

1987

Mitchell D. Henderson v. For Shor Company : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

James C. Jenkins; JENKINS & ASSOCIATES.

J. Blaine Zollinger; ZOLLINGER & ATTWOOD.

Recommended Citation

Brief of Appellant, *Mitchell D. Henderson v. For Shor Company*, No. 870502.00 (Utah Supreme Court, 1987).
https://digitalcommons.law.byu.edu/byu_sc1/1798

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

TAH
DOCUMENT

F U

IN THE SUPREME COURT OF THE STATE OF UTAH

10

DOCKET NO. **870502-CA**

ILEEN BUTTARS, LAURENA B.
HENDERSON, and DAVID HALE

ADDENDUM TO
BRIEF OF APPELLANT

Plaintiffs/Respondents

vs.

FOR-SHOR COMPANY

Supreme Court No. 20626

Defendant/Appellant

870502-CA

BRIEF OF APPELLANT FOR-SHOR COMPANY

Appeal from the Judgment and Decision of the
FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY, STATE OF UTAH
The Honorable VeNoy Christoffersen, Presiding

James C. Jenkins
JAMES C. JENKINS & ASSOCIATES
67 East 100 North
P.O. Box 3700
Logan, Utah 84321
Telephone: (801) 752-4107

Attorney for Defendant/Appellant

J. Blaine Zollinger
ZOLLINGER & ATTWOOD
256 North First West
Logan, Utah 84321
Telephone: (801) 752-0012

Attorney for Plaintiffs/Respondents

IN THE SUPREME COURT OF THE STATE OF UTAH

MITCHELL D. HENDERSON,
ILEEN BUTTARS, LAURENA B.
HENDERSON, and DAVID HALE

ADDENDUM TO
BRIEF OF APPELLANT

Plaintiffs/Respondents

vs.

FOR-SHOR COMPANY

Supreme Court No. 20626

Defendant/Appellant

BRIEF OF APPELLANT FOR-SHOR COMPANY

Appeal from the Judgment and Decision of the
FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY, STATE OF UTAH
The Honorable VeNoy Christoffersen, Presiding

James C. Jenkins
JAMES C. JENKINS & ASSOCIATES
67 East 100 North
P.O. Box 3700
Logan, Utah 84321
Telephone: (801) 752-4107

Attorney for Defendant/Appellant

J. Blaine Zollinger
ZOLLINGER & ATTWOOD
256 North First West
Logan, Utah 84321
Telephone: (801) 752-0012

Attorney for Plaintiffs/Respondents

ADDENDUM

Attached hereto for the Court's consideration are copies of the following document and excerpts from the District Court record and transcript:

Memorandum Decision

Findings of Fact and conclusions of Law

Judgment and Decree

Trial Exhibit No. 3 - - Statement, For-Shor Co.

Trial Exhibit No. 4 - - Invoice (with reverse side added)

Trial Exhibit No. 5 - - Credit Memo

Trial Exhibit No. 17 - - Account Agreement

Trial Exhibit No. 27 - - Return Document

Trial Exhibit No. 28 - - List of Forms (original)

Trial Exhibit No. 37 - - Promissory Note and For-Shor Statements

Page 7 of Plaintiff's Trial Brief

TVII pp. 261-262

IN THE FIRST JUDICIAL DISTRICT COURT, COUNTY OF CACHE
STATE OF UTAH

MITCHELL D. HENDERSON, ILEEN)
BUTTARS, LAURENA B. HENDERSON,)
DAVID HALE,)

Plaintiffs)

vs.)

FOR-SHORE COMPANY,)

Defendants)

MEMORANDUM DECISION

Civil No. 20456

This matter was heard before the Court in a split trial
secession on August 1 and 2, 1984 and again on September 17, 1984.
Briefs have been submitted after trial by both parties.

Based on the memorandum and testimony given at the trial,
the Court now enters this memorandum decision.

The Court finds that the repossession of the forms by For-
Shore Company was not a legal repossession. They had no right
to repossess the forms. The forms had been purchased by Mr.
Henderson, the last payment being in the form of a promissory note
accepted by the defendant, For-Shore Company and later reduced to
judgment by them. The judgment may be valid, but there was some
question on that because of the bankruptcy proceedings, although
defendant claims they did not receive notice, a copy of the notice
turns up in their file. Testimony of the plaintiffs is also that
the forms were sold to the plaintiff's mother, who is one of the
plaintiffs in this action, Ileen Buttars. It is obvious consideration
was given since she paid off Mitchells Security Bank loan, some
\$25,000.00. Defendants may surmise this was only a loan and there was
no intention to transfer title to Mrs. Buttars by Mr. Henderson, her

DEC 3 1984

Therefore, the damage for the wrongful repossession occurred to Mrs. Buttars and not Mr. Henderson, or Mr. Hale. If Mr. Hale was damaged, it was between he and Mr. Henderson, except that Mr. Hale should receive and the Court does give judgment to Mr. Hale for the \$265.00 overcharge by For-Shore to him on rental. The Court awards no damages to Mr. Henderson since they were not his forms. The Court feels that, although the defendants were a bit tricky in learning about the forms and then failing to inform Mr. Hale that they were the ones who took the forms after he told them they were stolen. It does not meet the criteria of punitive damages as set forth in Leigh Furniture and Carpet Company v. Isom, 657 P.2nd 293.

In addition the Court will award \$100.00 damages for the trespass which occurred in taking the forms.

