missing?

13 A. The majority of the document I see is
14 back wall not finished, this is paint and patch.
15 Magnet cover missing. I'm looking for a sink
16 that's missing. Perhaps you can direct me to it
17 and I will get there quickly. I see it. In room
18 1303 there is a missing sink. I see that.

19 Q. What about 1304?

20 A. 1304, I see a missing sink.

21 Q. What about 1307?

22 A. Looks like install a toilet, is that
23 what you're referring to?

24 Q. Right. What about 1312?

25 A. Fill in cutouts in the door. Door has

1 dents. Align the doorknobs. I'm sorry. I'm in
2 the wrong spot. On 1304. Did you say 1304?

3 Q. 1312.

4 A. 1312. Oh, very last one. Missing
5 sink.

6 Q. What about 1313?

7 A. Missing sink. I see that. I see in
8 1314 we're removing sinks. Maybe they're
9 misplaced.

10 Q. 1320?

11 A. 1320 repair a doorknob, repair a
12 doorjamb. Door doesn't close, and missing sink.

13 Q. Okay. What about 1323?

14 A. 1323, again, door doesn't close
15 properly. Door doesn't lock properly. Missing
16 sink.

17 Q. You've got 1328?

18 A. Change out electrical receptacle with
19 question mark and toilet.

20 Q. I'm just asking you about the toilets
21 and the sinks. Okay?

22 A. Okay. I see add a toilet. They want
23 to add a toilet. That would be a change, I guess.
24 They want caulk and replace a light cover.

25 Q. If these facilities aren't available in

1 these rooms, is Fetter going to be able to operate
2 and go ahead and serve their clients in the rooms
3 where they're missing toilets, missing sinks?

4 A. Well, I don't know.

5 Q. Okay. Did you inquire of Karl David as
6 to whether or not he had seen this document before?

7 A. I have inquired of Karl David and he
8 doesn't recall having received this document until
9 we got it sometime in October.

10 Q. October?

11 A. After the lawsuit was filed.

12 MR. ALTMAN: We can go ahead and take a
13 break if you want to.

14 THE COURT: Okay. Thank you. Are you
15 finished?

16 MR. ALTMAN: No, no, no.

17 THE COURT: Okay. Hope springs
18 eternal. Why don't we break until 2 o'clock, an
19 hour and a half. If you come back earlier, we'll
20 start early.

21 (A luncheon recess transpired from
22 12:22 p.m. to 1:47 p.m.)

23 (DFT. EXH. 2, Letter, 9-11-15, was
24 marked for identification.)

25 (DFT. EXH. 3, Letter, 2-23-16, was

1 marked for identification.)

2 (DFT. EXH. 4, E-Mail, 3-22-16, was
3 marked for identification.)

4 (DFT. EXH. 5, E-Mail, 3-2-16, was
5 marked for identification.)

6 THE COURT: Mr. Altman.

7 MR. ALTMAN: Yes.

8 BY MR. ALTMAN:

9 Q. Mr. Durbano, I don't know if I
10 understood you correctly. During your testimony
11 with Mr. Massalon and the questions being directed,
12 you're saying the tenant upfit was \$600,000?

13 A. I'll double check the amounts here on
14 the exhibit. I show a total of \$638,000.

15 Q. Do you have an agreement with Fetter
16 that they would pay \$638,000?

17 A. Well, I don't know how to answer that
18 for sure. We have an agreement that was referenced
19 in the document in a promissory note dealing with
20 some portion of those tenant improvements. It does
21 not reference \$638,000, so kind of yes and no to
22 that question.

23 Q. So the answer is, weren't we talking
24 about \$254,000?

25 A. Right. Yes, that's correct.



1 Q. Okay. And this is a number we have
2 seen for the first time today?

3 A. No. This was part of the billing that
4 we sent to the tenant way back in 2016 when the C
5 of O was issued, but on the document we had broken
6 out the tenant improvements into two columns. One
7 column was totalled up to 254,000 which they were
8 billed at the time, but there is another column
9 that totaled 326,000 for what we call capital
10 improvements a rather than tenant improvements.

11 Q. Again, you don't have any documents
12 that are signed by Fetter agreeing to go ahead and
13 pay for anything more than the \$254,000 for tenant
14 improvements?

15 A. Well, the document was signed was a
16 promissory note that we cancelled that did have a
17 specific amount in it. Also, the document that was
18 signed was the, if you will, the exhibit and the
19 addendums that confirmed that overages above the
20 \$56,000 would be paid by the tenant. Then we have
21 paragraph 3 of the lease that says if you don't
22 occupy, then you're obligated to pay for all of the
23 tenant improvements that were put in on your
24 behalf, which in my testimony today would be the
25 capital improvements as well.



1 Q. All right. But there is no document
2 that was signed because if there was something in
3 the note, if the note was cancelled, and so we
4 would go back to the other portion of the other
5 documents that were signed?

6 A. Correct.

7 Q. So Fetter has agreed, according to your
8 testimony, other than what you have said today to
9 pay upfit of 254?

10 A. Let me find the document, I will be
11 able to confirm that for you if you would like.
12 Looking here, the signed documents seem to
13 reference a contract -- not seem, they do. They
14 reference a contract between Bennett Hofford
15 Construction to be reviewed and confirmed by the
16 tenant. The contract specifically sets forth the
17 terms and conditions relating to their tenant
18 improvement and upfit.

19 Q. Are you talking about 3?

20 A. Addendum 3 is the one I'm looking at
21 right now. So the document has the budget cap in
22 it, but as I read through it, it doesn't say a cap
23 if you will or a budget amount even for the tenant
24 portion of those improvements. It's addendum 3 is
25 what I'm looking at.

1 Q. Tell me about -- we're going to come
2 back to this, but tell me about your lender. You
3 said you were making all your payments to the bank.
4 Why would the bank or the lender come in and say
5 hey I'm going to foreclose if you're making all
6 your payments?

7 A. Two things occurred that triggered
8 their belief that they had a right to foreclose.
9 One, they believed they had a right to foreclose
10 when the county threatened to not perform under
11 their lease, number one. That left them with a
12 feeling of insecurity was the way they originally
13 termed it. We don't believe that and didn't at the
14 time. We knew there were ulterior motives, but
15 that was one of the things they hung their hat on.

16 Subsequently, the decision was made to
17 file a strategic Chapter 11 protection. That also
18 was a basis which they later used to argue that
19 they would have the right to foreclose.

20 Q. What else happened at the time the bank
21 came in? Did they go ahead and say you need to go
22 ahead and change contractors or did you say hey
23 this is a good idea to hand off to Bennett Hofford?

24 A. What timeframe?

25 Q. Well, the timeframe when the

1 foreclosure was filed.

2 A. Oh, the foreclosure was filed
3 subsequent after the certificate of occupancy, so
4 there was no change of contractor.

5 Q. So tell me this. What kind of problems
6 did you have with the county?

7 A. Relative to the lease?

8 Q. Yeah. To the lease you had with the
9 county?

10 A. Well, as I started to mention and I
11 didn't want to go into too much of the drama, but
12 there was a change of the county chairman from
13 Teddie Pryor to Elliott Summey.

14 Q. Uh-huh.

15 A. When that changed, Chairman Summey took
16 180-degree different attitude. The attitude was
17 replete with this is a project that should be done
18 locally. I've got a group that's interested in
19 buying the building and we'll take over this
20 project. He demonstrated some -- I'll call it some
21 remorse, having looked at this building as his
22 father was the mayor who was a successful bidder on
23 the building originally, he had had the opportunity
24 with his group to investigate the building and
25 didn't decide to go forward with the acquisition

1 for various reasons. When we did, I think there
2 was some resentment that he didn't get the deal so
3 to speak.

4 So we started seeing evidence of this
5 remorseful, wished we would have, resentful almost
6 attitude from the new chairman Elliott Summey. And
7 frankly, it was difficult, almost impossible to
8 overcome as we met with him on numerous occasions.
9 And one of the occasions resulted in a private
10 conversation between he and I, and this is public,
11 so I don't know mind sharing it today, as well. He
12 indicated to me that this whole issue was all about
13 the money and he emphasized that term on several
14 occasions in somewhat of -- as he sat back and
15 reclined in the chair of the chairman there at his
16 private office and had his feet on the desk telling
17 me this was all about the money.

18 I took that at the time to mean that
19 this was about all the tenant improvements of the
20 county and the narrow bridges. I naively presumed
21 that we needed to work through tenant improvements.
22 But before long, it was made clear to me that it
23 was about how he could be financially benefitted
24 through this process. These are the kind of
25 problems we had with the county.

1 Q. So this took place in mid 2015?

2 A. Yes. This is happening 2015 or
3 something.

4 Q. All right. When did you change
5 contractors?

6 A. We changed to Bennett Hofford. Let me
7 get my years right.

8 Q. About the same time; is that fair to
9 say?

10 A. Yes. About the same time of mid that
11 year, yes.

12 Q. Is that something that the county
13 wanted you to do?

14 A. I don't know that they wanted us to do
15 it. Back then the -- what triggered the need for
16 a, I'll call it a stronger more robust contractor
17 was the desire to upfit the building with an entire
18 new HVAC system rather than try to remodel the
19 existing HVAC system.

20 Q. Who was requiring the new HVAC system.

21 A. It really wasn't a requirement. The
22 lease with the county, for example, similar to the
23 lease with Fetter had certain capital improvement
24 themes. Capital improvement being HVAC was one of
25 them. So we had made representations in both

1 leases, all leases, that the landlord would
2 maintain the structure of the building, and those
3 type of capital improvements would include the HVAC
4 system.

5 When we were analyzing the building for
6 purchase, the HVAC system that existed for the last
7 20 years for the building was in place it worked.
8 But as we began to bring it back online, we
9 realized that while it worked, only about a half to
10 a third of it worked. Some of these large chiller
11 units were worn out. Though we found that because
12 of some water damage one maybe had failed
13 spontaneously with a flooding event.

14 So we were faced with the decision of
15 rehabilitating this older model equipment that
16 would still be older model equipment or putting an
17 entire new HVAC system in the building. That led
18 to some pretty in-depth discussions with the
19 county. It opened the door to the same kind of
20 thing we had here with Fetter, some amendments to
21 the lease. We talked about the Cadillac version,
22 if I can use that term and not offend anybody,
23 versus the Chevrolet version of HVAC systems.
24 There was an expense involved for each one of them.
25 The discussion was we'll take the Chevrolet

1 version. There was some discussion about that's a
2 25-year lease, why don't we look at maybe spreading
3 some of the costs of those tenant improvements over
4 the life of the lease. These were the kinds of
5 things that were happening, and Bennett Hofford was
6 the better contractor to do that kind of in-depth
7 retrofit.

8 Q. Other than sending an invoice at the
9 end of -- in December, what kind of notice did you
10 provide to Fetter saying that the 254 was going to
11 be 600 as it relates to replacing the air
12 conditioning system?

13 A. Well, in December when the initial
14 certificate of occupancy was about to be issued, I
15 think it started off with a move-your-furniture-in
16 certificate, followed with the final certificate in
17 December -- excuse me -- January. We had billed
18 Fetter only for what we'll call the noncapital
19 improvements that are tenant related, and that was
20 the \$254,000.

21 Q. Answer this for me.

22 A. Okay.

23 Q. When was your decision made to go ahead
24 and put in the air-conditioning system, and when
25 did you notify Fetter that their upfit allowance,

1 because they were -- you knew they were on a budget
2 that they were working on supposedly; am I right.

3 A. I think we were all on a budget.

4 Q. When did you notify them the first time
5 that their upfit was going to be 600 rather than
6 254?

7 A. We have never notified them prior to
8 litigation or the repudiation of the lease.
9 Because prior to that time their responsibility was
10 just for what I'll call the specific tenant
11 improvements to alter their space. The capital
12 tenant improvements we felt with the lease in place
13 was or were the responsibility of the landlord. It
14 wasn't until after the lease was repudiated, a
15 refusal to take possession, pay rent, and pay for
16 -- basically complete repudiation of the lease
17 obligations that it triggered the contractual right
18 of Chicora to bill for all tenant improvements.

19 Q. Okay. And you did not go ahead and
20 send a notice to that effect?

21 A. No, we filed a lawsuit within two
22 weeks.

23 Q. I understand that. I understand that
24 you filed a lawsuit, but did you ever send a bill
25 for it until December or January of December 2015?

1 A. No. After the lawsuit was filed we
2 handled it through the course of the litigation.

3 Q. I understand that, but I am asking
4 about the notice. Did you ever ask Mr. Massalon to
5 go ahead and send a notice out saying this is
6 increased by virtue of us doing this?

7 A. Well, I guess to the extent that we
8 filed litigation and asked for damages, yes. But,
9 no, we didn't send out -- once we were in
10 litigation we let the pleadings handle these kinds
11 of things. Is that what you're asking?

12 Q. I'm not asking for that answer. I'm
13 asking for another answer.

14 A. I didn't give the right answer. I
15 apologize.

16 Q. Okay. This lease was signed in August
17 of 2014 and you were going to have a CO and they
18 were going to be able to move in by November 30,
19 2014, and there was a time of the essence provision
20 in your lease. And that sometimes works both ways,
21 am I correct?

22 A. That is correct.

23 Q. All right. And what happened where you
24 were not able to go ahead and turn it around?

25 A. I've got to correct your question.

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1 There was wasn't a time where we weren't able to
2 turn it around. Turn around meaning in other words
3 we were salvaging a project. No, this project was
4 moving along in all reasonable due diligence.
5 There were times when both the county and Fetter,
6 and county was a major factor in this. Were asking
7 for additional things to be done to the building.
8 There were significant amounts of changes in what
9 the county would want. One day they would want
10 this tenant there. A month would go by and the
11 county politically decided that was uncomfortable
12 and now they want the division of social services
13 there. And that would alter what would be required
14 for the tenant improvements.

15 It also affected Fetter. We know that
16 the county social services supports, if you will,
17 and provides a feeder, if I can use that term
18 gently, to the Fetter Clinic. They have a
19 symbiotic relationship. So that would change what
20 Fetter would want to do. And so we would through
21 discussions with Reuben Pettiford, very open
22 disclosures of what is going on, and that was
23 allowing Mr. Pettiford to, on behalf of Fetter, to
24 say, well, maybe we should put a dental clinic in
25 for example. You will see those in the documents.



1 There was a time where they wanted more space for a
2 dental clinic. And then there was a time when they
3 wanted to have maternity and then not.

4 So it was not a time where when did we
5 get in and turn it around. It was a time when did
6 we finally finalize the -- and confirm with
7 architectural drawings, the direction that both,
8 really all three tenants who have this social
9 service mission decide and say all right good now
10 we're signing contracts, let's move forward.

11 Q. All right. Then you signed another
12 one, another addendum that went from I think April
13 15th and you were going to be ready by June 1,
14 2015? What happened there? Why wasn't it ready on
15 June 1, 2015?

16 A. Well, I would like to alter your
17 question slightly.

18 Q. Why don't you answer my question and
19 then explain whatever you want.

20 A. Well, how can I say it generally but
21 that is a rhetorical question that assumes that we
22 weren't ready.

23 Q. Were you ready on the 15th of June or
24 1st of June?

25 A. Well, in my opinion we were, and we

1 were ready for -- and for the county. You may
2 recall this history that we received a partial
3 temporary. That is synonymous terms, partial or
4 temporary certificate of occupancy for the county
5 to move in about in June, and that that is the
6 first time that the county then notified us that
7 we're still not going to take the space because
8 we're moving in a different direction again.

9 That's when the HVAC issue started to
10 become a bigger challenge and the county was saying
11 we would like an upfitted HVAC rather than using
12 the old system. Well, if we're going to upfit for
13 the county the HVAC system and put in the -- and
14 they agreed to the Chevrolet version instead of the
15 Cadillac version, it made sense that we should do
16 that for Fetter as well. Because we would be
17 abandoning old system which is -- did the entire
18 building, all 400,000 square feet. So we would
19 abandon that system, won't repair it, start putting
20 in these new what's called VAV kind of box systems
21 in the ceilings of the tenants rather than one big
22 unit for the entire building.

23 So we had got to the point with the
24 county where a C of O had been issued and they
25 rejected that and said here are some more things we

1 want, there are different things we want, and
2 things were tense there for a month or so. They
3 also rejected the notion of paying for anything.
4 So there were some challenges and Fetter was, if
5 you will, kind of following to see what's the
6 county going to finally land on and then we'll move
7 forward with that.

8 Q. Fetter didn't really have anything to
9 follow the county on at that point, did they?
10 Weren't they prepared to go ahead -- didn't they --
11 are you familiar with an entity called HRSA,
12 H-R-S-A?

13 A. I have just heard of those initials.

14 Q. Did you know that Fetter had a grant
15 that they had obtained as far as several operations
16 at this facility? Did you know that at all?

17 A. I would say secondhand I have heard
18 that Fetter applies for grants and has been
19 successful in getting them, yes.

20 Q. Yeah. Did you know that they applied
21 for one and got one for this particular locations?

22 A. I can't say I knew any details about
23 that.

24 Q. Did you know what efforts Fetter made
25 as far as wanting to move into this property?

1 A. I do not know.

2 Q. You do not?

3 A. Well, I guess I do. They never moved
4 in so I guess I'll have to call it minimal efforts.
5 How's that?

6 Q. I'm going to give you an exhibit which
7 is marked as Defendant's No. 3. Will you pass that
8 down to the Judge?

9 THE COURT: Thank you.

10 BY MR. ALTMAN:

11 Q. This is a letter and this is unusual
12 that I wrote you. Tell me what you did as a result
13 of receiving this letter?

14 A. I do remember this letter. This was in
15 conjunction with some, I'll call it, back and forth
16 between us, Sam, and we're on a first name basis in
17 the letter so we'll do the same here. Where we're
18 talking about getting some payments made and, yeah,
19 pay the tenant improvements and Bennett Hofford
20 folks before they file a lien and get paying your
21 rent and let's go to town here.

22 Q. By chance, did you ever send me any
23 wiring instructions?

24 A. No, I don't think -- excuse me -- I
25 did. On the invoice it has wiring instructions, so

1 yes.

2 Q. No. Did you respond saying to me that?
3 Did you send me any response that said these are
4 wiring instructions?

5 A. I don't think so, no.

6 Q. All right. This is No. 4 that I'm
7 showing you. We're jumping around here a good bit.
8 Do you recognize this letter that's on the
9 stationery of NBSC?

10 A. I believe I have seen this letter
11 before, yes.

12 Q. Do you know what it was issued in
13 conjunction with?

14 A. Yes. Some recollection that they
15 Synovus Bank agreed to keep in place a letter of
16 credit -- line of credit, excuse me, for Fetter,
17 relative to their tenant improvements.

18 Q. That was approximately what the tenant
19 improvements were at that time?

20 A. It looks a little -- a little light.

21 Q. A little light?

22 A. A little light.

23 Q. This was sent to you?

24 A. It wasn't sent to me. It was sent to
25 the building there in South Carolina here at the

1 Chicora Building, but I was forwarded a copy I
2 believe.

3 Q. Did you respond in any way to the
4 letter?

5 A. I don't know that I did or not. I have
6 no recollection right now.

7 Q. Okay. I'm going to show you Exhibit
8 No. 4.

9 (Discussion off the record.)

10 BY MR. ALTMAN:

11 Q. Do you recognize that -- let me tell
12 you what that is. Quite frankly down at the bottom
13 there is some comments that I made to Jeremy
14 Blackburn on this so I have redacted that at the
15 bottom. I just don't think that was appropriate.
16 But anyhow, do you remember receiving this e-mail
17 that you were copied on?

18 A. Yes, I do remember this. I have seen
19 this e-mail.

20 Q. Did you do anything in response to the
21 e-mail?

22 A. I did. I recall that I responded to
23 you, I think, on this e-mail.

24 Q. Does it on item No. 2 it has little
25 bullet point in here. Could you read that into the

1 record?

2 A. On the bullet point No. 2, "Chicora and
3 Bennett Hofford agree the percentage completion is
4 close but do not agree with the dollar amounts
5 assigned by Fetter. Payment by Fetter will be a
6 good faith payment and the parties will work to
7 resolve the disagreements over the amount owed by
8 Fetter."

9 Q. Okay. That's good. So at this point,
10 if I understand this letter, that the percentage
11 completion is close, but it's not complete. Am I
12 correct in my reading of that?

13 A. I think it's more of a suggestion of
14 the dollar amounts assigned to the Fetter outfit.

15 Q. Well, that --

16 A. Rather than percent complete.

17 Q. Well, that is part of the -- part of
18 the second part of that first sentence, but what
19 about the first part? Chicora and Bennett Hofford
20 of agree that the percentage completion is close,
21 but then it goes on to talk about dollars?

22 A. I think this is Jeremy's effort at, if
23 you will, negotiating to get a partial payment. He
24 starts off with per the discussions today with
25 Chicora, at least a partial payment by Fetter for

1 the work completed.

2 Q. I understand that.

3 A. Confirmation that rent will start.

4 Q. I don't want to talk over you. Go
5 ahead.

6 A. So he is saying here is what we
7 discussed. There is going to be a partial payment
8 and confirmation that you'll start paying rent and
9 then he goes on and he gives the five bullet points
10 about some discussion items, but I don't see
11 anything in these bullet points that suggest or
12 even talk about your space is not complete.

13 Q. Well, it says Chicora and Bennett
14 Hofford agree that the percentage completion is
15 close. How am I to understand that other than to
16 tell me improvements are not complete?

17 A. Well, good point. I'll retract then
18 what I said, but my impression is not complete but
19 close is substantially complete is the term I think
20 I've used previously.

21 Q. All right. Let me have a minute with
22 my client.

23 THE COURT: Certainly I think there is
24 room over here.

25 (A brief recess was taken.)



1 BY MR. ALTMAN:

2 Q. Mr. Durbano, this is exhibit number --
3 Defendant's Exhibit No. 3 again. We were -- Fetter
4 was asking for another amendment with a completion
5 date of April 1. Was there any response to that?
6 Was there ever another amendment addressing the
7 issues posed in that letter?

8 A. Yes. There was a response to this
9 though we did not formalize another amendment. The
10 response done by e-mail to my recollection, as well
11 as phone conversations between you and I. The
12 response was Fetter Clinic really needed to pay
13 their tenant improvements, otherwise they would be
14 considered in breach and that the landlord and nor
15 the contractor were going to continue to put funds
16 into this project unless Fetter began honoring
17 their lease commitments and making appropriate
18 payments for their improvements as well as their
19 rent.

20 Q. There was an offer there to make
21 payment on the basis that the tenant improvements
22 were not completed; am I correct?

23 A. Yes. In the letter there is an offer
24 of a proposal that was unacceptable to us.

25 Q. Okay.



1 A. Neither the landlord, nor the project
2 manager, nor Bennett Hofford were prepared to
3 accept a 50 percent payment on execution of an
4 amendment and then start these change orders that
5 were requested.

6 Q. Were they change orders that were
7 requested?

8 A. I would say a significant number of the
9 items that were being discussed were change orders.

10 Q. Well, there was a list that apparently
11 was out there that had been given to somebody with
12 your company as far as the exhibit we have here
13 that is shown as Exhibit No. R?

14 A. Yes.

15 Q. And those weren't change orders. Those
16 were things that were actually supposed to be with
17 -- supposed to be in the tenant upfit.

18 A. I have got to respectfully disagree.
19 Some of those items are clearly change orders.

20 Q. Tell me, just look at it and tell me
21 which is a change order. Look at the document if
22 you wouldn't mind, please.

23 A. I can answer without looking at the
24 document. The ones that are started off with
25 change this is a change order. So if you see

1 anything on there that says change this.

2 Q. Okay.

3 A. That, in my mind, is a change order.
4 More importantly, for me to answer this question, I
5 would be speculating to some degree. Karl David
6 our construction guy on the site --

7 Q. I don't want you to speculate. Okay?

8 A. Yeah. We viewed at least we'll call it
9 the, you know, the home office, we viewed that the
10 tenant was making some fairly significant requested
11 changes which would have been subject to a change
12 order.

13 Q. But you can't answer. You think Karl
14 David can?

15 A. I think Karl David might be the best
16 for that.

17 Q. Okay.

18 A. The details necessary.

19 Q. Sure.

20 A. Though some of these changes are
21 requested punch list items were not on the original
22 drawings. I remember the sinks particularly.

23 Q. Okay.

24 THE COURT: Do you still agree that
25 you're finished?

1 MR. ALTMAN: I think I'm finished.

2 THE COURT: Mr. Massalon, do you have
3 any redirect?

4 MR. MASSALON: Just a couple.

5 EXAMINATION

6 BY MR. MASSALON:

7 Q. The last thing you said, what was asked
8 about the sinks and the change orders?

9 A. I just have a recollection that Fetter
10 had required additional sinks and particularly some
11 additional, call it modernized hardware for the
12 sinks, automatic off and on, motion sensing kind of
13 towel dispensers and sinks. So we definitely
14 viewed that as a change order, an additional upfit
15 that was not included on the original plans.

16 Q. Got you. Okay?

17 A. It seemed like there was a wall, some
18 new doors. They wanted an entry now out of a
19 different location for back entry for employees.
20 Things like that just struck me a fairly
21 significant change orders. The patching and
22 painting is something we do after you move in
23 anyway.

24 (PLF. EXH. 1T, E-Mail, 2-18-16, was
25 marked for identification.)



1 (PLF. EXH. 1U, E-Mail, 3-2-16, was
2 marked for identification.)

3 BY MR. MASSALON:

4 Q. Now, kind of going in reverse order,
5 Mr. Altman asked you about a letter February 23,
6 2016 and this is part of Exhibit T. There is an
7 e-mail in here of that same date refers to attached
8 letter, and you were asked if there was a response
9 to that letter. And so let me show you the next
10 document in that group. Do you think, take a look
11 at this e-mail, February 29, 2016.

12 THE COURT: What exhibit are you on,
13 Mr. Massalon.

14 MR. MASSALON: This is Exhibit T.

15 THE COURT: T. okay. Fine.

16 MR. MASSALON: This would be the third
17 or fourth page.

18 THE COURT: All right.

19 MR. MASSALON: The fourth page of
20 Exhibit T. And the question is, take a look at the
21 February 29, 2016 e-mail. Was that your response
22 to Mr. Altman's letter of February 23, 2016?

23 A. Yes. So I think that we get Sam's
24 e-mail on, it looks like Tuesday the 23rd, and then
25 the next Monday I'm responding back indicating that

1 we got his letter last week and we're trying to
2 figure out the disconnect between your numbers and
3 ours. So who is the project manager that your
4 letter references to established that the work
5 completed totals \$119,000. I'm rounding. We need
6 to get this person connected with Hank Hofford,
7 your project manager Karl David and sort this out.
8 As to the new TIs that I point out that your client
9 wants, and these would be the change orders, we're
10 happy to accommodate by way of an amendment as you
11 suggest in your e-mail. Sam suggested in the
12 e-mail an amendment.

13 We have got to resolve these
14 outstanding bills first to establish -- and
15 establish how the new TIs are paid for in a timely
16 manner. So we're confirming the same things that I
17 recall because we have got some old bills we have
18 got to take care of here and then we can move on to
19 the change order you would like.

20 Q. Now, during -- in response to one of
21 Mr. Altman's questions, I think I recall you saying
22 something like there was a provision in the lease
23 that dealt with punch list items?

24 A. Yes.

25 Q. Could you find that?

1 A. Sure.

2 Q. And point us to that part of the lease
3 that deals with the punch list?

4 A. If you look under repairs, I think it's
5 the heading called repairs, see if I can't spot it
6 real quick for us.

7 Q. This will be our Exhibit F.

8 A. It's paragraph 10, page 6 of -- what is
9 that exhibit? F as in Frank, foxtrot by airplane
10 terminology.

11 Q. Okay. And again if you would summarize
12 your understanding of how the punch list was
13 supposed to be handled under the lease?

14 A. Punch list items really fall under
15 repairs because they're not necessarily
16 improvements. You see there is a slight difference
17 between the two. So if we start in first sentence
18 of paragraph 10, that we start with the belief that
19 unless the tenant notifies that landlord in writing
20 at the time of delivery, and you recall we
21 delivered the premises back with certificate of
22 occupancy in January.

23 So unless you notify us in writing, you
24 accept -- the tenant accepts the premises as being
25 in the condition in which the landlord is obligated

1 to deliver the premises. So the landlord will
2 reasonably maintain the premises for your quiet
3 enjoyment now. Your habitability. So you can
4 occupy and use it for your tenant purposes
5 including maintenance, structural soundness, HVAC
6 repairs, if necessary. That is our job. And some
7 of those are included in operating expenses. But
8 the tenant shall at all times at the tenant's sole
9 cost and expense keep the premises in good
10 condition and repair excepting ordinary wear and
11 tear.

12 It goes on further to emphasize that
13 the tenant waives all rights to make repairs at the
14 expense of the landlord in lieu thereof or to
15 vacate the premises.

16 Q. Okay.

17 A. So then it finally concludes, landlord
18 has no obligation and has made no promise to alter,
19 remodel, improve, repair, decorate, or paint the
20 premises or any part thereof except as specified in
21 Exhibit B. No representation respecting the
22 condition of the premises or the building have been
23 made by the landlord except specifically as defined
24 herein.

25 Then we go to Exhibit B and that's

1 where it says we do our drawings and we go through
2 this process and finally cap it off with a
3 certificate of occupancy.

4 Q. Let me ask you what I hope will provoke
5 a short answer.

6 A. Sorry. Okay. I think I heard that.
7 Objection, Your Honor.

8 Q. Under the lease where the punch list
9 items to be address by the landlord after delivery
10 of the premises and after the premises was
11 delivered and occupied by the tenant?

