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Charles F. Hale, Beverly I. Hale v. Big H. Construction, Inc, T. Dwayne Horsley v. Citimortgage, Inc. : Appellant's Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CHARLES F. HALE and BEVERLY I. HALE, husband and wife, Plaintiffs and Appellants, vs. BIG H CONSTRUCTION, INC., a Utah corporation, and T. DWAYNE HORSLEY, an individual, Defendants and Appellees, vs. CITIMORTGAGE, INC., a Delaware corporation; Citibank Federal Savings Bank, a federally chartered savings bank; and John Does I-V, Third-Party Defendant/Appellant.	Case No. 20100785-CA *Appeal from the Third Judicial District Court for Salt Lake County, State of Utah, Honorable Sandra Peuler, Case No. 050905279*

APPELLANTS' REPLY BRIEF

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Plaintiffs and Appellants Charles F. Hale and Beverly I. Hale ("Hales"), by counsel, submit the following reply brief in the above-referenced appeal.

INTRODUCTION

The heart of the parties' dispute in this matter was purely arithmetical: the proper accounting for costs and payments in connection with the construction of two homes built as part of the unified construction project on Lots 45 and 46, Triple Crown Estates, in South Jordan, Utah. The Consolidated Brief of Defendants and Appellees Big H Construction, Inc. and Dwayne Horsley ("Consol. Brief") tries mightily to suspend the trial court's ruling from credibility issues, invoking gratuitous language from the court's Findings and Conclusions (R. 2105-2162, prepared by Defendants' counsel); by so doing, Defendants seek to frame legal errors as factual, in hopes that this Court will simply discard them. But their arguments are a smokescreen, intended to obscure the fact that the trial court adopted an untenable, hybridized financial analysis which (1) ignored one-half of the balance sheet (specifically, the total amounts paid), and (2) permitted Defendants to recover for items that cannot, as a matter of law, be considered "costs." This case must be remanded with instructions to take the costs, deduct the duplicates and mistaken invoices, deduct the overpayments and the underpayments, deduct the impermissible costs, deduct the warranty items, and then add the total payments.

Defendants attempt to mask the trial court's fundamental accounting errors by claiming that the evidence somehow showed the "reasonableness" of the costs which they claimed. But the "reasonableness" of costs is meaningless without considering the total

payments. Costs in a cost-plus building contract should, as a matter of law, be shown by the actual expenditures, rather than mere estimations of value. And, as a matter of law, reasonable costs are only those that Defendants paid unless they overpaid an invoice, in which case it is only the invoiced amount. When Big H paid a subcontractor more than the subcontractor requested, that is not a reasonable costs as a matter of law, and when Big H underpaid an invoice, the full amount cannot be considered reasonable.

Defendants also acknowledge that there are duplicate and mistaken invoices, but assert that only the builder's profit portion of those mistakes should be considered. However, that arithmetic repeats the accounting errors. These are invoices that were added to the "costs" twice and were designated as having been paid with the Hales' funds. Crediting only ten percent back to the Hales does not make them whole.

Finally, Defendants attempt to characterize the overpayments and underpayments as an issue of fact, for which the Hales did not marshal the evidence. But, just last year, this Court made it clear that the definition of "costs" in a contract and whether such costs are reasonable is an issue of law, reviewed for correctness.

ARGUMENT

POINT I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN ITS CALCULATION OF DAMAGES.

The trial court's first error was its calculation of damages without considering total costs versus total payments.[1] This was an error of law, not fact:

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[1] Throughout the construction, Defendants were receiving funds directly from the Hales and through draws on the Hales' loans. *See* R. 2111, 2114-2115, 2118 (referring to the loans and the Hales' personal expenditures).

> [The defendant] argues that the trial court used an incorrect method to calculate damages arising from his inability to access the Wasatch pipeline prior to July 2005. 'Whether the district court applied the correct rule for measuring damages is a question of law that we review for correctness.'

Wasatch Oil & Gas, LLC v. Reott, 2011 UT App. 152 at ¶ 10, -- P.3d --.

In her Minute Entry, the trial court recognized that Defendants' expert testified that "the builder's fee for Lot 45 should be the sum of $149,425." R. 1731 (Note that the mechanic's lien amount was $165,000.) Instead of using that figure, though, the court added together the costs indicated in Exhibits RR and SS, determining that the costs "totaled $2,740,649." *Id.* The court then multiplied that figure by ten percent and deducted a $100,000 builder's profit payment (R. 1732), concluding that Defendants were entitled to $174,000 for the builder's profit on Lot 45.[2]

In the Findings of Fact and Conclusions of Law prepared by Defendants' counsel, the damages were calculated by an entirely different method. First, the Findings accepted the determination of John Lipzinski, Hales' cost analysis expert, that Defendants' total costs were $2,414,843. Yet the Findings then set this figure aside, and consider only the invoices from Exh. RR (the Lot 45 costs), which total $1,721,000. This the trial court multiplied by ten percent, ruling that Defendants were entitled to $172,100 in builder's profit.[3] Even setting aside the differences between the Minute Entry and the Findings of

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[2] R. 1731 – 1732.

[3] R. 2119. Another portion of the Findings of Fact and Conclusions of Law, without explanation, states that Big H was entitled to a fee of $162,875. R. 2118.

Fact and the peculiar reference in the Findings to a $162,875 fee,[4] the numbers within the rulings are internally inconsistent.

First, the trial court held that the total cost for both houses was $2,414,843, and the total cost for Lot 45 was $1,721,000. Deducting the Lot 45 costs from the total would leave a cost balance for Lot 46 of only $693,843; yet, in the Minute Entry, trial court ruled that the Hales paid $100,000 in builder's profit – more than $30,000 too much if it was applied only to the Lot 46 house. Even the addition of the Lot 46 land cost back into the equation (which would be improper as a matter of law – *see* Point III below) cannot explain the discrepancy. The trial court's finding that "the Hales have not paid any portion of the $172,100 fee owed to Big H as of early December 2004" (R. 2121 at ¶ 38)[5] must be deemed error as a matter of law.

Second, the Findings of Fact adopt the calculation of $2,414,843 as "the total costs" (R. 2119 ¶ 35) – yet if Appellee Big H's total invoiced costs from Exhibits RR and SS are added together, they claim $2,740,649.40 for costs on both projects. R. 1731. Neither the Findings nor the Minute Entry explain the $325,806.40 difference. Even if the land costs are removed from the totals in Exhibits RR and SS (*see* Point III below), there is still a variance of nearly $57,000. There is only one explanation: there were

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[4] R. 2118.

