

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**SUPPLEMENTARY RESPONDING MOTION RECORD  
(re motion of Sreen Painting Ltd.)  
(returnable October 5, 2016)**

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**TO: THE SERVICE LIST**

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# TAB 1

FOR: COURT

144 PARK LTD

Court File No.: CV15-10843-00CL

Cross-Examination Date: August 26, 2016

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Cross-Examination of: HAYSAM FATTAH

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*Nimigan Mihailovich Reporting Inc.*  
*Hamilton, Ontario - 905-522-1653 - nmreporting.ca*

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\* \* \* \* \*

This is the Cross-Examination of **HAYSAM FATTAH** on his  
affidavits sworn on the 26th day of April, 2016 and on the  
16th day of June, 2016 taken upon oath at the office of  
Nimigan Mihailovich Reporting Inc., 1 James Street South,  
Suite 701, Hamilton, Ontario, L8P 4R5 on Friday, the 26th  
day of August, 2016.

\* \* \* \* \*

A P P E A R A N C E S:

- DEREK A. SCHMUCK - For Plaintiff,  
Simpson Wigle Law Sereen Painting
- SAM P. RAPPOS - For Collins Barrow Toronto Ltd.,  
Chaitons LLP acting as Court Appointed Trustee
- CURTIS D. TOMLINSON - Observer

UNDERTAKINGS

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\* \* \* \* \*

NOTE: The above-noted indices are provided for ease of reference only and are not to be relied upon in any manner whatsoever.

1 --- UPON COMMENCING AT 9:55 a.m.

2 HAYSAM FATTAH,

3 having duly affirmed,

4 was cross-examined and testified as follows:

5 BY MR. RAPPOS:

6 1 Q. Good morning.

7 A. Good morning.

8 2 Q. Can you state your name for the record.

9 A. Haysam Fattah.

10 3 Q. Can you spell it for the record.

11 A. H-A-Y-S-A-M. Last name is F-A-T-T-A-H.

12 4 Q. And, Mr. Fattah, have you been sworn in  
13 or you'd been affirmed?

14 A. Yes.

15 5 Q. Okay. So you understand that you're  
16 being cross-examined on two affidavits you swore on  
17 behalf of Sereen Painting, one dated April 26, 2016 and  
18 the other, June 16, 2016?

19 A. Yes.

20 6 Q. Okay. In your April 26th affidavit you  
21 state you're the owner of Sereen Painting; is that  
22 correct?

23 A. Yes.

24 7 Q. So are you the shareholder, like you  
25 own the company?



1 A. I own the company.

2 8 Q. Do you own it by yourself or --

3 A. Yes.

4 9 Q. Yes, okay.

5 A. Actually, me and my wife.

6 10 Q. Wife. And what's her name?

7 A. Faten.

8 11 Q. Okay. Now, are you also a director of

9 the company?

10 A. Yes.

11 12 Q. Along with Faten or just on your own?

12 A. No, on my own. Like I'm the director,

13 yes.

14 13 Q. Okay. And so the company is Sereen

15 Painting Limited, correct?

16 A. Yes.

17 14 Q. Okay, and what type of work does Sereen

18 do?

19 A. Painting. Mostly painting. We do

20 commercial, we do residential. All the painting. And

21 sometimes the client, they ask for taping, like

22 plastering stuff, we do for them.

23 15 Q. Okay. And in your June 16th affidavit

24 you talk about what type of duties you have for the

25 company, so what would your role be with Sereen on a

1 day-to-day basis? Are you actually doing the painting  
2 labour work or are you just more of an owner who oversees  
3 employees?

4 A. It's half half. Sometimes if we busy,  
5 I jump, I would be on my tools, like in my hand.

6 16 Q. Okay.

7 A. Yes.

8 17 Q. So you'd be on site --

9 A. Yes.

10 18 Q. -- actually taking part in the work?

11 A. Yes.

12 19 Q. Okay. And how many employees does the  
13 company have?

14 A. Four. Four, five.

15 20 Q. Four to five?

16 A. Depends if we get busy and I get more.

17 21 Q. Okay. And how long have those four or  
18 five employees been with Sereen?

19 A. Over like five years. Four or five  
20 years.

21 22 Q. So the people who are employees now  
22 would have been employees two years ago when the work was  
23 done on 144 Park?

24 A. They were the same, yes, some, some was  
25 the same.

1 23 Q. Okay.

2 A. Yeah.

3 24 Q. So the people who did work, are they  
4 still with you, of the people who did the work on  
5 144 Park, do you remember?

6 A. No, they're gone.

7 25 Q. Some of them are gone?

8 A. Two, they're gone out of the country,  
9 too.

10 26 Q. Okay. Now, you said Sereen provides  
11 painting services to commercial, is it to developments  
12 primarily or is it a mix of, like would Sereen do like if  
13 I needed my house painted, would you come do my house or  
14 is it more larger commercial developments?

15 A. Usually, yeah, commercial. Usually  
16 houses we do like for favor, like some friends or some of  
17 the owners of the comp -- like where we do working, yeah,  
18 if they ask me, we jump and do that for them.

19 27 Q. But mainly it's for like a commercial  
20 developer of a, like a condo?

21 A. Yes, condo and --

22 28 Q. Or like a housing development?

23 A. Big boxes like a Walmart, Home Depot,  
24 Canadian Tire, all those big stores.

25 29 Q. Okay. And, generally, how many

1 different jobs would Sereen be working on in a single  
2 time, would you have employees at multiple jobsites or is  
3 it more one jobsite to another jobsite to another  
4 jobsite? Is there a general kind of practice you use?