12 A. Sure. These are routine punch list
13 items. Bennett Hofford was always willing to do
14 it. The painter is going to come back, standard
15 drill.

16 Q. Let me try to clarify a couple things
17 on the damages and I will be done with you. If you
18 would, Mr. Altman questioned you about the costs,
19 and we have got a summary that shows a tenant
20 improvement loss of 326,905. Okay?

21 A. Okay. Yes, correct.

22 Q. Now my question for you is this --

23 A. Well, let me interrupt. The 326,905 is
24 the HVAC tenant improvements.

25 Q. And my question is, to get a total

1 claim, is that the total claim or does the 254,451
2 need to be added to that to make a total claim?

3 A. Well, depending on the legal theory
4 that His Honor elects here, we have a total of
5 tenant improvements that add up to \$638,000.

6 Q. Okay.

7 A. Okay. But to break that down, 327,000
8 of it is attributable to HVAC tenant improvements
9 specific to the Fetter space.

10 Q. Got you.

11 A. We have 311,000 of tenant improvements
12 that are woods, plastic, drywall, other things
13 other than HVAC that are attributable to the Fetter
14 space. If you then subtract from that the 56,600
15 that the landlord agreed to pay as the budget cap.

16 Q. Uh-huh.

17 A. Then it drops down to the 254,451.

18 Q. Okay.

19 A. So there you have that 250 some odd
20 thousand that Fetter had agreed to pay by way of
21 various amendments and suggested tenant
22 improvements. But the total for all tenant
23 improvements is \$638,000.

24 Q. Got you.

25 A. For a breach of the lease under

1 paragraph 3, I believe that is the applicable
2 number of damages. In other words, reimbursing.
3 That is not really damages. That is simply
4 reimbursing the landlord for money spent on behalf
5 of this client.

6 Q. Okay. And then finally on our summary
7 there is a blank line for a present value of future
8 lease payments?

9 A. Yes.

10 Q. First of all. What is that, in your
11 view?

12 A. By way of introduction, before law
13 school I graduated with a finance degree.

14 Q. Okay.

15 A. So I feel somewhat comfortable with
16 this analysis though I agree that Sam probably
17 needs some time to analyze it. But this is simply
18 taking a future stream of income.

19 Q. In this case, how long?

20 A. In this case, 5 years 60 months.

21 Q. Okay.

22 A. And bringing it back, this future
23 stream of income, to a present value. So if we
24 were to get this dollar amount today it is equal
25 based upon a -- we used a rate of return of

1 4 percent as an interest rate.

2 THE COURT: Of how much, sir?

3 THE WITNESS: 4. We did not use a
4 default here. For present value calculation you
5 would use what we would call a market rate.

6 BY MR. MASSALON:

7 Q. Okay. Got it.

8 A. Lower than the default obviously. So
9 we used a 4 percent rate of return and brought the
10 payments back to a present value. It's quite a
11 fascinating -- well, no, it's not fascinating at
12 all, but it's a mathematical formula that some find
13 fascinating..

14 Q. All right. For mathematicians?

15 A. Yeah, for mathematicians.

16 Q. I've got you.

17 A. Now we plug this into little hand-held
18 calculators these days.

19 Q. Okay.

20 A. Before, we have to use tables and now
21 they are on these Excel spreadsheets. And so the
22 math computations for confirming the accuracy are
23 over here in this box of the assumptions that the
24 table uses. So that if necessary an expert could
25 look at that and quantify it as we have done and

1 confirm accuracy or not.

2 Q. The present value under your
3 calculation of the rent called for under the Fetter
4 lease what?

5 A. 835,000.

6 Q. And that would be not in addition to
7 your calculation of the lost rent, as I understand
8 it, but instead of that?

9 A. Correct.

10 (PLF. EXH. 1W, Fetter Clinic Lost Rent,
11 was marked for identification.)

12 BY MR. MASSALON:

13 Q. So if Chicora recovered the present
14 value of the lost rent, it would be instead of the
15 lost rent figure that we have in Plaintiff's 1W,
16 right?

17 A. That is exactly right. And again,
18 forgive me, I didn't check my legal license at the
19 door or at the state line when we got here, but as
20 we read the South Carolina laws, and particularly
21 some of case laws, there is a progeny of cases that
22 suggest when someone repudiates their commercial
23 lease that the proper measure of damages, TIs are a
24 given.

25 MR. ALTMAN: Your Honor, I'm going to

1 object to this. This is conclusions of law.

2 MR. MASSALON: Okay.

3 BY MR. MASSALON:

4 Q. And again I -- and so why don't you, if
5 you would, just answer this question and then I'll
6 mark it and offer it. Is this an alternate theory
7 of recovering for damages instead of the lost rent
8 calculation under the lease?

9 A. Yes. That is correct.

10 Q. But not a cumulative way of figuring
11 it, it's an alternative?

12 A. It's one or the other.

13 Q. Got you. And so I would like to offer
14 this as Plaintiff's 1X I guess and I -- and I
15 mentioned to Mr. Altman that to the extent he would
16 like to study it or respond to it, that I would
17 certainly ask you to hold the record open for that
18 purpose if you would like that.

19 THE COURT: Would you like to do that?

20 MR. ALTMAN: Yes.

21 THE COURT: How long are you going to
22 take?

23 MR. ALTMAN: That's my objection.

24 THE COURT: 10 days?

25 MR. ALTMAN: Probably just one day.

1 MR. MASSALON: Okay.

2 MR. ALTMAN: That would be fine.

3 MR. MASSALON: Ten days is great.

4 Thank you. That's it.

5 (PLF. EXH. 1X, Present Future Value of
6 Payments; was marked for identification.)

7 THE COURT: Any recross, Mr. Altman?

8 MR. ALTMAN: Just --

9 THE COURT REPORTER: One moment,
10 please. Okay.

11 MR. MASSALON: That is all the redirect
12 I have got.

13 EXAMINATION

14 BY MR. ALTMAN:

15 Q. I have one question. You made
16 reference again to section No. 3?

17 A. Yes.

18 Q. On the lease which is under F. And the
19 last part of this says in here, "If the tenant
20 fails to occupy the premises and it's due to the
21 landlord's failure to complete improvements or to
22 perform any other obligations set forth herein, and
23 the tenant's obligation to pay interior finishing
24 costs pursuant to section 3 shall be excused or
25 waived." Am I correct in reading that?

1 A. Yes, you are.

2 Q. Okay. I have nothing further.

3 MR. MASSALON: Thank you.

4 THE COURT: Thank you, sir.

5 MR. MASSALON: Now, I notice Mr. Hinson
6 is outside, and I am happen to continue on.

7 MR. ALTMAN: Why don't you just go
8 ahead. We can go ahead and take Mr. Hinson.

9 (A brief pause transpired.)

10 JOHN CORBITT HINSON, III
11 being first duly sworn, testified as follows:

12 THE COURT: Please state your full
13 name, please, sir.

14 THE WITNESS: John Corbitt Hinson, III.

15 THE COURT: All right.

16 EXAMINATION

17 BY MR. ALTMAN:

18 Q. Mr. Hinson, where do you live?

19 A. 492 Dolphin Drive, Summerville, South
20 Carolina and zip is 29485.

21 Q. Tell me briefly, where were you born,
22 and where did you go to school, and what kind of
23 profession have you had during your work period.

24 A. Where was I born?

25 Q. Yeah.



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1 A. I was born in Philly, Pennsylvania, and
2 raised, for the most part my youth was in South
3 Jersey between Philly and Atlantic City. In the
4 rural called the Pine Barrens. Went to school
5 college at D. Lincoln University. It's an HB,
6 historically black college. From there I went to
7 the Atlanta University School of Social Work.
8 Spent a year working on a master's in social work.
9 Working in studying in the area of elder care and
10 black community development. And then I went to
11 University of Georgia.

12 I was recruited to go to the University
13 of Georgia at Athens there to do a master's in
14 public administration. I completed that degree and
15 then went to work for the City of Grand Rapids,
16 Michigan.

17 Q. Uh-huh.

18 A. Where I was a program manager for the
19 neighborhood improvement program.

20 Q. Uh-huh.

21 A. Over two projects that were about
22 recovering some historically significant housing.
23 Frank Lloyd Wright used to build a lot of homes
24 there and those programs would -- there was a
25 program to help recover those homes because a lot

1 of them after World War II had been rented.

2 Q. I'm going to bring you up and make you
3 come a little closer?

4 A. Okay.

5 Q. Not to me but as far as what I want to
6 do is get down to what we talked about.

7 A. Okay.

8 Q. Tell me about doing these jobs, did you
9 go have any additional education?

10 A. Well, after the master's, I got a law
11 degree at the University of Iowa.

12 Q. What did you with the law degree?

13 A. I practiced law in Columbus,
14 Mississippi. Then, in Greenville.

15 Q. Greenville, South Carolina?

16 A. Yeah. Greenville, South Carolina, Rock
17 Hill Legal Services. Greenville was with a private
18 law firm. And then I got with -- I said Rock Hill
19 was with Legal Services, didn't I?

20 Q. Sure.

21 A. Then with the State of South Carolina I
22 headed up the child support program for a region in
23 the state, several counties. And then after that I
24 worked in child and adult protective services in
25 Charleston County and in York County and I retired



1 in 2014, March of that year.

2 Q. Okay. Tell me about your relationship
3 with Franklin Fetter of Fetter Health Care?

4 A. My son-in-law's brother was a board
5 member.

6 Q. Uh-huh.

7 A. We were at a family function and he
8 said he heard something about me working with
9 community health centers in Mississippi and
10 Alabama. He asked me whether I might be interested
11 in serving on the board of Franklin Fetter. I
12 think it was right after I retired. He was
13 thinking I needed something to do. So I told him
14 -- I was embarrassed to say no, but I told him I
15 would like to look into it. That is how I came to
16 it.

17 Q. When did you officially become a member
18 of the board?

19 A. I think it was in the fall of -- I
20 think it was in the fall of 2014. I think so.
21 Maybe it was '15. I think it was '14. It was '14,
22 yeah. Yeah, it was '14.

23 Q. Were you assigned any positions as far
24 as chairmanships?

25 A. Well, later I became the vice chairman



1 of the board.

2 Q. Any other positions that you held?

3 A. I was the chairman of the facilities
4 committee.

5 Q. What was the facilities committee do?

6 A. Well, it was kind of a new committee at
7 the time, I believe, and what we were doing is
8 looking -- we were inspecting Fetter's several
9 facilities in various counties and making reports
10 to the board on their condition. If there were
11 needs, we were reporting to the -- making
12 recommendation and reporting to the board on those.

13 Q. How many, if I may ask this, how many
14 facilities does Fetter have and where are they
15 located to the best of your ability, okay?

16 A. Well, they're in Charleston,
17 Dorchester, Colleton. And boy, my memory, I'm so
18 embarrassed. I think there are at least eight I
19 think.

20 Q. Okay.

21 A. And then there was a proposed facility
22 for the Chicora Cherokee area. That proposal was
23 established and in the works before I became a
24 board member so but.

25 Q. Chicora Cherokee is that the same

1 neighborhood whether the Charleston Naval Hospital
2 was located?

3 A. Right. It was a proposal for that
4 facility.

5 Q. What was the proposal? Was it to
6 occupy space or to buy or --

7 A. It was to have a room there, an area
8 there, renovated and refurbished to suit as I
9 understood it.

10 Q. Uh-huh.

11 A. In order that we would, from that
12 location, provide primary health care services and
13 that was the idea.

14 Q. And this was, in fact, the Naval
15 Hospital we're talking about or was it another
16 location?

17 A. It was the Naval Hospital.

18 Q. Okay. As a member of that committee,
19 did you inspect the project from time to time?

20 A. I did.

21 Q. And?

22 A. Along with Mr. Leonard Brown and
23 Mr. Antoine Saunders.

24 Q. Who are they?

25 A. They are other -- they were the two

1 members who I worked with most frequently on that
2 committee. Mr. Saunders is a banker and Mr. Brown
3 is a realtor.

4 Q. Okay. And do you remember going to the
5 Naval Hospital in January of 2016?

6 A. I do.

7 Q. Tell me what you saw when you went
8 there as far as the condition of the space.

9 A. Well, I was shocked. I was hoping that
10 we were going to find a facility that would be
11 ready for us to move into.

12 Q. Uh-huh.

13 A. Because we were under a federal
14 deadline by our federal grantor to move in. I
15 think that the assumption might have been that we
16 were already in there, but any way, I think we were
17 chargeable at that point because of moneys received
18 with having a production amount, the increased
19 production amount because of the funds. Now, that
20 is just my understanding.

21 But when I got there, I was shocked. I
22 was hoping to find a facility that we could move
23 into. Instead, I found a place that I consider a
24 wreck. It was a mess.

25 Q. Tell me exactly, if you can, you know,

1 what the mess looked like.

2 A. Okay. Well, it certainly -- there are
3 a lot of rooms. I'll just talk about some of them.
4 When you first entered the area, that would be the
5 lobby. You couldn't tell it was a lobby. There
6 was supposed to be counter there from which to
7 serve -- there was nothing like that. There was --
8 it just was completely unfinished. I don't know
9 even know if the lights were installed.

10 I believe there was supposed to be a
11 pediatric waiting area to the left as you go in,
12 and my best recollection was it really wasn't done
13 at all. I mean, it wasn't renovated or refurbished
14 so as to -- the place wasn't furnished, obviously,
15 we weren't in there, but it was just -- there were
16 massive doors, kind of metal doors to the left of
17 -- to your left toward the back of that area that
18 was designated as what was to be the lobby and
19 those were broken in some kind of way and there was
20 a magnetic --

21 I remember that the nurse's station --
22 I remember the nurse's station. What nurse's
23 station? There wasn't anything there. I remember
24 broken walls. I remember areas where the ceiling
25 wasn't assembled. I remember a broken area in the

1 floor. Lot of areas where toilets were to go, no
2 toilets. It was a mess.

3 Q. Do you think it was in a condition
4 where Fetter could have moved in and operated its
5 business at that time that you inspected the
6 property?

7 A. No it wasn't in that sort of condition.
8 You couldn't provide health services there.
9 Missing doors. No, no, it was wasn't. And I went
10 a back and made that report to the board.

11 Q. Okay.

12 A. And I would tell you that my statement
13 about the condition of the place was the opinion of
14 the other board members who inspected then with me.

15 Q. Yeah. Did you subsequently go out when
16 Mr. Wilson went out -- Williams rather?

17 A. Yeah. You're talking about our
18 engineer?

19 Q. Yes. Tell me about --

20 A. I was there --

21 Q. Did you contact Mr. Williams about
22 working -- tell me about Mr. Williams as to what
23 you know about him?

24 A. Well, his -- he is, I believe, a
25 structural engineer. Does civil stuff. And has

1 his own company and he had been identified by a
2 past executive director to work with the -- with a
3 facilities committee before I came.

4 Q. Uh-huh.

5 A. And he was working with, I think,
6 Mr. -- that director, Mr. Pettiford, and an
7 emissary from MUSC who was sort of a consultant.
8 She was a Ph.D. in nursing or something like that,
9 and they had been working on it. I met them -- I
10 met those folks in September of '15.

11 Q. Uh-huh.

12 A. And I made the recommendation that he
13 be hired then because as best I can recall that had
14 not been formalized. That he be hired to assist
15 the committee and as our technical person. And so
16 when we came back, the -- I said --

17 Q. When you say you came back, you came
18 back from your inspection?

19 A. Right. I'm sorry.

20 Q. Okay.

21 A. When we came back from the inspection,
22 we had someone contact Mr. Williams to go out there
23 and inspect to see whether the specifications for
24 renovation, refurbishing, and repair had been met.

25 Q. Were you out there when he came out to

1 inspect?

2 A. I was out there for some time, but not
3 the entire time he was out there.

4 Q. That would have been February of 2016?

5 A. Yeah. The first part because I think I
6 was out there the very last part of January. We
7 were out there the very last part of January?

8 Q. Had thing changed from when
9 Mr. Williams was there with your prior visit as far
10 as repairs or changes that had taken place out
11 there correcting some of the deficiencies you
12 apparently recognized?

13 A. Not that I could see.

14 Q. Not that you could?

15 A. Like I said it was a very short time.
16 Not that I could see no.

17 Q. So I if I'm correct you're testifying
18 that when you went out there with Mr. Williams,
19 that this place was not in a position where it
20 could be occupied by Franklin Fetter to carry out
21 its mission?

22 A. Not to render medical services, no,
23 sir. It was not in such condition.

24 Q. All right. I don't have any further
25 questions. Answer any Mr. Massalon might have.

1 MR. MASSALON: Do you mind if I take
2 just a second?

3 THE COURT: Not at all.

4 MR. MASSALON: Okay. Thanks.

5 EXAMINATION

6 BY MR. MASSALON:

7 Q. Okay. Mr. Hinson, I'm John Massalon.

8 A. Yes.

9 Q. I met you before, but a long time ago?

10 A. Yes.

11 Q. So it's good to see you.

12 A. Good to see you.

13 Q. Now, just a little bit of background
14 stuff. Are you currently a board member now?

15 A. No.

16 Q. When did you finish up?

17 A. I resigned in last -- I resigned in the
18 spring of '17, I believe.

19 Q. Why was that?

20 A. Well, actually the board work was
21 taking up so much -- I had served for three years
22 and the board work was just so doggone -- it was
23 taking up a lot of time.

24 Q. I've got you.

25 A. And it just got to the point where I

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1 had plans to do things with my wife and my kids and
2 I -- some of those things had to be curtailed for a
3 while. Then looking forward, some of these things
4 probably -- because we had established how many
5 board meetings you could miss.

6 Q. I've got you.

7 A. And how many board meetings you could
8 participate in telephonically. Plus, the chairman
9 at the time was establishing a new task force. It
10 was a very rigorous membership involvement.

11 Q. Got you.

12 A. I hate to -- it sounds like I don't --
13 because it's a great honor to serve on that board,
14 and it does take lot, and I was willing to do that.
15 But it had been three years and I had, I think,
16 served well and I just thought I had to make a
17 determination at that point about what I was going
18 to do from that point with my life forward.

19 Q. Got you. Okay. And so currently
20 you're not affiliated with Fetter at all; is that
21 right?

22 A. I'm a patient.

23 Q. Okay.

24 A. I'm a patient.

25 Q. All right.



1 A. I am a patient.

2 Q. Well, don't tell me anything more about
3 that. All right? I'll let you keep that part to
4 yourself. As I understand your background, in your
5 prior education and life as an attorney, you didn't
6 have any background in construction, construction
7 contracts, construction defect claims, anything
8 like that, right?

9 A. No.

10 Q. And as far as healthcare goes you're
11 not any kind of licensed healthcare provider, a
12 nurse, doctor, anything like that?

13 A. No.

14 Q. Now I think you told us that you were
15 -- you came on the board sometime in the fall of
16 2014; would that be right?

17 A. That's got to be right.

18 Q. Okay. And I'll let you take a look at
19 it?

20 A. I hope that's right.

21 Q. Well, I don't know it to be wrong.
22 I'll take your word for it. In front of you there
23 is a contract?

24 A. Uh-huh.

25 Q. I'll represent to you that is the

1 original contract.

2 A. Uh-huh.

3 Q. Between Fetter and my client Chicora
4 dated August '14, August 4th of '14. Do see that?

5 A. (Indicating an affirmative response.)

6 Q. That would have been done before you
7 became a board member, right?

8 A. I think it was, yeah, yes, probably
9 if -- and my interview might have been in August.
10 I don't think I started until September, if I
11 remember.

12 Q. Let me ask you this then. It may be a
13 better way. Did you participate at all in
14 negotiating that contract?

15 A. No, I didn't participate in negotiation
16 of any of these contracts.

17 Q. Any of those contracts.

18 A. I wish I had.

19 Q. Now, let's see, you told us that I
20 think as I understood your testimony that you went
21 out to the site at least two times, once in January
22 of '16 and once in February of '16; is that right?

23 A. Well, at least two, probably three or
24 four.

25 Q. Okay. Would the other visits have been



1 before the two you mentioned or after?

2 A. Before.

3 Q. Okay. So maybe three or four times you
4 actually went to the site?

5 A. Yes.

6 Q. Okay. And did you always go with the
7 other two gentlemen you mentioned, Mr. Saunters and
8 --

9 A. I pretty much think so, yes. Because
10 they were inspections that I would call for. One
11 was -- one or two of the inspections, because there
12 might have been actually four or more than four,
13 but were called for because Chicora Cherokee wanted
14 us out there. I went out there at least once,
15 maybe twice with the then interim director, Ruth
16 Jordan.

17 Q. Okay. Now, you mentioned that at some
18 point Fetter retained Mr. Williams, and do you
19 remember when or about when that was?

20 A. I think that should have been -- that
21 should have been around February of '15.

22 Q. February of '15?

23 A. Yeah.

24 Q. And what was his job?

25 A. He was supposed to advise us on

1 technical things. The very first thing that he
2 advised us on was that the Chicora Cherokee hadn't
3 provided us with a floor plan or drawings, and that
4 was a needful thing. But as we specified what
5 needed to be done, he would advise us on how that
6 would be done, and whether it was done, and how
7 well.

8 Q. And did you make or get periodic
9 reports from Mr. Williams or did he just respond to
10 you as you asked him questions?

11 A. Well, I didn't ask too much of
12 Mr. Williams until we got that certificate of
13 occupancy and went out and saw that in our
14 estimation, the job was not suitable to accept,
15 that had it not been renovated or repaired. And
16 then we called him in to tell us whether or not we
17 were right or wrong.

18 Q. Okay. So he had been, if he started
19 working in February of '15, by February of '16, he
20 had been working for Chicora for about a year?

21 A. I guess, yeah. Yeah.

22 Q. Okay.

23 A. Yeah. I guess so. I don't know how
24 many times he provided services or invoices or
25 anything like that. I just didn't keep track of

1 that sort of thing.

2 Q. Got you.

3 A. I knew we needed him on our team and I
4 knew I needed to call him after that visit in early
5 February or the last part of January.

6 Q. Of '16?

7 A. Yes, sir.

8 Q. Got you. Okay. Now, you mentioned the
9 CO, and I would like for you, if you would, take a
10 look in that book for me at tab, let's see, Q. If
11 you would. I'm sorry. Scratch that. Not tab Q.
12 Take a look -- give me just a minute.

13 First, I want you to look at tab O.
14 All right. And you mentioned the certificates of
15 occupancy. Do you recognize these documents as the
16 certificates of occupancy issued by the City of
17 North Charleston for that, that suite?

18 A. Yeah. I have seen a copy of this.

19 Q. Okay.

20 A. Yes.

21 Q. All right. There are three of them
22 here. There is one for commercial, one for
23 mechanical -- I'm sorry. Let's see, there is one
24 miscellaneous and two that are typed that are
25 called F-I-N-A. Do you see those? Now you told us

1 that the premises wasn't suitable, but if you look
2 at the first one whether it's circled it says temp
3 CO, okay to set up office furniture. Do you see
4 that?

5 MR. ALTMAN: He is talking about this
6 one.

7 THE WITNESS: Yes, I have seen this and
8 yes.

9 BY MR. MASSALON:

10 Q. Okay so even though the City of North
11 Charleston inspector said it was okay to set up
12 office furniture, in your view it was not suitable
13 for that?

14 A. Exactly..

15 Q. Okay. Do you know what is required to
16 get one of these temporary COs, what the
17 requirements are?

18 A. I don't know what requirements he was
19 looking at, no.

20 Q. Do you know what requirements he should
21 have been looking at?

22 A. No, I don't. I do not.

23 Q. Okay. If I told you that you can't get
24 a CO with broken ceiling tiles, you would still
25 recall that when you went in after the CO was

1 issued, there was ceiling tiles missing or broken?

2 A. I recall areas where there was nothing.
3 That's exactly right, sir. Yes, indeed.

4 Q. During that visit either in January or
5 February, did you or anybody you saw make pictures
6 of what it looked like in there?

7 A. During our visit, I believe I took some
8 pictures on my camera, and I can't find them.

9 (PLF. EXH. 1Q, Certificate of
10 Occupancy, was marked for identification.)

11 BY MR. MASSALON:

12 Q. Got you. Now, if you would, take a
13 look now at Exhibit Q for me, if you would. And
14 I'll represent to you that this is the final
15 certificate of occupancy that was issued for suite
16 1300, January 21, 2016. Do you see that?

17 A. I do.

18 Q. And so do you believe that the visit
19 that you took out there in January was before or
20 after this one was issued?

21 A. Well, it's dated the 21st, so it would
22 have had to have been after.

23 Q. So you think even after final CO was
24 issued, when you saw it, it was still an unusable
25 situation?

1 A. That is my view.

2 Q. Now you mentioned I think that the
3 facilities committee members that went with you?

4 A. Leonard Brown.

5 Q. Uh-huh?

6 A. And Antoine Sanders.

7 Q. Mr. Brown you said was a realtor and
8 Mr. Sanders was a banker?

9 A. That is right.

10 Q. Do you know if there was a time when
11 the actual healthcare providers at Fetter were
12 taken out there to the space and were asked can
13 y'all perform services in this space?

14 A. I think there was. I think there was,
15 yes.

16 Q. When was that?

17 A. That would be much before this. As I
18 recall, this would be much before the events I'm
19 talking -- the events I'm talking about. The times
20 I'm talking about. I just seem to remember that.

21 Q. What I'm curious about is after the CO
22 was issued and the committee was looking at this,
23 did somebody take the actual doctors and nurses and
24 people that would provide the care to the Naval
25 Hospital and say can y'all work in this space and

1 do what you need to do?

2 A. I think, you know, I'm not real clear
3 on this, but I think it might have been Fetter has
4 a chief medical officer and I think she toured the
5 facility and it was, you know, it wasn't to see if
6 the place was up to snuff. It was, this is the
7 space we're talking about. Can you see, and in
8 fact I think that that emissary from MUSC was
9 looking at the same thing. Can you see services
10 here given the space. But I do not think that they
11 -- of course, you haven't asked me this questions
12 so I'm not going to --

13 Q. Sure. Go ahead and answer.

14 A. I don't think that they addressed the
15 question of whether or not that place was fit to
16 use right then and there.

17 Q. Okay. Now, when you and the other
18 members were looking at the space either in January
19 or February on either visit, did y'all have copies
20 of the plans and the specifications that you were
21 lobbying at to compare to what was actually there?

22 A. I don't -- I didn't have -- no, I
23 didn't have those when I went out. I just went out
24 there and just looking at the place without any
25 reference to the lease.



1 Q. Or the construction contract?

2 A. Or the construction guidelines, and I
3 was -- I was looking at the place with that unaided
4 eye.

5 Q. Okay.

6 A. My determination was that it wasn't
7 suitable to do anything in.

8 Q. Got you. Okay. Now, there was some
9 questions earlier, and if you would now turn in the
10 book to R to Exhibit R. You have seen this before?

11 A. Yes, I have.

12 Q. This was prepared by Mr. Williams as I
13 understand?

14 A. Yes, yes indeed.

15 Q. Do you believe this to be a complete
16 list of the issues that were observed during your
17 visits in January and February?

18 A. I would say -- I'll hazard to say yes.
19 I know it certainly describes the lobby. As I read
20 these items, it back the mental image and I see an
21 area that has not been at all -- there might have
22 been some work done, but I just couldn't tell it
23 just looked unfinished it was -- and it was a
24 wreck.

25 Q. Did you see it before the work was



1 started?

2 A. I believe so, yes, I did.

3 Q. You think it looked pretty much the
4 statement?

5 A. Let me just scratch I believe so. I
6 did.

7 Q. Okay. So you think when you saw it
8 before the work started and when you saw it January
9 or February of 2016, it looked pretty much the
10 same?

11 A. There was wasn't that much work done to
12 it.

13 Q. All right.

14 A. From the times I saw earlier. There
15 wasn't an appreciable amount of work done so that
16 that space then and there was usable. It was not.

17 Q. So do you think that whatever had been
18 done there between the time you first saw it and
19 the time you saw it in January, do you think that
20 work was worth zero?

21 A. I would just be guessing. I guess it
22 would be worth something, but I honestly couldn't
23 say how much.

24 Q. As I understand it, Fetter has so far
25 paid nothing for it at all?



1 A. I don't know.

2 Q. Okay.

3 A. I could not -- I'm embarrassed to say I
4 don't know the answer to that question.

5 Q. If I represented to you Fetter has paid
6 zero?

7 A. Uh-huh.

8 Q. Do you think the work that you saw was
9 worth zero?

10 A. I think from the very practical
11 standpoint of whether that work was of any service
12 to us, I would have to say, no, it wasn't. So it
13 wasn't worth anything to us. It wasn't tenured to
14 us in a condition where it could be used.

15 Q. Even though the city issued a CO and
16 said it was okay to move to furniture in?

17 A. I would have to say right, despite
18 that. I was astounded.

19 Q. Okay.

20 A. At the fact that the CO was issued. I
21 thought after I had seen the place there was some
22 sort of cruel joke.

23 Q. Did you or anybody you know on the
24 committee ever call up the city and say what is
25 going on here? How did y'all issue a CO for this

1 place?

2 A. We had the city called.

3 Q. Okay. And --

4 A. To try to investigate.

5 Q. Who was that that called?

6 A. It was an administrative assistant to
7 make sure it was in fact what it purported to be.

8 Q. What was the word that you got back?

9 A. One was on file.

10 Q. So it was legitimate?

11 A. I can't -- I can't say that. The
12 report was that that thing was on file, that an
13 original was on file.

14 Q. Well --

15 A. In fact, we sent -- I think someone was
16 sent down to see. I wasn't satisfied. They came
17 back and said, yes, this is it. So that tells you
18 about the question we had about it. We sent
19 somebody to see whether it was really filed or
20 whether we were talking about some sort of
21 counterfeit something or other.

