

2016

**Integrita, LLC, Wendy Harrison & Design-Build Solutions, LLC,
Petitioners/Appellants v. Utah Labor Commission, and Scott
Moulton, an Individual, Respondent/Appellee**

Utah Court of Appeals

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Case No. 20150110-CA

IN THE UTAH COURT OF APPEALS

INTEGRITA, LLC, WENDY HARRISON & DESIGN-BUILD SOLUTIONS, LLC,

Petitioners/Appellants

v.

UTAH LABOR COMMISSION, and SCOTT MOULTON, an individual,

Respondent/Appellee

**RESPONSE BRIEF OF RESPONDENT/APPELLEE
UTAH LABOR COMMISSION**

Appeal from the Judgment of the Third Judicial District Court, Davis County,
Judge Robert P. Faust

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FILED
UTAH APPELLATE COURTS

JAN 27 2016

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COUNSEL'S CERTIFICATE PURSUANT TO RULE 24(f)(1)(C)

I hereby certify that the Brief of Respondents contains 2,943 words, including headings, footnotes, and quotations, but excluding the Table of Contents, Table of Authorities, and the Addendum.

I have relied upon the word count of the word processing system, Word 2010 X5, used to prepare this brief. The font used is Times New Roman, 13 point.

Certified this 27 day of January, 2016.



Brent A. Burnett
Assistant Attorney General
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Utah Labor Commission

LIST OF ALL PARTIES

To the best of Respondent Utah Labor Commission's knowledge, all interested parties appear in the caption of this Brief.

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INTEGRITA, LLC, WENDY HARRISON & DESIGN-BUILD SOLUTIONS, LLC,

Petitioners/Appellants,

v.

UTAH LABOR COMMISSION, and SCOTT MOULTON, an individual,

Respondent/Appellee.

**RESPONSE BRIEF OF RESPONDENT/APPELLEE
UTAH LABOR COMMISSION**

STATEMENT OF JURISDICTION

This action comes within the original jurisdiction of this Court under Utah Code Ann. § 78A-4-103(2)(a)(ii) (West Supp. 2014).

STATEMENT OF ISSUE ON APPEAL

Integrita, LLC and its president, Wendy Harrison, received funds from Horizon, a general contractor, in settlement for “all labor material and services” that were performed for the general contractor. But petitioners failed to pay Scott Moulton for his labor and services on the project performed for Integrita. Did the district court err in upholding the Utah Labor Commission’s decision that petitioners are liable for Scott Moulton’s unpaid labor?

ISSUE PRESERVED BELOW and STANDARD OF REVIEW: This issue was raised below by Respondent Utah Labor Commission (R. 291-394) and decided by the district court. R. 711-26. Respondent agrees with petitioners that the district court's conclusions of law are reviewed for correctness and its findings of fact are reversed only if clearly erroneous. Brief of Appellant at 2.

DETERMINATIVE STATUTE

All determinative statutes and rules are found in Addendum A. Pertinent provisions include:

Utah Code Ann. § 34-28-2 (West 2011)

STATEMENT OF THE CASE

Petitioners filed their petition for judicial review of the Utah Labor Commission's decision in the Third District Court. R. 1-16. After a bench trial (R. 578-81), the district court entered its Findings of Fact and Conclusions of Law and Order on January 9, 2015. R. 711-726. Petitioners timely filed their notice of appeal to this Court. R. 727-28.

STATEMENT OF RELEVANT FACTS

The following is a verbatim restatement of the Stipulated Facts and Findings of Fact as found by district court. R. 712-18 (record cites have been omitted).

STIPULATED FACTS

1. Scott Moulton worked on five job sites described as The Red Onion, No Boundaries, KSL, City Creek and Burlington, with the first three job sites located at the Salt Lake International Airport and last two job sites located elsewhere.
2. Scott Moulton was hire by Ted Gurule in August 2012 and worked from September 3, 2012 through September 18, 2012.
3. Scott Moulton worked on those job sites for a total of 128.5 hours at his hourly rate of \$19.00, earning \$2,441.50.
4. TJ Enterprises & Acoustical, Inc. ("TJ Enterprises") during 2012 was a Utah corporation and construction company owned by Ted Gurule.
5. Integrita, LLC, ("Integrita") during 2012 was a Utah limited liability company and construction company owned and operated by Wendy Harrison.
6. Integrita, LLC, had a dba "Design Build Solutions" under which name it did business with Horizon Retail Construction during 2012.
7. No written subcontractor contract was executed between Wendy Harrison/Integrita, dba Design Build Solutions, and Ted Gurule/TJ Enterprises.
8. No written partnership or joint venture contract was executed between Wendy Harrison/Integrita, dba Design Build Solutions, and Ted Gurule/TJ Enterprises.

9. Mr. Moulton filed a wage claim against Design Build Solutions and TJ Enterprises on November 18, 2012.
10. UALD issued an order to pay on Mr. Moulton's wage claim on July 16, 2013.
11. Design Build Solutions, LLC, was formed in January, 2013.
12. Horizon Retail Construction, Inc. ("Horizon"), a corporation located in the state of Wisconsin, was the General Contractor for the Red Onion, KSL and No Boundaries and provided the construction funds for the three projects.
13. Horizon paid those funds to Integrita in order for it to pay for the labor and materials.
14. Integrita would take 2 ½% off each amount it paid to TJ Enterprises

FINDINGS OF FACT

1. Holly A. Carling has been self-employed as a CPA since 1986. Wendy Harrison has been her client for accounting and tax purposes for fourteen years, including the 2012 tax year. Ms. Carling did not file any partnership tax returns for Wendy Harrison. Ms. Carling also did tax work for Integrita, LLC.
2. Ms. Carling never met T.J. Gurule and she does not have any personal knowledge of any partnership conversations or actions between Ms. Harrison and Mr. Gurule.

3. Ms. Harrison/Integrita, dba Design Build Solutions, Roy Bosney and Mr. Gurule/TJ Enterprises held discussions with the intent of forming a joint venture or partnership for getting government contracts under minority provisions for women.
4. Mr. Gurule was initially contacted by Roy Bosney, who held a contractor's license, in 2010 or 2011. Mr. Gurule testified Ms. Harrison was at ninety percent of all meetings in forming the relationship between them. It was agreed between the parties that Mr. Gurule would place his work contracts into Integrita which would have a minority status by virtue of Ms. Harrison being a female owner. Life insurance was obtained for all three individuals, Mr Bosney, Ms. Harrison and Mr. Gurule.
5. This business relationship between Ms. Harrison and Mr. Gurule started and carried on without a formal written agreement under the terms discussed in the various business meetings they held for a joint venture.
6. The arrangement between Ms. Harrison and Mr. Gurule was that work would be obtained by them under the Integrita, LLC, dba Design Build Solutions, name. Ms. Harrison would provide the materials, carry the insurance, pay the bills, manage what she did, and provide the minority standing. Mr. Gurule brought into the relationship equipment, experience,

and ability to hire men. Mr. Gurule's role was also to provide work estimates, manage the projects and be a partner.

