

RECEIVED

Jul 21 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Eugene P. Warr, Jr., Special Referee

Appellate Case No. 2019-001062

Vincent C. Carter d/b/a Elite
Construction Co.,

Respondent,

v.

Eagles Landing Restaurants,
LLC,

Appellant.

RECORD ON APPEAL

VOLUME I OF II

FINKLEA LAW FIRM
PATRICK B. FORD, ESQUIRE
P.O. Box 1317
Florence, SC 29503
(843) 317-4900
Attorney for Respondent

LAW OFFICE OF BROOKS R.
FUDENBERG LLC
Brooks R. Fudenberg
171 Church Street
Suite 170
Charleston, SC 29401
843-416-2558
Attorney for Appellant

INDEX

ORDERS, JUDGMENTS, DECREES, and DECISIONS

ORDERS UNDER APPEAL

Order filed 10-25-18.....	1
Supplemental Order filed 5-28-19.....	9
Form 4 Order filed 5-28-19.....	15

OTHER ORDERS

Consent Order of Reference filed 5-2-17.....	18

PLEADINGS

Complaint.....	20
Answer & Counterclaim	23

OTHER MATERIALS

Hearing Transcript.....	28
Plaintiff's Trial Exhibits.....	487
Defendant's Trial Exhibits	756
Defendant's Notice of Motion and Motion to Amend, filed 10-30-18.....	809
Plaintiff's Motion to Reconsider, filed 11-05-18.....	811

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Vincent C. Carter d/b/a Elite Construction
Co.,

Plaintiff,

vs.

Eagles Landing Restaurants LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO: 2016-CP-21-00702

ORDER

This is an action arising from an agreement between the Parties whereby the Plaintiff, Vincent C. Carter, d/b/a Elite Construction Co., agreed to provide general contracting services to the Defendant, Eagles Landing Restaurants, LLC. The Plaintiff commenced this action by filing a Summons and Complaint with the Court of Common Pleas for Florence County on March 21, 2016, stating claims for Breach of Contract and Unjust Enrichment/Quantum Meruit. The Defendant accepted service by and through its attorney, Walker H. Willcox, Esquire. The Defendant filed an Answer and Counterclaim on May 2, 2018, asserting multiple defenses and counterclaiming for Breach of Contract, Fraud/Constructive Fraud, Quantum Meruit/Unjust Enrichment, Negligence/Gross Negligence, and Indemnification.

This matter was referred by Consent Order of Reference of the Honorable Michael G. Nettles, dated May 2, 2017, and filed with the Clerk of Court for Florence County on May 2, 2017. The Ordered provided the Special Referee with the authority to take testimony arising under the pleadings and to make findings of fact and conclusions of law, to rule on all matters related to this action and to enter a final judgment. The action was tried on December 20, 2017.

Present at the hearing were the Plaintiff and his attorney Patrick B. Ford and the Defendant and its attorney Walker H. Willcox.

BACKGROUND

On April 9, 2015, the Plaintiff and Defendant entered into a construction contract (the "Contract") in which the Plaintiff agreed to provide construction services to upfit a commercial space located on James Island, South Carolina for use as an IHOP restaurant for the fixed price of \$624,354.00. According to the Contract, the Plaintiff was to be paid by draws from the bank or lending institution directly to the Plaintiff as the work progressed. Based upon the testimony the relationship between the parties began cordially, but became increasingly acrimonious throughout the construction process.

It is undisputed that the Defendant has paid to the Plaintiff the sum of \$229,900.00 due under the Contract. However, the Defendant began paying the various subcontractors and vendors directly rather than paying any draws to the Plaintiff. The Parties acknowledge that at the time of trial the Defendant had paid \$390,888.33 to third-party vendors and subcontractors related to the project. The Plaintiff oversaw the project until receiving the temporary certificate of occupancy at which time the Plaintiff abandoned the project after not being paid despite repeatedly demanding payment.

During the construction process the Plaintiff issued five change orders for work allegedly not included within the scope of the Contract. Of the five change orders issued by the Plaintiff one of the change orders related to the hiring of additional electricians from Carolina Construction Solutions for the project. At the time of trial, Carolina Construction Solutions had not been paid for the labor and materials furnished in conjunction with the construction. Based

on the evidence submitted by the Parties the outstanding balance due to Carolina Construction Solutions at the time of trial was approximately \$61,863.06.

LIABILITY

Both parties brought actions against each other for breach of contract. Based on the evidence presented, I find that the Defendant breached the contract with the Plaintiff. Therefore, I find in favor of the Plaintiff with regard to his claim for breach of contract. I also find in favor of the Plaintiff with regard to his claim for unjust enrichment, as provided herein.

It is clear from the evidence that the Defendant failed to pay the Plaintiff upon demand for various draws. In fact, the payment history provided by the Parties indicates that the Defendant paid many of the vendors directly without paying the Plaintiff. Of the amounts paid directly by the Defendant, and upon review of the evidence, I have concluded that the following amounts were paid by the Defendant directly to third parties on behalf of the Plaintiff for work within the scope of the Contract:

• A+ Restaurant Management	\$46,715.97
• ABC Seal Coating	\$4,000.00
• Atlantic Electric LLC	\$3,414.81
• Bell Electric	\$4,910.00
• City Electric	\$847.75
• City of Charleston	\$2,895.00
• City Lighting Products	\$23,421.00
• Conklin's Construction	\$19,400.00
• Corrow Construction	\$6,660.00
• Design Team	\$3,298.00

• ECK Supply Co.	\$412.30
• Formula Automatic Door	\$1,128.61
• Handyman Plumbing	\$578.00
• Hobart Services	\$302.00
• Johnson Concrete	\$3,500.00
• Kessler Plumbing	\$8,061.00
• Marlite	\$16,744.15
• Mt. Pleasant Winnelson	\$3,267.00
• Multi-tech Safety Products, Inc.	\$26,522.00
• Neal's Flooring	\$2,200.00
• Nelson Sign	\$8,791.23
• New South Specialties	\$5,000.76
• Parterre Flooring	\$1,281.47
• Red Mountain Lighting	\$275.81
• Roll-A-Shade	\$7,428.00
• William Smith	\$2,642.50
• Turner Electric	\$3,500.00
• Waste Services, LLC	\$1,745.33
• Whistler Innovative Tech Solutions LLC	\$3,252.57

TOTAL: \$212,195.26

I have further concluded that the following amounts paid by the Defendants are not obligations of the Plaintiff as they do not fall within the scope of the Contract:

• Assured Neace Lukens	\$9,388.42
• Capital Materials of Savannah	\$4,919.03
• City of Charleston	\$1,895.94
• Digital Niche, LLC	\$6,881.20
• Hilton Displays	\$7,371.27
• Low Country Services	\$2,200.00
• National Restaurant Designers	\$44,344.21
• NBS Media Systems	\$6,161.41
• Neal's Flooring	\$6,600.00
• Prime Cut of Charleston	\$5,745.00
• WRM Management Group	\$2,101.26

TOTAL: \$97,607.74

The Plaintiff issued the following modifications, identified as **Change Orders**, after execution of the Contract:

1. Change Order dated June 12, 2015, for hiring additional electricians at the request of the Defendant in the amount of \$37,397.45;
2. Change Order dated June 12, 2015, for the removal of mold discovered in the amount of \$48,900.00;
3. Change Order dated June 15, 2015, for removal of tile flooring in the back-kitchen area, in the amount of \$54,900.00;

4. Change Order dated June 15, 2015, for installation of the new IHOP image in the amount of \$96,900.00; and
5. Change Order dated July 15, 2015, for installation of new floor tile in the front dining room in lieu of carpet, in the amount of \$26,987.00.

Article 1 of the Contract provides that it includes any Modifications issued after execution of the Contract. Therefore, I find and conclude that the Change Orders issued by the Plaintiff were Modifications within the meaning of the Contract, which included additional work not previously contemplated by the Parties. While the Change Orders were not executed by the Parties, based on the testimony of the parties, I find and conclude that representatives of the Defendants approved the additional work. Notwithstanding the foregoing, I also find and conclude that the Plaintiff performed the work set forth in the Change Orders, which was in excess of work provided for in the Contract. Thus, even if the Change Orders were not a part of the Contract, I find and conclude that the Defendant was unjustly enriched based on the labor and materials furnished by the Plaintiff pursuant to the Change Orders.

With respect to the Change Order #1, the contractor who supplied the electricians, Carolina Construction Solutions, initiated a lawsuit against both the Plaintiff and Defendant, alleging various causes of action, including, without limitation, breach of contract and foreclosure of a mechanic's lien. I have concluded that the Defendant is responsible for the costs of the additional electricians provided by Carolina Construction Solutions. However, I have not determined how to handle that issue given the claims for costs and attorney's fees and reserve judgment with respect to this issue. After further research and consideration, I will issue a supplemental order.

The Plaintiff claims that he is owed for the last four Change Orders the total of \$227,687.00. With respect to the last four Change Orders, and based on the testimony of the witnesses, I have concluded that the sum of \$38,596.85 is due to the Plaintiff for work performed pursuant to said Change Orders. This amount is broken down as follows:

Change Order #2 - Mold removal:	\$13,795.02
Change Order #3 - Tile removal kitchen:	\$10,156.83
Change Order #4 - New HOP/Décor:	\$7,445.00
Change Order #5 – Dining room tile:	\$7,200.00

From the evidence, I also find that the Defendant and Plaintiff agreed that the HVAC system would not be replaced in accordance with the Contract, and thus, I find that the Defendant is entitled to the credit in the amount of \$44,439.00, as provided by the Plaintiff. I also find that the Defendant paid \$11,285.00 to a subcontractor, ARS Rescue Rooter, directly for providing labor and materials in connection with the HVAC system and that this payment by the Defendant was made on behalf of the Plaintiff under the Contract. Based on the foregoing, I further find that the expense incurred by the Defendant for new HVAC units is not an obligation of the Plaintiff under the Contract. Likewise, I find that the Defendant is not entitled to damages for two additional HVAC units.

The Defendant asserts multiple causes of action against the Plaintiff. Based on the evidence, I concluded that the Defendant is not entitled to damages for labor paid to Mohamed Ali and Chris Morris or lost income; the Defendant is not entitled to damages for roof replacement and new sidewalks; and the Defendant is not entitled to damages for expenses incurred from Charleston Sign and Bishop & Son. However, I conclude that the Defendant is entitled to a credit \$5,000.76 in damages for the bathroom partitions.

DAMAGES

The Total due to the Plaintiff under the Contract was \$624,354.00. The Plaintiff has been paid \$229,900.00 to date. Based on the foregoing I calculate the Plaintiff's damages as follows:

Contract Price:	\$624,354.00
- Payments Made:	<u>- \$229,900.00</u>
	\$394,454.00
 - Payments Made by Eagles Landing:	 <u>- \$212,195.26</u>
	\$182,258.74
 + Value of Services from Charge Orders:	 <u>+ 38,596.85</u>
	\$220,855.59
- HVAC Credit:	- \$44,439.00
- ARS Rescue Rooter:	- \$11,285.00
-Bathroom Partitions credit	<u>-5,000.76</u>
 Total	 \$160,130.83

VERDICT

The Plaintiff is entitled to \$165,131.59, and the Defendant is entitled to \$5,000.76. Therefore, after offsetting these amounts, I find that the Defendant owes to the Plaintiff the sum of One Hundred Sixty Thousand One Hundred Thirty and 83/100 Dollars (\$160,130.83).

The last matter to resolve is costs for the Special Referee. I direct that the cost for the Special Referee be apportioned equally between the Plaintiff and Defendant to include the appearance fee and the costs of the transcript as requested by the Court to provide a thorough review of the facts and figures.

IT IS SO ORDERED.

October 11, 2018

Florence, South Carolina



EUGENE P. WARR, JR.,
SPECIAL REFEREE FOR FLORENCE COUNTY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	TWELFTH JUDICIAL CIRCUIT
Vincent C. Carter d/b/a Elite Construction Co.,	C/A NO: 2016-CP-21-702
Plaintiff,	SUPPLEMENTAL ORDER
vs.	2019 MAY 28 1:13 PM
Eagles Landing Restaurants, LLC,	FILED
Defendant.	CLOCK IN CANCELLED
	NOT RECORDED

This matter was tried before me, and after reviewing the arguments of counsel, the witness testimony, all exhibits submitted into evidence, and the notes taken during the trial, this Court issued an Order, which was filed on October 25, 2018, awarding judgment for the Plaintiff in the amount of \$160,130.83. At the time that the decision was rendered, the Court had not considered how to handle the issues related to the labor and materials furnished by Carolina Construction Solutions, for which the Plaintiff issued Change Order #1.

Subsequently, on October 30, 2018, the Defendant submitted a Motion to Amend this Court's Order filed on October 25, 2018. On November 5, 2018, the Plaintiff also submitted a Motion to Reconsider the Order filed on October 25, 2018. A hearing was held on the parties Motions on December 12, 2018.

This Court has reviewed the pleadings and arguments submitted by the attorneys, and the testimony and exhibits submitted into evidence. As a result, the Court hereby supplements its Order filed on October 25, 2018, with respect to Change Order #1, as

provided herein. This Court further denies both the Defendant's Motion to Amend and the Plaintiff's Motion to Reconsider.

BACKGROUND

The facts in the background of this Court's Order filed October 25, 2018, are incorporated by reference herein. Carolina Construction Solutions initiated legal proceedings on March 17, 2016, in the County of Charleston, Case Number 2016-CP-10-01355, in order to collect on the labor and materials it furnished on the upfit for the IHOP restaurant. The Defendant settled with Carolina Construction Solutions by remitting \$50,000.00 to Carolina Construction Solutions. Of the \$50,000.00 paid by the Defendant, \$20,000.00 was applied to the principal balance alleged due to Carolina Construction Solutions and \$30,000.00 was allocated towards attorney fees. To completely resolve the matter between all parties, the Plaintiff and Vincent Carter confessed judgment to the balance alleged due, in the amount of \$16,664.16, along with interest at the rate provided in the contract between the Plaintiff, Vincent Carter and Carolina Construction Solutions (the "Confession of Judgment")..

DISCUSSION

Based on this Court's review of the evidence and testimony of the witnesses, and in accordance with its findings in the Order filed on October 25, 2018, this Court finds that the Plaintiff is entitled to further damages equal to the amount of the judgment confessed to by the Plaintiff in the action initiated by Carolina Construction Solutions in the County of Charleston. Furthermore, after reconsidering the evidence, witness testimony, and the notes taken at the trial, this Court finds no reason to alter or amend its previous Order filed on October 25, 2018. Therefore, this Court denies both the Plaintiff's

and Defendant's Rule 59(e) Motions.

- **This Court finds that the Plaintiff is entitled to damages in the amount of \$16,664.16 and interest thereon in accordance with the Confession of Judgment.**

As provided in the previous Order, based on the testimony of the witnesses and the exhibits admitted into evidence at the trial, this Court found and concluded that the Defendant was responsible for the cost of the additional electricians provided by Carolina Construction Solutions. Based upon the resolution of the Carolina Construction Solutions action, the Plaintiff is entitled to damages in the amount of the judgment it confessed, \$16,664.16, along with any interest due thereon. While the Defendant paid \$50,000.00 towards the resolution of the action of Carolina Construction Solutions, this Court finds that those damages are also the responsibility of the Defendant, pursuant to Change Order #1.

- **The Court denies both the Defendant's Motion to Amend and the Plaintiff's Motion to Reconsider.**

Although the law of South Carolina does not address the standard of review applicable to such a Motion, the first sentence in the notes to Rule 59(e), SCRCPP, states that South Carolina's Rule 59(e) "is substantially the Federal Rule." Rule 59, SCRCPP (Notes). South Carolina courts look to federal law to interpret state rules of civil procedure that track the language of a corresponding federal rule. *Gardner v. Newsome Chevrolet-Buick*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). The purpose of a Rule 59(e) motion is to allow the court to reevaluate the basis for its previous decision. Because of interests of finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly.

The Fourth Circuit has similarly said of Rule 59(e) motions that “[i]n general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. American Nat’l Fire Assoc.*, 148 F.3d 396, 403 (4th Cir. 1998) (citations omitted). The Fourth Circuit, applying South Carolina law, established three grounds for revisiting a settled matter under Rule 59(e): (1) to accommodate an intervening change in the law; (2) to account for new evidence not previously available; and (3) to correct a clear error of law or prevent manifest injustice. *Dockins v. Benchmark Commc’ns*, 180 F.R.D. 294, 295 (D.S.C. 1998), *aff’d*, 176 F.3d 745 (4th Cir. 1999); *see also E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112 (4th Cir. 1997). A Rule 59(e) motion may not be used to relitigate old matters. *Pacific Ins. Co.*, 148 F.3d at 403.

The Defendant has set forth seven grounds for reconsideration:

- The evidence presented at trial does not support the findings that Defendant agreed to the change orders;
- The evidence presented a trial does not support the finding that the amounts expended by Defendant were not within the scope of the contract and not recoverable by Defendant;
- The evidence presented at trial does not support a finding that Plaintiff performed the work set forth in the contract and was entitled to the credits received in the Order;
- The evidence presented at trial demonstrated that Plaintiff is liable for lost income or other delay damages to Defendant;

- The change orders should not have been admitted as evidence;
- The Defendant is entitled to a credit for the amount paid to Carolina Construction;
- and
- The evidence presented at trial does not support the award to Plaintiff.

The Plaintiff has set forth three grounds for reconsideration:

- The evidence presented at the trial does not support the findings that all third parties directly paid by the Defendant performed work within the scope of the Contract for which the Defendant receives credit for paying;
- The evidence presented at the trial demonstrated that the Plaintiff was entitled to greater damages as a result for the work provided in the Change Orders, which was performed in addition to the contract; and
- The evidence presented at trial does not support the findings that the Defendant is entitled to damages for the bathroom partitions.

After considering the grounds raised in the motions of the Plaintiff and Defendant, and after reviewing the transcript of the trial, including the testimony of the witnesses and the exhibits that were admitted into evidence, as well as the notes from the trial, this Court denies both the Plaintiff's Motion to Reconsider and the Defendant's Motion to Amend. The testimony and exhibits admitted into evidence at trial support the Court's findings and conclusions.

BASED ON THE FOREGOING, IT IS ORDERED THAT the Court's previous Order filed October 25, 2019, is hereby supplemented and the total judgment

due to the Plaintiff is increased from \$160,130.83, to \$176,794.99, plus additional interest due by the Plaintiff to Carolina Construction Solutions in accordance with the Confession of Judgment. **AND IT IS**

FURTHER ORDERED that the Plaintiff's Motion to Reconsider and the Defendant's Motion to Amend are hereby denied.

AND IT IS SO ORDERED.

May 22, 2019
Florence, South Carolina

E. P. Warr, Jr.
Eugene P. Warr, Jr.
Special Referee for Florence County

FILED

CLOCK IN CANCELLED
NOT RECORDEDSTATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
DORIS POULOS O'HARA
CCCP & GS CASE NO. 2016-CP-21-702
FLORENCE COUNTY, SC

Vincent C. Carter d/b/a Elite Construction Co.

Eagles Landing Restaurants, LLC

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Patrick Ford	Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)**JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.**DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See page 2 for additionalinformation.**ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other**ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other**DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**BOX):

Affirmed; Reversed; Remanded; Other

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

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

This order ends does not end the case.

Additional Information for the Clerk :

the amount of the judgment. This Order Motion to amend.

This Order supplements this Court's Order filed October 25, 2018, and increases

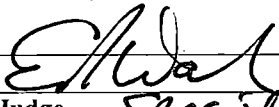
also denies the Plaintiff's Motion to Reconsider and the Defendant's

INFORMATION FOR THE JUDGEMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Vincent C. Carter d/b/a Elite Construction Co.	Eagles Landing Restaurants, LLC	\$176,794.99
		\$
		\$

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

			
~~Circuit Court Judge~~ <i>Special Referee</i>		Judge Code	Date

For Clerk of Court Office Use Only

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

Patrick B. Ford, Esquire
Finklea Law Firm
P.O. Box 1317
Florence, SC 29503

Walker H. Willcox, Esquire
Willcox, Buyck and Williams, P.A.
Post Office Box 1909
Florence, SC 29503-1909

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Vincent C. Carter d/b/a Elite
Construction Co.,

Plaintiff,

vs.

Eagles Landing Restaurants, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO.: 2016-CP-21-702

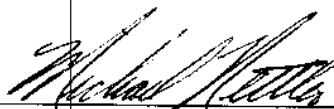
CONSENT ORDER
OF REFERENCE

FILED
2017 MAY -2 PM 3:30
DOAN - JUDGE G. HARRA
FLORENCE COUNTY, SC

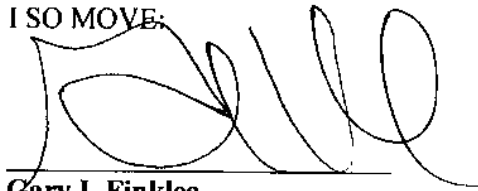
This matter comes before me on the motion of the Plaintiff to refer this action to Eugene P. Warr, Jr., Esquire, as Special Referee pursuant to S.C. Code Ann. Sections 14-11-60 and 15-31-150, and pursuant to Rule 53, S.C.R.C.P. It further appears that Walker H. Willcox, Esquire, attorney for the Defendant consents to reference.

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to Eugene P. Warr, Jr., Esquire, Special Referee for Florence County to take testimony arising under the pleadings and to make findings of fact and conclusions of law, with the authority to rule on all matters related to this action, including but not limited to, any motions concerning the case made prior to or subsequent of a final hearing and the authority to enter a final judgment. Any appeal from the motions and from the final Order or Orders of the Special Referee, if applicable, shall be directed to the South Carolina Supreme Court or Court of Appeals as provided by law.

5-2-
April 2017
Florence, South Carolina


CIRCUIT COURT JUDGE

I SO MOVE:



Gary L. Finklea

Attorney for the Plaintiff

Finklea Law Firm

Post Office Box 1317

Florence, SC 29501

Phone: (843) 317-4900

Fax: (843) 317-4910

I CONSENT:



WALKER H. WILLCOX

Attorney for Defendant

Willcox, Buyck and Williams, P.A.

248 W. Evans Street

Florence, SC 29501

Phone: (843) 662-3258

Fax: (843) 662-1342

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Vincent C. Carter d/b/a Elite
Construction Co.

Plaintiff,

Vs.

Eagles Landing Restaurants, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A #: 2016-CP-21-702

COMPLAINT
(Non-Jury Trial)

2016 JUN 21 PM 2:50

The Plaintiff, complaining of the Defendant herein, respectfully alleges as follows:

1. The Plaintiff is a citizen and resident of the County of Florence, State of South Carolina.
2. Upon information and belief, the Defendant is a limited liability company with its principle place of business in the County of Florence, State of South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

3. Heretofore, the parties executed a contract wherein the Plaintiff agreed to perform various construction services to an IHOP restaurant for and in consideration of the sum of Six Hundred Twenty Four Thousand Three Hundred Fifty Four No/100 (\$624,354.00) Dollars.
4. Thereafter, various change orders during construction totaling Two Hundred Sixty Seven Thousand Two Hundred Ninety Seven and 45/100 (\$267,297.45) Dollars were performed at the owner's request during construction. Additionally some change orders resulted in credits in the amount of Forty Eight Thousand One Hundred Thirty Six and No/100 (\$48,136.00) Dollars.

5. The Plaintiff has been paid Two Hundred Twenty Nine Thousand Nine Hundred and 00/100 (\$229,900.00) Dollars and upon information and belief, the Defendant has paid certain vendors directly One Hundred Seventy Five Thousand Three Hundred Eighty Five and 95/100 (\$175,308.95) Dollars. Therefore the total balance owed is Four Hundred Thirty Eight Thousand Three Hundred Six and 50/100 (\$438,306.50) Dollars.
6. Although the Plaintiff has made demand for partial payment in order that he can complete the few minor punch list items which remain, the Defendant fails to remit any payments or communicate any basis for not making payments.
7. Despite repeated demands, the Defendant has failed to pay the balance due and is therefore in breach of contract.

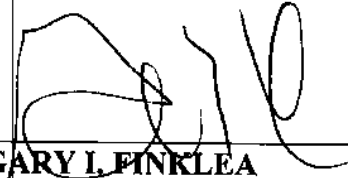
FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

8. Each and every relevant allegation set forth above is incorporated as if fully repeated herein verbatim.
9. Material and labor were supplied to the Defendant for purposes of various improvements to ready an IHOP restaurant for opening.
10. As a result of the work performed and material supplied, the Defendant has been unjustly enriched and has otherwise received a substantial benefit of labor, material and services performed by the Plaintiff.
11. Although demand for payment has been made, the Defendant refuses to pay the Plaintiff any sum due.
12. Plaintiff therefore respectfully seeks an award of actual damages under the principal of Quantum Meruit and alternatively unjust enrichment.

WHEREFORE, the Plaintiff respectfully prays that this Court find the Defendant in breach of contract, award actual damages, attorneys fees, costs, interest and for such other and further relief as the Court deems just and proper.

Florence, South Carolina

March 21, 2016



GARY L. FINKLEA
Attorney for Plaintiff
Finklea Law Firm
814 West Evans Street
Florence, SC 29503-1317
(843) 317-4900
(843) 317-4910 (fax)
gfinklea@finklealaw.com

**THIS PLEADING IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION GAINED THROUGH LITIGATION MAY BE USED AGAINST YOU.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-21-702

Vincent C. Carter d/b/a Elite Construction)
Construction Co.,)

Plaintiff,)

vs.)

Eagles Landing Restaurants, LLC,)

Defendant.)

ANSWER AND COUNTER-CLAIM

Defendant responds to the Complaint as follows:

1. Denies for the lack of information.
2. Admits.
3. Denies.
4. Denies.
5. Denies.
6. Denies.
7. Denies.
8. Denies unless expressly admitted herein.
9. Admits that Elite Construction Group was obligated to provide labor and material to the upfit of an IHOP restaurant (hereinafter generally referred to as the "upfit"). Denies the remaining allegations.
10. Denies.
11. Denies that Defendant owes any amount to Plaintiff.
12. Denies.

CLERK OF COURT
CCJP & CS
FLORENCE COUNTY, SC

2016 MAY -2 PM 3:41

FILED

13. Defendant denies every allegation that is not expressly admitted, qualified or explained.

FOR A FIRST DEFENSE

PAYMENT

14. Defendant paid any and all amounts owed in full and no outstanding amount is owed Plaintiff.

FOR A SECOND DEFENSE

NO PERFORMANCE

15. Plaintiff failed to perform its obligations under the contract and may not bring the current action.

FOR A THIRD DEFENSE

STANDING

16. Upon information and belief, Plaintiff was not the contracting party and he does not have standing to pursue this action.

FOR A FIRST COUNTER-CLAIM

BREACH OF CONTRACT

17. Plaintiff submitted a proposal or bid to perform an upfit for Defendant's IHOP restaurant in Charleston, South Carolina.

18. Defendant accepted the bid and the parties entered into a contract.

19. Plaintiff provided a breakdown of the scope of work it would provide for the upfit.

20. Plaintiff either did not perform agreed upon work or performed work in a deficient manner.

21. Defendant was required to find and pay replacement contractors to finish the work.

22. Plaintiff knew Defendant was up fitting a restaurant and that any construction delay would cause Defendant to lose sales and incur interest and penalties.

23. Plaintiff breached the parties contract.

24. Plaintiff's breach caused Defendant to suffer actual and consequential damages.

25. Defendant is entitled to recover actual and consequential damages from Plaintiff.

FOR A SECOND COUNTER-CLAIM

FRAUD/CONSTRUCTIVE FRAUD

26. Plaintiff submitted a bid to Defendant representing its agreement and ability to perform the upfit.

27. The bid was material and false.

28. Plaintiff either knew or should have known that it could not and would not perform the work quoted in the bid. Also, Plaintiff recklessly disregarded the truth or falsity of the bid.

29. Plaintiff received payment from Defendant for the upfit and Plaintiff failed to pay subcontractors.

30. Plaintiff intended that Defendant act upon its representations.

31. Defendant rightfully relied on Plaintiff's representations.

32. Plaintiff's fraud proximately caused Defendant to suffer actual and consequential damages.

33. Defendant is entitled to recover actual, consequential and punitive damages from Plaintiff.

FOR A THIRD CAUSE OF ACTION
QUANTUM MERUIT/UNJUST ENRICHMENT

34. Defendant paid Plaintiff to perform work on the upfit and conferred a benefit on Plaintiff.
35. Plaintiff received the money and realized a benefit.
36. Plaintiff did not pay subcontractors or materialmen and retained the money under conditions that make it unjust to retain the benefit without paying its value.
37. Defendant was required to hire and pay replacement contractors to perform the work Plaintiff agreed to perform.
38. Defendant is entitled to receive the money it paid to Plaintiff.

FOR A FOURTH CAUSE OF ACTION
NEGLIGENCE/GROSS NEGLIGENCE

39. Plaintiff undertook and owed a duty to Defendant to construct the upfit in a workmanlike manner.
40. Plaintiff negligently, grossly, recklessly, willfully and wantonly breached this duty.
41. Plaintiff's negligence proximately caused Defendant to suffer actual and consequential damages.
42. Defendant is entitled to recover actual, consequential and punitive damages.

FOR A FIFTH CAUSE OF ACTION
INDEMNITY

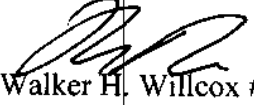
43. Plaintiff failed to pay contractors who performed work on the upfit.

44. Plaintiff must indemnify Defendant for any damages Defendant incurs arising from Plaintiff's misconduct including reasonable attorneys' fees and costs.

WHEREFORE, Defendant requests that the Court dismiss the Complaint, grant Defendants' counter-claims and award Defendant actual, consequential and punitive damages, reasonable attorneys' fees and costs and any other relief the Court deems just and equitable.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By:

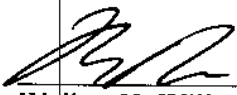

Walker H. Willcox #72608
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: wwillcox@willcoxlaw.com
Attorney for Defendants

April 29, 2016

CERTIFICATE OF SERVICE

I, the undersigned, of the law office of Willcox, Buyck & Williams, as attorneys for Defendants, do hereby certify that I have served the *Defendants' Answer* this April 29, 2016, by depositing the same in the United States Mail in envelopes, sufficient postage prepaid, properly addressed as follows:

Gary I. Finklea
Finklea Law Firm
814 West Evans Street
P.O. Box 1317
Florence, SC 29503
Attorney for Elite Construction Company
and Vincent C. Carter


Walker H. Willcox

FILED
2016 MAY -2 PM 3:41
CLERK OF COURT
FLORENCE COUNTY, SC

State of South Carolina
In the General Court
Twelfth Judicial Circuit
County of Florence

Vincent C. Carter d/b/a
Elite Construction Company,
Plaintiff,

v 2016-CP-21-702

Eagles Landing Restaurants, L.L.C.,
Defendant.

- - -
Special Referee Hearing
Held in the Above-Styled Cause
- - -

Tuesday, January, 23, 2018
Florence, South Carolina
10:55 a.m. - 8:31 p.m.

Before: The Honorable Gene Warr, Esq.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans St. (29501)
Florence, South Carolina
Telephone: (843) 673-9845
E-Mail: Info@qacourtreporting.com
Visit: Www.qacourtreporting.com

A P P E A R A N C E S

For Plaintiff:

Finklea Law Firm

814 West Evans Street

Post Office Box 1317

Florence, SC 29501

By: Gary I. Finklea, Esq.

Patrick B. Ford, Esq.

pford@finklealaw.com

For the Defendant:

Wilcox, Buyck and Williams, P.A.

248 West Evans Street

Post Office Box 1909

Kingstree, SC 29501

By: Walker H. Willcox, Esq.

wwillcox@willcoxlaw.com

I N D E X

Witness: James Allen Free

Direct Examination by Mr. Ford

Page

6

Cross Examination by Mr. Willcox

21

Redirect Examination by Mr. Ford

35

Witness: William Travis Everett

Direct Examination by Mr. Ford

45

Cross Examination by Mr. Willcox

67

Witness: Vince Carter

Direct Examination by Mr. Ford

75

Cross Examination by Mr. Willcox

136

Redirect Examination by Mr. Ford

229

Recross Examination by Mr. Willcox

249

Further Redirect Examination by Mr. Ford

458

Further Recross Examination by Mr. Willcox

458

Witness: Ellen Atkinson

Direct Examination by Mr. Willcox

253

Cross Examination by Mr Ford

270

Redirect Examination by Mr. Willcox

284

I N D E X (Continued)

Witness: Mahammed Ali

	Page
Direct Examination by Mr. Willcox	287
Cross Examination by Mr. Ford	306
Redirect Examination by Mr. Willcox	322
Recross Examination by Mr. Ford	329

Witness: Mohammed Makawi

Direct Examination by Mr. Willcox	332
Cross Examination by Mr. Ford	416

E X H I B I T S

Plaintiff's:

Pg/Ln	Ex.	Description
Premarked	1	Bid
Premarked	2	Contract
Premarked	3	Invoice
Premarked	4	Change Order Form
Premarked	5	Change Order Form
Premarked	6	Change Order Form
Premarked	7	Change Order Form
Premarked	8	Change Order Form
Premarked	9	Owner Credit Form
Premarked	10	Spread Sheet
Premarked	11	Banking Records
Premarked	12	Copies of Checks

E X H I B I T S (Continued)

Pg/ln	Ex.	Description
Premarked	13	Spreadsheet
Premarked	14	Temp. C.O.
Premarked	15	Summons and Complaint

Defendant's:

Pg/ln	Ex.	Description
Premarked	1	Bid
Premarked	2	Contract
Premarked	3	Spreadsheet
Premarked	4	Spreadsheet
Premarked	5	Compensation Detail
Premarked	6	Emails
Premarked	7	Profit and Loss
Premarked	8	Invoices
Premarked	9	Summary
Premarked	10	Email
Premarked	11	Invoice
Premarked	12	Email

(Exhibits were retained by the Court.)

** uh-huh = affirmative
huh-uh = negative

1 Whereupon,

2 THE COURT: This is the matter of
3 Vincent Carter, doing business as
4 Elite Construction Company, versus
5 Eagles Landing Restaurant, L.L.C., Florence County
6 case. And I'm going to hear the matter as special
7 referee and hopefully we'll get it all done today,
8 right, guys?

9 MR. WILLCOX: Uh-huh.

10 MR. FORD: Yeah.

11 THE COURT: All right. Patrick, you're
12 going to call your first witness.

13 MR. FORD: Yes, Your Honor.

14 THE COURT: Unless -- unless there's
15 something y'all want to tell me on the record
16 before we start the testimony.

17 MR. WILLCOX: Judge, we have premarked
18 Plaintiff's Exhibits 1 through --

19 MR. FORD: Thirteen.

20 MR. WILLCOX: -- 13 and all have been
21 deemed admitted with the exception of the
22 change -- basically the change orders and credits
23 which are 4 through 9. So we'll need to lay a
24 foundation for those. And as far as Defense
25 Exhibits, likewise we have admitted to the

1 admissibility of all those, 1 through 9, with the
2 exception of 8 and 9, which we want some
3 foundation on 8. And Number 9 is really just an
4 I.D. Exhibit, but -- but since it's a non-jury
5 matter, we -- we probably don't mind it being
6 admitted once the foundation is made on that,
7 Judge.

8 THE COURT: Go ahead.

9 MR. FORD: Okay.

10 THE COURT: All right.

11 MR. FORD: Your Honor, for our first
12 witness, we call Jimmy Free.

13 Thereupon,

14 James Allen Free,
15 having been first duly sworn by the court
16 reporter, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FORD:

19 Q Mr. Free, would you please state your
20 full name for the record.

21 A James Allen Free.

22 Q And where do you reside?

23 A 4487 Blitsgell Drive, Florence,
24 South Carolina.

25 Q Are you currently employed?

1 A Yes.

2 Q Where are you employed?

3 A Carolina Table Manufacturing.

4 Q And what is your position with
5 Carolina Table Manufacturing?

6 A C.E.O.

7 Q What do you -- can you tell us a little
8 bit about your educational background?

9 A Yes, I've received a B.S. degree in
10 accounting from the University of South Carolina,
11 and was a practicing C.P.A. for 20 plus years with
12 various firms in town.

13 Q Were you ever employed by the
14 defendant, Eagles Landing Restaurant?

15 A Yes, I was.

16 Q How long were you employed with
17 Eagles Landing?

18 A Approximately eight years.

19 Q And what were your duties and
20 responsibilities as an employee with
21 Eagles Landing?

22 A I was the Chief Financial Officer. I
23 did -- and assumed those -- all the relative
24 duties.

25 Q Could you please describe some of those

1 duties with us.

2 A Prepared financial statements, helped
3 negotiate financing for new buildings, oversaw
4 H.R., leases, day-to-day op--- financial
5 operations.

6 Q Did you --

7 A Paid the bills.

8 Q Uh-huh. Have you ever worked on a
9 number of new IHOP Restaurants?

10 A Yes, I've -- it would -- about five of
11 them since -- he had -- he owned three when I
12 joined him, and I think he was up to about eight
13 when I left.

14 Q Did you work on this most recent
15 transaction regarding the construction in this
16 case?

17 A I did.

18 Q And what were your responsibilities for
19 this particular job?

20 A Well, organizing the -- the payments to
21 the contractors, dealing with the landlord as far
22 as the rents were -- the lease payments go, and
23 just the general business side of it.

24 Q How was this particular project
25 financed?

1 A Well, it was financed out of our
2 operations.

3 Q Out of the --

4 A And then we -- Mr. Makawi was going
5 through a divorce settlement and couldn't obtain
6 traditional financing. We did all the other
7 previous ones through the S.P.A., and they were
8 not going to loan him the money until the divorce
9 was final so they would know what he'd have to do.
10 You know, they wouldn't sign off on the loan for
11 that. And then, unfortunately, we started the
12 project before we had financing secured.

13 Q How many -- did the company apply for
14 financing for this particular job?

15 A Yes.

16 Q Through what banks did they apply --
17 the company apply through?

18 A Capital Bank, it's out of Raleigh,
19 Pee Dee Bank, Wells Fargo, several ones.

20 Q And you said they were trying to obtain
21 an S.B.A. loan?

22 A Yes.

23 Q And Eagles Landing never obtained an
24 S.B.A. loan?

25 A No, it did not. It ended up borrowing

1 money from Merchant Financing from
2 American Express. And that hit the cash load
3 pretty hard. It was paying 3,000 something a
4 day -- a business day.

5 Q How many different corporations does
6 Mr. Makawi own that owned IHOP Restaurants?

7 A He had a -- five or six at the time I
8 was there. It was Eagles Landing Restaurants,
9 M.K.K.M., Inc., Dorchester Family Restaurants,
10 Farisco Family Restaurant, and then the real
11 estate was in Eagles Landing Properties, which was
12 a L.L.C.

13 Q And when you -- or you said that the
14 project was financed through the operating
15 account, is there just one operating account for
16 all those companies?

17 A Each company had its own bank account,
18 but it would all funnel into the main operating
19 account at Eagles Landing. So that -- that's --

20 Q All the funds were comingled from the
21 different restaurants into the one account at
22 Eagles Landing?

23 A Yeah. I mean, they -- they would pay a
24 management fee to Eagles Landing Restaurants.
25 That was the management company that...

1 Q What's that management fee, typically?
2 Is it a...

3 A It was generally the profits left over
4 from, we believe, the --

5 Q All of the profits?

6 A It wasn't -- it -- it wasn't -- not a
7 pay so much percent. It was just -- that's where
8 all the payroll and all the bills were getting
9 paid out of there so...

10 Q So --

11 A From the -- collected and deposited
12 into the individual accounts, but then transferred
13 from a sweep to a -- in a -- what they call a
14 sweep account. It would empty it out every day
15 and put it into a master account.

16 Q Were the employees paid from -- for
17 each individual out from the corporation?

18 A They were paid out of Eagles Landing
19 Restaurant, the management company.

20 Q All the employees from all the
21 restaurants were paid --

22 A Yes.

23 Q -- from Eagles Landing?

24 A Yes, we had one -- they got one W-2.
25 They could work in several different stores,

1 several different comp--- but they were employed
2 by Eagles Landing Restaurant.

3 Q I just want to confirm the use of the
4 net profits, from each of the restaurants, would
5 then get all swept into Eagles Landing where they
6 were together.

7 A The profits or the loss, either way.

8 Q And that -- and those were the one
9 source of funding for the IHOP project in this
10 case?

11 A Yes, and then we borrowed money from
12 American Express like a half a million bucks. And
13 I had to pay it back over a year.

14 Q Was that loan from American --

15 A Yes.

16 Q -- Express?

17 A It had to be paid back over --

18 Q Through --

19 A -- 12 months.

20 Q Was that through a credit card?

21 A Well, it was -- if you take
22 American Express or credit cards, they'll loan you
23 so much money, based on your volume, and charge
24 the six percent fee. But that was also funding
25 operations because we -- like we started the

1 project before we had financing.

2 Q Prior to the financing, was Mr. G, or
3 one of his companies, working on selling a
4 restaurant or other property that would help
5 finance this transaction?

6 A Yes, he -- he -- we -- there's a number
7 of locations.

8 Q And was -- did that property get sold?

9 A It sold and closed in September or
10 October of '15, I think.

11 Q What happened with the proceeds from
12 that sale?

13 A They -- they were -- well, there was
14 a -- they were put into four cashier's checks that
15 I never saw.

16 Q What entity was selling the -- the
17 business? Do you recall?

18 A Eagles Landing Properties.

19 Q And that property was located -- or
20 where was that property located?

21 A Lumberton, North Carolina.

22 Q On a typical upfit or renovation for
23 new construction for an IHOP, is it -- what
24 typically happens in terms of financing? Does the
25 financing get secured before the project begins?

1 A Yes, we'll have -- we -- we would pay
2 some upfront costs for architects and permits.
3 But, generally, the contractors wouldn't start
4 until we had a commitment that, okay, we can get
5 you paid. And then we'd use that money that we
6 put upfront -- paid upfront as part of the down
7 payment.

8 Q When did you leave the employment of
9 Eagles Landing?

10 A August of 2016.

11 Q What were your reasons for leaving?

12 A I needed to pursue other opportunities.
13 Wasn't satisfied with my future there and...

14 Q Did any of your reasons have to do with
15 this particular project?

16 A No, it was overall operations.

17 Q You -- you said for the sale of the
18 Lumberton building there were four cashier's
19 checks. Do you know how much each check --
20 cashier's check -- or what the total net from the
21 sale was?

22 A I -- it was in excess of a million
23 dollars -- 1.1 or 1.2. I -- it would be on the
24 closing statement.

25 Q And those were paid to Eagles Landing

1 Properties?

2 A That's who their sales contract was
3 through, Eagles Landing Properties.

4 Q Who would have the authority to obtain
5 the cashier or the funds from the company and
6 issue cashier's checks?

7 A Mr. Makawi.

8 Q To your understanding, was --

9 A My understanding -- well, I had it set
10 up to be wired into the operating account and he
11 changed it.

12 Q Did you leave Eagles Landing because of
13 the cash flow issues it was experiencing? Was
14 that one of the issues?

15 A That was one of them. And just
16 frustrated with the whole situation.

17 Q The whole situation, could you give us
18 some details about that, please.

19 A Well, cash flow, vendors, no
20 advancement, or broken promises to me.

21 Q What are the -- was Eagles Landing able
22 to pay its employees during this time?

23 A It paid them during this time, but it
24 changed a couple of payrolls -- dates, but
25 everybody got paid. But it maybe changed the

1 dates of them.

2 Q Were there any claims asserted against
3 Eagles Landing for failure to pay wages?

4 A Only after separation, but it -- I
5 mean, no general -- there had been -- I -- I would
6 say, no.

7 Q All right. I have no further
8 questions. What was Vince told about paying his
9 bill in this case?

10 MR. WILLCOX: I'd object to the -- I
11 believe that's for hearsay. You asked him was the
12 defendant --

13 MR. FORD: I mean --

14 MR. WILLCOX: -- told by some other
15 person.

16 MR. FORD: -- the state -- a statement
17 from representatives of Eagles Landing, Your
18 Honor. They're parties that would be -- a
19 statement of the party which is not hearsay.

20 THE COURT: You have to identify who
21 would have made these statements.

22 BY MR. FORD:

23 Q Did you make any statements to Jimmy --
24 or to Vince regarding financing of the project?

25 A Yes.

1 Q Did you tell Vince that there was a
2 sale of the building in Lumberton that would be
3 used to finance the project?

4 A I told him we were trying to get S.B.A.
5 financing and then the divorce had it. Told him
6 we were using some of these American Express
7 funds, and if -- you know, that didn't run out, we
8 had a -- were anticipating closing on this sale
9 and we expect we should have some money then.

10 Q Did Mr. Makawi --

11 A And he was --

12 Q -- ever mention using the proceeds from
13 the sale of the Lumberton property to finance the
14 buyout in this case?

15 A Well, he -- he knew we needed the funds
16 to get every -- all vendors taken care of, and
17 payroll, and get back on.

18 Q On any particular job, how -- how does
19 the payments normally work?

20 A Normally you have a loan commitment
21 from a bank, and they -- you get draws from the
22 construction from the bank. Like the contractor
23 will submit a work-in-progress sheet and you draw
24 down. You request a drawdown from the bank to
25 fund that.

1 Q And --

2 A The same thing with the equipment and
3 everything else.

4 Q Does the bank, typically, pay
5 everything that the contractor requests?

6 A Yeah, well, they'd send their own
7 inspectors and make sure the work was done and...

8 Q Does the contractor normally have to
9 chase down the finance company for payments for
10 draws that --

11 A No, they --

12 Q -- the project uses?

13 A -- they -- they would say -- they'd
14 give me or the C.F.O., you know, the current one,
15 the work and then we'd turn that in to the bank.

16 Q In this case, did the contractor,
17 Elite Construction, have to chase down money for
18 draws?

19 A Yeah, he would call me. But, you know,
20 if we had it, we would give it to him but...

21 Q Uh-huh.

22 A Toward the end, there were
23 disagreements and was told not to pay him until he
24 told me.

25 Q How did this project compare to -- to

1 other contracts or other projects that you did?

2 A Well, this one was started without
3 funding, so the -- the payments had to come from
4 operations.

5 Q Who decided to start the project
6 without funding?

7 A The two parties, Mohammed and Vince.

8 Q And did you -- other than the proceeds
9 from the Lumberton sale, were there any other --
10 and the American Express financing -- were there
11 other representations by you or by Mr. Makawi that
12 were made to Vince for -- to induce him to start
13 the project without a typical financing program?

14 A The only statements that were made by
15 me were we were working on trying to get
16 financing.

17 Q All right. The -- in other projects
18 did -- that you've seen were the subcontractors
19 paid directly by the bank, or did the general
20 contractor typically make those payments?

21 A The general contractor.

22 Q In this case, who -- who made the
23 payments to the subcontractors?

24 A Mr. Carter made them to -- to begin
25 with, and then towards the end, I think after the

1 store was even open, Mr. Makawi paid some of the
2 old bills. But, typically, the general contractor
3 pays the subcontractors.

4 Q Why were the -- why did Mr. Makawi have
5 to pay the old bills?

6 A Well, they were -- subcontractors had
7 mechanics liens.

8 Q Had the general contractor been paid at
9 that point?

10 A There's a spreadsheet that has what the
11 general contractor was paid and we went through
12 it. He gave me his --

13 Q Uh-huh.

14 A -- checkbook one time and I spread it
15 out for him --

16 Q All right.

17 A -- what had paid and --

18 Q But to your knowledge, the
19 subcontractors weren't paid because the contractor
20 hadn't been paid.

21 A That's correct. But, I mean, that --
22 you know, the contractors that were paid, were
23 paid from the draws that Vince requested. I mean,
24 he was -- he had subcontractors and labor to pay
25 out of those.

1 Q And this is premarked as Plaintiff's
2 Exhibit 10. Is this similar to the spreadsheet
3 that you had gone through with Vince?

4 A It -- it looks like it could have been
5 derived out of something I prepared, yes. I would
6 have spread his checks.

7 Q So you had access to
8 Elite Construction's bank statements and copies of
9 the checks to --

10 A He dropped them off at my office and we
11 went through them.

12 Q Why did Vince ask you to go through
13 them with him?

14 A Well, so he -- we could verify what
15 he's -- the checks that he had written to
16 contractors.

17 Q Was that the purpose -- for the purpose
18 of obtaining another draw?

19 A Yes, and to verify the draws that he
20 had taken, what he was -- what he was spending
21 them.

22 MR. FORD: Nothing further, Your Honor.

23 CROSS EXAMINATION

24 BY MR. WILLCOX:

25 Q James, and was it your testimony

1 that -- that Mr. Carter knew about these financing
2 issues before he agreed to take this job? Seemed
3 like y'all had -- y'all had conversations about
4 it?

5 A Yes.

6 Q You did? Okay. And, of course, all
7 that goes to what would have happened before he
8 submitted his bid, correct? Or more -- or I guess
9 the financial major of the project, correct?

10 A Well, normally, you get bids from the
11 contractor, and then you put that in your loan
12 package.

13 Q Okay. And -- and Mr. Carter submitted
14 a bid, didn't he?

15 A Yes.

16 Q Okay. And put this -- Plaintiff's
17 Exhibit 1, is that the bid he submitted?

18 A It -- it looks like it.

19 Q Okay. And if you look on the entire
20 bid, the -- are these items that you would assume
21 that the builder would be responsible for, these
22 charges, correct?

23 A I would.

24 Q Okay. And the bid you have is five
25 pages long with the last page being base bid

1 does not include, correct?

2 A Yes.

3 Q Okay. And with a contractor that when
4 you were doing these upfits, you would expect the
5 general contractor to, essentially, give you
6 the -- the bid -- the upfit of the building in a
7 turnkey nature, correct?

8 A Yes.

9 Q Okay. And unless it was put on this --

10 A Well, it just -- yes, it depends on the
11 body of the contract, what it does include and
12 what it doesn't.

13 Q Oh, so -- but you would expect the
14 general contractor to -- to perform the work, or
15 at least be responsible for the work, unless it
16 was found on this base bid does not
17 include, correct?

18 A I would expect them to perform the --
19 whatever it took to get the body of the contract
20 done. I mean, that's -- that could vary from
21 contract to contract.

22 Q Okay. And you see the bid notes.

23 A Yeah, and I haven't seen this since
24 2015, so I'm --

25 Q But --

1 A -- I'm just going in general. I
2 mean...

3 Q Sure. But it's something that
4 Mr. Carter submitted to -- to you and you relied
5 on to hire him, correct?

6 A And that was negotiated between
7 Mr. Makawi and Mr. Carter, correct.

8 Q And, typically, on -- on -- was this
9 the first upfit that Mr. Carter had done?

10 A It's the first upfitting he did for
11 Eagles Landing Restaurants.

12 Q Okay.

13 A I don't know what else he'd done.

14 Q Did you get any other bids for this
15 project?

16 A I believe we've got one from
17 Bench Mark, which is another contractor that did
18 the Lumberton IHOP.

19 Q Okay.

20 A And they -- and they may have done
21 another one, but that's one I know they did.

22 Q Okay. So -- so we had a competing bid,
23 but -- and based on his bid and Benchmark's bid,
24 we decided to go with Mr. Carter, correct?

25 A Yeah.

1 Q And that was based on what was in this
2 bid.

3 A Yes.

4 Q What he agreed to do, correct?

5 A Yeah.

6 Q Okay. And -- and then, there was a
7 contract signed. And I'm going to show you what's
8 been premarked as Plaintiff's Exhibit Number 2.
9 And you don't have to study the whole thing. I --
10 I'm just --

11 A Okay.

12 Q And there was a contract entered
13 into -- entered into with Mr. Carter, correct?

14 A Yes.

15 Q And that was to perform this work at a
16 fixed price, correct?

17 A Well, that's what this initial one --
18 but you always have change orders. I don't know
19 if that's referenced in here or not but -- yeah --

20 Q Well --

21 A -- this is saying here, we're going to
22 do it for this price.

23 Q So -- so it was a -- a fixed price. In
24 other words, if the -- unless there are change
25 orders agreed to by the parties, the contractor is

1 the one who is going to carry the risk of cost
2 going too high, correct?

3 A Or that's -- yeah, but then they have
4 the change orders so...

5 Q Okay. But they -- they'd have to have
6 a change order --

7 A Right.

8 Q -- if they wanted to increase --

9 A That's how --

10 Q -- this contract.

11 A -- a contract usually works. Yes, sir.

12 Q Okay. Then that's -- that's how it was
13 supposed to work in this case, correct?

14 A Yeah.

15 Q Okay. And as far as this construction
16 went, did -- did you often go to the site?

17 A I didn't oversee any construction work,
18 but I would go to the -- I went to the site a
19 handful of times to go over the bills that
20 Vince -- that he had to pay. To verify that we
21 needed to give him a draw. That was just the
22 extent of me going there.

23 Q And didn't -- didn't Eagles Landing
24 have to have people at the site to coordinate this
25 construction?

1 A They had people at the site at -- yeah,
2 he had -- Mohammed Ali was there, and Mr. Makawi
3 was in Egypt most of the time this was going on.

4 Q Mohammed Ali was there and was he there
5 the whole time?

6 A He was there a good bit, yes.

7 Q Okay. And he was -- had to supervise
8 the construction?

9 A Well, he was there doing that.

10 Q Okay. And how about Chris Morris, was
11 Chris Morris there?

12 A Yes, he was a district manager.

13 Q Okay. But he was there at the job site
14 as well, correct?

15 A He was there, too. We had other stores
16 in the area and they would -- they were there a
17 couple times a week or daily.

18 Q Okay. And as far as -- so it sounds
19 like you would go to Charleston and meet with
20 Vince just to go over what he was owed. Do you
21 know what his involvement was day to day at this
22 job site?

23 A Well, he was doing general contractor
24 duties.

25 Q Okay. And that's supposed to be

1 overseeing and supervising the entire project,
2 correct?

3 A That's -- that would be my definition,
4 yes.

5 Q Okay. Is that when -- when you would
6 hire Benchmark -- is that how -- would Benchmark
7 have their people at the job site, a manager
8 supervising the work?

9 A Yes.

10 Q Okay. And after this contract was
11 entered into, Mr. Carter knew and understood that
12 the arrangement was going to be that some of these
13 contractors at Eagles Landing would have to
14 contract with and pay to do this work, correct?

15 A At -- could you repeat this, please?

16 Q Well, some of these bills that
17 Eagles Landing would have to go out and talk to
18 these subcontractors and pay these subcontractors,
19 correct, on this project?

20 A Well, I don't think Mr. Carter
21 anticipated when he started that that was going to
22 happen.

23 Q But he certainly un--- he saw it
24 happening, correct?

25 A Yes.

1 Q Okay. Okay. And this contract -- I
2 mean, I'm sorry -- this job was supposed to occur
3 over the course of -- well, he said in this bid,
4 90 days, correct?

5 A Yeah.

6 Q Okay. And then the contract,
7 substantial completion, 120 days from the
8 beginning date of the contract, correct?

9 A Yes.

10 Q And it didn't happen in 120 days, did
11 it?

12 A It did not.

13 Q Okay. And every day that this
14 restaurant isn't open, as C.F.O., you would know
15 that this is a -- is a -- is a losing proposition
16 for Eagles Landing, correct?

17 A Yes, it was paying rent.

18 Q And losing income from the restaurant,
19 correct?

20 A Yeah.

21 Q And, typically, these restaurants had
22 positive net income cash flow, correct?

23 A Yes, but it was being eaten up because
24 of the way we had to borrow the money. I mean...

25 Q Well, I guess --

1 A It --

2 Q As you know the -- the -- the
3 actual operation cost and income, it -- it would
4 have turned a net income, correct?

