

64294-4

64294-4

NO. 64294-4-I

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COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION I

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Big Construction, Inc., a Washington  
corporation,

Appellant,

vs.

Conner Rubin, LLC, a Washington limited  
liability company,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

On March 14, 2007, respondent Conner Rubin, LLC (“Conner Rubin”) and appellant Big Construction, Inc. (“Big Construction”) executed a construction contract (the “Contract”) for the remodel of Conner Rubin’s Hideaway Restaurant Lounge and Card Room (the “Restaurant”) located in Shoreline, Washington. Declaration of Danny Rubin, §2, Ex. A; CP 27, 32-33; App. 1 A number of disputes arose between the parties, including the amounts billed to Conner Rubin and the change orders claimed by Big Construction for its construction work.

To resolve the disputes, the parties met on October 4, 2007 and executed a settlement agreement (the “Settlement Agreement”); Big Construction also executed a lien release (the “Lien Release”). Rubin Decl., §15; Exs. E and F; CP 29, 71, 73; App. 2, 3

Notwithstanding the parties’ Settlement Agreement, Big Construction on February 27, 2008 filed a claim of lien against the Restaurant in the amount of \$353,137.44. Rubin Decl., §19, Ex. G; CP 75-76 Conner Rubin filed suit against Big Construction to remove the lien as frivolous. CP 125-141 Big Construction counterclaimed and sought to foreclose its lien. CP 142-149

On September 18, 2009, The Hon. William Downing dismissed Big Construction’s counterclaims by summary judgment; the remaining

claims of Conner Rubin were also dismissed. CP 111-112

## II. STATEMENT OF CASE

### A. Billings and Payments Made Under Original Contract

The Contract was negotiated between Danny Rubin, the principal of Conner Rubin, and Danny Kim, the President of Big Construction. Rubin Decl. §2; CP 27 *The Contract* required that the contract price of \$450,000 to be paid in installments: \$50,000 was due on the execution of the Contract, \$100,000 was due on commencement of work, \$100,000 was due on completion of framing, \$100,000 was due on completion of electrical, plumbing, and HVAC, \$40,000 was due on completion of drywall and paint, and \$60,000 was due on completion of the project. Contract, p. 2, App. 1

The Contract also provided for an eight week completion date. The Restaurant had a gambling license from the City of Shoreline which would be forfeited if the Restaurant were to be closed for too long. To address Rubin's concerns about meeting the schedule, Kim made the handwritten addition on page 2 of the Contract assessing \$500 liquidated damages for each day of delay. Rubin Decl., §3; CP 28

Rubin paid the first \$150,000 required under the Contract by three separate checks he delivered to Kim. Rubin Decl., §4, Ex. B; CP 28, 36-38. On March 29, 2007, the parties executed a handwritten change order

that reflected the discovery of some footing and foundation problems on the west side of the restaurant and the need for new flooring. Rubin Decl., §5, Ex. C; CP 28, 48. As stated in the change order, the cost of the work was to be “approximately \$25,000 to \$35,000”.

The first invoice submitted under the Contract by Big Construction was dated April 27, 2007 and described the foundation and flooring work that had been done. However, instead of billing Conner Rubin \$25,000 to \$35,000, Big Construction billed the amount of \$130,560. Rubin, Decl. §6, Ex. D; CP 28, 50<sup>1</sup> On May 10, 2007, Rubin gave Big Construction a check for \$130,000. CP 28, 39

On July 11, 2007, Big Construction submitted another bill for \$49,569.28. CP 28, 51 The bill shows two agreed change orders that totaled \$15,560 and a “construction draw” of \$30,000. Pursuant to the terms of the Contract however, the next installment was for \$100,000 and was payable only upon completion of the framing work. Even though the framing work had not yet been completed, Rubin paid the invoice on July 12, 2007. Rubin Decl., §7; CP, 28, 40

The next bill, dated August 1, 2007, Invoice No. 30, shows a billed amount of \$110,000 for a “construction draw” for framing. CP 28, 52

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<sup>1</sup> Although the first invoice submitted to Rubin states it is “Invoice No. 22”, the invoice numbers are attributable to the Quick Book software used by Danny Kim when he prepared the invoices. Deposition of Danny Kim, attached as Exhibit A to Declaration of Mark Rowley (hereafter, “Kim Dep.”), 24:13-25:3; CP 14  
SEA\_DOCS:946726.1