7. Mr. Gurule did put two or three work projects under the Integrita name.
8. The address of the offices of TJ Enterprises was also listed as a satellite office of Integrita.
9. Business and work documents were created using the Integrita letterhead for correspondence for the work obtained with Ms. Harrison's knowledge.
10. Ms. McKissen, an employee with TJ Enterprises, testified she worked for 20 years for TJ Enterprises, and 2 and ½ years for Integrita/Design Build Solutions, Design Build Solutions/TJ Enterprises.
11. Ms. McKissen testified she acted as the Administrative Assistant for Integrita when it joined with TJ Enterprises in 2011.
12. Ms. McKissen drafted two letters on Integrita letterhead announcing the joining of TJ Enterprises and Integrita, LLC, dba Design Build Solutions. These letters announcing the joining of TJ Enterprises and Integrita, LLC, were sent out by mail and email to clients by Ms. McKissen.
13. Work Contracts at the Salt Lake City Airport were obtained by Ms. Harrison and Mr. Gurule. The contracts for the work at the Airport were between Horizon, as the general contractor, and Integrita, LLC, dba Design Build Solutions, as a subcontractor.

14. The employees working at the Airport projects wore security badges under the Integrita name, not under TJ Enterprises.
15. The Airport contracts required the subcontractor Integrita, LLC, dba Design Build Solutions, to furnish labor and materials.
16. The Airport contracts required Integrita, LLC, dba Design Build Solutions, to carry liability insurance and workers compensation insurance. Integrita, LLC, dba Design Builde Solutions, provided documents showing liability and workers compensation insurance for the contracts to Horizon.
17. The Airport contracts required any defective work to be corrected at no cost by Integrita, LLC, dba Design Build Solutions.
18. The Airport contracts were all signed by Wendy Harrison for Integrita, LLC, dba Design Build Solutions, and lists her as President of that company.
19. The Airport contracts allowed for second tier subcontractors with written permission of Horizon. The Airport contracts provide an area for listing suppliers and subcontractors. TJ Enterprise was not listed as a subcontractor of Integrita, LLC, dba Design Build Solutions, on the contracts.
20. Mr. Gurule prepared billings for materials and labor for submission to Horizon for the Airport work and those billings were in Integrita's name.

21. After monies were received from Horizon for the work done on the Airport jobs by Integrita, Ms. Harrison would take two and one-half percent (2 ½ %) and pass the rest of the money to Mr. Gurule under the TJ Enterprises name. TJ Enterprises was the entity used to get the money to employees for their work. Ms. Harrison and Mr. Gurule agreed to use his company's bank accounts to pay bills.
22. The business relationship between Mr. Gurule and Ms. Harrison ended when Ms. Harrison sent a letter dated October 2, 2012 to Mr. Gurule informing him that his services were no longer required.
23. Mr. Gurule left the equipment and men working on the Airport jobs with Integrita after receiving the letter dated October 2, 2012.
24. When their business relationship ended, TJ Enterprises was owed an estimated \$ 123,000 by Integrita, LLC, dba Design Build Solutions. Employees were not paid by TJ Enterprises because Ms. Harrison/Integrita, LLC, dba Design Build Solutions, would not pay the outstanding monies.
25. The projects at the Salt Lake Airport with Horizon ended in January 2013. The monies owed on the Airport projects were not paid to Integrita, LLC, dba Design Build Solutions, by Horizon by January 31, 2013.

26. Integrita, LLC, dba Design Build Solutions, sued Horizon for \$135,000 for the unpaid monies. This suit was settled for \$106,000 and waivers of liens were signed.
27. Wendy Harrison signed the notarized sworn waivers of lien for all projects at the Airport.
28. Those lien waivers covered the projects worked on by Mr. Moulton and for which he had not been fully paid.
29. The signed lien waivers were to settle with Horizon any outstanding costs, materials and labor on the Airport projects.
30. Ms. Harrison knew in November 2012 that wage claims were filed against Integrita, LLC, dba Design Build Solutions.
31. Design Build Solutions, LLC, was formed by Ms. Harrison in January 2013 to shorten the name, for doing construction, and the name was picked to capture the goodwill of the existing Integrita, LLC, dba Design Build Solutions. The company is intended to be used once Ms. Harrison has her own contractor's license but it has yet to do any business
32. While the Court heard evidence from Ms. Harrison refuting some of the testimony of Mr. Gurule, in assessing the testimony of both Mr. Gurule and Ms. Harrison, the Court determines Mr. Gurule's evidence was more persuasive and gives weight to his testimony.

SUMMARY OF ARGUMENT

Petitioners formed an association/joint venture with TJ Enterprises to perform as a subcontractor for Horizon on a construction project at the Salt Lake City Airport. Scott Moulton was an employee of the association who was not fully paid his wages. Harrison and Integrita and Harrison had a statutory duty to pay these wages as Moulton's employers. They had a contractual duty to Horizon to pay these wages based on the original contract and on the lein waivers they signed with Horizon in settlement of litigation.

ARGUMENT

THE DISTRICT COURT CORRECTLY HELD THAT PETITIONERS WERE LIABLE TO SCOTT MOULTON FOR HIS UNPAID WAGES

A. The District Court Correctly Held That Petitioners Were Part of an Association That Employed Scott Moulton

The district court held that Integrita, LLC and TJ Enterprises were an association pursuant to Utah Code Ann. § 34-28-2 (West 2011) (an association can be an employer). R. 718-19. Petitioners have not directly challenged the district court's conclusion that companies can form an association, but argue only that Moulton was hired and paid by TJ Enterprises. Brief of Petitioners at 13-15.

The district court held that an association can include companies as well as living persons. An association is simply "a gathering of people for a common purpose . . . an unincorporated business organization that is not a legal entity

separate from the persons who compose it.” R. 718 (quoting Black’s Law Dictionary, Seventh Edition). The district court held that Integrita and TJ Enterprises had joined for the common purpose of performing construction work for Horizon at the Salt Lake City Airport. R. 718-19.

