No. 18-938

IN THE

Supreme Court of the United States

RITZEN GROUP, INC.,

Petitioner,

v.

JACKSON MASONRY, LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 14, 2019
CERTIORARI GRANTED MAY 20, 2019

Dated: August 5, 2019

288832

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APPENDIX A — RELEVANT DOCKET ENTRIES

U.S. BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
(NASHVILLE)
BANKRUPTCY PETITION #: 3:16-BK-02065

Date Filed	#	Docket Text
03/24/2016	1 (4 pgs)	*Jackson Masonry, LLC* Chapter 11 Voluntary Petition Non-Individual. Fee Amount is $1717.00. (DUNHAM, GRIFFIN) (Entered: 03/24/2016)
		***
04/14/2016	57 (52 pgs; 9 docs)	Motion for Relief from Stay Fee Amount is $176.00 (Attachments: # 1 Exhibit A - Docket # 2 Exhibit B - Order for Sanctions # 3 Exhibit C - Response for March 24th hearing # 4 Exhibit D - Release of Deed of Trust # 5 Exhibit E - Partial Release of Lien # 6 Exhibit F - Partial Release of Lien # 7 Exhibit G - Agreement for Easement # 8 Exhibit H - Quitclaim Deed) Certificate of Service Mailed on 04/14/2016. Filed on the behalf of: Creditor Ritzen Group, Inc.. (HALTOM, JAMES) (Entered: 04/14/2016)
		***

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05/25/2016	101 (11 pgs)	*Debtor's* Opposition to (Related Document(s): 57) *Ritzen Group, Inc's Motion for Relief from the Automatic Stay* Filed on the behalf of: Debtor Jackson Masonry, LLC (RE: related document(s)57). (DUNHAM, GRIFFIN) (Entered: 05/25/2016)

***

06/10/2016	118 (6 pgs)	*Debtor's* Motion and Notice for Authority - *Objection to Informal Proof of Claim Filed by Ritzen Group, Inc. - Note: This is a claim objection filed pursuant to Federal Rule of Bankruptcy Procedure 3007 and Local Rules of Bankruptcy Procedures 9013-1 and 3007-1.* If timely response hearing will be held on 7/26/2016 at 09:00 AM at Courtroom 2, 2nd Floor Customs House, 701 Broadway, Nashville, TN 37203. Responses due by 7/11/2016. Filed on the behalf of: Debtor Jackson Masonry, LLC. (DUNHAM, GRIFFIN) (Entered: 06/10/2016)

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06/16/2016	133 (2 pgs)	Order Denying Motion For Relief From Stay (Related Doc # 57) *(or Modify) as to Ritzen Group Inc.* BY THE COURT: Judge Keith M. Lundin (rww) (Entered: 06/16/2016)
		***
08/31/2016	233 (9 pgs)	Response to *Debtor's Objection to Proof of Claim* Filed on the behalf of: Creditor Ritzen Group, Inc.. (HALTOM, JAMES) (Entered: 08/31/2016)
		***
09/13/2016	245 (4 pgs)	Adversary case 3:16-ap-90263. Complaint by Jackson Masonry, LLC against Ritzen Group, Inc.. Fee Amount is $350.00. Adversary Fee Will be Paid In Full Electronically at the Time of Filing. Jackson Masonry, LLC. Nature of Suit: (14 (Recovery of money/property - other)) (DUNHAM, GRIFFIN) (Entered: 09/13/2016)
		***

09/20/2016	252 (49 pgs; 15 docs)	Adversary case 3:16-ap-90270. Complaint by Ritzen Group, Inc. against Jackson Masonry, LLC. Fee Amount is $350.00. Adversary Fee Will be Paid In Full Electronically at the Time of Filing. Ritzen Group, Inc.. (Attachments: # 1 Exhibit A - Contract # 2 Exhibit B - Zoning Ordinance # 3 Exhibit C - September 8, 2014 letter # 4 Exhibit D - October 7, 2014 letter # 5 Exhibit E-1 - Acknowledgments # 6 Exhibit E-2 - November 10, 2014 letter # 7 Exhibit F - November 19, 2014 letter # 8 Exhibit G - December 2, 2014 letter # 9 Exhibit H-1 - December 4, 2014 letter # 10 Exhibit H-2 - December 4, 2014 letter # 11 Exhibit I-1 - December 12, 2014 letter # 12 Exhibit I-2 - December 12, 2014 letter # 13 Exhibit J-1 - December 15, 2014 email # 14 Exhibit J-2 - December 17, 2014 letter) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property), 21 (Validity, priority or extent of lien or other interest in property)) (HALTOM, JAMES) (Entered: 09/20/2016)

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01/13/2017	375 (3 pgs)	Order To Disallow Claim(s) *of Ritzen Group Inc in Part and Granting Judgment in Favor of Jackson Masonry LLC - Disallowing Court Claims #* 16,17 (RE: Related Doc#: 118, 187, 189, , 224, 225 , 226 , 235, 236, 239, 240, 241, 243, 258, 268, 269, 270, 271, 272, 279, 281, 305, 307, 312, 314, 317, 318, 325, 326, 329, 330, 331, 332, 344, 346, 352, 358, 361,). Signed on 1/13/2017. (sdt) (Entered: 01/13/2017)

***

03/01/2017	388 (25 pgs)	*Jackson Masonry's* Chapter 11 Plan of Reorganization Filed on the behalf of: Debtor Jackson Masonry, LLC. (DUNHAM, GRIFFIN) (Entered: 03/01/2017)
03/01/2017	389 (39 pgs)	Disclosure Statement *to Accompany Chapter 11 Plan of Reorganization* Filed on the behalf of: Debtor Jackson Masonry, LLC. (DUNHAM, GRIFFIN) (Entered: 03/01/2017)

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04/17/2017	412 (3 pgs)	*Agreed* Order Resolving Motion *(Expedited) to Satisfy Pre-Petition Claim of Ritzen Group Inc (Related Doc #118,375,388,389,392,398,404,405, 407)* (Related Doc # 395) BY THE COURT: Judge Charles M. Walker (sdt) (Entered: 04/17/2017)
04/17/2017	413 (4 pgs)	*Agreed* Order Granting Motion *(Joint) Dispensing with Damages Hearing and Granting Other Relief Related to Consolidated Matters Between Debtor and Ritzen Group Inc (Related Doc # 375)* (Related Doc # 409) BY THE COURT: Judge Charles M. Walker (sdt) (Entered: 04/17/2017)
		***
04/20/2017	422 (3 pgs)	Order Confirming Chapter 11 Plan *of Reorganization and Approving Disclosure Statement Accompanying Plan of Reorganization* (RE: Related Doc#: 388, 389, 390, 392, 405, 414, 415, 416). Signed on 4/20/2017. (rmw) (Entered: 04/20/2017)

04/21/2017	423 (13 pgs)	Order *Bench Decision* (RE: Related Doc#: 224, 358, 361, 364, 365, 401, 402, 403). Signed on 4/21/2017. (bmp) (Entered: 04/21/2017)
		***
09/17/2018	466 (40 pgs; 4 docs)	*Debtor's* Motion and Notice to Sell Property Free and Clear of Liens under Section 363(f) - Property description: 1200 49th Avenue North, Nashville, TN 37209 Fee Amount is $181.00. If timely response hearing will be held on 10/16/2018 at 09:00 AM at Courtroom 2, 2nd Floor Customs House, 701 Broadway, Nashville, TN 37203. Responses due by 10/9/2018. (Attachments: # 1 Exhibit Order Staying Execution and Establishing Supersedeas Bond # 2 Exhibit Order Compelling Release of Lien Lis Pendens # 3 Exhibit Purchase and Sale Agreement) Filed on the behalf of: Debtor Jackson Masonry, LLC. (HILDEBRAND IV, HENRY) (Entered: 09/17/2018)
		***

10/16/2018	474 (4 pgs)	*Reservation of Rights and Conditional* Objection to (466 Motion to Sell Property Free and Clear of Liens Under Section 363(f) - BK Motion, 472 Order to Continue Hearing) Certificate of Service mailed on 10/16/2018. Hearing will be held on 10/23/2018 at 09:00 AM at Courtroom 2, 2nd Floor Customs House, 701 Broadway, Nashville, TN 37203. Filed on the behalf of: Creditor Ritzen Group, Inc. (RE: related document(s)466, 472). (RAMSEY, SHANE) (Entered: 10/16/2018)

***

11/05/2018	479 (7 pgs)	*Agreed* Order Granting *Debtor's* Motion to Sell Property Free and Clear of Liens under Section 363 (f)*Claims, and Encumbrances located at 1200 49th Avenue North, Nashville, Tennessee 37209* (RE: Ref Doc #466) (Related Doc #474), BY THE COURT: Judge Charles M. Walker (bmp) (Entered: 11/05/2018)

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04/01/2019	484 (2 pgs)	*Agreed* Order *Establishing Claim Reserve of $400,000.00* (RE: Related Doc#: 479). Signed on 4/1/2019. (bmp) (Entered: 04/01/2019)

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Appendix A

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
(NASHVILLE)
CIVIL DOCKET FOR CASE #: 3:17-CV-00806

Date Filed	#	Docket Text
		***
07/20/2017	11	Appellant's BRIEF by Ritzen Group, Inc.. (Attachments: # 1 Attachment Unreported Decisions)(Baxter, John) (Entered: 07/20/2017)
07/20/2017	12	APPENDIX filed by Ritzen Group, Inc. re 11 Appellant's Brief. (Attachments: # 1 Attachment Appendix Volume II, # 2 Attachment Appendix Volume III, # 3 Attachment Appendix Volume IV, # 4 Attachment Appendix Volume V, # 5 Attachment Appendix Volume VI) (Baxter, John) (Entered: 07/20/2017)
		***
09/05/2017	15	Appellee's BRIEF by Jackson Masonry, LLC. Appellant Reply Brief due by 9/20/2017. (Hildebrand, Henry) (Entered: 09/05/2017)
09/05/2017	16	APPENDIX filed by Jackson Masonry, LLC re 15 Appellee's

		Brief. (Attachments: # 1 Attachment Appendix to Appellee's Brief) (Hildebrand, Henry) (Entered: 09/05/2017)
09/20/2017	17	Appellant's REPLY BRIEF by Ritzen Group, Inc.. (Attachments: # 1 Attachment Unreported and Out of State Cases)(Ramsey, Shane) (Entered: 09/20/2017)
01/25/2018	18	MEMORANDUM OPINION OF THE COURT. Signed by District Judge Aleta A. Trauger on 1/25/18. **(DOCKET TEXT SUMMARY ONLY-ATTORNEYS MUST OPEN THE PDF AND READ THE ORDER.)**(am) (Entered: 01/25/2018)

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Appendix A

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
COURT OF APPEALS DOCKET #'S:
18-5157 AND 18-5161
DISTRICT COURT CASE #'S: 3:17-CV-00806
AND 3:17-CV-00807

Date Filed	#	Docket Text
		***
04/25/2018	16	APPELLANT BRIEF filed by Mr. Shane Gibson Ramsey for Ritzen Group, Incorporated. Certificate of Service:04/25/2018. Argument Request: requested. [18-5157] (SGR) [Entered: 04/25/2018 09:47 PM]
05/25/2018	17	APPELLEE BRIEF filed by Mr. Henry E. Hildebrand, IV for Jackson Masonry, LLC. Certificate of Service:05/25/2018. Argument Request: not requested. [18-5157] (HEH) [Entered: 05/25/2018 03:46 PM]
06/08/2018	18	REPLY BRIEF filed by Attorney Mr. Shane Gibson Ramsey for Appellant Ritzen Group, Incorporated. Certificate of Service:06/08/2018. [18-5157] (SGR) [Entered: 06/08/2018 04:55 PM]

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10/16/2018	26	OPINION and JUDGMENT filed : AFFIRMED. Decision for publication. Jeffrey S. Sutton, David W. McKeague, and Amul R. Thapar (AUTHORING), Circuit Judges. [18-5157, 18-5161] (CL) [Entered: 10/16/2018 11:23 AM]

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APPENDIX B — TRANSCRIPT OF THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, FILED OCTOBER 26, 2016

U. S. BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
(Nashville)
Bankruptcy Petition #: 3:16-bk-02065

TRANSCRIPT OF PROCEEDINGS
June 14, 2016
Before The Honorable Keith Lundin,
Bankruptcy Judge

[3]CLERK: Next case is 16-02065, Jackson Masonry, LLC.

THE COURT: Can we have the Jackson Masonry people please? Appearances please.

MR. HALTOM: Good Morning, Your Honor. James Haltom for Ritzen Group, Inc. And, if it will please the Court, I have Amelia Lance with me this morning who is a summer clerk with us, (inaudible) at Vanderbilt, who will be clerking with the Eastern District of New York following our clerkship. So, I just wanted to introduce her to the Court.

THE COURT: My condolences. Who are you going to work for in New York?

MR. LANCE: Judge Raymond Reary (phonetic).

THE COURT: I hope you survive New York.

MR. DUNHAM: Good Morning, Your Honor. Griffin Dunham, Counsel for Jackson Masonry. Before we get started I just want to make sure that the IT people supply the connection necessary for the -

THE COURT: Go for it.

CLERK: I'll get them.

THE COURT: I've read every piece of paper I can get my hands on.

MR. HALTOM: Thank you, Your Honor. Before putting on proof there are a few comments I'd like to [4] make. First, a lot of papers have been filed and I think today I'm going to be able to demonstrate that, one, the Debtor is not insolvent; two, that the schedules are materially inaccurate and the Debtor entered into a series of very questionable transactions immediately before filing Bankruptcy, including transferring more than $100,000 to insiders; and three, that the actions pending before the state court, that the Debtor filed specifically to avoid trial, to avoid an evidentiary hearing, and to avoid sanctions filed by the state court.

The Debtor has asked that the Court take judicial notice of the schedules and filings in this case -

THE COURT: Let's stop right there for a second because what works best for me is if you tell me right now

what evidence you are admitting by agreement, tell me what the stipulations are, tell me which exhibits you are admitting without dispute, and that will shorten all this immensely. So, tell me, please.

MR. HALTOM: Sure. Yes, Your Honor, I think we can admit the contract between the parties, which is Exhibit 2, filed by Ritzen.

THE COURT: Okay, I have it right here. I've read it.

MR. HALTOM: Exhibit 1 is the state court docket, which the Court can take judicial notice of.

[5]THE COURT: Doesn't work. The state court docket has to be presented here if you want me to look at it, and I know that it is an exhibit and I have seen it here, but you don't want to rely on that. It's numbered as Exhibit 1; is that right?

MR. HALTOM: Yes, Your Honor.

THE COURT: Okay, so Exhibit 1 is being admitted by agreement; is that right? It was Exhibit A to your Motion to Modify.

MR. HALTOM: Yes, Your Honor. Motion (inaudible) stay.

THE COURT: So, we're going to admit that by agreement. Okay, that's one and two.

Appendix B

(Exhibit 1 and 2 admitted)

MR. HALTOM: These are not quite in order by I'll try and keep them in order.

THE COURT: Doesn't matter.

MR. HALTOM: Exhibit 3 is the transcript from the Meeting of Creditors. I think the Court will take judicial notice of that transcript.

THE COURT: Actually, I don't take judicial transcript -

MR. DUNHAM: Your Honor, I think we can expedite this process. I'll tell you right now (inaudible). Let's go ahead and just get them all in.

[6]THE COURT: So they're numbered what through what?

MR. DUNHAM: One through 18.

THE COURT: One through 18. So, is it correct that by agreement the parties are stipulating admissibility of exhibits, pre-filed Exhibits one through 18? Is that correct?

MR. HALTOM: Yes, Your Honor.

THE COURT: Madam Clerk, do you have those?

CLERK: Yes, sir.

THE COURT: And those numbers match yours?

CLERK: Yes, sir.

THE COURT: All right, you all wait for just a minute. I'm going to make sure that I've looked at one through 18. In order to do that I have to go online, so this takes just a second but it saves us a lot of time.

All right, what about A through I that have also been pre-filed? It looks like they are duplicates of some but not all. Is here a stipulation with respect to any or all of A through I?

MR. HALTOM: Yes, Your Honor. And I can make it quick to just go through these, one by one, real fast. One is, or A rather, is the company profile, which is [7]a narrative that the Debtor's Counsel filed relating to why they filed Bankruptcy. I think that is hearsay; it is just a narrative -

THE COURT: I only need to know the ones that you're in agreement for admitting. Because, if you're not in agreement, then the other side will offer them at some point or not, and I'll deal with it then.

MR. HALTOM: The motion that we filed as B is part of the docket. I'll stipulate to that.

THE COURT: B is in.

MR. HALTOM: As to the Complaint filed in state court, we'll consent to that.

THE COURT: The Ritzen Complaint is F?

MR. HALTOM: Right, Your Honor.

THE COURT: All right, so B and F are in by stipulation.

MR. HALTOM: Ritzen's response to request for admissions is a statement of the party, so G.

THE COURT: G is in by admission by agreement.

MR. HALTOM: H is a (inaudible) form. (Inaudible).

THE COURT: So H is in by agreement?

MR. HALTOM: Yes, Your Honor. And I think that is it. I is an objection they filed prior to the [8]informal claim filed by (inaudible). And we have a response to that but it may not be appropriate for today.

THE COURT: It's not admitted by agreement then?

MR. HALTOM: I mean it's on the docket. I don't - It is (inaudible) of record, Your Honor. We'll take judicial notice or we'll admit that it's part of the docket that's been filed. Correct, Your Honor.

THE COURT: You should see some of the things that are on the Bankruptcy Court's docket. As you know, the admissibility and being on the docket are two different things. So, the issue is whether I is admitted by agreement or not.

MR. HALTOM: As far as the facts that are contained in there, no, Your Honor.

THE COURT: So, you have an objection to the content of the document. The fact that it was filed is not one that you can dispute.

MR. HALTOM: Correct, Your Honor.

THE COURT: And so it's not admitted for its content.

MR. HALTOM: Correct.

THE COURT: So, the documents that are admitted for their content are one through 18, B, F, G, and H. Did I get that right?

[9]MR. HALTOM: I believe so, Your Honor.

THE COURT: Okay, that's great progress. Thank you. Now, if you all will wait just a minute, I have looked at everything except one of these and I need to look at one of these documents. Just a second. And now I have.

All right, thank you all for bearing with me. There were a couple of exhibits that you just admitted by stipulation that I hadn't read yet. Now I have. So you can assume that I'm generally familiar with all the exhibits.

Also, by way of stipulation, any other evidence that you're going to stipulate at this time?

MR. HALTOM: The parties have filed a stipulation of facts, which is Docket No. 117. And if it will please the Court I can quickly go through those facts or -

THE COURT: You don't need to. I'm going to read them but I've got to go to the docket to do that.

(Pause)

THE COURT: Good to go. Thank you.

