

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C20

THE SPARTAN ASSOCIATES, INC.)
)
)
 PLAINTIFF,) CASE NO.: 30-2015-00805807
) CU-CO-CJC
GARY HUMPHREYS,)
KAREN HUMPHREYS,)
)
 DEFENDANTS.)

)

HONORABLE DAVID CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

3/27/17

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF/
CROSS-DEFENDANT: BY: J. SCOTT RUSSO
 RUSSO & DUCKWORTH LLP

FOR THE DEFENDANTS/
CROSS-COMPLAINANTS: BY: WILLIAM G. BISSELL
 LAW OFFICES OF WILLIAM G.
 BISSELL

FOR THE CROSS-DEFENDANT: BY: ADAM BEREKI
 SELF-REPRESENTED

REPORTED BY:
KELVIN K. DO, CSR #13803
OFFICIAL COURT REPORTER

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| <u>THE PLAINTIFF:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|-----------------------|---------------|--------------|-----------------|----------------|
| | (NONE) | | | |

WITNESSES FOR

| <u>THE DEFENSE:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
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(NONE)

| <u>DEFENSE</u> | <u>IDENTIFIED</u> | <u>RECEIVED</u> |
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1 SANTA ANA, CALIFORNIA; MARCH 27, 2017

2 MORNING SESSION

3 *****

4 (THE FOLLOWING PROCEEDINGS

5 WERE HELD IN OPEN COURT.)

6
7 THE COURT: GOOD MORNING, EVERYBODY. THIS IS THE
8 SPARTAN ASSOCIATES, INC. VERSUS HUMPHREYS.

9 AND FOR THE RECORD, YOU ARE?

10 MR. RUSSO: GOOD MORNING, YOUR HONOR. SCOTT RUSSO
11 ON BEHALF OF SPARTAN ASSOCIATES, INC.

12 THE COURT: MR. RUSSO, WITH YOU IS?

13 MR. BEREKI: ADAM BEREKI, YOUR HONOR.

14 THE COURT: MR. BEREKI, SPELL YOUR LAST NAME FOR
15 ME, PLEASE.

16 MR. BEREKI: B-E-R-E-K-I.

17 THE COURT: AND YOU PRONOUNCE IT BEREKI?

18 MR. BEREKI: BEREKI. THE SECOND E IS SILENT.

19 THE COURT: GIVE ME A COUPLE WEEKS, I WILL GET IT
20 THEN.

21 MR. BEREKI: SOUNDS GREAT.

22 MR. BISSELL: GOOD MORNING, YOUR HONOR. WILLIAM
23 BISSELL FOR THE DEFENDANT/CROSS-COMPLAINANTS GARY
24 HUMPHREYS AND KAREN HUMPHREYS.

25 THE COURT: GOOD MORNING.

26 MR. BISSELL: YOUR HONOR, I HAVE BEEN REFERRING TO

1 MR. BEREKI AS "MR. BEREKI" FOR OVER TWO YEARS NOW. SO
2 IF I SAY "MR. BEREKI," IT'S NOT INTENDED TO SLIGHT.

3 MR. BEREKI: I WON'T BE OFFENDED.

4 THE COURT: I AM PRETTY SURE I HAVE BEEN SAYING
5 "BEREKI" AS WELL FOR THE LAST COUPLE OF YEARS.

6 OKAY. SO SINCE REVIEWING, MY UNDERSTANDING
7 IS -- THIS IS A COURT TRIAL OF HOW MANY DAYS?

8 MR. BISSELL: I WOULD THINK FOUR.

9 MR. RUSSO: IT WOULD BE FAIR.

10 THE COURT: AND WHAT HAPPENED TO OLD REPUBLIC
11 SURETY ACCOUNT?

12 MR. RUSSO: I GUESS I HAVEN'T EVEN THOUGHT ABOUT
13 THAT, YOUR HONOR. I AM ALSO DEFENDING THE SURETIES IN
14 THIS.

15 THE COURT: I SEE YOU DOWN FOR SURETEC INSURANCE
16 COMPANY, BUT I SEE THE LAW OFFICES OF HAUSMAN & SOSA
17 REPRESENTING OLD REPUBLIC.

18 MR. BEREKI: YOUR HONOR, WE HAVE HAD DISCUSSIONS
19 WITH BOTH THE SURETIES. THEY FELT I WAS COMPETENT TO
20 HANDLE THE DEFENSE AND THEY DIDN'T WANT TO SPEND THE
21 COST TO SEND AN ATTORNEY HERE. I DON'T HAVE A GREAT
22 ANSWER FOR THAT, BUT THAT'S JUST WHAT HAPPENED.

23 MR. BISSELL: YOUR HONOR, I WOULD LIKE TO SHED SOME
24 LIGHT ON THAT. THERE WAS A STIPULATION, I BELIEVE,
25 SIGNED BY THE COURT WHERE OLD REPUBLIC -- OLD REPUBLIC
26 ONLY, NOT SURETEC, WE ALL STIPULATED THAT THEY WOULDN'T

1 HAVE TO APPEAR, THAT THEY WOULD ABIDE BY WHATEVER RULING
2 THE COURT HAD AS FAR AS THE LIABILITY OF THE BOND, THAT
3 THE BOND WAS GOOD. THEY STIPULATED THE BOND HAD BEEN
4 ISSUED, THE BOND WAS GOOD. THERE'S NO ISSUE THERE. AND
5 THEY JUST FELT THAT TO COME IN HERE AND SIT -- AND WE
6 ALL AGREED -- THROUGH FOUR, FIVE DAYS OF TRIAL, WHEN
7 THEIR ISSUE REALLY WASN'T AT ISSUE, OTHER THAN THE
8 LIABILITY, EVERYBODY STIPULATED THAT THEY WOULD GO WITH
9 WHICHEVER WAY THE COURT RULED ON THE LIABILITY ISSUE.

10 THE COURT: SOUNDS FAMILIAR. HOPE I CAN FIND IT
11 WITHIN THE FILE.

12 MR. BISSELL: THAT'S TO THE BEST OF MY
13 RECOLLECTION.

14 MR. RUSSO: YOUR HONOR, THAT'S SURETEC'S POSITION
15 ALSO.

16 THE COURT: BUT, AGAIN, I SEE YOU AS OF RECORD.

17 MR. RUSSO: FRANKLY, YOUR HONOR, THAT WAS SO LONG
18 AGO, I FORGOT THERE WERE TWO. BUT THE ANSWER IS YES, I
19 AM COUNSEL FOR SURETEC.

20 THE COURT: AND IT LOOKS LIKE WE HAVE A RETURN FROM
21 THE CITY OF NEWPORT BEACH COMMUNITY PLANNING DEPARTMENT
22 ON THE SUBPOENA YOU ISSUED.

23 MR. BISSELL: THERE SHOULD ALSO BE ONE FROM THE
24 LIDO ISLE COMMUNITY ASSOCIATION, YOUR HONOR.

25 THE COURT: SO THERE IS. HAVE YOU SEEN THE
26 CONTENTS OF THESE?

1 MR. BISSELL: I HAVE NOT.

2 THE COURT: DO YOU WANT TO?

3 MR. BISSELL: I KNOW WHAT THEY ARE. THERE WERE
4 COPIES OF DOCUMENTS OF WHICH WE HAD, SO, I ASSUME THAT'S
5 ALL THEY'RE PRODUCING ALONG WITH THEIR DECLARATION AS TO
6 BEING A BUSINESS RECORD.

7 THE COURT: LET'S LET MR. BISSELL AND MR. RUSSO
8 HAVE A LOOK AT THE CONTENTS TO MAKE SURE EVERYTHING IS
9 THERE. AND MR. BEREKI, OF COURSE.

10 MR. BISSELL: THAT'S WHAT WE ASKED FOR.

11 THE COURT: OKAY. WELL, WE WILL JUST LEAVE IT ON
12 THE CLERK'S CALENDAR, AND WHEN YOU NEED IT, YOU WILL
13 FILL US IN.

14 AND SO WITH REFERENCE TO THAT WHICH
15 MR. BISSELL INDICATED, I HAVE IN MY HAND THE DOCUMENT
16 ENTITLED "STIPULATION BETWEEN DEFENDANTS AND
17 CROSS-COMPLAINANTS GARY HUMPHREYS, AN INDIVIDUAL, KAREN
18 HUMPHREYS, AN INDIVIDUAL, PLAINTIFF AND CROSS-DEFENDANT
19 SPARTAN ASSOCIATES, INC., A CALIFORNIA CORPORATION, AND
20 CROSS-DEFENDANT OLD REPUBLIC SURETY COMPANY, A
21 CORPORATION, RE: LIABILITY AND DAMAGES" -- AND THE ORDER
22 THEREON. IT WAS FILED ON FEBRUARY 1, 2017. IT WAS --
23 SUBSTANTIALLY REFLECTS THAT WHICH MR. BISSELL INDICATED.
24 I GUESS WE WON'T WORRY ABOUT OLD REPUBLIC -- SURE TO PAY
25 IF THEY NEED TO.

26 ALL RIGHT. AND SO LET'S TALK FOR A SECOND

1 ABOUT EXHIBITS. MY UNDERSTANDING IS YOU ALL HAVE COME
2 HERE TODAY WITH EXHIBITS, THE PLAINTIFFS' EXHIBITS
3 NUMBERED 1 THROUGH 60 AND THE DEFENDANTS' EXHIBITS
4 NUMBERED 1 THROUGH 60, OR SOMETHING ALONG THOSE LINES.

5 MR. RUSSO: IT'S ACTUALLY PLAINTIFFS' 1 THROUGH 137
6 AND DEFENDANTS' 1 THROUGH 62.

7 THE COURT: HOW DO WE FIX THIS PROBLEM?

8 MR. BISSELL: YOUR HONOR, WE HAD AN AGREEMENT
9 BETWEEN COUNSEL -- AND THIS WAS BEFORE MR. BEREKI
10 SUBSTITUTED OUT -- THAT WE WOULD TAKE
11 NUMBERS 1 THROUGH 100 AND THEY WOULD TAKE NUMBERS 100 ON
12 TO WHATEVER. WE HAVE OUR EXHIBITS KIND OF FINALIZED.
13 WE KNEW THE EXTENT OF THE EXHIBITS. THEY WERE STILL
14 WORKING PUTTING THEIRS TOGETHER. THEY DIDN'T KNOW HOW
15 MANY THEY HAD SO THEY OPTED TO START WITH 100 ON INTO
16 HOWEVER MANY THEY NEEDED.

17 THE COURT: TO INFINITY AND BEYOND.

18 MR. BISSELL: TO INFINITY AND BEYOND, YOUR HONOR.

19 MR. RUSSO: IT'S SIMPLY FIXED BY ADDING A TWO IN
20 THE DEFENDANTS' EXHIBITS AND WE CAN GO FROM THERE. OR
21 200.

22 THE COURT: WELL, IF WE PUT A ONE IN FRONT OF YOUR
23 NUMBER 1, I GUESS IT WOULD BE TEN RIGHT.

24 MR. RUSSO: WELL, WE HAVE 137.

25 THE COURT: PARDON?

26 MR. RUSSO: WE HAVE 137. I AM SUGGESTING IF WE

1 STARTED WITH 200 ON THEIRS, WE WOULD BE FINE.

2 THE CLERK: I THINK IT'S EASIER IF WE PUT A FIVE OR
3 THREE ON THE DEFENDANTS'.

4 THE COURT: SO 301 AND SO ON?

5 THE CLERK: BECAUSE MR. RUSSO HAS MORE THAN 100 AND
6 DEFENSE IS ONLY 75.

7 THE COURT: SEEMS LIKE A GREAT IDEA.

8 OKAY. SO THE TWO OF YOU GET TO COLLECTIVELY
9 MARK THOSE EXHIBITS, THE DEFENSE EXHIBITS. SO IT'S
10 GOING TO BE 301 AND FOLLOWING.

11 MR. BISSELL: SHOULD I DO THAT NOW?

12 THE COURT: WELL, YOU MIGHT AS WELL BECAUSE I THINK
13 I HAVE NOT HAD A CHANCE TO READ THE TRIAL BRIEFS YOU
14 SUBMITTED. WE WILL TAKE 30 MINUTES, COME BACK AT 10:00
15 AND RE-JOIN AFTER I READ THAT, AND WE WILL GET ROLLING.

16 MR. RUSSO: THANK YOU, YOUR HONOR.

17 MR. BISSELL: THANK YOU, YOUR HONOR. AS FAR AS THE
18 READING OF THE BRIEFS, DO YOU RECALL THAT WE HAVE --

19 THE COURT: WE BIFURCATED.

20 MR. BISSELL: BIFURCATED. THE FIRST CAUSE OF
21 ACTION WE TRIED FIRST. WE SUBMITTED A SEPARATE BRIEF ON
22 THE FIRST CAUSE OF ACTION ALONE. I DON'T KNOW IF YOU
23 WANT TO JUST FOCUS ON THAT AND WAIT --

24 MR. RUSSO: YOUR HONOR, MY UNDERSTANDING IS WE'RE
25 NOT NECESSARILY TRYING THE FIRST CAUSE OF ACTION FIRST.
26 WHAT WE'RE TRYING IS THE LICENSING ISSUES AND WHO THE

1 CONTRACT WAS WITH, AS BETWEEN THE CORPORATION AND
2 MR. BEREKI. THAT WAS MY UNDERSTANDING OF THE
3 BIFURCATION.

4 MR. BISSELL: THAT IS, IN ESSENCE, THE FIRST CAUSE
5 OF ACTION.

6 MR. RUSSO: WELL, IF WE GO INTO THE WHOLE FIRST
7 CAUSE OF ACTION, WE ARE TRYING -- THE WHOLE POINT TO
8 NARROW THE CLAIM, AND THAT'S THE WHOLE CASE, WHICH IS
9 SUBSTANTIALLY LONGER THAN THE BIFURCATION OF WHO THE
10 CONTRACTORS WERE.

11 MR. BISSELL: NOT TRUE, YOUR HONOR. THE FIRST
12 CAUSE OF ACTION ONLY GOES TO THE ISSUE OF WHO THE
13 CONTRACTING PARTIES WERE AND THE LICENSING STATUS OF
14 THOSE PARTIES. THERE'S NO ISSUES INVOLVING QUALITY OF
15 WORKMANSHIP, NEGLIGENCE, FRAUD, NONE OF THE OTHER CAUSES
16 OF ACTION APPEAR OR ARE A PART OF THE FIRST CAUSE OF
17 ACTION. IT'S A DISTINCT SEPARATE CAUSE OF ACTION.

18 THE COURT: WELL, OKAY. LET ME GO REFRESH MY
19 RECOLLECTION AS I READ THROUGH YOUR BRIEFS.

20 MR. RUSSO: THANK YOU, YOUR HONOR.

21 MR. BISSELL: THANK YOU, YOUR HONOR.

22 THE COURT: SEE YOU IN ABOUT 30.

23 (RECESS.)

24 THE COURT: JUST TO CONFIRM, I DID NOT FIND
25 PLAINTIFFS' TRIAL BRIEF IN MY STACK.

26 MR. RUSSO, DID I MISS IT?

1 MR. RUSSO: IT GOT FILED LAST NIGHT.

2 THE CLERK: LAST NIGHT?

3 MR. RUSSO: THAT'S WHEN I GAVE IT TO MY SECRETARY.

4 THE COURT: WHAT TIME? MIDNIGHT?

5 MR. RUSSO: PRETTY LATE, YOUR HONOR.

6 MR. BEREKI: I HAVE AN E-MAIL I COULD SEND OR I
7 COULD READ IT.

8 THE COURT: MAYBE MR. RUSSO HAS A SPARE COPY OF HIS
9 OWN.

10 MR. RUSSO: I DON'T, YOUR HONOR.

11 THE COURT: WE USUALLY LIKE TO GET COURTESY COPIES.
12 IT'S PROBABLY OUT THERE IN THE BOWELS OF THE COMPUTER.
13 DID YOU KNOW COMPUTERS HAVE BOWELS?

14 MR. RUSSO: I CAN ORALLY TELL YOU WHAT IT WOULD
15 SAY, YOUR HONOR, IF YOU LIKE.

16 THE COURT: I WOULD RATHER READ IT. IN THE
17 MEANTIME, JUST A QUICK DISCUSSION. I'M NOT SURE THERE'S
18 A WHOLE LOT OF SUBSTANTIAL DIFFERENCE BETWEEN YOUR
19 RESPECTIVE POSITIONS ON THIS BIFURCATION ISSUE. AT THE
20 END OF THE DAY, MR. BISSELL'S POINT IS THE THRESHOLD
21 ISSUE OF WHETHER OR NOT LICENSURE EXISTED. I HAVE NOT
22 LOOKED AT ANY OF THE DOCUMENTS IN YOUR EXHIBITS YET.
23 WITH RESPECT TO EITHER THE CONTRACT, I SEE
24 REPRESENTATIONS IN MR. BISSELL'S PAPERS OF AN ORAL
25 CONTRACT THAT CAUSES ME TO HAVE SOME CONCERN ALREADY.
26 AND THEN I SEE SPARTAN ASSOCIATES AS A POSSIBLE PLAYER

1 LURKING ON THE HORIZON.

2 SO I DON'T THINK THAT WE'RE TRYING THE FIRST
3 CAUSE OF ACTION IN THE SENSE OF DAMAGES SO MUCH AS WE'RE
4 TRYING TO ASCERTAIN THE LICENSURE.

5 MR. RUSSO: I DON'T THINK THERE'S ANY DISPUTE THAT
6 THE SPARTAN ASSOCIATES, INC. WAS LICENSED. THE QUESTION
7 WAS WHETHER OR NOT THE HUMPHREYS AGREEMENT WAS WITH
8 SPARTAN ASSOCIATES OR MR. BEREKI PERSONALLY.

9 THE COURT: IS THERE WRITTEN CONTRACT BETWEEN
10 SPARTAN ASSOCIATES AND THE HUMPHREYS?

11 MR. RUSSO: NO. WE HAVE E-MAILS THAT FORM THE
12 CONTRACT. IT'S FROM MR. BEREKI, AND HE WOULD CONTEND
13 THAT WAS ON BEHALF OF SPARTAN ASSOCIATES.

14 IS THERE SOMETHING IN THE LETTERHEAD THAT SAYS
15 SPARTAN ASSOCIATES AND HUMPHREYS ENTER INTO ANY
16 AGREEMENT? NO, THERE IS NOT.

17 THE COURT: OKAY. WE'RE FOLLOWING UP ON THAT BRIEF
18 OF YOURS.

19 MR. RUSSO: OH, GOOD.

20 THE CLERK: IT WILL TAKE A COUPLE OF MINUTES.

21 THE COURT: OKAY. SO ALL RIGHT. I TRIED TO FOCUS
22 ON THE FIRST AMENDED CROSS-COMPLAINT FIRST CAUSE OF
23 ACTION. THIS IS AGAINST CROSS-DEFENDANT MR. BEREKI --
24 MR. BEREKI.

25 MR. BEREKI: IT'S FINE.

26 MR. RUSSO: I HAD IT WRONG FOR TWO YEARS.

1 MR. BEREKI: IT'S FINE.

2 MR. BISSELL: LET'S JUST GO WITH "BEREKI."

3 THE COURT: THE CAUSE OF ACTION SEEKS DISGORGEMENT
4 OF THE FUNDS PAID TO THE TUNE OF \$848,000. THE
5 INDICATION IN THE CROSS-COMPLAINT IN APRIL 2012 ORAL
6 CONTRACT WITH LAST SERVICES, AUGUST 21, 2013, THERE IS
7 INDICATED IN THAT CAUSE OF ACTION SOME EFFORTS TO
8 SUBSTITUTE THE SPARTAN ASSOCIATES, INC. AS THE
9 CONTRACTING PARTY, BUT IT'S UNCLEAR AS TO HOW OR WHAT
10 THAT WAS OR HOW IT WOULD WORK. I'M SURE THAT'S WHAT
11 THIS TRIAL WILL CLARIFY FOR ME.

12 I ALSO SAY, MR. BISSELL, YOUR FILED REQUEST
13 FOR STATEMENT OF DECISION AND WE WILL HAVE TO SEE. IF
14 THIS IS A ONE DAY OR LESS TRIAL, WHICH SEEMS UNLIKELY IN
15 THESE CIRCUMSTANCES, THEN IT WOULD BE TIMELY. IF IT IS
16 MORE THAN A DAY, THEN IT IS PREMATURE.

17 MR. BISSELL: UNDERSTOOD, YOUR HONOR. I JUST
18 WANTED TO COVER THE BASES.

19 THE COURT: COVER THE BASES. GOOD MAN, GOOD
20 LAWYER. SO RATHER THAN WAIT FOR THE COMPUTER TO SPEW
21 OUT SOMETHING SOME DAY, THERE PROBABLY ISN'T ANY REASON
22 WHY WE CAN'T GET STARTED SINCE THE PRESENTATION FALLS TO
23 THE CROSS-COMPLAINANTS TO START.

24 MR. RUSSO: PERFECT. WE CAN START WITH THE
25 CROSS-COMPLAINANTS THEN.

26 THE COURT: DO YOU ALL FEEL CONSTRAINED TO GIVE ME

1 AN OPENING STATEMENT, OR DO YOU WANT TO JUST PUT ON YOUR
2 EVIDENCE?

3 MR. BISSELL: THE OPENING STATEMENT MAY FLUSH OUT
4 SLIGHTLY A BIT MORE THAN WHAT WAS IN THE BRIEF, AS FAR
5 AS BACKGROUND AND FACTS.

6 THE COURT: IN THAT CASE, RIGHT SIDE, BEGIN.

7 MR. BISSELL: VERY WELL, YOUR HONOR. THANK YOU.

8 ONCE AGAIN, YOUR HONOR, WILLIAM BISSELL,
9 REPRESENTING THE HUMPHREYS WHO ARE THE DEFENDANTS,
10 CROSS-COMPLAINANTS IN THIS ACTION.

11 THIS OPENING STATEMENT IS JUST ADDRESSING, AS
12 THE COURT HAS INDICATED, THE FIRST CAUSE OF ACTION PLED
13 IN THE FIRST AMENDED.

14 THE COURT: CORRECT. WE WILL HOLD OFF ON THE
15 GENERAL RUN OPENING STATEMENT UNTIL LATER.

16 MR. BISSELL: THANK YOU, YOUR HONOR. THANK YOU.

17 FACTUALLY, THE WAY THIS CASE PLAYS OUT IN
18 EARLY -- ACTUALLY, IN APRIL OF 2012, THE HUMPHREYS HAD
19 PURCHASED A SMALL VACATION CONDOMINIUM UNIT IN NEWPORT
20 BEACH. THEY LIVE UP IN CONTRA COSTA COUNTY, BAY AREA.
21 THEY HAVE FAMILY AND FRIENDS DOWN HERE. BOTH HAVE
22 CHILDREN DOWN HERE. THEY WANTED A PLACE WHERE THE
23 FAMILIES COULD GET TOGETHER, KIDS COULD GO AND USE IT,
24 FRIENDS COULD USE IT.

25 THE PROBLEM WAS THAT IT WAS A BUILDING THAT
26 HAD BEEN BUILT IN 1955. IT WAS A RENTAL UNIT. IT WAS

1 PROBABLY -- THERE WASN'T A WHOLE LOT THAT HAD BEEN DONE
2 TO IT SINCE 1955. IT WAS OLD.

3 THE COURT: POSITIVELY ANTIQUE. IT'S ALMOST AS OLD
4 AS I AM.

5 MR. BISSELL: STILL YOUNGER THAN I AM, YOUR HONOR.

6 IT NEEDED AN OVERHAUL. GARY HUMPHREYS HAD
7 KNOWN MR. BEREKI THROUGH HIS BROTHER AND SON.

8 MR. BEREKI HAD DONE SOME CONSTRUCTION WORK FOR BOTH OF
9 THEM. AND IN FACT, MR. HUMPHREYS HAD MET MR. BEREKI AT
10 HIS HOUSE WHERE MR. BEREKI WAS INSTALLING AN
11 ENTERTAINMENT SYSTEM IN THE HOME.

12 THE HUMPHREYS, BEING FROM THE BAY AREA, DIDN'T
13 KNOW ANY OTHER CONTRACTORS IN THE AREA.

14 THE COURT: ARE WE TALKING ELECTRONICS OR ARE WE
15 TALKING ABOUT STRUCTURE?

16 MR. RUSSO: ELECTRONICS. WIRING. MAYBE STRUCTURAL
17 TO THE EXTENT THAT YOU'RE INSTALLING A SUPPORT FOR A TV
18 SCREEN, SOMETHING LIKE THAT, AS FAR AS MR. HUMPHREYS
19 UNDERSTOOD. IT WASN'T HIS PROJECT. HE WASN'T VIABLY
20 INVOLVED OR PAYING ATTENTION, BUT THAT WAS HIS
21 UNDERSTANDING.

22 AGAIN, THE HUMPHREYS DIDN'T KNOW ANY OTHER
23 CONTRACTORS IN THIS AREA. HIS BROTHER SAID, "HEY, WHY
24 DON'T YOU GIVE ADAM BEREKI A CALL. HE DOES GOOD WORK
25 FOR ME."

26 THE HUMPHREYS CONTACTED MR. BEREKI. THEY

1 SAID, "HEY, WE BOUGHT THIS CONDOMINIUM UNIT. IT'S
2 SHABBY, IT NEEDS AN OVERHAUL. WOULD YOU BE INTERESTED
3 IN LOOKING AT IT WITH US AND MAYBE DOING THE WORK ON THE
4 PROJECT?

5 THEY WALKED THE PROJECT. MR. BEREKI COULDN'T
6 BE MORE ENTHUSIASTIC. "AS A LICENSED CONTRACTOR, I HAVE
7 DONE SEVERAL OF THESE TYPES OF JOBS. THIS IS WHAT I DO.
8 I HAVE DONE WORK IN THE CITY OF NEWPORT BEACH. I KNOW
9 THE CITY'S REGULATIONS. THIS IS RIGHT IN MY WHEELHOUSE.
10 THIS IS SOMETHING WE WOULD BE VERY INTERESTED IN DOING.
11 AND I ASSURE YOU YOU WILL BE MORE THAN HAPPY WITH THE
12 RESULTS."

13 MR. BEREKI, A FEW DAYS LATER, I THINK IT WAS
14 WITHIN THREE OR FOUR DAYS AFTER THEY WALKED THE
15 PREMISES, MR. BEREKI SENT THE HUMPHREYS A PROPOSAL VIA
16 E-MAIL. THIS PROPOSAL WAS ON MR. BEREKI'S PERSONAL
17 ACCOUNT. THE PROPOSAL BASICALLY OUTLINED WHAT
18 MR. BEREKI UNDERSTOOD THAT THE HUMPHREYS WANTED WITH
19 REGARD TO THEIR RENOVATION OF THEIR CONDOMINIUM UNIT.

20 AND THE HUMPHREYS WENT THROUGH THAT AND THEY
21 RESPONDED BACK VIA E-MAIL TO MR. BEREKI, IN WHICH THEY
22 AGREED TO MANY OF THE ITEMS. AND THERE WAS MANY ITEMS
23 THAT MR. BEREKI PROPOSED, AND NO, WE DON'T WANT TO DO
24 THAT, MAYBE DO THIS INSTEAD. IN OTHER WORDS, HERE'S
25 WHAT I PROPOSE, THE HUMPHREYS LOOKED AT IT AND SAYS
26 "YES, THAT'S FINE. HERE'S THE CHANGES WE WANTED TO

1 MAKE."

2 MR. BEREKI'S PROPOSAL, AS FAR AS FEES, WERE
3 \$500 A DAY FOR MYSELF AND \$500 A DAY FOR MY PARTNER, MR.
4 OVERLEY. MATERIALS WILL BE BILLED TO YOU AT THEIR COST,
5 NO MARK UP, AND OTHER LABOR, AS NECESSARY, WILL BE
6 BILLED AT COST. THE PROJECT WILL TAKE APPROXIMATELY TWO
7 AND A HALF MONTHS AND SHOULD COST AROUND \$143,000.

8 THIS WAS ALL MEMORIALIZED IN THE E-MAIL. WHEN
9 I SAY THERE WAS AN ORAL AGREEMENT, THERE WAS AN ORAL
10 AGREEMENT BUT IT WAS MEMORIALIZED IN THIS E-MAIL, THIS
11 BACK AND FORTH BETWEEN THE HUMPHREYS AND MR. BEREKI.
12 AND THAT IS DATED APRIL 5, 2012.

13 THE E-MAIL, AGAIN, WAS SENT ON MR. BEREKI'S
14 PERSONAL E-MAIL ACCOUNT. IT WAS SIGNED OFF BY ADAM
15 BEREKI. IT WAS -- IT MENTIONED MR. BEREKI ONLY AND HIS
16 PARTNER, GLENN OVERLEY. THERE WAS ABSOLUTELY NO MENTION
17 OF SPARTAN ASSOCIATES OR SPARTAN CONSTRUCTION IN THAT
18 E-MAIL.

19 THE HUMPHREYS WILL TESTIFY THAT THERE IS NO
20 MENTION OF SPARTAN ASSOCIATES OR SPARTAN CONSTRUCTION IN
21 ANY OF THEIR CONVERSATIONS LEADING UP TO THE E-MAIL.
22 THERE WAS NO MENTION OF SPARTAN ASSOCIATES WHEN THEY
23 WALKED THE PROJECT. THERE WAS NO MENTION OF SPARTAN
24 PERIOD.

25 NOW, THIS GOES A LITTLE BIT BEYOND OPENING,
26 BUT UNDER THE LAW, CONTRACTS ARE INTERPRETED AT THE TIME

1 THEY ARE ENTERED INTO, AND THEY ARE INTERPRETED BY THEIR
2 OBJECTIVE INTENT, NOT SOMEBODY'S UNEXPRESSED INTENT. SO
3 IF THERE WAS AN INTENT TO, HEY, I AM REALLY SPARTAN,
4 WHERE YOU'RE REALLY ENTERING INTO A CONTRACT WITH
5 SPARTAN, THERE WAS INDICATION OF THAT. THE HUMPHREYS
6 HAD ABSOLUTELY NO INDICATION. THEY HAD NEVER HEARD OF
7 SPARTAN AT THIS POINT IN TIME.

8 NOW, ONCE THE PROJECT STARTED -- AND I SHOULD
9 SAY THAT THE PROJECT INITIALLY WAS ONE SMALL -- I THINK
10 IT WAS A 900 SQUARE FOOT CONDOMINIUM UNIT, AND THE
11 ORIGINAL QUOTE OF \$143,000, TWO AND A HALF MONTHS IS
12 BASED ON REFURBISHING THAT ONE UNIT.

13 WELL, SHORTLY AFTER THAT, THE HUMPHREYS BOUGHT
14 THE ADJACENT UNIT. SO IT'S AN UPSTAIRS UNIT, IF YOU CAN
15 PICTURE IT.

16 THE COURT: WHEN DID THAT PURCHASE TAKE PLACE?
17 WHAT WAS THE DATE OF THAT PURCHASE?

18 MR. BISSELL: MAY, I BELIEVE. MAY OF 2012.

19 THE COURT: THAT WAS THE DATE OF THE PURCHASE WHEN
20 THE ESCROW CLOSED?

21 MR. BISSELL: OF THE SECOND UNIT, YES, YOUR HONOR.

22 THE COURT: WHEN DID ESCROW CLOSE ON THAT SECOND
23 UNIT?

24 MR. BISSELL: MAY OF 2012.

25 THE COURT: THANK YOU.

26 MR. BISSELL: SO THE PROJECT BECAME LARGER THAN

1 ORIGINALLY ESTIMATED. IT WAS GOING TO BE ROUGHLY DOUBLE
2 BECAUSE YOU HAD TWO UNITS OF THE SAME SIZE AND THEY WERE
3 BOTH IN SIMILAR SHAPE, THEY BOTH NEEDED THE SAME STUFF
4 DONE.

5 FOR THE FIRST THREE MONTHS ON THIS PROJECT,
6 UNTIL JULY OF 2012 -- I SHOULD PREFACE THIS. SHORTLY
7 AFTER THE APRIL 5 AGREEMENT, E-MAIL AGREEMENT, IF WE
8 COULD CALL THAT THE AGREEMENT, MR. BEREKI'S ACKNOWLEDGED
9 THAT WAS THE AGREEMENT, AND THERE WAS NO OTHER
10 AGREEMENT. THAT WAS THE ONLY AGREEMENT.

11 WITHIN TWO OR THREE DAYS AFTER THAT,
12 MR. BEREKI CONTACTED THE HUMPHREYS. IT COULD HAVE BEEN
13 WITHIN A WEEK AFTER THAT. CONTACTED THE HUMPHREYS AND
14 SAID I AM REALLY EXCITED ABOUT THIS, AND WE'RE GOING
15 FORWARD. I NEED \$15,000 AS A DOWN PAYMENT TO PAY --
16 I'VE GOT A LITTLE BIT OF LABOR ALREADY INVOLVED IN THIS
17 THING AND THIS WILL SEE ME THROUGH FOR ANOTHER WEEK OR
18 TWO. WOULD YOU SEND ME \$15,000.

19 MS. HUMPHREYS E-MAILS BACK AND SAYS FINE. WHO
20 DO YOU WANT IT MADE PAYABLE TO? SHE DIDN'T KNOW WHETHER
21 OR NOT IT SHOULD BE PAYABLE TO MR. BEREKI, MR. BEREKI
22 AND MR. OVERLEY, HIS PARTNER, A COMBINATION OF THE TWO?
23 SHE DIDN'T KNOW. MR. BEREKI RESPONDS BACK, HEY, TO ADAM
24 BEREKI.

25 SO FOR THE FIRST THREE MONTHS ON THIS PROJECT,
26 UNTIL JULY OF 2012, THE HUMPHREYS PAID MR. BEREKI

1 PERSONALLY \$100,000.

2 AFTER THE \$100,000 IN JULY OF 2012, MR.
3 BEREKI, I THINK THE LIGHTBULB WENT ON IN HIS HEAD THAT I
4 THINK I SHOULD BE RUNNING THIS JOB THROUGH MY
5 CORPORATION. HE HAD A CORPORATION APPARENTLY. IT WAS
6 SPARTAN. HE SENT THE HUMPHREYS AN E-MAIL SAYING WOULD
7 YOU PLEASE MAKE PAYMENTS TO SPARTAN.

8 NOW, AT THAT SAME TIME, UP UNTIL THAT TIME,
9 MR. BEREKI WAS NOT ONLY REQUESTING AND ACCEPTING
10 PAYMENTS TO HIM PERSONALLY, HE WAS PAYING ALL LABOR AND
11 MATERIAL ON THE JOB IN HIS OWN ACCOUNT, AND ACTUALLY IT
12 WAS SOMEONE'S MOTHER'S ACCOUNT. NOTHING ON THE SPARTAN
13 CONSTRUCTION ACCOUNT. SPARTAN DIDN'T EXIST ON THIS JOB
14 UNTIL JULY WHEN MR. BEREKI SAYS PLEASE START MAKING
15 PAYMENTS TO SPARTAN.

16 THE HUMPHREYS DIDN'T KNOW WHO SPARTAN WAS OR
17 WHAT SPARTAN WAS. THEY FIGURED IT WAS AN ACCOUNT
18 MR. BEREKI WANTED TO RUN PAYMENTS THROUGH, A DBA,
19 WHATEVER. IT REALLY DIDN'T REGISTER WITH THEM. IT
20 WASN'T EXPLAINED TO THEM, CERTAINLY, WHAT SPARTAN WAS,
21 JUST PLEASE COULD YOU MAKE PAYMENTS TO SPARTAN.

22 IT WAS IN JULY OF 2012, WHEN MR. BEREKI MADE
23 THIS REQUEST, THAT HE APPLIED TO THE BOARD OF
24 EQUALIZATION OF THE STATE OF CALIFORNIA FOR SPARTAN TO
25 BE AN EMPLOYER. IT WAS IN JULY OF 2012 WHEN MR. BEREKI
26 APPLIED AS SPARTAN CONSTRUCTION FOR WORKERS'

1 COMPENSATION INSURANCE ON THIS JOB. SO SPARTAN DIDN'T
2 EVEN EXIST ON THIS JOB UNTIL JULY OF 2012 AFTER THE
3 HUMPHREYS HAD ALREADY ENTERED INTO THE AGREEMENT, AFTER
4 THE HUMPHREYS HAD PAID MR. BEREKI \$100,000 PERSONALLY.

5 AND THEN FROM THAT POINT FORWARD, PAYMENTS
6 WERE MADE BOTH TO MR. BEREKI AND SPARTAN CONSTRUCTION.
7 \$188,000 WAS PAID PERSONALLY TO MR. BEREKI AND THE
8 BALANCE OF \$848,000 MINUS \$184,000 WAS PAID TO SOME
9 COMBINATION OF SPARTAN OR SPARTAN CONSTRUCTION AT
10 MR. BEREKI'S REQUEST.

11 AGAIN, THE HUMPHREYS THINKING THIS WAS SOME
12 ACCOUNT OR SOME BUSINESS DBA THAT ADAM WANTED TO USE,
13 AND THAT WAS FINE WITH THEM.

14 BUT THE POINT IS, CONTRACTS ARE INTERPRETED AT
15 THE TIME THEY ARE ENTERED INTO. AT THE TIME THIS
16 CONTRACT WAS ENTERED INTO, AND FOR THE FIRST THREE
17 MONTHS, SPARTAN DIDN'T EXIST ON THIS JOB.

18 MR. BEREKI, AFTER THE FACT, TRIED TO
19 APPARENTLY -- IT APPEARS THAT HE TRIED TO INSERT SPARTAN
20 INTO THE JOB. IT WAS TOO LATE AT THAT POINT. THERE WAS
21 NO CONTRACT THAT WAS ENTERED INTO BETWEEN SPARTAN AND
22 HUMPHREYS. IT JUST DIDN'T EXIST, THERE ISN'T ONE.

23 THE CONSEQUENCES, OF COURSE, WERE BRIEF, AND
24 THAT'S THAT MR. BEREKI WASN'T LICENSED. HE HAD NO
25 LICENSE TO ACT AS A CONTRACTOR. MR. BEREKI WAS AN RMO
26 FOR HIS CORPORATION, SPARTAN. THE LAW SAYS WE COULD BE

1 AN RMO, YOU CAN BE A RESPONSIBLE MANAGEMENT OFFICER, YOU
2 CAN BE A RESPONSIBLE MANAGING EMPLOYEE, YOU CAN BE THE
3 MANAGER, YOU CAN BE WHATEVER OF A PARTNERSHIP,
4 CORPORATION, JOINT VENTURE, WHATEVER, BUT THAT DOESN'T
5 GIVE YOU THE RIGHT TO GO OUT AND CONTRACT AS AN
6 INDIVIDUAL. YOU HAVE TO HAVE A LICENSE AS AN
7 INDIVIDUAL.

8 THE OTHER KEY HERE IS THAT MR. BEREKI -- MR.
9 OVERLEY. MR. BEREKI REFERRED TO MR. OVERLEY IN THE
10 AGREEMENT AS MY PARTNER, MY PARTNER MR. OVERLEY. MR.
11 OVERLEY WORKED ON THE JOB. HE WAS PAID ON THE JOB FOR
12 AT LEAST THE FIRST THREE MONTHS. THEN WHAT HAPPENED TO
13 MR. OVERLEY, WE DON'T KNOW. THE HUMPHREYS FRANKLY NEVER
14 MET MR. OVERLEY, NEVER SEEN HIM BEFORE. BUT HE WAS
15 REPRESENTED TO BE MR. BEREKI'S PARTNER.

16 SO, AS HIS PARTNER, THERE WOULD HAVE TO BE, BY
17 LAW, A LICENSE ISSUED TO THE TWO OF THEM AS A JOINT
18 VENTURE OR PARTNERSHIP. EVEN IF BOTH WERE INDIVIDUALLY
19 LICENSED, WHICH THEY WERE NOT, THEY WOULD STILL HAVE TO
20 HAVE A JOINT VENTURE LICENSE. EVEN IF YOU COULD ARGUE
21 THAT SPARTAN ASSOCIATES WAS SOMEHOW INVOLVED IN THIS
22 JOB, OR IF THE HUMPHREYS HAD CONTRACTED WITH SPARTAN --
23 AND THAT'S THE KEY, IS WHO THEY CONTRACTED WITH, NOT
24 WHETHER OR NOT SPARTAN WAS INVOLVED. SPARTAN COULD BE
25 INVOLVED AS MUCH AS IT WANTS. IT COULD BE A
26 SUBCONTRACTOR OF MR. BEREKI, IT COULD BE A CO-VENTURE

1 WITH MR. BEREKI AND MR. OVERLEY. IT CAN BE WHATEVER IT
2 WANTS, BUT IT DIDN'T CONTRACT WITH THE HUMPHREYS.

3 AND IF IT COULD BE ARGUED THAT SPARTAN
4 ASSOCIATES WAS SOMEHOW -- HAD SOMEHOW CONTRACTED WITH
5 THE HUMPHREYS, IT WOULD STILL NEED TO BE A JOINT VENTURE
6 LICENSE BETWEEN SPARTAN AND MR. OVERLEY, MR. BEREKI'S
7 PARTNER. SO BEREKI HAS TESTIFIED UNDER OATH THAT MR.
8 OVERLEY WAS AN INDEPENDENT CONTRACTOR. THAT WAS HIS
9 POSITION ON THIS JOB, INDEPENDENT CONTRACTOR. SO ANY
10 COMBINATION, ANY COMBINATION OF SPARTAN AND MR. OVERLEY,
11 ANY COMBINATION OF MR. BEREKI AND MR. OVERLEY, ANY
12 COMBINATION -- ANY COMBINATION YOU CAN COME UP WITH HAD
13 TO HAVE A LICENSE ISSUED TO IT AS A JOINT VENTURE.

14 AND THE EVIDENCE WILL SHOW WE HAVE ASKED FOR
15 THE PRODUCTION. THE BURDEN WILL SHIFT -- ONCE THE
16 LICENSURE ISSUE BECOMES IN ISSUE, THE BURDEN SHIFTS TO
17 THE CONTRACTOR TO PROVE LICENSURE. WE HAVE ASKED FOR
18 PRODUCTION TODAY IN THIS TRIAL OF LICENSES ISSUED TO
19 MR. BEREKI, INDIVIDUALLY, MR. OVERLEY, INDIVIDUALLY, OR
20 TO THE TWO OF THEM AS A JOINT VENTURE, OR BETWEEN ANY
21 COMBINATION OF THEM AND SPARTAN AS A JOINT VENTURE. AND
22 I -- I STRONGLY SUSPECT THAT WE'RE NOT GOING TO SEE THAT
23 LICENSE.

24 THE CONSEQUENCE OF THAT, YOUR HONOR, IS THAT,
25 UNDER THE LAW -- AND IT'S A HARSH REMEDY AND -- THE
26 COURT SHOULD UNDERSTAND THAT THE HUMPHREYS ARE PREPARED,

1 IF NECESSARY, TO -- YOU KNOW, WE CAN PUT ON EVIDENCE OF
2 18 MONTHS OF MALFEASANCE BY MR. BEREKI ON THIS JOB. NOT
3 ONLY NEGLIGENCE, BUT OUTRIGHT FRAUD.

4 SO WE FEEL THAT THE DISGORGEMENT STATUTE,
5 ALTHOUGH HARSH IN SOME INSTANCES, AND IN THIS INSTANCE
6 IT'S NOT THAT HARSH, UNDER THE LAW, THE LAW IS VERY
7 CLEAR THAT HARSH OR NOT, THE HUMPHREYS ARE ENTITLED TO
8 RECOVER FROM MR. BEREKI ALL AMOUNTS PAID BY THEM ON THIS
9 JOB. AND THAT AMOUNT TOTALS \$848,000.

10 THANK YOU.

11 THE COURT: TURN TO MR. RUSSO.

12 MR. RUSSO: IF ONLY IT WAS SO SIMPLE, YOUR HONOR.

13 THERE'S NOT A DISPUTE HERE THAT THE SPARTAN
14 ASSOCIATES, INC. IS LICENSED TO BE A CONTRACTOR WITH THE
15 CONTRACTOR STATE LICENSE BOARD. MR. BEREKI IS --
16 MR. BEREKI IS THE RMO OF THAT COMPANY. HE'S THE SOLE
17 SHAREHOLDER OF THAT COMPANY.

18 SPARTAN ASSOCIATES, THIS WAS NOT THEIR
19 FIRST -- IT'S -- IT WAS NOT ITS FIRST WORK WITH THE
20 HUMPHREYS FAMILY. THE HUMPHREYS HAVE FAMILY MEMBERS
21 THAT SPARTAN ASSOCIATES DID PRIOR PROJECTS ON. THERE
22 WERE TWO HOMES THAT WENT THROUGH SOME REMODEL WORK.
23 THERE WAS A COMMERCIAL OFFICE BUILDING THAT
24 MR. HUMPHREYS' BUSINESS IS IN WHERE SPARTAN ASSOCIATES
25 DID THE TENANT IMPROVEMENT WORK ON THAT PRIOR TO THIS
26 PROJECT. SPARTAN ASSOCIATES WAS AN ENTITY KNOWN BY THE

1 HUMPHREYS PRIOR TO THE HUMPHREYS ENGAGING SPARTAN
2 ASSOCIATES FOR THIS PROJECT.

3 WAS MR. BEREKI A LITTLE LAX ON THE FIRST
4 COUPLE OF CHECKS GOING TO HIM PERSONALLY? YES. BUT AT
5 ALL TIMES THIS WAS A SPARTAN ASSOCIATES PROJECT. YOU
6 WILL SEE -- THE EVIDENCE WILL SHOW THAT OVER \$500,000 OF
7 THE PAYMENTS FOR THIS REMODEL PROJECT FOR THE TWO
8 WATERFRONT HOMES WERE PAYABLE TO THE SPARTAN ASSOCIATES.

9 WHAT'S BEEN REFERRED TO HERE IN THIS
10 CROSS-COMPLAINT IS THE DISGORGEMENT STATUTE FOR
11 UNLICENSED CONTRACTING. THAT'S WHEN A PERSON WHO
12 DOESN'T HAVE A LICENSE ACCEPTS MONEY FOR WORK WHERE A
13 LICENSE WAS REQUIRED. SPARTAN ASSOCIATES, THE RECIPIENT
14 OF MOST OF THAT MONEY, THE VAST MAJORITY, WAS A LICENSED
15 CONTRACTOR SO THE STATUTE DOESN'T APPLY. IT IS NOT A
16 QUESTION IN MY MIND OF WHO WE ARE CONTRACTED WITH, IT'S
17 WAS THIS UNLICENSED WORK? CERTAINLY IT WAS NOT.

18 THE BUILDING PERMITS PULLED ON THIS PROJECT
19 WERE PULLED BY SPARTAN ASSOCIATES. THE HUMPHREYS WERE
20 WELL AWARE THAT THE BUILDING PERMITS WERE PULLED BY
21 SPARTAN ASSOCIATES. EVERY SUBCONTRACT ENTERED INTO ON
22 THIS PROJECT WAS ENTERED INTO BY THE SPARTAN ASSOCIATES,
23 INC., NOT MR. BEREKI PERSONALLY. SO WE WILL HAVE THOSE
24 IN EVIDENCE.

25 AT THE END OF THE DAY, THIS IS NOT TOO
26 DISSIMILAR TO THE FACT THAT OFTEN CLIENTS WILL WRITE TO

1 AN ATTORNEY -- EVEN THOUGH THEY WANT THE CHECKS WRITTEN
2 TO THE LAW FIRM, THEY WILL WRITE IT TO THE ATTORNEY AND
3 THEY DEPOSIT IT INTO THE LAW FIRM'S ACCOUNT. AT THE END
4 OF THE DAY, THE DISGORGEMENT STATUTE DOES NOT APPLY
5 BECAUSE WE DO HAVE LICENSURE HERE, THE PROPER B LICENSE.

6 WE WILL GET INTO THE OTHER ISSUES, THE QUALITY
7 OF THE WORK AND WHETHER OR NOT THERE WAS ANY
8 OVERCHARGING AND ALL THAT, BUT THERE WAS A LICENSE.
9 THERE WAS A B LICENSE. THE VAST MAJORITY OF THE MONEY
10 WENT THERE. ALL THE PERMITS, ALL THE ENGAGEMENTS IN
11 THIS WERE WITH THE SPARTAN ASSOCIATES, INC. THE
12 HUMPHREYS WERE WELL AWARE OF THAT THE WHOLE TIME.

