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Clerk, Supreme Court of Appeals

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Record No. 7402

In the Supreme Court of Appeals of Virginia at Richmond

L. R. T. GARRETT, t/a, etc., et al.

v.

ANCARROW MARINE, INCORPORATED, et al.

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND, PART TWO

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7402

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 19th day of January, 1970.

L. R. T. GARRETT, TRADING AS GARRETT AND COMPANY, AND BANK OF POWHATAN, Appellants,

against

ANCARROW MARINE, INCORPORATED; NEWTON H. ANCARROW; JOSEPHINE ANCARROW; L. W. RICHARDSON, TRUSTEE; RICHMOND MOORE, JR., TRUSTEE; AND HOME BENEFICIAL LIFE INSURANCE COMPANY, Appellees.

From the Hustings Court of the City of Richmond, Part Two
Wm. E. Spain, Judge

Upon the petition of L.R.T. Garrett, trading as Garrett and Company, and Bank of Powhatan an appeal is awarded them from a decree entered by the Hustings Court of the City of Richmond, Part Two, on the 22nd day of July, 1969, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and Ancarrow Marine, Incorporated, and others were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said court below in the penalty of $300, with condition as the law directs.

RECORD

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* * * * *

DECREE OF REFERENCE

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the bill of complaint; upon the answer of L. W. Richardson and Richmond Moore, Jr., Trustees, and Home Beneficial Life Insurance Company; upon the answer of Ancarrow Marine, Inc., Newton H. Ancarrow, and Josephine Ancarrow; upon the Crossbill of Ancarrow Marine, Inc.; and was argued by counsel.

On consideration whereof the cause is referred to G. Thomas Taylor, one of the commissioners in chancery of this court, who will inquire and report as follows:

1. Who are the owners of three certain tracts of land containing together 14.914 acres, as shown on plat of survey of Charles H. Fleet and Associates, dated October 30, page 28 } 1962, with all improvements thereon known as No. 1308 Brander Street, lying and being in the City of Richmond, Virginia, and fronting on the southern line of Brander Street and also along the western mean low water mark of the James River.

2. What liens, if any, are against the above parcels of real property, their priorities, and by whom held.

3. What work was performed on said real property by the plaintiff, the sum, if any, remaining unpaid for any such work and whether plaintiff has a valid and subsisting lien against said real property for the performance of such work.

4. Whether the defendant, Ancarrow Marine, Inc., has a valid counterclaim against the plaintiff and, if so, to what extent.

5. Any other matter, specially stated, which the Commissioner may deem pertinent or which any party may request to be so stated.

But before proceeding to execute the reference, the Commissioner shall give notice as required by law of the time and place fixed for executing the same.

Enter 12/22/66 WES

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ORDER

It appearing to the Court that the Bank of Powhatan, Powhatan, Virginia, is the assignee of certain invoices involved in this cause, it is therefore ADJUDGED, ORDERED and DECREED that said Bank of Powhatan be made a party plaintiff to this cause, to which the defendant objects and excepts.

Enter: 9/20/67

W.E.S.
Judge

* * * * *

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* * * * *

PETITION

To the Honorable William E. Spain, Judge:

Your Petitioner, Bank of Powhatan, by counsel, respectfully states as follows:

1. That the above Chancery cause is now pending in your Honor's Court.
2. That the object of said suit is to subject a certain parcel of land with improvements thereon, situated at 1308 Brander Street, to a mechanic's lien, and that the aforesaid property be sold to satisfy said lien.
3. That your Petitioner is the assignee of certain invoices involved in said suit, as is evidenced by an assignment of account attached hereto as Exhibit A and made a part hereof.

WHEREFORE, the Petitioner prays that it be made a party plaintiff to the said suit by virtue of being the assignee under said assignment of account and such other and further relief as the nature of this cause may require.

Bank of Powhatan

By: George B. Little
Of Counsel

George B. Little
J. Terry Parsley
Browder, Russell, Little & Morris
1510 Ross Building
Richmond, Virginia

Filed Sep 20 1967. By P. Facuns, D. C.

page 78 } EXHIBIT A

ASSIGNMENT OF ACCOUNTS

To Bank of Powhatan, Powhatan, Virginia

WHEREAS, the undersigned is indebted to the above mentioned bank, hereinafter called "bank", at the date hereof, is the sum of $40,000.00 principal, with interest thereon at the rate of 6% per annum due 30 days after date hereof.

NOW, THEREFORE, for value received, and for the purpose of securing payment at maturity of the principal and interest of said indebtedness, and of any extension or renewal of the same, and to secure as well any other indebtedness, now or hereafter owing from the undersigned to said bank, the undersigned hereby sets aside assigns and transfers to said bank, all of the accounts receivable hereinafter described, together with the right to sue for, collect, receive and receipt for the several sums represented by said accounts and to apply the proceeds thereof upon said indebtedness, which accounts hereby are warranted to be valid, subsisting and collectable accounts in the several amounts hereinafter written as to each, and are described as follows:

Name and Address of Debtor	Amount of account
Ancarrow Marine, Inc. 1308 Brander Street Richmond, Virginia Invoices 844, 889, 890, 902, 903 913, 981, 982, 1002 & 1003	Total Amount Due $48,228.85

The provisions and representations appearing upon the reverse side of this instrument are, and shall be construed to be, incorporated herein.

Date the day of January, 1965.

In the presence of:

Robert B. McRae
(Secretary)

Garrett & Company
R.B.T. Garrett
(Owner)

Date January 1965

Bank of Powhatan
Powhatan, Virginia 23139

Gentlemen:
We hereby acknowledge assignment as outlined above.

Ancarrow Marine Inc.
By: W. H. Ancarrow, Pres.

* * * * *

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* * * * *

REPORT OF COMMISSIONER IN CHANCERY

TO: The Honorable Judges of said Court

The undersigned Commissioner in Chancery to whom this case was referred by decree of reference entered January 23, 1967, now respectfully reports that on March 22, 23 and 24, 1967, April 6, 25, 26 and 27, 1967, at the law offices of Christian, Barton, Parker, Epps and Brent, 500 Mutual Building, Richmond, Virginia (pursuant to the notice which is attached to this report as Exhibit #1), he proceeded to take the depositions of L.R.T. Garrett and others for the purpose of enabling him to respond to the inquiries set out in the said decree of reference.

The depositions, with exhibits filed therewith, are returned herewith and are to be taken and read as a basis of this report.

Your commissioner reports that he has examined the record title to the real estate, which is the subject matter of this suit, located in the City of Richmond, Virginia, and more fully described and set out hereinafter as it appears from the indexed records in the Clerk's Office of the Hustings Court of the City of Richmond, Part 11, which examination was made for the purpose of ascertaining any liens or encumbrances that might exist against the said real property.

DESCRIPTION

All those certain tracts, pieces or parcels of land with the improvements thereon, lying and being in the City of Richmond, Virginia, and containing 14.914 acres, as shown on plat of Chas. H. Fleet & Assocs., dated October 30, 1962, and in accordance therewith described as follows:

BEGINNING at a rail on the south line of Brander Street, which is at the southeast corner of the property
page 83 } belonging to the United States of America; thence from said point of beginning extending S. 51 degrees 54 minutes 30 seconds E. 539.78 feet along the south line of Brander Street to a rod; thence extending S. 36 degrees 44 minutes 20 seconds E. 319.10 feet to a rod; thence extending N. 53 degrees 50 minutes E. 120 feet to a rod; thence extending S. 28 degrees 37 minutes E. 401.73 feet to a lead hub and tack; thence extending N. 53 degrees 51 minutes E. 208.79 feet to a point on the west mean low water mark of James River, (the last four courses and distances being along the property of Southern Railway Company); thence extending southwardly along the west mean low water mark of James River 435 feet, more or less, to a point; thence extending S. 75 degrees 49 minutes 30 seconds W. 588.69 feet, more or less, to an old rod; thence extending N. 14 degrees 10 minutes 30 seconds W. 157 feet to an old pipe; thence extending S. 75 degrees 49 minutes 30 seconds W. 104 feet to a lead hub and tack; thence extending S. 53 degrees 51 minutes W. 65.39 feet to a rod; (the last four courses and distances being along the property of Standard Oil Company of New Jersey); thence extending N. 19 degrees 52 minutes 06 seconds W. 1286.95 feet along a 30 foot easement or right-of-way (with the property of the City of Richmond on the west thereof) to a rod; thence extending N. 51 degrees 50 minutes 40 seconds E. 42 feet along the south line of the property of the United States of America to the point of beginning.

BEING the same property conveyed to Newton H. Ancarrow and Josephine Ancarrow, his wife, as tenants by the entireties with right of survivorship as at common law, by three deeds, one from Alexander H. Sands and wife, dated March 15, 1961 and recorded April 18, 1961 in the Clerk's Office of Hustings Court, Part 11, of the City of Richmond, Virginia, in Deed Book 263, page 86, conveying 3 acres, more or less; another from Virginia-Carolina Chemical Corporation, dated January 5, 1962, and recorded in said Clerk's Office on January 12, 1962, in Deed Book 270, page 17, conveying 10.494 acres, less a small triangular parcel; and the other deed being from Virginia-Carolina Chemical Corporation, dated April

18, 1961, and recorded in said Clerk's Office on May 29, 1961, in Deed Book 264, page 98.

page 84 } INQUIRY NO. 1

Who are the owners of three certain tracts of land containing together 14.914 acres, as shown on plat of survey of Charles H. Fleet and Associates, dated October 30, 1962, with all improvements thereon known as No. 1308 Brander Street, lying and being in the City of Richmond, Virginia, and fronting on the southern line of Brander Street and also along the western mean low water mark of the James River.

RESPONSE

Your commissioner reports that based on the indexed records in the Clerk's Office of the Hustings Court of the City of Richmond, Part 11, as of March 3, 1967, the record title of the subject real estate is in the name of Newton H. Ancarrow and Josephine Ancarrow, his wife, as tenants by the entireties with the right of survivorship as at common law.

INQUIRY NO. 2

What liens, if any, are against the above parcels of real property, their priorities, and by whom held.

RESPONSE

Your commissioner reports to the Court that as of March 3, 1967, the only liens against the subject real estate in the order of priority are as follows:
1. Taxes due the City of Richmond, Virginia for 1967 and subsequent years.
2. Deed of Trust:
Newton H. Ancarrow and Josephine Ancarrow, his wife
To: L. W. Richardson and Richmond Moore, Jr., Trustees,
Dated November 1, 1962, recorded in the Clerk's Office of the Hustings Court of the City of Richmond, Part 11, November 14, 1962, in Deed Book 278, page 413.
To secure the original amount of $55,000.00 and interest at 5-¾%, payable to Home Beneficial Life Insurance Company.
The noteholder and beneficiary thereunder is the Home Beneficial Life Insurance Company. The deed of trust provides for monthly payments of principal and interest of $529.65 per month, (commencing December 1, 1962), and the unpaid principal balance due as of December 1, 1966 is $40,342.22, plus interest.

page 85 } 3. *Memorandum of Mechanic's Lien:*

Dated February 12, 1965, recorded in the Clerk's Office of the Hustings Court of the City of Richmond, Part 11, February 12, 1965, in Deed Book 303, page 40. Memorandum by L.R.T. Garrett, trading as Garrett and Company, claims a lien against the subject real estate in the amount of $58,463.95, plus interest, from January 23, 1965. This Chancery cause constitutes the proceeding by which the said claimant seeks to enforce this lien.

4. There are various easements, conditions and rights of way against the subject parcel which are not reported herein, but are fully set forth in the Lawyers Title Insurance Policy, No. 211147-L (2), a copy of which is attached hereto as Exhibit #3. There is also an easement in Deed Book 281, page 592, to Chesapeake and Potomac Telephone Company.

Evidence in general and discussion thereof:

Because of the length of the hearings (7 days); the extensive direct and cross examinations of the principal parties and the other witnesses; the large number of exhibits (110 exhibits), your commissioner had ample opportunity to observe and consider the demeanor of the principal parties, and the other witnesses, their apparent candor, fairness and bias, intelligence; their interest or lack of it, in the outcome of the case; their respective opportunities, or lack of it for knowing the truth and for having observed the facts to which they testified. From all of these generally acceptable criteria, your commissioner made certain judgments upon which he determined the weight of the evidence and the credibility to be accorded same. The depositions taken on 7 days comprise over 1200 pages, and there are several hundred papers comprising the 110 exhibits. Your commissioner feels it imperative both to sort out and brief the evidence in categorical and orderly fashion in an effort to reduce the evidence to manageable proportions and answer properly and understandably the directed inquiries.

Your commissioner therefore reports that he has briefed and categorized the evidence as hereinafter set forth and refers in parenthesis ( ) to the volume number and page number in the depositions and/or the exhibit designation upon which such evidence may be found and documented.

page 86 } *INTRODUCTION*

In 1964, Ancarrow Marine, Inc., a boat builder, engaged the services of Garrett and Company, general contractor, to con-

struct a travel lift slip and launching ramp, along the south or west bank of the James River, at property owned by Newton H. Ancarrow and Josephine Ancarrow, and leased to Ancarrow Marine, Inc., located at 1308 Brander Street, in Richmond, Virginia.

Construction was started about June 1, 1964, and terminated about February 1, 1965. The general contractor was furnished plans and specifications for the construction of the facility by Ancarrow Marine, Inc., but no plans were prepared for the bulkhead along the bank.

The completed facility is of reinforced concrete construction and consists of a boat launching ramp, a travel lift slip, service and storage rooms, walkways, loading platforms, retaining walls, and appurtenances.

The completed steel sheet pile bulkhead runs along the south or west bank of the James River for a distance of approximately 344 feet.

The general contractor was engaged by Ancarrow Marine, Inc. to perform the work in accordance with the lines, grades, and dimensions shown on the plans or as modified by written or verbal orders, including the furnishing of materials, implements, machinery, equipment, tools, supplies, transportation, labor, and all the things necessary to the satisfactory prosecution and completion of the project.

THE CORPORATION IN GENERAL

Ancarrow Marine, Incorporated (sometimes hereafter referred to as corporation), was incorporated in 1956 (111-156) for the purpose of building and selling boats. (11-20, 111-81) Newton H. Ancarrow is the motivating spirit and force behind the corporation and since its inception, to the present, he was the sole stockholder of the corporation. (11-32, 33; 111-156) There are three officers in the corporation, namely Newton H. Ancarrow, President, and Josephine Ancarrow and Guilford D. Ware, who are also directors. (11-34, 35) Mrs. Ancarrow, as an officer of the corporation, kept the books, answered the phone, prepared the payroll, and was generally familiar with the financial records of the corporation, during the period in question (11-76, 11-43, IV-36), while Mr. Ancarrow devoted the majority of his time to the direct supervision of the construction. (1-43) The improvements that Garrett & Co. constructed upon the subject premises are not listed as assets on the corporation's balance sheet. (11-89, Exs. #34-A through 34-E, and Exs. #35-A through 35-E) However, no depreciation on these improvements constructed by Garrett & Co. were taken by Mr. and Mrs. Ancarrow personally on

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their own personal tax returns. (11-102) The corporation projected and maintained its corporate image and identity by engaging in various boat shows (111-84-85) and by advertising and using sales materials, by which it promoted its own name and image as a boat builder. (111-89-93; Exs. #69-72)

From a reading of the whole record, consisting of over 1200 pages and over 100 exhibits, your commissioner has come to the conclusion that there was a definite regard for maintaining the corporate identity of Ancarrow Marine, Incorporated, separate and distinct from the personal business dealings of Mr. and Mrs. Ancarrow. (111-153-155; Exs. #90-94) However, in only one instance there was a lapse in this corporate identity. This single instance was caused by the careless billing procedures of Garrett & Co. (Ex. #18) as well as the equally careless checking and payment procedures of Ancarrow Marine, Inc. This single lapse occurred in connection with work done by Garrett & Co. on the personal residence of Mr. and Mrs. Ancarrow. The payment for this work in the amount of $3,498.09 was paid July 13, 1964, by a check issued on Ancarrow Marine, Inc. (11-56; Ex. #38-C) However, it is also to be noted that although this work was done on the personal residence of Mr. and Mrs. Ancarrow, it was carried on Garrett & Co.'s books and ledger sheet as part of "Ancarrow Marine, Inc." job. (Ex. #11; Ex. #18)

FINANCIAL ASPECTS OF THE CORPORATION

The corporation is supposed to pay Mr. Ancarrow a salary of $750.00 per month, if the corporation has the money available. (11-36) If not, the salary is accumulated (11-37). Mr. and Mrs. Ancarrow have made various substan-
page 88 } tial loans to the corporation, which totals of principal and interest, as of July 31, 1965, exceeded $869,000.00. (11-42; IV-42-43) From 1959 through July 31, 1966, the corporation consistently lost money each year and the total loss for such period was in excess of $575,000.00 (11-49-52). As of July 31, 1964, the corporation had a cash balance of $706.64, and as of July 31, 1965, had a cash balance of $1,935.71. (11-60-61) The corporation had a gross income from launching boats in the year 1965 of $2,421.00. (11-53, 54) All in all the boat building business has not been a financial success, as it has never shown a profit. (111-158)

THE REAL ESTATE AND THE LEASE

The real estate along the James River, which is the subject matter of this suit, was acquired by Newton H. Ancarrow and

Josephine Ancarrow, his wife, as tenants by the entirety, with the right of survivorship as at common law, in 1962. (11-20). The said real estate is leased to the corporation under an oral lease which was made about 1962. (11-21) The said lease has no definite term (11-24), and the corporation is to pay rent "when they could". The amount of the rental coincides in amount with the payment on the mortgage. These rent payments were to be made if the corporation were in a position to pay. If the corporation had no income, it would not have to pay rent. The corporation has paid some rent, but not every month. (11-26) Mr. Ancarrow pays the real estate taxes on the subject real estate out of his personal funds. (11-26, 27) Shortly after the real estate was acquired in 1962, two buildings were erected thereon. (11-27). The first building cost $85,000.00 and was erected by Mr. and Mrs. Ancarrow. The lease agreement between Ancarrows and the corporation was that the corporation would occupy the building and the land necessary for the boat building and the land adjacent to the water. The rental was based on the corporation's capacity to pay and this was the amount necessary to curtail the mortgage. The lease had no time limit. It was intended that after the corporation got its finances established, it would pay a proper rent. The amount of "proper" rent had never been determined. It was Mrs. Ancarrow's page 89 } opinion that Mr. and Mrs. Ancarrow as the owners of the property could have put the corporation off the property in 30 days notice. (IV-105)

The Ancarrows conceded that the improvements constructed by Garrett & Co. would be the property of the corporation, and that the said improvements could not be physically removed (IV-113, 114), but that the corporation has no idea of leaving the project. (IV-115)

GARRETT & COMPANY

L.R.T. Garrett, the sole owner and operator of Garrett & Co. has engaged in the contracting business for 30 years. (11-105) Garrett & Co. had prior business dealings with Mr. Ancarrow in the matter of road grading which came to approximately $10,000.00. (11-107, 108) Mr. Garrett never gave Mr. Ancarrow either a cost estimate or time estimate on the construction in question. Mr. Garrett never discussed the project directly with Mr. Ancarrow, but referred him to Mr. Davis. (11-126, 127). Mr. Garrett did not undertake any credit check (D &B) on Mr. Ancarrow. (11-127)

Garrett & Co. had a revolving line of credit with the Bank of Powhatan. (11-176) When Garrett & Co. got a construc-

tion job and needed money they could generally borrow on their accounts receivable. (11-176)

THE BOAT RAMP AND SLIP: PRELIMINARY PLANS AND DISCUSSIONS

In the winter of 1963, Mr. Ancarrow discussed building a boat ramp and slip with Mr. Robert E. Davis, General Superintendent, of Garrett & Co. Preliminary discussions were had about coffer dams and how to keep the working site dry and "horse-back" estimates of costs. Mr. Ancarrow had also engaged in prior discussions with E. G. Bowles and had received an estimate of about $42,000 (111-107), which did not include the cost of coffer dams. (111-108) While these discussions with Mr. Davis of Garrett & Co were taking place during the winter of 1963, drawings and plans for the boat ramp and slip had not yet been prepared. (111-108) Mrs. Ancarrow originally thought the construction of the ramp would cost $10,000.00, but after inquiry among various contractors found it would cost $30,000.00 to $35,000.00. page 90 } (IV-5) Prior to starting construction, neither Mr. or Mrs. Ancarrow received any information from any source that their project would cost in excess of $150,000.00. Had they known this, they would never have considered going forward with the project. (IV-7).

When the weather got warmer in 1964, Mr. Davis, at the instance of Mr. Ancarrow, drove some test pilings in the James River in front of where the ramp is now located for the purpose of gathering data for the construction of coffer dams. The results of these test pilings showed a wooden coffer dam would be impracticable because of the lack of sufficient footing on the river bottom. (111-109) Although Mr. Ancarrow personally designed the boat ramp and slip, the drawings themselves were made by a draftsman. However, Mr. Ancarrow did not design the coffer dam. (111-119) The coffer dam was designed by Robert E. Davis of Garrett & Co. (1-313, 314), and at his instance three additional test borings were made. (111-111: Ex. #85) Mr. Ancarrow used design criteria issued by Virginia State Highway Department for bridge abutments because it appeared to him that the concrete work in the boat ramp and slip were similar to bridge abutments. (111-110) Although Mr. Ancarrow prepared the specifications, he admitted he had no previous experience in preparation of specifications or in the construction business. (111-172) The lack of detailed plans and specifications would have made it difficult for the owner to get a fixed price for construction of the facility. (IV-261, 262).

The ramp and the slip were not originally intended for public use. Its function was to get boats in and out of the river for the use of the corporation as a boat builder. Mr. and Mrs. Ancarrow themselves gave no consideration to personally build the boat ramp. The ramp was simply a facility of the boat building business. (IV-6) Mr. and Mrs. Ancarrow made it clear with Mr. Davis that they did not want construction going on during the warm months. (IV-7) Mr. Davis said he could finish the job before July 4, 1964. The Ancarrows would not have started the construction job if they had known it would take them through 1964 into 1965. (IV-8)

page 91 } Mr. Ancarrow in his original preliminary discussions with Mr. Davis of Garrett & Co. made inquiries concerning the construction of the boat ramp and slip on a fixed price basis. However, Mr. Davis raised so many contingencies based upon the uncertainties and unforeseen problems which could arise while working at or near water that the cost of a fixed price contract was high. Because of these contingencies and uncertainties that would have to be allowed and provided for in a fixed price contract, Mr. Ancarrow determined that the least expensive approach would be on a cost plus basis and that the corporation would supply certain materials, consisting of plywood, and interlocking sheet piling, and do itself the electrical and plumbing work. (111-121, 122) At no time during these preliminary discussions was it ever indicated to Mr. Ancarrow that the cost of the projected construction would amount to or exceed $100,000.00. Had such a figure been suggested, the work would never have been undertaken by the corporation. (111-124) In their own minds, the officers and directors of the corporation had made various preliminary estimates of the cost of the boat ramp and slip, which ranged from $30,000.00 to $46,000.00 (111-125) The project was commenced when Mr. Ancarrow instructed Mr. Davis to clear the property, start the excavation and spread the spoil over the property. (111-125, 126)

THE BOAT RAMP AND SLIP: THE SPECIFICATIONS:

Mr. Ancarrow prepared the specifications (Ex. #24), but admitted that he did not have much experience in preparation of specifications and had no previous knowledge of the construction business. (111-172)

It was Mr. Ancarrow's opinion that the specifications were sufficiently complete for someone competent. During the course of Mr. Ancarrow's preliminary discussions with Mr. Davis, Mr. Ancarrow asked Mr. Davis if the specifications

were sufficient and Mr. Davis responded that the specifications were adequate, provided there was someone there to explain them as they went along (111-177, 178). Because of the various contingencies that Mr. Davis brought to Mr. Ancarrow's attention, Mr. Ancarrow had been alerted to the various potential problems which were attendant to this type of construction. (111-181, 182) The plans and specifications (with the exception of the structural plans) are what are called "Concept Submission", which merely shows what is generally wanted, but are not detailed. (IV-256).

page 92 } Shop drawings for the steel work are necessary in order to purchase accurate quantities of steel reinforcing rods. (IV-257) There were no shop drawings for the steel work in the Ancarrow facility. (IV-228, 229, 257) The plans and the structural drawings of the Ancarrow facility were sufficient for the contractor to build from. (IV-199) However, a few dimensions in connection with the ramp grade and length could have been clarified (IV-200 Ex. 220) In the absence of such clarification on the plans themselves, the contractor would inquire of the owner of the facility what his criteria were and to what elevations he wanted to achieve. (IV-200, 201) The specifications (Ex. #24) were characterized as "sketchy". The format was not as straight forward as that that would be normally followed by an engineer and some of the items were not thoroughly defined. Also, the plans themselves were not as complete as those which would have been prepared by an engineer or an architect. (IV-204) With the plans and specifications that were used in this project, the contractor would have to work with the owner on interpreting some of the items. (IV-205)

Neither the plans nor the specifications made any reference to tolerances, nor to patching, and the item of patching is quite frequently spelled out in specifications. (IV-205) It is considered better practice to spell out the tolerances in the specifications. (IV-205, 206) Also, the specifications make no mention of a completion time. (IV-206) However, completion times may be either in the specifications or in the contract. Normally, specifications will contain more explanation with reference to the concrete finishing than are contained in the subject specifications. (IV-208)

PARTIES TO THE CONSTRUCTION CONTRACT

Mr. Garrett testified that he felt that the construction contract was with Mr. Ancarrow (Ex. #40) and testified further he did not even know of the existence of Ancarrow Marine, Inc. at the time the job began. (11-115, 116) Mr. Garrett

stated that he felt that his contract was with Mr. Ancarrow and *not* with Mrs. Ancarrow. (11-120, 121) However, the evidence amply supports that Mr. Ancarrow, acting for the corporation, contracted for the ramp, slip and sea wall, and Mrs. Ancarrow acted as an officer of the corporation when she performed duties as bookkeeper and checked the
page 93 } records. (IV-106) Mrs. Ancarrow never gave Mr. Ancarrow authority to act as her agent with reference to the land, and Mrs. Ancarrow did not personally authorize the improvements (IV-107), although she acted as an officer of the corporation. At no time did Garrett & Co. ever approach or look to Mrs. Ancarrow personally for any payment on the construction project (IV-103), and Mr. Garrett concedes that all billings were made to "Ancarrow Marine, Inc." (11-125) Your commissioner is of the opinion that Mr. Garrett's testimony that he personally did not know of the existence of Ancarrow Marine, Inc. at the time he entered into the contract, is not important, as there are various documents which either precede or are contemporaneous with in point of time with the actual construction job, which reflect that either Mr. Garrett himself, or the administrative personnel in his company, knew of the existence of the corporation. Some of these documents are as follows:

a. Exhibit #17 dated January, 1965, which was an assignment of the Ancarrow account receivable to the Bank of Powhatan (When Garrett & Co. assigned an account receivable to the Bank of Powhatan, they would execute a note and then pledge and assign as collateral the particular account receivable to the bank. (11-178) As a result of the pledge and assignment of the $48,000.00 Ancarrow job account receivable, Garrett & Co. borrowed $40,000.00 from the Bank of Powhatan (11-179 and 183) This Exhibit #17 shows on its face that the debtor was "Ancarrow Marine, Inc." (Ex. #17; 11-183, 184) Mr. Garrett never represented to the Bank of Powhatan that Mr. Ancarrow was the real debtor (11-183, 184)

b. Pursuant to the settlement of October, 1964, Garrett & Co. prepared a mechanics lien waiver form which was introduced as Exhibit #41. This Exhibit #41, signed by Mr. Garrett under oath (11-186, 187) shows on its face that the subject real estate was owned by Newton H. and Josephine W. Ancarrow. In addition, Exhibit #42 is also an affidavit under oath by L.R.T. Garrett, October 31, 1964, and refers on its face to " . . . the performance of the *contract between Ancarrow Marine, Incorporated* . . . and Garrett and Company . . . for work done to 10 October 1964 for the construction of a Ramp and Travel lift . . . " (underscoring supplied). Gar-

rett & Co. never billed Mr. Ancarrow personally
page 94 } for any of the work done on the Ancarrow construction site (11-189, 190) Alos, Exhibit #43, which is a completion report executed under oath by L.R.T. Garrett, October 14,1964, and filed with the City of Richmond, contains the statement " . . . does not include any other work independently contracted by Mr. Ancarrow".

From a reading of the entire transcript of the testimony and from an examination of all the relevant exhibits, the conclusion is inescapable that the only parties to the contract in question for the construction of the boat ramp, slip and coffer dam, was Ancarrow Marine, Incorporated, on one hand, and L.R.T. Garrett, trading as Garrett & Co. on the other. Every pertinent document in the case refers to the fact that *only* Ancarrow Marine, Incorporated was contracting to build the boat ramp and slip. Every essential exhibit either prepared by or offered in evidence by Garrett & Co. shows that it was dealing only with Ancarrow Marine, Incorporated, and not with Mr. and/or Mrs. Ancarrow personally. These include the following vital exhibits: Exhibit #24 (Specifications entitled "at Ancarrow Marine Incorporated"), Exhibit#17 (assignment, Exhibit #18 (invoice), Exhibit #41 (lien waivers), Exhibit #11 (ledger sheet), Exhibit #42 (affidavits), Exhibit #7A through 7S (invoices), Exhibit #43 (completion report) and Exhibit #30 (building permit), Exhibit #13 (invoices).

Your commissioner therefore reports that the credible evidence is substantial and overwhelming that Ancarrow Marine, Incorporated was the sole contracting party with Garrett & Co., and that as a corollary thereof, neither Mr. or Mrs. Ancarrow personally undertook to become obligated on the contract with Garrett & Co. for the construction and erection of the boat ramp and slip facility. It is true that Mr. and Mrs. Ancarrow were officers of the corporation, but there is no evidence whatever, not even a scintilla of evidence, to suggest that Mr. and Mrs. Ancarrow acted other than as officers of the corporation.

THE COST PLUS CONTRACT: 10% *ON MATERIALS AND* 25% *ON LABOR*

The evidence is not crystal clear on just how the exact terms of the cost plus contract were arrived at. However, during the period of construction, the terms of the precise percentage mark-up on the cost plus contract were established by the conduct of the parties and the defendant, Ancar-
page 95 } row Marine, Inc., concedes that there was and is no question that the agreement provided for a

mark-up of 25% on labor and 10% on materials and equipment. (1-381; 11-137; Ex. #13; Ex. #7A through #7S)

On the *absis* of this course of conduct between the parties from the commencement of the contract through the settlement of October 10, 1964, the corporation paid Garrett & Co. (after certain adjustments), in excess of $115,000.00, based on the mark-up of 25% on labor and 10% on materials. (Ex. #11 and Ex. #13) Because this was a cost plus contract, Mr. Ancarrow could have stopped the course of the construction at any time and sent Garrett & Co. off the job (1-400; 11-135) (See also Ex. #102 and Ex. #104 for materials purchased and costs paid by the corporation. Total materials purchased by the corporation came to $32,164.87 and total plumbing and electrical costs paid by the corporation were $10,128.05).

THE CONSTRUCTION

Mr. Robert E. Davis was Garrett & Co.'s general superintendent. (1-307) The project was started by the construction of the coffer dam by which the interlocking sheet piling was driven into place and then filled with sand. (1-318) The next step was to proceed with the excavation which required the use of a combination of equipment. During the process of the excavation, old boats, foundations, brick walls, poles, logs and other debris were dug up. These excavation problems coupled with the fact that Mr. Ancarrow wanted the construction to work around some trees made the job more difficult and added to the expense of the construction (1-187 and 319) As soon as the excavation began, the problem of water seepage began and required the constant use of three pumps all during the period of excavation until the coffer dam was pulled out. (1-183 and 320) At times, the water seepage required the use of three pumps working at the same time. (1-321) After the excavation was completed, the floor section of the travel lift was put in place and construction was started on the walls and that took place until the concrete was finished. The next step was the incline slip and the slabs on top of the slip. (1-322) After the coffer dam was pulled, the interlocking sheet piling was taken from the coffer *dan*

page 96 } and driven along the bank of the river to provide a sea wall. (1-323) The electrical work and the plumbing was handled by Mr. Ancarrow himself (and not by Garrett & Co.), at a total cost of $10,128.05. (1-323, 324; Ex. #104) Also, Ancarrow purchased the steel, the interlocking sheet pilings and plywood which was used for forming the concrete (1-324, at a total cost of $32,164.87

(Ex. #102) In March of 1965, Garrett & Co. was still on the construction job. (1-329) The reinforcing steel plans were designed by an engineer procured by Mr. Ancarrow. (1-333) These plans contained a schedule by which the various pieces of reinforcing steel were keyed by number to the location where they are to be inserted in the structure. This results in all of the pieces of reinforcing steel being cut to specific length and size. Mr. Davis testified that he had never been on a job, regardless of size, when there was not some reinforcing steel left over. (1-334) However, there is not supposed to be reinforcing steel left over if you have the right amount to start with. (1-335)

Mr. E. L. Wynn, an employee of Garrett & Co. became the construction superintendent on October 11, 1964, when the Ancarrow project was already under way. (1-171) Mr. Wynn worked "pretty closely" with Mr. Ancarrow and whenever any questions arise, he always discussed it with him and they came up with an answer. Mr. Ancarrow was at the construction site regularly and was always available to answer any questions that arose. Mr. Wynn made no departures or alterations from the plans and specifications without first clearing such departures with Mr. Ancarrow (1-172, 186 and 187). Mr. Ancarrow told Mr. Garrett that he (Mr. Ancarrow) was "running the job". (11-145 and 168)

CONSTRUCTION: .SETTLEMENT OF OCTOBER 10, 1964

During the period of construction between June through October 10, 1964, various disputes arose between the contracting parties (111-137 (111-200) (1-42) all of which were supposed to have been resolved in a compromise settlement which was made between the parties and which was supposed to settle all disputed matters through the billing date of October 10, 1964 (Ex. #14) Including the payment of $36,472.40, made pursuant to the settlement of October 10, 1964, the
page 97 } corporation had by then paid Garrett $115,000.00. (111-198; Ex. #11; Ex. #101 1-34) The exact terms of the compromise settlement and the intentions of the parties with reference to the said settlement of October 10, 1964, was and is a matter of continuing dispute. Mrs. Ancarrow testified that the payment of some $36,000.00 made pursuant to the settlement of October, 1964, was payment for "everything". (IV-76, 77) However, after October, 1964, the corporation continued to receive weekly billings from Garrett & Co. for work performed and materials furnished subsequent to October 10, 1964. From November, 1964, through

the first part of February, 1965 (IV-81, 82) Mrs. Ancarrow expressed her concern to Mr. Ancarrow over these continued billings and he told her to "forget it". (IV-82) When the weekly billings continued after October, this indicated to Mrs. Ancarrow that Garrett & Co. might be expecting further payment. (IV-83) Mrs. Ancarrow acknowledged that Mr. Garrett never did commit himself to the effect that the payment of $36,000.00 made pursuant to the settlement of October, 1964, was the last payment due. However, Mrs. Ancarrow states that was her understanding. But, her confidence in this understanding was shaken when she continued to get billings in November and December. (IV-112, 113) It was Mr. Ancarrow's position, on behalf of the corporation, that as a result of the October 10, 1964 settlement, the payment made thereunder was "for the job and that was it". (111-142) After the settlement of October, 1964, no further payments were ever made to Garrett & Co. (Ex. #11; 1-61) Mr. Ancarrow felt that no payments from the corporation were to be made to Garrett & Co., and that Garrett & Co. would require about 10 days to 2 weeks to finish the job. (111-142, 143) However, the evidence taken as a whole does not sustain Mr. Ancarrow on this point. Even Mr. Ancarrow concedes both that (a) Garrett may have been out of the room when he, Ancarrow, said the payment of $36,472.40 "was it" and that (b) Mr. Davis had no authority to commit Garrett & Co. to a full settlement of the entire project at said $36,-472.40 payment. (111-234) This concession by Mr. Ancarrow takes place in the following two colloquys at page 238 of volume III of the transcript:

page 98 } "Q. Did Mr. Garrett—agree with you that the payment of $36,000.00—would be all you would have then to pay and that he would complete the job?

A. I wouldn't say that Mr. Garrett agreed to this.

Q. Well, who did, sir?

A. I would say that Mr. Davis gave tacit agreement." and at page 234 of Volume III of the transcript:

"Q. You said before Mr. Davis had no authority to commit Garrett and Company?