MR. DUNHAM: Your Honor, I knew I spoke a little bit too soon on Exhibit 4. We can just read (inaudible). But I don't have any objection. I think we're all aware that the depositions of parties are admissible for any purpose. The only issue I have with Exhibit No. 4 is that it's a transcript and there's no objection to the [10]contents of the transcript but there are a lot of exhibits that are referenced and I don't believe the exhibits are a part of this transcript. So, the only limitation I would request is that, to the extent there is a question about the exhibits, the contents, of the exhibits, if that is not admitted, if there's not a stipulation as to the admissibility of exhibits and the (inaudible) on those exhibits.

TH8 COURT: This is the deposition in August of 2015; is that the one you're talking about?

MR. DUNHAM: That's correct.

THE COURT: I didn't find the exhibits. I read this deposition but there are no exhibits. And so the issue is -

MR. DUNHAM: (Inaudible) we have an exhibit that purports to be a transcript but it's really not because there aren't any exhibits that are contained. And so we don't have an objection really to the words that are spoken but the transcript (inaudible).

THE COURT: So, are they going to be added to this today?

MR. DUNHAM: No.

TH8 COURT: They're not. They're just not here. So we have an incomplete transcript is what we're going to call it, a transcript that does not have [11]the exhibits attached to it.

MR. HALTOM: Yes, Your Honor (inaudible) for rebuttal, if necessary.

THE COURT: Let's go ahead.

MR. HALTOM: All right, Your Honor. Related to the contract and the stipulation of facts that you just reviewed, I'd like to offer statements proffered into evidence that if Mr. Ritzen is called to testify he will testify that the contract required him to rezone -

THE COURT: What are you doing right now, Mr. Haltom? I'm not sure.

MR. HALTOM: Are you ready for proof?

THE COURT: Absolutely. I've been taking proof for the last 30 or 40 minutes now. And when they get computers in New York they'll do that up there also.

Anything else that you want to admit at this point before I hear the rest of the testimony?

MR. HALTOM: Fair enough. There's nothing else, I believe, that's stipulated to.

THE COURT: That's a great start. Call your first witness.

MR. HALTOM: All right, Mr. Ritzen.

(Witness sworn)

CLERK: State your name for the record, please.

[12]THE WITNESS: George Ritzen.

THEREUPON came

GEORGE RITZEN

Who, having been first duly sworn according to law, testified as follows:

Appendix B

DIRECT EXAMINATION

BY MR. HALTOM:

Q Mr. Ritzen, did you review the Statement of Facts that was filed in this matter, related to the contractor (inaudible) by the parties?

A Yes, sir.

Q And in that contract it was stipulated that the terms were incorporated, and one of those terms requires property to be rezoned. Can you tell us whether or not you completed that action and what (inaudible) and what you spent to make that happen?

A When we put the property under contract it was zoned IR, Industrial Restricted. For our purposes of developing it and highest and best use, we went through the SP Rezoning process for a specific plan, which is intensive from a time and financial standpoint. You, basically, create a plan for the property that is specific to that piece of property. It took, I believe, about nine months. I don't remember the specific timing but it is - the approval was in March of 2014. And the expenses associated with [13]due diligence or - I'm sorry, can you please repeat the question?

Q Sure. In March of 2014 the property was rezoned into a residential zoning?

A Yes, sir. It was rezoned for SP.

Q And after that occurred did the contract have any specifications regarding due diligence that you still could perform?

A Yes. That is when the due diligence period commenced is the day after the rezoning occurred.

Q And how long was that due diligence period?

A It was six months, with the option to extend, two options to extend, 30 days each.

Q Did you extend those two options, did you extend the due diligence period?

A Yes, sir.

Q And did the parties ever set a closing date?

A December 15 was the closing date.

Q And related to the December 15 closing date, were you prepared to close?

A Absolutely.

Q And what prevented the closing of this contract for real property?

[14]A We didn't have all the closing documents we needed from the seller.

Q And if the seller had provided all those closing documents -

MR. DUNHAM: Your Honor, I'm going to object to leading the witness.

THE COURT: All right, your response to the objection, Mr. Haltom?

MR. HALTOM: I can rephrase, Your Honor.

THE COURT: Okay, I'll allow you to rephrase. I will sustain the objection now that it's been made. I'm pretty liberal about leading questions until somebody raises it. Now that it's been raised, please proceed by Direct Examination.

MR. HALTOM: Yes, Your Honor.

BY MR. HALTOM:

Q What, if anything, prevented the closing on December 15?

A Lack of closing documents. The documents that we did receive were either incomplete, inaccurate, some of which had direct conflicts with the existing conditions of the property, and conflicted with the contract terms.

We provided a letter to the seller of documentation that we had available funds ready to close. However, it appeared that the title attorney or whoever was [15]

handling the title issue and the actual closing was supposed to be working for both sides and working towards a closing; however, they were resistant to providing documents in a timely manner or documents that were sufficient to actually close the transaction.

Q Do you have an opinion of why the seller was not cooperating?

MR. DUNHAM: Objection, speculation.

THE COURT: Response to the objection.

MR. HALTOM: I'll remove the last comment and just ask him why he thinks it didn't close.

THE COURT: I'll let you ask that question. The other one would be him trying to tell me what someone else was doing. He may have some personal knowledge of that if they said something to him along those lines but I don't have that personal knowledge yet. So, I'll sustain the objection.

BY MR. HALTOM:

Q Tell us, based on your knowledge, why you couldn't close on December 15.

A The closing didn't occur because we didn't have the documents needed from the seller in order to do it. The motivation, I believe, was based on -

MR. DUNHAM: Objection, speculation.

THE COURT: Response to the objection.

[16]MR. HALTOM: I think I've laid the foundation that he has the knowledge.

THE COURT: For now there is no foundation for the motivation of somebody that's not here. So I'll sustain the objection. Go ahead.

BY MR. HALTOM:

Q Based on the facts that you know, what was the (inaudible) of this property in your contract?

A I know that the seller was approached by multiple people that made offers to the seller in no less than $400,000 more than our contract was, the agreed upon selling price. So, the seller had minimum 400,000 reasons to not close with us and sell the property to another person.

Q So, after the closing did not occur, what happened in the immediate following days?

A We reached out to the seller and said, "If you provide the documents we need we can move forward with this." But not providing the documents does not alleviate their responsibility to do so and to close the property in accordance with the contract. So, we ended up filing a lawsuit December 23, a *lien lis* pendens and seeking

specific performance from the seller to force the closing of the contract.

Q And related to that lawsuit, do you know when it was set for trial?

[17]A Originally, August or September.

MR. HALTOM: If it will please the Court, it's been admitted into evidence, the state court docket, with the dates and the Court can see that by agreed order this case was originally scheduled for trial in August of 2015, and that Exhibit 1 was pulled up with that agreed order on April 24, 2015.

THE COURT: Go ahead with your examination here, Counsel, if you have questions for the witness.

THE WITNESS: That was the first court date or trial scheduled. It was rescheduled a second time and then a third time to April 5 or 6, I believe, of this year.

BY MR. HALTOM:

Q And with respect to that trial were you ready to proceed with the trial as scheduled?

A Absolutely.

MR. HALTOM: Your Honor, with respect to Mr. Ritzen, that is all that he's prepared to testify to.

THE COURT: Cross- examine.

CROSS-EXAMINATION

BY MR. DUNHAM:

Q Good Morning, Mr. Ritzen. My name is Griffin Dunham. I don't think we've had the pleasure to meet [18]yet except for just being in the courtroom. I know that there was a previous Counsel that represented you (inaudible). There's a direct examination question that asked you about the costs in order to rezone the property. We're talking about the property on 49th Avenue, correct?

A Yes, 1200 49th Avenue North.

Q And how much did it cost to have that rezoned?

A I think we've spent in excess of $100,000 during the due diligence and rezoning process, that's plus time. That's not inclusive of time.

Q Of the $100,000, break that down. How much of it was attorney fees? How much of it was expert? How much of it was to go through Zoning?

A Off the top of my head, I'd only be able to give you ranges. Attorneys would be minimal. The majority of it would be civil and design expense.

Q Did you have to hire a planner or -

A A civil engineer, environmental surveyor.

Q Now, in the state court lawsuit you had mentioned that you're seeking specific performance, right?

A Yes.

Q I believe that's what you testified to. When I say specific performance, what I'm referring to is you're trying to ask for the state court to issue an order [19]that compels Jackson Masonry to close on the purchase agreement that was executed between the parties. Correct?

A If that's what you're asking then yes.

Q In other words, the Ritzen Group, you wanted title to the property?

A Yes, we wanted to buy the property in accordance with the terms of the contract.

Q And if you don't get the property then the alternative is to get some sort of damages that put you in the same position that you would have been in, had the contract been performed?

MR. HALTOM: Your Honor, I'm going to object to the state court's remedy to the deed. The lawsuit speaks for itself in terms of the relief sought. And I think the legal argument that somehow damages would be appropriate versus specific performance is inappropriate at this stage.

THE COURT: Your response to the objection.

MR. DUNHAM: Your Honor, I think that the goal here is to figure out what relief that Ritzen Group is seeking in this case. It's our position that the state (inaudible) performance, and our position is what else? If the state court can't provide that, is there an alternative remedy, alternative relief that Ritzen will be seeking?

THE COURT: You can ask those [20]questions. There's a fine line here between what do they want and what's a legal conclusion. So, you can ask him about what he wants and I'm happy to hear what he wants. The legal stuff about whether that is relief that is available and where it's available, that's up to me. I can do that. Go ahead.

MR. DUNHAM: Yes, Your Honor.

BY MR. DUNHAM:

Q If you're not able to get title to the property then you want to be compensated through money damages; is that right?

A If we're unable to buy the property then I don't know exactly what we would be seeking as the alternative solution. My understanding is that everything is detailed in the lawsuit.

Q And that lawsuit that's pending in state court, that is a bench trial and not a jury trial, right?

A I believe so.

Q You had testified they didn't have all the closing documents; is that right?

A We did not receive all the closing documents from the seller.

Q All right, so which closing documents did you not receive?

MR. HALTOM: Your Honor, may I object [21]for a brief moment on this? We're not trying what occurred on December 15, 2014; we're having a motion for relief of stay. And in the interest of moving this report in an expedited manner, I don't think that this line of questioning is appropriate as relates to stay relief and whether or not the Debtor filed a stay in order to avoid a state court litigation. These issues need to be resolved before the trier of fact, and that is whether this court, through an AG action or a state court.

THE COURT: Your response to the objection?

MR. DUNHAM: My response is two-fold maybe three-fold. First of all, it was asked on direct examination, why wasn't there a closing? The response was because we didn't get on the docket. (Inaudible). The second issue is they're trying to a stay relief for cause. And one of the considerations for cause is whether or not there is going to be some likelihood of prevailing on the merits. So, there is some requirement to get into the merits about who is

responsible for the transaction on closing. And there is a three-fold part and that three-fold part is that when (inaudible) look at the 20-plus pages of briefing that's been filed, then it's important for the Court not to just be able to have the written papers that have been filed but to get a flavor or context with that (inaudible).

They put Mr. Ritzen on the stand and I'd like to test his knowledge about why the transaction didn't close.

THE COURT: I'm going to overrule the objection because of the first two points. This was a subject of direct examination and, secondly, it does bear on whether there is cause (inaudible). Having said that, I do not have to try the implied state court specific performance acts. Everybody understands that. I have to make an assessment of the reasons that you're (inaudible) aware of.

So, police each other on how deeply we go into this but we're not too deeply into it yet. So, for those reasons go ahead. Ask the question again.

BY MR. DUNHAM:

Q You testified that you didn't receive all the closing documents. My question is which documents didn't you receive?

A Per the contract I believe there's 10 documents required to be provided from the seller. May I take a look at the exhibit and I can go through each one with you?

Q And which exhibit are you referring to?

A The contract.

Q Off the top of your head right now you don't know what those are? You just want to go over [23]the contract to -

A To refresh my memory.

MR. HALTOM: I can hook up if that would be easier, Your Honor.

THE COURT: We're talking about Exhibit 2?

THE WITNESS: Yes, Your Honor.

THE COURT: The Court has access to that. you can put it right up on the screen.

MR. HALTOM: I lost it, Your Honor. Here it is.

BY MR. DONHAM:

Q The document that Mr. Ritzen has requested to refresh his recollection, I believe there are 10 documents that were already to be provided and I'll let him go through the list and tell us which ones were not provided.

A Okay, (inaudible) the general warranty deed that was provided was inaccurate. It was effectively a quitclaim deed, based on the language and restrictions that were on

there. So that was never - a general warranty deed that was in line with the terms of the contract and industry standards was never provided by the seller.

Q Now, the closing was December 15, correct?

A Yes.

[24]Q And the scheduled closing time was 3:00; is that right?

A That was the time that the seller's attorney dictated.

Q And on December 15, when was the decision made that you weren't going to close?

A It was never made. We were always willing and able to close.

Q You didn't show up on December 15 to close, right?

A I was in my office. I didn't have to physically be at any particular place in order to close the transaction.

Q Was there going to be like a (inaudible) closing or were you just going to sign documents and that would be the closing on the buyer's side?

A Signing documents and wiring funds can happen from anywhere.

Q Did you sign any documents on December 15 related to closing?

A We didn't have documents that were ready to be signed, so no.

Q When you say they weren't ready to be signed -

A They were inaccurate, incomplete, or [25]in conflict with the terms of the contract.

Q Do you recall that the seller, that Jackson Masonry had drafted documents ready for signature on the 15th purported to remedy the issue that you discussed in the letter that was mentioned on Direct Examination?

A I'm sorry, can you restate that question?

Q Sure. There was testimony about a letter that was written by your Counsel to Jackson Masonry's Counsel prior to closing. I believe the date on that was December 12th.

MR. HALTOM: Objection. That has not bee offered in proof.

THE COURT: Response to the objection.

MR. DUNHAM: I thought he had testified that there was a letter. So I'm asking for his testimony.

BY MR. DUNHAM:

Q You had testified that a letter was sent; is that your testimony?

A Earlier when Mr. Haltom was examining me, yes, I did mention a letter. I'm not sure what letter you're talking about, though, right now.

Q Perhaps it was marked for identification purposes as Exhibit B and you mentioned this letter was sent and would you agree that that letter that was sent, that you earlier were testifying about, it purported to point out [26] some deficiencies that would prohibit the closing.

MR. HALTOM: Your Honor, I object to the admissibility of this letter. It's hearsay. It's a letter from an attorney. Its contents are not reliable. It attempts to prove hearsay facts. He's trying to (inaudible) a letter from a different attorney to a different attorney.

THE COURT: I'm going to stop you because it hasn't been offered in evidence. Hang onto your objection until somebody offers something you can object to. Go ahead.

BY MR. DUNHAM:

Q The question was the letter that you're referring to, was that a letter that was written about December 12 that purported to point out deficiencies that would prevent the closing to occur on December 15?

A No.

Q What was that letter that you were referring to?

A The letter I said when Mr. Haltom was examining me, asking me questions, was a proof of funds letter.

Q What's a proof of funds letter that you're referring to?

A D or A?

Q The one that's in question here. Who was it from and who was it to?

[27]A It was to - I think it was addressed to Jackson's counsel at the time, I believe, but I'm not 100 percent sure on that. But it was stating that funds were available for closing.

Q Do you ever recall there being a letter that you had seen from or on the behalf of Ritzen Group to Jackson Masonry that pointed out reasons that there couldn't be a closing on December 15th?

A There were several letters between my attorney and Jackson's attorney.

Q Do you recall one that was sent on the Friday before the scheduled December 15 closing?

A If this is the one they're talking about I can review it.

Q No, I'm just wondering. I'm not trying to trick you. I'm just trying to get an idea of what documents you saw that pointed out deficiencies.

A The documents that I saw that point out the deficiencies were the documents themselves. I saw deficiencies in some of them.

Q If that's the case then I actually can save us some time. Go back and let's go over the contract again.

A If it's relevant, I'm not the only one that found deficiencies in them. I think some of them [28]Mr. Jackson even acknowledged in his deposition.

Q Back on Exhibit No. 7, I'm sorry, Exhibit No. 2 here. The questions we're asking about whether the documents were inaccurate or incomplete or not provided, your testimony, I believe, was that there was (inaudible) with Section 7B; is that correct?

A Did I ask to see the contract, yes; that's correct, I asked to see it.

Q So, here's my question. It says that at closing seller shall do the following. You testified that on December 15th - that was the closing date, correct?

A Yes.

Q You would agree that the seller was going to be closing at 3:00; is that correct?

A No, I said that the seller's counsel established 3:00 as the closing time.

Q And what information do you have to believe that deficiencies with the warranty deed weren't corrected by 3:00 on Monday, December 15?

A They were never provided to us. Their - seller's counsel refused to make some corrections, and Mr. Jackson's, Mrs. Jackson's, and Mr. Joe Schrott's (phonetic) deposition, their testimony, if that's the correct word, during their depositions that the documents were not ready.

Q I'll let you review here. I'm going [29]to go through here and you can see two, three, four, five, six, seven, eight, nine, all the way up to 10. Is that the same response? Is it your position that the documents one through 10, that either all or a portion of them were inaccurate or not provided prior to 3: 00 on December 15?

A It's a very broad question. All or some of them, yes, there were deficiencies in the documents that prevented closing.

Q Okay, then I do need to get into just a few more questions about that. Beside No. 1 you said there was an issue with the warranty deed and you said (inaudible) quitclaim deed. How about No. 2, (inaudible)?

A The title policy that was issued by seller's counsel's firm was different than the title policy that they had previously issued us. So, that required a review of all of the, I think it was exclusions or restrictions. I think it's typically Exhibit B on a title policy. So, that was different than what had originally been provided to us.

Q Was different as of -

A It had increased exclusions in the title insurance coverage that had never been provided to us before.

Q And do you know if that document was corrected by 3:00 on December 15?

A It was not corrected by, to my knowledge.

[30]Q And how about No. 3, do you know if the documents there were not -

A The lien waiver I don't believe that we received.

Q How about No. 4, the purchase certificate.

A I believe that was provided.

Q And the certifications in No. 5, the (inaudible) in the flood plains.

A I'm sorry, let me correct myself. On No. 4, I do not know if that was provided. No. 5, the FEMA Certificate was provided.

Q It's true that you don't know what documents the sellers had at 3:00 on December 15th?

A I only know what documents the seller provided to us in order for closing. How would I know what documents they generated in their office if they don't provide them to us.

Q So, my question is, there was a closing scheduled for 3:00 on Monday and it's true that the seller could have shown up for closing at 3:00 December 15 with the documents that were satisfactory to the buyer; is that correct?

A I know for a fact they didn't so I mean –

Q When you say you know for a fact, is [31]that based on -

A Their testimony during depositions.

Q Your basis for belief that they weren't prepared to close -

A It went from a belief to factual knowledge.

Q And was that Mr. Jackson who testified?

A Uh-huh. It was also Mrs. Jackson's testimony and Mr. Joe Schrott's testimony.

Q Who was (inaudible) going to use to finance the purchase of the property?

A We were going to end up partnering and we weren't going to have a traditional lender.

Q And who is the partner you were going to be with?

A The principal's name is Austin Pennington.

Q Austin who?

A Pennington.

Q And what company is that?

A I don't recall the name of the LLC - Amber Lane Development, LLC, I believe, was the entity.