The district court’s holding is supported by Utah’s law on statutory construction. When the word “person” is used in a statute, it normally means an individual, association, institution, corporation, company, trust, limited liability company, partnership, political subdivision, government bodies, and any other organization or entity. Utah Code Ann. § 68-3-12.5(17) (West Supp. 2014).

Petitioners’ argument misses the point that the association found by the district court was created by companies, and not just individuals. Nothing in the statute requires that the employees working for an unincorporated business organization that is not a separate legal entity must be employed by the association as opposed to the persons who created the association. The district court correctly held that the petitioners were part of an association and, as such, can be held liable to pay the wages of those who work for the association.

B. The District Court Correctly Held that the Petitioners Had Formed a Joint Venture With TJ Enterprises

Utah uses a five part test to determine if a joint venture exists.

The parties must combine their property, money, effects, skill, labor and knowledge. As a general rule, there must be [1] a community of interest in the performance of the common purpose, [2] a joint proprietary interest in

the subject matter, [3] a mutual right to control, [4] a right to share in the profits, and [5] unless there is an agreement to the contrary, a duty to share in any losses which may be sustained.

Elsworth Paulsen Constr. Co. v. 51-SPR-L.L.C., 2008 UT 28, ¶ 15, 183

P.3d 248 (quoting Bassett v. Baker, 530 P.2d 1, 2 (Utah 1974)).

The existence of a joint venture is usually a question of fact. Id.

Petitioners have only challenged the district court's decision as to the last two elements. Brief of Appellant at 10-12. As to the duty to share in any losses, petitioners fail to recognize that Utah's Supreme Court expressly said this element was only used "unless there is an agreement to the contrary." Elsworth, 2008 UT 28 at ¶ 15. That the parties specified in their unwritten agreement a specific division of the risk of loss means that the fifth element is not relevant.

Nor did the district court err in holding that the fourth element, sharing in the profits, was met. Both Integrity and TJ Enterprises looked to the same source for their profits, performing subcontractor work for Horizon. That they agreed to different measures as to how much of the profit each should receive does not alter the fact that they each had a right to share the profit.

Petitioners' reliance on Vern Shutte & Sons v. J.R. Broadbent, 473 P.2d 885 (Utah 1970), is misplaced. This decision dealt with a simple contract by which a farmer agreed to pay another for any weight gained by his cattle while the

other was feeding them. There was no joint venture because none of the elements of the test were met. There was no one profit for both from the contract.

That the parties received different portions of the expected profit does not prevent their activity from being a joint venture. The district court correctly held that the petitioners entered into a joint venture with TJ Enterprises.

C. Harrison Acted As The Agent of the Association and an Employer of Moulton

Ms. Harrison was the only officer/member of Integrita. She interacted with the general contractor and Mr. Gurule for accomplishment of the work.

Ms. Harrison verified the wages claimed by Moulton as being correct, and was the point person the general contractor looked to for resolution of the unpaid wages.

“Where the principal does something to support a third party’s reasonable belief that the agent has the authority to act, that agent is vested with apparent authority to bind the principal.” Grazer v. Jones, 2012 UT 58, ¶ 11, 289 P.3d 437. Harrison held herself out as the agent of the association and is liable for the unpaid wages.

D. Integrita’s Contract with Horizon and Harrison’s Acceptance of the Settlement Payment Under the Contract Made Petitioners Liable to Pay Moulton’s Wages

Petitioners correctly state that a third-party cannot usually claim the benefit of a contract that he is not a party to. Brief of Appellants at 17-18. But the


contract in question did just that. Integrita's contract with Horizon required Integrita to "defend, indemnify, and hold harmless the Contractor, its sureties, and the Owner, from . . . all claims for payment filed, . . . by any third party alleging or claiming non-payment for . . . labor." R. 724. Harrison, on behalf of Integrita also received money from Horizon in a settlement of her action for unpaid bills on work done by the association/joint venture. In receiving the settlement, Harrison and Integrita agreed that they had paid all labor and services that were part of the contract. R. 724-725. Moulton's unpaid wage claims are specifically one of the claims that Integrita agreed to defend and pay on behalf of Horizon.

The district court correctly held that Integrita was liable to pay Moulton's claim based on the terms of the original contract and the terms of the settlement lien waivers.

CONCLUSION

For the reasons set forth supra, the district court's decision should be upheld on appeal.

Respectfully submitted this 27th day of January, 2016.


BRENT A. BURNETT
Assistant Attorney General
Attorney for Respondent
Utah Labor Commission

CERTIFICATE OF MAILING

This is to certify that I mailed, first class postage prepaid, two copies of the foregoing RESPONSE BRIEF OF RESPONDENT UTAH LABOR COMMISSION to the following this 27th day of January, 2016:

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Attorney for Petitioners/Appellants

Scott Moulton, pro se
3517 West 8350 South
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Respondent/Appellee



A handwritten signature in blue ink, appearing to read "Brent A. Bunn", is written over a horizontal line.

ADDENDUM “A”

Utah Code Ann. § 34-28-2 (West 2011). Definitions -- Unincorporated entities.

(1) As used in this chapter:

(a) "Commission" means the Labor Commission.

(b) "Division" means the Division of Antidiscrimination and Labor.

(c) "Employer" includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this state, and any agent or officer of any of the above-mentioned classes, employing any person in this state.

(d) "Unincorporated entity" means an entity organized or doing business in the state that is not:

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

(e) "Wages" means the amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

(2)(a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.

(b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:

(i) is an active manager of the unincorporated entity;

(ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or

(iii) is not subject to supervision or control in the performance of work by:

(A) the unincorporated entity; or

(B) a person with whom the unincorporated entity contracts.

(c) As part of the rules made under Subsection (2)(b), the commission may define:

(i) "active manager";

(ii) "directly or indirectly holds at least an 8% ownership interest"; and

(iii) "subject to supervision or control in the performance of work."

(d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7, under which an unincorporated entity may seek approval of a mutual agreement to pay wages on non-regular paydays.

ADDENDUM “B”

JAN 09 2015

By: _____ *[Signature]*
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

INTERGRITA, LLC, a Utah limited liability company, dba DESIGN-BUILD SOLUTIONS, WENDY HARRISON, an individual, and DESIGN-BUILD SOLUTIONS, LLC, a Utah limited liability company,

Petitioners,

vs.