5 A. Sometimes, sometimes, yeah, it happened  
6 like we are part of this job, sometimes -- like what you  
7 said, yeah, we, sometimes we have multi places, so we  
8 will be all over. And sometimes we'll finish a project  
9 and we jump to the other one.

10 30 Q. Okay. Now when you and your employees  
11 are working on a project, how would you keep track of the  
12 hours completed or the work completed, is it usually like  
13 are there timesheets you'd fill out -- employees would  
14 fill out to say I was on this jobsite for "X" hours a day  
15 or how would, like what's your internal, for Sereen, the  
16 recordkeeping of jobsites?

17 A. Yeah, like when they do hourly rate,  
18 so, yeah, we put the time when they start and what time  
19 they finish. So it's eight hours a day, they work it.  
20 And sometimes if a job, we doing like I give them a  
21 piecework, so they do like, give you example, we're doing  
22 like a condo, so they will do -- a floor has like example  
23 ten unit, so we make a deal, so I let my guys they do it  
24 like a piecework.

25 31 Q. Right. But would you have -- would

1 Sereen then have a record, like as an example let's say  
2 yesterday one of your employees was painting a Walmart,  
3 would you have a record in your file that says John  
4 painted eight hours at Sereen -- sorry, at Walmart on  
5 August 25th?

6 A. Yeah, I put on my agenda, yeah,  
7 sometimes, yeah, I write them on my agenda, yes.

8 32 Q. So it's on more of an agenda, is there  
9 like a formal --

10 A. No.

11 33 Q. -- accounting system that you use?

12 A. No, it's just like agenda, like a book  
13 like this.

14 34 Q. So the actual --

15 A. Yeah.

16 35 Q. A handwritten agenda --

17 A. Yeah.

18 36 Q. -- you'd write down --

19 A. Yes.

20 37 Q. -- what employees work is done?

21 A. Yes. Yes.

22 38 Q. Okay.

23 MR. SCHMUCK: Yes, please let Sam  
24 finish his question before you answer.

25 THE DEPONENT: Oh, sure.

1 MR. SCHMUCK: Pause for a second  
2 between. Thanks.

3 THE DEPONENT: Sure.

4 BY MR. RAPPOS:

5 39 Q. So, Mr. Fattah, I'm going to go now  
6 more specifically to the condo project that we're here to  
7 discuss, which is the 144 Park project in Waterloo.

8 Now, in your affidavit you say that you  
9 were -- the contract was entered into in October of 2014;  
10 is that correct?

11 A. Yes.

12 40 Q. Okay. Now I'm going to show you, I  
13 just want to confirm at Exhibit A of your April 26th  
14 affidavit, there's a copy of a contract purchase order.  
15 On the second page, I just want to confirm, is that your  
16 signature on behalf of Sereen Painting?

17 A. Yes.

18 41 Q. So it's dated October 6th, 2014,  
19 correct?

20 A. Yes.

21 42 Q. Okay. And it says that the base  
22 contract is \$540,700, correct?

23 A. Yes.

24 43 Q. Okay. And now in this second page of  
25 the contract it says invoices are subject to ten percent

1 holdback, correct?

2 A. Yes.

3 44 Q. Okay. Now you said in your affidavit  
4 that you actually start -- Sereen actually started  
5 working before October. Could you give me some  
6 explanation how that worked, like the contract is dated  
7 October 6th, 2014 but you say you were there earlier and  
8 actually some of your invoices are dated --

9 A. Yes.

10 45 Q. -- in the summer of 2014.

11 A. Yes, yes, because they -- they have a  
12 company before us called -- it's called FN, FN Painting.  
13 They couldn't handle it, they don't know how to do the  
14 jobs and they were promising to get more people to do the  
15 job for the contractor and they couldn't handle it, so  
16 the contractor, he want me to take over. And actually  
17 firstly, he doesn't want me to take over, he want me to  
18 help, so I went in to help and but suddenly look like if  
19 you want me to continue the job. So that's what  
20 happened. They put that guy out and they could get me  
21 into this building to do the condos.

22 46 Q. Okay. Now, so the purchase order is  
23 between Sereen Painting and 144 Park, correct, is that --  
24 that's what it says, in your view?

25 A. Yes.

1 47 Q. Yeah. And your understanding is  
2 144 Park Limited was the owner of the project?

3 A. Yes.

4 48 Q. Okay. And then Sereen didn't use any  
5 other tradespeople or any subtrades to complete the work,  
6 it did the work itself?

7 A. Yes.

8 49 Q. Okay. So when Sereen was completing  
9 the work at 144 Park, who would have been, if you  
10 remember, the key contact people, who would you have been  
11 in contact with from 144 Park, the company or any people,  
12 employees of the Mady Group who own 144 Park, who would  
13 be -- were there certain people you were in contact with?

14 A. Sure. Yes.

15 50 Q. And who were they?

16 A. Carla, she was the project manager on  
17 that building. And Andre, Andre, he was her boss. His  
18 name, Andre Hanoman, I remember.

19 51 Q. Now, was there also, and I'll get to  
20 them later, but in some emails you attached to your  
21 affidavit, was there a company LCL? Does that ring a  
22 bell?

23 A. Yeah, LCL was -- they work with  
24 144 Park, so they are another company get involved for  
25 them, not for us, to help them to build the building.



1 Like they managed, for managing the building. So, yes,  
2 there was a guy, his name was... I forgot his name.

3 52 Q. Was it Carlos?

4 A. Carlos, Carlos, yes.

5 53 Q. It say in your emails from  
6 Carlos Cerrato.

7 A. Carlos, Carlos, yeah.

8 54 Q. Okay.

9 A. He was, yeah.

10 55 Q. And now would you have taken -- would  
11 LCL also give you in addition to Carla and Andre from  
12 144 Park, would anyone from LCL also tell you what  
13 painting needed to be done?