Dated this 17th day of December, 1984.

[illegible]

J. Blaine Zollinger
Attorney for Plaintiffs
ZOLLINGER & ATWOOD
ATTORNEYS AT LAW
256 NORTH FIRST WEST
LOGAN, UTAH 84321
(801) 753-0012

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

MITCHELL D. HENDERSON, ILEEN *
BUTTARS, LAURENA B. HENDERSON, *
DAVID HALE, *

Plaintiffs, *

vs. *

FOR-SHOR COMPANY, *

Defendants. *

AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 20456

This case was tried on August 1, and 2, 1984, and on September 17, 1984, and the parties having filed their written arguments to the Court and the Court having issued its Memorandum Decision, it now makes and enters the following

FINDINGS OF FACT

1. Mitchell Henderson purchased the forms in question, which were the subject of a prior lease, by paying cash on August 2, 1978, and by signing a promissory note on September 6, 1979.

2. Mitchell D. Henderson sold the same said forms to his grandmother, Ileen Buttars, in August, 1978, for fair and adequate consideration.

The Defendant took the forms in question on or about July 9, 1981, and has kept possession of them for at least three years.

4. The minimum fair rental value of the forms taken by Defendant is \$2,500.00 per year.

5. The fair market value of the forms taken by Defendant is \$5,725.35.

6. Plaintiff, Mitchell D. Henderson, filed for bankruptcy and listed Defendant as a creditor therein in July, 1980.

7. Plaintiff Mitchel Henderson suffered no mental or emotional distress caused by Defendant.

8. Defendant did not interfere with any contract or business relationship between David Hale and Mitchell D. Henderson or Ileen Buttars.

9. Defendant trespassed on Laurena Henderson's property when it took the subject forms in July, 1981.

10. Defendant damaged Laurena Henderson's property incidental to its trespass in the amount of \$100.00.

11. For-Shor over-charged Plaintiff, David Hale, on form rental in the amount of \$265.00.

12. Defendant's taking of the subject forms was not with willful and malicious intent.

13. A copy of the Notice of First Meeting of Creditors on Mitchell D. Henderson was found in Defendant's files.

From the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. At the time of Defendant's taking of the subject cement forming equipment, Ileen Buttars was the legal and lawful owner of the same.

2. Plaintiff Ileen Buttars has been damaged by Defendant in the amount of \$13,325.35, caused by Defendant's wrongful taking of said equipment.

3. Plaintiff Mitchell D. Henderson has suffered no legal damage caused by Defendant's unlawful taking of Ileen Buttars' equipment.

4. Plaintiff David Hale has suffered no lawful damage caused by Defendant's unlawful taking of the said equipment, but he should be awarded \$265.00 damages caused by an overcharge by Defendant in the amount of \$265.00 incidental to his rental of forms from Defendant.

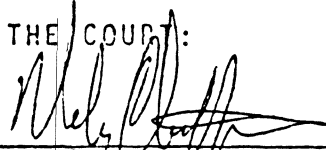
5. Plaintiff Laurena B. Henderson has suffered \$100.00 damages incidental to Defendant's trespass on her property

6. No punitive damages are justified in behalf of any of the Plaintiffs against the Defendant.

7. Plaintiffs should be awarded their costs of Court.

DATED this 1 day of ^{April} ~~December~~, ¹⁹⁸⁵ ~~1984~~.

BY THE COURT:



VeNoy Christoffersen
District Judge

Approved as to form this _____ day of December, 1984.

James C. Jenkins
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Findings of Fact and Conclusions of Law was mailed, postpaid, to James C. Jenkins, Attorney for Defendant, at P.O. Box 3700, Logan, Utah, 84321, this 6 day March, 1985.



Shari K. Hansen

J. Blaine Zollinger
Attorney for Plaintiffs
ZOLLINGER & ATWOOD
ATTORNEYS AT LAW
256 NORTH FIRST WEST
LOGAN, UTAH 84321
(801) 733-0012

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

MITCHELL D. HENDERSON, ILEEN *
BUTTARS, LAURENA B. HENDERSON, *
DAVID HALE, *

Plaintiffs, *

JUDGMENT AND DECREE

vs. *

FOR-SHOR COMPANY, *

Civil No. 20456

Defendants. *

This matter having been tried before the Court and the Court having entered its Memorandum Decision, and Findings of Fact and Conclusions of Law, and being fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff, Ileen Buttars, is hereby awarded a judgment against Defendant, For-Shor Company, in the amount of \$13,325.00.
2. Plaintiff, Laurena B. Henderson, is hereby awarded a judgment against Defendant, For-Shor Company, in the amount of \$100.00.
3. Plaintiff, Mitchell D. Henderson's claims against Defendant are hereby dismissed.
4. Plaintiff, David Hale, is awarded a judgment against Defendant, For-Shor company, in the amount of \$265.00.
5. Plaintiffs are awarded their costs of Court against Defendant.

DATED this 1st day of April, 1995.
~~December, 1984.~~

Number

20456-76

BY THE COURT:

Joseph
3/1/95
VeNoy Christoffersen
District Judge

50 1000

Approved as to form this _____ day of December, 1984.

JAMES C. JENKINS
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Judgment and Decree was mailed, postpaid, to James C. Jenkins, Attorney for Defendant, at P.O. Box 3700, Logan, Utah, 84321, this 20 day of December, 1984.