Because Rubin had already pre-paid \$30,000 against the framing installment of \$100,000 required by the Contract, Rubin's wife, Yasuko Conner, struck the \$110,000 amount and substituted "\$70,000". Rubin delivered the \$70,000 check to Kim on August 9, 2007. Rubin Decl. §8; CP 28, 52, 41 In his deposition, Kim admitted that his August 1, 2007 invoice overcharged Rubin. Kim Dep. 60:2-13; CP 15

Rubin's next payment of \$40,000 was made on September 7, 2007 for the completion of the drywall. CP 28, 42 On September 24, 2007, Rubin received Big Construction's next invoice, Invoice No. 35, for \$135,180 plus taxes. CP 28, 54-61 The first page of the invoice, totaling \$82,464.44, contained numerous change orders which had never been approved by Rubin. Rubin Decl., §9; CP 28, 54 The charges were then repeated on the remaining pages of the invoice. On page 5, a new line item of \$60,000 is billed as the "remaining balance". The legend at the bottom of the invoice states: "Work has been completed." CP 59

Rubin objected to the billing. Work was not complete. Rubin Decl., §9; CP 28 Kim however pleaded with Rubin to pay him some money because he needed to pay his workers. Kim told Rubin that his workers would walk off the job if they did not get paid. Because Rubin was concerned about the job not being timely completed and losing his gambling license, Rubin gave Kim a \$30,000 check on September 28,

2007. Rubin Decl., §10; CP 28, 43

B. Execution of Settlement Agreement and Lien Release.

In September, 2007, Rubin decided he needed assistance from his property manager, Rick Mouw, to help Rubin manage the construction and the billings. Mouw reviewed the September 24<sup>th</sup> invoice and met with Rubin and Kim at the job site in late morning on October 4, 2007. The three men discussed the charges from Big Construction and the work that needed to be done to complete the job. During those discussions, the men walked through the Restaurant. Rubin Decl., §11, 12; Declaration of Rick Mouw, §2, 3; CP 28-29, 24-25

Kim again told Rubin and Mouw that he needed to pay his workers or they would walk off the job. He said he needed \$68,000. Mouw told Mr. Kim that they needed to settle on the amount of his past charges and the dollar amounts of what it would take to complete the building. The parties agreed on a total amount of \$96,000. The sum of \$68,000 was to be paid that day and the balance of \$28,000 when the occupancy permit was issued. Rubin Decl., §13; Mouw Decl., §4; CP 29, 25

During the discussions, Rubin said he wanted extra floor outlets and parking lots lights. Kim pointed out that the plans did not require those items. The parties therefore agreed to exclude that work from their agreement. Rubin Decl., §14; Mouw Decl., §5; CP 29, 25

After verbal agreement was reached, Mouw went off to type the Settlement Agreement. Rubin, Yasuko Conner, and Kim met later that same day at the job site and signed the Settlement Agreement. App. 2 Mr. Kim also concurrently signed the Lien Release. App. 3 Mouw Decl., §6; Rubin Decl., §15; CP 25, 29 The Lien Release states that Big Construction “has been paid in FULL for all labor, subcontract work, equipment and materials supplied to the above described project.”

After the Settlement Agreement and Lien Release were signed, Rubin went home to get a check for \$68,000. He went back to the job site and delivered the check to Kim. Rubin Decl., §16; CP 29. On October 22, 2007, Kim told Rubin that he needed more money to pay his workers and requested an advance on the remaining balance of \$28,000 owed under the Settlement Agreement. Rubin delivered a check to Kim for \$20,000. Rubin Decl., §17; CP 29, 45. On November 19, 2007, Rubin delivered the last check for \$15,000. The additional \$7,000 over the required \$28,000 was in payment for extra electrical floor outlets that had been requested by Rubin during his walk-through of the Restaurant with Kim. Rubin Decl., §18; CP 29-30, 46

C. Big Construction’s Claim

By its answer to Conner Rubin’s Interrogatory No. 7, Big

Construction based its claim on the amounts described in Big Construction's Invoice Nos. 34, dated November 7, 2007, in the amount of \$103,572 and Invoice No. 87, dated December 24, 2007, in the amount of \$249,565.44. CP 10, 21-23, 62-69