UTAH LABOR COMMISSION, and SCOTT MOULTON, an individual,

Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

CASE NO. 130905586

Judge Robert P. Faust

The above-entitled matter came before the Court for a Trial de Novo on November 12, 2014. David E. Ross represented the Petitioners and Ronald V. Ludlow represented the Respondents.

BACKGROUND

A Petition for Judicial Review of an Informal Adjudicatory Proceeding pursuant to Utah Code Ann. § 63G-4-402 was filed on August 20, 2013. The Petitioners are appealing an Order to Pay a wage claim filed by Scott Moulton which was filed with the Labor Commission. The Labor Commission determined that Teddy Gurule, TJ Enterprises, Wendy Harrison, Integrita, LLC, dba Design Build Solutions, and Design Build Solutions, LLC, were co-employers and responsible for Mr. Moulton's wages.

Petitioners are seeking a determination on the following issues:

1. If the Petitioners were at any relevant time Mr. Moulton's employer;

2. If Ms. Harrison was a partner with Mr. Gurule and therefore personally liable for unpaid wages;
3. If Design Build Solutions, LLC, was not in existence at the relevant time and therefore not liable for unpaid wages; and,
4. If Integrita, LLC, dba Design Build Solutions, entered into a joint venture with TJ Enterprises.

The Court previously considered the manner of review for this case and issued a Memorandum Decision on May 12, 2014, that the trial de novo would be by witness testimony and documentary evidence and not by a review of the administrative record.

The Petitioners' requested relief was to stay the administrative action and to set aside the agency action under Utah Code Ann. § 63G-4-404(1)(b)(iii) and (b)(iv). Since the Labor Commission voluntarily stayed the order pending the outcome of this trial, the request for a stay of the Order is moot.

STIPULATED FACTS

The parties stipulated to the following undisputed facts before trial:

1. Scott Moulton worked on five job sites described as The Red Onion, No Boundaries, KSL, City Creek and Burlington, with the first three job sites located at the Salt Lake International Airport and last two job sites located elsewhere.
2. Scott Moulton was hired by Ted Gurule in August 2012 and worked from September 3, 2012 through September 18, 2012.
3. Scott Moulton worked on those job sites for a total of 128.5 hours at his hourly rate of \$19.00, earning \$2,441.50.

4. TJ Enterprises & Acoustical, Inc. ("TJ Enterprises") during 2012 was a Utah corporation and construction company owned by Ted Gurule.

5. Integrita, LLC, ("Integrita") during 2012 was a Utah limited liability company and construction company owned and operated by Wendy Harrison.

6. Integrita, LLC, had a dba "Design Build Solutions" under which name it did business with Horizon Retail Construction during 2012.

7. No written subcontractor contract was executed between Wendy Harrison/Integrita, dba Design Build Solutions, and Teddy Gurule/TJ Enterprises.

8. No written partnership or joint venture contract was executed between Wendy Harrison/Integrita, dba Design Build Solutions, and Ted Gurule/TJ Enterprises.

9. Mr. Moulton filed a wage claim against Design Build Solutions and TJ Enterprises on November 18, 2012.

10. UALD issued an order to pay on Mr. Moulton's wage claim on July 16, 2013.

11. Design Build Solutions, LLC, was formed in January 2013.

12. Horizon Retail Construction, Inc. ("Horizon"), a corporation located in the state of Wisconsin, was the General Contractor for the Red Onion, KSL and No Boundaries and provided the construction funds for the three projects.

13. Horizon paid those funds to Integrita in order for it to pay for the labor and materials.

14. Integrita would take 2 ½% off each amount it paid to TJ Enterprises.

FINDINGS OF FACT

After hearing testimony and receiving evidence, the Court makes the following findings of fact:

1. Holly A. Carling has been self-employed as a CPA since 1986. Wendy Harrison has been her client for accounting and tax purposes for fourteen years, including the 2012 tax year. Ms. Carling did not file any partnership tax returns for Wendy Harrison. Ms. Carling also did tax work for Integrita, LLC.

2. Ms. Carling never met T.J. Gurule and she does not have any personal knowledge of any partnership conversations or actions between Ms. Harrison and Mr. Gurule.

3. Ms. Harrison/Integrita, dba Design Build Solutions, Roy Bosney and Mr. Gurule/TJ Enterprises held discussions with the intent of forming a joint venture or partnership for getting government contracts under minority provisions for women. Tr. pp. 43, 45, 48, 153-156.

4. Mr. Gurule was initially contacted by Roy Bosney, who held a contractor's license, in 2010 or 2011. Mr. Gurule testified Ms. Harrison was at ninety percent of all of the meetings in forming the relationship between them. It was agreed between the parties that Mr. Gurule would place his work contracts into Integrita which would have a minority status by virtue of Ms. Harrison being a female owner. Life insurance was obtained for all three individuals, Mr. Bosney, Ms. Harrison and Mr. Gurule.

5. This business relationship between Ms. Harrison and Mr. Gurule started and carried on without a formal written agreement under the terms discussed in the various business meetings they held for a joint venture. Tr. pp. 55.

6. The arrangement between Ms. Harrison and Mr. Gurule was that work would be obtained by them under the Integrita, LLC, dba Design Build Solutions, name. Tr. pp. 54. Ms. Harrison would provide the materials, carry the insurance, pay the bills, manage what she did, and provide the minority standing. Tr. pp. 47, 48, 54, 121-122, 155, 165. Mr. Gurule brought into the relationship equipment,

experience, and ability to hire men. Tr. pp. 54, 156. Mr. Gurule's role was also to provide work estimates, manage the projects and be a partner. Tr. pp. 27-28, 46, 85, 121-123, 127.

7. Mr. Gurule did put two or three work projects under the Integrita name. Tr. p. 52,

8. The address of the offices of TJ Enterprises was also listed as a satellite office of Integrita. Def. Exhibit D, Tr. pp. 63, 169-170.

9. Business and work documents were created using the Integrita letterhead for correspondence for the work obtained with Ms. Harrison's knowledge. Tr. pp. 63, 154.

10. Ms. McKissen, an employee with TJ Enterprises, testified she worked for 20 years for TJ Enterprises, and 2 and 1/2 years for Integrita/Design Build Solutions, Design Build Solutions/TJ Enterprises. Tr. p. 152.

11. Ms. McKissen testified she acted as the Administrative Assistant for Integrita when it joined with TJ Enterprises in 2011. Def. Exhibit D, Tr. pp. 155, 168.

