

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

MARSH WATERPROOFING, INC.
Respondent,

v.

STEEPLE DORCHESTER, LTD. and
HAMILTON MANAGEMENT SERVICES COMPANY, INC.
Appellants.

RECORD ON APPEAL

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-10- 00262

Marsh Waterproofing, Inc.,

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on February 5, 2020 for a bench trial. Having reviewed applicable law, pre and post-trial memorandums submitted to the Court, and considered the arguments of counsel, the Court finds the mechanics lien dated November 16, 2018 in the amount of \$36,800.00 is valid and duly enforceable. Counsel shall confer on the issue of attorney's fees, and if the parties cannot agree, the matter can be submitted to the court via brief.

Counsel for Plaintiff is requested to submit a more formal order within thirty (30) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

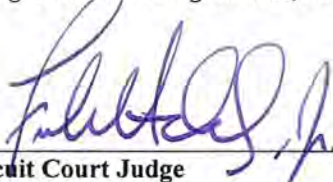
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

ROA 000002 Marsh Waterproofing	Steeple Dorchester Ltd.; Hamilton Management Services Co., Inc.	\$36,800.00 plus applicable interest and attorney's fees
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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



Circuit Court Judge

2159

Judge Code

02/11/2020

Date

For Clerk of Court Office Use Only

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

Albert A. Lacour, III

ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher Clay Olson

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: K. Nicole Carney

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

**FINAL ORDER FOR FORECLOSURE
OF MECHANIC'S LIEN
NON-JURY DECISION**

This matter came on before me for a jury trial at the February 3, 2020 term of court and was called for 9:30 AM on Wednesday February 5, 2020. At the outset, the Defendants indicated that the amount of the debt was not disputed, though Plaintiff's entitlement was, and the parties then agreed to waive the right to have the jury decide the facts concerning the amount of the debt and to try the case to the Court alone, whereupon the jury venire was discharged. The hearing was attended by Albert A. Lacour, III, Esq. and witnesses Tim Marsh and Avant Armentrout for the Plaintiff, Marsh Waterproofing, Inc., (or "Marsh"). C. Clay Olson, Esq., appeared for the Defendants. The testimony was taken, and from the testimony and exhibits in evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The initial Lis Pendens was filed on January 11, 2018.
2. The Amended Lis Pendens, Summons and Complaint were filed on January 22, 2018, and the Second Amended Lis Pendens and Amended Summons and



Amended Complaint were filed March 12, 2018.

3. Service was made upon the Defendant Hamilton Management Services Company, Inc. on January 23, 2018 and on the owner, ARC CAFEUSA001, LLC, on January 24, 2018 as shown by the proof of service filed herein.

4. The Defendants Steeple Dorchester, Ltd. and Hamilton Management Services Company, Inc., answered and asserted a Counterclaim on February 28, 2019 and a Reply to the Counterclaim was filed March 6, 2019.

5. The Defendants ARC CAFEUSA001, LLC, and Churpeyes II, Inc. were removed by the amendments to the pleadings. Paragraph 3 of the Amended Complaint alleges that the Churpeyes entity is the tenant of record, and the Steeple entity is the tenant in fact. Plaintiff is proceeding on its contract against Hamilton Management Services Company, Inc., and Steeple, and on its lien against the leasehold interest of the Defendant Steeple Dorchester, Ltd.

6. I find that the parties hereto and the real property which is the subject of the within action are within the jurisdiction of this Court.

7. I find that all of the correspondence between the Defendant, Hamilton Management Services Company, Inc., and Marsh Waterproofing, Inc., indicates Alexander Burns was acting for Hamilton Management Services Company, Inc. I find that Hamilton Management Services Company, Inc. authorized improvements to the property to be made by Marsh Waterproofing, Inc. and signed the acceptance of Plaintiff's proposal (Exhibit 6), thereby forming a valid and binding agreement supported by valid consideration.



8. I find that Plaintiff fully performed all the work it committed to perform but has not been paid for said work. The testimony reflects that there was never any complaint made about the quality of the work or the quantity of the work of Marsh.

9. I find that the Plaintiff timely filed its Statement for Mechanic's Lien which was introduced into evidence as Exhibit 11. The Statement for Lien was timely served as reflected by the Affidavit of Service, Exhibit 12. I further find that the Plaintiff perfected its lien by the timely filing a Lis Pendens and the commencement of this action to foreclose the lien, as detailed above.

10. When the time came for presentation of the Defendants' case, Defendants withdrew their Counterclaim and elected not to call any witnesses. Defendants rely on the fact that Plaintiff was not licensed in South Carolina as a general contractor and therefore maintain that Plaintiff is not entitled to recover on the contract or the lien.

11. Title 40, Chapter 11 of the South Carolina Code is the statutory regulatory scheme for general and mechanical contractors. A "general contractor" is one who performs or supervises or offers to perform or supervise "general construction". S.C. Code §40-11-20(9). "General construction" is installation, replacement or repair of a building or structure. S.C. Code §40-11-20(8). I find that the facts in the record establish that Marsh Waterproofing, Inc. and the work it performed do not fall within these definitions. The definitions reflect the history and common understanding that general contractors are defined essentially by either the nature of the work performed or the scope of the work performed.

12. Analyzing this case by the nature of the work, S.C. Code §40-11-20(8)



would require Marsh to build a building or structure, or replace a building or structure, or repair a building or structure. I find Marsh made absolutely no repairs or modifications to the structural elements of the building other than to mix up a couple of bags of concrete to close up the access opening in the slab. That work does not amount to \$5,000 worth of work to the existing structural elements. I find the foam was installed by Marsh in the open air space between grade and the bottom of the steel deck. It does not attach to any of the structural elements and does not modify or change any of the structural elements. The foam simply occupies the airspace to prevent the slab from moving downward if the slab fails. The scope of work outlined in the engineering report does not specify any repairs to any existing structural elements. I find that Marsh made no repairs to any footings, CMU walls, brick masonry walls, steel girders, steel joists, steel decking or the existing slab. None were called for by the engineering report. The installation of foam for supplemental support is not a classification of work identified in the statutory scheme as being the work of a general contractor in code section S.C. Code §40-11-410. (Exhibit 14).

13. Analyzing this case by the scope of the work, general contractors are sometimes identified by the fact that they contract to perform all of the work required to complete the project. Marsh clearly did not do this. I find that Marsh was not the only contractor on the project. The other contractor worked ahead of Marsh to perform the preparatory work. Marsh arrived last, in the order of the work, to install the foam in the airspace above grade and below the slab.

14. The scope of the general contractor's work generally includes providing



permitting, temporary utilities, temporary facilities, scheduling of the trades, sequencing of the trades, supervision of the trades, and general overall responsibility to see all of the work gets fully and properly executed. I find that none of the foregoing are within the scope of work defined by the proposal of Marsh. (Exhibit 6). The testimony of the witnesses for Marsh indicates that, to the extent that Marsh employees could observe whether these "general contractor" obligations were being met by others, they appeared to be furnished by someone else.

15. Additionally, I find that the representations of the Defendants to Marsh that they had a "contractor" working one step ahead of Marsh to do the preparatory work outlined in the engineer's report reasonably led Marsh to believe a general contractor was working ahead of Marsh on the project. The preparation work involved multiple trades, all of which required separate trade licenses, and would have required someone to pull a building permit before Marsh ever set foot on the project.

16. Additionally, I find that Defendants did not rely on the existence or non-existence of a license. Marsh made no representation to Defendants that it was licensed in the correspondence, the proposal, or the discussions of the parties. The Teseniar case stands for the proposition that "where the reason for the rule ends, so ends the rule." Teseniar v. Professional Plastering & Stucco, Inc., 407 SC 83, 754 SE2d 267 (Ct. App. 2014). On the facts in the record I find 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. Mr. Burns promised to check on it. Thereafter the parties proceeded with the work. Mr. Burns could not rely upon the



existence of a license for the qualifications of the contractor if he knew none existed.

17. Additionally, I find that Mr. Burns was referred to Marsh by Church's Chicken and was aware of the past activities of Marsh making repairs for the Church's franchise stores in multiple states at numerous store locations. I find that Defendants were made aware of the extensive experience and the ability of Marsh to install the foam by Marsh and by Church's. I find Defendants were not relying upon the existence of a license to know the contractor's qualifications to do the work. Defendants were made aware of the experience, the qualifications, and the track record of the contractor and were relying upon that knowledge, rather than the existence of a license, in deciding whether to engage the contractor. As the Court observed in Teseniar, "The statute involved, and similar ones, are designed to protect the public from being imposed upon by persons not qualified to render a professional service. ... In the case before us, [Defendant] was in a position to know, and did know, the qualifications of [Marsh]. No reliance was placed upon the existence of a license, as presumptively would be the case if [Marsh] was dealing with the general public." Teseniar, 407 SC at 97, 754 SE2d at 274.

18. I have reviewed the Affidavit of Counsel and the itemized time and cost entries submitted in support of Plaintiff's request for an award of attorney's fees, and I find that the fees and costs as set forth therein are reasonable. I find that the total fees and costs requested do not exceed the amount of the lien.

19. There are 6 factors to consider in determining an award of attorney's fees:
1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted



to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Bloomberg v. Nealco, Inc. 310 S.C. 492, 427 SE2d 659 (1993); citing Collins v. Collins 239 S.C. 170, 122 S.E.2d 1 (1961). I find that the litigation has been aggressively defended and involved novel arguments and issues on both sides. I find that counsel was required to prepare for numerous hearings prior to the trial itself. I find that the total attorney's hours devoted to this case exceed 120 hours as detailed in the motion for the award of the fees and costs and supporting documents. I find that counsel for Marsh enjoys high professional standing and has extensive experience in construction litigation. I find the rates charged are reasonable and in line with those customarily charged for similar services and that the results obtained justify the amount awarded.

20. I find that the amount due and owing to the Plaintiff upon its mechanic's lien is \$36,800, together with attorney's fees in the amount of _____ together with costs in the amount of _____ for a total debt of _____.

21. I find that the agreement of the parties is silent as to interest, and in the absence of an agreement on the matter, I decline to award pre-judgment interest. I find Plaintiff shall be entitled to recover interest after the entry of this judgment at the judgment rate as established by the current Order of the South Carolina Supreme Court dated January 6, 2020 in the amount of eight and three-quarters percent (8.75%) per annum upon the total debt set forth above and that such interest should be added to the total debt to determine the total amount secured by Plaintiff's lien through the date to



which such interest is computed. Upon the forgoing findings, I reach the following conclusions of law:

CONCLUSIONS OF LAW

22. I conclude Plaintiff constructed valuable improvements to the subject property leased to Steeple Dorchester Ltd. for which the Plaintiff has not been paid, and the Plaintiff is entitled to claim a Mechanic's Lien to secure the debt due together with costs and attorney's fees.

23. I conclude Plaintiff should have judgment for foreclosure of Plaintiff's mechanic's lien for the Total Amount Due of _____ together with interest from the date of entry of this order at 8.75%, as set forth above, and that the leasehold interest of Steeple Dorchester Ltd. in the subject property shall be sold at public auction after due advertisement.

24. I conclude that Hamilton Management Services Company, Inc. entered into the agreement for the work, and Plaintiff should have judgment against it on the contract claim. The mechanics lien statute preserves the claimant's right to pursue the contract remedy simultaneously in S.C. Code §29-5-420.

25. I conclude that Marsh Waterproofing, Inc. was not the general contractor on the job and was not required to be licensed as a general contractor.

26. I conclude that Hamilton Management Services Company, Inc. did not rely on the licensing of Marsh to determine the qualifications of the contractor; rather, Defendants relied on the information made known to it by Marsh and by the franchisor, Church's Chicken, as to the numerous restaurants upon which Marsh performed similar



work, and the experience, qualifications, and ability of the contractor to perform the work.

27. I conclude the cases relied upon by Defendants which deny recovery to general contractors are distinguishable from the facts of this case. As an example, the C-Sculptures case cited by Defendants reflects in the very first paragraph of the syllabus that it arises from a construction contract by which "a general contractor agreed to build a home..." C-Sculptures, LLC v. Brown 403 SC 53, 55, 742 SE2d 359, 360, (2013). I conclude that the decided cases cited by Defendants uniformly involve contractors who were either admittedly general contractors, or were adjudged to be general contractors based upon either the nature of the work or the scope of the work; therefore, the cases are inapplicable to these facts.

28. Neither of the parties filed an offer of settlement pursuant to the Mechanic's Lien Statute, and I conclude that the verdict is closer to the prayer in Plaintiff's Complaint, resulting in Plaintiff being the prevailing party.

29. I conclude the Plaintiff filed and served its Statement of Mechanic's Lien within 90 days of the last date of labor or materials furnished and also filed and served its Lis Pendens, Summons and Complaint for foreclosure within six months of the last date of labor or materials furnished.

30. I conclude that since the Plaintiff prevails, this case shall be referred to the Master in Equity so that he may conduct the sale and any additional proceedings incidental thereto.

It is therefore:



assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

The following is a description of the premises herein ordered to be sold:

The leasehold interest of Defendant Steeple Dorchester, Ltd., in and to:

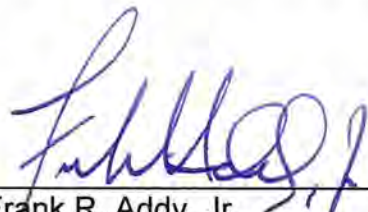
All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown on an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., 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

Present Address: 5343 Dorchester Road, Charleston, SC 29418-5620

Present Derivation: Memorandum of Assignment of lease to Churpeyes II, Inc. dated June 30, 2008 and recorded July 24, 2008 in Book N 655, Page 085 in the RMC Office for Charleston County.

AND IT IS SO ORDERED this 9th day of March, 2020 at Greenwood, South Carolina.



Frank R. Addy, Jr.
Presiding Judge, Ninth Judicial Circuit

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

**FINAL ORDER FOR FORECLOSURE
OF MECHANIC'S LIEN
NON-JURY DECISION**

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6. I find that the parties hereto and the real property which is the subject of the within action are within the jurisdiction of this Court.

7. I find that all of the correspondence between the Defendant, Hamilton Management Services Company, Inc., and Marsh Waterproofing, Inc., indicates Alexander Burns was acting for Hamilton Management Services Company, Inc. I find that Hamilton Management Services Company, Inc. authorized improvements to the property to be made by Marsh Waterproofing, Inc. and signed the acceptance of Plaintiff's proposal (Exhibit 6), thereby forming a valid and binding agreement supported by valid consideration.



8. I find that Plaintiff fully performed all the work it committed to perform but has not been paid for said work. The testimony reflects that there was never any complaint made about the quality of the work or the quantity of the work of Marsh.

9. I find that the Plaintiff timely filed its Statement for Mechanic's Lien which was introduced into evidence as Exhibit 11. The Statement for Lien was timely served as reflected by the Affidavit of Service, Exhibit 12. I further find that the Plaintiff perfected its lien by the timely filing a Lis Pendens and the commencement of this action to foreclose the lien, as detailed above.

10. When the time came for presentation of the Defendants' case, Defendants withdrew their Counterclaim and elected not to call any witnesses. Defendants rely on the fact that Plaintiff was not licensed in South Carolina as a general contractor and therefore maintain that Plaintiff is not entitled to recover on the contract or the lien.

11. Title 40, Chapter 11 of the South Carolina Code is the statutory regulatory scheme for general and mechanical contractors. A "general contractor" is one who performs or supervises or offers to perform or supervise "general construction". S.C. Code §40-11-20(9). "General construction" is installation, replacement or repair of a building or structure. S.C. Code §40-11-20(8). I find that the facts in the record establish that Marsh Waterproofing, Inc. and the work it performed do not fall within these definitions. The definitions reflect the history and common understanding that general contractors are defined essentially by either the nature of the work performed or the scope of the work performed.

12. Analyzing this case by the nature of the work, S.C. Code §40-11-20(8)



would require Marsh to build a building or structure, or replace a building or structure, or repair a building or structure. I find Marsh made absolutely no repairs or modifications to the structural elements of the building other than to mix up a couple of bags of concrete to close up the access opening in the slab. That work does not amount to \$5,000 worth of work to the existing structural elements. I find the foam was installed by Marsh in the open air space between grade and the bottom of the steel deck. It does not attach to any of the structural elements and does not modify or change any of the structural elements. The foam simply occupies the airspace to prevent the slab from moving downward if the slab fails. The scope of work outlined in the engineering report does not specify any repairs to any existing structural elements. I find that Marsh made no repairs to any footings, CMU walls, brick masonry walls, steel girders, steel joists, steel decking or the existing slab. None were called for by the engineering report. The installation of foam for supplemental support is not a classification of work identified in the statutory scheme as being the work of a general contractor in code section S.C. Code §40-11-410. (Exhibit 14).

13. Analyzing this case by the scope of the work, general contractors are sometimes identified by the fact that they contract to perform all of the work required to complete the project. Marsh clearly did not do this. I find that Marsh was not the only contractor on the project. The other contractor worked ahead of Marsh to perform the preparatory work. Marsh arrived last, in the order of the work, to install the foam in the airspace above grade and below the slab.

14. The scope of the general contractor's work generally includes providing



permitting, temporary utilities, temporary facilities, scheduling of the trades, sequencing of the trades, supervision of the trades, and general overall responsibility to see all of the work gets fully and properly executed. I find that none of the foregoing are within the scope of work defined by the proposal of Marsh. (Exhibit 6). The testimony of the witnesses for Marsh indicates that, to the extent that Marsh employees could observe whether these "general contractor" obligations were being met by others, they appeared to be furnished by someone else.

15. Additionally, I find that the representations of the Defendants to Marsh that they had a "contractor" working one step ahead of Marsh to do the preparatory work outlined in the engineer's report reasonably led Marsh to believe a general contractor was working ahead of Marsh on the project. The preparation work involved multiple trades, all of which required separate trade licenses, and would have required someone to pull a building permit before Marsh ever set foot on the project.

16. Additionally, I find that Defendants did not rely on the existence or non-existence of a license. Marsh made no representation to Defendants that it was licensed in the correspondence, the proposal, or the discussions of the parties. The Teseniar case stands for the proposition that "where the reason for the rule ends, so ends the rule." Teseniar v. Professional Plastering & Stucco, Inc., 407 SC 83, 754 SE2d 267 (Ct. App. 2014). On the facts in the record I find 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. Mr. Burns promised to check on it. Thereafter the parties proceeded with the work. Mr. Burns could not rely upon the



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18. I have reviewed the Affidavit of Counsel and the itemized time and cost entries submitted in support of Plaintiff's request for an award of attorney's fees, and I find that the fees and costs as set forth therein are reasonable. I find that the total fees and costs requested do not exceed the amount of the lien.

19. There are 6 factors to consider in determining an award of attorney's fees:
1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted



to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Bloomberg v. Nealco, Inc. 310 S.C. 492, 427 SE2d 659 (1993); citing Collins v. Collins 239 S.C. 170, 122 S.E.2d 1 (1961). I find that the litigation has been aggressively defended and involved novel arguments and issues on both sides. I find that counsel was required to prepare for numerous hearings prior to the trial itself. I find that the total attorney's hours devoted to this case exceed 120 hours as detailed in the motion for the award of the fees and costs and supporting documents. I find that counsel for Marsh enjoys high professional standing and has extensive experience in construction litigation. I find the rates charged are reasonable and in line with those customarily charged for similar services and that the results obtained justify the amount awarded.

20. I find that the amount due and owing to the Plaintiff upon its mechanic's lien is \$36,800, together with attorney's fees in the amount of _____ together with costs in the amount of _____ for a total debt of _____.

21. I find that the agreement of the parties is silent as to interest, and in the absence of an agreement on the matter, I decline to award pre-judgment interest. I find Plaintiff shall be entitled to recover interest after the entry of this judgment at the judgment rate as established by the current Order of the South Carolina Supreme Court dated January 6, 2020 in the amount of eight and three-quarters percent (8.75%) per annum upon the total debt set forth above and that such interest should be added to the total debt to determine the total amount secured by Plaintiff's lien through the date to



which such interest is computed. Upon the forgoing findings, I reach the following conclusions of law:

CONCLUSIONS OF LAW

22. I conclude Plaintiff constructed valuable improvements to the subject property leased to Steeple Dorchester Ltd. for which the Plaintiff has not been paid, and the Plaintiff is entitled to claim a Mechanic's Lien to secure the debt due together with costs and attorney's fees.

23. I conclude Plaintiff should have judgment for foreclosure of Plaintiff's mechanic's lien for the Total Amount Due of _____ together with interest from the date of entry of this order at 8.75%, as set forth above, and that the leasehold interest of Steeple Dorchester Ltd. in the subject property shall be sold at public auction after due advertisement.

24. I conclude that Hamilton Management Services Company, Inc. entered into the agreement for the work, and Plaintiff should have judgment against it on the contract claim. The mechanics lien statute preserves the claimant's right to pursue the contract remedy simultaneously in S.C. Code §29-5-420.

25. I conclude that Marsh Waterproofing, Inc. was not the general contractor on the job and was not required to be licensed as a general contractor.

26. I conclude that Hamilton Management Services Company, Inc. did not rely on the licensing of Marsh to determine the qualifications of the contractor; rather, Defendants relied on the information made known to it by Marsh and by the franchisor, Church's Chicken, as to the numerous restaurants upon which Marsh performed similar



work, and the experience, qualifications, and ability of the contractor to perform the work.

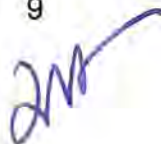
27. I conclude the cases relied upon by Defendants which deny recovery to general contractors are distinguishable from the facts of this case. As an example, the C-Sculptures case cited by Defendants reflects in the very first paragraph of the syllabus that it arises from a construction contract by which "a general contractor agreed to build a home..." C-Sculptures, LLC v. Brown 403 SC 53, 55, 742 SE2d 359, 360, (2013). I conclude that the decided cases cited by Defendants uniformly involve contractors who were either admittedly general contractors, or were adjudged to be general contractors based upon either the nature of the work or the scope of the work; therefore, the cases are inapplicable to these facts.

28. Neither of the parties filed an offer of settlement pursuant to the Mechanic's Lien Statute, and I conclude that the verdict is closer to the prayer in Plaintiff's Complaint, resulting in Plaintiff being the prevailing party.

29. I conclude the Plaintiff filed and served its Statement of Mechanic's Lien within 90 days of the last date of labor or materials furnished and also filed and served its Lis Pendens, Summons and Complaint for foreclosure within six months of the last date of labor or materials furnished.

30. I conclude that since the Plaintiff prevails, this case shall be referred to the Master in Equity so that he may conduct the sale and any additional proceedings incidental thereto.

It is therefore:



ORDERED, that there is due to the Plaintiff upon the contract claim set forth in the Complaint the sum of \$36,800 together with interest of 8.75% per annum accruing from and after the entry of this Order, and that judgment therefore shall be entered against Hamilton Management Services, Company, Inc.; and it is further,

ORDERED, that there is due to the Plaintiff upon the Mechanic's Lien set forth in the Complaint the Total Amount Due of _____ as of the date hereof, together with interest of 8.75% per annum accruing from and after the entry of this Order, and that the leasehold interest of Defendant Steeple Dorchester Ltd. in the property should be sold and the proceeds thereof applied to payment and satisfaction of the debt; and it is further,

ORDERED, that this matter is hereby referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, to conduct the Sale pursuant to S.C. Code Ann. §14-11-80 upon the terms hereinafter set forth and to conduct all further proceedings necessary or incidental thereto with leave to enforce final judgment herein and that any appeal shall be taken in accordance with S.C. Code Ann. §14-11-85; and it is further,

ORDERED, that the Defendant, Steeple Dorchester Ltd., shall on or before the date of Sale of the property hereinafter described, pay to the Plaintiff or the Plaintiff's attorney the full amount of the Plaintiff's debt, attorney's fees and costs as set forth herein; and it is further,

ORDERED, that on default of payment at or before the Sale date, the subject property described in the Complaint and hereinafter set forth, shall be sold by the



Master at public auction at the County Courthouse, in the City of Charleston, County and State aforesaid, on some convenient sale date hereafter (and should the regular day of judicial sales fall on a legal holiday, then, in such event, the sale day shall be the same day of the week next succeeding such holiday), that is to say:

(a) For cash; the Master will require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days, the same to be forfeited and applied to the costs and Plaintiff's debt.

(b) Interest on the balance of the bid shall be paid to the day of compliance at the rate of 8.75% percent per annum.

(c) The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

(d) Purchaser to pay for deed stamps and costs of recording the deed; and it is further,

ORDERED, that if Plaintiff is the successful bidder at the Sale, for a sum not exceeding the amount of costs, disbursements, expenses and indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness; and it is further,

ORDERED, that the Plaintiff is seeking a deficiency judgment and the same having not been waived, the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth (30th) day after such sale, exclusive at the day of sale,



whereupon the bidding shall be reopened by the Master and closed, all in accordance with S.C. Code Ann. §15-39-720 (1976 as amended); and it is further,

ORDERED, that the Master in Equity will, by advertisement, according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff or any other party to this action may become a purchaser at such Sale, and that if upon such Sale being made the purchaser, or purchasers, should fail to comply with the terms thereof within thirty (30) days after date of Sale, then the Master may advertise the premises for sale in the next or some subsequent sales date, at the risk of the former highest bidder, and sold from time to time thereafter until full compliance shall be secured; and it is further,

ORDERED, that the Master shall apply the proceeds at the Sale as follows:

First: To payment of the amount of the costs, disbursements, and expenses of this action, including any Guardian Ad Litem fees, or fees of attorneys appointed under Order of Court;

Next: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on same;

Next: Deficiency judgment being demanded by the Plaintiff, if the proceeds of sale be insufficient to pay the amounts hereinbefore authorized to be paid out of the proceeds with the costs and expenses, and the Plaintiff's debt and interest, then the Plaintiff shall have judgment for the unpaid portion thereof against Steeple



Dorchester Ltd.;

Next: Any surplus funds to be held pending the further Order of the Master; and it is further,

ORDERED, that upon entry of the report of the sale herein ordered, the Master shall enter judgment against the Defendant, Steeple Dorchester, Ltd., for any residue of the debt remaining unsatisfied after such sale.

ORDERED, that the Defendants and all persons whomsoever claiming under them be forever barred and foreclosed of all rights, title, interest and equity of redemption in the subject property so sold or any part thereof; and it is further,

ORDERED, that the deed of conveyance made pursuant to said sale shall contain the names of only the Plaintiff and the Defendant, Steeple Dorchester, Ltd., and Churpeyes II, Inc., who was the leasehold holder of record at the time of the filing of the initial notice of Lis Pendens in the within action, and the name of the grantee, and the Register of Mesne Conveyances of Clerk of the Court is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said deed; and it is further,

ORDERED, that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including but not limited to the issuance of a Writ of Assistance. And in the event that the successful bidder is other than the Defendant in possession herein, a Master may enter such additional Orders or Writs as may be necessary to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his



assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

The following is a description of the premises herein ordered to be sold:

The leasehold interest of Defendant Steeple Dorchester, Ltd., 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 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

Present Address: 5343 Dorchester Road, Charleston, SC 29418-5620

Present Derivation: Memorandum of Assignment of lease to Churpeyes II, Inc. dated June 30, 2008 and recorded July 24, 2008 in Book N 655, Page 085 in the RMC Office for Charleston County.

AND IT IS SO ORDERED this 9th day of March, 2020 at Greenwood, South Carolina.



Frank R. Addy, Jr.
Presiding Judge, Ninth Judicial Circuit

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

**SUPPLEMENTAL ORDER TO AMEND
FINAL ORDER OF FORECLOSURE OF
MECHANICS LIEN, NON-JURY
DECISION FILED MARCH 11, 2020**

This matter came before me again for the hearing of post-trial motions via video conference at 10 AM on Tuesday, April 28, 2020. Participating were Albert A. Lacour, III, attorney for the Plaintiff and C. Clay Olson, attorney for the Defendants. The court reporter was Stacy Johnson and the video conference was also recorded. Before the Court were: (1) the Plaintiff's Motion to Modify Judgment to Add Award of Attorney's Fees and Costs Pursuant To The Mechanic's Lien Statute filed February 21, 2020; (2) Defendant's Notice of Motion and Motion to Amend Judgment or For a New Trial in the Alternative (Rule 59) filed February 24, 2020; and (3) Defendants Notice of Motion to Amend Judgment or in the Alternative for New Trial and Clarification (Rule 59 (A) (2)) filed March 23, 2020.

Upon consideration of the Motions of Defendants and the Exhibits filed along with those motions and also the arguments of counsel, I find and conclude that my rulings at the time of the trial of the case and those necessarily contained in the entry of Judgment were sound and are hereby reaffirmed. Defendant's Motions are therefore **DENIED**.

Upon consideration of the Motion of Plaintiff and the Exhibits filed along with that motion and also the arguments of counsel, I find and conclude that an award of attorney's fees and costs under the statute is appropriate. Plaintiff's Motion is therefore **GRANTED**. The six factors to be considered in determining an award of attorney's fees are 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Blumberg v. Nealco, Inc. 310 S.C. 492, 427 S.E.2d 659 (1993).

Plaintiffs Motion is supported by 30 pages of time entries providing detailed descriptions of the nature of the services being provided in Exhibit A to the Motion. The entries reflect that this particular case is one of six identical mechanics liens filed in five different counties across the state and that numerous activities were consolidated by counsel as the work proceeded. As a result there are some entries dedicated solely to this action in this county and there are other activities that must be aggregated and then divided by the six separate actions to allocate them equally between all six cases.

The nature and extent of the legal services rendered is contained in the descriptions. I find the difficulty of representation and the level of skill required was elevated by the time limitations in the statute which required the six cases to proceed simultaneously. I find Defendants have vigorously defended the case and the issues raised by defendants have also increased the difficulty of representation beyond that normally encountered in a mechanics lien foreclosure. The time entries document \$15,961 in attorney's time devoted to this case solely. The time entries further document a total of \$77,347 of attorney's time devoted to the six cases jointly, and therefore the

allocated portion of this case would be \$12,701. The entries further document \$1140 of paralegal time to be allocated across the six cases resulting in \$190 to be allocated for this case. The charges by paralegal staff are allowable in South Carolina. Spriggs Group PC v. Slivka 402 S.C. 42, 738 S.E.2d 495 (Ct. App. 2013). I find therefore the total fees incurred as to this case are \$28,852.

The Affidavit in support of the Motion, attached as Exhibit C thereto, indicates that the fee agreement with the client is in writing and contains an hourly rate of \$225 for attorney's time, \$150 for associate time and \$95 for paralegal or clerical time. Additionally the plaintiff is required to reimburse counsel for all out-of-pocket costs incurred. I find that the affidavit reflects counsel has been in practice for 38 years and holds a rating from Martindale Hubble as "AV Preeminent" in his chosen field. I find that the rates charged for the services rendered are within the range of rates typically and customarily charged for such services within South Carolina. I find the efforts of counsel have bestowed a beneficial result upon the Plaintiff and resulted in a full recovery of the claim despite the vigorous efforts of Defendants to prevent such result.

I find the Affidavit of counsel and Exhibit B to the Motion reflect that the costs incurred directly in association with this case total \$1042.

I therefore conclude that an award of attorney's fees and paralegal fees in the amount of \$28,852 and costs of \$1,042 for a total of \$29,894 is appropriate and reasonable under the circumstances of this case. The total amount of the fees and costs should be added to the judgment previously entered. It is therefore,

ORDERED, that Plaintiff's Motion to Modify Judgment to Add Award of Attorney's Fees and Costs Pursuant To The Mechanic's Lien Statute is **GRANTED** and the Final Order For Foreclosure Of Mechanic's Lien Non-Jury Decision filed March 11, 2020 is amended and supplemented as follows:

- Paragraph 20 of the Final Order is amended to read "I find that the amount due and owing to the Plaintiff upon its mechanic's lien is \$36,800, together with attorneys's fees in the amount of \$28,852, together with costs in the amount of \$1042 for a total debt of \$66,694."
- Paragraph 23 of the Final Order is amended to read "I conclude Plaintiff should have judgment for foreclosure of Plaintiffs mechanics lien for the Total Amount Due of \$66,694 together with interest from the date of entry of this order at 8.75%, as set forth above, and that the leasehold interest of Steeple Dorchester Ltd. In the subject property shall be sold at public auction after due advertisement."
- The second paragraph at the top of page 10 is amended to read "**ORDERED**, that there is due to the Plaintiff upon the mechanics lien set forth in the Complaint the Total Amount Due of \$66,694 as of the date hereof, together with interest of 8.75% per annum accruing from and after the entry of this Order, and that the leasehold interest of Defendant Steeple Dorchester Ltd. in the property should be sold and the proceeds thereof applied to payment and satisfaction of the debt; and it is further,"

AND IT IS FURTHER ORDERED that all terms and conditions of the Final Order For Foreclosure Of Mechanic's Lien Non-Jury Decision filed March 11, 2020 are reaffirmed and remain in full force and effect, except to the extent modified herein.

AND IT IS FURTHER ORDERED Defendant's Notice of Motion and Motion to Amend Judgment or For a New Trial in the Alternative (Rule 59) and Defendant's Notice of Motion to Amend Judgment or in the Alternative for New Trial and Clarification (Rule 59 (A) (2)) are **DENIED**.

AND IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Marsh Waterproofing Inc VS ARC CAFEUSA001 LLC , defendant,
et al
Case Number: 2018CP1000262
Type: Order/Other

So Ordered

s/Frank R. Addy, Jr., 2159

Electronically signed on 2020-05-07 13:00:44 page 6 of 6

Marsh Waterproofing, Inc.

Plaintiff(s)

vs.

ARC CAFEUSA001, LLC, Churpeyes II, Inc., and
Hamilton Management Services Company, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 CP-10-262

Submitted By: Albert A. Lacour, III
Address: 126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144SC Bar #: 3099
Telephone #: (843) 577-2026
Fax #: (843) 722-2867
E-mail: alacour@clawsonandstauvers.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☒ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-NI-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☒ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture—Consent Order ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Out-of-State Depositions (650) ☐ Other (699) _____ ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510) ☐ Pre-Suit Discovery (670) ☐ Permanent Restraining Order (680)			

Submitting Party Signature

Date

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.
ROA 000034

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a “Proof of ADR” form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the “Notice of Intent to File Suit” or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARSH WATERPROOFING, INC.,

Plaintiff

vs.

ARC CAFEUSA001, LLC, Churpeyes II,
Inc. and Hamilton Management Services
Company, Inc.

Defendants.

1/22 2:38pm
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2018-CP-10-262

AMENDED LIS PENDENS

FILED
2018 JAN 22 PM 2:36
JULIE J. ARMSTRONG
CLERK OF COURT

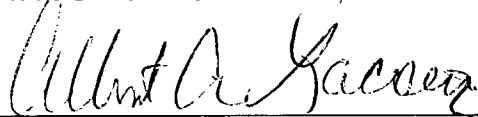
NOTICE is hereby given that an action has been commenced and is pending in this Court upon the Complaint for Foreclosure of Mechanic's Lien of the above named Plaintiff against the above named Defendant(s).

The premises affected by this action is at the time of the filing hereof located in the County of Charleston, State of South Carolina and legally described as follows:

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 Marsh Waterproofing, Inc.

Charleston, South Carolina

Jan 22, 2018

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-10-262

SUMMONS FOR MECHANIC'S LIEN

(Contract, Mechanic's Lien, Quantum
Meruit)

JURY TRIAL DEMANDED

FILED
2018 JAN 22 PM 2:35
JULIAN A. STRONG
CLERK OF COURT

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and **REQUIRED** to answer the Complaint for Foreclosure of Mechanic's Lien of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint for Foreclosure of Mechanic's Lien on the subscriber at office at CLAWSON and STAUBES, LLC, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492-8144, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint for Foreclosure of Mechanic's Lien within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Complaint for Foreclosure of Mechanic's Lien.

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

Charleston, South Carolina

Jan. 22, 2018.

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-10-262

**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

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:

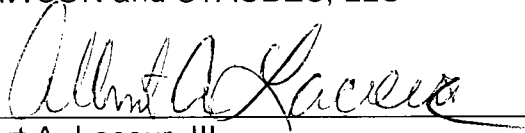
(a) against the Defendant Hamilton Management Services Company, Inc. for the sum of \$36,800.00 together with the costs and disbursements of this action, for breach of contract;

(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

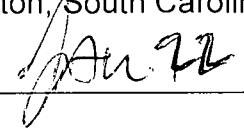
Phone: (843) 577-2026

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:

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.

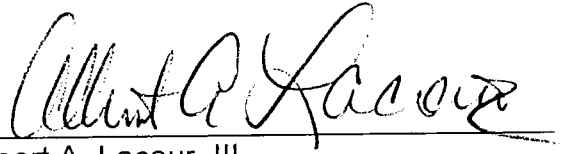
That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the

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

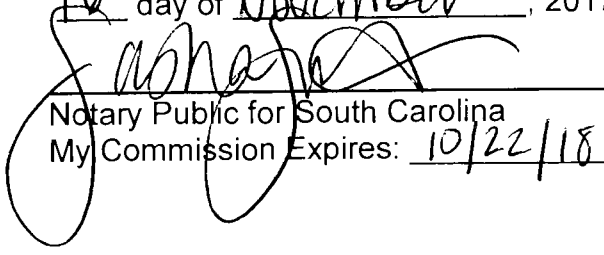
Fax: (843) 722-2867

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

)

) VERIFIED STATEMENT OF ACCOUNT

COUNTY OF JEFFERSON

)

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.

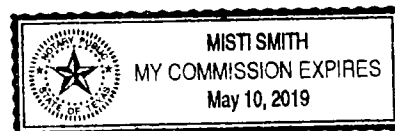
By: Tim Marsh
Tim Marsh
(print name)

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



ROA 000048
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 Pages: 5

of Sats:

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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Book



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

MARSH WATERPROOFING, INC.,

CASE NO.: 2018-CP-10-00262

Plaintiff

SECOND AMENDED LIS PENDENS

vs.

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

Defendants.

FILED
2018 MAR 12 AM 10:40
JULIE J. ARISTON
CLERK OF COURT

NOTICE is hereby given that an action has been commenced and is pending in this Court upon the Complaint for Foreclosure of Mechanic's Lien of the above named Plaintiff against the above named Defendant(s).

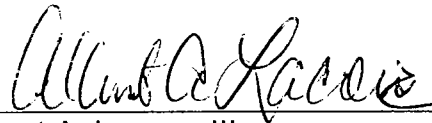
The premises affected by this action is at the time of the filing hereof located in the County of Charleston, State of South Carolina and legally described as follows:

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 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 Marsh Waterproofing, Inc.

Charleston, South Carolina

March 9, 2018

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 SUMMONS FOR
MECHANIC'S LIEN**

**(Contract, Mechanic's Lien, Quantum
Meruit)**

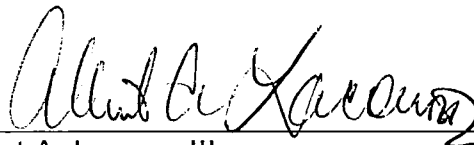
JURY TRIAL DEMANDED

FILED
2018 MAR 12 AM 10:39
CLERK OF COURT
JULIE J. ARISTIDES

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and **REQUIRED** to answer the Amended Complaint for Foreclosure of Mechanic's Lien of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Amended Complaint for Foreclosure of Mechanic's Lien on the subscriber at office at CLAWSON and STAUBES, LLC, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492-8144, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Amended Complaint for Foreclosure of Mechanic's Lien within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Amended Complaint for Foreclosure of Mechanic's Lien.

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

Charleston, South Carolina

March 9, 2018.

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

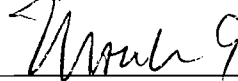
 9, 20 18.

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.

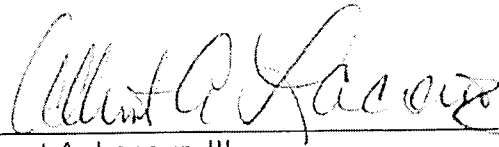
That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the

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

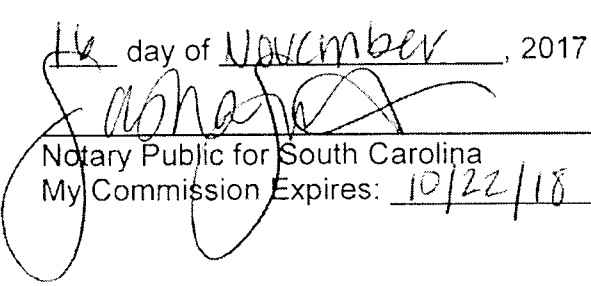
CLAWSON and STAUBES, LLC



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.

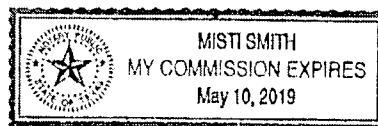
Marsh Waterproofing, Inc.

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)
) VERIFIED STATEMENT OF ACCOUNT
 COUNTY OF JEFFERSON)

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.

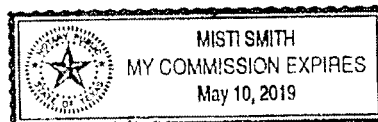
Marsh Waterproofing, Inc.

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

BookPageDocType

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 \$ 10.00Original Book: Original Page:

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CLERK JBA



0680

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11/16/2017

Recorded Date



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Original Book



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Recorded Time

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARSH WATERPROOFING, INC.,

Plaintiff,

vs.

STEEPLE DORCHESTER, LTD. AND
HAMILTON MANAGEMENT
SERVICES COMPANY, INC.

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT**

CIVIL ACTION NO. 2018-CP-10-00262

ANSWER AND COUNTERCLAIM

TO: ALBERT A. LACOUR, III, ESQUIRE, ATTORNEY FOR MARSH
WATERPROOFING, INC.