According to Kim, the work described in Invoice No. 34 was in progress when the Settlement Agreement was executed. Kim Dep. 85:2-86:10; CP 17-18. The work described in Invoice No. 87 is duplicative of the September 24, 2007 invoice with the exception that the some of the entries on the last page of the September 24<sup>th</sup> statement that had no corresponding charges are now assessed dollar amounts. Kim Dep. 86:11-87:3; CP 18

In his deposition, Kim testified that he told Rubin and Mouw that Big Construction was owed more than the \$96,000 that was recited in the Settlement Agreement but that he signed the agreement anyway because he needed money to pay his workers.

Q. Right. The second paragraph says, "Big Construction agrees that the balance owed to complete construction is \$96,000;" you see that?

A. Yeah, I do.

Q. Okay. Your understanding, though, that wasn't the total amount that was going to be paid you?

A. Right.

Q. Okay. And what do you base that understanding on?

A. Well, because I had told him that this isn't the amount that - that was owed to me. There was additional changes that's been going on at that time.

Q. Okay. Now, before this -

A. And then -- and then that -- that wasn't the total amount that he

owes.

Q. Okay. You told him that?

A. Yes.

Q. When he presented this to you?

A. Yes.

Q. Okay. Did you say, "Look, Mr. Rubin, this number's not correct, you owe me more" –

A. Right.

Q. -- "than 96," is that what you said?

A. Right.

Q. Okay. Did you say to Mr. Rubin, "Look, let's strike out 96,000, put 350,000"? You told him that this number's not correct; right?

A. Right.

Q. But you signed it?

A. Right.

Q. Why'd you sign it if it was incorrect?

A. Because he was holding my money, and I didn't have any money to pay my guys.

Q. You didn't have to sign it, did you?

A. He wasn't going to give me money.

Kim Dep. 79:17-80:25; CP 16

Kim also testified that Rubin lived up to the October 4<sup>th</sup> Agreement.

Q After the -- after this was signed, you received one payment of \$68,000; correct?

A. Right.

Q. And then you received two more payments totaling 35,000; correct?

A. Yeah.

Q. So Mr. Rubin lived up to his agreement in this -- reflected in Exhibit 5; correct?

A. Yes.

Q. Okay. But you're saying that the number was incorrect?

A. Right.

Q. That instead of \$96,000, it should have been three hundred and fifty thousand; correct?

A. Yes.

Kim Dep. 81:19-82:8; CP 16-17

### III. ARGUMENT

#### A. The Enforcement of the Settlement Agreement was Pleaded in Conner Rubin's Complaint

Big Construction argues that summary judgment was improperly granted because Conner Rubin “can not now set forth facts that were never pled in their pleadings and ask the Trial Court for relief that they never sought when they filed their complaint.” Big Construction Brief, p. 10

Big Construction's argument is frivolous. Washington has a system of notice pleading. CR 8(a) only requires “a short and plain statement of the claim” and a demand for relief in order to file a lawsuit. Under notice pleading, parties use the discovery process to uncover the evidence necessary to pursue their claims and defenses. *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wash.2d 974, 983, 216 P.3d 374, 379 (2009)

Even assuming however that a complaint needs to set forth all relevant facts, Conner Rubin's complaint, in fact, does affirmatively allege that the parties on October 4, 2007 executed the Settlement Agreement. Complaint, §12, CP 91 Big Construction's counterclaim also affirmatively recited the execution of the Settlement Agreement on October 4, 2007. Answer and Counterclaim, §3.17 to §3.21, CP 102

B. Conner Rubin Did Not Admit the Allegations in Big Construction's Counterclaim.

The original counsel for both Big Construction and Conner Rubin withdrew after the initial pleadings had been filed and new counsel thereafter appeared. CP 149-150, 151-153. Former counsel for Conner Rubin had not filed an answer to Big Construction's counterclaim nor had any motion for default ever been filed by Big Construction requiring an answer.