5 A Yes.

6 Q Okay.

7 A And -- well...

8 Q Okay. And -- and Mister -- did there
9 come a time when Mr. Carter made a -- a last draw
10 request?

11 A I'm -- yes, I -- I don't know the --
12 the dates, but he -- he did. But then he also
13 when -- you know, quit working because he wasn't
14 get paid.

15 Q Okay. Let me show you this -- this
16 email. And I guess this would be -- this would be
17 Number 10.

18 THE COURT: Defendant's Number 10?

19 MR. WILLCOX: Yes, sir. It's -- it's
20 an email from Mr. Carter.

21 THE COURT: Are you wanting to admit
22 that one?

23 MR. WILLCOX: Yeah, I move to admit
24 this email, Judge.

25 MR. FORD: No objections.

1 THE COURT: This is the email from --
2 from Carter to Free, Defendant's Exhibit Number 10
3 is admitted.

4 MR. WILLCOX: Okay.

5 BY MR. WILLCOX:

6 Q All right. And, Mr. Free, this is a --
7 it's so called Final Draw Request from
8 Elite Construction, correct?

9 A Yes.

10 Q Okay. And that was November, 2015?

11 A Yes.

12 Q Is that when the store opened, correct?

13 A It -- it was right around then, yes.

14 Q Okay. And he says his last final draw
15 request is 104,000, correct?

16 A Yes.

17 Q All right. And there was a punch list
18 submitted to Mr. Carter, correct?

19 A There probably was. I mean, I don't
20 remember sending it, but I'm sure --

21 Q Typically --

22 A -- you know -- or somebody would have
23 before he finished. There always is.

24 Q And, typically, with these type of
25 projects, you have a -- a punch list.

1 A Yes.

2 Q Okay. And do you know if Mr. Carter
3 performed any of those items on that punch list?

4 A I don't know. I don't know what the
5 punch list was. I mean, I don't know what the
6 punch list was but...

7 Q You don't know?

8 A I don't know.

9 Q Okay.

10 A I don't even have the punch list, so I
11 don't -- I can't tell you what he did or didn't on
12 it.

13 Q Well, after -- after this final draw
14 request, did Mr. Carter come back to the job site?

15 A I don't know. Mr. Makawi got another
16 contractor to get a certificate of occupancy.

17 Q Okay.

18 A So -- and I was at the end of that wits
19 of kind of -- I was fussing at him to give us some
20 money.

21 Q So at this point --

22 A So I didn't --

23 Q -- at this point the relation between
24 Eagles Landing and Mr. Carter had deteriorated?

25 A Yes.

1 Q Okay.

2 A Yes.

3 Q And Mr. Carter, essentially, said I'm
4 not done?

5 A Correct.

6 Q Okay. All right. As far as -- Jimmy,
7 most of the first part of your testimony was
8 regarding operations of the--- these -- these
9 L.L.C.'s and -- and this clear -- this paying into
10 a management fee -- this -- this is a system
11 that -- did you help set it up?

12 A Yes.

13 Q Okay. And so it was a system you knew
14 about and you helped set up and...

15 A Right.

16 Q Okay. So...

17 A It was just for -- to try to get things
18 as simple as they could.

19 Q Okay. So he had a business purpose.

20 A Yeah.

21 Q Okay. Jimmy, this other bid submitted
22 by Benchmark, was it more or less than the bid
23 submitted by Mr. Carter?

24 A It -- it was in the same ballpark. It
25 was -- we had had that one first, and we kind of

1 used that to go by --

2 Q Okay.

3 A -- from Benchmark.

4 THE COURT: Yeah, I'm sorry, which one
5 did you have first?

6 THE WITNESS: Benchmark.

7 THE COURT: Thank you.

8 BY MR. WILLCOX:

9 Q So decided to not to go with Benchmark
10 who had done the -- other jobs --

11 A Right.

12 Q -- for you and took -- took a chance on
13 Mr. Carter?

14 A Yes.

15 Q Okay. You recall if it was lower or
16 higher than Vince's bid?

17 A No, but there should be a copy of that
18 somewhere to --

19 Q You don't recall?

20 A I don't.

21 Q Okay.

22 A It was right in that same -- it -- it
23 could have been a little bit higher, but I --

24 Q Who Vince's?

25 A No, Benchmark's. I -- but I know

1 Mr. Makawi and Mr. Carter were tossing around the
2 idea of forming a -- their own company together at
3 one time.

4 Q Okay.

5 A And that would -- would save
6 Eagles Landing money if he was paying himself, you
7 know, part of the contractor's fee. That was --

8 Q And this is something --

9 A That would have been -- they never
10 formed a company, but that was -- they talked
11 about that so -- and that was at the same time
12 they were getting these bids.

13 Q Okay. Now, they're talking about that
14 in the -- before they agreed to these contracts --

15 A Right.

16 Q -- these bids?

17 A Yeah.

18 Q Okay.

19 MR. WILLCOX: No further questions.

20 THE COURT: Okay.

21 MR. FORD: Your Honor, just a couple of
22 follow-up.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MR. FORD:

1 Q Mr. Free, you testified that Mr. Makawi
2 was in Egypt throughout most of the project?

3 A Yeah, he was there a good bit going
4 back and forth.

5 Q You would -- to guess would you say 50
6 percent? Could you give us a percentage?

7 A I -- yeah, that'd be -- that'd be fair.

8 THE COURT: I'm sorry, what would be
9 fair?

10 THE WITNESS: That 50 percent would be
11 fair --

12 THE COURT: Okay. Thank you.

13 THE WITNESS: -- half the time.

14 BY MR. WILLCOX:

15 Q On most projects, were Mr. Makawi out
16 of the country as often as he was in this one or
17 was he, typically, around?

18 A He was, typically, around. I mean,
19 he -- he was always going back and forth, but
20 he -- he was -- he had other --

21 Q There was --

22 A -- marital issues. He was going
23 through his divorce, and had to go over there a
24 bunch for that, and his father was sick as well.

25 Q On a -- on the other jobs that you have

1 worked on, if he was in town, was it typical that
2 he'd be at the job site watching over stuff or
3 just checking in?

4 A He would go -- not as much as he would
5 on this one. I mean, but he -- he would mainly go
6 once the training started.

7 Q Did -- in the past jobs he did, did --
8 his employees, typically, show up at the job sites
9 to check in on what was going on?

10 A No.

11 Q Were you aware of any unexpected issues
12 that arose in this project that might have caused
13 a -- the contractor to extend -- or extend the
14 amount of time to finish the project?

15 A I think they had some mold issues. And
16 just -- that -- those type of things that weren't
17 anticipated until they started knocking down
18 walls.

19 Q And were you aware of any change orders
20 that were submitted in this case?

21 A I --

22 Q With respect to the project?

23 A I -- without -- I can't say that there
24 weren't. I mean, I -- I'm sure that he had delays
25 because of the mold issues and some other wiring,

1 electrical issues.

2 Q Okay.

3 A I -- I'm sure there were.

4 MR. FORD: Nothing further.

5 THE COURT: All right. Thank you,
6 Mr. Free.

7 THE WITNESS: Okay.

8 THE COURT: You're free, Free.

9 THE WITNESS: Free, Free.

10 THE COURT: You're free to go.

11 (Off the record.)

12 MR. WILLCOX: We have asked -- or
13 submitted Exhibit Number 8, which are invoices
14 from a plumber, Bishop and Sons, who had to come
15 to the job site there to repair some -- what we
16 allege as deficient plumbing. And we were going
17 to proffer that through Mr. Makawi who was aware
18 of the work done and the invoice and -- and that
19 it was paid. My understanding is, they want to
20 question their plumber about it -- about the
21 invoice and our position is, is that if they
22 question the plumber about it, we'd ask for it to
23 be admitted. Typically, if he's going to -- if
24 it -- if he -- if he's going to challenge the --
25 the work done or -- or what's on the -- on the

1 invoices.

2 THE COURT: Okay.

3 MR. FORD: Your Honor, that -- we
4 said -- we actually move now our motion in limine
5 to -- to exclude this particular set of invoices
6 from Bishop and Sons on -- first one that -- that
7 it's hearsay. It's provided by a -- a non-party
8 who's not here to testify to -- to it. Second of
9 all, while Mr. Makawi might have knowledge of this
10 stuff being paid, he does not have knowledge as to
11 what was wrong, whether it was related to the --
12 whether it was just typical maintenance, or
13 whether it was something that needed to be
14 repaired that -- that all would be required to
15 come into expert testimony. Someone who's
16 familiar and has special knowledge of plumbing
17 that can explain to what -- why these repairs were
18 necessary. And he -- he's not -- he's not --
19 unless Walker wants to qualify him as an expert in
20 plumbing, we do believe that it would have to be
21 excluded on that ground, as well, in addition to
22 it being hearsay.

23 THE COURT: Well, I think Mr. Makawi
24 could testify about that, and I don't know how
25 much he knows about plumbing. He may know a lot.

1 We can find that out. If we're going to do this,
2 you know, my anticipation is, is he's going to
3 testify about it. If it turns out that he cannot
4 get us past the things that would be -- really
5 goes to the heart of your objections, then I will
6 exclude what Mr. Everett is going to testify
7 about.

8 I think the most efficient way for us to
9 do it is I'm going to assume for now he is going
10 to -- to testify in a way that I'm going to be
11 able to admit it. So I think we're going to -- I
12 think we're going to end up admitting it. So I'm
13 going to let you go ahead and use it. And,
14 Mr. Everett, if it turns out I'm wrong, I'll say,
15 hey, we shouldn't have admitted it, and it's not
16 in here, and I'll just ignore everything. I'll
17 strike everything that Mr. Everett says. I just
18 want to move on.

19 MR. FORD: Thank you.

20 THE COURT: Does that sound all right
21 with y'all?

22 MR. FORD: Yes.

23 MR. WILLCOX: Yes, sir.

24 MR. FORD: Your Honor, as a preliminary
25 matter, I would move to enter into evidence

1 Plaintiff's Exhibits 4, 5, 6, 7, 8, and 9. And
2 I'm sorry, Your Honor, and also 3. Those are
3 the --

4 THE COURT: Three?

5 MR. FORD: Yes, those are change orders
6 on the product -- on the project and also -- and
7 credit -- an owner credit form for what credits
8 were given off to the discussions that
9 happened between Mr. Makawi and Vince Carter, the
10 owners of the respective businesses in question.
11 The -- the contract itself, Your Honor, which has
12 been entered as Exhibit 2...

13 THE COURT: Is it 2?

14 MR. FORD: Yes.

15 THE COURT: Did y'all agree to that
16 one?

17 MR. WILLCOX: Yes, sir.

18 MR. FORD: Yes, Your Honor.

19 THE COURT: All right.

20 MR. FORD: Subcon--- the contract sets
21 forth the -- what constitutes the -- the
22 contracts -- the total documents for the contract,
23 Your Honor. And there's some -- some
24 contemplation of additional -- additional
25 documents that not -- I don't know that everyone

1 is going to admit the architect drawings and all
2 that stuff today. But also it's typical in the
3 construction transaction to have change orders for
4 this type of work. The parties can only give an
5 estimate at the time of what -- what they believe
6 based on -- but when you get into the project, you
7 don't know what's going to happen. So we would
8 ask that you admit these change orders even if
9 they are -- are in terms of contract law under the
10 evidence.

11 Well, we would ask that -- we've also
12 asserted unjust enrichment and quantum meruit,
13 and that these were ben--- extra benefits
14 above and beyond the contract that -- that were
15 received. And therefore, we would be entitled to
16 admit them for showing the -- the value conferred
17 upon the defendant in this case for which the
18 plaintiff would be entitled to.

19 MR. WILLCOX: Judge, we object to their
20 admissibility based on -- our contention is, we
21 didn't agree to it, these change orders. They're
22 trying to variate the written agreement that's,
23 without question, been signed and agreed to by the
24 parties. It's got a merger integration clause in
25 that -- in that agreement. This is -- these are

1 documents prepared by summary documents. That
2 they don't go into any great detail about what the
3 charges are. These are summary documents prepared
4 by -- by the plaintiff that's self-serving. And
5 we -- we don't think they're admissible to -- to
6 show a -- a variation of the contract or even,
7 really, that the charges were incurred as he
8 summarizes on the -- on the documents.

9 THE COURT: What I'm going to do at
10 this time is I'm going -- I'm going to -- I
11 don't -- I don't -- I've not read the contract. I
12 don't -- there's a lot of things here I expect
13 I've not seen that I need to look over. For the
14 purpose of moving forward, I'm going to
15 conditionally admit them. But I'm going to
16 reserve the right to say, I shouldn't have
17 admitted them and, therefore, what you did
18 regarding that doesn't count.

19 MR. WILLCOX: Your Honor --

20 THE COURT: Unless y'all tell me some
21 reason you don't want me to do that that I can be
22 persuaded by it.

23 MR. FORD: I think it's what we talked
24 about earlier.

25 MR. WILLCOX: To some extent, this

1 witness is out of order, and if Vince would have
2 gone first, he would have laid the foundation of
3 the Exhibits. So --

4 THE COURT: I -- I understand.

5 MR. WILLCOX: -- we -- we may reference
6 them for I.D. purposes, and Patrick will ask about
7 the scope of the work reflected in the change
8 order. But Vince will be the one that'll actually
9 come and lay the foundation for the document
10 itself. So this witness will testify to the work
11 and nature of the work, and we may just reference
12 it for I.D. so it just helps --

13 THE COURT: Okay.

14 MR. WILLCOX: -- when we go back and
15 talk about it.

16 THE COURT: If -- if I do otherwise, if
17 I say, well, I'm not going to admit them and then
18 I around, well, I should have, then I -- I've made
19 it irreversible. I can't go back and fix that.
20 If I do it this way, I can go back and fix it.
21 And I'll just strike it and count. Because
22 that's -- that's why I'm saying what I'm saying
23 here. So let's -- let's -- we'll admit them --
24 conditionally admit them. I hope that's okay
25 to -- to call it that. If not, then we'll figure

1 out how to deal with it.

2 MR. WILLCOX: Thank you.

3 MR. FORD: Thank you, Your Honor.

4 THE COURT: Will you state your full
5 name for the record.

6 MR. EVERETT: William Travis Everett.

7 THE COURT: I'm sorry, wait -- I'm
8 sorry, I forgot. Raise your right hand and I know
9 you'll tell the truth anyway, but we got to get
10 you sworn in.

11 Thereupon,

12 William Travis Everett,
13 having been first duly sworn by the court
14 reporter, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FORD:

17 Q Mr. Everett, could please, again, state
18 your name for the record?

19 A William Travis Everett.

20 Q And where do you currently reside?

21 A I live in Hanahan, South Carolina.

22 Q Can you please describe for us your
23 educational background?

24 A High school graduate with a few years
25 of college.

1 Q Do you have any degrees --

2 A No --

3 Q -- any associate degrees or --

4 A No, I do not.

5 Q What -- who is your current employer?

6 A I am currently employed by

7 Everett Services. I am my own boss.

8 Q And what is your professional trade?

9 A Plumbing for 17 years.

10 Q Did you work on this project in
11 question?

12 A Yes, I worked on this project in
13 question.

14 Q DO you have any licenses from
15 the L.L.R.?

16 A I do not have a plumbing license. I
17 was working under a licensed contractor for this
18 job.

19 Q Who was the licensed contractor you
20 were working under?

21 A Kessler Plumbing.

22 Q Are you familiar, not only with the
23 plumbing on this job, but other aspects of the
24 work on this particular project?

25 A Yes, sir.

1 Q And I'm going to -- to just reference
2 these -- some of these documents now. But I'll,
3 first, ask you to identify Plaintiff's Exhibit 5.

4 A Okay.

5 Q Are you familiar with the -- the mold
6 issues on this project?

7 A Yes, sir. It delayed us a day for the
8 tear out to be done.

9 Q And what -- what was required to be
10 done in order to resolve the mold issues?

11 A From my understanding, it was all
12 sheetrock ripped out, all the insulation ripped
13 off the walls, and then a treatment would be done
14 in order for everything to be put back.

15 Q Before the -- and -- and sorry, about
16 your --

17 MR. WILLCOX: Judge, I object. I'm
18 confused. He's a plumber and I -- I don't know if
19 you're -- you're testifying about things he
20 actually witnessed.

21 MR. FORD: Yes.

22 MR. WILLCOX: He's talking about
23 remo--- remove the sheetrock and mold --

24 MR. FORD: Your Honor, I'll lay the
25 foundation.

1 BY MR. FORD:

2 Q Were you present when the mold
3 remediation work was -- took place?

4 A I was present when it was notified that
5 it needed to be done because of the plumbing that
6 was behind the sheetrock and mold in some of the
7 areas, which was more than just the dining area.

8 Q Were you required -- or was Kessler
9 Plumbing or any of its -- or you, yourself,
10 required to go in and remove any of the plumbing
11 for the mold mediation?

12 A We were required to delete existing
13 plumbing to -- in order to put new plumbing in
14 place. That is why I know about the situation.

15 Q So when you came to the job site, all
16 of the drywall had been pulled off the walls?

17 A All the drywall was pulled off in the
18 kitchen area and part of the dining area. Not the
19 bathrooms as that -- that point.

20 Q And your prior visits to the job site
21 before the mold issue was discovered, was that
22 drywall all intact?

23 A Correct.

24 Q All right. Did you observe any other
25 work that was done for the mold remediation?

1 A I -- all I observed was the gentleman
2 and Vince talking about getting it done, and it
3 had to be done right away because it was slowing
4 up the project.

5 Q At that time, did Vince tell
6 Mr. Makawi -- I'm sorry -- so you're saying Vince
7 had a conversation with Mr. Makawi? Is he --

8 A Yes.

9 Q -- is that the gentleman you're
10 referring to?

11 A Yes, it is.

12 Q Did you --

13 A And the other gentleman is not here
14 at -- that was there at the time.

15 Q Did you overhear the conversation
16 between Vince and Mr. Makawi?

17 A Yes, sir, I did.

18 Q Could you tell us a little bit about
19 what you recall being discussed?

20 A Mr. Makawi was telling Vince it needed
21 to get done, needed to get done right away. Vince
22 said that he would have to hire more people to get
23 it done faster. He said, do what's got to be
24 done. We need this taken care of.

25 Q Did Vince tell Mr. Makawi whether it

1 would cost extra?

2 A Yes, he did.

3 Q Did he mention it requiring a -- a
4 change order?

5 A Yes, he did.

6 Q And I'm just going to ask you to
7 identify what has been premarked as Plaintiff's 6,
8 but not yet been admitted -- or conditionally
9 admitted.

10 A Yes.

11 Q Could you please identify it?

12 A Yes, this is the change order form for
13 the back area of the kitchen where the job had
14 been started, and Mr. Makawi decided that he
15 wanted the whole kitchen basically redone,
16 everything, instead of just the areas that we were
17 originally supposed to work in.

18 Q And do you have any personal knowledge
19 of the work performed with respect to this change
20 order?

21 A Yes, I do. I was there on the day for
22 cutting the concrete. I was there for
23 jackhammering, making sure they were doing
24 everything that we needed out of our way so we
25 could finish our job.

1 Q Did you say that you overheard another
2 conversation between Vince and Mr. Makawi
3 regarding this --

4 A Yes, I did.

5 Q -- the change order? And did Vince
6 tell Mr. Makawi that this would cost extra to do
7 this work?

8 A Yes.

9 Q And did he once again say he'd have to
10 do a change order for this work?

11 A Yes, and Mr. Makawi said, get it done.
12 I don't care. We'll be fine.

13 Q So you -- I just want to make sure I
14 heard you correct. You testified that you
15 witnessed -- or you personally saw the
16 jackhammering being done to remove the concrete
17 floor?

18 A Yes.

19 Q Did you witness the removal of all the
20 completed walls that were in the back of the
21 kitchen?

22 A Yes.

23 Q Did you witness removal of three inches
24 of concrete between the tile and the original
25 concrete slab on the kitchen floor?

1 A Yes.

2 Q Did you witness the reinstallation of
3 all the new wood and metal walls?

4 A Yes.

5 Q And did you partake in the installation
6 of the plumbing back inside the walls?

7 A I put every bit of plumbing inside
8 those walls.

9 Q And did you witness --

10 A Twice.

11 Q And did you witness the electricians
12 doing their work on those walls?

13 A Yes.

14 Q And so I'd like to ask you to identify
15 what's marked as Plaintiff's Exhibit 4. Are you
16 familiar with the work performed regarding this
17 change order?

18 A I'm familiar with Mr. Makawi asked for
19 more people to be there to finish the job for
20 every trade.

21 Q Did Mr. Makawi specifically mention
22 anything regarding more electricians?

23 A Yes.

24 Q Can you give us a little bit more
25 detail regarding the conversation -- I presume

1 it's between Mr. Makawi and Mr. Carter?

2 A Yes, I was standing really close to
3 Mr. Carter because he asked me how much it would
4 cost for us to have more people come. And I told
5 him that our contract stated it was for,
6 basically, and my helper. Mr. Makawi wanted more
7 people for plumbing. He told Vince he wanted more
8 electricians. He wanted more of everything to get
9 the project moving faster. That it was going too
10 slow.

11 Q Did Vince tell Mr. Makawi that this
12 would cost extra to bring in more resources?

13 A Yes, he did.

14 Q Did you inform Vince that it would cost
15 extra to bring in more plumbers?

16 A Yes.

17 Q Do you have any knowledge as to whether
18 Vince or Mr. Makawi hired additional contractors?

19 A I know that there was about ten
20 electricians in the -- the next day.

21 Q Ten electricians. More than -- than on
22 the previous day?

23 A On the previous day there was only two
24 guys.

25 Q And do you know which company those

1 electricians worked for?

2 A Not the company name. They just wear
3 plain t-shirts.

4 Q I'm going next to ask you to identify
5 what's marked as Plaintiff's Exhibit 8.

6 THE COURT: Eight?

7 MR. FORD: Yes, Your Honor. Did I
8 skip 7?

9 THE COURT: I think you did.

10 MR. FORD: I might have.

11 BY MR. FORD:

12 Q Well, we'll start with 8. Would you
13 please identify what's marked as Plaintiff's
14 Exhibit 8.

15 A It's the change order for the tile to
16 be installed -- or carpet originally was planned
17 to be installed.

18 Q And do you have any knowledge of the
19 work that was performed in regards to that change
20 order?

21 A I was told about this -- I was informed
22 of this when it needed to be done because Vince
23 asked me if I knew any local tile company that
24 would bid the job to -- to do the work being
25 stated.

1 Q Were you aware of any conversations
2 between Vince, or Mr. Makawi, or any of the
3 representatives of Eagles Landing that made this
4 particular request?

5 A Yes, I was there the day that
6 Mr. Makawi asked for tile to be installed instead
7 of carpet.

8 Q Are you familiar with the terms of the
9 contract or the bid provided by --

10 A No.

11 Q -- Mr. Carter?

12 A I do not know the numbers of their
13 contracts.

14 Q Do you -- were you aware of whether or
15 not carpet was supposed to be installed in the
16 area initially?

17 A According to the plans, yes.

18 Q You had a chance -- you had the
19 opportunity to review these plans?

20 A Yes, we reviewed all the plans.

21 Q Were tiles installed in the area that
22 Mr. Makawi asked for them to be installed?

23 A Yes.

24 Q Did Vince tell Mr. Makawi or whoever
25 the a--- relevant agent of Eagles Landing that

1 this would be extra or --

2 A Yes.

3 Q -- would cost additional money? Did he
4 tell them it would be a change order?

5 A Yes, he did.

6 Q I'll pass the next and ask you to
7 identify what was marked as Plaintiff's Exhibit 7.

8 A I cannot help you with Exhibit 7.

9 Q So as the plumber on the job, what
10 specifically were you responsible with?

11 A I was responsible for after the
12 concrete was cut, finally everything moved out the
13 way completely, to replace and then to install
14 new, and that is what we did.

15 Q Did you install new plumbing behind the
16 walls as well?

17 A Yes.

18 Q I'm going to pass you what is marked as
19 Defendant's Exhibit 8. If you could, please, just
20 review.

21 (Off-the-record Discussion.)

22 MR. WILLCOX: We're looking over
23 Defendant's Number 8, Your Honor?

24 THE COURT: Yes. Let me make sure I've
25 got a copy.

1 THE WITNESS: Is the date of business
2 operations beginning? That was not any of this.

3 MR. FORD: Your Honor, I beg the
4 Court's indulgence for one moment.

5 THE COURT: Yes, sir.

6 MR. WILLCOX: We're trying to locate
7 the temporary C.O.

8 MR. FORD: I've got it.

9 THE COURT: Is this Exhibit Number 8
10 being admitted into evidence?

11 MR. WILLCOX: That's the one that --

12 THE COURT REPORTER: Do you want to go
13 off the record?

14 THE COURT: Yeah, we'll go off the
15 record.

16 (Off the record.)

17 BY MR. FORD:

18 Q Mr. Everett, would you please identify
19 this document.

20 A This is a temporary C.O. means the
21 business can open for operations on the
22 23rd of October, 2015.

23 Q Based upon the timeline or knowing that
24 the business could open on October 23rd, 2015,
25 could you review these documents? And I'll ask

1 you about each one as we go through.

2 A Okay. The first one is obvious. Okay.

3 Q All right. I'm going to start with P,
4 the first page of Exhibit 8. Would you please
5 read the description of the work performed.

6 A I'm going to read what Bishop and Sons
7 writing is. Ran 60 foot small sewer cable with
8 speed head down to kitchen floor sinks. Clear
9 grease, pulled back plastic, bread ties and paper
10 towels. That is obvious maintenance from people
11 using it. Especially if you have bread ties,
12 plastic.

13 Q All right. Is that the quote for batch
14 or invoice for the --

15 A Yes, it is.

16 Q -- first page? And since you were a
17 plumber on the job, were you familiar with all the
18 plumbing work that was done?

19 A Yes, sir, I am.

20 Q It's your contention that this is
21 maintenance that occurred almost --

22 A That's six months.

23 Q That's for 2017 so isn't that from
24 October?

25 MR. WILLCOX: 2015.

1 BY MR. FORD:

2 Q 2015. So that's a year and a half?

3 A Yeah, that's 18 months later.

4 Q And this is just -- this is normal
5 routine maintenance that would happen --

6 A Yes, it is.

7 Q -- in the course of using these
8 fixtures?

9 A Especially if people are putting bread
10 ties and plastic and paper towels down drains.

11 Q All right. Let's move to the next
12 invoice, and it's page three of Defendant's
13 Exhibit Number 8.

14 A Uh-huh.

15 Q If you could read -- once again read
16 the work performed on the quote.

17 A It says installed recirculation pump.
18 Tested it, is working. And that was 3/22/17,
19 which would be 15 months after C.O.

20 Q Were you asked or required to install a
21 recirculation pump at the job?

22 A Yes, we did.

23 Q Y'all installed it?

24 A We installed a new one before the job
25 was completed.

1 Q When was that installed?

2 A That would have been installed July,
3 September of 2015.

4 Q How often do those need to be
5 reinstalled?

6 A It depends on the manufacturer. They
7 can last 12 months. They can last 18 months.

8 Q But given the time frame here being 15
9 months, if this -- you believe this is routine
10 maintenance, or is it something that would have to
11 be replaced due to improper installation?

12 A That would have been just routine or
13 the fact that it was just out of warranty at --
14 right away. That's why it was the way it -- a new
15 one is installed.

16 Q But it's not related to -- to -- to the
17 installation of the previous one due to a
18 defect -- or defect in installation?

19 A It's not a defect in installation if it
20 was working for 12 months without a problem.

21 Q I'm going to move next to what I
22 believe is page five of Defendant's Exhibit 8. If
23 you could again read the scope of work from the --
24 the work order as a quote.

25 A It says, installed a new solid plate

1 over old floor drain and that was 2/13/17. So
2 that's, once again, over a year there.

3 Q Is it typical to have to install a new
4 soft plate from over -- over a floor drain within
5 a year or so after installation?

6 A In the restaurant business, yes.
7 They're just brass and they crack.

8 Q So in your experience -- or based on
9 your experience, this is just routine maintenance?

10 A Yes.

11 Q And it's not related to an improper
12 installation on the part of the --

13 A It says, old drain, so there was quite
14 a few old drains that were still in the front area
15 past the kitchen wall.

16 Q Is it possible that some of the drains
17 weren't even replaced during the construction?

18 A Correct. It doesn't say where that is
19 in the -- in the kitchen area.

20 Q All right. We'll move to what's page
21 seven of Defendant's Exhibit 8. Would you read,
22 again, the description of -- of the work -- the
23 scope of the work?

24 A All right. This is January, a year
25 later. I had to clean out trough drain by the

1 cook station full of food. The line was so full I
2 used a small sewer machine, snake it, and then one
3 by the dishwasher. Told the managers to keep the
4 trough drains clear in the future.

5 Q Were you -- did you have any part in
6 installing this particular plumbing on the job?

7 A I installed the trough drain.

8 Q And when you installed the trough
9 chain -- drain, did they have debris or food in
10 it?

11 A No, it did not.

12 Q Is it your experience and opinion that
13 this is just routine maintenance as a result of
14 the restaurant operating --

15 A Yes, it is.

16 Q -- for over a year? All right. Moving
17 to what is page nine of Defendant's Exhibit 8.
18 Could you please read to us the description of the
19 work for this next invoice.

20 A Replace a mixing valve in
21 February of 2017. But it says, for the mixing
22 valve in the restroom.

23 Q What is a mixing valve?

24 A Mixing valve is where hot and cold
25 water mixed together make tempered water so you

1 don't burn your em--- employees or restaurant
2 people's hands when they go to wash in the
3 restrooms.

4 Q Did you install the mixing valves in
5 this block?

6 A The restroom? Did not. The mixing
7 valves to be installed because they were mixing
8 valve -- the mixing valve before that was found to
9 be in good working condition.

10 Q So these were just -- the mixing valves
11 were just reused from the previous ones.

12 A Yes.

13 Q Before it was -- upfitted?

14 A Yes.

15 Q So this isn't related to the scope of
16 work -- or the contract work done?

17 A No, it was not.

18 Q Is that just routine maintenance?

19 A That would just be routine maintenance
20 from it going bad finally.

21 Q All right. And this is the final page
22 of Defendant's Exhibit 8. If you could, please
23 read the repairs work.

24 A Installed new sentence temporary
25 control valve. Test and set temperatures. That's

1 the same day.

2 Q Okay.

3 A That's the same product.

4 Q Is that the same invoice?

5 A Yeah, this -- this is the day he
6 actually put it in. This is the day when he
7 noticed it needed to be done. And then the
8 approval. So he came one day, saw what was wrong.
9 They approved it and then came in the next day --

10 Q All right.

11 A -- to install it.

12 Q So that was related then to that mixing
13 valve?

14 A Yes.

15 Q Now, Mr. Everett, as a -- how often --
16 or how present were you on the job -- or how long
17 were you on the job in this case?

18 A For IHOP I was there a good three, four
19 weeks.

20 Q And while you were there for those
21 three to four weeks, was -- was Vince --
22 Mr. Carter present at the site?

23 A Mr. Carter was present every day that I
24 was on the job site.

25 Q Was he there supervising and -- and

1 directing people where to go?

2 A Yes, he was.

3 Q Otherwise in your experience, was he
4 fulfilling his obligations as the general
5 contractor?

6 A Yes.

7 MR. WILLCOX: I object to that
8 question.

9 THE COURT: Yeah. He wouldn't know
10 that, I don't think, so I'll sustain the
11 objection.

12 BY MR. FORD:

13 Q Were you familiar with -- or did you
14 witness any Eagles Landing representatives or
15 employees visiting the job site?

16 A The gentleman that I would see with him
17 is not here today. He would be there a few
18 days -- occasionally with Mr. Mohammed.

19 Q Would he come down on days that
20 Mr. Mohammed was not there?

21 A Never saw him without Mr. Mohammed.

22 Q How often did he come around?

23 A When Mr. Mohammed was there, I would
24 see him, which was, you know, maybe five times on
25 the job.

1 Q And when he -- he was present at the
2 job site, how long was he there for?

3 A As long as Mr. Mohammed was there. You
4 know, four or five hours, and then they would do
5 whatever they had to do. I'm not their
6 babysitter.

7 Q Do you know the name of the gentleman
8 that was with --

9 A Mr. Ali.

10 Q Mr. Ali? Were there any other Eagles
11 employees that you witnessed come visit the job
12 site?

13 A Whenever I did the trim out in the
14 kitchen, a gentleman that said that he was the new
15 manager was there.

16 Q His name?

17 A His name was Chris something. I don't
18 know his last name.

19 Q And how often did Chris visit the job
20 site while you were there?

21 A I was there two days and saw Chris
22 there both days.

23 Q All right. And did he stay all day or
24 did he stay like an hour?

25 A I do not know how long he was there.

1 Q From what you witnessed, did those --
2 the representatives by Mr. Makawi,
3 Mr. Ali, or Mr. Chris, for lack of knowing his
4 last name, did they perform any supervisory
5 duties? Did they ask the contractors what -- what
6 was going on, what the status was?

7 A Mr. Malawi did.

8 Q Mr. Makawi.

9 A He would -- he would yell at us to get
10 stuff done, get faster, more people.

11 Q So in your experience, every time
12 Mr. Makawi visited the job site, it was,
13 basically, to tell everyone what to do and to do
14 it faster?

15 A Yes.

16 Q Okay.

17 MR. FORD: All right. No further
18 questions, Your Honor.

19 CROSS EXAMINATION

20 BY MR. WILLCOX:

21 Q All right. Mr. Kessler, you're a
22 plumber, right?

23 A I'm Mr. Everett, but yes, sir.

24 Q You work with Kessler?

25 A I worked for Kessler during this

1 project --

2 Q Okay. So --

3 A -- as a subcontractor.

4 Q And you -- you were there for every --
5 every day for three to four weeks is your
6 testimony?

7 A I was there for about three or four
8 weeks out of the whole length of the project.

9 Q Were you there all day long for three
10 or four weeks?

11 A Yes.

12 Q Okay. And when during the project was
13 that, what month?

14 A When we first started was May, June.

15 Q Okay.

16 A And continued until October.

17 Q All right. So then these change orders
18 you -- you testified about -- well, one of them
19 you said an agent -- you ever heard of an agent
20 from Eagles Landing. How did you know he was an
21 agent for Eagles Landing? I mean --

22 A I never said the word agent.

23 Q I mean, we can -- we can read back the
24 transcript, but the last one you said that an
25 agent of Eagles Landing was --

1 A I said the gentleman that I saw with
2 Mr. Mohammed was a -- a guy named Ali. I don't
3 know what his job was. That's who I saw with him.

4 Q And so you were working plu--- working
5 on the plumbing, and you just happened to overhear
6 some of these conversations take place. Were --
7 were you standing in the group while they're
8 talking? I mean, would -- would they talk to you?

9 A For some of the -- for some of the
10 conversations I was standing right next to the
11 group.

12 Q Kind of eavesdropping?

13 A Yeah.

14 Q Okay. And these change orders you were
15 shown, would -- did all of these conversations
16 happen on the same day?

17 A No, sir.

18 Q Okay. And these change orders you
19 were -- you were shown, had -- had you ever seen
20 these before?

21 A The paperwork? No, sir.

22 Q Yeah. Okay. So you -- you don't --
23 you weren't shown the -- the change order. You
24 don't know what Mr. Makawi was shown. You don't
25 know if he ever saw these change order forms, do

1 you?

2 A No, I do not. I just --

3 Q Uh-huh.

4 A -- know it was spoken.

5 Q You certainly didn't see him handed a
6 change order form right there when they have a
7 conversation, did you?

8 A No, sir.

9 Q Okay. But you heard Mr. Vincent say
10 that it's outside the scope and the change order
11 needed to be done?

12 A Yes.

13 Q Okay. But you don't know if it was
14 ever actually done, correct?

15 A I do not know.

16 Q Okay. And you said this mold delayed
17 the project by one day?

18 A For me.

19 Q For you.

20 A Yes, sir.

21 Q Okay. And these conversations you
22 overheard -- so you say you overheard, you -- you
23 don't know what day did they -- when did they
24 happen?

25 A I don't have a calendar on me when I

1 wrote down each day these things happened. No,
2 sir.

3 Q Are you --

4 A I just know I was out there when some
5 of the conversations happened because of the tile
6 for instance. Vince asked me if I knew a local
7 tile guy that would come finish because the tile
8 guys that were there was not fast enough and he
9 didn't want them.

10 Q So you don't know when these --

11 A I don't know --

12 Q -- alleged conversations happened?

13 A -- the dates. No, sir.

14 Q Okay. And you, obviously, don't know
15 the amounts it took to do these change orders,
16 correct?

17 A No, sir, I do not.

18 Q All right. And it didn't all happen on
19 the same day, correct?

20 A No, sir.

21 Q Okay. And you -- you don't -- you're
22 not familiar with the contract of the bid, and you
23 don't know what needed to be changed, ordered, or
24 what?

25 A I just -- I know the contract of the

1 plumbing.

2 Q You know the plumbing, correct?

3 A Yes, sir.

4 Q All right. And you've been plumbing
5 for 17 years. You don't have a license?

6 A No, sir.

7 Q Why is that?

8 A Because I've worked for different
9 people for 17 years.

10 Q What's involved with -- with getting a
11 license to...

12 A Financially, you've got to be stable to
13 own your own business.

14 Q Okay.

15 A And it's not something that I was ready
16 for.

17 Q Okay. Were you ever -- after the -- at
18 least the temporary C.O. was done, were you ever
19 notified about a punch list?

20 A Yes, sir.

21 Q Did you ever go back and do any of the
22 items on the punch list?

23 A Yes, sir.

24 Q Okay. What items did you do?

25 A We had to re-caulk the sinks in the

1 bathroom. We had to re-caulk around the
2 escutcheons because the -- it was not good enough
3 for the DHEC. We had to caulk the toilets down.
4 They wanted them caulked for DHEC purposes, just
5 minor things.

6 Q Okay. Was this before the restaurant
7 opened or after?

8 A The restaurant was in their training
9 process. They were open.

10 Q Okay. And they weren't open for
11 business, but they were training?

12 A They were training and they cooking.
13 They were doing things like it was a normal
14 business day --

15 Q Okay.

16 A -- while we went to do their punch
17 list.

18 Q But they didn't have you pay them.
19 Did -- did they have --

20 A No customers.

21 Q Okay. No paying customers. And -- and
22 Vince was the general contractor on this job,
23 correct?

24 A Yes, he was.

25 Q Okay. Do -- this temporary C.O. you

1 were given, why -- do you know why there was a
2 temporary C.O.?

3 A Yes, he had to have a temporary C.O. so
4 he could start training and open the restaurant
5 within a week.

6 Q Okay. Why not the permanent C.O.?

7 A You -- you always get a temporary C.O.
8 first. That's just how it always works.

9 Q In Charleston?

10 A Yes, sir.

11 Q Okay. When you looked at the plans and
12 specifications, you were only looking for the
13 plumbing details, correct?

14 A Correct.

15 Q Okay. So you don't know -- you won't
16 be able -- be able to testify about the other
17 details on the plans and specifications, correct?

18 A No, sir.

19 Q Okay.

20 MR. WILLCOX: Those are all the
21 questions I have.

22 THE COURT: Okay.

23 MR. FORD: Nothing further, Your Honor.

24 THE COURT: All right. Thank you,
25 Mr. Everett.

1 THE WITNESS: Thank you.

2 THE COURT: Appreciate you being here.

3 MR. FORD: I'd like to call my next
4 witness, Vince Carter.

5 Thereupon,

6 Vince Carter,
7 having been first duly sworn by the court
8 reporter, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FORD:

11 Q Mr. Carter, can you please state your
12 full name for the record.

13 A Vincent Karl Carter.

14 Q Where do you reside?

15 A Mount Pleasant, South Carolina.

16 Q All right. Are you the owner of
17 Elite Construction, Incorporated?

18 A Yes.

19 Q What's your education background?

20 A High school graduate, college graduate,
21 Clemson University. Went to college at
22 Francis Marion.

23 Q What did you obtain your degree in at
24 Francis Marion?

25 A In -- business degree.

1 Q What is your current occupation?

2 A I'm the President and C.E.O. of
3 Elite Construction.

4 Q Do you have any licenses with the
5 South Carolina L.L.R.?

6 A Yes.

7 Q What licenses do you have?

8 A I have a South Carolina real estate
9 license. I have a South Carolina home builders
10 license, and I have a li--- South Carolina general
11 contractor's license.

12 Q How long have you been in the business
13 of construction?

14 A Over 25 years.

15 Q And what portion of that is commercial
16 and what portion is residential?

17 A About 50/50.

18 Q All right. Have you been doing
19 residential construction for 25 years?

20 A No.

21 Q How long have you been doing
22 residential construction?

23 A Any -- from renovations -- if you were
24 to include renovations and remodeling as far --
25 and as well as new home construction, probably

1 almost 20 years.

2 Q All right. And how long have you been
3 doing commercial construction?

4 A Now, I was doing both at the same time.

5 Q Uh-huh.

6 A On the commercial construction company
7 as well as the residential. So I've been doing
8 commercial construction for probably about 20
9 years as well.

10 Q All right. Can you please identify
11 this document for us?

12 A Sure.

13 MR. WILLCOX: What is that? I'm sorry.

14 MR. FORD: It's Pla--- Plaintiff's
15 Exhibit 1.

16 MR. WILLCOX: Okay.

17 THE WITNESS: Oh, contract.

18 BY MR. FORD:

19 Q I'm sorry. Is that a contract or is
20 that the bid?

21 A Yeah, this is not the contract. This
22 is a -- it has some addendums, bid notes, on page
23 four and page five, that were part of the original
24 contract scope of work. Pages one, two, and three
25 are a breakdown of estimated cost of items

1 during -- within the scope of contract.

2 Q Is that the bid that you submitted to
3 Eagles Landing for this project?

4 A Yes.

5 Q You said something about pages four and
6 five, are those -- those were not included in
7 the --

8 A Those part --

9 Q -- bid?

10 A -- those are --

11 Q Is --

12 A -- part of the contract itself. And
13 the break --

14 Q Yeah. Is this the contract --

15 A This is part of the contract --

16 Q Hold on, I'm sorry. Let me finish the
17 question and then you say. Is the contract that
18 you're referring to marked as Plaintiff's
19 Exhibit 2?

20 A Yes.

21 Q How did you come upon this particular
22 job?

23 A I've known Mr. Makawi being a
24 resident -- a prior resident of Florence County,
25 I've known Mr. Makawi over the years, and just

1 walked into his office one day just talking with
2 him, and he had told me about a project he had.
3 And I'd like to take a look at it. And he said,
4 yes.

5 Q Did he provide you with prior bids?

6 A Yes.

7 Q Prior bids on the project? Did he ask
8 you to go over those bids and see if you could
9 make some changes and propose a new bid?

10 A Yes.

11 Q And is that what this Plaintiff's
12 Exhibit 1, or at least the first few pages of it,
13 are?

14 A Yeah.

15 Q That you submitted?

16 A Yeah.

17 Q And that's the bid that led to -- to
18 the entering of the contract?

19 A The total lump sum contract, yes.

20 Q What was the price for the total of the
21 contract?

22 A It's -- as per contract,
23 624,354 dollars.

24 Q And from your understanding of the
25 contract or document, did that just include the

1 work that you had -- or the work that you proposed
2 in the bid?

3 A Yes.

4 Q Did that include -- did that sum
5 include any issues that were unanticipated by the
6 parties?

7 A As in change orders or unforeseen
8 items?

9 Q Yes, unforeseen items.

10 A It did not include unforeseen items.

11 Q Did you -- could you please --
12 Article I of the contract.

13 A Article I.

14 Q Let me see if I can -- if I can narrow
15 it down a little bit for you. Just read the --
16 the first sentence there.

17 A Contract documents consisted in this
18 agreement conditions of the contract, general
19 supplementary, and other conditions, drawings,
20 specifications, addenda issue prior to execution
21 of this contract, other documents listed in this
22 agreement and modifications issued after execution
23 of this agreement all of which form the contract
24 and are as fully a part of the contract as if
25 attached to this agreement or repeated herein.

1 Q Now, that phrase regarding and
2 modifications issued after the execution of this
3 agreement, is that -- is that provision provided
4 in contemplation of -- of any change orders that
5 were required or work that was unforeseeable?

6 A Yes.

7 Q When did work commence on this
8 particular contract?

9 A I think it -- roughly June of 2015.

10 Q And the contract was entered into as of
11 April?

12 A I believe so.

13 Q From your understanding, what was the
14 cause of the delay in commencement of construction
15 and from the time the contract was executed?

16 A Once demolition began -- it was an
17 existing Ruby Tuesdays building that had been left
18 vacant for -- I don't know exactly how long. I
19 would estimate 10 to 12 years that it had been in
20 disarray. Once we began demolition, which was
21 part of my contract, we immediately found mold and
22 stopped the project.

23 Q But -- but before demolition, before
24 you started --

25 A Uh-huh.

1 Q -- what was the delay between April and
2 June. Was there an issue --

3 A Speaking of --

4 Q -- with financing?

5 A -- speaking with Mr. Jimmy Free, he had
6 mentioned to me that they were in the process of
7 securing financing through the S.B.A. That they
8 had worked with them on numerous other projects,
9 and there would not be a problem in the financing.
10 They were just going through underwriting.

11 Q To your understanding, did a S.B.A.
12 loan -- was there ever a commitment letter or was
13 the funding ever secured?

14 A Through the project, I asked
15 Mr. Jimmy Free on an almost biweekly basis when
16 that confirmation would come, and was told --
17 reassured that a Lumberton store was under
18 contract, and would be closing soon, and there
19 would be more than adequate funds to sufficiently
20 pay for this contract.

21 Q All right. So based on those
22 representations and after the timeline, at some
23 point did Mr. Makawi order you to start -- or
24 direct you to start construction?

25 A Yes, he did.

1 Q And that was, approximately, in
2 June of 2015?

3 A Approximately.

4 Q In a -- Vince, you said you've been a
5 general contractor now -- how long have you been
6 doing general contracting? How long had you been
7 at that particular instance.

8 A Over -- I've been different types of
9 general contracting. I've been a exclusively
10 commercial construction general contractor, as
11 well as simultaneously custom home builder. I
12 held licenses simultaneously. Added to my license
13 portfolio the general contracting license a few
14 years after getting my home builders license.

15 Q So how long is that, approximately?

16 A The general contracting, I'd say maybe
17 10 to 12 years, approximately.

18 Q Now, in your experience as a -- a
19 general contractor --

20 MR. FORD: Sir? Go off the record.

21 (Off-the-record Discussion.)

22 THE COURT: Sorry. Go back.

23 MR. FORD: Go back.

24 THE COURT: Sorry.

25 BY MR. FORD:

1 Q In your experience as a --

2 MR. FORD: Sorry. You ready?

3 THE COURT: Yes.

4 BY MR. FORD:

5 Q In your experience as a general
6 contractor, is this how a typ--- in terms of
7 funding, is this how a typical project occurs for
8 you?

9 A No.

10 Q How -- can you please state, typically,
11 how -- what happens at least in the initial
12 stages.

13 A Usually, in a lump sum contract, you
14 get paid draws based upon completion of the
15 project, and usually there's six to ten draws on a
16 project such as this that are -- the draws are
17 submitted, typically, to the bank and they send an
18 inspector to check on the progress and cut a check
19 based upon the percentage of what the grand total
20 amount was.

21 Q And is the general contractor
22 responsible for funding the first portion of the
23 completion before you get paid or do you receive
24 an initial draw.

25 A Sometimes you are allocated a down

1 payment upfront to begin, and I wasn't allocated
2 anything to begin with.

3 Q When was -- do you recall when you
4 received your first draw?

5 A I don't know the exact date.

6 Q Do you recall how much the first draw
7 was for?

8 A I do not recall the amount of the first
9 draw.

10 Q Was the amount of the first draw enough
11 to cover your typical expenses? Do you recall
12 that or do -- your expenses in this case?

13 A The first draw that was released to me
14 was not the amount requested. The amount -- I had
15 to prove to Mr. Free exactly how much I had paid
16 out and I was only given enough funds to cover
17 exactly what was paid out in labor and material.

18 Q All right.

19 A And told that the financing to secure
20 the loan will be almost very soon. Be patient and
21 maybe the next draw you can get what's atypical
22 (sic) to you and your company.

23 Q All right. Would you -- is it fair to
24 say that everything you provided in your bid here
25 is what the scope of the contract is or the -- or

1 the work?

2 A Yes.

3 Q And -- and also what's provided in the
4 contractual document?

5 A Right. Exactly.

6 Q I would like to provide you with
7 Plaintiff's Exhibit 13, which I also is
8 Defendant's Exhibit 4. And it's a tran--- would
9 you please identify that document.

10 A It is a breakdown sheet that was
11 prepared -- I don't know by who, but it is labeled
12 James Island IHOP Cost to Date.

13 Q All right. Do you believe it was
14 prepared by someone at Eagles Landing?

15 A It could have been. I cannot prove
16 that.

17 Q Is --

18 MR. WILLCOX: Right here.

19 MR. FORD: Thanks, Jim.

20 BY MR. FORD:

21 Q All right. Let's skip down first to
22 the third page of Exhibit -- of Plaintiff's
23 Exhibit 13.

24 THE COURT: I'm sorry, where do you
25 want --

1 MR. FORD: The third -- the third --
2 the third page, yes.

3 THE COURT: Third page, 13.

4 MR. FORD: Thirteen, yes.

5 THE COURT: Okay.

6 BY MR. FORD:

7 Q All of the -- marked as -- construction
8 are those -- to the best of your recollection and
9 your knowledge, the draws that were paid to you?

10 A Yes, except \$5,320.61. I did not
11 collect.

12 Q That -- that just appears to be an
13 amount billed.

14 A Okay.

15 Q But you said --

16 A The 229,900 I will agree upon that that
17 was paid to my company.

18 Q All right. So you believe you received
19 the money for that -- of the 229,900 dollars, do
20 you recall how much you had in expenses for paying
21 out contractors?

22 A Not exact amount, but I would guess
23 close to 190--- 190,000.

24 Q I'm going to pass to you Plaintiff's
25 Exhibit 10. If you could, please, could you

1 identify that document.

2 A It appears that these are check numbers
3 associated with my construction account bank. And
4 the dates and amounts correspond and what I see on
5 the right seems to match up with names and
6 material in time frame that would be in line with
7 what was paid out by Elite Construction during the
8 process of this job.

9 Q All right. So that appears to be all
10 the payments made by --

11 A It appears --

12 Q -- Elite.

13 A -- as far as checks are concerned.
14 There were debit cards also.

15 MR. FORD: Do you need a copy?

16 MR. WILLCOX: Yeah.

17 THE WITNESS: Debit cards associated
18 with it.

19 MR. WILLCOX: Yeah, thank you.

20 THE WITNESS: Paying out for material.

21 THE COURT: This labeled? I'm sorry.

22 MR. FORD: This is Plaintiff's
23 Exhibit 10.

24 THE COURT: Ten. Okay.

25 BY MR. FORD:

1 Q Of the 229,900 paid to you, can you
2 please tell the court what the expenses are based
3 on your total checks and total debits?

4 A Seems to total 178,939.44.

5 Q All right.

6 MR. FORD: Your Honor, we've already
7 premarked, and I believe admitted, Plaintiff's
8 Exhibit 11 and 12. I'm not going to go through
9 all these for the sake of time. But just for the
10 Court's reference, it's the bank statements from
11 which the information is pulled.

12 BY MR. FORD:

13 Q I will ask Vince, can you please
14 identify how the Judge will know which -- which
15 expenses are -- are for IHOP and which expenses
16 are -- are not.

17 A Yes.

18 THE COURT: Which one is that. I'm
19 sorry.

20 MR. FORD: That's Plaintiff's
21 Exhibit 11.

22 THE COURT: While he's looking at that,
23 you said the -- the documents that the information
24 is pulled and put in Exhibit 13?

25 MR. FORD: The information is pulled

1 from 11 and 12 and put into 10.

2 THE COURT: Ten, okay.

3 MR. FORD: Yeah.

4 THE COURT: Thank you.

5 THE WITNESS: For accounting purposes,
6 we have highlighted by the -- by using terminology
7 such as I/M -- that would be I for IHOP -- IHOP
8 Project associated costs and the letter after I,
9 if it was M, would have been for material bought
10 for the job. L for labor associated with the job,
11 any -- E for expense associated with the project.
12 So anything labeled as I and another letter would
13 have been designated for and as an IHOP expense on
14 my company's behalf.

15 BY MR. FORD:

16 Q And there's some items marked tool
17 rentals. Are all the tool rentals that you
18 identified here, those are an IHOP expense as
19 well?

20 A Yes.

21 Q All right.

22 MR. FORD: And the checks provided as
23 Plaintiff's Exhibit 4, Your Honor, just by way of
24 explanation, are not included in -- in what's
25 marked since we provided them separately. That

1 way you don't have to go through and try and
2 figure out what things are for IHOP or not. We
3 just provided them separately.

4 THE COURT: Okay.

5 MR. FORD: And those are all itemized
6 on Exhibit 10.

7 THE COURT: Got you.

8 BY MR. FORD:

9 Q So of the \$229,900 you were paid and
10 the \$178,939.44 that you paid out, what is the
11 total sort of left for -- for Elite Construction.

12 A It was \$50,960.56.

13 THE COURT: I'm sorry, that number --

14 THE WITNESS: \$50,960.56.

15 BY MR. FORD:

16 Q And then -- so I'm going to ask you --
17 we're going to go through the transactions by
18 account which we identified as Plaintiff's Exhibit
19 Number 13 and also will be -- that's Defendant's
20 Exhibit Number 4. Just go through these items for
21 A Plus Restaurant Hood Installation and
22 Maintenance, which is the first contractor listed.
23 Were those -- the work performed and the expenses
24 billed for and paid for by Eagles Landing, were
25 those expenses covered by the -- within the scope

1 of the contract?

2 THE COURT: Can I call time out before
3 you continue. Sorry.

4 (Off-the-record Discussion.)

5 BY MR. FORD:

6 Q So, Vince, was the work performed and
7 billed for by A Plus Restaurant Hood Installation
8 and Maintenance within the scope of your contract?

9 A Yes.

10 Q So that will be --

11 A Contractual obligation.

12 Q All right. Next, for A.B.C. Seal
13 Coating.

14 A Yes, that --

15 Q That's -- is that within the scope your
16 contract?

17 A Yes.

18 Q Do you recall what the particulars
19 of --

20 A That was for respraying the parking lot
21 and restriping it.

22 Q All right. And you recall what the
23 work was done for A Plus Restaurant Hood
24 Installation and Maintenance?

25 A Adding exhaust fans in the kitchen

1 area -- exhausts of all the cooking equipment.

2 Q All right. A.R.S. Rescue Rooter, is
3 the amount bills or -- and paid and performed
4 within the scope of the contract?