13 THE COURT: MR. BEREKI, TO YOU.

14 MR. BEREKI: JUST A FEW MINOR THINGS. I JUST
15 WANTED TO TOUCH ON THE WORDS "ORAL AGREEMENT" THAT KEEP
16 COMING UP. THAT BOX DOWN THERE WITH THE 4-INCH BINDERS
17 ARE THE E-MAILS. THERE WAS OVER A THOUSAND OF THEM THAT
18 HAPPENED BETWEEN MYSELF AND THE HUMPHREYS FAMILY, KAREN
19 AND GARY, AND THE ARCHITECTS, ENGINEERS, PEOPLE INVOLVED
20 WITH THE PROJECT. THERE'S HUNDREDS OF PAGES IN THOSE
21 E-MAILS OF AGREEMENTS WHERE SOMETHING HAPPENED ON THE
22 PROJECT AND I SAID, "HEY, WE GOT THIS PROBLEM, WHAT DO
23 YOU WANT TO DO ABOUT IT?" THEY WOULD SAY, "YES, GO
24 AHEAD AND SPEND THIS," OR "NO, DON'T DO THAT." TO ME,
25 THAT WAS EITHER PERMISSION TO DO OR NOT TO DO SOMETHING,
26 AND THAT, IN ITSELF, WAS AN AGREEMENT. SO THERE'S

1 COUNTLESS OTHER FORMS OF AGREEMENT THAT WENT ON IN
2 ADDITION TO THAT INITIAL ORAL AGREEMENT THAT YOU HAD.

3 THE COURT: LET ME ASK YOU, DID YOU PREPARE A FINAL
4 TRIAL BRIEF HERE, SIR?

5 MR. BEREKI: I DID NOT, SIR.

6 THE COURT: OKAY. HOPEFULLY SOMEBODY ON YOUR SIDE
7 OF THE TABLE, AT SOME POINT, WILL BE ABLE TO GIVE ME
8 SOME LAW WITH RESPECT TO THE ISSUE OF E-MAILS VIS-A-VIS
9 WRITTEN CONTRACTS AND WHETHER AN E-MAIL IN AND OF ITSELF
10 CONSTITUTES A WRITTEN CONTRACT.

11 MR. BEREKI: YES, YOUR HONOR.

12 THE COURT: MR. RUSSO IS MAKING NOTES.

13 MR. RUSSO: YES, I AM, YOUR HONOR.

14 MR. BEREKI: JUST A NOTE ABOUT THE RESPONSIBLE
15 MANAGING OFFICER ON THE LICENSE. I WASN'T, TO MY
16 KNOWLEDGE, THE RMO. I WAS THE QUALIFIED INDIVIDUAL. I
17 AM THE ONE THAT HAD THE WORK EXPERIENCE AND THE ONE THAT
18 TOOK THE TEST TO OBTAIN THE LICENSE.

19 AND AS FAR AS GLENN OVERLEY AND MY REFERENCE
20 TO BEING A PARTNER, HE'S A PARTNER THAT I WORK WITH.
21 HE'S A FELLOW RETIRED POLICE OFFICER, LIKE I AM. AND
22 JUST LIKE IN POLICE WORK I REFER TO PEOPLE AS MY
23 PARTNER, HE'S MY PARTNER. HE'S MY MAIN GUY. WE WORK
24 TOGETHER.

25 IT DOESN'T MEAN THAT I HAVE A LICENSE ISSUE
26 WITH HIM OR A BUSINESS WITH HIM. IN FACT, WE RENTED

1 SOME SHOP SPACE. HE HAS A DIFFERENT COMPANY, AND I HAVE
2 A DIFFERENT COMPANY. BUT TOGETHER ON THIS PROJECT, WE
3 CAME TOGETHER AND PARTNERED TO DO THE WORK.

4 THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: THANK YOU. SO LET'S START WITH
6 MR. BISSELL. YOUR FIRST WITNESS, PLEASE.

7 MR. BISSELL: THANK YOU, YOUR HONOR. THE
8 CROSS-COMPLAINANTS CALL KAREN HUMPHREYS.

9 THE COURT: MS. HUMPHREYS, IF YOU WILL STOP RIGHT
10 THERE, FACE THE CLERK, AND RAISE YOUR RIGHT HAND. SHE
11 IS GOING TO SWEAR YOU IN.

12 THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE
13 YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS
14 COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING
15 BUT THE TRUTH, SO HELP YOU GOD?

16 THE WITNESS: I DO.

17 THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME FOR
18 THE RECORD AND SPELL IT.

19 THE WITNESS: KAREN, K-A-R-E-N, MOE, M-O-E,
20 HUMPHREYS, H-U-M-P-H-R-E-Y-S.

21 THE COURT: GOOD MORNING, MS. HUMPHREYS. HAVE A
22 SEAT RIGHT HERE, PLEASE.

23 THE WITNESS: THANK YOU.

24 THE COURT: HOW ARE YOU?

25 THE WITNESS: I AM OKAY.

26 THE COURT: LET'S TALK ABOUT THE CLARITY OF THE

1 RECORD FOR A SECOND. THIS IS FOR EVERYBODY'S BENEFIT
2 HERE. COUPLE THINGS. NUMBER ONE, SPEAK UP. EVERYBODY
3 IN THE COURTROOM NEEDS TO HEAR WHAT YOU SAY. FEEL FREE
4 TO PULL DOWN THE MICROPHONE. I DON'T GUARANTEE IT WORKS
5 VERY WELL. USUALLY, IF YOU'RE CLOSER THAN ABOUT
6 4 INCHES, WE GET A LOT OF FEEDBACK AND TYPICALLY YOU
7 BLOW EVERYBODY OUT OF THE ROOM. IF YOU'RE FURTHER THAN
8 ABOUT 12 INCHES, IT DOESN'T PICK UP VERY WELL. SO
9 THERE'S A SWEET SPOT IN THERE SOMEWHERE IF YOU NEED IT.
10 I'M NOT SURE YOU REALLY DO. YOU HAVE A GOOD VOICE.

11 NEXT, IF YOU ARE ASKED A QUESTION THAT CALLS
12 FOR A "YES" OR "NO" ANSWER, IF YOU WOULD USE THE WORD
13 APPROPRIATE, YES OR NO. SOME PEOPLE LIKE TO SAY,
14 "UH-HUH" OR "HUH-HUH." I'M NOT ACCUSING YOU, I DON'T
15 KNOW YOU. I AM JUST LETTING YOU KNOW "UH-HUH" AND
16 "HUH-HUH" LOOK BOTH -- BOTH LOOK THE SAME IN THE
17 TRANSCRIPT FOR THIS TRIAL. THAT LEADS TO CONFUSION,
18 WHICH IS SOMETHING WE CANNOT AFFORD.

19 THE WITNESS: ALL RIGHT. YES.

20 THE COURT: GOOD ANSWER. THE COURT REPORTER WHO IS
21 SITTING RIGHT IN FRONT OF YOU, HIS JOB IS TO TAKE DOWN
22 EVERY WORD SPOKEN IN THE COURTROOM. AND SO IT'S
23 IMPORTANT TO KEEP IN MIND THAT EVEN A GOOD COURT
24 REPORTER LIKE THE GENTLEMAN SITTING HERE, MR. DO, CANNOT
25 TAKE DOWN TWO PEOPLE TALKING AT THE SAME TIME. WHAT
26 THIS MEANS IS THAT, WELL, I KNOW YOU CAN ANTICIPATE THE

1 QUESTIONS, AND LIKE MOST OF US IN LIFE, YOU WOULD LIKE
2 TO GET THIS OVER WITH, LET THE QUESTION BE FULLY POSED
3 BEFORE YOU START RESPONDING TO IT. SIMILARLY, I WILL
4 TRY TO NOT LET THE LAWYERS CUT YOU OFF MIDSTREAM. THAT
5 WAY THE RECORD CAN BE CLEAR AND CLEAN, AND IF ANY
6 REVIEWING COURT NEEDS TO LOOK AT IT, THEY WILL BE ABLE
7 TO UNDERSTAND WHAT HAPPENED HERE.

8 READY TO GO?

9 THE WITNESS: I AM.

10 THE COURT: MR. BISSELL, TO YOU, PLEASE.

11 MR. BISSELL: THANK YOU, YOUR HONOR.

12
13 DIRECT EXAMINATION

14
15 BY MR. BISSELL:

16 Q GOOD MORNING, MS. HUMPHREYS.

17 A GOOD MORNING.

18 Q ARE YOU AND YOUR HUSBAND CURRENTLY THE OWNERS
19 OF THE UPSTAIRS UNIT AT 436 VIA LIDO NORD?

20 A YES, WE ARE.

21 Q AND DID THAT PARTICULAR UNIT USED TO BE TWO
22 SEPARATE UNITS?

23 A YES.

24 Q DID YOU AND YOUR HUSBAND BUY BOTH OF THOSE
25 UNITS SEPARATELY?

26 A YES, WE DID.

1 Q AND WHEN DID YOU BUY EACH OF THOSE UNITS?

2 A WE BOUGHT THE FIRST UNIT IN NOVEMBER/DECEMBER
3 OF 2011, AND WE BOUGHT THE SECOND ONE IN MAY OF 2012.

4 Q AND WHAT WAS YOUR PURPOSE FOR BUYING THOSE TWO
5 UNITS?

6 A WE WANTED TO ESTABLISH A PLACE WHERE WE COULD
7 HAVE SOME VACATION TIME AND SPEND MORE TIME IN OUR
8 RETIREMENT WHERE WE WOULD BE CLOSE TO OUR FAMILY AND
9 FRIENDS IN SOUTHERN CALIFORNIA. MY PERSONAL HOPE WAS
10 THERE WOULD BE GRANDCHILDREN COMING SOON. WITH THE
11 FIELD OF DREAMS IDEA OF BUILD IT AND THEY WILL COME.

12 THE COURT: HOW DID THAT WORK OUT?

13 THE WITNESS: NOT YET.

14 THE COURT: OKAY.

15 BY MR. BISSELL:

16 Q AND TO EXPAND ON THE FIELD OF DREAMS CONCEPT,
17 WHERE IS THIS CONDOMINIUM SITUATED?

18 A IT'S ON LIDO ISLE, AN UPSTAIRS OF A TWO -- NOW
19 A TWO-UNIT DUPLEX. IT HAS THE BEACH RIGHT IN FRONT OF
20 IT.

21 Q AND AN UNOBSTRUCTED VIEW OF THE BAY?

22 A YES, IT IS ON THE BAY FRONT FACING BALBOA BAY
23 BEACH CLUB, ACROSS THAT DIRECTION.

24 Q ARE YOU FAMILIAR WITH ADAM BEREKI?

25 A YES, I AM.

26 Q WHEN DID YOU FIRST MEET MR. BEREKI?

1 A I MET HIM ON APRIL 1ST, 2012.

2 Q AND WHAT WAS THE OCCASION OF YOUR FIRST
3 MEETING WITH MR. BEREKI?

4 A GARY AND I MET WITH HIM AT THE SITE OF THE
5 CONDO, INSIDE THE CONDO TO DO A WALK-THROUGH TO TALK
6 ABOUT THE POSSIBILITIES OF UPGRADING IT WITH HIM.

7 Q AND YOU NEVER MET MR. BEREKI BEFORE THAT?

8 A I HAD NOT MET HIM BEFORE THAT DAY.

9 Q HAD YOU EVER SPOKEN TO MR. BEREKI BEFORE THAT
10 DAY?

11 A I HAD NOT SPOKEN WITH HIM BEFORE THAT DAY.

12 Q AT THE TIME THAT YOU PURCHASED THE TWO
13 CONDOMINIUM UNITS, HAD MR. BEREKI DONE ANY CONSTRUCTION
14 WORK FOR YOU OR YOUR HUSBAND?

15 A NO, HE HAD NOT.

16 Q SO AFTER BUYING UNIT -- THE FIRST OF THE TWO
17 UNITS, YOU HAD A WALK-THROUGH WITH MR. BEREKI ON THE
18 PREMISES?

19 A YES.

20 Q AND DID YOU COMMUNICATE WITH MR. BEREKI AND
21 WHAT YOU WERE THINKING OF HAVING HIM DO?

22 A YES. AS WE WALKED THROUGH, WE POINTED OUT
23 THINGS WE THOUGHT NEEDED TO BE FIXED AND TALKED ABOUT
24 IDEAS FOR UPGRADING IT.

25 Q CAN YOU DESCRIBE IN GENERAL WHAT YOUR THINKING
26 WAS? WHAT DID YOU WANT TO HAVE DONE TO THE UNIT AT THAT

1 TIME?

2 A YES, I CAN. THE UNIT HAD A GREAT LOCATION,
3 BUT IT HAD BEEN USED PRIMARILY FOR A LONG PERIOD OF TIME
4 AS A RENTAL UNIT. SO IT WAS IN BAD REPAIR WITH DIRTY
5 CARPET AND DINGS AND MARKS ON THE WALLS, THAT SORT OF
6 THING, AND IT WASN'T IN SHAPE FOR US TO ENJOY AS A
7 FAMILY HOME YET. SO WE WANTED TO CHANGE OUT THE
8 WINDOWS, WE WANTED TO GET THE ELECTRICAL UP TO CODE. IT
9 WAS STILL IN THE ORIGINAL 1950S CODE ON THAT. AND,
10 BASICALLY, FRESHEN IT UP, MAKE IT FEEL MORE WELCOMING.

11 Q DID YOU COMMUNICATE THAT TO MR. BEREKI?

12 A YES.

13 Q AT THE TIME OF THE WALK-THROUGH?

14 A YES.

15 Q DID MR. BEREKI INDICATE TO YOU THAT HE WAS
16 INTERESTED IN DOING THE PROJECT?

17 A YES, HE DID. HE WAS VERY EXCITED ABOUT THE
18 OPPORTUNITY, AND HE HAD A LOT OF IDEAS OF WHAT HE COULD
19 DO TO HELP US CREATE THAT KIND OF A SPACE.

20 Q MS. HUMPHREYS, YOU MIGHT HAVE A FEW EXHIBIT
21 BOOKS IN FRONT OF YOU -- I'M NOT SURE -- OR BEHIND YOU.
22 THERE'S ONE THAT INDICATES IT IS DEFENDANTS' TRIAL
23 EXHIBITS.

24 A YEAH, THIS ONE?

25 Q YEAH. COULD YOU PUT THAT IN FRONT OF YOU.

26 A YES.

1 THE COURT: ALL EXHIBIT BOOKS ARE SIZED AND
2 DESIGNED TO INDUCE HERNIAS, SO BE CAREFUL.

3 BY MR. BISSELL:

4 Q IF YOU WILL TURN TO -- IT'S TAB NO. 4 IN YOUR
5 EXHIBIT BOOK, BUT ACTUALLY EXHIBIT 304.

6 A I CAN. BUT IT'S BLANK.

7 Q I'M SORRY. LET ME BACKTRACK. IF YOU -- WHAT
8 HAPPENED TO IT?

9 THE COURT: POINT IT AT ME.

10 BY MR. BISSELL:

11 Q WHAT ARE YOU SAYING?

12 THE COURT: IT IS MISSING AN EXHIBIT.

13 MR. BISSELL: I HAVE EXTRAS.

14 THE WITNESS: YOUR HONOR, I FORGOT MY READING
15 GLASSES.

16 THE COURT: STEP ON OVER AND GET THEM, OR PERHAPS
17 MR. HUMPHREYS CAN HELP YOU OUT.

18 MR. HUMPHREYS: OH, IS THIS IT?

19 THE WITNESS: YEAH.

20 MR. BISSELL: IS ANYBODY ELSE'S EXHIBIT BOOK
21 MISSING NUMBER 4?

22 MR. RUSSO: MINE IS. THANK YOU.

23 THE COURT: I HAVE IT.

24 MR. BISSELL: ALL RIGHT.

25 THE COURT: LOOKS TO BE A GMAIL OF APRIL 6, 2012.

26 MR. BISSELL: THAT'S CORRECT.

1 BY MR. BISSELL:

2 Q ALTHOUGH I'M GOING TO ASK YOU, INSTEAD OF
3 FLIPPING FIRST TO NUMBER 4, IF YOU WOULD FLIP TO EXHIBIT
4 NUMBER 303, TABBED 3 IN YOUR BOOK.

5 A YES.

6 Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

7 A YES.

8 Q CAN YOU TELL US WHAT THAT IS?

9 A THIS IS A COPY OF E-MAILS THAT WERE SENT ON
10 APRIL 5, 2012 FROM ME TO ADAM BEREKI AT HIS PERSONAL
11 GMAIL ACCOUNT, AND IT ALSO INCLUDES THE TEXT OF THE
12 E-MAIL HE HAD SENT TO ME EARLIER IN THE DAY.

13 Q SO THIS WAS A RESPONSE TO MR. BEREKI'S E-MAIL
14 EARLIER THE SAME DAY?

15 A YES.

16 Q AND THIS EXHIBIT NUMBER 303 CONTAINS BOTH
17 MR. BEREKI'S ORIGINAL E-MAIL TO YOU AND YOUR RESPONSE TO
18 HIM?

19 A YES.

20 Q AND CAN YOU TELL ME IN GENERAL THE GIST OF
21 WHAT MR. BEREKI'S COMMUNICATION WAS TO YOU IN THIS
22 E-MAIL?

23 A HE HAD MEMORIALIZED A LOT OF THE CONVERSATION
24 THAT WE HAD AND HE ALSO -- IT WAS HIS PROPOSAL FOR THE
25 SCOPE OF WORK, BASICALLY, AND TALKING ABOUT THINGS THAT
26 HE THOUGHT WE TALKED ABOUT.

1 Q OKAY. AND DID YOU READ -- DID YOU GO OVER HIS
2 E-MAIL EARLIER IN THE DAY WITH MR. HUMPHREYS?

3 A YES, I DID.

4 Q DID THE TWO OF YOU DISCUSS THAT?

5 A YES, WE DID.

6 Q AND DID YOU UNDERSTAND IT TO BE MR. BEREKI'S
7 PROPOSAL FOR THE WORK HE WANTED TO DO?

8 A YES, WE DID.

9 Q AND DID YOU TALK ABOUT THAT PROPOSAL WITH
10 MR. HUMPHREYS?

11 A YES, WE TALKED ABOUT IT TOGETHER.

12 Q DID YOU COME UP WITH A RESPONSE TO
13 MR. BEREKI'S PROPOSAL?

14 A YES, WE CREATED THIS RESPONSE TOGETHER.

15 Q IS THAT RESPONSE ALSO INCLUDED IN THIS
16 APRIL 5, 2012, E-MAIL, EXHIBIT 303?

17 A YES.

18 Q DOES THE EXHIBIT YOU'RE REFERRING TO NOW, THE
19 EXHIBIT 303, DOES THAT ACCURATELY DESCRIBE WHAT YOUR
20 UNDERSTANDING WAS AS TO WHAT THE PROJECT WOULD ENTAIL AS
21 OF APRIL 5, 2012?

22 A YES, IT DID.

23 Q AND IN GENERAL TERMS, WHAT WAS THAT
24 UNDERSTANDING?

25 A MY UNDERSTANDING IS THAT WE WERE HIRING ADAM
26 AND HIS PARTNER GLENN OVERLEY TO FRESHEN UP THE UNIT BY

1 UPGRADING THE ELECTRICAL, DOING SOME CABINETS WORK,
2 REPLACING WINDOWS, PAINTING, THAT SORT OF THING.

3 Q AND DID MR. BEREKI INDICATE WHO IT WAS THAT HE
4 WAS PROPOSING WOULD DO THIS WORK?

5 A YES.

6 Q AND WHO DID HE -- CAN YOU POINT OUT IN THIS
7 EXHIBIT 303 WHERE MR. BEREKI IS INDICATING WHO HE'S
8 PROPOSING TO HAVE -- TO DO THE WORK?

9 A YES, I CAN. ON PAGE 5, SECOND-TO-THE-LAST
10 PARAGRAPH.

11 Q COULD YOU READ THAT PARAGRAPH, PLEASE?

12 A "AS I SHARED WITH YOU ON SUNDAY MY PARTNER
13 GLENN AND I CHARGE \$75" --

14 THE REPORTER: SLOW DOWN.

15 THE COURT: SLOW DOWN FOR THE COURT REPORTER. WHEN
16 YOU ARE READING YOUR CADENCE PICKED UP BY A FACTOR OF
17 ABOUT 50 PERCENT. HAVE YOU SEEN THAT COMMERCIAL YEARS
18 AGO WITH THE GUY TALKING ABOUT 3,000 MILES AN HOUR
19 ADVERTISING A PRODUCT THAT NOBODY TODAY REMEMBERS? WE
20 WANT TO BE ABLE TO PAY ATTENTION, SO READ SLOWLY.

21 THE WITNESS: THANKS FOR THE REMINDER.

22 "AS I SHARED WITH YOU ON SUNDAY, MY PARTNER
23 GLENN AND I CHARGE \$75 PER HOUR FOR LABOR (EACH). DUE
24 TO THE NIGHTMARE OF KEEPING TIMECARDS, ET CETERA, WE
25 ALSO HAVE A REDUCED DAILY RATE OF \$500 EACH. OUR
26 WORKDAYS ARE USUALLY TEN TO 12 HOURS. WHERE POSSIBLE WE

1 USE LABORERS TO HANDLE DEMOLITION, CLEAN UP, AND OTHER
2 NON-SKILLED WORK SO WE CAN FOCUS ON THE SKILLED
3 PORTIONS. THE LABORERS MAKE 15 TO \$25 PER HOUR AND WE
4 DO NOT MARK UP THEIR PAY. MATERIALS ARE PAID FOR
5 SEPARATELY AND ARE ALSO NOT MARKED UP."

6 BY MR. BISSELL:

7 Q BY THE WAY, DID YOU ASK MR. BEREKI AT THIS
8 TIME WHETHER OR NOT THERE SHOULD BE A WRITTEN CONTRACT
9 BETWEEN THE TWO OF YOU?

10 A YES, I DID.

11 Q IS THAT IN THIS E-MAIL ALSO?

12 A YES. IT'S THE LAST PARAGRAPH.

13 Q AND CAN YOU READ THAT, PLEASE?

14 A "WE ARE LOOKING FORWARD TO WORKING WITH YOU
15 TOO. DO WE NEED TO SIGN A CONTRACT BEFORE YOU GO AHEAD
16 AND GET STARTED? YOUR DAILY RATE SOUNDS FINE."

17 Q DID MR. BEREKI RESPOND TO YOUR INQUIRY AS TO
18 WHETHER THERE SHOULD BE ANY FORM OF WRITTEN CONTRACT
19 BETWEEN THE TWO OF YOU?

20 A YES, HE DID.

21 THE COURT: EXCUSE ME FOR A SECOND, COUNSEL, I AM A
22 LITTLE CONFUSED. I MUST BE MISSING SOMETHING. THE WAY
23 I AM LOOKING AT THIS E-MAIL STRING, THE FIRST AT THE TOP
24 DATED APRIL 5, 2012, SENT AT 5:41 P.M., SUBJECT, 436 VIA
25 LIDO NORD. AND THIS IS AN E-MAIL FROM MS. HUMPHREYS TO
26 MR. BEREKI, AND IT APPEARS TO BASICALLY BE THREE

1 SENTENCES LONG.

2 FOLLOWING THAT, ON APRIL 5, 2012, AT
3 8:41 A.M., MR. BEREKI WROTE.

4 AND THEN ALL THE FOLLOWING PAGES GOING TO
5 PAGE 6 APPEAR TO BE ALL PART OF THE E-MAIL MR. BEREKI
6 SENT TO THE HUMPHREYS.

7 AND SO I WOULD UNDERSTAND THIS LAST PARAGRAPH
8 TO BE MR. BEREKI INQUIRING AS TO WHETHER, QUOTE, WE NEED
9 TO SIGN A CONTRACT BEFORE YOU GO AHEAD AND GET STARTED.
10 THEN IT CLOSES WITH "BEST, ADAM BEREKI." PERHAPS THINGS
11 HAVE BEEN MIXED TOGETHER IN SOME WAY. HELP ME OUT WITH
12 THIS.

13 MR. BISSELL: IT'S VERY DIFFICULT, YOUR HONOR, AND
14 I UNDERSTAND -- I UNDERSTAND HOW THE COURT SEES THIS
15 BECAUSE A GOOD DEAL OF THE CORRESPONDENCE THAT WENT BACK
16 AND FORTH BETWEEN MR. BEREKI AND THE HUMPHREYS ON THIS
17 WAS ALL OF THIS NATURE. IT WAS MESSAGE SENT AND THEN
18 INSERTED IN THAT MESSAGE WAS A RESPONSE. SOMETIMES IT
19 WAS ALL IN CAPS, WHICH MAKES IT A LITTLE BIT EASIER.
20 SOMETIMES IT WASN'T. BUT THAT WAS THE NATURE OF THE
21 CORRESPONDENCE. I CAN PROBABLY CLEAR THIS UP BY SIMPLY
22 ASKING MS. HUMPHREYS WHETHER OR NOT THAT LAST
23 PARAGRAPH --

24 THE COURT: GO AHEAD, FIRE AWAY.

25 BY MR. BISSELL:

26 Q WHETHER THAT LAST PARAGRAPH -- DID YOU DRAFT

1 THAT LAST PARAGRAPH, THE PARAGRAPH YOU JUST READ --

2 A YES.

3 Q -- OF EXHIBIT 303?

4 A YES.

5 MR. BISSELL: DOES THAT HELP, YOUR HONOR?

6 THE COURT: UNTIL SOMEBODY COMES ALONG WITH FURTHER
7 CLARIFICATION.

8 MR. BEREKI: I AM HAPPY TO SAY --

9 THE COURT: YOU'RE NOT TESTIFYING YET.

10 MR. BEREKI: OKAY.

11 THE COURT: JUST HOLD YOUR PEACE.

12 MR. BEREKI: OKAY.

13 BY MR. BISSELL:

14 Q YOU HAVE HEARD THE COURT'S CONCERN THAT IT'S
15 DIFFICULT TO TELL WHO'S WRITING WHAT IN THIS E-MAIL,
16 WHICH IS UNDERSTANDABLE.

17 IS THERE A WAY THAT -- IS THERE A WAY TO
18 DIFFERENTIATE WHAT YOU WROTE VERSUS WHAT HE WROTE,
19 WITHOUT GOING THROUGH EACH LINE AND IDENTIFYING THAT IS
20 YOURS OR HIS?

21 A I BELIEVE SO.

22 Q OKAY.

23 A WHAT I DID WAS INSERT MY ANSWERS AFTER EACH
24 SUGGESTION THAT HE MADE. SO IF WE JUST LOOK AT THE
25 FIRST PAGE OF IT, THE "YES, FOR SURE" WAS MY RESPONSE TO
26 HIS PROPOSAL TO REPLACE THE ELECTRICAL.

1 THE COURT: NOW IT COMES CLEAR. THANK YOU,
2 MS. HUMPHREYS. NOW I UNDERSTAND.

3 BY MR. BISSELL:

4 Q ACTUALLY, I THINK THE FOLLOWING EXHIBIT MIGHT
5 FURTHER CLARIFY AS TO WHO OR WHAT.

6 WOULD YOU FLIP TO EXHIBIT NO. 4 ON YOUR TAB,
7 WHICH IS 304.

8 A THAT'S --

9 Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

10 A THAT'S THE EXHIBIT MISSING FROM THIS BINDER.

11 Q NOBODY GOT THAT TO YOU?

12 MR. BISSELL: MAY I APPROACH --

13 THE COURT: FEEL FREE TO TAKE IT UP.

14 MR. BISSELL: I GAVE IT TO MR. HUMPHREYS. I
15 THOUGHT FOR SURE --

16 THE COURT: IT'S NOW THAT PAPER GLIDER THAT
17 MR. RUSSO IS FLYING ACROSS THE COURTROOM.

18 MR. BISSELL: THERE YOU GO.

19 THE WITNESS: YES, I HAVE SEEN THIS BEFORE.

20 BY MR. BISSELL:

21 Q CAN YOU TELL US WHAT THIS DOCUMENT IS?

22 A THIS IS A AN E-MAIL THAT ADAM BEREKI SENT FROM
23 HIS PERSONAL ACCOUNT TO ME ON FRIDAY, APRIL 6, 2012.

24 Q NOW, IF YOU LOOK AT THE -- THE
25 SECOND-TO-THE-LAST PARAGRAPH BEGINNING WITH, "AS FAR
26 AS," DO YOU SEE THAT?

1 A YES.

2 Q IS THAT YOUR DRAFT, OR IS THAT MR. BEREKI'S
3 DRAFT?

4 A MR. BEREKI'S.

5 Q COULD YOU READ THAT, PLEASE?

6 A "AS FAR AS THE CONTRACT GOES, NO, NOTHING
7 NEEDS TO BE SIGNED UNLESS YOU PREFER TO. YOU ARE VERY
8 DEAR FRIENDS AND YOUR WORDS/COMMITMENT IS ENOUGH."

9 Q NOW, WHEN MR. BEREKI SAYS "YOU ARE VERY DEAR
10 FRIENDS," YOU MET HIM EXACTLY HOW MANY TIMES BEFORE
11 THIS?

12 A ONCE ON THE WALK-THROUGH.

13 Q DURING ANY CONVERSATION WITH MR. BEREKI BEFORE
14 HIS APRIL 5, 2012 E-MAIL TO YOU IN WHICH HE COMMUNICATED
15 HIS PROPOSAL FOR THE PROJECT, DID HE EVER MENTION THE
16 SPARTAN ASSOCIATES DEAL?

17 A NO, HE DIDN'T MENTION SPARTAN.

18 Q DID HE EVER MENTION SPARTAN AT ALL?

19 A NO.

20 Q HAVE YOU EVER HEARD OF SPARTAN ASSOCIATES IN
21 CONNECTION WITH MR. BEREKI AT ANY TIME BEFORE APRIL 5,
22 2012?

23 A NO.

24 Q IN THE APRIL 5, 2012 E-MAIL FROM MR. BEREKI,
25 EXHIBIT 303, IS THERE ANY MENTION IN THERE OF SPARTAN?

26 A NO.

1 Q IN APRIL 2012, DID YOU BELIEVE YOU WERE
2 CONTRACTING WITH SPARTAN ASSOCIATES?

3 A NO.

4 Q WHO DID YOU BELIEVE YOU WERE CONTRACTING WITH?

5 A I BELIEVED I WAS CONTRACTING WITH ADAM BEREKI
6 AND HIS PARTNER, GLENN OVERLEY.

7 Q WHAT WAS THAT UNDERSTANDING BASED ON?

8 A IT WAS BASED ON THE EXCHANGE OF E-MAILS ON
9 APRIL 5.

10 Q IF YOU WILL FLIP TO EXHIBIT -- IT'S NUMBERED
11 FIVE IN YOUR BOOKLET THERE, BUT IT'S 305.

12 HAVE YOU SEEN THIS DOCUMENT BEFORE?

13 A YES.

14 Q CAN YOU TELL US WHAT IT IS?

15 A THIS IS A COPY OF A STRING OF E-MAILS BETWEEN
16 MYSELF AND ADAM BEREKI ON FRIDAY, APRIL 13, 2012.

17 Q THIS IS ROUGHLY ONE WEEK AFTER THE APRIL 5,
18 2012 E-MAIL AGREEMENT?

19 A YES.

20 Q AND CAN YOU TELL US WHO INITIATED THIS E-MAIL
21 STRING?

22 A MR. BEREKI.

23 Q WHAT DID HE ASK IN HIS INITIAL E-MAIL TO YOU?

24 A HE ASKED FOR A CHECK FOR \$15,000 TO COVER
25 MATERIALS AND LABOR.

26 Q WHAT DID YOU RESPOND?

1 A I RESPONDED THAT I COULD SEND HIM A CHECK AND
2 I WANTED TO KNOW IF I COULD MAIL IT OR DID HE WANT IT
3 WIRED TO A BANK ACCOUNT AND TO WHOM TO MAKE IT OUT.

4 Q AND WHY DID YOU WANT TO KNOW TO WHOM TO MAKE
5 IT OUT?

6 A I WANT TO KNOW IF I SHOULD MAKE IT OUT TO ADAM
7 BEREKI OR ADAM BEREKI AND GLENN OVERLEY.

8 Q WHAT DID MR. BEREKI RESPOND?

9 A HE RESPONDED, "YES, TOMORROW IS FINE. MADE
10 OUT TO ADAM BEREKI. MY HOME ADDRESS IS."

11 Q IF YOU LOOK AT EXHIBIT NO. 6 IN YOUR BOOKLET,
12 BUT IT'S NUMBERED 306, HAVE YOU SEEN THAT DOCUMENT
13 BEFORE?

14 A YES.

15 Q CAN YOU TELL US WHAT THIS IS?

16 A THIS IS AN IMAGE OF A CHECK AND A DEPOSIT WITH
17 CHASE BANK.

18 Q AND WHEN YOU SAY "AN IMAGE," IS THAT AN IMAGE
19 OF A CHECK?

20 A YES, THERE'S AN IMAGE OF A CHECK ON THE PAGE.

21 Q CAN YOU DESCRIBE WHAT THAT CHECK IS?

22 A THIS IS A CHECK THAT I WROTE TO ADAM BEREKI
23 FOR \$15,000 ON APRIL 13, 2012.

24 Q THAT WAS IN RESPONSE TO HIS REQUEST OF THE
25 SAME DATE?

26 A YES, IT WAS.

1 Q WHO WAS THAT CHECK MADE PAYABLE TO?

2 A ADAM BEREKI.

3 Q BY THE WAY, ON THE EXHIBIT 5 YOU JUST LOOKED
4 AT, THE STRING E-MAIL, WHOSE E-MAIL ACCOUNT DID
5 MR. BEREKI'S E-MAIL COME TO YOU ON?

6 A HIS PERSONAL E-MAIL ACCOUNT AT GMAIL.

7 Q AT SOME POINT, DID YOU HEAR OF SPARTAN
8 CONSTRUCTION?

9 A YES, I DID.

10 Q WHEN WAS THAT?

11 A IT WAS SEVERAL MONTHS INTO THE PROJECT IN JULY
12 OF 2012.

13 Q HOW DID YOU HEAR OF SPARTAN CONSTRUCTION?

14 A ADAM ASKED US TO START MAKING THE CHECKS OUT
15 TO SPARTAN INSTEAD OF ADAM BEREKI.

16 Q DID HE TELL YOU WHY?

17 A NO.

18 Q DID HE EXPLAIN WHO SPARTAN WAS?

19 A NO.

20 Q DID IT MATTER TO YOU?

21 A NO, IT DIDN'T.

22 Q DID YOU HAVE SOME UNDERSTANDING OF WHO SPARTAN
23 CONSTRUCTION WAS?

24 A I THOUGHT SPARTAN WAS, I GUESS, ANOTHER
25 ACCOUNT THAT HE WANTED TO USE.

26 Q DID YOU EVER ENTER INTO ANY AGREEMENT WITH

1 SPARTAN ASSOCIATES ON THIS PROJECT?

2 A NO.

3 Q WERE YOU EVER ASKED TO ENTER INTO ANY SORT OF
4 AGREEMENT WITH SPARTAN ASSOCIATES?

5 A NO.

6 Q WERE YOU EVER PRESENTED WITH ANY TYPE OF
7 AGREEMENT WITH SPARTAN ASSOCIATES ON THIS PROJECT?

8 A NO.

9 MR. BISSELL: THANK YOU. NO FURTHER QUESTIONS,
10 YOUR HONOR.

11 THE COURT: MR. RUSSO, TO YOU.

12

13 CROSS-EXAMINATION

14

15 BY MR. RUSSO:

16 Q MS. HUMPHREYS, WHAT'S HUMPHREYS & ASSOCIATES?

17 A HUMPHREYS & ASSOCIATES IS A COMPANY THAT DOES
18 EARNED VALUE MANAGEMENT SYSTEM CONSULTING.

19 Q IS THAT YOUR HUSBAND'S BUSINESS, YOUR
20 BUSINESS, OR A COMBINATION?

21 A IT'S NOT MY BUSINESS.

22 Q OKAY.

23 A MY HUSBAND STARTED THE BUSINESS.

24 Q OKAY. SO IS IT A CORPORATION, TO YOUR
25 KNOWLEDGE?

26 A IT'S AN S CORP.

1 Q OKAY. ISN'T IT TRUE THAT HUMPHREYS
2 & ASSOCIATES MADE SOME OF THE PAYMENTS TOWARDS THE
3 CONSTRUCTION ON THE LIDO PROPERTY?

4 A NO.

5 Q YOU'RE SAYING NONE OF THE CHECKS CAME FROM
6 HUMPHREYS & ASSOCIATES?

7 A ARE YOU ASKING ME --

8 Q YES.

9 A -- IF THE CHECKS THAT WE PAID ADAM BEREKI CAME
10 FROM HUMPHREYS & ASSOCIATES?

11 Q SOME OF THEM, NOT ALL OF THEM.

12 A I HAVE NO KNOWLEDGE OF THAT.

13 Q OKAY. HUMPHREYS & ASSOCIATES, WHERE IS THAT
14 BUSINESS LOCATED?

15 A SOUTHERN CALIFORNIA.

16 Q RESEARCH AVENUE IN IRVINE; CORRECT?

17 A IT IS NOW.

18 Q 9910 RESEARCH AVENUE?

19 A I DON'T KNOW.

20 Q OKAY. YOU ARE AWARE THAT SPARTAN ASSOCIATES
21 DID THE TENANT IMPROVEMENTS AT YOUR HUSBAND'S BUSINESS
22 OFFICE PRIOR TO THIS WORK ON LIDO ISLE?

23 A I HEARD THAT SPARTAN ASSOCIATES, ADAM, DID
24 WORK AT THE OFFICE BUILDING BEFORE HUMPHREYS &
25 ASSOCIATES MOVED INTO IT.

26 Q OKAY. AND --

1 THE COURT: WHEN DID YOU HEAR THAT?

2 THE WITNESS: I HEARD THAT A FEW MONTHS AGO.

3 THE COURT: AFTER THIS LAWSUIT WAS FILED?

4 THE WITNESS: YES.

5 THE COURT: ALL RIGHT. GO ON.

6 BY MR. RUSSO:

7 Q ISN'T IT TRUE THAT ONE OF THE REASONS WHY YOU
8 AND YOUR HUSBAND HIRED SPARTAN ASSOCIATES WAS BECAUSE OF
9 ITS FINE WORK ON THE TENANT IMPROVEMENTS ON THE
10 COMMERCIAL OFFICE BUILDING FOR YOUR HUSBAND'S BUSINESS?

11 MR. BISSELL: OBJECTION, YOUR HONOR. HE'S
12 MISCHARACTERIZING THE WITNESS'S TESTIMONY SAYING ISN'T
13 IT TRUE THAT YOU ENTERED INTO A CONTRACT WITH SPARTAN
14 ASSOCIATES. SHE'S TESTIFIED IT'S HER UNDERSTANDING THAT
15 SHE ENTERED INTO A CONTRACT --

16 MR. RUSSO: IS THAT AN OBJECTION OR IS THAT A
17 SPEAKING OBJECTION?

18 MR. BISSELL: IT'S AN OBJECTION.

19 THE COURT: SEEMS THE LOCAL, LOCAL RULE; I.E., MY
20 RULE, NO SPEAKING OBJECTIONS EVEN IN COURT TRIALS.

21 MR. BISSELL: THANK YOU, YOUR HONOR.

22 THE COURT: ASIDE FROM THAT, MR. RUSSO, IF YOU WILL
23 KINDLY REPHRASE.

24 BY MR. RUSSO:

25 Q ISN'T IT TRUE THE REASON YOU ENTERED INTO ANY
26 RELATIONSHIP WAS BECAUSE OF HIS FINE WORK FOR YOUR

1 HUSBAND'S OFFICE BUILDING?

2 A I DIDN'T ENTER INTO AN AGREEMENT WITH SPARTAN
3 ASSOCIATES.

4 Q DO YOU KNOW HOW MANY ADDRESSES MR. BEREKI
5 USES?

6 A NO.

7 Q BECAUSE YOU KEEP REFERRING TO IT AS HIS
8 PERSONAL E-MAIL. DO YOU KNOW IF THAT'S THE SAME AS HIS
9 WORK E-MAIL?

10 A I ONLY AM FAMILIAR WITH THE ABEREKI@GMAIL.COM.

11 Q SO YOU DON'T KNOW IF THAT IS HIS PERSONAL
12 BUSINESS OR ANYTHING; CORRECT?

13 A YES.

14 Q YOU DON'T KNOW -- YES, YOU DON'T KNOW;
15 CORRECT?

16 A YES.

17 Q ISN'T IT TRUE THAT PRIOR TO THE LIDO PROJECT,
18 YOU MET MR. BEREKI AT FAMILY OCCASIONS OF YOURS?

19 A I HAD NEVER MET MR. BEREKI BEFORE APRIL 1ST.

20 Q ISN'T IT TRUE THAT HE ATTENDED YOUR
21 MOTHER-IN-LAW'S FUNERAL PRIOR TO THIS?

22 A I DON'T KNOW.

23 Q ISN'T IT TRUE THAT HE ATTENDED YOUR
24 BROTHER-IN-LAW'S FUNERAL PRIOR TO THIS?

25 A I DON'T KNOW.

26 Q OKAY. HE ATTENDED AND ACTUALLY SAT AT THE

1 FAMILY TABLE AT YOUR SON'S WEDDING; CORRECT?

2 A I REMEMBER HIM BEING INVITED TO THAT
3 WEDDING --

4 Q OKAY.

5 A -- WHICH WAS AFTER 2012.

6 Q YOU WOULD AGREE THAT HE WASN'T A FOREIGNER TO
7 YOUR FAMILY; CORRECT?

8 A I HAD NEVER MET HIM. HE HAD NO FAMILIARITY TO
9 MY FAMILY THAT I WAS AWARE OF PRIOR TO APRIL 1ST.

10 Q YOU WOULD AGREE, MA'AM, THAT YOU FELT THAT
11 YOUR AGREEMENT WITH WHOEVER YOU WERE HIRING AS A
12 CONTRACTOR WAS ADEQUATELY MEMORIALIZED IN YOUR E-MAILS
13 WHICH ARE EXHIBIT NUMBER 303; CORRECT?

14 A I FELT THAT -- THAT ADAM PROPOSED A SCOPE OF
15 WORK IN THE FIRST E-MAIL, AND OUR RESPONSE WAS AN
16 ACCEPTANCE OF THAT PROPOSAL.

17 Q SO YOU HAD A MEETING OF THE MINDS AND IT WAS
18 DOCUMENTED IN THE E-MAILS; CORRECT?

19 A YES.

20 Q SO IT'S NOT THAT THERE'S NO WRITING, IT'S JUST
21 THE WRITING IS E-MAILS AS OPPOSED TO SOMETHING SIGNED;
22 CORRECT?

23 A I HAD A CONCERN WHETHER WE NEEDED MORE THAN
24 THAT, WHICH IS WHY I ASKED HIM ABOUT IT IN MY E-MAIL.
25 BECAUSE I AM FAMILIAR WITH HAVING TO SIGN CONTRACTS WHEN
26 YOU HIRE PEOPLE TO DO WORK FOR YOU.

1 Q YOU HAVE HIRED CONTRACTORS TO WORK ON OTHER
2 VACATION HOMES; CORRECT?

3 A YES.

4 Q OKAY.

5 A OH, NO -- YES.

6 Q WELL, YOU HAVE TWO VACATION UNITS ON MAUI;
7 CORRECT?

8 A YES.

9 Q OKAY. AND YOU HAVE BEEN THROUGH THE PROCESS
10 OF REMODELING PROJECTS; CORRECT?

11 A YES.

12 Q OKAY. AND YOU WANTED A LICENSED CONTRACTOR
13 FOR THE WORK ON YOUR LIDO PROPERTIES; CORRECT?

14 A YES.

15 Q OKAY. AND BECAUSE YOU KNEW YOU WERE GOING TO
16 BE DOING PLUMBING AND ELECTRICAL AS WE CAN SEE IN
17 EXHIBIT NO. 303; CORRECT?

18 A I WANTED LICENSED WORK DONE, YES.

19 Q OKAY.

20 A WITH PERMITS.

21 Q DID YOU, PRIOR TO STARTING THIS RELATIONSHIP,
22 DOUBLE-CHECK TO MAKE SURE THAT THERE WAS A LICENSE FOR
23 THIS SINCE PERMITS HAD TO BE PULLED?

24 A NO. I TOOK ADAM AT HIS WORD THAT HE HAD A
25 LICENSE.

26 Q DID MR. BEREKI EVER TELL YOU -- WELL, HE TOLD

1 YOU HE WAS LICENSED; CORRECT?

2 A YES.

3 Q AND YOU'RE SAYING YOU DIDN'T REALIZE THAT THAT
4 LICENSE WAS IN THE NAME OF SPARTAN ASSOCIATES; YOU
5 THOUGHT IT WAS PERSONAL TO HIM?

6 A I HAD NEVER HEARD OF SPARTAN ASSOCIATES.

7 Q DID YOU EVER CHECK?

8 A DID I CHECK WHAT?

9 Q TO SEE WHETHER OR NOT MR. BEREKI'S LICENSE WAS
10 PERSONAL OR IN HIS BUSINESS NAME.

11 A NO.

12 Q I HATE TO DO THIS TO YOU, BUT WE GOT MULTIPLE
13 BINDERS. ONE OF THEM IS MARKED ONE TO 65. I'M GOING TO
14 WORK OFF THAT ONE AS OPPOSED TO THE ONE YOU WERE JUST
15 LOOKING AT.

16 THE COURT: WELL, SPEAKING OF HERNIA, YOU MAY HAVE
17 SET A NEW RECORD. I THINK THIS IS THE BIGGEST BINDER I
18 HAVE SEEN. THIS MAY INDIVIDUALLY BE THE BIGGEST BINDER
19 I HAVE EVER SEEN IN THIS DEPARTMENT.

20 MR. RUSSO: I HAD A HARD TIME CARRYING THOSE UP
21 TODAY.

22 THE COURT: EXHIBIT NUMBER?

23 MR. RUSSO: 38, THANK YOU.

24 MR. BISSELL: YOUR HONOR, I DON'T HAVE THE BENEFIT
25 OF THOSE EXHIBITS. IF I COULD TAKE A LOOK.

26 MR. RUSSO: SURE.

1 THE COURT: I GUESS MR. RUSSO COULDN'T CARRY A
2 FOURTH BECAUSE THESE WERE TOO HEAVY. THE STRAW THAT
3 BROKE THE CAMEL'S BACK.

4 MR. RUSSO: WE SEND EACH OTHER DROPBOXES OF THE
5 EXHIBITS.

6 BY MR. RUSSO:

7 Q MS. HUMPHREYS, DO YOU RECOGNIZE --

8 A I HAVEN'T --

9 Q I'M SORRY, MA'AM.

10 THE COURT: IT'S ALSO HARD TO WORK WITH.

11 THE WITNESS: AM I LOOKING FOR 38?

12 MR. RUSSO: YES, MA'AM.

13 THE COURT: YOU WEREN'T CONSERVING TREES, I CAN
14 TELL YOU THAT.

15 BY MR. RUSSO:

16 Q MS. HUMPHREYS, DO YOU RECOGNIZE EXHIBIT NO. 38
17 AS THE TERMINATION NOTICE IN WHICH YOU AND YOUR HUSBAND
18 TERMINATED THE SPARTAN ASSOCIATES FROM THIS PROJECT?

19 A THIS IS THE FIRST TIME I HAVE SEEN THIS.

20 Q YOU WERE AWARE THAT YOU -- DID YOUR HUSBAND
21 SHARE WITH YOU THAT A TERMINATION NOTICE WAS SENT TO
22 SPARTAN ASSOCIATES?