A. Right."

Finally, careful reading of Exhibit # 14 which is Ancarrow's own written expression of intention of settlement of October 10, 1964, does not bear out Mr. Ancarrow's position that the payment of some $36,000.00 constituted the last, full and final payment, due Garrett & Co. for the construction of the boat ramp and slip. Rather, Exhibit #14 states: "—settle—account in full—to 10 October '64—"

CONSTRUCTION: ESTIMATE OF $62,000.00

Mr. Ancarrow marked certain trees on the property that he wanted saved. (111-126) Clearing and excavation of the property commenced on or about June 1, 1964. (Ex. #13) Mr. Ancarrow testified that he told Mr. Davis that he wanted the job completed by the weekend of July 4, 1964, and Mr. Davis responded that he probably could finish the job in 8 weeks. (111-127) However, Mr. Davis testified he could not say how long the job would take because he did not know what he would run across. (1-344) At the outset, Mr. Ancarrow became displeased about the way the project was being handled by Garrett & Co., because of Garrett's failure to coordinate materials, men and equipment. (111-128) According to Mr. Ancarrow, work progressed on an irregular basis and dragged. About half way through the construction of the coffer dam, Mr. Ancarrow became quite concerned about the cost of the project. This concern arose when Mr. Robertson, an employee of Garrett & Co., told Mrs. Grubbs, an office employee of the corporation "the thing was going to cost in the order of a quarter of a million dollars". (111-129) When Mr. Ancarrow heard about this, he ordered Mr. Robertson to stop the job immediately. A conference, lasting 4 to 5 hours, was then held between Mr. and Mrs. Ancarrow, Mr. Davis and Mr. Robertson, about the progress and the page 99 } cost of the project. (111-129, 130) Mr. Ancarrow indicated that he absolutely did not want the job to continue if it was going to approach this figure of a quarter of a million dollars. During this conference, Exhibit #27, an estimate was made by Mr. Davis. (111-131) Mr. Davis told Mr. and Mrs. Ancarrow that the balance of the job was going to cost $62,000.00, but this figure did not include the cost of driving the sheet piling out in front of the building along the river bank. (111-131-141) It was on the basis of this estimate of $62,000.00 as contained in Exhibit #27 that the corporation allowed Garrett & Co. to continue the job, (111-131), although Mr. Ancarrow and Mrs. Ancarrow both conceded that they did not have a firm contract for the project at $62,000.00. (111-197, 230; IV-110)

EMPLOYMENT OF LABOR, RENTAL OF EQUIPMENT AND PURCHASE OF MATERIALS

The regular employee force of Garrett & Co. contained only a few men capable of doing the rough carpentry work required of the Ancarrow job. Thus, Garrett & Co. staff did not have sufficient manpower to do the magnitude of work re-

quired of the framing, pouring of concrete, and other things of this nature, on the Ancarrow project. Therefore, it was necessary for Garrett & Co. to go to the labor market to hire additional carpenter and concrete men. (1-57) Garrett & Co. also did not have sufficient equipment in the nature of specialty pieces, dump trucks, pile hammer, air compressor, in its own inventory and had to acquire this additional equipment by renting the same. (1-57, 58) It was estimated that Garrett & Co. may have had as few as 50 employees prior to the Ancarrow job, but that while the Ancarrow job was in full swing it may have had as many as 150 to 200 employees. (1-58) The hourly rates for labor were determined and set by Mr. Robert Davis, who was Garrett & Co.'s job superintendent. (1-76, 77) The rental rates for the use of equipment were determined by the job superintendent (Mr. Davis), and was derived both from Garrett's own standard rental rate and an official rental book commonly used in the construction trade for the rental of equipment, called "AED Rental Book Rate". (1-79, 87, 125; Ex. #21) As the job progressed, the decision of keeping a piece of equipment on the job or returning it back in to the rental was determined by Mr. Davis. (1-79)

The defendant proved beyond question that Garrett & Co., in the employment and use of labor on the Ancarrow job, gave various employees swift increases in pay scale, page 100 } from the time they were hired to the time Garrett & Co. left the project and let them go. For example, one employee commenced work in August, 1964, at $1.25 per hour, and within one week was raised to $2.00 an hour, and by the time that employee left the employment in December, 1964, he was earning $2.75 an hour. (1-98, 99) Another example was that Mr. E. L. Wynn was employed by Garrett & Co. on the Ancarrow job from December 26, 1964 to March 6, 1965, at $200.00 per week. From June, 1965, he was employed by Garrett & Co. at $190.00 per week, and in October, 1965, at $150.00 a week. (1-105) Despite this evidence, your commissioner concludes that this does not show that Garrett & Co., for the purpose of padding the "cost plus contract", deliberately hired unnecessary labor or paid its labor excessively, either in any particular instance or on a general basis more than the going rate for labor, or more than the particular employee was worth. There was no question that Garrett & Co. expanded its payroll for the purpose of the Ancarrow job, but this was because its own regular employees were not sufficient in number to do the Ancarrow job. (1-97-105) and 156). It is common in the construction business to keep a small regular employment staff and to in-

crease the labor force on a short term basis from the labor market to accomplish any particular job. (1-123, 124)

Exhibit #21, the AED Rental Book Rate refers to different rates for rental by the month, week or day. (1-124, 125) It is much more expensive to rent a piece of equipment on a daily rate than it is for a month. (1-124, 125) At first, Mr. Ancarrow decided to rent the Manitowoc on an hourly basis, because if he rented it on a monthly basis and it broke down, he would have to continue to pay rent for it. (1-341, 342) If a piece of equipment is used for anything more than 3 days in any given week, it is cheaper renting it by the week rather than by the day. (11-202, 203) According to the testimony of Mr. Garrett, sufficient equipment was supplied to the Ancarrow job to accomplish the task. (11-144), and that included equipment for driving the piling (11-page 101 } 145, 146)

RECORDS, BOOKS AND ACCOUNTS OF GARRETT & CO., CONTRACTOR:

John J. Spittle, Jr., who was the office manager of Garrett & Co. during the time of the Ancarrow project, had over 15 years office experience as an accountant. His duties at Garrett & Co. included the overall supervision of administration. He actually prepared the invoices on the Ancarrow job. (1-19) All billings and invoices on the Ancarrow job carried a standard markup of 25% on labor and 10% on materials. (1-25, 26) All invoices prepared by Garrett & Co. were in the name of "Ancarrow Marine, Inc.", and none bear the name of Mr. and/or Mrs. Ancarrow personally (Exs. #7A through #7S) The Ancarrows received the original of the invoices (Ex. #7A through #7S) as well as a copy of the itemized statement of account. (Ex. 8B through 8S) on a weekly basis. (1-26 and 29) During the course of the work done by Garrett & Co., Mrs. Ancarrow reviewed every bill received from Garrett & Co. and checked them out as best she could. Toward the end of the job, Mrs. Ancarrow actually typed some of the time sheets when the secretary was out sick. For the period from October 10th through the end of the job, Mrs. Ancarrow had copies of the daily time sheets of all work that was done on the job, and had an opportunity to review every one of them. (IV-37-39) All of the green time sheets, which reflect the utilization and cost of labor were typed in the Ancarrow office by its employee under the direction of Garrett's foreman, Mr. Wynn. (1-26 and 29) Mr. Wynn, Garrett's foreman, on a daily basis would indicate the following information on the time sheet: name of employee, classifica-

tion as to type of work performed, number of hours work, pay scale, materials delivered and equipment furnished. (Ex. 8B through 8S) (1-174) As these sheets were typed by the corporation's employee, the Corporation kept a copy of same for their own information (1-30 149, 150, 174) Delivery tickets for materials received were turned in to Ancarrow's office to be incorporated on the time sheet (1-176) Prior to the settlement of October, 1964, time sheets were not delivered to the Ancarrows. (111-201, 202) However, subsequent to the settlement of October, 1964, the time sheets themselves were typed by Mrs. Grubbs, an employee of Ancarrow Marine, Inc., and a copy was kept by the corporation. (11-217, 218, I-174) Mr. Ancarrow never concerned himself with the time sheets, (111-143) but Mrs. Ancarrow reviewed all of the time sheets, records and bills when she got them (IV-page 102 ⟨ 37) and *someties* Mr. Ancarrow checked bills and delivery tickets. (111-201, 202) Mr. Ancarrow concedes that Garrett continued to send weekly billings to the corporation, after the settlement of October, 1964, but contends that these bills were sent so that Garrett could take them to the bank and borrow money on them. (111-206) The statement of account between Garrett & Co. and Ancarrow Marine, Inc. per Exhibit #11 is as follows (1-34, 35):

Total billings per invoices		$179,407.82
LESS:		
Amount actually paid by Ancarrow Marine, Inc.	$115,103.98	
Amount claimed by Garrett & Co. in excess of that specified in the mechanics lien and bill of complaint	5,839.89	
		$120,943.87
Amount claimed by plaintiff in mechanics lien in this proceeding		58,463.95

Although Garrett & Company endeavored to send invoices and billings to the corporation each week, occasionally several invoices were kept back and forwarded at the same time. For example, the invoices for the weeks ending October 17 (Ex. #7-B; October 30 Ex. #7-C, October 24 Ex. #7-D, were sent at the same time on or about October 30 or 31. (1-69) Whenever it was determined that there had been an error in the billing, corrections were made and an adjustment would appear on a subsequent weekly invoice. For example, in one instance, Garrett & Co. failed to bill the corporation for two hours labor. When the error was discovered, an adjustment was made on a subsequent invoice. (1-7S).

Your commissioner concludes and is of the opinion that all in all the records kept by Garrett & Co. were detailed, full and without substantial error. However, there were errors in billings and charges. But these errors for the most part were detectable and discernable from other records kept and submitted by Garrett & Co. and are not therefore considered to be purposefully erroneous. For example, Exhibit #15-A reflects a rental of a piece of equipment by Garrett &Co. from an equipment rental firm for $787.50. Garrett & Co. in turn billed the corporation $1,113.00 (Ex. #15-B, 15-C), which was an apparent overcharge of $325.00, (1-87, 88) plus 10% which comes to $358.05. Although no satisfactory explanation was given for the reason for this overcharge, it is ap-
page 103 } parent to your commissioner that it was an unintentional error, as the error was discoverable from an examination and a comparison of the books and records kept by Garrett & Co. In every other instance where it was shown that there was a mistake, error or omission, in the Garrett & Co. books, records and billings, there errors or omissions were discernable from Garrett & Co.'s own records. (See also 1-116, 121; 209-304) Therefore, your commissioner has come to the conclusion that the Garrett & Co.'s records and books of accounts which were kept in connection with the Ancarrow project were adequately detailed, reasonably complete, substantially accurate (although not without error) and honest. (1-209-260)

DEFECTS IN CONSTRUCTION

When Garrett & Co. left the Ancarrow job site, the corporation had to do the following to complete the project: (See Ex. #103)

1. Labor and rental of equipment to straighten bulkhead (IV-121, 122)	$ 723.50
2. Apply crushed stone to raise road to grade of ramp (IV-122)	816.69
3. 200 ft. of cable for pulling bulkhead back into place (IV-122)	40.00
4. Welding (VI-122)	69.00
5. Welding materials (IV-122)	32.89
6. Fertilizer (IV-123)	99.04
7. Grass seed (IV-123)	225.00
8. Landscaping (IV-123)	1,349.00
9. Hardware and materials (IV-124)	45.40
10. Labor (IV-124)	120.00

Because this was a cost plus job, it appears to your commissioner that items 2, 6, 7, 8, 9 and 10 of above expenditures

made by the corporation in completing the job, are not chargable against Garrett & Co. The cost of seeding, fertilizing and landscaping are not properly chargable against Garrett & Co., because there is nothing in the specifications or in the contract that required Garrett & Co. to do fertilizing, seeding and landscaping, and had Garrett & Co. done such fertilizing, seeding and landscaping, it would be entitled to the cost thereof plus the usual mark-up. However,
page 104 } those expenditures (items 1, 3, 4, 5) made by the corporation to correct defective workmanship and/or materials supplied by Garrett & Co. in connection with straightening of the bulkhead are properly chargable against Garrett & Co., in the amount of $865.39. All of the reinforcing steel rods that were purchased were not used up. (111-149; Ex. #88) and the weight of this unused steel was estimated at 5½ tons (111-150, 151) The bulge in concrete was caused by form failure (1-394), but does not affect the structural soundness. (1-409) The $3,000.00 loss caused by damaged Manotowoc was borne by Garrett & Co., and not by the corporation. (1-398, 399)

DEFICIENCIES IN WORKMANSHIP

The following deficiencies are reflected by Exhibit #105, which would cost about $25,000.00 to correct:

1. Bulging wall at the extreme end of the travel lift slip which gives an unsightly appearance, by improper forming (IV-171), which would cost $6,695.00 to correct. (Ex. #105) A qualified man on the job could have by observation seen if there was any defect in the forming. In Mr. Ford's experience, he had never seen forming give way to cause a bulge after it had been approved by a competent inspector. (IV-171) Had Mr. Ford been on the construction site, he would have inspected the forming prior to the pouring of the concrete to determine whether or not the forming was adequate to support the concrete. Had Mr. Ford been on the job after the concrete was poured and had seen the bulge in the wall, he would have had it removed and replaced while the concrete was still "green". (IV-221) There was evidence that the forming did not hold in place. (IV-170)
2. The concrete surfaces were not treated neatly and not to grade, nor properly screened. (IV-172)
3. Discoloration in many areas which might have been a result of something in the forms. (IV-172, 173)
4. Deviations in plumbness in dimensions in the 8 service cubicle cells which would cost a total of $10,848.00
page 105 } to correct. (IV-174, 175; Ex. #105)

5. Replacement of 5 inch cracked floor slabs in service cells would cost $1,320.00. (IV-175)
6. Uneven walkways above the cells and top of travel lift slip which could be corrected by grinding, at a cost of $4,-680.00. (IV-175)
7. Unaligned and cracked rails, marred and broken areas, which could be repaired at $1,500.00. (IV-175), or at a cost of $800.00. (IV-291)
The substantial deficiencies of workmanship as above set forth and claimed by the corporation are shown in the following photographs which are contained in Exhibit #105:
Photograph #3 reflects deviation in the placement of the railing posts off center. (IV-192)
Photograph #5 shows discoloration in the wall. (IV-192)
Photograph #6 shows discoloration, unevenness of the top of wall and lack of smooth edging on top of wall. (IV-193)
Photograph #7 shows patching on wall and unevenness along top and uneven edging. (IV-193)
Photograph #8 shows non-square corners in cubicle. (IV-193)
Photograph#9 reflects cracked joint, discoloration and unsightly patching. (IV-195)
Photograph #10 shows mislocation of the pipe sleeve. (IV-193, 194)
Photograph #12 reflects unevenness of joints. (IV-194)
Photograph #13 shows patching on wall. (IV-194)
Photograph #14 shows crack and attempts at patching joint on travel lift slip walkway. (IV-194)
Photograph #15 reflects cracking patching adjacent to joint along wall. (IV-194)
Phtographs #16 and #17 show a bulge in the vertical wall of the travel lift slip. (IV-194), which Mr. Ford asserted occurred when the forms broke, and that a visual inspection, prior to the pouring of the concrete, would have detected the defective forming. (IV-194) This bulge was around 3½ inches (IV-195)
page 106 } Photograph #18 reflects lack of plumbness of wall. (IV-195)
Photograph #19 shows non-squareness of corners in service cubicles. (IV-195)

Notwithstanding the existence of the foregoing deficiencies, Mr. Ford, the defendants expert witness, did not recommend actually making the necessary corrections (at a cost of $25,-000.00) with the exception possibly of patching where some spalling had taken place. (IV-176) It would be his intention to try to live with these deviations rather than replace them. (IV-176)

There was evidence to the effect that some of the reinforcing steel rods that had been purchased were not used in the construction of the facility. (111-149 Ex. #88) However, the defendant concedes that there was no evidence that these reinforcing steel rods had been left out of the facility. (IV-198; see also IV-228 and 229) Had these remaining and unused steel reinforcing rods been designed for the facility and had not been put in, it would have created more than a passing concern to an engineer. (IV-198, 199) The cracks across the concrete along the walkways cannot be definitely attributable to poor workmanship. (IV-224), nor could it be determined what caused the discoloration in the concrete. The discoloration could have been caused from something on the forming or when the patching took place. (IV-224, 225) Part II of Exhibit #105 attributes to the form lumber the discoloration of the concrete walls. The evidence is without contradiction that the form lumber was supplied by the defendant. (Ex. #102; 1-324) Therefore, your commissioner concludes that the discoloration was not due to defective labor or materials supplied by Garrett & Co. Although Mr. Ancarrow was displeased with various aspects of the work, he never charged either Mr. Davis, Mr. Wynn or Mr. Robertson as being incompetent, nor did he ever complain to Mr. Garrett about either of these men. (111-189) Notwithstanding the fact of Mr. Ancarrow's displeasure at the quality of work performed by Garrett & Co., Mr. Ancarrow as late as February, 1965 asked Garrett & Co. to bid on additional road work. (111-189)

PHYSICAL DIMENSIONS

page 107 } The evidence shows that the physical measurements of the facility at the sites compared with the dimensions as set forth in the plans reflects certain deviations from the normal tolerances considered allowable in the trade. (IV-168, 169) Generally, however, the completed facility as built is in accordance with the general dimensions as planned. (IV-177) There are a number of so called deviations between the plans as drawn and the finished facility, but your commissioner does not consider these actual deviations, because they are in fact intentional, additional and agreed to changes in plans. (IV-177, 181, 182, 185 and 186) There exists a variation in the grade of the facility as completed, of 1¼ inches from the facility as planned. This was not considered by the defendant's expert witness to be a tolerable limit as such a variation would create personal sensation while you are walking on it of being uneven. However,

this would be a personal type of objection. Also, this variation created some low spots within which water will cause to be accumulated. (IV-179) The difference between the grade as planned and the grade as actually constructed would not affect the cost of the job, nor would it require additional changes to *accomodate* such variations. (IV-180) The length of the travel lift slip on the plans is approximately 100 feet. (IV-120, 211) The deviation between the length of the travel lift slip as constructed and that shown on the plans is between 1-7/8 inches to 3-7/8 inches. This variation from a functional standpoint is not serious, but while from an aesthetic standpoint it depends upon the individual's personal feeling. (IV-212, 213) Where tolerances become critical, this will add to the cost of construction, because the contractor has to exercise greater care and precision in constructing his form work and in his finishing operation. Likewise, the looser the specifications, the less the costs, and, where the specifications do not say anything about tolerances, it is difficult for a contractor to know what somebody is intending, unless the contractor makes inquiry. (IV-214, 216) Exhibit #106, which is a manual entitled "Recommended Practices for Concrete Pouring" contains recommended tol-
page 108 } erances which depend upon the nature of the work. (IV-215, 216) However, what is an acceptable tolerance in one type of work may not apply to another type of work. (IV-216) Basically, the *dimentional* deviations exceeding acceptable allowable tolerances on the Ancarrow project were objectionable to the defendant from an appearance standpoint. (IV-221)

ESTIMATED COSTS:

The defendant offered the evidence of Leonard N. Ford, a consulting engineer and partner of American Engineers. (IV-136-138 Ex. #105) Based upon field measurements and an examination of the plans and specifications, Mr. Ford made a total cost estimate for the Ancarrow facility at $154,795.00. (IV-141, 142) The unit costs were derived from Mr. Ford's engineering judgment coupled with use of a estimating handbook called "Means Construction Estimating Handbook", which is considered to be a reliable and fairly well known source. (IV-142, 143) This estimate of $154,795.00 includes an estimated concrete cost of $64,666.00, and this in turn is based on an estimate of 1356.4 cubic yards of concrete as necessary to build the structure as shown on the plans (IV-148), and includes also an estimated cost of reinforced steel bars of $10,049.00, making a total estimated cost of concrete

and steel reinforcing bars of $74,415.00. (IV-151) Engineers never expect an estimate to be an exact amount because bids and costs will vary. (IV-151) Ordinarily, an engineer's estimate is made for a project prior to the advertising for bids and are used for comparison to determine the reasonableness of a contractor's bids. (IV-196) Mr. Ford did not consider himself qualified to estimate the time which it would take to put the bulkhead in place (IV-164), but rendered an opinion that this facility could have been built within 180 calendar days. (IV-246) Mr. Ford could not say that his cost estimate would be true for any particular job. However, he did characterize his estimate as "a good engineer's estimate within plus or minus 10%". He could not say that a particular contractor would charge this much to do the job because his experience has shown instances where bids spread 100% from one contractor to another. (IV-166) Mr. Ford agreed that his was a theoretical estimate which could vary based on location, time of the year, terrain, and other page 109 } various factors. (IV-166) Mr. Ford hoped that a low bid would be within 10% of his estimate, but it would not surprise him if bids vary substantially from his estimate. This variance could depend upon how much profit the contractor was trying to make and a lot of other things (IV-167), and his estimate is based upon average conditions. (IV-168)

DETAILS OF THE COST ESTIMATE

The computation for an accurate estimation of the cost of excavating is rather difficult. It was estimated that 8,880 cubic yards of materials had to be excavated. (IV-156) In estimating the coffer dam, it was necessary to compute the volume of the fill which was contained in the coffer dam and the quantity of sheet piling that was used to construct the coffer dam. This information was obtained from the drawings of the coffer dam. (IV-157) Exs. #22 A, B and C, Ex. #25) It was estimated that 316 tons of B-1 stone was used in the facility. (IV-159) This calculation was based upon the geometry of the ramp and the thickness of the stone and in this turn was converted into cubic yards which was then multiplied by an estimated weight per cubic yard to arrive at the total weight. After determining the total weight of the stone, this was then multiplied by $4.00 per ton, which was considered by the witness to be a fair price. (IV-159) The estimated cost of the plumbing is not as reliable a figure as the estimated figure for the concrete and reinforcing steel, (IV-160) because of the lack of completeness in detail in the plans.

(IV-160, 161) The bulkhead along the shore line was not shown in the original plans and specifications and therefore the information upon which this portion of the estimate was based was primarily obtained from Mr. Ancarrow at the site. It could not be accurately determined what the depth or length of the piling was nor the depth or condition of the existing ground at the time which the piling was driven because fill had been put in the area. This created the problem in calculating the original grade of the bank to determine how much back-fill had to be put in it. (IV-161) There were additional retaining walls which are not shown in the original construction plans, but which were in fact constructed. Part of these walls are underground and part are above ground. The sub-structure portion, which is underground, cannot be seen thereby creating a problem in determining what were its actual dimensions. Therefore, it was necessary page 110 } to make certain assumptions as to the dimensions of that portion of the retaining wall not visible. (IV-162)

INQUIRY NO. 3

What work was performed on said real property by the plaintiff, the sum, if any, remaining unpaid for any such work and whether plaintiff has a valid and subsisting lien against said real property for the performance of such work.

RESPONSE

A. Your commissioner finds from the evidence that Garrett & Co. erected a facility for Ancarrow Marine, Inc. on the south or west bank of the James River of reinforced concrete construction, consisting of a boat launching ramp, a travel lift boat launching slip (in and on which is contained service and storage cells, walkways, loading platforms and retaining walls), and a steel sheet pile bulkhead along the south or west bank of the James River.

B. The contract for the construction of the facility was on a cost plus basis. The total cost of labor, equipment and materials as represented by the plaintiff's billings to the corporation on this construction work amounted to $173,567.93 ($179,402.82 less $5,839.89 not claimed on the mechanics lien), on which $115,103.98 was actually paid by Ancarrow Marine, Inc., leaving a balance remaining unpaid of $58,463.95 (less $2,723.44 allowed to be set off in Inquiry No. 4).

C. The work was performed on the leasehold interest of Ancarrow Marine, Inc. on real estate owned by Newton H. An-

carrow and Josephine Ancarrow, his wife, as tenants by the entirety with the right of survivorship as at common law. Ancarrow Marine, Inc. was only a month to month tenant on the said real estate, by virtue of an oral, unrecorded lease.

D. The only parties to the contract for the construction of the facility were Ancarrow Marine, Inc. and Garrett & Co. Neither Mr. or Mrs. Ancarrow personally, nor as each other's agent, contracted with Garrett & Co. for the construction of the facility.

E. Subject to the following qualifications, the plaintiff, Garrett & Co., has a valid and subsisting lien in the amount of $58,463.95 against the real property for the performance of such work:

page 111 } 1. The lien to the extent of $58,463.95 is reduced by set-offs by way of counter-claims in the amount of $2,723.44, which are more fully set forth and explained in Inquiry No. 4 of this report.

2. The lien extends only against the leasehold estate of Ancarrow Marine, Inc. and does not extend against the interest of Newton H. Ancarrow and Josephine Ancarrow, his wife, whose fee simple ownership in the subject real estate is by tenants by the entirety with the right of survivorship as at common law.

INQUIRY NO. 4

Whether the defendant, Ancarrow Marine, Inc. has a valid counter-claim against the plaintiff and, if so, to what extent.

RESPONSE

The defendant, Ancarrow Marine, Inc. established by way of counter-claim set-offs against the plaintiff in the total amount of $2,723.44, as follows:

1. An apparent and unexplained overcharge in the amount of $358.05 in connection with the rental of E-4 Pile Extractor. (Exs. #15 A, B, and C; 1-87, 88)

2. The plaintiff concedes in its brief at pages 16 and 44 that there are certain defects in the nature of cracked concrete, etc., which require patching and repairing, which could be repaired at a cost of $800.00 (IV-291) However, the defendant claims the cost of these repairs at $1,500.00. (IV-175, Ex. #105) The commissioner resolves this in favor of the defendant in the amount of $1,500.00.

3. Labor and materials to straighten bulkhead at a total cost of $865.39. (IV-121, 122)

INQUIRY NO. 5

Any other matter, specially stated, which the commissioner may deem pertinent or which any party may request to be so stated.

RESPONSE

A. Your commissioner reports that the Home Beneficial Life Insurance Company requests an allowance of attorney's fees in the amount of $250.00. (Exhibit #19)

B. The plaintiff properly recorded and perfected its mechanics lien to the extent of $58,463.95 and instituted suit thereon within the time prescribed by statute.

page 112 } C. The plaintiff claims in its brief (pages 2-3) that its mechanics lien attaches to the entire property. The defendant in its brief does not contest this claim. It is the opinion of your commissioner that the mechanics lien attaches only to the entire leasehold interest of Ancarrow Marine, Inc., and NOT against the fee simple interest of Newton H. and Josephine Ancarrow.

D. The plaintiff asserts in its brief (pages 3-4) a personal judgment against Newton H. Ancarrow, Josephine Ancarrow and Ancarrow Marine, Inc. It is the opinion of your commissioner that the evidence is overwhelming that neither Newton H. Ancarrow nor Josephine Ancarrow were parties to the construction contract. Therefore, your commissioner recommends that no personal liability be imposed upon them either jointly or severally. However, the evidence does establish that Ancarrow Marine, Inc. is indebted to the plaintiff, Garrett & Co., in the amount of $55,740.51 ($58,463.95 less $2,723.44).

E. Your commissioner finds from the evidence that the plaintiff, Garrett & Co., fulfilled its duty in keeping and supplying to the corporation accurate and correct accounts of all materials used and labor performed, with the names of the materialmen and laborers, so that Ancarrow Marine, Inc. could check upon the same. In the instant case, Mr. Ancarrow, who was president of Ancarrow Marine, Inc., was in constant supervision of all of the plaintiff's work, and there was nothing for the plaintiff to conceal. During the entire progress of construction, periodic, detailed, itemized statements, mostly on a weekly basis, were furnished to the corporation, in connection with materials, labor and equipment furnished the job. The evidence is abundantly clear that all of the detailed, itemized statements were furnished the corporation and as a matter of fact some of them were prepared in its office by

its own employee or officer (See *Hitt* v. *Smallwood* 147 Va. 778)

F. It is the opinion of your commissioner that the defendant, Ancarrow Marine, Inc. has failed to establish that the plaintiff's charges for the construction of this facility were either padded or excessive. It is true that the defendant submitted evidence (Ex. #105) to the effect that this facility could have been constructed for $154,795.00. However, your commissioner remains convinced that the defendant's expert witness (Mr. Ford), who prepared Ex. #105, was not fully cognizant and aware of all the actual surface, sub-surface, soil and water conditions that existed at the site during the period of construction by the plaintiff, Garrett & Co. In addition, the defendant's estimate of $154,795.00 is based on a number of assumptions and upon ordinary conditions. To your commissioner, the evidence was quite clear that the construction job as undertook by Garrett & Co. presented difficult, unusual and adverse conditions with reference to surface, soil and water. Therefore, your commissioner substantially discounted the probative value of the estimate of $154,795.00 as being a reliable and accurate figure with which this facility could have been constructed.

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G. The plaintiff contends in its brief that the mechanics lien should extend against the fee simple interest of Newton H. Ancarrow and Josephine Ancarrow on either one or all of the following three grounds: (plaintiff brief pages 18 ff)

1. That they as owners caused the improvements to be erected within the spirit and letter of Sections 43-3 and 43-20 of the Code of Virginia.
2. They are estopped to deny the lien.
3. The Court should pierce the corporate veil and hold that the plaintiff's lien attach to the land owned by Newton H. Ancarrow and Josephine Ancarrow. The plaintiff's first basis will not stand because there is no evidence whatever in the record that either Mr. or Mrs. Ancarrow personally or as each other's agent, contracted with Garrett & Co. for the construction. On the contrary, the evidence is overwhelming that both Mr. and Mrs. Ancarrow acted only as officers of the corporation and that the construction contract was only between Garrett & Co. and the corporation. Also, the plaintiff knew that the corporation did not own the subject real estate and that the same was owned by Newton H. Ancarrow and Josephine Ancarrow, because Exhibit #41, which is a mechanics lien waiver, executed by the plaintiff on December 28, 1964, shows on its face that the subject real estate was owned by Newton H. and Josephine W. Ancarrow. There is no evidence whatever

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that the plaintiff was misled by Mr. or Mrs. Ancarrow, either affirmatively or by their silence. There was no evidence of any duty for Mr. or Mrs. Ancarrow to make any representations or disclosures because the question of ownership did not become an issue until after the institution of the mechanics lien proceedings. Finally, Mr. Garrett himself conceded that his contract was with Mr. Ancarrow *ONLY* and not with Mrs. Ancarrow. (11-120, 121 Ex. #40) Therefore, by Mr. Garrett's own admission he could not claim a lien against the tenant by the entirety interest of Newton H. and Josephine Ancarrow by having a contract with just one of them (*Vasilion* v. *Vasilion* 192 Va. 735)

With reference to the plaintiff's claim that the individual defendants were estopped to deny a lien, again the evidence does not support the plaintiff's assertion. At all times, the plaintiff dealt with Ancarrow Marine, Inc. and treated Mr. Ancarrow as the president of Ancarrow Marine, Inc., and this is reflected on the various important exhibits which the plaintiff itself either prepared and/or introduced into evidence.

The plaintiff stresses the financial weakness of the corporation and this fact is amply proven by the evidence. However, the plaintiff through the entire construction dealt only with the corporation and yet never ran any credit check on either the corporation or the Ancarrows, though prudence might have suggested he do so. (11-127) Your commissioner concludes that the plaintiff has failed to establish any facts upon which could be based any breach of duty or failure to disclose when there was a duty to do so. In *Cantrell* v. *Booher* 201 Va. 649, the Court stated at page 654 that to constitute an estoppel by silence, such concealment must have been made in bad faith with the intention that the other party should be misled. There is no evidence whatever to show that either of the Ancarrows were motivated by bad faith or intended to mislead the plaintiff.

Your commissioner is not convinced from the evidence that had Mr. Garrett known of the verbal, unrecorded and vague lease between the corporation and the Ancarrows, and of the financial weakness of the corporation, that he page 115 } still would not have undertaken the construction. On the contrary, Mr. Garrett plainly exhibited his confidence in only Mr. Ancarrow and not on Mrs. Ancarrow or on the value of the land. He never ran any kind of credit check on Mr. Ancarrow because he relied on Mr. Ancarrow.

The plaintiff seeks to pierce the corporate veil in order to impose the mechanics lien on the land against the entirety

interest of Newton H. and Josephine W. Ancarrow. The evidence was uncontradicted that Newton H. Ancarrow was the sole and only stockholder in Ancarrow Marine, Inc. (11-32, 33) Assuming, for the purposes of argument only, that the corporate veil should be pierced, the net effect would still not result in the imposition of a lien against the entirety interest of Newton H. and Josephine W. Ancarrow, in the subject real estate, because Mr. Ancarrow being the sole and only stockholder, his single personal liability, without that of his wife, still would not legally subject the real estate to the lien. (*Vasilion* v. *Vasilion* 192 Va. 735)

H. The defendant alleges that it was defrauded as to the time of completion and the cost of the improvement (See defendant's brief pages 7 ff). There is no question that the corporation was gravely disappointed both as to the length of time that it took to construct the facility and the cost thereof. Your commissioner does not doubt that had the corporation known both of these factors in advance, they may not have proceeded with the project. However, the time of completion was never made a condition nor a term of the cost plus contract nor was the same set forth in the specifications (Ex. #24) The evidence was abundantly clear that Garrett & Co. in its discussions with the corporation placed so many contingencies on a fixed price contract that it was decided by the corporation to proceed on a cost plus contract, rather than a fixed price contract. From a study of the entire record and exhibits, your commissioner cannot find any evidence that Garrett & Co. made any misrepresentation of any material facts to the corporation with reference to either the time of completion or the cost thereof. It is true that certain estimates of the time of completion and the cost thereof were discussed. However, Mr. Ancarrow conceded that

page 116 } the cost estimates did not constitute a firm contract. (111-197, 230; IV-110)

Therefore, your commissioner concludes that Garrett & Co. committed no fraud on the corporation either in the time of completion or in the cost thereof, as Garrett & Co. itself never committed itself to a time for completion, nor to the cost thereof on a fixed contractural basis.

1. The defendant contends (brief pages 48 ff) that the payment of some $36,000.00 pursuant to the settlement of October, 1964, was made and received as the final payment for the completed job. It is the opinion of your commissioner that

the evidence does not sustain this contention for the reasons previously set forth and discussed in this report.

Respectfully,

Arlin F. Ruby
Commissioner in Chancery
Dated: December 16, 1968

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EXCEPTIONS TO COMMISSIONER'S REPORT

To The Honorable Judges of Said Court:

Defendant, Ancarrow Marine, Incorporated, for its exceptions to the Commissioner's Report states as follows:

EXCEPTION NUMBER ONE

It excepts to those portions of the report, and in particular paragraph E of the response to inquiry No. 3, which declares that the amount of the lien held by plaintiff exceeds $7,511.66, since this is the full amount due plaintiff under any view of the law and the evidence.

Evidence

Exhibit 54 (a copy of which is the next page of this paper) is an assignment made by Garrett and Company to the Bank of Powhatan of invoices charged to Ancarrow Marine, Incorporated totaling $48,228.85 in exchange for a
page 118 } loans of $40,000.00 to Garrett

Filed Jan. 22nd 1969.
Teste: Iva R. Purdy, Clerk
By L. E. Combs, D. C.

ASSIGNMENT OF ACCOUNTS

To Bank of Powhatan, Powhatan, Virginia

WHEREAS, the undersigned is indebted to the above mentioned bank, hereinafter called "bank", at the date hereof, in

the sum of $40,000.00 principal, with interest thereon at the rate of 6% per annum due 30 days after date hereof.

NOW, THEREFORE, for value received, and for the purpose of securing payment at maturity of the principal and interest of said indebtedness, and of any extension or renewal of the same, and to secure as well any other indebtedness, now or hereafter owing from the undersigned to said bank, the undersigned hereby sets aside assigns and transfers to said bank, all of the accounts receivable hereinafter described, together with the right to sue for, collect, receive and receipt for the several sums represented by said accounts and to apply the proceeds thereof upon said indebtedness, which accounts hereby are warranted to be valid, subsisting and *collectable* accounts in the several amounts hereinafter written as to each, and are described as follows:

Name and Address of Debtor	Amount of Account
Ancarrow Marine, Inc. 1308 Brander Street Richmond, Virginia Invoices 844, 889, 890, 902, 903 913, 981, 982, 1002 & 1003	Total Amount Due $48,228.85

The provisions and representations appearing upon the reverse side of this instrument are, and shall be construed to be, incorporated herein.

Date the day of January, 1965

In the presence of:

Robert B. McRae
(Secretary)

Garrett & Company
L.R.T. Garrett
(Owner)
Date January 1965

Bank of Powhatan
Powhatan, Virginia 23139

Gentlemen:

We hereby acknowledge assignment as outlined above.

Ancarrow Marine, Inc.
By: W. H. Ancarrow, Pres.

page 119 } and Company, (Report, page 12). The uncontradicted evidence is that Garrett received this money, has never repaid this loan, and has never received any reassignment of these accounts. The bank still owns these accounts and notified Ancarrow Marine, Incorporated of the assignment. On its face the assignment recites that the bank shall have the right to "sue for, collect, receive and receipt for" the accounts. This is only proper since Garrett received and still has the bank's money. The assigned accounts are invoices numbered 844, 889, 890, 902, 903, 913, 981, 982, 1002 and 1003. The Commissioner's Report allows *Garrett and Company* to enforce a lien for and recover for each of these accounts. The only other accounts in suit for which liens were filed total $10,608.13 against which there are two credit memos numbered 40 and 93 totaling $373.03 for a maximum liability, without offset of $10,235.10.

The Commissioner found as a fact that only Garrett filed a mechanic's lien (Report, page 4), and no lien has ever been filed by the Bank of Powhatan. The time for filing such a lien has now long since expired. The bank, therefore, can make no recovery in this mechanic's lien suit, since it never had or claimed any lien, perfect or imperfect. Garrett and Company cannot recover on the assigned claims since he does not own them.

Argument

The Supreme Court of Appeals has clearly held that the assignor of a contract has no right to sue thereon or collect or interfere with the claim once assigned. *Sweeney* v. *Foster,* 112 Va. 499 (1911). The court specifically held that a plaintiff has no cause of action on an assigned claim page 120 } until such time as he has obtained a reassignment. 112 Va. 504. As held in *Vance* v. *Maytag Sales Corporation,* 159 Va. 373 (1932), the assignee is the sole owner of an assigned claim: "If any right of action existed, and if it were assignable, it belongs to the Maytag Company, Incorporated (the assignee) and not to Vance" 159 Va. at 382. Once an assignment has been made the assignee takes all the rights and remedies possessed by his assignor, 6 *Am. Jur.* 2d, Assignments, §119, and a debtor with notice may respond only to the assignee, and the assignor can do nothing to defeat this right. See *Mandeville* v. *Welch,* 5 Wheat (U. S.) 277 (1820).

Assuming, arguendo, that Garrett and Company is entitled to some lien against the interests of Ancarrow Marine, Incorporated in the real estate involved, the Commissioner

should have found that the amount of this lien could not, in any event, exceed the amount of the claim still owned by Garrett and Company at the time he filed the liens and prosecuted the suit to enforce them. The law is clear on this point. Also, simple justice would forbid a recovery by Garrett, since he has never repaid the bank which loaned him $40,000.00 of its money on a note secured by an assignment of these same claims. If Garrett now recovers he will have received $40,000.00 from the bank on the claims and will now recover $48,000.00 from defendant for the same claims. If Garrett and Company had wished to enforce liens for these claims he should have repurchased or paid off the note at the bank and obtained a reassignment of the accounts securing the note. This he did not do.

page 121 } For the foregoing reasons the Commissioner erred in not limiting the lien found to the amount of $10,235.10, (less the offset below) the claims presently owned by Garrett and Company for which a memorandum of lien was filed. The Commissioner was manifestly incorrect in finding on page 31 of his report that the evidence established that Ancarrow Marine, Incorporated is indebted to the plaintiff, Garrett and Company, in the amount of $55,740.51. If it was indebted to Garrett at all it was indebted to him only in the amount of $10,235.10. Giving effect to the offset found by the Commissioner in the amount of $2,723.44 (Report, page 30), the Commissioner should have found a lien, if any, only in the amount of $7,511.66.