22 Q. All right. At least the information
23 you got back was that the CO was not counterfeit?

24 A. That something was filed. I don't know
25 how well we matched what was received in office and

1 what was to what was file there, but that was the
2 word I got back.

3 Q. Okay.

4 A. Because I asked them to do it.

5 Q. All right.

6 A. And I was told that it was done.

7 Q. So are you telling us that you-all
8 thought that the CO may have been counterfeit to
9 the point where y'all sent somebody to check or
10 called down there and whoever did that didn't
11 compare what you had to what was on file to see if
12 it really was fake?

13 A. I don't know in the work they did, when
14 they were dispatched to do it, whether they took
15 that much care to do that. But I was told the
16 report coming back.

17 Q. Right.

18 A. From that person who was sent, was
19 there that was a CO on file for Fetter's area in
20 that -- at that site.

21 Q. Got you. Now, once you found that out,
22 did that make any difference to you at all?

23 A. Well, yeah, it just astounded me as I
24 say. You know, I'm not an expert. I have been
25 involved in rehab.

1 Q. Uh-huh.

2 A. I did that with the city of Grand
3 Rapids. I built two houses myself and I was just
4 really surprised that anything like a certificate
5 of occupancy could have been issued for that
6 locality. I tell you, I thought it was a cruel
7 joke.

8 Q. But it wasn't?

9 A. Apparently not.

10 Q. It was a legitimate CO that said it was
11 okay to move office furniture in?

12 A. I'm not going to go that far, but the
13 report that I got back was that something had been
14 filed.

15 Q. All right. So what is the difference
16 between a legitimate CO and one that was on file in
17 the North Charleston building inspections
18 department? What was the difference?

19 A. Well, I would have to know that there
20 was a comparison, I don't know. I just don't know.
21 If that is a legal conclusion, I'm not ready to
22 come to it.

23 Q. Okay. And based on what you know,
24 nobody took it to the point where that was either
25 confirmed or not confirmed?

1 A. We got a confirmation from the person
2 on Fetter's staff who was sent.

3 Q. Right.

4 A. That there was a CO on file for that
5 site at Chicora Cherokee. That's all I can say
6 about it.

7 Q. Okay.

8 A. I mean, yeah.

9 Q. Now this item here that we're looking
10 at, did you send that to anybody at Chicora
11 yourself?

12 A. No, I did not.

13 Q. Do you know if anybody did?

14 A. I'm not sure I understand the question.

15 Q. Earlier you were saying you understood?

16 MR. DURBANO: Is that the same exhibit,
17 Exhibit R?

18 MR. MASSALON: I believe it is, yes.

19 THE WITNESS: I'm looking at --

20 MR. DURBANO: R yeah, I just wanted to
21 make sure.

22 BY MR. MASSALON:

23 Q. You're looking at Exhibit R but you
24 didn't send this to anybody at Chicora and you
25 don't know if anybody at Fetter did?

1 A. I have never sent it to anybody.

2 Q. Okay.

3 A. I reported on it to be the board.

4 Actually, I didn't report on it to the board. I
5 reported to the board on our findings in February
6 and I made another report, but anyway.

7 Q. Got you. On this there is some
8 references to missing toilets and sinks?

9 A. Uh-huh.

10 Q. Do you know if near the end of the
11 renovation if Fetter asked for automatic sinks and
12 toilets to be installed that were in addition for
13 new work that hadn't already been contracted for?

14 A. Would you mind we repeating the
15 question?

16 Q. Sure. It was a bad question. I'll try
17 --

18 A. Yeah.

19 Q. -- again to make it shorter. Do you
20 know whether Fetter asked, in early January 2016,
21 to have automatic sinks or automatic toilets
22 installed in the suite?

23 A. I know that something came up about
24 automatic toilets. I'm not sure at all about the
25 timing of that. I don't think it was in January,

1 but in any event my recollection was, and I may be
2 wrong, that the decision was that that was too
3 fancy. That wasn't something that really was going
4 to get final approval, if I'm not mistaken. But in
5 any event, so that is all I have to say about that.

6 Q. Okay. Now, did Mr. Williams ever give
7 you or the facilities committee an estimate of how
8 long it would take to do this work on the list?

9 A. I'm not sure about that at all. I'm
10 not sure about that at all.

11 Q. Okay. How about cost? Did he ever
12 tell you this will cost \$1 or, \$1000 or anything
13 like that did he?

14 A. I'm not sure about that.

15 Q. Okay. Do you know if the lender that
16 was financing the repairs at the hospital for
17 Chicora, whether they advanced money to pay for
18 some of these repairs or upgrades in the Fetter
19 suite?

20 A. I knew that Chicora Cherokee. I mean,
21 Chicora Life had sought a loan, I believe, to
22 advance the work there at the site, and they asked
23 us to execute an estoppel, a notice of estoppel so
24 as to allow that loan to go through.

25 Q. Okay.

1 A. We reviewed that and signed that. I
2 had big problems with it, but it was eventually
3 signed after modification. My understanding was
4 that the loan was going to go through and then very
5 shortly after that I understand that there was a
6 foreclosure proceeding.

7 Q. Take a look in your notebook, if you
8 would, at L for me. You mentioned that estoppel
9 certificate. Does that look like the one you're
10 talking about?

11 A. I don't remember. I guess it -- I
12 don't remember it. I know that we -- I couldn't
13 say.

14 Q. Okay. Look at paragraph 11 of it for
15 me. You mentioned a foreclosure. That paragraph
16 says that if the landlord meaning Chicora
17 defaulted, that the lender agreed it wouldn't
18 disturb the tenancy of Fetter?

19 A. I see it.

20 Q. So long as Fetter is not in default?

21 A. Right.

22 Q. Okay. Now --

23 A. That's what it says.

24 Q. When you and the facility members went
25 to the site in February of '16, as far as you know,

1 was it still Fetter's plan and intention to move
2 into the Old Naval Hospital?

3 A. It was.

4 Q. And did --

5 A. You said when we went?

6 Q. Yeah. When you went?

7 A. Yeah. And we hoped -- I didn't know
8 what would happen if we dropped the ball on that.

9 Q. Sometime after that, the board decided
10 not to do that?

11 A. Yes, I believe so. Yes, definitely.

12 Q. You were on the board?

13 A. Yeah.

14 Q. There was a vote taken not to move in?

15 A. And I don't remember the vote, but that
16 is my understanding that we're going to cut the
17 ties with Chicora Cherokee -- Chicora Life.

18 Q. All right. And a big reason Fetter
19 wanted to be there was because the county and some
20 other people were going to be there too, right?

21 A. Yes. That was part of it. Of course,
22 everybody wanted to be there because that was a
23 community that -- the Naval Hospital situated right
24 in -- in a -- right in one of our -- I don't want
25 to say target neighborhoods, but we would reach out

1 to a lot of people who live in that area because
2 they are economically challenged.

3 Q. A big part of you constituency is
4 there?

5 A. Right. I'm very familiar with that
6 area because I worked there for years.

7 Q. Right, right. Now, when county decided
8 not to move in, did Fetter decide not to move in?

9 A. I don't know when the county decided
10 not to go in. I can't answer -- I don't know the
11 answer to that question.

12 Q. Do you recall the board deciding not to
13 move in because the county decided not to move in,
14 whenever that was?

15 A. I don't recall that at all. I don't
16 know that there was any connection between -- I
17 know that there could have been because with that
18 things would be seriously falling apart.

19 Q. Okay.

20 A. Because the idea was we were going to
21 benefit from those co-tenants who would very much
22 assist in patient flow and one-stop so to speak
23 services to the community of need.

24 Q. Got you. Now, when the foreclosure was
25 filed that you mentioned, do you remember any time

1 when Fetter asked for assurances from Chicora or
2 its lender that there would be no problem if Fetter
3 went ahead and moved in even though the foreclosure
4 case was pending?

5 A. Would you mind repeating the question.

6 Q. Sure. You mentioned there was a
7 foreclosure case filed. My question was after you
8 became aware of that, the board became aware of
9 that, did anybody from Fetter ask Chicora for
10 assurances or reassurances that foreclosure
11 wouldn't affect Fetter's tenancy?

12 A. I don't know about that.

13 Q. Got you. Fetter so far has never moved
14 anywhere; is that right? Meaning that, is Fetter
15 still provided services out of its Nassau Street
16 location?

17 A. Absolutely.

18 Q. Do you know if there are any plans to
19 move anytime soon?

20 A. You know, I have not been with the
21 board for over a year, so I don't know. I'm not
22 privy to Fetter's plans now.

23 Q. Got you. Before you left the board,
24 was there a plan to move into to Old Naval Hospital
25 if the county ever eventually located there?

1 A. At the time I left?

2 Q. Uh-huh.

3 A. I don't know what the plan was when I
4 left. I don't know what the plan was. It
5 certainly, when I know left, Chicora Life had
6 brought an action against us and we were in the
7 process of trying to defend it, and we had been
8 involved in all kind of problems with Chicora Life
9 at that point, but the most recent one where we
10 were defending a suit.

11 Q. Okay.

12 A. They had sued us.

13 Q. Okay. Got you, got you. All right. I
14 think that is all I've got. Thank you.

15 THE COURT: Thank you.

16 MR. ALTMAN: I don't have anything.

17 THE COURT: Thank you, Mr. Hinson.

18 THE WITNESS: Thank you.

19 THE COURT: You are excused.

20 (A brief recess was taken.)

21 KARL DAVID

22 being first duly sworn, testified as follows:

23 THE COURT: Would you please state your
24 full name for the record.

25 THE WITNESS: Carmen Karl David.



1 THE COURT: Karl.

2 THE WITNESS: David.

3 THE COURT: David. Karl David.

4 MR. MASSALON: Carmen Karl David.

5 THE COURT: Are you K Karl or C Karl.

6 THE WITNESS: K Karl.

7 EXAMINATION

8 BY MR. MASSALON:

9 Q. Mr. David, as I just told you, I'm John
10 Massalon and I'm here representing Chicora Life in
11 the lawsuit against Fetter and I have what I think
12 are just a few questions for you this afternoon.
13 Tell me, what do you do for a living right now?

14 A. The best I can.

15 Q. Do you work for yourself or with
16 somebody else?

17 MR. DURBANO: I'm going to remember
18 that one.

19
20 THE WITNESS: I work for a
21 veteran-owned.

22 BY MR. MASSALON:

23 Q. Forgive me?

24 A. Disabled veteran general contractor.

25 Q. Okay. Got you. Generally, what is

1 your job there?

2 A. I'm an estimator.

3 Q. Estimator. How long have you been
4 doing that?

5 A. About a year.

6 Q. About a year. At sometime before that,
7 did you do some work at the Old Naval Hospital in
8 North Charleston?

9 A. Yes.

10 Q. Okay. If you would, just sort of talk
11 us through that a little bit and tell us when or
12 about when you started, what you did, that kind of
13 stuff?

14 A. Probably would have been March, April
15 2015.

16 Q. Okay.

17 A. Went to work as kind of like estimator
18 project manager.

19 Q. And who or for whom did you go to work?

20 A. The gentleman that was there was Tom
21 Woods.

22 Q. Okay. We have heard Mr. Woods' name
23 already today. Was that at Double D Construction?

24 A. I think so, yes.

25 Q. And how long or about how long did you



1 work for Mr. Woods at Double D Construction?

2 A. It's really kind of hard to say because
3 I think Tom left fairly quick after I got there.

4 Q. Okay. And did you remain on the
5 project?

6 A. I did.

7 Q. Okay. And what job did you stay for?

8 A. Estimating and project management.

9 Q. Who did you go to work for?

10 A. Chicora Life Center.

11 Q. Chicora Life Center?

12 A. Yes.

13 Q. Who did you report to? Who was your
14 supervisor there?

15 A. Doug and Jeremy.

16 Q. Doug and Jeremy. Okay. Good. And in
17 general, your work at the Old Naval Hospital, could
18 you give us just a general description of the kind
19 of things you do on a day-to-day basis?

20 A. A lot of scheduling, a lot of
21 preplanning, a lot of coordination between
22 different contractors, a lot of coordination
23 between the city, and the architects, and people
24 like that.

25 Q. Okay.

1 A. Some with the owners, very little with
2 the owners, but some.

3 Q. Now we have previously identified the
4 Fetter space as Suite 1300 there?

5 A. Okay.

6 Q. Is that what you remember?

7 A. Yes.

8 Q. And would you have been involved in
9 obtaining the certificate of occupancy for Suite
10 1300?

11 A. Yes.

12 Q. Okay. How would you have been -- sorry
13 -- how would you have been involved in that? What
14 would you have done?

15 A. Once we have gotten to a point of doing
16 different testings and actually doing construction,
17 then some of the testing that was required then we
18 literally scheduled the City of North Charleston to
19 come in and do an inspection for us.

20 Q. Okay.

21 A. And in the process, they would include
22 like the fire marshal and people like that.

23 Q. Okay. And so would it be accurate for
24 us to understand that when the renovations got to a
25 point where somebody made the decision, hey, it's

1 time to call for a CO, you would have been the one
2 to make that call and set that up?

3 A. Pretty much, yes.

4 Q. Other than that, other than actually
5 making a call to the city and asking them to come
6 out and do the CO inspection, did you anything else
7 in connection with the CO?

8 A. Not really, I mean.

9 Q. No, okay. And so forgive me for not
10 knowing this, but is it something where for
11 instance you have got to arrange with the
12 contractor to meet the inspector out there or do
13 you just have to open the doors and let the
14 inspectors look?

15 A. Pretty much what you do is you schedule
16 a time and then you coordinate the time with the
17 contractors.

18 Q. Okay. Good. Now for the Fetter area,
19 when the town or when the City of North Charleston
20 came out to inspect, do you remember whether there
21 was any additional work or anything that had to be
22 done after the inspection to get the CO or did it
23 pass the first time?

24 A. I don't remember if it passed the first
25 time. I think it was -- if there was anything, it

1 would have been a very small like maybe a -- some
2 kind of fire caulking hadn't been done, a very
3 minor detail that involved life safety.

4 (PLF. EXH. 10, Inspection Report, was
5 marked for identification.)

6 BY MR. MASSALON:

7 Q. Okay. Let me show you what we have
8 marked before as Exhibit 10, it's three pieces of
9 paper. I'll let you take a look at them and let me
10 know when you're done.

11 A. Okay.

12 Q. Do you recognize those documents?

13 A. Sure.

14 Q. What are those?

15 A. Well, it's where the city has come in
16 and done their inspection, and I think they gave us
17 a temporary CO where the owner could move the --
18 move furniture or whatever they needed to do at
19 that point, they could go ahead and proceed with
20 it.

21 Q. Does the issuance of a CO, what, if
22 anything, does that mean as far as you know? When
23 they city issues a CO, what does that mean?

24 A. Rent starts.

25 Q. Okay. Does it --

1 A. What I'm saying that there is nothing
2 to prevent you from being able to move in at that
3 point.

4 Q. You can occupy the space?

5 A. That's correct.

6 Q. Okay. Now, there was some prior
7 testimony that when or after these were issued that
8 there were still big problems in the space like
9 ceiling was missing in some places and, you know,
10 doors were missing, and all sorts of things were
11 still wrong. Will the city issue a CO if a place
12 is in that kind of condition?

13 A. No. If it involves fire-rated doors,
14 life-safety issues, in other words, access in and
15 out of the space, all your doors have to be
16 functioning, have to be on. No, it can't be in
17 disarray.

18 Q. Does the major building systems have to
19 work? Like electrical has got to work?

20 A. Yes.

21 Q. Plumbing has got to work?

22 A. Yes.

23 Q. Heat and air has got to work?

24 A. Yes.

25 Q. Lighting has to check out?

1 A. Yes.

2 Q. Plumbing fixtures have to be in?

3 A. Yes.

4 (PLF. EXH. 1P, Letter, 1-1-2015, was
5 marked for identification.)

6 BY MR. MASSALON:

7 Q. Okay. Now, let me show you what we
8 have previously marked as Exhibit P. Take a look
9 at that for me, if you would.

10 A. Okay.

11 Q. And do you recognize that?

12 A. Yes.

13 Q. What is that?

14 A. It's telling the owner their space is
15 ready.

16 Q. That is a letter you wrote?

17 A. With help.

18 Q. Tell us what that means, when you say
19 with help.

20 A. Well, I'm not that intelligent. I'm
21 sure we had Jake or somebody come in and kind of
22 help put the pieces or parts together.

23 Q. I've got you. And probably Jake's name
24 has come up before, Jake was or is one of the
25 attorneys in Mr. Durbano's law firm.



1 A. Yes. That is correct.

2 Q. And so with some help, this letter was
3 composed, you signed it and sent it to Fetter?

4 A. Yes.

5 Q. Attached to it is what?

6 A. An invoice.

7 Q. For?

8 A. Rent.

9 Q. Okay. And another invoice for?

10 A. Upfits.

11 Q. Okay. And the amount of the rent
12 invoice that was attached to this one is for how
13 much?

14 A. 14,801.

15 Q. All right. And the amount of the
16 tenant upfits is what?

17 A. 254,998.

18 Q. All right. Do you know where that
19 number came from?

20 A. In the very beginning we had a contract
21 or there was a contract between Fetter and Chicora
22 or Chicora and Double D, I'm not sure exactly who
23 or what, but there was a contract that had had been
24 issued.

25 Q. Was that upfit or renovate the space?

1 A. That's right.

2 Q. This invoice for tenant upfit, was that
3 Fetter's portion of the tenant upfit?

4 A. That's correct.

5 Q. To your knowledge, did Chicora ever get
6 any money after those invoices were sent to Fetter?

7 A. Not to my knowledge.

8 Q. Okay. Now let me show you another
9 document that we have marked this one at Exhibit 1Q
10 and see if you recognize that?

11 A. Yes.

12 Q. And does that look like a final
13 certificate of occupancy or the Suite 1300?

14 A. It was.

15 Q. What is the difference between the
16 temporary CO and the final CO?

17 A. Temporary means, there again, that you
18 can move furniture in, you can set your place up
19 for business, and you know, there may be some very
20 minor things that need to be completed. When it's
21 a permanent CO it means that they have come back
22 and reinspect it all of these things have been
23 fixed or corrected and there is no restrictions.

24 Q. Did you personally go into Suite 1300
25 at about this time in January of 2016?



1 A. I'm sure I did.

2 Q. Do you recall it being completed and
3 ready for tenant occupancy for that time?

4 A. I think it was completed according to
5 the contract documents.

6 Q. Okay. As far as you know, was it ready
7 for the tenant to occupy it and use it?

8 A. Yes.

9 (PLF. EXH. 1R, Walkthrough Inspection,
10 was marked for identification.)

11 BY MR. MASSALON:

12 Q. And now, let me show you we have marked
13 this as Exhibit 1R. Have you seen that before?

14 A. I don't remember seeing it.

15 Q. Okay. Do you remember it sometime
16 after your January 1, 2016 letter went out that
17 Fetter or somebody on behalf of Fetter complained
18 that there was still work to be done in the suite,
19 things weren't finished?

20 A. I don't really remember all those
21 pieces. As far as what I do remember is a group
22 from Fetter coming over and walking the specs.

23 Q. Were you there with them?

24 A. For a little bit. I don't think I did
25 a complete walkthrough with them, but for a little

1 bit I did.

2 Q. Just let them in the space basically?

3 A. Yes, pretty much.

4 Q. Now after that do you recall trying to
5 schedule a meeting between Fetter and the
6 contractor to talk about the property?

7 A. I could have. I don't remember.

8 Q. I'm just going to -- I'm not going to
9 show you all of these e-mails, but I would like to
10 show you just a couple of and ask you if you would
11 to take a look at them for us. And this one in --

12 MR. MASSALON: And gentlemen, for you,
13 this is Exhibit T and this would be the sixth page
14 of that exhibit. Sixth page up top here. An
15 e-mail from February 29, 2016.

16 BY MR. MASSALON:

17 Q. Does that appear to be from you, to
18 Mr. Durbano and Mr. Altman?

19 A. It does.

20 Q. Okay. And does that help refresh your
21 recollection about issues raised by Fetter after
22 the invoice that you sent them went out?

23 A. The biggest thing that I remember is
24 Fetter came back at some point in the stage, and I
25 don't remember the timeframes, wanting some



1 additional items, quite a few additional items.
2 They had a consultant that was involved and I don't
3 remember his name.

4 When we issued the contract, we had a
5 very defined scope and also kind of general -- not
6 a general, but had a layout of what the space was
7 supposed to look like. During the time we actually
8 started and up until this point and stage, he and I
9 had been kind of going back and forth with some
10 additional costs, change orders that had been
11 submitted.

12 Q. When you say he and I, who is the he?

13 A. The consultant for Fetter. I can't
14 remember his name.

15 Q. Okay. Got you.

16 A. Yes. And he and I had been going back
17 and forth about change orders related back to the
18 contract. I issued two different change orders and
19 they were never executed and it kind of created
20 some problems as far as trying to get additional
21 work done.

22 Q. Was Fetter at that time asking for
23 things like automatic sinks and automatic toilets
24 or you just don't remember?

25 A. Well, there was -- that is a good

1 example. A high dollar item, but yes.

2 Q. All right. Were you asking Fetter to
3 pay the contractor before any additional work would
4 be done or did they just not sign the change orders
5 for some other reason?

6 A. I don't know why they didn't sign the
7 change order, but we would not turn the contractor
8 loose until we had a signed change order.

9 Q. Got you. Do you recall trying to set
10 up a meeting between Hank Hofford and the Fetter
11 consultant or somebody at Fetter?

12 A. I don't.

13 Q. Let me ask you to take a quick look and
14 see if this will refresh you and see. Let me get
15 you to take a look at an e-mail dated March 2,
16 2016. And I can count those pages if you want me
17 to.

18 MR. ALTMAN: What is the date again?

19 MR. MASSALON: March 2, 2016. I think
20 it was 12 or 13 pages in this.

21 BY MR. MASSALON:

22 Q. This is March 2, 2016?

23 A. Adrian. Adrian Williams. Okay. I
24 remember.

25 Q. Does that refresh your recollection



1 about trying to set up a meeting between Fetter
2 consultants and the contractor?

3 A. Some yeah.

4 Q. Was the issue that you asked Fetter to
5 pay the contractor before the meeting got set up or
6 could get set up? What do you remember about that?

7 A. There was multiple things. The first
8 step is obviously getting a signed change order
9 agreeing to the scope of work. And then, the
10 second part of it is we, you know, we need to be
11 paid for what we have done to this point.

12 Q. Yes. And was there ever any payment
13 made that you recall?

14 A. Not that I'm aware of.

15 Q. Do you recall whether the meeting with
16 the contractor and Fetter ever got set up?

17 A. Probably not. I probably was pretty
18 direct about it.

19 Q. Yep. I have heard a rumor that you may
20 use colorful language from time to time. Is that
21 true?

22 A. I have been just as nice as I can be
23 here today.

24 Q. All right. I think those are all the
25 questions I have got for you. Thank you.

EXAMINATION

BY MR. ALTMAN:

Q. Mr. David, when the application or the call was made to the city, for the CO, did you check with Fetter to see whether they agreed that the tenant improvements were completed?

A. No.

Q. Why not?

A. Because of the process with the city, it was entirely up to the contractor and the city to perform the CO.

Q. You're telling me that the term completion of the tenant improvements does not require an okay from the tenant?

A. Two different questions.

Q. Okay.

A. When it applies to the city and the CO, Fetter really didn't have any involvement at that point.

Q. All right. Does it -- when you go ahead and apply to the city, do you have the plans attached to your permit?

A. I think in this case we did.

Q. Are you sure?

A. No, I'm not sure. It's been so long



1 ago.

2 Q. All right. Were you there during the
3 inspection that was made by the City of North
4 Charleston?

5 A. Yes.

6 Q. Okay. And how many times did they come
7 out?

8 A. Several times, I believe.

9 Q. Did they have a copy? Did they have a
10 copy of the plans with them when they were out
11 there?

12 A. Initially, when you get a permit you
13 have to submit a set of plans.

14 Q. Okay. All right. Did they have the
15 plans with them when they came out?

16 A. I'm pretty sure they did.

17 Q. Absolutely sure?

18 A. No, I'm not.

19 Q. Or pretty sure?

20 A. No, I'm not now.

21 Q. Okay. And tell me, with this you went
22 through a checklist of what they looked for?

23 A. It's little --

24 Q. Would that be plumbing?

25 A. Plumbing, electrical, life-safety

1 issues, exit lights, things that where there is
2 safe access in and out of the building or space.

3 Q. Okay. Do they check the number of
4 sinks?

5 A. I don't remember. I know that they
6 went through and made sure that sinks, light
7 switches, doors, those kind of things worked.

8 Q. Do you have -- did you have a checklist
9 that they provided you of what they did or just the
10 fact that there was a CO that was issued?

11 A. The only thing I have got at this point
12 is my memory.

13 Q. Okay.

14 A. Yeah. I mean, seriously, I'm looking
15 at documents that are two years old.

16 Q. So you don't really remember?

17 A. No, I don't.

18 Q. Look at Exhibit R for me. By the way,
19 this was -- I'm going to tell you, this was
20 prepared by Mr. Williams, and am I -- did I hear
21 you correctly that you have never seen this before?

22 A. I don't remember seeing it, no, sir.

23 Q. Did anybody tell you that they had
24 received a list from Mr. Williams?

25 A. I think somebody had mentioned that we

1 had gotten a list from Fetter, but I think at that
2 point and stage that the contracts had pretty well
3 been term -- leases had pretty well been
4 terminated. So at that point and stage I was
5 easing out.

6 Q. What were you going to talk to
7 Mr. Williams about? What was the purpose of the
8 meeting?

9 A. Change order items.

10 Q. That's all?

11 A. That is the biggest thing that I had
12 concerns with, yes.

13 Q. Didn't you tell Mr. Williams that if he
14 was going to come to any meeting with you he better
15 bring a check?

16 A. Well, that probably had something to do
17 with it, too.

18 Q. Do you know that Mr. Williams is not an
19 employee of Fetter?

20 A. No, sir.

21 Q. Did you know what his position actually
22 was as it relates to this matter?

23 A. No, sir, I don't.

24 Q. Okay.

25 A. He was a point of contact.

1 Q. Did he tell you that he was not an
2 employee of Fetter?

3 A. I think I was told by Fetter that
4 that's who I would correspond with and try to set
5 and coordinate meetings. Other than that, I don't
6 know.

7 Q. All that you remember is y'all were
8 going to talk about change orders?

9 A. Change orders that had been issued long
10 -- I mean, almost a year.

11 Q. And what did they specifically relate
12 to?

13 A. I don't remember at this point, but I
14 do know that there was additional items that Fetter
15 wanted installed.

16 Q. Such as?

17 A. I really couldn't tell you.

18 Q. Okay.

19 A. Not now.

20 Q. If you look at Exhibit No. R?

21 A. Uh-huh.

22 Q. Can you refresh your memory just by
23 looking on that list and seeing if any of the items
24 that were supposedly the subject of a change order
25 are listed?

1 A. I mean, none of this looks -- this
2 looks like some kind of punch list. I mean, it's
3 not the items that he and I were to talk about.

4 Q. Okay. I'm showing you an exhibit
5 number -- Defendant's Exhibit No. 4, and it doesn't
6 have your name on it as being a recipient, but
7 could you tell me if you ever received a copy of it
8 or saw it?

9 A. I don't remember seeing it.

10 Q. Okay. I don't have any further
11 questions?

12 MR. MASSALON: I don't have anything
13 else. Thank you, very much.

14 THE COURT: Thank you, sir.

15 JEREMY K. BLACKBURN
16 being first duly sworn, testified as follows:

17 THE COURT: State your full name for
18 the record.

19 A. Jeremy Kim Blackburn.

20 EXAMINATION

21 BY MR. MASSALON:

22 Q. Mr. Blackburn, where do you live?

23 A. West Ashley.

24 Q. Okay. And what is your current job?

25 A. Real estate development/finances.

1 Q. Okay. How long or about how long have
2 you been doing that?

3 A. Over 20 years for both.

4 Q. Okay. How long have you been doing the
5 specific work you're doing right now?

6 A. Like with those specific LLC companies?

7 Q. Let me ask you a better question. Was
8 there a time when you worked with Chicora Life?

9 A. There is.

10 Q. Okay. When was that?

11 A. I would say 2013 to last November.

12 Q. Okay. And there was a time when you
13 were actually the manager of --

14 A. 2016 --

15 Q. Chicora Life?

16 A. -- until November of '17.

17 Q. Okay. Before that, what was your job
18 description?

19 A. Owners's rep.

20 Q. What's an owner's rep? What did you do
21 as an owners rep --

22 A. Owners rep basically.

23 THE COURT REPORTER: One at a time,
24 please.

25 THE WITNESS: I'm sorry. Owners rep,



1 you kind of try to ride herd on cats.

2 BY MR. MASSALON:

3 Q. Okay.

4 A. Meaning, you have got to keep the
5 contractors, the tenants, banks finance, everybody
6 trying to move in the same direction to the benefit
7 of the owner, and I report directly to the manager
8 of the LLC which was Douglas Durbano.

9 Q. Okay. Now, did you heard Mr. Durbano's
10 testimony earlier today. Did you have any
11 involvement in the leasing with Fetter?

