

COURT OF APPEALS
DIVISION II

09 MAY 11 PM 12:36

STATE OF WASHINGTON
BY 

DEPUTY

NO. 38637-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PENNEBAKER CONSTRUCTION SERVICES, INC., a Washington corporation

Appellant

v.

PHIL NOTHSTEIN, an individual

Respondent

BRIEF OF RESPONDENT

Douglas J. Kaukl WSBA #4718
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I. INTRODUCTION

Phil Nothstein, a prospective home owner, bought a kit home and hired Pennebaker, a general contractor, to put it together on Nothstein's lot near Graham. At the time Pennebaker regarded the job as complete, a dispute arose because Nothstein believed that certain construction work was either incomplete or inadequately performed. Nothstein withheld final payment due to Pennebaker under the contract; Pennebaker filed a lien. The parties participated in a mediation of the dispute. At the conclusion of the mediation, the parties signed a settlement agreement which incorporated a "punch list," describing certain additional work that Pennebaker agreed to perform and additionally providing for payment of the withheld balance by Nothstein upon completion of the punch list. Unfortunately, the settlement agreement failed to create a mechanism whereby further disputes that might arise during performance of the agreed additional work could be resolved and contained incomplete or ambiguous descriptions of the specific work to be performed by Pennebaker.

Pennebaker performed some but not all of the settlement's punch list items but promised Nothstein that the remaining work would be timely performed if the remaining payment were made. Alternatively, Pennebaker threatened a lawsuit. Induced by the promise of performance, and to avoid a lawsuit, Nothstein tendered payment. Pennebaker did not perform

all of the promised punch list items, leaving widespread interior trim defects and an exterior siding appearance that required painting the entire home. Nothstein filed this action claiming a breach of the settlement agreement.

The appellant has improperly characterized it's the issues pertaining thereto its assignments of error. If they were properly framed, the appellant's appeal devolves to two issues (the error assigned to the trial court's resolution of the siding question having been waived by appellant by failure to brief it). The first is a challenge to the sufficiency of evidence to support several findings of fact relating to the claimed defense of accord and satisfaction; however, not only has the appellant failed to directly assign error to any finding of fact, the relevant findings abundantly supported by evidence in the record. The other component of this appellant's argument goes to the methodology by which the trial court found Nothstein to be the prevailing party and on that basis awarded attorney's fees.

II. RESPONSE TO ASSIGNMENTS OF ERROR BY APPELLANT

The appellant has improperly characterized the issues pertaining to the assignments of error it alleges. If properly characterized, the appellant's assignments of error and issues would be as follows:

Issues Pertaining to Assignments of Error

A dispute arising under a construction contract was settled by the contractor agreeing to perform certain additional or corrective work set forth on a punch list, and the owner agreeing to thereafter pay an agreed sum “provided punch list items complete.” If despite his dissatisfaction with the contractor’s performance of the additional work, the owner is induced to pay the agreed amount by the contractor’s promise to rectify the deficiencies, and to avoid threatened litigation, is the owner barred by the doctrine of accord and satisfaction from later bringing an action for damages due to the contractor’s failure to perform the additional or corrective work? (Assignments of Error 1, 2)

Does the record contain sufficient evidence to support the trial court’s Finding of Fact 5(a) which provides: “[H]ardi-Plank appearance, particularly on the North side, is not good indicating that the caulking that was done pursuant to the punchlist was somehow defective in that the seams are evident and there has been a bleaching- or leaching-out from the ends of the Hardi-Plank boards. The resulting appearance around the whole house is unacceptable and below minimum acceptable industry standards. The reasonable cost to correct this by repainting or restaining is \$1,900.” (Assignment of Error 3)

In an action for breach of contract action by a home owner against a general contractor alleging numerous incomplete or improperly performed “punch list” items, is a trial court justified in concluding that the homeowner is the prevailing party if the court awards him \$3,000 in damages, finding that the entire exterior of the home must be repainted due to construction work that was below acceptable standards and that the interior trim work has pervasive examples of unacceptable workmanship, but declines to enter monetary awards for other claimed deficiencies? (Assignment of Error 4)

III. STATEMENT OF THE CASE

Phil Nothstein, the plaintiff below, is a homeowner in Pierce County. This action was commenced September 30, 2005, in a complaint alleging damages for breach of a settlement agreement on the part of Pennebaker¹ (Ex. 2-1).