[5] Defendants assert that the Hales did not sufficiently marshal the evidence. This is both the incorrect standard of review, and factually incorrect. See Hales' Opening Brief pp. 21-24, 29-30, and 34-35. The lower court's analysis relied on figures in Exhibits RR and SS, which Defendant/Appellee Dwayne Horsley testified were a comprehensive accounting of the project (R. 2801 at 106-108), and that Defendants had been paid no builder's profit on Lot 45 (R. 2801 at 74). The remaining analysis was the trial court's own.

duplicate invoices (as Defendants acknowledge – *see Consol. Brief* at 27-29; pp. 12-13 below).

The methodology to calculate damages is fundamentally flawed because it requires the assumption that the payments from Hales' funds were equal to the costs accounted for in Exhibits RR and SS. However, the Findings of Fact themselves acknowledge that Defendants had not included all of the payments in its spreadsheets. R. 2118, *Consol. Brief* at 14 ¶ 7. The trial court's calculations erred as a matter of law because they did not consider the total costs against the total payments.

In short, this case must be remanded with instructions to add the total costs, deduct the duplicates and mistaken invoices, deduct the overpayments and the underpayments, deduct the impermissible costs, deduct the warranty items, and then add the total payments.

POINT II. THE TRIAL COURT'S DAMAGES FINDINGS AND CONCLUSIONS ARE CLEARLY ERRONEOUS, NOT SUPPORTED BY THE EVIDENCE AND INCORRECT AS A MATTER OF LAW.

A. The Trial Court's Analysis Failed to Account Properly for Documented Payments Versus Documented Expenditures.

As noted above, the trial court's cost analysis began with a finding, ostensibly based on the testimony of Mr. Lipzinski, that Appellee Big H Construction, Inc.'s final accountings (Exhibits RR and SS) were "consistent with each other – in other words, that every item for which the Hales were invoiced had a corresponding value that was incorporated in their Lot 45 home." (R. 2119 at ¶ 34.) Yet the lower court then disregarded unrefuted testimony concerning errors and duplications in those exhibits.

1. Improper Analysis of Invoices

First, the court's finding that Mr. Lipzinski accepted the accuracy of Exhibits RR and SS is not supported by the evidence; in fact, it is refuted his express testimony:[6]

> Q: Last foundational question on Exhibits 33 and 34. Did you discover errors in those documents? Just yes or no.
>
> A: Yes, sir, I did.
>
> Q: Did you also find that there were documents later discovered that were not included in those?
>
> A: Yes, sir.
>
> Q: So based on your review of the accounting work that you've now identified, did you form an opinion concerning the adequacy of Big H's job accounting?
>
> A: Yes, sir, we have.
>
> Q: And is that the opinion you stated earlier on?
>
> A: It is.
>
> Q: Okay. Do you feel that the accounting work was adequate for the purposes?
>
> A: No, I do not.

R. 2801 at p. 158 l. 23 – p. 159 l. 13.

Second, the trial court's finding that Mr. Lipzinski concluded that "every item for which the Hales were invoiced had a corresponding value that was incorporated in their

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[6] "[T]he Hales' expert, Mr. Lipzinski, did not testify that there were any inaccuracies in Big H's final accounting (Exhs. RR and SS)." R. 2118-19. As discussed in the opening brief, and in support of the marshalling requirement, it is true that Mr. Lipzinski did not testify regarding errors in RR and SS. But, Exh. D- RR and SS are identical to P-33 and 34.

Lot 45 Home" is also not supported by the evidence. [7] To the contrary, Mr. Lipzinski's analysis made clear that $72,735.16 were completely unsupported, and therefore not properly includable in a cost-plus analysis under prevailing industry standards:

> Q. You then have a line item that says less unsupported costs, and it references Schedule 3. This appears to be a deduction of $72,735.16. Would you walk the court through why you have unsupported costs on Schedule 3, and what they represent?
>
> A. Okay. What Schedule 3 represents – it's actually unnecessary, unnecessary or mismanaged costs. It represents things that are charged to a wrong job number, or basically does not – was not charged to the Hale properties. It also represents unsupported invoice information that we were never able to glean that information out of any of the documents that we received. And what that does, just so that you know, is that we have added up that value that shows up there is actually added to the value on – the total value on Exhibit 2, and then just reduce back off just clarification purposes. But basically between Schedule 3 and Schedule 2, that represents all the invoices that we've received –
>
> Q. So if the court were to compare –
>
> A. Or information.
>
> Q. I'm sorry. If the court were to compare Schedule 2 and 3, it would find all of the unsupported cost items on Schedule 3 reflected as invoiced amounts on Schedule 2?
>
> A. That's correct.
>
> Q. But then backed out again?
>
> A. Right.

(R. 2801 at p. 167, l. 23-169, l. 1.) Defendants made no attempt to offer rebuttal testimony that Mr. Lipzinski's deduction of unsupported costs was unwarranted.

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[7] In support of the marshalling requirement, Defendants' expert testified essentially that the Hales received more value than they paid. *See Hales' Brief* at 21-23. In addition, the trial court found that Big H had not been repaid approximately $52,000 in loans. R. 2116.

Defendant/Appellee Dwayne Horsley, through all of his trial testimony, did not address a single line item of Mr. Lipzinski's Schedule 3 in any way, claiming only that Exhibits RR and SS were comprehensive and that he did not detect any duplicates (R. 2801 at pp. 53, 79-80 and 106-108). A deduction of $72,735.16 was mandated by law.

Thus, even without the trial court's improper inclusion of the overpayments and underpayments (*see* subpoint B, below), improper inclusion of land costs in the calculation (*see* Point III, below), inclusion of duplicate invoices (*see* Point II B 3 below), failure to credit a specific $30,000 builder's fee payment (*see* Point III, below), and improper exclusion of repair costs (*see* Point V, below), the trial court's analysis started with an erroneous assumption: the total payments could not be simply ignored because it is undisputed that Exhibits RR and SS do not reflect those totals. From the very outset, therefore, the trial court's analysis was flawed.

2. Improper Application of Payments

The trial court's analysis failed on the payments side of the ledger by omitting entirely the total of payments on the project. Once the court determined the total amount of invoices, and allocated $1.721 million of those invoices to Lot 45, it simply walked away from the undisputed analysis of actual payments received: $2,375,507.99 (R. 2803 at 2-19). This number was arrived at by accounting for all payments actually made on the project (Schedule 9), less amounts paid by Big H directly (Schedule 8), plus amounts reimbursed to Big H by Hales (Schedule 9), plus fees paid by Big H (Schedule 9). *Id.*

Again, Defendants offered no evidence to refute Mr. Lipzinski's figures in this regard. Other than $30,000 of the builder's fees identified by Hales as such (*see*

Point III, below), Defendants appear to have accepted Mr. Lipzinski's figure in this regard.

B. The Trial Court Erred in Considering the Full Amount of the Payment Where Big H Overpaid Invoices and the Full Amount of the Invoice Where Big H Underpaid the Invoice.