Shirley R. Hildner

STATEMENT

FOR-SHOR COMPANY

338 West 1600 South
Salt Lake City, Utah 84115

Mitchell Henderson
2621 West 5600 South
Roy, Utah

PLAINTIFF'S
EXHIBIT

PENGAD-Beynon, R. L.

3

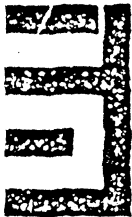
EXPLANATION	REFERENCE		✓	CHARGES	✓	CREDITS	✓	BALANCE
	DATE	NO.						
	MAR 30 78 IN	9,980		519.25 +				3,566.20
CHG	MAR 31 78			49.58 +				4,085.45
	APR 30 78 IN	10,517		519.25 +				4,135.03
CHG	APR 30 78			57.37 +				4,654.28
	MAY 30 78 IN	11,137		519.25 +				4,711.65
CHG	MAY 31 78			67.80 +				5,230.90
	JUN 30 78 IN	11,754		5,119.21 +				5,298.70
CHG	JUN 30 78			72.94 +				10,417.91
	JUL 31 78 IN	12,516				2,180.83 -		10,490.88
CHG	JUL 31 78			10.10 +				8,310.00
	AUG 2 78					6,400.00 -		1,909.99
	AUG 7 78					311.03 -		1,598.96
	AUG 27 78	12,514		456.37 +				2,420.67
	AUG 28 78	12,517		406.31 +				2,804.80
CHG	AUG 31 78			24.27 +				2,829.07
CHG	SEP 30 78			37.21 +				2,866.28
CHG	OCT 31 78			37.21 +				2,575.01
CHG	NOV 30 78			37.21 +				2,612.22
	DEC 29	15,728		402.64 +				3,224.76
	DEC 27	15,730		209.90 +				3,261.97
	DEC 31 78			37.21 +				3,305.31
CHG	JAN 31 79			47.74 +				3,353.05
CHG	FEB 29			46.40 +				3,399.45

PLEASE PAY LAST AMOUNT

FOR-SHOR COMPANY
338 West 1600 South
Salt Lake City, Utah 84115

Mitchell Henderson
2621 West 5600 South
Roy, Utah

EXPLANATION	REFERENCE		✓	CHARGES	✓	CREDITS	✓	BALANCE
	DATE	NO.						
	OCT 1'76IN	3,034		152.78+				
	OCT 1'76IN	3,089		70.44+				
	OCT 12'76IN	3,185		16.07+				
	OCT 16'76IN	3,225		304.13+				
	OCT 27'76IN	3,353		305.55+				848.95
	NOV 12'76IN	3,507		351.33+				
	NOV 18'76IN	3,568		443.15+				
	NOV 18'76IN	3,571		470.07+				2,114.42
	NOV 19'76IN	3,583		276.41+				2,300.83
	DEC 31'76IN	3,678		435.45-				1,055.38
CHG	DEC 31'76			25.32+				1,080.70
CHG	JAN 31'77			29.33+				2,010.03
	FEB 14'77IN	4,312				500.00-		1,510.03
CHG	FEB 28'77			29.33+				1,539.32
CHG	MAR 31'77			21.83+				1,561.25
	APR 8'77IN	4,852		474.39+				2,035.64
CHG	APR 30'77			21.83+				2,057.47
	MAY 5'77					500.00-		1,557.47
	MAY 4'77IN	5,220		231.02+				1,788.49
CHG	MAY 31'77			20.99+				1,809.48
	JUN 7'77IN	5,686		423.68+				2,233.16
CHG	JUN 30'77			25.67+				2,258.83
	JUL 21'77					1,000.00-		1,258.83
	JUL 21'77IN	5,700		206.07+				1,464.90
CHG	JUL 31'77			16.77+				1,481.67
	AUG 24'77					500.00-		1,101.63
CHG	AUG 31'77			13.94+				1,115.57
	SEP 26'77					1,200.00-		84.43
	SEP 26'77IN	7,514		646.07+				
	SEP 30'77IN	7,657		794.91+				1,356.55
CHG	OCT 30'77IN	8,129		519.25+				1,875.30
	OCT 31'77			13.57+				1,889.37
CHG	NOV 30'77IN	8,524		519.25+				2,408.62
	NOV 30'77			25.54+				2,434.16
	DEC 6'77					1,000.00-		1,434.16
	DEC 6'77IN	8,683		186.38+				
CHG	DEC 30'77IN	8,895		519.25+				2,139.79
	DEC 31'77			18.91+				2,158.70
	JAN 5'78IN	9,087		300.14+				
CHG	JAN 30'78IN	9,310		519.25+				2,978.09
	JAN 31'78			28.57+				3,006.66
CHG	FEB 28'78IN	9,557		519.25+				3,525.91
	FEB 28'78			40.29+				3,566.20
				PAY LAST AMOUNT				



FOP SHOR
COMPANY

338 WEST 1600 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 487-1656

INVOICE



Exhibit "A-5"