12. Ms. McKissen drafted two letters on Integrita letterhead announcing the joining of TJ Enterprises and Integrita, LLC, dba Design Build Solutions. Def Exhibit C, Tr. pp. 64, 157. These letters announcing the joining of TJ Enterprises and Integrita, LLC, were sent out by mail and email to clients by Ms. McKissen. Tr. pp. 64, 157.

13. Work Contracts at the Salt Lake City Airport were obtained by Ms. Harrison and Mr. Gurule. The contracts for the work at the Airport were between Horizon, as the general contractor, and Integrita, LLC, dba Design Build Solutions, as a subcontractor. Exhibits 2-4, Tr. p. 115.

14. The employees working at the Airport projects wore security badges under the Integrita name, not under TJ Enterprises. Tr. pp. 58, 78.

15. The Airport contracts required the subcontractor Integrita, LLC, dba Design Build Solutions, to furnish labor and materials. Exhibits 2-4, p. 1, Tr. p. 117.

16. The Airport contracts required Integrita, LLC, dba Design Build Solutions, to carry liability insurance and workers compensation insurance. Exhibits 2-4, p. 1, Tr. p. 117. Integrita, LLC, dba Design Build Solutions, provided documents showing liability and workers compensation insurance for the contracts to Horizon. Tr. pp. 39, 117.

17. The Airport contracts required any defective work to be corrected at no cost by Integrita, LLC, dba Design Build Solutions. Exhibits 2-4, p. 2, Tr. pp. 67, 79, 118.

18. The Airport contracts were all signed by Wendy Harrison for Integrita, LLC, dba Design Build Solutions, and lists her as President of that company. Exhibits 2-4, p. 8, Tr. pp. 117, 119, 120, 144.

19. The Airport contracts allowed for second tier subcontractors with written permission of Horizon. Exhibits 2-4, p. 2. The Airport contracts provide an area for listing suppliers and subcontractors. Exhibits 2-4, p. 7, Tr. p. 119. TJ Enterprises was not listed as a subcontractor of Integrita, LLC, dba Design Build Solutions, on the contracts. Exhibits 2-4, p. 7, Tr. pp. 68-69, 115, 119.

20. Mr. Gurule prepared billings for materials and labor for submission to Horizon for the Airport work and those billings were in Integrita's name. Tr. pp. 40, 60, 122.

21. After monies were received from Horizon for the work done on the Airport jobs by Integrita, Ms. Harrison would take two and one-half percent (2 ½ %) and pass the rest of the money to Mr. Gurule under the TJ Enterprises name. TJ Enterprises was the entity used to get the money to employees for their work. Tr. pp. 62, 92. Ms. Harrison and Mr. Gurule agreed to use his company's bank accounts to pay the bills.

22. The business relationship between Mr. Gurule and Ms. Harrison ended when Ms. Harrison sent a letter dated October 2, 2012 to Mr. Gurule informing him that his services were no longer required. Exhibit 5.

23. Mr. Gurule left the equipment and men working on the Airport jobs with Integrita after receiving the letter dated October 2, 2012. Tr. p. 42.

24. When their business relationship ended, TJ Enterprises was owed an estimated \$123,000 by Integrita, LLC, dba Design Build Solutions. Tr. pp. 70, 128. Employees were not paid by TJ Enterprises because Ms. Harrison/Integrita, LLC, dba Design Build Solutions, would not pay the outstanding monies. Tr. p. 70.

25. The projects at the Salt Lake Airport with Horizon ended in January 2013. Tr. p. 128. The monies owed on the Airport projects were not paid to Integrita, LLC, dba Design Build Solutions, by Horizon by January 31, 2013. Tr. p. 129.

26. Integrita, LLC, dba Design Build Solutions, sued Horizon for \$135,000 for the unpaid monies. Def. Exhibit A. This suit was settled for \$106,000 and waivers of liens were signed. Def. Exhibit B.

27. Wendy Harrison signed the notarized sworn waivers of lien for all projects at the Airport. Def. Exhibit B, Tr. pp. 134-135.

28. Those lien waivers covered the projects worked on by Mr. Moulton and for which he had not been fully paid. Tr. pp. 135-137.

29. The signed lien waivers were to settle with Horizon any outstanding costs, materials and labor on the Airport projects. Tr. pp. 137, 139.

30. Ms. Harrison knew in November 2012 that wage claims were filed against Integrita, LLC, dba Design Build Solutions. Tr. p. 147.

31. Design Build Solutions, LLC, was formed by Ms. Harrison in January 2013 to shorten the name, for doing construction, and the name was picked to capture the goodwill of the existing Integrita, LLC, dba Design Build Solutions. Tr. pp. 145, 148. The company is intended to be used once Ms. Harrison has her own contractor's license but it has yet to do any business.

32. While the Court heard evidence from Ms. Harrison refuting some of the testimony of Mr. Gurule, in assessing the testimony of both Mr. Gurule and Ms. Harrison, the Court determines Mr. Gurule's evidence was more persuasive and gives weight to his testimony.

CONCLUSIONS OF LAW

Based on the stipulated facts, admitted evidence, and the testimony and submissions by the parties, the Court concludes the following:

Association and Joint Venture

A business association is a broad business classification. An association is defined as "a gathering of people for a common purpose. . . an unincorporated business organization that is not a legal entity separate from the persons who compose it." Black's Law Dictionary, Seventh Edition.

Integrita, LLC, dba Design Build Solutions, and TJ Enterprises were engaged in a common purpose of performing construction work at the Salt Lake City Airport for Horizon, the general contractor. Mr. Moulton worked on those projects and was not paid for his labor.

The contracts with Horizon were in the name of Integrita, LLC, dba Design Build Solutions, and all work was carried on in that name. TJ Enterprises provided billing to Horizon under Integrita's name

and also acted as an estimator under the Integrita name. Ms. Harrison also acted under the Integrita name by receiving monies for work performed and distributing that money to suppliers and TJ Enterprises. The monies received for that work were distributed to the two entities by agreement. Based upon these facts, the Court concludes Integrita, LLC, dba Design Build Solutions, and TJ Enterprises were an unincorporated association and as such Utah Code Ann. § 34-28-2(3) holds them jointly liable for the unpaid wages of Mr. Moulton.

A joint venture is a relationship voluntarily entered into by the parties and may be proven by the actions taken by the parties. *Betenson v. Call Auto & Equipment Sales*, 645 P.2d 684, 686 (Utah 1982). The elements regarding a joint venture are: "(1) a community of interest in the performance of the common purpose; (2) a joint proprietary interest in the subject matter; (3) a mutual right to control; (4) a right to share in the profits; and, (5) unless there is an agreement to the contrary, a duty to share in any losses which may be sustained." *Rogers v. M. O. Bitner Co.*, 738 P.2d 1029 (Utah 1987), and *Basset v. Baker*, 530 P.2d 1, 2 (Utah 1974).