Q And was - explain to me the financing situation as to how you were going to get the funds to close on the real estate.

[32]A The funds were going to be wired; that's the letter that I was speaking about earlier.

Q (Inaudible). So, who is the bank in here? Where was the money coming from? Was it partially coming from Ritzen or partially coming from the LLC you referred to?

A The funds were coming from Wilson County Bank, I believe. It's Amber Lane's account, Austin's account.

Q And there was no more due diligence that had to take place in order for the monies to be wired on Monday?

A Just closing documents.

Q And were there anymore steps that Wilson County Bank needed to go through in order to get you the wire?

A No. These were not bank funds. These were individual funds.

Q And the individual funds came from who?

A Amber Lane Development LLC.

Q Amber Lane was putting up the money for you to be able to purchase the property.

A Yes.

Q And had Amber Lane gotten into a position that they were prepared to wire the funds on December 15th?

[33]A Absolutely.

Q Was there anymore due diligence on their part that was required?

A The only thing they needed were the closing documents. The only thing we needed was closing documents.

Q And when you say closing documents, which documents are you referring to? The same one through 10?

A All the documents contemplated in the contract that would be required to memorialize the transfer of the property in accordance with the terms of the contract.

Q And the documents that were provided, explain to me how Thrive was in play here.

A Thrive doesn't come into play yet.

Q Is Thrive (inaudible) property?

A That was one option.

Q And just for your understanding of what a few of these documents are here, an email from ACS to Ritzen Group. This is actually an email from ACS to you. Do you recall seeing this email before? This is Exhibit D.

A It is an exhibit.

Q Have you seen this email before?

A Yes.

Q And this email, would you agree that it's between a gentleman named Jim Loosher (phonetic) who is an [34] associate partner in Alternative Cash Solutions? Was ACS, were they going to be providing any funding in this deal?

A They were a potential lender.

Q So, as of Monday December 8, you were still considering Alternative Cash Solutions as a potential lender?

A As of Monday, December 8, the day before, the day after, the week before, the week after, I was considering many options.

Q Explain this email to me that Mr. Lusher - is that how you pronounce it?

A Sure.

Q He's on his way to meet with the lender and hopes to have some feedback today. When he refers to feedback, what is he referring to, do you know?

A You'd have to ask him.

Q When he refers to the feedback, is it still a process where they're conducting due diligence to figure out if they're going to lend you the money to enable you to buy the property?

A Can you please repeat the question?

Q Sure. Is this still a due diligence type of situation here where ACS is trying to figure out if they're going to lend you the money to close on the real estate?

[35]MR. HALTOM: Object to relevancy. The witness has testified that on the day of closing he had cash funds available to close. Asking about other people he potentially has thought about getting funds from, I'm not is relevant for today's purposes because he's already clearly testified that the closing date was already agreed to and cash funds were available.

THE COURT: Response.

MR. DUNHAM: Response is that the week before this email goes to show that Ritzen Group was still heading into the process of trying to secure lending. Jackson

Masonry's position is that they didn't have the (inaudible) available and that is the reason closing didn't occur. So, this email is going to show that seven days prior to closing there still was no pinned down financing available to the Ritzen Group.

THE COURT: I'm going to overrule the objection but I don't want that to be misconstrued as an invitation to try at break if this issue, and this is one of the issues in the lawsuit that we're all aware of. Now you have gone too far so ask your question again.

MR. DUNHAM: I will wrap this up, Your Honor.

BY MR. DUNHAM:

Q So, ACS was still being considered as [36]a possible lender a week before December 15, correct?

A It was an option. I didn't put much faith in it. ACS was referred to us by a mutual acquaintance and they said, hey, these guys do financing and have connections with lenders. So, I said, "Sure, we'll meet with them and if they can do something, great. But I don't have a relationship with them prior to this; I don't have any sort of track record with them prior to this. So I didn't put much faith in it.

Q So when did you actually get the commitment from the - what was the lender's name again that you had ready to go?

A There wasn't a lender. We established that there were private funds available, an account ready to go.

Q I'm sorry, private funds. What was the name of that LLC again?

A Amber Lane Development.

Q At what point did Amber Lane commit to providing the purchase price?

A What do you mean by "commit"?

Q What was the date when they said, "We will pay the purchase price. "

A I don't remember a specific date.

Q Was it between December 8 and [37]December 15?

A It could have been earlier.

Q Is it fair to say that as of December 8 you didn't have lending from any party, whether it's private funds or from a traditional bank, in order to pay the purchase price for the 49th Avenue property?

A No.

Q As of December 8, who was ready to wire funds on that date?

A Austin.

Q Through the LLC?

A I can only assure it would have been through Amber Lane Development. The actually LLC wasn't the concern; the funds available was the concern.

Q Was that an oral commitment or a written commitment?

A It was an oral commitment. I've known Austin for 20 years.

Q This Exhibit D here, I'm going down now to December 8 at 1:04, this is where you're asking Mr. Lusher, "What is the status of receiving a financing proposal (inaudible)." Do you admit that you wrote that email?

A Yes, it's from me to Jim.

Q If you had secured funding through Amber Lane and you have this 20 plus year relationship with Mr. [38] Austin, then why are you still searching for loans through ACS?

A Because I always want some sort of backup plan.

Q And so you (inaudible) you had all the documents that were going to show the terms of the potential financing between Ritzen Group and ACS?

A They eventually provided a term sheet.

Q Did you fill out an application?

A I'm sure I did. I had to provide financial information to them.

Q Do you recall when you provided that financial information to them?

A No, not off the top of my head.

Q Before December 8 or after?

A Before.

Q And there were other banks -

MR. DUNHAM: First of all, to complete the record and establish that (inaudible) between Mr. Ritzen and Mr. Lusher, I'd like to enter Exhibit D into evidence.

THE COURT: Any objection to the admissibility of D?

MR. HALTOM: Other than relevancy, no.

THE COURT: I'll overrule the relevancy objection and I'll admit it as Exhibit D.

[39](Exhibit D admitted)

BY MR. DUNHAM:

Q The Bank of Nashville was also a potential lender; is that correct?

A Yes.

Q And you agree that the Bank of Nashville never committed to funding the purchase price of the property, correct?

A No.

Q That's incorrect?

A I wouldn't agree with the statement that you made.

Q And why do you disagree with it?

A Because it's inaccurate.

Q And why is it inaccurate?

A It's not true. I don't know how else to say that.

Q Is it your position that Bank of Nashville was willing to fund the purchase price?

A It's my position that the Bank of Nashville had offered terms for financing, yes. Two different scenarios.

Q And when was that offer received?

A I don't remember the specific date. I got them in person actually out touring the [40]neighborhood surrounding the property.

Q When did you apply for funding through the Bank of Nashville?

A I don't remember the specific date. Well in advance of December 15th.

Q So, I now pull up Exhibit E. This appears to be an email from you, Mr. Ritzen, to Chris (inaudible), do you remember those emails?

A Yes.

Q Now, as of December 12 at about (inaudible) time, it appears there were still concerns at Bank of Nashville, correct?

A Concerns, I was working through some concerns with Bank or Nashville and juggling a difficult seller.

Q So what were the concerns with Bank of Nashville?

A The difficult seller.

Q Is Bank of Nashville evolving as a potential lender at this point?

A Correct.

Q So, as of December 8 you were still looking into ACS as a possible lender, and as of December 12 Bank of Nashville was a potential lender, and also, you had Amber Lane Properties, which was still (inaudible) [41] the purchase price. Is that correct as of December 12?

A Yes. I was seeking multiple financing methods to figure out - what it ultimately boils down to is each scenario would have led down a different development path.

Q For Bank of Nashville, though, they were going to require financial documents from a company called Provide Homes (phonetic); is that correct?

A If you have their term sheet and can refresh my memory then -

Q (Inaudible) in your email, please make sure (inaudible) Homes Financial, Bank of Nashville and ACS as soon as it is available. That seems to lead me to believe that it had not yet been furnished as of 11:48 a.m. on December 12.

A I take that line as it was very important for Thrive Homes to submit that financial information.

Q And, to your knowledge, that had not been done at the time you wrote the email?

A I don't know if it had been or not by that time but I knew that in that scenario Thrive Homes was going to be buying lots and they would be constructing the homes,

doing the vertical construction, and that any lender, regardless of the situation, is going to want to know that the company that is going to be building the homes is [42]actually a reputable, financially viable construction company.

Q It is true that on December 12 at 11:48 that conditions of Bank of Nashville and ACS closing on any funding, one of the conditions was financial information from Thrive Homes? Is that true?

A Yes. The same way that one of the conditions would have been my own personal financial information.

Q And you had supplied all that information already?

A Yes, I know when I supplied something to them.

MR. DUNHAM: Your Honor, no more questions of this witness.

THE COURT: Redirect?

MR. HALTOM: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. HALTOM:

Q Will you please tell the Court what you meant by "a difficult seller"?

Appendix B

A A seller that all signs point to as intentionally delaying or not providing documents in order to avoid closing.

Q And can you explain what (inaudible) [43]to avoid closing?

A There was a long letter campaign, I think starting in November, from the seller's counsel at the time. At certain points they refused to close; they refused to acknowledge the extension options contemplated in the contract; they attempted to, at one point, attempted to keep me from coming on the property for purposes of doing a Phase II environmental study. The refusal to provide the documents, refusal to correct documents, almost to the point - I don't think combative would be the right word but uncooperative would be a polite way of saying it.

Q When was the first time you saw closing documents for this transaction?

A The first documents we saw, not all of them, because the first time we received documents I think we only received three or four out of all the documents that they needed, none of which were sufficient, but I would say maybe a week before.

Q In terms of having funds - is there a reason why you were still dealing with financing up to that point?

A Just. to make sure that there's every sort of option we have. There's a long-standing relationship with some of the lenders we were working with. And -

Q Let me ask it another way. Was there [44]a reason why the financing had not been finalized then?

A Once we started to have push back from the seller, I feel I'm obligated to tell potential lenders this is what we're doing, this is the reason we have our relationships with the lenders that we do is because we play our cards face up with them and make sure that they're not going to be blind-sided by anything.

Q So, the seller's efforts to prevent closing, which is preventing you from finalizing your funds?

A Absolutely. Finalizing funds from a traditional lender.

Q But on the day of closing you had cash available to close this transaction?

A Absolutely.

Q With no financing involved?

A Absolutely.

Q And did you, in terms of the documents, (inaudible) showed you the contract, were the (inaudible) certificates provided?

A No.

Q Were signed documents indicating that the corporation had approved the transaction of this closing (inaudible).

A No.

Q So, in addition to the warranty [45]deed, which you previously mentioned, and new title exclusion policy issues, there were also missing (inaudible) certificates and missing authority documents?

A There were certain documents that had direct and obvious conflicts with them, statements that were untrue.

Q And at the day of closing did you ask the seller to produce those documents?

A I believe we asked them the day before, the day of and the day after.

Q And for purposes of this litigation, did you retain an expert who was going to testify in state court about those documents?

A Yes.

Q Are you aware whether the seller disclosed an expert in the state court litigation?

A I'm not aware of any expert on the seller's behalf.

Q So, do you think that if this matter proceeds to trial in a state court that you will be successful?

MR. DUNHAM: Objection, Your Honor, that's speculation and he's also now leading the witness. And number three (inaudible).

THE COURT: Your response to [46]the objection, Mr. Haltom.

MR. HALTOM: (Inaudible).

TH E COURT: I won't rule on the objection. Go ahead.

BY MR. HALTOM:

Q Tell me what you believe will occur if this goes to trial.

A I believe we'll win. We established the seller, Jackson Masonry, in leading up to I guess a couple months ago, whenever, prior to Bankruptcy leading up in preparation for (inaudible) filed four motions to compel. You know, one round of sanctions has been granted. We were seeking another round of sanctions and all signs pointed to them trying to delay by any means necessary in order to avoid a trial. And whereas we were pushing for a trial as quickly as possible in order to resolve this issue.

MR. HALTOM: I have no further questions, Your Honor.

THE COURT: Recross?

MR. DUNHAM: Just very brief, Your Honor.

Appendix B

RECROSS-EXAMINATION

BY MR. DUNHAM:

Q Mr. Ritzen, the motion for sanctions you're talking about, does that mean that the attorney was (inaudible).

[47]A Which sanctions are you talking about?

Q The sanctions motions. Is it your contention that Jackson Masonry filed for Bankruptcy because there was a sanctions hearing that was set to be heard on Friday; is that right?

A I'm sorry, which question are you asking me right now?

Q Let's ask the questions in a little bit more chronological manner. It's true that you (inaudible) Jackson Masonry filed for Bankruptcy to avoid a motion for sanctions that was on the docket for Friday (inaudible)?

A I believe they filed Bankruptcy to avoid the entire trial. I think it was a very convenient timing that they happened to do it 15 minutes before that particular motion, I think the fourth motion to compel and the second round of sanctions.

Q There was an evidentiary hearing, correct? There was an evidentiary hearing but the motion to compel was just for the production of more documents to prepare for trial; is that correct?

A I think you may be asking questions a little beyond my legal expertise but the fourth motion to compel and what was filed explains exactly what its intent was.

Q I want to dig down a little bit [48]because it's actually important (inaudible) your papers. The motion to compel related to documents that claim to be subject to (inaudible). Is that correct?

A The documents, the motion to compel had to do with documents that were redacted, that the seller took one stance of the - took conflicting stances at different times during the trial in regards to what role Mr. Keen Bartley or Bartley Keen, what his role was and who he was working for. And so I believe the fourth motion also dealt with them producing the documents that had been redacted, based on their own testimony of him being the title attorney. They were supposed to be representing both sides and I believe it also had to do with subpoenaing him for deposition.

Q You would agree then that the motion to compel and the motion for sanctions was because Jackson Masonry had asserted that certain information and documents were subject to attorney/client privilege and Ritzen disagreed with that?

A No. The motion to compel was because at one time Jackson Masonry said that the documents were attorney/client privilege and another time they said they weren't attorney/client privilege because he was the title attorney. And they flip-flopped back and forth. And so I believe that

the purpose of the motion to compel was to [49]clarify and the fact that Bartley Keen, Keen Bartley was the title attorney and then we come to find out that he was the title attorney that was supposed to be representing both sides towards closing and at some point he was solely representing Jackson's interests.

Q And the sanction motion was you were trying to get sanctions because you believed sanctions were appropriate because Jackson Masonry's attorneys produced documents that they claimed were subject to attorney/client privilege; is that correct?

A Because they finally provided documents that should have been provided no less than six months prior to that. And then when they finally did provide them, some of them were redacted.

Q You don't dispute that the reason those documents weren't produced is because there was a claim of attorney/client privilege. I'm not asking you to agree with it, I'm just saying that that's the reason why they weren't produced.

MR. HALTOM: Your Honor, I'm going to object. He's asking the witness to opine about those legal opinions which were included in pleadings in the state court action. He's already testified to the facts that he's aware of but a lot of questions are legal opinions of what counsel may or may not have included in pleadings. It's [50]not appropriate.

THE COURT: Response to the objection.

MR. DUNHAM: Your Honor (inaudible).

THE COURT: I won't rule on the objection and the witness doesn't have to answer. So, go ahead.

BY MR. DUNHAM:

Q The last question is that Ritzen Group filed a motion for summary judgment that was heard approximately a month before the hearing on the motion to compel? Do you recall that in 2016 the Ritzen Group filed a motion -

A I don't remember the specific dates of the motion for summary judgment but yes, it was done; the motion for summary judgment was heard.

Q (Inaudible) before the Bankruptcy?

A Whatever the dates in here are.

Q What was the hearing date on that motion for summary judgment? The parties stipulated that in 2016 there was a hearing on the Ritzen motion for a summary judgment, would you agree with that?

A Yes.

Q And Jackson Masonry did not file for Bankruptcy before the summary judgment hearing, correct?

A Yes.

MR. DUNHAM: Nothing further, Your Honor.

[51]THE COURT: You can step down. Thank you. Call your next witness.

MR. HALTOM: Your Honor, I'd like to talk about the schedule that had been filed.

THE COURT: I'll let you call your next witness. If you've got one, call him.

MR. HALTOM: Sure. Mr. Jackson, please.

(Witness sworn)

CLERK: Please be seated and state your full name for the record.

MR. JACKSON: Roger Suitor Jackson.

THEREUPON came

ROGER S. JACKSON

Who, having been first duly sworn according to law, testified as follows:

Appendix B

CROSS-EXAMINATION

BY MR. HALTOM:

Q Mr. Jackson, did you review the Bankruptcy Schedules that were filed in this action on behalf of Jackson Masonry, LLC?

A Yes, sir.

Q And are they accurate and true, to the best of your knowledge?

A Yes.

Q All right, I'd like to direct [52]your attention to what is on the screen, which is a summary of assets and liabilities of nine individuals. It's already been stipulated that this is admitted. Is it accurate that on (inaudible) Wednesday that the assets of the company are $2,544,000?

A Yes.

Q And do you know whether that includes the equity in the property that is the subject of this dispute?

A Off the book equity?

Q Yes, off the book equity.

A No, sir.

Q And at the bottom of that, is it accurate that the liabilities of the company are $1,545,000?

A Yes.

Q So, is it correct that the liabilities of this company do not exceed its assets?

A Yes.

Q And that the company has at least $1 million of net worth?

A I don't think that's right.

Q Please explain how it's not correct.

A Well, on our in-house statement, our book value doesn't show that much. That would have to include the off the book equity.

Q But this statement says the company [53]has $1 million more of assets than liabilities, correct?

A Yes.

Q And that does not include equity in the property that's the subject of this dispute, correct?

A It depends what equity are you speaking of, the appraised value equity versus book equity?

Q Let's break that down. This document indicates the company has $1 million more in assets than liabilities, correct:?

A Yes.

Q It's already been admitted in evidence. I'm going to go to Exhibit 9, which is docketed at No. 76, Page 5. This is a statement about the amount that you included in your schedules related to the property. And you listed 1200 4th Avenue North at $600,000; is that correct?

A Is that the value or the appraised?

Q I'm asking did you indicate in this Bankruptcy pleading that you value the property at $600,000?

A Yes.

Q And within the last two years, do you have an appraisal of this property of $1.2 million?

A Yes, sir.

Q And did you enter into a contract with (inaudible) to sell the property for $1.5 million?

A Yes, sir.

[54]Q And did another company offer to buy the property for $1,950?

A Yes, sir.

Q So, if you subtract the $600,000 that is listed in the schedule at the low end, there's at least $600,000 equity in this property; is that correct?

A Yes.

Q And that with Ritzen there's $900,000 equity in this property; is that correct?

A Yes.

Q And that would be $1.95 million offer and there's $1.3 million equity in this property?

A Yes.

Q And so, if you add that to the $1 million of net worth that this company currently has, it has at least $1.6 million of assets over liabilities; is that correct?

A If my math is right.

Q And the high end has $2.3 million of assets over liabilities; is that correct?

A Yes.

Q With respect to when you filed Bankruptcy, weren't you paying your employees on time when you filed Bankruptcy?

A Yes.

Q Were you paying your unsecured [55]creditors, your normal bills, on time when you filed Bankruptcy?

