

1993

Michael A. Mower v. James D. Craghead, F. Lynn Padan : Brief of Appellant

Utah Court of Appeals

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Jennifer L. Falk; Winder & Haslam; Attorney for Appellee.

Joseph M. Chambers; Preston & Chambers; Attorney for Appellants.

Recommended Citation

Brief of Appellant, *Mower v. Craghead*, No. 940682 (Utah Court of Appeals, 1993).
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IN THE UTAH COURT OF APPEALS

MICHAEL A. MOWER,	*	APPENDIX TO APPELLANTS' BRIEF
	*	
Plaintiff/Appellee	*	Case No. 940682-CA
	*	
vs.	*	APPEAL FROM THE THIRD JUDICIAL
	*	DISTRICT COURT OF SALT LAKE
	*	COUNTY, JUDGE SHEILA K. McCLEVE
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Priority No. 15
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants/Appellants	*	

Jennifer L. Falk
WINDER & HASLAM
175 West 200 South, Suite 4000
P.O. Box 2668
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Attorney for Appellee,
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Attorney for Appellants,
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Lynn Padan and Aspen
Construction

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Tel: (801) 394-5783

Attorney for Appellants,
James D. Craghead, F.
Lynn Padan and Aspen
Construction

UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

MICHAEL A. MOWER,	*	APPENDIX TO APPELLANTS' BRIEF
	*	
Plaintiff/Appellee	*	Case No. 940682-CA
	*	
vs.	*	APPEAL FROM THE THIRD JUDICIAL
	*	DISTRICT COURT OF SALT LAKE
	*	COUNTY, JUDGE SHEILA K. McCLEVE
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Priority No. 15
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants/Appellants	*	

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Attorney for Appellants,
James D. Craghead, F.
Lynn Padan and Aspen
Construction

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Appendix A

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

MAY 06 1994

By 
Deputy Clerk

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

MARTIN J. BENNETT,	*	
	*	ORDER OF DISMISSAL
Plaintiff	*	
	*	
vs.	*	Civil No. 930904047CV
	*	
JAMES D. CRAGHEAD, F. LYNN	*	Judge John A. Rokich
PADAN, aka ASPEN CONSTRUCTION	*	
INC., MICHAEL MOWER, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.	*	

This matter came before the Court upon the Defendant Aspen Construction's Motion to Dismiss and accompanying Affidavit and Memorandum of Law, dated January 7, 1994. The basis of the Defendant's Motion was that the Plaintiff, an unlicensed contractor, as a matter of law, lacks the ability to bring suit by virtue of §58-55-17 U.C.A. and as a consequence the Plaintiff is barred from attempting any collection or maintaining any proceeding to collect any sums due for services claimed to have been rendered but not limited to any mechanic lien foreclosure action. The Defendant Aspen Construction's Motion is granted for the reasons set forth in the Minute Entry previously entered by this Court. The Court having ruled upon the Defendant Aspen Construction's Motion to Dismiss, the Motion to Strike submitted by the Defendant Michael A. Mower is thereby rendered moot.

For good cause appearing it is hereby:

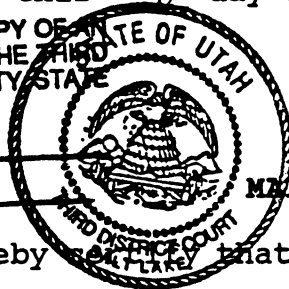
ORDERED, ADJUDGED & DECREED that this action is hereby dismissed with prejudice for the reasons set forth in this order and the Minute Entry dated March 31, 1994.

DATED this 8 day of April, 1994.

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: 5-26-94

DEPUTY COURT CLERK



DISTRICT JUDGE

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing

ORDER OF DISMISSAL was mailed postage prepaid to:

Jennifer L. Falk
WINDER & HASLAM
P.O. Box 2668
Salt Lake City, UT 84110-2668

Martin J. Bennett
10556 North 8100 West
Lehi, Utah 84043

on this 12 day of April 1994.

c:\lt\aspen\dismssal

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

FILED IN CLERK'S OFFICE
Salt Lake County Utah

MAY 19 1994

By [Signature] Deputy Clerk

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

MARTIN J. BENNETT,

Plaintiff

vs.

**JAMES D. CRAGHEAD, F. LYNN
PADAN, aka ASPEN CONSTRUCTION
INC., MICHAEL MOWER, and
JOHN and JANE DOES 1
through 20,**

Defendants.

*

*

*

*

*

*

*

**ORDER GRANTING JUDGMENT
FOR ATTORNEY'S FEES
PURSUANT TO §38-1-18 UCA**

Civil No. 930904047CV

Judge John A. Rokich

This matter came before the court upon the Defendant Aspen Construction's Motion for an Award of Attorney's Fees Pursuant to §38-1-18 Utah Code Annotated. The Motion was supported by an accompanying affidavit of counsel detailing the costs and fees incurred in defense of Plaintiff's lien foreclosure action.

The appropriate time having lapsed for the various parties to have submitted their responsive pleadings, the matter came before the court AND on May 6, 1994, the court entered a Minute Entry granting the Motion.

For good cause appearing it is hereby:

ORDERED, ADJUDGED, and DECREED that the Defendant Aspen Construction, Inc., shall have and recover judgment against the Plaintiff Martin J. Bennett for costs and expenses that have been expended in this matter of \$57.11; attorney's fees \$3,653.35; for a total judgment of \$3,710.46 and it is further ordered that this

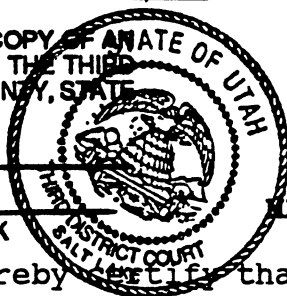
judgment shall be augmented in the amount of reasonable costs and attorney's fees expended in collecting said judgment by execution or otherwise and shall be established by affidavit plus interest on said judgment at the judgment rate as provided by law until paid or otherwise satisfied.

DATED this 18 day of May, 1994.

I CERTIFY THAT THIS IS A TRUE COPY OF ANATE OF UTAH
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.

DATE: 5-26-94

Mike Hefner
DEPUTY COURT CLERK



John A. Rokich
JUDGE JOHN A. ROKICH
District Judge

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing
ORDER GRANTING JUDGMENT FOR ATTORNEY'S FEES PURSUANT TO §38-1-18
UCA to

Jennifer L. Falk
WINDER & HASLAM
P.O. Box 2668
Salt Lake City, UT 84110-2668

Martin J. Bennett
10556 North 8100 West
Lehi, Utah 84043

on this 11th day of May 1994.

[Signature]

CLERK'S MAILING CERTIFICATE

Having received from the Defendant's Attorney sufficient copies and postage pre-paid envelopes for mailing, I hereby certify that on the ___ day of May, 1994, I mailed a true and correct copy of the above and foregoing ORDER GRANTING JUDGMENT FOR ATTORNEY'S FEES PURSUANT TO §38-1-18 UCA to:

Jennifer L. Falk
WINDER & HASLAM
P.O. Box 2668
Salt Lake City, UT 84110-2668

Martin J. Bennett
10556 North 8100 West
Lehi, Utah 84043

Joseph M. Chambers
PRESTON & CHAMBERS
31 Federal Avenue
Logan, UT 84321

Appendix B

Joseph M. Chambers #0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
Telephone: (801)752-3551

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

MARTIN J. BENNETT,	*	
	*	CERTIFICATE OF SERVICE
Plaintiff,	*	
	*	
v.	*	
	*	
JAMES CRAGHEAD, ASPEN	*	
CONSTRUCTION, INC., a Utah	*	
corporation, MICHAEL A. MOWER *	*	Civil No. 930904047 CV
and JOHN and JANE DOES 1	*	
through 20,	*	Judge: Rokich
	*	
Defendants	*	

TO THE PLAINTIFF AND HIS ATTORNEY, SUSAN NOYCE:

You are hereby notified that Defendant ASPEN CONSTRUCTION INC., by and through their attorney Joseph M. Chambers, submitted DEFENDANT PAYDEN'S FIRST SET OF: INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR ADMISSIONS to Plaintiff by placing a copy of said documents in the United States mail, postage prepaid, addressed to Plaintiff's attorney, Susan Noyce, #9 Exchange Place, Suite 710, Salt Lake City, UT 84111, and this Certificate of Service is submitted for filing by the Clerk of the Court.

DATED this 10th day of August, 1993.

PRESTON & CHAMBERS

Joseph M. Chambers
Attorney for Defendant

Joseph M. Chambers #0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
Telephone: (801)752-3551

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

MARTIN J. BENNETT,	*	
	*	DEFENDANT PAYDEN'S FIRST SET
Plaintiff,	*	OF: INTERROGATORIES, REQUEST
	*	FOR PRODUCTION OF DOCUMENTS
v.	*	AND REQUEST FOR ADMISSIONS
	*	
JAMES CRAGHEAD, ASPEN	*	
CONSTRUCTION, INC., a Utah	*	
corporation, MICHAEL A. MOWER	*	Civil No. 930904047 CV
and JOHN and JANE DOES 1	*	
through 20,	*	Judge: Rokich
	*	
Defendants	*	

TO: PLAINTIFF, MARTIN BENNETT, c/o his attorney of record, Susan Noyce:

The Defendant Lynn Payden submits the following Interrogatories, Request for Admissions and Request for Production of Documents to the Defendants to be answered under oath in accordance with the Utah Rules of Civil Procedure. As to documents requested to be produced, such documents are to be produced at the offices of Counsel for Plaintiff, PRESTON & CHAMBERS, 31 Federal Avenue, Logan, Utah 84321 on or before September 13, 1993, or such other time and place as may be mutually agreeable to Counsel for the Plaintiff and counsel for the Defendant.

Respecting said Interrogatories, you are requested to answer each question fully and completely in writing within 30 days after service. Such Interrogatories shall be considered continuing, and amended or supplemental answers to said Interrogatories must be served and filed should other or additional information be

available to, or acquired by you, pertaining to the following Interrogatories, which would make incorrect, incomplete or misleading any of the answers given by you at this time. The pronoun "you and your" refer to the parties whom these Interrogatories are addressed.

DEFINITIONS

The following definitions shall be used for the purpose of these discovery requests, absent a clear indication to the contrary:

1. "Plaintiff" or "subcontractor" shall refer to Martin J. Bennett.

2. "Defendant" or "Defendants" shall refer to the Defendant Aspen Construction, Inc. and the other Defendants as the context so indicates.

3. The word "document" as used herein means any kind of written, typewritten, printed or recorded material whatsoever, including but not limited to: notes, memoranda, letters, promissory notes, applications, petitions, exhibits, reports, correspondence, interoffice communications, all books of account, accounting records, and business records, whether copy or original, in whatever form made or maintained, including information made or maintained by electronic, photographic, or mechanical means, such as punch cards, tapes or microfilm.

4. To "identify" a document shall mean to state with respect thereto:

(a) the title of the document;

(b) the date appearing thereon and the date of the document's preparation, if known;

(c) the name and title (if known) of the document's author(s) and signer(s);

(d) the name(s) and address(es) of the person(s) to whom the document was addressed and distributed;

(e) a summary of the substance of the document; and

(f) the physical location of the original document (and of any copies of which you have knowledge) and the name(s) and address(es) of the custodian(s) thereof.

In lieu of providing the information requested in subparagraph (e), a complete and legible copy of the document may be produced.

If any document, identification of which is sought, has been lost or destroyed, state, in addition to the information required above, whether such document was lost or destroyed, and if lost, state the circumstances under which such document was lost and, if destroyed, state the circumstances under which such document was destroyed, the reason for such destruction, and identify each person responsible for or participating in such document's destruction.

5. To "identify" a person or entity shall mean to state his, her, or its names and last known business address and telephone number, and, if a natural person, his or her last known residential address and telephone number, and name of employer and employment position held by said person at all times material to these discovery requests, together with the business address and telephone number of such employers.

6. To "identify" an oral communication shall mean to state with respect thereto:

(a) the date and place of such oral communication.

(b) identify (as defined in paragraph 5 above) each person who participated in the communication or who was present at the time of the communication;

(c) the substance of what each such person said.

7. To "set forth in detail the basis" refers to the factual basis as well as the legal basis where legal theories or principles are discoverable.

8. If you cannot answer any question after conducting a reasonable investigation, you should so state and answer to the extent you can, stating what information you do have, what information you cannot provide and stating what efforts you made to attain the unknown information.

9. If you claim a privilege with respect to any matter, please identify the privilege you claim and provide a brief description of why such may be privileged. In any event if a report or other document is claimed to be privileged, identify the existence of such a document, the author, its date, who it was intended for and every person who has a copy of or viewed such document.

REQUEST FOR ADMISSIONS

1. Please admit that neither you or your attorney obtained a foreclosure report or other title report prior to filing the complaint.

2. Please admit that Martin J. Bennett contracted exclusively with Mr. Mower regarding the sheet rocking work on Mr. Craghead's home.

3. Please admit that Martin J. Bennett had no "written contract" with either Mr. Craghead or Aspen Construction.

4. Please admit that Martin Bennett had no "oral contract" with either Mr. Craghead or Aspen Construction.

5. Please admit that prior to or during the performance of your work you did not cover the beam work.

6. Please admit that Mr. Lynn Payden or his foreman instructed you to cover and protect the beam work.

7. Please admit that you performed services outside the scope of your contract.

8. Please admit that the services you performed "as extras" are charged at 2 1/2 to 3 times the going rate for such work.

9. Please admit that you were told on numerous occasions by Mr. Craghead, Mr. Payden and/or his foreman that you were not to do extra work.

10. Please admit that you are attempting to collect for time and work which was never performed by you.

11. Please admit that you and Mr. Mower are acting in concert with regards to this lawsuit.

12. Please admit that beam work was damaged by you, when you sheet rocked and plastered, which required that it be repainted.

13. Please admit that you are not a licensed contractor in the State of Utah.

14. Please admit that you hold no contractor's licenses (general or specialty) such as sheet rock, plaster, etc.) from the Utah Department of Business Regulations.

15. Please admit that §58-15-17 Utah Code Annotated bars any recovery by you since you are not licensed as a trade contractor in the State of Utah.

16. Please admit that all of the "lienholder Defendants" (page 2 paragraph 6 of complaint) are superior to the Plaintiff's alleged interest in the property being foreclosed.

17. Please admit that you are an employee of Mike Mowers.

18. Please admit that Mike Mower has failed to collect or pay unemployment insurance on Martin Bennett regarding the Craghead job.

19. Please admit that Mike Mower failed to secure any unknown compensation insurance coverage on Martin Bennett regarding the Craghead job.

20. Please admit that for purposes of Utah State Employment Insurance, Martin Bennett was a statutory employee of Mike Mower.

21. Please admit that for purposes of Utah State Workman's Compensation Laws, Martin Bennett was a statutory employee of Mike Mower.

INTERROGATORIES

1. If your answers to any of the foregoing Request for Admissions is anything other than an unequivocal admission, please set forth in detail the basis of each such non admission and why you refused to unequivocally admit the Request for Admission.

2. State the names and addresses of all persons whom you will call as witnesses at the time of the trial of this case.

3. State the names and addresses of all persons whom you may call as witnesses at the time of the trial of this case.

4. Summarize the testimony each of the witnesses identified in your answers to Interrogatories No. 2 and No. 3 is expected to give at trial.

5. If you anticipate that any person identified in your answer to Interrogatory No. 2 and answer to Interrogatory No. 3 will testify concerning or on the basis of any document or documents, please identify each such document.

6. Identify all documents you received by the persons specified in your answer to Interrogatory No. 5 and all documents prepared by you in connection with your communications with those persons.

7. State whether you presently intend to call any person to testify at the trial of this matter as an expert witness.

8. If your answer to Interrogatory No. 7 is in the affirmative, please:

(a) State the name and address of each such expert;

(b) State each such expert's qualifications;

(c) State the subject matter upon which such expert is expected to testify;

(d) State the substance of the facts and opinions to which each such expert is expected to testify; and

(e) Summarize the grounds for each such opinion.

9. If you anticipate that any person identified in your answer to Interrogatory No. 8 will testify concerning or on the basis of any report, document or documents, please identify each such document or report.

10. Other than as set forth in your answers above, please identify all PERCIPIENT witnesses who have knowledge of the facts

of the case including any claim or defense. In submitting this Interrogatory, we are not desirous of placing a burdensome request on you. However, in the event you are aware of potential witnesses which you do not intend to call we would like these potential witnesses identified.

11. Please identify all persons from whom you or your counsel have obtained statements or whom you or your counsel have interviewed in anticipation of litigation or in the course of representing the Defendants. Please set forth the facts and information which the foregoing witnesses gave during the interview or in their statement.

12. Set forth in detail the basis of the allegations made in paragraph eight (8) of the Plaintiff's Complaint to the effect that the Plaintiff had a contract with the Defendant Michael Mower.

13. Set forth in detail the basis of the allegations made in paragraph eight (8) of the Plaintiff's Complaint to the effect that the Plaintiff had a contract with the Defendant Aspen Construction.

14. Set forth in detail the basis of how your claim for \$13,135.77 is calculated?

15. Set forth in detail the basis of your alleged contract with Mr. Mower.

16. Set forth in detail all payments received from any source with respect to the work claimed to be performed on the Craghead residence.

17. Set forth in detail the identity and interest of all "lien holder" Defendants.

18. Set forth in detail the basis of the allegations in paragraph ten (10) of the Plaintiff's Complaint.

19. Set forth in detail the basis of the allegations in paragraph eleven (11) of the Plaintiff's Complaint.

20. Set forth in detail the basis of the allegations in paragraph twelve (12) of the Plaintiff's Complaint.

21. Set forth in detail the basis of the allegations in paragraph thirteen (13) of the Plaintiff's Complaint.

22. Set forth in detail the basis of the allegations in paragraph fourteen (14) of the Plaintiff's Complaint.

23. Set forth in detail the basis of the allegations in paragraph fifteen (15) of the Plaintiff's Complaint.

24. Set forth in detail the basis of the allegations in paragraph sixteen (16) of the Plaintiff's Complaint.

25. Set forth in detail the basis of the allegations in paragraph seventeen (17) of the Plaintiff's Complaint.

26. Set forth in detail the basis of the allegations in paragraph eighteen (18) of the Plaintiff's Complaint.

27. Set forth in detail the basis of the allegations in paragraph nineteen (19) of the Plaintiff's Complaint.

28. Set forth in detail all contracting jobs performed by you in 1991 and 1992.

29. Please identify all jobs (contracting or other) performed by you for, on behalf of, at the instance of, or in any manner for Mike Mower.

30. Please identify all persons and/or sources who assisted in the preparation of the answers and/or requests for discovery.

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 U.R.C.P. you are requested to produce the following documents.

1. Please produce for copying the original of any document which you intend to rely upon as supporting or corroborating the allegations of the Complaint.

2. Please produce all time records, day planner, invoices or other documents maintained by the Plaintiff in connection with or relating to in any manner the Craghead remodeling project.

3. Please produce for inspection the written contract or bid/acceptance documents or any similar such documents concerning the Craghead remodeling project.

4. Please produce all documents the identity of which is sought in the foregoing answers to the above Interrogatories.

5. Please produce all original notes and documents made by you, your agents or employees pertaining or relating to in any manner, no matter how remote, to the present law suit and/or the allegations made by the Plaintiffs or Defendant.

6. Please produce all notes and documents made by you regarding conversations with any persons who are percipient witnesses regarding the present law suit and any allegation or defense made by either the Plaintiffs or any of the Defendants.

7. Please produce all affidavits, witness statements and other documents taken by you in connection with matters pertaining to the present lawsuit and any allegations or defense made by the Plaintiffs or any of the Defendants.

8. Please produce all documents in your possession (not heretofore requested) relating to Aspen Construction, Michael Mower, James Craghead, the Craghead remodeling project or any lienholder Defendant.

9. Please produce the 1099/W-2 statement given to you by Michael Mower, in connection with the Craghead remodeling project.

10. Please produce Martin Bennett's 1990, 1991 and 1992 Federal and State Income Tax Returns.

DATED this 10 day of August, 1993.

PRESTON & CHAMBERS

Joseph M. Chambers
Attorney for Defendant

MAILING CERTIFICATE

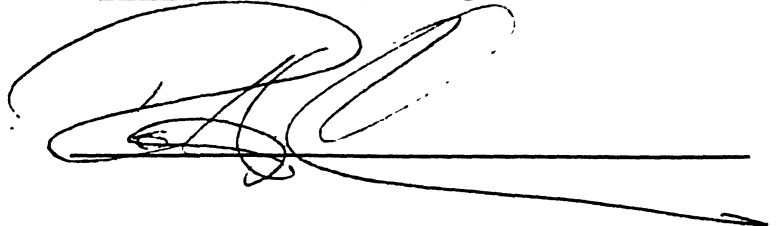
I hereby certify that I mailed a true and correct copy of the above and foregoing DEFENDANT PAYDEN'S FIRST SET OF: INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR ADMISSIONS to the Plaintiff's Attorney: Susan Noyce, #9 Exchange Place, Suite 710, Salt Lake City, Utah 84111 on this 10 day of August, 1993.

ROBERT W. HUGHES #1573
Attorney for Plaintiff
Suite 420
7050 South Union Park Avenue
Midvale, Utah 84047
Telephone: (801) 566-3688

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

MARTIN J. BENNETT,	)	CERTIFICATE OF SERVICE
Plaintiff,)	
vs.)	
JAMES CRAGHEAD; ASPEN	)	Civil No. 930904047CV
CONSTRUCTION, INC., a Utah)	
corporation; MICHAEL A.	)	Judge John A. Rokich
MOWER; and JOHN DOES 1)	
through 20,)	
Defendants.)	

I hereby certify that I mailed a copy of Plaintiff's Responses to Defendant's Requests for Admissions and Requests for Production of Documents and this Certificate of Service to Joseph M. Chambers, PRESTON & CHAMBERS, 31 Federal Avenue, Logan, Utah 84321, postage prepaid, this 9th day of September, 1993.



ROBERT W. HUGHES #1573
Attorney for Plaintiff
Suite 420
7050 South Union Park Avenue
Midvale, Utah 84047
Telephone: (801) 566-3688

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

MARTIN J. BENNETT,	)	PLAINTIFF'S RESPONSES TO
	)	DEFENDANT'S REQUESTS FOR
Plaintiff,	)	ADMISSIONS AND REQUESTS
	)	FOR PRODUCTION OF DOCUMENTS
vs.)	
JAMES CRAGHEAD; ASPEN	)	Civil No. 930904047CV
CONSTRUCTION, INC., a Utah)	
corporation; MICHAEL A.	)	Judge John A. Rokich
MOWER; and JOHN DOES 1)	
through 20,)	
Defendants.)	

Pursuant to the Utah Rules of Civil Procedure, Plaintiff hereby responds to Defendant's Requests for Admissions and Requests for Production of Documents as follows:

REQUESTS FOR ADMISSIONS

REQUEST NO. 1: Please admit that neither you or your attorney obtained a foreclosure report or other title report prior to filing the Complaint.

RESPONSE: Admit.

REQUEST NO. 2: Please admit that Martin J. Bennett contracted exclusively with Mr. Mower regarding the sheet rocking work on Mr. Craghead's home.

RESPONSE: Deny.

REQUEST NO. 3: Please admit that Martin J. Bennett had no "written contract" with either Mr. Craghead or Aspen Construction.

RESPONSE: Admit.

REQUEST NO. 4: Please admit that Martin bennett had no "oral contract" with either Mr. Craghead or Aspen Construction.

RESPONSE: Deny.

REQUEST NO. 5: Please admit that prior to or during the performance of your work you did not cover the beam work.

RESPONSE: Deny.

✓ REQUEST NO. 6: Please admit that Mr. Lynn Payden or his foreman instructed you to cover and protect the beam work. } Note

RESPONSE: Admit.

REQUEST NO. 7: Please admit that you performed services outside the scope of your contract.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 8: Please admit that the services you performed "as extras" are charged at 2-1/2 to 3 times the going rate for such work.

RESPONSE: Deny.

REQUEST NO. 9: Please admit that you were told on numerous occasions by Mr. Craghead, Mr. Payden and/or his foreman that you were not to do extra work.

RESPONSE: Deny.

REQUEST NO. 10: Please admit that you are attempting to collect for time and work which was never performed by you.

RESPONSE: Deny.

REQUEST NO. 11: Please admit that you and Mr. Mower are acting in concert with regards to this laws.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 12: Please admit that beam work was damaged by you, when you sheet rocked and plastered, which required that it be repainted.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 13: Please admit that you are not a licensed contractor in the State of Utah.

RESPONSE: Admit.

REQUEST NO. 14: Please admit that you hold no contractor's license (general or specialty, such as sheet rock, plaster, etc.) from the Utah Department of Business Regulations.

RESPONSE: Admit.

REQUEST NO. 15: Please admit that §58-15-17 Utah Code Ann. bars any recovery by you since you are not licensed as a trade contractor in the State of Utah.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible and requires a legal conclusion. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 16: Please admit that all of the "lienholder Defendants" (page 2 paragraph 6 of the Complaint) are superior to the Plaintiff's alleged interest in the property being foreclosed.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible and requires a legal conclusion. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 17: Please admit that you are an employee of Mike Mower.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 18: Please admit that Mike Mower has failed to collect or pay unemployment insurance on Martin bennett regarding the Craghead job.

RESPONSE: Plaintiff is without sufficient knowledge or information to form a belief as to the true or falsity of this Request and therefore denies the same.

REQUEST NO. 19: Please admit that Mike Mower failed to secure any ^{workman's} ~~unknown~~ compensation insurance coverage on Martin bennett regarding the Craghead job.

RESPONSE: Plaintiff is without sufficient knowledge or information to form a belief as to the true or falsity of this Request and therefore denies the same.

REQUEST NO. 20: Please admit that for purposes of Utah State Employment Insurance, Martin Bennett was a statutory employee of Mike Mower.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible and requires a legal conclusion. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST NO. 21: Please admit that for purposes of utah State Workman's Compensation Laws, Martin Bennett was a statutory employee of Mike Mower.

RESPONSE: Plaintiff objects to this Requests on the basis that said Request is ambiguous and unintelligible and requires a legal conclusion. Notwithstanding Plaintiff's objection, Plaintiff denies this Request.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce for copying the original of any document which you intend to rely upon as supporting or corroborating the allegations of the Complaint.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 2: Please produce all time records, day planner, invoices, or other documents maintained by the Plaintiff in connection with or relating to in any manner the Craghead remodeling project.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 3: Please produce for inspection the written contract or bid/acceptance documents or any similar such documents concerning the Craghead remodeling project.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 4: Please produce all documents the identity of which is sought in the foregoing answers to the above Interrogatories.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 5: Please produce all original notes and documents made by you, your agents or employees pertaining or relating to in any manner, no matter how remote, to the present lawsuit and/or the allegations made by the Plaintiff or Defendants.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 6: Please produce all notes and documents made by you regarding conversations with any persons who are percipient witnesses regarding the present lawsuit and any allegation or defense made by either the Plaintiff or any of the Defendants.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 7: Please produce all affidavits, witness statements, and other documents taken by you in connection with matters pertaining to the present lawsuit and any allegations or defense made by the Plaintiff or any of the Defendants.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 8: Please produce all documents in your possession (not heretofore requested) relating to Aspen Construction, Michael Mower, James Craghead, the Craghead remodeling project or any lienholder Defendant.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 9: Please produce the 1099/W-2 statement given to you by Michael Mower, in connection with the Craghead remodeling project.

RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

REQUEST NO. 10: Please produce Martin Bennett's 1990, 1991, and 1992 Federal and State Income Tax Returns.

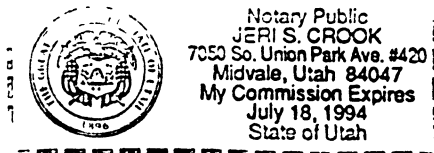
RESPONSE: The documents requested which are in Plaintiff's possession are available for inspection and copying at the office of Plaintiff's counsel upon reasonable notice.

DATED this 9th day of September, 1993.

Martin J. Bennett
MARTIN J. BENNETT

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 9th day of September, 1993, personally appeared before me
MARTIN J. BENNETT who duly acknowledged to me that he signed the foregoing
Plaintiff's Responses to Defendant's Requests for Admissions and Requests for
Production of Documents and he stated he has read the same and knows the contents
thereof to be true and correct.



My Commission Expires:

Jeri S. Crook
Notary Public

Residing At: Salt Lake County, Utah

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Plaintiff's Responses to
Defendant's Requests for Admissions and Requests for Production of Documents to
Joseph M. Chambers, PRESTON & CHAMBERS, 31 Federal Avenue, Logan, Utah
84321, postage prepaid, this 9th day of September, 1993.

benncrag.ans

ROBERT W. HUGHES #1573
Attorney for Plaintiff
Suite 420
7050 South Union Park Avenue
Midvale, Utah 84047
Telephone: (801) 566-3688

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

MARTIN J. BENNETT,	)	PLAINTIFF'S RESPONSES TO
	)	DEFENDANT'S FIRST SET OF
Plaintiff,	)	INTERROGATORIES
vs.)	
JAMES CRAGHEAD; ASPEN	)	Civil No. 930904047CV
CONSTRUCTION, INC., a Utah)	
corporation; MICHAEL A.	)	Judge John A. Rokich
MOWER; and JOHN DOES 1)	
through 20,)	
Defendants.)	

Pursuant to the Utah Rules of Civil Procedure, Plaintiff hereby responds to Defendant's First Set of Interrogatories as follows:

INTERROGATORY NO. 1: If your answers to any of the foregoing Requests for Admissions is anything other than an unequivocal admission, please set forth in detail the basis of each such nonadmission and why you refused to unequivocally admit the Request for Admission.

ANSWER: Plaintiff denied Request for Admission Nos. 2, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, and 21. In addition the objections set forth in Plaintiff's Response to the above-referenced Admissions, Plaintiff asserts that the statements contained therein are untrue.

INTERROGATORY NO. 2: State the names and addresses of all persons whom you will call as witnesses at the time of the trial of this case.

ANSWER: Defendants Michael Mower and James Craghead. Mark Strong, address unknown, 278-3173. Thomas E. Thornton, 3092 West Herman Drive, West Valley City, Utah, 966-5462. Lynn Payden, address unknown. Vaughn Feulner, address unknown, 250-2265. Scott Whipperman, 3757 East Mountain Valley Way, Salt Lake City, Utah 84092, 943-6837. Jenny Bennett, address unknown. Plaintiff may call additional witnesses at the trial of this matter. Plaintiff will supplement his answer to this Interrogatory when such witnesses are determined.

INTERROGATORY NO. 3: State the names and addresses of all persons whom you may call as witnesses at the time of the trial of this case.

ANSWER: Plaintiff may call additional witnesses at the trial of this matter. Plaintiff will supplement his answer to this Interrogatory when such witnesses are determined.

INTERROGATORY NO. 4: Summarize the testimony of each of the witnesses identified in your answers to Interrogatories No. 2 and No. 3 is expected to give at trial.

ANSWER: The work provided by Plaintiff as well as representations made to Plaintiff by Defendants. Specifically, Michael Mower will testify as to the hiring of

Plaintiff and the verbal contracts. Mark Strong will testify as to the quality of Plaintiff's work and the statements made by Defendants concerning subcontractors. Thomas E. Thornton will testify as to the directions given to Plaintiff regarding his work, Plaintiff's compensation for his work, and the quality of Plaintiff's work. Vaughn Feulner will testify to discussions that took place on the job site concerning compensation to workers and the labor performed on the roof. Scott Whipperman will testify as to the quality of Plaintiff's work. Jenny Bennett will testify as to the quality of Plaintiff's work and the hours that Plaintiff worked.

INTERROGATORY NO. 5: If you anticipate that any person identified in your answer to Interrogatory No. 2 and answer to Interrogatory No. 3 will testify concerning or on the basis of any document or documents, please identify each such document.

ANSWER: See Plaintiff's Responses to Defendant's Requests for Production of Documents. Plaintiff may call additional witnesses at the trial of this matter. Plaintiff will supplement his answer to this Interrogatory when such witnesses are determined.

INTERROGATORY NO. 6: Identify all documents you received by the persons specified in your answer to Interrogatory No. 5 and all documents prepared by you in connection with your communications with those persons.

ANSWER: See Plaintiff's responses to Defendant's Requests for Production of Documents.

INTERROGATORY NO. 7: State whether you presently intend to call any person to testify at the trial of this matter as an expert witness.

ANSWER: Plaintiff has not yet determined any expert witnesses who will testify at trial. Plaintiff will supplement his answer to this Interrogatory when expert witnesses are determined.

INTERROGATORY NO. 8: If your answer to No. 7 is in the affirmative, please:

- (a) State the name and address of such expert;
- (b) State each such expert's qualification;
- (c) State the subject matter upon which such expert is expected to testify;
- (d) State the substance of the facts and opinions to which each such expert is expected to testify, and
- (e) Summarize the grounds for each such opinion.

ANSWER: N/A. Plaintiff will supplement his answer this Interrogatory upon the determination of expert witnesses.

INTERROGATORY NO. 9: If you anticipate that any person identified in your answer to Interrogatory No. 8 will testify concerning or on the basis of any report, document, or documents, please identify each such document or report.

ANSWER: N/A. Plaintiff will supplement his answer this Interrogatory upon the determination of expert witnesses.

INTERROGATORY NO. 10: Other than as set forth in your answers above, please identify all PERCIPIENT witnesses who have knowledge of the facts of the case including any claim or defense. In submitting this Interrogatory, we are not desirous of

placing a burdensome request on you. However, in the event you are aware of potential witnesses which you do not intend to call we like these potential witnesses identified.

ANSWER: Plaintiff has not determined any percipient witnesses. Plaintiff will supplement his answer to this Interrogatory should such percipient witnesses be determined.

INTERROGATORY NO. 11: Please identify all persons from whom you or your counsel have obtained statements or whom you or your counsel have interviewed in anticipation of litigation or in the course of representing the Defendants. Please set forth the facts and information which the foregoing witnesses gave during the interview or in their statement.

ANSWER: None at this time.

INTERROGATORY NO. 12: Set forth in detail the basis of the allegations made in paragraph eight (8) of the Plaintiff's Complaint to the effect that the Plaintiff had a contract with the Defendant Michael Mower.

ANSWER: Paragraph 8 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 13: Set forth in detail the basis of the allegations made in paragraph eight (8) of the Plaintiff's Complaint to the effect that the Plaintiff had a contract with the Defendant Aspen Construction.

ANSWER: Paragraph 8 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 14: Set forth in detail the basis of how your claim for \$13,135.77 is calculated.

ANSWER: Based upon billings prepared by Plaintiff and presented to Mr. Mower, Mr. Craghead, and Mr. Payden.

INTERROGATORY NO. 15: ~~Set forth in detail the basis of your alleged~~
Contract with Mr. Mower.

ANSWER: Plaintiff had an agreement with Mr. Mower to tape and finish sheet rock that was hung by employees of Mr. Mower for a price of \$.25 per foot of sheet rock hung on the walls and ceilings. Plaintiff also contracted with Mr. Mower to hang and finish bullnose metal beams at \$1.00 per lineal foot. Any additional work requested of Plaintiff by Defendants was an "extra" contract for each item requested.

INTERROGATORY NO. 16: ~~Set forth in detail all payments received from any~~
source with respect to the work claimed to be performed on the Craghead residence.

ANSWER: Copies of payments are included in Plaintiff's Responses to Defendant's Request for Production of Documents.

INTERROGATORY NO. 17: Set forth in detail the identity and interest of all "lienholder" Defendants.

ANSWER: Not known at this time. Plaintiff will supplement his answer to this Interrogatory when such information becomes available.

INTERROGATORY NO. 18: Set forth in detail the basis of the allegations in paragraph ten (10) of Plaintiff's Complaint.

ANSWER: Paragraph 10 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 19: Set forth in detail the basis of the allegations in paragraph eleven (11) of Plaintiff's Complaint.

ANSWER: Paragraph 11 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 20: Set forth in detail the basis of the allegations in paragraph twelve (12) of Plaintiff's Complaint.

ANSWER: Paragraph 12 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 21: Set forth in detail the basis of the allegations in paragraph thirteen (13) of Plaintiff's Complaint.

ANSWER: Paragraph 13 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 22: Set forth in detail the basis of the allegations in paragraph fourteen (14) of Plaintiff's Complaint.

ANSWER: Paragraph 14 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 23: Set forth in detail the basis of the allegations in paragraph fifteen (15) of Plaintiff's Complaint.

ANSWER: Paragraph 15 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 24: Set forth in detail the basis of the allegations in paragraph sixteen (16) of Plaintiff's Complaint.

ANSWER: Paragraph 16 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 25: Set forth in detail the basis of the allegations in paragraph seventeen (17) of Plaintiff's Complaint.

ANSWER: Paragraph 17 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 26: Set forth in detail the basis of the allegations in paragraph eighteen (18) of Plaintiff's Complaint.

ANSWER: Paragraph 18 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 27: Set forth in detail the basis of the allegations in paragraph nineteen (19) of Plaintiff's Complaint.

ANSWER: Paragraph 19 of Plaintiff's Complaint is self-explanatory.

INTERROGATORY NO. 28: Set forth in detail all contracting jobs performed by you in 1991 and 1992.

ANSWER: Documentation of all contracting jobs in the requests years are included in Plaintiff's Responses to Defendant's Requests for Production of Documents.

INTERROGATORY NO. 29: Please identify all jobs (contracting or other) performed by you for, on behalf of, at the instance of, or in any manner for Mike Mower.

ANSWER: None.

INTERROGATORY NO. 30: Please identify all persons and/or sources who assisted in the preparation of the answers and/or requests for discovery.

ANSWER: Plaintiff and Plaintiff's attorneys, Robert W. Hughes and Susan Noyce.

DATED this 17th day of September, 1993.



MARTIN J. BENNETT

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

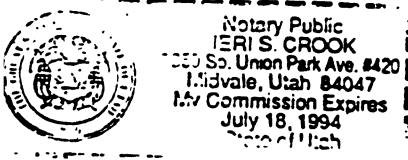
On the 17th day of September, 1993, personally appeared before me MARTIN J. BENNETT who duly acknowledged to me that he signed the foregoing

Plaintiff's Responses to Defendant's First Set of Interrogatories and he stated he has read the same and knows the contents thereof to be true and correct.

Jeri Crook
Notary Public

My Commission Expires:

Residing At: Salt Lake County, Utah



CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Plaintiff's Responses to Defendant's First Set of Interrogatories to Joseph M. Chambers, PRESTON & CHAMBERS, 31 Federal Avenue, Logan, Utah 84321, postage prepaid, this 17th day of September, 1993.

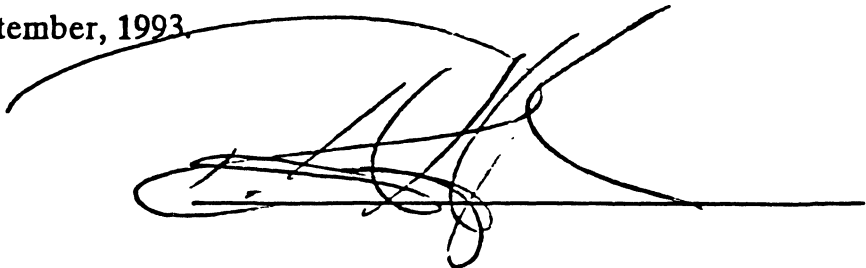
[Signature]

ROBERT W. HUGHES #1573
Attorney for Plaintiff
Suite 420
7050 South Union Park Avenue
Midvale, Utah 84047
Telephone: (801) 566-3688

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

MARTIN J. BENNETT,	)	CERTIFICATE OF SERVICE
Plaintiff,)	
vs.)	
JAMES CRAGHEAD; ASPEN	)	Civil No. 930904047CV
CONSTRUCTION, INC., a Utah)	
corporation; MICHAEL A.)	
MOWER; and JOHN DOES 1	)	Judge John A. Rokich
through 20,)	
Defendants.)	

I hereby certify that I mailed a copy of Plaintiff's Responses to Defendant's First Set of Interrogatories and this Certificate of Service to Joseph M. Chambers, PRESTON & CHAMBERS, 31 Federal Avenue, Logan, Utah 84321, postage prepaid, this 17th day of September, 1993.



1 Tuesday, April 5, 1994: 10:00 a.m.

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3

MICHAEL J. BENNETT,

4

called as a witness, having been first

5

duly sworn, was examined and testified as follows:

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7

EXAMINATION

8

BY MR. CHAMBERS:

9

Q. Mr. Bennett, my name is Joe Chambers.

10

I represent Aspen Construction and Mr. Jim Craghead

11

in this matter.

12

Have you ever had your deposition taken

13

before?

14

A. No.

15

Q. The purpose of me asking you to come

16

here and take a statement is to get your position

17

with regards to this case on record. It can be

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used against you if you change your story later on,

19

and I simply want to point that out.

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If at some point in the proceedings you

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cannot hear me or I ask a question that maybe is

22

ambiguous or not clear, please feel free to ask me

23

to clarify it. I'll be happy to do so.

24

A. What do you mean by ambiguous?

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Q. Something you don't understand.

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Tuesday, April 5, 1994: 10:00 a.m.

MICHAEL J. BENNETT,
called as a witness, having been first
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CHAMBERS:

Q. Mr. Bennett, my name is Joe Chambers.
I represent Aspen Construction and Mr. Jim Craghead
in this matter.

Have you ever had your deposition taken
before?

A. No.

Q. The purpose of me asking you to come
here and take a statement is to get your position
with regards to this case on record. It can be
used against you if you change your story later on,
and I simply want to point that out.

If at some point in the proceedings you
cannot hear me or I ask a question that maybe is
ambiguous or not clear, please feel free to ask me
to clarify it. I'll be happy to do so.

A. What do you mean by ambiguous?

Q. Something you don't understand.

1 school?

2 A. Yes.

3 Q. Did you have any education post
4 training, past high school?

5 A. '87-88 I went to a business college,
6 Mountain West Business.

7 Q. Is that in Salt Lake?

8 A. Yes, but they're not even around any
9 more. I think they've changed their name to
10 something.

11 Q. With regards to vocational training,
12 have you, after high school, had any specialized
13 vocational training?

14 A. In reference to the drywall, I started
15 -- got into this trade when I was 15 and worked
16 full-time from 15 on through high school, still
17 graduated, accomplished a lot back then.

18 Q. Okay. Other than the business school,
19 I assume that you've not had any other post high
20 school training?

21 A. No.

22 Q. At a certain point in this case, you
23 had retained to represent you a Mr. Robert W.
24 Hughes. Do you recall Mr. Hughes?

25 A. Do I recall him?

1 school?

2 A. Yes.

3 Q. Did you have any education post
4 training, past high school?

5 A. '87-88 I went to a business college,
6 Mountain West Business.

7 Q. Is that in Salt Lake?

8 A. Yes, but they're not even around any
9 more. I think they've changed their name to
10 something.

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12 have you, after high school, had any specialized
13 vocational training?

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15 -- got into this trade when I was 15 and worked
16 full-time from 15 on through high school, still
17 graduated, accomplished a lot back then.

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19 I assume that you've not had any other post high
20 school training?

21 A. No.

22 Q. At a certain point in this case, you
23 had retained to represent you a Mr. Robert W.
24 Hughes. Do you recall Mr. Hughes?

25 A. Do I recall him?

1 summarize. The ones that are marked P 0001 through
2 37, just through P 0037, those are all your
3 documents?

4 A. No, just these ones here.

5 MS. FALK: P 0021 and then beginning
6 again at P 0069 continuing to P 0087.

7 MR. CHAMBERS: I'm sorry, I was a
8 little bit slow, but once I get there I'm
9 permanently there. Say that again.

10 MS. FALK: The documents Mr. Bennett
11 produced are numbered P 0001 through P 0021, and
12 beginning again at P 0069 through P 0087.

13 MR. CHAMBERS: Thank you.

14 MR. CHAMBERS: (Resuming)

15 Q. And just so I have your testimony, is
16 that correct, what Ms. Falk has stated?

17 A. Yes, it is.

18 Q. Are there any other documents that you
19 have that are in your possession that you have not
20 delivered to her?

21 A. No, these are everything that -- all my
22 original billings and job breakdown.

23 Q. What exactly was the arrangement that
24 Mr. Mower had with you concerning the Craghead job?

25 A. Footage price was 21 cents a square

1 summarize. The ones that are marked P 0001 through
2 37, just through P 0037, those are all your
3 documents?

4 A. No, just these ones here.

5 MS. FALK: P 0021 and then beginning
6 again at P 0069 continuing to P 0087.

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12 beginning again at P 0069 through P 0087.

13 MR. CHAMBERS: Thank you.

14 MR. CHAMBERS: (Resuming)

15 Q. And just so I have your testimony, is
16 that correct, what Ms. Falk has stated?

17 A. Yes, it is.

18 Q. Are there any other documents that you
19 have that are in your possession that you have not
20 delivered to her?

21 A. No, these are everything that -- all my
22 original billings and job breakdown.

23 Q. What exactly was the arrangement that
24 Mr. Mower had with you concerning the Craghead job?

25 A. Footage price was 21 cents a square

1 said he was going to pay and I agreed with that.

2 Q. Did you keep a record of how many
3 square feet of sheetrock that you hung then?

4 A. Well, Mike had other nailers in that
5 were ahead of me but they were working complete,
6 and plus all the changes and everything then I
7 ended up starting to do nailing so I could finish
8 my part of everything.

9 Q. Okay.

10 A. So Mike kept track of all that. Mike
11 kept track of the footage. And at the end of the
12 job, that's how we came with that the footage that
13 was supplied on the job.

14 Q. You never kept track of the square
15 footage?

16 A. The square footage, no. That was all
17 up to Mike. And that's how we ended up with the
18 20,792 square feet, the board that was put into
19 that house, is what Mike told me it was. He had it
20 in there and nailed up, that was the amount.
21 That's even including the extra sheets that he had
22 to bring in for patches and all this other stuff,
23 that's everything.

24 Q. Okay. When you reference the figure of
25 20,000 --

1 said he was going to pay and I agreed with that.

2 Q. Did you keep a record of how many
3 square feet of sheetrock that you hung then?

4 A. Well, Mike had other nailers in that
5 were ahead of me but they were working complete,
6 and plus all the changes and everything then I
7 ended up starting to do nailing so I could finish
8 my part of everything.

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11 kept track of the footage. And at the end of the
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19 that house, is what Mike told me it was. He had it
20 in there and nailed up, that was the amount.
21 That's even including the extra sheets that he had
22 to bring in for patches and all this other stuff,
23 that's everything.

24 Q. Okay. When you reference the figure of
25 20,000 --

1 MR. CHAMBERS: (Resuming)

2 Q. With regards to that particular figure,
3 that was provided to you by Mr. Mower then, you did
4 not separately keep track of any square footage?

5 A. No, because I had no way of knowing.
6 Mike knew the square footage on it because -- well,
7 he has invoices of what was stocked and all this
8 stuff, so he's the one that supplied all the
9 sheetrock, so I had no way of knowing.

10 MR. CHAMBERS: Let's go off the
11 record.

12 (Off the record)

13 MR. CHAMBERS: Let's go back on the
14 record.

15 MS. FALK: Plaintiffs' Exhibit 1 is --

16 MR. CHAMBERS: I'm questioning, you can
17 do it on your questioning of Mr. Bennett. It's my
18 questioning at this time, Counsel.

19 MS. FALK: I would just like, for the
20 record, that you are referring to a document P 0069
21 through P 0087, and if you don't wish to enter it
22 as an exhibit, that's fine, but I would like it on
23 the record that you are referring to that.

24 MR. CHAMBERS: Thank you.

25 MR. CHAMBERS: (Resuming)

1 MR. CHAMBERS: (Resuming)

2 Q. With regards to that particular figure,
3 that was provided to you by Mr. Mower then, you did
4 not separately keep track of any square footage?

5 A. No, because I had no way of knowing.
6 Mike knew the square footage on it because -- well,
7 he has invoices of what was stocked and all this
8 stuff, so he's the one that supplied all the
9 sheetrock, so I had no way of knowing.

10 MR. CHAMBERS: Let's go off the
11 record.

12 (Off the record)

13 MR. CHAMBERS: Let's go back on the
14 record.

15 MS. FALK: Plaintiffs' Exhibit 1 is --

16 MR. CHAMBERS: I'm questioning, you can
17 do it on your questioning of Mr. Bennett. It's my
18 questioning at this time, Counsel.

19 MS. FALK: I would just like, for the
20 record, that you are referring to a document P 0069
21 through P 0087, and if you don't wish to enter it
22 as an exhibit, that's fine, but I would like it on
23 the record that you are referring to that.

24 MR. CHAMBERS: Thank you.

25 MR. CHAMBERS: (Resuming)

1 didn't count any of that. This is what -- the
2 actual footage that I ended up hanging, what I was
3 paid for because I was being paid for a dollar a
4 lineal foot from hanging it to the finish ready to
5 paint. So that's what all this footage is here is
6 just what my actual work is.

7 Q. Okay. Let me see, there's a figure
8 that says 1,780 lineal feet.

9 A. Uh-huh.

10 Q. Was that figure provided to you by
11 Mr. Mower?

12 A. Okay. This is how I understand it.
13 Mr. Mower provides the materials on this part of
14 it, same as the sheetrock, but on this here he
15 provided the materials but I only used a certain
16 amount of what he provided, and that's what this
17 is. This is only the amount of 178 pieces of what
18 I ended up using. Mike could have brought in 200
19 or 300 pieces and if that was left over, I didn't
20 use that. So that's just -- that isn't anything
21 that I used. Mike provided the materials, I
22 provided the labor on it, and my labor is in
23 accordance to the lengths or pieces per lineal
24 foot, is what my price was.

25 Q. I understand.

1 didn't count any of that. This is what -- the
2 actual footage that I ended up hanging, what I was
3 paid for because I was being paid for a dollar a
4 lineal foot from hanging it to the finish ready to
5 paint. So that's what all this footage is here is
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21 that I used. Mike provided the materials, I
22 provided the labor on it, and my labor is in
23 accordance to the lengths or pieces per lineal
24 foot, is what my price was.

25 Q. I understand.

1 tell me if I'm cutting you off. I don't want to do
2 that.

3 But let me ask you this to clarify it.
4 The first figure on 20,792 square feet, I asked you
5 if you maintained separate records on that and I
6 understood your answer to be no, that you got that
7 figure from Mr. Mower.

8 A. From Mr. Mower; correct.

9 Q. And you have no independent figures to
10 be able to tell that there was 20,792 square feet
11 of sheetrock hung?

12 A. No.

13 Q. You never measured the home yourself?

14 A. I did, I came up with a little bit more
15 than Mike, but Mike says this is what he ended up
16 stocking so I have to come up with that because we
17 went over -- Mike and I went over all this. And he
18 says, "No, Marty, this is what was hung in here,"
19 so that's what I have to go by.

20 Q. And what figure -- when you measured
21 the home --

22 A. My measurements might be different from
23 Mike's. Okay? Because I know I came up with quite
24 a bit more. I remember that conversation we had
25 because I always do go through and measure my

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21 the home --

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23 Mike's. Okay? Because I know I came up with quite
24 a bit more. I remember that conversation we had
25 because I always do go through and measure my

1 Q. Okay. So you go ahead and charge on
2 what you utilize?

3 A. Uh-huh.

4 Q. So if you used two twelve-foot sheets,
5 how many square feet would that be?

6 A. Well, there's 48 square feet to a sheet
7 so two of them would be 96.

8 Q. Okay.

9 A. But that's 96 square feet for that one
10 wall.

11 Q. Even though you may not use a foot and
12 a half of the end of it?

13 A. It's still scrap a little bit. If I
14 have a seven-foot six-inch wall, I can use it. I
15 can split a 14-foot sheet, but I can cut it down in
16 half and I have only a couple inches of scrap in
17 comparison to using two eights on that wall, which
18 I would end up with a foot, you know, 12 inch by
19 four-foot wide, two pieces of scrap. So if I can
20 split anything or even stand up an eight, because
21 my panels are four-foot wide, then that cuts down
22 on the scrap. So wherever it can be utilized that
23 way the best to keep the scrap down, that is what
24 is basically done.

25 Q. So based on this 20,792 square foot, as

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2 what you utilize?

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5 how many square feet would that be?

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20 split anything or even stand up an eight, because
21 my panels are four-foot wide, then that cuts down
22 on the scrap. So wherever it can be utilized that
23 way the best to keep the scrap down, that is what
24 is basically done.

25 Q. So based on this 20,792 square foot, as

1 invoices of what it cost you when you purchased it?

2 A. I've got invoices, but off what job and
3 everything, it could be off a number of jobs. It's
4 just my materials that I have left over off jobs
5 which turned into inventory until I go on to the
6 next job to turn it over. That's what happens.

7 Q. Were those items that went into your
8 inventory, were they billed out to the other
9 clients on those other jobs where they were excess
10 inventory from?

11 A. Well, they paid us part of the price,
12 yes, they paid for that.

13 Q. Mr. Mower provided you with the 20,792
14 square foot figure?

15 A. Yes, sir.

16 Q. From your records you were able to
17 deduce that you had used 178 pieces or did you have
18 to obtain that figure from Mr. Mower?

19 A. I didn't obtain it from Mr. Mower. He
20 stocked so many boxes, it would probably be on his
21 supply list but this is only what I ended coming up
22 with.

23 Q. And how did you keep track of those?

24 A. I can't find a record -- I had to write
25 it down to keep track of it because after three

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22 with.

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24 A. I can't find a record -- I had to write
25 it down to keep track of it because after three

1 only way I could come up with this here.

2 Q. But that record that you kept track of
3 of all of these pieces is not available right now?

4 A. No, because I don't see it in any of
5 this here. I don't remember seeing it. It was
6 probably kept on a separate piece of paper that I
7 probably discarded, I don't know.

8 Q. Okay. We've covered the material
9 supplied. What about the extra plaster, extras
10 with regards to the --

11 A. The extras are over and above what Mike
12 and I discussed on what I was supposed to do from
13 the start of the job.

14 Q. Okay. Did Mr. Mower provide you with
15 those figures?

16 A. No, I kept track of my time in there.

17 Q. And how would you keep track of your
18 time?

19 A. How would I keep track of it?

20 Q. Yes.

21 A. Well, I'd look at my watch and, okay,
22 then I start on -- because I kept everything
23 separate. If I just did plaster bullnose, I kept
24 track of how long it would take me to go throughout
25 the house to work on that and then stop it. Then

1 only way I could come up with this here.

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3 of all of these pieces is not available right now?

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5 this here. I don't remember seeing it. It was
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22 then I start on -- because I kept everything
23 separate. If I just did plaster bullnose, I kept
24 track of how long it would take me to go throughout
25 the house to work on that and then stop it. Then

1 half.

2 Q. I understand.

3 A. The next one is two hours.

4 Q. Were those figures placed on P 0074
5 immediately after you worked those hours or were
6 they put on a separate sheet of paper?

7 A. Yes, that paper is with me every day
8 and always wrote down. As soon as I would get done
9 with certain things then I would write down the
10 time that I spent on them. None of this is
11 guesswork, sir.

12 Q. Okay.

13 A. All of it is when I got done with each
14 and every thing, then that's when I wrote it down.

15 Q. But it was not put on another sheet of
16 paper then transposed over onto this one?

17 A. No, because I kept this on a clipboard
18 with paper that is like this with me all the time.
19 And every day, as I would go through and do all
20 these extras or any changes or what I ended up
21 doing, I wrote everything down.

22 Q. Was it common for you to work on the
23 job, say, from eleven o'clock till five o'clock in
24 the morning?

25 A. If needed be, yes, I do it all the

1 half.

2 Q. I understand.

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5 immediately after you worked those hours or were
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18 with paper that is like this with me all the time.
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21 doing, I wrote everything down.

22 Q. Was it common for you to work on the
23 job, say, from eleven o'clock till five o'clock in
24 the morning?

25 A. If needed be, yes, I do it all the

1 If I end up taking 200 hours to make a
2 thousand dollars, that's my loss, it isn't the
3 contractor or whoever hired me. That's my own
4 loss. If I end up only spending 50 hours or less
5 to make a thousand dollars, then I make money or
6 break even or whatever. But that time sheet or --
7 when I write down my hours is only for my own
8 personal use. That has nothing to do with the
9 person that hires me to do that job. That's only
10 for my own personal use. Because I can't go to
11 them in the middle of something and say, hey, you
12 know, I'm losing money. And he'll look at me and
13 say, well, that's not my fault. We had an
14 agreement. That's what all this is, is we had an
15 agreement, whether it was written down or not.

16 Q. Okay. Who retained you to work on the
17 Craghead home?

18 A. Pardon?

19 Q. Who retained your services to work on
20 the Craghead work?

21 A. Michael Mower hired me to do what he
22 needed done.

23 Q. And in that arrangement, as you've
24 indicated, that was for 21 cents a square foot for
25 the regular sheetrock to hang to finish?

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2 thousand dollars, that's my loss, it isn't the
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24 indicated, that was for 21 cents a square foot for
25 the regular sheetrock to hang to finish?

1 A. Okay, I didn't understand that last
2 part, that he had a written document with Aspen?

3 Q. That's right.

4 A. That's what you asked?

5 Q. Yes. Did Mr. Mower indicate to you
6 that his arrangement with Aspen was pursuant to a
7 written document?

8 A. No, because that's none of my business.

9 Q. In your relationship with Mr. Mower,
10 Mr. Mower treated you as a subcontractor on the
11 job; is that correct?

12 A. As a laborer on the job. He hired me
13 to do a certain amount. I just go in there and he
14 hired me to do some work for him.

15 Q. Did he withhold any employment taxes --

16 A. No.

17 Q. -- from the amounts he paid you?

18 A. No, because I told him that I take care
19 of all that stuff.

20 Q. Okay. Do you maintain a separate
21 workman's compensation policy on yourself?

22 A. Not on myself, no. I have my own
23 insurance.

24 Q. What insurance?

25 A. Health insurance, is what it is.

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2 part, that he had a written document with Aspen?

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21 workman's compensation policy on yourself?

22 A. Not on myself, no. I have my own
23 insurance.

24 Q. What insurance?

25 A. Health insurance, is what it is.

1 A. No, because it was never a question.

2 Q. Did you indicate to Mr. Mower that you
3 had no liability insurance?

4 A. No, because it was never questioned.

5 Q. Did you represent to Mr. Mower that you
6 were a licensed sheetrocking contractor?

7 A. No.

8 Q. Did you ever represent to Mr. Payton
9 that you were a licensed sheetrocking contractor?

10 A. No, because they never asked. If I was
11 asked, I would tell them no, I'm not licensed.

12 Q. Did you ever indicate to Mr. Craghead
13 that you were a licensed sheetrocking contractor?

14 A. No, he never asked me either.

15 Q. Did you ever represent to Mr. Mower
16 that you were any type of licensed contractor,
17 specialty or general?

18 A. No.

19 Q. Same thing with Mr. Payton, did you
20 ever represent to him that you were any type of
21 licensed contractor?

22 A. No.

23 Q. The same with Mr. Craghead?

24 A. The same with Mr. Craghead. If I was
25 asked that question, I would tell them no, I'm not

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25 asked that question, I would tell them no, I'm not

1 it.

2 If you work an eight-hour day in a room
3 on an average, what would you get in an hour?

4 A. Okay, these are easy houses. I'm just
5 going by my younger day, I can't do that any more
6 but I used to hang three to four thousand square
7 feet in a wall in a house. And houses are cut up
8 too. The first day -- well, in fact, how I did
9 things was I'd take a crew in, we'd lit on and
10 that's hanging ceilings and we'd split up and I'd
11 go in through and wall out and hang complete, even
12 scrap, a complete house, which averaged between
13 three to four thousand square feet of walls. That
14 isn't including the ceilings, but that was in my
15 younger days too. But then I get on other jobs and
16 11 sheets, it depends on the job.

17 In commercial, I get in commercial work
18 which is standup metal studs, with a partner I can
19 average between 30 and 40 sheets. It doesn't
20 matter what lengths they are, because they go by
21 sheets, okay, 30 or 40 sheets. And that's two
22 people working together and we just stand them up
23 and there's no extra cutting or anything, we're
24 standing up all the time.

25 When you get in a house, there's so

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25 When you get in a house, there's so

1 run into anything that is so specialized as
2 Mr. Craghead's home. That's with all the curving,
3 turning, beading into the doors, eliminating trim
4 and all this stuff, that is the very first home
5 that I've ever ran across. Even his finish, his
6 electrical, all that, everything that I did in
7 there with my part of the trade is totally
8 different from what is standard in the business.
9 It's specialty. Every bit of that place is
10 specialty stuff.

11 All the round walls, all the extra
12 scrolling and all this stuff, it takes time, a lot
13 of time. And most of that stuff is hard to bid on,
14 most of the stuff more contractors would bid on
15 that stuff as time and materials, because I
16 wouldn't have ever taken on that job. If I was
17 bidding that job, that job would have been time and
18 materials. That's the only way I would have ever
19 done it.

20 I would never have given a price
21 because of all the specialty work that's done there
22 and all the additions and everything that is taken
23 off, the sheetrock torn into, plugs moved,
24 electrical fixtures moved, all this stuff added
25 after sheetrock. It was entirely different. It

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1 to take that off. Then that turns into what Aspen
2 is quoting on this.

3 Because there's even places -- because
4 I know how Mr. Craghead was. He wanted
5 perfection. And if I even saw something, then once
6 that sheetrock was on, I would bring Mr. Craghead
7 over and have him look at it and ask him what he
8 would like done. Do you want it fixed,
9 Mr. Craghead? Look how crooked that is, that's got
10 a run in it or it's twisted or whatever. And he
11 would say yes, let's do it. I don't want to accept
12 that. There's many sheets that I ended up taking
13 off besides because it was too beat up or whatever,
14 and it cost more to just patch in in comparison to
15 just take off a sheet and put a new one up there in
16 order to finish.

17 Q. If it's not acceptable to the owner of
18 the home, whose responsibility is that? Is it
19 Mr. Mower's or part of the original job?

20 A. Yes. See, it's my responsibility to
21 make sure that my -- what I'm hired to do is
22 right. And I mean, most people would -- I'm
23 different from most people. If I see something
24 that is different or wrong, and I see it's going to
25 cost me or the general after the job's done, or any

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25 cost me or the general after the job's done, or any

1 sure that my job, or even the nailers in front of
2 me, are doing it right. If they can't do their job
3 complete, then I end up picking it up to make sure
4 that it's done so it doesn't come back on me. I'm
5 going to do my job right. And I have to be
6 responsible for me, and when I'm responsible for me
7 I save Mr. Mower or whoever hired me headache, the
8 general headache and the homeowner headache.

9 Q. I appreciate --

10 A. I've always been that way.

11 Q. -- what you're saying. But what I'm
12 getting down to is, if the job's not finished
13 correctly the first time, why are you charging that
14 back against anybody?

15 A. Because I end up fixing it.

16 Q. Who did it wrong in the first place?

17 A. Well, that's just it. If the
18 carpenters -- they're supposed to be watching out
19 to --

20 Q. We're not talking about carpenters.

21 A. Yes, I am because --

22 Q. You're talking about sheetrock.

23 A. -- you wanted examples. Do you want an
24 example? I'm going to give you an example.

25 Q. I want the example that you utilized.

1 tell Mr. Tom Thornton, who pushed all these subs
2 and everything, made sure everything was in
3 accordance. Or else Mr. Craghead would go to
4 Mr. Tom Thornton say I can't accept that, let's
5 change this, let's add this or whatever happened.
6 Or Lynn would do that too to make sure Mr. Craghead
7 was satisfied.

8 Mr. Payton took a lot of responsibility
9 to himself, also, to make sure the job was done
10 right. If he saw it and he didn't see anything,
11 then he would make sure that it was done right. I
12 can't accept this. And if it's behind the
13 sheetrock, the sheetrock came off and that created
14 an extra. And I shouldn't be or Mike should not be
15 penalized for that because we end up -- the bid was
16 we're only in there to do it once. But any time we
17 have to do and do and redo, it becomes extra.
18 That's extra work over and above.

19 Q. Okay. So what you're saying is
20 underneath nailers you worked six hours correcting
21 the nailers' errors?

22 A. Yes, 6. hours, that's basically here
23 the first part of the job, where I started -- I'm
24 looking at P 0072, when I started keeping track of
25 all these extras. We've got changed here, I had

1 was taken off from there a number of times
2 throughout the job and replaced, or after it had
3 gotten taken off a few times it gets so beat up, so
4 we had to get a new piece to put in there because
5 of plumbers or things that had to be changed behind
6 the walls and all that stuff. A lot of areas
7 needing to be left off.

8 So that's why I wrote down C's or N's.
9 If there's nail top perimeter adjoining upper loft,
10 I put nailer, nail door perimeter both sides. I
11 mean, that's another area there like in the first
12 part. Well, the door perimeters couldn't be nailed
13 off because a decision wasn't made with what was
14 going to be done in those areas, so the nailers
15 only did what they could on the other area of the
16 sheetrock. But where the door perimeter itself is,
17 where it needs to be nailed or screwed on to keep
18 the sheetrock tight to the studs, that was left.

19 But to do my job complete, later on,
20 once the decision was made, then if the nailers
21 didn't go back and do it, which I told them, hey,
22 they gotta go back through. I asked them and if I
23 had a complaint then I would tell Mike, Mike, these
24 nailers aren't doing it or whatever. But if I
25 ended up having to do it, I wrote it down.

1 sure that my job, or even the nailers in front of
2 me, are doing it right. If they can't do their job
3 complete, then I end up picking it up to make sure
4 that it's done so it doesn't come back on me. I'm
5 going to do my job right. And I have to be
6 responsible for me, and when I'm responsible for me
7 I save Mr. Mower or whoever hired me headache, the
8 general headache and the homeowner headache.

9 Q. I appreciate --

10 A. I've always been that way.

11 Q. -- what you're saying. But what I'm
12 getting down to is, if the job's not finished
13 correctly the first time, why are you charging that
14 back against anybody?

15 A. Because I end up fixing it.

16 Q. Who did it wrong in the first place?

17 A. Well, that's just it. If the
18 carpenters -- they're supposed to be watching out
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22 they gotta go back through. I asked them and if I
23 had a complaint then I would tell Mike, Mike, these
24 nailers aren't doing it or whatever. But if I
25 ended up having to do it, I wrote it down.

1 A. Because once what was done behind the
2 wall or in the wall or whatever and I'm in that
3 room having to do that room complete, I have to get
4 that area caught up because I've worked around that
5 area, and I might have a taped first coat and
6 second coat but I've got sheetrock here that is not
7 anything on it or areas that's not hung. And I'm
8 told that I have to get certain areas done, done
9 and complete. It's part of completing the job,
10 sir, in each room or whatever.

11 Q. What you're telling me is you didn't
12 have time to go to another room, work on that room
13 and in the meantime --

14 A. Well, I did. I came to a point --

15 Q. No, let me finish.

16 A. -- where it had to be done. That's the
17 question you're asking.

18 Q. And you didn't have time to go to
19 Mr. Mower or the foreman on the job and say, look,
20 you've got to get those other guys on and finish
21 this job up?

22 A. I would always ask Mr. Thompson, Tom
23 Thompson -- isn't that his last name? Or Tom,
24 okay, who ran the job, if it was ready to be done
25 so that I could get it caught up to be up to par

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2 wall or in the wall or whatever and I'm in that
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1 to do any extras. Tom is telling me -- Tom is
2 pushing me and telling me, these things have to be
3 done or else you're not going to be paid. I want
4 it done complete.

5 Q. Did anybody on that job tell you not to
6 do extra work?

7 A. No.

8 Q. Did Mr. Mower tell you not to perform
9 extra work?

10 A. Mr. Mower? No. He knew about the
11 rumors because anything that went on with that job
12 and everything I talked to him, told him, what's
13 going on? You know, find out. And I'm being told
14 that I have to do these things to get paid. This
15 is what Tom's telling me. And I even pulled
16 Mr. Payton off to the side out in the swimming pool
17 area and questioned him, what's this rumor going
18 around? Am I going to get paid for these extras
19 and all this? He says yes.

20 And Mr. Craghead always told me that
21 anything I do in there, I will get paid for. He
22 told me that many times because I would approach
23 him, what is going on? Why is all these rumors
24 happening?

25 Q. Have you been paid?

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2 pushing me and telling me, these things have to be
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23 him, what is going on? Why is all these rumors
24 happening?

25 Q. Have you been paid?

1 A. Payton, Tom and Craghead.

2 Q. What I want on this is times that they
3 told you, day, time.

4 A. I don't have those.

5 Q. Who was present?

6 A. I don't have those. I just know that
7 it happened or else I wouldn't have done it. I'm
8 not a stupid person. I don't go in there and just
9 say -- it would have been stupid of me for Mike to
10 call me up and say, Marty, I've got a job for you,
11 and for me it would be my own stupidity to go in
12 there and just do it and then come up to him and
13 say, what is it you're going to pay? When there's
14 no agreement or anything discussed on price or
15 anything, I'm not one to go in there and just do
16 it.

17 Q. Don't you think it would be equally
18 stupid of Mr. Payton --

19 A. It's been done because --

20 Q. Don't you think it would be equally
21 stupid of Mr. Payton just to allow some workmen to
22 come on the job and give them a blank check?