5 A No.

6 Q Are you familiar with the -- the work
7 by --

8 A Yes.

9 Q -- A.R.S. Rescue Rooter? What work did
10 they perform?

11 A A.R.S. Rescue Rooter, Mr. Mohammed -- I
12 had under my contract had hired a HVAC contractor
13 to come in and fire up the existing units that
14 were on the building that had not been fired up in
15 over ten years. He got them operating to run a
16 test to see how they would function while we were
17 under the construction phases. My contractor went
18 inside and started replacing the cord into the
19 specifications and plans, the front registers, and
20 putting in all new lines for the air plug. And to
21 the rear this is -- Mr. Mohammed hired
22 A.R.S. Rescue Rooter to do the lines and the
23 return -- air returns in the rear kitchen area.
24 The reason he had done that, my contractor's
25 price, he said, was too high so he wanted to hire

1 his own that could do it. And part of the punch
2 list on the architect's punch list, item list,
3 were that the A.R.S. Rescue Rooter returns in the
4 rear were not adequate, or were not done according
5 to specifications. My guy was signed off -- when
6 the architect as being the correct vents in the
7 front of the building or vents that were able to
8 be used or as equal to what the plans and specs
9 called for.

10 Q So pursuant to the contract, you
11 believe that's not within the scope of work? Or
12 that's not within the scope of work of the
13 contract.

14 A No.

15 Q Next Assured Neace Lukens
16 for \$9,388.48.

17 A I think that's the -- I'm not sure, but
18 I think it's for the client's builder's permits,
19 and the client always carries builder's insurance
20 policies. It's not part of the scope.

21 Q All right. Next up go to Atlantic
22 Electric, L.L.C. Are you familiar with the work
23 performed by Atlantic Electric, L.L.C.?

24 A No, I'm not. They were not hired by my
25 company, and I do not know what the outside lights

1 exactly were. They were -- this was an existing
2 Ruby Tuesdays building. There were existing
3 lights out there. They were operational before I
4 had left and given a C.O. I'm not sure what these
5 pertain to and were not part of my scope of work.

6 Q Next for Bell Electric. Do you -- are
7 you familiar with what the work was done for by
8 Bell?

9 A No, I'm not sure. They were not hired
10 by my company. I don't know or don't have
11 invoices as to what this pertains to. When we had
12 left the building, it was C.O.'d by the -- the
13 city and state. So the electrical had passed,
14 plumbing had passed, and everything was to their
15 satisfaction as well as the fire marshal. So
16 anything after the C.O. date that was done is not
17 part of my scope of work. And I -- I did not
18 leave any electrical left undone. So I'm not --
19 I'd say, no, to that.

20 Q All right. And the next, Capital --
21 so, I'm sorry, Bell Electric is not within the
22 scope of the contract?

23 A Correct, it is not.

24 Q The next go to Capital Materials of
25 Savannah, \$4,919.03. Looks like for drywall.

1 A Correct. That is the drywall that was
2 purchased for the change order for the mold in the
3 front and part of the rear of the building.

4 Q All right. Let's stop there just for a
5 second. When did -- when did you first discover
6 mold in the building?

7 A Almost within a week or two after
8 starting demolition.

9 Q And was the mold that was -- your bid,
10 did that include any sort of mold remediation or
11 removal?

12 A No, it did not.

13 Q Did you have the conversation with
14 Mr. Makawi regarding a change order for the mold
15 removal?

16 A Yes, I did.

17 Q Can you please identify this marked as
18 Plaintiff's Exhibit 5.

19 A Yes.

20 Q Is that the change order for mold
21 removal?

22 A Correct.

23 Q And did you submit this change order to
24 Mr. Makawi?

25 A Discussed -- he was out of the country

1 at the time.

2 Q Did you send this change order to
3 Jimmy Free or anyone with the company?

4 A Jimmy Free.

5 Q To your knowledge, did Mr. Makawi ever
6 sign the change order?

7 A He was not present, but gave me
8 approval.

9 Q And the approval he gave you was when
10 you had a discussion with the job --

11 A I -- let me back -- I don't -- I can't
12 exactly recall there were so many conversations
13 over the phone with him during this construction
14 of this project because he was out of town. I
15 don't know if this was one of the particular ones
16 he was there or not there. So it may have been
17 Ali that saw the mold and gave me approval, or it
18 may have been Mr. Mohammed. I'm not quite sure,
19 but I was given approval to remove the mold and
20 replace it.

21 Q All right. Do you recall what your
22 total costs were for the mold removal?

23 A I don't -- I would -- I would recall my
24 total cost to be somewhere between 20 to 25,000.

25 Q And the -- did that include the -- the

1 drywall purchased by Eagles Landing, or is that in
2 addition?

3 A This drywall amount would have covered
4 all the sheetrock that was necessary to replace,
5 including in that this bid was removing, bagging
6 all the existing molded sheetrock. And there was
7 a bunch of wood. Ruby Tuesdays had wood halfway
8 up the wall all the way around the building,
9 removing all that. It was molded. Tearing out
10 all the insulation that was -- that was affected,
11 re-insulating and re-sheetrocking the entire area.
12 The original scope and specs only called for the
13 sheetrock to stay originally as well as the wood.
14 And I believe the surface area originally were to
15 just get wallpaper. But all that was removed, and
16 redone, and resanded, and refinished, and
17 repainted.

18 Q All right.

19 A And all that was over the scope of the
20 original contract.

21 Q How -- in your change order, what was
22 the total that you had identified for the cost?

23 A Total cost -- estimated cost of about
24 20,8--- 800 dollars. Not -- that's just hard cost
25 labor and material only.

1 Q All right. And that's -- I think
2 that's -- sorry, what was the total you provided
3 on the change order initially?

4 A 48,900.

5 Q And to date your total costs -- what
6 did you pay out of pocket for the...

7 A Around 14,000 dollars give or take.

8 Q So approximately 13,795 dollars --

9 A Yes.

10 Q -- and two cents?

11 A Yes.

12 Q All right.

13 THE COURT: So, going back, let me --
14 let me make sure --

15 MR. FORD: Yes.

16 THE COURT: -- I'm understanding
17 something correctly. The 48,000 change order, is
18 there a document on that change order?

19 MR. FORD: Yes, Your Honor, that's
20 Plaintiff's Exhibit 5. And what --

21 THE COURT: Okay.

22 MR. FORD: -- what we've actually done
23 is we went back to look at what the -- the costs
24 were to see what the expenses were for both
25 Eagles Landing and Elite Construction. Now, all

1 the total expenses for the project are here. Some
2 include what would be the scope of the contract
3 and some are expenses for change orders.

4 THE COURT: Okay.

5 MR. FORD: And we went together and
6 just estimated those up so we didn't have to go
7 hours and hours of the numbers.

8 BY MR. FORD:

9 Q Has anything been paid to you to date,
10 Vince, for the change orders?

11 A No.

12 Q For this particular change order for
13 the mold remediation?

14 A No.

15 Q At this point in time, what do you
16 contend the total is due for the change order?

17 A Approximately 33,519.

18 Q Now, let's go back to Plaintiff's
19 Exhibit 13 and continue on to page two. Carolina
20 Construction Solutions, could you please describe
21 who hired Carolina Construction Solutions.

22 A That is a temp agency that was hired
23 upon the approval of Mr. Makawi to hire as many
24 electricians as possible, and get them in the
25 restaurant to get as much electrical done as we

1 could.

2 Q And those were the additional temp
3 workers that Mr. Everett described before?

4 A Yes. And were not part of the contract
5 or scope.

6 Q Did you or Mr. Makawi discuss a change
7 order regarding that where there would be
8 additional costs?

9 A Yes, we had a conversation about that.
10 He agreed that it would be fine. Just get it
11 done.

12 Q I'm going to ask you to identify
13 Plaintiff's Exhibit 4. Is this the change order
14 for the Carolina Construction Solutions?

15 A Yes.

16 Q What is the amount that you charged for
17 the change order?

18 A \$37,397.45.

19 Q What is the total amount that's been
20 billed by Carolina Construction Solutions pursuant
21 to the transactions by accounts provided by
22 Eagles Landing, which is Plaintiff's 13. What's
23 the total billed?

24 A On here, \$61,863.06.

25 Q Six cents?

1 A Yes.

2 Q And would you please identify this
3 document.

4 A Yes.

5 Q What -- what is that --

6 A It is a document Carolina Construction
7 Solutions having not been paid for the project
8 suing for their payment that is due.

9 Q And to your knowledge, do you know the
10 amount of the -- of the balance -- or the lien at
11 the time the lawsuit was filed?

12 A I do not. I believe the \$37,397.45 to
13 have been the amount requested by them upon
14 completion of the work.

15 Q Is that --

16 A Prior to litigation.

17 Q Is that a request they made from you?

18 A Yes.

19 Q If you could, please, could you
20 identify this document? Does that appear to be
21 the affidavit of account to the mechanic's lien?

22 A It appears to be, yes.

23 Q And what is the amount stated due?

24 A \$37,153.91 as of November 23rd, 2015.

25 Q And that -- is that fairly close to

1 what you charged in your change order?

2 A Yes.

3 THE COURT: Give -- give me that amount
4 one more time.

5 MR. FORD: The amount in the change
6 order, Your Honor, or the amount --

7 THE COURT: The amount that he just
8 quoted. I'm sorry.

9 MR. FORD: That's okay. It's -- it's
10 in that affidavit of account of the lawsuit, the
11 mechanic's lien. I believe it's part of Exhibit A
12 to the complaint.

13 THE COURT: Eight?

14 MR. FORD: I'm sorry, A.

15 THE WITNESS: A as in apple.

16 MR. FORD: Excuse me am I -- it's --
17 it's actually Exhibit C.

18 THE WITNESS: C.

19 THE COURT: C, okay.

20 THE COURT REPORTER: I want to tell you
21 this off -- off the record.

22 (Off-the-record Discussion.)

23 MR. FORD: Your Honor, it's \$37,153.91.

24 THE COURT: Thank you.

25 BY MR. FORD:

1 Q And to your knowledge, is that lawsuit
2 still pending?

3 A Yes.

4 Q Has Carolina Construction Solutions
5 been paid?

6 A As far as I know, no, they have not.

7 Q Do you believe that was within the
8 scope of your contract?

9 A It was not.

10 Q Is that why you did the change order?

11 A Correct.

12 Q Next, we'll move down to City Electric.
13 Do you recall what work was performed by
14 City Electric?

15 A City Electric is a electrical supply
16 company.

17 Q And you believe that's within the scope
18 of the contract --

19 A I allowed it as such, yes.

20 Q You allowed it as such as to complete
21 the --

22 A The part of the scope, yes.

23 Q Next we'll go to City Lighting
24 Products. What do you believe -- what's the work
25 that you believe they performed?

1 A City Lighting Products furnished the
2 lighting package for the IHOP.

3 Q Is it your understanding that -- that
4 the bill for some lights -- City Lighting Products
5 is the -- the work performed within the scope of
6 the contract?

7 A No, some of this amount is for the new
8 IHOP image, which was not part of my scope of
9 work.

10 Q So some of that -- the lighting
11 products provided as part of the new IHOP image,
12 and by that you mean the new decor package?

13 A Yes.

14 Q Do you believe that the whole amount is
15 the new decor package, part of it, or are you
16 uncertain as to...

17 A The lighting package is the entire new
18 decor package, and it was also upgraded by
19 Mr. Makawi to include all L.E.D.'s throughout the
20 entire restaurant, which was not part of the
21 original spec and contract.

22 Q So it's your opinion that this not
23 within the scope of the contract?

24 A It is not.

25 Q All right. Next, the city of

1 Charleston for the -- can you please explain what
2 those fees were for?

3 A Those are for the building permit and
4 licenses paid for by Mr. Makawi's Eagles Landing
5 and not part of the scope of the contract.

6 Q And in the typical construction job,
7 who pays for the building permit and building
8 license -- business --

9 A If it's --

10 Q -- business license?

11 A It can go either way, but in these --
12 this contract it was his responsibility.

13 Q Moving down now to Conklin's
14 Construction. Do you recall the scope of work --
15 or the work provided by Conklin's Construction?

16 A Yes.

17 Q What work did they perform?

18 A Suspended ceiling.

19 Q Is that within the scope of the
20 contract?

21 A Yes.

22 Q And that was paid by Eagles Landing?

23 A Yes.

24 Q Next, Corrow Construction, do you
25 recall what work they performed --

1 A No.

2 Q -- on the project?

3 A No. It says leak repair seal. I had
4 walked on the building with the architect,
5 Mr. Muller.

6 Q So you believe they -- sorry -- do you
7 believe they performed work on the roof?

8 A Apparently they -- they repai--- they
9 did some roof work. Mis--- I'm sorry, go ahead.

10 Q Pursuant to the contract, were you
11 supposed to replace the roof or just repair the
12 roof?

13 A Repair the roof.

14 Q Did you repair the roof?

15 A I did.

16 Q Can you please describe to us what you
17 did to repair the -- repair the roof?

18 A Having commercial roofing experience, I
19 went to A.B.C. Supply and bought membrane, equal
20 repair kits, and went on the roof with my
21 employees, and we patched leaks that were existing
22 on the building. I believe fixing 99 percent of
23 them.

24 Q Did you -- did the architect or anyone
25 else approve of the repairs you made to the roof?

1 A Yes, the architect and I did an
2 inspection of the roof. At what time he had
3 mentioned to me that this was a roof of over 25
4 years of age, and on its last legs and needed to
5 be replaced. However, Mr. Makawi, however, did
6 not want to replace the roof at that time. To
7 patch it as best as possible.

8 Q So you believe these were additional
9 repairs that were done --

10 A After we had left --

11 Q -- after --

12 A -- and not part of the scope of my
13 contract.

14 Q All right. Next, let's move to
15 Design Team. Do you recall what Design Team did
16 for this project?

17 A No, I do not. However, I believe I was
18 informed they did the word of term Design Team
19 equals a front canopy that was added to the front
20 of the building. And if that is the case, then
21 this would be part of my scope, and I agreed to
22 the 3,298 dollars as being part of my contract.

23 Q All right. Next, we'll go to
24 Digital Niche, L.L.C. Do you recall the scope or
25 the work performed by Digital Niche?

1 A No, but I believe since it's labeled
2 decor package, that would be part of the new IHOP
3 image.

4 Q And, therefore, do you believe that
5 would be part of a change order?

6 A Yes, correct.

7 Q Did you issue a change order for the
8 new --

9 A Yes.

10 Q First, let me start back. Did your
11 contract include the new decor package?

12 A No, it did not.

13 Q Before I think you mentioned that these
14 two pages were not part of -- part of the
15 contract.

16 A Yes.

17 Q Can you please read item number six in
18 the bid notes. Could you actually please read
19 the -- the first -- the first line and then number
20 six.

21 A Bid notes, base bids include in--- and
22 base bid includes the de--- decor package.

23 Q And then did that -- is the decor
24 package different from the -- what's been termed
25 as the new decor package in the contract

1 documents?

2 A Correct, they are different.

3 Q Did the contract include the new decor
4 package?

5 A No, it does not and it's quoted on this
6 page as not.

7 Q Can you please read the quote?

8 A On this page it says, note, this quote
9 does not include any new IHOP image.

10 Q And to you the new IHOP image means the
11 decor pack--- the new decor package?

12 A The new decor package, yes.

13 Q Next, we'll move to Es---
14 E.C. Case Supply Company. Do you recall the work
15 performed by E.C.--- E.C. Case Supply?

16 A It was a supply company and, yes.

17 Q What did they -- did they -- what did
18 they provide for the -- the job?

19 A I recall, to my best recollection, it
20 is a material board that was put up by my
21 employees probably somewhere in the kitchen area.

22 Q And is that within the scope of the
23 contract?

24 A Yes.

25 Q Moving on to Formula Automatic Door.

1 To your best of your recollection, what did
2 Formula Automatic Door do on the -- on the
3 project?

4 A That was the repair, I believe, of a
5 side entry door that had been damaged by someone
6 other than my crews and my personnel.

7 Q And is that part of the contract?

8 A No, it was not.

9 Q Next is Handy Man Plumbing. Do you --

10 A I --

11 Q -- know what they repaired --

12 A -- not -- I do not know what that is
13 for, and it is not part of my scope or contract.

14 Q Had all the plumbing work been
15 completed at that point in time? It looks like it
16 was paid --

17 A Yes.

18 Q -- or billed October 7, 2015.

19 A Right.

20 Q Next, Hilton Displays. Do you recall
21 what Hilton Displays was to do on the project?

22 A No, I was not. However, it says they
23 did a sign. I -- I don't recall that being --

24 Q Were signs included in the scope of the
25 contract?

1 A No.

2 Q Next is Hobart Services.

3 A I do not know who that is, and it's not
4 part of the scope of the contract.

5 Q All right. Next, we'll go to
6 Johnson Concrete. Do you recall what work Johnson
7 Concrete performed?

8 A He did some concrete work inside the
9 building and outside.

10 Q All right. Is there a portion of the
11 work that is attributed to a change order or a
12 portion that is attributed to --

13 A Approximately 3500 dollars of that
14 amount is associated through a change order.
15 5,048 dollars was associated to things part of
16 the...

17 Q I'm going to pull up the -- the change
18 order here.

19 A For 3500 -- I'm sorry -- 3500 being
20 part of my scope of work, and 5,048 dollars being
21 part of the change order.

22 Q Could you please identify this document
23 marked Plaintiff's Exhibit 6.

24 A It's a change order associated to the
25 removal of all the existing tile in the back

1 portion of the kitchen, as well as new walls that
2 had been installed and concrete under that --
3 jackhammering up con--- existing concrete of three
4 inches that were below the existing tile down to a
5 slab beneath and re--- re-concreting it and
6 installing all the walls back again, as well as
7 new plumbing and el--- new electrical.

8 Q Why did that work have to be completed?

9 A Mr. Makawi and actually Mr. Ali, we
10 were having a meeting, and Mr. Mohammed decided
11 that he, after we had begun construction, wanted
12 to remove the existing floor tile that were --
13 was, according to the original specifications,
14 supposed to stay.

15 Q All right. And when you say
16 Mr. Mohammed, you mean Mr. Ma--- Makawi?

17 A Yes.

18 Q I mean -- okay. What was the total
19 that you billed for that change order?

20 A The total was, according to this,
21 54,900 dollars.

22 Q All right. And what are you claiming
23 today? What cost did you expend with it on that
24 change order?

25 A Cost or request amount.

1 Q I mean, what -- what -- what -- let's
2 go through the cost first. What were your --

3 A Okay.

4 Q -- what were your costs for that
5 portion of the change order?

6 A Hard cost of labor approximately
7 \$10,156.83.

8 Q And then does that include the five --
9 and then Elite Construction pay the 5,048 to
10 Johnson Concrete for that portion of the change
11 order?

12 A I -- as a check -- I don't know if I
13 had paid that amount or Mr. Makawi did.

14 Q Well, what's the total balance you're
15 claiming for that change order?

16 A \$31,566.04.

17 Q And that --

18 THE COURT: Was a document associated
19 with that change order?

20 MR. FORD: Yes, Plaintiff's Exhibit 6.

21 BY MR. FORD:

22 Q So of the -- of the work performed by
23 Johnson Cret--- Johnson Concrete, you believe that
24 3,500 is within the scope of the contract, and
25 5,048 was not, but it was part of the change

1 order?

2 A Correct.

3 Q Next, Kessler Plumbing. This -- what
4 work did Kessler Plumbing perform?

5 A They did --

6 THE COURT: Just give me just one
7 second.

8 MR. FORD: Okay.

9 THE COURT: I'm sorry. You -- the
10 change order I was asking you about, you said was
11 Exhibit Number 6, right?

12 MR. FORD: Yes, Your Honor.

13 THE COURT: All right. And that's what
14 he was testifying the 31,566 number on?

15 MR. FORD: Yeah, I think it was 506,
16 Judge?

17 THE COURT: 506?

18 MR. FORD: Yeah.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: May I see it?

21 THE COURT: Yeah.

22 MR. FORD: Yeah, he -- he claimed
23 54,900 but his --

24 THE COURT: Okay.

25 MR. FORD: But he went back, the cost

1 were a little bit less so we --

2 THE COURT: The number on this exhibit
3 is not the number he's claiming?

4 MR. FORD: No, Your Honor.

5 THE COURT: The number he is claiming
6 is \$31,506.04.

7 MR. FORD: Based on his cost and -- and
8 the work that was done.

9 THE WITNESS: And it was --

10 MR. FORD: We went back and reevaluated
11 it.

12 THE COURT: All right. Okay. Okay.
13 I'm good. Sorry.

14 BY MR. FORD:

15 Q Let's move on to Kessler Plumbing.
16 Kessler Plumbing, that's who Mr. Everett worked
17 for who testified earlier?

18 A Yes.

19 Q And they performed most of the plumbing
20 work on the project?

21 A Yes.

22 Q And you contend that all that was
23 within the scope of the contract?

24 A Yes.

25 Q Next, Lowcountry Services. Do you

1 believe that the cleaning work -- or does it --
2 what work did Lowcountry Services provide?

3 A I don't know. They were not hired by
4 me.

5 Q Does it appear from the invoice that
6 they provided some sort of cleaning services?

7 A Yes.

8 Q Is that -- were the cleaning services
9 provided within the scope of the contract?

10 A No.

11 Q Had you already provided cleaning
12 services on a number of occasions to -- to get the
13 job site clean?

14 A We did have people clean up as we were
15 working.

16 Q And next moving on to Marlite. Is
17 Marlite part of the scope of the contract?

18 A No.

19 Q What -- what is Marlite or what
20 services -- or is that -- are those materials?

21 A It's some material.

22 Q And is that being installed on the
23 project?

24 A It was installed on the project, and
25 was part of a change order or the new decor

1 package.

2 Q As part of the new decor package?

3 A Correct.

4 Q Next, can you please identify what's
5 marked as Plaintiff's Exhibit 7?

6 A Yes.

7 Q That's a change order for the new decor
8 package?

9 A Yes.

10 Q So the change order you provided for
11 the new decor package, what -- what did that
12 include?

13 A All new decor package image for the
14 IHOP as outlined in a IHOP specification book
15 given to me by Mr. Makawi or the architect.

16 Q All right. And was that -- did that
17 include the -- the lighting products by
18 City Lighting?

19 A Yes.

20 Q And to the best of your knowledge, that
21 includes the Marlite?

22 A Yes.

23 Q And those were all not part of the
24 scope of the contract, correct?

25 A Correct.

1 Q Are there any other items that you can
2 think of that were included in the new decor
3 package?

4 A Pictures, vinyl placed on the wall. I
5 believe interior color choices, a specific tile,
6 specific lighting package, and then lights and
7 various things. I don't know exactly all of them.

8 Q But that was once again not included in
9 the initial contract?

10 A Correct. Yes.

11 Q Next, Mount Pleasant Winnelson.

12 A It's a plumbing supply house.

13 Q So Mount Pleasant Winnelson provided
14 materials for the job?

15 A Yes.

16 Q Does that include -- is that within the
17 scope of the contract?

18 A Yes.

19 Q Next Multi-Tech Safety Products, Inc.,
20 what did Multi-Tech Safety Products, Inc., provide
21 for --

22 A I believe --

23 Q -- for --

24 A -- this was the reason

25 Mr. Mohammed Makawi wanted to tear up the tile all

1 in the rear of the back kitchen area in order to
2 go back and replace it with this rubber floor
3 system by this company.

4 Q And that was not within the scope of
5 the contract?

6 A No.

7 Q Was that part of the -- the previous
8 change order?

9 A No, he paid them directly.

10 Q National Restaurant Designers, what
11 services or work did they perform?

12 A They were the architects that drew up
13 the plans and specifications.

14 Q Was that within the scope of the
15 contract?

16 A No, it was not.

17 Q And your experience, as the general
18 contractor, what party is responsible for paying
19 the architect?

20 A The owner.

21 Q Next M.B.S. Media Systems, do know what
22 work or services they provided in regards to the
23 contract?

24 A No, however, it's stated they did the
25 audio system.

1 Q Was the audio system within the scope
2 of the contract?

3 A No.

4 Q Neal's Flooring is the next item up.
5 Do you recall what work or materials they provided
6 with respect to the contract?

7 A They did installation only of the tile
8 in the whole entire dining room area as well as
9 bathrooms and side walls.

10 Q And was the tile in the whole front
11 area, was that initially part of the contract?

12 A No, the front area, according to the
13 plans and specs, had about 80 percent carpet and
14 about 20 percent tile.

15 Q If you could, please, would you
16 identify Plaintiff's Exhibit 8.

17 A Okay. It's a change order for adding
18 all the other tile that is not specified in the
19 plans and specifications.

20 Q Did you have any discussions with
21 Mr. Makawi or any other authorized representatives
22 for Eagles Landing with regard to changing the
23 tile --

24 A Yes.

25 Q -- and the carpet?

1 A Mr. Mohammed Makawi approved changing
2 the ti--- carpet to tile throughout the
3 restaurant.

4 Q And did you submit this change order to
5 Mr. Makawi?

6 A Mr. Free.

7 Q You submitted it to Mr. Free, the
8 C.F.O. for Eagles Landing?

9 A Yes.

10 Q To date have you been paid on -- for
11 this change order or do you --

12 A No, how--- I have not, but
13 Neal's Flooring was paid for their installation --
14 I -- as far as I know.

15 Q Okay. And pursuant to the change
16 order, what's the total you are requesting?

17 A 26,987.

18 Q And has any--- has anything been paid
19 to you under any of these change orders?

20 A No, they have not.

21 Q Next, Nelson Sign, what work did they
22 perform for services?

23 A That was the new awnings around the
24 building.

25 Q And was that part of the -- within the

1 scope of the contract?

2 A Yes, it was.

3 Q New South Specialties, what work did
4 New South Specialties perform -- or what labor did
5 they provide with respect to the contract?

6 A Bathroom partitions.

7 Q And was the materials and labor
8 included in -- within the scope of the contract?

9 A I believe so, yes.

10 Q Moving down, what materials or labor
11 did Parterre Flooring provide with respect to the
12 contract?

13 A They -- they were a vinyl flooring
14 supplier, and furnished the vinyl flooring to be
15 applied to the walls and according to the new IHOP
16 image.

17 Q And that was included in the change
18 order for the new IHOP floor --

19 A Image.

20 Q -- package?

21 A Yes.

22 Q And that's the change order form marked
23 as Plaintiff's Exhibit 7?

24 A Yes.

25 Q What services with Prime Cut of

1 Charleston provide to your recollection?

2 A I do not know. They were hired after
3 the C.O. was given.

4 Q Does it appear that they provided
5 landscaping services?

6 A Yes.

7 Q Were landscaping services within the
8 scope of the contract?

9 A No. However, I have done a lot of
10 landscaping. Brought in landscape guys to trim
11 back bushes, get rid of trash, clean up everything
12 and make it presentable.

13 Q What services did Road Mountain
14 Lighting provide for the con--- for the project?

15 A I don't know. They weren't hired by
16 me, and I don't know if they were a supplier or a
17 contractor. So it's not part of the scope of my
18 contract.

19 Q As far as you know, was all the
20 electrical work done at the point in time when --
21 when you had been out of it?

22 A The city approved it as being so and
23 issued a C.O. So, yes.

24 Q The next item, Roller Shade. What
25 materials or labor did Roller Shade provide for

1 the project?

2 A They provided the material and
3 installation of shades inside the building.

4 Q And was the materials and labor
5 provided by Roller Shade within the scope of the
6 contract?

7 A Yes.

8 Q What labor, materials, or services did
9 S and D Coffee provide for the project?

10 A I do not know. However, I would guess
11 with their name having coffee in it, they had
12 something to do with cof--- coffee. However, it's
13 not part of the scope of my contract. I did not
14 furnish any equipment in my scope of contract.

15 Q William Smith, what work did
16 William Smith provide or what's -- materials did
17 William Smith provide for the contract?

18 A They were the gas line contractor.

19 Q Was the gas line work performed by
20 William Smith within the scope of the contract?

21 A Yes, and approved by the city and fire
22 marshal.

23 Q Next, Turner Electric.

24 A But it was part of my scope of
25 contract.

1 Q Turner Electric was part?

2 A William Smith was.

3 Q Oh, William Smith was a part of it.

4 A Okay --

5 Q All right. Next, to Turner Electric,
6 what services or materials were provided by Turner
7 Electric for the project?

8 A Turner Electric is a electrical
9 contractor that had the permit on this job and
10 contract with me to furnish all electrical on the
11 project until Mr. Mohammed indicated that he
12 didn't want his services anymore. And for me to
13 hire the C.C.S. Temporary Agency to get in more
14 workers.

15 Q All right. And that was within the
16 scope of the contract?

17 A 3500 is part of the original contract,
18 yes.

19 Q Waste Services, L.L.C., what services
20 and materials did Waste Services, L.L.C., provide?

21 A They furnished porta potties and 30
22 yard canisters to put trash in.

23 Q Was the services and labor provided --
24 or materials provided within the scope of the
25 contract?

1 A Yes.

2 Q Whistler Innovative Tech Solutions,
3 L.L.C., what labor/materials did
4 Whistler Innovative Tech provide for the contract?

5 A I don't know, but it's labeled as
6 cabling.

7 Q Was that within the scope of the
8 contract?

9 A No cu--- no cabling was part of my
10 contract or scope of work.

11 Q Is that separate from the electrical
12 work?

13 A Yes.

14 Q W.R.M. Management Group, do you know
15 what services or materials they provided --

16 A They did --

17 Q -- under the --

18 A -- a mold test prior to the removal of
19 the mold.

20 Q Just to make things easier for the
21 court reporter, if you could wait me to answer
22 because she's got to take it all down. It reads a
23 little funny in the transcript. So they provided
24 a mold report?

25 A Yes.

1 Q And was that part of the mold change
2 order we discussed earlier?

3 A No, this was a report to prove that
4 mold was in existence and give it to
5 Eagles Landing.

6 Q This was prior to any work being
7 done --

8 A Prior to any work --

9 Q -- to --

10 A -- being performed, yes.

11 Q Now, let's move on to the HVAC units.
12 Can you tell us a little bit about -- or what was
13 agreed on initially and -- and how that changed?

14 A Yes, one afternoon the architect -- two
15 of the architects, Mr. Makawi, and Mr. Ali, and
16 myself were doing a walk through of the building,
17 and we discussed the air condition units. And
18 Mr. Mohammed Makawi had indicated that he wanted
19 to attempt to fire up the units that had been
20 dormant for seven to ten years and not replace
21 them. So we did that and Floyd Heating and Air, I
22 believe, were paid to fire up the units, which
23 were operational and running during the
24 construction process. And Mr. Makawi was given a
25 credit for the all new Trane heating and air

1 systems of -- I don't know the exact amount -- but
2 he was given that credit and take -- it was taken
3 off the project total amount.

4 Q All right. Would you please identify
5 Plaintiff's Exhibit 9.

6 A Okay. Yes, it's a credit sheet form
7 supplied by Elite Construction to Eagles Landing
8 for credits he had.

9 Q And pursuant to that credit form, did
10 Elite Construction provide a credit for the air
11 conditioning units --

12 A Yes.

13 Q -- as a result of trying to refurbish
14 or re--- reboot the ones that were on the roof?

15 A Yes.

16 Q Were there any other credits that were
17 given pursuant to that form?

18 A Yes, a freezer door that wasn't
19 removed, and a metal front canopy that was not
20 installed, however, later was installed, which we
21 discussed and I would give him credit for.

22 Q And that --

23 A -- so that should be --

24 Q That was included in the contract.

25 A Right.

1 THE COURT: So I want to make sure I
2 understand the net phase of that. The 58,000 is
3 what was spent over time?

4 MR. FORD: We don't know, Your Honor.
5 I believe the defense will --

6 MR. WILLCOX: We don't know that yet.

7 MR. FORD: Defendants will testify to
8 what that is.

9 THE COURT: But this Exhibit Number 9
10 is a credit.

11 MR. FORD: Yeah, that credit was
12 initially given. If you look at --

13 THE WITNESS: The -- the units were --
14 I'm sorry, may I answer that for, Your Honor.

15 MR. FORD: That's fine, please.

16 THE WITNESS: The -- a quote for
17 replacing the four units on the building I had
18 gotten that matched the specifications and was
19 shown to Mr. Makawi. And Mr. Makawi did not want
20 to replace the units. So I gave him that amount
21 as a credit --

22 THE COURT: Okay.

23 THE WITNESS: -- toward the lump sum.
24 That's what that was for, Your Honor.

25 MR. FORD: Gene, if you look at --

1 Judge, if you look at the Plaintiff's Exhibit 1
2 for the HVAC, there was a initial total through
3 the bid of 98,900. I believe that's in the credit
4 form. That's where that credit would have --

5 THE WITNESS: Right. So he's credited
6 the quote that I had gotten to replace the unit --
7 all units -- and given as credit.

8 THE COURT: We can go off the record.

9 (Off-the-record Discussion.)

10 BY MR. FORD:

11 Q The Defendant's Exhibit 10 appears to
12 be a final draw request. Could you please tell us
13 about this --

14 A A little bit about that?

15 Q -- yes.

16 A Sure. This led to -- from the very
17 beginning of the project -- typically a project
18 goes -- when it's a lump sum contract, I submit a
19 draw, and it -- a -- a inspector comes out, and
20 does an inspection, and pays based upon the amount
21 of the draw for work completed. And Mr. Free,
22 almost on a every weekly basis, was assuring me
23 that the funds to secure this construction lump --
24 this construction project would be taken care of
25 by the sale of either a store in Lumberton,

1 financing being finalized through the S.B.A., and
2 they had done work with the S.B.A. numerous times,
3 and I would be dealing with them or whoever they
4 secured the fundings for soon. After -- if you
5 notice the bids are in small increment amounts.

6 And the only reason they were in these
7 small increments amounts was because Mr. Free was
8 given approval by Mr. Makawi only to release enough
9 funds to pay only labor and material that had
10 been -- that I could prove that had been completed.
11 Nothing for my company or my supervising, which I
12 was on the project every day -- or I'd say four out
13 of five at least. And after numerous attempts to
14 try to get a draw for the company, I had
15 requested -- that was one of my final attempts at
16 getting this draw and for this amount.

17 It was not a final amount. It was a
18 final request for a draw. And I had asked for it
19 personally. I had asked for it and was told, you
20 are going to get it. I was -- nothing ever came of
21 it, and I started to get frustrated, and the project
22 was almost complete at that time. In fact, it was
23 at -- the temporary C.O. had been issued. I was
24 wanting to get my first draw. And this was my final
25 attempt in acquiring and asking Mr. Free for a draw.

1 It was not given approval for by Mr. Makawi in my
2 attempt at trying to get at least the first official
3 draw for my company during the construction process.

4 Q All right. And at that point in time
5 had -- or throughout the project, had some
6 contractors gone unpaid either from your or
7 from -- or from Eagles Landing?

8 A Yes.

9 Q And to your knowledge, had -- do you
10 have knowledge regarding the payment status of the
11 most -- some of the contractors -- most of the
12 contractors.

13 A Don't know if all of them have been
14 paid or not. I'm sorry. There were quite a few.

15 Q All right. So as the general
16 contractor, you were on the project day in and day
17 out?

18 A Yes, I'm -- I don't have any employees.
19 I'm a one-man show. I supervise, bid contracts,
20 and oversee projects. I'm a one-man operator.

21 Q How often was Mr. Makawi at the job
22 site?

23 A He would come in maybe once every two
24 weeks -- maybe once every three, four sometimes.

25 Q Okay. Was he available to you to

1 discuss certain issues, or did you usually have to
2 discuss that with his employees or...

3 A He was not available a lot of times.

4 Q What employees did you work with in
5 trying to get this job done?

6 A A lot of times, Jimmy Free and
7 sometimes Ali.

8 Q All right. Was -- was your inability
9 to get ahold to Mr. Makawi partially what led into
10 some of the delays in trying to get it done?

11 A Yes.

12 Q Were the delays also caused by some of
13 the change orders and the unexpect--- or
14 unforeseen circumstances of the job?

15 A Yes, absolutely.

16 Q Is it typical in construction for
17 unforeseen circumstances to -- to cause a delay?

18 A Yes.

19 Q How often did Mr. Ali or -- and I can't
20 remem--- Mr. Chris, for lack of his name, how
21 often were -- let's start with Mr. Ali, how often
22 was he at the job site?

23 A He may would come in once a week
24 typically.

25 Q And --

1 A Once every two weeks sometimes.

2 Q When he -- when he was at the job site,
3 how long was he there for?

4 A He stayed there for pretty much half a
5 day -- three or four hours.

6 Q And what would he be doing during that
7 time period that -- at least that you could
8 observe?

9 A I felt he was there to give updates to
10 Mr. Makawi who was overseas as to the progress of
11 the project.

12 Q So he discussed the status of the
13 project with you?

14 A We would discuss items, yes.

15 Q How often did Chris, the other
16 representative or employee -- I believe he was a
17 district manager -- how often did he visit the job
18 site?

19 A He started visiting the job site right
20 as we were going into the temporary C.O. to start
21 hiring folks. He was there going through
22 applications, interviewing, and going through
23 their training program and getting it ready for
24 opening.

25 Q From your end --

1 A Prior to that, I saw him as much as I
2 saw Mr. Ali. He would check in maybe once every
3 few days, maybe once a week, and just see how
4 things were going.

5 Q So from your observations it was more
6 just to check in and see -- see what the status
7 was. It wasn't to manage the project or --

8 A They did zero management of this
9 project, absolutely. No supervisory roles, no
10 management roles. They were not hired by me nor
11 asked to be part of my team.

12 MR. FORD: I don't have any further
13 questions.

14 THE WITNESS: I'd like to, Your Honor,
15 if it would be okay to go to the restroom.

16 THE COURT: Yeah, I was going to
17 suggest we take a break.

18 (Whereupon, a break was taken
19 from the proceedings.)

20 CROSS EXAMINATION

21 BY MR. WILLCOX:

22 Q All right, Mr. Carter, we've met.
23 My -- my name is Walt Willcox. I represent the
24 defendant in this action. And one thing I want to
25 pick up on. You said towards the end of your

1 testimony that Mr. Ali never did anything for you
2 or really not there that often. Is that your
3 testimony?

4 A I guess it depends on how often you
5 consider not very often.

6 Q But did you testify that he never
7 really did anything for you?

8 A He never did any -- I never hired him
9 to do anything for my company, no.

10 Q Did -- you testified he never did
11 anything for you?

12 A Never -- you have to explain what he
13 was asked to do for me for the company or without
14 company personal things like --

15 Q Sure.

16 A -- get me lunch or buy lunch. We'd go
17 to lunch or I'm not understanding your --

18 Q Well, was he --

19 A -- question.

20 Q -- was he helping you?

21 A No.

22 Q Okay. Let me show you this email.

23 MR. WILLCOX: I'll go ahead and move
24 it -- I'll let the Court look at it.

25 BY MR. WILLCOX:

1 Q That's an email dated
2 September 29th, 2015, from you to Mohammed Ali,
3 Marion, and Jimmy Free.

4 A Uh-huh.

5 Q And it looks like you're -- you're
6 announcing that you will not be at James Island on
7 Wednesday. You had personal business to attend
8 to. Then you're saying, Chris or Ali will need to
9 purchase materials for subcontractors if needed.

10 A Yes.

11 Q Okay. So you -- you asked those guys
12 to do -- do that for you, correct?

13 A I was told that day they were going to
14 be present, and I asked if they would do that for
15 me, yes.

16 Q Okay.

17 A That day only.

18 Q So this is just one time you sent the
19 email?

20 A That's it.

21 Q Okay.

22 A Far as I know.

23 Q Far as you know?

24 A Yes.

25 Q Well, let's go back to --

1 MR. WILLCOX: In fact, I'll -- I'll go
2 ahead and move to have it admitted as Defendant's
3 Exhibit --

4 THE COURT REPORTER: Twelve.

5 MR. FORD: No objection.

6 MR. WILLCOX: Twelve.

7 THE COURT: Defendant 12, let's go off
8 of my copy. Is that okay?

9 MR. WILLCOX: Yes, sir. Yes, sir,
10 Judge.

11 THE COURT: That'll be my copy,
12 Defendant's 12.

13 BY MR. WILLCOX:

14 Q All right. Now, let's straighten out
15 this for you a little bit. Let me show
16 you -- this is Defense -- Let me show you what's
17 been marked as Defendant's Exhibit Number 1, but I
18 believe it's also the plaintiff's exhibit.

19 A Okay.

20 Q And that's the -- the bid, correct?

21 A It appears to be a bid of estimated
22 costs for the project.

23 Q And this is the bid you submitted to
24 Eagles Landing, correct?

25 A I think -- it was a quote.

1 Q Okay. And in this quote, you outlined
2 several ch--- estimated fees to get the 624,355.
3 Is that correct?

4 A Correct.

5 Q All right. And you're -- you're -- you
6 were trying to be the general contractor for this
7 job, correct?

8 A Yes.

9 Q All right. And general contractors,
10 you're generally in charge of the up--- the whole
11 project, correct? And are you in charge of the
12 whole project?

13 A As general contractor, yes.

14 Q Okay. And if you want to exclude any
15 work, you -- you would need to expressly say so,
16 correct?

17 A Depends on what's in the contract
18 itself.

19 Q Okay. Well, the contract itself is
20 a -- let's look at Defendant's Exhibit Number 2.
21 This a -- it's payment of -- it's a stipulated
22 sum, correct?

23 A Correct.

24 Q So that's -- you're --

25 A It's not a cost plus.

1 Q All right. So you do the work for this
2 amount -- agreed upon amount, correct?

3 A Correct.

4 Q All right. And that means you -- you
5 do the work. You turn -- you turn the project
6 over to the owner so he can operate his
7 restaurant, correct?

8 A That's, typically, how it goes, yes.

9 Q Okay. And there's nothing in here that
10 would vary that. And I say, here, I mean, Exhibit
11 Number 2, correct?

12 A That would change from that -- this was
13 different circumstances due to the beginning, and
14 how it started, and how things proceeded, and were
15 approved and disapproved along the way by
16 Mr. Makawi.

17 Q Okay.

18 A And so --

19 Q Well, let's -- let's limit our current
20 conversation to Exhibit Number 2, okay?

21 A Okay. Ask your question again, please.
22 I'm sorry.

23 Q The same question. Nothing in here
24 would limit your responsibility under the
25 contract, correct?

1 A Correct.

2 Q And, in fact, some of it -- it's got an
3 integration clause in here. You familiar with
4 that term?

5 A Explain please.

6 Q Look at Article 1, which you read
7 during your initial testimony.

8 A Okay.

9 Q And that, in fact, says that only the
10 contract documents is what controls the
11 relationship between you and the owner, correct?

12 A Bear with me. I'm reading it in its
13 entirety.

14 Q Me, too. The document that is listed
15 on Article Nine.

16 A Yes, see architectural drawings.

17 Q Okay. So you agreed to perform the --

18 A Perform the work as outlined in the
19 architectural drawings and specifications.

20 Q And -- and that would be something
21 prepared to allow the contractor to perform the
22 upfit in its entirety, correct?

23 A No, there would be limitations to what
24 entirety means. Clarify entirety --

25 Q Well, it -- it --

1 A -- of the contract or the
2 specifications and --

3 Q It says the con--- it says building
4 according to the specifications and the plans,
5 correct?

6 A Yes.

7 Q Right. And you were going to do that
8 for 624,000 dollars, correct?

9 A Yes.

10 Q If the cost overruns, you take the risk
11 for that, correct?

12 A If it's part of the plans, and
13 specifications, and outlines of the architect,
14 yes.

15 Q Okay. Well, other than this bid, is
16 that -- that isn't spelled out anywhere -- or at
17 least nothing that you've testified to, correct?

18 A Not that I'm aware of, no.

19 Q Okay. And let's even look at the --
20 the bid.

21 A Can I keep this copy or...

22 Q That's the Court's copy.

23 A Okay.

24 Q How -- do you have a --

25 MR. FORD: I think it's -- I think it's

1 the same as --

2 THE WITNESS: Okay. I just wanted to
3 have a copy.

4 BY MR. WILLCOX:

5 Q Now, let's look --

6 A In case he asked the question.

7 Q -- at Defendant's Exhibit 1, which I'll
8 give you a copy of that.

9 A Okay.

10 Q And that is what we talked about
11 earlier, the bid.

12 A No, this is a quote, estimate not
13 signed by any parties, as to a general estimate of
14 costs that would be incurred if going into a
15 signed contract.

16 Q All right. So because it's not signed
17 by any of the parties, you -- your contention is
18 it's unenforceable?

19 A This? No. Parts of this were part of
20 the original contract. And I do not have a copy
21 of the original contract. I would say I remember
22 this as being the cover sheet, Exhibit -- of
23 Exhibit 1 to 2, and 4, and 5 I recall as being
24 part of the signed contract. I am not sure of the
25 big breakdown of 2 and 3, which may have been part

1 of the original contract.

2 Q Well, and the -- the bid breakdown, in
3 fact, equals the -- the amount you agreed to in
4 the contract, correct?

5 A Correct.

6 Q Okay. So it stands to reason this was
7 part of the bid.

8 A Correct.

9 Q Okay. And also you say 4 and 5 were
10 part of your bids -- part of the bid as well.

11 A Yes.

12 Q All right. Well, let's look at this
13 bid and -- and touch on some things that you
14 testified to earlier starting with the HVAC. And
15 some -- I'm going to look on page two, Exhibit 1,
16 line item 15, 700.

17 A Okay.

18 Q My part of your 624,000 dollar quote
19 was 98,900 for HVAC.

20 A That was an estimated cost.

21 Q Okay. And you didn't have to do the
22 HVAC's because the old ones worked, correct?

23 A Correct.

24 Q But you didn't give him credit
25 for 98,900.

1 A Gave him a credit for the replacement
2 cost.

3 Q All right. Well, what about the
4 other -- the rest of the 98,000 --

5 A This was an estimate on a lump sum
6 contract. They could be -- end up being higher or
7 lower than the amount stated of which the
8 difference would incur to me if it was over. If
9 it was less, it would still be a loss to me that I
10 would suffer.

11 Q Okay. So --

12 A Not to be paid out to the owner. It's
13 a lump sum contract.

14 Q All right. So --

15 A He was given a credit for what he
16 decided he did not want to do, which was replace
17 the units and which he was given a credit for.

18 Q But -- but we'll all agree that no
19 HVAC's were installed.

20 A No new HVAC's but new lines were.

21 Q Okay. And -- but a new HVAC would --
22 would have been a lion's share of that 98,900,
23 correct?

24 A Correct.

25 Q Okay. And as far as the roof goes,

1 again, the same page, looks like you quoted 9400
2 for a new roof, correct?

3 A No.

4 Q What was that for?

5 A Roof repairs.

6 Q You quoted 9400 for roof repairs?

7 A Yes.

8 Q And he --

9 A He was quo--- he had paid over 6,000
10 dollars for roof repairs alone for a few leaks.

11 Q And -- but you also performed -- and --
12 but -- but you said that that's not included in
13 the scope of work, correct?

14 A What he had paid, correct, was not part
15 of the scope of work.

16 Q So the roof --

17 A I had done roof repairs as well.

18 Q Did you spend 9,000 --

19 A Whenever I was -- and I pretty clo--- I
20 would say if I were to bid and give him an invoice
21 of the roof work that was done -- however it was
22 under the scope of me, me and my guys completed
23 the work -- it would -- it would have been pretty
24 close to 9400 dollars for the amount of work done.

25 Q And as far -- and this decor package,

1 you estimated 3200, correct?

2 A Old decor package.

3 Q But you're saying the new decor package
4 is 96,000 dollars?

5 A I had a conversation with the
6 architects. J.D. can testify to this. That going
7 rate for new decor packages in -- in buildings
8 were between a 100 to 150,000 dollars for the
9 new -- the new decor package.

10 Q What's different in new and the old
11 decor packages?

12 A Having never done an old IHOP, I would
13 not know.

14 Q Well, you quoted --

15 A I was only --

16 Q -- 3200. Where did you get that --

17 A Based upon --

18 Q -- information?

19 A -- another bid that was supplied by me
20 by Mr. Makawi. I went off the records, number of
21 the old package.

22 Q Well, what -- and what would cause a
23 difference between a 3200 dollar decor package --
24 and -- and let's be clear -- what is a decor
25 package?

1 A Interior, everything interior that's
2 visual to you. It could be a booth color. It
3 could be partitions between the booths. I could
4 be the colors on the walls, the lighting package,
5 pictures, photographs, anything on the walls, any
6 color. It could be signage, interior signage,
7 exterior signage. It could be a table at the
8 entryway where a cashier sits. It could be 25,000
9 dollars for just a table.

10 Q Now, and did you say you -- you bought
11 the new decor package?

12 A I did not buy the decor -- the new
13 decor package. Mr. Makawi had paid for the items
14 that were part of the new decor package.

15 Q And --

16 A I was -- go ahead.

17 Q Okay. Well, in that -- in the sheet
18 you just went through with Mr. Ford --

19 A Uh-huh.

20 Q -- did you see anything close to a
21 96,000 dollar decor package?

22 A No, there was a lot of items in that
23 that were part of the decor package.

24 Q All right. So even though you
25 submitted a change order for 96,000 dollars, you

1 never actually incurred any costs for a new decor
2 package?

3 A Other than labor to install it. All
4 the items to be installed by painters, part of the
5 decor package. A lot of the labor that was to
6 install this package was paid by me.

7 Q Well, that wouldn't have been any
8 different than the old decor package. I mean,
9 you -- you quoted to install the decor package --

10 A Not know what the old decor package
11 was, I cannot say.

12 Q Okay. You -- you quoted it. You
13 didn't know what it was.

14 A Based off a prior bid, I went with
15 their amount.

16 Q But you would have quoted the
17 installation cost as well, correct?

18 A Correct.

19 Q Okay. So you just don't know. You
20 don't know if that's a change. You don't know if
21 installing the new decor is different than the old
22 decor.

23 A I know the new decor package was
24 significantly different than the old decor package
25 because the old bid specifically outlined in their

1 contract, which he gave me to review, specifically
2 that that bid did not include the new decor
3 package. So I incorporated that into my contract
4 to also not be included.

5 Q And this 96,000 dollars for the new
6 decor package, do you have any invoices or -- or
7 anything to back up that you spent --

8 A Other than the conversation I had with
9 the architect, no.

10 Q Okay. But 96,000 dollars, how much of
11 your time would that be to install a new decor
12 package.

13 A Well, this IHOP started as an old IHOP
14 image. And once it began, it changed over to a
15 new IHOP image. Which there were a lot of things
16 that had to be changed and redone specifically.
17 Had to wait on certain items to come in. The time
18 frame was completely thrown out of the door
19 because a lot of these items to the new decor
20 package were not readily available close and had
21 to be shipped in from all over the country. And
22 it required a lot more labor intensity than I
23 would imagine the old one did for 3200 dollars.

24 Q Okay. So you think there's 93,000
25 dollars worth of difference there?

1 A If you look at some of the items that
2 were paid out by Mr. Makawi for just the L.E.D.
3 lighting and package alone, it was part of the
4 decor package. It was almost 27,000 dollars. I'd
5 say a 100,000 dollars to do an entire decor
6 package is --

7 Q All right. Well --

8 A -- fair.

9 Q -- I mean, surely you quoted to put
10 interior lighting in the restaurant, correct?

11 A Correct, regular non-LED, non-new decor
12 package.

13 Q All right.

14 A Very expensive lights inside the new
15 decor package --

16 Q In fact, you quoted the --

17 A -- bid.

18 Q -- you quoted -- where -- where is the
19 lighting in your quote here? Let's see.

20 A It would have fell under electrical
21 labor and materials under line items 16,000.

22 Q So you -- you quoted -- you quoted in
23 your electrical labor and materials
24 92,000 dollars -- 92,780 --

25 A Uh-huh.

1 Q Surely, you -- you provide some quote
2 for the interior lighting.

3 A Not separately according to what I see
4 here.

5 Q Did -- you did not quote interior
6 lighting?

7 A Did not quote on this sheet the amount
8 that would be allocated to that. It was included
9 in the entire electrical labor and materials
10 quote.

11 Q Okay. And your contention is putting
12 in this -- these L.E.D. lights raised it -- the
13 cost by how much?

14 A I'm not an electrician, but I'd say
15 significantly.

16 Q Do you have any invoices -- anything to
17 support that claim?

18 A Actually, I can go back in an email and
19 go to City Lighting and pull up that invoice that
20 was paid by Mr. Makawi. Did he not furnish you
21 with City Lighting --

22 Q You -- you got --

23 A -- invoices?

24 Q -- all the invoices for City Lighting.

25 A Okay.

1 Q Okay.

2 A Well, hold on -- hold a minute and
3 we'll be able to answer.

4 Q All right. We'll go through -- back
5 through that. Let's look at Plaintiff's -- I'm
6 sorry, Defendant's Exhibit 3.

7 MR. WILLCOX: Judge, this -- this is
8 the one that had just for cost, claims associated
9 with Mr. Carter's part of the project.

10 THE COURT: This is what -- say again
11 now?

12 MR. WILLCOX: This is Defendant's
13 Exhibit 3.

14 THE COURT: Yeah.

15 MR. WILLCOX: These are the figures
16 that we claim were part of Mr. Carter's part of
17 the contract.

18 THE COURT: Is that it, right?

19 MR. WILLCOX: Yes.

20 THE COURT: Yeah, yeah, okay. Yeah,
21 I've seen this one, right.

22 MR. WILLCOX: Which is --

23 THE COURT: I've got it. I've got it.

24 MR. WILLCOX: -- it's the same up until
25 a point of what Mr. Ford was reading off of.

1 And --

2 THE COURT: It's off -- it's the same
3 as Plaintiff's Exhibit 13?

4 MR. WILLCOX: It's the same until you
5 get to the -- the line item total of all project
6 cost, 620,000 dollars.

7 THE COURT: Uh-huh.

8 MR. WILLCOX: And -- this one stops
9 there.

10 THE COURT: Okay. This goes further.
11 So this one would have all of that has --

12 MR. WILLCOX: Plus a little more.
13 Right.

14 THE COURT: I'm not missing anything by
15 looking at Plaintiff's Exhibit --

16 MR. WILLCOX: No, no, no.

17 THE COURT: -- Number -- okay. All
18 right. Very good.

19 MR. WILLCOX: Okay.

20 BY MR. WILLCOX:

21 Q All right, Mr. Carter, let me show you
22 this.

23 THE WITNESS: Your Honor, may I request
24 the sheet that has the highlighted sections for
25 review?

1 MR. FORD: Yeah, the or--- the original
2 Plaintiff's 13?

3 MR. WILLCOX: Sure.

4 THE WITNESS: That -- that copy right
5 there.

6 MR. WILLCOX: I -- I don't think that's
7 in here.

8 (Off-the-record Discussion.)

9 BY MR. WILLCOX:

10 Q All right, Mr. Carter.

11 A Yes, sir.

12 Q You said A.R.S. Rescue Rooter was not
13 within the scope of your contract.

14 A Correct.

15 Q And you have been provided -- and I'm
16 looking at invoices from A.R.S. Rescue Rooter,
17 and -- and -- and, generally, what do they do at
18 the --

19 A I think A.R.S. Rescue Rooter is a
20 heating and air company, but I think the rooter
21 side of them deals with like clogged drains. I'm
22 not sure exactly.

23 Q Okay.

24 A But I do recall them being on the
25 project, and they were working in the kitchen area

1 doing the vent returns. Returns and air -- air
2 system, ventilation and gri--- grills.

3 Q Okay. So that -- that'd be part of the
4 HVAC, right?

5 A Correct.

6 Q Okay. And again, you -- you did quote
7 to provide the HVAC for this project.

8 A A new HVAC system, yes.

9 Q But you didn't --

10 A This was using the old system and
11 redoing the lines. Mr. Makawi wanted to do the --
12 I think, according to the architect, redo the --
13 the lines coming out of those units to get --
14 because they had been sitting dormant for so long
15 to not spew out any mold or -- since the building
16 had mold, the ductwork could have had mold. So
17 that was his -- his call to replace.