EXCEPTION NUMBER TWO

The report of the Commissioner errs in finding that the claim of Garrett and Company was not barred by actionable fraud on the claim of Garrett and Company in procuring and inducing the continuation of the contract. The law and evidence relevant to this exception is set forth in the memorandum of law attached hereto as Exhibit A.

EXCEPTION NUMBER THREE

The Commissioner erred in finding that the records kept by Garrett and Company were accurate and sufficient to form a basis for the liens claimed. The law and evidence relevant to this exception are set forth in Exhibit A.

CONCLUSION

Defendant, Ancarrow Marine, Incorporated, respectfully contends that this court should rule:

page 122 } 1. That any lien claimed by Garrett and Company is barred by its fraud and also by its failure to keep accurate records.

2. That any lien found by the court be in the amount of $7,511.66, only, since all other claims have been assigned by Garrett and Company to the Bank of Powhatan and are its property.

Respectfully submitted this day of January, 1969.

Ancarrow Marine, Incorporated
By Counsel

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PLAINTIFFS' EXCEPTIONS TO REPORT OF COMMISSIONER IN CHANCERY

To The Honorable Judged of the Aforesaid Court:

The plaintiffs, L.R.T. Garrett, Trading as Garrett and Company, and the Bank of Powhatan, except to the report of Arlin F. Ruby, Commissioner in Chancery, assigned to this cause, filed herein on January 13, 1969, on the following grounds:

1. That the Commissioner erred in his finding of fact that work was terminated on the subject project on or about February 1, 1965, as set forth in the introduction of the aforesaid report on page 5. This determination is opposed to the uncontradicted evidence that the subject work was completed on or about March 6, 1965, as is evidenced by the invoices filed as Exhibit B herein.

2. That the Commissioner erred in his finding that Exhibit 18, representing an invoice for work done by Garrett and Company at the personal residence of the individual defendants, Mr. and Mrs. Ancarrow, was billed to the corporate defendant, Ancarrow Marine, Incorporated, due to the *carless* billing procedures of Garrett and Company. This determination is not supported by the evidence for no evidence

was introduced showing that the billing was forwarded to the corporate defendant through a mistake by Garrett and Company and the only reasonable *inferance* to be drawn from the fact the billing was forwarded to the corporate defendant is that the individual defendants requested that the work be so billed.

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3. That the Commissioner erred in his finding set forth on page 13 of the aforesaid report, responses A, C and E to inquiry No. 3, and responses C, G and E to inquiry No. 5, wherein the Commissioner found that a judgment should not be entered against the individual defendants for the amount claimed nor their interest in the subject real estate subjected to the lien of the plaintiff, in the following particulars:

(a) That the Commissioner's finding is based upon the erroneous determination that the individual defendants did not cause the subject improvements to be erected within the letter and spirit of Sections 43-3 and 43-20 of the Code of Virginia.

(b) That the Commissioner's finding is based upon the erroneous determination that the individual defendants are not estopped to deny the lien of the plaintiff.

(c) That the Commissioner's finding is based upon the erroneous determination that the individual defendants had no duty to reveal to the plaintiff that during the negotiations of the construction contract or during the construction of the improvements they were acting solely in their capacity as officers of the corporate defendant or that the corporate defendant was leasing the premises from the individual defendants on an oral, unrecorded lease.

(d) That the Commissioner's finding is based upon the erroneous determination that reason and justice do not require that the Court pierce the corporate veil of the corporate defendant and hold the individual defendants liable to the plaintiff in this cause.

(e) That the Commissioner's finding is based upon the erroneous determination that even if the corporate veil could be pierced in the instant cause, only Mr. Ancarrow could be held personally liable.

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(f) That the Commissioner's finding is based upon the erroneous determination that Mr. Ancarrow did not act in behalf of or as agent for Mrs. Ancarrow in negotiating the contract with the plaintiff. The law and evidence relevant to and in support of this exception are set forth in the Memorandum of Law and Evidence attached hereto as Exhibit A and made a part hereof.

4. That the Commissioner erred in his finding that the only parties to the subject construction contract were the corporate defendant, Ancarrow Marine, Incorporated, and the plain-

tiff, Garrett and Company, as set forth in the aforesaid Commissioner's report, and in particular, in the introduction on page 5, in the Findings of Fact entitled "Parties to the Construction Contract", in responses A, D and E(2) to inquiry No. 3, and in responses D and G to inquiry No. 5. The law and evidence in support of and relevant to this exception are set forth in Exhibit A.

5. That the Commissioner erred in his finding on page 6 of the aforesaid Commissioner's report that the work done at the personal residence of Mr. and Mrs. Ancarrow was carried on Garrett and Company's books and ledger sheets as a part of the "Ancarrow Marine, Inc." job. This determination is opposed to the uncontradicted evidence that a ledger sheet in the name of Ancarrow Marine, Inc. was set up by the Garrett and Company (Exhibit 11) and that the work done at the personal residence of Mr. and Mrs. Ancarrow was billed on that ledger as was the construction project in question.

6. That the Commissioner erred in his finding on page 20 of his report that prior to the settlement of October, 1964, time sheets were not delivered to the defendants. This determination is opposed to the uncontradicted evidence that the same billing procedures were used prior to the settlement of October, 1964 as were used during the period in dispute (I-40) and is evidenced by Exhibit 13 filed herein.

page 144 } WHEREFORE, the plaintiffs, L.R.T. Garrett, Trading as Garrett and Company, and the Bank of Powhatan, hereby respectfully request the Court to set aside the findings of fact and conclusions of law objected to herein, to enter judgment against the individual defendants and to hold that the interest of the individual defendants in the subject real estate be subject to the lien of the plaintiffs.

L.R.T. Garrett, Trading as Garrett and
Company and Bank of Powhatan

By George B. Little
Counsel

Filed Jan. 22nd 1969.
Teste: Iva R. Purdy, Clerk
By L. E. Combs, D. C.

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This cause came to be again heard upon the papers formerly read and upon the answer to the crossbill of Ancarrow Marine, Incorporated, the decree of reference, the order making the Bank of Powhatan a party plaintiff in this cause, the order allowing the cause to be heard upon reproductions of the original invoices with supporting itemized statements of account and credit memoranda filed as Exhibit B to the petition herein and the amended answer of the defendants, Ancarrow Marine, Incorporated, Newton H. Ancarrow and Josephine Ancarrow; upon the report of Arlin F. Ruby, Commissioner in Chancery, filed in the Clerk's office on January 13, 1969, together with the depositions and the exhibits therewith returned; upon the exceptions of L.R.T. Garrett, Trading as Garrett and Company, and Bank of Powhatan, to such report; and upon exceptions of Ancarrow Marine, Incorporated, to such report; upon memoranda of law filed by the parties hereto in support of the exceptions to such report; and was argued by counsel.

Upon consideration whereof, the Court doth overrule the said exceptions and doth approve and confirm said report.

It is therefore ORDERED, ADJUDGED, and DECREED that the plaintiff, L.R.T. Garrett, Trading as
page 167 } Garrett and Company, be and the same is hereby awarded judgement against the defendant, Ancarrow Marine, Incorporated in the amount of Fifty-Five Thousand Seven Hundred Forty and 51/100 Dollars ($55,740.51) with interest at six per cent (6%) per annum from January 23, 1965 (this judgement includes the claims of the plaintiffs L.R.T. Garrett, Trading as Garrett and Company, and the Bank of Powhatan against the defendant Ancarrow Marine, Incorporated, represented by the accounts assigned by Garrett to the Bank of Powhatan as collateral security for a loan of Forty Thousand Dollars ($40,000.00) set out in Exhibit 17); that the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, has a valid and subsisting mechanic's lien in the amount of Fifty-Five Thousand Seven Hundred and 51/100 Dollars ($55,740.51) with interest at six per cent (6%) per annum from January 23, 1965, against the tenancy at will leasehold interest of the defendant, Ancarrow Marine, Incorporated, in and with respect to the property in suit as particularly set forth in the Commissioner's report; that the aforesaid interest of Ancarrow Marine, Incorporated, in the property in suit be sold to satisfy the lien of the plaintiff,

the proper parties being before the Court to enable the Court to effect such sale in this cause; and that the proceeds of said sale be distributed among the plaintiffs as their interest may appear in satisfaction or partial satisfaction of said judgement, to all of which actions the defendant, Ancarrow Marine, Incorporated, by counsel, objected and excepted.

It further appearing to the Court that the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, has substantially prevailed against the defendant, Ancarrow Marine, Incorporated, and that the defendants Newton H. Ancarrow and Josephine Ancarrow have substantially prevailed against the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, and that the rights of Bank of Powhatan are included in the judgement awarded to the complainant, L.R.T.

page 168 } Garrett, Trading as Garrett and Company against the defendant, Ancarrow Marine, Incorporated, and that the rights of Home Beneficial Life Insurance Company, L. W. Richardson and Richmond Moore, Jr., Trustees, were not affected by this suit, the Court doth further ADJUDGE, ORDER and DECREE:

(1) That counsel for Home Beneficial Life Insurance Company be allowed a fee and costs of $75.00;

(2) That Arlin F. Ruby, Commissioner in Chancery, be allowed a total of $1500.00 in full for his fee and costs as Commissioner in Chancery;

(3) That all of the fees and costs of this suit be borne one-half by the plaintiff, L.R.T. Garrett, Trading as Garrett and Company and one-half by the defendant, Ancarrow Marine, Incorporated.

To all of which counsel for the respective parties objected and excepted.

Enter this Decree,

Wm. E. Spain
Judge

July 22, 1969

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Pursuant to Rule 5:1 Section 4 of the Rules of the Court, Counsel for the plaintiffs, L.R.T. Garrett, Trading as Garrett and Company, and Bank of Powhatan, hereby give notice that said plaintiffs appeal from the Judgment and Order of this Court entered in this case on the 22nd day of July, 1969, and set forth the following Assignments of Error:

1. The Court's refusal to impose personal liability on the individual defendants and its refusal to subject the fee simple interest of the individual defendants in the land in suit to the mechanic's lien of the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, was contrary to law and to uncontradicted evidence for the following reasons:

In light of the uncontradicted testimony and evidence relating to the financial condition of the corporate defendant, Ancarrow Marine, Incorporated, at the time the contract in suit was made; the uncontradicted evidence with respect to the terms and conditions of the verbal lease be-
page 170 } tween the corporate defendant and the individual defendants; and the personal involvement of the individual defendants in and about the construction of the improvements erected pursuant to the contract between Ancarrow Marine, Incorporated, and L.R.T. Garrett, Trading as Garrett and Company:

(a) The Court erred in finding that the individual defendants did not cause the improvements in suit to be erected within the spirit and letter of Sections 43-3 and 43-20 of the Code of Virginia.

(b) The Court erred in not finding that the defendants were estopped to deny the lien of the plaintiff and estopped to deny that they were not parties to the contract with the plaintiff, L.R.T. Garrett, Trading as Garrett and Company.

(c) The Court erred in not finding that Ancarrow Marine, Incorporated, was acting as agent for the individual defendants when it contracted with the plaintiff for the construction of the subject improvements.

(d) The Court erred in not finding that Newton H. Ancarrow was acting on behalf of Josephine Ancarrow in his dealings with the plaintiff.

(e) The Court erred in not finding that reason and justice

required the piercing of the corporate veil of Ancarrow Marine, Incorporated, so as to hold the individual defendants personally liable to the plaintiffs in this cause.

2. The Court erred in confirming the following specific findings of the Commissioner in Chancery in so far as said specific findings can be deemed to constitute findings of fact for the reason that they are contrary to the evidence or not supported by evidence of any probative value:

(a) That Exhibit 18, representing an invoice for work done by the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, at the personal residence of the individual defendants, Mr. and Mrs. Ancarrow, was billed to Ancarrow Marine, Incorporated, due to the careless billing pro-
page 171 } cedures of Garrett and Company.

(b) That the work performed by the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, at the personal residence of Mr. and Mrs. Ancarrow was carried on Garrett and Company's books and ledger sheets as a part of the "Ancarrow Marine, Inc." job.

(c) That time sheets of the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, were not delivered to the defendants prior to the settlement in October, 1964.

(d) That there was a definite regard for maintaining the corporate identity of Ancarrow Marine, Incorporated, separate and distinct from the personal business dealings of Mr. and Mrs. Ancarrow during the calendar years 1964 and 1965.

(e) That Mr. and Mrs. Ancarrow did not act in any capacity other than in the capacity as officers of Ancarrow Marine, Incorporated, in dealing with the plaintiff.

(f) That Josephine Ancarrow did not give Newton H. Ancarrow authority to act as her agent with reference to the subject land nor did she personally authorize the improvements.

(g) That the plaintiff, L.R.T. Garrett, Trading as Garrett and Company, would have undertaken the subject construction even if it had known of the verbal, unrecorded lease between Ancarrow Marine, Incorporated, and Newton H. Ancarrow and Josephine Ancarrow and the financial weakness of Ancarrow Marine, Incorporated.

3. The Court erred in decreeing that all of the fees and costs of this suit should be borne one-half by the plaintiff, L.R.T. Garrett, Trading as Garrett and Company in that the Court should have taxed all fees and costs of this suit to the defendants.

L.R.T. Garrett, Trading as
Garrett and Company, and
Bank of Powhatan

By George B. Little
Of Counsel

Filed Jul 24 1969
Teste: Iva R. Purdy, Clerk.

By R. E. Combs, D. C.

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ASSIGNMENTS OF CROSS-ERROR

Pursuant to Rule 5:1, §4, of the Rules of Supreme Court of Appeals of Virginia, counsel for the defendant, Ancarrow Marine, Incorporated, sets forth the following assignments of cross-error.

The Hustings Court of the City of Richmond, Part II, erred as follows:

1. In overruling all exceptions of Ancarrow Marine, Incorporated to the report of the Commissioner in Chancery;

2. In awarding any judgment against the defendant Ancarrow Marine, Incorporated, since all claims of the plaintiffs are not supported by the law and evidence and all claims of the plaintiffs are barred by the fraud of L.R.T. Garrett, trading as Garrett and Company.

page 174 } 3. In awarding any judgment based on the claims of the Bank of Powhatan, since such plaintiff failed properly to plead or prove any cause of action cognizable against these defendants in this proceeding;

4. In awarding any judgment to the Bank of Powhatan, and in awarding any judgment to the plaintiff L.R.T. Garrett, trading as Garrett and Company, based upon the invoices theretofore assigned by him to the Bank of Powhatan; and

5. In failing to award judgment to the defendant Ancarrow Marine, Incorporated, on its cross-claim and in dismissing the same.

Ancarrow Marine, Incorporated
By Counsel

Filed Aug. 4 1969
Teste: Iva R. Purdy, Clerk

By ....., D. C.

John J. Spittle, Jr.

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TRANSCRIPT of the depositions of John J. Spittle, Jr. and others, taken before Honorable Arlin F. Ruby, a Commissioner in Chancery, pursuant to a Decree of Reference dated January 23, 1967, beginning on the 22nd day of March, 1967, at the law offices of Christian, Barton, Parker, Epps & Brent, 500 Mutual Building, Richmond, Virginia, beginning at 10:00 o'clock A. M.; said depositions to be read as evidence in the above-entitled cause now pending and undetermined between the parties.

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Dep.
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page 3 } APPEARANCES:

Browder, Russell, Little & Morris, 1510 Ross Building, Richmond, Virginia, By: George B. Little, Esquire, and J. Terry Parsley, Esquire, of counsel for the Complainant;

Christian, Barton, Parker, Epps & Brent, 500 Mutual Building, Richmond, Virginia, By: Charles W. Laughlin, Esquire, and Guilford D. Ware, Esquire, of counsel for Ancarrow Marine and Mr. and Mrs. Ancarrow.

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JOHN J. SPITTLE, JR., called as a witness in behalf of the Complainant, first being duly sworn, deposes and states as follows:

John J. Spittle, Jr.

DIRECT EXAMINATION

By Mr. Little:

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Q. What were your general duties as office manager while working for the plaintiff in this suit?

A. As office manager for Garrett I was responsible for supervision of the overall administrative part of the operation, specifically as far as the Ancarrow job was concerned I actually prepared the invoicing on the job.

Q. Mr. Spittle, I am going to show you 16 invoices and supporting papers and ask that you identify these please, sir, and I am also going to show you two credit memorandums and ask you would you please just identify these in general at the present time as to what they are?

A. What do you mean, the total or individually?

Q. In total right now.

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A. Just by looking at these things generally, these appear to be a group of invoices based on the construction work done by Garrett for Ancarrow Marine, Incorporated.

Q. From what period, sir?

A. There are also some miscellaneous credits on the bottom side.

Q. Would you go to the first and last invoices to get the dates?

A. These are in order. The first covers the period October 11 through October 17, 1964, and as far as the group is concerned the last basic invoice is covering the period January 16, 1965 through January 23, 1965.

It has just been pointed out there is what appears to be an odd billing here of random dates, welding services January 7, 1965 through January 22, 1965.

Q. Excuse me just a moment please. I think we might have them out of order. January 23, that is the last date there. You are right, sir. To keep the records reasonably straight, whose records are these, by the way?

John J. Spittle, Jr.

A. I could pick out a lot of these records just on the surface by seeing some of my work papers attached to them.

Q. Are these records of Garrett and Company?

A. They appear to be, yes, sir.

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Mr. Little: To keep the record straight these are our copies of the same invoices which have already been introduced. The invoices have been numbered 7-A through 7-S. Now your credit memos are in here.

The Commissioner: That's right.

Mr. Little: 7-A through 7-S are copies of our invoices. We would like to introduce all of these.

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Q. Coming back, Mr. Spittle, on the top of each of these invoices to which the various invoices are attached, could you identify the top and take Invoice No. 842 and tell me what is this original document I am looking at here?

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A. This happens to be Invoice 844, invoice of Garrett and Company to Ancarrow Marine, Incorporated, which is a copy of the original submitted to Ancarrow.

Q. Coming down to the next page, you will see a carbon copy of two typewritten pages. Would you identify this document and tell us what is this?

Mr. Laughlin: Let the record show counsel is referring to 8-B.

A. These two pages, the original invoice as per attached listing, what you are referring to at the present time is a summary of detail from the daily time sheets supporting the invoices.

Q. Who prepared this itemized statement of account?

A. I did.

Q. Upon what did you base this statement?

A. On the time sheets on the job.

Q. Now what you referred to as 8-B, under that you will see quite a few sheets of green paper. What are they basically?

A. This particular invoice covers the period from October 11 through October 17 and these are the time sheets supporting the billing for that period.

Q. Let's come back to 8-B and see what procedure you used. What is the first item that you computed on 8-B?

Dep. 3/22-23/67 page 24 } A. The first part of this detailed summary lists the labor for the job, the men employed, the hours for the week, separated into straight time, overtime and the rate with an extension across with a total for each man.

By the Commissioner:

Q. ST means straight time, OT means overtime, and this is rate per hour?

A. That's right.

By Mr. Little: (Continuing)

Q. Now you come down here and you find the heading entitled "Adjustments" and then W-E and 9/19, James Tucker and so on. Explain that item entitled "Adjustments."

A. All right, this particular reference, it happens to develop a credit there and it is nothing more than within an invoice credit, in lieu of listing a bunch of separate individual credits, it refers back to the weekend of 9/19 in which there was—

Q. Is that weekend or week ending?

A. Week ending 9/19, in which there was some dispute for two hours charged on the man, James Tucker, so it was clarified a week or two later, or sometime later, and by mutual adjustment or mutual agreement a credit was allowed and reflected on a subsequent invoice.

Q. Then you come down after your adjustments and you have "Plus 25% overhead, taxes, insurance, and profit." Were you consistent in all of these itemized statements

Dep. 3/22-23/67 page 25 } of accounts, not only the ones we have introduced into evidence, but all of the other itemized statements of accounts which were presented to Mr. Ancarrow from the inception of this job?

A. All invoices I prepared, I think the bulk of the billing on this job used the standard markup of 25% on labor.

Q. Then down here you have a heading entitled "Equipment." Would you explain that?

John J. Spittle, Jr.

A. It is nothing but a summary from the time sheets of the equipment used during the invoice period showing the hours used and the hourly rate with an extension and a total.

Q. In looking at the second page of Exhibit 8-B, you have a heading of "Materials." Would you explain that?

A. They kept records on a daily basis.

Q. Who is "they"?

A. The superintendent on the job. For this particular period it was Mr. E. L. Wynn. As materials were received the time sheets were so noted on the back, and when the time sheets came into the office, they had a copy of a delivery ticket or an invoice, whichever happened to be appropriate to that particular delivery, and from those in relation to the invoices which were received directly in the Garrett office the material charges to the job were billed with a handling charge of 10% added to the total.

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Q. Now the inclusion of the 10% handling on materials, was that a consistent policy of Garrett and Company with respect to this Ancarrow job from its inception?

A. That was standard throughout the job.

Q. Then you come down to the grand total of your itemized statement; is that correct?

A. Yes, grand total which, of course, corresponds to the original covering invoices.

Q. Did the Ancarrows receive copies of the invoice as well as the itemized statement of accounts we have been discussing here at the time they were submitted for payment? Did you send copies to them?

A. For the period being discussed the Ancarrows were billed on a weekly basis and they received the original invoice and summary in duplicate.

Q. Let's come to what we referred to as the time sheets, the green documents. During the period in question who typed up these time sheets?

A. The actual typing on these sheets was done by a lady in the Ancarrow office. These sheets were prepared under the direction of Garrett's job superintendent, Mr. Wynn. It bears his signature as the Garrett foreman.

Q. You will see some handwriting across the top breaking down the nature of the work, such things as erecting forms, tying steel, rubbing cement, stripping forms and so forth. To your knowledge who put all of that on these time sheets?

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A. Wynn had to classify the type of work performed for the day. As far as Garrett and Company was concerned he was the only one who had direct knowledge.

Q. On the back of the time sheets you will see a column of remarks and then at the bottom of the page you will see some other data. Would you describe what that was?

A. Wynn was in the habit of using a general remark section on the back of the time sheet to indicate pay changes, or if he saw fit to increase one of the employee's hourly rate of pay, that happens to be the case of the one I am looking at here.

Q. Do you know whose handwriting these remarks are in offhand? If you do not, somebody else can testify to that.

A. I cannot testify as to this being Wynn's handwriting. I am merely assuming that it is.

Q. All right, down at the bottom of these time sheets what is the data on this first one that we are looking at, and for the record we are studying the time sheet for October 15, 1964.

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A. There is a blank space down on the bottom of the reverse side of the time sheets, which it was customary to make a specific reference to a delivery of materials on that date. The one I happen to look at here is W. E. Graham and Sons, and it refers to a certain ticket number and a certain tonnage, and by prior knowledge I believe that is probably sand or gravel.

Q. To your knowledge was that the standard practice each day of making a notation by ticket number of all materials, equipment that arrived on the site that day?

A. That was the general practice.

Q. You don't know again whose handwriting that is, do you?

A. I cannot testify to that, sir.

Q. All right, going on through beneath the time sheet of October 15, we see some tickets in the file. Would you identify what these reflect? I am referring to two tickets, W. E. Graham and Sons.

A. We have two delivery tickets here concerning a delivery made or sold to Garrett delivered to Ancarrow Marine on Brander Street and it's for stone. The one ticket I am looking at calls for 27,000 odd pounds of No. 4 stone being delivered. The second ticket is of the same nature for some 26,000 odd pounds of stone. Those references go by number. The two tickets correspond to the recorded notation of materials which is on the back of the time sheet.

John J. Spittle, Jr.

Dep. 3/22-23/67 page 29 } Q. In other words, they are the two tickets reflected or referred to on the back of the time sheet from W. E. Graham and Sons?

A. That is correct.

Q. When these were reviewed by you, would the billing for these two shipments of materials necessarily be billed at the time the labor was billed on that time sheet? What I am getting at was there any delay sometime in the delivery of the material and the time Garrett and Company got the bill from Graham?

A. The material purchased by Garrett to be used on the Ancarrow job was to be billed on a cost basis and it was necessary in some cases to wait for the invoice from the supplier before the exact cost figure could be used, so they did not necessarily correspond. That is as far as time interval was concerned.

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Q. I believe you testified during this period billing was done on approximately a weekly basis to the Ancarrows?

Dep. 3/22-23/67 page 30 } A. That is correct, the attempt was made to bill them on a Friday for the work performed for them the previous work week.

Q. And they received copies of the invoice and a detailed itemized statement each time the bill went to them?

A. That is correct.

Q. Do you know whether they had copies of all of the daily time sheets each day?

A. The procedure, since they were actually typing the time sheets, was to retain a copy for their information.

By the Commissioner:

Q. Who are you speaking of?

A. I speak of the Ancarrow office.

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John J. Spittle, Jr.

Q. Mr. Spittle, I show you a Xerox copy of a ledger sheet and ask you to identify that?

A. This appears to be a ledger sheet from the Garrett books showing accounts receivable, the Ancarrow Marine job.

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Mr. Little: For the record and with the consent of counsel for defendants and to save some time, I would like to say that this ledger sheet shows total payments from the defendants on this job, excluding the amount sued for, the payments actually received come to $115,103.98. The amount sued for in this suit in its present status of the pleadings is $58,463.95.

The ledger sheet also reflects the additional work done over and above the $58,463.95, which we have discussed earlier, amounting to $5,839.89.

Again to save time and to make this ledger sheet of any meaning, the breakdown on the ledger sheet will show that the items charged to this job, that is including what has already been received, what we have sued for here and the $5,839.89 I have just mentioned, amount to $179,407.82.

Mr. Laughlin: I will agree that the record shows that.

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Mr. Little: To go back on the record let's go back to my explanation of the invoices that were missing from the documents which we had previously introduced which were attached to Exhibits 7-A through 7-S. I mentioned the fact that two of the companies whose invoices were not present had promised to send them to us and we will send them to you. The third, Southern Materials, I have a letter addressed to Ancarrow Marine, Incorporated which I would like to read into the record, dated December 21, 1964, a letter on the stationery of Southern Materials Company, Inc., addressed to Ancarrow Marine, Incorporated, 1308 Brander Street, Richmond, Virginia, re: Garrett Construction Company, "Gentlemen: We have in hand a check for $14,236.51 from the subject which pays for all materials supplied by our company through December 18, 1964 on your construction job done by

Garrett Construction Company.

John J. Spittle, Jr.

Dep. 3/22-23/67 page 37 } If we can be of any further assistance in this matter please advise."

Now this is not the best evidence of those tickets, but if there is any question about how much concrete was used in this job, we will certainly get a subpoena requiring Southern Materials to produce every ticket. We think that the defendants have those tickets.

Mr. Laughlin: We do not. I can state that unequivocally.

Mr. Little: The delivery tickets?

Mr. Laughlin: To counsel's knowledge I do not. What did they say?

Mr. Little: They said they were in a warehouse over in some field and it would be too much trouble to get them. The only way we can get them is subpoena them.

Mr. Laughlin: You want to stipulate this is the amount due Southern Materials?

Mr. Little: Through this date on this job.

Mr. Laughlin: That is all right with me.

Mr. Little: Let's file that as an exhibit.

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Dep. 3/22-23/67 page 38 } Mr. Little: I think you will see this doesn't cover every ticket for concrete, but it certainly covers the bulk.

Mr. Laughlin: Does it cover every one through that date?

Mr. Little: Yes, through December 18, 1964.

Mr. Laughlin: Let the record show this represents all materials purchased by Garrett from Southern Materials through the date of the letter for the Ancarrow job, including Ready-Mix concrete which constitutes probably 95% of it, in any event; is that right?

Mr. Little: Right and I understand you are not going to require us to get the invoices to support this figure of $14,236.51?

Mr. Laughlin: Unless you do so it is my present thought that we would not.

Mr. Little: We would want to do it if further materials of Southern Materials becomes an issue.

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Q. I show you an original of a letter from Ancarrow Marine to Garrett and Company and ask you if you are familiar with it?

A. This was an agreement made between Garrett and Company and Ancarrow Marine, Incorporated pursuant to the October 31 payment. As a matter of fact, it's prerequisite to that payment, $36,472.40. That was a prerequisite.

Q. Did this agreement purport to settle all accounts as of October 10, 1964?

A. Prior to what date?

Q. October 10, 1964?

A. That is correct, I believe it so states in this letter.

Q. And that is signed by Newton H. Ancarrow as President of Ancarrow Marine, Incorporated and signed by Mr. Garrett, is it not?

A. That is correct.

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Q. Now based upon your contact with this Ancarrow job and based on your own observations would you explain what part Mrs. Ancarrow played in this work?

A. Based on my visits and telephone conversations I gathered that Mrs. Ancarrow more or less supervised the administrative, the office portion of the business and perhaps that Mr. Ancarrow as far as this particular construction was concerned devoted the majority of his time to direct supervision of the construction itself.

Q. Did you have some contact with both Mr. and Mrs. Ancarrow or were your contacts related solely to Mrs. Ancarrow?

A. My connection was primarily administrative, and al-

though we had the occasion to talk to Mr. Ancarrow, the majority of my dealings were with Mrs. Ancarrow.

Q. Where were most of these meetings with Mrs. Ancarrow?

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A. Prior to the payment during October and preceding the issuance of this credit, I spent several days at the Ancarrow office on Brander Street and in relation to their objections to some of the charges, and sometime prior to that, I think on a Saturday, both Mr. and Mrs. Ancarrow visited the Garrett office.

Q. Now, Mr. Spittle, based on your position as office manager were you satisfied when you sent out those invoices that they represented the figures shown for the equipment, materials that were actually used on this job for the Ancarrows?

A. I am confident that the billing was correct as based on the time sheets that were kept on the job. As a matter of fact, as far as the accuracy of the billing was concerned, if you will examine any invoice, you will find that the time sheets were extended individually and then a summary was made on a different type basis and in an attempt to effect a reconciliation between total figures on the time sheets and the total figures as *sumitted* on the invoice.

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CROSS EXAMINATION

By Mr. Laughlin:

Q. Mr. Spittle, I believe the record shows that you went to work for Mr. Garrett in the spring of 1964; is that correct, sir?

A. April 27.

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Q. No, I just want to know at the time you went to work were you aware that this job was being started at that time?

A. When I first started to work for Garrett I was aware that the Ancarrow job was in process.

John J. Spittle, Jr.

Q. Were you a party to any of the negotiations or planning that went into the job when it first started?

A. None at all, except in the relationship between the office manager and construction superintendent to the extent that he had to keep abreast of the contracts, work that the company was taking on.

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Q. What was the company doing at this time overall, Garrett and Company?

A. What type of work?

Q. Yes, what jobs were they engaged in?

A. Well, again without reference to records, contracts or files or anything like that, I can only give you a general type answer.

Q. All right, as you recall it.

A. There were a number of contracts on hand. Garrett had some standing contracts as such. One in particular with the RF&P Railroad he furnished equipment or furnished crews from time to time on call. He had specific construction. One I recall he had been working on was St. Mary's Hospital as a subcontractor for sometime.

Q. Were there any others?

A. Oh, I am sure there were. There is no way without reference to a file that I could list them all.

Q. Did he have any other so-called cost plus contract jobs at that time?

A. Well, I can tell you this much: that the RF&P billing was something of that type, cost plus type of arrangement.

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Q. Did he have any other construction contracts on a cost plus basis?

A. I am sure that there were other jobs of a smaller nature that were performed on a cost plus arrangement, but I cannot be specific.

Q. Other than your consultation with I think you said the construction superintendent about the job—

A. Yes, being specific, that was Bob Davis.

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Q. He consulted with you before he began work?

A. I made it a point to consult with him.

John J. Spittle, Jr.

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Q. During your discussion with Mr. Davis concerning the cash which was going to be required on this job with Garrett and Company, was there any discussion about what this job was ultimately going to culminate in?

A. There were, but they were always somewhat generalized.

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Q. Do you recall any figures discussed with you and Mr. Davis?

A. With any accuracy I couldn't.

Q. Within $5,000 or $10,000?

A. I can only tell you this much: That Bob Davis consistently indicated to me that the billing would be probably far in excess of $100,000.00 and that the length of time required to construct the facility would run into a good many months and even at that point that during certain phases of the construction, particularly the building of a coffer dam to hold back the river water while they were actually doing construction, there was an unknown as to what might be encountered in driving piling and things of the like.

Q. But in talking with you and discussing this with you he indicated that the cost of this job brought in after all of these things taken into consideration would probably be in excess of $100,000.00?

A. It would be well in excess.

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John J. Spittle, Jr.

Q. You were concerned with the cost involved?
A. During the particular time they were driving pilings and, of course, the intention is to drive them straight, and when they end up well off perpendicular, it's obvious that it's an abnormal situation.

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Dep. 3/22-23/67 page 55 } Q. Did you indicate in your discussions with Mr. Davis that you felt that Garrett and Company had the capital sufficient to carry a job that was going to cost in excess of $100,000.00?
A. I told Bob Davis very, very clearly that it would require some very close coordination as far as financing was concerned.

* * * * *

Q. In other words, it was a negative figure?
A. Don't pin me down. I am saying right at the deficit point.
Q. In other words, there was no working capital at that point essentially?
A. More or less.

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Q. Did Garrett and Company have in its employ a staff or corps of carpenters that it could send on this job at the time it took on the job?
A. We had a few men capable of doing rough carpentry work, but nothing of the magnitude of the frames and so forth required on this job.

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John J. Spittle, Jr.

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Q. As far as you were concerned and as far as you could get from your conversation with Mr. Davis—

A. That is correct.

Q. —and that this figure well in excess of $100,000.00 was one you kind of began with and never, in any event, went below; is that correct?

A. That is correct.

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Q. Let me ask you one final question and I think we will be done. You have testified from certain invoices that were prepared by you and certain schedules that you prepared from the time slips and these green records on the job. Do any of these records in front of you now actually show disbursals of money by Garrett and Company on this job, in other words, what would be called by an accountant the costs of the job insofar as the outgo of money?

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A. You mean any of the exhibits so far?

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Q. Anything else that evidences any payment by the Garrett Company?

A. Now you have only got three elements on the whole job. You have labor, equipment and materials.

John J. Spittle, Jr.

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Q. All right, materials, labor and equipment, there is nothing indicating any expenditure of money by Garrett, in other words, payment of costs?

A. Not full proof, no.

Mr. Laughlin: I have no further questions.

REDIRECT EXAMINATION

By Mr. Little:

Q. Do not these records show costs incurred by Garrett with reference to materials—

Mr. Laughlin: I don't mind you leading him a little while, but just don't lead him now. He is your witness. He can take care of himself. Just ask him the questions.

A. If you want to run a quick cost analysis, of course, these invoices are totally lacking with reference to actual total equipment costs, but your payroll is evidence and there is sufficient information to substantiate material costs based on the rebilling to the Ancarrows.

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Q. I show you an assignment of accounts here. Could you identify that please?

A. This is an assignment of accounts.

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Q. It was made to the Bank of Powhatan, right?

A. That is correct.

Q. In the amount of what?

A. $48,228—I beg your pardon. It was $40,000 collateralized by some $48,228.85.

Q. Now this assignment you say to the Bank of Powhatan for the sum of $40,000 and it was made by Garrett and Company, was it not?

John J. Spittle, Jr.

A. That is correct.

Q. And this was acknowledged by Ancarrow Marine, Incorporated, by N. H. Ancarrow, President, right?

A. That's right.

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Q. Getting back to the estimates you said you heard at the outset, you said Mr. Davis made an estimate that it would be considerably in excess of $100,000; is that right?

A. That's right.

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By the Commissioner:

Q. You go ahead and answer the question as best you can.

A. Robertson told me that based on experience that he had had with other concrete jobs, so to speak, that he felt that the completed costs of this ramp would be a quarter of a million dollars.

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RECROSS EXAMINATION

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By Mr. Laughlin:
Q. What did Mr. Robertson say?
A. Robertson told me that Mrs. Ancarrow had managed to pin him down on the job and ask him in his personal opinion what he thought the cost of a job would run, and he quoted her the same figure of a quarter of a million dollars.
Q. And what had been her response?
A. And she was stunned.

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Q. I want to know what Mr. Robertson told you?
A. Robertson told me that he felt that Mrs. Ancarrow wasn't aware of what he presumed would be the total cost of the boat facility.

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By Mr. Laughlin:
Q. You don't mean that we kept the time sheets?
A. Kept a copy.

Mr. Laughlin: Thank you.

A. (Continuing) Of the time sheet.

By Mr. Little:
Q. And prepared them?
A. They were typed in the Ancarrow office.

By Mr. Laughlin:
Q. But do you know from what?
A. I think Wynn had a foreman's book or—
Q. And they were being typed from information submitted by Wynn?

A. Right.

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Dep.
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page 169 } E. L. WYNN, called as a witness in behalf of the complainant, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Little:

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Q. Again would you state what your connection with this job was?

A. I was hired as the superintendent to complete the job and it was already on the way when I got there.

Q. Whose place did you take as superintendent; do you recall?

A. Mr. Jim Robertson.

Q. So you were superintendent on the job during the period here involved?

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A. Yes, sir.

Q. During the progress of this job to what extent did you work with Mr. and Mrs. Ancarrow?

A. Well, I worked with Mr. Ancarrow, well, pretty closely on it. Any questions or anything on it I always discussed it with him and we come up with the answer.

Q. Was he on the job regularly?

A. Yes, sir.

Q. When things were staked off, for instance, who sometimes did the staking?

A. Well, I would, but most of the points was established when I got there and, of course, if we had a question on points, why, I discussed it with Mr. Ancarrow and he arrived to the point.

Q. Would it be fair to say that Mr. Ancarrow was very active throughout every phase of this construction?

A. Well, he was always there for an answer of any questions or anything that I needed and, of course, he was a frequent visitor of the site.

Q. Did you make any departures whatsoever from any of the plans which have been introduced without first clearing it with Mr. Ancarrow?

A. No, sir.

Q. Did you put people on this job on an overtime rate at any time without first checking with Mr. Ancarrow?

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A. Well, it was always known when I was going to work anytime. Mr. Ancarrow always knew if we was going to work overtime, unless we were caught in the middle of a concrete pour, and this is an unforseen thing, and then you have to stay with it.

Q. Referring to Exhibit 7-B and the time sheets attached thereto, the green ones, would you explain for the Commissioner how these were prepared during this period in question?

Mr. Laughlin: Tell me the date on the first one please.

Mr. Little: October 15, 1964, the witness is referring to that.

The Commissioner: These are the papers attached to 7-B.

