

3-25-2013

Frontier Development Group v. Caravella Clerk's Record v. 2 Dckt. 40581

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COPY

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

2 of 2
2 of 11

Frontier Development Group, LLC
Michael Horn

LAW CLERK

Plaintiffs/Counterdefendants/Respondents

VS

Louis Caravella and Patricia Caravella

Defendants/Counterclaimants/Appellants

and

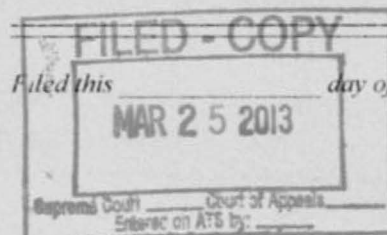
Yellowstone Do It Center

Plaintiff/Counterdefendant

Appealed from the District Court of the _____ Seventh _____ Judicial
District of the State of Idaho, in and for _____ Teton _____ County
Honorable Gregory W. Moeller _____, District Judge

Frederick J. Hahn, Brent J. Whiting, PO Box 50698 Idaho Falls, Idaho 83405
Attorney for Appellant

Michael Horn, Pro Se, P.O. Box 576, Bonita Springs, Florida 34133



By _____

Clerk

Deputy

410581

Supreme Court No. 40581-2012
Teton County No. CV 09-068

Frontier Development Group, LLC
Michael Horn
Plaintiffs/Counterdefendants/Respondents

VS

Louis Caravella and Patricia Caravella
Defendants/Counterclaimants/Appellants

and

Yellowstone Do It Center
Plaintiff/Counterdefendant

Frederick J Hahn, Esq.
Brent J. Whiting, Esq.
P.O. Box 50698
Idaho Falls, Idaho 83405
Attorney for Appellants

Michael Horn
P. O. Box 576
Bonita Springs, Florida 34133

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Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User	Judge
2/20/2009	NCOC	PHYLLIS	New Case Filed - Other Claims Jon J Shindurling
		PHYLLIS	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Swafford Law Office Receipt number: 0039511 Dated: 2/21/2009 Amount: \$88.00 (Check) For: Frontier Development Group, LLC (plaintiff) Jon J Shindurling
	ATRE	PHYLLIS	Plaintiff: Frontier Development Group, LLC Attorney Retained Larren K Covert Jon J Shindurling
	SMIS	PHYLLIS	Summons Issued Jon J Shindurling
3/11/2009	AFFD	GABBY	Affidavit Of Service Jon J Shindurling
	AFFD	GABBY	Affidavit Of Service Jon J Shindurling
4/6/2009		PHYLLIS	Filing: I7 - All Other Cases Paid by: Hahn Law Offices Receipt number: 0039974 Dated: 4/7/2009 Amount: \$58.00 (Check) For: Caravella, Louis (defendant) Jon J Shindurling
	ANSW	PHYLLIS	Answer and Counterclaim Jon J Shindurling
4/7/2009	SMIS	PHYLLIS	Summons Issued Jon J Shindurling
4/9/2009	ATRE	PHYLLIS	Defendant: Caravella, Louis Attorney Retained Frederick J Hahn III Gregory W Moeller
4/20/2009	NOTC	GABBY	Notice Of Deposition Duces Tecum/Louis Caravella Jon J Shindurling
	NOTC	GABBY	Notice Of Deposition Duces Tecum/Patricia Caravella Jon J Shindurling
5/18/2009	MISC	GABBY	Acknowledgment And Acceptance Of Service Jon J Shindurling
	NOTC	GABBY	Notice Of Service Jon J Shindurling
5/20/2009	MISC	GABBY	Acknowledgment And Acceptance Of Service Jon J Shindurling
	ANSW	GABBY	Answer To Counterclaim Jon J Shindurling
6/11/2009	DSAD	PHYLLIS	Disqualification of Judge - Administrative (batch process)
	ORDR	AGREEN	Administrative Order Gregory W Moeller
6/15/2009	NOTC	PHYLLIS	Notice of Change of Address Gregory W Moeller
6/23/2009	MOTN	GABBY	Motion For extension Of Time For Remittance Of Discovery Responses Gregory W Moeller
	HRSC	GABBY	Hearing Scheduled (Pull case for Review 07/07/2009 09:00 AM) Gregory W Moeller
7/7/2009	RE VW	PHYLLIS	Hearing result for Pull case for Review held on 07/07/2009 09:00 AM: Case Reviewed Will not sign unless set for hearing or other side stipulates Gregory W Moeller
7/9/2009	ATRE	PHYLLIS	Defendant: Caravella, Patricia Attorney Retained Frederick J Hahn III Gregory W Moeller
7/21/2009	MOTN	GABBY	Motion To Appear Telephonically At Hearing Gregory W Moeller
	HRSC	GABBY	Hearing Scheduled (Pull case for Review 08/04/2009 09:00 AM) Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User	Judge
7/30/2009	HRRS	PHYLLIS	Hearing Rescheduled (Motions 08/18/2009 02:00 PM)
8/17/2009	HRVC	PHYLLIS	Hearing result for Motions held on 08/18/2009 02:00 PM: Hearing Vacated to Extend Discovery Deadlines PA never appeared
8/18/2009	MINE	PHYLLIS	Minute Entry Hearing type: Motions Hearing date: 8/18/2009 Time: 3:23 pm Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number:
	ORDR	PHYLLIS	Order Granting Motion to Appear Telephonically at Hearing
	MINE	PHYLLIS	Minute Entry
8/20/2009	MOTN	PHYLLIS	Motion to Appear Telephonically
	NOTH	PHYLLIS	Notice Of Hearing
	HRSC	PHYLLIS	Hearing Scheduled (Motions 09/01/2009 02:00 PM) Motion for Extension of Time for Remittance of Discovery Requests
8/21/2009		PHYLLIS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Ron Swafford Receipt number: 0041608 Dated: 8/21/2009 Amount: \$2.00 (Check)
8/24/2009	MOTN	PHYLLIS	Motion to Consolidate
	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn III in Support of Motion to Consolidate
	NOTH	PHYLLIS	Notice Of Hearing
8/26/2009	MOTN	GABBY	Motion To Compel Discovery
	MOTN	GABBY	Motion For Protective Order
	AFFD	GABBY	Affidavit Of Frederick J. Hahn, III
	MISC	GABBY	Opposition To Motion For Extension Of Time; And Memorandum Supporting Motion To Compel and Motion For Protective Order Or To Strike Deposition Notices
	NOTH	GABBY	Notice Of Hearing
	MISC	PHYLLIS	Objection to Motion to Shorten Time
	MOTN	SHILL	Motion to Shorten Time
8/28/2009	MISC	PHYLLIS	Objection to Motion to Shorten Time
	NOTS	PHYLLIS	Notice Of Service

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User	Judge
9/1/2009	MINE	PHYLLIS	Minute Entry Hearing type: Status Conference Hearing date: 9/1/2009 Time: 2:34 pm Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford PA Fred Hahn DA
	ORDR	PHYLLIS	Order Granting Motion to Appear Telephonically
	ORDR	PHYLLIS	Order Shortening Time
	MOTN	PHYLLIS	Motion to Compel
	AFFD	PHYLLIS	Affidavit in Support of Motion to Compel
	DCHH	PHYLLIS	Hearing result for Motions held on 09/01/2009 02:00 PM: District Court Hearing Held Court Reporter: David marlowe Number of Transcript Pages for this hearing estimated at: less than 50
	HRSC	PHYLLIS	Hearing Scheduled (Pre-Trial Conference 02/16/2010 11:00 AM)
	HRSC	PHYLLIS	Hearing Scheduled (Court Trial 03/03/2010 09:00 AM)
		PHYLLIS	Notice Of Trial Setting and Order Governing Further Proceedings
9/9/2009	AFFD	PHYLLIS	Affidavit of Frederick J Hahn III
9/22/2009	NOTC	GABBY	Notice Of Service
12/1/2009	ORDR	PHYLLIS	Order Shortening Time
	ORDR	PHYLLIS	Order Granting Extension of Time
	ORDR	PHYLLIS	Order Granting Motions to Compel and for protective Order
	ORDR	PHYLLIS	Order on Motion to Consolidate
	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III
12/31/2009	MISC	PHYLLIS	Plaintiff's Fact and Expert Witness Witness Disclosure
1/11/2010	MISC	PHYLLIS	Witness Disclosure
	MISC	PHYLLIS	Plaintiff's Fact and Expert Witness Disclosure
2/3/2010	AFFD	GABBY	Affidavit Of Service Of Process
	MOTN	GABBY	Motion To Vacate And Reset The Trial
	AFFD	GABBY	Affidavit Of Frederick J Hahn, III
	MEMO	GABBY	Memorandum In support Of The Motion To Vacate And Reset The Trial
	NOTH	GABBY	Notice Of Hearing

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
2/3/2010	NOTC	GABBY	Notice Of Deposition Duces Tecum Of Michael Horn	Gregory W Moeller
	NOTC	GABBY	IRCO 30 (b)(6) Deposition Notice Duces Tecum Of Frontier Development Group, LLC	Gregory W Moeller
	HRSC	GABBY	Hearing Scheduled (Motions 02/16/2010 01:30 PM)	Gregory W Moeller
	HRVC	PHYLLIS	Hearing result for Pre-Trial Conference held on 02/16/2010 11:00 AM: Hearing Vacated	Gregory W Moeller
2/16/2010	NOTS	PHYLLIS	Notice Of Service	Gregory W Moeller
	MINE	PHYLLIS	Minute Entry Hearing type: Motions Hearing date: 2/16/2010 Time: 2:53 pm Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford Fred Hahn	Gregory W Moeller
	CONT	PHYLLIS	Hearing result for Court Trial held on 03/03/2010 09:00 AM: Continued	Gregory W Moeller
2/18/2010		PHYLLIS	Notice Of Trial Setting and Order Governing Further Proceedings	Gregory W Moeller
	DCHH	PHYLLIS	Hearing result for Motions held on 02/16/2010 01:30 PM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated at: 10	Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Court Trial 06/30/2010 09:00 AM)	Gregory W Moeller
	ORDR	SHILL	Order Referring Case to Mediation	Gregory W Moeller
2/23/2010	NOTC	GABBY	Notice Of Service	Gregory W Moeller
	NOTC	GABBY	Notice Of Service	Gregory W Moeller
	NOTS	PHYLLIS	Notice Of Service	Gregory W Moeller
2/26/2010	NOTC	GABBY	Notice Of Service	Gregory W Moeller
3/26/2010	MOTN	PHYLLIS	Motion in Limine	Gregory W Moeller
	MEMO	PHYLLIS	Memorandum in Support of Motion in Limine	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit in Support of Motion in Limine	Gregory W Moeller
4/12/2010	NOTC	GABBY	IRCP 30(b)(6) Deposition Notice Duces Tecum Of Frontier Development Group, LLC	Gregory W Moeller
	NOTC	GABBY	Notice Of Deposition Duces Tecum Of Michael Horn	Gregory W Moeller
4/14/2010	NOTC	GABBY	Notice Of Service	Gregory W Moeller
4/20/2010	MOTN	GABBY	Motion To Stay Discovery And Compel Mediation	Gregory W Moeller
4/21/2010	AFFD	GABBY	Affidavit In Support Of Motion To Compel	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
4/21/2010	MOTN	GABBY	Motion To Compel	Gregory W Moeller
4/28/2010	MOTN	PHYLLIS	Motion for Protective Order	Gregory W Moeller
5/7/2010	NOTS	PHYLLIS	Notice Of Service	Gregory W Moeller
5/19/2010	NOTH	GABBY	Notice Of Hearing	Gregory W Moeller
	HRSC	GABBY	Hearing Scheduled (Motions 06/15/2010 02:00 PM) Compel Mediation & Stay Discovery Compel	Gregory W Moeller
5/21/2010	NOTC	GABBY	Notice Of Service	Gregory W Moeller
6/10/2010	AFFD	PHYLLIS	Affidavit of Frederick J Hahn	Gregory W Moeller
	MEMO	PHYLLIS	Memorandum in Support of Motion for Protective Order and Opposing Motion to Compel and Stay Discovery	Gregory W Moeller
6/15/2010	MINE	PHYLLIS	Minute Entry Hearing type: Motions Hearing date: 6/15/2010 Time: 3:21 pm Courtroom: Court reporter: Minutes Clerk: PHYLLIS HANSEN Tape Number: Fred Hahn Ron Swafford	Gregory W Moeller
	DCHH	PHYLLIS	Hearing result for Motions held on 06/15/2010 02:00 PM: District Court Hearing Held Number of Transcript Pages for this hearing estimated at: 50 Compel	Gregory W Moeller
	CONT	PHYLLIS	Hearing result for Court Trial held on 06/30/2010 09:00 AM: Continued	Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Court Trial 11/10/2010 09:00 AM)	Gregory W Moeller
6/17/2010		PHYLLIS	Amended Notice Of Trial Setting and Order Governing Further Proceedings	Gregory W Moeller
7/6/2010	ORDR	PHYLLIS	Order	Gregory W Moeller
7/14/2010	MISC	PHYLLIS	Mediation Status Report	Gregory W Moeller
7/15/2010	NOTS	PHYLLIS	Notice Of Service	Gregory W Moeller
7/28/2010	MISC	PHYLLIS	IRCP 30(b)(6) Deposition Notice Duces Tecum of Frontier Development Group, LLC	Gregory W Moeller
	MISC	PHYLLIS	IRCP 30(b)(6) Deposition Notice Duces Tecum of Yellowstone Do It Center	Gregory W Moeller
	DEPO	PHYLLIS	Notice of Deposition Duces Tecu of Michael Horn	Gregory W Moeller
8/4/2010	MOTN	PHYLLIS	Motion in Limine	Gregory W Moeller
	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
8/19/2010	NOTS	PHYLLIS	Notice Of Service	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
8/26/2010	MOTN	PHYLLIS	Motion for Partial Summary Judgment	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Louis Caravella	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Patricia Caravella	Gregory W Moeller
	MEMO	PHYLLIS	Memorandum in Support for Caravellas' Motion for Partial Summary Judgment	Gregory W Moeller
	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
9/9/2010	HRSC	PHYLLIS	Hearing Scheduled (Status Conference 10/05/2010 11:00 AM)	Gregory W Moeller
9/13/2010	MISC	GABBY	Witness Disclosure	Gregory W Moeller
9/15/2010	MISC	PHYLLIS	Plaintiff's Second Fact and Expert Witness Disclosure	Gregory W Moeller
9/21/2010	NOTH	GABBY	Notice Of Hearing	Gregory W Moeller
	HRSC	GABBY	Hearing Scheduled (Motions 10/05/2010 02:00 PM) To Amend Counterclaim and Application For Preliminary Injunction	Gregory W Moeller
	MISC	GABBY	Objection To Motion To Motion For Partial Summaru Judgment	Gregory W Moeller
	AFFD	GABBY	Affidavit In Objection To Motion For Partial Summary Judgment	Gregory W Moeller
9/22/2010	MISC	GABBY	Application For Preliminary Injunction	Gregory W Moeller
	NOTH	GABBY	Amended Notice Of Hearing	Gregory W Moeller
	MOTN	GABBY	Motion To Amend Counterclaim	Gregory W Moeller
9/24/2010	AFFD	GABBY	Affidavit Of Brent L. Whiting	Gregory W Moeller
	AFFD	GABBY	Affidavit Of Frederick J. Hahn, III	Gregory W Moeller
	MEMO	GABBY	Memorandum In Support For The Motion To Amend The Counterclaim And In Opposition To The Motion In Limine	Gregory W Moeller
	MOTN	GABBY	Motion For Sanctions And Motion To Strike	Gregory W Moeller
	NOTH	GABBY	Notice Of Hearing	Gregory W Moeller
9/27/2010	HRVC	PHYLLIS	Hearing result for Status Conference held on 10/05/2010 11:00 AM: Hearing Vacated	Gregory W Moeller
9/28/2010	MOTN	GABBY	Motion To Shorten Time	Gregory W Moeller
10/4/2010	MEMO	PHYLLIS	Reply Memorandum in Support the Motion for Partial Summary Judgment	Gregory W Moeller
	NOTS	PHYLLIS	Notice Of Service	Gregory W Moeller
	MISC	PHYLLIS	Objection and Memorandum in Opposition to Motion for Sanctions and Motion to Strike	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III	Gregory W Moeller
	MISC	PHYLLIS	Objection and Memorandum in Opposition to Motion for Sanctions and Motion to Strkie	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
10/4/2010	AFFD	PHYLLIS	Affidavit of Frederick J Hahn	Gregory W Moeller
10/5/2010	MINE	PHYLLIS	Minute Entry Hearing type: Motion to Amend Counterclaim Hearing date: 10/5/2010 Time: 3:42 pm Courtroom: Court reporter: Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford, Plaintiff's Attorney F J Hahn Defendant's Attorney	Gregory W Moeller
	HRVC	PHYLLIS	Hearing result for Court Trial held on 11/10/2010 09:00 AM: Hearing Vacated	Gregory W Moeller
	DCHH	PHYLLIS	Hearing result for Motions held on 10/05/2010 02:00 PM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this hearing estimated at: less than 100	Gregory W Moeller
10/19/2010	ORDR	GABBY	Order Granting Motion To Amend The Counterclaim	Gregory W Moeller
	AMCO	GABBY	Amended Counterclaim	Gregory W Moeller
11/9/2010	NOTC	PHYLLIS	Notice of Intent to Take Default Against Frontier Development Group, LLC, Michael Horn & Yellowstone Do It Center, LLC	Gregory W Moeller
11/12/2010	ANSW	PHYLLIS	Answer to Amended Counterclaim	Gregory W Moeller
11/18/2010	ANSW	GABBY	Amended Answer To Amended Counterclaim	Gregory W Moeller
2/16/2011	HRSC	PHYLLIS	Hearing Scheduled (Status Conference 03/01/2011 11:00 AM)	Gregory W Moeller
3/1/2011	MINE	PHYLLIS	Minute Entry Hearing type: Status Conference Hearing date: 3/1/2011 Time: 11:11 am Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: FJ Hahn Defendant's Attorney	Gregory W Moeller
	CONT	PHYLLIS	Hearing result for Status Conference held on 03/01/2011 11:00 AM: Continued	Gregory W Moeller
3/2/2011	HRSC	PHYLLIS	Hearing Scheduled (Status Conference 04/05/2011 11:40 AM)	Gregory W Moeller
	MINE	PHYLLIS	Minute Entry	Gregory W Moeller
3/8/2011	MOTN	GABBY	Motion For Protective Order	Gregory W Moeller
	NOTH	GABBY	Notice Of Hearing	Gregory W Moeller
3/9/2011	HRSC	GABBY	Hearing Scheduled (Motions 03/15/2011 01:30 PM)	Gregory W Moeller
	MOTN	PHYLLIS	Motion for Protective Order	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
3/10/2011	NOTC	PHYLLIS	Notice to Vacate Hearing	Gregory W Moeller
3/11/2011	HRVC	PHYLLIS	Hearing result for Motions held on 03/15/2011 01:30 PM: Hearing Vacated	Gregory W Moeller
4/5/2011	MINE	PHYLLIS	Minute Entry Hearing type: Status Conference Hearing date: 4/5/2011 Time: 11:57 am Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Fred Hahn Ron Swafford	Gregory W Moeller
4/8/2011	HRRS	PHYLLIS	Hearing Rescheduled (Court Trial 12/12/2011 09:00 AM) first setting	Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Court Trial 10/03/2011 09:00 AM)	Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Pre-Trial Conference 09/06/2011 11:40 AM)	Gregory W Moeller
		PHYLLIS	Notice Of Trial Setting and Order Governing Further Proceedings	Gregory W Moeller
7/8/2011	NOTC	GABBY	Deposition Notice Duces Tecum Of Scott Norman	Gregory W Moeller
	NOTC	GABBY	Amended IRCP 30(b)(6) Deposition Notice Duces Tecum Of Yellowstone Do It Center, LLC	Gregory W Moeller
8/4/2011	MISC	PHYLLIS	Plaintiffs; and Counterdefendants' Third Fact and Expert Witness Disclosure	Gregory W Moeller
	MISC	PHYLLIS	Witness Disclosure	Gregory W Moeller
8/8/2011	MISC	SHILL	Plaintiffs' and Counter-Defendants' Third Fact and Expert Witness Disclosure	Gregory W Moeller
8/12/2011	MISC	PHYLLIS	Subpoena	Gregory W Moeller
	DEPO	PHYLLIS	Notice of Deposition	Gregory W Moeller
	NOTC	PHYLLIS	Notice of Inspection	Gregory W Moeller
	AFFS	PHYLLIS	Affidavit of Service	Gregory W Moeller
	MOTN	PHYLLIS	Motion to Dismiss, Motion to Suppress and Motion in limine	Gregory W Moeller
8/15/2011	AFFD	SHILL	Affidavit in Support of Motion to Dismiss, Motion to Suppress, and Motion in Limine	Gregory W Moeller
8/16/2011	MOTN	SHILL	Motion to Extend Discovery Deadlines and Reschedule Trial	Gregory W Moeller
	ORDR	GABBY	Order Quashing Subpoena And Granting Protective Order	Gregory W Moeller
	MISC	GABBY	Objection To Notice Of Deposition, Motion To Quash Subpoena And Motion For Protective Order	Gregory W Moeller
	AFFD	GABBY	Affidavit Of Brent L. Whitting	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
8/19/2011	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
	MOTN	PHYLLIS	Motion to Dismiss	Gregory W Moeller
	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
	MOTN	PHYLLIS	Motion in Limine	Gregory W Moeller
8/30/2011	MOTN	GABBY	Amended Motion In Limine	Gregory W Moeller
	AFFD	GABBY	Amended Affidavit In Support Of Motion In Limine	Gregory W Moeller
	MEMO	GABBY	Memorandum In Support Of Motion For Protective Order And Opposing Plaintiff's Motion To "Suppress" And In Limine	Gregory W Moeller
	MOTN	GABBY	Motion For Protective Order	Gregory W Moeller
	MEMO	GABBY	Memorandum In Opposition To Plaintiff's Motion To Dismiss	Gregory W Moeller
9/1/2011	MOTN	SHILL	Amended Motion in Limine	Gregory W Moeller
	AFFD	SHILL	Amended Affidavit in Support of Motion in Limine	Gregory W Moeller
9/6/2011	MINE	PHYLLIS	Minute Entry Hearing type: Pre-Trial Conference Hearing date: 9/6/2011 Time: 12:00 pm Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Laron Covert Plaintiff's Attorney Fred Hahn Defendant's Attorney	Gregory W Moeller
	MOTN	PHYLLIS	Motion for a Commission to Take Out of State Depositions	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit in Support of Motion for A Commission to Take Out of State Depositions	Gregory W Moeller
	STIP	PHYLLIS	Stipulation Regarding October 3, 2011 Trial Setting and All Pending Motions	Gregory W Moeller
	ORDR	SHILL	Order on October 3, 2011 Trial setting and all Pending Motions	Gregory W Moeller
	CONT	PHYLLIS	Hearing result for Pre-Trial Conference scheduled on 09/06/2011 11:40 AM: Continued	Gregory W Moeller
	CONT	PHYLLIS	Hearing result for Court Trial scheduled on 10/03/2011 09:00 AM: Continued	Gregory W Moeller
9/8/2011	ORDR	PHYLLIS	Order For a Commission to Take Out of State Depositions	Gregory W Moeller
10/4/2011	MOTN	SHILL	Amended Motion in Limine	Gregory W Moeller
	MOTN	SHILL	Motion for Inspection of Real Property and Improvements	Gregory W Moeller
	NOTC	SHILL	Notice of Hearing	Gregory W Moeller
10/5/2011	MOTN	SHILL	Motion for Telephonic Appearance	Gregory W Moeller

Date: 2/13/2013

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 03:23 PM

ROA Report

Page 10 of 15

Case: CV-2009-0000068 Current Judge: Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, etal.

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User	Judge
10/6/2011	HRSC	SHILL	Hearing Scheduled (Motions 10/18/2011 11:00 AM)
10/7/2011	AFFD	GABBY	Affidavit Of Michael Horn In Support Of Amended Motion In Limine
10/11/2011	MOTN	PHYLLIS	Motion to Strike
	MEMO	PHYLLIS	Memorandum in Support of Defendants' Motion to Strike
	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III, In Support of Defendants' Motion to Strike
	MOTN	PHYLLIS	Motion to Shorten Time
10/12/2011	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III, in Opposition to Plaintiffs' Amended Motion in Limine
	RPNS	PHYLLIS	Response To Motion to Strike
	MOTN	PHYLLIS	Motion for Summary Judgment
	AFFD	PHYLLIS	Affidavit of Brent Whiting
	NOTH	PHYLLIS	Notice Of Hearing
10/13/2011	MISC	PHYLLIS	Plaintiffs' and Counterdefendants' Witness List and Summary of Testimony
	MOTN	PHYLLIS	Motion to Strike
	AFFD	PHYLLIS	Affidavit of Michael Horn in Support of Amended Motion in Limine
10/17/2011	MEMO	PHYLLIS	Memorandum in Response to Motion to Strike
	AFFD	PHYLLIS	Affidavit of Counsel in Response to Motion to Strike
10/18/2011	MINE	PHYLLIS	Minute Entry Hearing type: Status Conference Hearing date: 10/18/2011 Time: 11:09 am Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford PA Brent WhitingDA
	ORDR	PHYLLIS	Order Shortening Time
	ORDR	PHYLLIS	Order for Inspection of Real Property and Improvements
	HRHD	PHYLLIS	Hearing result for Motions scheduled on 10/18/2011 11:00 AM: Hearing Held
10/21/2011	DCHH	PHYLLIS	Hearing result for Motions scheduled on 10/18/2011 11:00 AM: District Court Hearing Held Court Reporter: David Marlow Number of Transcript Pages for this hearing estimated at: Less than 50

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
10/31/2011	MOTN	SHILL	Amended Motion in Limine and/or Motion for Partial Summary Judgment	Gregory W Moeller
	MEMO	SHILL	Memorandum in Support of Amended Motion in Limine and/or Motion for Partial Summary Judgment	Gregory W Moeller
11/2/2011	MOTN	SHILL	Motion to Compel Defendant's/Counterclaimants' Answers to: 1. Plaintiff's First set of Discovery Requests to Defendant; 2. Plaintiff's Second Set of Discovery REquests to Defendants; 3. Plaintiff's Third Set of Interrogatories and Requests for Productin of Documents	Gregory W Moeller
	MOTN	SHILL	Motion to Shorten Time	Gregory W Moeller
11/3/2011	AFFD	PHYLLIS	Affidavit in Support of Motion to Compel Defendants'/Counterclaimants' Answers to: 1. Plaintiff's First Set of Discovery Requests to Defendant; 2. Plaintiff's Second Set of Discovery Requests to Defendants; 3, Plaintiff's Third Set of Interrogatories and Requests for Production of Documents	Gregory W Moeller
11/15/2011	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
11/16/2011	HRSC	PHYLLIS	Hearing Scheduled (Motions 12/06/2011 02:00 PM) several	Gregory W Moeller
11/23/2011	MISC	PHYLLIS	Signature Page for Affidavit from Brent Whiting	Gregory W Moeller
	MEMO	PHYLLIS	Memorandum in Opposition to Plaintiff's Amended Motion in Limine and/or MOTion for Partial Summary Judgment	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Brent Whiting	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Frederick J Hahn, III, in Opposition to Plaintiffs' Amended Motion in Limine and/or Motion for Partial Summary Judgment	Gregory W Moeller
	MOTN	PHYLLIS	Motion in Limine to Exclude Plaintiffs' and Counterdefendants' Expert Witness Testimony	Gregory W Moeller
	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
	MEMO	PHYLLIS	Memorandum in Support of Motion in Limine to Exclude Plaintiff's and Counterdefendants' Expert Witness Testimony	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III in Support of Motion in Limine	Gregory W Moeller
	MOTN	PHYLLIS	Motion to Shorten Time	Gregory W Moeller
12/1/2011	AFFD	PHYLLIS	Affidavit of Michael Horn	Gregory W Moeller
12/2/2011	NOTC	GABBY	Notice Of Service	Gregory W Moeller
	NOTC	GABBY	Notice Of Service	Gregory W Moeller
12/5/2011	MISC	GABBY	Subpoena Duces Tecum	Gregory W Moeller
	MISC	GABBY	Subpoena Duces Tecum	Gregory W Moeller
	MISC	GABBY	Subpoena Duces Tecum	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
12/6/2011	MISC	SHILL	Defendants'/Counterclaimants' Trial Exhibit Lists	Gregory W Moeller
	MINE	PHYLLIS	Minute Entry Hearing type: Motions Hearing date: 12/6/2011 Time: 3:29 pm Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford, Plaintiff's Attorney Fred Hahn, Defendants' Attorney	Gregory W Moeller
	HRHD	PHYLLIS	Hearing result for Motions scheduled on 12/06/2011 02:00 PM: Hearing Held several	Gregory W Moeller
	DCHH	PHYLLIS	District Court Hearing Held Court Reporter: David marlow Number of Transcript Pages for this hearing estimated at: 250	Gregory W Moeller
	ORDR	PHYLLIS	Order Shortening Time	Gregory W Moeller
12/7/2011	MISC	PHYLLIS	Amended Defendants'/Counterclaimants' Trial Exhibit Lists	Gregory W Moeller
12/9/2011	MISC	PHYLLIS	Defendant/Counterclaimants' Trial Brief	Gregory W Moeller
	MISC	PHYLLIS	Amended Defendants'/Counterclaimants' Trial Exhibit Lists	Gregory W Moeller
	MISC	PHYLLIS	Defendant/Counterclaimants' List of Likely Witnesses	Gregory W Moeller
12/12/2011	MISC	PHYLLIS	Amended Subpoena Duces Tecum	Gregory W Moeller
	MISC	PHYLLIS	Plaintiff Trial Exhibit list	Gregory W Moeller
12/13/2011	MINE	PHYLLIS	Minute Entry Hearing type: Court Trial Hearing date: 12/12/2011 Time: 7:41 am Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Ron Swafford, Plaintiffs' Attorney Fred Hahn, Defendants' Attorney Brent Whiting, Defendants' Attorney	Gregory W Moeller
	CTST	PHYLLIS	Hearing result for Court Trial scheduled on 12/12/2011 09:00 AM: Court Trial Started first setting	Gregory W Moeller
	ORDR	PHYLLIS	Order Regarding Defendants'/Counterclaimant's Motion in Limine	Gregory W Moeller
	ORDR	PHYLLIS	Order Regarding Presentation of Trial	Gregory W Moeller
12/14/2011	MISC	PHYLLIS	Amended Defendants'/Counterclaimants' Trial Exhibit List	Gregory W Moeller
12/30/2011	MOTN	PHYLLIS	Motion to Extend Post Trial Briefing Deadlines	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
12/30/2011	AFFD	PHYLLIS	Affidavit of Frederick J. Hahn, III, in Support of Motion to Extend Post-Trial Briefing Deadlines	Gregory W Moeller
1/3/2012	MISC	PHYLLIS	Objection to Motion to Extend Post-Trial Briefing Deadlines	Gregory W Moeller
1/4/2012	MINE	PHYLLIS	Minute Entry Hearing type: Motions Hearing date: 1/4/2012 Time: 12:31 pm Courtroom: Court reporter: Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford, Attorney for Plaintiffs Fred Hahn, Attorney for Defendants Brent Whiting, Attorney for Defendants	Gregory W Moeller
1/5/2012		PHYLLIS	Miscellaneous Payment: For Making Copy Of CS's of Court Trial By The Clerk, Per Page Paid by: Racine Olson Receipt number: 0049545 Dated: 1/5/2012 Amount: \$200.00 (Check)	Gregory W Moeller
1/17/2012	MISC	PHYLLIS	Plaintiffs'/Counterdefendants' Findings of Fact and Conclusions of Law (In a bound booklet in box with files)	Gregory W Moeller
	MISC	PHYLLIS	Plaintiffs'/Counterdefendants' Closing Argument (In a bound booklet in box with files)	Gregory W Moeller
	MISC	PHYLLIS	Caravellas' Proposed Findings of Fact and Conclusions of Law	Gregory W Moeller
	MISC	SHILL	Defendants'/Counterclaimants' Written Closing Argument	Gregory W Moeller
1/23/2012	MISC	PHYLLIS	P's Objection to Late Filing of Defendants' Post-Trial Brief, CD-ROM and Letter to Court dated January 19, 2012	Gregory W Moeller
1/24/2012	ORDR	PHYLLIS	Order	Gregory W Moeller
2/27/2012	AFFD	PHYLLIS	Affidavit of Frederick J Hahn in Support of Objection to Plaintiffs; Proposed Findings of Fact and Conclusions of Law	Gregory W Moeller
	MISC	PHYLLIS	Objection to Plaintiffs/Counterdefendants' Proposed Findings of Fact and Conclusions of Law	Gregory W Moeller
2/28/2012	MISC	PHYLLIS	Plaintiffs'/Counterdefendants' Objections to Defendants'/Counterclaimants' Proposed Findings of Fact and Conclusion of Law (In a bound booklet in box with files)	Gregory W Moeller
3/29/2012	MISC	GABBY	Findings Of Fact And Conclusion Of Law	Gregory W Moeller
3/29/2012	MOTN	PHYLLIS	Motion for Prejudgment Interest	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of William D Faler	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Counsel Regarding Calculation of Prejudgment Interest	Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User		Judge
6/29/2012	MEMO	PHYLLIS	Memorandum of Costs and Attorney Fees and Affidavit of Counsel	Gregory W Moeller
	MOTN	PHYLLIS	Motion for an Award of Costs and Attorney Fees	Gregory W Moeller
7/13/2012	MISC	PHYLLIS	Plaintiffs'/Counterdefendants' Objections to Defendants'/Courterclaimants' Memorandum of Costs and Attorney Fees	Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Counsel in Support of Plaintiffs'/Counterdefendants' Objections to Defendants'/Courterclaimants' Memorandum of Costs and Attorney Fees	Gregory W Moeller
7/26/2012	NOTH	PHYLLIS	Notice Of Hearing	Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Motions 08/21/2012 02:00 PM) for Attorneys Fees	Gregory W Moeller
8/17/2012	NOTH	PHYLLIS	Amended Notice Of Hearing	Gregory W Moeller
	CONT	PHYLLIS	Hearing result for Motions scheduled on 08/21/2012 02:00 PM: Continued for Attorneys Fees	Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Motions 09/18/2012 02:00 AM) for attorney fees	Gregory W Moeller
9/18/2012	MISC	SHILL	Caravellas' Reply Memorandum in Support of Motion for Attorney Fees	Gregory W Moeller
	MINE	PHYLLIS	Minute Entry Hearing type: Motions Hearing date: 9/18/2012 Time: 2:00 pm Courtroom: Court reporter: David Marlow Minutes Clerk: PHYLLIS HANSEN Tape Number: Ron Swafford , Plaintiffs Attorney Fred Hahn, Defendants Attorney	Gregory W Moeller
	DCHH	PHYLLIS	Hearing result for Motions scheduled on 09/18/2012 02:00 PM: District Court Hearing Held Court Reporter:David Marlow Number of Transcript Pages for this hearing estimated at: for attorney fees Less than 100	Gregory W Moeller
10/18/2012	MEMO	GABBY	Caravellas' Reply Memorandum In Support Of Motion For Attorney Fees	Gregory W Moeller
10/31/2012	MEMO	PHYLLIS	Memorandum Decision Re: Attorney Fees, Costs, and Pre-Judgment Interst	Gregory W Moeller
	JDMT	PHYLLIS	Final Judgment	Gregory W Moeller
	CDIS	PHYLLIS	Civil Disposition entered for: Caravella, Louis, Defendant; Caravella, Patricia, Defendant; Frontier Development Group, LLC, Plaintiff. Filing date: 10/31/2012	Gregory W Moeller
	CSCP	PHYLLIS	Case Status Closed But Pending: Closed	Gregory W Moeller
12/12/2012	NOTC	PHYLLIS	Notice of Appeal	Gregory W Moeller

Date: 2/13/2013

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 03:23 PM

ROA Report

Page 15 of 15

Case: CV-2009-0000068 Current Judge: Gregory W Moeller

Frontier Development Group, LLC vs. Louis Caravella, etal.