1. All Paragraphs not specifically admitted shall be construed as strictly denied.
2. The allegations contained in Paragraph 1 are admitted, upon information and belief.
3. The allegations contained in Paragraph 2 refer to several entities, at least two of which are not parties to this lawsuit. With regard to allegations made about these Defendants, Steeple Dorchester Ltd is a Delaware Corporation. (“Steeple”) Hamilton Management Services Company, Inc. (“Hamilton”) is a Delaware Corporation.
4. The allegations contained in Paragraph 3 make claims against parties other than the Defendants and these allegations are not denied nor admitted. With regard to allegations contained and made against Steeple, these are strictly denied as will be further discussed in Steeple’s Counterclaim.
5. The allegations contained in Paragraph 4 must be denied as phrased and this Defendant craves reference to the terms of the agreement referenced.
6. The allegations contained in Paragraph 5 are denied as to the use of the term “agreement.” Without waiving the Paragraph’s denial, the Defendants would admit that they are related entities, having a related origin and nexus.

FILED
2019 FEB 28 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT

7. The Defendant Steeple admits only that part of Paragraph 6 which implies that it was aware the Plaintiff was providing certain services and labor for an unnamed entity for which the Defendant Steeple was forced to acquiesce. All other assertions are denied.
8. The allegations contained in Paragraph 7 are denied and the Defendant would assert special objection to the terms “agreement” and “due demand for payment” as will be further elaborated upon in affirmative defenses and counterclaims.
9. The Defendant denies the allegations contained in Paragraphs 8 through 12 and demands strict proof of each.
10. Paragraph 13 is a reiteration of the previous 12 paragraphs and, therefore, makes no new allegations which need to be answered. To the extent that it does require a response, each are denied.
11. The Defendants deny those allegations contained in Paragraphs 13-16 and demand strict proof of each.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

12. The allegations contained in the Complaint fail to state a claim from which relief can be granted.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

13. The Plaintiff lacks standing to bring this lawsuit.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

14. The Defendants assert that the Plaintiff’s claims against the Defendants are barred by the doctrine of laches.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

15. The Defendants assert that the Plaintiff’s claims against the Defendants are barred as a result of the misrepresentations made by the Plaintiff to the Defendant or by an unnamed party to the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

16. Plaintiff’s claims against the Defendants **are barred** by S.C. Code 40-11-30 because the Plaintiff is required to be but is not properly licensed or registered with the South Carolina Department of Labor, Licensing and Regulation.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

17. Plaintiff's claims against the Defendants are barred under the doctrine of illegality as discussed in *W & N Constr. Co. v. Williams*, 322 S.C. 472 S.E.2d 622 (1996).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

18. Plaintiff's claims are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

19. Plaintiff's claims are barred pursuant to the statute of frauds.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

20. The Plaintiff's cause of action for the foreclosure of a mechanic's lien must be dismissed due to the Plaintiff's status as an **unlicensed contractor** and due to the fact that the mechanic's lien was not perfected within **90 days of the last day of work**.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

21. The Defendants are entitled to a reduction in amounts owed, if any based on any agreement to dismiss a known party to this lawsuit, ARC CAFE001. The Defendants should also be entitled to a reduction to amounts owed, if any, based on the dismissed party's status as the landlord and ultimate beneficiary of the labor and work provided, to the extent any exists.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

22. The case should be dismissed based on the Plaintiff's failure to name necessary parties, including the property owner pursuant to Rule 19, SCRCP.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

23. The case should be dismissed as all claims are contractual in nature and seek to enforce a contract which was entered into and performed in direct violation of the common law and statute in the following particulars:
- a. Marsh's status as an unlicensed contractor is confirmed by the LLR citation and cease and desist order. (See Exhibit "B")
 - b. Marsh failed to pull a building permit.
 - c. Marsh did not register to do business as a non-resident entity in further violation of statute.¹

¹ Marsh Waterproofing filed with the secretary of state's office, an application for authority as a foreign entity. See Exhibit C.

24. The Defendants Hamilton Management and Steeple Dorchester LTD reserve the right to assert further affirmative defenses

FURTHER ANSWERING AND AS A COUNTERCLAIM
(Tortious interference with contract as to Defendant Steeple Dorchester LTD)

25. The Defendant Steeple Dorchester Ltd. reasserts Paragraphs 1-24 and further alleges the following as a counterclaim.
26. Steeple Dorchester Ltd. is the entity which owns franchisee rights to that Church's Chicken located on Dorchester Road in Charleston, SC.
27. The real property is more specifically identified in the mechanics lien. ("Property")
28. On November 23, 2014, Defendant Steeple Dorchester Ltd. assumed, by assignment, the rights and obligations of a lease which was entered into on December 22nd 2006 between non-parties GE Capital Franchise Finance Corporation² and Churpeyes, Inc.
29. The property was sold to the current owner, ARC CAFEUSA001, LLC prior to the 2014 assignment.
30. The 2014 assignment created a landlord tenant relationship between the Defendant Steeple Dorchester Ltd. And ARC CAFEUSA001, LLC.
31. It is well established that the landlord tenant relationship is a contractual relationship.
32. The Plaintiff had direct knowledge that the Defendants leased the premises from another entity.
33. The Plaintiff also had direct knowledge that it was an unlicensed contractor as defined by South Carolina by virtue of its acknowledge lack of licensure and subsequent contacts with the SC LLR.
34. The filing of a mechanics lien by an entity which does not procure or maintain a license is an unjustified and improper act as defined by the SC Code and numerous case citations.
35. The filing was an intentional act.
36. Despite this knowledge, on or about November 17th 2017, the Plaintiff filed or caused to be filed that certain mechanics lien located at Book 53, Page 298 in the Charleston County, South Carolina Register of Deeds office.

² GE sold its interest in the premises to ARC CAFEUSA001

37. The filing of the lien and later service of the lien on ARC CAFEUSA001 was an overt act, performed precisely and with only the intent to injure the contractual relationship shared between Steeple Dorchester and ARC CAFEUSA001.

38. As a result of the actions of Marsh, an unlicensed contractor filing a mechanics lien without any legal authority, the lease was deemed in default and terminated.

39. As a result of the lease being terminated, the Defendant's affiliated companies State Acquisitions LLC, Hamilton Management Group and the Defendant were deemed in breach of the franchise agreement with Cajun Operating Company and the franchise agreement was subsequently terminated.

40. The termination of the lease and franchise agreement has caused the Defendant and its affiliated monetary damages which are still being determined.

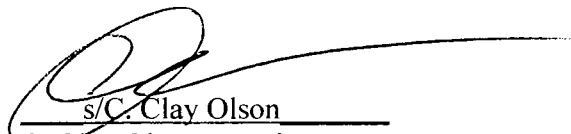
41. The actions of the Plaintiff were the proximate or legal cause of the lease termination and franchise termination.

42. The lease and franchise agreement constituted valuable assets which cannot be recovered or regained as a result of the unlawful publication of the mechanics lien.

WHEREFORE, having fully answered the Complaint the Defendant would ask that same be dismissed for reasons stated above in addition to the Defendants being awarded attorneys fees as the prevailing party in the mechanics lien portion of this lawsuit.

WHEREFORE, having asserted a cause of action for tortious breach/interference with contractual relations, the Defendants would ask for monetary damages as will be supported by the record. Such damages will include the total loss of the Defendant's leasehold rights, as well as for damages equaling the value of the Defendant's interest in the Church's franchise.

Respectfully submitted:


s/C. Clay Olson
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Charleston, SC 29401
843-224-6676
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Charleston, SC
February 27, 2019

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

REPLY TO COUNTERCLAIMS

**(Breach of Contract; Mechanic's Lien;
Quantum Meruit)**

JURY TRIAL DEMANDED

FILED
2019 MAR -6 PM 3:06
CLERK OF COURT
JULIE J. HASTON
BY

The Plaintiff, Marsh Waterproofing, Inc., (Hereinafter "Marsh") for its Reply to the Counterclaim of Defendants would allege and show unto this Honorable Court:

1. That Marsh is not required to admit or deny the truth of the allegations of paragraphs 1 through 24 because, upon information and belief, such constitute the Answer and affirmative defenses of Defendants and are not intended to state claims.
2. That answering the allegations of paragraph 25 Marsh would reallege its answers to the allegations of paragraphs 1 through 24 above, as fully as if the same were here set forth verbatim.
3. That Marsh is without sufficient information to form a belief as to the truth of the allegations of paragraph 26 and therefore denies same.
4. That Marsh admits the allegations of paragraph 27 upon information and belief.
5. That Marsh is without sufficient information to form a belief as to the truth of the allegations of paragraph 28, and therefore denies same because no assignment to the Defendant Steeple of any leasehold rights has ever been recorded.

6. That Marsh is without sufficient information to admit or deny the allegations paragraph 29, because no assignment to the Defendant Steeple of any leasehold rights has ever been recorded.
7. That Marsh is without sufficient information to form a belief as to the truth of the allegations of paragraph 30 because no assignment to the Defendant Steeple of any leasehold rights has ever been recorded.
8. That the allegations of paragraph 31 constitute a conclusion of law which Marsh is not required to admit or deny. To the extent the allegations of paragraph 31 are factual, the same are denied, upon information and belief.
9. That Marsh denies the allegations of paragraph 32 and would further show that the record reflects Defendant's predecessor in interest has the leasehold rights.
10. That Marsh denies the allegations of paragraph 33, upon the grounds *inter alia*: that no work classification existed at the time for the scope of work of Marsh; or alternatively, Defendant had hired another to act as general contractor and in either event no license was required of Marsh.
11. That Marsh denies allegations of paragraph 34 and would further show that such filing was justified, the exercise of a statutory right, and enjoys an absolute, unqualified privilege.
12. That Marsh admits the allegations of paragraph 35 and would further show that such filing was justified, the exercise of a statutory right, and enjoys an absolute, unqualified privilege.
13. That Marsh admits so much of paragraph 36 as alleges that it caused its mechanics lien to be filed in the appropriate offices in Charleston County, but would crave

reference to the filed lien itself for the specifics thereof and deny each and every allegation of paragraph 36 inconsistent therewith.

14. That Marsh denies the allegations of paragraph 37 and would further show that such filing was justified, the exercise of a statutory right, and enjoys an absolute, unqualified privilege.

15. That Marsh denies the allegations of paragraph 38, upon information and belief.

16. That Marsh is without sufficient information to form a belief as to the truth of the allegations of paragraph 39, 40, 41 and 42 and therefore denies same. Further answering, Marsh would show that Defendants' failure to pay the bills incurred by Defendants was the cause of Defendants losses, if any.

17. That Marsh denies each and every allegation of the Counterclaims not specifically admitted or qualified above.

FOR A FIRST AFFIRMATIVE DEFENSE
(No Procurement of Breach by Third party)

18. That Marsh did not procure the breach by a third-party of any contract to which Defendants were a party, but rather it was Defendants themselves who were deemed to be in breach of the agreement and the absence of any act to procure the breach by a third-party constitutes a complete defense to any claim for intentional interference with contractual relations.

FOR A SECOND AFFIRMATIVE DEFENSE
(Justification)

19. That Marsh has a statutory right to enforce a mechanics lien to secure its right to payment for labor and material provided for the improvement of real property and therefore the filing of the Mechanics Lien, Lis Pendens, Summons and Complaint is

entirely justified and such justification constitutes a complete defense to any claim for intentional interference with contractual relations.

FOR A THIRD AFFIRMATIVE DEFENSE
(Pleadings Enjoy Absolute, Unqualified Privilege)

20. That the filing of a Mechanics Lien, Lis Pendens, Summons and Complaint to enforce the right to be paid for labor and material provided for the improvement of real property is authorized by statute and such pleadings enjoy an absolute, unqualified privilege and may not be the basis of any claim by Defendants.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Defendants are the Authors of Their Own Injuries)

21. That Defendants procured the labor and material and services provided by Plaintiff and thereafter failed to pay for same, and such failure to pay resulted in Defendants being held in breach of their lease and franchise agreement and Defendants are therefore the authors of their own injury, if any, and such constitutes a complete defense to all counterclaims.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Incorporation of Prior Allegations)

22. That Marsh would incorporate and reallege herein all allegations set forth in the Complaint as fully as if the same were here set forth verbatim in further reply to the counterclaims of Defendants.

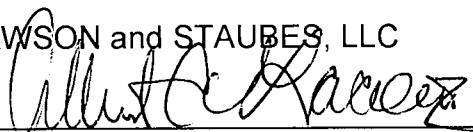
Wherefore having fully set forth its Reply to the Counterclaims of Defendants, Marsh prays Judgment:

(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 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, Hamilton Management Services Company, Inc. and Steeple Dorchester Ltd., in the amount of \$36,800.00 together with the costs and disbursements of this action for quantum meruit.

CLAWSON and STAUBES, LLC



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Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina

March 4, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Marsh Waterproofing, Inc.,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 2018-CP-10-00262
	)	
vs.	)	
	)	DEFENDANTS’ PRE-TRIAL BRIEF
Steeple Dorchester Ltd and	)	
Hamilton Management Services	)	
Company, Inc.	)	
	)	
Defendants.	)	

COME NOW the Defendants, Steeple Dorchester Ltd and Hamilton Management Services Company, Inc. Defendants) by and through their undersigned attorneys, submit this Pre-Trial Brief for consideration.

1.0 Concise Facts

This lawsuit stems from work performed by the Plaintiff at a Church's Chicken located in Charleston County, South Carolina. The Plaintiff, Marsh Waterproofing, Inc., is a Texas contractor. The Defendant Steeple Dorchester Ltd. is a Delaware Limited Liability Company registered to do business in the State of South Carolina which, at all times pertinent, operated the Church's Chicken located on Dorchester Drive in North Charleston, South Carolina. The Defendant Hamilton Management Services Company, Inc. is an entity which provided certain management services to Steeple Dorchester as well as other Church's Chicken locations in South Carolina and Georgia.

The Plaintiff was initially contacted by representatives from Ca un Operating Company Church's) for purposes of performing remedial work on Church's restaurants located in Alabama, Tennessee, North Carolina, and South Carolina. The Plaintiff was aware that the Church's crawl spaces needed to be repaired and renovated as a result of a catastrophic event which occurred at a Church's in Livingston, Texas. The Livingston tragedy involved a floor collapse in the kitchen area at a Church's which trapped employees and caused substantial permanent injuries due to contact with boiling grease from the deep fryers. It is uncontradicted

testimony that the Plaintiff performed unlicensed work in South Carolina, Alabama, Georgia, and Tennessee on behalf of Church's.

Marsh Waterproofing's scope of work at the Dorchester Road Church's was provided by Davis Patrikios Criswell, an engineering firm retained by Church's to inspect crawl spaces at locations around the region. In their own words, Davis Patrikios was retained 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.

The Davis Patrikos Criswell report and recommendations noted structural deficiencies at the building which could lead to another tragic floor collapse. Specifically, the Report states 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.

The Notice and Certificate of Mechanics Lien was filed on November 17, 2017 in the Charleston RMC.

On January 25, 2018, the Plaintiff filed the lawsuit which is currently pending. In its lawsuit, the Plaintiff has alleged the following causes of action:

1. Breach of Contract
2. Mechanic's Lien
3. Quantum Meruit

The Defendants would assert that they are entitled to judgment and a verdict as to all causes of action due to the Plaintiff's status as an unlicensed contractor.¹ Pursuant to S.C. Code 40-11-370 C), an entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. *S.C. Code Ann. § 40-11-370* The statute acts as a door closer and, therefore, the Defendants are entitled to summary judgment in this matter.

¹ an entity performing or overseeing general or mechanical construction without a license. See *C-Sculptures, LLC v. Brown*, 394 S.C. 519, 524, 716 S.E.2d 678, 681 (Ct. App. 2011)

2.0 Facts in Controversy

None. While the Plaintiff will attempt to provide the Court with arguments that it was under the belief, or impression, that it was not required to have a SC Contractor's license, this is irrelevant given the statute relied upon by the Defendants, as well as implausible given the evidence.

There may be some controversy as to the Plaintiff's alleged mental impression as to whether or not it was working for a general contractor at the time of construction. This has been alluded to in the Plaintiff's Memorandum in Opposition to Summary Judgment. The Defendants would point out that this argument is of no relevance given the statute. Furthermore, the argument was never alluded to in the Complaint, Amended Complaint, Correspondence to the LLR, or during the deposition of Tim Marsh.²

The Plaintiff might also argue that the work it performed was not within the purview of the LLR's licensing requirements. The Defendants would allege that, according to the LLR in its Conclusions of Law, the Plaintiff's work constituted General Construction and, thus, required a license.

3.0 Legal Issues

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

Defendants) would show uncontroverted evidence that Marsh Waterproofing is an unlicensed contractor. The Defendants are entitled to judgment as a matter of law pursuant to S.C. 40-11-30 and S.C. 40-11-370, which serve as door closing mechanisms, prohibiting unlicensed contractors from enforcing contracts in South Carolina courts. The precedent barring unlicensed contractors from pursuing such claims is well settled, having been the subject of multiple appellate court decisions. See S.C. Code 40-11-370

The Defendants assert that the Court only has to make two determinations in order to rule in their favor. The first finding is that Marsh performed General Construction without a license in this state.

S.C. Code 40-11-20

(8) "General construction" means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property.

² At his deposition, Tim Marsh denied that his company was a subcontractor on the project. The LLR proceeding, which the Defendants were not a party to, reveals Marsh made a representation that he believed his company was being supervised by a general contractor.

The second finding that the court must make is that the work performed by Marsh exceed 5,000.00. This is evident by the amount of its invoice and the damages sought, which are approximately 40,000.

The Court need look no further upon these findings as 40-11-370 c) bars this lawsuit. Our Supreme Court has held as recently as 2013 that 40-11-370 c) is not subject to statutory interpretation. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id. C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 361 (2013)

In the C-Sculptures decision, the Supreme Court found an arbitrator's decision to deny a motion to dismiss involving an *improperly licensed*, yet licensed contractor to be a manifest disregard of clear precedent and thus, reversed. The Court held in its analysis of 40-11-370 c) that the governing law ignored by the arbitrator is well defined, explicit, and clearly applicable, and consequently, the manifest disregard standard has been met. *Id.*

Even if the Courts had discretion to make exceptions for the Plaintiff's failure to obtain a license - a notion quickly and swiftly cut down by C-Sculptures the Plaintiff's excuses in this case are hardly compelling or supported by evidence. The Plaintiff's argument that it assumed there might have been a general contractor on the project is not even applicable if it was to be believed as the slight exception allowed for regarding unlicensed contractors requires that a licensed contractor supervise the unlicensed contractor's work. To Mr. Marsh and his building superintendent's credit, neither have tried to argue that their company was under the direction and supervision of anyone.

It should also be made clear that, should the court find that Marsh was being supervised by a licensed contractor at the project, this fact would only have traction in an action brought by Marsh against the supervising contractor for non-payment and not a member of the non-contractor public. The Court has explained this narrow exception in a matter which involved Lander University and construction payment issues which arose between the prime contractor and one of its subcontractors. The purpose of protecting the public interest by denying enforceability does not exist when dealing with claims between contractors. *Teseniar v. Profl Plastering & Stucco, Inc.*, 407 S.C. 83, 97, 754 S.E.2d 267, 274 (Ct. App. 2014); see also *Kennoy*

v. Graves, 300 S.W.2d 568, 570 (Ky. Ct. App. 1957) ("The statute involved, and similar ones, 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 persons engaged in the same business or profession are dealing at arm[']s length with each other. Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc., 418 S.C. 186, 203, 791 S.E.2d 321, 331 Ct. App. 2016)

4.0 Exhibits

See List of Exhibits.

5.0 ADR

The parties have mutually agreed that mediation would be fruitless in this matter.

6.0 Additional Issues

The Defendants will seek several rulings in limine and anticipate that the Plaintiff will seek similar rulings. As to one of the Motions in Limine involving the LLR Hearing Officer Report and Conclusions, the Defendants will seek limitations of that Order as it makes findings of fact which will have an indirect affect on the Defendants in this case. Because the Defendants were not a party to the regulatory matter or invited to provide testimony under oath or otherwise, there are certain items in the record which the Defendants would object to. Having said that, the legal holdings and findings regarding the Plaintiff's failure to obtain a license and status as an unlicensed contractor are congruent to the position advocated by Defendants. The Defendants take no issue with the legal conclusions regarding Plaintiff's work falling under SC 40-11-20 8) and will ask that the Court adopt the same finding, despite our disagreement with several factual conclusions.

Attorney for the Defendants

/s/ C. Clay Olson
C. CLAY OLSON

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

**POST-TRIAL MEMORANDUM OF
PLAINTIFF**

This memorandum is submitted to respond the primary arguments set forth in the Defendants Pre-Trial Brief, which is undated, but which was provided on February 6, 2020, via email, after the close of the trial record.

Marsh was not the general contractor.

Title 40, Chapter 11 of the South Carolina Code is the statutory regulatory scheme for general and mechanical contractors. A "general contractor" is one who performs or supervises or offers to perform or supervise "general construction". S.C. Code §40-11-20(9). "General construction" is installation, replacement or repair of a building or structure. S.C. Code §40-11-20(8). The facts in the record establish that Marsh Waterproofing, Inc. does not fall within that definition. These definitions reflect the history that general contractors are defined essentially by either the nature of the work performed or the scope of the work performed.

Analyzing this case by the nature of the work, subparagraph (8) would require us to build a building or structure, or replace a building or structure, or repair a building or

structure. The record reflects Marsh made absolutely no repairs or modifications to the structural elements of the building other than to mix up a couple of bags of concrete to close up the opening in the slab. That in no way amounts to \$5000 worth of work to the existing structural elements. The foam was installed in the open air space between grade and the bottom of the steel deck. It does not attach to any of the structural elements and does not modify or change any of the structural elements. The foam simply occupies the airspace to prevent the slab from moving downward if the slab fails.

The scope of work outlined by the engineering report does not specify any repairs to any existing structural elements. Marsh made no repairs to any footings, CMU walls, brick masonry walls, steel girders, steel joists, steel decking or the existing slab. None were called for by the engineering report. The installation of foam for supplemental support is not a classification of work identified in the statutory scheme as being the work of a general contractor in code section S.C. Code §40-11-410. (Exhibit 14).

Analyzing this case by the scope of the work, general contractors are sometimes identified by the fact that they contract to perform all of the work required to complete the project. Marsh clearly did not do this. Marsh was not the only contractor on the project. Others performed the preparatory work and others provided the typical general contractor responsibilities set forth below. Marsh only arrived last, in the order of the work, to install the foam in the airspace above grade and below the slab.

The scope of the general contractor's work generally includes providing permitting, temporary utilities, temporary facilities, scheduling of the trades, sequencing of the trades, supervision of the trades, and general overall responsibility to see all of

the work gets fully and properly executed. None of the foregoing are within the scope of work defined by the proposal of Marsh. (Exhibit 6).

The representations of the Defendants to Marsh that they had a “contractor” working one step ahead of Marsh to do the preparatory work outlined in the engineers report reasonably led Marsh to believe a general contractor was working ahead of him on the project. The prep work involved multiple trades, all of which required separate trade licenses, and would have required someone to pull a building permit before Marsh ever set foot on the project. To the extent that Marsh could observe whether these “general contractor” obligations were being met by others, they appeared to be furnished by someone, and it was not Marsh.

The statement in Defendant’s Pretrial Brief to the effect that Marsh “performed unlicensed work in South Carolina, Alabama, Georgia and Tennessee on behalf of Church’s” is a cute half-truth. Defendants provided no evidence that any of those states required a license for the installation of the foam. On the testimony in the record, only the state of Louisiana did require a license for that work.

The cases denying recovery to general contractors are distinguishable.

The C-Sculptures case reflects in the very first paragraph of the syllabus that it arises from a construction contract by which “a general contractor agreed to build a home...”. C-Sculptures, LLC v. Brown 403 SC 53, 55, 742 SE2d 359, 360, (2013). Indeed, all of the cases cited by Defendants in memoranda, motions and arguments throughout this litigation have uniformly involved contractors who were either admittedly

general contractors, or were adjudged to be general contractors based upon either the nature of the work or the scope of the work.

The Defendants did not rely on the existence or non-existence of a license.

Marsh made no representation to Defendants that it was licensed in the correspondence or the proposal or the discussions of the parties. The Teseniar case stands for the proposition that “where the reason for the rule ends, so ends the rule”. 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. Mr. Burns promised to check on it. We don’t know with whom he checked or whether he checked, but he responded, and the parties proceeded with the work. Mr. Burns could not rely upon the existence of a license for the qualifications of the contractor if he knew none existed.

In addition, Mr. Burns was referred to Marsh by Church’s, and aware of the past record of Marsh for making repairs for the Church’s franchise in multiple states at numerous stores, and so was fully aware of the extensive experience and the ability of Marsh to install the foam. He was not relying upon the existence of a license to know the contractor’s qualifications to do the work. He was fully aware of the experience and the qualifications and the track record of the contractor and was relying upon that knowledge, rather than the existence of a license in deciding whether to engage the contractor. “The statute involved, and similar ones, are designed to protect the public from being imposed upon by persons not qualified to render a professional service. ... In the case before us, [Defendant] was in a position to know, and did know, the

qualifications of [Marsh]. No reliance was placed upon the existence of a license, as presumptively would be the case if [Marsh] was dealing with the general public.” Teseniar v. Professional Plastering & Stucco, Inc. 407 SC 83, 97, 754 SE2d 267, 274 (Ct. App. 2014). In the present case, the testimony reflects that there was never any complaint made about the quality of the work or the quantity of the work of Marsh.

CLAWSON and STAUBES, LLC

s/Albert A. Lacour, III

Albert A. Lacour, III

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Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina

February 10, 2020.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
)
MARSH WATERPROOFING, INC.,)
)
Plaintiff,)
)
vs.)
)
STEEPLE DORCHESTER, LTD. AND)
HAMILTON MANAGMENT SERVICES)
COMPANY, INC.)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2018-CP-10-00262

SUPPLEMENTAL BRIEF OF
DEFENDANTS STEEPLE DORCHESTER, LTD.
AND HAMILTON MANAGMENT SERVICES
COMPANY, INC.

Misapplication Of Law

The Plaintiff continues to misunderstand the law in South Carolina on one issue. Specifically, the Plaintiff states that it was not the general contractor on the job as we would normally use the term. We agree. The State of South Carolina, however, defines general contractor means an entity which ***performs*** or supervises or ***offers to perform*** or supervise general construction. *SC 40-11-20(9)* There is no requirement of supervisory duties or management of trades, as laypeople use the term. The state goes on to define general Construction as the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property. *S.C. 40-11-20(8)* The LLR Order found that Marsh performed work which required a license when it determined that Marsh fell under the classification of general construction.

See LLR Order Paragraph 3:

“As such, the hearing officer determined that the scope of work for the use of this foam underneath the crawlspace for the project(s) was structural in nature and required a general contractor’s license pursuant to S.C. Code 40-11-20(8).”

Note that the LLR's finding was based on 40-11-20 8), which defines the term general construction. In other words, a contractor's license is required if you are serving to perform general construction or supervise general construction. In either event, you are a General Contractor in the eyes of the LLR, which is further supported in the LLR Order.

Credibility and Contradictions

There is a critical contradiction in Marsh's trial testimony and affidavits submitted to the LLR and this Court. The contradiction involves Marsh's statement to the LLR which states that Tim Marsh asked Alex Burns directly whether or not he needed a license for the work. It is

significant that Burns' testimony is directly contradictory to Marsh's recollection. It is even more compelling, however, that Tim Marsh has contradicted himself on the very issue.

Marsh has had three opportunities to provide testimony about the exchange. In his original affidavit, Marsh states that Mr. Burns asked him if he was licensed. In the LLR Order, it states Marsh testified that he, himself, asked Burns if a license was required. At trial, Marsh went back to his original testimony that Burns made the inquiry to him.

With regard to Marsh's testimony as to what Burns told him about the need for licensing, Marsh testified in his affidavit and to the LLR that Burns told him a license was not required. At trial, Marsh testified that Burns told him he was not sure, he would check. And most significantly, at trial, Marsh followed up by stating that they never discussed it again. In three opportunities, Marsh provides contradictory testimony.

Marsh Affidavit

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.

LLR Final Order

Mr. Marsh testified that he inquired about licensing with Hamilton, and Hamilton told him licensing was not necessary.

Trial Testimony

Paraphrasing) Marsh testified that Burns asked him if he was licensed. Marsh stated that he was not and inquired whether he need be licensed. Mr. Burns told Marsh that he was not sure but he would check. When asked about further communications, Marsh stated that he did not receive a response.

Although Marsh is unable to testify in a uniform manner on the issue, taking Marsh in a light most favorable to him would still mute the issue. *The LLR Order holds that "It is the responsibility of the Respondent (Marsh) to determine whether a license was required in South Carolina."*

The Defendants also ask that the Court take notice that Burns' alleged statements were only recently brought to the table. The Plaintiff's Complaint, Amended Complaint, and Correspondence to LLR (Bill Ritchey) never mentioned this convenient bit of information. It would seem to me that Marsh's attorney's correspondence to LLR would have mentioned that, the project owner notified us that we did not need a license, if it was a conversation which, in fact, happened.

The Issue of Licensing Never Came Up

The Court rightly takes issue with a scenario in which Marsh provided information to the Defendants affirmatively stating that it was not licensed and, despite being aware of this fact, the

Defendants are relying on licensing as a means to avoid paying the Plaintiff, as it was stated by Plaintiffs' Counsel in Court.

I would present to you that this issue never was raised by Tim Marsh or by Alex Burns. The conversation did not occur at all. I would support this contention with the conflicting testimony provided by Marsh, coupled with Mr. Burns testimony which was uniform and unwavering in his deposition, and the affidavit I have attached which was provided during November 2019.

At trial, Marsh testified that Mr. Burns asked him if his company (Marsh) was licensed. Mr. Marsh responded by asking whether or not he needed to be. Mr. Burns indicated that he didn't know and would get back to him. Marsh testified that Mr. Burns neither got back to him, nor did he, Tim Marsh, inquire further.

These two statements are directly inconsistent to one another as Marsh has provided information to the LLR, outside of our presence, which stated that Marsh asked about licensing and Burns affirmatively responded that one was not required. Marsh's trial testimony was completely contradictory by stating that Marsh did not bring it up to Burns, but vice versa. Of critical importance, Marsh testified at trial that when asked, Burns said he did not know if a license was necessary and the two never spoke about it again. The latter scenario is much different than the situation as portrayed to the LLR which is one where Burns allegedly instructed Marsh that a license was not needed and is now relying on a statute which hangs on licensure.

Note that the LLR Order also provides that it is the responsibility of the contractor to determine whether or not a license is required in South Carolina to perform this work.

In closing, we would offer that the law in South Carolina is well settled on the issue of an unlicensed contractor seeking to enforce a contract in our courts. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.*

It is undisputed that Respondent is a general contractor that performs general construction within the meaning of section 40-11-20 (8) and (9) of the South Carolina Code. Section 40-11-30 states:

No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting . . . without a license issued in accordance with this chapter.

C-Sculptures, LLC v. Brown, 403 S.C. 53, 56-57, 742 S.E.2d 359, 361 (2013)

It is worth noting that the *C-Sculptures* case was interpreting SC 40-11-20 (8) and SC 40-11-20 (9) in the context of 40-11-370 when it stated that an arbitrator's ruling should be overturned as it failed to grant an owner's motion to dismiss.

The arbitrator erred in failing to grant the owners' motion to dismiss based on the affirmative defense of § 40-11-370. The governing law ignored by the arbitrator was well defined, explicit, and clearly applicable, and consequently, the manifest disregard standard was met. ID.

Undersigned counsel, on behalf of the Defendants, would ask that this memorandum be considered and evaluated in light of the testimony and record at trial. The Defendants have established via testimony of the Plaintiff that it was not a licensed contractor. Further, the LLR Order is clear and unequivocal in its holding that the work performed required a license and was therefore performed in violation of Chapter 40.

HARPER LITTLE PLLC

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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

**MOTION TO MODIFY JUDGMENT TO
ADD AWARD OF ATTORNEY'S FEES
AND COSTS PURSUANT TO THE
MECHANIC'S LIEN STATUTE**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Marsh Waterproofing, Inc., ("Marsh") will move before the Honorable Frank R. Addy, Jr., Circuit Judge, on the 10th day after service hereof, or at such other time and place as is convenient to the Court and counsel, for modification of the Judgment on such terms as may be proper to award attorney's fees and costs to Marsh as the prevailing party pursuant to the Mechanic's Lien Statute.

APPLICABLE LAW

Both statutes, §29-5-10(a) and §29-5-20(A) provide for an award of attorney's fees and costs of the action to the prevailing party.

In South Carolina, an award of fees and costs is limited by the terms of the statutes to no more than the face amount of the lien. *Id.*; Mozingo and Wallace Architects, LLP v. Patricia Grand Ltd. Partnership 379 S.C. 478, 666 S.E.2d 267 (Ct. App.2008).

Both statutes provide for the parties to make offers of settlement in advance of the trial. §29-5-10(b) and §29-5-20(C). If the Plaintiff makes no offer, the prayer in the complaint is considered Plaintiff's offer for the purpose of determining the "prevailing

party" under the statute, and if the Defendant makes no offer, and asserts no counterclaim, his offer is considered to be zero.

A counterclaim is a claim presented by a defendant in opposition to or deduction from the claim of the Plaintiff, which tends to defeat or diminish the Plaintiffs demand. Black's Law Dictionary, 4th Ed. Rev.

In South Carolina, mechanics' liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them. Multiplex Bldg. Corp. v. Lyles, 268 S.C. 577, 235 S.E.2d 133 (1977); accord Skiba v. Gessner, 374 S.C. 208, 212, 648 S.E.2d 605, 606 (2007) (stating "one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it"); Butler Contracting, Inc. v. Court St., L.L.C., 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) (observing mechanics' lien statutes "must be strictly followed"). The statutory process encompasses several steps, including the (1) creation, (2) perfection, and (3) enforcement of the lien. See generally, S.C. Code §29-5-10 to §29-5-440 governing mechanics' liens.

The six factors to be considered in determining an award of attorney's fees are 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Blumberg v. Nealco, Inc. 310 S.C. 492, 427 S.E.2d 659 (1993).

The charges by paralegal staff are allowable in South Carolina. Spriggs Group PC v. Slivka 402 S.C. 42, 738 S.E.2d 495 (Ct. App. 2013).

ARGUMENT

Following a bench trial on February 5, 2020, the court awarded Marsh the full amount of the prayer, \$36,800. The Defendant plead a counterclaim, but withdrew the counterclaim at trial and presented no witnesses or evidence in support of it. Neither party made a written offer of settlement under the statute.

The fees incurred in connection with this specific case are set forth in Exhibit A to this Motion which contains all time entries for all cases and is color coded to identify the fees related to this case.

The costs incurred in connection with this specific case are set forth in Exhibit B to this Motion which reflects all costs incurred for all cases and is color coded to identify the costs related to this case.

The basis for the factual findings for the six factors necessary under the Bloomberg case are set forth in the Affidavit In Support which is attached as Exhibit C to this Motion.

The total of the calculated fee and cost components applicable to the Charleston lien is less than the face amount of the Mechanic's Lien at the time it was filed.

CONCLUSION

The judgment previously entered by the court in the amount of \$36,800 should be amended to add \$29,894, which is comprised of attorney's fees of \$28,852 and costs of \$1,042 so that the full judgment may be entered for further proceedings thereon. For the foregoing reasons, Marsh respectfully submits that it is entitled to an award of attorney's fees and costs as the prevailing party on the mechanics lien claim in the within action.

CLAWSON and STAUBES, LLC

s/ Albert A. Lacour, III

Albert A. Lacour, III
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Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina.

February 21, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
)
)

MARSH WATERPROOFING, INC.,

)

Plaintiff,

)

vs.

)

) CIVIL ACTION NO. 2018-CP-10-00262

STEEPLE DORCHESTER, LTD. AND
HAMILTON MANA EMENT SERVICES
COMPANY, INC.

)

) DEFENDANTS' NOTICE OF MOTION AND MOTION
) TO AMEND JUDGMENT OR FOR A NEW TRIAL IN
) THE ALTERNATIVE (RULE 59)

Defendants.

)

)

PLEASE TAKE NOTICE that Defendants STEEPLE DORCHESTER LTD. AND HAMILTON MANA EMENT SERVICES COMPANY, INC. (Defendants), by and through the undersigned counsel, and pursuant to Rules 59 a) and e), SCRCF, move this court for an order to alter or amend its judgment of February 12th, 2020 to find for the Defendants. Specifically, the Defendants ask that the Court direct the entry of a new judgment pursuant to SCRCF 59 a) 2). In the alternative, the Defendants would move for a new trial based on the grounds and arguments below.

In addition to requesting that the Court's judgment be amended in favor of the Defendants, the moving Defendants also seek for Steeple Dorchester, Ltd. be deemed the prevailing party and awarded reasonable attorney's fees and costs pursuant to the South Carolina mechanic's lien statutes as it is rightly the prevailing party pursuant to S.C. Code Ann. § 29-5-20 A).

As a third alternative and pursuant to Rule 52, the Defendants seek further clarification as to the Court's ruling dated February 12th, 2020. This motion is timely, pursuant to Rule 6, SCRCF as the tenth day falls on a Saturday and, therefore, runs until Monday, February 24th, 2020.

PROCEDURAL HISTORY

This lawsuit stems from work performed by the Plaintiff at the Church's Chicken located on Dorchester Road in Charleston County, South Carolina. The Plaintiff Marsh Waterproofing, Inc. is a Texas contractor who performed work in South Carolina at several Church's Chicken locations during August 2017.

On January 22nd, 2018, the Plaintiffs initiated this action against ARCAFEUSA, the title owner of the property where Steeple Dorchester operated a Church's Chicken franchise.¹ On March 12th, 2018, the Plaintiff amended its Complaint. In its amended complaint, the Plaintiff removed the record property owner and added Defendant Steeple Dorchester, Ltd. as a Defendant more than six months after the Plaintiff's work was performed. *See Amended Summons and Complaint*

On February 5th, 2020, a bench trial was conducted by the Honorable Frank Addy in Charleston, South Carolina. After the Plaintiff called two witnesses, the Defendants moved for a directed verdict which was denied. At the close of arguments, Judge Addy indicated that he would provide a ruling in a few days. On February 12th, 2020, the Court ruled in favor of the Plaintiff in the amount of \$36,800.00 holding specifically, as follows:

"The Court finds the mechanics lien dated November 16, 2018 in the amount of \$36,800.00 is valid and duly enforceable."

There was no ruling as to the Plaintiff's causes of action for breach of contract or quantum meruit. Furthermore, the Order does not set forth any findings of fact and instructs the Plaintiffs to submit a more formal Order within 30 days of receipt. The Defendants are not able to determine whether or not a more formal order will be submitted. Nevertheless, the Defendants hereby seek a new trial or, in the alternative, an amendment of the Court's February 12th Order. In addition, the Defendants seek clarification pursuant to Rule 52 a), which provides on the n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon. *See Rule 52(a) SCRPC.*

South Carolina Case Law and Statutory Scheme on Unlicensed Contractors

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRPC 59 a) as the trial court failed to consider S.C. Code Ann. 40-11- 370, which acts as a door closing statute for unlicensed contractors seeking to enforce contractual obligations in South Carolina courts. The Defendants will focus the majority of their efforts on the controlling statute and case law following the statute. According to S.C. Code Ann. 40-11- 370, an entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. *S.C. Code 40-11-370(c)* This statute should have barred not only the mechanic's lien claim, but all claims due to its plain meaning.

Pursuant to South Carolina law, contractors must be properly licensed to perform construction work. Specifically, S.C. Code §40-11-30 states:

¹ ARCAFE was inexplicably dismissed as a party before appearing, despite the fact was, at all times relevant, the record title holder to the property.

No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total costs of construction is greater than \$5,000 for general contracting or greater than \$5,000 for mechanical contracting without a license issued in accordance with this chapter.

S.C. Code Ann. §40-11-370 c) and S.C. Code Ann. §40-11-30 operate in tandem to bar lawsuits by unlicensed contractors in South Carolina. The statutes are all well-settled and, when raised as an affirmative defense, our courts have consistently barred unlicensed contractors from prevailing in lawsuits.

In a 2013 decision by the South Carolina Supreme Court, S.C. Code Ann. §40-11-370 c) was found to be clear, defined, explicit, and unquestionably applicable to bar the claims of an improperly licensed contractor who prevailed in an arbitration proceeding prior to having that decision overturned. *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56-57, 742 S.E.2d 359, 361 (2013)

The court in *C-Sculptures* provides a thorough analysis of S.C. Code Ann. §40-11-30 and S.C. Code Ann. §40-11-370 c) and, in doing so, deemed the latter to be subject to strict construction and outside the discretion of an arbitrator. The court held, Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning. *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56-57, 742 S.E.2d 359, 361 (2013) The *C-Sculptures* opinion is the key to Defendants' Rule 59 arguments because there is no way it can be reconciled with the Court's findings in this case.

C-Sculptures was cited on directed verdict. If anything, the facts in the case at bar are even less hairy than the issues presented by *C-Sculptures*, which held that an arbitrator's decision to deny a property owner's motion to dismiss claims brought by an *improperly* licensed contractor, pursuant to 40-11-370, constituted manifest disregard of a well-defined, explicit, and clearly applicable legal maxim. The Defendants would respectfully ask that the Court reconsider and amend its previous Order in favor of the Plaintiff and find for the Defendants based on the record and arguments.

The Defendants are of the opinion that the Court placed far too much weight on statements and arguments made in the record by counsel for the Plaintiff regarding the nature and scope of work performed by the Plaintiff. In closing arguments, Defendants sought to confuse the Court with an alternate interpretation of the phrase general contracting as it is used in S.C. Code Ann. §40-11-30. The statute holds as follows:

No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for **general contracting** or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter. S.C. Code Ann. § 40-11-30 (Emphasis Added)

The Plaintiff's argument s) were well articulated, albeit wrong. The Defendants are of the belief that Plaintiff's improper and unfounded arguments only served to confuse the Court and muddy the waters. Specifically, the Plaintiff argued that it was not subject to the door closing effect of S.C. Code Ann. § 40-11-370 c) because it was not the *general contractor* on the job. As Defendants argued in rebuttal, the phrase "*general contracting*" must be read in context of the Chapter regulating contractors in the South Carolina Code. Specifically, the Code defines *general contractor* as an entity which performs or supervises or offers to perform or supervise general construction. S.C. Code Ann. § 40-11-20(8) The key language in the provision is *performs or supervises* which clearly and unequivocally provides that a contractor need not be a supervising prime, or general contractor to be included in the definition of *general contractor* pursuant to the prevailing Code provisions. In addition, *general construction* means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property. S.C. Code Ann. § 40-11-20(9) Therefore, an entity is required to be licensed so long as it is performing general construction at a cost of more than \$5,000.00 to be subject to the licensing requirement.