INVOICE NO

11754

REFER TO THE ABOVE NUMBER
IN ALL CORRESPONDENCE

TERMS: NET 10TH

ORDER NO.	JOB	OUR ORDER NO.	DATE OF ORDER	VIA	F.O.B.	COLL. P.P.O.	SALESMAN	INVOICE DATE
								5-30-78

Mitch Henderson
P.O. Box 48
Clarkston, Utah 84305



SAME

QUANTITY	DESCRIPTION	UNIT PRICE	DISCOUNT	AMOUNT
	Form Rental - June 1978			
	Billing for items not returned:			
55	- 2' x 8' Panels	72.00ea		3,960.00
2	- 6" Inside Corners x 8'	51.50ea		103.00
50	- 2' x 4' Panels	40.70ea		2,035.00
4	- 6" Inside Corners x 4'	27.50ea		110.00
500	- Wedge Bolts	.21ea		105.00
50	- 2 x 4 Walers	.22ea		11.00
50	- Z Walers	.70ea		35.00
	Less 3 months rent applied	494.52/mo.		(1,483.56)
	Final Billing			

SUBJECT TO TERMS AND CONDITIONS APPEARING ON FACE AND REVERSE SIDE

NOTICE THAT TITLE TO ALL MERCHANDISE LISTED ON THIS INVOICE REMAINS WITH FOP SHOR CO. UNTIL FULLY PAID BY PURCHASER. A FINANCE CHARGE OF 1 1/4% PER MONTH (18% ANNUAL RATE) WILL BE CHARGED ON ALL INVOICES REMAINING UNPAID BY THE 10TH OF THE MONTH FOLLOWING PURCHASE. PURCHASER AGREES TO PAY ALL COSTS OF CARRYING INCLUDING A REASONABLE ATTORNEY'S FEE. PAYMENTS TO BE MADE AT THE OFFICE OF FOP SHOR CO., SALT LAKE CITY, UTAH. ALL OF THE MERCHANDISE DESCRIBED ABOVE RECEIVED IN GOOD ORDER. ALL RETURNS SUBJECT TO A 10% HANDLING CHARGE.

SUB TOTAL	4,875.44
SALES TAX	243.77
OTHER	
TOTAL	5,119.21

CONDITIONAL SALES CONTRACT

Vendor agrees to sell and the Vendee agrees to buy all of the goods and personal property described in the foregoing invoice, at the price and upon the terms therein stated. The title to said property shall remain in Vendor until the full purchase price is paid, but the Vendee shall be responsible for any loss, damage or injury to said property whether by fire or otherwise, and no such loss, damage or injury shall relieve the Vendee from liability to pay the full purchase price. Time is of the essence of this contract, and if default be made by the Vendee in any payment or any of the terms of the sale, the Vendor shall have the right, at its election, to declare a forfeiture hereunder, and may take possession of said property, with the right of entry upon any premises where said property may be and remove it therefrom without legal process, and thereupon all of the Vendee's right in or to said property shall cease and all payments theretofore made by the Vendee shall be retained by the Vendor as rental for the use of said property. In the event of repossession by Vendor, Vendee agrees that Vendor shall have the right to legally sell such property, and Vendee agrees to pay to Vendor any deficiency which may exist between such sale price and the contract or full purchase price. No acceptance of any intermediate payment by the Vendor after default shall be a waiver of subsequent default or of Vendor's right to repossess said property and declare a forfeiture of this contract. The Vendee agrees to pay all costs, charges, expenses and disbursements including reasonable attorney's fee incurred in taking possession of said goods or in collecting any sums which may be due and owing on this contract. Payment of this invoice is to be made at or mailed to the Vendor's place of business.

Vendor warrants that the goods shall be fit for the purpose for which such goods are ordinarily intended.

The warranty shall not apply to any goods that have been repaired or altered by anyone other than Vendor. The warranty shall not apply to any goods subject to misuse due to common negligence or accident, nor to any goods sold by Vendor which are not used in accordance with safe and approved practices or which have been used beyond the rated capacity of the goods.

THIS AGREEMENT SHALL BE INTERPRETED AND GOVERNED BY THE UTAH UNIFORM COMMERCIAL CODE, 70A-1-101 et seq., AND ANY OTHER APPLICABLE LAWS OF THE STATE OF UTAH.

338 WEST 1600 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 487-1656



INVOICE NO.

12516

REFER TO THE ABOVE NUMBER
IN ALL CORRESPONDENCE

TERMS: NET 10TH

TOMER ORDER NO	JOB	OUR ORDER NO	DATE OF ORDER	VIA	F O B	COLL T P D	SALES MAN	INVOICE DATE 7-31-78
----------------	-----	--------------	---------------	-----	-------	------------	-----------	-------------------------

Witch Henderson
2601 Box 48
Clarkston, Utah 84305

SAME

ORDERED	QTY SHIPPED	DESCRIPTION	UNIT PRICE	DISCOUNT	AMOUNT
		<p align="center"><u>CREDIT MEMO</u></p> <p>To adjust for billing #11754</p> <p>Add back 3 months rent applied</p> <p>Less 50% of rent @ 494.52/mo. x 3 months</p>			<p align="right">1483.56</p> <p align="right">(3560.54)</p>

ES SUBJECT TO TERMS AND CONDITIONS APPEARING ON FACE AND REVERSE SIDE

UNDERSTOOD THAT TITLE TO ALL MERCHANDISE LISTED ON THIS INVOICE REMAINS WITH FOR SHOR CO. UNTIL FULLY PAID BY PURCHASER. A FINANCE CHARGE OF 1 1/2% PER MONTH - 18% ANNUAL RATE WILL BE CHARGED ON ALL INVOICES REMAINING UNPAID BY THE 10TH OF THE MONTH FOLLOWING PURCHASE. PURCHASER AGREES TO PAY ALL COSTS OF COLLECTION, INCLUDING A REASONABLE ATTORNEY'S FEE. PAYMENTS TO BE MADE AT THE OFFICE OF FOR SHOR CO., SALT LAKE CITY, UTAH. ALL OF THE MERCHANDISE DESCRIBED ABOVE RECEIVED IN GOOD ORDER. ALL RETURNS SUBJECT TO A 10% HANDLING CHARGE.