Frontier Development Group, LLC vs. Louis Caravella, Patricia Caravella

Date	Code	User	Judge
12/12/2012		PHYLLIS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Racine Olsen Receipt number: 0052418 Dated: 12/12/2012 Amount: \$109.00 (Check) For: Caravella, Louis (defendant) Gregory W Moeller
	BNDC	PHYLLIS	Bond Posted - Cash (Receipt 52419 Dated 12/12/2012 for 500.00) Gregory W Moeller
	CSCP	PHYLLIS	Case Status Closed But Pending: closed pending clerk action Gregory W Moeller
1/28/2013	STIP	GABBY	Stipulation For Substitution Of Counsel Gregory W Moeller
	ATRE	GABBY	Plaintiff: Frontier Development Group, LLC Attorney Retained Michael J. Elia Gregory W Moeller
2/12/2013		PHYLLIS	Miscellaneous Payment: Fax Fee Paid by: Craig Stacey Receipt number: 0052897 Dated: 2/12/2013 Amount: \$20.00 (Credit card) Gregory W Moeller
		PHYLLIS	Miscellaneous Payment: Technology Cost - CC Paid by: Craig Stacey Receipt number: 0052897 Dated: 2/12/2013 Amount: \$3.00 (Credit card) Gregory W Moeller

Supreme Court No. 40581-2012
Teton County No. CV 09-068

Frontier Development Group, LLC
Michael Horn
Plaintiffs/Counterdefendants/Respondents

vs

Louis Caravella and Patricia Carevella
Defendants/Counterclaimants/Appellants

and

Yellowstone Do It Center
Plaintiff/Counterdefendant

Frederick J Hahn, Esq.
Brent J. Whiting, Esq.
P.O. Box 50698
Idaho Falls, Idaho 83405
Attorney for Appellants

Michael Horn
P. O. Box 576
Bonita Springs, Florida 34133

*Case filed 8/19/2011
Not on Repository*

SWAFFORD LAW, P.C.
Ronald L. Swafford, Esq., Bar No. 1657
R. James Archibald, Esq., Bar No. 4445
Trevor L. Castleton, Esq., Bar No. 5809
Larren K. Covert, Esq., Bar No. 7217
525 Ninth Street
Idaho Falls, Idaho 83404
Telephone (208) 524-4002
Facsimile (208) 524-4131

Attorney for: Plaintiffs, Frontier Development Group, LLC and Yellowstone Do It Center, LLC, (n/k/a YELLOWSTONE LUMBER) and Counterdefendants Frontier Development Group, LLC and Mike Horn

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON**

FRONTIER DEVELOPMENT GROUP,
LLC.,

Plaintiff,

vs.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants,

Case No. CV-2009-068

MOTION TO DISMISS

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Counterclaimants,

vs.

FRONTIER DEVELOPMENT GROUP, LLC,
and MICHAEL HORN,

Counter-defendants,

YELLOWSTONE DO IT CENTER, LLC
(n/k/a YELLOWSTONE LUMBER)

Plaintiff,

vs.

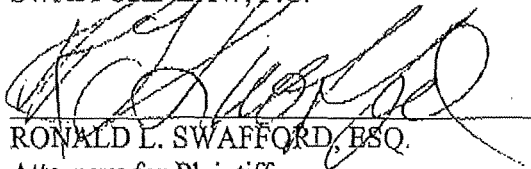
LOUIS CARAVELLA and PATRICA
CARAVELLA,

Defendants.

COMES NOW the Plaintiff, Frontier Development Group, LLC, by and through its attorney of record, RONALD L. SWAFFORD, ESQ. of Swafford Law Office, Chartered, who hereby who hereby moves this Court for an Order of dismissal as to Court 8 of the Amended Counterclaim. This motion is based upon the economic loss rule. Absent accompanying personal injury or property damage to property other than the product, purely economic losses alone are not recoverable in tort. (*Duffin v. Idaho Crop Improvement Ass'n*, 126 Idaho 1002; 895 P.2d 1195 (Idaho 1995)). A memorandum shall follow the filing of this motion. Oral hearing is requested on this motion.

DATED this 19th day of August 2011.

SWAFFORD LAW, P.C.



RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiff

* * * Communication Result Report (Aug. 19. 2011 12:28PM) * * *

1) Swofford Law

Date/Time: Aug. 19. 2011 12:27PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
4499 Memory TX	12083548496	P. 7	OK	

Reason for error

E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

SWOFFORD LAW, PC
 525 NINTH STREET
 IDAHO FALLS, IDAHO 83404
 TELEPHONE: (208) 524-4002
 FAX: (208) 524-4131

TO:	Clerk of the Court, Teton County	Date: AUGUST 18, 2011
FROM:	Frederick J. Fisher, III, Esq.	PAGES: 7, including cover sheet
SUBJECT:	Frontier Development et al v. Louis & Patricia Carewells Teton County Case No. CV-2009-08	
COMMENTS:	Attached are the following documents: 1. Motion to Dismiss 2. Notice of Hearing Thank you. Frederick J. Fisher, III, Esq. FAX NO. (208) 524-6109	

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000207

* * * Communication Result Report (Aug. 19. 2011 4:53PM) * * *

1) Swafford Law
2)

Date/Time: Aug. 19. 2011 4:51PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
4526 Memory TX	5286109	P. 7	OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection

SWAFFORD LAW, PC

525 NORTH STREET
IDAHO FALLS, IDAHO 83404
TELEPHONE: (208) 524-4002
FAX: (208) 524-4131

TO:	Clark of the Court, Teton County	Date: August 19, 2011
FAX NO.:	(208) 524-4666	PAGES: 7, including cover sheet
FROM:	Marlene Olsen Legal Assistant	
SUBJECT:	Frontier Development etd v. Looie & Patricia Casarella Teton County Case No. CV-2009-68	
COMMENTS:	Attached are the following documents: 1. Motion to Dismiss 2. Notice of Hearing Thank you.	
CC:	Frederick J. Hahn, III, Esq. FAX NO. (208) 524-6109	

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000208

COURT MINUTES

CV-2009-0000068

Frontier Development Group, LLC vs. Louis Caravella, etal.

Hearing type: Pre-Trial Conference

Hearing date: 9/6/2011

Time: 12:00 pm

Judge: Gregory W Moeller

Court reporter: David Marlow

Minutes Clerk: PHYLLIS HANSEN

Laron Covert Plaintiffs Attorney

Fred Hahn Defendant's Attorney

J calls case; ids those present; reviews case

PA – ask vacate second setting and just use first setting in December

Hahn – no objection

J – going to grant motion

Vacate October 03 setting; will leave for December 12 setting

That is firm; there will be no other continuances

J – what about other motions

PA – will coordinate with clerks and send out new notice

DA – need to obtain commission to take out of state deposition; can we fax to Madison

J – fax originals to Teton County and send copy to Rexburg

FILED

OCT 12 2011

TETON CO., ID
DISTRICT COURT

Frederick J. Hahn, III (ISB No. 4258)
Jonathan M. Volyn (ISB No. 6434)
Brent L. Whiting (ISB No. 6601)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
Post Office Box 50698
Idaho Falls, Idaho 83405
Telephone: (208) 528-6101
Fax: (208) 528-6109
fjh@racinelaw.net

Attorney for Defendants / Counterclaimants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FRONTIER DEVELOPMENT GROUP,
LLC

Plaintiff,

vs.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Counterclaimants,

v.

FRONTIER DEVELOPMENT GROUP,
LLC, and MICHAEL HORN,

Counterdefendants.

Case No. CV-09-068

MOTION FOR SUMMARY JUDGMENT

000210

YELLOWSTONE DO IT CENTER, LLC
Plaintiff,

vs.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

Defendants / Counterclaimants Louis and Patricia Caravella ("Caravellas"), by and through their counsel of record Racine Olson Nye Budge & Bailey, Chtd., pursuant to Rule 56 of the Idaho Rules of Civil Procedure hereby moves for the Court's Order granting Summary Judgment against Plaintiff / Counterdefendant Yellowstone Do It Center, LLC, regarding their claim of a mechanic's lien on the Caravellas' real property in Teton County, Idaho.

This Motion is based upon the Affidavit of Brent L. Whiting and is supported by a Memorandum in Support of the Motion for Summary Judgment. Oral argument is respectfully requested.

Dated this 12 day of October, 2011.


BRENT L. WHITING

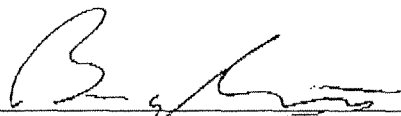
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 12 day of October, 2011.

DOCUMENT SERVED:**MOTION FOR SUMMARY JUDGMENT****ATTORNEYS SERVED:**

Swafford Law Office, Chartered
Ronald L. Swafford, Esq.
525 Ninth Street
Idaho Falls, ID. 83404

() *First Class Mail*
() *Hand Delivery*
(☒) *Facsimile*
() *Via Overnight Mail*



BRENT L. WHITING

N:\FJH37286 Caravella\Pleadings\Summary Judgment v. Yellowstone\Motion for Summary Judgment.wpd

COURT MINUTES

CV-2009-0000068

Frontier Development Group, LLC vs. Louis Caravella, etal.

Hearing type: Status Conference

Hearing date: 10/18/2011

Time: 11:09 am

Judge: Gregory W Moeller

Court reporter: David Marlow

Minutes Clerk: PHYLLIS HANSEN

Ron Swafford PA

Brent WhitingDA

J calls case; ids those present

Motion to compel inspection

Motion in limine

Motion to strike

Motion for summary judgment

Whiting – Summary Judgment not for today; probably will be withdrawing

PA – just need date for inspection

DA – not aware of discovery request seeking inspection; not discovery

PA – thought had done it

J – what if order within 14 days

PA – witnesses and client and Yellowstone want to inspect

J – reasonable request; will grant and order it permitted within the next 14 days

If not previously disclosed, should be done immediately

1114

000213

Motion in Limine - filed march 26, 2010 - contract by Caravella

DA- filed Motion to Strike

J - signing Order Shortening time

J - is set for court trial; why necessary where don't have a jury

PA - critical issue in many respects

House was owned by Rick Meyers; he partially built it

Caravellas bought it from him as is

No warranties at all - after inspection

Then begins complaining about construction

DA - his clients responsible

Claims relate to work before they purchased it

Implied warranties; between them and the seller

That claim is still on

1119

J - why should strike Horn's Affidavit

DA - motion filed on Octo 4

Affd not even signed until October followed by long weekend

Ask to postpone hearing; Swafford said no

Doesn't comply with the rules

All untimely

Foundation; legal conclusions

PA - responds

Contract already in the files

Filed Motion in limine in March; no time issue

1122

J – deny motion to strike; no significant prejudice to the defense

Motion in Limine – if presented on summary judgment basis – would have all the facts before me - are some disputed issues

At this point, not enough evidence to conclude

Court trial set, not jury trial - will have to sort out

Deny motion in Limine

Grant Motion to Inspect

Did grant Order Shortening time

J – have reviewed contract; strong evidence

Too much evidence of disputed fact for me to do that

PA – look like issue of law to me; not issue of fact

J – would be willing to look at in summary judgment sense

1126

DA – are you extending deadline

PA – though extended all motions until November 30

SWAFFORD LAW, P.C.
Ronald L. Swafford, Esq., Bar No. 1657
R. James Archibald, Esq., Bar No. 4445
Trevor L. Castleton, Esq., Bar No. 5809
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FILED
OCT 31 2011
TIME:
TETON CO. ID DISTRICT COURT

Attorney for: Plaintiffs, Frontier Development Group, LLC and Yellowstone Do It Center, LLC, (n/k/a YELLOWSTONE LUMBER) and Counterdefendants Frontier Development Group, LLC and Mike Horn

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON**

FRONTIER DEVELOPMENT GROUP, LLC, Plaintiff, vs. LOUIS CARAVELLA and PATRICIA CARAVELLA, Defendants,	Case No. CV-2009-068 AMENDED MOTION IN LIMINE AND/OR MOTION FOR PARTIAL SUMMARY JUDGMENT
LOUIS CARAVELLA and PATRICIA CARAVELLA, Counterclaimants, vs. FRONTIER DEVELOPMENT GROUP, LLC, and MICHAEL HORN, Counter-defendants,	

**AMENDED MOTION IN LIMINE AND/OR MOTION FOR PARTIAL SUMMARY
JUDGMENT**

YELLOWSTONE DO IT CENTER, LLC
(n/k/a YELLOWSTONE LUMBER)

Plaintiff,

vs.

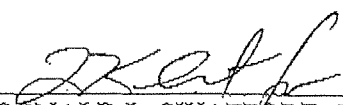
LOUIS CARAVELLA and PATRICA
CARAVELLA,

Defendants.

COMES NOW the Plaintiffs, by and through their attorney of record, RONALD L. SWAFFORD, ESQ. of Swafford Law Office, P.C., who hereby who hereby moves this Court for an Order granting summary judgment as to Court 8 of the Amended Counterclaim and to all counts in an much as they relate to events and the status of the home prior to the purchase by the Defendants pursuant to I.R.C.P. Rule 56. In the alternative, the Plaintiffs request this Court limit the introduction of evidence, testimony and exhibits to only include the work performed on the home after the purchase by the Defendants pursuant to I.R.E. 401, 402, 602, and all other applicable rules and statutes. This motion is based the record herein including the memorandum filed herewith and the affidavits previously filed with the Court. All such are fully integrated herein.

DATED this 31st day of October, 2011.

SWAFFORD LAW, P.C.



RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiff

AMENDED MOTION IN LIMINE AND/OR MOTION FOR PARTIAL SUMMARY
JUDGMENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I caused to be served a true and correct copy of the foregoing document on the parties designated below and by the method of delivery indicated:

Frederic J. Hahn, III
Racine, Olsen, Nye, Budge & Bailey
P.O. Box 50698
Idaho Falls, ID 83405
(208)528-6101

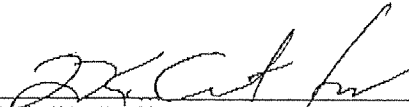
☒ FAX (208)-528-6109

☐ HAND DELIVERY

☐ COURTHOUSE BOX

DATED this 31st day of October, 2011.

SWAFFORD LAW, P.C.



RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiff

COURT MINUTES

CV-2009-0000068

Frontier Development Group, LLC vs. Louis Caravella, etal.

Hearing type: Motions

Hearing date: 12/6/2011

Time: 3:38 pm

Judge: Gregory W Moeller

Court reporter: David Marlow

Minutes Clerk: PHYLLIS HANSEN

Ron Swafford, Plaintiff's Attorney

Laron Covert, Plaintiffs Attorney

Fred Hahn, Defendants' Attorney

Brent Whiting, Defendants' Attorney

J calls case; ids those present

Motion in Limine

Motion in Limine/Summary Judgment to exclude evidence of work on the home before Caravellas purchased it

Request for order Shortening time

No objection

J will sign

Covert – Motion to Compel and for Sanctions

Whiting – they indicated they do not intend to call expert witnesses

Swafford – all witnesses have factual information about the case; not classified as experts

Are fact witnesses

Whit - we have some expert witnesses

343

Swaf - motion in Limine

Pre purchase versus Post purchase

Structure essentially up

All multi-million dollar homes

No engineering plans

Left house unfinished for 14 months when Caravella purchased it from Mr. Myers

347

Contract signed - April 14, 2008

Signed before inspected the home

Was rescindable

Checked checkmark that said wanted inspection

351

J - did expressively waive - yes

J any authority for that position

J - can hear all of the evidence and can decide what is admissible or not

Swaf - if he had a claim, he had to bring it against Mr. Myers

J - waivers have to be very clear ?

357

Nearly every defect claimed was in place before Caravella purchased the home

402

Covert - Motion to Dismiss negligence claim against Yellowstone

Purely economic losses

Inspection was before Caravellas purchased the home

Yellowstone owed no duty to Caravellas

Prohibits recovery of purely economic damages

Should be dismissed

404

J – think is too late for Motion for Summary Judgment

Will let it in and then base decision on what is clearly relevant

Just treat as Motion in Limine

408

Hahn – one critical inspection that did happen

Caravellas inspected with the guy that built the house

Haven't been provided closing documents

No documents relating to construction

Builders wife was the realtor

When the Caravellas purchased the property, they paid the \$23,000 lien

They paid for the siding twice

411

Warranty of habitability

Breach of contract

Fraud and misrepresentation claims

Negligence

Issue with structural integrity of the house

What done on Myers contract and Caravella contract

Difficult time getting documents

To exclude any evidence would be inappropriate

413

Swaf – several misstatements which have been made

Clients wife was just the listing agent

We don't have New Horizons records

Gave exhibits and documents

We have been very forthcoming on all the documents

417

They haven't given you any evidence of any issue of habitability

418

J – grant motion in part and deny in pary

Deny evidence of condition of the home and structure of the home before the caravellas purchased it

Can reconsider at trial when hear more evidence

Grant on economic loss rule

Not type of case where dealing - solely economic damages

Economic loss rules bars the negligence claims

420

Covert – quite a few things we don't have that we need

Interrogatory #3 dates times and people available for inspections

Ask court bar any expert witnesses of this matter

4 –

#6 – financial information from 2007 to present

Never been responded to

Think they fabricated the story because they could not pay

#7 – id any other documents or physical evidence to support claims

426

#8 – construction plans - they did not answer

#9 general admissions

Very evasive

433

Didn't that question come up at trial

Swaf – he didn't answer

We are in a very dangerous situation not going what he is going to say

responses are evasive and non responsive ask sanctions or not be able to produce

438

Hahn – they come to the court with unclean hands

We've supplemented Discovery twice

#3 – there is an answer

They had option and opportunity to depose both those witnesses

441

#4

451

We have complied with every request

They spend \$700,000 or more finishing the house

Have correspondence on the 28 along with second supplemental Discovery

453

Covert – what Hahn presented to the court was everything he had provided; he didn't present what he didn't provide

500

Hahn responds

502

J responds - very difficult to sort out what has been replied to and what has not been replied to

Not any specific sanction at this time

Any documents not previously disclosed will not be admitted at trial

Exception - might consider in instance of rebuttal

Hahn - we said we would make our documents available

If there is a document you want to admit at trial and they haven't seen it - I'm not going to admit it

Going to be very liberal to allow either side to present impeachment testimony

Tough calls who I believe and do not believe

Get to judge credibility

Discovery was substantially complied with but some exceptions not certain about

507

Set for 5 day trial - not possible to start on Monday

Busy schedule for Tuesday afternoon

8:00 a.m. to noon Tuesday then 8 hours for the next three days

Will allow roughly 12 hours to present direct case

509

Hahn - present cross exhibits we can stipulate to - not label

J - going to give 10 hours for case in chief

Swafford- ask exchange list of witnesses

Ask by tomorrow at 5:00 we really intend to call

J - by Thursday of this week by 5:00 pm want witness list pared down

J will take witnesses out of order

Get trial briefs in by Thursday

Will open SW public door open by 7:30 a.m.

Swafford – order on his motion in Limine

Hahn draw up other orders

FILED

DEC 13 2011

TETON CO., ID
DISTRICT COURT

Frederick J. Hahn, III (ISB No. 4258)
Jonathan M. Volyn (ISB No. 6434)
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BUDGE & BAILEY, CHARTERED
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Attorneys for Defendants / Counterclaimants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FRONTIER DEVELOPMENT GROUP,
LLC

Plaintiff,

vs.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Counterclaimants,

v.

FRONTIER DEVELOPMENT GROUP,
LLC, and MICHAEL HORN,

Counterdefendants.

Case No. CV-09-068

**ORDER REGARDING
PRESENTATION OF TRIAL**

YELLOWSTONE DO IT CENTER, LLC
Plaintiff,

vs.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

Based upon decisions made at the Pretrial Conference held on December 6, 2011, the Court orders the following regarding the remaining pre-trial activities and the presentation of trial:

IT IS ORDERED that the trial will be held before the court at the following dates and times:

1. Tuesday, December 13, 2011, from 8:00 a.m. to 12:00 p.m, noon.
2. Wednesday, December 14, 2011, from 8:00 a.m. to 5:00 p.m;
3. Thursday, December 15, 2011, from 8:00 a.m. to 5:00 p.m;
4. Friday December 16, 2011, from 8:00 a.m. to 5:00 p.m.

The Court will establish reasonable breaks for lunch and other needs during each day of trial.

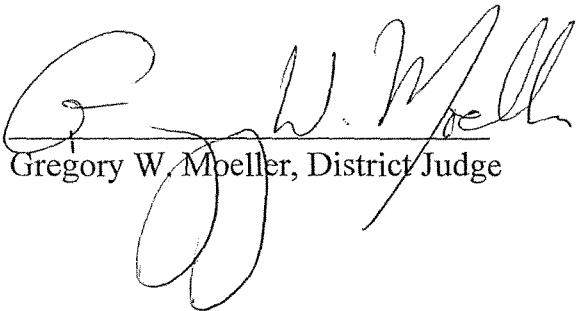
The Plaintiffs/ Counterdefendants will be allotted 10 hours to present their case in chief, and the Defendants/ Counterclaimants will also be allotted 10 hours to present their case in chief. The approximate remaining time of 8 hours will be reserved for cross

examinations and rebuttal. The Court has not set a time limit for each cross examination or rebuttal witness, so long as the testimony is relevant and not overly time consuming.

IT IS FURTHER ORDERED that each party shall file with the Court a final list of the witnesses that the party is highly likely to call to testify at trial, and serve the same upon opposing counsel, no later than Thursday, December 8, 2011, at 5:00 p.m.

IT IS ALSO ORDERED that if a party desires to file a trial brief, it must be filed with the Court and served on opposing counsel no later than Thursday, December 8, 2011, at 5:00 p.m.

Dated this 14th day of December, 2011.



Gregory W. Moeller, District Judge

CLERKS CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this ____ day of December, 2011.

ATTORNEYS SERVED:

Ronald L. Swafford, Esq.
Swafford Law Office, Chartered
525 Ninth Street
Idaho Falls, ID. 83404

☐ *First Class Mail*
☐ *Hand Delivery*
☐ *Facsimile*
☐ *Via Overnight Mail*

Frederick J. Hahn, III
Racine Olson Nye Budge & Bailey, Chtd.
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Idaho Falls, ID 83405

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Clerk of the Court

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DEC 15 2009

TETON CO., ID
DISTRICT COURT

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Attorneys for Defendants / Counterclaimants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
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FRONTIER DEVELOPMENT GROUP,
LLC

Plaintiff,

vs.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Counterclaimants,

v.

FRONTIER DEVELOPMENT GROUP,
LLC, and MICHAEL HORN,

Counterdefendants.

Case No. CV-09-068

**ORDER REGARDING
DEFENDANTS/COUNTER-
CLAIMANT'S MOTION IN LIMINE**

000230

YELLOWSTONE DO IT CENTER, LLC
Plaintiff,

vs.

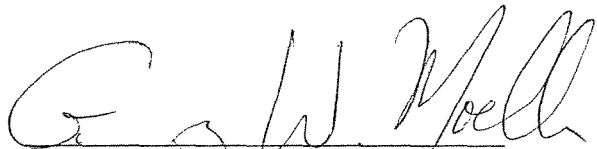
LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

At the hearing on the Defendant/Counterclaimants' Motion in Limine to exclude Plaintiffs/ Counterdefendants from presenting any expert opinion testimony, the Plaintiffs/ Counterdefendants expressed that they did not oppose the motion because they did not intend to present any expert opinion testimony. Counsel for the Plaintiffs/ Counterdefendants clarified that they will present only fact witnesses who will not offer expert opinions. Therefore,

IT IS ORDERED that the Defendants/Counterclaimants' Motion in Limine is GRANTED. This Order does not preclude the Plaintiffs/Counterdefendants from calling fact witnesses who might otherwise have the qualifications of an expert, but any such witnesses' testimonies shall be limited to fact testimony and shall not include any expert opinions regarding the facts or subject matter of this action.

Dated this 14th day of December, 2011.



Gregory W. Moeller, District Judge

CLERKS CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this _____ day of December, 2011.

ATTORNEYS SERVED:

Ronald L. Swafford, Esq.
Swafford Law Office, Chartered
525 Ninth Street
Idaho Falls, ID. 83404

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Clerk of the Court

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COURT MINUTES

CV-2009-0000068

Frontier Development Group, LLC vs. Louis Caravella, etal.

Hearing type: Court Trial

Hearing date: 12/17/2011

Time: 7:41 am

Judge: Gregory W Moeller

Court reporter: David Marlow

Minutes Clerk: PHYLLIS HANSEN

Ron Swafford, Plaintiffs' Attorney

Fred Hahn, Defendants' Attorney

Brent Whiting, Defendants' Attorney

J calls case; ids those present

Attorneys introduce their clients

J shall we meet in chambers to see if can work this out

PA – we are way past that

DA – would like to talk about exhibits off the record and then put it on the record

0812 Back on record

J – issue of record

DA – exhibits not produced prior to cut off date may not be submitted as evidence

PA – different than what counsel is indicating - follow rules of civil procedure

Filed three Motions in limine and sent two good faith letters

Now they are producing a bunch of exhibits

Things I've never seen before – lists by their contractor of things they say are not done properly

He didn't respond in good faith

Don't like being sabotaged on the day of trial

816

Da – Yellowstone responded to not discovery until last week

They didn't answer interrogatories

J – know has been problems with discovery issues

If there is any unfair surprise, I'm not going to let it in

We'll deal with those issues as they come up

817

PA calls W – 1

Louis Caravella

Clerk swears in W – 1

Defendant

PA ? W

Been looking for homes in area

real estate agent Mark Griesse

purchase and sales agreement to buy home from Rick Myers

822

PA intro PX 3 - signed contract

Never met Kathy horn; never had conversation with Kathy Horn

Exhibit 3 was offer made but was not accepted

PA moved PX3 be admitted no objection ADMITTED

826

PA intro PX 4 addendum to purchase agreement

830

J – usually don't read from documents until they are admitted

J before we start reading from document, need to have it admitted

DA – no objection ADMITTED

832

DA – object to form

Question restated objection withdrawn

PA moves to admit Ex 5 no objection ADMITTED

Have never received a Certificate of Occupancy

834

Exhibit 6 multiple listing agreement

Back to exhibit 3 - did not have attorney advise

Had not seen the home prior to making the offer

Inspected the home with Mr. Horn - around April 23 or 25 – can't really recall the date

@Exhibit 3 part 4

841

DA – objects to form of question PA – will cover later OVERULED

Knew it had set vacant for many months

Was unaware that there had been other contractors in the home during the 14 months period had been vacant

Only window not in was the one in the master bathroom

DA – objects - misstates his testimony SUSTAINED

There was water on some of the floors

846

Da – objects he is seeking a legal conclusion J – restate the question

Purchasing the home "as is"

847

PA – want to publish Mr. caravella's deposition

J – will mark as PX 97

W opens deposition

J ADMITTED

PA – Page 128

DA – there was an objection; need to go back and read the original question

J – will SUSTAIN the objection for now

PA – page 35 line 11

J – answer would be permissible

W – Horn assured me home was in good condition

PA – objection non responsive

853

House was not habitable at the time the house was purchased

@page 44 line 110 - - (changed mind)

856

Line 10 page 45; look at line 6; start with line 2

J – let's be a little more specific difficult to know when you are asking him to read and when he is answering

Page 45 line 17

"Went everyday" is not a true statement but went very frequently

Page 46 beginning on line 12

902

Page 47 line 10

905

DA – objection - it misstates the deposition testimony

J – general concern - you get 10 hours to present your case; probably treat cross in that time

Usually deposition is used for rebuttal

Have him use the deposition to impeach him

J – going to overrule the objection at this point

Deposition speaks for itself; I can read it if I have any question

907

Ridge beam; post

Estimated spend \$750 to finish home

DA – object asked and answered

J – wait for me to rule on objection

DA – has been asked and answered; he just didn't like the answer

J - OVERRULED

Page 85 line 24

Page 86 line 2

DA – counsel might start with his question on 85 line 9

J – up to Swafford; it is his direct examination

912

Concrete pad

W – never gave (Horn) a set of plans

915

Smart Home System

Did not order it; paid for it

Page 156 # 10

Never personally sent an e-mail to Mike Horn; was to open range

DA – objects - badgering the witness OVERRULED

What was going to be an approved purchase and what was not

Had to have a bid price on an item

Clearly spelled out in agreement

919

PA – move to Strike - J was responsive to your question OVERRULED

Page 80 #4

Line 17

921

Unauthorized work

Smart home system

Concrete work

Stone was authorized to be put in according to the drawings

923

Added stone to the pond side of the home

We had already paid for the stone; over paid for the stone

Didn't come to inspect the home after June 14 2008 until probably January 2009

925

Siding

No issue for the doors other than they overcharged me for the doors and they overcharged me for the doors

Had to give me a bid price for each phase

930

Letter 5-14-08 third paragraph

932

PA – move to admit PX 22 no objection ADMITTED

934

Issue with the roof

W – three issues - water on the floor – think he meant the dormers

Main issue - altered from the plans – water going in from the side

PA – roofing structure was built before you purchased the home

DA – objection = calls for speculation - will rephrase

W – roof issue was the say the design was changed

Jared will say it was the design of the house

939

Over the shed roof – were not flashed

Siding not completed the way you wanted it

Email re siding November 2008

@PX 68 (wrong one) That was the stone; we already covered the stone

942

PX 66

W – he sent invoices; still didn't pay

044

PX 86

PA – moves to admit no objection ADMITTED

Don't recall proposing settlement agreement December 05, 2008

Received stack of bills every month - very confusing

947

Agreed upon contract price

Bid prices came down for the work we authorized was about \$150,000

Never told Horn an amount

Every bill paid was to Frontier Development LLC

952

Materials provided

Page 179 bottom

Any reason to dispute the credibility of Yellowstone - yes

Page 180 #2

they are claiming \$74,000 unpaid

soffit material - rephrase may have given a wrong answer

955

Not disputing delivery; am disputing need and use

One bill for soffit material for \$5 or \$6,000

Another bill for soffit material for \$6000

Person only charged \$180 for soffit installation

Recess 957

Reconvene 1012

J recalls case

PA continues direct

Invoices are DX 79 (will be VVV)

J - need to have counsel agree on what exhibits are going to be used

PA @ PX 94 6th invoice back

Invoice 87150 - is this one of the duplicate billings

On the invoice I have, it is written soffit material

1018

Invoice 88577 (still on PX 94)

Multiple charges for tools – rulers and things you don't bill the client for

PA – do you know the dollar amount of tools you object to

W – can't tell you that - object to the overall bill

1025

PA – move to introduce all of the invoices in 89 and 94

No objection ADMITTED IN THEIR ENTIRETY

1027

J – your direct is more like a cross; very awkward situation

(email sent to someone other than Builder @ open range)

1029

Crawl space

DA – objection calling for speculation; witness says he doesn't know SUSTAINED

1031

Unauthorized materials

Garage doors or barn doors, concrete work; smart system; all of the excess materials from Yellowstone - soffit, 2 X 4, siding material, framing materials

Didn't authorize any materials from Yellowstone; I authorized Mike Horn to put siding on my home

Haven't listed all; my builder will have a list

Irregularities in billing

Have a lot of bills for work that wasn't done; duplicate bills that didn't make any sense

1035

Garage doors

1041

Change the interior of the mother-in-law suite

1044

Concrete pad

J – you have used 2 hours 2 minutes of your time

1045

DA – we stipulated to admissibility of exhibits yesterday

Our exhibits 1 -5 (A – E) will be admitted

6 (F) subject to foundation ; same with 7

8 – 14 should be admitted 14 (H – N)

J – H – N ADMITTED without objection

H – R come in subject to foundation

F & G only come in if foundation

T – Y is admitted

Z is duplicate

J – A – Y all admitted except for F and G

AA – ZZ all admitted by stipulation ADMITTED

AAA – JJJ is agreeable ADMITTED

1054

J – A – E

H – Y

AA - ZZ

AAA – JJJ

F G LLL subject to foundation being laid

1056

Da begins cross

Scope of work

W – had limited funds; very important I didn't get ahead of my self

Structural framing ASAP

Doghouse, stone were phase

Second phase – siding, rim, all the wood, exterior

Ex K - - email from Horn to Caravella - May 12, 2008

1100

EX N – 14 email from Horn to Caravella – May 16 2008

Bid prices

\$50,000 to cover framing materials and labor

Neither were completed

No plumbing work done by Mr horn

No electrical roughing though I was billed \$25 K

Exterior wrap and siding not complete and not done correctly

None of the detail was done

Breezeway – said he would finished but that was not done

Wood not completed

Trim around the windows not completed; flash not done

DA 6 – elevations

Saw these at Horn's house when we met with them; we discussed these with him -
the big ones you take to the sight

PA – object lack of foundation

DA – these are a reduced sized copy of the original plans original would be in the P & Z office

PA – we are subpoenaing these today

Two weeks ago they said they couldn't find them but they

J – will admit F – (6) contingent upon allowing plaintiff opportunity to object in the future

1108

DA – back to DX N

Insulation never done by Horn

Drywall – never done by Horn

1110

Wanted phase 1 done immediately

Only had \$50,000 but wanted to get started immediately

“firm estimates” - never received

told him not to start any work until had a bid price

1112

J – what is “Smart Home”

PA – objection non –responsive; is narrative OVERRULED

PA – objection narrative - DA – can re-ask

1115

Back to smart home - was not ever installed in the home

He wasn't supposed to bill me until it was installed

Concrete – received a bill and paid the bill

Never ordered concrete to be placed in the home

Wasn't in the phasing; wasn't even on the radar screen

Hadn't decided on garage doors yet. Windows

PA – objection calls for legal conclusions

DA – they applied the payments where they saw fit

J – going to sustain the objection and strike the answer but will allow you to ask in a different way

PA – calls for speculation and conjecture

J – going to sustain because don't think foundation has been laid but will allow you to re-ask

PA objection - objection narrative - J don't think he has even finished the sentence yet so not a narrative yet

1020

W – I didn't hire Yellowstone at all

J – you used 24 minutes

PA redirects -

Smart home

W- was not given the opportunity to select anything

It was never authorized

Wasn't supposed to be billed for anything until it was installed

1124

PA – PX 33 - email from Caravella to Horn

Move to admit – no objection ADMITTED

Authorization said had to have total bid price and had to be in proper phase

1129

Ex 32 moves to admit - no objection ADMITTED

DA – going to object - June 17 -2008

Objection is withdrawn

Didn't show up number one and wasn't authorized number two

If I "would have sawn that" I would have gone ballistic

1132

Rough in

DA – going to object in that we have gone beyond the scope –

J will allow you to re-cross

PA – object – non responsive SUSTAINED

1142

DA – objection mischaracterizes his testimony

J – will OVERRULE Mr. Caravella can take care of himself

1144

PA move to introduce 44 and 45 no objection ADMITTED

1146

PA move to admit PX 46 no objection ADMITTED

1148

PA move to admit PX 47 no objection ADMITTED

1150

PA – move to admit PX 50 no objection ADMITTED

1154

PA moves to admit PX 53 no objection ADMITTED

1156

PA moves to admit PX 55 no objection ADMITTED

1157

PA moves to admit PX 56 no objection ADMITTED

DA objects - argumentative OVERRULED

Complained about things

DA objects - argumentative OVERRULED

W – I was assuming the work was done according to specifications

PA – move to strike - J will strike

J – 40 minutes - now have used 2 hours and 42 minutes of your time

Start at 9:00 a.m. tomorrow

Recess 1203

14 December

0900

J recalls case; W – 1 recalled to the witness stand; still under oath

PA continues redirect

Invoices

PA @ PX 64

907

PA objection non-responsive STRICKEN

909

PA moves PX 64 be admitted no objection ADMITTED

912

DA – you're intending to use the document but not mark it?