23 A. And give them a blank check?

24 Q. Yes.

25 A. Well, yes. Mr. Payton and Craghead

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22 come on the job and give them a blank check?

23 A. And give them a blank check?

24 Q. Yes.

25 A. Well, yes. Mr. Payton and Craghead

1 Q. You're on the job because you're
2 working for Mower?

3 A. Right.

4 Q. Okay. Irrespective of that fact, that
5 you have no contract directly with Mr. Payton,
6 you're telling me he gave you permission to do the
7 extra work?

8 A. Yes, because the extra work is what he
9 pays for.

10 Q. You asked and --

11 A. What he pays for.

12 Q. -- answered that, sir.

13 A. Because Mr. --

14 Q. Sir, a yes can answer that. That's all
15 the question that I asked.

16 A. Okay, repeat it again.

17 MR. CHAMBERS: Would you read back the
18 question.

19 (Record read)

20 A. No, I don't have a contract with
21 Mr. Payton to do the extra work. It's just oral.

22 MR. CHAMBERS: (Resuming)

23 Q. Okay. Who was present when Mr. Payton
24 gave you permission to do the extra work?

25 A. Sometimes Jim would be or Tom. A lot

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24 gave you permission to do the extra work?

25 A. Sometimes Jim would be or Tom. A lot

1 A. Yes. That's within the first month,
2 within the first couple of weeks.

3 Q. Okay.

4 A. The first day I started into this.

5 Q. After you received payment on your
6 first invoice, it's your testimony that
7 Mr. Craghead did not tell you that you no longer
8 had any permission to do any further extra work?

9 A. He did not tell me.

10 Q. Okay. And were you paid in full for
11 your first invoice on the job?

12 MS. FALK: Do you mean did Mike pay him
13 for the first invoice in full? What you mean by in
14 full?

15 MR. CHAMBERS: (Resuming)

16 Q. I'm hesitant to clarify that because
17 there is one instance that I'm aware that a payment
18 went directly from Payton to you, Mr. Bennett.

19 A. Okay, on the first invoice?

20 Q. Yes.

21 A. Yes, I was paid in full. I've got my
22 checks here.

23 Q. What's the total on that invoice?

24 A. Which one?

25 Q. I assume the first invoice is invoice

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2 within the first couple of weeks.

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22 checks here.

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1 A. Yes.

2 Q. And the radius under 12 inches?

3 A. Yes.

4 Q. Are those workmen's compensation

5 numbers or insurance numbers on there, below that,

6 do they have anything to do with you?

7 A. No, these are Mike's numbers.

8 Q. Do you know that those are Mike's

9 numbers?

10 A. I have no idea. I assume they are. I

11 assume they are.

12 Q. They are not your numbers?

13 A. No, they're not my numbers.

14 Q. And you earlier indicated that if you

15 were going to do the Craghead job, you would do it

16 for more than on an -- I believe what you said your

17 answer was you would do it on a time and materials

18 basis?

19 A. I would have. That's my own opinion.

20 Q. On a construction project such as

21 Mr. Craghead, is there a percentage of waste on

22 board that you could expect on a job?

23 A. Yes.

24 Q. What would be the range of that waste?

25 A. It varies. It depends on how cut up

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5 numbers or insurance numbers on there, below that,
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25 A. It varies. It depends on how cut up

1 hang and finish at 21 cents a square foot?

2 A. Just finish.

3 Q. Okay, to finish. I appreciate that.

4 And to finish the lineal bead at a dollar a lineal
5 foot?

6 A. Yes.

7 Q. It did not include any aspect of
8 materials, all the materials were to be provided by
9 Mr. Mower?

10 A. Yes.

11 Q. And originally, there was no provision
12 in your agreement with Mr. Mower if you had to do
13 extra work, originally?

14 A. Originally?

15 Q. Yes.

16 A. No. Can you repeat that again? I feel
17 uncomfortable with that.

18 (Record read)

19 A. Originally there was no agreement to do
20 extra work, that's what you asked, okay?

21 Q. Yes.

22 A. No, there wasn't.

23 Q. Now, we were talking about an instance
24 where Mr. Craghead, in his living room, and I
25 believe you indicated that you were the only one

1 hang and finish at 21 cents a square foot?

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22 A. No, there wasn't.

23 Q. Now, we were talking about an instance
24 where Mr. Craghead, in his living room, and I
25 believe you indicated that you were the only one

1 me \$300 cash as a down payment to get going on the
2 job. And when I talked to him about the draw, I
3 didn't get him an invoice until that date. That's
4 why I've only got a copy of a \$3,000 check with
5 Mike on 4/10, he gave me \$300.

6 Q. Okay. Which had that invoice paid in
7 full?

8 A. Yes.

9 Q. Now, this conversation with
10 Mr. Craghead with regards to the extra work, did it
11 occur before or after the work represented on
12 invoice 0870090?

13 A. Did it occur before it?

14 Q. Or after?

15 A. Oh, I started -- it was within the
16 first couple of weeks I was running into the
17 problem, and that's when I approached him at that
18 time. And Mike said that he would turn in an
19 invoice for a certain amount. I asked Mike for a
20 certain amount, and I'm running into all these
21 problems and everything, and that's when I got this
22 invoice to him. The problems arise before --
23 within actually the first day I walked on the job
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1 cost.

2 Q. Okay. But you said when you left these
3 other jobs, you took this inventory, these items
4 represented by the inventory, as payment in lieu of
5 cash for those jobs?

6 A. In lieu of cash? No, it was on top of
7 -- it's more on, because Mike would have had to
8 put this out to do this job anyway. I just already
9 had it on hand and if Mike couldn't get up there I
10 went ahead and brought what I had. If Mike
11 couldn't get up there soon I brought what was up
12 there to relieve the pressure off Mike.

13 Q. Let me try and clarify it because
14 you've got me confused and I'm really trying to
15 understand this.

16 I've heard of situations where -- let's
17 say that I'm a brick layer and I know that I'm
18 going to need X number of bricks, and I get my best
19 estimate, but that I end up with, let's say, 50
20 extra bricks.

21 A. Uh-huh.

22 Q. The owner of the job pays for all the
23 bricks but I took the 50 bricks home. And I bring
24 them onto the next job and I charge someone for
25 them. Underneath my scenario, the owner of the

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1 Q. I'd like to show you what's been marked
2 as Deposition Exhibit No. 2.
3 (Exhibit 2 marked)

4 Q. This is an exhibit that consists of
5 four pages and I'd like you to take a look at Page
6 No. 2. First off, do you recognize this particular
7 document?

8 A. Uh-huh, yes.

9 Q. Susan Noyce was your attorney back in
10 September of 1992?

11 A. Yes.

12 Q. Did she prepare this notice of lien on
13 your behalf?

14 A. Yes.

15 Q. In there you've asked for a lien of
16 \$13,135.77. And I was wondering if you could break
17 down that figure and explain it to me.

18 A. Well, on P 071 the total comes up to
19 \$12,685.77. There was another invoice that was
20 turned in to Mike at the end, after this was turned
21 in, because I was still doing a little bit there
22 that things were behind. And I was always told I
23 had to do everything complete to get paid so I made
24 sure everything was done.

25 Q. Do you have a copy of that invoice with

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22 that things were behind. And I was always told I
23 had to do everything complete to get paid so I made
24 sure everything was done.

25 Q. Do you have a copy of that invoice with

1 It's by your left-hand corner there, your elbow.
2 Aspen Construction and Mr. Mower have entered into
3 their contract; right?

4 A. Yeah.

5 Q. And down there in the left-hand corner,
6 in the fine print, that document says -- on that
7 document it says, "Any alteration or deviation from
8 the above specifications involving extra costs will
9 be executed only upon written orders and will
10 become an extra charge over and above the
11 estimates."

12 A. What are you asking me this for,
13 because this has nothing to do with me? I didn't
14 sign this. I don't know this stuff. This is the
15 first time I've even seen this document.

16 Q. I understand.

17 A. I think this is irreverent (sic) with
18 the line of question of what we're going over.

19 Q. I guess my point is this, Mr. Bennett.
20 Your original agreement was for 21 cents and
21 Mr. Mower's agreement was --

22 A. Yes, I've seen that.

23 Q. There's a markup involved in there that
24 obviously --

25 A. That's his bid. This is Mike's and my

1 It's by your left-hand corner there, your elbow.
2 Aspen Construction and Mr. Mower have entered into
3 their contract; right?

4 A. Yeah.

5 Q. And down there in the left-hand corner,
6 in the fine print, that document says -- on that
7 document it says, "Any alteration or deviation from
8 the above specifications involving extra costs will
9 be executed only upon written orders and will
10 become an extra charge over and above the
11 estimates."

12 A. What are you asking me this for,
13 because this has nothing to do with me? I didn't
14 sign this. I don't know this stuff. This is the
15 first time I've even seen this document.

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1 think that's incentive to just do the extra work?

2 A. Say that again.

3 Q. I said when your normal contract
4 agreement was 21 cents a square foot, don't you
5 think that charging \$30 an hour for the extras is
6 plenty incentive to just continue to do extra work
7 without having any --

8 A. It was only done so I could carry on my
9 contract because -- my verbal contract with Mike.
10 If there's anything out of the ordinary, I did go
11 to the proper people to let them know what was
12 going on. I don't just go out of the blue and say
13 this is what's going to happen. I asked them to
14 discuss it and get the okay.

15 Q. And as I've indicated to you,
16 Mr. Payton and Mr. Craghead and Mr. Thornton have
17 all indicated to me that they made it perfectly
18 clear to you after the first invoice was submitted
19 that no further extra work was authorized.

20 MS. FALK: Is that a question?

21 MR. CHAMBERS: (Resuming)

22 Q. The question I have is: Do you know of
23 any reason why all three of them would be
24 testifying to that effect?

25 A. Oh, I can give plenty of reasons but

1 think that's incentive to just do the extra work?

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23 any reason why all three of them would be
24 testifying to that effect?

25 A. Oh, I can give plenty of reasons but

1 Aspen's responsibility?

2 A. No, he never indicated it's not Aspen's
3 because -- I gave you my answer.

4 Q. What's that?

5 A. I gave you my answer.

6 Q. If your agreement with Mr. Mower did
7 not include a provision for you to provide
8 materials but he was, why do you feel it's proper
9 to go ahead and claim a lien after that?

10 A. Because I supplied it on the job to do
11 the work. I took pressure off Mike to help Mike.
12 Whatever I could do to help him, too. If he
13 couldn't get it up there on time, I need the
14 materials to keep going. If I had it right there
15 at my house, I might as well take it with me so I
16 can keep going so he can get more materials up
17 there throughout the process of the job.

18 Q. Do you see any provision for materials
19 on Exhibit 1?

20 A. No.

21 Q. Would you assume that the materials
22 aspect of that are incorporated in the bid, then?

23 A. Would I assume?

24 Q. Yes.

25 A. Yes.

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1 Q. Yes. I mean --

2 MS. FALK: He's already testified he
3 didn't have a written contract.

4 MR. CHAMBERS: If you want to put an
5 objection on the record, Counselor, go ahead.

6 MS. FALK: I object to the question
7 because he's already testified that his contract
8 was oral and not written.

9 MR. CHAMBERS: (Resuming)

10 Q. And what my question to you is: What
11 value is a written contract if you're just going to
12 ignore the thing and then come up and supply
13 whatever invoices you feel are reasonable with
14 respect to that job?

15 A. This gives a basis. Things change
16 during job process, contracts do change.

17 Q. That's right. And that contract,
18 Exhibit No. 1, envisions that changes that do occur
19 will be by a written order; right?

20 A. Well, I don't know. I mean, this is
21 between Craghead and Mike.

22 Q. That's right. But your relationship
23 with Craghead and Aspen Construction comes as a
24 result of Mower contracting with them; right?

25 A. Any dealings I had with Craghead and

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21 between Craghead and Mike.

22 Q. That's right. But your relationship
23 with Craghead and Aspen Construction comes as a
24 result of Mower contracting with them; right?

25 A. Any dealings I had with Craghead and

1 with Mr. Craghead or Mr. Payton, or both,
2 indicating where it took place and what was exactly
3 said.

4 A. All these conversations were anywhere
5 in throughout the house, wherever they were or if I
6 had to chase them down, it's anywhere in that
7 house. Even out in the pool area we had
8 conversations.

9 Q. Have you got any record of those
10 conversations?

11 A. I didn't write these down, no.

12 Q. So in your day planner or anything?

13 A. A record is an agreeance (sic) of what
14 we came up with. That's why this stuff was done.
15 That is my record. I just don't go and do it.
16 They gave the okay, that's why it was done. That's
17 my record here.

18 Q. And when was that record created?

19 A. Throughout the job process. They knew
20 everything that was going on; Mike did, everybody
21 did.

22 Q. Prior to filing your mechanic's lien,
23 did you have any conversations with Mr. Mower?

24 A. I told him I needed to do that to
25 protect my interest, get paid.

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2 Q. Have you seen Mr. Mower's lien?

3 A. No, I haven't seen his lien. I don't
4 remember seeing it. I mean, this is going on for
5 two years now.

6 (Exhibit 3 marked)

7 Q. I'd like to show you what's been marked
8 as Deposition Exhibit No. 3. On the top of it it
9 has a claim for a notice of a lien.

10 A. Okay, it is notice of lien.

11 Q. Are you familiar with Mr. Mower's
12 signature?

13 A. Not to say yes or no on that.

14 Q. You have received payments from him in
15 the past, though?

16 A. Well, yes, I've received payment from
17 him.

18 Q. Does that appear to be his signature?

19 A. Yes, it is.

20 Q. On there it claims a lien of some
21 \$13,515.

22 A. Okay.

23 Q. Do you know whether or not that sum
24 includes the amount represented by your lien?

25 A. 13,500, what was mine? Mine's 13,100.

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2 for each item requested," unquote.

3 A. If that's what the lawyer at the time
4 put down, except he put down 25 cents instead of 26
5 cents.

6 Q. Well, it may not seem like it's a big
7 difference --

8 A. There's five cents more than
9 Mr. Craghead gave the okay on to get the full
10 finish that he wanted, because there's extra work
11 that needed to be provided.

12 Q. It may not seem like a big difference,
13 but I'm trying to find out, in one answer you say
14 25 cents, orally you told me 26 cents.

15 A. No, it's 26 cents. That's his mistake,
16 too. Okay? I'm finding --

17 Q. Did you have an opportunity to sign
18 your interrogatories on September 17, 1993?

19 A. To sign them?

20 Q. Yes.

21 A. Yeah, I signed them.

22 Q. And did you appear before a notary
23 public by the name of J. Jeri Crook, J E R I,
24 Crook?

25 A. If they're in the office. I don't

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1 Q. When exactly -- let me back that up.

2 You claim that Mr. Craghead authorized
3 the price to be increased by five cents a square
4 foot. Who was present when this authorization took
5 place?

6 A. I don't remember. All I can picture is
7 just me talking to Mr. Craghead, and I remember him
8 talking -- I remember talking to Payton, too.
9 Mr. Craghead gave the okay that he would pay that
10 and I know that Mr. Payton was around and present
11 and it was talked over with him also. I even
12 talked to Tom, also. But Mr. Craghead gave me the
13 okay.

14 Q. When did this conversation allegedly
15 take place?

16 A. I don't know the date or anything.
17 When it came to that point where it needed to be
18 done, the textures needed to be decided on and all
19 this stuff.

20 Q. What I find improbable about your
21 supposition that Mr. Craghead had authorized an
22 additional five cents is that his relationship,
23 Mr. Bennett, was with Mr. Mower throughout the
24 construction and they'd already cut a deal for
25 that. Why would he come to you and authorize five

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24 construction and they'd already cut a deal for
25 that. Why would he come to you and authorize five

1 Q. So I assume from your answer, Mr. Mower
2 was not present at this time?

3 A. When Mr. Craghead gave me the okay?

4 Q. When you say Mr. Craghead --

5 A. He probably wasn't there. I just
6 remember and picture Mr. Craghead sitting there. I
7 went through the explaining process and he checked
8 it out. I know my profession.

9 Q. I assume from your answer that
10 Mr. Mower was not present at that time?

11 A. Probably not. I don't know. I don't
12 know if they discussed it later on and got the okay
13 or if Mr. Craghead checked that with Mike or if
14 Mike talked to them. I don't know their
15 conversations. Ask me about me.

16 Q. I am asking you about you,
17 Mr. Bennett. I was asking if Mr. Mower was present
18 at that time when you had that conversation with
19 Mr. Craghead that you claim you had.

20 A. And I don't know. I don't remember.
21 All I can picture is my dealings with
22 Mr. Craghead. Mike probably wasn't up there at
23 that date. But later on, probably so.

24 Q. I understand. Do you have any document
25 that corroborates your testimony that there was a

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23 that date. But later on, probably so.

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25 that corroborates your testimony that there was a

1 there?

2 A. Exactly, I went to the money owner, the
3 guy that pays the bills.

4 Q. Why would you do that? Why wouldn't
5 you go to Mr. Mower?

6 A. I did go to Mike. Mike knew every
7 conversation that I had, all my complaints, all my
8 frustrations, everything. Mike got an earful from
9 me.

10 Q. That's my point, exactly.

11 A. Same as everybody else.

12 Q. Why would you go -- why wouldn't you go
13 and get a document, even just a letter from
14 Mr. Mower saying, that's right, the price has been
15 increased by five cents?

16 A. Because I trusted Mr. Mower, just like
17 I did Mr. Craghead and Mr. Payton, because Mike and
18 I -- he said that he would pay me and I believed
19 him. If I was doing what Mike was doing, my
20 dealings are written contracts. But these are
21 extras, I'm just doing labor stuff so he can get
22 done. He had the best finisher in this valley up
23 there.

24 Q. As part of this lawsuit you've gone
25 ahead and sued Mr. Mower. Do you have any other

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5 appear in court on the 31st. I'm without a lawyer
6 now. I am flat ass broke because I keep going
7 through dealings like this.

8 MR. CHAMBERS: Let's go off the
9 record.

10 (Off the record)

11 MR. CHAMBERS: Let's go back on the
12 record.

13 MR. CHAMBERS: (Resuming)

14 Q. This minute entry that Ms. Falk says
15 was issued, I have not gotten it. We're
16 traditionally a day or so later in the mail, being
17 up in Logan, than Salt Lake or Ogden.

18 A. Okay.

19 Q. So with regards to the fact that the
20 lawsuit is dismissed, as you say, I'm unaware of
21 that. Assuming it had not been dismissed and it
22 still exists, what was the basis for your claim
23 against Mr. Mower?

24 A. Against Mr. Mower, because I wasn't
25 being paid. He had me included on that, same as

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25 being paid. He had me included on that, same as

1 A. I didn't.

2 Q. Did she have any discussion with you
3 about whether or not there were down sides to
4 mechanic's liens as well?

5 A. I don't remember.

6 Q. Are you aware that Mr. Craghead claimed
7 that during the process the beams on his home were
8 damaged?

9 A. What?

10 MR. CHAMBERS: Read back the question,
11 will you?

12 (Record read)

13 A. No.

14 MR. CHAMBERS: (Resuming)

15 Q. In the Request for Admissions that I
16 had served on you, request No. 6 states, "Please
17 admit that Mr. Lynn Payton or his foreman
18 instructed you to cover and protect the beam
19 work."

20 A. And that was done.

21 Q. Let me finish, please. I apologize.
22 And in response to that you indicate,
23 "Admit."

24 The question I have for you is that
25 it's my understanding that either you or Mr. Mower

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21 Q. Let me finish, please. I apologize.
22 And in response to that you indicate,
23 "Admit."

24 The question I have for you is that
25 it's my understanding that either you or Mr. Mower

1 things, too. Who actually did it? Ask a question
2 that pertains to me, please.

3 Q. I'm trying to. I really am,
4 Mr. Bennett.

5 A. Because I have no idea. There's a
6 number of other trades in there.

7 Q. A number of other trades that are
8 cutting sheetrock?

9 A. Working around the beams and all this
10 other stuff. Your question was if I damaged them.
11 No, I did not.

12 Q. No, it wasn't. The question I asked
13 was: Whose responsibility is it, if they're
14 cutting the sheetrock, and the person that's
15 measuring it to cut it is marking the dimensions of
16 it on the beam?

17 A. You know, the carpenters were doing
18 some patch work in there, too. If I couldn't do it
19 then they would do it also. But I didn't write
20 down what they did. And they're adding onto the
21 beams and all this other stuff, adding new beams.
22 Not all the beams had finish work on them, finish
23 paint.

24 Q. At 21 cents a square foot, what do you
25 anticipate your average hourly rate would be?

1 A. I have no idea. I don't know until I
2 get done with the job, as with any job, that's why
3 I keep my own personal hours on it. It doesn't
4 matter. That's irrelevant.

5 Q. What do tapers --

6 A. It doesn't matter to you. Why should
7 it matter to you whether I make \$5 or \$10? That's
8 up to me.

9 Q. Are you implying by your answer that
10 you know it but you're not giving me a response?

11 A. No, I told you that I don't know until
12 the end of the job. You asked me what, doing that
13 job, should I be making? I know what I would like
14 to make.

15 MS. FALK: Can we go off the record for
16 a second here?

17 MR. CHAMBERS: Sure.

18 (Off the record)

19 MR. CHAMBERS: (Resuming)

20 Q. Do you know what a taper finisher
21 usually gets as a reasonable rate in the Salt Lake
22 construction community?

23 A. A journeyman, 12 to 13 an hour.

24 Q. Would you classify yourself as above a
25 journeyman or as a journeyman?

1 A. Above.

2 Q. And is there a classification for that?

3 A. Well, I have no idea. I know what my
4 worth is.

5 Q. I'm not familiar with the trades. I
6 mean, in the plumbing --

7 A. I know what my worth is.

8 Q. Okay. What do you consider your worth
9 to be per hour?

10 A. \$20 on up, on average, and \$30.

11 Q. What type of work is worth \$20 an hour?

12 A. What type of work?

13 Q. Yes, you say 20 on up.

14 A. Well, that's with my training;
15 sheetrock, drywall installation and finish.

16 Q. Okay. And anything other than
17 sheetrock, \$30 an hour is what you figure your time
18 is worth or that you're worth?

19 A. In that \$30 an hour there's a lot more
20 than that. Yes.

21 Q. Do you know what -- taking a look at P
22 70, what carpenters would normally be paid an hour?

23 A. I have no idea. My concern isn't what
24 they make, sir. I don't care what they make. I
25 know what I make and what I have made and what my

1 capabilities are.

2 Q. So to you it's irrelevant if carpenters
3 are paid 8 to 12 dollars an hour?

4 A. I have no idea. I don't know about
5 carpenters. I know what I would probably be paid,
6 I don't know what the going rate is or anything or
7 what's reasonable.

8 Q. That's not what I asked. What I said
9 is, to you it's irrelevant, to your case, whether
10 or not carpenters would get paid 8 to 12 dollars an
11 hour?

12 A. It is irrevelent -- irrelevant to me.

13 Q. And so even though a carpenter would
14 get paid, let's even assume \$15 an hour, you think
15 it's more reasonable, rather than to go get the
16 foreman on the job and have him do that, for you to
17 do ahead and act as carpenter and do the finish
18 work?

19 A. You're asking the same question again
20 because I stated earlier that I've only done
21 sheetrock and whatever had to do with sheetrock or
22 finishing. I did not do any carpentry work or
23 anything else.

24 Q. I apologize, because that's what I had
25 assumed that that meant.

1 A. No, it doesn't mean that, sir. That's
2 just differentiating between what the nailing that
3 should have been done or finishing in comparison to
4 what carpenters, which represents Aspen
5 Construction. And then they take it, whoever trade
6 ends up doing that, whatever had to be done.

7 Q. On P 16, invoice No. 5802, you have
8 charged Mr. Mower for cleaning of the beams
9 throughout the house.

10 A. Yes, I went ahead and cleaned it.

11 Q. Are there three individuals there?

12 A. Yes.

13 Q. I assume that those are two of your
14 sons?

15 A. Uh-huh.

16 Q. And the other's a friend of the boys,
17 your sons?

18 A. Yes.

19 Q. And they spent 18 hours apiece?

20 A. Uh-huh.

21 Q. What process did they employ to clean
22 the beams?

23 A. We used water and scrub brushes.

24 Q. During the process of the scrub
25 brushes, you maintain you did not remove the

1 finish?

2 A. Not remove the finish?

3 Q. Yes.

4 A. You scratch it if a finish gets
5 removed. If you ding it, it gets removed. I will
6 not take responsibility of that.

7 MS. FALK: That's not what he asked,
8 Martin. Did part of the finish come off --

9 THE WITNESS: Yes, part of the finish
10 came off.

11 MR. CHAMBERS: (Resuming)

12 Q. Okay. What was on the beams that
13 needed to be removed?

14 A. There was dirt from all the other
15 trades, the floor ran in there and sheetrock dust,
16 everybody's dust and dirt was on those beams.

17 Q. Okay.

18 A. You asked me and I told you.

19 Q. I know, but dust seems to be something
20 that could be removed by just simply washing it
21 down.

22 A. No, it doesn't. These beams were
23 extra, extra rough and the water needed to be used
24 to -- you can't just brush this off. The masking,
25 that's why masking wouldn't even adhere to it and

1 the paper would fall off, so I just used masking
2 tape. I had to put that on and then use any
3 perfa-tape to hold the masking on. These are
4 really rough, rough beams. You rub your hand
5 across them, you're going to be torn up.

6 MS. FALK: Okay.

7 MR. CHAMBERS: (Resuming)

8 Q. Do you intend to appeal the Court's
9 dismissal of that claim?

10 A. Pardon?

11 Q. This minute entry that was entered that
12 I haven't seen, that, from what I can gather,
13 dismisses the case, do you intend to take on --

14 A. I couldn't pursue it. I had no
15 representation, I can't afford one. All my efforts
16 have gone to shit right from the word go.

17 MR. CHAMBERS: That's all I have.

18 MS. FALK: I have some follow-up
19 questions.

20

21 EXAMINATION

22 BY MS. FALK:

23 Q. Marty, you said that you measured the
24 house yourself and came up with a larger square
25 footage than Mower had thought. Is that correct?

1 A. Yes.

2 Q. And your measurements include waste
3 material supplies; right?

4 A. Yes.

5 Q. Okay. These were materials from your
6 stock; right?

7 A. The materials that I brought in, yes.

8 Q. Okay. And is the reason you supplied
9 those materials to save time?

10 A. Yes.

11 Q. Okay.

12 A. Yes, so I could keep working.

13 Q. Have you ever had a license for a
14 contractor?

15 A. Years ago, yes.

16 Q. Do you have a federal ID number?

17 A. I have a federal ID number and state
18 tax.

19 Q. And a state tax number?

20 A. And a state tax number. Job Service I
21 don't have any more because I don't have any
22 employees.

23 Q. That's okay, I didn't ask about that.
24 Other than the plaster work, what other
25 extra work did you do?

55

1 A. Besides plaster work, you mean taping?

2 Q. Yes.

3 A. Is just basically nailing sheetrock.

4 Q. And nailing sheetrock?

5 A. Yes, whatever I had to do to carry on

6 my work.

7 Q. Were many of those changes due to

8 changes in the plans for the house?

9 A. Yes, or other subs' mistakes.

10 Q. What's pickup work? Is that a term in

11 the trade?

12 A. It's like if a piece of sheetrock is

13 left on, something can't be finished or it has to

14 be finished at a later date. Or pickup work could

15 be that dings and everything that end up happening

16 from the subs, they go back in and fix them, pick

17 them up.

18 Q. So is your testimony that a lot of your

19 extra work was work that had to be incurred after

20 others had done their work?

21 A. After they had done their work, yes.

22 Q. And that was much of this work caused

23 by other subcontractor's mistakes?

24 A. Yes.

25 Q. When you kept track of your extras, did

1 you always inform someone of the work that needed
2 to be done?

3 A. Yes, always.

4 Q. Turning to your exhibit, No. P 0072,
5 does this show who you talked to or who was
6 responsible for an extra?

7 A. Basically who I thought was
8 responsible.

9 Q. For the problem?

10 A. For the problem.

11 Q. For example, here you have on the top
12 of P 0072, master bath, small closet door,
13 perimeter nailed off. And then there's a C and a
14 change.

15 A. Yes, because it used to be an N and
16 until I found out why the nailers couldn't do that.

17 Q. What does C mean?

18 A. For carpenter, for Aspen Construction.

19 Q. For Aspen Construction?

20 A. Yes.

21 Q. And let's go down to the middle of the
22 page, north and lower level bath hung --

23 A. Header.

24 Q. -- header inside closet.

25 A. Uh-huh.

1 Q. And then an N.

2 A. The nailers missed that.

3 Q. So what does that mean?

4 A. The nailers -- okay, they said the room
5 was complete but it wasn't. They left loose ends.

6 Q. So the room was not complete?

7 A. Right.

8 Q. And so in order for that to be
9 complete, what had to be done?

10 A. I had to cut the sheetrock and nail it.

11 Q. You cut the sheetrock and you nailed
12 the sheetrock?

13 A. Yes.

14 Q. Did you get permission to do that?

15 A. With all loose ends, yes.

16 Q. Who gave you that permission?

17 A. Mike did.

18 Q. Mike gave you permission?

19 A. He said if I could not get the nailers
20 to do it, that they won't do it, and eventually
21 they were off the job.

22 Q. Did you try to get the nailers to do
23 it?

24 A. Oh, yes. There at the first of the job
25 I'd go down and grab them, this needs to be done,

1 this needs to be done.

2 Q. So at the beginning of the job, did the
3 nailers do all of the work?

4 A. Not all of it.

5 Q. What work didn't they do --

6 A. I don't know.

7 Q. -- that they were responsible for?

8 A. That's why I've got the N on there.

9 Either the nailers were supposed to do it or --

10 Q. Why wouldn't they do it at the start?
11 On what occasion would they not go ahead and nail
12 it after you had shown them what needed to be done
13 or directed Thornton what needed to be done?

14 A. (Witness mumbled something which
15 reporter didn't hear. Reporter asked
16 him to repeat it, which he declined to
17 do.)

18 Q. That's not --

19 MR. CHAMBERS: I want that on the
20 record.

21 A. They didn't have time.

22 MR. CHAMBERS: I want that on the
23 record.

24 A. I did.

25 MS. FALK: (Resuming)

1 Q. They didn't have time or what?

2 A. They either didn't have time or they
3 just wouldn't -- well, basically they wouldn't end
4 up making the time.

5 Q. They wouldn't end up making the time.
6 So the changes that you did and the extra work were
7 all things that needed to be done; is that correct?

8 A. Yes.

9 Q. Yes or no?

10 A. Yes, they needed to be done.

11 Q. Okay. Thank you.

12 My next question, did you let the
13 appropriate people know whether an extra was a
14 sheetrock problem?

15 A. If it was sheetrock problem?

16 Q. Right, or whether it was caused by
17 someone else?

18 A. Yes.

19 Q. Okay. Thank you.

20 Did you go from room to room when you
21 did work?

22 A. Yes.

23 Q. And why was that? Was that to
24 accommodate the general contractor?

25 A. A lot of rooms were incomplete. I

1 could only do partial or I'd have to leave things
2 behind.

3 Q. And was that to -- was the reason for
4 that to accommodate Mr. Payton, the general
5 contractor?

6 A. Yes.

7 Q. At one time in your testimony,
8 Mr. Chambers asked if Mr. Payton gave you a blank
9 check to do everything. Do you recall that?

10 A. I remember something about that, yes.

11 Q. Did Mower know of all of the extra work
12 you did?

13 A. Mike knew of everything that was going
14 on in that job.

15 Q. Mike knew everything that was going
16 on?

17 A. Uh-huh.

18 Q. Did you tell him everything?

19 A. Uh-huh.

20 Q. Did Payton and Craghead know what you
21 were doing?

22 A. Yes, they did.

23 Q. Did they authorize it?

24 A. Yes, they did.

25 Q. If you didn't do that work, would

1 someone else have had to have done it?

2 A. Someone else would have had to.

3 Q. Okay. Have you charged \$30 an hour on
4 other jobs?

5 A. Yes, I have.

6 Q. Do you have records of other jobs in
7 which you've charged \$30 an hour?

8 A. Yes, I do.

9 Q. Have you produced those to
10 Mr. Chambers?

11 A. I don't know if you've got records on
12 that.

13 MR. CHAMBERS: We have not.

14 A. I think we have.

15 MS. FALK: (Resuming)

16 Q. Did you give them to your former
17 attorney?

18 A. My former attorney, yes.

19 Q. Okay. I'm referring to invoice number
20 0070091. It's Page P 0006. Is it possible that
21 the date, 4/8/92, could be a mistake and that it's
22 5/8/92, being May 8, '92?

23 A. Yes, because that's a long time, that's
24 over a month.

25 Q. Is your answer yes?

1 A. Yes.

2 MS. FALK: That's all I have. Thank
3 you.

4
5 FURTHER EXAMINATION

6 BY MR. CHAMBERS:

7 Q. Mr. Bennett, go to P 5, if you would,
8 on the invoice 0870090. Down at the bottom of that
9 page it says, "N/C Mike laid one quarter inch from
10 wall to floor." What does that mean?

11 A. This first part of the job the
12 sheetrock laying up against the wall was for me to
13 finish and I went ahead and laid it down. I asked
14 Mike to do it and he couldn't do it.

15 Q. What does the N/C mean?

16 A. No charge.

17 Q. So that's included in part of your
18 regular contract?

19 A. Huh?

20 Q. That was included in your understanding
21 of what your contract --

22 A. I just went ahead and did it. I wrote
23 down everything that I did. This is one of them
24 and I wrote N C, no charge.

25 Q. All I'm trying to do is find out if you

1 considered that an extra, if you weren't charging
2 for it or whether it was part of your original
3 contract and you're not charging for it?

4 A. No, I kept track of everything I did.

5 Q. Which was it? I'm not going to guess.

6 A. No charge. Just what it says, no
7 charge.

8 Q. But it was an extra to the contract you
9 had with Mr. Mower?

10 A. It still doesn't --

11 MS. FALK: Do you understand the
12 question?

13 THE WITNESS: No.

14 MS. FALK: Maybe you ought to clarify.
15 I don't know what you're asking him.

16 A. I don't know what you're getting at.

17 MR. CHAMBERS: (Resuming)

18 Q. You had a contract with Mr. Mower, oral
19 contract --

20 A. Yes.

21 Q. -- to finish the sheetrock --

22 A. Yes.

23 Q. -- at 21 cents a square foot.

24 A. Uh-huh.

25 Q. Does laying one-quarter inch from wall

1 to floor constitute part of that?

2 A. That's just something I ended up
3 doing. There's also other things that I did on
4 that whole job that -- I mean, what do I do when I
5 have to move other subs' items so I can work? No
6 charge, it's just --

7 Q. Okay. Next item down, \$30 and scraped,
8 and I can't --

9 A. Scrapped.

10 Q. Scrapped, what's the next --

11 A. Sheetrock.

12 Q. Sheetrock on May 4 and swept floor?

13 A. Yes.

14 Q. That's basically cleanup work?

15 A. Yeah, that I had to do so I can
16 progress.

17 Q. The next item, \$30 C cleaned and swept
18 all house of all, and I can't make --

19 A. Subs, cleaned and swept house of all
20 subs.

21 Q. Scrapped --

22 A. I couldn't even hardly get around. I
23 had to do it so I could get my work done.

24 Q. Okay. On those two items, why couldn't
25 you have just gone and got the foreman and had him

1 tell them --

2 A. I did, it wasn't being done. After
3 that, it was done.

4 Q. Say it again, I'm sorry.

5 A. I did and it wasn't being done. So
6 finally I had to do it. After I did this and
7 complained and all this stuff, then throughout the
8 rest of the job it was done. This is the first
9 part of the job when I'm there.

10 Q. Now, you indicated in part of your
11 answer, which the court reporter didn't hear to a
12 previous question that Ms. Falk asked, that, quote,
13 "Mike had some jerks there on the job," unquote.

14 A. With every trade there is, that we all
15 end up having to deal with.

16 Q. Basically, these were people that were
17 not responsible?

18 A. I didn't say that.

19 Q. What would you define as qualities that
20 these people had that made them jerks, then?

21 A. A lot of it could be attitude, a lot of
22 it could be language, a lot of it could be just the
23 personality.

24 Q. But you --

25 A. It doesn't mean that they were

1 incompetent workers.

2 Q. You were answering her question with
3 regard to quality of work at the time, weren't
4 you?

5 A. That's what you assume because I think
6 different of everybody in here how we perceive each
7 other. That's my own opinion.

8 Q. Okay.

9 A. They weren't incompetent.

10 Q. Obviously there was a lot of work that
11 you had to go back and do for other people,
12 though.

13 A. Well then, you say that, that goes with
14 all subs. Why was the framing done wrong? Why
15 weren't the carpenters responsible enough to put in
16 straight framing? I just don't know.

17 MR. CHAMBERS: Okay, that's all.

18 MS. FALK: I have one further
19 question.

20

21 FURTHER EXAMINATION

22 BY MS. FALK:

23 Q. Marty, when you told me that some
24 people were jerks, did that mean you just didn't
25 like those people?

1 A. Yeah, I don't get along with everybody.

2 Q. Okay. Thank you. Okay.

3 (Concluded at 12:15 p.m.)

4

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CERTIFICATE OF DEPONENT

I, MICHAEL J. BENNETT, deponent herein,
do hereby certify and declare the within and
foregoing transcription to be my deposition in said
action taken on April 5, 1994; that I have read,
corrected and do hereby affix my signature to said
deposition.

DATED this _____ day of _____,
1994.

Deponent

STATE OF UTAH

)
) ss.
)

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 1994.

Notary Public residing in

REPORTER CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, DEANNA M. CHANDLER, a Notary Public
in and for the State of Utah, do hereby certify:

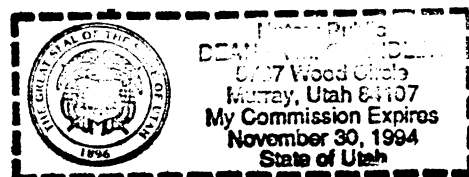
That prior to being examined, the
witness had previously been duly sworn to tell the
truth, the whole truth, and nothing but the truth;

That said deposition was taken down by
me in shorthand at the place therein named and
thereafter reduced to transcription under my
direction.

I further certify that I am not of kin
or otherwise associated with any of the parties to
said cause of action and that I am not interested
in the outcome thereof.

WITNESS MY HAND AND SEAL this 8th day
of April, 1994.

Deanna Chandler
DEANNA M. CHANDLER



MICHAEL A MOWER CONSTRUCTION
7674 SO 2700 W
WEST JORDAN, UTAH
84084 255-4532

Proposal No.

Sheet No.

Date
FEB 24, 1992

Proposal Submitted To	Work To Be Performed At
Name <u>ASPEN CONSTRUCTION</u>	Street <u>3899 E. PARKVIEW</u>
Street <u>2257 SO 1100 E</u>	City <u>SALT LAKE</u> State <u>UTAH</u>
City <u>SALT LAKE</u>	Date of Plans _____
State <u>UTAH</u>	Architect _____
Telephone Number <u>364-5842 P-4821503</u>	

We hereby propose to furnish the materials and perform the labor necessary for the completion of DRYWALL

6.70 per sq. ft. to hang & finish for paint
1.00 per lin. ft. for bull nose corner bead
7.50 per lin. ft. for radius under 12"

WORKERS COMP # M07146
INSURANCE W/ FULL SERVICE INS.
CONTRACTOR LIC # 409780
FED I.D. # 78-0478709

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of _____ Dollars (\$ _____).

with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by _____

Respectfully submitted MICHAEL A MOWER CONST.

Per Michael A Mower

Note — This proposal may be withdrawn
by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date _____



SUSAN C. NOYCE

Attorney at Law

September 2, 1992

CERTIFIED MAIL

Mr. James D. Craghead
3899 Parkview Drive
Salt Lake City, UT 84124


Re: NOTICE OF LIEN

Dear Mr. Craighead:

Please be advised that on September 1, 1992, a lien was placed of record at the Salt Lake County Recorder's office by Martin J. Bennett, 9586 So. Glacier Lane, Sandy, Utah 84092 in the amount of \$13,135.77, plus a lien fee, and attorney's fees. A copy of this Notice is enclosed.

This lien is for materials furnished to the property described in the Notice of Lien, and represents an obligation for which you are responsible. Please contact me regarding payment of this matter.

Sincerely,


Susan C. Noyce

encl.

cc: Martin Bennett



WHEN RECORDED MAIL TO:

NOTICE OF LIEN

The undersigned Martin J. Bennett, hereby gives notice of intention to hold and claim a lien upon the property and improvements thereon owned and reputed to be owned by James D. Craghead and located in Salt Lake County, State of Utah, more particular described as follows:

3899 East Parkview Drive, Salt Lake City, Utah

Legal Description - See attached Exhibit "A"

The amount demanded hereby is \$13,135.77; plus \$60.00 lien fee; plus attorney's fees; owing to the undersigned for furnishing materials and or labor used in the construction, alteration, addition to, repair of a building, structure, and/improvement of the above described property.

The undersigned furnished said materials and labor to James Craghead, 3899 East Parkview, Salt Lake City, Utah, the purported owner and to Mike Mower Construction, 7674 South 2700 West, West Jordan, Utah, the drywall contractor, such being done by the undersigned by the terms and conditions of which the undersigned did agree to furnish materials and labor specifically drywall labor and materials in consideration of payment to the undersigned as follows: upon presentment of invoice, and under which contract the first material and/or labor was furnished and/or performed on or about the 1st day of April, 1992 and the last was so furnished and/or performed on the 16th day of July, 1992 and for all of which materials and labor, the undersigned became entitled to TWENTY THOUSAND TWO HUNDRED TEN and 77/100s (\$20,210.77) , which is the reasonable value thereof, and on which payments have been made and credits and offsets allows amounts to SEVEN THOUSAND SEVENTY-FIVE and 00/100s (\$7,075.00) leaving a balance owing to the undersigned of THIRTEEN THOUSAND ONE HUNDRED THIRTY-FIVE and 77/100s (\$13,135.77) after deducting all just credits and offsets, and for which demand the undersigned holds and claims a lien by virtue of the provisions of Chapter 1, Title 38, Utah Code Annotated, 1953 as amended.

DATED this 31st day of August, 1992.

Martin J. Bennett

STATE OF UTAH)
COUNTY OF Salt Lake) : ss.

MARTIN J. BENNETT, being first duly sworn, deposes and states that he is the signer of in the foregoing Notice of Lien; that he has read and knows the contents thereof which are true as to his own knowledge and belief; and that he has appropriate authority to sign the foregoing Notice of Lien as the lien claimant, and that he has acknowledged to me that he executed the same.

Martin J. Bennett

31st day of August, 1992. Acknowledged, subscribed and sworn to before me this

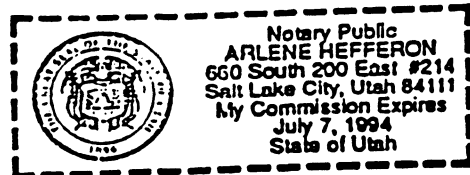
Arlene Hefferon
NOTARY PUBLIC

My Commission Expires:

7-7-94

Residing at:

Salt Lake County



(Lien)

EXHIBIT "A"

VTEI 16-36-401-004-0000 DIST 19				TOTAL ACRES	0.1
CRAGHEAD, JAMES D				REAL ESTATE	558
PRINT UPDATE				BUILDINGS	2374
LEGAL				MOTOR VEHIC	
TAX CLASS NE				TOTAL VALUE	2953
3899 E PARKVIEW DR	EDIT 1	BATCH NO	0		
SLC. UT	841242349	BATCH SEQ	0		
LOC: 3899 E PARKVIEW DR	EDIT 1	BOOK 6371	PAGE 2470	DATE 11/05/91	
SUB: MOUNT OLYMPUS PARK			TYPE UNKN	PLAT	

P R O P E R T Y D E S C R I P T I O N
 COM N 3°55'47" E 20 FT FR SE COR OF LOT 6. MT. OLYMPUS VIEW
 SUB., N 3°53'50" W 162.08 FT; N 75° E 168.33 FT; S 5° W 49.8
 FT; S 23°20' W 109.37 FT; W 25 FT S 12°24'30" W 205.38 FT;
 W'LY ON CURVE TO LEFT 17.46 FT; N 12°24'30" E 136.93 FT; N
 72°19'30" W 49.41 FT TO BEG. BEING PT OF LOT 118. MOUNT
 OLYMPUS PARK SUB. 5413-753 5413-0756 6264-2318

REQUESTED BY: INFLUENCE
FILE NO. 201-01-000000
FILED IN COUNTY OF JULY
\$ 8.00 BY Sharon West Deputy
REF 5350695

NOTICE OF LIEN

TO WHOM IT MAY CONCERN:

Notice is hereby given that the undersigned MICHAEL A MOWER

doing business as MICHAEL A MOWER CONSTRUCTION and residing at
2489 S 2700 W County of SALT LAKE State of Utah, hereby claim
and intend to hold and claim a lien upon that certain land and premises, owned and reputed to be
owned by JAMES D CRAIGHEAD and
situate, lying and being in 3809 E BRAWLEY DR, S14 County of SALT LAKE
State of Utah, described as follows, to wit:

COM N 3 55' 47" E 70 FT E2 SE COR OF LOT 6, MT OLYMPUS
VIEW SUR, N 3 53' 50" W 167.08 FT; N 75 E 168.33; S 5 W 49.8 FT;
S 73 20' W 109.37 FT; W 25 FT S 12 24' 30" W 205.38 FT;
N 14 ON CURVE TO LEFT 17.46 FT, N 12 24' 30" E 136.93 FT; N
77 19' 30" W 49 41 FT TO BEG BEING PT OF LOT 11B, MOUNT
OLYMPUS PARK SUR 5413-753 5413-0756 6264-2318

to secure the payment of the sum of \$13,515.58 Dollars,
owing to the undersigned for DRYWALL & PLASTER LABOR & MATERIALS

as a SUBCONTRACTOR
in, on and about the PREMISES on said land.

That the said indebtedness accrued and the undersigned furnished said materials to (or was em-
ployed by) ASPEN CONSTRUCTION (LYNN PARDEN PRINCIPAL)
(Name according to the fact)
who was the

GENERAL CONTRACTOR FOR
owner and the reputed owner of said premises as

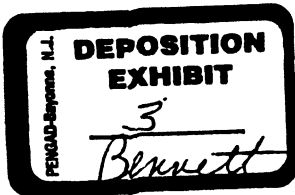
aforesaid, under a WRITTEN contract made between the said LYNN PARDEN FOR
ASPEN CONSTRUCTION and the undersigned

on the 24 day of FEB, 1992, by the terms of which the undersigned did agree
to SUPPLY MATERIALS & LABOR FOR SHEETROCK & INTERIOR PLASTER
and the said LYNN PARDEN FOR ASPEN CONSTRUCTION
did agree to pay the undersigned therefor as follows, to wit: \$2.70 per sq foot to
hang & finish sheetrock, \$1.00 per linear foot for bullnose
corner bead & \$7.50 per linear foot for plaster corners

and under which said contract the under-
signed did DELIVER the first MATERIALS on the 16th day of
MARCH and did PERFORM the last LABOR on the
16th day of AUGUST, 1992 and on and between said last mentioned
days, did PROVIDE MATERIALS & LABOR FOR DRYWALL & PLASTER amounting
to the sum of THIRTY ONE THOUSAND EIGHT HUNDRED FORTY SEVEN & 7/100 Dollars,
(31,847.73)
which was the reasonable value thereof, and on which the following payments have been made to wit:
EIGHTEEN THOUSAND THREE HUNDRED THIRTY ONE & 75/100 (18,331.95)

leaving a balance owing to the undersigned of THIRTEEN THOUSAND FIVE HUNDRED EIGHTEEN
AND 7/100 (13,515.58) Dollars after deducting all just credits and offsets, and for which
demand the undersigned hold and claim a lien by virtue of the provisions of Chapter 1, of Title
38, of the Utah Code Annotated 1953.

Michael A Mower



STATE OF UTAH,

County of Salt Lake

Michael A. Mower being first duly sworn, says that he is
the claimant in the foregoing Notice of Lien;

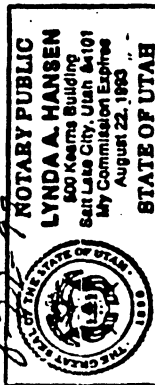
that he has heard read said notice and knows the contents thereof, and that the same is true of his
own knowledge.

Subscribed and sworn to before me this

19

19

com. exp.



Notary Public.

Notice of Lien

AGAINST

Dated _____, 19____

Recorded at the request of _____

_____, 19____

at _____ minutes past _____ o'clock _____ M.

in Book _____ of _____

page _____

Recorder _____ County _____

BLANK NO. 105—

© GEN. FTS. CO. — 2215 SO. 2000 EAST — SALT LAKE CITY

Tues April- 7- 1.5 C & N

8- 1.5 C & N

9- 1.5 C & N

10- 1.5 C & N

11- 2.0 C & N

Sun- 12- 4 AM- scrapped & swept plus mice

13- 1.5 hr- C

14- 3 hrs- C & N (ket. pony rail- 2 hrs)

15- 1 hr- C & N

16- 3.5 hrs- N - plus scrapped & swept

17- 4.0 hrs- C

Sat 18- 4.5 hrs- C

Tues 21- 2.5 - N

taped, taped lower living rm. u

taped / bd. rm. and all lower le

taped living rm. & Breakfast rm

taped upper left p.d. rm. & bath

taped upper left

pickup on trailers. screw off & zip pipe
1/4 right on round

P 0087

Pd 3300—

Pd 350—

3650.00

2650 ←

6300.00

5200.00

815.00 extras

6015.00

825.00

extras - 27.5 in X 30.00

6840.00

1000.00

7840.00

20,000 L.F. 26¢ (21¢ + 5¢ extra)

1000 L.F.

Bulbrose (metal bead only) 25¢ bps X 10.00

Flex Bulbrose
Span Bulbrose
L-metal

P 0086

$$\begin{array}{r}
 533 \\
 - 21 \text{ hrs} - \text{1st Billing extras} \\
 \hline
 512 \\
 + 374 \text{ all extras hrs.} \\
 \hline
 886 \text{ hrs worked} \\
 \div 86 \text{ 86 days} \times 24 \text{ hrs @ day} \\
 10.30 \text{ hrs @ days} \\
 \div 19402.54 \text{ price} \\
 \hline
 21.89 \text{ July}
 \end{array}$$

was included in the 1 weeks of work

$$\begin{array}{r}
 \text{Extras} - 374 \text{ hrs} \\
 \text{Reg hrs} - 533 \\
 \hline
 907
 \end{array}$$

24 April
 31 May
 30 June
 10 July
 95
 - 9 days took off
 86

P 0085

Jim, CRAIGHEAD LITE TOUCH
SWITCHES

Fixing walls - 9 hrs, 2.5, 1.5, .5, 1, 2.5,
22, 9,

Windows -

Mike - 7,

P 0084

Jim Craighead

South west stairs ceiling & Asmt. ^{staircase} ^{by tile.} ^{date}
Ch. Mon - 13th - 2 hrs - hang tape
N/C 1 hr - help set stairs for John
N/C 4 hrs - texture samples
Ch. Tues - 14th - 1 hr. - 1st coat
Ch. Wed - 15th - 1 hr. - 2nd coat
Ch. Thurs 16th - 1 hr. - 3rd & Text
1 hr Sand

6 hrs $\times 30 = 180^{00}$

P 0083



~~Mikes~~ 487-0482

$$7 \times 3 = 210.00$$

$$\text{credit } 130.00$$

Bill Trager 4355 San Park View Dr.
272-8959

Th-1 pre put 16 or 17 patches

Fr-1 tape 1st

W-2 2nd & tape 2 more patches

Tues-1 21 patches

~~Thurs-1~~

Brian 9:30 - 9:00 = 11.5 - 1.0 lunch = 10.5

Erik

Chris

Marty-

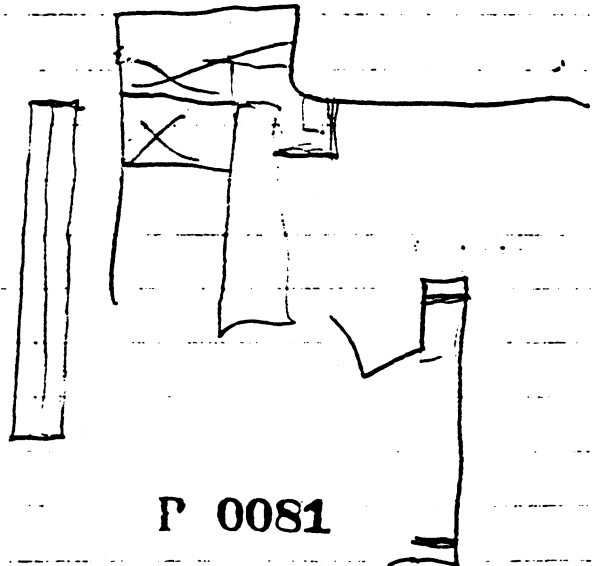
2nd day - 10:30 - 6:30 - 1/2 hr lunch = 7.5

~~original~~

P 0082

$$\begin{array}{r} 18 \\ \times 3 \\ \hline 44 \\ \hline 220.00 \end{array}$$

Comrad	TH - master windows	3 hrs	
Fri-	" "	2 hrs	
Sat-	" " tape	1.5 hrs	
Mon-	lg ballroom	1.0 hrs	- added in
Tues-	" "	1.0 hrs	- " "
Wed-	" "	1.5 hrs	
Thurs-	" "	1.5 hrs	- added in
	base	1.5 hrs	- added in



P 0081

Page 8

X add - Master Bath - ~~FIX~~ ^{FIX} at shower area
where tile grout was
removed.

X add - Breakfast nook - patch on exterior door wall
next to step platform to
living rm.

add - Upper left bd. rm - small window re-nailed both
sides above door to bath.
From bd. rm.

add - Breakfast nook - closet wall at top to loft where
beam was added, nailed off
& finished.

Bdr -	3.5, 2.5, 2.5,	P 0079	5.5 hr
Rand Window	3, 1.5, 1, .5, .5, .5, .5, .5, .5		8.0 hr
Master Stair 2-wall	1.5 m		1.5 hr
Step South end ceiling stairs, & front door entrance -			
patio Bathroom -			
A	3, 5.5, 6, .5, 2, 2, 1, 3, 2.5, 1, 1.5		28 hr
Fireplace at N.W. level	.5, 3.5, 3, 3, 5, 5, 1.5, 1, 1.5, 1 - already ext.		
Loft floor over kitchen pantry & stairs ceiling	5 stairs = 1.5, 1.5, .5, .5, 2, 6 hr		
Fixing walls	9, 2, 5, 1.5, .5, 1, 6, 5, 3, 5, 7, 2, 9, 8, 5 - 55.5		= 55.5

32 items
 20 items
 Pass 7
 Sun 6-14 - 3.5 Wed 6-17-4.5 Fri 1.5
 Tue 6-16 - 4.5 TH 6-18-3.5 Sat 1.0
 Back door entrance at Base Sun 2.5

South west Sat 6-13 - T.V. cabinets → 5.0

Lower level

add window headers
 Aquarium - Add wall to exterior door, cover one elec. box & tap 5.0

add Bar tops - Sound system walls

add Refrigerator opening

add Ceiling light patch

add Box patch by double door entrance

add Tear out stairs & repair wall

add Bsm't family rm - 2 ceiling patches (Brice)

add retape soffit shrink - 12' sheet

add Wall adjoining to soffit by door

add entrance - tape base & 2 wall

add patches (Brice)

add Stair rm - tape base again around stair

add entrance.

add Bsm't family rm - wall plugs to be covered when

water bar is.

add loft 3d rm - 8 patches

P 0078

add Circular stairs - patch at base of stairs

add Kitchen - ceiling patch

add North and 3d rm - 1 - close window headers

add Front door entrance - Box patch

Exterior work outside
 from entrance to stairs
 take

like-	North and lower level at base of stairs - rehung ceiling patch.	Mon - 5-18-1.5	
	Kitchen closet - hung shirk. to added door jamb.		
	Living rm. ceiling - 4 electrical patches & tape plus 2 canisters	5-26	2.5
	Master Bd. rm. - ceiling butting to fireplace, hang & tape & 1st coat	3 hrs.	2.5
	Kitchen - windows, shirk & returned bullnose into windows at base of windows	6-6 3.5	4.5 hrs.
	Round pony wall on west wall, used fast set mud at large bullnose.	1.5, 1.5, .5 = 2.5	
	Loft Bd. rm. - taped added elec. boxes by door on north side & south side.		
	north wall - taped & added elec. at base.		
	exterior door - taped & nailed added elec. box from floor to box.	1 hrs	
	Front door sill - tape around added elec. box.		
	Loft Bd. rm. - by door on north side, shirk. 3 plug patches and tape elec. holes at base. 1st coat	6-9 6.0	
	All small picture windows in loft and master Bd. rms, siliconed glass and shirked & L metal all returns.		hrs.
	Living rm - window return at west end of fireplace, tear off shirk. & bead, add rips, re-bead & tape	2.5	
	Kitchen closet - tape & 1st door extension.	1.0	
	ceiling light fixture moved, prep, taped 1st coat	1.5	
	North and lower level Bath - hung shirk. rip, beaded Header of window wraps - tape 1st coat		
	- angle cut closet shirk. opening - beaded - taped & 1st coat		
	Southwest lower level - shirk. ceiling patch by sound system panel - light was moved,		
	Bsmr. Family rm - hall door entrance to alc. rm. - taped & 2 coats, door rip added -	1.5 hrs	
		Total 56.5 hrs	

Southwest Lower level - hang ceiling strip along window
adjacent to screen box & L-metal $\frac{1}{2}$ in.
also along all windows ~~patches~~ added
Bead turning into all windows along
header, also hang window wrap at east end.

Basement family rm. - soffit ceiling rehang & patch wall, by screen
Ceiling running into soffit - tore out one
8' sheet and rehang and patched
shirk. around heat duct.

Patched shirk. around ceiling screen.
Fire place - finish hang metal and butted
 $\frac{1}{4}$ " rips for flex bullnose.

Loft above kitchen - patched in 3 ceiling lights

Southwest Lower level and family rm. - recessed all walls
and ceilings.

" " " - around all bar - ~~hang $\frac{1}{4}$ " shirk. to finish~~
~~to top of counter top and rehang rips~~
around refrigerator insert.

Master Bdrm. - covered plug next to window by fireplace.

Also plugged North and lower level rm. - covered plug in fireplace shelf.

next to base by bath rm. door
entrance.

Loft bd. rm. - covered phone plug on north wall.

" " " on South wall.

Breakfast nook - covered plug on wall adjacent kit. closet.

Loft above kitchen - taped 3 ceiling lights that were wires by dec.

Master bath window a north and, hang wrap and bottom of window.

Southwest lower level - patched in shirk. that dec. moved box by
double door entrance.

Basement hall ceiling box moved and taped.

" Bath - recess base area from shower to cabinet area (dec.)

Basement fireplace - remove shirk. around fire place box.

Southwest lower level - hung $\frac{1}{4}$ " rips along top edge of bar.

Basement family rm. - fireplace wall - northwest corner return to plumbing wall - rehung shirk and added lath to top of bullnose corner

Southwest lower level - aquarium wall - screened off wall, straitened lath lines, put lath in at both ends.

Bar counter - lathed at round shirk end and nailed 3" rip at header opening.

Base of stairs - lathed header and cut ceiling flush with door trim.

Rehung upper 48" piece adjoining header lath on atrium side.

Hung door lag on atrium side.

Under stairs at base - added 1" rips to floor.

Circular stairs - finish screwing of f. base. put lath on.

Basement family rm - ceiling movie screen area, put rips around opening - patched ceiling, hung L-metal

Southwest lower level - put 1" rips around all base area.

" " " rm. at aquarium end by last window - put window wrap, also repatched ceiling

" " " rm. - ceiling movie screen - put L-metal around opening

" " " basement ceiling at top of stairs - rehanging shirk. ironing load.

" " " basement - closet at base of stairs - rehanging wall on door side and wall where panel is and patching ceiling

Tom & Mart

Tom & Mart

Tom & Mart

4.27

Tom & Mart 3.5

4.28

4.10

4.29

3.10

	Kitchen - ceiling adjoining upper level pony wall at window end - rahung shirk.	C	
	Kitchen - pony wall add with arch at living rm. end - hung sh.rk.	C	
	Kitchen - closet upper angle west side hung sh.rk.	C	N-1/8
Pd. 4-24 ↑	Loft above kitchen - hung window wrap butting to skylight end.	C	C-1/23
	Rips around all bull nose flex areas	N	2.5 hr.
	David ← Breakfast nook - kit. closet wall - zipper curtain plug	N	
	David ← Screen off loft wall - kit. banister - kit closet (start)	N	
	Kitchen closet - hung sh.rk. & beaded beam	C	.5

P 0074

2	Mike	Layed 1/4" from wall to floor	Lower level No. and fireplace
20	N	Scrapped sh.rk. on main floor and swept floors	Prep & Bead
22	C	Cleared and swept all house of all suits.	tape
2		Scrapped shirk. again - upper loft behind and both and	Redo flex Bull nose & finish hang
10	N	upper loft above kitchen	1st coat
			2nd coat
			texture
			Mike - .5 hr
30	✓	All plaster Bull nose coated on edges	ERIK - 1.0 hr
30	✓	Base tape & 2 coats - 1, 2, 5, 3, 4, 1.5, 1, 2, 2, 2, 1, 1.5, 2, 1, 1, 1, 1	10' 10" - 2.0 hr
30	✓	Upper Bd. rm. loft - round window at entrance -	2, 79, = 129
30	✓	Southwest lower level - till cabinets - 2.5	Bull nose - 10' - 2.5, 5, 5, 1.5, 1.5, 1.5, 7, 4
30	✓	North Lower level Bath - Ed. rm. - west window headers -	1-Box - 38-10' / 8'-65 pch / 10'-10' stick
30	✓	Masking tape - 3" 8, 3 rolls / mid supplied - 20.2	2-Box - 120-10' / 8'-4
30	✓	All small picture corners wrap w/ shirk & L mid 51-32	Bull nose flex 10' - 5, 3, 4
30	✓		Doors - 8'-65
30	✓		10'-41
30	✓		@ Box 500 L. Ft.
30	✓		L-mata - 50 sticks + 15 sticks
30	✓		Splay - 9 sticks - 11' cut
30	✓		1.2x - Laborer cut - 6.5-8' For

Kitchen-top sheet rehung above oven wall right side of lg.
plaster bull nose.

C

- hung piece between oven wall and kitchen ceiling on
window wall

N

Upper Bd. rm. left - Bath rm. - hung small rip at bottom of door
by tub

N

- door header nailed off adjoining
bd. rm.

C

changed

- tub and wall rip nailed off

C

- water board cabinet and angle
nailed off

N

- replaced sheet at tub and wall
below rip

C

- ceiling angle above tub - window
wall - nailed off and cut back
to fit angle

N

Upper bd. rm. left - patio door entrance perimeter nailed off

C

changed

left above kitchen - banister on left side at top of stairs by
windows - rehanging from floor to ceiling
adjoining angle - rehanging butt ends adjoining
outside angle on adjoining wall

C

North and lower level stairs - hung all of wall on furnace rm. side

C

Top of circular stairs - and wrap nailed on left side

N

Kitchen ceiling soffit.

C

" pony walls rehanging bead

C

2 hrs

ceiling soffit - hung inside ribs for lighting

C

N	Master Bath - small closet door perimeter nailed off	C	changed
N	Lg. closet door perimeter nailed off	C	changed
N	Nailed off window by tub - pick up nailing board	C	
	rehung bottom shower wall	C x 2	
	rehung bottom outside closet wall adjoining shower wall	C x 2	
	patch in shirk above " " " " "	C	
	Master Bdrm - door entrance by metal beam on left - plug patch elec	C	
	Wlsr and top of stairs window wrap	C	
	Loft Bdrm. - top of stairs against window frame hung rip	C	
	rehung lower left corner closet at bathroom entrance	C	
	Living Rm. - South corner right side, hung leg and wrap.	C	
	" " ceiling angle sheet replaced 2" rip in angle	C	
	" " across from window, hung wrap	N ²	
	North and lower level - Bath - hung header inside closet	N	
	hung wall next to window	C	
	window by stairs hung window header	N	
	Master Bdrm. door entrance - right side - glued 1/4" shirk. over metal beam above window header	C	
	Kitchen closet - nailed door perimeter - both sides	C	changed
	nailed top perimeter adjoining upper loft	N	
	loft above kitchen - banister left side ^{at top of stairs} - finished hanging top cap	N	
	" " " " - corner towards windows		
	finished hang angle and wraps from floor to ceiling	C	
	Kitchen - pony wall adjoining oven wall - tore off shirk. one side - rehung both sides.	N	

Description	Total Footage of hrs.	Price per Item	Draw Credits	Totals
Total from page 1			\$	\$19,760.
Draw Credits - Mike - ck#	4-10-92		300.00	
555	4-24-92		3,000.00	
604	5-19-92		350.00	
Aspen-	1163	5-28-92	2650.00	
Mike-	640	6-12-	100.00	
	642	6-17-	75.00	
	653	6-22-	100.00	
	656	6-26-	100.00	
	668	7-2-	200.00	
	667	7-3-	200.00	
Total credits			\$7,075.00	
Total Amount Due & Payable				\$12,685
P 0071				

1579.64
 - 355.30
 = 1224.34
 9 + 9.34

Description		Total Footage or hours	Price Per Item	Draw Credits	Totals
Sheet Rock Footage		20,792 S.F.	.26¢ S.F.		\$5389.
Bullnose Footage	10' lengths - 178 pcs	1780 L.F.	\$1.00 L.F.		1780.
	8' lengths - 65 pcs.	520 L.F.	1.00 L.F.		520.
Bullnose Flex	10' lengths - 12 pcs.	120 L.F.	1.00 L.F.		120.0
	8' lengths - 4 pcs.	32 L.F.	1.00 L.F.		32.0
L-metal	10' lengths - 46 pcs.	460 L.F.	.50¢ L.F.		230.0
Bullnose Splay	10' lengths - 9 pcs.	90 L.F.	1.00 L.F.		90.0
1/2" J-bead	8' lengths - 4 pcs.	32 L.F.	.50¢ L.F.		16.0
Materials Supplied - mud -			\$5.40 ea.		126.23
	22 boxes				
Sheet rock	6'-8' x 1/2"	192 S.F.	11.00 M.L.		22.14
Bullnose bead	8'-65 pcs. - 10'-10 pcs.	620 L.F.	.15¢ L.F.		98.81
J-bead	4'-8' sticks		\$1.00 ea.		4.00
Nails	1-Box		30.15 ea.		32.03
Scrows	1/2 Box		52.50 ea.		27.89
Masking tape	11-3" rolls		3.99 ea.		46.13
					255.36
Extras - Plaster bullnose		43.5 hrs	\$30.00 hr.		1305.0
Base		40.0 hrs	30.00 hr.		1200.0
Fire place at N.W. Lower level		24.5 hrs	30.00 hr.		735.0
Small picture windows - (Gaar apart, re-cut ribs, re-L-metal, take out windows & caulk.)		25.0 hrs	30.00 hr.		750.0
					1790.0
Extras - Nailers		6.0 hrs	30.00 hr.		180.00
Carpenters		21.0 hrs	30.00 hr.		635.00
Carpenters (part of the 56.5 hrs - 27.5 hrs was pd to Marty by Aspen CK)		56.5 hrs	30.00 hr.		1695.0
Extras on pages 2,3,4,5,6 - The X's next to the description are for full finish - .83 hrs per item X 24 items		20.0 hrs	30.00 hr.		600.00
Extras on pages 3,7, & part of 8		33.0 hrs	30.00 hr.		990.00
Extras on last part of page 8		104.5 hrs	30.00 hr.		3135.00

Martin J. Bennett
 9586 So. Glacier Ln.
 Sandy, Utah 84092
 942-4240
 Fed I.D. #87-0365827

INVOICE NO.
 5803

SOLD TO Michael A. Mowat			SHIPPED TO Jim Craighead Residence		
STREET & NO. 7674 So. 2700 West			STREET & NO. 3899 East Park View		
CITY West Jordan	STATE Utah	ZIP 84084	CITY Salt Lake City	STATE Utah	ZIP

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
	Martin			7-10-92
2 page price break down list & 8 page extras list provided				
	Drywall Finish - 20,792 S.F. X 26¢			\$5389.54
	All Bond Combined			2788.00
	Materials Supplied			358.23
	All Extras			11,275.00
	Total			\$19,760.77
	Draw Credits			7,075.00
	Total Amount Due & Payable			\$12,685.77

INVOICE

2001
 L721/
 11723

6-11-92 - Cont'd Trujillo - Pd 43 hrs @ \$12.00/hr
 640 So 400 E. \$576.00
 S.L.C. UT
 523-08-5669

P 0069

CARRIER

SALES

0000

06/15/92

CUST TRUCK

Lynn

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
251002	CARTON HAMILTON TOPPING	15	EA	5.40	81.00
251001	CARTON HAMILTON AP RED DOT	12	EA	5.40	64.80

"Relax - otherwise you might die
all tensed up."

