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SC Court of Appeals

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Circuit Case No. 2018-CP-10-00262

Appellate Case 2020-000921

Steeple Dorchester, Ltd. and
Hamilton Management
Services Company, Inc.,

Respondent,

v.

Marsh Waterproofing, Inc.,

Appellant.

RECORD ON APPEAL VOLUME II

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1 STATE OF SOUTH CAROLINA) COMMON PLEAS COURT
)
 2)
)
 3 MARSH WATERPROOFING,) CASE NO.
) 2018-CP-10-00262
 4)
)
 5) Transcript of Record
 Plaintiff,) Non-Jury Trial
 6)
)
 7 vs.) Date: Feb. 5, 2020
)
 8 STEEPLE DORCHESTER, LTD,)
 et al)
)
 9 Defendants.

10 * * * * *

11

12 B E F O R E:

13 The Honorable Frank R. Addy, Jr.

14 * * * * *

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16 Krista Nicole Carney, Stenographic
 17 Court Reporter, transcribed by a
 18 Stenographic Court Reporter

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1 (These proceedings were had February 5,
2 2020, Charleston County Common Pleas Court, Judge
3 Addy.)

4 THE COURT: We will go on the record,
5 if we may, in the case of Marsh Waterproofing,
6 Incorporated, versus Steeple Dorchester, Ltd, et
7 al.

8 The record will reflect that I did have
9 a conversation in chambers with the attorneys, who
10 basically brought me up to speed on the issues
11 involved in this litigation and all parties have
12 agreed that the issues in this case are primarily
13 issues that the Court could handle without the need
14 to impose on a jury.

15 And so the parties have agreed to
16 waiving their rights associated with a jury trial
17 and get this matter handled somewhat more
18 expeditiously. I'm also told that the Plaintiff
19 had to travel all last night from Texas. So
20 welcome to South Carolina, sir. Try and do your
21 best to stay awake.

22 If everyone's ready to proceed, I'm
23 more than happy to -- if we need to take up any
24 housekeeping matters we can handle those or we can
25 just go straight into testimony, however y'all want

1 to proceed.

2 MR. OLSON: We've got one -- I don't
3 know without a jury, I'm even sure if this matters.
4 There has been -- the principal owner of my client
5 has been involved in a civil securities exchange of
6 commission. And it's been the criminal
7 allegations, with no criminal indictment.

8 I am aware that, you know, Plaintiff,
9 you know, wants to introduce them to basically
10 question the credibility. We, you know -- we don't
11 think that that's -- we don't think it falls under
12 those actions that can be. Typically, there's a
13 problem with prior criminal acts.

14 We think at this point -- and honestly
15 this is an argument that I was making sure for a
16 jury to be inflamed prejudice or whatever. I trust
17 you as a rational finder of facts. So I don't know
18 really -- I really don't believe there's any reason
19 to bring it up. Because if I were to put him on
20 the stand -- he's been represented by some lawyers
21 in New York. And they're absolutely not going to
22 testify about anything. They get asked about that.

23 So, we're at the point now where I
24 would like it if that stuff doesn't come in. If we
25 are we are -- we're prepared not to put him on the

1 stand and he hasn't been a subpoenaed witness. I
2 don't think we need to force him to testify.

3 THE COURT: Okay. The way that I
4 suggest that we handle this -- I've had this kind
5 of issue arise in bench trial. And, typically, at
6 the very least in order for the issue to be
7 preserved, there would have to be some sort of
8 proffer of his testimony. And then the Court would
9 simply decide whether to rely on any kind of
10 proffer of impeachment in determining that witness'
11 credibility.

12 If it's not anticipated that he's not
13 going to testify -- or if it's anticipated that
14 he's not going to testify, rather, then it's a
15 probably a nonissue. But if he were to testify, I
16 think that the way that we can handle it is simply
17 allow the Plaintiff to go in to that by way of a
18 proffer. The Court would reserve judgment on
19 whether that information is germane or relevant to
20 the question of credibility.

21 And the Court's final order would
22 simply reflect whether the Court considered that or
23 did not consider that in reaching its decision.
24 And that saves or preserves any objection that you
25 might have. I think that may be the cleanest way

1 to handle it.

2 MR. OLSON: I will call him after.

3 THE COURT: Okay.

4 MR. OLSON: I'm going to --

5 COURT REPORTER: I'm sorry, I can
6 barely hear you, Mr. Olson.

7 THE COURT: He's going to call him
8 later and he's going to see how it goes basically,
9 is what he said.

10 MR. OLSON: You don't plan on calling
11 him during your case?

12 MR. LACOUR: No. The Plaintiff did not
13 intend to call Mr. Burns in this case.

14 THE COURT: Anything from the Plaintiff
15 before we move forward?

16 MR. LACOUR: No, Your Honor. We filed
17 those two motions in limine. I assume we can
18 either give you that to review now or we can just
19 deal with those issues as they come up.

20 THE COURT: Just deal with them as they
21 come up, if you wish.

22 MR. LACOUR: Whatever is the Court's
23 pleasure should they come up.

24 MR. OLSON: They'll come up. I'm sure.

25 THE COURT: Well, I've read the

1 pretrial brief, so I think I got a pretty good feel
2 for the underlying factual allegations involving
3 the material that your client placed underneath the
4 fried chicken restaurants, the foundation, et
5 cetera, and make it more stable. And then, of
6 course, the subsequent events involving the bill
7 and the claims that were filed with allowed with
8 LLR and the other matters that subsequently took
9 place. So if y'all are ready to go, I'm more than
10 happy to start hearing testimony.

11 MR. LACOUR: Your Honor, the Plaintiff
12 is ready to proceed.

13 THE COURT: Yes, sir.

14 MR. LACOUR: If the Court pleases, we
15 call our first witness, Mr. Tim Marsh.

16 THE COURT: Mr. Marsh, if you want to
17 come on up and have a seat up here, please.

18 THE CLERK: Just for the record, please
19 state your full name and spell your last.

20 THE WITNESS: Tim Marsh, M-A-R-S-H.

21 TIM MARSH,
22 being first duly sworn, testified as follows:

23 MR. LACOUR: Do you prefer that we use
24 the podium or is it okay to stand.

25 THE COURT: Whatever you prefer.

1 DIRECT EXAMINATION

2 BY MR. LACOUR:

3 Q. Good morning.

4 Mr. Marsh, where do you reside, sir?

5 A. Vidor, Texas.

6 Q. And how long have you lived there?

7 A. I've been there since about 36,
8 37 years now.

9 Q. All right, sir. And are you married?

10 A. Yes, sir.

11 Q. Do you have children?

12 A. Two girls.

13 Q. And about as far as your educational
14 background, did you attend high school?

15 A. Yes, sir.

16 Q. Did you graduate?

17 A. Yes, sir.

18 Q. What was your first job out of high
19 school?

20 A. First job out of high school it was a
21 timber business, when I got out of high school.

22 Q. All right, sir. And then where did you
23 go next?

24 A. Went to Texas, moved to Texas and went
25 to Marsh Waterproofing.

1 Q. And your first job there, did you work
2 for yourself or somebody else?

3 A. Somebody else.

4 Q. How long were you there?

5 A. About 17 years.

6 Q. Now, what do you do now?

7 A. Some thing. I do waterproofing.

8 Q. And you worked where?

9 A. All over. Different states.

10 Q. Yes, sir. And the name of your
11 company?

12 A. Marsh Waterproofing.

13 Q. And what's your relationship to that
14 company?

15 A. I own it.

16 Q. And when you said waterproofing, is
17 that primarily exterior of the buildings?

18 A. That's primary exterior, underground
19 basements.

20 Q. How much of your work is commercial
21 versus residential?

22 A. Pretty much all of it is commercial.

23 Q. All right, sir. And do you do some
24 renovation and some new construction?

25 A. Yes, sir.

1 Q. About how much is renovation versus new
2 construction?

3 A. New construction, probably 15 percent,
4 estimation mostly.

5 Q. Approximately, how many people are
6 employed at Marsh Waterproofing?

7 A. We're probably up to 40, 45 businesses.

8 Q. All right. Now, is Marsh Waterproofing
9 a licensed building contractor in the state of
10 Texas?

11 A. It is. They have a d/b/a, so we are
12 licensed, yes.

13 Q. But does the State of Texas require
14 Marsh to go get some type of state-issued license
15 that says you are a licensed contractor?

16 A. No more than d/b/a does.

17 Q. So you don't have to have a building
18 contractor's license?

19 A. No, sir.

20 Q. Are you licensed in any other states?

21 A. Yes, sir.

22 Q. What other states are licensed?

23 A. Louisiana and Mississippi.

24 Q. All right, sir. And as far as the work
25 at issue in these cases, you were working on

1 Church's Chicken restaurants?

2 A. Yes, sir.

3 Q. Did you ever build any of these
4 restaurants, originally?

5 A. No, sir.

6 Q. Do you know the reason that Church's
7 wanted repairs done to these buildings?

8 A. Safety is what they were saying.

9 Q. So what work did Marsh do at these
10 restaurants?

11 A. We filled the crawl space and the
12 bottom.

13 Q. You're saying the bottom. Do you mean
14 underneath?

15 A. Underneath the building.

16 Q. So, in the space between the ground and
17 the bottom of the subspace?

18 A. Yes, sir, in the crawl space.

19 Q. And do you know -- do you recall when
20 the first one was that you repaired?

21 A. Oh, it's been several years back.

22 Q. Do you remember where it was?

23 A. Yes. Texas.

24 Q. Yes, sir. So Texas was the first state
25 where you made this type of repair?

1 A. Yes.

2 Q. And do you remember the name of the
3 particular town where it was, that first one?

4 A. I think it was Temple.

5 Q. Temple, all right. Well, after you --

6 A. Wait. It might have been Waco, one of
7 the two.

8 Q. Was there a job in Waco, that you
9 recall?

10 A. It was one of the two; Temple or Waco.
11 I can't remember.

12 Q. Okay. So after you did the repairs in
13 that first one in Texas, you did some others in
14 Texas?

15 A. Yes, sir.

16 Q. And were you asked to go to other
17 states and make repairs?

18 A. Yes, sir.

19 Q. And do you know off the top of your
20 head which other states you did the work in?

21 A. Tennessee, Georgia, South Carolina,
22 Texas. I think that's about it.

23 Q. Did you do some in Louisiana?

24 A. No, sir.

25 Q. How about Mississippi?

1 A. No, sir.

2 Q. Alabama?

3 A. I can't remember. I don't think we
4 did.

5 Q. Yes, sir. But in those states in
6 Louisiana, Mississippi, and Alabama, have you made
7 other repairs -- maybe you didn't do work in
8 Church's, but have you worked in Louisiana,
9 Mississippi, Alabama installing this foam?

10 A. Yes, sir.

11 Q. So, in other words, it wasn't
12 necessarily Church's, but same material, with same
13 similar type of applications to support them?

14 A. Correct.

15 Q. All right. Now, did you work for Cajun
16 Operating Company at Church's Chicken in some of
17 these locations?

18 A. Yes, sir.

19 Q. Did you also work sometimes for the
20 restaurant owner, franchisee, whatever you want to
21 call it, the owner of the little restaurant
22 locations?

23 A. Yes, sir.

24 Q. So this was a mixture of both?

25 A. Probably more of the company-owned

1 stores that made franchise stores, is what I call
2 them.

3 Q. Okay. Here in South Carolina, were you
4 working for the Church's people or the store owner?

5 A. The store owner, franchise owner.

6 Q. Did Marsh -- did you look at these
7 buildings and decide what to do with them?

8 A. No, sir.

9 Q. And so did you -- you did look at them?

10 A. I guess they had an engineer that they
11 hired.

12 Q. And did you receive a -- had you worked
13 with those engineers before you started working
14 with Church's Chicken?

15 A. I never worked with them, no, sir.

16 Q. And so just in general, what was it
17 that the engineer said had to happen?

18 A. Fill the void with foam.

19 Q. All right. And then when you filled
20 the void with the foam, the foam cures?

21 A. Yes, sir.

22 Q. And when it cures, what happens? Does
23 it change?

24 A. It just gets hard.

25 Q. And is that the only part of the work

1 that you did?

2 A. That's correct.

3 Q. And was there any specialized training
4 that was needed to install that foam?

5 A. We had specialized training over the
6 years since we've been doing foam.

7 Q. And did you need specialized equipment?

8 A. Yes, sir.

9 Q. And what did you need? What
10 specialized equipment did you need to install the
11 foam?

12 A. You got to have what they call a foam
13 rig as it comes out the gun and it's able to pump
14 it into the crawl spaces.

15 Q. I'm showing Plaintiff's Exhibit 1.
16 And what is that a picture of?

17 A. That's a foam rig.

18 Q. So how many men does it take to run
19 this thing?

20 A. Two men.

21 Q. Two men. And what is their job?
22 What's one doing with the other job?

23 A. One is operating equipment and the
24 other one is applying the foam up underneath.

25 Q. The guy that's applying the foam up

1 underneath, what's he doing?

2 A. He was basically spraying foam out of a
3 gun. And it comes in a liquid form and it goes out
4 and it starts foaming.

5 Q. And the gun you're talking about, is
6 that a gun or is it --

7 A. It's a foam gun, is what we call it.

8 Q. Does it look like a firehose?

9 A. Basically.

10 Q. It's got a nozzle on it?

11 A. Yes, sir.

12 Q. And then this other guy with the --
13 operating the equipment, what's he's doing?

14 A. He watches the gauges of equipment, he
15 gauges the temperature. So he has to watch the
16 gauges of the equipment. Before it starts getting
17 low, you have to shut the machine down and switch
18 over more material. So that's his job, to watch
19 the rig.

20 Q. So the equipment in that trailer is
21 pumping this stuff under pressure?

22 A. Yes.

23 Q. And so they basically -- where do they
24 start?

25 A. They start in the back, the furthest

1 back side and work their way up right into the
2 crawl space.

3 Q. And how long does it take -- if you got
4 two guys working that rig on the average building,
5 how long does it take for a two-men crew to do one
6 building?

7 A. A good -- usually 12 to 15 hours,
8 depending on, you know, how much -- if your gun
9 don't stop. So, you know, up 10 to 15 hours.

10 Q. Okay. So that's an 8-hour working day,
11 that's either one good long day or two days?

12 A. It's one really long day.

13 Q. All right, sir.

14 A. Then you got cleanup.

15 Q. Go ahead.

16 A. You got to do cleanup. After the job,
17 you got to get the job cleaned up, rig picked up,
18 and then you can move out.

19 So, basically, they foam one hole, they
20 usually get it set. The next day they do the
21 cleanup, loading the stuff up to go to another job.

22 Q. So it would be at least a day, to two
23 days to complete one?

24 A. Yes, sir.

25 Q. Next I want to hand you up Plaintiff's

1 Exhibits proposed 2 and 3. Three is sticker'd
2 upside down, but don't let that fool you.

3 MR. LACOUR: And, Judge, I did this
4 thinking we would have a jury. But if it would
5 help I can stand over here and pick this up. We
6 can't ask the court reporter to hold it up.

7 THE COURT: Just leave it right there.

8 BY MR. LACOUR:

9 Q. So if we're looking at the one that's
10 marked Exhibit Number 2, Mr. Marsh, I just want to
11 talk about the structural parts of the building
12 that are shown here. So in this particular
13 photograph we can't see the ground; correct?

14 A. Correct.

15 Q. But underneath that water there's some
16 dirt; is that right?

17 MR. OLSON: Objection.

18 THE COURT: Hold on.

19 MR. OLSON: We object to this entire
20 line of questioning, based on the fact that he has
21 never been to any of this before and he can't
22 testify. It wasn't taken by him or any of his
23 employees.

24 THE COURT: Was that photo taken under
25 -- is that one of the specific properties involved

1 here or is that some other property that he has
2 previously been involved in?

3 MR. LACOUR: This particular photograph
4 was taken under one of the Richland County stores.
5 It's not the Charleston store.

6 MR. OLSON: It hasn't been the same, so
7 I don't know how he would talk on this on the
8 picture.

9 THE COURT: Okay. If you want to ask
10 him generally speaking if that's the same sort
11 of -- I'll sustain the objection of that photograph
12 coming into evidence. But if you wish to use as a
13 demonstrative evidence to educate me, that's kind
14 of --

15 MR. LACOUR: Sure.

16 THE COURT: You want to ask him about
17 general what underneath these properties may look
18 like, and then he can explain how he applies the
19 foam.

20 MR. LACOUR: Let me approach it this
21 way.

22 THE COURT: Sure.

23 BY MR. LACOUR:

24 Q. Before we get into the specifics,
25 Mr. Marsh, how many of these buildings did you do

1 in Texas?

2 A. Several. Several occasions.

3 Q. 15 or 20?

4 A. Yes, sir.

5 Q. And then outside of Texas, another 15
6 or 20?

7 A. Yes, sir.

8 Q. Did you have -- we haven't gotten to it
9 yet, but did you have an engineering report for
10 every building that you ever did?

11 A. They did.

12 Q. And did they take pictures underneath
13 every building and put those in all the reports
14 reviewed?

15 A. Yes.

16 Q. Now, when you reviewed those reports,
17 that means you must at least looked at these
18 reports before?

19 A. Yes, sir.

20 Q. When you reviewed those reports, what
21 was your job to do? What did you take those
22 reports to do?

23 A. I took those reports to be able to
24 install the foam underneath the bed.

25 Q. Yes, sir. But you had to look at the

1 report to determine your price?

2 A. Yes, sir.

3 Q. You had to look at that particular
4 building to see if there's anything different about
5 that building?

6 A. Correct.

7 Q. Of all the 30 or 40 buildings that you
8 think you might have looked at, did you ever find
9 anything substantially different; components of the
10 construction? I'm not talking about signs or
11 shape.

12 A. No, sir.

13 Q. Were they basically built with the same
14 structural components?

15 A. Yes, sir.

16 Q. Okay. So given that background of the
17 30 or 40 that you looked at, were all of these
18 buildings built on dirt?

19 A. Dirt and concrete or block foundation.

20 Q. But none of these were out on pilings
21 out on the water?

22 A. No, sir.

23 Q. So it was a typical foundation that sat
24 on the water?

25 A. Yes, sir.

1 Q. And then if you just -- looking at this
2 one -- looking at Exhibit 2, again to the right,
3 the far right of Exhibit 2, and if you turn it and
4 orient right-side up where the water is on the
5 bottom and the decking is up top. But on the
6 right-hand side, that's some kind of a wall?

7 A. Yes.

8 Q. And what kind of material is that?

9 A. A C-block, it looks like.

10 Q. And, typically, that's set on some kind
11 of footing concrete down below?

12 A. Yes, sir.

13 Q. And then in the background, across the
14 middle diagonally, there's a -- it looks like a
15 large steel girder?

16 A. Yes, sir.

17 Q. And does the girders go across
18 someplace the stem wall and then around the
19 outside?

20 A. Correct.

21 Q. So they're sitting on top of the
22 concrete block, but they're also crossing over?

23 A. Yes, sir.

24 Q. And above -- and where those girders
25 are, were there also some joists underneath the

1 deck?

2 A. No. What you see, the girder, the big
3 steel beams right there --

4 Q. Yes, sir.

5 A. -- that's just decking on top of that.

6 Q. So the corrugated stuff across the
7 upper right of the photograph is the decking?

8 A. Yes, sir.

9 Q. And then what's on top of the deck?

10 A. Concrete, I think, two inches of
11 concrete, I think.

12 Q. And then above that is where the walls
13 of the restaurant are you walk in to get served?

14 A. Yes, sir.

15 Q. As far as those components go, were
16 those the same on all these buildings that you ever
17 did?

18 A. Yes.

19 Q. You never found any with wood
20 foundation?

21 A. No, sir.

22 Q. Because, apparently, they're all built
23 by the same original foundation?

24 A. Correct.

25 Q. Exhibit 3, real briefly. Same

1 questions. A little quicker. Is there a girder
2 across the top as you go through?

3 A. Yes, sir.

4 Q. And its underneath that same
5 foundation?

6 A. Yes, sir.

7 Q. And that's the reason they had these
8 engineers looking at it?

9 A. Yes.

10 Q. And, again, there's a CME wall in the
11 background?

12 A. Correct.

13 Q. And this direction you can see the
14 water's up on the plumbing, at least at the time
15 this was taken.

16 So once the engineers looked at these
17 buildings, what did they do next?

18 A. I guess they send it to the owner of
19 the report.

20 Q. So they went and looked at the
21 building, they created a report. And where those
22 reports provided to you-all on all of those
23 buildings?

24 A. Yes, sir.

25 Q. And as far as your recall, there's a

1 report for every location?

2 A. Sir?

3 Q. As far as you recall, was there a
4 report for every location?

5 A. As far as I recall -- and there's a lot
6 of locations. I think they had three or four
7 stores. You know, on their report, they just
8 listed the number of the stores and tell you in the
9 report. It's pretty much for all of them. It was
10 pretty much for all of them. They was all in the
11 same shape.

12 Q. All right. Let me hand you what's
13 Plaintiff's proposed Exhibit 4.

14 Now, proposed Exhibit 4, the report for
15 the Charleston location, Dorchester Road?

16 A. Yes, sir.

17 Q. And were all those reports prepared
18 with essentially the same format, same sections in
19 the report for the engineer?

20 A. Yes, sir.

21 Q. And would they -- did they essentially
22 have the same instructions in the recommendations
23 section?

24 A. Correct.

25 Q. How about turn to the recommendations

1 section.

2 A. Let me find it.

3 Q. Yes, sir.

4 A. All right, I got it.

5 Q. And under the recommendations, is there
6 a specific list of the work that the engineer is
7 recommending be done?

8 A. Yes, sir.

9 Q. What's the first item? There's seven
10 items? Or is there eight?

11 MR. OLSON: I can't remember.

12 THE WITNESS: Eight.

13 BY MR. LACOUR:

14 Q. All right. Let's run through --
15 briefly, what's the first thing that their engineer
16 is saying needs to happen?

17 A. The storm water.

18 Q. And then what's the second thing?

19 A. Inspect all the water and sewer lines.

20 Q. All right. And the third is to do --
21 what's the third one?

22 A. Replace all cast iron and steel sewer
23 lines.

24 Q. And then the fourth item?

25 A. Pipe all floor drains to a sewer

1 collection.

2 Q. And then?

3 A. Ensure all sewer water lines are in
4 good condition, working condition.

5 Q. What's next?

6 A. Confirm that all electric cables,
7 wires, low voltage cables, et cetera, and
8 conduit is secure.

9 Q. Is that the first seven items?

10 A. That's the first six.

11 Q. What's the seventh?

12 A. Remove all debris and the trash, et
13 cetera.

14 Q. And so what's the last one, eight?

15 A. Eighth one, apply expandible
16 polyurethane foam after all the other items are
17 performed and checked.

18 Q. So out of that list of eight things,
19 which one was your work?

20 A. Number eight, install the foam.

21 Q. So, you didn't have anything to do with
22 the first seven?

23 A. No, sir.

24 Q. Were you even there when the first
25 seven things were being done?

1 A. No, sir.

2 Q. All right. Do you know who first
3 contacted you about coming to South Carolina and
4 working in restaurants here?

5 A. A guy that worked for Church's Chicken
6 contacted me.

7 Q. And do you remember who that was?

8 A. Yeah. If you wouldn't have asked me, I
9 could have told you.

10 Q. Well, when it comes to you, let us
11 know.

12 A. Oh, Wayne. Wayne contacted me.

13 Q. Is that somebody that you had worked
14 with in other states, fixing the restaurants they
15 owned?

16 A. Yes, sir.

17 Q. And so what did he basically ask you to
18 do?

19 A. He said that there would be a guy that
20 would contact me, his location's here, they had a
21 life-safety issue and they need it done quick.

22 Q. So he told you that somebody else would
23 be in touch in South Carolina?

24 A. Yes, sir.

25 Q. And then did somebody get in touch?

1 A. Yes.

2 MR. OLSON: Objection; this is all
3 hearsay information.

4 THE COURT: I think it's going to
5 explain more how he got involved with the project.
6 I appreciate the objection. It's overruled.

7 BY MR. LACOUR:

8 Q. Did somebody from South Carolina,
9 thereafter, get in touch?

10 A. Yes, sir.

11 Q. And do you remember with whom you first
12 spoke?

13 A. Mr. Burns.

14 Q. And then let me hand you up Plaintiff's
15 Exhibit 5. Hand you up proposed Exhibit 5. So
16 what is that?

17 A. That's an email from him.

18 Q. It's from Mr. Burns?

19 A. Yes, sir.

20 Q. And it's to who?

21 A. To Marsh Waterproofing.

22 Q. And when's it dated?

23 A. July the 7th of '17.

24 Q. And does it indicate his position,
25 Mr. Burns' position and Mr. Burns' place of

1 employment?

2 A. Yes, sir.

3 Q. And what does it say?

4 A. Alex Burns, State Acquisitions, LLC.

5 Q. And what's he asking you to do?

6 A. Install the foam. Send him a proposal.

7 Q. So he's asking you to give a quote?

8 A. Yes, sir.

9 Q. I'm handing you up Plaintiff's proposed

10 Exhibit 6.

11 So then did you prepare a proposal?

12 A. Yes, sir.

13 Q. So what is Plaintiff's proposed

14 Exhibit 6?

15 A. It is a proposal to Mr. Burns to fill
16 the crawl spaces with foam.

17 Q. And what's it dated?

18 A. July the 10th, '17.

19 Q. And to who was it addressed?

20 A. Mr. Burns.

21 Q. Mr. Burns?

22 A. Yes, sir.

23 Q. State Acquisitions, LLC?

24 A. State Acquisitions, LLC.

25 Q. The same address that you have on that

1 email?

2 A. Yes, sir.

3 Q. So does your quotation describe your
4 scope of work?

5 A. Yes, sir.

6 Q. And does it also contain some
7 limitations or qualifications on your scope of
8 work?

9 A. Yes, sir.

10 Q. And so the first line, what did you
11 quote?

12 A. Crawl space must be clean and free of
13 standing water.

14 Q. So is that your work or is that an
15 exclusion?

16 A. That was an exclusion. That's their
17 words.

18 Q. All right. Then what's next?

19 A. All plumbing and electrical must be
20 prepared and secured by others.

21 Q. So all of these are by others, that
22 means you're excluded?

23 A. Yes.

24 Q. What's next?

25 A. This quote is based on 1,200 square

1 feet by 3 feet deep crawl space.

2 Q. And that's a limitation or an
3 exclusion?

4 A. That's what my proposal was based, on
5 how much foam I'm going to install into the crawl
6 space. That's the measurement.

7 Q. By the time that you got to South
8 Carolina, you had some or most of those others, 20
9 or 30 locations to know what the size was?

10 A. Correct. And the reports, you know,
11 they pretty much tell you the size of the locations
12 any way.

13 Q. Is it a basic rule of thumb of
14 estimating that the more accurate information you
15 got, the more accurate your pricing would be?

16 A. Correct.

17 Q. What's the next item?

18 A. Applying the foam in the crawl space.

19 Q. Is that your scope of your work or is
20 that exclusion of limitation?

21 A. No. That's what they had been using on
22 all of the rest of them.

23 Q. But is that the work that you're going
24 to do or is that also --

25 A. Yes. That's the work that I'm going to

1 do.

2 Q. So that's not an exclusion or
3 limitation?

4 A. That's correct.

5 Q. That is the work?

6 A. That is the work.

7 Q. And then there's something about next
8 proposed on, what, 10 sets? What's that about?

9 A. Ten sets. That's how much foam it
10 takes to do a store that size is 10 sets of foam.
11 And that's what we order.

12 Q. And then the last thing?

13 A. Remove access door and pour four inches
14 of concrete after completion.

15 Q. So when you guys get there, there's a
16 scuttle hole or an access door that you used to get
17 down?

18 A. Correct.

19 Q. And the last thing that they're going
20 to do is what?

21 A. Remove the door and fill four inches of
22 concrete on top of the foam.

23 Q. And how big are they?

24 A. Three-foot-by-three-foot.

25 Q. So they three-by-three-foot, however

1 thick the slab is?

2 A. Yeah, four inches.

3 Q. And that's part of your work?

4 A. Correct.

5 Q. That's not a limitation or an
6 exclusion?

7 A. Correct.

8 Q. So the two things you're going to do is
9 fill the void underneath and close up the door?

10 A. That's correct.

11 Q. So what price did you quote?

12 A. The price is 41,800 for one store. If
13 you do it in multiple stores, discount on the
14 price.

15 Q. And what's the discount for the
16 multiple stores?

17 A. 36,800.

18 Q. Any information there about how much
19 time?

20 A. Approximately, two working days per
21 store.

22 Q. All right. Now, is there also
23 information given concerning the timeliness and
24 preparation?

25 A. Correct.

1 Q. What's that?

2 A. It's \$875 a day if we get there and
3 they're not ready for us to go to work, if their
4 prep is not complete.

5 Q. So is that basically a crew rate for a
6 day?

7 A. Yes, sir. That's two men standing
8 there without doing nothing.

9 Q. I just want to make sure I understand
10 what that means. So you put something in this
11 quote that says what you're going to charge if your
12 guys show up and they're not ready for you?

13 A. Correct.

14 Q. And that's all that is?

15 A. That's all that is.

16 Q. Are there any payment terms indicated?

17 A. Yes.

18 Q. What's the terms of payment?

19 A. Upon completion.

20 Q. So, net 10?

21 A. Yes.

22 Q. So the time that it takes and turn a
23 check around?

24 A. Yes.

25 Q. And did you sign it?

1 A. Correct. Yes, sir.

2 Q. And did Mr. Burns sign the acceptance
3 and send it back?

4 A. Yes, sir.

5 Q. All right. Sir, then once you sent him
6 the proposal, he signed and sent it back, did you
7 hear back from him?

8 A. Yes, sir.

9 Q. Let me hand you Plaintiff's proposed 7.
10 So what is that?

11 A. This is an email back from him.

12 Q. And what's the date on this email?

13 A. It looks like July the 19th.

14 Q. So I think you have to read that from
15 the bottom up, but what is Mr. Burns either telling
16 you or asking you?

17 A. He's asking, you know, what's in the
18 payment terms, net 15. And he's assuming if you
19 get started and two days per store. And he's got
20 to make a schedule. He's going to schedule us, you
21 know.

22 Q. So, did you then hear further from him
23 about the schedule?

24 A. Yes, sir.

25 Q. Let me hand you Plaintiff's proposed 8.

1 Take a look at that and tell us what that is.

2 A. That's kind of -- he's talking about
3 how to schedule the stores. And in one store that
4 they might not do, but that's the Sumter location.

5 Q. What is that document?

6 A. This is a crawl space schedule.

7 Q. Okay. I mean, but what type of
8 document is it? Where did it come from?

9 A. It came from Mr. Burns.

10 Q. And is it a letter? Is it a fax or an
11 email?

12 A. An email, it looks like.

13 Q. An email from Mr. Burns. And what's
14 the date?

15 A. This one here is Friday, July the 22nd
16 (sic).

17 Q. And, again, it's an email that you have
18 to read from the bottom. What's he first talking
19 about?

20 A. He will confirm that his contractor on
21 the plumbing and electrical, that he'll be working
22 one step ahead of us.

23 Q. All right. So he's telling you about
24 the contractor?

25 A. Yes, sir.

1 Q. And what's that contractor going to be
2 doing?

3 A. He's going to be doing the pump out,
4 the plumbing, electrical, all of the above.

5 Q. That sounds like the list of things
6 that you excluded?

7 A. Yes, sir.

8 Q. So, does it say when he's going to be
9 doing that?

10 A. He said, one step ahead of us.

11 Q. And then does he -- he's talking about
12 the schedule. Did he actually provide a schedule?

13 A. I don't think he did at that time, but
14 then he did provide a schedule.

15 Q. Well, it says that there's a schedule
16 attached in the email; doesn't it? Does it show an
17 attachment up at the top?

18 A. Yes, sir.

19 Q. And so do you recognize the attachment?

20 MR. OLSON: Objection; as to leading.
21 He's leading the witness.

22 THE COURT: Overruled. We're doing a
23 non-jury.

24 Go ahead, please.

25 THE WITNESS: Yes, sir.

1 BY MR. LACOUR:

2 Q. And, so, what is the attachment?

3 A. It's a schedule of the stores.

4 Q. And so this is a schedule coming to you
5 from Mr. Burns?

6 A. Correct.

7 Q. And you didn't tell Mr. Burns when you
8 wanted to do each store. He told you when to do
9 each store?

10 A. Correct.

11 Q. And then what's the first date of work
12 on that schedule?

13 A. 7 -- it looks like -- I can't really
14 see that. It's kind of smeared on mine.

15 Q. Sometime the end of July?

16 A. Yes, sir. It's in July.

17 Q. Now, did that schedule slip a little or
18 did it hold?

19 A. It slipped a little.

20 Q. And then was it slipping on anything
21 you were doing, on your account?

22 A. No, sir.

23 Q. So they put you off a little past those
24 days?

25 A. Correct.

1 Q. And is there also something in the
2 email about maybe not doing one of the locations?

3 A. Correct.

4 Q. How many locations are listed on that
5 schedule?

6 A. Let's see. Eight, it looks like.

7 Q. And does the email talk about maybe not
8 doing one of them?

9 A. Yes, sir.

10 Q. As it turned out, did you take one off
11 the list?

12 A. Yes, sir.

13 Q. So you had a schedule, but you only
14 worked on seven?

15 A. Correct.

16 Q. All right, sir. So, eventually though
17 we made one trip -- the first trip you sent a crew
18 to South Carolina, even according to that schedule
19 or later one?

20 A. Correct.

21 Q. But when the crew made the first trip
22 to South Carolina, was the first location ready?

23 A. No, sir.

24 Q. Okay. Do you remember the specifics
25 about exactly how long they waited around or

1 whatever?

2 A. They was here two or three days. And I
3 sent them back. And then I think the following
4 week -- within two more weeks, I think they had the
5 first store ready.

6 Q. So, basically the schedule slipped some
7 more, they thought they were ready to start, but
8 they didn't, and it still took another two weeks to
9 start?

10 A. Correct.

11 Q. We'll get into specifics of that later.
12 But let me ask you this, did you, Marsh
13 Waterproofing -- you said that they had eight and
14 they dropped one. So there were seven stores. Did
15 Marsh do the work at all seven stores?

16 A. Correct.

17 Q. Did Marsh do everything that Marsh put
18 in its proposal at all seven stores?

19 A. Correct.

20 Q. Did you ever receive any complaint from
21 Mr. Burns or any of the people that worked for him
22 about the quality of the work?

23 A. No, sir.

24 Q. Did you ever receive any complaints
25 from Mr. Burns or anybody that worked for him about

1 the quantity of the work?

2 A. No, sir.

3 Q. And there were some guys that worked
4 for him that were, from your understanding, out
5 there around these jobs; right?

6 A. Correct.

7 MR. OLSON: Same objection.

8 BY MR. LACOUR:

9 Q. Do you recall who you were in touch
10 with, any names?

11 A. One was Church's Chicken that we kept
12 in touch with, Wayne. There were several other
13 guys.

14 Q. Do you know why Wayne was interested in
15 what was going on?

16 A. Life safety issue, is what they were
17 saying.

18 Q. Well, basically Church's Chicken
19 believed that it was a life safety issue and you
20 were supposed to take care of that?

21 A. Correct.

22 Q. So they had an interest?

23 A. Correct.

24 Q. Once the work was completed, did you
25 send an invoice for your work on this particular

1 location?

2 A. Yes, sir.

3 Q. All right. Let me hand you Plaintiff's
4 proposed 10. Tell us what that is, please, sir.

5 A. That is an invoice.

6 Q. Does this have a location on it?

7 A. This one here is -- yes, sir. I think
8 here is the Dorchester location.

9 Q. Yes, sir. And once you sent that
10 invoice, did you receive payment?

11 A. No, sir.

12 Q. When you did not receive payment, what
13 action did you take to try to collect?

14 A. I started calling.

15 Q. Yes, sir.

16 A. No results. And then I had to contact
17 my lawyer out of Texas. And he referred me to you.

18 Q. Yes, sir. All right. And as far as
19 action that you took to collect, once you got in
20 touch with me -- I'll show you what's been marked
21 as proposed 11. What is that document?

22 A. A mechanic's lien.

23 Q. If you start at the back and look at
24 the signature pages, you think the back one, that's
25 a statement of account?

1 A. Correct.

2 Q. And does that bear your signature?

3 A. Yes, sir.

4 Q. And backing up one more page, what's on
5 that one? I don't know what that is. I don't have
6 it memorized. Is it either that page or the next
7 page a verification?

8 A. Yes, sir.

9 Q. And that's got your signature, as well?

10 A. Yes, sir.

11 Q. And then the lien is signed by me?

12 A. Yes.

13 Q. As far as you know, what is stated in
14 that lien is accurate for the Dorchester Road
15 location?

16 A. Correct.

17 Q. All right. I'll also hand you up
18 Plaintiff's proposed Exhibit 12. Have you seen
19 that before?

20 A. Yes, sir.

21 Q. And what is it?

22 A. It's basically a mechanic's lien
23 statement.

24 Q. Proof of service of mechanic's lien
25 statement?

1 A. Yes.

2 Q. The process server just wrote down when
3 he served the lien and who he served?

4 A. Correct.

5 Q. All right, sir. Now, before you served
6 and filed your liens in South Carolina, did the
7 question come up about the licensing requirements?

8 A. Yes, sir. One time over telephone that
9 I didn't have no license and didn't think one was
10 required.

11 Q. And, so, at my request did we have your
12 lawyer get in touch?

13 A. Correct.

14 Q. Let me hand you Plaintiff's proposed
15 Exhibit 13. And what is that document?

16 A. It's says Bill Richey to the State
17 Licensing Board.

18 Q. And you may have to read this one
19 backwards too. There's an email from Bill Richey
20 to the South Carolina Department of LLR; right?

21 A. Yes, sir.

22 Q. Is that the front page or back page?

23 A. Back page.

24 Q. So this email, what's it dated?

25 A. It looks like November the 15th.

1 Q. Of what year?

2 A. '17.

3 Q. And what did Mr. Richey, your Texas
4 lawyer, ask the Department of LLR?

5 A. The specifics for -- to our scope of
6 work, what we performed.

7 Q. And did you tell him everything that we
8 did?

9 A. Yes, sir.

10 Q. Did you tell him that the preparatory
11 work was not in our scope?

12 A. Correct.

13 Q. And if you just read -- the Judge
14 doesn't need you to read everything to him -- the
15 specific part of Mr. Richey -- the description of
16 our scope of work. What did you tell him you would
17 do?

18 A. He's just telling you that we sprayed
19 the foam under the crawl space. And that all of
20 the electrical and plumbing stuff be done by
21 others.