PA – just to refresh his memory

915

DA – objection withdrawn PA will rephrase

Complaint about "Smart Home" System

PA @ PX 96 letter from W's attorney to Swafford

PA moves to admit PX 96 no objection ADMITTED

921

DA X W – 1

DA @DX K page 2 second paragraph

PA – not admitted J – has been stipulated to

PA – objection leading J this is cross he can lead OVERRULED

Scott Norman had things going on all over the place

Norman was Horn's material man

Also S&D electric

DA – back to PX 64

932

DA – @ PX 44 and 45

935

@PX 32

938

PA re redirects

Materials being ordered and delivered to site

940

PA @ PX 53 last paragraph

PA objects non-responsive SUSTAINED

943

PA @ PX 54

PA moves PX 54 be admitted

no objection

ADMITTED

946

PA @ PX 55

DA – objection lack of foundation - never an account between Caravella and YDIC

J - rephrase

950

PA calls W – 2

Thomas Davis

Clerk swears in W – 2

Teton County Building Inspector

PA ? W -2

Plans for construction

PA @ PX 92

PA – moves to have PX 92 admitted

Change to PX 98

DA – these correspond to DX F

DA – no objection believe these are identical to DX F

ADMITTED

W – they are stamped by

PA – believe these are not identical to DX F

J – yours have been admitted; F hasn't

958

No COA yet

DA – no objection to refreshing memory

Flashing requirement

DA object - foundation

Code change between time plans submitted and now

1003

PA @PX 7A

Stipulated to that and NNN and RRR

J – all of 7

DA – all of them

J – PX 7 A – D and all photos in NNN and RRR ADMITTED

1008

DA objection calls for speculation and leading withdrawn

W – requirement will remain with what house started under

1009

DA – X W – 2

2003 International Building Code

Require flashing

1013

DA intro DX CCCC marked move for admission no objection ADMITTED

Is plastic coating or is flashing @ 7C

PA – objection calls for speculation and conjecture OVERRULED

W – doesn't go past header section of the window - doesn't appear to be flashing

1015

DA @ DX 000 - 9

W – no flashing visible in photo

1017

PA redirects

Flashing can't be done until window installed

1020

DA – follow up

DA @ RRR 23

DA – is SSS instead

Clerk - SSS admitted by stipulation

1023

PA calls plaintiff

Michael Horn

Clerk swears in Plaintiff

Sign says Open Range Custom Homes

1028

DA – object leading

J - technically it is

SUSTAINED

1030

PA moves to admit PX 2 application for Building Permit

DA – inquire in aid of objection

PA – move to admit PX 1 and 2

DA – any employees

Permit signed by Kent Hillman -

W – 1099

PA – objection inappropriate lie of questioning - not appropriate

PA – with draw request to admit PX 1

J – PX 2 ADMITTED without objection

1033

Changes to submitted plans

1038

Had nothing to do with property for 14 months

Another contractor did do some work there

PA @ PC 7

100% sure blue plastic is window flashing

1041

PA refers to PX 8

Moves to introduce PX 8	no objection	ADMITTED
-------------------------	--------------	----------

Recess 1042

Reconvene 1052

PA continues direct

PA moves to admit PX 6	no objection	ADMITTED
------------------------	--------------	----------

Temporary stair railings

Materials left at site

1055

First heard from Caravellas

PA @ PX 10

PA moves to admit PX 10	no objection	ADMITTED
-------------------------	--------------	----------

DA whole line of questioning has been leading; expect same leeway

J – if you have an objection, will rule on it

1058

PA moves to admit PX 11	no objection	ADMITTED
-------------------------	--------------	----------

PA moves to admit PX 12

no objection

ADMITTED

1100

Did you ever inspect the home with Ps

DA – objection witness has binder in front of him

J – assume if he does look at it, it will only be at direction of attorney

J – if you need to look at something, ask attorney

1103

Reviewed lot lay out

DA object to form leading

OVERRULED

1106

PA @ PX 16

DA – this document never produced until exhibits produced no confirmation by either recipient

Unless we have agreement concerning exhibit, have to object

PA – that's not correct

All these emails were produced at the depositions

J – going to admit contingent upon by the end of the trial Mr. Swafford shows was provided, will not admit

J – is your client going to deny receiving this -

DA – I believe so

J – be difficult to make DA prove a negative

Going to allow to come in and question on it but will need some proof that it was provided

PA – he's just trying to get me to admit his exhibits

J – provisionally admit it

J – PROVISIONALLY ADMITTED subject to verification

1112

DA – objection in form; leading SUSTAINED

DA – objection to from; same question still leading

J – is but to move things along, pursuant to Rule 611 will ALLOW IT

1114

PA @ PX 17

PA moves to admit PX 17	no objection	ADMITTED
-------------------------	--------------	----------

1117

PA moves to admit PX 18	no objection	ADMITTED
-------------------------	--------------	----------

PA moves to admit PX 19	no objection	ADMITTED
-------------------------	--------------	----------

1123

June 14th meeting

PA @ PX 20

PA moves to admit PX 20	no objection	ADMITTED
-------------------------	--------------	----------

1127

June 14 meeting

PA moves to admit PX 22	no objection	ADMITTED
-------------------------	--------------	----------

1135

Stockpile stones at Yellowstone in Rigby

PA moves to admit PX 24	no objection	ADMITTED
-------------------------	--------------	----------

1139

PA moves to admit PX 27	no objection	ADMITTED
-------------------------	--------------	----------

DA my exhibit only consists of one page

PA – will add second page to exhibit; get copy to court before end of trial

1143

PA moves to introduce PX 28

DA believe is identical to PX 27

PA moves to admit PX 29	no objection	ADMITTED
-------------------------	--------------	----------

1147

PA moves to admit PX 30	no objection	ADMITTED
-------------------------	--------------	----------

1152

PA moves to admit PX 32	already admitted
-------------------------	------------------

1155

"Smart Home" concept

1158

PA moves to admit PX 33	already admitted
-------------------------	------------------

1200

PA moves to admit PX 34	no objection	ADMITTED
-------------------------	--------------	----------

Recess 1200

Reconvene 0102

J recalls case; ids those present

Mr. Horn still on stand; still under oath

J – discussing exhibit in PX 34 should be removed by stipulation; (returned to PA)

105

PA continues direct

PA @ PX 94

PA @ PX 34

PA move to admit PX 34 already admitted

0113

PA moves to admit PX 35 no objection ADMITTED

PA moves to admit PX 36 no objection ADMITTED

PA moves to admit PX 37 no objection ADMITTED

PA moves to admit PX 38 no objection ADMITTED

PA moves to admit PX 40 no objection ADMITTED

P – there is a bullet missing from the top of the page

0116

DA moves to strike non responsive

J will allow; let's make sure we get the exhibits right

0118 off the record

0119 back on the record

J – Hahn at 52 minutes

Swafford at 5 hours 15 minutes

PA - look at EEE

J – talking about EE

DA objection OVERRULED

125

PA @ PX 45

PA moves to admit PX 47 already admitted

128

PA moves to admit PX 48 no objection ADMITTED

PA moves to admit PX 49 no objection ADMITTED

PO moves to admit PX 50 no objection ADMITTED

131

PA moves to admit 51 no objection ADMITTED

PA moves to admit PX 52 (passed over; no response)

133

J – do you want 52 admitted

Yes no objection ADMITTED

PA – move to admit PX 53 already admitted

137

PA moves to admit PX 57 no objection ADMITTED

PA moves to admit PX 58 no objection ADMITTED

PA moves to admit PX 59 no objection ADMITTED

139

PA moves to admit PX 62 no objection ADMITTED

Add stone

@PX 64

142

PA moves to admit PX 66 Stipulated ADMITTED

PA moves to admit PX 67 no objection ADMITTED

PA moves to admit PX 68 no objection ADMITTED

0145

Offered to absorb the costs of the siding if he would pay for the stone

PA moves to admit PX 69 no objection ADMITTED

PA moves to admit PX 70 no objection ADMITTED

148

PA moves to admit PX 72	no objection	ADMITTED
-------------------------	--------------	----------

152

PA moves to admit PX 79	no objection	ADMITTED
-------------------------	--------------	----------

Soffit material

PA moves to admit PX 84	no objection	ADMITTED
-------------------------	--------------	----------

156

PA moves to admit PX 85	no objection	ADMITTED
-------------------------	--------------	----------

PA moves to admit PX 86	already admitted	
-------------------------	------------------	--

159

PA moves to admit PX89A – 89DD

DA – like a little more foundation

PA @ 89 I

202

PA @PX 89 N,

208

PA – moves to admit 89 A through 89 DD

DA – some problems - documents that were not produced in discovery and certainly none with any handwriting on them

Inclined to allow it in	ADMITTED
-------------------------	----------

@PX 88 everything except Caravellas' invoices

Asking pre-judgment interest

210

PX 91

PA moves to admit PX 91	no objection	ADMITTED
-------------------------	--------------	----------

PA moves to admit 88 and 89

89 already admitted

no objection (to 88)

ADMITTED

PA moves to admit PX 90

no objection

ADMITTED

214

PX 96

PA's time just over hours

Recess 218

Reconvene 230

J – Swafford 6 hours 14 minutes

Hahn 52 minutes

DA begins cross

Experience

236

Myers homes

3 of nine houses constructed in Teton Valley and Jackson Hole

240

P is excused

PA need to call witness right now; unavailable tomorrow

PA calls W – 2

Nephi Gibson

Clerk swears in W – 2

Electrician

Estimate \$50,000 just for electrical

Did exterior penetrations, some other things

Billed \$2500; got paid

244

DA begins cross

Also involved in the Myers project

Ran permanent power to the project

248

PA objects calls for speculation LET'S MOVE ON

Witness is excused

249

Mr. Horn returns to stand

DA @ DX D

Page 3 5 paragraphs down

301

PA objection calls for legal conclusion J don't think it is a legal conclusion
OVERRULED

Quick book reports have not been provided

No bank statements

304

DA requests Horn Deposition

Marked DDDD

P opens deposition

306

PA improper impeachment

J – not sure he is impeaching him yet; think he is just trying to lay a foundation

DA – didn't you tell me you tossed them out yes

No e mail records

Purged files and records of anything pertaining to the Myers project

Returned plans to Mr. Myers

308

Wife was listing agent

DA @PX 4

Don't know the extent of her interactions with First Horizon

311

DA @ DX A page 3

315

DX B

318

DX C

319

DX E

324

PA objection compound question J break that down

328

DA X 1 – 4 state of the Myers home

Move admission of G 1 – 4

PA – objection foundation LAY MORE FOUNDATION

PA - objection only three photographs used in the deposition

PA – don't have the 4th one looks like later in the year

J – going to admit G 1 through G3

P – probably take spring of 07 or 08; don't know

No reason to dispute

J – G 4 ADMITTED

DA @ DX H

335

DA @ DX H page 2 very bottom

339

Exterior rough ins

345

DA @ DX I

DA @ PX 19

347

Structural framing

350

DA @ DX K

356

First three items could be done for \$50,000

358

DA @ MMM 1

400

DA @ DX M second page

402

DA @ PX 98

404

God's Eye View

Kept one sheet of paper

J – God's Eye View? Same as Bird's Eye View also know as site plan

406

DA @ DX M

408

DA @ DX O

DA moves to admit DX O

PA – two of the three emails deal with the Caravella property other is entirely different matter

DA – believe O is in

PA – May 17 Horn to Norman

DA – don't believe is extraneous

J – already admitted; will leave in

412

Struhs house

PA – not relevant to this house

J – will allow you to explore on redirect OVERRULED

J – relevance?

Obtained account agreements from owners

J – OVERRULE objections

Tremendous about of dots to connect

J – pa's objection noted for record

415

Lien against the Struhs

PA motion to strike that testimony

J – trial is not over; will not show up in decision if he has not connected the dots

Will treat as foundational

417

DA @ DX P and Q

Up until October billing, Caravellas' paid 100% of invoices

@DX R

420

PX 98 A 4.3

P - Did not have the construction plans

424

First page of DX R

427

Asked for plans but didn't get them

Didn't need plans because plans didn't apply

DA @ DX N Page 3

432

PX 98 A 4.2

434

DA @ DX U

441

DA @ DX Y

444

PA objects J witness can take care of himself

DA @ DX AA

448

PA – objection asked and answered
OVERRULED

J – think was intended to clarify

Page 2 and 3 of DX V

450

DA @ DX CC

453

House vacant for over a year

Work performed by another contractor

Temp railings and on site cleanup

Part of that \$20,000 because of that

No documentation of that work

Outside clean up

Also included previous work that was not paid for when the project shut down

Job site insurance

Unpaid labor and materials

Invoices not paid

457

Material that had gone bad

Some remaining siding discarded in to a dumpster

Siding that was previously delivered

Sat out there 14 months, two winters, basically uncovered

Threw it in the dumpster across the street at another site I was working on

459

J – Hahn 3:17

Swafford 6:18

Won't quite finish tomorrow

Can come in Friday morning and get done

Will be here next Tuesday could fit something in then

Start at 8:00 tomorrow

Will stay and get done Thursday for just a couple of hours

DA- some rebuttal witnesses

J – will see what need for rebuttal; will be reasonable

December 15, 2011

0813

J recall case

Michael Horn recalled; still under oath

J ids those present

DA continues cross

@ DX EE

Concrete

0818

@ DX KK

0825

@DX MM

000266

0828

@DX OO

Smart home system

Barn and garage doors

An e-mail where you advised Ds' of the costs of the doors

0830

@DX V

Smart home invoices

Not invoiced until August 19, 2008

Invoices Caravellas on June 12

0833

Central Light Invoice Page 3

0834

Contractor's fee 12% on top of material and labor

0837

@PX 73

Didn't ask for copy of plans D was working off of until November

@PX 88

0842

@ DX N

e-mail

PA objection compound question

BREAK IT DOWN

\$2500 worth of electrical rough in

Didn't do insulation or drywall

000267

About \$500 each for additional windows

@YYY invoice from YDIC for windows

0847

@DX N

Garage doors were \$28,000 (YYY 92)

Garage doors were installed; barn doors were not installed

\$26,000 for barn doors

\$135,600 for work done

Exterior stone -

Exterior siding

Paddock windows

Concrete

Ordered barn doors and garage doors and installed some of them

Nephi Gibson electrical rough in

Total \$138,100

854

P – not done with subject

Interior framing done

856

PA object to counsel testifying

OVERRULED

@PX 88 2nd page amount Ps have paid

This is not spread sheet I provided after deposition

Claim a lien of \$148,000 and \$75,000 for Yellowstone

000268

859

PA redirects

I filed my lien first and included both amounts

Did not know Yellowstone was going to file lien

@ PX 88

Encompasses total billings and total amount received

Did not know billings would be issue

All submitted to Caravella

PA @DX N

905

DX N is email from P to D providing general estimates

He has not provided specifications, plans

May 29 it is reversed - explicit instructions

907

PA @ PX 20

Elevation and instructions for electrical and plumbing

909

@DX EE Siding

912

PA calls W – 3

Neil Hickada

Clerk swears in W – 3

general contractor

PA ? W – 3

Phone call from PA - asked if going to testify

Told me I could be held responsible for things that were happening after the trial

Felt like he was intimidating me

Felt like he was discouraging me from testifying

Concerned me; felt intimidated

Want judge o know had been intimidated by conversation

915

Licensed through state of Idaho

High end homes

Sub contractor for Frontier Development

Did not work on the Myers home

First time worked on home in dispute was in 07

Would have been after home was purchased

Sign said Open Range Homes

918

Home was 30 – 40% complete

Walk through with Caravella

Spoke with Mr. Caravella on June 14

Parking in front of the garage - standard sizes

He made comments he didn't think that was adequate for his needs

24 ' in depth and 12 ' in width

14 or 16 feet wide; customized concrete

Demeanor - seemed very focused; knew what he wanted to tell us

Specific in his directions; knew what he wanted

Orange line that delineated the top where the rock was going to go

922

stone

possibility of putting stone on the gable end of the guest home

he was okay with the yellow line

discussed the siding - board on board pattern

cedar siding; grayish color stain

rough ins

interior framing - possibility of moving some walls

kitchenette in the "back half"

bridge between the house and the guest suite

926

Spoke of \$250,000; said could get more

929

DA X W - 3

Telephone conversation lasted at most five minutes

Asked what you would be talking about - said not sure

Construction problems -

Any defects - do you know whether Frontier Development or Mr. horn has put you on notice

At no time did I threaten to sue you - no

W - felt threatened by the call

DA - Asked if any claims by Horn or Yellowstone

Wanted to know if had any claims or agreements

PA - this is not proper form of questioning

PA - motion to strike

DA –never any comment about Caravellas suing - no

932

June walk through - plumbing and electrical placements

W – have seen a few e-mails

Orange line on house –

DA @ DX G - pictures of house

Orange line would be on the photographs - can you tell me where they are

W – the orange line I saw was on tar paper - don't see any tar paper

938

W – didn't do any work on this house until after Caravellas purchased it

W – the one (orange line) I specifically talked about was on black tar paper

May have been on the tyvek

Don't recall seeing it on the OSB

940 –

J what is OSB – oriented strand board

940

PA – have some question may want to ask

J – asking to go beyond scope?

DA no objection as long as can cross

PA – delivery of materials

P approved height for the stone

942

DA – recross

Did you keep notes - no

Material ordered

Did Norman order the siding - think he was waiting for measurements from me

DA - did you work on the house in Jackson - yes

Siding ordered for both houses at the same time

Materials ordered at the same time to save shipping costs

W - some not complete when we left

945

PA calls Scott Norman

Clerk swears in W - 4

Recess 0946

J recalls case

Swafford 6:48

Hahn 4:13

PA - ask court to admonish parties not to have derogatory comments to witnesses after they testify

J - Belligerence and attitude; faces made from all parties - it would behoove all of us to act like professionals

959

DA ? W 4

1003

June 14 walkthrough

1006

Smart home system

P said he liked the idea of doing that

Was existing stone on the home

Yellow line was discussed specifically with P

Talked about siding at Mike's house and Dr. Burke's house

Can't see the line but it was there in the photos

1009

Discussed the rough ins in detail

Wrote everything on the sketches as we walked through the house

Wanted to turn the entertainment room in to a suite

1011

Materials ordered, delivered to the job site

What did Smart Home price include

J – paid for modules, light switches, cap 5 wiring?

1014

PA what else is required

W - to finish off the system – between \$40 – 45,000

Paid for the Smart Home System; not seeking to collect for that

No personal e-mails from Mike

1017

PA @ PX 93 and 94

PA move to Admit 93 and 94 no objection ADMITTED

Amount due in principle \$75,731.88

Asking for pre-judgment interest

1020

Materials were still on the job site when pulled off the job

PX 95

PA moves to admit PX 95 no objection ADMITTED

1021

PA Whiting X W -4

Plans - given in 06; brought to deposition; promised to provide with set of those plans; did not do that

PA – we requested those several times didn't we - you'll have to ask my attorney that

A lot of things were requested at that meeting that would have been important here weren't there

PA objects -speculation conjecture argumentative

PA like to publish depositions

1028

EEEE – 30B6 deposition of Yellowstone Do It Center

FFFF – 30B6 deposition of S & D electric

Move publish deposition of EEEE no objection ADMITTED

PA reads from Page 22

Page 24 line 8 plans

Page 130 line 11 garage doors

1034

Did not tried to hide the plans

Everyone was looking at them

Mr. Horn knew you had the plans –

PA objection speculation SUSTAINED

1036

DA @ PX 92

DA – move to admit 92 A – F no objection ADMITTED

Also providing materials to home in Jackson at the same time

Using same materials

Sold materials to Yellowstone in Bulk

SUSTAINED

DA – will rephrase

Was divided between two projects

1045

DA @ DX YYY

Doors were never installed

Yellowstone billed Frontier \$1000 for labor to install those doors

1048

Beam identified as structural issue

PA - object – speculation, conjecture, argumentative take another swing at it

PA – objection calls for legal conclusion overruled

1052

Open account -

PA – objection relevance OVERRULED

Smart home

S & D electronics sold the Smart home System

PA objection - withdrawn

W – was aware he had a contracting fee

W – believed Caravellas wanted the smart home lighting package prior to the June walk through

DA intro exhibit marked GGGG e-mail from Horn to Norman

PA objection not admitted

PA - objection not appropriate impeachment document

J – need to look at it to rule

DA – this is an email between the plaintiffs

J – communication between two parties to the case as well as one witness - if being used for impeachment purposes

PA - they have to set the foundation for impeachment

J – have to connect the dots; if don't, will withdraw admission

PA objection there has been no impeachment

J – understand objection- goes more to the weight; going to ADMIT it subject to making determination how much weight to give it

1103

Purchased from Central light

@ DX V

Invoice dated August 19 \$10597.55

Billed \$19,080.00

Was never installed; when stopped work, pulled it off the job site

Caravellas did not receive any part of this system

Had opportunity to sell system to another customer

W – had another customer who made offer to purchase for \$10,000

Smart home sales were intermingled with Yellowstone and S&D

1107

PA redirect

Why did you remove the central lighting system from the residence

W – only trying to protect the investment Caravellas had made

They had paid for it;

They had requested through Frontier Development for me to sell it

1109

Siding - sent amount agreed upon

Slider door - has not been paid

Were not able to install doors – concrete stuck out further than the framing material did

Drove from Idaho Falls to install the doors

There may be a \$1000 overcharge

1112

J limited re-cross

DA re-cross

W – were never charged for the time they drove up and tried to install the doors

1113

J – where is the Smart Home system - in the storage unit in Ucon

Still is in working condition

PA rest at this time

DA – need to read deposition in to the record

J – Swafford 7:14

Hahn 5:01

Need oral deposition read in to the record

First Horizon Loans deposition

PA – objecting to this reading of it - not taken in lieu of court testimony

Will not have cross examination

Have to be notified in lieu of court testimony

Hahn – was taken in lieu of court testimony

My understanding was Mr. Swafford was going to be there; at the last moment he decided to appear by telephone

J – what can you show me

Hahn – he did cross by telephone

J – what in lieu of trial testimony

Hahn we had detailed discussion about it

This is in respect to the Myers documents that Mr. Horn tossed

Absolutely clear between counsel

Recess 1120

Reconvene 1131

PA – withdraw objection; it was on the affidavit

J – read rule 32(a)(3)(b) is authority - likely would have let it in

Depositions are opened

Mrs. Caravella reads from the deposition

Page 5 line 11

1203

J – going to treat this as Mr. Swafford's time

PA – what if I don't want it read –

J – if you don't it's fine

PA - continue

1209

PA - request halt further reading

J – Swafford has waived further reading of his cross in the deposition

PA – move admission of the deposition

J – HHHH is admitted

Recess 1211

0116

PA agreement with regard to agreements - asking to confirm following exhibits

13 no

14

23

31 no objection

39 no objection

42 no objection

43

60 no objection

61 no objection

63 no objection

67 no objection

71 no objection

74 no objection

75 no objection

76 no objection

77 no objection

81 no objection

87 no objection

0120

DA calls W - 5

Jarred Kay

Clerk swears in W - 5

PA ? W - 5 background and experience

000280

Concrete and flat work

Rough framing, finish carpentry, door and window installation, roof installation

Drafted at least 100 rough ins

Degree in natural science

Contractors worked for and experience

J & K Construction own construction Company

50 customs homes involved

License general contract registered in the state

Have a code book if I am not familiar I will call the builder inspector.

Electrician have to be register

Caravella called me in late 2007

It could have been early 2008 not exact of date

He called me and ask few questions

House was vacated when I first looked at the house

Look and the construction and took pictures

Waited for Mr Caravella to see the house we discuss what he wanted to be fix

Yellow book—tab 67 ex MMM/admitted

MMM1 thru MMM8

I don't think this are my photos

0132

Elevation explains what it is and what it means

Tab 73-ex SSS yes so far those photos are mine

DA giving you some tabs please put tabs on 4, 8, 9, 28, 37, 53, 67, 68, 91.

73-4 explains what it is.

DA this is the fire place

Yes

DA SSS 4 how does that related to SSS 8

W-5 explains about sagging

0137

PA objection to this testimony. Construction done to Mr Meyers not Caravella

J understand your argument.

DA note an objection for the record

J

0138

DA continues . SSS 28

W-5 explains

W-5 found foundation but no supported. Explains

DA what is point load?

W-5 explains

DA looking at SSS 4

W-5 explains

J everything you are saying is being recorded. For example if you are pointed.

Ex SSS 8

DA

W-5 explains the ex SSS 8

0144

J SSS 28 is an after Picture?

W-5 yes

DA next picture tab 37 what are we looking at

W-5 take in the master bedroom and explains

0145

PA object

J overruled

DA.....