18 Q Okay. It needed to be done.

19 A I -- I would have suggested it be done,
20 yeah.

21 Q Okay. So you -- you would agree that
22 is within the scope of the --

23 A No --

24 Q -- contract?

25 A -- the contractor that was hired under

1 my contract had finished the front and was
2 given -- I had given Mr. Makawi the price to do
3 the back. Mr. Makawi did not want to have him do
4 the back. And said that he would take care of
5 getting it done and getting it done less expensive
6 at which time I said, okay. I'll still oversee
7 them, and watch them, make sure, you know, they do
8 what they need to do. But he hired them
9 independently, on his own.

10 Q Well, it -- but that -- that's work you
11 didn't have to do?

12 A Yes, work --

13 Q Okay.

14 A -- I did not have to do.

15 Q And so that -- that should have --
16 at -- at a minimum be deducted from whatever
17 amount you're claiming is owed?

18 A No, my original guys were actually
19 considerably less. I'm really -- they were --
20 it -- hold on one second. The company that was
21 originally hired, I'm trying to see what the
22 amounts were so I can give you more of an idea
23 what I would have allocated to the rear of the
24 building.

25 Q And those are payments you actually

1 made, correct?

2 A Three -- three thou--- Carlton Driggers
3 was the air condition. For the front vent I have
4 a total of 3,000 dollars that was paid to
5 Carlton Driggers for the ductwork in the front on
6 9/11/2015. As well as a 1500 dollar air condition
7 repair, which was not part of the ductwork. And
8 with what I'm seeing here of -- a total of
9 3,000 dollars to do the front vents, I would have
10 probably allocated -- since the building was about
11 60 percent dining room, 40 percent kitchen area,
12 if -- I would allocate maybe 3,000 dollars. About
13 the same as what the front would be for the rear.

14 MR. FORD: Your Honor, let the record
15 reflect Vince is -- Mr. Carter is referring to
16 Plaintiff's Exhibit Number 10 for the expenses.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: So to answer your
19 question, I may would allocate toward that
20 11,285 dollar, a credit that would be under my
21 scope of responsibility, 3,000 dollars.

22 BY MR. WILLCOX:

23 Q Okay. So -- but you -- you -- you
24 admit the work needed to be done, but -- and --
25 and you don't have a quote -- or you don't -- you

1 didn't engage anybody to do it. You -- you --
2 you're kind of guessing based on what you had done
3 on the front part of the building?

4 A No, I did have a quote for redoing the
5 ductwork through the whole entire building.

6 Q Okay.

7 A And this gentleman was paid
8 3,000 dollars to do the front ductwork, which the
9 architect signed off as being adequate. The rear
10 ductwork that A.R.S. had done actually was done --
11 if you look in your punch list, the architect
12 probably gave you -- the architect did not agree
13 with some locations, were incorrect in the rear,
14 as well as some of the grills needed to be
15 replaced.

16 Q So you -- you don't have a quote for
17 the entire work --

18 A I do not have the quote for the entire
19 building. I just know what I -- according to the
20 records -- the documents what I paid for the front
21 to get redone.

22 Q All right. And so --

23 A It was 3,000.

24 Q The back ductwork was within the scope.
25 You're just saying that because you didn't use

1 your man, you don't want to pay for it?

2 A No, the scope of work changed when
3 Mr. Makawi decided to use the existing air
4 conditioning units. So it was completely off
5 scope moving forward at that point, and we were
6 just trying to get the units up and operational.
7 Fix them, replace compressors, replace ductwork to
8 get them operational for use -- usable.

9 Q Okay. But not -- by not using the --
10 by using the -- the existing HVAC and the
11 considerable -- a considerable amount of money was
12 saved, correct? You quoted 98,000.

13 A Oh, yeah, the replacement of the units,
14 I believe I furnished a credit for -- I supplied a
15 quote for brand-new Trane units around 48,000
16 dollars. And gave him credit for that.

17 Q But you -- you're not willing to give
18 him credit for the entire 98,900?

19 A No, because a lot of the money was
20 spent getting ductwork done, and I -- I agreed to
21 go ahead and -- and make that part of my scope, or
22 allow that to be paid for by me, and that's the
23 credit I gave him.

24 Q Okay. But you don't know what that
25 amount is?

1 A No, I would speculate I'd give him on
2 this -- this request you're asking for about a
3 3,000 dollar -- based upon what the front was
4 done, the small -- the sides and the back being
5 smaller in square footage, that 3,000 should be
6 more than adequate.

7 Q Okay. All right. And let's go on to
8 the next. Assured Neace Lukens.

9 A Uh-huh.

10 Q And you say that Builders Risk, which
11 is typically --

12 A I'm not sure exactly, Walker. I mean,
13 I'm speculating that it was. I furnished the
14 general liability and -- and then usually the
15 owner can do the Builders Risk. That's what
16 Jimmy Free had actually told me.

17 Q But -- in -- in your quote, you quoted
18 3600 dollars -- and I'm looking on page three of
19 the quote -- for Builders Risk.

20 A Uh-huh.

21 Q And 4200 dollars for general liability
22 insurance.

23 A If I were to carry it, those would be
24 estimates that -- and I believe -- hold on one
25 moment -- that -- I believe there's another -- I'm

1 just looking on page five. Okay. I see that.

2 Q It says not excluded on page five,
3 correct?

4 A Okay. And that is for -- I had --
5 page -- what page was that, Walker?

6 Q Page three.

7 A Page three?

8 Q Yeah, look on --

9 A I also have on here, permit, which I go
10 on to say that the owner is responsible for the
11 permit which he did furnish. These were estimated
12 costs. I -- I don't usually get these -- give
13 these estimates as a credit or a deduction. It's
14 just part of what I estimated the project to be.

15 Q Okay.

16 A They're not given out as a credit or a
17 deduction.

18 Q But certainly it would help explain
19 what the parties believe the scope of the work
20 was, correct?

21 A In identifying what was to be done,
22 it's a good guide to go by as far as items that
23 would be done. Maybe not costs -- exact cost, but
24 items that would be part of the scope of work,
25 yes.

1 Q Okay.

2 A Unless otherwise changed by the owner.

3 Q All right. Let's go to Atlantic --

4 A Electric, L.L.C.

5 Q Yes.

6 A Outside lights.

7 THE COURT: Sorry. Before we leave the
8 previous item, your position is that no part of
9 that was within the scope of your contract?

10 THE WITNESS: What sir?

11 THE COURT: That your position is no
12 part of that was in the scope of what you were
13 covering?

14 THE WITNESS: The --

15 THE COURT: Insured?

16 THE WITNESS: No, that's not part of
17 the scope of my contract, sir.

18 THE COURT: Okay. All right. No part
19 of it is what you're saying?

20 THE WITNESS: No part of it. Yes, sir.

21 THE COURT: Okay.

22 BY MR. WILLCOX:

23 Q All right. Let's go to
24 Atlantic Electric. You just say you just don't
25 know what that is?

1 A It says outside lights. There were --
2 this was an existing restaurant, Walker. It was a
3 Ruby Tuesday. Outside light, there were some
4 around the perimeter of the parking. I -- I would
5 imagine that this was maybe fixing those older
6 lights to make them operational. I'm not sure
7 what this is. They -- that's why I didn't give it
8 in my scope of work because I didn't -- I -- I
9 don't believe I discussed anything about outside
10 lighting with Mr. Makawi.

11 Q But if the outside lighting wasn't
12 working, that -- that would be something, as the
13 general contractor, you would have had to have --
14 have done, correct?

15 A As far as replacing bulbs, I would say,
16 yes. But re--- totaling rewiring all of those, I
17 would say, no.

18 Q So as part of the general contractor's
19 duties, does -- you're saying --

20 A I was focused, basically, on the
21 building, and the parking lot, and getting it
22 restriped and that was pretty much my scope.

23 Q All right. Let's look -- let's look at
24 the invoice here for Atlantic Electric.

25 A Okay.

1 Q This is something --

2 MR. WILLCOX: Judge, these are in this
3 black notebook.

4 THE COURT: All right.

5 MR. WILLCOX: And it looks like they're
6 changing the ballast.

7 THE COURT: Are we going to admit
8 those -- are you going to admit those --

9 MR. WILLCOX: Those -- they're
10 already --

11 MR. FORD: Oh, they're already -- no,
12 that's fine. I didn't know if we had a number on
13 them if we're --

14 MR. WILLCOX: They're an attachment to
15 Exhibit 3. We --

16 MR. FORD: Okay.

17 MR. WILLCOX: They correspond to the
18 itmes on the exhibit.

19 THE COURT: And then -- go ahead. I'll
20 look with him. I'll -- I'll walk around there if
21 I need to. Go ahead.

22 BY MR. WILLCOX:

23 Q We were talking about the outside
24 lights issue, correct.

25 A Right.

1 Q Okay. All right.

2 A Looks like they were upgraded to H.I.D.
3 I don't think they were originally supposed to
4 have H.I.D. lamps. I don't see -- and they're
5 considerably more expensive. And it looks like
6 they've got him, since they were a Florence
7 contractor, they -- they charge him for journeyman
8 apprenticeships, travel, van, day trip, gas,
9 surcharged for a bucket truck for 2,000 dollars.
10 All that is expenses due in part to hiring a
11 contractor from here that, maybe, I would have
12 probably hired one from there and got -- or even
13 my contractor would not have charged a lot of
14 these extra expenses. So I wouldn't say it's part
15 of my scope of contract.

16 Q And so it -- and again to be clear,
17 what your contention is, it might have been within
18 the scope of your contract, but you would have
19 hired somebody else?

20 A No. This -- his upgrading of the
21 H.I.D. lighting out there, they were not H.I.D.
22 originally in those outside lamps. And all this
23 2,000 dollars in travel expense, all -- none of
24 that would have been part of my scope of the
25 contract.

1 Q But it's not excluded.

2 A What would have been -- would have been
3 my electrician going up and replacing bulbs in
4 those, maybe.

5 Q Okay. So is that -- if the bulbs
6 needed to be replaced or repaired to get the
7 lighting to working, that would have been within
8 your scope, correct?

9 A No, I don't believe so because I'm
10 pretty sure it was not part of the specifications
11 outlined by the architect in -- in the specs and
12 plans.

13 Q And -- and what we have, Vince, are the
14 bid -- the bid notes. Do you see any -- do you
15 see excluded anywhere in your bid notes?

16 A Excluded -- I would say excluded, no.

17 Q Okay.

18 A Part of specifications -- I would say
19 they are not part of the architectural
20 specifications and plans.

21 Q All right. Let's go on to Bell.

22 THE COURT: Let -- let me ask a
23 question, Walker.

24 MR. WILLCOX: Yeah.

25 THE COURT: I know I'm getting a lot of

1 questions about this. And I'm -- I'm worried
2 about my fundamental understanding of what you're
3 asking there. When you're asking him about being
4 excluded and not excluded, are -- are you saying
5 that anything that came along, if it was not
6 expressly excluded, then it should have been part
7 of the contract. Is that what you're saying?

8 MR. WILLCOX: Correct.

9 THE COURT: Your position.

10 MR. WILLCOX: Right. This -- this bid
11 is very broad. It's got lighting in here. I
12 think it was part of their contract.

13 THE COURT: Okay.

14 MR. WILLCOX: You see, it's kind of
15 going now and saying, no, it's not exclud--- not
16 included. It's easy to say that now. But if --
17 if -- if they're saying that, for instance, the
18 HVAC we -- we didn't use the duct that I wanted to
19 use, therefore, you did that at your own risk,
20 but -- but yet they're still charge us for it in
21 the bid. That -- they're -- they're double
22 charging us in other words. They're -- they're --
23 they're either, A, saying, no, that's out of
24 scope. But on the same hand saying, of course,
25 it's included in the bid, but it's outside of the

1 scope. We shouldn't have to be covering these
2 costs.

3 THE COURT: And -- and that would
4 everything -- so anything not expressly excluded,
5 has to be -- well -- and that would include your
6 position no matter what you come across and what
7 you encountered?

8 MR. WILLCOX: Well, that's certainly,
9 I'm -- I'm -- if you look at the bid notes,
10 anything in these categories I'm saying --

11 THE COURT: Anything in those
12 categories.

13 MR. WILLCOX: Yeah.

14 THE COURT: Okay. And if you say if
15 lighting is on there and I know it is on there,
16 who -- how do you draw the line of what -- on how
17 far -- what -- what if someone -- what if the
18 defendant had said, I want a hundred new light
19 bulbs. This is what I need. I mean, is that --
20 where do you draw the line on what's reasonable
21 and what's not in that situation?

22 MR. WILLCOX: Well, the -- like -- like
23 for ele--- electric for instance. Okay. The
24 exterior lighting needed to be changed. It needed
25 to be operational. Means that somebody had to do

1 it. There wasn't any -- any effort quoted by the
2 general to do it -- is what our contention is --
3 so we had to do it. And then -- and then I think
4 anything that put -- and that's how we limited
5 this to 620 by what we paid. Anything to put
6 this -- this restaurant into operation.

7 THE COURT: Okay.

8 MR. WILLCOX: I mean, reasonably,
9 within the scope of that contract or should have
10 been expressly excluded.

11 THE COURT: I mean, I'm -- I'm getting
12 there with you. I -- I just making sure I was
13 on -- where -- knew where you were coming from and
14 understood it as we go through it.

15 MR. WILLCOX: Okay.

16 THE COURT: Okay.

17 MR. WILLCOX: Or -- or, Judge, and the
18 alternative then is if you -- if you're saying
19 that, you know what, it wasn't necessary to be
20 operational, then don't charge us for it. And --
21 and a lot of these things they're charging us for
22 are these things not within the scope.

23 THE COURT: Okay. I -- I understand
24 that. Okay. All right. Proceed on. I'm sorry.

25 MR. WILLCOX: No, you're fine, Your

1 Honor.

2 BY MR. WILLCOX:

3 Q And -- and to clarify, did you spend
4 92,780 on -- in electrical?

5 A No, did not.

6 MR. WILLCOX: Judge, and then that's on
7 page two, line 16,000.

8 BY MR. WILLCOX:

9 Q Did you spend 62,700 in plumbing?

10 A I don't have all the total of the
11 invoices. I can't answer that.

12 Q Okay. And you -- and you did quote for
13 demolition 12,800, correct?

14 A That was estimated, correct.

15 Q Okay.

16 THE COURT: Well, which -- which ticket
17 are you looking over when you're asking him?

18 MR. WILLCOX: I'm Judge, on page two,
19 exhibit -- Defendant's Exhibit 1.

20 THE COURT: And hold this one -- hold
21 on.

22 MR. WILLCOX: Okay.

23 THE COURT: All right.

24 MR. WILLCOX: Okay.

25 BY MR. WILLCOX:

1 Q And -- and -- and the same with Bell
2 Electric. Bell Electric, it's got itemized as
3 breakers. Obviously breakers needed to be
4 installed at this restaurant. That'd be something
5 the general contractor would be responsible for,
6 correct?

7 A If it was within the scope of work.

8 Q You quoted for electrical 92,780,
9 correct?

10 A Estimated in the bid, yes.

11 Q And we -- and we've already established
12 you did not spend 92,780 on electrical.

13 A Correct.

14 Q Capital Materials of Savannah.

15 A However, I do not feel this 4910
16 dollars is part of my scope of work.

17 Q And just --

18 A And to answer your question --

19 Q Okay. I understand.

20 A -- before moving forward, I just wanted
21 to make it clear that that's not part of my scope
22 of work.

23 Q And your -- and your position is
24 because you didn't spend that -- that that's your
25 benefit. It's -- it's a windfall to you because

1 you didn't have to spend the money for electrical.

2 A Once you get a -- a C.O., electrical is
3 approved by the city and the fire marshal approves
4 that, at which time before these dates, he had
5 gotten his temporary C.O. and the electrical was
6 completed, according to the city, and approved.
7 So anything done after that, would have been a
8 personal choice, and to him, and not part of the
9 scope of work. As well as the outside lighting,
10 which 2,000 dollars of that was extra expense for
11 travel. Their bucket truck rental, a van --

12 Q And -- and the --

13 A -- miscellaneous. That's not actual --
14 a full 3,414 dollar cost of the actual items being
15 changed.

16 Q All right. The -- the -- you -- you
17 referenced El--- Atlantic Electric --

18 A Atlantic Electric.

19 Q -- as being after the temporary C.O.
20 That's -- let me show you the invoice date and you
21 look on the corner there, Vince.

22 A No, we were actually speaking about --

23 Q -- 9/30/20---

24 A -- Bell Electric and to answer the
25 Atlantic on the outside lighting, now, that's

1 different. I did not say that this was done prior
2 to or after the temp C.O. on the
3 Atlantic Electric 3414.

4 Q All right. So you're -- you're
5 recollection is Bell.

6 A My answer to Bell Electric was that it
7 was done after the temporary C.O., and should have
8 been a personal choice of Mr. Makawi or his
9 management to replace whatever they felt they
10 needed to replace, and not part of the scope of
11 work of the construction of the building.

12 Q All right. Let's see what's involved
13 in Capital Materials?

14 A Yes.

15 Q And that was for the -- the drywall,
16 correct?

17 A Correct.

18 Q And again drywall is, obviously,
19 putting in drywall, buying drywall is -- is in --
20 in the scope of contract.

21 A Absolutely not. Nowhere in the
22 contract does it state that new contracted com---
23 sheetrock would be removed. The specifications
24 and the architectural drawings state that the
25 existing sheetrock in the building would remain.

1 However, if there was some that was damaged that
2 may need replacement that we would do so before
3 new -- I believe -- wallpaper was to go up and
4 maybe some paint inside the existing building.

5 Q Right.

6 A Initially all sheetrock was supposed to
7 remain, Walker --

8 Q Let's -- let's --

9 A -- in the building.

10 Q -- let's go to page two of the bid,
11 line 1900.

12 A These numbers and these breakdowns do
13 not correlate exactly to the specifications
14 outlined in the architectural drawings and specs.
15 These were --

16 Q But --

17 A -- estimated things that -- that were
18 going to occur during the new construction and
19 estimated costs. These were not hard costs to go
20 off of.

21 Q Well --

22 A Items that would be definitely done.
23 They were estimated things.

24 Q You're starting with estimated by
25 looking at the plans and specifications, correct?

1 A Correct.

2 Q Okay. And you estimated 7,000 dollars
3 for drywall, correct?

4 A Yes.

5 Q That's from Capital Materials of
6 Savannah Sales is drywall, correct?

7 A Correct.

8 Q All right. Let's go on to the next
9 one. We've talked about the Carolina Construction
10 Solutions. And we'll -- we'll go back to that
11 one. And City Electric, you -- you agree with
12 City Electric?

13 A Yes.

14 Q Okay. City Lighting and Products,
15 23,412, you -- you do not agree?

16 A No, that's part of the new decor
17 package and lighting including upgrading to L.E.D.
18 lighting throughout the entire, which
19 plans and specs do not specify L.E.D. lighting as
20 being the -- the lighting package.

21 Q Again, provided monies for, obviously,
22 interior lighting under electrical, correct.

23 A Did I allocate monies for the lighting,
24 yes, for the old decor package lighting.

25 Q But you don't know how much that was

1 compared to new decor.

2 A Would have not exceeded 3200 dollars
3 according to -- I think it was the estimated
4 amount given.

5 Q And the decor package again was
6 pictures and cushions and things like that.

7 A Anything interior wise was their decor
8 package, and Mohammed, I guess, clarified a lot of
9 that.

10 Q And again, you quoted 92,780 for
11 electrical, labor, and materials.

12 A Based upon what the architect J.D.
13 had -- had informed me that that's what the decor
14 packages are going for.

15 Q Okay. All right. Let's go to the city
16 of Charleston, page three of the bid.

17 A Uh-huh.

18 Q You have quoted 3600 for the permit.
19 You're saying that that is outside of scope.

20 A That is outside of scope. And if you
21 go to page five of the same, it says building
22 permit cost bids base does not include.

23 Q Well, you see that on page three of the
24 bid to the --

25 A No, this -- this is not --

1 Q So the 3600 should be removed from the
2 lump sum amount, then?

3 A That 47,994 is not part my scope and
4 contract.

5 Q You quoted 3600 dollars for the permit.
6 And my question is, should that amount be removed
7 from the 624,354 lump sum?

8 A No, it's not part of the scope of my
9 contract.

10 Q Okay.

11 A According to page five, which was the
12 base bid outline specifics.

13 Q But on page three, you do admit that
14 there's a permit there --

15 A There is --

16 Q -- on the contract.

17 A -- there is an estimated allocation of
18 funds that would be there for it if I decided to
19 use them.

20 Q Okay.

21 A But outlined on page five, it specific
22 that he was to furnish that.

23 Q And the Conklin's Construction you
24 agree --

25 A Yes, that's for the acoustical ceiling.

1 THE COURT REPORTER: And if you could,
2 let him finish his question before you answer,
3 okay?

4 THE WITNESS: Okay. Sorry.

5 BY MR. WILLCOX:

6 Q All right. Corrow Construction.

7 A Yes.

8 Q You -- you contend that that was
9 outside the scope and that was for roof repair,
10 correct?

11 A I do not know. I do not know that
12 company. I don't know what that would have -- it
13 says for leak repairs. After I had walked off the
14 building, did a final walk through with the
15 architect, we had done our repair work. He was
16 satisfied with that and agreed with me that it
17 needed a whole new roof, but these leaks that I
18 had done repair wise were adequate.

19 Q Let me show you this invoice from
20 Carter Construction. If you could look on the top
21 right corner about the date the work was done.

22 A 9/5/2015.

23 Q And that was roof repair, obviously,
24 before the temporary C.O., correct?

25 A They never contacted me and told me who

1 they were, what they were doing. They were hired
2 by Mr. Makawi independently. I never spoke to
3 anyone representing this company, nor did I
4 inspect any work that they'd done.

5 Q Well, you would certainly agree that
6 having the roof not leak would be within the scope
7 of your contact, correct?

8 A No.

9 Q Well, you at least quoted roof.

10 A The specifications outlined to be
11 patched as to the best of the ability.

12 Q In your bid --

13 A And it -- it was repaired to the best
14 of our ability and approved by the architect.

15 Q And on page two, again, of your bid --

16 A Uh-huh.

17 Q -- you have a line item for the roof,
18 correct?

19 A Right. And which me and my -- my
20 company had done roof repairs that would consume
21 most of that 9400 dollars, but he was --
22 Mr. Makawi was never billed for it. It was just
23 part of what we'd done --

24 Q Okay.

25 A -- for free. Or at least what it would

1 be considered part of this 9400 dollars.

2 Q Did you -- I'm sorry, I mean, the
3 design team you agree, Digital Niche, you say is
4 the decor package, correct?

5 A No, Walker, that I was told later was
6 not -- it was part of the front awning. And after
7 I found out that it was, I agreed to the amount
8 paid because it is in my -- it is on the
9 blueprints and part of the specifications. So I
10 agreed that that's part of mine.

11 Q And I'm -- I'm talking about
12 Digital Niche. Digital Niche, not Design Team,
13 Digital Niche.

14 A Oh, you're -- okay, so, your final
15 design team -- Digital Niche. Yes, that's as
16 stated part of the decor package. Exactly what
17 the Digital Niche was, I'm not exactly sure.

18 Q All right. So the decor package --
19 well, you at least had quoted 3200 for the decor
20 package and this is for 6,881, correct?

21 A Correct.

22 Q Okay.

23 A I believe it's -- probably since the
24 term says Digital Niche, it would have been for
25 something printed out digitally that went on the

1 walls like a -- a pancake, a smiley face,
2 photographs of children that were in the building.

3 Q Okay.

4 A Or maybe even pictures. But I -- and I
5 agree that it is part of the new decor package,
6 not the old one.

7 Q But you also agree that you do owe
8 something for -- for the decor package whether it
9 be old or new.

10 A Oh, yeah, if it was the old -- part of
11 the old decor package, I had allocated an estimate
12 of like 3200 dollars.

13 Q And you -- you submitted a change order
14 for 92,000?

15 A That's for the entire new decor package
16 consisting of, not only Digital Niche, everything
17 associated with the new decor package. Marlites,
18 parts array, extra tile and so on.

19 Q Okay. And you've -- E.C.K. agreed, or
20 Lee Construction, obviously, you agree.

21 A Yes.

22 Q Formula.

23 A This for a damaged door, I believe.
24 I'm not -- there were no doors actually replaced
25 in the building. We used the existing building

1 and existing doors as far as exterior brick and
2 what not. But I believe it was for a damaged door
3 that was done by someone, and it wasn't done by
4 any of my contractors. So that was paid up -- not
5 part of the scope of the construction.

6 Q And -- and you, but you don't know who
7 the damage was done by?

8 A If that was what it -- I'm not sure
9 what that was. It could have been for a lock that
10 wasn't operating properly. It could have been
11 damaged. I don't have the actual --

12 Q Let -- let me -- let me show you again.

13 A Okay.

14 Q This is the invoice for the door.

15 A Okay. Frame, and hinge, and office.

16 Q And -- and -- and --

17 A Office functions, so these were locks
18 that were changed and rekeyed, it seems, and a
19 metal frame redone. I -- then I was wrong about
20 it being a damaged door. It was just some items
21 that had probably gotten changed due to the
22 owners' wanting to have new keys in the office,
23 which is not part of my scope of contract.

24 Q Doors are not part of the scope of your
25 contract?

1 A Repair -- I think there is a metal
2 piece there and locks were redone, no.

3 Q All right. Again, I would point you to
4 page two of the bid. Doors, frames, and hardware,
5 3,000 dollars. That's nowhere in your -- excluded
6 in your --

7 A That's for -- that's for new. We had
8 reframed some areas so that included the new
9 frames, hardware, and new doors which we supplied.
10 Or Mr. Makawi had supplied. I wasn't given the
11 draws to pay for those items. He had supplied
12 them and he had hung them.

13 Q Handyman Plumbing.

14 A I have no idea what that was for,
15 Walker, and I -- it's not part of my scope.

16 Q And -- and generally speaking, again,
17 plumbing, page two, is a 62,700 dollar allowance
18 for that.

19 A There should -- the contractor of
20 record should have been called by Mr. Makawi. He
21 would have been gladly come out and his warranty
22 work would have covered that. I shouldn't have
23 been billed for that. That contractor would have
24 been responsible for anything.

25 Q And we talked about earlier, you didn't

1 incur 62,700 dollars in plumbing cost.

2 A I don't know exactly what ended up
3 getting paid to my subcontractor.

4 Q Okay.

5 A But I do know that if those were
6 repairs -- and from earlier testimony, I believe
7 it was just done after maybe or some maintenance
8 issue. It's not part of my scope of contract.

9 THE COURT: And you -- are you on
10 Handyman Plumbing?

11 MR. WILLCOX: Yes.

12 THE WITNESS: Yes.

13 BY MR. WILLCOX:

14 Q Oh, and then look at Hilton Displays.

15 A Yes.

16 Q And again, you just say you're not
17 responsible for signs?

18 A I believe my scope is not responsible
19 for -- the architectural drawing and
20 specifications don't outline that I replace those.
21 That the owner does.

22 Q All right. What -- what -- what
23 defines your scope? I mean, what -- what do you
24 specify?

25 A The specifications outlined by the

1 architect that were specifically to be done for
2 this project. Do you have a copy of the plans and
3 specifications?

4 Q No, this -- y'all don't.

5 A Yeah -- yes, we don't have those.

6 Q I mean, we've got -- we've got the bid
7 notes.

8 A I've -- I've got actually the plans and
9 specifications in my truck.

10 Q We have the bid notes. We got what you
11 included, which actually -- and that's we have to
12 go on today.

13 A Right.

14 Q Okay.

15 A That's fine. But it -- I -- yeah, I
16 will answer the best I -- as I can.

17 Q And under roofing, page two again, we
18 have awnings, flat roof, metal canopy.

19 A Therein, again, a lot of this is
20 allowances, Walker, like curb allowance amount.
21 Some of these, if they were higher or lower,
22 whatever it was, it came back to the contractor
23 unless something was changed like the air
24 conditioning system, which he was given a credit
25 for new units that he chose not to do.

1 Q Woodmark Services.

2 A Hilton Displays, did I answer that,
3 Walker?

4 Q Well, you say you never --

5 A The signs, I'm not responsible. Yeah,
6 there were some signs out by the street, okay?
7 Two areas I believe. Entry into the main area
8 where a Lowes was and a bank, you could put a sign
9 there. I don't know if Mr. Makawi had done that.
10 And there was a bank next to the building that
11 shared a sign to put IHOP signage on. He did
12 that, which I believe would be part of this, which
13 I'm not responsible for. The only IHOP is four --
14 foam letters in the front of the building with a
15 red little smiley face. I mean, I don't see that
16 being 7,371 dollars, quite frankly.

17 Q How much did -- well, did you do that
18 work?

19 A No.

20 Q Was that --

21 A Mr. Makawi took care of all the
22 signage. Dealt with his company that he had used
23 before. I never met the guy. Never talked with
24 him. Never was brought into the conversation
25 about anything signage.

1 Q All right. Again, page two, including
2 in the bid for awnings, metal can---

3 A That's -- that's not a --

4 Q Did --

5 A -- a sign.

6 Q Did you spend 8,900 for awnings?

7 A No, the awning, I believe, was -- I
8 don't know how much the awning was, but I gave him
9 cre--- I did allow to pay for the awning that was
10 put up. I think we discussed that earlier, did we
11 not? Yeah, Design Team, I believe, on the prior
12 page was the awning. He paid out 3,298 dollars.
13 I agree that that would be part of my scope of
14 work.

15 Q All right. Let's go on to Hobar---
16 Hobart Services. And running gas lines was part
17 of your scope, correct?

18 A If they were within the specifications
19 outlined to this specific equipment, yes.
20 Mr. Makawi had a conversation with the gas
21 company, William Smith, who I believe had an
22 outstanding invoice of 2,420 dollars that they
23 were talking. That they haven't got paid for
24 extra work, and I'm not sure what Mr. Makawi had
25 had them do and running some gas in different

1 areas. But the gas lines that you're asking
2 about, I don't -- I don't think we're to that part
3 yet. They are William Smith? Yeah, they've
4 further down.

5 Q Okay. Installing gas lines is within
6 your scope of contract, right?

7 A We have to -- if -- is Hobart Services
8 a gas line contractor? Because on here it doesn't
9 say.

10 Q But he was running gas lines to the gas
11 griddle.

12 A Then I would say, yes, that would be
13 part of my scope of work. You don't have to show
14 me, Walker. If you say they're a gas contractor,
15 the one I had hired was a different one. I just
16 didn't know who these guys were.

17 Q All right. Johnson Concrete -- are you
18 saying part of this was within the scope of --

19 A Yes, the --

20 Q -- or outside of scope?

21 A -- the bid that Mr. Johnson had turned
22 in for pavement, it had outlined different prices
23 for different items. The 3500 dollars was part of
24 the front being resurfaced -- redone, poured with
25 dome -- corrugated domes for handicap entrance and

1 exit or frozen over protection, which he had done
2 that, and that's part of my scope. That'd be 3500
3 dollars. And the file -- if you take that away
4 from his total 8,548 leaves 5,048 dollars, which
5 is part of the change order for ripping out all
6 the tile in the back of the kitchen, and redoing
7 it, and re-putting new concrete back there. So to
8 answer your question, 3500 dollars is my
9 responsibility under my scope and contract.

10 Q And again, that's assuming that the --
11 the repair in the kitchen was outside your scope
12 and only came inside due to a change order?

13 A Yes.

14 Q Okay. Didn't -- didn't you have to put
15 new plumbing in the -- in the kitchen?

16 A Yes, there was new plumbing put in the
17 kitchen.

18 Q And to do that, wouldn't you have to
19 tear out the concrete?

20 A You trench, specifically, in the
21 locations where drains were going to be
22 re-attached to existing drain under. So very
23 small trenches were cut into the concrete to add
24 and attach to existing drains.

25 Q All right. Let's -- let me show you

1 this invoice from Johnson Concrete. Doesn't that
2 appear to you to be doing that?

3 A He did -- he poured some concrete in
4 some of the -- some of the trenches, but a lot of
5 the -- so the darn -- some of it was in some of
6 the front area that wasn't in our scope that
7 Mr. Mohammed wanted to tear out a lot of the front
8 where a bar area was for -- if you're familiar
9 with Ruby Tuesdays, a bar, and you got a big area
10 of bar there that was over and above the scope of
11 work. He didn't -- once the flooring was removed,
12 that -- it was really wavy and -- and instead of
13 just pouring a float, you know, on top of it,
14 Mr. Mohammed -- and actually Mr. Ali were all
15 there and -- and so let's just cut all that out
16 and get it out of here and pour all that. So that
17 was part of the change order. So that's why that
18 1775 as well as the 3273 were added together to
19 get the 5,048.

20 Q How much did you p--- well, when the
21 plumber or concrete person had to tear up concrete
22 and repour for the plumber, how much did that
23 cost?

24 A He didn't -- the -- we hired an
25 independent company to cut the concrete. The

1 plumbing -- the concrete contractor didn't cut
2 anything or remove any concrete at all. All he
3 did was -- is finish the concrete.

4 Q And how much did that cost?

5 A I think it's in the bid there.

6 Q Okay. Okay --

7 A Thirty -- yeah, 3500 was part of the
8 front, which is part of my scope and contract,
9 3500 dollars. 5,048 dollars was what the -- the
10 extra work was done according to the whole back.
11 Mohammed Makawi wanted to have all the back
12 redone. And that was coming in. Now, keep in
13 mind, once you tear up that tile, there's almost
14 two to three inches of concrete under the tile in
15 the kitchen that had to be jackhammered up. We
16 had to come back and what's called float that
17 floor to the new drains as well as old drains. So
18 that's part of his work was overseeing and pouring
19 all the concrete to the drains and getting it all
20 re-sloped. And then in that it -- it kind of
21 filled into existing ditches as well as
22 everywhere.

23 Q And Kessler Plumbing, you agree was
24 yours.

25 A Yes, sir.

1 Q Lowcountry Services, now, this was
2 cleaning done before opening.

3 A Yes, I had done some various cleaning
4 with different crews hired doing, you know, small
5 items. I didn't know about any cleaning crew that
6 was hired. And I don't think that was part of my
7 scope of work. We had already had some cleaners
8 in there.

9 Q Well, wouldn't you have to clean before
10 the restaurant is opened?

11 A Well, they went through testing, and --
12 and firing up the grills, and they had made the
13 restaurant dirty during -- during the -- I guess,
14 their training. And so after training, before
15 opening, they had made the restaurant dirty. So
16 they had to, obviously, clean it because it was
17 filled with people going through interviews, going
18 through training. There was food all in the
19 front, all in the back. They were testing
20 their -- all their cooks and bringing out food.
21 And it was just like it had been a fully
22 operational restaurant for that week or two of
23 training. So they had to clean all that before
24 they opened it up to the public. I believe that's
25 what that was for, which was not part of me or my

1 scope of work.

2 Q Let's look on page three of the bid.

3 A Uh-huh.

4 Q Look under general conditions.

5 A Page three?

6 Q Yeah.

7 A Okay.

8 Q What is -- what is -- what does general
9 conditions include?

10 A That's funds put in there for the
11 company if some -- that if it's not outlined in
12 the specifications or plans, that may have been a
13 minimal cost like gasoline, a broken hinge, or
14 small items.

15 Q So that -- that's supposed to capture
16 anything that was -- was not in the plans?

17 A No, that's just to capture some things
18 that were -- may or may not have been in the plans
19 for -- general conditions is just what that is. I
20 can't really be specific as to what a general
21 condition is. It's just monies allocated in an --
22 a contract that I put in there to cover anything
23 that I may have missed or that I know is an
24 expense of mine that I may have seen and just
25 taken care of instead of me having an owner to pay

1 for it.

2 Q And again, you say the Marlite is part
3 of this new decor package?

4 A Yes, it is.

5 Q And that's -- again, that's because
6 it's wiring for the --

7 A No, Marlite, I think, is a material.
8 Oh, it's a panel that I believe goes on the walls.
9 It's glued on the walls.

10 Q And -- and -- but that's going to be
11 part of the old decor. I mean, that goes on the
12 walls regardless, right?

13 A No, the original plans and
14 specifications called for all the interior divider
15 walls to remain as is according to what
16 Ruby Tuesdays had put up there, which was solid
17 wood. Behind that -- I'll show on the plans and
18 specs. Behind that was sheetrock. So all that
19 sheetrock had been molded. So all of that wood
20 had to be taken out during the construction and
21 removal of the mold. So we had to go back with
22 something and thus we had to re-sheetrock all
23 those divider walls and the architect in the new
24 decor package said, let's put this Marlite panel
25 up. And that's what that is. That's part of the

1 new decor package. It's a faux wood, I believe,
2 panel. Comes in a four by eight sheet and you
3 glue it up.

4 Q Look on page two of the bid. Again, we
5 have a line item for F.R.P. Marlite panels.

6 A That's for old decor package. Has
7 nothing to do with the new decor package.

8 Q But, obviously, you haven't given him a
9 credit for what you didn't do, correct?

10 A I did give some credits for things that
11 did not occur.

12 Q Okay. And you said -- that's the
13 -- the flooring in the kitchen?

14
15 A Correct.

16 Q And that's --

17 A I believe so.

18 Q -- that's the rubber flooring you put
19 in the kitchen to --

20 A I believe that is. I didn't put that
21 in. Mr. Makawi hired that contractor to come in.
22 That's the main purpose of Mr. Makawi wanting to
23 remove all that tile -- the ceramic tile that was
24 existing to the Ruby Tuesdays and go back with
25 this rubber floor system. Which that was to

1 remain by the way, originally.

2 Q What and the rubber flooring system
3 is -- is generally used in most -- most new
4 restaurants, correct?

5 A The plans and specifications outlined
6 it by the architect. Mr. Mueller said,
7 specifically, leave existing tile in kitchen area.

8 Q That -- that's not my question, Vince.
9 Is this --

10 A No, I cannot attest to that. I'm not
11 in a lot of restaurants to be able to see what is
12 in the back of them. I, however, in most of my
13 experience have seen that exact same tile that was
14 there originally in most of the restaurants I've
15 been in -- a ceramic tile.

16 Q So you -- you don't do much -- do many
17 restaurants?

18 A No. But, however, I've been in a lot
19 of them with my commercial roofing side. And of
20 the ones I've seen, 95 percent of them have been
21 ceramic.

22 Q And again, these -- these -- this is
23 this rubber floor that's supposed to help you
24 not --

25 A It's a new --

1 Q -- slip.

2 A -- upgraded rubber floor system from
3 what the installers and the supervisor that was
4 there was telling me. It's new. It's supposed to
5 be slip -- a lot more slip resistant, better
6 maintenance. However, it's not very cheap. It's
7 very expensive.

8 Q All right. And then National
9 Restaurant Designs, those are the plans?

10 A Right. Architect.

11 Q And the M.B.S. Media Systems.

12 A It's a audio -- I think sound -- the
13 sound throughout. It says audio, music. And on
14 page five, Walker, on page bid does not include --
15 it says, I think, item number -- 11 -- no P.O.S.
16 system or Muzak which is this sound system.

17 Q Muzak is that -- this is actual wiring
18 and installation of --

19 A It's --

20 Q -- speakers.

21 A -- it's not in the plans or
22 specifications outline by the architect for me to
23 do. So it's not part of my scope of work.

24 Q But it's not excluded in your -- your
25 bid notes?

1 A It's not included in my scope of work
2 or outlined in this plans or specifications to be
3 part of the work done.

4 Q Okay.

5 THE COURT: If -- if -- can I ask a
6 question before -- so like, for instance, with
7 Multi-Tech Safety Products and Rubber Floor,
8 N.B.S.B. Systems, and the sound system, these
9 people you did not work with them or didn't have
10 anything to do with ordering or the installer or
11 anything --

12 THE WITNESS: No, sir, I did not.

13 THE COURT: -- or anything else?

14 THE WITNESS: No, Your Honor.

15 THE COURT: Thank you.

16 BY MR. WILLCOX:

17 Q But you were the general contractor
18 when that was installed.

19 A If the dates to -- not on the audio
20 system.

21 Q Talking about mul--- Multa---
22 Multi-Tech.

23 A The Multi-Tech System, those guys were
24 there. I remember seeing them. And the media
25 system, no. The -- and, of course, the architect

1 was there all the time -- I'm just looking at this
2 last three.

3 THE COURT: Well, for instance, when
4 you -- and I'm sorry to interrupt here, Walker,
5 but I -- I just hate -- I'm afraid I'm not going
6 to -- I'm going to forget or not understanding as
7 well if I don't go ahead and ask about it now.

8 For instance, with the Multi-Tech Safety Products
9 folks, say, were working on the rubber floor as
10 you called it. You knew what they were doing?

11 THE WITNESS: Oh, I saw what they were
12 doing. Yes, Your Honor.

13 THE COURT: Did they -- did they come
14 in and tell you what they were doing?

15 THE WITNESS: The -- the whole purpose
16 of putting that -- a floor system had to go in.
17 It was originally supposed to stay exactly as it
18 was. And Mr. Makawi wanted us to remove all the
19 existing tile that was, according to the plans and
20 specs, supposed to stay -- the original kitchen
21 tile was to stay.

22 THE COURT: Did Mr. Makawi tell you he
23 was going to replace the floor with the rubber
24 floor?

25 THE WITNESS: Yes. Yes, sir.

1 THE COURT: And you -- you -- you made
2 him --

3 THE WITNESS: Watched them.

4 THE COURT: In other words, you watched
5 them --

6 THE WITNESS: The --

7 THE COURT: You been hiring this other
8 company --

9 THE WITNESS: Yes.

10 THE COURT: -- who was brining it in
11 and putting it in.

12 THE WITNESS: I had to coordinate with
13 them -- their time frame. Which they wanted
14 payment from Mr. Makawi, and we were waiting on
15 confirmation of that to get in there and get in
16 the schedule to get the building done.

17 THE COURT: I -- I -- I was trying to
18 understand the practical side of how that was
19 going along. And -- and that helps me, okay.

20 THE WITNESS: Yeah.

21 THE COURT: I'm sorry.

22 MR. WILLCOX: You're fine.

23 THE COURT: I'm sorry I broke the flow
24 of what you were doing. I just needed to stop and
25 get that in my head. Okay.

1 BY MR. WILLCOX:

2 Q And Neil Floor--- Neil Flooring you
3 agree? Is that correct?

4 A Neil Flooring was the contractor that
5 installed tile in this restaurant.

6 Q Okay. And, of course, tile is again
7 included in your -- your bid?

8 A According to the plans and
9 specifications, there were some tile. Tile was to
10 be installed in the bathrooms, the bathroom
11 sidewalls, and part of the dining room area.
12 Mr. Makawi decided to put tile in all of the
13 dining room area. So this bid is broken up into
14 two separate sections. One part of I have a
15 change order, and the other part of my scope of
16 work, it's labor only. Does not include any
17 materials.

18 Q Okay. And again, you quoted 24,900 for
19 tile.

20 A I gave an estimate of approximate cost
21 of 20--- if you say 24,000, I'll agree to that.

22 Q Twenty-four thousand.

23 A Yes.

24 Q All right.

25 A 24,900. But if you add the labor,

1 which this is labor only and material cost of the
2 tile, you probably are pretty close to that,
3 maybe.

4 Q Which is -- well, that'd be consistent
5 with what you quoted, right?

6 A No.

7 Q You've got 24,900 for tile, but you're
8 saying that any tile that's used is outside of
9 scope.

10 A There's different types of tile. Some
11 more expensive than others, and this happened to
12 be a pretty expensive tile. Half the building in
13 the front -- I'd say 75 percent of the front
14 dining area was supposed to be carpet according to
15 the plans and specs. Mr. Mohammed wanted to add
16 tile in those areas instead of carpet. So some of
17 that would have been a change order.

18 Q Okay. But again, you allowed for
19 24,900 dollars for tile. It's on page two of
20 the --

21 A Those aren't --

22 Q -- bid.

23 A -- allo--- allocated amounts. Those
24 are estimated cost of labor and material.

25 Q All right.

1 THE COURT: Where is the Exhibit
2 Number 2, the contract. Can I have a copy of
3 that --

4 MR. WILLCOX: Yes, sir.

5 THE COURT: -- Mr. Walker? Thanks.

6 BY MR. WILLCOX:

7 Q Okay. Let's go through more of
8 this stuff. And I'm going to summarize all that,
9 Vince, by Exhibit 1 you have all of these --

10 A Okay.

11 Q -- estimates, allowances, whatever of
12 624,354, correct?

13 A Correct.

14 Q Okay. Which matches the quote you
15 quote of the contract -- amount of the contract,
16 correct?

17 A Correct.

18 Q And you began work on April, 2015,
19 correct? Or that's when the commencement date of
20 the contract was, correct?

21 A I don't think the work started then.
22 It started a little later on.

23 Q What's the commencement date of the
24 contract?

25 A The 9th of April, 2015.

1 Q Okay. And you had a 120 days from that
2 commen--- commencement date to complete it,
3 correct?

4 A Unless it was delayed by unforeseen
5 items, which the contract says it -- if it is
6 delayed, it's not my responsibility.

7 Q Where does it say this?

8 A I believe it was -- I'm pretty sure
9 it's in there. Due to the acts of God or
10 unforeseen items, which we had mold in the rear of
11 the restaurant.

12 Q All right. And so --

13 A I'm sorry, Walker, I was trying to find
14 that.

15 Q Okay. Did you find it?

16 A No.

17 Q So of a 120 -- in fact, your bid says
18 90 days, but in the contract it says a 120 days
19 and that was -- had put -- puts completion due
20 April -- I'm sorry, August the 9th, correct?

21 A According to what you stated, yes.

22 Q According to the contract?

23 A Yes. I'm going to say, yes.

24 Q And -- and in substantial completion on
25 this contract -- on -- on this project was not

1 until the beginning of November, 2015, correct?

2 A Whatever date the temporary C.O. was
3 issued.

4 Q Was that late October --
5 October 27th, 2015?

6 A I think it was -- yeah, I think it was
7 late October.

8 Q That was temporary C.O.?

9 A Yes.

10 Q Okay. So it was about two months late?

11 A Give or take I'd say.

12 THE COURT: I thought I saw it was
13 October 23rd.

14 BY MR. WILLCOX:

15 Q And, obviously, if the restaurant is
16 not opening, not operating, it's losing money,
17 correct?

18 A Yes.

19 Q All right. Let's look at Exhibit
20 Number 4. Defendant's Exhibit 4, Vince, which is
21 the same as Plaintiff's Exhibit Number 13

22 A Do I have a copy of that, Walker?

23 Q You should. I'll give you that one.

24 (Off-the-record Discussion.)

25 BY MR. WILLCOX:

1 Q And go to the last page of that
2 document, Vince. It looks like that bottom line
3 figure is \$923,078.97, correct?

4 A That's the number stated there. Yes,
5 sir.

6 Q Okay. And if you go to the page before
7 that, as you'll see, this is the -- all -- all the
8 charges we -- we've just been over -- we've been
9 over twice now. The 620,000 dollars and then
10 we've added back in the -- for the seating, which
11 is a booth package, which we contend -- we agree
12 that's not -- outside your scope.

13 A Okay.

14 Q We've got the Oracle equipment, which
15 we agree is outside the scope. We've got
16 restaurant services, which is equipment, which we
17 agree is outside the scope, and the chairs, which
18 we agree is outside the scope.

19 A Yeah.

20 Q And then the small ware, you know, the
21 pots and pans and things --

22 A Yes.

23 Q -- like that. And so Mr. Makawi would
24 have paid so far \$923,078.97 for this project. Do
25 you have any reason to doubt that number?

1 A I wouldn't object to that, no.

2 Q Okay. And you testified earlier
3 Mr. Makawi was in E--- Egypt?

4 A I didn't know where he was. I never
5 asked him specifically what country he was in, but
6 he was -- I did -- I think I was informed by
7 Mr. Free that I could not communicate with
8 Mr. Makawi when he was out of the country.

9 Q All right. And so, obviously, when
10 Mr. Everett was saying that he heard conversations
11 between you and Mr. Makawi, that couldn't have
12 been correct?

13 A He overheard items of where Mr. Makawi
14 was in my presence, or he was there and overheard
15 us con--- conversating, yeah. Mr. Makawi was in
16 the states some during this project and out of the
17 country, I presume, because I was told as much.

18 Q Okay. And these change order forms you
19 testified about --

20 A Yes.

21 Q -- let's -- let's look at these.

22 A Okay.

23 Q Let's start with the --
24 Carolina Construction change order forms, which I
25 believe has been identified as Plaintiff's Exhibit

1 Number 4.

2 A Okay.

3 Q This is a document you prepared?

4 A Yes.

5 Q Okay. And what's the date on that
6 document?

7 A June 12th.

8 Q All right. And so according to that
9 document, Carolina Construction had already
10 performed their work, correct?

11 A Could have been, yes.

12 Q Okay.

13 A This was -- I think someone in my
14 office had sent this to Mr. Makawi or Mr. Free.

15 Q All right. So on June 14th -- I'm
16 sorry, June 15, 2015, according to that form you
17 created, Carolina Construction had done all their
18 work.

19 A No, this is --

20 Q And needed to be paid.

21 A No, sir. This invoice could have been
22 sent either during or after their work inside the
23 IHOP.

24 Q Carolina Construction Solutions aided
25 in the completion of electrical services needed on

1 the project.

2 A Yes, they did.

3 Q Okay. So this is -- this reads like
4 this is after they had done the work, correct?

5 A That reads that that could have been
6 during the process of them giving me invoices and
7 turning them in. They may not have been completed
8 a hundred percent.

9 Q Okay.

10 A I only submitted the invoices or a
11 grand total of what they were requesting -- the
12 grand total of those invoices after weeks of being
13 submitted -- as a grand total and sent to
14 Mr. Makawi.

15 Q And --

16 A They may have still been working and
17 still continued to work even prior -- or after
18 this was submitted.

19 Q Okay. Well, at least -- but, of
20 course, you say that -- aided in completion of
21 electrical service, but you dated this thing
22 June the 12th, 2015. Did -- did you -- you
23 backdated this.

24 A That could have possibly been an error.
25 I'm not sure.

1 Q Did you backdate it?

2 A I cannot recall that I done -- even
3 sent that. It could have been my wife or someone
4 who was in my office.

5 Q Did you backdate it be--- to try to get
6 it --

7 A No, I would not --

8 Q -- what --

9 A -- backdate anything, no.

10 Q And y'all have read the statement of
11 account by Carolina Construction Solutions in
12 their complaint.

13 A Yeah, they were the furnisher of the
14 temporary electricians on the job.

15 Q And I'm looking at Exhibit A to their
16 Complaint. Has the date of their work, 9/23/2015,
17 which is about three months after the date of
18 this --

19 A No, that -- no, that was the date of --
20 I may have signed this, and they may have put a
21 date in there. I don't know if they -- that date
22 is actually -- there may have been an error in the
23 actual date of the invoice. I can't say or
24 deny that it was. I just know that they had given
25 me an invoice for a certain amount and then that

1 was billed to Mr. Makawi.

2 Q And don't you agree it didn't -- it
3 didn't happen on June the 12th, 2015?

4 A Completion of the work? No, it did
5 com--- it was not completed at that time.

6 Q Have they -- all right. Let me show
7 you another invoice from Carolina Construction
8 Solutions. I'm looking at these bills. The work
9 was done in September and October.

10 A Okay. Yeah, they -- they were there at
11 that time. It could have been a clerical error as
12 to the date. I don't see why the date would be
13 any disregard as to why or -- or who these people
14 were. They definitely were there. I'll -- I'll
15 attest to them being there and working.

16 Q And it would have been --

17 A They were hired because of Mr. Makawi's
18 demand to have them there.

19 Q And then that was after the -- the
20 contract -- I'm sorry -- the project was already
21 delayed, correct?

22 A The project was delayed due to mold and
23 Mr. Makawi wanting to rip up the entire back
24 kitchen area that was already completed and it's
25 framing and roughed in base.

1 Q But these invoices have Carolina
2 Construction there --

3 A I'll --

4 Q -- in September and October, correct?

5 A I'll -- I'll attest that they were
6 there.

7 Q All right.

8 A If they say they were, I believe that.

9 Q Okay. So your -- your change order
10 date is wrong.

11 A It could have possibly been a -- a
12 clerical error, yes.

13 Q And, of course, these change orders
14 weren't signed.

15 A No, they were not signed. They were
16 verbally approved. Which, according to my
17 contract, says that things that are not outlined
18 in this contract that are verbally approved, if
19 it's associated with something like a change order
20 are acceptable.

21 Q You kind of read that into the
22 contract?

23 A He was out -- yeah, I -- I'm pretty
24 sure I saw it in there. And Mr. Makawi was to --
25 I believe he would admit he was out of the country

1 quite often, and a lot of times I was given
2 approval. If he was there, he approved it on the
3 spot. Sometimes he may have been out of the
4 country, but I remember us specifically talking
5 about things like mold and tearing up everything
6 in the kitchen area.

7 Q All right. And then we have the --
8 let's look at your change order form number six.

9 A Okay.

10 Q All right. And what's the date on that
11 change order form?

12 A June 15th.

13 Q Did this work occur on June the 15th?

14 A I can't recall exactly the dates. I
15 would not say that it occurred exactly on that
16 date. But all the items specified here was done
17 and approved by Mr. Makawi.

18 Q When?

19 A The exact date of approval, I -- I
20 would not say. I remember having the conversation
21 inside the building.

22 Q But -- and this is the Multi-Tech --
23 Marlite -- or I'm sorry, this is the Multi-Tech.

24 A This is when Ms. Mohammed decided to
25 not use -- that the plans and specifications and

1 contract called for leaving the existing kitchen
2 flooring. He decided to tear it up and which I
3 listened to him and we did. I told him it was an
4 extra -- it would be a change order to get
5 approved. He said just get it done.

6 Q Okay. And then this -- let me show you
7 this invoice from Multi-Tech dated
8 September 11, 2015.

9 A Okay.

10 Q All right. So that's again three
11 months after the date of the change order form.

12 A The change order dates may be
13 incorrect, but the work is 100 percent approved,
14 and is a functional change order. They came in --
15 they came in definitely a lot later to do their
16 rubber floor system. But that was done and
17 completed before they came in and did their work.

18 Q The -- this -- these other change order
19 forms. Got another dated June 15, 2015.

20 A I mean, I -- I'll may agree if that's
21 what you're asking. It seems to me that these may
22 have been done -- it looks like to me. Just
23 because the date of the change order, they're all
24 exactly or pretty close to the same, may have been
25 a clerical error. But the work requested on the

1 change order forms were approved by Mr. Makawi to
2 be done.

3 Q It looks like you backdated them.

4 A No, why -- what advantage would there
5 be to backdating anything --

6 Q Before the work was done?

7 A -- just -- no, sir. Just to get the
8 work paid for that he approved. Why, Mr. Walker,
9 would I tear up and entirely completed rear, as it
10 was already almost done according to the plans and
11 specifications, tear out a perfectly good wall
12 with all new plumbing and electrical, and a
13 perfectly good floor system unless Mr. Makawi had
14 wanted to change that.

15 Q Because you agreed to it in the
16 original contract, didn't you?

17 A No, absolutely not. All these change
18 orders were done on the fly by Mr. Makawi. And
19 the mold, when we first got into the building, the
20 whole place was infested with it. And it was some
21 unforeseen that to have been taken care of that
22 took a long time to redo and dramatically change
23 the -- the time frame and the schedule.

24 Q And as far as these amounts to your
25 change order form, I'm looking at 7, 8 -- 6, I'm

1 sorry -- 6, 7, 8 -- where is number 5?