22 Q. Okay. And then if you turn to the
23 response -- before we get to the response. Who
24 sent the response?

25 A. It looks like LLC.

1 Q. Say again?

2 MR. OLSON: Objection; hearsay.

3 It's an email from a guy that's not
4 here. I can't cross-examine him about the email.

5 THE COURT: Okay.

6 MR. LACOUR: Your Honor, it's not offer
7 for proof. It's offered for the effect upon the
8 hearsay.

9 THE COURT: Fair enough.

10 BY MR. LACOUR:

11 Q. So, who responded to Mr. Richey?

12 A. Mr. Lowe.

13 Q. Right below his name, does it say what
14 his position is?

15 A. Yes, it does. It says that this foam
16 was installed --

17 Q. No. No. No. Does Mr. Lowe -- down
18 below, does it say what his position is?

19 A. Yes, sir.

20 Q. What's his job?

21 A. Administrator.

22 Q. Administrator for the Contractor's
23 Licensing Board?

24 A. Correct.

25 Q. So, what did the Administrator of the

1 Contractor's Licensing Board say in his response?

2 A. If this foam was not being used as
3 energy efficient insulation, and only as means to
4 fill a void, there is no classification that would
5 require a license.

6 Q. So, he's saying if you're only putting
7 it in the space underneath, there's no
8 classification that requires a license?

9 A. Correct.

10 Q. At the time that you first got that
11 from Mr. Richey, do you know what he meant by
12 classification?

13 A. Yes, sir. Yes, sir.

14 Q. What he's talking about? What kind of
15 classification?

16 A. Any state that's got state licenses, if
17 they have classifications for your scope of work,
18 what's your license for.

19 Q. You're talking about a license
20 classification; correct?

21 A. Correct.

22 Q. Let me hand you Plaintiff's proposed
23 14. First of all, have you seen that before in
24 getting prepared?

25 A. Yes, sir.

1 Q. And what is that?

2 A. It's a license classification and
3 subclassification.

4 Q. So that's the general contractor's
5 license classifications for the state of South
6 Carolina?

7 A. Correct.

8 Q. And have you read through it?

9 A. Yes, sir.

10 Q. More than once?

11 A. Yes, sir.

12 Q. And is there any license classification
13 in there for installing foam for support?

14 A. No, sir.

15 Q. Foam is mentioned in there; right?

16 A. Correct.

17 Q. Does it mention in relation to
18 anything, other than insulation?

19 A. No, sir.

20 Q. So, in summary, it seems like Mr. Lowe
21 gave a real technical response to the question?

22 A. (Witness moves head up and down.)

23 Q. And he's saying there's no
24 classification that requires you to have a general
25 contractor's license to put foam in the building?

1 A. Correct.

2 Q. And that was all you knew at the time
3 that we filed the liens; correct?

4 A. Correct.

5 Q. And based on that response, did you
6 have your lawyers proceed with filing the lease?

7 A. Correct.

8 Q. All right.

9 MR. LACOUR: Your Honor, we have no
10 further questions for Mr. Marsh at this time.

11 THE COURT: Okay. Cross.

12 MR. OLSON: I don't think we have any
13 additional exhibits, other than -- when they come
14 up, I'll just hand them to you.

15 THE COURT: And while we're on that
16 topic, I assume the exhibits that you have shown
17 him, you were going to move those into evidence.

18 MR. LACOUR: I figured I would do that
19 at some point.

20 THE COURT: I just thought since we
21 were on that topic.

22 All right. Mr. Olson, any questions of
23 Mr. Marsh?

24 CROSS-EXAMINATION

25 BY MR. OLSON:

1 Q. How are you doing, Mr. Marsh?

2 A. Good. How are you?

3 Q. Not too bad. All right.

4 I've got a few questions for you. We
5 have met a couple of times. And do you recall
6 giving your deposition testimony on or about --
7 during May of 2019?

8 A. Yeah, I believe so.

9 Q. Had you ever been to South Carolina
10 before that day?

11 A. Before that date?

12 Q. Before your deposition in this case?

13 A. In my life?

14 Q. In your life.

15 A. In my life, no.

16 Q. So, correct me if I'm wrong -- and I'm
17 going to assume that you have never traveled to
18 South Carolina before this work, during this work,
19 or after this work, with the exception of your
20 deposition in Charleston?

21 A. That's correct.

22 Q. You have never visited one of Church's
23 sites before?

24 A. No, sir.

25 Q. Have you ever pulled a building permit

1 in South Carolina?

2 A. No.

3 Q. Have you ever held a license in South
4 Carolina?

5 A. No, sir.

6 Q. Have you ever been registered to do
7 business in South Carolina?

8 A. No, sir.

9 Q. Have you ever paid taxes here?

10 A. I have been paid nothing, except Texas.

11 Q. Are you saying that you haven't been
12 paid on any of these jobs?

13 A. None from LLC.

14 Q. You were not paid for any --

15 A. What case are you talking about?

16 Q. It's not a case. It's obviously --
17 were you paid for any of the work you did on any
18 Church's Restaurant in South Carolina, whether it's
19 this case or not?

20 A. Oh, yeah. Everybody else has always
21 paid me.

22 Q. But one of the -- of any of the stores
23 owned by my client, of the jobs that you did in
24 South Carolina -- or maybe you don't know --

25 A. I don't know which one you're talking

1 about.

2 Q. It doesn't matter. Any of them?

3 A. If you're asking if I've ever been paid
4 for anything in South Carolina, I don't know what
5 you're talking about.

6 Q. Well, you were paid \$40,000?

7 A. For one.

8 Q. For Church's?

9 A. But it wasn't for you. Church's paid
10 me \$40,000.

11 Q. Are you aware that money came from my
12 client?

13 A. I wasn't aware.

14 Q. But you wouldn't take issue with that?

15 A. I wasn't aware it come from your
16 client.

17 Q. Now, back to the tax question. Did you
18 file a tax return at that point?

19 A. I don't know. The office does that.
20 But if you need information, I can get it for you.

21 Q. Well, we can kind of get it now. But
22 I'll be willing to -- I'm going to move forward.

23 A. Well, you can't have it now, because it
24 wasn't asked for in the deposition. I can have it
25 for you.

1 Q. You don't have it?

2 A. I don't have it with me at this point.

3 MR. LACOUR: Is the question, are you
4 talking about the payment that we produced?

5 MR. OLSON: I was asking if he ever
6 paid taxes here. And he said that he's never been
7 paid for anything. And I took exception to that.
8 It's not part of the suit. It's just in general.

9 MR. LACOUR: I've got a copy of that,
10 if you need it.

11 BY MR. OLSON:

12 Q. Okay. All right. You've testified
13 earlier that you did not hold a license in South
14 Carolina in any form in terms of contractor,
15 whether it be a subcontractor or general
16 contractor?

17 A. Correct.

18 Q. I believe you testified that you were
19 told that you did not need to have one?

20 A. Correct.

21 Q. Was that in writing or was that
22 verbally?

23 A. Correct. I have that in writing.

24 Q. You have that in writing?

25 A. Yes.

1 Q. Well, I'll ask you about that in a
2 minute.

3 From my client, I thought you had said
4 that my client told you you didn't need to have a
5 license?

6 A. No, sir. He asked me, did I have a
7 license. And I told him, no; do I need license.

8 Q. And you said that my client told you
9 then that you didn't?

10 A. He said he would check and let me know.

11 Q. Did that ever happen?

12 A. I don't know if he did or not.

13 Q. But you never talked to him?

14 A. I told him, I did not. And he said he
15 would let me know. If we need a license, he would
16 let me know.

17 Q. Okay. I understand. Now, was this in
18 writing or was it over the telephone?

19 A. Telephone form.

20 Q. You testified earlier, not really your
21 words, maybe in the engineer's words, but you were
22 performing work that had been a life-safety
23 function?

24 A. (Witness moves head up and down.)

25 Q. And was it your understanding that

1 these projects began as a result of a tragedy, I
2 guess, in Texas where one of the floors collapsed
3 and badly burned two or three employees?

4 A. That's what I heard, too.

5 Q. And these stores in South Carolina were
6 not the first ones your company did for Church's?

7 A. Correct.

8 Q. In terms of -- you mentioned earlier
9 that you had no complaints for the work that you
10 did here; correct?

11 A. Correct.

12 Q. Were you able -- tell me the meaning
13 that you were able to -- actually able to ensure
14 the work by your men -- that it was actually
15 performed correctly?

16 A. My superintendent was the one that made
17 sure that the work was done correctly.

18 Q. Did he have any pictures?

19 A. He took some pictures of the projects.

20 Q. Have we been provided those?

21 A. I don't know what all you've been
22 provided.

23 MR. OLSON: For the record, that's one
24 of the things we asked for.

25 BY MR. OLSON:

1 Q. So it's your testimony that your
2 superintendent and maybe pictures that we
3 haven't seen -- but you said that you saw some
4 pictures?

5 A. Yes, sir, of the foam being in process.

6 Q. And you don't have them with you?

7 A. No, sir.

8 Q. All right. So we've established that
9 you're not licensed. Your superintendent is not
10 licensed here either?

11 A. No, sir. He works for me, he doesn't
12 need to be licensed.

13 Q. Well, in Texas? In Texas he wouldn't
14 have to be licensed?

15 A. My company has to be licensed. He
16 doesn't have to be licensed.

17 Q. Is he licensed in South Carolina?

18 A. No, sir.

19 Q. Let me ask you: So when did you pull
20 the building permits on this project?

21 A. I didn't pull no permits.

22 Q. When was the inspection performed by
23 the city or the county?

24 A. I don't know.

25 Q. What building code does this work fall

1 under in Charleston?

2 A. I don't know.

3 Q. Did you know then?

4 A. It wasn't our responsibility. It was
5 the contractor.

6 Q. And you weren't the contractor?

7 A. No, sir.

8 Q. Explain.

9 A. We weren't the contractor. We weren't
10 the electrical contractor. We weren't the plumbing
11 contractor. We was just the foam guy. Everybody
12 else had to perform that work before us.

13 Q. Okay. What basis do you have for that
14 statement?

15 A. It's on my proposal.

16 Q. That someone has to pull the permit?

17 A. We're not responsible.

18 Q. Where does it say that?

19 A. It's the owner of the building that he
20 hired a professional electrical contractor has to
21 pull this permit.

22 Q. I'm not talking about the electrical
23 work. I'm talking about in general. I asked you
24 if you pulled any permit? It's a yes or no
25 question.

1 A. No.

2 Q. As far as -- as to the building
3 inspector, you -- I guess you testified that you
4 wouldn't know if that happened or not.

5 Okay. And I think you said -- you said
6 that your proposal says you're not pulling the
7 permit?

8 A. Our proposal says that we're not
9 responsible for electrical or plumbing, all the
10 others are.

11 Q. I asked about the building permits.
12 Does it say that? Because I've never seen that.

13 A. I don't have to pull the permit.

14 Q. But your proposal doesn't say you have
15 to pull a permit? And that's all I'm asking. I
16 thought you said it was on the proposal. I haven't
17 seen that. And that's what I would like to see.

18 So, are you aware that in -- are you
19 saying that you are not a contractor?

20 A. I'm saying that I'm not an electrical
21 contractor, plumbing contractor, or a general
22 contractor. I was hired to install foam under the
23 crawl space only. All the other work was done by
24 others. All other work had to be performed before
25 I ever done mine. So if y'all don't have no

1 permits pulled or records of it, I sure don't.

2 Q. Of all the trade people that you think
3 came before you, which one of them would be
4 responsible for any of the structural integrity?

5 A. The owners.

6 Q. I'm talking about contractors.

7 A. I have no idea.

8 Q. It wouldn't be the electrical
9 contractor?

10 A. I don't know. I didn't hire them.

11 Q. No. What I'm getting at is, the work
12 you performed was structural in nature?

13 A. We filled the void with foam. It was
14 in the report.

15 Q. When a building is -- I know you
16 weren't there, so I don't know what you could speak
17 about this. When the building is sealed up, can
18 you see your work, basically under the crawl space?
19 You said all you did was spray foam. So, I assume
20 that you have access to it. Is it sealed up after
21 you would have performed your work or would you
22 have pictures of that?

23 A. What are you talking about; what's
24 sealed up?

25 Q. Well, I assume that there has to be

1 some sort of an opening made?

2 A. There is an opening.

3 Q. What is the purpose of -- I guess what
4 I'm getting at is this, if it's not aesthetic, what
5 is the purpose if it's not structural?

6 A. Because the engineer gave a report.
7 The owner, that's what they wanted.

8 Q. In the report it states it's a
9 life-safety issue and that's why they specified the
10 foam to be installed by you?

11 A. It didn't have to be by me. It could
12 have been by anyone.

13 Q. Well, but it was installed.

14 But what you're saying is that you had
15 nothing to do with the structural integrity of the
16 building?

17 A. I sprayed foam under the building, what
18 we were hired to do. I had no structural opinion,
19 no nothing.

20 Q. Let me make this a little bit easier.
21 What benefit does the foam provided. Is it -- are
22 people stuffing gifts with it?

23 A. Somewhere the engineer had to come up
24 with what it was going to provide. I mean, that's
25 all I know.

1 Q. And so you didn't even talk to the
2 engineer about why you were doing what you were
3 doing?

4 A. He just gave a report to the owners and
5 the owners gave it to me with prices.

6 Q. So you read it?

7 A. I didn't know if it would work or
8 didn't work.

9 Q. I'm not asking -- I'm not really asking
10 that.

11 A. Yes, you are. But go ahead.

12 Q. I'm asking, the purpose -- the purpose
13 of your work -- and if you can't say what the
14 purpose of your work is -- I mean, I'm not going to
15 beg you to.

16 I'm just trying to understand, you're
17 stating that -- you're stating that you're not a
18 contractor on this work. I mean, in everything
19 that I've read is that this was a life-safety
20 issue, this is a restaurant, and you're stating
21 that you have no responsibility for --

22 A. You've read it to the owner. The owner
23 sent me and wanted me to fill it with the foam. He
24 done everything else. Whoever hired --

25 Q. In terms of the structure, what else

1 was there to do, other than what you did, that's in
2 the report?

3 A. It's in the report. I only did the
4 foam. I didn't touch one other thing on that
5 building.

6 Q. Does removing the water, is that a
7 structural issue?

8 A. I'm sure the water was removed before
9 he could do electrical.

10 Q. Does the electrical hold the building
11 up?

12 A. Not that I know.

13 Q. How about the foam?

14 A. Not that I know of, when we filled the
15 foam. This is what the engineer had in his report
16 to do. And this wasn't the only one.

17 Q. What I've read in the report is that
18 foam, its purpose is structural integrity and it's
19 worked before, and that's the work that you
20 performed?

21 A. And it could be. But I'm not the
22 engineer that designed it. And I put the foam,
23 what they said to install.

24 Q. Can we leave it like this -- and I'm
25 not going to argue about it anymore -- but in

1 terms -- when you say that you were just there to
2 spray foam, you were there to -- your company was
3 hired to install the foam, which is prescribed as
4 the structural repairs for those buildings and
5 nobody else?

6 A. That's correct. That's my only job.

7 Q. I'm sorry. Bear with me while I ask
8 questions. I'm still learning. All right.

9 Is it your testimony that you were a
10 subcontractor working for a general contractor?

11 A. Yes.

12 Q. Are you able to tell me who the general
13 contractor was?

14 A. I have no idea.

15 Q. So you were -- now, again, I
16 realize that you weren't there, but were you made
17 aware -- was the general contractor supervising the
18 work?

19 A. Somebody was supposed to be overseeing
20 it. I don't know who it was.

21 Q. Was the general contractor supervisor
22 your work?

23 A. Well, let me put it this way, we never
24 saw nobody, other than if the electrical wasn't
25 done when we got ready to foam, we would have to

1 call Mr. Burns up. And he would call somebody
2 else. He organizes who to call.

3 Q. If you were a subcontractor, wouldn't
4 you be calling the general contractor?

5 A. I didn't know the general contractor.

6 Understand, I was hired to do one job.
7 And I stated that in my proposal, fill the form.
8 Everything else had to be done by others. So I
9 didn't have no organization of it. I didn't have
10 no scheduling of what they done, how they done it.

11 My only job was when they called me up
12 and told me their work was complete, I would come
13 and install the foam. And then I left to the next
14 location.

15 Q. That being the case, how can you
16 testify that you were a subcontractor, when you're
17 not?

18 A. I'm not the contractor. I am not the
19 general.

20 Q. I asked if you were a subcontractor and
21 you said you were?

22 A. And that's what I was. I was a sub. I
23 was not the general.

24 Q. Then I'm asking who the general
25 contractor was that was approving your work?

1 A. LLC. Acquisitions, LLC, as far as I
2 know. That's the only person I ever dealt with.

3 Q. But not as a contractor. Because you
4 testified you contacted the Church's franchise
5 owner? That's what's in your deposition.

6 A. No. The only thing we had to contact
7 him for is he wanted us to let him know when the
8 stores were done so he could mark that off his
9 list. Church's, as far as I know, didn't have
10 nothing to do with it.

11 Q. You testified that you contacted
12 franchise owners?

13 A. Franchise owners?

14 Q. Like Mr. Burns?

15 A. Like Mr. Burns, yes.

16 Q. Did you contact the general contractor?
17 Did you contact as a franchise owner of a
18 restaurant?

19 A. Yeah. So you're trying to say that I
20 was the contractor, I done the electrical and
21 plumbing, and all that?

22 Q. No. I'm not saying that. I'm not
23 saying that you were the general contractor. I'm
24 not -- at least we are having a conversation. If
25 you took what I asked you as, I'm saying or

1 implying, that you are the general contractor
2 there, I'm not.

3 I was asking if you were supervised by
4 a general contractor. There is a difference. I
5 was assuming that you were working for a general
6 contractor.

7 A. Well, let me qualify my statement
8 again. We were supervised by somebody with
9 Mr. Burns on scheduling. And we would let him know
10 when it was complete by the store. That was it.

11 Q. Do you have any direct knowledge as to
12 who that person was or that company was, the
13 contractor that was supervising it?

14 A. I don't.

15 Q. Your superintendent --

16 A. He might have.

17 Q. He will know?

18 A. He would know. And I think it's in the
19 license somewhere saying that he was.

20 Q. Well, I've got a question about one of
21 the exhibits that was handed up earlier. And I
22 know it's an exhibit. It's an email from your
23 lawyer to Mr. Richey. It's the email from -- I
24 just want you to read the date of the email from
25 Mr. Lowe and the date of email from Mr. Richey.

1 A. November 15th.

2 Q. And Richey also the 15th?

3 A. 15th.

4 Q. Now, what was the date the work was
5 completed in Charleston?

6 A. I would have to go back and look.

7 Q. If I suggested it was in August of --
8 August meaning, three months before that email,
9 would you take issue with that?

10 A. No, sir.

11 Q. So that email sent after work was
12 performed; correct?

13 A. Correct.

14 Q. If it was represented to Mr. Lowe --
15 and we don't have him here. But it wouldn't be
16 your testimony that this was an email sent to kind
17 of cover your rearend to make sure that you didn't
18 need a license before you worked?

19 A. I already covered my rearend before I
20 worked, that I didn't need a license.

21 Q. What you did was you sent this email --
22 tried to do that before you filed the lawsuit?

23 A. Before I did the work, I already
24 covered myself.

25 Q. How?

1 A. Because I'm licensed in Louisiana and
2 Mississippi. And South Carolina has reciprocal
3 license with all the same rules and regulations.
4 And they have classifications where you go to. And
5 that's how everybody, that have a license goes by,
6 the classifications only. I don't have to have
7 proof, you go by your classification and what they
8 are.

9 Q. So, now you're saying you have a
10 license now of some kind that --

11 A. I didn't say that. I said they
12 reciprocate license. In other words, they all go
13 by the same rules and regulations.

14 Q. All right.

15 A. And I can apply for a South Carolina
16 license if I were to come here and start doing
17 business. I have the obligation to.

18 Q. Which leads to, why didn't you do it
19 before you did the work here?

20 A. Because I didn't have to be licensed.

21 Q. Then why would you in the future?

22 A. I might. That was only for foam. I
23 mean, understand there's different classifications
24 of license. If I'm going to do roofing in
25 Louisiana, there's a classification for that. If

1 I'm going to do waterproofing, there's a
2 classification for that. If I'm going to build a
3 building, there is a classification for that. Foam
4 filling, there is not a classification for that.

5 Q. Before you did this work, did you make
6 any inquiry, any phone call, anything to LLR, to
7 ask if the work you performed required a license?

8 A. Online they have everything --

9 Q. That's not what I asked you. Did you
10 make an inquiry?

11 A. I did not make an inquiry.

12 Q. But you made one after the work and
13 before the lawsuit?

14 A. Correct.

15 Q. Okay. Are you aware that you're
16 actually registered to do business in South
17 Carolina?

18 A. Do what now?

19 Q. Are you aware that you did file a --
20 you did file a registration to do business in South
21 Carolina as a foreign entity?

22 A. Probably to pay taxes.

23 Q. Okay. That's not the form that you
24 filed to pay taxes. But it was -- would you
25 disagree with me if I told you that it was filed

1 the day before this lawsuit was filed?

2 A. I don't have no way to know if it was
3 filed. I don't have any paperwork in front of me.

4 Q. You wouldn't disagree?

5 A. Do what?

6 Q. You wouldn't disagree to that?

7 A. I can't agree or disagree. I do not
8 know.

9 Q. But you would agree that November 15th
10 is after August 17th?

11 A. Correct.

12 MR. OLSON: We were talking about the
13 motions in limine as they came up.

14 THE COURT: Okay. Do we need to
15 address that this morning or can you finish up?

16 MR. OLSON: No. This may kind of
17 change up what I have.

18 THE COURT: All right. What do you
19 want to address as far as the motion?

20 MR. OLSON: Well, Andy and I have
21 talked about this as to the actual -- there's an
22 LLR order, an order of appeal.

23 MR. LACOUR: It's called a final order.

24 THE COURT: Yeah, he submitted that to
25 pretrial. So I already looked at that.

1 MR. LACOUR: It was on the motion in
2 limine.

3 MR. OLSON: Right. And I didn't know
4 if we were stipulating -- I didn't get to read the
5 motion. I don't know if you're advocating some of
6 it.

7 MR. LACOUR: I don't know.

8 THE COURT: The way that I read today
9 and understand it is, it's the Plaintiff's position
10 that -- and correct me if I'm wrong -- it's the
11 Plaintiff's position that the Plaintiff was led to
12 believe, by the owner, that a general contractor
13 was overseeing other aspects of the project, and
14 additionally that there was no need for the
15 Plaintiff to be licensed in South Carolina, because
16 under the specific codes statute governing
17 licensure spraying foam for means of support as
18 opposed to special licensure. Am I stating that
19 correctly?

20 MR. LACOUR: If you're going to put
21 foam in insulation, you've got to have an interior
22 renovation class license. And that's the only time
23 foam is mentioned.

24 Apparently, the state of the art has
25 outrun our statute. And they just don't have --

1 nobody has come to this state and put foam
2 underneath the slab to support it.

3 So they don't have the class for it.
4 And that's dealt with in the LLR. And I thought
5 his question was simply whether we thought that you
6 were going to be in front of a jury. And he was --
7 I don't know whether he wanted to use it or not use
8 it. But if we're here on a bench trial, I'm sure
9 that you want to hear from both sides. I'm not
10 going to say, keep it out. I don't know what their
11 position is going to be. It exists.

12 MR. OLSON: I don't know -- with that
13 motion in limine, I don't know if it would come in
14 or if you take judicial notice of it.

15 THE COURT: I think I can take judicial
16 notice of administrative order that was issued by
17 LLR. How relevant it is, the issues involved in
18 this case, is not a matter entirely. Because LLR
19 is dealing with the issue.

20 The issue that LLR was dealing with, in
21 that order, was the question of the \$500 fine that
22 was against the Plaintiff and whether that fine
23 should have to be paid or not in good conscience or
24 equity.

25 And, so, I think they were kind of

1 approaching this more from a regulatory standpoint
2 than more than a strictly legal standpoint that I'm
3 having to deal with.

4 MR. LACOUR: Yes. And that would be
5 accurate. The significance is that Mr. Burns is
6 the one that went to LLR after he decided not to
7 pay us. And represented to them in writing -- we
8 haven't gotten to those exhibits yet -- that we
9 were the general contractor for the whole job.

10 MR. OLSON: That's not true. This is
11 not factual.

12 MR. LACOUR: The citation and cease and
13 desist order.

14 So then after the hearing they decided
15 maybe that wasn't right. And they withdrew the
16 cease and desist order and they dismissed their
17 citation and left us free to pursue on these six
18 jobs alone. They gave us a warning. If you're
19 going to come back and do these, come see us and
20 get a license. But as for these six, you're off
21 the hook.

22 MR. OLSON: No, they didn't. I mean,
23 the order says that the work he did required a
24 license. He didn't have a license. They found
25 some mitigating issues. They dropped the fine.

1 But they never ruled that he was legal.

2 THE COURT: Let me fix this now then.

3 LLR doesn't have the capacity or jurisdiction to
4 rule in this Court whether failure to have a
5 license bars pursuing a mechanic's lien. They
6 simply don't have that authority to make that kind
7 of decision. That's something only for me. And
8 that's something that we can, of course, argue
9 about.

10 MR. OLSON: We would stipulate that --

11 THE COURT: I think we all agree on
12 that point. That LLR's job. That's not by the
13 instruction of the imagination.

14 MR. LACOUR: No. But the only
15 significance it really has is that now the LLR has
16 not once, but twice, said, we're not going to
17 require you to have a license for these six jobs.

18 They didn't say that you got a free
19 pass to come back to the state on the other jobs.
20 They specifically said, you know, we think -- this
21 is important, because it's a fine point that's
22 important. When Mr. Lowe answered, no
23 classification exists, therefore, you don't need a
24 license. He's technically right.

25 When the LLR guy in the middle of that

1 hearing had to face this issue is there a
2 classification or not, he dodged it. The way he
3 dodged it was, he said, I'm going to mitigating
4 circumstances and dismiss this and never address
5 the issue, which is why if that issue went to the
6 jury and we needed to address the classification
7 and the jury would have to pass factually, is there
8 a classification on.

9 So, if that was a factual basis -- now,
10 you may take that issue from the jury. It is one
11 for you to decide, but the statute says what it
12 says. I agree with what you said initially. I'm
13 just saying that the reason that didn't hash out
14 before is the hearing officer sidestepped
15 mitigating circumstances. They didn't have to
16 address it. The last thing he wanted to do is shut
17 down his statutory scheme in his final order.

18 MR. OLSON: Can we take this up when we
19 close?

20 THE COURT: Yeah. I think that's what
21 I was suggesting initially.

22 Do you have any additional questions?

23 MR. OLSON: I do. I do. And I think I
24 do. I might not.

25 BY MR. OLSON:

1 Q. There's been an exhibit marked already.
2 Scope of work, I'll show it to you. This is
3 basically where you put -- I guess this is the
4 proposal?

5 A. That's correct.

6 Q. And I can get a copy of it. This is
7 made on your letterhead; correct?

8 A. Correct.

9 Q. All plumbing and electrical must be
10 clear and free of standing water. That's from you
11 to the owner. All plumbing and electrical must be
12 prepared and secured by others?

13 A. Correct.

14 Q. That's from you?

15 A. Yes.

16 Q. So in terms of sequencing, you were
17 telling the owner, at one point, you will do the
18 work; correct?

19 A. No, sir.

20 Q. Well, so you -- okay. So you put crawl
21 spaces must be clean and free of standing water,
22 but it didn't matter? I think you're saying that
23 must be done before you work?

24 A. What I'm telling you is, we can't do
25 nothing until all of the rest of this work is done.

1 Q. I understand that. But in terms of the
2 final -- yeah, the final question here. This quote
3 is based on 10 sets of foam. How did you perform
4 that calculation?

5 A. By others we had performed in the past.

6 Q. Others?

7 A. Locations.

8 Q. And how does that -- I'm going to take
9 your word for it. You're saying that these -- and
10 I have no reason to object that these are the same
11 or roughly the same boxes?

12 A. Correct.

13 Q. Now, had there been any change,
14 conditions, or anything unforeseen, how would this
15 have been affected?

16 A. What do you call unforeseen?

17 Q. Well, for instance, you say this quote
18 is based on 1,200 square feet, about three feet
19 deep, crawl space?

20 A. Correct.

21 Q. It's possible for the crawl space to
22 shrink? Or is it always three inches of crawl
23 space? I mean, I'm assuming there's always been
24 some degradation?

25 A. There would have been an extra charge

1 if it were bigger.

2 Q. So that would have taken up -- you
3 would have gotten a phone call from them?

4 A. Correct.

5 Q. Tell me the significance -- you know a
6 guy named Wayne that works for Church's?

7 A. Correct.

8 Q. Have you ever met him personally?

9 A. Yes.

10 Q. Have you ever met with him in person on
11 payment issues for Church's Chicken jobs?

12 A. Yes.

13 Q. Have you ever met with him about
14 payment issues on this job?

15 A. No. In person, are you talking about?

16 Q. Well, in person, have you met with him
17 about payment issues on this job?

18 A. When we couldn't receive the money I
19 called Wayne, and he said that he was going to
20 check into it.

21 Q. Now, I saw in your deposition that you
22 met the Church's folks in Atlanta, in person, I
23 think, at one point?

24 A. On their stores.

25 Q. That was on some stores that were owned

1 by Church's?

2 A. Correct.

3 Q. Were you paid in full for those?

4 A. Correct.

5 Q. The email that your lawyers sent to the
6 LLR, are you relying on that as evidence that you
7 did not -- that you did not need a license for the
8 work that you did?

9 A. All you can do is ask a question when
10 you get it back in writing. I mean, what else do
11 you have to provide? Are you saying I'm supposed
12 to hire a lawyer to start the lawsuit against the
13 LLC? No.

14 Q. No. I was actually suggesting that if
15 you cared if it was legal or not whether or not you
16 would have contacted him before you did the work?

17 A. Well, let me state this, we are
18 licensed in Mississippi and Louisiana, as a
19 reciprocating license. That means they follow the
20 same rules and regulations.

21 We have done foam work in Louisiana and
22 Mississippi with the same procedure, and we do not
23 have to have a classification for foam void
24 filling.

25 Q. You mentioned in your deposition that

1 you were licensed in Mississippi?

2 A. Correct.

3 Q. You never mentioned anything about --
4 maybe I missed something. I just don't know if you
5 are a recipient in --

6 A. Pull up the state guard, it tells you.
7 It's public information. You can look at it.

8 Q. So you're saying by having a license
9 in -- when I think of reciprocal they provide a
10 license in one state, I, therefore, think you have
11 a license in another state. Are you saying that
12 you have a South Carolina license?

13 A. No, sir. You're misunderstanding and
14 you are trying to twist words. You have to take
15 tests in every state to get licences. In other
16 words, they're reciprocating. They have the same
17 rules and regulations to pass state license.

18 In other words, Mississippi has the
19 same rules as Louisiana. And South Carolina is
20 reciprocating to Mississippi and Louisiana. They
21 have the same rules and regulations.

22 Q. When you say the same rules and
23 regulations, are you talking about building codes
24 that they follow?

25 A. Building codes and code classification.

1 Q. But, again, you've never taken a test
2 in South Carolina? And it's required.

3 A. No, sir, I ain't licensed in South
4 Carolina.

5 MR. OLSON: I have no further
6 questions.

7 THE COURT: Anything on redirect?

8 REDIRECT EXAMINATION

9 BY MR. LACOUR:

10 Q. Just one thing. Tim, do you still have
11 the exhibits? If you could find Exhibit 8. That
12 was the email regarding the contract for working
13 one step ahead of you.

14 A. All right. Go ahead.

15 Q. I believe there was a schedule attached
16 to the back?

17 A. Correct.

18 Q. And we went through this on direct?

19 A. Correct.

20 Q. But at that time you think there was
21 eight stores listed on the schedule?

22 A. Correct.

23 Q. And then one store was taken off the
24 schedule by Mr. Burns; is that correct?

25 A. Correct.

1 Q. So that means that you only worked on
2 seven?

3 A. Correct.

4 Q. But then you got paid for one store?

5 A. Correct.

6 Q. Where did the check come from?

7 A. It came from Church's Chicken.

8 Q. So you got a check from Church's?

9 A. Correct.

10 Q. And the discussion earlier was, you
11 didn't know whose money it was, the check came from
12 Church's?

13 A. Yeah. I don't know where they got it.

14 Q. But, basically, we did work on seven
15 stores and we got paid for one?

16 A. Yes.

17 Q. And this is one of the six that we
18 didn't get paid on?

19 A. Correct.

20 Q. That's fine. Something was mentioned
21 about \$40,000, but you didn't get one?

22 A. That's all I got.

23 Q. They paid you what you invoiced?

24 A. Yes, sir.

25 MR. LACOUR: Nothing further.

1 THE COURT: All right. Sir, you can
2 step down.

3 Do you have another witness?

4 MR. LACOUR: I do have one more
5 witness.

6 THE COURT: Let me take five minutes
7 real quick and do what we can before lunch.

8 (A brief recess was taken.)

9 THE COURT: We'll go back on the
10 record, if we may. Mr. Lacour, you want to call
11 your next witness, please.

12 MR. LACOUR: Yes, sir. Your Honor, we
13 would call Mr. Avant Armentrout to the stand.

14 THE CLERK: Please raise your right
15 hand. Do you swear or affirm that the testimony
16 you shall give will be the truth, the whole truth,
17 so help you God?

18 THE WITNESS: Yes.

19 THE CLERK: Please spell your full
20 name, spelling your last name.

21 THE WITNESS: Avant Armentrout,
22 A-R-M-E-N-T-R-O-U-T.

23 AVANT ARMENTROUT,
24 been first duly sworn, testified as follows:

25 MR. LACOUR: Your Honor, may it please.

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. LACOUR:

4 Q. Mr. Armentrout, where do you live, sir?

5 A. Vidor, Texas.

6 Q. Are you married?

7 A. I am.

8 Q. What's your wife's name?

9 A. Trisha.

10 Q. Y'all got children?

11 A. Yes, we do.

12 Q. How many, sir.

13 A. Too many. I mean, four.

14 Q. And what is your profession?

15 A. Laborer, foreman, job supervisor in
16 some cases.

17 Q. So you would be like a working super or
18 a working superintendent?

19 A. Yes.

20 Q. And where do you work?

21 A. Marsh Waterproofing.

22 Q. And what type of work comprises the
23 majority of your day-to-day? What do you spend
24 most of your time doing when you're at work?

25 A. Making things happen, just get the job

1 done.

2 Q. And what's your educational background?

3 A. GED.

4 Q. And how long have you been working with
5 Marsh Waterproofing?

6 A. Probably six or seven years.

7 Q. All right, sir. And so in the work
8 that we're talking about here today, the material
9 that was to be installed underneath the floor slab,
10 what was that?

11 A. What was it?

12 Q. Yes.

13 A. SP430.

14 Q. And that was the material that you were
15 familiar with?

16 A. Yes, sir.

17 Q. Had you installed it before you came to
18 South Carolina?

19 A. Yes, sir.

20 Q. And had you been a member of the
21 two-men crews that Mr. Marsh talked about, that you
22 could go in and install that at other locations?

23 A. I was half of it, yes, sir.

24 Q. And how many times did you install it
25 before you came to do the six and seven in South

1 Carolina?

2 A. I don't know an actual number, but
3 we'll say 30 plus.

4 Q. 30 plus?

5 A. Yes, sir.

6 Q. Do you have any idea, just from memory,
7 how many was in Texas?

8 A. A bunch.

9 Q. Might have been the majority of it?
10 Was it 20 or more?

11 A. I can't argue that, but yes, sir,
12 believe me.

13 Q. And do you know what other states you
14 had installed this material? I'm not asking about
15 Church's. But do you know other states that you
16 may have installed this material for this purpose?

17 A. Tennessee, Alabama, Georgia, Louisiana,
18 Mississippi, maybe. I'm not sure on Mississippi.
19 Oh, Texas.

20 Q. And Texas, yes, sir.

21 Tell me about, as far as the Church's
22 buildings you may have done -- I'm shifting back
23 now to repairs back to Church's. If you just think
24 about Church's buildings, did you find them all to
25 be essentially built the same way?

1 A. Yes, sir, very similar. I mean, within
2 reason.

3 Q. Were there sometimes slight differences
4 in the shape or the size?

5 A. Slight variances.

6 Q. Almost built cookie cutter?

7 A. That's the term that I would use
8 preform, prefab, whatever you want to use.

9 Q. If fairly typical when you've do the
10 franchise stores -- I don't care if it's a Church's
11 or a McDonald's, Hardee's, or whatever, that when
12 they go around and build the store, they're
13 building them all the same. They just all look the
14 same?

15 A. Okay. I can't agree.

16 Q. Never mind. How about as far as when
17 you arrived on site in South Carolina, as far our
18 scope of the work, did we remove any trash or
19 debris from underneath the buildings?

20 A. Huh-uh.

21 Q. You have to give a verbal response.

22 A. No, sir. I'm catching that.

23 Q. Did we remove any water from under the
24 buildings?

25 A. No, sir.

1 Q. Did we try to inspect sewer or water
2 lines for repair?

3 A. No, sir.

4 Q. And we didn't make any sewer repairs
5 either?

6 A. No, sir.

7 Q. So we didn't do any piping of the floor
8 drains to the sewer connections?

9 A. No, sir.

10 Q. And did we mess with the electrical?

11 A. I'm still alive so, no, sir.

12 Q. So did we do anything except to put the
13 foam in place?

14 A. That was it, sir.

15 Q. Was any of that work going on at any of
16 the locations while you were there?

17 A. There may have been one or two where we
18 showed up and somebody was getting a little bit.

19 Q. What did you say? You might have
20 gotten right there on their heels?

21 A. Yes, sir.

22 Q. Did you supervise or oversee any of
23 that preparatory work that's being done?

24 A. No, sir.

25 Q. So if you got there and they were

1 finishing up, you just had to wait on them?

2 A. Yes, sir.

3 Q. And so do you know who was doing it?

4 A. No, sir, I do not.

5 Q. I mean, you may have seen people there.

6 But did you have any interaction with them?

7 A. No, sir.

8 Q. And if you were to arrive and find
9 something wasn't done, what did you do about it?

10 A. If no one was there that directly
11 pertained to them, there was a gentleman named
12 Ricky or Wayne. That really was my contact.