As part of his testimony at trial, Mr. Lipzinski deducted two categories of costs from Defendants' allowable claim: instances where Defendants' payment was less than the invoiced amount (in which case they were credited only with the paid amount), and instances where the payment amount *exceeded* the invoiced amount (in which case they were credited with the invoice amount) (R. 2803 at 2-19).

Defendants' only counter to Hales' analysis of the underpayments and overpayments is that Hales did not marshal the evidence. The court's error here, though, was again one of law. Hales were charged for the full amount of the payment where Big H paid more than an invoice, and the full amount of the invoice where Big H underpaid an invoice. The question for this court is whether such charges can correctly be considered reasonable costs within the meaning of the parties' cost-plus contract. This, again, is an issue of law.

In *Dale K. Barker Co., PC v. John K. Bushnell*, 2010 UT App. 189, 237 P.3d 903 at ¶ 16, the court was called upon to interpret the meaning of the term "costs" in a contract. "'The trial court's interpretation of the meaning of 'costs' and 'fees' in the contract is a question of law.'" *Id.* (quoting *Kraatz v. Heritage Imps.*, 2003 UT App. 201, ¶ 24, 71 P.3d 188). "Although the contract referred to 'all costs,' costs, like attorney fees, must be reasonable." *Id.* And, in that case, the Court of Appeals specifically instructed

the trial court not to consider certain items that were duplicative and thereby deemed unreasonable. *Id.* at ¶ 18. In their Opening Brief, Hales presented clear authority that such charges are unreasonable as a matter of law and cannot be considered "costs" for a cost plus contract. *Opening Brief* at 30-31. As such, the trial court erred in including them in the damages calculation.[8]

1. Excluding the Overpayments and Underpayments (Schedule 1) Does Not Result in a "Double Dip."

As drafted by Defendants' counsel, the trial court's Findings concluded that Mr. Lipzinski's Schedule 11 treatment of underpayments and overpayments "constitutes an improper double counting (double dip)." (R. 2127). The court's conclusion, though, is incorrect as a matter of law. Mr. Lipzinski's Schedule 2 (as found by the trial court itself – R. 2119) constitutes a comprehensive list of *all invoices* in connection with the project. Schedule 9, in turn, itemizes *all payments* made by or on behalf of Hales. R. 2127. Schedule 11 does not duplicate either of these Schedules; it simply deducts the *net amounts* by which invoices were discounted (the discount to be credited to Hales) or by which invoices were overpaid (in which case the amount of overpayment was likewise credited to Hales). Only the amounts of overpayment or underpayment are accounted for in Schedule 11 – not the entire amount of the invoices or payments. Yet Hales are credited for the full amount of payments, whether made to (or on behalf of) Defendants on the project, or whether allocated elsewhere. Similarly, Hales were credited for the discounts realized against invoices separately listed in Schedule 2, but only for the

[8] R. 2126 ¶ 50 b, c ii.

amount of the discounts themselves, under Schedule 11. This was clearly explained during cross-examination (see R. 2802 at pp. 44-47); again, Defendants offered no analysis refuting that fact.

2. Overpayments and Underpayments Should Not Be "Netted Out" as a Matter of Law.

The Findings of Fact and Conclusions of Law concluded that the underpayments and overpayments "at the very least, should be netted out against each other." R. 2128. This again is conceptually erroneous. For example, if Big H was invoiced $100, but used the Hales' loan funds to pay $150, and if, in another instance, Big H was invoiced $100, but negotiated with the subcontractor and paid only $50 of the Hales' fund. Under the trial court's analysis, there should be no adjustment to the overall costs or payments because these items – the +$50 and the -$50 payments would "cancel out." In reality, Hales should not have had to pay the extra $50 – since the subcontractor did not charge it, Hales cannot legally be said to have incurred it. By the same token, Big H should not keep the $50 that it did not pay to the second subcontractor. That amount cannot be considered reasonable as a matter of law if Big H did not deem it worthy of payment.

It is noteworthy, in this regard, that Defendants' own expert confirmed the propriety of this analysis. On cross-examination, Defendants' expert, Robert Nielson, was asked concerning whether a deduction for discounted payments over invoiced amounts was appropriate in a cost-plus contract analysis, and confirmed it expressly:

> Q: Would it be fair to say that if on any of the invoices in the binder you reviewed Big H actually paid less than the face invoice amount, it should be what Big H paid not the invoice amount that should be the basis of the builder's fee?

A: Unless they have a contractual arrangement that allows them to benefit from discounts that they can get, yes.

Q: That would be a correct assessment, wouldn't it? Because actual cost is actual cost, not invoice cost, but paid cost?

A: Yes.

R. 2803 at p. 127 l. 12-p. 128 l. 2.

3. The Full Value of the Duplicates and Mistaken Invoices Must be Considered.

Defendants concede that there are duplicate and mistaken invoices, but attempt to minimize the effect of the duplicates by pseudo-accounting which again does not properly credit Hales' payments. *See Consol. Brief* at 28-29. Defendants concede that the CJ Heating invoice is a duplicate, and that Hales should be given a credit for it. *Id.* at 29. But, the full amount of the duplicate ($17,985) must be deducted from the analysis to properly credit the Hales for their payment, not just the ten percent builder's profit.

Defendants contend that the RT Custom Cabinets invoices are duplicative of only $1,264. Yet their own spreadsheet in Exhibit SS at page 4 shows:

45	R.T Custom Cabinets	Cabinets	Inv#1011	$21,000.00	-0-
	R.T Custom Cabinets	Cabinets	Inv#1071	$420.00	
	R.T Custom Cabinets	Cabinets	Inv#1072	$360.00	-0-
	R.T Custom Cabinets	Cabinets	Down Payment	$19,736.00	-0-
	R.T Custom Cabinets	Countertops	inv#1011	$21,000.00	-0-
	R.T Custom Cabinets	Payment	CH#2114913 Beehive $21,000.00		-0-
	R.T Custom Cabinets	Payment			

Plainly, Big H entered Invoice #1011 twice, and the duplication was included in the calculations. In addition, Big H counted a payment of $19,736 as a cost. The trial court clearly erred in its calculation here. Defendants' arguments regarding the down payment are mistaken. The document shows that it was a payment for Lot 46. *See Exh SS at Tab 45, attached in part at Exhibit 1.*

The Hales must also be credited for $60,000 from Stroud Invoice No. 4601. The Stroud invoice is only for $60,000. *Exh. SS at 24.* Some handwritten notes makes reference to $120,000, and Big H's spreadsheets charged the Hales $120,000 for the invoice. Without explanation, Defendants claim that is "simply $45.90 more than the actual total." *Consol. Brief* at 29. There is no finding that justifies the increase from $60,000 to $120,000. The court clearly erred in considering the $120,000, and the Hales must be given credit for their full payment.