In its reply brief in support of its cross motion for summary judgment (CP 78), Big Construction argued to the trial court, as it does here, that because no answer had yet been filed to Big Construction's counterclaim, the allegations of the counterclaim are deemed to be admitted. In response, Conner Rubin's new counsel filed an answer to the counterclaims the day before the summary judgment hearing. That answer denied various allegations in Big Construction's counterclaim. CP 108-110

Big Construction cites CR 8(d) in support of its argument. CR 8(d) provides:

**(d) Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted *when not denied in the responsive pleading*. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

CR 8(d)(emphasis added)

By its terms however CR 8(d) only admits an allegation in a pleading if the allegation is “not denied in a responsive pleading.” The responsive pleading to Big Construction’s counterclaim in fact denied the allegations relied upon by Big Construction.

C. There are No Material Facts in Dispute which Preclude Summary Judgment

(1) There Were No Additions to the Settlement Agreement.

Big Construction argues without any evidentiary support that there were “additions” to the Settlement Agreement, presumably contending that there were change orders agreed to by the parties after October 4, 2007. However, Big Construction in its answer to Conner Rubin’s interrogatories has admitted that its claim is limited to the work described in two specific invoices, Invoice Nos. 34 and 87. CP 20-23 As Kim testified in this deposition, the work described in those invoices had either already been completed or was already in progress as of October 4, 2007. Kim Dep. 86:11-87:3; CP 18 Because the Settlement Agreement expressly states that Big Construction would be paid a total amount of \$96,000 “to complete the construction”, no other alleged work can be compensable.

(2) Conner Rubin Fully Performed the Settlement Agreement

Notwithstanding (a) Kim's admission in his deposition that Conner Rubin performed the Settlement Agreement (Kim Dep. 81:19-82:8; CP 16-17) and (b) the documentary evidence of the checks, dated October 4, 2007, October 22, 2007 and November 15, 2007 (CP 44-46) totaling more than the \$96,000 required by the Settlement Agreement, Big Construction claims that the Settlement Agreement was nevertheless breached.

Big Construction argues, without any evidentiary support, that the Settlement Agreement required a total payment of \$606,000 instead of the \$572,569.72 paid by Conner Rubin to Big Construction. The argument is apparently based on the premise the last line of the paragraph under "FULL RELEASE" in the Lien Release (App. 3) established a new contract price of \$510,000 and that, together with the promise to pay \$96,000 under Settlement Agreement, the total contract price was now \$606,000. Such an argument is frivolous.

As of the time the Settlement Agreement and the lien release were executed by the parties, Conner Rubin had paid a total of \$469,569.28 CP 35-43 After the two documents were executed, Rubin went home and got a check for \$68,000 and went back to the job site and delivered it to Kim. Rubin Decl., §16; CP 29, 44. The Lien Release was accordingly executed before the \$68,000 was paid and was therefore made expressly

conditional upon the receipt of the money. When the \$68,000 was later paid, the release became effective. After the \$68,000 check was delivered, a total of \$537,569.28 had been paid or an amount \$27,569.28 **greater** than the \$510,000 recited under the paragraph entitled “Full Release”.

Secondly, the lien release could not, in any event, unilaterally increase the contract price to an amount higher than the balance promised under the Settlement Agreement for the simple reason that the lien release was not executed by Conner Rubin. The language of the release is solely an offer by Big Construction to release its claims when and if it received the sum of \$68,000. When the sum of \$68,000 was paid later that same date, the release became unconditional.

(3). The Settlement Agreement is Supported by Sufficient Consideration

Big Construction contends that the Settlement Agreement is void because of the absence of new consideration. However, lack of consideration is an affirmative defense which was not pleaded by Big Construction in its answer and that defense should accordingly now be barred. CP 142-148

The defense in any event fails. While the Court in *Rossellini v. Banchemo*, 83 Wn.2d. 268, 517 P.2d 955 (1974), cited by Big Construction, did void for failure of consideration an amendment to a construction contract that reduced the contract price, the Court expressly

stated that there was no finding by the trial court of an existence of a bona fide dispute or a doubtful claim, only a general dissatisfaction by the owner that “the thing wasn’t just being run right.” *Id.*, at 270.