13 Q. And so the Wayne guy, he worked at
14 Church's?

15 A. Yes, sir.

16 Q. Who did Ricky work for?

17 A. Mr. Burns.

18 Q. So you just worked with those two
19 people; right?

20 A. That's correct.

21 Q. That's who you called?

22 A. That's correct.

23 Q. Do you know if there was a point in
24 time where something like that happened at one of
25 the stores?

1 A. Yes, sir, there was. But, I mean,
2 couldn't put a finger on it now.

3 Q. You don't remember what the issue was?

4 A. That's correct.

5 Q. Do you happen to remember where it was?

6 A. No, sir.

7 Q. Just that it was here in South
8 Carolina?

9 A. I want to say it was a plumbing issue,
10 maybe.

11 Q. So leaking in -- either in some
12 plumbing or some sewer?

13 A. Yes, sir. I believe that's who it was.

14 Q. So, in that case, do you know who you
15 called?

16 A. It would have been Wayne or Ricky. And
17 Ricky got real hard to get ahold of. I'm not sure
18 why.

19 Q. In that instance, once you called, did
20 somebody address it?

21 A. Yes, sir. You couldn't proceed without
22 doing that.

23 Q. So was there a record kept of when
24 Marsh sent employees to South Carolina?

25 A. Yes, sir.

1 Q. Like a time record?

2 A. That's correct.

3 Q. I'm going to hand you up what's been
4 premarked Plaintiff's proposed 9. So what is
5 Plaintiff's proposed 9?

6 A. Timesheet.

7 Q. All right, sir. And to talk about
8 timesheets for a minute, do you keep timesheets all
9 the time?

10 A. Not anymore. It's digitally. But yes,
11 sir, it used to be.

12 Q. But there is a time record kept?

13 A. That is correct.

14 Q. Do they always keep time records on
15 every job?

16 A. Unless I'm not going to be doing
17 anything. Unless I have to go look at something.
18 But, you know, if there's actual work done, yes,
19 sir.

20 Q. Then what becomes of those, once
21 they're filled out or punched in?

22 A. I turn everything into the office.

23 Q. And the office use it for what purpose?
24 What do they do with it?

25 A. Allocate it to each job. I mean,

1 that's how you know what to do. I mean, what to
2 charge each job; money is being spent, what time
3 you have there.

4 Q. And those are typically prepared by
5 whoever is the superintendent?

6 A. Yes, sir.

7 Q. All right, sir. So when you're putting
8 down time for the job that you're the foreman on,
9 you're putting it down at or near the time that you
10 do the work?

11 A. That's correct.

12 Q. All right. And do your time records
13 indicate when you first traveled to South Carolina,
14 the very first trip?

15 A. It looks like it would be 8/3.

16 Q. All right, sir. Can you tell what
17 location you went to?

18 A. Dorchester.

19 Q. And what did you find during that first
20 trip?

21 A. They weren't ready.

22 Q. Do you have any recollection of what
23 the condition was? What was going on?

24 A. I'm pretty sure, initially, it was
25 water. Now, much past that, I don't know, because

1 I ain't going swimming in it.

2 Q. So it either had a leak or it wasn't in
3 conduit or whatever was supposed to happen?

4 A. It wasn't where it needed to be for me
5 to do my job.

6 Q. And so how long did y'all stay in hopes
7 that they'd get it right?

8 A. At least three days.

9 Q. Is that what it says?

10 A. Three days.

11 Q. Were you able to actually start your
12 work at that location on that trip?

13 A. No, sir.

14 Q. And so after three days, where did you
15 go?

16 A. Texas.

17 Q. You went back, okay. So do the time
18 records reflect how long it was before you came
19 back to South Carolina to try again?

20 A. Yes, sir. It looks like we returned on
21 8/17.

22 Q. Okay. So it was about 10 days, almost
23 two weeks in between leaving the first time and
24 coming back the second?

25 A. Yes, sir.

1 Q. And when you came back a second time,
2 what location did you go to first?

3 A. Dorchester.

4 Q. Is that because of the schedule?

5 A. That's correct.

6 Q. That's the one that you were supposed
7 to go to first?

8 A. Yes, sir.

9 Q. And so when you got back the second
10 time, was it ready that time?

11 A. Yes, sir.

12 Q. And then can you just tell us that
13 Dorchester was the first location. And then what
14 was the second location?

15 A. It's kind of hard to see on here.

16 Q. Yes, sir.

17 A. Rivers, the one on Rivers.

18 Q. Did it show when you got to Rivers?

19 A. Yes, sir, the 19th.

20 Q. So backing up then, you started -- you
21 got to Dorchester to start the Dorchester work on
22 what day?

23 A. The 17th.

24 Q. And you got to the second location by
25 the 19th. So you are at Dorchester on the 17th and

1 18th; is that right?

2 A. Yes, sir.

3 Q. Of August?

4 A. Yes.

5 Q. 2017?

6 A. Yes.

7 Q. And at the Dorchester location, were
8 you able to complete all of the work that we were
9 supposed to complete at that location?

10 A. Yes, sir.

11 Q. So we got the foam in and we got the
12 scuttle hole closed up?

13 A. That's correct.

14 Q. And any time that you were there, did
15 anybody come up to you who worked with Mr. Burns at
16 any occasion, or anybody else, and complain about
17 the quality of your work?

18 A. No, sir.

19 Q. Did anybody make any complaints to you
20 about the quantity of your work?

21 A. No, sir.

22 Q. Have you heard about any complaints
23 later?

24 A. Not to the best of my knowledge, no,
25 sir.

1 Q. Quality or quantity?

2 A. No, sir.

3 Q. All right. So the two men on the crew,
4 we heard earlier one usually operated the machine
5 on the trailer, and the other usually had to
6 operate the nozzle, the gun below?

7 A. That's correct.

8 Q. Which one were you?

9 A. Underneath the hosing.

10 Q. So you were under the building running
11 the gun?

12 A. That's correct.

13 Q. And so you have personal knowledge that
14 the location on Dorchester Road was completely
15 filled with foam?

16 A. Yes, sir, I do.

17 Q. And was that usually your job?

18 A. I choose it. I like it.

19 Q. I get it. But was that typically the
20 one that you would choose if you were
21 superintendent?

22 A. Yes, sir.

23 Q. You said you did 20 or 30. So that
24 means that you were under 20 or 30 of these
25 buildings?

1 A. Yes, sir.

2 Q. So, in your experience, what was the
3 ground surface? Was it dirt or something else?

4 A. Concrete.

5 Q. Underneath?

6 A. Yes, sir.

7 Q. Some of it was concrete underneath?

8 A. Yes, sir.

9 Q. Did other ones have dirt underneath?

10 A. Very few.

11 Q. Interesting. So did they all have
12 cinder block walls or brick walls around the
13 outside?

14 A. Yes, sir.

15 Q. As far as you know, those walls were
16 set on some kind of footing?

17 A. I'm assuming. I don't do that kind of
18 work.

19 Q. Yes, sir. But if it was covered with
20 the dirt and the concrete surface, then you
21 wouldn't know?

22 A. Yes, sir.

23 Q. But, typically, that's how they support
24 them?

25 A. Yes, sir.

1 Q. So you had cinder block or brick walls.

2 And did you sometime have piers in between?

3 A. Yes, sir.

4 Q. And other times you didn't?

5 A. You know, you can maneuver through.

6 Q. And did we do any changes to -- whether
7 it was concrete or dirt, did we do any changes to
8 that concrete or that dirt?

9 A. No, sir.

10 Q. Did we make any changes to the concrete
11 or brick walls?

12 A. No, sir.

13 Q. Where they had steel girders, did we
14 mess with the steel?

15 A. No, sir.

16 Q. How about the existing slab, not
17 talking about the open and close. That whole slab,
18 did you repair any holes in that slab?

19 A. No, sir.

20 Q. The steel girders, if there were joists
21 between those girders, did you mess with the joist?

22 A. No, sir.

23 Q. And I guess lastly, the part of the
24 buildings that was above the slab, the walls and
25 the windows and the door of the store, did we do

1 any work up there?

2 A. No, sir.

3 MR. LACOUR: I think that's all the
4 questions I have. Please answer any questions
5 Counsel may have.

6 MR. OLSON: Two questions.

7 CROSS-EXAMINATION

8 BY MR. OLSON:

9 Q. How are you doing?

10 One point. You testified that nobody
11 -- that you were not overseeing anybody at the
12 project, the Charleston project, I assume?

13 A. Say that again. I couldn't hear you.

14 Q. You testified earlier that you were not
15 overseeing anybody, any other trades or whatnot?

16 A. No, sir.

17 Q. My question to you is, at the
18 Charleston job, were any -- was any contractor
19 overseeing your work or supervising your work?

20 A. Which Charleston job, sir?

21 Q. Well, the job that we're here about
22 today.

23 A. There's six of them.

24 Q. Well, there's one Charleston?

25 A. There's six of them.

1 Q. Well, two.

2 Maybe they run together with you. Did
3 you have anybody overseeing, supervising, or
4 directing you to do work on these jobs in the
5 field?

6 A. I had my directions before I got there.
7 And I knew what I was supposed to do. As far as
8 anybody being there, you cannot go where I go
9 without an air mask. So, who showed up, whoever it
10 was, I'm only there from 8 to 10, 16 hours at a
11 time.

12 Q. As far as you know, though, you weren't
13 given any instruction or nobody made themselves
14 aware or known to you?

15 A. There was a Ricky, and I want to say in
16 Dorchester, had come by. And I happened to be out
17 at that time. But as far as instruction, no, sir.

18 Q. Okay. And you think when you bumped
19 into Ricky that was kind of happenstance, that was
20 the right place at the right place? It wasn't
21 scheduled in my book?

22 A. No. It was not scheduled, not on my
23 part. He might have come by to see what was going
24 on. I don't know. I don't know those folks. I'm
25 there to work. It's not a vacation.

1 MR. OLSON: I have no further
2 questions.

3 THE COURT: Any redirect?

4 MR. LACOUR: Nothing on redirect.
5 Thank you.

6 THE COURT: You can step down.

7 MR. LACOUR: The Plaintiff doesn't have
8 any additional witnesses, Your Honor. There's two
9 things that I would specifically call the Court's
10 attention to, whether we were in a jury setting or
11 not.

12 First, is that the Defendant did raise
13 the 90-day filing requirement as a potential
14 defense. And on the Charleston lien, which is in
15 evidence, it was filed on November 16th, 2017, and
16 served on November 16th, 2017. And the deadline
17 for doing so, the 90th day by my count, is November
18 the 17th. So we made it just under the wire.

19 The six-month filing requirement -- the
20 summons and complaint was not raised. But just for
21 the record, we filed it on January 22nd. It was
22 served on February 6th. And, of course, you can
23 get these off the documents that were filed.

24 But the deadline for filing the suit
25 would have been February 15th. So it was a couple

1 weeks earlier. The second thing is the matter of
2 award of attorney fees is not being waived. That
3 is reserved for the Court post-verdict, as a matter
4 of law.

5 There's no factual issue here. We
6 hadn't put up any evidence on it. And my
7 experience was typically that we do that by
8 affidavit after we resolve it all between
9 ourselves.

10 And so those are the two things that I
11 want to call the Court's attention to. Since we
12 are doing this nonjury, are we just going to
13 postpone motions to one time at the end?

14 THE COURT: Yes, that's what I was
15 planning on doing.

16 MR. LACOUR: That's what I thought too.
17 That's all we have, Your Honor.

18 THE COURT: And, of course, the
19 exhibits that you showed the witnesses, you're
20 going to move?

21 MR. LACOUR: I haven't moved those in
22 yet, but I may have more, if they are going to call
23 Mr. Burns. I have another stack here.

24 THE COURT: Good enough.

25 MR. OLSON: We can clarify. Normally,

1 at this time I would raise a directed verdict. Do
2 you want me to do it later on?

3 THE COURT: Yes. For purposes of the
4 procedure and for purposes of protecting the
5 record, I will presume that you are moving for a
6 directed verdict on all the Plaintiff's causes of
7 action under the mechanic's lien because they were
8 not licensed. And we can argue that later once we
9 have the evidence.

10 MR. OLSON: As long as I am not waiving
11 it.

12 THE COURT: No. You're not waiving any
13 arguments or directed verdict on these issues.

14 I assume that you are going to call Mr.
15 Burns after lunch?

16 MR. OLSON: I'm going to talk to him in
17 just a second. Sorry. I'm going to send you an
18 email about that and let you know.

19 THE COURT: We'll reconvene then around
20 2, 2:15, somewhere around there.

21 (A lunch recess was taken.)

22 THE COURT: If we could go back on the
23 record in Marsh Waterproofing versus Steeple
24 Dorchester.

25 At this point, does the Defense plan to

1 offer any testimony or call any witnesses.

2 MR. OLSON: Your Honor, we do not.

3 THE COURT: We can go straight into
4 argument then. Who wants to go first?

5 MR. OLSON: As far as the motion?

6 THE COURT: Sure.

7 MR. OLSON: And we had voluntarily
8 dismissed our counterclaim. And that was accepted
9 by opposing counsel.

10 THE COURT: Thank you.

11 MR. OLSON: Okay. So, Your Honor, the
12 Defendants, Steeple Dorchester and Hampton
13 Management would move for a directed verdict, based
14 on the fact that pursuant -- well, South Carolina
15 law, as well as the testimony already provided,
16 Marsh Waterproofing is a Texas entity.
17 Importantly, is not licensed in South Carolina as a
18 licensed contractor. That's the first prong.

19 I think the second prong that needs to
20 be considered I think is proven by overwhelming
21 evidence. Did the work they do require a license?
22 I have no problem -- and I'm -- we would defer to
23 your judgment on that.

24 I think we would add that when
25 considering that issue, the work falls under South

1 Carolina 40-11-20(8). Meaning it is structural in
2 nature. If you look at the expert's report, the
3 overall context that this work was done, Church's
4 basically having a remedial project for structural
5 failures at other locations. Whether what Tim
6 Marsh calls filling a void or spraying foam or
7 filling gap or whatever, that's semantics. It's
8 structural in nature.

9 I mean, the foam is being applied to
10 support the structure, either as additional support
11 or in some cases -- you know, the expert report is
12 talking about eminent failure. And they are the
13 structural -- I mean, they're the end contractor in
14 terms of -- in the beginning, in terms of
15 structural. We talked about electrical. We heard
16 they didn't do any water cleanup. We also heard
17 them say they didn't direct any contractors as the
18 general contractor.

19 That's not what the statute says. The
20 statute says that you are engaged in general
21 construction, which requires a license, if you're
22 involved in the structural improvement for repair
23 to -- you know, I would say in this case it's
24 actually commercial structure. That's what the LLR
25 ruling found when it -- when they held the work

1 required a license. That is what they raise it on.

2 I know that we went through a bunch of
3 line items. Well, they enumerated, well, you know,
4 it's not asphalt, it's not this, it's not that. It
5 falls on the greater overlapping structural
6 requirement, which requires a license, due to the
7 fact that you are engaged in construction, at the
8 point that you engage in anything that's deemed to
9 be structural.

10 And I don't think that the evidence
11 before the Court right now, anyone can conclude
12 that the work they did was anything other than
13 structural in nature. I just don't see how they
14 get there.

15 I went through some stuff -- I mean,
16 maybe I didn't need to and I didn't mean to be --
17 certainly being belligerent when asking about why
18 Tim Marsh had never been here before, why he never
19 reached out to the LLR.

20 We saw an email to the LLR, which was
21 months after the work was performed. I mean,
22 that's the first time they ever seemed to care.

23 As far as the testimony, we heard
24 Mr. Marsh say -- there was a question between my
25 client and him about whether a license was

1 required. Mr. Marsh responded that he would get
2 back to him. And he never heard from him again.
3 That is his testimony.

4 The LLR also holds it is the
5 responsibility of the contractor to find that out.
6 You know, maybe we would have an issue if my client
7 had called him and said, no, no, no. Hold on. You
8 don't need a license. That might be an issue. We
9 would still argue it would be the same holding.

10 We don't have that in this case. And
11 really it doesn't matter. He knew those facts. I
12 think this case involves work that is certainly
13 within the legislative intent, which is protection
14 of the general public. I think that the State
15 likes to regulate contractors.

16 You know, one thing I was just thinking
17 about at lunch, had there not been a dispute, who
18 would ever know that they had ever been here.
19 There's no permit. There's nothing. And I think
20 that -- you know, I didn't write the rules. But
21 there are reasons, you know, state legislators have
22 requirements.

23 I mean, I'm sure that if a dentist
24 wants to practice in California, I'm sure teeth are
25 the same there than here. But for some reason you

1 need to perform a tooth extraction. It can lead
2 to -- I think what some people perceive as an
3 inequitable results at times.

4 But the Court has addressed this on
5 numerous occasions. I think the only case that I
6 really need to cite is a very recent case
7 C-Sculptures case. I have a hard time saying that.
8 In that case, which is C-Sculptures, LLC versus
9 Brown, Supreme Court 2013 case. It basically
10 states that a licensed contractor, okay, but an
11 under a licensed contractor. They weren't properly
12 licensed in this case. I think the licensing in
13 the C-Sculptures, they had 100,000. They were
14 licensed over that.

15 An arbitrator found -- ruled against
16 the owner's motion to dismiss. They brought the
17 motion saying that he wasn't properly licensed.
18 The Court deemed the arbitrator's decision to be
19 not only, you know, overturned, but it was
20 manifested disregard for southern law. I think the
21 facts in this case are much less friendly to the
22 Plaintiffs in this matter than they were in that
23 matter.

24 I think, as far as a directed verdict,
25 we would formally make it under South Carolina

1 40-11-370. I think Mr. Lacour stated so many times
2 for the last few months. It's only fair that we
3 have it entered in the record in this case. An
4 entity which doesn't -- that doesn't have a
5 license, as required by this chapter, may not bring
6 an action either to enforce the provisions of a
7 contract.

8 And that's where we are right now.
9 They are seeking to enforce a contract via lawsuit.
10 They are barred from doing that. And we really
11 don't -- I don't know if there's anything else I
12 want to say about that. I appreciate it.

13 THE COURT: Do you want to be heard,
14 Mr. Lacour?

15 MR. LACOUR: Yes, sir. Absolutely.
16 Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. LACOUR: Factually, the record
19 before Your Honor right now is that these buildings
20 were composed of dirt footings, CMU or brick walls,
21 steel girders and joists, corrugated steel and
22 concrete slab. Those are the structural elements
23 of the buildings.

24 We did not do anything to any
25 structural element of the building. If we had, we

1 would have gotten a different answer from the LLR
2 when we first wrote an email and told them about
3 our scope of work.

4 So, factually, there is no structural
5 work that falls within any of the classifications
6 of general contractors. Part of the argument that
7 I heard earlier, and the testimony elicited on
8 cross, seems to be that their position is premised
9 upon the fact that we've got to be a subcontractor,
10 but we can't be if we don't have a contract with a
11 general contractor. And that's just not accurate.

12 Because today there are dozens and
13 dozens of different arrangements where a
14 subcontractor on the job has the contract with
15 either the owner or the construction manager.

16 In this case, if you look at the
17 exhibits that we've placed in evidence, with name
18 Hamilton Management, which is one of the Defendants
19 appears on -- I think on almost every exhibit.
20 Mr. Burns' name sits above a designation that he is
21 speaking for Hamilton Management and Hamilton
22 Management happens to control all of the entities.
23 We didn't get into that. But he did testify that
24 Mr. Burns controlled the management company,
25 Hamilton controlled all these restaurants. And

1 although he asked us to send his proposal addressed
2 to something called State Acquisitions, we dealt
3 with him.

4 Now, in a standard construction
5 management arrangement, all the, quote,
6 subcontractors, unquote, subcontractors have their
7 contract with the owner, and so does the general
8 contractor. And in what they call a construction
9 manager at risk arrangement, all of the, quote,
10 subcontractors, end quote, and the general
11 contractor have their contract with the
12 construction manager. So we didn't know if we were
13 dealing with an owner, unknown to us at the time,
14 or we're dealing with a construction manager, are
15 we dealing with a restaurant manager? We didn't
16 know. We're in Texas. We were told that he would
17 call us. That's what we knew.

18 So, the fact that we are dealing with
19 Hamilton Management did not tip us off and doesn't
20 indicate -- has no indication -- the fact that we
21 don't have a contract with the general contractor
22 has no bearing on the issue, is what I'm saying.

23 There's no requirement that we have a
24 contract with the general contractor. That might
25 be what most people are used to. But that's not

1 always the case. The second thing is 40-11, that
2 whole section of law is the statutes governing
3 general contractors. And, so, you know, if we're
4 not a general contractor we're not subject to that.

5 And, secondly, if you look at the
6 classifications, which became Exhibit 14, Your
7 Honor, can look it up, look it up and make sure
8 it's right. But those classifications are the
9 different types of work that general contractors
10 do. There's not a classification for it, not a
11 general contractor.

12 Now, he might have to go look at the
13 mechanical contractor classification or the
14 electrical contractor classification. And you
15 might get caught someplace else. If you don't fit
16 within the general contractor's classification,
17 you're not doing general contracting work.

18 Well, the only way they're trying to
19 hook us into that is, like I said, working on the
20 structural elements of the building. And we
21 didn't.

22 The decided cases -- and there are a
23 bunch of them. I've been doing this for a while.
24 But all of the decided cases always -- and I've
25 read them all. I'll double check. All of the

1 decided cases that say, you can't enforce this
2 contract because you didn't have a license at the
3 time you entered into it, all those cases, to the
4 very last one involved a company who was the only
5 contractor on the job and acting as general
6 contractor. It doesn't matter if it's a commercial
7 building. It doesn't matter if it's a residential
8 structure. If you read the case law, it always
9 involved just that one company. Nobody, in any of
10 those cases, ever said don't look at me, I'm not
11 the general contractor. They all, by their scope
12 of work, were the general contractor.

13 We, by our scope of work, are the
14 furthest thing from the general contractor. That
15 is, they didn't do any general conditions.
16 Meaning, general conditions, if you're not familiar
17 with the meaning; power, water, temporary power,
18 temporary water, porta-potties, trash dumpster,
19 general conditions, whatever it takes to do that
20 job. We didn't do any of that. We didn't
21 supervise others. That's what a general contractor
22 does.

23 If you go through the whole list of
24 things that I asked him on direct exam, none of the
25 general contractor functions were carried out by

1 us. We just showed up last and did our work.
2 That's not a general contractor. We would have
3 been there on day one if we were the general
4 contractor, that we're supposed to be supervising
5 the other guys.

6 So, factually, if we didn't change,
7 repair, alter, well known -- you know, redo the
8 masonry, redo the block. We didn't work on any
9 existing structure. We didn't move any dirt
10 around. So if we didn't work on some of that, then
11 we're not doing structural work. And that's the
12 problem that Mr. Lowe, the administrator, had when
13 he signed his email, he couldn't fit it into any of
14 the boxes.

15 So the C-Sculpture case, last point, is
16 the same as all the others. That might have been
17 an under-licensing case, instead of no licensing
18 case. But it all works out the same. But he's
19 still going on jobs. He's the only guy on the job.
20 Read the opinion. There's no discussion about
21 anybody else on the job, no discussion about any
22 contractor above him. He was the general
23 contractor.

24 And that's the one thing that all
25 these -- you can't recover it, because you don't

1 have a license to have in common, that all involved
2 either admittedly or through the proof of facts
3 during the scope of the work, general contractors.
4 And that's just not us.

5 THE COURT: Can I ask one question. I
6 don't think this was in the record or at lease I
7 didn't hear the answer. Who did pull the permits?
8 I'm assuming that these commercial businesses, they
9 would need a permit for the electrical, plumbing,
10 structural. Who did that?

11 MR. LACOUR: You hit on a good point.
12 Typically, when the electrician or a plumber shows
13 up to pull a permit, we were told they had the
14 Solaris people for all the work, except the sewer.

15 Typically, when those guys showed up
16 and pulled their permit, they're going to check to
17 see who's got the general permit. And if the sub
18 wants a permit and the general hasn't drawn his
19 yet, they're going to be on it. And they're going
20 to be working on it.

21 But, you know what, we don't know. It
22 wasn't us. We were in Texas. All that work had to
23 be done before we got here. It wasn't -- it's not
24 in our proposal to pull any permits.

25 THE COURT: Okay.

1 MR. LACOUR: We don't need any permit
2 for our work, because we are coming last. So,
3 you're right. Whoever got there and did all that
4 preparatory work would have had the permits. We're
5 going to show up and put it in our foam.

6 THE COURT: But your client was assured
7 that there was some other general contractor?

8 MR. LACOUR: Yeah. In exhibit --
9 there's an Exhibit Number 8. In Exhibit 8, there's
10 two things dealt with, which was specifically
11 represented us in that email. One is, you're
12 right, there's a discussion about we're going to
13 have our contractor working one step ahead of you
14 in a list of prep work; the water, the electrical,
15 and plumbing, and everything.

16 So we're sitting there in Texas saying,
17 okay, well they've got a contractor. Fine. And
18 that was our impression. The other thing is,
19 here's your schedule. So when you're talking about
20 the scheduling, sequencing, coordination, all the
21 people have to be out there, as well as the general
22 conditions. It's just obvious to us somebody else
23 is doing it. We don't need to address that. It
24 has nothing to do with our scope of work.

25 Now, you go back to Hamilton

1 Management. They never told us, did they manage
2 stores or did they manage construction. It's not
3 unusual for a chain store or a chain of restaurants
4 to have one company, just like they had one
5 engineer go look at every building, have one
6 company come and be the general contractor.

7 It just never concerned us. This
8 wasn't an issue at all until I was asked to file a
9 mechanic's lien. I said, have you checked with the
10 LLR. Well, no, we checked with him. And he told
11 us that he checked with somebody. Fine. Check
12 with the LLR first. And Mr. Lowe's response.

13 THE COURT: Because, obviously, he
14 didn't want to file a mechanic's lien if he had to
15 be licensed, because you knew that --

16 MR. LACOUR: If we thought that was
17 going to be a problem. You're right. That's the
18 Exhibit 13. And then Bill Richey is personal
19 counsel for the company. And, so, I told Bill, we
20 need to double check. And he did. And that's
21 where we get that email. Unfortunately, Mr. Lowe,
22 last spring of '19 had, like, quadruple bypass
23 surgery. He had been the administrator for quite a
24 while. And I've had prior dealings with him. He
25 knows what he was doing.

1 THE COURT: All right. And I have
2 researched this recently, that if I'm not mistaken
3 foreclosure in a mechanic's lien is an equitable
4 cause of action. And I don't know that I've ever
5 had this kind of issue come up. But let's assume
6 for a moment that the Court finds that
7 representations were made to your client that there
8 is a general contractor on site and they're doing
9 their part to take care of items one through seven
10 before they come in with item number eight and do
11 their job. Assuming that there's not a general
12 contractor, I mean, to what extent of the doctrine
13 of unclean hands prevent the defendants from
14 avoiding your mechanic's lien, if they're both
15 equitable principals?

16 You seem like you want to speak to
17 that.

18 MR. OLSON: Well, I do. There's a lot
19 of things that -- as to your question -- and, I
20 mean, if I'm clear as to what you're asking, the
21 statute states that if you're an unlicensed
22 contractor, you're not allowed to enforce the
23 contractor. It could be equitable mechanic's lien.
24 You can't bring a lawsuit.

25 THE COURT: Right.

1 MR. OLSON: Just to address the one
2 point that -- well, first of all, we never sent out
3 a general contractor. They were engaged in general
4 construction. It's defined in South Carolina as a
5 general contractor supervising general
6 construction. You are engaging in general
7 construction, if you perform an improvement to a
8 property. That's the statute that I cited. So to
9 the extent that it's been implied that they were,
10 no. The only reason that we even mentioned who was
11 or wasn't is because testimony and arguments made
12 by the other side seem to be leaning towards that,
13 well -- and they have been saying, well, we thought
14 they were the general. We thought they might have
15 been. There's nothing in the record that would
16 indicate we ever told them that there's a general
17 contractor. And, I mean, Tim Marsh made the same
18 argument.

19 THE COURT: And I'm not saying that
20 they are, Mr. Olson. And I'll just go ahead talk
21 out loud and address the Court's biggest concern
22 that I've got in this case. And it basically flows
23 like this, they're contacted by Church's Fried
24 Chicken who apparently gets wind that there's seven
25 stores in South Carolina that could use their help.

1 And then they deal with your client, who -- and I'm
2 going to get copies of the exhibits, because
3 obviously I have not seen them yet. But,
4 apparently, there's a representation made, hey, we
5 got a general contractor and we just need you guys
6 to come in and do this last part of the job. At
7 which point they come in, everybody agrees to a
8 contract price, the Plaintiff does their thing,
9 puts the foam in. I haven't heard any testimony
10 and apparently there's none in the record that it
11 was done negligently, or wrongly, or improperly, or
12 damaged your building, which is normally what I see
13 in these cases.

14 Normally, the people who own the house
15 or the property, there's always a dispute. And
16 they're saying, we didn't pay the general or we
17 didn't pay the contractor A, B, C, D ad nauseam.
18 So, apparently, the work was fine. And everything
19 was done okay, because there's no evidence to the
20 contrary. And then as soon as they bill your
21 client, that's when this all -- it sounds like your
22 client got the benefit of 36,000 whatever dollars
23 worth of foam and just doesn't want to pay for it.
24 That's how I'm seeing it.

25 MR. OLSON: I understand your argument

1 on the equitable side. First of all, the Court
2 doesn't really -- I mean, the law doesn't give any
3 discretion on that. To make you feel better, okay,
4 they were paid for one building. My client was
5 having -- was basically late. And then with the
6 mechanic's lien, they lost every one of their
7 leases. Nobody knows if the property is -- you
8 know, they weren't there to make a complaint. We
9 are not saying that. We don't know. But the fact
10 of the matter remains that pursuant to the statute,
11 it wouldn't matter if it's the most pristine job
12 anybody had ever done. I think it's wonderful.

13 The other thing, there's been no
14 representation by my client that there was a
15 general contractor. What they keep saying is they
16 reference the one email where they said our
17 contractor is going to be ahead of you. They are
18 talking about the guy that they requested.

19 THE COURT: Let me go at it in a
20 different way then. Why didn't your client pay
21 them? Because if you're saying that your client is
22 saying, okay, the work was fine, we didn't see any
23 problems. And then your client lost all these
24 leases and then suffered this horrible financial
25 strain from losing all those leases, then the easy

1 thing for your client to do is, as soon as they get
2 notice of lien, pick up the phone, we are so sorry,
3 what address do we need to FedEx the certified
4 check to.

5 I mean, that solves the problem.
6 You're either using this as a way to avoid paying
7 for work, which was not defective, or there's some
8 other reason.

9 MR. OLSON: Well --

10 THE COURT: Why?

11 MR. OLSON: I guess why did they allow
12 the lien to get filed?

13 THE COURT: No. Why haven't -- why
14 didn't they pay? I mean, did they just not want to
15 pay? Did they just decide they didn't want to pay?

16 MR. OLSON: To the extent of that, I
17 can tell you why. There was basically negotiations
18 along with the other franchisor owner, mainly
19 their -- the REIT that owns all the stores that
20 they were leasing from about -- you know, they had
21 a pool of money and they were prioritizing. There
22 are a bunch of emails about this. The liens were
23 filed. And at that point that's when leases were
24 terminated. And that's -- I mean, if anything,
25 they would have never paid them in the first place,

1 if they were trying to suggest -- I mean, if this
2 was like a way out -- I mean, and there's nothing
3 to indicate that they -- my clients searched these
4 people out. They were recommending to them. And
5 this was not an issue.

6 Once the suits were filed and
7 everything else -- I mean, I don't know the Court
8 will consider this, but, yeah, I mean, if you're
9 looking at a bunch of secured debt and -- if they
10 were a little more patient -- I don't want to
11 dredge on this.

12 THE COURT: The problem of being
13 impatient is then the clock runs on their lien, and
14 then they lose any recourse.

15 MR. OLSON: We weren't days away from
16 this. To the extent that they are were able to
17 file a lien -- and you just said their clock runs.
18 That's assuming they have a right to file. That's
19 assuming.

20 THE COURT: Okay. I understand your
21 position.

22 Mr. Lacour, did you want to respond to
23 anything that I said?

24 MR. LACOUR: To respond to your
25 question, we think the equities are with the

1 contractor, we never said we were living in South
2 Carolina. We even told them that we weren't. The
3 whole discussion he talked about in his testimony,
4 about Mr. Burns said he checked with somebody and
5 it was fine.

6 THE COURT: That's fine. Because all
7 of the other situations where I have refused to
8 enforce a mechanic's lien in a situation where the
9 contractors are representing that they were
10 licensed, bonded, and insured, and everything else
11 under the sun. And they weren't.

12 MR. LACOUR: Well, if I confine myself
13 to the record, that's exactly right. We never said
14 we were. We always told them we were not. And
15 that's as far as we got today. Everything else
16 I've had for you on that would have come in through
17 Mr. Burns.

18 MR. OLSON: We don't assert that they
19 made any misrepresentation about that. It never
20 came up.

21 THE COURT: I understand. The Court
22 will take the matter under advisement. I'll check
23 on these cases. I'll try to have y'all an order by
24 tomorrow afternoon or Friday.

25 MR. LACOUR: I had one other thing. I

1 would like to move my Exhibits 1 through 14 into
2 evidence.

3 THE COURT: Those are in evidence,
4 subject to any objection.

5 (Plaintiff's Exhibits 1 through 14 were
6 put into evidence without objection.)

7 THE COURT: Do you have something else?

8 MR. LACOUR: Did we end up with the
9 counterclaim being withdrawn?

10 THE COURT: He put that on the record.

11 MR. LACOUR: Did the Court wish to hear
12 from us right now on affirmative defenses?

13 THE COURT: No.

14 MR. LACOUR: Thank you, Your Honor.
15 That's all we would have.

16 THE COURT: Gentlemen, thank you.

17 MR. OLSON: I guess when it comes out
18 we will come back post trial. How would we do
19 that?

20 THE COURT: Any post-trial motions we
21 will simply allow those to be made. I always give
22 10 days. And they can be made by a written motion,
23 as opposed to us reassembling and a record being
24 made. That's the way that I prefer it. Now, if I
25 were down here frequently, I would invite y'all

1 back.

2 MR. LACOUR: We don't mind traveling.

3 MR. OLSON: We go all over the state.

4 THE COURT: Well, I appreciate it. Any
5 post-trial motions, let's handle them the good
6 old-fashion pen and paper. And I think that will
7 be probably sufficient to protect the record.

8 Thank y'all.

9 (The proceedings concluded.)

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1 State of South Carolina)

2 County of Charleston)

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4 I, Krista Nicole Carney, Official Court
5 Reporter for the Ninth Judicial Circuit of the
6 State of South Carolina do hereby certify that the
7 foregoing is a true, accurate and complete
8 Transcript of Record in the Court of General
9 Sessions for Charleston County, South Carolina, on
10 the 5th of February, 2020.

11 I do further certify that I am neither of
12 kin, counsel, nor interest to any party hereto.

13

14 May 29, 2020

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Krista Nicole Carney,

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Official Stenographic Court Reporter

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1 State of South Carolina)
 2 County of Charleston)
 3
 4 Marsh Waterproofing, Inc.,)
)
 5 Plaintiff,)
)
 6 vs.)
)
 7 Steeple Dorchester Ltd.)
 and Hamilton Management)
 8 Services Company, Inc.,)
)
 9 Defendant(s).)

Transcript of Record

2018-CP-10-00262

April 28, 2020

Via WebEx Videoconferencing

B E F O R E:

The Honorable Frank Addy, Jr., Judge

A P P E A R A N C E S:

Albert A. Lacour, III, Esquire

On behalf of Marsh Waterproofing, Ltd.

Christopher Clay Olson, Esquire

On behalf of Steeple Dorchester Limited and
Hamilton Management Services

Stacy S. Johnson
Circuit Court Reporter

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Certificate of Reporter

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E X H I B I T S

**NO EXHIBITS WERE INTRODUCED*

1 (The following proceedings were held April 28,
2 2020, beginning at 10:09 AM.)

3 THE COURT: All right. We're gonna go on the record
4 and this, I believe, is case 18-CP-10-262. This is Marsh
5 Waterproofing versus Steeple, S-T-E-E-P-L-E, Dorchester,
6 Limited and Hamilton Management, and this is basically a
7 hearing on several motions for reconsideration. And we
8 are conducting this by means of WebEx.

9 This was a case that was tried in front of me I
10 believe back in January and the Court has issued an order
11 and the purpose of the hearing today -- or the purpose
12 of us joining together today is to try and resolve the
13 outstanding motions as it relates to -- to this particular
14 case.

15 I know that the defense has filed a motion for
16 reconsideration. The order that the Court issued had
17 several -- I issued an order basically that didn't fully
18 account, I think, for some of the -- the financial
19 issues.

20 I assume, Mr. Olson, you want to go first or how
21 should we -- how should we proceed?

22 MR. OLSON: That probably makes the most sense. Or
23 Andy?

24 MR. LACOUR: Well, we've got -- Judge, there's
25 really only two -- two things pending to be addressed.

1 One was our motion for fees and costs and the other was
2 the Defendant's two motions for -- alter or amend or new
3 trial and those two motions -- it looked like to me the
4 second one really included the issues raised in the first
5 one, so however you want to do it.

6 MR. OLSON: I can --

7 MR. LACOUR: It's really one motion for each of
8 them; although I did file --

9 MR. OLSON: I can -- I can -- I can explain that.
10 I can explain that real quick --

11 MR. LACOUR: Well, that's okay.

12 MR. OLSON: -- the two motions. There's only --

13 THE COURT: All right. We're gonna have to -- we're
14 gonna have to watch out talking over each other. This is
15 awkward enough, so let -- let me -- Clay, I'll let you
16 speak in a minute after he finishes, okay?

17 MR. OLSON: Certainly.

18 MR. LACOUR: The -- the only other thing I was gonna
19 add was that although you're correct, each time Ms. Sartin
20 filed the -- the final order, which -- which had blanks
21 for the fee and cost awarded, I filed an alter or amend
22 just as a place-keeper to keep that order from becoming
23 final technically, so those don't have to be heard because
24 this hearing is satisfying those as far as I'm concerned,
25 so it's really just our fee and cost motions and Clay's

1 post-trial motions.

2 THE COURT: All right. Mr. Olson, why don't you go
3 ahead and put your motion on the record as it relates to
4 your motion to alter and amend and new trial.

5 MR. OLSON: Sure. Sure.

6 THE COURT: Of course, I have -- I have read your
7 -- go ahead.

8 MR. OLSON: Okay. Yeah, I think -- and it -- it
9 might have been a bit confusing as I -- I think that we
10 might have filed two memorandums. I think the first one
11 we were nervous about ten days on the original order and
12 then there was a -- there was a much -- much more robust
13 order, which is dated -- which is actually titled Final
14 Order for Foreclosure of Mechanic's Lien and that appears
15 to be the order we were actually appealing dated March 11,
16 2020.

17 It -- I can't -- I'm looking at this thing and I --
18 I cannot believe that that was just over a month ago. It
19 a feels like a million miles ago with all that's happened
20 since then. Anyway, we -- yeah, so I'll try to be brief.
21 I always say that.