The action alleged that Nothstein purchased a “kit” or prefabricated home and contracted with Pennebaker, a general contractor, to erect it on his lot near Graham. At the conclusion of construction, Nothstein withheld over \$40,000 of the final billings from Pennebaker on the grounds that some of the work was either incomplete or inadequately performed. Pennebaker then filed a claim of lien. (Ex. 2-1; App. 1)

¹ Defendant’s surety was also named as a defendant but was dismissed before trial.

The parties, accompanied by their respective counsel, mediated the dispute on September 30, 2004, before a professional mediator. A settlement was reached and reduced to writing and signed by the parties and their attorneys (Ex. 1-A²; App. 5-13). Insofar as the terms thereof are relevant to this appeal, the settlement provided that:

- Pennebaker would complete an 8-page punch list, which was attached to the settlement agreement, within two weeks from the settlement date.
- Nothstein would pay \$28,000 within 30 days of the settlement date “provided punchlist items complete.”
- A manufacturer’s representative of Hardi-Plank, a brand of siding installed on the building, would examine the installation and make repair recommendations, if any, which Pennebaker would accomplish. The inspection would be in the presence of Nothstein and Pennebaker.
- The settlement agreement would be enforceable in the Pierce County Superior Court, and the prevailing party in any such action would be entitled to recover reasonable attorney’s fees.

When Pennebaker failed to complete the punch list items to his satisfaction, Nothstein contacted Pennebaker to complain; he also instructed his attorney to contact Pennebaker’s counsel to attempt to resolve the matter. (RP McMahon P. 10) Finally, Nothstein prepared a letter to Pennebaker’s lawyer detailing the punch list items that remained to be

² Virtually all of the trial exhibits for both plaintiff and defendant were included in notebooks submitted by each party and were all admitted by stipulation. (RP Testimony of Jacqueline McMahon, Page 5)

done and transmitting a check for \$25,000, with specific instructions that the check not be negotiated until the remaining punch list items were completed. (RP, Nothstein P. 20; Ex. 2-8)

Pennebaker's counsel forwarded a letter addressed both to Nothstein and to his attorney dated November 5, 2004, acknowledging receipt of Nothstein's \$25,000 check, asserting that all of the punch list items had either been completed or were impracticable for one reason or another, or didn't need to be addressed in the first place; the letter promised a lawsuit unless the full \$28,000 were paid in a week. (Ex. 2-9)

Nothstein received his copy of the letter on November 8, a Friday. (RP Nothstein, P. 20) On Monday, November 8, Nothstein placed four calls to Pennebaker's attorney, failing to reach him. (RP Nothstein, P. 20) He then called Pennebaker directly and, as shown by his telephone bill (Ex. 1-E) spoke with him for 16 minutes. (RP Nothstein, P. 21)

During the conversation, Pennebaker agreed to complete all of the punch list items by the end of the week or the first part of the next week. (RP Nothstein, P. 22) And based on these representations, Nothstein agreed to send the remaining \$3,000 and did so within the hour, at the same time depositing sufficient funds into his account to cover both checks totaling \$28,000. (RP Nothstein, 22-23) Pennebaker asked Nothstein to send the check to his attorney. (RP Nothstein, P. 23-24)

Nothstein then called his attorney, Jacqueline McMahon, to advise her that he and Pennebaker had resolved the matter, Pennebaker had agreed to complete the punch list, and that he had sent the check to Pennebaker's lawyer; because of this resolution, Nothstein authorized McMahon to communicate his consent that the checks be negotiated (RP Nothstein, P. 31) but only under the express condition that Pennebaker did intend to return to the home to complete the punchlist items (RP McMahon, P. 13).