23 A NO.

24 Q YOU WEREN'T AWARE OF IT?

25 A NO.

26 Q OKAY. I WOULD LIKE YOU TO TURN TO --

1 THE COURT: BY THE WAY, JUST SO THE RECORD IS
2 CLEAR, YOU CHARACTERIZED THIS AS A TERMINATION NOTICE.
3 IT'S ACTUALLY STYLIZED AS NOTICE OF CESSATION OF LABOR
4 AND IT INDICATES THE LAST SENTENCE, QUOTE, "THIS NOTICE
5 OF CESSATION OF CONSTRUCTION AND RELATED ACTIVITIES
6 SHALL REMAIN IN EFFECT AND SHALL BE BINDING UNTIL
7 FURTHER NOTICE FROM THE UNDERSIGNED," END QUOTE. IT
8 DOESN'T STRICTLY SOUND LIKE A TERMINATION NOTICE.
9 BY MR. RUSSO:

10 Q WAS IT ON OR ABOUT AUGUST 28, 2013, THAT YOU
11 AND YOUR HUSBAND TERMINATED MR. BEREKI FROM THIS
12 PROJECT?

13 A YES.

14 Q ARE YOU AWARE OF ANY NOTICE OTHER THAN THIS
15 NOTICE HERE FOR THAT TERMINATION?

16 A NO.

17 Q MA'AM, CAN YOU PLEASE TURN TO EXHIBIT NUMBER
18 34.

19 A YES.

20 Q MA'AM, YOU ARE AWARE THAT A BUILDING PERMIT
21 HAD TO BE BULLIED FOR THIS PROJECT?

22 A YES.

23 Q AND YOU KNEW THAT ONLY A LICENSED CONTRACTOR
24 COULD PULL A BUILDING PERMIT?

25 A I DON'T KNOW THAT I KNEW THAT, BUT IT MAKES
26 SENSE.

1 Q YOU CAN SEE THAT THE BUILDING PERMIT WAS
2 PULLED BY THE SPARTAN ASSOCIATES, INC.?

3 A YES. IS THIS ON NOVEMBER 14, 2012? THIS ONE?

4 Q YES, MA'AM.

5 AS A MATTER OF FACT, MR. BEREKI E-MAILED YOU A
6 COPY OF THE BUILDING PERMIT FOR THIS, DIDN'T HE?

7 A I DON'T RECALL.

8 Q MA'AM, CAN YOU TURN TO EXHIBIT NO. 31 IN THAT
9 SAME BINDER.

10 A YES.

11 Q WERE YOU WORKING ON INTERIOR PLANS WITH
12 MR. BEREKI FOR THE LIDO PROJECT?

13 A I'M SORRY, I WAS READING. CAN YOU RESTATE
14 YOUR QUESTION, PLEASE?

15 Q SURE.

16 DID YOU WORK WITH MR. BEREKI REGARDING
17 INTERIOR PLANS FOR THE PROJECT?

18 A YES.

19 Q OKAY. AND IS THIS AN EXAMPLE OF THE INTERIOR
20 PLANS, WHAT WE SEE IN THIS EXHIBIT 31?

21 A THIS DATED AUGUST 23RD, 2013?

22 Q YES, MA'AM.

23 A I WASN'T WORKING WITH HIM ON PLANS IN AUGUST
24 OF 2013.

25 Q OKAY. DO YOU KNOW IF YOUR HUSBAND WAS?

26 A HE WAS NOT.

1 Q MA'AM, DID IT MATTER TO YOU WHETHER OR NOT
2 YOUR CONTRACTOR WAS ADAM BEREKI VERSUS SPARTAN
3 ASSOCIATES?

4 A DID IT --

5 MR. BISSELL: OBJECTION. IRRELEVANT.

6 THE COURT: SUSTAINED.

7 BY MR. RUSSO:

8 Q MA'AM, CAN YOU TURN TO EXHIBIT NO. 32.

9 A YES.

10 Q LOOKING AT PAGE 1 OF EXHIBIT NO. 32, MA'AM, IS
11 THAT YOUR E-MAIL TO MR. BEREKI ABOUT PAYMENT TO SPARTAN
12 CONSTRUCTION?

13 A NO.

14 Q IS YOUR E-MAIL ADDRESS
15 KMOEHUMPHREYS@YAHOO.COM?

16 A YES.

17 Q AND THE JULY 19, 2012, 1:59 P.M. E-MAIL AT THE
18 TOP OF EXHIBIT 32-1, IS THAT FROM YOU?

19 A YES, TO ADAM BEREKI.

20 Q OKAY. AND IT SAYS THERE, "I JUST GOT BACK
21 FROM WIRING \$45,000 TO THE SPARTAN CONSTRUCTION
22 ACCOUNT"?

23 A YES.

24 Q OKAY. SO YOU KNEW AT THIS POINT IN TIME THAT
25 YOUR PAYMENTS WERE GOING TO SPARTAN; CORRECT?

26 A THIS WAS THE FIRST PAYMENT I MADE TO SPARTAN

1 CONSTRUCTION AFTER ADAM ASKED ME TO, INSTEAD OF WRITING
2 CHECKS TO HIM, TO WIRE MONEY INTO THIS NEW BANK ACCOUNT.

3 Q OKAY. THROUGHOUT THIS PROJECT, ENGINEERS HAD
4 TO BE HIRED; CORRECT?

5 A YES.

6 Q ARCHITECTS HAD TO BE HIRED?

7 A YES.

8 Q AND YOUR AGREEMENT WITH MR. BEREKI WAS THAT
9 WHATEVER THOSE COSTS WERE FOR DESIGN PROFESSIONALS, THAT
10 WAS GOING TO BE A COST PAID FOR BY YOU AND YOUR HUSBAND;
11 CORRECT?

12 A NO.

13 MR. BISSELL: OBJECTION. RELEVANCY.

14 THE COURT: I WILL ALLOW THE QUESTION.

15 THE ANSWER WAS NO.

16 BY MR. RUSSO:

17 Q DO YOU KNOW WHAT THE TERMS WERE FOR YOUR
18 AGREEMENT WITH MR. BEREKI?

19 A YES.

20 Q OKAY. AND AMONGST THOSE TERMS WAS THAT HE WAS
21 TO BE REIMBURSED FOR PAYMENTS FOR DESIGN PROFESSIONALS;
22 CORRECT?

23 A THE TERMS OF OUR CONTRACT AGREEMENT AS OF
24 APRIL 2012 WERE THAT WE HIRE MR. BEREKI AND GLENN
25 OVERLEY FOR \$500 A DAY AND WE WOULD PAY FOR ACTUAL COSTS
26 OF LABOR AND MATERIALS. THE LABOR WOULD BE 15 TO \$25 AN

1 HOUR. THAT WAS THE TERMS OF OUR AGREEMENT.

2 Q SINCE THEN, MA'AM, YOU HAVE DISCUSSED WITH
3 YOUR HUSBAND THE FACT THAT YOU HAD AGREED TO REIMBURSE
4 MR. BEREKI FOR ANY DESIGN PROFESSIONALS EXPENSES;
5 CORRECT?

6 A NO.

7 Q WERE YOU AWARE --

8 THE COURT: THIS IS A GOOD TIME FOR A 10-MINUTE
9 RESTROOM BREAK. WHAT DO YOU THINK?

10 MR. RUSSO: SURE THING, YOUR HONOR.

11 THE COURT: MR. BEREKI, SO YOU KNOW, AFTER
12 MR. RUSSO IS COMPLETE, THEN YOU HAVE AN OPPORTUNITY TO
13 ASK SOME QUESTIONS AS WELL.

14 MR. BEREKI: THANK YOU FOR THAT, YOUR HONOR.

15 (RECESS.)

16 THE COURT: MS. HUMPHREYS, COME ON BACK.

17 THE WITNESS: COME ON DOWN.

18 THE COURT: MR. RUSSO, BACK TO YOU, PLEASE.

19 MR. RUSSO: SURE.

20 BY MR. RUSSO:

21 Q MS. HUMPHREYS, YOU SAID THAT YOU AND YOUR
22 HUSBAND MADE ALL THE PAYMENTS TO BEREKI & ASSOCIATES;
23 CORRECT?

24 A YES.

25 Q YOU OPENED UP THE BINDERS MR. BISSELL WAS
26 ASKING ABOUT RIGHT THERE TO TAB NUMBER 15?

1 A YES.

2 THE COURT: THE DEFENSE BOOK?

3 MR. RUSSO: YOU KNOW, LET ME MAKE IT EASIER. LET
4 ME MAKE A REPRESENTATION. TAB 15 IN THAT BOOK IS THE
5 SAME AS THE FIRST DOCUMENT, TAB 32, WHAT WE HAVE IN
6 FRONT OF YOU, SO WE DON'T HAVE TO OPEN TWO BOOKS.

7 THE COURT: ALL RIGHT. 32.

8 MR. RUSSO: YEAH, LET'S MAKE IT EASIER.

9 BY MR. RUSSO:

10 Q MS. HUMPHREYS --

11 MR. BISSELL: THAT'S YOUR 32?

12 MR. RUSSO: FIRST PAGE.

13 MR. BISSELL: OH, 32-SOMETHING?

14 MR. RUSSO: 32-2, I APOLOGIZE.

15 BY MR. RUSSO:

16 Q WE WERE TALKING ABOUT 32-1 A MOMENT AGO BEFORE
17 THE BREAK, MS. HUMPHREYS, AND YOU WERE SAYING THAT
18 \$45,000 WAS THE FIRST TIME THAT YOU WERE AWARE OF MAKING
19 A PAYMENT TO SPARTAN ASSOCIATES; CORRECT?

20 A ON JULY 19, 2012, I WIRED \$45,000 TO SPARTAN
21 CONSTRUCTION. THAT WAS MY FIRST PAYMENT TO THEM.

22 Q OKAY. LET'S GO TO 32-2, SAME AS EXHIBIT
23 NUMBER 15 IN THE DEFENDANT'S BOOK -- OR 315 IN THE
24 DEFENDANT'S BOOK.

25 IS THIS AN ACCURATE LIST OF ALL THE PAYMENTS
26 MADE ON THIS PROJECT, MA'AM?

1 A I BELIEVE SO.

2 Q OKAY. LET'S GO THROUGH THE NEXT DOCUMENTS IN
3 THE SAME EXHIBIT, 32.

4 SO 32-4, THAT'S THE FIRST CHECK FOR THE
5 \$15,000 FROM YOU AND YOUR HUSBAND'S JOINT ACCOUNT TO
6 MR. BEREKI; CORRECT?

7 A NO. THIS CHECK IS DATED MAY 17.

8 Q OKAY.

9 THE COURT: WHAT HAPPENED TO 32-3?

10 MR. RUSSO: I DON'T KNOW.

11 MR. BISSELL: I THOUGHT THAT WAS A CHECK
12 COMPILATION.

13 THE COURT: 32-2.

14 MR. RUSSO: I DON'T KNOW WHAT HAPPENED.

15 BY MR. RUSSO:

16 Q BUT 32-4, IS THAT A CHECK PAYABLE TO
17 MR. BEREKI?

18 A 32-4 IS A CHECK THAT I WROTE TO MR. BEREKI ON
19 MAY 17, 2012.

20 Q OKAY. IF WE GO BACK A PAGE TO 32-2, WE SEE
21 THAT THERE'S A RUNNING COMPILATION OF HOW MUCH MONEY WAS
22 PAID IN THE RIGHT-HAND COLUMN; CORRECT?

23 A YES.

24 Q OKAY. SO WOULD THIS BE THE SECOND CHECK IN
25 THAT COMPILATION DATED MAY 17, 2012, SO THE SECOND
26 \$15,000?

1 A YES.

2 Q OKAY. NOW I ASK YOU TO TURN TO 32-5.

3 A I AM THERE.

4 Q OKAY. AND AT THIS POINT IN TIME, YOU WERE
5 WRITING THIS \$50,000 CHECK TO SPARTAN CONSTRUCTION;
6 CORRECT?

7 A NOVEMBER 15, 2012, SPARTAN CONSTRUCTION,
8 \$50,000, SIGNED BY ME.

9 Q AGAIN, THAT WAS FROM THE JOINT ACCOUNT;
10 CORRECT?

11 A YES.

12 Q THE NEXT CHECK, 32-6.

13 WHAT IS THIS CHECK, MA'AM?

14 A THIS CHECK IS DATED AUGUST 31, 2012, MADE OUT
15 TO SPARTAN CONSTRUCTION FOR \$30,000, AND SIGNED BY GARY
16 HUMPHREYS.

17 Q AND THIS SEEMS TO BE FROM A DIFFERENT ACCOUNT.
18 DID HE HAVE HIS OWN ACCOUNT?

19 A WE HAVE SEVERAL DIFFERENT FAMILY BANK
20 ACCOUNTS.

21 Q OKAY.

22 A THIS WAS ONE OF OUR PERSONAL BANK ACCOUNTS.
23 AND THAT'S MY WRITING MAKING OUT THE CHECK.

24 Q ARE YOU A SIGNATORY ON THAT ACCOUNT?

25 A THEY ARE ALL LINKED TOGETHER, SO I BELIEVE SO,
26 YES.

1 Q OKAY. GO TO 32-7, MA'AM.

2 A YES.

3 Q SO YOU HAD ALREADY -- AT THIS POINT IN TIME
4 YOU HAD ALREADY BEEN WRITING CHECKS TO SPARTAN
5 CONSTRUCTION. AND THEN THIS ONE, 32-7, IS \$30,000
6 PAYABLE TO MR. BEREKI.

7 DO YOU SEE THAT?

8 A YES.

9 Q AT THIS POINT IN TIME, HAD MR. BEREKI TOLD YOU
10 THAT THE PAYMENTS WERE TO BE MADE TO SPARTAN ASSOCIATES?

11 A HE TOLD US THAT IN JULY OF 2012.

12 Q OKAY. BUT NEVERTHELESS, YOU WROTE A CHECK TO
13 HIM PERSONALLY IN DECEMBER FOR THE \$30,000; CORRECT?

14 A I DIDN'T WRITE THIS CHECK.

15 Q DID YOUR HUSBAND WRITE THIS CHECK?

16 A IT LOOKS LIKE HIS HANDWRITING AND HIS
17 SIGNATURE.

18 Q OKAY. 32-8, LET'S GO TO THE NEXT CHECK.
19 THIS IS ANOTHER \$30,000 CHECK TO MR. BEREKI;
20 CORRECT?

21 A YES.

22 Q AND DID YOU WRITE THIS ONE, OR DID YOUR
23 HUSBAND?

24 A MY HUSBAND.

25 Q OKAY. 32-9.

26 NOW THIS ONE IS A LITTLE BIT DIFFERENT. IS

1 THIS A CHECK THAT YOU WROTE?

2 A NO.

3 Q OKAY. WAS THAT YOUR HUSBAND'S HANDWRITING ON
4 THAT CHECK?

5 A YES.

6 Q IT SAYS ADAM BEREKI, SPARTAN ASSOCIATES ON IT;
7 CORRECT?

8 A MY COPY IS UNCLEAR. I CAN SEE IT SAYS ADAM
9 BEREKI AND SCRIBBLE.

10 Q OKAY. YOU CAN'T SEE SPARTAN ASSOCIATES IN THE
11 SECOND PART?

12 A I CAN BELIEVE THAT THAT'S WHAT IT SAYS, BUT I
13 CAN'T READ IT AS THAT.

14 Q FAIR ENOUGH.

15 LET'S GO TO 32-10.

16 IS THIS A WIRE TRANSFER THAT YOU PREPARED OR
17 THIS IS YOUR HUSBAND?

18 A I PREPARED THIS WITH THE BANKER.

19 Q OKAY. AND WAS THIS -- HOW MUCH WAS THIS
20 PAYMENT FOR, MA'AM?

21 A I THINK IT SAYS \$30,000.

22 Q OKAY. AND DO YOU KNOW TO WHICH ACCOUNT THIS
23 WAS WIRED?

24 A THE RECIPIENT SAYS ADAM BEREKI AND THERE'S AN
25 ACCOUNT NUMBER WRITTEN BELOW IT.

26 Q DO YOU KNOW IF THAT ACCOUNT WAS FOR SPARTAN

1 ASSOCIATES OR FOR MR. BEREKI?

2 A I DON'T.

3 Q GO TO 32-11.

4 IS THIS ANOTHER WIRE THAT YOU PREPARED?

5 A ALONG WITH THE BANKER, YES.

6 Q OKAY. AND WAS THIS TO THE SAME ACCOUNT AS THE
7 LAST WIRE?

8 A I WOULD HAVE TO COMPARE THE NUMBERS.

9 Q OKAY. DO YOU KNOW WHETHER OR NOT THIS WAS TO
10 MR. BEREKI'S PERSONAL ACCOUNT OR THE SPARTAN ASSOCIATES'
11 ACCOUNT?

12 A THE RECIPIENT IS ADAM BEREKI.

13 Q OKAY. YOU MENTIONED HUMPHREYS & ASSOCIATES.
14 THAT'S A CORPORATION; CORRECT?

15 A HUMPHREYS & ASSOCIATES IS AN S CORPORATION --

16 Q OKAY.

17 A -- TO MY UNDERSTANDING.

18 Q OKAY. WHO WERE THE SHAREHOLDERS OF HUMPHREYS
19 & ASSOCIATES?

20 A NOW?

21 Q HOW ABOUT --

22 A WHEN IT WAS FOUNDED?

23 Q FOUR YEARS AGO.

24 DO YOU KNOW?

25 A I APOLOGIZE FOR TALKING IN THE MIDDLE OF THE
26 QUESTION.

1 THE COURT: IT'S OKAY.

2 BY MR. RUSSO:

3 Q DO YOU KNOW, MA'AM, WHO THE SHAREHOLDERS WERE
4 FOR HUMPHREYS & ASSOCIATES?

5 A AT WHAT PERIOD OF TIME?

6 Q DO YOU KNOW AT ANY TIME?

7 A YES.

8 Q HOW ABOUT IN 2012?

9 A YES.

10 Q WHO WAS THE SHAREHOLDERS?

11 A GARY HUMPHREYS.

12 Q OKAY. WERE THERE -- AT SOME POINT IN TIME
13 WERE THERE OTHER SHAREHOLDERS OF HUMPHREYS & ASSOCIATES?

14 A YES.

15 Q WHEN WAS THAT, MA'AM?

16 A NOW.

17 Q OKAY. LET'S TURN TO EXHIBIT 32-12, MA'AM.

18 DO YOU RECOGNIZE 32-12?

19 A I HAVE NEVER SEEN IT BEFORE.

20 Q OKAY. SO IS THAT YOUR -- I SEE A SIGNATURE.

21 IS THAT -- CHRIS HUMPHREYS, IS THAT YOUR SON?

22 A CHRIS HUMPHREYS IS MY STEPSON.

23 Q OKAY. AND DO YOU RECOGNIZE HIS SIGNATURE ON
24 THIS CHECK?

25 A NO.

26 Q OKAY. DO YOU RECOGNIZE THIS AS A \$90,000

1 CHECK FROM HUMPHREYS & ASSOCIATES, INC., THE
2 CORPORATION, TO SPARTAN ASSOCIATES?

3 A YES.

4 Q SO IT WAS, IN FACT, THE CORPORATION THAT PAID
5 SPARTAN ASSOCIATES THIS CHECK ON JULY 31ST, 2013;
6 CORRECT?

7 MR. BISSELL: OBJECTION.

8 THE COURT: SUSTAINED.

9 MR. BISSELL: FOUNDATION.

10 BY MR. RUSSO:

11 Q DO YOU KNOW WHO PAID THE \$90,000 TO MR. BEREKI
12 AS EVIDENCED BY THIS \$90,000 CHECK?

13 A ARE YOU ASKING ME IF THIS CHECK SAYS IT'S
14 PAYABLE TO ADAM BEREKI?

15 Q WELL, IT'S FROM A CORPORATION --

16 A TO SPARTAN ASSOCIATES.

17 Q SO HUMPHREYS & ASSOCIATES, THE CORPORATION, TO
18 SPARTAN ASSOCIATES; CORRECT?

19 A YES.

20 Q LET'S GO TO THE NEXT CHECK, 32-13.

21 DO YOU RECOGNIZE THIS CHECK?

22 THE COURT: WHY DON'T WE GO INDIVIDUALLY -- SINCE I
23 NOTICED THAT ALL OF THE FOLLOWING CHECKS APPEAR TO BE
24 DRAWN ON THE HUMPHREYS & ASSOCIATES, INC. ACCOUNT,
25 PERHAPS YOU CAN COLLECTIVELY ASK ABOUT THEM AND SPEED IT
26 UP A LITTLE BIT.

1 MR. RUSSO: OKAY.

2 BY MR. RUSSO:

3 Q OKAY. THE NEXT CHECKS, 90,000, 95,000,
4 75,000, 60,000, 80,000, ALL OF THE REMAINING CHECKS THAT
5 WERE IN THE ACCOUNTING ARE ALL ACTUALLY PAID BY THE
6 CORPORATION, HUMPHREYS & ASSOCIATES, INC., TO SPARTAN
7 ASSOCIATES; CORRECT?

8 A YES.

9 Q AND THOSE ARE THE MONIES THAT YOU AND YOUR
10 HUSBAND ARE TRYING TO SEEK BACK AS PAID BY YOU IN THIS
11 CROSS-CLAIM; CORRECT?

12 A I DON'T KNOW THAT.

13 MR. RUSSO: I DON'T HAVE ANY FURTHER QUESTIONS AT
14 THIS TIME.

15 THE COURT: MR. BEREKI.

16

17 CROSS-EXAMINATION

18

19 BY MR. BEREKI:

20 Q HI, KAREN.

21 YOU TESTIFIED THAT WE HAD A CONTRACT; CORRECT?

22 A YES.

23 Q OKAY. AND DID YOU BELIEVE THAT THE SIGNING OF
24 YOUR NAME ON THE E-MAIL AGREEMENT OR ON THE AGREEMENT
25 CONTRACT THAT WE HAD WAS YOUR AGREEMENT TO THE TERMS AND
26 CONDITIONS OF THAT CONTRACT?

1 MR. BISSELL: OBJECTION. CALLS FOR A LEGAL
2 CONCLUSION.

3 THE COURT: SUSTAINED.

4 MR. BISSELL: LACK OF FOUNDATION THAT SHE SIGNED
5 IT.

6 THE COURT: SUSTAINED.

7 BY MR. BEREKI:

8 Q WOULD YOU AGREE THAT YOUR TYPING YOUR NAME ON
9 AN E-MAIL CONSTITUTES YOUR SIGNATURE -- CONSTITUTES YOUR
10 SIGNATURE?

11 MR. BISSELL: OBJECTION. LEGAL CONCLUSION.

12 THE COURT: SUSTAINED.

13 I AM AFRAID I MAY HAVE PUT YOU OFF A LITTLE
14 BIT ON THIS PARTICULAR POINT. MY REQUEST IS THAT YOU
15 STATE THE WORD "OBJECTION" AND THEN THE LEGAL BASIS FOR
16 IT WITHOUT THE SPEAKING OBJECTION THAT WOULD FOLLOW THE
17 LEGAL BASIS.

18 MR. BISSELL: UNDERSTOOD, YOUR HONOR. I WILL TRY
19 TO FIND THAT MIDDLE GROUND.

20 THE COURT: PERFECT.

21 BY MR. BEREKI:

22 Q YOU TESTIFIED THAT, PURSUANT TO OUR CONTRACT,
23 THAT YOU WOULD BE PAYING FOR THE ACTUAL COSTS OF ALL
24 LABOR AND MATERIALS; IS THAT CORRECT?

25 A I BELIEVE MY TESTIMONY WAS THAT WE AGREED TO
26 PAY YOU AND YOUR PARTNER GLENN \$500 A DAY AND THE ACTUAL

1 COSTS OF LABOR AND MATERIAL, THE LABOR BEING 15 TO \$25
2 AN HOUR. LABOR AND SUPPLIES -- SUPPLIES AND MATERIAL
3 AND THE LABOR, YES.

4 Q SO WHAT I AM GETTING AT IS YOU WERE AGREEING
5 TO PAY FOR THE ACTUAL COSTS FOR ALL THE LABOR THAT
6 SPARTAN INCURRED, AS WELL AS ALL THE MATERIALS THAT
7 SPARTAN PURCHASED FOR USE IN THE PROJECT?

8 A NO. MY AGREEMENT WAS WITH ADAM BEREKI AND
9 GLENN OVERLEY. I HADN'T HEARD OF SPARTAN.

10 Q OKAY. WERE YOU AGREEING TO PAY FOR -- WAS IT
11 YOUR UNDERSTANDING THAT YOU WERE AGREEING TO PAY FOR THE
12 ACTUAL COSTS OF LABOR AND MATERIALS THAT WERE USED ON
13 THE PROJECT?

14 MR. BISSELL: OBJECTION, YOUR HONOR. RELEVANCY AS
15 TO THIS CAUSE OF ACTION. MIGHT BE RELEVANT --

16 THE COURT: SUSTAINED.

17 BY MR. BEREKI:

18 Q COULD YOU PLEASE TURN TO EXHIBIT 31. IT'S
19 WHAT WE --

20 THE COURT: IN THE VERY BIG BOOK?

21 MR. BEREKI: IN THE VERY BIG BOOK, YOUR HONOR.

22 BY MR. BEREKI:

23 Q AND WE NEED TO GET TO 31-49.

24 YOU TESTIFIED THAT YOU HAD NEVER -- OR WERE
25 NOT WORKING ON INTERIOR OR EXTERIOR DESIGN PLANS IN
26 AUGUST 23 OF 2013; IS THAT CORRECT?

1 A YES.

2 Q ISN'T IT TRUE IN AUGUST -- ON AUGUST -- IN
3 AUGUST OF 2013 YOU ACTUALLY CAME TO THE JOB SITE TO MEET
4 WITH BOTH MYSELF AND BRYAN LEFEVER PERTAINING TO
5 INTERIOR AND ARCHITECTURAL DESIGN ELEMENTS?

6 A IN THE BEGINNING OF AUGUST WE MET WITH YOU,
7 YES.

8 Q AT THAT TIME, HAD YOU RECEIVED THIS -- OR
9 PRIOR TO THAT DATE, HAD YOU RECEIVED THIS COMPILATION OF
10 INTERIOR AND EXTERIOR DESIGN ITEMS?

11 THE COURT: REFERENCING THE ENTIRETY OF EXHIBIT 31?

12 MR. BEREKI: YES, YOUR HONOR.

13 THE WITNESS: WELL, THIS ONE IS DATED AUGUST 23. I
14 HAD RECEIVED SOMETHING SIMILAR TO THIS.

15 BY MR. BEREKI:

16 Q PRIOR TO OUR MEETING?

17 A MY RECOLLECTION IS AT THE MEETING THAT BRYAN
18 SHOWED US SOMETHING THAT HE PUT TOGETHER. PRIOR TO THE
19 MEETING, I RECEIVED SOME THINGS ABOUT FURNITURE AND
20 DESIGN CONSIDERATIONS, YES.

21 Q OKAY. AND AT THE MEETING, DID WE GO OVER THIS
22 SPECIFIC PRESENTATION STARTING WITH 31-49?

23 A I DON'T KNOW.

24 Q OKAY. I'M GOING TO REPRESENT TO YOU THAT WE
25 DID.

26 AND THEN SUBSEQUENT TO OUR MEETING, DID YOU

1 RECEIVE A COPY OF THIS AUGUST 23 PRESENTATION?

2 A IT LOOKS FAMILIAR. I CAN'T BE CERTAIN.

3 Q OKAY. CAN YOU TELL ME HOW IT LOOKS FAMILIAR?

4 A IT CONTAINS THINGS THAT WE TALKED ABOUT
5 BUYING, FOR EXAMPLE, THE FAN ON 3161 AND THE CHAIR ON
6 3166.

7 Q HOW ABOUT THE SPARTAN CONSTRUCTION LOGO? WAS
8 THAT ON THE PRESENTATION THAT YOU REVIEWED?

9 A I DON'T KNOW.

10 Q CAN YOU PLEASE TURN TO EXHIBIT 31-46.

11 A YES.

12 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

13 A NO.

14 Q DO YOU KNOW WHAT IT IS?

15 A IT SAYS IT'S A FLOOR ASSEMBLY.

16 Q DO YOU THINK THAT WOULD BE THE FLOOR ASSEMBLY
17 BETWEEN THE UPSTAIRS UNIT AND THE DOWNSTAIRS UNIT?

18 A PROBABLY.

19 Q OKAY.

20 THE COURT: OUT OF CURIOSITY -- THIS IS TO
21 MR. BEREKI -- DID THE HALF-INCH LAYER OF PLYWOOD
22 REPRESENT THE SUBFLOOR, OR IS THAT AN EXTRA LAYER, IN
23 YOUR UNDERSTANDING?

24 MR. BEREKI: THE ACTUAL SUBFLOOR, YOUR HONOR, WAS
25 THE THREE-QUARTER TONGUE-AND-GROOVE STRUCTURAL 1
26 PLYWOOD, AND THEN THERE WAS ANOTHER LAYER OF HALF-INCH

1 PLYWOOD ABOVE THAT.

2 THE COURT: OVER THE GENIEMAT?

3 MR. BEREKI: YES. THE GENIEMAT WAS THE SOUND
4 ISOLATOR.

5 BY MR. BEREKI:

6 Q WERE YOU AWARE THAT I SENT THIS DOCUMENT ON
7 3146, 3147, AND 3148 TO -- VIA E-MAIL TO GARY?

8 A NO.

9 Q GARY NEVER SHARED THESE DOCUMENTS WITH YOU?

10 THE COURT: TOO MANY FIRST NAMES TEND TO CAUSE
11 CONFUSION. WHEN YOU SAY "GARY," I DON'T KNOW WHO YOU'RE
12 TALKING ABOUT.

13 MR. BEREKI: I'M SORRY, YOUR HONOR.

14 THE COURT: SO GIVE A FULL NAME WHEN YOU ASK THAT
15 QUESTION.

16 MR. BEREKI: YES, YOUR HONOR.

17 BY MR. BEREKI:

18 Q SO GARY HUMPHREYS, YOUR HUSBAND, NEVER SENT
19 YOU THESE DOCUMENTS; CORRECT?

20 A HE DIDN'T SEND ME 3146 AND 47, CORRECT.

21 Q OKAY. ON EACH -- ON EACH OF THESE DOCUMENTS,
22 IT SAYS SPARTAN CONSTRUCTION; CORRECT?

23 A YES.

24 Q DO YOU KNOW THE ADDRESS FOR THE SPARTAN
25 ASSOCIATES, INC.?

26 A NO.

1 Q YOU NEVER SENT A CHECK TO THE SPARTAN
2 ASSOCIATES, INC.?

3 A I DON'T KNOW THE ADDRESS OF SPARTAN
4 ASSOCIATES, INC. I KNOW THE ADDRESS FOR ADAM BEREKI.
5 818 SPIRIT LANE, I BELIEVE.

6 Q DID YOU KNOW THAT THE ADDRESS FOR THE SPARTAN
7 ASSOCIATES, INC. IS THE SAME ADDRESS FOR ADAM BEREKI?

8 A NO.

9 Q DID YOU EVER MAIL A CHECK TO THE SPARTAN
10 ASSOCIATES, INC. AT 818 SPIRIT, COSTA MESA, CALIFORNIA?

11 A I DON'T RECALL.

12 MR. BEREKI: THAT WILL BE ALL. THANK YOU.

13 THE COURT: MR. BISSELL, BACK TO YOU THEN.

14 MR. BISSELL: JUST A COUPLE, YOUR HONOR.

15

16 REDIRECT EXAMINATION

17

18 BY MR. BISSELL:

19 Q YOU WERE GIVEN AN ADDRESS AT WHICH TO SEND
20 CHECKS; CORRECT?

21 A YES.

22 Q THAT WAS ALL CHECKS?

23 A YES.

24 Q NOW, THAT ADDRESS WAS GIVEN TO YOU BY
25 MR. BEREKI --

26 A YES.

1 Q -- BEREKI?

2 A YES.

3 Q A 818 SPIRIT LANE, COSTA MESA ADDRESS?

4 A YES.

5 Q WERE YOU EVER GIVEN ANOTHER ADDRESS SAYING
6 THIS IS SPARTAN ASSOCIATES' ADDRESS BY MR. BEREKI?

7 A NO.

8 Q YOU WERE ASKED TO LOOK AT EXHIBIT 34. THAT
9 WAS THE BUILDING PERMIT, I BELIEVE, FOR THE PROJECT?

10 A IT'S LABELED INSPECTION CARD.

11 Q INSPECTION CARD.

12 AND DOES IT INDICATE WHEN THAT CARD OR THE
13 BUILDING PERMIT WAS ISSUED ON THIS JOB?

14 A IT'S DATED AT THE TOP, 11/14/2012.

15 Q NOVEMBER 14, 2012 --

16 A NOVEMBER 14, 2012.

17 Q OKAY. AND MR. BEREKI BEGAN ON THIS JOB ON
18 APRIL 2012?

19 A YES.

20 MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: MR. RUSSO.

22

23 RECROSS-EXAMINATION

24

25 BY MR. RUSSO:

26 Q MS. HUMPHREYS, CAN YOU TURN TO EXHIBIT 30.

1 A YES.

2 Q HOW OFTEN DO YOU VISIT THE JOB SITE, MA'AM?

3 A HOW MUCH DID I VISIT THE JOB SITE?

4 Q YES.

5 A I DON'T RECALL A NUMBER. I WOULD SAY RARELY.

6 Q OKAY. LOOKING AT EXHIBIT NUMBER 30, THIS IS
7 THE JOB SITE; CORRECT?

8 THE COURT: TALKING ABOUT 30-1?

9 MR. RUSSO: YES, YOUR HONOR.

10 THE COURT: WOULD YOU LIKE TO MAKE A PRELIMINARY
11 OFFER OF PROOF WITH RESPECT TO THE DATE AND PHOTOGRAPHER
12 FOR THIS PHOTOGRAPH?

13 MR. RUSSO: I WILL MAKE AN OFFER OF PROOF BASED ON
14 WHAT MR. BEREKI JUST TOLD ME THAT THIS WAS TAKEN IN
15 APPROXIMATELY DECEMBER 2012.

16 THE COURT: BY MR. BEREKI?

17 MR. BEREKI: YES, YOUR HONOR.

18 THE COURT: OKAY.

19 BY MR. RUSSO:

20 Q MA'AM, ISN'T IT TRUE THAT WHEN THE
21 CONSTRUCTION STARTED ON THIS PROJECT, MR. BEREKI HUNG A
22 SPARTAN ASSOCIATES SIGN, THE SAME SIGN WE SEE HERE IN
23 THE TOP-RIGHT CORNER OF EXHIBIT 30-1, ON THE PROJECT?

24 A I DON'T KNOW THAT.

25 Q OKAY. YOU SAID YOU VISITED THE PROJECT
26 SPARINGLY. WHEN YOU WERE THERE, DIDN'T YOU SEE A

1 SPARTAN ASSOCIATES SIGN ON THE PROJECT?

2 A I DON'T RECALL.

3 Q WAS THERE CONSTRUCTION FENCING AROUND THE
4 PROJECT?

5 A I DON'T RECALL.

6 Q OKAY.

7 MR. RUSSO: THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: MR. BEREKI?

9 MR. BEREKI: NOTHING FURTHER, YOUR HONOR.

10 MR. BISSELL: NO QUESTIONS, YOUR HONOR.

11 THE COURT: OKAY. IN THAT CASE, THANK YOU. YOU
12 MAY STEP DOWN.

13 THE WITNESS: THANK YOU.

14 THE COURT: WHO IS YOUR NEXT WITNESS?

15 MR. BISSELL: NEXT WITNESS IS GARY HUMPHREYS, YOUR
16 HONOR.

17 THE COURT: MR. HUMPHREYS. WELL, WE CAN GO FOR
18 FIVE -- EIGHT MINUTES, AND THEN CONTINUE ON UNTIL LUNCH,
19 THAT IS.

20 THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE
21 YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS
22 COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING
23 BUT THE TRUTH, SO HELP YOU GOD?

24 THE WITNESS: I DO.

25 THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME AND
26 SPELL IT FOR THE RECORD.

1 THE WITNESS: GARY, G-A-R-Y, C., HUMPHREYS.
2 H-U-M-P-H-R-E-Y-S.

3 THE CLERK: THANK YOU, SIR.

4 THE WITNESS: GRAB MY WATER, IS THAT ALL RIGHT?

5 THE COURT: THAT'S PERFECTLY FINE. BRING IT WITH
6 YOU. AND GOOD MORNING, MR. HUMPHREYS. HOW ARE YOU?

7 THE WITNESS: HOW ARE YOU?

8 THE COURT: BETTER THAN EVER. THANKS.

9 MR. BISSELL, TO YOU, PLEASE.

10

11 DIRECT EXAMINATION

12

13 BY MR. BISSELL:

14 Q MR. HUMPHREYS, YOU HAVE HEARD YOUR WIFE
15 TESTIFY AS TO THE TWO OF YOU BUYING THIS CONDOMINIUM
16 UNIT ON LIDO ISLE AND THE REASONS YOU BOUGHT IT.

17 IS THAT CONSISTENT WITH YOUR UNDERSTANDING, OR
18 IS ANYTHING DIFFERENT THAN YOU UNDERSTOOD IT?

19 A NO, THAT'S EXACTLY THE WAY I UNDERSTOOD IT.

20 Q ARE YOU FAMILIAR WITH ADAM BEREKI?

21 A YES, I AM.

22 Q WHEN DID YOU FIRST MEET MR. BEREKI?

23 A I THINK IT WAS IN THE FALL OF 2011.

24 Q AND WHAT WAS THE CIRCUMSTANCES?

25 A I WAS VISITING MY BROTHER IN VILLA PARK, AND
26 HE WAS PUTTING IN A KIND OF A SOUND SYSTEM.

1 Q AND DID YOU SPEAK TO HIM AT THAT TIME?

2 A NOT MORE THAN HELLO, NICE TO MEET YOU, THAT
3 KIND OF THING. I REALLY DIDN'T SPEAK WITH HIM.

4 Q BEFORE YOU PURCHASED THE CONDOMINIUM UNITS IN
5 NEWPORT BEACH WITH YOUR WIFE, HAD MR. BEREKI DONE ANY
6 CONSTRUCTION FOR YOU?

7 A NO, HE DID NOT. HOWEVER, HE CLEARLY DID SOME
8 FOR MY BROTHER AND MY SON.

9 Q THAT WOULD BE BOTH -- WITH REGARD TO YOUR SON,
10 YOUR SON OWNS THE BUILDING, YOU RENT SPACE -- YOUR
11 BUSINESS RENTS SPACE FROM?

12 A YES.

13 Q THE CONSTRUCTION WORK THAT MR. BEREKI DID FOR
14 YOUR SON WAS -- PART OF THAT WAS ON THAT BUILDING?

15 A YES, IT WAS.

16 Q THAT WAS PRESUMABLY UNDER SOME SORT OF
17 AGREEMENT WITH MR. BEREKI AND/OR SPARTAN AND YOUR SON?

18 A YES.

19 Q DID YOU HAVE ANY INVOLVEMENT IN ANY OF THOSE
20 DISCUSSIONS BETWEEN YOUR SON AND MR. BEREKI CONCERNING
21 WORK TO THE PREMISES WHERE YOUR OFFICES ARE LOCATED?

22 A NO.

23 Q WERE YOU EVER PRESENT DURING CONVERSATIONS
24 BETWEEN MR. BEREKI AND YOUR SON CONCERNING WORK DONE TO
25 THE PREMISES WHERE YOUR OFFICES ARE LOCATED?

26 A NO.

1 THE COURT: PERHAPS WE COULD EXPLORE A LITTLE BIT.
2 I AM SURE I HEARD MS. HUMPHREYS TESTIFY THAT THE OFFICE
3 FOR HUMPHREYS & ASSOCIATES MOVED INTO THIS BUILDING
4 SOMETIME AFTER THAT CONSTRUCTION WAS DONE. PERHAPS I AM
5 MISTAKEN ON THAT, BUT I WOULD LIKE TO HAVE SOME IDEA ON
6 THE PROXIMITY AND LOCATION AND SO ON TO THE MOVE, IF
7 THERE WAS A MOVE.

8 MR. BISSELL: UNDERSTOOD, YOUR HONOR.

9 BY MR. BISSELL:

10 Q THERE WAS A POINT IN TIME WHERE
11 HUMPHREYS & ASSOCIATES WAS NOT OCCUPYING THE PRESENT
12 LOCATION ON RESEARCH -- IS IT RESEARCH DRIVE IN IRVINE?

13 A CORRECT.

14 Q AND WHEN DID IT MAKE THE MOVE -- FIRST OF ALL,
15 WHERE WAS IT LOCATED PRIOR TO ITS MOVE TO RESEARCH
16 DRIVE?

17 A ON TUSTIN AVENUE IN THE CITY OF ORANGE.

18 Q OKAY. AND WHEN DID IT MOVE FROM TUSTIN
19 AVENUE, CITY OF ORANGE, TO RESEARCH DRIVE IN IRVINE?

20 A I WOULD BE GUESSING. I CAN'T SAY FOR SURE. I
21 DIDN'T HANDLE -- I WASN'T INVOLVED IN IT OR I COULD
22 PROBABLY TELL YOU, BUT I CAN'T REMEMBER EXACTLY WHEN.

23 Q WHEN IT MOVED INTO THE PREMISES ON RESEARCH
24 DRIVE, HAD TENANT IMPROVEMENT WORK BEEN DONE, TO YOUR
25 KNOWLEDGE, TO THE BUILDING PRIOR TO YOUR MOVING IN?

26 A IT WAS SET UP LIKE WE WANTED IT. I DON'T KNOW

1 IF THAT MEANT IT NEEDED MODIFICATION BEFORE WE MOVED.

2 Q DO YOU REMEMBER MR. BEREKI DOING TENANT
3 IMPROVEMENT WORK AFTER YOU MOVED YOUR BUSINESS TO THE
4 RESEARCH DRIVE LOCATION?

5 A NO, I DON'T.

6 Q OKAY.

7 THE COURT: GENERALLY, I DON'T WANT MR. HUMPHREYS
8 TO GUESS. SO THERE MAY BE AN OPPORTUNITY LATER TO GET
9 MORE INFORMATION.

10 BY MR. BISSELL:

11 Q YOU SAY YOU CAN'T RECALL EXACTLY WHEN YOU
12 MOVED FROM TUSTIN AVENUE IN ORANGE TO RESEARCH DRIVE.
13 IS THERE A REASON WHY YOU CAN'T RECALL? WERE YOU NOT
14 INVOLVED IN THE MOVE?

15 A I WAS NOT INVOLVED IN THE MOVE AT ALL. MY
16 PRIMARY ROLE WAS TO BE OUT ON THE ROAD CONSULTING. I DO
17 VERY LITTLE AROUND THE OFFICE AND EVERYTHING ASSOCIATED
18 WITH THE PHYSICAL PLANT.

19 Q SO --

20 A SO --

21 Q SO THERE'S A POINT IN TIME WHERE YOU SHOWED UP
22 TO WORK IN TUSTIN -- ON TUSTIN AVENUE, AND THEN THERE
23 WAS A PERIOD OF TIME WHERE YOU JUST STARTED SHOWING UP
24 TO WORK IN IRVINE DRIVE; IS THAT CORRECT?

25 A YES. THEY TOLD ME WE HAD MOVED AND WHERE IT
26 WAS LOCATED.

1 Q BUT YOU'RE NOT EXACTLY SURE WHEN THAT MOVE
2 TOOK PLACE BECAUSE YOU WERE ON THE ROAD?

3 A EXACTLY.

4 Q DO YOU RECALL THE YEAR AT LEAST?

5 A 2010 TO '12. I AM JUST TOTALLY GUESSING.

6 Q OKAY. DO YOU RECALL WHEN YOU FIRST DISCUSSED
7 WITH MR. BEREKI THE POSSIBILITY OF HIM DOING
8 CONSTRUCTION WORK ON YOUR CONDOMINIUM UNIT?

9 A YES. THAT WAS IN SPRING OF 2012.

10 Q ALL RIGHT. AND CAN YOU DESCRIBE THE
11 CIRCUMSTANCES OF THAT DISCUSSION?

12 A I BELIEVE HE CALLED ME A NUMBER OF TIMES. WE
13 FINALLY SPOKE FOR A FEW MINUTES TO JUST SAY HELLO TO
14 EACH OTHER. THE REAL MEETING OCCURRED ON THAT DAY WE
15 MET ON APRIL OF 2012 AT THE JOB SITE. WE HAD A RENTER
16 IN THERE PRIOR TO THAT. WE COULDN'T GO IN VERY EASILY,
17 SO THAT'S WHY WE WAITED UNTIL THEN.

18 Q WAS THE RENTER NO LONGER THERE AS OF APRIL 1,
19 2012?

20 A I THINK THAT'S CORRECT.

21 Q OKAY. AND YOU HEARD -- YOU HEARD
22 MS. HUMPHREYS TESTIFY AS TO WHAT WAS DISCUSSED AT THE
23 MEETING ON THE SITE AND THAT MR. BEREKI EXPRESSED
24 ENTHUSIASM FOR THE JOB.

25 DO YOU CONCUR WITH THAT TESTIMONY?

26 A ABSOLUTELY. HE WAS HIGHLY EXCITED; SAID THAT

1 WHAT I SAW AT MY BROTHER'S IS NOTHING COMPARED TO WHAT
2 HE'S DONE BEFORE IN NEWPORT BEACH; THAT HE WAS REALLY
3 EXCITED ABOUT TAKING THIS JOB ON. GIDDY. CLEARLY
4 EAGER.

5 THE COURT: LET'S STOP THERE AND GO TO LUNCH ON THE
6 SIDE NOTE OF HUSBAND AGREEING WITH WIFE.

7 THE WITNESS: GOOD.

8 THE COURT: ON THE CONTRARY, I THINK WE WILL
9 PROBABLY SEE -- WE SEE IT A FAIR AMOUNT AT MY HOUSE.
10 WHY NOT? ALL RIGHT, EVERYBODY. SEE YOU BACK AT 1:30.
11 HAVE A GOOD LUNCH.

12 THE WITNESS: THANKS. YOU TOO.

13 (RECESS.)

14 //

1 SANTA ANA, CALIFORNIA; MARCH 27, 2017

2 *****

3 AFTERNOON SESSION

4 (THE FOLLOWING PROCEEDINGS

5 WERE HELD IN OPEN COURT.)

6
7 THE COURT: SORRY FOR THE DELAY. I HAD TO TRACK
8 DOWN THE BUSINESS AND PROFESSIONS CODE SECTION
9 APPLICABLE TO OUR CASE.

10 SIR, COME ON DOWN.

11 THE WITNESS: THANKS.

12 THE COURT: MR. BISSELL, BACK TO YOU, PLEASE.

13 MR. BISSELL: THANK YOU, YOUR HONOR.

14 BY MR. BISSELL:

15 Q MR. HUMPHREYS, BEFORE THE BREAK, YOU JUST
16 TESTIFIED THAT THE TESTIMONY THAT YOUR WIFE HAD GIVEN
17 THIS MORNING AS FAR AS WHAT YOU WANTED DONE TO THE UNIT,
18 WHAT WAS DISCUSSED WITH MR. BEREKI, THAT WAS
19 BASICALLY --

20 THE COURT: HE ABSOLUTELY AGREED WITH EVERYTHING
21 SHE SAID. WE HAVE THAT DOWN.

22 THE WITNESS: EXACTLY RIGHT.

23 BY MR. BISSELL:

24 Q DID MR. BEREKI TELL YOU AT ANY TIME PRIOR TO
25 APRIL 5, 2012, WHAT HIS QUALIFICATIONS WERE FOR DOING
26 THIS PROJECT?

1 A YES, HE DID.

2 Q WHAT DID HE TELL YOU?

3 A HE TOLD ME HE HAD DONE A NUMBER OF PROJECTS IN
4 NEWPORT BEACH, SPECIFICALLY, AND WEST COVINA, ORANGE
5 COUNTY, SOUTHERN CALIFORNIA IN GENERAL THAT WERE EVEN
6 MORE COMPREHENSIVE THAN THIS PROJECT. AND I FELT GOOD
7 WHEN HE FINISHED TELLING ME THE STORY THAT HE WAS MORE
8 THAN QUALIFIED TO HANDLE THIS JOB.