A I was filing them industry standard time.

Q So, you were paying them on time within industry standards?

A Yes.

Q Were there any bills you were deficient in, that were not being paid on time?

A No.

Q So, when you filed Bankruptcy all your payroll, bills and other expenses were getting paid within industry standards?

A Yes.

Q So, you had more assets than liabilities; is that correct?

A Yes.

Q And you were paying your debts on time when you filed Bankruptcy; is that correct?

A Yes.

MR. HALTOM: I'd like to move to what's been marked as Exhibit 8. This is Docket No. 74, Debtor's State of Financial Affairs.

THE COURT: Mr. Jackson, let me know when you've reviewed this - how old is this document?

THE WITNESS: I think this document [56]was revised, wasn't it? I think this document got revised. This was the initial filing document.

MR. HALTOM: I'll represent to the Court that this document has not been revised. It's been stipulated into evidence.

BY MR. HALTOM:

Q Mr. Jackson, did you indicate that as of the filing date that your gross revenues were $749,000 in this document?

A Yes.

Q And that for 2015 that your gross revenues were $755,000?

A Yes.

Q And that's not correct, is it?

A No, sir.

Q How much were your gross revenues for 2015?

A $4.9 million.

Q And how much were your approximate monthly revenues from $4.9 million?

A I'd have to do the calculation. It would be that much divided by 12.

Q Somewhere in the $400,000 a month range?

A Yes, sir.

Q And the year before you listed that [57]your gross revenues were $441,000, but that's not correct either, is it?

A No.

Q How much were your gross revenues, approximately, in 2014?

A I'm sorry, it says from 1/1/14 to 12/31/14.

Q 2014, general gross revenues.

A Yeah.

Q How much were those?

A $5 million.

Q Were you profitable in 2014?

A Yes.

Q Were you profitable in 2015?

A Yes.

Q And in terms of 2016, this number is not correct either, this $749,000?

A That could be right. I'm sorry.

Q Had you been talking about filing Bankruptcy in 2016?

A No.

Q Would you like me to refer to the testimony of your meeting of creditors where you testified that you had been profitable in 2016?

A Oh, when the filing was done, yes.

[58]Q Are you now revising your answer to indicate that you were profitable in 2016 as of the filing?

A Yes.

Q So you were profitable in '14, you were profitable in '15, and as of the filing in 2016 you were profitable?

A Yes. Below industry standard though.

Q Below industry standard. Tell me about that. Did you file Bankruptcy - did you become more profitable even though you had already filed?

A No, sir.

Q Let me move to your Docket No. 5. This is your list of 20 largest creditors. Tell me once you've had a chance to review this document.

A Okay.

Q Let's go down to (inaudible) Bank, which you list as having an unsecured claim of $228,000.

A Yes.

Q (Inaudible) did not have an unsecured claim, did they, because that property is worth at least $1.2 million; isn't that correct?

A Yes.

Q So, this document includes $228,000 of unsecured claims, which is not accurate, correct?

A Yes, sir.

[59]Q All right, now let's take a look at - you' re a company that has $5 million in revenue, correct?

A I'm sorry, say again.

Q You had $5 million in revenue.

A Last year?

Q Last year.

A Yes.

Q And you bring in about $400,000 a month, correct?

A Yes.

Q And excluding (inaudible) Bank, you only have about $200,000 of unsecured debt; is that correct?

A Does it total it on there?

Q $233,000.

A Yes, sir.

Q Is that the correct amount?

A Yes, sir.

Q And some of these 20 largest claims include a claim to Basnell Company (phonetic); is that how you pronounce that?

A Yes, sir.

Q For $228.

A Right.

Q And the claim for Tires Discounts of $862.

[60]A Yes.

Q And a claim to Piedmont Natural Gas for $789?

A Yes.

Q What is preventing you from paying these bills in the normal course of business?

A In the normal course of business?

Q Yes.

A Lack of funds.

Q You say you're profitable, right?

A Yes, sir.

Q And you're paying the bills in the normal course of business, right?

A Yes, sir.

Q Tell me about how you have a lack of funds then.

A Well, we just haven't had the cash to operate. We've had -

Q I'm trying to understanding the conflicting testimony. You said you are paying your bills but now you're saying you don't have available funds. Tell me why you don't have available funds.

A Legal fees drag down our balance.

Q Legal fees related to the Ritzen lawsuit?

A And there's another lawsuit as well.

[61]Q Tell me about this other lawsuit. When was it filed against you?

A January.

Q Did you ever file an answer in that lawsuit?

A Not to my knowledge.

Q Did you ever appear in that lawsuit?

A No.

Q Have you otherwise defended that lawsuit?

A No.

Q Let me go to Exhibit 9, Your Honor. This is amended schedule. Mr. Jackson, I'm going to go to Page 1, and if

you'll take a look, is it correct that you had $170,000 on hand when this was amended on April 29?

A Yes.

Q And so you have a total unsecured debt of $233,000 and cash on hand of $170,000?

A Yes.

Q Let's go to Page 2. Page 2 indicates your Accounts Receivable. And in this case you have accounts receivable of $749,000.

A Yes.

Q And about how much of that is currently outstanding?

A How much of that is [62]currently outstanding?

Q Do you have an idea of what - is that amount accurate? Has some of it been paid?

A I'd say it's accurate. Some of it has been paid.

Q Is any of that bad debt?

A Not to my knowledge.

Q Do you anticipate collecting all of those funds?

A Hopefully.

Q Is there any reason to believe that those funds won't be collected?

A No.

Q So, you have $170,000 cash on hand and $750,000 accounts receivable that you believe are collectible, and those two together are about $900,000.

A Yes.

Q And you have total unsecured debt or $233,000.

A Yes.

Q And you have at least $2 million of equity in the company; is that correct?

A That's what you say.

Q Well, I don't want - it's not me testifying. Remember a moment ago we talked about you had at [63]least $1 million equity in the company. Is there any reason why these funds can't go to pay unsecured creditors and the debts of the company?

A Other than other obligations I have as well.

Q And what are those other obligations?

A Payroll, normal expenses of running a business.

Q Are those expenses going to be more than what you have in your cash on hand and accounts receivable?

A I can't speak for that; I'm not sure.

Q Do you anticipate that you're not going to be able to pay those in the normal course of business?

A There's that possibility.

Q Tell me about why there's that possibility.

A I just don't have much funds available and we have low margins on the ongoing jobs that we have now.

Q Are those jobs profitable?

A Hopefully, yes. They are projected to have a little margin, though.

Q So why did you file Bankruptcy then?

A Because I didn't have funds available. I had the margins on my job that were below what we wanted to be and we were incurring a lot of legal fees.

[64]Q All right, let's talk about the - you say you have lack of funds available. We'll stay on No. 8. We'll go to Page 3. Tell me about - who is Peggy Jackson?

A That's my wife.

Q And what is her relationship with this company?

A She works for the company.

Q And is it accurate that you paid her $104,000 one week before filing Bankruptcy?

A Yes. I also borrowed the money to pay her from Franklin Synergy.

Q So you borrowed the money to pay your wife $100,000 who is an employee of the company; is that right?

A Yes.

Q And then filed Bankruptcy a week later.

A Yes, among other people.

Q Tell me about those other people.

A $60,000 in legal fees. I had to pay my ex-wife to get the lien released so I could borrow the money from mortgaging the property.

Q All right, let's talk about that ex-wife issue. Your ex-wife, was she, once upon a time, the owner of this company?

A Yes.

[65]Q And then did you all get divorced?

A Yes.

Q And you reached an agreement with her and said you'd buy out her interest?

A Yes.

Q And as part of that agreement she had a lien against the property at the Old Hickory Boulevard location?

A Yes.

Q And that agreement allows you to pay that debt over time?

A Yes.

Q And that payment was going to go for seven or eight years?

A Yes.

Q And that debt was not due when you filed Bankruptcy, was it? You still had payments that were supposed to be made in the future, right?

A Yes.

Q But you borrowed money a month before filing Bankruptcy to pay that debt early, correct?

A She had a lien on my property and the only way I could borrow the money was to get the lien released.

Q Let me break that down first. A [66]month before filing Bankruptcy you borrowed money to pay off her debt early, correct?

A Yes.

Q And that payment was made in March of this year, correct? Or thereabouts?

A Yes.

Q Within a month of you filing Bankruptcy?

A Yes. I took out a mortgage on the property and borrowed the money and just distributed the debt.

Q So, before filing Bankruptcy you borrowed more money in order to pre-pay a debt that had been owed to a former owner; is that correct?

A Yes, just rearranging the debt.

Q All right, I've pulled up what is a Release of Deed of Trust, which had been recorded in February, about six weeks before you filed Bankruptcy. Is this the release of the lien that you referenced?

A Yes.

Q And did you execute any other documents related to this transaction with Ms. Jackson?

A I quitclaimed the deed to the name of the company, trying to get more assets into the company.

Q Let me make sure I understand that. You moved property into the company a month before [67]filing Bankruptcy in order to get more assets into the company?

A So I could borrow the money and rearrange the debt.

Q So, is this the quitclaim deed where you and Ms. Maria Jackson are transferring to a personal ownership of Old Hickory Boulevard into the company?

A Yes.

Q So, it would be part of the estate in Bankruptcy?

A Yes.

Q And at the time were you contemplating filing Bankruptcy?

A Yes.

Q Last year, related to the Old Hickory Boulevard property, and let's talk about that for a quick moment. Did you, once upon a time, operate the business at the Old Hickory Boulevard property?

A Yes, in the early 2000's.

Q And after the closing date with Ritzen did you enter into an agreement for ingress and egress from that property, so you could access the property?

A Yes, I bought an access road to the back side.

Q Had the closing occurred on December [68]15, 2014, you had nine days to move, correct?

A Yes, sir.

Q And where were you going to move your company?

A I didn't know.

Q Was it possible on the day of closing that you would have moved it to your other property located at Old Hickory Boulevard?

A It's really not suitable.

Q Well, then tell me why, on December 26, 11 days after the closing of this document, the closing of the contract between Ritzen and Jackson, you executed an agreement for ingress and egress to the property? Were you contemplating on December 26 of potentially moving your company to that location?

A No, sir.

Q So then why did you do this?

A Just to add value to the property because the property is split by a creek and you can't access the back side without that easement. And it wouldn't be a very good piece of property - I was trying to sell the property and I was just trying to add value to the property.

Q Let's talk about about the 49th Avenue property. When did you decide that you were not going to - what is your intent with that property? Are you going to [69] stay there? Are you going to sell it? What do you want to do with it?

A I want to stay there.

Q When did you decide you wanted to stay there?

A After George couldn't come up with the funds for the closing.

Q And when was that?

A In December, after December 15th.

Q So, for almost 18 months now you've decided you want to stay there.

A Yes, sir.

Q And what were you going to do if the state court ordered you to sell that property?

A I'd be in bad shape.

Q And was that part of the reason that you filed Bankruptcy in the beginning, that the state court would adjudicate that issue?

A There were a lot of reasons.

Q Was that one of them?

A I wanted to get away from the legal fees and -

Q I'd like you to answer my question. Is that one of the reasons -

A No.

[70]Q No, it had nothing to do with it?

A No.

Q So, what will happen if this Court (inaudible) and orders the property sold?

A I'll be in bad shape.

Q You just testified a moment ago that you decided in December 2014 you were staying there.

A After the deal fell through, yes.

Q And so you're now telling me that this Bankruptcy has nothing to do with the state court trying that issue?

A No, sir.

Q Would you agree with me that you filed Bankruptcy six business days before that trial was set?

A I'm not sure about the dates but that sounds right.

Q But if the state court record reflects that date, would that be accurate?

A Yes, sir.

Q And you filed Bankruptcy on the morning of a hearing in the state court.

A I think so.

Q And you filed Bankruptcy three days after getting a denial of your motion for summary judgment.

A That sounds right.

[71]Q And you filed Bankruptcy a few weeks after getting an order for sanctions against the company in that state court action?

A Yes.

Q Speaking of that state court action, I'm going to pull up the Order granting Plaintiff's Motion for Sanctions. Did you recall whether you've seen this Order?

A Yes.

Q I'm going to go to the last paragraph before the actual Order. This document has been stipulated and I'm going to read into the record that after considering the motion for sanctions, Defendant's response was filed in opposition to the motion (inaudible) and the arguments of Counsel, the Court finds Plaintiff's Motion for Sanctions, a Rule 37, is proper and warranted.

Defendant failed to provide full and candid responses to Plaintiff's (inaudible) in discovery request. Roger Jackson had a responsibility, on behalf Jackson Masonry, LLC, to produce all responsive documents and the documents should have been produced much earlier than November 23, 2015. The subject documents were relevant because the buyers, Plaintiff Buyer's obligations to provide the funds for closing under the contract produced in 7C do not arise until the Defendant Seller's satisfactory compliance with providing closing documents pursuant to [72]the contract provision in 7D.

Defendant's failure to produce the documents until after depositions and summary judgment (inaudible) material has unnecessarily increased the cost of this litigation, the late resolution and waste of judicial resources.

Were you aware the documents that had been sought by Ritzen Group had not been produced?

A No, I was not.

Q I'm going to read into the record before, because it's important for the timing, one -

THE COURT: Are you doing this for the witness to discuss it or for my benefit?

MR. HALTOM: For both.

THE COURT: I've read it, Counsel. You don't need to read it for me but if you have a question about something that's in here, point the witness to it and ask him to expand on it.

BY MR. HALTOM:

Q Mr. Jackson, were you aware that the state court ordered you to pay attorney's fees, ordered the company to pay attorney's fees, or not cooperate in discovery?

A Yes.

Q Are you aware of whether or not [73]that specific dollar amount has been reduced to a judgment?

A No.

Q So, that issue still is pending before the State Court, is it not?

A I would assume.

Q Did you file an appeal of this order?

A I'm not sure.

Q Well, if it's not on the state court docket, would it be accurate that there was no appeal then, for the state court's record to be correct?

A I assume that.

Q So, if this matter, the stay is lifted, the state court is still going to have to address the issue of attorney's fees that's already ordered?

A I don't know how that works, James. I mean I'm not -

Q Going back to the state court action, were you aware that a motion to compel was ending when you filed Bankruptcy?

A No, sir.

Q Had you been told that there was a hearing on that date?

A I don't think so.

Q You were not aware that there was a request to take a deposition of an attorney?

[74]A I don't remember the particulars about what was going on. I just remember there was some action that would be taken, yes.

Q So, let me just make sure I understand the (inaudible) of you filing Bankruptcy. (Inaudible).

MR. DUNHAM: Your Honor, I'm going to object. It's redundant at this point. The Court is already aware. This testimony has already been provided. Now we're going to be duplicative. He requested a summary of Mr. Jackson's testimony.

THE COURT: Response to the objection, Mr. Haltom.

MR. HALTOM: I'll hold it for closing, Your Honor.

THE COURT: That's a good idea. Thank you. Please go ahead with your examination. That wasn't a statement that you have to quit. It was a statement don't summarize.

MR. HAL TOM: If you will give me one quick moment, Your Honor.

THE COURT: Sure.

BY MR. HALTOM:

Q Mr. Jackson, I'm going to pull up what has been premarked as Exhibit 11. Did you buy a almost $54,000 2016 Chevy Silverado Truck, 350D, on February [75]24, 2016?

A Yes, sir.

Q And the first payment was due on March 25, 2016?

A Yes, sir.

Q And the first payment was due the day after you filed Bankruptcy?

A Yes.

Q So, the company had enough assets to buy a $54,000 truck one month before filing the Bankruptcy?

A I financed it.

Q Was the company in sufficient financial strength to afford buying a $54,000 truck a month before filing Bankruptcy?

A Yes.

Q So, you were a strong enough company, financially, a month before filing Bankruptcy, to buy a new vehicle? I think that's already been asked and answered.

A Yes, sir.

Q So, let me refer your attention then to what's been pre-marked as Exhibit 11 - excuse me, 12 – is this a purchase agreement for a second brand new 2016 Chevy Silverado 350?

A Yes, sir.

Q And the price tag on this one [76]was $42,000, almost $43,000?

A Yes, sir.

Q And you bought it on the same day as the other truck?

A Yes, sir.

Q And those two together were over $100,000 of new vehicles a month before filing Bankruptcy?

A Yes, because I felt like I couldn't get the financing after Bankruptcy.

Q You couldn't finance it after Bankruptcy. And is there a particular reason why you needed two brand new trucks?

A Yes, sir, because my fleet has got a lot of age on it. They average like 400,000 miles and I was trying to upgrade my trucks.

Q I can pull up your schedules but in the interest of time, how many other trucks do you have currently for this company?

A Ten, 15.

Q So, with 10 or 15 trucks, was there a dire need a month before filing Bankruptcy to buy two new trucks?

A Yes, sir. If you'd have seen the trucks I had you would agree with me.

Q But you were financially strong [77]enough that that wasn't a problem.

A Yes, sir. I didn't think it would be an option after.

Q Going to the Old Hickory Boulevard property for a minute. We previously talked about equity you have in the 49th Avenue property being somewhere between $600,000 and $1.3 million.

A Yes.

Q The Old Hickory Boulevard property, how much equity do you have in that property?

A The bank that I got the money from had an appraisal done at 340.

Q Is that property for sale right now?

A Yes, sir.

Q And how much are you asking to sell it for?

A Five hundred.

Q And how much is the lien on that property?

A 238.

Q So, give or take, you have an additional $250,000 in equity in that property?

A Yes, sir.

Q And if that property sells, which you've asked the Court to do it, you would have more money from [78]the sale of that property than you owe to unsecured creditors?

A It's about the same.

Q Are you driving one of those vehicles that you purchased?

A Do I drive? Sometimes.

Q How frequently?

A Once a week.

Q So, it's a company asset, not something you individually are driving?

A Yes, sir.

MR. HALTOM: I think that's it, Your Honor.

THE COURT: Okay. Mr. Dunham.

MR. DUNHAM: Yes, Your Honor. I anticipate that my cross will take approximately 30 to 45 minutes. I just wanted to say that in case the Court wants to take a break.

THE COURT: We can take a little break, if you want to, and we'll come back - I'd like to take a break for lunch

if that's all right. I would keep going but let's taken 10 minutes then. It's noon so let's be back at a quarter after. Fifteen minutes.

(Lunch break 11:58a to 12 19p)

THE COURT: All right, cross-examination.

[79]MR. DUNHAM: Mr. Jackson, I'll remind you that you're still under oath.

THE COURT: I guess this is direct examination.

MR. DUNHAM: Your Honor, may I take this on cross?

THE COURT: I know, I know, but technically it's direct examination.

DIRECT EXAMINATION

BY MR. DUNHAM:

Q Mr. Jackson, first, what's your position with Jackson Masonry?

A I'm the owner.

Q How long have you been the owner?

A Since '98.

A Could you just give the Court a brief description of -

THE COURT: Hang on just a second. We have a small tech problem. One minute. We're back. Go ahead.

BY MR. DUNHAM:

Q The Court doesn't need a narrative on what the company does but just briefly explain how Jackson Masonry makes money.