In all, $118,721 in duplications appear from the face of the very documents adopted by the trial court, and need to be deducted from a proper costs-vs-payments analysis.

4. Overpayments Were Properly Deducted.

Defendants' final claim, that Hales' overpayments were improperly deducted from Hales' overpayment amount, is unclear. Apparently, Defendants believe that Mr. Lipzinski's accounting here results in deduction of $80,347.88, whereas only a tenth of that figure should have been deducted. If Defendants' invitation is accepted, though, and overpayments are deducted from the Adjusted Costs of the Work to reach the actual cost on which Defendants' builder's profit is calculated, the amount of overpayment is increased, not decreased. In either event, the trial court's disregard of overpayments entirely constitutes clear and reversible error as a point of law.

C. The Trial Court Improperly Deferred to "Reasonable Costs" in Deference to Actual Accounting Figures.

Having failed to rebut the validity of Hales' actual job cost accounting, Defendants fell back on (and the trial court adopted) the arguments that:

> Mr. Lipzinski found no evidence that any billed cost was excessive, unreasonable or above-market; . . . that Mr. Nielson confirmed the reasonableness of the costs through his two (change order and comparable price per square foot) analysis; and . . . the total amount of costs for the Lot 45 home is close to its appraised fair market value.

R. 2120 at ¶ 37. The trial court's reasoning here, though, disregards the superior accuracy of an actual cost analysis over "value received," and erroneously attributes an after-the-fact real estate appraisal as probative of actual costs incurred on the project. Neither approach is viable or tenable.

1. Actual Cost Versus Reasonable Value

All experts presenting evidence to the court agreed on one fundamental proposition: The most reliable and valid measure of a builder's charge under a cost-plus contract is the actual and reasonable costs incurred on the job. Mr. Lipzinski's testimony was clear and unequivocal in this regard (see R. 2801 at p. 138); Mr. Nielson, similarly, openly acknowledged that actual costs should be relied upon where they are available:

> Q: But I believe you testified in your deposition that neither of these methods is anywhere near as reliable as actual invoices; isn't that correct?
>
> A: I would still - yes, I would still say that . . . .
>
> Q: And wouldn't be even better to look at actual invoices against actual payments to determine what actual costs were?
>
> A: Yes. Easier said than done, but yes.

R. 2803 at p. 134 l. 21-p. 135 l. 12.

Defendants, though, apparently believe that this is irrelevant. They rely heavily and repeatedly on the decision of *Traco Steel Erectors, Inc. v. Comtrol, Inc.*, 2009 Utah 81, 222 P.3d 1165, for the proposition that, under Utah law, both Defendants and the trial court were entitled to disregard actual and valid cost analysis in favor of "reasonable cost" testimony (*Consol. Brief* at pp. 2, 4, 19, 20, and 25). Thus, even though Hales cited the Court to numerous cases from around the country and a well-regarded treatise which all state that Defendants should have proven the reasonableness of expenditures through actual costs and payments, Defendants assert that the *Traco Steel Erectors* holding makes evidence of record, showing actual costs and payments, either optional or irrelevant. However, Defendants err in their interpretation of and reliance on *Traco*.

Traco dealt with a unique situation not present before this Court. In that case, a steel erection subcontractor entered into two fixed price subcontracts with a general contractor for the performance of steel erection work on two state college projects. The subcontractor then abandoned the projects, and claimed additional payment. The general contractor counterclaimed for its costs incurred in completion. The trial court accepted the general contractor's damages evidence in the form of average cost data from RS Means Building Construction Cost Data -- *which the general contractor testified, without objection, reflected actual costs* -- and testimony on average hourly rates of its employees (2009 UT 81 at ¶1). The subcontractor offered no actual cost evidence, having failed to subpoena it timely.

Without marshaling evidence (*Id* at ¶ 3), the subcontractor challenged the adequacy of the evidence supporting the trial court's damages award. The Court of

Appeals affirmed, and the Utah Supreme Court upheld the Court of Appeals on certiorari. Concerning the sufficiency of evidence supporting a damages award, the Utah Supreme Court began by observing that:

> As a general matter, "the desired objective is to evaluate any loss suffered *by the most direct, practical and accurate method that can be employed.*" *Even Odds, Inc. v. Nielson*, 22 Utah 2d 49, 448 P.2d 709, 711 (1968).

Id. at ¶ 8 (emphasis added). The Supreme Court concluded that, given the lack of marshaled evidence concerning more reliable bases for the trial court's award, the sole question before it was whether, standing alone, the evidence derived from RS Means and testimony concerning average wages was legally sufficient. The court concluded that it was:

> In our view, the record leaves no room to doubt that reasonable minds might believe from the preponderance of the evidence that the damages presented by Comtrol through time cards, the RS Means average, and the testimony were actually suffered.
>
> . . . Had Traco timely subpoenaed Comtrol's payroll records, it is possible that such payroll records may have contradicted the evidence presented by Comtrol. Unfortunately, Traco failed to timely subpoena the payroll records and presented no other evidence, besides conflicting testimony and deposition exhibits, that the hourly rated $50.68 did not reflect the actual cost incurred for the labor and machinery required to complete Traco's work.

Id. at ¶ 26. In short, the *Traco* decision supports Hales' contention that actual costs incurred – not estimates or values – are the proper measure of damages. Where evidence of *actual cost*, and of *actual payments* is not only presented but undisputed, the *Traco* holding does not justify throwing out the whole in favor of "reasonableness."

Also, *Traco* did allow evidence of averages to prove damages, but only where there is also evidence that the averages accurately account for the project. *Id.* at ¶¶ 25, 26. The testimony stated that the average "actually reflected the costs incurred," and plaintiff did not present contradictory evidence, arguing unsuccessfully that the evidence was insufficient on its face. In this case, by contrast, Defendants failed as a matter of law to provide a full and adequate accounting, as required by *Traco*. Instead, Defendants presented two admittedly incomplete and plainly duplicative packets of invoices, and then called an expert who testified that, in his opinion, the documented cost of the Lot 45 house was "reasonable" because in his view the Hales received more value than the tabulated costs.[9] But, it is undisputed that Big H did not present the total payments.[10] Big H's expert did not attempt to determine how much was owed and to whom by offsetting the actual costs against the actual payments; he did not consider one of the two houses at all.[11]

Note, moreover, that in *Traco*, the court stated, "We are aware of no authority . . . that restricts evidence that may be used to prove contract damages to primary documentation of actual cash outlays to workers or suppliers, or that failure to do so results in a failure to present a prima facie case of damages." *Id.* at ¶ 23. In fact, there is a volume of authority holding that, in the context of cost-plus contracts, what may be considered a "cost," and whether it was reasonable, can only be proved by actual invoices

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[9] R. 1731, R. 2120, R. 1322, R. 2803 at 92-96.
[10] *Consol. Brief* at 14 ¶ 7.
[11] R. 2803 at 124.

and payment records.[12] Defendants seem to assert that *Traco* cannot be harmonized with those cases, and that they should therefore simply be ignored. *Traco*, though, must be read together with such other authority. With such a reading, *Traco* does not contradict nationwide authority more directly on point with the facts of this case. The only proper reading of *Traco*, giving due consideration to the national consensus, is that the evidence before the court therein – *in the absence of better evidence* – was sufficient to prove actual costs incurred.