P 0067

• TERMS •

E AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
NABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION

• NOTICE •

L NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DD
Y

X

DEL'D BY

MDS. TOTAL

145.80

CHK'D BY

DRAYAGE

.00

UT SALES TAX

9.11

INVOICE TOTAL

154.91

PRICES SUBJECT TO CHANGE WITHOUT NOTICE



06/12/92

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

42736

542736

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

CRAIG HEAD

W/C

SHIP TO

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		06/12/92	CUST TRUCK	Mark

QTY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
5	496003	PCS BULLNOSE CORNERS 10'	150	ML	180.00	27.0
0	495117	PCS PHILLIPS 1/2"X10'L 200	100	ML	105.00	10.5
2	339010	USG LIGHTWEIGHT SETTING 90	2	EA	4.75	9.5

To avoid delay, please have all of your symptoms ready."
-Notice in an English doctor's waiting room



P 0066

• TERMS •
ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED AFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON THE INVOICE. SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
SHALL BE RESPONSIBLE FOR ALL REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.
• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	47.
CHK'D BY	DRAYAGE	.
UT	SALES TAX	2.
	INVOICE TOTAL	49.

HANDISE REC'D
OD ORDER BY





06/08/92

INVOICE
P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

1

INVOICE#
42216
542216

06/08/92

MICHAEL A MOWER
7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

06/08/92

CRAIGHEAD
W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATES	CARRIER	SALESMAN
	5822		06/08/92	CUST TRUCK	Lynn

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT
10	PCS BULLNOSE CORNERS 10'	100	ML	180.00	18
1	NON-INVENTOR BAG 2 PURPOSE	1	EA	8.90	8

not your trust in kings and princes. Three of a kind
I take them both. -General Robert C. Schenck



P 0065

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
ED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
TO SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL DUNS DUE HEREUNDER ARE FULLY PAID. PURCHASER
REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	26.
CHK'D BY	DRAYAGE	
UT	SALES TAX	1.
	INVOICE TOTAL	28.

MERCHANDISE REC'D
ORDER BY

X



06/05/92

INVOICE

PO BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

42018

542013

1

RECEIVED

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

3899 EAST PARKVIEW

STOCK #	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALES
	5822		06/05/92	CUST TRUCK	Todd

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	DATE
15	251002	CARTON HAMILTON TOPPING	15	EA	5.40	81
100	436024	BULLNOSE INSIDE CORNER ACCESS.	100	EA	.40	40

you can' think of anything nice to say about a person,
ere's a bright future for you as a tabloid reporter.



0064

• TERMS •

THE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
BE AFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREON ARE FULLY PAID BY PURCHASER
REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	121
CHK'D BY	DRAYAGE	
UT	SALES TAX	7
	INVOICE TOTAL	128

HANDISE REC'D
OD ORDER BY





06/02/92

INVOICE

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO. 2

41526

S41526

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

CRAIG HEAD

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		06/02/92	CUST TRUCK	Mark

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT
00	496024 BULLNOSE INSIDE CORNER ACCESS.	100	EA	.45	45.
<p>"Giving money and power to government is like giving whiskey and car keys to teenage boys."</p>					
<p>✓</p>					
<p>P 0063</p>					

• TERMS •

ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED AND MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	45
CHK'D BY	DRAYAGE	
UT	SALES TAX	2
	INVOICE TOTAL	47

MERCHANDISE REC'D
BY ORDER BY





06/02/92

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

41523

S41523

1

PH 888

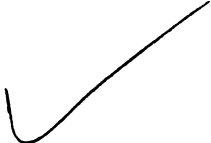
MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

W/CED @ CAPITOL

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALES
	5822		06/02/92	CUST TRUCK	Mark

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT.
2N0N-INVENTOR	HARDWALL PLASTER	2	EA	11.00	22
"Giving money and power to government is like giving whiskey and car keys to teenage boys."					
					
P 0062					

• TERMS •
COSTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND TO NO MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL PAY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
DOD ORDER BY

X

DEL'D BY	MDS. TOTAL	22
CHK'D BY	DRAYAGE	
UT	SALES TAX	1
	INVOICE TOTAL	23



05/26/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICENO

40770

S40770

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

CRAIG HEAD

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		05/26/92	CUST TRUCK	Marsha
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXTENS
4	251001 CARTON HAMILTON AP RED DOT	4	EA	5.40	21.
Success is getting what you want. Happiness is liking what you get.					
P 0061					

• TERMS •

ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED HEREON. UNPAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

ANDISE REC'D
D ORDER BY

DEL'D BY

MDS. TOTAL

21.

CHK'D BY

DRAYAGE

SALES TAX

1.

INVOICE TOTAL

22



05/21/92

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

40490

S40430

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHOP STOCK

W/C

SHIP TO

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
---------------	--------------	------------	---------------	---------	----------

5822

05/21/92

CUST TRUCK

Mark

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTEN
----------	-------------	-----------	------	-------	-------

1

861124

SL 120C D.C. WHITE SANDPAPER

1

EA

39.60

39

Pride makes us do things well - love
makes us do things to perfection.

P 0060

• TERMS •

ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED HEREON PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON INVOICE AND MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID PURCHASER
HEREBY WAIVES REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	39.
CHK'D BY	DRAYAGE	.
UT	SALES TAX	2.
	INVOICE TOTAL	42.

MERCHANDISE REC'D
BY ORDER BY

X



05/21/92

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

40432

1

S40432

MICHAEL A MOWER

7574 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

REMODEL 3899 EAST PARKVIEW
(3850 S.) MILL CREEK ROAD
RIGHT AT 4-WAY STOP
ASAP

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		05/21/92	FLATBED	Todd

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
15	CARTON HAMILTON TOPPING	15	EA	5.40	81.
2	USG LIGHTWEIGHT SETTING 90	2	EA	4.75	9.
To keep a kitchen spotless- don't use it.					
P 0059					

• TERMS •
COURT. THERE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND TO SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

HANDISE REC'D
OD ORDER BY

X

DEL'D BY	MDS. TOTAL	90
CHK'D BY	DRAYAGE	25
	SALES TAX	5
	INVOICE TOTAL	121



04/30/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

38251

1

338251

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

ASPEN

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/30/92	CUST TRUCK	LYNN

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENS
1	496002	CTN BULLNOSE CORNERS 10'	400	ML	150.00	60
4	496059	PCS CLINCH-ON OPEN B-NOSE 10'	40	ML	235.00	9
4	497003	PCS TRIM-TEX BULLNS ARCHWAY 10	40	ML	165.00	6
50	496024	BULLNOSE INSIDE CORNER ACCESS.	50	EA	.45	22

A major appliance is one that expires the day after the warranty runs out and the week before it goes on sale.



P 0058

• TERMS •
ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED HEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON THIS INVOICE. SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL PAY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
GOOD ORDER BY

X

DEL'D BY	MDS. TOTAL	98
CHK'D BY	DRAYAGE	
UT	SALES TAX	6
	INVOICE TOTAL	104



04/24/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

37657

537357

1

MICHAEL A MOWER

ASPEN

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/24/92	CUST TRUCK	MARK

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
2	171208 1/2" X 4' X 8' REGULAR USG	64	MF	114.00	7.

Some people think they are success
because they owe everybody money.



P. 0057

• TERMS •
ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLICABLE. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON INVOICE AND MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	7.
CHK'D BY	DRAYAGE	-
	UT SALES TAX	-
	INVOICE TOTAL	7.

NOISE REC'D
ORDER BY

X



04/23/92

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

37495

S37495

1

MICHAEL A MOWER

ASPEN

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/23/92	CUST TRUCK	TODD

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
6	171212	1/2" X 4' X 12' REGULAR USG	298	MF	114.00	32
6	171208	1/2" X 4' X 8' REGULAR USG	192	MF	114.00	21
6	161408	1/4" X 4' X 8' REGULAR USG	192	MF	178.00	34

A mind, like a parachute, only functions
when it is open.

672

P 0056

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
ACCUMULATED. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON THIS ORDER. MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
SHALL BE RESPONSIBLE FOR REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

MERCHANDISE REC'D
GOOD ORDER BY

X

DELD BY	MDS. TOTAL	88
CHK'D BY	DRAYAGE	
UT	SALES TAX	5
	INVOICE TOTAL	94

PRICES SUBJECT TO CHANGE WITHOUT NOTICE



04/21/92

INVOICE

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.
37238
537238

1

PHOTO

MICHAEL A MOWER
7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

ASPEN JOB
W/C AT CAPITOL

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
E	5822		04/21/92	CUST TRUCK	LYNN

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	DATE
4NON-INVENTOR	BAGS TWO PURPOSE PLASTER	4	EA	9.50	31
<p>It's your attitude, not aptitude, that determines your altitude in life.</p> <p>P 0055</p>					

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE APPLIED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED. IF SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.

• REPORT ANY DISCREPANCY IMMEDIATELY •

MERCHANDISE REC'D
GOOD ORDER BY

X

DEL'D BY	MDS. TOTAL
CHK'D BY	DRAYAGE
	UT SALES TAX
	INVOICE TOTAL



04/17/92

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

36934

1

536934

SHIPPED

MICHAEL A MOWER

SHIP TO

W/C @ STANDARD

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/17/92	CUST TRUCK	MARK

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTEN
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4NON-INVENTOR PAXLIGHT PLASTER AID

4 EA 9.93 39

By the yard life is hard; by the inch
life's a cinch.

P 0054

• TERMS •

NET 30 DAYS DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED AFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED ON THIS INVOICE. MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	39.7
CHK'D BY	DRAYAGE	.0
	SALES TAX	2.4
	INVOICE TOTAL	42.21

COPIES REC'D
ORDER BY

X

PRICES SUBJECT TO CHANGE WITHOUT NOTICE



INVOICE

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

04/17/92

INVOICENO.

36929

536329

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
-----------	--------------	------------	---------------	---------	----------

5822

04/17/92

CUST TRUCK

MARK

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENS
----------	-------------	-----------	------	-------	--------

5 191208 1/2" X 4' X 8' W/R BOARD USG
3 900515 UTAH LIME 50 LB.
4 NON-INVENTOR HARDWALL PLASTER
1 NON-INVENTOR GUAGING PLASTER

288 MF 173.00 49.
3 EA 5.15 15.
4 EA 11.00 44.
1 EA 12.00 12.

By the yard life is hard; by the inch
life's a cinch.

P 0053

• TERMS •

TO BE PAID DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
CHARGED. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREONCE ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY

MDS. TOTAL

121

CHK'D BY

DRAYAGE

SALES TAX

7

INVOICE TOTAL

128

HANDISE REC'D
DD ORDER BY





04/16/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO:

36826

536826

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

ASPEN

W/C

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
---------------	--------------	------------	---------------	---------	----------

5822

04/16/92

CUST TRUCK

MARK

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
----------	----------	-------------	-----------	------	-------	-----------

2

900603 PCS #66X EXP FLG CASING 10'

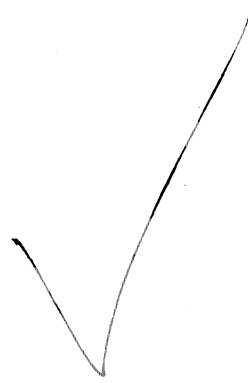
2

EA

2.40

4

There are those of us who are looking for
a blessing that's not in disguise.



P 0052

• TERMS •

CO. INTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED HEREFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON FILE. UNPAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
SHALL BE RESPONSIBLE FOR PAYING REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY

MDS. TOTAL

4

CHK'D BY

DRAYAGE

SALES TAX

LIT

INVOICE TOTAL

4

HANDISE REC'D
OD ORDER BY





04/13/92

INVOICE
P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

36453

536453

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

ASPEN

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/13/92	CUST TRUCK	MARSHA

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENS
1	496002 CTN. BULLNOSE CORNERS 10'	400	ML	150.00	60
10	497003 PCS TRIM-TEX BULLNS ARCHWAY 10	100	ML	165.00	16
1	580012 CTNS 1 5/8" DRITITE NAILS	1	CN	29.50	29

We make a living by what we get, but we
make a life by what we give.

5205

P 0051

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
GEO. HEREFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY

MDS. TOTAL

10

CHK'D BY

DRAYAGE

UT

SALES TAX

INVOICE TOTAL

11

CHANDISE REC'D
DOD ORDER BY

X



04/10/92

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

36153

1

536153

ORDER

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP

REMODEL ASPEN CONSTRUCTION
2899 EAST PARKWAY-MILLCREEK RD
TO 4-WAY STOP THEN RIGHT (3900S
****DELIVER ASAP****

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/10/92	FLATBED	MARK

QTY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT.
8	171214	VIDEO DEN 1/2" X 4' X 14'8" REGULAR USG BASEMENT	472	MF	106.00	50
5	171214	1/2" X 4' X 14'8" REGULAR USG	295	MF	116.00	34
24	171212	1/2" X 4' X 12' REGULAR USG	1,152	MF	116.00	133
24	171210	1/2" X 4' X 10' REGULAR USG	960	MF	116.00	111
25	171208	1/2" X 4' X 8' REGULAR USG	800	MF	116.00	93
12	251002	CARTON HAMILTON TOPPING	12	EA	5.40	64
12	251001	CARTON HAMILTON AP RED DOT	12	EA	5.40	64
10	251009	ROLL USG 500' PERFATAPE	10	EA	2.10	21
100	496020	BULLNOSE 3 WAY OUTSIDE CORNER	100	EA	.90	90
1	491410	CTNS 1 1/4"X 1 1/4"X10' CRNRBD	600	ML	74.00	44

3679

It's not a disgrace for a person to fall-
to lie there and moan is.



P 0050

• TERMS •
DUE DATE ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED AFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON THIS ORDER. UNLESS THE ABOVE LISTED MERCHANDISE IS FULLY PAID, PURCHASER'S OBLIGATION TO PAY FOR THE ABOVE
LISTED MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

ANDISE REC'D
ID ORDER BY

DEL'D BY	MDS. TOTAL	707.
CHK'D BY	DRAYAGE	
	SALES TAX	
UT	INVOICE TOTAL	751.

PRICES SUBJECT TO CHANGE WITHOUT NOTICE



04/06/92

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

35972

1

S35972

04/06/92

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIPPING

REMODEL ASPEN CONST.
2899 EAST PARKWAY MILLCREEK RD
TO 4-WAY STOP THEN RIGHT
DEL ASAP HOT!

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		04/06/92	FLATBED	TODD

QTY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT.
		KITCHEN AREA				
4	171212	1/2" X 4' X 12' REGULAR USG	192	MF	106.00	20
4	171208	1/2" X 4' X 8' REGULAR USG	128	MF	106.00	13
6	171210	1/2" X 4' X 10' REGULAR USG	240	MF	106.00	25
1	496200	1.75 METAL LATH 20 YD. BUNDLE	40	BD	19.40	19
		DEN				
2	171214	1/2" X 4' X 14'8" REGULAR USG	118	MF	106.00	12
2	171216	1/2" X 4' X 16' REGULAR USG	128	MF	106.00	13
11	171212	1/2" X 4' X 12' REGULAR USG	528	MF	106.00	55
11	171210	1/2" X 4' X 10' REGULAR USG	440	MF	106.00	46
15	171208	1/2" X 4' X 8' REGULAR USG	480	MF	106.00	50

2294

By the time you realize how short life is
it's too late to apply the brakes.



P 0049

• TERMS •
ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
HEREON. SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
AGREES TO PAY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
OOD ORDER BY



DEL'D BY	MDS. TOTAL	25
CHK'D BY	DRAYAGE	2
	SALES TAX	1
	INVOICE TOTAL	29



04/07/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICENO.

35741

535741

1

040792

MICHAEL A MOWER

SHIP TO

ASPEN

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

W/C

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALES TAX
	5822		04/07/92	CUST TRUCK	MARK

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT.
1	495116	CTN PHILLIPS 1 1/2" X 10' L 200	500	ML	78.00	3
100	496024	BULLNOSE INSIDE CORNER ACCESS.	100	EA	45	4
Never judge a book by its movie.						
✓						
P 0048						

• TERMS •

THE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
HEREAFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
SHALL BE RESPONSIBLE FOR ALL REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
DOD ORDER BY



DELD BY	MDS. TOTAL	9.
CHK'D BY	DRAYAGE	
UT	SALES TAX	
	INVOICE TOTAL	9.



03/31/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

34954

534954

1

ORDER NO.

MICHAEL A MOWER

SHIP TO

ASPEN

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
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5822

03/31/92

CUST TRUCK

MARSHA

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENS
----------	-------------	-----------	------	-------	--------

36	161408	1/4" X 4' X 8' REGULAR USG	1,152	MF	170.00	195
3	191208	1/2" X 4' X 8' W/R BOARD USG	96	MF	165.00	15
2	191212	1/2" X 4' X 12' W/R BOARD USG	96	MF	165.00	15

If you are too busy to laugh,
you are too busy.

1344

P 0047

• TERMS •

ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED HEREFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON THIS INVOICE. SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
HEREBY AGREES TO PAY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY

MDS. TOTAL

227

CHK'D BY

DRAYAGE

SALES TAX

14

UT

INVOICE TOTAL

241

HANDISE REC'D
ON ORDER BY

X



03/30/92

INVOICE

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

34842

S34842

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

W/C

SHIP TO

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		03/30/92	CUST TRUCK	LYNN

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT.
5	171208	1/2" X 4' X 8' REGULAR USG	160	MF	106.00	169
1	861290	1 MIL VISQUEEN 9' X 400'	1	EA	12.00	12

Let's hope the electric company
never gets control of the sun.

P 0046

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED HEREFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
DOC ORDER BY



DEL'D BY	MDS. TOTAL	28
CHK'D BY	DRAYAGE	
UT	SALES TAX	
	INVOICE TOTAL	30



03/30/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

34702

534702

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

3899 PARKWAY
DEL W/OTHER ORDER

SHIP TO

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		03/30/92	FLATBED	TODD

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENS
1	CTNS #200 1 1/8" WOOD SCREW 10M	1	CN	52.50	52

Isn't it odd how you can get behind time just passing it?

P 0045

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED. TITLE TO SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.

• REPORT ANY DISCREPANCY IMMEDIATELY •

MERCHANDISE REC'D
BY ORDER OF

X

DEL'D BY	MDS. TOTAL	52
CHK'D BY	DRAYAGE	
	UT SALES TAX	3
	INVOICE TOTAL	55



03/27/92

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

34595

534595

1

SHIP TO

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

3899 PARKWAY (3880 SO)
MILLCREEK CANYON ROAD TO
4-WAY, THEN RIGHT
TOP LOAD ASAP

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		03/27/92	FLATBED	MARSHA

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
2	171214	1/2" X 4' X 14'8" REGULAR USG	118	MF	106.00	12
15	171212	1/2" X 4' X 12' REGULAR USG	720	MF	106.00	76
10	171210	1/2" X 4' X 10' REGULAR USG	400	MF	106.00	42
8	251001	CARTON HAMILTON AP RED DOT	8	EA	5.40	43
Isn't it odd how you can get behind time just passing it?						
1238						
✓						
P 0044						

• TERMS •
COUNT ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
ED. HEREFTER PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
TO PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	174.
CHK'D BY	DRAYAGE	.
UT	SALES TAX	10.
	INVOICE TOTAL	185.

MANCISE REC'D
DD ORDER BY

X



03/23/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICENO: 4

33904

533904

1

ORDER

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

ASPEN CONST

W/C

ORDER NO.	CUST NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALES MAN
	5822		03/23/92	CUST TRUCK	LYNN

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT
1	496200 1.75 METAL LATH 20 YD. BUNDLE	48	BD	19.40	19
4	580021 LBS 1 1/4" BLUED NAILS	4	LB	1.00	4

It's easy to make money.
It's hard to make a living.

P 0043

• TERMS •
ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED HEREFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
AND NO SAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

HANDISE REC'D
ON ORDER BY



DEL'D BY	MDS. TOTAL	23
CHK'D BY	DRAYAGE	
UT	SALES TAX	1
	INVOICE TOTAL	24



03/20/92

INVOICE

PO BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO. 33821

33821

533821

1

ORDER

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

3899 PARKWAY (3880 S)
MILLCREEK CANYON RD TO 4 WAY
THEN RIGHT

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALES
	5822		03/20/92	FLATBED	LYNN

QUANTITY	ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENSION
12	251001	CARTON HAMILTON AP RED DOT	12	EA	5.40	64.80
8	251002	CARTON HAMILTON TOPPING	8	EA	5.40	43.20
2	496002	CTN BULLNOSE CORNERS 10'	800	ML	150.00	120.00
1	496010	1/2" BULLNOSE DOOR & WINDOW TRM	8	ML	325.00	2.60
20	496020	BULLNOSE 3 WAY OUTSIDE CORNER	20	EA	.90	18.00
4	496012	PCS #1085 PLASTIC BULLNOSE 8'	4	EA	5.15	20.60
6	496057	PCS CLINCH-ON OPEN ANGLE 10'	60	ML	120.00	7.20
10	251009	ROLL USG 500' PERFATAPE	10	EA	2.10	21.00
12	339011	USG IMPERIAL TAPE 100 YD. ROLL	12	EA	6.00	72.00

It's easy to make money.
It's hard to make a living.



P 0042

• TERMS •
ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
HEREON. TO OBTAIN MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
HEREBY AGREES TO PAY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.
• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY	MDS. TOTAL	369
CHK'D BY	DRAYAGE	
UT	SALES TAX	23
	INVOICE TOTAL	392

CHANDISE REC'D
JOD ORDER BY





INVOICE

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

33607

533607

03/19/92

1

APPROX

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

SHIP TO

3899 E PARKVIEW DR (3880 S)
UP MILLCREEK CANYON RD TO 4 WAY
STOP THEN RIGHT.

ORDER NO.	CUSTOMER NO.	ORDERED BY	SHIPPING DATE	CARRIER	SALESMAN
	5822		03/19/92	BOOM TRUCK	LYNN
ITEM NO.	DESCRIPTION	DELIVERED	UNITS	PRICE	EXTENSION
MAIN FLOOR					
8	171216 1/2" X 4' X 16' REGULAR USG	512	MF	106.00	54.
6	171214 1/2" X 4' X 14' 8" REGULAR USG	354	MF	106.00	37.
10	171212 1/2" X 4' X 12' REGULAR USG	480	MF	106.00	50.
10	171210 1/2" X 4' X 10' REGULAR USG	400	MF	106.00	42.
33	171208 1/2" X 4' X 8' REGULAR USG	1,056	MF	106.00	111.
14	161408 1/4" X 4' X 8' REGULAR USG	448	MF	170.00	76.
UP BEDROOM AREA					
2	171216 1/2" X 4' X 16' REGULAR USG	128	MF	106.00	13.
10	171214 1/2" X 4' X 14' 8" REGULAR USG	590	MF	106.00	62.
8	171212 1/2" X 4' X 12' REGULAR USG	384	MF	106.00	40.
2	171208 1/2" X 4' X 8' REGULAR USG	320	MF	106.00	33.
Wealth is where you can afford all the things you can't afford to be without.					
4672					
P 0041					

• TERMS •

ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED. UNPAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE.

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY

MDS. TOTAL

523.

CHK'D BY

DRAYAGE

.

UT

SALES TAX

32.

INVOICE TOTAL

556.

DISCOUNT REC'D
ON ORDER BY





03/19/92

INVOICE

PO. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

INVOICE NO.

33604

533604

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

PARKVIEW

W/C

INVOICE NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SHIP TO
	5822		03/19/92	CUST TRUCK	LYNN

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	DATE
16	161408 1/4" X 4' X 8' REGULAR USG	512	MF	170.00	87
<p>Wealth is when you can afford all the things you can't afford to be without.</p>					
<p>✓</p>					
<p>P 0040</p>					

• TERMS •

ACCOUNTS ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED. UNPAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL PAY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
GOOD ORDER BY



DEL'D BY	MDS. TOTAL	87
CHK'D BY	DRAYAGE	
UT	SALES TAX	5
	INVOICE TOTAL	92



03/17/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

1

INVOICENO. 34

33322

933322

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

ASPEN CONST.

W/C

ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER	SALES MAN
	5822		03/17/92	CUST TRUCK	MARSHA

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXTENS
1	560018 CTN PSS 1-1/8" COURSE TH 10M	1	CN	39.90	39.
1	560014 PSS 1 3/8" DRITITE NAILS 50 LB	1	EA	24.00	24.
1	580576 5 LB. #12 1-1/2" LAMIN SCREWS	1	EA	15.00	15.
1	560021 CTNS #400 1 5/8" WOOD SCREW 5M	1	CN	43.45	43.

average American lives in 7 homes in a lifetime.
amazing when you consider it takes 30 yrs to pay for one.

P 0039

• TERMS •

ALL INVOICES ARE DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE CHARGED THEREAFTER. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED HEREON. UNPAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER SHALL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •

WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE

• REPORT ANY DISCREPANCY IMMEDIATELY •

DEL'D BY

MDS. TOTAL

122.

CHK'D BY

DRAYAGE

.

UT

SALES TAX

7.

INVOICE TOTAL

130.

MERCHANDISE REC'D
ON ORDER BY

X



03/16/92

INVOICE

P.O. BOX 65588
525 WEST 2890 SOUTH
SALT LAKE CITY, UTAH 84115
(801) 973-2736
FAX (801) 973-2791

33157

33157

1

MICHAEL A MOWER

7674 SOUTH 2700 WEST
WEST JORDAN, UTAH 84084

3899 EAST PARKVIEW
MILLCREEK CANYON RD. TO 4-WAY
STOP ROAD THAT GOES TO RIGHT
IS PARK VIEW

ST. ORDER NO.	CUST. NUMBER	ORDERED BY	SHIPPING DATE	CARRIER
	5822		03/16/92	BOOM TRUCK

ITEM NO.	DESCRIPTION	DELIVERED	UNIT	PRICE	EXT.
UPPER LEVEL					
14	171216 1/2" X 4' X 16' REGULAR USG	896	MF	106.00	94
7	171214 1/2" X 4' X 14' 8" REGULAR USG	413	MF	106.00	43
12	171212 1/2" X 4' X 12' REGULAR USG	576	MF	106.00	61
15	171210 1/2" X 4' X 10' REGULAR USG	600	MF	106.00	63
12	171208 1/2" X 4' X 8' REGULAR USG	384	MF	106.00	40
2	191212 1/2" X 4' X 12' W/R BOARD USG	96	MF	170.00	16
4	191208 1/2" X 4' X 8' W/R BOARD USG	128	MF	170.00	21
11	161408 1/4" X 4' X 8' REGULAR USG	352	MF	170.00	59
LOWER LEVEL					
2	171216 1/2" X 4' X 16' REGULAR USG	128	MF	106.00	13
4	171214 1/2" X 4' X 14' 8" REGULAR USG	236	MF	106.00	25
1	171212 1/2" X 4' X 12' REGULAR USG	528	MF	106.00	55
10	171210 1/2" X 4' X 10' REGULAR USG	400	MF	106.00	42
15	171208 1/2" X 4' X 8' REGULAR USG	480	MF	106.00	50
2	191212 1/2" X 4' X 12' W/R BOARD USG	96	MF	170.00	16
3	191210 1/2" X 4' X 10' W/R BOARD USG	120	MF	170.00	20
5	191208 1/2" X 4' X 8' W/R BOARD USG	160	MF	170.00	27

Make the most of today-
yesterday cannot be relived and tomorrow is uncertain.

5593

P 0038

• TERMS •
ALL AMOUNTS DUE AND PAYABLE THE 10TH OF THE MONTH FOLLOWING PURCHASE AND HIGHEST LEGAL RATE OF INTEREST WILL BE
APPLIED. PURCHASER STIPULATES THAT THE ABOVE LISTED MERCHANDISE WILL BE USED AT THE ADDRESS INDICATED
ON THIS INVOICE. UNPAID MERCHANDISE SHALL NOT PASS TO PURCHASER UNTIL ALL SUMS DUE HEREUNDER ARE FULLY PAID. PURCHASER
WILL BE RESPONSIBLE FOR ANY REASONABLE ATTORNEY FEES IN THE EVENT THIS ACCOUNT IS PLACED WITH AN ATTORNEY FOR COLLECTION.

• NOTICE •
WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED WHEN DELIVERING INSIDE OF CURB LINE
• REPORT ANY DISCREPANCY IMMEDIATELY •

CHANDISE REC'D
GOOD ORDER BY

X

DEL'D BY	MDS. TOTAL	653
CHK'D BY	DRAYAGE	
UT	SALES TAX	40
	INVOICE TOTAL	694

Description	Total Footage of Mo.	Price per Item	Draw Credits	Totals
Draw Credits-Mika - ck#	Total from page 1			\$19,760.7
	4-10-92		\$300.00	
555	4-24-92		3,000.00	
604	5-19-92		350.00	
Aspen-	5-28-92		2650.00	
1163	6-12-		100.00	
Mika-	6-17-		75.00	
640	6-22-		100.00	
642	6-26-		100.00	
653	7-2-		200.00	
656	7-3-		200.00	
668				
667				
	Total credits		\$7,075.00	
	Total Amount Due & Payable			\$12,685
Deduct for charges to mika	8.75	30	262.5	17,571
15% mark up on extras not billed	15%	9377.5	1406.63	17309.
for previously				18,715
Extras invoiced on 7-17-92	6	30	180	
	15%	180	27	18,92

Extras

9740
~~8150~~
- 262.5 (8.75 hrs @ 30.00 charges to risk)

~~7887.5~~
9477.5
+ 180.0 Bullied on 7.17.92 Bennett

15%

~~8667.5~~
9657.5
1448.63
11,106.13

Description		Total Footage or hours	Price Per Item	Draw Credits	Totals
Sheet Rock Footage		20,792 S.F.	.26¢ S.F.		\$5389.12
Bullnose Footage	10' lengths - 178 pcs	1780 L.F.	\$1.00 L.F.		1780.00
	8' lengths - 65 pcs.	520 L.F.	1.00 L.F.		520.00
Bullnose Flex	10' lengths - 12 pcs.	120 L.F.	1.00 L.F.		120.00
	8' lengths - 4 pcs.	32 L.F.	1.00 L.F.		32.00
L-metal	10' lengths - 46 pcs.	460 L.F.	.50¢ L.F.		230.00
Bullnose Splay	10' lengths - 9 pcs.	90 L.F.	\$1.00 L.F.		90.00
1/2" J-bead	8' lengths - 4 pcs.	32 L.F.	.50¢ L.F.		16.00
					7931.12
Materials Supplied - mud -	22 boxes		\$5.40 ea.		126.23
Sheet rock	6-8' x 1/2"	192 S.F.	111.00 M.L.		22,167.00
Bullnose bead	8'-65 pcs. - 10'-10 pcs.	620 L.F.	15¢ L.F.		98.81
J-bead	4-8' sticks		\$1.00 ea.		4.00
Nails	1-Box		30.15 ea.		32.03
Scrows	1/2 Box		52.50 ea.		27.89
Masking tape	11-3" rolls		3.99 ea.		46.63
Extras - Plaster bullnose		43.5 hrs	\$30.00 hr.		1305.00
Base		40.0 hrs	30.00 hr.		1200.00
Fire place at N.W. Lower level		24.5 hrs	30.00 hr.		735.00
Small picture windows - (Saw apart, re-cut ribs, re-L-metal, take out windows & caulk.)		25.0 hrs	30.00 hr.		750.00
Extras - Nailers		6.0 hrs	30.00 hr.		180.00
Carpenters		21.0 hrs	30.00 hr.		635.00
Carpenters (part of the 56.5 hrs - 27.5 hrs was pd to Marty by Aspen CK)		56.5 hrs	30.00 hr.		1695.00
Extras on pages 2,3,4,5,6 - The X's next to the description are for full finish - .83 hrs per item X 7.1 items		20.0 hrs	30.00 hr.		600.00
Extras on pages 3,7, & part of 8		33.0 hrs	30.00 hr.		990.00
Extras on last part of page 8		104.5 hrs	30.00 hr.		3135.00
					17,571.12
					19,760.00

MICHAEL A MOWER CONSTRUCTION
7674 SO 2700 W
WEST JORDAN, UTAH
84064 255-4532

Proposal No.

Sheet No.

Date
FEB 24, 1992

Proposal Submitted To

Work To Be Performed At

Name ALPEN CONSTRUCTION
Street _____
City SALT LAKE
State UTAH
Telephone Number 364-3242 P-4521503

Street 3899 E. PARKVIEW
City SALT LAKE State UTAH
Date of Plans _____
Architect _____

We hereby propose to furnish the materials and perform the labor necessary for the completion of DRYWALL

.70
.75 per sq. ft. to hang & finish for paint
1.00 per lin. ft. for bull nose corner bead
7.50 per lin. ft. for radius under 12"

Tom Thornton

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of _____ Dollars (\$ _____).

with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by _____

Respectfully submitted MICHAEL A MOWER CONSTRUCTION

Per Michael A Mower

Note — This proposal may be withdrawn
by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date _____ Signature _____

P 0034

Martin J. Bennett
 9506 So. Glacier Ln.
 Sandy, Utah 84092
 Fed. I.D. # 87-0365827

INVOICE

T.C. Inc. 4-24-92
 L.C.

INVOICE NO

087009

SOLD TO Michael A. Mauer Construction		SHIPPED TO Jim Craighead Residence	
STREET & NO. 7674 So. 2700 West		STREET & NO. 3899 East Park View	
CITY West Jordan Utah	STATE UTAH	CITY Salt Lake City	STATE UTAH
ZIP 84094		ZIP 84094	
CUSTOMER'S ORDER	SALESMAN Martin	TERMS	F.O.B.
		DATE 4-24-92	
Draw on Drywall finish based on approximately 20,000 S.F. at 21¢ S.F.		\$2185.00	
Draw on 4-10-92		300.00	
Back charge nailers (30¢/hr)		180.00	
Extras - (List provided) (30¢/hr)		635.00	
Total Amount Due & Payable		\$3320.00	
"Thank You"		P 0033	

Martin J. Bennett
 9586 So. Glacier Ln.
 Sandy, Utah 84092
 942-4240
 Fed I.D. #87-0365827

INVOICE NO.
 5803

SOLD TO Michael A. Mowat			SHIPPED TO Jim Craighhead Residence		
STREET & NO. 7674 So. 2700 West			STREET & NO. 3899 East Park View		
CITY West Jordan	STATE Utah	ZIP 84084	CITY Salt Lake City	STATE Utah	ZIP
CUSTOMER'S ORDER		SALESMAN Martin	TERMS	F.O.B.	DATE 7-10-92
2 page price break down list & 8 page extras list provided					
Drywall Finish - 20,792 S.F. X 26¢					\$5389.54
All Brad Combined					2788.00
Materials Supplied					358.23
All Extras					11,225.00
Total				\$19,760.77	
Draw Credits				\$7,075.00	
Total Amount Due & Payable				\$12,685.77	
				0032	

INVOICE

REDIFORM
 7L721/
 01723

FBI I.D. # 07-0365827

INVOICE

SOLD TO Michael A. Mower Construction		SHIPPED TO Jim Craighead Residence	
STREET & NO. 7674 So 2700 West		STREET & NO. 3899 East Park View	
CITY West Jordan	STATE Utah	CITY Salt Lake City	STATE Utah
CUSTOMER'S ORDER		SALESMAN Martin	TERMS
		F.O.B.	DATE 7-10-92
Wood beam cleaning thru out house			
Erik Bennett - 18 hrs x \$5.00			\$ 90 00
Chris Bennett - 18 hrs x \$5.00			90 00
Brian Smalley - 18 hrs x \$5.00			90 00
Total Amount Due & Payable			\$ 270 00
P 0030			

REDIFORM
7L721/
01723

INVOICE NO.
5805

SOLD TO			SHIPPED TO		
Michael A. Mower Construction			Jim Craighead Residence		
STREET & NO.			STREET & NO.		
8489 So. 2700 West			3899 E. Park View Dr.		
CITY	STATE	ZIP	CITY	STATE	ZIP
W. Jordan	Utah	84084	Holladay	Utah	84124
CUSTOMER'S ORDER		SALESMAN	TERMS		F.O.B.
		Martin			
					DATE
					7-17-92
Extras: Drywall patches - southwest stairs ceiling & Bsmt. steam room patch by tiled shower.					
					\$180.00
khr. X 30 ⁰⁰					
Total Amount Due & Payable					\$180.00
P 0029					

INVOICE

REDIFORM.
7L721/
01723

P 0029

INVOICE NO. 11846

SOLD TO <i>Aspen Crest</i>			SHIPPED TO			VIA	
STREET & NO.			STREET & NO.				
CITY		STATE	ZIP	CITY		STATE	ZIP

[illegible]

T 8740

INVOICE

INVOICE NO. 11850

Michael A. Mow
704 So. 2700
West Palm Beach, FL 33409

BILLED TO			SHIPPED TO			VIA		
STREET & NO.			STREET & NO.					
CITY		STATE	ZIP	CITY		STATE	ZIP	

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
Found Delivered 704 So. 2700				7-20-74
Bill new drains 500.00				1.00
Plaster drains 375.00				7.50
Extra for plaster work (extra 3/4" rigid material)				4.00
Extra for duct (4" x 6") round by contractor				6.00
Total (to date to date)				1147.00
Drop of laundry complete 704 So. 2700				4.00
Taping 50.00				1.00
Plaster - 100% complete 375.00				7.50
Extra				1148.00
Total work complete to date				1568.19
Plaster drains				11382.60
Total billed to date				4799.30

P 0027

3740

INVOICE

4203

SOLD TO**SHIPPED TO**

Arden Court
STREET & NO.

STREET & NO. Cross Street

STREET & NO.

STREET & NO.

CITY

STATE

ZIP

CITY

STATE

ZIP

INVOICE

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
				5-21-63
Board delivered		20,346 #		.70 14242 20
Bullnose Corners		1,000 lf		1.00 1000 00
Plaster Corners		278 lf		7.50 2835 00
Plaster Extras				4.50 00
Taper Extras texture		20,346		5.055 1119 03
Current patching etc.				1171 50
Taper extras last billing				690 00
Total Contract to date				21515 73
				P 0024

SOLD TO:

STREET'S NO.

CITY

STATE

ZIP

SHIPPED TO

STREET & NO.

CITY

STATE

ZIP

4209

INVOICE

TOPS
FORM
46706

[illegible]

4212

ZIP

12515	52
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P 0022


MICHAEL A. MOWER CONSTRUCTION 02-85
7674 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

668
97-7051/3243

CHARTLAND 1981

PAY TO THE ORDER OF Martyn Bennett July 3 1992 \$ 200.00

two hundred & 00/100 DOLLARS

 **UNITED SAVINGS BANK**
Fourth South Office
376 East Fourth South
Salt Lake City, UT 84111

FOR M. Mower

⑆324370513⑆1200012308⑈0668


MICHAEL A. MOWER CONSTRUCTION 02-85
7674 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

667
97-7051/3243

CHARTLAND 1981

PAY TO THE ORDER OF Martyn Bennett July 3 1992 \$ 200.00

two hundred & 00/100 DOLLARS

 **UNITED SAVINGS BANK**
Fourth South Office
376 East Fourth South
Salt Lake City, UT 84111

FOR M. Mower

⑆324370513⑆1200012308⑈0667

F 0021

MICHAEL A. MOWER CONSTRUCTION 02-85
7674 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

653
97-7051/3243

PAY TO THE
ORDER OF

June 22nd 92
Martin Bennett \$ 100.00

One hundred & 00/100 DOLLARS



UNITED SAVINGS BANK

Fourth South Office
376 East Fourth South
Salt Lake City, UT 84111

FOR

M. Mower
⑆324370513⑆1200012308⑈ 0653

MICHAEL A. MOWER CONSTRUCTION 02-85
7674 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

656
97-7051/3243

PAY TO THE
ORDER OF

June 26th 92
Martin Bennett \$ 100.00

One hundred & 00/100 DOLLARS



UNITED SAVINGS BANK

Fourth South Office
376 East Fourth South
Salt Lake City, UT 84111

FOR

M. Mower
⑆324370513⑆1200012308⑈ 0656

1
0020

MICHAEL A. MOWER CONSTRUCTION 02-85
7874 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

640
97-7051/324

PAY TO THE
ORDER OF

June 17, 1992
Marty Bennett

\$ 100.00



UNITED SAVINGS BANK
Fourth South Office
378 East Fourth South
Salt Lake City, UT 84111

FOR

M. Mower
⑆324370513⑆1200012308⑈0640

MICHAEL A. MOWER CONSTRUCTION 02-85
7874 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

642
97-7051/3243

PAY TO THE
ORDER OF

6-17 1992
Marty Bennett

\$ 75.00



UNITED SAVINGS BANK
Fourth South Office
376 East Fourth South
Salt Lake City, UT 84111

FOR

Cranehead *M. Mower*
⑆324370513⑆1200012308⑈0642

F 0019

MICHAEL A. MOWER CONSTRUCTION
7874 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

02-45

604-740064

751

97-7051/3243

9/93

8-17 1992

\$ 1180.00

PAY TO THE
ORDER OF

Martin Bennett

one thousand one hundred eighty & 00/100 DOLLARS



UNITED SAVINGS BANK

Fourth South Office
378 East Fourth South
Salt Lake City, UT 84111

M. Mower

FOR

1:3243705131:1200012308 0751

\$180.00 is credited
to invoice #53

F 0018

5803

Sandy, Utah 84092

942-4240

Fed I.D. # 87-0365827

SOLD TO Michael J. Mower			SHIPPED TO Jim Cranford Residence		
STREET & NO. 7674 So. 2700 West			STREET & NO. 3899 East Park View		
CITY West Jordan	STATE Utah	ZIP 84084	CITY Salt Lake City	STATE Utah	ZIP

INVOICE

CUSTOMER'S ORDER	SALESMAN T. M. Mower	TERMS	F.O.B.	DATE 7-10-97
2 page price break down list & 8 page extras list provided				
Drywall Finish - 30-92 S.F. X 2 1/2"				\$539.54
All Bond Combined				2798.00
Materials Supplied				356.23
All Extras				11,235.00
Total				\$12,968.77
Draw Credits				\$2,075.00
Total Amount Due & Payable				\$10,893.77

EDIFORM

7L721/
01723

P 0017

REDIFORM.
**7L721/
01723**

Martin J. Bennett
 9586 So. Glacier Ln
 Sandy, Utah 84092
 942-4240
 Fed. I.D. # 87-0365827

INVOICE NO
 5805

SOLD TO Michael A. Mowar Construction			SHIPPED TO Jim Glasgow Residence		
STREET & NO. 9489 So. 2700 West			STREET & NO. 3999 E. Park View Dr		
CITY W. Jordan	STATE Utah	ZIP 84084	CITY Holladay	STATE Utah	ZIP 84124

INVOICE

CUSTOMER'S ORDER	SALESMAN Martin	TERMS	F.O.B.	DATE 7-17-97
Extras: Drywall patches - southwest stairs ceiling & Bent. stairway room patch by tiled shower. Labor. V 30.00				
Total Amount Due & Payable				120.00

REDIFORM
 7L721/
 01723

P 0015

Mike-	North and lower level at base of stairs - rehanging ceiling patch.	Mon - 5-18-1.5
	Kitchen closet - hung sh. r.k. to added door jamb.	
	Living Rm. ceiling - 4 electrical patches & tape & 2 canisters	--- 5-26
	Master Bd. rm. - ceiling butting to fireplace, hang & tape & 1st coat	3 hrs.

Southwest Lower level - hang ceiling strip along window
adjacent to screen box & L-metal $\frac{1}{2}$ hr.
also along all windows ~~put sh. & added~~
Bead turning into all windows along
header, also hung window wrap at east end.

Basement family rm. - soffit ceiling rehang & patch wall, by screen
Ceiling running into soffit - tore out one
8' sheet and rehung and patched
shirk. around heat duct.

Patched shirk. around ceiling screen.
Fire place - finish hang metal and butted
 $\frac{1}{4}$ " rips for flex bullnose.

Loft above kitchen - patched in 3 ceiling lights

Southwest Lower level and family rm. - re-scanned all walls
and ceilings, - 1.5 hr.

" " " - around all base - hung $\frac{1}{4}$ " shirk. to finish
to top of corner top and rehang rips
around refrigerator inset.

Master bdrm. - covered plug next to window by fireplace.

Wire plugged - North and lower level rm. - covered plug in fireplace shelf.

" " next to head by bath rm. door
entrance.

Loft bd. rm. - covered phone plug on north wall.
" " on south wall.

Break fast nook - covered plug on wall adjacent to kitchen closet.

Loft above kitchen - taped 3 ceiling lights that were moved by elec.

Master bath window a north end, hung wrap and bottom of window.
Southwest lower level - patched in shirk. that elec. wires lay by
double door entrance.

Basement hall ceiling box moved and taped.

" Bath - re-scan base area from shower to cabinet area (elec.)

Basement fireplace - remove shirk. around fire place box.

Southwest lower level - hung $\frac{1}{4}$ " rips along top edge of bar.

Basement family rm. - fireplace wall - northwest corner return to plumbing wall - rehung shirk and added lath to top of bullnose corner

Southwest lower level - aquarium wall - screwed off wall, straightened lath lines, put lath in at both ends.

Bar counter - lathed at round shirk end and nailed 3" rip at header opening.

Base of stairs - lathed header and cut ceiling flush with door trim.

Rehung upper 48" piece adjoining header lath on atrium side.

Hung door lag on atrium side.

Under stairs at base - added 1" rips to floor.

Circular stairs - finish screwing of f. base. put lath on.

Basement family rm - ceiling movie screen area, put rips around opening - patched ceiling, hung L-metal

Southwest lower level - put 1" rips around all base area.

" " " rm. at aquarium end by last window - put window wrap, also repatched ceiling

" " " rm. - ceiling movie screen - put L-metal around opening

" " " basement ceiling at top of stairs - rehanging shirk. & rehung board.

" " " basement - closet at base of stairs - rehanging wall on poor pipe and wall where

Tom & Mart
Tom & Mart

Tom & Mart

27

Tom & Mart 3.5

4.0

3.5

Kitchen-top sheet rahung above oven wall right side of lg.
plaster bull nose.

C

- hung piece between oven wall and kitchen ceiling on
window wall

N

Upper Bd. rm. left-Bath rm.-hung small rip at bottom of door
by tub

N

- door header nailed off adjoining
bd. rm.

C

changed

- tub and wall rip nailed off

C

- water board cabinet end angle
nailed off

N

- replaced sheet at tub and wall
below rip

C

- ceiling angle above tub-window
wall-nailed off and cut back
to fit angle

N

Upper bd. rm. left-patio door entrance perimeter nailed off

C

changed

loft above kitchen-banister on left side at top of stairs by
windows-rahung from floor to ceiling

adjoining angle-rahung butt ends adjoining
outside angle on adjoining wall

C

North and lower level stairs-hung all of wall on furnace end side

C

Top of circular stairs-and wrap nailed on left side

N

Kitchen ceiling soffit-

C

" pony walls rahung bead

C

2 etc

ceiling soffit-hung inside ribs for lighting



C

P 0010

Mike Mower - 255-4532

N	Master Bath - small closet door perimeter nailed off	C	changed
N	Lg. closet door perimeter nailed off	C	changed
N	Nailed off window by tub - pick up nailing bead	C	
	rehung bottom shower wall	C x 2	
	rehung bottom outside closet wall adjoining shower wall	C x 2	
	patch in shirk above " " " " "	C	
	Master Bdrm - door entrance by metal beam on left - plug patch in	C	
	Master and top of stairs window wrap	C	
	Loft Bdrm. - top of stairs against window frame loose rip	C	
	rehung lower left bottom closet at bathroom		
	entrance	C	
	Living Rm. South window right side, hung top and wrap.	C	
	" " ceiling angle sheet replaced 4" rip in angle	C	
	" " across from window, hung wrap	N	
	North and lower level - Bath - hung header inside closet	N	
	hung wall next to windows	C	
	window by stairs hung window header	N	
	Master Bdrm. door entrance - right side - glued 1/4" shirk over metal	C	
	beam above window header	C	
	Kitchen closet - nailed door perimeter - both sides	C	changed
	nailed top perimeter adjoining upper loft	N	
	loft above kitchen - banister left side ^{at top of stairs} - finished hanging top cap	N	
	" " " - corner towards windows		
	finished hang angle and wraps from		
	floor to ceiling	C	
	Kitchen - pony wall adjoining oven wall - Torq off shirk one side -		
	rehung both sides.	C	


P 0008

ASPEN CONSTRUCTION INC. 4-82		UDL/940064	1163
2257 SOUTH 1100 EAST #2-G		EXP. 9/93	
SALT LAKE CITY, UT 84106			31-7055/3240
Pay to the order of <u>Martin Bennett</u>		<u>May 28,</u> 19 <u>92</u>	\$ <u>2,650⁰⁰</u>
<u>Two thousand six hundred fifty and 7/100</u>			Dollars
 First Federal The Human Touch Bank		Sugarhouse Office 2262 South Highland Dr. Salt Lake City, UT 84106	
For <u>Taping - Mike Mower Contract.</u>		<u>Constance Hayward</u>	
⑈001163⑈ ⑈324070554⑈360780036105⑈			

May 17 1992

PAY TO THE ORDER OF Martin Bennett \$ 350.00

three hundred fifty @ 50/100 DOLLARS

 **UNITED SAVINGS BANK**
Fourth South Office
376 East Fourth South
Salt Lake City, UT 84111

FOR Cash M. Mower

⑆324370513⑆1200012308⑈0604

F 0007

SOLD TO Michael A. Oliver Construction			SHIPPED TO John A. Oliver Residence		
STREET & NO. 7674 So. 2700 West			STREET & NO. 3899 East Park View		
CITY West Jordan	STATE Utah	ZIP 84061	CITY Salt Lake City	STATE Utah	ZIP

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
	M.A.O.			4-3-92
Draw on Drywall Finish based on approximately 20,00 S.F. at 26¢ S.F.				\$1,700.00
Draw on Bullnose based at \$4.00 L.F.				\$4,000.00
Draw on Extras (list provided)				\$200.00
Total Amount Due & Payable				\$5,900.00

P 0006

Kitchen-top sheet rehang above oven wall right side of lg.
plaster bull nose.

C

- hung piece between oven wall and kitchen ceiling on
window wall

N

Upper Bd. rm. left-Bath rm.-hung small rip at bottom of door
by tub

N

- door header nailed off - adjoining
bd. rm.

C

changed

- tub and wall rip nailed off

C

- water board-cabinet and angle
nailed off

N

- replaced sheet at tub and wall
below rip

C

- ceiling angle above tub-window
wall-nailed off and cut back
to fit angle

N

Upper Bd. rm. left-patio door entrance perimeter nailed off

C

changed

loft above kitchen-banister on left side at top of stairs by

windows-rehang from floor to ceiling

adjoining angle-rehang butt ends adjoining

ing outside angle on adjoining wall

C

North and lower level stairs-hung all of wall on furnace inside

C

Top of circular stairs-and wrap nailed on left side

N

Kitchen ceiling soffit.

C

porch walls rehang board

C

ceiling soffit-hung inside ribs for lighting

C

Master Bath - small closet door perimeter nailed off	C	chained
Lg. closet door perimeter nailed off	C	chained
Nailed off window by tub - pick up nailing bead	C	
rehung bottom shower wall	C x 2	
rehung bottom outside closet wall adjoining shower wall	C x 2	
patch in shuck above " " " " "	C	
Master Bdrm - door entrance by metal beam on left - plug in trim	C	
Wstr and top of stairs window wrap	C	
Loft Bdrm - top of stairs against window frame hung up	C	
rehung lower left bottom door at bedroom entrance	C	
Living Rm - South window right side, hung leg and wrap	C	
" " ceiling angle sheet replaced 4" rip in angle	C	
" " across from window, hung wrap	N ²	
North and lower level - bath - hung header inside closet	N	
hung wall next to windows	C	
window by stairs hung window header	N	
Master Bdrm door entrance - right side - glued 1/4" shuck over metal beam above window header	C	
Kitchen closet - nailed door perimeter - both sides	C	chained
nailed top perimeter adjoining upper loft at top of stairs	N	
loft above kitchen - banister left side - finished hanging top cap	N	
" " " " - corner towards window		
finished hanging angle and wraps from floor to ceiling	C	
Kitchen - pony wall adjoining oven wall - tore off shuck and side - rehung both sides.	C	

MICHAEL A. MOWER CONSTRUCTION 02-85
7874 SOUTH 2700 WEST 255-4532
WEST JORDAN, UTAH 84084

555

97-7051/3243

Apr 24 1992

PAY TO THE
ORDER OF

Martin Bennett

\$ 3000.00

three thousand & 00/100

DOLLARS



UNITED SAVINGS BANK

Fourth South Office
378 East Fourth South
Salt Lake City, UT 84111

FOR

Craighead

M. Mower

⑆324370513⑆1200012308⑈ 0555

Pd #30000 on 4-10-92

All invoices = 19435.77
pymts = 8255.00
11,180.77 Bal Due

P 0002

Martin J. Bennett
 9536 So. Flower Ln.
 Sandy, Utah 84092
 Encl. # 87-0365827

INVOICE

Paid in full - 4-24-92

INVOICE NO.

087009

SOLD TO Michael J. Wagner Construction			SHIPPED TO Tina Conaghan Residence		
STREET & NO. 7674 So. 2700 West			STREET & NO. 3229 East Park Lane		
CITY West Jordan Utah	STATE Utah	ZIP 84086	CITY Salt Lake City	STATE Utah	ZIP
CUSTOMER'S ORDER		SALESMAN M. J. Wagner	TERMS	F.O.B.	DATE 4-24-92
Draw on Drywall finish based on approximately 20,000 S.F. at 21¢ S.F. Draw on 4-10-92 Bank Charge (30¢/day) Extras - (list provided) (2-00/100) Total Amount Due & Payable "Thank You"					
					\$2105.00 200.00 18.00 25.00 \$2348.00
					P 0001

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

MARTIN J. BENNETT,

Plaintiff,

vs.

JAMES CRAGHEAD,
ASPEN CONSTRUCTION, INC.,
a Utah corporation,
MICHAEL A. MOWER, and
JOHN AND JANE DOES 1
through 20,

Defendants.

Civil No. 930904047CV

Judge John A. Rokich

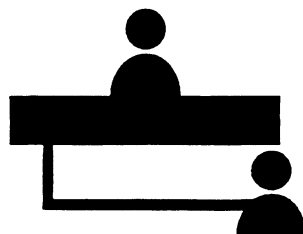
DEPOSITION UPON ORAL EXAMINATION OF

MICHAEL A. MOWER

TAKEN AT: 175 West 200 South
Salt Lake City, Utah

DATE: April 5, 1994

REPORTED BY: Deanna M. Chandler, CSR, RPR



**CAPITOL
REPORTERS**

175 South Main, #510
Salt Lake City, Utah 84111

(801) 363-7939

1 APPEARANCES:

2 For Defendants Craghead and Aspen:

3 Mr. Joseph M. Chambers
4 PRESTON & CHAMBERS
5 31 Federal Avenue
6 Logan, Utah 84321
7 752-3551

8 For Defendant Mower:

9 Ms. Jennifer L. Falk
10 WINDER & HASLAM
11 175 West 200 South
12 Salt Lake City, Utah 84110-2668
13 322-2222

14 I N D E X

15 EXAMINATIONS

16 BY MR. CHAMBERS, Page 3

17
18
19
20 EXHIBITS MARKED

21 Exhibit 4, Page 56
22
23
24
25

1 Tuesday, April 5, 1994: 2:10 p.m.

2
3 MICHAEL A. MOWER,
4 called as a witness, having been first
5 duly sworn, was examined and testified as follows:
6

7 EXAMINATION

8 BY MR. CHAMBERS:

9 Q. Mr. Mower, were you here the whole time
10 of the Bennett deposition?

11 A. Not the whole time.

12 Q. Okay. I didn't think you were.

13 At the beginning of Mr. Bennett's
14 deposition, I asked him to be sure to stop me and
15 clarify any questions that I ask, if I ask a
16 question that maybe you don't understand. I also
17 indicated to him that normally my purpose for
18 asking for the deposition is to get, as soon as
19 possible, that particular party or person's
20 statement on record, so I find out what their case
21 is about.

22 That deposition can also be used,
23 because it's under oath, to impeach you at a later
24 time. But I'm sure your counsel has gone over that
25 with you.

1 Have you had the occasion to have your
2 deposition taken before?

3 A. No.

4 MR. CHAMBERS: Counsel, can we go ahead
5 and stipulate that this is the time and place for
6 the taking of Mr. Mower's deposition, and that the
7 deposition be taken pursuant to the Utah Rules of
8 Civil Procedure and for all purposes set forth
9 therein?

10 MS. FALK: I'll so stipulate.

11 MR CHAMBERS: (Resuming)

12 Q. Mr. Mower, would you state your full
13 name and address?

14 A. It's Michael Allen Mower, 5056 Cheerful
15 Drive, Taylorsville.

16 Q. One of the things I forgot to ask you,
17 do you have any questions before we start the
18 deposition that maybe you would like to ask?

19 A. No.

20 Q. Okay. We have asked, in part of our
21 discovery, to have certain documents produced and
22 your counsel made those available to me this
23 morning around 9:30 and I've gone through those.
24 My understanding is that those documents consist of
25 what she's -- what Ms. Falk's law offices has had

1 stamped on them P 0022 through P 0037, and 38
2 through P 0067.

3 A. I don't have copies of the 0022 ones
4 that you were talking about.

5 Q. Are there any other documents that
6 you're aware of that would -- I guess in addition
7 to a videotape, although I haven't been able to
8 review it because I don't have the equipment.

9 MR. CHAMBERS: That's marked what,
10 counsel?

11 MS. FALK: 0068.

12 MR. CHAMBERS: (Resuming)

13 Q. Other than the videotape and these
14 documents, are you aware of anything else that
15 would be involved in this case?

16 A. No.

17 Q. I tried to notice whether or not there
18 was a date on the video and it wasn't marked. Do
19 you know when the video was taken?

20 A. The video was taken at the point in
21 time, and I don't know the exact date, that
22 Craghead indicated that he was going to backcharge
23 me 4,000 plus dollars for reapplying the finish to
24 the beams.

25 Q. Who was present during this

1 conversation?

2 A. Which conversation?

3 Q. The one that you indicated Mr. Craghead
4 was going to backcharge you.

5 A. Lynn, Lynn Payton.

6 Q. Anybody else?

7 A. Not that I can recall.

8 Q. And you don't recall where the
9 conversations took place at?

10 A. It was in the house, probably in the
11 foyer.

12 Q. And in relationship to any of the
13 invoices, have you taken a look at any of the
14 invoices on the dates? Would it help you to try
15 and pin down approximately the time? If you
16 can't --

17 A. Not at this point. I could probably
18 get a little closer if I reviewed it.

19 Q. Okay. I'd like to go ahead and use the
20 Exhibit No. 1^r that was used in the Bennett
21 deposition, use it in this deposition as well.
22 Can you identify that document?

23 A. Yes.

24 Q. What is that document?

25 A. That's a contract between myself and

1 Lynn Payton to do the sheetrock and the interior
2 plaster work for the Craghead residence.

3 Q. And you had an opportunity to walk
4 through the Craghead residence and view the job
5 before you gave that?

6 A. Yes, I had.

7 Q. About how many occasions were you able
8 to go through before you gave -- I assume that that
9 is in the form of a bid acceptance type proposal?

10 A. Uh-huh.

11 Q. Before you gave the bid, how many
12 times?

13 A. Probably twice.

14 Q. And at that time, was anything said on
15 either of those occasions -- well, was anybody
16 present with you when you had a chance to go
17 through the home?

18 A. The first time I met out there with
19 Lynn, went over details of what he wanted on the
20 job, what he had gone through at this point to
21 where he was waiting for a sheetrocker, he
22 indicated that he was having a hard time finding a
23 sheetrocker.

24 And then the second time when I went
25 through to measure, to get a feel for how much

1 board I was going to need and so forth, and there
2 were workers on the job but nobody in particular
3 that I recall.

4 Q. Okay.

5 A. Lynn was not there.

6 Q. Was anything said to you -- let me back
7 up.

8 I assume that up to this point in time
9 you had not met Mr. Craghead at all?

10 A. No.

11 Q. Was anything said to you by Mr. Payton
12 *with regards to the status of the beam work?*

13 A. No.

14 Q. Other than what is encompassed on

15 Exhibit No. 1, were there other aspects of your
16 arrangement with Aspen Construction?

17 A. No, not that I can recall.

18 Q. What was your agreement with
19 Mr. Bennett?

20 A. Marty was going to come in and do the
21 sheetrock finishing for me for 21 cents a foot plus
22 a dollar a lineal foot to apply the uppermost
23 corner beading.

24 Q. And did you have any agreement with him
25 with respect to materials?

*But WORKMEN ON Job - TYPE
Who - what DONE?*

*Integrate
Contract*

1 A. No.

2 Q. Was it assumed that you would supply
3 the materials for him?

4 A. It was.

5 Q. Was there any agreement at the outset
6 with regards to performing extra work beyond the
7 finishing and the bullnose?

8 MS. FALK: Agreement as to whom?

9 MR. CHAMBERS: (Resuming)

10 Q. With Mr. Bennett.

11 A. The only -- there's no agreement, it's
12 just naturally known that there's generally always
13 extra work in a job. It's just a rule of thumb.

14 Q. Okay. So nothing expressed but you
15 anticipated that during the course of it it would
16 arise and you'd have to deal with it?

17 A. Yes, especially on this job.

18 Q. Did, in fact, you have an opportunity
19 then to talk with Mr. Bennett later on about doing
20 the extra work and coming to an agreement as to
21 what would be charged?

22 A. Yes, I did.

23 Q. When was the earliest such conversation
24 that you can recall? I apologize, I assume that
25 that was not in writing, that agreement was not

1 reduced to a written instrument.

*Marty's Agreement
w/ Mower - oral*

2 A. The agreement to do the work was not;
3 no.

4 Q. What about the agreement that was
5 arrived at with regards to the extras?

6 A. No, it wasn't in writing.

7 Q. Any particular notation made in a
8 daytimer book by him or by you, that you recall,
9 that may have been coincidental to the time you had
10 the conversation with him?

11 A. That would indicate that we were
12 talking about extra work? No.

13 Q. I apologize, I interrupted you
14 earlier. You were going to go ahead and answer
15 that one question.

16 A. You asked about the price as well. The
17 first indication that I had of his price was the
18 first billing that he gave me for the extra work.

19 Q. So I assume that that was sort of
20 unilaterally arrived at by him?

21 A. He indicated to me that it was his
22 standard billing for service work.

23 Q. Okay. And on his invoices -- let me
24 make a statement first and then I'll get to the
25 question.

1 I'm assuming, as your counsel does,
2 that P 0006 should have been dated May 8th of '92
3 instead of April 8th, and is, in fact, the second
4 invoice. Do you know if that's --

5 A. 91 and 90? Oh, I see, yes.

6 Q. Yes.

7 A. Yes, that's what I would assume, that
8 he just made an error on that.

9 Q. Okay. In any event, if it's not, from
10 what your recollection is, 90 was received and paid
11 before 91 was?

12 A. Yes.

13 Q. Okay. So the documents that
14 Mr. Bennett submitted to you on his first invoice
15 consisted of P 0001, 3, 4 and 5?

16 A. Yes.

17 MS. FALK: Did you receive this entire
18 thing at the time?

19 THE WITNESS: 1, 3, 4 and 5, I did.

20 MS. FALK: Okay.

21 MR. CHAMBERS: (Resuming)

22 Q. And on that he listed -- it looks like
23 he identifies that he's making a draw for some
24 initial work of about \$2,185. Do you know how he
25 arrived at that figure?

1 A. He probably estimated the amount of
2 work in relation to the total job done.

3 Q. It looks like he gave you credit for
4 \$300 that you previously had given him on the
5 10th.

6 A. Yes.

7 Q. I'm having a hard time reading his
8 writing but it says backcharge --

9 A. Nailers.

10 Q. Okay, nailers, \$30 an hour?

11 A. Uh-huh.

12 Q. And extra lists provided \$30 an hour.
13 Those two charges, is that \$180 and 135
14 respectively?

15 A. I can read the 180, I can't read the
16 second one.

17 Q. Maybe off the original invoice it makes
18 a better copy.

19 A. Looks like 635 for the extras.

20 Q. Okay. As you reviewed that invoice
21 from him, those last two charges, was he attempting
22 to differentiate charges that should be charged to
23 you as opposed to Aspen Construction?

24 A. That's what he indicated.

25 Q. Did you have an opportunity then to

1 talk to Mr. Payton about the charges that were
2 totalling \$635?

3 A. Yeah, because Marty gave them the
4 invoice. They came to me actually, Marty gave them
5 a copy of the invoice.

6 Q. When you say they, I assume Mr. Payton
7 and Mr. Craghead were present?

8 A. Yes.

9 Q. Anybody else present?

10 A. At the time they came to me?

11 Q. Yes.

12 A. No.

13 Q. I say that for a foundation purpose,
14 just to know who was present if there might have
15 been other witnesses.

16 A. Uh-huh.

17 Q. Where did that conversation take place?

18 A. I recall that conversation taking place
19 between the family room or the great room and the
20 new kitchen dining area.

21 Q. The house is sufficient for me on
22 that.

23 A. Okay.

24 Q. What I'm trying to get to is your
25 office or another location. As precise as you did

1 it though, I appreciate it. What exactly
2 transpired at that meeting? Who said what to whom?

3 A. They came to me, they were concerned,
4 they thought I was being billed \$15 an hour and
5 they were being billed \$30 an hour. And I told
6 them that I haven't seen anything that Marty has
7 given me that was billing \$30 an hour. They said
8 that they had seen a charge from Marty that was
9 only charging me \$15 an hour. I never saw that.
10 All I saw was -- the only thing that Marty gave me
11 was this invoice and a breakdown of what he had
12 done.

13 Q. Would it be fair to say that they were
14 objecting to paying \$30 an hour for extra work at
15 that time?

16 A. No, what they were displeased with was
17 they thought he was charging Lynn backcharges to
18 Aspen Construction at one rate and backcharges to
19 me at another rate.

20 Q. Okay. Nothing else transpired during
21 that conversation?

22 A. Not really, no.

23 Q. Was there any resolution to that
24 particular matter?

25 A. No, not really. They just came to me

1 and said that they were displeased about that. I
2 said well --

3 MS. FALK: What did you say?

4 A. I just said I wasn't aware of the \$15
5 charge to me. The only thing I ever saw was the
6 \$30 an hour.

7 MR. CHAMBERS: (Resuming)

8 Q. How did you feel about the \$30 charge
9 that was being backcharged against you or added to
10 yours?

11 A. Well, Marty is a contractor. Marty
12 does -- you know, he does that sheetrock finishing
13 for a living. And \$30 an hour is, you know, within
14 the limits of being reasonable for a self-employed
15 contractor. That's how I feel about it.

16 Q. You yourself are a licensed contractor;
17 right?

18 A. Yes, I am.

19 Q. And it's your opinion that for
20 sheetrock finish work \$30 is reasonable?

21 A. For the contractor. If I were paying
22 employees, then it would be different. However, if
23 I were paying employees, my bill would have
24 included \$30 an hour plus markup. I think that
25 that's reasonable.

1 Q. What, is there a range of
2 reasonableness in there or is that just a flat
3 figure?

4 A. What do you mean by a range of
5 reasonableness?

6 Q. Oh, attorneys up in the Logan area
7 charge anywhere between 85 and 125 an hour,
8 depending on what they're doing, whether or not
9 they're experienced in that particular area. A
10 number of other factors play into it, but there's
11 -- you know, I would not say that there's a
12 specific charge for attorneys, there's more of a
13 range.

14 A. At a lower end or higher end of what a
15 drywall contractor or finisher should make?

16 Q. Yes.

17 A. Probably at the higher end, but Marty
18 does above average work.

19 Q. Okay. You even think that's fair for
20 the cleanup work that he was doing there?

21 A. Well, I wish that I had had laborers on
22 the job to do my end of it. At the time he needed
23 it done, I wasn't able to break someone free to go
24 over and help him. I had other jobs going on at
25 the time.

1 Q. Did he actually call you and say, I
2 need someone over here, and you couldn't or --

3 A. I would imagine he did. I don't recall
4 specifically, but he kept in close contact with
5 me. I had a mobile phone and, you know, he wasn't
6 afraid to call me.

7 Q. So you don't recall but it was not
8 beyond him to actually give you that opportunity?

9 A. Yeah, almost -- I would say -- without
10 recalling the exact conversation, I would say that
11 he probably did call me.

12 Q. Mr. Payton indicates to me that at that
13 particular conversation when he and Mr. Craghead
14 and you met, that they were objecting to the \$30 an
15 hour rate as being four to five times a reasonable
16 charge for the type of work involved. Do you
17 recall any of that in the conversation?

18 A. That was my opinion but that never came
19 up. I mean, the four to five times the reasonable
20 amount never came up.

21 Q. What would it cost to normally employ
22 someone to go in and do the cleaning and scrapping,
23 as he's identified on here?

24 A. My cost or their cost?

25 Q. An employee.

1 A. Because my cost isn't relative to what
2 their cost would be. My cost would be whatever it
3 cost me and their costs would be whatever it cost
4 me plus a markup.