2 THE COURT: I've got -- I've got one
3 here.

4 MR. WILLCOX: That's it, Judge.

5 BY MR. WILLCOX:

6 Q These amounts that you put in these
7 documents, you don't have any supporting
8 estimates, or quotes, or invoices, do you?

9 A You're specifically speaking of --

10 Q Any of them.

11 A -- change order -- no, I was told, by
12 Mr. Makawi after approval, to get it done and
13 we'll just take care of what the balance is when
14 they're done and completed. And I did them as --
15 as -- as my years of experience as a contractor of
16 over 25 years, based the prices on numerous years
17 of experience. And even talking to fellow
18 contractors as to what would be a -- a fair price.
19 And even Mister -- my attorney and I had discussed
20 and said there would be some -- okay.

21 Q Mr. Carter, you say -- you say you
22 incurred these costs?

23 A I incurred those costs?

24 Q Yeah.

25 A No, those were bills for the change

1 orders that were approved.

2 Q Did you pay these costs? Did you pay
3 these change orders?

4 A I couldn't pay the change orders
5 because I was not getting draws from Mr. Makawi.
6 Mr. Makawi paid for the material. I would have
7 labor in there and submit those, and request
8 almost immediately for an appropriate bid for
9 Mr. Free, which was denied and basically what was
10 paid for was --

11 Q You --

12 A -- labor and material only. So I
13 submitted these change orders to be paid.

14 Q So you don't have any -- any documents
15 to support any of these numbers in these changes
16 orders. You're just basing it on what your gut
17 instinct of --

18 A Of calculating the work and having 25
19 years of experience in construction, I based them
20 upon my experience.

21 Q So you, essentially, went back, put a
22 date on here of June the 15th of most of these,
23 and put a number you thought was fair?

24 A No -- no, as far -- I put a number that
25 I thought was reasonably fair due to my years of

1 experience, yes.

2 Q Okay. But you have no idea when you
3 actually created these things?

4 A The actual dates, no. Apparently the
5 dates could have been saved from another document.
6 I, a lot of times, will type over an existing
7 document and may not change the date or -- and --
8 and that could have been what the case is to how
9 some of these were -- the dates could be wrong.
10 But the work on the changes orders were approved
11 by Mr. Makawi, and are not part of the scope of
12 contract.

13 Q Mr. Carter, what exactly -- how much
14 money are you asking for?

15 A I never got paid other than I think the
16 difference we've shown -- my attorney and I --
17 there was a difference of 50,000 dollars and some
18 things. This is a lump sum contract. I'm a small
19 business man. I only have one employee and that
20 is me. I dedicated 100 percent of my time and
21 effort driving from Florence to this job every
22 single day. I requested from Mr. Free to do
23 normal draws of which I was continually led on to
24 believe that they were coming. Let's just pay
25 your labor and material, and if you notice by the

1 draw amounts that were paid out to me, they were
2 small in increment. Typically and according to my
3 contract, it does specify that -- I don't want to
4 waste the Court's time -- but it goes on to say
5 that in -- in this contract that I'm going to be
6 paid in progress draws by a bank of designation
7 and whatever their terms would be. And I will be
8 able to get my draws. And I never really,
9 technically, through this project got paid my fair
10 due for my -- my company or myself. I was trying
11 to save Mr. Makawi as much money as I could and
12 get it done as quickly as possible. But what's
13 due, I got to ask exactly what the amount we came
14 up with my attorney may have -- may I speak with
15 him about what that amount was. I don't exactly
16 what's left.

17 Q Well, you -- you were paid 229,000
18 dollars, correct?

19 A 229,000 dollars, yes.

20 Q Okay. And you say you have 50,000
21 dollars additionally --

22 A We have Exhibit --

23 Q Yeah.

24 A -- are you looking at Exhibit 10? If
25 you're looking at Exhibit 10 and you add up all

1 the debit cards, because I was told by Mr. Makawi
2 that I was to hand over to his accountant my
3 checkbook. Which in 25 years of construction as
4 well as bank statements, I have never done that
5 before for a lump sum contract. But I was told I
6 would not receive any funds until I did so. So I
7 did that and they -- Mr. Free and, as well as
8 myself, tabulated what's on Exhibit 10's total,
9 page three. It seems that there is a -- a
10 difference left over of \$50,960.65.

11 Q That you say you're owed.

12 A No, that's what was left over from what
13 was paid to me and my company, and what was paid
14 out with a balance of -- left over in the positive
15 would be \$50,960.56.

16 Q So what are you demanding?

17 A I believe it -- when you total up the
18 change orders -- you total up the change orders,
19 the difference of 624,000 dollars what we went
20 through in Exhibit 13 is rightfully mine and part
21 of my scope of work and contract and what is paid
22 out, was approximately a balance of 287,000
23 responsible left on the contract that's still owed
24 to Elite Construction Company.

25 Q All right. So -- so what you're asking

1 for is for Mr. Makawi on top of the 229,000
2 dollars he's already paid you, to pay you another
3 287,000 dollars for a total of about 510,000
4 dollars?

5 A According to the contract, if you
6 subtract what's been paid to me, 229,900 dollars,
7 178,934 dollars I proved that has been paid out
8 already. Okay? Not profit. Leaving a profit of
9 50,000 dollars. But if you take what was paid out
10 by me, what we did in Exhibit 13, take those and
11 try to -- we feel is rightly part of the scope of
12 contract -- away from the 624,000 leaves
13 approximately 287,000 dollars.

14 Q So your position is every dime of that
15 624 is -- is profit?

16 A It's a lump sum contract. If I, sir,
17 say I'm going to build your house for a million
18 dollars, and I build it for 900,000 dollars, a
19 100,000 goes in my pocket. You're none the wiser.
20 You're going to pay me a million dollars under the
21 contract to build your home.

22 Q The same goes if you spend too much
23 money on the contract, correct?

24 A If I -- if it cost me more, I have to
25 eat that cost. Exactly, that's part of my --

1 Q You can't -- can't --

2 A -- of our --

3 Q -- just say that was outside of the
4 scope of contract.

5 A It's part of the lump sum contract. If
6 it's part of the lump sum contract, I have to pay
7 for more for what some of the adjustments are, I
8 eat that cost.

9 Q Okay. And like we talked about
10 earlier, you didn't -- you didn't spend 62,000
11 dollars on plumbing. You didn't spend 92,000
12 dollar for electrical. You didn't spend -- or
13 you're not claiming the -- the -- the 24,900 for
14 the tile. You didn't spend 98,900 for H.V.--- or
15 H.V.A.C. What -- what you're asking for is
16 510,000 dollars. You didn't even expend the --
17 the largest line item's of this bid.

18 A A lot of these items that are on this
19 sheet you are referencing to Exhibit 1, some of
20 them may have been higher estimates I paid more
21 for. Some may have been lower estimates that I
22 kept the balance of. But this -- this was an
23 estimated sheet of what some of those costs would
24 be for the project.

25 Q Again, it -- here at trial, the best

1 thing we have to go on, is what your scope of work
2 is in this Exhibit 1, correct?

3 A Yes.

4 Q Okay. And what you've submitted here.

5 A And the -- and the -- Exhibit 1 -- is
6 this part of the Exhibit?

7 Q No, the contract.

8 A I -- I -- yes, to your question on
9 Exhibit 1, but I would add, yes, it's also part of
10 Exhibit 2, which outlines a lot of other
11 questions, and specifications, and payments that
12 were not made timely to my company.

13 Q And your Exhibits 10, 11, 12, they
14 don't have any adjoining invoices describing the
15 work or what you're paying for. These are just
16 amounts you spent --

17 A Amounts --

18 Q -- that you say was -- is within the
19 contract.

20 A And did -- Exhibit 10, Walker, and --

21 Q 10, 11, 12.

22 A The bank statements. But they were all
23 bank statements from my bank account verified
24 by -- by his C.F.O., Mr. Free. Yes, these were
25 all checks and debit cards dedicated 100 percent

1 to the paying of material and labor for this
2 project.

3 Q But you -- there's no description of
4 work in any of these documents, correct?

5 A No.

6 Q Okay.

7 A They were checks paid for --

8 Q That you worked for?

9 A -- to -- yes.

10 Q And if, Mr. Carter --

11 A Yes, sir.

12 Q -- as we showed, your Plaintiff's
13 Exhibit 13 and our Number 4 --

14 A Exhibit 13.

15 Q Your Plaintiff's Exhibit 13 --

16 A One, two --

17 Q -- our Defendant's Exhibit Number 4.

18 A Page four?

19 Q I'm sorry, it's Defendant's Exhibit
20 Number 4, your Plaintiff 13, the last page.

21 A Okay. Last page.

22 Q Correct. And what you're demanding is
23 that Eagles Landing pay -- and really incurred a
24 1,019,037.03 for this project, plus another
25 289,000 so that would essentially pay 1.3 million

1 dollars for this project?

2 A I don't know what the actual -- I'm not
3 a restaurateur. I would be only guessing it what
4 would be an appropriate amount to take a -- a
5 building and get it up and operational for a
6 restaurant.

7 Q So you think 1.3 million was the -- is
8 a reasonable number for this upfit?

9 A Well, I looked at a permit that was
10 just pulled on an IHOP that was upfitted -- not
11 that that's relevant here -- it was an approximate
12 880,000 contract given to a -- someone in -- to do
13 an upfit --

14 Q 800,000 --

15 A -- in Charleston. Yeah.

16 Q 500,000 cheaper.

17 A No, 880,000 just to do the
18 construction. So I imagine, from what I seen
19 Mr. Mohammed has spent for various items, I would
20 say 1.2, 1.3 million dollars to have a turnkey
21 restaurant is pretty reasonable.

22 Q And this 280,000 dollars you want the
23 court to award you, that goes straight to your
24 pocket, right?

25 A No, it goes to the incurring cost of my

1 corporation for -- I'm a small businessman. I
2 only do one to two small projects a year. For six
3 months I basically, you know -- and it was a lot
4 of -- I want to -- it's my -- my company makes
5 that as the general contractor doing -- I -- I bid
6 this work at a comparable bid price that was given
7 to me by Mr. Makawi. That's the only way I got
8 the project. And I -- I feel I'm owed my fair
9 share of what's left on that contract. I did the
10 work. I gave him my temporary C.O. He was
11 operational and in business in two weeks after
12 that.

13 Q And these amounts in your change orders
14 that you did at some point --

15 A Were all change orders I would have
16 loved to have not even messed with, quite frankly.
17 However, it stopped the project. Delayed me from
18 getting my money. The mold issue, the whole back
19 restaurant it was...

20 Q These -- these amounts in your change
21 orders, again are--- aren't amounts supported by
22 any specific numbers. These are amounts that you
23 created yourself.

24 A That I -- I think is fair due to my
25 experience as a contractor of over 25 years.

1 Q Okay.

2 MR. WILLCOX: I have no further
3 questions, Judge.

4 THE COURT: Thank you.

5 MR. FORD: What time is it?

6 THE COURT: It's not quite 4:00.

7 MR. FORD: All right. May I take just
8 a quick break. I have just got to grab some --
9 make sure I've got all my documents.

10 THE COURT: Yes, sir.

11 (Whereupon, a break was taken
12 from the proceedings.)

13 REDIRECT EXAMINATION

14 BY MR. FORD:

15 Q Vince, earlier you read Article One of
16 the contract simply stating that the contract
17 documents consisted of, among other things,
18 modifications issued after the execution of this
19 agreement. Does that include the change orders
20 that were --

21 A Yes.

22 Q -- were to cover events that were
23 unforeseen?

24 A Yes.

25 Q The change orders you provide in this

1 case were issued because of unforeseen events, or
2 because of -- of changes that caused an increase
3 in -- in the bid, or in the price of the job as a
4 result of demands of the owner?

5 A Yes.

6 Q I want to go back to Plaintiff's
7 Exhibit 1. Mr. Carter, you testified that these
8 were approximations based on your experience
9 and -- and -- and help of another bid. Did these
10 numbers include any sort of increase for -- or
11 when you make a bid, do you account for your time
12 and your expense, your profit. Do you mark that
13 up a little bit?

14 A Uh-huh.

15 Q Is that customary in the industry?

16 A Yes. Yes.

17 Q And that would be -- if you please,
18 could you read Section 8.6 of the contract.

19 A The contractor is to be paid a
20 100,000 dollars from this contract as a project
21 man--- fee. Payment is to be made as the
22 contractor's progress of work begins. Payment
23 amount requested shall be at the discretion of the
24 contractor. Typically payment draws to
25 contractor. Payments shall be made one-third

1 after start, with two weeks. Another third
2 halfway into project, and then the third at or
3 near completion.

4 Q Is that permitting -- contemplating you
5 receiving some--- something above the top for your
6 management of this project?

7 A Correct.

8 Q And to date, you testified earlier,
9 that you've received -- this spreadsheet --
10 according to Exhibit 10, approximately 50,000
11 dollars and some change?

12 A Yes.

13 Q As a -- that was left over from what
14 was paid to date plus your expenses?

15 A Yes.

16 Q I just want to go through these change
17 orders real briefly.

18 MR. FORD: Your Honor, I don't have a
19 clean copy of this, but I'm going move to admit.
20 This is a breakdown of the cost for each change
21 order provided by my client. A breakdown of what
22 was paid by Eagles Landing, what was paid by
23 Mr. Carter's company, Elite Construction. Your
24 Honor, I didn't make a copy of it.

25 THE COURT: Is that the only one you

1 got?

2 MR. FORD: Yes.

3 THE COURT: Has Walker seen it?

4 MR. FORD: No. No, he has not.

5 THE COURT: Let Walker see it, and I'll
6 go make me some copies based on what we're going
7 to do with it first, though.

8 MR. FORD: If we can go off the record
9 just a second.

10 (Off-the-record Discussion.)

11 BY MR. FORD:

12 Q Mr. Carter, I'm handing you, again,
13 what was Plaintiff's Exhibit 4, a change order,
14 for Carolina Construction -- for Carolina
15 Construction Solutions.

16 A Yes.

17 Q Are you claiming anything in addition
18 to what is due to Carolina Construction in this
19 case?

20 A No.

21 Q That change order simply represents
22 what the balance that you believe to be due from
23 the actual electricians.

24 A The temporary electricians, yes.

25 Q That's change order number five with

1 the mold.

2 A Okay.

3 Q Regarding to the mold removal?

4 A Right.

5 Q Was the total cost for Eagles Landing
6 for the sheetrock to Capital Materials? I believe
7 that's provided under Plaintiff's Exhibit 13.

8 A Yes.

9 Q And that's in the amount of \$4,919.03?

10 A Yes.

11 THE COURT: How much? Say again.

12 MR. FORD: \$4,919.03, Your Honor,
13 that's on Plaintiff's Exhibit 13, the first page
14 for Capital Materials.

15 THE COURT: Okay.

16 BY MR. FORD:

17 Q And then your total cost for the mold
18 removal then included payments to some contractors
19 to install the sheetrock. Is that correct?

20 A Remove, install.

21 Q And then also for painting the
22 sheetrock.

23 A Yes, painting the sheetrock, finishers,
24 and hangers.

25 Q And then for Waste Services.

1 A Yes, dumpster fees and...

2 Q Did you have to obtain a separate
3 dumpster in order to --

4 A Yes.

5 Q -- haul off the --

6 A Uh-huh. And painters.

7 Q All right. So your total cost for that
8 totaled \$13,795.02.

9 A Yes.

10 Q All right. Therefore, the total costs
11 paid for Eagles and for -- by Eagles and by you is
12 the summation of \$13,795.02 along with the
13 \$4,919.03.

14 A Yes.

15 Q And also along with that was the mold
16 testing, which was approximately \$2,101.26?

17 A Correct.

18 MR. FORD: And, Your Honor, the invoice
19 for the -- for the amount paid by Eagles Landing
20 for the mold removal is provided on Plaintiff's
21 Exhibit 13, and times divided by -- on the
22 Defendant's -- also the Defendant's 4 for W.R.M.
23 Management Group.

24 MR. WILLCOX: Patrick, can -- I'm sorry
25 to interrupt. What are -- what I thought y'all

1 were going to do is say this is what we claim is
2 owed in the change order.

3 MR. FORD: Uh-huh.

4 MR. WILLCOX: And I'm -- I'm still
5 unsure about --

6 MR. FORD: -- Okay.

7 MR. WILLCOX: -- are you claiming just
8 the \$13,000?

9 MR. FORD: Well, we're -- I'm claiming
10 the -- well, I think it's in second -- just let
11 me --

12 MR. WILLCOX: Okay.

13 MR. FORD: All right. If you have --

14 THE WITNESS: It's to your advantage.

15 MR. FORD: All right.

16 MR. WILLCOX: It's -- it's amending it.
17 Okay. Go ahead. Go ahead.

18 MR. FORD: Yeah, no.

19 THE COURT: Yeah, I'm a little --
20 I'm -- I'm more than a little lost. I'm
21 listening. Hoping this will all come back
22 together for me.

23 MR. FORD: Yes, Your Honor.

24 THE COURT: Okay.

25 BY MR. FORD:

1 Q And, Vince, for your time for managing
2 the mold removal, which you wouldn't have had to
3 do otherwise, what is a reasonable -- what would
4 you have charged -- I guess what's a reasonable
5 fee for a contractor for the management in this
6 case?

7 A Probably overseeing that project, a few
8 weeks of work, probably 6,000 dollars give or
9 take.

10 Q And what is the typical -- when you
11 make your bid, how -- what type of percentage do
12 you usually give yourself for profit in -- in --

13 A About 20, 25 percent.

14 MR. FORD: All right. So, basically,
15 what -- what we're trying to do here is establish,
16 based on the cost and the time taking what -- what
17 a reasonable change order would have been,
18 obviously, with the numbers here. We're also
19 trying to give a breakdown of the cost of the
20 change order. So Elite Construction, Vince
21 testified to, is paid out of pocket \$13,795.02.
22 Eagles Landing paid out of pocket \$13,020.29.
23 7,000 dollars -- \$7,020.29 comes from the drywall
24 from Capital Materials of Savannah for the
25 \$49,019.03. And then also, for the payment of the

1 mold testing to W.R.M. Management Group for the
2 \$2,101.26. That leaves a total cost of approx---
3 between both -- and Eagles Landing for
4 approximately 20,000 dollars and change. I'm
5 sorry, is that -- I'm -- yes, 20,000 dollars and
6 some change.

7 Then a supervisor fee of approx--- for
8 the general contractor's supervision, Vince has
9 testified to is 6,000 dollars. And then a markup
10 for -- for the profit for the company which
11 included in the bid is about 25 percent of -- of
12 the total of the cost and labor. So that's what
13 we would assert due for the change order. And
14 that we calculate to be a total of 33,519 --
15 \$33,519.13.

16 MR. WILLCOX: And that includes the
17 amount Elite --

18 MR. FORD: And then --

19 MR. WILLCOX: I'm sorry, Eagles Landing
20 paid.

21 MR. FORD: That -- that would -- then
22 we have to decrease that, yes, by what
23 Eagles Landing paid by the 7,000.

24 MR. WILLCOX: Judge, I -- I better just
25 maintain an objection. I understand this is too

1 speculative and to come back and a
2 designated amount on the -- a designated amount on
3 these change orders.

4 THE COURT: I'm going to tell y'all
5 what. Can we go off the record a minute.

6 (Off-the-record Discussion.)

7 THE COURT: We'll go on the record.

8 THE COURT REPORTER: Okay.

9 THE COURT: I'm not trying at all to
10 talk you out of where you were going.

11 MR. FORD: No, no, no.

12 THE COURT: I just wanted to tell y'all
13 what I was thinking at this point it'd be --
14 why -- why I -- where I --

15 MR. FORD: Well, I just wanted to make
16 sure we're all on the same page --

17 THE COURT: Okay.

18 MR. FORD: -- and we're not wasting the
19 Court's time.

20 THE COURT: Okay.

21 MR. FORD: All right. Thank you,
22 Judge.

23 THE COURT: Okay.

24 BY MR. FORD:

25 Q I ask you again to look at Plaintiff's

1 Exhibit Number 6.

2 A Okay.

3 Q Briefly, this was just for the removal
4 of the tile floor in the back part of the kitchen
5 area and pouring the new concrete. Is that
6 correct?

7 A Yes.

8 Q And the cost to date for Eagles
9 Landing, I believe you explained for us, 5,048
10 dollars as marked on Plaintiff's Exhibit 13. Is
11 that correct?

12 A Correct.

13 Q And the cost for Elite Construction for
14 payments to subcont--- or laborers and for other
15 materials provided was \$10,156.83. Is that
16 correct?

17 A Yes.

18 Q All right. The total cost for the
19 change order then, as you understand it, summation
20 of those which is approximately \$15,204.83. Is
21 that correct?

22 A Yes.

23 Q All right. For the -- the management
24 of that job, given the time it took based on your
25 experience based on your experience as the general

1 contractor, what is a reasonable management fee
2 for that.

3 A Ten thousand.

4 Q And then once again, your reasonable
5 rate of return is 25 percent?

6 A Correct.

7 Q So in this case you're asking for a
8 total of \$31,506.04 for the change order?

9 A Yes.

10 Q And we need to then subtract 5,048
11 dollars paid by Eagles Landing to come up with a
12 total of approximately 26,000 dollars. Is that
13 correct?

14 A Correct.

15 Q Next a change order, Plaintiff's
16 Exhibit 7. This is for the new -- new decor
17 package. Is that correct?

18 A Yes.

19 Q Okay. And as you understand it, the
20 total cost for Eagles Landing for the new decor
21 package including the Marlite, Parterre Flooring,
22 the City Lights -- the City Lighting -- or the
23 L.E.D. lighting -- and Parterre Flooring,
24 Marlite -- Marlite and the Digital Niche, I
25 believe --

1 A Uh-huh.

2 Q -- you stated that the decor package
3 would total approximately the sum of \$6,881.26 for
4 the Digital Niche.

5 A Yes.

6 Q Along with the Marlite costs, which you
7 testified to is \$16,744.15?

8 A Yes.

9 Q The Parterre Flooring, which
10 is \$1,281.47?

11 A Yes.

12 Q And then the amount for the
13 City Lighting, which was approximately 23,421
14 dollars?

15 A Yes.

16 Q And all of that was paid out by
17 Eagles Landing?

18 A Yes.

19 Q Did you have any costs associated
20 with -- with contractors or repairing that, or is
21 that all taken care of by Eagles Landing?

22 A No, I had contractors to do the work.

23 Q All right. And what was the total work
24 for the contractors paid out? Did you pay out
25 approximately 7,445 dollars for contractors to

1 install the Parterre Flooring, the Marlite?

2 A Yes.

3 Q And that's the total for costs for
4 Elite Construction for the change order?

5 A Yes.

6 Q So the total cost for the change order
7 then is approximately \$32,829.22?

8 A Yes.

9 Q And based on your experience as a
10 contractor for the time spent on the project, what
11 is a reasonable fee for the general contractor's
12 supervision?

13 A Ten thousand.

14 Q All right. And then you also gave a
15 credit for the old decor package. Is that
16 correct?

17 A Correct.

18 Q And how much is the amount of that
19 credit?

20 A 3200.

21 Q All right. So the -- and then are you
22 also asking for a 25 percent profit fee for -- for
23 your profit and your overhead?

24 A Yes.

25 Q All right.

1 MR. FORD: And it doesn't look like we
2 have a total for all that, Your Honor, but we
3 would ask the -- of course, the summation of all
4 that, less the credit of 3200, less the total paid
5 by Eagles Landing for -- for \$24,000 -- or for
6 the -- what all the numbers are for the lighting
7 and the --

8 THE COURT: It's about how much
9 -- just roughly?

10 MR. FORD: The total cost for
11 Eagles Landing -- or the total paid by
12 Eagles Landing is approximately -- I would say
13 about 47,000, includes with the lighting, the
14 Marlite, the Parterre Flooring, and the -- the
15 Digital Niche, which I'm not sure that -- I don't
16 recall what that was. But the total paid by
17 Elite Construction for its costs is 7,445 dollars,
18 which would bring the total change order for costs
19 up to approximately 48,000, maybe a little bit
20 less.

21 THE COURT: Which exhibit are you --
22 what -- what --

23 MR. FORD: This is --

24 THE COURT: -- that you've brought --

25 MR. FORD: -- this is Plaintiff's

1 Exhibit 7.

2 THE COURT: Seven? I thought you were
3 on 7. Okay.

4 MR. FORD: Yes, Your Honor. And then a
5 10,000 dollar fee for the management of the
6 project and coordinating by the general contractor
7 plus 25 percent total labor and materials. And
8 then subtract then from that total amount what's
9 been paid by Eagles Landing, which is the 47
10 approximately, and the 3200 dollar credit for the
11 old decor package.

12 THE COURT: You lost me on that one.

13 MR. FORD: Please --

14 THE COURT: I -- I was going through --
15 I thought you were 32,820 dollars in cost, plus
16 10,000 dollars in reasonable fee for the
17 supervision, 42,829 less a credit of 3200 and --
18 and of this -- it -- it -- assuming we're talking
19 about the same one, Plaintiff's Exhibit 7, and
20 somehow or another in there --

21 MR. FORD: Yes, Your Honor that --

22 THE COURT: I lost -- I lost you.

23 MR. FORD: The testimony today that
24 we've got from Mr. Carter as to what was included
25 in the decor package is for the amount paid to

1 City Lighting Products.

2 BY MR. FORD:

3 Q Is that correct?

4 A Yes.

5 MR. FORD: That 23,421 dollars. Next
6 is for what paid for the Marlite, which was
7 \$16,744.15.

8 THE COURT: Okay.

9 MR. FORD: Then what's paid to Digital
10 Niche -- or Digital Niche for \$6,881.20. Then was
11 all spent finally was paid for Parterre Flooring
12 \$1,281.47. That's the total cost for
13 Eagles Landing. Mr. Carter's company,
14 Elite Construction, paid out to several -- for
15 labor on the install, approximately 7,445 dollars.
16 Which is the total cost for Elite. Then he -- I
17 believe charged -- would charge 10,000 dollar
18 management fee as for managing and supervising the
19 work performed. And then an additional 25 percent
20 of the total labor and materials for the profit
21 which is stated.

22 THE COURT: All right. So you -- you
23 got in there a -- a -- a 10,000 dollar fee for
24 management, but you also got 25 percent of profit.
25 Is that correct?

1 MR. FORD: The 10,000 fee is for the
2 work that Mr. Carter did supervising and
3 coordinating everything. And then the 25 percent
4 for the company for the -- for -- to -- I guess to
5 account for his over.

6 THE COURT: And 25 percent profit is
7 based upon...

8 BY MR. FORD:

9 Q Mr. Carter, is it typical in the
10 industry when a contractor sets a budget to mark
11 everything up a little bit. Is that how the
12 company profits?

13 A If it's a -- a line item change order,
14 those are typically done at a higher rate than
15 standard. So the --

16 THE COURT: He -- he testified earlier
17 today 20 to 25 percent.

18 MR. FORD: Yes.

19 THE COURT: I'm -- I'm -- I'm -- I got
20 that. But I'm -- I'm just having a hard time in
21 tying it all into what we -- what would -- what
22 the foundation of this is. But I'm -- I'm -- I'm
23 listening.

24 MR. FORD: We're just trying to come up
25 with -- with the -- Walker had put initially the

1 total cost of the change order for the new decor
2 package. Mr. Carter had testified that -- for the
3 change order -- he provided 96,900 dollars for the
4 change order. Walker had asked about his costs.
5 So we're trying -- this is what we -- we -- the
6 costs for the change order -- we assert the cost
7 for the change order. So then the total of all
8 that would be subtracted then from whatever Eagles
9 has already paid, and then the credit -- the 3200
10 credit for the whole decor package.

11 THE COURT: Got you. Okay.

12 MR. FORD: Sorry, Your Honor, that's
13 the most complicated one.

14 THE COURT: I -- I think I understand
15 you better. I -- I just want to get a grip on
16 what was being claimed to make sure that I
17 understand the components of it and the -- the
18 reasoning behind it. Okay.

19 MR. FORD: Thank you, Your Honor.

20 BY MR. FORD:

21 Q And then, finally, the last change
22 order, this is for the tile in the front of the
23 restaurant. Mr. Carter, what were your costs for
24 that portion of the project?

25 A Approximately 7,200 dollars.

1 Q And that's what you paid to Neil --
2 Neil's Flooring?

3 A Yes.

4 Q And then Eagles Landing also paid
5 Neil's Flooring.

6 A 6,600 dollars.

7 Q All right. And the total, based on
8 your experience as a general contractor for the
9 time involved in coordinating and supervising the
10 work performed, what is a reasonable fee?

11 A 6,000 dollar supervisory fee.

12 Q And then are you also claiming the
13 25 percent markup for the --

14 A A fair -- fair --

15 Q -- for --

16 A -- rate of return, yeah.

17 MR. FORD: Your Honor, so for that
18 change order we're asking for a total -- the
19 Plaintiff is asking for a total of \$16,388
20 dollars. And, of course, that would -- that'd
21 have to account for the 6,600 paid already by
22 Eagles Landing. So, 16,388 less 6,600.

23 THE COURT: Okay. And I -- I totaled
24 up what your components and I got a lot more than
25 that. So maybe my math is that bad. It was

1 16,000?

2 MR. FORD: It was 6,600 paid by Eagles.
3 7,200 paid by Elite. That's \$13,800. Then 6,000
4 dollars for the contractor fee, and then
5 approximately 25 percent for the -- the profit.

6 THE COURT: Okay.

7 MR. FORD: And I believe -- let me make
8 sure that adds all up.

9 THE COURT: I get a good bit more than
10 what you said.

11 MR. FORD: Yeah, it looks like about
12 23 -- oh, Your Honor, I counted -- that must have
13 counted for the 6,600 after.

14 THE COURT: Okay.

15 MR. FORD: So it's 23 minus the 6,600
16 would be the 16,000, approximately. So we'd have
17 to count what Eagles Landing paid out.

18 THE COURT: Okay. Got you now. All
19 right.

20 MR. FORD: Thank you, Your Honor.

21 MR. WILLCOX: All right. I have the
22 same questions.

23 RECROSS EXAMINATION

24 BY MR. WILLCOX:

25 Q We -- we just came to what you --

1 you've revised significantly what -- what your
2 claims on these change orders are, correct?

3 A Reducing them --

4 Q Okay.

5 A -- to a reasonable rate of return,
6 negotiating, yes.

7 Q And -- and, obviously, with these
8 numbers changing like they are, Mr. Makawi
9 couldn't have agreed to any of these -- any of
10 these changes when you say he did. I mean, you --
11 you hadn't even provided him the numbers, had --
12 had you?

13 A At the time before all the work had
14 started, there were no -- there was just approval
15 to start the work.

16 Q Okay.

17 A And agreed to whatever it would take to
18 get it done -- get it done.

19 MR. WILLCOX: And, Judge, I'm maintain
20 my objection to the --

21 MR. EVERETT: Yes.

22 MR. WILLCOX: -- admissibility of these
23 change orders.

24 THE COURT: Okay.

25 MR. WILLCOX: And I don't want to

1 belabor the point.

2 MR. FORD: Your Honor, I maintain our
3 argument for -- even though it might not be a part
4 of the scope of contract, we are claiming
5 Quantum Meruit and unjust enrichment. So this goes to show
6 the value -- the value of the benefit conferred
7 by -- or by the plaintiff in this case to the
8 defendant.

9 BY MR. WILLCOX:

10 Q In -- in your 624,000 dollar contract
11 price, you -- you put a 100,000 dollars for
12 profit?

13 A No, I think I included within that
14 total scope was a 100,000 dollar management fee
15 for that project, what we just --

16 Q And that's --

17 A -- discussed for -- for change orders.

18 Q And that was included in the 624,000?

19 A Uh-huh.

20 Q Okay.

21 THE COURT REPORTER: Is that a yes?

22 THE WITNESS: Yes.

23 THE COURT REPORTER: Thank you.

24 MR. WILLCOX: Judge, I don't have any
25 further questions.

1 THE COURT: Okay. I need to get my
2 notepads. I'm done.

3 (Off-the-record Discussion.)

4 MR. FORD: Your Honor, that this --

5 MR. WILLCOX: Go ahead.

6 MR. FORD: Your Honor, at this time
7 the -- the plaintiff has rest his case and moves
8 the Court for a directed verdict based on the
9 greater weight of the evidence that there's no
10 issues as to -- as to what we're going to ask for
11 a judgment as a matter of law.

12 THE COURT: I will deny it at this
13 time. Of course, renew it later at the close of
14 the case. But at this point, we still got a long
15 ways to go hear from the other side, and I'm not
16 in a position to conclude that -- your motion.
17 And, Walker, you also have a motion?

18 MR. WILLCOX: A motion for directed
19 verdict, Judge. I -- we contend the Plaintiff has
20 not proven damages or that anything is owed for
21 breach of contract or any of the other claims.

22 THE COURT: And I'm also going to deny
23 that motion. Of course, you also have the right
24 to bring it again at the close of all the
25 evidence. But at this time, we still got, I

1 think, many more things that need to be further
2 developed before I could decide a directed
3 verdict, okay?

4 MR. WILLCOX: All right.

5 THE COURT: So it's also denied.

6 MR. WILLCOX: Okay. Thank you, Your
7 Honor.

8 THE COURT: Okay.

9 MR. FORD: Rest your case. The
10 Plaintiff rests.

11 MR. WILLCOX: All right, Judge,
12 Defendant calls Ellen Atkinson.
13 Thereupon,

14 Ellen Atkinson,
15 having been first duly sworn by the court
16 reporter, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WILLCOX:

19 Q Ellen, state your full name for the
20 record, please.

21 A It's Ellen Edwards Atkinson.

22 Q Okay. And -- and what is your current
23 occupation?

24 A I'm the controller at Eagles Landing
25 Restaurants.

1 Q Are you a C.P.A.?

2 A Yes.

3 Q Okay. How long have you been a C.P.A.?

4 A I've been licensed since 1992.

5 Q Okay. How long have you been -- you

6 say you're the controller for Eagles Landing?

7 A Uh-huh.

8 Q Okay. Is that a yes?

9 A Yes. Yes.

10 Q Okay. And how long have you been doing

11 book work for -- for companies?

12 A Since 1989.

13 Q Okay. And, Ellen, have you prepared

14 some spreadsheets and supporting documents for

15 this case?

16 A Yes, I prepared this.

17 Q All right. Let me show you what's been

18 marked and agreed to --

19 A Okay.

20 Q -- as Exhibit 3. And we'll give you

21 this notebook, okay? And this is Defendant's

22 Exhibit 3. And -- and we don't have to go through

23 it painstakingly like we did with Mr. Carter.

24 A Okay.

25 Q Can you tell -- tell us what that

1 spreadsheet is. Is that -- is that a summary of
2 all the charges?

3 A It is a summary of all that we had been
4 billed, all of the costs that we've incurred for
5 this James Island project, and then the actual
6 amount that we have paid out. And the amount we
7 have paid out is supported by the check numbers of
8 that account it came out of, or if it was paid by
9 American Express. However it was paid.

10 Q Okay.

11 A And that's the supporting invoices in
12 here.

13 Q Okay. So these are the amounts --

14 A Uh-huh.

15 Q -- that we have paid out that we claim
16 are part of the plaintiff's con--- contractual
17 responsibilities, correct?

18 A Yes.

19 Q Okay. And that total amount that we
20 paid is 620,788.33?

21 A Yes.

22 Q Okay. And the amount we've actually
23 incurred is \$695,508.90?

24 A Yes.

25 Q Okay. And you have a notebook there

1 under the --

2 A Uh-huh.

3 Q -- the spreadsheet.

4 A Uh-huh.

5 Q Okay. And describe to us how that
6 notebook is -- is arranged, please.

7 A Okay. The first thing I did was I went
8 back and read all of the files and the information
9 that we had in our files about the project. And
10 then went to the -- to the invoices that were
11 supportive of what we actually spent. Verified
12 the amounts have been paid. There were some --
13 also cost reports that Jamie Free had did -- done
14 up through the time period that he was there. I
15 made sure our -- this reconciled with what he had.
16 But, basically, just went back and verified this
17 were all the costs that we've actually occurred on
18 the I--- IHOP at James Island, 3518.

19 Q Okay. And in that book --

20 A Uh-huh.

21 Q -- they're -- they're arranged by
22 vendor, correct?

23 A Right. They're tabbed and arranged by
24 vendor in alphabetical order that goes straight
25 with the spreadsheet.

1 Q Okay. So the -- the -- the it--- the
2 items on the spreadsheet. For instance, if it
3 says A Plus Restaurant --

4 A Uh-huh.

5 Q -- we have invoices in there
6 for \$46,715.97?

7 A Yes, we've got the invoices. We've got
8 the cancelled check, or we've got the
9 American Express statement that's marked where we
10 pay it.

11 Q Okay. And that's how the entire
12 notebook is arranged?

13 A That's how the entire notebook is
14 arranged.

15 Q Okay. And again, the total paid out is
16 \$620,788.33 dollars.

17 A That's exactly -- yeah, that --

18 Q And it --

19 A -- that's exactly what we paid out.

20 Q \$620,788.33.

21 THE COURT: Okay. I had 627 to 620,
22 okay.

23 MR. WILLCOX: Okay.

24 BY MR. WILLCOX:

25 Q And let's go on to Exhibit Number 4,

1 Ellen. And take a quick look at that, okay?

2 A Okay.

3 Q Now, is that the same spreadsheet until
4 we get to the next to last page?

5 A Yes, it is.

6 Q Okay. And after the 620,000 dollar
7 number, what -- what are you listing there?

8 A These are -- actually these are amounts
9 that were part of the remodeling and the
10 construction at James Island, but these were
11 amounts that were paid by Mr. Makawi that were not
12 part of the contract with Elite Construction.

13 Q Okay. And that's --

14 A So these were additional costs we
15 actually did incur and pay.

16 Q Okay. And that's the booth package for
17 78,000 dollars.

18 A Yes.

19 Q And then we have equipment.

20 A Uh-huh.

21 Q Of 21,000 dollars and I'm using rough
22 numbers.

23 A Okay.

24 Q We have Restaurant Services, Inc.,
25 that's more equipment for about 200,000 dollars.

1 A Right.

2 Q Then we have val -- which are the
3 chairs in the restaurant.

4 A Right.

5 Q Of 6,000. And then the utensils
6 which -- for another 26,000. So the total amount
7 Mr. Makawi or Eagles Landing, sorry, has paid for
8 this project is 923,078 -- \$923,078 dollars --
9 seventy-eight -- and 78.97 cents, correct?

10 A That is correct.

11 Q All right. And that we've incurred
12 \$1,019,037.03, correct?

13 A Correct.

14 Q All right. And that's for the total --

15 THE COURT: And sorry -- sorry, Walker.

16 A million dol--- a million -- 1,019,000 and?

17 MR. WILLCOX: \$19,037.03. And, Judge,
18 this is the last page of the Exhibit --

19 THE COURT: Okay.

20 MR. WILLCOX: -- 4. All right.

21 THE COURT: Is all that -- are those in
22 here?

23 MR. WILLCOX: All the Exhibit 3
24 invoices are in here.

25 THE COURT: In here?

1 MR. WILLCOX: Yes, sir.

2 THE COURT: All right.

3 MR. WILLCOX: When we backup to that.

4 THE COURT: Okay.

5 MR. WILLCOX: Okay.

6 BY MR. WILLCOX:

7 Q All right. Now, let's go to Exhibit
8 Number 5 and take a quick look at that, please.

9 MR. WILLCOX: Another copy of that --
10 of it is evidence, Judge.

11 THE COURT: Okay. Are these the
12 -- the supporting documents.

13 MR. WILLCOX: Judge, those are the
14 supporting invoices. These -- these exhibits --

15
16 THE COURT: Okay.

17 BY MR. WILLCOX:

18 Q All right. And, Ellen, what is the
19 first page on Exhibit Number 5?

20 A The first page on Exhibit 5 is the
21 compensation detail that Mr. Mohammed Ali was paid
22 in 2015.

23 Q Okay. And it's got on there earnings,
24 a gross.

25 A Uh-huh.

1 Q Okay. And it looks like there's a
2 batch that starts with April 10th, 2015.

3 A Uh-huh.

4 Q You with me?

5 A That is correct, yes.

6 Q Yeah. And that goes all the way down
7 to November 6th, 2015, correct?

8 A Yes, it does.

9 Q Okay. So that shows what we paid
10 Mr. Ali, bi-weekly, for that date range, correct?

11 A Yes, it does.

12 Q All right. Now, it looks like on the
13 second page -- and that is Chris Morris, correct?

14 A Yes, it's the same thing for
15 Chris Morris.

16 Q Okay. And he started it on
17 July 3rd, 2015 --

18 A I --

19 Q -- and we -- we have numbers running
20 through November 6th, 2015, correct?

21 A That is correct.

22 Q The same deal, gross pay --

23 A Actually --

24 Q -- positively.

25 A -- actually if -- if you look up, he

1 started on 6/19.

2 Q Okay. I'm sorry, 6/19.

3 A Yeah.

4 Q 6/19/2015. And then we can run it all
5 the way to November 6th, 2015, correct?

6 A Yes.

7 Q All right. And that'll show us what we
8 paid him, bi-weekly, during that time period,
9 correct?

10 A That is correct.

11 Q Okay.

12 THE COURT: Just a second. I
13 appreciate this copy of 5. Do you have one like
14 this for 3 and 4 I could --

15 MR. WILLCOX: Yeah.

16 THE COURT: -- look onto as well?

17 BY MR. WILLCOX:

18 Q All right. Ellen --

19 A Okay.

20 Q -- let's go to Exhibit Number --
21 Exhibit Number 7.

22 A Okay.

23 Q Okay. And tell us what that is.

24 A A -- this is a profit and loss summary
25 for the James Island Store. This is for the month

1 of December of 2015.

2 Q Okay. And what is it showing the net
3 income was for that store?

4 A For that month, it was \$35,892.26.

5 Q Is that consistent with what this store
6 generates as far as net income goes?

7 A Yes, it is.

8 Q Okay. And that was the month after it
9 opened?

10 A That was the month after -- yes, they
11 opened the beginning of November. So this was the
12 month after, yes.

13 Q Okay.

14 THE COURT: And I -- I -- I'm sorry.
15 Ask that last question again and answer it again.
16 I'm sorry.

17 MR. WILLCOX: That's okay.

18 THE COURT: I was looking at something
19 else trying to catch up there and I lost that.
20 Now, go back to it.

21 BY MR. WILLCOX:

22 Q All right. Now, Ellen --

23 THE COURT: I'm sorry.

24 BY MR. WILLCOX:

25 Q -- what -- what did -- tell -- tell us

1 again what this statement is.

2 A This is a profit and loss statement for
3 the month of December, 2015, for the James Island
4 Store --

5 Q Okay.

6 A -- 3518.

7 Q And this --

8 THE COURT: Okay.

9 BY MR. WILLCOX:

10 Q -- is showing a -- a \$35,892.96 profit.

11 A Yes, that was the profit for
12 December of 2015.

13 Q Which is the month after --

14 A Yes. Yes.

15 Q -- the store opened, correct?

16 A Yes.

17 Q Okay. And this is consistent with what
18 this store generates as far net income goes?

19 A Yes, it is.

20 Q Okay.

21 MR. WILLCOX: Okay?

22 THE COURT: Sorry.

23 BY MR. WILLCOX:

24 Q And, Ellen, let me show you what's been
25 marked -- been identified as Exhibit 9. And,

1 Judge, this is where we -- trying to kind of put
2 it all together.

3 THE COURT: Most of these things are
4 plain. And I just want to make sure I wasn't
5 missing something in her testimony about it.
6 That's just fine and I appreciate you going -- and
7 your patience there. I want to hand you these two
8 things back before I actually have them -- or I
9 keep forgetting I have them in other numbers.

10 BY MR. WILLCOX:

11 Q Now, my -- so, Ellen --

12 A Okay.

13 Q -- what -- what is line number one
14 telling us?

15 A Line number one tells us the amount
16 that we have actually paid out on the construction
17 contract, that we paid directly to the plaintiff
18 or we paid on behalf of the plaintiff.

19 Q Okay.

20 A And that amount is \$620,788.33.

21 Q Okay. And what's that next line there?

22 A It's amount paid for upfit, and those
23 would be all the costs that Mr. Makawi incurred,
24 individually, outside of the contract for the --
25 as we said before -- the seating for the --

1 Q Equipment and everything.

2 A -- yes.

3 Q And that --

4 A Okay. That amount is \$923,078.97.

5 Q All right. And then let's look at
6 these numbers.

7 A Okay.

8 Q A quote of our plans to not perform,
9 okay? And -- and what are these three line items?

10 A The first one is the roof replacement
11 that was stipulated in the contract. That's 9400
12 dollars. The second one is the cost of two HVAC
13 units for the building. And that's \$58,392.96.
14 And the third one is for new sidewalks that were
15 called for in the contract that weren't done.
16 That's 1500 dollars.

17 Q And did we get the -- the HVAC number
18 from this spreadsheet?

19 A We did.

20 Q Okay.

21 A The original contract called for four
22 new HVAC units, and we only put two in. And this
23 was the cost of having two. And we used that same
24 figure for the two that we did not recently --
25 have not gotten.

1 Q Okay. And then how -- the -- the
2 new -- the roof replacement, did you get that
3 number from the bid?

4 A The roof replacement does come from the
5 bid.

6 Q And that's --

7 A Uh-huh.

8 Q -- 7500 on page two? Line item 7500?

9 A 9400 -- no, the -- for the roof it's --
10 it's 9400 dollars. It is the second item under
11 roofing --

12 Q Okay. All right. So -- and then we
13 have new sidewalks.

14 A Uh-huh.

15 Q Did you -- is -- are the new sidewalks
16 from this bid?

17 A Yeah, they're down there may be about
18 seventh from the bottom. It's under -- under site
19 work. It called for new sidewalks, 1500 dollars.

20 Q Okay. And --

21 A In the bid.

22 Q -- and the total of those three
23 numbers --

24 A Is --

25 Q -- tally --

1 A -- is \$69,292.96.

2 Q Okay. Now, on -- on -- let's go to
3 number four.

4 A Okay.

5 Q Labor paid to supervise. Using that
6 Exhibit 5 we talked about before --

7 A Uh-huh.

8 Q -- in those -- in that date range
9 between April --

10 A Uh-huh.

11 Q -- of 2015 and November 2015, are those
12 the numbers 4 -- gross paid to Mohammed Ali and
13 Christ Morris?

14 A Yes, they are.

15 Q Okay. And are they itemized by each
16 individual?

17 A Yes, they are and there're supported by
18 the exhibits.

19 Q Okay. And that total for those two is
20 what?

21 A \$81,444.37.

22 Q Okay. All right. Let's go to number
23 five.

24 A On five is lost income that Mr. Makawi
25 incurred from the -- the restaurant opening two

1 months late. And we used the profit that we had
2 in December of 2015, which was \$35,892.26, and
3 multiplied that by two for two normal months.

4 Q Okay.

5 A Okay. And that equals \$71,784.52.

6 Q Okay. All right. Let's go down to
7 number six, and then this is where we claimed
8 cost --

9 A Uh-huh.

10 Q -- to correct some deficit work.

11 A Right. These were costs -- the first
12 one was Charleston Sign Company for \$2,566.87.
13 The second one is what we're claiming under
14 Bishop and Son Plumbing where they had to come
15 back out there and do work to correct. It's
16 \$3,407.35. And the cost of the bathroom
17 partitions is 7,000 dollars.

18 Q Okay.

19 A And that equals -- sorry -- \$12,974.22.

20 Q Okay. And the total of the amounts
21 that we're claiming plaintiff owes to defendant is
22 what?

23 A Two hundred and \$235,496.07.

24 Q Okay. And that's all shown on
25 Exhibit 9?

1 A Yes.

2 Q Okay.

3 A Uh-huh.

4 MR. WILLCOX: Judge, those are all the
5 questions I have unless you need any clarification
6 on anything.

7 THE COURT: No, I think we're okay.
8 Thank you. Thank you.

9 CROSS EXAMINATION

10 BY MR. FORD:

11 Q Ms. Atkinson, thank you --

12 A Uh-huh.

13 Q -- for being here all day today and
14 bearing the day. I'm Patrick Ford. I represent
15 the plaintiff, Elite Construction, in this matter.
16 I just have a couple of follow-up questions. How
17 long have you been employed with Eagles Landing?

18 A I have been employed with
19 Eagles Landing since November the 28th of 2017.

20 Q So you've been there for approximately
21 three months?

22 A Yes.

23 Q A little under three months.

24 A A little under, yeah, under.

25 Q Do you have any personal knowledge

1 regarding payments with respect to what was paid
2 on the job --

3 MR. WILLCOX: Objection.

4 BY MR. FORD:

5 Q -- other than the documentation you've
6 reviewed?

7 A No personal knowledge from when the
8 project was going on. But if -- if you've got the
9 cancelled check and the invoice, that's pretty
10 much more -- more of the documents that you need,
11 I would...

12 Q Okay.

13 A But I was not there when the project
14 went on.

15 Q These Wells Fargo Bank Statement for
16 account number --

17 A Uh-huh.

18 Q -- 1772137491 does this -- is -- who's
19 account statement is it? What's the name on the
20 account?

21 A What's the last four digits of the one
22 you have?

23 Q 7491.

24 A 7491 is what Jimmy Free referred to
25 this morning as being the -- the management

1 account.

2 Q What -- what's the name of the entity
3 or person -- who -- who's the account's name in?

4 A I think -- I want to say it's under
5 Eagles Res--- Eagles Landing Restaurants. I'm not
6 exactly sure. It's under one of the corporations,
7 but I -- I hate to say exactly.

8 Q Well, you don't know which corporation
9 it's under.

10 A It's with the Florence Store. No, it's
11 not, it's under Eagles Landing Restaurants.

12 Q And you have --

13 A And Carolina IHOP.

14 Q Eagles Land--- so is Carolina IHOP
15 different from Eagles Landing?

16 A It's the name on the bank account.

17 Q Carolina IHOP is the name on the bank
18 account. So it's not an account in
19 Eagles Landing.

20 A I'm not, specifically, sure right now
21 what I can recall which one it is. But it's part
22 of our operating account.

23 Q And what funds the operating account?

24 A That account was set up -- and the
25 ultimate goal was to have each store paying a

1 management fee that goes into this account. And
2 then that -- then overhead and different costs are
3 spent out of there. But at that point, they were
4 actually just having to compile money to get from
5 which account they could -- you know, could take
6 it from to -- to write these checks out and pay
7 these bills.

8 Q To your knowledge, are there any
9 management agreements between this management
10 company and the other corporations rely on?

11 A I would have no knowledge of that.

12 Q So do you -- so does all the money from
13 the other corporations -- the other IHOP's just
14 all get put into this account based on a
15 non-existent agreement?

16 A The money -- the revenue that is the
17 actual restaurants generate go into each
18 restaurant's bank account. Okay. Then a portion
19 of that is transferred into this account to -- to
20 attempt to pay the -- the overhead, the management
21 fees, the cost of our wages and that.

22 Q So --

23 A And then --

24 Q -- are you -- all the funds then from
25 the different accounts comingled into this one

1 account?

2 MR. WILLCOX: Object to the form.
3 Object to that question, Judge. I'm -- I'm not
4 sure what the relevance is.

5 THE COURT: Well, I think he -- he's
6 cross examining her, so I think he can ask it.

7 MR. WILLCOX: Okay.

8 THE WITNESS: They go into that one
9 account, but then, I mean, you could say where
10 they -- where they came from.

11 BY MR. FORD:

12 Q But they're comingled into that account
13 once they're put in there together. Is that
14 correct?

15 A Yes.

16 Q And to the best of your knowledge,
17 you're not sure whether or not Eagles Landing is
18 on the account or Carolina IHOP is on the account.
19 It's --

20 A I'm pretty sure it's Carolina IHOP, but
21 I -- I haven't been there that long, and we've got
22 like seven different corporation names so it's
23 kind of.

24 Q I understand.

25 A I can tell by the last four digits of

1 the bank account which one it is.

2 Q I'm going to move on to one of the
3 credit card statements.

4 A Uh-huh.

5 Q It appears there's two of them. First
6 is for account number ending in 53001. Whose name
7 is on this credit card account?

8 A Mohammed Makawi.

9 Q So this is Mr. Makawi's personal credit
10 card?

11 A It was his company credit card that he
12 used, I believe. Like I say, I was not -- those
13 acc--- those cards no longer exist.

14 Q But at that point in time,
15 Eagles Landing is asserting that the con--- the
16 cost of some of these subcontractors were being
17 paid from a credit --

18 A Uh-huh.

19 Q -- card with only Mohammed Makawi's
20 name on it.

21 A Yes.

22 Q Were there multiple American Express
23 accounts?

24 A I don't know the answer to how many
25 there were.

1 Q Well, we have here, for example, this
2 account number is -- ends in 53001.

3 A Uh-huh.

4 Q And it's in the name of Mohammed
5 Makawi?

6 A Uh-huh.

7 THE COURT REPORTER: Is that a yes?

8 THE WITNESS: Yes, sorry.

9 THE COURT REPORTER: That's okay.

10 MR. FORD: And, Your Honor, I believe
11 these are all supplements to Exhibit 3.

12 THE COURT: Okay.

13 MR. FORD: Which should be in the -- I
14 believe the binder, Walker, right?

15 BY MR. FORD:

16 Q Are all these checks that were used to
17 pay these subcontractors here paid out of the
18 Wells Fargo account ending in 7491?

19 A Some were paid out of the actual
20 Wells Fargo account for the restaurant. So, no,
21 the answer is, no.

22 Q Which ones were paid out of the actual
23 account of the restaurant?

24 A You'd have to give me a minute to go
25 through them. Okay. Check 1289 to A.B.C. Seal

1 Co--- Coating for 4,000 dollars was paid out of
2 the restaurant's account with Wells Fargo.

3 Q Rather than go through of them, it's
4 fair to say that while some were paid from the
5 Eagles Landing account, others might have been
6 paid from the Carolina IHOP account -- or what you
7 believe to be --

8 A Well, it --

9 Q -- the Carolina IHOP account.

10 A Actually, I -- I can look at it right
11 here. It is Eagles Landing Restaurant on the
12 first account that you asked me about. Yes, they
13 were paid from one or the other.

14 Q You testified that the net income for
15 December of 2015 is similar --

16 A Uh-huh.

17 Q -- to the past months. What was the
18 net income for January, 2016?

19 A I cannot recall that off the top of my
20 head.

21 Q What's the net income for
22 February of 2016?

23 A I cannot recall that off the top of my
24 head.

25 Q How do you know if they are --

1 A Because I looked at --

2 Q -- the same?

3 A -- the different months whenever I got
4 this information together.

5 Q But you can't tell us, today, what
6 those amounts were?

7 A Not exactly, no.

8 Q When did -- do you know when
9 Mr. Chris Morris started working for the company?

10 A I can only go from the payroll journal.
11 It tells me up top. I think you have mine.

12 Q And what is the total amount being
13 asserted against Mr. Morris -- or that -- for
14 Mr. Morris' --

15 A I haven't -- you have my sheets.

16 Q I have the -- the last totals.

17 A No, but you --

18 Q I'm sorry.

19 A -- have my other --

20 Q Oh, I took those. Well, what was the
21 total on Exhibit 9?

22 THE COURT: You've got Exhibit 9 there.

23 THE WITNESS: It's the one where you --

24 MR. FORD: Oh, I've got it. I'm sorry.

25 My --

1 THE WITNESS: Okay.

2 MR. FORD: I apologize. Under all this
3 paper.

4 THE WITNESS: Okay. Repeat your
5 question, please.

6 BY MR. FORD:

7 Q So for Chris Morris --

8 A Uh-huh.

9 Q -- what is IHOP asserting that it paid
10 to Mr. Morris as a result of the job?

11 A \$28,838.01.

12 Q Is Mister -- was Mr. Morris paid a
13 salary or was he paid a -- on an hourly basis?

14 A I do not -- I was not there. I only
15 need to answer that if it varied, no.

16 Q Any information regarding that. Well,
17 is it fair to say that because there's no time in
18 here entered in for -- for hourly that he was most
19 likely paid on a salary?