A. Well, I had a time book that I kept the time with on the job and at the end of each day or the following morning I always carried these up to the office.

By Mr. Little: (Continuing)

Q. Carried what up to the office?

A. My time books.

Q. To what office did you carry them?

A. Mr. Ancarrow's office and Mrs. Grubbs taken them.

Q. Who is Mrs. Grubbs?

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A. She was the bookkeeper for Mr. Ancarrow. She taken the time off and put it on the sheets and then I always told her what each man was doing, so she added it to it. Also, during the day's operation if we had any poured concrete or had received any stone or had any invoices, I always carried them in and they were always put on the back of the page.

Q. They were put on the back of the page by whom?

A. Well, Mrs. Grubbs mostly.

E. L. Wynn

Q. Well, who else would on occasions, if anyone?

A. Well, I don't know whether Mrs. Ancarrow filled out any, but Mrs. Grubbs was out once or twice and I don't recall.

Q. But somebody in Mr. Ancarrow's office did it?

A. Yes.

Q. For instance, who did the typing on each of these time sheets?

A. Well, Mrs. Grubbs did most of the time; all I know she did it.

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A. I understand, not knowing, I understand that this site was the old Confederate shipyard at one time. I know that there were a lot of old boats and things that were piled up on the outside. All of this was dug out before I got there. Of course, it was some of it I had to move in there and I run into a lot of headwalls, ran stone and some brick walls in it when I was down there, but most all of this was done before I got there.

Q. How about the nature of the soil behind the coffer-dam? To what extent, if any, did that have an effect on water getting in behind the coffer-dam?

A. Well, you have a lot of sand in the bottom of this and, of course, sand being porous, you always have a chance of seepage.

Q. Back in behind the dam?

A. Well, back in behind the dam—particularly where the coffer-dam was, I don't think we ever suffered a leak in the coffer-dam itself because the coffer-dam was filled. It was filled in. It says here 14 foot, but I am satisfied it was every bit of that.

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Q. Did you have any leaks through the actual coffer-dam?

A. The onliest time we had a leak when the river came up and came over it, but through the coffer-dam itself I detected, oh, one or two places that had leaks in it, but I would say nothing greatly.

Q. Now the coffer-dam, you said the inside section was about 14 feet wide?

A. Well, it says here 15 foot and evidently this is it. I never had occasion to measure.

Q. Did you talk about the Manitowac? That is a crane, isn't it?

A. That's right.

Q. Was it built so that cranes could go out on the coffer-dam?

A. Yes, we had to move that out there.

Q. What was the size of the coffer-dam? What material was used on the outside of the coffer-dam?

A. Sheet piling.

Q. Interlocking steel piling?

A. That's right, interlocking sheet piling.

Q. In layman's language, the way you build a coffer-dam or the effect you have, you have two sheets of interlocking steel on the outside and then you tie those two together, do you not?

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A. That is true.

Q. Then you fill up the inside with sand, gravel, dirt? I mean that is basically what you do?

A. That is true.

Q. Now did Mr. Ancarrow ever make any directions with respect to the work that in your opinion added to the cost of the job?

A. Well, anytime we made a change it had to add a little cost to it, or two or three occasions we made a change or two in it, but the end of the wall, the north end on the west wall, there was more or less of a knee wall there and we squared it.

Q. With Mr. Ancarrow's approval?

A. Yes, sir, I discussed this with Mr. Ancarrow. We did that because we were afraid that the coming and going of the tide might bring the fill from under the walkways and cause a settlement. Also, we put piers behind this walkway, on the west walkway, and cut a grade beam in it to keep it from settling.

Q. What was the purpose of that?

A. The slab itself went back up under there and it was a fill job with knees on it and it was a right bad place to tamp and fill, which we did with the best that we could with what we had and we did a good job with it, but to be doubly sure that we had no settlement or any

Dep.

E. L. Wynn

3/22-23/67 page 187 } water that would ever wash any material out, we put these piers behind it with the grade beam to assure it.

Q. Now the piers and the grade beams, were they called for on the original plans?

A. No, sir.

Q. But did you discuss this change or departure from the plans with Mr. Ancarrow before you put those piers in and the grade beams?

A. Yes, sir, I went up there and told Mr. Ancarrow, I said, we could have a settlement on that side and cause a cracking in the sidewalk in a period of time, and if we now put piers behind it to strengthen this side of it, we are building it on fill ground, and you will eliminate a lot of settlement, and he agreed upon it.

Q. Now did Mr. Ancarrow attempt to save any trees down there?

A. Well, yes, sir, he did.

Q. What was the effect on the job of trying to save the trees? Tell us where the trees were.

A. Well, any time you try to save a tree and you have to work around it is a cost involved in it, but you have got to look again that it takes a long time to grow a tree like that, too.

Dep. 3/22-23/67 page 188 } Q. But you did it the more expensive way of working around the tree?

A. We had to work around it and to keep from knocking off limbs, and we did. We knocked off a lot of limbs. The boss man almost whipped me about it.

Q. You refer to Mr. Ancarrow as the boss man?

A. Yes.

Q. But you were working around the trees at his direction. You didn't decide to leave the trees?

A. No, he wanted the trees there.

Q. The cheapest way would have been to knock the trees out and not have to work around the trees?

A. So far as the construction is concerned, yes.

Q. But you would have ended up with no trees?

A. That is true.

Q. Now at any time during the period that you were foreman of this job did Mr. Ancarrow express to you that he didn't think you were competent to handle this job?

A. No, sir.

E. L. Wynn

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CROSS EXAMINATION

By Mr. Laughlin:

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Q. Now during the course of your testimony you have indicated two things that made this a difficult thing. One was control of this water, and you said something that I am not sure I understood, but to bring it back to your mind, you ran into some riffraff when you made some headwalls?

A. No, when we were taking out some places we run into some old retaining walls that were in there made out of riffraff stone.

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page 191 }

Q. That is when you were excavating?

A. Yes, when we were excavating.

Q. Other than this do you recall any unusual difficulties in this job?

A. Well, like I said, most of all this was done and dug out before I got there, you see, and I can only testify to what I run into when I was there.

Q. When you were there is what I am interested in.

A. These are the problems that I really run into was there so far as the basin itself. Now when we drove the piling down on the edge of the river, we had to take the material from the river and fill to get on top to drive your piling and, of course, this created a problem because now we are taking out wet material and putting it in behind the seawall and we are having to get on it with a big heavy crane and, of course, we got a lot of old mashed poles and a lot of old boats and things of this type out of the river, and this was really the only way that we could have walked on it because we did bury a lot of this into this seawall so we could get on it, but we did many times get stuck on the seawall.

Q. Did you have anything else you had difficulty with that you recall?

Dep.

A. Not offhand, I don't know, no more than—

E. L. Wynn

3/22-23/67 page 192 } Q. I beg your pardon?
A. Not offhand, I don't, no more than the ordinary run of the mill things you would expect in construction, high water and so forth.

Q. Once you had installed this coffer-dam and had water under control so water couldn't come into the job and once you had the excavations—

A. Actually the hole was done and most of the bottom pads was in.

Q. At that stage with the hole in the ground and the dam on the job, from there on out was basically a job of pouring ready-mix concrete to form; is that correct?

A. No, sir, I wouldn't say that because you run into a lot of hazards when you go into a thing like this. You have water problems and you have first one thing and then another, little problems that happen. This is not an ordinary job like coming up on top of a hill and building and it's not like having one particular spot that you can set a crane to reach the whole job. You can't—

Q. I understand that—

Mr. Little: Let him finish.

Q. I am not trying to stop you. If you think I am interrupting—

A. I am just trying to explain to you—

Dep. 3/22-23/67 page 193 } Q. I understand that, but what I want to know is what else could we have other than water coming into the coffer-dam? I understand if the coffer-dam broke, we would all be running down Hull Street, but I am trying to find out what this job entailed to a layman. Assuming the dam held and kept the hole dry, you were in a hole putting up a certain amount of forming, a certain amount of steel and ready-mix concrete?

A. Yes, and you have to realize you are working men in the hole, and a lot of times they are working with water one or two inches above their shoe. Sometimes it is dry, but sometimes they are working in water down there and, of course, this is a hazard of working on a river. This is one of the things that happen to you.

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Dep.
3/22-23/67
page 266 } Q. I am just trying to find out the efficiency of the operation. It seemed like for 6 men 9½-hours to pour 4 yards of ready-mix concrete is a little unusual.

A. Well, if you knowed what the conditions were, this is all right. If you were standing there and seeing this, this is one way to argue this thing, but if you don't know it, you don't know it. You are telling me about pouring 4 yards of that concrete. Well, I have poured more concrete in one day than is in that whole basin out there, but we had problems evidently to take this long to pour this concrete.

Q. Let's refer to October 26th—

The Commissioner: That is Exhibit 7-C and ancillary papers.

Q. This is three days later.

A. On the 26th?

Q. Now looking at the time slip for October 26, how long did the Manitowoc operate pouring concrete that day?

A. It shows a 10-hour operation here.

Q. And that cost $200.00 to Ancarrow Marine and there are 2 people working on that only, Bennie Jones and David Cooper. Do you see Mr. Jones and Mr. Cooper there?

A. Yeah.

Dep. Q. They are the 2 people working on the Mani-
3/22-23/67 towoc and how many cubic yards of concrete did
page 267 } they pour in 10 hours?

A. 8 yards.

Q. I think you will find it 10. There is one load of 8 and there is one load of 2.

A. You are right, it is 10 yards.

Q. They poured 10 cubic yards on October 26 in 10 hours with $200.00 worth of equipment. Do you remember what they were doing then? Remember they pulled the plug on this thing about the 6th of November.

A. They could have been—they couldn't have been—well, they could have for 10 yards of concrete—

Q. You wouldn't really expect to see it spend quite that much time pouring that much concrete, would you, sir?

A. Well, I would say, well, no, it wouldn't take that much time, but I would say that the charge on the crane is correct. It shows 10 hours so it worked 10 hours.

E. L. Wynn

Q. Look at the slip for November 6th and this is just before they pulled the plug—

The Commissioner: Let the record reflect the witness is referring now to Exhibit 7-E and ancillary papers.

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Q. Now if you will look at that record I think you will find that the Manitowoc spent 8 hours pouring concrete which cost Ancarrow Marine $160.00; is that correct?

A. That's right.

Q. And that you had 6 people working, Mr. Tucker, Mr. Hill, Mr. Clare, Mr. Evans, Mr. Hall and Mr. Hardy, all of these from 8 to 9½ hours. How many cubic yards of ready-mix concrete were poured?

A. It shows 9 cubic yards.

Q. And you worked the Manitowoc for 8 hours during that day?

A. Yes, sir, and I will vouch that the Manitowoc worked for 8 hours doing this and I will vouch that the men involved in this were doing this for this period of time, and if they weren't, they were doing something else. They weren't sitting under a shade tree.

Q. But it is possible that it is not very likely they spent that much time pouring that concrete?

A. No, but they were working. They were on the job producing.

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REDIRECT EXAMINATION

By Mr. Little:

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Q. Whoever filled this in, when you come to the air compressor and hammer and so forth not working, they checked in here, didn't they?

A. Yes, and let me explain this. Mrs. Ancarrow, it wasn't normally she filled out any of these. This was during the period that Mrs. Grubbs was sick or out. What happened here the Manitowoc, it was told it was there. It was there 8 hours. She showed none. This didn't make any difference. It was still there. It showed the air compressor and piling hammer was there and she wrote up here to be sure there was no mistake and checked it down here that it was not working.

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Dep.
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page 273 }

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By the Commissioner:

Q. Let me ask, Mr. Wynn, do you know of your own knowledge who filled in these other things which you are about to testify?

A. I don't know. You see, as I said, there was either one or the other that filled them in.

By Mr. Little: (Continuing)

Q. Now explain that.

A. Either Mrs. Grubbs—

Q. Who works for Mr. Ancarrow?

A. —or Mrs. Ancarrow.

Q. Who works for Mr. Ancarrow?

A. That's right, and they put in these things what I gave them.

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page 283 }

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RECROSS EXAMINATION

By Mr. Laughlin:

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E. L. Wynn

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3/22-23/67
page 284 }

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Q. After Mr. Waitt stopped keeping the time, did they ask you to keep the time?

A. Yes, they sure did.

Q. What did you tell them?

A. I told them that I wasn't a timekeeper, that it was going to take so much of my time to keep this, and then Mr. Davis and Mr. Ancarrow said, then supposing that you keep the book and if they type it up and put it on the things, will you take care of it, and I said yes, if it don't take too much of my time that I have to leave the men down there.

Q. So it was a joint discussion?

A. Yes, and you were in on it.

Q. That Mrs. Grubbs and Mrs. Ancarrow would type up what you turned in?

A. Yes.

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page 286 }

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RE-REDIRECT EXAMINATION

By Mr. Little:

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Dep.
3/22-23/67
page 289 }

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Q. You stated that you worked very closely with Mr. Ancarrow and discussed a lot of questions with him and each

day he would see these various green time sheets which you have been testifying to all day; is that right?

A. I can't testify that he saw them. They were made out in his office and it was his privilege to look at them. I don't say that he didn't look at them. I don't say he did. I don't know.

Q. Did he ever discuss any of the matters on any of the time sheets with you during the time you were calling him boss man and you were down there every day?

A. We had discussions on several items there on the equipment and things like that and there was adjustments made on these.

Q. So, therefore, it was apparent to you that as these time sheets would go in, he knew what was going on these time sheets?

Dep. 3/22-23/67 page 290 }

A. I was satisfied every day when I signed this time sheet that he was satisfied in my opinion, but I don't know this to be true with him.

Q. We know that the time sheets for the most part were complete with reference to the labor. Were they also complete with reference to the equipment, as to the taking the extensions out, not only the rate, but the total hours and what the jobs were done and were these completed each day?

A. I would say yes.

Q. So if Mr. Ancarrow wanted, each day he could come in and look at the time sheets and look at both the labor and the equipment to see what was on that job for that day?

A. He did pretty near it.

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By the Commissioner:

Dep. 3/22-23/67 page 293 }

Q. You stated that you always cleared changes or additional work with Mr. Ancarrow. Now what I want to understand does the word "clear" mean that Mr. Ancarrow initiated the changes or departures or were they situations where you as construction superintendent realized that certain things

had to be done to do the job right and you went to Mr. Ancarrow and said, this is what we have to do, and he would say okay?

A. No, there was some changes made in it and to my knowledge of knowing what could happen, I know that this, for instance, would save him trouble later on. I would then go to Mr. Ancarrow and suggest these things and tell him why, and to my knowledge I do not know of one thing that I ever went to Mr. Ancarrow and told him about and suggested that we do, that we didn't ever do it.

Q. The point that I want to understand is that Mr. Ancarrow did not initiate these changes. He did not come to you and say, this is the original plans and specifications, but now I want you to change it; I want you to do thus and so? He always said all right based on your suggestions?

A. Well, before I made any kind of change or deviation from that plan I discussed with him and he said go ahead. I told him always on these things. This could be something that could cause you trouble later on, not with the mind of how many dollars we were going to make, but I was thinking about him, of how much it would cost him later if he had to do these things.

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Dep. 3/22-23/67 page 296

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Q. Is it a fair statement, and I don't want to influence you, to say that these departures that you have testified to, and these are the only ones I have in my notes, are not really substantial additions in both cost and the time element of completing the job, were they?

A. Well, this is no more than ordinary on a job. I don't care who the engineer or architect is whoever drawed a set of drawings that there wasn't a change made in it before it was built.

Q. These are minor things?

A. There is cost involved, but I don't think you are talking about a whole lot of money.

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Dep.
3/22-23/67
page 300 }

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Q. The first instance I want to ask you is on October 23rd in which 4 cubic yards of concrete were poured, is that a lot of concrete?

Dep.
3/22-23/67
page 301 }

A. No, it is not a lot of concrete. If you are pouring it in a six inch wall and it's only about 8 inches tall now, you have got pipe stands in it and you have got steel in it and you have to pour it in it, and this is a real tedious thing and you have to pour it off of a truck into a concrete bucket and then bring it to the wall and pour it down the wall into this. This could create some problems.

Q. Mr. Laughlin showed and the records show that 4 cubic yards of concrete were poured in 9½ hours. It took 6 men at approximately $200.00 worth of labor. This is for October 23 for the job that was done on that day, and was that considered to be an inefficient, an efficient operation or was it an excessive cost?

A. Well, this is an excessive cost, but now you must realize that these men didn't work this entire 9 hours. They could have been working 4½ hours and worked somewhere else.

Q. But because you don't have enough categories on the time sheets we don't have an accurate picture of what actually happened; is that correct?

A. Well, you have a pretty general idea of what happened. There are many things that happened down there, but you put your time as near accurate as you can and you split it.

Dep.
3/22-23/67
page 302 }

Q. But you have this as being excessive for pouring 4 cubic yards of concrete. You say you split the cost, but, yet, it is not shown on the time sheet. Maybe I misunderstood.

A. No, let me explain it to you. Let's assume we made a pour of concrete out there. Let's assume that the actual pouring of this concrete lasted from eight in the morning until 12:00 in the morning. Now this is four hours. Let's assume that we have a man in here and we show him pouring 9 hours, but actually we show a man over here actually work-

ing four hours on that actually did something else. What I did, I took the amount of total time and tried to put it with this man so I wouldn't have to fill out these papers and make an hour here and an hour there. This would have been a real problem.

Q. Do I then get the idea that you have to take a practical approach in filling out these time cards and that if you really were going to do it 100% accurate, you probably would have needed an assistant or timekeeper, and that these green sheets which are attached to these exhibits are merely a practical approach of a busy superintendent filling this out?

A. Well, this is true, but to have a time sheet, a detailed time sheet, for this particular job you would have had to have a special time sheet.

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Dep.
3/22-23/67
page 304 } Q. The total time worked by each employee and the total time of the use of the equipment is accurate, but with reference to actually apportioning the total hours to each of the respective tasks is just in your opinion an estimate?

A. It has to be an estimate.

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Dep.
3/22-23/67
page 306 } ROBERT E. DAVIS, called as a witness in behalf of the Complainant, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Little:

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Dep.
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page 325 }

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Q. Mr. Davis, did you have anything to do with trying to get these bills paid, the bills that we are talking about here today that began on October 11?

A. The office asked me, since I was working down there and visited the job right frequently, if I would stop by and speak to Mr. Ancarrow and see if I could pick up a check, which I did.

Q. Do you recall having a meeting with him around Christmas, which is the latter part of December of 1964?

A. Yes, sir.

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Q. Would you tell us the gist of the conversation you had with Mr. Ancarrow at that time?

A. We had just about completed the first phase of the work that he wanted done on a cost plus basis.

Q. What do you mean by the first phase?

A. First agreement that we build the slip.

Q. And the travel lift?

A. And a travel lift. We were working on the seawall at this time and I thought that we had overlapped enough for him to justifiably pay us for the first phase of the work, for our first agreement I will say, and he said, all right, we will call it that then. He said, give me a few days to get the check.

Q. This was around Christmas of 1964?

A. To the best of my knowledge.

Q. Did you advise Mr. Garrett that Mr. Ancarrow had agreed to give you the check within a couple of days?

A. A few days. I am not going to pin it down to two days. He said he had to make arrangements with the bank or something.

Q. Repeat that please.

A. He said, I just can't give it to you right now. He said, I have to go and get it for you. He said, it will take me a few days to get it.

Q. Did you go back to get the check at the appointed time?

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A. I am not sure, but I think someone in the office called him up in the meantime about the check.

Q. At any time subsequent to that did Mr. Ancarrow ever admit in your presence that he had promised to give you a check and then didn't do it?

A. Yes, sir.

Q. When was that?

A. The time that Mr. Garrett and I were down there.

Q. When was this approximately?

A. I don't remember the date.

Q. Do you remember the month? You had had this meeting with him in December of 1964 you testified?

Robert E. Davis

A. I am sorry, I have forgotten the date.

Q. Did you have any meeting with Mr. Ancarrow the last part of January of 1965 about getting payment in full for the job up to date and, if so, who was present?

A. Mr. Garrett and Mr. Ancarrow and myself.

Q. Would you explain what happened at that meeting?

A. I asked Mr. Ancarrow if we have completed all of the work that he wanted done down there, and Mr. Ancarrow told me to go out there first and see what he wanted done, which I did, and I came back and I said, we will agree to complete it if he would give us the last check on a Friday.

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Q. Do you remember which Friday that was roughly?

A. I am not sure if it was the one during the week when we were talking, the week prior to that or the one following the conversation, and he said that he would go along on those terms.

Q. Explain that again that he agreed to make payment in full through a certain Friday?

A. That's right.

Q. If you would go ahead and complete the work without charging him for it; is that right?

A. Yes, sir; that's right.

Q. And Mr. Garrett was present when that representation was made?

A. Yes, sir.

Q. But you never did get the check, did you?

A. Well, they wouldn't—I doubt if I would get it, but Mr. Garrett didn't get it.

Q. Do you remember approximately how much was involved at that time in what Mr. Ancarrow owed?

A. Somewhere around $50,000 or $60,000.

Q. $50,000 or $60,000?

A. I don't remember what the invoices amounted to.

Q. Did you discuss specific invoices?

A. We came to an agreement, just like I told you, that either one of the Fridays, the Friday prior or the Friday afterwards, that during this discussion that we would, he would cut all of his payments off right then, and there would be nothing said about the past and he would settle up if we would do the rest of this work.

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Q. What do you mean "nothing said about the past"? What do you mean there?

A. I mean to wipe if off, that was the end of it.

Q. No more argument over—
A. No more argument.
Q. Do you know how much work was involved in finishing up that you had agreed not to get paid for roughly?
A. Yes, sir, it was a week or ten days probably.
Q. You don't know how much in dollars and cents?
A. No.
Q. That that amounted to?
A. That would go through the office and out in the billing of invoices.

CROSS EXAMINATION

By Mr. Laughlin:
Q. You say you would estimate it would take you a week to ten days to finish up?
A. Yes, sir.
Q. And that was late January of 1965?
A. To the best of my knowledge.
Q. Are you aware that your men were still there in March of 1965 working?
A. Yes, they worked after that.

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Q.

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Were any pilings driven before you really made up you mind how you were going to do it and how Ancarrow Marine was going to be charged?
A. It was just understood that we were going ahead on a cost plus basis.

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Robert E. Davis

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Q. Mr. Spittle, whom I think you know—
A. Yes, sir.
Q. —testified here that he consulted with you about the cost of this job and how long. Now is that testimony by Mr. Spittle accurate?
A. Well, every job we did Mr. Spittle consulted me and we checked the time sheets out together, but the final billing was made out by him.
Q. Do you recall talking to him about this job?
A. Quite a few times.
Q. Prior to the time it began concerning how much it was going to cost and how long it was going to take?
A. I couldn't say how long it was going to take because I didn't know what we were going to run across.
Q. Could you make an estimate as to how much it was going to cost?
A. At that time as well as I remember I said it was going to be over a hundred thousand dollars, considerably over.

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Q. And you told Mr. Spittle at that time that this job was going to cost more than a hundred thousand dollars to finish. Is that your testimony? If you don't remember, fine.

Mr. Little: He said considerably over a hundred thousand dollars.

A. As well as I remember I told him it would be considerably over that, depending upon what we hit.
Q. Upon what did you base that statement?
A. On the unknowns.
Q. Why didn't you say $200,000?
A. Well, maybe I could have said $200,000, but at the time that I was talking I didn't know what was in the ground, but if I had known what was in the ground and I had telescopic eyes, I probably would have said that.
Q. In other words, you figured that a hundred thousand dollars was the low side figure?
A. No, I wouldn't call that a low side, no, sir.
Q. Are you indicating that even if the ground had been fine it would have cost a hundred thousand dollars?

A. More than that.

Q. In other words, a hundred thousand dollars was a minimal cost for the job at that time?

A. We are talking about $40,000 or $50,000 even just for the coffer-dam before you even start anything else.

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Q. I understand that, but in your view at that time $100,000 was a minimal cost for this job?

A. No, I didn't say that. I said considerably over $100,000, that could be anywhere from $150,000 on up.

Q. That it would cost at least that much to do the job?

A. I didn't give anybody a firm price on this job.

Q. I didn't ask you that. I said that was your opinion that it would cost at least $100,000 and now you say $150,000?

A. I would say $150,000 to $200,000.

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Q. During the time that you had discussed this with Mr. Spittle and had arrived at a price did you ever communicate this estimate of yours to Mr. Ancarrow or to Mrs. Ancarrow?

A. No, sir, not that I know of.

Q. Did you at any time tell them what you thought this job was going to cost?

A. Not when we started.

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Q. I am talking about before the job started and before Ancarrow Marine made a commitment to the job?

A. I knew it had to go over a hundred thousand dollars with the coffer-dam costing $50,000 roughly.

Q. That is what I am saying to you. At this point you

Robert E. Davis

knew the job was going to cost $150,000 and had told Mr. Spittle it was going to cost in excess of $100,000, and your testimony is that at no time in your meetings or any time you saw Mr. or Mrs. Ancarrow did you ever reveal to them in your opinion this job was going to cost over $150,000?

Dep. 3/22-23/67 page 350 } A. Not that I recall.

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Q. Now you say at a later point you did have some discussion concerning this cost. Now what was the occasion for this?

A. We went in the office and stayed in about an hour and a half or two hours and on a yellow sheet of paper tried to add up some figures, which was impossible to do in two hours.

Q. I didn't understand.

A. I went in Mr. Ancarrow's office sometime after the excavation, not excavation complete, but the majority of the excavation had been done.

Q. And the coffer-dam was in?

A. Yes, sir, and he wanted to know how much more money.

Dep. 3/22-23/67 page 351 } Q. Had any concrete been poured at that time?

A. I think some of it had been poured in the floor.

Q. You had a hole in the ground, one slab, maybe two slabs in the bottom and a coffer-dam setting out there. Is that the idea?

A. Yes.

Q. What happened at this time?

A. He looked like he was dissatisfied in one sense of the word what it might end up costing, so we went in the office and sat in there about an hour and a half to two hours and tried to work up some figures about what it would cost to finish it and it couldn't have been realistic. You can't do that much figuring in an hour and a half or two hours. It was just something real quickly gotten together.

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Q. At this point what Garrett and Company had done, stop me if I am wrong, they dug the major hole you are going to build in?

A. Yes.

Q. And this had been billed in labor and materials?

A. Right.

Q. And they built the coffer-dam and they had been billed for labor primarily, but we bought the steel and it's our steel?

A. That's right.

Q. Relatively little concrete has been poured, right?

A. Quite a bit of forming had been done sitting up there on that bank.

Q. Sitting up on the bank?

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A. Yes, sir, you have to put your form up and place it in the hole.

Q. That is lying up on the bank I understand waiting to be carried down and set up in the hole. Anything else been done?

A. I believe that some of those forms had been set up in the bottom there.

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A. Some of these things are Greek right now. As far as the number of $2,500, I don't know what that represents. I know that I had Robertson in there and at that time he was closely tied in with the work and asked his opinion.

When I went back to the office, I knew, or at least I thought that Mr. Ancarrow would save this. I started to call him and let me come down and give him another estimate, but I realized that Robertson influenced me a little bit when I shouldn't have been influenced by him, because he was that type of person. He always thought he could do something

quicker than he could, but that wasn't right because nobody could have done it as quick as he thought he could. I think Mr. Ancarrow will back me up. He made statements when he would furnish this thing, and I said, Man, you are crazy as heck; it can't be done.

Q. Who did he make that statement to?

A. To me. I don't remember whether he made them to Ancarrow. I said, keep your damn mouth shut.

Q. When did he make this statement?

A. I don't recall, but the man is a good concrete man and he knows something about excavation, but when it comes to putting up forms, compared to Mr. Wynn, he didn't know how to estimate the time limit and I didn't know Mr. Robertson well enough at that time, although he had been recommended, and Mr. Wynn, he had worked for him, too, and knows that his estimate would be off on the forming.

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Q. What did he estimate as to the time as best as you can recall as to when you could complete the job?

A. He was about a month off.

Q. What was the estimate; do you recall?

A. Well, all during the stages, week by week, when I went down to see him, every day, I would ask him each week, now how long is it going to take you to finish this phase of the work? I am interested in getting the steel and forming so we can backfill it and move on, and every time he gave me an estimate it was at least a month off.

Q. In other words, if he said it would take a month, it would actually take two months?

A. Everything he told me—of course, he had a heart attack and went to the hospital and I was going to replace him all of the time as soon as I could find a better man. As soon as he told me, gave me his time limit on finishing, I knew he couldn't do it and I figured it was time to replace him, and, of course, the heart trouble came along and everything worked out automatically the way it did and I got hold of Mr. Wynn.

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A. I don't recall exactly what I told him.

Q. But you were standing there talking to him about the price and you never at any time told him, Mr. Ancarrow, under the most favorable conditions this construction is going to cost in excess of $150,000 to Ancarrow Marine, did you?

A. No, I don't recall that I did.

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RECROSS EXAMINATION

By Mr. Laughlin:

Q. Was there ever any talk about stopping the job that you knew of?

A. One time he indicated that he might stop it and award the rest of it as a contract.

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Q. When was this?

A. That was about the time that what you have got on that little piece of paper, approximately about that time.

Q. He was talking about cutting this job off and getting a contractor to finish it?

A. I don't—he never did do it, but he did indicate one time to me. Now whether he was kidding with me or not, I don't know.

Q. But he was discussing it with you?

A. He made the remark.

Q. That was about the time you made this estimate that we have in the record on the yellow pad?

A. Sometime pretty close to that.

Q. A little before that?

A. Maybe so.

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Robert E. Davis

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By the Commissioner:

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A. We hadn't finished driving the seawall; otherwise, his plans were to complete the seawall, but I don't know what the records show, but I think that when I came back Mr. Garrett asked me how much longer it would take. I might have over-estimated or under-estimated, I don't remember, but I thought it was somewhere around a week or ten days or in that vicinity more work left to be done.

Q. You said a week or ten days and this was in January of 1965?

A. When we had this discussion right then.

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Q. Let's talk just a few minutes about Exhibit No. 27 which contained these figures, this estimate of yours. Now you indicated that one of the reasons why you did that or made this is that Mr. Robertson had pressured you into putting something down on paper?

A. Well, naturally if I was working for you and you asked me a question, I would give you some kind of answer.

Q. But you were Mr. Robertson's superior?

A. Yes, sir.

Q. You had already expressed dissatisfaction with Mr. Robertson—

A. No.

Q. —because you had indicated he had made estimates which were—

A. Yes, he was no good at estimating how long it would take in doing something, as far as going into this form work, and I had planned to replace him and then he had a heart attack, but I had already made up my mind to replace him.

Q. Why did you allow him to pressure you into putting down this figure of $62,000?

A. I am not going to blame Robertson in pressuring me. That is my own fault.

Q. But you had expressed to Mr. Spittle this was going to cost considerably in excess of $100,000?

A. That's right.

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Q. How did you get pressured in making this out, Exhibit No. 27?

A. In pulling the coffer-dam it was a lot of it rooted into the rock and sometimes we would spend an hour and a half, I don't know how long, pulling one pile when you should pull one every ten minutes, and the seawall, that was another thing that I mentioned just now, you couldn't tell what was in the ground. We pulled boats and logs and piling and everything and that just interrupted the operation of driving the piles and cleaned up all of the stuff in front of it so we coulddrive the piles, and some of the piles didn't go down as far as we anticipated because of the rock and had to be cut off. A lot of it had to be cut off. Every one of them had to be cut off because you didn't drive any one of them because of the grade and started out using piling to be 20 feet long, and I think in some cases spliced piling which is all right, but this couldn't be anticipated at this time.

Q. In spite of all of this and in spite of not knowing all of these unknown factors, you still got pressured in making up this Exhibit No. 27?

A. Mr. Ancarrow wanted to know something and he said you know how many forms and you know how much you have already tied up in forms and you know what can be used or re-used, so give me a horseback estimate, and we met and we put down a horseback estimate.

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page 19 } NEWTON H. ANCARROW, upon being called as an adverse witness, by counsel for the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Little:

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Q. I see. Now, is this property leased to Ancarrow Marine, Incorporated?

A. I think so, sir. Yes, sir.

Q. You think so?

A. Yes. When I say that, I'm almost positive that we put in the minutes of Ancarrow Marine the fact that we leased the building and paint shop.

Q. What is leased to Ancarrow Marine?

A. The building, the paint shop, and whatever land they choose to use.

Q. Whatever land they choose to use?

A. Yes. That is, in our control, of this fifteen acre, approximately.

Q. When was that lease entered into?

A. 19—Now, I'm not real sure whether it was the end of 1961 or the beginning of 1962. Sometime in that winter.

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Newton H. Ancarrow

Let's come back to this lease. You say there is a minute in the minute book authorizing you, as President of Ancarrow Marine, Inc., to negotiate with you for the lease of the property. Now, did you have such negotiations with yourself?

A. Yes, sir.

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Dep.
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page 24 } Q. I am asking you, did you agree, you as Newton H. Ancarrow, agree with Newton H. Ancarrow, President of Ancarrow Marine, Inc., as to the term of this lease?

A. No.

Q. It was not for any—

A. If I understand what you mean, does Ancarrow Marine have a year to year or five year, ten year—

Q. That's right, sir.

A. No, sir. No, sir. Has no period.

Q. I did not want to put legal words in your mouth; it is what we call a tenancy at will?

A. That's what you said.

Q. Well, all right. But after your negotiations, can you—

A. I'm not being flippant there, because I don't really know what you said.

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Q. Did Mrs. Ancarrow know you, Newton H. Ancarrow, individually, had negotiated a lease with Newton H. Ancarrow, President of Ancarrow Marine?

A. I do not know what Mrs. Ancarrow knew.

Dep.
3/24/67
page 26 } Q. What rent did Ancarrow Marine, Inc., you, as President, agree to pay to Newton H. Ancarrow for this property?

Mr. Laughlin: Excuse me, Mr. Little. I hate to keep interrupting you. If you will ask him first of all whether they agreed to pay any rent.

Q. Did you agree to pay any rent?

A. They agreed to pay rent when they could.

Q. Agreed to pay rent when they could. All right. So, I take it, that the amount was not fixed.

A. Well, the amount was to have been established by the, let's see now. Payments due on the mortgage. In other words, Ancarrow Marine was to make the mortgage payments, in essence.

Q. If they were in position to do it.

A. Right. Right. But, of course, if no money came in, then Ancarrow Marine could not pay the rent.

Q. Has Ancarrow Marine, Inc., paid rent to Newton H. Ancarrow?

A. Yes, sir. Yes, sir.

Q. How much rent and in what years?

A. Oh, mercy. I don't know.

Q. Have they paid rent every month they were there?

A. No, sir.

Q. Who pays the taxes on that property, Mr. Ancarrow? Does Ancarrow Marine, Inc., or do you and Mrs. Ancarrow, or who?

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A. I do.

Q. Personally?

A. I think. Yes, sir.

Q. Who pays the insurance?

A. I don't know.

Q. When you bought the property you said that it had—I am not putting words in your mouth—but some rundown improvements or structures on there; are you using any of those structures now, buildings, by structures I mean buildings.

A. In a rather offhand way. There is an old remains of what appears to be an old concrete silo there, and when I have some old empty 55-gallon drums, or some old rusty pipe, I don't want to lay out on the front lawn, I chunk them back up in there, so I am using it as camouflage, but only to that extent.

Q. You did, or did you not, erect a building on that property shortly after you bought it in 1961?

A. We erected two.

Q. Two buildings; would you describe those buildings?

A. Well, let me see. The main building—

The Commissioner: Excuse me just a moment. When you use the word you, are you referring to them individually or—

Mr. Little: I should clarify that. Let's go back.

Newton H. Ancarrow

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Q. Who erected these two buildings that you have just mentioned on the property? Was it Ancarrow Marine, Inc., or was it you and your wife, Mr. Ancarrow?

A. Now, you're getting so specific. See, Robert Dunville built them.

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Q. Let's assume, based on that record, if the record is wrong, Mr. Ancarrow, you won't be bound by it, of course, that you and your wife borrowed the money to build this building. I think that is a safe assumption. Did Ancarrow Marine, Inc., even sign the note at Home Beneficial?

A. No, sir.

Q. How much did this first building cost, sir?

A. I don't remember.

Q. Approximately.

A. Approximately eighty-five thousand dollars.

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Q. Who had the contract with, I think you said Dunville built the buildings.

A. Robert Dunville built the building; yes, sir.

Q. Was the contract between Ancarrow Marine, Inc., and Dunville, or was it between Newton H. Ancarrow and Mrs. Ancarrow?

A. Well, I will have to answer as I did before, I don't know, but the answer can very readily be gotton.

Q. Would you produce that contract?

A. But I think that it was between Newton H. and Josephine Ancarrow.

Dep. Q. Individually and Robert Dunville.

Newton H. Ancarrow

3/24/67 page 32 } A. Who contacted the contractor to build the buildings.

Q. Was that a written contract?

A. Yes, sir.

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Q. What salaries are paid by Ancarrow Marine, Inc., to the officers of the corporation?

A. I'm trying to think of how to answer the question as simply as I can, because—may I answer the question rather indirectly?

The Commissioner: Answer it as best you can.

Q. Answer as you see fit, sir.

A. Well, I have established a rate which the corporation should pay me of about seven hundred, excuse me, exactly seven hundred-fifty dollars a month. But, if the money is not available—now, I must be careful in the selection of words—I would like to say forego, but I do not, because I consider this to be a—

Dep. 3/24/67 page 37 } Q. You let the salary build up, in other words, is this a fair statement?

A. Right.

Q. You accumulate your salary, is that right?

A. That's right. Right.

Q. If the funds are available, then the corporation pays you a salary, right?

A. Right.

Q. How about Mrs. Ancarrow? Does she have a salary?

A. The same.

Q. Roughly what is her salary?

A. Oh, mercy. Well, I don't keep the books, so I really don't know. Just like my shop foreman right now, if you asked me I can't tell you his salary.

Q. Have you and/or Mrs. Ancarrow made loans to this corporation?

A. Yes, sir.

Newton H. Ancarrow

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Q. Mr. Ancarrow, I call your attention to Commissioner's Exhibit 35B, which is the sheet for the liabilities and stockholders' equity of Ancarrow Marine, Inc., as of July 31, 1965. Under Current Liabilities, would you read this one item and the amount here.