5 Q. Go ahead and do me both.

6 A. My cost, I would probably -- for labor
7 work would probably have anywhere from a \$5 an hour
8 person to the least expensive guy on the job. If I
9 had a \$15-an-hour guy on the job and a \$10-an-hour
10 guy, the \$10-an-hour guy would do the work. If I
11 had a \$5-an-hour guy on the job, he would do the
12 work. The charge to them would probably minimally
13 be \$20 an hour, had I had a laborer to do the
14 work.

15 Q. Mr. Payton indicated to me that as an
16 outgrowth of that particular conversation, they
17 agreed to go ahead and pay on this one-time basis
18 only the extra charges, but that they then gave
19 instructions to you, as well as to the foreman on
20 the job, that Mr. Bennett was not to do extra
21 work. Do you recall that?

22 A. I recall that conversation but I don't
23 recall that conversation at that meeting.

24 Q. If Mr. Payton is incorrect, when, to
25 your recollection, did that conversation occur?

*Bennett
Not to
Do Extra
Work*

1 A. To my recollection, it would have been
2 like two more invoices down the road, a couple more
3 months down the road.

4 Q. Okay. For purposes of that
5 conversation, who would have been present at that
6 conversation?

7 A. Both Lynn and Jim.

8 Q. In your discovery, I can't pinpoint the
9 exact answer, but I believe there was a question
10 asked to the effect of whether or not there were
11 any other documents that modified the Exhibit No.
12 1, any written agreements. I believe your answer
13 was to the effect that there were not. Is that
14 accurate, if that is your, in fact, representation?

15 A. Nothing written.

16 Q. And by that answer I assume that there
17 is -- that you are maintaining that there was an
18 oral agreement of some sort?

19 MS. FALK: Objection, calls for a legal
20 conclusion. Counsel is asking whether he believes
21 it's an extra contract, a verbal contract or merely
22 supplements the contract or rescinds the contract.
23 There are various different interpretations.

24 MR. CHAMBERS: Normally what happens --

25 MS. FALK: You can still answer the

1 question.

2 MR. CHAMBERS: (Resuming)

3 Q. She's got her objection on the record
4 for the judge.

5 A. So restate the question.

6 MR. CHAMBERS: I'll probably be best to
7 have it reread.

8 (Record read)

9 A. Several.

10 MR. CHAMBERS: (Resuming)

11 Q. What would those be? And if there is a
12 specific chronological order to them, we could take
13 them in any order that --

14 A. Well, because I didn't keep records, it
15 would be hard to put them in exact chronological
16 order.

17 From the beginning of the job, for
18 example, in the first room that the sheetrock was
19 started in, in the master suite, they hung the
20 whole room. And then as soon as they were done,
21 they had to -- I don't recall if we took off the
22 sheets or if Aspen's people took off the sheets,
23 but there were sheets immediately removed from the
24 wall because the plumber -- if I remember right the
25 inspector hadn't been in to inspect the plumbing.

ASK
LYNN
What
was
Read
for
this
The
whole
story

1 So immediately there was extra work, and that was
2 all done orally.

3 One of the other instances was after
4 the sheetrockers had -- in my estimation it would
5 have been approximately half of the house hung,
6 Lynn indicated that they were not going to use wood
7 base molding and that the sheetrock should be run
8 all the way to the floor so that there were no
9 gaps, and it would be easier to tape because if the
10 sheetrock was going to finish right down to the
11 floor.

12 Another thing was --

13 Q. Did that require rework?

14 A. It required extra work on the part of
15 the taper that wouldn't normally be incurred.

16 One of the other things that they
17 wanted done differently was how we finished around
18 the windows. Initially, there was wood finish
19 around the windows. They were going to make a wood
20 molding that we would tie into and it would be very
21 simple to do, and then they decided to have us *is at*
22 sheetrock and put our bullnose corners around the *the*
23 window. How we were going to tie into the doors, *Cover*
by
original
Bro
24 there were a lot of things that were just left. It
25 was kind of design as you build.

1 So there were ongoing extras throughout
2 the whole job and it would be practically
3 impossible to go over them all. I mean, we could
4 go over them with Marty's list, he kept detailed
5 records of what he did.

6 Q. Is there anybody else other than Marty
7 who did the extra work as would have been required,
8 as you claim?

9 A. My plasterers did extra work.

10 Q. Did they maintain any logs any more
11 than what Marty did?

12 A. No, but none of those extras were
13 disputed either.

*Shows Paday can
be reasonable*

14 Q. They were just paid?

15 A. Yes.

16 Q. Those appear upon the invoices that
17 were produced this morning?

18 A. Yes. And they were on the invoices
19 that I received in my interrogatories as well;
20 admissions, I guess it was.

21 Q. So basically, the only extra work that
22 was really disputed was Mr. Bennett's?

23 A. That's all they've disputed.

24 Q. I would like to get a detailed list of
25 what the extras were. I think it would help

1 Mr. Payton to analyze the case. But I don't know
2 if you would like to do that in writing or in the
3 deposition.

4 MS. FALK: You're asking him to make --
5 create a document at this time listing all of the
6 extras that occurred on the job? He's already
7 testified that the only list of extras he has at
8 this point is the one that Mr. Bennett gave him,
9 and that the other plasterers did not give him or
10 that he no longer has documents relating to those.

11 MR. CHAMBERS: Okay. I was simply
12 trying to speed things up.

13 A. Yes, you have all the records I have of
14 the extras. You have Marty's list, which includes
15 everything that he did that was extra.

16 And as far as the plaster work goes, it
17 was -- they weren't disputed so there was nothing
18 extra done. I mean, I made no extra notes other
19 than the fact that Lynn knew and apparently Jim
20 knew what was extra. What they had initially said
21 we were going to do as far as plaster corners and
22 what we actually ended up doing as far as plaster
23 corners, that wasn't disputed so --

24 MR. CHAMBERS: (Resuming)

25 Q. Okay. On your lien, how was the lien

1 amount arrived at?

2 A. The amount was arrived by taking the
3 amount that I owed Marty, adding my markup to it.

4 MR. CHAMBERS: That Deposition Exhibit
5 No. 3, is that over there?

6 MS. FALK: Yes.

7 MR. CHAMBERS: (Resuming)

8 Q. Is that, in fact -- Exhibit No. 3, is
9 that a copy of your lien?

10 A. That's a copy of the initial lien I
11 did.

12 Q. Was there another lien?

13 A. After I placed this lien, I sought
14 counsel and he felt it would be wise for him to
15 file a lien through his --

16 MS. FALK: Let's go off the record for
17 a second.

18 (Off the record)

19 MR. CHAMBERS: (Resuming)

20 Q. Why don't we try and clarify that. If
21 there is a second lien, you'll check your records
22 and provide me with a copy of it?

23 A. Yes, there isn't a second lien for this
24 job.

25 Q. Okay. With regards to the 13,515.58,

1 you lost me a little bit in the going back and
2 forth there, so I think I'm going to ask the
3 question again but I can't remember what your
4 answer was.

5 How was that figure arrived at, then?

6 A. The amount that I owed Marty plus a *
7 markup.

8 Q. Okay. Do his lien figures have any
9 relationship to your lien figures?

10 A. I don't know how he derived his lien
11 figures.

12 Q. This morning he indicated, from what I
13 could understand, that he took the amount that was
14 listed on P 69 and added to it the two amounts
15 listed on 15 and 16, P 15 and 16.

16 A. And you're asking me if this relates to
17 my number?

18 Q. If they correlate in any fashion.

19 MS. FALK: I object. I still find that
20 question ambiguous. Why don't you explain what you
21 mean, if they correlate in any fashion? He's
22 already described how he arrived at his number and
23 you've already testified as to how you understand
24 Mr. Bennett arrived at his number. So I don't
25 understand your question to Mr. Mower.

1 MR. CHAMBERS: Okay, let me try and
2 clarify that.

3 MR. CHAMBERS: (Resuming)

4 Q. What amount do you feel that you owe
5 Mr. Bennett?

6 A. It's just over \$11,000.

7 Q. And through the invoices which
8 Mr. Bennett submitted to you, is there some way
9 that I could see how you arrived at that figure?

10 A. Through his invoices, probably not,
11 unless he shows all the payments that were made to
12 him. If he shows all his payments that were made
13 to him --

14 Q. I think he does pretty well up to that
15 point in time.

16 A. I think he received some after that.
17 At the time that he -- I would suppose that at the
18 time he filed his lien, I don't know what time that
19 was, maybe that amount was right. He received some
20 monies from me, but when I saw his lien I knew his
21 lien was higher than I thought the amount -- I knew
22 was higher than the amount I owed him. And I found
23 his lien when I went down to file mine. I saw that
24 he had already had a lien on the property.

25 Q. So you believe that Mr. Bennett has not

1 taken into account all the payments which he should
2 have?

3 A. Like I say, at the time that he --
4 maybe at the time that he filed the lien, he hadn't
5 received my final payment. I don't know where he
6 came up with his number but I know that the amount
7 that I owe him is just over \$11,000.

8 Q. Okay. I thought I had forwarded in the
9 original discovery, but I evidently neglected to,
10 so I sent a copy down on March 24th to your
11 counsel, what I called an Exhibit B which tried to
12 add up all the invoices and give credit for the
13 payments which Mr. Payton had made. Have you had
14 an opportunity to see that document?

15 A. Yes, I have.

16 MS. FALK: Would you get Mr. Mower a
17 copy of Exhibit B at this point so he knows
18 specifically what you're talking about?

19 MR. CHAMBERS: I only have one copy.

20 MS. FALK: Would you show it to him?

21 MR. CHAMBERS: I thought what you were
22 saying is he had a copy. If he doesn't, I'd be
23 happy to.

24 MS. FALK: Please show him one, thank
25 you.

1 A. And what are you asking about this?

2 MR. CHAMBERS: (Resuming)

3 Q. First off, I wanted to know if you'd

4 had a chance to see that document.

5 A. I did, uh-huh.

6 Q. Have you had a chance to compare your

7 records to see whether or not that document

8 accurately reflects all the payments that you

9 received?

10 A. The payments they show there match what

11 the payments are that I received or that they paid

12 to Marty in behalf of me.

13 Q. Do you have any problem with any of the

14 payments they paid directly to Marty?

15 A. No, they asked me before they did it.

16 Q. As I was trying to reconcile it, I

17 believe I came out of whack by about \$602 and made

18 a note of it down at the bottom. It would appear

19 to me that your records for your lien had not given

20 credit to Mr. Payton for about 602 or \$632.

21 A. That -- I don't think that's right but

22 I would have to double-check on that. I know that

23 all the payments that they made I had accounted

24 for, so I would assume that I had accounted for it

25 in the figure of the lien but I can double-check.

1 Q. Do you recall what your markup was that
2 you utilized in preparing the lien?

3 A. I forget but it's generally anywhere
4 from 10 to 20 percent.

5 Q. During the course of this particular *Treatm*
6 job, you, in essence, treated Mr. Bennett as a *as a* Contract
7 subcontractor for purposes of withholding payments,
8 federal withholding?

9 MS. FALK: Objection, calls for a legal
10 conclusion. Go ahead and answer it.

11 A. Yes.

12 MR. CHAMBERS: (Resuming)

13 Q. You definitely did not treat him as an
14 employee, though, and make withholding, FICA --

15 MS. FALK: Objection, that's
16 ambiguous. Go ahead.

17 A. I made no withholdings, no.

18 MR. CHAMBERS: (Resuming)

19 Q. No FICA withholdings or federal or
20 state withholdings?

21 A. No.

22 Q. The reason I asked that, I come back to
23 this markup. I could see how -- I guess I can
24 understand if he were an employee of yours why
25 you'd go ahead and take a markup for supervising

1 him. But as treating him as a separate
2 subcontractor, what would be the basis for you
3 taking a markup on his work?

4 A. His work was done through me.

5 Q. And in that sense, are you saying that
6 you supervised his work?

7 A. Most definitely.

8 Q. This next question may appear to be
9 somewhat awkward, but it took me by surprise this
10 morning to find out that there had been some sort
11 of action by the judge on a motion I made.

12 MS. FALK: May we take a break here so
13 that I can get that document for you,
14 Mr. Chambers?

15 MR. CHAMBERS: Yes.

16 (Recess)

17 MR. CHAMBERS: (Resuming)

18 Q. Lynn and Jim related to me a
19 conversation after they had received your last
20 invoice, trying to resolve some of the problems,
21 where you indicated to them that basically, besides
22 your markup for an overhead, you'd received
23 everything. Do you recall that conversation?

24 A. The way I recall the conversation was
25 that aside from the extras that are due, plus my

1 markup, everything had been paid, and it has.

2 Q. Okay. With the way I read that minute
3 entry, if Mr. Bennett is precluded from pursuing
4 his claim for his lien, what amount are you
5 claiming you're entitled to?

6 A. The full amount.

7 Q. Which is?

8 A. 13,515.58.

9 Q. And on what basis is that?

10 A. Marty was working for me, Marty did the
11 work, and --

12 Q. Marty was not -- I'm sorry.

13 A. And taking the cost of Marty to do the
14 work plus my markup. That's the cost of the work
15 that we did. The work was done and it should be
16 paid for.

17 Q. You're not saying that you owe Marty
18 anything?

19 A. Oh, yes, I do owe Marty.

20 Q. How much do you owe Marty?

21 A. A little over \$11,000.

22 Q. And even though he has no contractor's
23 license and cannot pursue that action legally,
24 you're still taking the position that you are going
25 to pay him?

1 MS. FALK: Objection, you're
2 representing legal matters to which Mr. Mower has
3 no knowledge, is not qualified to testify.

4 MR. CHAMBERS: (Resuming)

5 Q. You're a defendant in the action which
6 Mr. Bennett is the plaintiff, aren't you?

7 A. In his lien?

8 Q. Yes.

9 A. Yes.

10 Q. When you filed your response to his
11 complaint did you admit that you owed him the
12 \$11,000?

13 A. I don't recall receiving the thing.
14 Maybe I did. I don't recall.

15 Q. It appears that Judge Rokich has
16 indicated that Mr. Bennett cannot proceed to
17 collect the money against any of the defendants.
18 Notwithstanding that ruling, you're indicating that
19 you owe Mr. Bennett the \$11,000?

20 A. Yes, I do.

21 Q. I was beginning to ask a question and I
22 think your counsel then went and got this ruling.

23 The conversation that Mr. Craghead,
24 Mr. Payton and you had relative to the markup, what
25 did you indicate that your recollection of how that

1 went about was?

2 A. Whether they accepted my amount for
3 markup?

4 Q. Well, the gist of it, as I got it, was
5 that you were filing your lien only in the event --
6 that you were going to file the lien only in the
7 event that Bennett was successful in recovering
8 against you, but that you, in essence, were going
9 to them only for the markup.

10 A. No.

11 Q. No conversation like that ever
12 occurred?

13 A. I can remember telling them that the
14 amount they owed me was mostly Marty's, money that
15 Marty had coming to him plus my markup. I never
16 said to them that if Marty was unsuccessful with
17 his lien that I wouldn't proceed. I never said
18 that.

19 Q. When did you become aware that
20 Mr. Bennett was not a licensed contractor?

21 A. In your admissions.

22 Q. Are you familiar with the contractor
23 licensing statutes of the State of Utah?

24 A. What part of the licensing? I'm fairly
25 familiar but not --

1 Q. That's a fair response. The provision
2 with respect to -- it's the section I cited in my
3 memorandum, that a contractor, unless he's
4 licensed, cannot pursue a collection action for the
5 goods or for the services that he rendered. Have
6 you ever been involved in that section before?

7 A. I've heard that. I've also heard that
8 if someone does perform the work, whether they're
9 licensed or not and they can prove that they did
10 the work, that they can also collect for the amount
11 of work that they did, regardless. So I've heard
12 all sides, both ways.

13 Q. Would it be fair to say that to a
14 certain extent, at least, the \$11,000 that you've
15 indicated, that your lien and Mr. Bennett's lien
16 are duplicit, they overlap, they represent the same
17 dollars?

18 A. I would say yes.

19 Q. Are you aware of what happens upon the *Knowledge of*
20 recordation of a lien relative to title company *How Lien is set up*
21 reporting, what's out there? *Property*

22 A. I know that it goes on public record,
23 and if anyone were to try and sell or transfer the
24 property, that it would show that there are liens
25 against the property.

1 Q. Did your counsel show you a letter
2 which I sent to her way back in the beginning of
3 this matter indicating that these liens were
4 causing a hardship to Mr. Craghead in refinancing
5 his home?

6 MS. FALK: Objection, if you are going
7 to refer to a document, will you please have a copy
8 for Mr. Mower to review?

9 MR. CHAMBERS: (Resuming)

10 Q. She has the objection on record.

11 A. I remember something about it.

12 Q. Would it be fair to say --

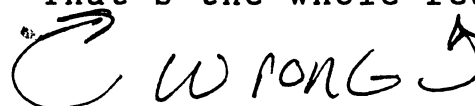
13 MS. FALK: If you're going to continue
14 questioning him about this document, I would like
15 you to have a copy of the letter for him to see and
16 we can take a break while you get a copy of it.

17 MR. CHAMBERS: I don't have a copy. I
18 sent it to you. It's not in the documents I
19 brought with me.

20 MR. CHAMBERS: (Resuming)

21 Q. Would it be fair, then, to say that you
22 were on notice that this was potentially going to
23 cause a problem on refinancing his house?

24 A. Whenever I lien someone, I'm aware that
25 it could cause problems. That's the whole reason



1 behind the thing.

2 Q. And to the extent that the dollars
3 involved between the two liens may be duplicate of
4 one another, did you take any steps to clarify in
5 your lien that between the two liens there was not
6 a total of, say, \$26,000 outstanding?

7 A. No, I didn't.

8 Q. Mr. Bennett, in his lien, has included
9 an amount for supplies. It seems to me, based on
10 the totality of the documentation, that he's
11 overcharging on that, that those supplies were
12 really something that, if he saved you from having
13 to provide them, you would have had to pay and it
14 was within your contract price as set forth on
15 Exhibit 1.

16 A. The way I see it is clear is that there
17 were several occasions when Marty called me and
18 said we needed certain things on the job the next
19 day or that day, or whatever, to proceed in a
20 certain area or doing a certain thing. And I said
21 -- maybe I told him when I would be able to get
22 him the materials, and he probably indicated to me
23 that he had some in stock and if he brought them,
24 could he bill me for them as opposed to waiting for
25 me to go down and pick up the materials. It was

1 all in the spirit of trying to keep the job
2 progressing and trying to expedite things. It was
3 nothing abnormal.

4 Q. I understand that. I'm not saying
5 anything immoral or illegal was being done. It
6 just seemed to me that Exhibit No. 1, for the price
7 you agreed to do the job at, that the materials,
8 for example the mud that would be necessary, was
9 included at the 70 cents per square foot. And I
10 guess the question I have: Is that true or not?
11 Is that contract, Exhibit 1, inclusive of the
12 necessary materials to do that?

13 A. That is the charge for the materials.
14 If I total all my invoices, all the material that I
15 delivered to the job as far as sheetrock goes, I
16 included all the amount of material that -- as far
17 as corner beads go that were a separate charge, I
18 included everything that Marty invoiced me for
19 installing, not for supplying to the job but for
20 installing.

21 And then, there were some materials
22 that he supplied to the job. I added the sheetrock
23 square footage to that and the charge for the
24 corner beads or whatever, they were all reasonable
25 prices, he was not overbilling me for the

1 materials.

2 Q. But should they be added on to a lien?

3 A. Definitely, because they were materials
4 used on the job. See, this doesn't say 70 cents a
5 square foot for 10,000 square foot or 70 cents a
6 foot for 15,000 square feet. It says 70 cents a
7 foot for all sheetrock hung and taped.

8 Now, if I supplied 20,000 square foot
9 and Marty brings another 500 square feet from his
10 stock, I have to pay for that. And that's all
11 inclusive of the amount of sheetrock that was
12 installed on the job.

13 Q. I guess I'm not talking about the
14 sheetrock. I'm just talking about --

15 A. Corner --

16 Q. You've got my copy, it's 59 I think.

17 A. Bullnoses and so forth?

18 Q. No, 22 boxes of mud.

19 A. Okay, it's the same thing. That 70
20 cents a foot includes -- that 70 cents a foot is
21 charged for the amount of sheetrock that I supply
22 to the job. And in that 70 cents I have to buy the
23 sheetrock, I have to buy the mud, I have to buy the
24 corner bead, I have to buy the nails, the screws,
25 everything that's involved in installing that

1 sheetrock.

2 Q. Masking tape?

3 A. Yes, everything. So the extra 22 boxes
4 are just, you know, part of what it takes to do
5 that.

6 Q. But to the extent that he's charging it
7 as an extra and trying to get reimbursed by Aspen
8 for that, that's already included within your
9 purchase price -- your price of 70 cents per square
10 foot?

11 A. I don't know what he was trying to be
12 reimbursed for. This is a bill to me. This bill
13 is made out to Michael Mower, so he's telling me
14 that I have to pay this. I haven't charged Lynn an
15 extra 22 boxes. What my invoice shows clearly is
16 how much sheetrock was delivered to the job and how
17 much corner bead was installed on the job, and how
18 much plaster work was done on the job. And then
19 any extra work, not materials but extra labor that
20 was charged to me by Marty, plus my markup.

21 Q. I understand that, but I guess what I'm
22 saying is, according to what Mr. Bennett said, he
23 took this amount of 12,685.77, which includes the
24 materials, 358, added on to it two other invoices
25 and filed that as his lien. And to that extent, it

1 seems to me that he's filed an excessive lien at
2 least against the house.

3 MS. FALK: We're not talking about this
4 lien here.

5 A. Maybe he did, but as I've already
6 indicated, the amount that I show I owe Marty is
7 much less than he shows.

8 MR. CHAMBERS: (Resuming)

9 Q. Have you got that reduced down to some
10 writing, how you calculated that?

11 A. I could look. I don't know if I still
12 have anything that I did my figures on. I could
13 easily figure it. I could easily do it again.

14 Q. I would like it, you know. It's one of
15 the questions I asked in the interrogatories and
16 didn't really get a specific answer to.

17 A. Maybe I didn't understand.

18 Q. I don't want to waste your time right
19 now doing it. Would you mind if we produced that
20 to you and -- or we can go through the documents
21 and have you --

22 MS. FALK: I have no objection. It
23 will certainly have to be done at trial as an
24 exhibit anyway. When we get our exhibits ready for
25 trial we'll give you a copy.

1 MR. CHAMBERS: Well, if that's within
2 the next three weeks, great, but if we're not going
3 to get the exhibit ready for trial, let's painfully
4 go through it now.

5 MR. CHAMBERS: (Resuming)

6 Q. What's the basis of your lien?

7 A. The basis of my lien is the labor Marty
8 charged for, plus materials that he supplied to me
9 in the form of sheetrock. Well, let's just go over
10 what my last invoice was for. It says board
11 delivered to the job.

12 MS. FALK: This is referring to
13 document P 0022, invoice No. 4212.

14 A. Board delivered to the job, 2,792
15 square feet at 7 cents a square foot; 14,554 at 40
16 cents. Bullnose corner bead, 2300 lineal feet at
17 one dollar, \$2,300. Plaster, because there were
18 extras involved that were undisputed, I just
19 grouped those together at \$3,887. Taping extras,
20 11,106.13. Total is 31,000.

21 Now, the 11,106 is probably going to be
22 the 12,685 less some of these materials and other
23 things that I didn't think should be charged to
24 Aspen. And I'd need a calculator to -- on Marty's
25 description his sheetrock footage matches mine.

1 MS. FALK: Why don't we take a break
2 while Mr. Mower figures that and I'll make my phone
3 call.

4 (Recess)

5 THE WITNESS: That's as near as I can
6 come right now.

7 MS. FALK: Do you want to wait?

8 THE WITNESS: It would be better to
9 wait.

10 MS. FALK: How close are you?

11 THE WITNESS: I'm within \$80.

12 MS. FALK: Do you want his \$80 now?

13 MR. CHAMBERS: Sure, that's great.

14 THE WITNESS: If I take the amount that
15 he shows that I owe and the amount that I'm saying
16 is owed on extras, I get the difference, the
17 difference is 1,579.64. If I deduct out the
18 materials that he supplied, 355.30 less work that
19 he also did on plaster bullnose of 13.05, then I'm
20 \$80 -- shows an \$80 overcharge. However, if I were
21 to look into it a little further I could probably
22 find where the \$80 is from.

23 MS. FALK: Okay.

24 MR. CHAMBERS: (Resuming)

25 Q. I appreciate that.

1 At the time you retained Mr. Bennett to
2 perform the finish work, did he make any
3 representations to you about being a licensed
4 contractor?

5 A. Marty had done work for me in the
6 past. I had a federal ID number for him, I had
7 sent him 1099's. I assumed -- he never said that 1099's
8 he was, I assumed he was. He had a federal ID
9 number and I had used him in the past. And that's
10 how I had his federal ID number, I had used him in
11 the past and he had given it to me for 1099
12 purposes.

13 Q. Did he make any representation to you
14 that he had liability insurance?

15 A. No.

16 Q. Any representation that he had
17 workmen's compensation insurance?

18 A. No.

19 Q. And although, as I understand your
20 testimony, he didn't expressly state that he was a
21 contractor, he implied and you understood that he
22 had a license by virtue of the fact that he gave
23 you the employer identification number?

24 MS. FALK: Objection, misstates his
25 testimony. All he said was that he had a federal

1 ID number.

2 A. I had acquired his federal ID number
3 from jobs done in the past.

4 MR. CHAMBERS: (Resuming)

5 Q. How long ago had he worked for you in
6 the past?

7 A. The last job he did for me was probably
8 in '90, before this one.

9 Q. Do you know, by chance, when was the
10 last time he was licensed?

11 A. I don't.

12 Q. I wasn't attempting to mischaracterize
13 your testimony. There was an implication in there
14 that I thought was present and I was asking you
15 simply whether or not that was true, and that's if
16 you understood he was a licensed contractor because
17 you had the federal ID number on hand?

18 A. I thought he was.

19 Q. Are you aware of any representations
20 Bennett would have made to Aspen Construction as a
21 result about being a licensed contractor?

22 A. No.

23 Q. Are there any representations which you
24 made to Aspen Construction about Bennett being a
25 licensed contractor?

1 A. No.

2 Q. Are you aware if your workmen's
3 compensation company audits the contracts, has been
4 unable to locate a workman's compensation number
5 for a specific subcontractor, what the consequences
6 of that are?

7 A. Yes, I am.

8 Q. Would you explain to me because I'm not
9 fully aware of it. What do you understand those
10 consequences to be?

11 A. If they audit my books and I have used
12 subcontractors and don't have proof that they were
13 insured at the time, I could have to pay their
14 worker's compensation.

15 Q. My understanding is that's a flat rate
16 of 10 percent of the amount that you compensated
17 them. Have you got any understanding on that?

18 A. I am not sure. I would assume that
19 it's at the rate that the trade that you used him
20 for would be.

21 Q. Are you aware of any conversations with
22 either Mr. Payton or Mr. Craghead about this four
23 or five cent increase that Mr. Bennett was talking
24 about with regards to the finishing of the
25 sheetrock?

1 A. Yeah, I'm very aware of it.

2 Q. Who was that with?

3 A. Well, his conversation, I don't know.

4 If you were asking about his conversation, I'm not
5 aware. My conversation, I am.

6 Q. Okay. What strikes me as odd in this
7 is there seems to be a chain of command on this job
8 with Mr. Craghead really out of the picture as the
9 owner and Mr. Payton the contractor. Was there a
10 chain of command followed on this job?

11 A. Yeah, there was a chain of command.
12 Marty always informed me of everything that went
13 on. However, your confusion comes from --

14 Q. You're right.

15 A. -- Jim Craghead's continual presence on
16 the job and his hands-on interaction with everybody
17 involved in the job, plus the fact that Lynn and
18 Jim Craghead continually talked to -- rather than
19 directing all their problems or anything that Marty
20 went to them with as a problem, rather than saying,
21 Marty, you know, you're employed by Mike, you take
22 that to Mike and if he brings it to us then we'll
23 deal with it. I mean, actually, that would have
24 been the proper way to handle it. But Marty
25 interacted with them, they interacted with Marty

1 and it was that way all the way through the job.

2 But as far as my relationship with
3 Marty and his asking me about whether he should
4 proceed or what he should do, he always came to
5 me. And I was on the job, I know that one of your
6 admissions or one of your interrogatories or
7 whatever said that I was not there very often. I
8 was there quite often.

9 Q. That's what I was told, is that you
10 weren't there that often.

11 A. Well --

12 Q. I was not there.

13 A. I know.

14 Q. The conversation that you had about the
15 five cents, four cents, whatever it was, was that
16 with you and Mr. Payton?

17 A. I know it was definitely with me and
18 Lynn. I don't recall if Jim was there or not. It
19 was likely that Jim was there because Jim was there
20 far more than Lynn ever was, and Jim was generally
21 involved in any conversation, especially involving
22 extra money, that I would have with him.

23 Q. Was the conversation to the effect that
24 your contract price was increased by five cents?

25 A. Yes.

1 Q. I guess that's where the confusion
2 comes from because I don't see that increase in
3 price reflected on your invoices as 75 cents
4 instead of 70 cents.

5 A. It should have been. It's a mistake on
6 my part because it was definitely increased. I
7 went to Lynn -- Marty came to me and he said, look,
8 you know, I put in -- I knew that I was going to
9 have a texture on the wall, but the texture that
10 Jim is asking for is basically like putting a whole
11 other coat of finish on the wall rather than just
12 going on dobbing a little mud on, wiping it off and
13 away you go. He really wanted, asked for a lot in
14 the texture.

15 And Marty came to me and said, I can't
16 do that for nothing, and he said he wanted an extra
17 five cents. Actually, my cost to Lynn should have
18 been more than five cents, and that happens on
19 occasion. I'll do that and I'll end up saying, you
20 know, I kind of gave it to myself a little bit on
21 that one. But you're definitely right, that should
22 say 75 cents a square foot and not 70 cents a
23 square food.

24 Q. Do you have any written documentation
25 to support that?

1 (Discussion with counsel off the record)

2 A. No, I don't. Everything was verbal.
3 It shouldn't have been but it was. Everything
4 should be written in a contract.

5 Q. Do you recall in any conversation with
6 Mr. Payton or Mr. Craghead about covering the
7 beams?

8 A. Yes.

9 Q. Do you recall when that occurred?

10 A. As far as covering the beams, when
11 Marty came on the job it was time to start the
12 taping.

13 Q. And who was present during that
14 conversation?

15 A. Probably Lynn and myself.

16 Q. And what was said, essentially?

17 A. Lynn said that we should probably try
18 and cover the beams before we start taping it.
19 Essentially, that's what was said.

20 Q. Then I guess as a result of that Marty
21 did, in fact, attempt to tape the beams?

22 A. Yes. In the living room or great room,
23 they basically had all of the beams wrapped with
24 Visqueen and taped. And I don't know if it was the
25 same day or the next morning, when they came it was

1 all falling down. At that point, they decided just
2 to tape and keep the wet mud off the beams.

3 Q. Was that largely successful?

4 A. I would say definitely.

5 Q. What does the videotape show?

6 A. The videotape shows the conditions of
7 the beam prior to -- actually, it was during the
8 process of them trying to match the finish. At
9 that time, Lynn and I were trying to work out a
10 deal where we could resolve who was going to pay
11 for this part of the beam or who was going to pay
12 for that part of the beam that needed to be
13 finished. We were assuming that they would be able
14 to match the finish. And so I went through to show
15 different areas that we had come up with that were
16 damaged from my guys cleaning the beams.

17 Q. Which you say your guys, are those the
18 same people that are represented on P 0016?

19 A. Yes, and one other person.

20 Q. Who was that other person?

21 A. Michael Roberts.

22 Q. Does the video show that the beams were
23 damaged by other subcontractors as well?

24 A. There's one place where they were
25 damaged by the subcontractors and there were

1 numerous places where, because of continual
2 remodeling, demolition and changing in the ways
3 that they were going to finish the house off, that
4 the beams were going to have to be refinished, many
5 areas throughout the house.

6 Q. Were you present this morning when I
7 asked Mr. Bennett about something to the effect
8 that couldn't the beams have been cleaned from the
9 plaster dust and the dust from the construction
10 simply by wiping them down?

11 A. They attempted to do that. And what
12 Marty indicated, that the beams were so rough, is
13 the problem that they came into. The dust that was
14 on the beams wasn't just sheetrock dust. Actually,
15 we were cleaning not only our own dust off the
16 beams but through the whole job. I mean, there's
17 construction dust continually through the job.

18 They tried -- first we tried to dry
19 brush them off to get the dust off and then they
20 tried to wet brush it off. And it took the wet
21 brushing to get it off. The problem was that when
22 it dried there was a residue left and so with that
23 residue they weren't happy with it. And then there
24 were a few places where they had to do a little
25 heavier work, maybe a clot of mud had got on the

1 beam or something and it wore through the finish
2 trying to clean it off.

3 Q. Did you feel like you had a very good
4 relationship with Mr. Payton?

5 A. I felt like I did.

6 Q. I was looking at the invoices, and
7 particularly the Exhibit B that I was talking with
8 you earlier. It seemed to me that, with the
9 exception of the last invoice, Mr. Payton had
10 pretty much made a fairly prompt payment to you of
11 all the invoices?

12 A. That's right.

13 Q. It also occurred to me, looking at the
14 invoices, that the last invoice, the one that is
15 disputed, has the bulk of all the extra charges on
16 it.

17 A. I think there was a greater period of
18 time that went by between the last two invoices. I
19 don't have a date on the invoice prior to that, but
20 taping extras at that point were 10,000 and on the
21 last one the taping extras were 11,000.

22 Q. Can you give me some document reference
23 there?

24 A. 0023, 0021 -- or 22, excuse me. I
25 would assume -- I don't have it dated, but I would

1 assume that the invoice No. 4209, number 0023, was
2 a June invoice.

3 Q. Do you have copies of the ticket book
4 or receipt book that would have invoice No. 4211
5 and 4210 to put a date on those?

6 A. Yeah, I would have those, hopefully
7 they would have a date on them.

8 Q. Maybe if you could take a look at that
9 receipt book and attach a copy, if that wouldn't be
10 -- when you're correcting the deposition, just
11 make a notation of the dates that those have on
12 them.

13 A. On invoice number 4203, No. 0024, I
14 showed the taping extra at five and a half cents
15 for the taping texture.

16 Q. I'm sorry, 4203?

17 A. Yes.

18 Q. Where is that at?

19 A. Halfway through, just taping extras
20 texture 23,346, which is exactly the same square
21 footage that is at board delivered at .055, so
22 Marty's extra to me was five cents and I was at
23 five and a half cents to Lynn.

24 Q. And that's what Mr. Payton had agreed
25 upon?

1 A. Uh-huh.

2 Q. The documents that are numbered P 38
3 through P 67, are those essentially all the
4 materials that you purchased with the exception of
5 what Mr. Bennett shows on --

6 A. Yes.

7 Q. -- Page 70, P 70?

8 A. Yes.

9 Q. To your knowledge, is there any dispute
10 about these?

11 A. Yes, I know of one dispute. Lynn was
12 trying to only pay for the actual square footage of
13 walls instead of the sheetrock delivered to the
14 jobs.

15 Q. Your position being on the amount that
16 was delivered to the job, that as damage occurred,
17 boards had to be replaced. That's, in fact, what
18 work you performed?

19 A. Well, no, my position is that it's
20 standard in the drywall industry that when you say,
21 for instance, 70 cents a square foot for the
22 sheetrock, it is at 70 cents a square foot for the
23 square footage of the wall. Marty tried to
24 illustrate that earlier. If you have a ten foot
25 wide wall or a ten and a half foot wall and you

1 have to use a twelve-foot board, you charge for the
2 twelve-foot board. You try to keep your scraps to
3 a minimum but the scrapping is included.

4 Q. I'd understood that you and Lynn had
5 sat down and discussed that issue and had tried to
6 resolve it by arriving at a six to eight percent
7 waste factor.

8 A. I would never say six to eight
9 percent. Whenever I -- you were asking Marty what
10 he figured in his waste when he bid the job, I
11 figured 15 percent. That's standard. If a job
12 looks like it's going to be cut up, if there's
13 going to be drops that are going to use excessive
14 waste, then you increase it. But I never go below
15 15 percent, at least.

16 Lynn may have said that's what he
17 thought it should be, but I never agreed to that.
18 It was always Lynn's position to me, the way I
19 recall it, that he didn't think that they should
20 have to pay for waste, that it should be the exact
21 footage on the walls.

22 Q. But in any event, what you were saying
23 in terms of square foot of board delivered to the
24 job was not that 24,000 square feet was delivered,
25 2,000 taken by any of the employees on their home

1 job?

2 A. No.

3 Q. It was all used in Craghead's house?

4 A. None was ever taken.

5 Q. I didn't think there was, I just wanted
6 to make sure that's clear.

7 A. Yes, that's true.

8 Q. There's a document that I'm looking for
9 that I thought Mr. Payton and you had sat down and
10 tried to work out a compromise.

11 (Exhibit 4 marked)

12 Q. Do you recall going over a document
13 like this with Mr. Payton?

14 A. No.

15 MS. FALK: No?

16 THE WITNESS: No.

17 MR. CHAMBERS: (Resuming)

18 Q. That pretty well does that for that
19 document.

20 A. Yeah, I don't recall ever seeing this
21 before.

22 Q. Okay. In your answer to the complaint
23 filed by Mr. Bennett against you, in Paragraph 17
24 you state: "Defendant Mower admits that
25 plaintiff," plaintiff being Mr. Bennett, "was a

1 subcontractor engaged in providing labor to the
2 Craghead residence but denies the remaining
3 allegations contained in Paragraph 17 of this
4 complaint," unquote.

5 What is your definition of a
6 subcontractor?

7 A. My definition of a subcontractor would
8 be a licensed contractor that does work for you and
9 you pay them a flat rate without taking taxes out,
10 I would assume. I guess that's basically the
11 definition.

12 Q. Okay. One last area, just a second.
13 Oh. I'm not trying to beat this to a pulp, but I
14 need to have clarified for me your position with
15 respect to Exhibit 1. Maybe let me preface that
16 with a statement.

17 Two parties enter into an agreement
18 that if there are going to be changes to the
19 document itself says that there are going to be --
20 those changes will be reduced down to writing. I
21 usually understand that to mean just exactly that,
22 rely on it. And as a result, I'm having a hard
23 time understanding what exactly your position is
24 with respect to the extras, on what basis you're
25 claiming, particularly in view of that statement in

1 the contract.

2 MS. FALK: In view of what statement?

3 MR. CHAMBERS: That any alteration or
4 deviation from the above involving extra costs will
5 be executed only upon written orders.

6 MS. FALK: Is that all you're saying?

7 MR. CHAMBERS: Yes.

8 MS. FALK: And what was your question?

9 MR. CHAMBERS: (Resuming)

10 Q. I'm trying to understand your position
11 about the extras in view of that statement on the
12 contract.

13 A. Well, my position is that's it's pretty
14 standard to have a statement like that or similar
15 to it in any contract. Unfortunately, too many
16 times that, you know, contractors and
17 subcontractors, owners and contractors don't live
18 by that. If they did, there probably would be less
19 time spent in court. The reality is that,
20 especially on this job, had everything that we'd
21 done be reduced to writing, it would have been
22 hard, it would have been very lengthy.

23 When you've seen Marty's list of
24 extras, if I were to come out and sign a change
25 order for every single thing that Marty did, the

55

1 job would probably still be going on. It's very
2 common for, even though those are the contracts,
3 for things to be done verbally. And most of the
4 time, they're taken care of. But on occasion,
5 they're not.

6 Q. I'd almost tend to agree with you on a
7 construction project where you were talking about a
8 home that, you know, maybe had 1200 square feet,
9 that the change orders on that would be
10 cumbersome. But we're talking about a process up
11 there where, from what I understand, they put six
12 or \$700,000 worth of remodeling, maybe even
13 \$900,000 worth of remodeling into that place. And
14 it seems to me that the bigger the contracts, the
15 more incumbent it is that the change orders and
16 that be put in writing. What's been your
17 experience?

18 A. My experience has been just what I
19 said. I mean, I've been in contracting for 16
20 years. I've been on \$10,000 jobs, I've been on \$6
21 million jobs. And there's always a time at the end
22 that it comes down to working out the extras, and
23 they're extras that everybody acknowledges as
24 you're going along that they're extras. But when
25 it comes down to the end, sometimes there's

1 problems with it. And it's almost -- I know if you
 2 asked me to I couldn't think of one job that all
 3 extras or even most extras are reduced to writing.

4 MR. CHAMBERS: That's all I have.

5 MS. FALK: I have no questions.

6 (Concluded at 3:47 p.m.)

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1 CERTIFICATE OF DEPONENT

2
3 I, MICHAEL A. MOWER, deponent herein,
4 do hereby certify and declare the within and
5 foregoing transcription to be my deposition in said
6 action taken on April 5, 1994; that I have read,
7 corrected and do hereby affix my signature to said
8 deposition.

9
10 DATED this _____ day of _____,
11 1994.

12
13
14 _____
Deponent

15)
16 STATE OF UTAH)

ss.
17)

18 SUBSCRIBED AND SWORN to before me this
19 _____ day of _____, 1994.

20
21
22 _____
Notary Public residing in
23 _____
24
25

REPORTER CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, DEANNA M. CHANDLER, a Notary Public
in and for the State of Utah, do hereby certify:

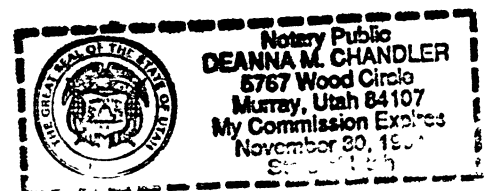
That prior to being examined, the
witness had previously been duly sworn to tell the
truth, the whole truth, and nothing but the truth;

That said deposition was taken down by
me in shorthand at the place therein named and
thereafter reduced to transcription under my
direction.

I further certify that I am not of kin
or otherwise associated with any of the parties to
said cause of action and that I am not interested
in the outcome thereof.

WITNESS MY HAND AND SEAL this 8th day
of April, 1994.

Deanna Chandler
DEANNA M. CHANDLER



SQUARE FOOTAGE IN HOUSE	16,375 SQ FT @ .70 \$/SQ
LIN FOOT BULLNOSE	2,100 LN FT @ \$1.00 F.
LIN FOOT RADIOS	438 LN FT @ \$7.50 F.

TOTALS

SQ FT	A 11,462 ⁵⁰
	B 2,100 ⁰⁰
	C 3,285 ⁰⁰
	16,847 ⁵⁰

AMOUNT PAID	18,933 ⁹⁵
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DAMAGE TO BEAM	4,400 ⁰⁰
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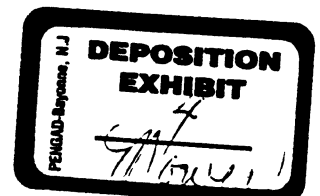
MARTY BENNETT CONTRACT TO MOWER

.21 \$ SQ FT

\$1.00 FT BULLNOSE LABOR ONLY

HANGERS

.17 \$ SQ FT



Appendix C

(c) the name and title (if known) of the document's author(s) and signer(s);

(d) the name(s) and address(es) of the person(s) to whom the document was addressed and distributed;

(e) a summary of the substance of the document; and

(f) the physical location of the original document (and of any copies of which you have knowledge) and the name(s) and address(es) of the custodian(s) thereof.

In lieu of providing the information requested in subparagraph (e), a complete and legible copy of the document may be produced.

If any document, identification of which is sought, has been lost or destroyed, state, in addition to the information required above, whether such document was lost or destroyed, and if lost, state the circumstances under which such document was lost and, if destroyed, state the circumstances under which such document was destroyed, the reason for such destruction, and identify each person responsible for or participating in such document's destruction.

5. To "identify" a person or entity shall mean to state his, her, or its names and last known business address and telephone number, and, if a natural person, his or her last known residential address and telephone number, and name of employer and employment position held by said person at all times material to these discovery requests, together with the business address and telephone number of such employers.

6. To "identify" an oral communication shall mean to state with respect thereto:

(a) the date and place of such oral communication.

(b) identify (as defined in paragraph 5 above) each person who participated in the communication or who was present at the time of the communication;

(c) the substance of what each such person said.

7. To "set forth in detail the basis" refers to the factual basis as well as the legal basis where legal theories or principles are discoverable.

8. If you cannot answer any question after conducting a reasonable investigation, you should so state and answer to the extent you can, stating what information you do have, what information you cannot provide and stating what efforts you made to attain the unknown information.

9. If you claim a privilege with respect to any matter, please identify the privilege you claim and provide a brief description of why such may be privileged. In any event if a report or other document is claimed to be privileged, identify the existence of such a document, the author, its date, who it was intended for and every person who has a copy of or viewed such document.

REQUEST FOR ADMISSIONS

1. Please admit that Exhibit "A" attached hereto is a true and correct copy of the proposal Plaintiff submitted to Aspen Construction Company regarding the drywall work to be performed on the Craghead home at 3899 East Parkview, Salt Lake City, Utah.

2. Please admit that Aspen Construction accepted the proposal contained in Exhibit "A" thereby forming a contract between the Plaintiff and Aspen Construction.

3. Please admit that Exhibit "A" is an integrated contract.

4. Please admit that Martin J. Bennett was not an "employee" of Mr. Mower.

5. Please admit that Mower treated Bennett as an "independent contractor" with respect to the Craghead project.

6. Please admit that the Plaintiff "subcontracted" a significant portion of the drywall work on the Craghead home to Martin Bennett.

7. Please admit that the Plaintiff is responsible for any damage Martin Bennett's actions created or caused to the Craghead property.

8. Please admit that Exhibit "A" is the only contract that existed between the Plaintiff and Aspen Construction with regards to work to be performed on the Craghead home.

9. Please admit that the Plaintiff had no "oral contract" with either Mr. Craghead or Aspen Construction concerning work to be performed on the Craghead home.

10. Please admit that prior to or during the performance of the drywall work Martin Bennett did not cover the beam work.

11. Please admit that Mr. Lynn Padan and his foreman Tom Thorton instructed Martin Bennett to cover and protect the beam work.

12. Please admit that Martin Bennett has admitted that he was told by Padan to cover the beams.

13. Please admit that Martin Bennett performed work outside the scope of the Plaintiff's bid proposal (Exhibit "A").

14. Please admit that Martin Bennett was not authorized to perform any work outside the scope of the bid proposal (Exhibit "A") accepted by Lynn Padan.

15. Please admit that the services Martin Bennett claims to have performed "as extras" are charged at 2 1/2 to 3 times the going rate for such work.

16. Please admit that Martin Bennett was told by Mr. Craghead, Mr. Padan and Tom Thorton that he was not to do extra work.

17. Please admit that after you (Mower) presented invoice 11849 for payment that Padan and Craghead told you that Bennett was not to perform work outside the scope of the bid proposal (Exhibit "A").

18. Please admit that you are attempting to collect for time and work which was never performed by Martin Bennett.

19. Please admit that the amount you claim as due and owing in your Complaint is attributable solely to work claimed to have been performed by Martin Bennett.

20. Please admit that beam work was damaged by Martin Bennett, when he sheetrocked and plastered, which required that the beam work be repainted.

21. Please admit that Exhibit "A" is a standard proposal form utilized by the Plaintiff in his contracting business.

22. Please admit that Exhibit "A" requires that any deviation or alteration in the scope of the work to be performed on the Craghead property must first be reduced to a written change order.

23. Please admit that neither you (Mower) or Bennett have a written change order authorizing you (Mower) or Bennett to perform any work outside the scope of the bid proposal (Exhibit "A").

24. Please admit that the total square feet in the Craghead home as to which the contract rate of 70¢ a square foot applies for "hang and finish for paint" does not exceed 16,375 square feet.

25. Please admit that the total linear feet in the Craghead home as to which the contract rate of \$1.00 per linear foot for "bull nose corner bead" does not exceed 2,100 linear feet.

26. Please admit that the total linear feet in the Craghead home as to which the contract rate of \$7.50 per linear foot for "radius under 12" does not exceed 438 linear feet.

27. Please admit that §58-15-17 Utah Code Annotated bars any recovery by Martin Bennett since he is not licensed as a trade contractor in the State of Utah.

28. Please admit that all of the "lienholder Defendants" (page 2 paragraph 5 of complaint) are superior to the Plaintiff's alleged interest in the property being foreclosed.

29. Please admit that you stated to Lynn Padan that you were essentially paid in full and that the only amounts you considered not paid represented the "extra" work which Martin Bennett claimed he had performed on the Craghead property.

30. Please admit that Mike Mower never collected or withheld Social Security or Federal withholding on any compensation paid to work he performed on the Craghead job.

31. Please admit that Mike Mower never obtained any workmans compensation insurance coverage on Martin Bennett regarding the Craghead job.

32. Please admit that Martin Bennett had no separate contract with Aspen Construction or Mr. Craghead regarding work to be performed on the Craghead home (i.e. his only contractual relationship to the Craghead job was through the Plaintiff).

33. Please admit that Exhibit "B" attached hereto represents a true and correct accounting of the payments made to you by Aspen Construction totaling \$18,933.95.

34. Please admit that after Aspen Construction received and paid your (Mower's) invoice 11850 (which included extras of \$1,148.00) Lynn Padan, Jim Craghead and Tom Thorton told Martin Bennett that Bennett was not to perform any work outside the scope of the bid proposal (Exhibit "A").

35. Please admit that \$11,106.13 of the \$13,515.58 you claim is owed is for work you have classified as "extras". (See your invoice #4212.)

36. Please admit that your invoice #4212 dated September 9, 1992, does not give Aspen credit for the \$602.00 paid June 26, 1992.

37. Please admit that Aspen Construction informed you as early as July 1992 that it was claiming an offset of \$4,400 - \$4,500 because Bennett had failed to protect the beamwork.

38. Please admit that immediately after Bennett started on the Craghead project that Padan informed Bennett and you (Mower) that the beams needed to be covered.

39. Please admit that Exhibit "C" attached hereto is a true and correct copy of your (Mower's) Invoice No. 11846 representing work you billed Aspen Construction for during February and March 1992.

40. Please admit that Exhibit "D" attached hereto is a true and correct copy of your (Mower) Invoice No. 11849 representing work you billed Aspen Construction for during March and April 1992.

41. Please admit that Exhibit "E" attached hereto is a true and correct copy of your (Mower) Invoice No. 11850 representing work you billed Aspen Construction for during April and May 1992.

42. Please admit that Exhibit "F" attached hereto is a true and correct copy of your (Mower) Invoice Nos. 4202 and 4203 representing work you billed Aspen Construction for during May 1992.

43. Please admit that Exhibit "G" attached hereto is a true and correct copy of your (Mower) Invoice (unnumbered) representing work you billed Aspen Construction for during May and June 1992.

44. Please admit that Exhibit "H" attached hereto is a true and correct copy of your (Mower) Invoice No. 4212 representing work you billed Aspen Construction for which you (Mower) claimed was performed on the Craghead home.

45. Please admit that Exhibit "I" attached hereto is a true and correct copy of the Mechanics Lien you filed against the Craghead property.

INTERROGATORIES

1. If your answer to any of the foregoing Request for Admissions (1-45) is anything other than an unequivocal admission, please explain fully the factual basis or other reasons why you refused to unequivocally admit the Request for Admission. (Please answer separately.)

2. State the names and addresses of all persons whom you will call as witnesses at the time of the trial of this case.

3. State the names and addresses of all persons whom you may call as witnesses at the time of the trial of this case.

4. Summarize the testimony each of the witnesses identified in your answers to Interrogatories No. 2 and No. 3 is expected to give at trial.

5. If you anticipate that any person identified in your answer to Interrogatory No. 2 and answer to Interrogatory No. 3 will testify concerning or on the basis of any document or documents, please identify each such document.

6. Identify all documents you received by the persons specified in your answer to Interrogatory No. 5 and all documents prepared by you in connection with your communications with those persons.

7. State whether you presently intend to call any person to testify at the trial of this matter as an expert witness.

8. If your answer to Interrogatory No. 7 is in the affirmative, please:

- (a) State the name and address of each such expert;
- (b) State each such expert's qualifications;
- (c) State the subject matter upon which such expert is expected to testify;
- (d) State the substance of the facts and opinions to which each such expert is expected to testify; and
- (e) Summarize the grounds for each such opinion.

9. If you anticipate that any person identified in your answer to Interrogatory No. 8 will testify concerning or on the basis of any report, document or documents, please identify each such document or report.

10. Other than as set forth in your answers above, please identify all PERCIPIENT witnesses who have knowledge of the facts of the case including any claim or defense. In submitting this Interrogatory, we are not desirous of placing a burdensome request on you. However, in the event you are aware of potential witnesses which you do not intend to call we would like these potential witnesses identified.

11. Please identify all persons from whom you or your counsel have obtained statements or whom you or your counsel have interviewed in anticipation of litigation or in the course of representing the Plaintiffs. Please set forth the facts and information which the foregoing witnesses gave during the interview or in their statement.

12. Set forth in detail all facts, conversations or other evidence you have to support the allegations made in paragraph six (6) of the Plaintiff's Complaint to the effect that the Plaintiff had an open account arrangement with Padan.

13. Set forth in detail all facts, conversations or other evidence you have to refute the plain language on Exhibit "A" that no deviation or alteration was to be made to the scope of the Craghead job unless upon written order.

14. Set forth in detail the time Mower was personally present at the Craghead jobsite:

- (a) date;
- (b) who was present;
- (c) work performed;
- (d) substance of any conversation or activity.

15. If you disagree with the information summarized on Exhibit B, set forth in detail all payments received from or to any source with respect to the work claimed to be performed on the Craghead residence.

16. Set forth in detail the identity and interest of all "lien holder" Defendants (page 2, paragraph 5 of your Complaint).

17. Set forth in detail the basis of the allegations in paragraph nine (9) of the Plaintiff's Complaint.

18. Please identify (definitions 5 and 6 page 3) all oral conversations you had with Lynn Padan with respect to the Craghead home.

19. Please identify (definitions 5 and 6 page 3) all oral conversations you had with James Craghead with respect to the Craghead home.

20. Please identify (definitions 5 and 6 page 3) all oral conversations you had with Martin Bennett with respect to the Craghead home.

21. Please identify (definitions 5 and 6 page 3) all oral conversations you had with Tom Thorton with respect to the Craghead home.

22. Please identify (definitions 5 and 6 page 3) all oral conversations you had with any other person at the Craghead home with respect to the scope of the work to be performed on the Craghead home.

23. Please identify (definition 4 page 2) all documents which you believe would constitute a "written order" within the context of how such term is utilized in Exhibit "A" which authorizes an

alteration or deviation from the scope of the work proposed by Mower in Exhibit "A".

24. Unless already provided in your prior answers please submit an accounting for the "extras" identifying or listing the following information on a daily basis:

(a) Date work performed;

(b) Who performed such work - names(s) of worker(s) or tradesmen/tradeswomen;

(c) Hours worked and rate of pay for such work - number of hours worked and time of day/night (if different jobs performed at different rates identify or break down each separately);

(d) Whether other workers/tradesman/general/owner present when work claimed to be performed was allegedly done (if none so state);

(e) Day or piece rate of worker(s);

(f) Summary or explanation describing work performed i.e. type or category of extra work performed: electrical, carpentry, plumbing, etc.;

(g) Identify the person who specifically requested or authorized the extra work to be performed (if none so state);

(h) All persons present when person in (g) above allegedly requested or authorized the extra work to be performed (if none so state).

(i) Cost of materials provided;

(j) Day total of extra work.

25. If no "written orders" (within the context of how such term is used in Exhibit "A") exist with regards to the extra work claimed to be performed, please explain upon what basis you claim entitlement to compensation for extras, notwithstanding the express language contained on Exhibit "A" which is directly left of Mowers signature.

26. Except as set forth above please identify all facts, witnesses, conversations, or other evidence you have which supports your claim for entitlement to compensation for the "extras" you claim on you Invoice No. 4212.

27. Please identify all work or jobs (contracting or other) performed by Martin Bennett, on behalf of, at the instance of, or in any manner for Mike Mower. During 1992 and 1993 with respect to each such job provide the following information:

- (a) General Contractor;
- (b) Type of work Bennett performed;
- (c) Total compensation paid Bennett.

28. Unless answered previously above, if you deny Exhibit "A" is an integrated contract please set forth all facts, conversations, evidence, etc., that you rely upon in arriving at your conclusion that such is not an integrated contract.

29. Please identify all persons and/or sources who assisted in the preparation of the answers and/or requests for discovery.

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 U.R.C.P. you are requested to produce the following documents.

1. Please produce for copying the original of any document which you intend to rely upon as supporting or corroborating the allegations of the Complaint.

2. Please produce all time records, day planner, invoices or other documents (see page 2 definition 3) maintained by the Plaintiff in connection with or relating to in any manner the Craghead remodeling project.

3. Please produce for inspection the original written contract or bid/acceptance/proposal documents or any similar such documents concerning the Craghead project.

4. Please produce for inspection any written (change) order (as such term is used in the bid proposal Exhibit "A") you claim exists with respect to the scope of the work to be performed on the Craghead home.

5. Please produce all documents (see page 2 definition 3) the identity of which is sought or referred to in any of the answers to the above Interrogatories.

6. Please produce all original notes and documents (see page 2 definition 3) made by you, your agents, employees, or subcontractors pertaining or relating to in any manner, to the allegations made by the Plaintiff that there was an open account arrangement with Padan.

7. Please produce all notes and documents made by you regarding conversations with any persons who are percipient witnesses regarding the present law suit and any allegation or defense made by either the Plaintiffs or any of the Defendants.

8. Please produce all affidavits, witness statements and other documents taken by you in connection with matters pertaining

to the present lawsuit and any allegations or defense made by the Plaintiffs or any of the Defendants.

9. Please produce all documents in your possession (not heretofore requested) relating to Aspen Construction, Michael Mower, Martin Bennett, James Craghead, the Craghead remodeling project or any lienholder Defendant.

10. Please produce any 1099/W-2 statement given by you (answer) to Martin Bennett, in connection with the Craghead remodeling project.

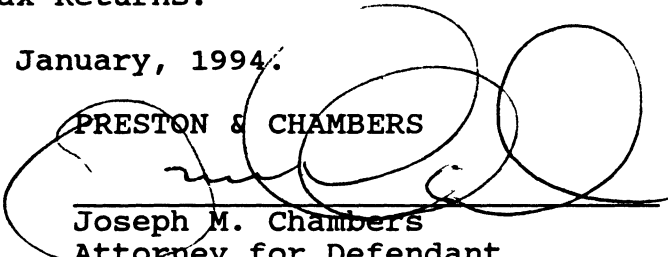
11. Please produce any 1099/W-2 statements given by you (Mower) to Martin Bennett for any other work (other than the Craghead project) for 1992 and 1993.

12. Please produce all payroll records for 1992 and 1993 of Mower Construction.

13. Please produce Michael Mowers 1991, 1992, and 1993 Federal and State Income Tax Returns.

DATED this 31 day of January, 1994.

PRESTON & CHAMBERS


Joseph M. Chambers
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the
above and foregoing **DEFENDANT PADAN'S FIRST SET OF:**
INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST
FOR ADMISSIONS to the Plaintiff's Attorney: Jennifer L. Falk,
WINDER & HASLAM, 175 West 200 South #4000, P.O. Box 2668, Salt Lake
City, Utah 84110-2668 on this February day of January, 1994.

lit\craghead.int

MICHAEL A MOWER CONSTRUCTION
7674 So 2700 W
WEST JORDAN, UTAH
34084 255-4532

Proposal No.

Sheet No.

Date
FEB 24, 1992

Proposal Submitted To	Work To Be Performed At
Name <u>ASPEN CONSTRUCTION</u>	Street <u>3899 E. PARKVIEW</u>
Street <u>2257 So 1100 E</u>	City <u>SALT LAKE</u> State <u>UTAH</u>
City <u>SALT LAKE</u>	Date of Plans _____
State <u>UTAH</u>	Architect _____
Telephone Number <u>361-5842 P-4821503</u>	

We hereby propose to furnish the materials and perform the labor necessary for the completion of DRYWALL

6.70 per sq. ft. to hang & finish for paint
1.00 per lin. ft. for full nose corner bead
7.50 per lin. ft. for radius under 12"

WORKERS COMP # M07146
INSURANCE W/ FULL SERVICE INS.
CONTRACTOR LIC. # 409780
FED. I.D. # 78-0478709

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of _____ Dollars (\$ _____).

with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by _____

Respectfully submitted MICHAEL A MOWER CONST.

Per Michael A Mower

Note — This proposal may be withdrawn
by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date _____

Job: Craghead
Site: 3899 E. Parkway

Sub-contractor: Michael Mower Construction

W-9 ☒ FED - 78-0478709

License # 409780

Worker's compensation M 07146

General liability ins Full Service Ins

Ind. contractor agreement ☐

Sub-contractor agreement ☒ Bid amount \$

Sub-contractor disclosure ☒

Material suppliers
(note if joint check agreement)

Swanson

Date	Statement Amount	Invoiced	Paid Amount	Balance
3/30/92	3,771.95	3,771.95	3,000-	771.95
4/24	7,610.70	7,610.70	8,382.65	-0-
5/14	4,299.30	4,299.30	2,000-	2,299.3
5/20			2,299.30	-0-
5/21	3,282.25	2,650-	2,650-	632.25
6/26	602.00	602-	602-	632.2
	<u>19,566.20</u>	<u>18,933.95</u>	<u>18,932.95</u>	<u>632.9</u>

INVOICE NO 11846

CUSTOMER'S ORDER	SALESMAN	TERMS	FOB	DATE
------------------	----------	-------	-----	------

[illegible]

INVOICE

Michael A. Nower
7674 So 2700 W
W. Jordan UT
84024

INVOICE NO. 11849

SOLD TO Apex Const			SHIPPED TO Chambers Res.			VIA		
STREET & NO.			STREET & NO.					
CITY			CITY			STATE		
STATE			STATE			ZIP		

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
------------------	----------	-------	--------	------

Board delivered	19,332		710	13532.40
Full nose corners	800 LF		1.00	800.00
Plaster corners	100 LF		7.50	750.00
Total Contract to date				15082.40
Material delivered & Hung	19,332		24.5	8699.44
toping completed	4070		25	1935.20
plaster corners completed	100		7.50	750.00
				11384.64
Previous payments	PAID 4/24	Invoiced & paid		3000.00
	CK # 1032			
	INV # 5005			
Total Due				8384.64
	Less previously invoiced			-771.90

8740

INVOICE

* held back
from nower

7,610.7

Michael H Mon J
 7674 So 2700
 Wickenburg, UT

INVOICE NO 11020

SOLD TO Aspen Construction			SHIPPED TO Craighead Builders			VIA		
STREET & NO			STREET & NO					
CITY STATE ZIP			CITY STATE ZIP					

CUSTOMER'S ORDER	SALESMAN	TERMS	FOB	DATE
Board Delivered	20,346			70 14,242
Bull nose corners	800 1200			1 00 1200
Plaster corners	370 LF			7 50 2835
Extras for plaster work (stairs & odd sized radiused)				450 10
Extras for Marty (taper) caused by contractor				698 10
Total Contract to date				19425
Drywall hanging complete	20,346			45 9155
Taping 50%	10,173			25 2543
Plaster 100% complete	378			7 50 2835
Extras				1148
total work complete to date				15681
Previous draws				11382
Total billed for & due				4299

PAID LA 1111 2,000 on 5/14
 CK # CKM 2,292 on 5/12
 INV # 5008

T 8740

INVOICE

11,382.65
 4,299.30
 75,681.95

West Jordan, UT 27087

0 0 4203

SOLD TO

Aspen Court

STREET & NO

SHIPPED TO

Craighood

STREET & NO

CITY

STATE

ZIP

CITY

STATE

ZIP

INVOICE

TOPS
FORM
45705 C

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
				5-21-92
Board delivered		20,346 [¢]		.70 14242 20
Bullnose Corners		1,000 [¢]		1.00 1000 00
Plaster Corners		378 [¢]		7.50 2835 00
Plaster Extras				450 00
Taper Extras texture		20,346		0.055 1119 03
Current patches, etc.				1171 50
Taper extras last billing				699 00
Total contract to date				21515 73

Michael A Mower Const.
2489 So 2700 W
West Jordan UT

Page II

INVOICE NO.

4204

SOLD TO

Aspen Court

STREET & NO

SHIPPED TO

Craighood

STREET & NO

CITY

STATE

ZIP

CITY

STATE

ZIP

INVOICE

TOPS
FORM
45705 C

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
				5-21-92
Board delivered & hung 100%		20,346		.45 9155 70
Taping 75%		15,259		2.05 4154 00
Plaster 100%				3785 00
taping extras				1369 50
dated work complete to date				19914 20
Previous payments				15691 95
Balance Due				3287 25
PAID 5/28/92 \$2650 to Martin Bennett				2650 00
CK 1163 Paid on				832 25
INV 3010				

Invoice
Michael A Mower Const

Plaster work @ Craighead Res.

28' @ 9.5 266.00

16' @ 7.5 120.00

~~2~~ 16' @ 13.5 216.00

\$602.00

PAID 6/26/92

CK # 1275

INV # 4013

Michael A Mower Const
8489 So 2700 W
W. Jordan, UT 84088

MOB 580-9870

INVOICE NO

4212

SOLD TO

Aspen Const
STREET & NO

SHIPPED TO

Crashhead Res
STREET & NO

CITY

STATE

ZIP

CITY

STATE

ZIP

INVOICE

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B	DATE
				9.9.92
Board Delivered to job			20792	70 14554 45
Bull nose cornerboard			2200	1.00 2300 00
Flaster				3887 00
Taping extras				11,106 13
Total				31,847 53
Previous Payments				18331 95
Balance due upon receipt				13515 58

TDPS
FORM
46706 ©



Mike Mower
He has
around 400⁰⁰
outstanding
at Swansons

Forrest of M. Mower
County of SALT LAKE State of UTAH
B-100 in Shannon West District
RET 5350695

NOTICE OF LIEN

TO WHOM IT MAY CONCERN:

Notice is hereby given that the undersigned MICHAEL A MOWER

doing business as MICHAEL A MOWER CONSTRUCTION and residing at 2409 S 2700 W County of SALT LAKE State of Utah, hereby claim and intend to hold and claim a lien upon that certain land and premises, owned and reputed to be owned by JAMES D CRAGG and situate, lying and being in 3895 E PARKVIEW DR, SLC County of SALT LAKE State of Utah, described as follows, to wit:

COM N 3 55' 47" E 70 FT F2 SE 1/4 OF LOT 6, MT. OLYMPUS
NEW SUB, N 3 53' 50" W 162.08 FT; N 75 E 168.33; S 5 W 49.8 FT;
S 73 20' W 109.57 FT; W 75 FT S 12 24' 30" W 205.38 FT;
W 1/4 ON CURVE TO LEFT 17.46 FT, N 12 24' 30" E 136.93 FT; N
72 19' 30" W 49.41 FT TO BEG. OF BEING PT OF LOT 118, MOUNT
OLYMPUS PARK SUB 5413-753 5413-0756 6264-2318

to secure the payment of the sum of \$13,515.58 Dollars,
owing to the undersigned for DRYWALL & PLASTER LABOR & MATERIALS

as a SUBCONTRACTOR

in, on and about the PREMISES on said land.

That the said indebtedness accrued and the undersigned furnished said materials to (or was employed by) ASPEN CONSTRUCTION (LYNN PADEN PRINCIPAL)

who was the

GENERAL CONTRACTOR FOR

owner and the reputed owner of said premises as
aforesaid, under a WRITTEN contract made between the said LYNN PADEN FOR
ASPEN CONSTRUCTION

and the undersigned

on the 24 day of FEB, 1992, by the terms of which the undersigned did agree to

to SUPPLY MATERIALS & LABOR FOR SHEETROCK & INTERIOR PLASTER

and the said LYNN PADEN FOR ASPEN CONSTRUCTION

did agree to pay the undersigned therefor as follows, to wit: \$2.70 per sq. foot to

hang & finish sheetrock, \$1.00 per linear foot for wall base

corner bead & \$7.50 per linear foot for plaster corners

and under which said contract the under-

signed did DELIVER the first MATERIALS on the 16th day of

MARCH and did PERFORM the last LABOR on the

16th day of AUGUST, 1992 and on and between said last mentioned

days, did PROVIDE MATERIALS & LABOR FOR DRYWALL & PLASTER amounting

to the sum of THIRTY ONE THOUSAND EIGHT HUNDRED FORTY SEVEN & 7/100 Dollars,

which was the reasonable value thereof, and on which the following payments have been made to wit:

EIGHTEEN THOUSAND THREE HUNDRED THIRTY ONE & 95/100 (18,331.95)

leaving a balance owing to the undersigned of THIRTEEN THOUSAND FIVE HUNDRED EIGHTEEN

and 7/100 (13,515.58) Dollars after deducting all just credits and offsets, and for which

demand the undersigned hold and claim a lien by virtue of the provisions of Chapter 1, of Title

38, of the Utah Code Annotated 1953.

Michael A Mower

STATE OF UTAH,

County of Salt Lake

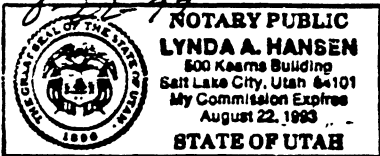
Michael A. Mower being first duly sworn, says that he is
the claimant in the foregoing Notice of Lien;

that he has heard read said notice and knows the contents thereof, and that the same is true of his
own knowledge.