20 A I would think so, yes.

21 Q Typically in a salary was a person paid
22 the same amount each week, or bi-weekly,
23 regardless of how many hours that person works?

24 A Yes, they are.

25 Q Do you know how many hours Mr. Morris

1 was at the job site for?

2 A I was not there. I do not.

3 Q So would you agree that if Mr. Morris
4 was at the job site for one hour or eight hours a
5 day, he'd get paid the same amount for the day?

6 A I -- I don't know what their actual
7 agreement was then.

8 Q So how do you know that the total due
9 under the contract to Mr. Morris is \$28,832.01?

10 A I know that -- I mean, from that --
11 from our assertion that he spent all his time at
12 that project during this time period.

13 Q Do you --

14 A But was I actually there, was I
15 actually -- no, because I wasn't employed by them
16 then.

17 Q You have no knowledge of how much time
18 he spent there?

19 A No.

20 Q But you're the one who came up with
21 these numbers.

22 A They came straight from our payroll
23 journal, yeah.

24 Q The same forward for Mr. Ali. Do you
25 know how much time he spent at the particular job

1 sites?

2 A I was told a hundred percent. Was I
3 there to know it, no.

4 Q So he was there a hundred percent of
5 the time for -- from the commencement of the
6 project to the end of the project every day all
7 day, eight hours a day?

8 A I can't answer that question.

9 Q Once again, how do you know that, as a
10 result of the project, he was paid \$52,606.36?

11 A Because those are the wages that he
12 earned from when the project started at the
13 beginning of April through the -- the first couple
14 of days of November. Do I know specifically, no.

15 Q Now, item number --

16 A Uh-huh.

17 Q -- sorry, on Exhibit 9 here
18 under number three, item A, there's a line item
19 for roof --

20 A Uh-huh.

21 Q -- replacement.

22 A Uh-huh.

23 Q Do you know whether the roof was
24 replaced?

25 A From all the contract I've mentioned

1 that I've seen, I don't believe the roof was
2 replaced, no. It was -- not the whole
3 thing.

4 Q And the two HVAC units --

5 A Uh-huh.

6 Q -- how did you come up with that
7 number?

8 A That was in cost of us that we had to
9 pay to have the first two HVAC units installed.

10 Q So the --

11 A On the restaurant -- on there.

12 Q You have two other HVAC units been
13 installed?

14 A They have not. That would be the cost
15 of them, having two more installed based on what
16 we paid previously.

17 Q Have you received any initial
18 estimates?

19 A No, I have not.

20 Q Were you aware that the HVAC units --
21 that a credit was given for the HVAC units
22 approximately 48,000 dollars?

23 A We had no copy of that credit in any of
24 our files at the office, no.

25 Q Were you aware that Mr. Makawi had

1 indicated he did not want to replace the HVAC
2 units?

3 A I -- I was not there to know what their
4 conversation was about the HVAC units. Sorry.

5 Q That's all right. New sidewalks for --

6 A Uh-huh.

7 Q -- 1500 dollars.

8 A Uh-huh.

9 Q Are you -- are you aware of what work
10 was done to put the sidewalks -- did they have to
11 repour it, or was it just replace -- patching,
12 replacing certain parts of the sidewalk, or was it
13 reinstalling the whole sidewalk?

14 A Well, it says new sidewalks in the --
15 in the contract. So I would assume it was new
16 sidewalks.

17 Q And do you have an invoice or a check
18 for the -- what was paid for the bathroom
19 partitions?

20 A The cost for the bathroom partitions --
21 this is what it'll cost to have them replaced now.
22 And what needs to be fixed there, and we're basing
23 that cost on what we previously paid for the
24 partition, plus an estimate for labor.

25 Q But there's been no contractor there

1 to -- to inspect and tell you whether there's
2 anything wrong and what would cost to replace it
3 or anything of that nature?

4 A I don't have an estimate. I'm not
5 aware of one. There may be, but I'm not aware of
6 it.

7 Q So that's just another number that's
8 based on what it cost to install it.

9 A It's based on what we actually paid for
10 the partitions during the construction progress --
11 process with a reasonable estimate for a labor.
12 This is...

13 MR. FORD: All right. No further
14 questions.

15 REDIRECT EXAMINATION

16 BY MR. WILLCOX:

17 Q Ellen --

18 A Uh-huh.

19 Q -- you were asked several questions
20 about the bank accounts.

21 A Uh-huh.

22 Q This book you have, this spreadsheet --
23 we have -- this is proof that these amounts have
24 actually been paid to the vendors, correct?

25 A Right. For example, we've got -- if we

1 flip to that particular vendor, we -- most of them
2 we have copies of the cancelled check that tells
3 you which bank account it came out of. That's
4 easily identified. We have copies of the
5 invoices. And somewhere I -- I couldn't find the
6 actual copy of the cancelled check, I went to the
7 bank and printed it out, the copy that cleared the
8 bank.

9 Q Okay.

10 A Yeah.

11 Q So you simulated proof of payment.

12 A Yes.

13 Q Okay. All right. And then as to those
14 vendors, that corresponded on the spreadsheet,
15 correct?

16 A Yes, it does.

17 Q Okay.

18 MR. WILLCOX: Those are all the
19 questions I have.

20 THE COURT: Ms. Atkinson, can I ask you
21 a question?

22 THE WITNESS: Sure.

23 THE COURT: Have you been in this
24 business long enough, now, to determine if there's
25 any seasonality to the business that comes in?

1 THE WITNESS: Honestly I have not. The
2 time period that I've been there, I've spent a lot
3 of my time trying to catch up information that was
4 not entered into the QuickBooks. I -- most of my
5 time -- a good bit of my time has been spent
6 accumulating data from passing it and updating it.
7 So I don't -- I haven't been there long enough to
8 know about the seasonal portion of it.

9 THE COURT: Do you have any feel of
10 whether or not December is a better than average,
11 less than average, or average month compared?

12 THE WITNESS: I think it's average.
13 From what I looked at, I looked at the profit and
14 loss figures that we had in 2016. I looked at
15 what we had through November of 2017. To me it
16 appears to be an average for that store.

17 THE COURT: Thank you, ma'am.

18 THE WITNESS: Uh-huh.

19 MR. WILLCOX: All right. Judge, we'll
20 call Mohammed Ali.

21 THE COURT: All right.

22 THE COURT REPORTER: You ready for me
23 to --

24 THE COURT: Yeah.
25 Thereupon,

1 Mohammed Ali,
2 having been first duly sworn by the court
3 reporter, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WILLCOX:

6 Q Please state your name for the record.

7 A My name is Mohammed Ali.

8 Q Okay. And Mr. Ali what -- what do you
9 currently do?

10 A I'm a -- I'm a -- I have my own
11 construction company. I do all the remodeling for
12 the IHOP and the build outs.

13 Q Okay. And were you involved in this --
14 this IHOP that you've seen discussed today?

15 A Yes, sir.

16 Q Okay. And when did you begin working
17 for Mr. Makawi's companies?

18 A Started working there in July of --
19 July 14th, 2001 to end of '16 -- '17. End of '16.
20 I cannot recall the exact date.

21 Q Okay. So during this period of time
22 when this IHOP was upfitted, you -- you were
23 working for one of Mr. Makawi's companies,
24 correct?

25 A Yes.

1 Q All right. And were you paid a salary?

2 A Yes, sir.

3 Q Okay. And describe your first
4 encounter with this IHOP project. What was your
5 first understanding of what was going on?

6 A My understanding was going on
7 Mr. Vince, he was going to be our contractor. I
8 mean, we -- we did -- I did a lot of the stores
9 with Mr. Makawi. When I first started with him,
10 was only one store. And I guess this was
11 IHOP number eight. So I -- I was present all the
12 process for building all the stores. So was my
13 understanding that Mr. Vince would be the
14 contractor for -- for James Island like the
15 previous the other contractor that he was working
16 with at some Lumberton location, Myrtle Beach
17 location, Wilmington location, even the two
18 Charleston locations. So --

19 Q Okay. So what -- Vince would be a new
20 contractor for this --

21 A Yeah, yeah --

22 Q -- project, okay.

23 A -- so, basically, a new contractor
24 which is -- was going to be done like the other
25 contractor, they give us a turnkey. And we just

1 go in and start working and training customers --
2 I mean, training the employees thus far.

3 Q And what was your role going to be
4 during this construction process?

5 A I mean, in the beginning, my role was
6 to be a district manager for the store. But --
7 and after that, I've been told by Mr. Makawi, I
8 need to make sure that everything is being
9 processed right after we seen the delayed was most
10 of the stuff was getting delayed and stuff like
11 that. So I started being there mostly every day
12 and, you know, not really every day. Every day I
13 be like the maybe four days out of the week to
14 five days out of the week, you know.

15 Q So would you spend most of your time at
16 this store --

17 A Yes.

18 Q -- while it was being built?

19 A Yes, sir.

20 Q Okay. And were you having to kind of
21 manage the su--- the subcontractors while you were
22 there?

23 A Yes, sir. Most -- some of the times, I
24 have to, you know, go to Lowes get some products
25 that can -- Mr. Vince cannot get to them or, you

1 know, open the stores sometimes. You know, me --
2 it was me and Chris there most of the time, yeah.

3 Q And -- and -- and who is Chris?

4 A Chris was a district manager that we
5 hired for the Charleston location.

6 Q Okay.

7 A Yeah.

8 Q And what was Chris's role in this
9 project that you know of?

10 A Again, he was hired to be district
11 manager for the stores in James Island and the
12 Charleston location. And he came on with me for
13 the -- make sure that the -- the project is
14 correct.

15 Q Okay. Was he there -- was he there a
16 good portion of his time?

17 A Most of the time, yeah.

18 Q Okay. Was he there consistently on a
19 daily basis?

20 A Yeah, because he lives in Charleston.
21 He actually was more there, yeah.

22 Q Okay. And where were you living at the
23 time?

24 A Myrtle Beach.

25 Q Okay. And so -- so you were there

1 about four days out of -- out of the week?

2 A Yes, sir.

3 Q Okay. And Monday through Thursday?

4 A Yes, sir.

5 Q Is --

6 A And sometime Monday through Thursday.

7 Sometime I don't go there Monday. I be there
8 Mon--- Tuesday through Friday, but, you know...

9 Q Okay. Now, how often would you see
10 Vince there?

11 A He -- he most the time was there, but
12 sometime he just leave early and he wasn't there.
13 He'd have to be there to make sure that everything
14 was done. But most of the time he was there.
15 Some of the time -- I mean, like sometime he leave
16 early. He's not there and, you know, nobody open
17 the doors or close. Sometimes I would have to
18 close the door and open the doors for the
19 subcontractor.

20 Q And -- and -- and did Vince ask you
21 to -- to do -- do things with the subcontractors
22 to manage them?

23 A Maybe sometime, yeah.

24 Q Okay. Would he do that on a frequent
25 basis?

1 A For the most part, yeah, sometime,
2 yeah.

3 Q Okay. And -- and tell -- tell us,
4 generally, how this construction progress --
5 project went compared -- maybe compared to the
6 other ones.

7 A No, it -- it was a mess. Because the
8 other ones usually we don't have to go there and
9 do anything. I mean, we -- even like a couple of
10 months before -- I mean, like a couple of months
11 about -- about six to seven months before we had
12 Lumberton location. And where we have to do the
13 Lumberton location, we went there after everything
14 was done. We took the C.O. and everything and we
15 just went in and we did most of the training and
16 stuff on it.

17 Q And so with this one, did -- did you
18 have to be more involved with this one?

19 A Yeah, we have to be involved because I
20 think Mr. Vince didn't have no experience in
21 IHOP -- building an IHOP and he didn't know where
22 to get this from, or where we need to do this
23 from, or where we can get that. And most of the
24 time that -- I was more contact with him than
25 anybody else.

1 Q All those questions he had, would that
2 fall unto you to figure those things out?

3 A I'm sorry?

4 Q All those questions he had --

5 A Yeah.

6 Q -- would it figure -- would that fall
7 on your figure those things out?

8 A Yes, sir.

9 Q Okay. And these change orders,
10 you've -- you've heard all this testimony about
11 these change orders.

12 A Yes, sir.

13 Q What -- what was your understanding
14 of -- of the -- the -- the work on the kitchen?

15 A To be honest with you, the only change
16 order I know about -- and me and him discussed it,
17 and actually he told me about it, and I said,
18 okay, just go ahead. And I talked to Mr. Makawi
19 about it, and he said go ahead and do it. Which
20 is the mold inside that -- inside -- I mean, it
21 was in the dining room. And, you know, those
22 things -- I never seen a change order to sign or
23 an email for it or anything.

24 Q So no other approvals were asked of you
25 for change orders?

1 A No, sir. No, the only thing he -- I
2 know about in my knowledge was the sheetrock mold.
3 And that was really -- everything was wooden there
4 and it was really bad. That's it.

5 Q And how long did it take to deal with
6 that mold?

7 A And I cannot recall exactly. It's been
8 almost three years, but I -- I want to say a week.

9 Q Okay.

10 A A week, a week and a half, somewhere
11 there.

12 Q Did that cause the project to be
13 delayed by more than two months?

14 A I mean, if the -- if the -- if it only
15 delayed a week, it should delay two months.

16 Q Okay.

17 A That's my...

18 Q And -- and when you say we, what --
19 what -- what was involved in -- in fixing this
20 mold issue? Was it just tearing up the sheetrock?

21 A I think it was -- first thing that
22 Mr. Vince hired a company. If I -- if I best
23 remember, he hired a company to make sure the mold
24 is not -- is harmful or is -- is okay to get wet
25 and the company came back with the result said --

1 and actually he called me and I approved the
2 company to come make sure instead of changing the
3 sheetrock and stuff like that. And I said, it's
4 fine, let's do that. And the company came in then
5 three days. Then the result came right away, and
6 three days later we start tearing the sheetrock up
7 and putting up the new sheetrock.

8 Q Now, when -- when all that was going
9 on, that took about a week?

10 A Yeah, about a week, week and a half.
11 Not more than.

12 Q Okay. Was that -- was that at the
13 beginning of the project?

14 A Yes, sir.

15 Q Okay. And the --

16 A All is that -- that -- I mean, it was
17 the first week or second week when we first went
18 to the stores because when -- and it was the
19 demolition part of the project, you know.

20 Q Okay. And during these -- during this
21 work, there -- there was -- there was
22 subcontractors all in the store, correct?

23 A Yes, sir.

24 Q Okay. And -- and were you managing
25 them sometimes?

1 A Sometimes, yeah. But I was there to
2 make sure that if they need something -- sometime
3 I have to go pick up something for them or
4 something. And I call Vince and tell him I am
5 going pick up this from Lowes. He said just give
6 it to them, you know, stuff like that.

7 Q So he -- he would rely on you to do
8 those things?

9 A Yes.

10 Q Okay. And as far as what -- what is
11 your understanding of what a decor package is?

12 A A decor package to me is just pictures.
13 The only -- the only difference between a decor
14 package from IHOP and the old decor package and --
15 I mean, you can see the new remodeling work is
16 only the pictures decor package. It is not a
17 different between the old decor package and it
18 just from it. It's a decor. Something is not and
19 like really a necessary for the business.
20 Basically, you can choose a decor package. You
21 can choose a picture for me take it off, put it
22 on, whatever you want so...

23 Q Okay. And with the -- with the other
24 upfits of the IHOP's, you didn't have to get
25 involved, correct?

1 A No, I never did.

2 Q You were there, but you didn't have to
3 get involved?

4 A For -- for which one?

5 Q For the -- for any of them.

6 A Any one I never go there. Actually was
7 Mr. Makawi and the contractor. He do all whatever
8 they have to do. And what we have to do is just
9 maybe call the contractor see how far we are for
10 just we can put the hiring trailer so we used to
11 have like a hiring trailer there just for hiring.
12 But we never get involved in the construction
13 because we wasn't for that -- paid for that. So
14 working -- actually my job title to work with
15 this.

16 Q All right. Did there come a time when
17 Mr. Carter, essentially, stopped coming to the
18 project?

19 A There in -- in the end part of the
20 project, he -- yeah.

21 Q Oh -- oh, tell -- tell us what -- what
22 you remember that was about.

23 A I don't know. I remember the issue he
24 say that something about -- and he had issue of
25 payments and he had -- he have to clear this with

1 Jimmy Free and Mr. Makawi. And then it was like,
2 I want to see all stuff. And he just -- this the
3 time he was not coming in but before now.

4 Q And -- and what was your understanding
5 about why Carolina Construction came to the
6 restaurant?

7 A I know who is Carolina Construction.

8 Q Okay.

9 A I'll be honest with you, I cannot -- I
10 mean, I cannot recall -- I cannot say who is them
11 or is not them, you know.

12 Q And -- and your understanding was is
13 that the kitchen floor was what was planned on
14 being installed, correct?

15 A Yes, sir.

16 Q Okay. And the decor package -- the new
17 decor package versus the old decor package there
18 was a 96,000 dollar difference?

19 A No, I don't think so. Is that the
20 decor package lighting is lighting. Pictures is
21 pictures. Only a different graphic -- from a
22 different graphic. And, I mean, you can go to the
23 older IHOP's right now and you see the decor
24 package with just the old pictures, which is
25 tomatoes, flower -- tomatoes, strawberry, or a

1 coffee cup. When you go to the other ones, it's
2 different image, basically, for the decor package.

3 Q And what about the tile being installed
4 versus the carpet. Do -- do you un--- do you
5 remember any type of --

6 A Yes.

7 Q -- problem with that?

8 A Yeah, yeah, I remember. It was like
9 a -- it was a area around the -- actually I want
10 to say ten feet four post -- I want to say eight
11 feet -- eight by four or four by eight feet was
12 right there when you coming out of the kitchen to
13 catch the grease and whatever. It was like a walk
14 off mat basically, you know.

15 Q So this -- this is the tile that we --

16 A Yeah, it was -- it was the walk off
17 mat. It was not -- it was not a -- the whole
18 dining room or -- I mean, you can see the specs,
19 too, for. It's like a walk off mat and -- and in
20 IHOP specs. It's a walk off mat and when you
21 coming out the kitchen that was the part to be
22 installed. And I'm -- that was it.

23 Q Okay. Has anybody ever offered to pay
24 you a -- a management fee for your services
25 performed on this -- on this work?

1 A On what? I'm sorry.

2 Q Has -- has anybody offered to pay you
3 any type of management fee?

4 A No, sir.

5 Q How about a 25 percent profit for
6 anything that you did on this -- on this job?

7 A No, sir.

8 Q Okay. Let me show you --

9 MR. WILLCOX: Where are these exhibits
10 I gave you -- that one.

11 BY MR. WILLCOX:

12 Q Mohammed, take a look at that front --
13 that top page. Well, were you paid a salary
14 during the summer of 2015?

15 A Yes, sir.

16 Q Okay. Look at that gross number on
17 that -- on that page.

18 THE COURT: Which one Walker, I'm
19 sorry.

20 MR. WILLCOX: Exhibit Number 5.

21 THE COURT: Thank you.

22 THE WITNESS: Okay.

23 BY MR. WILLCOX:

24 Q And the -- the -- so you were -- were
25 you paid a salary bi-weekly?

1 A Yes, sir.

2 Q Okay. Is that -- that 3,000 dollar
3 number, is that what you received during that time
4 period?

5 A Yes, sir.

6 Q Okay. And you received that every that
7 every other week, correct?

8 A Yeah.

9 Q All right. And that's -- that Exhibit
10 is accurate, and that's what your -- what you were
11 paid during that time period.

12 A Uh-huh.

13 Q Okay.

14 THE COURT REPORTER: Is that a yes?

15 BY MR. WILLCOX:

16 Q Is that a yes?

17 A Yes.

18 Q Okay. And again, you -- you spent a
19 majority of your time during that time period at
20 the store?

21 A Yes, sir.

22 Q Okay. Let me show you this. This has
23 been marked as Exhibit 6. What is your
24 understanding about the punch list? Was there a
25 punch list done after Mr. Carter supposedly --

1 A Yes.

2 Q Did -- and take a quick look at the --
3 that punch list, Mohammed. Exhibit Number 6.

4 (Off-the-record Discussion.)

5 BY MR. WILLCOX:

6 Q Now, on the first page of Exhibit 6,
7 Mohammed, there's an email from Vince Carter
8 saying that he'll do the installation of a metal
9 cap over existing roof curve. And that's dated
10 January of 2016. Do you see that email?

11 A Yes, sir.

12 Q Okay. To your knowledge, did he come
13 back and do any of -- any of these other punch
14 list items?

15 A I cannot recall he did or not. I
16 can't -- I -- I -- I don't know if he did or he
17 didn't do. He might have did -- he might have
18 did. I -- I cannot recall.

19 Q But looking at some of these punch list
20 items, did you stay on at the store after it was
21 open to --

22 A Yes, sir.

23 Q -- help with some of the maintenance
24 issues?

25 A Yeah, yeah, and we -- because it was

1 after it was open that we have to be there for the
2 first 30 days because of training and stuff like.

3 Q Okay. And did -- did you and your team
4 have to do most of these punch list items
5 yourself?

6 A Yes, sir.

7 Q Okay. Mohammed, when the kitchen was
8 -- was -- when the floor of the kitchen was torn
9 -- was redone and there was some concrete poured,
10 tell us about that -- about the concrete work done
11 in the kitchen.

12 A Yeah, well, I mean, with the concrete
13 was in the kitchen, I was there and I think
14 Mr. Makawi was there and Vince. And -- and they
15 took off the notch off for the drains. And by the
16 time you notch all the drains, the only -- the
17 restaurant is only 5400 square feet. Seventy-five
18 percent of that -- between 65 and 70 percent is
19 the dining room. And 25 percent of that -- all
20 that left the amount is the kitchen. So by time
21 you do all the drains, do all the upfitting, and
22 all the stuff was almost 80 or 90 percent from the
23 kitchen part. So it was like ten percent or a
24 little bit less than ten percent from the leftover
25 tiles. And the -- the restaurant is kind of old,

1 and it was, what, 12 years old. I don't think we
2 can be able to match the rest of the ten percent
3 of the tile, so it was easy to take all the ten
4 percent of the tile than trying to match up the
5 tile and do something matching the tile so...

6 Q Okay. So that was a better decision.

7 A Yes.

8 Q Working up and --

9 A Yes, sir.

10 Q Okay.

11 A And the -- with the concrete poured,
12 I'm -- I'm not a -- it was poured all over the --
13 all over the -- I think was the -- but even if we
14 took off the tile, we could just like
15 self-level -- I mean, Mr. Carter, but we know that
16 as a experienced contractor instead of pouring all
17 con--- new concrete all over, he could self-level
18 that to make sure it's level instead of putting in
19 all new concrete. And the self-level is way
20 cheaper than just putting all concrete and -- for
21 the whole thing.

22 Q Well -- and what was done. Was that
23 what was done?

24 A No, was done was a -- a concrete
25 instead of the self-level.

1 Q Okay. Just kind of went the more
2 expensive way, huh?

3 A Yes.

4 Q Okay. And -- and -- and new lighting
5 was put into the restaurant?

6 A New lighting should be.

7 Q But was there a lighting pack---
8 package put in the restaurant?

9 A Yes.

10 Q Okay. And what was there lighting had
11 to be repaired for that -- for the parking lot?

12 A Yes, the lighting package should be
13 included because we had like a gooseneck all over
14 the outside lighting. And that should be in the
15 lighting package. And I think that gooseneck was
16 removed by Mr. Vince and his employees because
17 that was a part of that -- the lighting.

18 Q Okay.

19 A And if anything got repair off of
20 that -- of that lighting. But all I know was the
21 gooseneck was attached out to the parking because
22 IHOP -- IHOP, of course, could not approve the
23 same gooseneck because it was more the
24 Ruby Tuesday advantage than our advantage.

25 Q And -- and was Mr. Carter involved,

1 obviously, in the putting in the -- in the
2 interior lighting as well?

3 A Yes, sir.

4 Q Okay.

5 A And we have to be put new lighting
6 because if you put new acoustic ceiling, you have
7 to put new lighting. And you cannot -- you cannot
8 take the lighting off, and use the new ceiling and
9 not put new -- same lighting or put lighting
10 there.

11 Q Okay. So this work that was done, the
12 elec--- electric package, the plumbing, Mr. Carter
13 was there and -- and knew -- to your knowledge,
14 knew what was going on?

15 A Yes, sir.

16 Q Okay.

17 MR. WILLCOX: I don't have any further
18 questions, Judge.

19 THE COURT: Okay.

20 CROSS EXAMINATION

21 BY MR. FORD:

22 Q Mr. Ali, thank you again for being
23 here. I know it's been somewhat of a long day.

24 A Yes, sir.

25 Q I'll try and keep this as brief as

1 possible. I do have a couple of questions for
2 you. Again, my name is Patrick Ford. I represent
3 the plaintiff in this matter. What was your
4 position with Eagles Landing?

5 A I was director of operations.

6 Q What were your duties as director of
7 operations?

8 A My duty as director of operation,
9 whatever the operation need. Take care of the
10 managements, the whole -- whatever the operation
11 need, I should be there.

12 Q Whatever the operation needed, that was
13 your...

14 A I mean -- well, to make sure the
15 operation runs smoothly, and stores get opened in
16 time between employees, and the whole nine yard.

17 Q All right. So if your duties were to
18 make sure the operations went smoothly and the
19 stores were open on time, isn't it within your
20 scope of the duties to go to the job site to make
21 sure everything was going on time?

22 A What you mean?

23 Q If you went to the project -- that
24 construction project or the upfit in Char--- in
25 James Island --

1 A Okay.

2 Q -- to make sure everything was going on
3 time, isn't that within the scope of your duties
4 anyway?

5 A Yes, sir.

6 Q So why should Eagles Landing have to
7 pay for that if that's just what your job is?

8 A Okay. You're talking about my job as a
9 district manager or my job as a contractor?

10 Q Your job as director of operations.

11 A Okay.

12 Q As you testified that --

13 A Yeah, yeah, well, my job as a gen--- or
14 my job as a director of operation to make sure
15 that I check with the contractor, and make sure
16 that the store get open in time. I make sure to
17 go there to make sure physically the work getting
18 done in time. That's number one. Second thing, I
19 supposed -- my job as director of operation, I
20 supposed to make sure that my stores is right.
21 But in that case, I have to take care of IHOP
22 operation, which have something I have to do with
23 the pancake, okay? If in that case I have to go
24 to make sure that whatever Mr. Carter need that
25 should take me away from my -- what you call it,

1 flipping pancake operation.

2 Q But you testified, though, that part of
3 your job is to make sure that the stores open on
4 time, that --

5 A Open on time.

6 Q -- everything in the IHOP is correct --

7 A Yes.

8 Q -- in terms of construction. So those
9 are a part of your duties as operations --
10 director of operations as well.

11 A No, not as a contractor. Because --

12 Q Not as a contractor, but it's --

13 A Yeah.

14 Q -- it's your job to go there and --

15 A Right. Well, you got to be specific
16 what you asking me. Because I don't think you
17 asking me very -- you say -- you're asking me a
18 very wide question.

19 Q Well, you just --

20 A One -- one --

21 Q -- your testimony here today is that
22 your job is to go and check and make sure of
23 the -- of the --

24 A Okay.

25 Q -- IHOP's open on time --

1 A We supposed --

2 Q -- and make sure --

3 A -- we suppose to have the store open
4 somewhere in August -- somewhere around August --
5 I cannot recall the same exact date -- August 28th
6 or August 29th, somewhere in there. And that
7 what -- make sure that training, open the store on
8 time, the whole nine yards is done.

9 Q All right. But part of that was to
10 make sure that -- to -- to at least know and be
11 able to advise Mr. Makawi what the status was of
12 the construction.

13 A It was. And I did.

14 Q How often -- is it true that you went
15 to the job site one or twice a week?

16 A Not once or twice, no.

17 Q Earlier today you --

18 A Actually I was with Mr. Carter at least
19 three times a week or four times a week having
20 lunch together.

21 Q Did Mr. Carter request that you be
22 there three times a week, four times a week?

23 A No.

24 Q So you just -- you just went?

25 A No, when the delay start happening, I

1 have to go there to make sure.

2 Q Why did you have to go there because it
3 was in the scope of your duties as operations
4 director?

5 A Yeah, it wasn't open on time.

6 Q All right. So it was just within the
7 normal scope of your duties, then?

8 A If you want to call that, but it -- I
9 must cover my duty to make sure the store is open.
10 Then after that when they start delaying, we have
11 to be there.

12 Q Because that's part of your job
13 description, is it not?

14 A Yes.

15 Q All right. How many -- how many times
16 did Vince request for you to -- to purchase
17 materials for contractors?

18 A I do not recall how many time exactly,
19 but it was a few times, yeah.

20 Q All right. So two or three?

21 A I cannot recall exactly to say -- say
22 the amount of time.

23 Q All right. How many hours -- when you
24 were there, how many hours of the day were you
25 there for?

1 A I was there between six to seven --
2 five to seven hours sometime, give and take
3 some -- some days more, some days less than.
4 But...

5 Q You spoke a little bit before about
6 what that decor package includes.

7 A Yes, sir.

8 Q How -- what familiar do you have with
9 the new decor package as opposed to the old decor
10 package?

11 A Okay. My experience with IHOP, I been
12 with IHOP over 18 years. And what my job
13 currently do, I do remodeling for IHOP's, and
14 that's over two-and-a-half years now or almost two
15 years.

16 Q What --

17 A I've been in the -- in the -- in the
18 system for a long time.

19 Q Are you a general contractor?

20 A No, sir.

21 Q Do you have any licenses with the
22 South Carolina L.L.R. for building or doing
23 construction?

24 A When -- when you have a remodeling
25 company, you're not required to have a general

1 contractor license.

2 Q So you don't do new construction. You
3 just --

4 A I do --

5 Q -- go in there and make sure the
6 building is upfit for an IHOP.

7 A Yes.

8 Q And you said you've been doing that for
9 two years.

10 A Yes, sir.

11 Q And you -- do you -- participated in
12 multiple jobs. I believe you testified that when
13 you started working there, there was one IHOP.

14 A Yes, sir.

15 Q And now there are eight, approximately?

16 A Eight or nine, yes.

17 Q Eight or nine.

18 A Yes.

19 Q And so you were there in -- from
20 that -- from that -- that point in time from the
21 first one to that -- through the eight or nine,
22 were you the director of operations for those?

23 A No. I mean, I was with most of them,
24 yes.

25 Q All right.

1 A I was district manager and then
2 director of operations.

3 Q How were those jobs typically financed?

4 A I cannot recall because that wasn't my
5 part as a -- as here for. That was handled
6 between Mr. Makawi and Mr. Jimmy Free and I -- I
7 wasn't -- I wasn't informed of anything.

8 Q How were the jobs that you oversee --
9 see now, how are they typically financed?

10 A Well, the jobs I'm doing now, I'm not
11 working for Eagles Landing anymore.

12 Q But if you're doing an upfit for an
13 IHOP or a renovation, how is that financed?

14 A Okay. Some of them is financed with
15 the bank. Some of them is paid cash. Some of
16 them, I finance them personally. And --

17 Q All right. How many renovations have
18 you done since you started out in your own
19 company?

20 A Around 52.

21 Q Fifty two renovations. What percentage
22 of those were with bank financing?

23 A I want to say 50/50.

24 Q So 50 percent of the 50 or so
25 transactions 50 percent of them were financing.

1 And when the bank finances it, did the bank --
2 did -- did -- typically pay the contractor
3 directly after a draw request is submitted?

4 A No, sir.

5 Q How did --

6 A The -- the -- when the bank finance as
7 soon as the contract is done, as -- as long as the
8 work is done, the owner tell them that all the
9 work is done and he send me the money.

10 Q You testified that you -- the only
11 change order you were familiar with was the mold
12 change order. Is that correct?

13 A Yes, sir.

14 Q But you stated you were there almost
15 every other day. How come you weren't familiar
16 with the other change orders if you were there all
17 the time?

18 MR. WILLCOX: Object to the form of
19 that question.

20 THE COURT: All right. Ask it again.

21 BY MR. FORD:

22 Q I'll say it again.

23 THE COURT: Oh, hold on -- hold on, I'm
24 sorry. Don't answer that. Ask it again.

25 MR. FORD: Yes, Your Honor.

1 BY MR. FORD:

2 Q If you were present, Mr. Ali, for three
3 to five days a week -- or five to six days a
4 week -- I can't remember what your exact testimony
5 was --

6 A Uh-huh.

7 Q -- and you were there to supervise or
8 facilitate with what was going on in the
9 construction, how did you have no knowledge of --
10 of what these change orders were.

11 A Okay. I never see this --

12 THE COURT: All right. Hold -- hold --
13 hold -- I'm Sorry. What was your objection?

14 MR. WILLCOX: Well, he -- he's assuming
15 something into evidence that isn't into evidence.
16 I mean, it's -- he's asking him to -- to -- why --
17 why don't you know that something that might not
18 exist -- exists. The -- the question itself
19 doesn't --

20 THE COURT: Yeah, I -- I'm kind of

21 MR. FORD: I'll re---

22 THE COURT: -- uncomfortable --

23 MR. FORD: -- I'll rephrase. I'll
24 re-ask.

25 THE COURT: Yeah, even though it's

1 cross examination, and cross examination is pretty
2 broad.

3 MR. FORD: I'll rephrase, Your Honor.

4 THE COURT: Okay.

5 BY MR. FORD:

6 Q All right. Were you aware --

7 A I never --

8 Q Hold on. Let me finish my question.

9 A Okay.

10 Q You already stated that you had no
11 knowledge regarding the Carolina Construction
12 Solutions electricians?

13 A I don't -- I mean, you mind telling me
14 what work -- kind of work did. By telling the
15 name of the company, I cannot recall it.

16 Q That certain --

17 A There were --

18 Q -- were you ever -- when you were
19 present on the job site, did you see a number of
20 electricians that might be hired than you would
21 see on a typical job site?

22 A Oh, yeah. Yeah.

23 Q All right. And your business as a --
24 as in the business of renovations, does it
25 typically cost more to have more electricians

1 there --

2 A Okay.

3 Q -- than less?

4 A When you do an renovation is different
5 than when you do a new construction. When doing
6 renovation, you don't -- you don't -- you don't
7 add on electricity. You don't take off
8 electricity. All you have to do is just keep the
9 new existing electricity. With this new
10 construction, the whole ceiling was down. New
11 wiring have to be done to the -- that should be
12 under the contract -- new wiring have to be done
13 to the hood. New wiring have to be lighting --
14 new lighting in the system because you have to
15 redo the whole ceiling. And like Mr. Carter say,
16 we changed all the A.C. duct units and the old
17 ductwork for the A.C. You cannot change the duct
18 work without doing the electricity.

19 Q All right. So when you mean
20 renovation, you mean nothing structural to the
21 building?

22 A That's right.

23 Q All right. But you agree that this was
24 not new construction.

25 A What's that?

1 Q This was not new -- the project with
2 new construction, was it?

3 A Which one -- which?

4 Q The James Island project.

5 A It's upfit which, which is different
6 between the --

7 Q But it was not new construction.

8 A What you mean new construction? I
9 don't understand what you're saying.

10 Q Well, the building already existed, did
11 it not?

12 A Yeah, the wall is there, but everything
13 inside have to be upfitted.

14 Q But it was still a --

15 A Yeah.

16 THE COURT: I -- I think I understand.
17 Y'all -- it's a difference in wording, but I
18 understand what.

19 MR. FORD: I think we just don't
20 with the definition --

21 THE COURT: Yeah.

22 BY MR. FORD:

23 Q I'm going to give you what is
24 Plaintiff's Exhibit 6. And you stated before that
25 you were aware about some changes made to the

1 kitchen. Is that correct?

2 A Yes, sir.

3 Q Were you aware that that work was done?
4 If you could please, read the change order.

5 A Well, remove the -- remove all the tile
6 in the back of the kitchen area approximately 200
7 and -- 2600 square feet and install installing
8 new -- and a new wall being installed -- ready
9 installed being a removal, new electricity,
10 plumbing. Restore and the wall as well.

11 Q Were you aware of any of that work
12 being done?

13 A I mean, the work has been done, yes.

14 Q But was that -- that particular work
15 done, did you observe it happening?

16 A Yes.

17 Q So you were aware that -- that -- are
18 you familiar with the terms of the contract? Did
19 you review the contract?

20 A No.

21 Q No. And then let's identify Plaintiff's
22 Exhibit 8.

23 A Yes.

24 Q Please review the work.

25 A Installing of new flooring and tiles in

1 the front dining room area where it was carpet.

2 The specification in the plan was

3 still tile image IHOP specification.

4 Q Did you observe that work?

5 A Yes.

6 Q Did Elite Construction, through its
7 subcontractors, complete that work?

8 A Yes.

9 Q Was that work that Mr. Makawi had asked
10 to be done?

11 A Yes.

12 Q Were you aware that in some cases or
13 some instances Mr. Makawi hired his own con---
14 subcontractors to come in and do the work?

15 A Yes.

16 Q Were you responsible for reaching out
17 and hiring subcontractors in certain instances?

18 A In -- in the end of it, yes.

19 Q All right. Which contractors did you
20 reach out to? Was that just to complete the punch
21 list?

22 A Yeah.

23 Q All right.

24 MR. FORD: I have no further questions.

25 MR. WILLCOX: A couple on redirect,

1 Judge.

2 REDIRECT EXAMINATION

3 BY MR. WILLCOX:

4 Q Mohammed, these -- these exhibits you
5 were shown about this work being done, you said
6 the only change order you knew about was the mold,
7 correct?

8 A Yes, sir.

9 Q Okay. And from what you understood,
10 that work was done as part of the contract,
11 correct?

12 A Yeah, the only thing I know that
13 Mr. Vince told me about that was going to cost
14 extra, is the sheetrock.

15 Q Okay.

16 A I mean, I don't know if he discuss it
17 with somebody. He didn't discuss it with
18 somebody. As far as my knowledge, he didn't never
19 discuss with me anything about that's going to be.

20 Q And -- and if he -- if somebody had
21 told you that it was going to cost 26,000 dollars
22 to put in that tile that we discussed earlier from
23 the walkout to the -- the kitchen, would you have
24 thought they were crazy?

25 A Yes.

1 Q Okay.

2 A Even this cost in the whole entire
3 store to be done in the renovation is they do it
4 new tiles -- take off the carpet and new tile
5 between three to four dollars square feet and that
6 was part of it.

7 Q Okay. And this work that was done in
8 the kitchen, that was to put the -- the kitchen
9 floor in, correct?

10 A Yes, sir.

11 Q Okay. And that your understanding
12 would be part of any contract, correct?

13 A Yes, sir.

14 Q And would you think that cost -- would
15 you agree to pay 54,900 dollars to do that
16 portion?

17 A No way. You -- you pour a whole slab
18 floor for new restaurant for less than that.

19 Q And this decor package --

20 A Yes, sir.

21 MR. FORD: Your Honor, I'm -- I'm just
22 going to object to that last question. Mister --
23 while Mr. Ali does have some experience with
24 respect to renovations, he said he's not -- not a
25 licensed contractor. No knowledge regarding

1 structural such to the extent that he's testifying
2 about what the cost would be or what they should
3 be, I don't believe that that's appropriate for
4 him to talk to. It's speculation, Your Honor,
5 based on his inexperience and not being a licensed
6 contractor.

7 MR. WILLCOX: Judge, all I asked --
8 what I asked was this might -- tell him it was
9 going to be 54,000 dollars to put a new kitchen
10 floor in. And I believe he answered, no. Then I
11 asked would he be a surprise, and he does have
12 that knowledge in upfittings and remodelings to --
13 to know whether that's high or not.

14 THE COURT: Yeah, I -- I -- I think
15 that he's got enough general knowledge and
16 experience to -- and -- and -- and also in the --
17 these type buildings to --

18 THE WITNESS: Is for my purpose --

19 THE COURT: -- answer the question.

20 THE WITNESS: -- from the previous
21 store that we built, so.

22 THE COURT: I'm going to let him
23 answer.

24 BY MR. WILLCOX:

25 Q All right, Mohammed. I'll show you

1 what's been marked as Plaintiff's Exhibit
2 Number 7. Did anybody tell you a -- a new decor
3 package was going to cost -- cost Mohammed 96,000
4 dollars extra?

5 A No, sir.

6 Q Okay.

7 THE COURT: How much extra?

8 MR. WILLCOX: 96,000 dollars.

9 THE COURT: Okay, yeah. I thought you
10 said 196,000 dollars. You said 96,000.

11 MR. WILLCOX: 96,900.

12 BY MR. WILLCOX:

13 Q That seem a bit high to you?

14 A Yes.

15 Q And do y'all ever hang any Van Gogh's
16 or any type of paintings in these IHOP's?

17 A No.

18 Q Do y'all ever -- do y'all ever hang any
19 type of Vincent Van Gogh pictures or anything like
20 that?

21 A No.

22 Q Okay. Let me show you what's been
23 marked as Exhibit Number 1. And look at the
24 electrical -- well, I -- look at the
25 electrical amount and tile amount.

1 A Which one?

2 MR. FORD: Judge, Objection --

3 THE COURT: All right. You're
4 objecting again about his --

5 MR. FORD: Well, once -- once I hear
6 the question. Let me hear it, if it's related to
7 the contract --

8 THE COURT: Okay.

9 MR. FORD: -- we would just object on
10 the grounds of --

11 THE COURT: All right. Say the
12 question again, Walker.

13 BY MR. WILLCOX:

14 Q Okay. Mohammed, on -- on Exhibit
15 Number 1, there is a line item for tile 24,900.

16 A Okay.

17 Q Was that enough money to -- to do the
18 tile work that was done at the...

19 A Yes, sir.

20 Q Okay.

21 MR. FORD: Judge, the same -- the same
22 objection as before.

23 THE COURT: Well, I don't know if he's
24 asking a question of his own actual knowledge of
25 what was spent, or if he's asking his opinion

1 as -- ask--- asking him his opinion on is that a
2 lot.

3 MR. FORD: He's asking him if -- if
4 that's a reasonable amount --

5 THE COURT: Okay.

6 MR. FORD: -- to the tile. He's not a
7 contractor. I don't know how he would know
8 what -- what a reasonable amount for a fee would
9 be.

10 MR. WILLCOX: He -- he would know how
11 much tile was put in, Your Honor. He -- he knows
12 how much tile was put in that restaurant.

13 THE WITNESS: No, I don't -- I don't
14 remember the restaurant -- I'm sorry, sir, to cut
15 you off. I know my restaurants between dining
16 room. You can go to any IHOP and measure it.
17 And, you know, my restaurant. I have between
18 2,000 to 2500 square feet. If even you go to
19 James Island store right now, it's between 25 to
20 20 -- between 20 square feet -- James Island is
21 around 2450 square feet with the entryway, which
22 is in tile. And usually this -- this what we
23 go -- you know, we go on so...

24 THE COURT: I -- I think that he has
25 enough knowledge and experience -- only --

1 not a contractor -- when he's required to be a
2 contractor to answer that question. I -- I
3 think --

4 THE WITNESS: And you don't have to be
5 a contractor to lay floor. All -- all -- all your
6 flooring contractor, you don't have to be
7 licensed -- or anybody can lay flooring as long as
8 he can get the work and do it so...

9 BY MR. WILLCOX:

10 Q Were new sidewalks -- did Mr. Carter
11 install new sidewalks in this IHOP?

12 A The front -- only for the handicap
13 area.

14 Q Okay. Any -- any -- any other places?

15 A No, sir.

16 Q Okay.

17 A Because it was already existing
18 building. The only thing was the handicap rail
19 for the front.

20 Q Okay.

21 MR. WILLCOX: Those are all the
22 questions I have, Your Honor. Thank you.

23 MR. FORD: Your Honor, if I may just on
24 redirect.

25 THE COURT: Sure.

1 MR. FORD: Just because Walker asked a
2 little bit about the change order.

3 RECROSS EXAMINATION

4 BY MR. FORD:

5 Q Mr. Ali, you stated that 54,900 dollars
6 is an unreasonable amount for laying tiles for
7 approximately 2600 square feet. And I think you
8 said 2500 square feet is as big as it is. Do you
9 think that an unreasonable amount for -- for all
10 that would be 3--- an unreasonable amount would be
11 31,000 dollars to do that?

12 A I think a reasonable amount to do -- to
13 do what the change order or the whole floor?

14 Q That the -- the --

15 A Because you --

16 Q Well, the 2500 square feet --

17 A What you asking me to do the change
18 order or the --

19 Q The change order -- all right. Let me
20 see.

21 A I think the change order is around --
22 at the most if I -- if I can recall if something
23 had change the walk off carpet because was some
24 tile there already, I think is around 600 to 700
25 square feet at most, if that.

1 Q So you're disputing the amount of the
2 square footage. What would it cost if it -- we
3 were -- if it was 2500 square feet, in your
4 opinion, what's a reasonable --

5 A Twenty -- 2500 square feet and you
6 always usually do it around -- with material or
7 just labor?

8 Q With both, the total of -- the total
9 of --

10 A Yeah --

11 Q -- with --

12 A -- it's around eight dollars square
13 feet.

14 Q Eight dollars a square foot so eight
15 times 2500? All right.

16 A And that's for the whole store. I --
17 if you ask me about the whole store, you ask me
18 about the change order. So if --

19 Q Plaintiff's Exhibit 3 for invoice
20 provided for the tile installation from Neil's
21 Flooring, why don't we look at it. It looks like
22 just for the tile base installation could you
23 please identify how much Neil's charged for just
24 the tile base installation and metal trim?

25 A 2100. This only for installing 2300 --

1 3,000 -- 3,000 -- two -- 320 linear feet.

2 Q Uh-huh.

3 A For five dollars a square feet. So if
4 a average IHOP 2600, if you that -- times that,
5 say -- that would never come to 31,000 as you say.

6 Q That's 2--- 320 linear foot. Now,
7 what's the difference between a linear feet.

8 A No, no, no, linear foot, it's a base --
9 linear base.

10 Q That's around --

11 A That's around the base.

12 Q Yes, that's good. All right. What's a
13 reasonable amount to you install that -- a rubber
14 base flooring in the kitchen?

15 A Rubber base flooring?

16 Q Yeah, the rubber floor.

17 A Rubber base flooring is totally
18 different than if you talking about labor and
19 material. That's a totally different because this
20 welding, laying the floor and welding the seams,
21 it's seamless. If you talking you cannot compress
22 out -- out of between the flooring and the tile
23 flooring.

24 Q All right.

25 MR. FORD: I have no further questions.

1 Thanks.

2 THE COURT: Okay. Thank you, sir.

3 (Off-the-record Discussion.)

4 Thereupon,

5 Mohammed Makawi,

6 having been first duly sworn by the court

7 reporter, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WILLCOX::

10 Q All right, Mohammed, please state your
11 state for the record. Please state your name for
12 the record.

13 A Mohammed Makawi.

14 Q And Mohammed, what do you do for a
15 living?

16 A I actually franchisee for IHOP.

17 Q Okay. And how many IHOP's do you --
18 new companies that you control, own?

19 A Eight right now.

20 Q Okay. And I'm sure you're going to be
21 asked. Is -- is there a management company that
22 collects and profits from these restaurants
23 that --

24 A No. No, no.

25 Q Okay.

1 A It just -- we have a managing company
2 to actually control all the stores. Well,
3 basically, we have some insurance. We have the
4 office. We have the C.P.A. We have the -- and
5 all this get paid -- has to get paid from all the
6 companies. So we actually dedicate some set
7 amount of money from every store monthly to go to
8 that company to take care -- sometime we cannot
9 just get -- you get a better package in insurance
10 for the eight stores.

11 Q Okay.

12 A If you did it store by store, it's
13 going to be a lot -- hell, a lot more expensive.
14 So what we dedicate is like, hey, we take in a
15 package. And then we take some money from every
16 store to go to the -- to the Eagles Landing.
17 We're trying to -- to pay for -- the management
18 company to pay for all this stuff that combined
19 together.

20 Q Was this something that Jimmy Free
21 helped you come up with?

22 A He did, yes.

23 Q Okay. So there's a business purpose
24 beyond -- behind doing that?

25 A Exactly.

1 Q Okay. And -- and Eagles Landing
2 Restaurants, L.L.C., does it own and operate the
3 IHOP in James Island?

4 A James Island, the -- yeah -- yeah,
5 you're right.

6 Q Okay.

7 A Yeah.

8 Q All right. And -- and you're the
9 principal owner of Eagles Landing --

10 A Yes.

11 Q -- Restaurants. And let - let's start
12 with -- let's start from the beginning. What --
13 how many IHOP's have you upfitted during your
14 career as a franchisee?

15 A I can say get involved with about two,
16 actually three. But did it -- was very involved
17 in it about five.

18 Q Okay. And tell -- tell us -- tell us
19 some about how this idea behind the James Island
20 IHOP got started.

21 A Okay. Well, I -- I was going through
22 divorce. And financing was very hard on that
23 time. And if not for divorce and I was prohibited
24 actually from getting loans. I was trying to get
25 a loan by showing that everything that I have, but

1 it was prohibited from actually closing on any
2 loan until I get the divorce decree. Which it
3 wasn't available at that time. So, basically, we
4 couldn't do it at that time. So I had a friend of
5 mine, Vince Carter. He's a friend of mine for 17
6 and a half years old. I mean this and
7 that -- but about 17 years and a half, basically.

8 Q All right.

9 A I actually called him and told him,
10 hey, this is my situation here. And we were
11 talking, me and him, off and on off of -- of
12 trying to get him in with us to -- to get into
13 Eagles Landing Property so we can make our own
14 property company that can actually build all the
15 stores for us. And we wanted to start with that
16 store at least. You know, like, hey, let's go
17 ahead and start with that one. His wording to me
18 that, yeah, we can do that. And I showed him the
19 bid that I have which is usually -- this is the
20 guy that does all my IHOP's -- about 570,000
21 dollars from Benchmark, built out. The guy knows
22 exactly what -- what is he doing. He -- if I give
23 it to him, it would have been on the job second
24 day. I'm on the job all the way to training.
25 But, hey, when it's a turnkey, I'm going to give

1 you the turnkey, the C.O., and all this stuff.
2 Two weeks before opening so we can start the two
3 weeks get it for training to get train--- to train
4 people.

5 Q Okay. So let -- let me slow you down a
6 little bit, Mohammed. So with this James Island
7 IHOP, you -- in the past with the other stores,
8 you were using a -- a -- a contractor named
9 Benchmark. Is that correct?

10 A Yes.

11 Q Okay. And -- and typically with
12 Benchmark --

13 A Yes.

14 Q -- it'll be turnkey, correct?

15 A Yes.

16 Q All right.

17 A Exactly.

18 Q And when -- when you would contract
19 with Benchmark -- how many stores had Benchmark
20 built for you?

21 A Hold on.

22 Q Okay.

23 A Since -- since 2000 until now.

24 Q All right. So and -- and when you --
25 when you contract with Benchmark, you said they

1 took control of the project until C.O., correct?

2 A Exactly.

3 Q All right. And did Benchmark submit a
4 bid for this IHOP?

5 A Yes.

6 Q Okay. And what was that -- what was
7 that bid in relation to the bid Mr. Carter
8 provided you?

9 A It was actually 570,000 dollars. I --
10 I -- if you have a copy of it here in front of me,
11 but it's 570,000 dollars. And I actually was
12 talking to Vince about it, and I show it to him.
13 He's like I can give you that IHOP done for
14 350,000 maximum. So we talking about using him
15 to be honestly. And it came handy in the meantime
16 because, basically, I'm in a burden,
17 you know, financing is not getting the right way. So
18 I was like, are you sure about that? He's like,
19 yeah, definitely. I can get it done for 350 and
20 no -- no question asked. Okay.

21 If he did it for 350 that whatever is
22 different between -- basically that's why I give him
23 the -- I give him the -- actually more than the 570,
24 which is the 570 that was to get it done. I give
25 him more so we can include all this excluded stuff

1 in it and, of course, it would be room that we can
2 actually fit it if he came true to -- to -- to get
3 the 350 done, then we had a deal that we were going
4 to split whatever it is that happen between that
5 bid -- bi--- between the 570 and -- I'm
6 sorry. The 620 and the 350.

7 Q Well, let -- let -- let me slow me down
8 again, Mohammed. So -- so you got -- you got a
9 bid from Benchmark for about 570, correct?

10 A Yes, sir.

11 Q All right. Now, you -- then you also
12 got a bid from Vince.

13 A That is correct, yes.

14 Q Okay. And let me show you what's been
15 marked as Exhibit Number 1.

16 A The bid, okay.

17 Q And is that the bid you received from
18 Mr. Carter?

19 A That's right.

20 Q All right. And was he supposed to be
21 responsible for the -- the whole entire project,
22 turnkey, correct?

23 A That is turnkey and suppose to be
24 even -- even the unincluded stuff.

25 Q Okay.

1 A Unincluded because of that, sir.

2 Q Because this bid was more than what the
3 bid for Benchmark was.

4 A Benchmark, it was like about 55,000
5 dollar more --

6 Q Okay.

7 A -- than -- than the guaranteed
8 contractor, basically.

9 Q All right. And -- and what -- what --
10 what was your understanding about what was
11 excluded from his bid? I mean, did you have a
12 chance to -- to look at this, obviously?

13 A I did.

14 Q Okay.

15 A I did.

16 Q And go to the last page for me,
17 Mohammed.

18 A Sure.

19 Q Other than the items listed on this
20 last page, was anything supposed to be excluded
21 from the scope of work?

22 A No, not usually.

23 Q Okay. All right. And did -- did
24 y'all -- did you and Mr. Carter sign a contract?

25 A Yes.

1 Q Okay. Let me show you what's been
2 marked as Exhibit Number 2. Now, is that the
3 contract that you and Mr. Carter signed?

4 A Yes.

5 Q Okay. And is -- is that a stipulated
6 sum contract?

7 A Yes.

8 Q Okay. And did Mr. Carter agree to
9 perform the work to upfit the -- the IHOP?

10 A I'm sorry, yes.

11 Q Okay. Was that -- was that lump sum
12 624,000 dollars?

13 A Yes.

14 Q And is that amount found on -- on
15 this -- it says page eight of the exhibit, but
16 that's a Bates number. But from the third page of
17 the exhibit look -- look on Article 3 -- I'm
18 sorry, Article 4, the fourth one.

19 A It said on the third page which is --

20 Q This says page eight on the bottom.

21 A Is that eight, yeah. I got it.

22 Q So look under Article 4.

23 A Uh-huh.

24 Q And is that the amount that he agreed
25 to do this upfit was 624,354?

1 A Exactly, that's why we call it a lump
2 sum.

3 Q All right. And so you didn't expect to
4 pay any more than that 624,000 dollars.

5 A No.

6 Q Okay. And was there a time limit to
7 when you had to have the -- the restaurant done?

8 A Yes.

9 Q Okay. And is that on Article 33, that
10 contract a 120 days from the date of the contract?

11 A It was 90 days, but, yeah, I think that
12 I signed on a 120 days.

13 Q Okay. And you say 90 days, if you go
14 back to Exhibit 1, he proposed a 90-day
15 construction schedule.

16 A Yes.

17 Q Okay. How quickly would Benchmark be
18 able to turn these --

19 A That's exactly what was in Benchmark,
20 90 days.

21 Q Okay. And so y'all agreed to 120 days.

22 A I signed the contract for a 120 days,
23 yes.

24 Q Okay. Now, on this contract, was there
25 anything excluded from the scope of work?

1 A Other than the excluded stuff, yeah,
2 no.

3 Q So you -- so your understanding was the
4 only thing excluded from the scope of work was --

5 A The -- yeah -- was from the bid which
6 is part of the contract.

7 Q Okay. Other than that, it's like what
8 we call -- it's a turnkey project, correct?

9 A That's correct.

10 Q Okay. All right. Now, you -- you said
11 you had a -- a preexisting relationship with
12 Mr. Carter. And how -- how did you know him?