The Defendants understand that it is quite easy to get lost in the minutia of S.C. 40-11-10 et seq. The Contractors Licensing Board clearly understood the requirements of its own commission, however, when it found that Marsh was in violation:

As such, the hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and required a general contractor's license pursuant to S.C. Code Ann §§ 40-11-20(8) and 40-11-410(1) (1976, as amended) See the third conclusion of law in the Order issued by the Contractor's Licensing Board.

Finally, the Contractors Licensing Board could not have concluded its opinion any clearer than in its final paragraph where its ruling should be all that is required to bar Marsh's claims in this matter:

"The Respondent is cautioned that the scope of the work on the project(s) does require a general contracting license in South Carolina if the Respondent is not supervised by a licensee in the required license group and classification."

The Order has served to clarify and contradict every one of the Plaintiff's arguments and, despite the muddy water, this Court should have applied the law as it is written, not as interpreted by the Plaintiff. For these reasons, the Defendants would respectfully request that judgment be amended in its favor. Alternatively, the Defendants would ask for a new trial.

Should the court fail to find that the Defendants are entitled to an amendment of its original judgment and, further, hold that the Defendants are not entitled to a new trial, the Defendants seek clarification as to the Court's holding that the mechanics lien was valid and enforceable. The Defendants note that Rule 52 a) is applicable to non-jury matters and instructs the trial court to find the

facts specially and state separately its conclusions of law thereon in support of a judgment. Rule 52 b) allows a court to also amend its findings or make additional findings and may amend the judgment accordingly.

The Judgment's Validation of the Mechanic's Lien was Improper

The Court's judgment in this case declares that the Plaintiff's mechanics lien was valid and enforceable. *See Order*. This holding goes against the weight of established and well-developed South Carolina statutory and case law as has been discussed throughout this memorandum.

In order for the Court to find that the mechanics lien was valid and enforceable, the Court would have to find that either: a) Marsh Waterproofing possessed a valid general contractor's license in the State of South Carolina; b) a license was not required; or c) that Marsh Waterproofing was working under the supervision of a licensed contractor. Both a) and c) are immediately ruled out via Tim Marsh's trial testimony. Thus, the holding can only be based on the Court's implied holding that a license was not required.

The Court Failed to Consider Evidence in the Contractor's Licensing Board Order

It is clear that the Court did not place any weight on the South Carolina LLR Contractor's Licensing Board Opinion² which held, in pertinent part, as follows:

- a. The hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project s) was structural in nature and required a general contractor's license pursuant to S.C. Code Ann §§ 40-11-20 8) and 40-11-410 1) 1976, as amended). See LLR Order, Page 5.
- b. The hearing officer finds that Respondent violated S.C. Code Ann. § 40-11-110 A) 5) in that Respondent engaged in contracting work in South Carolina when not properly licensed or supervised by a licensee licensed in the required license group and classification. See LLR Order, Page 5.

The LLR's Contractor's Licensing Board is the established agency charged with the regulation of licensing within the industry. As the Order found that the scope of work fell within that which a license was required and further found that the Plaintiff violated South Carolina law by engaging in contracting work in South Carolina while not being properly licensed, a new trial or amendment of the Order is paramount to the furtherance of justice.

In considering the LLR Order, the court should have considered the great weight previous courts have afforded agency administrative orders. The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987); see also *Nucor Steel v. Pub. Serv. Comm'n of S.C.*, 310 S.C. 539, 543, 426 S.E.2d 319, 321

² The Order is attached as Exhibit B.

1992) Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason.). There is no cogent reason to ignore or overrule a decision made by the Contractors Licensing Board in this case. The Board Order represents legal and factual findings in an ex parte regulatory proceeding in which the Defendants were not able to testify or present evidence.

The Court was Prejudiced by Plaintiff's Presentation of SEC Materials

The Defendants have included a final exhibit, which is an affidavit prepared by Alexander C. Burns, principal of Hamilton Management. The full weight of Burns' testimony should be considered in light of the court's consideration of irrelevant, yet untrue assertions made by the Plaintiff. Specifically, the Plaintiff repeatedly contended that Burns and the Defendants were aware of Marsh's status as an unlicensed contractor. S.C. Code Ann. 40-11-370 does not allow for exceptions, whether they be invented or actual, and the presentation of Burns testimony should not be necessary in light of the Plaintiff's status as an unlicensed contractor. Regardless, Burns' testimony should be considered by the Court to the extent the Court's judgment of the Defendants was hampered by Plaintiff's shameless presentation of the inflammatory materials.

WHEREFORE, the Defendants seek consideration of this memorandum and exhibits and amend its judgment accordingly to find in favor of the Defendants. Alternatively, this Court should grant a new trial absolute to the Plaintiffs.

HARPER LITTLE PLLC

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February 24, 2020

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-10- 00262

Marsh Waterproofing, Inc.,

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on February 5, 2020 for a bench trial. Having reviewed applicable law, pre and post-trial memorandums submitted to the Court, and considered the arguments of counsel, the Court finds the mechanics lien dated November 16, 2018 in the amount of \$36,800.00 is valid and duly enforceable. Counsel shall confer on the issue of attorney's fees, and if the parties cannot agree, the matter can be submitted to the court via brief.

Counsel for Plaintiff is requested to submit a more formal order within thirty (30) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

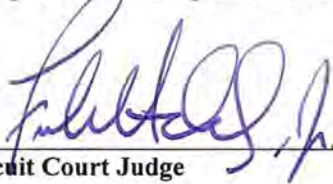
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

ROA 000099 Marsh Waterproofing	Steeple Dorchester Ltd.; Hamilton Management Services Co., Inc.	\$36,800.00 plus applicable interest and attorney's fees
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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



Circuit Court Judge

2159

Judge Code

02/11/2020

Date

For Clerk of Court Office Use Only

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

Albert A. Lacour, III

ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher Clay Olson

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: K. Nicole Carney

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA CONTRACTORS' LICENSING BOARD**

In the Matter of:

**MARSH WATERPROOFING INC.
License No: Unlicensed**

Case/Citation Number 2017-354

**FINAL ORDER
(Private)**

This matter came before Daniel Lehman, a hearing officer duly appointed by the South Carolina Contractor's Licensing Board ("Board"), for a final order hearing on June 21, 2019 as a result of the Notice of Citation Appeal hearing served upon the Respondent and filed with the Board. The hearing was held pursuant to and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (2005, as amended), to determine whether the citation issued to the Respondent on April 5, 2018, should be affirmed and the proposed penalty imposed upon the Respondent. Respondent timely requested this hearing after receipt of the citation and cease and desist order. Erin Baldwin, Esq., of the Office of Disciplinary Counsel represented the State. Timothy Karl Marsh, Secretary/Treasurer of Marsh Waterproofing, Inc., was present and was represented by Albert A. Lacour, III, Esq. The parties entered into a Stipulation of Facts (SOF) in which the parties stipulated to the facts and exhibits in the SOF, but the Respondent did not admit to misconduct in violation of S.C. Code Ann. § 40-11-110(A)(5) (1976, as amended).

EXHIBITS AND WITNESSES

State's Exhibit:

Exhibit A: Stipulation of Facts with ten (10) exhibits

Respondent's Exhibits:

Exhibit A: Request dated October 31, 2017 from Hamilton Management Services Co. to the Contractor's Board to determine licensure status of Marsh Waterproofing Inc.

Exhibit B: *Teseniar v Prof'l Plastering & Stucco, Inc.* 407 S.C. 83, 754 S.E.2d 267 (2014)

State's Witnesses: None

Respondent's Witness: Timothy Karl Marsh

FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the hearing officer, including the admitted facts in the SOF and the attached exhibits, and mitigating testimony presented by Timothy Karl Marsh, the hearing officer makes the following findings of fact:

1. On or about April 5, 2018, Respondent was issued a Citation for violating S.C. Code Ann. § 40-11-110(A)(5). Additionally, on or about April 11, 2018, a Cease and Desist Order was issued

to Respondent. On or about April 12, 2018, Respondent, through Counsel, appealed the citation and penalty.

2. At all times relevant to this matter, Respondent was not licensed with the State of South Carolina to perform any general or mechanical contracting work.

3. Respondent admits that the Board has personal jurisdiction over Respondent and subject matter jurisdiction over the facts herein.

4. Prior to Respondent's involvement in this matter, the crawlspaces/basements of various locations of Church's Chicken ("Church's") commercial restaurants were inspected to determine whether any structural deficiencies existed in the buildings' ground floor structural systems. Following the inspections, the engineer recommended "immediate structural support be provided for all structural members in the crawlspace." The engineer recommended that Alchemy Polymers AP Lift 430—a "high density expanding closed cell structural foam system"—be installed in the crawlspace. AP Lift 430 is a two-component, structural polyurethane foam. The engineer did not recommend any repairs to existing structural elements. The parties agree that there were substantially similar reports issued for other Church's restaurants located in South Carolina.

5. On or about July 10, 2017, Respondent submitted a proposal to Hamilton Management Services Company, Inc. (hereinafter "Hamilton") to spray AP Lift 430 foam into the crawlspace of six separate commercial restaurants throughout the State of South Carolina for a cost of \$36,800.00 per location. The proposal specifically excludes all preparatory work including plumbing, electrical and water removal. On its face, the proposal contains no project general conditions. It provides for no supervision of other trades or the preparatory work. It provides for no sequencing or scheduling and, to the contrary, provides a crew rate for any time the Respondent's crew is delayed waiting for the completion of the preparatory work. The proposal did not include any repairs to existing structural elements.

6. Respondent observed that general conditions, scheduling, and sequencing were provided by others. Any supervision for the other trades was provided by others. Respondent made no repairs or modifications to any standing water, plumbing, electrical, brick masonry walls, cracks in concrete slabs, steel joists, steel girders, block piers, or concrete footings. Respondent has experience in other states installing the foam material under floor slabs in Church's restaurants.

7. Respondent was told in writing by Hamilton that Hamilton had a contractor to do the work of the multiple trades before Respondent arrived, so Respondent believed that Hamilton had a general contractor. Hamilton represented to Respondent during the course of the correspondence exchanged by them on July 21, 2017 that another contractor was performing the preparation work ahead of Respondent. The work involved multiple trades, appeared to require multiple permits, and was to be completed before Respondent's arrival.

8. Hamilton hired another contractor to do the preparatory work.

9. The crawlspaces were sprayed with AP Lift 430 by Respondent. Hamilton never complained about the quality of Respondent's work. On or about September 5, 2017, Respondent billed Hamilton a total of \$36,800.00 per location. After the work was completed, Hamilton failed to pay Respondent. The parties agree that there were substantially similar invoices issued for other Church's restaurants located in South Carolina.

10. On or about November 15, 2017, Respondent's counsel, Bill Richey, emailed Roger Lowe, Administrator for the Board, inquiring as to whether Respondent required a license for the work performed. Mr. Lowe informed Mr. Richey that based on the information provided, a license was not required.

11. On or about November 15, 2017, Respondent filed mechanic's liens against six locations where work was performed and completed, based on Hamilton's failure to pay the invoices issued by Respondent.

12. On or about November 20, 2017, a complaint was filed against Respondent with the South Carolina Department of Labor, Licensing and Regulation (hereinafter "LLR"). LLR assigned Investigator Maurice Smith to investigate the allegations within the complaint. On or about February 20, 2018, Investigator Smith mailed Respondent a notice of complaint. Respondent, through Counsel, responded to the notice of complaint.

13. Hamilton filed in each of the mechanic's lien cases a Motion to Dismiss, and relies on the Citation and Cease and Desist Order. Hamilton, in effect, alleges that Respondent acted as an unlicensed general contractor, after representing to Respondent that Hamilton had engaged another contractor to do all preparatory work involving multiple trades. This litigation is still ongoing, and the issue of licensure is still of critical importance to the parties in the civil litigation.

14. The State averred that S.C. Code Ann § 40-11-30 requires that any entity or individual be licensed when performing contracting work when the cost exceeds \$5,000.00. Furthermore, S.C. Code Ann. § 40-11-20(8) defines general construction as "the installation, replacement, or repair of a building, structure...or improvement of any kind to real property." Additionally, S.C. Code Ann. § 40-11-410(1) notes the license classification of General Contractors—Building includes commercial, industrial, institutional, modular, and all other types of building construction. The State's position was that the installation of AP Lift 430 in order to provide immediate structural support in an effort to prevent the floor system from imminent failure was squarely within the definition of S.C. Code Ann § 40-11-20(8). As a result, Respondent was performing general construction work over \$5,000.00 and therefore was required to obtain a general contractor's license as defined in S.C. Code Ann. § 40-11-410(1).

15. The State further averred that Respondent's information provided to Mr. Lowe did not state that the AP Lift 430 was being used to provide immediate structural support to prevent the floor system from imminent failure. The State submitted that if Mr. Lowe was given this information, he would have advised that a general contractor's license was required. The State also noted that Respondent only sought the advice of Mr. Lowe after the work was performed, invoiced, and payment declined by Hamilton.

16. Respondent averred in the SOF and Mr. Marsh testified that his point of contact was Hamilton and that Respondent was expected to comply with Hamilton's schedule of multiple trade subcontractors and all of the direction received from Hamilton for the multiple projects. Respondent believed that either Hamilton or someone else was the general contractor. Respondent testified that Hamilton knew at all times that Respondent was not licensed in South Carolina. There was never an issue with the quality of Respondent's work on any of the projects. Respondent's unlicensed status only became an issue for Hamilton when payment for the multiple projects became due.

17. Respondent averred in the SOF and Mr. Marsh testified that he did not know whether Hamilton simply engaged multiple trade subcontractors to accomplish the work, or actually did engage

a general contractor. All preparatory work was completed before Respondent's arrival, and all those other people had moved on to the next building ahead of Respondent. Someone other than Respondent was sequencing and scheduling the work. Someone other than Respondent was providing general conditions such as dumpsters, portable facilities, water, power, equipment and supervision for all trades, including Respondent. In short, Respondent believed that the execution of the plumbing and electrical work would require permits to be pulled, and therefore, someone other than Respondent was acting as the general contractor for the project.

18. Respondent averred in the SOF and Mr. Marsh testified that the work Respondent did on the projects did not meet the definition of "general construction" defined as: "installation, replacement, or repair of a building, structure ... or improvement of any kind to real property." S.C. Code § 40-11-20(8). Respondent made no changes or modifications to existing exterior brick veneer walls, concrete slabs, perimeter retaining walls, steel decking under the slab, steel joists under the decking, steel girders at the perimeter, masonry piers, footings or foundations for the piers or walls, or the dirt at grade. Each and every structural element was left in exactly the same condition by Respondent as it was found. There was no modification, change, repair or activity of any kind by Respondent addressing any structural element. In short, there was no structural repair made to the existing structure or building. The work which was done was to install the expandable polyurethane foam in the open air space between the top of the dirt and the bottom of the slab. The foam is not affixed to the land in any way. The foam was only installed in the open void or airspace under the slab and above the ground exactly as the email from personal counsel in Texas described. The foam provided support for the slab as indicated in the email. No building or structure was installed. No structural component of the existing building or structure was repaired or replaced. No permanent improvement to real estate occurred because the foam is in no way attached to the real estate or to the structural elements of the existing building. The foam simply filled the open void under the slab. Once it cured, it lent support to the slab.

19. Respondent averred in the SOF and Mr. Marsh testified that he inquired about licensing with Hamilton, and Hamilton told him licensing was not necessary; he inquired with the Board Administrator before proceeding with filing the mechanics lien and was told licensure was not required; he was told Hamilton had a contractor and he reasonably believed, based on Hamilton's representations, that someone else was providing general contracting services for the project; he observed that general conditions were apparently being provided by others; and he made no modification or repair to any structural element of the building. The Board's statute and South Carolina case law allow an unlicensed subcontractor to work on a job where a general contractor is supervising the work and Respondent believed that was the situation he was working under.

20. Respondent averred in the SOF and Mr. Marsh testified that his company is highly experienced and qualified at performing the particular work at issue: installing the foam material in the open spaces under building slabs. Respondent performed the same work using the same product, process, building design, and followed the design of the same engineering team in at least six different states. Respondent performed the same process for dozens of restaurants in those states. The project was manned by an experienced team employed by an experienced contractor.

21. The Respondent averred in the SOF and Mr. Marsh testified that there was no complaint made as to the quality of the work or the quantity of the work performed by Respondent. Hamilton did not present any observations to that effect, and the engineers that designed the process have presented no information to that effect. The project was completed successfully and the client received both the quality and quantity of the work contracted for. Hamilton had reason to know, and did know, the qualifications, experience level, and ability of Respondent to perform the work, and no

reliance was placed upon the existence (or lack of) a license. There was no harm to anyone in this case via substandard work. Respondent averred in the SOF and Mr. Marsh testified that sanctions are not appropriate where Hamilton's obvious motive was to use an unlicensed practice citation as a defense to avoid payment of half a million dollars for professional work.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, it is found and concluded as a matter of law that:

1. The Board has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-11-100(E) and 40-1-70(6) (1976, as amended).

2. The hearing officer can affirm, dismiss or amend the citation and penalty issued on April 5, 2018. S.C. Code Ann. § 40-11-100(E) (1976, as amended) and the cease and desist order issued on April 11, 2018.

3. Based on a review of the evidence presented, the hearing officer determined that the Engineer's report recommended the Alchemy Polymers AP Lift 430 product used by the Respondent to provide full continuous support to the structural members in the crawlspace of the project(s). The Engineer described the high density expanding closed cell structural foam system as providing the compressive strength to adequately support the superstructure. As such, the hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and required a general contractor's license pursuant to S.C. Code Ann §§ 40-11-20(8) and 40-11-410(1) (1976, as amended).

4. It is the responsibility of the Respondent to determine whether a license was required in South Carolina to perform this work; however, Hamilton was fully aware that Respondent was not licensed in South Carolina throughout Respondent's performance of his scope of work on the project(s). There is nothing in the Respondent's scope of work document that indicated licensing and the Respondent's scope of work document references other work of sub-contractors involved in Hamilton project(s) that was to be completed prior to Respondent's performance of its scope of work. The hearing officer accepted the Respondent's mitigation that Respondent was told by Hamilton and the Board Administrator that a license was not needed in South Carolina for this work.¹ Further, Respondent was not supervising any work on the project(s) and believed that Hamilton was either the licensed general contractor hiring, organizing, and supervising subcontractors, or that Hamilton had hired a licensed general contractor to organize and supervise subcontractors. If this was the case, Respondent was not required to be licensed as a sub-contractor pursuant to S.C. Code Ann. § 40-11-270(E) (1976, as amended). Furthermore, Hamilton never alleged there was substandard work or unprofessional conduct by Respondent, so there was no harm to Hamilton's project(s) from the scope of work performed by Respondent.

5. The hearing officer finds that Respondent violated S.C. Code Ann. § 40-11-110(A)(5) in that Respondent engaged in contracting work in South Carolina when not properly licensed or supervised by a licensee licensed in the required license group and classification. However, based on the mitigating information in the SOF and Mr. Marsh's testimony and the fact that there was no

¹ The hearing officer determined that the information provided to the Board Administrator on November 15, 2017 by Respondent's attorney Bill Richey was very specific regarding the product Respondent used that was recommended by an engineer for the purpose of providing support. Mr. Richey was told Respondent did not need a license unless the foam was installed with the intent to provide the benefit of its insulation properties, which required an Interior Renovation license.

substandard work or harm to any member of the public, the hearing officer does not believe that the Respondent's misconduct rises to the level of warranting a citation and penalty.

6. The action by the hearing officer is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of general contractors against the countervailing concern that society be protected from professional ineptitude and misconduct.

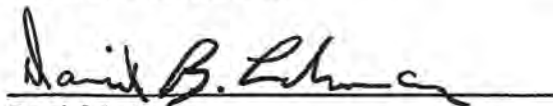
7. The action by the hearing officer is designed to protect the welfare of the public.

NOW THEREFORE, IT IS ORDERED that:

1. The citation issued on April 5, 2018 and the accompanying penalty of \$500.00 shall be dismissed.
2. The cease and desist order issued on April 11, 2018 shall be withdrawn.
3. The Respondent is cautioned that the scope of the work on the project(s) does require a general contracting license in South Carolina if the Respondent is not supervised by a licensee in the required license group and classification.

AND IT IS SO ORDERED.

**SOUTH CAROLINA CONTRACTOR'S
LICENSING BOARD**



**Daniel Lehman
Hearing Officer**

July 23, 2019

South Carolina Department of Labor, Licensing and Regulation

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

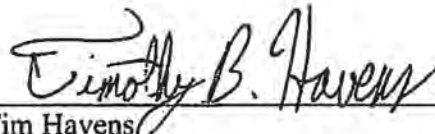
In the Matter of:
Marsh Waterproofing Inc.

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date, July 23, 2019, served the Private Final Order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, addressed to the party(ies) or their attorney(s) to the following address:

MARSH WATERPROOFING INC.
240 S MAIN STR STE 2
VIDOR TX 77662

ALBERT A. LACOUR, III, ESQUIRE
126 SEVEN FARMS DRIVE, SUITE 200
CHARLESTON, SC 29492



Tim Havens
Paralegal
SC Department of Labor, Licensing
and Regulation

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.



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.



Signature of Notary Public

My commission expires: 9.13.21

[SEAL]

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

**NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND JUDGMENT -
RULE 52(b) and 59 (e)**

To: C. Clay Olson, Esq., Attorney for Defendants:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Marsh Waterproofing, Inc., by its undersigned attorney, will move before the Honorable Frank R. Addy, Jr., Presiding Judge of the Ninth Judicial Circuit, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order from the Court granting relief from the Final Order dated March 9, 2020, (copy attached as Exhibit A) pursuant to the provisions of S.C.R.C.P. Rules 52 (b) and/or 59 (e).

The grounds for this Motion are that the undersigned would respectfully suggest that the Court entered an incomplete order by mistake or inadvertence and should alter or amend the order for the reasons that:

1. the order is missing pages 10 through 13; and
2. the order does not contain a specific determination of the amount of the debt, as required by S.C.R.C.P. Rule 71 (a) and (b); and
3. the order does not provide a ruling on the pending post-trial motions of both

parties.

The undersigned is informed and believes that the court inadvertently entered the Final Order dated March 9, 2020, and for the foregoing reasons the undersigned would respectfully request that this Honorable Court reconsider its ruling and Alter or Amend the Order, pursuant to S.C.R.C.P. Rules 52 (b) and/or 59 (e).

CLAWSON and STAUBES, LLC

s/ Albert A. Lacour, III

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.

March 10, 2020.

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 NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
JUDGMENT - RULE 52(b) and 59 (e)**

To: C. Clay Olson, Esq., Attorney for Defendants:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Marsh Waterproofing, Inc., by its undersigned attorney, will move before the Honorable Frank R. Addy, Jr., Presiding Judge of the Ninth Judicial Circuit, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order from the Court granting relief from the Final Order dated March 9, 2020, and filed March 11, 2020, (copy attached as Exhibit A), pursuant to the provisions of S.C.R.C.P. Rules 52 (b) and/or 59 (e).

The grounds for this Motion are that the undersigned would respectfully suggest that the Court entered an incomplete order by mistake or inadvertence and should alter or amend the order for the reasons that:

1. the order does not contain a specific determination of the amount of the debt, as required by S.C.R.C.P. Rule 71 (a) and (b); and
2. the order does not provide a ruling on the pending post-trial motions of both parties.

The undersigned is informed and believes that the court inadvertently entered the Final Order dated March 9, 2020, filed March 11, 2020, and for the foregoing reasons the undersigned would respectfully request that this Honorable Court reconsider its ruling and Alter or Amend the Order, pursuant to S.C.R.C.P. Rules 52 (b) and/or 59 (e).

CLAWSON and STAUBES, LLC

s/ Albert A. Lacour, III

Albert A. Lacour, III
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Email: alacour@clawsonandstaubes.com
Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina.

March 11, 2020.



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

**FINAL ORDER FOR FORECLOSURE
OF MECHANIC'S LIEN
NON-JURY DECISION**

This matter came on before me for a jury trial at the February 3, 2020 term of court and was called for 9:30 AM on Wednesday February 5, 2020. At the outset, the Defendants indicated that the amount of the debt was not disputed, though Plaintiff's entitlement was, and the parties then agreed to waive the right to have the jury decide the facts concerning the amount of the debt and to try the case to the Court alone, whereupon the jury venire was discharged. The hearing was attended by Albert A. Lacour, III, Esq. and witnesses Tim Marsh and Avant Armentrout for the Plaintiff, Marsh Waterproofing, Inc., (or "Marsh"). C. Clay Olson, Esq., appeared for the Defendants. The testimony was taken, and from the testimony and exhibits in evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The initial Lis Pendens was filed on January 11, 2018.
2. The Amended Lis Pendens, Summons and Complaint were filed on January 22, 2018, and the Second Amended Lis Pendens and Amended Summons and

Amended Complaint were filed March 12, 2018.

3. Service was made upon the Defendant Hamilton Management Services Company, Inc. on January 23, 2018 and on the owner, ARC CAFEUSA001, LLC, on January 24, 2018 as shown by the proof of service filed herein.

4. The Defendants Steeple Dorchester, Ltd. and Hamilton Management Services Company, Inc., answered and asserted a Counterclaim on February 28, 2019 and a Reply to the Counterclaim was filed March 6, 2019.

5. The Defendants ARC CAFEUSA001, LLC, and Churpeyes II, Inc. were removed by the amendments to the pleadings. Paragraph 3 of the Amended Complaint alleges that the Churpeyes entity is the tenant of record, and the Steeple entity is the tenant in fact. Plaintiff is proceeding on its contract against Hamilton Management Services Company, Inc., and Steeple, and on its lien against the leasehold interest of the Defendant Steeple Dorchester, Ltd.

6. I find that the parties hereto and the real property which is the subject of the within action are within the jurisdiction of this Court.

7. I find that all of the correspondence between the Defendant, Hamilton Management Services Company, Inc., and Marsh Waterproofing, Inc., indicates Alexander Burns was acting for Hamilton Management Services Company, Inc. I find that Hamilton Management Services Company, Inc. authorized improvements to the property to be made by Marsh Waterproofing, Inc. and signed the acceptance of Plaintiff's proposal (Exhibit 6), thereby forming a valid and binding agreement supported by valid consideration.



8. I find that Plaintiff fully performed all the work it committed to perform but has not been paid for said work. The testimony reflects that there was never any complaint made about the quality of the work or the quantity of the work of Marsh.

9. I find that the Plaintiff timely filed its Statement for Mechanic's Lien which was introduced into evidence as Exhibit 11. The Statement for Lien was timely served as reflected by the Affidavit of Service, Exhibit 12. I further find that the Plaintiff perfected its lien by the timely filing a Lis Pendens and the commencement of this action to foreclose the lien, as detailed above.

10. When the time came for presentation of the Defendants' case, Defendants withdrew their Counterclaim and elected not to call any witnesses. Defendants rely on the fact that Plaintiff was not licensed in South Carolina as a general contractor and therefore maintain that Plaintiff is not entitled to recover on the contract or the lien.

11. Title 40, Chapter 11 of the South Carolina Code is the statutory regulatory scheme for general and mechanical contractors. A "general contractor" is one who performs or supervises or offers to perform or supervise "general construction", S.C. Code §40-11-20(9). "General construction" is installation, replacement or repair of a building or structure. S.C. Code §40-11-20(8). I find that the facts in the record establish that Marsh Waterproofing, Inc. and the work it performed do not fall within these definitions. The definitions reflect the history and common understanding that general contractors are defined essentially by either the nature of the work performed or the scope of the work performed.

12. Analyzing this case by the nature of the work, S.C. Code §40-11-20(8)



would require Marsh to build a building or structure, or replace a building or structure, or repair a building or structure. I find Marsh made absolutely no repairs or modifications to the structural elements of the building other than to mix up a couple of bags of concrete to close up the access opening in the slab. That work does not amount to \$5,000 worth of work to the existing structural elements. I find the foam was installed by Marsh in the open air space between grade and the bottom of the steel deck. It does not attach to any of the structural elements and does not modify or change any of the structural elements. The foam simply occupies the airspace to prevent the slab from moving downward if the slab fails. The scope of work outlined in the engineering report does not specify any repairs to any existing structural elements. I find that Marsh made no repairs to any footings, CMU walls, brick masonry walls, steel girders, steel joists, steel decking or the existing slab. None were called for by the engineering report. The installation of foam for supplemental support is not a classification of work identified in the statutory scheme as being the work of a general contractor in code section S.C. Code §40-11-410. (Exhibit 14).

13. Analyzing this case by the scope of the work, general contractors are sometimes identified by the fact that they contract to perform all of the work required to complete the project. Marsh clearly did not do this. I find that Marsh was not the only contractor on the project. The other contractor worked ahead of Marsh to perform the preparatory work. Marsh arrived last, in the order of the work, to install the foam in the airspace above grade and below the slab.

14. The scope of the general contractor's work generally includes providing



permitting, temporary utilities, temporary facilities, scheduling of the trades, sequencing of the trades, supervision of the trades, and general overall responsibility to see all of the work gets fully and properly executed. I find that none of the foregoing are within the scope of work defined by the proposal of Marsh. (Exhibit 6). The testimony of the witnesses for Marsh indicates that, to the extent that Marsh employees could observe whether these "general contractor" obligations were being met by others, they appeared to be furnished by someone else.

15. Additionally, I find that the representations of the Defendants to Marsh that they had a "contractor" working one step ahead of Marsh to do the preparatory work outlined in the engineer's report reasonably led Marsh to believe a general contractor was working ahead of Marsh on the project. The preparation work involved multiple trades, all of which required separate trade licenses, and would have required someone to pull a building permit before Marsh ever set foot on the project.

16. Additionally, I find that Defendants did not rely on the existence or non-existence of a license. Marsh made no representation to Defendants that it was licensed in the correspondence, the proposal, or the discussions of the parties. The Teseniar case stands for the proposition that "where the reason for the rule ends, so ends the rule." Teseniar v. Professional Plastering & Stucco, Inc., 407 SC 83, 754 SE2d 267 (Ct. App. 2014). On the facts in the record I find 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. Mr. Burns promised to check on it. Thereafter the parties proceeded with the work. Mr. Burns could not rely upon the



existence of a license for the qualifications of the contractor if he knew none existed.

17. Additionally, I find that Mr. Burns was referred to Marsh by Church's Chicken and was aware of the past activities of Marsh making repairs for the Church's franchise stores in multiple states at numerous store locations. I find that Defendants were made aware of the extensive experience and the ability of Marsh to install the foam by Marsh and by Church's. I find Defendants were not relying upon the existence of a license to know the contractor's qualifications to do the work. Defendants were made aware of the experience, the qualifications, and the track record of the contractor and were relying upon that knowledge, rather than the existence of a license, in deciding whether to engage the contractor. As the Court observed in Teseniar, "The statute involved, and similar ones, are designed to protect the public from being imposed upon by persons not qualified to render a professional service. ... In the case before us, [Defendant] was in a position to know, and did know, the qualifications of [Marsh]. No reliance was placed upon the existence of a license, as presumptively would be the case if [Marsh] was dealing with the general public." Teseniar, 407 SC at 97, 754 SE2d at 274.

18. I have reviewed the Affidavit of Counsel and the itemized time and cost entries submitted in support of Plaintiff's request for an award of attorney's fees, and I find that the fees and costs as set forth therein are reasonable. I find that the total fees and costs requested do not exceed the amount of the lien.

19. There are 6 factors to consider in determining an award of attorney's fees:
1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted



to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Bloomberg v. Nealco, Inc. 310 S.C. 492, 427 SE2d 659 (1993); citing Collins v. Collins 239 S.C. 170, 122 S.E.2d 1 (1961). I find that the litigation has been aggressively defended and involved novel arguments and issues on both sides. I find that counsel was required to prepare for numerous hearings prior to the trial itself. I find that the total attorney's hours devoted to this case exceed 120 hours as detailed in the motion for the award of the fees and costs and supporting documents. I find that counsel for Marsh enjoys high professional standing and has extensive experience in construction litigation. I find the rates charged are reasonable and in line with those customarily charged for similar services and that the results obtained justify the amount awarded.

20. I find that the amount due and owing to the Plaintiff upon its mechanic's lien is \$36,800, together with attorney's fees in the amount of _____ together with costs in the amount of _____ for a total debt of _____.

21. I find that the agreement of the parties is silent as to interest, and in the absence of an agreement on the matter, I decline to award pre-judgment interest. I find Plaintiff shall be entitled to recover interest after the entry of this judgment at the judgment rate as established by the current Order of the South Carolina Supreme Court dated January 6, 2020 in the amount of eight and three-quarters percent (8.75%) per annum upon the total debt set forth above and that such interest should be added to the total debt to determine the total amount secured by Plaintiff's lien through the date to



which such interest is computed. Upon the forgoing findings, I reach the following conclusions of law:

CONCLUSIONS OF LAW

22. I conclude Plaintiff constructed valuable improvements to the subject property leased to Steeple Dorchester Ltd. for which the Plaintiff has not been paid, and the Plaintiff is entitled to claim a Mechanic's Lien to secure the debt due together with costs and attorney's fees.

23. I conclude Plaintiff should have judgment for foreclosure of Plaintiff's mechanic's lien for the Total Amount Due of _____ together with interest from the date of entry of this order at 8.75%, as set forth above, and that the leasehold interest of Steeple Dorchester Ltd. in the subject property shall be sold at public auction after due advertisement.

24. I conclude that Hamilton Management Services Company, Inc. entered into the agreement for the work, and Plaintiff should have judgment against it on the contract claim. The mechanics lien statute preserves the claimant's right to pursue the contract remedy simultaneously in S.C. Code §29-5-420.

25. I conclude that Marsh Waterproofing, Inc. was not the general contractor on the job and was not required to be licensed as a general contractor.

26. I conclude that Hamilton Management Services Company, Inc. did not rely on the licensing of Marsh to determine the qualifications of the contractor; rather, Defendants relied on the information made known to it by Marsh and by the franchisor, Church's Chicken, as to the numerous restaurants upon which Marsh performed similar



work, and the experience, qualifications, and ability of the contractor to perform the work.

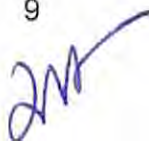
27. I conclude the cases relied upon by Defendants which deny recovery to general contractors are distinguishable from the facts of this case. As an example, the C-Sculptures case cited by Defendants reflects in the very first paragraph of the syllabus that it arises from a construction contract by which "a general contractor agreed to build a home..." C-Sculptures, LLC v. Brown 403 SC 53, 55, 742 SE2d 359, 360, (2013). I conclude that the decided cases cited by Defendants uniformly involve contractors who were either admittedly general contractors, or were adjudged to be general contractors based upon either the nature of the work or the scope of the work; therefore, the cases are inapplicable to these facts.

28. Neither of the parties filed an offer of settlement pursuant to the Mechanic's Lien Statute, and I conclude that the verdict is closer to the prayer in Plaintiff's Complaint, resulting in Plaintiff being the prevailing party.

29. I conclude the Plaintiff filed and served its Statement of Mechanic's Lien within 90 days of the last date of labor or materials furnished and also filed and served its Lis Pendens, Summons and Complaint for foreclosure within six months of the last date of labor or materials furnished.

30. I conclude that since the Plaintiff prevails, this case shall be referred to the Master in Equity so that he may conduct the sale and any additional proceedings incidental thereto.

It is therefore:



assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

The following is a description of the premises herein ordered to be sold:

The leasehold interest of Defendant Steeple Dorchester, Ltd., in and to:

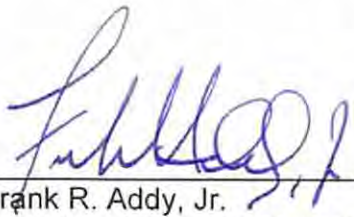
All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Charleston County, City of North Charleston, State of South Carolina, being as shown on an ALTA/ACSM Land Title Survey prepared for Churpeyes Real Estate Limited Partnership, by Cox and Dinkins, Inc., 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

Present Address: 5343 Dorchester Road, Charleston, SC 29418-5620

Present Derivation: Memorandum of Assignment of lease to Churpeyes II, Inc. dated June 30, 2008 and recorded July 24, 2008 in Book N 655, Page 085 in the RMC Office for Charleston County.

AND IT IS SO ORDERED this 9th day of March, 2020 at Greenwood, South Carolina.



Frank R. Addy, Jr.
Presiding Judge, Ninth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
MARSH WATERPROOFING INC.,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 2018-CP-10-00262
vs.	)	
STEEPLE DORCHESTER, LTD. AND	)	
HAMILTON MANAGEMENT SERVICES	)	
COMPANY, INC.	)	DEFENDANTS NOTICE OF MOTION TO
	)	TO AMEND JUDGMENT OR IN THE
Defendants.	)	ALTERNATIVE FOR A NEW TRIAL AND
	)	CLARIFICATION UNDER 59 A) 2)

PLEASE TAKE NOTICE that Defendants STEEPLE DORCHESTER LTD. AND HAMILTON MANAGEMENT SERVICES COMPANY, INC. Defendants), by and through the undersigned counsel, and pursuant to Rules 59 a) and e), SCRPC, move this court for an order to alter or amend its judgment of March 11, 2020 to find for the Defendants. Specifically, the Defendants ask that the Court direct the entry of a new judgment pursuant to SCRPC 59 a) 2). In the alternative, the Defendants would move for a new trial based on the grounds and arguments below.

In addition to requesting that the Court's judgment be amended in favor of the Defendants, the moving Defendants also seek for Steeple Dorchester, Ltd. be deemed the prevailing party and awarded reasonable attorneys' fees and costs pursuant to the South Carolina mechanic's lien statutes as it is rightly the prevailing party pursuant to S.C. Code Ann. § 29-5-20 A). As a third alternative and pursuant to Rule 52, the Defendants seek further clarification as to the Court's ruling dated March 11, 2020.

PROCEDURAL HISTORY

This lawsuit stems from work performed by the Plaintiff at the Church's Chicken located on Dorchester Road in Charleston County, South Carolina. Plaintiff Marsh Waterproofing, Inc. is a Texas contractor who performed work in South Carolina at several Church's Chicken locations during the month of August, 2017 and Defendant Steeple Dorchester Ltd was a franchisee operating d/b/a Church's Chicken. Defendant Hamilton Management Services Company was a management company providing third-party management to Defendant Steeple Dorchester Ltd. and its parent, State Acquisitions, LLC.

On January 22nd, 2018, the Plaintiffs initiated this action against ARCAFEUSA, the title

owner of the property where Steeple Dorchester operated a Church's Chicken franchise.¹ On March 12th, 2018, the Plaintiff amended its Complaint. In its amended complaint, the Plaintiff removed the record property owner and added Defendant Steeple Dorchester, Ltd. as a Defendant more than six months after the Plaintiff's work was performed. *See Amended Summons and Complaint.*

On February 5th, 2020, a bench trial was conducted by the Honorable Frank Addy in Charleston, South Carolina. The Defendants raised a motion *in limine* regarding the improper inclusion of certain testimony by the Plaintiffs concerning extrinsic evidence of prior acts of one of the anticipated witnesses for the Defendants, which was never ruled upon by the Court. After the Plaintiff called two witnesses, the Defendants moved for a directed verdict which was denied. At the close of arguments, Judge Addy indicated that he would provide a ruling in a few days.

On February 12th, 2020, the Court ruled in favor of the Plaintiff in the amount of 36,800.00 holding specifically, as follows: The Court finds the Mechanic's Lien dated November 16, 2018 in the amount of 36,800.00 is valid and duly enforceable.

On February 24, 2020, the Defendants filed a Motion to Amend Judgment or in the Alternative For A New Trial, which was not considered by the Court.

On March 9, 2020, the Court issued a Final Order For Foreclosure of Mechanic's Lien which was amended on March 11, 2020, at the request of the Plaintiff by its Motion to Alter or Amend the Judgment, which listed the amount of the debt as well as included a sum of the attorneys' fees and costs sought by the Plaintiff.

There was no ruling in the Order as to the Plaintiff's causes of action for breach of contract against Steeple Dorchester Ltd. or a ruling regarding *quantum meruit* against any of the parties.

For the reasons which will be detailed within this memorandum, the Defendants hereby seek a new trial or, in the alternative, an amendment of the Court's Order. In addition, the Defendants seek clarification pursuant to Rule 52 a), which provides In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon. *See Rule 52(a) SCRPC.*

¹ ARCCAFE001,LLC was inexplicably dismissed as a party before appearing, despite the fact was, at all times relevant, the record title holder to the property.

ARGUMENT

I. There is No Contract Between Plaintiff and Defendants Hamilton Management Services Company or Defendant Steeple Dorchester, Ltd. and, therefore, any Judgment against Hamilton Management Services Company or Steeple Dorchester, Ltd. Should be Vacated, Amended, or Otherwise Withdrawn

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRPC 59 a) as the Court failed to consider that there is no evidence supporting a valid contract between the Plaintiff and either Defendant. While the Defendants focused the thrust of their argument in this action on the lack of licensure on the part of the Plaintiff, this does not alleviate the Plaintiff's burden to establish the existence of a valid contract between the parties in the action in order to prevail upon its claim.