W-5 explains

0147

PA – objection move to strike

OVERRULED

Pa – Want to make sure my objection is clear

J – expertise in application

He has experience in applying the code

OVERRULED

DA @ dx

PA – totally lost

J – picture is upside down

W – middle of the steel plate

Anchor bolt and the plate – used to secure the house to the foundation

That is paramount

Photo taken for D to show him what I had discovered

Floor joists on the top of the photo

Above the threads on the anchor bolt – the support was missing above the foundation

Found other bolts that didn't have nuts on them

Not even the exterior bearing walls were fastened; nothing had been cinched down

0152

DA@SSS 78 same this

91 above where you saw earlier - point load location

The beam distributes the weight to that one point

After the repair

Repairs made – added glu-lam -

0154

D@ 23,24, 32,33

SSS 23 - picture of exterior wall in the master bathroom- shocked there was no counter flashing on the roof

Good practice to do it; several places around the house that ws leaking

Had done some flashing in other places

24 spot in the south bedroom that leaked

Could see daylight through the roof where the two roofs joined

Cold joined - nothing flashed; every time it rained or snowed it leaked; could see daylight through it

158

Photo 32 - right above the front entry door - had to take the siding off to install the flashing

Photo 33 fix above the garage doors remove the siding; install the flashing

Were able to reuse some of the siding

200

Almost through out the house found places that didn't meet industry standards

SSS – 1 cement pad in the back of the house – sloped back into the house; could see in photo 3 how damp the ground is when took it out

In the corner of 3 is where the water collected

5 – ballooned framed wall in the den – studs follow the pitch of the room; framed on top of an LVL – wall is not level

J – don't see the laser line - three red lines on the top of the photo

6 – fix in the activity room in the garage

7 – upside down – exhibit number in the top of the photo – window in the guest bath; not sitting n the bearing wall; typical of what we found throughout

Had to add framing to that or take out the original stuff and add new stuff to it

208

@ photo 10 - directly above the last photo; looks careless to me; not easy fix to jack up

11 – master bedroom door; plate is going to fall out if any one kicks it

12-17 – the house after we got done

18- wall that separates the guest bedroom into the activity room - rige beam – rat's nest framing; 19 is a close up of that; ridge beam not even attached

No mechanical connection

20 upside down same ridge beam butted up against a truss; ridge beam is the start of the structure; just the nails would be holding that

12 foot roof – can't imagine not having a mechanical connection; especially in the country with snow on the roof

214

Would never construct a home without plans

SSS 21 engineers fix to the master bedroom; roof bearing on it; carrying the wall carrying the roof load; can see the balloon framing

25 – picture of the stair landing – framing was coming undone; double plate on bearing wall; separated from other bearing wall

26

27 Bathroom in the guest suite – wall being built without a top plate

29 – couldn't attach the ridge beam with many connections

Stripped a lot of the rafters; had to even up the ceiling; leveled off the ceiling

30 – could see the framing whee we leveled doff the ceiling

220

Master bathroom had been worked over; engineer's fix in the activity room

Walls were stood up but they weren't fastened to the plate above

31 – relates to photo 27 – same location but a wall with a top plate

34 shot from the driveway of the bridge - had to remove the siding to add counter flashing - stairway wall – had to add flashing; leaked severely - 83 shows that

83 is inside the windows looking at in 37

84- relates to cold seam in the roof – south bedroom

85 – exhibit sticker top right looking in to the laundry room – how much moisture is in the beam; water running down the stud below it

225

87 – looking from the guest bedroom in to the drive way – how the timbers connected to the wall

89 – sticker bottom left bearing wall on mail level – going in to master bedroom – it's pulling away

93 - way too many nails were used- starts splitting apart; as you keep adding nails you don't make the wall stronger you make it weaker

94- closet in the main hall; wall kinked

Window flashing – none around exterior roofs

232

Close out of the doghouse – flashing from the tyvek on to the standing seam; water entering the house; done opposite of the way it should be; clashing can't sit on all poritons of the roof - look at 47

Before we touched the place – standing seam roof- see the tyvek underneath the flashing; had to add flashing to stop that water from entering

234

Went and got a copy of the plans from Guy Robertson's office; Guy met me at the house and we walked through it

He provided a before and after elevation

1 – to fix problems and 2 – to finish the home

Segregated the billings - first 7 just involved the fixes

DA @ TTT – estimate to perform repairs

PA – objection - not relevant; not responsive DA – will re-ask

Elevation audit of the fixes

PA ? in aid of objection - are these actually incurred or hypothetically –

PA – object to the exhibit -

Da – already admitted

J – will let it remain admitted; shows what could have been done

239

PPP back 11 pages invoices actually sent to Ds

Pages in front – checks paid by Caravellas

J – first pages are sent as checks; last pages

J – first 3 pages are checks; 4th pages invoice; 4 more pages of checks then 11 pages of invoices

243

W – the 3150 is not a construction fix

Invoices are PPP-1

DA – move be admitted

000287

PA objection - can't tell if these involve fixes or fixes and finishes

J - witness has testified were fixes

PA ? in aid of objection

DA - object - don't think he has personal knowledge -

J will allow him to answer - if he doesn't know, he doesn't know

255

J - going to let you proceed if you want - certainly all the issues are will taken but I don't think it will affect how I rule

If it is admitted, it will be admitted to show what he claims he fixed

J - if I admit it I will note your objections

PA - will enter objection does it does not show what he claims it does

J - will admit Shows work what he claimed to do in repair

258

DA continues

Move admission of remaining pages at PPP -2

PA same objection

J - objection notes; ADMITTED

QQQ - notes from journal

DA moves admit

PA objection lack of foundation, relevance

Reflects day's activities

Reflect efforts in fixing construction problems at Caravellas

DA - move QQQ be admitted

PA - not relevant to anything before the Court

J - understand objection

J ? - contemporary records; recorded on the date the day indicates

J – will ADMIT; understand the basis for PA's objection; this exhibit may help you because it is probative

302

DA @ DXRRR – list of beams current state and then to right, engineered repairs

@UUU

305

DA move admit RRR ? in aid of objection

My measurements; right hand side are engineers measurements

J – will the engineer be testifying' will ADMIT RRR; if the engineer doesn't testify, will not consider this evidence

VVV has been admitted by stipulation -

307

DA @ PPP-1

Transposes invoices numbers on to one page

PA – objection; don't have copy

Amount of total fixes \$63,000 and change

309 elevations - didn't find one elevation that matched the original prints

@ DX 000

Added stone to match the elevations; also added the stone on the chimney once we pierced it through

Comparing 000 3 and 4

5 and 6 none of the windows were trimmed according to the plans

314

000 7 and 8

9 an 10

316

PA – object to counsel testifying

J – don't think he was testifying

Cost to install doors

PA objection WILL ALLOW

Recess 318

Reconvene 335

J recalls case

Swafford 7 ½ hours

Hahn 7:13

Swafford need to call two rebuttal witness

339

Jared Kay is recalled

DA continues direct

Takeoff

Siding on Caravella house – 10 inch board and then one shows 8 inches but is 10 inches

Window trim add up the lineal footage

Soffit material

343

DA @ DX G

Soffit material needed to be added

G – 2

Have to reference other photos to see the state of the house

000290

PA – objection - narrative; way beyond the question SOUNDS LIKE HEARSAY TO
ME WILL SUSTAIN

348

@DX YYY

Square footage X 2.4 to get lineal feet

351

YDIC 05 - T & G and stain

Stone left to be installed

Invoices matched up on stone

YDIC 11 – 2 X 6 14 footer - for interior framing

YDIC 13 -

Tyvek – even if took off original tyvek there was enough tyvek to wrap the house twice

354

YDIC 25 - three entries for tyvek

W – one is for tape to connect

YDIC 42 - siding – of what's there now - 4200 sq.ft - 6600 sq. feet

359

PA object leading TECHINICALLY LEADING WILL SUSTAIN

YDIC 59 Flashing tape

YDIC 61 invoice for garage doors

402

YDIC 67 more 2 X 6 16 foot more framing pieces

Cost to install garage doors about \$350 per door

YDIC 78 more 2 X 6 cedar exterior trim

Sierra Pacific windows - cost to install

000291

Paddock windows - 2 X 2 windows

Is \$564 reasonable

PA objects SUSTAINED

405

Siding - seemed like twice as much as needed and they weren't even done

One 10 foot piece of siding left

Trim material - no stack left; more than twice as much as required

Soffit material was way over done; about 350 feet left to put on

406

PA - cross W - 5

When was property left -

PA - vacated in December 2008

W - started in April 2010

D - visited property in the winter

W - walked the property

DA - objection argumentative OVERRULED

W - was back and forth every two weeks

Probably there from January

W - River Rim is gated community access

Don't know what materials disappeared

409

Orange line on the stone - don't remember seeing a line

PA @ DX MMM - 2

@MMM - 3

412

Was there a building slump in 2008 - late 2008

Building code

421

W – looked like from the very moment the home was started there were defects

NORA –

PA @ DX PPP 1

Invoices contain mainly fixes

430

PA #7

Doors -

437

PA @ DXYYY - 11 hand fir

Hand fir is not anywhere on the exterior

Not making a claim that Yellowstone did not deliver the materials they claim

442

Total amount D has spent thus far with you - don't know

Replaced the heat pumps - furnaces there but not installed

446

PA @ DX BBBB - never m ind

447

DA redirects

DA @ DX PPP – 1

DA @QQQ

PA – objection not relevant OVERRULED

Entry with no time – work performed but not charged for

Listed on billings

450

Chimney

Tried to keep fixes and finish items separate

Finishes after seventh invoice

Garage doors - three garage doors and two stall doors

Reasonable value installation and door \$5500

No feel for stall doors

453

Delivery of items

The amounts ordered and delivered were certainly not installed

Who takes back unused materials - not homeowner

You open an account with your name and then have sub-account with homeowners

Each invoice has a different account on it

456

Would not slope a roof into a vertical wall

If the house leaks, it's not the homeowners fault

457

PA de-crosses

Roof modification my Myers - would rain gutters have solved the problem - no;
there was no room to install them

If homeowners not paying and declines to pay you, do you return his materials back

458

J – Swafford 8:15

Hahn 7:57

DA calls W – 6

Scott Spaulding

Clerk swears in W – 6

Structural Engineer

DA ? W – 6

Jared Kay asked me to walk through the home

Incomplete but basically closed in

Looking for connections, tight framing, bolts all the way tight to the ground

Not tight at all, too many nails; headers much smaller then expected

In the breezeway, area of roof framing that looked like a bird's nest

looked like framer didn't know what he was doing

Undersized beams

502

DA @ DX VVV - report based on walk-through

Charged Jared for work and was paid

@DX RRR

Before Caravellas bought property was approached by Mr. Norman

Concern the beam was undersized; could use cross tie to support the beam

Gave set a drawings and gave size of beam

I engineered a fix

507

PA X W – 6

Considered those to be structural defects

Was not aware not all of those were done

Don't know if anyone has accomplished the changes suggested

DA - Object – beyond the scope and irrelevant

J – appropriate if the character had been attacked; some conspiracy to overcharge

Will allow this line of questioning

DA – different question than was asked

Reputation for honesty is not in question

J – door is open enough will allow

My experience with YDIC and Scott Normn has always been good

510

Fixes

DA @ PX 92

@ PX 34

516

PA@ DX RRR

Beam was insufficient; would not carry the loads

Recommended replacement

Was not erring on the side of caution

There are specific loads a structure has to be engineered to

They inspect it to see if it conforms to plans

Approved by an architect? - don't know

520

PA @ DX F

88.1 does have stamp of Prestwick Architects

J – see what it says

Go to A 7 .1

See name; not a stamp

522

@DX 98

Prestwick Architects seal is on each page

Means architect has taken responsibility

DA - objection form and foundation ~ LAY MORE FOUNDATION

526

NORA

DA object -relevance OVERRULED

527

DA CALLS w – 7 Patricia Caravella

Clerk swears in W – 7 Plaintiff

DA ? W – 7

DA @ DX 98

Did not see all of the pages on DX 98 but did see some of them

Had some concerns about the house

534

Looked at the house but didn't specifically focus on beams

Stayed in the cabins there and went to the clubhouse the next morning

Went to the Burke house

536

On the second day spent about 2 ½ hours at the Myers house

Horn was so positive; felt like we were developing a good rapport with him

He minimized problems with the house

538

PA X W – 7

Have seen the plans in our home daily

543

DA – object; vague withdrawn

547

DA – objection misstates her answer she can answer

548

DA re directs W – 7

PA objects OVERREULED

PA Leading J – can ask in a different way

553

J – Hahn 8:20

Swafford 8:45

Hahn – will certainly use all the time

3 and possible 4 witnesses

Swafford 2 maybe 3 rebuttal witnesses

Will apportion equal amount of time for rebuttal

16 December

812

J recalls case; ids those present

DA calls P;

J still under oath

Deposition Exhibit 1 to First Horizon

Off the record 0815

Recalled 0818

Da – evidence is in the record has already been admitted

Exhibit 1 and 2 to First Horizon's Deposition

Co-counsel personally delivered the exhibits to Mr. Covert of Mr. Swafford's office

PA – they were provided 5 days before trial

J – do you dispute this was a deposition exhibit which you attended telephonically

PA – no

J – how can you claim unfair surprise

J – exhibits were mentioned when the deposition was read into the record

PA – have not seen this so don't even know what it is

It's not in my documents

0821

J – provisionally assuming foundation is laid will be admissible

Was part of deposition exhibit; put everyone on notice

Deposition was admitted without objection

Certainly don't find in violation of Discovery

PA – no where was this spread sheet provided

J – no kind of Discovery shenanigans

Objection noted for the record

823

DA begins cross

Sole member of Frontier Development ? managing member

Frontier Development never had any employees no

At time of this, wife Kathy was 50% and I was 50%

P – was just income coming in

825

PA objection not relevant OVERRULED

W – had another e-mail address

0829

DA @ Depo Ex 1 - spread sheet with respect to Myers project

Depo Ex 2

HHHH – 1 spreadsheets

HHHH – 2 renumbering of tabs 1 -12

Monthly draw requests from FD for Myers project?

W – sent to Rick Myers

0837

PA objection compound sentence

Certifying the funds I received went to pay the invoices on the previous draw

0839

DA @ tab 6

FHHL 195 spread sheet

Submitted more that was paid

844

Owner had ability to access funds for different purposes including interest payments

Not a complete record of each draw request

In theory you could access the landscape line item money to help pay for other items you had gone over budget on

0844

Tab one

Without reviewing each item – this line item may not be what was done

Looked at overall percentage of completion

Would allow us to use those funds to pay something in a different line item

FHHL - 205

0853

Gas fireplace inserts line 35 paid \$5,000

Gas fireplace inserts were never installed on the Myers project were they?

0855

each draw request had to be submitted by invoice

FH would then sent out inspector to look at the work

This is for a deposit for the gas fireplace inserts

Where did the \$8000 draw for the septic system go

0858

Siding materials line item 21

@FHHL 207

\$5726 for siding and trim stain

902

000301

J page 207 total amount is illegible but on 205 see the number you are mentioning

Spread sheet line item 35 \$5000 for fireplace inserts

Page 211 is affidavit of all bills paid

W – haven't been paid the money yet

W – the document is not indicative of what has been paid

905

DA @ draw 7 siding labor and materials \$10879.60

That may or may not be true

J – the court understands your position - you don't need to explain that any more

PA – if he would rephrase the question, he won't have to answer incorrectly

J – very aware of both sides' position ~

908

FHHL 140 behind tab 7 siding material

How did the siding go bad

W – the siding was delivered to the job site

DA – what do you recall your testimony being

W – sat at that job site for at least 14 months at which I did not have control of that job site

Do not know what happened to that siding

Picked up any remaining scraps and unusable materials and put them in the dumpster

DA – was stained cedar siding - W on one side

0912

Building the Schlagel house at the same time building the Myers house

Draw request 5 paid \$3500 for propane tank

W – have to disagree

J – note your objection

0914

What flat work was done on the Myers project - W don't recall if we ever did any flat work on that project

\$205,000 was dispersed for framing and framing material line items

If you did you funds for another line item, how would you document that

0919

Everything is substantiated on the invoices

Draw for \$21974 for cabinets

0921

Second draw – wiring instructions

DA – has to be document showing Rick Myers was his own sub-contractor?

PA – been asked and answered twice J HAS BEEN ASKED AND ANSWERED AND I THINK I UNDERSTAND THE ANSWER

\$656,174 been disbursed \$61,388 contracting fee

PA objection not relevant OVERREULED

926

No siding on the house when Caravellas purchased the house

No propane tank at the property

No fireplace inserts

No cabinets or vanities

No septic tank

Line item 18 \$5000 for steel beam - no steel beam in the house

Siding line says "labor" and materials

929

\$28,475 - soft draw

931

PA X P

938

PA did you bud the home identical to the plans approved yes

Was First Horizon made aware every time that you were not putting in that particular line item

PA @HHHH-1 compare with tab 6

942

Septic system draw 6

949

Did not use any of his materials on another home

Resent the reflection on my integrity

More cost effective for me to use my funds to get people paid

951

DA redirects

Company was paid the amounts on HHHH – 1? Went through FDG checking account

Which ones did you not pay - submitted to First Horizons - they didn't pay them because the project had shut down

These were the documents you tossed – no returned to Myers

PA objection - beyond scope

J - Rule 6 -11 allows

955

DA @ PX 5

Date counter offer transmit by wife to Caravellas

Recorded lien for \$23,000 same day 10:22 April 08

Lien included amount from prior unpaid invoices and the work we had recently accomplished per Rick Myers

Who did that - don't recall;

Had numerous homes going at the time; numerous sub contractors

Not a very complicated task

1001

DA recalls D

DA -? D

Visited home April - any type of hand railing no

Went back in June

PA - was covered in direct - J - actually it was in yours, not his; he can ask

Explained didn't want to take out a loan

1005

PA objection leading SUSTAINED

Said phase one would probably cost \$50,000

Only 2 things talked about on the 14 -

Didn't have to talk about "Smart Home"

1 - option of getting Horn to do everything for 15% or 12 for just construction

2 - where going to put electrical and faucets on exterior

PA - objection - never mind

1008

Pad to wash down horses and drain there

1 - can't store your horse trailer

000305

Did you authorize any one to do any of the concrete work prior to completing the other phases

DA@ DX AAA letter attached to e-mail

Events that occurred during the construction project

J - was going to give each party 1 hour for rebuttal but think will give 45 minutes plus whatever time has not used

Recess 1014

Reconvene 0300

J recalls case; Mr. Caravella is recalled

PA begins cross

Not asking to not have to pay for the work that is done

I think I have paid for it already

PA @ PX 29 2nd to last paragraph

DA – objection way beyond direct OVERRULE pursuant to 611

308

PA @ PX 62

PA @ PX 64

Did you send any more money after this e-mail

312

PA @ PX 29

315

PA @ DX AAA

PA @ DX BBB

321

DA redirect May 29 e-mail

Visited the property in June

DA would like to recall Mr. horn

PA objection already rested

J – can call him in rebuttal will allow to recall him pursuant to 611

Did not bill First Horizon for material that was used at another job site

PA objection asked and answered THINK IN PREPARATORY TO NEXT ?
OVERRULED

325

DA @ DX HHH -2

Siding

Tab 7

Shipped to lot one block 16

Horn that's not where it went

330

DA intro IIII copy of HHHHFHHL124

PA object - could be but can't correlate for sure

DA – w id's it

None of the info

J – looks like reprinted version look in date box - goes over the line

DA – this is a reprint of the final bill - everything is identical

Swafford it may be but I cannot verify it

May be different materials; did not provide it before trial

DA – is impeachment

Going to object

J – looks like data is identical going to ALLOW IT FOR ILLUSTRATIVE PURPOSES

333

DA intro JJJJ pick ticket

PA objection not been introduced J – think he’s trying to lay SUPPORT

PA objection - going beyond J – just establishing the foundation SUPPORT

Same invoice number as IIII

Teton Springs

P – that may be what it says but that is not where it was delivered

DA – moves admission of JJJJ

PA never provided in Discovery J – for impeachment ADMITTED for
impeachment purposes

339

Document 122

Balance forward \$9711

@ KKKK wood Source - ship to Box Teton Springs

That amount matches balance FHHL 122

DA moves admission of KKKK PA same objection OVERRULED admitted for
impeachment purposes

344

PA X P

Wasn’t uncommon for vendors to put the wrong address on the shipping form

349

DA – redirect

PA – objection calls for speculation and conjecture Think in context is proper
OVERRULED

352

Not a stick of siding was ever installed on the Caravella site - right

353

PA re X

356

PA calls Neil Hickida

Mixture of two kinds of work - fixes and finishes

Left job site - no longer being paid

401

PA @ DX RRR

406

Testimony of Jared Kay

Believe he ordered the correct amount

Sis lose Tyvek on multiple occasions due to wind

Soffit material

411

Loose 2" off every 10" board

416

DA X W - 3

Typical waste from siding

420

Water inside the house after left project

There was a little left to be installed

Not all the soffit material was installed

@RRR

PA – objection ambiguous can't tell which ones he's talking about

J – think all of them MAY ANSWER

423

PA redirects

Soffit material - think good sized stack left

427

Hahn 22 minutes left

Swafford 48 minute left

PA recalls Scott Norman

431

W – need notes to refresh memory J – you may

433

DA – object had motion in limine been asked to hypothesize why difference from himself and Mr. Kay WILL ALLOW

Believe may have been a slight additional amount so wouldn't have to order more

DA - object getting in to opinion testimony is not proper

J let him finish the question; testifying about his work

Just comparing difference in calculations

442

Windows

Fair price on windows

444

Smart Home System - can't get rid of it

445

DA begins X

Account agreement issue

PA – objection misstates the evidence J – think the witness is capable of correcting him if he makes a mistake

DA @ DX LLL

PA object – upsetting - e mail from Scott to me - attorney client privilege accidentally released

DA – resent implication counsel just opened the door

Had no intention of using until the door was opened

J – this court is not the forum to rule on ethical issues; expects to see professionalism this doe appear to be attorney client privilege document - can you waive by talking about - happens all the time

Don't believe there is a privilege - this is regarding the smart home system - S & D is not a party here

To elicit testimony that you can't sell a smarthome when shows he could have

J – just want to rule on the evidentiary issue

452

PA – just the ethics of my colleague =

J – is there a privilege here or not

PA – yes there is - its an e-mail from Horn to ME

J – are you attorney for Yellowstone - yes

Are you an attorney for S & D - yes

Are you attorney for Mr. Norman -

J – letter raises ethical issues both ways

Going to rule INADMISSABLE

Can raise issue with bar counsel

456

PA set of plans

DA – objection hearsay SUSTAINED

456

PA - Resting

DA – all testified to in deposition

J already ruled

J – if intended to use issue like this; would have perhaps been better to have filed a motion in limine so I could have considered it

458

Simultaneous closing argument with both sides

On Jan 06 by 5:00 pm both sides will submit closing arguments

Prepare findings and facts

Send electronic version preferably in word format

J – understand both positions

Will deem submitted at 5:00 p.m. on January 06

COURT MINUTESCV-2009-0000068

Frontier Development Group, LLC vs. Louis Caravella, etal.

Hearing type: Motions

Hearing date: 1/4/2012

Time: 12:31 pm

Judge: Gregory W Moeller

Minutes Clerk: PHYLLIS HANSEN

Ron Swafford, Attorney for Plaintiffs

Fred Hahn, Attorney for Defendants

Brent Whiting, Attorney for Defendants

J calls case; ids those present

Motion to Extend Briefing

DA Attempted to get full or partial transcript of hearing

Did not contact Mr. Swafford because did not know what our client would pay for

Did not hear from court reporter until 23 so contacted our client; he was gone for the holidays

We are not attempting to gain any advantage

Not asking for any filings in advance of Briefing

Want to make sure we are accurate in what we cite

Plaintiffs' not required to get a copy of the transcripts so will not increase their costs or prejudice them

J – have you made a payment for production of the transcripts

DA – ordered five transcripts about \$2300

J – advantages to being able to cite from transcripts; not usual

Can listen to transcript or get a CD copy

Why is there a need to cite the record so specifically

DA – lot of testimony that went by very quickly

Have been working on our briefing and proposed findings

Specific testimony that will be key to accurately report back to the court

Won't quote verbatim with pages and pages of quotes

Don't want to prejudice in any way

J – have been given time frame to obtain transcripts?

DA – hopeful will be middle of this month

1238

PA – our Brief is essentially prepared; did not want to wait

Our fees are upwards of \$40,000

If they get, I would also have to get

Talked to Marlow yesterday – he said would be about 45 days

I'm gone last 8 days of January; would be in February or March

Don't want to be forced to spend the money; can't afford it

Prejudices us if we can't respond, can't read, can't compare

1241

DA – would like to talk to Marlow to see if we can't pare down the number of transcripts

We need to exchange Briefs by fax by 5:00 on Friday

If we can extend out one or two transcripts

I would allow Swafford time to get cds or listen to tapes

Would like to finish the briefing with accurate cites

1243

J - the longer we wait, the less I'm going to remember about the case

Took extensive notes

Complete transcript would be helpful to the court as well

D's have a right to transcripts; real issue is whether we change our timelines

Can request cds be made

Postpone due date for post trial briefs and findings by one week

Will have additional time to obtain cds or listen to tapes of trial

If Ds' wish to pursue request for transcripts if they want to

One week extension

Can certainly get transcript if want to

Audio copie are available

FILED IN CH. BERS AT REXBURG,
MADISON COUNTY, IDAHO.

Date: March 29, 2012

Time: 9:05 p.m.

By: E. W. Moeller
DISTRICT JUDGE

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY**

FRONTIER DEVELOPMENT GROUP,)
LLC,)

Plaintiff,)

vs.)

LOUIS CARAVELLA and PATRICIA)
CARAVELLA,)

Defendants)

Case No. CV-2009-68

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

LOUIS CARAVELLA, and PATRICIA)
CARAVELLA,)

Counterclaimants,)

vs.)

FRONTIER DEVELOPMENT GROUP,)
LLC, and MICHAEL HORN,)

Counter-defendants.)

I. INTRODUCTION

This matter came before the Court for a four-day court trial beginning December 13, 2011 in Teton County. At the completion of the trial, the parties were ordered to submit written closing arguments and proposed findings of fact and conclusions of law. The parties were later granted an extension of time and permitted to file objections to their counterpart's proposed findings and conclusions. This matter was deemed submitted on February 28, 2012.

In addition to the four days of trial testimony and the fourteen volumes of the file in this matter, the Court has reviewed 87 pages of closing argument, 153 pages of proposed findings and conclusions, and over 200 pages of objections to the proposed findings and conclusions. The challenge before the Court is to now distill the voluminous record before it into a legally cogent ruling.

II. RULING ON PLAINTIFFS' OBJECTIONS TO DEFENDANTS' LATE FILING OF THEIR POST-TRIAL BRIEF

The Court will first address Plaintiffs' objection to Defendant's allegedly late filing of their post-trial brief. After extending the deadline, the Court ordered that the post-trial documents should be filed by January 13, 2012.¹ Inasmuch as Defendants filed the digital version of their documents with the Court on January 19, 2012, Plaintiff's ask that it be stricken.²

The record establishes that Defendants' closing argument was filed on January 18, 2012, and their proposed findings and conclusions were filed on January 19, 2012. However, Plaintiffs' proposed findings and conclusions and their closing argument were not filed with the Court until January 17, 2012. It appears that neither side strictly followed the Court's order.³

The Court notes that it actually received Defendants' proposed findings and conclusions and their closing argument before it received Plaintiffs. Defendants sent copies to the Court's resident chambers by facsimile transmission on January 13, 2012. The fax notations on the top of every page of both documents show that the proposed findings and conclusions were faxed to the Court at 5:07 p.m. and the closing argument at 7:15 p.m. Plaintiffs' documents were sent by mail on January 13, 2012. Due to the intervening weekend and State holiday, it is not surprising that the mailed documents from both sides, including the digital copies, were received a few days later than normal. However, even if the digital version was late, the printed version was timely and, therefore, there was no demonstrated prejudice to Plaintiffs. For these reasons, Plaintiff's motion is denied.

¹ The extension was granted at Defendant's request by virtue of the Court's bench ruling of January 4, 2012. See *Minute Entry* (January 4, 2012).

² Plaintiffs' also asked the Court to strike a letter from to counsel, dated January 19, 2012, which accompanied the documents on CD-ROM and sought a hearing on their request to file objections to the proposed findings and conclusions. The Court has already ruled on this matter. See Order (January 24, 2012).

³ As tempting as it might have been for the Court to strike all of the voluminous post-trial filings from both sides, it refrained. The submitted materials from both parties proved very helpful in analyzing this complex matter.

III. FINDINGS OF FACT

The Court regrettably notes that at times during the trial Dr. Caravella and Mr. Horn displayed a high level of antipathy, contempt, and disrespect for each other *and* opposing counsel while testifying. While such behavior may not be readily apparent to one reading the written transcript, the courtroom demeanor of both parties significantly affected the credibility and the weight the Court afforded their testimony as the trier of fact.

A. The Parties.

1. Defendants/Counterclaimants, Louis Caravella (“Dr. Caravella”) and Patricia Caravella (“Mrs. Caravella”), hereinafter referred to collectively as the “Caravellas,” are residents of the State of Ohio and are the owners of real property located at 968 River Rim Pond Lane in Teton, Idaho (the “property” or the “home”). Dr. Caravella testified that the Property is currently in his wife’s name to protect his assets in the event of a malpractice suit.⁴

2. Plaintiff/Counter-defendant, Frontier Development Group, LLC (“FDG”), was organized on September 20, 2005, in the State of Wyoming. FDG has remained a limited liability company in good standing since the date of its filing. FDG is registered as a foreign limited liability company in the State of Idaho and is also registered in Idaho as a “doing business as” entity (“dba”) known as Open Range Homes. Plaintiffs’ Exhibit 90. FDG is registered in Idaho as a residential contractor.

3. Counter-defendant, Michael Horn (“Horn”), is the manager of the aforementioned FDG. From 2005 through 2010 he was engaged in the business of constructing homes while he resided in Teton County, Idaho.

4. Plaintiff/Counter-defendant, Yellowstone Do It Center, LLC (“Yellowstone”), is an Idaho Limited Liability Company having its principle place of business in Rigby, Idaho. It is now known as “Yellowstone Lumber.” Yellowstone is engaged in the business of retail sales, selling construction supplies and materials, some of which it installs. Yellowstone is managed by Scott Norman.

B. The Nature of the Pending Lawsuits.

5. This lawsuit arises out of a series of transactions related to the construction of a home in Teton County, Idaho. FDG and Yellowstone brought separate lawsuits seeking to foreclose on

⁴ See *Depo. of Louis Caravella*, pp. 8:10 – 9:7 (September 28, 2009).

labor and materialmen's liens. Both actions were later consolidated.⁵ Caravellas counterclaimed for damages under the following theories: breach of contract, breach of duty of good faith and fair dealing, breach of the Idaho Consumer Protection Act, breach of warranty of habitability, slander of title, fraud and misrepresentation, civil conspiracy, and negligence.

C. Horn's Initial Work on the Property for Myers.

6. In 2006, third-party Richard Myers ("Myers") owned the property, subject to a deed of trust in favor of First Horizon Home Loans ("First Horizon"). Horn testified that Myers contracted with FDG to construct a residential structure on the property according to certain plans ("the plans") drafted and approved by an architect. First Horizon financed the construction of the home for Myers.

7. Myers suffered a financial setback in early 2007 and had difficulty making interest payments on the construction loan to First Horizon. FDG coordinated with Myers and First Horizon to make interest payments by donating FDG's contracting fee (profit) to these payments. Myers also directed FDG to further reduce numerous construction line items and transfer the funds to other areas of the project, allowing Myers to access funds for purposes of paying interest on the construction loan. First Horizon approved these reductions and transfers. See Defendant's Ex. HHHH.

8. In April of 2007, Myers declared bankruptcy. Due to the bankruptcy, First Horizon rescinded the construction loan. Myers and First Horizon instructed FDG to vacate the project and halt all expenditures. The project was approximately fifty percent (50%) completed when construction was halted and only two foundation inspections had been performed by Teton County. When construction was halted, framing was almost complete, but no framing inspection had been performed. Significant framing issues remained and existed at the time construction halted in March, 2007, including an incomplete roof, exposed door openings, exposed window openings, and incomplete structural framing. The Project was left exposed to the winter elements, as well as to the sun and wind, for a period of at least fourteen (14) months.

9. First Horizon initiated foreclosure proceedings on the property, and the property was listed for sale. Myers hired Kathleen Horn, who was employed as a real estate agent at Windermere Real Estate/Teton Valley ("Windermere"), to list the property for sale. Kathleen Horn is married to Michael Horn.

⁵ *Order on Motion to Consolidate* (December 1, 2009).

10. Horn testified that during the Myers construction, he prepared, signed and submitted draw requests to First Horizon for payment of certain items of labor and materials. In the draw requests, Horn certified the following:

General Contractor/Builder and Borrower state that all of the funds that are requested in this "Draw Request" will be used to pay for the labor and materials which created the improvements to the subject property. General Contractor/Builder and Borrower further state that all funds advanced before the date of this request (if any) were also used to pay for labor and materials for the improvements of the subject property. **Borrower and General Contractor/Builder also state that the improvements completed to the subject property were completed as per the "Plans and Specifications" originally submitted to the Lender, except for the "Change Orders" listed below:**

[Blank lines follow this paragraph, upon which any change orders should be identified]

See Defendants' Ex. HHHH-2, tab 10 p. 43 (emphasis added. Although Horn testified that Meyers requested numerous changes, no draw requests submitted by Horn identified any "Change Orders" from the original plans and specifications. Exhibit HHHH-2, tab 2 p. 302; tab 3 p. 285; tab 4, p. 267; tab 5 p. 249; tab 6 p. 203; tab 7 p. 133; tab 8 p. 97; tab 9 p. 67; tab 10 p. 43; tab 11; and tab 12.

11. Accompanying each draw request, Horn delivered a signed an *All Bills Paid Affidavit*, certifying that all bills from the previous draw had been paid and that the funds sought in the present draw would be used to pay for additional work that was completed or would soon be completed. See Defendants' Ex. HHHH-2, tab 2 p. 303; tab 3 p. 286; tab 4, p. 268; tab 5 p. 250; tab 6 p. 214; tab 7 p. 134; tab 8 p. 98; tab 9 p. 67; and tab 10 p. 44. Horn testified that occasionally First Horizon held the total amount of funds requested back, but he did not document specific instances.

12. Horn's disbursements spreadsheet produced in the deposition of First Horizon's employee, Defendants' Ex. HHHH-1, p.1, shows that Horn was paid the total amount of \$656,173, which included payment for the following line items:

- a. \$3,500 for a propane tank (line item 9);
- b. \$24,000 for the septic tank and well (line item 10);
- c. \$5,000 for steel beams (line item 18);
- d. \$3,500 for Roof flashing (line item 20);

- e. \$16,605.60 for siding labor and materials (line item 21);
- f. \$5,000 for gas fireplace inserts (line item 35);
- g. \$14,397.98 for cabinets (\$21,977.44 less \$7,579.96) (line item 47); and
- h. \$15,000 for fascia and soffit labor and materials (line item 22).

Horn testified that funds were routinely transferred from one line item to another during the project, but did not document specific instances.

13. Horn requested draws of \$5,725 for staining of 19,744 linear feet of siding and exterior trim, \$10,879 for siding materials, and was paid those amounts by First Horizon. He was also paid \$15,000 for 100% of the soffit and fascia. Defendants' Ex. HHHH-2, tab 6, p. 205-206; tab 7 p. 121; and HHHH-1, p. 1 lines 21 and 22. However, no siding was ever installed or later found on the property when it was purchased by the Caravellas.

14. At trial, Horn explained that the funds from the siding line item may have been used to cover other costs. However, First Horizon's *Exception Approval Request*, indicates that \$10,880 was distributed specifically to pay for all the siding, which had already been delivered. It was also noted that the remaining budget for siding was for installation labor. Defendants' Ex. HHHH-2, tab 7 p. 121.

15. During his testimony, Horn was shown copies of statements and invoices that relate to the siding material request. The First Horizon documents included a blurred copy of Invoice 641 from the supplier, Wood Source, for \$10,879.60, and a statement that referred to Invoice 641. The statement had Horn's handwritten note that read "Line 21," which corresponds with the line item for siding on First Horizon's disbursements spreadsheet. Horn testified that all of the "siding" was stained and delivered to the Myers property. Horn testified that material was never billed to one project, but delivered and used on another project. Horn testified that the siding was delivered to the Myers job, but never installed because Myers filed for bankruptcy protection before the work could be completed. Defendants' Ex. HHHH-2, tab 6 pp. 122, 124.

16. Horn admitted that the siding was not found on the property when it was later purchased by the Caravellas. Horn speculated that the siding had been "stolen" or had been removed from the property by Myers or First Horizon during the fourteen-month interim period before the Caravellas purchased the property. Horn testified that when he returned to the property in the Spring of 2008, there was only a small amount of siding on the site, and it was not useable after having sat uncovered on the ground for two winters. He testified that he disposed of the siding in a garbage dumpster.

17. Later, a clear reprint of invoice 641 from Wood Source was admitted into evidence. The materials described on invoice 641 were large framing timbers, not siding as Horn testified and as he had represented to First Horizon. See Defendants' Ex. IIII. Invoice 641 also specifically identifies that the materials were delivered to an address in the Teton Springs subdivision in Victor, a distance of approximately 30 miles from the property. Wood Source delivery tickets evidence that the materials sold pursuant to invoice 641 were actually delivered to Teton Springs. Defendants' Ex. JJJJ.