The Court concludes there was a joint venture as well between Integrita, LLC, dba Design Build Solutions, and TJ Enterprises because the parties combined their property, money, effects, skill, labor and knowledge to perform work and get paid for the same. In this case, Ms. Harrison/Integrita, LLC, dba Design Build Solutions, and Mr. Gurule/TJ Enterprises had the intent to form a joint venture and had entered into discussions about that. The paperwork for that joint venture never materialized but other actions such as obtaining work together, obtaining life insurance, and sending notices to the public regarding their relationship were done.

These two entities were both engaged in pursuing and performing construction work, including obtaining contracts with Horizon Retail at the Salt Lake City Airport which they jointly accomplished and were paid for by Horizon. Horizon paid monies to Integrita, LLC, dba Design Build Solutions, where this money was split between the two entities with 2 ½ % going to Integrita, LLC, dba Design Build Solutions, and the rest going to TJ Enterprises. Thus, Integrita, LLC, dba Design Build Solutions, and TJ Enterprises had a community of interest in obtaining and satisfactorily performing construction work, they shared the money from the work, and they each had the right to control various aspects of the work contract.

Mr. Gurule signed over contracts to the business relationship that were put in the Integrita name. He also provided tools, expertise, and his reputation. Ms. Harrison provided her minority status as a woman, and the business name under which the work was performed. Each of these are a proprietary interest belonging to the respective individuals, which they combined for the common purpose of construction work under the business relationship and each entity had a proprietary interest in the joint endeavor at the Airport.

Mr. Gurule and Ms. Harrison mutually controlled the work. Both had managerial responsibilities and interacted with Horizon about the work being performed. Mr. Gurule prepared billings and submitted them to Horizon. Ms. Harrison controlled the distribution of money. Key person life insurance was taken out on each other where Ms. Harrison listed Mr. Gurule as a "Business Partner." There was a mutual right to control of the projects.

The contracts with Horizon Retail were in the name of Integrita, LLC, dba Design Build Solutions. As the contractee, Ms. Harrison/ Integrita, LLC, dba Design Build Solutions, was entitled to

profits that might arise from performance of the contract. The parties agreed to 2 ½ % percent of the monies received going to Ms. Harrison, with the balance going to Mr. Gurule. This agreement entitled Mr. Gurule to profits, if any, after he had paid the labor of employees. This agreement does not alter the fact that as the contractee, Ms. Harrison/Integrita, LLC, dba Design Build Solutions, was entitled to a share of the profits from the contract and in fact took 2 ½ percent as a cap on her profits. The agreement only structures Ms. Harrison's/Integrita, LLC, dba Design Build Solutions, share of the profits as an up-front payment of fixed portion, rather than a more speculative portion received after all cost payments were made. Mr. Gurule agreed to obtain his right to the share of profits by retaining any monies after payment of wages. There was a right to share in the profits of the contracts between Ms. Harrison/Integrita, LLC, dba Design Build Solutions, and Mr. Gurule/TJ Enterprises.

Mr. Gurule bore the risk of loss if he had mistakenly estimated the project. The agreement called for him to bear the loss if, after payment of labor, there was a shortage. However, Ms. Harrison/Integrita, LLC, dba Design Build Solutions, had a duty to share in losses. The contracts with Horizon Retail specifically provided that the contractee bore the burden of fixing defective work at no cost to the General Contractor. As the contractee, Ms. Harrison/Integrita, LLC, dba Design Build Solutions, bore the risk of loss from having to fix defective work. Under *Bassett*, the actions of Integrita, LLC, dba Design Build Solutions, and TJ Enterprises were a joint venture. As a joint venture, Utah Code Ann. § 34-28-2(3) holds them jointly liable for the unpaid wages of Mr. Moulton.

Personal Liability

Utah Code Ann. § 34-28-2(3) holds any agent or officer of any firm, association, or joint venture liable for the payment of unpaid wages. Ms Harrison held herself out as the president of Integrita, LLC,

dba Design Build Solutions, when she entered into the contracts with Horizon Retail. She managed the contracts and interacted with Horizon personnel about the performance of work. She accepted and disbursed monies for the contract. Ms. Harrison was an officer of Integrita and an agent of the joint venture. Horizon discussed with her the unpaid wages, and entered into a settlement of unpaid monies with her. Ms. Harrison acted as an agent of the joint venture and is personally liable for payment of wages under Utah Code Ann. § 34-28-2(3).

Successor Business

The question before the Court is whether Design Build Solutions, LLC, is liable for unpaid wages of Integrita, LLC, dba Design Build Solutions, as a mere continuation of Integrita, LLC, dba Design Build Solutions. A mere continuation traditionally requires a continuation of ownership and control. *A.R. Teeters & Assoc., Inc. v. Eastman Kodak Co.*, 836 P.2d 1034, 1039-40 (Ct. App. 1992). The purpose of the mere continuation doctrine is to prevent parties from simply reincarnating a business under a different name to escape liability.

Successorship liability for unpaid wages in this case is viewed in the light of national labor law. The Federal common law successorship doctrine extends to almost every employment law statute.¹ Under that doctrine a successor business is held liable for the predecessor's obligations where (1) the successor had notice of the claim before acquisition; and (2) there was substantial continuity in the

¹ *Steinbach v. Hubbard*, 51 F.3d 843, 845 (9th Cir. 1995)(citing *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973) (NLRA); *Upholsterers' Int'l Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323 (7th Cir.1990)(Multiemployer Pension Plan Amendments Act ("MPPAA")); *Sec'y of Labor v. Mullins*, 888 F.2d 1448 (D.C.Cir.1989) (Mine Safety and Health Act); *Criswell v. Delta Air Lines, Inc.*, 868 F.2d 1093 (9th Cir.1989) (Age Discrimination in Employment Act); *Trustees for Alaska Laborers-Construction Indus. Health & Sec. Fund v. Ferrell*, 812 F.2d 512 (9th Cir.1987) (ERISA); *Musikiwamba v. ESSI, Inc.*, 760 F.2d 740 (7th Cir.1985) (explaining that imposition of successor liability is to ensure that an employee's statutory rights are not "vitiating by the mere fact of a sudden change in the employer's business"); *Bates v. Pac. Mar. Ass'n*, 744 F.2d 705 (9th Cir.1984).

operation of the business before and after the sale. *Steinbach v. Hubbard*, 51 F.3d 843, 845 (9th Cir. 1995).