The Order states as a finding of fact, I find that Hamilton Management Services Company authorized improvements to the property to be made by Marsh Waterproofing, Inc. and signed the acceptance of the Plaintiff's proposal (exhibit 6), thereby forming a valid and binding agreement supported by valid consideration. *Order, Paragraph 7.*

Accepting the scope of work as a contract which was entered into evidence by the Plaintiff, as Exhibit 4 to their *Return to Motion For Summary Judgment*, the document is clearly addressed to (emphasis added) **State Acquisitions, LLC** and addresses multiple crawlspaces across numerous properties operated by subsidiaries of State Acquisitions, LLC across South Carolina. *Exhibit A.*

The document is signed by Alexander Burns, in his capacity as a representative of State Acquisitions, LLC. There is no reference in the proposal to Hamilton Management Services Company authorizing the work, as is stated in the Order, or agreeing to act as guarantor or surety in any capacity. Moreover, there is no reference to Steeple Dorchester Ltd. in the scope of work as a party to the contract, or as guarantor or surety. The agreement for the crawlspace work was entered into between the Plaintiff and State Acquisitions, LLC, which is the parent company of Steeple Dorchester Ltd.

Hamilton testified as a 30 b) 6) witness that the services it provided were, as follows:

8 Hamilton Management Services Company was
9 contracted by State Acquisitions, on behalf of
10 the Steeple subsidiaries, to provide certain
11 services related to the administrative function
12 of the entities. For example, Hamilton
13 Management Services Company provided all of the
14 accounting services to State Acquisitions and

15 all of the Steeple subsidiaries. (SEE Deposition of Hamilton Management Services
Company Page 27)

and

17 Hamilton Management Services Company contracted
18 all of the third-party vendors on behalf of the
19 various Steeple entities. It procured bids, it
20 arranged contracts, it provided all the payment
21 and billing services on behalf of the entity,
22 for fees.

(SEE Deposition of Hamilton Management Services Company Page 28)

There should have never been any confusion with regard to the role, or lack thereof, of Hamilton Management Services in the pro ect. The same should be said about State Acquisitions. The Plaintiff understood that their client for contracting purposes to be State Acquisitions, LLC insofar as their invoices, which again were provided to the Court as evidence by the Plaintiff as Exhibit 8 to their *Return to Motion For Summary Judgment*, is addressed “Bill To” emphasis added) **State Acquisitions, LLC**. The invoice lists work that was performed at a Steeple subsidiary by name and even lists the subsidiary’s name and address as where the work is performed. *Exhibit B*.

Perplexingly, despite the existence of the other contract in evidence and absolutely no evidence of any other written contracts between any of the parties, the Court found as a conclusion of law, “Hamilton Management Services Company, Inc. entered into an agreement for the work, and Plaintiff should have udgment against it on the contract claim.” *See Order, Paragraph 23*.

The Court cannot find as a conclusion of fact or law that a valid contract exists between either Steeple Dorchester Ltd. or Hamilton Management Services Company and the Plaintiff, when the Plaintiff itself tendered into evidence a contract covering the sub ect matter of this action with another party.² Notwithstanding that the party may be an affiliate of Steeple Dorchester Ltd., the basic elements of contract law require that an action for breach of contract be tendered against the party to the contract. The Defendants properly raised in their answer an affirmative defense of the Statute of Frauds. *See Answer, Paragraph 19*.

The South Carolina Statute of Frauds, as codified under SC Code Ann 32-3-10 states that, No action shall be brought whereby: 2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person; . Moreover, Section 32-3-20 states that No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or

² The proposal was directed to State Acquisitions.

given concerning or relating to the character, conduct, credit, ability, trade or dealings of any person to the intent or purpose that such other person may obtain credit, money or goods thereon unless such representation or assurance be made in writing, signed by the party to be charged therewith or by some person thereunto by him legally authorized.

The Defendants have failed to name State Acquisitions, LLC as a party to this action and have provided absolutely no claims or evidence to suggest why or how Steeple Dorchester Ltd. or Hamilton Management Services Company should be liable for a contract explicitly entered into between the Plaintiff and State Acquisitions, LLC. This basic defect ought to be enough for the Court to amend its judgment regarding the breach of contract claim against both Steeple Dorchester Ltd. and Hamilton Management Services Company.

This fatal flaw renders it impossible for the Court to find for the Plaintiff under any theory save quantum meruit. However, the findings of fact and law do not otherwise support that Hamilton Management Services Company was unjustly enriched at the expense of the Plaintiff as it did not receive any benefits conferred by the Plaintiff as a result of the work performed. *See Affidavit of Alexander Burns*. The same holds true for all defendants.

Given that there can be no surviving claims against Defendant Hamilton Management Services Company, Defendant Hamilton Management Services Company respectfully requests that the court find for Hamilton Management Services Company on the Plaintiff's actions for breach of contract, foreclosure of a mechanics lien, and quantum meruit.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52 a) a determination by the Court as to whether it considered the existence of a contract covering the scope of work between the Plaintiff and State Acquisitions, LLC, at the peril of Hamilton Management Services, Inc. and if not, the grounds by which it disregarded this evidence by substituting the contracting party for Hamilton Management Services.

II. The Court Cannot Award Attorneys' Fees or Costs in Any Claim Against Hamilton Management Services Company

Defendant Hamilton Management Services Company respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59 a) as the Court failed to consider whether there was any statutory or contractual authority by which it could award the attorneys' fees and costs against Hamilton Management Services Company. Notwithstanding the other impediments to the Plaintiff prevailing on any cause of action as raised herein, even if the Plaintiff were to prevail on a claim against Defendant Hamilton Management Services Company for either breach of contract or *quantum meruit*, there is no applicable statute or provision of contract by which Defendant Hamilton Management Services Company

could be subject to an award of attorneys' fees and costs insofar as it has at no time held any interest in the subject property, whether as an owner or tenant. As such, Defendant Hamilton Management Services Company respectfully requests the Court alter the judgment to relieve Defendant Hamilton Management Services Company from the Plaintiff's attorneys' fees and costs.

Additionally, Defendant Hamilton Management Services Company respectfully requests pursuant to SCRPC Rule 52 a) a determination by the Court as to the contractual or statutory grounds under which it awarded the Plaintiff's attorneys' fees and costs as judgment against Defendant Hamilton Management Services Company.

III. The Order Explicitly Contradicts the Testimony of the Defendants' Witness

Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRPC 59 a) as the trial court failed to consider the written or deposition testimony of Alexander Burns, a director of Defendant Hamilton Management Services Company and its Rule 30 b) 6) designee, which directly contradicts the Court's findings of fact in the Order as they relate to Mr. Burns' own reliance.

The Court found that, Additionally, I find that Defendants did not rely on the existence or non-existence of a license. *See Order, Paragraph 16*. This is in stark contrast to Mr. Burns' affidavit which states, it was my belief that Marsh Waterproofing, Inc was adequately licensed, bonded and insured for the work being performed. *Exhibit C, Page 2*. See also the following deposition testimony from Mr. Burns which asserts reliance:

Q. Well, at what point did you decide you didn't
 19 intend to pay because you didn't think he could
 20 file a lien?
 21 MR. OLSON: Objection.
 22 A. No. At the point at which we became aware that
 23 a contractor **that had previously sent us**
 24 **documents in which they stated they were**
 25 **licensed**, bonded, and insured, we found out was
 1 not licensed in South Carolina, and we were
 2 unclear as to whether we were going to have to
 3 have the work removed and redone by a licensed
 4 contractor. (*Emphasis Added*) (*See Deposition of Alexander*
Burns Page 98-99)³

Mr. Burns further testified that, It would have been antithetical to the interests of Hamilton Management Services Company or 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

³ Mr. Burns deposition testimony was given as a 30(b)(6) designee for Hamilton Management Services.

any of the entities would have received by doing so as of the authori ation 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 authori ed the Forty Thousand Dollar Payment. *Exhibit C, Page 3.*

The Court's Order attempts to substantiate its decision by further finding fact which is contradicted by the Plaintiff. Marsh made no representation to Defendants that it was licensed in the correspondence, the proposal or the discussions of the parties. *See Order, Paragraph 16.* While it would likely bear no significance as to what representations were made by Marsh due to the strict nature of the statute barring unlicensed contractors, the Defendants would urge the Court to consider the evidence should it be persuasive.

The Plaintiff's reliance argument has no precedent. Plaintiff attempts to graft the holding from *Teseniar v. Profl Plastering & Stucco, Inc.* to somehow create a lack of reliance exception to S.C. 40-11-370 c). This exception does not exist at common law. Furthermore, the exception certainly is not supported by *Teseniar*. In that case, the court found that a prime contractor was able to retain the services of an unlicensed subcontractor so long as it supervised the subcontractor and was licensed in the trades being performed by the subcontractor. The Court in *Teseniar* stated, verbatim, as follows:

"Moreover, we note the pertinent licensing statutes are intended to protect the public interest. S.C. Code Ann. § 40-1-10(A)-(B) (2011). The purpose of protecting the public interest by denying enforceability does not exist when dealing with claims between contractors. See Kennoy v. Graves, 300 S.W.2d 568 (Ky. App. 1957) ("The statute involved, and similar ones, 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 persons engaged in the same business or profession are dealing at arm[s] length with each other. In the case before us, appellant was in a position to know, and did know, the qualifications of appellee. No reliance was placed upon the existence of a license, as presumptively would be the case if appellee was dealing with the general public."). *Teseniar v. Profl Plastering & Stucco, Inc.*, 407 S.C. 83, 97, 754 S.E.2d 267, 274 Ct. App. 2014)

It would be in error for this Court to adopt the Teseniar holdings as a justification for Marsh's lack of licensure. *Teseniar* holds that the requirement that a contractor be licensed is excused in situations where one contractor sues another contractor. The distinction drawn by that Court is sensibly reasoned upon the fact that the parties in *Tseniar* were both contractors and members of the contracting industry do not need the protections afforded to the non-contractor public as the situation before this court which is the identical situation envisioned by SC 40-11-370.

To find for the Plaintiff in the face of an explicit statute requiring licensure, the Court must have found as an evidentiary matter that the Defendants truly *were* “in a position to know, and did know, the qualifications of Marsh . No reliance was placed upon the existence of a license, as presumptively there would be in the case if Marsh was dealing with the general public. *Order, Paragraph 17*. If the only person in a position to know the Defendants’ knowledge of Marsh’s qualifications explicitly testified in writing that he was not aware that Marsh was unlicensed until long after the work was completed, the Court must either find this to be a defect to the Plaintiff’s reliance upon Teseniar or state why the Court chose to wholly disregard the written testimony of Mr. Burns, as appeared in the record.

And while an evidentiary finding would be without merit, as there is no testimony to indicate that the Defendants were aware of the Plaintiff’s unlicensed status, to hold that a non-contracting entity like any of the Defendants is not owed the protection of 40-11-370 would be akin to drafting new legislation entirely.

Therefore, the Defendants respectfully request pursuant to SCRPC Rule 52 a) a determination by the Court as to whether it considered the deposition testimony or the affidavit of Alexander Burns of November 8, 2019, and if not, the grounds by which it disregarded this evidence which appeared in the record as well as the basis by which the Court determined that the Defendants are not afforded the status of the general public insofar as there is no evidence in the record to suggest that either entity has any construction industry experience, licensure, or familiarity and should be afforded a special status beyond that of the general public.

III. The LLR Found The Work Performed Required A General Contractor’s License

In order for the Court to find that the Mechanic’s Lien was valid and enforceable, the Court would have to find that either: a) Marsh Waterproofing possessed a valid general contractor’s license in the State of South Carolina; b) a license was not required; or c) that Marsh Waterproofing was working under the supervision of a licensed contractor. Both a) and c) are immediately ruled out via Tim Marsh’s trial testimony, and as set forth below. Thus, the holding can only be based on the Court’s implied holding that a license was not required.

It is clear that the Court did not place any weight on the South Carolina LLR Contractor’s Licensing Board Opinion (LLR Final Order) which found that the Plaintiff violated South Carolina law while acting as an unlicensed general contractor and performing work that serves as the basis for this action, which required a general contractor’s license in South Carolina.

The Court found in its order (emphasis added) “General Construction is installation, replacement or repair of a building or structure. **S.C. Code §40-11-20(8)**. I find that the facts in

the record establish that Marsh Waterproofing, Inc. and the work it performed do not fall within these definitions . *See Order, Paragraph 11.*

This ruling was based upon the Court analyzing this case by the nature of the work and analyzing this case by the scope of work as opposed to deferring to conclusions of fact and law of the Contractor's Licensing Board, which provided a written final ruling relative to the Plaintiff's specific conduct in this matter. The LLR Final Order reached the exact opposite conclusion having considered the technical specs for the structural foam and the recommendations of the engineering report.

The LLR's Contractor's Licensing Board is the established agency charged with the regulation of licensing within the industry. As the LLR Final Order found that the scope of work fell within that which a license was required and further found that the Plaintiff violated South Carolina law by engaging in contracting work in South Carolina while not being properly licensed, a new trial or amendment of the Court's Order is paramount to the furtherance of justice.

The LLR Final Order held, in pertinent part, as follows (emphasis added): The hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and **required a general contractor's license** pursuant to **S.C. Code Ann §§ 40-11-20(8)** and 40-11-410 1) 1976, as amended). *See Exhibit D, Page 5.*

It should not escape the Court's notice that LLR cited the exact same statute as violated by the Plaintiff that the Order states the Plaintiff did not violate. The Court need not extrapolate the LLR Final Order as it directly calls out the statute contemplated by the Court.

With regard to whether the Plaintiff violated South Carolina law, in the eyes of the statutory board established to regulate such violations of law, (emphasis added) The hearing officer finds that **[Marsh Waterproofing] violated S.C. Code Ann.§ 40-11-110(A)(5)** in that Marsh Waterproofing engaged in contracting work in South Carolina **when not properly licensed or supervised by a licensee** licensed in the required license group and classification. *See Exhibit D, Page 5.*

In considering the LLR Final Order, the Court ought to have considered the great weight previous courts have afforded similar agency administrative orders. The construction of a

statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 1987); see also Nucor Steel v. Pub. Serv. Comm'n of S.C., 310 S.C. 539, 543, 426 S.E.2d 319, 321 1992) Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason.).

There is no cogent reason to ignore or overrule a decision made by the Contractors Licensing Board in this case. The Board Order represents legal and factual findings in an *ex parte* regulatory proceeding in which the Defendants were not able to testify or present evidence and the Plaintiff was afforded great latitude by which to stipulate to facts that were otherwise contradicted in the record in this case.

The determination of LLR that the Plaintiff was acting as a general contractor should also be considered in light of the Court's holding which distinguishes of the facts in the C-Sculptures case from the action at bar. The Order states, I conclude that the decided cases cited by Defendants uniformly involve contractors who were either admittedly general contractors, or were adjudged to be general contractors based upon either the nature of the work or the scope of the work; therefore, the cases are inapplicable to these facts. *See Order, Paragraph 27.*

If the LLR concluded as a matter of law that the Plaintiff was acting as an unlicensed general contractor based upon their review of the scope of work performed by the Plaintiff, it would stand to reason that the Court would find that the Plaintiff was adjudged to be a general contractor based upon the scope of work by the government agency with the singular authority to make such determinations on behalf of the State of South Carolina; which is exactly analogous to the fact pattern of C-Sculptures.

The Defendants respectfully request that the Court adopt the findings of the LLR and find that the work performed by the Plaintiff required a general contracting license and find that this serves as a complete bar to the Plaintiff's recovery and render judgment in favor of the Defendants on all causes of action, and thus declare the Defendants the prevailing party.

In the alternative, the Defendants request a new trial in order to seek further testimony before the Court from the LLR regarding the requirement for licensure to the extent the Court is unresolved regarding the sufficiency of their written order.

Additionally, Defendants respectfully request pursuant to SCRCF Rule 52 a) a determination by the Court as to whether it considered the LLR's conclusion of law as dispositive of whether the work performed by the Plaintiff requires a general contracting license in South Carolina, and if not, the grounds by which it disregarded this evidence, which appeared in the record.

IV. The Plaintiff Was Not Working Beneath or Supervised by a South Carolina Licensed Contractor

While the Order does state that the Court finds that Marsh reasonably believed that a general contractor was working ahead of Marsh on the project there is no evidence in the record to suggest that the Plaintiff even believed that it was **supervised by** a licensed South Carolina general contractor. As set forth above, the LLR hearing officer found that (emphasis added), Marsh Waterproofing was **not properly licensed or supervised by a licensee licensed in the required license group and classification.**" See Exhibit D, Page 6.

Given that Plaintiff could not identify any general contractors involved in the project that it had agreed to work under, conceded in the deposition of Tim Marsh that it was not: i) supervised by a general contractor; ii) scheduled by a general contractor; iii) contracted with a general contractor; iv) and did seeking payment from a general contractor, the Court cannot have found that it was working under a licensed South Carolina general contractor that it did not know or see.

The Plaintiff cannot prevail on the reliance upon the conceptual existence and licensure of another contractor when the Plaintiff was not directly supervised by the licensed contractor. Given no justifiable reliance and the lack of direct licensure by the Plaintiff, the Defendants respectfully request the Court render judgment in favor of the Defendants on all causes of action and declare the Defendants to be the prevailing party.

Additionally, Defendants respectfully request pursuant to SCRCF Rule 52 a) a determination by the Court as to whether it found that the Plaintiff was working under a licensed South Carolina general contractor, and if so, which licensed South Carolina general contractor in particular and the facts the Court considered to establish their privity.

V. The Offer To Perform Contracting Work By The Plaintiff Was Illegal At Time of Formation

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCF 59 a) as the trial court failed to consider whether the Plaintiff could have even made the offer to perform the services under South Carolina law.

SC Code Ann 40-11-30 states (emphasis added) No entity or individual may or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting

For a claim of breach of contract or *quantum meruit* the Court would have to find that the offer to perform services could have been lawfully entered into by the Plaintiff at the time of formation. Similarly, for the Court to determine that a Mechanic's Lien was valid at the time of filing would require that the Court determine that the Plaintiff could have initially offered to perform the work.

The LLR makes clear in its final order that (emphasis added), Marsh Waterproofing is cautioned that the scope of work on the project s) does require a general contracting license in South Carolina if Marsh Waterproofing is not supervised by a licensee in the required license group or classification . See *Exhibit D, Page 6*.

Per LLR, given the exact same facts and circumstances, if the Plaintiff were to seek to do the exact same thing today, it could not even make the offer to do so without either obtaining a license or be supervised by a licensed South Carolina general contractor, or it would be violating Section 40-11-30.

As set forth above, there is absolutely no evidence in the record to suggest that the Plaintiff was supervised by a licensed South Carolina general contractor for purposes of availing itself of that contractors' license at the time of offer and thus could not have lawfully made an offer to perform the work.

If the offer of a contract itself violates statutory law, then the contract cannot be seen as having been ratified as an enforceable contract. See *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004) holding the general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution).

The Plaintiff was obviously not supervised by a licensed South Carolina general contractor at any time and the LLR Final Order establishes that the work does require either a valid general construction license or to be supervised by one; therefore insofar as no party has ever attempted to argue that the Plaintiff was a South Carolina licensed general contractor, the Court cannot have found that it was already supervised by a licensed South Carolina general contractor at the time at which it offered to perform 36,800 in contracting work on July 10, 2017.

To the extent that the Plaintiff's solicitation was illegal at the time of offer, by statute, it cannot maintain any of its causes of action and therefore the Defendants respectfully request judgment in favor of the Defendants on all causes of action and that they be deemed the prevailing party.

VI. The Testimony of Tim Marsh is Inconsistent

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59 a) as the trial court failed to consider the inconsistencies in the statements made by Tim Marsh in his affidavit of April 30, 2018 versus his testimony at trial, as it appears in the Order. Paragraph 2 of the affidavit states I asked him Burns 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 there did not seem to be a need to be licensed to do our work in South Carolina. *See Exhibit E.*

As a Finding of Fact, the Order states in paragraph 16, On the facts in the record I find 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. Mr. Burns promised to check on it. Thereafter the parties proceeded with the work. Mr. Burns could not rely upon the existence of a license for the qualifications of the contractor if he knew none existed. This is in concert with Mr. Marsh's trial testimony in which he alleged that no follow up conversation took place regarding the need for licensure.

Despite the inconsistencies in Mr. Marsh's statements regarding the alleged conversations regarding licensure, the Order makes no reference to the testimony of Mr. Burns, which was entered into the record in the form of an affidavit stating in relevant part At no time did Mr. Marsh, or any other party from Marsh Waterproofing, discuss the issue of contractor licensing with me or anyone else at Hamilton or the Steeple entities. *See Exhibit C, Page 2.*

To the extent that the testimony of Tim Marsh is inconsistent and cannot be relied upon as definitively refuting the testimony of Mr. Burns, the Defendants respectfully request judgment in favor of the Defendants on all causes of action and that they be deemed the prevailing party or in the alternative a new trial which permits Mr. Burns to testify about his conversations with Mr. Marsh to the extent the Court requires further clarity on his testimony, Mr. Burns' testimony was effectively precluded by the improper acts of the Plaintiff, for reasons set forth below.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52 a) a determination by the Court as to whether it found the testimony of Mr. Marsh was sufficiently consistent to definitively establish the substance of the conversation between Mr. Marsh and Mr. Burns relative to licensure and whether the Court considered the written testimony of Mr. Burns regarding his recollection of the conversation, and if not, the grounds by which it disregarded this evidence which appeared in the record.

VII. The Order Materially Misstates Mr. Burns' Testimony

Insofar as the Order sets forth Mr. Burns' testimony relative to the Defendants in a way that is not supported by the *actual* testimony of Mr. Burns, as it appears in the record, the Defendants respectfully request that the Order be amended to reflect Mr. Burns' actual record testimony, as set forth in his

affidavit of November 8, 2019 regarding his discussions with Mr. Marsh, his belief as to the Plaintiff's status as a licensed contractor, his reliance upon their licensure as a condition for State Acquisitions, LLC to contract services, and by extension respectfully request judgment in favor of the Defendants on all causes of action and that they be deemed the prevailing party or in the alternative a new trial which permits Mr. Burns to testify about his conversations with Mr. Marsh to the extent the Court requires further clarity on his testimony, Mr. Burns' testimony was effectively precluded by the improper acts of the Plaintiff, for reasons set forth below.

Additionally, Defendants respectfully request pursuant to SCRPC Rule 52 a) a determination by the Court as to whether the Court considered the written testimony of Mr. Burns as contained in his affidavit, and if not, the grounds by which it disregarded this evidence which appeared in the record.

IIIX. Judgment on the Mechanic's Lien Is Not A Judiciable Matter

As testified by Mr. Burns, Following Marsh's filing of the mechanic's liens, on or about December 18, 2017, the landlord terminated all of the leases to the Steeple entities pursuant to a breach of the forbearance agreement, which specifically prohibited the filing of any Mechanic's Liens on the properties. *See Exhibit C, Page 5.*

As noted above, Plaintiff dismissed the landlord from the action in 2017 with no indication of any consideration received, which would serve to otherwise off-set the Plaintiff's claim. As such, the Plaintiff cannot foreclose on the real estate itself but only on Defendant Steeple Dorchester Ltd. leasehold interest, which has not existed since 2017.

The Court instructs the case be referred to the Master in Equity so that he may conduct the sale despite the fact that there is nothing to be sold. *See Order, Paragraph 30.*

If there is no leasehold interest, by virtue of the termination of the lease, then there is nothing upon which the Plaintiff may foreclose the Mechanic's Lien upon. If there is no possibility of recovery under the foreclosure, then it cannot serve justice for the Court to have consider the merits of the Mechanic's Lien as a distinct cause of action from the breach of contract and the *quantum meruit* claims.

The Plaintiff was made aware of the termination of the leases since the inception of this lawsuit. The counterclaim was raised specifically upon the grounds that the harm caused by the Plaintiff was as a result of the termination of the leases.

The Plaintiff has effectively wasted the Defendants' and the Court's time and resources maintaining a cause of action that the Defendants have attempted to dispose of through a motion to dismiss and a motion for summary judgment as well as directed verdict. While the Defendants concede they have been focused upon the determination that the Plaintiff was acting as an unlicensed contractor,

which would resolve all of the causes of action together, it remains the burden of the Plaintiff to ensure that the causes of action they seek to maintain represent a justiciable controversy for which relief can be granted by the courts and are not brought for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation, as required by SCRCP Rule 11 b) 1).

The termination of the leases has appeared in the record and been well known to the Plaintiff for over two years and yet they have maintained this cause of action, which cannot advance their interest financially or otherwise, to the detriment of the Defendants.

The clear motivation for the Plaintiff to maintain the illusory cause of action related to the foreclosure of the Mechanic's Lien is the imposition of their attorneys' fees & costs, which would not otherwise be available to them. It cannot be an appropriate remedy to foreclose a lien which does not secure anything solely to recover expenses that cannot otherwise be recovered.

The Defendants respectfully request that the Court render judgment in favor of the Defendants on the foreclosure mechanic's lien, and to be deemed the prevailing party, or in the alternative impose a sanction in favor of the Defendants in the amount of their attorneys' fees and costs associated with defending the action for foreclosure of the Mechanic's Lien, pursuant to the Court's inherent authority under Rule 11 b) 3).

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52 a) a determination by the Court as to whether there is even currently a lien on the property, its leasehold interest, and clarification as to what exactly is to be sold by the Master in Equity.

IX. The Court Was Prejudiced By Plaintiff's Improper Presentation of Extrinsic Information Regarding a Critical Witness For Defendants.

The Defendants have included a final exhibit, which is an affidavit dated February 24, 2020 prepared by Alexander Burns, Director of Hamilton Management Services Company. The full weight of Mr. Burns' testimony should be considered in light of improper inclusion of extrinsic information to attack the credibility of a witness without seeking the Court's permission as is required by Rule 608 b) of the South Carolina Rules of Evidence, and only then introducing it upon cross examination of a witness at trial.

Mr. Burns provides a detailed statement regarding the chilling effect the Plaintiff's procedural misconduct had regarding his willingness to testify and the Defendants were clearly prejudiced by his lack of live testimony at trial. *See Exhibit F.*

The complete lack of reference to Mr. Burns' prior written testimony in the Order makes clear that the Court either did not consider Mr. Burns' testimony or found it to be entirely discredited. Even that Mr. Burns was in a position to have direct knowledge of the facts and

circumstances regarding the Defendants' knowledge and justification, as well as the evidentiary support for their counterclaim, his testimony's exclusion cannot go unconsidered by the Court.

WHEREFORE, the Defendants seek consideration of this motion and exhibits and respectfully request the Court amend its judgment accordingly to find in favor of the Defendants, and deem them the prevailing party. Alternatively, this Court should grant a new trial absolute to the Defendants providing the Court with the opportunity to consider additional testimony, including that of Mr. Burns and LLR.

HARPER LITTLE PLLC

/s/ C. Clay Olson
C. Clay Olson, Esquire
SC Bar 17007
164 Market Street, Ste 139
Charleston, SC 29403
clay@harperlittlelaw.com

March 22, 2020

EXHIBIT A

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**

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Acceptance of Proposal: AB Date: 7/21/2017

EXHIBIT B

ROA 000146
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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EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT

MARSH WATERPROOFING, INC.,

Plaintiff,

VS.

**STEEPLE DORCHESTER, LTD. AND
HAMILTON MANAGEMENT SERVICES
COMPANY, INC.**

CIVIL ACTION NO. 2018-CP-10-00262

AFFIDAVIT OF ALEXANDER C. BURNS

Defendants.

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.

The Steeple entities are owned by State Acquisitions, LLC, which is also managed by Hamilton Management Services Company.

Beyond a management agreement, Hamilton Management Services Company does not currently, nor has it ever, held an interest in, State Acquisitions, LLC, the Steeple entities nor the underlying former Church's Chicken businesses.

I have read the deposition transcript of Marsh Waterproofing, Inc., as well as an affidavit provided by Mr. Timothy Marsh.

Hamilton sought proposals for the structural repair of the foundations of multiple Church's Chicken restaurants operated by the Steeple entities upon a finding by a structural engineer that they were structurally unsound and some of which were at imminent risk of structural collapse. The structural engineers were hired at the behest of Church's Chicken, the franchisor following the collapse of the crawl spaces of another Church's Chicken restaurant, unaffiliated with the

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.

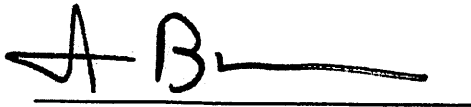
The LLR states as a conclusion of law that the declination of a citation and penalty was based upon the mitigating information, which is contested by both my testimony and the deposition of

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.

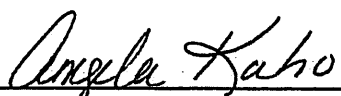

Signature of Notary Public
My commission expires: Nov. 1, 2027



EXHIBIT D

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA CONTRACTORS' LICENSING BOARD**

In the Matter of:

**MARSH WATERPROOFING INC.
License No: Unlicensed**

Case/Citation Number 2017-354

**FINAL ORDER
(Private)**

This matter came before Daniel Lehman, a hearing officer duly appointed by the South Carolina Contractor's Licensing Board ("Board"), for a final order hearing on June 21, 2019 as a result of the Notice of Citation Appeal hearing served upon the Respondent and filed with the Board. The hearing was held pursuant to and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (2005, as amended), to determine whether the citation issued to the Respondent on April 5, 2018, should be affirmed and the proposed penalty imposed upon the Respondent. Respondent timely requested this hearing after receipt of the citation and cease and desist order. Erin Baldwin, Esq., of the Office of Disciplinary Counsel represented the State. Timothy Karl Marsh, Secretary/Treasurer of Marsh Waterproofing, Inc., was present and was represented by Albert A. Lacour, III, Esq. The parties entered into a Stipulation of Facts (SOF) in which the parties stipulated to the facts and exhibits in the SOF, but the Respondent did not admit to misconduct in violation of S.C. Code Ann. § 40-11-110(A)(5) (1976, as amended).

EXHIBITS AND WITNESSES

State's Exhibit:

Exhibit A: Stipulation of Facts with ten (10) exhibits

Respondent's Exhibits:

Exhibit A: Request dated October 31, 2017 from Hamilton Management Services Co. to the Contractor's Board to determine licensure status of Marsh Waterproofing Inc.

Exhibit B: *Teseniar v Prof'l Plastering & Stucco, Inc.* 407 S.C. 83, 754 S.E.2d 267 (2014)

State's Witnesses: None

Respondent's Witness: Timothy Karl Marsh

FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the hearing officer, including the admitted facts in the SOF and the attached exhibits, and mitigating testimony presented by Timothy Karl Marsh, the hearing officer makes the following findings of fact:

1. On or about April 5, 2018, Respondent was issued a Citation for violating S.C. Code Ann. § 40-11-110(A)(5). Additionally, on or about April 11, 2018, a Cease and Desist Order was issued

to Respondent. On or about April 12, 2018, Respondent, through Counsel, appealed the citation and penalty.

2. At all times relevant to this matter, Respondent was not licensed with the State of South Carolina to perform any general or mechanical contracting work.

3. Respondent admits that the Board has personal jurisdiction over Respondent and subject matter jurisdiction over the facts herein.

4. Prior to Respondent's involvement in this matter, the crawlspaces/basements of various locations of Church's Chicken ("Church's") commercial restaurants were inspected to determine whether any structural deficiencies existed in the buildings' ground floor structural systems. Following the inspections, the engineer recommended "immediate structural support be provided for all structural members in the crawlspace." The engineer recommended that Alchemy Polymers AP Lift 430—a "high density expanding closed cell structural foam system"—be installed in the crawlspace. AP Lift 430 is a two-component, structural polyurethane foam. The engineer did not recommend any repairs to existing structural elements. The parties agree that there were substantially similar reports issued for other Church's restaurants located in South Carolina.

5. On or about July 10, 2017, Respondent submitted a proposal to Hamilton Management Services Company, Inc. (hereinafter "Hamilton") to spray AP Lift 430 foam into the crawlspace of six separate commercial restaurants throughout the State of South Carolina for a cost of \$36,800.00 per location. The proposal specifically excludes all preparatory work including plumbing, electrical and water removal. On its face, the proposal contains no project general conditions. It provides for no supervision of other trades or the preparatory work. It provides for no sequencing or scheduling and, to the contrary, provides a crew rate for any time the Respondent's crew is delayed waiting for the completion of the preparatory work. The proposal did not include any repairs to existing structural elements.

6. Respondent observed that general conditions, scheduling, and sequencing were provided by others. Any supervision for the other trades was provided by others. Respondent made no repairs or modifications to any standing water, plumbing, electrical, brick masonry walls, cracks in concrete slabs, steel joists, steel girders, block piers, or concrete footings. Respondent has experience in other states installing the foam material under floor slabs in Church's restaurants.

7. Respondent was told in writing by Hamilton that Hamilton had a contractor to do the work of the multiple trades before Respondent arrived, so Respondent believed that Hamilton had a general contractor. Hamilton represented to Respondent during the course of the correspondence exchanged by them on July 21, 2017 that another contractor was performing the preparation work ahead of Respondent. The work involved multiple trades, appeared to require multiple permits, and was to be completed before Respondent's arrival.

8. Hamilton hired another contractor to do the preparatory work.

9. The crawlspaces were sprayed with AP Lift 430 by Respondent. Hamilton never complained about the quality of Respondent's work. On or about September 5, 2017, Respondent billed Hamilton a total of \$36,800.00 per location. After the work was completed, Hamilton failed to pay Respondent. The parties agree that there were substantially similar invoices issued for other Church's restaurants located in South Carolina.

10. On or about November 15, 2017, Respondent's counsel, Bill Richey, emailed Roger Lowe, Administrator for the Board, inquiring as to whether Respondent required a license for the work performed. Mr. Lowe informed Mr. Richey that based on the information provided, a license was not required.

11. On or about November 15, 2017, Respondent filed mechanic's liens against six locations where work was performed and completed, based on Hamilton's failure to pay the invoices issued by Respondent.

12. On or about November 20, 2017, a complaint was filed against Respondent with the South Carolina Department of Labor, Licensing and Regulation (hereinafter "LLR"). LLR assigned Investigator Maurice Smith to investigate the allegations within the complaint. On or about February 20, 2018, Investigator Smith mailed Respondent a notice of complaint. Respondent, through Counsel, responded to the notice of complaint.

13. Hamilton filed in each of the mechanic's lien cases a Motion to Dismiss, and relies on the Citation and Cease and Desist Order. Hamilton, in effect, alleges that Respondent acted as an unlicensed general contractor, after representing to Respondent that Hamilton had engaged another contractor to do all preparatory work involving multiple trades. This litigation is still ongoing, and the issue of licensure is still of critical importance to the parties in the civil litigation.

14. The State averred that S.C. Code Ann § 40-11-30 requires that any entity or individual be licensed when performing contracting work when the cost exceeds \$5,000.00. Furthermore, S.C. Code Ann. § 40-11-20(8) defines general construction as "the installation, replacement, or repair of a building, structure...or improvement of any kind to real property." Additionally, S.C. Code Ann. § 40-11-410(1) notes the license classification of General Contractors—Building includes commercial, industrial, institutional, modular, and all other types of building construction. The State's position was that the installation of AP Lift 430 in order to provide immediate structural support in an effort to prevent the floor system from imminent failure was squarely within the definition of S.C. Code Ann § 40-11-20(8). As a result, Respondent was performing general construction work over \$5,000.00 and therefore was required to obtain a general contractor's license as defined in S.C. Code Ann. § 40-11-410(1).

15. The State further averred that Respondent's information provided to Mr. Lowe did not state that the AP Lift 430 was being used to provide immediate structural support to prevent the floor system from imminent failure. The State submitted that if Mr. Lowe was given this information, he would have advised that a general contractor's license was required. The State also noted that Respondent only sought the advice of Mr. Lowe after the work was performed, invoiced, and payment declined by Hamilton.

16. Respondent averred in the SOF and Mr. Marsh testified that his point of contact was Hamilton and that Respondent was expected to comply with Hamilton's schedule of multiple trade subcontractors and all of the direction received from Hamilton for the multiple projects. Respondent believed that either Hamilton or someone else was the general contractor. Respondent testified that Hamilton knew at all times that Respondent was not licensed in South Carolina. There was never an issue with the quality of Respondent's work on any of the projects. Respondent's unlicensed status only became an issue for Hamilton when payment for the multiple projects became due.

17. Respondent averred in the SOF and Mr. Marsh testified that he did not know whether Hamilton simply engaged multiple trade subcontractors to accomplish the work, or actually did engage

a general contractor. All preparatory work was completed before Respondent's arrival, and all those other people had moved on to the next building ahead of Respondent. Someone other than Respondent was sequencing and scheduling the work. Someone other than Respondent was providing general conditions such as dumpsters, portable facilities, water, power, equipment and supervision for all trades, including Respondent. In short, Respondent believed that the execution of the plumbing and electrical work would require permits to be pulled, and therefore, someone other than Respondent was acting as the general contractor for the project.

18. Respondent averred in the SOF and Mr. Marsh testified that the work Respondent did on the projects did not meet the definition of "general construction" defined as: "installation, replacement, or repair of a building, structure ... or improvement of any kind to real property." S.C. Code § 40-11-20(8). Respondent made no changes or modifications to existing exterior brick veneer walls, concrete slabs, perimeter retaining walls, steel decking under the slab, steel joists under the decking, steel girders at the perimeter, masonry piers, footings or foundations for the piers or walls, or the dirt at grade. Each and every structural element was left in exactly the same condition by Respondent as it was found. There was no modification, change, repair or activity of any kind by Respondent addressing any structural element. In short, there was no structural repair made to the existing structure or building. The work which was done was to install the expandable polyurethane foam in the open air space between the top of the dirt and the bottom of the slab. The foam is not affixed to the land in any way. The foam was only installed in the open void or airspace under the slab and above the ground exactly as the email from personal counsel in Texas described. The foam provided support for the slab as indicated in the email. No building or structure was installed. No structural component of the existing building or structure was repaired or replaced. No permanent improvement to real estate occurred because the foam is in no way attached to the real estate or to the structural elements of the existing building. The foam simply filled the open void under the slab. Once it cured, it lent support to the slab.

19. Respondent averred in the SOF and Mr. Marsh testified that he inquired about licensing with Hamilton, and Hamilton told him licensing was not necessary; he inquired with the Board Administrator before proceeding with filing the mechanics lien and was told licensure was not required; he was told Hamilton had a contractor and he reasonably believed, based on Hamilton's representations, that someone else was providing general contracting services for the project; he observed that general conditions were apparently being provided by others; and he made no modification or repair to any structural element of the building. The Board's statute and South Carolina case law allow an unlicensed subcontractor to work on a job where a general contractor is supervising the work and Respondent believed that was the situation he was working under.

20. Respondent averred in the SOF and Mr. Marsh testified that his company is highly experienced and qualified at performing the particular work at issue: installing the foam material in the open spaces under building slabs. Respondent performed the same work using the same product, process, building design, and followed the design of the same engineering team in at least six different states. Respondent performed the same process for dozens of restaurants in those states. The project was manned by an experienced team employed by an experienced contractor.

21. The Respondent averred in the SOF and Mr. Marsh testified that there was no complaint made as to the quality of the work or the quantity of the work performed by Respondent. Hamilton did not present any observations to that effect, and the engineers that designed the process have presented no information to that effect. The project was completed successfully and the client received both the quality and quantity of the work contracted for. Hamilton had reason to know, and did know, the qualifications, experience level, and ability of Respondent to perform the work, and no

reliance was placed upon the existence (or lack of) a license. There was no harm to anyone in this case via substandard work. Respondent averred in the SOF and Mr. Marsh testified that sanctions are not appropriate where Hamilton's obvious motive was to use an unlicensed practice citation as a defense to avoid payment of half a million dollars for professional work.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, it is found and concluded as a matter of law that:

1. The Board has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-11-100(E) and 40-1-70(6) (1976, as amended).

2. The hearing officer can affirm, dismiss or amend the citation and penalty issued on April 5, 2018. S.C. Code Ann. § 40-11-100(E) (1976, as amended) and the cease and desist order issued on April 11, 2018.

3. Based on a review of the evidence presented, the hearing officer determined that the Engineer's report recommended the Alchemy Polymers AP Lift 430 product used by the Respondent to provided full continuous support to the structural members in the crawlspace of the project(s). The Engineer described the high density expanding closed cell structural foam system as providing the compressive strength to adequately support the superstructure. As such, the hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and required a general contractor's license pursuant to S.C. Code Ann §§ 40-11-20(8) and 40-11-410(1) (1976, as amended).

4. It is the responsibility of the Respondent to determine whether a license was required in South Carolina to perform this work; however, Hamilton was fully aware that Respondent was not licensed in South Carolina throughout Respondent's performance of his scope of work on the project(s). There is nothing in the Respondent's scope of work document that indicated licensing and the Respondent's scope of work document references other work of sub-contractors involved in Hamilton project(s) that was to be completed prior to Respondent's performance of its scope of work. The hearing officer accepted the Respondent's mitigation that Respondent was told by Hamilton and the Board Administrator that a license was not needed in South Carolina for this work.¹ Further, Respondent was not supervising any work on the project(s) and believed that Hamilton was either the licensed general contractor hiring, organizing, and supervising subcontractors, or that Hamilton had hired a licensed general contractor to organize and supervise subcontractors. If this was the case, Respondent was not required to be licensed as a sub-contractor pursuant to S.C. Code Ann. § 40-11-270(E) (1976, as amended). Furthermore, Hamilton never alleged there was substandard work or unprofessional conduct by Respondent, so there was no harm to Hamilton's project(s) from the scope of work performed by Respondent.

5. The hearing officer finds that Respondent violated S.C. Code Ann. § 40-11-110(A)(5) in that Respondent engaged in contracting work in South Carolina when not properly licensed or supervised by a licensee licensed in the required license group and classification. However, based on the mitigating information in the SOF and Mr. Marsh's testimony and the fact that there was no

¹ The hearing officer determined that the information provided to the Board Administrator on November 15, 2017 by Respondent's attorney Bill Richey was very specific regarding the product Respondent used that was recommended by an engineer for the purposed of providing support. Mr. Richey was told Respondent did not need a license unless the foam was installed with the intent to provide the benefit of its insulation properties, which required an Interior Renovation license.

substandard work or harm to any member of the public, the hearing officer does not believe that the Respondent's misconduct rises to the level of warranting a citation and penalty.

