

Arbitration - Five Best Practice Tips for the Final Hearing

Presented at the Construction Law Committee

March 14, 2011

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SMITHS' DAMAGES

Bills Paid to Vendors

\$ 97,092.86

(amount owed for work performed in house)

(see "Vendor Payments (2nd Revised)" chart with supporting documents)

Change Order Credits

\$57,229.45

(items SMITHs paid BROWN for but did not receive)

(see "Change Orders – Credits Due(2nd Revised)" chart with supporting documents)

Spec Credits Owed

\$12,305.80

(credits owed on items not included that were indicated in specs)

(see "Specs Credits (1st Revised)" chart with supporting documents)

Pending

\$20,000-30,000 (est.)

Items that SMITHs still need to fix:

Storage Unit

\$2,801.26

(\$164.78/month × 17 months)

(see Rental Agreement with Space Plus Storage)

CONSTRUCTION Loan

\$31,416.75

(Based on borrowing \$200,000 to finish this Project, SMITHs pay \$1,256.67 in interest each month since 9/30/05 --- \$1,256.67 per month thru 10/07 arbitration date

(i.e., 25 months) is \$31,416.75) (see SMITH BARNEY Loan Management Account Agreement)

Preconstruction Loan

\$16,995.00

(SMITHs could not convert from preconstruction loan due to BROWN's lien – SMITHs were paying Prime at 8.25% from 6/04 thru 11/06. The bank gave the SMITHs a guaranteed rate if the SMITHs closed by June 2005. Per the contract, BROWN should have been finished in 20 weeks. Assuming BROWN was given an additional 20 weeks to finish the project due to delays beyond BROWN's control (i.e., a total of 40 weeks, a generous assumption), his finish date would have been by 9/01/05. The SMITHs paid an additional \$1,133 per month due to BROWN's failure to complete the project within 10 months (i.e., 40 weeks). \$1,133/month × 15 months)

20% Warranty Claim

From (\$214,400.00 [total draws paid to BROWN] × 20%)

\$42,880.00

From SMITHs on Change Orders (\$145,690.30 [total paid on CO's] × 20%)

\$29,138.06

(BROWN charged an additional 20% on all of his subcontractors and on all Change Orders "in order to give [the SMITHs] the contractor's warranty", as he repeatedly told the SMITHs -- BROWN did not honor his warranty)

(see Construction Agreement)

TOTAL:

\$309,859.18 to \$319,859.18

CHANGE ORDERS – CREDITS DUE (First Change order analysis)

CHANGE ORDER	DATE	CK#, DATE	CK AMT	Claim
14 (S0197, S0262-263)	3/08/05	#252, 3/18/05 (S0232) #107, 4/24/05 (S0236)	\$7,054.77 \$4,227.37 (\$3,527.39 on CO#14)	Baseboard
17 (S0268, S0463)	4/11/05	#102, 4/13/05 (S0235) (S0560)	\$5,613.00 (\$980.00 total on CO#17)	Sub Floors
23 (S0206, S0467)	5/11/05	#112, 5/11/05 (S0567)	\$19,852.50 (\$26,887 total on CO#23 – paid ½ of CO, \$13,443.50)	Pool
24 (S0207, S0466, S0274)	5/11/05	#112, 5/11/05 (S0567)	\$19,852.50 (\$12,818 total on CO#24 – paid ½ of CO, \$6,409.00)	Pool
25 (S0208, S0465)	6/1/05	#114, 6/2/05 (S0556)	\$24,374.00 (\$19,055 total on CO#25 -- paid ½ of CO, \$9,527.50)	Kitchen
26 (S0464, S0276)	6/01/05	#119, 6/23/05 (S0561)	\$2,338.25 (\$1,450.00 total on CO#26)	Sub Floors:

CHANGE ORDER CREDITS DUE:

CO #14: \$10,582.16

CO #17: \$980.00

CO #23: \$5,835.81

CO #24: \$2,563.60

CO #25: \$12,120.63

CO #26: \$1,450.00

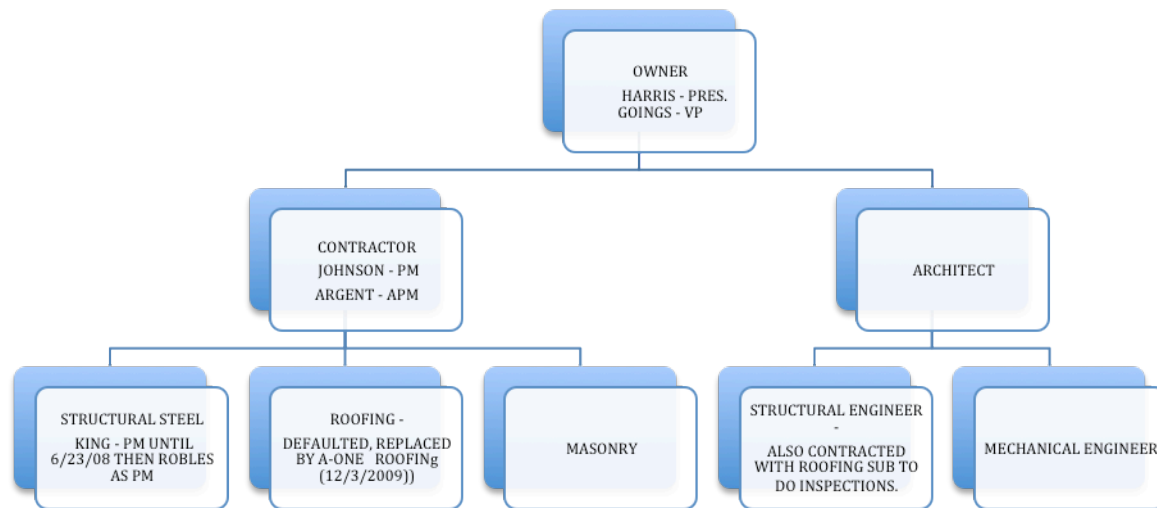
TOTAL: \$57,229.45

CHANGE ORDERS – CREDITS DUE (2nd Revised)

CHANGE ORDER	DATE	CK#, DATE	CK AMT	CREDIT CLAIMED DUE	Comments
14 (S0197 , S0262-263)	3/08/05	#252, 3/18/05 (S0232) #107,4/24/05 (S0236)	\$7,054.77 \$4,227.37 (\$3,527.39 on CO#14)	Baseboard finish out and additional travertine: Paid BROWN \$10,582.16 – credit due – should have been included in original contract price. Credit claimed Due on CO #14: \$10,582.16	Believes baseboards should have been included in initial travertine COST EXPERT
17 (S0268 , S0463)	4/11/05	#102, 4/13/05 (S0235) (S0560)	\$5,613.00 (\$980.00 total on CO#17)	Sub Floors: Contract stipulated that sub floors would be installed where wood floors were going in (see p. 11 of Spec's, "Wood Flooring", 3rd ¶); nevertheless, BROWN charged \$980.00 for the bedrooms and \$1,450 (see CO #26) for the game room Credit claimed Due on CO #17: \$980.00	SMITHs get this.
23 (S0206 , S0467)	5/11/05	#112, 5/11/05 (S0567)	\$19,852.50 (\$26,887 total on CO#23 – paid ½ of CO, \$13,443.50)	Pool redo: SMITH's paid BROWN \$13,443.50 on this CO. (see document 158 for calculation of credit due , only revising as to (i) coping around pool and spa only 90% complete, and (ii) deck drain system only 20% complete) These are EXPERTs numbers from his report. Credit claimed Due on CO #23: \$5,835.81	
24 (S0207 , S0466, S0274)	5/11/05	#112, 5/11/05 (S0567)	\$19,852.50 (\$12,818 total on CO#24 – paid ½ of CO, \$6,409.00)	Travertine install on Pool Deck and Lanai: S's paid BROWN \$6,409.00 on this CO. Less than 30% complete. Expert's completion percentages. Credit claimed Due on CO #24: \$2,563.60 (\$6,409.00 - (\$12,818 x 30%))	
25 (S0208	6/1/05	#114, 6/2/05	\$24,374.00	Kitchen Remodel: SMITHS's paid BROWN \$9,527.50 on this CO. When BROWN	EXPERTs