A. Current Liabilities accrued interest on notes payable one hundred ninety-four thousand four hundred fifteen dollars and fifty-one cents.

Q. To your knowledge has Ancarrow Marine, Incorporated, given any notes to anybody other than you and Mrs. Ancarrow?

A. Not to my knowledge.

Q. So that would represent interest due on notes to you and Mrs. Ancarrow?

A. Yes, sir. I presume so.

Q. Now, under Deferred Liability, would you read this, please.

A. Deferred Liability, notes payable officers, six hundred seventy-five thousand one hundred-eighty-one dollars forty-seven cents.

Q. Now, are they notes to your knowledge payable to you and Mrs. Ancarrow?

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A. To my knowledge, that's right.

Q. The only other officer is Mr. Ware, is that right, aside from you and your wife?

A. That is correct.

Q. And to your knowledge the corporation does not owe Mr. Ware anything, does it? I am not talking about legal services. I will rephrase the question. The corporation has not given Mr. Ware any notes, to your knowledge.

A. No, sir.

Q. Coming down here under Stockholders' Equity (Deficiency) will you show what the deficit of the corporation was for the year ending July 31, 1965?

A. Well, it says here on the balance sheet eight hundred ten thousand five hundred thirty-three dollars sixty-two cents.

Newton H. Ancarrow

Q. While we are on the balance sheets, let me refer to the balance sheet of, known as Commission's Exhibit 34B, that was for the year ending July 31, 1964, and the same three items we refer to again to save time, the accrued interest on notes payable there a year earlier was one hundred forty-nine thousand forty-seven dollars and forty-three cents, right?

A. That's what it appears on this sheet, yes.

Q. During the course of one year, going back up to the same figure for July 31, 1965, that figure increased some forty-five thousand dollars, approximately.

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A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Under Deferred Liabilities you will recall that on July 31, 1965 under notes payable officers the figure was six hundred seventy-five thousand one hundred eighty-one dollars forty-seven cents, and on this statement it was six hundred forty-eight thousand. By this I am referring to 34B. Six hundred forty-eight thousand one hundred sixty-seven dollars three cents. Which is an increase of roughly twenty-seven thousand dollars between 1964 and 1965, is that right? The difference between—

A. It appears to be roughly, yes.

Q. And the deficit figure for 1964 was seven hundred eighteen thousand seven hundred fifty-four dollars and eight cents, and in 1965 it was eight hundred ten thousand five hundred thirty-three dollars sixty-two cents, which shows an increase between July, 1964 and July, 1965 of a deficit of some ninety thousand dollars. Ninety-some thousand, is that right? Is that approximately right?

A. On the face of it, yes. Yes, it appears there. Yes.

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Q. I will rephrase it. Has Ancarrow Marine during the years 1964 and 1965, or indeed any other time, to your knowledge, since its inception—

A. All right.

Q. —borrowed any money from a bank? Answer that first.

A. Yes.
Q. All right. When you made such loans, did you and Mrs. Ancarrow personally endorse the notes?
A. No.

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Q. Now, I show you Commissioner's Exhibit 36, which has been identified as Exhibit reflecting the gross income from the marina for the calendar year 1965 and the calendar year 1966. Now, is it not true from this that the gross income from launching boats decreased in 1966 from what it was in 1965?

Mr. Laughlin: It shows on its face it did, Mr. Little.

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Q. Now, calling your attention to Exhibit 37A, which is the income tax return for Ancarrow Marine, Incorporated, ending July 31, 1964, is it not true that the corporation had a loss for that taxable year, according to this return, of one hundred twenty-four thousand two hundred forty-three dollars thirty-one cents?
A. That's what's on the form, yes, sir.
Q. Is it not also true that on that same return, on a portion of the schedule entitled Net Operating Loss Deductions, that the corporation at the end of 1959 shows that the corporation had—

Mr. Laughlin: You say 1959?
Mr. Little: 1959.

Dep. Q. (Continuing)—had a net operating loss of one hundred three thousand some odd dollars, at

Newton H. Ancarrow

3/24/67 page 50 } the end of 1960 had a loss of seventy-seven thousand dollars, and at the end of 1961 it had a loss of sixty-two thousand dollars—these are just in round figures—in 1962 a loss of one hundred seventeen thousand dollars, and in 1963 a loss of ninety-one thousand dollars.

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Q. Let me ask the question, go back to the first page, line 29, the title Net Operating Loss Deductions—

The Commissioner: Let the record show the witness is referring to Exhibit 37A.

Q. It shows a figure of four hundred fifty-two thousand three hundred thirty-seven dollars fifty-four cents, is that correct?

A. Yes, sir. That is on there.

Q. It shows to that figure, added to the loss year ending July 31, 1964 of one hundred twenty-four thousand two hundred forty-three dollars thirty-one cents, for a total loss, including the loss for this year just cited, five hundred seventy-six thousand five hundred eighty dollars eighty-five cents, is that correct?

A. That is what is on the form, yes, sir.

Mr. Laughlin: I apologize, counsel. Apparently I was in error.

Q. Now, coming to Commissioner's Exhibit 37B, which is the corporation income tax return for the year ending July 31, 1965—and I could be in error here because the numbers might not be on the line, the proper line, because this is a carbon copy—as I read this, on line 28, for the year ending July 31, 1965, you had an additional loss of ninety-one thousand seven hundred seventy-nine dollars fiftyfour cents.

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A. That is what is on the form, yes, sir.

Newton H. Ancarrow

Q. And on Commissioner's Exhibit 37C, which is the tax return for the year ending July 31, 1966, you had an additional loss of thirty-three thousand five hundred seventy dollars seven cents.

A. Yes, sir.

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Mr. Little: Mr. Laughlin, to save time, can we stipulate for the record the job on the personal residence of Mr. and Mrs. Ancarrow was paid for by a check issued on Ancarrow Marine, Incorporated?

Mr. Laughlin: I think that is accurate.

Mr. Little: Right. Specifically it is represented by check #C1149 of Ancarrow Marine, Incorporated, dated July 13, 1964, which on the stub shows covers invoices 401, 2 and 3.

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Q. When you wrote these checks, Mr. Ancarrow, at any time during the year ending July 31, 1964, or July 31, 1965, either one, did Ancarrow Marine, Incorporated, have on hand as much cash as twenty-five thousand dollars?

Mr. Laughlin: Mr. Little, let me help you. I think the answer to that is that there was enough on hand to clear the checks when the checks came back.

Mr. Little: I am asking the witness if he borrowed the money and put the money in the Ancarrow Marine account to make the checks good.

Mr. Laughlin: Ask him that then.

Newton H. Ancarrow

Q. Did you borrow money in order to make these checks good?

Mr. Laughlin: You say you, Ancarrow Marine, you mean?
A. Yes.

Q. Ancarrow Marine, Incorporated.
A. I presume this, yes.
Q. Let me ask you this. Did Ancarrow Marine, Incorporated, borrow the money, or did you and Mrs. Ancarrow borrow the money?
A. To do precisely what?
Q. To put money in the corporation to make these checks good.

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A. Well, Ancarrow Marine borrowed the money from Mrs. Ancarrow and myself who in—I better not. That might—
Q. Go ahead.
A. I don't want to be cute.
Q. Who in turn borrowed the money from the bank?
A. Who in turn borrowed it from the Federal Reserve System.
Q. The Federal Reserve System?
A. That's what I said. I didn't want to say it. I would be presumed to be cute. I don't want to be cute.

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Q. The fact remains that to make these checks good, you and Mrs. Ancarrow had to go out and borrow money from something, somebody, or some institution, then turn around and lent the money to Ancarrow Marine, Incorporated, and then Ancarrow Marine, Incorporated would write a check on that account, is that right?
A. I'm inclined to say no.

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By Mr. Laughlin:

Q. Can you tell us what you did, Mr. Ancarrow, the best you remember.

A. What I'm trying to say, occasionally we sell a boat, then I will use this money, if it's there, to pay Garrett, but I don't know that this thing happened to occur on one of these specific six checks.

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Q. Who are the parties to this contract?

A. To the best of my knowledge Ancarrow Marine, Incorporated—oh boy—R.L.T. Garrett, is that it?

Q. That's right. Trading as Garrett and Company.

Mr. Garrett: L.R.T. Excuse me.

Q .What do you base that knowledge on, that they were the parties to the contract?

A. What do I base that knowledge on? Negotiations with Mr. Davis.

Q. Negotiations. At any time did you advise Mr. Garrett that his contract was with your corporation and not with you and/or your wife individually?

A. Can I have that read back?

Dep.
3/24/67 NOTE: At this point the previous question is
page 63 } read by the reporter.

A. Let's see. Garrett—

Mr. Laughlin: Maybe the witness can answer the question; I want to ask something, before you go on to the next question I would like to say something. Answer that question. Don't ask another until I look at something.

A. No, I don't believe that I personally told Mr. Garrett that specifically the contract was with Ancarrow Marine and not with myself.

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Newton H. Ancarrow

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By Mr. Little: (Continuing)

Q. Did you tell anyone else that Garrett and Company, that the contract was between Ancarrow Marine, Incorporated and Garrett and Company and not with you and your wife?

A. No.

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Q. Now, the work you had done on your residence, Mr. Ancarrow, for about two thousand dollars, that was also billed to Ancarrow Marine, Incorporated, was it not?

A. Yes.

Q. Did you regard this as legitimate business expense of the corporation?

A. No.

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Q. Right. I would, too. Now, Mr. Ancarrow, did you have plans for building any other buildings on this property, specifically, you have heard Mr. Davis testify that you mentioned a plan to build another building down there so that you could refit boats, or repair boats, or doing something of that nature.

A. Yes.

Q. You did have?

A. Yes.

Q. What sized building were you contemplating in relation

to the buildings that are now down there? The same size, smaller, or larger, or—

A. To suit the contingencies—not contingencies, that is the wrong word.

Mr. Laughlin: Condition?

A. I'm lost in semantics now. All right. Condition, yes, or requirements. Whatever the requirements were at the time we built the building.

Q. What were you going to do in that building? What type of work? I am not trying to make it difficult.

Dep. 3/24/67 page 70 } A. No. I'm trying to answer the question properly. At that time the buildings that I had planned to build were to be used to construct, repair, and/or store boats.

Q. In connection with this building, would you have used the slip and the travel lift slip that was built by Garrett and Company?

A. Yes.

Q. Would you also use the ramp and the travel lift slip that was built in connection with your existing building down there when you would go to launch a boat or bring one in or something?

A. Yes.

Q. Is any parking area required for the effective use of this travel slip? I mean the ramp and the travel lift, or the ramp and the travel lift slip?

A. Yes.

Q. Because people coming in there to launch boats will bring trailers, usually, and you have to provide parking for the cars and the trailers.

A. Yes.

Q. It is a pretty substantial area, is it not, required for parking, depending on your business?

A. That's hard to answer.

Q. You heard Mr. Davis mention the fact that you were contemplating buying a piece of equipment, I think that is a travel lift, is that right? Do you remember mentioning anything to him about that, so that you could hoist boats out?

Dep. 3/24/67 page 71 } A. Yes. I remember Mr. Davis saying that I said that I anticipated purchasing a travel lift.

Q. Did you anticipate purchasing a travel lift?

A. Yes.

Newton H. Ancarrow

Q. What would have been the cost of that, roughly? Did you ever check far enough to know?

A. Yes. The cost would have been between ten and seventy-five thousand dollars.

Q. Depending on what size piece of equipment you got?

A. No.

Q. What would it depend on then? I give up.

A. It depends on how many travel lifts they got on hand. Because at that very moment they had a sixty ton travel lift, brand new, never run, that they would have sold me for fourteen thousand dollars. But on their literature it listed for seventy-five thousand dollars.

Q. Mr. Ancarrow, you have had an interest in the polution problem of the James River for sometime, have you not.

A. Yes, sir.

Q. Mr. Ancarrow—and in this I want to assure you we are all in agreement—the river condition at the location of this marina is pretty sad, is it not.

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A. Yes, sir.

Q. Do you find this a deterrent to your business?

A. Most decidedly.

Q. It has hurt your business a whole lot, has it not?

A. It has hurt my business. Now, I don't know actually to what extent.

Q. It is not the most attractive place for people to come and launch a boat with all that polution in the river, is it.

A. No, sir.

Q. Has the business at the marina been up to your expectations, Mr. Ancarrow?

A. Well, categorically or otherwise?

Mr. Laughlin: Explain as best you can what you mean.

A. Well, I don't consider that I have a marina.

Q. Well—

A. My intention was that this was the beginning. That is what I have always said. But, as you pointed out, the river being what it is, I have delayed extension of this until the river is cleaned up. So, I will give a categorical answer to you, I think—Lord, I have forgotten what the question was. Yes, but with the understanding that I have not developed the marina, so that I don't even use the travel lift slip for the purpose of which it was intended.

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Q. What else were you planning to do down there to extend that marina operation?

Newton H. Ancarrow

A. Oh, mercy. Well, with the approval of the Corps of Engineers we were going to put slips out in the river—now, I would like to say this represents my plans, as I see them now.

Q. Did you have those plans back at the time of this contract?

A. Yes, sir. I have a lot of it on the paper over there right now.

Q. You do? All right.

A. Where was I? I am going to start all the way back. At that time—

The Commissioner: You were planning on building slips out in the river with the approval of the Corps of Engineers.

A. (Continuing)—put in slips, put the travel lift in, build a building capable of handling the repairs of up to sixty-seventy foot boats, also a paint shop for this purpose, ships channelry, restaurant, motel, all of these things dependent on surveys at the time. In other words, when I say I hope to build a motel there, because I think it's a good place with 95 passing right by, and the people wanting to come up the river some day; but I would, of course, go to Quality Courts, Holiday Inn, all of these people who know what they are doing, to tell me whether I should build a motel; if so, how big. I am qualifying these plans a little bit.

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Q. Well then, your plans called for the expenditure of an awful lot of money, did it not.

A. Yes, sir.

Q. Do you have any idea how much?

A. I think this would vary from year to year, and unquestionably is going up each year, but I am guessing, to do what I have just outlined, of the order of five to six million dollars.

Q. Did you feel that you had the resources to get the funds that were necessary for the financing of that type of improvement?

A. All right. Now, I must stop and ask you which you this is?

Q. You individually.

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. But it would require your individual, you and Mrs. Ancarrow's, financial strength to do it in addition to Ancarrow Marine, Incorporated, would it not.

A. That's a double barreled question; so no.

By Mr. Laughlin:

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Q. Explain why it is a double barreled question. Give us the best answer you can.

A. Well, because it would require that Ancarrow Marine exist to provide the facilities to repair and service these boats to run the marina. Now, Ancarrow Marine would have nothing to do with the motel, restaurant, ships channelry, as my plans are today. Now, did I answer that properly?

Q. Yes, sir. That's fine.

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Q. Now, sir, I want to get back to this lease. The corporation authorized you as its president to negotiate with the owners, which was you and Mrs. Ancarrow, to make a lease.

A. Wait a minute. See, there are two leases. Which?

Q. You tell me about the two leases. Tell me about the first lease and the second lease.

A. The first one was for the building, the two buildings, that Mrs. Ancarrow and I constructed.

Q. Right. These were the buildings that were built by Robert Dunville.

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A. Right.

Q. All right.

A. And, as best I remember, not having seen them in the books for a matter of several years, we were considering a location in Tappahannock, several locations on the James—

Mr. Laughlin: Location of what, Mr. Ancarrow? I don't think the Commissioner understands. Location of what?

A. Oh. All right. We were up on Summit Avenue building boats.

Q. Not where there is any water.

A. It is like building an automobile up on the tiptop of Mount Everest. All right. We were trying to find somewhere to go. This Summit Avenue arrangement was temporary at

its inception. All right. So then, as best I remember, the corporation authorized me, as president, to negotiate with myself and Mrs. Ancarrow for a lease. Now, I am trying to remember the minutes, and I keep forgetting what I am saying. You understand what I'm saying?

Q. All right.

A. To negotiate for a location to build boats. I think I have said what I meant.

Q. All right. I understand.

A. Now, so we are looking at Tappahannock, several locations, and North Carolina, up and down the James, and so forth, and we decided on this one. So then we built the building.

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Q. Let me interrupt. When you found this location, you and Mrs. Ancarrow purchased the property first.

A. Right. In 19—I think it was October or November of 1961.

Q. Right. You purchased the property in your own name, and the corporation was already in existence.

A. Yes.

Q. All right. You then made, in the corporate minutes book, a resolution to authorize you as president—

A. This was done previously.

Q. That is all right, but it is in the corporation minutes book authorizing you, as president, to negotiate a lease for certain property—

A. Right.

Q. At the time this corporate resolution was made, you did not then, you and Mrs. Ancarrow did not then own the property on the James River.

A. No.

Q. Is that correct?

A. That is correct.

Q. So that you, after you acquired, you and Mrs. Ancarrow acquired the property on James River, you then went back to your corporate minutes and said, now, this is our authority to negotiate a lease. Is that right?

A. Not quite. Yes. We built the building first.

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Q. All right. When you built the building, you and Mrs. Ancarrow built the building?

A. Right.

Q. You built the building. At the time you built the building, was it your intention then to lease the building to the corporation, or was your plans—

A. Yes, with qualifications.

Q. Just briefly what are the qualifications?

A. This building is not a special purpose building. It is just a cinder block rectangular building with fifteen foot ceiling, and so forth. So we built the building where we did thinking, or shall we say, hoping that if Ancarrow Marine did not use it, anybody in the world could. All right. So then we built the building, and Ancarrow Marine moved in.

Q. When, about 1961-62?

A. Spring of 1962.

Q. And they have occupied the building ever since?

A. Yes.

Q. To the best of your knowledge there is no formal written lease.

A. No.

Q. And you feel that at any time—Let me put it this way, let me make a hypothetical case. Let's suppose you sold all the stock of Ancarrow Marine to Mr. Jones, a fictitious person.

Dep. 3/24/67 page 82 } A. All right.

Q. Could then you and Mrs. Ancarrow say we are now going to terminate the lease of Ancarrow Marine—

A. Yes.

Q. —and Ancarrow Marine would have to vacate the premises?

A. Yes, sir.

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Q. Assuming you sold this property to the hypothetical person, Mr. Jones, could he come in to you on the next day and say, Mr. and Mrs. Ancarrow, we have decided we are going to move Ancarrow Marine, we are going to move down to South Carolina.

A. Right.

Q. We don't owe you any rent, except for any rent owed in the past, we don't owe you anything in the future.

A. Right.

Q. All right. I understand. Now, let's talk about the second lease.

Dep. 3/24/67 page 83 } A. All right.

Q. What was that lease of?

A. Well now, the second lease became quite another proposition. This was a structure that could

be used only for one purpose. And so we felt that Ancarrow Marine should build this one.

Q. All right, sir. That structure was what?

A. The travel lift and launching ramp, which we are talking about today.

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A. Yes. I think I understand what you are saying, and I think my answer is, yes, I have done it.

Q. Give me an example of how.

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A. When Ancarrow Marine rented a building from Thomas A. Costa—

Q. All right.

A. I forget the address, Egg Harbor, New Jersey. It was simply a shell. And so in order to use this shell I had to go in, put heat, lights, water, floor, several other things.

Q. All right.

A. Now, when he terminated the lease, I just moved out.

Q. All your improvements went along with it?

A. Right. They were amortized.

Q. You understood my question. I appreciate your answer.

A. Then we moved into 2723 Summit. I did the same thing.

Q. Is that good business to build something then walk away from it? All right. It depends on how long you stay there.

A. It depends on how much the rent is and, in other words, now, you must remember I paid next to no rent for this building, because Mr. Costa realized that I was going to improve it.

Q. So you have to look at all the circumstances.

A. That's why I say, back when you asked me that question, I gave you yes. On the face of it, it may sound silly.

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Newton H. Ancarrow

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Q. All right. Now, let me put it this way. The lease that exists now between Mr. and Mrs. Ancarrow on one hand, personally, and the corporation on the other hand, is still in existence now, although each *have* a right to change it or modify it or terminate it by snapping your fingers, right?

A. You reckon it's as easy—but, yes.

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Q. You said that the agreement is that the contract was between Ancarrow Marine, Incorporated and Mr. Garrett for the improvements that Mr. Garrett would put on, is that right?

A. This is my impression.

Q. All right. Now, can you tell me why then that those improvements that Mr. Garrett put on the property are not listed on your balance sheet as assets?

A. No, sir.

Q. Why not, sir?

A. I said I can't tell you why they aren't.

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By Mr. Laughlin:

Q. Do you know what the statements were prepared for, these that are in evidence, these financial statements? Do you know?

A. Me?

Q. Yes.
A. No.

Mrs. Ancarrow: I prepared the two statements to keep the records current. Just to keep the records current.
Mr. Laughlin: For you?
Mrs. Ancarrow: For myself; yes, sir.
The Commissioner: Were they prepared for any financial institution, given to anybody to get a loan, to reflect your financial condition?
A. No.

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Q. Did Mr. Garrett or any, Mr. Davis or any of his other employees, before they commenced work on the contract—
A. All right.
Q. —ever ask you any questions about the financial structure of your corporation?
A. No, sir.

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Q. During your testimony I think the Commissioner was asking you, and you made the statement that Ancarrow Marine could come up, Ancarrow Marine could get off of that property down there anytime they wanted to, theoretically—do you remember that—because there was no fixed term on the lease or anything like that, theoretically. If I owned that stock in Ancarrow Marine, I could just come up to you, Newton Ancarrow and Josephine Ancarrow, and say I'm leaving the property; right?

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A. Right.

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Q. Do you know whether or not depreciation was taken on your personal returns?
A. They were not.

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page 105 } L. R. T. GARRETT, the plaintiff herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Little:
Q. Would you state your full name and age, Mr. Garrett?
A. L. R.—You want the whole name?
Q. That is all right, your initials.
A. L.R.T. Garrett. Age, you say?
Q. Right.
A. Fifty-seven.
Q. Do you trade as Garrett and Company?
A. Yes, sir.
Q. How long have you been in the construction business, Mr. Garrett?
A. About thirty years.

Mr. Little: I would like to introduce this Xerox copy—
Mr. Laughlin: We will stipulate all this. This is his license.
Mr. Little: This is his license for 1964 and 1965.
Mr. Laughlin: We will stipulate he had his license and everything else.

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page 106 } The Commissioner: Let the record reflect that Commissioner's Exhibit 39 will be the construction license.

Mr. Little: Strict proof is required by the pleadings, is the only reason I did it.

L. R. T. Garrett

The Commissioner: This is a State Registration Board license, I believe, is it not?

Mr. Garrett: That's right. That is a very low number, incidentally. We have been a member of it ever since it first started. State Registration Board. You have to have that to bid anything over two thousand dollars.

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Q. Do you recall in January of 1965 meeting with Mr. Davis and Mr. Ancarrow about this job?

A. Yes.

Q. Would you describe what happened, to the best of your knowledge.

A. Well—

Q. What agreement, if any, was made?

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A. Well, we hadn't gotten our money. It was some money or monies were due us, and we hadn't received it and we needed it badly, and I said, told Mr. Davis, I said, let's go down and see Mr. Ancarrow. And so we saw him. I think he sat in our car, or we sat in his car, one or the other, right there in front of his office, and I told him, I said, Newt—this is the best I can remember now—we need this money badly, and you have continued to say you're going to pay us, you're going to pay us, you had to make some arrangements to get it. And I said, we really do need it badly. And I said, we are still working out here now, as you know, and I said, we don't have but so much more work to do. And I said, if you will pay us this money now I will want you to get together with Mr. Davis, which they did, and they got out the car and Mr. Davis walked around just to see what he had to do. When they returned I said, did you all have a meeting of the mind? And they said yes. I said, if you will pay us this money we will do this work free. I mean, in other words, give it to you to compensate for you paying us this money now. I don't—That was the latter part of January.

Q. Do you know about when that was and how much work, roughly, we were talking about then that had been done up to that time?

L. R. T. Garrett

A. Well, it was on a Tuesday, because I know I missed Rotary, and it was around the middle of the day, around 12:30, I imagine, anywhere from 10:30 to 12:30 because—And it was somewhere around about, oh, I think it was now around the 22nd or 23rd of January. Whenever that Tuesday would come up on. And the other work that they were talking about doing was driving the sheathing that had been pulled down on the river bank in the front, that was extra work that he had there. And we were going along and doing that. And I said that would amount in, oh, approximately just, off the record, I don't say off the record but just offhanded I'd say three thousand dollars or maybe thirty-five hundred, or three to five thousand dollars.

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Q. Did he agree to that proposal?

A. To the best of my knowledge I think he did. Now, when I say that, he didn't go in and write us a check, but that was what I proposed to him, and I thought we would get a check back, and we didn't get it in a few days. You want me to continue on?

Q. Yes.

A. We didn't get it in a few days, say a week, and I called, and Mrs. Ancarrow, I asked her about it. And I wish to say this, maybe I shouldn't talk too much, but my relations with Mr. and Mrs. Ancarrow and their father was always, I mean I knew him, I thought a tremendous lot of him. He was a fine old gentleman, and we have never had any argument or fussing back and forth. It has always been very friendly. And I'm a little surprised that we are in this position. But, anyway, that is just it. But, anyway, she mentioned that she, I believe that she, they didn't have the money right now. They were trying to get it. But, in the meantime, they felt that they ought to have an adjustment. I said what kind of an adjustment are you talking about, Mrs. Ancarrow? Now this is to the best of my knowledge now. She said, well, we are looking for twenty-five thousand dollars. She maybe can verify this. I think I'm right on this. And I said, well, goodness gracious, Mrs. Ancarrow, we can't do that. We just didn't have that money in the job, and we have given you all the adjustments we could give, and I have offered Mr. Ancarrow this other adjustment to get our money, and we just can't do it now. Now, if you all don't pay, I'm going to have to talk to our lawyer and see what kind of protection we have, because we have put out a tremendous lot of money for labor which, using carpenters—and I wish to say there that I told

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Newt several times on the job we had trouble with carpenters and not being able to get what we really wanted, but they had the Ross Building being built, the State Farm Bureau, the 700 Building, Virginia Life, and frankly it was a scarcity of good help.

Q. Did you so tell Mr. Ancarrow?

A. Yes. And he knew. He knew that. And I say this, Mr. Ancarrow was there with the men, and he realized the situation there. Mr. Wynn, I think Mr. Ancarrow will say, was an excellent man; Mr. Wynn had to be run off the job because we could not depend on him on account of drinking. Well, we have to put up with people like that at times, especially when these other contractors have a job say for two years and we have one down there that will be six or eight months, or whatever it might be, and this, you get a building like that, you get under roof, so to speak, you get going down there, you are out in the open and the boys, they figure those things. In a building like this you can hide in, so to speak. Out there your man is on top of you all the time.

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Q. Now, as I understand it, when you and Mr. Ancarrow and Mr. Davis met down there on that agreement about pay me up through today and I won't charge you any more for the balance of the work, that was the last part of January, is that right?

A. Yes, sir.

Q. I show you what is Exhibit A to the Bill of Complaint, which is an invoice No. 230 to Ancarrow Marine, Incorporated, and as you can see it covers work done for the weeks ending 1/31/65, 2/7/65, 2/14/65, 3/28/65, and 3/6/65, totaling fifty-eight hundred thirty-nine dollars eighty-nine cents. Are you familiar with that?

A. Yes. Well, this is after, this was the work we were talking about giving him.

Q. Right. If he had paid you.

A. Yes. That's right.

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Q. Now, Mr. Garrett, with whom did you feel that you had a contract for this job?

A. Mr. Ancarrow.

L. R. T. Garrett

Mr. Laughlin: I object to the question and answer as being entirely irrelevant and immaterial. The answer can stay in the record so it can be ruled upon by the Court. What this witness felt is really of no concern. I make my objection simply for the record, Mr. Commissioner.

Q. At the time this job began, did you even know there was an Ancarrow Marine, Incorporated?
A. Frankly, no.

Mr. Little: That is all I have.

CROSS EXAMINATION

By Mr. Laughlin:
Q. The last two questions you answered may be of some importance. I have objected to the first one, and the answer is on the record, and my notes say you testified you felt you had a contract with Mr. Ancarrow; at the time the job began you did not even know there was an Ancarrow Marine, Incorporated; were those your answers?
A. That's right. Yes, sir.
Dep. 3/24/67 page 117 } Q. Now, under oath, you are satisfied that they are accurate and correct?
A. Yes.
Q. And you considered the basis upon which you made them before you made them. You have been here three days listening to the testimony in this case. You have no question or qualification about either answer.
A. Now, repeat your question, sir.
Q. Do you want to qualify your answer in any way?
A. Do I want to qualify it?
Q. Yes.
A. No. In other words, the question was what?
Q. You were asked who you felt you had a contract with. You said Mr. Ancarrow.
A. Right.
Q. Then you said at the time the job was begun you did not even know there was an Ancarrow Marine, Incorporated, is that correct?
A. Ancarrow Marine, Incorporated, yes. I knew there was an Ancarrow Marine, but not Ancarrow Marine, Incorporated.
Q. With that qualification you are satisfied with both answers?
A. Yes, sir.

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Q. You do not want to add to them, change them, or anything.

A. Not unless you want me to.

Q. No, I want to make certain that later on you won't tell me that, oh, I forgot something. I want to change it.

A. No, sir. Not to my knowledge.

Q. Well now, how limited is your knowledge? You have a pretty good knowledge, you have been sitting here three days when we have been talking about the entire case.

A. I have found out sitting here that there was an Ancarrow Marine, Incorporated.

Q. I understand that. I am talking about back there when the job started, when you had this feeling who you had a contract with.

A. No, sir. When the job started I talked to Mr. Ancarrow. Mr. Davis worked it out, and in fact, when the first job we had with Mr. Ancarrow, I told him, it was in the early part of the spring or around in, say, I don't know just when it was, the record will show, February or March, something like that, I called him and asked him could he let us have a check on part payment. He said, Mr. Garrett, I will—I think he said that. I don't think he called me Linwood—anyway, it was all right. He said I think we can pay you the whole thing. I just told him I needed a little bit. I went down there and we have a very happy relationship.

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Q. You felt you had the contract with Mr. Ancarrow, period.

A. That's the way I felt about it.

Q. I wrote that at the same time on this piece of paper. Would you sign it, please, sir?

Mr. Little: I think this is unusual.

Mr. Laughlin: I know it is unusual. I want to make certain the witness is certain of his answer.

Mr. Little: He can sign it for what it is worth.

Q. Do you want to add to that in any way, qualify it in any way, please do so. And I am referring, of course, to the contract for the construction of this boat ramp and slip at Brander Street which is in this lawsuit.

A. I felt I had a contract with Mr. Ancarrow.

Q. Right, for this work.

A. And Ancarrow Marine.

Q. What?

A. Now, I knew there was an Ancarrow Marine, but I didn't question to see whether it was Ancarrow Marine, Incorporated, or not.

Q. That is all right. You felt you had a contract with Mr. Ancarrow, that was it.

Dep. 3/24/67 page 120

A. I felt I had a contract with Mr. Ancarrow.

Q. You did not have a contract with Ancarrow Marine, Incorporated.

A. Not to my knowledge.

Q. You did not feel you did at all.

A. Huh uh.

Mr. Little: That has been admitted in the pleadings by the defendant. They say there was a contract. Go ahead.

Q. All right. Now, this is the important question, and this is why I had you write this down, one of the reasons: You did not, therefore, feel that you had any contract with Mrs. Ancarrow; right? And this is the reason I had you write this down. You have answered yes or no to it about six times.

Mr. Little: That is perfectly all right.

A. That is all right, Mr. Laughlin.

Q. You did not feel you had a contract with Mrs. Ancarrow; right?

A. I dealt with Mr. Ancarrow.

Q. I know.

A. Mrs. Ancarrow came in later on on the deal, but I felt I was dealing with honest people or peoples.

Q. I still feel you are, sir.

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A. That's the way I felt.

Q. My question to you is, you did not, therefore, feel you had any contract with Mrs. Ancarrow.

A. Frankly, I didn't know Mrs. Ancarrow right then when we first started on it, other than just to go in the office, or she wrote the checks, or talked to her on the telephone, something of that sort.

Q. You did not feel you had any contract with her, did you, sir? You did not even know her.

A. That is all right. If that's what you want me to say; yes.

Q. You did not feel you had any contract with her.

A. I had a contract with Mr. Ancarrow.

Q. You have testified you felt that. I am saying it conversely. You felt you had no contract with Mrs. Ancarrow.

A. I didn't, she didn't give me a purchase order. Neither did he.

Q. I want a simple answer to a simple question. You did not feel that you had a contract with Mrs. Ancarrow.

A. That is all right; yes.

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page 122 }

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Dep.
3/24/67
page 123 }

Q. Now, you have stated you knew there was something called Ancarrow Marine at the time you made this contract; is that a fair statement, sir?

A. I think it is.

Q. How did you know there was an Ancarrow Marine?

A. Because he was building the marina and that was referred to as Ancarrow down at Ancarrow Marine.

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page 125 }

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Q. When did you first find out that there was something known as Ancarrow Marine, Incorporated?

A. It could have happened within thirty days, or the first billing. I see through all the bills that I think most of them are all made out to Ancarrow Marine, Incorporated.

Q. Aren't they all, sir?

A. Probably are.

Q. Is there any doubt in your mind that they all are?

A. It didn't matter, Mr. Laughlin.

Q. Do I understand you to sit here and say it did not matter?

A. If Newton Ancarrow told me to charge it to X, Y or Z

Corporation, I felt he was going to be responsible for it, I would have done it for him.

Q. Did such a conversation take place?

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A. Sir?

Q. Did such a conversation take place?

A. No. We just—

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Dep. 3/24/67 page 137 }

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Q. I am not talking about that. Your testimony is here now, as I have it, that Ancarrow Marine, neither Ancarrow Marine or Mr. Ancarrow or Mrs. Ancarrow ever agreed with you, so far as you know, on behalf of Garrett and Company, to pay you cost, plus ten percent or cost, plus twenty-five percent as now on these bills.

A. We sent them the first bill, and they accepted it.

Q. All right. But, you never had—

A. All I can say.

Q. You never had any agreement to pay on that basis.

A. That's right. We sent them the first bill and they accepted it.

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Q. Both times you are right, in other words.

A. No. We undercharged you the first time.

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L. R. T. Garrett

Q. You cannot testify to that as to a fact yourself, that Mr. Ancarrow and your superintendent ran the job, because you were not there, is that not true?

A. Yes. But, I was there several times, and I remember one day of going in there and Mr. Ancarrow was kind of exploded and said take the damn stuff off the job. I walked on in the office and talked to Mrs. Ancarrow, and sat around there for about a half hour; came on back. I felt he was—and I have exploded myself at times with things I thought—

Q. When was this it happened?

Dep. 3/24/67 page 145 }

A. When was it?

Q. Yes.

A. Sometime during the middle of the job, in warm weather, I think it was. And I went back out. Of course I was going to take it off if he wanted it off, and he didn't say anymore. And I said, well, Newt, who is running this job? And he has told me this several times, he said, I am running this job. That's all I wanted him to say. I wasn't trying to set a trap for him, but I wanted him to know, and he knew along the line, that is the reason we billed him once a week for his own benefit to know and if anything was wrong to get it while, when it was hot. I know when it's hot, it's so much easier to correct.

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Q. Whose idea was it to assign the accounts to the bank, the bank's or yours?

A. No, my own. My idea.

Q. Your idea, not the bank's idea?

A. Well, you don't normally have to do this, assign, when you borrow on the account you borrow the money and assign the account as additional collateral.

Q. You were borrowing money on this account?

A. That's right.

Q. It was not a revolving credit on this account?

A. Not on this account.

Q. Are you certain of that?

A. That's what I—we got the money. I'm not that—

Q. You got forty-thousand dollars?

L. R. T. Garrett

A. That's right.

Q. Thank you. And this refers to Commissioner's Exhibit No. 17, which is the—

A. I reckon so, if that's it.

Dep. 3/24/67 page 182

Q. Now, who did you put on here as the name and address of the debtor at the time you did this? Let the record reflect the witness is referring to Commissioner's Exhibit No. 17.

A. Right here is Ancarrow Marine, Inc.

Q. And this was filed by you under representation that this was the situation, was it not, sir.

A. That it was what kind of situation?

Q. I say this was filed by you upon the representation that this was in fact the debtor, Ancarrow Marine, Incorporated. You gave this information to the bank and represented to them that Ancarrow Marine, Incorporated, owed you this much money, did you not, sir.

A. Yes.

Q. All right. So, at that time there was no question in your mind that Ancarrow Marine, Incorporated was the one who owed you this money, was there.

A. No. The only question in my mind—There has never been any question. Mr. Ancarrow owed the money and—

Q. Well now, Mr. Ancarrow's name is not on here anywhere. I am talking about Ancarrow Marine, Incorporated.

A. He signed down at the bottom.

Q. For Ancarrow Marine, Incorporated.

A. He signed down at the bottom.

Q. For Ancarrow Marine, Incorporated.

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The Commissioner: Read exactly what it says. Read the signature. What does it say?

A. You want me to read it?

The Commissioner: Yes.

A. N. H. Ancarrow, President.

Q. What does it say right before, though?

A. Ancarrow Marine, I-N-C.

Q. At this time you were transferring to the Bank of Powhatan these forty-eight thousand odd dollars in accounts and representing to them that the debtor was Ancarrow Marine, Incorporated. Now, is that a fair statement, sir?

A. That's what that thing shows.

Q. And that is what you intended it to do at that time, is it not, sir.

A. Yes. We signed the account.
Q. I know. That is what you intended to do.
A. Yes.

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Dep. 3/24/67 page 184 } Q. You did not represent to the Bank of Powhatan Mr. Ancarrow was the real debtor, did you, sir?
A. No. It looks like we sent it in this way.
Q. You did not want to mislead the Bank of Powhatan of all people, did you, sir?
A. That's right.
Q. You were trying to tell them the truth, if you were telling anybody the truth, were you not, sir?
A. Yes, I reckon so.