14 A. Yeah, sometimes they ask Carla or when  
15 they see me on site, they want me to do, and sometimes  
16 and they send the email and they said Carla, they spoke  
17 to Carla, so they want me to -- to see the job to be  
18 done.

19 56 Q. And generally when you or your  
20 employees were dealing with 144 Park or LCL, would you  
21 typically deal, speak in person or would it, like I know  
22 you've attached some emails, so I know there were some  
23 emails, but how would you typically communicate with  
24 either 144 Park or LCL? Was it more verbally; is that  
25 fair?

1 A. Most of it verbally on the phone, yeah.

2 57 Q. Okay. Now, would you then make a note  
3 or like how would you keep track of what they asked you  
4 to do in terms of if there was a verbal request?

5 A. No, I never leave a note because I'm  
6 always on site, so I take care of it when I was there.  
7 So they go floor by floor, so I know what they need to be  
8 done, so I go -- like all is in my head, like I have  
9 them.

10 58 Q. Okay. So but then there's, you  
11 wouldn't have any written documentation that says, again,  
12 August 25th Carla called, told me to do this. It was  
13 all, you kind of just kept it in your memory?

14 A. No.

15 59 Q. So no written documents?

16 A. No.

17 60 Q. Okay. Now in your June 16th affidavit  
18 you talk about the reason why Sereen stopped work at  
19 144 Park was for payment of non -- non-payment of  
20 invoices; is that correct?

21 A. On, sorry, June? June --

22 61 Q. In your affidavit from June 16th.

23 A. Yes. Yes.

24 62 Q. I just want to make clear that my  
25 understanding that --

1 MR. SCHMUCK: This one here.

2 BY MR. RAPPOS:

3 63 Q. -- Sereen stopped painting, stopped  
4 doing work at 144 Park because of non-payment. I think  
5 it's Paragraph 4. That's correct?

6 A. Yes. Yes.

7 64 Q. Okay. Okay, Mr. Fattah, I'm going to  
8 take you to, and I apologize, there's usually a reason  
9 why people become lawyers and that's because they're not  
10 good with numbers, but I'm going to speak to you about  
11 some of the numbers in your affidavit in the contract,  
12 and I'll try to be as clear as I can on what numbers I'm  
13 referring to.

14 So to start, I just wanted to confirm  
15 in your April affidavit, it's April 26th. You have that  
16 in front of you?

17 MR. SCHMUCK: This one.

18 THE DEPONENT: Okay.

19 BY MR. RAPPOS:

20 65 Q. You claim in Paragraph 4, so the top of  
21 Page 2, and you say it again the next paragraph, so the  
22 amount you say that Sereen supplied materials and  
23 services was totaling 747,490.55; is that correct?

24 A. Yes.

25 66 Q. Now, I just want to confirm because

1 that's the number that's reflected in that affidavit,  
2 I believe it's also reflected in your Statement of Claim,  
3 but I just want to -- in your July, sorry, June 26th  
4 affidavit you attach a chart as Exhibit A to your  
5 affidavit. I think your counsel has it in front of you.

6 A. Hmmm.

7 67 Q. With a number of the total invoices  
8 issued total \$747,130.55; do you see that?

9 A. Yes, I see it.

10 68 Q. So is that now the correct amount that  
11 was --

12 A. Yeah, that's the correct amount, yeah.

13 69 Q. Okay, so the amount that Sereen  
14 invoiced and supplied materials was \$747,130.55?

15 A. Yes.

16 70 Q. Correct, okay, thank you.

17 Okay, now I'm going to go back to that  
18 affidavit that we were looking at, it's the June --  
19 sorry, the April one, my apologies, I'm going to -- I'll  
20 do my best not to get confused.

21 So we've set down, confirmed how much  
22 you invoiced or Sereen invoiced. I want to refer to the  
23 amount that was paid. So in Paragraph 5 of your  
24 affidavit you state that 144 Park paid Sereen  
25 \$401,538.55; do you see that?

1 A. Yeah, I see it.

2 71 Q. Okay. Now, when we look to the chart  
3 in Exhibit A of your June 16th affidavit, it states that  
4 you were paid or Sereen was paid, sorry, \$446,047.70;  
5 do you see that?

6 A. Yeah, I see it.

7 72 Q. Okay, can you explain to me how you  
8 reached the \$401,538.55 number that was first put in your  
9 affidavit, like how did you calculate that number?  
10 Because it obviously then changed in your second  
11 affidavit, you accounted for I guess an additional --

12 A. Because I was -- I miss one of the  
13 invoice, so that's why we look at it after and I got it  
14 for Mr. Schmuck, so that's what happened.

15 73 Q. So you said the first lower number was  
16 because you missed including an invoice --

17 A. I missed, yes.

18 74 Q. -- that had been paid?

19 A. Yes.

20 75 Q. Okay. So it's Sereen's current  
21 position that it received \$446,047.70 in payment from  
22 144 Park, correct?

23 A. Yes.

24 76 Q. Okay. So because of the number change  
25 of how much you were paid, that would also then change

1 the amount that you're still owed by that difference of  
2 amount. So in Paragraph 5 of your -- of that affidavit,  
3 you say that you're still owed and you filed a lien for  
4 \$345,952, and that's reflected in the lien that you  
5 registered on title and I think it's also reflected in  
6 your Statement of Claim.

7 Now, in that chart on Exhibit A of your  
8 June affidavit it says that Sereen is now owed  
9 \$300,554.24; is that correct?

10 A. Yes.

11 77 Q. So that would be the current amount  
12 Sereen is still owed --

13 A. Yes.

14 78 Q. -- the 300,554.24?