6. The action by the hearing officer is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of general contractors against the countervailing concern that society be protected from professional ineptitude and misconduct.

7. The action by the hearing officer is designed to protect the welfare of the public.

NOW THEREFORE, IT IS ORDERED that:

1. The citation issued on April 5, 2018 and the accompanying penalty of \$500.00 shall be dismissed.
2. The cease and desist order issued on April 11, 2018 shall be withdrawn.
3. The Respondent is cautioned that the scope of the work on the project(s) does require a general contracting license in South Carolina if the Respondent is not supervised by a licensee in the required license group and classification.

AND IT IS SO ORDERED.

**SOUTH CAROLINA CONTRACTOR'S
LICENSING BOARD**



**Daniel Lehman
Hearing Officer**

July 23, 2019

EXHIBIT E



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

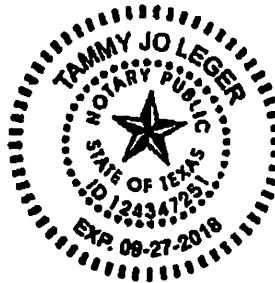


EXHIBIT F

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

MARSH WATERPROOFING, INC.

Plaintiff,

vs.

STEEPLE DORCHESTER LTD et al

Defendants.

**IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2018-CP-10000262**

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.

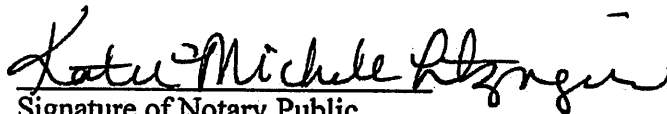
FURTHER AFFIANT SAYETH NOT.



Alexander Burns.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The foregoing affidavit of Alexander Burns was acknowledged before me this 14 day of February, 2020, by Alexander Burns.


Signature of Notary Public
My commission expires: 9.13.21

[SEAL]

Page 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
: Case No.: 2018-CP-10-00262
MARSH WATERPROOFING, INC.,)
) Plaintiff(s),)
) -vs-) DEPOSITION OF:
) STEEPLE DORCHESTER LTD. and) ALEXANDER CHATFIELD BURNS
HAMILTON MANAGEMENT)
SERVICES COMPANY, INC.,)
) Defendant(s).)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
: Case No.: 2018-CP-40-00579
MARSH WATERPROOFING, INC.,)
) Plaintiff(s),)
) -vs-)
) STEEPLE DORCHESTER LTD. and)
HAMILTON MANAGEMENT)
SERVICES COMPANY, INC.,)
) Defendant(s).)

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
 3 : Case No.: 2018-CP-40-00527
 4 MARSH WATERPROOFING, INC.,)
 5 Plaintiff(s),)
 6 -vs-)
 7 STEEPLE DORCHESTER LTD. and)
 8 HAMILTON MANAGEMENT)
 9 SERVICES COMPANY, INC.,)
 10 Defendant(s).)

10 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 11 COUNTY OF ORANGEBURG) FOR THE FIRST JUDICIAL CIRCUIT
 12 : Case No.: 2018-CP-38-00105
 13 MARSH WATERPROOFING, INC.,)
 14 Plaintiff(s),)
 15 -vs-)
 16 STEEPLE DORCHESTER LTD. and)
 17 HAMILTON MANAGEMENT)
 18 SERVICES COMPANY, INC.,)
 19 Defendant(s).)

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT
 3 : Case No.: 2018-CP-04-00135
 4 MARSH WATERPROOFING, INC.,)
 5 Plaintiff(s),)
 6 -vs-)
 7 STEEPLE DORCHESTER LTD. and)
 8 HAMILTON MANAGEMENT)
 9 SERVICES COMPANY, INC.,)
 10 Defendant(s).)

11 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 12 COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL
 13 : Case No.: 2018-CP-23-00491
 14 MARSH WATERPROOFING, INC.,)
 15 Plaintiff(s),)
 16 -vs-)
 17 STEEPLE DORCHESTER LTD. and)
 18 HAMILTON MANAGEMENT)
 19 SERVICES COMPANY, INC.,)
 20 Defendant(s).)

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Spartanburg	Summerville	Sumter	West Columbia

1 Given before John P. Crawford, Jr., Court
2 Reporter and Notary Public, at Clawson and Staubes, LLC,
3 126 Seven Farms Drive, Suite 200, Charleston, South
 Carolina, on Wednesday, May 15th, 2019, commencing at
 10:24 a.m.

16
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A P P E A R A N C E S

For the Plaintiff(s): Clawson & Staubes, LLC
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All exhibits were retained by Plaintiff's counsel.

1 DIRECT EXAMINATION BY MR. LACOUR:

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. Tell me what your full name is, please.

5 A. Alexander Chatfield Burns.

6 Q. Mr. Burns, my name is Andy Lacour, and I
7 represent Marsh Waterproofing in the litigation
8 that is pending between Marsh and several
9 entities for which you are appearing today as
10 the representative, and I'm going to ask you
11 some questions today. As we proceed, there are
12 only a couple of rules. One is that if you
13 don't understand my question, you are to
14 address your request for clarification to me,
15 as opposed to somebody else in the room; is
16 that agreeable?

17 A. Yes.

18 Q. And that's really the main rule, and you're not
19 going to hurt my feelings if you ask me to
20 rephrase it or tell me you didn't understand it
21 or to say it against slower or whatever. That's
22 fine. Okay?

23 A. Yes.

24 Q. Secondly, have you been deposed before?

25 A. Yes.

1 Q. Okay. There is another rule. Try to hold your
2 answers until I get to the end of my question,
3 because he's going to take down half my
4 question, then your answer, and then the rest
5 of the question, and it's going to make the
6 transcript really messy. So, will you do that
7 for me?

8 A. I'll try, to the best of my ability.

9 MR. OLSON: He's going to try. I don't know
10 how he's going to do.

11 Q. I get it. In conversation, we all do that a
12 little more often, but in here, we want to slow
13 down a little bit. I might surprise you. There
14 may be a twist on the question you weren't
15 expecting, and it changes your answers. So, if
16 you'll just try and do that for me, and if you
17 get to going too fast, we'll try and slow you
18 down. Okay?

19 A. Yes.

20 MR. OLSON: Jay, if you have any issue with
21 any of this, don't be afraid Raise your hand.

22 MR. LACOUR: Oh, yeah. I second that. Yeah,
23 you can say wait a minute, and we'll stop for
24 you.

25 Q. All right. The other thing, I guess, is that if

1 we take a break at anytime or if we break for
2 lunch or whatever, you certainly can spend time
3 with your lawyer, but you can't discuss what's
4 going on in the deposition, either before or
5 coming up. That's supposed to, you've got to
6 wait until the end of the deposition to talk
7 about what's going on in here; is that
8 agreeable?

9 A. Agree.

10 MR. OLSON: Or I think you can, and he gets
11 to ask you exactly what we talked about.

12 Q. Yeah. It's better not to because --

13 A. I agree not to discuss the contents of the
14 deposition.

15 Q. It's a waiver of attorney client privilege, and
16 you don't want to do that. So, better to not
17 to.

18 (NOTICE OF DEPOSITION MARKED AS PLAINTIFF'S
19 EXHIBIT NO. 1 FOR IDENTIFICATION.)

20 Q. All right. So, let me show you, we issued a
21 notice of deposition for the 30(b)(6)
22 representative of the Steeple entities and
23 Hamilton Management. Are you here today
24 appearing as the 30(b)(6) representative of
25 those entities?

1 A. May I?

2 Q. Yes. Because the way it works is, I just issued
3 the notice to the entity, and the entity
4 decides who's going to come. So, are you here
5 for those entities?

6 A. I am here as a representative on behalf of the
7 Steeple Dorchester Ltd., Hamilton Management
8 Services Company, Steeple Main Columbia Ltd.,
9 Steeple Two Notch Ltd., Steeple Chestnut Ltd.,
10 Steeple West Shockley Ferry Ltd., Steeple South
11 Pleasantburg Ltd.

12 Q. Okay. Thank you. And so, do you understand that
13 as the 30(b)(6) representative, you have
14 basically been designated to speak for the
15 company?

16 A. Yes.

17 Q. Okay. And then, anything you say here will bind
18 the company?

19 A. Yes.

20 Q. Okay. And the other thing about 30(b)(6)
21 depositions is they survive the lawsuit. So,
22 this testimony will be here, will be around,
23 will be available to people in other lawsuits,
24 other times after this point in time. So, it
25 continues to live; do you understand that?

1 A. Yes.

2 Q. Okay. Fair enough. So, in this notice, there
3 was a section called, related to the duces
4 tecum where we asked you to bring certain
5 documents, and one would be the documents
6 supporting your position or your counterclaims,
7 and we asked in particular for leases and
8 assignments for each restaurant, management
9 agreements for each restaurant, operating
10 agreements for Hamilton and Steeple and State,
11 and a letter to the LLR on November 20th, and a
12 termination letter from ARC. Did you bring any
13 of those documents with you today?

14 A. No.

15 Q. Okay. Have those documents, to your knowledge,
16 already been provided to your attorney?

17 A. Yes.

18 Q. Okay. And so, do you know where within the,
19 within the 1,700 pages worth of documents your
20 attorney has produced we can find those?

21 A. No.

22 Q. Okay. Why not?

23 A. I don't know where in the 1,700 pages they
24 would be. My understanding is they would be
25 contained within the 1,700 pages.

1 Q. Okay. From where do you get that understanding?

2 A. I was part of the production to my attorney of
3 the 1,700 pages.

4 Q. Okay. Fair enough. So, are you testifying that
5 you believe you provided those, you saw that
6 they were provided, so to speak?

7 A. To the extent that they were available.

8 Q. Okay. Well, which ones were not available?

9 A. I'd have to go back through the 1,700 pages of
10 production.

11 Q. Okay. So, you didn't do anything before you got
12 here today to try and figure out which ones you
13 had produced and which ones you hadn't?

14 A. No.

15 Q. Okay. That kind of begs one more question. If
16 you think you put everything together, but you
17 haven't gone back to check, then it's possible
18 that these were not produced, correct?

19 A. It's certainly possible. Without inquiry, I
20 wouldn't --

21 Q. All right. So, we need to know that, but right
22 now, you're saying you just don't know it for
23 today?

24 A. I have not, I don't have a copy of the 1,700
25 pages, thus I can't confirm where they would

1 appear in there or not.

2 Q. Okay. All right. Yeah, I didn't know if you'd
3 had a chance, for instance, to --

4 MR. OLSON: Andy, can we go off the record
5 for one second?

6 MR. LACOUR: In a minute.

7 MR. OLSON: Okay.

8 Q. I didn't know if you had had a chance, for
9 instance, before today to go and look for them,
10 to be sure that were produced. You just haven't
11 had that opportunity before today?

12 A. We had produced all documents that were
13 requested of us, to our knowledge. To the
14 extent that anything wasn't produced, it either
15 wasn't available or we were unable to locate
16 it.

17 Q. Okay. All right. Because this, just so you
18 know, this list, this list is a follow-up list
19 of things that, once I went through everything,
20 I hadn't found, so I asked for it. But, you
21 hadn't had an opportunity to figure out if they
22 were produced or not before today?

23 A. Correct.

24 Q. Okay. Fair enough. All right. And then, the
25 other thing is, there's a list of topics, and

1 if you could just read that to yourself. Have
2 you seen it for today?

3 A. No.

4 Q. Okay. Well, take a look at it first.

5 A. All right.

6 Q. Are you the person best suited that's connected
7 with these various entities to answer questions
8 on these subjects that are set forth here on
9 Attachment A?

10 A. Yes.

11 Q. Okay. Great. I just wanted to make sure. If
12 there's somebody else, as we go along, if we're
13 at one of these particular topics where I'm
14 asking you about a particular subject and
15 there's somebody else that knows more than you,
16 if you would, just simply identify them for me
17 and tell me why they know more than you. It
18 might be obvious, but if you can just identify
19 them, then we'll move on past that. Okay?

20 A. Yes.

21 Q. Thank you. Okay. So, where do you reside?

22 A. Mount Pleasant, South Carolina.

23 Q. Okay. And are married?

24 A. Yes.

25 Q. Kids?

1 A. No.

2 Q. No. All right. Tell me your educational
3 background, please, sir.

4 A. I hold a Bachelor of Arts from Columbia
5 University in classical studies, I also
6 attended the Presidents and Key Executives MBA
7 program at Pepperdine University, and the Juris
8 Doctorate program at the Charleston School of
9 Law.

10 Q. Pepperdine MBA. You said Charleston Law?

11 A. Yes.

12 Q. Did you earn all three degrees?

13 A. No.

14 Q. The BA?

15 A. Yes.

16 Q. And the MBA?

17 A. No.

18 Q. And the JD?

19 A. No.

20 Q. How long were you at Charleston Law?

21 A. Approximately one year.

22 Q. Okay. You got the hard part behind you.

23 A. I don't understand the question.

24 Q. If you finished the first year, the hard part
25 is behind you.

1 A. I wouldn't --

2 Q. The next two years are usually easier.

3 A. I wouldn't be in a position to know what the
4 second or third year entail.

5 Q. Yes. Okay. Fair enough. So, where were you
6 raised?

7 A. I was born in New York City. I graduated high
8 school in Westport, Connecticut.

9 Q. Before you became involved with Church's
10 Chicken franchises, were you involved with
11 other franchise type operations?

12 A. No.

13 Q. What was your work history before Church's
14 involvement?

15 A. On the advise of counsel, I invoke my Fifth
16 Amendment right and respectfully decline to
17 answer your question.

18 Q. Okay. Usually somebody only takes the Fifth
19 Amendment when they are currently under
20 indictment or somehow subject to criminal
21 sanction.

22 MR. OLSON: Object.

23 Q. So, tell me what's going on in your life that
24 makes you believe you have a Fifth Amendment
25 right.

1 MR. OLSON: There is a clear objection.

2 A. I've already asserted my right. I'm not going
3 to provide any further information.

4 Q. Okay.

5 MR. OLSON: I'll just state for record that
6 I'm able to make a speaking objection in this
7 circumstance. He has stated, you know, his
8 constitutional right. I don't mean to get loud
9 about it. I mean, if we want to talk about it
10 off the record for a minute or whatever, it
11 might be easier.

12 MR. LACOUR: We can. Sure. I'm just trying
13 to find out what he did for a living, you know,
14 what he knows how to do before we get into
15 this.

16 MR. OLSON: Can we go off the record for
17 just a second?

18 MR. LACOUR: Sure.

19 (The deposition went off the record for a
20 brief period of time.)

21 Q. Trying to synthesize what I just learned, I
22 understand that for the period of time from
23 2011 --

24 MR. LACOUR: you said to --

25 MR. OLSON: To 14, 2014 would be sort of

1 pertinent.

2 MR. LACOUR: Okay.

3 Q. So, you've been advised not to discuss your
4 past employment for a certain time, and that's
5 fine if you want to not tell me about that. Let
6 me just ask you this, during that time frame,
7 were you operating franchise operations,
8 restaurants?

9 A. No.

10 Q. Okay. So, 2011 to 2014, you are not operating
11 any restaurants. That's fine. So, let me, just
12 give me a minute and I'll work around this. And
13 so, but in or about 2014 was your first
14 introduction to franchise restaurant
15 operations?

16 A. Yes.

17 Q. This was November, I think?

18 A. Yes.

19 Q. Got you. Fair enough. And it was Church's, that
20 was your first franchise restaurant group that
21 you started operating, or was it something
22 before Church's?

23 A. Yes.

24 Q. Okay.

25 A. Church's was the first franchise restaurant

1 group that I was involved in.

2 Q. Got it. Today, do you have involvement with
3 other franchises than Church's?

4 A. No.

5 Q. Okay. All right. And in the answers to
6 interrogatories we received, there's an answer
7 to interrogatory number two that says you paid
8 no money, no value for the leases on the six
9 restaurants involved in the suit. Can you
10 explain to me how that came to be?

11 A. On behalf of Steeple Dorchester Ltd., Steeple
12 Main Columbia Ltd., Steeple Two Notch Ltd.,
13 Steeple Chestnut Ltd, Steeple West Shockley
14 Ltd., and Steeple South Pleasantburg Ltd., the
15 leases for the subject properties were acquired
16 via assignment in conjunction with State
17 Acquisitions' purchase of certain operating
18 businesses.

19 Q. Okay. So, State Acquisitions acquired the
20 business?

21 A. State Acquisitions and the various Steeple
22 subsidiaries acquired, collectively acquired
23 numerous business operations.

24 Q. And the Steeple entities -- can we call them
25 the Steeple entities so you don't have to keep

1 naming --

2 A. Without objection.

3 Q. Yes. Thank you. So, the Steeple entities then,
4 what, acquired the leasehold on the properties?

5 A. Yes.

6 Q. And State Acquisitions acquired the business
7 and the business assets?

8 A. No.

9 Q. Okay. Explain how that worked.

10 A. Each Steeple entity acquired the business
11 assets of each location.

12 Q. Okay.

13 A. State Acquisitions is the parent company for
14 each of the Steeple entities and acquired
15 certain franchise rights in addition to each
16 individual location. For example, Steeple
17 Chestnut Ltd., I believe, is in Orangeburg, and
18 it acquired the Orangeburg location assets, and
19 it acquired the Orangeburg location franchise
20 agreement.

21 Q. Okay.

22 A. It acquired the rights to the Orangeburg lease.
23 State Acquisitions, as its parent company,
24 acquired certain other franchise assets,
25 engaged in the financing of the acquisition as

1 the guarantor.

2 Q. Okay.

3 A. State Acquisitions is also a guarantor party to
4 each of the leases which were acquired on
5 assignment.

6 Q. Sure. Okay. So, you're saying State acquired
7 the franchise rights?

8 A. Certain franchise rights.

9 Q. Okay. Well, did Steeple have some franchise
10 rights, as well?

11 A. Yes.

12 Q. Okay. Fair enough. So, the franchise is going
13 to involve both entities at each location,
14 correct?

15 A. I don't understand the question.

16 Q. Any issues related to the franchise agreement
17 could involve both State Acquisitions and/or
18 the applicable Steeple entity?

19 A. Depending upon the issue, yes.

20 Q. That's what I'm getting at. And so, any lease
21 issues are going to involve the Steeple entity?

22 A. And potentially State Acquisitions. State
23 Acquisitions is a guarantor.

24 Q. Okay. Now, I think I get it. So, at the time
25 that the Steeple entities acquired the

1 locations at issue in this case, there were
2 leases executed, and I've got about six lease
3 agreements from the various counties. Do those
4 appear to be the assignment of lessee's
5 interests executed between -- let me see one of
6 them while you're looking at that one. They
7 appear to be identical, but it looks to be an
8 assignment of lessee's interest from Churpeyes
9 II, that's C-H-U-R-P-E-Y-E-S, Roman numeral
10 two, Inc., to your various Steeple entities.
11 There's six of them, one for each location?

12 A. Upon cursory introduction, I have no reason to
13 doubt the documents.

14 Q. Okay.

15 MR. LACOUR: Let's mark these collectively
16 as Exhibit Two.

17 (ASSIGNMENTS OF LESSEE'S INTEREST IN LEASE
18 AGREEMENT MARKED AS PLAINTIFF'S EXHIBIT NO. 2
19 FOR IDENTIFICATION.)

20 MR. LACOUR: And since you've got, while I'm
21 thinking about this, since we've got
22 depositions coming in tomorrow, Clay, we'll
23 probably impose upon Jay to keep these original
24 so you'll have them all if you need them
25 tomorrow.

1 MR. OLSON: That's fine. And tomorrow, we'll
2 start with number whatever.

3 MR. LACOUR: Yeah, or whatever. Yeah, we'll
4 keep going tomorrow, but so just so you know,
5 I'll be providing exhibits to you after this is
6 over with, as opposed to you having them all
7 because we're going to need them tomorrow.

8 Q. So, at the time these leases were signed and,
9 excuse me, these assignments of leases were
10 signed in November of 2014, do you know why
11 these assignments were not recorded?

12 A. No.

13 (ASSIGNMENT, ASSUMPTION, CONSENT AND LEASE
14 MODIFICATION AGREEMENTS MARKED AS PLAINTIFF'S
15 EXHIBIT NO. 3 FOR IDENTIFICATION.)

16 Q. Okay. Also produced was a series of assignment,
17 assumption, and lease modification agreements.
18 Now, we have six assignments, one for each of
19 the locations where we worked, and for some
20 reason, we only have three of these additional
21 documents. Can you look at these and tell me,
22 do you remember executing these, and if so,
23 what purpose did they serve? The only thing,
24 and I'll just suggest to you, the only thing I
25 see different is these come up and have the

1 landlord's agreement to the assignment and a
2 guarantee, which you pointed out, from State
3 Acquisitions, is the only thing I see. But, it
4 looks like we're accomplishing about the same
5 thing, but this time, with the approval, if you
6 will, of the ARC USA people.

7 MR. OLSON: Object to the form of the
8 question.

9 Q. So, can you tell me what the purpose of these
10 was?

11 A. I cannot. Were I to speculate, I would say that
12 the assignment of lessee's interest is a
13 bilateral agreement between the assignor and
14 the assignee.

15 Q. Uh-huh.

16 A. The assignment assumption, consent, and lease
17 modification is an agreement between all of the
18 parties.

19 Q. Yes.

20 A. And the landlord, the assignor, and the
21 assignee.

22 Q. Got you.

23 A. Whereas, the other agreement is bilateral.

24 Q. In Exhibit Three, we're bringing the landlord
25 in consenting to or agreeing to that transfer?

1 A. Correct.

2 Q. Can you tell me why I only have three out of
3 six?

4 A. I cannot.

5 Q. Okay. All right. That's one of the things I was
6 missing. I didn't understand why I had six. I
7 could find six assignments. Okay. So, both of
8 these assignment agreements are in November of
9 2014. So, then did you operate these six
10 locations from November of 2014 until summer of
11 2017 when all these events we are fixing to get
12 to occurred?

13 A. Yes. Each Steeple entity would have operated
14 each location and State Acquisitions, as the
15 parent company of the entities, would have
16 operated them to the extent that it was the
17 parent. Hamilton Management Services Company is
18 a management services company which, for fees,
19 provided certain management services ancillary
20 to the operation of the business.

21 Q. Got you. And so, while we're there, one of the
22 things I asked about was, were there any
23 written management services agreements
24 documenting what Hamilton was doing for each
25 Steeple entity?

1 A. No.

2 Q. Okay. So, can you just tell me, in your own
3 words, the type of services Hamilton provided
4 for the Steeple entities?

5 A. Management services.

6 Q. Okay. Good. What falls into that category, a
7 little more specifically?

8 A. Hamilton Management Services Company was
9 contracted by State Acquisitions, on behalf of
10 the Steeple subsidiaries, to provide certain
11 services related to the administrative function
12 of the entities. For example, Hamilton
13 Management Services Company provided all of the
14 accounting services to State Acquisitions and
15 all of the Steeple subsidiaries.

16 Q. Okay.

17 A. Hamilton Management Services Company contracted
18 all of the third party vendors on behalf of the
19 various Steeple entities. It procured bids, it
20 arranged contracts, it provided all the payment
21 and billing services on behalf of the entity,
22 for fees.

23 Q. Got you. Okay.

24 A. Hamilton Management Services Company received a
25 fee for its services that was set with State

1 Acquisitions covering all of these
2 subsidiaries, in aggregate.

3 Q. Okay. All right. So, just to kind of round out,
4 is Hamilton, Hamilton is a Delaware
5 Corporation?

6 A. Yes.

7 Q. And are you the only shareholder or stockholder
8 or are there others?

9 A. I'm not a shareholder of Hamilton Management
10 Services Company.

11 Q. Not. Okay. Who are the shareholders,
12 stockholders?

13 A. Hamilton Management Services Company is owned
14 by Continuum Fiduciary Management, LLC.

15 Q. It's a corporation. So, it issues stocks, but
16 it's owned by Continuum?

17 A. A limited liability company.

18 Q. An LLC. Okay. And so, does Hamilton have
19 officers?

20 A. I'm currently the only officer at Hamilton.

21 Q. Okay. So, whatever Hamilton needs to cause to
22 happen, you're the individual that can sign the
23 papers or cause it to happen?

24 A. Currently, I am the only officer. However, over
25 the course of Hamilton's history, there have

1 been numerous officers.

2 Q. Oh, sure. I understand. At the time, at the
3 time we're going to be looking at, 2017, summer
4 and fall of 2017, were you the only officer
5 then or were there others?

6 A. Depending upon the time. I would require some
7 more specificity, as there were arrivals and
8 departures of other officers during the course
9 of 2017.

10 Q. Okay. Well, we'll pick that up as we go, then.
11 And does Hamilton have an address?

12 A. Hamilton has a post office box currently, PO
13 Box 22245.

14 Q. Does it have a physical location?

15 A. Not currently.

16 Q. No. But, would it then be operating out of your
17 home, technically?

18 A. It uses its post office box.

19 Q. Just the post office box.

20 MR. OLSON: Object to the form of that last
21 question.

22 Q. And a phone number?

23 A. (843) 300-1985.

24 Q. Okay. Is that a landline?

25 A. Yes.

1 Q. Okay. And so, then the Steeple entities, are
2 they still operating?

3 A. I don't understand the question.

4 Q. The Steeple entities, are they still operating
5 or are they shut down?

6 MR. OLSON: Object to the form.

7 A. The entities currently exist.

8 Q. Okay. Are they doing business?

9 A. Yes.

10 Q. Okay. And do they have a managing member or
11 members?

12 A. They are corporations.

13 Q. The Steeple entities are Ltd., Limited.

14 A. With respect, I promise you they are
15 corporations.

16 Q. They are all corporations, though?

17 A. They're all Delaware corporations that are
18 foreign registered, neither South Carolina or
19 Georgia.

20 Q. Okay. So, do these corporations have officers?

21 A. Yes.

22 Q. And are you the only officer for them or are
23 there other officers?

24 A. Currently, yes. I am, I serve as an officer at
25 the Steeple entities, by contract, from

1 Hamilton Management Services Company.

2 Q. Sure. Do they have addresses different from
3 Hamilton?

4 A. No, not currently.

5 Q. Got you. Phone numbers different from Hamilton?

6 A. Not currently.

7 Q. Got you. I didn't ask you about employees. Are
8 you the only employee of Hamilton or are there
9 other employees?

10 A. Currently, yes.

11 Q. Okay. How many employees at Hamilton?

12 A. Currently, I am the only employee.

13 Q. Oh, only one. Sorry. The same question with the
14 Steeple entities.

15 A. I'm not employed by the Steeple entities.

16 Q. Correct. Are there other employees --

17 A. Not currently.

18 Q. -- of any Steeple entity --

19 A. Not currently.

20 Q. -- in this litigation?

21 A. Not currently.

22 Q. Okay. And then, now State Acquisitions, only so
23 I can understand how this all fits together,
24 it's also a Delaware company, but it's an LLC?

25 A. That's correct.

1 Q. And are you the managing member at State?

2 A. No.

3 Q. No. Okay. Who is?

4 A. State does not have a managing member. State
5 Acquisitions does not have a managing member.

6 Q. Okay. How does it function?

7 A. State Acquisitions has a manager, which is
8 Hamilton Management Services Company.

9 Q. Okay. Now, does State Acquisitions have a
10 physical location?

11 A. No.

12 Q. Does it have a phone different from the one you
13 already identified?

14 A. No.

15 Q. Does it have employees?

16 A. No.

17 Q. Okay.

18 A. Not currently.

19 Q. Okay. It has in the past, but not at the
20 present?

21 A. That's correct.

22 Q. Okay. And so, what's Charleston Trading?

23 A. Charleston Trading is the parent company of
24 State Acquisitions.

25 Q. Okay. Is Charleston Trading also a Delaware --

1 A. No.

2 Q. -- company, corporation?

3 A. No.

4 Q. Is it domestic?

5 A. It's not a Delaware corporation.

6 Q. It's Delaware?

7 A. It is not a Delaware corporation.

8 Q. Okay. Where is it organized?

9 A. Wyoming.

10 Q. Okay. And what does Charleston Trading --
11 you're saying it is the parent company over
12 State Acquisitions?

13 A. Yes.

14 Q. And so, how is it organized, Charleston
15 Trading, is it organized as an LLC?

16 A. It is a limited liability company.

17 Q. Okay. And does it have a managing member?

18 A. No.

19 Q. Or partner?

20 A. No.

21 Q. Okay. So, who operates or acts for Charleston
22 Training?

23 A. Hamilton Management Services Company.

24 Q. So, if Hamilton is the manager at the locations
25 where each of the Steeples entities were

1 operating and Hamilton manages or acts for
2 Charleston Trading, which controls State
3 Acquisitions, then Hamilton can effectively act
4 for any of the entities that we've been
5 discussing?

6 A. Pursuant to its management services agreement.

7 Q. Yeah. All within the bounds of whatever is --
8 I'm not going to get into all the details, but
9 that's how it set up, so that Hamilton --

10 A. Hamilton Management Services Company has
11 limited authority to act on behalf of the
12 Steeple entities, State Acquisitions, and
13 Charleston Trading.

14 Q. Got you. All right. Okay. So, between these
15 various entities, there are certain payments
16 due to Church's on a regular basis, be it
17 weekly, monthly, or annually under the
18 franchise agreements?

19 A. No.

20 Q. No. Okay. Were there?

21 A. Yes.

22 Q. Okay. And so, can you just identify to me the
23 nature -- I don't need specifics. I'm trying to
24 understand what types of payments that were
25 required to be made to the franchisor, was it

1 percentage of sales, for instance?

2 (The deposition went off the record for a
3 brief period of time.)

4 Q. Like for instance, if you could just tell me,
5 there's two types, there is this and there is
6 that that you have to pay. It might be more. I
7 don't know.

8 A. Generically, each Steeple entity was
9 responsible for a payment to Cajun Operating
10 Company, d/b/a Church's Chicken, as a royalty
11 payment under the franchise agreement in the
12 amount of approximately 5% of the gross sales
13 of each location on a weekly basis. Similarly,
14 each Steeple location under the franchise
15 agreement, generically, was required to
16 contribute approximately 5% of its gross sales
17 to a marketing fund.

18 Q. Okay.

19 A. There were other payments that were made by the
20 Steeple entities and State Acquisitions to
21 Church's Chicken, pursuant to the franchise
22 agreement and other agreements.

23 Q. Okay.

24 A. But, generically, the major --

25 Q. The two big ones.

1 A. I'm not prepared to speculate as to size, but
2 presumably.

3 Q. Okay. So, was there other, was there a debt
4 contribution that was being paid by any of the
5 Steeple entities to the franchisor?

6 A. Yes.

7 Q. Okay. And did that stem from the acquisition?

8 A. No.

9 Q. What did that debt arise from?

10 A. A subsequent agreement between the franchisor
11 the various Steeple entities and State
12 Acquisitions.

13 Q. Okay. Are you saying at the point in time that
14 the forbearance agreement was entered into that
15 there was an arrangement made to try and work
16 off some of the debt?

17 A. Which forbearance agreement? Sorry.

18 Q. The only one I know about is the one produced
19 of May 23rd, 2017.

20 A. May I take a look?

21 Q. Yeah. You can look at it.

22 A. Thank you.

23 Q. I may be jumping ahead. I'm just trying to ask,
24 you said there was some debt as a result of an
25 agreement, and I'm wondering if that's the

1 forbearance agreement --

2 A. The forbearance agreement appears to -- sorry.

3 Q. I'm sorry. Let me finish the question. I was
4 wondering whether the forbearance agreement
5 that I placed in front of you was the point in
6 time where there was some accumulated debt that
7 needed to be worked off?

8 A. Approximately.

9 Q. Got you. All right. So, prior to the
10 forbearance agreement, there may not have been
11 any debt category, but after, there was?

12 A. In 2014, there was no debt between State
13 Acquisitions, the Steeple entities, and the
14 franchise. In 2015, there was no debt between
15 State Acquisitions, the Steeple entities, and
16 the franchise. In 2016, there was no debt
17 between State Acquisitions, the Steeple
18 entities, and the franchise. In 2017, there was
19 debt between State Acquisitions, the Steeple
20 entities, and the franchise.

21 Q. Can you tell me what the genesis of that debt
22 was, where did it arise, how did it arise?

23 A. Payments due to the franchise that were
24 refinanced.

25 Q. So, there were payments coming due in 2017 that

1 an arrangement was made to postpone?

2 A. Yes.

3 Q. Or break them down, break them down
4 differently, somehow?

5 A. Otherwise, change, modify the terms of payment
6 of.

7 Q. Got you. Okay. Fair enough. And you sought that
8 arrangement, and they agreed to that
9 arrangement, for whatever reason, just to allow
10 things to continue?

11 A. I don't recall whether we sought the
12 arrangement or the arrangement was offered to
13 us.

14 Q. Okay.

15 A. The arrangement was mutually agreed to by the
16 parties.

17 Q. Okay. All right. So, beginning sometime in
18 2017, there was some amount of debt that was
19 being worked off, if you will, by the Steeple
20 entities and the --

21 A. I wish to amend my prior statement.

22 Q. Go ahead.

23 A. It is, upon reflection, it is conceivable that
24 there was debt due toward the end of 2016.

25 Q. Fair enough.

1 A. I don't wish to state exactly when. I'm
2 confident there was no debt in 2014 or 2015,
3 although the genesis of the debt may have been
4 the end of 2016, as opposed to 2017.

5 Q. Got you. Was there some particular event that
6 caused this debt to suddenly start to
7 accumulate where it hadn't been before, or was
8 it, can you just tell me what you recall about
9 why it occurred, why did the payments suddenly
10 become in arrears?

11 A. It was related to an overall decline in the
12 business.

13 Q. Okay. So, local market share, did somebody else
14 come in?

15 A. I don't recall which specific, that depending
16 upon each specific Steeple store, there could
17 be a confluence of events.

18 Q. I see. Okay. All right. Fair enough. So, for
19 whatever reason, the market got tighter or
20 competition got stronger or something happened,
21 and your business, you saw business decline at
22 some of these locations?

23 A. Yes.

24 Q. Okay. Fair enough.

25 A. Whether that was a cyclical decline or

1 idiosyncratic, I don't have that information
2 currently.

3 Q. Fair enough. And the next question was going to
4 be about Hamilton's arrangement with the
5 Steeple entities, and you said there was not a
6 written agreement, but there was an operating
7 agreement or understanding in place?

8 A. There was an agreement with State Acquisitions
9 which covered its subsidiaries.

10 Q. Got you. Okay. Was it in writing between -- I
11 might have missed or not asked the other
12 question properly. Was there a written
13 agreement between State Acquisitions and
14 Hamilton Management?

15 A. Yes.

16 Q. Okay. Has that been produced?

17 A. I don't know.

18 Q. Okay. So, tell me How Hamilton and State came
19 to hire Marsh in 2017, how did how did that
20 come about?

21 A. Hamilton did not hire State. The various
22 Steeple entities did. Hamilton --

23 Q. Okay. Wait a minute. You said Hamilton didn't
24 hire State.

25 A. I apologize.

1 Q. I know. I'm just going to catch you before you
2 get too far into it.

3 A. Thank you.

4 Q. So, yeah. So, the question is, whether it was
5 State or Hamilton, we'll look at the documents,
6 but how did one of those entities end up hiring
7 Marsh, how did that come about?

8 A. Marsh Waterproofing was initially introduced to
9 the Hamilton, State, Steeple collective group
10 via an introduction by the franchisor, Church's
11 Chicken.

12 Q. Church's. Which is the Cajun Operating people?

13 A. Church's has several entities. There's Cajun
14 Global, Cajun Operating. I'm not prepared to
15 specify which one collectively. They operate
16 d/b/a Church's Chicken.

17 Q. Okay. So, somebody at one of the Church's
18 entities --

19 A. Had a preexisting relationship with Marsh and
20 recommended --

21 Q. To you.

22 A. Actually, either recommended or required. I
23 don't recall whether it was a recommendation or
24 an outright requirement. The implication was
25 that Marsh was to be hired.

1 Q. Okay. Coming from the Cajun people?

2 A. Yes.

3 Q. Whichever entity.

4 A. Coming from the Church's Chicken franchisor, as
5 we understood it.

6 Q. Do you remember the individual that was making
7 that requirement or recommendation?

8 A. There were numerous individuals involved in the
9 conversation.

10 Q. Okay. Who might it have been, then? If you
11 don't remember which one, then --

12 A. I don't recall which, specifically. However, I
13 would be happy to provide a list of the
14 individuals who were involved in the
15 conversation.

16 Q. Well, we've got a list in your discovery.

17 A. Sure.

18 Q. So, let me run through it real quick. With
19 regard to the Cajun Group, we have Joe
20 Christina?

21 A. Yes.

22 Q. It says he's the CEO at Cajun Global.

23 A. My understanding is Joe is currently the CEO.
24 He was previously the senior vice-president of
25 franchise operations, depending upon what time

1 we're talking about.

2 Q. Sure.

3 A. His title may have changed.

4 Q. All right. So, do you have a recollection that
5 Mr. Christina --

6 A. Mr. Christina was involved in these
7 conversations.

8 Q. Okay. But, do you have a specific recollection
9 that he required you to use Marsh or could it
10 have been a recommendation?

11 A. It was certainly a requirement that we use an
12 approved contractor.

13 Q. Okay.

14 A. Marsh was one of the approved contractors.

15 Q. Fair enough.

16 A. And I believe it was recommended that Marsh, of
17 the approved contractors, be the one from the
18 approved list. I do not recall how many were on
19 the list or the circumstances.

20 Q. A list, you believe, existed?

21 A. Yes.

22 Q. Okay. So, were you provided that list?

23 A. I don't know that I was provided the list.

24 However, someone in the organization was likely
25 provided a list.

1 Q. Okay. And which organization?

2 A. State, Steeple, or Hamilton.

3 Q. Okay.

4 A. Depending on where it was going.

5 Q. All right. Did you ever review the list or did
6 somebody else make the choice as to which --

7 A. I believe the only choice that was presented to
8 me from the franchise was Marsh.

9 Q. Okay. And do you know why that was?

10 A. I do not. My understanding is that Church's had
11 a preexisting relationship with Marsh and had
12 worked with Marsh on numerous other Church's
13 properties.

14 Q. Okay. Do you know if any of the other folks on
15 the list had any experience with this repair?

16 A. I do not.

17 Q. All right. And you don't recall the nature of
18 your discussions with whoever in your
19 organizations was making that choice and
20 contacting contractors?

21 A. We were advised that this was a, that this was
22 a requirement by the franchise of some urgency.

23 Q. Yes. Who in your organization was handling that
24 urgent matter?

25 A. It was being handled, depending upon the time

1 frame, by Rikki Vaughn, the president of
2 operations.

3 Q. Anybody else?

4 A. It was also being attended to by Frank Taylor,
5 who was a consultant that we brought in for
6 overseeing business operations.

7 Q. So, he wasn't an employee, but he was an
8 outside consultant?

9 A. Correct. And he was intimately involved.

10 Q. And Rikki Vaughan, though, was an employee?

11 A. Yes.

12 Q. Anybody else involved?

13 A. Depending upon the time, Eric Dunham, who was
14 previously our head of facilities.

15 Q. Okay. All right. Another person is Dusty
16 Profumo?

17 A. Yes.

18 Q. Was he involved in the conversation about --

19 A. Yes.

20 Q. -- which, the specific part about which
21 contractor to hire?

22 A. I don't recall.

23 Q. How about Craig Prusher, the general counsel?

24 A. I don't recall.

25 Q. Jay Allen?

1 A. Yes.

2 Q. He was. Do you have any recollection of your
3 conversations with Mr. Allen?

4 A. I believe Mr. Allen recommended Marsh, and my
5 recollection is that he was going to be
6 involved in coordinating the engagement of
7 Marsh.

8 Q. Okay. And then, was he, or you don't know?

9 A. That's my recollection.

10 Q. Okay. Wayne Stubbs?

11 A. Was also involved with Mr. Allen.

12 Q. Okay.

13 A. His involvement and Mr. Allen's involvement are
14 currently indistinguishable to me. They were
15 both intimately involved.

16 Q. Okay. They were both in the construction
17 division or whatever they call it?

18 A. At Church's, yes.

19 Q. At Church's. And then, Janet Santen at First
20 Financial Bank?

21 A. She was involved in the discussion and agreed
22 to the transaction.

23 Q. Okay.

24 A. As was Glenn Kindred of VEREIT, the landlord.

25 Q. Okay. Wait a minute.

1 A. Sure.

2 Q. Okay. Glenn Kindred and Debbie Hester --

3 A. Yes.

4 Q. -- are VEREIT people?

5 A. Yes.

6 Q. Okay. So, if there was a conversation going on
7 between folks related to the landlord and folks
8 related to the franchisor and your people --

9 A. And the lender.

10 Q. And the lender, yeah. So, what did you
11 understand everybody ended up agreeing that was
12 going to happen? Before anything happened, what
13 was the understanding about how it was supposed
14 to happen?

15 A. Per the forbearance agreement, I refer you to
16 section 3.5 of the forbearance agreement, which
17 indicates that an engineering report would be
18 undertaken no later than, I believe, June 15th,
19 2017.

20 Q. Okay. Since we're going to refer to this, let's
21 go ahead and mark this as -- where are we?

22 A. Three?

23 Q. Four.

24 A. Oh, sorry.

25 Q. Yeah. Three is over there.

1 (FORBEARANCE AGREEMENT MARKED AS
2 PLAINTIFF'S EXHIBIT NO. 4 FOR IDENTIFICATION.)

3 Q. Good enough. But, thanks for your help. It'll
4 take all three of us after awhile to keep up.

5 A. Section 3.5.

6 Q. Yeah. Okay.

7 A. So, 3.5 says we have to hire an engineer.

8 Q. Okay.

9 A. Section 3.6 says the engineer has to tell us
10 what's going on, and 3.5(c) says that we have
11 to meet the engineer's recommendations.