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Dep. 3/24/67 page 185 }

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Dep. 3/24/67 page 186 } Q. At the time that you achieved this settlement we talked about in October of 1964 on these accounts, Ancarrow Marine required that a lien, mechanic's lien affidavit be executed; do you recall that, sir?
A. Yes, I think so.
Q. At that time you embarked upon the preparation of a mechanic's lien waiver on the form of Lawyers Title Insurance Corporation; do you recall that, sir?
A. I remember that we went through a procedure of that sort, Mr. Laughlin.
Q. I show you a form, Lawyers Title Insurance Corporation form 91-1, dated December 28, 1964, and ask you if that is your signature on behalf of Garrett and Company on the back—

Mr. Laughlin: And I would like to have this marked as Exhibit No. 41.
The Commissioner: Mechanic's lien waiver marked Commissioner's Exhibit No. 41.

Q. My only question at this point is that your signature on the back, Mr. Garrett?

A. Yes, sir. That seems to be all right.

Q. All right, sir. Who did you indicate owned this real estate at the time you executed that lien waiver?

A. Real estate owned, this one says up at the top here Newton H. and Josephine W. Ancarrow.

Q. At that time you had no doubt about who owned the real estate, did you, sir?

Dep. 3/24/67 page 187 }

A. Never thought about it. Never questioned it, Mr. Laughlin.

Q. Now, also they required you to prepare and file an affidavit concerning the payment of bills, did they not, sir.

A. I don't know. If you will show it to me, I could tell you.

Q. I show you paper dated October 31, 1964, on the form of paper stationary of Garrett and Company. I ask you if that is your signature? That is your signature, is it not, Mr. Garrett?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. That was executed under oath by you and witnessed by, I think, Mr. Waitt and Mr. McRay, is that right?

A. No. This is by Mr. Davis and Spittle, Jr.

Q. I'm sorry. I could not remember.

A. Yes.

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Q. On the basis of that affidavit and on the papers filed at the time, you received from Ancarrow Marine, Incorporated a check in excess of thirty-six thousand dollars, did you not, sir.

A. I think along about that time, yes, that was that settlement, I think.

Q. October 31, which is the date of that affidavit.

A. Yes.

Dep.

Q. When you took the assignment of accounts to the Bank of Powhatan you received some forty

3/24/67 page 189 } thousand dollars in cash for that statement that Ancarrow Marine, Incorporated was the debtor, did you not, sir.

A. You are talking about in January?

Q. Yes, sir.

A. Yes. Yes.

Q. At that time you got forty thousand dollars for filing a statement Ancarrow Marine, Incorporated owed the money.

A. Yes.

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Dep. 3/24/67 page 192 }

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Q. Well, it has come to it. And, we are right down to it now. What I want to know is there any contingent on your part that after October 31st, 1964, one, that you did not know there was something known as Ancarrow Marine, Incorporated.

Dep. 3/24/67 page 193 } A. I knew it was Ancarrow Marine, Incorporated. When I say that, I didn't look into the records to see, other than what we had. We billed them.

Q. Everything you had indicated you had a contract with Ancarrow Marine, Incorporated, did it not.

A. Let me ask you this—

The Commissioner: Just a moment, Mr. Garrett, let me explain this, sir.

A. All right.

The Commissioner: Don't ask Mr. Laughlin any questions. That may seem to you I am being unfair; he is going to ask you the questions, and then to make your answer complete you can add anything you want, because I realize you want to tell the whole truth. So let him ask the questions, sir. All right.

A. Yes, sir.

Q. After October 31 you knew there was an Ancarrow Marine, Incorporated, did you not, sir.

A. Yes, sir.

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Dep.
3/24/67
page 195 } Q. How long have you been in business?
A. Thirty years.

Q. You know the difference between a corporation and an individual, do you not, sir.

A. Yes, I think so.

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Dep.
3/24/67
page 198 }

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REDIRECT EXAMINATION

Dep. By Mr. Little:
3/24/67 Q. By looking at 43, who is shown as the owner
page 199 } of that property on that completion certificate filed by your company?

A. Ancarrow Marine.

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Dep.
3/24/67
page 205 }

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Q. So far as you are concerned, is it safe to say that you still maintain your contract was with Mr. Ancarrow?

A. That's right, sir.

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Dep.
4/6-26/67
page 15 } L. R. T. GARRETT, the complainant, having previously been duly sworn, deposes and states as follows:

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Dep.
4/6-26/67
page 22 }

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RECROSS EXAMINATION

By Mr. Laughlin:

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Dep.
4/6-26/67
page 43 }

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Q. From whom did you get the hammer?
A. Now we had several hammers I think. Mr. Davis could probably bring you up to date on it, but this hammer I think you are referring to is one that we had from Thorington.
Q. And you paid Thorington no rent?
A. On this particular item I don't think we did.

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Dep.
4/6-26/67
page 62 } W. R. PARKER, called as a witness in behalf of the defendants, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Laughlin:

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Dep.
4/6-26/67
page 63 }

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Q. One of these is an assignment dated January, 1965

from Garrett and Company to your bank of the accounts of Ancarrow Marine, Incorporated; is that correct, sir?

A. That is correct.

Q. On the basis of this assignment did you, in fact, pay to Mr. Garrett $40,000?

A. On his note, yes.

Q. And this assignment, in fact, secured a note in the amount of $40,000; is that correct?

A. A secured note of $40,000, right.

Q. Is that the note which you brought with you today?

A. It is.

Q. Dated March 9, 1967?

A. That is correct.

Q. And is it fair to state that this March 9, 1967 note is a renewal note for the original obligation?

Dep. 4/6-26/67 page 64

A. It is a renewal for the original obligation.

Q. At what time was the first note made; do you know, sir?

A. I do not have that record.

Q. Would it have been would you imagine early in 1965?

A. I would imagine the same time the assignment was given, but I do not have the record. I do not personally keep it.

Mr. Little: Let the record show that this assignment is the same one that has been introduced.

The Commissioner: Let the record reflect that the exhibit will be designated *Commissioner's Exhibit No.* 54. It is the assignment of account.

Q. Mr. Parker, this assignment that was made in 1965 and securing the note of $40,000, which we now have marked as Exhibit No. 55—

The Commissioner: Commissioner's *Exhibit No.* 55 will be promissory note dated 3/9/67.

Q. I hand you Exhibits 54 and 55 and ask you if the assignment which is Exhibit No. 54 has at all times been in effect since the time it was executed and has been in possession of your bank?

Dep. 4/6-26/67 page 65

A. I got it right out of the vault.

Q. You have been keeping it in the vault at the bank?

A. Right.

Q. It's the only security for this note of $40,000?

A. That is correct.

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Dep. 4/6-26/67 page 66

Q. These notes have been renewed and have, in fact, not been paid?

A. That's right.

Q. Did the Bank of Powhatan participate in this suit in any way?

A. Is the bank participating?

Q. Yes.

A. Well, I talked to Mr. Garrett on yesterday and one of Mr. Garrett's attorneys asked me if we had any objection to being made a party to the suit, and my reply was that we wanted to do everything possible to get our money, and if it was necessary to make us a party to the suit, we would not object.

Q. Prior to that have you been a party to the suit?

A. No, sir.

Q. Have you been informed of the conduct of the suit and how it's been carried out?

A. No more than from time to time Mr. Garrett would tell us that it's going into Court and he hoped it would be settled before very long. I do not think I have any letters to that effect.

Q. Did you ever talk to Mr. Little prior to yesterday?

Dep. 4/6-26/67 page 67

A. I talked to Mr. Little quite sometime ago, maybe three or four weeks ago I believe.

Q. Prior to that had you ever talked to him?

A. I don't think so.

Q. What was his purpose in calling you at that time?

A. I had talked to Mr. Garrett and told him to hurry up the settlement, and he told me if I wished to that Mr. Little would be glad to talk with me, and I think I called Mr. Little over the telephone and told him I wished he would hurry this up.

Q. I now show you a note in the amount of $5,000 made by Garrett Contracting Company, Incorporated and payable to the Bank of Powhatan and ask you if that is secured by this assignment which is Exhibit No. 54?

A. That is supposed to be partly secured by the assignment. Of course, the amount stated on the assignment is $48,228.85, and we had one note, the original note, of $40,000 and, of course, this assignment would go as far as the amount of money due Mr. Garrett is concerned. Mr. Garrett told me

he was to get considerably more money than $48,000 and would pay both the $40,000 and the two—$5,000 notes from that.

Q. This is one of the $5,000 notes?

A. Yes.

Mr. Laughlin: I would like to have that marked Exhibit 56.

Dep. 4/6-26/67 page 68 } The Commissioner: That promissory note dated 3/13/67 is marked as *Exhibit No.* 56.

By Mr. Laughlin: (Continuing)

Q. Is that note secured by anything other than the assignment?

A. Only by his signature and he has a small balance I believe left from a real estate deal that we are holding as collateral to make up any difference between the $48,000 and the total of $50,000 that he owes, for the $40,000 and the two —$5,000 notes.

Q. What is the balance of that?

A. I don't know what the balance is on that.

Q. There is nothing major?

A. No.

Q. Is there any deed of trust on any real estate securing any of these loans?

A. No. We have a deed of trust on some of Mr. Garrett's property, but that is on other loans.

Q. So the only security for these loans is this assignment?

A. That is all I know of.

Mr. Laughlin: Let's have the second note of $5,000, dated March 13, 1967 of Garrett and Company payable to the Bank of Powhatan marked as Exhibit 57.

Dep. 4/6-26/67 page 69 } The Commissioner: Exhibit No. 56 has been designated "Promissory Note" dated 3/13/67 and I want to call that "Corporate Note."

Exhibit No. 57 will be designated "Promissory Note" dated 3/13/67 and called "Garrett and Company."

By Mr. Laughlin: (Continuing)

Q. Mr. Parker, has Mr. Garrett ever expressed to you any concern about the payment of these accounts either at the time he made this loan or subsequent thereto?

A. No, Mr. Garrett when I inquired of him would always tell me that he was hurrying as much as he possibly could and expected to pay me before too long.

Q. Did he ever indicate to you that the accounts were no good?
A. No.
Q. Did he ever indicate to you that Ancarrow Marine was a fraudulently operated organization and couldn't pay their accounts?
A. No.
Q. Did he ever tell you he considered the corporation a sham and undercapitalized and was working a fraud on him in contracting for this?
A. No.

Dep. 4/6-26/67 page 70 }

Q. Did he ever tell you he thought the corporation could not or would not pay this obligation—
A. No.
Q. —at the time he made this loan?
A. No, sir.
Q. How about in 1967 when he made the additional loans, the two—$5,000 loans?
A. No.
Q. Did he tell you at that time he had been defrauded in any way in entering this deal with Ancarrow Marine, Incorporated?
A. He just told me he was having trouble.
Q. Did he tell you he had been defrauded?
A. No, sir.
Q. Did he tell you Ancarrow Marine was a sham?
A. No, sir.
Q. On the basis of what he said he was advanced $50,000?
A. That is correct.

CROSS EXAMINATION

By Mr. Little:

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Dep. 4/6-26/67 page 71 }

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Q. This assignment was simply given to you as collateral for a loan made; is that right?
A. Right.

W. R. Parker

REDIRECT EXAMINATION

By Mr. Laughlin:

Q. Did you expect the balance of the two—$5,000 notes to be paid out of the proceeds of that assignment?

A. Like I said, $48,228.85 we would expect for all of that to come back and sufficient residues to come to pay these two—$5,000 obligations.

Q. And you are looking for this assignment as security for those, too?

A. Yes, sir.

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4/6-26/67
page 72 }

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By the Commissioner:

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Dep.
4/6-26/67
page 73 }

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Q. Did you make any particular credit check into Mr. Ancarrow personally?

A. No, we did not. We understood they were a very reliable firm and that Mr. Ancarrow himself was very reliable and it would be a matter of a very short time before we got our money.

By Mr. Laughlin: (Continuing)

Q. Where did you understand that they were a very reliable firm? Did Mr. Garrett tell you that?

A. Well, Mr. Garrett I suppose did. Mr. Price who was our Executive Vice President, I had heard him state that in his opinion that an assignment of Ancarrow Marine would be perfectly good and would be paid as soon as the work had been done.

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Dep.
4/6-26/67
page 80 } NEWTON H. ANCARROW, a defendant, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Laughlin:

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4/6-26/67
page 81 }

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Q. What happened as a result of this?

A. When we entered into the contract to have the boat built, I had the understanding with Arno A. Apel and Norman Lauderbach, I had the understanding that if the boat turned out to be successful in speed and performance, that I would have the right to produce this boat commercially.

Q. In other words, one that would be exclusively of all other persons; is that correct, sir?

A. Right.

Q. Did you determine to produce the boat commercially?

A. Yes.

Q. Approximately what year was this?

A. 1956.

Q. As a result of this did you incorporate a corporation to produce this boat?

A. Yes.

Q. What was the name of that corporation?

A. Ancarrow Marine, Incorporated.

Dep. 4/6-26/67 page 82 }

Q. Is that the corporation that is involved in this litigation?

A. Yes.

Q. Where did you initiate production of this boat and others of like nature?

A. I have forgotten the street number, but it was on Atlantic a block and one-half up from Egg Harbor Boat Works in Egg Harbor, New Jersey in a building that was then owned by Mr. Costa.

Newton H. Ancarrow

Q. Now approximately how long did you construct boats in Egg Harbor?

A. I think it was of the order of a year and a half.

Q. During the course of this year and a half and the construction of these boats, did you attend certain boat shows?

A. Yes, sir, the best I remember we attended two New York boat shows while we were in Egg Harbor.

Q. Now Ancarrow Marine, Incorporated I take it decided after this approximately a year and a half to come to Richmond, is that correct, to move its operations here?

A. Yes.

Mr. Little: Mr. Laughlin, try not to lead him too much.

Mr. Laughlin: I am just trying to save time.

Dep. 4/6-26/67 page 83 } The Commissioner: Off the record.

NOTE: Off the record discussion.

By Mr. Laughlin: (Continuing)

Q. Ancarrow Marine, Incorporated determined to move its operations to Richmond shortly thereafter; is that correct?

A. Yes.

Q. Could you tell me why this move was made briefly?

A. Well, I decided that if I was going to have a business that I certainly had to be, at least, if I was to have an active business, that I was going to have to live at least somewhere in close proximity.

Q. In order that the Commissioner may understand, while you were operating this business in Egg Harbor where were you living?

A. In Richmond.

Q. Were you employed elsewhere other than Ancarrow Marine, Incorporated?

A. Well, we must back up a little bit.

Q. All right.

A. During the construction of the first 24-footer I was then employed with Experiment, Incorporated which is now Texaco Experiment, but as soon as I determined that this boat was successful as a prototype and that we were going to produce these boats, then I left Experiment in order to start the business in Egg Harbor, and it soon became evident that this was just too much of a good thing to run from Richmond to Egg Harbor every time a prospect was going to come to look at the boat. Well, I was going up there twice a week. This

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just got old after six or eight months and so I started looking around down here.

Q. Where did you locate when you came to Richmond?

A. 1723 Summit Avenue I believe.

Q. Where is this located?

A. This is in Scott's Addition just up a block from Sealtest Dairy.

Q. Did you continue in the production of boats at that location?

A. Yes.

Q. Let me show you a series of pictures which I will ask you to identify for us for our information just to give the Commissioner and the Court some idea what we are making. Can you tell us what this picture is?

A. This is the New York Boat Show.

Q. What is that a picture of?

A. Of our exhibit at the New York Boat Show.

Q. Do you know what year that is?

A. I was just trying to see. It must have been about 1960.

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Q. Would you take this blue pencil and just put a number by the boats that are Ancarrow Marine boats on that picture? Put a letter instead of a number, A, B or C. However many you see there, put it right on the boat.

A. Oh, on the boat?

Q. Right on the boat.

A. All right.

Q. So the three that you have marked A, B and C are boats manufactured by Ancarrow Marine, Incorporated; is that correct?

A. Yes, sir.

Mr. Laughlin: I would like to have that marked as Exhibit 63.

The Commissioner: Let's mark that *Exhibit No.* 63 and call it "Photo N. Y. Boat Show."

Q. Would you look at that next picture?

A. This is a photograph of our exhibit in the Chicago Boat Show of 1961.

Mr. Laughlin: Could we have that marked as Exhibit No. 64, Mr. Commissioner?

The Commissioner: Let the record reflect that *Exhibit No.* 64 will be "Photo Chicago Boat Show."

Newton H. Ancarrow

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Q. Would you mark on Exhibit No. 64 please, Mr. Ancarrow, those boats that are manufactured by Ancarrow Marine, Incorporated?

A. All right.

Q. Just put an A, B or C.

The Commissioner: He has marked on there A, B, C and D, indicating boats of Ancarrow Marine, Incorporated.

Q. I show you another photograph and ask you if you can tell us what that is please?

A. This is a portion of our exhibit in the 1962 New York Boat Show.

Q. New York Boat Show 1962?

A. Yes, so that means that the previous one was 1961.

Mr. Laughlin: Could we have that marked as Exhibit No. 65, Mr. Commissioner?

The Commissioner: All right, let the record reflect that *Exhibit No.* 65 will be a photo N. Y. Boat Show 1962.

By Mr. Laughlin: (Continuing)

Q. Having seen this photograph, Mr. Ancarrow, is it now your recollection that the first photograph was in 1961?

The Commissioner: Referring to Exhibit No. 63.

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A. Right, because I remember the order of our location.

Q. Could you mark on Exhibit 65 the boats that were manufactured by Ancarrow Marine, Incorporated?

A. All right.

Q. They have been marked with an A and B?

A. I did say this was a portion of our exhibit.

Q. I show you a picture of a boat, Mr. Ancarrow, and ask you if you can tell us where that picture was taken?

A. This picture was taken at my boat house at Wares Wharf on the Rappahannock River.

Q. Was that the boat manufactured by the Ancarrow Marine Corporation?

A. Yes, sir.

Q. Does the boat have a nickname?

A. The Ghazal-Doha, manufactured for Sheik F. Bahrain.

Q. What year was that boat manufactured; do you know, Mr. Ancarrow?

A. Not right offhand, I can't remember.

Mr. Laughlin: Could we have that marked as *Exhibit No.* 66?

The Commissioner: All right, this is a photo of the Ghazal-Doha.

By Mr. Laughlin: (Continuing)

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Q. I show you a photograph of another boat and ask you if that was manufactured by Ancarrow Marine, Incorporated?

A. Yes, that was.

Q. Where was that photograph made?

A. This was made in the James River right out in front of Ancarrow Marine.

Q. When was that boat manufactured; do you know, sir?

A. This boat more or less grew. This one started in 1963 and we did work on it in successive years through 1965.

Mr. Laughlin: Could we have that identified as Exhibit No. 67?

The Commissioner: All right.

By Mr. Laughlin: (Continuing)

Q. Which is the boat named "First Cruise."

The Commissioner: All right, this is a photo of boat "First Cruise."

Q. I show you a photograph of another boat and ask you whether that was manufactured by Ancarrow Marine, Incorporated?

A. Yes, sir, that was.

Q. Where was that manufactured?

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A. That was manufactured at 1308 Brander Street, Ancarrow Marine.

Q. To whom was that boat sold?

A. This was sold to the Sheik Kuwatt.

Q. When was that?

A. 1963; this boat was produced 1963.

Mr. Laughlin: Will you mark that Exhibit No. 68?

The Commissioner: All right, that will be 68, photo—Kuwatt Boat.

By Mr. Laughlin: (Continuing)

Q. Did Ancarrow Marine use certain advertising and sales materials that it had prepared?

Newton H. Ancarrow

A. Constantly to about latter 1964 and 1965.

Q. I show you three brochures and ask you if you can tell us briefly what they are, sir, and we will have those identified by the Commissioner.

A. This was the brochure made up the first year which used the photographs of the prototype.

Q. This is the first year Ancarrow Marine, Incorporated built boats; is that correct?

A. Yes, and we only had one model that year.

Q. That would be for the year 1956, Mr. Ancarrow?

A. Yes, sir.

Mr. Laughlin: I would like that marked Exhibit No. 69.

Dep. 4/6-26/67 The Commissioner: Let the record reflect that *Exhibit No.* 69 will be called "Ancarrow Brochure —1956".

page 90 } By Mr. Laughlin: (Continuing)

Q. Do you have one of these for every year through 1965, in any event? I haven't brought them all here.

A. Yes, sir.

Q. What is the next one you have there?

A. This is the brochure for 1958.

Mr. Laughlin: I would like this marked as Exhibit No. 70.

The Commissioner: All right, I will mark that *Exhibit No.* 70 and this is "Ancarrow Brochure—1958."

By Mr. Laughlin: (Continuing)

Q. Does that show the line of boats being manufactured by Ancarrow Marine, Incorporated at that time?

A. This shows that it had been increased to four models.

Q. Could you show the Commissioner the pictures of the four models as contained in the brochure?

A. The Aquilifer which I think was 25 feet. It was 25 feet. The Praetorian, a 3-place sport boat—

Dep. 4/6-26/67 Q. Some of these colored photographs show you in the boat, do they not, Mr. Ancarrow?

A. Yes, sir.

page 91 } Q. And that is not your wife with you, is it?

A. The Aquilifer shows me; the Praetorian shows me; the Patrician shows me. The Patrician was a 19-foot 6-place. The Gladiator was a 6-place utility.

Mr. Laughlin: I would like that marked as an exhibit.

Newton H. Ancarrow

The Commissioner: Exhibit No. 70 will be "Ancarrow Brochure—1958."

Mr. Laughlin: We would like to have marked as Exhibit No. 71 the brochure for 1964. Let the Commissioner mark that please, Mr. Ancarrow.

The Commissioner: Let the record reflect that *Exhibit No.* 71 will be the Ancarrow Brochure for 1964.

By Mr. Laughlin: (Continuing)

Q. Could you briefly point out the boats which were being offered in 1964 to the Commissioner.

A. In 1964 we offered 13 models of stock boats with a custom section illustrating three—I am looking for a word now.

Q. Styles?

A. —proposals for custom boats.

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Q. Do you have in the frontispice of that brochure a picture of the location of your present facility?

A. Yes, sir.

Q. Do you have any different boats in photographs there from the catalogs we have previously looked at?

A. Yes, by now we have the Starfire which is a 16-foot 5-place runabout, the Centurion in three different configurations, the Gladiator which has been previously shown, the Patrician which has previously been shown and the Praetorian has been discontinued.

There is the Consul, a 20-foot 3-place V-drive, the 25-footer Aquilifer which has previously been shown, the Aquilifer Mk—I, a 25-footer, the 28 foot Sea-Sprite in three configurations, and then the custom section of a 47-footer, a 60-footer and an 80-footer.

Q. During the course of the operation of Ancarrow Marine, Incorporated you had occasion to purchase a substantial amount of magazine advertising. Is that a fair statement, sir?

A. Yes, sir.

Mr. Laughlin: For the Commissioner I will just state for the record I have in my hand the proofs of certain ads, yachting ads for 1962. Some of these do not show the year. Some of these are in Boating Industry, several from Yachting and another one for Motor Boating. The ones for Motor Boating have the years shown on them and the months and some of them show the address in

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page 93 } Richmond, so that you can approximately date them by this date.

I would like to have this all given one number, but first let me ask this question.

By Mr. Laughlin: (Continuing)

Q. Mr. Ancarrow, is this just a selection of some of the advertisements that were run by Ancarrow Marine Corporation?

A. Now do you want me to identify these individually or—

Q. No, sir, is that a selection of the kind of advertising you were running in boating magazines for Ancarrow Marine Corporation?

A. Yes, sir, all this appears to be a portion of the advertising.

The Commissioner: Let the record reflect that *Exhibit No.* 72 will be designated as "Advertising Proofs."

Mr. Laughlin: The next thing I have, Mr. Commissioner, is a selection of various magazine articles in various magazines which I will mention, but I think we can file as one exhibit from various publications making editorial comment about the boats manufactured by Ancarrow Marine, Incorporated.

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By Mr. Laughlin: (Continuing)

Q. Mr. Ancarrow, did Ancarrow Marine produce something a little unusual in the boat industry? Is this why you received this comment in the magazines?

A. Well, we like to think so.

Q. Primarily what was it that you had achieved which was a little different?

A. Styling, performance, speed.

Mr. Laughlin: Mr. Commissioner, the next thing I have is a collection of various articles from newspapers other than those in Richmond concerning the boats of Ancarrow Ma-

rine, Incorporated, which I have in my own inartistic way clipped, pasted and stuck into a folder so that it may be marked as one exhibit. These are from various newspapers: The New York Times, the New World Telegraph, an Atlantic City paper, The Washington Post, The Baltimore Sun, The New York Times again, The Evening Star, The Miami Herald, a collection of various articles showing various photographs and making comments about the boats manufactured by Ancarrow Marine, Incorporated.

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I would like to have this marked as Exhibit No. 74.

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Q. Let me ask you, Mr. Ancarrow, these are not all of the ads run by your company by any manner or means?

A. Not by any manner or means.

Q. Are these some that you happened to have available and that you let me have?

A. That's right.

Q. I now show you a copy of something that I will have to ask what this is? What is this little book?

A. That is a publication of the Japanese Power Boat Association.

Q. And on page something or another, about the tenth page, there is a picture of an Ancarrow Marine boat?

A. Two.

Q. Are there two boats?

A. Yes, right here.

Q. And what it says, it loses something in the translation. Is that an advertisement or is that an article?

A. No, sir, that is an editorial.

Mr. Laughlin: The date is in 1965.

The Commissioner: Japanese Magazine is marked No. 82.

By Mr. Laughlin: (Continuing)

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Q. Mr. Ancarrow, I now hold another magazine. What is this?

A. That is a Russian Magazine.

Q. This is put out by the U.S.I.A. for distribution in Russia. Is that what this is? I notice it has some English and this is dated. I would assume it has a date somewhere on it in English.

Newton H. Ancarrow

The Commissioner: What page is that on?

Mr. Laughlin: I want page 8, these two on page 8, boats of Ancarrow Marine, Incorporated.

The Commissioner: I will mark the Russian Magazine as *Exhibit No.* 83.

NOTE: After a short recess the taking of the depositions continues as follows:

By Mr. Laughlin: (Continuing)

Q. Mr. Ancarrow, we have set up on the table here a piece of equipment that has been showing us a very delightful movie. Can you tell us what this piece of equipment is?

A. Well, this is one of two, well, what do we say, salesmen's tools to take around to various dealers and show our line of boats and also these were taken around when a dealer would go into a boat show. For instance, it's pretty hard to get or demonstrate the performance of the boats, so we would send these to the various and sundry boat shows that our dealers were participating in, and they were just *ran* continuously.

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Q. Were all of these boats shown manufactured by Ancarrow Marine, Incorporated?

A. Yes, sir.

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Q. Mr. Ancarrow, when you first came to Richmond you testified you were located on Summit Avenue. Did this prove to be a satisfactory location for your boat manufacturing operations?

A. Well, in actual fact when we came here I tried to find some location on the water.

Q. How did you go about this?

A. Well, actually I inquired around and gave a superficial look and soon found there was nothing of any consequence, maybe the Sternheimer building over on Main Street or a few places like that, but nothing that was suitable to us and I wanted to move quickly, so we moved up on Summit Avenue as a temporary expedient.

Q. You continued your search to find a place for Ancarrow Marine that would be on the water?

A. Yes, sir.

Q. How did you go about this?

A. Well, in the Richmond area, and I wanted to stay, keep the operation in or about Richmond for the same reason that

I moved it to Richmond, so of the James River I bought aerial photographs and marked possible locations on them that had adequate roads, power, service facilities, and then I went to the Richmond Yacht Basin. I think it was Richmond Yacht Basin back then, and I rented a boat from Candell and went up and down the river and eliminated a great number of the prospective locations this way and then looking at property owners found out that Southern Materials owned most of the others, so finally Jack Smith, our real estate agent, said he had two that I hadn't found yet and one of them was the lower end of the island on which, is it still Richmond Steel is on? That was available and then this location that we are now and after weighing these two factors and, let's see. We compared the island where we are now, Deep Bottom, and the gravel pit just below, well, I will say Henrico Marina and then there is a field around in the cut-off owned by Mr. Meade which is between Henrico and Richmond Yacht Basin. Now this is on the river. It isn't between them geographically, but it's on the river, and after considering the pros and cons of all of these locations, we settled on the one we are currently occupying.

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Q. When did you move into the building facilities down at Brander Street; do you recall, sir?

A. I think it was May of 1962.

Q. Now had you planned at that time to develop facilities to put boats into the water at that point? Was that what your purpose was?

A. Yes, sir, that was our purpose for moving to that location to get access to some navigable water, preferably fresh.

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Q. When did you first begin work on what finally resulted in the plans for the boat ramp and slip at the location on Brander Street?

A. Substantially immediately, I mean this started going through our minds and we decided approximately on its location, and then in 1963, I think it was, we had Froehling and Robertson make some test borings. We knew that it was granite, but we didn't know exactly where, so we made some test borings to determine the elevation of the granite.

Q. Had you ever held any discussions—I mean when I say you Ancarrow Marine, Incorporated—any discussions concerning the cost of a facility that you were going to construct on the river?

A. At this juncture in 1963?

Q. Yes.

A. No, because in 1963 we just made some preliminary drawings establishing elevations and then we took, oh, I think it was a year and a half to two years measuring high tides to find out where the average highest tide was.

Q. What was the purpose in doing that?

A. So that our walkways and wharves and things wouldn't go under water every day. I don't know, but we estimated the low side goes under about six times a year or something like this, other than a flood, of course.

Dep. 4/6-26/67 page 106 } Q. What was the first time you ever had anything to do with Garrett and Company?

A. It must have been about, let me see. It was still cold weather. I am just going to say the winter of 1963, yes—wait a minute—yes, yes, 1963.

Q. For what purpose did you contact Garrett and Company at that point?

A. Well, Garrett was one of several people that we contacted at this juncture to get some rough idea of how many dollars we were talking about, in other words, to find out if we had in mind a practical structure and one that we could afford to build.

Q. Had Mr. Garrett done any work for you prior to that?

A. Yes, sir.

Q. What had he done for you?

A. He had graded—let me see now—he had graded around the building and done the rough grading for all the lawns and things.

Q. This is at Brander Street?

A. Yes, I am talking about down on the river now, done all the rough grading for the lawns.

Q. And that had been satisfactory as far as you were concerned?

A. Yes, sir.

Dep. 4/6-26/67 page 107 } Q. You say you contacted him concerning the potential cost of this operation. With whom did you deal with in your contacts with Garrett and Company?

A. Mr. Davis.

Q. What were your conversations with him concerning this boat slip and ramp, and this is directing your attention to the period in the winter of 1963?

A. Yes, well, we talked about how we were going to go about building the thing, the ramp that is, some preliminary discussions about coffer-dams and how we were going to keep

the thing dry and some rough, horseback estimate of the cost.

Q. Do you recall what this estimate was at the time, sir?

A. Well, of course, I don't remember now, but I think it was around $40,000, because it was lower than Bowles' estimate which was about $42,000.

Q. This is E. G. Bowles had given you an estimate for construction?

A. Yes, sir.

Q. Had you seen anyone else about constructing the facility?

A. Yes, sir, we had. I had talked to quite a number of contractors in town. Now let me see. Some of them would be Taylor and Parrish, G. P. Clay.

Dep. 4/6-26/67 page 108 } Q. Had you talked with any people outside of the city of Richmond?

A. Yes, sir, we talked to Tidewater Construction in Norfolk. There were several others that don't come to mind right now.

Q. Now this figure of approximately $40,000, did that include any cost for the construction of a coffer-dam?

A. No, sir.

Q. Why was that, sir?

A. Well, because at this time we didn't know whether we were going to build a parabolic or semi-circular coffer-dam of wood or whether we would drive sheet piling. Originally we had notions of building a wooden coffer-dam.

Q. When you say "we" do you mean Mr. Davis?

A. Yes, when I said "we" I meant Mr. Davis and I.

Q. Had you developed at that time the plans which we have put in evidence here of the boat ramp and slip?

A. Now we are still back in the winter of 1963?

Q. Yes, sir.

A. No, we had not developed the plans to the detail that we have it now.

Q. What was the next thing that occurred after these preliminary considerations as you recall?

Dep. 4/6-26/67 page 109 } A. Well, during this time we were in the process of making these drawings and, now let me see. Now we began to get into a little warmer weather and we drove some test piling out in front of the ramp—

Q. Who drove the test piling?

A. Mr. Davis—Garrett and Company.

Q. But Mr. Davis actually had the work done?

A. Yes, Mr. Davis.

Newton H. Ancarrow

Q. And these test pilings were driven where, out in the river?

A. Yes, and all along the back to determine the conditions of the river bottom for installing the coffer-dam, and during the driving of these test pilings we soon found that the river had been dredged and that a semi-circular wood structure would be impractical because by the time we got that far out in the river, they had dredged all of the material off of the top of this granite shelf. There wasn't sufficient footing.

Now we have gone into 1964 by now. We started off talking about in the winter of 1963. Then just a minute ago I said we were moving into warm weather, which indicated now we have gone into 1964.

Q. In preparing the drawings that were finally used for the construction of the boat ramp and slip, other than the structural steel drawings and things of that nature these were prepared by you personally, for Ancarrow Marine?

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A. No, I had a draftsman that actually did the preparation.

Q. Excuse me.

A. But I told him what to draw.

Q. You did the designing?

A. Yes.

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Q. Where did the plans or how did the plans for the coffer-dam originate?

A. Well, I more or less left the coffer-dam up to Mr. Davis because he seemed to be more familiar with that and actually he had the results of the driving the test piling, and so he went to Bethlehem Steel and to the best of my knowledge they were the people that drew the plans for the coffer-dam and specifications and so forth.

Q. You didn't design the coffer-dam, in any event?

A. No, sir.

Q. After the plans had been finalized did a copy of these plans find their way to Garrett and Company? Did they have these available?

Newton H. Ancarrow

A. Yes, sir, one afternoon I called Mr. Davis and told him that I had the drawings now and this would include the plumbing and the electric and all of the other things, so he suggested that I leave them by his office on the way home, so I took either one or two sets of the drawings and pulled up beside Garrett and Company and I think it was on Altamont Street and Mr. Garrett came out the door, so I gave him the copy of the drawings to give to Mr. Davis.

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Q. Was this prior to the time that any construction had actually begun?

A. Yes, sir.

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Q. Prior to the time that the work began on this project had you reached an agreement with Garrett and Company through Mr. Davis as to what you were to be charged for the construction?

A. Well, actually I went after the thing on a contract basis, but Mr. Davis started—

Q. What do you mean by contract basis, fixed price?

A. Fixed price, okay, he charges me so many dollars and I wind up with what we have a picture of—

Q. All right.

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A. —but then he started talking about contingencies and uncertainties and unforseens and so actually I said, what are these contingencies, unforseens, and this was rather nebulous. I never really got to my mind what was a satisfactory answer, and in the final analyzation when we struck these boats in the corner, this was one of the things he was talking about, but he said that if he gave me a fixed price, that it would have to include every contingency that he could think of and that probably the least expensive way would be on a cost plus and that I would purchase certain parts of the materials, for instance, plywood. I knew I could buy plywood as a boat builder cheaper than anybody in the City of Richmond.

Q. Was there anything else you were to buy?

Newton H. Ancarrow

A. Well, it came to the electric and the plumbing and Mr. Davis said that wasn't in their line, and he gave me the names of two people to contact to subcontract this thing, and I didn't call them. I called people that I was familiar with. Let's see. I do forget the initials, but a Mr. Green, the electrician, and Mr. Wade, the plumber.

Q. These were called for in the specifications, but you were going to do this work yourself, have it done outside?

A. Right.

Q. You were also to procure the steel for the piling?

A. The sheet piling, yes.

Dep. Q. The sheet piling, all right.

4/6-26/67 A. Yes, sir.

page 123 } Q. How were you to be charged for the equipment that was to be used on the job?

A. Well, Mr. Davis said he—now I must admit I forget his exact words—but he gave me the best price he could on it and that it would be at or less than what we had been paying in building the road and clearing the property and establishing the lawns around the plant.

Q. The work that Garrett and Company had previously done for you?

A. Yes.

Q. Did you have any concern at this time about the ability of Garrett and Company to perform this contract?

A. No, sir.

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Q. Now during this time immediately prior to the construction of the job did anyone from Garrett and Company indicate to Ancarrow Marine, Incorporated through you that the cost of this job was to amount to anything like $100,000 or in excess of $100,000?

A. Absolutely not.

Q. Would Ancarrow Marine, Incorporated have undertaken the project if it had cost that much?

Dep. A. Absolutely not.

4/6-26/67 Q. Were there any discussions among the of-

page 125 } ficers and directors of Ancarrow Marine concerning the amount of money they could put into this project prior to the beginning?

A. Prior to the beginning, yes.

Q. All right.

A. Well, when we first started discussing the thing we—

By Mr. Little:

Q. Who is "we"?

A. The officers—

By Mr. Laughlin: (Continuing)

Q. And directors of Ancarrow Marine?

A. —and directors of Ancarrow Marine—wait a minute, that broke my thought.

Q. When you first started discussing?

A. Yes, when we first started discussing, we were discussing of the order of $30,000 to $36,000 and then when we altered it and put the travel lift slip on, the price then we decided would necessarily go up and we agreed that $42,000 to $46,000 would be in order. We were led to believe that this was the order of the price at this time.

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Dep.
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page 127 } Q. Prior to the time you began actual construction on the ramp and travel lift was there any discussion between Ancarrow Marine, Incorporated and Garrett and Company concerning the length of time that the construction was going to take?

A. Well, I told Mr. Davis that I would like to have the thing finished by the weekend of the 4th of July so that we could use it.

By Mr. Little:

Q. What year?

A. That same year, 1964 I think it was.

By Mr. Laughlin: (Continuing)

Q. What was his indication as to when he thought it would be completed?

Newton H. Ancarrow

A. Well, I think this was of the order of 6 weeks and he told me that he didn't think that they could quite get it in 6 weeks, but that they probably could get it in 8.

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Q. Did there come a time when you became concerned about the cost that this project was going to run to?

A. Yes.

Q. Would you tell us about that, sir?

A. Well, I guess this concern started, oh, about half way through the coffer-dam actually because some days they drive, well, I think actually, as many as 30 pilings a day and then the next day through various and sundry reasons they wouldn't get any, and so the driving of the sheet piling dragged.

Q. Did there come a time when you had a discussion with Mr. Robertson concerning the cost of construction of the job?

A. Well, I think the first discussion with Mr. Robertson occurred on the day that he came up to the office and told Mrs. Grubbs that the thing was going to cost in the order of a quarter of a million dollars.