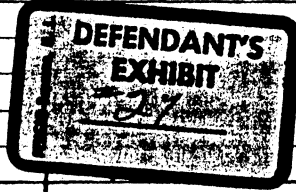
SUB TOTAL	(2076.90)
SALES TAX	{103.65}
OTHER	

PENCAD-299900, M. 1.
DEFENDANT'S
EXHIBIT
17

(Corporate Title)

RETURN	ITEM	S.F.	Total S.F.	VALUE	TOTAL	RETURN	ITEM	S.F.	Total S.F.	VALUE	TOTAL	RETURN	ITEM	S.F.	Total S.F.	VALUE	TOTAL	RETURN	ITEM	S.F.	Total S.F.	VALUE	TOTAL	RETURN	ITEM	S.F.	Total S.F.	VALUE	TOTAL	
55	2' x 8'	16		96.00			2' x 6'	12		77.00			2' x 5'	10		72.00			24	2' x 4'	8		53.00			2' x 3'	6		47.00	
	22"	16		96.00			22"	12		77.00			22"	10		72.00				22"	8		53.00			22"	6		47.00	
	20"	13		96.00			20"	10		77.00			20"	9		72.00				20"	7		53.00				5		47.00	
	18"	12		89.00			18"	9		71.00			18"	8		63.00				18"	6		50.00			18"	5		42.00	
	16"	11		89.00			16"	8		71.00			16"	8		63.00				16"	5		50.00			16"	5		42.00	
	15"	11		89.00			15"	8		71.00			15"	8		63.00				15"	5		50.00			15"	5		42.00	
	14"	11		82.00			14"	8		66.00			14"	7		57.00				14"	5		47.00			14"	4		40.00	
	12"	8		72.00			12"	6		59.00			12"	5		51.00				12"	4		42.00			12"	3		36.00	
	10"	8		72.00			10"	6		59.00			10"	5		51.00				10"	4		42.00			10"	3		35.00	
	8"	5		68.00			8"	4		54.00			8"	4		48.00				8"	3		40.00			8"	3		32.00	
	6"	4		58.00			6"	3		47.00			6"	3		41.00				6"	2		32.00			6"	2		28.00	
	4"	4		58.00			4"	3		47.00			4"	3		41.00				4"	2		32.00			4"	2		28.00	
	2"	3		25.00			2"	2		19.00			2"	2		17.00				2"	1		14.00			2"	1		10.00	
	1 1/2"	3		24.00			1 1/2"	2		19.00			1 1/2"	2		16.00				1 1/2"	1		14.00			1 1/2"	1		9.00	
	1"	3		22.00			1"	2		17.00			1"	2		14.00				1"	1		10.00			1"	1		8.00	
2	6" I.C.	8	51.5	63.00			6" I.C.	6		50.00			6" I.C.	5		44.00			2	6" I.C.	4		32.00			6" I.C.	3		30.00	
	4" I.C.	4		49.00			4" I.C.	3		40.00			4" I.C.	3		37.00				4" I.C.	3		26.00			4" I.C.	2		24.00	
	O.C.	4		19.00			O.C.	3		15.00			O.C.	3		14.00				O.C.	2		9.00			O.C.	2		8.00	
	F.A.	3		10.00			F.A.	2		8.00			F.A.	3		7.00				F.A.	2		6.00			F.A.	2		5.00	
	I.H.C.	10		164.00			I.H.C.	8		125.00			I.H.C.	7		103.00				I.H.C.	5		84.00			I.H.C.	5		64.00	
	O.H.C.	4		73.00			O.H.C.	3		55.00			O.H.C.	3		49.00				O.H.C.	2		39.00			O.H.C.	2		31.00	
	Pil F.	10		106.00			Pil F.	8		83.00			Pil F.	7		74.00				Pil F.	5		54.00			Pil F.	5		46.00	
	I.B.C.	4		62.00			I.B.C.	3		50.00			I.B.C.	3		43.00				I.B.C.	2		36.00			I.B.C.	2		29.00	
	O.B.C.	9		89.00			O.B.C.	7		70.00			O.B.C.	6		59.00				O.B.C.	5		48.00			O.B.C.	4		43.00	
	Adj. F.	8		58.00			Adj. F.	6		41.00			Adj. F.	5		32.00				Adj. F.	4		27.00			Adj. F.	3		20.00	

RETURN	ITEM	VALUE	TOTAL	RETURN	ITEM	VALUE	TOTAL
1012	Wedge Bolt	21.28			Turn Buckle	16.50	
	Long Bolt	.50			Scaffold Bracket	28.00	
	Short Bolt	.32			8" Gang Waler R	1.00	
	Base Tie Bolt	.28			14" Gang Waler R	1.50	
	Short Wedge	.25				1.30	
	2x4 Waler Tie	.33				.28	
	2x6 Waler Tie	.33				21.00	
	4x4 Strongback Tie	.33				1.70	
	4x6 Strongback Tie	.33				.60	
	Z-Waler	.94			Gang Form Bolt	.78	
	Waler Plate	.76			Gang Form Slave	1.55	



RECEIVED FROM: MITCH HONORE RETURN No 01712

CONTRACTOR ADDRESS _____

DATE 7/7/31

JOB NO. _____

ADDRESS 1012 10th Ave

P.O. NO. 7144pl

DAMAGE # 10/10/2025

TALLY BY _____

CHECKED BY _____

CONDITIONS OF FORMS

☐ CLEAN & OILED

☐ DIRTY

PERSONAL PROPERTY TAX TO BE REPORTED AND PAID BY LESSEE.