9 Q DID HE TELL YOU HE WAS A LICENSED CONTRACTOR?

10 A YES, HE DID.

11 Q HOW DID THAT COME UP?

12 A I THINK I ASKED HIM, ARE YOU A LICENSED
13 CONTRACTOR, JUST TO MAKE SURE. AND HE AFFIRMED THAT HE
14 WAS.

15 Q DID YOU BELIEVE HIM WHEN HE TOLD YOU HE WAS A
16 LICENSED CONTRACTOR?

17 A YES, I DID.

18 Q WOULD YOU HAVE HAD MR. BEREKI DO THIS JOB FOR
19 YOU IF YOU BELIEVED THAT HE WAS NOT A --

20 A ABSOLUTELY NOT. I HAVE HEARD SOME TERRIBLE
21 HORROR STORIES ABOUT THOSE SITUATIONS.

22 Q IF YOU WILL TURN --

23 A I HAVE TWO BOOKS HERE.

24 Q IT'S THE ONE THAT'S DEFENDANTS' EXHIBITS.

25 A IS THAT THE BIG ONE?

26 THE COURT: IT MAY BE BEHIND YOU, SIR.

1 MR. BISSELL: I THINK IT'S THAT ONE.

2 MR. RUSSO: THAT ONE.

3 THE WITNESS: DEFENDANTS' TRIAL EXHIBITS.

4 MR. BISSELL: YES.

5 BY MR. BISSELL:

6 Q IF YOU WILL TURN TO WHAT'S TABBED IN YOUR
7 BOOK --

8 A I COULDN'T HEAR, SORRY.

9 THE COURT: TURN TO TAB 3.

10 BY MR. BISSELL:

11 Q TAB 3.

12 A OKAY. I'M THERE.

13 Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

14 A YES, I HAVE.

15 Q AND YOU HEARD YOUR WIFE TESTIFY THIS MORNING
16 THAT -- EXCUSE ME.

17 YOUR HONOR, IS IT ALL RIGHT TO QUESTION HIM
18 ALONG THOSE LINES, OR DO YOU WANT ME TO GO THROUGH THE
19 WHOLE SCENARIO OF ASKING HIM EVERY QUESTION THAT I ASKED
20 MS. HUMPHREYS ABOUT THE UNDERSTANDING OF WHAT THIS WAS?

21 THE COURT: TAKE YOUR BEST SHOT.

22 MR. BISSELL: THANKS, YOUR HONOR.

23 THE COURT: WHICHEVER WAY YOU LIKE.

24 BY MR. BISSELL:

25 Q YOU HAVE SEEN THIS DOCUMENT BEFORE, HAVE YOU
26 NOT?

1 A YES, I HAVE.

2 Q WHEN DID YOU FIRST SEE THIS?

3 A ON THAT DATE OF APRIL 5TH OF 2012.

4 Q AND THIS DOCUMENT HAS BEEN IDENTIFIED AS A --
5 KIND OF A TWO-STRING E-MAIL BETWEEN YOURSELF AND
6 MR. BEREKI. IS THAT YOUR UNDERSTANDING?

7 A MR. BEREKI, MYSELF, AND MY WIFE.

8 Q COULD YOU TELL US WHAT YOUR UNDERSTANDING OF
9 THIS DOCUMENT WAS?

10 A IT WAS KIND OF OUR ACCEPTANCE, AND IN SOME
11 CASES A REJECTION OR ASKING FOR CLARITY OF THE
12 SUGGESTIONS HE MADE IN WHAT I HAVE CHARACTERIZED AS A
13 PROPOSAL IN THE PRIOR TAB.

14 Q DID -- THE E-MAIL FROM MR. BEREKI AND YOU AND
15 YOUR WIFE'S RESPONSE TO MR. BEREKI, IT WAS ALL CONTAINED
16 IN THIS ONE DOCUMENT. DID THAT SET FORTH WHAT YOUR
17 UNDERSTANDING WAS AS FAR AS THE PROJECT WAS CONCERNED
18 FROM APRIL 5, 2012?

19 A YES, IT DOES.

20 Q DURING ANY OF YOUR CONVERSATIONS WITH
21 MR. BEREKI, LEADING UP TO THE APRIL 5, 2012, E-MAIL
22 CORRESPONDENCE, DID MR. BEREKI EVER MENTION SPARTAN TO
23 YOU?

24 A NO, HE DIDN'T.

25 Q YOU'VE READ THE EXHIBIT -- THE E-MAIL EXCHANGE
26 BETWEEN YOU AND YOUR WIFE AND MR. BEREKI, EXHIBIT 303.

1 DOES THE NAME SPARTAN APPEAR ANYWHERE IN THAT E-MAIL?

2 A NO, IT DOESN'T.

3 Q AT ANY TIME BEFORE MR. BEREKI STARTED WORK ON
4 THE PROJECT, HAD YOU EVER HEARD OF SPARTAN?

5 A NO, I HADN'T.

6 Q WHO DID YOU BELIEVE YOU WERE CONTRACTING WITH
7 AS OF APRIL 5, 2012, FOR THIS PARTICULAR PROJECT?

8 A ADAM BEREKI AND HIS PARTNER, GLENN OVERLEY.

9 Q NOW, YOU HAD NEVER MET MR. OVERLEY BEFORE; IS
10 THAT CORRECT?

11 A THAT'S CORRECT.

12 Q DID MR. BEREKI EXPLAIN ANYTHING ABOUT HIS
13 PARTNER, WHAT HIS QUALIFICATIONS WERE?

14 A I DON'T RECALL THAT HE DID.

15 Q YOUR UNDERSTANDING THAT YOU WERE CONTRACTING
16 WITH MR. HUMPHREYS (SIC) AND HIS PARTNER IS BASED ON
17 WHAT, THEN?

18 A WITH MR. BEREKI AND HIS PARTNER IS BASED ON
19 THIS E-MAIL AND EXHIBIT 3. YOU SAID HUMPHREYS. THAT'S
20 WHY I SAID --

21 Q I'M SORRY.

22 A -- BEREKI AND HIS PARTNER, GLENN OVERLEY. IT
23 WAS BASED ON THIS E-MAIL, YES.

24 Q I WILL DO THAT OFF AND ON. I APOLOGIZE.

25 MS. HUMPHREYS HAS ALREADY TESTIFIED AS TO
26 EXHIBIT 306, WHICH WAS THE MAY 13, 2012 CHECK. IT'S OUR

1 EXHIBIT, NUMBER 6.

2 YOU'VE SEEN THAT CHECK BEFORE; CORRECT?

3 A YES, I HAVE.

4 Q AND YOU AND YOUR WIFE MADE FURTHER PAYMENTS TO
5 MR. BEREKI ON THIS JOB; CORRECT?

6 A YES, WE DID.

7 Q IF YOU WILL FLIP TO TAB NUMBER 15 IN THE
8 EXHIBIT BOOK YOU HAVE IN FRONT OF YOU.

9 A OKAY. I'M THERE.

10 Q CAN YOU IDENTIFY THAT DOCUMENT FOR US?

11 A YES. IT'S AN EXTRACT OF CHECKS AND WIRE
12 TRANSFERS FROM KAREN AND ME, SOMETIMES
13 HUMPHREYS & ASSOCIATES TO ADAM BEREKI OR SPARTAN.

14 Q IS THIS CHECK EXTRACT A COMPILATION PREPARED
15 BY YOU UNDER YOUR DIRECTION?

16 A PREPARED UNDER MY DIRECTION.

17 Q BY WHO?

18 A MY ACCOUNTANT.

19 Q AND DOES THIS EXHIBIT REFLECT ALL PAYMENTS
20 MADE BY YOU AND YOUR WIFE ON THIS JOB?

21 A I BELIEVE IT DOES.

22 Q WHAT WAS THE DATE OF THE FIRST PAYMENT TO
23 SPARTAN CONSTRUCTION?

24 A JULY 19, 2012.

25 Q SO AT SOME POINT, HAD YOU HEARD OF SPARTAN
26 CONSTRUCTION?

1 A YES. IN THE JULY TIME FRAME, A FEW MONTHS
2 INTO THE PROJECT.

3 Q AND HOW DID YOU HEAR OF SPARTAN CONSTRUCTION?

4 A ADAM ASKED US TO START MAKING CHECKS TO
5 SPARTAN.

6 Q DID HE EXPLAIN TO YOU WHY?

7 A NO.

8 Q DID YOU ASK HIM WHY?

9 A NO.

10 Q DID HE EXPLAIN TO YOU WHO SPARTAN CONSTRUCTION
11 WAS?

12 A NO.

13 Q DID YOU HAVE ANY SORT OF UNDERSTANDING OF WHO
14 YOU THOUGHT SPARTAN CONSTRUCTION WAS?

15 A I JUST FIGURED IT WAS A SEPARATE ACCOUNT OR
16 DBA THAT HE WAS USING. I DIDN'T THINK ABOUT IT, QUITE
17 FRANKLY.

18 Q AT ANY TIME DURING MR. BEREKI'S INVOLVEMENT ON
19 THIS PROJECT, DID HE EVER APPROACH YOU WITH A PROPOSED
20 CONTRACT FROM SPARTAN CONSTRUCTION?

21 A NO.

22 Q DID HE APPROACH YOU WITH ANY TYPE OF PROPOSAL
23 FROM SPARTAN CONSTRUCTION?

24 A NO.

25 Q WAS THERE ANY POINT DURING MR. BEREKI'S
26 INVOLVEMENT IN THIS PROJECT IN WHICH YOU THOUGHT THAT

1 YOU HAD CONTRACTED WITH SPARTAN CONSTRUCTION?

2 A NO.

3 MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

4 THE COURT: MR. RUSSO.

5

6 CROSS-EXAMINATION

7

8 BY MR. RUSSO:

9 Q WHEN YOU WENT TO THE PROJECT AND SAW THE
10 SPARTAN CONSTRUCTION SIGN IN FRONT OF IT, DID YOU ASK
11 QUESTIONS ABOUT THAT?

12 MR. BISSELL: OBJECTION, YOUR HONOR. ASSUMES FACTS
13 NOT IN EVIDENCE.

14 THE COURT: SUSTAINED.

15 BY MR. RUSSO:

16 Q HOW MANY TIMES DID YOU GO TO THE PROJECT, SIR?

17 A THREE TO FIVE.

18 Q IN THE YEAR AND A HALF?

19 A THAT'S ABOUT RIGHT.

20 Q OKAY. AND YOU SAW THE SPARTAN ASSOCIATES SIGN
21 ON THE PROJECT?

22 A NO.

23 Q DID YOU WALK AROUND THE WHOLE PROJECT WHEN YOU
24 GOT THERE?

25 A NOT NECESSARILY.

26 Q DID YOU LOOK FROM THE STREET AND NOT GO SEE

1 WHAT WAS GOING ON WITH THE WORK?

2 A I WENT AND SAW WHAT WAS GOING ON WITH THE
3 WORK.

4 Q OKAY. CAN YOU TURN TO EXHIBIT 30. IT'S THE
5 OTHER BINDER, SIR.

6 A OH, OKAY. 30. I'M THERE.

7 Q I WILL ADDRESS YOUR ATTENTION TO PAGE 30-1,
8 THE FIRST PAGE.

9 A OKAY.

10 Q DO YOU SEE IN THE TOP-RIGHT CORNER OF THE
11 PICTURE, THE SPARTAN ASSOCIATES SIGN?

12 A I SEE THAT NOW.

13 Q YOU ARE SAYING YOU NEVER SAW THAT?

14 A NEVER SAW IT.

15 THE COURT: PERHAPS WE CAN GET SOME ORIENTATION.
16 BY MR. RUSSO:

17 Q SIR, CAN YOU TELL ME WHAT IS DEPICTED IN 30-1?

18 A IT LOOKS LIKE THE FRONT END OF THE CONDOMINIUM
19 ON THE BEACH SIDE THAT HAD BEEN OPENED UP.

20 Q OKAY. SO IF WE ARE INSIDE LOOKING TOWARDS ME
21 ON THIS PICTURE --

22 A YES.

23 Q -- AM I LOOKING AT WATER OR TOWARDS THE
24 STREET?

25 A YOU'RE LOOKING AT WATER.

26 Q OKAY.

1 THE COURT: SO IS THERE A STREET BETWEEN THE WATER
2 AND THE FRONT OF THIS HOUSE?

3 THE WITNESS: NO.

4 THE COURT: SIDEWALK?

5 THE WITNESS: YES.

6 BY MR. RUSSO:

7 Q WERE YOU AWARE, SIR, THAT THAT SIGN WAS
8 ORIGINALLY POSTED ON THE FRONT OF THE HOUSE WHEN
9 CONSTRUCTION BEGAN, BUT THE OWNER'S ASSOCIATION REQUIRED
10 THAT IT BE REMOVED?

11 A NO.

12 Q YOU WEREN'T AWARE OF THAT?

13 A I WAS NOT AWARE OF THAT.

14 Q OKAY. SIR, DID YOU LOOK INTO THE LICENSURE OF
15 MR. BEREKI?

16 A NO.

17 Q SO YOU DIDN'T CHECK TO SEE WHETHER OR NOT
18 MR. BEREKI HAD A LICENSE HIMSELF; CORRECT?

19 A NO.

20 Q CAN YOU TURN, SIR, TO EXHIBIT NO. 32 IN THE
21 BOOK BEFORE YOU.

22 A OKAY. I'M THERE.

23 Q SIR, CUTTING TO THE CHASE, ARE ALL THE CHECKS
24 THAT ARE IN EXHIBIT NO. 32 THE CHECKS THAT MAKE UP THE
25 CHECK REGISTER THAT WE HAVE DISCUSSED BEFORE, WHICH IS
26 32-2, WITH THE EXCEPTION OF THE FIRST \$15,000 CHECK

1 MISSING?

2 A YES.

3 MR. RUSSO: OKAY. I WILL MOVE INTO ADMISSION
4 EXHIBIT 32.

5 THE WITNESS: SORRY?

6 THE COURT: ANY OBJECTION?

7 MR. BISSELL: LET ME JUST MAKE SURE.

8 THE COURT: THIRTY-TWO CONSISTS OF PAGE 1 OF AN
9 E-MAIL STRING DATED VARIOUSLY. AT THE TOP, JULY 19,
10 2012, THE NEXT ONE, JULY 19, 2012; THE NEXT ONE,
11 JULY 20, 2012; THE LAST AT THE BOTTOM, FEBRUARY 1, 2017.

12 PAGE 2 IS THAT WHICH YOU PREVIOUSLY SHOWED,
13 EXHIBIT 315, THE EXTRACTED CHECKS, PREPARED AT
14 MR. HUMPHREYS' BY HIS ACCOUNTANT.

15 FOLLOWING THAT, 32, PAGE 4 -- THERE IS NO 32-3
16 BY THE WAY.

17 32-4 THROUGH 32-17, COPIES OF CHECKS PAYABLE
18 EITHER TO MR. BEREKI AT VARIOUS TIMES OR TO SPARTAN
19 ASSOCIATES, INCORPORATED. SOME CHECKS DRAWN ON THE
20 HUMPHREYS' PERSONAL ACCOUNT. SOME REFLECTED AS WIRE
21 TRANSFER. AND THEN TOWARDS THE END, A SERIES OF CHECKS
22 DRAWN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES,
23 INCORPORATED.

24 MR. RUSSO: COULDN'T HAVE DONE IT BETTER MYSELF,
25 YOUR HONOR.

26 MR. BISSELL: NO OBJECTION, YOUR HONOR.

1 YOUR HONOR, DO YOU PREFER TO HAVE EXHIBITS
2 ENTERED ALL AT ONCE AT THE END OF THE CASE?

3 THE COURT: IN A COURT TRIAL, I REALLY DON'T CARE.
4 AND FOR OUR PURPOSES ON THIS PARTICULAR BIFURCATED
5 MATTER, PROBABLY BETTER IF WE JUST DO THEM AS THEY COME.

6 SO 32 RECEIVED.

7 (EXHIBIT NO. 32 WAS ADMITTED INTO EVIDENCE.)

8 BY MR. RUSSO:

9 Q SIR, WERE YOU AWARE THAT A BUILDING PERMIT HAD
10 TO BE PULLED ON THIS PROJECT?

11 A THE BUILDING PERMIT HAD TO DO WHAT?

12 Q THAT A BUILDING PERMIT HAD TO BE PULLED ON
13 THIS PROJECT.

14 A I'M ASSUMING --

15 THE COURT: MIGHT BE PULLED -- PULLED IS ALMOST A
16 TERM OF ART FOR THE CONSTRUCTION BUSINESS. SO PROBABLY
17 THE QUESTION REPHRASED AS, WERE YOU AWARE OF WHETHER OR
18 NOT THE CITY REQUIRED A PERMIT TO BE ISSUED FOR THE
19 PERFORMANCE OF THIS WORK.

20 BY MR. RUSSO:

21 Q WERE YOU AWARE THAT THE CITY REQUIRED A
22 BUILDING PERMIT TO BE ISSUED FOR THE PERFORMANCE OF THIS
23 WORK?

24 A I AM NOW.

25 THE COURT: GOOD QUESTION.

26

1 BY MR. RUSSO:

2 Q AND WERE YOU AWARE, SIR, THAT SPARTAN
3 ASSOCIATES WAS THE APPLICANT FOR THAT BUILDING PERMIT?

4 A NO.

5 Q WERE YOU AWARE, SIR, THAT ARCHITECTS OR CIVIL
6 ENGINEERS HAD TO BE HIRED FOR THIS PROJECT?

7 A I BELIEVE SO LATER.

8 Q AND WERE YOU AWARE, SIR, THAT IT WAS SPARTAN
9 ASSOCIATES THAT HAD TO CONTRACT WITH THE CIVIL
10 ENGINEERS?

11 A NO.

12 Q WERE YOU AWARE, SIR, THAT -- WHAT DESIGN
13 PROFESSIONALS WERE YOU AWARE OF ON THIS PROJECT, SIR?

14 A I THINK THE ONLY NAME I REMEMBER IS WONG.

15 Q OKAY. AND DO YOU KNOW WHAT HIS PROFESSION
16 WAS?

17 A I DO NOT.

18 Q WERE YOU AWARE, SIR, THAT EVERY SUBCONTRACT TO
19 A PROJECT WAS WITH SPARTAN ASSOCIATES?

20 A I WAS NOT.

21 Q OKAY.

22 MR. RUSSO: NO FURTHER QUESTIONS.

23 THE COURT: MR. BEREKI?

24 MR. BEREKI: THANK YOU, YOUR HONOR.

25

26 CROSS-EXAMINATION

1
2 BY MR. BEREKI:

3 Q YOU MENTIONED A LITTLE BIT EARLIER ABOUT
4 HEARING TERRIBLE WAR STORIES ABOUT CONSTRUCTION. CAN
5 YOU GIVE US AN IDEA ABOUT WHAT YOU HEARD ABOUT --

6 THE COURT: LET'S NOT GO THERE.

7 MR. BISSELL: OBJECTION. RELEVANCY, YOUR HONOR.

8 THE COURT: SUSTAINED.

9 BY MR. BEREKI:

10 Q DID ALL YOUR FAMILY MEMBERS TELL YOU THAT
11 SPARTAN HAD DONE A GOOD JOB ON THEIR PROJECTS?

12 A NO.

13 Q THEY DIDN'T?

14 A NO.

15 Q WHAT DID THEY SAY?

16 A ADAM BEREKI DID A GOOD JOB. I NEVER HEARD THE
17 NAME SPARTAN ASSOCIATES.

18 Q OKAY. SO THEY TOLD YOU THAT ADAM BEREKI HAD
19 DONE A GOOD JOB ON ALL THEIR PROJECTS?

20 A YES.

21 Q AND YOUR BUSINESS OFFICE, THE WORK THAT YOU
22 SAW DONE THERE, DID YOU FEEL THAT A GOOD JOB HAD BEEN
23 DONE?

24 A YES.

25 Q OKAY. WERE THERE ANY COMPLAINTS ABOUT THE
26 WORK PRODUCT ITSELF?

1 MR. BISSELL: OBJECTION. VAGUE.

2 THE COURT: WELL, IT'S COMPOUND BECAUSE WE ARE NOW
3 WELL AWARE THERE ARE MULTIPLE PROJECTS. SO I WILL
4 SUSTAIN ON COMPOUND AT THIS POINT.

5 YOU CAN FOLLOW UP, MR. BEREKI.

6 MR. BEREKI: MR. --

7 THE COURT: LET ME CLARIFY SINCE I KNOW YOU'RE NOT
8 A LAWYER. BASICALLY IF YOU WANT TO ASK A QUESTION LIKE
9 THAT, YOU NEED TO ASK PROJECT BY PROJECT AND ANOTHER
10 COLLECTIVELY.

11 MR. BEREKI: OKAY.

12 BY MR. BEREKI:

13 Q WERE THERE ANY COMPLAINTS ABOUT THE WORK THAT
14 SPARTAN DID ON YOUR -- AT THE HUMPHREYS & ASSOCIATES
15 OFFICE BUILDING ON RESEARCH?

16 A I NEVER HEARD SPARTAN ASSOCIATES. SO I HAVE
17 TO SAY NO, THERE WERE NO COMPLAINTS.

18 Q OKAY. WERE THERE ANY COMPLAINTS ABOUT THE
19 WORK THAT ADAM BEREKI DID AT YOUR -- AT THE
20 HUMPHREYS & ASSOCIATES OFFICE ON RESEARCH?

21 A NO.

22 Q OKAY. DO YOU HIRE CONTRACTORS IN YOUR
23 BUSINESS?

24 A NOT CONSTRUCTION CONTRACTORS. CONSULTANTS,
25 MANAGEMENT CONSULTANTS, ACCOUNTANTS, PEOPLE, EXPERTS IN
26 NUCLEAR PHYSICS, THAT KIND OF THING.

1 Q OKAY. BUT YOU REFER TO THEM AS CONTRACTORS;
2 CORRECT?

3 A CONSULTANTS, ASSOCIATES, THOSE KIND OF TITLES.

4 Q OKAY. COULD YOU PLEASE TURN TO EXHIBIT 40.

5 A OKAY. I'M THERE.

6 Q OKAY. AND THEN I ASK YOU TO GO TO EXHIBIT A
7 WHICH BEGINS ON 40-8.

8 A OKAY. I'M THERE.

9 Q CAN YOU READ THE TITLE OF THIS PAGE THAT'S IN
10 BOLD FOR US, SIR?

11 A HUMPHREYS & ASSOCIATES, INC., INDEPENDENT
12 CONTRACTOR AGREEMENT.

13 Q SO IN YOUR COMPANY, WHAT DOES THIS INDEPENDENT
14 CONTRACTOR AGREEMENT APPLY TO?

15 MR. BISSELL: RELEVANCY, YOUR HONOR. OBJECTION.

16 THE COURT: SUSTAINED.

17 BY MR. BEREKI:

18 Q WAS YOUR TESTIMONY THAT YOU DON'T HIRE
19 CONTRACTORS IN YOUR COMPANY?

20 A I AM SAYING THAT WE REFER TO THEM AS
21 CONSULTANTS OR ASSOCIATES. I WASN'T SURE WHAT THE EXACT
22 AGREEMENT NAME IS. IN FACT, I'M CONFIDENT IT'S CHANGED.

23 Q WOULD THOSE CONSULTANTS BE HIRED UNDER THIS
24 INDEPENDENT CONTRACTOR AGREEMENT?

25 MR. BISSELL: SAME OBJECTION. RELEVANCE.

26 THE COURT: SUSTAINED. LET ME INDICATE TO YOU,

1 MR. BEREKI, I CONSIDER THERE TO BE SOME DIFFERENTIATION.
2 I UNDERSTAND YOUR POINT IN TERMS OF TITLE, INDEPENDENT
3 CONTRACTOR CONTAINED ON THIS ATTACHED EXHIBIT TO EXHIBIT
4 40, BUT IT WOULD BE RELEVANT AND GERMANE IF THIS WAS A
5 CONTRACT TO PERFORM CONSTRUCTION-TYPE CONTRACTING WORK.
6 HIRING SOMEBODY TO DO THE FUNCTION OF A MANAGEMENT
7 CONSULTANT IN THE REALM OF MR. HUMPHREYS' BUSINESS, I
8 THINK, IS AN ENTIRELY DIFFERENT THING, AND, THEREFORE,
9 NOT RELEVANT.

10 MR. BEREKI: WHERE I'M COMING FROM IS THAT
11 MR. HUMPHREYS, IN MY KNOWLEDGE, IS A MANAGEMENT
12 CONSULTANT. HE WROTE THE BOOK ON PROJECT MANAGEMENT.
13 AND IT -- HE MAY NOT BE INVOLVED IN CONSTRUCTION
14 PROJECTS LIKE THIS AS MUCH, BUT HE DOES STATE THAT IN
15 HIS WORK, THAT HIS MANAGEMENT PRINCIPLES, THAT HE BOTH
16 TEACHES AND IS A SELF-PROCLAIMED EXPERT IN --

17 THE COURT: ASK HIM ABOUT THAT.

18 MR. BEREKI: OKAY.

19 THE COURT: I KNOW YOU'RE JUST ABOUT TO DO THAT.

20 MR. BEREKI: YES, I WAS, SIR.

21 BY MR. BEREKI:

22 Q OKAY. I'M GOING TO HOLD UP WHAT HAS NOT YET
23 BEEN MARKED. WELL, IT IS ON THIS EXHIBIT -- ON THE
24 LIST, BUT THIS BLUE BOOK. IT SAYS, "PROJECT MANAGEMENT
25 USING EARNED VALUE," BY HUMPHREYS & ASSOCIATES.

26 DID YOU WRITE THIS BOOK, SIR?

1 MR. BISSELL: OBJECTION. RELEVANCY.

2 THE COURT: YOU CAN ANSWER YES OR NO.

3 THE WITNESS: YES.

4 BY MR. BEREKI:

5 Q AND IN THIS BOOK, ARE THERE PRINCIPLES
6 RELATING TO THE HANDLING OF CONTRACTS?

7 A YES.

8 Q WOULD YOU AGREE THAT YOU HAVE EXTENSIVE
9 EXPERIENCE IN VARIOUS TYPE OF CONTRACTS?

10 A FOR GOVERNMENT FUNDED CONTRACTS OVER
11 \$100 MILLION WHERE THERE'S A VERY SPECIFIC REQUIREMENT
12 FOR A THING CALLED EARNED VALUE MANAGEMENT SYSTEMS.

13 Q OKAY. SO HOW ABOUT AN ACTUAL COST OR A
14 COST-PLUS CONTRACT, DO YOU HAVE EXPERIENCE IN THAT?

15 A MANY OF MY CLIENTS HAVE COST PLUS CONTRACTS.

16 Q OKAY. AND WOULD YOU AGREE THAT YOU HAVE
17 EXTENSIVE EXPERIENCE IN PROJECT MANAGEMENT?

18 A IN EARNED VALUE PROJECT MANAGEMENT SYSTEMS,
19 YES.

20 Q OKAY. SO DURING THE PROJECT, DID I EVER ASK
21 YOU TO MAKE A CHECK OUT TO LEGOLAND TO BUILD YOUR
22 PROPERTY?

23 A I DON'T THINK SO.

24 Q OKAY. DID I ASK YOU TO MAKE A CHECK OUT TO
25 JUDGE CHAFFEE?

26 THE COURT: WELL, LET'S NOT BE FACETIOUS.

1 BY MR. BEREKI:

2 Q HOW ABOUT PINKBERRY, THE ICE CREAM
3 MANUFACTURER?

4 MR. BISSELL: OBJECTION. RELEVANCE.

5 THE COURT: SUSTAINED.

6 BY MR. BEREKI:

7 Q SO YOU HAVE STATED THAT YOU HAVE EXPERIENCE IN
8 CONTRACTS AND PROJECT MANAGEMENT, YET YOU ARE ALLEGING
9 THAT A SUBSTITUTION OCCURRED OF SPARTAN ASSOCIATES INTO
10 THE PROJECT, AND DESPITE ALL OF THIS EXPERIENCE, WOULD
11 YOU AGREE THAT THAT DID NOT SEND UP A RED FLAG TO YOU?

12 THE COURT: I WILL SUSTAIN MY OWN OBJECTION AS TOO
13 MANY WORDS.

14 MR. BEREKI: OKAY.

15 THE COURT: SEE IF YOU CAN GO BACK AND REFRAME THE
16 QUESTION. USUALLY, QUESTIONS, SINCE YOU'RE
17 CROSS-EXAMINING -- LET ME EXPLAIN. SINCE YOU'RE
18 CROSS-EXAMINING, YOU GET TO ASK LEADING QUESTIONS. I
19 DON'T KNOW IF MR. RUSSO HAS GIVEN YOU THE LECTURE ON
20 LEADING AND NON-LEADING QUESTIONS.

21 MR. RUSSO: WE HAD A FULL NIGHT OF IT LAST NIGHT.

22 THE COURT: OKAY.

23 MR. BEREKI: I AM JUST A ROOKIE, THOUGH.

24 THE COURT: A LEADING QUESTION IS ANY QUESTION
25 THAT'S DESIGNED OR INTENDED TO PUT WORDS INTO THE MOUTH
26 OF THE WITNESS THAT ADOPTS THE QUESTION BY SAYING YES.

1 MR. BEREKI: OKAY.

2 THE COURT: LEADING QUESTION. YOU WENT TO THE
3 STORE LAST NIGHT, DIDN'T YOU? THE ANSWER WILL BE YES OR
4 NO. PRESUMPTIVELY, THE ANSWER IS GOING TO BE YES.
5 WHILE YOU WERE AT THE STORE, YOU BOUGHT A SIX PACK OF
6 BEER, CORRECT? PRESUMPTIVELY, THE ANSWER WILL BE YES.

7 SO WHAT'S THE NON-LEADING FORM? NOT THAT YOU
8 NEED TO KNOW THIS RIGHT NOW, BUT I WILL CLOSE THE BIG
9 PICTURE. THE NON-LEADING FORM IS ANY QUESTION THAT
10 EMPLOYS THE JOURNALIST'S TOOLS. WHAT ARE THE JOURNALIST
11 TOOLS? WHO, WHAT, WHEN, WHERE, WHY, HOW. WHERE DID YOU
12 GO LAST NIGHT? CAN'T BE ANSWERED JUST YES OR NO. I
13 WENT TO THE STORE. WHAT, IF ANYTHING, DID YOU BUY WHILE
14 YOU WERE AT THE STORE? NOTICE I STUCK AN EXTRA CLAUSE
15 IN THERE, "IF ANYTHING." THERE IS A TECHNICAL REASON
16 FOR THAT, BUT YOU DON'T NEED TO WORRY ABOUT THAT.
17 ANSWER, CAN'T BE YES OR NO. ANSWER, I BOUGHT A SIX PACK
18 OF BEER.

19 THE REASON I AM SAYING THIS TO YOU IS THAT,
20 TYPICALLY, LEADING QUESTIONS ARE SHORT, TO THE POINT.
21 PREFACING WITH LONG PARAGRAPHS OF INFORMATION IS
22 BASICALLY TESTIMONIALS THAT DON'T REALLY WASH VERY WELL
23 AROUND HERE. YOU WANT TO ASK SHORT QUESTIONS, ALLOW THE
24 WITNESS TO SAY YES OR NO. THE LONGER THE QUESTION IS,
25 THE MORE I START GOING, I'M NOT GOING TO REQUIRE A "YES"
26 OR "NO" ANSWER. I'M GOING TO LET THE WITNESS TAKE OFF

1 AND GIVE SEVERAL PARAGRAPHS OF RESPONSE TO THAT.

2 BECAUSE, OFTENTIMES, WITH THE LONGER QUESTION,
3 THERE ARE CERTAIN BUILT-IN ASSUMPTIONS THAT MAY OR MAY
4 NOT BE ACCURATE. AND AS WE HAVE ALREADY SEEN, MR.
5 HUMPHREYS AND MRS. HUMPHREYS HAVE DONE A GOOD JOB OF
6 DIFFERENTIATING TO LEADING QUESTIONS. YOU HAD A
7 CONTRACT WITH SPARTAN, DIDN'T YOU? THAT'S THE SHORT
8 VERSION OF WHAT ACTUALLY WAS ASKED. THE ANSWER, I
9 DIDN'T HAVE A CONTRACT WITH SPARTAN AT ALL. I HAD A
10 CONTRACT WITH MR. BEREKI.

11 MR. BEREKI: THANK YOU.

12 THE COURT: IT COULDN'T BE ANSWERED YES OR NO.
13 THAT IS THE PROBLEM.

14 MR. BEREKI: I UNDERSTAND.

15 THE COURT: NOW, TO GET THE CHAFFEE FULL COURSE,
16 YOU'RE GOING TO HAVE TO READ THE COUNTY BAR JOURNAL NEXT
17 MONTH, BUT IN THE MEANTIME -- OR LAST QUARTER.

18 MR. RUSSO PROBABLY GAVE YOU A COPY OF THE ARTICLE I
19 WROTE ON LEADING QUESTIONS. IN THE MEANTIME, IT'S JUST
20 IMPORTANT TO KEEP IN MIND THAT IT'S BEST TO HAVE YOUR
21 QUESTION WRITTEN OUT. AND I KNOW IT'S A LITTLE LATE IN
22 THE GAME FOR THAT, BUT AS WE GO THROUGH THIS TRIAL, YOU
23 WANT TO WRITE OUT YOUR QUESTIONS SO THAT YOU WILL HAVE A
24 GOOD FLOW. THERE'S NOTHING WRONG WITH READING QUESTIONS
25 OR AT LEAST REFERRING TO NOTES SO YOU KNOW WHERE YOU'RE
26 GOING.

1 MR. BEREKI: THANK YOU, YOUR HONOR.

2 THE COURT: OKAY.

3 MR. BEREKI: I WILL TAKE THAT TO HEART.

4 THE COURT: ALL RIGHT. BACK TO IT, SIR.

5 BY MR. BEREKI:

6 Q DID IT SEND UP A RED FLAG TO YOU WHEN YOU WERE
7 ASKED TO WRITE A CHECK TO SPARTAN CONSTRUCTION?

8 A NOT REALLY.

9 Q WOULD IT SEND UP A RED FLAG TO YOU IF YOU
10 THOUGHT YOU HAD A CONTRACT WITH ADAM BEREKI AND YET ADAM
11 BEREKI IS ASKING YOU TO PAY SOMEONE ELSE?

12 A NO. I THINK THAT'S THE SAME QUESTION.

13 MR. BEREKI: I THINK I WILL BE DONE FOR NOW.

14 THE COURT: OKAY. MR. BISSELL, BACK TO YOU.

15 MR. BISSELL: THANK YOU, YOUR HONOR.

16

17 REDIRECT EXAMINATION

18

19 BY MR. BISSELL:

20 Q MR. HUMPHREYS, MR. RUSSO, NOT SO MUCH BY YOUR
21 TESTIMONY, BUT INDICATED TO YOU, REPRESENTED TO YOU THAT
22 ALL SUBCONTRACTS ENTERED INTO ON THIS PROJECT WERE BY
23 SPARTAN CONSTRUCTION. I ASK YOU TO FLIP TO TAB NUMBER
24 51 --

25 A OF THE BIGGER BOOK --

26 Q -- OF THE DEFENDANTS' BOOK, THE SMALLER OF THE

1 TWO.

2 A YOU SAID 51?

3 Q 51, YES.

4 THE COURT: "SMALL" IS SUCH A RELEVANT TERM.

5 MR. BISSELL: SMALLER OF THE TWO.

6 THE WITNESS: OKAY. I'M AT 51.

7 BY MR. BISSELL:

8 Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

9 A I THINK I HAVE.

10 Q IS THIS A DOCUMENT THAT WAS PRODUCED BY
11 MR. BEREKI IN CONJUNCTION WITH THIS LAWSUIT?

12 A YES.

13 Q THIS PURPORTS TO BE A WORK AUTHORIZATION TO
14 WONG & ASSOCIATES?

15 A YES.

16 Q AND YOU MENTIONED THAT WONG WAS A NAME THAT
17 YOU RECOGNIZE AS BEING ONE OF THE CONSULTANTS ON THIS
18 PROJECT?

19 A I DO NOW, AND I SEE THE TITLE CONSULTING
20 ENGINEER.

21 Q WHO IS THIS WORK AUTHORIZATION DIRECTED TO?
22 WHO'S THE CLIENT? UP AT THE TOP, UPPER LEFT.

23 A OH, CLIENT, SORRY. ADAM BEREKI.

24 Q AND WHO AT THE BOTTOM RIGHT-HAND PORTION,
25 WHO'S THIS WORK ORDER APPROVED BY?

26 A ADAM BEREKI.

1 MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: MR. RUSSO?

3
4 RECROSS-EXAMINATION

5
6 BY MR. RUSSO:

7 Q I DON'T WANT TO DO TIT FOR TAT, BUT CAN YOU
8 TURN TO EXHIBIT 33, SIR.

9 A IN THE OTHER BOOK?

10 Q YES, SIR.

11 A 33?

12 Q YES, SIR.

13 A I'M AT 33.

14 Q LOOKING AT 33-1, SIR, DO YOU SEE THE CONTRACT
15 OF RUSSELL'S CRANE SERVICE?

16 A I SEE RUSSELL CRANE SERVICE IN THE UPPER
17 LEFT-HAND CORNER.

18 Q WHO IS THE CLIENT OUT HERE, BILLED TO?

19 A BILLED TO IS SPARTAN CONSTRUCTION AND THE DATE
20 IS JANUARY OF 2013.

21 Q OKAY. MOVING TO PAGE 3-2, SIR, THE GEOLOGIST
22 FOR THIS PROJECT?

23 A HARRINGTON GEOTECHNICAL ENGINEERING, INC.

24 Q WHO WAS THE CONTRACTOR FOR THIS?

25 A IT'S THE JULY 25 OF 2013, MR. ADAM BEREKI,
26 SPARTAN CONSTRUCTION.

1 Q MOVING ON, SIR. EXHIBIT 33-3, THE NEXT
2 PAGE --

3 A YES.

4 Q -- INVOICE FOR THE WINDOWS?

5 A CALIFORNIA GLASS AND WINDOW.

6 Q SOLD TO WHO, SIR?

7 A ON MARCH 26 OF 2013, SPARTAN CONSTRUCTION.

8 Q SIR, TURN TO 33-5. CONTRACTED WITH ANAHEIM
9 HEATING AND AIR CONDITIONING. WHO'S THE CONTRACT WITH?

10 A DATED MAY 27, 2013, SPARTAN CONSTRUCTION. AND
11 IT SAYS "EQUALS ADAM."

12 Q NEXT PAGE, 33-6, SIR.

13 PROCOAT, INC. WHAT DID THEY DO ON THIS
14 PROJECT?

15 A PROCOAT, INC., IT'S DATED, AGAIN, MARCH 22 OF
16 2013. IS THERE A SCOPE OF WORK ON HERE SOMEPLACE I
17 SHOULD BE FINDING?

18 Q DO YOU KNOW WHAT THIS WAS FOR, SIR?

19 A I DO NOT.

20 Q DID YOU HAVE TO HAVE A WATERPROOFING
21 SUBCONTRACTOR?

22 A I DON'T KNOW.

23 Q NEXT PAGE, 33-7, SIR. SHORELINE FABRICATORS,
24 WHAT DID THEY DO FOR YOU?

25 A IT SAYS TO FABRICATE AND INSTALL ONE 10-FOOT
26 LONG GUTTER. GUTTER TO BE MADE FROM 24-GAUGE STAINLESS

1 STEEL AND TWO, THREE-INCH LONG NO-HUB THUNDERBIRD DRAINS
2 AT EACH END.

3 Q AGAIN, THIS WAS FOR SPARTAN CONSTRUCTION;
4 CORRECT?

5 A IN APRIL OF 2013, SPARTAN CONSTRUCTION.

6 Q OKAY. LAST ONE, 33-8. HELIX ENVIRONMENTAL
7 PLANNING, WHAT DID THEY DO FOR YOU, SIR?

8 A PROVIDE ENVIRONMENTAL CONSULTING SERVICES FOR
9 THE RESIDENTIAL REMODEL OF NEWPORT BEACH. AGAIN, DATED
10 JANUARY 16 OF 2013. I ASSUME THE SUBJECT COVERS.

11 Q AGAIN, THIS WAS WITH SPARTAN; CORRECT?

12 A SORRY. YES --

13 Q THANK YOU --

14 A -- IT'S WITH SPARTAN.

15 Q -- SIR.

16 MR. RUSSO: NO FURTHER QUESTIONS.

17 THE COURT: MR. BEREKI.

18 MR. BEREKI: NOTHING FURTHER, YOUR HONOR.

19 MR. BISSELL: YOUR HONOR, I WOULD REQUEST TO -- I
20 WOULD MOVE INTO EVIDENCE EXHIBITS 302, 303 --

21 THE COURT: HOLD ON A SECOND. START OVER AGAIN.

22 MR. BISSELL: 302, 303, 304, 305, 306, AND 315.

23 THE COURT: ANY OBJECTION TO 302?

24 MR. RUSSO: NO, YOUR HONOR.

25 THE COURT: MR. BEREKI?

26 MR. BEREKI: NO.

1 THE COURT: YOU'RE A PART OF THIS TOO.

2 MR. BEREKI: NO.

3 THE COURT: ALL RIGHT. 302 RECEIVED.

4 (EXHIBIT NO. 302 WAS ADMITTED INTO EVIDENCE.)

5 THE COURT: 303.

6 MR. RUSSO: NO OBJECTION.

7 MR. BEREKI: NO OBJECTION.

8 THE COURT: RECEIVED.

9 (EXHIBIT NO. 303 WAS ADMITTED INTO EVIDENCE.)

10 THE COURT: 304.

11 MR. RUSSO: NO OBJECTION.

12 MR. BEREKI: NO OBJECTION.

13 THE COURT: ALSO RECEIVED.

14 (EXHIBIT NO. 304 WAS ADMITTED INTO EVIDENCE.)

15 THE COURT: 305.

16 MR. RUSSO: NO OBJECTION.

17 MR. BEREKI: NO OBJECTION.

18 THE COURT: RECEIVED.

19 (EXHIBIT NO. 305 WAS ADMITTED INTO EVIDENCE.)

20 THE COURT: 306 IS THE COPY OF THE CHASE CHECK,
21 \$50,000. ANY OBJECTION?

22 MR. BEREKI: NO OBJECTION.

23 MR. RUSSO: NO OBJECTION.

24 THE COURT: RECEIVED.

25 (EXHIBIT NO. 306 WAS ADMITTED INTO EVIDENCE.)

26 THE COURT: LASTLY, 315, THIS IS THE SUMMARY OF

1 CHECKS PAID OVER THE COURSE OF THE RUN OF THIS EVENT.

2 ANY OBJECTION?

3 MR. RUSSO: IT'S -- I OBJECT THAT IT'S DUPLICATIVE
4 OF THREE -- I'M SORRY -- OF 32. AND I BELIEVE THERE'S
5 AN ABSENCE OF FOUNDATION FOR IT.

6 THE COURT: SO DID YOU MOVE 32?

7 MR. RUSSO: I DID.

8 THE COURT: THERE IT IS. I JUST DIDN'T NOTE IT IN
9 MY BOOK. WELL, CONSIDERING THE FACT THAT 32 IS IN
10 EVIDENCE, DO WE NEED TWO OF THEM?

11 MR. BISSELL: AGAIN, YOUR HONOR, I DON'T HAVE THEIR
12 EXHIBIT BOOK. I'M GOING TO HAVE TO TAKE A --

13 THE COURT: TAKE A LOOK.

14 MR. BISSELL: AS LONG AS IT'S TRULY DUPLICATIVE --

15 MR. RUSSO: IT IS.

16 MR. BISSELL: -- WE DON'T.

17 THE COURT: WELL, ONE DIFFERENCE I CAN TELL YOU
18 RIGHT NOW. 32-2, WHICH IS THE PAGE IN QUESTION, ON MY
19 BOOK, THERE ARE A SERIES OF RED CHECKMARKS. THEN THERE
20 ARE SOME BLUE INITIALS NEXT TO, IT LOOKS LIKE, THE
21 BEREKI ENTRIES AND THEN SOMEONE IN BLUE HAS CIRCLED THE
22 BALANCE OF 848,000.

23 MR. BISSELL: TO ME, THOSE ARE INSIGNIFICANT. SO I
24 HAVE NO OBJECTION TO 32 COMING IN.

25 THE COURT: OKAY. WE WON'T DOUBLE DOWN ON THAT
26 ONE.

1 MR. BISSELL: ALL RIGHT.

2 THE COURT: THANK YOU, SIR, YOU CAN STEP DOWN.

3 THE WITNESS: THANK YOU, SIR.

4 MR. BISSELL: YOUR HONOR, AT THIS TIME, CROSS

5 COMPLAINANTS CALL ADAM BEREKI TO THE STAND.

6 THE COURT: MR. BEREKI.

7 MR. BEREKI: YOUR HONOR, MAY I RUN TO THE BATHROOM

8 REALLY QUICK?

9 MR. BISSELL: ABSOLUTELY.

10 MR. BEREKI: THANK YOU. I WILL BE RIGHT BACK.

11 THE COURT: WE WILL GO OFF THE RECORD FOR A SECOND.

12 (OFF THE RECORD.)

13 THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE

14 YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS

15 COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING

16 BUT THE TRUTH, SO HELP YOU GOD?

17 THE WITNESS: I DO.

18 THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME AND

19 SPELL IT FOR THE RECORD.

20 THE WITNESS: ADAM, A-D-A-M, ALAN, A-L-A-N, BEREKI,

21 B-E-R-E-K-I.

22 THE CLERK: THANK YOU.

23 THE COURT: COME ON DOWN, MR. BEREKI. HAVE A SEAT.

24 NOW, I NEED TO EXPLAIN SOMETHING TO YOU SINCE I HAVE

25 JUST GIVEN YOU A LITTLE BIT OF CHAFFEE ON EVIDENCE

26 ALREADY. BECAUSE YOUR POSITION IS ADVERSE TO

1 MR. BISSELL'S CLIENTS, EVEN THOUGH MR. BISSELL IS
2 CALLING YOU, HE GETS TO ASK LEADING QUESTIONS OF YOU.
3 ON, QUOTE, CROSS-EXAMINATION, MR. RUSSO IS GOING TO HAVE
4 TO ASK YOU NON-LEADING QUESTIONS. AND TO THE EXTENT YOU
5 WANT TO ASK YOURSELF QUESTIONS, I JUST WILL UNDERSTAND
6 THAT YOU'RE GOING TO BASICALLY ASK YOURSELF NON-LEADING
7 QUESTIONS. AGAIN, THOSE ARE THE WHO, WHAT, WHEN, WHY,
8 AND HOW QUESTIONS.

9 THE WITNESS: IS IT MY UNDERSTANDING THAT YOU'RE
10 GOING TO GIVE ME A PERIOD OF TIME AFTER THIS TO ASK MY
11 OWN QUESTIONS --

12 THE COURT: OH, SURE.

13 MR. BEREKI: -- TO HAVE A SMALL DIATRIBE OF MY OWN.

14 THE COURT: YOU'RE GOING TO BE UNDER OATH ASKING
15 YOURSELF QUESTIONS TO WHICH YOU HAVE TO GIVE TRUTHFUL
16 ANSWERS.

17 MR. BEREKI: YES, SIR. THAT WILL BE --

18 THE COURT: THERE IS A CERTAIN IRONY THERE. I
19 DON'T KNOW WHY.

20 ALL RIGHT. MR. BISSELL, TO YOU, PLEASE.

21 MR. BISSELL: THANK YOU, YOUR HONOR.

22

23 DIRECT EXAMINATION

24

25 BY MR. BISSELL:

26 Q MR. BEREKI, IF YOU WILL TURN TO TAB NUMBER 2

1 IN DEFENDANTS' EXHIBIT BOOK, EXHIBIT 302.

2 A I'M THERE, SIR.

3 Q YOU RECOGNIZE THAT DOCUMENT?

4 A YOU SAID 302; CORRECT?

5 Q 202.

6 THE COURT: NO, 302. TAB --

7 MR. BISSELL: I'M SORRY. SORRY.

8 BY MR. BISSELL:

9 Q 302, TAB NUMBER 2.

10 A I DO RECOGNIZE THIS DOCUMENT.

11 Q AND DID YOU DRAFT THAT?

12 A YES.

13 Q AND ON WHOSE E-MAIL ACCOUNT WAS THAT DOCUMENT
14 SENT TO THE HUMPHREYS?

15 A THE ADAM BEREKI E-MAIL ACCOUNT.

16 Q DID SPARTAN HAVE AN E-MAIL ACCOUNT AT THIS
17 TIME?

18 A I BELIEVE IT DID.

19 Q OKAY.

20 A HOWEVER, ADAM BEREKI WAS THE E-MAIL ACCOUNT
21 THAT I USED FOR SPARTAN.

22 Q IF YOU WILL FLIP TO EXHIBIT -- YOUR EXHIBIT
23 NOW, IN YOUR EXHIBIT BOOK, 39 -- 35-13.

24 A I'M SORRY. SAY AGAIN.

25 Q EXHIBIT 35-13.

26 A OKAY.

1 OKAY.

2 Q DO YOU RECOGNIZE THAT DOCUMENT, SIR?

3 A I DO.

4 Q WHAT IS THAT?

5 A THIS IS A CONTRACT WITH -- BETWEEN THE SPARTAN
6 ASSOCIATES AND ADP AND GUARD. ADP PROVIDED PAYROLL
7 SERVICES AND GUARD PROVIDED WORKERS' COMP SERVICES.