A We, basically, do masonry [80]subcontracting work. We do commercial, industrial, institutional buildings. We work for general contractors. We give them a turn key price to furnish and install all the masonry work.

Q And describe the size of the operations from 1998 to now.

A Various sizes from small to large. We have a large group of people that we work for that we just do any size up to a million dollars or two million dollars or one thousand dollars.

Q And Jackson Masonry was the sole masonry contractor for the Pinnacle Building right downtown; is that right?

A Yes, sir.

Q How many employees do you have?

A Approximately 45.

Q And when I refer to a document called the company profile, do you know what I'm referring to?

A Yes, sir.

Q Have you seen that document before?

A Yes, sir.

Q I'm going to pull it up here - I'm sorry. This is the company profile that's been marked for identification purposes as Exhibit A. have you seen this document before?

[81]A Yes, sir.

Q I'll represent here that it's an 8-page document, the eighth page being the certificate of service. Did you see this document before it got filed?

A Yes.

Q And is everything contained in the company profile as accurate as you knew it to be?

A Yes.

Q Do you wish to incorporate the terms of the company profile into your testimony today?

A Yes, sir.

Q You'll recall in the profile that it does set forth some of the reasons for filing, and is it your testimony that the reasons for the filing are contained in the profile, that those are accurate?

A Yes, sir.

MR. DUNHAM: Your Honor, I'd like to admit Exhibit A, what's marked for identification purposes as Exhibit A, into evidence as Exhibit A.

THE COURT: Any objection to the admissibility of Exhibit A?

MR. HALTOM: No, Your Honor.

THE COURT: All right, Exhibit A is admitted.

(Exhibit A admitted)

BY MR. DUNHAM:

Q In the profile you talk about the Jackson Masonry business as a family - Jackson Masonry doesn't sub out all its job, instead it has its core employees. Explain that business model a little bit.

A It's just something that has evolved over time that people that work for me tend to stay with me for a while. I try to treat them right and pay them well, and most of them have been with me for like 15 or 20 years.

Q And what's the annual revenue of Jackson Masonry?

A $5 million last year.

Q I know that there was a discussion before about the statements and schedules that were filed that showed a gross sales of 400+ thousand dollars. Was that accurate?

A I think so.

Q The document that was shown to you showed gross sales of less than $500,000.

A Yes.

Q And is that accurate?

A No.

MR. DUNHAM: It's been admitted into evidence, Your Honor, but there has been the transcript from the meeting of creditors, on Page 26, evidence is that [83] Mr. Jackson has admitted prior to that that number is inaccurate.

BY MR. DUNHAM:

Q Number 10, was there any intent on your part to deceive anybody when you listed the gross sales being less than $500,000?

A No, sir.

Q And you submitted cash collateral budget for the Court that shows that there is a monthly revenue of about $400,000.

A Yes, sir.

Q Has Jackson Masonry ever lost money in a year?

A Yes, sir.

Q All right, describe this period of time recently.

A 2008, 2009, 2010, 2011 and 2012.

Q All right, what happened?

A Just the economy went bad and I did everything I could to keep all my people busy and had to take jobs at lower margins and just tried to make it.

Q Did those years where it lost money, did that give you an ability to recognize some of the warning signs?

A Yes, sir. During that period of time [84]I contemplated Bankruptcy then and was just able to stave it off and eek through to make it to where we did now today.

Q Did you see warning signs prior to filing Bankruptcy now?

A Yes.

Q So what was different between 2012 and now?

A We made money, when we started making money the last few years, it just wasn't a lot of money. Then I started looking at these looming litigation fees and, you know, bad cash f l ow, and that's what - I could see the signs.

Q As one of those signs, when you go and execute a job and you've got a price in the contract, give me the range of what the industry would say is a good projected operating margin.

A About five percent.

Q At the time of filing, when you looked at the existing 16 contracts, what was the estimated profit margin there?

A Less than two percent.

Q As a business owner, what does that tell you about the sustainability of the company, the risks?

A It tells me there's going to be a lot of risks for my cash flow.

Q Now, in order to avoid Bankruptcy filing, what did Jackson Masonry do?

A Moved the property into Jackson Masonry's name and tried to restructure some debt.

Q On the restructuring of debt point, let's spend a little time talking about that. Mr. Haltom also asked you about

that. Let me summarize a little bit here and you tell me if I'm wrong. Prior to Bankruptcy, in the months before, there was a $238,000 credit line that was extended from Franklin Synergy to Jackson Masonry; is that true?

A Yes.

Q Explain why was there a need for there to be funding in the amount of $238,000.

A It was basically just to restructure debt.

Q Explain what you mean there.

A My ex-wife had a lien on the property at 657 and it was always my intent -

Q 657 is the Old Hickory Boulevard property.

A Yes, sir. And I wanted to get that lien released, I had to get that lien released so I could borrow the 238 to pay back other notes that were due and to help supplement legal fees.

Q Let's go through how you used the [86]238. There was $22,857 to John Harris, right?

A Yes.

Q And John Harris is a lawyer who represented you in the state court action?

A Yes, sir.

Q And $17,592 to Tim Crenshaw?

A Yes, sir.

Q Also a lawyer in the state court action?

A Yes, sir.

Q And there is $45,000 went to Maria Jackson and I want to ask you about that. First of all I why did you owe Maria Jackson any money?

A That was the remainder of the money that I had owed her from the divorce for the buyout of the business, her portion.

Q And so you had been making payments to her over time.

A Yes, sir.

Q Now, in the motion that was filed by Ritzen in this case, there was an allegation that, if you look at Paragraph No. 53 here, (inaudible) weeks before applying Bankruptcy. Jackson Masonry obtained approval and consent for a (inaudible) payment or other preferential treatment from (inaudible) release from lien against the 49th Avenue property. Explain your response to that. What's [87]your response to that paragraph?

A Yes, I paid her the balance of the note that I owed her and, in turn, she released the property.

Q And that gave Franklin Synergy a first lien position?

A Yes, sir, and that gave Franklin Synergy first position.

Q And prior to the $238,000 line of credit, who had another security position besides your ex-wife?

A Civic Bank.

Q And in connection with the Franklin Synergy funding, what did Civic Bank do?

A Civic Bank released the lien because they had it - it had been a lien from a previous note that I had with them, and we had a verbal agreement, and I had tried to borrow money from Civic for this and I couldn't arrange financing with anybody, so I told them, if I go to another institution, will you release this property because you have the other one over-collateralized? And they said, yes, they would.

Q When you say the other one are you referring to the 49th Avenue property?

A Yes, sir.

Q Civic has the first position there?

A Yes, sir.

[88]Q And the debts were a lot less than what the value of the property is?

A On 657? Yes.

Q Out of curiosity, where did you get the 238 number, where did that come from?

A Franklin Synergy had an appraisal done on the 657 Old Hickory property and it came out at 340, and they would only lend me 70 percent of the appraised value.

Q And Civic Bank had a lien on 49th, is the property worth a lot more than what Civic is owed?

A The appraisal that they had on it was $1.2 million.

Q And the expectation is that it's worth more than that today, right?

A That's what they say.

Q Now, there was also a payment that was discussed in excess of $100,000 that went to Patty Jackson. First of all, who is Patty Jackson?

A That's my wife.

Q Why was that payment made?

A It was an on demand note that she had lent the company in a couple of notes a few years ago, and she had called for it.

Q Where is that money now?

A It's in an escrow account. She has [89]set up an escrow account.

Q Why did she put it into an escrow account?

A Because you requested that we do it.

Q And it's being held there and, if the company needs it, the company can do something with it?

A I suppose.

Q Now, the $100,000, is that a legitimate debt that was owed to Patty Jackson or not?

A Yes, sir.

Q Explain how she became a creditor of the company.

A Well, we were having hard times and she, basically, bailed us out a couple of times to help us make payroll and to fund whatever we were doing at the time. On two different occasions she, basically, lent us $50,000. And we had a note to that effect.

Q Freeland Chevrolet got $10,000 of that 238, and I think we've already discussed that that was used as two down payments for two trucks.

A Yes, sir.

Q You've already testified about the need for those.

A Yes, sir.

Q And how about $20,000 going to our [90]law firm as a Bankruptcy retainer.

A Yes, sir.

Q And then there was $18,000 in remaining funds that went into the operating account.

A Yes, sir.

Q Was there any collusion with Civic Bank before the filing of the Bankruptcy in connection with Civic Bank releasing its deed of trust?

A No, sir.

Q And the quitclaim deed was also brought up during the examination by Mr. Halton, and I want to make sure I'm right here when I look at it. This is a quitclaim deed that was recorded on February 17, 2016. As you can see, it's been admitted into evidence. But this is a quitclaim deed from you and your ex-wife, right?

A Yes, sir.

Q Where you're actually putting property into the name of the company.

A Yes, sir.

Q So, before February, the company didn't have this asset on its balance sheet, I presume.

A Yes, sir.

Q And so now this quitclaim deed increased the value of what is now the Bankruptcy estate?

A Yes.

[91]Q What else did you do before you resorted to filing for Bankruptcy. Did you have other individuals in the masonry community that you could reach out to and get help?

A Yes, I consulted with Mr. Andy Sneed with WASCO, who had just recently filed a Chapter 11 as well.

Q What's your relationship like with Mr. Sneed?

A I worked for him for probably 10 years during the course of my career. I worked for his company. And it's a very close relationship.

Q You're aware that the WASCO case didn't turn out just as WASCO wanted it to, right?

A Yes, sir.

Q Now, let's talk about, in addition to consulting with Mr. Sneed and the Franklin Synergy line, how about

personally? What have you person ally done to try to avoid Bankruptcy?

A I've cut my draws down to a lesser amount than what I was receiving.

Q How much are you getting paid now that you have Bankruptcy?

A $1500 a week.

Q So, $6000 a month.

A Yes, sir.

[92]Q So, it's $72,000 a year. Do you have any personal knowledge of what the industry standard is to operate a $5 million masonry company?

A I don't really have good knowledge of that.

Q I'm going to turn now to what has been marked for identification purposes as Exhibit H. I'll let you tell me what this is.

A During the course of litigation, we just didn't have the money to fund it so I cashed in my IRA to bring more money into the company to keep it going.

Q How much did you put into the company?

A $78,000 or - the whole thing was 80 but I believe they penalized me some for drawing it. So, it was like $78, 000.

Q And when did this happen?

A I want to say September of last year or - is there a date on it? It was in the fall or winter of last year.

Q Now that (inaudible} show a profit for 2015?

A Yes.

Q How about the existing contracts when you filed? Explain the dynamic of trying to renegotiate contracts after you've already entered into them with [93]the contract owners.

A It's almost impossible after you've been awarded a contract and negotiate for more money, because usually everything - the owner has already arranged their financing, the general contractor has their price, and it's virtually impossible to go back and get more from them.

Q So, the company profile mentions trying to renegotiate the terms of the executory contracts, has that been happening?

A No, not really. I didn't talk to anybody.

Q Why not?

A I just didn't really - I would rather, I would rather keep the good reputation than try to unfulfill a contract that I have.

Q Since the Bankruptcy has been filed, are you aware of anything that's been happening with the executory contracts with the project owners?

A Yes. You've talked to several of the general contractors.

Q Let's talk about some of the contracts, the 16 of them. What's the problem with the ones that are going forward? Some of them have been assumed, obviously. There's a docket entry to that respect but if the contracts going forward are assumed then do you have concerns about [94]the sustainability of the business?

A Yes, sir.

Q So what is the plan, then, to make sure chat the company still survives, even if those contracts are assumed?

A Well, I'm hoping to, on future projects, incorporate more money into our estimates, just cut expenses the best we can, and try to operate more efficiently.

Q How has the Bankruptcy filing, so far, helped with say cost management of the existing contracts?

A It's kind of given us a little brief stay. You know, it's added some money to our cash flow.

Q When I talk about - we'll get to that in just a little bit. I'm not going to get ahead of myself. One of the reasons

we talked about the company profile was the contracts, and the other reason was the two lawsuits that faced Jackson Masonry.

A Yes.

Q Talk about the Clarksville lawsuit first, the lawsuit in which TMS (inaudible). Describe, first of all, what the basis of that lawsuit is.

A Yes, it's a lawsuit between the City of Clarksville is suing the general contractor and it's bonding company for defective work on the Clarksville Marina Project.

Q What was your role with the [95]Clarksville Marina Project?

A I was a subcontractor working for TMS and we, basically, installed stone and rip-rap stone down by the river.

Q What was the total cost of the project?

A $2.2 million.

Q And what was the total cost of your -

A Oh, I'm sorry, my portion was $2.2 million; I don't know what the total contract was for the city.

Q So, the Jackson Masonry sales were $2.2 million?

A Yes, sir.

Q And the lawsuit then goes from Clarksville against TMS and TMS against Jackson Masonry?

A Yes. TMS also has a lawsuit against the engineering firm, separate from that.

Q Talk about, if you can testify about the effect of that lawsuit on Jackson Masonry's projections with respect to the legal costs that relate to the TMS lawsuit.

A Yes, I'm afraid that legal fees alone could probably, and expert witness fees, could run a half a million dollars, barring the settlement. I don't know what kind of settlement there would be, too.

Q Has there been already - I know that [96]you testified that there has not been an answer filed but has there been legal work performed on the legal side of that case?

A Yes, sir.

Q Describe that work that has been performed.

A It's, basically, just letters from my prior counsel with the different parties that have been involved.

Q What's the total liability that is potential as a result of that Clarksville lawsuit?

A There was a report done by the city; the city had a professional report done, and it was suggesting that they -

MR. HALTOM: Objection to this testimony, Your Honor. He's testifying about what a city report estimated the cost to be as personal knowledge.

THE COURT: Your response to the objection.

MR. DUNHAM: Yes, Your Honor. I'll rephrase the question.

THE COURT: Okay, I won't rule on the objection but -

BY MR. DUNHAM:

Q I don't want to know what you base [97]your information off of, I just want to know from the company's standpoint, when you're in Bankruptcy what do you estimate the potential liability to be?

A A half-million dollars.

Q And that's in terms of expenses and fees and expert fees, judgment exposure -

A It could be a couple million.

Q Do you know what the stage of that litigation is right now?

A Not really.

Q Moving on to the Ritzen lawsuit. Let me first ask you, why were you thinking of selling that 49th Avenue property?

A It was during the time when we were really hurting for money and I thought that that might be a way to get it to help us out.

Q During that case, and there's an allegation that you didn't close because you wanted to sell to a third party. Can you speak to that?

A No, sir.

Q Let me make sure I'm clarifying dates here. So, March of 2013 was when the contractor signed, and there was a period until December 15, 2014 when there was rezoning and due diligence being performed.

A Yes.

[98]Q Let me ask you the question, why didn't Jackson Masonry close on the real estate deal with the Ritzen Group?

A He didn't show up at the closing with the money.

Q Did Jackson Masonry show up at the closing?

A Yes, sir.

Q Explain that to me. Was there a physical closing that took place?

A Well, it was scheduled to be at the attorney's office at 3:00 on the 15th and I showed up there.

Q Describe the extent to which Jackson Masonry had performed under the terms of the contract.

A I thought we had performed everything.

Q And the closing did not take place?

A No, sir.

Q And what's your opinion as to why the closing didn't take place?

A I don't think he could arrange funding.

Q After December 15th when closing didn't take place, there was discussion about an offer of $2 million during testimony, what was that about?

A It was just some unsolicited offers that people - there was a lot of people aware of the property sale [99]and after the closing they just brought unsolicited offers over to me.

Q Did you make any attempts to sell the property after December 15th?

A No, sir.

Q Why not?

A We decided to keep the property.

Q So, the question is why not move to Old Hickory Boulevard?

A It's too small. It's not the proper zoning.

Q If you had to move Jackson Masonry now, I know you said it would be (inaudible) on Direct Examination, but where could you move to?

A I have no idea.

Q Are you aware that in this case that - after talking about the Ritzen lawsuit, let's move on to what I'll refer to as the under-capitalization of the company. You testified that on a balance sheet your assets exceeded your liabilities, right?

A Yes.

Q From a cash flow standpoint, explain the cash reserve needs in the masonry industry.

A It should be two or three months because of unforeseen things that seem to always pop up.

[100]Q And two or three months of expenses, what is that for Jackson Masonry?

A That would be a million dollars.

Q Couldn't Jackson Masonry have gotten other financing if it was in a cash crush?

A No, sir. Our credit limit was maxed out and we tried on several occasions to get, before we got Franklin Synergy to give us the 238, we had tried several other people.

Q And so the Old Hickory, if that was to sell, would that assist with the cash reserve issue?

A Yes, sir.

Q The question that I have about the cash reserves, you said two or three months, a million dollars, how much did Jackson Masonry have when it filed for Bankruptcy, in cash?

A $4000.

Q And that was after payments to Patty Jackson?

A Yes.

Q Now, the timing for the filing, what consideration was given to the Ritzen lawsuit when the decision was made to file on the morning in which it filed?

A No more than all the rest of the stuff under-capitalization and other legal fees.

[101]Q The motion that is pending between Jackson Masonry and Ritzen in that lawsuit, what does that result

in from a conflict of interest standpoint with Jackson Masonry and counsel?

A Basically, it led me to believe that they wouldn't be able to represent me anymore.

Q So, who's going to go forward representing you with the risks (inaudible) that lawsuit?

A You will.

Q And the state court case, was that a judge trial or was that going to be a bench trial - I'm sorry, a bench trial or was that going to be a jury trial?

A Bench.

Q The plan in Bankruptcy, what is it? What are you proposing to pay your creditors when you file a plan?

A I'm hoping to pay them 100 percent.

Q When you filed the Chapter 11 what was your intent?

A Was to just reorganize the company and get it on more sound footing and build up my cash reserves.

Q What did you feel like would happen if you didn't build up those cash reserves?

A That I would go out of business.

MR. DUNHAM: Your Honor, if I may consult with my notes and co-Counsel.

[102]THE COURT: Sure.

(Brief pause)

BY MR. DUNHAM:

Q I believe you heard the opinion before about what Mr. Ritzen thought the outcome of the trial was going to be, what do you believe the outcome of the trial is going to be, whether it's heard in Bankruptcy Court or State Court?

A I believe that we'll prevail.

Q And I'll just ask, I know it sounds like a subtle thought, but was there any bad faith when you filed this Bankruptcy case?

A No, sir.

Q Last question, when you testified, filled out your statements and schedules, you showed that there was (inaudible) of future liabilities. Are you aware that that (inaudible) to zero dollar liability on the TMS lawsuit?

A Was I aware that it was not built into that?

Q Right, so that the statements and schedules that were filed -

A Oh, okay, yes. No, I wasn't.

MR. DUNHAM: No further questions.

THE COURT: Re-Cross.

RE-CROSS-EXAMINATION

[103]BY MR. HALTOM:

Q Mr. Jackson, you said that you filed Bankruptcy, in part, related to the state court litigation because of the conflict of interest with your Counsel. Can you explain to the Court what that meant and why that would influence your Bankruptcy filing decision?

A I was of the opinion that Ken (inaudible) getting deposed would have something to do with him continuing to represent us.

Q So, your Bankruptcy filing was filed, in part, because of (inaudible) related to the state court litigation?