12 A. Yes.

13 Q. Okay. What was your role in that?

14 A. I can't recall specifically whom, I
15 believe it was somebody from Charleston County that
16 brought Reuben, Mr. Pettiford, over to the Life
17 Center and introduced him saying this would be a
18 good fit for the social service hub, that Fetter
19 provided services that were both complimentary to
20 the Department of Mental Health, as well as
21 specifically DAODAS and DHEC. DHEC focus being on
22 the WIC, the women that receive WIC vouchers, they
23 could do their prenatal and postnatal checkups.
24 And mental health, at mental health they provide
25 evaluations and other physical type evaluations for

1 the mental health patients.

2 Q. Just for the record, DAODAS is what?

3 A. Department of Alcohol and Drug Abuse
4 Services. It's also known as the Charleston
5 Center.

6 Q. Okay. Good. Do you think you were the
7 initial point of contact at Chicora by someone from
8 Fetter?

9 A. Yes, I do.

10 Q. Okay. After that, how did the lease
11 negotiations progress as you recall?

12 A. I think I walked Mr. Pettiford and I
13 can't remember how to pronounce his last name,
14 Patrick forgive me, their CFO, through the
15 building. I showed them some potential sights and
16 eventually identified some square footage needs and
17 picked a location. He wanted to be at the front of
18 the building. He was very adamant that he wanted
19 to be towards the front of the building, so that
20 everybody coming into the center would go past
21 Fetter. So I helped identify the location. We
22 signed, I'd say, a very generic LOI that was
23 nonbinding. That was forwarded to Mr. Durbano in
24 Utah, and he prepared the initial lease proposal
25 for Fetter.

1 Q. I have highlighted the name and you
2 said Patrick. Is that his last name? Would you
3 spell that for the court reporter?

4 THE COURT: It's spelled with N-W I
5 remember.

6 THE WITNESS: November, Whiskey, Alpha,
7 Echo, Zulu, India, Echo, Golf, Whiskey, Echo.

8 BY MR. MASSALON:

9 Q. I don't mean him any disrespect, but
10 I'll call him Patrick. Do you know what his job
11 was at Fetter?

12 A. He was the CFO.

13 Q. CFO. Okay. After the term sheet or
14 the letter of intent was sent to Mr. Durbano, would
15 Mr. Durbano have done or somebody in his firm done
16 a lot of contract drafting and dealing with Fetter
17 about these specific terms?

18 A. Yeah. I'm sure I was copied and
19 involve, but the actual lease document was
20 generated from Mr. Durbano's office and then sent
21 to Mr. Pettiford and I think Mr. Patrick for their
22 review.

23 Q. Got you. I've got you. Now, as the
24 owner's rep, once the lease was signed, did you
25 have some responsibilities as owner's rep for the

1 renovation or upfitting of the suite?

2 A. Not like physical activity, but as far
3 as oversight of the contractors, yes.

4 Q. What is the difference between those
5 two?

6 A. I'm not going to go physically do the
7 work, but I'm going to try and ensure it's being
8 done.

9 Q. Okay. How often or about how often do
10 you think you were at the Old Naval Hospital when
11 this work was being done?

12 A. At the beginning, I was there daily.

13 Q. Did you actually have an office there?

14 A. I did.

15 Q. From when to when did you actually have
16 an office in that space?

17 A. I mean, there was an office that I used
18 clear up until the building was sold to the county.
19 So from the beginning until November of 2017, I
20 would have had an office there. However, I wasn't
21 there that entire time.

22 Q. Now, as far as Fetter suite, how often
23 do you think you were actually in that while the
24 upgrading and renovation work was going on?

25 A. I would confirm the testimony



1 Mr. Durbano gave earlier. At the onset of the
2 project, Double D was initially tasked to do some,
3 I call it general demolition and preparation. And
4 so understand that between the county, Fetter, and
5 mental health, you had well over 100,000 square
6 feet of space being renovated. In fact, almost
7 130,000, and that did include the common areas, the
8 lobbies, et cetera. So I was definitely in there
9 weekly, but I wouldn't say every day. There were
10 some weeks I would be in there every day, but I
11 wasn't in there every single day that it was there.

12 Q. Okay. And in a general way, did the
13 work progress steadily in the Fetter suite over the
14 times when there was no work going on or anything
15 unusual about the flow of the work in the space?

16 A. I don't know that it would be -- there
17 was times when there was no work going on, but I
18 don't think that would be unusual in that, again,
19 with over almost 3 acres of office space under
20 renovation, you know, you go in phases. You know,
21 you're going to go through the demolition phase.
22 Then you're going to go through an electrical
23 plumbing and the mechanical. You know, generally
24 you go demolition, then mechanical, then plumbing,
25 then electrical and then final finishes.

1 Q. Got you. Got you. So Mr. Durbano told
2 us a little earlier that by the time the third
3 addendum was signed in November of 2015, y'all were
4 zeroing in on a completion date. Is that
5 consistent with your recollection?

6 A. Yes.

7 Q. And did you have any role in dealing
8 with the City of North Charleston and asking for
9 inspections or scheduling certificate of occupancy
10 inspections?

11 A. For the building or for Fetter.

12 Q. For Fetter?

13 A. No.

14 Q. No. And Mr. David just testified that
15 he handled that primarily for the Fetter suite?

16 A. At the time, and just get it out there
17 so we don't get to it later. At the time the
18 Fetter suite was issued the CO, I was in the
19 hospital.

20 Q. I was going to ask you about that. How
21 long were you out and what happened to you?

22 A. I had a procedure on my back that had
23 pretty serious complications with, and I would say
24 December, January, and parts of February I was
25 almost incapacitated.

1 Q. Okay. All right. So let me ask you,
2 if I can, to pick up with -- and I'll show you some
3 e-mails perhaps that will refresh your
4 recollection. Was there a time that you recall
5 Patrick asking to set up an inspection, with people
6 from Fetter, of the suite. I'll direct you if I
7 can to this, I think would be the second page of
8 Exhibit T. Down at the bottom there is an e-mail
9 from Patrick to you. Do you see that?

10 A. I do.

11 Q. And the date of that is what?

12 A. February 4, 2016.

13 Q. Basically, what is going on there?

14 A. Mr. Patrick was, just like it says, he
15 was asking or I guess informing is the exact
16 language that Adrian Williams and the facility
17 committee will be at the facility next day at
18 9 a.m. to discuss the punch list with me and my
19 team.

20 Q. Okay. Now, earlier there was some
21 questions about Mr. Williams and whether he had
22 worked for Chicora at some time. Not Fetter, but
23 Chicora. Do you recall anything about that?

24 A. I do believe he worked for Double D for
25 short period of time.

1 Q. Okay. And what, if you know, was
2 Mr. Williams's job at Double D?

3 A. I believe it was to help with the
4 Fetter suite.

5 Q. In what way meaning to help?

6 A. I don't recall. Mr. Wood hired him and
7 Mr. Wood fired him.

8 Q. At this time in February of 2016, as
9 far as you know, Mr. Williams wasn't working for
10 Chicora or Double D, or Bennett Hofford, or anybody
11 like that?

12 A. Correct.

13 Q. Now did you actually go to this meeting
14 as best you can recall?

15 A. I did. I remember because my wife had
16 to drive me.

17 Q. And other than that, other than your
18 wife driving you, do you remember anything else
19 about it?

20 A. I remember --

21 MR. ALTMAN: John, forgive me. What is
22 the date?

23 THE WITNESS: February 4th.

24 MR. MASSALON: Yeah. If you look on
25 the second page of Exhibit T, down at the bottom,

1 I'm starting at the bottom.

2 MR. ALTMAN: Okay.

3 BY MR. MASSALON:

4 Q. Other than your wife driving you to
5 this meeting, what do you remember about it?

6 A. Mr. David and Fetter were having some
7 -- a continuation of some spirited conversations.
8 I was asked to see if I could attend to hopefully
9 resolve any concerns that Fetter had and make sure
10 we were meeting their needs as a tenant to the best
11 of the landlord's ability.

12 Q. And what else do you remember about the
13 meeting itself? Did y'all talk about specific
14 issues in the suite or did they just walk around
15 and make a list or how did that go?

16 A. We met in what was the vital records
17 space. There was a conference table there and I
18 recall that there were several members and it was a
19 little spirited. I don't remember specifics of
20 anything that was identified.

21 Q. All right. Mr. Hinson was here
22 earlier. Do you remember him being there?

23 A. I do.

24 Q. Okay.

25 A. I remember him. I remember Patrick was

1 there. I remember Ms. Jordan was there. And I
2 remember, I thought he was a contractor, I don't
3 remember him being a real estate agent. There was
4 a real estate agent and a banker, but I thought he
5 was a contractor for Fetter.

6 Q. Okay. Got you. Other than it being
7 spirited, do you remember them making any specific
8 requested or demands at that time?

9 A. Sure. So maybe to correct some of the
10 things since I was there, when Mr. Pettiford was
11 the CEO of Fetter, he had brought through several
12 of the health professionals from Fetter and they
13 were the ones that wanted these, you know, the
14 specialized sinks that we have been talking about.

15 Q. Where you just put your hands under the
16 faucet and water turns on?

17 A. Correct. And so after Mr. Pettiford's
18 dismissal, that was immediately, that whole thing,
19 that was killed then. Ms. Jordan and I believe
20 Mr. Hinson came in shortly after Mr. Pettiford's
21 termination and before that third amendment to the
22 lease was signed, and we identified a very specific
23 scope, what Mr. David testified to of what would be
24 done and where it would be done. Then,
25 subsequently after that when the lease memo was

1 executed, what became to be known was there were
2 some sinks in some locations as well as toilets in
3 some locations that needed to be moved. And those
4 were the change orders or some of the change orders
5 that were generated. The issue was that the
6 location of the sink was behind where it was
7 perceived to be obstructing the entrance into the
8 exam rooms. And so Fetter requested that those
9 sinks be moved to opposite walls or different walls
10 in those exam rooms. Additionally they wanted
11 toilets. As you mentioned, there were multiple
12 variations of what Fetter would take.

13 They had a maternity section that they
14 were doing in conjunction with MUSC at the back of
15 the space and in that maternity space or that was
16 going to be for maternity, they wanted -- I think
17 it was one of the doctors that wanted a toilet --
18 they wanted a bathroom. And so there were some
19 things like that that were talked about that were
20 generating some of these change orders that
21 Mr. David testified to earlier.

22 But the sinks were, those were
23 eliminated a year before we're talking now. So
24 those were eliminated when Reuben was actually
25 terminated and I think there's e-mails that

1 probably bear that out. But the issues that they
2 talked about were that they wanted these sinks
3 moved, they wanted these toilets moved, and that's
4 where these change orders were being generated.

5 The other thing that we talked about
6 was the percentage of work that was completed
7 versus the invoices that were submitted, and they
8 were also upset that they started to get an invoice
9 for their rent.

10 Q. Okay. Now, let me get you to take a
11 look at -- I should know these by now -- Exhibit R
12 which has been identified as the punch list that
13 was prepared by Mr. Williams. You have seen that
14 before today, correct?

15 A. I have.

16 Q. Did you see it at or about the time
17 it's shown as being created in February of 2016?

18 A. The first time I saw that document was
19 in Mrs. Jordan's deposition.

20 Q. In this case?

21 A. Yes.

22 Q. Now in looking at the items there, you
23 were there during at least part of this inspection.
24 My first question is, were all the things that are
25 shown on this unfinished or unresolved items in the

1 suite or is this a combination of punch list items
2 and items that Fetter wanted to change, but no
3 change order had been signed yet?

4 A. I walked into the conference room and
5 walked out. That is all I could do. I did not
6 walk through the space. I did not even walk into
7 the space.

8 Q. I'll give you a for instance, and I
9 don't know if you know this, but I'll ask you. In
10 the first item 1300 for instance is the lobby. The
11 second item is reception area desk not installed?

12 A. Okay.

13 Q. Do you remember if that was something
14 that the existing contract called for or is that
15 something Fetter wanted to change and had not
16 agreed on a change order yet?

17 A. Neither. It was actually in the
18 basement and it had been moved to the basement
19 while they were doing the renovations. It was a
20 receptionist desk in that area. That was actually
21 the general reception for the Naval Hospital when
22 we purchased the building, when Chicora purchased
23 the building. The desk was located to actually the
24 kitchen area so that it wouldn't be damaged during
25 all the work that was going to be there.

1 Q. Okay.

2 A. It just needed to be brought back
3 upstairs. When I was in the building a month ago,
4 it's back there.

5 Q. Leave it to me to pick a bad example.
6 How about last item 1300 on that it says "Clean
7 existing doors."

8 A. Okay.

9 Q. That sounds like just a punch list
10 item.

11 A. I would agree.

12 Q. Next, let me find one real quick. Item
13 1307. Room 1307. It says, "Install toilet."

14 A. Okay.

15 Q. Do you know if that was something that
16 was part of the existing contract or something that
17 Fetter wanted to change, but hadn't signed the
18 change order?

19 A. If we look at the construction
20 documents, the plans, that were produced when the
21 permits were pulled, it would identify that room
22 and it would show the location of the toilet. Now
23 looking at those plans, we could then reference
24 that if there was a change order, and how that's
25 done was the toilet would be in dots to show it was

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1 going to be moved. So if we have got a set of the
2 plans, then I can tell you if the toilet was
3 missing.

4 There were toilets that were removed
5 and the plumbing lines were upgraded or updated.
6 Those were part of that budget that Mr. Durbano
7 testified that were capital improvements. If a
8 toilet was moved or relocated, then that would come
9 out of the Fetter tenant improvement budget. But
10 if it was part of the general building system that
11 we needed to update the plumbing, which we did a
12 lot of, then it would come out of the capital
13 improvement budget that Mr. Durbano referenced
14 earlier. But I can't testify if that was a change
15 order or just part of a regular tenant improvement
16 unless I have got a set of the construction
17 documents to look at.

18 Q. I understand. Now, the -- after the
19 meeting that was requested on February 4th by
20 Patrick, you said that you -- your wife drove you
21 to this meeting. Did you stay heavily engaged or
22 was that it for you for a while?

23 A. I monitored e-mails and would talk to
24 Mr. Durbano and Mr. David, but I wasn't back at the
25 facility for several weeks.



1 Q. Okay. Let me refer you, if I can, just ²¹²
2 as a -- to refresh you a little bit. And without
3 counting pages, I'm flipping over to the e-mail
4 March 9, 2016. And the one I'm looking at to begin
5 with has a calendar meeting, Fetter-Chicora
6 calendar meeting?

7 THE COURT: What's the date of e-mail?

8 MR. MASSALON: March 9th and it looks
9 like that (indicating).

10 BY MR. MASSALON:

11 Q. All right. Let me get you to take a
12 look at this March 9, 2016 e-mail. Take a look at
13 that and then when you get done, tell me if that
14 refreshes your recollection about trying to set up
15 a meeting with Ms. Jordan?

16 A. I believe there are some e-mails that
17 predate this where either Mr. Altman or Mr. Durbano
18 were contacting each other about the county finance
19 committee had passed a resolution to cancel their
20 lease, and so as I recall this was an attempt to
21 meet with Fetter and make sure that they were still
22 committed to the project or that they were going
23 honor the lease and still move forward.

24 Q. Does this look to you to coincide with
25 the time when you returned from your medical issues

1 and got re-engaged in the project in March of 2016? ²¹³

2 A. Yeah. Out of necessity because the
3 actions of the county I was getting -- I was
4 unfortunately having to come back.

5 Q. Got you. Okay. After that, did you
6 try to set up a meeting with Mr. Williams or
7 Ms. Jordan to talk about these issues?

8 A. Sure. You know, the e-mails document
9 that I think we were trying to get together to meet
10 with them to confirm their lease, confirm they were
11 moving forward.

12 Q. Okay. Let me refer to you an e-mail
13 dated March 16, 2016, from you to Mr. Durbano. Do
14 you see that one?

15 A. Yes.

16 Q. And the subject is Fetter-Ruth Jordan
17 conversation. Do you see that?

18 A. I do.

19 Q. Were these phone conversations or did
20 you actually get an opportunity to meet with
21 Ms. Jordan face-to-face?

22 A. No, this one was a phone call.

23 Q. What did Ms. Jordan tell you at that
24 time?

25 A. I don't remember except for what is

1 documented here in this e-mail.

2 Q. Sure. But refreshing your recollection
3 or using that to refresh your recollection.

4 A. This e-mail says that I spoke with her
5 and she said they're not going to be the only ones
6 in the building. If the county is in, then Fetter
7 is still in. If the county buys the building, then
8 they're still in as well.

9 Q. Okay. Did Ms. Jordan tell you the
10 opposite or the flip side of that which is if the
11 county was out, Fetter was out?

12 A. Yeah. In fact, she told me they
13 cancelled their equipment order.

14 Q. What does that mean, equipment order.

15 A. Exam beds. That's what I recall was
16 they had had several examination tables that they
17 had ordered.

18 Q. Next I'll refer you to an e-mail from
19 you to Ms. Jordan?

20 A. Okay.

21 Q. March 16, 2016, and take a look at that
22 and then let me know when you are done.

23 A. Okay.

24 Q. It refers to a meeting on the 28th of
25 the board of directors. What was that about, if



1 you recall?

2 A. I think it's referenced in this
3 previous e-mail you showed me as well that there
4 was a board meeting on the 28th that was kind of
5 the next decision point for Fetter to determine
6 what they were going to do in regards to the
7 Chicora Life Center project.

8 Q. So would it be accurate for us to
9 understand that at least by the time of this
10 e-mail, the information you were getting from
11 Ms. Jordan was there hasn't been any definitive
12 decision made about what Fetter was going to do?

13 A. Yes.

14 Q. Let me, again, just kind of walking
15 through this. Next e-mail March 19, 2016, you were
16 still trying to set up meeting between Mr. Hofford
17 and Mr. Williams?

18 A. Yes.

19 Q. And the purpose of that as you recall
20 is what or was what?

21 A. In the meeting in February -- well, as
22 the owner's representative, I was trying to get the
23 general contractor that we engaged to perform the
24 tenant improvements for Fetter and Fetter to meet
25 to resolve any punch list items or anything else

1 that they could have.

2 My whole goal here was to try and get
3 the tenant in the building and at this time
4 specifically to get a tenant in to start paying
5 rent and to pay the tenant improvements. I believe
6 at this point, there was the lender was obviously
7 very concerned. The contractor was very concerned.
8 They hadn't been paid since August on any of the
9 Fetter work and so there was -- I was just trying
10 to get some positive movement forward and if that
11 meant getting the Fetter representative which
12 understood as well was Mr. Williams. And
13 Ms. Jordan and then Hofford together, I was going
14 to do anything I needed to do that.

15 Q. Okay. I'm happy for you to keep
16 looking through the e-mail. Mr. Williams it looks
17 like at the bottom of that page responded it looks
18 like he was going to be out until March 22nd. Do
19 you see that?

20 A. Yeah, I do.

21 Q. It looks like on the next page, on
22 March 21st, you asked if Ms. Jordan would be
23 available for that meeting. Do you know if that
24 actually got set up? Do you recall?

25 A. I think that was the -- maybe it



1 wasn't.

2 Q. Sure. Flip back and see. I think that
3 was an earlier proposed meeting date I believe. If
4 you can flip back.

5 A. I haven't looked at these for -- I know
6 which one it was. You're right, it was the meeting
7 cancellation.

8 Q. That's looks like it was the March 11th
9 meeting?

10 A. Yeah. I mean, I was trying to get a
11 meeting set up. Chicora as the owner of the
12 building, we have a general contractor who is
13 responsible for putting in the tenant improvements,
14 the CO had been issued by the city, and now I'm
15 trying to get the tenant to be happy with whatever
16 else they need in their space so that we can
17 accomplish them moving in and taking occupancy.

18 Q. Okay. And the -- let me then show you,
19 and at the top of this is actually an e-mail from
20 Mr. Altman to you, but below that is there is an
21 e-mail March 22nd from you to Ms. Jordan. Do you
22 see that?

23 A. I do it.

24 Q. Refers to a discussion today. Do you
25 know if that was an in-person meeting or just a

1 phone conference?

2 A. I don't recall.

3 Q. Do you know if the contractor
4 participated in that or was that just you and
5 Ms. Jordan?

6 A. I don't recall.

7 Q. Okay. And again, just to kind of speed
8 this along, in that at least you were confirming a
9 discussion that you had that Fetter agreed that
10 some amount of work had been completed and you
11 asked to be paid for that much work, and there is
12 some reference to the percentage completion and a
13 disagreement about the scope of work. Do you see
14 that?

15 A. I do.

16 Q. Do you understand that those were the
17 remaining issues which is how much of the work had
18 been done and how much should have been done under
19 the Bennett Hofford contract? You understood that
20 to be Fetter's concerns?

21 A. I believe their concerns were related
22 to what was in these change orders and the cost of
23 the change orders that Karl was -- you know, Karl
24 was really the construction liaison for the owner
25 and, you know, he was issuing these change orders

1 and also demanding the payment be made. Again, I
2 was trying to resolve everybody's concern and
3 trying to get some positive movement and momentum
4 here. But, yeah, the issue was what was there and
5 what was wasn't there.

6 Q. Next is an e-mail from you to
7 Ms. Jordan, March 30, 2016. What was the purpose
8 of that e-mail?

9 A. They had that board meeting on the 28th
10 and we were anxious to learn what their decision
11 was in regards to moving forward, paying part of
12 their tenant improvements that they indicated they
13 would. I just wanted an update.

14 Q. Okay. Next is an e-mail. Actually,
15 it's in the middle, from Ms. Jordan to you March
16 30, 2016, what did she tell you in response to
17 that?

18 A. She said that they directed their
19 attorney respond.

20 Q. Okay. And at that point, and again,
21 I'm happy for you to flip through the rest of these
22 e-mails, did you remain involved in the dialogue or
23 from that point forward to Mr. Durbano and
24 Mr. Altman take it from there and e-mail back and
25 forth about what happened next?

1 A. Yeah. I believe at that point once it
2 went to legal, that's above my pay grade.

3 Q. Okay. And so is your recollection that
4 Mr. Durbano and Mr. Altman handled it from there?

5 A. Correct.

6 Q. Okay. Let me see. Do you mind giving
7 me just a second. If I'm not done, I am close. I
8 just want to look through my notes and these
9 documents.

10 THE COURT: Fine.

11 MR. MASSALON: Give me just a moment.

12 (A brief pause transpired.)

13 BY MR. MASSALON:

14 Q. In your capacity as the owner's rep,
15 did you recall receiving any demand after January
16 1, 2016 from Fetter that said do these things or
17 we're going to terminate our lease?

18 A. No.

19 Q. Do you recall after January 1, 2016,
20 receiving from Fetter any request or demand for a
21 non-disturbance agreement or reassurance that the
22 lender's foreclosure would not interfere with
23 Fetter's tenancy?

24 A. No.

25 MR. MASSALON: I think that is all I

1 have got for this one.

2 THE COURT: Mr. Altman?

3 EXAMINATION

4 BY MR. ALTMAN:

5 Q. Mr. Blackburn, I'm going to show you
6 Defendant's Exhibit No. 3. Did you discuss that
7 matter with Mr. Durbano?

8 A. This (indicating).

9 Q. Yes.

10 A. Yes, sir.

11 Q. When did you do that?

12 A. I'm sure it was shortly after it was
13 received.

14 Q. Okay. In that letter, Fetter has
15 offered to make some payments.

16 A. I see that is.

17 Q. Offered to wire the money, but it
18 wanted the tenant improvements completed; is that
19 correct?

20 A. I mean, I think you're asking me to
21 give a conclusion of the intent of the letter. You
22 wrote it, so if that's what you tell me that's what
23 the intent is.

24 Q. No, I'm not going to tell you.

25 A. Okay.



1 Q. You received it. If you received it?

2 A. Okay.

3 Q. I want to know what you thought about
4 it when you were there?

5 A. Okay. Let me reread it. Okay. The
6 meeting that a participated in in the beginning of
7 February I believe that both parties, both Chicora
8 and Fetter were still, you know, there was a 5-year
9 lease with Fetter. There was 25- to 30-year lease
10 with the county. And the intent was I think that
11 the five years that Fetter had would just be the
12 initial term and if things went successful for them
13 they would renew as well. So this was going to be
14 long-term relationship.

15 So I think Chicora, the position
16 Chicora had was let's see if we can find a way to
17 work with Fetter to find a way to meet their needs
18 and get into the space. I believe that your letter
19 back was again a negotiation of, hey, what do we
20 got to do to make this work for everybody.

21 Q. Isn't there an inference in there, too,
22 that we want a deadline by which we can move into
23 -- by Fetter can move into?

24 A. There is a deadline referenced in here
25 for the completion of the improvements. I don't

1 know if those improvements are the change orders or
2 -- I mean, there is a CO that clearly said they
3 could move in.

4 Q. There is a CO that says, but doesn't in
5 the lease documents -- by the way, let me ask you
6 this: At some point, and if I remember correctly
7 back year or so ago, you testified as the manager
8 of the LLC?

9 A. Correct.

10 Q. You had taken never what month?

11 A. September of '16.

12 Q. Of '16?

13 A. Yes.

14 Q. And you had access to all the records
15 of Chicora at the time?

16 A. Correct.

17 Q. Okay. And do you remember the leases
18 and the leases having different dates by which the
19 tenant's improvements were to be completed?

20 A. Yes.

21 Q. And you know that on at least 3
22 occasions that the dates did not go ahead and the
23 tenant improvements were not completed as of those
24 dates?

25 A. Correct.

1 Q. Fetter apparently wanted to go ahead
2 and have a due date where everything was done. Is
3 that what you gather by this letter?

4 A. Yes. That's what the request is to
5 have everything done by April 1, 2016.

6 Q. Did you agree to sign a document to
7 that effect that it would be done by April 1st of
8 -- was there any record to go ahead and show that
9 that had been done, an agreement to that effect?

10 A. I don't believe anything was ever
11 executed agreeing to your proposal.

12 Q. Okay. Was there any e-mails or
13 information that you had that that was going to be
14 acceptable by Chicora, the proposal was made in
15 that letter?

16 A. The only e-mail that I'm aware of is
17 pretty much already in the records here today.

18 Q. Okay. I'm showing you can Defendant's
19 Exhibit No. 4.

20 A. Okay.

21 Q. Look at the second bullet point.

22 A. Okay.

23 Q. Why don't you read that into the record
24 if you don't mind?

25 A. "Chicora and Bennett Hofford agree that

1 the percentage completion is close, but do not
2 agree with the dollar amounts assigned by Fetter?

3 Q. Go ahead.

4 A. "Payment by Fetter will be a good-faith
5 payment."

6 Q. I just want you to do No. 2. Okay?

7 A. That's No. 2.

8 Q. Okay. Go ahead. Excuse me.

9 A. That's okay. "Payment by Fetter will
10 be a good-faith payment and the parties will work
11 to resolve the disagreements over the amounts owed
12 by Fetter."

13 Q. All right. The first part of that
14 sentence, what does the word close mean?

15 A. I mean, that is a legal term if you're.

16 Q. But you wrote it?

17 A. Sure.

18 Q. You wrote it. If you wrote it, then
19 you have got to help me with it.

20 A. Look at it this way. There is an
21 effort here to have the parties agree to resolve
22 whatever differences there are. And so when I say
23 you know the old saying is close only counts in
24 hand grenades and horseshoes, right? What I'm
25 trying not to do is put up a barrier that, hey,

1 we're nowhere near. The close reference is I think
2 we can resolve this. I think we can get through
3 it. We're close. You know, we're talking about a
4 5-year lease that becomes a 25-year lease
5 potentially. Let's not let whatever these
6 percentages are get in the way. Let's try to
7 clearly identify what needs to be done and work
8 towards resolution of those items.

9 Q. So you agree that somewhere along the
10 way that you want to go ahead and get paid, but
11 you're willing to go ahead and work to address the
12 issues that have been raised by Fetter.

13 A. I don't think there was anything that
14 would contradict that at all. Chicora was willing
15 to address change orders, to meet, to schedule
16 meetings, in fact I would say that I went out of my
17 personally at that time to do everything I could to
18 help make Fetter happy.

19 Q. All right. Do you have any of the
20 proposed change orders that weren't signed?

21 A. I believe they're in the records, but I
22 don't have them with me personally right now.

23 Q. Do you know when those change orders
24 were issued?

25 A. Mr. David was the one that issued them.

1 He would be the best person to ask that to.

2 Q. He is no longer employed with Chicora
3 as I understand it he has got another job?

4 A. Again, neither Mr. David or I are
5 affiliated with the company anymore, so I don't
6 have those.

7 Q. Okay. Were you aware of the list that
8 had been prepared by Mr. Williams?

9 A. No.

10 Q. When did you?

11 MR. MASSALON: Sorry. I was going to
12 look at something in my box. I don't mean to be
13 disruptive.

14 MR. ALTMAN: Sure.

15 BY MR. ALTMAN:

16 Q. Did you think Mr. Williams was going to
17 prepare a list of what he found?

18 A. Yes.

19 Q. You just never saw it?

20 A. No. The first time I saw that was in
21 Ruth Jordan's deposition.

22 Q. All right. Do you know anybody else --
23 did you discuss it with anybody else as to whether
24 or not they had received it?

25 A. After Ms. Jordan's deposition I did

1 because I didn't -- I was not aware that anyone had
2 produced one or we had received one.

3 Q. Okay. Did you find out that it had
4 been received?

5 A. No, we did not.

6 Q. Who did you speak to?

7 A. I spoke to Mr. Durbano, Mr. Wild,
8 Mr. David at the time. I called Bennett Hofford.
9 I tried -- I contacted everybody I could think of.