8 Q AND WERE THOSE SERVICES TO BE PROVIDED IN
9 CONNECTION WITH THE PROJECT YOU WERE DOING FOR THE
10 HUMPHREYS?

11 A YES, SIR.

12 Q WHEN I SAY "THE HUMPHREYS," I'M TALKING ABOUT
13 THE HUMPHREYS PROJECT ON LIDO NORD. DO YOU UNDERSTAND
14 THAT, SIR?

15 A YES.

16 THE COURT: LET'S BE CLEAR. THE CONTRACT ITSELF
17 ENCOMPASSES PAGE 35-11 THROUGH -13; IS THAT RIGHT?

18 THE WITNESS: YOUR HONOR, I BELIEVE IT ENCOMPASSES
19 35-1 THROUGH -- MAYBE THE ENTIRE 35 EXHIBIT. IT IS.
20 BY MR. BISSELL:

21 Q SO IF YOU LOOK AT THE BOTTOM OF PAGE 35-13,
22 THERE'S AN E-MAIL ACCOUNT THERE, IS THERE NOT?

23 A YES.

24 Q AND THAT E-MAIL ACCOUNT IS
25 ADAM@THESPARTANASSOCIATES.COM?

26 A YES.

1 Q AND YOU WERE USING THAT E-MAIL IN CONJUNCTION
2 WITH THE HUMPHREYS PROJECT?

3 A YES, SOMETIMES, I DID.

4 Q WELL, DID YOU JUST NOT TESTIFY THAT YOU ALWAYS
5 USE THE ADAM BEREKI E-MAIL IN CONJUNCTION WITH SPARTAN
6 ASSOCIATES FOR THIS PROJECT?

7 A I DID NOT USE THE WORD "ALWAYS."

8 Q BACK TO EXHIBIT 302. TURN TO PAGE 5 OF THAT
9 EXHIBIT.

10 ARE YOU THERE?

11 A I'M THERE, SIR.

12 Q OKAY. NOW, AT THE LAST COMPLETE PARAGRAPH,
13 YOU MENTIONED WHAT YOU AND YOUR PARTNER PROPOSED TO
14 CHARGE THE HUMPHREYS ON THIS PROJECT; CORRECT?

15 A IN RELATING TO THIS DOCUMENT, IT'S NOT ON THIS
16 DOCUMENT, NO.

17 Q ARE YOU -- I'M SORRY. PAGE 4, 302, PAGE 4.

18 A NO. IT WOULD BE 304; RIGHT?

19 Q NO.

20 A OKAY. 302, PAGE 4, YES. I'M HERE NOW.

21 Q SECOND TO THE -- THE LAST COMPLETE PARAGRAPH
22 ON THE PAGE, THAT'S A PROPOSAL BY YOU AND YOUR PARTNER
23 AS TO WHAT YOU TWO INTEND TO CHARGE THE HUMPHREYS ON
24 THIS PROJECT?

25 A NO. IT'S A PROPOSAL FROM SPARTAN ABOUT WHAT
26 THE LABOR RATE OF ADAM BEREKI AND GLEN CHARGE ON THE

1 PROJECT.

2 Q OKAY. CAN YOU POINT TO ANYWHERE IN THAT
3 DOCUMENT WHERE THE NAME SPARTAN IS MENTIONED?

4 A IT'S NOT.

5 Q NOW, THE COST OF THE WORK THAT YOU ESTIMATED
6 AT THAT TIME, UNDERSTANDING THAT THE SCOPE CHANGED, IT
7 WAS \$143,000?

8 A ACTUALLY, THERE WERE TWO PROJECTS, WHAT WE
9 DESCRIBED IN THIS E-MAIL AS PHASE ONE AND PHASE TWO.
10 PHASE ONE WAS TO BE SOMEWHAT OF A COSMETIC REMODEL OF
11 THE UNIT ITSELF, AND THAT WAS TO BE ABOUT \$68,000, IS
12 WHAT I ESTIMATED.

13 AND THEN THERE WAS ANOTHER PHASE OF THE
14 PROJECT THAT WE SPOKE ABOUT, WHICH WAS PUTTING A DECK ON
15 TOP OF THE UNIT BECAUSE THE HUMPHREYS INDICATED THEY
16 WANTED TO HAVE LARGER DECK ENTERTAINMENT SPACE, AND THAT
17 WOULD BE SOMETHING THAT WOULD BE RESEARCHED AND
18 DISCUSSED OR AGREED UPON LATER. AND THAT AMOUNT WAS
19 75,000.

20 SO I THINK IF YOU ADD THE 68 AND 75, IT'S 143.
21 BUT THE 75, TO MY RECOLLECTION, WASN'T YET AGREED UPON.
22 IT WAS SOMETHING WE WERE GOING TO RESEARCH ON.

23 Q IT WAS YOUR ESTIMATE?

24 A YES.

25 Q IN THE LAST PAGE OF THIS E-MAIL, HOW DO YOU
26 SIGN OFF?

1 A BEST, ADAM BEREKI.

2 Q NOW, YOUR PARTNER, MR. -- YOU TESTIFIED
3 THAT -- YOU MENTIONED IN YOUR OPENING STATEMENT THAT
4 MR. OAKLEY -- MR. OVERLEY WAS YOUR PARTNER ON THIS
5 PROJECT?

6 A YES.

7 Q HE WAS AN INDEPENDENT CONTRACTOR?

8 A NO. WELL, AN INDEPENDENT LICENSED CONTRACTOR,
9 OR JUST AN INDEPENDENT CONTRACTOR IN THE TERMS OF HOW
10 YOU WOULD FILE A TAX RETURN FOR HIM?

11 Q HOW YOU WOULD FILE A TAX RETURN?

12 A YES, HE WAS TREATED AS AN INDEPENDENT
13 CONTRACTOR.

14 Q HE HAD NO INVOLVEMENT WITH SPARTAN OTHER THAN
15 PARTNERING WITH YOU; CORRECT?

16 A ARE YOU REFERRING TO ME AS SPARTAN OR ME AS
17 ADAM BEREKI?

18 Q EITHER/OR.

19 A OKAY. I THINK TO MAKE IT CLEAR, I'M UP HERE
20 AS A REPRESENTATIVE OF THE SPARTAN ASSOCIATES. AND TO
21 NOT DIFFERENTIATE THOSE ISSUES, I WOULD APPRECIATE IF
22 YOU WOULD CLARIFY IN YOUR QUESTIONS WHICH ONE YOU'RE
23 REFERRING TO OR JUST ASSUME THAT I'M ALWAYS TALKING FROM
24 THE PLACE OF SPARTAN.

25 THE COURT: THE WITNESS'S COMPOUND OBJECTION IS
26 SUSTAINED.

1 REPHRASE.

2 BY MR. BISSELL:

3 Q READING FROM THE DEPOSITION THAT YOU GAVE IN
4 THIS MATTER AT PAGE -- BEGINNING OF PAGE -- I'M SORRY --
5 98, BEGINNING LINE 10 --

6 THE COURT: ALL RIGHT. HOLD ON A SECOND. 98,
7 LINE 10. GOING TO WHERE?

8 MR. BISSELL: TO LINE -- I'M SORRY -- LINE 10 --
9 I'M SORRY -- TO LINE 13.

10 THE COURT: ANY OBJECTION?

11 MR. RUSSO: NO.

12 THE COURT: GO AHEAD AND READ.

13 MR. BISSELL: LET'S SEE.

14 BY MR. BISSELL:

15 Q "QUESTION: MR. OVERLEY, WAS HE -- DID HE HAVE
16 ANY INVOLVEMENT WITH SPARTAN?

17 "ANSWER: HE WAS AN INDEPENDENT CONTRACTOR,
18 YOU MIGHT SAY."

19 IF YOU WILL FLIP TO EXHIBIT 303, THE -- I'M
20 SORRY. 305, IF YOU WOULD, SIR.

21 A OKAY. I'M HERE.

22 Q DO YOU RECOGNIZE THAT DOCUMENT?

23 A YES.

24 Q AND IN THIS DOCUMENT, YOU'RE COMMUNICATING
25 WITH THE HUMPHREYS AND YOU'RE ASKING THEM TO CUT YOU A
26 CHECK FOR \$15,000; CORRECT?

1 A YES.

2 Q AND MS. HUMPHREYS, IN RESPONSE TO YOUR
3 REQUEST, ASKS YOU WHO SHE SHOULD MAKE THE CHECK OUT TO.

4 DO YOU SEE THAT?

5 A I DO.

6 Q WHO IS IT THAT YOU'RE ASKING TO MAKE THE CHECK
7 OUT TO?

8 A ADAM BEREKI.

9 Q IS THERE ANYTHING IN THE EXHIBIT 3 --
10 EXHIBIT 303 AGREEMENT THAT WOULD -- YOU CONTEND WOULD
11 PUT THE HUMPHREYS ON NOTICE THAT THEY WERE CONTRACTING
12 WITH ANYONE OTHER THAN YOU AND YOUR PARTNER,
13 MR. OVERLEY? CAN YOU POINT TO THAT?

14 A IN THESE DOCUMENTS, NO.

15 Q IS THERE ANYTHING IN THE E-MAIL YOU SENT TO
16 THE HUMPHREYS ON APRIL 13, THAT'S EXHIBIT 305, WHERE
17 YOU'RE ASKING FOR PAYMENT AND ASKING THE PAYMENT BE MADE
18 PAYABLE TO ADAM BEREKI, THAT WOULD PUT THE HUMPHREYS ON
19 NOTICE THEY HAVE CONTRACTED WITH ANYONE OTHER THAN YOU?

20 A NO.

21 YOU'RE SPEAKING DOCUMENT SPECIFIC ONLY?

22 Q WELL, DID YOU HAVE CONVERSATIONS WITH THE
23 HUMPHREYS PRIOR TO APRIL 5, 2012 WHERE YOU INDICATED TO
24 THEM THAT YOU WERE GOING TO BE DOING THIS JOB WITH
25 SPARTAN CONSTRUCTION AND NOT ADAM BEREKI?

26 A I BELIEVE THEY UNDERSTOOD IT WAS WITH SPARTAN

1 CONSTRUCTION.

2 Q ANY CONVERSATIONS TO THAT EFFECT?

3 A YEAH, I TOLD THEM THAT THAT'S WHAT MY COMPANY
4 IS, SPARTAN CONSTRUCTION.

5 Q WHEN DID YOU TELL THEM THAT?

6 A DURING THE DAY WE MET THERE ON LIDO. I
7 BELIEVE, AS MR. HUMPHREYS SAID, HE DID ASK FOR -- IF I
8 WAS LICENSED AND I DID SAY THAT I WAS AS SPARTAN AND
9 REFERRED HIM TO THE CALIFORNIA STATE LICENSE BOARD TO
10 CHECK THE LICENSE NUMBER.

11 Q READING AGAIN FROM YOUR DEPOSITION OF PAGE 61,
12 LINES 5 THROUGH 9.

13 "QUESTION" --

14 THE COURT: HOLD ON.

15 MR. BISSELL: I'M SORRY.

16 THE COURT: ANY OBJECTION?

17 MR. RUSSO: NO OBJECTION.

18 THE COURT: GO AHEAD.

19 BY MR. BISSELL:

20 Q "QUESTION: ASIDE FROM TELLING YOU WHAT THEY
21 WANTED, DID THE HUMPHREYS EVER MANAGE THE PROJECT?

22 "ANSWER: OH, YES.

23 "QUESTION: DID THEY HIRE CONTRACTORS?

24 "ANSWER: ME.

25 NOW, YOU REQUESTED AND RECEIVED PAYMENTS FOR A
26 NUMBER OF MONTHS AND ACCEPTED PAYMENTS MADE OUT TO ADAM

1 BEREKI ON THIS JOB; CORRECT?

2 A CAN YOU STATE THAT AGAIN, PLEASE.

3 Q FOR A NUMBER OF MONTHS INTO THIS PROJECT, YOU
4 ACCEPTED PAYMENTS FROM THE HUMPHREYS MADE OUT TO ADAM
5 BEREKI; IS THAT CORRECT?

6 A YES.

7 Q FOR A NUMBER OF MONTHS ON THIS PROJECT, YOU
8 PAID YOUR LABOR AND MATERIALS WITH CHECKS DRAWN ON THE
9 PERSONAL ACCOUNT OF ADAM BEREKI AND/OR YOUR MOTHER; IS
10 THAT CORRECT?

11 A CAN YOU ASK THOSE QUESTIONS ONE AT A TIME,
12 PLEASE.

13 Q UNTIL JULY OF 2012, YOU PAID YOUR OWN LABOR
14 AND MATERIALS ON THIS PROJECT ON CHECKS DRAWN ON EITHER
15 YOUR PERSONAL ACCOUNT OR THEY WERE PAID ON CHECKS DRAWN
16 ON YOUR MOTHER'S ACCOUNT; IS THAT CORRECT?

17 A NO.

18 Q NOW, YOU HAVE A -- YOU BROUGHT VOLUMES OF
19 DOCUMENTS. CAN YOU POINT TO EVIDENCE OF A SINGLE
20 PAYMENT MADE IN CONNECTION WITH THIS JOB TO ANYBODY,
21 LABOR, MATERIALS, CONTRACTOR, THAT WAS PAID ON AN
22 ACCOUNT BY SPARTAN CONSTRUCTION?

23 A I BELIEVE THE PAYMENTS FOR THE SHOP SPACE RENT
24 WERE FROM SPARTAN CONSTRUCTION.

25 Q SHOP SPACE RENT?

26 A YES.

1 Q YOU BELIEVE THAT YOU PAID THE SHOP SPACE RENT
2 ON CHECKS DRAWN FROM SPARTAN CONSTRUCTION?

3 A AT THIS MOMENT I BELIEVE I DO. I HAVE
4 TO CHECK TO VERIFY THAT.

5 Q YOU HAVE BEEN ASKED TO PRODUCE THOSE
6 DOCUMENTS. DO YOU HAVE THOSE DOCUMENTS?

7 A I HAVE THE CHECKS THAT SPARTAN WROTE, YES.

8 MR. BISSELL: CAN WE HAVE THE WITNESS PRODUCE THOSE
9 DOCUMENTS? WE HAVE ASKED HIM TO PRODUCE THOSE. THEY
10 WERE NOT PROVIDED IN DISCOVERY. WE DON'T BELIEVE THEY
11 EXIST.

12 THE COURT: I WILL VACATE. YOU GUYS CAN SPEND
13 ABOUT TEN MINUTES, THE THREE OF YOU, GO OVER THE
14 PRODUCTION. LET MS. BOLCE KNOW WHEN YOU ARE READY TO
15 RESUME.

16 MR. BISSELL: THANK YOU, YOUR HONOR.

17 (RECESS.)

18 THE COURT: MR. BISSELL.

19 MR. BISSELL: THANK YOU, YOUR HONOR.

20 THE COURT: HOW ARE WE DOING?

21 MR. BISSELL: I THINK WE'RE READY.

22 THE COURT: PROCEED.

23 BY MR. BISSELL:

24 Q MR. BEREKI, YOU HAVE HAD A CHANCE TO SIT DOWN
25 WITH MR. RUSSO, CORPORATION'S COUNSEL, TO LOOK OVER THE
26 CHECKS YOU HAVE. YOU HAVE BEEN ASKED TO PRODUCE ANY

1 CHECKS PAYABLE ON THE -- A SPARTAN CONSTRUCTION ACCOUNT
2 TO ANYBODY INVOLVED ON THIS PROJECT BEFORE, SAY,
3 JULY 15, 2012.

4 YOU'VE MADE A SEARCH OF YOUR RECORDS?

5 A THE ONES THAT I HAVE AVAILABLE, YES. IT
6 WASN'T UNTIL YOU ASKED THE QUESTION THAT I REALIZED THAT
7 THAT CHECKBOOK I USED ON THIS PROJECT ACTUALLY BEGAN
8 WITH CHECK 001 IN JULY. SO THERE MUST BE ANOTHER
9 CHECKBOOK THAT IS OUTSTANDING THAT I DON'T HAVE BECAUSE
10 THE BANK ACCOUNT HAS BEEN CLOSED DOWN FOR AT LEAST THREE
11 YEARS NOW.

12 Q BOTTOM LINE IS YOU CAN'T PRODUCE A SINGLE
13 RECORD OF PAYMENT TO ANYBODY ON THIS JOB ON A SPARTAN
14 CONSTRUCTION ACCOUNT PRIOR TO JULY OF 2012; IS THAT
15 CORRECT?

16 A I'M NOT SAYING I CAN'T PRODUCE IT. I'M SAYING
17 I DON'T HAVE THAT INFORMATION AVAILABLE TO ME RIGHT NOW.

18 Q YOU WERE ASKED TO PRODUCE IT AND YOU HAVEN'T
19 PRODUCED IT.

20 A I WASN'T AWARE THAT IT EXISTED.

21 Q ISN'T IT TRUE THAT SPARTAN -- AS FAR AS THIS
22 PROJECT WAS CONCERNED, SPARTAN DIDN'T EVEN EXIST UNTIL
23 JULY OF 2012?

24 A THAT'S NOT TRUE.

25 Q YOU DIDN'T APPLY TO THE BOARD OF EQUALIZATION
26 FOR -- TO REGISTER SPARTAN AS AN EMPLOYER UNTIL JULY OF

1 2012; IS THAT CORRECT?

2 A THAT IS CORRECT.

3 Q AND YOU DIDN'T APPLY FOR WORKERS' COMPENSATION
4 ON THIS JOB WITH SPARTAN CONSTRUCTION UNTIL JULY OF
5 2012; IS THAT CORRECT?

6 A THAT IS CORRECT, BECAUSE --

7 Q BOTH --

8 A -- SPARTAN DID NOT OPERATE WITH EMPLOYEES
9 PRIOR TO THAT -- PRIOR TO THE NECESSITY TO DO SO ON THIS
10 PROJECT. THIS PROJECT DEEMED EMPLOYEES WITH WORKERS'
11 COMPENSATION NECESSARY.

12 Q AND IF YOU FLIP TO TAB NUMBER 51 IN THE BOOK,
13 DEFENDANTS' BOOK IN FRONT OF YOU, DO YOU SEE THAT
14 DOCUMENT?

15 A I BELIEVE I DO. 51?

16 Q TAB 51 IS DEFENDANTS' EXHIBIT 351. THAT IS
17 YOUR TAB 51.

18 A YES.

19 Q DO YOU RECOGNIZE THAT DOCUMENT?

20 A I DO.

21 Q AND WHAT IS THAT?

22 A IT IS A WORK ORDER AUTHORIZATION TO BEGIN --
23 FOR WONG & ASSOCIATES TO BE A CONSULTING ENGINEER ON THE
24 PROJECT.

25 Q WHAT'S THE DATE OF THAT?

26 A 8/14/2012.

1 Q AND WHO'S THE CLIENT ON THAT?

2 A ADAM BEREKI.

3 Q AND WHO APPROVED THAT?

4 A ADAM BEREKI.

5 Q IF YOU WILL TURN TO EXHIBIT --

6 A AND I WOULD ALSO LIKE YOU TO LOOK AT THE
7 ADDRESS THAT SAYS 436 VIA LIDO NORD, AND THAT'S WHERE
8 SPARTAN'S BUSINESS LICENSE WAS REGISTERED AS WELL, IS AT
9 436 VIA LIDO NORD.

10 Q THANK YOU.

11 A SURE.

12 Q IF YOU WILL TURN TO TAB 55,

13 CROSS-COMPLAINANTS' EXHIBIT 355.

14 A OKAY.

15 Q THIS IS A COLLECTION OF 36 DIFFERENT CHECKS.

16 A OKAY.

17 Q YOU CAN THUMB THROUGH THOSE. DO YOU RECOGNIZE
18 THOSE CHECKS? LET ME KNOW WHEN YOU'RE READY.

19 A YES, I APPEAR TO RECOGNIZE THEM.

20 Q OKAY. THESE ARE ALL CHECKS THAT WERE IN
21 PAYMENT OF SOME COST INCURRED IN CONNECTION WITH THE
22 HUMPHREYS PROJECT?

23 A YES. THEY APPEAR TO BE.

24 Q AND ON WHOSE ACCOUNT WERE EACH OF THESE CHECKS
25 DRAWN?

26 A CAN YOU JUST LET ME KNOW IF THERE ARE ANY THAT

1 SAYS ROSE AND BEREKI AT THE TOP. OTHERWISE, I WILL JUST
2 SAY THEY ARE ALL FROM ADAM'S ACCOUNT.

3 Q IN THIS PARTICULAR EXHIBIT, I WILL REPRESENT
4 TO YOU THAT NONE OF --

5 A OKAY. THESE ALL CAME FROM THE ACCOUNT OF ADAM
6 BEREKI.

7 Q MR. BEREKI, AT THE TIME THAT YOU CONTRACTED
8 WITH THE HUMPHREYS, DID YOU POSSESS A CONTRACTOR'S
9 LICENSE ISSUED IN YOUR NAME?

10 A ISSUED IN MY NAME, NO.

11 Q AT THE TIME THAT YOU PERFORMED WORK ON THIS
12 PROJECT, DID YOU POSSESS A CONTRACTOR'S LICENSE ISSUED
13 IN YOUR NAME?

14 A NO.

15 Q AT THE TIME THAT YOU CONTRACTED WITH THE
16 HUMPHREYS, DID YOU AND MR. OVERLEY POSSESS A JOINT
17 VENTURE CONTRACTOR'S LICENSE ISSUED TO THE TWO OF YOU AS
18 A JOINT VENTURE?

19 A NO.

20 Q AT THE TIME -- AT ANY TIME WHEN YOU WORKED ON
21 THIS PROJECT, DID YOU AND YOUR PARTNER, MR. OVERLEY,
22 POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED TO
23 THE TWO OF YOU?

24 A NO.

25 Q AT THE TIME THAT YOU CONTRACTED -- ENTERED
26 INTO THE CONTRACT WITH THE HUMPHREYS ON THIS PROJECT,

1 DID SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A JOINT
2 VENTURE LICENSE ISSUED TO THE TWO OF THEM?

3 A CAN YOU SAY THAT AGAIN, PLEASE.

4 Q AT THE TIME THAT YOU -- THAT YOU CONTRACTED
5 WITH THE HUMPHREYS, DID THE SPARTAN ASSOCIATES AND
6 MR. OVERLEY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE
7 ISSUED BY THE CALIFORNIA CONTRACTOR'S LICENSE BOARD?

8 A WELL, YOUR QUESTION ASSUMES THAT I CONTRACTED
9 WITH THE HUMPHREYS AND I AM SAYING THAT SPARTAN
10 ASSOCIATES CONTRACTED WITH THE HUMPHREYS. SO.

11 Q ALL RIGHT. LET'S USE THE DATE. AS OF
12 APRIL 5 -- AS OF APRIL 5, 2012, DID SPARTAN ASSOCIATES
13 AND MR. OVERLEY JOINTLY POSSESS A JOINT VENTURE
14 CONTRACTOR'S LICENSE ISSUED BY THE CALIFORNIA
15 CONTRACTOR'S LICENSE BOARD?

16 A NO.

17 Q AT ANY TIME DURING -- AT ANY TIME BETWEEN
18 APRIL 5, 2012 AND SEPTEMBER 31, 2013, DID THE SPARTAN
19 ASSOCIATES AND MR. OVERLEY POSSESS A CONTRACTOR'S
20 LICENSE ISSUED TO THEM AS JOINT VENTURES?

21 A NO.

22 MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: MR. RUSSO.

24
25 CROSS-EXAMINATION
26

1 BY MR. RUSSO:

2 Q MR. BEREKI, WHO PERFORMED THE WORK AT THE VIA
3 LIDO NORD PROJECT?

4 A THE SPARTAN ASSOCIATES.

5 Q WERE YOU EVER DOING ANY OF THE WORK IN YOUR
6 PERSONAL CAPACITY AS OPPOSED TO ON BEHALF OF SPARTAN
7 ASSOCIATES?

8 A NO.

9 Q LET'S GO TO EXHIBIT 32, SIR.

10 A IN OUR BOOK?

11 Q YES.

12 A OKAY. OKAY.

13 Q DIRECTING YOUR ATTENTION TO 32-2, WHICH IS
14 THAT REGISTER.

15 A OKAY.

16 Q THE FIRST \$100,000 IN CHECKS WERE PAYABLE TO
17 ADAM BEREKI; CORRECT?

18 A CORRECT.

19 Q AND THEN AFTER THAT, WAS ALL THE MONEY PUT
20 INTO SPARTAN ASSOCIATES' ACCOUNTS AFTER THAT FIRST
21 \$100,000?

22 A YES.

23 Q OKAY. SO EVEN IF THE CHECK WAS PAYABLE TO
24 ADAM BEREKI LATER ON, IT STILL WENT TO SPARTAN; CORRECT?

25 A CORRECT.

26 Q OKAY.

1 A AND EVEN THOUGH I ASKED THEM TO MAKE THE CHECK
2 TO SPARTAN, THEY STILL MADE IT TO ADAM BEREKI, BUT IT
3 STILL WENT IN THE SPARTAN ACCOUNT.

4 Q DURING THIS FIRST PERIOD, IT LOOKS LIKE THAT
5 LAST CHECK BEFORE THINGS SWITCHED OVER WAS JUNE 22,
6 2012. WHAT WAS THE WORK THAT WAS GOING ON ON THIS
7 PROJECT?

8 A PRIMARYLY -- WELL, THE FIRST THING WE DID WAS
9 TO GET THEM PACKED UP AND MOVED. SO I HAD TO BUY ALL
10 THE MOVING SUPPLIES AND PAY FOR THE LABOR TO HAVE
11 EVERYONE PACK UP ALL OF THE BELONGINGS THAT BELONGED TO
12 THE HUMPHREYS -- THEIR PERSONAL BELONGINGS WERE THERE --
13 AND ALL OF THE FURNITURE. AND THEN WE TOOK THAT VIA
14 TRAILER TO THE SHOP THAT HAD BEEN RENTED FOR USE ON THIS
15 PROJECT AND PUT UP STEEL VERTICAL SHELVING, WRAPPED THE
16 FURNISHINGS AND OTHER THINGS IN PLASTIC TO THEN BE
17 PALLETIZED AND PUT IN STORAGE WHILE WE WERE WORKING ON
18 THE PROJECT.

19 Q SO YOU HAD TO RENT STORAGE FOR ALL THEIR
20 STUFF?

21 A I HAD THE STORAGE, AND, YES, I USED THAT TO
22 STORE THEIR STUFF.

23 Q OF THIS \$100,000, BEFORE EVERYTHING WAS TRULY
24 SPARTAN ASSOCIATES, A PORTION OF IT WAS FOR RENTING A
25 PLACE FOR THEIR STUFF AND MOVING IT THERE; CORRECT?

26 A THAT'S ONE ASPECT, YES.

1 Q OKAY. TO YOUR KNOWLEDGE, DOES THAT REQUIRE A
2 CONTRACTOR'S LICENSE?

3 A NO.

4 Q OKAY. WHAT ELSE DID YOU DO?

5 A THERE WAS SIGNIFICANT COMMUNICATION BETWEEN
6 THE HUMPHREYS AND I AND MY TEAM ABOUT DESIGN ISSUES. I
7 WAS GOING TO BUILD THEM A CUSTOM MARQUIS, AND THERE WAS
8 OTHER DESIGN FACETS THAT WERE DISCUSSED GOING BACK AND
9 FORTH. SO A SIGNIFICANT AMOUNT OF TIME WAS SPENT ON
10 THAT.

11 Q WAS THAT ANYTHING THAT REQUIRED A CONTRACTOR'S
12 LICENSE?

13 A NO.

14 Q WHAT ELSE DID YOU DO?

15 A WE STARTED DEMOLITION.

16 Q OKAY. NOW, TELL ME ABOUT THE DEMOLITION OR
17 TELL THE COURT ABOUT THE DEMOLITION. WAS THERE ANYTHING
18 AS FAR AS A REMOVAL OF THE FOUNDATION DURING THIS
19 PERIOD?

20 A NO.

21 Q WAS THERE ANY REMOVAL OF STRUCTURAL WALLS
22 DURING THIS PERIOD, PART OF ANYTHING GOING ON WITH
23 SPARTAN ASSOCIATES?

24 A IF YOU MEAN A LOAD-BEARING WALL BY STRUCTURAL
25 WALL, NO. WE TORE DRY WALL OR PLASTER OFF THE WALL AND
26 THAT IS A STRUCTURAL ELEMENT. BUT AS FAR AS PULLING OUT

1 THE WALL AND MOVING THE STRUCTURE OR ANYTHING LIKE THAT,
2 NONE OF THAT OCCURRED.

3 Q WAS THERE ANYTHING YOU DID DURING THIS FIRST
4 PERIOD THAT REQUIRED A CONTRACTOR'S LICENSE?

5 MR. BISSELL: OBJECTION. LACK OF FOUNDATION.

6 THE COURT: SUSTAINED.

7 BY MR. RUSSO:

8 Q DO YOU KNOW, SIR, WHETHER OR NOT ANY OF THE
9 WORK YOU PERFORMED REQUIRED A CONTRACTOR'S LICENSE?

10 MR. BISSELL: SAME OBJECTION.

11 THE COURT: TO THIS QUESTION, YOU CAN ANSWER YES OR
12 NO.

13 THE WITNESS: AT THIS MOMENT, I RECALL THAT MOST
14 EVERYTHING WE WERE DOING WAS DEMOLITION, THAT THERE WAS
15 NOT ACTUAL CONSTRUCTION GOING ON. I HAVE TO REALLY LOOK
16 BACK AT THE PICTURES AND REALLY GET A FEEL. BUT IF
17 THERE WAS ANY WORK GOING ON, IT WAS VERY, VERY MINUTE.

18 BY MR. RUSSO:

19 Q YOU ARE FAMILIAR WITH A C21 CONTRACTOR'S
20 LICENSE FOR DEMOLITION?

21 A IT'S -- YES.

22 Q OKAY. THAT'S WHEN STRUCTURAL ELEMENTS ARE
23 REMOVED; CORRECT?

24 A CORRECT.

25 Q OKAY.

26 A OR BUILDINGS ARE MOVED OR SIGNIFICANT SHORING

1 IS INVOLVED.

2 Q TO THE BEST OF YOUR RECOLLECTION, DID ANY OF
3 THE DEMOLITION WORK THAT YOU PERFORMED FALL WITHIN THE
4 REQUIREMENTS OF THE C21 LICENSE?

5 A NO.

6 Q LATER ON IN THE PROJECT, WERE THERE MORE
7 STRUCTURAL ELEMENTS INVOLVED?

8 A YES.

9 Q AND BY THEN, YOU HAD STRUCTURAL ENGINEERS AND
10 DESIGN PROFESSIONALS?

11 A YES.

12 Q AND A PERMIT WAS PULLED; CORRECT?

13 A YES.

14 Q WHO PULLED THE PERMIT?

15 A SPARTAN ASSOCIATES.

16 Q NOW, YOU SAID THAT DURING YOUR MEETING WITH
17 THE HUMPHREYS, THE ISSUE OF LICENSURE CAME UP; CORRECT?

18 A YES.

19 Q AND WHAT DID YOU TELL THEM?

20 A THAT I HAD A LICENSE. THAT I, SPARTAN, HAD A
21 LICENSE.

22 Q DID YOU ASK THEM TO LOOK IT UP?

23 A I THINK HOW IT HAPPENED WAS THERE WAS A
24 MENTION OF IT BY GARY HUMPHREYS, AS HE HAD SAID, AND
25 THAT THERE WAS -- WHEN HE SAID THAT, IT TRIGGERED MY
26 MEMORY THAT I HAD SAID TO HIM THAT HE COULD LOOK IT UP

1 ON THE STATE'S LICENSE BOARD TO VERIFY THAT, IN FACT,
2 SPARTAN DID HAVE A LICENSE.

3 Q THE PRIOR PROJECTS, INCLUDING THE OFFICE
4 BUILDING WHERE MR. HUMPHREYS' BUSINESS IS, WHO PERFORMED
5 THAT WORK?

6 A THE SPARTAN ASSOCIATES.

7 Q WHO WAS PAID FOR THAT WORK?

8 A THE SPARTAN ASSOCIATES.

9 Q WHO CONTRACTED FOR THAT WORK?

10 A THE SPARTAN ASSOCIATES.

11 Q IN JULY OF 2012, YOU APPLIED FOR THE WORKERS'
12 COMP FOR THIS PROJECT; CORRECT?

13 A CORRECT.

14 Q AND WHO APPLIED FOR THAT?

15 A THE SPARTAN ASSOCIATES.

16 Q AND WHY DID YOU NEED TO APPLY FOR IT THEN AS
17 OPPOSED TO NOT HAVING IT BEFORE?

18 A THE WAY THAT THIS PROJECT ENDED UP, I WAS
19 GOING TO BE USING A LOT OF UNSKILLED LABOR. USUALLY,
20 GENERALLY SPEAKING, SKILLED LABOR YOU CAN 1099 AND TREAT
21 AS AN INDEPENDENT SUBCONTRACTOR. HOWEVER, IN THIS CASE,
22 BECAUSE I WAS HIRING PEOPLE THAT WERE UNSKILLED, I
23 NEEDED TO TREAT THEM LEGALLY AS AN EMPLOYEE, AND SO
24 THAT'S WHY THE EMPLOYEE ACCOUNT WAS SET UP.

25 Q WHEN MR. HUMPHREYS PAID YOU OR WHEN YOU WERE
26 BEING PAID BY HUMPHREYS & ASSOCIATES, DID THAT RAISE ANY

1 RED FLAGS WITH YOU?

2 A NO.

3 Q WITH THE EXCEPTION OF -- THERE WAS ONE
4 ENGINEER, I BELIEVE, THAT THE CONTRACT WAS WITH YOU
5 PERSONALLY; CORRECT?

6 A NO. IT HAS MY NAME ON IT, BUT THERE WERE SOME
7 ISSUES WHERE PEOPLE PUT MY NAME ON CONTRACTS EVEN THOUGH
8 IT WAS SPARTAN CONSTRUCTION. JUST LIKE THE HUMPHREYS
9 WROTE CHECKS TO ADAM BEREKI, AND I ASKED THEM TO PUT
10 SPARTAN ON THERE. IT'S JUST A REAL -- YOU KNOW, IT
11 WASN'T -- I WASN'T -- THE WORD USUALLY COMES TO MIND AS
12 ABLE ABOUT IT. I JUST WENT WITH THE FLOW.

13 Q WHAT KIND OF LICENSE DOES SPARTAN HAVE?

14 A A B.

15 Q WHAT'S ITS LICENSE NUMBER?

16 A 927244.

17 Q WAS IT ACTIVE DURING THE ENTIRE TIME OF THIS
18 PROJECT?

19 A YES.

20 Q WHO'S THE RESPONSIBLE MANAGING OFFICER OF
21 SPARTAN ASSOCIATES?

22 A I DON'T THINK I'M CLASSIFIED AS THE RMO, BUT
23 ADAM BEREKI IS THE QUALIFYING INDIVIDUAL, THE ONE WHO
24 HAD THE WORK EXPERIENCE AND TOOK THE EXAM.

25 Q THE BUILDING PERMIT FOR THE PROJECT, IS THAT
26 FOR UNIT 34?

1 A THIS IS ONE OF THEM, YES.

2 Q OKAY. DID YOU SHARE -- WELL, 34 IS ONE OF THE
3 BUILDING PERMITS?

4 A YES.

5 Q HOW MANY WERE THERE, SIR?

6 A THREE THAT SPARTAN HAD ISSUED.

7 Q DID ADAM BEREKI INDIVIDUALLY EVER APPLY FOR A
8 BUILDING PERMIT FOR THIS PROJECT?

9 A NO.

10 Q OKAY.

11 MR. RUSSO: MOVE INTO ADMISSION EXHIBIT 34.

12 MR. BISSELL: NO OBJECTION.

13 THE COURT: RECEIVED.

14 (EXHIBIT NO. 34 WAS ADMITTED INTO EVIDENCE.)

15 THE COURT: THIRTY-FOUR IS ONE OF SEVERAL. WHICH
16 ONE IS THIS IN ORDER? IS IT THE FIRST? THE LAST?

17 BY MR. RUSSO:

18 Q LOOKING AT EXHIBIT 34, SIR, IS THERE MORE THAN
19 ONE BUILDING PERMIT HERE, SIR?

20 A YES. THERE ARE TWO AND A THIRD IS IN ANOTHER
21 LOCATION.

22 Q WHAT IS THE OTHER LOCATION, IF YOU KNOW?

23 A I BELIEVE IT'S UP IN THE BEGINNING.

24 NO. I DON'T HAVE AN EXHIBIT LIST HERE IN THIS
25 BINDER.

26 Q IT'S ALL RIGHT.

1 A IT'S UNDER SCE, WHICH IS A DOWNSTAIRS --

2 Q OKAY. SO THREE BUILDING PERMITS WERE PULLED
3 AND IT WAS ALL BY SPARTAN ASSOCIATES; CORRECT?

4 A YES.

5 MR. RUSSO: WELL, AGAIN, MOVE INTO ADMISSION
6 EXHIBIT 34, THE COMPLETE EXHIBIT.

7 MR. BISSELL: NO OBJECTION, YOUR HONOR.

8 THE COURT: WELL, 34 IS RECEIVED. BUT LET'S BE
9 CLEAR. 34-1 APPEARS TO HAVE BEEN ISSUED ON NOVEMBER 14,
10 2012. AM I CORRECT?

11 MR. BISSELL: YES.

12 THE COURT: MR. RUSSO?

13 MR. RUSSO: THAT'S WHAT IT SAYS. IT'S ACTUALLY THE
14 INSPECTION.

15 THE COURT: 34-2, IT LOOKS LIKE A MECHANICAL,
16 ELECTRICAL, PLUMBING COMBINATION PERMIT, AND IT APPEARS
17 TO HAVE BEEN ISSUED ON NOVEMBER 14, 2012. LEFT-HAND
18 COLUMN, TOWARDS THE MIDDLE OF THE PAGE.

19 MR. RUSSO: YES.

20 THE COURT: AND THEN 34-3 LOOKS TO BE A PLUMBING
21 SEWER LINE PERMIT. AND I'M HAVING TROUBLE FINDING A
22 DATE OF ISSUANCE.

23 MR. RUSSO: 4/11/2013. IT'S MIDWAY ON THE LEFT.

24 THE COURT: OKAY. ARE THERE ANY OTHER PERMITS
25 ISSUED FOR THIS PROPERTY OTHER THAN THESE THREE FOR THIS
26 PROJECT?

1 THE WITNESS: THERE ARE ONLY TWO. AND THE SECOND
2 PAGE, YOUR HONOR, THAT SAYS "CANCELED/EXPIRED," THIS
3 IS -- ULTIMATELY WHAT HAPPENED WAS WHEN THE NEXT
4 CONTRACTOR TOOK OVER, THEY CANCELED THIS PERMIT. SO
5 THAT PAGE ISN'T AN ACTUAL PERMIT.

6 SO JUST TO BE A LITTLE BIT MORE CLEAR, THE
7 YELLOW PAGE THAT YOU SEE, 34-1, THAT'S ONE PERMIT. THE
8 SECOND ONE IS THE CANCELLATION OF THAT. AND 34-3 IS THE
9 SECOND PERMIT ITSELF FOR PLUMBING AND SEWER LINE. AND
10 THE THIRD PERMIT WAS FOR THE SOUTHERN CALIFORNIA EDISON
11 TO PUT A BIG PIPE UNDERGROUND AND RUN IT TO A NEW POWER
12 UNIT AT THE BUILDING.

13 THE COURT: GOING FROM WHAT, 100 AMP TO 200 AMP
14 SERVICE?

15 THE WITNESS: ABOUT THAT, YES.

16 THE COURT: GO AHEAD.

17 BY MR. RUSSO:

18 Q MR. BEREKI, EXHIBIT 35, ARE THESE ALL THE
19 DOCUMENTS PERTAINING TO THE PAYROLL AND WORKERS' COMP
20 FOR THE PROJECT?

21 A YES.

22 MR. RUSSO: I MOVE INTO ADMISSION EXHIBIT 35.

23 THE COURT: ANY OBJECTION ON PAYROLL?

24 MR. BISSELL: I'M NOT SURE I HAVE SEEN IT. LET ME
25 TAKE A QUICK LOOK.

26 THE COURT: TAKE A LOOK, OF COURSE.

1 MR. RUSSO: SURE.

2 MR. BISSELL: NO OBJECTION, YOUR HONOR.

3 THE COURT: RECEIVED.

4 (EXHIBIT NO. 35 WAS ADMITTED INTO EVIDENCE.)

5 BY MR. RUSSO:

6 Q MR. BEREKI, CAN YOU TURN TO EXHIBIT 33,
7 PLEASE.

8 A I'M HERE.

9 Q CAN YOU TELL ME IN SUMMARY, ALTHOUGH WE HAVE
10 ALREADY BEEN OVER THESE DOCUMENTS, WHAT IS EXHIBIT 33?

11 A I WENT THROUGH SOME OF THE WORK ORDERS. I
12 PICKED OUT A HANDFUL OF THEM. THESE ARE BASICALLY WORK
13 ORDERS OR CONTRACTS BETWEEN SPARTAN AND OTHER COMPANIES
14 THAT WERE HIRED TO DO WORK SPECIFICALLY ON THE LIDO
15 PROJECT.

16 MR. RUSSO: MOVE INTO ADMISSION EXHIBIT 33.

17 MR. BISSELL: NO OBJECTION.

18 THE COURT: RECEIVED.

19 (EXHIBIT NO. 33 WAS ADMITTED INTO EVIDENCE.)

20 THE WITNESS: ACTUALLY, THERE'S ANOTHER EXHIBIT IN
21 THERE, A TIMECARD.

22 THE COURT: WHICH PAGE WILL THAT BE?

23 THE WITNESS: 33-4, YOUR HONOR.

24 BY MR. RUSSO:

25 Q MR. BEREKI, DID YOU PROVIDE ACCOUNTINGS TO THE
26 HUMPHREYS FOR THIS PROJECT?

1 A I DID.

2 Q OKAY. AND THE ACCOUNTINGS, WERE THEY -- DID
3 THEY DESIGNATE SPARTAN ASSOCIATES AS THE ONE BILLING
4 THEM?

5 A YES.

6 Q OKAY.

7 A ALL WITH THE EXCEPTION OF THE FIRST ONE, I
8 THINK IT WAS -- THE FIRST THREE MONTHS THERE WAS SOME
9 SORT OF -- THIS IS AN EXCEL SPREADSHEET. JUST HOW I HAD
10 ALWAYS DONE IT IN THE PAST, BUT SINCE IT BECAME -- THIS
11 JOB BECAME EXTREMELY COMPLEX, I SWITCHED OVER TO
12 QUICKBOOKS AND QUICKBOOKS STARTED GENERATING THIS
13 OUTPUT, AND THE OUTPUT SAYS THE SPARTAN ASSOCIATES ON
14 IT.

15 THE COURT: NOW, MR. RUSSO, WHAT I'M HEARING IS
16 THERE WERE AT LEAST TWO ACCOUNTINGS.

17 MR. RUSSO: I THINK THERE WERE A LOT OF THEM.

18 THE COURT: MAYBE WE NEED TO GO OVER IT.

19 MR. RUSSO: SURE.

20 BY MR. RUSSO:

21 Q MR. BEREKI, CAN YOU TURN TO EXHIBIT NUMBER 39.

22 A SURE.

23 OKAY.

24 Q CAN YOU TELL ME WHAT EXHIBIT 39 IS, SIR?

25 A THIRTY-NINE IS A PARTIAL INVOICE BY THE
26 SPARTAN ASSOCIATES TO HUMPHREYS & ASSOCIATES, INC.

1 THE COURT: WHAT'S THE DATE?

2 THE WITNESS: THERE IS NO DATE ON HERE, YOUR HONOR.

3 BUT I CAN GIVE YOU -- IT WAS PRIOR IN FEBRUARY OF 2012.

4 TWO MONTHS PRIOR TO THE LIDO PROJECT.

5 THE COURT: THIS IS AN ACCOUNTING WITH RESPECT TO

6 THE WORK DONE ON RESEARCH DRIVE?

7 THE WITNESS: YES, SIR.

8 THE COURT: OKAY.

9 THE WITNESS: THIS WAS A PROJECT

10 HUMPHREYS & ASSOCIATES BUSINESS HIRED SPARTAN TO DO AT

11 THEIR BUSINESS OFFICE.

12 THE COURT: OKAY. GO AHEAD.

13 BY MR. RUSSO:

14 Q SO DID YOU UNDERSTAND MR. HUMPHREYS TO BE THE
15 PRESIDENT OF HUMPHREYS & ASSOCIATES?

16 A YES.

17 Q OKAY. SO SPARTAN ASSOCIATES HAD ALREADY DONE
18 THIS PROJECT AND INVOICED HIS BUSINESS FOR IT; CORRECT?

19 A YES.

20 MR. RUSSO: MOVE INTO ADMISSION NUMBER 39.

21 MR. BISSELL: OBJECTION. RELEVANCE, YOUR HONOR.

22 THE COURT: OBJECTION SUSTAINED.

23 BY MR. RUSSO:

24 Q MR. BEREKI, DID YOU INTERACT AT ALL WITH
25 MR. HUMPHREYS REGARDING THE PROJECT AT 9910 RESEARCH
26 DRIVE?

1 A THAT WOULD DEPEND UPON WHAT YOU MEAN BY
2 INTERACT. I BELIEVE HE SHOWED UP THERE ONE DAY WITH
3 CHRIS WHILE I WAS WORKING ON THE PROJECT. I SAID HI TO
4 HIM AND THIS AND THAT. I THINK THAT WAS OUR ONLY
5 INTERACTION ABOUT THIS --

6 Q OKAY.

7 A -- ABOUT THAT PROJECT.

8 Q CAN YOU TURN TO EXHIBIT NO. 18, SIR.

9 A SURE.

10 Q FINALLY FOUND THE ACCOUNTING. WHAT IS EXHIBIT
11 18?

12 A EXHIBIT 18 APPEARS TO BE ALL OF THE
13 ACCOUNTINGS AND ASSOCIATED E-MAILS FOR THE PROJECT.

14 Q WAS THIS SOMETHING THAT YOU SUBMITTED TO
15 MR. AND MRS. HUMPHREYS?

16 A YES.

17 Q OKAY.

18 A VIA E-MAIL.

19 Q WHEN YOU STARTED --

20 THE COURT: WHAT DATE?

21 THE WITNESS: EACH ONE OF THEM IS A DIFFERENT DATE,
22 YOUR HONOR. THEY WERE SPACED OUT ABOUT A MONTH EACH.

23 BY MR. BEREKI:

24 Q SO WHAT WAS YOUR PROCEDURE AS FAR AS PROVIDING
25 ACCOUNTINGS TO THE HUMPHREYS?

26 A I WOULD, GENERALLY SPEAKING, INCUR WORK IN THE

1 FORM OF -- OR DO WORK IN THE FORM OF LABOR AND PURCHASE
2 MATERIALS FOR THE PROJECT, AND THEN I WOULD PUT THEM
3 INTO EITHER WHAT BEGAN AS THE SPREADSHEET. AND LATER I
4 HIRED MY MOM, WHO'S AN ACCOUNTANT OR BOOKKEEPER, I
5 SHOULD SAY, VERY EXPERIENCED IN THIS TO THEN DO THE
6 PAYROLL AND PUT THE APPROPRIATE CHARGES TO BILL THEM, TO
7 BILL THE HUMPHREYS.