Subscribed and sworn to before me this

Michael A. Mower
Lynda A. Hansen
13 day of OCT, 1982
Lynda A. Hansen
Notary Public.

com. exp.
8-22-83



Notice of Lien

AGAINST

Dated _____, 19__

Recorded at the request of _____

at _____ minutes past _____ o'clock _____ M., _____, 19__

In Book _____ of _____

page _____

Recorder _____ County _____

BLANK NO. 108--

© 1978 P.T.B. CO. — 2515 SO. 2400 EAST — SALT LAKE CITY

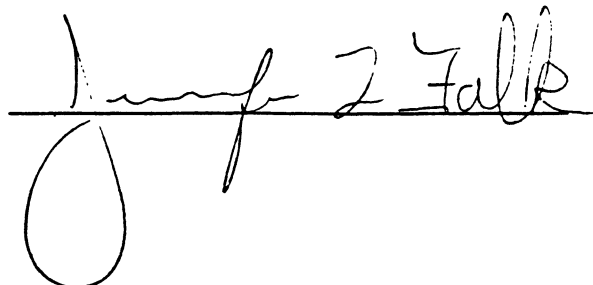
LINCOLN W. HOBBS, Esq. #4846
JENNIFER L. FALK, Esq. #4568
WINDER & HASLAM, P.C.
Attorneys for Plaintiff
175 West 200 South #4000
P. O. Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

IN THE THIRD CIRCUIT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	:	
	:	
Plaintiff,	:	CERTIFICATE OF SERVICE OF
	:	DISCOVERY DOCUMENTS
	:	
vs.	:	
	:	
JAMES D. CRAGHEAD, F. LYNN	:	Civil No. 930009062 CV
PADAN aka ASPEN	:	Judge Sheila K. McCleve
CONSTRUCTION, INC., MARTIN	:	
BENNETT, JOHN and JANE DOES	:	
NOS. 1 through 20,	:	
	:	
Defendants.	:	

I hereby certify that a true and correct copy of the PLAINTIFF'S RESPONSE TO DEFENDANT PADAN'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS, PLAINTIFF'S ANSWERS TO DEFENDANT PADAN'S FIRST SET OF INTERROGATORIES, and PLAINTIFF'S RESPONSES TO DEFENDANT PADAN'S FIRST SET OF REQUEST FOR ADMISSIONS were mailed, postage prepaid, this 16 day of March, 1994, along with a copy of this Certificate of Service to:

Attorneys for Defendants Craghead and Padan:
Joseph M. Chambers
PRESTON & CHAMBERS
31 Federal Avenue
Logan, Utah 84321



LINCOLN W. HOBBS, Esq. #4846
JENNIFER L. FALK, Esq. #4568
WINDER & HASLAM, P.C.
Attorneys for Plaintiff
175 West 200 South #4000
P. O. Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	:	
	:	
Plaintiff,	:	PLAINTIFF'S RESPONSE TO
	:	DEFENDANT PADAN'S FIRST
vs.	:	SET OF REQUEST FOR
	:	PRODUCTION OF DOCUMENTS
	:	
JAMES D. CRAGHEAD, F. LYNN	:	Civil No. 930009062 CV
PADAN aka ASPEN	:	Judge Sheila K. McCleve
CONSTRUCTION, INC., MARTIN	:	
BENNETT, JOHN and JANE DOES	:	
NOS. 1 through 20,	:	
	:	
Defendants.	:	

Plaintiff, Michael A. Mower, responds to Defendant Padan's
First Set of Request for Production of Documents as follows:

1. Please produce for copying the original of any document
which you intend to rely upon as supporting or corroborating the
allegations of the Complaint.

RESPONSE: Plaintiff will produce for inspection all respon-
sive, relevant, non-privileged documents within his possession or
control to defendant at a mutually convenient time and place.

2. Please produce all time records, day planner, invoices
or other documents (see page 2 definition 3) maintained by the

Plaintiff in connection with or relating to in any manner the Craghead remodeling project.

RESPONSE: Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

3. Please produce for inspection the original written contract or bid/acceptance/proposal documents or any similar such documents concerning the Craghead project.

RESPONSE: Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

4. Please produce for inspection any written (change) order (as such term is used in the bid proposal Exhibit "A") you claim exists with respect to the scope of the work to be performed on the Craghead home.

RESPONSE: Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

5. Please produce all documents (see page 2 definition 3) the identity of which is sought or referred to in any of the answers to the above Interrogatories.

RESPONSE: Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

6. Please produce all original notes and documents (see page 2 definition 3) made by you, your agents, employees, or subcontractors pertaining or relating to in any manner, to the allegations made by the Plaintiff that there was an open account arrangement with Padan.

RESPONSE: Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

7. Please produce all notes and documents made by you regarding conversations with any persons who are percipient witnesses regarding the present law suit and any allegation or defense made by either the Plaintiffs or any of the Defendants.

RESPONSE: Plaintiff objects to Production Request No. 7 on the grounds that it is vague and ambiguous in that Plaintiff does not know what Defendant means by "with any persons who are percipient witnesses regarding the present law suit". Subject to this objection, Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

8. Please produce all affidavits, witness statements and other documents taken by you in connection with matters pertaining to the present lawsuit and any allegations or defense made by the Plaintiffs or any of the Defendants.

RESPONSE: Plaintiff objects to Production Request No. 8 on the grounds that it asks for documents which are protected by the

No
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Just
A to

doctrine of work product. Subject to this objection, Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

9. Please produce all documents in your possession (not heretofore requested) relating to Aspen Construction, Michael Mower, Martin Bennett, James Craghead, the Craghead remodeling project or any lienholder Defendant.

RESPONSE: Plaintiff objects to Production Request No. 9 on the grounds that it is vague and ambiguous in that Plaintiff does not know what defendant means by "or any lienholder Defendant". Subject to this objection, Plaintiff will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to defendant at a mutually convenient time and place.

*Forclsa
Report*

*Motion to
Dismiss
In & sp.
par*

10. Please produce any 1099/W-2 statement give by you (answer) to Martin Bennett, in connection with the Craghead remodeling project.

RESPONSE: Plaintiff will produce copies of these documents.

11. Please produce any 1099/W-2 statements given by you (Mower) to Martin Bennett for any other work (other than the Craghead project) for 1992 and 1993.

RESPONSE: Plaintiff objects on the grounds that Document Request No. 11 is vague and ambiguous and the information sought

is not reasonably calculated to lead to the discovery of admissible evidence.

12. Please produce all payroll records for 1992 and 1993 of Mower Construction.

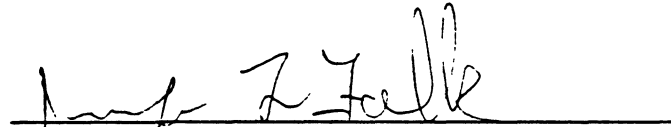
RESPONSE: Plaintiff objects on the grounds that Document Request No. 12 is vague and ambiguous and overly broad. Subject to this objection, plaintiff will produce copies of all payroll records for 1992 and 1993 relating to the Craghead project.

13. Please produce Michael Mowers (sic) 1991, 1992, and 1993 Federal and State Income Tax Returns.

RESPONSE: Plaintiff objects on the grounds that Document Request No. 13 is vague, ambiguous, overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

DATED this 16 day of March, 1994.

WINDER & HASLAM, P.C.



LINCOLN W. HOBBS
JENNIFER L. FALK
Attorneys for Plaintiff

LINCOLN W. HOBBS, Esq. #4846
JENNIFER L. FALK, Esq. #4568
WINDER & HASLAM, P.C.
Attorneys for Plaintiff
175 West 200 South #4000
P. O. Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	:	
	:	PLAINTIFF'S ANSWERS TO
Plaintiff,	:	DEFENDANT PADAN'S FIRST
	:	SET OF INTERROGATORIES
vs.	:	
	:	
JAMES D. CRAGHEAD, F. LYNN	:	Civil No. 930009062 CV
PADAN aka ASPEN	:	Judge Sheila K. McCleve
CONSTRUCTION, INC., MARTIN	:	
BENNETT, JOHN and JANE DOES	:	
NOS. 1 through 20,	:	
	:	
Defendants.	:	

Plaintiff, Michael A. Mower, in response to Defendant Padan's First Set of Interrogatories, admits, denies and alleges as follows:

1. If your answer to any of the foregoing Request for Admissions (1-45) is anything other than an unequivocal admission, please explain fully the factual basis or other reasons why you refused to unequivocally admit the Request for Admission. (Please answer separately.)

ANSWER: See plaintiff's responses to Defendant Padan's First Set of Request for Admissions.

2. State the names and addresses of all persons whom you will call as witnesses at the time of the trial of this case.

ANSWER: Martin Bennett. Lehi, Utah. Plaintiff has not yet determined whether there are others he will call. Plaintiff will supplement this response when such determination is made.

3. State the names and addresses of all persons whom you may call as witnesses at the time of the trial of this case.

ANSWER: Gordon Nielsen and Pat Davis. Plaintiff has not yet determined if there are others but will supplement this response when such determination is made.

4. Summarize the testimony each of the witnesses identified in your answers to Interrogatories No. 2 and No. 3 is expected to give at trial.

ANSWER: Martin Bennett will testify as to improvements provided to defendant's property under the contract and at the direction of defendant Craghead and his agents.

Gordon Nielsen and Pat Davis will testify at what point they) ^{No}
were finally told the beams were a finished product.

5. If you anticipate that any person identified in your answer to Interrogatory No. 2 and answer to Interrogatory No. 3 will testify concerning or on the basis of any document or documents, please identify each such document.

ANSWER: In addition to the contract, Martin Bennett kept detailed notes as to what extras he was told to do and how long it took him to do them; on information and belief such documents ^{No}
have already been produced to defendant. Plaintiff has not yet

determined whether there are others but will supplement his response as such determination is made.

6. Identify all documents you received by the persons specified in your answer to Interrogatory No. 5 and all documents prepared by you in connection with your communications with those persons.

ANSWER: See answer to Interrogatory No. 5.

7. State whether you presently intend to call any person to testify at the trial of this matter as an expert witness.

ANSWER: Plaintiff anticipates calling an expert painter. Plaintiff has not yet determined other details or whether other experts will be called. Plaintiff will supplement his response when such determination has been made.

8. If your answer to Interrogatory No. 7 is in the affirmative, please:

- (a) State the name and address of each such expert;
- (b) State each such expert's qualifications;
- (c) State the subject matter upon which such expert is expected to testify;
- (d) State the substance of the facts and opinions to which each such expert is expected to testify; and
- (e) Summarize the grounds for each such opinion.

ANSWER: See answer to Interrogatory No. 7.

9. If you anticipate that any person identified in your answer to Interrogatory No. 8 will testify concerning or on the

basis of any report, document or documents, please identify each such document or report.

ANSWER: See answer to Interrogatory No. 7.

10. Other than as set forth in your answers above, please identify all PERCIPIENT witnesses who have knowledge of the facts of the case including any claim or defense. In submitting this Interrogatory, we are not desirous of placing a burdensome request on you. However, in the event you are aware of potential witnesses which you do not intend to call we would like these potential witnesses identified.

ANSWER: Plaintiff has not yet identified further potential witnesses. Plaintiff will supplement this Interrogatory when such identifications are made.

11. Please identify all persons from whom you or your counsel have obtained statements or whom you or your counsel have interviewed in anticipation of litigation or in the course of representing the Plaintiffs (sic). Please set forth the facts and information which the foregoing witnesses gave during the interview or in their statement.

ANSWER: Plaintiff objects on the grounds that Interrogatory No. 11 seeks information covered by work product and privilege. In the event such statements are obtained, plaintiff will provide a relevant privilege log.))

12. Set forth in detail all facts, conversations or other evidence you have to support the allegations made in paragraph

six (6) of the Plaintiff's Complaint to the effect that the Plaintiff had an open account arrangement with Padan.

ANSWER: Plaintiff had an open account arrangement with Swanson Builders. Pursuant to this plaintiff provided materials to the Craghead property for the full scope of the contract.

13. Set forth in detail all facts, conversations or other evidence you have to refute the plain language on Exhibit "A" that no deviation or alteration was to be made to the scope of the Craghead job unless upon written order.

ANSWER: By Exhibit "A" plaintiff understands defendant to refer to plaintiff's proposal. Work performed by Bennett was for drywall and plastered corners and was thus within the scope of the initial contract. In the event any extra work was performed outside the scope of the contract, however, such work was performed via oral modification and course of performance, as evidenced by documents produced by plaintiff, documents in defendant Bennett's possession, and testimony of plaintiff and others.

14. Set forth in detail the time Mower was personally present at the Craghead jobsite:

- (a) date;
- (b) who was present;
- (c) work performed;
- (d) substance of any conversation or activity.

ANSWER: Plaintiff was at the Craghead jobsite at least three to four times a week during a five-day workweek, supervis-

logic
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padan's
must be
open
also?
motion
to
Dismiss
Summe
Judge

ing the job, ensuring materials were supplied and the work properly completed. Other workers were present at this time including Martin Bennett. Tom Thorton was often there and Lynn Padan was sometimes there, and Craghead was often there.

15. If you disagree with the information summarized on Exhibit B (sic), set forth in detail all payments received from or to any source with respect to the work claimed to be performed on the Craghead residence.

ANSWER: No Exhibit "B" was supplied with the interrogatory requests.

*Couldnt
you
Call a
I can
Fax
Come
on*

16. Set forth in detail the identity and interest of all "lien holder" Defendants (page 2, paragraph 5 of your Complaint).

ANSWER: Plaintiff objects to Interrogatory No. 16 in that the information is equally, if not more, accessible to defendant as owner of the home to which notice of lien is given.

*rule
19*

17. Set forth in detail the basis of the allegations in paragraph nine (9) of the Plaintiff's Complaint.

ANSWER: Plaintiff performed and supervised the supervision of valuable improvements applied to the Craghead property-- namely, labor and materials for drywall. Defendant has refused to pay the full amount due and owing for these services and improvements.

18. Please identify (definitions 5 and 6 page 3) all oral conversations you had with Lynn Padan with respect to the Craghead home.

ANSWER: Plaintiff had numerous conversations with Padan with respect to the Craghead home, including conversations of the quality of work, the necessity for extra work, the protection of beams, the need to repaint the beams throughout the building, the status of plaintiff's license, the cost of the job and matters concerning billing.

19. Please identify (definitions 5 and 6 page 3) all oral conversations you had with James Craghead with respect to the Craghead home.

ANSWER: Although Craghead was present at many of plaintiff's conversations with Padan, plaintiff had very few with Craghead personally. The conversations usually concerned other details of work, and later the amount of billing.

20. Please identify (definitions 5 and 6 page 3) all oral conversations you had with Martin Bennett with respect to the Craghead home.

ANSWER: Plaintiff has had and continues to have conversations with Bennett concerning the quality and scope of labor performed on the Craghead property, the directions of others, the amount of billing, the beams, and the amount due and owing plaintiff and Bennett under the contract. During the job performance these conversations occurred four or five times weekly, with fewer toward the end of the job. Since January plaintiff has had two or three conversations with Bennett.

21. Please identify (definitions 5 and 6 page 3) all oral conversations you had with Tom Thorton with respect to the Craghead home.

ANSWER: Plaintiff had numerous conversations with Thorton as to the scope and quality of his work, the work in general, and the oversight of the job and different personalities on the job.

22. Please identify (definitions 5 and 6 page 3) all oral conversations you had with any other person at the Craghead home with respect to the scope of the work to be performed on the Craghead home.

ANSWER: Plaintiff objects to Interrogatory No. 22 on the grounds it is vague, ambiguous and overly broad. Subject to this objection, plaintiff had general conversations with other workers throughout the job.

23. Please identify (definition 4 page 2) all documents which you believe would constitute a "written order" within the context of how such term is utilized in Exhibit "A" which authorizes an alteration or deviation from the scope of the work proposed by Mower in Exhibit "A".

ANSWER: If by Exhibit "A" defendant refers to plaintiff's proposal, then plaintiff answers no such documents exist to his knowledge.

24. Unless already provided in your prior answers please submit an accounting for the "extras" identifying or listing the following information on a daily basis:

(a) Date work performed;

(b) Who performed such work - name(s) of worker(s) or tradesmen/tradeswomen;

(c) Hours worked and rate of pay for such work - number of hours worked and time of day/night (if different jobs performed at different rates identify or break down each separately);

(d) Whether other workers/tradesman/general/owner present when work claimed to be performed was allegedly done (if none so state);

(e) Day or piece rate of worker(s);

(f) Summary or explanation describing work performed i.e. type or category of extra work performed: electrical, carpentry, plumbing, etc.;

(g) Identify the person who specifically requested or authorized the extra work to be performed (if none so state);

(h) All persons present when person in (g) above allegedly requested or authorized the extra work to be performed (if none so state);

(i) Cost of materials provided;

(j) Day total of extra work.

ANSWER: See documents produced by plaintiff and by *None*
Bennett.

25. If no "written orders" (within the context of how such term is used in Exhibit "A") exist with regards to the extra work claimed to be performed, please explain upon what basis you claim

entitlement to compensation for extras, notwithstanding the express language contained in Exhibit "A" which is directly left of Mowers (sic) signature.

ANSWER: See answer to Interrogatory No. 13.

26. Except as set forth above please identify all facts, witnesses, conversations, or other evidence you have which supports your claim for entitlement to compensation for the "extras" you claim on you (sic) Invoice No. 4212.

ANSWER: See answer to Interrogatory No. 13.

27. Please identify all work or jobs (contracting or other) performed by Martin Bennett, on behalf of, at the instance of, or in any manner for Mike Mower. During 1992 and 1993 with respect to each such job provide the following information:

- (a) General contractor;
- (b) Type of work Bennett performed;
- (c) Total compensation paid Bennett.

ANSWER: There has been no opportunity for Bennett to work for plaintiff since completion of Craghead job.

28. Unless answered previously above, if you deny Exhibit "A" is an integrated contract please set forth all facts, conversations, evidence, etc., that you rely upon in arriving at your conclusion that such is not an integrated contract.

ANSWER: See answer to Interrogatory No. 13.

29. Please identify all persons and/or sources who assisted in the preparation of the answers and/or requests for discovery.

ANSWER: Jennifer L. Falk, plaintiff's attorney.

DATED this 16th day of March, 1994.

Michael A. Mower
Michael A. Mower

WINDER & HASLAM, P.C.

Lincoln W. Hobbs
LINCOLN W. HOBBS
JENNIFER L. FALK
Attorneys for Plaintiff

VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

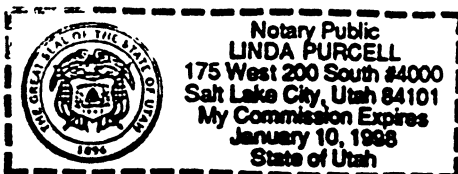
MICHAEL A. MOWER, being first duly sworn, upon his oath deposes and says that he has read the foregoing Plaintiff's Answers to Defendant Padan's First Set of Interrogatories and the same are true and correct, except as to the answers given on information and belief, and as to the same, he believes them to be true.

Michael A. Mower
MICHAEL A. MOWER

SUBSCRIBED AND SWORN to before me this 16th day of March, 1994.

Linda Purcell
NOTARY PUBLIC

2578\001\answer.int



LINCOLN W. HOBBS, Esq. #4846
JENNIFER L. FALK, Esq. #4568
WINDER & HASLAM, P.C.
Attorneys for Plaintiff
175 West 200 South #4000
P. O. Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	:	
	:	
Plaintiff,	:	PLAINTIFF'S RESPONSES TO
	:	DEFENDANT PADAN'S FIRST SET
	:	OF REQUEST FOR ADMISSIONS
vs.	:	
	:	
JAMES D. CRAGHEAD, F. LYNN	:	Civil No. 930009062 CV
PADAN aka ASPEN	:	Judge Sheila K. McCleve
CONSTRUCTION, INC., MARTIN	:	
BENNETT, JOHN and JANE DOES	:	
NOS. 1 through 20,	:	
	:	
Defendants.	:	

Plaintiff, Michael A. Mower, responds to defendant Padan's Request for Admissions as follows:

1. Please admit that Exhibit "A" attached hereto is a true and correct copy of the proposal Plaintiff submitted to Aspen Construction Company regarding the drywall work to be performed on the Craghead home at 3899 East Parkview, Salt Lake City, Utah.

RESPONSE: Admits.

2. Please admit that Aspen Construction accepted the proposal contained in Exhibit "A" thereby forming a contract between the Plaintiff and Aspen Construction.

RESPONSE: Admits.

3. Please admit that Exhibit "A" is an integrated contract.

RESPONSE: Denies. Although the Exhibit "A" is for drywall, plaintiff avers that contract was supplemented verbally and through course of performance.

4. Please admit that Martin J. Bennett was not an "employee" of Mr. Mower.

RESPONSE: Denies. Defendant has failed to identify the context or definition of "employee" and plaintiff is unable to specifically admit or deny. Plaintiff avers, however, that plaintiff supplied Bennett with a 1099 tax form.

5. Please admit that Mower treated Bennett as an "independent contractor" with respect to the Craghead project.

RESPONSE: Denies. Defendant has failed to define "independent contractor" or refer to context, therefore, plaintiff denies. Plaintiff avers, however, that plaintiff supplied Bennett with a 1099 tax form.

6. Please admit that the Plaintiff "subcontracted" a significant portion of the drywall work on the Craghead home to Martin Bennett.

RESPONSE: Denies. Defendant has failed to define "subcontracted" or refer to context and, therefore, plaintiff does not know what defendant means. Plaintiff avers, however, he supplied Bennett with a 1099 tax form.

7. Please admit that the Plaintiff is responsible for any damage Martin Bennett's actions created or caused to the Craghead property.

RESPONSE: Denies. Plaintiff denies any damage was created or caused to the Craghead property.

8. Please admit that Exhibit "A" is the only contract that existed between the Plaintiff and Aspen Construction with regards to work to be performed on the Craghead home.

RESPONSE: Denies. See Response to Admission Request No. 3.

9. Please admit that the Plaintiff had no "oral contract" with either Mr. Craghead or Aspen Construction concerning work to be performed on the Craghead home.

RESPONSE: Denies. See Response to Admission Request No. 3.

10. Please admit that prior to or during the performance of the drywall work Martin Bennett did not cover the beam work.

RESPONSE: Denies. Marty covered beams first with masking tape and visqueen and, later, with masking tape.

11. Please admit that Mr. Lynn Padan and his foreman Tom Thorton instructed Martin Bennett to cover and protect the beam work.

RESPONSE: Plaintiff is without information or belief as to the existence of such conversation alleged by defendant and, therefore, denies.

12. Please admit that Martin Bennett has admitted that he was told by Padan to cover the beams.

RESPONSE: Plaintiff is without information or belief and, therefore, denies.

13. Please admit that Martin Bennett performed work outside the scope of the Plaintiff's bid proposal (Exhibit "A").

RESPONSE: Denies. The scope of the proposal is dry wall and plastered corners.

14. Please admit that Martin Bennett was not authorized to perform any work outside the scope of the bid proposal (Exhibit "A") accepted by Lynn Padan.

RESPONSE: Denies. See Responses to Admission Requests Nos. 3 and 13.

15. Please admit that the services Martin Bennett claims to have performed "as extras" are charged at 2 1/2 to 3 times the going rate for such work.

RESPONSE: Denies.

16. Please admit that Martin Bennett was told by Mr. Craghead, Mr. Padan and Tom Thorton that he was not to do extra work.

RESPONSE: Defendant fails to give specifics as to the time or place of any such conversations and Plaintiff lacks sufficient information to respond to Admission Request No. 16 and, therefore, denies.

17. Please admit that after you (Mower) presented invoice 11849 for payment that Padan and Craghead told you that Bennett

if all work was within scope of bid proposal then the extra work

was not to perform work outside the scope of the bid proposal (Exhibit "A").

Note

RESPONSE: Denies.

18. Please admit that you are attempting to collect for time and work which was never performed by Martin Bennett.

RESPONSE: Denies. A thorough and detailed list has been submitted for work billed.

19. Please admit that the amount you claim as due and owing in your Complaint is attributable solely to work claimed to have been performed by Martin Bennett.

RESPONSE: Denies. Amount due and owing by defendants is to plaintiff. This includes plaintiff's charges, supervision, skills, and appropriate markup.

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Responsibility
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Sword

20. Please admit that beam work was damaged by Martin Bennett, when he sheetrocked and plastered, which required that the beam work be repainted.

RESPONSE: Denies. Any requirement for repainting of the beams, if at all, was due to the removal of materials from old painted beams and the addition of new beams of a color far different than the color of the color of the original.

get me
paint
need
start

21. Please admit that Exhibit "A" is a standard proposal form utilized by the Plaintiff in his contracting business.

RESPONSE: Denies. Plaintiff no longer uses such form.

22. Please admit that Exhibit "A" requires that any deviation or alteration in the scope of the work to be performed on

the Craghead property must first be reduced to a written change order.

RESPONSE: Denies; Exhibit "A" can be supplemented or modified or both, orally or through course of performance.

23. Please admit that neither you (Mower) or Bennett have a written change order authorizing you (Mower) or Bennett to perform any work outside the scope of the bid proposal (Exhibit "A").

RESPONSE: Admits.

24. Please admit that the total square feet in the Craghead home as to which the contract rate of 70¢ a square foot applies for "hand and finish for paint" does not exceed 16,375 square feet.

RESPONSE: Denies. The total square footage is 20,792 square feet.

*How is
such
calculated?*

25. Please admit that the total linear feet in the Craghead home as to which the contract rate of \$1.00 per linear foot for "bull nose corner bead" does not exceed 2,100 linear feet.

RESPONSE: Denies. The total footage of corner bead was 2,300 linear feet.

*How is
such
calculated?*

26. Please admit that the total linear feet in the Craghead home as to which the contract rate of \$7.50 per linear foot for "radius under 12" does not exceed 438 linear feet.

RESPONSE: Admits.

27. Please admit that §58-15-17 Utah Code Annotated bars any recovery by Martin Bennett since he is not licensed as a trade contractor in the State of Utah.

RESPONSE: Denies. Bennett is entitled to recover pursuant to the appropriate lien statutes.

28. Please admit that all of the "lienholder Defendants" (page 2 paragraph 5 of complaint) are superior to the Plaintiff's alleged interest in the property being foreclosed.

RESPONSE: Denies. ✓

29. Please admit that you stated to Lynn Padan that you were essentially paid in full and that the only amounts you considered not paid represented the "extra" work which Martin Bennett claimed he had performed on the Craghead property.

RESPONSE: Denies. The "extra" work was part of the contract, was fully performed, and the value of the improvements benefits the Craghead property. Plaintiff is entitled to the full amount claimed under this lien.

30. Please admit that Mike Mower never collected or withheld Social Security or Federal withholding on any compensation paid to work he performed on the Craghead job.

RESPONSE: Denies because plaintiff does not understand what defendant is asking him to admit. Plaintiff avers, however, he supplied Bennett with a 1099 tax form.

Note

31. Please admit that Mike Mower never obtained any workmans compensation insurance coverage on Martin Bennett regarding the Craghead job.

RESPONSE: Admits.

32. Please admit that Martin Bennett had no separate contract with Aspen Construction or Mr. Craghead regarding work to be performed on the Craghead home (i.e. his only contractual relationship to the Craghead job was through the Plaintiff).

RESPONSE: Plaintiff believes such is the case but lacks sufficient information to respond to Admission Request No. 32 and, therefore, denies.

33. Please admit that Exhibit "B" attached hereto represents a true and correct accounting of the payments made to you by Aspen Construction totaling \$18,933.95.

RESPONSE: Admits.

34. Please admit that after Aspen Construction received and paid your (Mower's) invoice 11850 (which included extras of \$1,148.00) Lynn Padan, Jim Craghead and Tom Thorton told Martin Bennett that Bennett was not to perform any work outside the scope of the bid proposal (Exhibit "A").

RESPONSE: Plaintiff lacks sufficient information to respond to Admission Request No. 34 and, therefore, denies.

35. Please admit that \$11,106.13 of the \$13,515.58 you claim is owed is for work you have classified as "extras". (See your invoice #4212.)

RESPONSE: Admits.

36. Please admit that your invoice #4212 dated September 9, 1992, does not give Aspen credit for the \$602.00 paid June 26, 1992.

RESPONSE: Admits.

37. Please admit that Aspen Construction informed you as early as July 1992 that it was claiming an offset of 44,400 - \$4,500 because Bennett had failed to protect the beamwork.

RESPONSE: Denies.

38. Please admit that immediately after Bennett started on the Craghead project that Padan informed Bennett and you (Mower) that the beams needed to be covered.

RESPONSE: Denies. Plaintiff was not told by defendant that the beams had already been painted until after doing the ceilings and walls in the master bedroom.

39. Please admit that Exhibit "C" attached hereto is a true and correct copy of your (Mower's) Invoice No. 11846 representing work you billed Aspen Construction for during February and March 1992.

RESPONSE: Admits.

40. Please admit that Exhibit "D" attached hereto is a true and correct copy of your (Mower) Invoice No. 11849 representing work you billed Aspen Construction for during March and April 1992.

RESPONSE: Admits.

41. Please admit that Exhibit "E" attached hereto is a true and correct copy of your (Mower) Invoice No. 11850 representing work you billed Aspen Construction for during April and May 1992.

RESPONSE: Admits.

42. Please admit that Exhibit "F" attached hereto is a true and correct copy of your (Mower) Invoice Nos. 4202 and 4203 representing work you billed Aspen Construction for during May 1992.

RESPONSE: Admits.

43. Please admit that Exhibit "G" attached hereto is a true and correct copy of your (Mower) Invoice (unnumbered) representing work you billed Aspen Construction for during May and June 1992.

RESPONSE: Admits.

44. Please admit that Exhibit "H" attached hereto is a true and correct copy of your (Mower) Invoice No. 4212 representing work you billed Aspen Construction for which you (Mower) claimed was performed on the Craghead home.

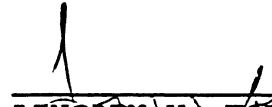
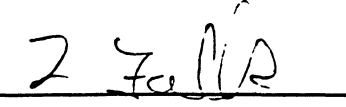
RESPONSE: Admits.

45. Please admit that Exhibit "I" attached hereto is a true and correct copy of the Mechanics Lien you filed against the Craghead property.

RESPONSE: Admits.

DATED this 16 day of March, 1994.

WINDER & HASLAM, P.C.


LINCOLN W. HOBBS

JENNIFER L. FALK
Attorneys for Plaintiff

DATED this 16th day of March, 1994.

Michael A. Mower
Michael A. Mower

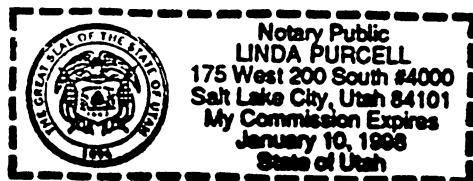
VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, MICHAEL A. MOWER, being first duly sworn, upon his oath deposes and says that he has read the foregoing Plaintiff's Responses to Defendant Padan's First Request for Admissions and the same are true and correct, except as to the answers given on information and belief, and as to the same, he believes them to be true.

Michael A. Mower
MICHAEL A. MOWER

SUBSCRIBED AND SWORN to before me this 16th day of March, 1994.



Linda Purcell
NOTARY PUBLIC

ATTORNEYS
AT
LAW

WINDER & HASLAM
A PROFESSIONAL CORPORATION

SUITE 4000
175 WEST 200 SOUTH
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FAX (801) 532-3706
(801) 322-2222

JENNIFER L. FALK

March 17, 1994

Mr. Joseph M. Chambers
PRESTON & CHAMBERS
31 Federal Avenue
Logan, Utah 84321

Re: Mower v. Craghead, et al.
Civil No. 930009062 CV

Dear Mr. Chambers:

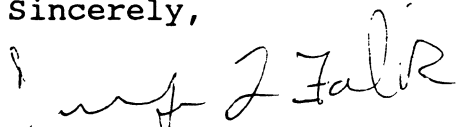
By now you should have received our responses to your discovery. You will note that I have objected to certain of your document requests. If you can provide me information as to why the documents requested are relevant I would be happy to discuss the issue with you.

We also are having a copy made of a videotape of the beams which Mike Mower made in connection with your allegations. As to your request for original documents, we are happy to provide them for your review before the depositions at a mutually convenient time so that you may determine what copies you would like.

In a telephone conversation earlier this week I told you we had contacted Mr. Bennett and he wishes to retain our firm. I have not yet accepted his case nor have I had an opportunity to review his discovery responses. In the event I do accept Mr. Bennett's case, however, I reserve the right to supplement his, Mower or both's responses to discovery.

If you have any questions, please don't hesitate to call. Otherwise I look forward to seeing you for the depositions of Martin Bennett and Michael Mower in our offices on April 5, 1994.

Sincerely,



JENNIFER L. FALK

JLF:lbp



The Law Firm of

Preston & Chambers

A Professional Corporation

31 Federal Avenue
Logan, Utah 84321
(801) 752-3551
FAX (801) 752-3556

George D. Preston (1897-1965)
M.C. Harris (1887-1981)
George W. Preston
Joseph M. Chambers

March '24, 1994

Ms. Jennifer L. Falk
WINDER & HASLAM
Suite 4000
175 West 200 South
P.O. Box 2668
Salt Lake City, UT 84110-2668

Re: Mower vs. Craghead, et al.
Discovery Objections - Demand to Comply

Dear Ms. Falk:

This letter is in response to your letter dated March 17, 1994. At the outset let me indicate that I was disappointed with the negative position which your client has decided to take concerning a portion of the discovery which I submitted. I think that you would concede that the discovery which I sent was not simply boiler plate discovery but was customized to this litigation to ferret out specific facts.

I do not feel that your client has responded to portions of the discovery in good faith. When you contacted me about amending your Complaint I indicated to you that if you would provide me a written stipulation I would not require you to waste your time or your client's money by jumping through the hoops of filing a motion to amend and then waiting for ruling from the Court. When you contacted me concerning the need for an extension of time to answer the discovery I indicated that you could have as much time as you need so long as I received the documents prior to the deposition. When you needed to change the deposition date, I tried to accommodate your schedule. I do not feel that the courtesies I have extended have been reciprocated by your client and this disappoints me. I thought we had gotten past the saber rattling some time ago and could simply approach this case in a professional and forthright manner.

The specific objections which I have to your client's responses to the discovery are set forth below. If these are not cured or other arrangements made then I will have no other choice but to seek a Motion to Compel.

Ms. Jennifer L. Falk
March 24, 1994
Page 2

Objection No. 1. (No action is required by you.) In the third paragraph of your letter dated March 17, 1994, you attempt to reserve the right to supplement Mr. Bennett's responses. Please be on notice that I do not believe you can supplement Mr. Bennett's responses or even Mr. Mower's to the extent that they would contradict specific answers which Bennett and Mower have already given. (You obviously have the right to explain away an answer at any time you obtain additional information). So that there is no question about my position I am not acquiescing that you have the right to amend any such response!

Objection No. 2. In your answers to the first set of Interrogatories specifically question 15 you indicate that no Exhibit "B" was supplied with the Interrogatories. Considering the fact that we have been on the phone two or three times during the interim (including the telephone conversation where I granted you an extension of time to answer the discovery) I do not see why you could not have given me the courtesy of indicating that I had failed to attach an Exhibit "B". In any event the Exhibit "B" referred to is the Exhibit "B" attached to the Request for Admissions. Enclosed is a copy. I would appreciate it if you would supplement your answer given reference to this specific document.

Objection No. 3. I have asked you to provide me with the names and addresses of the persons whom you may call at trial. You have given me their names but you have not given me their addresses. See answer to Interrogatory No. 3. Would you please get me the addresses if such is available to you and/or your client.

Objection No. 4. In answer to Interrogatory No. 11 you indicate that you object to answering this interrogatory on the grounds of the work product doctrine privilege. If statements have been obtained please answer the relative question or provide the relevant privilege log as you indicate, otherwise simply indicate that no statements have been obtained at this time as such information in the negative is not privileged. (See also objection 6 below.)

Objection No. 5. Interrogatory No. 24 asks for an accounting of the extras on a daily basis with rather specific questions asked to substantiate the charges your client is claiming a lien for. Your client attempts to avoid any answer simply by stating "Answer: See documents produced by Plaintiff and by Bennett". The problem I have with this answer is that both your client and Bennett have never produced any documents. Hence your response is not a proper response. In fact almost all of your responses to the request for production of documents indicate that you have not produced any

Ms. Jennifer L. Falk
March 24, 1994
Page 3

documents but that you will in the future. (See objection 6 below.) Until I receive the documents then I believe your client is obligated to take the time to provide me with a breakdown of what he is charging i.e. the underlying evidence and calculations to support the lien and lien amount. If I do not receive the necessary information prior to the depositions then I will file a motion in limine

Objection No. 6. Response to Request for Production of Documents. Rule 34 indicates that documents must be produced at a reasonable time and manner. My request for production of documents requested that the documents be produced at my law firm by a specific date set in conjunction with depositions so that I could be prepared prior thereto. You did not timely object to this request but have instead unilaterally substituted your response as follows: Plaintiff will produce for inspection all responsive relevant, nonprivileged documents within his possession or control to Defendant at a mutually convenient time and place.

I object to this, however, I also do not want to be unreasonable hence I would immediately request that you or your secretary call my office and indicate when the documents will be made available at your law office so that I could come to Salt Lake to inspect such and review the original documents and/or copy those documents you have that are responsive to the requests I made. (Please give me 2-3 possible dates.) If the documents are not made available to me prior to the depositions then I will have to cancel the depositions and seek sanctions or proceed with the depositions and file a motion in limine. My requests were made in a timely fashion and given the fact that your client has the burden of proof in this case, all I am asking for is his evidence to support his case. (If he doesn't have the necessary evidence then let's dismiss his action and get on with our lives.)

Objection No. 7. In addition to the response noted above you have objected to the production of certain documents based upon Work Product Doctrine. If these statements were obtained by your client and not yourself then I believe the Work Product Doctrine has no application. See Madsen v. United Television, Inc., 88042 (Utah 1990); Gold Standard, Inc. v. Ames Barrick Resources, 801 P2d 909 (Utah 1990). In any event if you are unwilling to produce witness statements of witnesses which you know will or anticipate to testify at trial then I will have no other alternative but to make a motion in limine to prevent their testimony unless such statements are made available to me prior to the depositions. These statements are not yours. They are statements of the witnesses and represent the underlying facts in the case which the rules of discovery allow me access to. 26(b)(3) U.R.C.P.

Ms. Jennifer L. Falk
March 24, 1994
Page 4

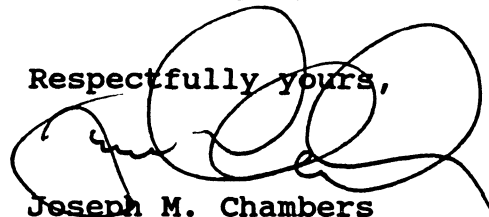
Objection No. 8. In response to Request No. 12 where I requested payroll records for the years 1992 and 1993 of Mower Construction as well as Mr. Mower's 1991, 1992, and 1993 tax returns, I must respectfully disagree with you. The documents are directly relevant to my discovery in the case. I do not have to detail to you the relevancy of such as such would be an invasion of my mental processes and methods which are protected by the Work Product Doctrine. Rule 26(b) URCP states that:

"unless otherwise limited by an order of the court the scope of discovery extends to any matter not privileged which is relevant to the subject matter involved in the pending action. It is not a grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

I believe (and am telling you in this letter in good faith) that Mr. Mower's tax return is sought because I believe such will lead to the discovery of admissible evidence. My firm belief is corroborated by other evidence that I have including Mower's answers to discovery as to how he treated Mr. Bennett. All of the foregoing leads me to believe this and other evidence will disclose that Mr. Mower is in fact liable for any action or inaction which Mr. Bennett took. I would respectfully request that you produce those documents in accordance with the request.

I have attempted to extend to your client common courtesies I would expect but if he wishes to litigate in this manner so be it. Please give me a response to the foregoing within ten (10) days or otherwise I will file a Motion to Compel/Motion in Limine accordingly.

Respectfully yours,



Joseph M. Chambers
Attorney at Law

JMC/bh

P.S. As to the documents to be produced I need access to those within the next week otherwise I will proceed with the deposition, however, I will also seek sanctions for having to continue such until after I have completed my review of the documents, in essence your client will have caused a needless duplication of effort.

ATTORNEYS
AT
LAW

WINDER & HASLAM
A PROFESSIONAL CORPORATION

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175 WEST 200 SOUTH
P.O. BOX 2668
SALT LAKE CITY, UTAH 84110-2668
FAX (801) 532-3706
(801) 322-2222

JENNIFER L. FALK

March 25, 1994

Mr. Joseph M. Chambers
PRESTON & CHAMBERS
31 Federal Avenue
Logan, Utah 84321

Re: Mower v. Craghead, et al.
Civil No. 930009062 CV

Dear Mr. Chambers:

I am in receipt of your letter dated March 24, 1994. I believe my client has responded fully to your request for interrogatories. In order to avoid any confusion or controversy on this matter, however, I will provide the following information.

As to Interrogatory No. 15, I have sent a copy of the Exhibit "B" to my client, and have asked him to answer the question in connection with Exhibit "B". I will supplement the response once I have received an answer from my client.

As to your objections to the answer to Interrogatory No. 3, I have given you the names of possible witnesses. I do not currently have their addresses. The method I would use to get their addresses is through the yellow pages, you are as able to do that as am I.

In response to your objection to our answer to Interrogatory No. 11, our answer speaks for itself.

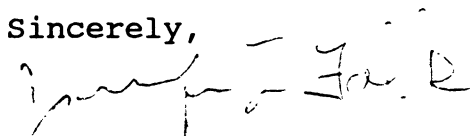
In response to Interrogatory No. 24, we refer to the documents which we are willing to produce. You are welcome to look at these documents at any time at our law firm within the hours of 10:00 a.m. to 5:00 p.m. on either Monday, Tuesday, Thursday or Friday of next week, March 28 through April 1, 1994, or on Monday, April 5, 1994. Please call me and tell me when you expect to be down so that I may have my secretary arrange to have a room available for you in which to review the documents.

Mr. Joseph M. Chambers
PRESTON & CHAMBERS
March 25, 1994
Page 2

It appears the only request for documents over which we have a disagreement is your request for Mr. Mower's tax returns for the years 1991 through 1993. As I said in my earlier letter, unless you can provide me with some reason why these documents are "reasonably calculated to lead to the discovery of admissible evidence", I am not inclined to produce them. If you are able to provide me a reason why this information requested may fall within the scope of Rule 26(b) of the Utah R. Civ. P., however, then I will be happy to discuss the matter with you. Your answer that it is important "as to how he treated Mr. Bennett" can be readily ascertained from the 1099 forms which Mr. Mower has already agreed to provide to you.

If you have any further questions, please do not hesitate to call.

Sincerely,



JENNIFER L. FALK

JLF:lbp

LINCOLN W. HOBBS, Esq. #4846
JENNIFER L. FALK, Esq. #4568
WINDER & HASLAM, P.C.
Attorneys for Plaintiff
175 West 200 South #4000
P. O. Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	:	
	:	
Plaintiff,	:	PLAINTIFF'S FIRST REQUEST
	:	FOR PRODUCTION OF DOCUMENTS
vs.	:	TO DEFENDANTS JAMES D.
	:	CRAGHEAD AND F. LYNN PADAN
	:	
JAMES D. CRAGHEAD, F. LYNN	:	Civil No. 930009062 CV
PADAN aka ASPEN	:	Judge Sheila K. McCleve
CONSTRUCTION, INC., MARTIN	:	
BENNETT, JOHN and JANE DOES	:	
NOS. 1 through 20,	:	
	:	
Defendants.	:	

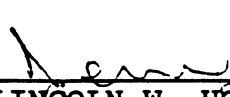
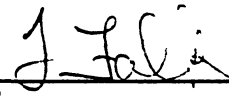
Plaintiff, Michael A. Mower, by and through his counsel of record and pursuant to Rule 34, Utah R.Civ.P., requests that the defendants James D. Craghead and F. Lynn Padan produce the following documents for inspection and copying at the offices of Winder & Haslam, 175 West 200 South, Suite 4000, Salt Lake City, Utah, within thirty (30) days of the date of service hereof. This request is intended to and does cover all documents in possession of each and every defendant, available to them, or subject to their custody and control. Each response must be seasonably supplemented pursuant to Rule 26(e), Utah R.Civ.P.

REQUESTS

1. Any documents identified in your response to Plaintiff's First Set of Interrogatories to Defendants James D. Craghead and F. Lynn Padan.
2. Any documents reviewed or relied upon by you in responding to plaintiff's First Set of Interrogatories to Defendants James D. Craghead and F. Lynn Padan.
3. A copy of any and all documents pertaining to the Project.
4. Any and all documents defendants or either of them may or intend to introduce as exhibits at any trial or hearing in this action.
5. All correspondence between defendants during the discovery period.
6. All correspondence, notes or other documents relating or pertaining to communications by you with the plaintiff, or any agent thereof, during the discovery period.
7. Evidence of all claims paid by you relating to the Project.
8. All other documents, of whatsoever nature and from whatever source, concerning or pertaining to the claims involved in this lawsuit.
9. All documents upon which you rely in formulating, calculating, estimating or otherwise assessing any and all damages or offsets claimed against the plaintiff in this action.

DATED this 28 day of March, 1994.

WINDER & HASLAM, P.C.

LINCOLN W. HOBBS
JENNIFER L. FALK
Attorneys for Plaintiff

2578\001\REQUEST.POD

LINCOLN W. HOBBS, Esq. #4846
JENNIFER L. FALK, Esq. #4568
WINDER & HASLAM, P.C.
Attorneys for Plaintiff
175 West 200 South #4000
P. O. Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	:	
	:	PLAINTIFF'S FIRST SET OF
Plaintiff,	:	INTERROGATORIES TO
	:	DEFENDANTS JAMES D. CRAGHEAD
vs.	:	AND F. LYNN PADAN
	:	
JAMES D. CRAGHEAD, F. LYNN	:	Civil No. 930009062 CV
PADAN aka ASPEN	:	Judge Sheila K. McCleve
CONSTRUCTION, INC., MARTIN	:	
BENNETT, JOHN and JANE DOES	:	
NOS. 1 through 20,	:	
	:	
Defendants.	:	

Plaintiff, Michael A. Mower, by and through his counsel of record and pursuant to Rule 33, Utah R. Civ. P., submits the following interrogatories to be answered by defendants James D. Craghead and F. Lynn Padan. Each Interrogatory must be answered by the named defendants in writing, fully, under oath and within thirty (30) days after service hereof. To the extent that the responses to these Interrogatories are the same for multiple defendants, the defendants may answer collectively. Individual responses shall be provided, however, when necessary. Each answer hereto must be reasonably supplemented pursuant to Rule 26(3), Utah R. Civ. P.

INSTRUCTIONS FOR USE AND DEFINITIONS

All information is to be divulged which is in the possession of said individual or corporate party, its attorneys, investigators, agents, employees or other representatives of the named party and its attorney.

1. The words "you", "your", "defendant" and "defendants" are defined as each and every defendant answering these interrogatories, as well as all agents, employees, counsel or other persons or entities acting or purporting to act for or on behalf of that defendant.

2. The word "document" is defined to include the original and any copy of any written or recorded material, in whole or in part, including drafts, handwritten notes, magnetic tape or other method of electronic reproduction, and all computer stored and computer retrievable information.

3. In addition to its common meaning, the word "correspondence," is defined to include notes, memoranda, or other documents recording or referring to oral communications.

4. When it is requested that you "identify" an individual, business entity or documents, that means: (1) with respect to an individual -- to state his full name, complete residential address and telephone number, place of employment, job title, if any, and his employer's complete address and telephone number; (2) with respect to a business entity -- to state its full name, complete address and telephone number, and the

full name of the owner, partners and president of the business entity; (3) with respect to a document -- to state the date the document bears, a description of the document in sufficient detail to enable it to be specifically identified, and the names and addresses of the custodian and of the preparer of the document; and (4) with respect to any other matter, provide information necessary to provide a full and complete response to the interrogatory.

5. The word "witness" includes, but is not limited to, any person who: (1) was an actor or viewer of the transactions or occurrences involved in this lawsuit; (2) has knowledge of the damage or injury claimed; (3) has investigated such transactions, occurrences, damages or injuries; or (4) was interviewed by or made statements to you, your counsel, any agent or employee concerning such transactions, occurrences, damages or injuries.

6. The phrase "expert witness" means any person you or your counsel expect to call as an expert witness at trial. The phrase "expert witness" also includes any engineers, consultants, or others retained to inspect, examine, test or analyze the work performed by defendants on the Project during the discovery period.

7. In these Interrogatories, the term "Project" refers to and includes the property located in Salt Lake City, Salt Lake County, State of Utah, and bears the following legal description:

Com- N 3°55'47" E 20 ft from SE Cor of Lot 6, Mt. Olympus View Sub., N 3°53'50" W 162.08 ft; N 75° E 168.33; S 5° W 49.8 ft; S 23°20' W 109.37 ft, W 25 ft S 12°24' 30" W 205.38 ft; W'ly on curve to left 17.46 ft, N 12°24'30" E 136.93 ft; N 72°19'30" W 49.41 ft to Beg. Being pt of Lot 118, Mount Olympus Park Sub. 5413-753 5413-0756 6264-2318

8. The phrase "Discovery Period" means that period beginning on the day you first had involvement with the Project and continuing to and including the date of your response to these Interrogatories.

9. The use of the masculine includes the feminine herein. The use of the singular shall be construed as the plural and the use of the plural shall be construed as the singular where necessary to facilitate complete answers. The use of "and" shall mean "or" and the use of "or" shall mean "and" where necessary to facilitate complete answers.

GENERAL INSTRUCTIONS

If, because of a claim of privilege, or for any other reason, you refuse to answer any interrogatory herein, state the nature of and all factual and legal bases for the claim of privilege or other reasons for not answering any interrogatory.

These interrogatories shall be deemed continuing so as to require further and supplemental answers should Defendant receive additional pertinent information between the time the answers are served and the time of trial.

In answering each Interrogatory:

a. Identify each document relied upon or which forms a basis for the answer given or which corroborates the answer given or the substance of what is given in answer to these interrogatories;

b. State whether the information furnished is within the personal knowledge of the person answering and, if not, the name, if known, of each person to whom the information is a matter of personal knowledge;

c. Identify each person who assisted or participated in preparing and supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories; and

d. If any document which refers or relates to anything about which these interrogatories ask has been destroyed, set forth the content of said document, the location of any copies of said document, the date of such destruction and the name of the person who ordered or authorized such destruction.

INTERROGATORIES

INTERROGATORY #1: Identify all witness.

INTERROGATORY #2: With respect to each witness you have identified in your answer to Interrogatory #1, state:

a. The substance of the facts of which he has knowledge;

b. The manner in which he obtained such knowledge, i.e., eyewitness, participant, investigator, etc.;

c. Whether you or your counsel expect to call each such witness a trial; and

d. Identify written or recorded statements or reports received from him by you or your counsel.

INTERROGATORY #3: Identify all expert witnesses.

INTERROGATORY #4: With respect to each expert witness you have identified in your answer to Interrogatory #3, state:

a. His profession or occupation, and the field in which he is claimed to be an expert;

b. The formal education and specialized training he has received in his field;

c. Licenses which he now holds authorizing him to practice in his field;

d. The professional experience and work he has had in his field since entering the field;

e. The compensation, if any, he is to receive for his work and efforts in connection with this litigation;

f. The subject matter on which he is expected to testify;

g. Describe any tests, examinations or studies he performed;

h. The substance of the facts and opinions to which he is expected to testify;

i. A summary of the grounds for each such opinion;

j. Identify any written or recorded statements, reports, correspondence or other documents received by you;

k. Identify all persons who assisted him in preparing any reports or documents, in conducting any tests, examinations, or studies, or in preparing his opinions or his testimony, and describe the nature of the assistance rendered;

l. Describe any previous experience in his field which involved matters similar to those encountered in this action;

m. If he has testified previously as an expert witness in any Court, before any administrative tribunal, in arbitration proceedings, or before any governmental or legislative body, state when, identify on behalf of whom such testimony was given, state the opinions and inferences to which he testified, the facts and data upon which the opinions and inferences were based, and identify before whom such testimony was given, including for any adversary proceeding, the names of all parties, Plaintiff and Defendants, the name of the division of the Court or other tribunal, the civil action number, the identity and location of the Court clerk and reporter or other custodian of the pleadings and transcript, the identity of the lawyers representing each

party, and the citation to any appeals arising out of the trial;

n. Identify all articles, treatises, manuscripts, books or other writings authored in whole or in part by him;

o. Describe each course taught by him, identify each institution for whom the course was taught, and state the date of each teaching; and

p. State whether any professional licenses held by him have been suspended or revoked, and if so, identify by who, state when, and describe all reasons for such suspension or revocation.

INTERROGATORY #5: Identify each person, not heretofore mentioned, who has personal knowledge of the facts and material relevant to this lawsuit, and the substance of those facts.

INTERROGATORY #6: Except for attorneys' work product, identify all exhibits you intend to introduce at trial.

INTERROGATORY #7: Identify all persons who assisted or participated in the preparation of your responses to these interrogatories.

INTERROGATORY #8: State in detail and with particularity all factual and legal grounds upon which any affirmative defense and/or counterclaim is based.

INTERROGATORY #9: Did either or both of you make an agreement with or engage plaintiff to furnish any labor and materials as alleged in plaintiff's Complaint?

INTERROGATORY #10: If the preceding interrogatory was answered in the affirmative, state:

a. What labor and materials were to be furnished by plaintiff, including any change orders or additional authorized work;

b. The amount of money you agreed to pay for the same.

INTERROGATORY #11: Were labor and materials furnished by plaintiff?

INTERROGATORY #12: If the preceding Interrogatory was answered in the negative, state in detail and with particularity what labor and materials agreed to be furnished were not so furnished.

INTERROGATORY #13: Were the labor and materials furnished by plaintiff satisfactory?

INTERROGATORY #14: If any items of the work performed by the plaintiff on the Project were found by defendants to be defective or failing to conform with the agreement, describe how it was defective or failed to conform and describe what procedures, if any, were taken to remedy the alleged non-conforming items.

INTERROGATORY #15: Identify the person or entities, if any, which had responsibility for the inspection and acceptance of work performed by or on behalf of the plaintiff. With respect thereto, please state:

- a. Whether inspection reports were prepared;
- b. Whether acceptance reports were prepared;
- c. Whether punch lists were prepared outlining corrections to be made;
- d. Whether approval for punch list corrections were prepared;
- e. The procedure used for inspection and acceptance of defendant's work; and
- f. Identify any documents related to the foregoing.

INTERROGATORY #16: State the date when you first had contact with plaintiff regarding the Project.

INTERROGATORY #17: Identify each officer and employee of plaintiff with whom you dealt regarding the Project.

INTERROGATORY #18: State the date on which the project was completed.

INTERROGATORY #19: State the dates on which plaintiff's services were:

- a. commenced;
- b. completed.

INTERROGATORY #20: Identify the names and addresses of each and every individual or entity who supplied labor, materials or both to the Project.

INTERROGATORY #21: Identify each item of damages that you claim as an offset or counterclaim.

INTERROGATORY #22: State whether you have received any requests for payment from plaintiff in respect to the Project.

INTERROGATORY #23: If your answer to the preceding Interrogatory was in the affirmative, then state:

- a. When such request was made;
- b. Who made such request;
- c. The amount of the payment requested;
- d. Whether such request was written or oral;
- e. If oral, set forth the substance thereof.

INTERROGATORY #24: State whether any payment has been made by you or with your knowledge to plaintiff with respect to work performed on the Project.

INTERROGATORY #25: If your answer to the preceding Interrogatory was in the affirmative, state:

- a. To which company or individual payment was made;
- b. The amount of such payment;
- c. The date or dates of payment;
- d. By whom the payment was made; and
- e. The reason for payment.

INTERROGATORY #26: Have you ever notified plaintiff that the amount set forth in plaintiff's Complaint was not due from you to plaintiff?

INTERROGATORY #27: If the answer to the preceding Interrogatory was in the affirmative, state:

- a. To whom such notice was given;
- b. When such notice was given;
- c. Where such notice was given;
- d. How such notice was given.

INTERROGATORY #28: Do you admit owing plaintiff the amount set forth in plaintiff's Complaint?

INTERROGATORY #29: If the answer to the preceding Interrogatory was in the negative, state:

- a. What amount, if any, you admit owing to plaintiff;
- b. In detail, and with particularity, the facts upon which you rely in denying liability.

INTERROGATORY #30: State all the facts, if any, by which you will contest that the work done by plaintiff was not reasonably worth the price claimed by the plaintiff.

INTERROGATORY #31: Identify all correspondence, contracts or any writing of any kind or description between and among the contractor, architect/engineer, subcontractors, material and equipment suppliers, the owner, field representatives,

bonding and surety companies; consultants, or any other person, firm, or entity concerning or affecting the Project.

INTERROGATORY #32: Identify all documents upon which defendants intend to rely to establish proof of claims, damages, or refutation of claims.

INTERROGATORY #33: Identify all documents, including letters, memoranda, contracts, plans, specifications and drawings, defining or describing your duties with respect to the Project, by providing the following information:

- a. State the nature of each such document;
- b. State the date it was prepared;
- c. State its title (if any);
- d. Describe its general subject matter and contents;
- e. Identify who prepared, drafted or authored it;
- f. Identify its present location;
- g. Identify its present custodian;
- h. If the document is no longer in your possession; identify its last known custodian and the circumstances under which it passed from your control to that person;
- i. Identify each person who approved of each such document;

j. State the date on which each such document was approved.

INTERROGATORY #34: Identify all documents evidencing loans taken out by you of which any proceeds were used in connection with the Project.

INTERROGATORY #35: Identify all invoices and purchase orders between you and the plaintiff relating to the Project.

INTERROGATORY #36: Identify all conversations or communications between you and the plaintiff in connection with the Project.

INTERROGATORY #37: Identify all construction projects over the past ten years with which F. Lynn Padan has had any connection and as to each state:

- a. By whom he was employed;
- b. The nature of his employment;
- c. The name and address of the general contractor;
- d. The length of time of his employment;
- e. The identity of all contracts or agreements relating to the Project; and
- f. The type of license held by Padan at the time of the employment.

INTERROGATORY #38: Identify the name of the painter who allegedly painted the beams and provide the following information:

a. State the date the painter was contacted and by whom;

b. Identify the contract entered into with the painter (if any) for the beams, including its general subject matter and contents, and the price;

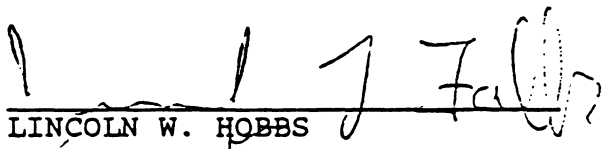
c. Identify whether he painted the beams after the drywall; and

d. If not, the name and address of the person who did, along with the contract and price.

INTERROGATORY #39: Identify any agreements concerning indemnification, release of liens, or both between Craghead and Padan, giving a detailed description of the substance of the agreement.

DATED this 28 day of March, 1994.

WINDER & HASLAM, P.C.



LINCOLN W. HOBBS
JENNIFER L. FALK
Attorneys for Plaintiff

2578\001\INTERR

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

Not on file

22A

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,

Plaintiff

vs.

JAMES D. CRAGHEAD, F. LYNN
PADAN, aka ASPEN CONSTRUCTION
INC., MARTIN BENNETT, and
JOHN and JANE DOES 1
through 20,

Defendants.

*

*

*

*

*

*

*

CERTIFICATE OF SERVICE

Civil No. 9309062 CV

Judge Sheila K. McCleve

I hereby certify that a true and correct copy of the DEFENDANT
F. LYNN PADAN'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
and DEFENDANT F. LYNN PADAN'S RESPONSE TO PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS were mailed, postage prepaid, this 15th
day of June, 1994, along with a copy of this Certificate of Service
to Plaintiff's attorney:

Jennifer L. Falk
WINDER & HASLAM
175 West 200 South, #4000
P.O. Box 2668
Salt Lake City, UT 74110-2668

JOSEPH M. CHAMBERS

d:\lit\padan.certificate

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
Plaintiff	*	CERTIFICATE OF SERVICE
	*	
vs.	*	
	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Judge Sheila K. McCleve
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
Defendants.	*	

I hereby certify that a true and correct copy of the DEFENDANT F. LYNN PADAN'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES and DEFENDANT F. LYNN PADAN'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS were mailed, postage prepaid, this 18th day of June, 1994, along with a copy of this Certificate of Service to Plaintiff's attorney:

Jennifer L. Falk
WINDER & HASLAM
175 West 200 South, #4000
P.O. Box 2668
Salt Lake City, UT 74110-2668


JOSEPH M. CHAMBERS

d:\lit\padan.certificate

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
	*	DEFENDANT F. LYNN PADAN'S
Plaintiff	*	RESPONSE TO PLAINTIFF'S FIRST
	*	REQUEST FOR PRODUCTION OF
		DOCUMENTS
vs.	*	
	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Judge Sheila K. McCleve
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.		

STATE OF UTAH)
 :ss
County of Cache)

F. LYNN PADAN, submits the following response to request for production of documents:

1. Any documents identified in your response to Plaintiff's First Set of Interrogatories to Defendants James D. Craghead and F. Lynn Padan.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's

possession or have been marked as exhibits to prior depositions taken in this case thus far.

2. Any documents reviewed or relied upon by you in responding to Plaintiff's First Set of Interrogatories to Defendants James D. Craghead and F. Lynn Padan.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

3. A copy of any and all documents pertaining to the Project.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

4. Any and all documents defendants or either of them may or intent to introduce as exhibits at any trial or hearing in this action.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents

within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

5. All correspondence between defendants during the discovery period.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

6. All correspondence, notes or other documents relating or pertaining to communications by you with the Plaintiff, or any agent thereof during the discovery period.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

7. Evidence of all claims paid by you relating to the Project.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

8. All other documents, of whatsoever nature and from whatever source, concerning or pertaining to the claims involved in this lawsuit.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

9. All documents upon which you rely in formulating, calculating, estimating or otherwise assessing any and all damages or offsets claimed against the plaintiff in this action.

ANSWER: The Defendant F. Lynn Padan will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's

possession or have been marked as exhibits to prior depositions taken in this case thus far.

DATED this 14th day of June, 1994.

F. Lynn Padan
F. LYNN PADAN

V E R I F I C A T I O N

STATE OF UTAH)
 : ss.
County of Cache)

F. LYNN PADAN, being first duly sworn, deposes and says: That he has read the above and foregoing document and knows the contents thereof and the facts alleged therein are true to his own best knowledge and belief except as to those matters stated on information and belief and to those matters, he believes them to be true.

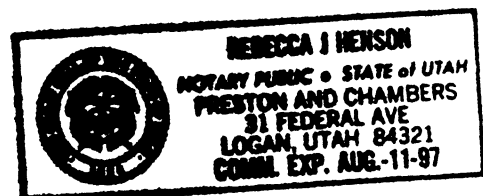
F. Lynn Padan
F. LYNN PADAN

ACKNOWLEDGMENT

On the 14 day of June, 1994, personally appeared before me, F. LYNN PADAN, the signer of the within instrument, who duly acknowledged that he executed the same.

Rebecca J. Henson
Notary Public
Residing at: *2000*
Commission Expires: *5-11-97*

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Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
Plaintiff	*	DEFENDANT F. LYNN PADAN'S
	*	ANSWERS TO PLAINTIFF'S FIRST
		SET OF INTERROGATORIES
vs.	*	
	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Judge Sheila K. McCleve
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.		

STATE OF UTAH)
 :ss
County of Cache)

F. LYNN PADAN, submits the following answers to interroga-
tories:

INTERROGATORIES

INTERROGATORY NO. 1: Identify all witness.

ANSWER: Known percipient witnesses are as follows: Martin
Bennett, Michael A. Mower, F. Lynn Padan, James D. Craghead, and
Tom Thorton. Defendant Craghead reserves the right to call other
witnesses which become known to him between now and the time set
for trial and in particular any rebuttal witnesses.

INTERROGATORY NO. 2: With respect to each witness you have
identified in your answer to Interrogatory #1, state:

a. The substance of the facts of which he has knowledge;

b. The manner in which he obtained such knowledge, i.e., eyewitness, participant, investigator, etc.;

c. Whether you or your counsel expect to call each such witness a trial; and

d. Identify written or recorded statements or reports received from him by you or your counsel.

ANSWER:

2a. Michael A. Mower: The substance of the facts which Mr. Mower has knowledge of would appear to be set forth in his deposition.

Michael Bennett: The substance of the facts to which Mr. Bennett has knowledge of would appear to be set forth in his deposition.

Tom Thorton: The substance of the facts to which Mr. Thorton has would go to his role as foreman on the job for Aspen Construction, the instructions to both Mr. Bennett and/or Mr. Mower relative to the requirement of covering the beams, the extent of the damage done to the beams, instructions to Martin Bennett that he was not to do extra work, general availability considering the size of the job that had he been informed by Mr. Bennett and/or Mr. Mower many of the extras which Mr. Bennett seeks charges for would have been unnecessary as he was given instructions to perform the work requested by Mr. Bennett to prevent Mr. Bennett from incurring

such excessive charges, the nature of the damage to the beams and the requirement of a painter being required to repair the damage.

F. Lynn Padan: The substance of the facts of which Mr. Padan has knowledge of relate largely to those set forth with Mr. Tom Thorton except for the relationship with Mr. Bennett and Mr. Mower would be more direct one on one conversations, etc.

James D. Craghead: The substance of the facts which Mr. Craghead has knowledge of relate to conversations he had after payment of the first invoice of extras, instructions he gave directly to Mower, Bennett, Padan, and Thorton that no other extras were to be incurred at the rates attempted to billed, cost of damage to the beams and the need to repaint dealing with other subcontractors as they relate to the job.

Painter: Original - Jensen Painting.

Other Witnesses: Expert sheetrocker and/or general contracotr and painter.

2b. All of the above facts would to Mr. Craghead's knowledge have been obtained as either an eyewitness or a participant to a conversation. No investigator has been employed in this action.

2c. At this time counsel for Mr. Craghead would expect to call each of the above witnesses at the time of trial.

2d. As part of trial preparation and which is claimed to be attorney work product counsel for Mr. Craghead has obtained a statement from Mr. Padan and Mr. Thorton the contents of the statement are privileged and protected by the attorney work product doctrine, no other information will be provided concerning said

statement. Subsequent work fromer employee Jensen Painting Mark Neilson.

INTERROGATORY NO. 3: Identify all expert witnesses.

ANSWER: At this time no expert witnesses have been retained. Defendant's counsel expects expert witnesses to be retained prior to trial of the following background: sheetrocker or sheetrocking subcontractor, general contractor and painting contractor.

INTERROGATORY NO. 4: With respect to each expert witness you have identified in your answer to Interrogatory #3, state:

- a. His profession or occupation, and the field in which he is claimed to be an expert;
- b. The formal education and specialized training he has received in his field;
- c. Licenses which he now holds authorizing him to practice in his field;
- d. The professional experience and work he has had in his field since entering the field;
- e. The compensation, if any, he is to receive for his work and efforts in connection with this litigation;
- f. The subject matter on which he is expected to testify;
- g. Describe any tests, examinations or studies he performed;
- h. The substance of the facts and opinions to which he is expected to testify;
- i. A summary of the grounds for each such opinion;

j. Identify any written or recorded statements, reports, correspondence or other documents received by you;

k. Identify all persons who assisted him in preparing any reports or documents, in conducting any tests, examinations, or studies, or in preparing his opinions or his testimony, and describe the nature of the assistance rendered;

l. Describe any previous experience in his field which involved matters similar to those encountered in this action.

m. If he has testified previously as an expert witness in any Court, before any administrative tribunal, in arbitration proceedings, or before any governmental or legislative body, state when, identify on behalf of whom such testimony was given, state the opinions and inferences to which he testified, the facts and data upon which the opinions and inferences were based, and identify before whom such testimony was given, including for any adversary proceeding, the names of all parties, Plaintiff and Defendants, the name of the division of the Court or other tribunal, the civil action number, the identity and location of the Court clerk and reporter or other custodian of the pleadings and transcript, the identity of the lawyers representing each party, and the citation to any appeals arising out of the trial;

n. Identify all articles, treatises, manuscripts, books or other writings authorized in whole or in part by him;

o. Describe each course taught by him, identify each institution for whom the course was taught, and state the date of each teaching; and

p. State whether any professional licenses held by him have been suspended or revoked, and if so, identify by who, state when, and describe all reasons for such suspension or revocation.

ANSWER: No expert witnesses have been obtained at this time, consequently counsel is unable to provide additional information other than what is listed above.

INTERROGATORY NO. 5: Identify each person, not heretofore mentioned, who has personal knowledge of the facts and material relevant to this lawsuit, and the substance of those facts.

ANSWER: I (Mr. Padan) am not aware of any such person, however, if any such person falling within the perimeters of Interrogatory No. 5 comes to my knowledge, I reserves the right to call said witnesses at the time of trial.