In contrast, in the instant case there is unrebutted evidence of substantial irregularities in Big Construction’s billings, together with numerous unapproved and contested change orders claimed by Big Construction. The Contract’s liquidated damage clause alone creates a large potential claim against Big Construction that was waived by the Settlement Agreement. The Contract required completion within 8 weeks or by May 14, 2007. App. 1 Actual completion did not occur any earlier than the date of Conner Rubin’s last check, dated November 19, 2007. CP 46 The only delay claimed by Big Construction in its billings because of a change order was a delay of 15 days for the foundation work, as described in Invoice No. 22. CP 50 The number of days of delay is accordingly 174 days; that delay at \$500 per day would result in liquidated damages of \$87,000.

Moreover, the existence of a good faith defense is sufficient consideration for a settlement agreement even though the defense may not exist in law or fact.

A compromise is a settlement of a disputed claim by mutual concession to avoid a lawsuit. Compromise and settlement is a subcategory of the more inclusive term ‘accord and satisfaction’. It differs from the latter in that

any claim whether disputed, unliquidated or undisputed and liquidated may be discharged by an accord and satisfaction, but only a disputed or unliquidated claim may be the basis for a compromise. . . . A settlement is supported by sufficient consideration when there is a bona fide claim which is unliquidated, disputed or doubtful. Compromises are favored in the law. . . . Sufficient consideration to support a compromise and settlement may exist even though the defense or claim actually does not exist in law or fact since so rigorous a standard would discourage compromises.

*Harding v. Will*, 81 Wash.2d 132, 138, 500 P.2d 91, 96 (1972)(citations omitted)

(4) The Performance by Conner Rubin of the Settlement Agreement Extinguishes Big Construction's Claims.

Citing *Douglas Northwest v. O'Brien & Sons*, 64 Wn.App. 661, 828 P.12d 565 (1992), Big Construction argues, again without any evidentiary support, that there was no "meeting of the minds" that the performance by Conner Rubin of the Settlement Agreement would constitute full satisfaction of Big Construction's claims. In *Douglas Northwest*, the court held that

The elements of an accord and satisfaction are (1) a debtor tenders payment (2) on a disputed claim, (3) communicates that the payment is intended as full satisfaction of the disputed claim, and (4) the creditor accepts the payment.

*Douglas Northwest, Inc.*, *surpa*, at 685-686 The court held that Douglas Northwest could not establish the third element of an accord and satisfaction by merely tendering checks in an amount less than the creditor

demanded. The court found that the Douglas Northwest failed to clearly communicate that the checks were intended as full satisfaction of the creditor's claim.

The doctrine of accord and satisfaction normally is invoked by a debtor in a case where there is no written agreement between the debtor and creditor describing the consequence of the payment by a debtor of an amount less than the creditor demands. The doctrine accordingly requires acts and declarations by the debtor that clearly communicates to the creditor that the tendered payment constitutes payment in full of the creditor's claim. Moreover, protests by the creditor that he is owed more than the tendered amount does not vitiate the accord and satisfaction.

Where, however, a sum of money is tendered in satisfaction of the claim, and the tender is accompanied with such acts and declarations as amount to a condition that if the money is accepted it is accepted in satisfaction, and such that the party to whom it is offered is bound to understand therefrom that if he takes it he takes it subject to such condition, an acceptance of the money offered constitutes an accord and satisfaction. This is true although the creditor protests at the time that the amount paid is not all that is due, or that he does not accept it in full satisfaction of his claim.

*Ingram v. Sauset*, 121 Wash. 444, 446-447, 209 P. 699, 700 (1922)(emphasis added)

In the instant case, the evidence is overwhelming that the \$96,000 paid by Conner Rubin was paid in full satisfaction of all of Big

Construction's claims. Not only were there "acts and declarations" by Conner Rubin sufficient to satisfy the accord and satisfaction doctrine, there was a **written settlement agreement and release** executed by Big Construction expressly acknowledging the full satisfaction of its claim. Moreover, the protests by Kim that he was owed more than the payments promised by the settlement agreement are, as a matter of law, insufficient to void Big Construction's agreement.

Big Construction also argues without the support of any evidence that there was no "meeting of the minds" because the settlement agreement and release do not reflect the alleged promises by Conner Rubin to pay an additional \$150,000 and award two additional construction contracts. In addition to the lack of any evidence, the short answer to Big Construction's argument is that neither the settlement agreement nor the release which Big Construction signed was conditioned on such promises.