X 12 hrs to be + truck for 2 days

LISTED QUAN. ARE CORRECT AND COMPLETE (LESSEE)

Y

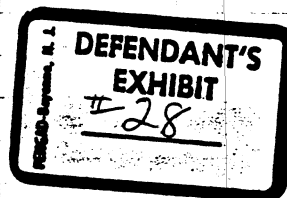
SF	SUMMARY	VALUE
	8'	
	6'	
	5'	
	4'	
	3'	
	Hardware	
	TOTAL	

NOTICE: A CHARGE OF 2% OF VALUE WILL BE ASSESSED IF FORMS ARE NOT RETURNED CLEANED AND OILED.



FORMS SOLD TO: INTERSTATE INDUSTRIES -7
PAGE 1

1	2	3	4	5	6	7	8
ITEM	Qty	Purchase Price	EXTENSION		NEW Price 1982	Extension	
(UNLESS 318283015)							
24"x8'P	75	6072	455400		9832	662400	
24"x4'P	50	3238	161900		4876	243800	
8' OC	12	1540	18552		1748	20976	
1"x4'F	10	653	6530		920	9200	
2"x4'F	10	805	8050		1288	12880	
8"x4'F	8	1960	15680		3680	29440	
10"x4'F	8	2378	19024		3864	30912	
12"x4'F	21	2567	53907		3864	81144	
14"x4'F	16	2677	42832		4324	69184	
15"x4'F	16	3284	52444		4600	73600	
16"x4'F	8	2797	22376		4600	36800	
4' IC	14	2093	29302		2944	41216	
8' IC	3	3864	11592		5796	17388	
4"x4'F	8	1822	14576		2944	23552	
18"x4'F	7	2907	20349		4600	32200	
						13,846.92	
Inv. #304							
20"x4'F	8	3050	24400		4976	39808	
6"x4'F	12	2010	24120		2944	35328	
UNDER TISS	150	.161	2415		.30	4500	
WEDGE BOLTS	3000	.161	48300		.26	78000	
Z WABLS	150	.58	8700		.86	12900	
TOTAL			10,404.49			15,544.28	35% up
TOTAL Pg 1		10,404.49				15,544.28	
TOTAL Pg 2		80572				35% up	
TOTAL		11,210.21				17,246.47	



File and not put up and a time

FIRMS SOLD TO: MITCH HENDERSON
 PAGE 2.

ITEM	QTY	PRICE	EXTENSION
(INV 3507)			
4" OC	10	958	9580
12"x4' F	3	2567	7701
18"x4' F	1	2907	2907
1"x4' F	14	653	9142
Long Bolts	200	.32	64.00
(INV 3570)			
6" IC x 4'	10	2275	22750
14"x4' F	6	2617	15702
1"x4' F	10	639	6390
		TOTAL	80572
Final deal not put up any of these			

Rental Equipment Comparison

ITEM	Qty	1978 PRICE	EXTENSION	NEW PRICE	EXTENSION
24"x8" P	55	5472	300960	96.00	5280.00
6" I.C. x 8'	2	3914	7828	63.00	126.00
24"x4" P	50	3093	154650	53.00	2650.00
6" I.C. x 4'	4	2090	8360	32.00	128.00
Welding Bolt	500	.16	80.00	.28	140.00
2x4 WALSLEY	50	.167	835	.33	16.50
2 WALSLEY	50	.53	26.50	.94	47.00
(5/13 4875.44)			4832.83		8387.50
(00 to Recovery)					

NEW PRICE FORMS OWNED BY M. Henderson
(Purchased from Interstate Industries) 1554428

NEW PRICE FORMS OWNED BY M. Henderson
(Purchased from FOR-SHED CO.) 129162

NEW PRICE FORMS RENTED TO M. Henderson
(NOT RETURNED) PICKED UP 838750
25,223.40

Assume FORMS were USED - plywood in these RECOVERIES
WAGE IN REPAIR OF REPAIRING. LESS 30% of NEW PRICE
RESTORE IN NEW CONDITION
VALUE USED 17,656.38



INSTALLMENT PROMISSORY NOTE

The undersigned promises to pay to the order of FOR-SHOR COMPANY, 367 West 1600 South in Salt Lake City, Utah or at such other place as the holder hereof may designate in writing, the sum of THREE THOUSAND SEVEN HUNDRED FORTY EIGHT DOLLARS & FORTY-THREE CENTS, plus interest thereon at the rate of 18% per annum in 12 successively equal monthly installments of \$343.36.

This note may be prepaid in part or in full at any time without penalty.

Payments shall be due on the 10th day of each month commencing with SEPTEMBER 10th 1979. The holder shall allow a five (5) day grace period on any payment.