15 A. Yes.

16 79 Q. Okay. Okay, as part of your April  
17 affidavit at Exhibit B, you provide copies of the  
18 invoices that Sereen issued to 144 Park, correct?

19 A. Yes.

20 80 Q. And these represent all -- these  
21 represent invoices with respect to all the work your  
22 company did for 144 Park?

23 A. Yes.

24 81 Q. Okay. So as I understand it, and I'll  
25 ask you to confirm, Sereen confirms that for

1 Invoices 69, 70, 72, 73, and 74 that it was repaid in  
2 full for those invoices, correct?

3 A. Yes.

4 82 Q. Okay. And then those invoices are what  
5 totals the 446,000 that you got paid, correct?

6 A. Yes.

7 83 Q. Okay. And now so that I can understand  
8 the different invoices, on your chart that's in front of  
9 you it says that Invoice 69 was for a PDI which I think  
10 is, is it post pre-delivery inspection I believe or...  
11 so the 69 was for a PDI, correct?

12 A. Yes.

13 84 Q. Okay, and then Invoices 70 and 74 and  
14 74-1 were with respect to the contract?

15 A. Yes.

16 85 Q. And all other invoices were for PDIs?

17 A. Yes.

18 86 Q. Okay. So you confirm that the invoices  
19 at 69, 70, 72, 73 and 74 were paid. How would you  
20 have -- like what was your practice or Sereen's practice,  
21 like how would you submit invoices to 144 Park? Would  
22 you -- for payment, like would you email them to them?  
23 Would you mail it? Fax it?

24 A. Fax it.

25 87 Q. Fax it, okay.

1 Now would you have in your records  
2 copies of the fax confirmations that would show that when  
3 you faxed all these invoices directly to 144 Park?

4 A. No.

5 88 Q. No, so you wouldn't keep a record to  
6 show that you faxed it over to them?

7 A. No.

8 89 Q. Okay. So just to confirm, so you have  
9 no written documentation that would show or support that  
10 these invoices were sent directly to 144 Park?

11 A. No.

12 90 Q. No, okay. But your evidence is that  
13 you faxed each of these invoices to 144 Park?

14 A. Yes.

15 91 Q. Okay. Okay, so I'm going to take you,  
16 Mr. Fattah, to the invoices that Sereen says remain  
17 unpaid, were never paid by 144 Park. And that are  
18 Invoices 74-1, 76, 77, 79, 80, 81, 82, 91, and 92, and  
19 you have copies of those in front of you, correct?

20 A. Hm'mmm.

21 92 Q. Okay.

22 A. Yes.

23 93 Q. So the first invoice I'm looking at is  
24 Invoice 74-1 which is dated September 26, 2014.  
25 Do you have that in front of you?



1 A. Yes.

2 94 Q. Okay. Now this invoice is in the  
3 amount of \$135,000 plus HST, which comes to a total of  
4 \$152,550. In the body of the invoices it just, as I read  
5 it, is says the amount of contract is \$540,700 and that's  
6 the base value of the contract, correct?

7 A. Yes.

8 95 Q. Okay. And then it says amount of this  
9 bill is \$150,000, correct?

10 A. Yes.

11 96 Q. Okay. And then there's a ten percent  
12 holdback of \$15,000, correct?

13 A. Yes.

14 97 Q. Okay, can you give me some description  
15 of -- so your company is billed \$150,000 on this invoice,  
16 but on the face of the invoice there's no description of  
17 what work was actually completed. Do you have any  
18 recollection or documentation that deals with what work  
19 was completed in connection with this specific invoice?

20 A. Yeah, I remember we, when we discuss  
21 with 144, every month they pay and we done like three  
22 floor or four floor. So that's how we get paid, like I  
23 put that amount and I got it.

24 98 Q. So this would have been -- so this  
25 would have been part of -- this is work that you did

1 under the original contract?

2 A. Yes.

3 99 Q. This is not for any extras --

4 A. Yes.

5 100 Q. -- this is the contract work?

6 A. Yes, contract work, yeah.

7 101 Q. But you don't have any documentation to  
8 show what specifically, what under the contract you did  
9 to charge this \$150,000?

10 A. No.

11 102 Q. No.

12 MR. SCHMUCK: As the contract  
13 indicated, Counsel, which is at Exhibit A, the painting  
14 portion was \$30,000 per floor, and 30,000 times 5 I think  
15 is 150,000.

16 BY MR. RAPPOS:

17 103 Q. So then Counsel has confirmed it, so  
18 then I take it, Mr. Fattah, from what your counsel said,  
19 this would be -- your understanding is that you charged  
20 for five floors of painting?

21 A. Yes.

22 104 Q. On this invoice?

23 A. Yes.

24 105 Q. But you wouldn't know which five  
25 floors, you just while you were doing it, you just issue

1 this invoice for five floors?

2 A. Yes.

3 106 Q. Okay.

4 MR. SCHMUCK: Did you paint the  
5 floors in a certain order, like from the bottom up or  
6 from the top down or...

7 THE DEPONENT: Yes, from the bottom,  
8 yeah. Yes, from the bottom up.

9 BY MR. RAPPOS:

10 107 Q. Okay, now, so on that point, so under  
11 the contract it says --

12 MR. RAPPOS: That's if you'll take it  
13 back, Counsel, thank you.

14 BY MR. RAPPOS:

15 108 Q. On Item No. 2 what we just were  
16 discussing, it says \$300,000 was part of the contract for  
17 painting Floors 10 through 19. So \$30,000 a floor,  
18 correct?

19 A. Yes.

20 109 Q. Okay. So now if I take you to the  
21 invoices that you issued, if you look at Invoice 70 which  
22 is one of the ones that were paid.