12 Q. Okay. So, as I'm looking at page three of
13 Exhibit Four here, under 3.5(a), it says, lease
14 parties shall deliver to the landlord
15 engineering reports. Now, the lease parties was
16 everybody on your side, the Steeple entities
17 and, because of the guarantees, both State and
18 Hamilton, right?

19 A. I don't believe Hamilton is a lease party.

20 Q. Okay.

21 A. Hamilton was not a party to the leases, so I
22 don't believe it's a lease party.

23 Q. Fair enough. So, then the reports had to be
24 obtained by --

25 A. The lease parties.

1 Q. -- State and --

2 A. The Steeple entries.

3 Q. -- the Steeple entries and given to the
4 landlord?

5 A. That's right.

6 Q. Okay. But, you didn't have to give them to, you
7 didn't have to give them to Church's, but you
8 had to give them to the landlord?

9 A. That was covered under a separate agreement
10 between the franchise and --

11 Q. All right. Fair enough. And then, follow-up
12 confirmation that it got done had to be
13 provided, and then -- Okay. So, it looks like
14 the structural engineer had to be paid for by
15 the lease parties, correct?

16 A. Yes.

17 Q. Okay. And it doesn't specifically say he's got
18 to pay for the repairs?

19 A. I believe it says the lease parties or another
20 third party. I refer you to 3.5(c). It only
21 indicates that the landlord is not required to
22 pay for it.

23 Q. Yeah. That's all I see is the landlord can't be
24 compelled to pay for it. It doesn't really
25 specify who is going to pay for it, does it?

1 A. That's correct.

2 Q. Okay. The engineer getting paid is specifically
3 spelled out, but the repairs themselves aren't
4 mentioned, as I read this, as far as your
5 agreement with --

6 A. I agree.

7 Q. -- the landlord and --

8 A. I agree that the landlord could not be
9 compelled to make the payment. However, the
10 agreement with the landlord did not require the
11 lease party to make the payment, only that the
12 repairs be made.

13 Q. Right.

14 A. So, my understanding of the agreement is that
15 any third party could have provided payment.

16 Q. Just don't ask the landlord to write the check;
17 that was the deal?

18 A. Correct.

19 Q. Okay. All right.

20 (The deposition went off the record for a
21 brief period of time.)

22 Q. So, I'm going to try and move through this
23 stuff faster because I'm not sure how much
24 really this has to do with anything, but I'm
25 just trying to find out. There's an email here

1 from Eric Criswell to you, copied to some of
2 these folks you've mentioned, like Wayne
3 Stubbs, and it's talking about the Orangeburg
4 building and the Sumter store.

5 A. Yes.

6 Q. I'm trying to read upside down.

7 A. Oh, I'm sorry.

8 Q. No. That's okay. I'm pretty good at it, if I
9 can get close enough. You can read it while I'm
10 thinking about my question.

11 A. I do recall the email. We can start there.

12 Q. What's going on here?

13 A. Sure. This email from Eric Criswell from the
14 engineering firm is advising that, based on
15 their observation, two of the stores need to be
16 closed immediately until structural repairs
17 could be made. My understanding is that one of
18 the stores was already closed.

19 Q. Okay.

20 A. And so, only one other would actually have to
21 be closed, and the remaining stores could
22 remain open while the repair was completed.

23 Q. All right. So, these were just the two
24 locations that had the most serious issues that
25 need to be addressed?

1 A. Yes.

2 Q. Okay.

3 A. One of which, again, was already closed.

4 Q. Yes. The safety concerns there, there were no
5 safety concerns where it was closed, and you
6 had time to go in and make the repair?

7 A. Correct.

8 Q. But, that's going to impair your ability to
9 make all the payments that are coming due, if
10 you've got a store closed?

11 A. Potentially.

12 Q. When did that close, did it close in late 16?

13 A. Which store?

14 Q. Well, I don't know. Which one was already
15 closed?

16 A. Orangeburg was already closed.

17 Q. Do you remember when it closed?

18 A. I do not. However, I remember the circumstances
19 regarding its closure.

20 Q. What were they?

21 A. The store had a fire.

22 Q. Oh, okay.

23 A. So, Orangeburg was covered by business
24 interruption insurance during its period of
25 closure, as such, per your question, it would,

1 it's closure would not --

2 Q. Yeah. I'm just thinking back to whether that
3 would have impaired your ability to make
4 payments?

5 A. I would not.

6 Q. But, it didn't because you had good coverage?

7 A. Yes, sir. We also similarly had business
8 interruption insurance for which we reviewed
9 the claim for the other store that was being
10 closed.

11 Q. Got you. All right. So then, we get to July of
12 2017. These are roughly in chronological order.
13 The best way I know is to just walk through
14 things. If you need anything that we haven't
15 marked as an exhibit, you can ask for it. So,
16 the next thing I've got here is a proposal from
17 Marsh; do you recognize that?

18 A. Yes.

19 Q. Okay. Does your signature appear on the second
20 page?

21 A. Yes.

22 Q. Okay. And so, when you signed that, who were
23 you signing on behalf of?

24 A. State Acquisitions, on behalf of its various
25 subsidiaries, the individual Steeple entities.

1 Q. Got you.

2 A. So, apologies. I was signing on behalf of
3 Hamilton Management Services Company, which was
4 the contracted manager of State Acquisitions in
5 the various subsidiaries.

6 Q. Yes. Okay. So, in your words, who do you
7 believe we had our agreement with?

8 A. Steeple Dorchester Ltd., Steeple Main Columbia
9 Ltd., Steeple Two --

10 Q. All the Steeple entities?

11 A. Well, the Steeple entities that are captioned.

12 Q. Okay.

13 A. There are 25 Steeple entities.

14 Q. Oh, there are?

15 A. Yes.

16 Q. So, the Steeple entities in the case are the
17 only ones we're going to ask you about here
18 today.

19 A. Correct.

20 Q. You don't need to go into the rest of them. So,
21 if there's 25 Steeple entities and we're only
22 here on five or six, did the other stores not
23 need repairs?

24 A. That's correct.

25 Q. Okay.

1 A. The engineers surveyed all that were presumed
2 to -- Some stores didn't have crawl spaces,
3 didn't get surveyed; some stores did have crawl
4 spaces, no issue; some stores got surveyed, had
5 crawl spaces, had issues; some stores had crawl
6 spaces, had issues, needed to be closed.

7 Q. That's what I figured. I didn't know the
8 extent. So, July 10th, the question was, when
9 you signed this on July 21st, you were signing
10 on behalf of State Acquisitions and the Steeple
11 entities?

12 A. I was signing on behalf of the Steeple
13 entities, yes.

14 Q. Okay. And in the proposal, how did you
15 understand, what is your understanding as to
16 whether water removal, trash and debris removal
17 was to be performed and by whom?

18 A. My understanding is that the crawl space must
19 be clean and free of standing water and all
20 plumbing and electrical must be repaired and
21 secured by others.

22 Q. Okay.

23 A. It was not part of the scope.

24 Q. Not part of the scope of whom?

25 A. The scope of work of Marsh Waterproofing.

1 Q. Okay.

2 A. Marsh Waterproofing indicates their scope of
3 work and then lists --

4 Q. Right. And then, the plumbing and electrical,
5 that was to be done by others?

6 A. To the extent that it was required.

7 Q. Yeah, if it was needed. Okay. Marsh was going
8 to place the foam material?

9 A. Marsh was going to remediate the crawl spaces.

10 Q. Yes, sir. Then, the specific scope stated in
11 that document is to place the foam material and
12 close the scuttle opening, pour concrete in the
13 scuttle opening, and everything else was by
14 others, is my question, I guess.

15 MR. OLSON: Object to the form.

16 A. As far as everything, I don't know about
17 everything else. I know that the crawl space
18 must be clean and free of standing water, and
19 any electrical and plumbing must be repaired
20 and secured by others.

21 Q. Right.

22 A. My understanding was everything else was to be
23 done by Marsh, related to the remediation. We
24 did not, we were not advised that we required
25 any other vendors, and we were told by Marsh

1 that this would solve the issue.

2 Q. "Apply Alchemy Polymers 430 foam to fill crawl
3 space, remove access door and fill with four
4 inches of concrete after completion." Was there
5 anything else that you understood Marsh was
6 supposed to do, other than what I just said?

7 A. Anything else required to remediate the crawl
8 space issues. My understanding is we --

9 Q. Where is that in here?

10 MR. OLSON: Object to the form.

11 A. It's basically -- you asked me for my
12 understanding.

13 Q. I did. But, where is it stated in there?

14 A. It's based on my conversation with Tim Marsh.

15 Q. Okay. Is it stated in the proposal of July 10th,
16 2017?

17 A. The proposal appears silent. The document
18 speaks for itself.

19 Q. All right.

20 MR. LACOUR: Let's mark this as the next
21 exhibit.

22 (PROPOSAL OF 7/10/19 MARKED AS PLAINTIFF'S
23 EXHIBIT NO. 5 FOR IDENTIFICATION.)

24 Q. All right. Now, that proposal has a provision
25 for the crew appearing, and in the event the

1 crew appears and the crawl space is not ready
2 for the work, what does it provide?

3 A. It provides if the crawl space is not prepared,
4 \$875 per day will be charged while we,
5 presumably Marsh Waterproofing, are waiting on
6 the electrical, plumbing, and cleaning to be
7 finished.

8 Q. Okay. And you had said those were things that
9 were to be provided by others?

10 A. To the extent required.

11 Q. Yeah.

12 A. To the extent not required, Marsh will be
13 providing all of the services related to the
14 remediation.

15 Q. Are we going to be providing anything other
16 than what I read, the installation of the foam
17 and the closing of the scuttle opening?

18 A. I don't know.

19 Q. Okay. And there's nothing in there that says
20 we're going to provide anything besides those
21 two things, is there?

22 A. No.

23 Q. Okay. And if you'll look at the document, both
24 pages, I just want to ask you, do you see
25 anything in that proposal anywhere that

1 mentions furnishing permits?

2 A. No. Nor does it specify that the permits were
3 required to be furnished as it specifies what
4 was otherwise required.

5 Q. Do you see anything in there that says Marsh is
6 going to do work on electrical, plumbing,
7 cleaning out trash, or removing water?

8 A. No.

9 Q. Do you see anything in that document that says
10 Marsh is providing scheduling or sequencing of
11 work of others?

12 A. In this document, no.

13 Q. Anything and there that says Marsh is going to
14 provide dumpsters or any removal services?

15 A. In this document, no.

16 Q. How about temporary facilities, in that
17 document?

18 A. No.

19 Q. Okay.

20 A. My understanding is that most of those were not
21 required.

22 Q. It's also your understanding that all that had
23 to be done before we arrived, isn't it?

24 A. I don't know that temporary dumpsters or
25 facilities were required at all for the

1 project.

2 Q. May not have been. Whatever was required had to
3 be accomplished before we arrived, according to
4 that proposal, didn't it?

5 A. Certain things had to be required in order for
6 Marsh to complete its construction work.

7 Q. Yeah. Certain stuff had to come before the foam
8 was installed, right?

9 MR. OLSON: Object to the form.

10 A. Yes.

11 Q. And the proposal lays that out?

12 A. It provides certain information regarding
13 exclusions, yes.

14 Q. Well, not only is it excluded from Marsh's
15 scope of work, but it tells you that those
16 things have to be completed before the foam can
17 be placed, right?

18 MR. OLSON: Object to the form.

19 A. Yes.

20 Q. And you didn't hear that the first time from
21 Marsh, did you?

22 A. I don't understand the question.

23 Q. Before you got this proposal, you had a stack
24 of engineering reports, one on every store,
25 didn't you?

1 A. Yes.

2 Q. And the engineers spelled out how the work was
3 to happen, didn't they?

4 A. No.

5 Q. Well, let's look at one.

6 A. Sure. Would you like my understanding?

7 Q. No, sir. I'm going to let you read one. I may
8 have to go get one. We'll take a break, and
9 I'll get you one. I don't want you to guess.

10 A. That's fine.

11 Q. Yeah. I need to go get one. Hang on a second.

12 A. Would you like to come back to it, or do you
13 want to go get it now?

14 Q. Oh, no. I think we need to talk about it now.
15 I'll be right back.

16 (The deposition went off the record for a
17 brief period of time.)

18 Q. All right. So, picking up where we left off, I
19 provided you a copy of the Davis Patrikios
20 Criswell engineering report for the Dorchester
21 Road store; is that correct?

22 A. Yes.

23 Q. And basically, did you look at these reports
24 back when you obtained them?

25 A. Yes.

1 Q. And so, if the stores were on a crawl space and
2 if they need a remediation, then the buildings
3 were all built essentially the same, those that
4 needed remediation, correct?

5 A. Similarly enough.

6 Q. At least the structural elements of the
7 building. And then, the reports all basically
8 read the same, did they not?

9 A. No.

10 Q. They did not. Okay. Why not?

11 A. Two of the reports read that the stores were in
12 critical condition and needed to be shut down
13 immediately prior to the repair. The other
14 reports did not indicate that.

15 Q. Okay. All right. So, these stores, the two that
16 you had to shut down immediately, we saw that
17 email earlier about Orangeburg and Sumter?

18 A. Correct.

19 Q. Okay. The other -- Sumter is not in the case,
20 so then the other five involved in this lawsuit
21 all read the same?

22 A. Similarly enough.

23 Q. In the recommendation section is where the
24 engineer spells out what he wants to happen in
25 order to achieve a sound structural foam

1 installation result?

2 A. The engineer provides a recommendation
3 following the general procedure.

4 Q. Uh-huh.

5 A. He specifically states the above-noted
6 procedures in a general recommendation and will
7 require additional engineering design
8 calculation, further observation, and
9 preparation of construction documents prior to
10 implementation, which is beyond the scope of
11 this inspection phase of work.

12 Q. Okay. And he recommends the following general
13 procedure to install the foam, and the first
14 thing is to get the water out, correct?

15 A. Yes, as a general procedure.

16 Q. And the second thing is to check sewer lines
17 and water lines, and a third thing -- he goes
18 right down the list, and the last thing on his
19 list is always to apply the foam, correct?

20 A. As his general procedure. For example, the
21 agreement, the engineer report says, it is our
22 understanding the Church's Chicken has used
23 this, being the foam solution, in the past with
24 other crawl spaces and achieve favorable
25 results. The Alchemy Polymers AP 430 has been

1 reviewed. In review of the specifications and
2 the compressive strength noted, it is adequate
3 to support the superstructure. However, my
4 understanding is that the foam was not the only
5 recommendation for ways of remediating. Based
6 on my conversation with Mr. Criswell, he
7 suggested that there were other potential
8 solutions.

9 Q. Right. But, the --

10 A. Church's favored this one.

11 Q. The other potential solutions aren't spelled
12 out in his reports, are they?

13 A. Correct. This report offers one alternative and
14 makes clear that it is one alternative.

15 Q. Exactly. And when he offers that one
16 alternative, he offers a list of things that
17 have to be done to prepare the space before the
18 foam is installed, does he not?

19 A. That's correct.

20 Q. Okay. And the last thing on this list is the
21 installation of the foam. So, that makes all
22 the other work preparatory, correct?

23 A. Presumably, it makes it outside the scope of
24 the foam.

25 Q. That wasn't the question. I'm just asking about

1 the order of the work. The engineer, and this
2 is how we got off on this subject --

3 A. The document speaks for itself.

4 Q. It does. But, doesn't the engineer spell out
5 the things he recommends for the procedure and
6 puts seven items in front of the installation
7 on the foam?

8 A. Yes. There are seven items in front of the
9 installation of the foam.

10 Q. The only question I asked earlier was, didn't
11 the engineer spell out the order of the work,
12 and that's how we got off on this tangent.

13 MR. OLSON: Object to the form.

14 Q. And you said he didn't.

15 A. He spelled out a path.

16 Q. Okay. He spelled out a path for the use of the
17 structural foam, did he not?

18 A. Yes, as a recommendation.

19 Q. I don't doubt that there's a million ways to
20 skin the cat. I don't care, though. What I'm
21 asking about is, didn't the engineer spell out
22 the order that the preparation had to occur
23 before the foam was installed?

24 A. It also states that all site water should be
25 diverted to prevent future water entry into the

1 crawl space, as an event subsequent to the
2 application of the foam, the second paragraph
3 after the list.

4 Q. Okay. Well, the recommended procedure has a
5 number of, a set of numbered paragraphs.

6 A. I understand that.

7 Q. Now, where are you talking about?

8 A. I'm talking about the paragraph after the set,
9 it says, for example, we recommend verifying
10 existing soil conditions with a local
11 geothermal technician engineer prior to
12 installation, all site water should be diverted
13 to prevent water entry into the crawl space,
14 the provision for a draining system should be
15 included for removal of any future water that
16 might infiltration into the crawl space.

17 Q. Wonderful. Now, none of that is in the scope of
18 work set forth in Exhibit Five, is it?

19 A. No.

20 Q. Okay. So, you had other contractors, though,
21 working on this remediation project, correct?

22 A. No.

23 Q. Okay. Well, who is Osiris Systems?

24 A. I wouldn't describe it as a contractor.

25 Q. That's neither hear nor there.

1 MR. OLSON: Object to the form.

2 Q. Who is Osiris Systems?

3 A. Osiris Systems is a maintenance company that
4 was contracted to provide services in
5 conjunction with this and other projects.

6 Q. Who hired Osiris Systems?

7 A. The Steeple entities.

8 Q. And what did the Steeple entities hire them to
9 do?

10 A. Provide the precondition work prior to the
11 contracting work being done by Marsh.

12 Q. Items one through seven on the report in front
13 of you?

14 A. No. No.

15 Q. No. You've got one through six. What have you
16 got? Pump out storm water is one; did Osiris do
17 that?

18 A. Yes.

19 Q. Inspect the sewer and water and make repairs,
20 as necessary; did Osiris do that?

21 A. No.

22 Q. Replacing cast iron or steel sewer lines, if
23 needed; did they look at those to see what they
24 were made of?

25 A. I don't believe.

1 Q. Okay. Pipe all floor drains to the sewer
2 collection?

3 A. I don't believe so.

4 Q. Check water and sewer lines for good working
5 conditions?

6 A. I don't believe so.

7 Q. Put all the electrical wires in conduit?

8 A. I don't know.

9 Q. Remove the debris and --

10 A. Yes.

11 Q. -- trash and hole pumps?

12 A. Yes. So, I believe they did two of the eight
13 things.

14 Q. All right. Was that because two or three of the
15 eight things was all that was necessary --

16 A. No, sir.

17 Q. -- in these locations?

18 A. No, sir.

19 Q. Okay. Explain that to me.

20 A. Roto-Rooter was contracted to do the piping
21 work at some of the locations.

22 Q. Okay.

23 A. Roto-Rooter is a licensed contractor.

24 Q. Why didn't we get a Roto-Rooter quote or
25 invoice or anything about Roto-Rooter?

1 A. I don't know.

2 Q. You say you did have Roto-Rooter on the jobs?

3 A. Yes, sir.

4 Q. But, you didn't produce any documents from
5 Roto-Rooter?

6 A. I can't speak to what was produced. I haven't
7 had a chance to review your production set.

8 Q. Yeah. This is all I've got, this quotation here
9 (indicating). That quote from Osiris Systems is
10 what I got, the only other entity hired to work
11 on this work, on this project, this remediation
12 project.

13 A. I believe this quote was not, we did not agree
14 to these terms.

15 Q. That's the only one you produced.

16 A. Okay.

17 Q. Have you got a different one?

18 A. I don't know if an additional quote was
19 written, but the services were not contracted.
20 Not all these services were contracted with
21 Osiris.

22 Q. Yeah. Let's mark this first, so we know what
23 we're talking about.

24 (OSIRIS SYSTEMS QUOTE OF 7/12/17 MARKED AS
25 PLAINTIFF'S EXHIBIT NO. 6 FOR IDENTIFICATION.)

1 Q. All right. So, Exhibit Six is the only other
2 invoice that you produced to me, and it's from
3 Osiris. If you look at it, it does lay out some
4 of the preparatory work in the engineering
5 report as being the Osiris scope; is that
6 correct?

7 A. Yes.

8 Q. Maybe not all of it, but some of it?

9 A. Yes.

10 Q. And so, you're saying that Six may not be the
11 only proposal you got from Osiris?

12 A. Correct. And there may be other proposals.

13 Q. Fair enough.

14 A. Written or otherwise.

15 Q. Well, apparently there's one to Roto-Rooter,
16 but we don't have that one, either.

17 A. There may not be a proposal. Roto-Rooter may
18 have just billed it.

19 Q. Okay. It could be just an invoice?

20 A. I don't have that information.

21 Q. Got you. Well, did Osiris get paid for doing
22 some work on these buildings before Marsh
23 appeared to install the foam?

24 MR. OLSON: Object to the form.

25 A. I don't believe they got paid prior to Marsh

1 beginning to do the work. I believe --

2 Q. I don't know that that's what I asked you. I
3 said, did they appear to do some work prior to
4 Marsh appearing to do its work?

5 A. Osiris appears to have done work prior to Marsh
6 doing their work.

7 Q. Okay. So, as far as you know, yes, Osiris came
8 to the jobs and did certain things and then,
9 when they were complete, Marsh appeared and did
10 its work?

11 A. Osiris and Marsh were in contact and
12 coordinated the schedule together.

13 Q. Yeah. All right.

14 A. My understanding is that Osiris was operating
15 on the pumping schedule, per Marsh's direction.

16 Q. Per Marsh's direction?

17 A. Yes.

18 Q. Marsh wasn't here, were they?

19 A. Marsh provided a schedule and worked with
20 Osiris to coordinate. There was a number of
21 communications between myself, Osiris, and Mr.
22 Marsh regarding the scheduling.

23 Q. And as you sit here now, it's your recollection
24 that Marsh provided schedule?

25 A. Yes.

1 Q. As opposed to your people?

2 A. That's correct. Marsh was going to be
3 scheduling when they could come out and when
4 they could schedule it.

5 Q. Before we go any farther, looking back to
6 Exhibit Five. Is there anything in Exhibit Five
7 that spells out grading or filling or mucking
8 of the soil by Marsh?

9 A. I believe the document is silent on grading,
10 filling, and mucking of the soil.

11 Q. Okay. Does it indicate Marsh is going to
12 perform any of the plumbing or electrical?

13 A. No.

14 Q. Does it indicate Marsh is going to make any
15 repairs to the steel joists or girders, any
16 welding work in there?

17 A. No.

18 Q. Any masonry repairs to block or brick piers or
19 stem walls?

20 A. Yes. The four inches of concrete would appear
21 to be.

22 Q. No. The question is, block or brick piers or
23 stem walls?

24 A. I'm not familiar with the distinction, so I'm
25 not qualified to answer the question.

1 Q. It's a vertical thing.

2 A. Well, again, if I'm not qualified to answer
3 that question, then I'm not going to be able
4 to. My understanding is that the concrete would
5 qualify as that, so if you're telling me it
6 doesn't --

7 Q. I'm getting to that. Do the words block or
8 brick appear in the --

9 A. The words block or brick do not appear.

10 Q. Okay. That's fair enough. Now, it does say
11 we're going to remove the door and close to
12 scuttle opening?

13 A. The word scuttle opening, it says, and fill
14 with four inches of concrete after completion.
15 It does not specify where or how.

16 Q. Okay. Is there anything in there about crack
17 repair in footings or slabs?

18 A. I don't know where the four inches of concrete
19 would go or to the extent that they may apply
20 to the footings or fillings, and without
21 sufficient information to determine that, it's
22 ambiguous.

23 Q. But, no crack repair?

24 A. I don't know, I don't know if the concrete
25 applies. I can't answer that question.

1 Q. Do you see anything in there indicating crack
2 repair?

3 A. It indicates that four inches of concrete will
4 be applied. I don't know if the four inches of
5 concrete would apply to crack repair or
6 something else. I don't have that information.

7 Q. Do you have any clue how these buildings were
8 constructed?

9 A. I do not.

10 Q. You've never been out there to look at one?

11 A. From a construction standpoint, no.

12 Q. Have you ever been out there and look at them
13 when any of this was going on?

14 A. I was not on-site during any of this.

15 Q. Did you ever read the reports that you got from
16 the engineers that showed photographs of all of
17 it?

18 A. I've already stated that I've read the reports.

19 Q. Then, why don't know what they're talking about
20 when they're talking about the access opening?

21 MR. OLSON: Object to the form.

22 Q. There is a photograph of it in every report.
23 We'll go back to the one you had.

24 MR. OLSON: Object to the form.

25 Q. At the top of page three, photo five, that is

1 the access opening.

2 A. Okay.

3 Q. It's in every report.

4 A. Agreed.

5 Q. The proposal, Exhibit Number Five, says to
6 remove the access door --

7 A. Yes.

8 Q. -- and to fill the opening with four inches of
9 concrete.

10 A. Due respect, it says, remove the access door
11 and fill with four inches of concrete. I don't
12 know if the concrete would go to the footings
13 or if it would go to the top. I am without
14 sufficient information to explain, in terms of
15 answering your question.

16 Q. Take a look at the picture.

17 A. I am without sufficient information to answer
18 your question as to where the concrete would be
19 applied. Your question was whether the concrete
20 would be related to the footings. I do not
21 know. I'm not an expert on this. I did not
22 inspect the work.

23 Q. I'm not asking about experts. I'm asking you,
24 have you set foot in any of the buildings after
25 the repairs were made?

1 A. No.

2 Q. None?

3 A. None.

4 Q. You don't own any buildings that were repaired?

5 MR. OLSON: Object to the form.

6 A. I don't own any buildings that were repaired.

7 That's correct.

8 Q. All the ones that were repaired, you no longer
9 control or own?

10 A. That's correct.

11 Q. Okay. All right. And you haven't been back,
12 after the fact, to look at the work that was
13 done?

14 A. I have not inspected any of the work that was
15 completed.

16 Q. All right. Did anybody employed by you inspect
17 the work to see if it was completed?

18 A. I don't know.

19 Q. Any of the Steeple entity employees, were they
20 in any of the stores?

21 A. Yes.

22 Q. During or after the repairs?

23 A. Yes.

24 Q. Okay. So, who, that worked for you, would have
25 known what happened?

1 A. Rikki Vaughn.

2 Q. Okay. Where's Rikki today?

3 A. I don't know.

4 Q. Okay. You don't know where he's working now?

5 A. He's a former employee no longer in our custody
6 or control.

7 Q. Right. But, you don't have a forwarding address
8 or anything for him, where you send his tax
9 records?

10 A. I don't. To the extent that we have any
11 information, it would have been produced.

12 Q. Well, you didn't produce anything on Rikki, so
13 I'm just asking if you know who in your
14 organization knows where Rikki's forwarding
15 address is?

16 A. I'd have to inquire.

17 Q. Who would you ask?

18 A. Mr. Vaughan. I'd have to look through our files
19 to see if we have a current forwarding address.
20 Mr. Vaughn was terminated in 2017.

21 Q. So, the answer is --

22 A. So, I don't know that we would have it.

23 Q. The first question was, who does know, and the
24 answer is you don't have any other employees,
25 so it's got to be you?

1 A. Sure.

2 Q. Okay. And then, where are you going to look?

3 MR. OLSON: Object to the form.

4 MR. LACOUR: What's wrong with the form of
5 the question?

6 MR. OLSON: You're asking him where he's
7 going to look?

8 MR. LACOUR: Yep. I'm asking him what
9 records he's going to look at. I'm entitled to
10 know. He says the record --

11 MR. OLSON: He hasn't said there are any
12 records.

13 MR. LACOUR: He said he was going to go
14 look.

15 A. I'm going to look through the documents we've
16 produced. My understanding is that if we were
17 asked for it, we would have provided it, and so
18 where I would look would be the documents we've
19 produced.

20 Q. No. That's not the question you were asked. The
21 question you were asking is, what record does
22 your organization have of Mr. Vaughn's current
23 address or forwarding address?

24 A. I don't know if we have a record of his current
25 address.

1 Q. Okay. Well, then you wouldn't be able to send
2 him his tax records following his termination,
3 would you?

4 MR. OLSON: Object to the form.

5 A. The record we would have post-termination may
6 not exist. We may have a record pre-termination
7 of his last known address.

8 Q. Uh-huh. So, where are you going to look, at
9 what record are you going to look --

10 A. I will consult, I would request the document
11 from our third party payroll provider to
12 provide me with a copy of that document. That's
13 not a record in our custody or control.

14 Q. Who is your third party payroll provider?

15 A. I don't recall.

16 Q. You don't know?

17 A. We've switched. We've had several payroll
18 providers. I'd have to find out which one
19 during the time in which Mr. Vaughn was
20 employed.

21 Q. Okay. So, you don't know who's got the record,
22 and you don't know who you can ask?

23 A. I believe I said I was going to ask the payroll
24 provider, to the extent that we're going to go
25 off the tax record.

1 Q. But, you can't ask your current payroll
2 provider, so you don't know who you're going to
3 ask, yet, do you?

4 A. No.

5 Q. Okay. So, if you don't understand about the
6 extent of the concrete repairs, we'll move past
7 that one. Does it set forth the price for the
8 work?

9 A. It sets forth a rate.

10 Q. Yes. Does it set forth the price of the work?

11 A. It sets forth the rate. It says price and then
12 price for multiple stores. There are two
13 different rates.

14 Q. Yes. And so, did they do multiple stores for
15 you?

16 A. Yes.

17 Q. Was it your understanding that the price for
18 the work was going to be the multiple store
19 location price?

20 A. Yes.

21 Q. Okay. And then, is that what you got invoiced
22 for, that multiple store location price?

23 A. I don't have a copy of the invoice.

24 Q. You don't recall?

25 A. Yes.

1 Q. So, was it at the multiple location rate?

2 A. That's correct.

3 Q. Okay. And according to the email on top of that
4 stack of invoices, Marsh Waterproofing was
5 asking Alex. Are you the only Alex that works
6 at Hamilton Management Services Company?

7 A. Yes.

8 Q. It says, Alex, how do the invoices need to be
9 made out? Do they need to be in each entity
10 name? Please advise. What was your response?

11 A. I believe I provided that they should be made
12 to each entity.

13 Q. Well, you've got all seven of them there. Take
14 a look at how they were made out.

15 A. Then, they were made to State Acquisitions, the
16 parent company of each entity.

17 Q. Which is in keeping with what you said earlier,
18 is you thought State was doing the hiring on
19 behalf of the Steeple entities. Okay. All
20 right. So, back to Exhibit Five, does it say
21 when payment was due from Hamilton --

22 A. It says payment due upon completion.

23 Q. -- Steeple, and State Acquisitions?

24 A. Due upon completion.

25 Q. Okay. Was it paid?

1 A. To my knowledge, no.

2 Q. Okay. All right. So, the proposal, Five, is to
3 State Acquisitions, LLC, and it's directed to
4 State Acquisitions, correct?

5 A. Yes.

6 Q. Because you had asked them for a quote?

7 A. Yes.

8 Q. And then, the same thing on the Exhibit Six,
9 it's addressed to Rikki Vaughn at State
10 Acquisitions?

11 A. Correct. Exhibit Five is addressed to both
12 Church's Chicken and State Acquisitions.

13 Q. Well, to Church's Chicken restaurant?

14 A. Sure.

15 Q. But, it wasn't --

16 A. But, State Acquisitions is not a Church's
17 Chicken restaurant.

18 Q. Correct. The business location was a franchise,
19 Church's Chicken?

20 A. Correct. But, State Acquisitions was not.

21 Q. Is not?

22 A. Correct.

23 Q. I understand.

24 A. I'm merely pointing out the form of a document.

25 Q. Yes. I understand. Okay. So, State Acquisitions

1 then, when you signed Exhibit Five, it was
2 agreeing to pay the multi-location price, the
3 \$36,800, for each of the --

4 A. On behalf of its subsidiaries, yes.

5 Q. For each of the seven locations?

6 A. I don't know how many. I believe you had
7 provided me with six. I don't know if six or
8 seven were completed.

9 Q. Seven were completed, one was paid.

10 A. Okay.

11 Q. And the other six are due.

12 A. Okay.

13 Q. Do you know how one got paid for?

14 A. I don't recall.

15 Q. Okay.

16 A. I wish to amend my answer. When you asked if
17 they were paid, you were informing me that one
18 of them was paid. I did not previously recall
19 that, so thus --

20 Q. The six we're discussing weren't paid.

21 A. Sure. Agree.

22 Q. But, seven were repaired, initially?

23 A. Yes.

24 Q. And there are seven invoices, one location got
25 paid, and the other six did not. I don't even

1 know what location was paid; do you recall?

2 A. I do not.

3 Q. Okay.

4 MR. LACOUR: Let's mark this one as the next
5 one.

6 (EMAIL OF 7/10/17 MARKED AS PLAINTIFF'S
7 EXHIBIT NO. 7 FOR IDENTIFICATION.)

8 Q. I want to show you Exhibit Seven, which was
9 email from you to Glenn Kindred, who is one of
10 the guys at the landlord's?

11 A. Yes.

12 Q. Just read it to yourself. I want to ask you
13 some questions about it.

14 A. "Dear Glenn, as you are aware --

15 Q. No, no. Read it to yourself.

16 A. Oh, sure.

17 Q. Sorry.

18 A. Sure.

19 Q. By the way, before I get to that, we didn't
20 have an invoice from Roto-Rooter, and you
21 already told me you thought they did some work.
22 Do you remember what they worked on?

23 A. The plumbing.

24 Q. So, like the drains, it talks about drains and
25 sewer?

1 A. It talks about the piping and plumbing. Yes.

2 Q. Okay. I got you. So, Osiris wasn't doing that,
3 but they might have been doing the electrical
4 and wiring?

5 A. I don't believe Osiris was doing the
6 electrical. I believe Osiris was just doing
7 pump out.

8 Q. Okay. Do you know who was doing the electrical?

9 A. I don't believe there was any electrical work
10 required.

11 Q. Everything was already in conduit?

12 A. Yes.

13 Q. Okay. Got you. All right. That would make
14 sense, but I don't know. Okay. I'm sorry.

15 A. I don't know if there was any electrical work
16 required to be done, but I don't believe there
17 was another contractor to do it.

18 Q. Okay. Let's look at what's now been marked
19 Exhibit Seven. And so, in that letter, and I
20 think in the first paragraph, you are writing
21 to the landlord, and it looks like a brief
22 description of the past experience of Marsh?

23 A. Yes.

24 Q. Okay. So, where did you come by that
25 information that's in that paragraph?

1 A. From Church's Chicken, directly.

2 Q. Okay. So, you --

3 A. From Jay Allen and Wayne Stubbs, as well as a
4 conversation with Tim Marsh.

5 Q. Well, okay. So, first of all, some information
6 came from Tim and some came from Church's?

7 A. That's correct.

8 Q. What information in there came from Tim?

9 A. That he had -- well, the price, the negotiated
10 price, that come from Tim.

11 Q. Yeah.

12 A. And I believe Tim also mentioned that he had
13 remediated approximately 50 Church's Chicken
14 locations.

15 Q. Fair enough. All right. Do you know any
16 different than that today?

17 A. Whether there have remediated 50 locations?

18 Q. Yeah.

19 A. No.

20 Q. Okay. And then, in the second paragraph, it
21 looks like it's just a discussion of financial
22 issues between your companies and the landlord?

23 A. I don't understand the question.

24 Q. Huh?

25 A. I don't understand the question.

1 Q. I don't understand, really. It talks about,
2 given your financial position?

3 A. Yes.

4 Q. What are we talking about, what was your
5 financial position at the time of that letter
6 that you are referring to?

7 A. That we did not have a sufficient budget for
8 capital expenditure for this without, as we
9 said, on our own.

10 Q. Okay.

11 A. For example, it states that we've sent demand
12 letters to two other landlords requiring their
13 contribution, that without them paying
14 similarly, the VEREIT leases, which do not
15 include those other two landlords, obviously.
16 The forbearance agreement, Exhibit Four, does
17 not contemplate those other two leases.

18 Q. Okay.

19 A. Is that clear?

20 Q. Yeah.

21 A. So, for example --

22 Q. I'm more interested in understanding, though,
23 so you're asking landlords to help you cash
24 flow it, basically?

25 A. In addition to the franchise.

1 Q. Yeah.

2 A. The forbearance agreement provides that it will
3 be paid for by us or a third party.

4 Q. Uh-huh.

5 A. We're indicating that we will require a third
6 party, per the forbearance agreement, to be a
7 part of this before we can accept the
8 transaction.

9 Q. Okay. And you have to forgive me.

10 A. Sure.

11 Q. I didn't get Exhibit Four until this morning
12 when I arrived. So, that's new to me. So, the
13 forbearance agreement was just a month or two,
14 signed just a month or so before this letter
15 was written?

16 A. Yes,

17 Q. So, what you're saying in this letter, Exhibit
18 Seven, is that given that you are already on a
19 tight budget and trying to remediate past due
20 payments, you're going to need further
21 forbearance or something to help you cash flow,
22 to have the cash to pay for the repairs?

23 A. Yes.

24 Q. Okay. Got it. But, the seven locations times
25 \$36,800, the multiple store price, is about

1 \$220-something thousand, if I remember right.

2 A. I'll take your word for it.

3 Q. Okay. So, did you tell Marsh Waterproofing that
4 you didn't have the money to pay him when you
5 hired him?

6 A. Marsh didn't inquire.

7 Q. Okay. So, the fact that they didn't ask makes
8 it okay for you to hire him to do work that you
9 know you don't have the money to pay?

10 MR. OLSON: Object to the form.

11 A. We believed that our agreements between our
12 lender, our landlord, and our franchise, in
13 addition to our working capital and the
14 contributions from the other two landlords,
15 would have provided sufficient financing at
16 that time. We were actively negotiating a
17 restructuring with all of the parties at that
18 point, who had agreed in good faith to provide
19 us sufficient financing to continue operations,
20 including the remediation.

21 Q. I get it. You had a plan in place that you were
22 working presently, at that time, to try and get
23 to where you had the cash?

24 A. Yes.

25 Q. But, you didn't have it, correct?

1 A. I'm not prepared to say whether we had the cash
2 or not. We certainly had other liabilities, but
3 whether we had the money in our account --

4 Q. Yeah.

5 A. It's a matter of fungible payment.

6 Q. Well, you signed this and sent it back to him,
7 presumably, on July 21st, 2017?

8 A. Yes.

9 Q. And so, here on July 10th, you're working on it.
10 Did you -- Here's another one, very similar. Is
11 that the same kind of letter going to the
12 Church's people?

13 A. Yes.

14 Q. All right. So, we can mark that one.

15 (LETTER OF 7/10/17 MARKED AS PLAINTIFF'S
16 EXHIBIT NO. 8 FOR IDENTIFICATION.)

17 Q. So, taking Seven and Eight together, this is
18 where you were working with both your landlord
19 and your franchisor to try and get their
20 cooperation to allow you to have enough relief
21 that you can cash flow these payments?

22 A. Which was, again, these letters were sent 11
23 days prior to my execution of the --

24 Q. Sure. Yeah. You were working on it.

25 A. And we believed we had sufficient agreement.

1 Q. Okay. All right. Fair enough. I'm just saying.
2 So, did that all pan out, did everybody agree
3 to what you were asking?

4 A. We had a provisional agreement prior to my
5 execution of the Marsh document.

6 Q. Okay. All right. So, through further
7 discussion, emails, whatever, telephone
8 conferences, you believe you had found a way to
9 make the thing, not everything you're proposing
10 here, but you had come to some agreement as to
11 how it was going to happen?

12 A. Yes.

13 Q. Okay. And then, so once you got to that
14 agreement, then you signed off with Marsh and
15 told him, okay, you're hired?

16 A. Yes.

17 Q. Okay. So, what happened in terms of the
18 financing arrangements that you thought you
19 had?

20 A. We continued to move forward in our discussions
21 of the restructuring and ultimately what
22 precipitated the termination of our negotiation
23 was when Marsh decided to file a lien on the
24 property. At that point, the landlord indicated
25 they were no longer interested in engaging in

1 any further discussions, as we had breached the
2 forbearance agreement, Section 3.2(b),
3 subsection 2 requires any other charges that
4 result in liens on any or all portion of the
5 properties. It advised us that we, that by
6 filing the liens, we had breached that and they
7 were no longer prepared to negotiate.

8 Q. All right. So, you hired us on July 10th, signed
9 by you July 21st, 2017, right?

10 A. Sure.

11 Q. And then --

12 A. This was prior to signing.

13 Q. Well, but on the same date you got --

14 A. The proposal.

15 Q. -- our proposal, you were busy trying to work
16 out the arrangements to pay for it?

17 A. Prior to agreeing to the proposal, yes.

18 Q. Yeah. It probably started beforehand. I get
19 that. But, then you still hadn't reached an
20 agreement with them at the time Marsh filed
21 their liens, is what you just told me.

22 A. We had we had a continuing agreement, in
23 principle.

24 Q. But, nothing final?

25 A. That's correct.

1 Q. Okay. So, you still hadn't struck a deal as to
2 exactly how you were --

3 A. We had we had an interim operating plan, but we
4 had not resolved all of the outstanding
5 liabilities.

6 Q. All right. And we know when we filed our liens,
7 it was the middle of November of 2017, but the
8 bills had been sent on September 5th, 2017. You
9 looked at those a minute ago, right?

10 A. Sure.

11 Q. Okay.

12 A. So, roughly 60 days.

13 Q. Yeah. In July, you didn't have a final deal,
14 and September 5th, you didn't have a final deal,
15 and by November, mid-November, call it November
16 15th, you still didn't have a final deal?

17 A. We were in the process of finalizing a deal
18 when the deal went away.

19 Q. Okay. Well, but the deal went away because of a
20 new breach of Exhibit Four, correct?

21 MR. OLSON: Object to the form.

22 A. Yes.

23 Q. Okay. All right. But, you are counting on these
24 folks' assistance, if you will, and maybe
25 further forbearance, whatever, to help you find

1 a way to pay these --

2 A. To meet all of our obligations.

3 Q. -- obligations, out of cash flow?

4 A. Or additional capital injection or what have
5 you.

6 Q. Okay. Maybe assistance with different financing
7 or whatever.

8 A. We believed that there was a viable path to
9 meet all of our obligations.

10 Q. Sure. I get it. So, what happened in November,
11 who was it that backed out in November, was it
12 the landlord or the franchise?