A Yes.

Q And talking about the closing documents, did you see, inspect, or view the closing documents at any point in time?

A No, sir.

Q Do you have any personal knowledge whether those closing documents were ready?

A No, sir.

Q Who was going to testify at trial to affirm that Jackson Masonry was ready to close?

A I assume my counsel.

Q Your counsel was going to testify. Anyone else besides your counsel?

[104]A No, sir.

Q So, besides your counsel, you had no way to prove that Jackson Masonry was ready to close?

A They were the ones that were handling the closing documents.

Q A moment ago you mentioned that you did not talk to anyone else about selling this property. Didn't you, in fact, enter into a second contract, a "backup contract," to sell this property for $1. 4 million?

A Oh, yes, sir.

Q So, in fact, you were pretty committed to selling the property, because you entered into a second contract, right?

A It expired 30 days after it was entered into.

Q But you entered into a second contract, right. And after the closing for this contract was scheduled, didn't

you meet with Mr. Green about his potential interest to buy the property?

A Yes.

Q So, after the closing was scheduled, you were still meeting with other people about potentially selling the property to them?

A I wasn't selling the property to anybody. They were interested in buying it.

[105]Q But you were listening because you were meeting with them, right?

A I had lunch with them, yes.

Q Is it my understanding that you filed Bankruptcy in order for Jackson Masonry to make industry standard profits?

A I would prefer - that would be one of my hopeful outcomes.

Q Well, (inaudible) that you filed in order to get a competitive advantage to have industry standard profitability.

MR. DUNHAM: Objection to characterization.

THE COURT: Response to the objection.

MR. HALTOM: He testified that part of it was to meet industry standards in terms of five percent versus two percent. I just want to clarify his testimony.

THE WITNESS: Hopefully, one of the outcomes -

THE COURT: Just a minute, I'm sorry. Let's go back to you, Mr. Dunham. What's the objection here?

MR. DUNHAM: There is a characterization that he testified he wanted to gain a competitive advantage. I don't believe that's something- certainly he can ask but I don't think Mr. Jackson will testify that he filed to get [106]an advantage.

THE COURT: Let's rephrase this question, Mr. Haltom because I didn't like that phrase either. I didn't hear that from the witness so let's rephrase it.

BY MR. HALTOM:

Q You're profitable, correct?

A Yes, sir.

Q And you filed Bankruptcy, in part, to renegotiate your contracts so you can meet industry standard profit margins?

A Yes, sir.

Q And you filed Bankruptcy, in part, to meet industry standard payments for you, as the president and CEO of the company?

A Yes, sir.

Q And that would help return equity to you, as the sole owner, correct?

A Yes.

Q When did you decide you were going to file Bankruptcy?

A I don't know the exact date.

Q I believe you mentioned earlier in February.

A There had been some discussion about it, yes.

[107]Q When you were renegotiating your line of credit with the bank, had you already contemplated filing Bankruptcy then?

A I can't speak to that; I don't remember.

Q What about when you purchased those new cars, had you contemplated filing Bankruptcy then?

A Yes, sir.

Q And so, did you tell the car dealer that you were planning on filing Bankruptcy?

A No, sir.

Q Did you tell the banks that you were considering filing Bankruptcy?

A No, sir.

Q Did you tell Ms. Patty Jackson you were considering filing Bankruptcy?

A Yes, sir.

Q Was she aware when she called the note that you were planning on filing Bankruptcy?

A No, sir.

Q When did you tell her you were considering filing Bankruptcy?

MR. DUNHAM: Your Honor, I'm going to object and move to strike. (Inaudible) the conversations between Mr. Jackson and his wife, I don't believe that those are admissible.

[108]THE COURT: Your response to the objection.

MR. HALTOM: She was an employee of the company, Your Honor, so, therefore, the marital privilege doesn't apply as a payroll administrator of the company.

THE COURT: I think Mr. Haltom is correct about that, and that there isn't a privilege applicable. But I

would say that Mr. - we already started into this testimony about this debt and so questioning about that debt to her is already a subject with respect to which privilege is not going to work. So, go ahead. Rephrase the question or ask the question again.

BY MR. HALTOM:

Q When do you recall having the first discussion with Ms. Jackson that the company may file Bankruptcy?

A I don't recall.

Q To the best of your knowledge, was it a day before?

A A month.

Q A month before?

A Yes.

Q One month before. And the payments to Ms. Jackson were made one week before filing Bankruptcy?

A The demand was made before that.

[109]Q So, when you made that payment the company was already planning to file Bankruptcy; is that correct?

A Yes. The payment was made at the same time that the property mortgage was set up with Franklin Synergy Bank, the $238,000.

Q You testified that your cash reserves, you make a million for two to three months; is that correct?

A That would be nice. I've never had that.

Q You've never had that happen. How many years have you been in business?

A Since '98.

Q 1998, so 18 years. And you've never had that level of cash reserve in 18 years, have you?

A I've never been that healthy.

Q So, having that lump of cash reserve is not something that's necessary for you to operate your business, because you've been doing it for 18 years without that, correct?

A Yes.

MR. HALTOM: One second, Your Honor.

(Brief pause)

BY MR. HALTOM:

Q You mentioned that the note to Ms. Jackson had been paid but you just don't have full access [110]to it yet. Tell me about how you just don't have access to it.

A Well, I really don't have access to it. It's in an escrow account in her name.

Q Did you all have a joint checking account beforehand?

A Yes.

Q Do you deposit your funds into a joint checking account?

A Yes, sir.

Q And so those funds that you paid out of the company's registry was paid into a joint checking account, deposited into a joint checking account?

A Yes.

A For your use and ability to use as well?

A Yes.

Q And you mentioned that you reduced your pay to $72,000 annually. And as part of the Bankruptcy filing, did that increase your pay to the industry standard?

A Rephrase.

Q As part of your reorganization to increase your pay -

A That would be a hopeful outcome, yes, sir.

Q So, you're trying, with [111]this reorganization, to return the equity that you had in the company and the payments you were receiving in the company.

A That's a hopeful outcome, yes.

Q And let me understand that you had all these contracts for 2016 but you did not attempt to renegotiate any of them before filing Bankruptcy, did you?

A No, sir.

MR. HALTOM: Thank you, Your Honor.

THE COURT: Redirect, if any.

REDIRECT EXAMINATION

BY MR. DUNHAM:

Q Mr. Jackson, without the Bankruptcy filing, what kind of leverage do you have to renegotiate contracts?

A Zero.

Q How much money had you paid the prior law firm to defend you in the Ritzen lawsuit?

A In the neighborhood of $80,000.

Q And they're not going to be going forward as your counsel?

A No, sir.

Q So, there is a question about strategy. Do I understand that you're going to pay our firm to get caught up to speed in that case, right?

A Yes.

[112]Q Was it a strategy to try to hurt Ritzen Group when you filed the Bankruptcy?

A No.

Q One more question about Franklin Synergy. I thought that to avoid Bankruptcy you agreed to enter into, or you had discussion with Franklin Synergy about funding. Was the $238,000 part of an effort to avoid Bankruptcy?

A Yes.

MR. DUNHAM: Your Honor, no more questions.

THE COURT: You can step down. Two times, Mr. Haltom.

MR. HALTOM: Yes, sir.

THE COURT: Thank you. You can step down. Call your next witness.

MR. HALTOM: I've completed my proof, Your Honor.

THE COURT: All right. To you, Mr. Dunham.

MR. DUNHAM: The Respondent rests.

THE COURT: No more evidence, then?

MR. HALTOM: I would like to recall Mr. Jackson for one question, Your Honor.

THE COURT: I don't think that's going to work, Mr. Haltom. Not going to work. Two times. You [113]have no evidence from the other side so no more evidence.

All right, that closes the proof. Let's talk about this for a minute. Mr. Haltom, let me have you first. You've tried a case to dismiss a Chapter 11 for bad faith filing. That's the case you've tried. Whether you know it or not, that's - and no criticism intended, I'm just telling you that's the issue you put up here. And I understand because I've been here long enough to know that the criteria for relief from a stay sometimes overlaps the motion to dismiss. But you have to understand I'm saying this now to you, because here's how I am looking at this case is, if I grant you relief from the stay and you go back to state court, and you try your lawsuit against Ritzen Group and they - there's lots of possible outcomes but let's say you went and you get an order for specific performance out of the state court, and while all that is happening, Mr. Dunham and Mr. Hildebrand being the smart lawyers that they are, they're going to reject your contract over here in Bankruptcy and we're going to have a hearing on rejection of the contract while you're off trying to get a trial date in the state court. And the issue of all of the economics of what I just described is right back here. It's right back in

Bankruptcy if this case continues. And I'm sitting here trying to figure out what are you going to accomplish with relief from the stay, what do you think you're going [114] to accomplish going back to state court?

MR. HALTOM: Well, Your Honor, it's clear that the Debtor does not want this issue adjudicated anywhere. If they wanted to reject this contract -

THE COURT: Why do you say that?

MR. HALTOM: Because if they rejected (inaudible) contract, this property has increased so much in value, five, six, seven, $800,000 that we would be entitled to as the (inaudible). And so they do not want to go down the path of -

THE COURT: Stop right there. I have no evidence that they don't want to go down that track. that's why I'm asking you. Just bear with me. Look, I'm an economics guy. Bankruptcy is all about money. And if Ritzen Group is right, that they had a right to acquire this property, and if that's where things end up, if they're right they have a right to acquire the property, and the Debtor rejects the contract in Bankruptcy, rejection damages are going to include lost profits. And I'm going to be sitting - my successor is going to be sitting here valuing your claim in the Bankruptcy case and it's going to include - let's just imagine it includes $1 million worth of lost profits, okay? So, you now have a claim in the Bankruptcy case, just to keep the numbers round, for $1 million, and the Debtor is still fully solvent because they own a piece of property

worth $2 [115]million, plus the Old Hickory, plus contracts in process and future profits and all that. So, your client gets paid in full in the Bankruptcy case, based on the lost profits and everything else that's there, or the Debtor has to bail out of Bankruptcy because they can't pay you under those terms.

The economics is the same. You get paid in full. What am I missing?

MR. HALTOM: On Friday, in advance of this hearing, Debtor filed a motion to, an objection to the informal claim -

THE COURT: Sure.

MR. HALTOM: - which it clearly is an action that should be an adversarial proceeding because under 70 -

THE COURT: Mr. Haltom, I'm talking about the big picture, not (inaudible) right now. Let's talk about the forest. The forest is that at some point the Ritzen Group is going to file a claim in this case. You're going to have to unless I dismiss the case, and I haven't been asked to dismiss the case. I don't have a motion to dismiss. I haven't tried a motion to dismiss but the very first thing I said to you is your case here today has been more like a motion to dismiss the case than like a relief statement. But, trust me, I don't have a motion to dismiss and I'm not going to dismiss the Bankruptcy case today.

[116]You're eventually going to ask to file a proof of claim if you don't dismiss this case. And that claim, I know

you're going to sit down with Mr. Ritzen, you guys don't come up with pie in the sky, it's going to be a $10 million claim, $2 million claim, $3 million claim, whatever you think the lost profit and everything else is here.

Okay, why isn't that just exactly what happens in Bankruptcy? They'll object to that claim and my successor will try that claim objection and estimate or value or whatever your claim.

MR. HALTOM: Well, first, Your Honor, there are fee issues with the state court, which are still unadjudicated, which -

THE COURT: Always happens and if I were trying the claim objection, you're going to have to include in that $2 million claim another couple hundred thousand for attorneys' fees in state court that you would be entitled to recover and we would have a hearing to decide whether that is a reasonable estimate of your claim.

MR. HALTOM: Well, a claim should not proceed as a claim objection because the Debtor has a claim against Ritzen for release of escrow funds, release of lien pending (inaudible) and for attorneys' fees under the contract. So, this should not be a claim objection, it's [117]going to have to be an (inaudible). And so because of the transfer of property and the potential escrow monies that the Debtor is also trying to recover, it would have to be an adversary proceeding, which means we would start all over from the beginning with fees, discovery, all of chat.

The state court is ready to try this case.

THE COURT: I don't doubt they're ready to try it. I'm asking you - you're in a Bankruptcy and granting relief from a stay is a fairly extraordinary remedy at the beginning of an 11. And every 11 I've seen in the last 35 years was filed proximate to some litigation somewhere else. I've never seen an 11 filed that didn't have a lawsuit.

So, you have to tell me what do you, what are you getting? You go back to state court but how do you escape litigation in the Bankruptcy Court over rejection of this contract, damages, the attorneys' fees, the lost profits - how do you escape all that?

MR. HALTOM: If you break the automatic stay, it a l lows the state court to adjudicate issues related to the property. And there's nothing that needs to come back to the Bankruptcy Court with the exception of a claim for attorneys' fees if that's awarded.

THE COURT: Where do you think [118]you' re going to collect that? You're going to come right back here, Mr. Haltom. I've got exclusive jurisdiction over the property of the estate. You go to state court, say you get an order for specific performance. The Debtor rejects the contract. It's at that point you actually have a contract. If you lose in state court, then I don't even have to reject your contract. You ain't got one.

MR. HALTOM: Okay, Your Honor. Let's look at the criteria that the Sixth Circuit has established

for (inaudible). And in applying that in these similar circumstances where specific performance of a real estate contract is at issue, the granted, and in some cases even sui sponte, granted dismissal of the Bankruptcy because of the totality of the circumstances. Now, if we look at those five criteria, one is judicial economy. The state court action is ready to go. It will not require a new action before this Court. It can be adjudicated in a relatively reasonable period of time. The state court is familiar with the plans there are. There's only a few pretrial issues that need to be resolved.

Number two, (inaudible). This is case is six days away from trial. The case is clearly ready for trial.

Number three, the resolution of primarily Bankruptcy issues. This is a two-party state breach of [119]contract action. So, there's no specific specialized knowledge that's required from the Bankruptcy Court.

Four, the chance of success on the merits, which is very important here because the Debtor has testified he does not have personal knowledge of the documents or -

THE COURT: Let's stop there for a minute. There's two, maybe three possible outcomes in the state court. And it's all contested right now. One would be an order for specific performance. If you get an order for specific performance, that would be a statement by the state court. Predicate for specific performance would be that there is an enforceable contract that can be ordered specifically performed. So, you would have to first prove that there was

a breach by the Ritzen Group that would entitle Jackson Masonry to not perform. You'd have to first establish the existence of a contract. Great.

And then you get a state court order that the Ritzen Group is entitled to specific performance of the now executory contract. And about that time, if not before that moment.in time, Ritzen Group rejects the contract under 365 in the Bankruptcy Court. How do you stop that?

MR. HALTOM: I think it will be more expensive if this proceeds in Bankruptcy Court. You've asked about the cost of litigation. They do not want this [120]contract adjudicated, period. And because this claim -

THE COURT: Well, you keep saying that but I don't see it at all. I think, in fact, they want to adjudicate this contract right into oblivion, one way or another, either by proving there is no contract, which is the predicate to your specific performance argument, or by proving that they have a right of rejection of that contract, which would be an interesting trial also.

I say there are three possible outcomes. One of them is you get a specific performance order, which brings you back to Bankruptcy to figure out whether that now executory contract can be objective.

The second possible outcome is that the state court decides there is no enforceable contract and no specific performance, in which case the state court would probably award you some attorney's fees for the discovery abuses

in the state court, but that's claim back in the Bankruptcy case but we will have engaged in tens or hundreds of thousands of dollars' worth of litigation in state court for no outcome at all, other than deplete the estate of hundreds of thousands of dollars in attorneys' fees. I don't see any value to that outcome and I'll tell you what I think about the probability of that outcome in a minute.

Third outcome is the state court says there is a contract here and they award, either directly or [121]in the alternative, damages for breach of contract by the Debtor. In which case, what do you have to do, Mr. Haltom?

MR. HA LTOM: Well, it would be a claim against the estate -

THE COURT: Come right back here with a claim. And at that point we will have an objection to the claim and I'd adjudicate that and then there would be a plan of reorganization, which would have to deal with your damages claim. We'd have to have all of the remaining - I'm right back where I started when I started questioning you, and it is one of the factors for relief from the stay is whether we would gain some cosmic advantage in the context of the Chapter 11 case by sending part of this back to state court. What is the advantage?

MR. HALTOM: The advantage in adjudicating in a rapid manner, the state court claims would all be resolved in terms of whatever fees that would be awarded; this Court would have the ability to enforce specific performance; and in granting relief from the automatic

stay, it can basically allow the state court to enforce its judgment in order to sell the property.

If the Court grants leave from the automatic stay, the moveant doesn't have to come back to get a second grant from the automatic stay to enforce the judgment.

[122]THE COURT: Oh, how wrong you are, Counsel. Trust me. I grant relief from a stay routinely to liquidate claims in state court and they have to come back to collect the claims here. And that would undoubtedly, even if I grant you relief from the stay, I would not, in addition, grant you the right to execute on property of the estate until I see about other creditor interests, until I see about the reorganization of this Debtor, the continuing employment of 45 people and things of that sort.

You aren't going to touch this property without further hearing in Bankruptcy Court, even if I would grant relief from the stay. You can be sure of that.

MR. HALTOM: Your Honor, under other Sixth Circuit cases where a financially healthy debtor, which we have, who is admittedly profitable, which is admittedly not insolvent, which has admittedly paid his bills on time, basically pulls a parachute right before a state court hearing in order to prevent the adjudication of that stay under the Sixth Circuit standard is that routinely granted, to allow that to go to conclusion. There is a preference of that, Your Honor.

THE COURT: The preference stuff, of course, would be recoverable only in Bankruptcy. Your client ends up as

the largest creditor in a Chapter 11 case where one of the sources of funds to pay your client is the [123]recovery preferences that are only recoverable in the Bankruptcy case. How is there an advantage to going to state court under those circumstances?

MR. HALTOM: The legislative intent under 262 evidences that the intent of the automatic stay is (inaudible) circumstances where the lower court permits the proceedings in the original jurisdiction and there would be no great prejudice to the Bankruptcy estate. There's not going to be a great prejudice to allow the state court, who is familiar with the cause of action that is pending before it, familiar with the evidentiary issues, to adjudicate this in a relatively quick and efficient manner.

If there are still Bankruptcy issues to resolve and if the parties aren't able to reach a resolution then it would be appropriate for the Bankruptcy Court to address those issues, (inaudible).

THE COURT: Let's stop there for just a second because it was a question I was asking myself as I was sitting and reading all this. Ritzen Group would be perfectly happy with contract rejection damages. I asked myself it I represented Ritzen Group what would I be happy with, and I'd be happy with contract rejection damages because, assuming I can value the lost profit from the development of this property, I get present value of three or four or five years of development headache. That's what I [124]get. I get it all done now. And the only way they would be able to confirm a plan in this case is going

to be to account for all that same lost profit because that lost profit is built into the value of the estate and, as you well pointed out today, there's value in this estate.

So, one of two things have to happen. We've got to pay Ritzen Group in full or they've got to get out of Bankruptcy. In which case, you're right back in state court again.