Sometime during the period November 8-10, McMahon spoke by telephone with Pennebaker's lawyer; she expressed her client's continuing dissatisfaction with the incomplete punchlist and that this was the reason the \$25,000 check had been submitted with instructions that it not be cashed and also why the \$3,000 had not been tendered. (RP, McMahon P. 14) Pennebaker's lawyer responded that he would contact his client to make sure the complaints were dealt with (RP McMahon, P. 14).

McMahon left a voicemail message for Pennebaker's lawyer around November 8 to the effect that the checks could be cashed only on condition Pennebaker intended to complete the punchlist items. (RP McMahon, Pp. 34,) Pennebaker's counsel sent McMahon an email on November 10 advising of receipt of the second check and requesting authorization to negotiate them. (Ex. 1-G) McMahon responded with an email the same day (Ex. 1-H) stating simply: "Thank you for your email.

I was informed by my client that you are to cash the checks. With this said, the matter should be concluded. Please let me know if you have any questions or concerns.”

Asked why Nothstein paid the money if he was unhappy with the quality and extent of Pennebaker’s performance of the settlement agreement, McMahan testified:

Because he was afraid or concerned that [Pennebaker’s lawyer] would file a lawsuit against him on November 12th, as he had threatened in his November 5th letter, and also because he had believed—and so had I believed—that the verbal assurances that Mr. Pennebaker would indeed come to the property and complete the items in the punch list within a week when, in fact, Mr. Pennebaker never showed up again at my client’s house.

(RP McMahan, P. 17-18)

At the conclusion of a bench trial before the Hon. Robert H. Peterson, serving as Judge *pro tempore*, the trial court found that the exterior siding’s installation was below acceptable standards and required repainting, assessing damages of \$1,900, that there was pervasive interior trim defects that overall were below minimum acceptable standards, assessing \$1,100 damages (Finding of Fact 5, CP 39-43). The court also entered judgment for septic tank repairs that defendant stipulated to (RP Pennebaker 12/4/2007, Pp. 99-101). The court declined to enter relief in favor of plaintiff for other items on the punchlist, finding that they had either

already been completed or were *de minimus*. (Finding of Fact 6, CP 39-43).

In concluding that the plaintiff was the prevailing party, the court found that the case essentially involved a single issue, whether defendant had breached the settlement agreement. Because the defendant manifestly did not perform two important components of the settlement agreement (involving widespread instances of unacceptable interior trim installation and siding installation so below acceptable standards that the structure had to be repainted), the court found that it would not be appropriate to apply a proportionality approach comparing which party prevailed on each issue in order to determine who the prevailing party was. (Finding of Fact 8, CP 39-43)

IV. SUMMARY OF ARGUMENT

Unchallenged findings abundantly support the trial court's rejection of the defense of accord and satisfaction. The appellant has waived its assignment of error related to the trial court's resolution of the siding issue because the assignment was not briefed. Similarly, the appellant has waived any error related to assessment of attorney's fees because appellant has failed to provide any reference to the record to allow this Court to conduct a meaningful review. Moreover, the unchallenged trial court's findings to the effect that assessment of attorney's fees utilizing a propor-

tionality approach would be appropriate support its determination that Nothstein was the prevailing party.

Respondent has elected to abandon his cross appeal for failure of the trial court to assess all of the respondent's fees incurred despite finding them reasonable. Respondent does, however, seek an award of fees on appeal if he is deemed to be the prevailing party.

V. ARGUMENT

1. The Trial Court Correctly Rejected the Defense of Accord and Satisfaction.

With respect to the checks tendered by Nothstein, appellant's brief states, completely without reference to the record: "*Before depositing the checks, counsel for Pennebaker confirmed that the matter was resolved. Counsel for Nothstein acknowledged that the matter was resolved and authorized Pennebaker to cash the checks.*" As was explained above in the statement of the case, considerably more interaction between counsel and the parties took place in connection with the tender of these checks, all of which conclusively show that the appellant's characterization of the events surrounding tender of the checks is utterly unsupported by the record, including threats on the part of Pennebaker to commence a lawsuit, and un rebutted testimony by Nothstein that during a 16-minute telephone with Pennebaker the defendant agreed unequivocally to complete the punch list.