22 Basically I don't think I need to go through the
23 -- the litany of the proceedings other than the fact that
24 this matter was tried before your court in Charleston
25 county. It was originally a jury trial, which was agreed

1 pretty much by consent that we didn't have any issues for
2 a jury, and you subsequently adjourned -- dismissed the
3 jury and so we proceeded before you.

4 The issues before the Court were the plaintiff,
5 Marsh Waterproofing's actions for foreclosure on a
6 mechanic's lien, unjust enrichment and breach of contract.
7 And the order that we are appealing is that -- I think
8 I just stated the order dated -- it looks like it's dated
9 March 11, 2020, several points. I'll -- and I'll just --
10 I'll just start in -- in no particular order, but the --
11 the first issue that we have brought up is the fact that
12 the -- in terms of Marsh Waterproofing, a Texas entity,
13 who is unlicensed in South Carolina, they've never been
14 licensed partially or -- or wholly or fully or -- or --
15 you know, in fact, their principal, Tim Marsh, had never
16 been to South Carolina even in -- even -- even during this
17 job. I mean, he's the -- the company's license holder in
18 Texas to the extent that would even be relevant, never --
19 never even came to South Carolina during the work and it
20 was an LLR -- all right. I'm -- are we good?

21 THE COURT: I think you were cutting out on me a few
22 moments. Back -- back up -- back up about ten seconds as
23 far as me hearing you. I don't think the court reporter
24 heard you either, but --

25 MR. OLSON: Okay. Yeah, and I'll -- I heard like a

1 dial tone it sounded like. It was interesting.

2 Okay. So basically the -- I think where I was, I
3 was stating that the -- I was bringing up again the
4 unlicensed contractor statute and -- and case law and
5 our opinion that Marsh Waterproofing was not only an
6 unlicensed entity, I think that Marsh Waterproofing to
7 their credit has admitted that, I mean, that's not --
8 that's not at issue. What is at issue is did the work
9 they performed require licensure and, therefore, were
10 they in violation of -- of -- of the law and prohibited
11 from bringing this entire action as a whole because of
12 their lack of license -- licensure.

13 We would like the Court to reconsider its finding
14 which -- which I think deemed the mechanic's lien to be
15 valid. South Carolina LLR, contractors licensing board,
16 which is given, you know, any of the -- any of the
17 regulatory entities in South Carolina are given great
18 deference to regulate and -- and -- and their decisions
19 are usually given -- given -- I think -- I think -- I
20 think case law says given the utmost credence, I believe,
21 in -- in these situations, but the contractors licensing
22 board found that Marsh was indeed performing work that
23 was classified as general construction and general
24 construction is -- it falls within the definition of
25 general contractor.

1 A general contractor is defined as an entity who
2 performs or offers to perform general construction for
3 more than \$5,000, so I think there's a little bit of
4 issue with the semantics there. To be a general
5 contractor under the statute -- or under the LLR does
6 not mean that you have to be a traditional -- what
7 we consider a general contractor, which means that
8 you're -- you have subcontractors and you're managing
9 stuff and you're supervising stuff. It just means that
10 you have to be offering construction work for more than
11 \$5,000. And there's a couple of exceptions there that
12 don't really -- they don't apply to this case.

13 I mean, I think that there's an issue as to whether
14 a landscaper is -- is general construction. I mean, I
15 think there's case law about that and some other things,
16 but anything where you're -- where the work is deemed
17 structural in -- in nature, which the LLR found that this
18 was, you are performing general construction, you're,
19 therefore, a general contractor, you're, therefore, in
20 violation of this statute by performing work more than
21 \$5,000. All of that is uncontradicted as to the work
22 was more than \$5,000 and the LLR's findings were -- well,
23 as -- as I just stated -- and -- so we don't feel that
24 the -- that there was any evidence offered contrary to
25 the LLR's finding that -- that Marsh Waterproofing was

1 somehow exempt from the requirements and so to find that
2 the mechanic's lien is valid we ask that you reconsider
3 that finding primarily because we feel that it's against
4 the weight of evidence and there is nothing that Tim Marsh
5 could really say or provide that would -- I don't really
6 know how he would be able to refute that.

7 There was a lot of talk at trial about well, was
8 your work structural and -- and he continued to say well,
9 all we do is we fill a void. Well, you know, LLR found,
10 and I think correctly, that by filling a void with a
11 material that is intended to create support or strengthen
12 in this case the sub floor, that work is structural, and
13 I don't think they had a real big -- they didn't seem to
14 -- to go through a lot of stress in making that finding.
15 Based on that, this lawsuit -- lawsuit should have never
16 been brought. They're not allowed to bring it.

17 At one point I -- I should say this because I -- I
18 don't know that it was on the record. I think that it
19 was on the record right at the end of the proceedings.
20 Your Honor made mention of the fact that in these
21 instances -- Judge Addy had stated that in these
22 instances he -- Your Honor had not heard any evidence
23 that the owner, being my client, had had any issue with
24 the work and, you know, I -- I don't have a transcript.
25 I don't know if you said you would have liked to have

1 seen that or you required seeing that or -- or something
2 else, but we -- we would just like -- you know, we would
3 like to point out that with regard to that issue we don't
4 -- we were never in a position to make a complaint or to
5 -- to approve as to that work.

6 Marsh, being an unlicensed contractor from Texas,
7 did not pull a building permit at the job, they would
8 not have been allowed to had they had tried to do it and,
9 therefore, there were no inspections done. So we have
10 no idea whether the work was satisfactory or not. If --
11 if that's of issue to you, you know, we would still, you
12 know, politely state that that shouldn't really matter
13 either when you read the statute on its face, but I -- I
14 do think from a -- based from an equitable standpoint it
15 -- it might please the Court to hear that it's -- this
16 is not a situation where we're perfectly happy with the
17 work. I mean, you know, we -- we could -- we could say
18 that we had issues with it, but honestly we don't know.

19 When the mechanic's liens were filed, we lost every
20 one of these leases by virtue of a default clause in --
21 in the leases, they were all terminated, and my client
22 lost his entire franchise, which was twenty-three
23 Church's -- Church's restaurants, he now has none, and,
24 you know, this was a -- you know, a four or \$5 million
25 investment and -- and his primary, you know, his source

1 of livelihood and whatnot.

2 You know, I would point out that my client has
3 testified consistently by -- by affidavit and at his
4 deposition that he never -- as Mr. Marsh state's, you
5 know, that my client held himself -- you know, basically
6 represented that he had another general contractor, you
7 know, lined up and that Mr. Marsh -- Mr. Marsh's company
8 would, you know, be a sub or something like that and
9 that's -- honestly that's -- that's preposterous. I
10 mean, their argument is, is that if -- you know, there
11 is some case law which state's that if you're a
12 subcontractor and you're not licensed, as long as you
13 are being supervised by a licensed contractor, you're
14 -- you're not in violation of statute and -- and can,
15 therefore, you know, bring an action, you know, for a
16 mechanic's lien.

17 In this case, the case is factually distinct from
18 that because my client states that he -- he never made
19 that rep -- representation first of all. Mr. Marsh was
20 -- basically contradicted himself on -- on a couple of
21 occasions as to how that representation was made. Even
22 if the representation was made, which we contend that
23 it wasn't made, Mr. Marsh admitted that -- he admitted
24 that they -- he was -- that his company was not a
25 subcontractor through a licensed contractor or a

1 licensed contractor that was supervising him, that
2 he would still be outside of the requirements
3 notwithstanding if you find my client's a -- a liar,
4 you know, I mean, you -- all you have to do is take
5 Mr. Marsh's testimony and his -- well, Mr. Marsh doesn't
6 have personal knowledge, he wasn't there, but -- and he
7 was kind enough to bring his -- his associate with him
8 that actually -- and -- and the fellow's name escapes
9 me right now, but the guy that was in the field in
10 South Carolina who -- who did testify that nobody was
11 supervising him or their work at the time. I believe
12 that they're -- so basically their argument is, is that
13 well, we thought we were -- we were working for a
14 general contractor and, therefore, it was -- it was okay
15 and -- and that -- honestly it can't really be believed.

16 I mean, they didn't bill a general contractor, they
17 didn't get paid -- they -- they weren't -- you know, if
18 -- if they were working for a general contractor, well,
19 then why -- you know, why aren't they a defendant in
20 this lawsuit? Please tell me who they were so, you know,
21 we can bring them in.

22 I think that Mr. -- I think that Tim Marsh was maybe
23 -- maybe unaware of the requirement, maybe he was aware
24 of it and didn't care. I -- you know, I -- I don't know,
25 I can't get into his head. I do know though that he --

1 he is aware of requirements that contractors be licensed
2 in other states by virtue of the fact that he is licensed
3 in Louisiana and, I believe, Mississippi. Where he --
4 where he operates in Texas does not -- does not require
5 a state license I believe was -- was his testimony. I
6 haven't looked into it on my own, but...

7 So on those -- you know, on those grounds we would
8 find that it's just -- this lawsuit can't go forward,
9 it shouldn't have been able to, you know, to reach this
10 point and I think that it -- it got to this point based
11 on, I believe, our summary judgment motion. I mean, I
12 guess it was deemed that there were some issues of fact
13 and -- and I think that that's possible in terms of
14 maybe there was a factual issue before trial as to whether
15 or not -- maybe two things, that the work -- the work
16 Marsh did required a license, that could have been an
17 issue. The other issue could have been whether or not
18 Marsh was working and being supervised by a licensed
19 general contractor. Well, as -- as to the latter, we --
20 we just don't -- we don't see how anyone could find they
21 were working under a general contractor when there's been
22 no evidence that that had occurred.

23 As to the -- as to the former, whether the license
24 -- excuse me -- whether the work required a license, we
25 would ask and -- and we did ask and we continue to ask if

1 you would consider the LLR order, which I would like to
2 read, I think, two sentences of it which are in the order
3 which basically say the hearing officer finds that the
4 respondent violated South Carolina Code 40-11-110(A)(5)
5 in that respondent engaged in contracting work in South
6 Carolina when not properly licensed or supervised by a
7 licensed contractor in the required license group and
8 classification. We don't -- I don't know how it could
9 be any clearer than that sentence there.

10 It -- it also states that -- well, I lost -- I had
11 a little note written down here. Well, the order also
12 goes on to state that the penalizing regulatory body,
13 contractors licensing board, did not find that this
14 situation required, you know, any kind of -- any kind
15 of quasi criminal or, you know, penalizing, you know,
16 any of the penalties by them because they found that
17 there -- you know, they -- they thought that there was
18 some mitigating information and they also base it on
19 Mr. Marsh's testimony that there was no substandard
20 work, harm -- or harm to any member of the public.

21 And we don't -- you know, and -- and we don't --
22 we don't necessarily agree with that, but that's --
23 that's neither here nor there for this hearing. What
24 was important was as far as what we're concerned about,
25 that body was deciding whether or not there should be a

1 -- you know, a fine imposed against Marsh Contracting.
2 They state that they're, you know -- and what we're
3 concerned with is the LLR's findings that basically
4 state that -- that the work was performed which required
5 a license or supervision. There was no license or
6 supervision. The LLR concluded with the respondent is
7 cautioned that the scope of work on the project does
8 require a general contracting license in South Carolina
9 if respondent is not supervised by licensee in the
10 required license group or classification.

11 So basically everything that we're concerned with
12 we're -- we -- we agree with the LLR. We -- we -- we're
13 -- the fact that they decided not to give him a fine
14 is -- is -- is fine with us, too. We weren't -- we
15 actually -- I think it should be stated we weren't
16 allowed to participate in the hearing and -- and had
17 no meaningful participation in the hearing. That
18 investigation was done in Columbia and -- and involved
19 Mr. Marsh only, so I don't really know -- I'm not sure
20 what all testimony was given there. But basically we --
21 that's our -- that's -- that's our main -- that's our
22 main -- that's our -- that's our main point here.

23 You know, I understand that this can lead -- this
24 maybe results and sometimes appear to be inequitable.
25 You know, the statute though, it's so clear and it's been

1 -- it's so -- it's some of the best developed, you know,
2 statutory law in South Carolina. This statute has only
3 been around since 1994 or '96, I believe, but it had
4 been the common law prior to that. Basically if the
5 common law decision prior to 1995 stated that well, if
6 you're not a licensed contractor, if you enter into a
7 contract, well, you can't sue to enforce it because it's
8 illegal. It would be like trying to enforce, you know,
9 maybe some sort of gambling agreement or -- or any --
10 anything else that was deemed to be outside of what is
11 legal and recognized, so they ended up codifying it in
12 South Carolina 40-11-30 and, of course, 40 -- or excuse
13 me. Yeah, I lost my -- I lost my place here, but the
14 actual section that I should -- I should -- I should
15 have memorized it as times as we've talked about it, but
16 the -- in -- in -- in South Carolina 40 -- I think it's
17 -- I believe, and I don't want to speak out of turn here,
18 but I think it's -- I believe it's 40-11-370, which
19 states an unlicensed contractor, you know, under this
20 chapter may not -- may not bring an action, you know,
21 at law or in equity, which all of their actions are
22 either legal or equitable actions, and I bring up --
23 and I bring -- and I kind of thought at the beginning
24 of this matter that that -- this would hold up fairly --
25 fairly quickly, it has not been, it's been -- you know,

1 it's -- it's -- you know, it's -- it's -- it's been a
2 long -- a long battle and I've got a worthy adversary,
3 I think I have, but I think Mr. Lacour's done a great
4 job in this matter. I don't think he's right in the
5 proposed order that was presented. I don't really think
6 -- I don't want to waste any time today. I think I've --
7 I've been thorough in the memo and I don't want to go
8 through all of the things that I think that he is wrong
9 about. I think that standing on its face our argument
10 should be enough that under -- you know, basically I
11 think to find for him you have to find that he's being
12 supervised by a general contractor. I don't know how
13 that gets into the record when there's no testimony
14 that would suggest so. I know Mr. Marsh had indicated
15 -- well, he thought that he was working for a general
16 contractor and that's -- there's certainly no precedent
17 that states that if you think you're working -- and
18 especially under these circumstances. I mean, it wasn't
19 as if anybody testified that there was any supervision
20 whatsoever out there. In fact, my client was relying
21 on the expertise of -- of Mr. Lacour's client. We -- I
22 -- I know we were asked at -- at times during the trial
23 and -- and, again, I don't know that it's relevant as to
24 the statute or I don't even really know that it would get
25 that far in terms of -- I think a jury would -- would,

1 you know, only be asked a two-part question, which is
2 basically do you find he has a license, no. Do you find
3 -- yes or no. We would say no. Do you find that this
4 work requires a license; yes or no? We think, again,
5 the answer would be yes. And if that's the case, well,
6 then you can't find for him on breach of contract,
7 quantum meruit or foreclosure of a mechanic's lien.

8 A couple -- couple of follow-up points. I think
9 I've kind of covered that until I feel like I'm blue in
10 the face, but basically we sort of would like to just
11 raise notice that we found it very inappropriate and
12 improper for opposing counsel to offer a -- an SEC
13 filing. First of all, it wasn't a criminal finding.
14 It -- it actually would not be admissible to even rebut
15 any testimony or be considered by a jury in this state.
16 It's -- it's -- it's a civil action, which actually --
17 it -- it certainly doesn't say that, you know, my client
18 is a fraudster or I -- which I think was the term used
19 by opposing counsel. He should be considered with the
20 same -- you know, his -- my client's testimony, which is
21 -- which has, you know, certainly been consistent should
22 -- should be considered with the same weight as, you
23 know, opposing counsel's client, and we don't -- we don't
24 know if that was kind of an opportunity that this Court
25 had given the mud churned up by that exhibit that was

1 presented and we think it was presented in bad faith and
2 it was only intended to harm, intimidate, harass and it
3 -- and it did that.

4 So finally as far as breach of contract and quantum
5 meruit, in addition to what we've already said we also
6 -- we don't -- we don't understand how this Court could
7 find for the -- the plaintiff and -- and certainly in
8 breach -- breach of contract; namely, because the only
9 con -- only document resembling a contract is a proposal,
10 which is submitted to -- on behalf of the State
11 Acquisitions, which is not a party to this lawsuit.

12 As far as the mechanic's lien action, the owner of
13 the property is not named as a defendant. They were
14 named as a defendant and then they were just -- and then
15 they were -- just magically disappeared for reasons we
16 -- we were suspicious of, but we certainly can't -- we
17 -- we can't prove -- we can't prove as to why, but it
18 -- it just -- basically what you have with the mechanic's
19 lien is what is the subject matter? Before we'd claim
20 that well, we're -- we're trying to foreclose on a lease,
21 which that's the only interest my -- my client had in
22 the property. Well, that lease was terminated the moment
23 this mechanic's lien was filed and that lease is no
24 longer, so there is nothing to foreclose on. There is
25 -- we would offer that the only -- you know, we'd offer

1 the only reason that -- that this cause of action was
2 even brought was simply as a fee shifting one. It would
3 certainly not -- and there's certainly no pursuit of any
4 -- any real property interest. Had there been, he would
5 have sued in a -- sued the actual owner of the property,
6 which he had the right to do.

7 Finally, I think -- oh, finally, yeah, as to -- as
8 to the defendant Hamilton Management Services Company,
9 this is the only defendant that we -- we -- and let me
10 -- let me -- let me back up and a second. It appears
11 that the order finds for all causes of action I think
12 against all defendants, which are two. The defendants
13 are Steeple Dorchester Limited, which was the actual
14 tenant at the property. While we don't think that a
15 mechanic's lien should be -- you know, a mechanic's lien
16 should be appropriate in this matter, if it were to be
17 found to be appropriate the only entity that you could
18 actually -- could actually I think even remotely find
19 that -- find -- find against would be Steeple Dorchester
20 being that they were the actual tenant. Hamilton
21 Management Services Company is a payroll -- it manages
22 payroll for all -- for the Church's Chickens. I mean, it
23 had zero to do with -- with any of this but about for
24 maybe the fact that it's my client -- it's part of one
25 of his e-mail signatures or something like that. I mean,

1 Hamilton Management Services Company was never a real
2 party in interest and, you know, we would just again
3 reiterate that -- that -- that we -- we don't think that
4 there should be any liability or any judgment found
5 against either of our entities. We don't think that
6 there is any theory under which Hamilton Management
7 Services Company, whether it be breach of contract,
8 quasi contract, quantum meruit or mechanic's lien, we
9 don't -- we just -- we don't know how they could even
10 -- it would be in any way comprehensible that -- that
11 there could be anything they did.

12 With all that being said, again, we just -- we just
13 think that the statute's clear, the LLR holding should
14 carry a good deal of weight here as our courts has
15 indicate -- have indicated, that these licensing bodies,
16 whether it be cosmetology or -- or the -- you know --
17 you know, any of the physicians licensing boards or any
18 of the -- any other, you know, that -- that, you know,
19 these are the entities that are in -- charged with
20 basically administering and regulating and governing
21 the rules of which their members, you know, sees to
22 operate and -- and operate legally and so, therefore,
23 we think that they should be, you know -- that we think
24 that order should have been given -- given a lot of
25 credence and to the extent any credence is -- is, you

1 know, or any validity is shown to the order, we don't
2 see how you could find for the plaintiff, and that's it.

3 THE COURT: Okay. Mr. Lacour, do you want to -- do
4 you want respond to that just for the record?

5 MR. LACOUR: Yes, sir, Your Honor.

6 I had prepared to respond in full, but -- so if I
7 bog done on something you're not interested in, you can
8 tell me to move on. But to begin with, a motion under
9 59(a) and (e) is essentially an opportunity to give
10 the Court a do-over in case the Court misapprehended
11 something that was in the record -- put in the record
12 at trial. It's not a do-over for counsel for the
13 defendant to come in and proffer testimony and evidence
14 and exhibits, affidavits, that he had the opportunity
15 to present at trial or at least ask about it, but failed
16 to do so. The record, I believe, still controls or
17 limits the facts that we have to work with here and --
18 and basically -- and this is a case where the defendants
19 chose I think for tact -- tactical reasons not to present
20 any witnesses and -- and not to present any evidence
21 except through cross-examination, and -- and that was a
22 -- a choice that they made on the record and -- and --
23 and it seems to underlie most of the arguments made
24 that they -- that they're -- they're trying to go in a
25 different direction.

1 One -- one example is he just said a minute ago
2 something about well, maybe there's no leasehold interest
3 for us to foreclose on. Well, we won't know if there's
4 anything there until we get to our sale, but if he's
5 right and these leasehold interests disappeared -- did
6 we lose Clay?

7 MR. OLSON: I'm here. No, I --

8 MR. LACOUR: Okay.

9 MR. OLSON: I'm here. Sorry about that.

10 MR. LACOUR: That's okay.

11 So if -- if he's correct that these leasehold
12 interests have terminated, then the sale's not gonna
13 generate any money to reduce his debt. He's still gonna
14 owe it all when the debt's settles and that's the only
15 difference that's gonna make.

16 Most of these arguments, like I said, fall into that
17 first category of -- of stuff he wishes he put in the
18 record. March -- he says the March 11th -- on page two,
19 he says the March 11th order included the debt and the
20 fees. Well, they're not. That motion still has to be
21 heard and an award made. He says there's no ruling on
22 the contract. Well, there is a ruling on the contract.
23 It's an element of a mechanic's lien. The Court found
24 for the plaintiff on the contract.

25 When you get to argument Roman numeral two, he

1 indicates we were not entitled to collect fees and costs
2 against Hamilton, and he's absolutely right, and the
3 order does not, so there's none in the proposed order.
4 There's nothing that -- that leaves the debt as the
5 judgment against Hamilton, but it puts the fees in the
6 foreclosure, which is only against Steeple.

7 When we get to arguments Roman numeral three, four
8 and -- and eight, those all seem to be based on testimony
9 and statements of the defendant's witness, none of which
10 are in the record, so there was no testimony at trial
11 from the defendant. So I don't understand how you can
12 fail to call a witness at trial, but then submit not one,
13 but two, I think, affidavits by that same witness after
14 the trial and after the record's closed and I don't think
15 the system works like that.

16 There were a -- a bunch of exhibits that I see
17 attached to his motion, none of which were offered at
18 trial by choice, and I don't think that -- that you get
19 to present testimony by affidavit after the trial is
20 over with, especially the same witness that you had the
21 opportunity to call but chose not to.

22 Argument Ro -- Roman numeral three, actually the
23 second one, there's two Roman numeral three's, and then
24 four and five, all seem to be based on the LLR final
25 order and he's asking the order be binding. Your Honor

1 looked over my -- because we arrived expecting a jury
2 trial, we had a motion in limine to ask the Court whether
3 we were or weren't going to be allowed on the plaintiff's
4 side to use that order, and Your Honor ruled in chambers
5 before we started that the order was in no way gonna be
6 binding on the Court's factual findings, that the Court
7 was not gonna be limited by that finding. I think Your
8 Honor realized that because the -- the defendants were
9 not a party to it, it wouldn't be fair to -- for me to be
10 able to use it against them, and the way for me to find
11 out is to ask by motion in limine, so I did, and -- and
12 you ruled against my position, but now he's coming back
13 after the trial asking for the same thing that I would
14 have asked for, is for it to be binding. That's how I
15 see that one.

16 Article -- excuse me, argument number six has
17 something to do with the affidavit of Marsh not being
18 -- which was not part of the record at trial, but was in
19 the record, Marsh's affidavit was filed in the record of
20 the case a year -- a couple of years before, but it --
21 I guess I'm saying if counsel wanted to use the affidavit
22 of Marsh at trial, he could have put it in evidence and
23 cross-examined Mr. Marsh on it. I don't believe that
24 happened. I don't know there were any exhibits for the
25 defendant. And then I would only point out that Marsh's

1 testimony at trial is entirely consistent with the
2 affidavit that was filed of record some year and a half
3 or two years before.

4 We get to argument number nine. This, again, looks
5 like do-over for counsel. He's submitting a post-trial
6 affidavit from the witness he didn't call. It's -- it's
7 strange that he uses terms like procedural misconduct
8 implying somehow that there was some unauthorized
9 activity on the -- on the part of -- on my part in
10 submitting the other motion in limine, which was to find
11 out how to use the SEC order, but that motion in limine
12 contained the Federal case law saying it's entirely
13 admissible, you know, in the Court's discretion, of
14 course, but there's authority for its admissibility in
15 the motion. But somehow he's implying something -- like
16 some ethical misconduct on my part as a substitute for
17 advocacy. I don't understand that.

18 And there's a motion -- the motion in limine was
19 simply to get the Court's guidance over what would or
20 wouldn't be permitted. Since they didn't call the
21 witness, Your Honor didn't need to rule on the motion
22 in limine. We never got to it.

23 Only the first argument really presents an issue
24 within the testimony we had at trial and so the first
25 argument has to do with who do we get -- who do we

1 receive judgment against and he says we had no contract
2 with Hamilton or Steeple, only with an entity called
3 State Acquisitions.

4 Now the full relationship of Hamilton and Steeple
5 and State Acquisitions is not in the record because they
6 didn't get a chance to put it in because they didn't
7 call any witnesses, but what is in the record is a
8 series of exhibits that shows Burns represented Hamilton
9 and Hamilton acted for Steeple and that's as far as we
10 need to get. Exhibit 4 is signed by Hamil -- by Mr. Burns
11 in his capacity for Hamilton Management. That's --
12 excuse me -- Exhibit 4 is the engineering report. It is
13 addressed to Mr. Burns at Hamilton Management and that's
14 the engineering report that Mr. Burns at Hamilton
15 Management gave to us to work from.

16 Exhibit 5 is an e-mail which is -- in which
17 Mr. Burns signed it for Hamilton Management and said
18 address your proposal to State Acquisitions.

19 Six is our proposal, which we did exactly what he
20 asked us to. We addressed it to State Acquisitions.
21 When Mr. Burns signed it, he didn't indicate he was
22 signing it for State Acquisitions, he didn't indicate
23 he was signing it for Hamilton or Steeple, he just signed
24 it.

25 And then Exhibit 7 is Mr. Burns's -- signed by

1 Mr. Burns for Hamilton. Seven was an e-mail exchange
2 about the details of your insurance.

3 Exhibit 8 is an e-mail from Hamilton saying here
4 is your schedule and it's signed by Burns and there's a
5 couple in the series there signed by Burns.

6 And Exhibit 10 is our invoice where we billed it to
7 State Acquisitions the way he told us to.

8 So what does the record show? It shows Burns can
9 act for Steeple, it shows Burns can act for Hamilton,
10 and apparently he can act for State Acquisitions. And
11 Hamilton, the entity, acts for Steeple and State
12 Acquisitions, but the only records of activities we have
13 is Mr. Burns acting in his capacity with Hamilton for
14 Steeple, the restaurant.

15 So, you know, Hamilton and Steeple, one or the
16 other of them, said send it to State Acquisitions, so
17 we did. That makes no never mind. Then we have our con
18 -- they could tell us to address it to the Easter Bunny,
19 it wouldn't matter. We still have a contract with
20 Hamilton and Steeple. If they want us to bill the
21 Easter Bunny, we can bill the Easter Bunny. Whatever
22 they tell us to do we're gonna do to get paid, so.

23 But the pleadings and the testimony and the
24 exhibits are all consistent with the order. We have a
25 contract claim against Hamilton and Steeple and we have

1 a foreclosure against Steeple, who was the holder of
2 the leasehold, and it's not -- anyway that's what the
3 record is at this point the facts are.

4 The last thing is simply to address the argument
5 that Tim testified he thought he was working for a
6 general contractor. That's not what he said. He thought
7 he was supervised by a general contractor. That's not
8 what he said. What he said was we were convinced there
9 had to be a general contractor on the job because
10 99 percent of the job was to be built ahead of us, ahead
11 of our arrival. We were the last people to get to the
12 job. Everybody else was supposed to be finished before
13 we got there.

14 The order of the work was established by the
15 engineer, not by us. The engineering report's real
16 clear about what order things are supposed to happen in
17 and our part was last. The order of the work established
18 by the engineer would sort of dictate there had to be a
19 general contractor out there before us and -- and so we
20 didn't see if that general contractor was out there or
21 who was out there, we never got to because that would
22 have been part of Mr. Burns's cross-examination and
23 those exhibits were never -- you'll see them on our
24 exhibit list, but they were never offered and you can't
25 really consider them and you don't have a copy of them.

1 I never put them in. We didn't get there.

2 But the -- so the order of the work dictates that
3 the GC was there before us, the order of the work would
4 dictate that whoever's there before us would have had
5 to get the permit to do the work before us and the LLR
6 never exists -- never addressed the issue raised by Tim's
7 testimony and our Exhibit 14, which is the lack of a
8 classification for the installation of foam for purposes
9 other than insulation, and -- and the exhibits you do
10 have, the e-mail exchange from Bill Richey and -- in
11 Texas and Roger Lowe with LLR. Bill is personal counsel
12 for Marsh in Texas and Mr. Lowe at the time was the
13 administrator of the LLR. He was in charge of all those
14 investigators and -- and he -- if you read it close he
15 says there's no classification of work for installing
16 foam for that purpose.

17 There is a -- there is a classification of work if
18 you're gonna use foam for insulation, but if you're not
19 using it for insulation, there's no classification. What
20 that -- that's engineer speaks, it translates into no,
21 you -- and he said flat out no, you don't need a license
22 to do that, and -- and that was the question we asked
23 before we filed our mechanic's lien. It's not something
24 we relied on in doing the work, it's something we asked
25 -- that we relied on in filing this lien and, you know,

1 if the LLR hearing officer made it come out the same, the
2 LLR hearing officer never addressed that issue. I raised
3 it, but he never addressed the lack of classification,
4 so. And I guess my position would be that if we're gonna
5 go there, then we're gonna have to address the lack of
6 classification and I don't have any idea how the Court
7 arrived and on what basis the Court arrived at its
8 determination.

9 I drafted the order based on the record I had and
10 if Your Honor wants me to beef that up somehow, I'm glad
11 to do it, but -- so I think that covers everything I
12 heard on the motion for new trial.

13 Thank you. Unless you've got a specific question,
14 Your Honor.

15 THE COURT: No. Do we need to go ahead and address
16 costs and then I can let Mr. Olson respond to kind of
17 everything briefly and we can end -- we can sort of it
18 end it that way or start -- try and start --

19 MR. OLSON: That would be fine. When you say
20 address -- addressing costs, I'm assuming that the
21 ruling is -- or, I mean, I guess if we're gonna get into
22 like an attorneys fees award, I'm -- I'm assuming that
23 the motion has been decided and -- and so I guess I --
24 I mean, I'll gladly -- I'd gladly like to speak really
25 shortly after we're done with that.

1 THE COURT: Right. I just want him to go ahead and
2 -- since he got the floor, I was gonna go ahead and let
3 Mr. Lacour address the issue of costs and then you can
4 respond to that and -- and any closing thoughts about
5 how he responded to your initial argument. That's --

6 MR. OLSEN: Perfect. Thank you.

7 MR. LACOUR: All right, sir.

8 THE COURT: All right.

9 And, Mr. Olson, if you would, just mute your
10 microphone for a second because I think I'm getting some
11 feedback from your end, okay?

12 MR. OLSON: You probably are, yeah.

13 THE COURT: Thanks.

14 All right. Go ahead, Mr. Lacour.

15 MR. LACOUR: Okay. Thank you, Your Honor.

16 So our -- our motion for award of attorneys fees
17 and costs was filed after the initial judgment was filed.
18 The judgment came in on -- on February 12th. We filed
19 a -- a motion shortly thereafter seeking an award of --
20 let's see -- yeah, February 21st seeking an award of
21 attorneys fees and costs on the mechanic's lien cause
22 of action.

23 Your Honor, I don't know if you have that document
24 before you. It is four parts. It's -- there's a motion
25 which outlines the law and gives some brief argument and

1 the -- and the totals that -- that we're seeking to be
2 awarded and then there's an -- three exhibits.

3 Exhibit A is the detail from our computer system
4 of the -- all the attorneys fees incurred and all the
5 work done, you know, by -- in -- in tenth of an hour
6 increments with the description, the date and what we
7 did. Exhibit B is similarly detailed cost information
8 for all -- this is for all six of the mechanic's liens.

9 And then Exhibit C was my affidavit and the
10 affidavit provides you the -- the fee -- terms of the fee
11 agreement with the client and it's a letter January 4th
12 of 2018. It's a -- it provides a detail of the work
13 performed, it goes through the attachments and gives the
14 total gross fees. It points out that we had to find the
15 LLR work and the Secretary of State work related to --
16 well, obviously the LLR work related to that hearing and
17 -- and that -- those charges that were dismissed and the
18 Secretary of State work relating to having the company
19 qualify in -- in South Carolina and then -- so all those
20 had to be removed from the -- from the mix because they
21 would not be awardable under any circumstances as part
22 of a mechanic's lien. And then there's a color code and
23 the color -- the color coding done with highlighter on
24 the entries shows that the bright yellow were either
25 direct Charleston charges or these that are shared by

1 all six. Those that are direct are specifically marked
2 very clearly with a bracket and that they are not to be
3 divided, that they are all a hundred percent billable to
4 Charleston.

5 Then on Exhibit B, the cost information, the same
6 procedure. Find any LLR or Secretary of State costs and
7 remove them and then find the costs directly related to
8 Charleston and then on -- the last thing in the affidavit
9 goes into the elements of the Bloomberg case.

10 So if we -- if we look at the detailed entries,
11 you'll see -- and there's a -- at the very top of the
12 first page of entries there is a legend. Yellow is
13 either Charleston direct or Charleston shared -- or
14 let's call it shared with -- by all six, of which
15 Charleston has a one -- one-sixth share. Blue is the
16 things I removed because they're LLR or Secretary of
17 State and green was Greenville because I did Greenville
18 just for comparison purposes so I could get an idea
19 because we tried Charleston and it had fewer motions, I
20 guess, or less time in motions and we -- we didn't try
21 Greenville, but it had travel time and -- and then we
22 did argue all the motions up there, so I was just curious
23 as to sort of the other end of the spectrum from the work
24 we had to do in Charleston.

25 So -- and I can go through these totals if you want,

1 but the -- the totals are set out in the -- in the motion
2 and the conclusion of the motion, Your Honor, what we're
3 seeking is 28,852 for attorneys fees and a 1,042 for
4 costs and so the total to be added is 29,894, and that's
5 just in the conclusion paragraph of my motion where those
6 numbers are. But, like I said, the way I got -- got those
7 was just sitting down with a calculator and adding up all
8 the entries of a certain color on the exhibit and -- and
9 then adding them backwards and trying to double-check and
10 figure out what -- because, you know, you never get the
11 same number twice the first time through trying to figure
12 out exactly what the numbers are.

13 The way they go together, for Charleston, it's
14 \$15,961 of direct Charleston charges. I'm talking about
15 attorneys fees now. The shared charges where I had
16 something -- some operation I could do for all six liens
17 at once and then just replicate the pleading, that time
18 totalled 77,347. Well, one-sixth of that came to 12,701.
19 And we also had paralegal time, which is recoverable in
20 South Carolina, and one-sixth of paralegal time is 190,
21 so if you add the 15,961 from my Charleston time and the
22 12,701 for one-sixth of the shared time and the 190 for
23 the one-sixth of paralegal time, that's how you get to
24 the 28,852.

25 The costs for Charleston, the total 1,042, are the

1 direct costs, they're all labeled which lien they're for
2 or something in the description tells me which they're
3 for. So when it's all said and done, if we add the fees
4 and the costs to the 36,800, we should end up at 66,694.

5 An interesting thing was Greenville had more costs,
6 but all the other -- but the -- and it did not have a
7 trial, so Greenville came out at 12,100, so there were
8 about 4,000 less for fees. Well, that's about a week's
9 worth of work trying to get it ready and get it up and
10 get it tried and Greenville's costs were slightly more,
11 it was 1,187, that's probably the travel, Greenville
12 would have come out to 63,019, if it was awarded on the
13 same basis. So 66 versus 63. The difference is no trial
14 yet in -- in -- in Greenville. So, I mean, to me, that's
15 just the way to check. Not that you're concerned with
16 the Greenville fees, but It sort of gave me a reality
17 check as to whether my numbers were halfway close.

18 So I know that's a lot of numbers to throw at you
19 in a video conference. Does that -- does that outline
20 well enough for Your Honor how I got there?

21 THE COURT: Yeah, you -- you got there. Are -- are
22 you gonna be -- will you be seeking any additional for
23 the hearing that we're doing today or should we -- should
24 I -- should I consider that as well?

25 MR. LACOUR: Your -- certainly I'm happy for Your

1 Honor to consider it. There's really no way to capture
2 it into the motion. I -- at one time I was putting
3 estimated time in for hearings like that, but too many
4 judges were not happy with that so I quit trying to do
5 it. If Your Honor would consider today's time, too, that
6 would be wonderful. It will -- it'll change the number
7 slightly. If you just want to go on the record, I
8 understand at some point it becomes a circular, I'm
9 chasing my tail trying to get it all documented.

10 THE COURT: All right.

11 All right. Mr. Olson, did you want to briefly
12 respond?

13 MR. OLSON: Me?

14 THE COURT: Yeah, you.

15 MR. OLSON: Yeah, thank you.

16 And -- and believe it or not, this -- this will
17 be really brief. Yeah, just as to -- as to his closing
18 remarks, of course, we -- we would simply just state
19 that, first of all, as to the motion in limine, to the
20 extent the Court wants to take that into consideration,
21 one was -- I mean, one was never filed and that's not
22 -- wasn't part of the appeal. In fact, I've never --
23 I've never -- I've never seen it to the extent there was
24 a written motion. I do know that we did discuss the
25 jury issue, I -- I recall that, but as far as the LLR

1 testimony, and I'm not -- maybe I didn't understand
2 Mr. Lacour and -- and maybe he's saying something --
3 something different, but the LLR order was -- it was one
4 of my exhibits I know and -- and I know that we entered
5 it. So -- and, yeah, we -- we do want -- we do want
6 you to consider it. I'm not sure why Andy wouldn't --
7 wouldn't want it to be considered due to the fact that
8 it -- it clearly rules on what we would -- we would --
9 we would show as a -- a factor, which would undermine
10 this entire lawsuit and justify, if not demand, a
11 dismissal and an award of attorneys fees for our client.
12 This is a fee shifting statute, the mechanic's lien part
13 is.

14 I would state that in terms of the mechanic's lien
15 -- or excuse me, in terms of attorneys fees only, there
16 can be no judgment of attorneys fees against Hamilton
17 Management Services. They're -- they're not -- there's
18 no vehicle for fees in any of the agreements, it's not
19 a record titleholder or it has nothing -- it has no
20 property interest. And I stated before, well, you know,
21 in detail I will accept the fact that, you know, Andy's
22 made an argument that perhaps their name was mentioned
23 on something or whatever, but, again, the only way that
24 they could actually be -- you know, my understanding is
25 the only way they could actually receive -- they could

1 actually be penalized with attorneys fees would -- would
2 for them to be -- you know, have an interest in the
3 property or -- yeah. I mean, I -- I think that's right.
4 And we would concede that State Acquisitions -- I mean,
5 excuse me, the Steeple Dorchester entity did have a
6 leasehold interest at one point, so, you know, to the
7 extent that you find that the mechanic's lien is valid
8 and -- and that his fees are valid, you know, without
9 conceding anything we would -- we would -- we would
10 certainly assert that yeah, they would be more
11 appropriate against that entity if they -- they're to
12 be awarded at all.