18. Horn admitted that the Teton Springs address was the location of another construction project in concurrent progress by Horn and/or FDG for a customer by the name of Schlegale. Horn testified that he used the same type of siding on the Schlegale home that was ordered for Myers. Horn later theorized and testified that the Wood Source material may have been delivered to the Schlegale project as opposed to the Myers home, because there was a fork lift on the Schlegale Project and not the Myers Project. However, with the exception of the first draw, each of Horn's draws ~~on the~~ Myers project includes equipment rental and Horn billed First Horizon for a fork lift on Draw 7, the same draw as the siding was billed and paid. Defendants' Ex. HHHH-1, p. 139.

19. Horn received payment from First Horizon for a propane tank in the amount of \$3,500. Defendants' Ex. HHHH-1, p. 1 line 9. It was undisputed that no propane tank was ever installed or found on the property. Horn claimed that the money for propane tank was used for other aspects of the projects, but he was unable to identify any specific aspect. No such reapportionment of funds is found in any of First Horizon's documents. Horn's documentation to First Horizon evidences that the propane tank was 100% completed and paid to Horn. Defendants' Ex. HHHH-2, tab 6 p. 196; tab 7 p. 125; tab 9 p. 57; tab 10 p. 37.

20. The records indicate that Horn received payment from First Horizon for steel beams in the amount of \$5,000. Defendants' Ex. HHHH-1, p. 1 line 18. It is undisputed that no steel beams were ever installed or later found on the property. Horn claimed that the funds had been used for other aspects of the project, but he did not identify any specific aspect. No such reapportionment of funds is found in any of First Horizon's documents. Horn's documentation shows that the steel beams were 100% completed and paid to Horn. Defendants' Ex. HHHH-2, tab 9 p. 57; tab 10 p. 37.

21. Horn also submitted a draw request for fireplace inserts and was paid \$5,000 from First Horizon out of the budget line item for gas fireplace inserts. Defendants' Ex. HHHH-2, tab 6 p. 205, 209-10; and HHHH-1, p. 1 line 35. It was undisputed that no fireplace inserts were installed or found on the property when Caravella purchased the home. Horn testified that, to the best of his knowledge, the inserts were delivered, but he did not know what happened to them.

22. Horn also received disbursements totaling \$24,000 for a septic tank and well. Defendants' Ex. HHHH-1, p.1 line 10. It was undisputed that no septic tank was ever installed or found on the property. Horn testified that he had received authorization from First Horizon to draw funds from the septic tank line item to cover additional costs for the well. However, the well was already included in the same line item. There is no record of the "reapportionment" of funds regarding the septic tank in any of First Horizon's documents. Horn's documentation to First Horizon's evidences that the septic tank was 100% completed. Defendants' Ex. HHHH-2, tab 6 p. 196; tab 7 p. 125; tab 9 p. 57; and tab 10 p. 37.

23. Horn received payment from First Horizon for cabinets in the amount of \$14,397.98. Defendants' Ex. HHHH-1, p.1 line 47; and HHHH-2, tab 10 p. 15. Line item 47 shows a total disbursement of \$21,977.44, but a note below the column for the 10th Draw indicates that \$7,579.96 was allocated to Myers' interest payments. Horn asserted in his testimony that he paid the \$14,000 over to Myers, because he (Myers) wanted to do the cabinets himself. Horn did not produce any documentation to support his claim that he paid Myers \$14,000. Rather, Horn claimed that he disposed of all his records related to the Myers project and could not produce any accounting records or cancelled checks.

24. Horn received payment from First Horizon for 100% of roof flashing in the amount of \$3,500. Defendants' Ex. HHHH-1, p. 1 line 20. Jared Kay, an expert for the Caravellas, testified that although the roof had been installed, there was no flashing installed in portions of the roof when he took over the project for the Caravellas. Kay testified that he removed portions of the roof and install flashing to fix latent defects in Horn's construction. Defendants' Ex. PPP-1, last page.

25. The Court finds that Horn submitted numerous draw requests and was paid for construction labor and materials that were apparently never installed in the home or later found on the property when it was purchased by the Caravellas. Additionally, the work performed by Horn for Myers had numerous substantial latent defects, which were later discovered by Kay

when he began working on the home for the Caravellas. This will be discussed more fully below.

D. Conduct of the parties prior to purchase of the property.

26. In March of 2008, the Caravellas were interested in purchasing or building a home in the Teton Valley. They contacted real estate agent Mark Griese of Windermere, the same agency where Horn's wife, Kathleen, worked. Caravellas were advised of the partially completed home that Kathleen Horn had listed for Myers, and provided them information to contact Michael Horn about the construction.

27. Beginning March 17, 2008, the Caravellas and Horn exchanged a series of e-mails about the home, and other properties owned by Horn. Horn's outgoing e-mails all contained an e-mail address of "builder@openrange.com." Horn told the Caravellas that the subject property had been sitting untouched for over a year. Horn represented to the Caravellas that First Horizon would not allow the property to be sold for less than \$800,000, and that other prospective buyers had tried unsuccessfully to purchase it for less. Defendants' Ex. A, p. 3.

28. The Caravellas testified convincingly that Horn represented to them on several occasions that the value of the property was \$1.2 million, with \$800,000 worth of construction completed and the lot having a value of \$400,000. Horn stated that purchasing the property for \$800,000.00 was like getting the lot for free. Defendants' Ex. A, p. 3.

29. Caravellas offered credible testimony that Horn represented that he was one of the best builders, if not the best, in Teton Valley. He told them that regarding home interiors, "many have tried" to match his interior work, "but all have failed." Mrs. Caravella testified credibly that during the Caravellas' meetings with Horn in late April 2008, Horn represented himself as "the best builder" in the Teton Valley, and represented his skills as a builder in "superlative terms."

30. At trial, Horn testified that he has no actual hands-on construction skills. He has not performed concrete, framing, HVAC, electrical, or any other construction work. However, as a Lt. Colonel in the Air Force, his duties required him to oversee the construction of several major facilities. He additionally testified about his experience in managing residential construction projects locally as a general contractor/builder.

31. During their discussions regarding the cost of construction, Horn informed the Caravellas that "Chase's" construction loan rates were the best, but not if the loan was for a "second" home. Horn recommended that the Caravellas apply for the loan and initially represent that they were trying to sell their existing home, so that they could obtain the most favorable financing. They were then advised to "change [their] mind" about selling their first home when the construction was completed. Defendants' Ex. D, p. 3.

32. Regarding their interactions with Horn, Mr. Caravella testified that he relied upon Horn's statements concerning his skills as a builder. He testified that Horn's persuasive assurances and statements about his skills and experience caused them to trust him and to rely upon his representations.

E. The Caravellas' purchase of the property.

33. Based on the information the Caravellas received from Horn about the home, the Caravellas asked Griesse to prepare an offer for them to purchase the property from Myers. Plaintiffs' Ex. 3 (Purchase and Sale Agreement, p. 1 and ¶ 31).

34. Dr. Caravella signed an offer to purchase the property for \$749,000 on April 4, 2008. Defendants' Ex. 3. At that time, the Caravellas had never seen the home in person.

35. Upon receipt of the \$749,000 offer from the Caravellas, Myers (through Kathleen Horn) counteroffered for \$799,000. At trial, Caravellas expressed suspicion that Kathleen Horn was aware of the conversations between her husband and the Caravellas regarding the value and price of the home, although they submitted no additional evidence supporting these concerns. Plaintiffs' Ex. 5.

36. Less than two hours after the counteroffer was signed and delivered to the Caravellas, Horn recorded a mechanics lien for \$23,000 against the property on behalf of FDG. Defendants' Ex. ZZZ. The Caravellas accepted the counteroffer later that evening.

37. At trial, Horn testified that the \$23,000 lien was to cover the cost of a handrail he installed in the home in early 2008, and for other work performed for Myers in 2007 and 2008. Horn did not identify who performed this work, nor did he produce any documentation of such work. FDG's \$23,000 lien was eventually paid from the closing funds.

38. The Caravellas continued to correspond by e-mail with Horn throughout the remainder of April. In late-April of 2008, the Caravellas traveled from Ohio to Teton Valley

where they met with Horn at his residence in Teton Springs. At his residence, Horn showed the Caravellas a large copy of the plans for the property. Horn denied having a full set of plans and testified that he only possessed a "site plan" that provided a "birds-eye view" of the home. However, the Caravellas testified more credibly that the plans they saw were detailed and included drawings of the floor plans and exterior elevations of the home. Plaintiffs' Ex. 98. Mrs. Caravella testified that although they did not review each of the pages of the Plans, she believed Horn had the full set of house plans at his home.

39. The Caravellas provided detailed testimony about the visit. They testified credibly that they met with Horn and Griesse on two consecutive days to review and inspect the property. Although Horn testified that they only met on one day for approximately 1 ½ hours, the Court finds that the Caravellas' testimony is more credible on this point.

40. The Caravellas testified that they did not see any hand railing installed by the interior stairs at the time of their visit. They also testified that they did not see a red line around the house marking the level for stone placement.

41. The Caravellas testified that Horn pointed out just two interior framing/structural problems during his inspection of the property: a missing support post and an inadequate structural beam. Horn told them that the beam would need to be enhanced.

42. Horn advised the Caravellas that certain structural, framing and leaking issues needed to be remedied as soon as possible. Mrs. Caravella testified that while she had concerns about water intrusion into the house, Horn minimized the problems and told the Caravellas the home was "in good shape," "structurally sound" and a "great house".

43. The Caravellas closed on the home on or about May 5, 2008. The Caravellas admitted to purchasing the home from Myers "as is." However, they also testified that they relied on Horn's representations regarding the quality and condition of the home in their decision to close the purchase of the home from Myers.

F. Caravellas' contract with Horn/FDG to complete the home.

(1) The Plans.

44. After closing, the Caravellas and Horn continued to discuss and review the home plans (Ex. 98) and their decision to complete the home. The Caravellas informed Horn that they did not want to get a construction loan. Rather, they desired to do work on the home in stages, as

their own funds became available. Defendants' Ex. J. Horn agreed to an exchange of promises with the Caravellas regarding the construction of the home in stages approved by Caravellas.

45. Caravellas testified that they believed they were dealing with Horn personally, not on behalf of an entity, such as FDG. However, Horn testified credibly that his e-mail address and signage at the home site provided notice from the start that they were dealing with "Frontier Development, LLC dba Open Range Homes." Later, Caravellas sent at least five payments to Horn via checks made payable to "Frontier Development Group, LLC" (Defendants' Ex. Q, BB, NN, and UU) or Open Range Homes (Defendants' Ex. T).

46. Caravellas did not enter into a formal written contract with Horn or FDG. Horn admitted in his testimony that he never disclosed to the Caravellas all the information required to be disclosed under Idaho Code § 45-525.

47. Dr. Caravella testified to having significant knowledge and experience working with builders and contractors on construction management issues. He testified about prior projects, including a commercial/professional building related to his medical practice. The Court finds that Dr. Caravella's experience makes him a more sophisticated purchaser than the average homebuyer.

48. The Caravellas and Horn agreed that the construction would proceed generally according to the plans that had been developed earlier for Myers (Plaintiffs' Ex. 98). There were a few adjustments made to the exterior design, including those made by Myers and those requested by Caravellas.

49. Horn denied having a full set of plans and testified that he possessed a "site plan" that merely provided a "birds-eye view" of the home. However, the Caravellas testified more credibly that the plans they saw were more detailed and provided drawings of the house elevations. A full copy of the plans is currently on file with the Teton County building department. Horn claimed that they were unavailable to him earlier.

50. Scott Norman from Yellowstone, to whom Horn referred as "my materials guy," testified that he possessed a full copy of the plans. Plaintiffs' Ex. 92. Scott Spaulding testified that in 2007, Norman provided him with a set of the plans used in conjunction with the preparation of a structural fix. Plaintiffs' Ex. 34. Horn claims that these were only partial plans containing the exterior renderings.

51. Horn testified that Myers had instructed him to deviate from the written plans with regard to a portion of the roof and the location of exterior siding and rock. Horn further testified that the exterior of the home was marked with a painted line to indicate Myer's changes to the exterior plans for stone. Caravellas testified that they were never made aware of any deviations from the written plans and they never saw any markings on the exterior. However, photographs taken by a defense witness, Jared Kay, show evidence of an orange line around two portions of the exterior that appears to correspond with the stone level. Defendants' MMM-2 and MMM-3.

52. The plans submitted to First Horizon earlier are the same plans that were on file with the Teton County building department and in Scott Norman's possession. See Plaintiffs' Ex. 92 and Ex. 98 with Defendants' Ex. HHHH-2, tab 12. Evidence presented at trial confirms that while the property was under construction for Myers, Horn did not notify First Horizon in writing that the work was being done any differently than specified in the written plans. Although the multiple draw request forms submitted by Horn included space to describe any changes to the plans, no changes were ever identified in any of the draw requests. Defendants' Ex. HHHH-2, tab 2 p. 302; tab 3 p. 285; tab 4 p. 267; tab 5 p. 249; tab 6 p. 203; tab 7 p. 133; tab 8 p. 97; tab 9 p. 67; tab 10 p. 43.

53. Horn's offered testimony concerning statements he attributed to Myers about alleged oral modifications to the plans. Myers did not testify at trial. These alleged out-of-court statements are clearly hearsay and inadmissible to prove the truth of the matter asserted. Although not objected to at the time, as the trier of fact, the Court is not required to accept (or place much weight in) hearsay testimony.

54. While the record contains numerous requests for change orders by Caravellas, there is no reliable evidence that the Caravellas were aware of, or consented to, any specific modifications to the written plans by Myers.

55. The Court finds that the parties agreed that the home would be constructed in accordance with the original written plans, subject to Caravellas' requested changes.

56. Additionally, the Court finds that Horn's testimony that he undertook to complete construction work on a high-end, 6,000 square foot home without having any specific plans is not credible. The Court also finds that it is not credible that Horn failed to outline in writing any of the modifications to the original plan he claims Myers authorized.

(2) The Scope and Timing of Work.

57. Caravellas and Horn agreed that there were very specific aspects of the construction that should be completed as soon as possible, such as fixing the structural issues and getting the home properly enclosed and sealed to protect it from the weather. Defendants' Ex. I, p. 3, and Ex. S, p. 1-2. The parties also agreed that a new phase of work would not be approved until: (1) all work on the previously approved phases was complete, and (2) the Caravellas confirmed that they had sufficient funds to complete the next phase. Defendants' Ex. H, p. 2; Ex. S p. 2; and Ex. 19a. The Caravellas advised Horn that they had only \$50,000 to start on the initial phases. Defendants' Ex. S, p.1; Ex. N, p.5. Horn agreed to provide quotes or bids for each stage of construction. Defendants' Ex. H, p.2.

58. Horn advised the Caravellas that he could complete the following categories of work for the stated prices:

- a. Shore up the remaining structural framing, ridge vents (roof) and exterior stone for \$50,000; and
- b. Exterior wrap and pre-stained siding for \$35,000.

Defendants' Ex. N, May 12, 14, and 16, 2008 e-mails from Horn to Caravella.

59. Although Horn quoted prices for other categories of work, such as complete plumbing and electrical rough-in, HVAC, insulation and drywall, it was undisputed at trial that those portions of the work were neither performed nor billed by Horn. Therefore, these bid prices are not relevant. Defendants' Ex. N, May 16 e-mail.

60. The Caravellas authorized Horn to proceed with work on the structural framing, ridge vents, exterior stone and siding in accordance with the original written plans. Defendants' Ex. N, p.5; Ex. S, p. 2-3. The Caravellas also approved the completion of "exterior rough-ins" for plumbing and electrical, to facilitate the exterior stone and siding installation. Defendants' Ex. S, p. 2. Later, Caravellas asked Horn to add two small windows in one wall of the garage/horse paddock area. Defendants' Ex. S, p. 3. Horn advised the Caravellas it would cost \$500 for each window installed. Exhibit Ex. N, p. 1. The Caravellas further agreed to have Horn install additional stone on the utility room wall so long as it was done last and there was enough stone to do it without purchasing more. Defendants' Ex. N, May 15, 2008 e-mail.

61. The total contract price for the work authorized by the Caravellas on the home was \$88,500, itemized as follows:

- a. Exterior stone, structural framing and roof ridge vents: \$50,000;
- b. Exterior wrap, siding and stain: \$35,000;

- c. Exterior plumbing and electrical rough-ins: \$2,500;
- d. Two additional windows: \$1,000; and
- e. Additional stone on the utility room: no additional cost.

62. Horn and his subcontractors Neal Hikida, Nephi Gibson, and Scott Norman, all testified that Dr. Caravella told them on June 14, 2008, that he had \$250,000 to spend in 2008.

63. Dr. Caravella denied ever having claimed to have \$250,000 to spend, and pointed out his e-mail from a couple weeks earlier stating that he only had \$50,000. Regardless, there is no evidence in the record that even if Dr. Caravella said he had \$250,000, that he ever authorized FDG to spend that much.

64. Caravellas continued to add to and/or adjust the authorized work by e-mail. Each authorization was sent without Caravella viewing the ongoing construction. The authorizations are set forth in Plaintiffs' Ex. 30, 32, 33, 35, 45 and 47. However, there is no evidence that these additions were actually built by Horn.

G. FDG's performance on the project.

(1) Exterior Stone, Structural Framing and Roof/Ridge Vents.

65. Horn billed the Caravellas a total of \$86,500 (labor, materials and a 12% contractor fee) for the exterior stonework, fixing the structural framing, and fixing the leaking roof/ridge vents, which are the tasks he had agreed to complete for \$50,000. Defendants Ex. XXX, p. 2; Ex. N, p. 1.

66. Horn represented to the Caravellas that the exterior stonework had been completed. Defendants' Ex. DD, p. 1. However, Kay and Dr. Caravella testified that the stone installed on the home by Horn: (1) did not conform to the exterior stonework depicted on the plans, and (2) was not completed. A comparison of the plans and pictures of the home following Horn's final work on the home confirms their testimony. Defendants' Ex. OOO.

67. Horn did not dispute that the stone did not match the plans. Rather, he claimed that Myers had changed the plans, or that he did not have a copy of the plans. The Court finds that Horn did not complete the stonework set forth in the plans, pursuant to the contract with the Caravellas.

68. The Caravellas paid Kay to complete the stone work and to redo portions of that work to conform with the written plans. Kay testified that the stone purchased on the home by

Horn would have been a sufficient quantity to conform to the plans, if stone had not been installed in places that the plans did not call for stone.

69. During the inspection of the home in April 2008 with the Caravellas, Horn identified a limited amount of “structural framing” that needed to be completed. Horn testified he never installed the support post in the garage, nor did he properly shore up the ridge beam in the entertainment/mother-in-law suite above the garage, which were two of the first items of work to be completed. Horn had previously identified that these were critical items of work needed to be done “ASAP.” Defendants’ Ex. H.

70. Horn did not identify, disclose or correct other serious structural deficiencies with the framing in the crawl space, the framing and trusses supporting the roof of the home, and areas where the home was not secured to the concrete foundation. Horn failed to substantially complete his contractual obligation to fix the structural deficiencies in the home.

71. The ridge vents continued to leak water after Horn claimed to have finished that portion of the work. Horn identified this work as one of the first items to be completed. Defendants’ Ex. K. Kay testified that Horn failed to install flashing at critical points in the ridge vents and other portions of the roof, thereby causing the continued leakage after Horn completed work on the vents. Horn failed to substantially complete his contractual obligation to fix the ridge vents.

(2) Exterior Wrap, Siding and Staining.

72. Horn billed the Caravellas a total of \$74,350 (labor, materials and contractor fee) for siding, which he had agreed to complete for \$35,000. Defendants’ Ex. XXX, p. 2.

73. Kay and Dr. Caravella testified that the siding installed on the home by Horn did not conform with the exterior siding depicted on the written plans. Horn did not dispute that the siding did not match the plans. Rather, he claimed that Myers had changed the plans, or that he did not have a copy of the plans. Horn did not fully complete installation of the siding on the home or substantially perform his agreement with the Caravellas to complete the siding on the home.

(3) Electrical Rough-ins.

74. Horn billed Caravella \$2,500 for exterior electrical rough-ins performed by Nephi Electric. Kay testified that electrical rough-in was not performed. However, Nephi Gibson

credibly testified that he performed the work and provided an invoice verifying his work on the electrical rough-ins. Plaintiffs' Ex. 88.

(4) Extra Windows for the Paddock.

75. Horn installed the two extra windows requested by the Caravellas. Although he gave Caravellas a \$500 estimate for the cost of each installed window, he billed the Caravellas \$2,399.19 for the two windows, plus an additional amount for labor. Ex. XXX, pp. 1-2.

(5) Work Performed, but not Approved by Caravellas.

76. When Dr. Caravella visited the property on June 14, 2008, the parties discussed multiple aspects of the project that eventually would need to be completed, such as the location of electrical fixtures and outlets, location of concrete pads, and the "mother-in-law suite." Although Dr. Caravella authorized Horn to determine the proper phases, he did not authorize Horn to decide when he would commence on the various phases. Rather, the parties had previously agreed that work would only be done according to phases approved in advance by the Caravellas, after receiving a bid estimate from Horn for each phase.

a. Concrete Pads.

77. Although Dr. Caravella expressed a desire to eventually install concrete in specific areas, he testified that he did not authorize Horn to install any concrete prior to receiving a bid estimate or prior to completing the other approved work on the home, nor were there any e-mails wherein he made any such authorization. Horn billed \$19,900 to the Caravellas for the installation of the concrete. Defendants' Ex. HH, pp. 2-4.

78. Dr. Caravella testified that Horn installed concrete on the property without first providing a bid to the Caravellas, without confirming the work in writing prior to performing it, and without obtaining prior approval from the Caravellas. Dr. Caravella sent an e-mail to Horn on August 18, 2008 indicating that he had not yet authorized the cement work. When he responded, Horn did not deny the lack of authorization, but explained that he did it because he had an available crew and he felt it was best to do it before late October. Defendants' Ex. DD.

79. Dr. Caravella testified that, with the exception of a small 10' x 10' pad, the concrete was neither poured in a location where concrete was called for in the plans, nor was it poured in a location directed by the Caravellas. Although the 10' x 10' pad was poured in the correct location, the Caravellas had not authorized Horn to install it during that phase of the project. Kay testified that the 10' x 10' pad was not installed correctly, resulting in water draining towards

the building rather than away from it. It later was removed. A photograph of the water-saturated ground beneath the pad supported Kay's testimony. Defendants' Ex. SSS-1, 2, and 3.

b. Garage Doors.

80. Dr. Caravella testified that while the Caravellas ultimately wanted to have garage doors installed, Horn never provided the Caravellas with an estimate for the cost of installing garage doors, nor did he seek prior approval from the Caravellas to purchase and install the garage doors.

81. Horn ordered three garage and two barn doors from Yellowstone even though the Caravellas had not yet selected any particular door that they wanted to have installed. Yellowstone purchased all five doors from Western States Garage Door Supply, Inc. Western States billed Yellowstone \$4,487 for each garage door and \$3,794 for each barn door, for a total wholesale cost of \$21,049. Defendants' Ex. YYY, p. YDIC00062.

82. Yellowstone billed FDG \$24,000 for the doors, which is a 14% markup from the wholesale cost. Plaintiffs' Ex. 94o. Horn billed the Caravellas a total of \$29,040.89 for installed "Garage & Barn Doors." It is undisputed that only the three garage doors were ever installed—the barn doors were never installed. The Court finds that Horn's bill to the Caravellas erroneously included the uninstalled barn doors. Defendants' Ex. XXX, p. 2.

83. Kay testified that garage doors of the same quality would cost about \$5,500 each, including installation. His testimony is supported by Yellowstone's invoices. Each garage door would have cost \$5,115 after adding 14% to the wholesale price. Kay testified that installation of garage doors costs about \$350. Therefore, the installed price for each garage door delivered by Yellowstone should have been \$5,465. The total installed price for the three garage doors that were actually installed should have been \$16,395. Therefore, FDG overbilled the Caravellas by \$12,645.89 for the garage doors.

(6) Uninstalled Smart Home System.

84. Prior to the June 14, 2008, meeting, the Caravellas expressly rejected Horn's recommendation that they install a Centralite Smart Home system. Defendants' Ex. E. Nevertheless, on June 4, 2008, Horn recommended that Norman, the seller of the Smart Home system, attend the June 14 meeting with Dr. Caravella, stating that it would be his "chance to sell lighting package, TVs, whole house audio, etc." Defendants' Ex. GGGG. On June 12, 2008, two days prior to the meeting, Norman ordered the Smart Home system for the Caravellas'

home, for the price of \$10,597.55 even though the Caravellas had said they did not want the Smart Home unit. Defendants' Ex. V.

85. Dr. Caravella testified that at the June 14 meeting, Norman and Horn would not stop talking about the Smart Home system. Dr. Caravella testified that he did not want the system, but agreed to buy it just so Horn and Norman would stop talking about it and move on to other more pressing issues. Dr. Caravella testified that he believed he would have time to change his mind because the system would not be installed until a much later phase in the construction. He did not know that Norman had already ordered the Smart Home system.

86. Horn sent a billing to the Caravellas on June 19, 2008, that included \$19,080 for the Smart Home system and its complete installation. Defendants' Ex. W and Ex. KKK. The Caravellas paid the June 19, 2008 bill in full on the same date. Defendants' Ex. T. The actual cost of the Smart Home system was \$10,597.55. Defendants' Ex. V, p. 3. However, Norman invoiced \$19,080, which included installation costs.

87. The evidence at trial established that the Smart Home system could have been returned to the manufacturer for a refund, less a restocking fee of 15%. Defendants' Ex. V, p. 3. However, neither Horn nor Norman advised the Caravellas of this option.

88. It was undisputed at trial that the Smart Home system was never installed and the Caravellas later confirmed multiple times that they did not want the unit. Norman testified that he and Horn could have mitigated the damages and returned the Smart Home unit to the manufacturer. Norman testified at the time of trial, that he still had the unit in his possession, and it was still functional.

89. Norman provided contradictory testimony regarding his ability to re-sell or re-use the Smart Home system. On cross-examination by Caravellas' counsel, Norman admitted that he could have sold the system to another buyer for \$10,000. Later, during rebuttal, he testified that he could not have sold the system to another buyer. Norman's rebuttal testimony is further contradicted by testimony in his prior deposition, wherein he testified that he could have sold the system to another buyer. Defendants' Ex. FFFF, p. 13.

90. Norman testified at trial that the Smart Home system needed to be installed in conjunction with the electrical wiring of the home, and thus needed to be incorporated into the electrical layout from the beginning. At the time of trial, the Caravellas testified that they had resumed construction of the home and that it was nearly complete. Because the unit had been

removed from the property, it was not available to the Caravellas for installation when they resumed construction on the home. Therefore, the Caravellas could not have used, and currently do not have any use for, the Smart Home system.

(7) Waste disposal and portable toilets.

91. Horn also billed the Caravellas \$1,253.94 for waste disposal and portable toilets. Defendants' Ex. XXX, p. 2. Although objected to by Caravellas' at trial, this appears to be an appropriately billed expense.

H. Construction defects, overbilling and non-conforming work.

92. After they ended their relationship with Horn/FDG, the Caravellas hired Jared Kay of J.B. Kay Construction, LLC, to inspect the work on the home by FDG and possibly complete it himself. Kay testified that he has been involved in construction for over 20 years, with hands-on experience in performing all aspects of concrete construction, rough framing, siding and window installation, as well as roofing. Kay testified he has been involved with the construction of over 50 custom homes throughout Southeast Idaho and has much experience in high-end homes.

93. Kay testified credibly with respect to latent defects he found in the construction, as well as excessive billing on the Project by Yellowstone. Kay testified that he first inspected the home for the Caravellas in either December of 2008 or January of 2009. At the time he inspected the home, there were no excess construction materials on the site, except for some miscellaneous rock, which did not match the rock installed on the residence.

94. Kay testified that he was frequently present at the residence in the winter and spring of 2009 on behalf of the Caravellas, because he was working on another project located near the home. Kay testified that Defendants' Ex. MMM (1-7) accurately depicts the status of the construction of the home when he first inspected it in December of 2008 or January of 2009.

(1) Defective Framing.

95. Kay testified regarding latent structural framing defects and deficiencies with respect to FDG's work on the home. He testified that he took the photographs contained in Defendants' Ex. SSS and that photographs 4, 8, 9, 28, 37, 53, 67, 68, and 91 depict serious latent defects with respect to the interior framing of the fireplace in the home. Kay testified that because Horn failed to construct the sub-floor of the fireplace so that it was bearing on the foundation below, the fireplace was compressing and sinking under the weight of its own load (Defendants' Ex.

SSS-37). He further testified that in order to remedy this latent defect, he was required to remove portions of the floor, (Defendants' Ex. SSS-8), jack up the structure (Defendants' Ex. SSS-53), and re-frame the fireplace (Defendants' Ex. SSS-28) to meet the existing building codes, as well as good building practice. He installed elements of the construction that were mandated by the International Building Code, but not installed by the prior contractor, such as "squash blocking."

96. Kay testified that when he first reviewed the home in order to determine what work needed to be done, he accessed a crawl space and discovered that the foundation was not even attached or fastened to the framing. He observed that anchor bolts were not fastened as required by the International Building Code in place at the time in Teton County. Defendants' Ex. SSS-67 and Ex. SSS-68 depict anchor bolts that were not properly connected. Kay testified he encountered this condition throughout the construction, including bearing exterior walls.

97. Kay testified that he also encountered latent defects with respect to the structural framing in the master bathroom area. He testified that he was able to determine that the deficient structural framing in this area was performed after the original construction performed on the Myers project, based upon the look and UV impact to the lumber. He testified that the interior structural framing in the master bathroom was deficient, because the prior contractor had pieced together lumber and failed to fasten the walls to the ceiling.

98. Kay testified that Ex. SSS-18 depicts a wall separating in the guest bedroom. He testified that Ex. SSS-21 depicts an example of where he was required to fix interior structural framing in order to spread the loads, ensure structural integrity, and implement the engineering fixes recommended by Spaulding. Defendants' Ex. VVV. Kay testified to numerous instances in which he was required to install additional framing, beams and supports to shore up the existing framing as directed by Spaulding. See Defendants' Ex. SSS-21, SSS-91, and SSS-92.

99. Kay testified that the stair landing in the home included latent defects in the structural framing and that mechanical fasteners and devices were not used by the prior contractor. Defendants' Ex. SSS-25. This caused the framing to separate at the top due to improper construction.

100. Scott Spaulding is a structural engineer, licensed in the State of Idaho. He has over 30 years of experience as a practicing professional engineer. Spaulding testified he

reviewed and inspected the framing in the home in 2009. Spaulding testified that he observed framing that was substandard and violated the building code in effect at the time.

101. Both Kay and Spaulding testified that they observed over-nailing in areas of the framing, which destroyed the structural integrity of the framing work. Defendants' Ex. SSS-11 and SSS-93. Both testified to observing areas in the structural framing where mechanical fasteners were required by code, but were not installed by FDG/Horn. Kay testified that he repaired those conditions.

102. Spaulding testified that Norman provided him with a set of plans in 2007 for the Myers project and asked him to conduct a structural analysis with respect to a beam load in the mother-in-law suite.

103. Spaulding testified that he observed framing that was "not tight" and not tied together. He testified beams and framing members were undersized and improperly installed. He testified that he observed framing which failed to comply with the code requirements in effect at the time. Spaulding testified that aspects of FDG/Horn's framing created life safety issues that had to be fixed to ensure a safe structure. Spaulding also testified that he considered the framing performed by FDG/Horn to be a construction defect. Spaulding testified that he authored a report summarizing his findings, which was admitted as Defendants' Ex. VVV.

104. Horn and Hikida testified that any defects identified by Spaulding and Kay all existed during the time when they were building the home for Myers. They explained that because the Myer's project was not finished, the framing had not yet been inspected. They testified that although there were typical defects in the framing, these defects would have been detected by an inspection and repaired by them, if Caravellas had allowed them to complete the job.

(2) Defects in the Flashing and Water Infiltration.

105. Tom Davis, the Teton County Building Inspector, testified that Teton County had adopted the 2003 International Building Code, which was in effect at the time the home was initially permitted for construction. Davis testified that flashing around all exterior windows, doors, and roofs was a requirement of the code.

106. Kay testified that Defendants' Ex. SSS (23, 24, 32, 33, 83 – 85, and 90) depict flashing problems with the construction and water intrusion into the structure due to a lack of flashing. He opined that the prior contractor failed to install proper flashing around exterior

windows or counter flashing on standing seam roofs, both of which are required by the International Building Code in place in Teton County at the time, as well as good building practice and industry standard. Kay testified that he observed water infiltration into the home where the prior contractor failed to properly flash exterior windows, as well as portions of the roof and ridge vents. Defendants' Ex. SSS (24, 32, 83-85 and 90).

107. Kay testified that the photographs contained in Defendants' Ex. SSS (18-20) related to the "dog house" framing construction (roof venting), specifically noting that Ex. SSS (19) shows ridge beam "dog house" construction that does not meet the requirements of the building code or good building practice.

108. Kay testified that because proper flashing was not installed by the prior contractor, he was required to remove siding and install flashing around exterior windows, doors, and roof areas. This included one location where FDG/Horn modified the written plans for the roof without an architect or engineer's involvement. This resulted in portions of the roof making direct contact with vertical walls, presumably to avoid further water infiltration into the home. Defendants' Ex. SSS (32-35). He testified that once flashed, those areas no longer leaked.