An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. *Plywood Marketing Assoc., v. Astoria Plywood Corp.* 16 Wn. App. 566, 558 P.2d 283 (1976). The elements of an accord and satisfaction are (1) a bona fide dispute, (2) an agreement to settle that dispute, and (3) performance of the agreement. *Housing Auth. v. Northeast Lake Wash. Sewer & Water Dist.*, 56 Wn. App. 589, 784 P.2d 1284 (1990), review denied, 115 Wn.2d 1004 (1990). The burden of proof was Pennebaker's as the party asserting the defense. *Gleason v. Metro. Mortgage Co.*, 15 Wn. App. 481, 498, 551 P.2d 147 (1976).

There is no bright line rule for purposes of establishment of accord and satisfaction. Whether there has been an accord and satisfaction is generally a mixed question of law and fact. Where the facts are not in controversy, it is purely a question of law. *Kibler v. Frank L. Garrett & Sons*, 73 Wn.2d 523, 525, 439 P.2d 416 (1968).

If the evidence showed, without more as suggested by appellant's truncated description of events, that a settlement agreement was reached between the parties, Pennebaker did some work, and that the Plaintiff forwarded a check in the amount of \$28,000.00 to the Defendant, which was cashed after the lawyers "confirmed" that the matter was resolved, it would be one thing. However, the significant additional circumstances

surrounding these transactions reveal that the Nothstein's tender of the checks was not intended to be an acknowledgement that Pennebaker had fully performed its obligations under the settlement agreement. Indeed, Nothstein's letter transmitting the first check expressly instructed that it *not* be negotiated until all the items on the punchlist were completed. Moreover, the extent of the incomplete items claimed by Nothstein to be incomplete on the punch list collectively supports the conclusion that Nothstein, having manifestly not received the benefit of the bargain due him under the settlement agreement, would not have relinquished his claim for performance thereof.

Appellant has not challenged Finding of Fact 4 wherein the trial court determined that Pennebaker, to induce release of the funds, promised Nothstein that the punch list items, and particularly the Hardi-Plank siding issues, would be completed, and based on those assurances Nothstein authorized release of the funds. These findings therefore should be considered verities on appeal. *Nunez v. American Bldg. Maintenance Co.*, 144 Wash. App. 345, 190 P.3rd 56 (2008) Plainly, the third element of an accord and satisfaction, actual performance of the agreement, had not occurred at the time the funds were released. *Plywood Marketing, supra.*

2. **Appellant has Waived Its Assignment of Error #3 by Failing to Brief.**

In its Assignment of Error #3, appellant claims error in the trial court's finding that the home's siding was defective when the settlement agreement required this determination to be made by the product's manufacturer. However, having asserted the Assignment of Error, appellant fails to address the assignment in its brief. The assignment is therefore waived. *Cowiche County Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1982); *Smith v. King*, 106 Wn.2d 443, 722 P.2d 796 (1986).

3. **Appellant Has Failed to Provide Citation to the Record in Support of Its Claim of Error Based on the Trial Court's Award of Attorney's Fees to Nothstein.**

The trial court awarded Nothstein \$3,000 in attorney's fees, rejecting an argument by Pennebaker that the fees assessed should be proportional because Pennebaker successfully defended against most of the claims brought. (Finding of Fact 8, CP 39-43) Appellant assigns error to this, contending that the trial court should have applied the "proportionality" approach, that assesses the relative success of each party where no party fully prevails, and thereby found Pennebaker to have prevailed be-

cause it successfully defended numerically more claims than Nothstein won.

Unfortunately, in its briefing of the claimed error appellant has utterly failed to provide to the Court of Appeals any reference in the record that supports its bare claim that it prevailed on 93% of the claims presented. (Brief of Appellant, P. 11) In fact, the brief is devoid of any reference to the record germane to the proportionality issue. As a general rule, appellate courts will not consider an assignment of error that is not supported by argument which includes reference to the record. *Cowiche Canyon, infra*. Without a meaningful reference to the record, this Court is unable to review this claim of error and should decline to do so. This failure is doubly egregious because this Court rejected the appellant's first version of its opening brief because it failed to provide appropriate references to the record.