13 And, finally, as far as the classification, I
14 mean, Andy just mentioned it, he mentioned it at trial,
15 he mentioned Bill Richey, personal counsel from Marsh,
16 in an e-mail that was sent to the LLR. I just want --
17 you know, I don't know that -- if this was clear or not,
18 but, first of all, two things. One of them was this was
19 by no means to -- you know, as an attempt to follow the
20 law in terms of the work. It was -- this e-mail was
21 sent after the job was completed the day before the
22 mechanic's lien was filed. Bill Richey is an employee.
23 He did send an e-mail which basically gave Andy CYA to
24 file a mechanic's lien and I -- I think Andy did the
25 right thing and -- and probably was justified in

1 following it based on what Mr. Richey said -- I mean,
2 excuse me, what -- not Mr. Richey, Mr. -- a member of the
3 e-mail was from at LLR; however, I think it's clear that
4 the advice given by the LLR employee was not correct in
5 his -- the actual board that regulates everything, you
6 know, and -- and -- and has the official say, deemed that
7 work to require a license.

8 Another thing is, is that the opinion that was
9 given in that e-mail was given based on the information
10 provided by Mr. Lacour's client, which one -- you know,
11 one thing that I think is significant here is we don't
12 see anything in that e-mail which says hey, we're a
13 Tex -- we're a Texas contractor, we were just working
14 for a general contractor in South Carolina and we -- you
15 know, we didn't get paid. It -- it says nothing of the
16 sort because they never -- again, this -- this is a
17 fiction for them to state that well, we assumed that
18 there was a general contractor. Even if they did, the
19 statute requires that that general contractor supervise
20 them. There's no testimony that that happened because
21 it didn't and -- and I think that's it.

22 And as -- as far as a copy of -- I mean, I'm not
23 looking at a copy of it. I'm not -- I trust Andy and it
24 sounds like he did a -- did his best effort to actually
25 segregate some of the fees and I think that's very

1 reasonable. I wouldn't take exception to anything he
2 had presented to the Court in terms of, you know, legal
3 fees and whatnot. I disagree with some of his arguments
4 and -- and some of this other stuff, but I -- I think
5 he's a good lawyer and -- and -- I would not really --

6 THE COURT: All right. Well, I -- I did have a
7 chance to -- to review the fee affidavit when it was --
8 initially hit the clerk's file and glanced over it again
9 as counsel was speaking and I -- I concur with Mr. Olson
10 that the fees and costs look appropriate and -- and are
11 warranted in this -- in this situation. And I do -- I do
12 appreciate Mr. Olson's advocacy on behalf of his client,
13 but I'm concerned of the existence and nonexistence of
14 evidence at the time of the hearing and obviously a lot
15 of what we have alluded to or a lot of what has been
16 discussed here alludes to depositions and things which
17 are outside what was presented to the Court at the time
18 of the hearing.

19 You know, Mr. Lacour's point that -- that there was
20 a tactical decision not to put up a defense, that's --
21 that's a very valid point. I -- I do stand by my rulings
22 that I made at the time that we conducted the -- the
23 trial of this case and -- and would find that -- that an
24 award under the mechanic's lien would be appropriate for
25 the reasons we put on the record -- or that I put on the

1 record back in January.

2 So at this point, Mr. Lacour, maybe if you could
3 maybe the easiest thing to do would simply be for you to
4 send me maybe a supplemental order that fills in the
5 blanks with -- with the costs that -- that we have
6 discussed and also noting that the motion to alter and
7 amend is being denied. I don't know that it needs to
8 be terribly lengthy or terribly complicated because
9 obviously we've made a record here today and my clerk
10 will -- or my assistant Freda will be sharing a copy of
11 this WebEx video with Ms. Johnson so that she can review
12 it if she needs to for purposes of preparing any future
13 transcript, but I'm comfortable with the -- with the
14 verdict rendered by the Court at trial and I appreciate
15 y'all's advocacy, of course.

16 Can we leave it at that, Mr. Lacour, Mr. Olson?

17 MR. OLSON: I think we can. Thank you.

18 MR. LACOUR: Yes, sir. That's fine. I'll prepare
19 something brief in -- to supplement the most recently
20 filed order or reference that one.

21 THE COURT: Perfect. All right.

22 MR. OLSON: Thank you.

23 THE COURT: Gentlemen, thank you. It's good to
24 see y'all again under these weird circumstances, but
25 hopefully --

1 MR. OLSON: Maybe in person next time.

2 THE COURT: Maybe next time it will be in the
3 flesh. We'll see.

4 (Discussion off the record.)

5 MR. OLSON: Yeah. Thank you. Yeah, definitely.
6 Thank you very much. I appreciate everybody.

7 MR. LACOUR: Good lawyering. Thank you.

8 THE COURT: All right. Take care. I'm gonna go
9 ahead and end the recording.

10 (Whereupon, the proceedings were concluded at
11 11:15 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
28th day of April, 2020.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.
This transcript may also contain transmission
interruptions and/or technical difficulties due to
being conducted remotely via videoconferencing.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

June 22, 2020

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

Record on Appeal

Marsh Waterproofing Trial Exhibit 1



ROA000520

Record on Appeal

Marsh Waterproofing Trial Exhibit 2



ROA000522

Record on Appeal

Marsh Waterproofing Trial Exhibit 3



ROA000524

Record on Appeal

Marsh Waterproofing Trial Exhibit 4

ASSESSMENT – PHYSICAL DAMAGE TO PROPERTY



Restaurant #: 757– 5343 Dorchester Road, Charleston, SC 29418

Hamilton Management Services Co.
Mr. Alexander Burns
701 East Bay St Suite 410
Charleston, SC 29403

Prepared by



Davis Patrikios Criswell, Inc.
7975 Stage Hills Boulevard, Suite 1
Memphis, TN 38133

Job No. 2017086
June 22, 2017

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

OBSERVATION DATA SUMMARY**Date of Visit:** *May 31, 2017***Weather:** *Partly Cloudy, 81°***Location:** *5343 Dorchester Road
Charleston, South Carolina, 29418***Crawlspace Conditions:** *Standing Water***Client(s):** *Hamilton Management Services Co.
Mr. Alexander Burns
701 East Bay St Suite 410
Charleston, SC 29403***Notes:** *Observing condition of first floor
elevated framing from
crawlspace; Access to
crawlspace was limited due to
standing water.***Prototype #:** *N/A***Market Leader:** *N/A***Present at Observation:** *Ralph Velasco, E.I.***FORENSIC ENGINEERING SCOPE**

Davis Patrikios Criswell, Incorporated was contacted to provide a visual observation of the crawl space / basement to identify observed structural deficiencies in the building's ground floor slab structural system. Repair recommendations will be made on an as needed basis in order to maintain life safety and structural integrity of the floor system.

OBSERVATION

The on-site field observation was performed by Mr. Ralph Velasco, E.I. of Davis Patrikios Criswell, Incorporated. Mr. Velasco performed the field observation of the restaurant located at 5343 Dorchester Road, Charleston, South Carolina on May 31, 2017. Mr. Eric Criswell, P.E. and Mr. Gerry Patrikios, P.E. reviewed observation notes and photographs obtained during Mr. Velasco's observation on June 2, 2017. Mr. Eric Dunham was the Church's Chicken representative whom Mr. Velasco met with during the observation.

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

STRUCTURE BACKGROUND AND COMPONENTS

The property located at 5343 Dorchester Road, Charleston, South Carolina was a Church's Chicken restaurant and was occupied by a tenant at the time of observation. The building was located in Charleston County, South Carolina. The restaurant was 991 square feet, and was constructed in 1976 according to the Charleston County Assessor's website. (<http://sc-charleston-county.governmax.com>)

The restaurant was observed to face east and was a conventional framed structure with steel beams supporting metal decking with a concrete topping slab. The perimeter of the framing was founded on a concrete basement wall approximately 3'-0" in height. The interior steel beams were supported by piers with isolated spread concrete footings. The interior and exterior load bearing walls were presumed to be light gauge metal studs bearing on the elevated slab system.

The site was observed to be generally flat with drainage flowing away from the building on all sides. The store had pea-gravel concrete sidewalks on three sides of the building with an asphalt drive-thru aisle, parking lot, and an extended concrete front patio.

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

SITE AND STRUCTURAL OBSERVATIONS:

ID	LOCATION	OBSERVATION COMMENTS	PHOTO(S) #
A SITE			
1	Paving	Asphalt Drive Thru and Parking area with common cracking	1-4
2	Sidewalks at Building	Pea Gravel Sidewalks on all sides of building with cracks and separation	1-4
3	Site Drainage	Drainage generally flows away from building on three sides of building	1-4
B STRUCTURE			
1	Exterior Walls, Interior Walls and Finishes	No Observed Damage.	N/A
2	Perimeter Retaining Wall	Wall partially underwater in crawlspace.	6
3	Mudslab	Standing water in crawlspace. Limited access.	5
4	Girder Steel Beam	Evidence of rust and oxidation; Significant deterioration and delamination.	7
5	Joists Steel Beams	Evidence of rust and oxidation; Significant deterioration, delamination, and loss of structural section.	8, 9
6	Perimeter Steel Beams	Advanced evidence of rust and oxidation; Significant deterioration, delamination, and loss of structural section	10
7	Metal Decking and Topping Slab	Advanced evidence of rust and oxidation; Significant loss of structural section; Deterioration of decking; Bare concrete observed.	11
8	Under Slab Hung Utilities	Evidence of Water Submersion on Underhung Utilities	12
9	Sump Pump	Sump pump not observed, but assumed to not be working due to standing water in crawlspace	5
10	Shoring	No shoring observed.	13, 14

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

DISCUSSIONS AND CONCLUSIONS:

We observed significant evidence of long-term rust and oxidation to the structural steel beams supporting the metal deck and concrete topping slab. The condition of the beams has advanced to a state where, all observed steel perimeter beams, steel beam joists, and steel beam girders were noted to be in a condition where deterioration, delamination, and/or loss of structural section has occurred. The metal deck spanning between the beam joists was noted to have significant rust and oxidation damage. In some observed locations within the crawlspace, bare concrete from the topping slab could be observed due to complete loss of structural section of the metal decking. The concrete topping slab was not designed to span between the steel joists without the metal decking support.

The crawlspace was also noted to have a significant amount of standing water present throughout the crawlspace. The crawlspace is built underground; therefore, in order to drain water from under the building a sump pump pit and pump are required. Confirmation of the condition of the sump pump was not determined; however, water was ponding in the crawlspace. Water was noted as condensing on the bottom of the metal decking / bare concrete at the time of observation. In our professional engineering judgment, the crawlspace lacked adequate ventilation to prevent condensing of moisture in the crawlspace. We recommend a licensed mechanical engineer confirm the necessary requirements for ventilation in the crawlspace.

In our professional engineering judgment, the condition of the structural steel framing and metal decking have reached a condition where remaining structural materials are overstressed and normal cyclic loading could cause catastrophic collapse of the elevated slab. The observed structural condition indicates that failure of the floor system is imminent. Any additional localized failure of the floor system could result in catastrophic collapse of the entire structure. We recommend that Church's Chicken provide immediate continuous structural support of the floor decking and beams in order to protect both life

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

safety and Church's capital assets. We recommend this store location be repaired immediately.

RECOMMENDATIONS:

Based on the visual observation and condition of the load bearing structural members, we recommend that immediate structural support be provided for all structural members in the crawlspace. This would include all perimeter beams, joists beams, girder beams, metal decking and bare concrete areas. It is critical that full continuous support be provided to the structural members in the crawlspace.

For immediate life safety concerns and speed of installation, a high density expanding closed cell structural foam system is recommended for installation in the crawlspace. It is our understanding that Church's Chicken has used this solution in the past with other crawlspaces and has achieved favorable results. The Alchemy Polymers AP Lift 430 product has been reviewed. In review of the specifications, the compressive strength noted is adequate to support the superstructure.

We recommend the following general procedure in order to achieve sound structural foam installation results.

- 1.) Pump all storm water out of the crawl space. Contractor to provide fans as necessary to allow crawl space area to be a dry prior to commencing work.
- 2.) Inspect all under hung water and sewer lines, provide proper tight joints, support and slope.
- 3.) Replace all cast iron or steel sewer lines, if needed, schedule 40 PVC. No steel or cast iron pipes in crawl space and inside polyurethane foam.
- 4.) Pipe all floor drains to sewer collection and verify leak free and positive flow. Secure pipe.
- 5.) Ensure all sewer and water lines are in good working condition and secured.

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Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

- 6.) Confirm that any electrical cables, wires, low voltage cables, etc. are in conduit and properly secured.
- 7.) Remove all debris, pumps, trash, etc. from ground surface.
- 8.) Apply the expandable polyurethane foam after above noted items are performed and checked.

In areas where expansive soils are present, the structural foam could cause issues with heaving of the building's structural system. We recommend verifying existing soil conditions with a local geotechnical engineer prior to installation. All site water should be diverted to prevent water entry into the crawlspace. The provision for a drainage system should be included for removal of any future water that might infiltration into the crawlspace.

The above noted procedure is a general recommendation and will require additional engineering design, calculation, further observation, and preparation of construction documents prior to implementation, which is beyond the scope of this inspection phase of work. Additional repair options may be considered on a case by case basis. The owner shall provide a detailed scope of work for consideration. In any case, the damages observed require a full bearing repair solution.

QUALIFICATIONS

The information presented in this report addressed the limited objectives related to the evaluation of the crawlspace. This report only describes the conditions observed at the time of our evaluation. It is not intended to fully delineate or document every defect or deficiency throughout the subject property. This observation does not include a detailed analytical study of the structural elements nor does this report warrant the structural quality of the structural members which were not exposed and were not readily available for visual observation or other areas not mentioned in this report. If any additional information is encountered which relates to this evaluation, Davis Patrikios Criswell, Inc. reserves the right to alter the recommendations contained in this report. In some cases, additional

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Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

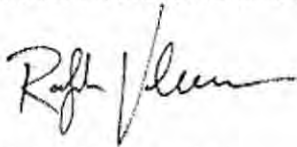
studies may be warranted to fully evaluate concerns noted.

Our services have been performed using that degree of skill and care ordinarily exercised under similar conditions by reputable members of Davis Patrikios Criswell's profession practicing in the same or similar locality at the time of performance. Any verbal statements made before, during, or after the course of the observation were made as a courtesy only and are not considered a part of this report.

Thank you for your business and please feel free to call us if you have any questions or comments regarding our report or structural observation.

Sincerely,

Davis Patrikios Criswell, Inc.



Ralph Velasco, E.I.
Field Inspector



Eric Criswell, P.E.
Senior Engineer



Engineer of Record By:
Gerry Patrikios, P.E.
Senior Engineer

June 22, 2017

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Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

PHOTOGRAPHIC DOCUMENTATION:



Photo 1: Front/East Elevation & Asphalt Parking



Photo 2: South Elevation & Asphalt Drive-Thru

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Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403



Photo 3: North Elevation & Parking Lot



Photo 4: West Elevation & Asphalt Drive-Thru

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Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403



Photo 5: Standing Water at Entrance of Crawlspace



Photo 6: Evidence of Standing Water Observed on Perimeter Retaining Wall

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Photo 7: Rust, Deterioration, and Delamination Observed on Interior Girder Beam

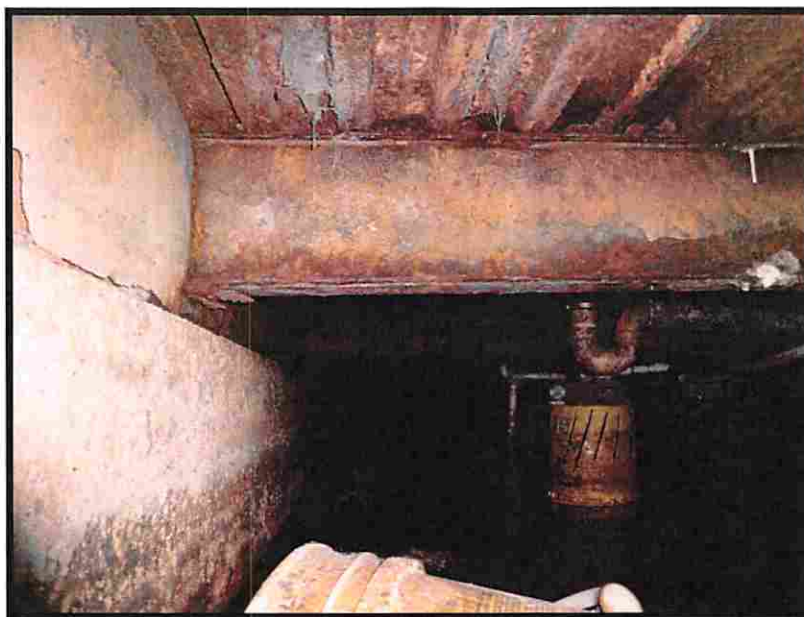


Photo 8: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beams

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Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403



Photo 9: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beam



Photo 10: Severe Rust, Deterioration, and Delamination Observed on Perimeter Support Beam

June 22, 2017

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Photo 11: Observed Severe Rusting of Metal Decking, and Exposed Concrete



Photo 12: Condition of Under Slab Hung Utilities

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Photo 13: No Shoring Observed for Elevated Slab or Steel Frame

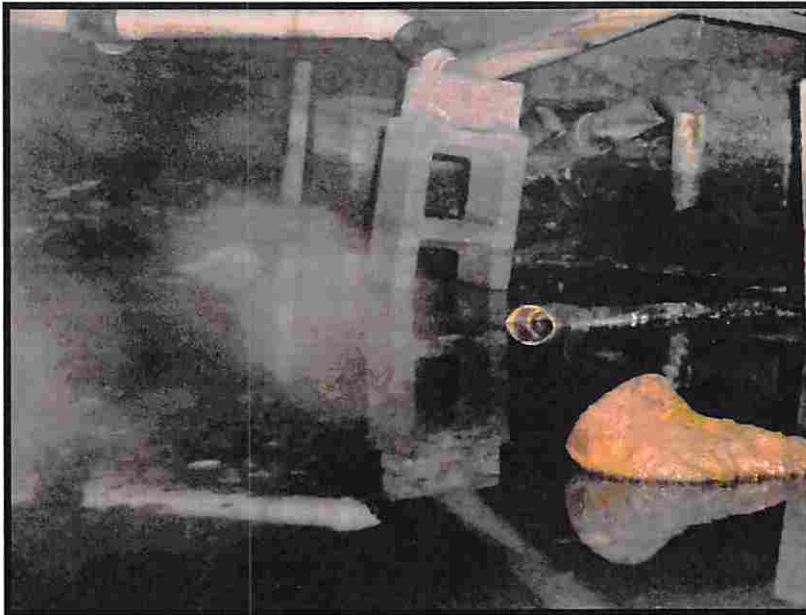


Photo 14: No Shoring Observed for Floor Decking

Record on Appeal

Marsh Waterproofing Trial Exhibit 5

From: Alexander Burns <aburns@hamiltonmsc.com>
To: mwaterproofing <mwaterproofing@aol.com>
Subject: Churchs Chicken South Carolina
Date: Fri, Jul 7, 2017 3:41 pm

Tim-

It was a pleasure speaking with you on the telephone today. Per our discussion, please provide us a final quote for crawl space remediation for our Church's Chicken locations in South Carolina. The quote should be sent to my attention at State Acquisitions, LLC. We are looking to make a final decision post-haste.

Regards,

Alex

Alexander Burns
Director
Hamilton Management Services Company
259 Seven Farms Drive
Suite 301
Charleston, SC 29492
Tel: (843) 300-1985
E-mail: ABurns@HamiltonMSC.com

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 6

Marsh Waterproofing, Inc.

Specializing in Building Restoration

Physical Address:
240 South Main St. Suite #2
Vidor, TX 77662

Mailing Address:
P.O. Drawer 968
Vidor, TX 77670-0968

Ph# 409-769-0459
Toll free: 1-866-251-0234
Fax# 409-769-1682

Email: mwaterproofing@aol.com

July 10, 2017

**Churchs Chicken
State Acquisitions, LLC
259 Seven Farms DR
Suite #301
Charleston SC 29492**

Attn: Alexander Burns

Scope of Work: Foam Underneath Crawlspace at Churchs Chicken

- Crawl space must be clean and free of standing water
- All plumbing and electrical must be repaired and secured by others
- This quote is based on 1200 square feet by 3 feet deep crawlspace
- Apply alchemy polymers 430 foam to fill crawlspace
- This quote is based using 10 sets of alchemy polymers foam
- Remove access door and fill with 4 inches of concrete after completion

Price: \$41,800.00 plus all applicable taxes.

Price for multiple stores: \$36,800.00 plus all applicable taxes.

***NOTE: Approximately 2 working days per store**

***If crawlspace is not prepared \$875.00 per day will be charged while we are waiting on electrical, plumbing and cleaning to be finished.**

Terms: Payment due upon completion.

**Respectfully Submitted,
Tim Marsh
Marsh Waterproofing Inc.
409-782-3527**

Acceptance of Proposal: AB Date: 7/21/2017

From: Alexander Burns <aburns@hamiltonmsc.com>
To: mwaterproofing <mwaterproofing@aol.com>
Subject: Re: Churchs Crawl Spaces
Date: Wed, Jul 19, 2017 12:34 pm

Your quote said "payment do upon completion" I am assuming this means like NET 15? Assuming we pull the trigger this week, I imagine you would get started next week and roll through the restaurants at a rate of 2 days per restaurant, correct?

On Wed, Jul 19, 2017 at 10:05 AM, <mwaterproofing@aol.com> wrote:
That is fine. Once I hear from you I will get materials ordered.

Thanks

Marsh Waterproofing, Inc.
PO Box 968
Vidor, TX 77670
Phone #409-769-0459
Fax #409-769-1682

-----Original Message-----

From: Alexander Burns <aburns@hamiltonmsc.com>
To: mwaterproofing <mwaterproofing@aol.com>
Sent: Wed, Jul 19, 2017 8:35 am
Subject: Churchs Crawl Spaces

We are confirming a schedule for restaurants now. It will either be 7 restaurants or 8. I am expecting to have final confirmation to you no later than Friday so that we can immediately get started.

Regards,

Alex

—
Alexander Burns
Director
Hamilton Management Services Company
259 Seven Farms Drive
Suite 301
Charleston, SC 29492
Tel: (843) 300-1985
E-mail: ABurns@HamiltonMSC.com

--
Alexander Burns
Director

Re: Churchs Crawl Spaces

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

Hamilton Management Services Company
259 Seven Farms Drive
Suite 301
Charleston, SC 29492
Tel: (843) 300-1985
E-mail: ABurns@HamiltonMSC.com

Record on Appeal

Marsh Waterproofing Trial Exhibit 7

From: Alexander Burns <aburns@hamiltonmsc.com>
To: mwaterproofing <mwaterproofing@aol.com>
Subject: Re: Crawl Space Schedule
Date: Fri, Jul 21, 2017 1:04 pm

No problem. One note on the last store (#1251 in Sumter, SC) we are waiting for confirmation from the landlord as to whether they'd like us to handle it or their own contractor will be doing the work. I will have a final confirmation early next week.

Regards,

Alex

On Fri, Jul 21, 2017 at 11:26 AM, <mwaterproofing@aol.com> wrote:

> Alex,
> Tim is not in the office right now. I will have him look this over as
> soon as he is back.

>

> Thanks,
> Michelle

>

>

> Marsh Waterproofing, Inc.
> PO Box 968
> Vidor, TX 77670
> Phone #409-769-0459
> Fax #409-769-1682

>

>

> -----Original Message-----

> From: Alexander Burns <aburns@hamiltonmsc.com>
> To: mwaterproofing <mwaterproofing@aol.com>
> Sent: Fri, Jul 21, 2017 10:15 am
> Subject: Crawl Space Schedule

>

> Please see the attached crawl space schedule. If these dates work for
> you, I will confirm with my contractor who is doing the pump-out and
> plumbing / electrical. He will be working one step ahead of you on
> each site.

>

> Regards,

>

> Alex

>

Re: Crawl Space Schedule

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

> --
> Alexander Burns
> Director
> Hamilton Management Services Company
> 259 Seven Farms Drive
> Suite 301
> Charleston, SC 29492
> Tel: (843) 300-1985
> E-mail: ABurns@HamiltonMSC.com

--
Alexander Burns
Director
Hamilton Management Services Company
259 Seven Farms Drive
Suite 301
Charleston, SC 29492
Tel: (843) 300-1985
E-mail: ABurns@HamiltonMSC.com

Crawl Space Remediation

<u>START DATE</u>	<u>END DATE</u>	<u>Entity Name</u>	<u>D/B/A</u>	<u>DMA</u>	<u>Address</u>	<u>City / State / ZIP</u>	<u>Store #</u>
7/28/2017	7/29/2017	Steeple Dorchester Ltd	Church's Chicken	Charleston	5343 Dorchester Avenue	N. Charleston, SC 29418	0757 ✓
7/30/2017	7/31/2017	Steeple Up River Ltd	Church's Chicken	Charleston	6138 Rivers Avenue	N. Charleston, SC 29406	0758 paid
8/1/2017	8/2/2017	Steeple Main Columbia Ltd	Church's Chicken	Columbia	4000 Main Street	Columbia, SC 29201	0821
8/3/2017	8/4/2017	Steeple Two Notch Ltd	Church's Chicken	Columbia	7116 Two Notch Road	Columbia, SC 29223	0904
8/5/2017	8/6/2017	Steeple Chestnut Ltd	Church's Chicken	Columbia	2390 Chestnut Street Prince Orange	Orangeburg, SC 29115	1446
8/7/2017	8/8/2017	Steeple West Shockley Ferry Ltd	Church's Chicken	Greenville	102 W. Shockley Ferry	Anderson, SC 29624	0148
8/9/2017	8/10/2017	Steeple South Pleasantburg Ltd	Church's Chicken	Greenville	302 S. Pleasantburg Drive	Greenville, SC 29607	1024
8/11/2017	8/12/2017	Steeple West Liberty Ltd	Church's Chicken	Greenville	200 West Liberty Street	Sumter, SC 29150	1251

Did not ab.]

Marsh 7

Marsh Waterproofing _000007

ROA000551

Record on Appeal

Marsh Waterproofing Trial Exhibit 9

*See Tim
- Roger with Avant All week -

FOREMAN'S WEEKLY TIMESHEET

Foreman's Name: Avant Armentrout

Week starting date: 7/31/17

Week ending date: 8/6/17

MONDAY: 7/31

JOB NAME:	EMPLOYEE NAME:	TIME:
Jasper High Lights	Avant, Roger, Marvin	10.5

TUESDAY: 8/1

JOB NAME:	EMPLOYEE NAME:	TIME:
Dollar General - Dollar	Avant, Roger	6 hrs.
Roof		
OK Paper-3105 Executive		
Roof		
Library on Fannet Roof		

WEDNESDAY: 8/2

JOB NAME:	EMPLOYEE NAME:	TIME:
Re trip maintenance	Avant, Roger	1 hr.
Drive to Alabama		9 hrs
		Drive time
Per Diem		

THURSDAY:

8/3

JOB NAME:	EMPLOYEE NAME:	TIME:
Drive to Charleston	Avent, Roger	10 hrs
		Drive time
Per Diem		

FRIDAY:

8/4

JOB NAME:	EMPLOYEE NAME:	TIME:
Charleston - Dorchester Church's	Avent, Roger	10 hrs
Per Diem		

SATURDAY:

8/5

JOB NAME:	EMPLOYEE NAME:	TIME:
Dorchester Church's	Avent, Roger	8 hrs
Per Diem		

SUNDAY:

8/6

JOB NAME:	EMPLOYEE NAME:	TIME:
Dorchester Church's	Avent, Roger	8 hrs
Per Diem		

FOREMAN'S WEEKLY TIMESHEET

Foreman's Name: Avent Armentrout

Week starting date: 8/14/17 Week ending date: 8/20/17

MONDAY: 8/14

JOB NAME:	EMPLOYEE NAME:	TIME:
Bend Copper	Avent, Roger, Dyan	9 hrs
Cut Wall		
Spaw Glass		

TUESDAY: 8/15

JOB NAME:	EMPLOYEE NAME:	TIME:
Spaw Glass	Avent, Roger, Dyan	9 hrs
Bend metal		
Fit metal cutter		

WEDNESDAY: 8/16

JOB NAME:	EMPLOYEE NAME:	TIME:
Spaw Glass	Avent, Roger, Dyan	9 hrs

THURSDAY:

8/17

JOB NAME:	EMPLOYEE NAME:	TIME:
Drive to S. Carolina	Avant, Roger	16 hrs
	- See Tim -	
Per Diem		

Drive time

FRIDAY:

8/18

JOB NAME:	EMPLOYEE NAME:	TIME:
Dorchester Church S. Carolina	Avant, Roger	16 hrs
Per Diem		

SATURDAY:

8/19

JOB NAME:	EMPLOYEE NAME:	TIME:
Rivers Church S. Carolina	Avant, Roger	14 hrs
Per diem		

SUNDAY:

8/20

JOB NAME:	EMPLOYEE NAME:	TIME:
Charleston Church S. Carolina	Avant, Roger	8 hrs
Per Diem		

FOREMAN'S WEEKLY TIMESHEET

Foreman's Name: Avant Armentrout

Week starting date: 8/21/17 Week ending date: 8/27/17

MONDAY: 8/21

JOB NAME:	EMPLOYEE NAME:	TIME:
<u>S. Carolina</u>	<u>Avant, Roger</u>	<u>12 hrs</u>
<u>Loading + Transporting</u>		
<u>Team</u>		
<u>Per Diem</u>		

TUESDAY: 8/22

JOB NAME:	EMPLOYEE NAME:	TIME:
<u>Orangeburg - Church</u>	<u>Avant, Roger</u>	<u>9 hrs</u>
<u>(was not ready - have to go back to finish)</u>		
<u>Per diem</u>		

WEDNESDAY: 8/23

JOB NAME:	EMPLOYEE NAME:	TIME:
<u>Columbia - Main</u>	<u>Avant, Roger</u>	<u>10 hrs</u>
<u>(Dumping work)</u>		
<u>per Diem</u>		

6 problems
74.5
13.5 drive
ROA000557

THURSDAY:

8/24

JOB NAME:	EMPLOYEE NAME:	TIME:
Two Notch Church Columbia	Avent, Roger	11 hrs
per diem		

FRIDAY:

8/25

JOB NAME:	EMPLOYEE NAME:	TIME:
Orangeburg Church Finish Form and Plumbing work	Avent, Roger	12 hrs
per diem		

SATURDAY:

8/26

JOB NAME:	EMPLOYEE NAME:	TIME:
Greenville S. Carolina Church	Avent, Roger	10 hrs
per diem		

SUNDAY:

8/27

JOB NAME:	EMPLOYEE NAME:	TIME:
Anderson S. Carolina Church	Avent, Roger	9.5 hrs
Driving Back Home		13.5 hrs Drive

Record on Appeal

Marsh Waterproofing Trial Exhibit 10

Marsh Waterproofing Inc
Vidor, TX 77670-0968
P.O. Box 968

Invoice

Date	Invoice #
9/5/2017	6530

Bill To
State Acquisitions, LLC 259 Seven Farms DR Suite #301 Charleston SC 29492

		P.O. No.	Terms	Project
Description	Qty	Rate	Amount	
Installation of foam injection system under crawlspace. Steeple Dorchester Ltd Church's Chicken #0757 5343 Dorchester AVE N Charleston SC 29418		36,800.00	36,800.00	
			Subtotal	\$36,800.00
			Sales Tax (0.0%)	\$0.00
			Total	\$36,800.00
			Payments/Credits	\$0.00
			Balance Due	\$36,800.00

Record on Appeal

Marsh Waterproofing Trial Exhibit 11

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARSH WATERPROOFING, INC.,
Plaintiff

VS.

ARC CAFEUSA001, LLC,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

STATEMENT FOR MECHANIC'S LIEN



PGS:
5

NOTICE IS HEREBY GIVEN that Marsh Waterproofing, Inc., (License Number: not required for scope of work), is due the sum of Thirty-Six Thousand Eight Hundred and No/100 Dollars, (\$36,800.00) from State Acquisitions, LLC, a statement of a just and true account of said indebtedness being attached hereto and made a part hereof.

That said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvement of the real estate herein described and owned by ARC CAFEUSA001, LLC, by virtue of an agreement with, or by the consent of such owner(s) or a person or persons authorized by or rightly acting for said owner(s), or the debt is due because such improvements have been authorized by such owner(s). That as shown by the attached statement the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days of the date hereon, or or after August 19, 2017.

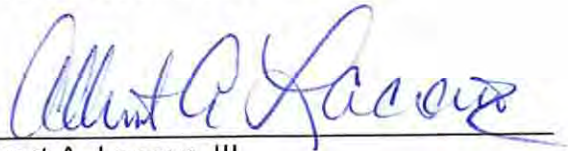
That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the

costs of enforcing said lien including reasonable attorney's fees all as provided by law upon the buildings or structures hereinafter mentioned and upon the following described real estate:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown on an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., dated May 21, 1990, and recorded June 28, 1991 in the Office of the RMC for Charleston County in Plat Book CD at Page 91. The aforesaid plat is incorporated by reference herein.

TMS: 408-10-00-229

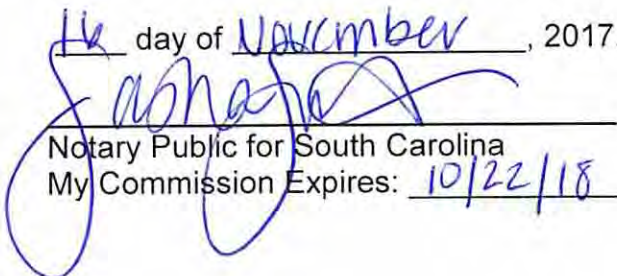
CLAWSON and STAUBES, LLC



Albert A. Lacour, III
Bar No.: 3099
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: alacour@clawsonandstaubes.com
Attorney for Plaintiff

Sworn and subscribed before me this

14 day of November, 2017.



Notary Public for South Carolina

My Commission Expires: 10/22/18

VERIFICATION

PERSONALLY appeared before me Tim Marsh,
who, being duly sworn, deposes and says that he/she is the
Owner of Marsh Waterproofing, Inc., the Plaintiff, in the
foregoing action; that has read the foregoing Statement for Mechanic's Lien and the
allegations contained therein are true and correct of own knowledge, save and except
those matters alleged upon information and belief, and as to those matters believes the
same to be true.

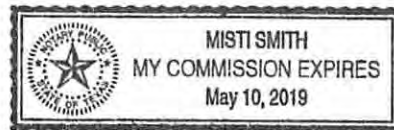
Marsh Waterproofing, Inc.

By: Tim Marsh
Tim Marsh
(print name)

Its: owner
(print title)

Sworn and subscribed before me this
15th day of November, 2017.

Misti Smith
Notary Public for Texas
My Commission Expires: 5/10/19



STATE OF TEXAS

COUNTY OF JEFFERSON

)
) VERIFIED STATEMENT OF ACCOUNT
)

Personally appeared before me, Tim Marsh, who
being sworn, deposes and says that he/she is the Owner of
Marsh Waterproofing, Inc., the Plaintiff, and authorized to make the within Statement of
Account.

That from State Acquisitions, LLC, the sum of Thirty-Six Thousand Eight
Hundred and No/100 Dollars, (\$36,800.00) is currently due and owing upon the
following invoices:

INVOICE DATE	INVOICE NUMBER	AMOUNT
9/5/17	6530	\$36,800.00
Total Balance Due and Owing:		\$36,800.00

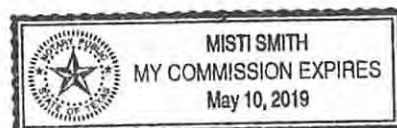
That the foregoing statement is a true and just account of all sums due and
owing and no part thereof has been paid by discount or otherwise.

Marsh Waterproofing, Inc.

By: Tim Marsh
Tim Marsh
(print name)

Its: Owner
(print title)

Sworn and subscribed before me this
15th day of November, 2017.
Misti Smith
Notary Public for Texas
My Commission Expires: 5/10/19



RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



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CLAWSON & STAUBES
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CHARLESTON SC 29492 (BOX)

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Elaine H. Bozman, Register
Charleston County, SC

MAKER:

ARC CAFEUSA001 LLC

of Sats:

of Pages: 5

of References:

Note:

RECIPIENT:

MARSH WATERPROOFING INC

Recording Fee \$ 10.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

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Record on Appeal

Marsh Waterproofing Trial Exhibit 12

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: _____

Plaintiff:

Marsh Waterproofing

vs.

Defendant:

ARC CAFEUSA001, LLC

For:

Albert Lacour, III
Clawson and Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492

Received by Sharp Investigations LLC on the 16th day of November, 2017 at 12:15 pm to be served on **ARC CAFEUSA001 CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.**

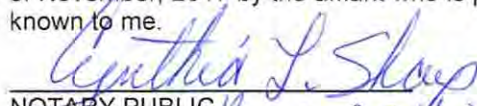
I, Jason Roberts, being duly sworn, depose and say that on the **16th day of November, 2017 at 2:35 pm, I:**

served a **REGISTERED AGENT** by delivering a true copy of the **Statement for Mechanic's Lien, Verification and Verified Statement of Account** with the date and hour of service endorsed thereon by me, to: **Lisa Culler as Registered Agent** at the address of: **2 Office Park Court, Suite 103, Columbia, SC 29223** on behalf of **ARC CAFEUSA001**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: Caucasian, Height: 5'8", Weight: 200, Hair: Blonde, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 17th day of November, 2017 by the affiant who is personally known to me.


NOTARY PUBLIC

Expires: April 28th, 2025



Jason Roberts
Process Server

Sharp Investigations LLC
7406 Garners Ferry Rd
9648
Columbia, SC 29290
(803) 530-5525

Our Job Serial Number: SRP-2017000491

Record on Appeal

Marsh Waterproofing Trial Exhibit 13

Albert A. Lacour, III

From: Bill Richey <billrichey@griffinandmatthews.com>
Sent: November 15, 2017 10:48 AM
To: Albert A. Lacour, III
Subject: Fw: License question



This document is confidential and/or privileged and should only be viewed by the intended recipient.

From: Roger Lowe
Sent: Wednesday, November 15, 2017 9:40 AM
To: Bill Richey
Subject: RE: License question

Good morning,

Based upon the information supplied, in compliance with South Carolina Code of Laws Title 40 Chapter 11, my reply to your question is as follows:

If the foam is not being used for energy efficiency (insulation) and only as a means to fill a void, then there is no classification that would require a license. If the foam is installed with the intent to provide the benefit of its insulation properties, then an Interior Renovation classification would be required as a General Contractor License.