13 A. So, as soon as the liens got filed, the
14 landlord sent us a termination of all of our
15 leases.

16 Q. Okay.

17 A. Once the landlord terminated all of our leases,
18 the lender commenced litigation and the
19 franchise sent us further default on our
20 franchise. Once the landlord and the bank were
21 out, the franchise told us that we were going
22 to be out, similarly, and the only thing we
23 could do was effectively hand over the
24 properties to the franchise.

25 Q. Okay. So, did the landlord terminate any --

1 A. The landlord terminated all the leases because
2 we had defaulted on these (indicating). They
3 terminated every single one of our leases.

4 Q. All leases?

5 A. Yes.

6 Q. Not just the six that were --

7 A. Because we breached the forbearance agreement,
8 it resulted in a termination of everything.

9 Q. Okay.

10 A. With no further opportunity for negotiation, no
11 opportunity for cure.

12 Q. All right. And then, on the franchise --

13 A. The lender -- no. As soon as the lender said
14 no, the bank sued everyone, sued all the
15 borrowers.

16 Q. Wait a minute. So, who --

17 A. First Franchise Capital, Janet Santen.

18 Q. As soon as the lender said --

19 A. As soon as the landlord said we're out, you've
20 breached our agreement.

21 Q. Wait a minute. Slow down. You said the
22 landlord, and you said lenders?

23 A. Yes.

24 Q. So, slow down. So, I need to understand. As far
25 as the leases go, leases were terminated by the

1 ARC USA people?

2 A. VEREIT.

3 Q. VEREIT people, V-E-R-E-I-T people. But, then as
4 far as the franchises, were all the franchises
5 terminated?

6 A. Yes.

7 Q. Or just the five or six that were left?

8 A. Because all the leases were terminated, all the
9 franchise agreements were terminated.

10 Q. Because you have to keep a location?

11 A. Agreed.

12 Q. I understand. Okay.

13 A. And also, again, at the same time, because the
14 landlord exercised the right, the bank sued
15 over its collateral.

16 Q. I understand.

17 A. So, the liens were the death knell, if you
18 will, of what was otherwise a restructuring
19 plan that had been agreed to in principle by
20 the parties.

21 Q. But, you didn't have a final agreement?

22 A. We did not have a final agreement.

23 Q. And apparently, there wasn't any viable backup
24 plan in place to get a bridge or do something?

25 A. Once the lease is were terminated, we were out

1 of --

2 Q. Okay. And so, what do you know about lien
3 rights of contractors?

4 A. I know that in South Carolina, any work over
5 \$5,000 is required to be conducted by a general
6 contractor, and the general contractor, a
7 licensed general contractor, and that licensed
8 general contractors have certain rights to file
9 liens.

10 Q. Okay. And do you realize that the lien rights
11 are not unlimited in time?

12 A. I do.

13 Q. Okay. Did you know that before?

14 A. I did.

15 Q. Okay. So, you knew you had only about 90 days
16 to get these people paid?

17 A. We did not, we did not contemplate the
18 likelihood of them filing a lien. We believed,
19 at that time, that they were actually not able
20 to file a lien. At the point at which the lien
21 was filed, we did not believe the lien could be
22 filed.

23 Q. So, let me get this straight. So, you hired the
24 contractor in July --

25 A. Yes.

1 Q. -- to do almost a quarter of a million dollars
2 worth of work, and you didn't have the money in
3 July or August or September or October,
4 correct?

5 MR. OLSON: Object.

6 A. I disagree. I dispute that we didn't have the
7 money.

8 Q. You didn't have the money. If you had the
9 money, you would have paid him.

10 MR. OLSON: Objection.

11 A. I don't agree.

12 Q. Okay. So, you hired the contractor in July, and
13 he did a quarter of a million dollars worth of
14 work for you in August, and you never intended
15 to pay him?

16 MR. OLSON: Object to the form.

17 A. I disagree. We did intend to pay.

18 Q. Well, at what point did you decide you didn't
19 intend to pay because you didn't think he could
20 file a lien?

21 MR. OLSON: Objection.

22 A. No. At the point at which we became aware that
23 a contractor that had previously sent us
24 documents in which they stated they were
25 licensed, bonded, and insured, we found out was

1 not licensed in South Carolina, and we were
2 unclear as to whether we were going to have to
3 have the work removed and redone by a licensed
4 contractor.

5 Q. Okay. So, you're talking about something that's
6 unrelated to this work in these projects?

7 A. I am not. I am stating that we were, at the
8 point at which we determined that we were
9 uncertain as to the payment of Marsh, we were,
10 it was because we were uncertain as to whether
11 the work was completed per South Carolina code
12 by an unlicensed contractor.

13 Q. Well, first of all, who ever suggested that
14 Marsh was licensed, bonded, and insured?

15 A. Marsh's, all of the documents that Marsh sent
16 us, in their logo, has licensed, bonded, and
17 insured, and it appeared on their website, and
18 it appeared in the logo in their emails.

19 Q. All right. Does this proposal have the logo?

20 A. It does not.

21 Q. Well, show me something that does.

22 A. I don't have all 1,700 documents here. If you
23 would like to send me the --

24 Q. I haven't seen a thing.

25 A. Okay.

1 THE WITNESS: Clay, would you kindly pull up
2 Marsh Waterproofing's website?

3 A. My recollection is that the front page of their
4 website, their logo at the time, I don't know
5 if it currently does, but at the time, it said
6 licensed, bonded, and insured.

7 THE WITNESS: May I?

8 MR. OLSON: It's going to be hard to be an
9 exhibit, but you can reference it.

10 MR. LACOUR: Sure.

11 MR. OLSON: This is
12 www.MarshWaterproofing.com.

13 A. I apologize. It says licensed and bonded.

14 Q. Okay.

15 A. There you are.

16 Q. Licensed and bonded?

17 A. Yes.

18 Q. And it shows three different states, Texas,
19 Louisiana, and it looks like Mississippi,
20 doesn't it?

21 A. I'll take your geography for it.

22 Q. Well you tell me. It doesn't show South
23 Carolina there, does it?

24 A. No.

25 Q. Okay.

1 A. Nor does it state that that is an exhaustive
2 list of where they're licensed, but it does
3 state in plain language, licensed and bonded.

4 Q. Licensed and bonded, Texas, Louisiana, and
5 Mississippi.

6 A. It does not say Texas, Louisiana, and
7 Mississippi. It has a graphic of three states.

8 Q. Okay. Good enough. All right. So, you got
9 anything else to show me that Marsh sent you
10 saying they were licensed in the state of South
11 Carolina?

12 A. I believe that same logo appeared in other
13 correspondence. That's my recollection.

14 Q. Okay. Anything besides that logo?

15 A. No.

16 Q. Okay. With three same three states. You had
17 never seen one with South Carolina showing
18 graphically, have you?

19 A. No.

20 Q. Okay. All right. That's fair enough. The other
21 thing I want to know is, who was it, at what
22 point did you decide that maybe you didn't have
23 to pay him because maybe you could catch them
24 in some kind of a licensing issue, whether it
25 exists or not, remains to be determined by the

1 jury?

2 MR. OLSON: Object to the form.

3 Q. But, at what point did you decide that was your
4 way out, you shouldn't have to pay him?

5 MR. OLSON: Object to the form.

6 A. At the point at which we determined that Marsh
7 was definitively not licensed, we believed that
8 we had an obligation to consider whether we had
9 to have the work redone by a licensed
10 contractor.

11 Q. You did believe that. Did anybody tell you that
12 or you just believed that on your own?

13 A. It was a discussion, there was a discussion
14 among the company.

15 Q. You and other employees?

16 A. Some of those discussions are privileged.

17 Q. Well, you don't have to tell me about
18 discussions with lawyers.

19 A. Again, you said a discussion with yourself or a
20 discussion with others, and I'm telling you
21 that some of the discussions with others are
22 privileged.

23 Q. Okay. And so, the question was not with whom.

24 A. Fine.

25 Q. The question was, at what point in time did you

1 decide it?

2 MR. OLSON: Object to the form.

3 A. After.

4 MR. LACOUR: What's wrong with the form of
5 that question? I'm entitled to know when he
6 decided.

7 MR. OLSON: That's fine. You're implying
8 that he made a decision that was not going to
9 pay them.

10 MR. LACOUR: I'm not implying anything. He's
11 already said so. I'm asking him when he did
12 that. Noted.

13 Q. Answer the question. When did you make that
14 decision?

15 A. After the invoices were received, but before
16 the liens were filed. I don't recall the
17 specific date.

18 Q. After the invoices and before the liens?

19 A. Yes.

20 Q. Well, then why were you continuing to negotiate
21 if you made your decision before the liens --

22 A. Yes.

23 Q. -- that you weren't going to pay him?

24 A. Because Church's made clear that it was
25 important to them, as part of their agreement

1 to the overall forbearance, that as they put
2 it, even if we were not required to make the
3 payment, they referred to it as a, their words,
4 moral obligation. So, in order to get Church's
5 on board with the restructuring, even if we did
6 not have a legal obligation to pay it, Church's
7 required us to make payment as part of them
8 agreeing to get on board.

9 Q. Okay. And so, in your mind, the fact that
10 somebody traveled halfway across the country
11 and performed the work you asked him to
12 perform, furnished the materials, whatever,
13 under their proposal and sent you the bill,
14 those facts didn't impose upon you any
15 obligation to pay for it?

16 A. Those facts, taken on balance with the fact
17 that the work may not have been completed to
18 South Carolina standards.

19 Q. You got any proof of that?

20 A. That the work was not completed?

21 Q. To South Carolina standards, what you just
22 said.

23 A. We did not ultimately conduct any full
24 investigation. There were concerns raised.

25 Q. Did you ever write any letter or email to Marsh

1 and ask any questions about South Carolina
2 standards?

3 A. No.

4 Q. Okay. Did you ever make any complaint to Marsh
5 about the quantity of the work or the quality
6 of the work?

7 A. Yes.

8 Q. In writing?

9 A. Yes.

10 Q. Where?

11 A. There's a discussion with Marsh about a
12 question related to some of the concrete work
13 that was raised by Rikki Vaughn.

14 Q. And where is that? It's not in any of the
15 emails you produced.

16 A. I assume that would be something that Marsh
17 would have, if it went to Marsh directly.

18 Q. I don't know that it exists.

19 A. Okay.

20 Q. We don't have it. You haven't produced it, and
21 I haven't seen it. So, you think there's an
22 email between Rikki Vaughn and who?

23 A. And Tim Marsh.

24 Q. Okay. And what is the subject of their
25 discussion?

1 A. An issue related to the concrete.

2 Q. And what was the question about the concrete?

3 A. Whether it was adequately provided? I don't
4 know the specific nature of the issue.

5 Q. What was the perceived inadequacy?

6 A. I don't know. I didn't inspect it. I'm going
7 based on the conversation I had with Rikki in
8 which he indicated there may have been an
9 issue. You asked me if there were any
10 discussion of it.

11 Q. Yeah. I'm trying to figure it out. So, you
12 believe an email exists, but you've never seen
13 it?

14 A. Correct. I was not a party to the email.

15 Q. Okay. Well, fine. All right. Anything other
16 than the mystery missing email that you believe
17 is in writing between any of your entities and
18 Marsh about deficiencies and quality or
19 quantity of the work?

20 A. Not to my knowledge.

21 Q. You never even confronted Marsh about the
22 licensing, did you?

23 A. No.

24 Q. Okay. Got it.

25 A. Nor did Marsh send me demand for payment. He

1 sent me an invoice, but --

2 Q. Did you not receive invoices?

3 A. I received the invoice.

4 Q. Did you not sign a proposal that said that
5 payment is due upon completion?

6 A. I did.

7 Q. Isn't that a term on the bottom of Exhibit
8 Five, right down there the bottom (indicating)?

9 A. Yes. It is.

10 Q. Okay. And you agreed to that, even when you
11 knew you didn't have the money to make the
12 payments, right?

13 A. I repeatedly dispute that we didn't have the
14 money to pay it.

15 Q. Then, why were you working so hard in Exhibit
16 Seven and Eight to get the money to pay for it?

17 A. The documents speak for themselves.

18 Q. Huh?

19 A. The documents speak for themselves.

20 Q. Yeah. And it looks to me, speaking for
21 themselves, like you were working very hard to
22 acquire the money to pay for it.

23 A. I've already provided my answer.

24 Q. Okay. So, you were not negotiating with these
25 people to get the money to pay Marsh, you had

1 the money to pay Marsh?

2 A. We were negotiating with regard to a global
3 settlement for all of our liabilities.
4 Specifically --

5 Q. Let me ask you a question. Do you see Marsh's
6 signature any place on Exhibit Four?

7 A. Exhibit Four, the forbearance agreement?

8 Q. Yeah.

9 A. I do not.

10 Q. It wasn't in that discussion, was it?

11 A. That's correct.

12 Q. He didn't have any idea how much money you were
13 into these people for when you hired him, did
14 he?

15 A. Nor did Marsh inquire.

16 Q. No. I understand that.

17 A. Despite their substantive conversation with
18 Church's.

19 Q. Even if he had inquired about whether you owed
20 money to these people and were behind with
21 these people, you're not going to tell him your
22 personal business, are you?

23 A. I respectfully decline. I disagree. Were Marsh
24 to have asked, we would have an obligation for
25 good faith, fair dealing, and sufficient

1 candor. We were not privy to the conversation
2 that Marsh had with Church's where we
3 understood --

4 Q. Let me see if I get that whole comment you just
5 made, the full impact of it.

6 A. Sure.

7 Q. If Marsh doesn't ask you, you don't have to be
8 honest with him; is that what you just said?

9 MR. OLSON: Object to the form.

10 A. No, sir.

11 Q. Well, try and rephrase it, because that's what
12 I heard.

13 A. What I said was that if Marsh had asked us. You
14 said even if Marsh asked, we didn't have to
15 tell them our business. That is different. I'm
16 saying if Marsh had asked, we had an obligation
17 to tell them.

18 Q. And since Marsh didn't ask, you have, in your
19 view, no obligation to tell them?

20 A. No obligation. If they do not ask for any
21 financial detail or deciding to provide us
22 credit terms, we did not have any obligation to
23 provide it to them.

24 Q. We didn't provide credit terms.

25 A. I respectfully disagree.

1 Q. Well, it was due upon completion.

2 A. Respectfully, credit terms are when work is
3 provided first and payment is provided second.

4 Q. Fair enough.

5 A. Marsh did provide credit terms.

6 Q. We did.

7 A. Marsh could have required 100% deposit up
8 front, a 50% deposit up front.

9 Q. Okay. Fair enough.

10 A. So, Marsh did provide credit terms, and they
11 did not ask any questions of us prior to
12 providing the credit terms.

13 Q. At the time he signed that, you had no way to
14 comply, and you knew it.

15 A. I do not agree. We certainly could have
16 complied.

17 Q. Well, where is your proof --

18 A. My proof is --

19 Q. -- that you have to cash or the wherewithal to
20 pay for the repairs?

21 A. Yes. May I?

22 Q. Yes. Seven or Eight, you can have anything you
23 see.

24 A. So, in document Seven, we state, "In order to
25 finance the VEREIT property crawl space

1 remediation, we are requesting that we be
2 permitted to defer the payment of rent in an
3 amount equal to the cost of the remediation",
4 which means we had and believed we had
5 sufficient cash were we to not pay VEREIT. So,
6 we had the cash were we do not pay someone
7 else.

8 Q. Yeah. But, you knew you had to pay VEREIT.

9 A. No. We didn't. We specifically asked VEREIT if
10 we were going to be able to not pay them.

11 Q. You were asking VEREIT to excuse you from the
12 obligation to pay them, so you could pay Marsh,
13 weren't you?

14 A. That was one of the options that we were asking
15 for. Yes.

16 Q. And so, back to where we were in July and
17 August and September and October and November,
18 you had all that time to let Marsh know, some
19 of that time before Marsh did his work, that
20 without being excused from some of your other
21 financial obligations, you didn't have the cash
22 to pay him; isn't that correct?

23 A. Marsh did not inquire.

24 Q. I understand that. That's not the question.
25 Just answer --

1 A. We similarly had the obligation or we similarly
2 had the opportunity to provide them information
3 as to the price of our various products or any
4 other tangentially relevant information. They
5 didn't ask us whether sales were up or down, or
6 you know, anything else. We could have provided
7 them any information.

8 Q. I get that. You didn't find it to be your
9 obligation, as you said earlier, in dealing --

10 A. To provide any non-requested information, no.

11 Q. -- in dealing with people in good faith and in
12 fair dealing to let the guy know that you were
13 going to have him come up here and do that
14 work, and unless you got excused from some
15 other financial obligation, you didn't have the
16 money to pay him; isn't that right?

17 A. We did not, we did not have the obligation to
18 tell him.

19 Q. Okay. There's some continuing emails with Dusty
20 Profumo about \$40,000 coming from Church's?

21 A. Okay.

22 Q. And conditioned on whether the landlord will
23 agree to a deferral for some period of time of
24 the rent. So, was this just the two of them
25 trying to, is that just the two of the

1 creditors kind of pushing back and forth about
2 who's going bear the most of it or the least of
3 it?

4 A. That's my understanding.

5 Q. Okay. And you're kind of in the middle trying
6 to get some concession from both, and they
7 might be muscling back and forth about who's
8 going to do what?

9 A. Yes.

10 Q. Got you. All right. And that's pretty normal.

11 A. And our understanding is that Church's
12 ultimately was the one who induced Marsh into
13 doing business with us.

14 Q. Okay.

15 A. We did not, we did not seek out or solicit
16 Marsh, so to the extent that Church's did or
17 didn't or should or shouldn't have provided any
18 information regarding our financial condition,
19 I can't speak to that, either.

20 Q. I don't know that anybody had any information
21 on your financial --

22 A. Church's had copies of all of our, Church's had
23 current financial statements, was in all of our
24 restructuring discussions, and was copied on
25 all of the weekly transactions. They knew

1 exactly how much money was in the bank account.

2 Q. I get that. But, nobody told Marsh, did they?

3 A. No. I'm simply speaking to Church's and
4 Church's conversations with Marsh, and in
5 answering your question of whether we did, I'm
6 saying that Church's was in the same position.

7 Q. Church's is allowed to provide any of your
8 financial information or documents to anybody
9 else, are they?

10 A. I don't believe we have a confidentiality
11 agreement regarding that.

12 Q. You've got a franchise agreement --

13 A. We do.

14 Q. -- though, covering that?

15 A. Except that Church's --

16 Q. It doesn't allow them to distribute your
17 financial information to the world, does it?

18 A. I believe that in the context of procuring
19 vendors, they are allowed to provide certain
20 information. Church's was the one who procured
21 Marsh for us.

22 Q. Okay.

23 A. They were the ones who secured, my
24 understanding is they were the ones who secured
25 you.

1 Q. We are not Church's vendor here, we are your
2 vendor, right?

3 A. You are our vendor by association. Church's is
4 the one who arranged --

5 Q. Do you see anybody else's signature on page two
6 of Exhibit Five but yours?

7 A. I do not.

8 Q. Okay. Marsh was here as your vendor. All right.
9 So, Exhibit Four is the forbearance agreement
10 that was signed in May?

11 A. Correct.

12 Q. That was something I hadn't seen before today.
13 So, does that basically reflect that in May,
14 the two months before we were hired, month and
15 a half, you're basically almost \$600,000 in
16 debt, whatever is set out on this chart here,
17 as part of that document?

18 A. Exhibit A of Plaintiff's Exhibit Four, I
19 believe, accurately reflects the past due
20 amount due to the landlord.

21 Q. Yeah. All right. At that time?

22 A. At that time.

23 Q. Yeah. And so, I don't know where my notes are
24 now because, like I said, I was trying to
25 scramble around this morning since I didn't

1 have it before now. Almost \$524,000 in the
2 total due column, if you add up all the
3 different locations?

4 A. Sure.

5 Q. But, that's between your entities and the
6 landlord?

7 A. That's correct.

8 Q. The VEREIT people, correct?

9 A. Yes.

10 Q. Okay. Got it. All right. Was there also some
11 money that was owed to Church's at that time?

12 A. I believe so.

13 Q. Is there a forbearance agreement or something
14 to do with that, or was Church's just working
15 with you?

16 A. There were promissory notes between Church's
17 and -- but, there was no forbearance agreement.

18 Q. All right. So, have the notes been produced?

19 A. No.

20 Q. Why not?

21 A. Were they requested?

22 Q. Everything was requested. So, do you remember
23 how much you owed Church's --

24 A. I do not.

25 Q. -- in this time frame?

1 A. I do not.

2 Q. Do you remember how much you owed Church's when
3 things were terminated?

4 A. At the point in which they were terminated, we
5 ultimately resolved to owe Church's zero.

6 Q. Okay. And how much did you owe them the minute
7 before you agreed to zero?

8 A. I don't recall.

9 Q. Ballpark?

10 A. Several hundred thousand dollars.

11 Q. Okay. All right. So, you might not have owed
12 Church's several hundred thousand in May of
13 17, but you owed them something, you were
14 behind with Church's, too; is that right?

15 A. Yes.

16 Q. I saw something a minute ago that might be
17 relevant to that, and now I can't find it.

18 A. Actually, I do want to amend an earlier
19 statement.

20 Q. Sure.

21 A. When you asked specifically about whether we
22 had the ability to pay for all the Marsh work
23 and what have you, we were actively engaged in
24 the sale of some real estate that was owned by
25 a subsidiary of State Acquisitions.

1 Q. Uh-huh.

2 A. Whether we had a contract at that point or not,
3 we ultimately ended up closing and receiving
4 additional proceeds. So, part and parcel to
5 this discussion was always that we would have
6 had sufficient funds from our sale to meet
7 numerous obligations.

8 Q. Was that the one --

9 A. Including --

10 Q. Was that the one location we get paid for?

11 A. No. That location did not have a crawl space.

12 Q. Okay.

13 A. But, specifically, we had a source of financing
14 from the net proceeds of the sale of that
15 property.

16 Q. Then, it closed?

17 A. Yes. It did.

18 Q. And you still didn't pay them?

19 A. That's correct.

20 MR. LACOUR: All right. Let's mark this one.

21 (EMAIL OF 7/21/17 MARKED AS PLAINTIFF'S
22 EXHIBIT NO. 9 FOR IDENTIFICATION.)

23 Q. Okay. Tell me what Exhibit Nine is, please.

24 A. Exhibit Nine is a document related to the, it's
25 an internal email between myself and an

1 administrative assistant at Hamilton Management
2 Services Company stating that the work needed
3 to be done, the pumping work needed to be
4 completed prior to Marsh beginning.

5 Q. Uh-huh. It references an attached schedule?

6 A. Yes.

7 Q. Who created the schedule?

8 A. I don't recall.

9 Q. Well, look at the email.

10 A. Presumably, it would be me.

11 Q. Read the email. Exhibit Nine says who created
12 the schedule. Who created the schedule?

13 A. "Attached is my proposed schedule." So, me.

14 Q. My?

15 A. Yes.

16 Q. Who created the schedule?

17 A. I created this document based on a conversation
18 with Tim Marsh.

19 Q. Okay. You created the schedule that's attached
20 to Exhibit Nine?

21 MR. OLSON: Object to the form.

22 A. Yes.

23 MR. LACOUR: Let's mark Ten.

24 (EMAIL OF 8/3/17 MARKED AS PLAINTIFF'S
25 EXHIBIT NO. 10 FOR IDENTIFICATION.)

1 Q. I want to show you Exhibit Ten, and you have to
2 read it from the back to the front.

3 A. Okay.

4 Q. Who is sending who the schedule --

5 A. From me --

6 Q. -- initially?

7 A. From me to Tim.

8 Q. Yes, sir.

9 A. In which I say, Tim, please see the attached
10 schedules. If these dates work for you, I will
11 confirm with my contractor who is doing the
12 pump-out and doing the plumbing and electrical.
13 He will be working one step ahead of you on
14 each site.

15 Q. Got you. So, you told us you had a contractor?

16 A. A contractor doing the pump-out and a
17 contractor doing the plumbing and electrical.

18 Q. And that was Roto-Rooter and Osiris?

19 A. Yes.

20 Q. All right. And then, you're sending your
21 schedule to Tim?

22 A. Yes. My proposed schedule, asking him if these
23 dates work for him.

24 Q. Yeah.

25 A. Because he will ultimately control the

1 schedule.

2 Q. Well, when he can be here will control it, but
3 you prepared the schedule and you said --

4 A. I specifically say, if these dates work for
5 you. It is not a firm schedule. I'm not
6 requiring that it be done on these dates.

7 Q. Yes. And the schedule originated with you and
8 Exhibits Eight, Nine, and Ten, right?

9 A. Based upon a discussion with Tim as to when he
10 could be out there.

11 Q. Absolutely.

12 A. I consider it a collaborative schedule.

13 Q. Right. But, you didn't, Tim didn't decide which
14 site got done first, second, and third, did he?

15 A. No. Tim suggested that they needed to be done
16 in a specific geographic area, and we proposed
17 a plan.

18 Q. And y'all figured it out. Okay. Y'all, being
19 you and Mr. Marsh?

20 A. Marsh. We discussed with Tim and Rikki and the
21 people pumping and Roto-Rooter.

22 Q. Right.

23 A. Everyone was involved in the discussion.

24 Q. All right. And then, who created this document
25 that's attached to these emails?

1 A. I did.

2 Q. Okay.

3 A. Presumably.

4 Q. All right. This looks like pages are missing
5 these things go together. Do these things go
6 together (indicating)? Just look at those and
7 tell me if they go together.

8 A. Sure.

9 Q. They may not.

10 A. Yeah. They do.

11 Q. What is all that?

12 A. Okay. This is a message between the CFO of
13 Church's and me.

14 Q. Okay.

15 A. The message says, we have \$39,000 worth of
16 funds that Church's was holding on our behalf.

17 Q. Okay.

18 A. They were prepared to give that money over,
19 along with potentially some other money of --
20 They have some money that's ours.

21 Q. Right.

22 A. They want to make sure that we've done the
23 work, and if we have done the work, they are
24 prepared to hand over the money to pay for, as
25 a down payment to help contribute with some of

1 the crawl space remediation.

2 Q. Okay.

3 A. Which is exactly what I had asked for from them
4 on July 10th. So, I would actually amend my
5 statement and say by August 10th, we now have an
6 agreement, in principle, or we now have an
7 agreement documented between Church's and I,
8 per my email of July 10th.

9 Q. That might be part of the same thread, but I'm
10 not sure. Take a look at that.

11 A. List given two days between -- Yeah. This is
12 all part and parcel to the scheduling. I don't
13 see any inherent distinction.

14 Q. Okay.

15 A. Do you want to mark these as exhibits?

16 Q. I'm trying to see what's changing here.

17 A. Can I --

18 Q. Wait a minute. I'm just looking at the --

19 A. Some of it has to do with the weather not
20 cooperating and dates getting shifted.

21 Q. Yeah. That's what I was thinking. It looks like
22 the same format, so to speak, but having to
23 shuffle the dates.

24 A. And that was just because the weather wasn't
25 cooperating.

1 Q. All right. So, was that holding up the Roto-
2 Rooter and Osiris people, trying to get it
3 dried out?

4 A. I don't know if it was holding them up or if it
5 holding Marsh up or, I don't have the specifics
6 as to who, my understanding is completion was
7 being held up.

8 Q. Okay. Well, on August 11th and August 10th, these
9 are all -- Here's the 10th and here's the 11th
10 stuff. But, the 10th and 11th, we hadn't even
11 come to Charleston, at that time.

12 A. I don't know.

13 Q. That's before.

14 A. I don't know. But, for contractor contacts, it
15 does list the contractor for pump-out,
16 plumbing, and electrical as Osiris, which was
17 subsequently Roto-Rooter for plumbing, and the
18 contractor listed for foam installation is
19 listed as Marsh Waterproofing.

20 Q. Okay.

21 A. So, Marsh Waterproofing is listed as the
22 contractor for providing the foam services.

23 Q. Yes, sir. I get it. And this is, you're telling
24 other folks --

25 A. Church's, yes. I'm telling them who my

1 understanding of the various people doing the
2 various things are.

3 Q. Got you. All right. So, and we're getting close
4 because this is August 15th, and we actually
5 came and started slightly after that.

6 MR. LACOUR: Let's mark that as the next
7 exhibit.

8 (EMAIL OF 8/10/17 MARKED AS PLAINTIFF'S
9 EXHIBIT NO. 11 FOR IDENTIFICATION.)

10 Q. So, there's a lot to back and forth, and we
11 probably don't need to go through them, but
12 it's mostly Mr. Profumo at Church's, it's like
13 he's hammering you every day, did you start,
14 did you start, did you start?

15 A. Yes.

16 Q. They were really pushing y'all to get it
17 started and get it done?

18 A. Yes.

19 Q. Why?

20 A. They were concerned about potential structural
21 safety issues given that a Church's had
22 previously collapsed in Texas and they were in
23 the middle of a \$50 million litigation.

24 Q. So, they were just trying to get that wrapped
25 up?

1 A. Yes.

2 Q. That's all that is?

3 A. Yes.

4 Q. Okay. All right. Let me find one here. Here we
5 go. So, we've got -- I think these are related
6 (indicating).

7 A. Sure. They are.

8 Q. We've got these two letters --

9 A. They are. I can, I can -- I'm good.

10 Q. Okay. So, what's --

11 A. Sure. I'm going to start with this one
12 (indicating). Can we mark these? These are
13 defaults --

14 Q. Hang on. Do you want to mark those as one
15 exhibit?

16 A. Yes.

17 Q. Because it's the same thing, just different
18 locations?

19 A. Yes.

20 Q. Okay.

21 MR. OLSON: These are Church's letterhead
22 defaults?

23 MR. LACOUR: Yes.

24 MR. OLSON: Both of the are going to be
25 marked as one exhibit?

1 MR. LACOUR: Yes. We're going to do July 7th
2 and July 10th.

3 (FRANCHISE DEFAULT LETTERS MARKED AS
4 PLAINTIFF'S EXHIBIT NO. 12 FOR IDENTIFICATION.)

5 Q. Okay.

6 A. Church's sent correspondence to all the Steeple
7 entities saying, effectively, we are very
8 serious about you getting these crawl spaces
9 done. We understand, per my correspondence,
10 that you have a plan, and if you don't complete
11 them by a certain, that you are in default and
12 your cure period runs 30 days. So, if you don't
13 get them done by then --

14 Q. Thirty days.

15 A. -- then you're out.

16 Q. Okay. And then, the email is just --

17 A. They've extended --

18 Q. Towards the end of that, they extended it?

19 A. There were some weather issues, we were
20 complying, you know.

21 Q. Okay. So, let me mark that, that's Thirteen.

22 A. Sure.

23 (EMAIL OF 8/21/17 MARKED AS PLAINTIFF'S
24 EXHIBIT NO. 13 FOR IDENTIFICATION.)

25 Q. So, Exhibit Thirteen is follow-up emails to the

1 two letters that are Exhibit Twelve?

2 A. And Eleven. Yes.

3 Q. Simply where they are acknowledging that they
4 know you're working on it, they know you're
5 having issues with weather and whatever and
6 coordination.

7 A. Yeah.

8 Q. So, just we'll give you a few more days, as
9 long as you're on top of it.

10 A. Everyone's fine.

11 Q. Okay. So, there was no, at least as of August
12 21st, they were not terminating --

13 A. Correct.

14 Q. Right. They are not terminating anything. They
15 are going to take a step back --

16 A. We're actually back in good standing.

17 Q. Yeah. They're going to take a step back and let
18 you finish it and --

19 A. Yes. And then, once we had finished it, the
20 defaults were cured.

21 Q. Right. Okay. Well, then if --

22 A. No. The defaults were cured.

23 Q. Yeah. Well, but if you finished the repairs --

24 A. Yes.

25 Q. -- with the buildings, then it would cure the

1 defaults --

2 A. Yes.

3 Q. -- in the franchise?

4 A. Yes.

5 Q. And if you finished the repairs with the
6 buildings, it would avoid any kind of issue
7 with the landlord?

8 A. Yes.

9 Q. Okay. And you did get the work done?

10 A. Whether the work was completed to South
11 Carolina code remains an open issue. But, yes,
12 some work was completed. Crawl spaces were
13 filled with foam.

14 Q. Right. The work got done?

15 A. To my knowledge.

16 Q. So, I guess what I'm trying to figure out --
17 Let me back up to what you just said. You've
18 mentioned it a couple times now, so let me
19 chase that rabbit. So, who raised an issue
20 about code compliance?

21 A. That was a discussion that was had at State
22 Acquisitions.

23 Q. Okay. And so, what code provision was anybody
24 worried about?

25 A. The concern was that if the work was performed

1 by an unlicensed contractor that they may not
2 have completed the work to South Carolina
3 standards as they are not licensed by the State
4 of South Carolina.

5 Q. Okay. So, do you know anything about the
6 distinction between licensing and
7 qualifications to build?

8 A. I do not.

9 Q. Okay. All right. Do you grasp the concept, I
10 guess a general way to describe it, that
11 somebody with 30 or 40 years in construction
12 will know the right way to do something --

13 A. I do not.

14 Q. -- whether he's got the license or not?

15 A. I do not. I vehemently disagree with that.

16 Q. Oh, you do?

17 A. I do.

18 Q. On what basis?

19 A. On the basis that if that were the case, I
20 believe the State of South Carolina, in their
21 infinite wisdom, would provide for an
22 experience waiver in lieu of a license, and the
23 fact that they have not done so is the basis by
24 which I believe that experience is no
25 substitute for adequate licensure.

1 Q. Yeah. You missed the whole point.

2 MR. OLSON: Object to the form.

3 Q. The man owns the company might have the
4 license, but the guy that's been doing the work
5 in the field is the guy that knows how to do
6 the work, and he didn't have a license.

7 A. But, without a license, I would have no basis
8 of knowing whether that person has 30 or 40
9 years worth of experience, has never done this
10 before, or what have you. The licensure is the
11 standard. So, I would not know.

12 Q. You would know, you wrote a letter about it,
13 and we've already marked it as an exhibit.

14 A. That they had experience or did not have
15 experience?

16 Q. Fifty restaurants, you wrote in your letter.

17 A. Yes.

18 Q. Okay. Fair enough. Why was Sumter taken off the
19 list?

20 A. There was a question as to -- The landlord had
21 the obligation to repair the Sumter property.

22 Q. Okay.

23 A. The landlord had indicated that they would
24 prefer to ultimately just take back the
25 property and terminate the lease.

1 Q. Okay. So, your lease at the Sumter location
2 with that landlord put the burden on them?

3 A. Yes.

4 Q. But, the VEREIT leases --

5 A. That's correct.

6 Q. -- then put the burden on VEREIT?

7 A. Correct.

8 Q. Fair enough. All right.

9 A. So again, we said to these, we said because the
10 Sumter landlord wasn't going to pay, then we
11 weren't going to do the work. Presumably, if we
12 have no intention of paying for any of the
13 work, we would have also done that property.
14 The only reason we didn't do that was because
15 the Sumter landlord wasn't going to pay for it
16 and did not want to be on the hook for paying
17 for it. So, in answer to your earlier question
18 of whether we had any intention, I believe this
19 is indicia of the fact that we did intend, at
20 that point, to pay for the work. Otherwise, why
21 would we not have what, why would we have
22 dropped one off solely because someone else
23 wasn't paying for it, in answer to your
24 question.

25 Q. Okay. There's nothing here -- I've got a lot of

1 correspondence on the termination of leases.

2 A. You should have seen the box.

3 Q. Yeah. I imagine. But, I don't have any
4 information on termination of franchises.

5 A. The franchise agreements were not terminated.

6 Q. They were not?

7 A. No.

8 Q. Okay.

9 A. Well, not pursuant to this.

10 Q. Well, tell me about the termination of the
11 franchise agreements.

12 A. The franchise agreements were novated to the
13 franchisor.

14 Q. Basically, they allowed you to give it back?

15 A. Yes.

16 Q. They didn't ask for anything from you?

17 A. Correct. Well, they asked for certain things,
18 releases, transitional assistance.

19 Q. Paperwork?

20 A. No. A release is more than paperwork. I gave up
21 certain claims against them.

22 Q. Okay. Paperwork and releases and transitional
23 assistance?

24 A. Right.

25 Q. Did somebody else to pick up the location?

1 A. No. They picked up the locations.

2 Q. They did?

3 A. Yes.

4 Q. All right. So, basically -- on all of them?

5 A. One the ones that they wanted.

6 Q. Okay. So, there might be some that are still
7 closed and shuttered?

8 A. Yes.

9 Q. Okay. But, they've got --

10 A. They took them all over, they may have kept
11 them closed.

12 Q. Yeah, exactly. But, Church's --

13 A. Church's got them all. No one else got them.

14 Q. Okay. Got it. That's what I was trying to
15 figure out. But, I don't have anything here on
16 that. I've got all this stuff on the leases and
17 termination of leases. Here's two things. This
18 letter, that is a notice to your lender?

19 A. Yes.

20 Q. Saying that they terminated the leases --

21 A. The lease, yes.

22 Q. -- on December 13th, 2017?

23 A. The 12th. On the 12th, they noticed us that they
24 terminated the lease on the 13th. Yes. This says
25 that the lender, who is the secured party on

1 the collateral, can come pick their stuff up.

2 Q. I get it. Yeah. And so, what I was looking for
3 was, I had asked, one of the things I've been
4 asking for is the December 13th letter, which
5 wasn't in the stuff that was produced.

6 A. Okay.

7 Q. Where is the termination letter December 13th,
8 2017?

9 A. Without reviewing the 1,700 pages that were
10 produced, I can't tell you.

11 Q. I have reviewed it, and it's not there. That's
12 why I've been asking for it in my subsequent
13 list.

14 A. Okay.

15 Q. I made a list of everything I didn't find after
16 I went through it all.

17 A. Okay.

18 Q. And he's had it for a month, and I've been
19 trying to get this stuff.

20 A. We have produced everything we had related to
21 this, so it's possible it's no longer in our
22 custody or control.

23 Q. Yeah. Did it come from the same people --

24 A. Yes.

25 Q. -- the Kutak Rock people?

1 A. Yes.

2 Q. I don't know if I would have any luck with them
3 giving me anything that involved you, but you
4 can certainly ask for it, perhaps. I can't get
5 it.

6 A. Presumably, VEREIT would also have a copy.

7 Q. Yeah.

8 A. Which would be available --

9 Q. I would think y'all would have it, but
10 apparently not. And that letter would say why
11 they were terminating it, and that was pretty
12 much explain everything about why they
13 terminated the leases. That's really the key,
14 central thing. It will either support your
15 position or not, and I can't understand why we
16 don't have it. Do you know the reason why we
17 don't have it?

18 A. No. My understanding is we had produced all the
19 documents related to the termination that were
20 in our custody and control.

21 Q. You've said that four or five times now, and
22 I've got five notes of things that we don't
23 have.

24 A. I don't understand the question.

25 Q. You keep saying that, every time you don't have

1 it, and you keep saying, we've produced
2 everything we have, but yet you've made no
3 attempt to go back and look for any of the
4 specific stuff we said was missing and that we
5 need, and I just wondered, have you got any
6 explanation for that?

7 A. No.

8 Q. Okay. On the lease side of it, the termination
9 letters dated in August, and then an actual
10 memorandum for each location dated in March of
11 2018; is that right?

12 A. Sure. This termination terminates --

13 Q. Yeah. All the leases, everything that has been
14 put under lease, and then put under the
15 forbearance agreement, and the letters say,
16 okay, we're terminating it. And see, this is
17 why I was confused because we got, on the
18 lease, we've got August 15th, and we've got
19 these terminations that refer to the --

20 A. Right. These reserve the rights, but they don't
21 actually terminate. It's notice of termination.
22 They didn't actually terminate --

23 Q. This is the actual paperwork to terminate
24 (indicating)?

25 A. Correct. Again, thus there's a forbearance

1 between them. There's another forbearance.

2 Q. Okay. Well, that hasn't been produced.

3 A. Okay.

4 Q. Forbearance was back in May.

5 A. Right.

6 Q. The only one you've produced is this one
7 (indicating), that's in May. And then, by
8 August, they're saying, no, we're going to
9 terminate, but see, this is what I don't get.
10 If they're going ahead and terminating your
11 leases in August, then --

12 A. Clearly, it was not the case.

13 Q. Well, August 15th?

14 A. I agree.

15 Q. It says you were being terminated.

16 A. And yet, we were not until May of 2018.

17 Q. Well, maybe you were and you just didn't get
18 around to taking the lease off the record until
19 May. Back up.

20 A. Sure. But again, you were in the properties in
21 August, so how would we have been out?

22 Q. Yeah. Let's find out.

23 MR. LACOUR: Let's mark these as Fourteen.

24 (NOTICES OF LEASE TERMINATION MARKED AS
25 PLAINTIFF'S EXHIBIT NO. 14 FOR IDENTIFICATION.)

1 Q. So, Fourteen is notices of termination of your
2 lease and the landlord reserving their rights,
3 correct?

4 A. Yes.

5 Q. And they're all dated August 15th, but you can
6 look through it.

7 A. Okay. Sure.

8 Q. All right. But, you had had a forbearance
9 agreement with all concerned?

10 A. Yes

11 Q. Back in May?

12 A. Yes.

13 Q. All right. So, what document have you got to
14 show me or show me that these terminations were
15 somehow rescinded or undone after they were
16 issued in August of 2017?

17 A. I'd have to look through the document
18 production.

19 Q. Okay. Well, if they were terminated in August
20 of 2017 --

21 A. I do not believe they were. My recollection is
22 that they were not, that this notice of
23 termination notwithstanding, they were
24 ultimately terminated in 2018. Sorry, they were
25 ultimately terminated later in 2017.

1 Q. Well, that's what I'm getting at because
2 there's a mystery letter that supposedly
3 terminates them in December, but that's the one
4 that's not been produced.