Ms. Harrison/Integrita, LLC, dba Design Build Solutions, knew in November 2012 that wage claims had been filed naming them as liable parties. Design Build Solutions, LLC, was formed in January 2013. The Order to Pay from the Labor Commission was issued July 16, 2013. Ms. Harrison/Integrita, LLC, dba Design Build Solutions, had notice of the claim prior to the formation of Design Build Solutions.

Ms. Harrison testified that the purpose of forming Design Build Solutions, LLC, was to shorten the name from Integrita, LLC, dba Design Build Solutions, and the name was chosen for the purpose of capturing the goodwill of Integrita, LLC, dba Design Build Solutions. Design Build Solutions, LLC, has the same ownership, and is in the same business of construction as Integrita, LLC, dba Design Build Solutions. Ms. Harrison testified that Design Build Solutions, LLC, had not performed any work and she was going to use it when she obtained her contractor's license. Further, there is no legal restriction that prevents using Design Build Solutions, LLC, to do work now performed as Integrita, LLC, dba Design Build Solutions.

Normally, a successor business is not liable for the debts of its predecessor except where the successor company is a mere continuation of the predecessor company, or where the transaction is entered into in order to escape liability. *Decius v. Action Collection Service, Inc.*, 105 P.3d 956, 958-959 (Utah App. 2005). A company falling under the mere continuation exception has the same ownership and control by the successor as the predecessor. *Id.*

The Court concludes for the reasons set for the above, Design Build Solutions, LLC, is a mere continuation of Integrita, LLC, dba Design Build Solutions, and is liable for the unpaid wages of Integrita, LLC, dba Design Build Solutions.

Contract Obligation

This case is also subject to interpretation of the wage liability of the Petitioners by the contracts entered into with Horizon. Contracts are interpreted by the four corners rule where the intent of the contract is determined within the four corners of the contract document. The contracts for the projects Mr. Moulton worked on at the Airport were between Horizon Retail Construction, Inc. and Integrita, LLC, dba Design Build Solutions. Those contracts provide that Integrita, LLC, dba Design Build Solutions, was to provide the labor for the contract. There was a provision in the contract for a second tier subcontractor with written permission of Horizon. No written permission was obtained from Horizon for TJ Enterprises to act as a second tier subcontractor. Therefore, the responsibility for labor was entirely on Integrita, LLC, dba Design Build Solutions.

The contract required Integrita, LLC, dba Design Build Solutions, to “defend, indemnify, and hold harmless the Contractor, its sureties, and the Owner, from . . . all claims for payment filed, . . . by any third party alleging or claiming non-payment for . . . labor” (Exhibit 1, p.2 Liens).

Ms. Harrison/Integrita, LLC, dba Design Build Solutions, sued Horizon for unpaid monies, and settled that suit for \$106,000. Ms. Harrison signed lien waivers for that settlement for each of the projects at the Airport, including the ones for which Mr. Moulton worked.

The settlement lien waivers specifically state that “all labor materials and services committed for have been fully paid”. Ms. Harrison testified the lien waivers were to settle with Horizon for any

outstanding costs, materials and labor. (Tr. pp. 137, 139), and that the liens cover the entire time of the projects.


By the terms of the original contract and the terms of the settlement lien waivers, Integrita, LLC, dba Design Build Solutions, was liable for the payment of outstanding wage claims. By its contractual agreements with Horizon, Integrita, LLC, dba Design Build Solutions, is liable for the unpaid wages of Mr. Moulton.

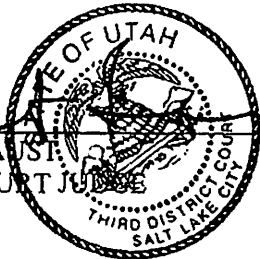
ORDER

The Court having received evidence and testimony on this case, finds that the Petitioners: Integrita, LLC, dba Design Build Solutions; Wendy Harrison; and, Design Build Solutions are liable for the unpaid wages of Mr. Moulton as “employers” as defined in Utah Code Ann. §34-28-1 *et seq.* The Court affirms the Labor Commission’s Order to Pay.

DATED this 8th day of January, 2015.

BY THE COURT:


ROBERT P. FAUST
DISTRICT COURT JUDGE


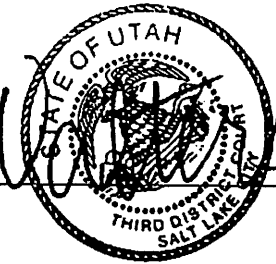


CERTIFICATE OF SERVICE

I hereby certify that I mailed/mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law and Order, to the following, this 9th day of January, 2015:

David E. Ross II
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ADDENDUM “C”

1 Let's put it--and this particular one is for property, express
2 (inaudible) it is not necessarily part of Mr. Moulton's thing,
3 but there was a number of mechanic's liens executed; right?

4 A No. It--this was a release of all of the projects--

5 Q No. This is a mechanic's lien.

6 A No. I understand that, sir.

7 Q No. This is mechanic's liens, that's what they
8 are.

9 A I don't know what you're asking me.

10 Q We'll move on, Ms. Harrison.

11 MR. LUDLOW: Your Honor, I move to admit--move to
12 admit the complaint.

13 THE COURT: Any objection?

14 MR. ROSS: And I'll object on the relevancy of the--
15 why he wants to enter something that occurred long after the
16 event.

17 MR. LUDLOW: No, it's not long after. It has to do
18 with business that took place prior to--

19 THE COURT: It relates to issues at the time that
20 are relevant. So admitted.

21 MR. LUDLOW: Thank you.

22 Q (By Mr. Ludlow) Now, Ms. Harrison, I'm going to
23 hand you this document. In the end, you came to a settlement
24 with Horizon on this suit; is that correct?

25 A Yes. We did.

1 Q And as part of that settlement, you provided waivers
2 of lien; correct?

3 A Yes. I did.

4 Q And these are titled subcontractors material,
5 suppliers, final unconditional waiver of lien. That's how
6 they're titled; correct?

7 A Uh-huh (affirmative).

8 Q And your name is there; correct?

9 A Yes. It is.

10 Q And you've signed it?

11 A And these are on all the projects at the airport.

12 Q Correct.

13 There's a separate lien for every project you worked
14 on--

15 A Yes.

16 Q --on airport?

17 And that's notarized; correct?

18 A Yes.

19 Q Sworn before the notary?

20 A Uh-huh (affirmative).

21 Q This particular one on the--as we have Bates numbers
22 on the bottom is number one, is for, let's see Sam Weller and
23 KSL.