INTERROGATORY NO. 6: Except for attorneys' work product, identify all exhibits you intend to introduce at trial.

ANSWER: This Defendant objects to Interrogatory No. 6 as infringing upon the attorney work product doctrine privilege. No formal exhibits have been prepared to date although various documents have been introduced at depositions and identified therein. To the extent that a complete disclosure of the exhibits would be required Defendant's counsel objects as it infringes upon his mental processes in preparation for this trial.

INTERROGATORY NO. 7: Identify all persons who assisted or participated in the preparation of your responses to these interrogatories.

ANSWER: Lynn Padan.

INTERROGATORY NO. 8: State in detail and with particularity all factual and legal grounds upon which any affirmative defense and/or counterclaim is based.

ANSWER: As previously admitted in discovery related to Martin Bennett the subcontractor Mr. Bennett clearly acknowledges that he was instructed to cover the beams to protect them and in fact testimony has later been obtained that Mr. Mower did in fact attempt to cover the beams with some form of plastic which did not hold, consequently during the sheetrocking process the beams which had been previously painted were damaged. After a couple of days of the painter attempting to match the paint and being unsuccessful it necessitated that all the beams be repainted. This was raised by Padan with Mr. Mower at the conclusion of the job as an offset but was rejected by Mr. Mower. In addition to the foregoing Defendant Padan will seek to have stricken based on the reasonable value of the work provided any right of Plaintiff to mechanics lien and if and when successful will seek his attorney's fees pursuant to §38-1-18 of the Utah Code.

INTERROGATORY NO. 9: Did either or both of you make an agreement with or engage Plaintiff to furnish any labor and materials as alleged in Plaintiff's Complaint?

ANSWER: In the context of the interrogatory I am assuming when you are referring to either or both of you, you are referring to myself and Mr. Craghead. With the foregoing qualification in mind I believe the documentation will support that Mr. Padan working through the corporation Aspen Construction contracted with Mr. Mower at a piece rate to have the sheetrocking work done. I know of no basis on which I have had any other contract with either Mr. Bennett or Mr. Mower.

INTERROGATORY NO. 10: If the preceding interrogatory was answered in the affirmative, state:

a. What labor and materials were to be furnished by Plaintiff, including any change orders or additional authorized work;

b. The amount of money you agreed to pay for the same.

ANSWER:

10a. No work change orders exist. Scope of only authorized work set forth in bid acceptance form executed by Padan and Mower.

10b. Same as "a".

INTERROGATORY NO. 11: Were labor and materials furnished by Plaintiff?

ANSWER: I assume when you ask were labor and materials furnished by the Plaintiff that there is an implied statement were labor and materials furnished by the Plaintiff to the Craghead residence during the remodeling process. If this is the context in which the question is raised the answer is yes although as set forth above we feel the labor caused additional damages to which

the contractor is entitled to offset and which damages have not been taken into account in the mechanics lien filed by the Plaintiff Michael Mower.

INTERROGATORY NO. 12: If the preceding Interrogatory was answered in the negative, state in detail and with particularity what labor and materials agreed to be furnished were not so furnished.

ANSWER: Based upon the answer given to Interrogatory No. 11 it would appear that this interrogatory need not be responded to.

INTERROGATORY NO. 13: Were the labor and materials furnished by Plaintiff satisfactory?

ANSWER: No.

INTERROGATORY NO. 14: If any items of the work performed by the Plaintiff on the Project were found by defendants to be defective or failing to conform with the agreement, describe how it was defective or failed to conform and describe what procedures, if any, were taken to remedy the alleged non-conforming items.

ANSWER: As set forth above when the workmen failed to cover the beams and protect them (work was conducted on the outside of the home with regards to stucco and painting and similar instructions were given to the workmen and was complied with. This resulted in no damage to the outside beams and it was not necessary to repaint them as was the inside beams). Since the beams were not covered and protected dirt, dust, and debris accumulated on top of the beams as well as workmen writing directly on and in the grooves of the beams destroying the final surface as well as sheetrock and

plaster getting on the beams. When Mr. Bennett brought his son and other of his son's friends on the job in an attempt to clean the beams. They scrubbed them so hard that it removed the paint finish. As a result of the direct negligence in failure to follow specific instructions to cover the beams it necessitated that they be repainted at a cost of approximately \$4,000 - \$4,400.

INTERROGATORY NO. 15: Identify the person or entities, if any, which had responsibility for the inspection and acceptance of work performed by or on behalf of the plaintiff. With respect thereto, please state:

- a. Whether inspection reports were prepared;
- b. Whether acceptance reports were prepared;
- c. Whether punch lists were prepared outlining corrections to be made;
- d. Whether approval for punch list corrections were prepared;
- e. The procedure used for inspection and acceptance of defendant's work; and
- f. Identify any documents related to the foregoing.

ANSWER:

- 15a. No.
- 15b. No.
- 15c. Yes.
- 15d. Don't know? Approval by who? Nothing in writing however.

15e. No formal procedure or policy is in place or was used in this instance.

15f. Miscellaneous papers, notes, time records, most of which have been destroyed previous to any litigation being filed.

INTERROGATORY NO. 16: State the date when you first had contact with Plaintiff regarding the Project.

ANSWER: It was in relationship to obtaining the bid proposal submitted by Mower to Aspen Construction.

INTERROGATORY NO. 17: Identify each officer and employee of Plaintiff with whom you dealt regarding the Project.

ANSWER: Michael Mower.

INTERROGATORY NO. 18: State the date on which the project was completed.

ANSWER: There were several segments to the project. It was not uncommon that as phase began to come to completion Mr. Craghead requested other remodeling.

INTERROGATORY NO. 19: State the dates on which Plaintiff's services were:

- a. commenced;
- b. completed.

ANSWER:

19a. _____, 19____

19b. _____, 19____

INTERROGATORY NO. 20: Identify the names and addresses of each and every individual or entity who supplied labor, materials or both to the Project.

ANSWER: Object as being overly broad and not relating to any issue involved in this particular suit. In addition such information is confidential as it represents a group of tradesmen available to the Defendant which gives him an economic edge. Without further clarification as to the relevance of this information this party objects as being overly broad and burdensome. In addition Mower, if he was on the job as much as he claims would know much of this information.

INTERROGATORY NO. 21: Identify each item of damages that you claim as an offset or counterclaim.

ANSWER: - Rework of paint job \$4,400.
- Attorney Fees
- Others? - unknown at this time.

INTERROGATORY NO. 22: State whether you have received any requests for payment from plaintiff in respect to the Project.

ANSWER: Yes.

INTERROGATORY NO. 23: If your answer to the preceding Interrogatory was in the affirmative, then state:

- a. When such request was made;
- b. Who made such request;
- c. The amount of the payment requested;
- d. Whether such request was written or oral;
- e. If oral, set forth the substance thereof.

ANSWER:

23a. Invoices were received and payments timely made until the last invoice came with all of the "extras" which Bennett had been told he was not to do.

23b. Both Bennett and Mower.

24c. See invoice.

25d. Written.

26e. N/A

INTERROGATORY NO. 24: State whether any payment has been made by you or with your knowledge to Plaintiff with respect to work performed on the Project.

ANSWER: I made several payments that were usually within a couple of weeks if not sooner as to when the invoice was provided, until the last such invoice was given which contained all of the extra works which was rejected.

INTERROGATORY NO. 25: If your answer to the preceding Interrogatory was in the affirmative, state:

- a. To which company or individual payment was made;
- b. The amount of such payment;
- c. The date or dates of payment;
- d. By whom the payment was made; and
- e. The reason for payment.

ANSWER: See Interrogatory No. 24 above. Such information relative to payments to the Plaintiff are summarized in the exhibits to Bennett and Mower depositions.

INTERROGATORY NO. 26: Have you ever notified Plaintiff that the amount set forth in Plaintiff's Complaint was not due from you to Plaintiff?

ANSWER: Yes.

INTERROGATORY NO. 27: If the answer to the preceding Interrogatory was in the affirmative, state:

- a. To whom such notice was given;
- b. When such notice was given;
- c. Where such notice was given;
- d. How such notice was given.

ANSWER: I do not have the exact date of when or where such notice was given, however, I am informed by my attorney that there were conversations between himself and Ms. Falk on behalf of the Plaintiff which discussed the fact that we objected to the scope and extent of the lien including a potential settlement negotiation which took place on the premises of Mr. Craghead's residence approximately 6-9 months before any action was initiated by either Mr. Chambers or Ms. Falk. There was also discussions prior thereto which Mr. Mower will recall. There was a heated discussion between he and Craghead occurred in my office, in my presence.

INTERROGATORY NO. 28: Do you admit owing Plaintiff the amount set forth in Plaintiff's Complaint?

ANSWER: No.

INTERROGATORY NO. 29: If the answer to the preceding Interrogatory was in the negative, state:

- a. What amount, if any, you admit owing to Plaintiff;
- b. In detail, and with particularity, the facts upon which you rely in denying liability.

ANSWER: In previous conversations with Mr. Mower and Mr. Padan, Mr. Mower admitted that he, himself, had hardly any amount

due and owing that Mr. Padan had paid him directly and that the only amounts outstanding were for those "extra" amounts Mr. Bennett claimed to be due and owing. Mr. Bennett was charging for time and amounts outside the scope of his contracted job. He was given specific instructions such were outside the scope of the work he was to do. Given the type and nature of the work outside the scope of his contract which he was told by Mr. Thorton, Mr. Craghead and myself included such work as cleanup, carpentry work, and other work completely outside the scope of sheetrocking and drywall work. After receiving the first invoice containing extras which was paid, specific instructions were given to Bennett to work through Tom Thorton, the foreman on the job to have this type of work performed. The home which consists of approximately 7,900 open square feet is a large enough project that had Mr. Bennett kept Mr. Thorton informed Thorton had time to move the men to the necessary rooms in order to timely and efficiently schedule the work. This was not done. Mr. Bennett believing that he could obtain more than triple his going rate for sheetrocking work would perform such menial tasks as "cleaning up" notwithstanding the fact that he was told not to. This in addition to the damage that was done to the beams result in an amount which we believe is due and owing from Michael Mower. Mr. Bennett has been prohibited from proceeding further in any litigation to collect for work he claims was performed. To allow Mr. Mower to collect the same would be tantamount to allowing Mr. Bennett to collect the same consequently the scope of the statute in question which was raised in the

Bennett proceeding we believe also bars Mr. Mower from collecting that. With the offset due to the negligent work in failing to cover the beam results in Mr. Mower's lien being completely false and in fact slanderous.

INTERROGATORY NO. 30: State all the facts, if any, by which you will contest that the work done by Plaintiff was not reasonably worth the price claimed by the Plaintiff.

ANSWER: See previous answers. No other additional information is available at this time.

INTERROGATORY NO. 31: Identify all correspondence, contracts or any writing of any kind or description between and among the contractor, architect/engineer, subcontractors, material and equipment suppliers, the owner, field representatives, bonding and surety companies; consultants, or any other person, firm, or entity concerning or affecting the Project.

ANSWER: Object as being overly broad and not related to the issues relative to the mechanics lien foreclosure action and related offsets and counterclaims. If counsel for the Plaintiff can provide the basis of why such a broad question needs to be addressed or what the scope or extent of the work is leading to we would be happy to reevaluate our answer, however, based on the foregoing and without waiving any objection I know of no correspondence, contracts, or writing of any kind with any subcontractor material and equipment suppliers, field representatives, bonding and surety companies, consultants, or other persons, firms, or entities affecting the project. There is

correspondence with the contractor and with such certain architect engineers, however, to the extent to which such would lead to any discoverable information or are relevant in this case are highly questioned.

INTERROGATORY NO. 32: Identify all documents upon which Defendants intend to rely to establish proof of claims, damages, or refutation of claims.

ANSWER: See answers to Request for Production of Documents.

INTERROGATORY NO. 33: Identify all documents, including letters, memoranda, contracts, plans, specifications and drawings, defining or describing your duties with respect to the Project, by providing the following information:

- a. State the nature of each such document;
- b. State the date it was prepared;
- c. State its title (if any);
- d. Describe its general subject matter and contents;
- e. Identify who prepared, drafted or authored it;
- f. Identify its present location;
- g. Identify its present custodian;
- h. If the document is no longer in your possession; identify its last known custodian and the circumstances under which it passed from your control to that person;
- i. Identify each person who approved of each such document;
- j. State the date on which each such document was approved.

ANSWER: See answer to 31 above.

INTERROGATORY NO. 34: Identify all documents evidencing loans taken out by you of which any proceeds were used in connection with the Project.

ANSWER: In relationship to Aspen Construction and/or Lynn Padan: none.

INTERROGATORY NO. 35: Identify all invoices and purchase order between you and the Plaintiff relating to the Project.

ANSWER: All such documents have been identified and attached to the Mower and Bennett depositions.

INTERROGATORY NO. 36: Identify all conversations or communications between you and the Plaintiff in connection with the Project.

ANSWER: It is difficult at best to identify all conversations. If you could identify a particular topic I could attempt to answer with some degree of certainty, but with such a broad question it is difficult.

INTERROGATORY NO. 37: Identify all construction projects over the past ten years with which F. Lynn Padan has had any connection and as to each state:

- a. By whom he was employed;
- b. The nature of his employment;
- c. The name and address of the general contractor;
- d. The length of time of his employment;
- e. The identity of all contracts or agreements relating to the Project; and

f. The type of license held by Padan at the time of the employment.

ANSWER: Object as being overly broad and burdensome and not calculated to leading to any discoverable information.

INTERROGATORY NO. 38: Identify the name of the painter who allegedly painted the beams and provide the following information:

a. State the date the painter was contacted and by whom;

b. Identify the contract entered into with the painter (if any) for the beams, including its general subject matter and contents, and the price;

c. Identify whether he painted the beams after the drywall; and

d. If not, the name and address of the person who did, along with the contract and price.

ANSWER:

38a. _____, 19____

38b. \$ _____

38c. _____

38d. _____

INTERROGATORY NO. 39: Identify any agreements concerning indemnification, release of liens, or both between Craghead and Padan, giving a detailed description of the substance of the agreement.

ANSWER: To my knowledge no such indemnification, release of liens, agreements of such a nature exist between Craghead and Padan.

DATED this 14 day of June, 1994.


F. LYNN PADAN

V E R I F I C A T I O N


STATE OF UTAH)
 : ss.
County of Cache)

F. LYNN PADAN, being first duly sworn, deposes and says: That he has read the above and foregoing document and knows the contents thereof and the facts alleged therein are true to his own best knowledge and belief except as to those matters stated on information and belief and to those matters, he believes them to be true.


F. LYNN PADAN

ACKNOWLEDGMENT

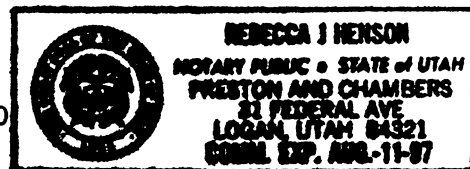
On the 14 day of June, 1994, personally appeared before me, F. LYNN PADAN, the signer of the within instrument, who duly acknowledged that he executed the same.


Notary Public

Residing at: Cache

Commission Expires: 2-11-97

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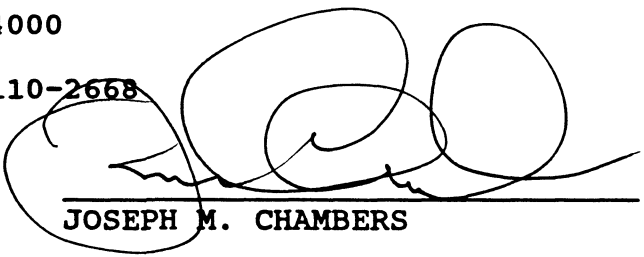
Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
	*	CERTIFICATE OF SERVICE
Plaintiff	*	
	*	
vs.	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	Judge Sheila K. McCleve
PADAN, aka ASPEN CONSTRUCTION	*	
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.		

I hereby certify that a true and correct copy of the DEFENDANT JAMES D. CRAGHEAD'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES and DEFENDANT JAMES D. CRAGHEAD'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS were mailed, postage prepaid, this 15th day of June, 1994, along with a copy of this Certificate of Service to Plaintiff's attorney:

Jennifer L. Falk
WINDER & HASLAM
175 West 200 South, #4000
P.O. Box 2668
Salt Lake City, UT 74110-2668


JOSEPH M. CHAMBERS

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Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,

Plaintiff

vs.

JAMES D. CRAGHEAD, F. LYNN
PADAN, aka ASPEN CONSTRUCTION
INC., MARTIN BENNETT, and
JOHN and JANE DOES 1
through 20,

Defendants.

*

*

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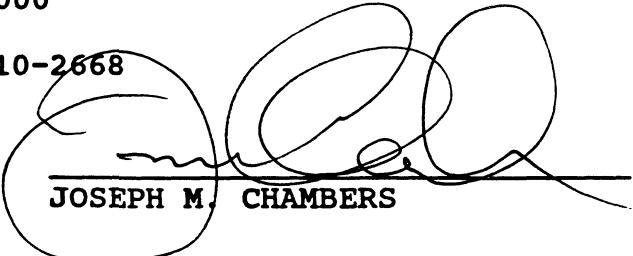
CERTIFICATE OF SERVICE

Civil No. 9309062 CV

Judge Sheila K. McCleve

I hereby certify that a true and correct copy of the DEFENDANT
JAMES D. CRAGHEAD'S ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES and DEFENDANT JAMES D. CRAGHEAD'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS were mailed,
postage prepaid, this 15th day of June, 1994, along with a copy of
this Certificate of Service to Plaintiff's attorney:

Jennifer L. Falk
WINDER & HASLAM
175 West 200 South, #4000
P.O. Box 2668
Salt Lake City, UT 74110-2668


JOSEPH M. CHAMBERS

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Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
	*	DEFENDANT JAMES D. CRAGHEAD'S
Plaintiff	*	RESPONSE TO PLAINTIFF'S FIRST
	*	REQUEST FOR PRODUCTION OF
		DOCUMENTS
vs.	*	
	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Judge Sheila K. McCleve
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.		

STATE OF UTAH)
 :ss
County of Cache)

JAMES D. CRAGHEAD, submits the following response to request for production of documents:

1. Any documents identified in your response to Plaintiff's First Set of Interrogatories to Defendants James D. Craghead and F. Lynn Padan.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's

possession or have been marked as exhibits to prior depositions taken in this case thus far.

2. Any documents reviewed or relied upon by you in responding to Plaintiff's First Set of Interrogatories to Defendants James D. Craghead and F. Lynn Padan.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

3. A copy of any and all documents pertaining to the Project.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

4. Any and all documents defendants or either of them may or intend to introduce as exhibits at any trial or hearing in this action.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents

within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

5. All correspondence between defendants during the discovery period.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

6. All correspondence, notes or other documents relating or pertaining to communications by you with the Plaintiff, or any agent thereof during the discovery period.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

7. Evidence of all claims paid by you relating to the Project.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

8. All other documents, of whatsoever nature and from whatever source, concerning or pertaining to the claims involved in this lawsuit.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's possession or have been marked as exhibits to prior depositions taken in this case thus far.

9. All documents upon which you rely in formulating, calculating, estimating or otherwise assessing any and all damages or offsets claimed against the plaintiff in this action.

ANSWER: The Defendant Jim Craghead will produce for inspection all responsive, relevant, non-privileged documents within his possession or control to the Plaintiff at a mutually convenient time and place. Without waiving said objection said documents are believed to have been produced or in Plaintiff's

possession or have been marked as exhibits to prior depositions taken in this case thus far.

DATED this 14 day of June, 1994.


JAMES D. CRAGHEAD

V E R I F I C A T I O N


STATE OF UTAH)
 : ss.
County of Cache)

JAMES D. CRAGHEAD, being first duly sworn, deposes and says:
That he has read the above and foregoing document and knows the contents thereof and the facts alleged therein are true to his own best knowledge and belief except as to those matters stated on information and belief and to those matters, he believes them to be true.


JAMES D. CRAGHEAD

ACKNOWLEDGMENT

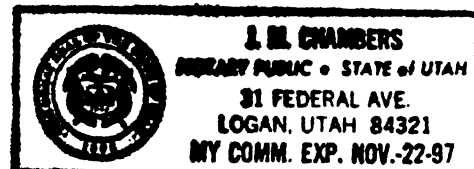
On the 14 day of June, 1994, personally appeared before me, JAMES D. CRAGHEAD, the signer of the within instrument, who duly acknowledged that he executed the same.


Notary Public

Residing at: 1101 N. 1st St.

Commission Expires: 11-22-97

d:\lit\craghead.response



Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
	*	
Plaintiff	*	DEFENDANT JAMES D. CRAGHEAD'S
	*	ANSWERS TO PLAINTIFF'S FIRST
	*	SET OF INTERROGATORIES
vs.	*	
	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Judge Sheila K. McCleve
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.		

STATE OF UTAH)
 :ss
County of Cache)

JIM CRAGHEAD, submits the following answers to interroga-
tories:

INTERROGATORIES

INTERROGATORY NO. 1: Identify all witness. (sic)

ANSWER: Known percipient witnesses are as follows: Martin
Bennett, Michael A. Mower, F. Lynn Padan, James D. Craghead, Tom
Thorton, Dave Zilles, and/or Ted Erekson. Defendant Craghead
reserves the right to call other witnesses which become known to
him between now and the time set for trial and in particular any
rebuttal witnesses.

INTERROGATORY NO. 2: With respect to each witness you have identified in your answer to Interrogatory #1, state:

a. The substance of the facts of which he has knowledge;

b. The manner in which he obtained such knowledge, i.e., eyewitness, participant, investigator, etc.;

c. Whether you or your counsel expect to call each such witness a trial; and

d. Identify written or recorded statements or reports received from him by you or your counsel.

ANSWER:

2a. Michael A. Mower: The substance of the facts which Mr. Mower has knowledge of would appear to be set forth in his deposition.

Michael Bennett: The substance of the facts to which Mr. Bennett has knowledge of would appear to be set forth in his deposition.

Tom Thorton: The substance of the facts to which Mr. Thorton has would go to his role as foreman on the job for Aspen Construction, the instructions to both Mr. Bennett and/or Mr. Mower relative to the requirement of covering the beams, the extent of the damage done to the beams, instructions to Martin Bennett that he was not to do extra work, general availability considering the size of the job that had he been informed by Mr. Bennett and/or Mr. Mower many of the extras which Mr. Bennett seeks charges for would have been unnecessary as he was given instructions to perform the

work requested by Mr. Bennett to prevent Mr. Bennett from incurring such excessive charges, the nature of the damage to the beams and the requirement of a painter being required to repair the damage.

F. Lynn Padan: The substance of the facts of which Mr. Padan has knowledge of relate largely to those set forth with Mr. Tom Thorton except for the relationship with Mr. Bennett and Mr. Mower would be more direct one on one conversations, etc.; reasonableness of costs incurred versus excessive costs; extra costs (damages) incurred.

James D. Craghead: The substance of the facts which Mr. Craghead has knowledge of relate to conversations he had after payment of the first invoice of extras, instructions he gave directly to Mower, Bennett, Padan, and Thorton that Bennett was not to perform extras nor were extras to be incurred at the rates attempted to billed, cost of damage to the beams and the need to repaint dealing with other subcontractors as they relate to the job.

Dave Zilles/Ted Erikson: The substance of the facts which these gentlemen relate to the refinancing problems encountered with the Craghead home, including rising interest rates, damages incurred because of liens and attempts by Craghead to mitigate damages.

2b. All of the above facts would to Mr. Craghead's knowledge have been obtained as either an eyewitness or a participant to a conversation. No investigator has been employed in this action.

2c. At this time counsel for Mr. Craghead would expect to call each of the above witnesses at the time of trial.

2d. As part of trial preparation and which is claimed to be attorney work product Counsel has obtained a statement from Mr. Padan and Mr. Thorton the contents of the statement are privileged and protected by the attorney work product doctrine, no other information will be provided concerning said statement.

INTERROGATORY NO. 3: Identify all expert witnesses.

ANSWER: At this time no expert witnesses have been retained. Defendant's counsel expects expert witnesses to be retained prior to trial of the following background: sheetrocker or sheetrocking subcontractor, general contractor and painting contractors (first and second).

INTERROGATORY NO. 4: With respect to each expert witness you have identified in your answer to Interrogatory #3, state:

- a. His profession or occupation, and the field in which he is claimed to be an expert;
- b. The formal education and specialized training he has received in his field;
- c. Licenses which he now holds authorizing him to practice in his field;
- d. The professional experience and work he has had in his field since entering the field;
- e. The compensation, if any, he is to receive for his work and efforts in connection with this litigation;

f. The subject matter on which he is expected to testify;

g. Describe any tests, examinations or studies he performed;

h. The substance of the facts and opinions to which he is expected to testify;

i. A summary of the grounds for each such opinion;

j. Identify any written or recorded statements, reports, correspondence or other documents received by you;

k. Identify all persons who assisted him in preparing any reports or documents, in conducting any tests, examinations, or studies, or in preparing his opinions or his testimony, and describe the nature of the assistance rendered;

l. Describe any previous experience in his field which involved matters similar to those encountered in this action.

m. If he has testified previously as an expert witness in any Court, before any administrative tribunal, in arbitration proceedings, or before any governmental or legislative body, state when, identify on behalf of whom such testimony was given, state the opinions and inferences to which he testified, the facts and data upon which the opinions and inferences were based, and identify before whom such testimony was given, including for any adversary proceeding, the names of all parties, Plaintiff and Defendants, the name of the division of the Court or other tribunal, the civil action number, the identity and location of the Court clerk

and reporter or other custodian of the pleadings and transcript, the identity of the lawyers representing each party, and the citation to any appeals arising out of the trial;

n. Identify all articles, treatises, manuscripts, books or other writings authorized in whole or in part by him;

o. Describe each course taught by him, identify each institution for whom the course was taught, and state the date of each teaching; and

p. State whether any professional licenses held by him have been suspended or revoked, and if so, identify by who, state when, and describe all reasons for such suspension or revocation.

ANSWER: As to witnesses that have been obtained at this time counsel is unable to provide additional information other than what is listed above.

INTERROGATORY NO. 5: Identify each person, not heretofore mentioned, who has personal knowledge of the facts and material relevant to this lawsuit, and the substance of those facts.

ANSWER: Mr. Craghead is not aware of any such person, however, if any such person falling within the perimeters of Interrogatory No. 5 comes to Mr. Craghead's knowledge, Mr. Craghead reserves the right to call said witnesses at the time of trial.

INTERROGATORY NO. 6: Except for attorneys' work product, identify all exhibits you intend to introduce at trial.

ANSWER: This Defendant objects to Interrogatory No. 6 as infringing upon the attorney work product. No formal exhibits have been prepared to date although various documents have been introduced at depositions and identified therein. To the extent that a complete disclosure of the exhibits would be required Defendant's counsel objects as it infringes upon his mental processes in preparation of this trial.

INTERROGATORY NO. 7: Identify all persons who assisted or participated in the preparation of your responses to these interrogatories.

ANSWER: James D. Craghead.

INTERROGATORY NO. 8: State in detail and with particularity all factual and legal grounds upon which any affirmative defense and/or counterclaim is based.

ANSWER: As previously admitted in discovery related to Martin Bennett the subcontractor Mr. Bennett clearly acknowledges that he was instructed to cover the beams to protect them and in fact testimony has later been obtained that Mr. Mower did in fact attempt to cover the beams with some form of plastic which did not hold, consequently during the sheetrocking process the beams which had been previously painted were damaged. This damage (after a couple of days of the painter attempting to match the paint and being unsuccessful) necessitated that all the beams be repainted. This was raised with Mr. Mower at the conclusion of the job as an offset but was rejected by Mr. Mower. In addition to the foregoing Defendant Craghead will seek to have stricken based on the

reasonable value of the work provided any right of Plaintiff to mechanics lien and if successful will seek his attorney's fees pursuant to §38-1-18 of the Utah Code.

INTERROGATORY NO. 9: Did either or both of you make an agreement with or engage Plaintiff to furnish any labor and materials as alleged in Plaintiff's Complaint?

ANSWER: In the context of the interrogatory I am assuming when you are referring to either or both of you, you are referring to myself and Mr. F. Lynn Padan or Aspen Construction. With the foregoing qualification in mind I believe the documentation will support that Mr. Padan working through his corporation Aspen Construction contracted with Mr. Mower at a piece rate to have the sheetrocking work done. I know of no basis on which I have had any contract with either Mr. Bennett or Mr. Mower.

INTERROGATORY NO. 10: If the preceding interrogatory was answered in the affirmative, state:

a. What labor and materials were to be furnished by Plaintiff, including any change orders or additional authorized work;

b. The amount of money you agreed to pay for the same.

ANSWER: I believe any answers concerning the labor and materials or the amount of money agreed to be paid for the same are best left to be answered by Mr. Padan. I am at this point in time unaware of what arrangements were made by Mr. Padan exactly and as stated previously above I personally have made no arrangements to my knowledge.

INTERROGATORY NO. 11: Were labor and materials furnished by Plaintiff?

ANSWER: I assume when you ask were labor and materials furnished by the Plaintiff that there is an implied statement were labor and materials furnished by the Plaintiff to the Craghead residence during the remodeling process. If this is the context in which the question is raised the answer is yes although as set forth above we feel the labor caused additional damages to which the contractor is entitled to offset and which damages have not been taken into account in the mechanics lien filed by the Plaintiff Michael Mower.

INTERROGATORY NO. 12: If the preceding Interrogatory was answered in the negative, state in detail and with particularity what labor and materials agreed to be furnished were not so furnished.

ANSWER: Based upon the answer given to Interrogatory No. 11 it would appear that this interrogatory need not be responded to.

INTERROGATORY NO. 13: Were the labor and materials furnished by Plaintiff satisfactory?

ANSWER: No.

INTERROGATORY NO. 14: If any items of the work performed by the Plaintiff on the Project were found by defendants to be defective or failing to conform with the agreement, describe how it was defective or failed to conform and describe what procedures, if any, were taken to remedy the alleged non-conforming items.

ANSWER: As set forth above when the workmen failed to cover the beams and protect them (one work was conducted on the outside of the home with regards to stucco and painting similar instructions were given to the workmen and was complied with. This resulted in no damage to the beams and it not being necessary to repaint them as was the inside beams. Since the beams were not covered and protected dirt, dust, and debris accumulated on top of the beams as well as workmen writing directly on the beams destroying the final surface as well as mud and plaster getting on the beams. When Mr. Bennett brought his son and other of his son's friends on the job in an attempt to clean the beams they scrubbed them so hard that it removed the paint finish. As a result of the direct negligence in failure to follow specific instructions to cover the beams it necessitated that they be repainted at a cost of approximately \$4,000 - \$4,400.

INTERROGATORY NO. 15: Identify the person or entities, if any, which had responsibility for the inspection and acceptance of work performed by or on behalf of the plaintiff. With respect thereto, please state:

- a. Whether inspection reports were prepared;
- b. Whether acceptance reports were prepared;
- c. Whether punch lists were prepared outlining corrections to be made;
- d. Whether approval for punch list corrections were prepared;

e. The procedure used for inspection and acceptance of defendant's work; and

f. Identify any documents related to the foregoing.

ANSWER:

15a. No.

15b. No.

15c. Yes.

15d. Yes.

15e. No formal procedure or policy is in place or was used in this instance.

15f. Miscellaneous papers, notes, time records, most of which have been destroyed previous to any litigation being filed.

INTERROGATORY NO. 16: State the date when you first had contact with Plaintiff regarding the Project.

ANSWER: I can't recall exact date. In context of the job I believe it was shortly after the first billing by Bennett/Mower.

INTERROGATORY NO. 17: Identify each officer and employee of Plaintiff with whom you dealt regarding the Project.

ANSWER: F. Lynn Padan, Tom Thorton. There are other subcontractors who worked on the job who I also had some contact with, however, in the context of the question asked other than Tom Thorton and Mr. Padan I had no direct dealings with any other officers or employees.

INTERROGATORY NO. 18: State the date on which the project was completed.

ANSWER: Approximately April 1994.

INTERROGATORY NO. 19: State the dates on which Plaintiff's services were:

- a. commenced;
- b. completed.

ANSWER:

19a. Unknown.

19b. Unknown.

INTERROGATORY NO. 20: Identify the names and addresses of each and every individual or entity who supplied labor, materials or both to the Project.

ANSWER: Object as being overly broad and not relating to any issue involved in this particular suit. In the first instance Mr. Craghead has no direct course of all of the names and addresses of each individual or entity who supplied labor or materials or both to the project. Such information is in the hands of Mr. Padan and is not readily available to Mr. Craghead.

INTERROGATORY NO. 21: Identify each item of damages that you claim as an offset or counterclaim.

ANSWER:

- Rework of paint job \$4,400.
- Legal fees incurred.
- Lost opportunity re: lower interest rate on \$298,000 loan.
- Others may also be present. I need to consult with my attorney.

INTERROGATORY NO. 22: State whether you have received any requests for payment from plaintiff in respect to the Project.

ANSWER: Yes.

INTERROGATORY NO. 23: If your answer to the preceding Interrogatory was in the affirmative, then state:

- a. When such request was made;
- b. Who made such request;
- c. The amount of the payment requested;
- d. Whether such request was written or oral;
- e. If oral, set forth the substance thereof.

ANSWER: a-e; oral requests. I can't recall specifics of request per categories set forth above.

INTERROGATORY NO. 24: State whether any payment has been made by you or with your knowledge to Plaintiff with respect to work performed on the Project.

ANSWER: Based upon information and belief (I have no direct or personal knowledge of such) it is my understanding that Mr. Padan has made several payments that usually within a couple of weeks if not sooner as to when the invoice was provided until the last such invoice was given which contained all of the extra works which was rejected. I in turn have made only payments to Aspen Construction as the work on the job progressed. I have as stated above have no knowledge of what payments Aspen Construction has made except as to such that has come up in the course of this litigation.

INTERROGATORY NO. 25: If your answer to the preceding Interrogatory was in the affirmative, state:

- a. To which company or individual payment was made;
- b. The amount of such payment;
- c. The date or dates of payment;
- d. By whom the payment was made; and

e. The reason for payment.

ANSWER: See Interrogatory No. 24 above. Such information relative to payments to the Plaintiff with respect to work performed on the project are within the control of Mr. Padan.

INTERROGATORY NO. 26: Have you ever notified Plaintiff that the amount set forth in Plaintiff's Complaint was not due from you to Plaintiff?

ANSWER: Yes.

INTERROGATORY NO. 27: If the answer to the preceding Interrogatory was in the affirmative, state:

- a. To whom such notice was given;
- b. When such notice was given;
- c. Where such notice was given;
- d. How such notice was given.

ANSWER: I do not have the exact date of when or where such notice was given, however, I am informed by my attorney that there were conversations between himself and Ms. Falk on behalf of the Plaintiff which discussed the fact that we objected to the scope and extent of the lien including a potential settlement negotiation which took place on the premises of my home approximately 6-9 months before any action was initiated by either myself or Ms. Falk. There was also discussions prior thereto which Mr. Mower will recall. It was a very heated discussion.

INTERROGATORY NO. 28: Do you admit owing Plaintiff the amount set forth in Plaintiff's Complaint?

ANSWER: No.

INTERROGATORY NO. 29: If the answer to the preceding Interrogatory was in the negative, state:

- a. What amount, if any, you admit owing to Plaintiff;
- b. In detail, and with particularity, the facts upon which you rely in denying liability.

ANSWER: In previous conversations with Mr. Mower and Mr. Padan, Mr. Mower admitted that he, himself, had hardly any amount due and owing, that Mr. Padan had paid him directly and that the only amounts outstanding were for those amounts Mr. Bennett claimed to be due and owing. Mr. Bennett was charging for excessive time and amounts outside the scope of his job, even after he was given specific instructions such were outside the scope of the work he was to do.

He was told by Mr. Thorton, Mr. Padan and myself: examples include such work as cleanup, carpentry work, and other work completely outside the scope of sheetrocking and drywall work. After receiving the first invoice (which was paid) specific instructions were given to Bennett to work through Tom Thorton, the foreman on the job to have this type (extra) of work performed. The home which consists of approximately 33,000 open square feet is a large enough project that had Mr. Bennett kept Mr. Thorton informed Thorton had time to move the men to the necessary rooms in order to timely and efficiently schedule the work. This was not done. Mr. Bennett believing that he could obtain more than triple his going rate for sheetrocking work would perform such menial tasks as cleaning up notwithstanding the fact that he was told not

to. This in addition to the damage that was done to the beams results in an offset which there after was due and owing from Michael Mower to Craghead. Mr. Bennett has been prohibited from proceeding further in any litigation to collect for work he claims was performed. To allow Mr. Mower to collect the same would be tantamount to allowing Mr. Bennett to collect the same consequently the scope of the statute in questions which was raised in the Bennett proceeding we believe also bars Mr. Mower from collecting that and the offset due to the negligent work in failing to cover the beam results in Mr. Mower's lien being completely false and in fact slanderous. There is also the excessive interest incurred by the fact the liens have stopped refinancing at a lower interest rate.

INTERROGATORY NO. 30: State all the facts, if any, by which you will contest that the work done by Plaintiff was not reasonably worth the price claimed by the Plaintiff.

ANSWER: See previous answers. No other additional information is available.

INTERROGATORY NO. 31: Identify all correspondence, contracts or any writing of any kind or description between and among the contractor, architect/engineer, subcontractors, material and equipment suppliers, the owner, field representatives, bonding and surety companies; consultants, or any other person, firm, or entity concerning or affecting the Project.

ANSWER: Object as being overly broad and not related to the issues relative to the mechanics lien foreclosure action and

related offsets and counterclaims. If counsel for the Plaintiff can provide the basis of why such a broad question needs to be addressed or what the scope or extent of the work is leading to of a discoverable nature we would be happy to reevaluate our answer, however, based on the foregoing and without waiving any objection I know of no correspondence, contracts, or writing of any kind with any subcontractor material and equipment suppliers, field representatives, bonding and surety companies, consultants, or other persons, firms, or entities affecting the project. There are correspondence and contractor with the general contractor and with such certain architect engineers, however, to the extent to which such would lead to any discoverable information or are relevant in this case are highly questioned.

INTERROGATORY NO. 32: Identify all documents upon which Defendants intend to rely to establish proof of claims, damages, or refutation of claims.

ANSWER: The Defendant Craghead is in the process of requesting Mr. Padan to pull together such documents, however, at this time no such documents exist or are in the possession or control of the Defendant James Craghead.

INTERROGATORY NO. 33: Identify all documents, including letters, memoranda, contracts, plans, specifications and drawings, defining or describing your duties with respect to the Project, by providing the following information:

- a. State the nature of each such document;
- b. State the date it was prepared;

- c. State its title (if any);
- d. Describe its general subject matter and contents;
- e. Identify who prepared, drafted or authored it;
- f. Identify its present location;
- g. Identify its present custodian;
- h. If the document is no longer in your possession; identify its last known custodian and the circumstances under which it passed from your control to that person;
- i. Identify each person who approved of each such document;
- j. State the date on which each such document was approved.

ANSWER: See answer to 31 above.

INTERROGATORY NO. 34: Identify all documents evidencing loans taken out by you of which any proceeds were used in connection with the Project.

ANSWER: Objection, such information contains extremely confidential information similar to your objection to our obtaining your tax returns. We object providing you any financial information concerning the Defendant James D. Craghead. Your contacts and contracts were with Mr. Padan, consequently, this Defendant objects to producing any such documents as they are not relevant to this proceeding in any manner or fashion without waiving said objection the Defendant Craghead would indicate that other than a loan which was obtained to purchase the property and which loan was obtained long before any work for remodeling was

done on the project the only other loans have been loans which the Defendant Craghead has been attempting to obtain but have been rejected due to the mechanics lien and the fact that interest rates have now increased substantially resulting in further damage by the Plaintiff's slandering title to the Defendant's property.

INTERROGATORY NO. 35: Identify all invoices and purchase order between you and the Plaintiff relating to the Project.

ANSWER: To the Defendant Craghead's knowledge no such invoices or purchase orders exist as all of Mower's dealings were with Aspen Construction.

INTERROGATORY NO. 36: Identify all conversations or communications between you and the Plaintiff in connection with the Project.

ANSWER: Specific conversations which Craghead has had with the Plaintiff include those listed above, i.e. conversations objecting to the bill upon presentation of all the Bennett extras which were invoiced at the end of the job rather than on an ongoing basis thus disallowing Padan or Craghead any opportunity to object except to the extent that they gave specific directions to Bennett not to perform extras outside the scope of his contract.

INTERROGATORY NO. 37: Identify all construction projects over the past ten years with which F. Lynn Padan has had any connection and as to each state:

- a. By whom he was employed;
- b. The nature of his employment;
- c. The name and address of the general contractor;

- d. The length of time of his employment;
- e. The identity of all contracts or agreements relating to the Project; and
- f. The type of license held by Padan at the time of the employment.

ANSWER: Such information is beyond my knowledge, information or belief.

INTERROGATORY NO. 38: Identify the name of the painter who allegedly painted the beams and provide the following information:

- a. State the date the painter was contacted and by whom;
- b. Identify the contract entered into with the painter (if any) for the beams, including its general subject matter and contents, and the price;
- c. Identify whether he painted the beams after the drywall; and
- d. If not, the name and address of the person who did, along with the contract and price.

ANSWER: I will need to obtain this all from Padan.

INTERROGATORY NO. 39: Identify any agreements concerning indemnification, release of liens, or both between Craghead and Padan, giving a detailed description of the substance of the agreement.

ANSWER: To my knowledge no such indemnification, release of liens, agreements of such a nature exist between Craghead and Padan.

DATED this 14 day of ^{June} May, 1994.



JAMES D. CRAGHEAD

V E R I F I C A T I O N

STATE OF UTAH)
 : ss.
County of Cache)

JAMES D. CRAGHEAD, being first duly sworn, deposes and says:
That he has read the above and foregoing document and knows the
contents thereof and the facts alleged therein are true to his own
best knowledge and belief except as to those matters stated on
information and belief and to those matters, he believes them to be
true.



JAMES D. CRAGHEAD

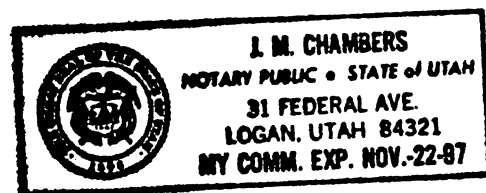
ACKNOWLEDGMENT

On the 14 day of ^{June} May, 1994, personally appeared before me,
JAMES D. CRAGHEAD, the signer of the within instrument, who duly
acknowledged that he executed the same.



Notary Public
Residing at: Provo, Utah
Commission Expires: 11/22/97

d:\lit\craghead.answer



ORIGINAL

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

* * *

MICHAEL A. MOWER,

Plaintiff,

vs.

JAMES D. CRAGHEAD, F.
LYNN PADAN aka ASPEN
CONSTRUCTION, INC.,
MARTIN BENNET, JOHN and
JANE DOES NOS. 1 through
20,

Defendants.

Civil No. 930009062 CV

Deposition of:

FRANK LYNN PADAN

Judge Sheila K. McCleve

BE IT REMEMBERED that on Friday, the 8th day of July, 1994, commencing at the hour of 9:05 a.m., the deposition of FRANK LYNN PADAN, produced as a witness at the instance and request of the Plaintiff in the above-entitled action before the above-named Court, was taken before Jill Dunford, a Certified Shorthand Reporter, Utah License No. 244, and Notary Public in and for the State of Utah, at the offices of Winder & Haslam, 175 West 200 South, Suite 4000, Salt Lake City, Utah.



Associated Professional Reporters

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A P P E A R A N C E S

For the Plaintiff:	Jennifer L. Falk, Esq. WINDER & HASLAM 175 West 200 South, #4000 P.O. Box 2668 Salt Lake City, Utah 84110-2668
For the Defendants Craghead and Padan:	Joseph M. Chambers, Esq. PRESTON & CHAMBERS 31 Federal Avenue Logan, Utha 84321

I N D E X

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* * *

P R O C E E D I N G S

FRANK LYNN PADAN,

called as a witness at the instance of the
Plaintiff, having first been duly sworn, was
examined and testified as follows:

MR. CHAMBERS: There are a couple of
housekeeping details that maybe we can get out of the
way. I don't know if you want them on the record or not.

There are a couple of the answers that were
incomplete that Lynn didn't have at the time. We have
got those answers and we can give those to you on the
interrogatories. We brought documents for you.

MS. FALK: Let's go ahead and put this on the
record.

EXAMINATION

BY MS. FALK:

Q You had some interrogatory responses and some
documents which were due in May, and I have still not
received the documents. I have received some
interrogatory responses on June 16th. But I wrote your
counsel stating that there were interrogatories that were
incomplete. He's indicated now that you have those
responses. Do you have them on a paper, or are you
planning to just state them orally?

MR. CHAMBERS: I think what we wanted to do is

1 go over the question, because there are a couple of
2 things that Lynn doesn't understand how to answer and get
3 clarification.

4 MS. FALK: Well, I think that's something that
5 you you do off the record. I mean, that's why he has an
6 attorney. And I think July 8th is a little late to be
7 telling me that you don't understand responses to
8 questions asked in March.

9 Q (BY MS. FALK) Do you have documents,
10 Mr. Padan?

11 A Uh-huh, yes.

12 Q Are they in a form which you are prepared to
13 give them to me?

14 MR. CHAMBERS: We haven't made copies. He
15 just brought them.

16 MS. FALK: That also is against what we agreed
17 earlier, Mr. Chambers. We agreed that you would provide
18 me with the copies of all documents on July 5th.

19 MR. CHAMBERS: I have tried to.

20 Q (BY MS. FALK) And so you are saying that you
21 do have documents, Mr. Padan?

22 MR. CHAMBERS: We were here about 20 minutes
23 ago too. I mean, prior to this we informed your
24 receptionist we came early to meet with you if you had a
25 chance so that we could give you the documents.

1 MS. FALK: Well, I didn't have a chance to do
2 that. And to arrive at a quarter to 9:00 when a
3 deposition starts at 9:00 is not giving opposing counsel
4 very much time to look at documents.

5 MR. CHAMBERS: It's the same amount of time
6 that you gave me last time, Jennifer.

7 MS. FALK: And that was acceptable to you,
8 Mr. Chambers.

9 MR. CHAMBERS: No, it was not acceptable to
10 me.

11 MS. FALK: I will need to continue this
12 deposition so that I may look at the documents. If you
13 want to leave them with me now and we can set a time so
14 that I can peruse them, and we can set a time to continue
15 this deposition at a later date right now, or we can do
16 that after this portion of the deposition, whatever you
17 prefer.

18 MR. CHAMBERS: The documents aren't that
19 significant. It's just simply the bills with regards to
20 the painting.

21 MS. FALK: Well, I think I have a right to
22 look at all of the documents---

23 MR. CHAMBERS: I think you do too.

24 MS. FALK: --before I take Mr. Padan's
25 deposition.

1 MR. CHAMBERS: All I'm suggesting, Counsel, is
2 that you take a look at them. If you feel it's necessary
3 to reschedule, we'll cooperate with you. They are not
4 that significant. Maybe if you took five minutes to look
5 at them, it would save everybody a lot of trouble.

6 MS. FALK: Well, I am reserving my right for
7 the record to continue this deposition.

8 MR. CHAMBERS: And I'll stipulate that you
9 have the right to do that, and I'll cooperate with you.
10 And I'm also suggesting if you take a look at them, we'll
11 save some time, because they are not that significant.

12 MS. FALK: Thank you.

13 Q (BY MS. FALK) Would you state your name for
14 the record, Mr. Padan.

15 A It's Frank Lynn Padan.

16 Q And please spell your last name.

17 A P, as in Paul, a-d-a-n.

18 Q Mr. Padan, what is your relationship to Aspen
19 Construction, Inc.?

20 A President.

21 Q And when did you become president?

22 A When the corporation was formed. I don't
23 recall the exact date; approximately four years ago.

24 Q Who was your attorney for the formation of
25 Aspen Construction?

1 A I don't recall.

2 Q Who are the other officers?

3 A None.

4 Q None? You are the sole owner?

5 A Yes.

6 Q Do you own all the shares of stock as well?

7 A Yes.

8 Q Have you ever had your deposition taken
9 before?

10 A In this matter or other matters?

11 Q In any matter.

12 A Yes.

13 Q So you understand that every answer you give
14 is under oath?

15 A Yes.

16 Q Tell me about the other matters that you have
17 had your deposition taken.

18 A The only other time that I have given a
19 deposition is relating to the Craghead residence in a
20 matter where Mr. Craghead had a lawsuit with the owner of
21 the residence when he purchased it, and I was asked to
22 testify as to the status of the condition of the pool at
23 that time and what we had covered with the pool in the
24 course of construction.

25 Q What was the name of that litigation?

1 A I don't know. I don't remember. I don't
2 recall the name. It was Mr. Craghead versus the previous
3 owner of the residence. This was approximately two years
4 ago.

5 Q Was this before you met Michael Mower?

6 A I believe so.

7 Q Was this lawsuit ongoing at the time you met
8 Mr. Mower?

9 A I don't know.

10 Q You don't recall?

11 A No, I'm not that familiar with lawsuits. I
12 was just asked to go down in a situation similar to this
13 and respond to questions as to the condition of his pool.

14 Q And who asked you to have your deposition
15 taken?

16 A I don't recall. It might have been
17 Mr. Chambers. I don't recall exactly how that came
18 about. Like I said, it was two years ago. I don't know.
19 I think I was just served or something.

20 Q Do you recall who the attorneys were in that
21 matter?

22 A I do not.

23 Q Earlier you stated that you believe
24 Mr. Chambers may have asked you?

25 A Uh-huh, yes.

1 Q Do you recall whether Mr. Chambers was
2 Mr. Craghead's attorney?

3 A Mr. Chambers has represented Mr. Craghead on
4 on a numbers of matters.

5 Q So is it your understanding that he
6 represented Mr. Craghead on that matter?

7 A I don't know. I honestly don't know if he
8 represented him on that matter or not.

9 Q Do you know the outcome of that?

10 A I do not. My only involvement was
11 approximately 30 minutes answering questions about the
12 pool.

13 Q Were there any other occasions in which you
14 had your deposition taken?

15 A No.

16 Q Have you been involved in any other lawsuits?

17 A I presently have a subcontractor who we are
18 negotiating to settle who has--I guess he's initiated a
19 lawsuit. I'm not very familiar with the process. I
20 guess--I don't know when it's termed a lawsuit and when
21 it isn't. But I have a--I am a defendant in a lawsuit
22 right now, assuming it's a lawsuit. In my understanding
23 of one, it's not gotten very far.

24 Q What is the name of the subcontractor?

25 A That's A, K and R Heating and

1 Air-Conditioning, I believe.

2 Q And what project is that related to?

3 A It relates to a home that I constructed in
4 Park City.

5 Q What is the address of the home?

6 A 77 Thaynes Canyon Drive.

7 Q Mr. Padan, when did you first meet Michael
8 Mower?

9 A I'm not exactly sure. Looking back to my
10 notes and records, I believe it was sometime around just
11 prior to the signing of the contract on the Craghead
12 residence. The contract was dated February 24th of 1992.

13 Q Mr. Padan, I would like to interrupt you at
14 this point. You are holding a document. Would you tell
15 me what that document is?

16 A The contract between Michael Mower
17 Construction and Aspen Construction to perform Sheetrock
18 work on the Craghead residence.

19 Q I would prefer you not to look at any
20 documents during this deposition except for those that I
21 ask you to. If you would hand me the copy which you are
22 holding at this point so that I can see if it is, in
23 fact--

24 A Okay.

25 Q --one of the documents which I intend to use

1 in the deposition exhibit, I would appreciate it.

2 (Witness handed documents
3 to Ms. Falk.)

4 A Are you saying I'm not--

5 MR. CHAMBERS: The record should reflect that
6 the document was handed to her. You have had an
7 opportunity to inspect it. Would you give it back to
8 Mr. Padan, and he'll put it in his folder.

9 MS. FALK: That's no problem.

10 THE WITNESS: Okay, so you are saying I'm not
11 allowed to look at any records? It just makes my
12 responses to your questions more accurate.

13 Q (BY MS. FALK) I would prefer you not to look
14 at any documents unless I show them to you.

15 A So would you prefer more inaccurate responses?

16 Q I would prefer what you can recall without the
17 help of documents at this time.

18 A What is the point in that?

19 Q It's my prerogative, Mr. Padan. I'm going to
20 ask the questions, not you.

21 MR. CHAMBERS: Well, I think, Counsel, if
22 during the course of the deposition he has a question to
23 clarify, I think he has the right to ask a question.

24 MS. FALK: Thank you for your comments,
25 Mr. Chambers.

1 Q (BY MS. FALK) Mr. Padan, we were talking
2 about when you believe--

3 MR. CHAMBERS: Excuse me. You cut me off.

4 MS. FALK: Please finish.

5 MR. CHAMBERS: I wasn't quite through. Do you
6 want us to have a good deposition or not?

7 MS. FALK: Let's go off the record.

8 MR. CHAMBERS: No, I want this to be on the
9 record.

10 MS. FALK: I would like to have the
11 deposition--

12 MR. CHAMBERS: Do you want him to ask
13 questions if he wants clarification? Do you want him to
14 ask me? What ground rules do you want on this?

15 Q (BY MS. FALK) Mr. Padan, if you have any
16 questions as to the form of question I ask you, please
17 ask for clarification.

18 MR. CHAMBERS: Do you understand what she
19 means?

20 THE WITNESS: No, I have no idea what she
21 means.

22 MS. FALK: Then let's go off the record and
23 give Mr. Chambers a chance to explain to his client--

24 MR. CHAMBERS: I want this on the record.

25 MS. FALK: --the statement I just made to him.

1 MR. CHAMBERS: Counsel, on the record, I have
2 given him instructions prior hereto that if he has a
3 question about any question of yours, he should seek
4 clarification, and that's all he was doing.

5 MS. FALK: Thank you. That reiterated my
6 point exactly.

7 Q (BY MS. FALK) Let's continue with the
8 question I asked you, Mr. Padan.

9 At what point do you recall first meeting
10 Mr. Mower?

11 A Sometime prior to the signing of the contract,
12 which was around the end of February, so we signed it
13 relatively quickly. We were taking bids at the time for
14 Sheetrock.

15 Q When you say "we," to whom are you referring?

16 A We, meaning Aspen Construction, Incorporated.

17 Q So just you, personally?

18 A Well, we had at that time, as I recall, it was
19 myself, my office manager, and an estimator in the office
20 at that time.

21 Q And who is the office manager?

22 A She is no longer with us. Her name was
23 Constance Hazzard.

24 Q Hazard?

25 A H-a-z-z-a-r-d. She retired in March of this

1 year.

2 Q And your office estimator is?

3 A His name is Kevin Monson. As best as I can
4 recall, Kevin has been on and off with the company, and I
5 don't recall if he was employed at that point in time.
6 But that's the reference to we, meaning employees that
7 are in my office.

8 Q So is it your testimony that you first met
9 Mike Mower in or about February of '92?

10 A As best as I can recall right now.

11 Q Do you recall where that meeting took place?

12 A No.

13 Q You have no idea?

14 A I don't recall at this time. Are you talking
15 about the first time I met him?

16 Q Right.

17 A A long time ago. I would suspect that it was
18 at the Craghead residence, but I don't recall exactly.

19 Q Why do you suspect it was at the Craghead
20 residence?

21 A Only from the standpoint if I'm asking
22 somebody to bid on a job, that it's been my experience
23 and my practice to meet on the job site so that there is
24 a better understanding of the work to be contracted or to
25 be estimated.

1 Q Do you recall whether you had other bids for
2 the drywall?

3 A Yes.

4 Q Did you meet with them on the property as
5 well?

6 A I don't recall.

7 Q Why did you choose Mr. Mower's bid?

8 A Mr. Mower was able to get on the job a little
9 bit sooner. As I recall, we contacted at least two other
10 Sheetrocking contractors in addition to Mr. Mower. I
11 believe there were at least three contractors total that
12 we spoke to. The bids were relatively close in price.
13 Mr. Mower was--I evaluated a subcontractor on a number of
14 things, not just price, but ability to evaluate,
15 willingness to do the job, when they can start the job,
16 when they say they can finish the job, and so forth, a
17 number of factors. All of those factors were weighed in
18 my decision to choose Mower Construction.

19 Q Did you go through the same process in
20 choosing every subcontractor for the job on the Craghead
21 residence?

22 A Well, to some degree I believe I did.
23 Contracting, to get work done on a home is done on a case
24 by case basis, whatever best suits the needs of the job
25 at the time.

1 Q What do you recall about the Craghead
2 residence in terms of how you selected subcontractors?

3 A This was a large custom home, difficult
4 remodel, a lot of activities going on, numerous trades.
5 Would you repeat your question, please.

6 Q Surely. I'll rephrase it or I can have it
7 read back. Which would you reprefer?

8 A Rephrase it.

9 Q Okay, I wanted to know whether in choosing
10 Mike Mower as a subcontractor for the Craghead residence,
11 the way in which you chose other subcontractors was
12 similar.

13 A The way in which it was similar?

14 Q Or whether it was similar, first.

15 A Well, I'm pondering your question. It's a
16 difficult question. It was a job done two years ago, and
17 it was a very tenuous job with a lot going on, so I'm
18 just searching my memory. But generally in the search
19 for subcontractors, as I believe I responded to the
20 information you may have or you are going to receive, the
21 information we select contractors based on is criteria
22 including the license, proper Workmen's Compensation
23 coverage, experience in the job, longevity in the
24 business, a number of factors. And they are all weighed
25 differently.

1 Q Who weighs them?

2 A I do.

3 Q When you say that they are weighed
4 differently, explain what you mean.

5 A Well, what I mean by that is from time to time
6 different things--availability of subcontractors to
7 perform work might outweigh other things. It's just you
8 have so many different things that you weigh in
9 formulating the decision, given different situations,
10 some things may receive heavier weight in one situation
11 than in another. I was just trying to list off the
12 factors that I typically use. Those are subjective.
13 There are things that we do that we try to do as a matter
14 of policy to comply with the State requirements.

15 Q What are those?

16 A Well, that's license and proof of insurance.

17 Q Do you ask every subcontractor to provide you
18 a copy of his or her license and proof of insurance?

19 A What we do--that whole end of it was at that
20 time carried out by Constance, and the policy that we
21 used was--and it's changed over the time--but we have an
22 independent subcontractor acknowledgement form at one
23 time they were signing. I don't know if that was in
24 place at that time. Sometimes she would get copies of
25 licenses. Otherwise, we have the book from the State

1 that lists all the licensed contractors. I don't recall
2 if we were using that book at that time. But to
3 determine a license, there are a couple of ways to do it.
4 You can refer to the book. You can call the State. You
5 can ask them to show proof of their license.

6 Q What book are you referring to?

7 A The State has a book that they sub to do that.
8 I don't know what it's called. I don't administrate that
9 end of it. But I know that recently we have used that
10 book. But I don't recall exactly at that point in time
11 what we were using. But as a general matter, in the
12 course of doing business, we try to verify those things.

13 Q Who were other subcontractors on the Craghead
14 job?

15 A Oh, numerous.

16 Q Start listing them, if you would.

17 A Well, the painter, starting with the painter,
18 the painter that I contracted with, Jensen Painting. I
19 have checks to them. I'm going through my mind all the
20 way back to the beginning. We had pool work performed by
21 Joe Hansen Plastering. Are you talking suppliers of
22 material as well?

23 Q Including suppliers of material, yes.

24 A A lot of the material for the job was
25 purchased from Standard Builders Supply in Salt Lake

1 City, lumber and so forth.

2 Q Who was your electrician?

3 A We had several electricians on the job.

4 Q Different companies?

5 A No, we perform the electrical contracting work
6 on the job at some point in time.

7 A When you say we--

8 A Aspen Construction, Incorporated.

9 Q Who oversaw the electrical work?

10 A We employed several different licensed
11 journeymen electricians on Aspen Construction's payroll.
12 During the course of construction, as I recall, we had a
13 fairly high turnover at that time in electricians. They
14 weren't with the company for a long period of time. They
15 were hired specifically to do that job.

16 Q Did you provide their Workers' Comp.?

17 A Yes, they were on my payroll as an employee.

18 Q Did any of them have contractors' licenses?

19 A I don't recall if they did or didn't. As I
20 understood the State requirements at that time, in order
21 for me to perform the electrical work, I had to have a
22 licensed journeyman electrician on my payroll doing the
23 work, which we did do.

24 Q And who was the licensed journeyman?

25 A Well, as I said, I don't recall at this time.

1 I don't have those records with me. But we do have the
2 employment records.

3 Q You did not bring those records to produce?

4 A No. And this was--the job was somewhat
5 unusual, in that Mr. Craghead, as he would go along and
6 ask us to do a certain amount of work, we would perform
7 that work. He would then decide to do additional work,
8 and it just kind of went on as though it was multiple
9 contracts. We never had a good job description. We were
10 just asked to continue to do a variety of jobs up there.
11 Mr. Craghead also contracted directly and had employees
12 working on the job himself.

13 Q With whom did he contract directly?

14 A I don't know. See, I wasn't there 100 percent
15 of the time. As a matter of fact, there was another
16 contractor involved on the project, general contractor,
17 before I was there.

18 Q Before you were there?

19 A Uh-huh, yes.

20 Q Was he still on the job when you came?

21 A No.

22 Q Or did you replace him?

23 A No, I don't know if I replaced him. I don't
24 know the circumstances surrounding that.

25 Q Who was that general contractor?

1 A I don't know his name.

2 Q Could you find out?

3 A The only way I could find out would be to ask
4 Mr. Craghead.

5 Q And you have never asked Mr. Craghead who it
6 was?

7 A I think it probably came up in conversation a
8 couple of years ago or even prior to--more than two years
9 ago. And I just don't recall the name. It had no
10 relevance to me.

11 Q How did you come about being the general
12 contractor for Mr. Craghead?

13 A I was referred to him.

14 Q By whom?

15 A By a gentleman named Allen Wright.

16 Q W-r-i-g-h-t?

17 A Yes.

18 Q And how did he know you?

19 A Mr. Write was a business associate of a
20 personal friend of mine.

21 Q Did Mr. Craghead contact you first or did you
22 contact Mr. Craghead?

23 A As I recall, I was contacted by Mr. Craghead.

24 Q Do you recall any particulars of the
25 conversation you had with Mr. Craghead?

1 A Relating to when he first contracted with me?

2 Q Yes.

3 A Any of the particulars? At that time, I was
4 requested to go up to the residence, meet with him,
5 discuss a remodel job. And at that time he asked me if I
6 would be interested in doing the job. We discussed the
7 scope of the work at that point in time which was to
8 include redoing the carpet in the home, repainting, much
9 smaller amount of work than it ended up being. And I
10 recall that we discussed a fee. A cost-plus situation
11 was discussed at that time.

12 Q Tell me what you mean by cost-plus.

13 A That the nature of the work--he hadn't really
14 defined exactly what he wanted to do. So I couldn't sit
15 down and give him a firm estimate for a lump sum. And so
16 because he had not put together a complete idea in his
17 mind of what he wanted and exactly what type of carpet
18 and so forth, that the only good way to accomplish the
19 job and get it done would be for us to work where we were
20 reimbursed for all of the direct costs of material and
21 labor on the job, and then there would be a percentage of
22 that total that would be paid to Aspen Construction for
23 profit and overhead.

24 Q What was that percentage?

25 A Well, at the time, we discussed 15 percent at

1 that first meeting. I told him that on a remodel project
2 that typically required more time and effort than new
3 construction, and that I had in the past contracted at
4 ten percent as a fee for new construction, but in a
5 remodel, I would need to be compensated 15 percent.

6 Q What did he say?

7 A I don't recall that he commented at that time
8 in that meeting. And it concluded shortly after that and
9 I left.

10 Q About how long did that meeting take place?

11 A I don't know; maybe an hour.

12 Q Do you recall when it took place?

13 A No, I don't.

14 Q Do you recall whether it was in '91 or '92?

15 A No, I don't. To respond, I would just be
16 guessing.

17 Q How long after this meeting did he ask you to
18 do the job?

19 A Well, my understanding was that I was not
20 selected as the general contractor at that point in time,
21 and that he selected someone else to do the construction.
22 And construction--some construction did take place. I
23 don't know that it was necessarily construction. It
24 might have just been--I don't know if it was demolition,
25 but just cleaning up the area and so forth. When I

1 arrived on the job--well, he later called me and wanted
2 to talk to me again about--

3 Q So is it--go ahead.

4 A --about doing the work.

5 Q Is it your understanding, Mr. Padan, that the
6 first time you met Mr. Craghead concerning the job, there
7 was no other general contractor hired at that time?

8 A Yes.

9 Q Is it your understanding he had just recently
10 purchased the home and was seeking to remodel it?

11 A Yes. I don't know the date that he purchased
12 it, but he--as far as I know, he didn't live in it.

13 Q Did it appear that at the time you went up
14 there that no work had recently been done?

15 A Yeah, I believe so. I don't think anything
16 had started.

17 Q So you said that you did not get the job at
18 that time, and that several months later he contacted
19 you; is that correct?

20 A Yes.

21 Q How many months would you say later?

22 A After our original meeting?

23 Q Right.

24 A I really don't recall, because I don't recall
25 when the first meeting took place exactly.

1 Q Do you recall whether it was summer when you
2 first met with him or fall? Can you recall a season?

3 A No, I can't. I really can't.

4 Q Do you recall when he contacted you the second
5 time?

6 A No, without referring to any notes, I don't
7 recall. It's been some time.

8 Q Do you have notes of those meetings?

9 A I may. I'm not sure. I looked--I have looked
10 for notes, and my office manager retired, boxed all of
11 our stuff up in boxes. She ran everything in my office
12 and retired, and I had some difficulty with my
13 documentation, trying to locate things.

14 Q Is it your custom to take notes at a meeting
15 such as the first meeting you had with Mr. Craghead?

16 A Yes. And whether or not I retained those
17 would depend on the importance of it. If I'm asked to
18 attend a meeting, a preconstruction meeting, and we are
19 not the successful bidder or something like that, we
20 might discard those notes. But I might take notes in a
21 variety of forms. I might jot it down on my computer. I
22 might write in my dayplanner. I might put it on a piece
23 of paper and put it in a file. Just depending
24 on--something like that, where I don't have the contract,
25 it would just vary. But more than likely, my planner

1 might indicate some notes as to the conversation. And
2 that's one of the things that I have looked for in our
3 boxes.

4 Q The notes?

5 A My planner from 1992. And I have not found it
6 yet.

7 Q How long, Mr. Padan, do you anticipate it
8 taking before you can unearth these documents?

9 A I have a--I'm very busy right now, and I do
10 not presently have an office manager. I hired one last
11 night, as a matter of fact, and until I get her in my
12 office, she'll be--she is giving notice to her present
13 employer in California that she is quitting. She is to
14 call me today and let me know if that will be two weeks'
15 or four weeks' notice. She has to continue working, and
16 she'll be employed by me full-time. And as soon as I
17 have her, I can have her go through and try and find
18 that.

19 Q Mr. Padan, have you seen a copy of the
20 plaintiff's requests to you for production of documents?

21 A I believe so.

22 Q Do you understand that there is a time
23 limitation in which a defendant must respond?

24 A I would assume there is some time limit. I
25 don't follow this too closely. I rely on the advice of

1 my attorney. And this latest one I understood and
2 apparently I misunderstood. I thought I was to bring it
3 with me today for the deposition. And Mr. Chambers had
4 pointed out to me that it needed to be earlier. And I
5 have been out of town.

6 Q Is it your understanding that by producing to
7 me the documents you have in your possession today you
8 would have met all of the requirements of the document
9 production?

10 A I don't understand your question.

11 Q Well, in our conversations you have mentioned
12 notes which you have and daytimers. And having read the
13 document requests, is it your understanding that those
14 have also been requested?

15 A My understanding is that you have requested
16 any and all documents relating to this matter, and I have
17 searched for them prior to this meeting.

18 Q And you believe you have copies of these?

19 A All I'm saying is they may or may not exist.
20 But as of today, I have not--I have not been able to
21 locate them.

22 Q But you do have boxes of documents from your
23 office; is that correct?

24 A Uh-huh, yes.

25 Q And if you have documents, they are most

1 likely in those boxes?

2 A More than likely. But I went--I have gone
3 through several of them. I mean, it's quite a volume of
4 paperwork. And some of it is in storage. Like I said, I
5 just haven't found anything yet.

6 Q So is it your testimony that you may have in
7 storage documents which are responsive to the document
8 requests such as your daytimer and your notes from
9 meetings with Mr. Craghead?

10 A Well, the one thing in particular that I
11 recall that might have something in it is my day planner.
12 That's what I'm talking about. I don't believe that--if
13 I had notes, I have looked. I haven't found them. I
14 don't believe that there would be any notes from that
15 original meeting from Craghead.

16 Q But you haven't looked through all your boxes,
17 right?

18 A No, I haven't looked through all of my boxes.
19 I have looked through boxes relating to the Craghead
20 residence, in the event that something was misfiled. It
21 could be somewhere.

22 Q Have you produced or are you ready to produce
23 to me today all of the documents from the boxes which
24 which relate to the Craghead residence?

25 A Well, there were a number of things, a number

1 of requests that you made that pertain to all of the
2 documents for the entire job. And I believe we responded
3 to that.