I hope this answers your questions,



Roger K. Lowe, MCP CBO

Administrator
SC Building Codes Council
SC Contractors' Licensing Board
SC Manufactured Housing Board
SC Boiler Safety Program

110 Centerview Drive ♦ Columbia, SC 29211 ♦ roger.lowe@llr.sc.gov ♦ 803.896.4688 ♦ 803.896.4814 FAX

From: Bill Richey [mailto:billrichey@griffinandmatthews.com]
Sent: Wednesday, November 15, 2017 10:26 AM
To: Roger Lowe <roger.lowe@llr.sc.gov>
Subject: License question

***** SCDLLR NOTICE *****

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

Mr. Lowe:

I called the number on the website and I was referred to you.

I am a lawyer in Texas. I am trying to determine if a client of mine needs a license to perform specific work in South Carolina. My client is not required to have a license in Texas to perform this work.

The specific work involves the spraying of expandable polyurethane foam into open spaces, which then expands and hardens, providing support. The specific product is Alchemy Polymers AP Lift 430. The process has been recommended by an engineer. My client performs no other work other than spraying the foam. Any work required prior to the spraying of the foam, such as plumbing, electrical, etc., is handled by the owner or the general contractor, and is not within my client's scope of work.

I appreciate any assistance that you can provide.

Bill Richey

State Bar No. 16874950
Griffin & Matthews
400 Neches
Beaumont, TX 77701
409-832-6006
409-832-1000 F
griffinandmatthews.com

This document is confidential and/or privileged and should only be viewed by the intended recipient.

Record on Appeal

Marsh Waterproofing Trial Exhibit 14

S.C. Code Ann. § 40-11-410

This document is current through ch. 1-14, 16 of session 123.

South Carolina Code of Laws Annotated by LexisNexis® > Title 40. Professions and Occupations (Chs. 1 — 83) > Chapter 11. Contractors (Arts. 1 — 3) > Article 1. In General (§§ 40-11-5 — 40-11-430)

§ 40-11-410. License classifications and subclassifications.

The following license classifications are in effect:

(1)“General Contractors-Building” which includes commercial, industrial, institutional, modular, and all other types of building construction, including residential structures. This license classification includes all work under the subclassifications of Wood Frame Structures-Class II. Interior Renovation, Masonry, Pre-engineered Metal Buildings, General Roofing, and Structural Shapes.

Licensees under this classification may perform ancillary work, including grading, associated with the building or structure which the licensee has been engaged to construct. However, if a project includes work performed under a Mechanical Contractor subclassification or any of these license subclassifications, the licensee must have a license for this work or use a contractor licensed in the appropriate license classification or subclassification to perform the work: Swimming Pools, Bridges, Boring and Tunneling, Water and Sewer Lines, Pipe Lines, Railroad Lines, Specialty Roofing, Marine, Water and Sewer Plants, and Asphalt Paving.

(2)“General Contractors-Highway” which includes work under these subclassifications:

(a)“Bridges” which include bridge construction and repairs, railroad trestles and overpasses, and work under the subclassifications of Boring and Tunneling, Concrete, Marine, and Railroad Lines.

(b)“Concrete Paving” which includes the construction, rehabilitation and repair of concrete streets, roads, highways, driveways, parking lots, airport runways and aprons, and concrete work incidental thereto including, but not limited to, sidewalks, curbs, medians, and barrier walls. This subclassification also includes work under the subclassification of Grading.

(c)“Asphalt Paving” which includes asphalt paving, repairs and rehabilitation of streets, roads, highways, parking lots, airport runways and aprons, concrete including, but not limited to, curbs, gutters, and concrete or asphalt paving of storm sewers, and includes paving with sealers, geotextile fabrics, slurry seals, and surface treatments incidental thereto. This subclassification also includes work under the subclassification of Grading.

(d)“Grading” which includes the soil preparation and rehabilitation of streets, roads, highways, railroad beds, building sites, parking lots, and storm sewers. This subclassification also includes work under the subclassification of Highway Incidental.

(e)“Highway Incidental” which includes highway work for grooving, milling, rehabilitating, and installing guardrails, gutters, highway signs, pavement marking, and painting.

(3)“General Contractors-Public Utility” which includes work under these subclassifications:

(a)“Pipe Lines” which includes the construction, installation, alteration, maintenance, and repair of systems for the transmission or distribution of petroleum fuels, petroleum distillates, natural gas, chemicals, and slurries through pipeline from one station to another including all excavating, trenching, backfilling and installation of booster stations and equipment and installation and replacement of tanks connected to the system. This subclassification does not include the piping and tanks for the dispensing of any petroleum product at retail.

(b) "Water and Sewer Plants" which includes all classifications and subclassifications necessary for the construction of water treatment and wastewater treatment facilities. However, if a project includes work to be performed under any of these license subclassifications, the licensee must either have a license to perform this work or use a contractor licensed in the appropriate license classification or subclassification to perform the work: Bridges, Railroad Lines, Specialty Roofing, and Mechanical work.

(c) "Water and Sewer Lines" which includes construction work on water mains, water service lines, water storage tanks, sewer mains, sewer lines, lift stations, pumping stations and appurtenances to water storage tanks, lift stations, pumping stations, pavement patching, backfill, and erosion control as a part of construction, and which includes connection at the building of all lines to the appropriate lines contained in commercial structures, installation and repair of a project involving manholes, the laying of pipe for storm drains and sewer mains, all necessary connections, and excavation and backfilling, and concrete work incidental thereto.

Contractors in this license subclassification in license groups three, four, and five may install fire protection sprinkler system underground mains to a flanged outlet 1'-0" above the finished floor in compliance with National Fire Protection Association Standard 24. However, shop drawings must be submitted and approved by the State Fire Marshal with a copy of the approved drawings going to the licensed fire sprinkler contractor. Flushing and testing certificates must be delivered to the authority having jurisdiction and the performing licensed fire sprinkler contractor performing. General contractors in this license subclassification may not engage in water and sewer line work from the right-of-way to a residential structure unless the entity is a subcontractor to a licensee holding a plumbing subclassification.

(4) "General Contractors-Specialty" which includes work under these subclassifications:

(a) "Boring and Tunneling" which includes the construction of underground or underwater passageways with diameters in excess of ninety-six inches or lengths in excess of three hundred fifty feet by digging or boring through and under the earth's surface, including the bracing and compacting of passageways to make them safe for the purpose intended. This subclassification includes the preparation of ground surfaces at points of ingress and egress. Underground structures less than ninety-six inches in diameter or less than three hundred fifty feet in length are considered normal excavation.

(b) "Concrete" which includes all work in connection with concrete forming and placing; assembling of forms, molds, slipforms and pans; centering, trenching, excavating, backfill, and grading in connection with concrete construction; construction of sidewalks, driveways, curbs, medians, and barrier walls; and installing of embedded items essential to or comprising an integral part of concrete or concrete construction including reinforcing elements and accessories including, but not limited to, concrete chimneys, floors, piers, and foundations when using concrete rebar and other materials common to the concrete industry. This subclassification does not include the General Contractor-Highway- Bridge license subclassification or the construction of streets, roads, parking lots, and highways.

(c) "Interior Renovation" which includes installing, remodeling, renovations, and finishes of acoustical ceiling systems and panels, load-bearing and nonload-bearing drywall partitions, lathing and plastering, flooring (excluding carpet) and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork; and which also includes fireproofing, insulation, lining, painting, partitions, sandblasting, interior wall covering, and waterproofing. This subclassification does not include alterations to load-bearing portions of a structure.

(d) "Marine" which includes all water activities to construct seawalls, bulkheads, docks, piers, wharves, and other water structures including, but not limited to, pile driving, boat slips, and boardwalks. Licensees under this classification may perform ancillary work including fill and grading. This license subclassification does not include structures within the scope of the General Contractor-Building classification.

(e) "Masonry" which includes the installation, with or without the use of mortar or adhesives, of brick, concrete block, gypsum partition tile, pumice block, fire clay products, rough cut and dressed stone, marble panels or slate units, structural glazed tile or block, glass brick or block, solar screen tile or block, or other units and products common to the masonry industry.

- (f)“Pre-engineered Metal Buildings” which includes the construction of pre-engineered metal buildings not exceeding forty feet in width with no single structural span exceeding forty feet in length, and consisting of no more than a concrete floor slab, metal frame, metal roof, metal sidewalls, and building insulation.
- (g)“Railroad Lines” which includes the installation and repair of railroad lines, including setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, and signal markers. This subclassification does not include grading, trestles, or overpasses.
- (h)“General Roofing” which includes the installation and repair of roofs and roof decking on commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. This license subclassification is limited to shingles, clay and concrete tile, slate, wood-shake roofing, metal roofing, and asphalt-rolled roofing.
- (i)“Specialty Roofing” which includes the installation and repair of roofs and roof decking on commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. This license subclassification includes all work under the General Roofing license subclassification and other types of roofing not specifically included in the general roofing license subclassification.
- (j)“Structural Framing” which includes the installation, repair, or alteration of metal or composite structural members for buildings or structures, including riveting, welding, and rigging. This subclassification also includes work under the subclassification of Structural Shapes.
- (k)“Structural Shapes” which includes the installation, repair, or alteration of metal or composite shapes, tubing, pipes and bars, including minor field fabrication as may be necessary.
- (l)“Swimming Pools” which includes the construction, service, and repair of all commercial and institutional swimming pools and spas, including concrete, gunite, plastic, vinyl-lined, and fiberglass pools and spas; pool decks, walkways, tiling, and coping; and the installation of all equipment, including pumps, filters, and chemical feeders, water and gas service lines from the point of service to the pool equipment, wiring from the pool equipment to the first readily accessible disconnect, pool piping, fittings, backflow prevention devices, waste lines, and other integral parts of a swimming pool or spa.
- (m)“Wood Frame Structures” which include framing, roofing, siding, or flooring for wood-framed structures in excess of five thousand feet used for housing livestock, storage, or processing, when such structures are not used for habitation or office facilities.
- (n)“Public Electrical Utility” which includes the installation, replacement, alteration, and repair of transmission lines on or off public rights-of-way, including erection of poles, guying systems, tower line erection, street lighting, and outside lighting of all voltages and all underground systems, including ducts for signal communication and similar installations, transformers, circuit breakers, capacitors, primary metering devices, and other related equipment not used in connection with this subclassification. A contract that contains electrical work above fifty volts must be performed by a licensed public utility-electrical or mechanical-electrical contractor. This subclassification does not cover athletic field lighting, stadium lighting, or lighting which is not on public easements or rights-of-way.
- (o)“Boiler installation” which includes those who are qualified to install, repair, and service boilers and boiler piping including the boiler auxiliary equipment, controls, and actuated machinery and dryer rolls. To qualify for this subclassification, a person must pass a technical examination administered by the board or must be the holder of the American Society of Mechanical Engineers (ASME) “S” stamp or hold the National Board of Boiler and Pressure Vessel Inspectors (NBBPVI) “R” stamp and meet the requirements for licensure according to this chapter.
- (p)“Glass and Glazing” which includes, but is not limited to, commercial, residential, industrial, institutional, modular, and all other types of glass and glazing construction. The construction is limited to selection, cutting, assembling, and installing all makes and kinds of glass for windows, sash and doors, metal frames, ornamental decorations, mirrors, and tub and shower enclosures. This license classification includes all work under the subclassifications of renovation, structural shapes, and architectural aluminum glazing systems which include aluminum entrance doors and frame systems, entrance and egress hardware, curtain wall

systems, sliding doors/mall fronts, overhead glazing systems, and architectural window systems and accessories. Contractors engaged solely in residential construction must be licensed or registered with the South Carolina Residential Builders' Commission and are not required to have this classification. The board may require an applicant to pass an examination before licensure as provided by this chapter.

(5) "Mechanical Contractors" which includes work under these subclassifications:

(a) "Air Conditioning" which includes the installation, replacement, alteration, and repair of air conditioning equipment and systems which consist of a number of components necessary to produce conditioned air for environmental heating or cooling, or both, within buildings. Hot water or steam heating systems or components are not included under this classification.

(b) "Heating" which includes installation, replacement, alteration, and repair of heating equipment and systems in buildings which require the use of high or low pressure steam vapor or hot water including all piping, ducts, and mechanical equipment within, adjacent to, or connected with a building and the installation of necessary gas lines if any of this equipment is gas-fired.

(c) "Packaged Equipment" (air conditioning-heating packaged equipment limited to twenty-five tons cooling and five hundred thousand BTU/HR heating per unit) which includes the installation, replacement, alteration, or repair of air conditioning equipment and systems which consist of a number of components necessary to produce conditioned air for environmental heating or cooling, or both, within buildings, including types of heating systems and any size package equipment; and the installation, alteration, and repair of ventilation systems, including duct work, air filtering devices, water treatment devices, pneumatic or electrical controls, or control piping; thermal and acoustical insulation, vibration isolation materials and devices, liquid fuel piping and tanks, water and gas piping from service and heating circuits and air handling systems, including gas-fired furnaces and space heaters; and factory-assembled single package units and split type direct expansion equipment, including heat pumps. This subclassification does not include installing, replacing, altering, or repairing hot water or steam heating systems or components.

(d) "Electrical" which includes the installation, alteration, or repair of wiring-related electrical material and equipment used in the generating, transmitting, or utilization of electrical energy less than six hundred volts, including all overhead electrical wiring on public rights-of-way for signs and street decorations and all underground electrical distribution systems of less than six hundred volts serving private properties. This subclassification also includes, but is not limited to, installing, altering, and repairing, panels, controls, conductors, conduits, cables, devices, plates, electric ceilings, control wiring; and electric heating, lighting fixtures, lamps, general outside lighting, underground and overhead feeder distribution systems for services, and related components or work necessary to provide a complete electrical system and installing window or through-the-wall air conditioning units not to exceed three HP or three tons where no piping is necessary. Under this subclassification, general outside lighting is limited solely to within property lines and not on public easements or rights-of-way. A contract that contains electrical work above fifty volts must be performed by a contractor licensed under this subclassification or a licensed public electrical utility contractor. This license subclassification includes installing, altering, and repairing all lighting on private property, athletic fields, stadiums, parking lots, and the design, installation, and servicing of fire alarm systems.

(e) "Lightning Protection Systems" which includes installation, replacement, alteration, or repair of necessary lightning protection conduction, cables, rods, points, anchors, fastening devices, labels, ground clamps, braces, and all related component parts necessary for a complete lightning protection system.

(f) "Plumbing" which includes the installation, replacement, alteration, and repair of all plumbing including solar water heating when performed solely within property lines and not on public easements or rights-of-way except to make connections to water meters or sewer taps as allowed by the utility owner; and the installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks, and excluding municipal or related water supply systems; venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; roof leaders; water-conditioning equipment; piping and equipment for swimming pools; and installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey

sewage or other waste products from buildings. If this equipment is gas-fired, the necessary gas lines may be installed under this subclassification used in connection with this subclassification. Plumbing contractors in license groups three, four, and five are not required to be licensed under Chapter 45, Title 23 to install standpipe systems, including water hose connections, water hose cabinets, and related branch lines if the water hoses do not supply water to automatic fire protection sprinklers.

(g)“Pressure and Process Piping” which includes the installation, maintenance, repair, alteration, or extension of a system of piping, tubing, vessels, containers, pumps, apparatus, and appurtenances in connection with pressure piping used for circulation, transporting, holding, or processing of gas, vapor, fluid, liquid, semi-liquid, or any combination of these. However, boilers, boiler piping, piping used to convey potable water, sanitary sewage, liquefied petroleum, manufactured or natural gas or refrigeration, air conditioning and comfort heating piping are not included in this subclassification.

(h)“Refrigeration” which includes the installation, replacement, alteration, and repair of refrigeration equipment and systems used for processing, storage, and display of food products and other perishable commodities and commercial, industrial, and manufacturing processes requiring refrigeration, excluding comfort air conditioning. This subclassification also includes work on systems including related equipment for temperature, safety, and capacity controls, thermal insulation, vibration isolation materials and devices, water treatment devices, construction and installation of walk-in refrigeration boxes, liquid fuel piping and tanks, water and gas piping from equipment to service connection, and testing and balancing of refrigeration equipment and systems. An entity licensed under the air conditioning subclassification may also do work under this subclassification.

History

1998 Act No. 440, § 1; 1999 Act No. 91, § 7; 2001 Act No. 32, §§ 2, 3A; 2005 Act No. 59, § 2.

Annotations

Research References & Practice Aids

CROSS REFERENCES.—

Certification as qualifying party, see S.C. Code Ann. § 40-11-230.

Qualifications for acting as sole prime contractor, see S.C. Code Ann. § 40-11-340.

Exemptions from application of chapter; content of posters to be distributed to building permit offices, see S.C. Code Ann. § 40-11-360.

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End of Document

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 1

ASSESSMENT – PHYSICAL DAMAGE TO PROPERTY



Restaurant #: 757– 5343 Dorchester Road, Charleston, SC 29418

Hamilton Management Services Co.
Mr. Alexander Burns
701 East Bay St Suite 410
Charleston, SC 29403

Prepared by



Davis Patrikios Criswell, Inc.
7975 Stage Hills Boulevard, Suite 1
Memphis, TN 38133

Job No. 2017086
June 22, 2017



ROA000579

OBSERVATION DATA SUMMARY

Date of Visit: May 31, 2017

Weather: Partly Cloudy, 81°

Location: 5343 Dorchester Road
Charleston, South Carolina, 29418

Crawlspace Conditions: Standing Water

Client(s): Hamilton Management Services Co.
Mr. Alexander Burns
701 East Bay St Suite 410
Charleston, SC 29403

Notes: Observing condition of first floor
elevated framing from
crawlspace; Access to
crawlspace was limited due to
standing water.

Prototype #: N/A

Market Leader: N/A

Present at Observation: Ralph Velasco, E.I.

FORENSIC ENGINEERING SCOPE

Davis Patrikios Criswell, Incorporated was contacted to provide a visual observation of the crawl space / basement to identify observed structural deficiencies in the building's ground floor slab structural system. Repair recommendations will be made on an as needed basis in order to maintain life safety and structural integrity of the floor system.

OBSERVATION

The on-site field observation was performed by Mr. Ralph Velasco, E.I. of Davis Patrikios Criswell, Incorporated. Mr. Velasco performed the field observation of the restaurant located at 5343 Dorchester Road, Charleston, South Carolina on May 31, 2017. Mr. Eric Criswell, P.E. and Mr. Gerry Patrikios, P.E. reviewed observation notes and photographs obtained during Mr. Velasco's observation on June 2, 2017. Mr. Eric Dunham was the Church's Chicken representative whom Mr. Velasco met with during the observation.

STRUCTURE BACKGROUND AND COMPONENTS

The property located at 5343 Dorchester Road, Charleston, South Carolina was a Church's Chicken restaurant and was occupied by a tenant at the time of observation. The building was located in Charleston County, South Carolina. The restaurant was 991 square feet, and was constructed in 1976 according to the Charleston County Assessor's website. (<http://sc-charleston-county.governmax.com>)

The restaurant was observed to face east and was a conventional framed structure with steel beams supporting metal decking with a concrete topping slab. The perimeter of the framing was founded on a concrete basement wall approximately 3'-0" in height. The interior steel beams were supported by piers with isolated spread concrete footings. The interior and exterior load bearing walls were presumed to be light gauge metal studs bearing on the elevated slab system.

The site was observed to be generally flat with drainage flowing away from the building on all sides. The store had pea-gravel concrete sidewalks on three sides of the building with an asphalt drive-thru aisle, parking lot, and an extended concrete front patio.

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

SITE AND STRUCTURAL OBSERVATIONS:

<u>ID</u>	<u>LOCATION</u>	<u>OBSERVATION COMMENTS</u>	<u>PHOTO(S) #</u>
A SITE			
1	Paving	Asphalt Drive Thru and Parking area with common cracking	1-4
2	Sidewalks at Building	Pea Gravel Sidewalks on all sides of building with cracks and separation	1-4
3	Site Drainage	Drainage generally flows away from building on three sides of building	1-4
B STRUCTURE			
1	Exterior Walls, Interior Walls and Finishes	No Observed Damage.	N/A
2	Perimeter Retaining Wall	Wall partially underwater in crawlspace.	6
3	Mudslab	Standing water in crawlspace. Limited access.	5
4	Girder Steel Beam	Evidence of rust and oxidation; Significant deterioration and delamination.	7
5	Joists Steel Beams	Evidence of rust and oxidation; Significant deterioration, delamination, and loss of structural section.	8, 9
6	Perimeter Steel Beams	Advanced evidence of rust and oxidation; Significant deterioration, delamination, and loss of structural section	10
7	Metal Decking and Topping Slab	Advanced evidence of rust and oxidation; Significant loss of structural section; Deterioration of decking; Bare concrete observed.	11
8	Under Slab Hung Utilities	Evidence of Water Submersion on Underhung Utilities	12
9	Sump Pump	Sump pump not observed, but assumed to not be working due to standing water in crawlspace	5
10	Shoring	No shoring observed.	13, 14

DISCUSSIONS AND CONCLUSIONS:

We observed significant evidence of long-term rust and oxidation to the structural steel beams supporting the metal deck and concrete topping slab. The condition of the beams has advanced to a state where, all observed steel perimeter beams, steel beam joists, and steel beam girders were noted to be in a condition where deterioration, delamination, and/or loss of structural section has occurred. The metal deck spanning between the beam joists was noted to have significant rust and oxidation damage. In some observed locations within the crawlspace, bare concrete from the topping slab could be observed due to complete loss of structural section of the metal decking. The concrete topping slab was not designed to span between the steel joists without the metal decking support.

The crawlspace was also noted to have a significant amount of standing water present throughout the crawlspace. The crawlspace is built underground; therefore, in order to drain water from under the building a sump pump pit and pump are required. Confirmation of the condition of the sump pump was not determined; however, water was ponding in the crawlspace. Water was noted as condensing on the bottom of the metal decking / bare concrete at the time of observation. In our professional engineering judgment, the crawlspace lacked adequate ventilation to prevent condensing of moisture in the crawlspace. We recommend a licensed mechanical engineer confirm the necessary requirements for ventilation in the crawlspace.

In our professional engineering judgment, the condition of the structural steel framing and metal decking have reached a condition where remaining structural materials are overstressed and normal cyclic loading could cause catastrophic collapse of the elevated slab. The observed structural condition indicates that failure of the floor system is imminent. Any additional localized failure of the floor system could result in catastrophic collapse of the entire structure. We recommend that Church's Chicken provide immediate continuous structural support of the floor decking and beams in order to protect both life

safety and Church's capital assets. We recommend this store location be repaired immediately.

RECOMMENDATIONS:

Based on the visual observation and condition of the load bearing structural members, we recommend that immediate structural support be provided for all structural members in the crawlspace. This would include all perimeter beams, joists beams, girder beams, metal decking and bare concrete areas. It is critical that full continuous support be provided to the structural members in the crawlspace.

For immediate life safety concerns and speed of installation, a high density expanding closed cell structural foam system is recommended for installation in the crawlspace. It is our understanding that Church's Chicken has used this solution in the past with other crawlspaces and has achieved favorable results. The Alchemy Polymers AP Lift 430 product has been reviewed. In review of the specifications, the compressive strength noted is adequate to support the superstructure.

We recommend the following general procedure in order to achieve sound structural foam installation results.

- 1.) Pump all storm water out of the crawl space. Contractor to provide fans as necessary to allow crawl space area to be a dry prior to commencing work.
- 2.) Inspect all under hung water and sewer lines, provide proper tight joints, support and slope.
- 3.) Replace all cast iron or steel sewer lines, if needed, schedule 40 PVC. No steel or cast iron pipes in crawl space and inside polyurethane foam.
- 4.) Pipe all floor drains to sewer collection and verify leak free and positive flow.
Secure pipe.
- 5.) Ensure all sewer and water lines are in good working condition and secured.

- 6.) Confirm that any electrical cables, wires, low voltage cables, etc. are in conduit and properly secured.
- 7.) Remove all debris, pumps, trash, etc. from ground surface.
- 8.) Apply the expandable polyurethane foam after above noted items are performed and checked.

In areas where expansive soils are present, the structural foam could cause issues with heaving of the building's structural system. We recommend verifying existing soil conditions with a local geotechnical engineer prior to installation. All site water should be diverted to prevent water entry into the crawlspace. The provision for a drainage system should be included for removal of any future water that might infiltration into the crawlspace.

The above noted procedure is a general recommendation and will require additional engineering design, calculation, further observation, and preparation of construction documents prior to implementation, which is beyond the scope of this inspection phase of work. Additional repair options may be considered on a case by case basis. The owner shall provide a detailed scope of work for consideration. In any case, the damages observed require a full bearing repair solution.

QUALIFICATIONS

The information presented in this report addressed the limited objectives related to the evaluation of the crawlspace. This report only describes the conditions observed at the time of our evaluation. It is not intended to fully delineate or document every defect or deficiency throughout the subject property. This observation does not include a detailed analytical study of the structural elements nor does this report warrant the structural quality of the structural members which were not exposed and were not readily available for visual observation or other areas not mentioned in this report. If any additional information is encountered which relates to this evaluation, Davis Patrikios Criswell, Inc. reserves the right to alter the recommendations contained in this report. In some cases, additional

studies may be warranted to fully evaluate concerns noted.

Our services have been performed using that degree of skill and care ordinarily exercised under similar conditions by reputable members of Davis Patrikios Criswell's profession practicing in the same or similar locality at the time of performance. Any verbal statements made before, during, or after the course of the observation were made as a courtesy only and are not considered a part of this report.

Thank you for your business and please feel free to call us if you have any questions or comments regarding our report or structural observation.

Sincerely,

Davis Patrikios Criswell, Inc.



Ralph Velasco, E.I.
Field Inspector



Eric Criswell, P.E.
Senior Engineer



Engineer of Record By:
Gerry Patrikios, P.E.
Senior Engineer

PHOTOGRAPHIC DOCUMENTATION:



Photo 1: Front/East Elevation & Asphalt Parking



Photo 2: South Elevation & Asphalt Drive-Thru



Photo 3: North Elevation & Parking Lot



Photo 4: West Elevation & Asphalt Drive-Thru



Photo 5: Standing Water at Entrance of Crawlspace



Photo 6: Evidence of Standing Water Observed on Perimeter Retaining Wall



Photo 7: Rust, Deterioration, and Delamination Observed on Interior Girder Beam



Photo 8: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beams



Photo 9: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beam



Photo 10: Severe Rust, Deterioration, and Delamination Observed on Perimeter Support Beam



Photo 11: Observed Severe Rusting of Metal Decking, and Exposed Concrete



Photo 12: Condition of Under Slab Hung Utilities



Photo 13: No Shoring Observed for Elevated Slab or Steel Frame



Photo 14: No Shoring Observed for Floor Decking

Subject: Church's Chicken #757 and #1446 Reports
From: Eric Criswell <ecriswell@dpcmemphis.com>
To: Alex Burns <aburns@hamiltonind.com>
Date Sent: Friday, June 23, 2017 4:00:21 PM GMT-04:00
Date Received: Friday, June 23, 2017 4:00:26 PM GMT-04:00

Alex,

Attached are the reports for #757 and #1446.

Eric Criswell
Professional Engineer



7975 Stage Hills Blvd Suite 1A Memphis, TN 38133
Ph. +1 901 377.9984 Fax +1 901 290.0875

[website](#) | [map](#) | [email](#) | 



2008 Memphis Business Journal "Top 40 Under 40" Honoree

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Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 2

South Carolina Department of Labor, Licensing and Regulation
Office of Investigation and Enforcement
P.O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4470

CITATION AND NOTIFICATION OF PENALTY FOR GENERAL AND MECHANICAL CONTRACTING

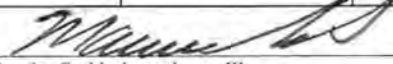
Marsh Waterproofing, Inc.
[REDACTED]
Vidor, TX 77662

License Number: UNLICENSED
☒ General ☐ Mechanical

Issuance Date: 4/5/2018
Case No.: 2017-354

This citation describes alleged violation(s) of Title 40, Chapter 11 of the South Carolina Code of Laws Ann., 1976, (as amended.) The penalties listed are based on these violations. You must pay the proposed penalties pursuant to §40-11-100. Any citation and/or penalty assessed by the South Carolina Department of Labor, Licensing and Regulation may be appealed without payment by requesting a hearing in writing before the Board. Such requests must be addressed to: South Carolina Contractors' Licensing Board, P. O. Box 11329, Columbia, S.C., 29211-1329, and must be mailed within 15 days of receipt of this Citation. This citation concerns application of the South Carolina Contractors Practice Act and Regulations and does not necessarily resolve all aspects of any disciplinary action currently pending before the Board or which may be filed in the future. **Disciplinary action by the Board may result in you being required to pay the costs associated with the investigation and prosecution of the case. If no appeal is filed, the citation will become a final order of the South Carolina Contractors' Licensing Board and the citation penalty must be paid within 30 days of receipt of the citation.**

ITEM	DISCIPLINARY AUTHORITY	DESCRIPTION OF VIOLATION	PENALTY AMOUNT
1	§40-11-110(A)(5)	Engaging or offering to engage in contracting work or submitting a bid when not properly licensed or while a license is under suspension or revocation. (§40-11-30)	500.00
	§40-11-110(A)(5)	Use of the term 'licensed contractor' without being licensed. (§40-11-370)(A))	
	§40-11-110(A)(5)	Issuing a building permit to an unlicensed general or mechanical contractor. (§40-11-350)	
	§40-11-110(A)(5)	Failure to immediately withdraw from a construction project after violation of licensing requirements. (§40-11-300(B))	
	§40-11-110(A)(5)	Acting as a construction manager without being registered by the Department or in excess of group limitation or license classification. (§40-11-320 and Reg. 29-5)	
	§40-11-110(A)(5)	Dividing work into portions to avoid licensing requirements or group limitations. (§40-11-300(A))	
	§40-11-110(A)(5)	Engaging in a name other than the exact name that appears on the licensee's license. (§40-11-370)(B))	
	§40-11-110(A)(5)	Failure to obtain a building permit as required by local or state jurisdiction – First Offense. (§40-11-110(A)(13))	
	§40-11-110(A)(5)	Failure to maintain a business address accessible to the public. (§40-11-110(A)(18))	
	§40-11-110(A)(5)	Failure to notify the Department of any change in current mailing address, home address, home and/or office telephone number. (Reg.29-9)	
	§40-11-110(A)(5)	Failure to notify the Department of changes in information required in an original or renewal application. (§40-11-110(20))	
	§40-11-110(A)(5)	Departure from an applicable building code of the State of South Carolina or any of its political subdivisions as determined by a court of competent jurisdiction. (§40-11-110(A)(23))	
	§40-11-110(A)(5)	Failure to notify the Department of a change in status of primary qualifying party within fifteen (15) days of disassociation. (§40-11-230)(B)(3))	
	§40-11-110(A)(5)	Contracting without a primary qualifying party after license suspension. (§40-11-230)(B)(3))	
	§40-11-110(A)(5)	Failure to have a certified primary qualifying party in full-time employment in a responsible management position. (§40-11-240(A)(2))	
	§40-11-110(A)(5)	Failure to comply with joint venture bid requirements. (§40-11-340)	
	§40-11-110(A)(9)	Aiding or abetting an unlicensed entity to evade the Practice Act, combining or conspiring with an unlicensed entity, allowing one's license to be used by an unlicensed entity, or acting as agent, partner, or associate, of an unlicensed entity. (§40-11-200)	
	§40-11-110(A)(10)	Entering into a contract with an unlicensed contractor for work to be performed for which a license is required. (§40-11-200)(B))	
	§40-11-110(A)(11)	Using false, misleading, or deceptive advertising whereby a member of the public may be misled and injured. (§40-11-370)	
	§40-11-110(A)(21)	Contracting or offering to contract for construction work exceeding the limitations of a group or outside the classification or subclassification of a license. (§40-11-270)(A))	


Maurice Smith, Investigator III

TOTAL PENALTY: \$500.00

Copy received: _____
Signature of Respondent _____ Date _____

Please make check or money order payable to:
South Carolina Contractors' Licensing Board

CERTIFICATE OF SERVICE BY MAIL
This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified, return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the party(ies) or their attorney(s) to the following address
240 S Main Street, Ste 2, Vidor, TX 77662.

This 5 day of APRIL, 2018.

By: Maurice Smith, Investigator III

07/15/2013

Date Fine Received: _____
Check No.: _____
Received By: _____

EXHIBIT

2

ROA000596

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 3

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA CONTRACTOR'S LICENSING BOARD**

In the Matter of:

MARSH WATERPROOFING INC.

Vidor, TX 77662

License No.: UNLICENSED

Respondent.

Case No: 2017-354

ORDER TO CEASE AND DESIST

TO THE ABOVE NAMED RESPONDENT:

WHEREAS, it has been brought to the attention of the South Carolina Contractor's Licensing Board (hereinafter referred to as "the Board") that you may have engaged in or offered to engage in the practice of general contracting or mechanical contracting without being currently licensed or registered, as required by law; and

WHEREAS, pursuant to S.C. Code Ann. § 40-11-30 (as amended),¹ it is unlawful for a person to engage or offer to engage in the practice of general contracting or mechanical contracting in this State, for which the total cost of construction is greater than five thousand dollars (\$5,000), without obtaining a license from the Board; and

WHEREAS, you are not currently authorized by the Board to engage in the aforementioned activities; and this Order is authorized by Sections 40-11-100 and 40-1-100.

THEREFORE, YOU ARE HEREBY NOTIFIED AND EXPRESSLY ORDERED to immediately cease and desist from advertising or engaging in the practice of general contracting or mechanical contracting, as defined by Sections 40-11-20 and 40-11-30 until such time, if ever, as you may be properly authorized by the Board in accordance with applicable law.

VIOLATIONS MAY BE PUNISHED BY THE IMPOSITION OF CIVIL PENALTIES IN AMOUNTS UP TO \$10,000.00 FOR EACH VIOLATION AND CRIMINAL PENALTIES, WHICH MAY INCLUDE IMPRISONMENT, AS PROVIDED BY LAW.

AND IT IS SO ORDERED.

**SOUTH CAROLINA CONTRACTOR'S
LICENSING BOARD**

Date

4/11/18

BY:

James E. Lady, Chair

EXHIBIT

3

¹ Further reference to the South Carolina Code of Laws and South Carolina Code of Regulations shall be by code section only.

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 4

CITY OF NORTH CHARLESTON

2500 City Hall Lane
North Charleston, SC 29406

FREEDOM OF INFORMATION REQUEST

Date: February 20th 2018

Name: Olson Christopher C Tel: 843-224-6676
Last First Middle

Address: 164 Market Street Suite 139
Charleston SC 29401 clay@harperwhitwell.com
Email Address

Request Received By

Date Received

Be as precise as possible with your request. Include date ranges (Ex: 2015-2017) when applicable and provide all known relevant information. If you are requesting a 911 call, please provide date, approximate time, and address from which call was placed. Please provide addresses, case numbers and dates as needed.

Fees and Costs: There may be fees and costs associated with your request. Please refer to Fee Schedule, attached. The City of North Charleston may, in its discretion, require a 25% deposit of anticipated fees prior to commencing work.

Description of Information Requested:

Building permit information for renovations to Church's Chicken during 2017 at the location

TMS: 408-10-00-229

The property owner is listed as ARC CAFEUSA001

We think Marsh Waterproofing might have sought a permit as well as other entities or vendors of the Church's companies including State Acquisitions, LLC, Hamilton Management etc.

While due dates vary based upon the age of the documents/data you are requesting, you should expect to receive a response from a City employee within ten (10) days of receipt of this FOIA.

City of North Charleston
FOIA FEES and CHARGES

	DESCRIPTION	COST	COST PER UNIT	NO. OF UNITS	SUB- TOTAL
Labor	Search, retrieve and redaction of records based upon employee's hourly wage (charged by the quarter hour)	Varies			
Materials					
	Compact Disc (CD)	.32			
	Digital Versatile Disc (DVD)	.42			
	Thumb Drive	Varies			
	External Hard Drive	Customer Provides			
	Copies (Black & White)	.12			
	Copies (Color)	.15			
	Maps, Plats (Oversized)	5.00			
Documents	Police Incident Report	Per Page Rate			
	Fire Report	Per Page Rate			
	Criminal History Report	Per Page Rate			
	Booking Report	Per Page Rate			
	Copies Produced by Outside Source	Varies			
			TOTAL	DUE 	

*Daily NCPD Incident Reports are available, free of charge, at the Records Window, 2nd Floor, City Hall

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 5

South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

Marsh Waterproofing, Inc.

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Foreign

Incorporated Texas

State:

Important Dates

Effective Date 03/07/2018

:

Expiration N/A

Date:

Term End N/A

Date:

Dissolved N/A

Date:

Registered Agent

Agent: Albert A. Lacour, III

Address: 126 Seven Farms Dr Ste 200
Charleston, South Carolina 29492

Official Documents On File

Filing Type	Filing Date
Application for a Certificate of Authority to Transact Business	03/07/2018

For filing questions please contact us at 803-734-2158

Copyright © 2019 State of South Carolina

EXHIBIT

5

ROA000603

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 6

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Marsh Waterproofing, Inc.,

Plaintiff,

vs.

ARC CAFEUSA001, LLC, Churpeyes II,
Inc. and Hamilton Management Services
Company, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-267

**COMPLAINT FOR FORECLOSURE
MECHANIC'S LIEN
(Breach of Contract; Mechanic's Lien;
Quantum Meruit)**

JURY TRIAL DEMANDED

The Plaintiff, Marsh Waterproofing, Inc., complaining of the Defendants would
allege and show unto this Honorable Court as follows:

FOR A FIRST CAUSE OF ACTION:
(Breach of Contract)

1. That the Plaintiff is a corporation duly organized and existing pursuant to the laws of the State of Texas and having its principal place of business in that State.
2. That upon information and belief the Defendant ARC CAFEUSA001, LLC, is a limited liability company organized under the laws of the State of Delaware, the Defendant Hamilton Management Services Company, Inc. is, upon information and belief a corporation organized under the laws of the State of Delaware, and the Defendant Churpeyes II, Inc. is a domestic corporation organized under the law of the State of South Carolina.
3. That upon information and belief, the Defendant ARC CAFEUSA001, LLC, is the owner of the real property more particularly described in Exhibit "A", which is attached

EXHIBIT

6

ROA000605

hereto and made a part hereof which property is located in the County of Charleston, State of South Carolina, and the Defendant Churpeyes II, Inc. is a tenant and operator of the restaurant on the property.