8 Q HOW WOULD THESE ACCOUNTINGS BE SENT TO THE
9 HUMPHREYS?

10 A VIA E-MAIL.

11 Q OKAY. SO LET'S LOOK AT THE SIXTH PAGE OF
12 EXHIBIT 18.

13 A OKAY.

14 Q I SEE NEAR THE HOLE PUNCH, THE MIDDLE, IT SAYS
15 "THE SPARTAN ASSOCIATES."

16 A CORRECT.

17 Q OKAY. FROM THIS POINT FORWARD, DID ALL THE
18 ACCOUNTINGS THAT YOU PROVIDED TO THE HUMPHREYS HAVE THE
19 SPARTAN ASSOCIATES ON IT?

20 A I BELIEVE -- I BELIEVE SO, YES.

21 Q DID THE HUMPHREYS EVER ASK YOU ABOUT THAT OR
22 QUESTION IT?

23 A NO. I THOUGHT IT WAS CLEAR AS DAY, THEY
24 UNDERSTOOD.

25 Q TOWARDS THE END OF EXHIBIT 18, STARTING
26 ROUGHLY AT PAGE 49, WE NOW HAVE E-MAILS AS PART OF THIS

1 EXHIBIT.

2 A CORRECT.

3 Q WERE THESE -- AND THEN YOU GOT A NUMBER OF
4 PAGES, PERHAPS MAYBE ANOTHER 60 PAGES.

5 A CORRECT.

6 Q WERE THESE E-MAILS ASSOCIATED WITH THE
7 TRANSMITTAL OF THE ACCOUNTING WITH THE SPARTAN ON IT TO
8 THE HUMPHREYS?

9 A YES.

10 Q DID YOU HIRE DESIGNERS FOR THE HUMPHREYS
11 PROJECT? OR HOW DID THAT GO AS FAR AS THE INTERIOR
12 DESIGNING?

13 A I PRIMARILY DID IT, BUT I ALSO HIRED PEOPLE TO
14 HELP ME OUT ON CERTAIN ASPECTS ON THAT.

15 Q AND THE DESIGNERS WHO WERE HIRED, WERE THEIR
16 INVOICES PASSED ON THROUGH YOUR ACCOUNTING TO THE
17 HUMPHREYS?

18 A YES.

19 Q HOW ABOUT THE ENGINEERING SERVICES, WERE THOSE
20 PASSED ON?

21 A YES.

22 Q WERE THERE ANY OTHER DESIGN PROFESSIONALS
23 ENGAGED WITH THIS?

24 A YES.

25 Q WHO ELSE WAS THERE?

26 A BRYAN LEFEVER.

1 Q WHAT WAS HIS PROFESSION?

2 A HE'S AN INTERIOR DESIGNER.

3 Q OKAY. AND DID BRYAN CONTRACT WITH THE SPARTAN
4 ASSOCIATES OR THE HUMPHREYS DIRECTLY?

5 A THE SPARTAN ASSOCIATES.

6 Q OKAY. AND THEN HE PASSED THAT ALONG?

7 A YES.

8 Q WHO ELSE DID YOU HAVE TO HIRE FOR THIS?

9 A I HIRED A PLUMBER, AN ELECTRICIAN, NUMEROUS
10 UNSKILLED WORKERS. I HIRED A FOREMAN, AN ENGINEER, AN
11 ARCHITECT, CRANE OPERATORS, METAL FABRICATORS, PEOPLE TO
12 RE-ALIGN THE SEWER DRAIN UNDERNEATH THE HOUSE BECAUSE IT
13 WAS ROTTEN. OTHER PEOPLE, OTHER CARPENTERS. A CONCRETE
14 EXPERT. A CONCRETE SUBCONTRACTOR. A FIRE SPRINKLER
15 SUBCONTRACTOR AND PAVING SUBCONTRACTOR. THAT'S WHAT'S
16 COMING TO MIND.

17 Q OKAY. SIR, OF THE MONIES THAT WERE PAID, HOW
18 MUCH OF IT WAS PAID THROUGH THE SPARTAN ASSOCIATES
19 ACCOUNT?

20 A I BELIEVE THAT NUMBER IS \$758,000.

21 Q AND --

22 A GO AHEAD.

23 Q FINISH. I'M SORRY.

24 A OH, THAT'S FINE. THAT'S IT. \$758,000.

25 Q OKAY. SO SOME OF IT YOU HAVE -- SOME OF THE
26 FIRST \$100,000 WENT INTO YOUR PERSONAL ACCOUNT. DID

1 SOME OF IT GO INTO THE SPARTAN ACCOUNT?

2 A 10,000 DID, YES.

3 Q SO 90 WENT IN YOUR PERSONAL ACCOUNT, 10 WENT
4 INTO THE SPARTAN ACCOUNT; CORRECT?

5 A CORRECT.

6 Q AND THEN ALL THAT MONEY WAS SPENT BY SPARTAN
7 ASSOCIATES, THE LICENSE CONTRACTOR ON THIS PROJECT;
8 CORRECT?

9 A YES.

10 Q OF THE MONIES THAT THE HUMPHREYS SPENT ON THIS
11 PROJECT, HOW MUCH OF IT WENT TO ADAM BEREKI, ALTHOUGH --
12 EVEN THOUGH YOU PAID IT OUT FOR WORKERS ON THIS?

13 A I'M SORRY. CAN YOU SAY THAT AGAIN?

14 Q SURE.

15 YOU HAD \$100,000 IN CHECKS IN THE BEGINNING OR
16 WIRES THAT WENT INTO -- THAT WAS MADE PAYABLE TO ADAM
17 BEREKI; CORRECT?

18 A CORRECT.

19 Q OKAY. AND ALL THE REST OF THIS WAS ULTIMATELY
20 MADE PAYABLE TO SPARTAN ASSOCIATES, OR THE CHECKS WERE,
21 EVEN THOUGH YOU REQUESTED THAT SPARTAN ASSOCIATES WOULD
22 DEPOSIT IT IN THE SPARTAN ASSOCIATES BANK ACCOUNT;
23 CORRECT?

24 A YES.

25 Q AND SPARTAN ASSOCIATES PERFORMED ALL THE WORK
26 ON THIS PROJECT; CORRECT?

1 A YES. WELL, WITH THE EXCEPTION OF THESE
2 SUBCONTRACTORS THAT WERE HIRED, YES.

3 Q OKAY. THROUGH ITS SUBCONTRACTORS?

4 A I'M SORRY?

5 Q THROUGH ITS SUBCONTRACTORS --

6 A YES, YES. YES.

7 MR. RUSSO: I DON'T HAVE ANY FURTHER QUESTIONS.

8 THE COURT: MR. BISSELL?

9 MR. BISSELL: THANK YOU, YOUR HONOR.

10
11 REDIRECT EXAMINATION

12
13 BY MR. BISSELL:

14 Q JUST A POINT OF CLARIFICATION, MR. BEREKI.
15 YOU TESTIFIED THAT THE SPARTAN ASSOCIATES IS A LICENSED
16 CONTRACTOR.

17 A YES.

18 Q ISN'T IT TRUE THAT THE --

19 A EXCUSE ME.

20 Q -- THE LICENSE FOR THE SPARTAN ASSOCIATES HAS
21 BEEN REVOKED BY THE CONTRACTOR'S LICENSE BOARD?

22 A WHAT I TESTIFIED TO WAS AT THE TIME OF THE
23 PROJECT THE LICENSE WAS IN GOOD STANDING OR VALID, YES.

24 Q AND SINCE THEN IT'S BEEN REVOKED; CORRECT?

25 A WELL, IT WAS EXPIRED BECAUSE THE COMPANY
26 DISSOLVED. AND WHEN THERE'S A DISSOLUTION OF A COMPANY,

1 THE LICENSE GOES WITH IT.

2 Q SIR, YOU'RE AWARE THAT THE LICENSE HAS BEEN
3 REVOKED, AREN'T YOU?

4 A IT SHOWS A REVOKED STATUS, YES.

5 Q YOU KNOW WHY IT WAS REVOKED; CORRECT?

6 A I --

7 Q AND IT'S NOT BECAUSE THE CORPORATION IS
8 DISSOLVED; CORRECT?

9 A CORRECT.

10 Q SO YOU HAD CONVERSATIONS WITH AN ATTORNEY IN
11 SAN DIEGO ABOUT THE PROBLEM INVOLVING THE LICENSE. IT
12 HAD NOTHING TO DO WITH A CORPORATION BEING DISSOLVED; IS
13 THAT TRUE?

14 A I'M SORRY. SAY THAT AGAIN.

15 Q AS FAR AS THE REASON FOR THE LICENSE BEING
16 REVOKED, IT HAD NOTHING TO DO WITH THE CORPORATION BEING
17 DISSOLVED --

18 A NO. THE LICENSE IS NOT REVOKED BECAUSE THE
19 CORPORATION IS DISSOLVED. I SAID THE LICENSE WAS
20 EXPIRED BECAUSE THE CORPORATION DISSOLVED. AS OF RIGHT
21 NOW, THE LICENSE SHOWS REVOKED, HOWEVER.

22 Q CORRECT.

23 AND THAT WAS BECAUSE OF SOME ILLEGAL ACTION
24 TAKEN AGAINST THE LICENSE; CORRECT?

25 A I WOULD SAY IT WAS ILLEGAL ACTION TAKEN
26 AGAINST THE LICENSE. AN ARBITRATION PROCEEDING WAS

1 CONDUCTED WITHOUT MY PRESENCE, AND AN AWARD WAS ISSUED
2 WITHOUT SPARTAN BEING ALLOWED TO ATTEND IT TO DEFEND
3 ITSELF. THAT'S AN ILLEGAL PROCEEDING IN MY BOOK.

4 Q AND AS LONG AS WE ARE ON THE AREA OF THE LAW,
5 YOU TESTIFIED TO WHAT'S REQUIRED AND WHAT ISN'T REQUIRED
6 AS FAR AS A CONTRACTOR'S LICENSE, WHAT TYPE OF WORK
7 REQUIRES A LICENSE, WHAT TYPE OF WORK DOESN'T. YOU HAVE
8 TESTIFIED TO THAT.

9 CAN YOU TELL US BRIEFLY -- CAN YOU EXPLAIN TO
10 US WHAT YOUR UNDERSTANDING IS OF WHAT WORK IS A LICENSE
11 REQUIRED FOR.

12 A IT DEPENDS ON WHICH LICENSE YOU'RE TALKING
13 ABOUT.

14 Q SAY A GENERAL BUILDING LICENSE, B LICENSE.

15 A A GENERAL BUILDING LICENSE, I BELIEVE YOU HAVE
16 TO DO TWO OR MORE TRADES TO BE ABLE TO USE YOUR LICENSE
17 ON A PROJECT. IF YOU'RE DOING THAT SINGLE TRADE, IT HAS
18 TO BE DONE BY THAT LICENSEE.

19 Q DO YOU HAVE ANY KNOWLEDGE AS YOU SIT HERE
20 TODAY AS TO WHAT TYPE OF WORK IS A LICENSE REQUIRED FOR?

21 A WHAT TYPE OF WORK A LICENSE IS REQUIRED FOR.
22 I'M NOT SURE I'M UNDERSTANDING YOUR QUESTION, SIR.

23 Q OKAY. WELL, YOU HAVE TESTIFIED TO AS CERTAIN
24 AREAS OF THE WORK THAT YOU SAY SPARTAN ASSOCIATES DID
25 THAT DIDN'T REQUIRE A LICENSE.

26 A OKAY.

1 Q WELL, IF YOU KNOW WHAT A -- IF YOU KNOW THAT A
2 LICENSE WAS NOT REQUIRED, OR YOU BELIEVE THAT YOU KNOW
3 THAT A LICENSE WAS NOT REQUIRED FOR CERTAIN WORK, THEN
4 THE QUESTION IS: DO YOU HAVE AN UNDERSTANDING OF WHAT
5 KIND OF WORK A LICENSE IS REQUIRED FOR?

6 A YES.

7 Q CAN YOU TELL US?

8 A FRAMING, PLUMBING, ELECTRICAL, DRYWALL,
9 ROOFING, STUCCO, CONCRETE. THOSE ARE THE ONES THAT ARE
10 COMING TO MIND RELATIVE TO THIS PROJECT.

11 Q AND AS FAR AS -- HOLD ON ONE SECOND, PLEASE.

12 HAVE YOU EVER READ THE CONTRACTOR'S LICENSE
13 LAW OR ANY SECTIONS OF THE CONTRACTOR'S LICENSE LAW THAT
14 EXPLAINS WHEN A LICENSE IS REQUIRED?

15 A I'M SURE I HAVE, SIR.

16 Q OKAY. AND DO YOU KNOW -- ARE YOU FAMILIAR
17 WITH THE TERM OF "THE WORK OF IMPROVEMENT" IN CONNECTION
18 WITH CONTRACTING WORK?

19 A IMPROVEMENT?

20 Q HAVE YOU EVER HEARD THAT TERM BEFORE?

21 A HOME IMPROVEMENT I HAVE HEARD.

22 Q OKAY. ARE YOU FAMILIAR WITH ANY KIND OF
23 MONETARY THRESHOLD THAT CAN'T BE CROSSED WITHOUT HAVING
24 A CONTRACTOR'S LICENSE FOR ONE DOING HOME IMPROVEMENT
25 WORK?

26 A THAT DEPENDS WHAT -- IT DEPENDS WHAT HOME

1 IMPROVEMENT WORK IS DEFINED AS. AND YOU CAN'T -- GO
2 AHEAD.

3 Q CAN YOU TELL ME WHAT YOUR DEFINITION OF "HOME
4 IMPROVEMENT WORK" IS?

5 A I REALLY HAVEN'T THOUGHT ABOUT IT BEFORE.

6 Q YOU HAVE MENTIONED THAT THE -- YOU SENT
7 ACCOUNTINGS TO THE HUMPHREYS UNDER A SPARTAN ASSOCIATES
8 HEADING. BUT THIS ALL OCCURRED SOMETIME IN JULY OF
9 2012?

10 A ALL THE INVOICES WERE NOT SENT IN JULY, NO.

11 Q BUT I'M TALKING ABOUT INVOICES WHERE -- THAT
12 SHOW ANY INDICATION OF SPARTAN ASSOCIATES ON IT.

13 A I BELIEVE BEFORE THEN, THERE WEREN'T. IT WAS
14 JUST AN EXCEL SPREADSHEET. AND I NOTIFIED THEM THAT I
15 WAS DOING A ACCOUNTING CUTOVER TO THE QUICKBOOKS.

16 Q AND THIS ACCOUNTING CUTOVER TO THE QUICKBOOKS,
17 THAT COINCIDED WITH THE SPARTAN ASSOCIATES APPLYING TO
18 THE BOARD OF EQUALIZATION TO REGISTER WITH THE BOARD OF
19 EQUALIZATION AND IT COINCIDED WITH THE SPARTAN
20 ASSOCIATES APPLYING FOR WORKERS' COMP INSURANCE ON THIS
21 JOB?

22 A YES.

23 MR. BISSELL: YOUR HONOR, I HAVE NO FURTHER
24 QUESTIONS, BUT I MOVE INTO -- REQUEST TO BE MOVED INTO
25 EVIDENCE EXHIBITS 341, 351, 355 -- I'M SORRY. I RETRACT
26 EXHIBIT 341. WE DID NOT REFER TO THAT.

1 MR. RUSSO: SO 351, 355?

2 MR. BISSELL: YES.

3 MR. RUSSO: OKAY. I HAVE NO OBJECTION.

4 THE COURT: ALL RIGHT. 351 RECEIVED.

5 (EXHIBIT NO. 351 WAS ADMITTED INTO EVIDENCE.)

6 THE COURT: 355 ALSO RECEIVED.

7 (EXHIBIT NO 355 WAS ADMITTED INTO EVIDENCE.)

8 THE COURT: I WOULD GO AHEAD AND TAKE TEN MINUTES,
9 RESTROOM BREAK, AND THEN COME BACK. AND MR. BEREKI MAY
10 HAVE SOME QUESTIONS OF HIMSELF.

11 (RECESS.)

12 THE COURT: OKAY. PRESSING ON.

13 MR. BEREKI?

14 MR. BEREKI: I WOULD JUST LIKE TO GO OVER EXHIBIT
15 30 IN THE PLAINTIFFS' BOOK.

16 THE COURT: THE PHOTOGRAPHS?

17 MR. BEREKI: THE PHOTOGRAPH, JUST THE 30-1, SIR.

18 THE COURT: OKAY. I'M AT 30-1.

19 MR. BEREKI: I HAD TWO SIGNS, TWO SPARTAN SIGNS.
20 ONE WAS PUT UP ON THE WATER SIDE OF THE BUILDING, THE
21 OTHER WAS ON THE STREET SIDE. THE ASSOCIATION ASKED ME
22 TO TAKE DOWN OR TURN DOWN THE SIGN ON THE STREET SIDE.

23 THE COURT: APPROXIMATELY WHAT DATE WAS THAT THAT
24 IT WENT DOWN?

25 MR. BEREKI: WITHIN A COUPLE OF DAYS AFTER SPARTAN
26 BEING ON THE PROJECT.

1 THE COURT: OKAY.

2 MR. BEREKI: THE WOMAN PATROLS THE PLACE LIKE IT'S
3 NOBODY'S BUSINESS.

4 SO THEN THIS SIGN WASN'T ALWAYS ON THE OUTSIDE
5 OF THE BUILDING HERE. IT WAS AS LONG AS I REMEMBERED IT
6 OR OFTEN COULD TO PUT IT UP, BUT THE OTHER SIGN THAT HAD
7 GONE ON THE FRONT OF THE BUILDING WAS INSIDE THE GARAGE.

8 THE COURT: WHEN YOU SAY "INSIDE THE GARAGE," YOU
9 MEAN IT WAS HUNG ON THE WALL INSIDE THE GARAGE, OR IT
10 WAS JUST LEFT STANDING --

11 MR. BEREKI: IT WAS HUNG ON THE WALL INSIDE THE
12 GARAGE. AND ON-SITE THERE WAS ALSO --

13 THE COURT: WAS THE GARAGE OPEN OR CLOSED ALL THE
14 TIME?

15 MR. BEREKI: DURING BUSINESS TIME, OPEN.

16 THE COURT: OKAY.

17 MR. BEREKI: WE HAD TURNED IT INTO A BARN DOOR TYPE
18 OF THING AFTER REMOVING THE GARAGE DOORS.

19 ALSO ON THE SITE WAS IN-CASE-OF-AN-EMERGENCY
20 WRITING, AND IT HAD MY PERSONAL CELL PHONE NUMBER ON IT,
21 BUT IT SAID THE SPARTAN ASSOCIATES.

22 THE COURT: OKAY.

23 MR. BEREKI: OR SPARTAN CONSTRUCTION, I'M SORRY.

24 I WOULD LIKE TO ALSO REFER TO EXHIBITS -- I
25 BELIEVE IT'S -- THERE WAS A LEASE FOR A SHOP SPACE THAT
26 WAS USED IN CONJUNCTION WITH THIS PROJECT. THAT LEASE

1 BEGAN IN MARCH OF 2012. AND THE PAYMENTS FOR THAT
2 SHOP -- WELL, THE HUMPHREYS' FURNISHINGS WERE STORED IN
3 THAT BUILDING BEGINNING THE DAY THAT WE BEGAN WORK ON
4 THE PROJECT.

5 THE COURT: SO WAS I TO UNDERSTAND THERE WAS A SHOP
6 AND A STORAGE SPACE?

7 MR. BEREKI: CORRECT.

8 THE COURT: GO ON.

9 MR. BEREKI: AND THAT SHOP SPACE WAS RENTED IN
10 SPARTAN'S NAME.

11 AND FINALLY, TO SHOW SPARTAN'S HISTORY, CAN WE
12 TURN TO EXHIBIT 39. MR. HUMPHREYS -- OR MR. RUSSO HAD
13 ALREADY GONE OVER 39-1.

14 THE REMAINING EXHIBITS HERE ARE EACH OF THE
15 SPARTAN INVOICES THAT I HAVE IN RECORD FOR ALL OF THE
16 WORK THAT SPARTAN HAD DONE FOR THE HUMPHREYS' FAMILY
17 MEMBERS, INCLUDING THEIR EXTENDED FAMILY MEMBERS. AND
18 ON ALL OF THESE INVOICES, YOU WILL SEE THE SPARTAN
19 ASSOCIATES LOGO. ON MANY OF THEM, YOU WILL SEE GENERAL
20 BUILDING CONTRACTOR WITH THE LICENSE NUMBER DOWN BELOW.
21 THESE WERE PRIMARILY FOR MR. HUMPHREYS' SON,
22 HUMPHREYS & ASSOCIATES' OFFICE BUILDING, CHRIS
23 HUMPHREYS' MOTHER, CHRIS HUMPHREYS' MOTHER- AND
24 FATHER-IN-LAW. AND ON EVERY PROJECT THIS IS HOW THEY
25 WERE INVOICED.

26 THE COURT: OKAY. I SEE IT. NEXT.

1 MR. BEREKI: THAT'S ALL, YOUR HONOR.

2 THE COURT: MR. RUSSO, ANY FOLLOW-UP?

3 MR. RUSSO: NO, YOUR HONOR.

4 THE COURT: MR. BISSELL, HOW ABOUT YOU?

5 MR. BISSELL: I THINK JUST ONE OR TWO QUESTIONS,
6 YOUR HONOR.

7 BY MR. BISSELL:

8 Q MR. BEREKI, YOU REFERENCE THE EXHIBIT, I THINK
9 IT WAS 30.1, SHOWING A SIGN ON THE CONSTRUCTION SITE.

10 AND YOU'VE BEEN ON CONSTRUCTION SITES BEFORE;
11 CORRECT?

12 A HAVE I BEEN ON CONSTRUCTION SITES?

13 Q YES. YOU'RE FAMILIAR WITH CONSTRUCTION SITES,
14 ARE YOU NOT?

15 A YES.

16 Q IT'S PRETTY COMMON FOR ALL SORTS OF
17 CONTRACTORS TO -- WHOEVER IS INVOLVED WITH THE JOB
18 USUALLY CAN OR DOES HANG THEIR SIGN ON THE PROTECTIVE --
19 EITHER THE PROTECTIVE FENCING AT THE CONSTRUCTION SITE
20 OR THE SITE ITSELF, ALL THE VARIOUS SUBCONTRACTORS,
21 PAINTERS --

22 A THAT'S NOT BEEN MY EXPERIENCE, ACTUALLY. MOST
23 PROJECTS THAT I HAVE SEEN, THE GENERAL IS THE ONLY ONE
24 THAT PUTS THEIR SIGN UP BECAUSE THEY WANT THE BUSINESS
25 TO SUBCONTRACT ALL THE OTHER SUBS.

26 Q SO FROM YOUR EXPERIENCE, IT'S NOT -- IT'S NOT

1 USUAL OR IT'S UNUSUAL FOR A SUBCONTRACTOR TO HAVE HIS
2 SIGN ON THE PROJECT?

3 A I CANNOT RECALL A PROJECT WHERE I HAVE SEEN A
4 SUBCONTRACTOR'S SIGN ON THE PROJECT. THE ONES THAT ARE
5 COMING TO MIND RIGHT NOW ARE -- ESPECIALLY ONE AT MY
6 GYM, SNYDER LANGSTON, THERE ARE PROBABLY 20
7 SUBCONTRACTORS WORKING THERE AND NOT ONE HAS A SIGN UP
8 EXCEPT FOR SNYDER LANGSTON BECAUSE THEY'RE THE GENERAL.

9 Q IF YOU WILL FLIP TO EXHIBIT 48 IN THE
10 DEFENDANTS' -- TAB 48, EXHIBIT 348 IN THE DEFENDANTS'
11 BOOKLET.

12 A 48 YOU SAID, SIR?

13 Q YES. TAB 48. ACTUALLY EXHIBIT 348.

14 A OKAY.

15 I'M HERE.

16 Q FLIPPING TO PAGE 048-002.

17 A OKAY.

18 Q DO YOU RECOGNIZE THIS DOCUMENT?

19 A I BELIEVE SO.

20 Q YOU TESTIFIED THAT YOU ENTERED IN A SHOP LEASE
21 AS THE SPARTAN ASSOCIATES, OR DID I MISUNDERSTAND YOU?

22 A NO, I DID. I BELIEVE I DID.

23 Q IF YOU WILL FLIP TO PAGE 048-006 --

24 A RIGHT.

25 Q -- PARAGRAPH 1.1. CAN YOU TELL US WHO IT SAYS
26 THE LESSEES ARE.

1 A GLENN OVERLEY AND ADAM BEREKI, JOINTLY AND
2 SEPARATELY, GO DOORS AND SPARTAN ASSOCIATES.

3 Q DOING BUSINESS AS; CORRECT? YOU FORGOT THE
4 DBA.

5 A DBA GO DOORS/SPARTAN ASSOCIATES. GO DOORS IS
6 GLEN'S COMPANY AND SPARTAN ASSOCIATES IS -- I'M THE
7 SHAREHOLDER. IT'S MY COMPANY, SPARTAN ASSOCIATES.

8 Q AND IF YOU FLIP TO PAGE 48-039.

9 A 039?

10 Q 039, THE SAME EXHIBIT.

11 A OKAY.

12 Q THE BOTTOM OF THE PAGE FOR LESSEES, WHO IS
13 SIGNING THIS LEASE?

14 A ADAM BEREKI ON BEHALF OF SPARTAN.

15 Q ARE YOU -- DO YOU HAVE A DIFFERENT PAGE THAN I
16 HAVE? I DON'T SEE "ON BEHALF OF SPARTAN." DO YOU SEE
17 "ON BEHALF OF SPARTAN" THERE?

18 A WELL, AS THE SPARTAN ASSOCIATES
19 REPRESENTATIVE, YES. I SIGN MY NAME ON THE BACK OF THE
20 SPARTAN CHECKS TOO. SAME THING. IT SAYS ABOVE, "THE
21 SPARTAN ASSOCIATES."

22 THE COURT: I'M SORRY. WHERE ARE YOU POINTING WHEN
23 YOU SAY IT SHOWS ABOVE THE SPARTAN ASSOCIATES?

24 THE WITNESS: AT THE VERY TOP OF THE DOCUMENT, IT
25 SAYS "LEASE MODIFICATION AGREEMENT, GLENN OVERLEY AND
26 ADAM BEREKI, JOINT AND SEPARATELY, GO DOORS, DBA SPARTAN

1 ASSOCIATES."

2 THE COURT: THANK YOU.

3 MR. BISSELL: THANK YOU. NO FURTHER QUESTIONS,
4 YOUR HONOR.

5 MR. RUSSO: JUST MOVE INTO ADMISSION EXHIBIT 30-1.

6 THE COURT: ANY OBJECTION FOR 30-1?

7 MR. RUSSO: THE PICTURE WITH THE SIGN.

8 MR. BISSELL: NO OBJECTION, YOUR HONOR.

9 THE COURT: 30-1 IS RECEIVED.

10 (EXHIBIT NO 30-1 WAS ADMITTED INTO EVIDENCE.)

11 MR. BISSELL: YOUR HONOR, WE REQUEST MOVING INTO
12 EVIDENCE EXHIBIT --

13 THE COURT: WAIT A SECOND. LET ME GET TO -- AND
14 MR. BISSELL?

15 MR. BISSELL: EXHIBIT 348.

16 THE COURT: IN ITS ENTIRETY.

17 MR. BISSELL: YES.

18 THE COURT: ANY OBJECTION?

19 MR. RUSSO: NO OBJECTION.

20 MR. BEREKI: NO OBJECTION.

21 THE COURT: 348 RECEIVED.

22 (EXHIBIT NO. 348 WAS ADMITTED INTO EVIDENCE.)

23 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

24 THE WITNESS: THANK YOU.

25 MR. BISSELL: YOUR HONOR, CROSS-COMPLAINANTS REST
26 ON THE FIRST CAUSE OF ACTION --

1 THE COURT: WELL, HOLD ON A SECOND. I'M LOOKING
2 FOR A LITTLE CLARIFICATION BEFORE YOU CAN SAY REST --

3 MR. BISSELL: THANK YOU.

4 THE COURT: -- BECAUSE WHAT I SEE CONTAINED -- GIVE
5 ME A SECOND TO FIND IT.

6 EXHIBIT 32-2, THIS IS THE PLAINTIFFS'
7 VARIATION OR THE PLAINTIFFS' ITERATION OF THE EXHIBIT
8 YOU OFFERED, BUT WE DIDN'T WANT TO DOUBLE DOWN.

9 MR. BISSELL: THE COMPILATION OF CHECKS?

10 THE COURT: COMPILATION OF CHECKS WHICH WE WENT
11 OVER IN SOME DETAIL. AND SO WHAT I SEE ARE BASICALLY A
12 SERIES OF CHECKS WRITTEN DIRECTLY ON THE ACCOUNT OF YOUR
13 CLIENTS. AND THEN I SEE A SERIES OF CHECKS WRITTEN ON
14 THE ACCOUNT OF HUMPHREYS & ASSOCIATES, INC. WHICH IS NOT
15 A PARTY IN THIS ACTION. WHILE THERE'S TESTIMONY AT THIS
16 TIME MR. HUMPHREYS IS THE SOLE SHAREHOLDER OF THE
17 CORPORATION, ADMITTEDLY AN S CORPORATION, ALTHOUGH AN S
18 CORPORATION ONLY HAS CERTAIN TAX RAMIFICATIONS, IT
19 DOESN'T REALLY CHANGE THE NATURE OF THE CORPORATE
20 ENTITY, PER SE, IN TERMS OF ITS PERSONHOOD.

21 SO THE QUESTION IS: HOW DO YOUR CLIENTS FIT
22 INTO THE PICTURE IN TERMS OF RECOVERY? SHOULD THEY
23 RECOVER FOR CHECKS THAT A SEPARATE LEGAL ENTITY WROTE?

24 MR. BISSELL: I CAN HAVE MR. HUMPHREYS ADDRESS THAT
25 ISSUE. WOULD YOU LIKE HIM TO RE-TAKE THE STAND AND I
26 CAN ASK HIM ABOUT THAT?

1 THE COURT: WELL, IT'S YOUR CASE. I AM NOT TRYING
2 TO TRY YOUR CASE.

3 MR. BISSELL: IF THE COURT HAS A QUESTION, I WOULD
4 LIKE TO ADDRESS --

5 THE COURT: I THINK MR. RUSSO HAS RAISED THE ISSUE.
6 THAT IS CERTAINLY WHAT I WAS HEARING FROM THE TEN OR SO
7 QUESTIONS MR. RUSSO WAS ASKING. IT'S A FAIR QUESTION
8 THAT NEEDS TO BE ADDRESSED EITHER IN TERMS OF TESTIMONY
9 OF MR. HUMPHREYS AND/OR, I DON'T KNOW, MAYBE YOU WANT TO
10 CONSIDER AMENDING THE COMPLAINT. THAT'S NOT WITHIN MY
11 PURVIEW OF THIS. AND I'M SURE MR. RUSSO WOULD HAVE AN
12 OBJECTION TO THAT, OR MR. BEREKI.

13 MR. BISSELL: I AM REQUESTING THAT I RECALL
14 MR. HUMPHREYS TO THE STAND SO THAT WE CAN CLARIFY THAT
15 ISSUE FOR THE COURT.

16 THE COURT: LET'S DO THAT.

17 MR. BISSELL: OKAY. GO AHEAD.

18 THE COURT: COME ON DOWN, MR. HUMPHREYS. YOU'RE
19 STILL UNDER OATH. IT DIDN'T WEAR OFF.

20

21 FURTHER DIRECT EXAMINATION

22

23 BY MR. BISSELL:

24 Q MR. HUMPHREYS, IF YOU WILL TURN TO, IN THE
25 DEFENDANTS' EXHIBIT BOOK --

26 A OURS?

1 Q THAT'S OURS.

2 -- EXHIBIT 315.

3 A 15?

4 THE COURT: TAB 15.

5 THE WITNESS: TAB 15, I'M THERE.

6 BY MR. BISSELL:

7 Q ARE YOU THERE?

8 A YES.

9 Q AND YOU HAVE TESTIFIED THAT THIS WAS A
10 COMPILATION OF CHECKS THAT YOU PREPARED UNDER YOUR
11 DIRECTION ON YOUR ACCOUNT; CORRECT?

12 A YES.

13 Q NOW, YOU WILL SEE BEGINNING WITH CHECK
14 DESIGNATED AS NUMBER 11 --

15 THE COURT: YOU KNOW WHAT, LET'S TAKE THE EXHIBIT
16 THAT WAS RECEIVED, WHICH IS EXHIBIT 32.

17 THE WITNESS: OUT OF THE OTHER BOOK?

18 THE COURT: OUT OF THE BIG BOOK.

19 MR. BISSELL: OKAY.

20 THE COURT: MR. RUSSO WILL BE HAPPY TO SHARE THAT
21 BOOK WITH YOU. IN PARTICULAR, 32 HAS THE BACKUP IN
22 TERMS OF COPIES OF THE CHECKS THAT WERE WRITTEN. SO
23 IT'S A LITTLE EASIER TO DELINEATE WHICH ONES WERE
24 WRITTEN ON THE HUMPHREYS' PERSONAL ACCOUNT AND WHICH
25 ONES WERE WRITTEN -- WERE DONE VIA A WIRE TRANSFER,
26 WHICH ONES WERE DONE VIA CHECKS ON THE

1 HUMPHREYS & ASSOCIATES, INCORPORATED ACCOUNT.

2 BY MR. BISSELL:

3 Q ARE YOU WITH ME ON --

4 A I'M AT 32 --

5 Q DASH TWO?

6 A DASH TWO.

7 Q OKAY. NOW, DOES THAT APPEAR TO BE -- ASIDE
8 FROM RED CHECKMARKS AND SOME BLUE INK NOTATIONS, DOES
9 THAT APPEAR TO BE THE SAME CHECK COMPILATION THAT YOU
10 HAD PREPARED UNDER YOUR DIRECTION?

11 A YES.

12 Q IF YOU WILL NOTICE, BEGINNING WITH CHECK
13 11 THROUGH -- SORRY.

14 THE COURT: 17?

15 BY MR. BISSELL:

16 Q IF YOU FLIP TO EXHIBIT 32-12, SAME EXHIBIT,
17 JUST THE BACKUP --

18 A OKAY. I'M THERE.

19 Q ALL RIGHT. YOU WILL SEE THAT THAT'S A CHECK
20 DATED JULY 31ST, 2013, AND THAT'S DRAWN ON
21 HUMPHREYS & ASSOCIATES' BANK ACCOUNT?

22 A YES.

23 Q ALL RIGHT. IS THERE A REASON WHY THIS CHECK
24 WAS DRAWN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES?

25 A YES.

26 Q CAN YOU TELL US WHY THAT WAS?

1 A QUITE A FEW OF THE TIMES. THIS WAS WHEN I HAD
2 A LARGE PROJECT GOING IN TEXAS. I WASN'T IN TOWN. AND
3 ADAM WOULD CALL AND SAY, "I NEED MONEY RIGHT AWAY." AND
4 I WOULD SAY, "SEND IT, OFFICE," AND EITHER BOB OR CHRIS,
5 THE TWO THAT HAVE SIGNATURE AUTHORITY, WOULD SEND IT.
6 AND THEN THEY WOULD FACTOR IT UP AND THROW IT ON MY W-2.
7 SO IT'S JUST AN EXPEDIENCY MEANS.

8 Q LET'S NOT GO QUITE SO FAST THROUGH THAT
9 BECAUSE I DIDN'T QUITE FOLLOW THAT.

10 THE COURT: I AM GLAD I WASN'T THE ONLY ONE.

11 THE WITNESS: OKAY.

12 BY MR. BISSELL:

13 Q YOU ARE SAYING THERE WAS TIMES WHEN YOU WERE
14 OUT OF TOWN AND MR. BEREKI WOULD CALL AND SAY I NEED
15 PAYMENT?

16 A YES.

17 Q AND YOU WEREN'T AVAILABLE TO ISSUE A CHECK ON
18 YOUR OWN ACCOUNT?

19 A THAT'S RIGHT.

20 Q SO YOU CALL SOMEBODY FROM
21 HUMPHREYS & ASSOCIATES AND SAY I NEED YOU TO CUT A CHECK
22 TO MR. BEREKI OR SPARTAN ASSOCIATES?

23 A EXACTLY.

24 Q AND THEY WOULD DO THAT?

25 A YES.

26 Q AND WAS THERE A RECONCILIATION AS FAR AS THE

1 PAYMENT MADE BY THE COMPANY AND YOU REIMBURSING THE
2 COMPANY FOR ANY PAYMENTS MADE BY THEM AT MR. BEREKI'S
3 REQUEST?

4 A YES. EVERY QUARTER THEY HAVE TO FACTOR IT UP
5 FOR TAXES AND PAY THE IRS AND THE STATE.

6 Q SO --

7 A SO IT WAS JUST AN EXPEDIENCY MEANS.

8 Q I UNDERSTAND IT'S EXPEDIENCY.

9 BUT IS IT TRUE THAT, FOR INSTANCE, CHECK
10 NUMBER 32-12 MADE PAYABLE TO THE SPARTAN ASSOCIATES FOR
11 \$90,000, YOU, MR. HUMPHREYS, AND YOUR WIFE,
12 MRS. HUMPHREYS, PERSONALLY ENDED UP PAYING THAT AMOUNT?

13 A THAT'S CORRECT.

14 Q WOULD THE SAME BE TRUE FOR CHECK NUMBER 32-13?

15 A YES.

16 Q ANY CHANGE IN THAT? ANY DIFFERENCE IN THE
17 PROCESS?

18 A SAME PROCESS EVERY TIME.

19 Q DID YOU, IN FACT, PAY HUMPHREYS & ASSOCIATES
20 \$95,000 AS REIMBURSEMENT FOR THEIR CHECK NUMBER 16819
21 PAYABLE TO SPARTAN ASSOCIATES?

22 THE COURT: PERHAPS A BETTER QUESTION WOULD BE,
23 DEFINE OR DESCRIBE WHAT FACTORING IT UP WOULD ENTAIL,
24 PLEASE.

25 MR. BISSELL: THANK YOU, YOUR HONOR.

26

1 BY MR. BISSELL:

2 Q OKAY. FACTORING IT UP --

3 A SO TO YIELD --

4 Q NO. JUST TELL US WHAT FACTORING IT UP IS,
5 PLEASE.

6 A FOR ME TO HAVE A \$95,000 CHECK, I PROBABLY
7 HAD -- I'M THROWING OUT A NUMBER -- 140,000 OF TAXABLE
8 INCOME, AND THE DIFFERENCE WENT TO THE IRS OR STATE AT
9 THE END OF EACH QUARTER. AM I MAKING SENSE NOW? IN
10 OTHER WORDS, KAREN AND I PAID FOR EVERY BIT OF THESE
11 THAT SAY HUMPHREYS & ASSOCIATES AT THE END OF EACH
12 QUARTER.

13 Q HOW WAS THAT DONE?

14 A ON MY QUARTERLY INCOME TAX ESTIMATED PAYMENTS.

15 Q WELL, THAT'S YOUR QUARTERLY INCOME TAX
16 ESTIMATED PAYMENTS. HOW IS HUMPHREYS & ASSOCIATES
17 REIMBURSED FOR THE \$95,000 REPRESENTED ON THEIR CHECK TO
18 SPARTAN ASSOCIATES THAT'S EXHIBIT 32-13? HOW WERE THEY
19 REIMBURSED?

20 A BY KAREN AND I EARNING THE INCOME, 140,000 OR
21 WHATEVER. AND THEN 45 WENT TO THE STATE OR FEDS AND THE
22 REST WENT TO HUMPHREYS & ASSOCIATES.

23 Q SO WHEN YOU SAY "FACTOR UP," ARE YOU SAYING
24 THAT PAYMENT TO YOU THAT YOU EARNED, INCOME TO YOU FROM
25 HUMPHREYS & ASSOCIATES, WAS DEDUCTED FROM YOUR PAY BASED
26 ON CHECKS THEY HAD WRITTEN TO SPARTAN ASSOCIATES AND

1 MR. HUMPHREYS (SIC)?

2 A YES.

3 Q IS THAT WHAT "FACTORING IT UP" MEANS?

4 A THAT'S A TERM THAT I HAVE USED. SORRY. YES.

5 Q AND WAS THAT THE SAME ACROSS THE BOARD WITH

6 ALL CHECKS WRITTEN ON HUMPHREYS & ASSOCIATES, INC.

7 CHECKS TO MR. HUMPHREYS -- TO MR. BEREKI OR SPARTAN

8 ASSOCIATES?

9 A YES, IT IS.

10 Q AND ON EACH OF THOSE CHECKS, WAS THERE WHAT
11 YOU CALL FACTORING UP; I.E., THEY DEDUCTED FROM YOU
12 INCOME THAT YOU HAD EARNED WORKING FOR THE COMPANY AND
13 APPLIED THE INCOME TO THEMSELVES AS REIMBURSEMENT?

14 A YES, THAT'S EXACTLY RIGHT. AM I EXPLAINING IT
15 VERY WELL? ARE WE OKAY?

16 MR. BISSELL: I HAVE NO FURTHER QUESTIONS, YOUR
17 HONOR.

18 THE COURT: WE WILL FIND OUT AFTER MR. RUSSO AND
19 MR. BEREKI HAVE THEIR CHANCE TO ASK YOU QUESTIONS.

20

21 FURTHER CROSS-EXAMINATION

22

23 BY MR. RUSSO:

24 Q WHY DO YOU HAVE A CORPORATION, SIR?

25 A WHY DO I HAVE A CORPORATION?

26 MR. BISSELL: OBJECTION. RELEVANCY.

1 THE COURT: YOU CAN ANSWER.

2 THE WITNESS: TO PROVIDE CONSULTING SERVICES TO MY
3 CLIENTS.

4 BY MR. RUSSO:

5 Q AND AS THE SHAREHOLDER, THAT SHIELDS YOU FROM
6 PERSONAL LIABILITY; CORRECT?

7 A IN A SMALL FASHION, YES.

8 Q OKAY. AND THE HUMPHREYS & ASSOCIATES FILES
9 ITS OWN TAX RETURNS EVERY YEAR?

10 A AS AN S CORP, I BELIEVE THEY FLOW IT THROUGH
11 TO ME.

12 Q SO THE COMPANY FILES A TAX RETURN AND YOU GET
13 A K-1; CORRECT?

14 A I DON'T REMEMBER THE NUMBER, BUT I KNOW I GET
15 A FORM.

16 Q OKAY.

17 A OKAY.

18 Q YOUR PROFITS; CORRECT?

19 A SAY AGAIN?

20 Q YOUR PROFITS FROM THE COMPANY; CORRECT?

21 A PROFITS OR LOSSES.

22 Q AND YOU ALSO GET A W-2 FROM THE COMPANY AS AN
23 EMPLOYEE FOR YOUR SALARY; CORRECT?

24 A CORRECT.

25 Q OKAY. AND AT NO POINT IN TIME DID YOU EVER
26 WRITE A CHECK BACK TO HUMPHREYS & ASSOCIATES FOR ANY OF

1 THESE CHECKS THAT WERE WRITTEN TO SPARTAN ASSOCIATES;
2 CORRECT?

3 A WELL, BECAUSE THEY HANDLED IT IN THE
4 ACCOUNTING.

5 Q OKAY. ULTIMATELY ALL YOU'RE SAYING IS YOU HAD
6 TO ACCOUNT FOR IT AS REVENUE; CORRECT?

7 A SAY AGAIN?

8 Q ULTIMATELY, ALL YOU'RE SAYING IS YOU HAD TO
9 ACCOUNT FOR IT AS REVENUE; CORRECT?

10 A REVENUE?

11 Q YES.

12 A I DON'T UNDERSTAND. TRY ME AGAIN.

13 Q YOU'RE SAYING THAT YOU -- THIS MONEY THAT
14 HUMPHREYS & ASSOCIATES PAID ULTIMATELY WAS ATTRIBUTED TO
15 YOU AS REVENUE ON YOUR W-2; CORRECT?

16 A WHEN YOU SAY "REVENUE," PART OF MY PAYROLL?
17 IS THAT WHAT YOU'RE SAYING?

18 Q YES.

19 A OKAY.

20 Q BUT AT NO POINT IN TIME DID YOU WRITE A CHECK
21 BACK TO HUMPHREYS & ASSOCIATES FOR THESE PAYMENTS IT
22 MADE TO SPARTAN ASSOCIATES; CORRECT?

23 A I HAVE AN INDEPENDENT CONTRACTOR. THEY LOOK
24 AT EVERY LITTLE NUMBER EVERY QUARTER AND SIGN OFF.
25 THERE'S NO GAIN -- I WORK IN THE UNITED STATES
26 GOVERNMENT BUSINESS. THERE ARE NO GAMES TO BE PLAYED

1 EVEN IF ONE WAS SO INCLINED TO DO SO.

2 Q THE ANSWER TO THE QUESTION IS NO, YOU DID NOT
3 WRITE CHECKS BACK TO HUMPHREYS & ASSOCIATES FOR THE
4 MONIES PAID TO SPARTAN ASSOCIATES; CORRECT?

5 A OKAY.

6 MR. RUSSO: THANK YOU. NO FURTHER QUESTIONS.

7 THE COURT: MR. BEREKI, HOW ABOUT YOU?

8 MR. BEREKI: I DO, JUST A COUPLE, YOUR HONOR.

9

10 FURTHER CROSS-EXAMINATION

11

12 BY MR. BEREKI:

13 Q DO YOU CARRY YOUR PERSONAL CHECKBOOK WITH YOU
14 WHEN YOU TRAVEL?

15 A NO.

16 Q DO YOU CARRY A BUSINESS CHECKBOOK WITH YOU
17 WHEN YOU TRAVEL?

18 A NO.

19 Q HOW DO YOU PAY FOR CORPORATE EXPENSES WHEN YOU
20 TRAVEL?

21 A WITH A CREDIT CARD OR CASH.

22 Q OKAY. DURING THE PROJECT, DID WE EVER HAVE
23 DISCUSSIONS ABOUT SETTING UP A REGULAR PAY SCHEDULE SO
24 THAT THERE WOULDN'T BE ISSUES AROUND EXPEDIENCY, AS YOU
25 CALL THEM?

26 A I DON'T REMEMBER IF WE DID.

1 Q THERE WAS NUMEROUS TIMES. I WILL REPRESENT TO
2 YOU THAT WE SPOKE ABOUT --

3 THE COURT: YOU'RE NOT TESTIFYING YET.

4 MR. BEREKI: OKAY. NO FURTHER QUESTIONS.

5 THE COURT: MR. BISSELL?

6 MR. BISSELL: PARDON ME?

7 THE COURT: ANY MORE ON YOUR SIDE?

8 MR. BISSELL: NO, YOUR HONOR.

9 THE COURT: THANK YOU, MR. HUMPHREYS. YOU CAN STEP
10 DOWN.

11 THE WITNESS: THANKS.

12 THE COURT: AND WITH THAT, I TAKE IT --

13 MR. BISSELL: WE REST, YOUR HONOR.

14 THE COURT: REST AS TO THIS PHASE?

15 MR. BISSELL: AS TO THE FIRST PHASE.

16 THE COURT: MR. RUSSO?

17 MR. RUSSO: SPARTAN ASSOCIATES RESTS AS TO THIS
18 PHASE.

19 THE COURT: MR. BEREKI?

20 MR. BEREKI: I REST, YOUR HONOR.

21 THE COURT: I WISH I COULD REST. LET'S DO THIS. I
22 NEED TO THINK ABOUT THIS A LITTLE BIT AND LOOK AT YOUR
23 EXHIBITS. LET'S RE-JOIN TOMORROW MORNING, 9:30.

24 MR. RUSSO: YOUR HONOR --

25 THE COURT: LET'S SEE WHERE WE GO AFTER THAT.

26 MR. RUSSO: OKAY.

1 MR. BEREKI: THANK YOU, YOUR HONOR.

2 THE COURT: GOOD NIGHT, EVERYBODY.

3 (OFF THE RECORD.)