MR. HALTOM: Well, there is also some value that is not capitalized in dollars and cents, and that is having a development in the neighborhood where you've already got developing other properties, having people see their building signs go up, having a presence in the long-term development of that community. And so there is a tremendous amount of value to the company other than dollars and cents -

THE COURT: Lost business opportunity is dealt with a lot, as you well know, from your state court litigation. You know how the Tennessee courts would deal with that. They would have to value that. Parts of it are not subject to recovery because they're too unknowable. And some of it is. And I'm back where I was. You said it a minute ago, I think you're right, why wouldn't the Ritzen Group simply accept rejection of this contract and [125]recover its damages from the Debtor in the Bankruptcy case?

MR. HALTOM: Well, if we had a motion for rejection before us, we might consider it. But the Debtor has not done that. They have filed to circumvent the process of having an AP or having a rejection of (inaudible) contract

while they're trying to object to the informal claim that's been filed, even though - that's going to waste a lot of money because we're going to be back here arguing that issue when -

THE COURT: Arguing what issue?

MR. HALTOM: Their objection to the informal claim of Ritzen Group. A claim objection is not going to resolve their $15,000 of escrow money that's going to sit out there. A claim objection is not going to resolve a lien -

THE COURT: Actually, it would. The claim objection is going to be converted by the Bankruptcy Rules, under Part 4 of the Bankruptcy Rules, into an adversary proceeding. There's not procedural problems here. I wouldn't let that happen and I assume my successor won't. The $15,000, in addition to being de minimis and pretty not important, would be a recoupment issue. If there is a contract, it would be the other piece of the contract dispute and he'll get subsumed in any math.

Why isn't the most efficient, direct [126]and best outcome that you all stay in Chapter 11 and you resolve the Ritzen claim in the context of the Chapter 11 case, rather than trying the specific performance case and then coming back to try the claim rejection case?

MR. HALTOM: I think the Bench just hit the nail on the head with respect that would be converted into an adversary proceeding and that we would litigate this thing all over again. (Inaudible) and, yes, on the back end

it would all be bundled up when the adversary resolved. But, basically, you're going to be trying the same cause of action that is pending before the state court, but starting all over again. The Debtor talked about the legal expenses involved in it; the legal expenses from restarting a trial from the beginning, with discovery, with presumably new depositions, with all of those, far exceeds the judicial economies allowing the state court -

THE COURT: I don't know what my successor will do but I can tell you right now what I would do. If I continued to manage this case, I would order claim estimation. I would require you to file a claim that I would then estimate. And that estimation process doesn't require the kind of discovery trial that you're talking about because we've got essentially, since 1898, of doing this in Bankruptcy, and we estimate the Ritzen Group's claim. Those are fairly liberal outcomes, usually. (Inaudible). It would [127]be discounted by the risk of the litigation a little bit but that's fair. The estimated profits and all those things, we'd have a hearing on that usually within, oh, I don't know, three or four months of the claim and the objection being filed. We do that. That's what would happen. And I would come up with a number and these folks sitting over here are going to have to pay you that number or they're going to have to bail out because the assets are worth - you see the direct one-to-one relationship between the value of the asset they have and the amount of this claim over here. They're almost the same thing. It's over. I'm trying to figure out why you're not doing that. Why do you want relief from the stay?

It bears on No. 4 of the realistic criteria for stay relief. The likelihood of success or likelihood of an outcome, what the outcome would be. It looks to me like you've got a two-step going. The real expensive first part, and that's go to state court, try a lawsuit in state court and then come back here and face all of the Bankruptcy issues.

MR. HALTOM: Your Honor, the bad faith calls praying relief is present here because the Debtor, in its financial condition, was profitable, not solvent, paid insiders a bunch of money, incurred a bunch of obligations right before filing, admits that there is a conflict with their attorney that would have, basically, prevented [128] a successful outcome in the state court litigation.

Those cause factors should allow Ritzen Group- maybe it's willing to expend the- I don't know what hypothetically it's more expensive in state court or less expensive in the long run as you're suggesting here. There are potential shortcut avenues. But if it's contested here it's going to be just as expensive.

There is a preference that if it is clear that a debtor is filing Bankruptcy on the heels of an adverse judgment in state court to prevent that cause exists -

THE COURT: Mr. Haltom, you overstate the rules. If that was the case, we wouldn't have any Chapter 11 cases. I'm sitting here remembering NuKote, which had come out of something on the order of a $50 million intellectual property judgment for stealing Hewlett Packard's patents, and they filed it here in order to manage the $50 million

judgment. That's why people go into - what's an asbestosis case, Mr. Haltom? Here it's a management of litigation. That's what we do. We manage litigation in other courts and try to save everybody money, or in a case like this one, to try and get everybody paid for less money.

MR. HALTOM: Your Honor, here, the Debtor, because it's profitable, and because it's filing this to reposition itself to meet some industry standard profit margins, that's an improper filing of the Bankruptcy in order [129]to gain a competitive advantage. You do not need to be insolvent to file Bankruptcy but you need to have some extraordinary event that would occur that would prevent you from - otherwise, every time a single lawsuit gets filed, a company would file Bankruptcy merely to escape the potential for exposure or the potential for fees. So, yes, Bankruptcy in this context is fairly rightly used when there are those claims you're talking about with asbestos litigation.

Here, on the flip side, you've got a profitable company facing a conflict with its counsel and who filed in order to meet an industry standard for profit margins. That's not the purpose of Bankruptcy. Bankruptcy is not for the purpose of giving equity back to the equity holder and allow the owner to, basically, use the Code as an instrument of becoming more profitable in a competitive advantage situation.

Here, it's insider debts, new debts, the pending state court litigation, the undisputed fact that the company has been profitable for three-and-a-half years, and that Mr. Jackson has testified was part of the strategy of exiting

the state litigation when he had pre-determined a year ago that he wanted to stay in this property. (Inaudible) that's not going to occur with a Bankruptcy pending, took a company that could have easily renegotiated some of its obligations or maintained its current [130]profit margins and put it into Bankruptcy.

And so to file Bankruptcy when you clearly had a 36-month or more pattern of profitability, just to swing and become instead of a low margin company paying higher profit margins to meet the standard is an improper purpose. Otherwise, every company that's barely getting by is going to file an order to try to meet some pre-determined - as a lawyer, I would love to get a 10 percent profit margin on all my cases. So, if I would follow my law firm, if I'm only making six percent, in order for me to meet the (inaudible), I mean that's not - there are some winners and losers but that doesn't mean they belong in the Bankruptcy Court when admittedly it was a solvent company, paid their bills on time.

THE COURT: Let me talk to Mr. Dunham for a minute. Mr. Dunham, you look to me like you're in a zero sum game because you are going to have to pay the Ritzen Group whatever they have been injured here. And the only way you avoid that is if you successfully prove that there was no executory contract at all. And in order to prove that there was no executory contract at all, you have to try the lawsuit that is pending in state court.

MR. DUNHAM: I think there is a contract that exists. We're going to seek to have a court order declared that

Ritzen was the first to breach and if they do [131]declare that that is the case then there is no claim Ritzen would have.

I do believe that this is a quintessential claim (inaudible) is how it should be handled. And I will represent, as an officer of the Court, that we filed a claim objection because this Court - this can't occur in state court until September or October, depending upon the new judge's - Judge McCoy is retiring. So, this is actually an attempt for us to push the ball forward and get to a resolution in the matter.

I believe that's it's perfect for claims resolution because there is a claim against the Debtor and we're not going to be -

THE COURT: But you agree with the premise that in order to take care of an order, either by estimation or outright claim objection, in order to value the Ritzen Group's claim in this Bankruptcy, the predicate question has to be answered, was there an enforceable contract?

MR. DUNHAM: Yes, Your Honor.

THE COURT: Which is the predicate issue in the state court as well.

MR. DUNHAM: Yes, Your Honor. The first question is, was there an enforceable contract. There is an enforceable contract that Jackson Masonry can enforce against [132]Ritzen. Our position is Ritzen does not have the contract to enforce and, hence, it was the first breach.

It's a very, very, very simple case the way I see it, whether it's state court or Bankruptcy Court. There are some facts that might be in dispute but those are all facts that make this, in my simple view of the case, is I'm going to trial.

THE COURT: And why wouldn't I grant relief from the stay to go back to state court to answer that question? A modification of the stay to allow the state court to determine whether the Ritzen Group has an enforceable right to purchase the property from Jackson Masonry.

MR. DUNHAM: I think there are three reasons. The first one is (inaudible). If we can have this done by July 27, then that's quicker than the state court. It's not going to be as involved as the state court and we'd love to deal with it separately, presuming that we can get to any discovery issue with the Ritzen Group.

Right now, this claim objection was filed last week. In order to expedite this process. So, we wouldn't have to fact the allegation that we're trying to avoid the case or trying to slow ball it. Bring it on. That's our position.

THE COURT: But you know that [133]wouldn't happen as quickly as you've described; you know that's not the case. Because anybody coming in as my successor is going to first pre-try. They're going to instruct the Ritzen Group to file a proof of claim that includes all their claims of damages, in the event that that issue has to be tried. And you' re going to want to do discovery that includes King Bartley, the Sheldon Law Firm, everybody else that

is in here. That's what you'd be doing in state court and it's what you'd be doing here. You've got to do that. Am I correct?

MR. DONHAM: I think that's correct.

TH E COURT: So, you're looking at several months of development to get that done.

MR. DONHAM: Yes. Our position would be that, and I believe Ritzen would probably go along with this, if Ritzen was prepared or Mr. Haltom was prepared to go to trial then I was hoping that there would be an agreement to have an expedited discovery scheduling order in Bankruptcy, so we can get to that waiver before we ever go to state court. That was the goal. It helps both parties to minimize the expenses. And so the same objection is really a forum to trigger that so we can get this thing on a scheduling track to get it adjudicated quickly.

THE COURT: If they win the argument that they have an enforceable right to this property then [134]the economics of your Chapter 11 case is what?

MR. DUNHAM: If they have an enforceable right to the contract and it comes to that, of course, we're going to file a motion to reject. And regardless of what the rejection damages are, (inaudible). From an estimation standpoint it's just a matter of are they going to (inaudible). The liabilities in this case are (inaudible) on what the assets are. It's going to a 100 percent plan. We're not going to have absolute priority issues -

THE COURT: So, why wouldn't you and Mr. Haltom, before you leave this room here today, estimate the risk of outcome, of adverse outcomes in both directions, estimate the damages that would be involved here and shake hands. Why wouldn't you do that? Why would you all spend a couple hundred thousand dollars litigating this?

MR. DUNHAM: Your Honor, first of all, Mr. Haltom is really easy to work with. We've sat down face-to-face and gone through some of the issues, possible resolution of the issues, and our position is we've put a number on what the rejection damages are and I believe there is a fundamental disagreement as to what those damages would be. It's a matter of law that I believe is in dispute. If there is a claim that is in favor of Ritzen, they're going to value what that judgment is going to be a lot different than what we will.

[135]THE COURT: That's right. That's why we have negotiations. You see the economics of this whole situation differently than I do, then. The only issue here is how much the Debtor is going to pay Ritzen Group at some point.

MR. DUNHAM: I certainly don't see it that way. I think that there's going to be a claims hearing, whether it's an adversary proceeding or whatever forum it's in, state court or Bankruptcy Court, I think it's going to be a (inaudible) for Jackson Masonry. And if we get to walk away without a Ritzen claim - I understand Mr. Haltom feels the exact opposite way -

THE COURT: And Jackson Masonry will have paid you $150,000 to $200,000 worth of fees between here

and there. So, there is cost to this Debtor, a substantial cost to this Debtor to get from where you are to there, even if you win everything. So, of course, you have that somewhere in this calculous, in addition to the discovery abuse, attorneys' fees over in state court that would have to be valued into your -

MR. DUNHAM: Yes, Your Honor. All of that is part - in fact, we even did an analysis of what the reputation damage was going to be by filing for Bankruptcy, and what the fallout was going to be, the transaction costs, the ability to get future projects and for that (inaudible). [136] No doubt this was a Chapter 11 that everybody wanted to avoid.

TH8 COURT: And what do you see is the risk that my successor will grant Mr. Haltom's motion to dismiss the case outright, when or if he files?

MR. DUNHAM: I think there is always a risk in cases but the Chapter 11 is the right thing to do to put this company in a position to be sustainable, and if the Court disagrees then I believe Mr. Jackson is willing to live with the consequences. But all the proof that we would intend to put on in the motion to dismiss hearing, which would be a little different than what we did today, would prove that Ritzen Group was an afterthought. All it was going to do was add value to a Bankruptcy estate. That PMS lawsuit, multi-million dollar, that was a huge decision. The contract had operated so far below what industry standards are, some of the (inaudible) rejected. The question is, if it's a 100 percent plan, is the rejection damage going to be more than what it would cost to –

THE COURT: It's the same issue with the Ritzen Group, right. I get that.

MR. DUNHAM: Exactly.

THE COURT: Okay.

MR. DUNHAM: I certainly don't intend - part of the reason for this case is to get the claim heard as [137] quickly as possible because we need to get a plan on file. And we're going to have to estimate it and then we want to get the plan going forward to get them out of Bankruptcy. So, instead of spending a boatload of money on (inaudible) pre-petition, we would have a clean break, get the lawyers out of it and they can focus on making money as a contractor. That's a snapshot of what we're trying to do here. Not to mention keeping the 45 employees with the ability to (inaudible).

THE COURT: Okay, thank you. So, I'm back to you. Is there anything you want to say to me? What else?

MR. HALTOM: It is, I think, pretty clear that they seek a declaratory judgment with regard to whether or not this contract (inaudible). That will get resolved in an adversary proceeding, which will have the time and expenses that will be involved in it.

Then once that's resolved those other issues that the Court addressed will be handled with respect to executory contract issues. Here the most efficient remedy that could happen would be that the Court grant a limited (inaudible),

allow the state court to wrap up the litigation and then the claim will be adjudicated through rejection of the contract or whether the Court would enforce specific performance that could be handled.

[138]I spoke with the scheduling clerk for Judge McCoy. She can get us on the schedule before Judge McCoy retires and this could be handled probably in the next 60 days, as opposed to filing a claim, addressing that, (inaudible) started, spending nine months going down the road of an AP before we get to the determination of whether or not there is an enforceable claim. I think that the relief from the stay to adjudicate the state court action, there would some expense involved in that but it would be some expense that would be for a short period of time and there would not be continuing expenses related to along, adverse AP action, which clearly would have a lot of discovery issues related to whether or not there was a conflict.

Our firm, there would probably a lot of (inaudible) evidentiary issues related to the testimony of whoever was going to present the facts that -

THE COURT: I don't see how you avoid those issues either place.

MR. HALTOM: They're teed off and pending in the state court and it can get done within the next 60 days.

THE COURT: Anything else you want to say?

MR. HALTOM: No, Your Honor.

THE COURT: Mr. Dunham, anything else [139]you want to say?

MR. DUNHAM: No, Your Honor.

THE COURT: Okay, here's what I'm going to do. It's 20 minutes of 2:00 right now. I'm going to take a break for about 10 or 15 minutes to get my notes together and I'm going to come back in here at 2:00 and I'll decide your case at 2:00. You're welcome to stay around if you want to but you don't have to.

I'll go on the record and decide the case whether you're here or not and, trust me, the outcome will be the same whether you're here or not. That's just to say that you all get to decide whether you want to stay around.

So, we'll be briefly in recess and if you want to come back at 2:00 you can.

(Recess 1:41 to 2:05p)

THE COURT: All right, back on the record in Jackson Masonry on the Ritzen Group's motion to modify or lift the automatic stay. These are my findings of fact and conclusions of law under Bankruptcy Rule 7052.

For the following reasons I'm going to deny the request to modify or lift the automatic stay. Because I'm doing this orally sometimes this comes out in a less than

perfect order of things but I'm going to start with the big picture and go to the small picture.

It's not usual to have a request [140]for relief from a stay like this at the beginning of a Chapter 11 case when there's a major piece of litigation pending in another court. In fact, it's almost always true that there are one or more major pieces of litigation pending in another court at the beginning of a Chapter 11 case. That's the way it works.

It's also almost always true that filing a Chapter 11 case presents some sort of litigation advantage for a debtor. And I read lots and lots of recorded cases where appellate courts use "litigation advantage" as a reason for either dismissing a Chapter 11 case or granting relief from the stay. And that's fine for appellate courts to do that but it typically is because they're looking for some nice catch word or buzz word to describe why something shouldn't be in Chapter 11. And that leads to a philosophical debate that I don't need to engage in here today, except to say this, it's almost always true at the beginning of a Chapter 11 case that there's litigation pending, and it's almost always true that the 11 is filed, at least in part, to stop that litigation and to shift the litigation to some other court. And if that was the reason for granting relief from the stay there wouldn't have been any asbestosis litigation, there wouldn't have been in Bankruptcy Court, there wouldn't have been any breast implant litigation in Bankruptcy Court. I could go on and on and on. [141]Because those whole industries, the trucking industry, came into Bankruptcy because they had litigation problems in some other court.

That's not the issue. The issue is whether this is an unusual fact pattern and the unusual thing that a Bankruptcy Court looks for is a debtor who is on the verge of losing something in state court that only affects the debtor themselves and not creditors of the debtor or not other parties, and they're using the Bankruptcy as a way of putting off that inevitability. Now I'm going to come back to that thought over and over again, because in the criteria for lifting a stay I'm supposed to evaluate "the inevitability of outcome in some other court."

In this case I don't see an inevitable outcome in state court law. I think there's a real horse race going on over in state court between the debtor and the Ritzen Group about whether this contract was enforceable by the Ritzen Group. And there's lots of facts on both sides. And there's a good reason why Chancellor McCoy didn't grant summary judgment. There's all kinds of contested facts.

There's (inaudible) with respect to law firms, there's all kinds of problems in the state court litigation, which raises a significant risk of loss for both sides. That's how I see it. It's not one where the Bankruptcy Court is simply putting off the inevitable outcome [142]in some other court. I don't see an inevitable outcome in some other court. I see there are some questions that have to be answered somewhere and they can be answered more efficiently in Bankruptcy Court and more appropriately in the Bankruptcy Court because there are huge Bankruptcy issues here that complicate the state court litigation. And I don't think everybody quite appreciates that yet so I'll make it clear.

Let's do it this way. In deciding whether to back away from the stay I'm supposed to look at judicial economy. Yes. About the trial readiness in state court, about whether there are Bankruptcy issues and what predominates and what has to come first and second with respect to state court issues and Bankruptcy Court issues. Chances of success on the merits, yes. Cost of defense, burdens to the Bankruptcy estate, impact on other creditors and such things.

I've considered all of those, I've looked at all of the exhibits, and I think that this case weighs in favor of not granting a relief from the stay. And it's because of something like this. We have a contract between the debtor and Ritzen Group, which may still be an executory contract. It may not be an executory contract. What I mean, the technical meaning of that is it's either enforceable or it isn't, there's either obligations on both sides. And we [143]don't know whether that contract is enforceable. That's the essence of the state court litigation.

If the state court were to determine that it was an executory contract sometime down the road, and it's important to note the state court has not determined that question, the state court refused to determine that question, and said it was inappropriate to decide that question on summary judgment.