4. That the Plaintiff and the Defendant, Hamilton Management Services Company, Inc., entered into an agreement for the Plaintiff to provide materials and labor for improvements which include but are not limited to the installation of expandable polyurethane foam under the building slab for structural support on the property which is described above.

5. That the Plaintiff furnished such labor and materials under the agreement with Hamilton Management Services Company, Inc. who had authority from or acted rightly for either the Defendant and owner, ARC CAFEUSA001, LLC or the tenant Churpeyes II, Inc.

6. That the Defendant and owner ARC CAFEUSA001, LLC, and the tenant Churpeyes II, Inc., knew and were aware of the work being performed by the Plaintiff.

7. That despite due demand for payment, the Defendant Hamilton Management Services Company, Inc. has failed and refused to pay the Plaintiff pursuant to the agreement between the parties and such failure to pay constitutes a material breach of the terms of the agreement and has caused damage to the Plaintiff Marsh Waterproofing , Inc. in the sum of \$36,800.00.

FOR A SECOND CAUSE OF ACTION:
(Mechanic's Lien)

8. That the Plaintiff would reallege the allegations contained in paragraphs 1

through 7 above, as fully as if the same were set forth here verbatim.

9. That the Plaintiff performed all of the work required and furnished all materials required by the Defendant, Hamilton Management Services Company, Inc., in a workmanlike manner and no complaints have been made to the Plaintiff regarding the work performed or the quality or the quantity of materials furnished.

10. That the Plaintiff timely recorded a Statement for Mechanic's Lien in the Office of the RMC for Charleston County in Book 0680 at Page 340 and served a copy of the same on the Defendant-Owner, ARC CAFEUSA001, LLC, and a copy of the same is attached hereto as Exhibit "B" and made a part hereof by reference.

11. That six months has not expired since the last day that work was performed or labor and materials furnished by the Plaintiff.

12. That there is a balance due and owing to the Plaintiff upon the agreement in the amount of \$36,800.00 together with a reasonable attorney's fee and the other costs and disbursements of this action, and interest on the amount so due, and despite due demand the Defendants have failed to pay same to the Plaintiff.

FOR A THIRD CAUSE OF ACTION:
(Quantum Meruit)

13. That the Plaintiff would reallege the allegations contained in paragraphs 1, 2, 3, 5, 6 and 7, above as fully as if the same were set forth here verbatim.

14. That the Plaintiff furnished materials and labor for improvements which include but are not limited to the installation of expandable polyurethane foam under the building slab for structural support, which materials and labor were incorporated into

the construction of the restaurant building on the property owned by the Defendant ARC CAFEUSA001, and occupied by the tenant Churpeyes II, Inc., and Plaintiff thereby conferred a benefit upon the Defendant ARC CAFEUSA001, LLC and Defendant Churpeyes II, Inc.

15. That the materials and labor so furnished by the Plaintiff were of a reasonable value of \$36,800.00 and that such materials were appreciated by the Defendants ARC CAFEUSA001, LLC, and Defendant Churpeyes II, Inc., and utilized in such construction, and the Defendants thereby realized the value of such materials and labor.

16. That Defendants accepted the materials so furnished and retained those materials and improvements and under the circumstances of this case it would be inequitable for it to retain such benefit without paying the reasonable value thereof.

WHEREFORE, THE PLAINTIFF PRAYS JUDGMENT:

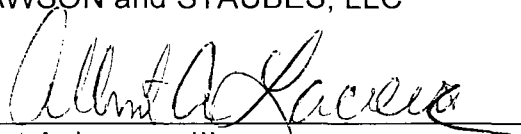
(a) against the Defendant Hamilton Management Services Company, Inc. for the sum of \$36,800.00 together with the costs and disbursements of this action, for breach of contract;

(b) against the Defendants ARC CAFEUSA001, LLC, and Churpeyes II, Inc. for foreclosure of the above Mechanic's Lien in the amount of \$36,800.00 together with reasonable attorney's fees and other costs and disbursements of this action and interest on the amount so due, and further, directing that the property be sold and the proceeds thereof applied to payment and satisfaction of the debt; or

(c) in the alternative, against the Defendants, ARC CAFEUSA001, LLC, and

Churpeyes II, Inc., in the amount of \$36,800.00 together with the costs and disbursements of this action for quantum meruit.

CLAWSON and STAUBES, LLC



Albert A. Lacour, III

Bar No.: 3099

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: alacour@clawsonandstaubes.com

Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina

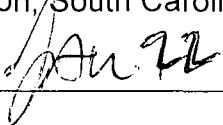
 2018

EXHIBIT A

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., dated May 21, 1990, and recorded June 28, 1991 in the Office of the RMC for Charleston County in Plat Book CD at Page 91. The aforesaid plat is incorporated by reference herein.

TMS: 408-10-00-229

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARSH WATERPROOFING, INC.,
Plaintiff

vs.

ARC CAFEUSA001, LLC,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

STATEMENT FOR MECHANIC'S LIEN



BP0680340

PGS:

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NOTICE IS HEREBY GIVEN that Marsh Waterproofing, Inc., (License Number: not required for scope of work), is due the sum of Thirty-Six Thousand Eight Hundred and No/100 Dollars, (\$36,800.00) from State Acquisitions, LLC, a statement of a just and true account of said indebtedness being attached hereto and made a part hereof.

That said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvement of the real estate herein described and owned by ARC CAFEUSA001, LLC, by virtue of an agreement with, or by the consent of such owner(s) or a person or persons authorized by or rightly acting for said owner(s), or the debt is due because such improvements have been authorized by such owner(s). That as shown by the attached statement the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days of the date hereon, or or after August 19, 2017.

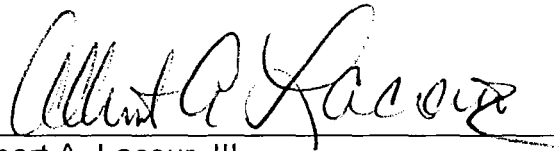
That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the

costs of enforcing said lien including reasonable attorney's fees all as provided by law upon the buildings or structures hereinafter mentioned and upon the following described real estate:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown on an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., dated May 21, 1990, and recorded June 28, 1991 in the Office of the RMC for Charleston County in Plat Book CD at Page 91. The aforesaid plat is incorporated by reference herein.

TMS: 408-10-00-229

CLAWSON and STAUBES, LLC



Albert A. Lacour, III

Bar No.: 3099

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

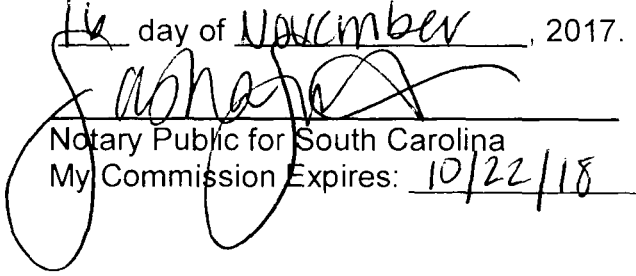
Fax: (843) 722-2867

Email: alacour@clawsonandstaubes.com

Attorney for Plaintiff

Sworn and subscribed before me this

14 day of November, 2017.



Notary Public for South Carolina

My Commission Expires: 10/22/18

VERIFICATION

PERSONALLY appeared before me Tim Marsh,
who, being duly sworn, deposes and says that he/she is the
Owner of Marsh Waterproofing, Inc., the Plaintiff, in the
foregoing action; that has read the foregoing Statement for Mechanic's Lien and the
allegations contained therein are true and correct of own knowledge, save and except
those matters alleged upon information and belief, and as to those matters believes the
same to be true.

Marsh Waterproofing, Inc.

By: Tim Marsh
Tim Marsh
(print name)

Its: Owner
(print title)

Sworn and subscribed before me this
15th day of November, 2017.

Misti Smith
Notary Public for Texas
My Commission Expires: 5/10/19



STATE OF TEXAS

COUNTY OF JEFFERSON

)
)
)

VERIFIED STATEMENT OF ACCOUNT

Personally appeared before me, Tim Marsh, who being sworn, deposes and says that he/she is the Owner of Marsh Waterproofing, Inc., the Plaintiff, and authorized to make the within Statement of Account.

That from State Acquisitions, LLC, the sum of Thirty-Six Thousand Eight Hundred and No/100 Dollars, (\$36,800.00) is currently due and owing upon the following invoices:

INVOICE DATE	INVOICE NUMBER	AMOUNT
9/5/17	6530	\$36,800.00
Total Balance Due and Owing:		\$36,800.00

That the foregoing statement is a true and just account of all sums due and owing and no part thereof has been paid by discount or otherwise.

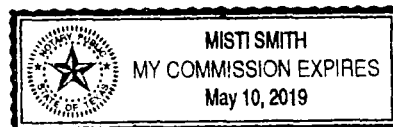
Marsh Waterproofing, Inc.

By: Tim Marsh
Tim Marsh
(print name)

Its: Owner
(print title)

Sworn and subscribed before me this
15th day of November, 2017.

Misti Smith
Notary Public for Texas
My Commission Expires: 5/10/19



RECORDER'S PAGE



NOTE: This page **MUST** remain
with the original document

Filed By:

CLAWSON & STAUBES
126 SEVEN FARMS DR.
SUITE 200
CHARLESTON SC 29492 (BOX)

RECORDED

Date: November 16, 2017

Time: 2:14:29 PM

Book	Page	DocType
0680	340	Mech/Lien

Elaine H. Bozman, Register
Charleston County, SC

MAKER:

ARC CAFEUSA001 LLC

of Sats:

of Pages: 5

of References:

RECIPIENT:

MARSH WATERPROOFING INC

Note:

Recording Fee \$ 10.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

Original Book:

Original Page:

DRAWER **Drawer 2**
CLERK **JBA**



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Recorded Date



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Pgs



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Recorded Time



Albert A. Lacour, III
Licensed in SC
alacour@clawsonandstaubes.com

January 18, 2018

File No.: 20172910.000

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St Ste 106
Charleston, SC 29401-2210

Re: Marsh Waterproofing, Inc.
Case No.: 2018-CP 10-262

Dear Ms. Armstrong:

Enclosed please find an original and one copy of the Cover Sheet, Amended Lis Pendens, Summons, Complaint, Exhibits A and B, and our check for \$150.00 for the filing fee in the above-referenced case. Please file the originals and note the new case number on the copies and return the file stamped copies to our office by the bearer of this letter. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

A handwritten signature in black ink, appearing to read "Albert A. Lacour, III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Albert A. Lacour, III

AAL/aal

Enclosures

cc: VIA E-MAIL w/encl. to Bill Richey, Esq.

Record on Appeal

Steeple Dorchester and Hamilton Services Trial Exhibit 7

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Marsh Waterproofing, Inc.,
Plaintiff,

vs.

Steeple Dorchester Ltd. and Hamilton
Management Services Company, Inc.,
Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00262

**AMENDED COMPLAINT FOR
FORECLOSURE MECHANIC'S LIEN
(Breach of Contract; Mechanic's Lien;
Quantum Meruit)**

JURY TRIAL DEMANDED

2018 APR 10 PM 10:39
CLERK OF COURT

The Plaintiff, Marsh Waterproofing, Inc., complaining of the Defendants would allege and show unto this Honorable Court as follows:

FOR A FIRST CAUSE OF ACTION:
(Breach of Contract)

1. That the Plaintiff is a corporation duly organized and existing pursuant to the laws of the State of Texas and having its principal place of business in that State.
2. That upon information and belief ARC CAFEUSA001, LLC, is a limited liability company organized under the laws of the State of Delaware; the Defendant Hamilton Management Services Company, Inc. is, upon information and belief a corporation organized under the laws of the State of Delaware; Churpeyes II, Inc. is a domestic corporation organized under the law of the State of South Carolina; and Defendant Steeple Dorchester Ltd. is organized pursuant to the law of the state of Delaware, and is the leasee, tenant and operator of the restaurant on the property.
3. That upon information and belief, ARC CAFEUSA001, LLC, is the record owner

of the real property more particularly described in Exhibit "A", which is attached hereto and made a part hereof which property is located in the County of Charleston, State of South Carolina, and Churpeyes II, Inc. is the tenant of record under the lease agreement; and the Defendant Steeple Dorchester Ltd. is the tenant and operator of the restaurant on the property, in fact.

4. That the Plaintiff and the Defendant, Hamilton Management Services Company, Inc., entered into an agreement for the Plaintiff to provide materials and labor for improvements which include but are not limited to the installation of expandable polyurethane foam under the building slab for structural support on the property which is described above.

5. That the Plaintiff furnished such labor and materials under the agreement with Hamilton Management Services Company, Inc. who had authority from or acted rightly for the tenant Steeple Dorchester Ltd. Upon information and belief they are both under common control.

6. That the Defendant and tenant Steeple Dorchester Ltd. knew and was aware of the work being performed by the Plaintiff.

7. That despite due demand for payment, the Defendant Hamilton Management Services Company, Inc. has failed and refused to pay the Plaintiff pursuant to the agreement between the parties and such failure to pay constitutes a material breach of the terms of the agreement and has caused damage to the Plaintiff Marsh Waterproofing, Inc. in the sum of \$36,800.00.

FOR A SECOND CAUSE OF ACTION:
(Mechanic's Lien)

8. That the Plaintiff would reallege the allegations contained in paragraphs 1 through 7 above, as fully as if the same were set forth here verbatim.

9. That the Plaintiff performed all of the work required and furnished all materials required by the Defendant, Hamilton Management Services Company, Inc., in a workmanlike manner and no complaints have been made to the Plaintiff regarding the work performed or the quality or the quantity of materials furnished.

10. That the Plaintiff timely recorded a Statement for Mechanic's Lien in the Office of the RMC for Charleston County in Book 0680 at Page 340 and served a copy of the same on the Owner, ARC CAFEUSA001, LLC, and the tenant of record Churpeyes II, Inc. and a copy of the same is attached hereto as Exhibit "B" and made a part hereof by reference.

11. That six months has not expired since the last day that work was performed or labor and materials furnished by the Plaintiff.

12. That there is a balance due and owing to the Plaintiff upon the agreement in the amount of \$36,800.00 together with a reasonable attorney's fee and the other costs and disbursements of this action, and interest on the amount so due, and despite due demand the Defendants have failed to pay same to the Plaintiff.

FOR A THIRD CAUSE OF ACTION:
(Quantum Meruit)

13. That the Plaintiff would reallege the allegations contained in paragraphs 1, 2, 3,

5, 6, 7 and 9, above as fully as if the same were set forth here verbatim.

14. That the Plaintiff furnished materials and labor for improvements which include but are not limited to the installation of expandable polyurethane foam under the building slab for structural support, which materials and labor were incorporated into the construction of the restaurant building on the property leased in fact and occupied by Steeple Dorchester Ltd., and managed by Hamilton Management Services Company, Inc., and Plaintiff thereby conferred a benefit upon the Defendants.

15. That the materials and labor so furnished by the Plaintiff were of a reasonable value of \$36,800.00 and that such materials were appreciated by the Defendants and utilized in such construction, and the Defendants thereby realized the value of such materials and labor.

16. That Defendants accepted the materials so furnished and retained those materials and improvements and under the circumstances of this case it would be inequitable for it to retain such benefit without paying the reasonable value thereof.

WHEREFORE, THE PLAINTIFF PRAYS JUDGMENT:

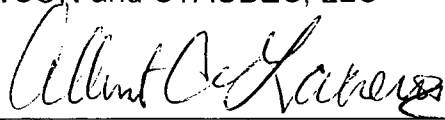
(a) against the Defendants Hamilton Management Services Company, Inc. and Steeple Dorchester Ltd. for the sum of \$36,800.00 together with the costs and disbursements of this action, for breach of contract;

(b) against the leasehold interest of the Defendant Steeple Dorchester Ltd. for foreclosure of the above Mechanic's Lien in the amount of \$36,800.00 together with reasonable attorney's fees and other costs and disbursements of this action and interest on the amount so due, and further, directing that the property be sold and the proceeds

thereof applied to payment and satisfaction of the debt; or

(c) in the alternative, against the Defendants, Steeple Dorchester Ltd. and Hamilton Management Services Company, Inc., in the amount of \$36,800.00 together with the costs and disbursements of this action for quantum meruit.

CLAWSON and STAUBES, LLC



Albert A. Lacour, III

Bar No.: 3099

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: alacour@clawsonandstaubes.com

Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina

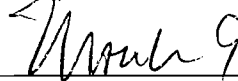
 9, 20 18.

EXHIBIT A

The leasehold interest of Defendant in and to:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., dated May 21, 1990, and recorded June 28, 1991 in the Office of the RMC for Charleston County in Plat Book CD at Page 91. The aforesaid plat is incorporated by reference herein.

TMS: 408-10-00-229

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARSH WATERPROOFING, INC.,
Plaintiff

vs.

ARC CAFEUSA001, LLC,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

STATEMENT FOR MECHANIC'S LIEN



BP0680340

PGS:

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NOTICE IS HEREBY GIVEN that Marsh Waterproofing, Inc., (License Number: not required for scope of work), is due the sum of Thirty-Six Thousand Eight Hundred and No/100 Dollars, (\$36,800.00) from State Acquisitions, LLC, a statement of a just and true account of said indebtedness being attached hereto and made a part hereof.

That said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvement of the real estate herein described and owned by ARC CAFEUSA001, LLC, by virtue of an agreement with, or by the consent of such owner(s) or a person or persons authorized by or rightly acting for said owner(s), or the debt is due because such improvements have been authorized by such owner(s). That as shown by the attached statement the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days of the date hereon, or or after August 19, 2017.

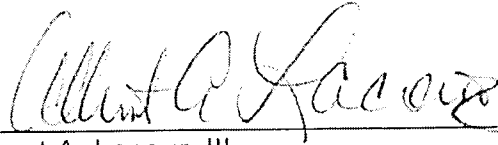
That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the

costs of enforcing said lien including reasonable attorney's fees all as provided by law upon the buildings or structures hereinafter mentioned and upon the following described real estate:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown on an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., dated May 21, 1990, and recorded June 28, 1991 in the Office of the RMC for Charleston County in Plat Book CD at Page 91. The aforesaid plat is incorporated by reference herein.

TMS: 408-10-00-229

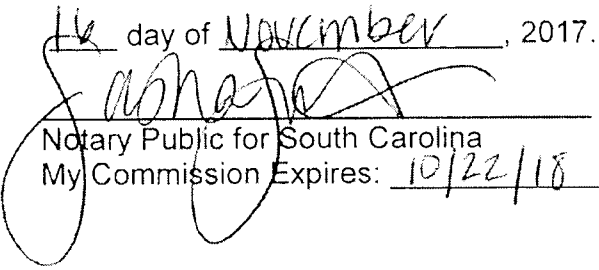
CLAWSON and STAUBES, LLC



Albert A. Lacour, III
Bar No.: 3099
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: alacour@clawsonandstaubes.com
Attorney for Plaintiff

Sworn and subscribed before me this

14 day of November, 2017.



Notary Public for South Carolina

My Commission Expires: 10/22/18

VERIFICATION

PERSONALLY appeared before me Tim Marsh,
who, being duly sworn, deposes and says that he/she is the
Owner of Marsh Waterproofing, Inc., the Plaintiff, in the
foregoing action; that has read the foregoing Statement for Mechanic's Lien and the
allegations contained therein are true and correct of own knowledge, save and except
those matters alleged upon information and belief, and as to those matters believes the
same to be true.

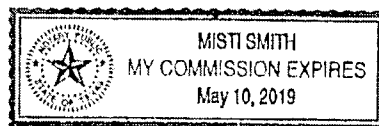
Marsh Waterproofing, Inc.

By: Tim Marsh
Tim Marsh
(print name)

Its: owner
(print title)

Sworn and subscribed before me this
15th day of November, 2017.

Misti Smith
Notary Public for Texas
My Commission Expires: 5/10/19



STATE OF TEXAS

COUNTY OF JEFFERSON

)
) VERIFIED STATEMENT OF ACCOUNT
)

Personally appeared before me, Tim Marsh, who
being sworn, deposes and says that he/she is the Owner of
Marsh Waterproofing, Inc., the Plaintiff, and authorized to make the within Statement of
Account.

That from State Acquisitions, LLC, the sum of Thirty-Six Thousand Eight
Hundred and No/100 Dollars, (\$36,800.00) is currently due and owing upon the
following invoices:

INVOICE DATE	INVOICE NUMBER	AMOUNT
9/5/17	6530	\$36,800.00
Total Balance Due and Owing:		\$36,800.00

That the foregoing statement is a true and just account of all sums due and
owing and no part thereof has been paid by discount or otherwise.

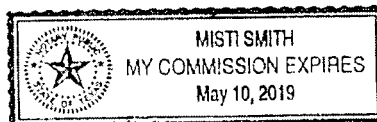
Marsh Waterproofing, Inc.

By: Tim Marsh
Tim Marsh
(print name)

Its: Owner
(print title)

Sworn and subscribed before me this
15th day of November, 2017.

Misti Smith
Notary Public for Texas
My Commission Expires: 5/10/19



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NOTE: This page MUST remain
with the original document

**Filed By:**

CLAWSON & STAUBES
126 SEVEN FARMS DR.
SUITE 200
CHARLESTON SC 29492 (BOX)

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Mech/Lien

Elaine H. Bozman, Register
Charleston County, SC

MAKER:

ARC CAFEUSA001 LLC

of Sats:

of Pages: 5

of References:

RECIPIENT:

MARSH WATERPROOFING INC

Note:

Recording Fee \$ 10.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

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Albert A. Lacour, III
Licensed in SC
alacour@clawsonandstaubes.com

March 09, 2018

File No.: 20172910.000

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St Ste 106
Charleston, SC 29401-2210

Re: Marsh Waterproofing, Inc.
Case No.: 2018-CP-10-00262

Dear Ms. Armstrong:

Enclosed please find an original and one copy of the Second Amended Lis Pendens and Amended Summons and Complaint in the above-referenced case. Please file the originals and return the file stamped copies to our office by the bearer of this letter. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

A handwritten signature in black ink, appearing to read "Albert A. Lacour, III". The signature is fluid and cursive, written over the printed name.

Albert A. Lacour, III

AAL/kch
Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00262

Marsh Waterproofing, Inc.,

Plaintiff,

vs.

Steeple Dorchester Ltd. and Hamilton
Management Services Company, Inc.

Defendant(s).

**TRIAL BRIEF OF MARSH
WATERPROOFING, INC.**

The Plaintiff, above named, submits the following as its Trial Brief:

I.
STATEMENT OF FACTS:

Marsh Waterproofing, Inc. is a contractor in its home state of Texas. Marsh was hired to make repairs to Churches Chicken Restaurants in Texas following a terrible accident involving the collapse of the concrete floor slab in a restaurant. The repair, which was designed by an engineering firm, involved the installation of foam material in the open crawlspace beneath the slab to provide supplemental support for the slab. Marsh acquired the equipment necessary to install the foam and made similar repairs to buildings in Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Tennessee. Here in South Carolina, Marsh was engaged by the defendant, Hamilton Management, to make repairs to eight restaurants. One restaurant was removed from the list by Hamilton. Marsh received payment for one restaurant. Marsh was never paid for the other six restaurants and filed six identical mechanics lien actions in the five counties where those restaurants are located. One of those restaurants was located here in Charleston County.

Marsh filed and served its mechanics liens after obtaining the necessary title information from the various counties. For reasons unknown to Marsh, Defendants never recorded their lease assignments in the records offices of the respective counties. It was only after filing and serving its foreclosure actions that information was volunteered by the former leasee and the current lessor/owner as to the identity of the Steeple entities. The failure of the Steeple Defendants to comply with the general recording statute was the cause of the initial misjoinder of parties, and the Defendants are therefore the authors of their own injuries, if any are claimed to arise from the misjoinder.

The Steeple entities owned the leasehold and were managed by Hamilton. The Steeple entities and Hamilton were under the common control of Alexander Burns. The Steeple Defendants filed a counterclaim for intentional interference with contractual relations. The theory is that we filed and served these actions initially against the record owner and the record leasee intentionally, and with the motive to injure the Defendant's business relationship with the owner/lessor. The leases were terminated according to the lease provisions when the mechanics liens were filed. The leases were not breached by the landlord. The procurement of a breach of a contract by a third-party is a necessary element of the claim. Additionally, the failure of the Defendants to pay for the services rendered is the root cause of the problem and the Defendants are, for a second reason, the authors of their own injuries.

II.

FACTS IN CONTROVERSY:

Defendants are attempting to defeat the claims of Marsh by showing that Marsh is not a licensed general contractor in the state of South Carolina. Marsh will show that it is not required to be licensed because it did not do general contracting work. No repairs were made by Marsh to any of the structural elements of the building. Defendants told Marsh they had a contractor, whereas they later told the LLR that Marsh was the general contractor in an effort to avoid payment obligations.

The proposal of Marsh does not contain any general conditions or scheduling or provision for the supervision of other work which would be required of a general contractor. Marsh reasonably believed it was only a trade subcontractor on the project because Defendants represented to Marsh that Defendants had a contractor working ahead of Marsh to do the preparatory work.

Defendants may also claim that Marsh was supposed to pull a building permit but the proposal of Marsh does not contain any such requirement. Additionally, the work of Marsh came last in order, so it stands to reason that the contractor doing the preparatory work with need to pull a permit at the beginning of the job.

III.

APPLICABLE LAW:

Charges to be submitted by Plaintiff will include, but not be limited to the following:

As to the claims of Plaintiff:

The mechanics lien statute, S.C. Code §29-5-10, provides for liens to be filed by those having an agreement with the owner, and S.C. Code §29-5-20 provides for liens to be filed by those having an agreement with someone other than the owner but acting for the owner.

The mechanics lien statute allows for enforcement of the lien against an estate less than a fee simple interest, such as a leasehold interest. S.C. Code §29-5-30.

S.C. Code §29-5-90 provides that the lien is dissolved unless it is filed in the records office of the county where the property is located and served on the owner, or in the event the owner cannot be found, upon the person in possession within 90 days of the last furnishing of labor or material.

S.C. Code §29-5-120 provides that suit for enforcing the lien must be commenced and notice of pendency of the action filed within six months after the last furnishing of labor or material.

Performance of a contract has been defined to be such a fulfillment of its duties as puts an end to its obligations, leaving nothing more to be done.

Contracts are to be construed according to the terms used and such terms are to be taken and understood in their plain, ordinary and popular sense. The jury is without authority to alter a contract by construction or make a new agreement for the parties.

Where there is any ambiguity in the contract or there is doubt as to the proper construction of the contract, the construction placed thereon by the parties themselves is entitled to great, if not controlling, influence. The conduct of the parties is entitled to great weight in interpreting an ambiguous contract. The repeated actions of the parties in carrying out the agreement are conclusive as to the party's interpretation.

A unilateral error does not entitle a party to avoid a contract. The realization that the agreement is poorly timed, or that changes in circumstances make it a bad deal, does not entitle a party to an agreement to avoid performance.

An acceptance of performance may be express or may be implied from conduct. Acceptance of a work or structure as being in compliance with the agreement will ordinarily constitute a waiver of full performance or defective performance, if any.

Charges 33 through 38 relate to the law of Quantum Meruit. Such is not a jury issue, but the charges were included as the most expedient way to provide the law to the Court for its use. A claim for equitable relief such as Quantum Meruit is reserved for the court to decide after the jury has ruled on the legal claims between the parties. Loyola v. Thomasson Properties 318 SC 92, 456 SE2d 423 (Ct. App. 1995). Only a party

exonerated of fault by the jury is entitled to equitable relief. Otis Elevator v. Hardin Constr. Co. 316 SC 292, 450 SE2d 41 (1994). In the event the action on the contract fails, the concept of Quantum Meruit is an equitable principle that allows for recovery for services based upon an implied contract. Quantum Meruit means "as much as he deserves" and the theory is that the Defendant has received a benefit which would be unjust for him to retain without paying for it. The necessary elements for recovery include (1) valuable services or material were furnished; (2) to the person sought to be charged; (3) that the services and materials were accepted used and enjoyed by the person sought to be charged; (4) under such circumstances as reasonably notified the person to be charged that the Plaintiff in performing such services was expecting to be paid by him.

As to the Affirmative Defenses:

The general recording act requires the recording of the Defendant's assignments of lease rights. S.C. Code §30-7-10. The statute has been in existence in one form or another since 1776 and is not a new requirement.

The mechanics lien statute takes into account that a license is not always required to perform contracting work in South Carolina. The recent amendment which requires the Statement for Mechanics Lien to contain the claimant's license number contains the express exception "if he is required by law to be licensed or registered". S.C. Code §29-5-15.

A licensed general contractor may use unlicensed subcontractors to perform work within the limitations of the license holder's group and class or sub-classification. S.C. Code §40-11-270 (E).

A contractor may be subject to discipline or an enforcement action by the LLR if he undertakes to do general contracting work without the appropriate license; however, the work of general contractors is defined by the statutory license classifications and sub classifications contained in S.C. Code §40-11-410 and none of those provisions contain any classification for the installation of foam for purposes other than insulation.

The filing of the mechanics lien is absolutely privileged in South Carolina and enjoys the absolute privilege accorded to judicial proceedings because such filing is specifically authorized by statute.

A foreign corporation that is not registered to do business in South Carolina, which seeks to foreclose a mechanics lien filed against property located in this state may qualify to do business in South Carolina after commencement of the suit. The agreements made by the unregistered corporation are not invalidated by the failure to register. S. C. Code §33-15-102 (e).

The Statute of Frauds has no applicability to a contract that can be performed in less than one year from the time it is made. S. C. Code §32-3-10 (5).

The purpose of protecting the public interest by denying enforceability does not exist when dealing with claims between knowledgeable parties. The licensing statutes are designed to protect the public from being imposed upon by persons not qualified to render a professional service. The reason for the rule denying enforceability does not exist when the persons engaged are knowledgeable and in a position to know, and do know, the qualifications of the contractor or subcontractor. In such case, no reliance is placed upon the existence of a license as presumptively would be the case if the contractor or subcontractor was dealing with the general public.

The courts generally give deference to an administrative agency's interpretation of an applicable statute, or its own regulation.

A principal is liable to third persons for the frauds, deceits, concealments, misrepresentations, negligence and other malfeasance or omissions of duty of his agent, even though the principal did not authorize, participate in, or know of such misconduct.

A principal is affected with constructive knowledge of all material facts of which his agent has notice. The knowledge of an agent concerning matters within the scope of his agency is imputed to the principal.

As to the Counter Claim:

To establish a cause of action for tortious interference with contractual relations, the plaintiff must show the existence of a contract, knowledge of the contract, intentional procurement of its breach, the absence of justification and resulting damages. An essential element is the intentional procurement of the breach of the contract by a third-party. Where there is no breach of contract by the other party to the agreement there can be no recovery. Justification is the exercise in good faith of a legal right by a party to an agreement, and affords no basis for an action for intentional interference with a contract even though the justified activity causes a third-party not to perform.

Punitive damages must be specifically prayed for in the complaint and may not be recovered otherwise. S. C. Code §15-32-510.

IV.
EXHIBITS:

The Exhibits for the Plaintiff will be:

1. Photograph of foam rig
2. Illustrative photograph of structural elements
3. Illustrative photograph of structural elements
4. Engineering Report for the Church's Chicken restaurant
5. Email exchange of 7/7/17 confirming request for quotation
6. Signed and accepted quotation of 7/10/17
7. Email exchange of 7/19/17 regarding details of arrangements
8. Email exchange 7/21/17 regarding schedule
9. Time records of Marsh Waterproofing, Inc.
10. Invoice of Marsh Waterproofing, Inc., for work performed
11. Statement for Mechanics Lien for work performed
12. Proof of service of lien
13. Email exchange 11/15/17 between Bill Richey and Roger Lowe at LLR
14. SC Code §40-11-410 Classifications of Work
15. Assignment of lease
16. Termination of Franchise Agreement letter dated 7/7/17
17. Termination of Franchise Agreement letter dated 7/10/17
18. Email 8/21/17 Extension of cure date by Franchisor
19. Osiris quotation 7/12/17
20. Email 7/21/17 schedule by Burns to admin assistant
21. Email 8/3/17 over 7/21/17 schedule by Burns to Marsh WP
22. Email 8/10/17 showing schedule is slipping later
23. Letter 7/10/17 to landlord asking for help to pay Marsh
24. Letter 7/10/17 to franchisor asking for help to pay Marsh
25. Letters of 8/15/17 from landlord terminating Forbearance Agreement
26. Letters of Hamilton to LLR 10/31/17 and 12/19/17 implying Marsh is GC

The Exhibits which are in disagreement are:

None are known to be in disagreement at this time.

V.
WITNESSES:

The witnesses for the Plaintiff will be:

1. Tim Marsh
Owner of Marsh Waterproofing, Inc.
c/o Albert A. Lacour, III, Esq.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
843-329-0207

2. Avant Armentrout
Foreman for Marsh Waterproofing, Inc.
c/o Albert A. Lacour, III, Esq.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
843-329-0207

3. Roger Hollier
Laborer for Marsh Waterproofing, Inc.
c/o Albert A. Lacour, III, Esq.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
843-329-0207

VI.
EVIDENTIARY PROBLEMS ANTICIPATED:

Plaintiff will object to any attempt of Defendants to enter testimony or exhibits in support of damages claimed by Defendants because nothing was produced in discovery despite service of written discovery, service of a Notice of 30(b)(6) Deposition *Duces Tecum* and a Motion to Compel responses aimed at obtaining such information sufficiently in advance of trial to be useful. The representative testified he did not have all the necessary information, and produced no records in response to the Notice of Deposition *Duces Tecum*. The parties resolved the Motion to Compel by a consent order that recites its applicability to all six cases and bars the introduction of any information or documents not produced by the deadline in the order. Defendants did not produce any damages information or documents by the deadline.

VII.
UNUSUAL QUESTIONS BROUGHT TO THE ATTENTION OF THE COURT:

Pending Motions:

1. Plaintiff's Motion in Limine (Fraud Prosecution/Credibility): Plaintiff will move for a ruling on the admissibility of the Consent Judgment obtained by the S.E.C. against Mr. Burns. He was investigated and prosecuted by the S.E.C. for fraud involving a \$300 million fraudulent scheme he participated in as an investment advisor to publicly traded companies. Plaintiff seeks a ruling on the propriety of, and any limitations on, inquiring about it on cross examination as it bears on his credibility. The S.E.C. complaint and the Consent Judgement are attached to the motion.

2. Plaintiff's Motion in Limine (Licensing): Plaintiff will move for an Order barring any reference to "licensing" or lack of same on the part of Plaintiff, or to the Citation and Cease and Desist Order entered by the South Carolina Department of Labor, Licensing and Regulation against Marsh. On appeal of those sanctions, the LLR dismissed the Citation and withdrew the Cease and Desist Order, holding that Marsh was not the general contractor for these jobs and therefore not required to be licensed as one. The ruling was based in part on the misrepresentations made by the Defendants to the LLR that Marsh was the general contractor for the entire project, when the job records all indicated otherwise. The order of the LLR is attached to the motion.

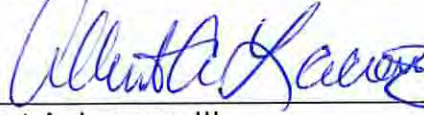
Other unusual issues:

In the event the licensing Motion in Limine is granted, exhibits 13 and 14 will be withdrawn, and Plaintiff's requests to charge 39 through 42 will be withdrawn.

VIII.
SETTLEMENT NEGOTIATIONS ATTEMPTED:

Counsel have discussed settlement in the abstract, but there have been no offers made by Defendants.

CLAWSON and STAUBES, LLC



Albert A. Lacour, III

Bar No.: 3099

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: alacour@clawsonandstaubes.com

Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina.

Feb. 4 2020.

**) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT**

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Steeple entities, which was built using the same design. Church's provided Hamilton with a list of contractors and made an introduction to Marsh Waterproofing.

Prior to the commencement of work, I asked Mr. Marsh about the payment terms and whether he would require any deposit for the work to be performed. Mr. Marsh indicated that he would not require any deposit and would invoice the entities on NET terms, following the completion of the work. Mr. Marsh did not ask any questions regarding the financial condition of any of the Steeple entities, nor did he inquire as to the nature of the arrangement between Hamilton Management Services Company and the Steeple entities. Mr. Marsh's deposition states that he believes that in his discussions with Church's Chicken they indicated that "they [the Steeple entities] was financially stable." To the contrary, Church's Chicken was intimately familiar with the precarious nature of the Steeple entities and was actively engaged in negotiations regarding a restructuring of the Steeple entities including the closure of multiple restaurants.

Mr. Marsh indicated in our telephone conversation that he would "handle everything" with regard to the project with the exception of pumping out the crawl spaces (which he described as a dirty and messy business and something he did not want to get involved with) as well as indicated that the Steeple entities needed to have any broken piping or electrical work fixed prior to as they would become inaccessible upon the addition of the structural foam.

There was never any discussion of Hamilton Management Services Company acting as the general contractor of the structural foam or any other project. Mr. Marsh never inquired as to whether Hamilton Management Services Company was licensed as a general contractor (it is not) nor did he indicated that he believed there was a general contractor involved.

I advised Mr. Marsh that Mr. Rikki Vaughn, the president of operations of the Steeple Entities as well as K.C. Jenkins, his administrative assistant, would be coordinating the access to the space and ensuring that the spaces were pumped out. It was my understanding that this coordination was the action of a client providing space access and in preparation for the work of Marsh as its general contractor.

The only discussion of scheduling I had with Mr. Marsh was to ask him his requirements. Mr. Marsh indicated that he had no preferences for scheduling and that we were free to create a sequence of stores at our leisure, except that he wanted to have all of the properties in the same cities completed sequentially, so as to avoid additional travel.

At no time did Mr. Marsh, nor any other party from Marsh Waterproofing, discuss the issue of contractor licensing with me or anyone else at Hamilton or the Steeple entities. At the point at which Hamilton coordinated the Steeple engagement of Marsh Waterproofing, Inc. it was my belief that Marsh Waterproofing, Inc. was adequately licensed, bonded and insured for the work being performed.

Mr. Marsh's statement in his deposition that Texas has no licensing requirements is in contrast to the statement on his website in the "About Us" section that Marsh Waterproofing is a licensed contractor in Texas, which I reviewed prior to Hamilton hiring Marsh Waterproofing on behalf of the Steeple entities.

My basis for the belief that Marsh was licensed and bonded is the inclusion of the words "Licensed and bonded" in Marsh's logo and on their website, as well as his referral to me by Church's Chicken, who indicated that they had engaged him for work throughout the country and my understanding that Church's has a full time construction management department staffed with knowledgeable construction professionals who are aware of the licensure requirements as well as multiple attorneys in their general counsel's office. Given that Church's Chicken was in the midst of tens of millions of dollars of litigation over the damage caused by the crawl space that previously failed, I reasonably believed that they had exercised diligence in their recommendation of a contractor. Mr. Marsh's testimony that he and I discussed his or Marsh Waterproofing's licensure is false.