23 A. Yes, 70.

24 110 Q. Okay. This says you painted from  
25 Floors 10 through 14, which is five floors.

1 A. Yes.

2 111 Q. And that you charged \$150,000. Is that  
3 what it states?

4 A. Yes.

5 112 Q. Okay. So that's five floors. Then if  
6 I take you to Invoice 74 which again is an invoice that  
7 was paid.

8 A. Seventy-four?

9 113 Q. Yes, please.

10 A. Okay.

11 114 Q. It says a bill of \$150,000 for  
12 Floors 15 through 18.

13 A. Yes.

14 115 Q. Okay. So that means you've billed  
15 \$300,000 for painting Floors 10 through 18, correct?

16 A. Yes.

17 116 Q. Okay.

18 A. But there -- there on Invoice 70, if  
19 you go back, it says we did some work was the old painter  
20 done, Suite 548, 608, 905, 907, and all those, they were  
21 like extra work to do after that painter is gone.

22 117 Q. Right, but that's a different amount,  
23 that's another \$21,000 you charged.

24 A. Yes.

25 118 Q. Okay. My point is, sir, what I'm

1 trying to understand, the purchase order says Floors 10  
2 through 19, \$30,000 each for \$300,000. You've issued  
3 Invoice 70 for \$150,000 for five floors, which was paid  
4 and then you issued Invoice 74 for five more floors for  
5 \$150,000, so you've invoiced \$300,000 that was paid for  
6 painting the floors.

7 A. Yeah, plus --

8 119 Q. That's the full amount of the contract  
9 price, so where is this additional \$150,000, five more  
10 floors on Invoice 74-1? You've already invoiced and paid  
11 for the ten -- for the \$300,000 worth of floors.

12 A. I didn't understand. Can you say it  
13 again, please.

14 120 Q. Sure. On invoice -- sorry. If you go  
15 back to the contract.

16 A. Yes.

17 121 Q. It says of the \$540,000 -- sorry.  
18 \$540,700 contract price, \$300,000 is for painting  
19 Floors 10 through 19, \$30,000 each.

20 A. Yes.

21 122 Q. Okay. On Invoice 70 you've billed  
22 144 Park \$150,000 for Floors 10 through 14.

23 A. Yes.

24 123 Q. So you've charged \$150,000 and you've  
25 painted half the floors you were required to paint and

1           you were paid that invoice.

2                           A. Yes.

3   124                   Q. On Invoice 74 it says you painted  
4           Floors 15 to 18 and you charged \$150,000. So when you  
5           add 74 invoice and 70 invoice, that means you billed  
6           \$300,000 for painting Floors 10 through 18 which is what  
7           the contract says.

8                           A. Yes.

9   125                   Q. How is it then in Invoice 74-1 you're  
10           now billing another \$150,000 and you've just said that's  
11           for painting five floors, the other two invoices said you  
12           painted all the floors.

13                          A. Yes, but I did the common area. We  
14           have all the common area we're working on.

15   126                   Q. So then what you just said before that  
16           the 74-1 \$150,000, how is that for five floors; what five  
17           floors are we referring to?

18                          A. That's what he want was 144, he want me  
19           to bill like the way he want it, so I billed it the way  
20           he want it that time. And when the common area come,  
21           like we start doing the common area, at the same time we  
22           doing the common area, so I want to get money to pay my  
23           bills. So that's what happened on that.

24   127                   Q. Sorry, sir, I don't understand.  
25           The contract says you're going to get paid \$300,000 for

1 painting Floors 10 through 18 or 10 through 19.

2 A. Yes.

3 128 Q. You've got paid \$300,000 for painting  
4 those floors and now you're saying Invoice 74-1 is for  
5 another five floors of painting \$30,000 each, but there's  
6 no reference in the 74-1 invoice to that, I don't know  
7 what you billed that for. You just billed \$150,000 for  
8 painting and there's no -- the invoice doesn't give me  
9 any description of what you actually did to get that  
10 \$150,000 payment.

11 A. When we did that, because we did even,  
12 even the top, we were working on the top floors, so I  
13 bill them that amount because that time I remember, I ask  
14 whatever who was in charge on 144, so I bill them that  
15 amount what is on my invoice. That's what happened.

16 Because we did a lot of work on the  
17 common area, so he says just bill me for that and we did  
18 it as part of the contract.

19 129 Q. Sorry, who told you that?

20 A. The guy, the one he was on 144, Mark --  
21 Marco.

22 130 Q. So you had a conversation and he told  
23 you to bill him another \$150,000?

24 A. That's part of the contract, so when I  
25 did that, so we get -- we get money, so he says just send

1 me the invoice, so I write it down the way you seen it.

2 MR. SCHMUCK: And to be fair to the  
3 witness, Counsel, the contract did include other work  
4 that makes up the \$540,700 including painting the  
5 townhouses. And Invoice 74-1 doesn't say whether it's  
6 painting or --

7 THE DEPONENT: Yeah.

8 MR. RAPPOS: It doesn't say anything.

9 MR. SCHMUCK: -- or --

10 THE DEPONENT: Because --

11 MR. SCHMUCK: -- wallpaper.

12 MR. RAPPOS: But it doesn't say  
13 anything, that's the question I'm asking.

14 BY MR. RAPPOS:

15 131 Q. You issued an invoice for \$150,000 for  
16 payment of work that you say you're doing and there's no  
17 way to confirm what work you did on this invoice, it's  
18 just blank.

19 A. It's part of the contract, the  
20 contract, that's how we send the invoice, part of the  
21 contract.

22 132 Q. But show me where in the part of the  
23 contract, so you're now charging \$450,000 for painting,  
24 it doesn't say where you said you're only charging  
25 \$300,000 for painting.