109. Kay testified that Defendants' Ex. SSS (85) depicts a beam inside the house that was not properly flashed. Because the prior contractor failed to flash the area, water saturated the beam and infiltrated into the home. Kay noted several other examples of improper or poor construction practices by Horn/FDG, which did not meet the requirements of the building code, good building practice or industry standard. See Defendants' Ex. SSS(47, 87, 89, and 93).

110. Kay also testified that the concrete work installed by Horn was improperly performed, because it sloped into the home, thereby causing it to infiltrate under the concrete and saturate the soil. Kay testified that Defendants' Ex. SSS (1-3) accurately depict concrete that he had to break out and remove. The dark soil depicted in these photos shows where water had permeated the soil under the concrete.

(3) Non-conforming Work.

111. Kay testified regarding photographs designated as Defendants' Exhibit OOO (1, 3, 5, 7, 9 and 11), which depict the exterior construction performed by FDG/Horn. In between each picture is an elevation depicting the construction as called for by the plans, designated as Defendants' Ex. OOO (2, 4, 6, 8, 10, and 12). Kay testified that comparing the photos with the elevations illustrates examples of where Horn failed to follow the details in the construction

plans, including the failure to install window trim pursuant to the plans, and stone elevations according to the plans.

112. Kay testified convincingly that Horn failed to perform the work he undertook for the Caravellas in substantial conformance with the plans and elevations for the home. Although Horn testified that Myers had orally changed the plans, there was no competent testimony from Myers or other witnesses specifically confirming the alleged changes.

(4) Overbilling for materials.

113. Kay testified that he reviewed the photos of the Myers' house as it existed immediately prior to the Caravellas' purchase. Defendants' Ex. G (2) shows the uncompleted soffit in the gabled area to the right side of the photo where the Tyvek material is blowing away from the upper window. He estimated the uncompleted soffit to be approximately 350 square feet.⁶

114. Yellowstone billed FDG for 4,962 lineal feet (2067.5 square feet) of soffit material on the Caravella project. Defendants' Ex. YYY, p. YDIC-003 and YIDC-005. Kay estimated that this is nearly six times the amount of unfinished soffit material than was necessary to finish the job. First Horizon and Myers already paid horn for all of the soffit and fascia.

115. Norman and Hikida testified that Kay failed to include a large area of soffit from under the breezeway in his calculations. They also testified that new soffit materials were necessary to match the color variations between new and aged materials.

116. Kay testified that he did a take-off of the actual trim material used for the Caravellas' window trim and that there was 400 lineal feet of 2x6 cedar material, 150 lineal feet of 2x8 cedar material, and 300 lineal feet of 2x10 cedar material used to construct the trim.

117. Yellowstone billed FDG and the Caravellas for 1,600 lineal feet of 2x6 window trim material, 768 lineal feet of 2x8 window trim material, and 640 lineal feet of 2x10 cedar window trim material. Defendants' Ex. YYY, pp. YDIC0044 and YDIC0078.

118. Horn testified that there is always waste with every project. Horn suggests, without supporting testimony, that Hikida was primarily focused on the aesthetics of a multimillion dollar home, while Kay's installation was done without concern for aesthetics.

⁶ Kay testified that Soffit material is ordered in lineal feet, and to convert square footage into lineal feet, you multiply the square footage by a factor of 2.4. Therefore, it would take 840 lineal feet of 1x6 tongue and groove material to construct 350 square feet of soffit material.

119. Kay testified that he reviewed the Yellowstone invoices with respect to the Tyvek building wrap material sold to FDG and for which Yellowstone claims a lien. Defendants' Ex. YYY. Based on his review of the amount of Tyvek sold, compared to the amount of surface space on the building, Kay testified that even if all of the old Tyvek material were removed, there was still enough Tyvek invoiced by Yellowstone to wrap the building more than two times.

120. Norman testified that the amount provided was the correct amount to cover the home and replace the Tyvek damaged or missing since the project was terminated by Myer.

121. With respect to siding, Kay testified he did a review of the Caravella house and determined the exact amount of siding installed was 4,200 square feet. This square footage converts to just under 6,500 square feet of lineal siding material. However, Yellowstone billed FDG for 11,469 lineal feet of cedar siding material. Defendants Ex. YYY, p. YDIC0042. Yellowstone also claims a lien against Caravellas for that same amount. Kay testified that Yellowstone's siding invoices included material for nearly twice the amount necessary to side the Caravella house.

122. Norman testified that Kay's calculations were mathematically incorrect because he underestimated the amount of necessary overlap and used the wrong size for the boards.

123. Kay testified that when installing window trim and/or siding, a contractor typically figures a 10% "waste" factor to account for material that could not be used due to cutting material to fit. Norman and Hikida testified that they used a 33% to 35% waste factor to accommodate the use of longer siding boards with fewer seams.

(5) Costs to fix construction defects in the home.

124. Kay testified that his Invoice Nos. 1 through 7, as well as the Coldwater Timber Products invoices and Radford Roofing invoices, depict the correct amounts he billed and was paid for by the Caravellas for fixing the latent defects in the home. Defendants' Ex. PPP-1. On cross examination, Kay clarified that with respect to his Invoice No. 2 (Ex. PPP-1), some of the \$3,000 billing amount for "stone finishes" included fixing an exterior cap stone that had fallen off the house, but also included costs associated with completing stonework on the home. Kay also clarified on cross examination that with respect to the Radford Roofing invoice found at Ex. PPP-1 of the \$5,750 billing amount, only \$2,600 related to fixing latent defects in the roof installed by Mr. Horn.

125. The amount billed by J.K. Kay Construction's Invoices 1 through 7, totals \$76,650.00. Defendants' Ex. PPP (Invoices 1-7). Kay admitted that the invoices contained a few billings that were not for latent defects he repaired, but to accommodate Caravellas' design changes. However, Kay credibly testified that the amount billed for fixing latent construction defects on the home, and paid by the Caravellas, was approximately \$63,000.00.⁷ Defendants' Ex. PPP.

I. Payment of Contract Price by Caravellas to Horn.

126. The Caravellas paid a total of \$138,097.24 to FDG for the work that Horn represented had been done on the property. Defendants' Ex. XXX, p. 2. Dr. Caravella testified that, after paying FDG a total of \$138,097.24, the Caravellas refused to make additional payments because Horn had performed work that was not authorized and he had performed work that did not conform to the Plans. Defendants' Ex. 84.

127. The Caravellas' payments to Horn included at least \$50,000 for exterior stone installed, structural framing fixes and ridge vents/roof fixes; \$35,000 for exterior wrap and siding, stained and installed; \$2,500 for exterior electrical rough-ins; and \$1,000 for two extra windows. Therefore, the Caravellas paid the full contract price of \$88,500 for the work they approved FDG to complete on the home. Because FDG failed to complete the stonework, ridge vents, structural framing and siding in conformity with the plans and specifications, FDG was not entitled to full payment of the contract price. FDG did not substantially perform the work contemplated by the parties.

128. The remaining balance of the Caravellas' payments to FDG were sufficient to cover the billed amounts for the additional, unapproved work and materials performed and installed by FDG, including the concrete (\$19,900) and garage doors (\$29,040.89) which totaled \$48,940.89. Because Horn overbilled the Caravellas for the garage doors, and the concrete was both defective and misplaced, he is not entitled to full payment of the amounts he billed the Caravellas.

129. Although Caravellas only reluctantly agreed to allow the Smart Home system to be purchased, they still consented and paid \$19,080.00 for it. This included the base price for the unit (\$10,597.55) plus installation. However, it was not installed in the home. Therefore, they should not have been charged for the installation. The amount charged by FDG to the Caravellas

⁷ See Defendants' Proposed Finding of Fact, No. 208.

and paid by the Caravellas for the uninstalled Smart Home unit should also be credited by \$10,000. This represents the value of the unit had it been sold and used on another project as the Caravellas directed, and Norman testified he could have done. Therefore, Caravellas only owe \$597.85 for the Smart Home system.

130. The fees FDG incurred for waste disposal and portable toilets were both reasonable and necessary. Regardless of whether the work was incomplete or partially defective, these services did benefit Caravellas and their property. Therefore, FDG is entitled to payment to cover the billed costs of waste disposal and portable toilets in the amount of \$1,253.94.

131. The Court finds that Caravellas paid FDG a total of \$138,097.24. The Court also finds that the most possibly owed to FDG, based on its findings, *supra*, is \$126,646.79. This includes the contracted work (\$88,500), the credited amount owing for the uninstalled Smart Home system (\$597.85),⁸ an adjusted amount due for the garage doors (\$16,395.00), the disputed concrete work (\$19,900), and waste disposal and portable toilets (\$1,253.94). Therefore, not only was FDG was paid in full for all amounts it was entitled to receive pursuant to the construction contract with the Caravellas, it was actually overpaid for the work performed and materials provided.

J. Yellowstone's delivery of materials and its agreements with Horn.

132. Both Norman and Horn testified that Yellowstone had an open account agreement with Horn and FDG. Defendants' Ex. EEEE; and Norman Depo. pp. 13-14, 53-54. Norman testified in his deposition that Yellowstone was relying on Horn or FDG's credit in setting up the account and in supplying material to the project. Defendants' Ex. EEEE, p. 141.

133. Norman and Horn testified that Yellowstone sold materials to Horn for several projects that were under construction at the same time as the Caravellas' project. One of these projects utilized that same siding, trim and stain color as the Caravellas' Home. (*See also*, Ex. EEEE, pp. 49-51, 72, 83, 84 and 86.)

134. Yellowstone purchased the materials in bulk for FDG's various projects and delivered some to each of its projects. Defendants' Ex. EEEE, pp. 72, 79-80, 82-86. The sales

⁸Since the unit was not installed, Caravellas should only have been billed the actual cost of \$10,597.85. The Court has credited the Caravellas \$10,000.00, the price the unit could have been sold for, leaving only \$597.85 owed.

records do not identify the specific amount of materials that were ordered for, or delivered to, each project.

135. FDG purchased the materials for both the Caravella home and the Jackson project from Yellowstone on the open account. Defendants' Ex. EEEE, pp. 72, 79-80, 82-86. Yellowstone did not produce delivery receipts for any of the materials it asserts were delivered to the Caravellas' property, and was unable to identify the exact quantity of materials that were delivered to or actually used in the construction of the Caravella home. Defendants' Ex. EEEE pp. 84-86.

136. Norman testified that Yellowstone agreed to let FDG pay its other subcontractors and suppliers first, before paying Yellowstone. Defendants' Ex. EEEE, pp. 94.

137. Kay testified convincingly that Yellowstone's invoices billed the Caravellas for significantly more siding, fascia, soffit, and exterior Tyvek wrap than was required to complete the siding of the home. The Court finds Kay's testimony was credible and convincing regarding the amounts of materials necessary to complete the home and actually installed on the home. FDG and Horn's prior dealings with Meyers and First Horizon also showed a pattern of billing for materials that were never used in constructing the home.

138. The Court finds that many of the materials billed to the Caravellas, and included in Yellowstone's claim of lien, were never installed on or in the home. The Court further finds that Yellowstone billed the Caravellas for materials that were either never delivered to the property or that were removed from the property, and thus were not used in the construction of any improvement on the property.

K. FDG and Yellowstone's lien filings.

(1) Yellowstone's Lien.

139. Yellowstone recorded a mechanics lien against the property in the amount of \$75,731.88 on December 9, 2008. Yellowstone's claim of lien states as follows:

The name and address of the person or entity who employed Claimant or to whom Claimant furnished materials is: Yellowstone Do It Center, 272 N. Yellowstone, Rigby, Idaho 83442.

Plaintiffs' Ex. 95 [Handwritten portion in italics]. In other words, the claim of lien asserts that Yellowstone hired itself or that it provided the materials to itself.

140. At trial, there was no testimony given regarding the value of the materials that were actually delivered, used, or incorporated in the home.

(2) FDG's Lien.

141. FDG filed a mechanics lien in the amount of \$105,683.37, which included the amounts claimed by Yellowstone. FDG's claim of lien states that that FDG is the lien claimant; however, it also states that FDG was "the person or entity who employed Claimant or to whom Claimant furnished materials." Plaintiffs' Ex. 91.

142. At trial, the Plaintiffs did not present any testimony regarding the actual value of the improvements that were made to the property by FDG, its subcontractors, or its material suppliers.

L. Yellowstone and Horn's alleged fraudulent activity.

143. Dr. Caravella clearly advised FDG that he only intended to authorize and pay for construction and materials as he had funds available. Defendants' Ex. H, p. 2; Plaintiffs' Ex. 19a.

144. Dr. Caravella testified that he paid each of FDG's invoices immediately upon receipt. Dr. Caravella testified that he did not want to finance the construction of the home, or incur debt to construct the home. Up until October of 2008, Caravellas timely paid each of Horn's invoices.

145. Without Caravellas' knowledge, consent or agreement, Yellowstone and FDG agreed between themselves that FDG would pay its subcontractors and suppliers with the first funds received from the Caravellas, leaving the Yellowstone billings for the end of the construction. Defendants' Ex. EEEE (Norman Depo., p. 94); and Ex. DDDD (Horn Depo., p. 170). The effect of FDG and Yellowstone's private arrangement was that if the Caravellas refused to pay the eventual bill from FDG, the unpaid balance for materials allegedly supplied by Yellowstone would allow FDG to file and record a materialman's lien.

146. In making its deliveries to FDG, Yellowstone overbilled the Caravellas for the siding actually installed on the home. Yellowstone also overbilled the Caravellas for soffit and fascia, both of which had been previously installed when Myers owned the property.

147. In addition to the work that was not authorized, FDG also billed the Caravellas for completion of all the stonework, all the siding, and repair of the structural issues, none of which were actually completed.

148. The Court does not find that Horn and Norman's conduct with respect to the Smart Home system evidences intent to defraud the Caravellas. Although there is some evidence that high-pressure tactics were used, the Court cannot find these tactics rose to the level of fraudulent activity.

149. Although the Court finds that the practical effect of FDG and Yellowstone's agreement allowed them to both place mechanics liens on the property for more materials than were used, the Court cannot find that this was part of an intentional civil conspiracy or scheme to defraud Caravellas.

150. Horn represented Norman to the Caravellas as his "material guy" (Defendants' Ex. N, May 12 e-mail) and Horn, Norman and Neal Hikida testified that Norman calculated the quantities of material to order and bill to the Caravellas. However, the fact that more materials than necessary were billed to the Caravellas, while evidence of poor accounting and record keeping, is not sufficient evidence of collusion and an intent to defraud the Caravellas by Yellowstone or FDG.

M. Evidence Relating to I.C. § 45-525 and Idaho Consumer Protection Act.

151. FDG and the Caravellas entered a contract for construction work in an amount in excess of \$2,000 on the home. The home is "residential real property" as defined by Idaho Code § 45-525(5)(b). FDG was a general contractor as defined by Idaho Code § 45-525(5)(a).

152. Horn failed to present evidence that FDG gave the Caravellas any of the General Contractor Disclosures mandated by Idaho Code § 45-525(2). Horn presented no evidence that FDG obtained a signed General Contractor Disclosure statement from the Caravellas as required by that code section.

153. Horn presented no evidence of any contract initiated by the Caravellas for a "bona fide emergency" as identified at Idaho Code § 45-525(6). The evidence at trial established that FDG failed to fix roof leaks in the home or the structural framing deficiencies discussed by the parties at the outset of their e-mail discussions.

154. If FDG had complied with the disclosure requirements of Idaho Code § 45-525, the Caravellas would have been advised of their right to obtain lien releases or otherwise avoided the Yellowstone Lien.

N. Alleged Unity of Interest Between Horn and FDG.

155. Horn testified that he created FDG for the purpose of operating a business as a building contractor. Horn registered the assumed business name of Open Range Homes for FDG with the Idaho Secretary of State.

156. Horn testified that his wife, Kathleen Horn, now owns a small percentage of ownership in FDG, but she does not participate in the business of FDG. Horn testified that she has no specific duties with FDG, but co-owns it with her spouse.

157. Horn testified that FDG acts only through him, never hired any employees, did not own any assets at the time of trial, and that all of FDG's profits were taken by him as his personal income, although he does not receive any compensation as a manager or employee of FDG. Horn also testified that during the time FDG was involved with the Caravellas' construction, it owned construction related assets, including two telescopic forklifts.

158. Horn testified that prior to forming FDG, Horn's only experience related to building residential structures was in his capacity as a property owner who acted as his own general contractor in the construction of two personal residences, first in Park City, Utah, and later in Victor, Idaho. He further testified that while serving on active duty in the United States Air Force as a Lieutenant Colonel, he performed duties as a project manager overseeing the construction of multi-million dollar projects for the Air Force.

159. Horn testified that he acted as his own general contractor and hired subcontractors to perform all of the construction work on his residences. He did not perform any of the construction himself, nor did he hire any direct employees to perform construction work. FDG has never had any employees.

160. After forming FDG, Horn continued to operate in the same manner as he had performed with regard to the construction of his own residences, but he did so for paying clients rather than for himself. Neither FDG nor Horn engaged in the hands-on performance of any construction work for the customers, but instead hired a primary subcontractor to complete portions of the work and even to oversee the work done by the other subcontractors.

161. Prior to the Caravellas' purchase of the partially completed home and their hiring of FDG to resume construction on the home, Horn communicated with Caravellas through his e-mail at the address "builder@openrangehomes.com." After purchasing the home, Caravellas should have seen the signage at the job site also referred to "Open Range Homes." After work commenced, all invoices were sent on FDG letterhead, providing clear notice that Caravellas were dealing with "Frontier Development, LLC dba Open Range Homes."

162. The Court finds that Caravellas must have known they were dealing with FDG and Open Range Homes, and not Horn personally, because they sent at least five payments to FDG via checks made payable to "Frontier Development Group, LLC" (Defendants' Ex. Q, BB, NN, and UU) or "Open Range Homes (Defendants' Ex. T)." The Court further finds that even if Caravellas did not initially know, they essentially acquiesced to the arrangement by continuing to make payments directly to FDG, rather than to Horn. If Caravellas had not wished to work with FDG, rather than Horn personally, they could have terminated the relationship early on because the project was clearly intended to be divided into separate and distinct phases.

163. This is admittedly a close question, one the Court has wrestled with for some time. Nevertheless, while Horn may not have rigorously followed all formalities one working through an entity should generally follow, the Court finds that his conduct was sufficient to merit the protection afforded to the participants in a limited liability company. The Court cannot find any evidence that Horn actively attempted to conceal FDG's role in the transaction. The Court finds that the e-mail address (used on all correspondence), the signage on the job site, and the letterhead on the invoices, adequately evidenced FDG's role in this transaction. Certainly, there was enough information to put Caravellas on reasonable notice they were dealing with a business entity. As sophisticated buyers, Caravellas had opportunities to protect themselves by insisting on a written agreement with Horn personally, but did not do so.

IV. CONCLUSIONS OF LAW

A. Jurisdiction and Venue.

1. The Court has proper jurisdiction over this matter pursuant to I.C. § 45- 516. Venue is proper pursuant to I.C. § 5-401.

B. Plaintiffs' Lien Foreclosure Claims.

(1) **Yellowstone's Lien Claim is defective.**

2. Idaho Code § 45-507(3)(c) requires that a claim of lien must contain "the name of the person by whom [the lien claimant] was employed or to whom [the lien claimant] furnished the materials."

3. Yellowstone's claim of lien is fatally defective, because it merely identifies itself as the person or entity who employed it or to whom it furnished materials, and thus fails to provide the information required by Idaho Code § 45-507(3)(c). *Riggen v. Perkins*, 42 Idaho 391, 395-96, 246 P. 962, 963 (1926); *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904) (overruled on other grounds); *Hogan v. Bigler*, 9 Cal. App. 71, 96 P. 97 (1908).

4. Although *Riggen* is an old precedent, the essential holding appears to be vital and enduring. The U.S. Bankruptcy Court for Idaho in *In re Rake*, 363 B.R. 146 (Bnkr. D. Idaho 2007) noted the following as one of the "multiple defects" in a debtor's lien:

Idaho Code § 45-507(3)(c) requires the lien to set forth the name of the person the lienor was "employed by" or to whom he furnished materials. Debtor's claim of lien alleges he provided labor and material "in accordance with a contract with Joe Rake [the debtor]."

Id., 363 B.R. at 154 (fn. 14). By naming himself as the party to whom the materials were supplied, the Bankruptcy Court opined that the debtor's lien appeared more like an investment than a contract. *Id.* Due to this similarity, the Court's reliance on this holding would not be akin to "blindly rely[ing] on a few quoted words."⁹

5. In the alternative, even if I.C. § 45-507(3)(c) had been complied with, Yellowstone's lien was still not valid. The right to a mechanic's lien "is based on the theory that the claimant has, either by his labor or by the materials furnished and used, contributed to the construction or improvement of the property against which the lien is asserted." *Chief Indus., Inc. v.*

⁹ *Plaintiffs'/Counterdefendants' Findings of Fact and Conclusions of Law*, p. 57(January 13, 2012).

Schwendiman, 99 Idaho 682, 687, 587 P.2d 823, 828 (1978). In *Chief Industries*, the Idaho Supreme Court stated, “. . . where the labor is not used or the materials are not incorporated into the building, structure or improvement, no lien on land or building results.” *Id.*

6. In order for a lien to attach to property arising from the providing of materials, the lien claimant must establish that the materials were in fact used and incorporated into the project. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 687 (1978). When materials are actually delivered to the property, “a rebuttable presumption arises that such materials were actually incorporated into the structure or improvement.” *Id.*

7. In this case, Yellowstone could not produce any delivery receipts to establish that all the materials had been delivered to the property. Hikida, FDG’s supervising subcontractor, testified that all the materials had been delivered to the property; however, he did not testify that he had reviewed all of Yellowstone’s invoices, nor did he review the invoices during his testimony. Therefore, his testimony lacks sufficient foundation to afford it much, if any, weight.

8. The preponderance of the evidence at trial shows that Hikida was mistaken. The evidence shows that FDG was constructing another residence at the same time, of approximately the same size as the Caravellas’ home, and that Yellowstone ordered all the siding, fascia and soffit materials for both projects in bulk, and billed all of it to FDG’s open account. Horn and Norman both testified that on at least one other project under construction at the same time as the Caravellas, Yellowstone was supplying the exact same materials as used on the Caravellas’ home.

9. When questioned about the missing siding that was delivered while work was still being done for Myers, Horn conceded that there have been occasions when materials for one job had been delivered to another job site, depending on the location of his unloading equipment.

10. Based on the Court’s findings that Yellowstone billed the Caravellas for more siding, soffit, fascia, Tyvek wrap, and trim material than was necessary to complete the home, the Court draws a reasonable inference that not all of the materials billed to the Caravellas were delivered to the property. There was also evidence that the needed supplies and materials were previously delivered when the home was still being built for Myers. Kay’s testimony regarding the exact quantities of siding, trim, soffit and fascia, as well as Tyvek on the home, as opposed to the quantities claimed by Yellowstone, establish that Yellowstone’s claimed quantities for this

material are erroneous. By failing to accurately account for the materials correctly delivered to the correct job site, Yellowstone failed to substantially comply with the Idaho Lien statute.

11. Because Yellowstone failed to establish that the materials were in fact delivered to the property, it cannot rely on the rebuttable presumption the materials were used on the property. *Chief Industries*, 99 Idaho at 687, 587 P.2d at 828.

12. Based upon Kay's testimony concerning the excessive quantities of materials Yellowstone claims were delivered and installed, Yellowstone cannot claim a lien for the amounts of material in its invoices, because the amounts could not be physically installed on the home. Therefore, no lien ever attached to the Caravellas' home in favor of Yellowstone.

13. The value of a lien under Idaho Code § 45-501, *et seq.*, is determined by the value of the materials or labor provided. The value of materials actually provided and incorporated into a project must be established with reasonable certainty.

14. Yellowstone failed to identify with reasonable certainty the actual amount of materials that were provided and incorporated into the Caravellas' home. Further, Yellowstone did not present any evidence as to the value of any materials that actually were installed in the home.

15. Therefore, Yellowstone's lien, as well as FDG's lien to the extent that it included amounts owed to Yellowstone, never attached to the subject property and fails to establish grounds to foreclose a lien against the property.

(2) Horn/FDG's Lien Claim.

16. FDG's claim of lien suffers from the same defects as Yellowstone's does. Rather than identifying the person by whom it was employed or to whom it provided materials and labor, as required by Idaho Code § 45-507(3)(c), the claimant incorrectly identifies itself as the employing or receiving party.

17. FDG's claim of lien is therefore fatally defective for failure to comply with the requirements of Idaho Code § 45-507(3)(c). *Riggen v. Perkins*, 42 Idaho 391, 395-96, 246 P. 962, 963 (1926); *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904) (overruled on other grounds); *Hogan v. Bigler*, 9 Cal. App. 71, 96 P. 97 (1908). Because the lien is fatally defective, it cannot be foreclosed.

18. Additionally, when the work of a lien claimant has substantial, material defects, he cannot enforce a mechanic's lien, because he has failed to substantially perform the construction

contract. *Perception Constr. Mgmt., Inc. v. Bell*, ___ Idaho ___, 254 P.3d 1246, 1250-51 (June 29, 2011).

19. FDG failed to substantially complete the construction contract, because he failed to construct the home in conformity with the plans and specifications. There were also substantial and material defects in the construction. Kay and Spaulding testified and established that FDG's construction was defective.

20. The evidence at trial established that the home leaked where FDG failed to properly install, or install at all, flashing on exterior doors, windows and aspects of the roof. Kay testified that he was required to remove major portions of the siding, to install flashing and then reinstall siding. Kay also testified to roof leaks where flashing had not been installed and he was required to remove shingles and properly install flashing and re-shingle the roof.

21. The Court has found that FDG failed to substantially perform the construction contract between the parties. Therefore, it concludes that he is not entitled to the benefits of a mechanics lien.

22. For the same reasons explained above regarding Yellowstone, FDG also cannot enforce a lien against the property for the materials identified by Yellowstone. FDG substantially over-charged the Caravellas for materials provided and work performed. Neither FDG nor Yellowstone has adequately identified the materials that were actually used in the construction of the home.

23. There was no evidence presented quantifying the value of the labor and materials *actually used or performed* by FDG and its subcontractors in the construction. FDG has not established with reasonable certainty the value of the work done on the property. Moreover, the Caravellas were required to repair and replace much of the construction performed by Horn, including framing, siding and concrete work. Therefore, FDG cannot foreclose on the mechanic's lien.

24. FDG agreed to complete the exterior stone installation, fix the structural framing, fix the roof/ridge vents, install all the exterior siding, complete exterior electrical rough-ins, and install two additional windows for \$88,500. In addition to the contracted and agreed scope of work, FDG installed concrete flatwork and garage doors without prior approval from the

Caravellas. The Court has previously found that Caravellas paid FDG a total of \$138,097.24, yet the most possibly owed to FDG is \$126,646.79.¹⁰

25. Because FDG received full payment for the contracted work and additional amounts for the value it may have added to the property for the work not contracted, it has no grounds to foreclose a mechanic's lien on the property.

C. Caravellas Claim for Breach of Contract.

26. The Caravellas agreed that FDG would complete a limited scope of work pursuant to bid prices, which included the exterior stone work, fix the structural framing, fix the leaking roof, and install siding in accordance with the written plans and specifications. The Caravellas also agreed to exterior electrical rough-ins to facilitate exterior stone, siding work, and two additional windows in the horse paddocks. Pursuant to the parties' e-mail exchanges and FDG's pricing, the **total price for this limited scope of work** was \$88,500. The Caravellas payment of \$138,097.24 to Horn was well in excess of the full contract price.

27. FDG breached the contract by failing to complete exterior stone in conformity with the plans and specifications, install all of the siding and trim in conformance with the plans or in a workmanlike manner, perform the structural framing pursuant to the plans and the Building Code, and construct the home in a workmanlike manner.

28. The Caravellas were required to hire another contractor, Jared Kay, to repair the defects in construction, to correct the non-conforming work, and to complete the work required by the contract, for the total cost of \$63,000.00.

29. FDG also breached the contract by:

- a. incurring substantial costs to the Caravellas for unauthorized work, including installation of garage doors without authority and installation of concrete flatwork without permission;
- b. substantially overbilling the Caravellas for the work and materials that were not actually authorized and provided.

30. FDG overbilled the Caravellas by \$12,645.89 for the garage doors.

31. Caravellas are entitled to a partial refund for the \$19,080 billed for the Smart Home system because it was never installed. Testimony established the cost without installation was \$10,597.85. Additionally, Norman testified that he could have returned the unit for \$10,000, but

¹⁰ See Finding of Fact No. 131, *supra*.

failed to do so although he knew Caravellas did not want the unit. The Court concludes that Caravellas should also be credited the \$10,000.00 Norman could have sold the unit for, leaving only \$597.85 owed. Therefore, since Caravellas paid the full \$19,080 for the unit, but only owe \$597.85, they are entitled to recover \$18,482.15.

32. FDG billed the Caravellas \$19,900 for concrete that was installed without authorization, in the wrong location, and in a materially defective state.

33. Therefore, the Caravellas were damaged in the total amount of \$114,028.04 by Horn's multiple breaches of the contract, calculated as follows:

- a. \$63,000.00 for the cost of repairing Horn's construction defects and completing the scope of the work Horn had agreed to perform;
- b. \$12,645.89 for overcharging on the garage doors;
- c. \$19,900 for the unauthorized, non-conforming and defective concrete; and
- d. \$18,482.15 for the Smart Home system that was not installed and should have been returned or sold.

D. Warranty of Habitability.

34. Idaho courts have upheld the warranty of habitability with respect to residential construction. In *Tusch Enterprise v. Coffin*, 113 Idaho 37, 46, 740 P.2d 1022, 1031 (1987), the Idaho Supreme Court recognized claims for construction defects under the warranty of habitability. "The implied warranty is that the structure will be fit for habitation . . . and the expectations of the parties." *Id.* The Court in *Tusch* cited with approval the following analysis by the Wyoming Supreme Court:

Courts will judicially protect the victims of shoddy workmanship. Consumer protection demands that those who buy homes are entitled to rely on the skill of the builder and that the house is constructed so as to be reasonably fit for its intended use.

Id., citing *Moxley v. Laramie Builders, Inc.*, 600 P.2d 733, 735 (Wyo.1979) (footnote omitted).

35. The Supreme Court in *Tusch* also held that the implied warranty of habitability is not limited by principals of privity only to actions brought against builder by the original purchaser of the home:

We hold only that subsequent purchasers of residential dwellings, who suffer purely economic losses from latent defects manifesting themselves within a reasonable time, may maintain an action against the builder (or builder-developer, as the case may be,) of the dwelling based upon the implied warranty of habitability despite the fact that no privity of contract exists between the two. Any other holding would lead to an absurd result.

Id., 113 Idaho at 52, 740 P.2d at 1037.

36. FDG focuses on the fact that the sale between Myers and Caravellas was to be on an “as is” basis. The *Purchase and Sales Agreement* expressly stated:

NO WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTY OF HABITABILITY, AGREEMENTS OR REPRESENTATIONS NOT EXPRESSLY SET FORTH HEREIN SHALL BE BINDING UPON THE PARTIES.

Plaintiff’s Exhibit 3, at ¶ 32 (emphasis in original). The agreement also shows that Caravellas specifically checked the box indicating they wanted an inspection. Plaintiff’s Exhibit 3, at ¶ 9. As buyers, Caravellas had ten days to notify Meyers of any disapproved items and would forfeit the right to have Myers make corrections if they failed to give him written notice. Plaintiff’s Exhibit 3, at ¶¶ 9(C)(2) – (4). Horn testified that the home was only partially completed and Caravellas were aware it had been exposed to the elements over the winter.

37. FDG fails to recognize that any waivers of remedies contained in the *Purchase and Sales Agreement* were personal between Myers and the Caravellas. The agreement did not limit the Caravellas’ right to assert any claims against FDG for: (a) breach of the warranty of habitability as to the prior work performed for Myers, or (b) breach of breach of the warranty of habitability as to the recent work performed for them. FDG was not a third-party beneficiary of the Meyers/Caravella *Purchase and Sales Agreement*—it was only expressly “binding upon the parties.” Plaintiff’s Exhibit 3, at ¶ 32. Additionally, the record is clear that the Caravellas relied heavily upon Horn’s representations as to the condition of the home. In lieu of bringing in an outside inspector, Caravellas relied upon the builder who would be completing the home to confirm its condition. Again, FDG is not a third-party beneficiary to the notice provisions of the agreement, especially where Horn knew that Caravellas were relying upon his assessment of the home’s condition.

38. FDG, as builder under the contract with Myers, was just as responsible to Caravellas for any breaches of the Warranty of Habitability for his prior work as it would have been to Myers. Since FDG also acted as builder for Caravellas, it is responsible for all of the work performed on the home up to the point it was removed from the job.

39. It is clear from Kay and Spaulding’s testimony that the home was not habitable. Both testified to serious structural defects that made the home unsafe. Additionally, they testified concerning water intrusion into the home after FDG began working for Caravellas. The

Court finds that FDG breached the warranty of habitability with respect to work performed under the Myers contract, as well as the work performed under its contract with Caravellas.

40. The Caravellas were damaged by the breach of the warranty of habitability in the amount of \$63,000.00, the amount they paid Kay for repairing the substantial defects.

E. Fraud and Misrepresentation.

41. “A party must establish nine elements to prove fraud: ‘1) a statement or a representation of fact; 2) its falsity; 3) its materiality; 4) the speaker's knowledge of its falsity; 5) the speaker's intent that there be reliance; 6) the hearer's ignorance of the falsity of the statement; 7) reliance by the hearer; 8) justifiable reliance; and 9) resultant injury.’” *Glaze v. Deffenbaugh*, 144 Idaho 829, 833, 172 P.3d 1104, 1108 (2007) (quoting *Mannos v. Moss*, 143 Idaho 927, 931, 155 P.3d 1166, 1170 (2007)).