4 //

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)

) SS

COUNTY OF ORANGE)

I, KELVIN K. DO, CSR #13803, COURT
REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE
FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT
STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 11, 2017.

Certified Copy; Adam Bereki

KELVIN K. DO, CSR #13803
OFFICIAL COURT REPORTER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C20

| | | |
|------------------------------|---|----------------------------|
| THE SPARTAN ASSOCIATES, INC. |) | |
| |) | |
| |) | |
| PLAINTIFF, |) | CASE NO.: 30-2015-00805807 |
| |) | CU-CO-CJC |
| GARY HUMPHREYS, |) | |
| KAREN HUMPHREYS, |) | |
| |) | |
| DEFENDANTS. |) | |
| _____ |) | |

HONORABLE DAVID CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

3/28/17

APPEARANCES OF COUNSEL:

| | |
|--|---|
| FOR THE PLAINTIFF/ CROSS-DEFENDANT: | BY: J. SCOTT RUSSO RUSSO & DUCKWORTH LLP |
|--|---|

| | |
|--|--|
| FOR THE DEFENDANTS/ CROSS-COMPLAINANTS: | BY: WILLIAM G. BISSELL LAW OFFICES OF WILLIAM G. BISSELL |
|--|--|

| | |
|--------------------------|-------------------------------------|
| FOR THE CROSS-DEFENDANT: | BY: ADAM BEREKI SELF-REPRESENTED |
|--------------------------|-------------------------------------|

REPORTED BY:
KELVIN K. DO, CSR #13803, CSR
OFFICIAL COURT REPORTER

1 SANTA ANA, CALIFORNIA; MARCH 28, 2017

2 MORNING SESSION

3 *****

4 (THE FOLLOWING PROCEEDINGS

5 WERE HELD IN OPEN COURT.)

6
7 THE COURT: GOOD MORNING, EVERYBODY.

8 MR. RUSSO: GOOD MORNING, YOUR HONOR.

9 MR. BISSELL: GOOD MORNING, YOUR HONOR.

10 THE COURT: PRETTY BAD ON THE FREEWAY, MR. RUSSO?

11 MR. RUSSO: NORTH OF JEFFREY, IT WAS A PARKING LOT.
12 THERE WAS AN ACCIDENT. I AND EVERYONE ELSE TRIED TO
13 DRIVE AROUND IT, ALL THE SIDE STREETS. IT WAS JUST ONE
14 OF THOSE DAYS.

15 THE COURT: DID YOU USE THE WAZE PROGRAM ON YOUR
16 PHONE?

17 MR. RUSSO: NO, I DIDN'T. ONCE I GOT ON AND I
18 REALIZED IT WAS STOPPED, I JUST PUT THE GOOGLE MAPS ON
19 AND SAW IT WAS RED FROM WHERE I WAS ALL THE WAY, MID-WAY
20 BETWEEN JEFFREY AND CULVER. SO I DROVE AROUND AND GOT
21 BACK ON AT CULVER AND IT WAS FINE, BUT IT TOOK A WHILE.

22 THE COURT: ON THE 5?

23 MR. RUSSO: I GOT OFF THE 5 BECAUSE I REALIZED
24 AFTER TEN MINUTES WE WEREN'T GOING ANYWHERE.

25 THE COURT: ALL RIGHT. SO WHAT I AM ABOUT TO DO AT
26 THIS TIME IS TO INVITE ARGUMENT WITH RESPECT TO THE

1 FIRST CAUSE OF ACTION ISSUE, AND WE WILL SEE WHERE WE GO
2 AFTER THAT.

3 SO MR. BISSELL, WE WILL START WITH YOU.

4 MR. BISSELL: THANK YOU, YOUR HONOR.

5 YOUR HONOR, CIVIL CODE SECTION 1636 PROVIDES
6 THAT A CONTRACT MUST BE INTERPRETED AS TO GIVE EFFECT TO
7 THE MUTUAL INTENTION OF THE PARTIES AS IT EXISTED AT THE
8 TIME OF THE CONTRACTING. THE CASE OF SHAW VERSUS
9 REGENTS OF UNIVERSITY OF CALIFORNIA 58 CAL.APP.4TH 44
10 STATES, "ALTHOUGH UNDER CIVIL CODE SECTION 1636 AND 1638
11 THE INTENT OF THE PARTIES DETERMINES THE MEAN OF THE
12 CONTRACT, THE RELEVANT INTENT IS OBJECTIVE. THAT IS,
13 THE OBJECTIVE INTENT IS EVIDENCED BY THE WORDS OF THE
14 INSTRUMENT, NOT A PARTY'S OBJECTIVE INTENT. THE TRUE
15 INTENT OF THE CONTRACTING PARTY IS IRRELEVANT IF IT
16 REMAINS UNEXPRESSED."

17 IN THE CASE OF TRAVELERS -- I'M SORRY --
18 AUGBURN VERSUS TRAVELERS INSURANCE COMPANY, 207 CAL.APP.
19 50 STATED, "AS TO HARDSHIPS, ADVANTAGES, OR
20 DISADVANTAGES, WHICH MAY RESULT FROM SUCH CONSTRUCTION,
21 COURTS HAVE NOTHING TO DO."

22 SO WHAT WAS THE OBJECTIVE EXPRESSED INTENT OF
23 THE PARTIES AT THE TIME THAT THEY ENTERED INTO THIS
24 CONTRACT? FIRST OF ALL, WE ALL HAVE TO DEFINE WHAT THE
25 CONTRACT IS. THE ONLY CONTRACT WE HAVE BETWEEN THE
26 HUMPHREYS AND MR. BEREKI IS OUR EXHIBIT 303, WHICH WAS

1 THE APRIL 5, 2012 E-MAIL STRING IN WHICH MR. BEREKI
2 COMMUNICATED HIS PROPOSAL FOR THE WORK ITEMIZING EACH
3 ITEM OF WORK. MS. HUMPHREYS RESPONDED TO THAT PROPOSAL
4 AND AGREED TO THE TERMS OF THE AGREEMENT AND HIRING
5 MR. BEREKI AND MR. OVERLEY TO DO THE JOB.

6 THERE SIMPLY WAS NO OTHER CONTRACT. THERE WAS
7 NO CONTRACT AT ANY TIME PROPOSED, OFFERED, SUGGESTED BY
8 SPARTAN ASSOCIATES AND THE HUMPHREYS OR PROPOSED TO THE
9 HUMPHREYS.

10 NOW, IT IS APPARENT THAT MR. BEREKI, AT SOME
11 POINT, DEVELOPED AN UNEXPRESSED INTENT THAT THE
12 CONTRACTING PARTY BE SPARTAN ASSOCIATES INSTEAD OF
13 HIMSELF. HOWEVER, THE EVIDENCE IS CLEAR THAT THAT
14 UNEXPRESSED INTENT DIDN'T EVEN DAWN ON MR. BEREKI UNTIL
15 SEVERAL MONTHS INTO THE JOB.

16 THE EVIDENCE THAT SUPPORTS THAT IS MR. BEREKI
17 AFTER THE -- SHORTLY AFTER THE EXHIBIT 303 CONTRACT WAS
18 PROPOSED AND AGREED TO, HE REQUESTED THAT THE PAYMENTS
19 BE MADE PAYABLE TO HIM PERSONALLY. MR. BEREKI PAID ALL
20 OF THE JOB COSTS ON THIS PROJECT UP UNTIL JULY OF 2012
21 ON HIS PERSONAL ACCOUNT OR ON HIS MOTHER'S PERSONAL
22 ACCOUNT, NOT ON THE SPARTAN ACCOUNT.

23 MR. BEREKI NEVER SENT AN INVOICE TO THE
24 HUMPHREYS BEFORE JULY OF 2012 ON ANY DOCUMENT THAT WOULD
25 EVEN HAVE THE NAME SPARTAN ON IT, MUCH LESS A LOGO OR
26 ANYTHING THAT WOULD ALERT THE HUMPHREYS THAT SPARTAN WAS

1 PART OF THIS JOB.

2 MR. BEREKI DIDN'T SET UP SPARTAN AS A -- AN
3 EMPLOYER UNTIL JULY OF 2012. THAT'S WHEN HE REGISTERED
4 WITH THE BOARD OF EQUALIZATION AND THAT'S WHEN HE
5 APPLIED FOR WORKERS' COMPENSATION INSURANCE FOR THIS JOB
6 AS SPARTAN.

7 THE HUMPHREYS PAID MR. BEREKI \$100,000 BEFORE
8 MR. BEREKI EVEN BROUGHT UP THE NAME SPARTAN. PURE AND
9 SIMPLY, SPARTAN WANTED PRESENCE IN THIS JOB IN ANY WAY,
10 SHAPE, OR FORM BEFORE JULY OF 2012. AND, AGAIN, A
11 CONTRACT'S INTERPRETED BY THE OBJECTIVE EXPRESSED INTENT
12 AT THE TIME THE PARTIES ENTER INTO IT.

13 MR. BEREKI OFFERED AS EVIDENCE EXHIBIT 30-1
14 SHOWING A SPARTAN SIGN ON THE PROJECT AT SOME
15 UNDISCLOSED DATE. BUT MR. BEREKI HAS TESTIFIED THAT FOR
16 THE FIRST SEVERAL MONTHS, EVEN THOUGH HE HAD BEEN PAID
17 \$100,000, THE HUMPHREYS PAID HIM \$100,000 ON THIS JOB,
18 HE BASICALLY JUST HAD BEEN PUTTERING AROUND. EXHIBIT
19 30-1 SHOWS THE CONDOMINIUM IN A VIRTUALLY DEMOLISHED
20 STATE. SO CLEARLY THAT PICTURE WASN'T TAKEN AT ANY
21 EARLY STAGE OF MR. BEREKI'S INVOLVEMENT IN THE PROJECT.

22 WHAT WAS THE EVIDENCE OFFERED AS TO THE
23 OBJECTIVE INTENT OF THE PARTIES AT THE TIME THAT THE
24 CONTRACT WAS ENTERED INTO THAT SPARTAN WAS ONE OF THE
25 CONTRACTING PARTIES? YOUR HONOR, THERE WAS ABSOLUTELY
26 NONE. THERE IS NOTHING THERE THAT SUGGESTS SPARTAN

1 OBJECTIVELY WAS A CONTRACTING PARTY. IN FACT, IT WAS
2 CLEAR FROM THE TESTIMONY OF MR. BEREKI WHEN HE WAS
3 TALKING ABOUT -- FIRST HE TESTIFIED THAT HE HAD ENTERED
4 INTO THIS SHOP RENTAL LEASE AS SPARTAN CONSTRUCTION.
5 WELL, WHEN WE LOOKED AT THE LEASE, IT WAS CLEAR THAT HE
6 DID NOT ENTER THE LEASE AS SPARTAN CONSTRUCTION. HE
7 ENTERED IT AS ADAM BEREKI, DBA SPARTAN. IT'S CLEAR ADAM
8 BEREKI NEVER UNDERSTOOD THE DIFFERENCE BETWEEN A
9 CORPORATION AND HIMSELF. HE JUST DIDN'T UNDERSTAND. HE
10 THOUGHT -- HE FELT THE CORPORATION WAS HIM, HE WAS THE
11 CORPORATION. AND THAT'S NOT THE WAY IT WORKS UNDER THE
12 LAW.

13 WHAT'S THE SIGNIFICANCE OF THE CONTRACTING?
14 THE SIGNIFICANCE IS THE CONTRACTOR HAS TO BE LICENSED.
15 MR. BEREKI SEEMED TO BE UNDER THE IMPRESSION THAT UNLESS
16 HE WAS DOING SOMETHING STRUCTURAL, HE DIDN'T NEED A
17 LICENSE. IN LIGHT OF WHAT TRANSPIRED ON THIS JOB, IT IS
18 NOT SURPRISING THAT MR. BEREKI THINKS THAT, BUT HE'S
19 CLEARLY WRONG.

20 A FUNDAMENTAL SECTION OF THE CONTRACTOR'S
21 LICENSE LAW, BUSINESS AND PROFESSIONS CODE SECTION 7026
22 DEFINES A CONTRACTOR VERY BROADLY AS INCLUDING ANY
23 PERSON WHO UNDERTAKES TO CONSTRUCT, ALTER, REPAIR OR
24 IMPROVE ANY BUILDING OR STRUCTURE.

25 EXHIBIT 303, THE AGREEMENT THAT THE PARTIES
26 ENTERED INTO, IS EVIDENCE OF SUCH UNDERTAKING. IT IS

1 CLEAR A LICENSE IS REQUIRED. NO QUESTION ABOUT THAT.

2 MR. BEREKI WAS NOT LICENSED. HE'S TESTIFIED
3 THAT HE HAD NO LICENSE ISSUED TO HIM AT ANY TIME, EITHER
4 AT THE TIME THE CONTRACT WAS ENTERED INTO OR AT ANY TIME
5 THE WORK WAS BEING PERFORMED BY MR. BEREKI. HE
6 TESTIFIED THAT THE PARTNERSHIP OF HE AND MR. OVERLEY
7 WERE NOT LICENSED AT THE TIME THE CONTRACTING WAS
8 ENTERED INTO OR AT ANY TIME DURING THE WORK. IN FACT,
9 THEY COULD NOT HAVE BEEN LICENSED BECAUSE MR. BEREKI
10 DIDN'T HAVE A LICENSE. A JOINT VENTURE LICENSE REQUIRES
11 THAT BOTH PARTIES TO THE JOINT VENTURE, OR IF IT'S MORE
12 THAN TWO, HOWEVER MANY PARTIES TO THE JOINT VENTURE,
13 EACH BE INDIVIDUALLY LICENSED. MR. BEREKI TESTIFIED
14 THAT HE WAS NOT LICENSED.

15 EVEN IF ONE WERE TO SUBSCRIBE TO THE THEORY
16 THAT SPARTAN ASSOCIATES HAD CONTRACTED WITH THE
17 HUMPHREYS, SPARTAN ASSOCIATES AND MR. OVERLEY, AND
18 MR. BEREKI HAS TESTIFIED IT WAS AN INDEPENDENT
19 CONTRACTOR HE PARTNERED WITH ON THIS JOB, THAT
20 PARTNERSHIP WAS NOT LICENSED. THERE WAS NO COMBINATION
21 OR PERMUTATION OF INDIVIDUALS OR ENTITIES THAT
22 PARTICIPATED ON THIS JOB THAT HAD THE REQUISITE LICENSE.

23 THE COURT RAISED THE QUESTION YESTERDAY AS TO
24 THE QUESTION OF WHAT IS THE IMPACT, WHAT IS THE EFFECT
25 OF THE FACT THAT NOT ALL PAYMENTS ON THIS JOB CAME TO
26 MR. BEREKI DIRECTLY FROM THE HUMPHREYS. WHAT IS THE

1 EFFECT OF THAT? CAN THE HUMPHREYS STILL RECOVER ON
2 DISGORGEMENT?

3 THE KEY STATUTE WHICH HAS BEEN BRIEFED, AND I
4 AM SURE THE JUDGE HAS READ, IS BUSINESS AND PROFESSIONS
5 CODE SECTION 7031, SUBSECTION E, "A PERSON WHO UTILIZES
6 THE SERVICES OF AN UNLICENSED CONTRACTOR MAY BRING AN
7 ACTION IN ANY COURT OR COMPETENT JURISDICTION IN THIS
8 STATE TO RECOVER ALL COMPENSATION PAID TO THE UNLICENSED
9 CONTRACTOR FOR PERFORMING -- PERFORMANCE OF ANY ACT OR
10 CONTRACT."

11 NOW, THE COURT SUGGESTED YESTERDAY THAT MAYBE
12 HUMPHREYS & ASSOCIATES SHOULD BE A CO-PARTY TO THE
13 ACTION TO RECOVER THE FUNDS THAT THEY -- BASICALLY THEY
14 WERE A CONDUIT, BUT -- THE FUNDS THAT WERE CONDUITED
15 THROUGH THEM TO MR. BEREKI. THEY COULDN'T BE A PARTY TO
16 THIS ACTION. THIS STATUTE IS LIMITED TO A PERSON WHO
17 UTILIZES THE SERVICES OF AN UNLICENSED CONTRACTOR.

18 THE ONLY PEOPLE WHO UTILIZED THE SERVICES OF
19 THE UNLICENSED CONTRACTOR OF MR. BEREKI AND MR. OVERLEY
20 WERE THE HUMPHREYS. THEY WERE THE ONLY PERSONS THAT CAN
21 BRING THIS ACTION. THERE IS NO LANGUAGE IN THAT CODE
22 SECTION THAT LIMITS OR RESTRICTS WHERE THE SOURCE OF THE
23 FUNDS COME FROM. IT'S JUST ALL COMPENSATION.

24 NOW THAT MAKES SENSE. IT MAKES SENSE THAT
25 THERE'S NO LIMITATION BECAUSE I ASSUME THAT THE
26 LEGISLATURE WAS -- TOOK SOME SORT OF CUE FROM THE

1 CONSTRUCTION INDUSTRY THAT, HEY, WAIT A MINUTE, WE HAVE
2 CONSTRUCTION LENDERS OUT HERE WHO ARE DISBURSING FUNDS
3 ON PROJECTS ALL THE TIME. WE HAVE THIRD-PARTY
4 CONSTRUCTION CONTROL AGENTS WHO ARE DISBURSING
5 CONSTRUCTION FUNDS ON PROJECTS ALL THE TIME. WE HAVE
6 CONSTRUCTION FUND ESCROW ACCOUNTS WHERE FUNDS ARE
7 DISBURSED ALL THE TIME.

8 SO THERE ARE A MYRIAD OF EXAMPLES OR
9 SITUATIONS WHERE PAYMENT DOESN'T HAVE TO COME OR DOESN'T
10 COME DIRECTLY FROM THE PARTY WHO CONTRACTED WITH THE
11 UNLICENSED CONTRACTOR. THERE ARE OTHER CONDUITS FOR
12 THAT PAYMENT AND THE STATUTE MAKES NO DIFFERENTIATION OR
13 NO RESTRICTIONS ON WHERE THAT MONEY COMES FROM. IT'S
14 PURE AND SIMPLY ALL COMPENSATION PAID.

15 IF YOU LOOK AT THE INTENT, THAT SECTION OF
16 7031 WAS NOT AN ORIGINAL SECTION. THAT WAS APPLIED
17 AFTER -- SEVERAL YEARS AFTER SECTION 7031 WAS ENACTED.
18 SECTION 7031 WAS INITIALLY SIMPLY A SECTION THAT SAID AN
19 UNLICENSED CONTRACTOR CANNOT BRING AN ACTION IN ANY
20 COURT OF LAW TO RECOVER ON ANY JOB THAT HE'S PERFORMED
21 WORK ON THAT REQUIRED A LICENSE.

22 WELL, THE LEGISLATURE UNDERSTOOD -- AT SOME
23 POINT THEY UNDERSTOOD THAT, WAIT A SECOND, WE NEED TO
24 TREAT PEOPLE EQUALLY HERE. THERE'S PEOPLE THAT HAVE
25 PAID AN UNLICENSED CONTRACTOR AND THERE'S PEOPLE THAT
26 HAVEN'T PAID AN UNLICENSED CONTRACTOR.

1 NOW, IF THE HUMPHREYS HADN'T PAID MR. BEREKI A
2 DIME AND MR. BEREKI CLAIMED -- THE HUMPHREYS PAID HIM
3 848,000. SAY MR. BEREKI CLAIMS, HUMPHREYS, YOU DIDN'T
4 PAY ME A DIME. I DID ALL THIS WORK. YOU OWE ME
5 \$848,000. WELL, HE WOULD BE OUT OF LUCK. HE'S NOT
6 ENTITLED TO DIME ONE UNDER THE ORIGINAL SECTION OF 7031.
7 NOW, UNDER THE ORIGINAL SECTION OF 7301, THOSE WHO HAD
8 PAID THE UNLICENSED CONTRACTOR, THE PEOPLE IN THE
9 HUMPHREYS POSITION, THEY COULDN'T RECOVER. SO THERE WAS
10 AN UNEQUAL TREATMENT OF PARTIES DEALING WITH UNLICENSED
11 CONTRACTORS UNDER SECTION 7031. WELL, THE LEGISLATURE
12 RECOGNIZED THAT AND HE EQUALIZED THE IMPACT THAT
13 SOMEBODY WHO DOESN'T PAY OR SOMEBODY WHO DOES PAY IS
14 GOING TO BE TREATED THE SAME AS SOMEBODY WHO DOESN'T
15 PAY; I.E., IF YOU OWE THE GUY 100 PERCENT OF WHAT WOULD
16 OTHERWISE BE DUE ON THIS JOB, HE'S NOT ENTITLED TO IT.
17 IF YOU PAID HIM 100 PERCENT OF WHATEVER HE IS ENTITLED
18 TO ON THE JOB, YOU'RE ENTITLED TO RECOVER 100 PERCENT.

19 IN THE CASE ALATRISTE VERSUS CESAR'S EXTERIOR
20 DESIGNS, INC. 183 CAL.APP.4TH 656, THE COURT STATED
21 7031(B) WAS DESIGNED TO TREAT PERSONS WHO HAVE UTILIZED
22 UNLICENSED CONTRACTORS CONSISTENTLY REGARDLESS OF
23 WHETHER THEY HAVE PAID THE CONTRACTOR FOR THE UNLICENSED
24 WORK. THE ONLY WAY THAT 7031(B) CAN BE APPLIED IN THIS
25 CASE WOULD BE CONSISTENT WITH NOT ONLY THE LANGUAGE OF
26 THE STATUTE ITSELF -- THROUGH LANGUAGE OF THE STATUTE,

1 WHICH IS NOT VAGUE AND NOT AMBIGUOUS. AND THE
2 INTERPRETATION OF THAT STATUTE IS FOUND IN THE ALATRISTE
3 CASE, IS THAT THE HUMPHREYS ARE ENTITLED TO RECOVER ALL
4 COMPENSATION PAID. THAT DOESN'T MATTER IF IT CAME FROM
5 THEIR PERSONAL ACCOUNT OR IF IT CAME FROM A CONDUIT
6 THROUGH WHICH THEY MADE PAYMENT OR WHETHER IT CAME FROM
7 A RICH UNCLE. IT JUST MAKES NO DIFFERENCE. THE STATUTE
8 IS CLEAR. ALL COMPENSATION.

9 THE EVIDENCE IS UNCONTROVERTED THAT THE
10 HUMPHREYS PAID AS COMPENSATION TO MR. BEREKI ON THIS
11 PROJECT \$848,000. MR. BEREKI WAS REQUIRED TO HAVE A
12 LICENSE. HE HAD NO LICENSE. UNDER THE LAW, THE
13 HUMPHREYS ARE ENTITLED TO \$848,000.

14 THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU. MR. RUSSO.

16 MR. RUSSO: YES, YOUR HONOR.

17 IF ONLY IT WERE SO SIMPLE. YOUR HONOR, THE
18 BACKGROUND ON ALL THIS IS MR. BEREKI WAS WORKING IN THE
19 POLICE FORCE WITH MR. HUMPHREYS' BROTHER.

20 THE COURT: WHICH POLICE FORCE WAS THAT?

21 MR. RUSSO: HUNTINGTON BEACH.

22 THE COURT: HB?

23 MR. RUSSO: YES. HE WENT OUT ON DISABILITY FROM
24 THE POLICE FORCE. SO THAT WAS HOW THE RELATIONSHIP
25 STARTED WITH THE BROTHER. HE JUST WENT INTO CONTRACT.
26 THAT BUSINESS HAS NOW BEEN DISSOLVED. SO IT'S GONE.

1 DOESN'T HAVE ANY MONEY. HE'S OUT WITH HIS DISABILITY
2 TRYING TO EARN A LIVING. THE COMPANY HAS NO MONEY. THE
3 COMPANY HAS NO MONEY TO PAY THEIR ATTORNEY IN THIS CASE,
4 BUT HERE WE ARE CLOSE TO TRIAL SO HERE I AM.

5 THE COURT: GOD, WE LOVE THE VOLUNTEERS.

6 MR. RUSSO: IT IS THAT. SO THE BOTTOM LINE IS
7 WE'RE AT A POINT WHERE THROUGH SOME CREATIVE LAWYERING
8 THIS NEW ISSUE CAME UP AT THE LAST MINUTE. THEY SAID
9 THIS DISPUTE HAS BEEN GOING ON SINCE AUGUST OF 2013.
10 THIS LAWSUIT HAS BEEN PENDING SINCE AUGUST OF 2015. AND
11 THEN IN JANUARY OF THIS YEAR, THE CROSS-COMPLAINT WAS
12 AMENDED TO ADD THIS CLAIM FOR DISGORGEMENT. SO IT'S NOT
13 SOMETHING THAT WAS ON THEIR MINDS, IT'S NOT SOMETHING
14 THAT THEY CARED ABOUT, IT'S NOT SOMETHING THEY CARED
15 ABOUT WHEN I TOOK THEIR DEPOSITIONS. THIS WAS A LAST
16 MINUTE, HEY, LET'S GIVE THIS ONE A SHOT.

17 SO SHOULD THERE BE SYMPATHY FOR THE HUMPHREYS
18 IN LOSING THIS CLAIM WHEN WE HAVE BIGGER ISSUES IN THIS
19 CASE? ABSOLUTELY NOT. THIS IS SOME GOOD, CREATIVE
20 LAWYERING BY A GOOD LAWYER TO COME UP WITH THIS
21 TECHNICAL ISSUE. AND IT'S A BIG FORFEITURE ISSUE. WE
22 KNOW THE LAWS OF FORFEITURE. I HAVE BEEN ON THE OTHER
23 SIDE OF THIS STATUTE AND ARGUED IT, AND IT'S DRACONIAN.
24 IT IS. BUT THIS CASE DOES NOT FIT THE PIECES OF PUZZLE
25 FOR FORFEITURE. THIS IS NOT AN UNLICENSED CONTRACTOR
26 CASE.

1 WHAT DO WE HAVE HERE? WE HAVE PAYMENTS OVER
2 \$800,000. AND OF THAT, OVER 700,000 OF IT WAS PAID TO A
3 LICENSED CONTRACTOR. THE LICENSED CONTRACTOR WHO
4 PERFORMED THE WORK. THE STATUTE AT ISSUE 7031(B) TALKS
5 ABOUT REPAYMENT FOR COMPENSATION PAID TO THE UNLICENSED
6 CONTRACTOR FOR PERFORMANCE OF ANY ACT OR CONTRACT, WORK
7 THAT HAD TO HAVE A LICENSE. OKAY. SO COMPENSATION TO
8 THE UNLICENSED CONTRACTOR.

9 YOU HAVE SEEN THE CHECKS, EXHIBIT 32. AFTER
10 THE FIRST \$100,000, THE CHECKS WERE MADE TO THE
11 CONTRACTOR WHO PERFORMED THE WORK WHO WAS LICENSED.
12 INTERSPERSED LATER ON THERE WERE SOME PAYMENTS, THEY
13 WERE DIRECTED TO MR. BEREKI, DESPITE THE TESTIMONY THAT
14 HE ASKED THAT THEY BE PAID TO SPARTAN ASSOCIATES. THEY
15 GOT DEPOSITED INTO THE SPARTAN ASSOCIATES' ACCOUNT AND
16 SPARTAN ASSOCIATES DID THE WORK.

17 SO IT'S NOT EVEN AN ISSUE UNDER THE
18 SUBSTANTIAL COMPLIANCE RULES THAT WENT ON. AND I
19 UNDERSTAND, WITH THE CHANGES TO 7031, MOST OF THAT
20 WAS -- SUBSTANTIAL COMPLIANCE WAS, FOR THE MOST PART,
21 THE PAST. WE DON'T HAVE THAT REALLY, NOR DOES THIS FIT
22 NEATLY WITHIN THE CONFINES OF SUBSTANTIAL COMPLIANCE.
23 THIS IS JUST PURE INAPPLICABILITY IN THIS CASE OF 7031
24 BECAUSE IT'S NOT ABOUT THAT ORAL AGREEMENT, THE E-MAIL,
25 THE STATUTE IS ABOUT UNLICENSED WORK. WE DON'T HAVE
26 THAT HERE. THAT FIRST CONVERSATION, WHETHER OR NOT THEY

1 THOUGHT IT WAS SPARTAN ASSOCIATES OR MR. BEREKI, THAT'S
2 NOT WHAT THE STATUTE SPEAKS TO. IT'S PAYMENTS TO AN
3 UNLICENSED CONTRACTOR FOR WORK THAT NEEDED TO BE
4 LICENSED. AND THE PAYMENTS, THEY KNEW WHO THEY WERE
5 WRITING THE CHECKS TO WHEN THEY WERE WRITING TO SPARTAN
6 ASSOCIATES, LICENSED CONTRACTOR, THIS DID NOT APPLY.

7 NOW WE DO HAVE THE FIRST \$100,000 OF PAYMENTS
8 WHICH WERE PAYABLE TO MR. BEREKI. WHAT I WOULD SUBMIT
9 ON THAT, YOUR HONOR, IS IT'S -- IT DOESN'T REALLY MATTER
10 WHO THOSE PAYMENTS WENT TO. THE POINT IS THERE'S BEEN A
11 FAILURE OF PROOF BY THE HUMPHREYS ON THIS AS TO THAT
12 WORK FOR WHICH THAT \$100,000 WAS PAID WAS REQUIRED TO BE
13 LICENSED. THERE'S BEEN NO EVIDENCE. TO THE CONTRARY,
14 THE ONLY EVIDENCE YOU HAVE IS THAT BASED ON WHAT WAS
15 GOING ON AT THAT TIME, DURING THE FIRST \$100,000, THE
16 TESTIMONY OF MR. BEREKI WAS THAT WE WERE LOADING UP
17 THINGS, WE WERE GETTING STORAGE UNITS, WE WERE DOING
18 THOSE THINGS, DOING SOME DEMOLITION. BUT IF YOU WERE TO
19 LOOK AT THE C11 LICENSE FOR DEMOLITION WORK,
20 STRUCTURAL WORK, AT THAT POINT IN TIME, THERE'S NO
21 EVIDENCE AT THAT POINT IN TIME THAT THIS WORK REQUIRED A
22 LICENSE FROM HIM PERSONALLY. SO THAT'S A FAILURE OF
23 PROOF ON THEIR PART.

24 THEN WE TURN TO THE ISSUE OF THE REAL PARTY IN
25 INTEREST. THE FACT OF THE MATTER IS THAT A CORPORATION
26 PAID \$495,000 OF THE PAYMENTS TO SPARTAN ASSOCIATES.

1 THE CASES ON THAT ISSUE, ON REAL PARTY IN INTEREST, ARE
2 THE DION VERSUS PELAYO CASE, 2006 145.CAL.APP.4TH 347
3 AND THE GANTMAN VERSUS UNITED PACIFIC INSURANCE CASE,
4 1999 232 CAL.APP.3RD 1560. THIS IS JUST FUNDAMENTAL
5 STUFF. THE CLAIM HAS TO BE PROSECUTED BY THE REAL PARTY
6 IN INTEREST, NOT SOMEBODY WHO'S INTERESTED, BUT THE
7 ACTUAL REAL PARTY. THEY FAILED, AT LEAST AS TO \$495,000
8 OF THE CHECKS, BECAUSE THEY WERE WRITTEN BY A
9 CORPORATION WHO SHOULD HAVE BEEN JOINED IN THIS ACTION,
10 SHOULD HAVE DONE AN ASSIGNMENT, SHOULD HAVE DONE
11 SOMETHING LONG BEFORE NOW. IT'S LATE AND THERE COULD BE
12 STATUTE OF LIMITATIONS ISSUES ASSOCIATED WITH THAT PARTY
13 COMING IN. IT'S NOW A SIMPLE AMENDMENT AT THIS POINT IN
14 TIME.

15 SO THE FACT OF THE MATTER IS IT'S NOT A LITTLE
16 ISSUE. THIS IS NOT THE SAME AS A CONSTRUCTION LENDER
17 DISBURSING FUNDS. IN THE CASE OF CONSTRUCTION LENDER
18 DISBURSING FUNDS, THAT MONEY IS THE BORROWER'S MONEY.
19 YOU HAVE GOT THIS CONDUIT, BUT THAT'S THE BORROWER'S
20 MONEY. THIS WAS THE CORPORATION'S MONEY. PERHAPS
21 MR. HUMPHREYS GOT TAXED ON IT IN THE FUTURE, BUT AT THE
22 TIME THE PAYMENTS WERE MADE, THE CORPORATION'S MONEY.
23 SO THIS IS ANOTHER GLITCH IN THEIR CASE. SO FOR ALL
24 THOSE REASONS, 7031 NOT APPLYING. REAL PARTY IN
25 INTEREST. AND -- WELL, FOR THOSE TWO REASONS. THEY
26 FAILED TO ULTIMATELY PROVE, AS THEY HAD TO WITH THEIR

1 BURDEN, THAT FIRST CAUSE OF ACTION IN THAT
2 CROSS-COMPLAINT.

3 WE'VE GOT BIGGER ISSUES IN THIS CASE. WE GOT
4 THE COMPLAINT. WE GOT THEIR CROSS-COMPLAINT FOR THE
5 WORK BEING DEFICIENT. WE GOT OTHER ISSUES, BUT THIS IS
6 NOT THE VEHICLE FOR THE HUMPHREYS TO GET WHAT THEY WANT.
7 WE GOT THE REST OF THE CASE TO TRY.

8 THANK YOU.

9 THE COURT: THANK YOU, MR. RUSSO.

10 MR. BEREKI?

11 MR. BEREKI: NOTHING, YOUR HONOR.

12 THE COURT: YOU WILL RELY ON MR. RUSSO'S ARGUMENT?

13 THE COURT: HE WAS BRILLIANT, YES, SIR. THANK YOU.

14 THE COURT: I WILL TAKE 15 MINUTES, GO COLLECT MY
15 THOUGHTS, REVIEW MY NOTES. SORRY FOR THE DELAY, BUT IT
16 SEEMS LIKE GOOD IDEA. SO FEEL FREE TO TAKE A WALK
17 ABOUT, RUN UP AND DOWN THE HALLWAYS, SWIM A COUPLE OF
18 LAPS. WE WILL BE BACK.

19 MR. BISSELL: THANK YOU.

20 (RECESS.)

21 THE COURT: THANK YOU, OFFICER GINO.

22 MR. RUSSO.

23 MR. RUSSO: YES, YOUR HONOR.

24 THE COURT: ARE YOU BY ANY CHANCE A STUDENT OF
25 ANCIENT GREEK HISTORY?

26 MR. RUSSO: WELL, IT SO HAPPENS THAT MY FAVORITE

1 PROFESSOR AT UC DAVIS WAS A GUY NAMED SPYRIDAKIS. HE
2 TAUGHT ANCIENT --

3 THE COURT: HE DOESN'T SOUND TOO ANCIENT.

4 MR. RUSSO: HE TAUGHT ANCIENT HISTORY AND I TOOK
5 ALL THREE OF HIS COURSES. GREEK HISTORY IS THE FIRST
6 ONE, AND THEN A COUPLE -- WE DID ANCIENT ROME,
7 MESOPOTAMIA. SO THE ANSWER IS, IT WAS MY FAVORITE
8 COURSE.

9 THE COURT: EXCELLENT. THEN YOU'RE PROBABLY
10 FAMILIAR WITH THE STORY FROM THE CITY-STATE OF SPARTA IN
11 ANCIENT GREECE IN THE NAME OF THE COMPANY OPERATED BY
12 MR. BEREKI. AS YOU KNOW, SPARTA WAS A VERY WARLIKE
13 CIVILIZATION. THEIR YOUNG MEN WERE TRAINED AT A VERY
14 EARLY AGE TO BASICALLY PREPARE AND FIGHT A NUMBER OF
15 BATTLES BECAUSE IT WAS A WARLIKE CIVILIZATION THAT WENT
16 ON. SO THE LINE FROM THE MOTHERS AND TWO SONS GOING OFF
17 TO BATTLE ON BEHALF OF THE CITY-STATE OF SPARTAN. COME
18 BACK VICTORIOUS OR COME BACK DEAD OVER YOUR SHIELD.
19 LET'S HOPE THAT DOESN'T APPLY TO SOMEBODY HERE TODAY.

20 MR. RUSSO: ONE ANECDOTE. ONE OF MY FAVORITE
21 THINGS ABOUT THAT -- AND I ALSO TOOK MILITARY HISTORY
22 FOR A YEAR -- WAS THE INVENTION THAT MADE THE GREEKS
23 SUCCESSFUL -- NOT THE SPARTANS BUT THE GREEKS -- WAS
24 LENGTHENING THE PHALANX SO WHEN THEY ALL RAN INTO EACH
25 OTHER, THEIRS WAS A FEW FEET LONGER. I THOUGHT THAT WAS
26 A KIND OF AN INTERESTING DEVELOPMENT.

1 THE COURT: I THOUGHT YOU WERE GOING TO TELL ME IT
2 WAS THE WHEEL.

3 MR. RUSSO: NO.

4 THE COURT: OR THE CATAPULT.

5 MR. RUSSO: NO, LENGTHENING THE PHALANX.

6 THE COURT: A LONGER SPEAR. I THINK THE ENGLISH
7 CAME UP WITH ANOTHER LINE CALLED "HOISTED BY THEIR OWN
8 PETARD." WHAT IS A PETARD?

9 MR. RUSSO: I DON'T RECALL WHAT A PETARD IS.

10 THE COURT: IT'S ANOTHER VERSION OF A SPEAR. ALL
11 RIGHT. WELL, YOU ALL CAUSED ME TO HAVE A FEW MOMENTS OF
12 CONSIDERATION HERE. MY INITIAL COMMENT, YOU KNOW, FINE
13 LAWYERS AND GOOD LAWYERING, AS WE HAVE SEEN HERE, MAKES
14 THIS DECISIONAL PROCESS ALL THE HARDER. I WANT TO THANK
15 THE LAWYERS, BOTH OF YOU, FOR GOOD WORK, GOOD
16 PRESENTATIONS. STILL, YOU KNOW, I HAVE TO SAY, AT THE
17 BOTTOM, THE FACT IS THE FACTS WIN OR LOSE CASES. PEOPLE
18 THAT THINK, HEY, YOU KNOW, I WANT CLARENCE DARO
19 (PHONETIC) -- A NAME FROM THE PAST -- I WANT THE
20 TOUGHEST LAWYER IN TOWN, SO ON AND SO FORTH. MY
21 EXPERIENCE IS THAT BAD LAWYERING CAN LOSE CASES BECAUSE
22 THE FACTS DON'T GET IN. ULTIMATELY, GOOD LAWYERING,
23 WHICH IS WHAT I HAVE SEEN HERE, ACCOUNTS FOR THE FACT,
24 AGAIN, THAT IT MAKES THE DECISION HARDER. AGAIN, IT'S
25 THE FACTS THAT CONTROL, NOT THE LAWYERS THAT CONTROL.
26 AN INTERESTING EXERCISE FOR ME, FROM THE STANDPOINT OF

1 JUST REVIEWING AND CONSIDERING WHAT'S REQUIRED UNDER THE
2 CONTRACTOR LICENSE LAW, AND IN SOME WAYS, IT'S A LITTLE
3 BIT OF A TRIP INTO ALICE IN WONDERLAND.

4 I TURN FIRST TO BUSINESS PROFESSIONS CODE
5 SECTION 7159, WHICH IS ENTITLED "HOME IMPROVEMENT; HOME
6 IMPROVEMENT GOODS OR SERVICES DEFINITIONS." WELL, THIS
7 DEFINES THE -- UNDER -- SUBSECTION B DEFINES THE HOME
8 IMPROVEMENT CONTRACT AS MEANING ANY AGREEMENT, WHETHER
9 ORAL OR WRITTEN, BETWEEN THE CONTRACTOR AND THE OWNER
10 FOR THE PERFORMANCES OF A HOME IMPROVEMENT, AS DEFINED
11 BY SECTION 7151.

12 SECTION 7551 DEFINES A HOME IMPROVEMENT AS
13 BEING THE REPAIRING, REMODELING, ALTERING, CONVERTING OR
14 MODERNIZING UP OR ADDING TO RESIDENTIAL PROPERTY AND
15 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE CONSTRUCTION,
16 ERECTION, REPLACEMENT, OR IMPROVEMENT OF DRIVEWAYS,
17 SWIMMING POOLS, INCLUDING SPAS, HOT TUBS, TERRACES,
18 PATIOS, AWNINGS, STORM WINDOWS, LANDSCAPING, FENCES,
19 PORCHES, GARAGES, FALLOUT SHELTERS, BASEMENTS, AND OTHER
20 IMPROVEMENTS OF THE STRUCTURE OR LAND WHICH IS ADJACENT
21 TO A DWELLING. HOME IMPROVEMENT SHALL ALSO MEAN THE
22 INSTALLATION OF HOME IMPROVEMENT GOODS OR THE FURNISHING
23 OF HOME IMPROVEMENT SERVICES.

24 I THINK THAT THAT INCLUDES THE REMODELING
25 PROJECT THAT WAS DONE ON THIS PROPERTY. ALTHOUGH I
26 SUSPECT, AS AN ARGUMENT, THAT IT COULD BE LIMITED TO

1 THINGS OUTSIDE OF THE STRUCTURE ITSELF. IF THAT WERE
2 THE CASE, THEN I SUSPECT THAT SECTION 7164 WOULD APPLY
3 WITH RESPECT TO THIS.

4 WHY AM I TALKING ABOUT THIS? BECAUSE IF YOU
5 LOOK AT SECTION 7159(C), IT REQUIRES THAT THE LICENSEE
6 SHALL COMPLY WITH ALL OF THE FOLLOWING. IT SPELLS OUT,
7 IN GREAT DETAIL, THE REQUIRED CONTENTS OF THE CONTRACT
8 BETWEEN THE CONTRACTOR AND THE CONTRACTING PARTIES. AS
9 WE HAVE SEEN NONE OF WHICH ARE PRESENT HERE, BUT JUST SO
10 THAT WE'RE ON THE SAME PAGE, IT REQUIRES, AMONG OTHER
11 THINGS -- AND THIS IS WHERE IT'S CONFUSING BECAUSE IT
12 SAYS, FOR PURPOSES OF THIS SECTION, SUBSECTION B OF
13 7159, FOR PURPOSES OF THIS SECTION, HOME IMPROVEMENT
14 CONTRACT MEANS AN AGREEMENT, WHETHER ORAL OR WRITTEN, OR
15 CONTAINED IN ONE OR MORE DOCUMENTS, ET CETERA.

16 SO THERE SEEMS TO BE SOME ACKNOWLEDGMENT THAT
17 IT CAN BE ORAL OR WRITTEN, BUT THEN IT GOES ON IN
18 SUBSECTION C TO SAY, "IN ADDITION TO THE SPECIFIC
19 REQUIREMENTS LISTED UNDER THIS SECTION, EVERY HOME
20 IMPROVEMENT CONTRACT AND ANY PERSON SUBJECT TO LICENSURE
21 UNDER THIS CHAPTER SHALL COMPLY WITH ALL OF THE
22 FOLLOWING:

23 "ONE, THE WRITING SHALL BE LEGIBLE." THAT
24 DENIES AN ORAL CONTRACT.

25 "TWO, ANY PRINTED FORM SHALL BE READABLE;

26 "THREE, BEFORE ANY WORK STARTED, THE

1 CONTRACTOR SHALL GIVE THE BUYER A COPY OF THE CONTRACT
2 SIGNED AND DATED BY BOTH THE CONTRACTOR AND THE BUYER,"
3 WHICH SEEMS TO BELIE THE CONCEPT OF THE EXCHANGE OF
4 E-MAILS AS BEING SOME FORM OF WRITTEN SIGNED AGREEMENTS,
5 AS HAS BEEN ARGUED IN THIS CASE. SO I WON'T GO ON WITH
6 ANY MORE OF THE DETAILS FOR THIS CODE SECTION.

7 SO NUMBER ONE, I HAVE CONCERNS ABOUT THE
8 NATURE OF THE CONTRACT BETWEEN THE PARTIES;

9 NUMBER TWO, JUST DEALING WITH AN ISSUE THAT
10 APPEARS TO BE INCIDENTAL TO THIS LITIGATION; THAT IS,
11 WHETHER OR NOT HUMPHREYS & ASSOCIATES, INCORPORATED
12 SHOULD HAVE BEEN, COULD HAVE BEEN, OUGHT TO HAVE BEEN A
13 PARTY TO THIS LAWSUIT, THE EVIDENCE HERE IS
14 HUMPHREYS & ASSOCIATES IS A SUBCHAPTER S CORPORATION.
15 THAT HAS NOT ONLY TAX SIGNIFICANCE, BUT IT HAS OTHER
16 SIGNIFICANCE WITH RESPECT TO COMPENSATION OF EMPLOYEES
17 TO THE CORPORATION, OF WHICH MR. HUMPHREYS IS BOTH AN
18 OFFICER AND AN EMPLOYEE OF THE CORPORATION, AS I
19 UNDERSTAND FROM THE EVIDENCE. WITH AN S CORPORATION, IT
20 SERVES SIMPLY AS A CONDUIT AND PASSTHROUGH SO THE
21 CORPORATION ITSELF PAYS NO TAXES. INSTEAD, ITS INCOME
22 IS PASSED TO ITS EMPLOYEES AND OFFICERS TO THE EXTENT
23 THAT THEY'RE COMPENSATED AND THEY PAY THE TAXES.

24 SO THE EVIDENCE SHOWS HERE THE PAYMENTS THAT
25 WERE MADE THROUGH HUMPHREYS & ASSOCIATES, INCORPORATED'S
26 BANK ACCOUNT WERE ESSENTIALLY DEBITED AGAINST

1 MR. HUMPHREYS' COMPENSATION; EFFECTIVELY MAKING THE
2 PAYMENT DIRECTLY FROM MR. HUMPHREYS TO WHETHER IT'S
3 MR. BEREKI OR SPARTAN AT THIS POINT IS OF NO PARTICULAR
4 MOMENT. IN THE COURT'S OPINION, THE COURT FINDS THAT
5 THE HUMPHREYS & ASSOCIATES, INCORPORATED ENTITY IS NOT A
6 NECESSARY PARTY TO THIS LITIGATION OR EVEN AN
7 APPROPRIATE PARTY GIVEN THESE FACTS.

8 TURNING TO THE CROSS-DEFENDANTS' ARGUMENT
9 OF -- WITH RESPECT TO WHAT THE HUMPHREYS KNEW OR
10 UNDERSTOOD WHEN THE CHECKS STARTED GOING TO THE SPARTAN
11 ASSOCIATES, I THINK THAT THE ARGUMENT PRESUPPOSES A
12 CERTAIN LEVEL OF SOPHISTICATION AND EXPERIENCE THAT I
13 CANNOT AND DO NOT ASCRIBE TO MR. HUMPHREYS. SURE, THEY
14 REMODEL OTHER PROPERTIES. THEY OWN OTHER PROPERTIES.
15 BUT NOTHING IN THE EVIDENCE SUGGESTS THAT THEY ARE
16 KNOWLEDGEABLE ABOUT CONTRACTORS, KNOWLEDGEABLE ABOUT
17 CONTRACTING, KNOWLEDGEABLE ABOUT CONTRACTING IN A SENSE
18 OF BUILDING STRUCTURES. MR. HUMPHREYS' EXPERIENCE
19 DEALING AS A CONSULTANT ON LARGE GOVERNMENT CONTRACTS
20 DID NOT STRIKE ME AS FALLING WITHIN BUILDING CONTRACTS,
21 BUT SOMETHING ELSE. AND, AGAIN, I THINK THAT THEY ARE
22 ENTIRELY DIFFERENT DISCIPLINES, WHICH REQUIRE DIFFERENT
23 LEVELS OF UNDERSTANDING AND EXPERIENCE.

24 THE PROBLEM FOR THE UNINITIATED IN DEALING
25 WITH BILLING CONTRACTORS IS THE USE OF SUBCONTRACTORS,
26 THE USE OF CORPORATE ENTITIES, SOMETIMES, TO REFLECT

1 PAYMENTS. I DON'T BLAME -- I DON'T FIND THAT
2 MR. HUMPHREYS AND MRS. HUMPHREYS WERE IN SOME FASHION
3 REQUIRED TO EXPLORE IN ANY PARTICULAR DETAIL WHAT
4 SPARTAN ASSOCIATES, INCORPORATED WAS THAT THEY WERE
5 MAKING PAYMENTS TO UNDER THESE CIRCUMSTANCES.