In any event, appellant has not assigned error to the trial court's Finding of Fact 8 (CP 39-43 and Appendix), which first determines that the cause of action presented essentially the single issue of whether Pennebaker had breached the settlement agreement and, second, determined that Pennebaker plainly did breach it in two important regards, making it inappropriate for the Court to apply a proportionality approach that would deny Nothstein as the prevailing party. Without an assignment

of error, the finding is a verity on appeal. *Cowiche, supra*. The unchallenged finding, therefore, implies that even if appellant preserved its grounds for appeal by appropriate citation to the record, determination of the prevailing party utilizing proportionality would still favor Nothstein as the prevailing party.

VI. REQUEST FOR ATTORNEY'S FEES ON APPEAL

Pursuant to RAP 18.1(b), respondent requests an award of attorney's fees incurred on appeal should he be deemed the prevailing party.

The general rule in Washington is that parties may not recover attorney fees except under a statute, contractual obligation, or some well-recognized principle of equity. *N. Pac. Plywood, Inc. v. Access Rd. Builders, Inc.* 29 Wash. App. 228, 628 P.2d 482 (1981).

The settlement agreement (Ex 2-6), as conceded by the appellant, is a contract (Brief of Appellant, P.7). Paragraph 6 of the settlement agreement provides: "Prevailing party in litigation to enforce this settlement agreement is entitled to reasonable attorney's fees." RCW 4.84.330 provides, in relevant part:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether

he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

A contractual provision for an award of attorney fees at trial supports an award of attorney fees on appeal." *Reeves v. McClain*, 56 Wash. App. 301, 783 P.2d 606 (1989).

VII. CONCLUSION

This Court should affirm the judgment.

RESPECTFULLY SUBMITTED this 11th day of
May, 2009.



Douglas J. Kaukl WSBA 4718
Attorney for Respondent Phil Nothstein

CERTIFICATE OF SERVICE

I hereby certify that on this date I deposited a true and correct copy of RESPONDENT'S BRIEF in the first class United States mail, postage prepaid, and addressed to counsel of record for appellant. I further certify that on this date caused a true and correct copy of RESPONDENT'S BRIEF to be transmitted by telefacsimile to counsel of record for appellant.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Puyallup, Washington, this 11th day of May, 2009.



Douglas J. Kaukl WSBA 4718
Attorney for Respondent Phil Nothstein

THE
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY  IDENTITY

APPENDIX

1 the benefit of plaintiff. Due to the facts alleged herein, all defendants herein are subject to the
2 jurisdiction of this Court.

3
4 III

5 In April, 2003, defendant PENNEBAKER, contracted in writing with plaintiff to build a
6 daylight basement and erect and complete a log home package purchased by Vice Roy, a
7 Canadian company, of a home for plaintiff located at 10816 - 250TH St. E, Graham, Pierce
8 County, Washington, according to certain plans and blueprints agreed upon by the parties. The
9 amount to be paid defendants for such materials and work, subject to the above conditions, was
10 approximately \$120,000.00 plus sales tax. However, with the addition of a daylight basement,
11 PENNEBAKER charged NOTHSTEIN \$152,455.64 for the completed assembly of the home.

12 On July 2, 2004, PENNEBAKER filed a claim of lien in the amount of \$44,079.92 on
13 NOTHSTEIN'S project. Plaintiff refused to pay the lien amount based on the defendant's failure
14 to complete the terms of the contract which created additional unnecessary costs to Plaintiff. On
15 September 30, 2004 the parties participated in non-binding arbitration. The parties agreed that
16 NOTHSTEIN would pay PENNEBAKER the sum of \$28,000.00 in exchange for
17 PENNEBAKER'S agreement to perform the items listed on the punch list as well as perform
18 those items specifically identified in the non-binding arbitration agreement, (attached hereto as
19 Exhibit "A", and by this reference incorporated herein).

20
21 Plaintiff seeks to enforce the terms of the non-binding arbitration agreement.

22
23
24
25
Complaint - 2

Jacqueline McMahon

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(360) 893-2527 - Phone
(360) 893-4073 - Fax

IV

1
2 Defendant PENNEBAKER has on file with the Washington State Department
3 of Labor & Industries a performance and labor and materials bond No. SG0984 in the
4 amount of \$12,000.00, with defendant CBIC as surety.