Q. Was this the first time you had ever heard a figure of this nature mentioned?

A. Yes, sir.

Q. What did you do as a result of this?

A. Now do you mean me?

Q. Yes.

A. I went out the door into the shop where Mr. Robertson had disappeared and through trying to get ahold of him and tell him to stop now, Mrs. Ancarrow went out the front door and she caught him first, so she was the first one to say stop.

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Q. What do you mean? You wanted him to go off the job?

A. I wanted him to stop the job right now.

Q. Was this the time Mr. Davis testified concerning that you asked that the job be stopped when there was a concern about the price?

A. Yes, it was one of the times.

Q. What happened as a result of your telling him to stop the job?

A. Well, I think we called Mr. Davis—

The Commissioner: Ask him when he says we to indicate who is "we".

A. Me or Mrs. Ancarrow. I don't know who actually made the telephone call, but it was.

Q. A call was made from Ancarrow Marine, Incorporated to Garrett and Company?

A. Yes, that's right, to Mr. Davis and we thought it best that he come down and straighten out this business about a quarter of a million dollars because I realized, if the superintendent on the job thought this, that he could very well make it stretch out to this.

Q. Was there a conference held as a result of this?

A. Yes, sir.

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Q. Who was present at this meeting?

A. Mrs. Ancarrow and myself, Mr. Davis and Mr. Robertson.

Q. What was discussed at this time?

A. The cost and progress or speed of the job to that date.

Q. Did you indicate you wanted the job to continue if it was going to cost anything in that neighborhood?

A. We indicated that we absolutely did not want it to continue if it was going to even approach this figure.

Q. What, if any, indication was given you by Garrett and Company and by whom as to what the job was going to cost?

A. At this time?

Q. Yes, sir.

A. Well, at this time Mr. Davis told us it would be, I believe it was, $62,000.

Q. Is this when this memo was written that is in the record?

A. Yes.

Q. Did he make that computation in your office?

A. Yes, sir.

Q. With whom did he consult in making this?

A. Mr. Robertson and himself I presume.

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Q. Did he indicate to you when he gave you this estimate that he had any concern about its accuracy in any way?

A. No, sir.

Newton H. Ancarrow

Q. Did he tell you that it would probably be as much as 50 to 100 to 200 percent wrong?

A. No, sir, the only thing which he indicated to me that this didn't include driving the sheet piling out in front of the building.

Q. Along the bank?

A. Right, after the job was finished.

Q. Did he seem to be pretty well satisfied that his job could be brought in for that price?

A. Yes, sir.

Q. Did he indicate to you that this was a fact without any qualification as far as you were concerned?

A. Yes, sir.

Q. Was it on this basis that you allowed the job to continue?

A. Yes, sir.

Q. Now I show you Exhibit No. 27 which is the memorandum which was written by Mr. Davis and there is some ink writing on that memorandum. Did you write that, sir, yourself?

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A. Yes, sir.

Q. Would you explain to the Commissioner what the figures mean that you have written down there? Don't write on it. You can point to it.

A. The $98,000 figure here—

The Commissioner: Let the record reflect that the witness is looking at Exhibit 27.

A. (Continuing) The $98,000 that I wrote on here represented the total overall cost of everything to include driving the sheet piling out in front, grading, seeding, the whole thing complete and finished.

Q. Why did you write that figure on the yellow sheet?

A. As I said that represented what I estimated, based on Mr. Davis' figures and consulting with him, that that would represent the absolute outside figure that the job would cost.

Q. Were there to be any contingencies left over from that figure at all?

A. No, sir.

Q. Did you make that notation of $98,000 on there at the time of this conference?

A. Yes, sir.

Q. Did anyone at any time during the course of that con-

Dep. 4/6-26/67 page 134 } ference indicate that the job was going to cost in excess of $150,000?

A. No, sir.

Q. Did anyone indicate it would cost in excess of $200,000?

A. No, sir.

Q. Did anyone indicate it would cost in excess of $100,000?

A. No, sir.

Q. Under any of these circumstances would you have allowed this job to continue?

Mr. Little: That is speculation.

Mr. Laughlin: I would like to have that answered for the record.

A. Could I have that?

By Mr. Laughlin: (Continuing)

Q. If it had been represented to you that the job was going to cost in excess of $100,000, would Ancarrow Marine have allowed Garrett and Company to continue with the job?

A. At $100,000 it's problematical. I have already indicated $98,000, so this would be only two more. As I say, this would be problematical. I doubt if at over $100,000 we would have permitted it to go on. As a matter of fact, I believe we indicated to Mr. Garrett then that we would not.

Mr. Little: Mr. Garrett?

Dep. 4/6-26/67 page 135 } A. I meant Mr. Davis. Excuse me.

Q. How long did you spend discussing this matter at the time this yellow memorandum was written which is Exhibit No. 27?

A. I think it was something of the order of 4 to 5 hours.

Q. Was it gone into fairly thoroughly?

A. I thought so.

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Q. All right, sir, now there has been some testimony concerning the keeping of these time records that have been put

in evidence that were typed after this period in October that the settlement was made. I believe the testimony is that Mrs. Grubbs apparently typed these sheets up. Were these sheets checked by you in any way on a daily basis?

A. No, sir.

Q. Were they checked by you in any way?

A. No, sir.

Q. Did you have any concern about what went on the sheets?

A. No, sir.

Q. Was this your responsibility in any way?

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A. I don't think so. I felt that we were just offering a stenographic service and that there was no concern there on my part.

Q. Was Mrs. Grubbs instructed in any way to verify the records one way or the other?

A. No, sir.

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Q. Mr. Garrett has testified that there was a discussion he had with you in December of that year. Do you recall that, December of 1964?

A. I remember Mr. Garrett's coming over in December, yes.

Q. What did you all talk about?

A. Principally finishing. My main concern then was them finishing and getting out. There was some discussion about the roads, I mean the final grading around this ramp and there was a discussion about how long it was taking to get, oh, some twenty or thirty sheet pilings driven that would finish the bulkhead. I am not positive, but to the best of my recollection the visit was occasioned by reports that the river was going to rise, so Mr. Davis and Mr. Garrett came over and told the men to move the equipment up away from the river, which they did.

Q. Was there anything else discussed as far as you recall?

A. Well, I have heard, well, I don't know how to answer this honestly. May I refer to testimony that has already been given?

Q. Sure.

The Commissioner: Certainly.

A. I don't know what is legal and what isn't.

Dep.

4/6-26/67 By the Commissioner:
page 146 } Q. Well, you go ahead.
A. I have heard said that I told them that I was going to pay them, and I have no recollection of this.

By Mr. Laughlin: (Continuing)
Q. All right, coming to a meeting that was held in January which Mr. Garrett testified to, do you recall that, sir?
A. This is the meeting I believe that I am referring to now.
Q. Excuse me. I am sorry. I will put it this way: In January or December did you tell Mr. Garrett that you were going to pay Garrett and Company any more money?
A. No.

By Mr. Little:
Q. What was that?
A. No.

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By Mr. Laughlin: (Continuing)
Q. Mr. Ancarrow, you have heard Mr. Garrett testify that he considered that he had a contract with you personally for the construction of this boat slip and ramp. Do you recall that testimony of Mr. Garrett?
Dep. A. Yes.
4/6-26/67 Q. To your knowledge did you at any time ever
page 153 } indicate to him or anyone in Garrett and Company that you personally had a contract for this construction?
A. No.
Q. Did you ever receive a bill from Garrett and Company personally for this construction?
A. No.
Q. Do you know of any facts that would reasonably lead Mr. Garrett to this conclusion in your mind?
A. No.
Q. Did Mr. Garrett ever tell you at any time prior to the date you heard him testify here at this hearing that he thought he had a contract with you personally?
A. No.

Newton H. Ancarrow

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By Mr. Laughlin: (Continuing)

Q. The next letter dated June 16, 1960, from Bruce Campbell, Ltd. to Ancarrow Marine, Incorporated with a telegram attached. Is this the gentleman who is the boat racer in England?

A. He holds the world's speed record.

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Q. Is he the one that was recently killed?

A. Yes, he went a bit too fast.

Q. He purchased several boats from your company; is that correct?

A. Yes.

The Commissioner: Let the record reflect that *Exhibit No.* 93 will be letter from Campbell, Ltd. dated 6/16/60, with telegram.

By Mr. Laughlin: (Continuing)

Q. I have a letter dated June 30, 1959 with attached documents and ask you if that represents the sale of one of your boats to a gentleman named Aristotle Onassis in Monte Carlo, Monaco?

A. Yes, sir.

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CROSS EXAMINATION

By Mr. Little:

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Newton H. Ancarrow

Q. According to the information just read from the annual reports, which have been introduced as Exhibits 50 and 51, I will rephrase that. That was wrong. There are only two officers in the corporation, you and Mrs. Ancarrow; is that correct?

A. Yes.

Q. All right, sir, let's come back to the boat building business, Mr. Ancarrow. You have been in business since 1956, haven't you?

A. Yes.

Q. Have you regarded it as a successful business from a financial standpoint?

A. No.

Q. Have you ever shown a profit in the boat building business since the inception of the corporation?

A. No.

Mr. Little: What I would like to do, we are going to need the exhibits.

The Commissioner: What exhibits do you want?

Mr. Little: I am going to need Exhibit 37 in a minute.

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The Commissioner: You have those, 37A-B-C.

Mr. Little: Right.

The Commissioner: You need Exhibits 34 and 35?

Mr. Little: Right. I think that is all I am going to need right now.

By Mr. Little: (Continuing)

Q. Mr. Ancarrow, I show you a balance sheet of Ancarrow Marine, Incorporated as of July 31, 1957 which was furnished by your counsel to us, I presume. What was your loss for the first year that you were in business here? On this what is the loss shown, on this statement I have just referred to?

A. You are pointing to $47,907.34.

Q. What is opposite that?

A. Net loss for the period, Exhibit B.

Mr. Little: I would like to introduce that.

The Commissioner: Let the record reflect that *Exhibit No.* 95 will be balance sheet year ended 1957.

By Mr. Little: (Continuing)

Q. I show you balance sheet of July 31, 1958. Would you read what this net loss was for the year?

Dep. 4/6-26/67 page 160 } A. $126,265.89.

Mr. Little: I introduce this please, sir.

The Commissioner: All right, let the record reflect that *Commissioner's Exhibit No.* 96 will be balance sheet year ended 1958.

By Mr. Little: (Continuing)

Q. I will show you the balance sheet of Ancarrow Marine, Incorporated for July 31, 1959 and ask you to read what is shown as the net loss for the year ending July 31, 1959?

A. $103,374.38.

Mr. Little: I would introduce this please.

The Commissioner: *Exhibit No.* 97 will be balance sheet year ending 1959.

By Mr. Little: (Continuing)

Q. I show you the balance sheet of July 31, 1960, sir, of Ancarrow Marine, Incorporated. Would you read the net loss for the year ending for this period?

A. $77,225.66.

Mr. Little: I introduce that.

The Commissioner: *Exhbit No.* 98 will be balance sheet year ending 1960.

Dep. 4/6-26/67 page 160 } By Mr. Little: (Continuing)

Q. Now I show you the balance sheet of Ancarrow Marine, Incorporated for the year ending July 31, 1961. Would you read what is shown as the net loss for the year?

A. $62,587.39.

Mr. Little: I would introduce that.

The Commissioner: That will be *Exhibit No.* 99 the balance sheet year ending 1961.

By Mr. Little: (Continuing)

Q. Now I refer to Commissioner's Exhibit No. 37A, which is the U. S. Federal Corporate Tax Return for Ancarrow Marine, Incorporated for the period ending July 31, 1964. Will you state what loss is reflected on line 11 of that return for that year?

A. $64,748.43.

Q. I show you what is Commissioner's Exhibit 37B, the U. S. Federal Tax Return for the year ending July 31, 1965

and what was the loss that year, sir? I beg your pardon, Mr. Ancarrow. I am giving you the wrong figure. I do apologize.

Mr. Little: Can we go back to 37A?
The Commissioner: All right.

By Mr. Little: (Continuing)
Q. I am giving the wrong figures. That is my mistake, Mr. Ancarrow.

Dep. 4/6-26/67 page 162 } Coming back to 37A, which is a tax return for the year ended July 31, 1964, would you show what line 28 shows? That is the line we ought to reading. That is the loss for this year.

A. $124,243.31.
Q. Then coming to 37B, which is a tax return for the year ended July 31, 1965, would you show the loss as it is reflected for that year's operation on line 28?
A. Presumed to be $91,779.54 in parentheses. It's a carbon copy half down and half up. I reckon that is the figure.
Q. All right, 37C which is for the year ending July 31, 1966.
A. $33,570.07.
Q. So it is true that in every year you have been in operation in selling boats you have lost money?
A. Yes.

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Q. The total deficit shown on the balance sheet of July 31, 1965, Exhibit 35B, is what amount?
A. $810,533.62.

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Q. Has anyone to your knowledge made any unsecured loans to the corporation other than you or Mrs. Ancarrow? Have some people loaned the corporation money at different times?

A. I think so, nothing substantial.

Q. Do you have any idea how much they were?

A. No.

Q. Do you have any idea how many—

A. It was in the early part. When we started the business there was a whole lot of tools, jigs, fixtures, money, time, everything, and I do consider time, materials, all of these things as having a dollar value.

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Q. Let me phrase it this way: Since let's say 1960—

A. 1960—

Q. —has anyone put any cash in the corporation, made a loan of cash to the corporation?

A. No.

Q. Except you and Mrs. Ancarrow, is that right?

A. Right.

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Q. Now let's come down to the work in suit that we have been discussing for several days, Mr. Ancarrow, and go over a little of your testimony if we could. You discussed this projected improvement of a boat ramp and other things with several different contractors, didn't you?

A. Yes, sir.

Q. I think you named some of them. Did you ask any of them to give you a fixed price after you had gotten your plans fully prepared?

Newton H. Ancarrow

A. Yes, sir.
Q. Whom did you ask?
A. E. G. Bowles.
Q. What did he say?
A. I believe the record shows $42,000.

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Q. Did he give you that in writing?
A. No, sir.
Q. Did he review your plans?
A. Yes, sir.
Q. Did that include the coffer-dam?
A. No, sir.
Q. Did it include the seawall?
A. No, sir.
Q. Then in answer to my question, sir, after you had decided on the coffer-dam and after you had decided on the seawall, did you try to get anybody to give you a fixed price on this work?
A. No, sir.
Q. You did not?
A. No, sir.

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A. Now.
Q. Let's come to the specifications a minute. Would you read the title to them?

The Commissioner: Let the record reflect the witness is referring to Exhibit 24.

A. Specifications for slip and ramp at Ancarrow Marine, Incorporated, 1308 Brander Street, Richmond, Virginia.

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Q. Come on down here in the third paragraph, who do you mean by "owner" in here?
A. Ancarrow Marine, Incorporated.
Q. Ancarrow Marine, Incorporated?
A. Wait a minute. That's right.
Q. And Ancarrow Marine, Incorporated was the owner? Is there anything in the specifications that indicates they are the owner?
A. The heading.
Q. The heading and how does the heading indicate that Ancarrow Marine, Incorporated is the owner?
A. Is that the name of it?
Q. It says, "Ancarrow Marine, Incorporated."
A. Right, that does indicate that that is the owner.

The Commissioner: When you refer to the word "Owner," Mr. Little, are you referring to the owner of the real estate or the owner of the business or what is the word "Owner"?
Mr. Little: I am going to ask him that.

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By Mr. Little: (Continuing)
Q. What do you mean? Ancarrow Marine, Incorporated is the owner of what?
A. Slip and ramp.
Q. Do they own the dirt under it?
A. I don't know.
Q. The slip and the ramp, but you are not sure whether they own the land under it?

Mr. Laughlin: He didn't say that.

A. That is correct, that is not what I said.
Q. What did you mean by "owner," owner of what?

Mr. Laughlin: The slip and the ramp, that is what he said. He told you.
The Commissioner: That is my impression of what he said.

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A. I don't even know where I was in the answer now.

(Last answer read).

A. (Continuing) When we first embarked on this thing we asked around to find out if we were within the realm of possibility, and I think I said we established that we thought that we were heading something of the order of $36,000, $30,000 to $36,000.

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page 188 } By Mr. Little: (Continuing)

Q. Then you decided as I understand it that you could add the whole travel lift slip for an additional six to ten thousand dollars; is that right?

A. Thereabouts.

Q. You were talking a little bit about you got concerned about the rate the pilings were going in. You said they put in 30 pilings on one day and the next day they didn't put in any. Was there an explanation as to why they didn't put it down? Was it just poor, lousy work or did they run into problems or just what was it, Mr. Ancarrow?

A. Well, I am extremely reticent, but I will say it was very poor, lousy work and equipment.

Q. In your judgment?

A. Yes, sir.

Q. Right, in your judgment?

A. Yes, right, I can't give anybody else's.

Q. Did you regard Mr. Robertson as incompetent?

A. No.

Q. He was the first superintendent on the job. What was your answer?

A. No.

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Q. Did you regard Mr. Wynn as incompetent?

A. No.

Q. Did you regard Mr. Davis as incompetent?

A. No.

Q. Did you ever complain to Mr. Garrett about any of those three gentlemen?

A. No.

Newton H. Ancarrow

Q. As a matter of fact, you did want Robertson to come back on the job you say now as a timekeeper; is that right?
A. Yes.
Q. And you did hire Mr. Wynn to complete this work after Garrett and Company left, didn't you?
A. Yes.
Q. And as recently as February, 1965 you were asking Garrett and Company to bid on additional work for you, weren't you?
A. Yes.

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By the Commissioner:
Q. Do you understand that?
A. All right. Well, now I will try to again repeat what has gone into the record previously by saying that Mr. Davis said that the costs of the slip, travel lift slip, boat ramp would be $62,000. I added the coffer-dam, sheet piling in my handwriting in the conference with Mr. Davis, Mr. Robertson and Mrs. Ancarrow at that time, and it was my impression and understanding that $98,000 was the absolute tops the thing could go, that it would go no higher.

By Mr. Little: (Continuing)
Q. I believe you stated that he represented to you that $62,000 would be the absolute outside price?
A. Right.
Q. Is that right, from then on or from the beginning or when?
A. From the very beginning.
Q. Oh, from the beginning?
A. Yes.
Q. Oh, not from the time you had this meeting?
A. Right.

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Q. This was not an estimate of what additional costs was going to be incurred?
A. No.
Q. This was the total cost he was estimating for you?
A. Yes.

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Q. You are now saying that this little memorandum that

was introduced in evidence right here, Exhibit No. 27, whenever this was prepared, that what this was intended to do was to assure you that the total costs of this job, both for work that had already been done and had to be done in the future would be $62,000?

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A. No, sir.
Q. Plus the costs of the coffer-dam and the seawall?
A. Right.
Q. Is that right?
A. Right.
Q. Right?
A. That would be the total—
Q. Were you under the impression that you had a firm contract for this work to be done for that? You were not?
A. No.
Q. You don't even know what month this meeting was in?
A. That is what I said. At this juncture I do not.

By the Commissioner:
Q. Was this before Mr. Robertson had the heart attack?
A. Well, as a matter of fact, he has gotten me rattled.
Q. No one wants you to be rattled. Was this before Mr. Robertson had the heart attack?
A. Oh, certainly, yes. I have gone on the record I think and I have stated almost to the day, but right now I am rattled. I can't remember the date, and until I remember it, I refuse to say.

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NOTE: Off the record discussion.

Mr. Little: I think the record shows Mr. Wynn came on the job about the 8th of August.

By Mr. Little: (Continuing)
Q. What is this figure of $98,000 again?
A. That was what Mr. Davis and I agreed would be the outside cost, to include the coffer-dam, seawall and final grading.
Q. Everything?
A. Right.

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Newton H. Ancarrow

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Q. At this meeting you had in October that led to Exhibit 14, all of these charges were hashed back and forth between you and Mr. Ancarrow and representatives of Garrett and Company; is that correct?

A. Yes.

Q. You *speant* what, eleven hours or something that day?

A. Yes.

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Q. And you went into everything?

A. Yes.

Q. When Mrs. Ancarrow came up there she had an itemized list of all of these grievances, didn't she?

A. Yes.

Q. Do you remember how many pages it was?

A. No.

Q. Did she prepare that list; do you know?

A. Partially.

Q. Who else prepared it?

A. I think it was some of mine.

Q. Some of yours and some of Mrs. Ancarrow's? Anybody else?

A. Not that I remember.

Q. But Mrs. Ancarrow knew quite a bit about what was going on on that job, didn't she?

A. No.

Q. To be able to come up with these deficiencies I mean?

A. Yes.

Q. What?

A. Mrs. Ancarrow knew nothing about what was going on on the job. Mrs. Ancarrow did know about the deficiencies.

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Q. How did she know about the deficiencies?

A. They show on the record.

Q. Did she review the records?

A. Yes, when we get a bill we generally look it over.

Q. Did Mrs. Ancarrow look over the bills?

A. Yes.

Q. She was keeping posted of these bills?

A. Yes.

Q. In fact, she was keeping them?

A. Yes.
Q. And you were checking them?
A. Yes.
Q. Were you checking the time sheets?
A. We didn't have the time sheets then.
Q. Were you checking the delivery tickets?
A. Some things we were. If we had them, we would try to match what delivery tickets we had up with the invoices.

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Q. Did you ever make any assurances that you were going to pay them?
A. No.
Q. You never made any assurances from October 31, 1964, any time after that to any person connected with Garrett and Company that you would pay them any more money for this work that we are talking about?
A. No.
Q. You never did?
A. No.
Q. What?
A. No.
Q. Do you remember Mr. Davis testifying that he was trying to get money from you during this period after October 31?
A. Yes, I remember Mr. Davis testifying to that.
Q. Was Mr. Davis wrong?
A. Yes.
Q. When he says this?
A. Yes.
Q. Do you remember Mr. Davis testifying that in December he came down and talked with you and he said, look, this work is really in two phases, just pay us through the first phase, which came to about $48,000, and bring that up, and you promised him a check within a couple of days? Do you remember him testifying to that?

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A. Yes, I remember him testifying to that.
Q. Are you saying that he is lying, Mr. Ancarrow?

Newton H. Ancarrow

A. No.
Q. Do you think he is correct?
A. No.
Q. You really contend that you never made any promises to anybody connected with Garrett and Company—
A. Yes.
Q. —after October 31 about paying them any more money?
A. Yes.

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Q. Do you remember the assignment to the Bank of Powhatan?
A. Yes.

The Commissioner: Exhibit No. 17.

Q. You signed that in the month of January, 1965?
A. Yes.
Dep. Q. Well, now you didn't think you owed Mr.
4/6-26/67 Garrett anything at this time, did you?
page 215 } A. As a matter of fact, we called the President of the Bank of Powhatan and told him so.
Q. When?
A. The day we signed this.
Q. That you didn't owe him anything?
A. Right. We told him—
Q. Why did you sign this?

The Commissioner: Let him finish his statement.

By the Commissioner:
Q. You said you called the President of the Powhatan Bank?
A. Right, and we said, look, we have got a paper here with a whole lot of numbers on it and as far as we are concerned that is about all it amounts to. He said, now—Mrs. Ancarrow did the telephoning, so I am saying what she said.

Newton H. Ancarrow

By Mr. Little: (Continuing)

Q. Let her testify to that, but you signed this assignment in January, 1965?

A. Right.

Q. And you don't think that would mislead the bank or anything?

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page 216 } Mr. Laughlin: I think if you are going to ask him the question that way, he is entitled to tell us what Mrs. Ancarrow told him.

The Commissioner: When you asked him the question did he think that would mislead, he can answer the question any way he wants to.

A. What is the question?

(Question read)

A. No, I wouldn't think that it would mislead the bank, because as I previously said we had talked to the President of the Bank about this very thing and he explained to us that it would just permit Garrett to borrow money on that, and I saw no reason why I should prevent Garrett from borrowing money on these pieces of paper, as long as the bank understood we did not recognize those invoices.

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REDIRECT EXAMINATION

By Mr. Laughlin:

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By the Commissioner:

Q. Now going back to this meeting you had with Mr. Davis and Mr. Robertson, this was a conference that you indicated of 4 or 5 hours?

A. Yes.

Q. And the net result of the 4 or 5 hour conference was what we have here as Exhibit No. 27?

A. That is all we had left—I don't know why we had that.

Q. I don't understand what you mean, sir.

A. Well, there was much scribblings about coffer-dams and there was much scribblings about how to do this, that and the other and many other breakdowns on such things as lumber, and they were done on another little tablet, I think J. Gibson McIlvain, a yellow tablet a little larger than that, and these figures were brought over to here.

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Q. And those figures were discarded and thrown away?

A. Oh, yes.

Q. In answer to a question from Mr. Little you said that the $62,000 figure was an estimate and was not a figure upon which Garrett was *commited* to finish this job?

A. Right.

Q. Is that right?

A. Yes.

Q. Was that because Mr. Davis didn't have authority to commit Mr. Garrett to a figure?

A. I don't know. I doubt that Mr. Davis had the authority from the way he was talking, but the purpose of the thing was to establish what Mr. Davis in his professional opinion thought was the outside figure that the whole business would cost.

Q. Now this was prompted by Mr. Robertson's statement to Mrs. Grubbs that the cost would run $250,000?

A. Yes.

Q. This conference?

A. Yes.

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Q. What did Mr. Robertson have to say during this conversation of 4 or 5 hours? Was he confronted with this statement that he had made of $250,000?

A. Yes.

Q. What did he say?

A. And then there was much backscuttling, but, of course, now he is caught, he has *commited* the unpardonable sin and he is caught between his employer and a client, and so he just bowed out of it as gracefully as he could.

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JOSEPHINE W. ANCARROW, a defendant herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Laughlin:

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Q. Mrs. Ancarrow, you have been present through all this, so I am going to kind of speak to you in shorthand about some of the things that have gone before. Turning your mind to the period immediately prior to the beginning of the construction by Garrett and Company on the boat slip and ramp at Brander Street, do you recall any discussions between you and Mr. Ancarrow concerning the way and methods for erecting this facility, and who was to pay for it, and how much it was to cost? Do you recall any discussions of that nature?

A. Yes, sir.

Q. Would you tell us, and tell the Commissioner, what was discussed and what was decided, if anything?

A. Well, Ancarrow Marine was located up in Scott's Addition where we couldn't get our boats into the water. We had a great deal of difficulty, and spent a lot of money. When we moved the business to the river, this was the primary reason. But, of course, when we moved there we did not have an access to the river. It was going to have to be put in. And we went about this, and in going about it found out it was going to be a much more expensive proposition than we had anticipated.

Josephine W. Ancarrow

Q. What did you initially think it would cost?

A. Initially we had thought it would be in the neighborhood of ten thousand dollars. Now, more or less. We didn't think it would cost too much to put a ramp down to the river. But, in inquiring around and talking to the contractors and all we found out it was going to cost more than that. It was going to cost in the neighborhood of thirty thousand dollars or thirty-five.

Dep. 4/26-27/67 page 6 } Well, Ancarrow Marine was having a hard time getting going, getting on its feet, and we had to determine whether or not we could justify this. But, we decided that if it was going to exist, if it was going to continue, it had to have access to the river.

Q. Was this ramp and slip to be built for use by the public or was it to be used to—

A. No. Originally we had no intention of opening the ramp to the public.

Q. What was it to be the function?

A. The function was simply to get our boats into the river, or any boats out of the river that, you know, that was for the use of Ancarrow Marine as a boat manufacturer.

Q. Was any consideration given to you and Mr. Ancarrow personally building this boat ramp or boat slip and ramp?

A. No. Well, we didn't feel that we could justify building it for the company, because it wouldn't improve the property in any way. It was simply a function of the business.

Q. Now, at the time you determined to go forward with this matter for Ancarrow Marine, Incorporated, what was the cost you had estimated you were going to be faced with to complete the job?

Dep. 4/26-27/67 page 7 } A. Well, we determined from talking to people about it that this thing was going to cost around thirty-five or thirty-six thousand dollars, is the way we started it. It worked up between forty and forty-two thousand. This was the figure that we went into it with. This is what we thought it was going to cost.

Q. Did you, either through your husband or a representative of Garrett and Company, or anyone else, Mr. Spittle, Mr. Davis, Mr. Garrett, Mr. Wynn, Mr. Robertson, or anyone at this period when the job was first being initiated, receive any information in any way directly or indirectly that would have indicated to you that the cost of this construction would have, in Mr. Spittle's words, well exceeded one hundred fifty thousand dollars?

A. No, sir.

Josephine W. Ancarrow

Q. Would you even have remotely considered going forward with this project if that had come to your attention?
A. Absolutely not.

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Q. Now, coming to this discussion that occurred along about the last of July or the first of August, would you tell us how that arose and what part you took in it?

Mr. Little: What are you discussing, Mr. Laughlin?
The Commissioner: The last part of July of 1964.

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Q. Or the first part of August. The best we can pin it down it was the last part of July or the first part of August.
A. I assume you mean the meeting of Mr. Davis, Mr. Robertson and Mr. Ancarrow?
Q. Down at the ramp. How did that meeting come to take place and what part did you play in it?
A. Well, the job, things weren't moving along particularly fast, and I was becoming concerned about how long it was taking, and Mr. Robertson was in the office one day. I don't remember why. And I questioned him about how much longer they were going to be, and talked to him for a while, and then he started to leave and Miss Grubbs was sitting in her office and she said, Mrs. Ancarrow, ask Mr. Robertson what he told me about this job out here. I said what do you mean? She says, you just ask him what he told me about this job out here, what this job out here was going to cost. So, I went, I said, what do you mean? She said, well, he's told me that job was going to run maybe a quarter of a million dollars. Well, boy, you just as well have shot me out of that office.

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Q. Start back, tell us what happened now in your own way. She told you this, then what happened?

Josephine W. Ancarrow

A. Well, I shot out of the front door and I grabbed Mr. Robertson, and I confronted him with the statement he had made to Mrs. Grubbs. Well, of course, he kind of hemmed and hawed, but he said, well, frankly Mrs. Ancarrow, I don't see how we are going to complete this job for under two hundred thousand dollars. And, he said, it may run into a quarter of a million dollars.

Q. What did you say to him at that point?

A. I said, Mr. Robertson, you can't be serious. And he said, well, he said, well, I don't know, but, he said, it's right much work out here. And I said—He said, what did Mr. Davis tell you it was going to cost? And I told him.

By the Commissioner:

Q. What was it that you told him, if I may interrupt?

A. I told him we had in our mind the figure was around forty thousand dollars, maybe forty or forty-two thousand dollars. Now, I know this sounds ridiculous.

Q. Go ahead.

A. Anyway, I immediately went back in the office and called Mr. Davis on the telephone.

Dep. 4-26-27/67 page 11 } By Mr. Laughlin: (Continuing)

Q. Let me stop you right there and say one thing. You say this sounds ridiculous to you now, did you believe it then? Is that what you were relying on?

A. Yes. Then I firmly believed that is what it was.

Q. You called whom now?

A. I called Mr. Davis, who up to this time was the man we had dealt with.

Q. Was there ever an indication to you directly or indirectly from Mr. Garrett that Mr. Davis did not have the authority to do what he did on this job and to deal with you on this job?

A. No. It never was indicated. I don't think, anyway.

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Dep. 4/26-27/67 page 13 } By Mr. Laughlin:

Q. Did you ever have any indication that Mr. Davis had any limitation on anything that he did in negotiating this contract as to price, time of completion, method of completion, materials to be used, equipment to be used, time to work, when to start, when to stop, anything at all, Mrs. Ancarrow?

A. No. Mr. Davis was the man that we did business with,

really, as Garrett and Company.

Q. How often was Mr. Garrett on the job at all?

A. Not very often. As a matter of fact, now, I don't believe I saw Mr. Garrett down there until the first—Now, I won't say the first, the June bill was presented, which probably was the first of July sometime.

Q. During all of the discussions, some of which we will talk about later, that you had with Mr. Garrett about payment on this case, settlement of the disputes, did he ever at any time tell you or anyone else in your presence that Mr. Davis did not have the authority to do what he did up to that point?

A. No. No. As a matter of fact, when I did talk to Mr. Garrett he would tell me if Mr. Davis said such and such a thing that was fine.

Dep. 4/26-27/67 page 14 } Q. Now, coming back to this meeting we were talking about in late July or early August, you said you called Mr. Davis after this conversation with Mr. Robertson. What did you say to him?

A. Well, it was in the afternoon. It was late in the afternoon and I told Mr. Davis what Mr. Robertson had just told me. And Mr. Davis said, oh, Mrs. Ancarrow, that is ridiculous. He said, that job is not going to run any two hundred thousand dollars. It's not going to run around a hundred thousand dollars.

Q. What was your response to this?

A. I said, Mr. Davis, I just, am just real upset about this thing, because, I said, this thing is stopped. We don't want to go any further. Let's sit down and talk this thing over and have a firm understanding about it right here and now.

Q. What was his response to that?

A. So he said, well,—I said, can you come over here? I wanted him to come right then. But, of course, he said he couldn't but he would be down there the first thing in the morning.

So the next morning he and Mr. Robertson came in the office. And Mr. Ancarrow, Mr. Robertson, Mr. Davis and myself sat down and we went over this whole job.

Dep. 4/26-27/67 page 15 } Q. Was there any indication by Mr. Davis or Mr. Robertson that they didn't have time to make the estimate that they made at that time?

A. No.

Q. Did they ever indicate that they needed some information which they did not have available at that time?

A. No.

Josephine W. Ancarrow

Q. Did they indicate to you in any way that the estimate they were giving you was a sheer fantastic guess of any kind that couldn't be relied upon?

A. No. As a matter of fact, Mr. Davis questioned Mr. Robertson about how much it would cost to, or how much they had given piling, and how much it would cost for so many yards of concrete. They went over everything. Of course, now, I am not a construction man. I don't know whether they covered it thoroughly or not, but it seemed to me they did. They talked about a lot of things that I didn't know anything about. And, when they got through, they came up with a figure, which, of course, was over my forty thousand dollars I had in mind. And, I was very much concerned, very frankly. And I said, Mr. Davis, now are you sure that this job is not going to exceed this figure, because we had a hard time justifying this forty thousand dollars for Ancarrow Marine to put out on this thing. Now you have got it up to sixty-two thousand dollars, and it just, if it's going to cost any more than that, just let's forget it now.

Q. What was his response to that?

Dep. 4/26-27/67 page 16 } A. Well, he just laughed it off and he said, well, he really didn't think it was going to cost that much but—It certainly wouldn't go over that. So—

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Q. Without going into details of those controversies, can you tell us in general what were the basic problems that were being threshed out?

A. Well, there were obviously errors in billing—it is hard to go back now and remember—but equipment, use of equipment and labor and—

Q. Had you discussed some of these things with Mr. Spittle over this period of time?

A. I had talked to Mr. Garrett about them, and Mr. Garrett had said they would issue credits to us for any discrepancies in bills, and he offered to have Mr. Spittle come down and go over the account with me.

Q. Was this in fact done?

A. Finally, yes.

Q. When was this done?

A. I believe Mr. Spittle came down in August.

Q. Prior to the payment of the twenty-five thousand dollars?

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A. Yes. If he was down there in August it was prior to the payment of the twenty-five thousand dollars.

Q. Is that the only time he came down there to go over the accounts with you?

A. No. He was down there several—he was there two or three times.

Q. In an effort to work out the varying discrepancies in the accounts?

A. Yes.

Q. Now, coming to the conference that took place in October, you were present at this, were you not?

A. Yes.

Q. Can you tell us how this conference arose and what led up to it, and what took place at the conference, as you recall?

A. Well, I had been trying to get these billings straightened out and they had never been straightened out.

Q. Let me ask this so the record will be clear, how long had you been actively working for Ancarrow Marine in any capacity as an active employee?

A. Well, I had been working for Ancarrow Marine since 1958, I think.

Q. Doing what, primarily?

A. Primarily keeping books.

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Q. Were you the person primarily in charge of the office, as such, and any office staff you might have as opposed to construction building or boat building?

A. Oh, yes.

Q. Excuse me. Continue on with what you were stating now about what led up to this meeting in October.

A. Well, I had been trying to get this thing straightened out because this job was just, it was going and we were getting these tremendous bills, and I just couldn't see compounding errors one on top of the other, and you forget things as they go. So, finally Mr. Spittle came down and we went over these things. But, Mr. Spittle wasn't—never issued any credits, as such. We just went over these things. And it just reached a point where you just plant your feet and say, well,

Josephine W. Ancarrow

I'm just not going to pay any more until we get this thing straightened out. And I had previously told Mr. Garrett that we just would not pay him any more money until this job was completed. We had, as far as I was concerned, we had paid for the job.

Q. When did you tell him that?

A. I can't, I don't remember exactly when it was. It was, I believe it was the day I gave him that twenty-five thousand dollar check. I'm not sure.

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Q. There has been some testimony concerning an assignment which was given to the Bank of Powhatan by Garrett and Company. Do you recall the discussions that had been had about that?

A. Yes.

Q. There has been some indication that you personally called the Bank of Powhatan. Do you recall that testimony?

A. Yes.

Q. Could you tell us what happened on this occasion, as best you can recall?

A. Well, Ancarrow Marine was asked to sign this thing, this assignment.

Q. Did it come in the mail? How did you receive the request?

A. I think Mr. McRae brought it down to the office.

Q. All right.

A. Or somebody brought it.

Q. From Garrett and Company?

A. From Garrett and Company. But, before he brought it down there we had been asked to sign it and refused. And then this day Mr. McRae came down with the thing.

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Q. Excuse me. Let me back up there. You said before Mr. McRae came down there you had been asked to sign it and refused. Who asked you that time? Did it come in the mail? Did the Bank ask you—

A. No. I think they called on the phone.

Q. By whom?

Josephine W. Ancarrow

A. I don't remember. Probably Mr. Garrett. I don't—

Q. From Garrett and Company, you mean?

A. Yes.

Q. Excuse me. Mr. McRae brought this assignment down again—

A. He brought it down and asked us to sign it, and I didn't see any necessity to sign it. I didn't see why they wanted us to sign it. So, he explained that it would simply—

Q. You say he, who explained?

A. Mr. McRae said it was simply a piece of paper to enable Garrett to go to the Bank and borrow money. I said, yes, but I don't want it to involve Ancarrow Marine in any way. We don't owe Garrett that money and don't want to liable ourselves for it. So, he assured me that it wouldn't, and I asked him if he would mind if I talked to the man at the bank, and he said, no. And, he told me who to call. The Bank of Powhatan. I am not sure that it was Mr. Parker, but I think it was.