13 A He's -- he -- he was a friend of mine
14 for 17 years -- actually is still a friend of mine
15 for 17 years.

16 Q Okay. And how did you know he was in
17 the construction business?

18 A He actually did -- I actually
19 contracted him to do my house when I started to
20 building in 2006. We been talking off and on,
21 on -- on trying to build the house in Florence and
22 stuff. But anyway, he actually told me that I can
23 pay him some money for the license and actually,
24 I -- I can actually go ahead and build it myself.
25 So, basically, I was there doing the job as a G---

1 G.C.

2 Q Uh-huh.

3 A But using his license so because I'm
4 not licensed to do the stuff.

5 THE COURT: That was as to your house?

6 THE WITNESS: For my house, yes.

7 That's right.

8 BY MR. WILLCOX:

9 Q And did that relationship -- tran---
10 trans -- transform into him agreeing to build
11 this --

12 A Yeah.

13 Q -- IHOP at the island. And tell us --
14 let's talk about the -- the site. About what this
15 IHOP was. What -- what -- describe the shape of
16 this building whenever y'all leased it and decided
17 to put an IHOP in it.

18 A It was --

19 Q What -- what had been there?

20 A It was a Ruby Tuesday.

21 Q Okay.

22 A That we actually took it over to
23 convert it to an IHOP.

24 Q Okay. And had you -- had you taken old
25 restaurants before and --

1 A Yes, I did. I take -- I take a KFC
2 and -- I took a KFC, I'm sure I did it. And I
3 took a -- a cold shell in Myrtle Beach and I did
4 it too. Actually more than one in Myrtle Beach
5 and then a I think Charleston. I've done
6 Charleston, too, the same way.

7 Q Okay. And when -- when you would do
8 these upfits --

9 A Uh-huh.

10 Q -- I mean, would it be essentially
11 y'all would gut the building.

12 A I'm sorry.

13 Q Would y'all, essentially, gut the
14 building?

15 A Since I got the building?

16 Q Would you, essentially, gut the
17 building?

18 A Yes.

19 Q Okay.

20 A Yeah.

21 Q And so -- it's -- it'd be a -- a fairly
22 significant remodeling job, correct?

23 A Basically, yes.

24 Q Okay. And there are certain things
25 that IHOP corporate requires you to do, correct?

1 A Exactly.

2 Q Okay. So they have specifications
3 and -- and -- and things like that.

4 A They do.

5 Q Okay.

6 A They actually send the specifications
7 to an architect and the architect give us the
8 drawing and we work off of the drawing and get it
9 done.

10 Q Okay. And so this -- this project
11 began -- what -- well, how -- did -- did -- did --
12 did you sign the lease for this building sometime
13 in late 2014?

14 A Yes, I did.

15 Q Okay. And were you making lease
16 payments?

17 A Yes, that was -- yeah, but that was
18 supposed to start -- I think it was July if I'm
19 not mistaken.

20 Q Okay. So --

21 A End of July.

22 Q You and Vince entered into these
23 contracts about April the 9th, 2015.

24 A That's right.

25 Q Okay. And after y'all -- tell me --

1 tell me how work began. What -- what -- what
2 happened after you entered into the con--- entered
3 into the contract --

4 A Okay.

5 Q -- did Vince begin immediately?

6 A No, when I talked to him, I knew that
7 he might think that he can do it for that much.
8 But I know that I give him a -- a too big of a
9 bite that he can bite. And -- but that's why I
10 actually wanted to go ahead and give him that
11 portion in there and just work with him. My
12 understanding is I actually told him as a friend,
13 hey, are you familiar with that? No. But you're
14 familiar with the building. Yes. He can do the
15 building, but I can -- I'm going to work with you.
16 So basically the work supposed to be 50/50 between
17 me and my guys and him. So we can get him there.
18 He does it -- from what his testimony is
19 and -- and the problem is he -- he doesn't even
20 understand the difference between the -- what is a
21 remodeling. What is old remodeling, what is new
22 remodeling. What is -- what is -- what is tile.
23 What is carpet. What is -- you -- you see that
24 from, you know, like every aspect -- every time --
25 every minute that he would start. His -- he's a

1 very smart builder. He just -- I think I give him a
2 too big of a bite to bite -- to chew.

3 Q And at -- at what point -- from the
4 very beginning, though, were -- were you and he
5 working together to manage the subcontractors and
6 order -- order material and -- and contract with
7 subcontractors, or did you begin -- have to get
8 in --

9 A I have to --

10 Q -- and later --

11 A -- it -- it -- of course, that -- the
12 problem is he doesn't know where -- where to order
13 the stuff from. Which is -- all this stuff
14 supposed to laid in in the job Bruce phone
15 number and -- and -- and copy the name and all the
16 stuff. Here is really in the drawing he had this.
17 But I was getting in. I was helping him, me and
18 my assistant which is Marion and was
19 working with him every day. He can -- he can
20 testify to that himself. She was doing the
21 ordering. She was getting everything that he
22 needs. She was taking a big burden off of his
23 shoulder, basically.

24 Chris and Mohammed Ali, I actually
25 dedicated them to make sure that -- which is

1 Mohammed Ali didn't even know how to -- he was
2 trying to say that his job starts when the turn over
3 began. Then he can start hiring and start the --
4 the operation. That's why he was talking about the
5 operation. I have operation. But with any of the
6 contracts they would -- they would never be actually
7 involved until the turnover. Before that, no. They
8 can be there, yes, to -- to see if, hey, when we
9 going to open. Why are they asking when we going to
10 open? Because we want to know when they supposed to
11 start training. And that's part of his job,
12 training.

13 Q You're talking about Mohammed Ali?

14 A Of course, yes.

15 Q Okay.

16 A And Chris, of course, because Chris was
17 district manager of Charleston area. Mohammed Ali
18 was a district manager and, you know, trying to be
19 a director of operation for the whole entire
20 company, basically.

21 Q Okay. And how often would you -- would
22 you go down to this site?

23 A A lot -- I just had to leave the
24 country for like three weeks. Actually it was --
25 I had a couple of cases. I was married to an

1 Egyptian lady, and I definitely have divorce -- a
2 very complicated divorce case. So I have some
3 courts in here and some courts in Egypt to take
4 care of that. And, of course, my father had a
5 very critical condition with his -- he got two
6 strokes -- two brain strokes and stuff and I have
7 to be there because it was -- it was very
8 important for me to take care of him.

9 Q All right. And during this job, do you
10 recall this issue with the mold possible?

11 A Every day. And -- and I was getting
12 calls from J--- from Vince. I was getting
13 calls -- I was calling him. I was calling Jimmy
14 because Jimmy was calling me. Everybody in the
15 project was calling me at that time.

16 Q Okay. And you got a call about the
17 mold?

18 A I did.

19 Q Okay.

20 A Yes.

21 Q And was that early on in the project?

22 A Exactly, that was the -- pretty much at
23 the beginning -- at the beginning stage of the --
24 the project and I actually -- Vince called me and
25 told me about that position. I was like what you

1 think about that? What should we do? He said,
2 look, if we got that sprayed, it's going to cost a
3 lot more money and it might come back again. It
4 would be a lot better and a lot cheaper to
5 actually replace that cardboard and -- and the --
6 the -- the -- how they call it, the drywall.
7 Which is -- I trust him. He's -- he's a
8 trustworthy -- He knows exactly. If it
9 start to run.

10 So I told him, now, I have a very
11 important factor that I always think of before
12 anything else especially in the hard time that I'm
13 in right now. Money. His very specific words to
14 me -- and he can refer me if I'm wrong -- he told
15 me, it's going to cost you about 21 to 2300 dollar
16 exactly to get that problem resolved. And I told
17 him, go ahead and do it. That was the only verbal
18 one that we did.

19 Q All right. So let's talk about the
20 other alleged change orders. The kitchen area --

21 A Yes.

22 Q -- putting of this rubber tile --

23 A Uh-huh.

24 Q -- down in the kitchen area. Was that
25 the -- the plan all along to put that --

1 A No. The plan was supposed to tiles.

2 Q Okay.

3 A The -- the existing tile. But,
4 unfortunately, the trenches that he did to do
5 the -- all the plumbing and to do the new walls
6 that he have to be -- that have to -- to do
7 that -- you know, walls if you do framing,
8 basically, you're going to have to -- as long you
9 dig trenches -- he went ahead and digged trenches
10 for the walls, too. So, basically, in the back it
11 was like he -- he can't -- it's not -- not even
12 five-foot by five-foot area that he can actually
13 put your feet in it and it doesn't have a trench.
14 Look, everywhere, basically. So by that time, all
15 the tile was completely gone.

16 Q Okay. So from -- from doing the --
17 the -- doing the work --

18 A Yeah, and it was --

19 Q -- in the kitchen?

20 A Yeah, and it was a red tile which is --
21 does not exist right now. That was like long time
22 ago and that -- and that Ruby Tuesdays, it's not
23 there. My understanding is it -- do you -- how we
24 going to replace that tile with the same tile.
25 Because, basically, you can't put yellow and red

1 in the same -- it's not going to happen. IHOP is
2 not going to approve it. Then I -- what I -- what
3 I said is, what do you think the best way to do
4 it? He's like, no, we can do completely new
5 tiles. I was like, all right, as long as we don't
6 put new tiles, why don't we go ahead and get the
7 carpet -- the -- the rubber. And the rubber
8 flooring is going to be exactly the tile -- the
9 tile cost about three dollars to four dollars a
10 square foot to get it done. So we talking about
11 if we going hold that, and we already providing
12 the tiles -- so, basically, it's going to be labor
13 basically. Let's go ahead and get the rubber.
14 Rubber is like about eight dollars a square foot.
15 So it's not that far from there, basically.

16 Q Okay. And so -- so this is after all
17 the kitchen tile had been torn up from all the
18 trenches and everything --

19 A Exactly.

20 Q -- that the new tile had to be put down
21 there anyway.

22 A Yeah.

23 Q Now, was tile -- let's go back to
24 Exhibit Number 1, Mohammed. It's in front of you
25 there. Didn't you have an allowance -- about a

1 24,900 dollar allowance for tile?

2 A Yeah.

3 Q Okay. Did you -- did you think that
4 putting the tile down --

5 A Well, let me -- let me -- let me tell
6 you something, though.

7 Q Okay.

8 A Before we go through that. Because
9 that was definitely to explain to the Court and to
10 you and, of course, to the -- to -- to the
11 lawyer -- the op--- the opponent lawyer, why Vince
12 was not understanding the numbers that much.
13 Because, basically, he actually asked me to take
14 that numbers from Benchmark, increase it to be
15 624,700. That's why he doesn't un--- understand
16 how it works. Because he didn't do it. He's just
17 got it from somebody and just copied it and -- and
18 put it in there.

19 Q Okay.

20 A Unfortunately. But he didn't know that
21 it is -- it has a lot into it that he don't know.
22 That's why I tried to help him out. I -- I tried
23 to be with him all the way through the project.

24 Q So this -- this -- this quote ha--- has
25 an allowance for tile?

1 A Exactly.

2 Q Okay.

3 A Exactly.

4 Q And so -- so it's already built --
5 this -- this cost is already built into this
6 contract, right?

7 A Exactly.

8 Q Was that your understanding when you --
9 when you told him to go ahead and put it in?

10 A Yes.

11 Q Okay. Did anybody ever submit to you,
12 even with the mold, Mohammed -- did anybody submit
13 to you a -- a form -- a change order --

14 A He --

15 Q -- form?

16 A Swear to God, I've never seen any
17 change order tell when you -- when he brought it
18 to me like when the case is -- is -- is actually
19 filed. I've never agreed to any of this number.
20 I would never agree to this number. I would have
21 definitely tell him, hey, go with -- go with
22 option A. Whatever it is, that Option A is for
23 that much money. Because, basically, I can't
24 afford it. That's why it been a -- brought up
25 later after the fact.

1 Q Okay. So -- so, obviously, him --
2 the -- the amount this tile would have cost --
3 well, if he -- if he'd told you it was going to
4 cost 55,000 dollars, would you --

5 A I would never agree with it.

6 Q Okay. How about if he told you it was
7 going to be 31,506?

8 A For what?

9 Q For -- for his cost. For his
10 management fee, for his 25 percent profit.

11 A Okay. Well, first of all,
12 management --

13 Q Just on top of the contract.

14 A First of all, management fee supposed
15 to be in the contract. That's built in in the
16 contract. And he said that. But we're thinking
17 about 25 percent, which is the -- how they call
18 it, the markup. Nobody would ever pay 25 percent.
19 It's usually between -- if he's a genius of
20 geniuses of G.C., honestly, we make it 15 percent.
21 Fifteen percent is max, that's what he does. But
22 anyway, when -- in this case we're not talking
23 about 15 percent or 25 percent or 60 percent,
24 whatever it is. We're talking about a lump sum.
25 So you can't talk about -- you -- you, you know,

1 you cannot be confusing himself or yourself. You
2 cannot talk about, I'm going to have a percentage
3 of 25. In the meantime, I'm going to have a
4 100,000 dollars. In the meantime, I'm going to
5 have a 620. What?

6 Q So you thought your expectation was --
7 was --

8 A Definitely not.

9 Q -- was that he --

10 A I would never -- I -- look I have never
11 and I would never agree with that much money
12 especially in the decor package.

13 Q Okay. Well, let -- let -- let's talk
14 about the kitchen floor.

15 A Yes.

16 Q Okay.

17 A No, kitchen, I already talk to you
18 already. That this is the situation that's
19 exactly the situation how it works.

20 Q Well, did -- did he ever tell you this
21 is going to be 54,000 on top of the contract
22 price --

23 A No.

24 Q Okay. Would you agree to that.

25 A Of course, not.

1 Q Would you agree to pay any amount over
2 the contract price?

3 A No. Over the contract price, yes,
4 definitely. To be honest with you, I cannot lie.
5 But it -- it is -- if over the contract price --
6 if we're talking about a situation here of -- of
7 rubber. How much is rubber going to cost versus
8 the -- the -- the -- the tile because he messed it
9 up. He's going to have to do it, regardless. He
10 did it. He couldn't leave the tile what -- the
11 way it is. Nor he actually fix it.

12 So, basically, once the situation has to
13 be happening in here. Either replace the tile which
14 is -- would be very hard because, basically, to --
15 to match the color in the back of the -- back of the
16 house, over 25 to 30 years old, Ruby Tuesday, it
17 will never happen. We all know that. Not even in
18 IHOP we had -- couldn't even match a couple of tiles
19 for IHOP that started maybe ten years ago. We
20 couldn't.

21 Q Okay.

22 A So, yes, I would agree on a dollar,
23 1.50 different between the rubber and the -- and
24 the -- and the tile. Because the tile, you're
25 talking about the price, the labor -- the price of

1 the material, the labor and -- price and labor,
2 basically. And, of course, the 65 percent
3 increase or -- or 25 percent, I think.

4 Q Well, but -- but he never gave you that
5 change. Y'all never had the --

6 A Never had the change ever.

7 THE COURT REPORTER: And if you could,
8 let him finish his question --

9 THE WITNESS: Yeah.

10 THE COURT REPORTER: -- before you
11 answer. That's okay.

12 THE WITNESS: I'm sorry, I'll do that.

13 BY MR. WILLCOX:

14 Q So y'all never had that conversation.
15 He -- he did it.

16 A I've never had a conversation with him
17 on a change order other than -- you see the --

18 Q And --

19 A -- word the change order, never come up
20 unless if we was talking about that --

21 Q The mold.

22 A -- the mold.

23 Q Okay.

24 A The only thing.

25 Q All right. Let's talk about the decor

1 package. Do you recall -- did he ever talk to you
2 about increasing the contract amount by 96,900
3 dollars for a new decor package?

4 A I would definitely cancel the contract
5 right -- right there and then and not do it at
6 all, at all. 95,000 dollars, you talking about --
7 I'm -- I'm -- what percentage this -- 23 -- 24
8 percent out of the whole total. No, no, by more
9 than this, 30 percent. There's no way.

10 Q Okay. And so the existing contract
11 had --

12 A 625.

13 Q Right.

14 A Okay. Divide -- divide that number by
15 625 percent, that will give you a percentage of
16 the increase. He's talking about 280,000 dollar
17 increases. Over 625,000 dollar, that's about 25
18 to 33 percent of the project. I would stop the
19 project and still make money.

20 Q Right. You're were never given -- you
21 were never --

22 A No way.

23 Q -- presented that?

24 A I've never been -- I've been introduced
25 to it. I've never heard about it. I give this

1 number. Look, usually the -- the change order --
2 I just want to explain that to the court, too, so
3 you un--- you understand. I know that it's a
4 weird manner, but what -- it have to be explained.
5 Let say right now I'm building a store. If I got
6 a change order, the change order comes to me. I
7 bid on the change order. The change order is like
8 here's a -- here -- here's what we have to change.
9 This is how much it's going to cost. Do you
10 accept? What if I say, yes, then it goes, but I
11 have to sign it. If I didn't say, yes, then it
12 stops. Can I stop the project? Of course. If I
13 didn't get paid for what I requested -- I'm not
14 going to get paid for it.

15 Q So Vince never submitted his change
16 order to you and never give -- never gave you the
17 chance to say yes or no, correct?

18 A No.

19 Q He just did it?

20 A Yes.

21 Q Okay. And you would not have agreed to
22 pay 96,000 dol--- 900 dollars?

23 A No, sir.

24 Q Okay.

25 A New decor package, you know what decor

1 package is, sir.

2 Q Right. Pictures.

3 A But the problem is he didn't -- he
4 didn't get it. He doesn't understand that from
5 the beginning. He said that, I mean, he didn't
6 deny that he doesn't understand what's different
7 between the old one and the new one. The
8 different like the -- like Mohammed said that he
9 might -- he was very close to it. That -- that
10 instead of the picture -- this is the vision --
11 instead of the picture, it's like saying a -- a --
12 a batch or -- or a syrup container. The other one
13 is like an apple or whatever it is.

14 Q Okay.

15 A So it's just a -- just a image and
16 stuff. This is number one. Number two, of
17 course, the lighting package is different than the
18 old lighting package. It's the same price, but
19 it's different. Like if -- if the color was gold,
20 this color is going to be brown. The same exact
21 thing with the Marlite. Marlite is the paneling
22 that you brought on the wall under the -- under --
23 under the -- how they call it -- the --

24 Q Sheetrock?

25 A Yes. But anyway, thank you, though.

1 But that's the Marlite. The only change between
2 the old Marlite and the new Marlite, it's the same
3 exact panel, the same exact company, the same
4 ex--- the difference is the color. From a yellow
5 to a dark beige. That's it.

6 Q So -- so these things he agreed to do
7 in the contract.

8 A It is already in there, yes.

9 Q Okay.

10 A Yeah.

11 Q And Mohammed, tell -- tell us what you
12 know about this claim about Carolina Construction
13 and that being a change order.

14 A Well, at that time, I knew that we were
15 completely late in opening the store. And I was
16 really bothered about that because, basically, I'm
17 going to pay a lot of money. We're talking
18 about -- and that's a lot of money.

19 That's 16,000 dollars every month that I have to
20 pay more. But -- so when I start getting closer
21 to the 120 days and we're passing the 120 days, I
22 got antsy. I was like, we -- we're going to have
23 to do something. I mean, we -- it's -- it's your
24 job. Get it done. Let's go ahead and get some
25 people hired. He's like, no problem. I'll hire a

1 contractor. Hire, you want to hire the
2 different -- it doesn't matter. Just get it done
3 because we really need to open. That's the only
4 thing that happened. Did I hear about it, that
5 there? Yes.

6 Q So -- so you -- you had a conversation
7 with Vince and told him to speed it up.

8 A Of course.

9 Q And he said, I'll -- I'll hire more
10 contractors?

11 A Of course.

12 Q Okay. Did he ever submit a change
13 order to you or tell you this is going to be mo---
14 more on top of the contract?

15 A No, it was -- it was supposed to be not
16 a one man show. It was supposed to be a con--- a
17 company that coming in to do this job. But I
18 didn't see any company at all. Actually I saw
19 one-man show.

20 Q All right. And -- and that -- that was
21 my next question. At the job site, you had
22 subs -- who all did Vince have there?

23 A Two guys I see that he brought with him
24 that they were not good for anything. I mean,
25 they can clean. They can sweep. They can do --

1 if you tell them whatever it is. I mean, you --
2 labor people like you can say a seven, eight
3 dollars an hour people that will definitely pass
4 by like my cooks and my D.M.O.'s and all this
5 stuff.

6 Q Uh-huh.

7 A And they were doing stuff that you tell
8 him to do like, hey, hang up this picture in here.
9 You know, handy work, but very minor handy work.
10 Not like -- not like specific and professional
11 hired han--- han--- hand work, no. They would
12 definitely have a problem with that.

13 Q Okay. And how -- how often was Vince
14 there to your understanding?

15 A A lot of time.

16 Q Okay.

17 A Yeah, a -- a couple of situation that
18 he actually was not there to open and it -- I
19 heard about that. I told him, no problem. We
20 have two people in there that they can open the
21 store so he can start working. And he never
22 were -- went there early in the morning. Somebody
23 has to go there. Because, basically, if it's
24 on -- on it's own, it would have taken other two
25 months. I promise you that. Why, because it have

1 to be open a certain time. You know, a vendor
2 comes in or a carpet -- or a contractor comes in
3 to do his job, somebody has to be there to open
4 the store because the store -- he cannot leave it
5 open. It has some material inside that anybody
6 can steal it for in -- in a blink of an eye.

7 Q Right. Okay. And so all -- all this
8 work that was being done at the restaurant, you
9 said Vince was there --

10 A Yeah.

11 Q -- a good bit. He knew about all this
12 work being done?

13 A Of course.

14 Q Okay. He knew -- he knew about all the
15 materials being shipped there and being installed,
16 correct?

17 A Exactly.

18 Q Okay. And again, he never sent you or
19 submitted to you any type of amended contract or
20 any change order forms or anything like that?

21 A Not at all.

22 Q Okay. And -- and, Mohammed, this
23 project was delayed, correct?

24 A It was delayed, yeah, about two
25 months -- two-and-a-half months, something like

1 this.

2 Q And what was your understanding of the
3 cause of that delay?

4 A Well, it just a lot of -- a lot of --
5 I'll tell you. First of all, there was not enough
6 people in the site to get the job done. We were
7 hustling to get people to do one job, and then
8 they get fired. And then we got another person to
9 do another job, and then they get fired. And it's
10 totally different than actually getting a company
11 that is in there that has their own contractors
12 like Benchmark.

13 When they do the electrician, the
14 electrician is done like how long does it take,
15 whatever. Ten days, boom, boom, boom, it is done
16 deal. Other than going in there -- and you heard
17 earlier from his noncertified plumber that he was
18 asking him, do you know anybody that can do tile.
19 If I'm a G.C., I'm not going to ask a plumber -- an
20 unlicensed plumber if you know anybody to do tiles.
21 I'll have, you know, I'll -- I'll reach through my
22 bucket, and I get five or six of them. Call them up
23 right away and they will be there.

24 Q So was it clear to you that he didn't
25 have the contractors lined up --

1 A But that's if you put one plus --

2 Q and --

3 A -- one together -- this is exactly what
4 his -- his -- his witness said. That he was
5 asking him for a plumber for electrician. Where
6 is the people. And he himself said that he's
7 going to be a -- a one-man show. Yeah, you're
8 smart. You can't do everything by yourself. You
9 going to have to rely -- rely that to people -- to
10 other people to come in and do it. Other than
11 that, of course, my guys were getting frustrated
12 because we -- we're not going to be open. There's
13 no way. Why? And the air condition is not done.
14 Ele--- the electrician is not done the right --
15 the right way. And what's going on in there,
16 nothing.

17 I know Vince is trying, but he's not
18 capable of doing it. You know, just talk to him.
19 He's capable of doing it. But just get him
20 involved. That's why you see Vince talking about he
21 hired -- I hired, X hired, Y hired. This is not
22 supposed to be there. If I'm a very good G.C., it's
23 supposed to be one word, only one word comes out
24 from him through me, basically. If I would have
25 told him that, hey, I'm going to do this, the first

1 thing he's going to tell me, hey, here's a change
2 order, sign it, no problem at all. I already said
3 it. I'm a man for my word. I'm going to sign it
4 and that's it.

5 Q Okay. Well, let's look at some of this
6 speaking of things that you paid for or
7 Eagles Landing paid for. Let's look at Exhibit
8 Number 3 and 4, Mohammed. At which --

9 A Is that the colored one?

10 Q No, 3 -- 3 -- look on the last page of
11 Number 3, Mohammed.

12 A This is Number 3. This is number 6.

13 Q It says the total -- the total amount
14 paid is 620,788.33?

15 A Where is it?

16 Q It's on the last page. The last.

17 A The last page?

18 Q Yes.

19 A Okay. Yeah, 620.

20 Q All right. And this is -- this is the
21 spreadsheet that Ellen testified about, correct?

22 A Uh-huh.

23 Q All right.

24 A Yeah.

25 Q And these are the amounts that we

1 either paid --

2 A Yeah, can I get the color one, please,
3 if you don't mind me asking. I know I had one in
4 here.

5 (Off-the-record Discussion.)

6 BY MR. WILLCOX:

7 Q All right, Mohammed. What you've got
8 there, you've got Plaintiff's Number 13, I think.
9 That's the -- our Exhibit Number 4. And that
10 spreadsheet, does that show the amounts that
11 Eagles Landing paid either Vince or paid
12 subcontractors on Vince's behalf?

13 A That's correct.

14 Q Okay.

15 A Yes.

16 Q And the spreadsheet -- at least on
17 Plaintiff's Number 13, which is colored, the
18 amount that we paid for -- to either Vince or on
19 Vince's behalf was it 620,788.33?

20 A That's correct.

21 Q And that -- and those payments were
22 within the scope of the contract.

23 A That's correct.

24 Q Is that because your understanding of
25 the contract -- this lump sum contract was -- it

1 was turnkey. He takes care of it unless it's
2 expressly excluded.

3 A That's correct. Yes.

4 Q Okay. And did he ever tell you
5 anything different?

6 A No.

7 Q Did he ever submit to you any document
8 that was any different? Ever gave you these
9 change forms?

10 A No.

11 Q Okay. And -- so we had 620,788 that we
12 paid toward either Vince or on his behalf?

13 A Uh-huh.

14 Q The scope -- scope of work?

15 A Uh-huh.

16 Q And --

17 THE COURT REPORTER: Is that a yes?

18 THE WITNESS: Yes, I'm sorry. Sorry.

19 BY MR. WILLCOX:

20 Q And then you have on the last page, we
21 paid \$923,078.97 for this entire -- for this
22 entire project.

23 A It was actually a million.

24 Q Million --

25 A Just -- yes --

1 Q Okay.

2 A -- yeah. Yeah.

3 Q Now -- so our contention is, and what
4 you're testifying is -- to is, that we have paid
5 Vince --

6 MR. FORD: Your Honor --

7 BY MR. WILLCOX:

8 Q -- 620---

9 MR. FORD: -- just object to that. You
10 mean paid Elite, correct? Elite Construction?

11 MR. WILLCOX: But -- at -- at least out
12 of a corporation. It's a d/b/a. So it is Vince.

13 THE COURT: All right. I --

14 MR. FORD: Elite Construction.

15 MR. WILLCOX: Yeah --

16 THE WITNESS: Yes.

17 THE COURT: I thought it was a
18 corporation.

19 MR. WILLCOX: It's a d/b/a.

20 BY MR. WILLCOX:

21 Q So you paid Vince -- of the 624,000
22 contract price, we have paid him \$620,788.33.

23 A That's correct.

24 THE COURT: You paid him how much?

25 MR. WILLCOX: We paid him \$620,788.33.

1 THE COURT: Okay. That's the number I
2 got. I'm sorry. I got it.

3 MR. WILLCOX: Okay.

4 MR. FORD: I -- we'll just object. I
5 guess I -- it was paid out to the contractors. It
6 wasn't necessarily paid to Vince, but it was paid
7 pursuant to the contract. Is that what you're...

8 MR. WILLCOX: Paid either to Vince or
9 on Vince's behalf.

10 MR. FORD: Okay. All right.

11 THE COURT: Okay. That's -- I -- I was
12 going to ask the same thing. It was paid either
13 to him or on his behalf. Okay.

14 BY MR. WILLCOX:

15 Q For the scope of work, correct?

16 A Yes, sir.

17 Q Okay. All right. Now, let me show
18 you, Mohammed, something that --

19 A You want this?

20 Q No.

21 A I know it's too late.

22 (Off-the-record Discussion.)

23 BY MR. WILLCOX:

24 Q Mohammed, let me show you this document
25 that looks to have been previously identified as

1 Number 9.

2 THE COURT: Plaintiff's Number 9?

3 MR. WILLCOX: Defendant's Number 9.

4 THE COURT: Okay. I'm sorry.

5 BY MR. WILLCOX:

6 Q Let me know when you're ready. You
7 ready?

8 A Yeah.

9 Q All right, Mohammed, so we have paid --
10 Eagles Landing paid, either plaintiff or on
11 plaintiff's behalf, 620,788.33.

12 A That's right.

13 Q Okay.

14 A Yes.

15 MR. WILLCOX: Number 9, Judge. That's
16 Plaintiff's Number 9.

17 THE COURT: I don't think I have the
18 copy of Defendant's Number 9. Would it be in
19 here?

20 MR. FORD: No, sir.

21 THE COURT: I -- I don't think I
22 have -- can I just look at what you've got there a
23 minute?

24 MR. WILLCOX: Yes, sir.

25 THE COURT: Yeah, I saw this at some

1 point today. I have seen it. Okay. I
2 actually -- I know where that is. I've got a copy
3 of that I sort of wrote 9 down at the bottom. I
4 thought that what it was. I've seen that. Go
5 ahead. I'm sorry.

6 MR. WILLCOX: Okay.

7 THE COURT: I've got it right here.
8 Defendant's Exhibit Number 9.

9 MR. WILLCOX: Okay.

10 BY MR. WILLCOX:

11 Q So, we paid -- of the 625,000 dollar
12 contract price, we paid 620,000 dollars, rough
13 numbers, correct?

14 A Yes, sir.

15 Q All right. And there -- there are
16 items in this contract that Vince did not perform,
17 correct?

18 A Of course.

19 Q Okay. He -- he didn't replace the
20 H.V.--- the H.V.A.C. units.

21 A Of course.

22 Q He didn't replace the roof. Is that
23 correct?

24 A That's right.

25 Q He didn't put new sidewalks in.

1 A Yes.

2 Q That's correct. He did not?

3 A Yes, he didn't.

4 Q All right. Never gave -- never gave
5 you credit for those things, did he?

6 A No.

7 Q Okay. We -- we had to incur costs to
8 send people down there to -- to help him with the
9 construction, didn't we?

10 A Of course, yes.

11 Q Mohammed Ali and --

12 A Mohammed Ali and Chris --

13 Q -- Chris.

14 A -- and, of course, Marion, but I didn't
15 add Marion at all.

16 Q Okay. And --

17 A Because all of this -- between
18 Marion and the contractors.

19 Q And part of the allowance I'm showing
20 you the -- the bid again, Mohammed. Part of the
21 allowance --

22 A Uh-huh.

23 Q -- for this job was 21,000 dollars for
24 supervision of the job, correct?

25 A That's correct.

1 Q Okay. And now this project was two
2 months late, correct?

3 A Yes.

4 Q Okay.

5 A It was two-and-a-half months exactly --
6 to be exact.

7 Q And so because -- and, of course, the
8 contract doesn't address the delay -- what happens
9 in a delay, so it's -- we -- we -- let's look at
10 the -- what the law allows. So we have two months
11 that the restaurant's not open, correct?

12 A That's correct.

13 Q All right. And you heard Ellen's
14 testimony about an average -- of what the -- what
15 the profit and loss -- that income for
16 December of 2015 was.

17 A Exactly.

18 Q Okay. And that was \$35,892.26.

19 A Yes.

20 Q Okay. And that's about a average of
21 what that store does on a monthly basis.

22 A Yes.

23 Q Net income. Is that correct?

24 A Yes.

25 MR. FORD: Your Honor, I -- I object to

1 that. I think it's in specs -- not in evidence.
2 There's nothing in evidence to indicate what the
3 stores did other than Ms. Ellen's testimony, which
4 she states she doesn't know --

5 MR. WILLCOX: But, Judge, you --

6 MR. FORD: -- what the numbers the
7 store did.

8 MR. WILLCOX: Well, Judge, we -- we
9 have the profit and loss for December, 2015.
10 Which was the month after the store opened. And
11 that's more than meets the --

12 THE WITNESS: We can --

13 MR. WILLCOX: -- of non-speculative
14 evidence for lost income.

15 THE COURT: Well, I think he can
16 testify that any month that he's actually had what
17 his income was whether he has any document with
18 him or not. I mean, I -- I mean he can testify.

19 MR. WILLCOX: All right, Your Honor.

20 THE COURT: Yeah, I mean, it's --

21 MR. FORD: Well, Mis--- Mr. Makawi has
22 not testified to that, that amount. He might be
23 familiar with the general foundation for
24 that.

25 THE COURT: Right. We don't know --

1 MR. FORD: Your Honor, but she -- she
2 could -- she said she didn't know.

3 THE COURT: All right. We got --

4 MR. WILLCOX: She said it was the
5 average, but...

6 THE COURT: Right.

7 MR. WILLCOX: But she said --

8 THE COURT: Well, I won't go into all
9 she said. I got -- I know all she said. I won't
10 summarize it here, but it -- it -- I think it's
11 okay for him to answer the question. I'd like for
12 him to tell us how it is he knows. I mean, I'm
13 sure -- I mean, he's the owner of the business,
14 but just a couple of questions about how he would
15 know would be good.

16 THE WITNESS: Yeah, I can, easy.

17 THE COURT: Okay.

18 THE WITNESS: If we thought about the
19 store opening in December, if the store opened in
20 August -- that December was the first month of
21 opening. Let's say that December months but it's
22 in August, opening usually is the same -- maybe
23 not the same, but let's say in the area -- if we
24 open that store in this area, the opening will
25 estimate that number of months. Like let's say

1 35,000 dollars. That might be higher than in
2 other months or lower in another months. But
3 we're talking about comparing apple to apple.
4 Comparing a months that we open in December that's
5 the opening the first months of opening. Take it
6 to August, the first months of opening is going to
7 be the same amount. That's what we -- well,
8 actually, I calculated that. In every -- in every
9 area -- every area is different than the other.
10 But anyway, like we say in James Island, we open
11 in December for 35,000 dollar. It would be the
12 same exact thing and more, if it's not less, in
13 August.

14 THE COURT: Can I ask him a couple of
15 questions before you move on through this?

16 MR. WILLCOX: Sure.

17 THE COURT: Do you know what your
18 average income per month was for the year 2016 in
19 this store?

20 THE WITNESS: About -- I think, if I'm
21 not mistaken, about a 100 and something thousand
22 dollars -- a 100 and -- I think 125. I know it
23 was still -- we still have open balances that we
24 didn't pay yet. So that has to go and cover that.
25 Still up until open.

1 THE COURT: No, what I'm asking you, do
2 you know --

3 THE WITNESS: Yes.

4 THE COURT: --- do you know what your
5 average monthly income was for the Charleston
6 IHOP -- the one we're talking about here.

7 THE WITNESS: In the opening or after
8 opening?

9 THE COURT: No, after opening for the
10 year of 2016.

11 THE WITNESS: Sixteen which is --

12 THE COURT: What was the year -- what
13 the average month income was for the year 2016 for
14 the store. You opened December of '15, I think.

15 THE WITNESS: Exactly.

16 THE COURT: Do you know what the
17 average income was for 2016?

18 THE WITNESS: What a -- what -- what
19 around 35 -- 30 to 35,000 dollars so...

20 THE COURT: Thirty to 35,000?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 THE WITNESS: And -- and in -- in
24 the -- in the first part of '15. Because
25 basically -- usually when we compare prices -- oh,

1 I'm sorry, sales. We compare sales, opening is
2 more sales than other months. That's what I'm
3 trying to get you -- the measure here.

4 THE COURT: Okay.

5 THE COURT: Usually opening is like
6 about -- if the average is like 30 or the average
7 is 28, usually it drops -- after a year and six
8 months, it drops about 20 to 15 -- 15 to 20 to 25
9 percent of that number.

10 BY MR. WILLCOX:

11 Q And, Mohammed, this store --

12 A I'm just trying to --

13 Q Yeah --

14 A -- you know, in my --

15 THE COURT: I understand.

16 BY MR. WILLCOX:

17 Q This -- this store began operations in
18 November of 2015, correct?

19 A No, no, it's -- I think it was December
20 when we -- we opened actually that -- that store
21 we open Friday, Saturday, and Sunday that was
22 in -- in November. And then we opened December
23 right away.

24 Q Okay.

25 THE COURT: Well, you didn't get your

1 certificate of occupancy until October 23rd, even
2 to get training or get in there and do anything.

3 THE WITNESS: Of course, yes.

4 THE COURT: Obviously, you couldn't
5 open until well into the -- in the end of
6 November, which I think you're saying you opened
7 at the end of November.

8 THE WITNESS: Exactly. And in November
9 because it was -- I remember it was very clear it
10 was like Friday, Saturday, and Sunday -- the last
11 Friday, Saturday, and Sunday. We've never opened
12 Friday, Saturday, and Sunday, ever. This is the
13 first time that we open in that store so I
14 remember it.

15 THE COURT: Okay.

16 THE WITNESS: So it's Friday, Saturday,
17 and Sunday, the last and then we start it.

18 THE COURT: Okay.

19 BY MR. WILLCOX:

20 Q Okay. So you think the average was
21 about 35,000 a month, correct?

22 A For -- for the opening, a little more,
23 a little less.

24 Q Okay. But it --

25 THE COURT: But I think he stated that

1 the average for 2016, as best he can recalls, was
2 30 to 35,000 a month.

3 THE WITNESS: Exactly.

4 THE COURT: All right. Okay. Thank
5 you.

6 BY MR. WILLCOX:

7 Q All right. And -- and we were delayed
8 by two months, correct?

9 A Two-and-a-half months exactly.

10 Q All right. And taken that the -- the
11 amount -- at least what's averaged, that's about
12 another 70,000 dollars in lost income --

13 A Exactly.

14 Q -- is that -- okay.

15 A Yes, sir. Yes.

16 Q All right. And then, Mohammed, there
17 was some issues where we had to call a plumber
18 back, Bishop and Sons, to do some work?

19 A Yes.

20 Q Can -- can you tell us about that?

21 A Yeah. We have a drain in the kitchen
22 that was, I think, seven foot long. And one in
23 the dish area that is almost a seven -- no,
24 seven -- it's like about ten foot long. It was
25 existing that -- the drain. It didn't work. It

1 was not supposed to be there at all, honestly.
2 It's not -- it might work for Ruby Tuesday, but
3 for us it's not going to work at all. That's why
4 I got a word from Vince, hey, let's keep it -- you
5 cut the cost. No problem. If you're going to cut
6 the cost, just keep it up. The problem is right
7 now, when we have -- we start having problems with
8 two things. The existing plumbing which is half
9 of this stuff you got to find that they replaced
10 the caps. And they -- they -- I'm sorry, they
11 replaced the -- the drains itself. And I have a
12 lot of plastic thing and a lot of food into it,
13 which is usually -- in a normal case, you never
14 have food going through that this sit--- again,
15 it's DHEC -- DHEC and the city. Because you have
16 to have a drain -- how they call it? It's not a
17 drain. It's like a net in front of the
18 drain. It's like a --

19 Q Filter.

20 A Yeah, that -- a big filter that doesn't
21 allow big obstacles to get in through. But
22 because of that long drain -- that ten foot drain
23 that we have in the kitchen -- thanks God, I
24 closed it right now -- which is this close to
25 closing it is not included in here -- I just did

1 it myself. Which that's supposed to be done to
2 begin with. But anyway, for -- for the sake of
3 cutting the cost, we didn't do that.

4 But imagine the drain is ten foot that
5 has one, two, three, holes in the middle to -- for
6 the water to go through the sewer. That was in the
7 kitchen. A cook is standing in the -- in the grill,
8 and he's cooking -- of course, it is a lot of
9 actually portioning in cups, like two-ounce cups.
10 This two-ounce cups comes in down and goes through
11 the whole. Because the drain -- actually the -- how
12 they call it -- the -- the strainer was like three
13 sessions for the ten -- the ten foot. It's like
14 about three-and-a-half foot each that you can
15 actually pull it out. It's like a -- a long foot.
16 And it was slippery.

17 It was not -- it was very hazardous. It
18 was not good at all. And -- and that was the reason
19 for all this stuff to go through the drain and
20 actually clog a lot of stuff. Plus there were
21 existing drains that his plumber said that we're
22 going to have to cancel this drains. Later on we
23 have to find out that this drain is the only out to
24 -- to the whole kitchen. So they have to go there,
25 open it back in and get it to work. Replace the top

1 and get it to work.

2 Q All right. And is that what Bishop and
3 Sons was telling us that --

4 A Exactly. Exactly. But -- but he was
5 right about -- about the food was -- and the
6 plastic and all this stuff was there, yes,
7 definitely.

8 Q Okay.

9 A Definitely.

10 Q And so we had to pay Bishop and Son --

11 A Yeah.

12 Q -- look at this invoice, Mohammed.

13 A It does say sewer cable. What is --
14 what is a sewer cable for? You know what a sewer
15 cable -- a snake.

16 Q Right. To clean out.

17 A To -- right. And if -- if it's a
18 normal store, I think that I've never used a snake
19 in my regular stores in my entire life for 25
20 years that I've been building IHOP. Never. Why
21 in this store only. Because of that big drain
22 that was there that was actually allowing a big --
23 honestly, to be honest with you, I don't
24 understand how the DHEC allowed that to happen and
25 the city. Because usually they giving us a hell

1 of a hard time right now in Charleston -- downtown
 2 Charleston about you cannot keep that, but you
 3 have -- it have to be covered. It was -- it was a
 4 disaster.

5 Q Okay. So -- so you had to call Bishop
 6 and Sons --

7 A Yeah.

8 Q -- to come?

9 A Yeah.

10 Q And then that was something that was
 11 never done properly? So it never --

12 A To begin with, yes.

13 Q Okay.

14 A That was ongoing. I'll tell you
 15 something.

16 MR. FORD: I -- I --

17 THE COURT: Do you object to --

18 MR. FORD: -- establish, haven't
 19 properly established, and haven't had knowledge of
 20 plumbing or -- or what was -- maybe the plumber
 21 told him what it was but that would be hearsay.
 22 We had a plumber here today to testify, you know,
 23 had been a plumber for 17 years.

24 THE COURT: Okay.

25 MR. FORD: And lay some sort of

1 foundation for knowledge from Mr. Makawi.

2 MR. WILLCOX: I think we just laid the
3 foundation and knowledge of this particular
4 problem.

5 THE COURT: What was your last
6 question? I'm sorry.

7 MR. WILLCOX: I said -- I said, did you
8 have to call the Bishop and Son to come fix this
9 because it wasn't functioning properly? He
10 said --

11 THE WITNESS: Okay. Can I -- can I
12 tell you something in here.

13 THE COURT: Well, hold on. I'm sorry.

14 THE WITNESS: Okay.

15 THE COURT: If you -- if you -- what's
16 your objection to the question?

17 MR. FORD: From what -- from what I'm
18 gathering from Mr. Makawi's testimony is that he's
19 testifying to what -- what the issues were in the
20 drains and if -- that is --

21 THE WITNESS: You --

22 MR. FORD: -- that is -- it is in the
23 description, but he seems to giving more of an
24 explanation of what -- of what the problem was,
25 what -- what was done. I mean, if he was there to

1 observe it, that -- to some extent that's fine.
2 But also just -- it seems to kind of exceed what
3 the description is. He's adding a little bit more
4 to it, and if he wasn't the one who diagnosed it,
5 if he's not a plumber, I think that would be some
6 sort of knowledge that would be required for --
7 for an expert -- an appropriate expert.

8 THE COURT: I -- I think he's told us
9 primarily what he actually observed. I -- I
10 think -- now, if you -- I -- I -- I think -- I
11 think it's permissible for you to ask him why did
12 you call this plumber. I -- I -- I think to ask
13 him the question, did you call the plumber due to
14 the problems you were having, I -- say that
15 question again. Say it one more time.

16 MR. WILLCOX: Really, basically, I said
17 why did you call the plumber.

18 THE COURT: Yeah, that's what I want
19 you to ask him.

20 BY MR. WILLCOX:

21 Q Okay. Why'd you call -- why'd you call
22 the plumber -- plumber?

23 A We were getting the drain clogged all
24 the time. We had -- we've been having a hard
25 time, over a hard time, over a hard time. The

1 water was going out in the box bar -- the back
2 bar. It was completely like floating was the
3 word -- flooding was the word, sorry. See, if you
4 looked at the -- the -- the receipts in here --
5 I'm not a plumber, but I've been there. I've been
6 actually talking to the plumber and he speaks
7 explaining to me what is the problem is. And I
8 definitely verify that. But it is a problem.
9 And -- and -- and --

10 THE COURT: Let me -- let me stop you.
11 I -- going back to -- if we go -- I -- I would
12 have to say this about Mr. Ford's objection. At
13 the point he objected, I hadn't heard anything
14 that I thought crossed that line, but if we go
15 into you explaining what the plumber told you,
16 then we would be crossing that line.

17 THE WITNESS: Sure.

18 THE COURT: I'd have to sustain --
19 sustain what he objected to, okay?

20 THE WITNESS: Sorry about that.

21 THE COURT: Okay.

22 BY MR. WILLCOX:

23 Q And what was your understanding of why
24 this needed to be repaired?

25 A My understanding was that you see it --

1 it was in -- in February which is not -- not --
2 about almost a year away from opening. Usually we
3 have a three to five years in plumbing, air
4 conditioning, all this stuff. So let's say
5 minimum two years I'm still in there. And even if
6 I have a problem that I actually reported in the
7 punch list in there, even if I complain about it
8 three, four, five, six years later, still going to
9 be a warranty issue. Because, basically, it was
10 reported in the beginning that it is a warranty
11 issue. If we didn't fix it, or we fix it
12 repeatedly over and over and over again, that
13 means that it rely to the same issue that was
14 reported in the punch list as a problem.

15 Q So was it your understanding that
16 the -- that this work had to be done because
17 the -- the drain wasn't --

18 A Of course.

19 Q -- installed properly?

20 A Of course.

21 Q Okay.

22 A I have to -- I have to go on myself and
23 actually completely cancel this big long drain.
24 That was supposed to be done --

25 Q Okay.

1 A -- in 2015.

2 Q All right. And -- and those are the
3 invoices for that work done, correct?

4 A Yes, sir.

5 MR. WILLCOX: Judge, I -- I'll go ahead
6 and move Number 8 into evidence. I think they
7 objected before we laid a foundation.

8 THE COURT: That's the --

9 MR. WILLCOX: And the --

10 THE COURT: -- that's the bill for --

11 MR. WILLCOX: The plumbing.

12 THE COURT: -- the plumber?

13 MR. WILLCOX: Yes, sir.

14 MR. FORD: Your Honor, clearly the --
15 the invoices themselves are hearsay. They're
16 provided by the plumber for pur--- I mean, it's
17 not a court statement provided here that the
18 plumber is not here to testify as to -- as to
19 what -- what is true or not true. Can't cross
20 examine him that's why --

21 THE COURT: May I see it?

22 MR. FORD: Sure.

23 MR. WILLCOX: But that, Judge, earlier
24 I actually did cross examine that document with
25 their plumber.

1 THE COURT: Say again.

2 MR. WILLCOX: Earlier I think that --
3 they did cross examine that -- that document with
4 their own plumber.

5 MR. FORD: Now, we -- we did do that
6 under the -- your conditional ruling to -- to
7 admit it at that point in time. Obviously, our
8 plumber was going to be presented before the
9 issues, and I wouldn't have a chance to -- to ask
10 him about it now.

11 MR. WILLCOX: Well, their the ones
12 wanted it to be submitted to his plumber.

13 THE COURT: So --

14 MR. WILLCOX: And, judge, and what --
15

16 THE COURT: Go ahead.

17 MR. WILLCOX: What this is telling us
18 is how much we had to pay to repair this defective
19 plumbing.

20 THE COURT: I -- I think that the fact
21 that y'all letting it -- it -- it's --

22 MR. WILLCOX: The plumbing.

23 MR. FORD: -- it -- it -- it -- it --

24 THE COURT: I think that putting this
25 bill in and -- and taking a position that it -- it

1 was caused by the problem described and
2 350 dollars was the amount, I'm -- I'm going to
3 let that in. It's my decision. I've got to
4 decide, though, based on everything I've heard
5 today from everybody. Was it caused by problems
6 that Mr. Carter did something wrong, or was it
7 caused by something else. And I may or may not
8 have enough information to conclude it was caused
9 by something Mr. Carter did or didn't do. That
10 remains to be seen. But I think that I can -- I
11 think I'm going to -- I'm going to admit it. But
12 I've got to decide -- make a judgment call on
13 whether or not there's some deficiency by the
14 plaintiff that caused it to be incurred. Okay?

15 MR. FORD: Thank you, Your Honor.

16 THE COURT: You're welcome?

17 MR. WILLCOX: And -- and -- and, Judge,
18 that's another line item on this Exhibit Number 9.
19 BY MR. WILLCOX:

20 Q Mohammed, let me show you what's been
21 admitted as Defendant's Exhibit Number 11.

22 MR. FORD: All right. Same objection
23 to Number 11.

24 THE COURT: I think we agree to that
25 one.

1 MR. FORD: Yeah.

2 MR. WILLCOX: Yeah.

3 THE COURT: What -- what --

4 MR. FORD: I -- I thought --

5 THE COURT: -- I thought we've had so
6 many and it's getting late.

7 MR. WILLCOX: This is the -- what --
8 what I'm doing, Judge, is going down Exhibit 9,
9 showing the -- what the costs are for what it was.

10 THE COURT: I've been looking at it
11 several times today. Seems like to me a lot of
12 people testified about these numbers.

13 MR. FORD: I don't believe we've used
14 Number 11, Walker. I think -- what I might
15 have --

16 THE COURT: Right?

17 MR. WILLCOX: Is that --

18 THE COURT REPORTER: I can only take
19 one person at a time.

20 THE COURT: Let me -- we've got to slow
21 down. All right. Go ahead, Patrick.

22 MR. FORD: All right. My -- my
23 understanding was that when you gave me Number 8,
24 Number 11 was attached to it. There's the staple
25 mark right there. And at that point in time, we

1 had just been talking to the plumbers was

2 -- 11, I don't recall agreeing to it.

3 I think I do believe if we go back and look, that

4 I maintained the objection to both 8 & 9

5 items on the same grounds.

6 THE COURT: Okay. So your objection

7 around the same objection is. Once --we

8 just went over.

9 MR. FORD: No, no, no --

10 MR. WILLCOX: Number 11, Judge.

11 THE COURT: I mean, Number 11. Number

12 11 was the one with the plumber's bill we just

13 looked at 350 dollars?

14 MR. WILLCOX: It's 3,000.

15 MR. FORD: Number 8 is the plumber's

16 bill. Eleven appears to be a -- another invoice

17 or repair order for a sign and Charleston Sign and

18 Banner.

19 THE COURT: I have not seen Plaintiff's

20 Exhibit Number 11.

21 MR. FORD: All right.

22 THE COURT: Today.

23 MR. FORD: We are raising the same

24 objection.

25 THE COURT: Now, and so -- I'm going to

1 go back a minute. Plaintiff's Exhibit Number --

2 MR. WILLCOX: Defendant's --

3 THE COURT: -- 8 -- excuse me --

4 Defendant's Exhibit Number 8 is the one that I was
5 too simple -- too simply identifying as 350
6 dollars was the bill on top. The total bill is
7 more than that.

8 MR. WILLCOX: Correct.

9 THE COURT: I should have never said
10 that. But I've got the total of those bills --
11 Defendant's Exhibit Number 8, okay? Now, we're
12 talking about Defendant's Exhibit Number 9, now,
13 are we not?

14 MR. FORD: No. No, sir, we're talking
15 about Defendant's Number 11.

16 THE COURT: Let me look at 11 then.

17 MR. WILLCOX: Okay.

18 THE COURT: Then we're looking at
19 Defendant's Exhibit Number 11. This is the sign
20 and banner bills. I've not -- I've not seen this.

21 MR. WILLCOX: I'll -- I'll --

22 MR. EVERETT: You're -- you're
23 trying -- now, Walker?

24 MR. WILLCOX: Yes.

25 THE COURT: You're trying to ask

1 your -- your witness about this bill now?

2 MR. WILLCOX: Correct.

3 THE COURT: All right. And -- and what
4 are you saying about the bill being placed into
5 evidence, Patrick?

6 MR. FORD: Your Honor, to the extent
7 that Walker wants to ask him about it in terms of
8 what he has personal -- firsthand knowledge of,
9 he's free to ask him questions about that, but
10 admitting that actual bill into evidence, we've
11 not cross examined anyone with respect to this
12 document. It is just flat out hearsay. And --
13 and moreover, the repairs would require, I believe
14 once again, an expert or someone that has
15 knowledge and experience related in the area of --
16 of designing banners or whatever it purports to --
17 to say is deficient. Someone would need to
18 testify to that. We have no one here to cross
19 examine on behalf of that document.

20 MR. WILLCOX: Judge, all I'm going to
21 ask him is what he recalls about what the work was
22 done, how much it cost, if he paid for the work.
23 And that's all that exhibit does is -- is show
24 those two things. You don't need an expert to
25 introduce.

1 THE COURT: I -- I -- I think you --
2 you can do this. I think Walker can ask him about
3 this bill. And he put it into evidence. I think
4 that whether or not it's connected to the
5 contract, was it part of the contract, was it
6 something that was done right or wrong before, all
7 those things are the issues that I've got to sort
8 through. And -- and -- and so it -- it's -- it's
9 somewhat like I'm introducing a medical bill in a
10 car wreck case. I say here's the doctor's bill of
11 500 dollars, Your Honor. Well, you know, was it
12 related to the accident. Is it some other bill
13 the person had because their neck was hurting
14 anyway. I -- I got to figure that out. But I'm
15 going to let you place it -- I'm going to let --
16 I'm going to let him testify about the bill and
17 I -- I'm -- because he's -- because it's his bill.
18 He -- and he would know about his bills. But that
19 doesn't get us all the way over to the end
20 conclusion, okay?

21 MR. WILLCOX: Yes, sir.

22 THE COURT: Does that -- does that make
23 sense, Patrick? You -- you --

24 MR. FORD: Yes, Your Honor, I think so.

25 THE COURT: Approach the

1 bench and I'm going to listen to him.