1 A. No.

2 MR. SCHMUCK: No, you're not right,  
3 Counsel. The contract refers to painting the townhouses  
4 as well and other painting within that price. So the  
5 total painting contract price is not 300.

6 MR. RAPPOS: It's Item 2. You said  
7 earlier the way you --

8 MR. SCHMUCK: Yes, Item 1, Item 3,  
9 Item 4, Item 5, Item 6 are all painting.

10 THE DEPONENT: Yeah.

11 MR. RAPPOS: Sure. But earlier when  
12 I asked Mr. Fattah how did you get the \$150,000 number,  
13 Counsel, you said it's \$30,000 times a floor. That's  
14 five floors. Well, it can't be five floors because he  
15 already charged \$300,000 for painting those floors,  
16 \$30,000 a floor. If it was referencing these other  
17 touch-up and townhouses and whatnot, how did you get to  
18 the \$150,000 number?

19 THE DEPONENT: Because that, that's  
20 how we did them, like when the contract was  
21 500-something, so we send -- we submitted invoice to the  
22 company. So we don't put specifically what's that and  
23 what is that.

24 BY MR. RAPPOS:

25 133 Q. Well you have to understand, I'm trying

1 to confirm whether or not what work you did on this  
2 invoice and the invoice is totally blank, and 144 Park  
3 has no record of ever even receiving this invoice, so I'm  
4 trying to understand what work you did, that's the only  
5 questions I'm asking for and I'm just trying to get  
6 clarification on what you say your work, your company  
7 provided.

8 So you're saying this invoice is just  
9 for paint work you did in connection with the contract,  
10 correct?

11 A. Yes.

12 134 Q. Okay. And it's your position that  
13 Marco or someone else at 144 Park or Mady told you to  
14 invoice this way, correct?

15 A. Yes.

16 135 Q. But you have no documentation, no  
17 notes, no emails, nothing to confirm that?

18 A. No.

19 136 Q. Okay, so the remaining unpaid invoices  
20 all deal with PDIs that were conducted by your company to  
21 144 Park, correct?

22 A. Yes.

23 137 Q. Okay. Now, each invoice would say a  
24 date, example on Invoice 76 it says PDI from July 28,  
25 2014 lists 320 hours at \$45 an hour, correct?

1 A. Yes.

2 138 Q. And then on the same invoice it talks  
3 about from August 11, 2014, 296 hours at \$45 an hour,  
4 correct?

5 A. Yes.

6 139 Q. So you have very specific hour  
7 calculations. How would you have come up with those  
8 hours? Like even sort of 320 from July 28th, where --  
9 do you have any documentation that shows who did that 328  
10 hours of work or 320 hours of work?

11 A. When I said about I put all my guys on  
12 the agenda, I put the hours, so that's how I mark them --  
13 I mark the hours.

14 140 Q. Do you have a -- do you still have a  
15 copy of your agenda?

16 A. I believe so, yes.

17 MR. RAPPOS: Counsel, I'm going to  
18 ask for an undertaking to produce a copy of an agenda  
19 that would have dealt with the amount -- sorry, the work  
20 completed under the -- that dealt with the unpaid  
21 invoices.

22 MR. SCHMUCK: We'll use our best  
23 efforts to locate that agenda and if we find it, we'll  
24 produce it to you, the pages that refer to this project,  
25 but we'll keep confidential other clients of the company.

1 U/T NO. 1:

2 MR. RAPPOS: Thank you.

3 BY MR. RAPPOS:

4 141 Q. But as you said before, Mr. Fattah,  
5 outside of your agenda, you don't have any, like your  
6 employees wouldn't give you a timesheet or any of that,  
7 just you write down John was here eight hours, Michael  
8 was here eight hours, there's no other timesheets or  
9 anything?

10 A. No.

11 142 Q. Okay. Now, and the remaining invoices  
12 all refer to PDIs. How would you have gotten  
13 instructions or who would have told you to do painting  
14 touch-ups for PDIs from 144 Park, would it have been  
15 Carla or someone else?

16 A. Carla and Andre.

17 143 Q. Carla and Andre.

18 A. Her boss.

19 144 Q. Okay. So now I believe in your, and I  
20 apologize for jumping back and forth, but in your  
21 affidavit from June at Exhibit B you attach a number of  
22 emails, and you indicate -- I don't want to put words in  
23 your mouth, so I'll refer to the affidavit.

24 MR. RAPPOS: But I believe in  
25 Paragraph 14, if you wouldn't mind, of that affidavit,

1 Counsel.

2 MR. SCHMUCK: Okay.

3 BY MR. RAPPOS:

4 145 Q. It talks about that with these  
5 invoices, you state that the extra work was done pursuant  
6 to verbal requests made by Carla, their property manager,  
7 or other representatives of 144 Park, correct?

8 A. Yes.

9 146 Q. Okay. And you produced it as Exhibit  
10 B, a number of emails you were able to recover in  
11 connection with this, with these extra work; is that  
12 correct?

13 A. Yes.

14 147 Q. Now, would these be all the emails you  
15 have available to you or that you can obtain in  
16 connection with the PDI work on these invoices?

17 A. Yes, that's --

18 148 Q. All right.

19 A. -- it.

20 149 Q. So I'm just trying to understand,  
21 Mr. Fattah, the timing, because when I look at the  
22 emails, the first email is from -- well, sorry, let me  
23 backtrack. The PDIs that are listed in the unpaid  
24 invoices start working in July 28th, it's July 28th,  
25 August 11th, the next invoice says August 26th,

1 September 8th, the next one is September 8th to 19th, the  
2 next one is September 22nd to October 3rd, October 6th to  
3 October 17th, October 20th to October 31st, November 3rd  
4 to November 14th, and November 17th to November 28th.  
5 So all those dates are from July 28th 'til the end of  
6 November, so that's a four-month period, from July 28th  
7 to November 28th, that's what the invoices say?