, S0465)		(S0556)	(\$19,055 total on CO#25 -- paid ½ of CO, \$9,527.50)	<p>was fired, the kitchen was not even close to finished. About ¼ was completed. In addition, he specified in the kitchen remodel several items that SMITHS's did not receive:</p> <ul style="list-style-type: none"> Permits \$480 Relocate Intercom System \$500 Protection of Travertine Floors \$150 Provide and Install New Granite \$1,750 Painting \$1,600 Dish Drawer Scratch \$225 Remove two recessed lights \$150 Install two owner lights \$120 <p>Total: \$4,975.00</p> <p>¾ reimburse for deposit: \$7,145.63 (i.e., \$9,527.50 × .75)</p> <p>Credit Due on CO #25: \$12,120.63</p> <p>EXPERT says kitchen was 80% complete at this time – so this number has to be changed.</p>	credits
26 (S0464 , S0276)	6/01/05	#119, 6/23/05 (S0561)	\$2,338.25 (\$1,450.00 total on CO#26)	<p>Sub Floors: Contract stipulated that sub floors would be installed where wood floors were going in; nevertheless, BROWN charged \$980.00 (see CO #17) for the bedrooms and \$1,450 for the game room</p> <p>Credit claimed Due on CO #26: \$1,450.00</p>	SMITHS RECOVER
27 (S0211 , S0461)	6/01/05	#114, 6/2/05 (S0556)	\$24,374.00 (\$28,693 total on CO#27 --- paid ½ of CO, \$14,346.50)	<p>Kitchen Cabinets: SMITH's paid BROWN \$14,346.50 on this CO (equates to ½ of CO). Approximately ½ of this CO was complete when BROWN was fired.</p> <p>The cabinet cost from Building Product Specialist was \$24,950 – BROWN had paid him \$12,475; so Smith's's paid the balance of \$12,475 directly to the cabinet man</p> <p>This meant that Smith's paid \$1,871.50 over the cabinet cost in order to get the job completed (i.e., \$14,346.50 - \$12,475.00).</p> <p>In general, let's give SMITHS credits on co's and not their out of pocket expense.</p> <p>Credit claimed Due on CO #27: \$1,871.50</p>	
30	6/20/05	#104,	\$6,000.00	Stairs and Railings: Stainless Steel	

(S0214 , S0462)		6/20/05 (S0566)	(\$12,135. 88 total on CO#30)	<p>Fabricators gave SMITHS's a bill for \$22,015.73 to fabricate and install the stairs. SMITHS's had a \$10,000 allowance in the contract for stairs. So, S's total output for this change order should have been \$12,015.73. S's paid BROWN a \$6,000 deposit on this CO. BROWN gave SSF deposit of \$5,503.93.</p> <p>In order for SSF to complete the stairs, S's had to pay SSF the full amount they were owed, which included S's \$10,000 allowance.</p> <p>So, S's paid \$16,511.80 (i.e., \$22,015.73 - \$5,503.93).</p> <p>Credit CLAIMED Due on CO #30: \$16,511.80</p>	
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*Add individual names to extent possible.

* Add dates for changes.

Condominium Tower – CHRONOLOGY.

- 12/1/04 – Memo to Jeff P re problems with dimensions and layout of floors. Claims it is not obstructing contractors. (Exh.6A)
- 3/30/05 – after walk through – Memo to Jeff P outlining further framing issues. (Exh.6G)
- 5/4/05 – First letter To Owner re problems with drawings and framing. (Exh. 24)
- 5/6/05 – Manpower reports show framing contractor fully staffed.
- 5/7/05 – Owner stops work on 6th floor while dimensions corrected. (Exh 28 and 5B).
- 6/3/05 – Michelle Grant – new Project Manager arrives on site.
- 8/12/05 – 6th floor frame out scheduled to be complete (see, pg. 24 of schedule, Exh 12)
- 9/30/05 – Change order #7 awards contractor on-site overhead for delays in framing “through the end of March ‘06”(projected project end date).
- 10/16/05 – Hurricane Wilma hits and forces project shutdown. Damages all open floors.
- 11/4/05 – Recovery scheduled initiated. Michelle Grant forces overtime work on all floors.