The unpaid balance of the principal sum of the debt evidenced by this note and interest thereon shall immediately become due and payable at the election of the holder, FOR-SHOR COMPANY, in the event of any one or more of the following:

1. Six (6) days' default in any payment due hereunder;
2. The appointment of a receiver of the estate, or any part thereof, of makers or of the owner of such estate;
3. The filing of a petition by or against maker or the owner of such estate for relief under any bankruptcy or insolvency law;
4. An assignment by makers or the owner of such estate for the benefit of creditors;

Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

Maker hereby authorizes and empowers any attorney of any court of record of this state or elsewhere to appear for him in any court of record on default in the payment of any installment due on the obligation evidenced by this note securing such obligation, and thereupon to waive the issuance and service of process or other notice, to confess judgment for the principal sum of this obligation, together with interest, cost of suit, and counsel fees as provided, and to release all errors and waive all right of appeal. If any action is brought for the enforcement of this note such plaintiff shall recover as reasonable counsel fees twenty per cent (20%) of the amount decreed for principal and interest, which counsel fees shall be entered, allowed, and paid as a part of the judgment in the action.

Mitch M. Mendenhall
(INDIVIDUALLY)

Subscribed and sworn to before me this 6th day of September 1979.

Owen J. Smith
(NOTARY PUBLIC)

My Commission Expires March 13, 1981

STATEMENT

FOR-SHOR COMPANY

338 West 1600 South
Salt Lake City, Utah 84115

Mitchell Henderson
2621 West 5600 South
Roy, Utah

2

EXPLANATION	REFERENCE		✓	CHARGES	✓	CREDITS	✓	BALANCE
	DATE	NO.						
	MAR 30 78 IN	9,980		519.25 +				3,566.20
CHG	MAR 31 78			49.58 +				4,085.45
	APR 30 78 IN	10,517		519.25 +				4,135.03
CHG	APR 30 78			57.37 +				4,654.28
	MAY 30 78 IN	11,137		519.25 +				4,711.65
CHG	MAY 31 78			67.80 +				5,230.90
	JUN 30 78 IN	11,754		5,119.21 +				5,298.70
CHG	JUN 30 78			72.94 +				10,417.91
	JUL 31 78 IN	12,516				2,180.83 -		10,490.85
CHG	JUL 31 78			19.10 +				8,310.02
	AUG 2 78					6,400.00 -		8,329.12
CHG	AUG 7 78					311.03 -		1,929.12
	AUG 2 78 IN	12,514		456.33 +				1,619.09
	AUG 16 78 IN	12,817		406.21 +				2,480.63
CHG	AUG 31 78			24.27 +				2,504.90
CHG	SEP 30 78			32.90 +				2,537.80
CHG	OCT 31 78			37.21 +				2,575.01
CHG	NOV 30 78			37.21 +				2,612.22
CHG	DEC 29	15,728		402.64 +				3,224.76
	DEC 27	15,730		209.90 +				3,261.97
	DEC 31 78			37.21 +				3,305.31
CHG	JAN 31 79			43.34 +				3,351.71
CHG	FEB 28 79			46.40 +				3,398.11
CHG	MAR 31 79			46.40 +				

9/31/79 3,632.43

ADIAN-S F221

07/2/79

16.00
10.00
3,748.43

FOR-SHOR COMPANY

333 West 1600 South
Salt Lake City, Utah 84115

Mitchell Henderson
2621 West 5600 South
Roy, Utah

REFERENCE		
DATE	NO.	
MAR 30 78 IN	9,930	519.25 +
MAR 31 78		49.58 +
APR 30 78 IN	10,517	519.25 +
APR 30 78		57.37 +
MAY 30 78 IN	11,137	519.25 +
MAY 31 78		67.80 +
JUN 30 78 IN	11,754	519.25 +
JUN 30 78		71.04 -
JUL 31 78 IN	12,516	
JUL 31 78		17.11 +
AUG 2 78		
AUG 7 78		
AUG 2 78 IN	12,514	456.77 +
AUG 14 78 IN	12,517	406.01 +
AUG 31 78		34.07 +
SEP 30 78		31.00 +
OCT 31 78		37.21 +
NOV 30 78		37.21 +
DEC 29	15,728	402.64 +
DEC 27	15,730	209.90 +
DEC 31 78		37.21 +
JAN 31 79		43.34 +
FEB 28 79		46.40 +
MAR 31 79		46.40 +
APR 30 79		46.40 +
SEP 7 79 IN	22,582	