4 Q I'm not sure. Is your answer then yes, that
5 you have produced all of the documents from the boxes
6 concerning the Craghead residence?

7 MR. CHAMBERS: The answer would be no. The
8 response to the question, we produced all the documents
9 that--

10 (Witness conferred with his
11 counsel off the record.)

12 MS. FALK: Put on the record that counsel is
13 conferring with Mr. Padan.

14 MR. CHAMBERS: Mr. Padan looked to me, and I
15 understood he wanted some advice as to how to answer the
16 question. And I'm telling him what my response would be
17 to assist him in answering your question. I have let him
18 go on for approximately five minutes. You have asked the
19 question twice. He hasn't given you a response that
20 obviously you are comfortable with, and so I figured I
21 would try and assist him in--

22 MS. FALK: So Mr. Chambers, what is your
23 answer?

24 MR. CHAMBERS: I'm not under oath, Counsel.

25 Q (BY MS. FALK) Then Mr. Padan, would you

1 answer the question?

2 A Rephrase it. No, restate it.

3 MS. FALK: Would you please read back the
4 record. I think it's clearer.

5 (The record was read
6 by the court reporter.)

7 THE WITNESS: You are saying, as I understand
8 your question, have I given to you every document I have
9 relating to the construction on that job?

10 Q (BY MS. FALK) That's correct.

11 A No, you do not have in your possession all of
12 those documents.

13 Q And have you given me every document that you
14 have in the boxes that you have already looked through
15 concerning the Craghead residence?

16 (Witness conferred with his
17 counsel off the record.)

18 A Well, that's where I'm having trouble with the
19 question. As I recall the response to your requests for
20 production of documents, the response was that it was an
21 overly broad request, and it was a great volume of
22 documents. Please indicate to us what it is and how it's
23 relevant, and we are happy to produce it.

24 Q What exactly are you not producing which you
25 feel is not relevant?

1 MR. CHAMBERS: Do you want the architectural
2 plans? We didn't feel like they were relevant.

3 MS. FALK: Yes, I would like the architectural
4 plans.

5 MR. CHAMBERS: What relevance does that have,
6 Counsel, to one subcontractor's lien for \$11,000?

7 MS. FALK: Well, I'm not going to take up time
8 on the record and state on the record the discovery
9 disputes. But I will state that I do feel that under
10 Rule 26 that everything that I have asked for is
11 reasonably calculated to lead to the production of
12 admissible evidence.

13 MR. CHAMBERS: What I'm indicating to you here
14 now is we have produced or are ready to produce
15 everything which we thought was responsive to the request
16 for production of documents.

17 MS. FALK: What documents are you withholding
18 as irrelevant?

19 MR. CHAMBERS: We didn't think you wanted the
20 architectural designs. We didn't see where they were
21 relevant. If I have misinterpreted, it didn't seem to be
22 within the gamut of the response.

23 MS. FALK: What other documents besides the
24 plans?

25 MR. CHAMBERS: Tell her what the documents

1 are.

2 Q (BY MS. FALK) Mr. Padan, maybe to make it a
3 little easier, let's just go through some documents which
4 I would like copies of and see if you know whether you
5 have them, and if you could, whether you are producing
6 them today or whether you are planning to produce them at
7 all.

8 A Okay, fine.

9 Q Earlier we talked about the subcontractors on
10 the job. And you mentioned Jensen Painting and Joe
11 Hansen Plastering. You mentioned a variety of journeymen
12 electricians as well. Are you producing records
13 concerning each and every one of those subcontractors,
14 including their contracts, their proposals, any and all
15 payments, any and all written order for extra work?

16 A Well, I'm unfamiliar with this entire process.
17 You don't seem to be comfortable with me talking to my
18 attorney. So my response would have to be I'm not going
19 to produce anything unless I am compelled to produce it.

20 Q Do you know whether you have documents
21 concerning Jensen Painting in your files?

22 A Yes, I do.

23 Q Do you have documents concerning Joe Hansen
24 Plastering?

25 MR. CHAMBERS: Those documents are here today,

1 Counsel, on Jensen Painting.

2 Q (BY MS. FALK) Do you have documents
3 concerning Joe Hansen Plastering?

4 A I could not answer definitively if I have any
5 other documents in boxes that have been dead filed
6 relating to that job, because I was not the one
7 administering those documents.

8 Q Who was the administrator for your documents?

9 A Constance Hazzard.

10 Q Have you spoken with Constance since she
11 retired concerning this case?

12 A I talked to her one time. She was in New York
13 attempting to file an unemployment claim, and she was at
14 the office, the New York office, unemployment office.
15 They called for some information, verifying her
16 employment. She called. I didn't speak to her. My
17 girlfriend was in the office and took the call at that
18 time.

19 Q When you said that Constance Hazzard retired,
20 did she receive retirement benefits from Aspen
21 Construction?

22 A No.

23 Q What is your definition of retired?

24 A She is no longer continuing on working.

25 Q How old is Constance?

1 A Fifty-five.

2 Q So she has no other job?

3 A That's what she indicated when she left, that
4 she was planning to retire. She had indicated that she
5 was going to Arizona, and the last word we got, she
6 turned up in New York.

7 Q Do you have an address for Constance?

8 A No, I do not.

9 Q Do you know how I could get a hold of her?

10 A No, I don't know that either. In fact, we
11 could not get a hold of her to try and find out some
12 things after she left. We were trying to locate where
13 she had filed some documents, and we had no way to
14 contact her. And when my girlfriend took the call that
15 day, we were relieved, because she had called and we were
16 able to ask her some questions relating to where various
17 things were and where she had filed them.

18 Q Did you ask her where she had put the
19 documents concerning Craghead?

20 A Well, I didn't have the opportunity to speak
21 with her, so I don't know the substance of the
22 conversation. My girlfriend at the time was looking for
23 some particular items, because she was helping me out
24 doing my accounting at that time. She asked some
25 questions that she needed.

1 Q What is your girlfriend's name?

2 A Christina Moore.

3 Q What is Christina's position?

4 A She has been employed part-time from time to
5 time with Aspen Construction as if--in a variety of
6 duties. She has done some bookkeeping, running around,
7 picking up things, a variety of things.

8 Q Has she been employed during 1992, 1993 or
9 1994?

10 A She--no, I don't believe she was employed in
11 '92. Probably the latter half of '93 and part-time
12 through '94 to almost to date. She no longer works there
13 at all.

14 Q What is her number?

15 A 364-5842.

16 Q What is her address?

17 A 230 East 300 South, Apartment No. 1101.

18 Q Lynn, in addition to the painter and the pool
19 work and the electricians, who are other subcontractors
20 on your job at the Craghead residence?

21 A It would be Standard Builders, Jensen
22 Painting, the pool plastering. The rock work, all of the
23 stone work on the residence was done by L&B Masonry.

24 Q Could you spell that, please?

25 A L&B, B, as in boy, Masonry.

1 Q Out of Salt Lake?

2 A They are out of Heber.

3 Q Who was the main subcontractor or the main
4 worker for L&B?

5 A His name was Eric Bunker.

6 Q Who is the principal of L&B Masonry?

7 A Eric Bunker.

8 Q Does Eric have a subcontractor's license?

9 A Uh-huh, as far as I know.

10 Q Did you ask him at the time?

11 A Uh-huh, yes.

12 Q Did he produce it to you when you asked?

13 A I don't know. Connie handled all of that.

14 But just my general information, particularly with Eric,
15 he's indicated to me that he has a license. He's been
16 actively contracting in the Park City area for years and
17 has been on jobs with--

18 Q Do you know whether he has a subcontractor's
19 and a general license?

20 A I don't know. My guess is that he does not
21 have a general's license.

22 Q As a general contractor, have you ever done
23 work which might be subcontracting?

24 A Well, what is your definition of
25 subcontracting?

1 Q What is your definition of subcontracting?

2 That's probably a better question, since it's your area.

3 A My definition of subcontracting? I guess when
4 you contract with somebody to do a single phase of work
5 such as drywall, general contracting would involve more
6 than one phase.

7 Q Have you ever worked under another general
8 contractor?

9 A Uh-huh, yes.

10 Q Who was that?

11 A I have worked for--you mean as in any
12 capacity?

13 Q As a subcontractor.

14 A As a subcontractor?

15 Q Yes.

16 A At any point in my life?

17 Q Let's say the last five years.

18 A The last five years have I worked as a sub
19 under any general contractor?

20 Q Yes.

21 A I worked for--well, again, it depends on your
22 definition of subcontractor. I have performed--the only
23 other entity that I would have been involved in that I
24 recall at this time was CIDCO, Commercial Industrial
25 Development Company. The acronym is CIDCO. I would

1 perform a variety of work for them.

2 Q Do you have an area of specialty in
3 construction apart from being a general contractor?

4 A I don't believe so.

5 Q How did you get into construction?

6 A By that, you mean what was my first job?

7 Q However you choose to answer it.

8 A I built a residence for myself. It was the
9 first thing I ever did in construction.

10 Q When was that?

11 A I guess I was about 20 years old.

12 Q How old are you now?

13 A Thirty-four.

14 Q So 14 years ago was your first construction
15 job?

16 A Yes.

17 Q Did you have others helping you on that house?

18 A Myself and a partner. We owned the home
19 together. We built it together. We performed almost 100
20 percent of the work ourselves, as I recall.

21 Q Who was your partner?

22 A His name was Kevin Kietz.

23 Q K-e-a-t-s?

24 A K-e-i-t-z.

25 Q Did you live in the home?

1 A No, we got it almost ready for occupancy. We
2 didn't have enough--as I recall, we didn't have enough
3 money to carpet the home, to finish it, so we couldn't
4 move in. And subsequently--as I recall how it happened,
5 I basically turned over my interest in the home to
6 Mr. Kietz. And I don't recall exactly what he did with
7 it. His father might have--I don't think he moved in. I
8 think eventually they sold it or something.

9 Q Did you get any money out of the home?

10 A No.

11 Q Not even for materials and labor?

12 A Oh, yeah, for materials.

13 Q So Mr. Kietz provided the material?

14 A Well, no, we both did. We paid jointly for
15 all of the material as we went. And I don't recall the
16 details 15 years ago. But at the conclusion of it,
17 somehow--I don't recall the disposition of it. I just
18 recall basically working for about eight months for no
19 pay, trying to build this home.

20 Q Was that your first job in construction?

21 A I think I worked for A-Core Concrete Cutting
22 for a while. I worked for numerous construction
23 companies. A-Core Drilling and Sawing Concrete was prior
24 to that or right around the same time. I don't remember
25 which came first. A-Core might have been before that.

1 Q When was your next construction job?

2 A I don't recall what followed immediately, if
3 anything. I went back to college. It was sometime after
4 that.

5 Q What year did you incorporate Aspen
6 Construction?

7 A Aspen Construction, Incorporated I believe is
8 about four years old, maybe five. I don't recall
9 exactly.

10 Q So 1989 to '90? Does that sound about right?

11 A Possibly.

12 Q What was your job before Aspen Construction?

13 A I was a partner in a company called Aspen
14 Property Development, which was a licensed general
15 contractor.

16 Q Aspen Property Development held the license?

17 A Uh-huh, yes.

18 Q Who was your other partner?

19 A His name was Bart Miller.

20 Q Did Bart Miller have a contractor's license
21 apart from Aspen?

22 A Not to my knowledge.

23 Q Did he do construction work?

24 A He did office work.

25 Q Office work?

1 A Yes.

2 Q When did you become associated with Aspen
3 Property Development?

4 A I believe we were partners for maybe four
5 years.

6 Q 1986? Does that sound about right?

7 A That sounds about right.

8 Q And how did you become associated with Aspen
9 Property Development?

10 A Well, I was a partner. I formed that company
11 with Bart Miller.

12 Q You were the only two partners?

13 A Uh-huh, yes.

14 Q Was it a general partnership?

15 A Uh-huh, yes.

16 Q What work did you do under Aspen Property
17 Development?

18 A Well, we worked on trying to put together
19 several projects that didn't come together for us. So we
20 spent a lot of time researching real estate development
21 and trying to do some things that didn't happen.

22 Q What was the purpose or the mission statement
23 of your partnership?

24 A Well, we were licensed as a general
25 contractor. We didn't have--the main mission of that

1 company was to try to build income property, whether it
2 be duplexes or something like that, an attempt to joint
3 venture or obtain some financing and joint venture with
4 somebody that would finance a project that we could build
5 and maybe have an equity ownership in.

6 Q Did any of those proposals come to fruition?

7 A No, none of those did.

8 Q How did you make money during this time?

9 A Well, we didn't make very much. That's why
10 the partnership was dissolved. Mr. Miller got tired of
11 having no money. And I believe during that period of
12 time we subcontracted various phases of work for CIDCO.
13 I was hired--CIDCO used me as a superintendent or a job
14 supervisor I think during that period of time on some
15 projects that CIDCO had.

16 Q Were you on their payroll?

17 A No.

18 Q How were you paid? As an independent
19 contractor?

20 A We billed them.

21 Q You billed them?

22 A Aspen Property Development billed them. I
23 think during that period of time we built--I would
24 oversee the construction we had. I'm just trying to
25 think back on exactly what the projects were. Generally

1 I was a project--I would run the job for CIDCO. They
2 would get a contract and essentially turn around
3 and--well, I think we actually entered into kind of a
4 joint venture arrangement on one residence where we joint
5 ventured with another general contractor. We did--they
6 processed the paperwork and we did all the project
7 scheduling and site supervision.

8 Q What type of project was it?

9 A Well, we did a residence in Park City as a
10 joint venture with CIDCO.

11 Q Do you recall where that residence is?

12 A I don't recall the exact street address. I
13 could tell you the street. It's Aerie Circle, A-e-r-i-e.

14 Q Who was your contract at CIDCO?

15 A The president was John Pap, P-a-p.

16 Q Was it through John Pap that you were given
17 your jobs with CIDCO?

18 A Uh-huh, yes.

19 Q Who carried your Workers' Comp. at this time?

20 A I don't recall.

21 Q Do you recall whether Aspen Property
22 Development had a Workers' Compensation policy?

23 A I believe--yes.

24 Q Would you have papers going back to Aspen
25 Property Development?

1 A What do you mean by anything?

2 Q Any other job-related activities.

3 A No.

4 Q Did you have any other job?

5 A No.

6 Q How did it come about that you incorporated
7 Aspen Construction?

8 A Well, as I stated earlier, Mr. Miller was very
9 disenchanted with construction. It was not a very good
10 time for building, at least for us, and he left. We
11 dissolved the partnership. I decided to stay in the
12 business, and so I formed a new company.

13 Q Did you get to keep projects that had started
14 under Aspen Property Development?

15 A As I recall, there weren't any ongoing
16 projects. We tried to--the intent was to complete
17 anything we had going and dissolve it. So it was a clean
18 break. I don't believe there was anything ongoing at the
19 time.

20 Q Do you recall who your attorney was or whether
21 you had an attorney in the dissolution or the wind up of
22 the partnership and the formation of the corporation?

23 A I recall that there was an attorney involved
24 to do the dissolution. The attorney was--I don't recall
25 who it was. It was handled by Mr. Miller. And as I

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22 the partnership and the formation of the corporation?

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24 to do the dissolution. The attorney was--I don't recall
25 who it was. It was handled by Mr. Miller. And as I

1 Q When was the last time you saw Mr. Miller or
2 speak with him?

3 A The last time I spoke with him?

4 Q Yes.

5 A Maybe a month ago. He was in my office again
6 speaking to my estimator and he walked in my office and
7 said hello.

8 Q Are you still friends?

9 A Well, we are friendly. We don't socialize or
10 anything.

11 Q Did you have a falling out from the general
12 partnership?

13 A No, it wasn't really a falling out. He had a
14 new wife, new baby. He needed stable income. We didn't
15 have any personal--or business problems to speak of. He
16 just was frustrated with construction. Too much work for
17 too little money, as he put it. And he left and formed a
18 real estate company.

19 Q Have you done any work with him since?

20 A No.

21 Q Do you recall how long after you started Aspen
22 Construction that you first met Mr. Craghead?

23 A After I started Aspen Construction,
24 Incorporated?

25 Q Right.

1 Q When was the last time you saw Mr. Miller or
2 speak with him?

3 A The last time I spoke with him?

4 Q Yes.

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6 speaking to my estimator and he walked in my office and
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22 Construction that you first met Mr. Craghead?

23 A After I started Aspen Construction,
24 Incorporated?

25 Q Right.

1 A He wanted to talk again about employing Aspen
2 Construction to do some work on his home. He told me
3 that 15 percent was--he was not willing to pay 15
4 percent. And he reiterated his desire to pay ten
5 percent. I guess we probably discussed the nature of the
6 work again.

7 Q Had the nature of the work changed between the
8 first and the second meeting

9 A No, other than the fact that there had been
10 some demolition work that had occurred in between the two
11 meetings that we had. Some work had taken place, as I
12 recall.

13 Q Did he mention why he was no longer continuing
14 with the person who had done the work?

15 A No, he didn't.

16 Q Did you ask?

17 A No. My relationship was such I was being
18 interviewed, as I perceived it at the time. And I didn't
19 ask questions of that nature.

20 Q Did he hire you at that meeting?

21 A I don't recall exactly. We might have--we may
22 have reached a verbal agreement at that meeting.

23 Q Did you decide on a price?

24 A I believe at that meeting we did.

25 Q What was it?

1 A He wanted to talk again about employing As
2 Construction to do some work on his home. He told me
3 that 15 percent was--he was not willing to pay 15
4 percent. And he reiterated his desire to pay ten
5 percent. I guess we probably discussed the nature of
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11 meetings that we had. Some work had taken place,
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18 interviewed, as I perceived it at the time. And
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21 A I don't recall exactly. We might have
22 have reached a verbal agreement at that meeting

23 Q Did you decide on a price?

24 A I believe at that meeting we did.

25 Q What was it?

1 Q Have you asked Mr. Hansen for any records
2 concerning the Craghead residence?

3 A To my knowledge, Mr. Hansen does not have any
4 records in his possession. Therefore, I have not
5 requested anything from him.

6 Q So is your testimony that you provide the
7 documents to him, and when he has finished his work for
8 Aspen Construction, he returns all documents to Aspen
9 Construction?

10 A Again, I don't have a one-to-one relationship
11 with him. Constance Hazzard handled that for me. And to
12 what extent she involved him, I'm not exactly sure right
13 now. Since she's left, I have been dealing with him
14 since about March.

15 Q So do you know whether he would have
16 documents?

17 A To my knowledge, I don't believe he does. It
18 would be just--it just wouldn't be something I would
19 think that he would have. And if he ever did have them,
20 I would have expected that they were returned.

21 Q Do you recall any other conversation that took
22 place at the second meeting you had with Craghead?

23 A I really don't recall.

24 Q I have asked you this before, Mr. Padan, but
25 is it your testimony that you may have these dates on

1 your daytimer of whether these two meetings took place?

2 A Yes, I may.

3 Q Were you doing any other projects at the time
4 of the second meeting with Mr. Craghead?

5 A I understand you to mean was there any ongoing
6 construction in progress at that time?

7 Q Right.

8 A I just don't recall if there was anything
9 ongoing back then.

10 Q Do you recall whether you were able to start
11 right away?

12 A Yeah, I believe we started right away.

13 Q How long after your second meeting were you
14 informed by Mr. Craghead that you had the job?

15 A Well, I believe that we had an understanding
16 at that second meeting that I had the job.

17 Q Did you sign a contract?

18 A No.

19 Q Have you ever signed a contract with
20 Mr. Craghead?

21 A No.

22 Q Did you have a set of plans?

23 A He employed an architect who drafted some
24 plans, various stages along the way.

25 Q At what point did you first see those plans?

1 A I don't recall if they existed at that point
2 in time when I was contracted to do the work or not. As
3 I recall, the architect made--as Mr. Craghead wanted to
4 have more work done, the architect just kind of worked
5 along and created some plans for the work that he
6 originally contemplated. But the scope of the work
7 changed from what I was told originally what he wanted
8 done. So there are--we did work off of blueprints. But
9 I don't recall at what time they were created, because
10 there were several revisions.

11 Q Would there be more than one set of blueprints
12 then to incorporate these different revisions?

13 A No, I guess they are all essentially stapled
14 together in one set. I think what happened was they
15 just--he added pages as Mr. Craghead requested additional
16 things.

17 Q Do you have copies of those plans?

18 A I do.

19 MS. FALK: I'm making a request on the record
20 for copies of those plans.

21 Q (BY MS. FALK) When did you first realize that
22 you needed a drywaller for the job? Was that part of the
23 second meeting?

24 A No.

25 Q So was it your understanding at the second

1 meeting that the remodel would include mostly surface
2 remodeling, such as changing carpet and repainting?

3 A That's correct. That was what he was asking
4 me to help him do at that time.

5 Q And when did the plans change?

6 A Well, I don't know when I was informed that he
7 wanted additional work done. I don't know; maybe within
8 two months.

9 Q Had you already started working before you
10 were informed that he wanted additional work done?

11 A I believe so, as best as I can recall right
12 now.

13 Q How long after the second meeting did you
14 contact Mike Mower?

15 A I don't recall.

16 Q Could you say whether it was more than or less
17 than one month?

18 A More than one month.

19 Q More than two months?

20 A More than two months, probably.

21 Q How much longer after Craghead informed you
22 that he wanted more work done did you contact Mike Mower?

23 A I don't recall.

24 Q Did you contact other subcontractors besides
25 drywallers near the period you contacted Mike Mower?

1 A Say that again. I'm sorry.

2 Q Did you contact other subcontractors to do
3 other types of work other than drywall at the time or
4 near, around the time you contacted Mike Mower?

5 A Well, there was, as I recall, there was other
6 work going on, so I don't recall specific instances, but
7 I would assume so.

8 Q Did you contact a person for framing? Was
9 there any framing, additional framing, that had to be
10 done?

11 A There was some remodel type framing that--but
12 no subcontractor was contacted.

13 Q Who did the framing?

14 A Aspen Construction.

15 Q Who were the people employed at that time
16 other than yourself and Tom Thornton?

17 A Vaughn Fuelner.

18 (PHONE INTERRUPTION.)

19 A Excuse me. I meant to turn that off.

20 MS. FALK: Let's just take a break right now
21 for about five minutes.

22 (A SHORT RECESS WAS TAKEN.)

23 Q (BY MS. FALK) Before the break, Mr. Padan, I
24 was asking you about the employees you had at the time of
25 on the Craghead project. I believe your testimony was

1 that you may have a list of the employees that you had at
2 that time, but you are not certain.

3 A That's correct.

4 Q If you did have this, would this also be in
5 the documents, the boxes of documents, you were referring
6 to earlier?

7 A It may be, yes.

8 Q Where else would it be, if a copy existed?

9 A Well, I assume that we have employment
10 records. I mean, we have turned in withholding on them.

11 Q But you don't believe Mr. Hansen would have
12 copies of those records?

13 A Well, he may. I just--he may have records
14 like that as far as withholding.

15 Q Would you ask him--

16 A Certainly.

17 Q --what records he may have concerning Aspen
18 and the Craghead residence?

19 A Yes.

20 Q Mr. Padan, you mentioned two meetings with
21 Mr. Craghead. Do you recall any other meetings other
22 than those two that you had with Mr. Craghead before the
23 first meeting Mr. Mower?

24 A Well, I'm sure I had numerous meetings with
25 Mr. Craghead prior to meeting Mr. Mower. Mr. Craghead

1 was up at his residence sometimes all day.

2 Q Was he living there at the time?

3 A No.

4 Q Did he consider you the general contractor for
5 the job?

6 A I can't state what he might have believed.

7 Q Was it your understanding that he considered
8 you his general contractor for the job?

9 A My understanding was that he viewed me at a
10 minimum scheduling and coordinating the things that he
11 wanted done.

12 Q Who was ultimately responsible for the things
13 he wanted done?

14 A It would be myself.

15 Q Did he hire people without your approval?

16 A Yes.

17 Q Who did he hire?

18 A The painter who originally painted the beams
19 was obtained either by Mr. Craghead or the other general
20 contractor. And I don't--that's why I'm not exactly sure
21 who the original contractor was on the beams. I believe
22 I have his name and what the details of that contract
23 were, because it didn't have anything to do with me.

24 Q Were the beams already painted before you had
25 your second meeting with Mr. Craghead?

1 A Before I had the second meeting, yes.

2 Q Were they painted before you had the first
3 meeting?

4 A Well, I don't recall exactly.

5 Q When did you first learn that the beams had
6 been repainted?

7 A Well, it was one of those first meetings,
8 because Mr. Craghead had contracted for that work to be
9 done and had indicated to me that he had found a
10 specialty painting contractor that could do that type of
11 work. His goal was to take a beam, a glu-lam beam that
12 had a very dark stain on it.

13 Q A glu-lam beam? Can you spell that?

14 A G-l-u--l-a-m. It's an abbreviation for glue
15 laminated. I'm sorry. That was how it was constructed,
16 with a series of those in the roof. It had a dark brown
17 stain, and he wanted them to be natural. And he
18 indicated to me that he had inquired about having them
19 sandblasted somehow to get rid of the dark color. And he
20 had met with a painter or more than one painter and found
21 out that that couldn't be done. That they had to--there
22 had to be some sort of glazing process, graining process
23 where you put a paint on the beam and make it look like
24 it's a natural wood grain.

25 Either he or--I don't know how he found this

1 painter, but the painter was obtained, and he indicated
2 to me that he had a time frame when he--this man was
3 available. Apparently he paints Mormon temples and is a
4 specialist in doing these type of things. And
5 Mr. Craghead had wanted him to do the beams and brought
6 him in on the front end to do that painting.

7 Q So did he do that before you even--

8 A Yes.

9 Q --were hired?

10 A Right.

11 Q Did the painter do the inside and outside of
12 the beams?

13 A We did the exterior of the beams later, the
14 outside where they project beyond the outside wall of the
15 house. I don't know why that came about. I don't recall
16 that the inside had been painted. As I recall, maybe
17 they were in the process of finishing them or something.
18 It was close in that time period. But the entire length
19 of the beam was painted early on in the project and was
20 not--I had nothing to do with it.

21 Q Why did you change painting contractors?

22 A Well, I don't know if it was changed or not.
23 As I understood it--and I only had a brief meeting with
24 that original painting contractor. There was a
25 partnership between two gentlemen, and I think that they

1 were doing this original painting, and I think that they
2 may have split their partnership, but I'm not sure. But
3 the one remaining person is who we continued to contract
4 with to paint the walls. And I only met with him one
5 time, and it was his representative, Mark Strong, who was
6 on site and coordinated the painting. And that's who I
7 dealt with and I bid the jobs and collected the money and
8 so forth. So I had virtually no contact with the owner
9 of that company. And Mark Strong was retained during
10 that period of time. And then eventually he separated
11 from at that company, and I don't--in fact, I don't even
12 know what has become of him. I have a phone number, a
13 digital pager number for him.

14 Q I would like that, please. Do you have those
15 with you?

16 A Yes. Would you like them now?

17 Q Yes, please. Mr. Padan, while you are looking
18 for that, I'm going to take a two-minute break.
19 Co-counsel has come in, and we need to take one or two
20 minutes. Thank you.

21 (A short recess was taken.)

22 A Home phone is 278-3173. And a digital pager
23 number is 530-3715. It's Mark Strong with Jensen
24 Painting.

25 Q He is no longer with Jensen, though; is that

1 correct?

2 A Well, I don't know. I don't believe he is,
3 and I recall calling those telephone numbers and either
4 not getting an answer or being told that he didn't live
5 there any longer.

6 Q Do you recall your first conversation with
7 Mike Mower?

8 A Yes.

9 Q Tell me what you recall.

10 A Well, I recall discussing the need for some
11 drywall work at the Craghead residence. I recall
12 Mr. Mower representing himself as a drywall contractor.
13 I recall him talking about recent drywall projects he had
14 completed. I don't recall which ones. But he indicated
15 that he was licensed to do drywall work. That he was
16 insured and had Workmen's Compensation coverage.

17 Q Do you recall asking him specifically whether
18 he was insured?

19 A Uh-huh, yes.

20 Q And what did you say?

21 A Well, as I recollect, this was a verbal
22 conversation we were having. I don't recall whether it
23 was on the job site or my office. I believe it was
24 probably on the job site, as I said earlier. Those are
25 just routine questions, just to determine--I had never

1 contracted with Mr. Mower, and I didn't have any personal
2 knowledge of his qualifications and work experience. So
3 I was asking him those questions.

4 Q How did you come into contact with Mr. Mower?

5 A I don't recall exactly. I believe what
6 happened was somebody that was on the job knew him and
7 mentioned to him that I was looking for a drywall
8 contractor, and he contacted me.

9 Q Do you recall in the conversation with
10 Mr. Mower discussing your work load?

11 A My work load?

12 Q Yes.

13 A No, I don't recall.

14 Q Do you recall discussing with Mr. Mower any
15 other jobs you were doing at the time?

16 A I don't recall a conversation.

17 Q Do you recall discussing with Mr. Mower any
18 jobs that you had done or were doing in Park City?

19 A I may have. I don't recall.

20 Q Do you recall discussing any jobs that
21 Mr. Mower had done?

22 A As I just stated, I recall that he discussed
23 some work that he had done as drywall work on more than
24 one job. I don't recall what those jobs were.

25 Q Do you recall whether he told you the jobs?

1 A Yes, I do recall that he stated specific jobs.

2 Q But you don't recall which jobs those were?

3 A No.

4 Q Did you ask for references of the jobs?

5 A No, I did not. The only reference that I
6 obtained on him at the time was the individual. As I
7 said, I don't recall who it was. But one of the
8 individuals on the job recommended him and recommended to
9 him that he call me. And that was a reference that I
10 used.

11 Q How were you referred the other two
12 subcontractors from whom you solicited bids?

13 A Well, probably one of them may have done work
14 for us in the past. I don't recall exactly how--at least
15 the one other bid that we obtained at that time, I don't
16 recall how we contacted that individual.

17 Q Who was the other bidder?

18 A Terry Barney. I don't know if it's called
19 Terry Barney Drywall. I can't remember.

20 Q Have you had any work since then with
21 Mr. Barney?

22 A No.

23 Q No?

24 A No.

25 Q Do you have a number for him?

1 A Let me look. I don't have it in my directory.
2 I think that Mower knows him. I seem to recall in our
3 discussions talking about Terry Barney hiring him.

4 Q Was it the first discussion you had with
5 Mr. Mower?

6 A I don't know if it was the first or not.

7 Q Did Mr. Mower submit a proposal to you, a bid
8 proposal?

9 A Well, did he submit a bid proposal? We had
10 a--we spoke verbally about the price that he would
11 charge. We discussed what the other subcontractors had
12 bid the job for and had a discussion as to what was a
13 reasonable price and so forth.

14 Q Who were--

15 A And then he later followed that up with a
16 proposal in writing.

17 Q Who were the other contractors that you had
18 discussed the drywalling with by the time you met with
19 Mr. Mower?

20 A Terry Barney was one. I know there was one
21 other at least, and I don't recall that contractor's
22 name.

23 Q Would you have copies of their bid proposals?

24 A I don't know.

25 Q Do you have any documentation verifying that

1 you talked to these two people before you talked to
2 Mr. Mower?

3 A I don't believe I have any written
4 documentation.

5 Q So it's just your recollection?

6 A That's correct.

7 Q And you don't recall who the second person
8 was?

9 A No.

10 Q Who spoke to Terry Barney?

11 A I did.

12 Q Did you have any after Mike Mower?

13 A Excuse me?

14 Q Did you have any bid proposals submitted after
15 Mike Mower's?

16 A No, I don't believe so.

17 Q If you only were hired to do paint and
18 carpeting, why did you need a drywaller?

19 A Oh, Mr. Craghead decided that--well, he made a
20 number of changes. He decided that he wanted the place
21 re-drywalled.

22 Q He wanted the place re-drywalled?

23 A Yeah, he did that--it wasn't unusual for him
24 to do something like that. It may not have needed it,
25 but he requested that the inside be covered with another

1 layer of drywall on top of what was there.

2 Q Is that typical, to put on another layer of
3 drywall rather than replace it?

4 A No, it's not typical.

5 Q What was his reasoning for having the second
6 layer of drywall?

7 A Well, we had moved some walls. Those were
8 required to be changed. We made holes in walls,
9 different things. There was a lot damage to the drywall
10 in the house. After looking at it and discussing it, it
11 looked as though it might be just as cheap to recover it
12 as to go in and fix it all. And he was not the type of
13 person that wanted a repair. He preferred to have
14 everything just redone.

15 Q So by the time you had decided you needed a
16 drywaller, there had already been walls torn down; is
17 that correct?

18 A Yeah.

19 Q Had there been walls expanded? Had any rooms
20 been expanded?

21 A Well, nothing outside of the--yes, there
22 was walls that were taken down or moved or whatever,
23 yes.

24 Q Did you have a set of plans which you could
25 submit to a drywaller at that point and show them

1 specifically what was going to need to be drywalled?

2 A Well, at that point, it wasn't really
3 necessary. Practically everything that needed to be done
4 was in place. It was far easier--my experience with
5 drywall is they don't even like to look at the
6 blueprints. They prefer to come up to the job and
7 measure it and stand inside the building rather than try
8 and conceptualize three-dimensional space off of a
9 two-dimensional blueprint.

10 But everything was in place, maybe some minor
11 items. I don't recall. But everything was essentially
12 in place. And Mr. Mower bid the job on a unit price. So
13 neither Mr. Mower or myself had a concern that the scope
14 of the project was not well enough defined.

15 Q What did you mean by a unit price?

16 A Meaning that he would be compensated by the
17 square foot for the--he quoted a price of 70 cents, I
18 believe, per square foot of drywall that was to be
19 supplied, attached, affixed to the wall, and finish
20 coated with plaster. He also quoted a price for round
21 metal commonly referred to as bull nose. Not knowing
22 exactly how many lineal feet there were in the job, and
23 not wanting to go measure it all, he just simply quoted a
24 price per lineal foot for that work.

25 There were some radius walls that didn't fall

1 within either of those categories. He quoted those at a
2 separate lineal foot price, the idea being that, "We'll
3 just come in and we'll do this when we are done. We'll
4 measure the footage and the lineal--the square footage of
5 wall and ceiling, the lineal footage of bull nose and
6 radius, and bill you," and multiply the footages by the
7 rate that he quoted rather than a lump sum bid where
8 somebody would come in and say, "I'll do the whole job
9 for \$20,000 or something."

10 Q How did Terry Barney bid the job?

11 A He bid it the same way. He bid it--he
12 actually came down to the job, as I recall, and measured
13 it.

14 Q He, being Terry?

15 A Terry, yeah. I think Terry may have lump sum
16 bid it in the beginning. And then I requested lineal and
17 square foot prices from him so that I could compare
18 prices. At that point, I preferred to have unit pricing
19 rather than lump sum bidding. And I wanted it--and then
20 that way I could compare those.

21 And so I had Terry requote it square foot
22 prices, as did Mike, as did--I think I just remembered
23 who the other contractor was. It was a guy named Tim
24 Trujillo. I'm trying to think of what his name was. I
25 can't recall his company name, but he bid it as well.

1 Q Did he also bid on a unit basis?

2 A Yes.

3 Q Why did you choose Mike Mower?

4 MR. CHAMBERS: That's been asked and answered.

5 Q (BY MS. FALK) Perhaps it was, but if you
6 wouldn't mind telling me again.

7 A He was referred by somebody on the job, is one
8 factor. I had met with him, spoken to him. I was
9 interested in obtaining--I had contracted with Terry
10 Barney and Tim Trujillo in the past and had experienced
11 scheduling problems. I was interested in finding a new
12 drywall contractor that would get in and get the work
13 done in a timely fashion, because I had had problems in
14 the past with that. And his price--you know--the pricing
15 was--those prices that are on that sheet, his bid
16 proposal and contract are after our discussions.

17 He went back and prepared that. And I believe
18 we discussed what the other contractors' unit prices
19 were. He wanted the job. He wanted to make sure that he
20 would get the job. He wanted to make sure that his
21 prices were acceptable to get the job. And I believe at
22 that point in time that he was capable of doing the job
23 and licensed and so forth and that his quoted unit prices
24 were reasonable.

25 Q Do you recall anything else of your

1 conversation with Mike Mower?

2 A Yes. I very clearly recall talking about the
3 beams with Mike. It was an unusual situation that the
4 beams had been painted prior to doing this Sheetrocking
5 work. And Mike was at the job. We discussed the fact
6 that the beams had been done. I explained to him what I
7 had been told as to why they were done. The painter was
8 only available at that point in time. And Mr. Craghead
9 had the work done when this particular painting
10 contractor was available to do it and so forth.

11 I had been instructed to be--to cover the
12 beams and protect them, because they were a finished
13 product. And we discussed that. And, in fact, the 70
14 cents per square foot is a price that even now, two years
15 later, is much higher than the going rate. The reason
16 that we agreed to that price was because the additional
17 time and expense and material that would be required to
18 cover the beams.

19 And so we agreed to a higher number of 70
20 cents versus--at that time the going rate was about 60
21 cents per square foot for drywall.

22 (Exhibit No. 1 was
23 marked for identification.)

24 Q I'm going to show you what is marked as
25 Exhibit 1. Did you need to say anything else to finish

1 the answer?

2 A No.

3 Q Do you recognize this document?

4 A I don't recall this specifically with Tom
5 Thornton's signature down there at the bottom.

6 Q Have you never seen this document before?

7 A Yes, I'm just saying this looks identical to
8 the one that I have in my file. I'm just saying that I
9 don't--my recollection is that I don't recall seeing this
10 Tom Thornton on the bottom of the copy. Mine may have
11 it. I don't know.

12 Q Other than the words, Tom Thornton--

13 A Well, and the price crossed out. I don't
14 recall if that's on my copy of it or not.

15 Q So you don't recall whether or not you ever
16 discussed the 75 per square foot price with Mike Mower?

17 A My recollection of this contract has always
18 been that it's 70 cents. That's been my understanding.
19 And whether or not my contract shows .75 scratched out
20 and .70 on there, I don't recall.

21 Q Do you recall whether you had a conversation
22 with Mr. Mower about a 75 per square foot price?

23 A I do recall that Mr. Mower wanted--in the
24 course of our conversations and our negotiation on this
25 contract, I recall that he was suggesting a higher price.

1 I don't recall what it was. And we had the discussion of
2 what the other bids had come in at. And I recall
3 settling on 70 cents per square foot for the drywall
4 work. And I don't know if he had it at 75 and crossed it
5 out or not. I just don't recall. My understanding of
6 this contract is it has always been--it was 70 cents.

7 Q I may have misunderstood your earlier
8 testimony. Did you have a conversation with Mr. Mower
9 about a 60 cents per square foot?

10 A No, what I said to you was that the going rate
11 for normal Sheetrock work at that time, as I recall, was
12 about 60 cents per square foot and that we were
13 contracting with Mr. Mower for 70 cents per square foot.
14 That additional dime in there was due to the fact that he
15 had to preserve and protect and cover the existing
16 painted beam work in the residence.

17 Q Now, did you have this very conversation with
18 Tim Trujillo?

19 A Yes.

20 Q And you had the same conversation with Terry
21 Barney?

22 A Yes.

23 Q Do you have notes of those conversations?

24 A I don't believe so.

25 Q Do you have any notes of conversations you had

1 with Mike Mower?

2 A I don't believe that I took any notes.

3 Q So it's just your recollection that you told
4 him?

5 A That's correct.

6 Q Was anyone present at this conversation?

7 A Oh, I think--I'm sure--this was a big issue.
8 I'm sure that Tom Thornton was present. We discussed the
9 covering of the beams on numerous occasions and
10 subsequent to the beginning of work.

11 Q In which room did your discussion take place?

12 A In which room?

13 Q Right.

14 A I believe the living room.

15 Q What time of day was it?

16 A The only thing that I recall is that it was
17 during the day.

18 Q Where was Mr. Thornton standing in relation to
19 you and Mr. Mower?

20 A I don't recall.

21 Q Do you recall specifically whether he was
22 there?

23 A Mr. Thornton?

24 Q Right.

25 A I recall specifically that Mr. Craghead was

1 there and I believe Mr. Thornton was there. There
2 were--it's hard for me to recall the difference
3 between--I can't say that I recall absolutely for sure
4 that Mr. Thornton was there. But I do recall
5 Mr. Craghead being there.

6 Q Were they participating in the conversation?

7 A They, meaning?

8 Q Mr. Thornton and Mr. Craghead.

9 A Mr. Craghead was participating in the
10 conversation, and I don't recall--I don't recall Thornton
11 participating. As I stated, I believe he was there, but
12 I'm not 100 percent sure he was there.

13 Q When you say you believe he was there, do you
14 mean in the room in general or--

15 A No, as a party to--

16 Q --as a party?

17 A --to the conversation.

18 Q What did Mr. Craghead say during this
19 conversation?

20 A The conversation surrounded the need to cover
21 and protect the beams.

22 Q Do you recall specifically anything he said?

23 A Specifically that the beams absolutely had to
24 be covered.

25 Q Were the beams covered at the time this

1 conversation took place?

2 A No.

3 Q Were they dusty at this time?

4 A No. The beams were in good shape at that
5 time.

6 Q Had demolition occurred at that time?

7 A The beam work--we had moved some walls.

8 Q Had you moved some walls?

9 A Yes. We had moved--we had moved walls
10 in--well, in the area of the home where 90 percent of the
11 beams are, there are no walls. So there really wasn't
12 much construction work in there at all. When I say we
13 moved walls, I'm thinking in terms of the entire
14 residence. Yes, there may have been dust, regular dust.
15 There may have been some on the beams at that point in
16 time. But it was not visible to the eye.

17 Q So is it your testimony that at the time you
18 had a conversation with Mr. Mower, no measure had been
19 taken to cover the beams?

20 A That's correct.

21 Q My understanding is you had this conversation
22 with Mr. Mower the very first time you met him. Is that
23 correct?

24 A The conversation concerning beams?

25 Q Yes.

1 A Yes, I believe that was in the first
2 conversation we had at the residence.

3 Q Do you recall any specific comments or
4 exchanges Mr. Craghead and Mr. Mower had during this
5 conversation?

6 A At that meeting?

7 Q Yes.

8 A I don't know that I recall an exchange. I
9 recall Mr. Craghead very concerned about his beams and
10 talking directly to Mr. Mower and instructing him that if
11 he were to do the drywall, the beams absolutely had to be
12 covered and protected.

13 Q Did he give any suggestions as to how these
14 beams were to be covered?

15 A I don't recall Mr. Craghead suggesting the
16 manner. But I do recall the instruction being given that
17 they were to be completely covered and protected so that
18 nothing--none of the drywall or drywall mud or any
19 activities from drywall could possibly damage the beams
20 in any way.

21 Q Did you give any suggestions to Mr. Mower as
22 to how to protect the beams during this conversation?

23 A I believe that I suggested--well, I know that
24 I told him to completely cover them. I may--and I don't
25 recall exactly. I may have suggested that he use either,

1 preferably visqueen, which is a plastic to cover the
2 beams, but I don't know that I--I don't believe I told
3 him specifically what product to use to do it, just the
4 general instruction that they were to be covered and
5 protected, the purpose being to prevent damage during
6 drywall and finishing of drywall.

7 Q Were any of these beams damaged before
8 drywalling began?

9 A No, not to my knowledge.

10 Q Were there any extras on the job you had with
11 Mr. Craghead? Mr. Padan, I also request that you not
12 write any notes during your deposition. If would you
13 like to write a note, we'll just make it an exhibit to
14 the deposition and then you can have a copy.

15 MR. CHAMBERS: I object to that. I have never
16 been in a deposition where counsel has had the right to
17 instruct the witness not to make any notes.

18 MS. FALK: As I just said, if he does choose
19 to make notes, then we will attach those notes as an
20 exhibit to the deposition. I just wanted you to be aware
21 of that.

22 MR. CHAMBERS: Counsel, if he wants to
23 communicate with me in writing, that will not be marked
24 as an exhibit to the deposition. It would be considered
25 attorney-client communication.

1 MS. FALK: If you would like to take a break
2 at this point, that's fine. I believe there is a
3 question pending. Would you read back my question.

4 (The record was read
5 by the court reporter.)

6 THE WITNESS: That's fine. I didn't know that
7 I wasn't able to take notes. I don't have any need to
8 take notes.

9 Q (BY MS. FALK) Could you elaborate what you
10 mean by were there any extras on the job?

11 A You mean in my contract with Craghead or my
12 contract with Mower?

13 Q Any extras. Were there any extras on the
14 job?

15 A Well, my contract didn't have anything to do
16 with extras. I was supervising the job. I had a
17 cost-plus contract. So that question didn't really apply
18 to me. Mr. Mower had a contract with me that was unit
19 pricing. Nobody tried to determine the square footage of
20 the drywall on the front end of the job or the lineal
21 footages, the bull nose or radius corners. That's why we
22 did the unit pricing contract, to encompass everything.

23 Q So is it your position that under the contract
24 you had with Mr. Mower, it's impossible to have extras?

25 A No, it's not impossible to have extras.

1 Q What would be things considered extras under
2 the contract you had with Mr. Mower?

3 A Well, Mr. Mower is claiming extras to be doing
4 general cleanup, sweeping, miscellaneous carpentry work,
5 and so forth that is not a part of his contract. And
6 they did do that type of work. Mr. Bennett did do some
7 of that type of work. And I was not aware at the time he
8 was doing that work that he was doing it.

9 Q Did you ever pay him for any of the work?

10 A We did. Mr. Mower submitted a bill to us. I
11 presented it to Mr. Craghead. It was--when I received
12 it, it was unusual and I was surprised and I immediately
13 conferred with Mr. Craghead and my superintendent, Tom
14 Thornton. And we reviewed the bill, and Mr. Craghead at
15 that point in time authorized me to pay that first bill.

16 And then he instructed Mr. Mower, Mr. Bennett,
17 myself, and Mr. Thornton that no future billings of that
18 sort would be paid. That they are not, in his opinion,
19 extras to the contract. That Mr. Bennett or Mr. Mower or
20 anybody else are not to be performing that type of
21 activity on the residence. That if cleanup and so forth
22 needs to be done, he could have his nephew or somebody
23 come in and do it for him for a much lower amount of
24 money per hour. As I recall, they were billing at a
25 significant hourly rate.

1 So he did authorize me to make payment to
2 Mower Construction on that first bill that was submitted,
3 and then instructed everyone that no more of that type of
4 work was to go on.

5 Q When was this first bill submitted?

6 A I don't recall the date. I didn't memorize
7 all of this. I came in here thinking I would be able to
8 refer to my documentation. Had I known, I would have
9 tried to memorize all these dates.

10 Q When did this meeting take place?

11 A Immediately after that bill was submitted to
12 me from Mower Construction, the first bill for extra
13 work.

14 Q Who submitted the bill?

15 A Mr. Mower handed--or mailed or dropped off to
16 my office a billing.

17 Q So did the meeting take place in your office?

18 A No, I left and took the bill and at my
19 earliest convenience shortly thereafter met with
20 Mr. Craghead, discussed the billing. And that meeting
21 took place on the job site.

22 Q Did you have the authority to pay bills
23 without Mr. Craghead's direct approval?

24 A The process that we went through to pay bills
25 was normally a subcontractor or materials supplier would

1 submit a bill to me. I would photocopy and give a copy
2 to Mr. Craghead. I would collect a number of them over a
3 week or two and total them up, staple them together and
4 give him the request to pay them. And he would go down
5 the list, and if he had a problem with any of it, he
6 would bring it to my attention and that would be dealt
7 with. Once he was satisfied that the billings were
8 correct and all the various things, then he would
9 authorize me to make payment to those people.

10 The bill from Mower for extras was unusual, in
11 that it was billed at a very high rate of pay. It was
12 work that I wasn't aware was being performed. And it was
13 outside the scope of his contract. And so I immediately
14 brought it to the attention of Mr. Craghead.

15 Q So you brought it to the attention of
16 Mr. Craghead?

17 A Uh-huh, yes.

18 Q When you referred to contracts, is there a
19 certain document you are referring to?

20 A I'm referring to this document (indicating.)

21 Q Which has been marked as Exhibit 1 to your
22 deposition?

23 A Yes.

24 Q Now, what makes you say that's a contract?

25 A It's a very standard form that's typically

1 used in the industry. It has an offer at the top, an
2 acceptance at the bottom.

3 Q And does that incorporate the terms of the
4 contract you had with Mr. Mower?

5 A Does this incorporate the terms?

6 Q All of the terms, in your mind, of the
7 contract you had with Mr. Mower?

8 A I believe so, yes.

9 Q Who else performed extras on the job?

10 A What do you mean by extras? Do you mean what
11 subcontractors might have performed extras?

12 Q Well, my understanding is that no work done by
13 Aspen Construction can be considered an extra because of
14 the cost-plus contract. Is that correct?

15 A That's correct.

16 Q And that Mike Mower submitted extras. So
17 there are extras in relation to his contract on the job
18 that you paid for?

19 A Yes, we did pay an invoice--

20 Q Other than those?

21 A --that was submitted for extras.

22 Q Other than those extras, were there any other
23 extras on the job?

24 A Do you mean performed by Mower or by anyone?

25 Q Other than Mower.

1 A Extras performed by anyone other than Mower?

2 Q Correct.

3 A Well, the majority of the work was done with
4 lump sum bids. I think the stone mason, L&B Masonry,
5 charged by the square foot for their stone. I don't
6 believe that they--I don't recall them billing for any
7 extras. The painter was employed at an hourly rate, not
8 on a square foot rate. So extras wouldn't apply to an
9 hourly contract where you are being billed hourly, the
10 amount of time you are there on the job.

11 Q How much was the billing hourly for the
12 painters?

13 A They billed at varying rates, depending on the
14 skill of the individual that was there. The billing rate
15 ranged from \$25 an hour for the lead man, for Mark
16 Strong, down to, oh, in the neighborhood of \$15 an hour.
17 Generally they had four men on the job. Three of them
18 were at \$15 an hour. One was billed at--Mark Strong who
19 was the specialist in graining this wood beam was billed
20 at \$25 an hour.

21 Q Mr. Padan, I'm handing you what will be marked
22 as Exhibit 2 to your deposition.

23 (Exhibit No. 2 was
24 marked for identification.)

25 Q Do you recognize this?

1 A Give me just a minute to read it, please.

2 Q Okay.

3 (Witness reviewed document.)

4 Q Have you ever seen this before, Mr. Padan?

5 A Yes.

6 Q When did you first see it?

7 A I don't recall.

8 Q This document is entitled, "Defendant Aspen
9 Construction's Answer to Complaint." On Page 2, as a
10 Fourth Affirmative Defense you state that, "Plaintiff
11 Mower specifically provided that any alteration from the
12 accepted bid proposal would be done in writing," end
13 quote?

14 A Yes.

15 Q In your work as a general contractor, do you
16 require as a matter of practice that every extra and
17 change order be done in writing?

18 A Yes and no. Depending on my relationship with
19 the subcontractor, if I have a long-standing relationship
20 where a level of trust and understanding has been
21 established, I don't typically require it for minor
22 items, because oftentimes it's more time-consuming than
23 it's worth.

24 Q What are considered minor items?

25 MR. CHAMBERS: He is not through answering.

1 THE WITNESS: Right. Let me finish.

2 Q (BY MS. FALK) Okay.

3 A In the case of Mower Construction or any
4 subcontractor with who I'm new to, if it's the first job
5 or the first few jobs that I have contracted with, it is
6 typical for me to be very cautious about billings, change
7 orders, extras, anything of that nature, and I don't have
8 a policy across the board that I require every single
9 thing to be in writing. But I do require that more
10 frequently with a subcontractor that I'm new to than one
11 I have an established relationship with.

12 Q Did you require that from Mike Mower?

13 A Well, I signed his proposal and accepted it.
14 And as I read it, I understood it to say that there would
15 be no changes to the contract except in writing. That
16 was my understanding when I signed it. And that's
17 what--I assumed we would proceed with that understanding.
18 And I assumed that that was his intent as well, because
19 it was his form provided to me which stated that.

20 Q Did you ever talk to him about it, your
21 assumption?

22 A I did not talk to him about that assumption
23 until after I received the first billing for extras. And
24 upon receiving that billing for extras and looking at it,
25 reviewing it with Mr. Craghead, I then discussed it with

1 Mr. Mower and informed him that no extras would be done.
2 That Mr. Bennett was to cease immediately from doing that
3 type of work for a number of reasons. If you would like
4 to hear them, I'll be happy to elaborate.

5 Q Sure.

6 A Mr. Bennett would typically work long hours.
7 He would be--he would arrive on the job late in the day.
8 Our men would leave the job. Everyone would leave the
9 job at about 5:00 at night and leave. Mr. Bennett would
10 be left there by himself. And I didn't know until I got
11 the first billing that he was claiming that he was
12 working till sometime early in the morning, working all
13 through the night with no supervision, nobody to see what
14 he was doing, see if he was doing things he shouldn't be
15 doing, just no way to control that situation.

16 Q So Mr. Thornton never told you this before you
17 received the bill?

18 A Well, I don't think that Mr. Thornton was
19 necessarily aware of the problem with Mr. Bennett working
20 after he had gone home. Nobody was at the job site.

21 Q What were the problems? Why was it a problem?

22 A The problem was that Mr. Bennett claimed that
23 he was sweeping, that he was doing minor carpentry
24 repairs, a number of things outside of the scope of
25 drywall work which he should not have been doing, we did

1 not want him to do. And first of all, it was causing him
2 to take more time if he was really doing this stuff,
3 doing other things other than drywall. And the job
4 had--was taking a tremendous amount of time because there
5 was only one man there doing the work, Mr. Martin
6 Bennett.

7 So for a variety of reasons, we didn't want
8 him to do any type of extra work. We constantly
9 requested that they get more manpower on the job. None
10 ever showed up. It was a huge delay on the job. We
11 couldn't control him because he would work at night when
12 no one was there.

13 And after receiving the first billing, it was
14 at very high rates of pay that Mr. Craghead was not
15 willing to pay. And so I immediately brought it to Mr.
16 Mower's attention, Bennett, Thornton after my
17 conversation with Craghead and instructed them that that
18 activity was not to continue.

19 Q Now, when did this meeting take place between
20 you, Mower, Bennett, and Thornton?

21 A I don't know that--I don't know that Bennett
22 was at that meeting at the same time. I don't know that
23 we grouped everyone together. But I specifically told
24 each of those individuals. We had a meeting at the house
25 with Mr. Craghead, myself, Mower. I don't recall if

1 Bennett was there at the time. I don't think he was. I
2 think we had a separate conversation with Bennett when he
3 showed up for work. Mr. Thornton then further instructed
4 Mr. Bennett, himself, to not continue doing what he is
5 terming extra work.

6 Q So is it your testimony that until you
7 received your first billing, no one ever told Marty
8 Bennett that he couldn't do extra work?

9 A Well, I can't say what Mower told him or not.
10 My contract was with Mower. I was under no obligation to
11 tell Mower's employees anything. I had a contract and an
12 understanding with Mower. And that was up to Mr. Mower
13 to control his employees. I didn't have any direct
14 knowledge of it until Mower brought in the invoice to me.

15 Q So it's your understanding through this job
16 that your contract was with Mower and Bennett was his
17 employee?

18 A Well, my understanding--I contracted with
19 Mower.

20 Q Right. Beyond that, it was Mower's business.

21 Q So you have stated that there were a variety
22 of reasons that you didn't want Marty to be doing extras,
23 and you have stated some. Are there any others than the
24 ones you have stated, any other reasons?

25 A Well, I guess I should add that he wasn't--he

1 was attempting to do some carpentry work, which I didn't
2 know if he was qualified or not to do.

3 Q What type of work?

4 A I didn't want him doing anything that he
5 wasn't qualified to do.

6 A Well, I don't recall exactly; some minor--he
7 needed some blocks of wood installed and some different
8 things. I mean, that's just not something I want a
9 carpenter doing, not a drywall finisher.

10 Q If Marty had worked during the day, is it your
11 contention that everything he said as extras would have
12 been done by someone else?

13 A Mr. Bennett was told that if he had anything
14 that was inhibiting his work in any way, that he was to
15 immediately go to Mr. Thornton and tell Mr. Thornton that
16 he had a problem, that there was a piece of wood that
17 needed to be installed or something that needed to happen
18 before he could finish the drywall. He was instructed to
19 tell Mr. Thornton and Mr. Thornton would direct the
20 necessary people to get that done.

21 And as I think I have stated elsewhere, it was
22 a rather large home. We had one person there actual
23 drywall finishing in a home that contained--well, that
24 has a square footage floor area of 7,500 square feet,
25 approximately. There was no reason why Mr. Mower--or

1 Mr. Bennett--excuse me--could not have found work in
2 another part of the home and allowed a carpenter to come
3 in for ten minutes to fix or finish an area that he was
4 working on. And he was instructed, he was told that, not
5 to do it.

6 So had he worked during the middle of the day,
7 Mr. Thornton who was on the job eight hours a day every
8 day would have then had the opportunity to stop him from
9 doing that work.

10 Q Who told Mr. Bennett this?

11 A Craghead told him, I told him, and Thornton
12 told him.

13 Q Were you present when Craghead told him?

14 A Yes.

15 Q When did this conversation take place?

16 A Well, we had a conversation immediately after
17 the first billing where we became aware that he was
18 doing this type of work at night and billing for it. And
19 it was within days of receipt of that invoice from Mower
20 that that conversation took place.

21 Q When say "that conversation," is that the
22 conversation between Craghead and Bennett?

23 A Yeah, and myself. I was present.

24 Q So is it your testimony there was one
25 conversation or three conversations?

1 A Well, there--I think this whole issue with the
2 extras, I think there was--I mean, you have people on the
3 job site, myself and Mr. Craghead and Mr. Bennett, at
4 various times with an opportunity to communicate at more
5 than one time. And I don't know how many times that is.

6 Q Did you hear this conversation between
7 Craghead and Bennett?

8 A How many times did I personally hear
9 Mr. Craghead say that to Mr. Bennett?

10 Q Correct.

11 A Well, the one time that I have already told
12 you about.

13 Q And that's the time right after the billing?

14 A Right after the billings. There may have been
15 others. I don't recall specifically.

16 Q Would they have been before or after that
17 conversation that you do recall?

18 A Well, I don't recall specific conversations,
19 but my conclusion would be that they were--any
20 conversations occurred after that, because I don't recall
21 that we were--I recall being surprised at the first
22 billing and not knowing that Mr. Bennett was working late
23 at night and so forth. I'm concluding from that that
24 there wouldn't be any real reason for conversation to
25 have taken place prior to that.

1 Q So you are unaware of any conversations prior
2 to the billing between Bennett and yourself, between
3 Bennett and Craghead, or between Bennett and Thornton
4 concerning his working late at night and doing extras; is
5 that correct?

6 A Yeah, the only thing that I would qualify on
7 that is during the day, there is just numerous
8 conversations. Like I said, Mr. Bennett would show up in
9 the afternoon. So he would be--sometimes he might show
10 up around noon. I don't recall that he was there very
11 often between 8:00 and noon, because he got--probably
12 because he got in the habit of working late and was
13 working till 2:00 in the morning and then he would sleep
14 in in the morning.

15 But during the period of time that he was
16 there probably--well, I do recall myself and Mr. Thornton
17 talking probably before that time and talking to
18 Mr. Bennett and Mr. Bennett wanting to have some items of
19 work done so that he could get his work done. And I
20 recall telling him, "We'll get somebody to do that. You
21 just keep drywalling and we'll put someone on it." That
22 was kind of the extent of those conversations.

23 Q So you had one conversation like that before
24 you received the billing?

25 A Yeah, as I recall, I think there were some

1 minor things that came up along the way where we
2 instructed Mr. Bennett not to do them. We had men there
3 that could do that and for him to just stay concentrated
4 on getting that drywall done.

5 Q What did he say?

6 A Well, as I recall, he complied and said okay.

7 Q And he, in fact, did continue with the
8 drywall?

9 A Apparently after we received the billing, he
10 continued, according to him, he continued to do that type
11 of work when no one was there.

12 Q But he complied? I'm talking about the
13 specific conversations prior to the--

14 A While we were there during the day he would
15 say okay, and Tom would send a carpenter over and fix
16 that little item and he would continue on with his
17 Sheetrock. And it's my understanding that this work was
18 occurring at night after everyone was gone.

19 Q And how did you reach that understanding?

20 A The conversation with Bennett after getting
21 the billing from Mower.

22 Q So you didn't have any idea that that was
23 occurring until you received the billing, that Bennett
24 was working at night?

25 A No, I knew he was working at night.

1 Q You knew he was working at night before you
2 received the billing?

3 A Yeah, doing drywall work is what we assumed.
4 I mean, we would leave at 5:00. He would still be there.
5 So I assume he was there doing drywall work. We are in a
6 bad situation, because Mower would only supply one
7 individual to do a huge home. Anyone else would have had
8 six men in there, but we had one. And he was--you
9 know--we would leave at 5:00 and we would assume that he
10 was there working doing drywall.

11 Q Earlier you talked about Exhibit 1 being a
12 complete contract. I didn't see anything in there on a
13 time performance requirement that it be finished by a
14 certain time.

15 A No, I don't see anything either.

16 Q Was it your understanding that it was to be
17 completed by a certain time?

18 A My understanding was that it would be
19 completed in a reasonable period of time.

20 Q What was a reasonable period of time for you?

21 A My experience on a job of that size would be
22 six weeks, eight weeks maximum.

23 Q Your understanding was that by April 24th, all
24 work would be finished?

25 A That would be--that would be my expectation,

1 my reasonable expectation for a job of that size.

2 Q And did you discuss that with Mr. Mower?

3 A I don't recall.

4 Q What about the number of men on the job? Did
5 you ever discuss that with Mr. Mower before you accepted
6 his proposal?

7 A No, we did not discuss the number of men that
8 would be on the job.

9 Q After the first billing for extras that you
10 received, did Marty's performance change in any way? By
11 Marty, I mean Marty Bennett.

12 A Well, he continued to work nights. So that
13 didn't change. He continued to show up in the afternoons
14 late. So that there was no change there. And I wasn't
15 aware personally that he was performing extra work or in
16 anticipation of getting a bill for extra work, because we
17 had had the conversation with him that he was to stop
18 doing that. That Mr. Craghead was no longer going to
19 authorize any payments for that kind of work. And I
20 didn't see--I mean, that's what I observed.

21 Q Did you ever ask Marty to do anything besides
22 drywall?

23 A Did I personally ask him to do anything
24 besides drywall?

25 Q Correct.

1 A Not to my recollection.

2 Q Is it your contention that every extra asked
3 for by Marty is outside the scope of the contract?

4 A Yes.

5 Q Is it your contention that none of them relate
6 to drywall?

7 A Explain what you mean.

8 Q Is it your contention that none of the extras
9 relate to the performance of drywall?

10 A Yes, that would be accurate.

11 Q In the discussion that you had with Marty
12 before receiving the bill for extras, were there any
13 changes that were made that you related to Marty in the
14 performance of his job? For example, was a room ever
15 drywalled and then a certain change would be made and
16 Marty would have to go back?

17 A Well, I don't know that I recall specific
18 instances. What I do recall in my mind is that in any
19 drywall contract there is a certain amount--any that I
20 have been involved in in building homes, especially a
21 home of this size, there is a certain amount of work,
22 whether it be a dinged wall or somebody knocked a hole in
23 a wall or something like that is typically normally
24 ordinarily included in a contract. And there was some of
25 that. But in my opinion and my understanding, it did not

1 exceed the scope of what I felt like would be reasonably
2 included in the contract under the terms of this contract
3 here (indicating.)

4 Q So is it your understanding that those are not
5 extras?

6 A No, that's what I'm saying. That's my
7 impression of it. As I recall, I don't recall specific
8 instances in what he did. I was not on the job all day
9 long. I was there--it varied widely when I was there and
10 how much I was there. But on an average, it might have
11 averaged out to one hour a day.

12 Q Do you have--

13 A And oftentimes Marty was not there when I was
14 there. I would be there in the morning.

15 Q Do you have a signed copy of Exhibit 1?

16 A Yes.

17 Q In your records?

18 A I believe so.

19 Q In your answer, on Page 2, you have a Fifth
20 Affirmative Defense. It states, "The rate for which the
21 Plaintiff seeks compensation for is excessive in that it
22 is four to seven times the contracted compensation
23 between Mower and the Defendant Bennett," end quote.

24 What was the contracted compensation?

25 A That response is based on information provided

1 to me by Michael Mower. Michael Mower indicated to me
2 that Mr. Bennett was billing him at an hourly rate of \$15
3 an hour and that Mr. Bennett was billing Mr. Craghead at
4 \$30 per hour.

5 MR. CHAMBERS: Do you mean Mower? You said
6 Bennett.

7 THE WITNESS: Bennett was billing Mower.

8 MR. CHAMBERS: What?

9 THE WITNESS: No, Bennett was billing Craghead
10 at \$30 per hour. Bennett was billing Mower at \$15.
11 That's what Mr. Mower stated to me.

12 Q (BY MS. FALK) When did that conversation take
13 place?

14 A After he submitted his first bill for extras,
15 shortly thereafter.

16 Q Was this the same information which you have
17 you told Mr. Mower that no further extras were to be
18 done?

19 A Yes.

20 Q And was this a conversation between you and
21 Mower only, or were others present?

22 A Well, I recall Mr. Craghead having been there,
23 because I recall Mr. Craghead's response to this
24 information.

25 Q So was Mr. Craghead present during this

1 conversation?

2 A Yes.

3 Q Concerning the hourly--

4 A Yes.

5 Q Did Mr. Mower tell Mr. Craghead this or did he
6 tell you the fact that Craghead was being billed \$30 an
7 hour and that he was being billed \$15 an hour?

8 A Well, I think he told us both what
9 Mr. Craghead's response was. He said, "First of all,
10 Mr. Bennett is not to be doing any extras. Secondly, why
11 is he billing, trying to attempt to bill at \$30 an hour
12 to me rather than \$15 an hour, which is what he normally
13 bills?"

14 So because of that, Mr. Craghead realized
15 right then and there that Mr. Bennett was attempting to,
16 in his opinion, Mr. Craghead's opinion, steal money from
17 him. That he perceived him as a wealthy individual and
18 that he was going to bill him at excessive rates for work
19 that he in some cases didn't even perform.

20 Q Do you believe \$30 an hour is an excessive
21 rate for drywall?

22 A Yes.

23 Q What is the normal rate for drywall?

24 A In the capacity of a subcontractor or an
25 employee? Those two rates would be widely different. If

1 I contracted with a person who held a valid
2 subcontractor's license and had paid all the necessary
3 fees, had all of the insurances and had all of the
4 overhead that goes along with running and operating a
5 business in that manner, in my opinion, a reasonable rate
6 of pay would be maybe \$20 per hour for somebody that's
7 licensed to do that type of business.

8 If I were to hire someone as an employee to do
9 that, just based on my own experience of being an
10 employer and hiring tradesmen, I would--I could contract
11 to have that work done for \$10 to \$12 per hour.

12 Q So in your affirmative defense when you are
13 saying it's four to seven times the contracted
14 compensation between Mower and Defendant Bennett--

15 A Maybe I should clarify that for you.

16 Q Was that verbally?

17 A Well, what I intended to mean in that is
18 Mr. Bennett--I had information that Mr. Bennett had not
19 done the work. I mean, if you look at the work, he
20 submitted a time sheet of work that he had done. And I
21 knew personally that he had not done that work.

22 Q You personally knew he had not done that?

23 A I personally knew that he had not done the
24 work.

25 Q How did you personally know that he had not

1 done that work?

2 A Because I knew that that was done by another
3 individual that worked for me, and I had had watched the
4 work be done by that other individual that day. And Mr.
5 Bennett wrote it down in his billing sheet that he had
6 done that work that night. And I know that in several
7 instances that he lied about that. That was not
8 accurate. And the four to seven times was me working
9 backwards, because he would lie and start throwing in
10 stuff he hadn't even done, plus doing it at a high rate
11 of pay.

12 Q So by saying four to seven, you are not saying
13 that you could get this contracted for seven times less
14 than \$30 an hour?

15 A No.

16 Q Or in other words, less than--

17 A No, that was a combination of him saying he
18 did a bunch of work that he didn't do and at a high rate
19 of pay.

20 Q So the lowest you could get if you had an
21 employee would be \$10 to \$12 to do drywall? Is that your
22 testimony?

23 A For a competent drywaller, yes.

24 Q What steps did you take to ensure that
25 Mr. Mower was a subcontractor?

1 A To ensure that he was a subcontractor?

2 Q Yes.

3 A That was left to Connie Hazzard. She was to
4 maintain a file, check on their insurance. Normally our
5 requirement across the board with anyone is that we call
6 Workmen's Compensation and have them send us a copy of
7 their Workmen's Compensation policy that arrives in the
8 mail. And the big reason for that is that if they don't
9 have--they don't have that kind of coverage, then I wind
10 up being liable for it and potentially I end up paying
11 for it three years down the road.

12 Q What about contractor's license? What steps
13 did you take to ensure that Mike Mower had a
14 subcontractor's license?

15 A Personally outside of asking him directly what
16 license he had, I didn't do anything personally. That
17 was left to my office manager to verify what license he
18 might have. Whether she did or not, I don't know.