Finally, *Traco* is also distinguishable as not dealing with a cost-plus contract with a non-builder. The parties in *Traco* were industry insiders adjusting payments under a fixed-price contract. Hales' cited case law involved individual homeowners versus contractors. *See, e.g, Treen Const., Inc. v. Reasonover*, 30 So.3d 933, 936 (La. App. 2009); *Burdette v. Drushell*, 837 So.2d 54, 59 (La. App. 2002); *Freeman & Co. v. Bolt*, 968 P.2d 247, 254 (Idaho App. 1998); *Nolop v. Spettel*, 64 N.W.2d 859, 863-864 (Wis. 1954); *Forrest Const. Co., LLC v. Laughlin*, 337 S.W.3d 211, *8, 2009 WL 4723365 (Tenn. App.). This distinction is pivotal in that cost-plus contracts give significant discretion to the contractor. As such, contractors dealing with non-industry owners

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[12] *Treen Const., Inc. v. Reasonover*, 30 So. 3d 933, 936 (La. App. 2009); *Burdette v. Drushell*, 837 So. 2d 54, 59 (La. App. 2002); *Freeman & Co. v. Bolt*, 968 P.2d 247, 254 (Idaho App. 1998); *Arc Elec. Co., Inc. v. Esslinger-Lefler, Inc.*, 591 P.2d 989, 992 (Ariz. App. 1979); *Union Bldg. Corp. v. J&J Bldg. & Maintenance Contractors, Inc.*, 578 S.W.2d 519, 522 (Tex. Civ. App. 1979); *Nolop v. Spettel*, 64 N.W.2d 859, 863-864 (Wis. 1954); *JBR Contractors, Inc. v. E & W, LLC*, 2010 WL 802076, 991 A.2d 18 (unpub.); *Forrest Const. Co., LLC v. Laughlin*, 337 S.W.3d 211, *8, 2009 WL 4723365 (Tenn. App.); 17A Am. Jur. 2d, Contracts § 495.

should be viewed as quasi-fiduciaries; and, they must produce an accounting that is more than a best guess.

2. Appraisal Testimony

If estimates of building value were inadequate to demonstrate costs, fair market value of the home as built, as estimated by a real estate appraisal performed after construction was completed, was clearly inadequate in the face of contradictory actual cost evidence, including (as it must) changes in the real estate market in the region.

POINT III. THE TRIAL COURT'S INCLUSION OF LAND COSTS IN ITS ANALYSIS CONSTITUTED AN IMPERMISSIBLE AWARD OF A REAL ESTATE COMMISSION TO DEFENDANTS/APPELLANTS.

As a matter of law,[13] Defendants cannot be awarded a ten percent profit on the cost of the land. It is undisputed that the parties' contracts do not refer to or authorize such a profit.[14]

Defendants attempt a semantic avoidance of the Statute of Frauds[15] by arguing that a ten percent commission on the lots without any writing is valid because the lot was a

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[13] Defendants contend that the Hales failed to marshal the evidence on this issue; however, the issue centers on the interpretation and application of statutes and the legal definition of "costs," not on the sufficiency of the evidence. Even if every disputed fact regarding the land is found in Defendants' favor, Defendants are still not entitled to recover a profit on the land because there is not written contract supporting the profit and Defendants are not authorized under the Real Estate Licensing and Practices Act. As such, marshalling of evidence cannot be required. *See Wasatch Oil & Gas, LLC v. Reott*, 2011 UT App. 152, ¶ 2, -- P.3d -- (stating that the application of the Statute of Frauds is reviewed for correctness).

[14] None of the four contracts contain a provision authorizing a commission on the land or relating to whether the land can be included as a "cost" for purposes of the builder's profit. Exhs. P-5, 6, 7, 8. The same is true of the addenda. Exhs. P-9, 10, 11.

[15] Utah Code Ann. § 25-5-1, *et seq.*

"cost." But the Statute of Frauds is broad in its sweep. It requires that "every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation" be in writing "signed by the party to be charged with the agreement." Utah Code Ann. § 25-5-4(5) (2003).[16] "Compensation" means "something given or received as an equivalent for services, debt, loss, injury, suffering, etc."[17] or "payment, remuneration."[18] The Statute of Frauds also provides:

> No estate or interest in real property ..., nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same.

Utah Code Ann. § 25-5-1 (2003). Under the plain reading of the statute, whether the claim is called a profit on a cost or a commission, Defendants cannot recover any fee relating to the price of the lots.

The Real Estate Licensing and Practices Act ("the Licensing Act")[19] also forbids Defendants from claiming a profit on the lots. It is undisputed that Defendants are not authorized real estate brokers or agents.[20] Defendants claim that the land was "acquired with the professional assistance of David Horsley, a licensed real estate agent acting for

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[16] The Statute of Frauds was amended in 2004, but it did not change the substance of this subsection.
[17] www.dictionary.com.
[18] Miriam Webster Dictionary available at www.m-w.com.
[19] Utah Code Ann. § 61-2f-201, *et seq.* (2003).
[20] There is no finding indicating that either Defendant is so licensed. *See* R. 1722-34, 2105-62. Defendants do not assert that they were so licensed at the time of the events in question or at any time. *See Consol. Brief.*

Big H." However, the Licensing Act does not permit an unlicensed third-party to claim a real estate commission.

> No person may bring or maintain an action in any court of this state for the recovery of a commission, fee or compensation for any act done or service rendered which is prohibited under this chapter to other than licensed principal brokers, unless the person was duly licensed as a principal broker at the time of the doing of the act or rendering the service.

Utah Code Ann. § 61-2f-409 (2003). Defendants are the parties seeking to "bring or maintain an action in any court of this state for the recovery of a commission, fee or compensation;" yet, they are "other than licensed principal brokers." A simple reading of the plain language of the Licensing Act makes it clear that Defendants cannot claim a commission on the cost of the lots.