V

5
6 Plaintiff has faithfully performed all terms, covenants and conditions of the arbitration
7 agreement dated September 30, 2004 and all other agreements, if any, to be performed.
8

VII

9
10 Defendant Pennebaker Construction Services, Inc. has failed to perform its part of the
11 arbitration agreement dated September 30, 2004 and other agreements, if any, in the following
12 particulars:

13 A. The residence remains uncompleted in several respects, including, but not limited
14 to The defendant failed to complete the punch list within two weeks and even today, many of the
15 items listed on the punch list remain uncompleted.

16 B. The Hardy Plank issue has not been resolved and remains to be completed.

17 C. Defendants' construction work has not been performed in a workmanlike manner,
18 requiring plaintiffs to contract with third parties to repair unsatisfactory and faulty work.
19

VIII

20
21 Subsequent to the aforesaid breaches by defendants, the plaintiff has continued to suffer
22 additional damages for work which remains uncompleted on the residence. Said damages total the
23 sum of approximately \$6,000.00.
24

25 *Complaint - 3*

Jacqueline McMahon

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IX

That as a direct and proximate result of defendants' breaches as aforesaid, plaintiffs has suffered damages as follows:

A. The reasonable costs of completion of the residence in the approximate sum of \$6,000.00

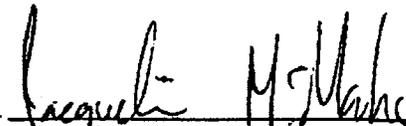
B. Mental distress, anguish, and time expended in assuming supervision of construction.

C. Attorney's fees and costs incurred as a result of defendants willful breach of the binding arbitration agreement.

WHEREFORE, plaintiff prays for judgment against the defendants as follows:

1. For judgment against the defendants in an amount to be proved at trial;
2. For judgment against defendants on Bond No. SG0984, in an amount not to exceed \$12,000.00;
3. For attorney's fees and costs;
5. For such other and further relief as to the court may seem just proper.

DATED: September 27, 2005.



 Jacqueline McMahon, WSBA #19321
 Attorney for Plaintiff

9/30/04
Aur T W F

- 1.) Pennebaker to complete punchlist per attached 8 page ~~Executive Order~~ ^{Order} within 2 weeks from settlement
- 2.) Nothstein to pay Pennebaker \$28,000.00 within 30 days from settlement provided punchlist items complete.
- 3.) Pennebaker to provide release of lien within 1 week. ^{to Athan Transmountain} Nothstein to sign promissory note & DOT securing amount owed Pennebaker (to be held in trust by ~~transmountain~~ ^{Athan} ~~for Nothstein~~ ^{counsel}). The prom. note & DOT will be destroyed upon satisfaction of payment.
- 4.) Address Hardy Plank per Manufactures Dept's recommendations & Make report if necessary. Parties to be present e site when Manuf. rep. looks at house.
- 5.) Binding settlement agreement enforceable in Pierce County Superior Court.
- 6.) Prevailing party in litigation to enforce this settlement agreement & entitled to reasonable attorney's fees.

William R. Pennebaker
 William R. Pennebaker 9/30/04

APPENDIX 5

Jacqueline McPherson
 Jacqueline McPherson WSOA 19321
Phil Hottel

- Hardi Plank not caulked at any seams. It also has nail heads exposed, not covered, and open missdrilled holes not filled and repaired. This will cause substantial water damage

caulk seams
nail heads

will skip
if go w/ offer
of settlement

- Decks poorly constructed especially the railing of the decking, lending itself to premature rot.

- Exterior window trim has numerous gaps where water can enter. Paint on trim appears to be thin, not long lasting.

will walk

Phil to parcel
Cover + Bill
installs

- Foam insulation on foundation exposed and unprotected. It already had numerous gouges and one melted spot.

- Wires hanging out of Hardi Plank on north elevation leaving a water entry spot.

will walk

omit

- Conduit coming out of ground, north elevation, covered only with duct tape.