10 Q. Nobody has ever seen that list?

11 A. I don't know of any e-mail records
12 produced by Fetter or Chicora that show that list
13 was ever received.

14 Q. Was it hand-delivered? Do you know
15 whether it could have been hand-delivered to
16 anybody?

17 A. I mean anything is possible, but I --

18 Q. Okay.

19 A. -- don't know that it was
20 hand-delivered. I have never heard any testimony
21 that stated it was.

22 Q. When you saw that list back when we
23 took the deposition of Ms. Jordan, did you go back
24 and look at the property and look at it to see if
25 those were issues that were outstanding?

1 A. No, I didn't.

2 Q. You did not?

3 A. No.

4 Q. Has anybody else, to your knowledge,
5 done that?

6 A. That was after, a year after the
7 lawsuit had been filed.

8 Q. I understand that.

9 A. Okay.

10 Q. I understand that?

11 A. The last time, we do routine security
12 checks through Fetter space during the bankruptcy
13 proceedings, but, there was -- frankly, was no
14 money to complete any work. Fetter at that point
15 had repudiated the lease. I don't know why there
16 would be an intent or requirement to go and
17 complete things for somebody that had repudiated
18 and said they were moving someplace else.

19 Q. Did they say they were moving someplace
20 else?

21 A. There was, yes. In fact, I think it
22 was a letter from you.

23 Q. That they were moving somewhere else?

24 A. I believe there was either an e-mail or
25 a letter stated that they would look for space in

1 other locations.

2 Q. Tell me when that was written to you.

3 A. It might not have been to me
4 personally, but it was sent to Chicora.

5 Q. Okay. And it was done by me?

6 A. Again, I don't recall that it was you.
7 I said there was somebody from Fetter. It was
8 either yourself or somebody from Fetter that sent
9 us notice saying they were going to look for other
10 locations.

11 Q. Yeah. And when was that received?

12 A. I don't recall the exact date. It was
13 in this March-April timeframe of 2000 --

14 Q. There are a whole lot of e-mails that
15 somehow have made it to this case today in this
16 hearing and there is nothing that I have seen was
17 like that?

18 A. Okay.

19 Q. So I'm just wondering, that would be an
20 important part of your testimony, would it not if
21 there was something like that done?

22 A. I don't know why it would be important,
23 if you could help me understand that. I just, you
24 know, I think that it was very clear that there
25 was, you know, at that point we were told Fetter

1 was going to look for other locations.

2 Q. Okay. Who told you? You just don't
3 know?

4 A. I don't recall.

5 Q. You don't recall?

6 A. No.

7 Q. Okay. Would you have any records
8 anywhere that could tell you who told you?

9 A. Not outside of what had been provided
10 in the litigation already.

11 Q. Are you familiar with an agency called
12 HRSA?

13 A. No.

14 Q. H-R-S-A?

15 A. I'm not.

16 Q. Okay. Did you know that Fetter had
17 filed and obtained a grant from HRSA for this
18 project?

19 A. I knew they had filed for a grant. I
20 didn't know the acronym that's for the agency they
21 were receiving the grant with.

22 Q. Do you know the amount of the grant.

23 A. I don't.

24 Q. Okay. And it was for this purpose, for
25 the purpose of this Chicora?

1 A. I do know that they filed. I think I
2 helped Mr. Pettiford or Mr. Patrick with multiple
3 grant applications for everything from pharmacy to
4 dental to maternity. I do know that they fund
5 through grants.

6 Q. You mentioned that Mr. Williams was
7 fired by D & D?

8 A. In May of 2015 Double D, essentially
9 May or June of that time period, all the employees
10 of Double D were either terminated or let go. He
11 would have been an employee of Double D?

12 Q. How long was he an employee of
13 Double D?

14 A. I don't recall. Couldn't have been
15 that long. A couple of months maybe.

16 Q. A couple of months?

17 A. Uh-huh.

18 Q. Did you ever have any contact with him
19 while you were involved in this project?

20 A. Yeah. He was at -- I recall a couple
21 of meetings he was at regarding the Fetter space.

22 Q. Okay.

23 A. He and T.O. Doggett who was the
24 architect at the time.

25 Q. All right. Tell me, what is

1 Mr. Williams' background?

2 A. I learned today he was an engineer.

3 Q. Yeah. You didn't know anything about
4 him before?

5 A. No.

6 Q. Have you checked him out at all? Do
7 you know who he might be --

8 A. Double D had a hundred employees. I
9 didn't check out all the employees. I just know
10 that he was hired to help manage the Fetter
11 construction space.

12 Q. Yeah, but you don't know for a fact
13 that he was fired?

14 A. Well, I know that all the employees
15 were terminated. So whether it's fired or
16 terminated, he was no longer -- how about this: He
17 was no longer employed by Double D.

18 Q. Okay. That is a little bit better?

19 MR. DURBANO: A little softer there.

20 BY MR. ALTMAN:

21 Q. What percentage of the space was Fetter
22 going to occupy?

23 A. Of the building?

24 Q. Uh-huh.

25 A. Well, the entire building has got a



1 usable and a rentable square footage. The overall
2 building was over 350,000 square feet. Fetter is,
3 let's say for round numbers, approximately 10,000
4 of that.

5 Q. So we're at 3 percent, 2 and a half to
6 3 percent?

7 A. 3.6.

8 Q. What was the cost of the
9 air-conditioning unit?

10 A. The cost of?

11 Q. The air-conditioning unit that you
12 installed?

13 A. For Fetter?

14 Q. For everybody?

15 A. Oh, it was over 3 million.

16 Q. Who did the installation for you?

17 A. Chicora contracted with Bennett
18 Hofford. And then Bennett Hofford, as the general
19 contractor, contracted with multiple
20 subcontractors. At the same time that the Fetter
21 space, the HVAC was being installed, it was also
22 being installed throughout all of the county space
23 and also mental health. So there were multiple
24 subcontractors that were assigned to different
25 areas.

1 Just to maybe clarify that 3 million
2 dollar number, I think that 3 million dollar number
3 was for all the tenant improvements for Fetter, all
4 the tenant improvements for mental health,
5 including HVAC in both, as well as the HVAC for the
6 county. I think the loan increase from the lender
7 was 3 million and the covered everything.

8 Q. So what you-all did is divided the cost
9 of the air-conditioning unit between those three
10 tenants?

11 A. No. It was specific to each tenant's
12 space. So each tenant's space I believe in fact
13 that each tenant's space actually had a different
14 subcontractor for the HVAC and those subcontractors
15 bid on those spaces. And so the invoices related
16 to those individual tenant spaces are specific to
17 those spaces. There was no division of an overall
18 amount between any of them.

19 Q. So each unit was controlled, each you
20 have common area?

21 A. Correct. And the common area was a
22 separate contract as well. So there was a contract
23 with Bennett Hofford specifically for Fetter space
24 and it was for approximately the same numbers we
25 have discussed today, the 600,000.

1 Q. Fetter space was 600,000?

2 A. That was for the HVAC, capital
3 improvements, and the tenant improvements.

4 Q. All right. But you're saying there was
5 300,000 in that. What kind of tonnage did you get
6 for this Fetter space?

7 A. Whatever the mechanical engineers
8 required. I mean, the mechanical engineers did all
9 the plans and the space calculations.

10 Q. This is 9,000 square feet, 9,100 square
11 feet?

12 A. Correct.

13 Q. You're saying it was \$300,000 for that?

14 A. Yes.

15 Q. Was there an obligation in the lease to
16 go ahead and get an estoppel agreement signed by
17 the lender?

18 A. I think you have already discussed that
19 with Mr. Durbano.

20 Q. I'm going to ask you since you were the
21 manager.

22 A. I wasn't the manager at the time in
23 question. I was the manager after starting at
24 December 16th.

25 Q. You inherited it, right?



1 A. Okay.

2 Q. You were there and you were
3 negotiating. You inherited it, but you're a banker
4 and you know a little bit about, I think about
5 estoppel agreements, do you not?

6 A. I think at my previous deposition you
7 asked me the same question and we discussed it
8 then.

9 Q. Yeah.

10 A. But I think the answer is going to be
11 same.

12 Q. Well, you told me it's really the
13 tenant's obligation to go ahead and get the
14 estoppel. That's what you told me before?

15 A. I think you're paraphrasing.

16 Q. Well, then you straighten me out.

17 A. I think my exact testimony was that in
18 over 10 years or mortgage banking and banking, I
19 don't ever recall having a request from a tenant,
20 except in this instance, in that the lender
21 provided an estoppel, exactly what Mr. Durbano
22 said. I never received a notice that they wanted
23 it. I never received a default notice that they
24 needed it. You know, the lease and the legal
25 interpretation of those exact phrases, you know,

1 you and Mr. Durbano are attorneys, you're much more
2 qualified to answer that question than I am.

3 Q. No, but I'm asking you as a banker.

4 A. Okay.

5 Q. Okay. I believe the term is in there
6 it says, the landlord shall. Would you agree with
7 me?

8 A. That's the exact language out of the
9 lease.

10 Q. Okay.

11 A. Okay.

12 Q. Did you ever see the estoppel -- I
13 think you told me that you never saw an estoppel
14 come back, a signed estoppel, am I correct, in the
15 deposition?

16 A. I think the estoppel went from Fetter
17 to Mr. Durbano to the lender, and then the lender
18 then turned around and did fund the tenant
19 improvements.

20 Q. I'm asking you whether or did you or
21 anybody receive a copy of the executed estoppel
22 agreement by the lender?

23 A. You're talking about like the last page
24 of the estoppel?

25 Q. Yes.

1 A. I did not then and do not now have
2 that.

3 Q. Did you, after the deposition that we
4 took, did you go ahead and inquire of the lender,
5 if the lender had executed that estoppel agreement?

6 A. No.

7 Q. I don't have any further questions.

8 MR. MASSALON: Just a couple of
9 redirect.

10 EXAMINATION

11 BY MR. MASSALON:

12 Q. Mr. Altman asked you about receiving
13 notice from Fetter that they were looking for other
14 space. Do you remember those questions?

15 A. Yes.

16 Q. Take a look at Exhibit S for me, the
17 last sentence?

18 A. Which one.

19 Q. S like in Sam?

20 A. Okay.

21 Q. And what is the last sentence of that
22 letter? It says, "Fetter will immediately begin
23 its search for another location." All right. So
24 I'm not crazy?

25 MR. MASSALON: That's all I've got.



1 THE COURT: Any further questions,
2 Mr. Altman?

3 MR. ALTMAN: No.

4 THE WITNESS: Okay. Are we going to
5 recess for the day at this point?

6 MR. MASSALON: I have only got one more
7 witness, but as I mentioned, he can't be here until
8 tomorrow morning.

9 THE COURT: Okay.

10 MR. MASSALON: So I'm game to start
11 whatever time you and Mr. Altman would like to, but
12 I won't have my last witness until about 2:30.

13 THE COURT: That's fine. I understand
14 that.

15 MR. MASSALON: Whatever y'all's
16 pleasure is.

17 THE COURT: What do you prefer to
18 start, Mr. Altman? 9:30?

19 MR. ALTMAN: 9:30 would be fine.

20 THE COURT: 9:30.

21 MR. MASSALON: Okay. Good. I'll just
22 get Mr. Briggman to come over when he is finish
23 with his doctor's appointment.

24 THE COURT: Okay. That's fine.

25 MR. MASSALON: I expect him to be

1 short.

2 THE COURT: Okay. Mr. Altman, you said
3 you have three or four witnesses?

4 MR. ALTMAN: No, no, I don't. I had
5 three, actually three, but I think one is
6 Ms. Jordan, then I have Mr. Williams, then I have
7 this nice young lady here who has been patient here
8 and sat through this all day.

9 THE COURT: Okay. Fine. So finishing
10 tomorrow is not a problem then?

11 MR. MASSALON: No, I'll be short. I
12 don't expect my cross-examination of any of
13 Mr. Altman's witnesses to go long.

14 THE COURT: Thank you, everybody.

15 (The hearing was adjourned at 5:09
16 p.m.)

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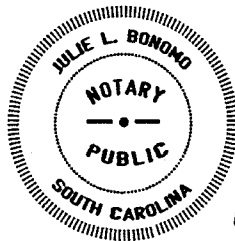


CERTIFICATE OF REPORTER

I, Julie L. Bonomo, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 8th day of May, 2018,
at Charleston, Charleston County, South Carolina.



Julie L. Bonomo
Court Reporter
My Commission expires
July 28, 2027

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON COURT OF COMMON PLEAS
3 CHICORA LIFE CENTER, LC,
4 Plaintiff,
5 vs. CASE NO. 2016-CP-10-2380
6 FETTER HEALTH CARE NETWORK, INC., NBSC
7 CORPORATION; AND JOHN AND JANE DOES 1-100,
8 Defendants.
9 TRIAL BEFORE: WADE H. LOGAN, III
10 VOLUME II
11 DATE: April 24, 2018
12 TIME: 9:40 a.m.
13 LOCATION: Law Offices of
14 BUIST BYARS & TAYLOR
15 652 Coleman Boulevard
Suite 200
Mount Pleasant, South Carolina
16 REPORTED BY: Julie L. Bonomo
17
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18 ALSO PRESENT:

19 Douglas Durbano
20 Jeremy Blackburn
21 Aretha Jones
22 Dallin Durbano

23 (INDEX AT REAR OF TRANSCRIPT)
24
25

P R O C E E D I N G S

RUTH M. JORDAN

being first duly sworn, testified as follows:

THE COURT: State your full name for
the record, please.

A. Ruth M. Jordan, R-U-T-H, middle initial
M, J-O-R-D-A-N.

THE COURT: Thank you, ma'am. All
right, Mr. Altman.

EXAMINATION

BY MR. ALTMAN:

Q. Ms. Jordan, you have provided your
name. Would you tell us about your background as
far as where you live and what your present
employment is.

A. I'm a resident here in Charleston, have
lived in Charleston all of my life. I'm a graduate
of Charleston Southern University. I'm a retired
procurement officer from the Naval Weapons Station
in Charleston. I'm currently a consultant and
realtor with Carolina One.

Q. Okay. Tell us what your relationship
with Fetter was and when it started and the
positions that you held with Fetter?

A. Back in the Fall of 2013, I was



1 appointed to the board of trustees of Franklin C.
2 Fetter. And then sometime later in the early Fall
3 of 2015 was appointed the interim CEO.

4 Q. Okay. And would you tell us about
5 Franklin Fetter and the nature of its business and
6 what it provides to the community.

7 A. Franklin C. Fetter is a community-based
8 healthcare clinic that serves the uninsured and the
9 most vulnerable population. We have sites in or
10 they have sites in four counties. Charleston,
11 Dorchester, Berkeley, and Colleton Counties.

12 Q. When you say you provide services?

13 A. Medical services, healthcare services.

14 Q. And you provide doctors with that, as
15 well?

16 A. Yes, sir.

17 Q. Do you have a hospital or are they
18 referred to hospitals?

19 A. No. I said medical sites, clinics.

20 Q. Just clinics?

21 A. Yes.

22 Q. Were you involved in any way with the
23 -- let me ask you this: You said you were with
24 Franklin Fetter, are you -- when did you resign or
25 when did you retire from the board?

1 A. I retired from the board in September
2 of 2015, left the CEO's role in April of 2016.

3 Q. Okay. And were you involved with the
4 decision to lease property at the Naval Hospital?

5 A. Yes.

6 Q. And what was Franklin Fetter Health
7 Care trying to do by leasing the property as far as
8 providing services?

9 A. The main campus of Franklin C. Fetter
10 is located at 51 Nassau Street. We have multiple
11 campuses throughout the Tri county area. And there
12 in North Charleston we had or have or they have a
13 pediatric site located in the Union Heights
14 section.

15 When the opportunity arose prior to me
16 coming on the board that the Naval hospital was
17 going to be what we call one-stop shop to provide
18 services to the Lowcountry, it's my understanding
19 that Franklin C. Fetter began to look at that spot
20 as a central location because of our patient base
21 coming from the 29405 area, and the need to be able
22 to move the pediatric site from Union Heights to a
23 to a main -- in a more valuable -- in a more proper
24 building. We felt like the Naval Hospital would be
25 that perfect location.

1 Q. All right. How was the move to be
2 financed?

3 A. The move was to be financed through our
4 line of credit with National Bank of South
5 Carolina.

6 Q. Did you have any grants that you were
7 going to utilize for the purposes of developing the
8 business of Fetter at the Naval Hospital?

9 A. Prior to me coming on the board, the
10 prior CEO had applied for what we call a HRSA
11 grant. HRSA stands for Health Resource Service
12 Administration through HHS, Health and Human
13 Services which is a federally-funded organization
14 that funds community healthcare centers throughout
15 the country. Upon them applying for the grant it
16 was approved with a deadline of moving and
17 establishing the site.

18 Q. Yes. And do you remember what that
19 deadline was?

20 A. There were multiple deadlines.

21 Q. Why were there multiple deadlines?

22 A. Because the building was not complete
23 and the improvements were not made and we had to
24 keep going back to our funders and requesting an
25 extension.

1 Q. Tell me again, and I may have been
2 asleep at the switch here, what was the grant, how
3 much was the grant and what was it going to be used
4 to go ahead and do?

5 A. I'm not sure exactly the amount of the
6 initial grant, but as you -- and Mrs. Jones can
7 talk further about this, but as you budget, you
8 indicate how much of the number of patients that
9 you're going to see, how it's going to be
10 beneficial to the community, and the number of
11 patients, and they are will fund you based on that.

12 So part of the other funding that we
13 got was the outfitting. We had gotten some money
14 to buy computer systems in which we spent over
15 \$100,000 in computer systems that were stored in a
16 closet to go into that facility along with paying
17 for network services and other licenses.

18 Q. All right. Do you remember when the
19 original lease was signed? Was it signed by you or
20 signed by Mr. Pettiford?

21 A. It was signed by Mr. Pettiford and I
22 believe that was in August of 2014.

23 Q. Let me show you some documents that
24 were introduced yesterday and I want to ask you to
25 go over them with me. This is Tab F, and this is,

1 I think that the parties agree this is a basic
2 information statement and it indicates that the
3 lease was signed. What date is shown on here?

4 A. Well, the basic lease was August 4,
5 2014. The signature was also August 4, 2014.

6 Q. Do you know who signed that on behalf
7 of Franklin Fetter?

8 A. Mr. Reuben Pettiford who was the CEO at
9 that time.

10 Q. This is the lease itself and I'm going
11 to point you to some paragraphs and ask you to go
12 ahead and help me with this. What does section No.
13 1 do?

14 A. So again, it says that, "The landlord
15 hereby leases to the tenant and the tenant" --

16 Q. You don't have to read the whole thing.

17 A. Okay.

18 Q. But just does that describe
19 accurately --

20 A. Yes.

21 Q. -- describe the premises --

22 A. Yes. Yes.

23 Q. -- to be leased at that time?

24 A. Approximately, yes.

25 Q. Yeah.

1 A. 8,872 square feet.

2 Q. And in No. 2, in No. 2 on page No. 1,
3 is there anything in here that tells you when the
4 delivery is going to be -- when there is supposed
5 to be delivery of the premises?

6 A. Well, terms and completions of
7 improvements there is no dates listed in that
8 particular section at this point.

9 Q. Well, it says -- what does it say in
10 this particular sentence that I'm pointing to?

11 A. "Tenant takes the premises as is except
12 for described in Exhibit B and tenant to receive
13 delivery of the premises after satisfactory
14 completion of the tenant's improvements by the
15 landlord."

16 Q. Okay. And I point you again to section
17 No. 3. Does it have any provision in there that
18 talks about in the event that the landlord fails to
19 complete the improvements or perform any other
20 obligation? What happens at that point?

21 A. Well, I'm going have to read it.

22 Q. Take your time.

23 A. Okay. What it basically says, that
24 once all the improvements are made, "The tenant
25 agrees to occupy and pay the landlord. However, if



1 the landlord fails to complete the improvements or
2 perform any other obligations set therein, then the
3 obligation to pay for the improvements shall be
4 waived or excused."

5 Q. And if I'm right in No. 4 you're
6 talking about the rental, and is there a delivery
7 date in there as far as when the premises is to be
8 delivered?

9 A. Yes. The initial rental date was
10 November 1, 2014.

11 Q. When you say rental date, is that the
12 delivery date?

13 A. Yes. Shall occur by November 1st.

14 Q. Were the premises delivered to Fetter
15 on November 1st?

16 A. No, sir.

17 Q. Do you know why they weren't delivered?

18 A. There was -- the improvements were not
19 done.

20 Q. Was that caused in any way by Fetter?

21 A. No, sir, not at all.

22 Q. Did you agree to go ahead, subsequent
23 to this to go ahead and give Chicora more time to
24 go ahead and complete the improvements?

25 A. Yes. Because I believe Mr. Pettiford

1 did sign something later on.

2 Q. Okay. Here No. 10. Were the premises
3 ever delivered, this is talking about any time that
4 you were involved as CEO, delivered with all tenant
5 improvements completed?

6 A. No, sir. Never.

7 Q. And I'm going to get into some other
8 testimony with you about this at a later -- later
9 on. Section 24. Did you -- was Fetter forced to
10 obtain counsel to represent them in this matter?

11 A. Yes, sir.

12 Q. Okay. What does 26 provide?

13 A. It provides a subordination
14 non-disturbance attornment clause.

15 Q. Whose obligation is it to go ahead and
16 provide that?

17 A. The landlord's.

18 Q. Ms. Jordan, I'm going to ask you to
19 stop for a minute and look at this, and I think you
20 probably looked at it before. Do you know anything
21 in this lease or any of its amendments that
22 requires Fetter to provide a notice to cure, any
23 default by the landlord?

24 A. You're saying in the --

25 Q. In the lease?

1 A. Not to my knowledge.

2 Q. Not to your knowledge?

3 A. Uh-huh.

4 Q. Was there a non-disturbance agreement
5 that was ever provided to you?

6 A. No.

7 Q. Did you request one?

8 A. Yes.

9 Q. We'll get into that as well. This
10 estoppel certificate that is in Section 29 on Page
11 No. 14, that was something that was presented to
12 you?

13 A. Yes.

14 Q. Is that what you actually ended up
15 adding a non-disturbance provision in that
16 document?

17 A. Yes.

18 Q. And you signed it?

19 A. Yes.

20 Q. We'll show you that later. Did you
21 ever get a document back from Chicora saying that
22 it had been signed?

23 A. No.

24 Q. No. 33 talks about a security deposit.
25 Was there a security deposit made by Fetter?

1 A. Yes. In the amount of \$17,000.

2 Q. And that amount was received by
3 Chicora?

4 A. Yes.

5 Q. And section No. 50, what does that say
6 about the tenant improvements?

7 A. It says that the landlord shall deliver
8 the premises as is after the improvements have been
9 completed and with -- along with a certificate of
10 occupancy.

11 Q. That the improvements have been
12 completed?

13 A. Uh-huh.

14 Q. And the certificate of occupancy. Were
15 the tenant -- were the improvements ever completed?

16 A. No, sir.

17 Q. I'm flipping over to Exhibit B and I
18 would like you to look at it and I'll ask you some
19 questions about the second paragraph in Section B?

20 THE COURT: Which section?

21 MR. ALTMAN: Section B. Second
22 paragraph on Exhibit B.

23 THE COURT: Okay.

24 THE WITNESS: Yes, sir.

25 BY MR. ALTMAN:



1 Q. Did anyone from Chicora ever contact
2 you or anybody to your knowledge from Fetter to
3 determine whether or not the improvements were
4 satisfactory to you before applying for a
5 certificate of occupancy?

6 A. No.

7 Q. If someone had asked you for -- to give
8 a letter to the effect that the tenant improvements
9 had been completed, would you have been able to do
10 so?

11 A. I would not have been able to have said
12 that the improvements had been completed, no,
13 because they hadn't been as of the time I left in
14 March, late March of 2016.

15 Q. Okay. The next item in here is -- it's
16 a little bit out of order. This is under G
17 heading. Could you look at that and tell us what
18 that's about?

19 A. This is an additional lease for a
20 storage space of some medical records.

21 Q. And this was at the Chicora Building on
22 Rivers Avenue?

23 A. Yes, it was.

24 Q. Who signed that on your behalf?

25 A. Mr. Reuben Pettiford.

1 Q. When is that dated?

2 A. This is dated April 15, 2015.

3 Q. And that provides for payment of some
4 rent?

5 A. Yes. That provides payments for some
6 rent of, let me see what the amount is right now,
7 \$1,776.

8 Q. All right. Did Fetter actually move
9 into the hospital under this lease as far as this
10 space?

11 A. They moved medical records, but we did
12 not move in.

13 Q. Okay. But this wasn't --

14 A. It was storage.

15 Q. The medical records, this was for
16 storage?

17 A. Storage of medical records, yes.

18 Q. All right. How long -- did you pay
19 rent while you were there?

20 A. Yes.

21 Q. Do you know what happened as to why you
22 left the current premises?

23 A. We found out after our -- one of our
24 staff went in and saw that the medical records were
25 in a very wet and damaged and high humidity, water

1 intrusion was in the space.

2 Q. So y'all left. Did you advise Chicora
3 why you were going to leave?

4 A. Yes.

5 Q. Did you ask them to repair the space?

6 A. No.

7 Q. You did not ask them?

8 A. We told them that the medical records
9 were damaged, and they said they were not obligated
10 to make any repairs to that spot, that that was not
11 a part. It was an as-is space and they weren't
12 obligated to make any repairs to that spot.

13 Q. But you paid for the time you were
14 there?

15 A. Yes.

16 Q. You made no claim for -- I think it
17 states in there that you were aware that there
18 could be problems?

19 A. Again. I didn't sign this space, but I
20 do recall having a conversation and they said that
21 it was not -- they were not going to make any
22 improvements in that space.

23 Q. Okay.

24 A. Basically, they were saying that they
25 did Fetter a favor by allowing Fetter to use the

1 spot.

2 Q. This was in the basement?

3 A. Yes, it was in a basement.

4 Q. Did it have any windows down there?

5 A. I personally never went into the spot.

6 Q. But you paid for the space?

7 A. Yes.

8 Q. Do you know how many months you paid?

9 A. They apparently might have paid for an
10 entire year because I think records were actually
11 removed in April 2016.

12 Q. Okay. I'm showing you this is under
13 Tab No. H. This appears to be an executive summary
14 of an addenda to the lease. Can you tell me what
15 that was about and it looks like there was an
16 extension in there. Can you tell us about the
17 background of that?

18 A. Mr. Pettiford decided that he wanted to
19 expand the suite from 8,772 square feet to 10,974
20 square feet for some additional services that we
21 were thinking about using or providing in that
22 location. And so this is an increase of the space.

23 Q. Does it have a date on there by which
24 the improvements were to be delivered?

25 A. For the term commencement was June



1 2015.

2 Q. Were they completed with their
3 improvements by June of 2015?

4 A. No.

5 Q. Did you do anything or did Fetter do
6 anything to your knowledge to go ahead and cause a
7 delay in Chicora completing the space?

8 A. Absolutely not.

9 Q. Do you know why they were not able to
10 deliver the property at that time?

11 A. No. I just read through the papers
12 that there were multiple issues with the building
13 and air-conditioning systems and various issues
14 with the building.

15 Q. But none of this was the responsibility
16 or fault of Fetter?

17 A. No.

18 Q. And this is under Tab No. H. Would you
19 look under H? This appears to be an addendum to
20 the lease that covers the information we had on the
21 preceding exhibit. When is the term supposed to
22 commence?

23 A. Let me see.

24 Q. It's under Section C?

25 A. June 1, 2015.



1 Q. And it's supposed to be?

2 A. Completed.

3 Q. What was supposed to happen? What was
4 the basis of the term of completion? What was
5 supposed to happen?

6 A. That all the tenant improvements and
7 the certificate of occupancy shall be made by June
8 1, 2015.

9 Q. And the word between tenant
10 improvements and issue of a certificate of
11 occupancy is the word "and," is it not?

12 A. Yes. Tenant improvements and issuance
13 of a certificate of occupancy.

14 Q. All right. I'm going to skip J. This
15 is the note and mortgage that you remember?

16 A. Uh-huh.

17 Q. That was cancelled in response to,
18 let's see, I'm going to show you exhibit number --
19 Defendant's No. 2 in response to the agreement I
20 think that you made with Chicora that you provided
21 a letter of credit?

22 A. Yes.

23 Q. Or proof that you have a line of credit
24 to do?

25 A. Uh-huh.



1 Q. Okay. This is Defendant's Exhibit 2.
2 All right. There is -- this under Tab No. K.
3 There is a third addendum. Tell me what the reason
4 for the third addendum was. Please take your time.
5 Okay?

6 A. Okay. It says the note and mortgage
7 referenced in the second addendum were executed
8 without authority and has been cancelled and
9 returned to tenant. And so this basically recapped
10 that they had taken off the note and mortgage of
11 the property, and then it just restated the actual
12 square footage, not of 10,000, but 9,108 square
13 feet.

14 Q. Why were you reduced from 10-something
15 to 9,100?

16 A. Because I'm not quite sure if I recall,
17 but I believe it's because we actually measured the
18 space.

19 Q. And there was an agreement between you
20 and Chicora, between Fetter and Chicora that there
21 was only 9,100 square feet?

22 A. Uh-huh.

23 Q. Okay. And when does it say the term is
24 supposed to commence? What is the basis for the
25 term commencing and the date?

1 A. So, again, it says November 2015. And
2 then it says 90 days from the date of the contract
3 to be executed by February 2015 or 2016 -- I'm
4 sorry. February 15, 2016. And I'm sorry,
5 actually, it says amended 9,108 square feet
6 allotted common area of 1,866. So it just recaps
7 again the original square footage.