6 TURNING TO MY OWN RESEARCH, I FOUND TWO CASES
7 THAT I THINK ARE ANALOGOUS TO OUR CASE AND REQUIRE SOME
8 CONSIDERATION. FIRST CASE IS BALL VERSUS STEADFAST-BLK.
9 THIS IS A 2011 CASE RECORDED AT 196 CAL.APP.4TH 694.

10 HERE, JUST TO GIVE YOU THE SUMMARY, THE TRIAL
11 COURT IN THIS INSTANCE SUSTAINED WITHOUT LEAVE TO AMEND
12 THE PROPERTY OWNER'S DEMURRER TO A CAUSE OF ACTION FOR
13 CLOSURE -- FOR FORECLOSURE OF A MECHANIC'S LIEN IN AN
14 INDIVIDUAL LICENSED CONTRACTOR'S COMPLAINT. THE COURT
15 FOUND THAT THE CONTRACTOR WAS NEVER LICENSED AS A
16 CONTRACTOR TO DO BUSINESS UNDER THE FICTITIOUS BUSINESS
17 NAME HE USED AND THUS WAS PRECLUDED, AS A MATTER OF LAW,
18 UNDER BUSINESS PROFESSIONS CODE SECTION 7031,
19 SUBDIVISION A FROM PURSUING THIS CAUSE OF ACTION.

20 AND JUST TO BE CLEAR, WHAT WE HAVE IS AN
21 INDIVIDUAL CONTRACTOR, MR. BALL, WHO WAS DOING BUSINESS
22 UNDER A DBA OF CLARK HEATING AND AIR CONDITIONING. AND
23 AS IT HAPPENED, THIS DBA WAS NOT A CORPORATION; IT WAS
24 JUST A DBA. AND SO WHEN BALL SUED, THE HOMEOWNER SAID,
25 WELL, WAIT, WE HAVE THIS CONTRACT WITH CLARK HEATING AND
26 AIR CONDITIONING AND THIS GUY IS NOT CLARK, WE DON'T

1 THINK, AND THE TRIAL COURT AGREED.

2 THE COURT OF APPEAL REVERSED. THE COURT FOUND
3 THAT THE TRIAL COURT HAD CONFUSED THE INDIVIDUAL OWNER
4 TO WHOM THE CONTRACTOR'S LICENSE WAS ISSUED WITH THE
5 NAME UNDER WHICH THE INDIVIDUAL CONDUCTED HIS
6 CONTRACTING BUSINESS; I.E., THE FICTITIOUS BUSINESS
7 NAME. THE CONTRACTOR WAS LICENSED AS A, QUOTE, SOLE
8 OWNER, END QUOTE, AND NOT AS A PARTNERSHIP OR CORPORATE
9 ENTITY PURSUANT TO THE CLASSIFICATION SYSTEM OF B&P CODE
10 SECTION 7065. THE FICTITIOUS BUSINESS NAME HE USED WAS
11 NOT AN ENTITY THAT COULD BE LICENSED; RATHER, IT WAS THE
12 BUSINESS NAME UNDER WHICH THE INDIVIDUAL LICENSEE DID
13 BUSINESS. NOT ONLY WAS THE FICTITIOUS BUSINESS NAME NOT
14 A DISTINCT LEGAL ENTITY, IT WAS NOT AMONG THE CATEGORIES
15 OF INDIVIDUALS OR ENTITIES DEFINED BY THE CONTRACTOR'S
16 STATE LICENSE LAW, B&P CODE SECTION 7000, TO WHOM A
17 CONTRACTOR'S LICENSE MAY ISSUE.

18 ACCORDINGLY, BECAUSE THE CONTRACTOR WAS A
19 LICENSED CONTRACTOR, HE WAS ENTITLED TO PERFORM
20 CONTRACTING WORK UNDER THE FICTITIOUS BUSINESS NAME.
21 HIS FAILURE TO CONTRACT IN THE EXACT SAME NAME SET FORTH
22 IN HIS LICENSE WAS, AT MOST, GROUNDS FOR DISCIPLINARY
23 ACTION, BUT IT DID NOT BAR HIM FROM RECOVERING FOR WORK
24 PERFORMED UNDER THE CONTRACTS.

25 SO NOW WE CONTRAST THE BALL OPINION WITH THE
26 FACTS OF THIS CASE. AND I THINK OUR CASE HERE IS

1 DISTINGUISHABLE. FIRST OF ALL, AND FOREMOST, WE HAVE NO
2 LICENSE IN THE NAME OF MR. BEREKI INDIVIDUALLY; INSTEAD,
3 IT APPEARS HE WAS THE QUALIFYING CORPORATE OFFICER FOR
4 THE LEGAL ENTITY, SPARTAN ASSOCIATES, INCORPORATED.
5 THAT WAS THE ENTITY TO WHICH THE CONTRACTOR'S LICENSE
6 WAS ISSUED, AS OPPOSED TO OUR OTHER CASE. YOU KNOW,
7 HERE, AS A MATTER OF LAW, THE CORPORATE ENTITY WAS
8 ENTITLED TO BE LICENSED, WHICH IT WAS. THIS WILL TAKE
9 US TO MORE CONSIDERATION LATER ON.

10 SO SECONDLY, I TURN TO THE OTHER CASE, 29
11 PALMS ENTERPRISES CORPORATION VERSUS BARDOS. THIS IS A
12 2012 CASE RECORDED AT 210 CAL.APP.4TH STARTING AT
13 PAGE 14, 13. THIS CASE ACTUALLY APPEARS TO BE DIRECTLY
14 ON POINT.

15 AND JUST TO GIVE YOU THE OVERVIEW, HERE WHAT
16 WE HAVE IS A TRIBAL CORPORATION THAT SUED THE CONTRACTOR
17 TO RECOVER MONEY PAID FOR WORK ON TRIBAL LAND ALLEGING
18 B&P CODE SECTION 7031 17200 AND THAT THE CONTRACTOR WAS
19 UNLICENSED AND THAT ITS PERFORMANCE OF WORK WITHOUT A
20 LICENSE WAS UNFAIR COMPETITION.

21 HERE THE TRIAL COURT GRANTED THE SUMMARY
22 JUDGMENT FOR THE TRIBAL CORPORATION. IN AFFIRMING THAT
23 SUMMARY JUDGMENT, THE COURT OF APPEAL REJECTED THE
24 CONTRACTOR'S ARGUMENT THAT B&P CODE SECTION 7031 WAS NOT
25 ENFORCEABLE IN A CONTRACT MADE WITH THE TRIBAL ENTITY
26 FOR WORK DONE ON TRIBAL LAND.

1 ALL RIGHT. WE DON'T HAVE A TRIBAL LAND ISSUE.
2 WE ALL UNDERSTAND THAT, SO I WILL SKIP OVER THE
3 CONSIDERATIONS THE DCA MADE WITH RESPECT TO THE TRIBAL
4 LAND ISSUE AND THE TRIBAL CONTRACT AND INSTEAD TURN TO
5 THE ISSUES THAT ARE GERMANE TO US.

6 THE COURT HELD THAT THE CONTRACT DID NOT
7 CREATE A FACT ISSUE AS TO WHETHER IT SUBSTANTIALLY
8 COMPLIED WITH THE REQUIREMENTS OF 7031 BECAUSE THERE WAS
9 NOTHING INDICATING THAT THE CONTRACTOR ACTED REASONABLY
10 AND IN GOOD FAITH TO MAINTAIN PROPER LICENSURE. AND THE
11 EVIDENCE REFLECTED THAT THE CONTRACTOR KNEW IT WAS
12 UNLICENSED AND DID NOT ACT PROMPTLY TO OBTAIN ITS
13 LICENSE. ALTHOUGH THE OWNER OF THE UNLICENSED SOLE
14 PROPRIETORSHIP WAS ALSO THE RESPONSIBLE MANAGING OFFICER
15 FOR A CORPORATION THAT HAD BEEN LICENSED, THE OWNER DID
16 NOT HOLD THE CORPORATION'S LICENSES AS AN INDIVIDUAL
17 AND, THEREFORE, COULD NOT PERFORM WORK UNDER THAT
18 LICENSE USING THE NAME OF THE SOLE PROPRIETORSHIP. THE
19 CONTRACTOR COULD NOT RELY ON EQUITABLE ESTOPPEL TO
20 CIRCUMVENT SECTION 7031.

21 AGAIN, I THINK THAT THE ARGUMENT ADVOCATED
22 HERE IS THAT EITHER SPARTAN WAS THE CONTRACTING PARTY
23 OR, ALTERNATIVELY, THAT MR. BEREKI WAS OPERATING UNDER
24 SPARTAN'S LICENSE. THE SECOND PART OF THAT ARGUMENT IS
25 UNDONE BY THE 29 PALMS CASE, WHICH BASICALLY HOLDS THAT
26 AN INDIVIDUAL, SUCH AS MR. BEREKI, CANNOT RELY -- IF

1 HE'S CONTRACTING ON HIS OWN, CANNOT RELY ON HIS
2 CORPORATION'S LICENSE TO CONTRACT.

3 SO WE HAVE TO NOW TURN TO THE ULTIMATE FACTUAL
4 ISSUE THAT THE COURT MUST DECIDE. AND SO THAT REALLY
5 TURNS ON JUST WHO WERE THE CONTRACTING PARTIES TO
6 WHATEVER THIS AGREEMENT WAS, HARKENING BACK TO MY
7 INITIAL DISCUSSION ABOUT THE NECESSARY ELEMENTS FOR A
8 CONTRACT.

9 CLEARLY, THE HUMPHREYS INTENDED TO ENGAGE
10 SOMEONE TO DO THE WORK ON THEIR SINGLE UNIT IN OR ABOUT
11 APRIL OF 2012. I HAVE BEEN TOLD AND THE EVIDENCE IS A
12 LITTLE UNCLEAR HERE, BUT WHAT I UNDERSTAND IS THAT WHAT
13 HAPPENED IS THAT A SECOND UNIT WAS PURCHASED BY MR. AND
14 MRS. HUMPHREYS APPROXIMATELY TWO TO FOUR MONTHS AFTER
15 THIS APRIL 2012 E-MAIL EXCHANGE OCCURRED. AND THAT
16 WHATEVER WORK IN ROLLING THAT SECOND UNIT INTO THE
17 INITIAL UNIT WERE, THAT WAS ALSO SUBJECT TO WHATEVER THE
18 AGREEMENT WAS BETWEEN THE PARTIES.

19 AND I HAVE TO SAY, IT WAS AT A CERTAIN LEVEL
20 OF CONCERN THAT -- WHEN I SAY "WHATEVER THE AGREEMENT
21 WAS," IT'S BECAUSE ULTIMATELY IT'S STILL, EVEN TO THIS
22 DAY AFTER ALL THE EVIDENCE, STILL NOT CLEAR WHAT THE
23 AGREEMENT WAS. JUST A LESSON IN OR COMMENT ON THE FACT
24 THAT THESE TYPES OF CONTRACTS, PARTICULARLY WE'RE
25 DEALING WITH TENS OF THOUSANDS, ULTIMATELY HUNDREDS OF
26 THOUSANDS OF DOLLARS, NEED TO BE NAILED DOWN IN DETAIL,

1 IN WRITING. THAT WRITING SUBSCRIBED TO WITH THE
2 SIGNATURES OF THE PARTIES THAT ARE CONTRACTING.

3 WITH RESPECT TO THE SECOND PROPERTY, I FIND NO
4 WRITING THAT ACTUALLY DETAILS WHAT WAS TO BE DONE ON THE
5 SECOND PROPERTY OR HOW IT WAS TO BE INCLUDED IN THE
6 INITIAL CONTRACT. I SUPPOSE IT COULD BE CONSIDERED AS
7 SOME FORM OF A CHANGE ORDER THAT THE CODE EVEN REQUIRES
8 CHANGE ORDERS BE IN WRITING AND BE ATTACHED TO THE
9 ORIGINAL CONTRACT.

10 WHAT I DO FIND HERE IS THAT NOTHING IN THE
11 APRIL 2012 E-MAILS OR THE MEETINGS AND DISCUSSIONS
12 REVEALS SPARTAN AS THE CONTRACTING PARTY WITH THE
13 HUMPHREYS. ALL OF THE LANGUAGE RELATES TO MR. BEREKI
14 INDIVIDUALLY.

15 MY CONCERN HERE -- AND I AM SORRY IF THIS
16 SOUNDS POLITICAL, BUT I WILL BORROW FROM SOMETHING THAT
17 THEN-SPEAKER OF THE HOUSE NANCY PELOSI SAID WITH RESPECT
18 TO THE ACA, THE AFFORDABLE CARE ACT. WE NEED TO PASS IT
19 SO YOU CAN FIND OUT WHAT'S INSIDE OF IT. HERE WE HAVE A
20 SITUATION WHERE, IN HINDSIGHT, IT -- THE CONTRACT, IN
21 SOME FORM OR FASHION, NEEDED TO BE SIGNED BEFORE WE
22 COULD FIND OUT WHO THE CONTRACTING PARTIES WERE. THAT'S
23 SILLY.

24 THE ULTIMATE FINDING HERE IS THAT, AS WE SEE,
25 ALL THE PAYMENTS INITIALLY OVER SEVERAL MONTHS WERE MADE
26 TO MR. BEREKI INDIVIDUALLY. MR. BEREKI'S ACCOUNTS

1 PERSONALLY PAID FOR THE WORK ONCE HE WAS COMPENSATED BY
2 THE HUMPHREYS. THE PAYMENTS TO SPARTAN SHOW UP SOME
3 MONTHS LATER AND THEY DO NOT REFLECT ANY SORT OF
4 RETROSPECTIVE MODIFICATION OF THE INITIAL AGREEMENT OR A
5 SUBSTITUTION OF SPARTAN AS THE CONTRACTOR HERE. AGAIN,
6 THIS IS THE PROBLEM WITH TRYING TO DO THINGS ON AN AD
7 HOC BASIS.

8 THE COURT NOW FINDS THAT THIS CONTRACT WAS
9 BETWEEN MR. HUMPHREYS AND MR. BEREKI INDIVIDUALLY.
10 THERE WAS NO CONTRACT WITH SPARTAN, NOR WAS THERE ANY
11 MECHANISM OR FORM WITHIN WHICH THE HUMPHREYS COULD
12 UNDERSTAND THAT SPARTAN WAS THE ACTUAL CONTRACTING PARTY
13 AS IS ASSERTED BY MR. BEREKI. GIVEN THOSE
14 CIRCUMSTANCES, SINCE WE KNOW MR. BEREKI DID NOT AND DOES
15 NOT POSSESS A CONTRACTOR'S LICENSE -- AND, ULTIMATELY, I
16 WOULD JUST TELL YOU LAWYERS TO TAKE A LOOK AT A CASE
17 ENTITLED MW ERECTORS VERSUS NIEDERHAUSER. IT'S A CASE
18 OF 2005. I DON'T HAVE THE CITE IN FRONT OF ME AT THE
19 MOMENT. I THINK IT'S REPORTED AT 34 CAL. 4.

20 THE REASON I CITE TO THE CASE, NUMBER ONE,
21 IT'S A CALIFORNIA SUPREME COURT CASE. NUMBER TWO, IT IS
22 CONSIDERED BY MANY TO BE THE BELLWETHER CASE ON THE
23 ISSUE OF CONTRACTOR RESPONSIBILITY OR UNLICENSED
24 CONTRACTOR RESPONSIBILITY. MW ERECTORS DID NOT HAVE A
25 LICENSE AT THE TIME THAT IT WAS TO DO THE HEAVY STEEL
26 CONSTRUCTION FOR A HOTEL OVER BY DISNEYLAND. SPENT

1 \$2 MILLION PUTTING UP HEAVY STEEL. THERE WAS A DISPUTE
2 BETWEEN THE GENERAL CONTRACTOR OR THE CONTRACTING PARTY,
3 NIEDERHAUSER, AND MW ERECTORS, SO NIEDERHAUSER ELECTED
4 NOT TO PAY THE \$2 MILLION TO MW ERECTORS. IT TURNED OUT
5 THAT MW ERECTORS LEARNED IN HINDSIGHT THAT THEY DIDN'T
6 HAVE THEIR LICENSE AT THE TIME AND HAD LOST ITS LICENSE
7 OR DROPPED THEIR LICENSE BY EXPIRATION OF TIME, SO THEY
8 WENT AND GOT THE LICENSE. I DON'T THINK THE WORK HAD
9 BEEN ENTIRELY COMPLETED AT THE TIME THAT IT DID
10 RE-OBTAIN THE LICENSE.

11 THE SUPREME COURT IN REVERSING THE COURT OF
12 APPEAL ON THIS ISSUE FOUND THAT THE CONTRACTOR'S LICENSE
13 LAW IS DRACONIAN IN ITS EFFECT, BUT THAT'S THE INTENT OF
14 THE LEGISLATURE. THE LEGISLATURE EXPECTS CONTRACTORS TO
15 BE LICENSED AT ALL TIMES DURING THE PERFORMANCE OF WORK
16 ON A PROJECT, AND IN FAILING TO BE SO LICENSED AT ANY
17 POINT IN TIME, SUBJECT TO THE FORFEITURE.

18 AND SO IN MY OPINION, THE FORFEITURE IS
19 REQUIRED HERE, AND THAT IS DISGORGEMENT. AND I KNOW MR.
20 BISSELL CITED A CASE. I WOULD CITE TO YOU ALATRISTE
21 VERSUS CESAR'S EXTERIOR DESIGNS, INC. THIS IS A CASE AT
22 183 CAL.APP.4 656, WHICH STANDS FOR THE PROPOSITION
23 UNDER THE STATUTE AUTHORIZING RECOVERY OF ALL
24 COMPENSATION PAID TO AN UNLICENSED CONTRACTOR. THE
25 UNLICENSED CONTRACTOR WAS REQUIRED TO RETURN ALL
26 COMPENSATION RECEIVED WITHOUT REDUCTIONS OR OFFSETS FOR

1 THE VALUE OF MATERIALS USED IN THE PROJECT.

2 THERE ARE PLENTY OF OTHER CASES IN THIS
3 PARTICULAR AREA ALL SAYING ROUGHLY THE SAME THING,
4 WHETHER IT COMES TO PAYMENTS FOR MATERIALS OR PAYMENTS
5 TO SUBCONTRACTORS. AS INDICATED BY EXHIBIT 32, THE
6 DISGORGEMENT AMOUNT IS THE \$848,000.

7 THAT, I THINK, TAKES CARE OF THE
8 CROSS-COMPLAINT, THE FIRST CAUSE OF ACTION. NOW, I
9 INVITE COUNSEL TO MEET TOGETHER AND SEE WHERE WE GO FROM
10 HERE.

11 MR. RUSSO: THANK YOU, YOUR HONOR.

12 THE COURT: COME BACK AND LET ME KNOW IF YOU CAN DO
13 THAT IN THE NEXT 20 MINUTES. I WOULD APPRECIATE THAT.

14 MR. RUSSO: THANK YOU, YOUR HONOR.

15 MR. BISSELL: OKAY. THANK YOU, YOUR HONOR.

16 THE COURT: OKAY.

17 MR. RUSSO: BY THE WAY, I USED THAT MW ERECTORS
18 CASE RIGHT AFTER IT WAS DECIDED IN ANOTHER CASE WITH
19 JUDGE JOHNSTON FOR DISGORGEMENT, AND I REMEMBER IT BEING
20 THAT CASE AT THE TIME.

21 THE COURT: IT'S STILL CITED IN AT LEAST ONE OF THE
22 TWO CASES THAT I JUST READ FROM.

23 MR. RUSSO: YEAH.

24 THE COURT: I WAS RELATING THE STORY TO ONE OF OUR
25 OUT-OF-COUNTY ASSIGNED JUDGES YESTERDAY IN THE LUNCH
26 ROOM TO WHICH SHE SAID THANK YOU. SHE HAD ALSO USED

1 THAT CASE ON A NUMBER OF OCCASIONS.

2 MR. RUSSO: MINE WAS AFFIRMED ALSO IN THIS
3 COURTROOM.

4 THE COURT: PARDON ME?

5 MR. RUSSO: THAT ONE WENT UP ON APPEAL AND IT WAS
6 AFFIRMED ON DISGORGEMENT, BUT I REPRESENTED THE PERSON
7 WANTING THE DISGORGEMENT AT THE TIME.

8 THE COURT: I UNDERSTAND.

9 (RECESS.)

10 THE COURT: ALL RIGHT. WHAT'S THE PLAN?

11 MR. RUSSO: WELL, WE'RE IN MUTUAL AGREEMENT THAT
12 THE REMAINING CLAIMS SHOULD BE STAYED AS THIS ONE PRETTY
13 MUCH CUTS THE LEGS OUT FROM UNDERNEATH EVERYTHING. THE
14 QUESTION WE HAVE, AND I DON'T KNOW THE ANSWER, BUT WE'RE
15 HOPING THAT MAYBE YOU DO, IS, IS THERE A WAY TO HAVE AN
16 ORDER STAY IN THE REMAINING CLAIMS AND HAVE SOME SORT OF
17 JUDGMENT BE ENTERED ON WHAT WE HAVE SO FAR SO THAT COULD
18 POSSIBLY BE TAKEN UP ON APPEAL AT THIS POINT?

19 THE COURT: I THINK YOU'RE GOING TO END UP HAVING
20 TO DO IT ALL OR NOTHING.

21 MR. BISSELL: IT WOULD BE SIMILAR TO I THINK IT'S
22 CCP 637, WHICH ALLOWS FOR STAYING OF THE TRIAL OF THE
23 DEFENSE PENDING THE ENTRY OF FINAL JUDGMENT ON OTHER
24 CAUSES OF ACTION. THERE IS CAUSES OF ACTION, BUT THE
25 THINKING IS IT'S JUST SORT OF THE OTHER SIDE OF THE
26 COIN. TO THINK -- OUR THINKING IS THAT WE COULD SPEND

1 THE NEXT THREE DAYS PUTTING ON EVIDENCE OF DAMAGES THAT
2 AREN'T GOING TO AMOUNT TO THE AMOUNT OF DISGORGEMENT.
3 SO THERE'S REALLY NO POINT OF THAT, BUT THOSE ARE GOOD
4 CAUSES OF ACTION.

5 NOW, IF THE COURT'S JUDGMENT ON THE FIRST
6 CAUSE OF ACTION IS TAKEN UP ON APPEAL, AND SOMEHOW I
7 DON'T BELIEVE IT WOULD BE, BUT IF IT HAPPENED TO BE
8 OVERTURNED, WE DON'T WANT TO HAVE TO COME BACK AND BE
9 LIMITED TO ONLY TRYING THAT ONE CAUSE OF ACTION, HAVING
10 DISMISSED WHAT ARE ALSO, WE BELIEVE, GOOD MERITORIOUS
11 CAUSES OF ACTION. BUT AS WE SIT HERE TODAY, IT JUST
12 MAKES NO SENSE TO GO FORWARD AT THIS TIME ON ANY OF
13 THOSE CAUSES OF ACTION.

14 MR. RUSSO: FUNDAMENTALLY, YOUR FINDINGS WOULD ALSO
15 BE THE DEFENSE TO THE PLAINTIFFS' CLAIM IN ITS
16 COMPLAINT. BECAUSE YOU FOUND THAT BEREKI WAS THE
17 CONTRACTOR, HE'S UNLICENSED, AND, THEREFORE, THE GOODS
18 AND MATERIALS SUPPLIED BY SPARTAN, WHICH IS THE CLAIM,
19 WE LOSE BASED ON THAT FINDING. BUT WE HAVEN'T TRIED
20 THAT CAUSE OF ACTION. THAT'S ESSENTIALLY WHAT WE GET.
21 WE'RE IN TOTAL AGREEMENT THAT IT DOES NOT MAKE SENSE TO
22 PROCEED.

23 MR. BISSELL: AND IT DOESN'T MAKE SENSE TO DISMISS
24 PREMATURELY WHILE THERE IS STILL ANY UNCERTAINTY AS TO
25 THE FINALITY OF THE COURT'S RULING IN THE FIRST CAUSE OF
26 ACTION.

1 THE COURT: WELL, I'M NOT SURE THAT YOUR APPELLATE
2 PRACTICE IS GOING TO BE SUSCEPTIBLE IN THAT KIND OF
3 PROCEDURE. MY CONCERN IS WHAT THE COURT OF APPEAL
4 EXPECTS IS BASICALLY A JUDGMENT ON ALL OF THE ISSUES.
5 IF THERE'S SOME MECHANISM; I.E., A STAY, I'D LIKE TO
6 KNOW WHAT THE AUTHORITY IS FOR THAT. I AM GOING TO HAVE
7 TO LEAVE THAT TO YOU, BUT IN MY OWN APPELLATE
8 EXPERIENCE, I HAVE, IN ONE CASE, HAD A TRIAL WHERE THE
9 LEAD PLAINTIFF WAS BIFURCATED OUT, CASE TRIED, I LOST.
10 FILED A NOTICE OF APPEAL. MEANWHILE, WE HAD TO COME
11 BACK FOR A SECOND BITE OF THE APPLE WITH RESPECT TO THE
12 BALANCE OF THE CLASS. AND WHAT I DID IS I STIPULATED A
13 JUDGMENT IN FAVOR OF THE CLASS AND AGAINST MY CLIENT,
14 SUBJECT TO REVIEW ON APPEAL OF BOTH HALVES OF THIS CASE.
15 AND THE COURT OF APPEAL, IN THAT PARTICULAR CASE,
16 SUBSCRIBED TO THE APPROACH AND SAID, NO, THIS WAS AN
17 ACCEPTABLE PROCESS. BUT WE HAVE RESOLVED THROUGH THAT
18 PROCESS BOTH THE LEAD PLAINTIFFS' CLAIMS AND THE CLASS
19 CLAIMS. SO EVERYTHING WAS THERE READY FOR THE COURT OF
20 APPEAL TO DECIDE. ULTIMATELY, THAT CASE WENT TO THE
21 STATE SUPREME COURT.

22 YOU GUYS WANT TO CHECK -- DO MORE RESEARCH
23 THIS AFTERNOON AND COME BACK AND TELL ME IN THE MORNING?

24 MR. RUSSO: I AM ASSUMING WE COULD CRAFT SOME SORT
25 OF STIPULATION THAT ULTIMATELY --

26 THE COURT: WHAT YOU SAY MAKES PERFECT SENSE.

1 MR. RUSSO: MAKE FINDINGS SUCH THAT IT IS THAT YOU
2 FOUND FOR THE AFFIRMATIVE DEFENSE ON THE COMPLAINT ALSO.

3 MR. BISSELL: WELL, IF I UNDERSTAND YOUR HONOR
4 CORRECTLY, I THINK THE CONCERN IS THAT THE COURT OF
5 APPEALS IS NOT GOING TO BE INTERESTED IN ANYTHING SHORT
6 OF A FINAL JUDGMENT ON THIS, AND THE FINAL JUDGMENT HAS
7 TO INCLUDE ALL CAUSES OF ACTION. IS THAT CORRECT?

8 THE COURT: PRECISELY. AND, AGAIN, YOU KNOW, I AM
9 ALL FOR SAVING YOUR CLIENTS ON BOTH SIDES AS MUCH MONEY
10 AS POSSIBLE.

11 MR. BISSELL: I'M NOT SURE A STIPULATION ON OUR
12 PART, EVEN IF -- IT'S GOING TO DO IT. BECAUSE WE WOULD
13 CERTAINLY STIPULATE --

14 THE COURT: I GUESS THE QUESTION IS WHAT'S THE
15 WORST THAT COULD HAPPEN. IT GOES TO THE DCA, THEY GO
16 WE'RE NOT GOING TO ACCEPT THE IDEA OF THE BALANCE OF A
17 CASE BEING STAYED, SEND IT BACK TO COMPLETE THE CASE AND
18 THEN WE WILL REVIEW IT ON APPEAL.

19 MR. BISSELL: YEAH.

20 THE COURT: FINE. IT COMES BACK IN PROBABLY NINE
21 MONTHS TO A YEAR, AND WE GO ON AND TRY THE BALANCE OF
22 THE CASE. I SUPPOSE THAT'S ONE POSSIBILITY. ON THE
23 OTHER HAND, OF COURSE, THAT SUBJECTS ALL OF US TO SOME
24 CRITICISM FROM OUR FRIENDS ACROSS THE STREET AT THE DCA.

25 MR. BISSELL: I DON'T WANT TO DO THAT.

26 THE COURT: WELL, I WOULD LIKE TO THINK THAT THEY

1 WOULD APPRECIATE THE CONCEPT OF NOT CONSUMING A LOT OF
2 EXTRA COURTROOM TIME THAT COULD BE PUT TO OTHER
3 PURPOSES; NOT CONSUMING ANY MORE OF YOUR CLIENT'S MONEY
4 I GUESS IS THE ULTIMATE ISSUE THAT RESOLVES THE CASE. I
5 DON'T HAVE A GOOD SENSE AS TO WHAT A PANEL OF THE DCA
6 WOULD DO OVER THIS.

7 MR. BISSELL: FRANKLY, YOUR HONOR, I'M NOT OVERLY
8 CONCERNED ABOUT THE PROSPECT OF APPEAL. I BELIEVE THAT
9 THE COURT'S STATEMENT, THE DECISION IS SOUND. AND I
10 HAVE SPOKEN TO MY CLIENTS ABOUT THAT AND WE TALKED ABOUT
11 THE RISK, YOU KNOW, IF YOU DO DISMISS, WHAT ARE THE
12 RISKS? WE HAVE AGREED THAT THE RISK IS MINIMAL. IF
13 NECESSARY, WE WILL DISMISS. WE WOULD JUST PREFER NOT
14 TO.

15 THE COURT: ALL RIGHT. LET'S ALL BE PRAGMATIC
16 LAWYERS AROUND HERE. AND PRAGMATISM CALLS FOR TRYING TO
17 KEEP THIS AS INEXPENSIVE AS POSSIBLE. TO DO ANOTHER
18 SEVERAL DAYS OF TRIAL, FOR PARTICULARLY NO GOOD REASON,
19 SEEMS TO ME TO BE THROWING IN GOOD MONEY AFTER BAD AT
20 THIS POINT. IT MAY BE THAT THE DCA WILL TURN IT RIGHT
21 AROUND, AS I SAID. IT MAY BE THAT THEY WILL AFFIRM AND
22 THAT WILL BE EFFECTIVELY THE END OF IT.

23 I LIKE THE IDEA. MAYBE YOU FOLKS, INSTEAD OF
24 COMING BACK TOMORROW, COULD WORK ON SOMETHING OVER THE
25 NOON HOUR AND SEE WHAT YOU PUT TOGETHER.

26 MR. RUSSO: I AM THINKING ALONG THE LINES OF AN

1 OFFER OF PROOF ON THE PLAINTIFFS' CLAIMS AND THEN YOU
2 FIND FOR THE DEFENSE ON THAT SO WE WOULD HAVE
3 EFFECTIVELY LAID THAT OUT.

4 THE COURT: WELL, ON THE PLAINTIFFS' CLAIMS, YEAH,
5 IT'S GOING TO BE A LACK OF STANDING --

6 MR. RUSSO: SURE.

7 THE COURT: -- AND THE 7031 ISSUE, THE FACTUAL
8 FINDING THAT SPARTAN WAS NOT THE CONTRACTING PARTY AND
9 HAS NO STANDING IN AND OF ITSELF.

10 MR. RUSSO: YES, THAT'S WHERE I WAS GOING.

11 THE COURT: ON THE DEFENSE CROSS-COMPLAINANTS'
12 SIDE, THERE ARE OTHER REMAINING ISSUES WITH RESPECT TO
13 THE TERMINATIONS THAT THE CROSS-COMPLAINANT MAY WISH OR
14 MAY NOT WISH TO HAVE ADJUDICATED AT THIS POINT.

15 MR. BISSELL: IT'S CLEARLY EXPEDIENCY AT THIS
16 POINT. WE HAVE NOTHING TO GAIN BY GOING FORWARD WITH
17 THE CROSS-COMPLAINT. IT'S JUST A MATTER OF BEING
18 CAUTIOUS AND NOT LETTING GOOD CAUSES OF ACTION GO BY THE
19 BOARD IF -- UNTIL THEY BECOME NECESSARY.

20 THE COURT: EXCUSE ME FOR A SECOND. I HAVE TO GO.
21 IF YOU WOULDN'T MIND COMING BACK AT 1:45 TO FILL ME IN
22 ON WHERE YOU'RE GOING. MAYBE WE WILL GO ON THE RECORD
23 AT THAT POINT IN TIME. MY APOLOGIES.

24 MR. RUSSO: THANK YOU, YOUR HONOR.

25 MR. BISSELL: THANK YOU, YOUR HONOR.

26 THE COURT: THE TRAIN IS LEAVING THE STATION AT THE

1 MOMENT .

2 (RECESS .)

3 //

1 SANTA ANA, CALIFORNIA; MARCH 28, 2017

2 *****

3 AFTERNOON SESSION

4 (THE FOLLOWING PROCEEDINGS

5 WERE HELD IN OPEN COURT.)

6
7 THE COURT: ALL RIGHT. DO WE HAVE AN ANSWER TO THE
8 GORDIAN KNOT PROBLEM?

9 MR. BISSELL: WE MIGHT, YOUR HONOR. WE HAVE COME
10 UP WITH SOMETHING THAT'S ACCEPTABLE TO BOTH OF US.

11 THE COURT: THAT'S HALF THE BATTLE.

12 MR. BISSELL: IT'S ACCEPTABLE TO THE TWO OF US, BUT
13 THAT DOESN'T NECESSARILY MEAN IT'S GOING TO FLY. WE
14 WILL RUN IT BY YOU.

15 MR. RUSSO: WE GOT HOUSEKEEPING ON THE COMPLAINT
16 ITSELF, AND WHAT I WOULD LIKE TO DO IS THEN MAKE AN
17 OFFER OF PROOF OF WHAT THE EVIDENCE WOULD BE. THEY
18 ACCEPT THE OFFER OF PROOF, BUT YOU RULE BASED ON THE
19 DEFENSES OF THE LICENSURE AND STANDING AGAINST THE
20 PLAINTIFF ON THAT.

21 THE COURT: OKAY.

22 MR. RUSSO: THAT WAY WE HAVE A JUDGMENT ON A
23 COMPLAINT FOR THE SAME REASONS.

24 THE COURT: OKAY.

25 MR. RUSSO: AND THEN WE HAVE THE OTHER
26 HOUSEKEEPING.

1 MR. BISSELL: AS TO THE REMAINING CAUSES OF ACTION
2 ON THE FIRST AMENDED CROSS-COMPLAINT, EVERYBODY IS IN
3 AGREEMENT THAT WE HANDLE IT THIS WAY:

4 THOSE CAUSES OF ACTION WOULD BE DISMISSED
5 WITHOUT PREJUDICE.

6 IF JUDGMENT ON THE FIRST CAUSE OF ACTION
7 BECOMES FINAL, THE DISMISSAL WITHOUT PREJUDICE WILL
8 CONVERT TO DISMISSAL WITH PREJUDICE.

9 PENDING JUDGMENT BECOMING FINAL ON THE FIRST
10 CAUSE OF ACTION, THE STATUTE OF LIMITATIONS ON THE
11 RE-FILING OF THE DISMISSED CAUSES OF ACTION IS WAIVED.

12 IF THE NEW -- IF A NEW ACTION IS FILED ON THE
13 DISMISSED CAUSES OF ACTION, DISCOVERY IS DEEMED
14 COMPLETED AND WILL NOT BE RE-OPENED.

15 THE NEWLY FILED CASE WILL BE CONSOLIDATED WITH
16 THE REMANDED CASE FOR TRIAL.

17 THE COURT: I THINK IT MAKES SENSE. DO YOU?

18 MR. BISSELL: I THINK IT COVERS IT.

19 THE COURT: I THINK THAT KEEPS THE DOOR FROM BEING
20 SLAMMED IN YOUR FACE SHOULD IT FOR SOME REASON COME
21 BACK, ON ONE HAND. ON THE OTHER HAND, IT SHOULD COME
22 BACK PER STATUS QUO.

23 MR. BISSELL: THAT WAS THE INTENT.

24 THE COURT: AS TO -- TO BE SURE OF WHERE I AM
25 GOING, I HAVE PULLED OUT THE PLAINTIFF'S COMPLAINT, THE
26 COMMON COUNT, AND SERVICES RENDERED, AND COMMON ACCOUNT

1 OPEN BOOK ACCOUNT. AND I HAVE ALSO IN HAND THE FIRST
2 AMENDED CROSS-COMPLAINT FOR DAMAGES FOR NEGLIGENCE,
3 FRAUD, ALTER EGO, PENALTY, ATTORNEY'S FEES,
4 DISCOURAGEMENT AND RECOVERY AGAINST CONTRACTOR'S LICENSE
5 BOND. I PRESUME YOU TWO WANT PART OF THAT RECOVERY FROM
6 CONTRACTOR'S LICENSE BOND.

7 MR. BISSELL: WE WANT TO SAY THAT, YOUR HONOR.

8 THE COURT: OKAY. IS THAT NOT SOMETHING WE SHOULD
9 DEAL WITH NOW AS OPPOSED TO LATER, OR IS THAT AN ISSUE
10 THAT MIGHT BE SUBSUMED BY THIS DETERMINATION OF THE
11 LICENSE?

12 MR. BISSELL: HERE IS MY THINKING, YOUR HONOR. THE
13 CONTRACTOR'S LICENSE BONDS WERE ISSUED TO SPARTAN
14 CONSTRUCTION.

15 THE COURT: WHICH I DETERMINED WAS NOT THE
16 CONTRACTING PARTY.

17 MR. BISSELL: WAS NOT THE CONTRACTOR. NOW SPARTAN
18 DID PERFORM WORK ON THE JOB. AND IF NECESSARY, WE'RE
19 PREPARED TO PUT ON EVIDENCE THAT SPARTAN CONSTRUCTION,
20 ALONG WITH MR. BEREKI, VIOLATED PROVISIONS OF THE
21 CONTRACTOR'S LICENSE LOG, WHICH WOULD MAKE THOSE BONDS
22 LIABLE. AT THIS POINT, WE'RE PREPARED TO DEFER THAT
23 ALONG WITH THE OTHER CAUSES OF ACTION.

24 THE COURT: ALL RIGHT.

25 MR. RUSSO: IT'S KIND OF LIKE I FORGOT THEY EXISTED
26 IN THE BEGINNING. IT'S ANOTHER ISSUE.

1 THE COURT: WELL, WELCOME TO THE BAR EXAM.

2 MR. RUSSO: YOUR HONOR, SO I THINK THE FIRST STEP
3 WOULD BE THE OFFER OF PROOF.

4 THE COURT: PHASE ONE.

5 MR. RUSSO: YES, YOUR HONOR.

6 THE COURT: THE RUSSO PRESENTATION OFFER OF PROOF.
7 SIR, IF YOU PLEASE.

8 MR. RUSSO: EXCUSE ME, YOUR HONOR.

9 THE COURT: IF YOU PLEASE.

10 MR. RUSSO: IF IT PLEASE THE COURT.

11 YOUR HONOR, THE PLAINTIFF, SPARTAN ASSOCIATES,
12 WOULD MAKE AN OFFER OF PROOF THAT, IF CALLED, ADAM
13 BEREKI WOULD BE THE WITNESS, AND THE TESTIMONY WOULD BE
14 THAT SPARTAN ASSOCIATES HAD RENDERED GOODS AND SERVICES
15 TO THE HUMPHREYS, THE DEFENDANTS, AT THE FAIR MARKET
16 VALUE FOR THE SERVICES AND GOODS OF \$82,821.53 TO BE
17 BACKED UP BY INVOICES AND TESTIMONY ABOUT THE REASONABLE
18 VALUE OF THOSE SERVICES. THAT WOULD BE ON THE FIRST
19 CAUSE OF ACTION, QUANTUM MERUIT.

20 AND THEN FOR THE SECOND CAUSE OF ACTION, GO
21 HAND IN HAND THAT IT WAS AN OPEN BOOK ACCOUNT.
22 ACCOUNTING WAS RENDERED TO THE HUMPHREYS AS DEFENDANTS
23 THAT -- THEY WERE GIVEN THE ACCOUNTINGS AND THE SUM WAS
24 \$82,821.53 THAT WAS STILL DUE. IT WOULD BE CLAIMED ON
25 THE SECOND CAUSE OF ACTION.

26 THE COURT: AND THOSE CLAIMS, I UNDERSTAND, ARE

1 BASED UPON THE VIEW OF PLAINTIFF SPARTAN THAT IT WAS THE
2 GENERAL CONTRACTOR ON THE PROJECT?

3 MR. RUSSO: THAT'S CORRECT, THAT SPARTAN ASSOCIATES
4 WAS THE GENERAL CONTRACTOR, AND THAT IT WAS DULY
5 LICENSED AT ALL TIMES TO PERFORM IN THAT WAY.

6 THE COURT: OKAY. AND SO BASED ON THAT OFFER OF
7 PROOF, AS WE HAVE JUST RECENTLY DISCUSSED, I WOULD FIND
8 THAT SPARTAN DOES NOT HAVE STANDING, AS I DETERMINED
9 EARLIER TODAY THAT MR. BEREKI WAS THE PURPORTED GENERAL
10 CONTRACTOR ON THE CONTRACT. SPARTAN MAY HAVE BEEN
11 APPARENTLY SUBSTITUTED, BUT IT IS CERTAINLY NOT WITH THE
12 PERMISSION OR AGREEMENT OF MR. AND MRS. HUMPHREYS.

13 SO BASED ON THAT, I WOULD INDICATE JUDGMENT
14 FOR DEFENDANT ON THE COMPLAINT. DEFENDANTS, PLURAL ON
15 THE COMPLAINT.

16 THEN MR. BISSELL, I GUESS WE NEED YOUR RECORD
17 WITH RESPECT TO WHAT YOU WANT TO DO OFFICIALLY WITH
18 RESPECT TO THE BALANCE OF THE CAUSES OF ACTION.

19 MR. BISSELL: THANK YOU, YOUR HONOR.

20 THE PARTIES HAVE DISCUSSED AND HAVE AGREED AND
21 ARE WILLING TO STIPULATE TO HANDLING THE REMAINING
22 CAUSES OF ACTION ON THE FIRST AMENDED CROSS-COMPLAINT AS
23 FOLLOWS:

24 THE MANY CAUSES OF ACTION IN THE ENTIRETY WILL
25 BE DISMISSED -- ARE BEING DISMISSED WITHOUT PREJUDICE.
26 IF JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMES FINAL,

1 THE DISMISSAL WITHOUT PREJUDICE WILL BE CONVERTED TO
2 DISMISSAL WITH PREJUDICE. PENDING JUDGMENT ON THE FIRST
3 CAUSE OF ACTION BECOMING FINAL, THE STATUTE OF
4 LIMITATIONS ON THE RE-FILEING OF AN ACTION ON THE
5 DISMISSED CAUSES OF ACTION IS WAIVED.

6 THE COURT: OR TOLLED?

7 MR. BISSELL: WELL, ACTUALLY, WE DISCUSSED THAT. I
8 THINK -- I DON'T KNOW THAT TOLLING HELPS BECAUSE, AT
9 THIS POINT IN TIME, ALL OF THE STATUTES WOULD HAVE RUN.
10 WE COULDN'T -- I THINK TOLLING STOPS IT AS OF NOW, AND
11 NOW WOULD BE TOO LATE TO RE-FILE.

12 THE COURT: UNDERSTOOD. OKAY.

13 MR. BISSELL: IF A NEW ACTION IS FILED ON THE
14 DISMISSED CAUSES OF ACTION, DISCOVERY IS DEEMED
15 COMPLETED AND WILL NOT BE RE-OPENED. THE NEWLY FILED
16 CASE WILL BE CONSOLIDATED WITH THE REMANDED CASE FOR
17 TRIAL. AND THAT'S -- THAT IS THE STIPULATION.

18 THE COURT: DOES THAT COMPORT WITH YOUR
19 UNDERSTANDING, MR. RUSSO?

20 MR. RUSSO: YES, YOUR HONOR. ON BEHALF OF SPARTAN
21 ASSOCIATES, SO STIPULATED.

22 THE COURT: MR. BEREKI, HOW ABOUT YOU?

23 MR. BEREKI: SO STIPULATED.

24 THE COURT: THE COURT ACCEPTS THE STIPULATION.
25 PURSUANT THEN TO MR. BISSELL'S MOTION, THE COURT WILL
26 ORDER THE REMAINING CAUSES OF ACTION, NEGLIGENCE, FRAUD,

1 ALTER EGO, PENALTY, ATTORNEY'S FEES, AND RECOVERY
2 AGAINST THE CONTRACTOR'S LICENSE BOND TO BE DISMISSED
3 WITHOUT PREJUDICE. THE JUDGMENT WILL BE ON THE SOLE
4 REMAINING CAUSE OF ACTION FOR DISCOURAGEMENT; CORRECT?

5 MR. BISSELL: CORRECT.

6 THE COURT: AND THE COURT UNDERSTANDS AND ADOPTS
7 THE CONDITIONAL WAIVER OF THE STATUTE OF LIMITATIONS,
8 THAT CONDITION BEING WHETHER OR NOT THE -- TRULY THE DCA
9 RETURNS THIS CASE FOR RE-TRIAL ON A REVERSAL OF THE
10 COURT'S DETERMINATION.

11 MR. BISSELL: THANK YOU, YOUR HONOR.

12 THE COURT: GOOD WORK.

13 MR. RUSSO: THANK YOU VERY MUCH, YOUR HONOR.

14 THE COURT: SO MR. BISSELL, YOU'RE GOING TO PREPARE
15 THE PROPOSED JUDGMENT. CIRCULATED, OF COURSE, TO
16 MR. RUSSO AND MR. BEREKI.

17 MR. BISSELL: WILL DO.

18 THE COURT: SEND IT OVER HERE. I THINK THERE'S AN
19 APPROPRIATE PERIOD OF TIME WE CAN HOLD IT JUST TO MAKE
20 SURE IF THERE'S SOME OBJECTION, THAT THAT OBJECTION CAN
21 BE MADE AND FILED.

22 AND WE WILL TAKE IT FROM THERE.

23 MR. BISSELL: I WILL DO SO. THANK YOU. THANK YOU
24 FOR YOUR ATTENTION TO THIS CASE.

25 THE COURT: I JUST COMMENT -- I DON'T OFTEN SAY
26 THIS. ONE OF THE INTERESTING THINGS USUALLY IN A TRIAL

1 OF THIS NATURE, THERE'S A, QUOTE, BAD GUY AND A GOOD
2 GUY. I WOULD SAY ALL THREE OF YOU ARE VERY NICE PEOPLE.
3 I'M SORRY IT CAME TO THIS FOR A LOT OF REASONS. AND SO
4 THE JUDGMENT, YOU KNOW, IS WHAT IT IS. IT'S NOT A
5 REFLECTION ON YOUR HUMANITY OR PERSONHOOD. I WISH YOU
6 WELL.

7 MR. BISSELL: UNDERSTOOD, YOUR HONOR.

8 THE COURT: ALL OF YOU.

9 MR. BISSELL: THANK YOU, YOUR HONOR.

10 MR. HUMPHREYS: THANK YOU.

11 THE COURT: TAKE CARE. OH, CAN WE STIPULATE TO THE
12 EXHIBITS BEING RETURNED TO YOU ALL FOR SAFEKEEPING?

13 MR. RUSSO: I THOUGHT THE COURT WANTED TO KEEP THE
14 EXHIBITS.

15 THE COURT: GUESS AGAIN.

16 MR. RUSSO: YES, YOUR HONOR.

17 MR. BISSELL: YES, YOUR HONOR. OFF THE RECORD.

18 (OFF THE RECORD.)

19 //

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)

) SS

COUNTY OF ORANGE)

I, KELVIN K. DO, CSR #13803, COURT
REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE
FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT
STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 11, 2017.

Certified Copy; Adam Bereki

KELVIN K. DO, CSR #13803
OFFICIAL COURT REPORTER