5 A. All right.

6 Q. Hence, my specific request. That's why I've
7 been tracking that one thing down, it was the
8 missing piece. Now, I didn't have this piece
9 until now, but if I've got this straight, I had
10 been looking at these documents, which were
11 produced, saying you were terminated August
12 15th, and you're saying no, there's one in
13 December, but you haven't produced it, and I
14 can't find it, and that's why I'm so curious
15 about it.

16 A. Might I suggest, I would suggest it might be
17 prudent to subpoena VEREIT, the other side of
18 these documents. To the extent that they are
19 not in our custody and control, presumably,
20 they are in theirs.

21 Q. Yeah. There are also in some place up in the,
22 out west where they are not subject to subpoena
23 power. Subpoenas are no good beyond
24 jurisdictional borders with state.

25 A. They are registered to do business in South

1 Carolina and have a registered agent in South
2 Carolina.

3 Q. Maybe it works and maybe it doesn't.

4 A. I can't, I can't provide you legal advice.

5 Q. I understand. The termination documents that
6 we, we haven't marked them yet, but we can.

7 A. Sure.

8 Q. But, that looks like the document eventually
9 that was recorded to memorialize the end of the
10 lease arrangement; is that correct?

11 A. Yes.

12 Q. Okay. And do you remember why it took from
13 either August or December all the way until
14 March of 2018?

15 A. Yes. There was an interim agreement in place
16 that was subsequently terminated based on the
17 liens.

18 Q. Okay.

19 A. That's my recollection.

20 Q. We don't have that agreement, either, if
21 there's another agreement.

22 A. That's the one we're talking about.

23 Q. Yeah.

24 A. That missing agreement that exists, prior to --

25 Q. Yeah. Well, we're also looking for the

1 termination for that missing agreement.

2 A. Right.

3 MR. LACOUR: Off the record.

4 (The deposition went off the record for a
5 brief period of time.)

6 (LEASE TERMINATIONS MARKED AS PLAINTIFF'S
7 EXHIBIT NO. 15 FOR IDENTIFICATION.)

8 Q. Okay. I'm going to hand you back a stack of
9 documents now that's been marked as Exhibit
10 Fifteen, sir. And as to those documents, it's
11 my understanding, from what you told me
12 earlier, those are the actual, formal
13 termination of the leases?

14 A. Yes.

15 Q. Of record, and they were recorded in each of
16 the counties?

17 A. It is my understanding that the termination of
18 memorandum of lease are the governing documents
19 that terminate the lease relationship between
20 the Steeple entities and ARC CAFEUSA001, LLC,
21 the landlord of the relevant properties.

22 Q. Okay. And so, there's not a lot here,
23 substantively, other than the termination of
24 the lease relationship. Is there any other
25 litigation still pending --

1 A. No.

2 Q. -- between the landlord and any of the entities
3 you have control of?

4 A. No. All actions between them have been
5 resolved.

6 Q. Okay. So, to the extent that there was money
7 owed in arrears --

8 A. It's been resolved.

9 Q. -- it's either been paid or it's been
10 compromised or something has happened to it?

11 A. Yes. All controversy between the parties has
12 been resolved.

13 Q. Okay. And what they got out of it was they got
14 control of the property back?

15 A. Among other things.

16 Q. The landlord?

17 A. Yes.

18 Q. What else did they get? I mean, what was the
19 outline of the --

20 A. They got the releases, Church's agreed to
21 assume other leases. They didn't just get the
22 properties back vacant, Church's took over the
23 properties.

24 Q. Okay.

25 A. Some of them. Others, they got back vacant and

1 subsequently sold.

2 Q. Okay. So, let me just to talk you about this
3 relationship which is just you and landlord.

4 A. Sure.

5 Q. So, the landlord got control the property?

6 A. Yes.

7 Q. And what else did the landlord get, did you pay
8 part of the money you owed them?

9 A. I don't recall the specific financial terms. I
10 don't think --

11 Q. Again, it was either paid or compromised?

12 A. Yes. It was certainly compromised. It was not
13 paid in full.

14 Q. Fair enough. So, did the landlord get anything
15 else?

16 A. From Steeple or from any other parties?

17 Q. Steeple and State Acquisitions and Hamilton.
18 Oh, Hamilton wasn't a part of it?

19 A. No. Well, they actually, they got a release of
20 all claims and what have you.

21 Q. Yeah. Control of the property and the release,
22 they gave a release.

23 A. A limited release.

24 Q. Okay. Is there something they're still holding
25 your feet to the fire on?

1 A. I would have to look through the, I would have
2 to look.

3 Q. All right. Okay. And then, as far as the
4 Church's people, the franchisor, you're saying
5 they basically swooped in and then --

6 A. Yes. They took over the properties.

7 Q. And leased them from ARC?

8 A. Yes. And we consented, we gave, part of what we
9 gave VEREIT was the consent to let them come in
10 without us having, there was no downtime, there
11 was no diminution of the property. We agreed to
12 leave everything in place.

13 Q. Yeah. Okay.

14 A. Church's, we let Church's hire all of our
15 employees.

16 Q. Okay. And then, y'all swapped releases, beyond
17 that?

18 A. Yes.

19 Q. And again, past due amounts were either paid or
20 compromised?

21 A. Yes. Compromised.

22 Q. Okay. Well, that puts State and the Steeple
23 entities perhaps out from under some of the
24 debt?

25 A. Yes.

1 Q. Okay.

2 A. But, at a considerably lower price than if they
3 would have been able to sell the properties,
4 sell the business in the ordinary course.

5 Q. Right.

6 A. The precipitating factor of selling the
7 business or handing the business back to
8 Church's versus being able to restructure,
9 refinance, renegotiate was based on the liens.

10 Q. Yeah. Okay. Well, to the extent that there's a
11 counterclaim in this case for damages, you may
12 claim you've lost some money because of one
13 circumstance, but you would have to give credit
14 for where you got exonerated from debt in other
15 circumstance. When the discovery responses were
16 provided, we weren't given any calculation of
17 damages. Do you have any today?

18 A. Not yet.

19 Q. Not yet. Okay. What is the holdup?

20 A. We're still assessing the final liabilities.

21 Q. This case has been around for a year. How long
22 is it going to take?

23 A. I don't have that answer.

24 Q. Okay. What are you waiting on? What's the
25 holdup? What's not yet resolved? What's unknown

1 now a year after?

2 A. I don't know.

3 Q. Okay. What's preventing you from giving us
4 final numbers?

5 A. I don't, I don't have the underlying
6 information with me.

7 Q. Okay.

8 A. We've not closed out tax year 2018 yet, which
9 was the year in which the properties were
10 transferred over.

11 Q. Okay.

12 A. So, we don't have the final accounting of that
13 year, nor do we have an assessment of the
14 liabilities. So, to come up with a number for
15 the diminution of value, we won't have that.
16 Presumably, by the time the 2018 tax returns,
17 which are on extension, are filed, we would
18 have a complete accounting of 2018.

19 Q. Okay. Fair enough. When do expect that's going
20 to happen?

21 A. Those tax returns are due September 15th, 2019.

22 Q. All right. There are three letters here. Well,
23 that's an email, so we'll go with two letter, I
24 guess.

25 (MARSH LICENSURE LETTERS MARKED AS

1 PLAINTIFF'S EXHIBIT NO. 16 FOR IDENTIFICATION.)

2 Q. Take a look at these.

3 A. Okay. Sure.

4 Q. So, let me state for the record we marked two
5 letters --

6 A. Sixteen.

7 Q. We marked two letters as one exhibit, Sixteen.
8 One is dated October 31st, 2017, and the other
9 is December 19th, 2017. Did you write both of
10 those letters?

11 A. I did.

12 Q. Did you say in both of those letters that Marsh
13 Waterproofing out of Texas was your general
14 contractor?

15 A. I did.

16 Q. Okay. And why did you say that?

17 A. Based upon my information and belief, Marsh
18 Waterproofing was acting as my general
19 contractor.

20 Q. Okay. Was there anything about that in the
21 proposal we marked earlier?

22 A. No. The basis of my belief as to the nature of
23 their work was informed by the engineering
24 proposal or the engineering recommendations,
25 which I don't remember which exhibit it is.

1 Q. You read something into the engineering report?

2 A. Yes.

3 Q. I'll hand you back the one from Dorchester Road
4 you looked at earlier.

5 A. Thank you.

6 Q. Okay. So, the first thing -- Well, first look
7 at what you want to, and then I'll ask you some
8 questions.

9 A. Okay. So, with relation to the structural
10 repair or are you just asking about the
11 contracting work?

12 Q. The first question I want to ask you is, you
13 said that there was something in the
14 engineering proposal that made you think Marsh
15 was a general contractor; is that right?

16 A. No. There's something in here that indicated
17 the work they were providing, and that work --

18 Q. Okay. Go ahead. And what is that?

19 A. So, the nature of the work being, the nature of
20 what was required to be done by Marsh.

21 Q. Okay.

22 A. Similarly, Marsh's web site referred to their
23 contracting services, and my discussion with
24 Church's referred to them as providing general
25 contractor services.

1 Q. What about the nature of the work that they
2 performed?

3 A. Structural repairs to the foundation.

4 Q. Okay. I asked you a series of questions
5 earlier, and we talked about the fact that the
6 last work was the work done by Marsh?

7 A. Yes.

8 Q. Which was to put the foam underneath there?

9 A. The Alchemy Polymers Lift 430 foam.

10 Q. That fancy foam. That's right. I asked you a
11 series of questions.

12 A. Yes, sir.

13 Q. And I asked you, was there any grading or
14 filling or mucking or any changes to the soil,
15 and you said no. And I asked you about plumbing
16 and electrical work, and you said no. I asked
17 you about repairs to the steel joists or
18 girders, I asked you about the block and brick
19 on stem walls and piers, and asked you about
20 concrete repairs, crack repairs.

21 A. Sure.

22 Q. And the only one of those you were the least
23 bit confused about was the concrete. So, what
24 specific work do you think Marsh did that they
25 would have to be a general contractor to do?

1 A. The Alchemy Polymers Lift foam, in review of
2 the specifications, the compressive strength of
3 the foam is adequate to support the
4 superstructure. As such, my belief is that if
5 they were applying foam for the purpose of
6 holding up the building, that that work was a
7 structural repair to the foundation.

8 Q. Right. Okay. Anything else?

9 MR. OLSON: Object to the form.

10 Q. Anything else, besides that?

11 A. That the work related to the foam and the
12 concrete constitute work of a general
13 contractor, that the work was done for the
14 purpose of holding up the building, that there
15 was no other work that was being done related
16 to improving the structural load bearing
17 members, the high density foam, that that was
18 the sole method required for remediation.

19 Q. Okay.

20 A. That there were no other requirements, other
21 than that the foam be applied to hold up the
22 superstructure.

23 Q. Yeah. That's the engineer's plan.

24 A. Yes. And so, by doing that, they were going to
25 be repairing the structure of the foundation,

1 that the work they were doing was part and
2 parcel to the repair of the structure of the
3 foundation, and that the sole work that needed
4 to be done to repair the structure of the
5 foundation was the application of the foam and
6 the concrete. That was how you repair the
7 foundation. All of the other work were things
8 you needed to do prior to the repairs. I read
9 them as preconditions to repair.

10 Q. Yes. I agree.

11 A. So, again, my basis for my assertion that they
12 were general contractors, they were providing
13 structural repair work to the foundation of a
14 commercial property.

15 Q. By installing foam?

16 MR. OLSON: Object to the form.

17 A. High density structural foam and concrete.

18 Q. And they put it in an open space?

19 MR. OLSON: Object to the form.

20 A. Yes.

21 Q. The foam went into the crawl space --

22 A. I don't, I am not prepared to speculate as to
23 how the foam was applied.

24 Q. -- the open space? No. I said where.

25 MR. OLSON: Object to the form.

1 Q. It went into the open space underneath the
2 slab, so it could hold it up?

3 A. Yes.

4 Q. Okay.

5 A. To repair the structure, for the purpose of
6 repairing the structure.

7 Q. I get that. For the purpose of holding the slab
8 up?

9 A. Yes.

10 Q. Because the floor caved in in the one in Texas,
11 right?

12 A. Yes.

13 Q. So, they put the foam in the bottom down there
14 to hold the slab up, so the floor can't cave
15 in?

16 A. So, they repaired the superstructure of the
17 building. Yes.

18 Q. Well, that's the basis of you saying that they
19 were the general contractor?

20 A. Yes.

21 Q. Which was a brainstorm you had at some point
22 after all the work was done and billed but not
23 paid for; is that right?

24 MR. OLSON: Object to the form.

25 A. I don't know that it was a brainstorm.

1 Q. Well, you got the idea from someplace. You
2 don't have to tell me if it was counsel, but
3 you got the idea after the work was done, the
4 bills were sent, and it wasn't paid for?

5 A. Yes.

6 Q. Okay. Have you told me every reason you have
7 for believing that Marsh was your general
8 contractor?

9 A. Marsh was not working as a, under anyone else's
10 supervision. Hamilton Management is certainly
11 not a general contractor, nor did it hold
12 itself out to be.

13 Q. Well, who did we coordinate with?

14 A. The management company of the franchise. You
15 also coordinated with the construction
16 department of Church's Chicken, who is not a
17 general contractor.

18 Q. Why were we coordinating with the construction
19 people at Church's?

20 A. They were the ones who originally made the
21 introduction, and they were involved.

22 Q. Yeah.

23 A. They were the ones who provided the -- We
24 didn't suggest the Alchemy Polymers, they did.

25 Q. Well, actually --

1 A. No. Actually, respectfully.

2 Q. Actually, the engineer did.

3 A. No. The engineer, it was provided to. I'll have
4 the quote from the report, if I may.

5 Q. Sure.

6 A. "The Alchemy Polymers AP Lift 430 product has
7 been reviewed. It is our understanding the
8 Church's Chicken has used the solution in the
9 past with other crawl spaces and achieved
10 favorable results." We did not provide that
11 information to the engineers, Church's did, or
12 Marsh. We had no idea that the foam was a
13 viable solution. So, again, the discussion of
14 what foam --

15 Q. You missed the point, once again. The question
16 is --

17 A. What is the basis --

18 Q. No. We've kind of gotten off on a tangent. What
19 I was trying to find out was why you were
20 asserting to the LLR that we were your general
21 contractor, other than the obvious reason, to
22 try and not have to pay us, and you had said
23 because, and you just explained, because you
24 felt that we were making a structural repair to
25 the building?

1 A. Yes.

2 Q. I get that.

3 A. Okay.

4 Q. So, then the next question, you had to say, you
5 said that we were not --

6 A. And that Marsh holds itself out, otherwise, as
7 a general contractor.

8 Q. You said we were not being supervised by
9 anyone, and I said, who were we coordinating
10 with.

11 A. Coordination and supervision are two separate
12 things.

13 Q. I understand that.

14 A. Okay.

15 Q. So, who were we coordinating with?

16 A. You were coordinating with Church's
17 construction department and Hamilton
18 Management.

19 Q. And why were we coordinating with Hamilton?

20 A. To provide access to the site.

21 Q. Great. Now, why were we coordinating with
22 Church's?

23 MR. OLSON: Object to the form.

24 A. Because they provided, they introduced the
25 general contractor.

1 Q. I'm talking about the work. What coordination
2 were we doing with Church's during the work?
3 We're not talking about before.

4 MR. OLSON: Object to the form.

5 Q. Tell me about the work. What part of that do
6 you not understand? In performing the work, are
7 you saying --

8 A. Church's made the recommendation of the
9 product.

10 Q. Are you saying that in installing the foam, we
11 had to talk to the people at Church's before we
12 started work on location?

13 MR. OLSON: Object to the form.

14 A. Yes.

15 Q. Well, tell me why.

16 A. Because the product recommendation --

17 Q. No, sir.

18 MR. OLSON: Object to the form.

19 Q. It has nothing to do with the product.

20 A. With all due respect, I'm answering your
21 question.

22 Q. No, you're not. You're going, you're dancing
23 around it. The question is, with whom did we
24 have to coordinate to get the work done? You
25 said Hamilton, for access?

1 A. Yes.

2 Q. That has to do with getting the work done at
3 the job, on the day, and that's all it has to
4 do with.

5 A. Yes.

6 Q. Okay. What did we have to communicate with
7 Church's about on the day at the job to get the
8 work done?

9 MR. OLSON: Object to the form.

10 A. Nothing.

11 Q. That's what I thought. Now, is there something
12 else you wanted to tell me.

13 A. That Marsh communicated with Church's regarding
14 the product specification, what was going to be
15 used. We did not provide any information
16 regarding the size of the crawl space or
17 anything of the sort.

18 Q. Sure. I don't know that Marsh provided anything
19 to anybody. Marsh was provided the same
20 engineering reports to come up with a price.
21 What makes you think Marsh had any upfront
22 involvement with any of this?

23 A. We were not a party to the discussion. So,
24 Marsh provided us the pricing, prior. We didn't
25 say, hey, Marsh, go use the AP foam.

1 Q. No. You sent them the reports.

2 A. Right.

3 Q. And they came up with a price by the report,
4 which said to use the AP foam.

5 A. To meet the engineer's recommendations.

6 Q. Am I missing something here? Are you saying
7 that you did not send the engineering reports
8 to Marsh for the locations he was supposed to
9 repair?

10 A. No. That's not what I'm saying.

11 Q. Because my understanding was you did.

12 A. We did.

13 Q. Not you, Mr. Vaughn sent them.

14 A. I agree that the, I agree that the reports were
15 sent to Marsh prior to, following the reports
16 be completed by the engineers, prior to Marsh
17 sending over a quote. I agree.

18 Q. And it may be the disconnect here is, I tried
19 to ask you about your background, but I'm not
20 going to be allowed to go there, but maybe you
21 don't know anything about construction, but in
22 the world of construction, engineers design
23 things, contractors just build them. Okay?

24 A. Great. And the contractor that is responsible
25 for building it is a general contractor.

1 Q. No. That just doesn't follow. It has nothing to
2 do with anything. You can be licensed at much
3 less than a general contractor or no license at
4 all and perform work in the State of South
5 Carolina.

6 MR. OLSON: Object to the form.

7 A. Are you asking me a question or telling me
8 about the law?

9 Q. I'm trying to figure out why you took it upon
10 yourself to write these two letters here, and
11 we're coming back around full circle, and the
12 only thing you can tell me is you think that
13 what Marsh did resulted in a structural repair
14 to the building?

15 A. I do.

16 Q. And I get that. But, that's how we got off on
17 that tangent. All right. Were there any
18 concrete repairs to the building, other than
19 where you take the door off of that entrance
20 hole to get under the building?

21 A. Other than the four inches of concrete applied
22 after completion?

23 Q. Yeah.

24 A. I'm not aware of any other concrete.

25 Q. Got you. Okay. All right. And you don't have

1 any idea what the value of that concrete work
2 is, do you?

3 A. the I believe the total price for the work is
4 \$36,800.

5 Q. Correct.

6 A. There was no itemization provided. It was all
7 part and parcel.

8 Q. So, you don't have any clue about what the
9 concrete portion of that repair is, do you?

10 A. There was no itemization.

11 Q. Do you have any idea what the concrete portion
12 of the repair was, yes or no?

13 A. No.

14 Q. Thank you.

15 A. It was not itemized. It is not possible to be
16 discerned. We could not buy them separately.

17 Q. It's really possible for it to be determined.
18 All you need to know is what the cost of that
19 work was, which you can get a lot of different
20 ways. My question is, did you ever get it?

21 A. No.

22 Q. Okay. And the last thing, I guess, is some of
23 these earlier ones but I've got to find it.

24 A. I wish to supplement my answer to why I thought
25 they were a contractor.

1 Q. Sure. You can.

2 A. Per my letter, I confirmed the requirement that
3 all contractors engaging in contracting work
4 with a total cost of construction in excess of
5 \$5,000 are required to be licensed as general
6 contractors. My definition of general
7 contractor was taken from that.

8 Q. Fair enough. Well, \$5,000 is the easy part. Do
9 you know what and where you find what's the
10 work of a general contractor in the State of
11 South Carolina?

12 A. I don't understand the question.

13 Q. Well, a \$5,000 minimum amount is one part of
14 the puzzle.

15 MR. OLSON: Object to the form.

16 Q. Do you know where you look to find out what is
17 considered --

18 A. South Carolina Annotated Code.

19 Q. Yes, sir. Do you know what section?

20 A. I do not.

21 Q. Okay. Have you ever looked it up?

22 A. I have.

23 Q. And what did you find?

24 A. That the contracting work with a total cost of
25 construction in excess of \$5,000. I'm not going

1 to be able to provide a more specific
2 definition, based upon my review. I don't have
3 that, I don't know the working definition off
4 the top of my head from the South Carolina
5 code. But, I have answered your question that
6 that was where I consulted.

7 Q. There's two components, and you looked at the
8 right section. And that statement says, general
9 contracting work, \$5,000. Given it's more than
10 \$5,000, my question is, did you ever look up
11 the part of the code that defines what is
12 general contracting?

13 A. Yes.

14 Q. And what did you find?

15 MR. OLSON: Object to the form.

16 A. I don't recall.

17 Q. Okay.

18 A. I found that the work completed by Marsh met
19 the definition.

20 Q. Not if you looked it up.

21 MR. OLSON: Object to the form.

22 A. With all the respect, I've testified.

23 Q. You have. But, you didn't look in the right
24 place, apparently.

25 A. With all due respect, that's not a question.

1 Q. I'm looking for one more email, I promise, and
2 then we'll be done. But, I've got to find it. I
3 thought I marked it, but I don't see it in the
4 stack of what we marked. So, if I don't find it
5 here, I'll go back through that stack.

6 (The deposition went off the record for a
7 brief period of time.)

8 Q. Okay. It was Exhibit Ten, and we've already
9 talked about it.

10 A. Okay.

11 Q. Nothing we've talked about changes any
12 testimony you gave or what you think about
13 Exhibit Ten, does it?

14 A. I don't believe so.

15 Q. I mean, whatever is there. It goes back to an
16 original --

17 A. Right. I agree. Exhibit.

18 Q. Yeah.

19 A. I accept Exhibit Ten.

20 Q. You were talking about, it says, your
21 contractor, but you were talking about Osiris
22 going ahead of us.

23 A. And Roto-Rooter.

24 Q. And Roto-Rooter.

25 A. Yes.

1 Q. Okay. Well, it only says contractor, singular.

2 A. Again, we --

3 Q. Well, it changed.

4 A. Right.

5 Q. You said it changed because you started with
6 Osiris and then you changed to Roto-Rooter?

7 A. Yes. That's correct.

8 Q. Got it, got it. I understand. Okay. I think
9 that's all the questions I have.

10 MR. OLSON: I have like two follow-up
11 questions, and I don't think they will create
12 more questions.

13 MR. LACOUR: Careful.

14 CROSS EXAMINATION BY MR. OLSON:

15 Q. Alex, is it your position that when a
16 contractor presents itself as doing work and
17 agrees to do work in a particular state, that
18 it is fairly reasonable to assume that they are
19 licensed in that state?

20 A. Yes, particularly when they had given
21 indication that they had licenses in their
22 trade marketing.

23 Q. Is in your opinion that the due diligence
24 should fall upon you to determine whether
25 they're licensed before the work is performed

1 or on them to be forthwith as to whether they
2 are or not, at that same time?

3 MR. LACOUR: Object to the form.

4 A. The obligation for licensure would remain on
5 the licensee, as opposed to their client, and
6 further, that the diligence that we might have
7 otherwise engaged in with a contractor that we
8 found, say on Craigslist, we didn't undertake
9 based upon the fact that they were Church's
10 recommended contractor, and that gave us a
11 degree of comfort that they had due inquiry and
12 experience.

13 Q. Last question, as far as the forbearance
14 agreement that has been entered into evidence,
15 is it your position that the mechanic's lien
16 caused that agreement to blow up or
17 negotiations of that agreement to blow up?

18 A. Based upon the conversation that I had with
19 Glenn Kindred of VEREIT, he made clear to me in
20 no uncertain terms that the straw that broke
21 the camel's back or the precipitating event or
22 the determining reason why VEREIT was no longer
23 willing to continue on in forbearance or help
24 us negotiate was because a lien was filed
25 against their property and that was something

1 that had other implications for them and
2 required them to take prompt action, that but
3 for those liens, we would not have been in the
4 position that we were in with regard to
5 termination.

6 Q. Now, did Glenn elaborate as to certain
7 pressures that they might, may or may not be
8 feeling due to lien being filed?

9 A. Yes. He indicated that the lien was a source of
10 stress for VEREIT because it created an
11 encumbrance on their properties that they
12 owned, as we were simply tenants. And so, but
13 for the lien filing, they would have been in a
14 position to work out and provide us more
15 flexibility, but that they had to terminate
16 once the lien was filed.

17 Q. Is Glenn the best person to talk to about the
18 rationale behind the opinion he communicated to
19 you?

20 A. Yes. Glenn was the senior officer at VEREIT who
21 engaged in all of the substantive negotiations
22 and was the point of contact for all things
23 related to the landlord/tenant discussions,
24 negotiations. Debbie Hester provided certain
25 administrative information, but Glenn was, my

1 understanding, the go-to person.

2 Q. That's all I have.

3 THE WITNESS: I'm going to stand up, but
4 then you're going to ask me a question, right?

5 MR. LACOUR: Well, yeah. I get to follow up.

6 RE-DIRECT EXAMINATION BY MR. LACOUR:

7 Q. So, in your discussions with Glenn --

8 A. Yes. Kindred at VEREIT.

9 Q. Did you have any discussion and all with Glenn
10 about the distinction between the lien
11 attaching to the fee interest in the property
12 and a lien attaching to your leasehold interest
13 in the property?

14 A. No.

15 Q. Do you know if Glenn understood the difference?

16 A. I would have no way of knowing what Glenn's
17 understanding was.

18 Q. Okay. Fair enough. And with regard to the basis
19 for your answer the second question where you
20 expressed an opinion, I objected to the
21 opinion. So, you need to tell me about your
22 experience in hiring contractors to make
23 repairs to buildings. Is this the first time
24 you've ever done it?

25 A. No.

1 Q. Okay. And what type of repairs have you hired
2 people to do in the past?

3 A. Numerous.

4 Q. Okay.

5 A. Electrical, plumbing, drywall.

6 Q. Okay.

7 A. Alterations, roofing repair.

8 Q. Okay. Electrical and plumbing and drywall, none
9 of those were involved in this scope of work by
10 Marsh Waterproofing, correct?

11 A. That's correct.

12 Q. And neither was any roofing?

13 A. Correct.

14 Q. Alterations in the nature of walls, changes in
15 walls or ceilings or floors, we didn't do that,
16 either, did we?

17 MR. OLSON: Object to the form.

18 A. Agreed.

19 Q. All right. So, when you had, in your previous
20 experience, hired people to make the types of
21 repairs you're talking about, had you hired
22 general contractors?

23 A. Yes.

24 Q. Okay. Fair enough. That's all the questions I
25 have.

1 A. Thank you for your time.

2 Q. You're welcome. Thank you. I appreciate it.

3

4 (Deposition concluded at 1:47 p.m.)

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1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF CHARLESTON)

6 I, John P. Crawford, Jr., Court Reporter and Notary
7 Public, certify that I did have Alexander Chatfield
8 Burns to appear before me at 10:20 a.m. on Wednesday,
9 May 15th, 2019, at Clawson and Staubes, LLC, 126th, Seven
10 Farms Drive, Suite 200, Charleston, South Carolina; that
11 the witness was sworn and cautioned to tell the truth,
12 and that the pages constitute a true and accurate
13 transcript of the statement given at that time and
14 place.

15 I further certify that I am not of counsel or kin to
16 any of the parties to this cause of action, nor am I
17 interested in any manner in its outcome.

18 IN WITNESS WHEREOF, I have hereunto set my hand and
19 seal this the 20th day of May 2019.

20

21

22

23

24

25

Notary Public for South Carolina

My Commission Expires: April 4th, 2022

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

Marsh Waterproofing, Inc.

Respondent,

v.

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

Appellants.

NOTICE OF APPEAL

Appellants, Steeple Dorchester, Ltd. and Hamilton Management Services Company, Inc., hereby serves their Notice of Appeal in the matter captioned above as to the Final Order of the Honorable Frank R. Addy, Jr., dated March 11, 2020.

Appellants received written notice of entry of Honorable Frank R. Addy, Jr.'s Form Four Order on February 12, 2020. See Appellants' Exhibit No. 1. On February 24, 2020, Appellants, by and through the undersigned counsel, and pursuant to Rules 59 a) and e), SCRCF, timely filed their Motion to Alter or Amend the Court's Order dated February 12, 2020, which, upon information and belief, was not considered by the Court, as a formal Final Order had not yet been filed. See Appellants' Exhibit No. 2. On March 9, 2020, the Court issued a Final Order, which was amended on March 11, 2020, at the request of the Plaintiff/Respondent by its Motion to Alter or Amend the Judgment. On March 23, 2020, Appellants, by and through the undersigned counsel, and pursuant to Rules 59 a) and e), SCRCF, timely filed their Motion for an Order to Alter or Amend the Court's Final Order filed on March 11th, 2020. See Appellants' Exhibit No. 3. On May 11, 2020, Appellants received written notice of the Court's Order denying the Appellants' Rule 59 Motion to Alter or Amend Judgment of the March 11, 2020 Final Order. See Appellants' Exhibit No. 4. As such, Appellants timely files this Notice of Appeal of the Honorable Frank R. Addy, Jr.'s March 11, 2020, Final Order.

June 10, 2019



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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.
4) 2018-CP-10-00262
5))
6 Plaintiff,) Transcript of Record
7 vs.) Non-Jury Trial
8 STEEPLE DORCHESTER, LTD,)
9 et al))
10 Defendants.)

11 * * * * *

12 B E F O R E:

13 The Honorable Frank R. Addy, Jr.

14 * * * * *

15
16 Krista Nicole Carney, Stenographic
17 Court Reporter, transcribed by a
18 Stenographic Court Reporter

19

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1 A P P E A R A N C E S

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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

15

16

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18 _____
19 Krista Nicole Carney,
20 Official Stenographic Court Reporter

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1 State of South Carolina) Court of Common Pleas
2 County of Charleston) Ninth Judicial Circuit
3
4 Marsh Waterproofing, Inc.,)
5)
6 Plaintiff,)
7 vs.) Transcript of Record
8) 2018-CP-10-00262
9 Steeple Dorchester Ltd.)
and Hamilton Management)
Services Company, Inc.,)
10)
11 _____ Defendant(s).)

11 April 28, 2020

12 Via WebEx Videoconferencing

13 B E F O R E:

14 The Honorable Frank Addy, Jr., Judge
15

16 A P P E A R A N C E S:

17 Albert A. Lacour, III, Esquire

18 On behalf of Marsh Waterproofing, Ltd.
19

20 Christopher Clay Olson, Esquire

21 On behalf of Steeple Dorchester Limited and
Hamilton Management Services
22

23 Stacy S. Johnson
24 Circuit Court Reporter
25

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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 down 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.

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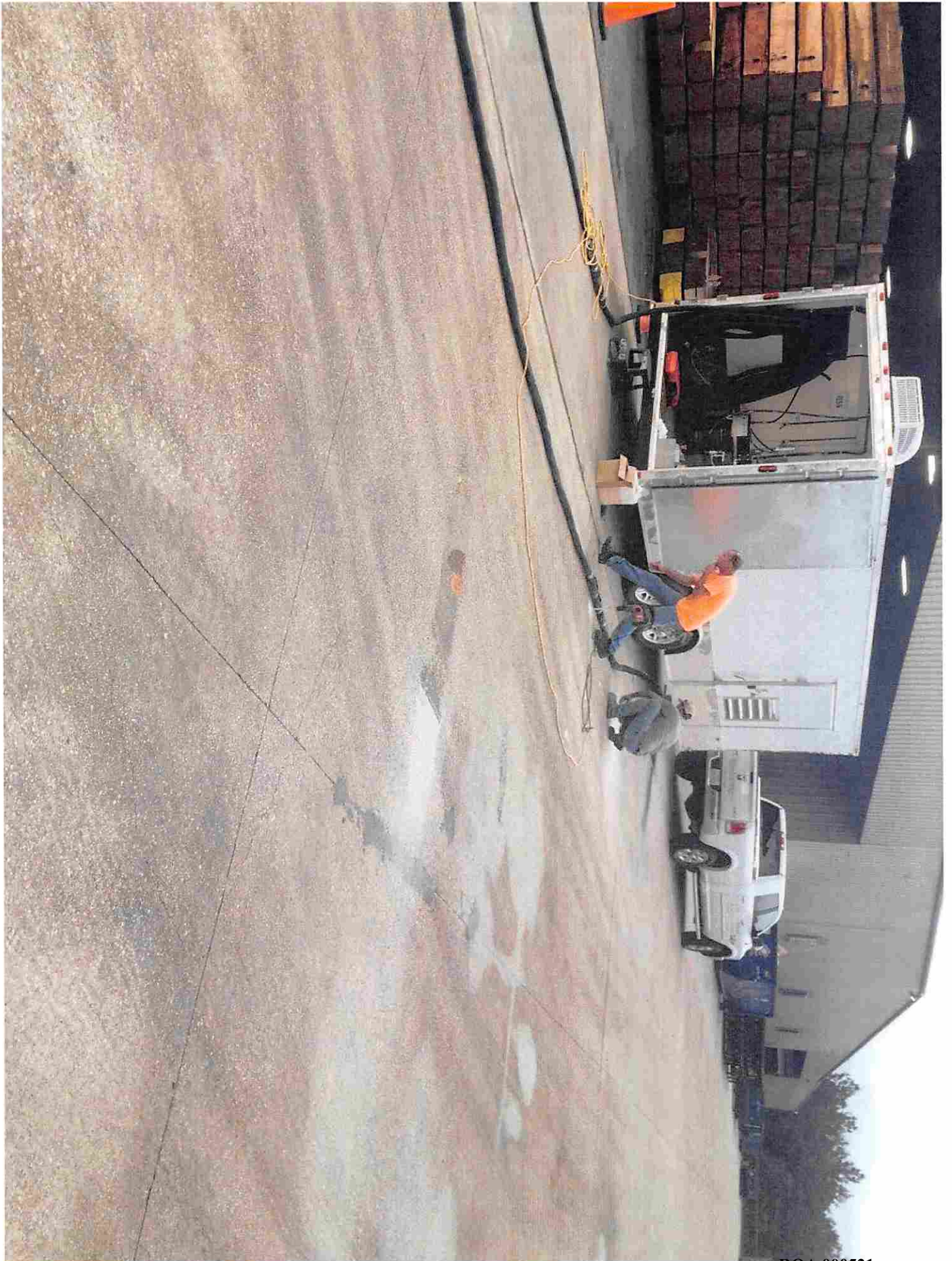
I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

June 22, 2020

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

Record on Appeal

Marsh Waterproofing Trial Exhibit 1



Record on Appeal

Marsh Waterproofing Trial Exhibit 2



Record on Appeal

Marsh Waterproofing Trial Exhibit 3



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:

<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

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.
-
-

June 22, 2017

DPC Report No. 2017086**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

DPC Report No. 2017086
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

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

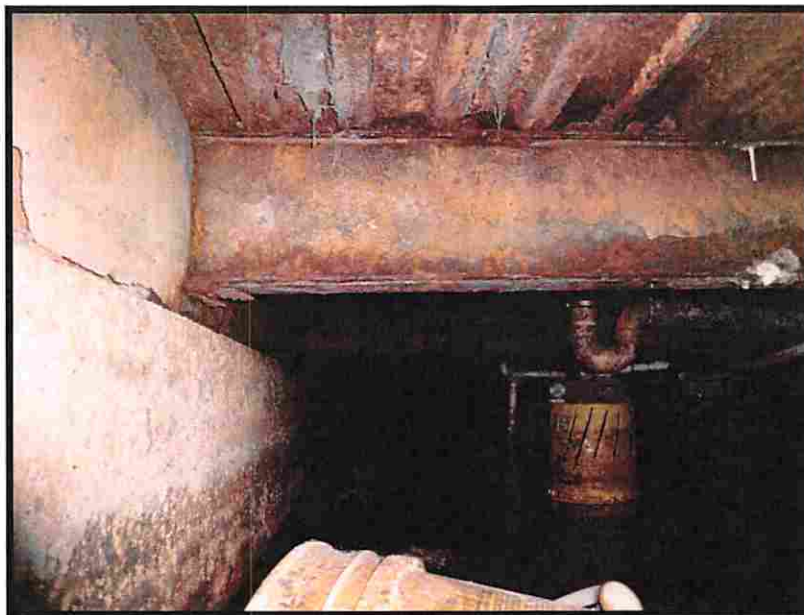


Photo 8: Severe Rust, Deterioration, and Delamination Observed on Joist Support Beams



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

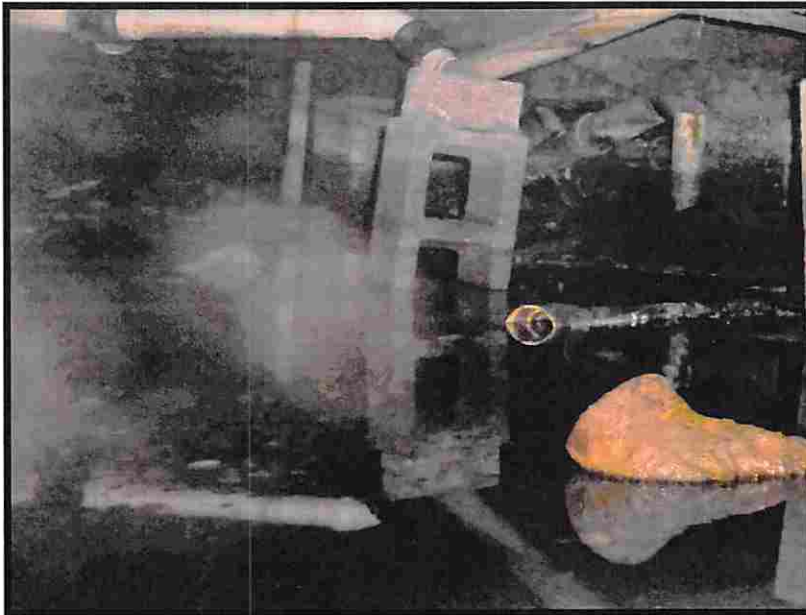


Photo 14: No Shoring Observed for Floor Decking

Record on Appeal

Marsh Waterproofing Trial Exhibit 5

Churchs Chicken South Carolina

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

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

Record on Appeal

Marsh Waterproofing Trial Exhibit 7

Re: Churchs Crawl Spaces

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

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 8

Re: Crawl Space Schedule

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

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

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 TIMESHEETForeman's Name: Avent ArmentroutWeek starting date: 8/14/17 Week ending date: 8/20/17MONDAY: 8/14

JOB NAME:	EMPLOYEE NAME:	TIME:
Bend Copper	Avent, Rogers, Dyan	9 hrs
Cut Wall		
Spaw Glass		

TUESDAY: 8/15

JOB NAME:	EMPLOYEE NAME:	TIME:
Spaw Glass	Avent, Rogers, Dyan	9 hrs
Bend metal		
Fit metal cutter		

WEDNESDAY: 8/16

JOB NAME:	EMPLOYEE NAME:	TIME:
Spaw Glass	Avent, Rogers, 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 TIMESHEETForeman's Name: Agent ArmentroutWeek starting date: 8/21/17 Week ending date: 8/27/17MONDAY: 8/21

JOB NAME:	EMPLOYEE NAME:	TIME:
<u>S. Carolina</u>	<u>Agent, 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>Agent, 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>Agent, Roger</u>	<u>10 hrs</u>
<u>(Dumpling work)</u>		
<u>per Diem</u>		

6 problems
74.5
13.5 drive
ROA 000559

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



BP0680340

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.

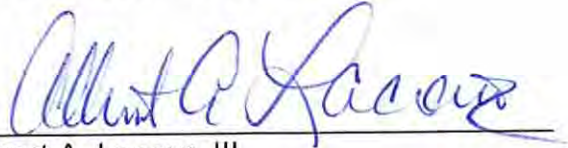
That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the

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

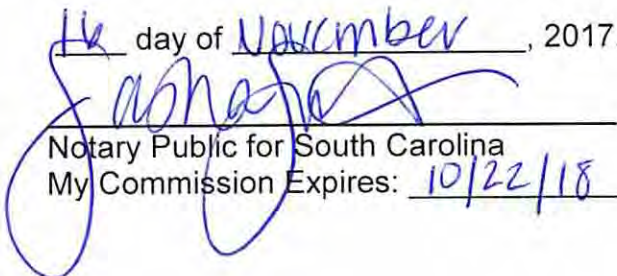
CLAWSON and STAUBES, LLC



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.

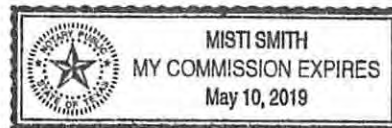
Marsh Waterproofing, Inc.

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.

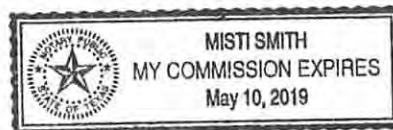
By: Tim Marsh
Tim Marsh
(print name)

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

**Filed By:**

CLAWSON & STAUBES
126 SEVEN FARMS DR.
SUITE 200
CHARLESTON SC 29492 (BOX)

RECORDED

Date: November 16, 2017

Time: 2:14:29 PM

BookPageDocType**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 \$ -

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Chattel \$ -

TOTAL \$ 10.00Original Book: Original Page: DRAWER **Drawer 2**CLERK **JBA**

0680

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340

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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.**

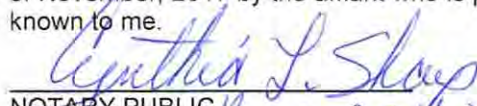
I, Jason Roberts, being duly sworn, depose and say that on the **16th day of November, 2017 at 2:35 pm, I:**

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.
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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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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

**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



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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.

RECEIVED

Jan 25 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.,

Respondent.

Certificate of Counsel

The undersigned hereby certifies that the Amended 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

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Charleston, South Carolina
January 25, 2021