If they were to decide that it was an executory contract, then you'd have the classic Bankruptcy question of whether the debtor can and should reject that contract. Is it burdensome to the estate to perform that contract and

what would the damage claim be if it were rejected by the Bankruptcy Court by the debtor in the Bankruptcy case. That's an issue of economics. And the Debtor and Ritzen are not the only people concerned about that question. There's other people out there who aren't in the courtroom today. And, in particular, there's the City of Clarksville, which is missing - of course, they never even had notice. They didn't even know to be here. They may know about a Bankruptcy case but they have no idea that their right of recovery, in the event that the marina lawsuit goes bad for a now defunct general contractor, as I understand it from something that I read the pocket is sitting right over here, and it's Jackson Masonry. And we're going to be [144]looking at a big claim against Jackson Masonry that's going to be sitting on the same table with Ritzen Group. And that is the kind of thing that inspires Bankruptcy Judges when they're looking at an early stage Chapter 11 case and a request from one major creditor for relief from the stay.

Let's take a hard look at the economics of what's going on. If Ritzen Group ends up having substantial rights in this debtor, they're going to be in competition with whoever the other creditors are. And that's a Bankruptcy issue and that would be one of the issues with respect to rejection of the contract, in the event that we find that there is an enforceable contract, and would have to be balanced against the Debtor's ability to pay other creditors and whether rejection is going to create a debtor situation or a worse situation for the other creditors. That's a Bankruptcy question and it's written all over here. And the fact that we don't know whether the contract is

enforceable yet just increases the risk on both sides. That's what it is. And risk evaluation is what Bankruptcy Courts do. That's what we do. That's what happens in Bankruptcy. We evaluate the likelihood of success by the Ritzen Group, the likelihood of success by the Debtor, we value those risks, we figure out what would be the worst outcome for the debtor, the best outcome for the debtor, we put those numbers down on paper, we look at the other assets [145] and income and liabilities, like Clarksville, et cetera, the other $233,000 worth of unsecured debt in addition to Clarksville, and we figure out how to get everybody paid, or as nearly get everybody paid as possible.

If I grant relief from the stay in this case and send the contract question back to state court, what happens is the debtor has to make a business judgment about whether they want one bite or two bites at the apple. It's an interesting question but that really is the question. They get two bites at the apple if they don't do anything in Bankruptcy for a while. And they, instead, defend in state court and they man up, woman up, whatever they're going to do in state court and they litigate to the Court of Appeals and Tennessee Supreme Court the question of whether there is a contract and whether it is enforceable. Because if they win that argument in state court, after spending I would say several hundred thousand dollars' worth of attorneys' fees, they don't have a rejection issue anymore because they don't have to reject it. But they get that bite and that bite, if I represented the debtor and decided to do that in state court, would include full scale completion of discovery, litigation with the law firms that are all tangled up in the closing in this case with respect

to who they represent, whether they're the closing agent, whether they have a conflict of interest and all that, what kind of proof am I [146]going to be able to present? It's going to be a lot of hoo-doo over in state court that we haven't finished yet.

And then a full scale trial on the merits. If I win that trial, Ritzen Group has got to appeal and we're going to go up either way, through the state court system. And we're looking at, I would say years, but at least many, many months of litigation in state court. Meanwhile, the debtor is sitting over here in Bankruptcy, continuing to operate if they can, hopefully continue to pay their 45 employees, if they can, and bid on projects where they're not going to be able to get bonding, if they're required to get bonding, because they're sitting over here in Chapter 11 now and can't do it.

It's going to severely impair the ability of the debtor to continue to function as a contractor in the masonry business while they litigate for a year or two over in state court.

Now, the reason I say it's two bites at the apple, if they win that bite, they win. That's great. They've proven there's no contract right on behalf of Ritzen Group and after appeals they don't have a contract to deal with and so they don't have to do anything more in Bankruptcy except Ritzen Group will then file a proof of claim for its discovery abuse amounts that haven't been determined but might be determined by the state court if I granted [147]relief from the stay.

Now, we come back over here as a claim in the Bankruptcy case. And if the debtor is still in business at that point, the debtor would have some assets to sell and be able to pay people.

If they lose that litigation in state court or it looks like they're going to lose that litigation in state court, they reject the contract in Bankruptcy and we have a trial in Bankruptcy at that point on whether they can reject the contract and reject some damages under the contract, once the state court has determined that there is a contract.

Would I let the state court go on and order specific performance at that point? No. I wouldn't do that. There are some cases that talk about doing that but it's a bazaar outcome. That's to say that the other creditors in the case, that you don't have say in this. You don't have a say in how we value and manage and distribute the assets of this Bankruptcy estate. The state court gets to decide that, not the Bankruptcy Court. It doesn't work that way. There is an overriding Bankruptcy issue for stay relief purposes that has to be decided, and it is a huge asset that could have tremendous value to this estate, doesn't get distributed by a state court after the filing of the Chapter 11 case. It doesn't work that way. It gets done [148]in the Bankruptcy Court. Eventually somebody has to come back here for that to happen.

And even if you win the argument in state court that you have a contract and it is enforceable, you're still going to have to talk with the Bankruptcy Court down the road because the debtor is going to reject the contract at that

point, if it's not before. And strategically I can see an argument for rejecting it now, before anybody else acts because look what else happens then. Then the issue before the Bankruptcy Court is was there a contract, and if there was a contract, what are the damage rights in the Bankruptcy case now? And it could be that's the most efficient way yet. The answer for all the questions is for it to be right here in Bankruptcy, in the context of all the Bankruptcy and state court issues destroyed at the same time.

In other words, rejection of a contract that may not exist, or it may exist, with the first is sue being was there a contract that could be rejected and, if so, is it executory and what's the economics of now rejecting that contract? It could be more efficient to do it here. But it's clear to me that granting relief from the stay doesn't answer the questions and it doesn't because one of the criteria is are there competing, if not preliminary, Bankruptcy issues and the Bankruptcy issues are substantial here. They just are. And they have to do with contract [149]rejection where you don't have a judicial decision about whether there is an enforceable contract. And when you're in that situation, granting relief from the stay to go to state court to answer the preliminary question would be silly, in my opinion. It's not more efficient and it's not a good use of judicial time in either place.

Trial (inaudible) is one of the issues. Yeah, there's been some development over in state court. There has. Some of that would be - it doesn't matter which court that preparation goes to. There's been a deposition taken, at

least one. There may be supplemental discovery as well. That stuff is all going to be usable here as well as there, either place. I don't see an advantage gained in terms of the cost of preparation, the trial readiness. Going to state court you're going to try some things that shouldn't be tried in state court now that there is a Bankruptcy. And there are some issues that could be tried there or here.

It reminds me a little bit of the cases that say for eligibility purposes you sometimes grant relief from a stay to go to state court to liquidate a claim. That's silly. My job is to determine eligibility. And my job is to determine whether to allow the rejection of this contract. And one of the things I would have to decide is, is there a contract, first of all. And then can it be rejected? And granting relief from the stay to the [150]state court to go ahead and do that has (inaudible) problems.

The only situation where I would do that would be if I was also willing to dismiss the case. If I don't think there's a Bankruptcy here at all. And I think there is a Bankruptcy here. It's not the kind of dire moment where a business has to be in Bankruptcy; it's a case of a business that has had ups and downs and is facing a bunch of litigation now that's going to drain its resources, and there's no better place for it to be than Bankruptcy. And there are allegations that there have been preferential payments made, maybe fraudulent conveyances. Answering those arguments, there's the transfer of assets into the debtor on the eve of Bankruptcy, some refinancing that may have been a wash to some extent. There's been a payment or two made to some insiders, which is only going to be recoverable in the

Bankruptcy case. It's the exactly the right place for us to value those things and include them in the distribution calculous for this business.

And on top of that there is the management of the Clarksville litigation, which I think as only a matter of timing hasn't become a bigger financial drain on business.

I see this all the time with contractors who have secondary and tertiary liability in great big lawsuits, and it ruins their business because they can't get [151]bonding and because they can't get on jobs of a certain size and things of that sort until they get a handle on that. And that's what I see going on here. I do.

The fact that in eight, nine, 10, 11 and 12 they didn't make money and then when they started making money, it means that the economy in Middle Tennessee has helped them now. I don't see that they're out of the woods. They did some things that I always see to try to stay in business during that period, borrowing money from family members, doing lien adjustments. That troubles me only a little bit. You look for excessive stuff like that. As I've said, the way you undo the payment to Mr. Jackson's wife is by staying in Bankruptcy, not by getting out of Bankruptcy, and stay relief just complicates that, complicates the accounting for that in the Bankruptcy case.

There was a little Bankruptcy pre-planning here and I bring it up because this is the kind of argument that gets made in the Appellate Court that they misunderstand. He went out and bought a couple of cars right before filing

Bankruptcy because, as Mr. Jackson said, it would be hell to get those cars after filing Bankruptcy. I don't hold that against them. We got $100,000 worth of assets in the estate also. We got the two cars and not paid for. And it's between Mr. Jackson and the banks whether he had to tell them that he was contemplating Bankruptcy. That [152] ain't a problem for the debtor. The debtor has got two new trucks and they're going to help the debtor in the business and the debt appears to me to be inconsequential in the context of whether Ritzen Group will get paid whatever they're owed, and other creditors in the case, anything that will help the debtor pay their debts down the road.

I've got to do an economic assessment. And the economics of this case is absolutely clear to me where I stand on the (inaudible).

Thankfully tomorrow is my last day, which has nothing to do with the outcome of this case, it would be the same. But if I was staying here, I'd have you all in for a pre-trial conference in 30 or 40 days. I would tee up everything that you have going here. Is there a contract? Can it be rejected? What would be the damages if it were rejected? What kind of recoupment rights are there, if any, if it can or can't be rejected? I'd have all those things; I'd tee them all up; and then I'd order you guys to mediation and I'd get the best business mediator I could find in town and I'd have you all spend a couple of days really talking about what your risks are, because you've got risks on every side of this. Everybody is at risk of losing completely. That's my appraisal of your respective positions.

Appendix B

I read the depositions and I looked at the meeting of creditors stuff and I look at all the [153]documents and contracts and the timing when all those closing documents were due and the letters and emails that were exchanged and everything. That's the stuff that makes up lawsuits. And that's why Bankruptcy works so well. Bankruptcy is the perfect place to do honest to goodness risk assessment. And everybody (inaudible) is just that. It's a bunch of huff and puff. I don't take it seriously. You've all got skin in the game and you all can lose. Everybody in this room can. And that's why this is a Bankruptcy case and not a state court specific performance lawsuit. It got here before the state court ordered anything like that. And now you all get to be realistic about who owes what to whom and how much, and what's the most efficient way to resolve it?

I see that factor about the cost of defense and potential burden to the estate and the impact of the litigation on creditors as very strongly favoring a Bankruptcy forum for all of this because you can it get it all together except here. You can go to state court and talk about specific performance and contract rights and other things but it's got to come back here at that point to do all the rest of it. And I don't grant relief from the stay in hopes of avoiding what I see as well up in the six figure costs to go to state court, litigate all of those questions, and then come back here and answer the Bankruptcy questions.

Instead, the Bankruptcy questions [154]give you the perfect platform for addressing the value of everybody's not risk- free positions. This is it. This is where you need to be, in my opinion. That's why I'm not granting relief from the stay.

Appendix B

The likelihood of success on the merits I've already talked about. I really see it as a horse race. (Inaudible) rejection of the contract, if there is one, and the predicate question of whether there is one. That's based on my review of both of your respective positions in the state court.

The discovery stuff that happened in state court, it's always there. Somebody always doesn't do the discovery stuff right. And it's not uncommon for me to see that as one of the things that's going on in the state court litigation. And on even Bankruptcy litigation like this it's often part of the litigation calculous by Jackson that they are not cooperating in discovery to the extent that a state court expects them to.

I bring it up here for a different reason, and the reason is it won't be tolerated in Bankruptcy Court. It won't be. It's naked time; it's time where everybody has to get naked. That means all the facts have to come out on the table here. Nobody is going to tolerate the kind of stuff that was going on in state court. There is no other place to go now for litigation of this. It's all going [155]to happen right here and it's going to happen very efficiently under the Federal Rules and you all aren't going to be permitted to do the sort of stuff that was going on in state court.

And I tell you that because it will be more efficient here. If we need to estimate claims, we'll estimate the rejection damage claim, if there is a rejection damage claim here for the Ritzen Group. The cost of estimating that claim is a fraction of the actual cost that would be

incurred in actually litigating and liquidating that claim. I've done it. I've done it many times. I've seen it done in billions of dollars' worth of litigation in other cases. Not so much here in Nashville but other places. It's a very efficient way to figure out exactly what somebody is due. And here you get it, you will get it that the debtor has a huge incentive to figure this out because, to the extent that there's damages here, those damages are reflected in the increased value of the estate. It's that simple.

You know, if this property really is worth a lot of money, and the Ritzen Group is going to have a right, if they have an enforceable contract, to a big piece of that. Because that's going to be included in their lost business opportunity here if it's found that there was a contract and the debtor is allowed to reject it.

Now, on the other hand, the risk of [156]a goose egg and not proving that is significant here, as I've found. And so there's so much room here for discussion and negotiations. It's a classic Bankruptcy moment. That's what it is. You can't do what I just described over there in state court because we don't have all of the folks, all of the stake holders are not there. The stake holders being the other $230,000 worth of unsecured creditors and this Clarksville, the unknown creditor that wants to have a say. They just don't know it yet. And keeping this business going while we work all of that out just has Bankruptcy written all over it. And it doesn't have the stench that I see in cases where there's no reorganization. We're just holding off litigation for a while. We have a business here that everybody wants to keep in business, and assets that

need to be preserved, maybe some assets that need to be recovered. That's a Bankruptcy picture and not a bad faith picture. And so that's how I get where I get.

Don't be confused. I haven't made any decisions about who's going to win and who's going to lose with respect to the existence of a contract, the right to reject that contract, the amount of damages, if any. I'm telling you all you have a lot at risk, everybody does, and this is the place to work that out. Relief from the stay is not the right way to go. It's going to cost everybody a lot more money.

[157]Okay, there's a lot of very specific findings I can make in addition to this about the pending Ritzen lawsuit, about what happened on December 15 when we didn't have a closing, about the Ritzen Group not being there, about Jackson Masonry being there. I could go through a lot of those details. It would only be to tell you why I think there's risks on all sides here and why I understand completely why Carol McCoy didn't grant summary judgment to anybody. It's a big horse race still, a lot of facts out there.

I think I'm not going to burden you all with any greater detail than that, than what I've done. I did consider the fact that it looks like there may be assets here in excess of liabilities but that's a really strange way to describe this fact pattern. Without valuing the Clarksville case and without knowing whether there is a rejection damages here and what that rejection damages claim would be to the Ritzen Group, it's not possible to say whether the assets exceed the liabilities in this case. You can't say so.

And I'm talking Bankruptcy now but those are facts that simply aren't here. Yeah, there may be $1 million worth of equity in a piece of property but that equity may belong to the Ritzen Group if they have a contract and if they can prove that there are damages in the event a Bankruptcy Court allows rejection would be measured by the [158] value that they didn't have. But I would guess you've got to discount that by a whole bunch of stuff, by the risk of not recovering, by the cost of attorneys' fees and things. In other words, the math of those assets and how they might be distributed is not at all clear again. We don't know how much the Clarksville lawsuit is worth. So we don't know how to put that in here.

We transferred an asset here on the eve of Bankruptcy, the Old Hickory property, into the estate, personally, as I gather, by Mr. Jackson and his former spouse because the assets went up. And then they borrowed a bunch of money in order to pay off some other creditors. The math of that and who came out ahead and whether there are preferences or other kinds of recovery, that map would have to be included in any calculation of solvency or insolvency here, and I can't do it sitting here yet. I just don't know.

I'm glad to hear, it's unusual, that this Debtor is paying its debts, trade debt and for employees along the way. And with a little luck they'll get to continue doing that. I think that's important for them to stay in business while this is going on. I hope they can.

From my standpoint, that's a real plus for staying in Bankruptcy is preserving the going concern value of this

business, now that it has become profitable in the last two years, so that there's money there in the [159]event that these debts turn out adverse to Jackson Masonry.

When all is said and done, we value the Clarksville problem; we value Mr. Ritzen's situation, whatever it may be; if everything else is gathered up we may need a going concern business in order to get everybody paid. I can't tell. But that's a Bankruptcy issue also.

I'm also telling you that I've considered all this stuff. I get the fact pattern here and I've thought about all these things in reaching my conclusion that we're better off on the Bankruptcy side than we are in the anarchy of sending this part back to state court and having part of it here where we can manage this litigation more efficiently for everybody concerned.

Those are findings and conclusions. I could add a bunch of state law cases. You all have cited some that are good from the Sixth Circuit about how to evaluate this. I should say I've read, over the years, dozens of these dismissal cases usually, sometimes release stay cases, where courts have said this is a two-party matter and that's all it is and it ought to go back to state court, and it shouldn't be here.

Number one, this isn't just a two-party matter. I'd say there is a barking dog in the Ritzen, and please take no offense at my analogy. The Ritzen Group's claim is right here and there's no question that the timing [160]of this filing most affected the Ritzen claim. It did. And it was

filed a few days before the hearing on sanctions and for discovery, and a few days before the actual trial in state court. As a strategic matter, if I represented the debtor, I would have filed the debtor even earlier to keep the state court from finishing this litigation. That's what you need to do and they did.

Through one set of lenses that's a litigation strategy, through another set of lenses that's good Bankruptcy advice. I've seen both kinds. And this is not absolutely bright line clearly good Bankruptcy advice, there's a little litigation strategy in there, too.

I think that good Bankruptcy advice outweighs the litigation strategy in this fact pattern. So, I come out on the side of that timing question.

Any questions from Counsel about what I did or why I did it? And you won't offend me a bit because, as I say, you're going to be in front of a different judge the next time you're in the room.

Unless you have a question, I'm going to just repeat one thing that I've said before. You have a golden opportunity before this case hits in dark directions. Now is the time for you to get help. Talk to each other. Now is the time. Front end. And figure out what your realistic likelihoods are of success in this litigation. And [161]if Jackson Masonry stays in business and realizes the value of its assets, then everybody might walk away smelling very, very good, sooner rather than later.

But I guarantee you the lawyers in the room and not in this room can consume easily a half a million dollars of value over the next year because of litigation. And I want them to earn livings, I really do want them to earn livings but there are also good lawyers involved, and the kind that will be able to have conversations you need to have sooner rather than later about the things we've been talking about today. Do it here. It's just the right place and the right time.

Anything else from anybody?

(No audible response)

THE COURT: Okay, I need an order from you that simply says: "For the reasons stated orally by the Court under Bankruptcy Rule 7052, motion for relief from stay is denied." And nothing more than that needed. Thank you for great preparation. You're used to the electronics; it was perfect. Thank you so much. It's so complicated to do this on paper, everybody was ready and everybody did a very, very good job today. Thank you. We'll be in recess.

(Court adjourned at 2:41p)