In response to Plaintiffs argument that the Mechanic's Lien Act precludes land costs from being included, Defendants argue that they may recover under the Mechanic's Lien Act because they "rendered service[s]" in relation to the lots. *Consol. Brief* at 28 n.20. Even if the contradictions in Defendants' semantics were overlooked, their assertions fail as a matter of law. The Licensing Act prohibits Defendants from recovering compensation for rendering services related to the purchase of lots, and there is no other provision in the Mechanic's Lien Act that would permit Defendants such a recovery.

Defendants also contend that the Hales waived these statutory arguments by not asserting them as an affirmative defense at the start of the case. But Defendants'

counterclaim does not indicate that Defendants claimed a profit on the sale of the land.[21] Hales cannot be expected to divine Defendants' mathematics at the pleadings stage – indeed, Hales' Complaint sought an accounting because they did not know the basis of Defendants' claims. In any event, Hales' Complaint expressly challenged whether Defendants' asserted costs were "legitimate and reasonable,"[22] and their Counterclaim Answer incorporated their Complaint. The Hales' Complaint also specifically puts the Mechanic's Lien Act at issue, alleging the invalidity of the lien, slander of title on the basis of the claimed Mechanic's Lien, and abuse of the lien right.[23] The issues, moreover, were clearly presented to the court at trial (*see* Rule 15(b), Utah R. Civ. P.).[24]

POINT IV. JAMES HORSLEY HAD ACTUAL AND APPARENT AUTHORITY TO ACCEPT THE $30,000 PAYMENT, AND HALES PROPERLY MARSHALED THE EVIDENCE.

Rather than challenging the Hales legal arguments with respect to James Horsley, Defendants assert only that the Hales failed to marshal the evidence; however, the Hales properly marshaled the evidence as to the findings that they challenge. Defendants assert that Hales omitted: "1. The Hales decided to make the check payable to James, not Big H." *Consol. Brief* at 34. But, the Hales' Brief says, "the Hales wrote a check to James Horsley." *Hales' Brief* at 37. Defendants argue that the Hales did not state, "2. James was not a shareholder, officer or director of Big H." *Consol. Brief* at 34. Yet, the brief states, "James testified that he was not ever an officer, director or shareholder in Big H."

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[21] R. 57-60.
[22] R. 1-34.
[23] *Id.*
[24] R. 1863-67, 76.

Hales' Brief at 38. Defendants assert that the Hales did not state, "3. There is no evidence that James appears on any Big H records maintained by the Utah Division of Corporations." *Consol. Brief* at 34. But, the Hales cited this verbatim. *Hales' Brief* at 37. Defendants assert that the Hales failed to state: "4. At the time James received the $30,000 check, the Hales knew that their failure to pay the agreed-upon ten percent fee to Big H had created enormous tensions between James and Dwayne (Horsley), leading to numerous arguments between them." *Consol. Brief* at 34. However, the Hales did state, "Mr. Hale's testimony could be read to indicate that he knew James was not receiving draws from Big H, and that James could not induce Dwayne to pay him. In addition, Mr. Hale testified that he knew that James and Dwayne were 'estranged' at the time that he paid James the $30,000." *Hales' Brief* at 38, 40 n.57. Also, "the Hales were aware that there were 'enormous tensions' between Dwayne and James." *Id.* at 42. Next, Defendants assert that the Hales' brief fails to acknowledge that "The Hales well knew that James wanted the check to pursue a personal investment opportunity in a start-up mortgage company." *Consol. Brief* at 34. But, the Hales acknowledged this finding verbatim. *Hales' Brief* at 42. Defendants also argue that the Hales did not marshal: "6. The Hales failed to designate Big H as a joint payee on the check." *Consol. Brief* at 34. Yet, the Hales stated, "the Hales wrote a check to James Horsley." *Hales' Brief* at 37 (emphasis added). Defendants also argue that the Hales did not marshal evidence in support of the trial court's finding at R. 2123 ¶ 39 that it was "otherwise unreasonable" for the Hales to have expected James to apply the payment to Big H. However, the Hales did marshal the evidence with respect to the portions of that conclusion that they

challenged, and the unchallenged portions do not require marshalling.[25] "A party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Utah R. App. P. 24(a)(9). It goes without saying that fact findings that are not challenged do not need to be marshaled. In short, Hales challenged the trial court's conclusions at 39a and b that James did not have actual or apparent authority, and properly marshaled the evidence in support of those points.

In addition, Defendants assert that the Hales did not marshal the evidence supporting the findings that, "Before they sued Big H, the Hales never informed Big H or Horsley of the existence of the payment, or of their position that it was supposed to be a credit to their account with Big H" and, "At the point the Hales issued the check to James, they were in an adversarial relationship with Big H, making it incumbent upon them to clearly inform Big H of the payment to assure that it was aware of it." To the extent that there is a dispute as to whether James was a part of "Big H," the Hales properly marshaled any evidence that would support a conclusion that he was not. *Hales' Brief* at 37-38, 40 n.58, 41 (acknowledging the evidence that James was not an officer, director or shareholder in Big H; that James does not appear in the corporate records; that there was some testimony that James was not a employee of Big H; and that the Hales

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[25] The Hales did not expressly or impliedly challenge portions of the court's findings that support this conclusion. Specifically, "7. The Hales failed to have James (or Big H) sign a restrictive endorsement" and "The Hales, in their entire history of their profitable family business, had never before issued to an individual (such as James) a check supposedly intended for a business entity creditor (such as Big H). . . . Mrs. Hale testified at trial [that] when she paid accounts on behalf of the family business (BC), she was always careful to assure that invoices were paid to the correct payee, since she knew it is difficult to recover the payment if it is directed to the wrong creditor."

knew that James was subordinate to Dwayne). The Hales do not challenge the remainder of these findings, and therefore had no duty to marshal the evidence supporting them. The Hales therefore request that this Court consider the substance of their legal argument, points which the Defendants entirely ignore.

POINT V. ALL OTHER ISSUES RAISED BY THIS APPEAL ARE ADEQUATELY ADDRESSED IN HALES' OPENING BRIEF.

Hales rely on their opening brief for the remaining issues of warranty repair costs and Defendants' wrongful liening of Hales' property. For the reasons set out therein, the trial court should have included the only competent evidence concerning the cost of repairs to Defendants' defective workmanship on the houses (which both experts agreed was necessary); further, Defendants should answer for having asserted a lien in violation of Utah Code Ann. § 38-1-25.

DATED this 5th day of July, 2011.