461.44 -
30000 -

Int. May - Aug. 18.60
Int. Sept - Oct. 73.08
Int. Nov - Dec. 80.11

FOR-SHOR COMPANY
338 West 1600 South
Salt Lake City, Utah 84115

Mitchell Henderson
2621 West 5600 South
Roy, Utah

OCT 1'76IN	5074			
OCT 1'76IN	3080			
OCT 12'76IN	3184			
OCT 14'76IN	3202			
OCT 27'76IN	3353			
NOV 1'76IN	2000			
NOV 3'76IN	2000			
NOV 1'77IN	2000			
NOV 1'77IN	2000			
NOV 1'77IN	2000			
NOV 1'77IN	2000			
JAN 31'77		29.33 +		2010.08
FEB 14'77IN	4,312		500.00 -	1,510.08
FEB 28'77		29.33 +		1,539.42
MAR 31'77		29.33 +		1,568.75
APR 8'77IN	4,850	454.30 +		2,023.05
APR 30'77		29.33 +		2,052.38
MAY 5'77			500.00 -	1,552.38
MAY 1'77IN	5,800	231.00 +		1,783.38
MAY 31'77		29.33 +		1,812.71
JUN 7'77IN	5,800	423.68 +		2,236.39
JUN 30'77		29.33 +		2,265.72
JUL 2'77			1,000.00 -	1,265.72
JUL 28'77IN		711.00 +		1,976.72
JUL 31'77		29.33 +		2,006.05
AUG 24'77			500.00 -	1,506.05
AUG 31'77		13.94 +		1,520.00
SEP 25'77			1,200.00 -	320.00
SEP 26'77IN	7,514	646.07 +		1,356.55
SEP 30'77IN	7,657	794.91 +		1,875.80
OCT 30'77IN	8,129	519.25 +		1,889.37
OCT 31'77		13.57 +		2,408.62
NOV 30'77IN	8,524	519.25 +		2,434.16
NOV 30'77		25.54 +		2,434.16
DEC 6'77			1,000.00 -	1,434.16
DEC 6'77IN	8,683	156.32 +		2,139.79
DEC 30'77IN	8,895	519.25 +		2,158.70
DEC 31'77		13.91 +		2,172.61
JAN 5'78IN	9,017	300.14 +		2,472.75
JAN 30'78IN	9,310	519.25 +		2,992.00
JAN 31'78		13.91 +		3,005.91
FEB 28'78IN	9,557	519.25 +		3,525.16
FEB 28'78		40.29 +		3,565.45

40.29 MAY LAST AMOUNT

from 1978, when they were converted to purchase to February, 1984, where they now stand at 7 percent to 9 percent over the prices listed in Defendant's Exhibit #27 or page three of Exhibit #28 (Jim Snarr's testimony).

All of the forms can be put in new condition by merely sandblasting the frames, repainting them and by putting new plywood in the frames. Mr. Snarr inspected the remainder of the forms at Laurena Henderson's place in Clarkston in late 1983 and stated in Court that those particular forms had a value of 76 percent of new. He calculated the value by figuring what it would cost to re-condition them and thereby put them in new condition. New prices as of February, 1984, for the items Defendant admits it took would be:

	<u>1982 Price</u>	<u>1984 Price</u>	<u>Totals</u>
55 2'x8' panels	96.00 x 8% =	103.68	5,702.40
24 2'x8' panels	53.00 x 8% =	57.24	1,373.76
2 8'x6' inside corners	65.00x8%=	68.04	136.08
2 4'x6" inside corners	32.00x8%=	34.56	69.12
900 wedge bolts	.28 x ?	.28	<u>252.00</u>
			7,533.36
		Deduct for used	<u>.76</u>
			5,725.35

Mitchell and David Hale both testified that the forms taken were mostly reconditioned because they had been preparing them for Hale's Tremonton jobs, the owner or contractor for which was very fussy. They both said the forms were in excellent condition. Thus, the figures set forth above are the minimum.

Mrs. Buttars, although generating about \$2,500 in revenue for the first half of 1981, could generate no further business when people learned she had only about a half set (Laurena Henderson's testimony). She has been without the forms or without compensation therefor for over three years.

ARGUMENT

POINT I

1 Q Today.

2 A No, I don't.

3 Q Is this a 1981 price you've got on there?

4 A That is a 1978 price.

5 Q And the 1982 price is on this other exhibit, is it
6 not, the one that we argued about here a minute ago?

7 A That's correct.

8 Q Have you got that in your hand?

9 A Yes.

10 Q Let me see it. Okay, would you show where the 1982
11 price is on that third page? Show that to the court.

12 A The 1982 new price is shown in column next under
13 New Price. Right here.

14 Q That was 1982. And how much of an increase has
15 there been since 1982 on those same forms?

16 A Approximately--today?

17 Q Yes.

18 A To the present?

19 Q Uh-huh.

20 A Somewhere between seven and ten per cent.

21 Q And that went up in January of 1984; is that cor-
22 rect?

23 A It actually went up in October of '73. We could
24 not receive notification until February of '84.

25 Q So if you were to give today's prices for that same

1 equipment in new condition, it would be seven to ten per cent
2 higher than is on this other Exhibit 26; is that correct?

3 A On page three?

4 Q Page three, yes.

5 A Yes.

6 MR. ZOLLINGER: Okay. That's all I have.

7 RECROSS EXAMINATION

8 BY MR. JENKINS:

9 Q Mr. Snarr, did Mr. Henderson direct that the \$6,400
10 payment in 1978 was to be applied any differently than speci-
11 fied under your underlying agreement, Exhibit 17?

12 A Not to my knowledge.

13 Q Are you saying then that if he had directed you to
14 apply the \$6,400 by putting some of that toward the purchase
15 of equipment and the balance towards the past due account,
16 that you would have complied with that request?

17 A That's correct.

18 Q Did you do that?

19 A Did I do what?

20 Q Did you apply some of it to the purchase of
21 equipment and the balance to the past due account?

22 A No.

23 Q Now I call your attention to Exhibit 26. Can you
24 tell us what it is?

25 A Exhibit 26 is a compilation of my figures. On

CERTIFICATE OF SERVICE

I hereby certify that four (4) copies of Addendum to Appellant's Brief were served on Plaintiff/Respondents' Counsel, J. Blaine Zollinger, at 256 North 100 West, Logan, Utah 84321 this _____ day of July, 1985.

James C. Jenkins
Attorney for Appellant