8 A. Yes.

9 150 Q. Okay. Now, Mr. Fattah, when I look at  
10 the emails that you produced, the first email from  
11 Carlos Cerrato is dated April 16, 2014. So I just --  
12 can you show me how that April 16th email and the  
13 information contained in there is at all connected to  
14 these unpaid PDI invoices which are all dated July 28th  
15 to November 28th. So can you point me to specific work  
16 that was done on these unpaid invoice PDIs that somehow  
17 tie into these PDIs that say have to be done in April and  
18 May?

19 A. Okay, this is -- this is different PDI.  
20 This was part of the work after when we done on the same  
21 date here, the one you see in April --

22 151 Q. Hm'mmm.

23 A. -- is it April -- April 16th, yes.

24 152 Q. Right.

25 A. So this is like you -- they want those

1 floors, if you look and those number of the unit, he want  
2 those to be done, it's not part of the PDI after when the  
3 owner move in.

4 153 Q. Okay, so then when I'm looking at --  
5 I'm trying to do a cross-reference.

6 A. Yes.

7 154 Q. So I'm looking at what you're saying is  
8 that there was an earlier PDI, so if I'm looking at  
9 Invoice 69 which was -- has been paid in full, and  
10 Invoice 70 which has been paid in full. On Invoice 70  
11 there was a reference to Units 508, 909, 910, and 908;  
12 do you see those?

13 A. Yes.

14 155 Q. Okay. And those units are all  
15 referenced in that email.

16 A. Yes.

17 156 Q. Okay. And then --

18 A. But we went back, we did that, we did  
19 those one and we went back to do again after the trade,  
20 we went back.

21 157 Q. Okay, but what I'm trying to understand  
22 is the emails, you've said these emails deal -- you said  
23 the emails you attached deal with the unpaid invoices.

24 A. Yes.

25 158 Q. The PDIs. But this email clearly, in

1 my view, and correct me if I'm wrong, deals with earlier  
2 PDIs you did that were dealt with under Invoices 69  
3 and 70.

4 A. Yes.

5 159 Q. Okay, so this email actually doesn't  
6 deal with the unpaid invoice PDIs; is that correct?

7 A. Yes.

8 160 Q. Okay. Now the next email is  
9 April 22nd, and I'm just trying to understand, can you  
10 explain to me how this email then would relate to any of  
11 the unpaid PDI invoices?

12 A. I don't understand what you said.  
13 Sorry, like what --

14 161 Q. Sorry, I apologize if I'm not being  
15 clear. I'm trying to understand, you have a number of  
16 unpaid invoices that list PDIs that you say your company  
17 conducted from July 28th to November 28th, okay.

18 A. Yes.

19 162 Q. Now the invoices don't refer to what  
20 units you did PDIs on and we have no documentation that  
21 sets out what work, what PDI and what units you did per  
22 each invoice, correct, you have nothing, no documentation  
23 that would support --

24 A. No.

25 163 Q. -- in connection with each of these



1 unpaid invoices what PDIs you did on what suites?

2 A. No, but I remember we start like which  
3 floor we start and which floor we stop, but I don't put  
4 any document.

5 164 Q. Okay. So that's what -- the question I  
6 was when you put these emails in attached to your  
7 affidavit, and maybe I misread and I apologize if I  
8 misread your affidavit, I had assumed they were dealing  
9 with PDIs for the unpaid invoices. Is that --

10 MR. SCHMUCK: I don't think he ever  
11 said that in Paragraph 14, he just said extras.

12 MR. RAPPOS: Okay, then again it may  
13 have been my misunderstanding. I had been under the  
14 impression that they were related to the unpaid invoices.  
15 But you're correct, Counsel, that may have been a  
16 misinterpretation on my part.

17 BY MR. RAPPOS:

18 165 Q. So just so I'm clear, so for the PDI  
19 invoices that you've submitted for payment, there's no  
20 documentation you have that sets out what units you did  
21 for each of the invoices, correct?

22 A. No.

23 166 Q. Okay. Do you have any emails, any type  
24 of documentation, notes, that would support that or that  
25 show that either Carla or Andre or anyone else for

1 144 Park told you to do the PDIs that you invoiced here?

2 A. No.

3 167 Q. Okay. So the only thing that Sereen is  
4 relying on for payment is just these -- what these  
5 invoices say?

6 A. Yes.

7 MR. SCHMUCK: And so you're not  
8 caught by surprise, and the fact that there was nothing  
9 from Mady saying, objecting to an invoice being sent  
10 saying why the heck did you invoice us for that, we never  
11 asked for that. Nobody has produced any objections from  
12 Mady to any of the billings or the quality of the work  
13 done by Sereen.

14 MR. RAPPOS: Counsel, we have no  
15 record of these invoices ever being received and your  
16 client doesn't have any fax transmissions to say that  
17 they were even submitted. And we also don't have any  
18 documentation to show that he was ordered to do any of  
19 this PDI work.

20 MR. SCHMUCK: Yes, I can't speak to  
21 the quality of Mady's recordkeeping.

22 MR. RAPPOS: Can you speak to the  
23 quality of your client's recordkeeping?

24 MR. SCHMUCK: Yes, he can. Yes.

25 BY MR. RAPPOS:

1 168 Q. Mr. Fattah, I wanted to go back in  
2 connection with the invoices you were paid in full, and  
3 as I'm sure as a person who does work for condo companies  
4 and other types of builders, would you agree that it's  
5 typical that owners would hold back ten percent of the  
6 value of an invoice when they're paying your invoice?