2 MR. FORD: I mean, my -- my -- the only
3 thing I would ask is -- if the bill is admitted
4 into evidence that you have to consider the
5 description or to the extent that it asserts that
6 there's some sort of causation as a result of
7 either deficient work by a contractor that led to
8 the price, if you want to look to see what they
9 paid out, that's fine. But in terms of
10 determining whether or not that was related to the
11 contract, I think there needs to be someone here
12 to testify. We also can't cross examine anyone.

13 MR. WILLCOX: No one is going to
14 testify.

15 MR. FORD: Well, they're not an expert
16 in -- in terms of signs.

17 MR. WILLCOX: You don't have to be an
18 expert to testify about a bill.

19 THE COURT: I've got tons of notes
20 today, and I think that there -- that, you know,
21 there -- there might or not be enough to tie
22 all -- all of that together. I don't -- I don't
23 know what all the contract called -- you -- you
24 folks all know the contract, and all the documents
25 much better than me. I'll have to look at that as

1 it -- it might be that I conclude the contract has
2 very little to do with this bill that the witness
3 is holding in his hand. I don't know. I
4 understand what you're saying. You're -- Patrick,
5 is it you don't want the document itself to -- to
6 be able to prove itself on the face of it. And I
7 think that's fair enough. But if I've got other
8 connecting evidence, then I've got to -- I've got
9 to consider it. So -- so I'm going to continue to
10 be as -- as we've done today, pretty wide open
11 with all this stuff. And continue down that path
12 for now, okay?

13 MR. FORD: Thank you, Your Honor.

14 BY MR. WILLCOX:

15 Q All right. Mohammed, take a look at
16 that bill and tell us what you remember about that
17 bill.

18 A Okay. I'm -- I'm just trying to help.
19 Because I know that's very hard for you, Your
20 Honor.

21 THE COURT: Okay.

22 THE WITNESS: The -- the problem is,
23 this is a -- a parking lot lights that they
24 changed the bulbs. The lights exist. The -- the
25 light is -- is a column -- a long -- very long

1 column that had a base into it which is here.

2 That exactly the -- the actual body of the light
3 exists.

4 BY MR. WILLCOX:

5 Q Okay. What was done --

6 A This is -- this is what --

7 Q -- what else was done?

8 A -- this is what it says in here. I'm
9 just trying to explain it so you understand. Is
10 it -- does it belong to the contract or it
11 doesn't. I'm just trying to -- and it's up to the
12 Judge. What -- what I'm saying is, I'm trying to
13 make it easier to understand. If we're going to
14 do the whole building -- the whole thing, you
15 know, if we added another light, this is not
16 the -- and we said that in the contract, it will
17 be included in the contract. But what he did in
18 here, it says, they changed the light bulbs to
19 light bulbs and ballast. That's the only thing
20 they did for the lights, basically. They didn't
21 replace lights. They didn't replace columns.
22 They didn't replace it's -- other than that, the
23 whole light is going to cost about what, three,
24 4,000 dollars.

25 Q How much is that bill, Mohammed?

1 A It's 2500 dollars. That's what it is.

2 It's not --

3 Q And what was that -- and when was that
4 work done according to that bill.

5 A It is January 3rd of 2017.

6 Q Okay. So this was -- so you had to
7 call somebody in --

8 A So it's about a year.

9 Q You had to call somebody in --

10 A Of course.

11 Q -- to do some repair work on this
12 light.

13 A Of course.

14 Q It's a brand-new light. Is that
15 correct?

16 A Yeah.

17 Q Okay.

18 A And it was actually --

19 Q Let -- let me ask the question.

20 THE COURT REPORTER: Let him finish his
21 question first.

22 THE WITNESS: I'm sorry.

23 BY MR. WILLCOX:

24 Q No talking over. How -- how much did
25 that cost?

1 A How much did -- did this bill cost?

2 Q Yeah.

3 A Twenty-five hundred 66 and 87 cents.

4 Q Okay. All right. That's it. Okay.

5 A Thank you.

6 THE COURT: But -- but this occurred
7 over a year after the company -- the -- the -- the
8 plaintiff did his work? Is that correct?

9 THE WITNESS: Can I explain that.

10 MR. WILLCOX: Correct, I mean, it --
11 it --

12 THE WITNESS: It is a year, but --

13 THE COURT: It's a little over a year,
14 right?

15 THE WITNESS: No, it's exactly a year.
16 Let -- if we open the -- a year almost.

17 THE COURT: Okay.

18 THE WITNESS: What we're talking about
19 is right now, if the stuff was done from the
20 beginning, would have never had to do it. It
21 might. It might. Something happened, a lightning
22 happened, it would definitely take off the light
23 and the -- the bulbs and definitely the bast. I'm
24 not saying that that might not happen. I would --
25 it might happen. But if it's not done from the

1 beginning, it will be very accurate to do -- to
2 be, you know, to ask for it later. Because it
3 was --

4 MR. FORD: I -- I think I just
5 requested to strike the testimony right there. I
6 think he's explaining -- I mean --

7 THE WITNESS: I just like --

8 THE COURT: Okay.

9 MR. FORD: -- would generally
10 be -- have knowledge of it.

11 THE COURT: I -- I -- I think Patrick's
12 right about this part.

13 THE WITNESS: I'm sorry.

14 THE COURT: And he's saying that you --
15 you -- let me say this. I've got to have some
16 expert --

17 THE WITNESS: Of course.

18 THE COURT: -- tell me, well, it was
19 soon enough in time that it should have been cured
20 at the time the renovations were being done -- if
21 it was being done. Or tell me, no, it's a
22 separate event. Way later, these things happen.
23 I don't know.

24 MR. WILLCOX: Okay.

25 THE COURT: I know that one side would

1 like for it to be not included. The other side
2 would like for it to be included. I understand
3 the wishes actually of both sides, but I don't
4 know.

5 MR. WILLCOX: Okay.

6 THE COURT: And there might be enough
7 again, and over evidence that y'all have submitted
8 that I can somehow get to an answer on that.
9 But -- and I'm trying to be careful about that.
10 Because y'all submitted some -- there's been so
11 much information in there. I -- it's very --
12 but -- but y'all just -- I hope y'all understand
13 what I'm saying there. That I -- I -- I have
14 to -- I think Patrick's objection as to that is
15 correct.

16 MR. WILLCOX: We do, Your Honor.

17 THE COURT: Okay.

18 BY MR. WILLCOX:

19 Q All right. Mohammed, let's -- let's
20 look at number 9, okay? Look at item number six
21 and is that simply called bathroom partitions.

22 A Yes.

23 Q All right. Explain to us what the
24 problems were with the bathroom partitions.

25 A Okay. The bathroom partition, they

1 come manufactured. The -- the GC supposed
2 to call the company and tell them exactly the
3 measurement of that bathroom partition. They send
4 it --

5 Q Did do that?

6 A Yes.

7 Q Okay.

8 A They send it to us manufactured
9 accordingly to what he got in the plans and the
10 measurement that he sent them.

11 Q Okay.

12 A They did that. But, unfortunately, it
13 was misunder--- installed -- and it was not
14 installed the right way. So basically -- and
15 it's -- and fabricated wood. It is not real wood.
16 Real wood you can putty it and cover it and paint
17 whatever it is that you can actually stain it.
18 But this one is how they call it -- manufactured
19 wood. So when you make a hole, there's no way you
20 can take -- unless you -- on top. And that was
21 done the same way. You have some picture of that.
22 It is messed up. Basically, it was supposed to
23 be, you know, it butt to each other, and then they
24 screw it, and then you put the screws in to get --
25 to get that partition together. If you put it

1 this way and it's the right way, it's fine. But
2 if you put it this way, then you going to have two
3 holes in here and two holes in there. So, you
4 know, you know what I'm talking about.

5 Q Is the partition bowing out?

6 A Completely messed up.

7 Q Okay.

8 A Why, because of the painters. I mean,
9 we -- we -- I mean this is not nothing that we can
10 hide. It is already there. We can get the
11 pictures -- the pictures here. It's already
12 there.

13 Q Okay.

14 A What -- what I'm trying to tell you is,
15 why are we replacing it? Because we've been told
16 by IHOP to replace it because it doesn't look
17 good. We have -- I'm not to explain that, but
18 it's -- it's -- I have to call it an O.A.R., which
19 is corporation assessment report. And that's a
20 type of inspection that they actually go as a --
21 as a customer and look at everything. If he
22 didn't like -- if they didn't like it, we get the
23 grade on it. And it turn you from a A operator to
24 a B operator to C operator. And all this stuff
25 affect your pocket money, basically. Why, because

1 you get penalized. You get -- I'm sorry,
2 penalized. You get penalized on that all the
3 time. When that happen, they understood for a
4 month or two that, yes, it has holes because it's
5 a punch list, and it is in the punch list that
6 this will be replaced. Up to today, it is not
7 replaced.

8 Q Okay. And let -- let me show you
9 what's marked as Exhibit 4. There are some of the
10 Newsouth Specialties called plastic partitions.

11 THE COURT: Excuse me. Hold on one
12 minute. Yes, sir. Yes, let's just take a break.

13 (Whereupon, a break was taken
14 from the proceedings.)

15 BY MR. WILLCOX:

16 Q All right. Mohammed, I was asking you
17 about the partitions on Exhibit Number 9. And we
18 have a 7,000 dollar charge there for partitions.

19 A That was right.

20 Q Okay. Mohammed, let me show you --
21 Defendant's Exhibit Number 4, Newsouth
22 Specialties, plastic partitions. Is that the
23 amount we paid for the partitions currently at the
24 IHOP?

25 A The 5,000?

1 Q Yes.

2 A Yes.

3 Q Okay. Now -- so is the way they got
4 the 7,000 dollar number --

5 A Was that number plus --

6 Q -- the --

7 A -- labor.

8 Q And so the 5,000 --

9 A And shipping and all this stuff.

10 Q 5,000 for the partitions --

11 A Uh-huh.

12 Q -- that we paid --

13 A Yes.

14 Q -- Newsouth Specialties, plus 2,000
15 dollars to install it, correct?

16 A Install it, yeah.

17 MR. FORD: I would object to the -- I
18 don't know that Mr. Makawi has knowledge as to how
19 much it would cost to install the partitions.
20 Once again, it's -- it's -- he's not in the
21 business -- he's in the business of building
22 IHOP's, but he's not in the business of -- of
23 manufacturing and installing bathroom partitions
24 for the bathrooms. And we've got no invoice or --
25 or any sort of contractor that's submitted. Even

1 if we did, I'd still say it was hearsay, but based
2 on this, it just seems to be going off of prior
3 observations and then adding some money when they
4 paid 5,000. It looks like the total the first
5 time. Now, they're trying to say it's seven to
6 fix it, and there's just no one here to
7 corroborate that -- that knowledge regarding that
8 number.

9 THE COURT: Well, I -- I'm going to let
10 him testify as to what he spent on his building,
11 but I -- but again, it -- it's still -- I've got
12 to make a decision on how that fits into what
13 the -- the plaintiff was supposed to do.

14 MR. FORD: Uh-huh. I just need -- to
15 the extent they're -- they're testifying to the
16 amount now for the -- that they're claiming for
17 the seven, we have nothing -- nothing from the
18 contractor or any -- what -- it's was just going
19 based off of what was paid. Now, I don't object
20 to him testifying what was paid initially.

21 MR. WILLCOX: There's a lot more than
22 he did for change orders.

23 THE COURT: You don't object to what
24 that you do -- you don't object --

25 MR. FORD: I don't -- I -- I believe

1 he's testifying that they paid
2 Newsouth Specialties 5,076 prior to for the
3 partitions. I don't object to that. We even
4 agreed to -- I mean, that they made the payment,
5 and they've shown with the checks that they made
6 the payment. But for determining how much it is
7 going to cost to make the repairs, I would imagine
8 that -- you'd need a contractor to come in. I
9 don't know whether these need to be re-replaced or
10 some of these can just be unscrewed and -- and --
11 and simple -- reassembled if it was something
12 wrong. I mean, there's nothing here to indicate
13 what -- what the cost would be.

14 THE COURT: And I don't know those
15 things.

16 MR. FORD: Which is why I'm saying now,
17 you know, Mr. Makawi can't testify to -- to the
18 amount that it would cost to do that when he's not
19 a -- an expert with respect to the bathroom
20 partitions.

21 THE COURT: Well, I thought he
22 testified to what he spent.

23 MR. WILLCOX: He did, Judge. He
24 testified that the cost -- he was told it had to
25 be replaced. It cost 5,000 dollars to -- to

1 purchase partitions to begin with -- and he's
2 estimating 2,000 dollars for labor.

3 MR. FORD: But I don't know what
4 that -- the estimate for the labor is. How do we
5 know that this --

6 THE WITNESS: That's what the
7 carpenter --

8 MR. FORD: -- needs to be replaced.

9 THE WITNESS: -- told me.

10 MR. FORD: That's hearsay so...

11 THE COURT: Finish the last part again.

12 MR. FORD: Okay. Mr. Makawi's basis
13 for establishing what the cost of new partitions
14 would be is from a contractor, what the contractor
15 told him. That's hearsay.

16 THE COURT: I agree.

17 MR. FORD: Second, the -- I mean,
18 Mr. Makawi's estimate as to labor, if he was
19 provided an estimate for labor by a contractor,
20 that's not here, that would be hearsay. And
21 second of all, it doesn't seem to be that it was
22 provided by a contractor. It's just Mr. Makawi
23 saying it's going to be 2,000 for the labor.

24 THE COURT: Walker, was this a
25 replacement of the partitions?

1 MR. WILLCOX: This is an estimate to
2 replace the part--- the defective partitions using
3 the 5,000 dollars to pay for the material to begin
4 with. And I think it's -- it's obvious you don't
5 need expert testimony to know that it's going
6 to -- it took somebody about a day to install it
7 before to -- it's going to cost some amount of
8 money to install the partitions.

9 MR. FORD: But they can't -- I mean,
10 they just can't testify --

11 MR. WILLCOX: He can testify to --

12 MR. FORD: -- I --

13 MR. WILLCOX: -- whether --

14 THE COURT: I -- I think what you're
15 getting at that we don't know that they need to be
16 replaced.

17 MR. FORD: Well, we don't -- I mean, we
18 don't have pictures of what it is. Mr. Makawi is
19 testified somewhat, but it doesn't give a good
20 picture of what is actually wrong with these
21 partitions.

22 MR. WILLCOX: He testified that they're
23 bowed in and...

24 THE COURT: Yeah.

25 MR. WILLCOX: -- that they need to be

1 replaced.

2 THE COURT: Well, that goes to what I
3 believe about all the testimony today. And I
4 think I'm -- I'm going to -- I -- I do think it --
5 that you make a valid point, Patrick, that he's
6 basing what he's testifying to that the need -- or
7 what someone told him and that's not allowable.
8 But he's also testified to what he's seen himself
9 as I understand it. There were problems with the
10 partitions. And he's experienced enough in what
11 an IHOP store needs and how it functions to -- to
12 testify as to what he needs and to what will and
13 will not work -- what's acceptable to IHOP and
14 what will not be. So I'm going to let him testify
15 to those things. But there are loose ends that I
16 have to look at to see how it all fits together
17 before I determine or make any conclusions about
18 that.

19 MR. FORD: Thank you.

20 THE COURT: Okay.

21 BY MR. WILLCOX:

22 Q All right. Mohammed, we've gone
23 through some objections for what you may be
24 relying on. But on Number 9, what's -- what is
25 the last number there that we're claiming damages

1 against the plaintiff -- the 235,000 dollar
2 number?

3 A The -- yeah, the total is \$230 -- and
4 35,496.07.

5 Q That -- and that's the amount you
6 claim -- or additional amounts we expended for
7 this project, correct?

8 A That's right.

9 Q And amounts we're going to have to
10 incur to correct some what we claim are
11 deficient --

12 A That's right.

13 Q -- work, correct? And amounts for work
14 he did not perform?

15 A True, that's not including the
16 outstanding balance for some vendors.

17 Q Okay. But we -- all right. We're
18 claiming \$235,496.07 for a counterclaim against
19 the Plaintiff, correct?

20 A That's correct.

21 Q Okay.

22 MR. WILLCOX: All right. Those are all
23 the questions that I have.

24 THE COURT: Okay. Patrick.

25 CROSS EXAMINATION

1 BY MR. FORD:

2 Q Mohammed, thanks again for being here.
3 I know it's been a long day at this point. I
4 commend both you and Vince for sitting through it.
5 Again, we met briefly before the deposition. My
6 name is Patrick and I represent the plaintiff.
7 I've just got a few follow-up questions, and I'll
8 try to make it as short as I possibly can. I know
9 it's been a long day. Could you please again
10 describe to me sort of how Eagles Landing is the
11 management company for all this and -- and how
12 it -- how everything gets paid in.

13 A Okay.

14 MR. WILLCOX: Judge, I'll make the same
15 objection for relevance. I have absolutely no
16 idea what this has to deal with this construction
17 dispute.

18 MR. FORD: We're -- we're just trying
19 to determine whether or not Mr. Makawi's using his
20 own personal funds or funds from other IHOP's to
21 fund the construction job. I mean, this is a
22 breach of contract --

23 MR. WILLCOX: So what?

24 MR. FORD: -- case to collect a debt
25 and to determine whether or not these other

1 companies that are separate corporations should be
2 liable under a corporate veil piercing theory just
3 by the way that the money is managed. That
4 it's -- that the Eagles Landing is simply and
5 ultimately a part of the other companies.

6 THE COURT: Yeah, I think it's broad --
7 the action is broad enough and I think I'm going
8 to let you ask him.

9 THE WITNESS: Okay. You want me to
10 answer it?

11 BY MR. FORD:

12 Q Yes, please.

13 A Sure.

14 Q Do you remember the question?

15 A Yes, definitely. Look, Eagles Landing
16 Restaurants -- I say it again. I know I say it
17 before. It was -- it's a company that actually we
18 formed to pay some stuff that we can actually not
19 divide. We're trying to get that -- of getting
20 that package for all the stores. And in order for
21 us to get the package at that tran--- that package
22 for the store for like insurance company -- I'm
23 giving you an example. Insurance company like if
24 we wanted to get a general insurance for one
25 store, it's going to cost 20,000 dollars. If I

1 wanted to get it for 20 -- for -- for eight
2 stores, it's about 16,000 dollars separately. I
3 can get it for 14, or for 13, for 10,000 dollars
4 for the whole eight stores.

5 If I did that, how we going to get this
6 money -- collect this money for the insurance that
7 we're taken as far as a package from all the stores.
8 So we actually pay -- every store has to pay a
9 certain amount of money like let's say 2,000 dollar
10 every week from that store to this paying company to
11 make sure that we take care of the office expenses,
12 which is all the office expenses like the C.P.A.,
13 the H.R., the -- the assistants in there, the
14 maintenance guy that does all the maintenance for
15 all the stores, all this stuff we have to take some
16 type of payment from all the stores, collect it in
17 Eagles Landing International -- Eagles Landing
18 Restaurants and pay this. Does that explain? Yes.

19 Q What amount does each company pay or
20 how is that amount --

21 A The --

22 Q -- I don't need to know exactly, but
23 just how is the amount deter--- determined for
24 each company?

25 A Well, actually we take -- we take the

1 whole amount of like -- let's say we add C.P.A.
2 pay for year, so and so on. And accountant or --
3 or the -- sorry, the H.R. is that much and that
4 much, the -- the director of operation that much,
5 the -- well, let's -- we'll add them together,
6 divide them by eight, divide them by 52 weeks and
7 that's how much we get from them.

8 Q Is there a management agreement between
9 Eagles Landing and the --

10 A No.

11 Q -- other companies?

12 A No.

13 Q How many IHOP restaurants does
14 Eagles Landing Restaurant, L.L.C., own and
15 operate?

16 A Two, if I'm not mistaken.

17 Q One, being the one in James Island?

18 A Yes.

19 Q The -- what -- and what -- what other
20 one does it own? Where is that located?

21 A That James Island?

22 Q No, where is the -- the second
23 restaurant. You said it owns two. One, being the
24 one in James Island.

25 A I'm -- I'm not sure which one is which

1 actually. I have a lot of companies, but if I --
2 if I can look at the structure of --

3 Q But there -- there are two IHOP's.

4 A There are two IHOP's, yes.

5 Q Okay.

6 A I think if I'm not mistaken.

7 Q I want to go back a little bit to the
8 financing. So you had applied for an S.B. lo---
9 S.B.A. loan in this case?

10 A Uh-huh.

11 Q But you were unable to get due -- due
12 to your divorce?

13 A No, let me -- let me explain that to
14 you. I'm already approved -- preapproved with
15 S.B.A. for seven million dollars. The only
16 thing -- the only obstacle that I have that --
17 that keep me away from getting an access to this
18 seven million bucks was that -- the divorce. I
19 have to give them the divorce decree, and then
20 they're going to start saying, no problem at all.
21 I didn't know that at that time because,
22 basically, I didn't think that divorce going to
23 stop anything from happening. But, unfortunately,
24 I didn't have in my calculation that divorce would
25 definitely cancel -- not cancel but stop any draw

1 from -- or any bank loan with any meaning for
2 anything until I get the divorce decree. Once I
3 got the divorce decree in 2016, I started getting
4 like, hey, no problem. What you want? This the
5 first thing I want to do. They start working with
6 me on it. That explain? Yeah. Okay.

7 Q You talked a little bit earlier about
8 Vince saying he would do the IHOP for 350 or the
9 contract says --

10 A Yeah.

11 Q -- 624. So the contract, though, that
12 you did sign was for 624,000?

13 A Exactly.

14 Q You mentioned something about you and
15 Vince potentially splitting -- splitting --

16 A No -- no --

17 Q -- some --

18 A -- not. Let me explain that to you.
19 You want me to do that or you wait for the
20 question.

21 Q Let -- let me just say -- let me finish
22 the question first and --

23 A Sure.

24 Q -- I mean, I'm not trying to ask you --

25 A Sure.

1 Q -- yes or no question at --

2 A No, no, no.

3 Q -- something along those lines. It's
4 just that we don't need a whole explanation for
5 it.

6 A No problem.

7 Q So was there ever any sort of agreement
8 for you and Vince to kind of co-manage contracting
9 for -- for this particular job?

10 A In which one?

11 Q For this, the James Island one.

12 A For the James Island, we have one in
13 here, right?

14 Q Well, no you have the contract, but did
15 you all agree -- were you going to, I guess,
16 provide some sort of management service --

17 A But honestly -- and that's my mistake.
18 I didn't think I was going to need it because he's
19 my friend. I didn't think honestly that we going
20 to need that contract.

21 Q I just want to go through again -- and
22 we'll go through the defendant's exhibits. In
23 the -- the first page of Exhibit 1 --

24 A Yes.

25 Q -- does it not provide that the --

1 the -- the quote and the bid did not include any
2 new IHOP image?

3 A It didn't include the new IHOP image?

4 Q Does the bid or the first page of the
5 bid provide that this quote does not include any
6 new IHOP image?

7 A I'm -- I can't recall that. Is -- does
8 it say in there?

9 Q All right. Could you please read, I
10 guess, where it's note -- the note at the bottom
11 of the correspondence.

12 A The note says this quote does not
13 include any new IHOP image. Okay. What is a new
14 IHOP image?

15 Q Your understanding is the new IHOP
16 image is something that would be included in the
17 new decor package?

18 A What is a difference between the decor
19 package and then new image?

20 Q Could you please just answer the
21 question.

22 A I'm sorry, yes. Definitely. Can you
23 repeat the question.

24 Q Does the new IHOP image, would that be
25 something that would be included in the new decor

1 pack--- in the new decor package.

2 A Yes, we can say it this way. It is.

3 Q You stated in your testimony earlier
4 that the rent for the James Island IHOP was 16,000
5 dollars a month.

6 A The -- yeah, I'm not sure about how
7 much is it exactly, but I can get that -- but I
8 just estimate.

9 Q That was just an estimation?

10 A That almost -- yes.

11 Q All right. Would -- would you think
12 that it might be around some more like 9,000
13 dollars -- 9,821 a month?

14 A It might, yes.

15 Q All right.

16 A Maybe I got confused with another IHOP.
17 Sorry for that. It happens all the time.

18 Q I'm just going to go down through --
19 through a couple of these things. I think Vince
20 testified to some of these, but he didn't know
21 everything that was done. This is Plaintiff's
22 Exhibit 13 which is the same as Defendant's
23 Exhibit 4 for Lowcountry Services. It said for
24 cleaning. Do you know whether the cleaning was --
25 was the cleaning for after it -- it took place,

1 looks like 10/26/2015 was when it was paid. Do
2 you know what date the invoice was for?

3 A I don't, but can I get the book,
4 please?

5 Q Sure.

6 A Definitely.

7 Q And this is the supplement to
8 Defendant's Exhibit --

9 A Okay.

10 Q -- 3.

11 A Okay.

12 Q All right. It appears that the -- you
13 have produced the check for that was paid to
14 Lowcountry.

15 A Uh-huh.

16 Q Do you know when the cleaning was done?

17 A Usually the cleaning is -- usually --
18 typically --

19 Q What -- when in this -- when in this
20 instance --

21 A In this one?

22 Q -- did Lowcountry come and clean the
23 IHOP Restaurant?

24 A It -- it happened twice in this
25 store -- in this particular store. One at the

1 middle of the -- of the way almost getting closer
2 to getting the booth package done.

3 Q Uh-huh.

4 A And it happens at the end of the
5 store -- at the end of the project --

6 Q But do you know a --

7 A Before training.

8 Q -- do you know a particular day -- the
9 day or the month?

10 A No, I can't recall that, but around --
11 around that invoices.

12 Q Do you know what -- what was cleaned by
13 Lowcountry Cleaning Services?

14 A What the first -- the -- this one was
15 like all the booths -- after the booths it was
16 like a lot of dust and a lot of, you know,
17 glasses. It was not -- and all the glass was not
18 clean. All the outside is not clean. This is a
19 cleaning topic. Basically getting the training
20 done and get the turnkey. Then it's very common
21 in every project.

22 Q All right. I don't need that. The
23 invoice again.

24 A Whether it's --

25 Q We covered all this in --

1 THE COURT: What -- would you go over
2 this again.

3 MR. FORD: This is just the Low--- the
4 Lowcountry Services. It doesn't -- there's no
5 invoice or anything that describes what the
6 services was. I was just trying to get an idea of
7 what -- what -- what was done.

8 THE COURT: There's no invoice?

9 MR. FORD: No, Your Honor.

10 THE WITNESS: I know that have it
11 somewhere.

12 MR. FORD: It was just a canceled
13 check.

14 THE COURT: What's the date of the
15 check?

16 THE WITNESS: The date of the check is
17 October of 26, 2015.

18 THE COURT: Okay.

19 MR. FORD: I was just asking him more
20 in terms of what they did because there was no --

21 THE WITNESS: Which is around opening.
22 Like if you -- if you see -- right before the
23 training right away. Exactly what I said.

24 BY MR. FORD:

25 Q Mr. Makawi, Do you know what date the

1 construction began?

2 A I can't recall that. It's supposed to
3 be sometime in April. But when, I don't know. I
4 really don't know the question.

5 Q What is your relationship to
6 Mohammed Ali?

7 A He's a manager. He's my manager.

8 Q But are -- do you have a familial
9 relationship?

10 A Not at all.

11 Q You two aren't related? You aren't
12 family members?

13 A Not at all.

14 Q All right. How did you two meet?

15 A He actually -- I met him through a
16 friend of mine that told me that he's -- he is
17 in -- somewhere in New York. And then I called
18 him, and I told him to come in. And he did come
19 in and he started to work with me.

20 Q Okay. Did Vince ever request you to
21 kind of step in and -- and take on a hands-on
22 approach in this case or in the -- on the project?
23 Or is that something you took your own initiative
24 to do?

25 A Originally he did. Definitely stepped

1 in -- asked me, literally, to help him out
2 because, basically, this is his first IHOP. He
3 had never done an IHOP before. I definitely need
4 your help so help me out with every aspect of it.
5 And that's exactly what we agreed on to begin
6 with.

7 Q Do you have any correspondence to that
8 effect that would kind of show that those
9 conversations occurred?

10 A I'm sorry?

11 Q Do you have any correspondence, any
12 emails -- how -- how did -- how did y'all talk
13 normally?

14 A No, that would have happened when we
15 actually first had the deal on the whole thing
16 that we were trying -- talking about trying out in
17 my office.

18 Q I'm just going to go through now
19 Defendant's Exhibit 9. Has the roof been
20 replaced?

21 A No, it wasn't replaced.

22 Q Have you obtained an estimate from a
23 licensed contractor for what it would cost to
24 replace the roof?

25 A That was -- that was his job to do

1 that, but it's not replaced up to now.

2 Q Did you -- did you not tell Vince that
3 you didn't want the roof to be replaced, but you
4 wanted it to be repaired?

5 A No, not -- not this one definitely. I
6 didn't talk about that at all.

7 Q Have the two HVAC units been replaced?

8 A It did. My -- my -- by me. You
9 talking --

10 Q The two HVAC units --

11 A -- about replaced.

12 Q -- you're --

13 A That I replaced.

14 Q -- talking about -- yes, have these
15 been replaced?

16 A That I replaced or has it been replaced
17 by --

18 Q The two --

19 A -- by him?

20 Q -- the two HVAC units that you're
21 asserting damages for --

22 A I -- I did replace them. Yes.

23 Q Those have been replaced?

24 A Yes. Exactly. Two units out of four.

25 Q And the new sidewalks, you said --

1 A They're not sidewalks.

2 Q -- the way that Vince had done that
3 sort of that like that -- that handicap accessible
4 ramp, what -- what other sidewalks were supposed
5 to be done?

6 A No, what he did is actually -- I think
7 he did the power washing for that thing. But it
8 wasn't -- it wasn't installed. It wasn't done.

9 Q How often did Mr. Mohammed Ali, to your
10 knowledge, visit the job site? Were you present
11 every time he visited or did he visit --

12 A No, I wasn't -- I wasn't present every
13 time he -- he visited, definitely.

14 Q Can you please explain to me what
15 the -- the decor package entails to the extent
16 that you -- you know --

17 A Okay. Let me explain it again. To I
18 know I did that before.

19 Q Just tell me what items -- what
20 items --

21 A Okay.

22 Q -- what items to be included in the new
23 decor package.

24 A Let -- let me tell you. Old decor
25 package -- it's important to use the -- it's very

1 important to understand the whole thing. He
2 didn't understand it because he didn't do an IHOP
3 before.

4 Q Please just state. If you could just
5 explain --

6 A I'm sorry.

7 Q -- that aspect.

8 A I'm sorry. I'm sorry. Lighting, what
9 is the difference from between the lighting in the
10 old package and the lighting in the new package.
11 It's the same exact lighting from the same
12 company, Red Mountain. It's the same exact thing.
13 But instead of being brown, what is the decor
14 package called for -- orange. That is. What is
15 different -- price different a dollar two, maybe.
16 Maybe nothing at all. And a lot of that -- a lot
17 of things it's not nothing. It's nothing to be
18 compared.

19 What is different between the decor
20 package -- old decor package and the new decor
21 package, in my light, it's paneling. The panels --
22 not in the quantity, but the color. What was the
23 color to match that orange one, it was supposed to
24 be dark brown. The -- the old one was beige. That
25 color, doesn't make a difference in price. I don't

1 think to, but if it did, then it's a dollar maybe or
2 less than this. Honestly. What else? The old
3 decor package, pictures, that's digital image.

4 Pictures, the same exact thing. Instead
5 of being a -- a picture that had a -- an apple, it
6 changed to match the -- the new one over a picture
7 that has a pancake and a girl sitting down.

8 What is the price different in it?

9 None. In the -- in the pictures, none. And I mean
10 it. But if you're telling me about what is
11 different between -- you already have like -- in the
12 contract it says in there that not including any new
13 IHOP -- new IHOP image. Okay. But it's including
14 the old IHOP image. Yeah, what is different between
15 the old and new, I just said it right now.

16 Q All right. And I -- I -- I just want
17 to know what -- what is the decor package
18 generally. I don't really care about --

19 A That's it.

20 Q -- new or old at this point. I -- I
21 just want -- is the Parterre Flooring included in
22 the decor package?

23 A Which one?

24 Q The Parterre Flooring.

25 A What flooring?

1 Q Parterre Flooring.

2 A You talking about the tile?

3 MR. CARTER: The --

4 THE COURT: Whoa -- whoa -- whoa --

5 BY MR. FORD:

6 Q The Parterre --

7 THE COURT: Stop -- whoa -- whoa --

8 stop. I'm sorry, you can't talk right now.

9 MR. CARTER: All right.

10 THE COURT: Now, you --

11 THE WITNESS: I -- I'm just talking
12 what I understand.

13 THE COURT: You -- you guys are making
14 the court reporter's life totally miserable over
15 there.

16 THE WITNESS: Sorry.

17 THE COURT: Y'all are going to keep on
18 and I -- and I should have talked about it before.
19 Y'all have got to slow down because you're both
20 talking.

21 THE WITNESS: Yeah.

22 THE COURT: I know you don't realize
23 it.

24 THE WITNESS: Sorry.

25 THE COURT: And you're doing the best

1 you can. But you -- you talk at the same time a
2 lot. And -- and --

3 THE WITNESS: Sorry, apologize.

4 THE COURT: So we've got to let the
5 questions get finished. And then the answer
6 comes. And then the answer has got to finish and
7 the next question comes.

8 THE WITNESS: Sorry.

9 THE COURT: I know -- I know it's late,
10 but we still got to go at a rate that we can keep
11 the car in the road.

12 THE WITNESS: Sorry.

13 BY MR. FORD:

14 Q Okay. Mr. Makawi, on the -- the
15 Plaintiff's Exhibit 13 -- Defendant's --
16 Defendant's Exhibit 4, there's a line item for the
17 Parterre Flooring.

18 A Okay.

19 Q Is that part of the new -- or is that
20 part of the decor package?

21 A No.

22 Q Okay. You testified before that --
23 that the bathroom partitions -- other than what
24 you testified to based on previous knowledge, have
25 you obtained an estimate from a contractor for

1 repairing the bathroom partitions?

2 A I did not.

3 Q Have the bathroom partitions been
4 replaced or repaired?

5 A Not yet as of today.

6 Q Did you -- did you or someone on behalf
7 of Eagles Landing retain the company that
8 installed the bathroom partitions from
9 Newsouth Specialties?

10 A No.

11 Q Is it not true that Vince recommended
12 the -- a contractor who was re--- recommended by
13 the manufacturer?

14 A No, he's the one that did it.

15 Q Were there some contractors that were
16 retained by you or other employees of Eagles
17 Landing that weren't retained by Vince on this
18 list?

19 A That was not retained by Vince on this
20 list?

21 Q Yes. Which -- which contractors did
22 you hire that -- that Vince didn't hire?

23 A On this ones?

24 Q Yes, on the itemi--- itemization you
25 provided?

1 A I -- I can't recall any one of them,
2 actually.

3 Q Did you indicate the need to hire
4 further subcontractors whether it be electricians
5 or plumbers in order to get the job sped up?

6 A I was very clear on that. I said that
7 I -- I did ask to get it done because we are
8 already late. We are already losing tons of tons.

9 Q And -- and did Vince not tell you that
10 in order to hire more contractors, it would cost
11 more money?

12 A Swear to God, it did never happened.

13 THE COURT: Say that -- what was that
14 answer?

15 THE COURT: It never happened.

16 BY MR. FORD:

17 Q Who did Vince, typically, report to
18 when he -- he made draw requests?

19 A To me.

20 Q He didn't -- he didn't make any request
21 to Jimmy Free?

22 A He might.

23 Q What -- what was the process -- did
24 you -- if he made a request to Jimmy Free, would
25 then Jimmy come talk to you?

1 A It should, yes, but it should be
2 between me and him, basically. Jimmy is just
3 there to pay, basically, the bills. But maybe out
4 of friendship or whatever, there is that -- he's a
5 nice guy and he's -- both -- they're both nice
6 guys anyway, so, I understand that. They might --
7 it might -- I might go there and tell him, hey,
8 this bill need to be pay. He's going to take
9 it -- he doesn't have any authority to pay it or
10 anything. He's going to have to get back --

11 Q If -- if -- if you weren't available,
12 then would it be appropriate for Vince to contact
13 Jimmy?

14 A Jimmy and Mohammed Ali had the right to
15 sign checks, but they're not allowed to do the
16 check unless if they came back -- they get back
17 with me on that.

18 Q If -- if -- if Vince wasn't able to
19 find you with the change order form because say
20 you were out of the country or out-of-town whether
21 it was in Egypt or -- or at court for the
22 proceedings that were pending --

23 A He usually call me.

24 Q Well, hold on -- let me fi--- please
25 finish my question.

1 A Okay. Sorry.

2 Q Would it be appropriate for him to --
3 to pass the change orders on over to Jimmy or
4 Mohammed Ali?

5 A They're not going to give him an
6 answer. It's going to have to be either a call
7 between me and Jimmy, or between me and Ali, or
8 between me and Vince. And Vince called me a lot
9 more -- I mean, a lot -- sorry, to -- to -- as---
10 to talk about a lot of stuff.

11 Q But if he can't get a hold to you to
12 submit the change orders, then --

13 A Then he's going to call --

14 Q -- who would he have to submit it to?

15 A He can -- he can -- he can actually
16 talk to -- and not submit it, but he can actually
17 submit it to me via email and I will get it. Or
18 he actually can talk to Mohammed Ali and Mohammed
19 Ali will get me so I can call him up. That
20 happened a lot of time. That Mohammed Ali or
21 Jimmy call me and tell me, hey, call Vince right
22 now. And I do so we can discuss stuff.

23 Q All right. Did the original plans and
24 specifications call for carpet in the -- the
25 entryway of the lobby?

1 A It was a four by eight area, I think,
2 if I'm not mistaken.

3 Q And you were the one that wanted to --
4 to put tile in the whole area?

5 A No. No, it was -- the only different
6 between the tile and the -- and -- and the -- and
7 the carpet was a dollar. The -- the different
8 between the carpet and the --

9 Q But that -- that -- that's not what I
10 asked you. Did you --

11 A No, I answered the question. I
12 answered the question. Vince to go ahead and
13 replace it. I didn't ask for it to be tile all
14 the way. I wanted -- I wanted it to be like
15 this -- like this specific and like -- like this
16 specs. I wanted it to be like this, but --

17 Q When you say --

18 A -- it was too late.

19 Q -- there was -- when you say this, what
20 did you want it to be like?

21 A Like what it is in there in the plan.
22 Whatever it is in the plan, I want it to be like
23 it is. Carpet and tile, but it never happened. I
24 just came back and I find it all of it tile. I
25 was like, huh.

1 THE COURT: All right. Let's -- let's
2 don't have comments of any type while the other
3 party is testifying.

4 MR. CARTER: I'm sorry, sir.

5 THE COURT: That -- that -- that I --
6 it's all right. I don't expect you to -- all the
7 Court rules or anything now. Time out a second.
8 Let me -- let me -- let me -- because if I'm
9 getting confused, that's bad for -- for me and
10 then bad for all of us. The tile, sir, you --
11 you -- are you saying you didn't want to change
12 the area that was changed on the plans from carpet
13 to tile -- that you did not want that?

14 THE WITNESS: Specifically, I didn't
15 ask for it. I came in and found it. And I was
16 like asking, why is it tile. He said that it's --
17 it's a lot better. I was like, fine. Whatever it
18 is. Did I have okay with it? He said, yeah.
19 Fine.

20 THE COURT: So you never asked for it?

21 THE WITNESS: No.

22 THE COURT: And when you came in, it
23 was done.

24 THE WITNESS: It was done, yeah.

25 THE COURT: Thank you.

1 BY MR. FORD:

2 Q All right. You testified, Mr. Makawi,
3 that you were aware of the mold issue?

4 A Yes.

5 Q Is that correct? All right. And from
6 your understanding, it was -- to remediate the
7 entire mold problem, it was going to cost 2,000 --

8 A Twenty-one to 2300 dollars, exactly.

9 Q And that was what was told to you by
10 Mohammed Ali?

11 A No, by Vince.

12 Q Would you agree -- the 2100 dollars
13 that was pa--- paid to W.R.M. Management, that --
14 from your understanding that was what the cost was
15 for, removing the mold? The 2100, from your
16 understanding, that was the cost to clean up the
17 mold entirely?

18 A That was what company? You said --

19 Q W.R.M. Management.

20 A That's correct.

21 Q That wasn't just for the -- the mold
22 report from the -- the mold company?

23 A No, that was -- that was for the mold.

24 THE COURT: It was what -- it was for
25 the --

1 THE WITNESS: It been -- it belonged to
2 the mold.

3 THE COURT: It was associated with the
4 mold issue, right?

5 THE WITNESS: Yes.

6 MR. FORD: Yeah.

7 BY MR. FORD:

8 Q What -- what was the -- if that was the
9 only cost, what was the -- the drywall purchased
10 for? Wasn't that not purchased to replace the
11 sheetrock that had mold on it?

12 A No, that the -- the drywall -- if you
13 can get me any drywall section in here, this is
14 the only drywall that we have that we paid for.

15 Q Yes, but --

16 A And that's to do the back of -- let me
17 back up. The kitchen has a lot of walls that been
18 done completely that was not -- that was not there
19 in the -- in -- in -- in -- in the existing
20 building. All this has to be covered by the
21 drywall, and has to be covered by F.R.P. from the
22 other side. But the F.R.P. is not going to go on
23 top of the wood framing. You have to have
24 drywall -- dry wood. Then the F.R.P. So,
25 basically, any wall which is was a lot in the

1 drawing. You can actually look at it. All this
2 stuff was a drywall. 4,000 dollars for drywall
3 that's nothing. This is -- that would definitely
4 do that part.

5 That would definitely tell you that we
6 didn't spend that much of a drywall on the mold.
7 The mold was a section, and I was very aware that
8 the section was like a corner from this corner, and
9 it's still molding up to today. I can actually take
10 a picture and send it to you. But this -- a corner
11 that has to be replaced. 4,000 dollars drywall for
12 a corner that has to be replaced -- or a couple of
13 corners that has to be replaced because it doesn't
14 have mold, no, it doesn't make sense.

15 Q So it's your -- your contention that
16 this drywall was not for mold removal, but for
17 other --

18 A For other jobs, yes. Definitely.

19 Q And I've just got one or two other
20 things. On the Plaintiff's Exhibit 9, how was the
21 52,606 dollars calculated?

22 A How was what?

23 Q The -- from Mohammed Ali you asserted
24 that -- that he indicated \$52,606.36 for the time
25 that he was there at the project managing, how was

1 that figure calculated?

2 A That's his salary from the beginning of
3 the project to the end of the project.

4 Q Is that his gross salary?

5 A Yes.

6 Q And when -- when did he first start
7 going on the project?

8 A Well, before -- before it started.
9 Even before we started the project itself. It
10 was -- he was there when we were actually going
11 there to look at that place.

12 Q So is it your contention that Vince and
13 his company have to pay for -- for Makawi -- for
14 the times prior to that he visited the -- the job
15 site?

16 A Honestly, to be honest with you, it's
17 supposed to be paying for Mohammed Ali, not
18 Makawi --

19 Q I'm sorry, Mohammed Ali.

20 A -- but Mohammed Ali. No, problem.
21 I'll fix it. But Mohammed Ali and, of course,
22 have to pay for Chris because they were there all
23 the time. They have to pay for Marion for her job
24 because she actually was not doing my assistant
25 work at all. It was just completely for

1 Elite Construction. And I was there all the time.
2 From the testimony of -- of Mr. Carter, you know,
3 that earlier, he was talking about my name a lot.
4 Makawi was there. He was doing, he was doing, he
5 was doing, he was doing. Is that time that I have
6 to be reimbursed for, not actually charge
7 25 percent but I'll charge 15 percent because I'm a
8 guy. I'm not a good guy. So what -- where I
9 am -- where am I from this.

10 I mean, if -- if I'm contracting the
11 person, I would never go there until I call him up
12 and tell him, hey, where are we, come in. We are 20
13 percent completion. I'll go there. Yeah, it looks
14 like 20 percent. Sign a piece of paper, send it to
15 the bank and they send the money. Right now, I'm
16 involved from A to the -- from A to Z, basically. I
17 was there from A to Z. And nobody from the people
18 that was actually in there would say anything
19 different than this, even Mr. Carter. What I'm
20 saying is, I didn't even put my name in there. I
21 didn't even put myself and my salary in there and
22 say, hey, I want 120,000 plus 25,000 or 25 percent.
23 I'm a lot more than 25 percent, but I'll take 25
24 percent. And, of course, I'm not -- I need to --

25 Q Okay. I'm going to --

1 A I'm sorry.

2 Q -- I -- I just wanted to know how the
3 number was calculated.

4 A Okay. You -- you know it then.

5 Q From -- from what -- what was the start
6 date and how -- how was that computed?

7 A Okay.

8 Q What percentage of his total salary.

9 A When -- when -- when we started the
10 construction sometime in April -- end of April
11 that when we started it -- when we started
12 demolition, then they started being there all the
13 time. That's what I calculated in there.

14 Q So the calculation is from the end of
15 April to the end of November?

16 A End of November, exactly when we got
17 the -- when we got the turn -- the turn over which
18 is the permanent C.O., so we can get out people
19 on --

20 Q All right.

21 A -- to get it.

22 Q During that time period, was Mr. Ali
23 exclusively just working on the IHOP project in
24 James Island?

25 A Exclusively?

1 Q Yes.

2 A We can say about 80 percent. Two -- 20
3 percent is usually Saturday and Sunday there's
4 nobody in the project. So Saturday and Sunday he
5 was back to a store. And he take a day off. And
6 then he work the rest in the store. So,
7 basically, Saturday and Sunday he's at -- he's
8 doing IHOP job. One day off for him. That's
9 three days. Then he was working four days.

10 Q All right. Do you agree that
11 regardless of what Mr. Ali had been doing, whether
12 he was at the James Island project, or at a
13 different store, or at, you know, the Eagles
14 Landing headquarters, that he would have been paid
15 this same amount irrespective of -- of what he was
16 doing?

17 A No matter what?

18 Q Yes, is that --

19 A No.

20 Q -- is his salary set?

21 A No. He's a salary. If he work in
22 corporation which is his job description as the
23 director of operation. If he's working making
24 inspections, checking all the R's, checking all
25 the E's, checking hiring, rehiring, and cleaning,

1 am I going so fast? Sorry. I get carry on.

2 Sometime I -- I get faster. But --

3 THE COURT: I do, too. Sorry about
4 that.

5 THE WITNESS: You're going to have to
6 take me like this. But, you know, hiring, doing
7 inspections, ordering, making sure that the food
8 course is right, making sure that the labor course
9 is right, making that he orders the stuff, all
10 this stuff the job description for the director of
11 operation. Handling all the complaints and all
12 this stuff has nothing to do with any
13 construction. But once he is there, if he is not
14 working for Elite Construction, he would have been
15 fired. He would have never made that money. You
16 got that?

17 Q So this was paid to him
18 to additional -- I mean, into addition --

19 A No, it was --

20 Q -- to whatever salary he got?

21 A -- it was -- it was built in for him,
22 like, hey, I'm going to -- I give you to run my
23 business. It was already amount. Okay. Well,
24 now, we're not running my business. I'm giving
25 you -- I'm borrowing you from Eagles Landing, and

1 I'm giving you to Elite to help him out.

2 THE COURT: All right. Let me -- let
3 me -- can I ask some questions.

4 MR. FORD: Yes, sir.

5 THE COURT: Again, I'm afraid I'm going
6 to get -- I'm the one who is in the dark here. So
7 you -- you are not claiming the entire 50 some odd
8 thousand dollar number -- 52,606 dollars. As I
9 understand it, you are claiming 80 percent of that
10 should be attached to this.

11 THE WITNESS: Can I --

12 THE COURT: Is -- is that right, 80
13 percent?

14 THE WITNESS: Yeah, pretty much. But
15 what I'm -- what I'm saying is, that the
16 construction work is not there Saturday and
17 Sunday. So, basically, he has no job Saturday and
18 Sunday.

19 THE COURT: But he was work -- so, in
20 other words, you're saying he was working some of
21 the time other than this project.

22 THE WITNESS: Of, but he's -- he's
23 taking a day off. So, basically, we can say 80
24 percent, plus 80, 90, yes, that's fine.

25 THE COURT: All right.

1 THE WITNESS: Yeah.

2 THE COURT: Did you discuss with
3 Mr. Carter that you were going to be putting
4 Mr. Ali on the project --

5 THE WITNESS: That was discussed at the
6 beginning, yes.

7 THE COURT: And did you -- did you
8 discuss it with him and let him know that you
9 expected what you were paying Mr. Ali to
10 essentially be accounted for against Mr. Carter?

11 THE WITNESS: Of course, but when that
12 would -- when that happened, it was 350. And I go
13 back again I would -- we was talking about this.
14 Because he's my friend, and I wanted to help him.
15 And I want to help him. So this is what I want.
16 I know I'm giving you a big of a bit you can't
17 chew. Even -- even if you told me, hey, I can do
18 it in no time. There's no problem. Don't worry
19 about it. I know. Been there, done that. So I'm
20 going to give you that person and that person to
21 be working with you doing everything that you
22 need. And Marion is going to be there. If you
23 need her to order or do stuff, you can call her
24 and she order the stuff for you. All these people
25 plus me, we were working constantly for the

1 project.

2 THE COURT: Okay.

3 MR. FORD: All right, Your Honor, I
4 don't have any further questions at this time.

5 MR. WILLCOX: No further questions.

6 All right, Mohammed, you're --

7 THE WITNESS: I can go.

8 THE COURT: Hold -- Hold on. Hold on
9 one minute. I'm sorry, just hold on one minute.
10 I know it's late. I'm not trying to keep y'all
11 even later, but give me one minute. You
12 testified, as I understand, that y'all had an
13 agreement three -- or Mr. Carter told you 350,000
14 dollars would do it.

15 THE WITNESS: Yes.

16 THE COURT: But you signed a contract
17 for 624,000 dollars. Is that correct?

18 THE WITNESS: I did.

19 THE COURT: Why -- why did you do that?

20 THE WITNESS: I'll tell you. Honestly,
21 the -- the even when it started between me and
22 Mr. Carter, it was, hey, can we get it done? What
23 do you think can we get it done? He was like 350,
24 no more than 350. I promise you it is going to be
25 no more than 350. I honestly, no problem. Why is

1 it 350 to 650 -- to 625 or 624 or whatever, because
2 I told him, hey, how am I going to get paid? I
3 told him, listen, the different between the 350
4 and the 624 -- and God is my witness to that -- we
5 going to split it. Not -- it doesn't mean that
6 I'm going to split -- take my part in a way, but
7 it's going to be a deduction. So I'm not that
8 cheap, basically. I'm down big time, you know,
9 financially. So I told him, so, basically, if he
10 did it for 350,000 I agreed on, I'm going to give
11 you half of that. Half of the different between
12 250 and 365 -- 325 is about 50 grand. No, about
13 200 and -- how much is it?

14 THE COURT: A little more than that.
15 Yes, sir.

16 THE WITNESS: Yes, sir. A little more
17 than that.

18 THE COURT: Actually more than that. I
19 can do math.

20 THE WITNESS: I'm sorry, it's too late.
21 I can't even calculate anything. But anyway, that
22 would be the difference. I'll take -- give him
23 half. So, basically, half of that, plus 350, that
24 was supposed to be coming to him. The 350 is
25 straight to finish the job that he actually talk

1 about. And the rest -- the different between the
2 350 and the half is going to be his profit. And
3 that was -- that was -- as God is my witness to
4 that, this is the deal that we have in the
5 beginning.

6 THE COURT: When you told Mr. Carter to
7 bring more people in, more electricians, whatever
8 it took because you were getting antsy, I think
9 was the word used about it, after the 120 days or
10 along in there, I thought that I understood you
11 testified you did not think that would cost more
12 money. Did I misunderstand that or is that what
13 you testified to?

14 THE WITNESS: No, let me -- let me
15 explain that to you. When I -- when I told him --
16 I tell him where is the people. Where is the
17 people that you said that you can hurry and you
18 can get them in. I need them in right now. I
19 need to get this project open. We're going
20 through two months of delay. This is money.
21 We're talking about money and income, money and
22 everything. And definitely -- you know when you
23 need that and -- and that one. Like if it -- if
24 the bank is paying for it, I'm more caution. I'm
25 all right. I'm fine. I'm okay. What I'm paying

1 is down payment so it's not hurting me that much
2 operation wise. But when we're talking about
3 everything coming out of your bottom line right
4 away, that means that you're under the heat.

5 THE COURT: I and I understand that.
6 And I understand why you -- you would have been,
7 as you said, antsy. I -- I get that.

8 THE WITNESS: Sure.

9 THE COURT: What I'm asking you,
10 though, is -- and -- and I understand all that.
11 Let me say this. I understand --

12 THE WITNESS: Of course.

13 THE COURT: -- your claim -- your --
14 your lawyer has framed your claim about the delay.
15 But what I'm asking is, did you believe that it
16 would cost more money to bring in more people? Or
17 did you not believe that?

18 THE WITNESS: I definitely --

19 THE COURT: I mean, it would or it
20 would not?

21 THE WITNESS: I definitely believe it's
22 going to cost some money. How much, I didn't
23 know. How much did he tell me? Nothing.

24 THE COURT: In other words, so -- so
25 you didn't discuss with Mr. Carter how much more

1 it would cost.

2 THE WITNESS: Not at all. What -- what
3 I understood is -- because, basically, thinking
4 again, silly me about the 350, we're good. And he
5 have enough, but anyway know still. Even if it
6 was, if I'm -- if I'm going to incur 60,000
7 dollars as a con--- as a contractor, I got to see
8 and tell him, hey, you want it speedy, yeah. We
9 have before this is how much we spent. I'm sorry
10 it was not what I expected which is -- I
11 understand that. But this is what it was going to
12 cost to get more people. Do you want to keep it
13 with more people for that cost, or you want to
14 just eat the cost? Because, basically, if I'm
15 spending -- if I'm spending 60,000 dollars to get
16 more people, and I'm spending 20,000 dollars in --
17 in rent, I wouldn't eat that 20,000 dollars. It
18 makes no sense.

19 THE COURT: All right. Thank you, sir.

20 THE WITNESS: You're welcome.

21 MR. FORD: Jimmy -- Walker, are you --
22 are you done?

23 MR. WILLCOX: Yeah, the defense rests.

24 MR. FORD: Okay. You report -- may I
25 call Vince for a rebuttal witness? I got one

1 question for Vince.

2 THE COURT: Objection?

3 MR. FORD: Just one question. One
4 que--- one question.

5 MR. WILLCOX: Because I need to see
6 what -- I mean, I -- I have to reserve the right
7 to call a rebuttal witness myself by counsel.

8 THE COURT: All right.

9 MR. FORD: Vince.

10 MR. CARTER: Do I need to move, Your
11 Honor?

12 THE COURT: No, you're still -- you're
13 still under oath.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. FORD:

16 Q Vince, did you and Mr. Makawi ever have
17 a conversation regarding whether you would be
18 responsible for payment of his -- of his
19 employees, Mr. Ali and Mr. Morris, in regards
20 to -- to the project?

21 A No.

22 MR. FORD: That's it. No further
23 questions.

24 FURTHER RECROSS EXAMINATION

25 BY MR. WILLCOX:

1 Q Mr. Carter, did you quote in Exhibit 1
2 that you would provide overhead supervision at the
3 job site?

4 A I did.

5 Q Okay.

6 MR. WILLCOX: No further questions of
7 this witness.

8 THE COURT: All right. Very good.
9 Thank you everybody.

10 (Whereupon, at 8:31 p.m. the
11 foregoing hearing was concluded.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25