JONES WALDO HOLBROOK & McDONOUGH PC

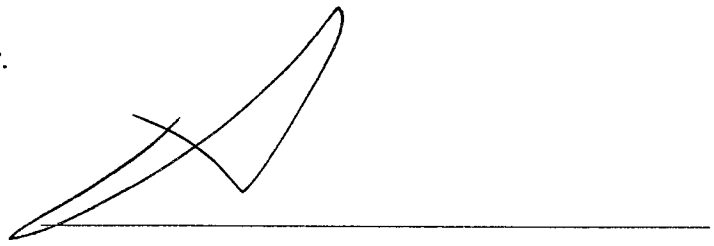
By _____
Vincent C. Rampton
Kathleen E. McDonald
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Hales' Reply Brief was mailed via first class mail, postage prepaid, to the following this 5th day of July, 2011:

John T. Anderson
Anderson & Karrenberg
50 West Broadway, Suite 700
Salt Lake City, UT 84101
Attorneys for
Big H Construction, Inc.

Bradley L. Tilt
Fabian & Clendenin
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
Attorneys for
CitiMortgage, Inc.



Tab 1

Invoice

DATE	INVOICE #
1/29/2004	1011

R.T. CUSTOM CABINETRY inc.
PROUD CRAFTSMEN
668 W. 9320 S. Suite A. Sandy, UT 84070
Tel. 801-561-3535 Fax. 561-8039

BILL TO
Hale, Chuck (Tiffani & Jr.'s Home) Lot #46 11136 S. Sir Barton Ln So. Jordan, UT

DESCRIPTION	QTY	UNIT/RATE	AMOUNT
Upstairs Kitchen tops (Cambria Park Gate)		6,048.00	6,048.00
Add for Ogee edge		1,050.00	1,050.00
Laundry room tops with under mounted sink		2,047.00	2,047.00
Add for Ogee edge		288.00	288.00
Master bath - 3 tops plus radius top in water closet (Travertine)		2,730.00	2,730.00
Add for Ogee edge		210.00	210.00
Basement Kitchen tops with back splash & under mounting of sink		4,620.00	4,620.00
Add for ogee edge		1,312.00	1,312.00
Basement bath room (Travertine)		819.00	819.00
Add for Ogee edge		153.00	153.00
Powder room bath		655.00	655.00
Add for Ogee edge		158.00	158.00
Main Bathroom with under mounted sink (Travertine)		789.00	789.00
Add for Ogee edge		121.00	121.00
		Total	$21,000.00

668 W. 9320 S, Sandy Ut 84070
801-561-3535 Fax 801-561-0088

Statement

DATE
4/9/2004

TO:
Hale, Chuck (Tiffani & Jr.'s Home) Lot #46 11136 S. Sir Barton Ln So. Jordan, UT

Past Due
Pay ASAP

AMOUNT DUE	$21,780.00

DATE	TRANSACTION	AMOUNT	BALANCE
01/28/2004	Balance forward		0.00
01/29/2004	INV #1011	21,000.00	21,000.00
04/08/2004	INV #1071	420.00	21,420.00
04/08/2004	INV #1072	360.00	21,780.00
		AMOUNT DUE	**$21,780.00**

R.T. CUSTOM CABINETRY inc.
PROUD CRAFTSMEN
668 W. 9320 S, Sandy Ut 84070
801-561-3535 Fax 801-561-0099

Invoice

DATE	INVOICE #
4/8/2004	1072

BILL TO

Hale, Charles & Beverly
10864 So. 2420 W.
So. Jordan, UT 84095

DESCRIPTION	QTY	UNIT/RATE	AMOUNT
Valances around mirror (remake) for Jr. s house		175.00	175.00
Electrical work in bath for Jr. s house		15.00	15.00
Electrical work in island for Jr. s house		130.00	130.00
Remake sink support for Jr. s house		40.00	40.00
		Total	$360.00

DUE UPON COMPLETION OF WORK/ JOB .

R.T. CUSTOM CABINETRY inc.

PROUD CRAFTSMEN

Date: 10/21 2003

PROPOSAL AND CONTRACT AGREEMENT

We (R.T. Custom Cabinetry inc.) propose to provide all necessary materials and labor to manufacture and or install all cabinetry and or countertops in a substantial workmanlike order as according to trade standards or customer satisfaction for:

(You) Chuck & Beverly Hale

JR Tiffani House

Work to be performed at:

LOT # 46 - 11136 S. 81 Barton L

Tiffany Hale

As covered in the specifications and or drawings provided, for the sum of: $ 39,472.00

Thirty Nine Thousand Four Hundred Seventy two Dollars. To be paid under the terms to follow: 50% deposit upon signing of this agreement, balance due upon completion of services covered herein.

50% = 19,736.00

We are maintaining a six to eight week production lead-time. New jobs are added to the production schedule only after a contract, deposit, and complete floor plan – including but not limited to; decision on all options, choices, appliance specifications, final measurements and or any information pertinent to the manufacturing and or installation of the proposed project. When the aforementioned items and information are provided and complete, you will be informed in writing of the next available completion/installation date. We ask you, the consumer to choose from the available completion and or installation dates and guarantee readiness of the proposed job-site.

We will manufacture to achieve the scheduled date and hereby offer a $30 per day discount if delivery and installation of the said project falls behind schedule. (Based on a four day work week) In the event job site readiness falls behind the scheduled delivery/installation date, your cabinetry and or produced project shall be warehoused at an additional cost to you of $30 per day. (Based on a four day work week) In the event the project need be warehoused for more than eight days (Based on a four day work week) full and total amount of this agreement, less installation price, shall be invoiced and become due and payable.

Delivery/installation of such postponed projects shall be rescheduled at our availability and negotiated upon job-site readiness. We operate a tight schedule, but can typically reschedule installs within ten working days. (Based on a four day work week)

No plumbing, electrical, flooring, decorating or other construction work shall be performed unless specified in the drawings and or specifications provided and covered herein. Openings for appliances and or sinks shall be built or cut to the specifications provided by you, the consumer, or your representative (appliance or sink provider) as per cutout specifications. In the event incorrect information is provided, a service charge and or change order may be necessary to modify or rebuild the project to current altered specifications provided.

We shall deliver and install this project as per this agreement as carefully and proficiently as possible. We shall not assume or be held liable for any job-site damage to flooring, walls, ceilings etc. unless such damage is negligent and careless on our behalf. It is advised that finished flooring and moldings be installed after installation of cabinetry to avoid any damage that may result in standard and typical installation procedures. On remodels we ask that the room be clear of appliances or objects that may hinder the placement and installation of cabinetry.

It is specifically understood that all items manufactured by R.T. Custom Cabinetry inc., both in the shop and or on the job-site, will remain the property of R.T. Custom Cabinetry inc. until 100% paid for in full. We retain the right upon breach of this agreement by the purchaser to sell those items in our possession. In effecting any resale on breach of this agreement by the purchaser, we shall be deemed to act in the capacity of agent for the purchaser. The purchaser shall be liable for any net deficiency on resale.