Mr. Marsh's testimony regarding my statement that a license was not required is false. There was no discussion between Mr. Marsh and I regarding whether he required a license in the State of South Carolina. It would have been antithetical to the interests of Hamilton Management Services Company and the Steeple entities for me to engage the services of an unlicensed contractor and a potentially negligent act to knowingly do so. Moreover, I am unaware of any benefit that any of the entities would have received by doing so.

I received a copy of the invoices in September, 2017 via e-mail. On or about September 21, 2017, I authorized payment in the amount of Forty Thousand Dollars (\$40,000) to Marsh Waterproofing via funds held by Church's Chicken for the benefit of the Steeple entities. It is my understanding that Church's Chicken immediately tendered this payment to Marsh Waterproofing.

Contrary to the statements made by Mr. Marsh that I knew Marsh Waterproofing was unlicensed at the time of their hiring, as of the authorization of this payment, I still did not know that Marsh Waterproofing was unlicensed in South Carolina.

Had I have known that Marsh Waterproofing was unlicensed in late September of 2017, I would not have authorized the Forty Thousand Dollar payment.

Following the completion of the work, the only correspondence I received from Marsh Waterproofing was the e-mail regarding where to send the invoices and the copy of the invoices.

Mr. Marsh did not subsequently contact me via telephone, e-mail, fax or send me any letters. I am unaware of any missed calls from Mr. Marsh or anyone at Marsh Waterproofing. I did not receive any voicemails from Mr. Marsh or anyone at Marsh Waterproofing. Neither Tim Marsh, anyone else from Marsh Waterproofing, nor their attorneys contact me or anyone else at or affiliated with Hamilton or the Steeple entities regarding non-payment prior to the filing of the mechanics liens.

As part of the restructuring of the lease obligations with the landlord, the Steeple entities were required to make certain representations regarding the completion of the remediation of the work. As part of Hamilton's diligence in preparation for these representations, I sought to confirm that Marsh was adequately licensed for the work performed, as is standard practice prior to making such representations. In doing so, I attempted to search for their license in the South

Carolina LLR online contractor licensing database. Based upon my preliminary search results which yielded no results, I suspended any further payments and made written inquiry to LLR on or about October 31, 2017 to determine the licensure status of Marsh Waterproofing.

Upon confirmation from LLR that Marsh Waterproofing was not licensed in the State of South Carolina, I subsequently declined to exercise any payment to Marsh on the basis that such payment could not be compelled at law and equity and to do so would be to make a gratuitous distribution of the respective companies' assets. I believed at the time, and continue to believe, that such a distribution would constitute a breach of Hamilton Management Services Company, and by extension my own fiduciary obligations to the Steeple entities and their stakeholders.

A second reason for the declination to tender any payment was my concern over the risks related to the work being performed by an unlicensed contractor *vis a vie* any exclusions to our property and liability insurance coverage or coverage under Marsh Waterproofing's insurance for any defects in the work. Given that the nature of the work was inherently structural, and the circumstances giving rise to the work was the grave injury of Church's Chicken employees at another site and the engineer's report warning of the imminent risk of structural collapse, I was concerned that the Steeple entities may have to have the work redone or incur additional expense to certify that it met South Carolina building standards, or potentially purchase some other insurance coverage to mitigate the risk.

I was advised by counsel that if Marsh Waterproofing was unlicensed to perform the work then the Steeple entities could potentially be liable for any worker's compensation claims tendered by any of *his* employees for injuries sustained while working on the Steeple sites. Similarly, if Marsh Waterproofing did not pay their employees who performed work on the site, there was a potential exposure that the Marsh employees could have sued the Steeple entities for unpaid wages under the South Carolina Payment of Wages Act, under a belief that they were working for the Steeple entities, since Marsh Waterproofing was not a licensed contractor.

On or about November 8, 2017, I attended a meeting at Church's Chicken corporate headquarters in Atlanta, Georgia. Present at the meeting were representatives from Church's Chicken, the landlord, the lender to the Steeple entities, and a restructuring advisor hired by the Steeple entities at the request of Church's Chicken, as well as counsel for the respective parties. During this meeting, we reconfirmed the terms of a forbearance agreement with the landlord, who indicated that they were willing to proceed and even move forward with a series of new restructured leases, which would permit the Steeple entities to restructure and continue operating as going concerns, with the specific caveat that at no time could the properties become encumbered with any mechanic's liens, which they considered to be a non-negotiable as they created an encumbrance on their properties.

At this meeting, I advised the attendees that I believed that Marsh Waterproofing was not licensed and had made inquiries of LLR. Moreover, I advised that it was my understanding that the extent that Marsh Waterproofing was not licensed, that the Steeple entities had no lawful obligations to Marsh Waterproofing and that Marsh Waterproofing would be unable to file any mechanics liens without a license. I subsequently received written confirmation in the form of a "License Search Affidavit" dated November 9, 2017, which confirmed that neither Marsh

Waterproofing, Inc nor Mr. Tim Marsh were licensed with LLR and that no entity nor individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than \$5,000 without a license issued by LLR.

Based upon Mr. Marsh's testimony that Church's Chicken told Mr. Marsh to file the mechanics liens and that they recommended it, Church's Chicken knew that the filing of the mechanics liens (even if improper) would set off an unrecoverable chain of events for the Steeple entities leading to Church's Chicken being able to purchase the restaurants for a fraction of the cost they would have otherwise had to pay in an orderly sale.

Had Mr. Marsh or any other representative of Marsh Waterproofing contacted Hamilton or the Steeple entities at the time and indicated that they were contemplating taking legal action against the Steeple entities and specifically sought to file mechanics liens, I would have advised them of the November 9th, 2017 affidavit and our basis for withholding payment and further advised them of their inability to file a mechanics lien, and moreover the damages that would have resulted from their filing of a mechanics lien. I would have suggested that to the extent they still believed they were entitled to payment, they ought to have considered bringing suit in the ordinary course or would have likely suggested that they compel arbitration, which we would have consented to.

Following Marsh's filing of the mechanic's liens, on or about December 18, 2017, the landlord terminated all of their leases to the Steeple entities pursuant to the breach of the forbearance agreement, which specifically prohibited the filing of any mechanics liens on the properties. In my contemporaneous telephone discussions with Glenn Kindred, a representative of the landlord, Mr. Kindred advised me specifically that the precipitating factor was the filing of the mechanics liens and used the phrase "the straw that broke the camel's back." It is my understanding that the proximate cause of the lease terminations and the subsequent *fire sale* of the Steeple entity assets to Church's Chicken was the improper filing of the mechanics liens by Marsh Waterproofing and their attorneys.

Marsh Waterproofing named the Steeple entities, Hamilton and the landlord in the complain and then appears to have immediately dismissed the landlord from the complaint. I do not have any information as to whether the landlord made any payment to Marsh as consideration from this dismissal. To the extent that there was a payment in settlement, this would presumably inure to the benefits of the Steeple entities and would have reduced Marsh's purported claim. The landlord, which owns the properties, is the party who stood to benefit the most from any repairs insofar as they continue to own the building and enjoy the rents from what are considered to be repaired restaurants. The Steeple entities operated the restaurants for around sixty days following Marsh's completion of the work and the termination of the leases. It is my belief that Marsh dismissed the landlord from the complaint for an ulterior purpose as, if their claims against the Steeple entities are proven at trial, my understanding is that they stood to recover from the landlord receiving the benefit as well. The landlord is a multi-billion dollar, publicly traded real estate investment trust, and would have made a suitable cop-defendant if they believed that they were entitled to the recovery.

Upon the filing of the mechanics liens, and subsequent termination of the leases for breach pursuant to the filing of the mechanics liens, Church's Chicken acquired all of the restaurant assets of the Steeple entities and currently operates all of the restaurants in question. Mr. Marsh testified that Church's Chicken, who knew it was an express condition of the forbearance agreement of the leases, encouraged them to file the lines. Prior to reviewing Mr. Marsh's deposition, I was unaware that Church's Chicken had any correspondence with Marsh Waterproofing and had previously advised Church's that all correspondence with Marsh related to our matter should be handled through our attorney as soon as we became aware of the licensure issue at the end of October, 2017.

I was present at the LLR hearing on June 21, 2019 in Columbia, South Carolina. I was a visitor and was not permitted to speak or provide any testimony. Following the ruling by LLR and Marsh Waterproofing filing an appeal, I was not contacted by LLR to provide any testimony nor was permitted to submit any subsequent documentation, which would have been in contravention to many of the facts stipulated to by LLR.

The stipulation as to the facts between LLR and Marsh Waterproofing contained numerous errors in fact that remained uncorrected throughout the appeal. Specifically, Mr. Marsh testified that he believed he was working under a subcontractor and that Hamilton had advised in writing that it had a general contractor (or potentially was the general contractor, as was alleged by Marsh's attorney at the hearing) when in his deposition he stated that he was not hired by a contractor and was not aware of anyone else involved. The LLR appeal stated that Hamilton knew at all times that Respondent was not licensed in South Carolina, when Hamilton had no knowledge of Marsh's licensure status until it searched for the license in October of 2017, was unable to find it, and requested a copy from LLR as well as confirmation that a license was required.

The LLR ruling further states that Respondent's unlicensed status only became an issue for Hamilton when payment for the multiple projects became due. Hamilton Management Services Company is a management company and was never liable for the payments to Marsh Waterproofing, it simply serves as the manager of the Steeple entities contracting vendors on their behalf. Hamilton also tendered payment in the amount of \$40,000 on behalf of the Steeple entities through an authorization of Steeple entity funds held by the franchisor. The franchisor was not otherwise authorized to release these funds, which were due to the Steeple entities, without the consent of Hamilton, as manager of the Steeple entities.

The LLR ruling states that someone other than Respondent was providing general conditions such as dumpsters, portable facilities, water, power, equipment and supervision for all trades including Marsh Waterproofing. This is a false statement as no party provided portable facilities, there were no dumpsters for construction debris (only commercial dumpsters for the restaurant), all water and power was the water and power in-service of the restaurant as opposed to provided by a contractor and Mr. Marsh testified that Marsh Waterproofing brought all of its own equipment, including a \$100,000 trailer and supervised the work of his employees.

Mr. Marsh also stated in the LLR hearing that I advised him that no licensure was required, which remains a false statement. Finally, Mr. Marsh testified that there was no complaint made

as to the quality of the work. This is a false statement of fact as I previously indicated that Rikki Vaughn had indicated to Mr. Marsh that there was an issue with the concrete at one of the sites.

LLR claims that no reliance was placed upon the existence (or lack of) a license. Hamilton would have never authorized Marsh Waterproofing to engage in any work on behalf of the Steeple entities if it were aware that it was unlicensed and specifically to the contrary expressly relied upon the representations made by Marsh on its website that it was both "LICENSED AND BONDED".

The LLR ruling places great emphasis on the statement that the project was completed successfully, and the client received both the quality and quantity of work contracted for. To the contrary, Hamilton and the Steeple entities are without any information as to the quality and/or sufficiency of the work performed by Marsh Waterproofing and specifically cautions that because it is no longer in possession of any of the properties, and has not been for quite some time, it is without the ability to make inquiry as to the standard of work completed.

LLR places great deference upon Mr. Marsh's experience and skill, however Mr. Marsh was never on-site at any of the restaurants in South Carolina and instead delegated all of the work to individuals of presumably lesser skill without ever inspecting their work himself. No testimony was ever entered by any of the Marsh employees who were action ally on-site in which they certified the quality or even completion of the work, the sole source of determination that the work was successfully completed was the fact that the workers were no longer on site, the apparent inclusion of foam (although the site of the foam is obscured by a concrete encapsulation), and the invoices tendered by Marsh.

LLR found as a conclusion of law that Marsh Waterproofing was not supervising any work on the project which is contradicted by the statements in the deposition of Tim Marsh where he states that Hamilton and the Steeple entities "did not have any representative or inspecting or anything like that or supervising the work." Mr. Marsh also testified in his deposition that Mr. Avant, an employee of Marsh Waterproofing, serves as the supervisor for the company and was on site with Mr. Hollier, who performed the work.

Hamilton was never afforded the opportunity to engage in a review by any qualified third-party as the exigent circumstances of the mechanic's liens precipitated immediate default under the leases, substantive litigation by multiple parties (cross defaults by the lender and Church's Chicken as franchisor) against the Steeple entities, including me personally, and takeover of the restaurants by Church's Chicken without the ability to run any sale process.

LLR stated that Hamilton's obvious motive was to use an unlicensed practice citation as a defense to avoid payment of half a million dollars of professional work. The total invoices presented by Marsh, including the payments made on behalf of the Steeple entities represent a fraction of the amount stipulated to and make no reference to the \$40,000 payment made to Marsh Waterproofing.

The LLR states as a conclusion of law that the declination of a citation and penalty was based upon the mitigating information, which is contested by both my testimony and the deposition of

Mr. Marsh, and the fact that there was no substandard work, a fact that remains in dispute, and no harm to any member of the public. The only uncontested matter in their findings is that there has yet to be any harm to the public.

Hamilton does not owe any obligation to Marsh as it was the management company for the Steeple entities and not the client of Marsh. Moreover, Hamilton had no other means of determining whether the work would be covered under any of the insurance coverage of the Steeple entities or Marsh Waterproofing in the event of a failure without a definitive determination by LLR.

It is my belief that had the LLR appeals board had the benefit of reviewing Mr. Marsh's deposition as well as my testimony, including the transcript of my 30(b)(6) deposition, they could not have reached the same conclusions of fact and would have found no mitigating circumstances.

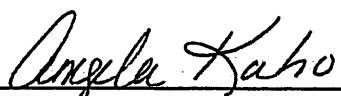
FURTHER AFFIANT SAYETH NOT.



Alexander Burns

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The foregoing affidavit of Alexander Burns was acknowledged before me this 8th day of November, 2019 by Alexander Burns.


Signature of Notary Public
My commission expires: Nov. 1, 2027



**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2018-CP-10000262**

MARSH WATERPROOFING, INC.

Plaintiff,

vs.

STEEPLE DORCHESTER LTD et al

Defendants.

AFFIDAVIT OF ALEXANDER BURNS

PERSONALLY, APPEARED BEFORE ME, ALEXANDER BURNS WHO SWEARS AND IS DULY DEPOSED AS FOLLOWS:

I am 18 years of age or older.

I am competent to make this affidavit which is based on my own personal knowledge.

I am a director of Hamilton Management Services Company, which is a management company that I established in 2014 in Charleston, South Carolina.

Hamilton Management Services Company manages each of the Steeple entities which serve as defendants in the action against Marsh Waterproofing, Inc.

I am not individually a party to this action and have previously provided testimony in the form of a deposition and a written affidavit dated September 26th, 2019.

In my capacity as Director of Hamilton Management Services Company, I have direct knowledge of the facts and circumstances which give rise to this action.

There was never a contract between Steeple Dorchester Ltd. or Hamilton Management Services Company and Marsh Waterproofing. The only written contract regarding the subject matter was a written proposal between State Acquisitions, LLC, the parent company of Steeple Dorchester Ltd and Marsh Waterproofing. I executed the proposal on behalf of State Acquisitions, LLC, to whom it is addressed, who is not a party to this action.

I reiterate the testimony from page two of my prior affidavit that "Hamilton does not owe any obligation to Marsh as it was the management company for the Steeple entities and not the client of Marsh".

There is currently no leasehold interest for which Marsh Waterproofing can foreclose. The leasehold interest held by Steeple Dorchester Ltd. was terminated by the landlord, ARC CAFÉ 001, LLC on March 5th, 2018, effective November 30, 2017, a copy of which was filed

with the Charleston Register of Deeds. The termination by the landlord was pursuant to the tenant, Steeple Dorchester Ltd, breach of the forbearance agreement, pursuant to the lease, which precluded the filing of any Mechanics' Liens on the property. The Mechanics' Lien was filed by the Marsh Waterproofing on November 16, 2017 and the landlord terminated the lease effective November 30, 2017.

Insofar as the leasehold interest held by Steeple Dorchester Ltd. no longer exists, it is impossible to foreclose upon the interest and impossible to sell the property that is subject to the leasehold interest as it no longer exists. Marsh Waterproofing has elected to voluntarily dismiss the landlord from this action and has not named Cajun Global, LLC d/b/a Church's Chicken, which I understand to be the current tenant of the property. Cajun Global, LLC, is the Franchisor of Church's Chicken, who introduced the me to Marsh Waterproofing, and with whom I understand that Marsh Waterproofing maintains a longstanding and profitable business relationship.

On page four of the Post-Trial Memorandum, the attorney for Marsh Waterproofing states, "Mr. Burns could not rely upon the existence of a license for the qualifications of the contractor if he knew none existed". and further "Mr. Burns was fully aware of the experience and qualifications and the track record of the contractor and was relying upon that knowledge rather than the existence of a license when deciding whether to engage the contractor".

To the contrary, on page two of my prior affidavit, which remains my testimony, "At the point at which Hamilton coordinated the Steeple engagement of Marsh Waterproofing, Inc. it was my belief that Marsh Waterproofing, Inc. was adequately licensed, bonded and insured for the work being performed".

Moreover, also on page four of the post-trial Memorandum, the attorney for Marsh Waterproofing states, "On the facts in the record the parties discussed licensing before the work started and Tim Marsh told Mr. Burns that he was not licensed in South Carolina and asked if Mr. Burns thought he needed to be".

Again, on page two of my prior affidavit, which remains my testimony, "At no time did Mr. Marsh, nor any other party from Marsh Waterproofing, discuss the issue of contractor licensing with me or anyone else at Hamilton or the Steeple entities". Subsequently, on page three I stated, "Contrary to the statements made by Mr. Marsh that I knew Marsh Waterproofing was unlicensed at the time of their hiring, as of the authorization of this payment, I still did not know that Marsh Waterproofing was unlicensed in South Carolina."

The attorney for Marsh Waterproofing has mischaracterized the record by repeatedly disregarding my prior testimony in an effort to mislead the court as to my belief.

In the Post Trial Memorandum, counsel for Marsh Waterproofing stated that my "credibility was undermined by the Consent Judgment against him...". Counsel then references the civil Securities & Exchange Commission Complaint upon which it is based as evidence of "misrepresentations and other illicit dealings."

Nothing related to that matter, which dates from 2014 and prior is in any way connected to this action, nor does the Marsh Waterproofing raise any connection except to attack my personal credibility. Moreover, there is no probative value to the prior action as the settlement is predicated upon an agreement whereby I did not either admit nor deny the allegations in the SEC Complaint.

While I am not admitted before the South Carolina Bar, nor any other State or Federal Bar, I did attend Law School in the State of South Carolina and it is my understanding that under the South Carolina Rules of Evidence, in order for the Marsh Waterproofing to introduce EXTRINSIC information, the Plaintiff can only do so in cross-examination (as opposed to in the form of reply to motion); AND would have to seek the Court's PRIOR consent.

I subsequently advised counsel for the Defendants that I was prepared to testify as an individual, ONLY, if the Court ruled that further inquiry into the matter, upon my cross-examination, was inadmissible. It is my understanding that counsel for the Defendants attempted to previously confer with Plaintiff's counsel regarding this matter, informing him that such evidence was improperly included and required the Court's consent to be raised at cross-examination.

It is my understanding that the counsel for the Defendants attempted to raise the issue of excluding the testimony, via a Motion *in limine*, which the Court heard and elected not to rule upon given the lack of a jury.

Given that the Court did not rule on the Defendants' Motion *in limine* to exclude the evidence, I advised the counsel for the Defendants that I would not be voluntarily testifying as I was not prepared to subject myself to questioning, under oath, regarding the prior SEC matter, insofar as I was not individually represented by counsel in this matter – who could object on my behalf, and was concerned that the adequate defense of my credibility could require me to take a position on matters in which I have consented with the Securities & Exchange Commission to neither admit nor deny in any public statement.

It is my belief that the Plaintiff's attorney included the references to the prior SEC matter as a means of prejudicing the Court against me and my testimony as well as creating a situation in which it was untenable for me to testify, knowing that he could use inadmissible information to force me into an adverse line of questioning. It is my understanding that the Defendants were forced to withdraw their counterclaim against the Plaintiff insofar as without my testimony there was no party available to set forth a *prima facie* case against the Plaintiff.

In a new trial, if the Court were to rule that questioning upon cross examination related to my prior civil matter with the Securities & Exchange Commission was inadmissible, I would be prepared to testify on behalf of the Defense regarding the following matters:

1. The background of the Defendant parties and the circumstances which gave rise to this action.
2. The lack of existence of a contract between Steeple Dorchester Ltd OR Hamilton Management Services Company and Marsh Waterproofing.

3. The existence of a written contract covering the relevant scope of work between Marsh Waterproofing and State Acquisitions, LLC, the parent of Steeple Dorchester Ltd, which is not a party to this action.
4. My conversations with Tim Marsh of Marsh Waterproofing, specifically regarding a lack of any discussion regarding Mr. Marsh or Marsh Waterproofing's licensure requirements.
5. The circumstances of my letter on behalf of Hamilton Management Services Company to the LLR.
6. My understanding as to Marsh Waterproofing's licensure at the time of hiring.
7. My continuing belief that Marsh Waterproofing was adequately licensed at the time I a \$40,000 directed payment for the benefit of Marsh Waterproofing.
8. The inaccuracies regarding Hamilton Management Services Company that were stipulated between the South Carolina LLR and Marsh Waterproofing for the purpose of the LLR hearing.
9. My conversations with representatives of Cajun Global, LLC and ARC CAFEUSA001, LLC related to the requirement that a Mechanics' Lien not be filed against the properties as a condition of the restructuring of the lease between ARC CAFEUSA001, LLC and Defendant Steeple Dorchester, Ltd.
10. My belief that Cajun Global, LLC induced Marsh into filing the Mechanics' Liens as a means of forcing the liquidation of Steeple Dorchester Ltd., which ultimately resulted in Cajun Global, LLC obtaining control over the property and the assets at a significant discount to the price paid by Steeple Dorchester Ltd. three years earlier.
11. My conversation with Glen Kindred of ARC CAFEUSA001, LLC in which he informed me that the filing of the Mechanics' Lien was the proximate cause of the termination of the leases.
12. My understanding of the termination of the leases as the proximate cause of the liquidation of the assets of Steeple Dorchester Ltd.
13. The damages suffered by Steeple Dorchester Ltd. as a result of the Marsh Waterproofing filing the Mechanics' Lien.
14. The Defendants rationale for withholding payment on the basis of potential claims and the need to have the work inspected by a licensed South Carolina contractor or engineer prior to releasing payment.

It is my belief that my testimony would provide the Court with significant direct evidence of the misconduct of the Plaintiff as it relates to the Defendants counterclaim and would serve to

directly refute many of the assertions made by the Marsh Waterproofing in their claims, specifically regarding my beliefs and reliance.

I believe that the Defendants were irreparably harmed by my lack of testimony, insofar as I am the only available party with direct knowledge of these matters.

FURTHER AFFIANT SAYETH NOT.

A. Burns

Alexander Burns.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The foregoing affidavit of Alexander Burns was acknowledged before me this 24 day of February, 2020, by Alexander Burns.

Kate Michele Hengen

Signature of Notary Public

My commission expires: 9.13.21

[SEAL]

STATE OF TEXAS)
)
COUNTY OF ORANGE)

AFFIDAVIT OF MARSH WATERPROOFING, INC.



1. That I am the Secretary and Treasurer of Marsh Waterproofing, Inc. and authorized to make this affidavit on behalf of the corporation.
2. That in discussion with Alexander Burns of Hamilton Management Services Company, Inc., prior to the beginning of work, he asked me whether I was licensed in South Carolina. I asked him whether I needed to be licensed in South Carolina and he told me he would check with someone and get back to me. He subsequently did respond to me and tell me that there did not seem to be a need to be licensed to do our work in South Carolina. He did not tell me with whom he checked, but I took him at his word.
3. That previous email correspondence with Mr. Burns referenced his contractor providing all preparatory work under the buildings involving water removal, plumbing and electrical changes. He informed me that his contractor would be executing all of that work. It follows that somebody pulled permits for electrical and plumbing repairs and presumably for the project generally, but all of that work was provided by others.
4. That our crew made their initial trip to South Carolina in August only to find that none of the buildings were ready for us to begin work. Our crew returned to Texas to await further notification. The scheduling of the trades, the sequencing of the work, the preparatory electrical plumbing and water removal work, the furnishing of general conditions such as dumpsters and portable bathroom facilities was all provided by others. Mr. Burns was our primary point of contact

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but several other gentlemen who apparently worked for or with him contacted us from time to time with updates on the project.

5. We provided no direction or supervision to others regarding any preparatory work under the buildings and it was accomplished before we arrived on site.
6. During the course of performing the installation of our foam material we made no changes at all to existing grade, standing water, plumbing pipes, electrical wiring, steel girders, steel joists, block piers, brick masonry walls, cracks in concrete slabs, or concrete footings.
7. We have installed foam at existing Church's restaurants in our home state of Texas where no license is required. We have made similar repairs in the state of Mississippi where we have been licensed for many years prior to repairing any restaurants. We have made similar repairs in the states of Alabama, Georgia, South Carolina and North Carolina where, to our best knowledge, after inquiry, no license has been required.
8. We have been provided a copy of the Cease and Desist Order issued by the South Carolina LLR. We previously received the Citation and accompanying letter via mail. We never received the Cease and Desist Order by mail, and only recently received a copy through counsel. Nevertheless, we will fully comply with that Order and with any final determination by LLR of the Appeal of the Citation.

FURTHER, THE AFFIANT SAYETH NOT!

(signature and notarization on following page)

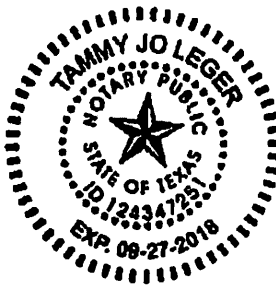
Marsh Waterproofing, Inc.

Tim Marsh (SEAL)
By: Tim Marsh, Its Secretary/Treasurer

Sworn to before me this 30th day
of April, 2018.

Tammy Jo Leger
Notary Public for Texas

My Commission Expires: 9/27/18



ASSESSMENT – PHYSICAL DAMAGE TO PROPERTY



Restaurant #: 757– 5343 Dorchester Road, Charleston, SC 29418

Hamilton Management Services Co.
Mr. Alexander Burns
701 East Bay St Suite 410
Charleston, SC 29403

Prepared by



Davis Patrikios Criswell, Inc.
7975 Stage Hills Boulevard, Suite 1
Memphis, TN 38133

Job No. 2017086
June 22, 2017



ROA000655

OBSERVATION DATA SUMMARY

Date of Visit: *May 31, 2017*

Weather: *Partly Cloudy, 81°*

Location: *5343 Dorchester Road
Charleston, South Carolina, 29418*

Crawlspace Conditions: *Standing Water*

Client(s): *Hamilton Management Services Co.
Mr. Alexander Burns
701 East Bay St Suite 410
Charleston, SC 29403*

Notes: *Observing condition of first floor
elevated framing from
crawlspace; Access to
crawlspace was limited due to
standing water.*

Prototype #: *N/A*

Market Leader: *N/A*

Present at Observation: *Ralph Velasco, E.I.*

FORENSIC ENGINEERING SCOPE

Davis Patrikios Criswell, Incorporated was contacted to provide a visual observation of the crawl space / basement to identify observed structural deficiencies in the building's ground floor slab structural system. Repair recommendations will be made on an as needed basis in order to maintain life safety and structural integrity of the floor system.

OBSERVATION

The on-site field observation was performed by Mr. Ralph Velasco, E.I. of Davis Patrikios Criswell, Incorporated. Mr. Velasco performed the field observation of the restaurant located at 5343 Dorchester Road, Charleston, South Carolina on May 31, 2017. Mr. Eric Criswell, P.E. and Mr. Gerry Patrikios, P.E. reviewed observation notes and photographs obtained during Mr. Velasco's observation on June 2, 2017. Mr. Eric Dunham was the Church's Chicken representative whom Mr. Velasco met with during the observation.

STRUCTURE BACKGROUND AND COMPONENTS

The property located at 5343 Dorchester Road, Charleston, South Carolina was a Church's Chicken restaurant and was occupied by a tenant at the time of observation. The building was located in Charleston County, South Carolina. The restaurant was 991 square feet, and was constructed in 1976 according to the Charleston County Assessor's website. (<http://sc-charleston-county.governmax.com>)

The restaurant was observed to face east and was a conventional framed structure with steel beams supporting metal decking with a concrete topping slab. The perimeter of the framing was founded on a concrete basement wall approximately 3'-0" in height. The interior steel beams were supported by piers with isolated spread concrete footings. The interior and exterior load bearing walls were presumed to be light gauge metal studs bearing on the elevated slab system.

The site was observed to be generally flat with drainage flowing away from the building on all sides. The store had pea-gravel concrete sidewalks on three sides of the building with an asphalt drive-thru aisle, parking lot, and an extended concrete front patio.

DPC Report No. 2017086
Restaurant #: 1024 – 5343 Dorchester Road, Charleston, SC 29403

SITE AND STRUCTURAL OBSERVATIONS:

<u>ID</u>	<u>LOCATION</u>	<u>OBSERVATION COMMENTS</u>	<u>PHOTO(S) #</u>
A SITE			
1	Paving	Asphalt Drive Thru and Parking area with common cracking	1-4
2	Sidewalks at Building	Pea Gravel Sidewalks on all sides of building with cracks and separation	1-4
3	Site Drainage	Drainage generally flows away from building on three sides of building	1-4
B STRUCTURE			
1	Exterior Walls, Interior Walls and Finishes	No Observed Damage.	N/A
2	Perimeter Retaining Wall	Wall partially underwater in crawlspace.	6
3	Mudslab	Standing water in crawlspace. Limited access.	5
4	Girder Steel Beam	Evidence of rust and oxidation; Significant deterioration and delamination.	7
5	Joists Steel Beams	Evidence of rust and oxidation; Significant deterioration, delamination, and loss of structural section.	8, 9
6	Perimeter Steel Beams	Advanced evidence of rust and oxidation; Significant deterioration, delamination, and loss of structural section	10
7	Metal Decking and Topping Slab	Advanced evidence of rust and oxidation; Significant loss of structural section; Deterioration of decking; Bare concrete observed.	11
8	Under Slab Hung Utilities	Evidence of Water Submersion on Underhung Utilities	12
9	Sump Pump	Sump pump not observed, but assumed to not be working due to standing water in crawlspace	5
10	Shoring	No shoring observed.	13, 14

DISCUSSIONS AND CONCLUSIONS:

We observed significant evidence of long-term rust and oxidation to the structural steel beams supporting the metal deck and concrete topping slab. The condition of the beams has advanced to a state where, all observed steel perimeter beams, steel beam joists, and steel beam girders were noted to be in a condition where deterioration, delamination, and/or loss of structural section has occurred. The metal deck spanning between the beam joists was noted to have significant rust and oxidation damage. In some observed locations within the crawlspace, bare concrete from the topping slab could be observed due to complete loss of structural section of the metal decking. The concrete topping slab was not designed to span between the steel joists without the metal decking support.

The crawlspace was also noted to have a significant amount of standing water present throughout the crawlspace. The crawlspace is built underground; therefore, in order to drain water from under the building a sump pump pit and pump are required. Confirmation of the condition of the sump pump was not determined; however, water was ponding in the crawlspace. Water was noted as condensing on the bottom of the metal decking / bare concrete at the time of observation. In our professional engineering judgment, the crawlspace lacked adequate ventilation to prevent condensing of moisture in the crawlspace. We recommend a licensed mechanical engineer confirm the necessary requirements for ventilation in the crawlspace.

In our professional engineering judgment, the condition of the structural steel framing and metal decking have reached a condition where remaining structural materials are overstressed and normal cyclic loading could cause catastrophic collapse of the elevated slab. The observed structural condition indicates that failure of the floor system is imminent. Any additional localized failure of the floor system could result in catastrophic collapse of the entire structure. We recommend that Church's Chicken provide immediate continuous structural support of the floor decking and beams in order to protect both life

safety and Church's capital assets. We recommend this store location be repaired immediately.

RECOMMENDATIONS:

Based on the visual observation and condition of the load bearing structural members, we recommend that immediate structural support be provided for all structural members in the crawlspace. This would include all perimeter beams, joists beams, girder beams, metal decking and bare concrete areas. It is critical that full continuous support be provided to the structural members in the crawlspace.

For immediate life safety concerns and speed of installation, a high density expanding closed cell structural foam system is recommended for installation in the crawlspace. It is our understanding that Church's Chicken has used this solution in the past with other crawlspaces and has achieved favorable results. The Alchemy Polymers AP Lift 430 product has been reviewed. In review of the specifications, the compressive strength noted is adequate to support the superstructure.

We recommend the following general procedure in order to achieve sound structural foam installation results.

- 1.) Pump all storm water out of the crawl space. Contractor to provide fans as necessary to allow crawl space area to be a dry prior to commencing work.
- 2.) Inspect all under hung water and sewer lines, provide proper tight joints, support and slope.
- 3.) Replace all cast iron or steel sewer lines, if needed, schedule 40 PVC. No steel or cast iron pipes in crawl space and inside polyurethane foam.
- 4.) Pipe all floor drains to sewer collection and verify leak free and positive flow.
Secure pipe.
- 5.) Ensure all sewer and water lines are in good working condition and secured.

- 6.) Confirm that any electrical cables, wires, low voltage cables, etc. are in conduit and properly secured.
- 7.) Remove all debris, pumps, trash, etc. from ground surface.
- 8.) Apply the expandable polyurethane foam after above noted items are performed and checked.

In areas where expansive soils are present, the structural foam could cause issues with heaving of the building's structural system. We recommend verifying existing soil conditions with a local geotechnical engineer prior to installation. All site water should be diverted to prevent water entry into the crawlspace. The provision for a drainage system should be included for removal of any future water that might infiltration into the crawlspace.

The above noted procedure is a general recommendation and will require additional engineering design, calculation, further observation, and preparation of construction documents prior to implementation, which is beyond the scope of this inspection phase of work. Additional repair options may be considered on a case by case basis. The owner shall provide a detailed scope of work for consideration. In any case, the damages observed require a full bearing repair solution.

QUALIFICATIONS

The information presented in this report addressed the limited objectives related to the evaluation of the crawlspace. This report only describes the conditions observed at the time of our evaluation. It is not intended to fully delineate or document every defect or deficiency throughout the subject property. This observation does not include a detailed analytical study of the structural elements nor does this report warrant the structural quality of the structural members which were not exposed and were not readily available for visual observation or other areas not mentioned in this report. If any additional information is encountered which relates to this evaluation, Davis Patrikios Criswell, Inc. reserves the right to alter the recommendations contained in this report. In some cases, additional

studies may be warranted to fully evaluate concerns noted.

Our services have been performed using that degree of skill and care ordinarily exercised under similar conditions by reputable members of Davis Patrikios Criswell's profession practicing in the same or similar locality at the time of performance. Any verbal statements made before, during, or after the course of the observation were made as a courtesy only and are not considered a part of this report.

Thank you for your business and please feel free to call us if you have any questions or comments regarding our report or structural observation.

Sincerely,

Davis Patrikios Criswell, Inc.



Ralph Velasco, E.I.
Field Inspector



Eric Criswell, P.E.
Senior Engineer



Engineer of Record By:
Gerry Patrikios, P.E.
Senior Engineer

PHOTOGRAPHIC DOCUMENTATION:



Photo 1: Front/East Elevation & Asphalt Parking



Photo 2: South Elevation & Asphalt Drive-Thru



Photo 3: North Elevation & Parking Lot



Photo 4: West Elevation & Asphalt Drive-Thru



Photo 5: Standing Water at Entrance of Crawlspace



Photo 6: Evidence of Standing Water Observed on Perimeter Retaining Wall



Photo 7: Rust, Deterioration, and Delamination Observed on Interior Girder Beam



Photo 8: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beams



Photo 9: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beam



Photo 10: Severe Rust, Deterioration, and Delamination Observed on Perimeter Support Beam



Photo 11: Observed Severe Rusting of Metal Decking, and Exposed Concrete



Photo 12: Condition of Under Slab Hung Utilities



Photo 13: No Shoring Observed for Elevated Slab or Steel Frame



Photo 14: No Shoring Observed for Floor Decking

Marsh Waterproofing Inc
Vidor, TX 77670-0968
P.O. Box 968

Invoice

Date	Invoice #
9/5/2017	6533

Bill To
State Acquisitions, LLC 259 Seven Farms DR Suite #301 Charleston SC 29492

P.O. No.	Terms	Project

Description	Qty	Rate	Amount
Installation of foam injection system under crawlspace. Steeple Two Notch Ltd Churchs Chicken #0904 7116 Two Notch RD Columbia SC 29223		36,800.00	36,800.00

		Subtotal	\$36,800.00
		Sales Tax (0.0%)	\$0.00
		Total	\$36,800.00
		Payments/Credits	\$0.00
		Balance Due	\$36,800.00

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Marsh Waterproofing, Inc.

Specializing in Building Restoration

Physical Address:
240 South Main St. Suite #2
Vidor, TX 77662



Ph# 409-769-0459
Toll free: 1-866-251-0234
Fax# 409-769-1682

Mailing Address:
P.O. Drawer 968
Vidor, TX 77670-0968

Email: mwaterproofing@aol.com

July 10, 2017

**Churchs Chicken
State Acquisitions, LLC
259 Seven Farms DR
Suite #301
Charleston SC 29492**

Attn: Alexander Burns

Scope of Work: Foam Underneath Crawlspace at Churchs Chicken

- Crawl space must be clean and free of standing water
- All plumbing and electrical must be repaired and secured by others
- This quote is based on 1200 square feet by 3 feet deep crawlspace
- Apply alchemy polymers 430 foam to fill crawlspace
- This quote is based using 10 sets of alchemy polymers foam
- Remove access door and fill with 4 inches of concrete after completion

Price: \$41,800.00 plus all applicable taxes.

Price for multiple stores: \$36,800.00 plus all applicable taxes.

***NOTE: Approximately 2 working days per store**

***If crawlspace is not prepared \$875.00 per day will be charged while we are waiting on electrical, plumbing and cleaning to be finished.**

Terms: Payment due upon completion.

**Respectfully Submitted,
Tim Marsh
Marsh Waterproofing Inc.
409-782-3527**

Acceptance of Propsal: AB Date: 7/21/2017

RECEIVED

Jan 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Circuit Case No. 2018-CP-10-00262

Appellate Case 2020-000921

Steeple Dorchester, Ltd. and
Hamilton Management
Services Company, Inc.,

Appellants,

v.

Marsh Waterproofing, Inc.,

Respondents.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s C. Clay Olson

C. Clay Olson, SC Bar No. 17007

Harper Little, PLLC

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Charleston, SC 29401

843-224-6676

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Charleston, South Carolina
January 21, 2021

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January 22, 2021

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