42. The Court concludes that Horn/FDG made some materially false statements of fact to the Caravellas to induce their reliance. The Court also concludes that Caravellas were ignorant of the falsity of the statements and justifiably relied upon them to their detriment. These statements concerned:

- a. the condition, quality and value of the home and workmanship of the construction performed on the home before they purchased it;
- b. the progress and quality of work FDG performed on the project pursuant to his contract with them; and
- c. the cost of materials used in the construction.

43. Although Caravellas have established the presence of eight out of nine elements of fraud set forth in *Glaze*, the Court cannot conclude that Caravellas established by a preponderance of the evidence that Horn and/or Norman *knew* their statements were false.

44. Although Norman and Yellowstone misrepresented the amount and value of materials used in the construction of the home, the Court cannot find that this was intentional, rather than just the result of poor record keeping or incompetence in estimating the materials needed. There is no evidence in the record that Horn was actually aware of the poor workmanship on the framing, flashing and other places in the home. In fact, Caravellas successfully painted him as one who was not a “hands-on” general contractor/builder. Although the Court was presented with facts that seriously call Horn’s competence as a general contractor/builder into question, the Court cannot conclude by a preponderance of the evidence

that the actions of Horn and/or Norman were fraudulent. Although Horn may have exaggerated his building skills and reputation, such inflated self-promotion does not necessarily rise to the level of fraud. Regardless, the Court concludes by a preponderance of the evidence that sophisticated purchasers like the Caravellas would not likely have relied solely on such statements.

F. Civil Conspiracy.

45. A civil conspiracy that gives rise to legal remedies exists if there is an agreement between two or more to accomplish an unlawful objective or to accomplish a lawful objective in an unlawful manner. *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003); *Kloppenborg v. Mays*, 60 Idaho 19, 27-28, 88 P.2d 513, 516 (1939). The essence of a cause of action for civil conspiracy is the civil wrong committed as the objective of the conspiracy, not the conspiracy itself. *Argonaut Ins. Co. v. White*, 86 Idaho 374, 379, 386 P.2d 964, 966 (1963).

46. In the case at hand, the Court cannot conclude that Caravellas proved by a preponderance of the evidence that Horn and Norman conspired together to overcharge the Caravellas for construction materials or the work performed. Similarly, the Court cannot conclude that Caravellas proved by a preponderance of the evidence that FDG and Yellowstone were in collusion together to fraudulently bill the Caravellas for excessive amounts of material that were not, and could never have been, used in the construction.

47. Although the evidence is subject to multiple interpretations, the Court concludes that Caravellas failed to prove by a preponderance of the evidence that Horn and Norman's actions were part of a coordinated conspiracy to take advantage of the Caravellas. It is just as likely that Horn's incompetence as a general contractor/builder was the chief reason for the poor management of materials on the project. The Court notes that Yellowstone's failure to clearly account for the materials *actually* supplied and used on the Caravella project was also concerning. However, the Court cannot conclude by a preponderance of the evidence that these failings and deficiencies in record keeping and inventory control were part of an intentional, coordinated plan between Horn/FDG and Norman/Yellowstone.

G. Good Faith and Fair Dealing.

48. A covenant of good faith and fair dealing is implied in every contract. *Luzar v. Western Sur. Co.*, 107 Idaho 693, 696, 692 P.2d 337, 340 (1984). It "is an objective determination of whether the parties have acted in good faith in terms of enforcing the contractual provisions." *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 243, 108 P.3d 380, 390 (2005). "An action by one party that violates, qualifies or significantly impairs any benefit or right of the other party . . . violates the covenant." *Id.*

49. By performing work and incurring costs beyond the scope of the agreement, FDG deprived the Caravellas of one of the most important benefits of their agreement—the completion of work in the order Caravellas wanted as their available funds allowed. Although Caravellas paid FDG in full for the work and materials that were actually performed and installed on their home, FDG may have failed to pay Yellowstone the amount due for materials it received, resulting in Yellowstone's lien against the Caravella property.

50. Despite these actions, which the Court has previously concluded amount to a breach of the contract, the Court cannot conclude that a breach of the covenant of good faith and fair dealing was established by a preponderance of the evidence. Again, although the evidence illustrated a high level of administrative incompetence on the part of the Horn and FDG, it did not sufficiently establish that these failings were the result of bad faith. Based on the record at trial, the Court cannot conclude that the bad management practices clearly present here were the legal equivalent of bad faith.

H. Slander of Title.

51. Slander of title requires proof of four elements: (1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special damages." *Porter v. Bassett*, 146 Idaho 399, 405, 195 P.3d 1212, 1218 (2008) (quoting *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003)); *Weitz v. Green*, 148 Idaho 851 (2010).

52. Slander is "[a] defamatory assertion expressed in a transitory form." Black's Law Dictionary 660 (3rd pocket ed. 2006). A "defamatory" statement is one "tending to harm a person's reputation, [usually] by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business." *Id.*, at 188. "Malice" includes a reckless disregard for the truth or falsity of a statement.

53. Attorney fees and legal expenses incurred in removing a cloud from the chain of title constitute special damages for purposes of a slander of title claim. *Rayl v. Shull Enters., Inc.*, 108 Idaho 524, 530, 700 P.2d 567, 573 (1984).

54. The Court concludes that the recording of liens by FDG and Yellowstone constituted a statement, setting forth an amount allegedly owed and unpaid. The Court also concludes that the amounts claimed in the liens recorded by Horn/FDG and Yellowstone were false. Furthermore, the statements were published when they were recorded in Teton County and made part of the public record. The Court further concludes that the statements were slanderous inasmuch as they adversely affected Caravellas' business and financial interest by placing an unnecessary cloud on their title. The Court additionally finds that Caravellas have established by a preponderance of the evidence that the liens were filed maliciously, which can be defined as a reckless disregard for the truth or falsity of a statement.

55. Although the Court has previously concluded that Caravellas failed to prove by a preponderance of the evidence that Horn/FDG and Yellowstone intentionally overcharged them, a preponderance of the evidence does show that Horn/FDG and Yellowstone *should have known* that they substantially overbilled the Caravellas for the work and materials actually provided. Horn/FDG and Yellowstone displayed a cavalier indifference to accepted accounting and inventory control procedures, which resulted in supplies and materials being charged that were never delivered to, or used at, the Caravellas' job site. By recording their liens against the Caravella property under such circumstance, Horn/FDG and Yellowstone demonstrated a reckless disregard for the truth or falsity of their sworn statements.

56. FDG should have known that it had already received full payment from the Caravellas pursuant to its contract with them. It also received sufficient payment to cover its unauthorized work on the property. Likewise, Yellowstone should have known that not all of the materials and supplies it provided could have possibly been used on the Caravellas' job site. Horn/FDG and Yellowstone's actions in recording their liens were clearly reckless, erroneous, and wrongful.

57. As a result of FDG and Yellowstone's reckless actions, the Caravellas have suffered damages in the amount of the legal fees and expenses necessary to have the liens removed as a cloud on the title to their property.

I. Horn's Personal Liability.

58. "In order for a corporation to be an alter ego of an individual, there must be (1) a unity of interest and ownership to a degree that the separate personalities of the corporation and individual no longer exist and (2) if the acts are treated as acts of the corporation an inequitable result would follow." *The Vanderford Co., Inc. v. Primary Residential Mortgage, Inc.*, 144 Idaho 547, 557, 165 P.3d 261, 271 (2007).

59. While Horn was not overly attentive to the formalities of entity ownership, the Court concludes that Caravellas failed to prove by a preponderance of the evidence that there was a complete unity of interest and ownership. Although Horn had complete control over the actions and finances of FDG, and treated its profits as his own personal income, this alone does not invalidate the LLC. The LLC owned separate assets at the time it did business with Caravellas. The names of "Frontier Development Group" and/or "Open Range Homes" were present on every correspondence, invoice, and the signage at the job site. The Court concludes that there was no evidence that Horn attempted to conceal the LLC from Caravellas. When Caravellas began making payments, they did so by making checks directly payable to FDG or Open Range Homes without complaint, reservation, or objection. The Court must conclude that Caravellas acquiesced to the fact they were dealing with an entity, and not Horn personally.

60. The fact that Horn has now allegedly left FDG with no means of satisfying a judgment against it does create serious equitable concerns for the Court, but this alone is not controlling of the Court's legal analysis.

J. Notice and Opportunity to Repair Act.

60. FDG and Yellowstone intimated at trial, and have argued in their post-trial filings, that the Notice and Opportunity to Repair Act, Idaho Code §§ 6-2501, *et seq.* ("NORA"), bars the Caravellas' from maintaining an action against them for construction defects.

61. The Court has carefully reviewed the pleadings on file in this matter. The *Amended Answer to Amended Counterclaim* filed by FDG, Horn, and Yellowstone on November 18, 2010, did not raise this issue as an affirmative defense. Similarly, no other pleading filed before the trial addresses this issue.

62. At trial, Caravellas objected to the Plaintiffs' attempt to argue and present evidence on this subject. No motion has since been made by Plaintiffs to amend their pleading to assert the

new affirmative defense. Any such motion would likely be denied because the issue was not tried by consent. IRCP 15(b). Moreover, a review of the pleadings discloses that the Caravellas initiated their counterclaims for construction defects in October of 2010. Plaintiffs had over a year before trial to properly raise this issue.

63. NORA is typically raised as an affirmative defense *before* trial. See *e.g.*, *Mendenhall v. Aldous*, 146 Idaho 434, 196 P.3d 352 (2008); *Perception Const. Management, Inc. v. Bell*, 151 Idaho 250, 254 P.3d 1246 (2011). Waiting until trial to raise this argument unfairly prejudiced the Caravellas. The Court concludes that by failing to provide proper notice to Caravellas before trial that they intended to raise this issue, Plaintiffs waived it.

64. The Court notes that even if it considered the issue, there is some evidence in the record confirming that at least one letter addressing NORA issues was sent to Plaintiffs' counsel on March 3, 2009. Defendants' Exhibit 96.¹¹ See also Defendants' Exhibit AAA.

K. Violation of the Idaho Consumer Protection Act, I.C. §§ 45-525 and 48-608.

65. Idaho Code § 45-525(3) requires a general contractor to provide certain information to a residential homeowner for whom he is providing services in excess of \$2,000.00. The Court has previously found that FDG was subject to this statute as a "general contractor" and that the contract was in excess of \$2,000.00. The Court also found that FDG failed to disclose the required information. Therefore, I.C. § 45-525(4) applies, which states:

Failure to provide complete disclosures as required by this section to the homeowner . . . shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

66. Idaho Code § 48-608, Idaho's Consumer Protection Act, sets forth the remedies available for a victim of a practice identified in the Act:

Any person who . . . suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages . . . Any such person or class may also seek restitution, an order

¹¹ Caravellas claim that they could have submitted additional evidence, had the issue been properly raised. Apparently, there is a letter dated July 16, 2009, that was disclosed to Plaintiffs' counsel before trial that further discusses NORA issues. *Aff. of Frederick J. Hahn, III*, Ex.1- 4 (February 24, 2012). This letter was not considered by the Court in making this decision, but likely would have been considered if the issue had been properly raised before trial by Plaintiffs.

enjoining the use or employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

67. The Court concludes that Caravellas are entitled to their actual damages against FDG for violation of the Consumer Protection Act. The amount is identical to those damages awarded under their breach of contract claims. Such an award, however, should be concurrent with the award in the breach of contract claims, and not additional. Caravellas have not requested other forms of relief applicable here and have pointed to no evidence in the record to support an award of punitive damages or equitable relief.

V. CONCLUSION

For the reasons set forth above, the Court summarizes its rulings on the issues presented at trial as follows:

1. FDG's complaint to foreclose on its claim of lien against Caravellas is hereby **DISMISSED** and it shall take nothing thereby.

2. Yellowstone's complaint to foreclose on its claim of lien against Caravellas is hereby **DISMISSED** and it shall take nothing thereby.

3. Caravellas' amended counter claims against FDG, Horn and Yellowstone, are resolved as follows:

a. Caravellas are hereby **GRANTED** judgment against FDG on COUNT ONE of their amended counterclaim (Breach of Contract) in the amount of **\$114,028.04**.

b. Caravellas' claims under COUNT TWO of their amended counterclaim (Breach of the Duty of Good Faith and Fair Dealing) are hereby **DISMISSED** and they shall take nothing thereby.

c. Caravellas are hereby **GRANTED** judgment against FDG on COUNT THREE of their amended counterclaim (Violation of the Idaho Consumer Protection Act) in the amount of **\$114,028.04**. This award is *concurrent with*, and not in addition to, the damages awarded in COUNT ONE.

d. Caravellas are hereby **GRANTED** judgment against FDG on COUNT FOUR of their amended counterclaim (Breach of the Warranty of Habitability) in the amount of **\$63,000.00**. This award is *concurrent with*, and not in addition to, the damages awarded in COUNT ONE and COUNT THREE.

e. Caravellas are hereby **GRANTED** judgment against FDG and Yellowstone on COUNT FIVE of their amended counterclaim (Slander of Title) in an amount **to be determined** based upon their reasonable attorney fees and costs incurred in defending against FDG and Yellowstone's complaints to foreclose on their invalid claims of lien.¹² Any amounts awarded will be *in addition to* the damages awarded in COUNT ONE, COUNT THREE and COUNT FOUR.

f. Caravellas' claims under COUNT SIX of their amended counterclaim (Fraud and Misrepresentation) are hereby **DISMISSED** and they shall take nothing thereby.

g. Caravellas' claims under COUNT SEVEN of their amended counterclaim (Civil Conspiracy) are hereby **DISMISSED** and they shall take nothing thereby.

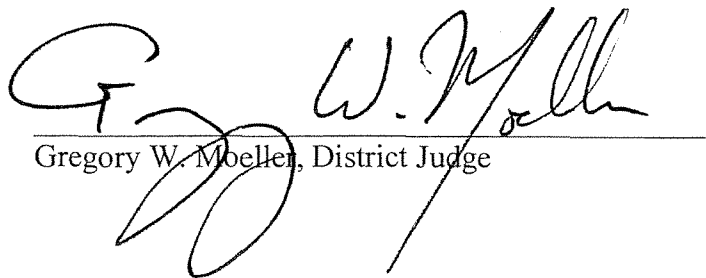
h. Caravellas' claims under COUNT EIGHT of their amended counterclaim (Negligence) were previously **DISMISSED** on summary judgment.

i. As prevailing parties, Caravellas are **GRANTED** prejudgment interest pursuant to I.C. § 28-22-104 at the rate of twelve percent *per anum*, in an amount **to be determined**.¹³

j. As prevailing parties, Caravellas are entitled to request reasonable attorney fees and costs pursuant to I.C. §§ 12-120, 12-121, and 45-608, as well as I.R.C.P. 54(d) and (e).

SO ORDERED.

Dated this 29th of March, 2012.



Gregory W. Moeller, District Judge

¹² Caravellas may submit the amount claimed along with any request for fees and costs as prevailing parties. However, Caravellas should take care clearly apportion any requested fees and costs between their defense of Plaintiffs' complaint and the pursuit of their own counterclaims.

¹³ Because of the complexities involved in this case, the Court will require additional information from Caravellas, submitted by affidavit and appropriate briefing, if desired, to determine the starting accrual date for prejudgment interest on the various awards granted herein. FDG and Yellowstone may respond with responsive affidavits and briefing.

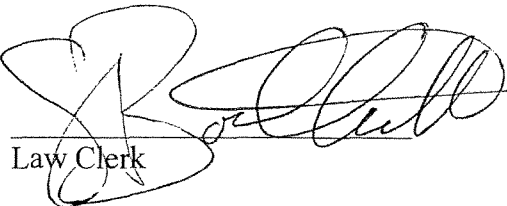
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Findings & Conclusions was served upon the following parties on this 30th day of March, 2012, via U.S. Mail, postage prepaid:

Ronald L. Swafford
SWAFFORD LAW OFFICE, CHARTERED
535 Ninth Street
Idaho Falls, ID 83404
Attorney for Plaintiffs/Counter-defendants

Frederick J. Hahn, III
Brent L. Whiting
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 50698
Idaho Falls, Idaho 83405
Attorneys for Defendants/Counterclaimants

By:


Law Clerk

COURT MINUTES

CV-2009-0000068

Frontier Development Group, LLC vs. Louis Caravella, etal.

Hearing type: Motions

Hearing date: 9/18/2012

Time: 2:00 pm

Judge: Gregory W Moeller

Court reporter: David Marlow

Minutes Clerk: PHYLLIS HANSEN

Ron Swafford , Plaintiffs Attorney

Fred Hahn, Defendants Attorney

J calls case; ids those present

Motion for fees and costs and Motion for Pre-Judgment Interest

PA – didn't get it; object to it, untimely

DA – filed by fax yesterday

PA – my objection was filed timely

J – why wait to file this

DA – think should be considered

If sur-reply that needs to be filed, would wait for that to be considered

J – they have backed off on some of their claims and clarified some points

Reduction in amount asking for

Will consider

PA – will may be arguing things that may be redundant

J – will withhold ruling

204

DA – we deferred to Judge's instruction as to whether defense related or counter-claims

J – overlap is unavoidable

DA – some of the plaintiffs' objections were well taken

11.35% reduction in fees requested

Some billing went to collateral matter has been withdrawn

Fees we have requested are reasonable

Yellowstone lien was the driving force in this litigation

But for the Yellowstone lien, this case would have settled Payment of 100% of amount plus attorneys fees or we won't settle

PA – objections

J will sustain - order stricken up until basis for mediation

08-286 Struhs

2010-106 Williams

In lockstep; both filed liens

Identical to this case

Contractor and supplier were in lockstep; recorded lines together

Defense costs far outweigh the prosecution costs

Yellowstone not innocent bystander by any means

Motion for pre-judgment interest was unopposed

J - Awarded \$114,000 but asked for \$137,000

DA – both liens were deemed invalid

Ready to commence trial, but conflict of interest was brought up by counsel; that added at least a year to conflict; then came back and said could represent both

214

PA – don't see how representation of two parties made longer more expensive trial

Problem was when consolidated the cases -

Problem from the very beginning – 85% was a dispute between Horn and Frontier Development and the Caravellas

90% of the trial was based on that

26% WAS Frontier Development and 74% Yellowstone

218

J – was part of trial interlinked

PA – overlaps - what material was ordered and what was delivered

PA – can't speculate; they have the burden of establish how much each party owes

They didn't satisfy it

222

J – what would you recommend

PA – the only thing you have before you is our billing; ours is accurate

Costs – they've included every cost as one cost

Lawsuit – one thing – Horn had sold a defective house, hidden the defects and did not fix those defects

Lien was small part of

Look at my objections

Didn't file Motion, didn't file Memorandum, %5883.0

Did not object to withdrawal or reentry

228

Lien issue

15% over Yellowstone

231

DA responds

One lien case drove this litigation

In lockstep and supported each other

We did apportion fees

Look at Exhibit B Memorandum

We have done what the court asked

Have not sought extraordinary costs

Costs should be award against both

236

J – both sides have done a tremendous amount of work

J – will give you 10 days to respond to document

PA – he has to allocate defense fees against the two of them - he can't just assess defense fees against Yellowstone only

DA –think it is clear from the table -

There are defense fees then some to Yellowstone only

J - page 43 totaling up of those figures

J were liens against same inventory

DA – Frontier Lien included the Yellowstone lien

J – they were defending against both liens

243

PA – page 6 middle paragraph

J – late filing by Hahn helpful to court and to Swafford

Will give Swafford 14 days to respond

As sanction, Hahn will not be allowed to respond

000367

FILED IN CHAMBERS AT REXBURG,
MADISON COUNTY, IDAHO.

Date, October 31, 2012

Time 11:45 a.m.

By Gary W. Mullen
DISTRICT JUDGE

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY**

FRONTIER DEVELOPMENT GROUP,)
LLC,)

Plaintiff,)

vs.)

LOUIS CARAVELLA and PATRICIA)
CARAVELLA,)

Defendants)

Case No. CV-2009-68

**MEMORANDUM DECISION RE:
ATTORNEY FEES, COSTS, AND
PREJUDGMENT INTEREST**

LOUIS CARAVELLA, and PATRICIA)
CARAVELLA,)

Counterclaimants,)

vs.)

FRONTIER DEVELOPMENT GROUP,)
LLC, and MICHAEL HORN,)

Counter-defendants.)

I. INTRODUCTION

Following a four-day bench trial of this matter, the Court entered its *Findings of Fact and Conclusions of Law* on March 29, 2012. The Court dismissed the lien claims of Plaintiff Frontier Development Group, LLC ("FDG") and Plaintiff Yellowstone Do It Center, LLC ("Yellowstone") (collectively "Plaintiffs") and awarded Defendants/Counterclaimants Louis and Patricia Caravella

(“Caravellas”) \$114,028.04 in damages. Additionally, the Court granted Caravellas prejudgment interest in an amount to be determined and concluded that Caravellas, as the prevailing parties, were entitled to seek reasonable attorney fees and costs.¹

Caravellas are now requesting \$137,350.79 in attorney fees, apportioned as follows: \$101,617.00 in attorney fees for defending against the lien claims of *both* FDG and Yellowstone, and \$35,737.00 in attorney fees for pursuing its counterclaims *solely*² against FDG.³ Caravellas also request an award of costs totaling \$10,290.26 against both FDG and Yellowstone, and \$36,167.94 in prejudgment interest against FDG accrued through May 31, 2012.⁴

II. STANDARD OF REVIEW

Trial courts may award attorney fees to the prevailing party when authorized by statute or contract. Idaho Rule of Civil Procedure 54(e)(1). See also *Heller v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984). In this case, Plaintiff seeks fees under Rule 54(e)(1) and I.C. §§ 12-120(3) and 12-121. Rule 54(e)(1) grants the Court discretion to award fees to the prevailing party in the following circumstances:

In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; . . .

Additionally, I.C. § 12-120(3) governs the award of attorney fees in certain civil actions based on contracts and other commercial transactions. It states:

¹ *Findings of Fact and Conclusions of Law*, pp. 46-47 (March 29, 2012).

² The Court notes that at least one of Caravellas’ successful counterclaims (Count 5) concerned Yellowstone. However, the Court limited the damages to attorney fees and Caravellas have not argued that Yellowstone should be included in their “offensive” claims.

³ *Caravellas’ Reply Memorandum in Support of Motion for Attorney Fees*, p. 5 and 9 (September 18, 2012). The attorney fees requested are an adjusted figure; Caravellas were originally seeking \$154,940 in attorney fees. *Motion for an Award of Costs and Attorney Fees*, p. 3 (June 29, 2012). However, they have since stipulated to reduce the amount sought to \$137,350.79. *Caravellas’ Reply Memorandum*, p. 9. However, the total sum requested (\$101,617 + \$35,737) actually totals \$137,354.00. Since Caravellas have consistently used the lower figure throughout their pleadings and at oral argument, the Court will go by the lower figure.

⁴ *Motion for an Award of Costs and Fees*, p. 3 (June 29, 2012); *Affidavit of Counsel Regarding Calculation of Prejudgment Interest*, p. 2 (June 29, 2012).

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

This section defines a commercial transaction as "all transactions except transactions for personal or household purposes." If a transaction is covered by this statute, the decision to award fees to the prevailing party is no longer discretionary; however, the amount of fees awarded remains within the Court's discretion.

The determination of a "reasonable attorney's fee" is a matter of the trial court's discretion. *Graham v. State Farm Mut. Auto. Ins. Co.*, 138 Idaho 611, 67 P.3d 90 (2003). In exercising its discretion, the trial court should consider the following factors set forth in I.R.C.P. 54(e)(3):

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

Rule 54(d)(1)(C) governs the award of costs and allows certain costs of right to the prevailing party. Other necessary and exceptional costs can be awarded in the discretion of the Court under Rule 54(d)(1)(D).

As previously noted, the awarding of fees and costs is largely a discretionary function of the Court. Discretionary decisions require the Court to (1) rightly perceive the issue as one of discretion, (2) act within the outer boundaries of the discretion allotted, and (3) reach the decision

through the exercise of reason. *Associates Northwest, Inc. v. Beets*, 112 Idaho 603, 605, 733 P.2d 824, 826 (Ct. App. 1987).

III. DISCUSSION

A. There is a legal basis for awarding attorney fees to Caravellas.

Neither FDG nor Yellowstone has denied that Caravellas are the prevailing parties to this action. Similarly, they have not contested Caravellas' assertion that I.R.C.P. 54(e)(1) and I.C. §§ 12-120(3) and 12-121 provide a legal basis for awarding fees in this case. Nevertheless, I.R.C.P. 54(e)(2) requires the Court to make written findings as to the basis and reasons for awarding fees.

The Idaho Supreme Court has consistently held that when considering an award of attorney fees, "a determination on prevailing parties is committed to the discretion of the trial court." *Shore v. Peterson*, 146 Idaho 903, 914, 204 P.3d 1114, 1125 (2009). Rule 54(d)(1)(B)⁵ provides guidance in exercising this discretion:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

When considering "all of the issues and claims involved," *Shore* holds that the Court must take "an overall view, not a claim-by-claim analysis." *Id.*

The Court has already concluded that Caravellas were the prevailing parties.⁶ They successfully defended against both lien foreclosure actions and prevailed on four of the eight counts in their amended counterclaim. Most of the counterclaims brought by Caravellas were overlapping—similar amounts in damages were sought under a variety of alternative theories. The Court again concludes that taking an overall view of the case, Caravellas are clearly the prevailing parties.

⁵ Although this rule pertains to costs, it has been expressly made applicable to attorney fees under Rule 54(e)(1).

⁶ *Findings of Fact and Conclusions of Law*, p. 47.

In addition to determining the prevailing parties, the Court must also articulate a legal basis for awarding attorney fees. Attorney fees can only be awarded when specifically authorized by statute or contract. *Heller v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984). Caravellas are seeking attorney fees pursuant I.C. § 12-121. As noted above, Rule 54(e)(1) grants the Court discretion to award attorney fees to the prevailing parties pursuant to I.C. § 12-121 “when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation.” The Court concludes that the facts in this case justify such an award.

In granting judgment to Caravellas on Plaintiffs’ lien foreclosure claims, the Court specifically concluded that both liens were defective because FDG and Yellowstone merely identified themselves “as the person or entity who employed it or to whom it furnished materials, and thus fails to provide the information required by Idaho Code § 45-507(3)(c).”⁷ See *Riggen v. Perkins*, 42 Idaho 391, 395-96, 246 P. 962, 963 (1926). Furthermore, neither FDG nor Yellowstone could establish that the materials allegedly supplied were actually used on the home as required by *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 687, 587 P.2d 823, 828 (1978).⁸ Additionally, FDG was further barred from asserting its lien because a claimant has not substantially performed a construction contract when the work has substantial, material defects. *Perception Constr. Mgmt., Inc. v. Bell*, 151 Idaho 250, 254 P.3d 1246, 1250-51 (2011). The Court also found that FDG had no grounds to foreclose its lien on the property because it “received full payment for the contracted work and additional amounts for the value it may have added to the property for the work not contracted . . .”⁹

Due to these shortcomings, neither FDG nor Yellowstone had any reasonable likelihood of prevailing at trial. This was not merely an instance of the Court finding Caravellas’ witnesses more persuasive than Plaintiffs’ witnesses. Rather, the defects in the liens and the lack of proof should have been readily apparent to Plaintiffs long before trial. The Court finds that for Plaintiffs to persist in their lien claims, despite the fundamental flaws in their respective cases, is tantamount to bringing and pursuing their claims frivolously, unreasonably or without foundation.

⁷ *Id.*, Conclusions of Law Nos. 2-4, and 16-17.

⁸ *Id.*, Conclusions of Law Nos. 5-15, and 22-23.

⁹ *Id.*, Conclusion of Law No. 25.

Similarly, concerning Caravellas' counterclaims, the Court found the evidence of breach of contract and breach of the warranty of habitability against FDG to be overwhelming. While falling short of fraud or bad faith, the Court found "a high level of administrative incompetence on the part of the Horn and FDG."¹⁰ Two experts, Jared Kay and Scott Spaulding, testified convincingly for Caravellas that the framing and flashing on the home were inadequate, caused avoidable damage to the home, and did not meet Code specifications.¹¹ Most alarmingly, Spaulding testified:

[H]e observed framing that was "not tight" and not tied together. He testified beams and framing members were undersized and improperly installed. He testified that he observed framing which failed to comply with the code requirements in effect at the time. Spaulding testified that aspects of FDG/Horn's framing *created life safety issues that had to be fixed to ensure a safe structure*. Spaulding also testified that he considered the framing performed by FDG/Horn to be a construction defect. Spaulding testified that he authored a report summarizing his findings, which was admitted as Defendants' Ex. VVV.¹²

(Emphasis added). These allegations were substantiated with numerous photographs evidencing clearly deficient and hazardous construction by FDG.¹³

The Court listened closely to four days of trial testimony, personally observing the witnesses' demeanor and weighing their evidence. The Court finds that in exercising its reasoned discretion, and in light of the overwhelming and disturbing evidence of seriously substandard construction practices on the Caravella's home, FDG defended this matter frivolously, unreasonably, and without a proper legal foundation. FDG's efforts to excuse its shoddy work caused Caravellas to unnecessarily expend considerable resources to prosecute their claims.

Therefore, the Court concludes that Caravellas are entitled to an award of attorney fees pursuant to I.C. § 12-121. Because the Court has awarded fees under I.C. § 12-121, without objection from Plaintiffs, it is unnecessary for it to further evaluate Caravellas' request for fees pursuant to I.C. § 12-120(3).¹⁴

¹⁰ *Id.*, Conclusion of Law No. 50.

¹¹ *Id.*, Conclusion of Law Nos. 95-110.

¹² *Id.*, Conclusion of Law No. 103.

¹³ See Defendants' Exhibit SSS.

¹⁴ *N.B.*: Attorney fees are generally not available in lien foreclosure cases under I.C. § 12-120(3). See *L & W Supply Corp. v. Chartrand Family Trust*, 136 Idaho 738, 40 P.3d 96 (2002) ("The gravamen was the in rem enforcement of a statutory claim [I.C. § 45-501], and, as this Court has held, '[a]ttorney fees under I.C. § 12-120(3) are not available when the claim is based on a statutory provision, even when the underlying action depends on contract.' Consequently, attorney fees under I.C. § 12-120(3) were properly denied.").

B. Apportionment of the attorney fees.

FDG and Yellowstone contend that Caravellas failed to properly apportion the attorney fees claimed by Caravellas. They correctly note that the Court ordered Caravellas to “clearly apportion any requested fees and costs between their defense of Plaintiffs’ complaint and the pursuit of their own counterclaims.”¹⁵ They also correctly assert that the Court made no finding that FDG and Yellowstone acted in concert or should be held jointly and severally liable for the judgment. As noted earlier, Rule 54(d)(1)(B) allows a trial court to “apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.”

Caravellas have submitted a proposed apportionment of the \$137,350.79 in attorney fees they are claiming. They assert that of that total, \$101,627.54 was expended in defending against the two lien claims, while \$35,737.00 was expended in prosecuting their counterclaims against FDG.¹⁶ Caravellas attached a lengthy exhibit to their *Memorandum of Costs and Attorney Fees* explaining their proposed allocation of the fees.¹⁷ They argue that the defense of the lien claims, although often overlapping with their own claims against FDG, took the most time to litigate. Caravellas also note that it was impossible to divide the defense time between FDG and Yellowstone because the claims were so similar.

Plaintiffs reject those arguments, claiming at oral argument that while the amount of time apportioned to the counterclaims against FDG constitutes only 22.9% of the total fee, 85% of the actual time spent at trial was devoted to Caravellas claims against Horn and FDG. They note that only two witnesses testified from Yellowstone and that the bulk of the Court’s findings and conclusions concerned FDG’s counterclaims. They assert that the apportionment has been deliberately skewed towards Yellowstone because Caravellas know that FDG has virtually no assets.

Attempting to ascertain the proper apportionment between the respective parties has been a challenging assignment for the Court. The Court has carefully reviewed the billing statements and

¹⁵ *Findings of Fact and Conclusions of Law*, p. 47, fn. 12.

¹⁶ *Caravellas’ Reply Memorandum in Support of Motion for Attorney Fees*, p. 5 and 9.

¹⁷ *Memorandum of Costs and Attorney Fees and Affidavit of Counsel*, Ex. B (June 29, 2012). The amount sought therein was later adjusted. See *Reply Memorandum*, pp. 5 and 9.

the transaction file list submitted by Caravellas' attorneys.¹⁸ After reviewing these materials and the Plaintiffs' objections, the Court concurs with Caravellas that the time spent defending the two lien claims is virtually indiscernible between FDG and Yellowstone. The work necessarily covered much of the same evidence, witnesses, and discovery. The Court also concludes that Caravellas were justified and prudent in devoting significant resources and time at trial to defending against the lien claims, which totaled \$75,731.88 for Yellowstone and \$105,683.37 FDG. Caravellas also spent considerable resources on their "offensive" counterclaims against Plaintiffs. Although they did not prevail on every claim and theory they asserted, the Court concluded Caravellas were entitled to \$114,028.04 in damages.¹⁹

Much of the evidence and testimony presented at trial to support Caravellas' damage claims overlapped with that used to defend against the lien claims. However, the Court concurs with Plaintiffs that Caravellas' proposed allocation is too heavily weighted in favor of the lien claims. At least 50% of the trial testimony appeared to be solely devoted to the counterclaims. However, Caravellas apportion roughly 23% of the total attorney fees towards the counterclaims while asserting that 77% of the time was dedicated to defense of the lien claims. Again, the Court notes the unavoidable overlap, but concludes that a fair and equitable division of the legal services will be to apportion 50% of the total \$137,350.79 in fees to Caravellas' defense of the lien claims and the remaining 50% to asserting their counterclaims. As a result, pending further adjustments, the Court will award Caravellas \$68,675.39 against FDG and Yellowstone for their successful defense of the lien claims and \$68,675.40 against FDG for prevailing on their counterclaims.