10% = 3,947.00

A 5% discount shall be given if payment is received immediately upon installation/completion. In the event payment is not received within ten (10) calendar days, we reserve the right to charge interest in the amount of 2% per month, not to exceed 24% per year. At twenty (20) days past due, it is customary to file notice of intent to lien. In the event a collection agency or legal representation is necessary, you, the purchaser agree to reimburse us, R.T. Custom Cabinetry inc. for any reasonable amounts expended in order to collect 100% of the total contract balance.

Deposit date: 10/21/03 Check # 3537

Amount of deposit: $19,736.00

Submitted by: TBud

Title: _____

ACCEPTANCE

You (R.T. Custom Cabinetry inc.) are hereby authorized to furnish all the materials and labor required to complete the work mentioned in the proposal and contract agreement above, for which I/we agree to pay the amounts mentioned in said proposal and according to the terms thereof.

Accepted by: X Beverly Hale Date: 10/21 2003

X _____

Invoice

DATE	INVOICE #
1/29/2004	1011

BILL TO

Hale, Chuck
(Tiffani & Jr.'s Home)
Lot #46 11136 S. Sir Barton Ln
So. Jordan. UT

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Main Bathroom with under mounted sink (Travertine)		789.00	789.00
Add for Ogee edge		121.00	121.00
		Total	$21,000.00

	Craftsmen Tile	Tile / Medallions	Payable to Arizona tile CH#20974 F.U.B	$2,220.00	-0-
	Craftsmen Tile	Tile labor	None CH#20977 F.U.B	$9,800.00	
	Craftsmen Tile	Tile labor	None/ Big H	$5,289.00	
	Craftsmen Tile	Tile Labor	Balance to date CH#23084 F.U.B	$7,349.50	
45	R.T Custom Cabinets	Cabinets	Inv#1011	$21,000.00	-0-
	R.T Custom Cabinets	Cabinets	Inv#1071	$420.00	
	R.T Custom Cabinets	Cabinets	Inv#1072	$360.00	-0-
	R.T Custom Cabinets	Cabinets	Down Payment	$19,736.00	-0-
	R.T Custom Cabinets	Countertops	Inv#1011	$21,000.00	-0-
	R.T Custom Cabinets	Payment	CH#2114913 Beehive $21,000.00		-0-
	R.T Custom Cabinets	Payment			
46	CR Painting	Painting	Inv#336	$17,000.00	-0-
	CR Painting	Painting		$17,176.00	-0-
	CR Painting	Painting	Inv#345	$2,865.00	
	CR Painting	Payment	CH#23074 F.U.B $17,000		-0-
	CR Painting	Payment	CH#3154 Big H $10,000		
	CR Painting	Payment	CH#3342 Big H $17,000		
47	Sure Appliances	Appliances		$14,682.02	-0-
	Sure Appliances	Payment	CH#23085 F.U.B $14,682.02		-0-
48	Tanner Glass	Door knobs	Inv#3000479	$2,763.42	-0-
	Tanner Glass	Payment	CH#3495 Big H $2,763.42		-0-
49	Garage Door Center	Garage doors	Inv#615218	$3,662.00	-0-
	Garage Door Center	Payment	CH#22207 F.U.B $3,662.00		
50	Capitol Rain Gutters	Rain gutters	Inv#21	$1,842.75	-0-
	Capital Rain Gutters	Payment	CH#23076 F.U.B $1,842.75		-0-
51	Big H Construction	Framing labor	CH#020110 F.U.B	$18,500.00	-0-
	Big H Construction	Framing labor	CH#018361 F.U.B	$14,300.00	
	Big H Construction	Framing labor	CH#018511 F.U.B	$10,000.00	-0-
	Big H Construction	Finish labor	CH#2113331 Beehive $15,000.00	$15,000.00	
52	Questar Gas	Service agreement	CH#18220 F.U.B	$116.86	-0-
	Questar Gas	Temp gas	CH#23078 F.U.B	$420.29	-0-
	Questar Gas	Payment	Big H		
	Questar Gas	Payment	Big H		
53	City of South Jordan	Water	CH#000019529 F.U.B	$30.64	-0-
	City of South Jordan	Water	Big H	$29.92	-0-
	City of South Jordan	Water	Big H	$26.68	
	City of South Jordan	Water	Big H	$56.45	
54	Valley Ready Mix	concrete	Inv#53023 CH#019074 F.U.B	$2,505.10	
55	Utah Power	Temp power	Big H	$19.97	-0-
	Utah Power	Temp power	CH#000020106 F.U.B	$55.69	
	Utah Power	Temp power	CH#000019525 F.U.B	$22.45	
	Utah Power	Temp Power	CH#18216 F.U.B	$86.62	
56	Bonnie Reynolds	Final clean	Hales	$2,360.00	-0-
57	Sunline Landscaping	Landscaping	Inv#900 $79,000		
	Sunline Landscaping	Landscaping/wtrfall/rock walls	Inv #502 $50,000	$10,000.00	
	Sunline Landscaping				
	Sunline Landscaping	Payment	CH#126 Hales $30,500		-0-
	Sunline Landscaping	Payment	CH#139 Hales $10,000		-0-
	Sunline Landscaping	Payment	CH#225 Hales $14,250		-0-
	Sunline Landscaping	Payment	CH#262 Hales $14,250		-0-
	Sunline Landscaping	Payment	CH#3542 Hales $15,000		-0-
	Sunline Landscaping	Payment	CH#3557 Hales $15,000		-0-
	Sunline Landscaping	Payment	CH#2113236 Beehive C.U		
	Sunline Landscape	Payment	James		
58	CHS Construction	Hang Doors	Inv#1112	$1,494.00	
	CHS Construction	Payment	CH#3237 Big H $1,494.00		
59	Artisan Stairways	Rails/payment	Inv#9182	$6,000.00	-0-
	Artisan Stairways	Rails/payment	Cashiers check James Horsley $6,000.00		
60	Mark Campbell	Finish work	Charged to lot 45 $1,168.00		-0-
	Mark Campbell	Finish work	Charged to Lot 45 $8,976.00		
61	Meitler Metal Works	Exterior rails	CH#126 Hales	$8,197.50	-0-
62	Old World Stone	Sinks	Visa Tiffany Hale	$1,211.25	
63	At Home Furnishings	Credenza	Visa Big H $935.00 Remainder Tiffany	$2,805.71	
64	Valley Sand & Gravel	Gravel	Inv#46410 CH#18221 F.U.B	$620.41	
	Valley Sand & Gravel	Gravel	Inv#46437 CH#18221 F.U.B $1,938.36	$1,317.95	
65	BMC West	Lumber for temp rail	Big H	$385.60	
	BMC West	Stakes / Tapes	CH#18214 F.U.B	$101.78	
66	Water Essentials	Water purifier	Quote 30497 Hales	$5,496.25	
67	Diamond Rental	Heaters	CH#3269 Big H	$417.87	