8 Q. Okay.

9 A. But later on we'll find out that the
10 actual space had been changed.

11 Q. The term commencement down here, what
12 is supposed to be shall occur when?

13 A. It says here that the commencement of
14 term shall occur upon completion of tenant
15 improvements and the issuance of a certificate of
16 occupancy by February 15, 2016.

17 Q. Okay. There is a word here between
18 those two, the word "and" so both of those, would
19 both be required?

20 A. Yes. And I signed that.

21 Q. And you signed that?

22 A. Yes.

23 Q. I'm showing you Exhibit No. L, and if
24 you tell me, look at the document and tell me what
25 you believe that is?

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1 A. That is the tenant estoppel certificate
2 that we forwarded back upon their request. And
3 part of this was due that they were going to remove
4 the mortgage note and that we were going to forward
5 them a tenant certificate, tenant estoppel
6 certificate, and we made all the necessary changes,
7 but they never returned it.

8 Q. This was signed by you on November
9 24th?

10 A. Yes.

11 Q. Who did you give this to or who did you
12 send it to, if you remember?

13 A. I actually sent it over to Karl.

14 Q. And Karl was supposed to get back with
15 you?

16 A. Yes.

17 Q. With the executed copy?

18 A. Uh-huh.

19 Q. Did you get any -- in January of 2015,
20 did you get any notice that a CO had been issued?

21 A. In 2015?

22 Q. 2016?

23 A. In 2016, I was told that there was a
24 certificate of occupancy available. I never
25 received it, but I was aware that there was a



1 certificate of occupancy available.

2 Q. Were you surprised when you got the
3 notice?

4 A. Yes.

5 Q. And tell me, had you been out to the
6 space to inspect it from time to time?

7 A. Yes. We had -- the team which was our
8 facilities team, which consisted of several board
9 members, we went there very -- weekly almost,
10 inspecting the space. We were excited about moving
11 into the space. We inspected it many times. One
12 of the things that was brought to our attention was
13 that there was an exit out of the rear end of the
14 suite, because the suite was nearly 1,000 square
15 feet. And we came through once, and when we came
16 back, the exit had been sealed.

17 Q. When was this?

18 A. I think this was actually in
19 January/February of 2016.

20 Q. 2016?

21 A. Yeah. We realized that the exit had
22 been sealed. And I said, after the fire department
23 had made an inspection the exit had been sealed?
24 Well, how are we going to get out the rear end of
25 this suite of almost 10,000 square feet if we can't

1 get out. Adrian Williams pointed out that there
2 was to egress and in --

3 Q. Tell us who Adrian Williams is.

4 A. Adrian Williams was a consultant, an
5 engineer consultant that we hired to provide us
6 with a list of completions of improvements that was
7 completed and not completed.

8 Q. Tell me, what does Mr. Williams do and
9 so forth. What is his background, to the best of
10 your --

11 A. To the best of my knowledge, he is an
12 engineer, construction engineer.

13 Q. When you say you went out with the
14 committee, who were the committee members you went
15 out with?

16 A. The committee members consisted of
17 Mr. Hinson, Mr. Leonard Brown, Mr. Antoine Saunders
18 and myself along with Adrian Williams from time to
19 time.

20 Q. Did y'all go at the same time for each?

21 A. Most of the time, yes, but Mr. Williams
22 went out separately.

23 Q. He went out separately?

24 A. Yes. Because he had to do a whole lot.

25 Q. Were you there -- there is a report.

1 Let me see if we have got that. This is under R.
2 Could you look at this and identify this if you
3 know what it is?

4 A. That is an inspection walkthrough that
5 was actually formulated with the committee and
6 Mr. Adrian Williams of the improvements that was
7 not completed.

8 Q. And this was done for the time period
9 that's set forth in there?

10 A. Yes.

11 Q. Were you there during the entire time
12 that the report was -- from the 5th through the
13 9th?

14 A. Yes.

15 Q. Okay.

16 A. Do you mean did I physically go out to
17 the --

18 Q. No, were you there --

19 A. Yes.

20 Q. -- for the entire period?

21 A. Yes.

22 Q. Five or four days?

23 A. Yes.

24 Q. And there was a report that was issued,
25 and could you tell me as of the time this report

1 was issued whether or not the space was completed
2 in the manner in which Fetter could move in and
3 operate?

4 A. No, it was not.

5 Q. Would you look at that list and see if
6 any of those short or deficiencies that are stated
7 in there are the result of items that would have
8 been an add on or a change order to the original
9 items that were to be provided for the space?

10 A. No. These were basically improvements
11 that was necessary for us to occupy the space.

12 Q. Were there requests made for some
13 upgrades that you decided not to do?

14 A. Yes.

15 Q. What were those upgrades that you
16 decided not to do?

17 A. There were, instead of we wanted to
18 change the front door, and then some sinks. We
19 wanted to add several sinks that was not there.
20 They apparently weren't going to do it so we
21 requested some cabinet sinks to be installed.

22 Q. All right. There a reference in here
23 that some sinks and some toilets and so forth.
24 Were those different or were those basically what
25 was supposed to be provided. If you can check and

1 spend a minute or so looking at the document before
2 you respond if you don't mind?

3 A. The bathrooms was horrific. The water
4 coolers in the space was horrific. They were
5 filthy. They were nasty. I mean, they were
6 originally part of the original building when it
7 was built. I'm not sure when the building was
8 originally built. In the early -- or late '60s,
9 early '70s when the hospital was actually built.
10 So those particular areas they had not even done
11 anything with those particular areas at all. That
12 was in our particular suite.

13 Q. Was this supposed to be done under the
14 basic upfit?

15 A. Yes.

16 Q. Not to be an add on?

17 A. No.

18 Q. Or a change order?

19 A. No.

20 Q. Okay.

21 A. And they were to put sinks in the
22 areas. They were supposed to put sinks in most of
23 the examination rooms.

24 Q. Were they standard sinks or any
25 upgraded sinks? Or just tell me.

1 A. Standard sinks. They were supposed to
2 be standard sinks.

3 Q. If you could, just look at that and see
4 if you can go ahead briefly describe after you have
5 looked. Take a minute that I had mentioned to you.
6 Look at it and just tell us why you couldn't move
7 in to the space?

8 A. Again, doors hadn't been replaced.
9 Locks hadn't been put on. Toilets hadn't been
10 installed. Some areas that we requested to have
11 done hadn't been completed. There was not an exit
12 out of the end of the building. And so again, it
13 was the improvements.

14 Q. Did you present a copy of this to
15 Mr. David?

16 A. Yes, I did.

17 Q. What was his response?

18 A. He said that he wasn't going to a
19 goddamn thing until he received some moneys.

20 Q. All right. And as a result of that
21 conversation and inspection report, I'm going to
22 show you Defendant's Exhibit No. 3.

23 A. So after speaking with him, he told me
24 he was not going to do a goddamn thing until they
25 received some kind of moneys. I informed the board

1 along with our attorney and we in turn forwarded
2 them back letter telling them that we were going to
3 provide them with a check in the amount of \$59,446
4 which is 50 percent of the work that had been
5 completed, provided that they were also going to
6 deliver us the building in a timely manner. And --

7 Q. This had gone on -- your relationship
8 with Fetter had gone, with Fetter and Chicora, had
9 gone on since August?

10 A. Uh-huh. Of 2014.

11 Q. Of 2014, and this was February of 2016?

12 A. Uh-huh.

13 Q. And there was supposed to be like a
14 very short delivery date, was there not, in the
15 previous amendments we talked about?

16 A. Yes.

17 Q. Did Mr. David ever call you back?

18 A. No. Everything went dark after that
19 point. Construction workers weren't working there
20 anymore. Everything just went dark.

21 Q. If Chicora had come back and said I
22 need another 10 or \$15,000, would you have
23 recommended that to the board to get this thing
24 going?

25 A. We were working on a timeline. My

1 marketing people had already began to market that
2 we were going to be in the building by May 1st. We
3 already had told our pediatric group to get ready
4 to move. We had already contacted our medical
5 provider with over \$50,000 worth of supplies and
6 equipment was already on order to be delivered in
7 April after we received the building. And so we
8 were working diligently to have this building ready
9 do go by May 1.

10 When our candidates for CEOs came
11 through, every candidate that we had, possible
12 candidates for our new CEO, we took them to the
13 site and said this is our new building. I took
14 Mrs. Jones there in April of 2016 to say to her
15 this is your new building and we were excited about
16 it. And so we had every intention to move in the
17 building.

18 Q. Was there any concern that you had
19 about this litigation that had been threatened or
20 was ongoing with -- threatened litigation with the
21 foreclosure action that was filed?

22 A. Yes?

23 Q. Were you aware that it had been filed
24 by Chicora's lender?

25 A. Yes.

1 Q. Were you uncomfortable with that?

2 A. We were uncomfortable with that.

3 Q. Why?

4 A. Because, again, it was supposed to be a
5 countywide one-stop shop where we were going to
6 have WIC which is Women, Infants, and children. It
7 was going to have mental health in it. It was
8 going to have other county services in it and we
9 were just going to be a small tenant in the
10 building. So one of the concerns was if this
11 project never takes place, then where are we going
12 to be in the entire project? Are we going to be
13 able to have the common space that they promised.
14 They promised we were going to have an auditorium
15 for training areas, the auditorium was not
16 completed. They were going to have security.
17 There were going to be a lot of things that were
18 going to be offered being in this particular spot.
19 So those were our concerns.

20 The actual driveway where the bus loop
21 was going to come in for our patients to be able to
22 be dropped off, that was never completed. The
23 landscaping on the outside of the building was
24 never completed.

25 Q. All right. But Ms. Jordan, if they had



1 gone ahead and completed these tenant improvements,
2 wouldn't you have been obligated to move in?

3 A. Yes.

4 Q. And you would have moved in?

5 A. Yes.

6 Q. Even though there was a problem?

7 A. Uh-huh.

8 Q. With all of these other items you had
9 mentioned?

10 A. Uh-huh.

11 Q. Tell me the background, if you wouldn't
12 mind, of the people that were on the facilities
13 committee, what they did and so forth.

14 A. Mr. Leonard Brown is a retired
15 accountant from the U.S. Navy and a certified
16 commercial realtor. Mr. Adrian Saunders -- I mean
17 Antoine Saunders is a banker with a large bank here
18 in Charleston and Mr. Corbitt Hinson is a retired
19 attorney.

20 Q. So when you went out and you received
21 information, you received it not only from what you
22 saw, you got reports from them as well?

23 A. Yes.

24 Q. And you also got the report from --

25 A. From Mr. Adrian Williams as well.

1 Q. And to the best of your knowledge and
2 opinion, was the space ever, and I think this is a
3 repetition, I apologize for it. Was the space, the
4 tenant improvements completed to the point where
5 you could've moved in and operated as Fetter Health
6 Care Network?

7 MR. MASSALON: Before she answers that,
8 to the extent that that asks for an expert opinion,
9 I would object to that. I think that she can
10 testify factually about what she saw, but giving an
11 opinion about that I think is outside of her
12 expertise or scope.

13 THE WITNESS: No the space was not --
14 the improvements were not completed that we could
15 move in.

16 BY MR. ALTMAN:

17 Q. Generally do this. I know you have
18 gone over this. Can you tell us visually what you
19 saw when you moved in and why you couldn't move in?

20 A. There was water intrusion still leaking
21 in several areas, examination rooms. Water was
22 leaking through the ceilings, the plumbing was
23 inefficient, again, along with the list of the
24 other items. So there was structural repairs that
25 needed to be done along with some cosmetic things

1 as well.

2 Q. You're a realtor at present, right?

3 A. Yes.

4 Q. Do you know what a punch list is?

5 A. Yes.

6 Q. Was this a substantial -- how would you
7 classify this list?

8 A. A large substantial punch list items.

9 MR. ALTMAN: Just give me minute.

10 MR. MASSALON: Sure take your time.

11 MR. ALTMAN: She is yours.

12 EXAMINATION

13 BY ATTY1:

14 Q. Ms. Jordan, I'm John Massalon. You may
15 remember we met at your deposition?

16 A. Yes, sir.

17 Q. I have got a few questions for you. So
18 I understand from your testimony that you are
19 currently work as a realtor and have been for about
20 20 years?

21 A. Uh-huh.

22 Q. That is "yes"?

23 A. Yes, sir.

24 Q. Sorry. Just for the record.

25 A. Okay.

1 Q. And at the time you gave your
2 deposition, you mentioned that you also ran a
3 consulting business called Williams and Williams
4 Associates?

5 A. No. I was a member of Williams and
6 Associates.

7 Q. I've got you. Are you still doing
8 that?

9 A. No.

10 Q. Okay. Now, have you ever been a
11 contractor or licensed as a contractor?

12 A. No. I was contracting officer.

13 Q. Okay. That is different than a
14 contractor?

15 A. Right, uh-huh.

16 Q. And as part of being a contract
17 officer, you have dealt with certificates of
18 occupancy on and off over the years I guess?

19 A. With real estate, yes.

20 Q. Okay. And is your understanding that
21 when a county or a city issues a certificate of
22 occupancy, that means that whatever they are
23 inspecting is substantially complete?

24 A. Yes.

25 Q. Okay. Now, you told us I think that



1 you worked as the CEO of Fetter from September of
2 '15 to April of '19.

3 A. April of 2016. Late March/April. I
4 mean late March 2016.

5 Q. You're right. I misspoke. September
6 '15 to April of '16, right?

7 A. Uh-huh.

8 Q. Now, Mr. Altman asked you to look at
9 some documents and I'm just going to ask you to
10 flip through them real quick, if you don't mind.
11 Exhibit first F which was the initial contract.
12 August 4, 2014.

13 A. Uh-huh.

14 Q. That was before your tenure as CEO,
15 right?

16 A. Yes.

17 Q. You weren't involved in negotiating or
18 signing this agreement, right?

19 A. No, sir.

20 Q. Now, next, if you flip over to
21 Exhibit I which is the first addendum. I'll give
22 you a second to get there. That was also signed
23 before your tenure as CEO and you didn't sign that
24 one or negotiate that one?

25 A. No, sir.

1 Q. Next is Exhibit J and that was the
2 second addendum also before your time, you didn't
3 sign or negotiate that?

4 A. No, sir.

5 Q. So from your standpoint, either
6 Mr. Pettiford or the folks on the Chicora side
7 would be the one who negotiated the original
8 agreement, the first addendum, and the second
9 addendums?

10 A. Yes, sir.

11 Q. Okay. Now, you mentioned, if you would
12 flip over to the third addendum for me, Paragraph A
13 and you referred to this?

14 A. Third one is in addendum F?

15 Q. I'm sorry. I'm going too fast. K.

16 A. K.

17 Q. Exhibit K, please.

18 A. Okay.

19 Q. And I'm looking at Paragraph A of
20 Exhibit K. You mentioned that one of the things
21 that says is that the second addendum was signed
22 without authority by Mr. Pettiford?

23 A. The -- if it has in there that it talks
24 about a mortgage note being applied to the second
25 addendum, he did not have the authority to do that.

1 Q. All right. If you flip over for me to
2 Exhibit M, like Mary, M?

3 A. Uh-huh.

4 Q. That is a copy of that note?

5 A. Uh-huh.

6 Q. That was signed by Mr. Pettiford and
7 it's got cancelled written across that. Do you see
8 that?

9 A. Uh-huh, yes.

10 Q. And then the next thing in is a
11 cancellation of a mortgage on the 51 Nassau Street
12 property?

13 A. Yes, sir.

14 Q. Okay. And so by the time you came on
15 as CEO, that was done and my clients agreed to do
16 that, to cancel the note, cancel the mortgage?

17 A. Yes.

18 Q. Now, there was some talk about
19 completion dates. And if you flip back to
20 Exhibit K, the Paragraph D of Exhibit K extended
21 the completion date to February 15, 2016, right?

22 A. Correct.

23 Q. And you so you testified in response to
24 several questions that there were delays in the
25 completion, but we can agree, can't we, that by

1 agreement the completion date was extended to
2 February 15, 2016?

3 A. Correct.

4 Q. So as long as Chicora delivered the
5 premises by that date, it was on time?

6 A. As long as the improvements were made.

7 Q. And?

8 A. And certificate of occupancy.

9 Q. All right. Let's talk about that for a
10 second. Is it your view of the agreement that no
11 matter what the City of North Charleston said, that
12 Fetter did not have to accept these premises until
13 they were perfect?

14 A. No, sir. The improvements had to be
15 made.

16 Q. All right. But what if there was a
17 scratch on the wall or a missing doorknob or
18 missing doorstep, that would not be completed,
19 correct?

20 A. Again, there were substantial
21 improvements that had not been made.

22 Q. And I understand your testimony on
23 that, but I'm asking you a slightly different
24 question. Which is could Fetter refuse the
25 premises, in your view, because one single item

1 under the contract had not been completed?

2 A. In my view, we did not accept -- would
3 not accept the premises had the improvements not
4 been made.

5 Q. And I understand that, but my question
6 is a different one which is, assume for purposes of
7 this a hypothetical. The tenant improvements were
8 completed one doorknob is missing. Okay? Could
9 Fetter reject the premises because that one
10 doorknob is missing and say even though a
11 certificate of occupancy is issued, everything is
12 done, but this one doorknob was missing, we're not
13 taking the premises?

14 A. I don't know why we would not take the
15 premises if one doorknob was missing.

16 Q. So you and I would agree that the
17 tenant improvements didn't have to be perfect for
18 the obligation to be triggered for Fetter to
19 occupy, pay the tenant improvements, and pay the
20 rent?

21 A. At the time of this letter as of
22 February.

23 Q. Uh-huh.

24 A. Only 50 percent of the -- what we felt
25 of the work had been completed.

1 Q. Okay. And of that 50 percent, is that
2 according to you or according to Mr. Williams?

3 A. That is according to Mr. Williams.

4 Q. Okay. Now let's chat about that a
5 second if we can. Would you flip over for me to
6 Exhibit R in the book. And I understand from your
7 testimony and prior testimony that that's the list
8 that Mr. Williams prepared after y'all's
9 walkthrough?

10 A. Yes.

11 Q. Okay. Now you mentioned a couple of
12 things that I recall in your testimony. You said
13 that there was a -- that there had been an exit
14 door in the suite that had been closed or blocked
15 off?

16 A. Had been sealed.

17 Q. Sealed. Can you find that for me on
18 this list?

19 A. At the time we did the original --
20 again, at the time we did the original walkthrough.

21 Q. Uh-huh.

22 A. It was open. It was open. And when we
23 came back, it had been sealed after the fire
24 department had gone through, after the committee
25 had gone through. We came back, we're like, what

1 happened to the door? Why is this exit not here.

2 Q. When you came back that was with
3 Mr. Williams?

4 A. No. This was -- this was with -- I'm
5 not sure exactly why we were -- we were there
6 meeting weekly. The committee was meeting weekly.

7 Q. Okay. When is it that you remember
8 that you went there and saw no exit door?

9 A. I can't give you the exact date.

10 Q. Can you tell me if it was before or
11 after you went with Mr. Williams?

12 A. It was after Mr. Williams and I had
13 gone through.

14 Q. So you think that was something that
15 happened after Mr. Williams, did the door?

16 A. Oh, yeah, they sealed up the door
17 afterward.

18 Q. Now you also mentioned water. Was that
19 happening when you were there with Mr. Williams?

20 A. No.

21 Q. So that also happened afterwards?

22 A. That happened afterwards.

23 Q. Okay. Let's see, you mentioned, and
24 again I was taking notes, so if I didn't hear
25 right, straighten me out. But you said the

1 bathrooms were horrendous is what I jotted down?

2 A. Yes.

3 Q. What specifically does that mean in
4 your recollection?

5 A. So they were filthy.

6 Q. They weren't clean?

7 A. They were broken.

8 Q. Okay.

9 A. They were broken.

10 Q. Like what --

11 A. Rusted.

12 Q. When you say they were broken, what
13 specifically do you mean by that?

14 A. The toilets did not look operable.
15 They did not look operable. The actual doors on
16 the stalls were all rusted.

17 Q. Did you try to flush them to see if
18 they were operable?

19 A. No. We did not.

20 Q. Did not. Now, again, was that before
21 or after your trip with Mr. Williams, the rusted
22 and --

23 A. I'm not sure.

24 Q. Don't remember?

25 A. I'm not sure.



1 Q. Do you see anything on this list here
2 about rusty doors or things like that in
3 Mr. Williams' repairs?

4 A. Okay. He has here under item 1334,
5 restrooms, finish rest rooms, add toilets, sinks,
6 et cetera. That is item No. 1334.

7 Q. Uh-huh?

8 A. Item 1443 needs cleaning and painting,
9 patch holes in the walls, light fixtures hanging
10 down, install new dividers and that is item 1343.
11 And item 1344 needs cleaning and painting, patch
12 holes in the walls, install new dividers. That was
13 item 1334 in the restrooms.

14 Q. So your testimony is what Mr. Williams
15 meant by new dividers was they were rusty ones and
16 they need to be new?

17 A. They needed to be replaced.

18 Q. Okay. Now, how about broken fixtures
19 and I'll lead off by saying I see if you look in
20 item -- and I saw it just a moment ago. Item 1302,
21 do you see that one on the first page? It says
22 replace toilet seat. I see that one. I don't see
23 reference to any other broken plumbing fixtures,
24 but I'm willing to be corrected if you see another
25 one besides that?

1 A. Again, I did not use the toilet. It
2 was not usable. It was filthy.

3 Q. Okay.

4 A. Okay. We didn't go and flush the
5 toilets. Typically when a property is available
6 and you're saying it's ready for occupancy, then
7 each toilet should be able to flush, each light
8 fixture should be turned on during an inspection.

9 Q. Now, as far as the number of times you
10 went out there, Mr. Hinson testified yesterday and
11 he testified that he thought that he and the
12 facilities committee had gone out there three or
13 four times?

14 A. At least.

15 Q. And I think you said that y'all went
16 out there weekly, which sounds like a lot more than
17 that.

18 A. Between -- between the time we were
19 really gearing up, they might have gone more than
20 three or four times.

21 Q. He said he thought he went out there
22 three or four times. Did you go without him?

23 A. We could have.

24 Q. Don't know for sure?

25 A. No. I went out there with staff. I

1 took staff out there. So we had our chief medical
2 officer going out there. We had our computer
3 people going out there, our IT people were going
4 out there. So we went out multiple times because,
5 again, remember I told you that we were gearing up
6 with furnishings. So I met contractors out there,
7 suppliers out there multiple times, yes.

8 Q. Who is the chief medical officer there?

9 A. Her name was Dr. Shantae Jenkins.

10 Q. When was it that you and Dr. Jenkins
11 went to the site?

12 A. I don't have the exact dates.

13 Q. Do you remember generally without
14 remembering specifically?

15 A. We were through there multiple times in
16 February of 2015.

17 Q. February of 2015?

18 A. Yeah, 2015. I mean, 2016. Probably
19 January/February of 2016.

20 Q. Other than Dr. Jenkins, did you go out
21 to the site with any other healthcare providers?

22 A. Oh, yeah. We went out there with the
23 entire staff. We had the IT people were constantly
24 out there. We had our medical personnel that was
25 there. We even invited our pediatric doctor,

1 Dr. Slaughter to go out and look where the
2 pediatric unit was going to be. We also had
3 Mrs. Brown who was our -- what was Ms. Brown?

4 MR. ALTMAN: Just --

5 MR. MASSALON: Just do the best you
6 can.

7 THE WITNESS: We also had Mrs. Brown
8 and she was our care coordinator there as well.

9 BY MR. MASSALON:

10 Q. Got you.

11 A. So multiple staff.

12 Q. And this was all after the certificate
13 of occupancy was issued as you recall it?

14 A. And again I'm not sure exactly when the
15 certificate of occupancy was given. I heard it was
16 available.

17 Q. Okay. It's in the notebooks. So I'll
18 get you to take a look at a couple of things for
19 me. First exhibit?

20 THE COURT: Exhibit Q.

21 BY MR. MASSALON:

22 Q. I should know that by now. Exhibit Q
23 and also Exhibit O, please. So those two, Q and O?

24 A. Okay.

25 Q. All right. Now that's Exhibit Q dated

1 January 21, 2016, right?

2 A. Yes, uh-huh.

3 Q. If you flip back to Exhibit O, we have
4 temporary COs, certificates of occupancy issued on
5 December 22, 2015. Do you see that?

6 A. Okay.

7 Q. Okay. And if you look, there is an
8 area there that is circled that says okay to set up
9 office furniture. Do you see that?

10 A. Yeah.

11 Q. Okay. Now, when you heard that there
12 were certificates of occupancy issued, did you do
13 anything to try figure out how that had happened in
14 light of what you saw or say you saw out at the
15 site?

16 A. No.

17 Q. Mr. Hinson told us yesterday that he
18 thought somebody called to verify that that had
19 actually happened. Did you know anything about
20 that?

21 A. No, we did not.

22 Q. Okay.

23 A. We proceeded to try to get our
24 necessary licensing. We have to get DHEC, pharmacy
25 licenses, computer service licenses. And again, we

1 were moving forward. We were checking off our
2 boxes to get in that building by May 1st.

3 Q. So you're testimony is you heard that a
4 CO was issued?

5 A. Uh-huh.

6 Q. And you told us based on what you know
7 generally, that that means it's substantially
8 complete, yet you had gone to the site and seen
9 something that you didn't think was substantially
10 complete?

11 A. Improvements was not substantially
12 complete.

13 Q. There was no inquiry with the city
14 inspectors how the CO got issued with it in that
15 condition.

16 A. Huh-uh. No, I did not.

17 Q. Okay. All right. Let's see. Then
18 skipping around here, let me check my list real
19 quick. Now, you gave some testimony about an offer
20 that was made on behalf of Fetter to pay for some
21 of the tenant improvements or some part of the
22 tenant improvements?

23 A. Yes.

24 Q. You and I would agree that the work
25 that was done out there was worth something?

1 A. Yes, sir.

2 Q. Okay. It's not zero?

3 A. Yes, sir.

4 Q. You would also agree that so far Fetter
5 has paid zero. So there is a something out there
6 that's worth some dollar amount and Fetter has not
7 paid anything for it?

8 A. No.

9 Q. Okay. And also, Fetter has never paid
10 any rent for the suite?

11 A. No. We never occupied the suite
12 either.

13 Q. Now you mentioned that you had sent the
14 list from Mr. Williams that we looked at a little
15 earlier to Mr. David. How did you do that?

16 A. Via e-mail, I believe.

17 Q. And when you went out to the site and
18 looked at it, did you make any photographs of it?

19 A. Of the site?

20 Q. Yes, ma'am. When y'all went out and
21 looked at it and found it --

22 A. No, I did not. I do not recall.

23 Q. Do you know if anybody made any
24 photographs?

25 A. No, I do not recall.

1 Q. All we have is your recollection and
2 that of anybody else that went?

3 A. Yes.

4 Q. Give me just a moment, if I can. Now,
5 we can agree that a big reason that Fetter wanted
6 to be at the Naval Hospital was because of the
7 county and DAODAS and all of the other programs
8 were going to be out there, right?

9 A. That, as well as the location and us
10 having the need to move our pediatric site from
11 where it's currently located.

12 Q. Okay. And even though the location is
13 still close to Fetter's constituency, it's a lot
14 less of an attractive place that none of the other
15 facilities are in there. The county is not in
16 there. DAODAS isn't in there. Mental health is
17 not there.

18 A. I think the more tenants you have, like
19 any location, like a mall, the more tenants you
20 have, the better it is.

21 Q. So we agree about that that it was less
22 attractive for Fetter to go in there without
23 knowing that other tenants were going to do?

24 A. Was less attractive to know that
25 whether or not the facility was going to be made

1 available and not shuttered up and closed after we
2 spent millions of dollars putting this packet
3 together and not being able to use this facility.

4 Q. Now, you mention the non-disturbance
5 agreement. And so I'll ask you to take a look at
6 that and let me ask a couple of questions about
7 that. I'll ask you to look at Item L?

8 A. L.

9 Q. I think you looked it up before.
10 That's a tenant estoppel certificate?

11 A. Uh-huh.

12 Q. You know what that is from your other
13 work, correct?

14 A. Uh-huh.

15 Q. Now, you mentioned I'll ask you to take
16 a look at Paragraph 11. That one says that in the
17 event of a default by the landlord which would be
18 Chicora, that the lender agreed not to disturb the
19 tenant's tenancy as long as the tenant wasn't in
20 default, correct?

21 A. Uh-huh.

22 Q. That's a "yes"?

23 A. Yes.

24 Q. You signed that on the next page?

25 A. Yes.

1 Q. And your testimony was that you never
2 got a countersigned copy back from the lender?

3 A. Never did.

4 Q. Did you ever ask for one?

5 A. Not that I recall.

6 Q. You mentioned that when you heard about
7 the foreclosure that that was concerning to you.
8 Did you or anybody that you know of at Fetter ask
9 for one then?

10 A. No.

11 Q. All right. Let me take just a moment
12 to see if I have got anything I have missed, and if
13 I'm not done, I will be shortly.

14 (A brief recess was taken.)

15 BY MR. MASSALON:

16 Q. Okay. A few more, Ms. Jordan, and I
17 will be done. Would you take a look for me in the
18 notebook, the original contract is at Item F and, I
19 want to look for a second at Exhibit B, which is
20 all the way at the end of page 22.

21 A. Yes.

22 MR. ALTMAN: I don't think that's
23 Exhibit B.

24 MR. MASSALON: You have got it now.

25 THE WITNESS: There we go.

1 BY MR. MASSALON:

2 Q. The last paragraph is one I want to ask
3 you about. So if you want to take a second and
4 look at that?

5 A. Okay.

6 Q. And I'm just going to publish it and
7 you can check me. It says, "The expectation and
8 agreement of the parties is that current or
9 existing improvements of the premises may be used
10 to the fullest extent possible so as to reduce the
11 cost of tenant improvement." That means to the
12 extent there were things already in place that
13 could be used or reused, the agreement was that
14 that was okay?