Because the Court did not find that FDG and Yellowstone were involved in a civil conspiracy, or acted jointly, the fees assessed against them for defense of the lien claim will not be awarded jointly and severally. Although the Court ordered a consolidation of the two cases brought by FDG and Yellowstone due to the similar subject matter, it did not intend to suggest by doing so that it had found any unity of action between those parties. Accordingly, the Court will divide the

¹⁸ *Id.*, Ex. A and B.

¹⁹ The damages were allocated as follows: (1) \$63,000.00 for the cost of repairing Horn's construction defects and completing the scope of the work Horn had agreed to perform; (2) \$12,645.89 for overcharging on the garage doors; (3) \$19,900 for the unauthorized, non-conforming and defective concrete; and (4) \$18,482.15 for the Smart Home system that was not installed and should have been returned or sold. *Findings of Fact and Conclusions of Law*, Conclusion of Law No. 33.

fees for defense of the liens equally between FDG and Yellowstone, with \$34,337.70 awarded against FDG and \$34,337.69 awarded against Yellowstone. Therefore, the Court has allocated the attorney fees, *subject to the further adjustments set forth in Section II(C), infra*, as follows:

Defense of Plaintiffs' Lien Claims

\$34,337.70 against Yellowstone

\$34,337.69 against FDG

Caravellas' Counterclaims

\$68,675.40 against FDG

C. Caravellas are entitled to recover reasonable attorney fees.

FDG and Yellowstone have objected to the amount of attorney fees requested by Caravellas as excessive and unreasonable. The Court has previously noted that Caravellas originally requested an award of \$154,940 in attorney fees. However, before oral argument they reduced the amount sought to \$137,350.79. This reflects \$14,287.00 (11.35%) in discounts not properly reflected in the billing statements and \$3,302.21 in voluntary reductions based upon two of Plaintiffs' objections. The Court will address the remaining objections below.

(1) Interoffice conferences and communications.

Plaintiffs objected to over 26 billed entries for "interoffice conferences" as being unnecessary and excessive. Such matters constitute \$3,900.00 of the total bill. Caravellas maintain that each entry was necessary to further the case and usually brief.

The Court has reviewed the billing statements and notes that these entries are typically included with other more specific tasks. Although it is impossible to discern how the time was broken down between multiple tasks, this is not required. As long as the total time billed appears reasonable for the multiple tasks, the Court will not second-guess such entries. It is likely that such interoffice communication actually enhanced attorney performance and expedited progress on the matter.

(2) File creation and coding.

Caravellas' attorneys apparently billed 45 hours (\$3,753.00) for entering data into the CaseMap® software system, which FDG and Yellowstone claim is excessive and unnecessary. They also allege that 9.8 hours (\$833.00) for summarizing depositions was unnecessary. Caravellas

argue that this was a “document intensive” case and note that such work was subject to the 11.35% discount noted above.

The Court is cognizant of the important role that document management software can play in complex litigation and notes that the efficiency and quality of Caravellas’ trial presentation was most likely enhanced by the use of this tool. Additionally, the Court notes that this data entry work was primarily done by “BKH” or Bonnie Hill, a paralegal with Caravellas’ attorneys’ firm, whose time was billed at approximately \$83.00 per hour. Under the circumstances unique to this case, the Court concludes that these fees were reasonable and appropriate for inclusion in the total bill. Additionally, given the number and length of the depositions taken in this case, 9.8 hours for summarizing and indexing strikes the Court as neither excessive nor wasteful.

(3) Research and drafting time.

Plaintiffs point to several specific issues in the case for which they allege Caravellas were significantly overbilled. First, Plaintiffs object to 12.2 hours (\$2,025.69) billed for researching and drafting incurred opposing a motion to extend time for discovery. Caravellas point out that this time was not spent on just the motion to extend time, but also on a motion to compel and a motion for a protective order. The Court agrees and will allow these fees.

Second, Plaintiffs argue that 20.1 hours (\$3,589.72) billed for a protection order was excessive and unnecessary. Caravellas suggest that the 11.35% discount adequately adjusted this amount. Given Caravellas explanation for the 12.2 hours immediately above, this seems like an excessive, and perhaps duplicative, amount of time spent. Therefore, the Court will reduce the amount awarded to 4 hours, a reduction of \$2,930.04.

Third, Plaintiffs object to the 9.3 hours claimed by Caravellas for correspondence and preparation of the mediation statement. They suggest only 2 hours was necessary. Caravellas argue that the factual complexity of the case necessitated 9.3 hours of work. The Court, mindful of the of the number and difficulty of the issues involved in this case, concludes that 9.3 hours for preparation of the mediation statement was reasonable.

Fourth, Plaintiffs claim that 35.85 hours (\$6,173.37) for the trial brief is clearly excessive and suggest that only 12 hours was necessary. Caravellas argue that plethora of legal issues involved, coupled with the factual complexity of the case, justify the time spent. In exercising its

reasoned discretion, the Court concludes that although it may have been incurred in good faith, 35.85 hours is excessive. It will lower the amount awarded by 50%, a reduction of \$3,086.69.

Finally, Plaintiffs assert that the 163.3 hours (\$27,896.37) billed for Caravellas' post-trial filings is unreasonable on its face. This included time spent listening to the audio recording of the trial, preparing proposed findings and conclusions, preparing closing arguments, researching the relevant law, and objecting to Plaintiffs' proposed findings and conclusions. They argue that this should be reduced by at least 66.7% (\$18,597.58). Caravellas assert that the billed time was all necessary and included time spent responding to Plaintiffs own lengthy proposed findings and conclusions. They correctly point out that the time was well spent because the Court adopted many of their proposed findings and conclusions. The Court notes that although *both* side's post-trial filings were indeed voluminous;²⁰ they were also very helpful to the Court and displayed the earmarks of outstanding legal scholarship. However, the 163.3 hours dedicated to this task by Caravellas' attorneys seems extreme. The trial lasted four days and resulted in approximately 32 hours of testimony. The time billed by Caravellas' attorneys, 163.3 hours, is the equivalent of over *4 weeks* of work. While the Court appreciates, and no doubt benefitted from the thoroughness of Caravellas' attorneys, it strikes the Court as unfair to require Plaintiffs to pay that much. Therefore, once again exercising its reasoned discretion, the Court will reduce the requested amount by 50%, a reduction of \$13,948.19.

(4) "Unnecessary" billings.

Plaintiffs' final objection concerns fees billed for what they term "unnecessary work." Caravellas have already consented to withdraw their request for fees on two of the objected to matters totaling \$3,302.21.²¹ The Court will address the remaining objections below.

Caravellas requested payment for work on an August 2010 motion for summary judgment totaling 10 hours (\$2,065.60). Plaintiffs argue that the motion was never heard or ruled upon by the Court. Caravellas correctly note that this concerned a conflict of interest issue and the Court

²⁰ For example, Plaintiffs submitted 80 pages of proposed findings and conclusions and Caravellas submitted 73 pages. Additionally, Plaintiff's objections to Caravella's proposed findings exceeded 200 pages.

²¹ This reduction related to work on a motion for summary judgment that was never heard (\$1,178.88) and claims related to Kathleen Horn (\$2,123.33).

delayed ruling to allow time for Plaintiffs to consult with Bar Counsel on the matter. This was a legitimate issue and Caravellas were justified in raising it.

Caravellas also request payment for 20.4 hours (\$3,387.22) used to prepare and research a motion to obtain an injunction against Michael Horn, owner/manager of FDG. They did not prevail on the motion. Caravellas assert that the motion concerned their efforts to prevent the manager of FDG from transferring ownership of the LLC's assets in Teton Valley to his wife in Florida, which they allege has more "debtor-friendly" collection laws. Although the Caravellas did not prevail on the motion for reasons articulated by the Court on the record, the Court does not consider this an unnecessary expense. If the Court had the same information before it then, that is has now, it is possible it may have reached a different conclusion.²² This is neither unusual nor solely the fault of the attorneys — an actual trial has a way of clarifying issues for the Court in a way not always possible at a pre-trial hearing. The Court was simply not as well advised in the premises then as it was after four days of trial. Therefore, exercising its discretion, the Court will allow this expense.

Plaintiffs also object to the 31.6 hours (\$5,388.68) claimed on the conflict of interest issue. Caravellas assert that this was necessary and reasonable. The Court agrees that the issue was properly brought to the Court, hence it allowed the fees requested in the preceding paragraph. However, the additional 31.6 hours spent researching the issue appears excessive and unwarranted. The Court will exercise its discretion and lower the amount requested by two-thirds, a reduction of \$3,610.42.

Finally, Plaintiffs argue that Caravellas' use of two attorneys throughout the trial was unnecessary, especially where only one questioned witnesses and argued. They allege this amounted to 44.8 hours (\$7,438.59) of unnecessary billings. The Court disagrees. The use of co-counsel is typically a matter left to the judgment of the client and the law firm. In a case as complex and long as this one, the Court will not second-guess the reasonable decision to have Mr. Whiting assist Mr. Hahn at trial. From the Court's observation of the trial, Mr. Whiting was more than merely a "potted plant" at the defense table—he was actively involved in document management, advised lead counsel on arguments and objections, assisted in note taking, and

²² The Court notes that this issue may be revisited in Teton County Case No. CV-2011-365. The Court has no opinion how it will rule on the issue if it comes before the Court again and remains open to the persuasive arguments of counsel.

counseled with Caravellas when Mr. Hahn was engaged in examining witnesses. His contributions were professional, necessary, and helpful to the favorable outcome achieved by Caravellas.

(5) Conclusion: Caravellas are entitled to a reasonable attorney fee of \$113,775.45.

Based on the forgoing, the Court has made further reductions to the requested attorney fees of \$2,930.04, \$3086.69, \$13,948.19, and \$3,610.42—a total reduction of \$23,575.34. This sum should be subtracted from the \$137,350.79 fee requested by Caravellas. Therefore, the Court concludes that the total attorney fee assessed in this case should be \$113,775.45. This will result in an adjusted award of attorney fees apportioned as follows:

Defense of Plaintiffs' Lien Claims

\$28,443.86 against Yellowstone

\$28,443.86 against FDG

Caravellas' Counterclaims

\$56,887.73 against FDG

Applying the factors set forth in Rule 54(e)(3), the Court finds and concludes that this matter required considerable time and labor. The issues presented required significant skill to address. The “experience and ability of the attorneys” in this “particular field of law” was high and necessary. The hourly fees charged by the firm members handling this case were \$206.56 per hour for Mr. Hahn, \$166.04 per hour for Mr. Whiting, \$164.92 per hour for Mr. Volyn, and \$85.00 and \$83.04 for the two paralegals.²³ These are reasonable rates for representation of this caliber and well within the range of “prevailing charges for like work” in Eastern Idaho. The billings indicate that Caravellas’ attorneys worked very hard on this case.

This was not an easy case to litigate—Plaintiffs were uncooperative at times and all of the parties, except Mrs. Caravella, demonstrated considerable animosity for each other. There was also an unusual amount of pretrial motions and hearings. Given the unique circumstances of this case, including the nature of the claims, the amount in controversy, and the favorable results obtained, the Court finds that Caravellas’ attorneys have earned a reasonable attorney fee of \$113,775.45.

²³ *Memorandum of Costs and Attorney Fees and Affidavit of Counsel*, ¶ 5; *Affidavit of William Faler*, ¶ 5 (June 29, 2012).

D. Caravellas are entitled to recover a portion of their claimed costs.

Caravellas have requested that the Court award them costs as prevailing parties totaling \$8,107.13. Rule 54(d)(6) provides that the “[f]ailure to timely object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed.” Therefore, the Court concludes that Plaintiffs have waived their right to object to any of the claimed costs. Nevertheless, the Court must still independently scrutinize the requested costs to ensure that they are proper. This task is made more difficult by Caravellas’ failure to designate the requested costs as either costs of right or discretionary costs as required by Rule 54.

Caravellas seek an award of \$116.00 in filing fees and \$25.00 in service fees, which are authorized as costs of right under Rule 54(d)(1)(C)(1) and (2). They have also asked for \$3,384.60 in deposition costs for four depositions. Rule 54(d)(1)(C)(9) allows recovery for the cost of reporting and transcribing depositions, so these costs also appears appropriate. Caravellas ask for \$114.23 for exhibit fees, which are expressly authorized under Rule 54(d)(1)(C)(6) up to \$500.00.

Caravellas also request expert witness fees for Scott Spaulding (\$845.00) and Jared Kay (\$2,180.00). Rule 54(d)(1)(C)(8) allows reasonable expert witness fees of up to \$2000.00 for each expert. Scott Spaulding’s testimony clearly qualifies. Jared Kay’s testimony was very helpful to the Court, but much of his testimony was not expert testimony. For example, he testified of his own work on the project and provided evidence of the costs associated with his repairs. Therefore, his testimony was not purely expert testimony. Additionally, the \$2,180.80 requested exceeds the maximum allowed. Exercising its reasoned discretion, the Court will only award one-half of the allowable expert witness fees (\$1,000.00) for Jared Kay’s testimony. Therefore, Caravellas are granted a total of \$1,845.00 in expert witness fees.

The remaining fees claimed do not appear to be costs of right, so they must be evaluated as discretionary costs under Rule 54(d)(1)(D). This rule only allows an award of such costs upon a showing that the costs were “necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party.” *Id.* Costs which are necessary and reasonably incurred may not be exceptional. *Inama v. Brewer*, 132 Idaho 377, 973 P.2d 148 (1999).

Caravellas seek \$200.00 for obtaining a CD ROM recording of the trial from Teton County. Given the complexity and vast amounts of conflicting testimony presented at trial, coupled with the

thorough post-trial pleadings of Caravellas, the Court finds that this was a necessary and exceptional cost.

Mediation fees of \$650.00 have also been requested. The Court finds that although this is a necessary cost, reasonably incurred, it is not exceptional. The mediation was ordered by the Court and, absent evidence of bad faith participation, the Court has no reason to conclude this was an exceptional cost.

Caravellas have also requested \$1,241.50 for fees associated with a deposition held out of state. This Court does not routinely grant travel costs, especially when the travel time billed by the attorneys as a fee has been awarded. Again, although this is a necessary cost, reasonably incurred, there is no evidence suggesting this was an exceptional cost.

Therefore, the Court will award Caravellas \$5,484.83 in costs of right and \$200.00 in discretionary costs. These costs will be apportioned in the same manner as the attorney fees: 50% against FDG for the counterclaims and 25% each against FDG and Yellowstone for defense of the lien claims.

E. Caravellas are entitled to recover prejudgment interest.

Idaho Code § 28-22-104(1) governs the recovery of pre-judgment interest and sets forth a standard amount of interest. It provides:

When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of twelve cents (12) on the hundred by the year on:

- (1) Money due by express contract.
- (2) Money after the same becomes due.
- (3) Money lent.
- (4) Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied.
- (5) Money due on the settlement of mutual accounts from the date the balance is ascertained.
- (6) Money due upon open accounts after three (3) months from the date of the last item.

Any pre-judgment interest allowed is calculated as simple interest, with no compounding. *Doolittle v. Meridian Joint School Dist. No. 2*, 128 Idaho 805, 814, 919 P.2d 334, 343 (1996). Once judgment is rendered, the judgment rate of interest applies. I.C. § 28-22-104(4).

As prevailing parties, Caravellas are entitled to prejudgment interest in addition to the principal judgment amount. Damages for breach of the warranty of habitability and for the costs of completing and repairing within the scope of the contract totaled \$63,000. Using the statutory method of calculation, the total prejudgment award for this breach is \$14,041.38 through May 31, 2012.²⁴ Damages for contract overpayments which were made to FDG under the agreement totaled \$51,028.04. Again, using the statutory method of calculation, the total prejudgment interest award is 22,126.56 through May 31, 2012.²⁵ This brings the total of prejudgment interest requested to \$36,167.94 as of May 31, 2012. Prejudgment interest has continued to accrue against FDG up to the date of this decision in the amount of \$5,734.44,²⁶ which should also be added to the judgment. Therefore, the total prejudgment interest awarded to Caravellas through October 31, 2012 is \$41,902.38.²⁷

Caravellas are only entitled to prejudgment interest against FDG because this award is based solely from their successful counterclaims against FDG. Although the Court did grant Caravellas' slander of title claims against FDG and Yellowstone, it determined that the attorney fees incurred in defending the lien claims would constitute the damages to be awarded.²⁸ Since that award is effective as of the date of this decision, no prejudgment interest has accrued on this part of the judgment.

IV. CONCLUSION

As with the Court's original decision in this matter, the attorney fees and cost issues have been complex. The Court has attempted to apply principles of reason and logic to the proceedings to render a proper apportionment of the fees. By its very nature, such a decision is highly subjective and based upon the Court's discretion to apportion fees after "considering all of the issues and

²⁴ The Court took the \$63,000 award, multiplied by 12%, which gave a total annual interest of \$7,560. That was divided by 365 to come to the daily accrual of \$20.71. Interest was calculated beginning July 23, 2010. The time between that date and May 31, 2012 is 1 year, 313 days. $678 \text{ (days)} \times 20.71 \text{ (\$/day)} = \$14,041.38$.

²⁵ The Court took the \$51,028.04 award, multiplied by 12%, which gave a total annual interest of 6,123.36. That was divided by 365 to come to the daily accrual of \$16.77. Interest was calculated beginning October 20, 2008. The time between that date and May 31, 2012 is 3 years, 224 days. $1319 \text{ (days)} \times 16.77 \text{ (\$/day)} = \$22,119.63$.

²⁶ $\$20.71/\text{day} + \$16.37/\text{day} = \$37.48/\text{day}$. Inasmuch as 153 days have passed since May 31, 2012, the total prejudgment interest should be increased by \$5,734.44 ($\$37.48/\text{day} \times 153 \text{ days} = \$5,734.44$).

²⁷ $\$36,167.94 + \$5,734.44 = \$41,902.38$.

²⁸ *Findings of Fact and Conclusions of Law*, Conclusion of Law No. 57.

claims involved in the action and the resultant judgment or judgments obtained.” Rule 54(d)(1)(B). Based on the reasoning set forth above, the Court hereby awards and apportions attorney fees and costs to Caravellas as set forth below:

A. Caravellas are entitled to \$113,775.45 in total attorney fees, apportioned as follows:

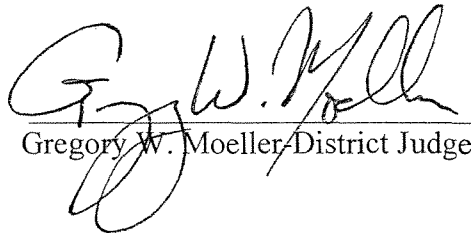
- (1) \$28,443.86 against Yellowstone and \$28,443.86 against FDG for defense of the lien foreclosure claims and as damages pursuant to Count 5 of their amended counterclaim; and
- (2) 56,887.73 against FDG for prevailing on their amended counterclaim;

B. Caravellas are entitled to \$5,684.83 in costs of right and discretionary costs apportioned as follows:

- (1) \$1,421.21 against Yellowstone and \$1,421.21 against FDG for defense of the lien foreclosure claims; and
- (2) \$2,842.42 against FDG for prevailing on their amended counterclaim;

C. Caravellas are entitled to \$41,902.38 in prejudgment interest awarded solely against FDG.

SO ORDERED this 31st day of October, 2012.



Gregory W. Moeller-District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was served upon the following parties on this 31st day of October, 2012, via U.S. Mail, postage prepaid:

Ronald L. Swafford
SWAFFORD LAW OFFICE, CHARTERED
535 Ninth Street
Idaho Falls, ID 83404
Attorney for Plaintiffs/Counter-defendants

Frederick J. Hahn, III
Brent L. Whiting
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 50698
Idaho Falls, Idaho 83405
Attorneys for Defendants/Counterclaimants

By: 

Law Clerk

FILED IN CHAMBERS AT REXBURG,
MADISON COUNTY, IDAHO.

Date. October 31, 2012

Time 1:30 p.m.

By G. W. M. Bell

DISTRICT JUDGE

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY**

FRONTIER DEVELOPMENT GROUP,)
LLC,)

Plaintiff,)

vs.)

LOUIS CARAVELLA and PATRICIA)
CARAVELLA,)

Defendants)

Case No. CV-2009-68

FINAL JUDGMENT

LOUIS CARAVELLA, and PATRICIA)
CARAVELLA,)

Counterclaimants,)

vs.)

FRONTIER DEVELOPMENT GROUP,)
LLC, and MICHAEL HORN,)

Counter-defendants.)

On March 29, 2012, following a bench trial, the Court issued its *Findings of Fact and Conclusions of Law*. On October 30, 2012, the Court issued its *Memorandum Decision re: Attorney fees, Costs, and Prejudgment Interest*. There being no further claims remaining before the Court, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Frontier Development Group's complaint to foreclose on its claim of lien against Caravellas is hereby dismissed with prejudice;

2. Yellowstone's complaint to foreclose on its claim of lien against Caravellas is hereby dismissed with prejudice;

3. Caravellas are awarded \$114,028.04 in damages against Frontier Development Group for prevailing on Counts 1, 3, and 4, of their amended counterclaim;

4. Caravellas are awarded \$113,775.45 in attorney fees, apportioned as follows:

A. \$28,443.86 against Yellowstone and \$28,443.86 against Frontier Development Group for defense of the lien foreclosure claims and for prevailing on Count 5 of their amended counterclaim; and

B. 56,887.73 against Frontier Development Group for prevailing on their amended counterclaims;

5. Caravellas are awarded \$5,684.83 in costs of right and discretionary costs apportioned as follows:

A. \$1,421.21 against Yellowstone and \$1,421.21 against Frontier Development Group for defense of the lien foreclosure claims; and

B. \$2,842.42 against Frontier Development Group for prevailing on their amended counterclaim;

6. Caravellas are awarded \$41,902.38 in prejudgment interest awarded solely against Frontier Development Group pursuant to I.C. § 28-22-104.

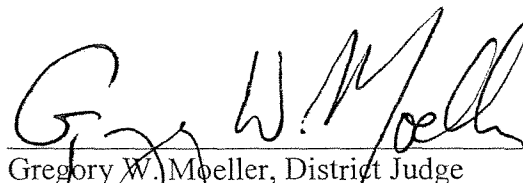
Total Judgment against Yellowstone: \$29,865.07.

Total Judgment against Frontier Development Group: \$245,525.64.

The judgments awarded herein shall apply to FDG and Yellowstone separately. Interest shall henceforth accrue at the judgment rate.

All matters before the Court now having been fully adjudicated, this shall be deemed as a final judgment for purposes of I.R.C.P. 54(a).

SO ORDERED this 31st day of October, 2012.



Gregory W. Moeller, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Findings & Conclusions was served upon the following parties on this 31st day of October, 2012, via U.S. Mail, postage prepaid:

Ronald L. Swafford
SWAFFORD LAW OFFICE, CHARTERED
535 Ninth Street
Idaho Falls, ID 83404
Attorney for Plaintiffs/Counter-defendants

Frederick J. Hahn, III
Brent L. Whiting
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 50698
Idaho Falls, Idaho 83405
Attorneys for Defendants/Counterclaimants

By: 
Law Clerk

FILED

DEC 12 2012
TETON CO., ID
DISTRICT COURT

Frederick J. Hahn, III (ISB No. 4258)
Brent L. Whiting (ISB No. 6601)
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Telephone: (208) 528-6101
Fax: (208) 528-6109
fjh@racinelaw.net

Attorney for Defendants / Counterclaimants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FRONTIER DEVELOPMENT GROUP,
LLC

Respondent-Plaintiff,

v.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Appellants-Defendants.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Appellants-Counterclaimants,

v.

FRONTIER DEVELOPMENT GROUP,
LLC, and MICHAEL HORN,

Respondents-Counterdefendants.

Case No. CV-09-068

NOTICE OF APPEAL

Fee category: L(4)

Fee: \$109

000389

YELLOWSTONE DO IT CENTER, LLC
Plaintiff,

v.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Defendants.

LOUIS CARAVELLA and PATRICIA
CARAVELLA,

Counterclaimants

v.

YELLOWSTONE DO IT CENTER, LLC,

Counterdefendant

TO: THE ABOVE NAMED RESPONDENTS, MICHAEL HORN AND FRONTIER
DEVELOPMENT GROUP, LLC, AND THE PARTIES' ATTORNEY, RONALD L.
SWAFFORD, SWAFFORD LAW, P.C., 525 NINTH STREET, IDAHO FALLS, ID
83404; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Louis Caravella and Patricia Caravella (collectively
"Appellants"), appeal against the above named Respondents to the Idaho Supreme Court from
the final Judgment filed October 31, 2012, and the Findings of Fact and Conclusions of Law filed
March 29, 2012, the Honorable Gregory W. Moeller, District Judge, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the
judgements or orders described in paragraph 1 above are appealable orders under and pursuant to
Rule 11(a)(1), I.A.R.

3. Preliminary statement of the issues on appeal: any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, include the following:

A. Whether the District Court erred in failing to find that Respondents-Counterdefendants Michael Horn ("Horn") and Frontier Development Group, LLC ("FDG") were liable to Appellants for fraud.

B. The enumeration of a specific issue stated above does not prevent Appellants from asserting additional issues on appeal, pursuant to Rule 17(f), I.A.R.

4. Has an order been entered sealing all or any portion of the record? **NO**.

5. (a) Is a reporter's transcript requested? **YES**.

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

TRANSCRIPTS OF THE FOUR-DAY TRIAL, DECEMBER 13-16, 2011.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

Trial Exhibits listed on the attached Addendum A. There are a total of 43 Defendants' Exhibits and 12 Plaintiffs Exhibits identified on Addendum A.

7. I certify:

(a). That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow, Court Reporter
P.O. Box 1671
Idaho Falls, ID 83403

(b)(1). X That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(c)(1). X That the estimated fee for preparation of the clerk's record has been paid.

(d)(1). X That the appellate filing fee has been paid.

(e). That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 12th day of December, 2012.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
BRENT L. WHITING

CERTIFICATE OF SERVICE

Ronald L. Swafford, Esq.
Swafford Law Office, Chartered
525 Ninth Street
Idaho Falls, ID. 83404

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Via Overnight Mail*

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403
Court Reporter

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Via Overnight Mail*


BRENT L. WHITING

Addendum A

Defendants' Exhibits		Plaintiffs' Exhibits
Exhibit #	Binder Tab #	Exhibit #
A	1	3
B	2	5
C	3	19
D	4	22
E	5	34
G	7	59
H	8	72
I	9	84
J	10	88
K	11	91
N	14	94
Q	17	95
S	19	
T	20	
V	22	
W	23	
BB	28	
DD	32	
HH	36	
NN	42	
QQ	45	
UU	49	
VV	50	
BBB	56	
KKK	65	
MMM	67	
OOO	69	
PPP-1	70	
PPP-2	70	
SSS	73	
VVV	76	
XXX	78	
YYY	79	
ZZZ	80	
DDDD	84	
EEEE	85	
FFFF	86	
GGGG	87	
HHHH-1	88	
HHHH-2	88	
III	89	
JJJ	90	
KKK	91	

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FRONTIER DEVELOPMENT GROUP, LLC,)	
MICHAEL HORN,	)	Supreme Court Docket
	)	No. 40581-2012
Plaintiffs/Counterdefendants/)	
Respondents,)	
	)	Teton County Case No.
- vs -	)	CV 2009-068
)	
LOUIS CARAVELLA, PATRICIA)	
CARAVELLA	)	CERTIFICATE OF EXHIBITS
)	
Defendants/ Counterclaimants/)	
Appellants)	
)	
and)	
)	
YELLOWSTONE DO IT CENTER)	
)	
Plaintiff/Counterdefendant.)	
_____)	

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that the following is a list of exhibits, offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

PX 3	Real Estate Purchase & Sale Agreement	Sent
PX 5	Counter Offer to Real Estate Purchase & Sale Agreement	Sent

PX 19	Email from L. Caravella to M. Horn dated May 10, 08	Sent
PX 22	Email from M. Horn to L. Caravella dated May 12 and May 13, 08	Sent
PX 34	Design Intelligence, LLC Rendering of roof beam support	Sent
PX 59	Email from M.Horn to L. Caravella Dated Oct 6, 08	Sent
PX 72	Email from M. Horn to L. Caravella dated Nov 24, 08	Sent
PX 84	Email from L. Caravella to M. Horn dated Dec 03, 08	Sent
PX 88	Caravella Billing/Invoice Summary	Sent
PX 91	Claim of Lien for Labor and/or Material-Frontier Dev.	Sent
PX 94	Yellowstone Invoices	Sent
PX 95	Claim of Lien for Labor and/or Materials-Yellowstone	Sent

DX A	E-Mail string 3/17-3/20/08	Sent
DX B	E-Mail 3/20/08	Sent
DX C	E-mail 3/20/08	Sent
DX D	E-mail string 3/21-3/22/08	Sent
DX E	E-mail 3/21/08	Sent
DX G	House Pictures	Sent
DX H	E-mail 4/23-5/7/08	Sent
DX I	E-mail 5/7-5/10/08	Sent
DX J	Enclosures 5/7-5/10/08	Sent
DX K	E-mail 5/12/08	Sent
DX N	E-mail 5/16/08	Sent
DX Q	Check # 1721 5/20/08	Sent
DX S	E-mail attachment 5/13/08	Sent
DX T	Check # 1749 6/19/08	Sent
DX V	S&D Invoice 6/12/08	Sent
DX W	FDG Invoice 6/19/08	Sent
DX BB	Check # 1778 7/17/08	Sent
DX DD	E-mail stream 8/18-8/20/08	Sent
DX HH	E-mail Stream 8/18-8/21/08	Sent
DX NN	Check # 1828 09/08/08	Sent
DX QQ	E-mail Stream 9/13-10/6/08	Sent
DX UU	Check # 1865 10/20/08	Sent
DX VV	E-mail 10/30/08	Sent
DX BBB	E-mail stream 11/24-11/25/08	Sent
DX KKK	E-mail String 6/22-6/24/08	Sent
DX MMM	Post Horn Const. Photo	Sent
DX OOO	Original Plan Elevation vs Post Horn Const. Photos	Sent
DX PPP-1	JB Kay checks	Sent
DX PPP-2	JB Kay Construction Billings	Sent

DX SSS	JB Kay Construction photos 1-98	Sent
DX VVV	Design Intelligence Expert Report	Sent
DX XXX	FDG Billings to Caravella	Sent
DX YYY	YDIC Billings	Sent
DX ZZZ	Horn Lien 4/08/08	Sent
DX DDDD	Deposition of Michael Horn	Sent
DX EEEE	Deposition of Scott Norman – Yellowstone	Sent
DX FFFF	Deposition of Scott Norman – Individual	Sent
DX GGGG	E-Mail from Horn to Norman, dated June 04 ,08	Sent
DX HHHH-1	Deposition of Theresa Nichols	Sent
DX HHHH-2	First Horizon Exhibits	Sent
DX IIII	Wood Source Invoice	Sent
DX JJJJ	Wood Source Delivery Ticket	Sent
DX KKKK	Wood Source Acknowledgement	Sent

And I further certify that all of said Exhibits are on file in my office and are part of this record on Appeal in this cause and are hereby transmitted to the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 13 day of February, 2013.

Mary Lou Hansen

by Pamela A Hansen

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FRONTIER DEVELOPMENT GROUP, LLC,)	
MICHAEL HORN,	)	Supreme Court Docket
	)	No. 40581-2012
Plaintiffs/Counterdefendants/)	
Respondents,)	
	)	Teton County Case No.
- vs -	)	CV 2009-068
)	
LOUIS CARAVELLA, PATRICIA)	
CARAVELLA	)	CERTIFICATE OF SERVICE
)	
Defendants/ Counterclaimants/)	
Appellants)	
)	
and)	
)	
YELLOWSTONE DO IT CENTER)	
)	
Plaintiff/Counterdefendant.)	
_____)	

I, Phyllis A. Hansen, deputy clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Teton County, do hereby certify that I have personally served or mailed, by United States mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their attorney of record as follows:

Frederick J Hahn, Esq.
Brent J Whiting, Esq.
PO Box 50698
Idaho Falls, Idaho 83405

Michael J. Horn, Pro Se
PO Box 576
Bonita Springs, Florida 34133

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
court this 25 day of February, 2013.

Mary Lou Hansen

By: Phyllis A. Hansen
Phyllis A. Hansen, Deputy

000398

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FRONTIER DEVELOPMENT GROUP, LLC,)	
MICHAEL HORN,	)	Supreme Court Docket
	)	No. 40581-2012
Plaintiffs/Counterdefendants/)	
Respondents,)	
	)	Teton County Case No.
- vs -	)	CV 2009-068
)	
)	
LOUIS CARAVELLA, PATRICIA)	
CARAVELLA	)	CLERK'S CERTIFICATE
)	
Defendants/ Counterclaimants/)	
Appellants)	
)	
and)	
)	
YELLOWSTONE DO IT CENTER)	
)	
Plaintiff/Counterdefendant.)	
_____)	

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents, charts and pictures offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the