A settlement agreement and release are contracts subject to contract interpretation principles. *Del Rosario v. Del Rosario*, 116 Wn.App. 886, 891, 68 P.3d 1130 (2003). A court is not empowered to interpret unambiguous language, but rather must give it its ordinary meaning and should not read ambiguity into a contract where it can be reasonably avoided. *Martinez v. Miller Industries, Inc.*, 94 Wn.App. 935,

944, 974 P.2d 1261 (1999)

D. This Court Should Award Attorneys' Fees to Conner Rubin Pursuant to RAP 18.9(a).

Big Construction's appeal is frivolous, presents no debatable issues for review and was filed for the sole purpose of delay. Big Construction has asserted arguments which are simply not supported by the record or any applicable law and has made numerous arguments without any evidentiary support.

This Court should sanction Big Construction under RAP 18.9(a) and award Conner Rubin its attorneys' fees incurred in the defense of this appeal.

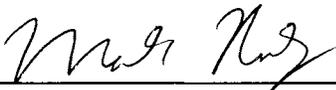
**IV. CONCLUSION**

This Court should affirm the trial court's summary judgment and award Conner Rubin its attorney's fees on appeal.

DATED this 15<sup>th</sup> day of January, 2010.

Respectfully submitted,

GARVEY SCHUBERT BARER

By   
Mark A. Rowley, WSBA #7555  
Attorneys for Respondent

# **APPENDIX 1**

## **Construction Contract, CP 32- 33**

EAJ



Remodel Estimate Contract  
3.14.07

Hideaway Restaurant Lounge & Card room  
14525 Aurora Ave N. Shoreline, Way.

8238 A St.  
Tacoma, Wa. 98408  
Danny's Cell 206.303.9899  
Office 253.507.8019  
Fax 253.807.8577

Description
<b>Demolition:</b> Existing roof of the card room area with the mechanical heavy tonnage needs removing. Plywood sub flooring @ 70% removal. Area specific removal costs contingent.
<b>Foundation:</b> Area facing Aurora will be replaced with 16" footing according to Blueprint specs. Adjoining basement stairwell foundation re enforced. Area specific reinforcement costs variable.
<b>Framing:</b> New Frame in of bathroom, bar, cage, count room, kitchen, basement office, sprinkler room & storage room.
<b>Electrical:</b> Adequate amperage to supply entire building. Low voltage wiring included.
<b>Plumbing:</b> Specs according to plan
<b>HVAC:</b> As needed for sq. footage requirement
<b>Drywall:</b> Hanging, taping, PVA & texture building's entirety.
<b>Paint:</b> Exterior and interior
<b>Siding:</b> Hardy Plank Lap siding entire excepting front. Front will be hardy cement board material.
<b>Finish Work:</b> Bar counter, cage counter and shelving, count room shelving

**BIG CONSTRUCTION**  
DANNY KIM, PRESIDENT  
8238 A ST.  
TACOMA, WA. 98408  
206.303.9899  
FAX 253.807.8577

REMODEL CONTRACT, EXCLUSIONS AND INSTALLMENT AGREEMENT

SUBMITTED TO:  
HIDEAWAY RESTAURANT LOUNGE & CARDROOM  
14525 AURORA AVE N.  
SHORELINE, WA. 98133

BIG CONSTRUCTION proposes to provide all construction remodel services to Hideaway Restaurant and Lounge & Card room. Upon project commencement, BIG CONSTRUCTION estimates an eight week completion date. This excludes any City of Shoreline requirements and/ or restrictions affecting project completion date. Including but not limited to permits, hook ups, scheduling delays and inspections.

Terms as follows: *IF schedule is not met by Big Con.  
There will be a penalty of Fee \$500.<sup>00</sup> a day*

BIG CONSTRUCTION HEREINAFTER CALLED THE CONTRACTOR to receive a \$50,000.00 Injection towards the approximate cost of \$450,000.00. Upon project commencement, first installment will be due at first week's end equal to \$100,000.00. Upon framing completion second installment will be due equal to \$100,000.00. At the completion of rough in of electrical, plumbing and HVAC third installment equal to \$100,000.00. Fourth installment equal to \$40,000.00 will be due upon completion of drywall, paint; final installment of \$60,000.00 due upon completion.