15 A. If that's what it says.

16 Q. Okay. The next sentence says, "Any
17 tenant improvements requested by tenant which
18 exceed the budget cap shall be the sole
19 responsibility of and paid for by the tenant." Did
20 I read that right?

21 A. Yes, correct.

22 Q. Now, a couple of questions about your
23 walkthroughs. When you went to the suite to check
24 the condition of the improvements, did you ever
25 take the contract or the plans for the suite and



1 compare what was in the contract to what was done
2 onsite?

3 A. Adrian Williams did.

4 Q. You did not?

5 A. No.

6 Q. And nobody on the building facilities
7 committee did that either, right?

8 A. Other than we did have a diagram along
9 with -- but no, we did not.

10 Q. Okay. Now, the -- do you know if there
11 were any operating businesses in the Naval
12 Hospital? You expressed some concern that it was
13 going to be shuttered and closed down. Were you
14 aware that they were operating businesses in the
15 hospital until it was sold to the county?

16 A. I think there was one small office
17 towards the front.

18 Q. Okay.

19 A. I'm not sure what the name of it was,
20 but it was one small office.

21 Q. Now, you mentioned some concerns about
22 landscaping and the turnaround and things like that
23 outside, and none of that was part of the Fetter
24 contract, correct?

25 A. No. That was not part of the Fetter

1 contract.

2 Q. All right. And let's see, as far as
3 the county's plan to move in, were you or anybody
4 at Fetter in communication with the county about
5 whether they were going to move in, when they were
6 going to move in, anything like that?

7 A. No. Not to the extent of when they
8 were going to move in. At different times when we
9 were in the building, there were different people
10 from the county that was walking through as well.

11 Q. Okay.

12 A. I attended several of the county
13 meetings to find out what was happening with the
14 county as well.

15 Q. Did you ever have any direct
16 communication with Councilman Pryor or anyone to
17 ask him, is the county going to move in or is the
18 county going to pull out of this lease?

19 A. I have. I did talk to Councilman
20 Teddie Pryor. He is a good friend.

21 Q. And it was about whether the county was
22 going to move in or not?

23 A. He said the county was.

24 Q. Was?

25 A. Yes.

1 Q. When the county decided it was not
2 going to move in, Fetter also decided it was not
3 going to move in, right?

4 A. That was after my tenure.

5 Q. So you don't know?

6 A. I don't know?

7 Q. I think that's it for me. Thanks.

8 THE COURT: Mr. Altman?

9 EXAMINATION

10 BY MR. ALTMAN:

11 Q. I've got several questions here. Were
12 you ever told that there was going to be a charge
13 for a change in the air-conditioning system?

14 A. No.

15 Q. Okay. Did you ever see -- when I say
16 told, did you receive any type of communication
17 saying you were going to be billed for the new
18 system that was going to be put in?

19 A. No, I wasn't.

20 Q. When you said y'all had done a lot of
21 work, you know, as far as computers and so forth,
22 do you have an idea of how much money you had spent
23 in preparation of going into this building?

24 A. I know in terms of actual purchases IT
25 systems was well over \$100,000. We had an order on

1 hold for \$50,000 worth of examination room
2 equipment. And so that was the actual
3 out-of-pocket moneys that we had already spent was
4 the IT equipment.

5 Q. All right. I want to ask you
6 something, and I may have asked it a different way.
7 If the tenant improvements had been completed,
8 irrespective of the county doing whatever it was
9 going to do, would Fetter have moved in?

10 A. Yes.

11 Q. Thank you.

12 THE COURT: Thank you, very much.

13 MR. MASSALON: Hold on just a second.

14 THE COURT: I'm sorry. I thought you
15 said you didn't have more.

16 MR. MASSALON: May I? Just one quick
17 one.

18 EXAMINATION

19 BY MR. MASSALON:

20 Q. As far as when you saw things like the
21 condition of the bathrooms and other things, am
22 I -- do I understand your testimony correctly that
23 you don't really remember when that was as far as a
24 date on the calendar?

25 A. No, not the exact date on the calendar.

1 Q. Is it also true that you don't remember
2 whether it was before or after these certificates
3 of occupancy were issued?

4 A. Again, like I stated, I never saw the
5 date of the certificate of occupancy. This was the
6 first time I saw the certificate of occupancy with
7 the date.

8 Q. And having --

9 A. During the period of January and
10 February, the staff and I, and facility committee
11 visited the site for tours.

12 Q. What I'm trying to pin down is having
13 now seen the certificates and the dates, can you
14 tell us whether these observations about the
15 horrific toilets and things like that was before or
16 after the CO?

17 A. I don't know.

18 Q. That's it then. Thank you.

19 THE COURT: Thank you.

20 MR. MASSALON: Mr. Briggman is outside.
21 Do you mind if we go ahead and take him. I think
22 we'll be short and get him in and out.

23 THE COURT: If that's okay with Sam.

24 MR. ALTMAN: Can I ask one question?

25 THE COURT: Sure.



EXAMINATION

BY MR. ALTMAN:

Q. Ms. Jordan -- can we go back?

MR. MASSALON: I'm sorry. I think
we're still.

BY MR. ALTMAN:

Q. Ms. Jordan, as far as what
Mr. Massalon, you know, the condition, you said you
when out to the property in January and in
February?

A. That's right, yes.

Q. What was the condition of the property
when you went out there as far as completion of
tenant improvements?

A. They were still not completed even as
of late February and early March. They were still
not completed.

Q. What about in January and the beginning
of February when Mr. Williams made his inspection?

A. They were not?

Q. Okay.

MR. ALTMAN: That is all I have.

THE COURT: Certainly, we can go ahead
and take him. I think we have got Mr. Williams
here, too probably.



1 MR. MASSALON: It looked like there
2 were a couple of gentlemen. I don't know
3 Mr. Williams.

4 (A brief recess was taken.)

5 THE COURT: Mr. Briggman.

6 DARBIS BRIGGMAN
7 being first duly sworn, testified as follows:

8 THE COURT: State your full name for
9 the record, please, sir.

10 THE WITNESS: Darbis, D-A-R-B-I-S,
11 Briggman, B-R-I-G-G-M-A-N.

12 EXAMINATION

13 BY MR. MASSALON:

14 Q. Good morning, Mr. Briggman. John
15 Massalon, and I appreciate you coming down here for
16 us. Tell us, what is your job with the City of
17 North Charleston?

18 A. I'm the building official for the City
19 of North Charleston.

20 Q. And in plain terms, does that mean you
21 are the head guy in that department?

22 A. Yes, sir.

23 Q. How long or about how long have you
24 been doing that?

25 A. I have been with the city for 25 years

1 and I have been the building official for 20 or
2 more years.

3 Q. Okay. Are you a certified building
4 official?

5 A. Yes, sir.

6 Q. How long have you been certified?

7 A. I have been certified as a building
8 official about 20 years also.

9 Q. Okay. Now, in general terms, what does
10 your department do for the citizens and residents
11 of North Charleston?

12 A. The citizens, we look at as both
13 residential and commercial. Any residential work.
14 Say if you're building a new home, the drawings are
15 submitted to the city throughout. Other
16 departments will plan it and zone it and will
17 approve. What we do in the building department, we
18 do a plans review and perform all the inspections
19 up until the issuance of a certificate of
20 occupancy.

21 Q. Now, the purpose of the plan review is
22 generally what?

23 A. The purpose of the plan review is to
24 make sure that the design that has been submitted
25 by the design professional meet the intent of the

1 -- right now we're on the International Code so it
2 meets the intent of all applicable codes that is
3 part of the construction.

4 Q. And so if somebody submits a plan that
5 violates some building code or some safety code
6 during the plan review process, that would be
7 highlighted and corrected?

8 A. Yes, sir. That would be highlighted
9 and sent back to the design professional for
10 correction.

11 Q. So am I correct to understand before a
12 building permit is issued, that plan review has to
13 be completed and approved?

14 A. Yes, sir.

15 Q. Okay. And once the plans are approved
16 and the construction starts, is there just an
17 inspection at the end or is there an inspection
18 process that goes on?

19 A. The inspection is that goes on is
20 dependent on the submittal of scope of work.
21 Dependent on the scope of work itself that pertains
22 to the project.

23 Q. You're familiar with renovation of the
24 former Naval Hospital at 3600 Rivers?

25 A. Yes, sir.



1 Q. Before that, had your department
2 handled a project that you think was similar in
3 scope and type to that one?

4 A. Yes, sir.

5 Q. What would that be?

6 A. To the hospital.

7 Q. To the hospital?

8 A. To the hospital. There was some other
9 areas that was under renovation that we performed
10 plans review and inspections on.

11 Q. Okay. How about other buildings
12 entirely? Have you done inspections like this
13 before?

14 A. Yes, sir.

15 Q. Like what for instance?

16 A. Boeing.

17 Q. Boeing.

18 A. That's one of the largest projects, but
19 anything that's built in the city.

20 Q. The Naval Hospital was a commercial
21 renovation not a new construction, right?

22 A. That's correct, sir.

23 Q. So as far as the inspections go for
24 that specific project, what inspections would have
25 been required before the certificate of occupancy

1 was issued?

2 A. The inspections that for what we were
3 submitted by the design professional on the
4 renovation that was approved by the drawings. All
5 of the inspections that associated with them, with
6 the project what was on the design, that was
7 submitted to us and it was approved.

8 Q. Okay. So would it be fair for us to
9 understand that the inspector takes the plans and
10 then goes to the site and looks to see if the plans
11 match what's happened out at the site?

12 A. Yes, sir.

13 Q. How many different kinds of inspections
14 are there in this interim period between building
15 permit and final occupancy?

16 A. It all goes back, again, to the scope
17 of work.

18 Q. I see.

19 A. Then you have because there is
20 electrical part of scope of work, plumbing part of
21 scope of work, mechanical part of scope of work,
22 along with the building. So all of that is where
23 the contractors who submitted for the permits,
24 those are inspections that would be performed.

25 Q. Okay. And the certificate of



1 occupancy, what is the purpose of that? What does
2 signify?

3 A. Well, the certificate of occupancy
4 specifies that we, the building department, had
5 inspect and that all code compliance has met the
6 requirement for life safety and that the facility
7 is -- or the area is safe to move in.

8 Q. Okay. Let me ask you, if you would,
9 there is a notebook in front of you?

10 A. Yes, sir.

11 Q. If I could ask you to go to Exhibit O
12 in that notebook for me. And Exhibit O is three
13 pieces of paper, and could you identify those for
14 us, please?

15 A. Yes, sir. The first one is where the
16 inspector, Mr. Whittaker inspected this for a temp
17 CO to set up office furniture.

18 Q. And the date of that is December 22,
19 2015?

20 A. Yes, sir.

21 Q. Your signature is down in the lower
22 left?

23 A. Yes, sir.

24 Q. The next one is what?

25 A. The next one is a description of new

1 unit approved by my initials on it and this is a
2 mechanical permit.

3 Q. Okay. So that would be for things like
4 heating and air and things of that nature?

5 A. Yes, sir.

6 Q. And then the last one is what?

7 A. The last one is electrical permit and
8 the installation of electrical and two AC units and
9 that was passed also on December -- I mean, the
10 date was issued, it is December 22nd.

11 Q. 2015?

12 A. Yes, sir.

13 Q. Okay. Now, from the City of North
14 Charleston standpoint, once these documents were
15 issued, the occupant, the Suite No. 1300 specified
16 here was code compliant and safe to occupy by the
17 tenant?

18 A. Yes.

19 Q. Now, we have heard some testimony
20 before you got here that this suite, according to
21 Fetter, still had problems like missing ceiling,
22 nonfunctioning bathrooms, missing toilets, missing
23 sinks, things of that nature. In your experience,
24 would a CO have been issued if the property was in
25 that condition?

1 A. No, sir.

2 Q. Now, let me ask you then to flip over
3 to Q. Okay. And what is that document?

4 A. This is the certificate of occupancy.

5 Q. That is also for 3600 Rivers, Suite
6 1300?

7 A. Yes, sir.

8 Q. And that was issued what date?

9 A. This was date completed was January 21,
10 2016.

11 Q. And what is the difference between this
12 document and the ones we were just looking at?

13 A. This was the final document that we
14 issued to the owners, or the owner's representative
15 that everything has met the intent of the code
16 compliance.

17 Q. Okay. Would that mean that all of the
18 essential services like electricity, plumbing,
19 mechanical, code requirements, all of that stuff
20 had been satisfied?

21 A. Yes, sir.

22 Q. And that the suite, from the city's
23 standpoint, was safe and ready to occupy?

24 A. Yes, sir.

25 Q. Again, going back to the prior

1 question, if there was broken or missing plumbing
2 fixtures, missing ceilings, things of that nature
3 in the suite, would this document have been issued
4 by the city?

5 A. No, sir.

6 Q. Okay. Now, does this certificate of
7 occupancy also indicate from the city's standpoint
8 that the renovations or work comply with the plans
9 that were submitted and approved?

10 A. Yes, sir. That's correct.

11 Q. Now, do you recall whether after the CO
12 was issued if anybody from Fetter or on behalf of
13 Fetter called up and questioned why the city had
14 issued it or challenged the city's decision to
15 issue it?

16 A. No, sir. I don't recall that.

17 Q. All right.

18 MR. MASSALON: Those are all the
19 questions I have. Thank you, very.

20 THE COURT: Mr. Altman.

21 EXAMINATION

22 BY MR. ALTMAN:

23 Q. Mr. Briggman.

24 A. Yes, sir.

25 Q. Did you do any of the inspections

1 yourself?

2 A. No, sir.

3 Q. You did not?

4 A. No, sir. I walked through, but I did
5 not do any inspections.

6 Q. You didn't do any inspections. When
7 did you walk through?

8 A. Periodically, you know, and the exact
9 date I don't recall.

10 Q. You don't remember?

11 A. No, sir.

12 Q. Before or after?

13 A. It was --

14 Q. After the date these certificates were
15 issued?

16 A. I can't recall the exact dates.

17 Q. Do you know whether or not the
18 inspectors had the plans with them at the time they
19 walked through?

20 A. Well, at the time, Mr. Whittaker, I'm
21 not sure.

22 Q. You're not sure what he had?

23 A. Yes, sir.

24 Q. Okay. And you were concerned more
25 about meeting code requirements?

1 A. Yes, sir.

2 Q. Do you go ahead and examine issues of
3 craftsmanship?

4 A. Craftsmanship is -- there was certain
5 things in the code that is exempted from the code,
6 but cosmetic we do not. It's not part of life
7 safety.

8 Q. But you can't testify that you went
9 through, you went through yourself, you were
10 relying on somebody else who is not here today?

11 A. That's correct, sir.

12 Q. Were there any photographs taken of the
13 space?

14 A. Not by my department.

15 Q. Y'all don't do that?

16 A. No, sir.

17 Q. I'm going to let you turn to No. R.

18 A. Yes, sir.

19 Q. I'm going to make a statement to you.
20 This is what is going to be represented to you as a
21 walkthrough inspection that took place several
22 weeks after your CO was issued. Why don't you look
23 at that and see if you can -- why don't you look at
24 it first?

25 A. Yes, sir.

1 Q. Tell me when you're finished and I'll
2 ask you a question.

3 A. Okay. Sir.

4 Q. Would you have issued a CO if you saw a
5 list like that as far as tenant issues?

6 A. That, sir, the majority of items that's
7 located on here, it's not a code issue other than I
8 saw the one where replace electrical socket, but
9 then again it's dependent on that. So --

10 Q. You're primarily concerned about code
11 issues rather than craftsmanship or anything like
12 that?

13 A. Yes, sir.

14 Q. Again, you don't have any photographs,
15 you didn't do the inspection yourself?

16 A. Yes, sir.

17 Q. Other people did it and are those
18 people here with you today?

19 A. No, sir.

20 Q. I don't have any further questions.

21 MR. MASSALON: Just a couple of
22 followups.

23 EXAMINATION

24 BY MR. MASSALON:

25 Q. Would you describe most of the things

1 on that list that Mr. Altman showed you as
2 cosmetic?

3 A. We have got one is ceiling tiles,
4 doorknobs, dents in the doors, install shelving,
5 door doesn't close properly, lights not working.
6 Well, that shouldn't be because when we do our
7 inspection, we make sure that all the lights are
8 working when we do a final CO. So we check all of
9 that.

10 Q. So that should have been working when
11 you saw it in January?

12 A. Yes, sir.

13 Q. Okay. How about the other things? Are
14 they cosmetic things like clean existing doors in
15 the first?

16 A. That's correct, sir.

17 Q. Okay. Do y'all flush toilets when you
18 go in and check to make sure they're working?

19 A. Yes, sir.

20 Q. Turn on sinks to make sure they are
21 working?

22 A. That and check the water temperature
23 and everything.

24 Q. And so the city must have the plans for
25 these renovations on file for the contractor to get

1 a permit and to get a CO?

2 A. Yes, sir, that is correct.

3 MR. MASSALON: Okay. That's it for me.

4 EXAMINATION

5 BY MR. ALTMAN:

6 Q. Let me just, you talked about
7 inspections. You didn't do any of these
8 inspections yourself?

9 A. No, sir.

10 Q. You don't know who flushed toilets and
11 who didn't flush toilets?

12 A. Going by what my inspectors, yes. I
13 can't say.

14 Q. You didn't do it?

15 A. No, sir.

16 MR. ALTMAN: Thanks. I have nothing
17 further.

18 THE COURT: Thank you for coming in.

19 MR. MASSALON: Thank you.

20 ADRIAN L. WILLIAMS

21 being first duly sworn, testified as follows:

22 THE COURT: State your full name for
23 the record, please.

24 THE WITNESS: Adrian Lamar Williams..

25 EXAMINATION



1 BY MR. ALTMAN:

2 Q. Mr. Williams, tell us a little bit
3 about yourself, where you are from, where you went
4 to school, and what you presently do.

5 A. Originally from North Charleston. I
6 graduated from The Citadel in '87. I graduated
7 with a civil engineering degree. I am a licensed
8 civil engineer, a professional engineer and
9 construction manager. I have been doing this since
10 1987.

11 Q. Do you have your own company?

12 A. I do, yes.

13 Q. What is the name of your company?

14 A. Atlantic South Consulting Services.

15 Q. All right. You're familiar with the
16 project we're talking about as the Naval Hospital.
17 When was your first introduction to the Naval
18 Hospital and the relationship with Franklin Fetter?

19 A. I was introduced by Mr. -- oh, Lord --

20 Q. Pettiford?

21 A. Pettiford, yes, to the project from
22 Fetter to look at the project that they were trying
23 to do. We worked with Fetter on other projects.

24 Q. Did you -- how long ago was that?

25 A. It was -- I can't remember, '14.



1 Q. 2014.

2 A. Yes, sir.

3 Q. Tell me what you did at that time for
4 Fetter or how did you get involved?

5 A. I got involved to help layout their,
6 what I called their program for this building,
7 rooms and where everybody would be, how that flow
8 would look and just to lay it out. And then was I
9 was also asked to provide the estimates on actually
10 getting contractors to do the work.

11 Q. All right. Did you do any drawings for
12 them?

13 A. For Fetter?

14 Q. Yeah.

15 A. Yes, I did some drawings for them to
16 help them look at the layout.

17 Q. Was that part of the plans that went
18 with the contract, if you know that?

19 A. No. I don't think it was with the
20 contract.

21 Q. Okay.

22 A. It shouldn't be, no.

23 Q. All right. Tell me, did you go to work
24 for Fetter or work for somebody you know at the
25 Naval Hospital?



1 A. Initially, I worked for the contractor
2 for a couple of weeks. Then we severed that
3 relationship. I worked at the contractor for -- as
4 the project manager for Fetter. Then, like I said,
5 for about two weeks. And then what happened after,
6 like I said, we just.

7 Q. What happened during that two-week
8 period?

9 A. I served as a program manager. I
10 watched over the project, kind of kept up on what
11 was going on, and really found that that wasn't --
12 I couldn't do that in that arena and do what I did
13 with my own business.

14 Q. Okay. So you're next contact with --
15 this was back in 2014?

16 A. Yes.

17 Q. When were you called upon again? Did
18 you make inspections to the property from time to
19 time on behalf of Fetter?

20 A. Yes. Fetter still -- I offered Fetter
21 that I would go look at the building for them. So
22 I did go back and forth several times.

23 Q. Did you get a call in either January or
24 February of 2016 to inspect the property because
25 the CO had been issued?

1 A. Yeah. I was asked to go walk through
2 the project and give a -- provide a punch list of
3 items that were needed.

4 Q. All right. If you'll turn I think
5 we're at this Exhibit R?

6 A. Yes, sir.

7 Q. Is this something that you prepared?

8 A. Yes.

9 Q. What did you use to go ahead and
10 prepare that? Did you have any plans or drawings
11 or did you utilize or was it all by sight?

12 A. It was actually both. We provided a
13 drawing that had the room numbers on it just so
14 that we would know, you know, we would reference --
15 which room numbers were referenced. We just put
16 numbers on it.

17 Q. You did this for which dates in here?
18 5th through the 9th?

19 A. Yes. 5th through 9th.

20 Q. Was this document prepared by you?

21 A. Yes.

22 Q. Okay. And were you aware that a CO had
23 been issued?

24 A. Yes. I was told that the CO was
25 issued.

1 Q. As far as engineering, do you go ahead
2 and work with COs in your practice?

3 A. I do that on it with the construction
4 management. So I do, yes.

5 Q. Would a CO have been -- in your
6 opinion, would a CO have been granted with this
7 list?

8 A. Well, the COs aren't granted on the
9 list. It's granted on the drawings, the
10 architectural drawings that we did.

11 Q. Okay.

12 A. Again that is what -- the list was
13 based off of those drawings.

14 Q. So these are drawings. All right.
15 With these items on here, was this property at the
16 time you inspected it in a condition that Fetter
17 could have moved in and operated based on what you
18 know about the operation of Fetter?

19 A. Based on what I know, no.

20 Q. Tell me why or tell us why?

21 A. For instance, some of the bathrooms
22 weren't finished. The sinks weren't installed in
23 some of the rooms. The front desk wasn't set up
24 appropriately. And then there was supposed to be
25 an exit door. They talked about putting an exit

1 door on the back end of the building as a second
2 ingress/egress that wasn't in there.

3 Q. As well as all of these?

4 A. As well as these items.

5 Q. Did you come up with an estimate that
6 you thought the value of the work in place was at
7 the time?

8 A. Yes.

9 Q. Can you tell us approximately what that
10 was?

11 A. I don't remember the exact number. It
12 was, I want to say it was 75 percent, basically I
13 think is what we said, off of what the contractor's
14 invoice was. Based off of his values.

15 Q. Okay. Do you know whether or not any
16 of the items on this list have been accomplished by
17 eliminating them?

18 A. No. I don't know if any of them have
19 been completed.

20 Q. Did you have any contact with anybody
21 from Chicora regarding any meetings and so forth
22 with them regarding the list?

23 A. I don't think we have ever with Chicora
24 had met concerning a list.

25 Q. Did you speak with a fellow named Karl

1 David?

2 A. Yes, I did.

3 Q. He called you wanting to -- what did he
4 want from you?

5 A. Last I remember speaking with Karl
6 David was to talk about payment for the work that
7 had already been done and that they weren't going
8 to do anything else until they had gotten payment
9 from Fetter.

10 Q. You understand that would be this list
11 that would have been prepared?

12 A. Yes.

13 MR. ALTMAN: Okay. Answer any
14 questions Mr. Massalon might have?

15 MR. MASSALON: Thank you.

16 EXAMINATION

17 BY MR. MASSALON:

18 Q. Mr. Williams, earlier we had a witness
19 Ruth Jordan who testified she had worked with a
20 company called Williams and Williams Associates,
21 something like that?

22 A. Uh-huh.

23 Q. That I just noticed the last name is
24 your last name?

25 A. Yes.



1 Q. Do you have anything to do with that
2 business at all?

3 A. No, sir.

4 Q. Okay. Now I understand that you
5 currently own and operate Atlantic Consulting
6 Services; is that right?

7 A. Atlantic South Consulting Services.

8 Q. Atlantic South?

9 A. Yes, sir.

10 Q. I'm sorry. When or about did you start
11 that?

12 A. It was originated in 2004.

13 Q. Before that, you were the Charleston
14 County director of waste water operations?

15 A. I was at Charleston Water Systems.

16 Q. Charleston Water Systems?

17 A. But Charleston Public Works at that
18 time.

19 Q. Got you. How long did you that?

20 A. That's 2000. So that's '94. It's
21 probably 13 years.

22 Q. Got you.

23 A. 12 or 13 years.

24 Q. Now, do you have any contractor
25 licenses?

1 A. I don't have a contractor's license.

2 Q. Okay. And what I mean is you're not a
3 licensed residential builder, licensed commercial
4 contractor, nothing like that?

5 A. Not a contractor, no.

6 Q. You said you're a registered
7 professional engineer?

8 A. Yes.

9 Q. And what -- you said was that civil?

10 A. Civil engineer.

11 Q. Civil engineer. Okay. Now, when you
12 worked in 2014, would it be fair to understand that
13 you didn't participate in any of the contract
14 negotiations between Fetter and Chicora over the
15 upfit there?

16 A. That's true. I did not.

17 Q. Okay. Now you mentioned that when you
18 did your walkthrough in February of '16 that you
19 had a diagram or plan that you were working off of?

20 A. Yes.

21 Q. Let me ask you if you would, in that
22 notebook, take a look at Exhibit I. And about,
23 well, three pages in there is a poor copy and right
24 behind that is what looks like a better copy
25 exhibit?

1 MR. ALTMAN: I think you're going the
2 other way.

3 THE WITNESS: Okay.

4 MR. ALTMAN: Flip over again.

5 BY MR. MASSALON:

6 Q. There might be a better?

7 A. Okay, yes.

8 Q. That's probably clearer on the next
9 page?

10 A. Yes.

11 Q. Does this look like the thing you had?

12 A. Does this look like a -- I'm sorry.

13 Q. You said that you had a diagram or
14 sketch with you when you did your inspection. Does
15 this look like what it was?

16 A. No. It was different than this.

17 Q. It was different than this? What do
18 you remember about it?

19 A. Well, in the back area where it was
20 cleared there were rooms on the back end here. So
21 this doesn't include the whole area that they ended
22 up doing the upfitting in?

23 Q. Okay. Was it a document that looked
24 like this, it just had additional or different
25 detail in it? Is that what?

1 A. As far as the flooring, it was similar
2 to this. It wasn't exactly like this, no.

3 Q. Okay. But it was this kind of what I
4 would call like a layout plan or a configuration
5 plan?

6 A. I would say the layout of the floor, of
7 the office space, yes, it doesn't include some of
8 the other items that were in there.

9 Q. Got you. Now, did you have any other
10 plans, specifications, or contractor agreements to
11 review?

12 A. No.

13 Q. Okay. So if we can, let's look at your
14 list and it says it was prepared February 4th
15 through 5th? What day?

16 MR. DURBANO: 5th through the 9th.

17 BY MR. MASSALON:

18 Q. 5th through the 9th. There you go.
19 Were you in the space more than one day or was that
20 just the time period it took you to compile all of
21 this?

22 A. I was in there more than one day.

23 Q. When you were in there, did you make
24 any photographs or video or anything of what it
25 looked like or did you just work off some kind of a

1 check sheet?

2 A. I just wrote this out.

3 Q. Wrote it out. Okay. And are these
4 things all just based on your observation of the
5 space and what you thought it should look like or
6 thought should be in there?

7 A. Based on -- these were based off of the
8 information I had on that drawing that we had.

9 Q. That we just looked at?

10 A. Not -- no, not this drawing.

11 Q. Similar to the one we looked at?

12 A. Similar to the one. There was another
13 one that was drawn up, yeah.

14 Q. Okay. And some of these items wouldn't
15 be shown on that. Like for instance, if we look in
16 1300, the reception area desk, that wouldn't be
17 shown on a plan like the one you had, right?

18 A. It was in here. I would say I can't
19 remember if that was actually on the -- how it was
20 detailed on the drawing that I had.

21 Q. Okay.

22 A. If it was the reception area.

23 Q. Typically, something like a reception
24 area desk wouldn't be shown on a floor plan
25 schematic?

1 A. The desk itself?

2 Q. Uh-huh.

3 A. It could be. On a floor schematic?

4 Q. What you remember about it?

5 A. Whether you're talking about a built-in
6 desk or a free-standing desk. Sometimes you would
7 have a built-in desk. You could see that on a
8 floor schematic.

9 Q. Well, the one that you had, do you
10 think it showed furnishings and things like that on
11 it?

12 A. It didn't show any furnishings.

13 Q. Okay. Now, again, not to belabor this.
14 One of the items here is clean existing doors in
15 1300?

16 A. Uh-huh.

17 Q. That wouldn't be anything shown on the
18 plan. That would be just something you observed?

19 A. Right.

20 Q. That needed doing?

21 A. Yes.

22 Q. Did you get any input from the folks at
23 Fetter about what they thought the space should
24 look like, or what should be there that wasn't, or
25 anything like that, or were you working by

1 yourself?

2 A. No. I got input from folks at Fetter.

3 Q. Okay.

4 A. What they wanted, yes, sir.

5 Q. All right. Who were you talking to
6 from Fetter?

7 A. I was talking to -- Fetter had a
8 committee that I spoke with, their committee. I
9 guess they called it the building committee. I'm
10 not sure what they called it. But it was some
11 folks that would say here is what we want and I'd
12 call it program, but in there, how they wanted the
13 building outfitted.