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Q. All right. Did you call him?

A. I called him.

Q. And what was your discussion?

A. I told Mr. Parker that I had this thing, I wanted to know exactly what it was. And, I said, because we don't feel that we owe Garrett and Company this money. And, I don't want to put Ancarrow Marine in a difficult position.

Q. What was his response to that?

A. He told me, he said, well, have you got invoices, have you received invoices from Garrett and Company with the number—they were numbered, I think—invoice numbers on it? I said, we have them here. He said, well, you are simply verifying the fact that you have received these invoices from Garrett and Company.

Q. On that basis did you sign?

A. On that basis Mr. Ancarrow signed it. I'm not sure that I would have, but Mr. Ancarrow did.

Q. There was some testimony concerning a discussion held sometime in January between you and Mr. Davis, as I recall, and some talk about a twenty-five thousand dollar discount. Could you tell us what your recollection is of what Mr. Davis is referring to there?

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A. Yes. Mr. Davis came down to the office to ask for a check for Garrett and Company.

Q. When was this?

A. I don't know. I know it was in the—it was probably in January, because I think there was snow on the

ground. It was cold. And I said, Mr. Davis, I don't feel Ancarrow Marine owes Garrett and Company any money.

We had at that time all these invoices which we didn't feel like we owed. We felt we owed Garrett and Company for putting that bulkhead out in front of the plant, and this, of course, had to be paid. But, by this time, frankly, I was sick and tired of Garrett and Company's equipment out there in the front yard.

Q. When you talk about paying for the bulkhead, you are talking about this roughly six thousand dollars that they were talking about, this October?

A. Yes.

Q. All right.

A. So, I said, do you have any idea how much Ancarrow Marine has paid for that thing out there? He said, no, he didn't. So I told him. And I think he was surprised. And I said, now, we don't feel like we owe Garrett and Company any more money for that thing. I said, as a matter of fact, I think Garrett and Company owes us some money. Well, he said, if there is something that you are unhappy about, maybe we can straighten it out. I said, well, there were several things, right many things that we were unhappy about, but the big thing during the whole job was the equipment. We felt that the equipment had held the job up and caused the job to run into the amount of money that it had run into. Mr. Davis said he was sure that Mr. Garrett felt that he had put out this money and was due to be compensated for it. And I said, well, I don't want to seem hard or to do Mr. Garrett out of any money, but at the same time you must put yourself in our position. And he asked me what I meant. I said, well, I had broken down the bills and, as I recollect now, we had spent over fifty thousand dollars in equipment rental alone on this job. I said, now this was not any money out of Mr. Garrett's pocket. I think this equipment rental he could certainly make an adjustment on that. He said, well, he would ask him.

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So he called him on the phone, and Mr. Garrett didn't want to do it. And I talked to Mr. Garrett that day.

Q. What was the substance of that conversation?

A. I believe that was the day that he said he was going to have his lawyer get in touch with me.

Q. What was the adjustment you had suggested on this—

A. I suggested that he give us about twenty-five thousand dollars credit. As I remember, the equipment ren-

Dep. 4/26-27/67 page 32 } tals were over fifty thousand dollars and I thought about half of it would be about fair, which was around twenty-five thousand dollars. Well, of course, he laughed at me, but I thought that was a reasonable request.

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Q. Now, the first one of these we have in this batch is dated September 27; is it a fair statement that all the time slips we have in here, with few if any exceptions that are typed, were the ones that were kept by Mrs. Grubbs?

A. Yes. I would say it is.

Dep. 4/26-27/67 page 34 } Q. So she started keeping these in advance of this settlement in October, is that correct?

A. Oh, yes. Uh huh.

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CROSS EXAMINATION

By Mr. Little:

Dep. 4/26-27/67 page 36 } Q. Mrs. Ancarrow, I will try to speed it up as Mr. Laughlin did, and just condense some questions here for you.

Now, you have been an officer and director of the corporation since its inception?

A. I don't believe I was originally.

Q. Since say 1958 when you moved to Richmond, or 1959 or 1960, in that period?

A. I was made an officer sometime in that period. I don't know exactly when.

Q. Certainly during all this work that was done down here

you were an officer and director; your husband was the only other one.

A. Yes, sir.

Q. You were really the office manager, you had the sole responsibility for the bookkeeping done internally in the company, did you not.

A. I had sole responsibility for recording; yes.

Q. Right. You were the bookkeeper for the company.

A. Yes.

Q. You were intimately acquainted with the financial condition of the company at all times.

A. Yes, sir.

Q. You were the treasurer of the company—

A. Yes.

Q. —and as well as serving in other capacities, right?

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A. Yes.

Q. As a matter of fact, you prepared a lot of the financial statements which have now been introduced in evidence, the various profit and loss statements and balance sheets of Ancarrow Marine, Incorporated, have you not?

A. Yes. I think the last two.

Q. The tax returns, the last two, you prepared those, did you not?

A. Yes.

Q. How about the profit and loss statements and balance sheets from 1957, 1958, 1959 and 1960, during that period?

A. Leach, Calkins & Scott did them.

Q. You prepared the last two Federal tax returns?

A. Yes.

Q. I take my hat off to any lady who can prepare corporate tax returns. That is very good.

A. I hope they are right.

Q. Now, during the course of this work done by Garrett and Company, you reviewed every bill received from Garrett and Company, did you not?

A. Yes, sir.

Q. You checked it out as best you could.

A. Yes, sir.

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Q. When Mrs. Grubbs was not there toward the end of the job, you actually prepared some of the time sheets, did you not?

A. She was out.

Q. I think she was sick or something.

Josephine W. Ancarrow

A. I don't know why, but I did, I believe I did a few of those sheets.

Q. From the period of October the 10th through the end of this work, you had daily time sheets of all work that was done on this job in your office, right?

A. (Nodding head indicating yes)

Q. They were the ones that you reviewed and checked.

A. No, I didn't review those.

Q. You did not review any of them?

A. No, sir. Not after October.

Q. You did not review anything after October?

A. No.

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Q. You had an opportunity to check every one of those, did you not.

A. I had an opportunity.

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Q. You made frequent calls to Garrett and Company throughout this work, questioning various items in the bills and so forth, did you not?

A. Not after October.

Q. Not after October?

A. No.

Q. You never had any questions whatsoever after October 10th?

A. No, after that meeting up there in October, Mr. Spittle had not gotten the credit together. I had some conversations with Mr. Spittle directly after that meeting in October.

Q. Yes.

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A. And after that I do not recall calling up there about anything on these.

Q. I will come to this in more detail later. At one point in your testimony you said you had analyzed the invoices from Garrett and Company and saw the rental of equipment amounted to about fifty thousand dollars—

A. Yes.

Q. —is that right?

A. Yes, sir.

Q. Over what period did that cover?

A. Now, I would have to have my little piece of paper which I don't have.

Josephine W. Ancarrow

Q. Do you have it?
A. I don't have it down here.
Q. Do you think you could get that for us?
A. I can certainly look and see.
Q. Would you try to find it?
A. I certainly would.
Q. I would appreciate it if you would.
A. Exactly what I did come up with, the figures, I took the bills, the bills were broken down into labor, material, and equipment.
Q. That's right.
A. Equipment rentals, and I simply broke them down. I took the invoices and took the amounts off of those invoices.

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Q. Now, Mrs. Ancarrow, I want to come to the loans which you personally made to this corporation in 1964 and 1965. I think Mr. Laughlin can give you a slip, I want you *you* to acknowledge the fact that you made these loans in the amounts that I am going to give you.

Mr. Laughlin: We stipulated those loans were made.
Mr. Little: All right. It is stipulated then that these loans were made by you personally to the corporation in September of 1964, forty-six thousand one hundred thirty-eight dollars thirty-six cents; in October of 1964, eighty-four hundred eighty-three dollars; in November of 1964, thirty-eight thousand eight hundred dollars; in February of 1965, seventy-three hundred sixty-three dollars forty-three cents; in March of 1965, ten thousand dollars.
It is understood we have stipulated she made those loans to the corporation.
Mr. Laughlin: She made those loans. All right.
The Commissioner: Is there a total of that?
Mr. Little: One hundred ten thousand seven hundred eighty-four dollars.

Josephine W. Ancarrow

Q. It is also stipulated that your husband during 1964—

Dep. 4/26-27/67 page 43 } Mr. Laughlin: That is already in the record. It has already been stipulated.
Mr. Little: I want to ask her a question about it, Mr. Laughlin. That is why I am going over it right now.
Mr. Laughlin: All right.

Q. In April, 1964, your husband loaned the corporation fifty thousand dollars; in June he loaned it thirty-nine; in July, thirty-five thousand, in August, twenty thousand; and in December of 1964, twenty-six hundred, for a total of one hundred forty-six thousand six hundred dollars. So then, based on that, you and your husband made unsecured loans to this corporation during the years 1964-1965 in an amount in excess of a quarter of a million dollars, did you not?
A. Well now, I didn't add them up, if that's what they add up to be.
Q. I think it has been testified or stipulated that you did not actually even get back a note at the time these loans were made, is that correct?
A. Yes. Now this is—
Q. 1964—
A. '64 and 5?
Q. Yes. In other words, I think the evidence shows that the last notes of the corporation—we have asked for the production of all the notes of the corporation payable to either you or Mr. Ancarrow—I think the last note was dated in 1962.

Dep. 4/26-27/67 page 44 } Mr. Little: Is that right, Mr. Laughlin?
Mr. Laughlin: I think 1963. I think the record will show, Mr. Little, you have not asked a question, you are simply stating facts to argue the case. The record will show we stipulated yesterday what that date was, and there were not any notes thereafter. We can go back and dig it up again.

Q. Now, Mrs. Ancarrow, of the notes that have been introduced in record, the only one that is payable to you, I believe —you check me on this—is the note dated July 31, 1962.

Mr. Laughlin: It is stipulated. We agree that is the fact in the case, Mr. Little. It shows on the record. What else do you want to ask her?
A. All right.

Josephine W. Ancarrow

Q. So, you are sure that there were no notes given by the corporation to you for any of these loans you made to it in 1964 or 1965.

A. No notes have been issued.

Q. No notes have been issued.

A. Still haven't been issued. I would like to tell you why, though.

The Commissioner: You may. Please finish any answer you feel you want to explain further. We want you to give the whole truth.

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A. Because these, the books, Leach, Calkins & Scott have not been over the books and I have kept the books myself, and after they are gone over then these notes will be issued.

Q. I see. In the past you were the one who signed some of those notes, did you not?

A. Yes.

Q. You actually make up the notes, the accountants do not make up the notes.

A. No, but the figures are verified.

Q. I see. Now, Mrs. Ancarrow, it is important, what was the source of the money of these loans? Were these your personal resources that you used to get money to put into the corporation?

A. Now just exactly what—

Q. Did you personally go out and borrow the money to lend the corporation?

A. Yes. Yes.

Q. Is that what you did?

A. Yes.

Q. When you borrowed the money to do that, did the corporation endorse those notes? It did not, did it?

A. No.

Q. These loans were made solely on the basis of your personal signature.

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A. Yes.

Q. Now, Mrs. Ancarrow, since you are intimately familiar with the financial operations of the corporation, to your knowledge has the corporation, or did the corporation borrow any money whatsoever, and I don't want to trick you, but listen to the question, solely on the basis of its financial statement during the period of 1964 or 1965, with the exception, if this is an exception, the

forty-five hundred loan on one boat? Did the corporation borrow any money during these years?

A. I don't think so. Not on its financial statement.

Q. Mrs. Ancarrow, do you remember when your husband testified he went into considerable detail about the plans for the overall development of this property which you and he own together?

A. (Nodding head indicating yes)

Q. Do you remember that testimony?

A. You mean not yesterday but previous?

Q. Yes, previous.

A. Yes.

Q. Were you familiar with those plans of your husband's prior to his testifying up here?

A. Yes.

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Q. So you knew what the plans and the utilization of that property was contemplated to be certainly back, not as far back as 1963?

A. No.

Q. You did not?

A. No.

Q. He had not told you then?

A. I don't think he had made those plans back that far.

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Q. Mrs. Ancarrow, your husband has testified that he, as president of Ancarrow Marine, negotiated with the owners of the property about the lease which the corporation has on the property. Do you remember that testimony?

A. Yes.

Q. Did he discuss any of this with you?

A. Certainly.

Q. So you left all the questions about the lease up to him, did you not?

A. Well, we usually talk things over.

Q. You knew what he was doing and contemplating, did you not?

A. Yes, I believe I did.

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Q. Now, coming down to the rent paid by the corporation to you and Mr. Ancarrow, I call your attention, the record already shows the rent paid in 1964 was seventy-seven hundred seventy-one dollars. Just assume that is correct for the moment. I am not trying to commit you to that figure. And the rent paid in 1965 was six thousand three hundred forty-seven dollars. So, my question to you is, even though you and your husband had made loans totaling a quarter of a million dollars during 1964 and the very first part of 1965 to build something ostensibly for the corporation, the rent decreased between the years 1964 and 1965, is that not right?

A. According to your figures it decreased. But—

The Commissioner: Go ahead. You answer the question in full.

A. But, Ancarrow Marine pays rent when they have the money to pay it, and when they don't have the money to pay it, they don't pay it.

By Mr. Laughlin:

Q. So as to make the record clear, that amount paid does not indicate any agreed rent that you have to pay each year?

A. No.

By Mr. Little: (Continuing)

Q. In fact, you do not have any real fixed agreement making it mandatory on the corporation to pay you all any rent, do you.

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A. We have no written agreement, no.

Q. Do you have a verbal agreement?

A. Well, yes. We would like for the company to pay, I forget the exact figures, approximately seven hundred dollars a month.

By Mr. Laughlin:

Q. That is arrived at how, Mrs. Ancarrow?

A. These are—

Mr. Little: Let me question her. I will bring that up, Mr. Laughlin.

A. This is—

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By Mr. Little: (Continuing)
Q. The debt service on the loan.
A. On the loan.
Q. Right.
A. And we would like for them to pay that each month.
Q. When I say you would like for them to pay it—
A. When they don't have the money to pay it, then they don't pay it.
Q. Do you accrue it?
A. I don't think that I do.
Q. In other words, if you have cash in the corporation to pay the rent, you pay it.
A. Yes.
Dep. 4/26-27/67 page 51 } Q. At about seven hundred dollars a month.
A. Yes.
Q. If you don't, you don't pay it, and you don't even accrue it.

Mr. Laughlin: She said she did not know, Mr. Little.

A. I don't know what Leach, Calkins & Scott does with it.
Q. You kept the books, now, in 1964 and 1965.
A. I didn't accrue it. That's why I said I didn't accrue it, because I don't know how.
Q. So far as the operations of the slip and travel lift, the financial income derived from that, has that been up to your expectations?
A. Well, Mr. Little, originally we didn't intend to use this, open this slip to the general public.
Q. Right.
A. But, during the construction there was so much interest shown in it, and there is no access to this river in the city, so we decided we would open it to the public. I will have to say that when we first opened it I was amazed at what we got off of it. But, of course, as the weather gets warm, and the water gets bad, then there is no more income off it.
Q. The water has really hurt your income, has it not.
Dep. 4/26-27/67 page 52 } A. It sure has, but I'm real pleased—if we ever get that river cleaned up, Ancarrow Marine will have a real nice source of income.
Q. Mrs. Ancarrow, you said that originally this wasn't even going to be used by the public, this was just going to be used by Ancarrow Marine, Incorporated, is that not right?
A. Yes, sir.

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Q. You were going to build this massive improvement down there just to have access to the water for boats built by AncarrowMarine,Incorporated.

A. And repair.

Q. And repair.

A. Yes.

Q. Now, this travel slip, for instance, how many times have you all used that for boats that were either made by Ancarrow Marine, Incorporated, or repaired by them?

A. Well, we have used it, but not as it was originally intended to be used. We have not, Ancarrow Marine has not got a travel lift.

Q. So how can you use it without the travel lift?

A. Well, we have used it to dock boats in.

Q. It is a right expensive dock, is it not?

A. It is a right expensive dock, but—

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Q. But actually you have never, since it was constructed, had a travel lift down there to lift up the boat and put it down there.

A. No.

Q. And at the present time, for instance, there is one sloop—I am no sailor—

A. There is a sailboat in there, yes.

Q. So the only use you have gotten out of it is as a parking place.

A. That's right.

Q. As you look back on it, does that seem to be very practical to spend that much money to have a place to dock a boat?

A. As I look back on it, no, sir, it sure doesn't.

Q. Right. The record shows what figures you earn from gasoline. Do you recall offhand what your gross profit is on gasoline that you sell down there?

A. You mean in dollars and cents?

Q. No, so much per gallon, how many pennies per gallon?

A. Five cents.

Q. Five cents. It isn't much, is it.

A. It is nothing much.

Q. If you sell five thousand gallons in a year down there your gross profit margin is about three hundred dollars, is that right?

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A. I guess so.

Q. My mathematics is poor, too.

A. I guess so. About two-hundred fifty-three hundred dollars. There is no profit in pumping gas unless you pump a whole lot of it.

Q. Now, let me go back to some of your other

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Q. It was a mistake to start, was it not.

A. It was a great big mistake.

Q. Right. You have regretted it ever since you started, have you not.

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A. But not, I cannot think that it was—I know now that you don't go into a contract without a written contract. I have learned this the hard way. But, I will have to say in my own defense that we went into this thing in all good faith with Mr. Davis, and we had no idea what we were getting into.

Q. Neither one of you had any idea what you were getting into.

A. Because he assured us that it was not going to cost—If anybody had told, I had no idea it was going to cost this much money. And they laugh at me when I say this, but I will make the statement that I believe this thing could have been done and finished long before October ever rolled around, and it could have been done within the figure Mr. Davis gave us.

Q. Everything?

A. I believe it could have been.

Q. And you have had much experience in the construction business?

A. I have had no experience in the construction business. Excuse me. I didn't mean to get real up set.

The Commissioner: That is all right.

Q. Do you think, Mrs. Ancarrow, that Mr. Ancarrow might have had a little more information about what he was getting into then perhaps was related to you?

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A. No, I don't think so.

Q. Did he ever tell you of any conversation he had with Mr. Dunville of Dunville and Company?

A. I think when Dunville built the plant that we are now in, and I think this is the time the plant was built, it was mentioned to them about putting in this ramp. I think that is the only—I'm not sure, but I don't know that he said he approached him anymore. He may have, but I don't recall.

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Q. Do you think, as you look at that construction, that there was any way of completing it by the fourth of July of 1964?

A. Well, no, not the way they were going at it. No.

Q. By anybody, Mrs. Ancarrow.

A. I just don't know, Mr. Little. I tell you the truth, I didn't pay too much attention to the thing until, of course, I was interested in it, but, I didn't stay out there until it started getting on into the summer, and I felt that the work was dragging.

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Q. Did your husband explain to you why people did not want to give a fixed price contract on this work?

A. Yes.

Q. What did he tell you?

A. Well, he said that Mr. Davis said that he felt that he could do this cheaper on a cost plus basis than he could on a contract basis because he would have—well, he told you yesterday he would have to take into consideration any difficulties he would run into.

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Q. Now, on that pad there was an estimate, right, that Mr. Davis made.
A. Mr. Davis. Yes.
Q. Was that an estimate for work to be done in the future?
A. That was an estimate for the whole thing as it is down there now, as I understood it.
Q. As you understood it.
A. Yes.

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Q. Could you be wrong as to what he was intending to do?
A. Mr. Little, we can always be wrong, but I don't think I was.
Q. Let me ask you this. This meeting was the latter part of July or the first part of August.
A. I don't know. I don't remember the date of the meeting.
Q. Could it have been later in August?
A. I don't remember when it was.
Q. If you don't remember, that is all right. When you worked up that estimate, did you start with what bills you had gotten from Garrett at that time?
A. That was mentioned and taken into consideration. We took into consideration what money Ancarrow Marine had put out and work that Garrett had done, but I don't remember what they were. Garrett had done some extra work down there. I don't know whether we had even been billed for it.

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A. Now, the day that Mr. Davis was down there, I frankly will have to say that up to this point I wasn't paying too much attention to what was going on out there.
Q. Yes, ma'am.
A. When somebody hits you with a quarter of a million

dollar figure on something that you have been carrying around in your head at forty, it kind of upsets you now. Wouldn't it you?

Q. Certainly. Certainly.

A. All right. So this precipitated this meeting.

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Q. Let's come to that meeting that has been testified to as being an eleven hour meeting. As I understand it, you worked up a list of what all your complaints were, did you not?

A. Yes.

Q. Do you have that list?

A. No, not as I took it up there, I don't.

Q. You do not have it?

A. No.

Q. You went up there to talk about the invoices that you had received in the amount of thirty-nine thousand dollars, did you not?

A. We went up there to talk about this job I think from the word go.

Q. All right, but your specific list of complaints, you had related to certain specific invoices, did they not?

A. Yes. They had to, did they not?

Q. Yes.

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A. Yes. Certainly.

Q. I think the other evidence shows that you had been billed for thirty-nine thousand dollars and you wanted certain credits on that because of this list that you had, is that not right?

A. Now you are talking about a thirty-nine thousand dollar figure. That may have been what we owed Mr. Garrett at that time, but we went up there to try to straighten out the discrepancies in invoices previous to this, as well as this.

Q. Right. But to try to bring it up to a certain date, did you not?

A. We were trying to get it straight.

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Q. You were, after October, whether it is the 10th, 19th, or 31st, you were still getting your copy of the daily time sheets, were you not.

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A. Yes, sir.

Q. Was anybody checking them in your office?

A. Mrs. Grubbs was writing those sheets for them, and I believe she continued on doing what she had been doing. I'm not sure.

Q. Did that indicate to you that Garrett and Company might he expecting payment for what was on those time sheets?

A. Well, when the bills came it indicated to me they might be expecting payment.

Q. But you continued, or somebody in your office continued to check these time sheets daily.

Mr. Laughlin: She hasn't testified to that.

Q. Did they check them?

A. I say that Mrs. Grubbs wrote these sheets out, and I expect that she continued doing what she had been doing before. And by this, I mean she was keeping the time on the individual men as it was given to her.

Q. And on the equipment.

A. Yes.

Q. And checking off to see what materials were delivered there?

A. Well, this was part of what she was doing for Mr. Wynn.

Q. Well, were you just doing this then, your version is, just for the benefit of Garrett and Company? I mean not that you thought that you owed them any money, you were doing something for Mr. Wynn or Garrett and Company to help them.

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A. Yes.

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Q. Well now, if you really believed that, why were you concerned about all these time sheets coming in after November?
A. I don't think I was particularly concerned about them.
Q. You were not?
A. No.

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Q. Whose handwriting does that appear to be?
A. Mrs. Grubbs'.
Q. So certainly in November your own employees were trying to keep accurate records as to what equipment was there and being used and so forth.
A. She was doing that for Mr. Wynn.
Q. You say this was for Mr. Wynn's benefit?
A. Yes. He told her what to put on those sheets.

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Q. I am trying to show—By the way, looking at your exhibit here, 100-B, about every six days, ten days, something like that, we find this slip of paper in here.
A. Yes.
Q. Who prepared that?
A. Mrs. Grubbs.
Q. Mrs. Grubbs?
A. Yes.

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Q. Explain that. Why was she keeping that?

A. Well, you see, this is a list of names—I think they will correspond to the names on the time sheets. I'm not sure.

Q. You put down the hourly rate, did you not.

A. These were the hours that came off these sheets on these days, and that appears to be the total hours out there. And they were sent up to Mr. Garrett. Not these, but these.

Q. Not these white pieces of paper.

A. No.

Q. These were prepared by Mrs. Grubbs. This is for your own information.

A. This is for her information, yes.

Mr. Laughlin: Ask her whose information it was prepared for, if anybody's.

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A. Mrs. Grubbs did it. You see, she had been doing it previous to this October meeting. She just kept on. And, from time to time, Garrett's office would call her and check with her, and this was a quick way of looking.

Q. After November, though, there was no change in what was done with reference to those basic time sheets, was there? In other words, didn't you all do the same thing with respect to them for the days after November 1st as you did the days prior to that?

A. Well now, we didn't keep, we did keep them prior to—The only difference was that with this down here and checking them, I don't think we paid too much attention to it.

Q. You did not pay too much attention to it.

A. No.

Q. I will show you the time sheets for December 1st, and we will go through it quickly. Under the pile extractor you had not used, and under the cargo truck not used, and the other equipment not only do you know all the hours but what it was used for, do you not.

A. Yes. And Mr. Wynn gave that to her, and she wrote it down when he told her.

Q. December 2nd you had a couple pieces of equipment not used, clearly shown; that was all written in by Mrs. Grubbs.

A. Yes.

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Q. December 3rd, same thing.

A. Yes.

Q. December 4, the same thing for about six pieces of equipment there.

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A. Yes, sir. Yes.

Q. And on December the 7th you have under the TD24 you had not used, under repairs. Is that right?

A. Yes.

Q. There are others in there, and I refer for the record's sake specifically to things like December 10th, 11th, 14th, 15th, where similar notation, too, were on. Let's come up to December the 22nd.

The Commissioner: This is still part of Exhibit No. 100-B.

Q. Now, can you tell whose handwriting this one is on this one?

A. It looks like mine.

Q. That looks like yours, does it not.

The Commissioner: What date are you talking about?

Mr. Little: This is December the 22nd.

Q. Now, coming down under equipment, you see rental. You see?

A. Yes.

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Q. Under rate, who wrote this word, none, in for the Manitowoc and air compressor, piling hammer?

A. I did.

Q. Then also up here at the top you have a separate category, too, not working, is that right?

A. Yes.

Q. Whose handwriting is that in?

A. That's mine.

Q. You checked that, those three pieces of equipment were not working that day.

A. Yes.

Q. And the other pieces of equipment you set forth the hours.

A. Yes.

Q. Is that right? That they did work.

A. Yes. Yes.

Q. Now, how about the time sheet for December 18th? Whose handwriting is that in?

A. That's mine.

Q. That is yours, is it not?

A. Yes.

Q. Now, you have six pieces of equipment down there, right, that you had the number of hours that each worked with exception of the pile hammer.

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A. Yes.
Q. What did you write opposite the pile hammer?
A. Here but not used.
Dep. Q. That is your handwriting?
4/26-27/67 A. Yes. But all that was written, Mr. Wynn
page 92 } told me what to write.
Q. Who put it down on December 21? That is your handwriting again, is it not?
A. Yes.
Q. You were still reporting deliveries on the back, were you not? Would you read off what you wrote for December 21?
A. Virginia Welding Supply Company, Ticket #F6442, Order #1178, two cylinders of oxygen, 488 cubic feet; one cylinder acetylene, one hundred thirty cubic feet; and thirty cubic feet; and sixty pounds, I guess it is, fifty three thirty seconds.

Mr. Little: If it please the Court, I have not had a chance to go through all these. I am not saying this is all I can find similar notations on. The record will speak for that. We will compile that for the Court.

Q. The same procedure was followed on into January of 1965, about specifying which equipment was used and not used?
A. Well, as long as they were down there these were kept.
Q. Right.
Dep. A. That's right.
4/26-27/67 Q. With no change in the method of keeping
page 93 } them from the period prior to November the 1st.
A. Should there have been?
Q. I am asking you. I don't think there should have been.
A. That's the way Mr. Garrett kept his records.
Q. I believe you said that you do not recall any time after November having, you or Mrs. Grubbs, contact Garrett to clear up any questions with Garrett and Company about any of the items on these time sheets, is that your testimony?
A. I don't recall any. There may have been some. But I—
Q. It might have been some.
A. Might have been some. I don't know.

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Q. There is a notation on here with the date of 12/10/64; no fault of operator or machine. Ancarrow instructed operator over his objection. Mrs. Grubbs advised. Now, does that refresh your memory at all that perhaps Mrs. Grubbs was checking with the office on details of daily time sheets?

A. Mr. Garrett's office would call her from time to time and check on different things, but I cannot testify as to that, because I don't know what it means.

Q. No, but I am asking you if that refreshed your memory as to whether you were not having calls back and forth between Garrett and Company about—

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A. There were calls back and forth between Garrett and Company and our office as long as the men were on the place.

A. You see, when they needed materials they had to come in our office and call their office. This was the only phone that they had access to.

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Q. In other words, you knew that you owed Mr. Garrett some more money initially.

A. Yes. Yes.

Q. Some more money on this bulkhead. How much would you figure that was going to be?

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A. Well, originally Mr. Davis had said it would cost around six thousand dollars. But now, this was in October and Mr. Garrett's men had been at Ancarrow Marine. This was, you say, January?

Q. Yes.

A. Now how long is that? All right. That's three months. He wanted to be paid for those men's time.

Q. You knew that he expected payment for that or wanted to be paid.

A. I didn't feel like we owed him that money.

Q. You knew he expected to be paid.

A. Certainly. He asked me for the money.

Q. He had asked you for it several times.

A. Yes, I think he did.

Q. Several times after November the 1st, did he not.

A. I'm sure he did.

Q. So then, I am not trying to confuse you, but you said the bulkhead was going to cost six thousand dollars and you wanted a credit of twenty-five thousand dollars. Now, did that, in your mind, did that mean that Garrett should write you a check for nineteen thousand dollars?

A. Well, now, Mr. Little, back then we were still trying to solve this thing in a friendly, on a friendly basis. We had been told not to pay Garrett any more money.

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Q. You had been told to—

A. Yes.

Q. By whom?

A. By our attorney.

Q. Had you told Mr. Garrett that you had been told by your attorney not to pay any more money?

A. I don't know whether I told Mr. Garrett that or not.

Q. Do you have any knowledge that anyone told Mr. Garrett that your attorney had advised you—

A. No, I don't know that I told Mr. Garrett that. I'm not sure that I did. I told Mr. Garrett that I would not pay him any more money. But, at the same time, if we could get this thing straightened out and pay, finish that bulkhead and pay him for that, then he would, in essence, get some money. He wouldn't get all the money that he was looking for. But, I was trying to reason out with him how he had overcharged, how he has caused Ancarrow Marine to be overcharged so much on this job.

Q. Mrs. Ancarrow, you still had access to the books of Ancarrow Marine, and up to the end of January you saw bills in there of fifty-eight thousand dollars from Garrett and Company, did you not.

A. That's right. I certainly did.

Q. Were you talking about a credit of twenty-five thousand dollars on that fifty eight, isn't that what you were talking about?

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A. I really wasn't talking about that. I was talking about on the overall job, Mr. Little. But,

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I don't know what you are trying to get at.

Q. I think you have answered it well enough.

A. I felt we had been overcharged for the whole thing.

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REDIRECT EXAMINATION

By Mr. Laughlin:

Q. Mrs. Ancarrow, at any time during any of your conversations with Mr. Garrett or anybody from his company, did anybody ever indicate to you in anyway, by inference, directly, indirectly, in writing, orally, over the telephone, their attitude, speech, failure to speak, actions, lack of actions, that they expected you personally to pay for what has been done on the Ancarrow Marine, Incorporated?

A. No.

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By the Commissioner:

Q. Mrs. Ancarrow, let me just ask you a few questions. Going back now all the way to the time when you and Mr. Ancarrow acquired the property on Brander Street, Ancarrow Marine, Incorporated then became a tenant on the property, is that right?

A. (Nodding head indicating yes)

Q. And no formal written lease was executed.

A. Not that I recall.

Q. But, is there an agreement between you and Mr. Ancarrow, as the owners of the property, and Ancarrow Marine, Incorporated, that Ancarrow Marine, Incorporated was going to occupy a building and the land necessary for the boat building and the land adjacent to the water?

A. Yes.

Q. Is that right?

A. Yes.

Q. And that was going to be at a rental, if Ancarrow Marine, Incorporated could pay the amount to curtail the mortgage, is that right?

A. Yes.

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Q. In this agreement is there a time limit upon which this lease is to run?

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A. No. And, as to the rental on the property, it was understood that they would pay this until they got in a financial position, then we would charge them the proper rent on this.

Q. The proper rent had never been determined as yet.

A. No.

Q. Now, in connection with the time of the lease, is this lease sort of an indefinite lease?

A. Yes.

Q. Could Ancarrow Marine, Incorporated pick up any time it wanted to and leave the premises, if it wanted to?

A. I assume so. I don't know.

Q. Could you and Mr. Ancarrow, as the owners of the property, at any time you wanted to put Ancarrow Marine out of the property?

A. I would assume so, on proper notice.

Q. How much notice do you think that would be?

A. Isn't it customary when you pay on a month to month basis there is thirty-days?

Q. A thirty-day notice?

A. Yes.

Q. All right. Fine. In connection with the contracting for these improvements, Mr. Laughlin has asked you whether or not you and Mr. Ancarrow ever personally agreed to pay for these improvements, and your answer was no.

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A. (Nodding head indicating yes)

Q. Who was it that contracted to put the improvements up? And by improvements I mean the ramp, and the seawall and the slip.

A. Mr. Ancarrow, acting as Ancarrow Marine.

Q. President of Ancarrow Marine?

A. Yes. Contracted to do that.

Q. In all your conduct as bookkeeper and as checking any kind of record or doing anything, did you act as Mrs. Ancarrow, personally, or did you act as an officer and director of Ancarrow Marine, Incorporated?

A. I acted as an officer of Ancarrow Marine. I'm pretty sure.

Q. Did Mr. Ancarrow, your husband, have your authority to act as your agent in connection with anything involving the real estate?

A. I don't understand what you mean.

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Q. You and Mr. Ancarrow own the real estate in your own names as tenants by the entirety?

A. Yes.

Q. Therefore, anything that would have to be done with reference to the real estate would have to be your joint act, both Mr. and Mrs. Ancarrow would have to unite in this act.

A. I would think so, yes.

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Q. Was there any act that you did with reference to the land that only Mr. Ancarrow did because he could act as your agent without your approval—or without your knowledge of what he was doing?

A. Not that I can recollect.

Q. Did you ever give him the authority to act with reference to the land to do as he pleased without even telling you about it?

A. No, I don't think I did tell him.

Q. Did he ever do anything, any act, with reference to the land and then come back and say this is what I have done with reference to the land?

A. Not that I can recall. I mean I—It's hard to say black and white, but I don't remember anything.

Q. You don't remember. All right. With reference then to the construction of these very valuable improvements on the land—

A. Yes.

Q. —You did not authorize them personally yourself?

A. You are talking about this—

Q. You, as an individual.

A. No. No.

Q. Did you give Mr. Ancarrow any authority to authorize their construction, as an individual for you personally?

A. No, sir.

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Q. Well, let me see now. You did not take Mr. Davis' figure

of sixty-two thousand dollars to be a firm contract. You took that to be an estimate.

A. Yes.

Q. But, it wasn't a contract at that time.

A. It wasn't a written contract. But, I believed what he told me, because I stressed it so hard. I mean Mr. Ancarrow and I were very persistent.

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RECROSS EXAMINATION

By Mr. Little:

Q. One more question. Getting back to this lease agreement, or this agreement, whatever it was, between the corporation and you and Mr. Ancarrow, you agreed to that, did you not, on the terms that you have already discussed what the terms of the lease would be, that the rent would be seven hundred dollars a month if the corporation had the money to pay it, that it didn't have to pay the money if it didn't have it, and that the rent would be later adjusted to be a fair rental if the corporation would get on its feet; you agreed to all of that?

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A. Of course. I suppose so.

Q. Did you also agree that the ramp and all these improvements that Mr. Garrett put on there, which have been certainly characterized as very substantial, would be the property of the corporation?

A. (Nodding head indicating yes) Absolutely.

Q. You also agreed that you, as the owners, could terminate that lease with the corporation, I think you said, on thirty days' notice; right?

A. Well, since we don't have a written lease, I believe that's the customary legal thing. I don't know.

* * * * *

Josephine W. Ancarrow

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page 115 }

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By Mr. Little: (Continuing)

Q. Was it your understanding—I am asking this to see how deep this thought went, Mr. Commissioner—if those improvements were the property of the corporation, wouldn't the corporation have great difficulty in taking those properties with them if they ever left that property?

A. Mr. Little, I'll tell you the truth, we had—Ancarrow Marine has no idea of leaving that property.

Q. Right. Because you and Mr. Ancarrow own the land, and Mr. Ancarrow owns all the stock in Ancarrow Marine, Incorporated, does he not?

A. He does.

Q. So you could not see of any way, any possibility that you, as the owners of the land, could possibly end up with other than the improvements, could you?

A. I never thought about it, to tell you the truth.

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Q. But, as a practical matter, you knew that that concrete was going to be on that land as long as you owned it, did you not.

A. Well, I don't know now.

Q. That you, as the owners, were going to get the benefit of those improvements; didn't you know that, Mrs. Ancarrow?

A. Well, I should have known it if I didn't, but I just never thought about it.

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Dep.
4/26-27/67
page 136 } LEONARD NEAL FORD, a witness of lawful age, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Laughlin:

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Dep.
4/26-27/67
page 142 } Q. Now, in doing this you have included the items for concrete, reinforcing steel, the cofferdam, slab sub-base, plumbing and electrical, a miscellaneous item for pipe sleeves, and the items indicated, excavating the structure, putting in the bulkhead, putting in certain additional ramp extensions and retaining walls, and have come up with a total cost of $154,795.00. Now, it is your professional opinion, based upon the work which you did, that this would be an accurate cost for the construction of this facility as shown on the plans and specifications supplied to you

A. Yes. This is an estimate of what we feel would be a reasonable cost for such a facility.

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page 253 } WILLIAM J. BLANTON, upon being called in rebuttal by counsel for the plaintiff, first being duly sworn, testified as follows:

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CROSS EXAMINATION

By Mr. Laughlin:

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Q. You would not estimate any job under any circumstances?
A. No. I don't feel qualified to.

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page 320 }

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By the Commissioner:
Q. Let me ask this question then. If you are not qualified to give an estimate, if you say you don't give estimates, then you are not qualified to comment on Mr. Ford's estimate.
A. Only in light of what other jobs have cost. That's all.

The Commissioner: All right, sir. That is all.

Dep.
4/26-27/67 By Mr. Laughlin:
page 321 } Q. You are not going to say his estimate is wrong in any way?
A. Oh, no.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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