Respectfully submitted:

Danny Kim

Acceptance of Proposal

The above terms and conditions are satisfactory and are hereby accepted. BIG CONSTRUCTION is authorized to complete this contract as specified. Payment to be made as outlined.

DATE: 3/14/07  
SIGNATURE: [Signature]  
*Y. [Signature]*

# **APPENDIX 2**

## **Settlement Agreement, CP 71**

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10/4/07

Agreement Between Big Construction Company and Yasuko Connor, Danny Ruben - Hidaway Casino

Big Construction agrees that the balance owed to complete the construction at Hidaway Casino is \$96,000.00. Items to be included that need to be completed:

- 1. Roof finished
- 2. Bathrooms
- 3. Bar
- 4. Poker Podium and Cashier's Cage
- 5. All electrical
- 6. HVAC
- 7. Plumbing
- 8. Carpet
- 9. Parking lot resurfacing
- 10. Deck
- 11. Handicap ramp
- 12. Downstairs door
- 13. Railings around deck
- 14. Neon around the interior rooms

Items not included are as follows:

- 1. Extra electrical floor outlets
- 2. Parking lot lights

Big Construction also to connect kitchen appliances installed by King Lee.

On October 4<sup>th</sup>, 2007, Danny Ruben to pay Big Construction \$68,000.00.

Balance due \$28,000.00.

Big Construction to receive the final payment of \$28,000.00 when final occupancy permit is issued.

Estimated time of completion by the 15<sup>th</sup> of October 2007.

Danny Kim  
 Big Construction  
 10-4-07

Danny S. Kim  
 Danny S. Kim

Daniel Ruben 10-4-07  
 Danny Ruben

Yasuko Connor 10-4-07  
 Yasuko Connor

# **APPENDIX 3**

## **Lien Release, CP 73**

276

**PRE-LIEN RELEASE FORM  
FOR**

Contractor, sub contractor, or materialman

Company or Individual Name: Big Construction - Danny S. Kim  
Address: 12705 119th Ave. Ct. E.  
City, State, Zip Code: Puyallup WA. 98374  
Telephone & Fax Numbers: 206-303-9899 Fax: \_\_\_\_\_

Project Name: Hideaway Casino and Restaurant  
Brief Description: \_\_\_\_\_

**CONDITIONAL RELEASE**

The undersigned does hereby release all mechanic's liens, stop notice, equitable lien and labor and material rights against the above property regarding labor services, materials purchased, rented, acquired or furnished for use and used on above premises up to and including NOV. 1, 2007 (date).

This release is for the benefit of and may be relied upon by the owner, prime contractor, the lender and the principal and surety on all labor and material bonds.

This release is CONDITIONAL, and shall be effective only upon payment to the undersigned in the sum of \$ 68,000.00 If the payment is by check, the release is effective only when the check is paid by the bank upon which it is drawn.

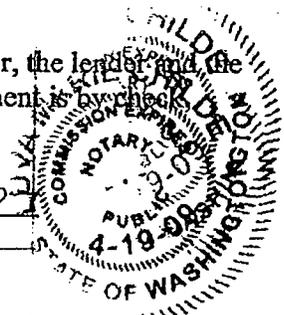
COMPANY / INDIVIDUAL NAME: Big Construction DATE: 10-4-07  
BY: [Signature] PRINT NAME: Danny S. Kim  
(Owner/Agent)

**FULL RELEASE**

The undersigned has been paid in FULL for all labor, subcontract work, equipment and materials supplied to the above described project, and hereby releases all mechanic's liens, stop notice, equitable lien and labor and material bond rights against the project for all materials, supplies, labor, services, etc., purchased, acquired or furnished by or for us and used on the above premises, up to and including NOV. 1, 2007 (date) in the amount of \$ 510,000.00

This release is for the benefit of and may be relied upon by the owner, prime contractor, the lender and the principal and surety on all labor and material bonds posted for the project. If the payment is by check, this release is effective only when the check is paid by the bank by which it is drawn.

COMPANY / INDIVIDUAL NAME: Big Construction DATE: 10-4-07  
BY: [Signature] PRINT NAME: Danny S. Kim  
(Owner/Agent)



State of Washington Edmonds, Sworn and subscribed before me on this OCT 4 day, 2007.  
County of Snohomish, Notary Public: [Signature]  
My Commission expires: 4-19-09