14 Q. Okay.

15 A. I met with them, and it was
16 Mr. Pettiford. I met with the board also.

17 Q. When you were preparing this list, did
18 you have somebody from Fetter saying, okay, you
19 know, there should be this and I'll just take the
20 first item, doors to hallway. Well, that's not a
21 good example. 1301, one of them is remove entry
22 door to waiting area.

23 A. Uh-huh.

24 Q. Did you have somebody that was with you
25 when you were working on this list saying this door

1 shouldn't be here. We need to take it out?

2 A. Just for clarification, when I walked
3 through?

4 Q. Whenever you were preparing this list?

5 A. No. I walked -- I walked through with
6 some folks with Fetter initially, just to walk the
7 building. And then I said I would come back. So
8 when I prepared the list, I prepared the list when
9 I was doing my walkthroughs, my personal.

10 Q. Without any input from anybody from
11 Fetter?

12 A. Without any input other than the layout
13 that we have.

14 Q. Okay. When you were preparing the
15 list, did you know at that time that a CO had been
16 issued?

17 A. I don't recall the dates. I mean that
18 timeline.

19 Q. Okay.

20 A. I don't recall.

21 Q. The COs are in here, and if you would
22 like to look at them, I can show you. They're
23 Exhibit O is the temporary CO and Q is the final
24 CO?

25 A. I'm not saying -- I'm just trying to

1 remember.

2 Q. Sure.

3 A. I'm not sure. I probably was aware of
4 it. I can't remember the exact date that I was
5 notified and I'm not sure.

6 Q. Okay.

7 A. I'm not sure.

8 Q. You would agree with me generally that
9 when a CO is issued that means that the space is
10 compliant with the plans that were submitted for
11 the permit, code compliant, and ready to be
12 occupied?

13 A. Yes.

14 Q. You told us I believe that you, in your
15 observation, this space wasn't ready to be
16 occupied?

17 A. Yes.

18 Q. Did you or anybody you know from Fetter
19 go back to the City of North Charleston and say
20 something like why did you guys issue a CO, this
21 place isn't ready to be occupied?

22 A. Not that I know of. I'm not aware of.

23 Q. Anybody doing that? Okay. Do you know
24 if there is some process in the city for doing that
25 if the CO issued mistakenly or incorrectly to go to

1 the building official and say this isn't right?

2 A. No, I have never experienced that.

3 Q. Got you. Now, when you were asked to
4 prepare this list, did you actually get hired to do
5 something specific or did they just ask you to walk
6 through the space and write down whatever you
7 observed?

8 A. No. I was hired. I was hired by
9 Fetter near the end to say, hey, will you walk
10 through this. Watch the -- be their project
11 manager, yes.

12 Q. Would you characterize this as a punch
13 list?

14 A. Yes.

15 Q. And typically a punch list is something
16 a contractor cleans up at the end of the project?

17 A. Cleans up at the end of the project,
18 yes.

19 Q. And the number of things on here we can
20 agree are just cosmetic issues like sand and
21 repaint door trim?

22 A. Uh-huh.

23 Q. Is that a "yes"?

24 A. That is a "yes." I'm sorry.

25 Q. That's okay. Now, were you involved in

1 any request at this time for Fetter to have new or
2 additional improvements in the space, change
3 orders?

4 A. Was I involved with the change orders?

5 Q. Right. At this time, was Fetter
6 requesting any change orders from the contractor
7 that you knew of?

8 A. At that time I think they had already
9 had some discussion about a change order.

10 Q. Were you involved in that or did that
11 happen before you got called back?

12 A. No, that happened before. I'm not sure
13 of the timing of when that happened, but, no, I
14 wasn't involved in that.

15 Q. Do you have any items on this list that
16 are things that Fetter wanted to be installed in
17 the suite but were not part of a contract that you
18 know of?

19 A. Well, I didn't get the contract
20 initially, so I didn't know what was in the
21 contract. But what the list is, is items that we
22 had discussions about that weren't in there.

23 Q. And when you say that weren't in there,
24 that weren't in where or what?

25 A. In some of the rooms like the sinks



1 weren't installed in some of the exam rooms.

2 Q. Okay.

3 A. Or the bathrooms, there were a couple
4 of bathroom that were -- I think there was one or
5 two bathrooms that were supposed to be added that
6 weren't there.

7 Q. That was based on what you saw on the
8 drawing you had or what somebody from Fetter told
9 you should be there?

10 A. Based on a schematic drawing that I
11 had.

12 Q. Got you. And you got that from who at
13 Fetter?

14 A. I'm not sure. I don't remember names
15 other than Karl and maybe Jeremy, but I don't know
16 who I actually got -- but it was another little
17 architect that was there that had given me a
18 drawing.

19 Q. Okay. Now --

20 A. I don't know if he was an engineer or
21 architect or what his role was.

22 Q. Okay. Now, you previously gave an
23 affidavit in this case; is that right?

24 A. Uh-huh.

25 Q. I'll let you take a look at it.

1 A. Yes.

2 Q. One of the things it says is that you
3 were hired to assess the condition of the suite?

4 A. Uh-huh.

5 Q. Is that a "yes"?

6 A. Yes.

7 Q. As I understand it, you worked for a
8 couple of weeks in 2014 and then not again until
9 February of '16?

10 A. As on contract.

11 Q. Okay.

12 A.. How do I want to say this? I worked,
13 yes, 2014 for a period with the contractor and then
14 I was hired later on by Fetter. But in between
15 then I would go and inspect the site for Fetter pro
16 bono.

17 Q. All right. So you did that for free?

18 A. Right.

19 Q. Just to be nice. How often do you
20 think you went to the site between your initial
21 tenure and when you got called back or when you got
22 hired in February of '16?

23 A. I would say on average, probably once
24 every two weeks.

25 Q. Okay. And when you made those visits,

1 what were you doing?

2 A. Just walk through to see what the
3 condition of the improvements were.

4 Q. Did you report to somebody at Fetter
5 once you did that?

6 A. Yes.

7 Q. How would you make those reports?

8 A. Verbally.

9 Q. Okay. Were you just checking on
10 progress?

11 A. Yes?

12 Q. Did it look like the work was
13 progressing as it should?

14 A. The work was progressing, yes.

15 Q. As it should?

16 A. I'm not sure about it should, but
17 progressing.

18 Q. What is the difference?

19 A. I didn't have a schedule. When you say
20 progressing as it should, it would be based on a
21 schedule I wasn't aware of a schedule. So that's
22 why I would say I'm not sure of that. I didn't
23 have a schedule.

24 Q. I understand.

25 A. Yes.



1 Q. Okay. Other than the punch list that
2 we see here, did you prepare any written reports?

3 A. Not that I recall, no.

4 Q. Now, how were you paid for that?
5 Meaning, for the report?

6 A. Based on the contract for an hourly
7 rate.

8 Q. An hourly rate. What was your hourly
9 rate for the consulting work you did in '16?

10 A. Wow, that is a good one. I really
11 don't remember.

12 Q. Okay. Your affidavit says that the
13 punch list was sent to Chicora. What do you know
14 about that?

15 A. That I forwarded it to Chicora to the
16 acting chairman at that time.

17 Q. To Chicora or Fetter?

18 A. I'm sorry. To Fetter.

19 Q. I thought it said that the report was
20 forwarded to Chicora. Did I misread that? Would
21 you pass it to me and I can show you.

22 A. Yeah, show me. I'm sorry.

23 Q. That's okay.

24 THE COURT: Do you want to give that an
25 exhibit number?

1 MR. ALTMAN: That's not an exhibit.

2 MR. MASSALON: No, it's not. This is
3 an affidavit that he gave earlier in the case.

4 THE COURT: Maybe you better make that
5 an exhibit for identification so I know what you're
6 referring.

7 MR. MASSALON: I'll do that. That
8 would be 1Y.

9 THE COURT REPORTER: I think X?

10 MR. MASSALON: X has already been used.

11 THE COURT REPORTER: Okay. Y then.

12 (PLF. EXH. 1Y, Affidavit, was marked
13 for identification.)

14 MR. MASSALON: Okay. And I'm looking
15 at Paragraph 7, the last sentence if you take a
16 look at the last sentence, Paragraph 7.

17 A. Yes, to Fetter?

18 Q. I think it says to the landlord, does
19 it not?

20 A. I understand this was forwarded to the
21 landlord.

22 Q. That's right.

23 A. The tenant -- I didn't. I provided it
24 to Fetter.

25 Q. Okay. You gave it to Fetter and then

1 what happened after that you don't know?

2 A. Yes, sir.

3 Q. Got you. Do you know, do you have any
4 understanding of when that would have been
5 forwarded or that Fetter claims it was forwarded to
6 the landlord?

7 A. I don't remember this, no.

8 Q. When did you send it to Fetter?

9 A. Sometime in February. I can't tell you
10 the exact date.

11 Q. In relation to when it was created
12 when?

13 A. Yes.

14 Q. About that time?

15 A. About that same time.

16 Q. Now, is it possible that you were
17 onsite before those certificates of occupancy were
18 issued and you compiled that list pre-CO and not
19 post-CO.

20 A. It is it possible?

21 Q. Well, let me ask you a better question.
22 I guess anything is possible?

23 A. Yeah.

24 Q. In looking at your list and the fact
25 that COs were issued, do you think that maybe you

1 were there inspecting and compiling that list
2 before the COs were issued?

3 A. I would have to look back and see the
4 date that the CO was issued?

5 Q. The COs were issued, and I'll tell you,
6 the temporary COs were issued December 22, 2015,
7 and the final CO was issued January 21, 2016.

8 A. Then I would be after the CO was
9 issued.

10 Q. So you believe that you were definitely
11 there after the COs were issued?

12 A. As far as this punch list or inspection
13 was concerned.

14 Q. Okay. And the -- were you doing your
15 work over a weekend? The reason I ask is because I
16 checked the calendar and February 5th is a Friday
17 and February 9th is a Tuesday. So would you have
18 been in there over the weekend during that period?

19 A. I don't think I was over -- I don't
20 recall it being over the weekend, but it was over
21 this that period, that span of time.

22 Q. Do you think you were in there every
23 day that is shown in that time period?

24 A. No, no.

25 Q. Okay. All right. And is that the last

346

1 time whenever you finished preparing that checklist
2 the last time you have been on the site?

3 A. No. There was a meeting after I think
4 in March.

5 Q. Who else was there besides you?

6 A. I think Ms. Jordan was there. I think
7 it was now -- I'm not -- I don't recall exactly who
8 was there. It was with -- I don't recall exactly
9 who was there.

10 Q. Okay. Have you done any other work on
11 this suite since February or March of 2016?

12 A. No.

13 Q. Okay. All right. I think that is all
14 I have for you. Thank you?

15 A. Okay.

16 THE COURT: Mr. Altman?

17 MR. ALTMAN: I don't have anything.

18 THE COURT: Thank you for coming in,
19 sir.

20 MR. MASSALON: Thank you.

21 (A brief pause transpired.)

22 ARETHA R. JONES

23 being first duly sworn, testified as follows:

24 THE COURT: Would you state your full
25 name for the court reporter, please.

1 THE WITNESS: Aretha, R as in Robert,
2 Jones.

3 EXAMINATION

4 BY MR. ALTMAN:

5 Q. Ms. Jones, tell us a little bit about
6 your background, where you're from and what kind of
7 education you have and what kind of employment you
8 have been involved in during your time.

9 A. So I'm Aretha Jones. I'm from
10 Savannah, Georgia. I arrived in Charleston in
11 April 2016, to serve in the capacity of chief
12 executive officer. Prior to that I worked as a
13 chief executor officer of the Community Health
14 Center of Savannah for 17 years. I have a master's
15 in health administration, a master's in public
16 administration. I live in Summerville, South
17 Carolina.

18 Q. Yeah. And tell us a little bit about
19 your job at Fetter. What do you actually do there
20 as far as CEO?

21 A. So I'm the employee of the board of
22 directors. I am responsible for the day-to-day
23 operations for the 21 locations, all of the
24 employees, the medical, dental, and behavioral
25 health programs.

1 Q. How many employees do you have?

2 A. 140.

3 Q. And Ms. Jones, what is your first
4 contact with the Charleston Naval Hospital?

5 A. So I interviewed in January, the last
6 week of January. And so part of my interview
7 process was to tour the Naval Hospital.

8 Q. Tell us what year though.

9 A. January 2016.

10 Q. Yeah. And how did it -- tell me what
11 was -- who was your interview with?

12 A. So I interviewed with the entire board.
13 The tour through the Naval Hospital was with the
14 board chair at the time, Deborah Winston (ph), the
15 interim CEO, Ruth Jordan, and the chief medical
16 officer, Dr. Shantae Jenkins.

17 Q. Y'all went out to the hospital itself?

18 A. We went out to the Naval Hospital.
19 Y'all call it Suite 13. I called it Friday the
20 13th. From the moment I saw it, I thought it was a
21 bad idea. It was a disaster.

22 Q. Why do you think it was a bad idea and
23 why do you think it was a disaster?

24 A. It looked institutionalized. It looked
25 like an old health department. And also, when I

1 walked in the suite in the back where the offices
2 were, it was pouring water.

3 Q. Uh-huh.

4 A. And so I was told that it was supposed
5 to be ready in February, but I walked into the
6 back, past the exam rooms, and the water was just
7 pouring. So I just didn't see how this was going
8 to be ready by February.

9 Q. What was the other condition? Do you
10 remember anything about the condition itself?

11 A. I remember it being dark. There were a
12 lot of -- there were like five or six doors like
13 every 50 steps. There were five or six doors up
14 against the wall. Then you go a little further,
15 there were doors up against the wall. The
16 bathrooms, I remember flipping on a switch and no
17 light came on in the bathroom. The sinks, there
18 were some sinks I guess where they were supposed to
19 be positioned, but they were like hanging off or
20 they were sitting right and that where they were
21 going to be put.

22 Q. This was in the last week of January
23 2016?

24 A. I interviewed the last week of January.

25 Q. Let's go ahead and so you were there

1 just for a couple of hours?

2 A. We were there about an hour.

3 Q. You were there about an hour. What was
4 your next contact that you had with?

5 A. I came back up in February for my
6 second interview. We went back out there,
7 Dr. Jenkins and I and we walked the space.

8 Q. Had it changed any since you had been
9 there?

10 A. I remember it not being so dark. I
11 remember thinking, I'm going to leave this building
12 with asbestos because I could just smell the mold
13 and the mildew and it was just bad. I just didn't
14 see how it was going to work.

15 Q. Okay.

16 A. I remember touring.-- at that point she
17 took me through the hallways. The elevators were
18 not operable. They had a sign on it and there was
19 nothing in the lobby except for a small desk and a
20 security desk.

21 Q. Have you been back out to the Naval
22 Hospital since that time or did you go up
23 periodically after your second visit?

24 A. So I arrived in April. My first
25 workday was April 11, 2016, and in orientation they

1 came to get me because the medical records room was
2 leaking. And so I had to go out there. We had to
3 get someone from Chicora on the phone because
4 security wouldn't let us past the gate.

5 Finally, once security let us past the
6 gate, we went down in the basement where the
7 records -- I call it the basement -- where the
8 records were and the water leaking. Records were
9 damaged and I do have pictures. Records were
10 damaged. It was wet. It was leaky. Anyway, we
11 had to get records out immediately.

12 Q. Are you aware there was another lease
13 for the medical records space and I think we talked
14 last night where you were going to check. How many
15 payments did you make?

16 A. We paid from 2015 through April 2016.

17 Q. Okay. So you paid whatever your
18 obligation was and you complied with your
19 obligations under that additional document?

20 A. Yes.

21 Q. All right.

22 A. I just was out to the Naval Hospital
23 again in February. I was invited by City of
24 Charleston or North Charleston. I don't remember.

25 Q. To go out there and look at it again?

1 A. Uh-huh.

2 Q. Just out of curiosity, why were you
3 asked to go out?

4 A. Because they had acquired the facility
5 and they wanted to know --

6 Q. This is Charleston County.

7 A. Yes.

8 Q. And what was the condition of the
9 premises?

10 A. So the premises still pretty much
11 looked the same. They explained to us that they
12 had to do some asbestos remediation, mold
13 remediation, and they were correcting the HVAC
14 system. That egress in the back was still a
15 concern because it was sealed up and we talked
16 about why the egress was sealed. But it was just
17 not a space we're interested in.

18 Q. All right. Are you familiar with
19 Exhibit R down there that had been prepared?

20 A. That is this?

21 Q. Yeah. Exhibit R. Had you seen that
22 before?

23 A. I didn't see this until I arrived.

24 Q. You were not involved in that?

25 A. Huh-uh.



1 Q. You didn't check that to see if those
2 repairs had been made?

3 A. No.

4 Q. Or where any renovations had been made?

5 A. (Indicating a negative response.)

6 Q. And the decision was made, am I
7 correct, by Fetter, that the tenant improvements
8 had not been completed?

9 A. They're still not done.

10 Q. Okay. And y'all decided to terminate
11 the contract --

12 A. Yes.

13 Q. -- or the lease?

14 MR. ALTMAN: John, I have no further
15 questions.

16 MR. MASSALON: Okay. Thanks.

17 EXAMINATION

18 BY MR. MASSALON:

19 Q. Ms. Jones, fair to say that the first
20 time you saw the space you didn't like it on site?

21 A. Absolutely.

22 Q. Okay. And so despite what had happened
23 before you came here, whoever had decided to
24 relocate Fetter's operations to the Old Naval
25 Hospital, you thought that was a mistake?

1 A. After I walked in the facility and saw
2 that it was pouring water, I knew it was a mistake.

3 Q. Now let me ask you, if I could, to look
4 at that punch list item. And you have told us
5 about three things at least I jotted down. That
6 the water was pouring into the suite, that you had
7 mentioned this ingress/egress door, and also the
8 mold and mildew. Take a look at that list and, if
9 you could, show me where that is on this list, any
10 of those items?

11 A. I don't see any.

12 Q. Okay. And that was prepared you just
13 heard Mr. Williams testify in February 2016, which
14 would have been after you saw it the first time and
15 -- I'm sorry. Before you saw it the first time and
16 after you saw it the second time?

17 A. No. This was prepared after I saw it
18 the first time. Is that what you said?

19 Q. Yeah. That was a terrible question.
20 Let me try that again. Even though you say you saw
21 water, smelled mold and mildew, and the
22 ingress/egress door was missing in January and
23 again in March, this report that was prepared in
24 February shows none of that?

25 A. I don't know why.

1 Q. Okay.

2 A. I know what I saw.

3 Q. Ever ask Mr. Williams why his report
4 doesn't show those things?

5 A. When I got here, I never engaged
6 Mr. Williams.

7 Q. Never saw him before today?

8 A. Yes.

9 Q. Under what circumstances?

10 A. At a fundraiser.

11 Q. Did y'all ever talk about this before
12 today?

13 A. No.

14 Q. Okay. Now, again, you have patiently
15 sat with us the last day and a half or so, and is
16 it fair for us to understand that all of these
17 agreements between Fetter and Chicora were signed
18 before you had any involvement with Fetter?

19 A. Thank God, yes.

20 Q. Okay. And so you didn't negotiate with
21 anybody as far as what the documents mean, the
22 people who negotiated them would know more than
23 you?

24 A. I know what I saw and I know it wasn't
25 a good facility.

1 Q. I understand your testimony on that.
2 My question, though, was about the contracts. As
3 far as the contracts and what the words say and
4 what they mean, the people who negotiated them
5 would know more about that than you?

6 A. No.

7 Q. No. Okay. So tell me what you know
8 about the negotiation of these contracts.

9 A. I think from what I can read, the
10 contracts were very one-sided. I think they
11 benefitted the landlord. They did not take into
12 account the tenant and for a community health
13 center, regardless of what the CO says, if the
14 tenant did not approve it -- because DHEC, the
15 Department of Health and Environmental Control
16 wouldn't have approved the site. So from my
17 experience as a healthcare executive, the contracts
18 did not take into account the requirements of a
19 community health center.

20 Q. Who do you think would know the
21 requirements of a community health center? Would
22 that be Fetter or would that be Chicora?

23 A. I guess both. They say they built for
24 hospitals.

25 Q. Definitely Fetter would?

1 A. Yes.

2 Q. You would expect the people at Fetter
3 when asked to sign a contract that did not meet
4 their needs, somebody there should have said
5 something about it or raised an issue about it?

6 A. Absolutely.

7 Q. And apparently did not according to
8 your people?

9 A. Yes.

10 Q. As far as the COs, you mentioned those
11 and we looked at them a couple of times throughout
12 this process. Have you ever looked at them before
13 today?

14 A. Yes.

15 Q. When was it that you became aware of
16 them?

17 A. About my first week of work.

18 Q. Okay. And how did that happen?

19 A. After I was called out of orientation
20 to go to the facility and saw that the water was
21 leaking on medical records, I then wanted to know
22 like what can we do to end this nightmare. That's
23 when I started asking people in the agencies where
24 are we in the process, have COs been issued, and
25 then realized there was a CO.

1 Q. And did you get the temporary COs that
2 are marked as O and the final one that is marked as
3 Q?

4 A. I saw all of them.

5 Q. You saw all of them. When you got
6 those did you contact Mr. Briggman or anybody at
7 the City of North Charleston to inquire --

8 A. Yes. I tried to get in touch with
9 Mr. Whittaker.

10 Q. Mr. Whittaker? Who was that?

11 A. That was the person's name on here.

12 Q. Were you able to get in touch with
13 Mr. Whittaker?

14 A. Mr. Whittaker referred me to his
15 supervisor who was Mr. Briggman. When I talked to
16 him, he refused to speak to me.

17 Q. Okay. And wouldn't talk to you at all?

18 A. Wouldn't talk to me at all.

19 Q. Okay.

20 A. As soon as I said Naval Hospital, he
21 would not talk to me.

22 Q. Were you calling to convince
23 Mr. Briggman that the COs shouldn't have been
24 issued?

25 A. I was calling to find out how they were

1 issued and could I get some requirements. Could he
2 walk me through how it was approved.

3 Q. The goal of that was to convince him
4 that he made a mistake and shouldn't have issued
5 them?

6 A. I needed some understanding. It just
7 didn't make sense.

8 Q. Do you think there anything he could
9 have told you he reassured you that they were
10 properly issued?

11 A. After doing some investigation or some
12 research on my own, I realized that it wasn't about
13 tenant improvements or cosmetics or being able to
14 provide services. It was simply about life and
15 safety. So when they do the COs they didn't care
16 if doors were up against the wall or if the toilets
17 were rusty. They didn't care about that. They
18 just wanted to make sure no one would die in the
19 building.

20 Q. Okay. You heard Mr. Briggman's
21 testimony and you think that's what Mr. Briggman
22 just told us?

23 A. Yes.

24 Q. Now, the punch list, did you try show
25 that to Mr. Briggman or Mr. Whittaker or somebody

1 with the city --

2 A. No.

3 Q. -- and say, we have got this list of
4 items, how was that CO issued with these things?

5 A. When I reached out to Mr. Whittaker, he
6 referred me to Mr. Briggman who told me he was not
7 discussing it.

8 Q. Okay. As far as the list itself goes,
9 you would agree with me that not everything on it
10 is some catastrophic building problem. Some things
11 are just clean up and punch list, right?

12 A. For a health center, they're all
13 catastrophic...

14 Q. Okay. So you think dirty doors, for
15 instance, are catastrophic?

16 A. You have to be hygienic. You don't want
17 to go to the doctor with a dirty door.

18 Q. Okay. Now, let's see, when you took
19 over as CEO, understanding that you thought this
20 was disaster and a mistake, was it still Fetter's
21 intention to move into that suite once you became
22 CEO and leader?

23 A. Yes. My exact words to the board was
24 we're obligated.

25 Q. And Mr. Altman touched on this, but

1 ultimately, the board made the decision not to do
2 that?

3 A. Well, then the foreclosure happened and
4 there was no building to move into.

5 Q. Still there now, right?

6 A. Uh-huh.

7 Q. Yes. And are you aware that at least
8 one business operated in it until it was sold to
9 the county?

10 A. No, not until here.

11 Q. Did you or anybody at Fetter ever ask
12 for reassurance that if Fetter moved in that the
13 foreclosure would not foreclose the tenants rights?

14 A. By the time I -- after it passed the CO
15 inspections and I was trying to figure things out,
16 by late May I think both parties had decided it
17 wasn't going to work out.

18 Q. And the decision actually, if you flip
19 over in the notebook for me, to Item S for me. At
20 least by April 26th a decision had already been
21 made by Fetter not to move in and look for another
22 location?

23 A. Yes.

24 Q. So in May all of that was done?

25 A. (Indicating an affirmative response.)

1 Q. Yes?

2 A. Yes.

3 Q. Okay. Now, currently is Fetter's main
4 campus still at 51 Nassau Street?

5 A. Yes.

6 Q. Do y'all have any plans to move?

7 A. Not 51 Nassau.

8 Q. Let me ask you a better question. Not
9 move that, but move the operations to some other
10 location?

11 A. The 51 Nassau will remain open. We
12 plan to open additional locations.

13 Q. Do you plan to open one at the Naval
14 Hospital?

15 A. No.

16 Q. And so there are no ongoing
17 negotiations or discussions with the county about
18 moving into that place?

19 A. Like I said, they reached out to us.
20 We did a tour in February. We were asked to send a
21 letter of intent and our response was we're not
22 interested.

23 Q. I think that is all I have got. Wait a
24 minute. Hold on a second. I may have a note.
25 Forgive me.

1 You mentioned DHEC. Do you know if
2 DHEC inspected Suite 1300 and approved it?

3 A. No, they did not inspect it.

4 Q. You're sure of that?

5 A. As far as I know, they did not inspect
6 it.

7 Q. Do you know they didn't or as far as
8 you know they didn't?

9 A. As far as I know they didn't because
10 after we received the funding for Suite 1300, we
11 never moved into the facility and we never
12 scheduled a DHEC inspection.

13 Q. Does that mean you never did it or
14 nobody ever?

15 A. I never scheduled it.

16 Q. Did you check with anybody at Fetter to
17 see if anybody did it?

18 A. It is my understanding that no one at
19 Fetter that is currently employed there scheduled a
20 DHEC inspection.

21 MR. MASSALON: That's it. Thank you.

22 MR. ALTMAN: Thank you.

23 THE COURT: Thank you. Is that it,
24 Mr. Altman.

25 MR. ALTMAN: That's it from us.

1 THE COURT: By way of housekeeping --
2 thank you, ma'am.

3 MR. MASSALON: Thank you.

4 THE COURT: The court reporter tells me
5 it will take her a couple of weeks to get a
6 transcript to you and we had talked about you-all
7 prepares proposed orders. Mr. Altman is suggesting
8 two weeks to three weeks. Do you think you can do
9 it by then after receiving the transcript?

10 MR. ALTMAN: Probably 30 days.

11 THE COURT: 30 days would be. I will
12 do what you want to do, but I don't want to --

13 MR. MASSALON: I'm here for you. You
14 tell me when to do it and we will definitely get it
15 done then.

16 THE COURT: Do you want to say three
17 weeks from the day? I don't know what that day is.

18 MR. ALTMAN: Let's give ourselves
19 enough time. If she is going to take two weeks and
20 then there are things that are going to come up
21 with.

22 MR. MASSALON: Sure.

23 THE COURT: Not from today, but three
24 weeks after.

25 MR. MASSALON: After the transcript?

1 THE COURT: After the transcript.

2 MR. MASSALON: That's fine.

3 THE COURT REPORTER: Are we still on
4 the record?

5 MR. MASSALON: Yes.

6 THE COURT: Yes, ma'am, please. We
7 need to run a check to make sure she has got all of
8 the exhibits. And I still need to get -- my fault.
9 I didn't ask you again. I need to get a copy of
10 that order form for the special record.

11 Q. I may have that and I can do that. The
12 only thing I would ask just as formality as far as
13 motions go, do you want us just to put legal
14 arguments in the proposed orders?

15 THE COURT: Put it in the proposed
16 order, yes.

17 MR. MASSALON: As opposed to making DV
18 motions and things like that?

19 THE COURT: Yeah.

20 MR. MASSALON: All right. I'll get you
21 a copy of this order, and I think that I should
22 have from the Plaintiff's side Exhibit 1A through X
23 I believe.

24 THE COURT: Y. The last one was Y.

25 MR. MASSALON: 1A through 1Y.

1 MR. ALTMAN: I've got ten days from
2 let's say tomorrow to go ahead and discuss with the
3 court and this, Mr. Durbano's new financial issue
4 that he -- his method of computing some of his
5 damages.

6 THE COURT: Okay.

7 MR. MASSALON: The projected.

8 MR. DURBANO: Present value.

9 MR. ALTMAN: Present value.

10 THE COURT: Anything else?

11 MR. MASSALON: I think that's it.

12 Thank you.

13 THE COURT: All right. Thank you, very
14 much. Ms. Reporter, we are now off the record.
15 Thank you.

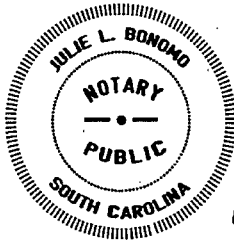
16 (The hearing adjourned at 12:12 p.m.)
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CERTIFICATE OF REPORTER

I, Julie L. Bonomo, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 8th day of May, 2018,
at Charleston, Charleston County, South Carolina.



Julie L. Bonomo
Court Reporter
My Commission expires
July 28, 2027

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Chicora Life Center, LC vs.
Feter Health Care Network, Inc.

Trial Before Wade H Logan, III
April 24, 2018

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
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