24 A Uh-huh (affirmative).

25 Q Correct?

1 A Yes. It is.

2 Q And it reads: Having entered into agreement with
3 Horizon Retail Construction, Inc., the general contractor for
4 the construction of Sam Weller and KSL, at the premises of the
5 owner located at the airport terminal, that all labor,
6 material and services committed for have been fully paid and
7 dis--indebtedness discharged.

8 A Yes.

9 Q Right? Okay.

10 And this was a project Mr. Moulton worked on, isn't
11 it? The KSL--KSL project?

12 A I'm not aware. I'd have to look at his time card
13 again.

14 Q I'll represent to you that it's been admitted today
15 that it--that was one of the projects.

16 Now, if you'd look to Page 6--

17 A Just a minute, please, if I may. I'd like to have a
18 look.

19 KSL is, yes.

20 Q Okay. Now, if you'd look at Page 6 on that.

21 A Okay, yes. I have Page 6 here.

22 Q And if you'll see, this is for No Boundaries.

23 A It is.

24 Q Right?

25 A Uh-huh (affirmative).

1 Q The same language re--re--leaving Horizon, all
2 labor, material and services committed; correct?

3 A It is.

4 Q Over to Page 7. Again, this is No Boundaries.

5 A Yes.

6 Q Same language.

7 A Uh-huh (affirmative).

8 Q Page 8. That's for No Boundaries, isn't it?

9 A It is.

10 Q Page 9.

11 A It is.

12 Q No Boundaries.

13 Page 10.

14 A Uh-huh (affirmative).

15 Q That's for No Boundaries.

16 Page 11 is for No Boundaries.

17 Page 13 is for Red Onion; is that correct?

18 A Page 13--actually, Page 13 is TNDC Express.

19 Q Oh, I'm sorry. Page 14.

20 A Page 14 is for Red Onion.

21 Q Page 49.

22 A That's for KSL, yes, it is.

23 Q Okay. Page 50?

24 A It is.

25 Q And the--other than the different projects on there,

1 these lien--lien releases contain all the same language; is
2 that correct?

3 A Yes, it is, sir.

4 Q And you signed each and every one of these?

5 A Yes. I did.

6 Q All right. These are all--all to settle with
7 Horizon for outstanding cost, materials and labor; correct?

8 A Yes.

9 Q Now, under your agreement with T.J. Enterprises and
10 Ted Gurule, monies that you got in, you took the first two-
11 and-a-half percent; is that correct?

12 A I took a fixed rate.

13 Q Two-and-a-half percent.

14 And the monies on these liens were for, at least
15 some of it during that period of time Mr. Gurule was in that
16 agreement with you, wasn't he?

17 A I'm not aware of that.

18 Q Well, it says it settles--you told us these settle
19 all the outstanding debt.

20 A These settle all these, yes, absolutely.

21 Q So if there is money out--outstanding to Mr. Gurule
22 from work that hadn't been paid, these liens cover them;
23 correct?

24 And your agreement relates to the work he's done and
25 due payment; correct?

1 A Mr. Gurule was paid in full.

2 Q That's not my question. If there was outstanding or
3 had been none, Mr. Gurule was due payment for those and
4 settlement of those debts through these liens was made to you,
5 Mr. Gurule was entitled to ninety-seven-and-a-half percent of
6 the money you recovered; correct?

7 A Mr. Gurule was fired.

8 Q Not the question. Let me ask you one more time.
9 I'll be very clear. Mr. Gurule had done the work out at the
10 airport. His testimony was that he was owed money for work
11 that was done but not paid. You sued Horizon for unpaid
12 monies to the tune of \$135,000.

13 A Uh-huh (affirmative). On the work that was done
14 from September to December.

15 Q Now, that's not what you said and that's not what
16 this says.

17 A That is what I'm saying. That's exactly what these
18 monies--

19 Q Now--

20 A --were for.

21 Q The liens do not limit that. It says paid in full--

22 A You're absolutely correct--

23 Q --for those pro--

24 A --the lien is for the entire project.

25 Q --projects. Okay.

1 So we're clear, the liens pay for anything
2 outstanding for the projects listed there; correct?

3 A Yes.

4 Q And if that money included some that Mr. Gurule was
5 entitled to before he was terminated, then he was entitled to
6 ninety-seven-and-a-half percent of the monies you recovered on
7 that work; correct?

8 A That is not correct, sir.

9 Q How is it not correct, then?

10 A He doesn't hold a license.

11 Q That's not the agreement. The agreement was you
12 took the first two-and-a-half percent off of projects, he got
13 the rest; he paid the labor, he paid the--the materials out of
14 that. That was the agreement that's been testified here to
15 today. If these lien monies and this settlement represent
16 monies that were owed from when he worked on the projects,
17 then that money, he's entitled to ninety-seven-and-a-half
18 percent and you're only entitled to two-and-a-half percent of
19 it; right?

20 A I'm entitled to two-and-a-half percent.

21 Q Okay. Did you give any of this settlement money to
22 Mr. Gurule?

23 A No.

24 Q Did you even tell Mr. Gurule you were suing Horizon?

25 A I have no communication with Mr. Gurule.

1 Q Okay. So you have unpaid monies which settled in
2 full all the projects out at the airport. Mr. Gurule--

3 A It wasn't settled in full, we had to agree to an
4 agreement.

5 Q Well, the--isn't that what the lien says?

6 THE COURT: Counsel, that's semantics. She's just
7 trying to say I was owed more, it was discounted.

8 MR. LUDLOW: Okay.

9 THE COURT: You're saying at the end of the day,
10 everything was settled in full, everybody walked away with
11 accounts balances. I'm with you.

12 MR. LUDLOW: Okay. Very good.

13 THE COURT: The bottom line is it resolved the
14 fights.

15 Go ahead.

16 Q (By Mr. Ludlow) It resolved your claims with
17 Horizon? Or Horizon's interest with you; is that correct?

18 A Yes.

19 MR. LUDLOW: Your Honor, I'd move to admit the--the
20 exhibit liens.

21 THE COURT: Any objections?

22 MR. ROSS: I'll just object on relevancy but other
23 than that, I think it's fine.

24 THE COURT: And on the same standard I applied,
25 overruled. I'll take it in for what weight that it is.