- Hardi Plank was poorly fitted over flashing creating avenue for water.

will caulk

Economic Loss

- Bathrooms have areas of poor caulking where water can seep. *Will caulk*
- Tub surrounds have gaps in the paint and caulking around top and one side, may give water access. *Will caulk*
- One shower head wall cover not secure, falls down, leaving water avenue. *Will secure*
- Water lines not flushed out leaving grit and debris in that is harmful to new appliances - dishwasher, wash machine and refrigerator. *omit*
- One slider door is missing it's lock leaving the home unprotected. A block of wood is in place now, albeit unsightly. *Offer to replace or supply new handle*

3

Safety Issues

7 L - The threshold from basement slider door to concrete pad very high and a trip hazard.

will caulk - Wires hanging out of Hardi Plank.

will attach - One exterior flood light falling out.

will attach - hand rail to basement loose at both ends.

will tighten - Insulation around large ceiling pipe exposed with air gaps in the finished area of basement. Air quality problem.

omit - Bracket at base of one post in basement exposed and a tripping hazard.

will place cover - Electrical or other device has cover missing (?) wires are exposed in basement stairwell niche.

- Wire's sticking out of wall in master bedroom.

omit - Unsafe water when the pipes weren't flushed.

age 4

Poor Workmanship

will
re-mail
caulk

- Fascia boards warping leaving large gaps.

Re-mail
warping board
all place
bolt

- Decks have improper nailing, fastener (1 bolt), gaps in rail and the 1" x 10" front board warping outward.

will
caulk

- Gaps at corners of exterior trim.

will
connect

- One downspout was poorly connected and crimped.

will
adjust

- Downstair slider door latch hard to use.

will
adjust

- Several interior doors difficult to open, close, or they rub the carpet. This includes closet doors.

will
repair

- Drywall chipped off of corners, not repaired.

will
repair

- Numerous small holes in drywall, especially around outlet and switch covers not repaired. Others that were repaired are very apparent and unsightly.

will
caulk

- Gaps in knotty pine trim throughout the house.

age 5

Poor Workmanship

will
puddy - Some nail heads not puttied on interior trim.

will
caulk - Sloppy caulking around sinks and back splashes.

will inspect
address - Pergo not secure in one area.

will inspect
address - Pergo not flush and nicely trimmed in breakfast nook.

will
repair - Outlet in family room misplaced and a makeshift trim job was done. Very unsightly.

replace trim
w/ Sliver
Trim - Slider door in family room not trimmed in knotty pine, but in window trim unlike rest of home.

will
caulk - French door trim has gap at top.

will
trim - Cabinetry has two visible bottoms not trimmed like others.

will
trim
out - Copper pipe in basement game room exposed and not properly trimmed out.

age 6

Poor Workmanship

Will trim out - Interior threshold of basement slider door not trimmed out.

Will install screw - Missing screw in switch plate

Will replace light bulbs - Two ceiling lights in basement quit working.

Will replace outlet - Cosmetic paint run and discolored outlet in master bedroom.

Will install knotty pine - Missing piece of Knotty pine trim at bottom of main stairwell.

Not Completed Items (no previously mentions)

see pg 1

- no preservative or stain on deck → now it is weathered & unsightly.

will be

- no door stops installed anywhere.

Phil will purchase & Bill install

- no towel holders, shower rods or mirrors installed in bathrooms.

- closet shelves not painted, still in marred & nicked primer.

will install new locks supplied by burner

- door locks in bathrooms (2 out of 3) broken.

will finish

- canned light in main floor hallway not finished, still has red safety plug & no bulb.

bulb

- no bulb in canned light in basement stairwell

?

- no closet light in one walk in closet.

Final Cleaning

page 8

will
brush off

No cleaning at all of the Hardi Plank.
Very dirty and lots of mud splatters.

Window's poorly washed and need redone.

omit

- No cabinets or vanities were wiped out, lots of dust and saw dust.

Remove stickers

Protective stickers not removed from door striker plates and several light fixtures.

check for dust within house + clean if necessary

- Drywall dust still in many parts of house. Floor poorly cleaned and vinyl flooring not mopped at all.

will clean

- Slider doors not cleaned still have dirt and taping marks on them.