19 Q Did you ever follow up on it?

20 A To verify if he had a license?

21 Q Right.

22 A Did I ever?

23 Q Right.

24 A Well, since this has gone to court, we have
25 learned that he holds a general contractor's license.

1 Q Up until the time that you found out he held
2 general contractor's license, which is after the
3 litigation was filed, did you ever know that he held any
4 type of license before that time? That's a really bad
5 question. If you want me to--

6 A No, that's fine. Other than what he
7 represented to me, I didn't have any--which was that
8 he--he represented to me that he held a drywall specialty
9 license.

10 Q Did you ever ask him for a number,
11 contractor's number?

12 A No, but he--well, it's written on my copy of
13 this. Mine is different than this. Oh, there it is.

14 Q You are referring to--

15 A Yeah, the last page of this document.

16 Q --to Exhibit A?

17 A This is the document that I have, and written
18 on there is the license number.

19 Q So earlier you testified that you considered
20 Exhibit 1 to your deposition the contract between you and
21 Mr. Mower. On looking at Exhibit A to the answer, which
22 is Exhibit 2 to your deposition, do you still believe
23 that is your contract between you and Mower?

24 A Oh, I don't know. Maybe you confused me on
25 that question. You asked me originally if I recognized

1 this document. I said yes, I recognize parts of this.
2 Some of it I don't recognize as being that. And you
3 wouldn't let me refer to any of my documentation to know
4 for certain. Then I believe you asked me if I thought
5 this represented my contract, and I misinterpreted your
6 statement. This is the copy that I have, and this is
7 what I understand is my contract.

8 MR. CHAMBERS: By this--

9 THE WITNESS: Now I can see--

10 MR. CHAMBERS: Hold on. By "this," you are
11 referring to Exhibit A attached to the answer to the
12 complaint?

13 THE WITNESS: Yes.

14 Q (BY MS. FALK) So that's your contract?

15 A Well, I knew it looked like what I thought I
16 had, but you have now provided me a copy, and now I
17 recognize this to be the one that I have in my
18 possession.

19 Q Whose signature is that on Exhibit A?

20 A Exhibit A, at the very bottom?

21 Q Yes.

22 A That's mine. That says F. Lynn Padan.

23 Q Mr. Padan, did there come a time when you told
24 Mr. Mower that the beams had to be covered after he had
25 begun work?

1 A Yes.

2 Q Do you recall the circumstances surrounding
3 that conversation?

4 A Yes.

5 Q Could you tell those to me?

6 A I went up to the job the first day they
7 started work after the drywall had been delivered and
8 stocked into the job and his drywall hangers arrived on
9 the job to attach the drywall. I was there the first
10 day. They had worked about--oh, I don't know, maybe a
11 couple of hours, starting in a room that had painted
12 beams in it when I arrived on the job. And I walked in
13 to the room and the hangers who were, my understanding,
14 were subcontracted by Mower, were not hourly employees,
15 were hanging the drywall on the ceiling. And these are
16 exposed beams that hang down below the ceiling a distance
17 of about 12 inches. So the Sheetrock has to be fitted up
18 inside there.

19 The first thing that I noticed when I walked
20 in to the room were dimensions that had been written on
21 the beam with a pencil, and the individual hanging the
22 Sheetrock was up on the scaffolding and was writing the
23 dimensions down after he would measure the piece to be
24 cut. He would write the dimensions on the side of the
25 beam.

1 So I immediately upon seeing that realized
2 that the beam was being damaged. That he was writing on
3 a finished product with a pencil, construction pencil.
4 And I told him to stop immediately and informed him and
5 asked him, I said, "Didn't Mr. Mower tell you that these
6 beams have to be covered and protected and this is
7 finished product?" And he said, "No, nobody told me."
8 And I said, "Well, you have got to cover and protect
9 those beams."

10 I recall calling Mr. Mower and relating the
11 incident to him and telling him that that was totally
12 unacceptable. That I was upset that he hadn't
13 communicated with his subcontractors that he had hired
14 what our specific instructions were. And Mr. Mower came
15 up to the job and said, "I'll take care of it. I'll get
16 the beams covered."

17 And he purchased--he left the job and
18 purchased masking tape and I believe a heavy construction
19 type paper and came up and covered and taped and covered
20 I believe the majority of the beams that day or the next
21 day.

22 The next day when we arrived on the job site,
23 the day after he had taped and covered them with this
24 paper, I walked in the door of the building and most of
25 the paper had pulled loose, I guess under the weight of

1 the paper. Maybe he bought the wrong type of masking
2 tape or whatever. But the tape didn't adhere very well
3 to the surface, and the paper had fallen down in most
4 cases just one-half, so we had a sheet of paper hanging
5 from the ceiling with the beam exposed.

6 So I called Mr. Mower again and I said, "You
7 used the wrong tape or whatever. You need to get up here
8 and change this." And he came up at that point and said,
9 "Well, I don't think that I'm going to be able to get
10 these covered adequately," or he wasn't willing to invest
11 the time and the effort required into covering the beams
12 adequately. He took the paper down and took it off and
13 threw it away.

14 Q So he said, "I don't think," or, "I'm not
15 willing to put the time in"? You started on the
16 conversation he told you and then--

17 A Would you like me to elaborate on the
18 conversation?

19 Q Sure.

20 A Okay, I guess I'm trying to think maybe a
21 little bit of what was going through his mind. But he
22 looked at it with great disgust that all of his work that
23 he had done the day before was laying on the floor or
24 hanging loose on the ceiling and was frustrated by that.
25 And he said he made the decision in his mind--

1 Q He said that he made the decision?

2 A Yeah, well, we were sitting there having a
3 conversation. And he said, "This isn't going to work.
4 This is going to be too much trouble. I don't know that
5 I'm going to be able to do this at a reasonable cost."
6 And he decided that what he would do is instruct his men
7 to be very careful in the application of the Sheetrock,
8 and that if any dust or drywall materials were to get on
9 the surface of beams, that he would just sponge them down
10 when he was done. I voiced some objection to that.

11 Q What did you say?

12 A I said, "Are you sure that's going to work?
13 Do you think that you will get anything on the beams? If
14 you do, are you sure that you can remove it from the
15 surface?" He was confident that he could do so. And he
16 wanted to proceed in that fashion. And he took
17 responsibility for the beams.

18 I said to him, "Whatever you do, whatever
19 damage you do to the beams that occurs, that's your
20 responsibility." And he was very confident that by being
21 careful and in the application and by maybe sponging it
22 down when he was done with a wet sponge, just to remove
23 surface dust or whatever, that he could go ahead and
24 proceed and in effect save himself the cost of having to
25 properly cover and protect him on the front end of the

1 job.

2 Now, I viewed him at that point in time as a
3 drywall contractor, a specialist with knowledge of the
4 materials and so forth. And I took him at his word, that
5 he knew what he was doing and that he could protect those
6 beams and install it in a fashion that didn't create
7 damage. So he proceeded from that point forward without
8 any paper or plastic covering over the beams.

9 Q And you accepted that decision?

10 A I did, based on his representations that he
11 took responsibility for the beams and that there would be
12 no damage to them.

13 Q Were the beams ever damaged?

14 A Yes.

15 Q When was that?

16 A The beams were damaged at the--he allowed the
17 beams to remain unprotected until the completion of his
18 job.

19 May I take a break to use the bathroom?

20 Q Do you want to finish what you were saying
21 beforehand, or do you want her to read it back?

22 A I would rather--I need to use the bathroom and
23 it's kind of--I can't think.

24 (A short recess was taken.)

25 MS. FALK: We are on the record again in Mower

1 versus Craghead, Lynn Padan, Aspen Construction, and
2 others. Mr. Padan has just mentioned to me that he would
3 prefer to end this portion of his deposition as soon as
4 possible, and we'll continue this deposition at a later
5 date.

6 I have spoken with Mr. Chambers, and it's my
7 understanding, Mr. Chambers, that we agree to continue
8 this deposition once I have had an opportunity to review
9 the documents?

10 MR. CHAMBERS: Yes.

11 MS. FALK: I would, in addition to the
12 documents which you have here for me to review today, I
13 also want documents mentioned in the deposition, the
14 plans, any plans, architectural plans. I want copies of
15 any change orders. I want copies of any extra work,
16 documentation done by any contractor or subcontractor on
17 the job. I also want documents concerning Craghead, the
18 job that Jim Hansen may have. I want all employment
19 records and a list of all employees of Aspen Construction
20 during the course of the Craghead residence construction.

21 Q (BY MS. FALK) Mr. Padan, are there any other
22 documents you can think of which you do not have ready
23 for me to produce today and which you have not mentioned
24 at this point which concern the Craghead residence?

25 A I don't think so.

1 Q You don't think that a review of the boxes
2 that you have would reveal any other documents those we
3 have spoken about on the record today other than--

4 A Not to my knowledge. I don't think so.

5 Q One of the requests that I failed to reiterate
6 right now are any and all notes you have of any
7 conversations between you, Mr. Bennett, Mr. Mower,
8 Mr. Craghead, Mr. Thornton, and other subcontractors or
9 contractors or people who performed labor or supplied
10 materials to the job.

11 A Well, I will look again for my '92 day
12 planner.

13 Q I have two quick questions before we continue.
14 Mr. Padan, is it your contention that if you
15 had known that Mike Mower was not a subcontractor but a
16 general contractor, you would not have hired him for the
17 job?

18 A Absolutely.

19 Q And is it your contention that you did not
20 find out that Mr. Mower was a general contractor until
21 after he filed a lien?

22 A Yes.

23 Q Is it your testimony that you thought, up
24 until that point, that he was a subcontractor only of
25 drywall and that he held no general contractor's license?

1 A Mike Mower had a conversation with me at one
2 point that he was going to bid on a residence to be
3 remodeled. This was at the end, right toward the end of
4 his contract with me. That's the only knowledge I had at
5 that time. And I don't recall whether--if at that time
6 he stated he held a general contractor's license. I
7 don't remember any conversations as to the status of his
8 licenses that he might have held. But he did mention to
9 me about the time that he was finishing the contract that
10 he was bidding on a remodel on a residence and asked me
11 some questions about that process. He left me with the
12 impression that he knew very little about that type of
13 work. He was wanting advice and help from me to do this
14 remodel work. But yet, nothing ever was mentioned to
15 licenses that I recall.

16 Q Did you offer him advice or help?

17 A I recall that I did, a limited amount. I
18 believe that conversation took place in my office.

19 Q Did you talk to him at all about hiring
20 subcontractors?

21 A I don't recall.

22 Q How many jobs have you done, you as Aspen
23 Construction, since its inception?

24 A I don't know what that number would be.

25 Q Would it be more than five?

1 A Well, I build homes, and I don't build very
2 many; probably more than five, maybe less than ten.

3 Q Do you have documentation on every home you
4 have built?

5 A No.

6 Q Could you provide the name of the
7 subcontractors on every home you have built?

8 A You mean by memory?

9 Q Or through your documentation.

10 A No.

11 Q No?

12 A Not to my knowledge. Again, I don't know what
13 documentation I may or may not have.

14 Q Could you provide or can you provide me with
15 the names of every drywall subcontractor you have ever
16 had?

17 A I could give you a list. I don't know if it
18 would be 100 percent.

19 Q You could sit down and do that?

20 A Just through memory. If you requested that I
21 remember every drywall contractor I have ever contracted
22 with over some period of time, I could probably recollect
23 the majority of them.

24 Q Who made the decision to repaint the beams?

25 A Mr. Craghead.

1 Q Why didn't you make that decision?

2 A I didn't make those types of decisions
3 typically. I supervised and scheduled the job and
4 provided what expertise I had to lend to the project in
5 terms of familiarity with the construction process, the
6 trades, and the types of things that needed to occur and
7 when. I worked very closely with Mr. Craghead and was
8 very involved, he was very involved in the project. He
9 was on the job a much greater amount of time than I was.
10 And because of his involvement and his interest in the
11 project and so forth, he was very actively involved in
12 the payment process. I would submit the bills to him,
13 and he generally approved almost everything that was
14 discussed. And he said, "Yes, let's do that," or, "No,
15 let's not do that."

16 In the case of the beams, he came in, looked
17 at the beams, had the painter look at the beams.

18 Q When you say "painter," are you saying Mark
19 Strong?

20 A That's correct. Mark Strong came back in and
21 looked at the beams. And in the painter's opinion, the
22 beams had to be repainted. My opinion at that time was
23 that they needed to be repainted. And Mr. Craghead's
24 opinion was that they needed to be repainted.
25 Mr. Craghead instructed the painter at that time to give

1 him a bid to repaint the beams inside the house.

2 Q Were there any other areas other than drywall
3 that needed to be repainted other than the problems with
4 the drywall?

5 A Do you mean problems with the beam?

6 Q Were there any other portions of any beams
7 that needed to be repainted other than those caused by
8 the drywall?

9 A Well, we went through and looked at every beam
10 in the house. They had not damaged every single beam in
11 the house. I would estimate that they had damaged about
12 80 percent of the beams in the house. Does that answer
13 your question?

14 Q No. My question was, were there other beams
15 damaged, was there damage done to the beams other than
16 the damage done by drywallers?

17 A You mean by other trades or something?

18 Q Right.

19 A There was a couple of instances in the
20 doorways where there was heavy traffic. There was one
21 doorway in particular that had--well, really we are
22 talking about beams. It's post end beams. It's kind of
23 a post beam construction. And there is one entry door
24 into the residence that has posts that come down on both
25 sides of it. And because of the traffic through that

1 area, those--the inside edges of that had been scuffed
2 and scraped on the new painting. And we had--that
3 had--we had noticed that somewhere along the line while
4 all this was going on. And I had conversations with
5 Mower about it. Because he asked me, he said, "Well,
6 what are you going to do about that section that the
7 other trades have damaged?" And we had gotten with
8 the--with Mr. Craghead and with the architect, and the
9 architect was--had designed and was suggesting that we
10 take a trim molding, kind of like a door stop around the
11 inside of the door that matched the door itself to cover
12 that damage so we would be able to cover that and take
13 care of that problem.

14 Q Why did you not do that?

15 A Why did we not do that?

16 Q Yes.

17 A Because when the beams were repainted, it was
18 not necessary after the beams were repainted.

19 Q Was that the only place in which the beams
20 were damaged due to construction or structural changes--

21 A My recollection--

22 Q --that the paint was different?

23 A My recollection of it is that that particular
24 instance, I recall it as being--I don't recall any other
25 specific areas. I do recall that one, because of the

1 discussion surrounding that. But in general, my
2 recollection is that that was the main one that didn't
3 apply to Mower. There may or may not have been minor
4 areas somewhere else. But I don't recall those.

5 Q Did you ever try to match the paint?

6 A Yes.

7 Q Why didn't you just repaint the damaged beams?

8 A The painter spent a great deal of time trying
9 to match the paint. I can't tell you why he was having
10 difficulty or what happened. I don't recall at this
11 time. But he worked for about two full days, his crew,
12 mixing and matching and so forth, and Mr. Craghead paid
13 them for that time, which was not being charged as an
14 offset to Mower and has not been. And they painted
15 several samples and tried to get them to match and just
16 could not match it. And because this building is a wide,
17 open space with--you know--as I mentioned earlier, the
18 bulk of this beam work is in the living room, which is
19 one big room. It wouldn't suffice to have a different
20 color--you know--on some of the beams. Although if you
21 were to look at the beams, you could find damage to
22 almost any beam.

23 So at some places on it, something significant
24 to the eye that you would notice, and if necessary it
25 necessitated that every beam really did need to be

1 regained and glazed. And the problem that we
2 encountered was that we couldn't match it exactly. And
3 we couldn't get it to look--you know--to where you
4 couldn't notice it with your eye.

5 We tried for two full days to do that. We
6 tried to mitigate the problem and were unsuccessful. And
7 the painter just said, "I just cannot match it. I need
8 to repaint the beams." And Mr. Craghead asked him for a
9 bid at that time, and he gave it to him.

10 And we discussed it with Mower as well. And
11 Mr. Mower suggested that he have a friend of his come
12 after he heard that the bid was \$4,400 to do it. He
13 suggested that he have a friend of his come in and paint
14 it for a cheaper price, because that was--at that point
15 in time, Mr. Mower was willing to consider an offset to
16 his contract and was attempting to negotiate the cost of
17 repainting the beams lower which--and that cost would be
18 borne by him.

19 I didn't participate too much in that. He
20 talked to Mr. Craghead directly and said, "I would like
21 to have a friend of mine come in and try and do this
22 work." Mr. Craghead explained to him that this just
23 wasn't standard painting.

24 Q So now are you overhearing this conversation
25 or--

1 A Yes.

2 Q --or is that what Mr. Craghead told you?

3 A I'm overhearing it.

4 Q Who else is present at this conversation?

5 Just the three of you?

6 A I think it was just the three of us, yes. And
7 I'm listening while they discuss this, because--

8 Q Was it a friendly conversation?

9 A It was friendly.

10 Q No voices were raised?

11 A No, not at all, not in this conversation. We
12 were there, and I was really trying to serve everybody's
13 interests and be a mediator. Mr. Craghead had looked to
14 me for advice, "What do you think?" and so forth.
15 Everything was okay temper-wise. There was no problem.

16 Q Did Mr. Craghead agree to have this other
17 individual look at the house and make a bid?

18 A No, Mr. Craghead said that this was a very
19 special glazing, graining process, and that he had
20 searched through a number of painting contractors to find
21 somebody that was competent and capable of doing this
22 type of work and had found this one individual and had
23 paid that approximate price the first time. And he
24 didn't see any reason why he should have to settle for
25 anything less than what he had the first time around and

1 said that he would prefer to have the same painter come
2 back in and redo it in the same way as the first time.

3 Q Is it your testimony that other than this one
4 door post area, that no other beam would have had to be
5 repainted?

6 A No, that's not my testimony. I think Tom
7 Thornton would be a better person to ask that question.

8 Q Why?

9 A Because he is there all day every day and
10 would have a better recollection of it than I do.

11 Q So did you notice any other areas other than
12 the beam?

13 A As I said, I specifically recall that entry
14 door.

15 Q What about over windows?

16 A It had been a concern of mine.

17 Q Do you recall any difference over windows?

18 A Over windows?

19 Q Yes.

20 A Well, there is only--the beams or posts that
21 would be over windows would be--well, I can't say that.
22 I guess there are some over windows.

23 Q Can you recall specifically?

24 A See, where damage might have occurred would be
25 low to the ground where other trades were trafficking

1 through.

2 Q What about moving down walls or changing
3 walls? Were any beams ever affected?

4 A No, I really don't believe that there was a
5 problem, once the drywall started, that there was a
6 problem with any of the beams that had been painted. We
7 had exercised extreme care in protecting them to that
8 point. And I wasn't aware of any damage that would be
9 needing repair at the time the drywall started. But as I
10 pointed out, that one doorway I believe did get nicked
11 during the process, and Mr. Thornton might be able to
12 tell you that a few other places were nicked. I don't
13 know.

14 Q Is it your understanding that Mr. Craghead
15 would have left these nicks different colors than beams
16 without repainting them if the drywall had been able to
17 cover the 80 percent?

18 A Well, had Mr. Mower--I don't know. I don't
19 think I can answer that question. The only thing I can
20 say is had Mr. Mower covered the beams, as requested,
21 that damage wouldn't have occurred.

22 Q But they would be repainted anyway? You don't
23 know?

24 A I didn't actually finish when we took a break
25 earlier. Just to complete on that, the beam work, when

1 Mr. Mower proceeded with the drywalling, after the
2 drywall was hung, Mr. Bennett came in and did his
3 plastering work, which is the drywall plaster finish and
4 wall and ceiling texture. At the conclusion of his work
5 and essentially the completion of Mower's contract, then
6 came the issue of, "Okay, you guys have got to clean the
7 beams off." And apparently Mr. Bennett arranged with
8 Mower to clean the beams, to undertake that
9 responsibility.

10 Q And how do you know this?

11 A Well, I know this, because the next day when I
12 got to the job, what I saw going on. Mr. Bennett had
13 brought his son and two of his son's friends with him to
14 the job that day. And I arrived--well, I don't know the
15 exact timing, but I arrived on the job. I don't know if
16 they had been there a day or two days or what. But they
17 had accomplished the cleaning on the jobs--or on the
18 beams almost entirely when I arrived on the job site.
19 And what I witnessed was three boys on a scaffolding,
20 Mr. Bennett's son and his two friends, with buckets of
21 soapy water and stiff bristle brushes scrubbing the
22 beams.

23 What they had done, and it was very obvious
24 from the ground looking up, is as they had moved along,
25 they had scrubbed the graining, glazing right off of the

1 beams and had done that through almost the entire house.
2 And that's where the problem started. I think that
3 they--had they used a different method to clean them,
4 they may have been successful in just removing the
5 drywall plaster that, if you took a wet sponge, you might
6 have been able to wipe that off. But using stiff bristle
7 brushes, they scrubbed right through the finish and took
8 it right off.

9 Q What is your basis for this statement? What
10 is your knowledge of this? Just your experience as a
11 contractor?

12 A That my knowledge of--well, I witnessed the
13 process they were using.

14 Q Right. But your testimony concerning what
15 would have occurred had they used a different--

16 A Just simply my best guess from experience in
17 the business. Drywall mud is water soluble.

18 Q What about the finish, plaster finish? Is
19 that also water soluble?

20 A The plaster finish?

21 Q When you do the finish work, the swirls on
22 ceilings.

23 A Yes, it's water soluble. But if you get
24 that--if you get some drywall compound on your carpet,
25 you can usually just get it right up with a wet sponge or

1 something.

2 Q What about the paint? Do you know what type
3 of paint that was?

4 A I really don't know much about the painting at
5 all.

6 Q Are you finished with that? I didn't mean to
7 cut you off.

8 A Yes.

9 Q Just one other question, Mr. Padan. In terms
10 of authority on the job, what relationship did Tom
11 Thornton have to you?

12 A Tom Thornton was an employee, hourly employee.

13 Q What was his hourly rate?

14 A I believe at that time it was \$12 per hour.
15 We referred to him as the foreman of plaster finish.
16 Because Mr. Thornton in my absence would receive
17 deliveries. If the subcontractor needed power cords or
18 needed power or needed water or so forth, he was
19 somewhat--he was there to help in those types of areas.
20 But he was--primarily his job was with his carpentry
21 work. He was a carpenter.

22 Q Does he have a subcontractor's license?

23 A Not to my knowledge.

24 Q Was he an employee of yours before you began
25 at the Craghead residence?

1 A Yes.

2 Q Is he still an employee?

3 A Yes.

4 Q Did he have authority to authorize extra work
5 and change orders?

6 A No.

7 Q Who had the authority to authorize extra work?

8 A That rested with Mr. Craghead who would
9 communicate it to me and I would communicate it to the
10 subcontractor.

11 Q What if there was something on the job that
12 needed to be done right away and neither you nor Craghead
13 was there? What was the person to do then?

14 A Well, I don't believe that that occurred. I
15 have a Cellular phone. Mr. Craghead has a Cellular
16 phone. And we were both very much available.
17 Mr. Thornton never authorized the expenditure of any
18 money in any way. He was simply there to facilitate
19 construction, and that I think was very clear with the
20 people working there. He was a working carpenter with a
21 tool belt on. He didn't have the appearance of that kind
22 of authority.

23 Q So is it your testimony that only you and
24 Mr. Craghead had the authority to authorize any change
25 orders or extra work?

1 A Yes.

2 MS. FALK: I have no further questions at this
3 time. This deposition will be continued upon the receipt
4 of the documents requested by Plaintiff from Defendant
5 Padan and Defendant Craghead.

6 MR. CHAMBERS: I have a few questions that I
7 want to put on the record right now.

8 THE WITNESS: May I add something to the last
9 statement I made?

10 Q (BY MS. FALK) Sure.

11 A In terms of authority for authorizing extras,
12 if I received authorization from Craghead, I might from
13 time to time communicate that to Thornton and have him
14 relate a message to somebody. But I don't recall if that
15 ever specifically occurred.

16 But in effect, he would be--if that occurred,
17 he would be saying, "I talked to Lynn. Lynn said to go
18 ahead and do the work." But I don't recall any
19 specific--at this time I don't recall any specific
20 instances where that occurred.

21 Q Are there any documents which would reflect
22 your recollection--

23 A No.

24 Q --refresh your recollection?

25 A No.

EXAMINATION

BY MR. CHAMBERS:

Q You indicated that the construction of the homes that you have been involved in, anywhere between five and ten, what is the average size job that you have been involved with?

A In terms of square footage size or dollar value?

Q Cost, wholesale cost, just something to--

A Oh, actual contracted amount, average maybe \$500,000.

Q Is it fair to say that that's a fairly good-sized home?

A Yes.

Q Just to re-emphasize, did you have an opportunity to read and go over the requests for production of documents?

A Yes.

Q And the documents that you brought with you today, did those include all the documents that you thought were responsive to those requests?

A Yes.

Q You indicated to counsel that had Mr. Mower indicated that he was a general contractor rather than a specialty licensed contractor, you would not have hired

1 him. What was your reasoning or what was your logic
2 behind that?

3 A My experience in construction has been
4 unlicensed individuals are always a risk and generally a
5 problem. In an effort to eliminate those type of
6 problems, I have come to rely heavily on the licensing of
7 individuals as a quick way of checking and ensuring that
8 an individual has had the requisite experience to perform
9 that type of work, has the necessary financial statements
10 that are required by the State, has taken a written test.

11 I have gone through this myself in three
12 states and twice in the state of Utah, so I'm very
13 familiar with the process and what you have to go through
14 to get the license. Generally those people that don't
15 bother with that process or don't have the experience,
16 qualifications to do it, are a problem on the job, if you
17 accidentally contract with one of them, and they tend to
18 be fly by night contractors.

19 So in order to avoid problems, and I'm
20 generally on jobs of good-sized homes where we try to
21 contract with the best people. We are not taking
22 necessarily the low bid every time, but we are weighing a
23 number of factors including their experience and their
24 expertise and trying to avoid problems down the road in
25 doing so. And the homeowners are much more satisfied if

1 there are no problems and the work is done on time and
2 done in a professional-like manner. And the license,
3 just knowing that an individual has that specialty
4 license to perform that trade can eliminate a lot of
5 headaches down the road. And so as a result, I have come
6 to rely on that very heavily in my selection of
7 subcontractors.

8 Q Did you have any understanding of any
9 limitations on a general's license at that time?

10 A My understanding of a general contractor's
11 license at that time relates back to a conversation I had
12 with an investigator at the State a number of years ago
13 who informed me that a general contractor's license
14 allows you to contract to do any job that requires three
15 or more trades. And that was the law that was in effect
16 at that time. And that for a general contractor such as
17 myself, the question arose in conversation with whether
18 or not I could subcontract with my general contractor's
19 license to do framing solely as a single trade on a home,
20 say, for another general contractor, and I was told that
21 I could not. That my general contractor license allowed
22 me to supervise other trades who were licensed with
23 specialty licenses. And if I wanted the contract to do
24 framing, for example, I would be required to obtain a
25 framing subcontractor's license.

1 So that was my understanding of the way the
2 law, the license law worked at that time.

3 Q Were there outside beams as well as the inside
4 beams to the home?

5 A Yes.

6 Q Were the stucco subcontractors instructed to
7 cover the outside beams to prevent damage?

8 A Yes.

9 Q Did they do so?

10 A Yes.

11 Q Was there any damage done to the painting on
12 the outside beams?

13 A None.

14 Q In relationship to Exhibit A which is attached
15 to Exhibit 2 of this deposition on that particular
16 exhibit, does it authorize Mr. Mower to perform any
17 carpentry work?

18 A I don't believe it authorizes him to do any of
19 that type of work.

20 Q Does it authorize him to do any electrical or
21 plumbing work?

22 A I don't believe it authorizes him to do that
23 type of work.

24 Q And had he wanted to do any carpentry work,
25 would you have required of him a change order?

1 A If he had wanted to do carpentry work, we
2 would have had to have discussed his ability and
3 competence to perform that type of work. And had I
4 chosen to contract with him and he demonstrated that he
5 was licensed and capable of doing it, I would have signed
6 a contract with him to perform specifically carpentry
7 work.

8 Q Do you recall the invoices that were submitted
9 to you by Mr. Mower and Mr. Bennett in relationship to
10 this job?

11 A In general, I recall them.

12 Q Would it be a fair characterization to say
13 that the extras which are basically the subject of this
14 litigation were not billed until the end of the
15 contract?

16 A Repeat that. The extras that were not what?

17 Q That are the subject of this litigation
18 were not invoiced to you until the end, until the very
19 end?

20 A That's correct.

21 Q Is that one of the reasons why you were
22 unaware that there was a problem with the extras?

23 A Yes.

24 MR. CHAMBERS: That's all I have.

25 MS. FALK: I have some follow-up questions.

1 FURTHER EXAMINATION

2 BY MS. FALK:

3 Q What was the name of the investigator with
4 whom you spoke?

5 A I don't recall.

6 Q When did this conversation take place?

7 A Oh, this was over five years ago.

8 Q Was this conversation before you started Aspen
9 Construction?10 A I think I had that conversation when I had
11 Aspen Property Development.12 Q Who was the plastering subcontractor who did
13 the outside beams?

14 A Utah Plaster Systems.

15 Q Do you have contracts with them?

16 A I believe I do.

17 Q Do you have a proposal?

18 A A written proposal?

19 Q Yes.

20 A That was not a part of the contract?

21 Q Correct.

22 A I don't recall.

23 Q What is his subcontractor's number?

24 A License number?

25 Q License number.

1 A I don't recall.

2 Q When did you determine he had a
3 subcontractor's license?

4 A At the time we hired him. Again, Constance
5 Hazzard verified that information for us in our office.

6 Q Did Constance tell you that she had verified
7 that information?

8 A The process that we went through is if
9 somebody--I would forward the information to her that I
10 intended to contract with a particular subcontractor.
11 She would then take that information and do the necessary
12 verifications.

13 Q Right.

14 A If she uncovered a problem with that, she
15 would normally consult with the subcontractor first. If
16 there continued to be a problem where I should not want
17 to contract with them, she was--I was expected that she
18 would--I expected that she would notify me of that.

19 Q How did she notify you?

20 A She would just verbally tell me. She would
21 say, "XYZ Contracting doesn't appear to be licensed."
22 And I would then contact the subcontractor myself, which
23 happened on a number of occasions and has over the years,
24 and I would ask them about the status of their license.
25 In some cases, the license has--they have had a license

1 under a different name or a different spelling or
2 something, and we resolved it in other cases. They did
3 not have a license. They weren't employed.

4 But that was left to her. If she brought it
5 to my attention, I dealt with it. If she did not bring
6 it to my attention, then I assumed that they had
7 been--they were duly licensed and I would go ahead and
8 contract with them.

9 Q Did the plasterers begin before or after the
10 dry wall?

11 MR. CHAMBERS: Outside or inside?

12 THE WITNESS: Well, outside stucco plastering?

13 Q (BY MS. FALK) Yes, if you recall.

14 A I'm sorry, I can't recall. It may have been
15 concurrent.

16 Q The documents that you are producing today, do
17 they contain documents concerning the plaster
18 subcontractor?

19 A No.

20 Q Will you search your records and provide me
21 with those documents?

22 A Yes.

23 Q We have mentioned the subcontractors. I have
24 asked you for any and all names you can remember of
25 subcontractors. Did you have a plumber subcontractor?

1 A I believe we did. I don't recall exactly. We
2 have in the past employed licensed journeymen, plumbers
3 on our payroll, and have done some limited plumbing work
4 with our own employees. I don't recall if--on the
5 Craghead residence the plumbing work was relatively
6 minor. I don't know who accomplished that at this time.

7 Q How many employees do you have right now?

8 A Three.

9 Q Who are they?

10 A Tom Thornton, Vaughn Fuelner, and Bill
11 Krausert.

12 Q Can you spell Bill's last name?

13 A K-r-a-u-s-e-r-t.

14 Q What work are they performing for you at this
15 point?

16 A I am constructing a home in Jeremy Ranch, and
17 those three individuals are working on that job doing
18 carpentry work mainly.

19 Q Who are the other workers on that job? Who
20 are the subcontractors?

21 A There is quite a few.

22 Q I would like a list of all of them in addition
23 to their subcontractor's licenses.

24 A A written list?

25 Q Yes.

1 A If you can name any right now, that would be
2 great. If you don't recall any names--

3 A I can name several for you right now.

4 Q Okay.

5 A The carpet is being installed by the Carpet
6 Giant in Salt Lake City. The countertop--excuse me--the
7 kitchen cabinets were manufactured and installed by
8 Pierce Cabinets of Heber City. The tile work in the job,
9 in the home, is being done by--I can't pronounce his
10 name--you don't mind if I look at this, do you?

11 Q That's fine. Is that your computer day
12 planner?

13 A It's just a telephone directory, name and
14 phone numbers. It's Lopatriello, L-o-p-a-t-r-i-e-l-l-o,
15 Bill Lopatriello.

16 Q Did you subcontract with all of these persons,
17 or were these people engaged by the owner?

18 A No, these were--on this job, everything was
19 contracted with me.

20 Q Who did the tile work for the Craghead
21 residence?

22 A Two different tile layers. One was contracted
23 by Mr. Craghead, and I know that he is no longer in
24 business. That was the reason why there was--we brought
25 in a second one. I don't know his name.

1 Q Who was the second?

2 A We had Skyline Tile of Salt Lake City.

3 Q And who performed the kitchen work, cabinet
4 work in the Craghead residence?

5 A In Craghead?

6 Q Yes.

7 A The cabinetry was installed by Teerlink
8 Cabinets, T-e-e-r-l-i-n-k, of Salt Lake City.

9 Q Mr. Padan--

10 A There were a number of subcontractors on the
11 job that might come to mind. I can give you a list.

12 Q I would like a list of all the subcontractors.
13 We have asked for that in our interrogatories which we
14 served on your counsel in March of '94, and we would like
15 a complete list of that, now that you have had a chance
16 to go through and have your memory refreshed.

17 A Okay.

18 MS. FALK: I have no further questions.

19 (The deposition was
20 adjourned at 1:10 p.m.)

21 * * *

22

23

24

25

C E R T I F I C A T E

STATE OF _____)
 : ss.
 COUNTY OF _____)

I HEREBY CERTIFY that I have read the foregoing testimony consisting of 134 pages, numbered from 3 through 137, inclusive, and the same is a true and correct transcription of said testimony with the exception of the corrections I have listed below in ink, giving my reasons therefor.

1. Page _____	Line _____	Correction _____	Reason _____
2. Page _____	Line _____	Correction _____	Reason _____
3. Page _____	Line _____	Correction _____	Reason _____
4. Page _____	Line _____	Correction _____	Reason _____
5. Page _____	Line _____	Correction _____	Reason _____
6. Page _____	Line _____	Correction _____	Reason _____
7. Page _____	Line _____	Correction _____	Reason _____
8. Page _____	Line _____	Correction _____	Reason _____
9. Page _____	Line _____	Correction _____	Reason _____
10. Page _____	Line _____	Correction _____	Reason _____

 FRANK LYNN PADAN

SUBSCRIBED AND SWORN to at _____,
 this _____ day of _____, 19 ____.

 NOTARY PUBLIC
 Residing at _____

My commission expires:

C E R T I F I C A T E

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

THIS IS TO CERTIFY that the deposition of FRANK LYNN PADAN, the witness in the foregoing deposition, was taken before me, Jill Dunford, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, residing at Farmington, Utah.

That said witness was by me, before examination, duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause.

That the testimony of said witness was reported by me in Stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages numbered from 3 to 137, inclusive, and said witness deposed and said as in the foregoing annexed deposition.

I further certify that after said deposition was transcribed, the original of same was delivered to Mr. Chambers to be submitted to the witness for reading and signature, signed before a Notary Public, and to be returned to me for filing with the Clerk of the said Court.

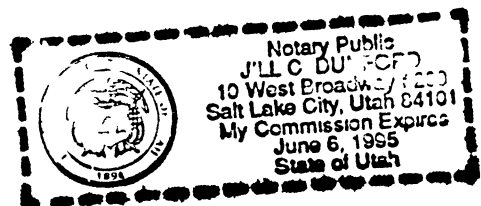
I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal of Salt Lake City, Utah, this 12th day of July, 1994.

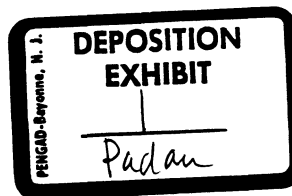
Jill Dunford
JILL DUNFORD, CSR
License No. 244

My Commission Expires:

June 6, 1995



MICHAEL A MOWER CONSTRUCTION
7674 SO 2700 W
WEST JORDAN, UTAH
84084 255-4532



Proposal No.

Sheet No.

Date
FEB 24, 1992

Proposal Submitted To

Work To Be Performed At

Name ASPEN CONSTRUCTION
Street _____
City SALT LAKE
State UTAH
Telephone Number 364-5842 P-4621503

Street 3899 E. PARKVIEW
City SALT LAKE State UTAH
Date of Plans _____
Architect _____

We hereby propose to furnish the materials and perform the labor necessary for the completion of DRYWALL

.70
.75 per sq. ft. to hang & finish for paint
1.00 per lin. ft. for bull nose corner bead
7.50 per lin. ft. for radius under 12"

Tom Thornton

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of _____ Dollars (\$ _____).

with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by _____

Respectfully submitted MICHAEL A MOWER CONST.

Per Michael A Mower

Note — This proposal may be withdrawn
by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL

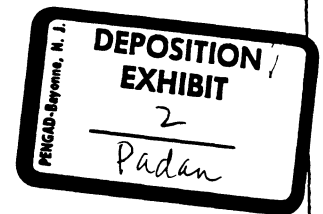
The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date _____ Signature _____

P 0034

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551



IN THE CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,

Plaintiff

vs.

JAMES D. CRAGHEAD, F. LYNN
PADAN, aka ASPEN CONSTRUCTION
INC., MARTIN BENNETT, and
JOHN and JANE DOES 1
through 20,

Defendants.

*

*

*

*

*

*

*

DEFENDANT ASPEN CONSTRUCTION'S
ANSWER TO COMPLAINT

Civil No. 9309062 CV

Judge Sheila K. McCleve

COMES NOW the Defendant Aspen Construction, Inc., and hereby
answers, counterclaim and cross-claims as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Aspen
Construction Company upon which relief can be granted.

SECOND DEFENSE

1. In answer to the allegations set forth in paragraphs 3, 4,
and 5 of Plaintiff's Complaint, Aspen Construction Company (herein
after Aspen) admits.

2. In answer to the allegations set forth in paragraphs 6, 7,
8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, and 23 of
Plaintiff's Complaint, Aspen denies.

3. In answer to the allegations set forth in paragraphs 1 and 2 of Plaintiff's Complaint Aspen is without sufficient knowledge and information to form a belief with respect to the same and therefore denies the same.

4. This Defendant denies all other allegations of the Complaint not heretofore admitted.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's claim is prohibited and cannot be established pursuant to §58-55-17 UCA.

FOURTH AFFIRMATIVE DEFENSE

This Defendant raises as an additional affirmative defense the statute of frauds. The integrated contract between the Defendant Aspen and the Plaintiff Mower specifically provided that any alteration from the accepted bid proposal (a copy of which is attached hereto as Exhibit "A") would be done in writing. The work allegedly performed by the Plaintiff for "extras" is barred by the statute of frauds and the parole evidence rule.

FIFTH AFFIRMATIVE DEFENSE

The "rate" for which the Plaintiff seeks compensation for is excessive in that it is 4-7 times the contracted compensation between Mower and the Defendant Bennett. Plaintiff and the Defendant Bennett (a subcontractor of the Plaintiff Mower) disregarded Aspen's and the Owner's specific instructions that he (Bennett) not perform any work outside the scope of the Aspen-Mower contract, a copy of which is attached hereto as Exhibit "A".

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff caused damage to the structure for which he has been lawfully back charged or offset. Mr. Bennett was instructed to cover the beam work, which was either not done or which was removed shortly afterwards resulting in the beam work having to be repainted. Mr. Mower is responsible for the damages caused by his subcontractor Mr. Bennett.

SEVENTH AFFIRMATIVE DEFENSE

As an additional and affirmative defense this Defendant avers that this action has neither been brought or asserted in good faith. The Plaintiff and Mr. Bennett were informed at the outset that they would not be compensated for any work performed outside of the scope of the accepted bid proposal (Exhibit "A") unless agreed to in writing. Notwithstanding the Plaintiff is attempting to collect for work as to which he has no contract. Not only were they (Mower and Bennett) not requested to do such work, but they were expressly told not to do such, particularly at rates 4-7 times Bennett's normal compensation. The amount besides being blatantly excessive, the action is without merit and therefore this Defendant is entitled to recover its reasonable attorneys fees and costs incurred in defending this action.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate its damages.

NINTH AFFIRMATIVE DEFENSE

As an additional and affirmative defense this Defendant avers that any injury, loss, or damage sustained by the Plaintiff have

been directly and proximately caused by the negligence or the actions of Plaintiff (including the negligent supervision of Bennett) which negligence or actions have been greater than any negligence or action on the part of this Defendant and therefore Plaintiff's claims against this Defendant are barred as a matter of law.

TENTH AFFIRMATIVE DEFENSE

Any and all liability of Defendant Padan to the Plaintiff is caused by the acts and/or omissions of other Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

The Utah Mechanics' Lien Statutes exist to protect those who enhance the value of property by supplying labor or materials. The Plaintiff however has not enhanced the value of the property and any claimed enhancement is at rates far exceeding reasonable or fair compensation.

TWELFTH AFFIRMATIVE DEFENSE

The Quantum Merit Relief prayed for is equitable. The Defendant pleads the equitable defenses of laches. This Defendant has been prejudiced by the Plaintiff's inaction in slumbering on his lien rights.

THIRTEENTH AFFIRMATIVE DEFENSE

The Quantum Relief prayed for is equitable. Equity follows the law. To the extent the Plaintiff has not complied with the express provisions of his bid proposal with regards to the claimed relief for "extras" or work beyond the scope of the accepted bid proposal, the Quantum Relief remedy is inappropriate.

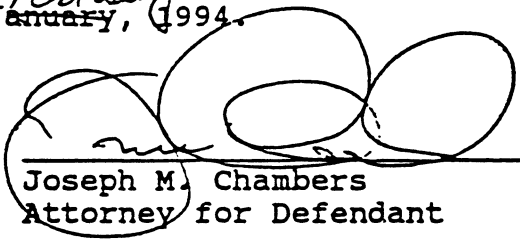
FOURTEENTH AFFIRMATIVE DEFENSE

He who seeks equity must do equity. The actions of the Plaintiff in seeking relief for work he claims was performed under the circumstances (at rates far exceeding the normal trade rate) is inequitable.

COUNTERCLAIM/CROSSCLAIMS

This Defendant, Aspen Construction, respectfully reserves the right to amend this pleading to assert such counterclaims and crossclaims as may be discovered, during the course of litigation.

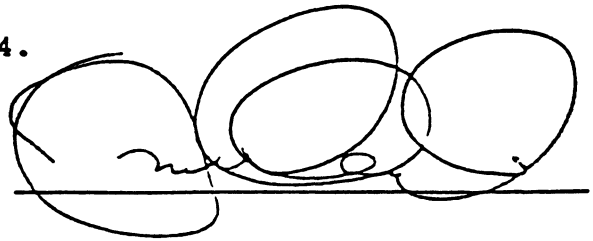
Dated this 1st day of ~~January~~ ^{February}, 1994.



Joseph M. Chambers
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing ASPEN CONSTRUCTION'S ANSWER TO COMPLAINT to the Plaintiff's Attorney, Jennifer L. Falk, WINDER & HASLAM, 175 West 200 South #4000, P.O. Box 2668, Salt Lake City, Utah 84110-2668 on this 1st day of ~~January~~ ^{February} 1994.



c:\l\c\g\calans

MICHAEL A MOWER C. INSTRUCTION
7674 SO 2700 W
WEST JORDAN, UTAH
84084 255-4532

Proposal No.

Sheet No.

Date

FEB 24, 1992

Proposal Submitted To	Work To Be Performed At
Name <u>ASPEN CONSTRUCTION</u>	Street <u>3899 E. PARKVIEW</u>
Street <u>2207 SO 1100 E</u>	City <u>SALT LAKE</u> State <u>UTAH</u>
City <u>SALT LAKE</u>	Date of Plans _____
State <u>UTAH</u>	Architect _____
Telephone Number <u>364-5842 P-4821503</u>	

We hereby propose to furnish the materials and perform the labor necessary for the completion of DRYWALL

6.70 per sq. ft. to hang & finish for paint
1.00 per lin. ft. for full nose corner bead
7.50 per lin. ft. for radius under 12"

WORKERS COMP # M07146
INSURANCE W/ FULL SERVICE INS.
CONTRACTOR LIC # 409280
FED. I.D. # 78-0478709

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of _____ Dollars (\$ _____).

with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

Respectfully submitted MICHAEL A MOWER C. INSTRUCTION

Per Michael A Mower

Note — This proposal may be withdrawn by us if not accepted within 30 days


ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551


Not on Docket


IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
Plaintiff	*	CERTIFICATE OF SERVICE
vs.	*	
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Civil No. 9309062 CV
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	Judge Sheila K. McCleve
through 20,	*	
Defendants.	*	

I hereby certify that a true and correct copy of the
SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS in relationship to Interrogatories
Nos. 20, 31, 34 and 36 were mailed, postage prepaid, this 31st
day of August, 1994, along with a copy of this Certificate of
Service to Plaintiff's attorney:

Jennifer L. Falk
WINDER & HASLAM
175 West 200 South, #4000
P.O. Box 2668
Salt Lake City, UT 74110-2668


JOSEPH M. CHAMBERS

d:\craghead\craghead.certificate

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
Plaintiff	*	SUPPLEMENTAL RESPONSES
vs.	*	TO PLAINTIFF'S INTERROGATORIES
	*	AND REQUEST FOR PRODUCTION
		OF DOCUMENTS
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Civil No. 9309062 CV
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	Judge Sheila K. McCleve
through 20,	*	
Defendants.	*	

COMES NOW the Defendants F. Lynn Padan and James D. Craghead and file supplemental answers to the Interrogatories Nos. 20, 31, 34, and 36 as follows:

INTERROGATORY NO. 20: Identify the names and addresses of each and every individual or entity who supplied labor, materials, or both to the project.

ANSWER: Lynn Padan: See list attached. The list is not represented as being 100 percent complete but has been reconstructed following the burglary and destruction of my business records.

ANSWER: James Craghead: These were under the control and direction of Mr. Padan - Aspen Construction, the general

contractor on the remodeling project. The only individuals I am familiar with are all included in his list.

INTERROGATORY NO. 31: Identify all correspondence, contracts, or any writing of any kind or description between and among the contractor, architects/engineer, subcontractors, material and equipment suppliers, the owner, field representatives, bonding surety companies, consultants, or any other person, firm, or entity concerning or affecting the Project.

ANSWER: Lynn Padan: All contracts, writings, correspondence of the nature sought has been lost in the burglary. It is impossible for me to reconstruct let alone recall all of these. If you have specific questions in relationship to a given area perhaps I could answer your questions.

ANSWER: James Craghead: Except for a cost plus contract executed on an American Architectate standard contract with Aspen Construction all others were handled by the general contractor. (I did not keep a copy of that AA contract.)

INTERROGATORY NO. 34: Identify all documents evidencing loans taken out by you of which any proceeds were used in connection with the Project.

ANSWER: Lynn Padan: None - not applicable.

ANSWER: James Craghead: No construction loans were taken out to finance the project, nor were any loans of any type taken out of which any proceeds were used in connection with the project.

INTERROGATORY NO. 36: Identify all conversations or communications between you and the Plaintiff in connection with the Project.

ANSWER: Lynn Padan: See deposition taken July 8, 1994.

ANSWER: James Craghead: The only conversations I recall relate to money, the payment of bills or dispute concerning the workmanship/damage to the beams. It is difficult to recall each conversation specifically however I recall having a conversation when he and Bennett were told not to perform extras, that the foreman would coordinate the work with other subs and that Bennett's extra rates were outrageous; I recall a dispute over the extras and being dumped on by the final billing; I recall a dispute over the beams being damaged. These are all that I recall at this time.

DATED this 31st day of August, 1994.

PRESTON & CHAMBERS


JOSEPH M. CHAMBERS

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS postage prepaid to Jennifer L. Falk, WINDER & HASLAM, P.O. Box 2668, 175 West 200 South, Suite 4000, Salt Lake City, UT 84110-2668 dated this 31 day of August, 1994.


d:\lit\craghead.supplemental

ASPEN CONSTRUCTION, INC.

3090 East 3300 South, Suite #8
Salt Lake City, Utah 84109

JAMES CRAGHEAD RESIDENCE

3899 East Parkview Drive
Salt Lake City, Utah

**SUBCONTRACTORS and Material
Suppliers**

*A-Core Concrete Cutting, Inc.
5360 Riley Lane
Murray, Utah 84107
261-5552

*A.J. Dean and Sons
6695 South Wasatch Blvd.
Salt Lake City, Utah 84121
943-6003

*AA Carbide, Inc.
1818 South 300 West
Salt Lake City, Utah 84115
486-4881

*Accent Surface
588 West 3560 South
Salt Lake City, Utah 84115
269-0701

*Ace Disposal Company
P.O. Box 2608
Salt Lake City, Utah 84110
363-9995

*ACT Employment Services
P.O. Box 520277
Salt Lake City, Utah 84152-0277
466-6600

*Air-O-Fasteners, Inc.
2290 South West Temple
Salt Lake City, Utah 84115
483-1515

*AK&R Whipple
47 South 1000 West
Salt Lake City, Utah 84104
359-7141

*Applied Automation, Inc.
3186 Washington Street
Salt Lake City, Utah 84115
486-8791

*Bath Concrete Pumping
P.O. Box 1843
Sandy, Utah 84091
944-9091

*Bath Crest, Inc.
2425 South Progress Drive
Salt Lake City, Utah 84115
972-1110

*Benson Bolt
1063 East 50 South
American Fork, Utah 84003
756-9611

*Bernco Distributors
755 West 800 South
Salt Lake City, Utah 84104
364-4231

*Bomanite of Utah, Inc.
11421 Gold Dust Drive
Riverton, Utah 84065
561-7451

*Buehner Block
2800 South West Temple
Salt Lake City, Utah 84115
467-5456

*Burton Lumber
2220 South State Street
Salt Lake City, Utah 84115
487-8861

- *Carpet Giant
823 South Main
Salt Lake City, Utah 84111
363-4563
- *Conely Co.
4000 South West Temple
Salt Lake City, Utah 84157
266-6452
- *Contempo Ceramic Tile Corp.
3699 South 300 West
Salt Lake City, Utah 84115
262-1717
- *Culligan
1450 South West Temple
Salt Lake City, Utah 84115
487-7528
- *Dal-Tile Corp.
3037 South 300 West
Salt Lake City, Utah 84115
487-9901
- *Davis Concrete Pumping
1564 East Blaine Avenue
Salt Lake City, Utah 84105
487-7867
- *Diamond Rental and Sales
4370 South 500 West
Salt Lake City, Utah 84123
268-1112
- *Dura-Crete, Inc.
1475 West 3500 South
Salt Lake City, Utah 84119
972-8686
- *Economy Builders Supply
3232 South 400 East
Salt Lake City, Utah 84115
486-3300
- *Electrical Wholesale Supply
158 East 4500 South
Salt Lake City, Utah 84157
268-2555
- *Excel Personnel
2790 South Main, Suite #104
Salt Lake City, Utah 84115
467-0300
- *Familian Pipe and Supply
20 East Truman Avenue
Salt Lake City, Utah 84115
487-0050
- *Fireplaces, Inc.
973 East 2100 South
Salt Lake City, Utah 84106
486-8452
- *Florida Tile
305 West 2880 South
Salt Lake City, Utah 84115
485-2900
- *Geneva Rock Products, Inc.
P.O. Box 538
Orem, Utah 84059
225-7186
- *Grainger
2775 South 900 West
Salt Lake City, Utah 84119
972-1340
- *Hajoca Corp.
2205 South 400 West
Salt Lake City, Utah 84115
486-7261
- *Hillcrest Drywall Company
767 Enchanted Drive
Midvale, Utah 84047
266-9975
- *Intermountain Concrete Specialties
425 West 1700 South
Salt Lake City, Utah 84115
486-5311
- *Intermountain Glass
1530 South State
Salt Lake City, Utah 84115
484-8586

*Intermountain Stone and Marble
146 East 3300 South
Salt Lake City, Utah 84107
266-4241

*Intermountain Temporaries
P.O. Box 65157
Salt Lake City, Utah 84165
467-6500

*Jensen Painting and Decoration
2026 East 4500 South
Salt Lake City, Utah 84117
277-6700

*Johansen's Swim-Pool Plastering
12519 South 1500 West
Riverton, Utah 84065
562-2737

*Kingdon Sheet Metal, Inc.
3691 South 300 West
Salt Lake City, Utah 84115
262-4412

*L&B Masonry
P.O. Box 081298
Park City, Utah 84068-1298
649-6503

*Layton Roofing
356 Reed Avenue
Salt Lake City, Utah 84103
363-0377

*Lite Touch
3550 South 700 West
Salt Lake City, Utah 84119
268-8688

*Mark's Maintenance and Installation
5796 Topowa Drive
Murray, Utah 84107
269-9097

*Masco, Inc.
462 South 675 West
Centerville, Utah 84014
295-4695

*National Constructions Specialties
P.O. Box 1071
West Jordan, Utah 84084
566-4094

*Pacific Supply
2114 South 400 West
Salt Lake City, Utah 84115
484-6136

*Riverside Sprinklers
2985 South 1000 East
Salt Lake City, Utah 84124
261-4858

*Roth Topsoil
P.O. Box 640
Draper, Utah
571-8088

*RSI
505 North Main Street
North Salt Lake City, Utah 84054
298-9052

*Salt Lake Aquarium
4689 Holladay Blvd.
Salt Lake City, Utah 84117
272-4072

*Salt Lake Mill and Lumber Co.
49 North 600 West
Salt Lake City, Utah 84116
364-6571

*Security Steel Works, Inc.
P.O. Box 2075
Sandy, Utah 84091
869-0226

*Snideman and Associates
1444 East 3300 South
Salt Lake City, Utah 84106
486-3844

*Speciality Tile and Marble, Inc.
P.O. Box 70276
West Valley, Utah 84170
261-1211

4

*Spiral Stairs of America
1718 Franklin Avenue
Erie, Pennsylvania 16510
422-3700

*Wimmer Electric
5330 Riley Lane
Murray, Utah
262-8780

*Standard Builders Supply, Inc.
220 West 2700 South
Salt Lake City, Utah 84165
487-7731

*Zeeman Tile Company
3967 South Renault Circle
West Valley, Utah 84119
973-7641

*Studio II Bagno
2374 South West Temple
Salt Lake City, Utah 84115
484-8552

*Sure Appliance
153 West 900 South
Salt Lake City, Utah 84101
328-2038

*Swanson Bldg. Materials, Inc.
525 West 2890 South
Salt Lake City, Utah 84115
973-2736

*Teerlink Cabinets
4689 South Holladay Blvd.
Salt Lake City, Utah
278-4400

*The John & Co.
1235 West 3050 South
Ogden, Utah 84401
621-7814

*The Swiss Boy
305 North 200 West
Bountiful, Utah 84010
298-3656

*Wasatch Electric
1574 South West Temple
Salt Lake City, Utah 84126
487-4511

*Western Rental and Sales
40 East 3300 South
Salt Lake City, Utah 84115
486-5931

4

Appendix D

ATTORNEYS
AT
LAW

WINDER & HASLAM
A PROFESSIONAL CORPORATION

SUITE 4000
175 WEST 200 SOUTH
P.O. BOX 2666
SALT LAKE CITY, UTAH 84110-2666
FAX (801) 553-5706
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~ this page

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20

TELECOPIER COVER SHEET

Date: August 4, 1994

Please deliver the following pages to:

Name: Joseph M. Chambers

Firm: Preston & Chambers

City: Logan, UT

Number: 801-752-3556

From: Jennifer L. Falk

Comments: _____

Total number of pages (including cover sheet): 3

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ATTORNEYS
AT
LAW
WINDER & HASLAM
A PROFESSIONAL CORPORATION

SUITE 4000
175 WEST 200 SOUTH
P.O. BOX 2668
SALT LAKE CITY, UTAH 84110-2668
FAX (801) 532-3786
(801) 532-2222

JENNIFER L. FALK

August 4, 1994

Joseph M. Chambers
PRESTON & CHAMBERS
31 Federal Avenue
Logan, Utah 84321

VIA FACSIMILE #752-3556

Re: Michael Mower v. James D. Craghead, et al

Dear Joe:

I have a phone message dated August 4, 1994, at 9:33 a.m. regarding "Lynn Padan's business burglarized-July 13th" and was further informed that you wanted me to know as to the reason we had not received responses to our discovery requests. However, our discovery was originally sent on March 28, 1994. Responses were due 30 days later and, even giving grace time for mailing, should have been filed the first of May.

When we did receive responses, they were incomplete and we filed a Motion to Compel on July 6, 1994, after a letter dated June 21 and phone calls to you requesting that the responses be supplemented. No documents have been produced. A copy of my June 21 letter is enclosed. You have not explained how the alleged burglary of Mr. Padan's business on July 13 affects your ability to respond; unless you are alleging a burglar stole all of the documents we requested. Even so, you still have not responded to certain of our interrogatory requests. Nor do I see how the burglary would affect Craghead's ability to respond.

Wmf
As you know, our Motion for Sanctions was granted July 27, 1994 and you have twenty days from that date in which to fully respond to the discovery requests or judgment will be granted. We expect the answers to our interrogatories, along with all documents you do have in your possession by no later than August 17, 1994, the date designed by the Court. In addition, please send a list of those documents you allege you cannot deliver us due to the burglary.

Sincerely,

JLF
JENNIFER L. FALK
JLF:lbp
Enclosure

ATTORNEYS
AT
LAW

WINDER & HASLAM
A PROFESSIONAL CORPORATION

SUITE 4000
175 WEST 300 SOUTH
P.O. BOX 2668
SALT LAKE CITY, UTAH 84110-3668
FAX (801) 532-3706
(801) 532-3222

JENNIFER L. FALK

June 21, 1994

Joseph M. Chambers
PRESTON & CHAMBERS
31 Federal Avenue
Logan, Utah 84321

VIA FACSIMILE #752-3556

Re: Michael Mower v. James D. Craghead, et al

Dear Joe:

On June 16, 1994, I received partial responses from defendants to plaintiff's discovery in the above-entitled matter. Although you filed a certificate of service with the court, you have failed to provide me with copies of any documents.

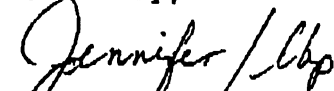
I called on Friday asking for copies but you failed to return my call. As you are aware, Padan's deposition is scheduled for Friday, June 24, 1994. I expect copies of all responsive documents in our offices by noon on Thursday, June 24, 1994.

Furthermore, I am clearly entitled to a response by Craghead on Interrogatories Nos. 20, 31 and 34, by Padan on Interrogatory No. 31, and to a supplementation by both defendants on Interrogatory No. 36 as to dates, persons present and the substance of each conversation.

Interrogatory No. 20 is relevant because other workers were in a position to have knowledge of the dispute. Painters and drywallers are particularly relevant to defendants' claims of damages and the allegations contained in the counterclaim, as are the responses sought in Interrogatories Nos. 31 and 34.

Please have amended answers and documents in our offices by no later than Thursday, June 23, 1994, or I will file a motion to compel seeking sanctions. As I said to you in our conversation in May, I want complete responses before proceeding with the deposition of Padan.

Sincerely,


JENNIFER L. FALK

JLF:lbp

Appendix E

Joseph M. Chambers 0612
PRESTON & CHAMBERS
Attorney for Defendant
31 Federal Avenue
Logan, Utah 84321
(801) 752-3551

30

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL A. MOWER,	*	
	*	
Plaintiff	*	AFFIDAVIT OF JOSEPH
	*	M. CHAMBERS
	*	
vs.	*	
	*	Civil No. 9309062 CV
JAMES D. CRAGHEAD, F. LYNN	*	
PADAN, aka ASPEN CONSTRUCTION	*	Judge Sheila K. McCleve
INC., MARTIN BENNETT, and	*	
JOHN and JANE DOES 1	*	
through 20,	*	
	*	
Defendants.		

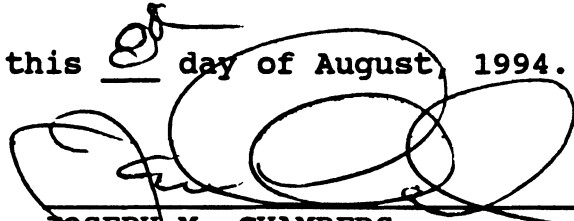
STATE OF UTAH)
 : ss.
County of Cache)

JOSEPH M. CHAMBERS, being first duly sworn upon oath states
and represents as follows:

1. That I am the Defendant's attorney in the above-entitled matter.
2. If called to testify in this matter would testify under oath as follows:
3. That I am under a physician's care at the present time and have been since approximately July 20, 1994, for acute pneumonia in my right lung. With the exception of certain critical matters which I could not get my partner to handle I am following my physician's instructions of bed rest (occasionally going into

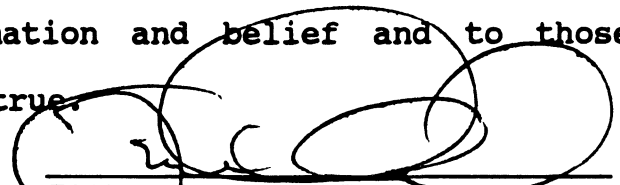
the office for an hour every other day) to make sure that certain crucial deadlines are not overlooked and that continuances are obtained or other arrangements made. Attached hereto is a brief statement from my physician following a physical exam in his office on July 26, 1994.

Respectfully submitted this 28 day of August, 1994.


JOSEPH M. CHAMBERS

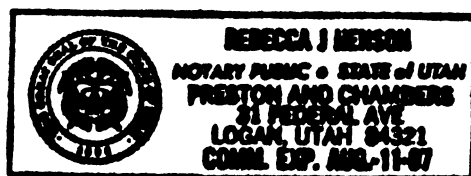
V E R I F I C A T I O N

JOSEPH M. CHAMBERS, being first duly sworn, deposes and says: That he has read the above and foregoing AFFIDAVIT OF JOSEPH M. CHAMBERS and knows the contents thereof and the facts alleged therein are true to his own best knowledge and belief except as to those matters stated on information and belief and to those matters, he believes them to be true.


JOSEPH M. CHAMBERS

STATE OF UTAH)
 : ss.
County of Cache)

On the 28 day of August, 1994, personally appeared before me, JOSEPH M. CHAMBERS, the signer of the within instrument, who duly acknowledged that he executed the same.



Rebecca J. Henson
Notary Public
Residing at: Cache
Commission Expires: 8-11-97

d:\chambers.joe

GARY R. GIBBONS, M.D.
DEA NO. AG 9395016

GORDON S. WOOD, M.D.
DEA NO. BW 2577368

GIBBONS & WOOD

Otorhinolaryngology
Head & Neck Surgery
Facial Plastic and Reconstructive Surgery

NAME

Joe Chambers

AGE

ADDRESS

Providence, UT

DATE

26 July 94

R *Patient has acute pneumonia
and should be at bedrest x 5 days.*

REFILL	REFILL	REFILL
TIMES	P.R.N.	N.R.

LABEL

GENERIC

McGill

M.D.

1300 North 500 East, Suite 240

Logan, Utah 84321

Telephone (801) 753-7880



The Law Firm of

Preston & Chambers

A Professional Corporation

31 Federal Avenue
Logan, Utah 84321
(801) 752-3551
FAX (801) 752-3556

George D. Preston (1897-1965)
M.C. Harris (1887-1981)
George W. Preston
Joseph M. Chambers

August 8, 1994

Ms. Jennifer L. Falk
WINDER & HASLAM
P.O. Box 2668
175 West 200 South, Suite 4000
Salt Lake City, UT 84110-2668

Re: Michael Mower vs. Aspen Construction, et al.

Dear Ms. Falk:

I have attempted to contact you during the last three weeks leaving various phone messages with your personal secretary, (most recently on August 4), as well as with the receptionist of Winder & Haslam. The purpose of my attempts to contact you, as well as Mr. Padan's separate attempts, was to inform you that Mr. Padan's business was burglarized on July 13, 1994. Rather than giving me the courtesy of returning my phone calls, you have proceeded to pursue your Motion for Sanctions. Rather than talk to me directly you have responded by letter which was faxed to my office on August 4, 1994. Perhaps you feel justified in maintaining an intentional ignorance of events, however I believe your actions are not justifiable.

At the outset I would like to remind you that the discovery which I sent to you in the Bennett case necessitated a substantial extension on your behalf, which I readily granted. I acknowledged that my discovery was delinquent. Part of this problem was encompassed by the fact that Mr. Craghead was out of town extensively and part was my fault. Nonetheless I must respectfully take issue with you that the responses when submitted were incomplete.

The documents which we produced encompassed all of the documents which we understood were being requested. The fact that your Request for Production of Documents were framed in such a vague and broad manner is not my fault. Following the deposition of Mr. Padan on Friday, July 8, 1994, where you clarified the scope of the documents you needed we indicated or intended that we would cooperate. We did not know however that the business was going to

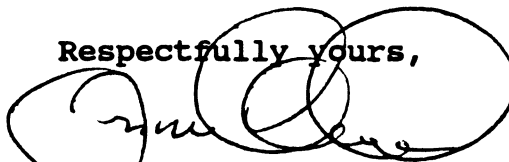
Ms. Jennifer L. Falk
August 8, 1994
Page 2

be burglarized before we could get the documents to you. So that there is no misunderstanding you state in your letter that I have not explained how the alleged burglary of Mr. Padan's business on July 13 affects his ability respond. To me it is obvious but I will unequivocally state and represent that Mr. Padan (as noted in the police report) had stolen from him his entire office, i.e., equipment, books, records, files, etc. This in turn has made it impossible for Mr. Padan to produce the documents. You will recall at the deposition that I did not ask you to formally submit additional Request for Production of Documents although technically I believe we had the right to do so. Having clarified what you wanted we were attempting in good faith to respond to your request.

Recently with the election of one of your senior partners as Bar President I read with interest his request/admonition to the bar to attempt to cooperate and have an open line of communication with all the attorneys. From my dealings with you this has been a one-way street. You have not hesitated to call and ask for favors of extension (which were granted) however even when matters are attempting to be brought to your attention you have intentionally refused to communicate, refused to allow the knowledge of the problem to come to your attention so that you can feel that you can go to the court and receive sanctions accordingly.

Please be advised that I have formally objected to the order. First, I believe we have fully answered the discovery requests and that your motion to compel is completely out of order given the circumstances involved in this case. Second, your actions have only heightened my interest in getting this matter resolved in my client's favor as quickly as possible. If you have any questions about the motion please call.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Joe Chambers", enclosed within a large, loopy circular flourish.

Joseph M. Chambers
Attorney at Law

JMC/bh

cc: Court (attached to affidavit)

d:\joe94\jlfk.11r

Appendix F

The text of Utah Code Ann. §58-55-17. (1953) as amended provides:

No contractor may act as agent or commence or maintain any action in any court of the state for collection of compensation for performing any act for which a license is required by this chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into, and when the alleged cause of actions arose.

The text of Utah Code Ann. §58-55-604 (1953) as renumbered 1994 provides:

No contractor may act as agent or commence or maintain any action in any court of the state for collection of compensation for performing any act for which a license is required by this chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into, and when the alleged cause of actions arose.

The text of Utah Code of Judicial Adm. 4-504 provides:

Written orders, judgments and decrees.

Intent:

To establish a uniform procedure for submitting written orders, judgments, and decrees to the court. This rule is not intended to change existing law with respect to the enforceability of unwritten agreements.

Applicability:

This rule shall apply to all civil proceedings in courts of record except small claims.

Statement of the Rule:

(1): in all rulings by a Court, counsel for the party or parties obtaining the ruling shall within 15 days, or within a shorter time as the Court may direct, files with the court a proposed order, judgment or decree in conformity with the ruling.

(2) copies of the proposed findings, judgments and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five days after service.

(3) Stipulated settlements and dismissals shall also be reduced to writing and presented to the court for signature within fifteen days of the settlement and dismissal.

(4) Upon entry of judgment, notice of such judgment shall be served upon the opposing party, and proof of service shall be filed with the court. All judgments, orders, and decrees, or copies thereof, which are to be transmitted after signature by the judge, including other correspondence requiring a reply, must be accompanied by pre-addressed envelopes and pre-paid postage.

(5) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own initiative and shall identify the attorneys of record.

(6) Except where otherwise ordered, all judgments . . . shall contain the address or the last known address of the judgment debtor and the social security number of the judgment debtor if known.

(7) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court.

(8) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.

(9) In all cases where judgment is rendered upon a written obligation to pay money and a judgment has previously been rendered upon the same written obligation, the plaintiff or plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon the same written obligation.

(10) Nothing in this rule shall be construed to limit the power of any court, upon a proper showing, to enforce a settlement agreement or any other agreement which has not been reduced to writing.

(Amended effective January 15, 1990; April 15, 1991)

The text of Utah Rule of Civil Procedure 41(b) provides:

(b) involuntary dismissal; effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for a dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.