7 A. Yes.

8 169 Q. Is that normal for you?

9 A. Yes.

10 170 Q. Okay. But now you received full  
11 payment of those first invoices. Did you request that  
12 the holdback amount be paid, be paid to Sereen?

13 A. No.

14 171 Q. So 144 Park just paid the remaining  
15 10 percent on those \$446,000 of invoices?

16 A. Yes, but was the reason because it  
17 wasn't my contract in the beginning, but after, they  
18 start holding, holding back.

19 172 Q. Sorry, sir, I don't understand.  
20 Can you explain -- sorry, can you help me understand.

21 A. When we start the building, it wasn't  
22 my contract, it was other company.

23 173 Q. Right.

24 A. So they want when I did something, so  
25 they pay me full amount because they didn't hold nothing

1 on me. But after when they give me the contract, so they  
2 start holding ten percent.

3 174 Q. But you said that -- sorry, sir, I'm  
4 still getting a little confused because we talked about  
5 earlier you said by Invoice 70, it was under your  
6 contract, and Invoice 74 were under your contract even  
7 though those were dated in June 2nd and July 18th, and  
8 your contract is not dated to October.

9 So you've indicated that two of those  
10 invoices were with respect to work under the contract  
11 even though they were invoiced before the contract was  
12 entered into.

13 A. No, I understand you wrong here about  
14 the first maybe when we start in the building, that's  
15 what I understand what you said.

16 175 Q. So I'm just, so I'm referring to like  
17 so Invoice No. 70.

18 A. Oh, okay, 70.

19 176 Q. Okay. And in that chart that you put  
20 on your other affidavit at Exhibit A you say that  
21 exhibit -- that contract -- that it's a -- that  
22 Invoice 70 is with respect to your contract even though  
23 the invoice is dated in June and the contract is not  
24 dated 'til October. So how are you invoicing amounts in  
25 connection with the contract that hadn't been entered

1 into yet? Do you have any idea --

2 A. No.

3 177 Q. -- or explanation?

4 A. No.

5 178 Q. No?

6 MR. SCHMUCK: Other than what he said  
7 in the affidavit that work started before the written  
8 contract was signed.

9 MR. RAPPOS: Okay.

10 MR. SCHMUCK: And that Mady paid it.

11 BY MR. RAPPOS:

12 179 Q. And again, it's -- and in your  
13 June 16th affidavit at Paragraph 18, do you have that in  
14 front of you, the June one? Yeah. It says the total  
15 contract price was \$540,700 plus HST, which comes up to  
16 \$610,991. And then you say Sereen Painting only invoiced  
17 a total of \$515,280 under the base contract. Is that  
18 correct is what you say in the affidavit?

19 A. Yes.

20 180 Q. That's okay. So I just want to  
21 understand how you reached that 515,280 number because  
22 when I look at your chart that you attach as an exhibit,  
23 you've invoiced three invoices that you refer to out of  
24 the contract which total 471,000 which even when you add  
25 in HST doesn't have at least -- I apologize, but... comes

1 out to \$532,230. So I just don't understand where the  
2 number 515,280 came from because that's what it says in  
3 Paragraph 18, but then the chart has a number that's --

4 MR. SCHMUCK: I think the difference  
5 is in the holdback. If we take the column called invoice  
6 total. Yes, the three numbers under invoice total for  
7 those base contract invoices totals 515,280.

8 MR. RAPPOS: Sorry, can you --

9 MR. SCHMUCK: Yes. See the column  
10 called invoice total?

11 MR. RAPPOS: Yes.

12 MR. SCHMUCK: And then if you look at  
13 the three invoices that are referred to as the contract  
14 work, those three numbers total \$515,280 which is the  
15 number in Paragraph 18 of the affidavit. So there was a  
16 holdback deducted from the invoices.

17 MR. RAPPOS: So you're saying that  
18 the invoice total of the contract (sic) 70 is 193,230 for  
19 Invoice 70?

20 MR. SCHMUCK: Yes, which --

21 MR. RAPPOS: 74 is 169,500 and  
22 Invoice 74-1, 152,550?

23 MR. SCHMUCK: Right, and those  
24 numbers include HST, but --

25 MR. RAPPOS: Don't include holdback?

1 MR. SCHMUCK: -- do not have a  
2 holdback deduction in there.

3 MR. RAPPOS: Okay, so you're saying  
4 when you add those numbers in and minus the ten percent,  
5 that's how you got the --

6 MR. SCHMUCK: Well, if I just add  
7 those three numbers from the invoice total column, you  
8 get 515,280.

9 MR. RAPPOS: Okay, thank you for that  
10 clarification, Counsel. Counsel, if you wouldn't mind  
11 taking a break for five minutes, let me go over my notes.

12 MR. SCHMUCK: Sure.

13 MR. RAPPOS: Pretty close to ending,  
14 I just want to make sure I've hit all the questions I'd  
15 like to ask Mr. Fattah.

16 MR. SCHMUCK: Okay.

17 MR. RAPPOS: Thank you.

18 --- OFF THE RECORD AT 10:44 a.m.

19 --- RESUMING AT 10:51 a.m.

20 BY MR. RAPPOS:

21 181 Q. Mr. Fattah, I just have a few more, two  
22 more questions for you.

23 For the invoices that you've submitted,  
24 would you have been the person who was generating or  
25 creating these invoices or would it have been somebody

1 else with Sereen?

2 A. You mean like who did -- who write the  
3 invoices?

4 182 Q. Yes.

5 A. My wife.

6 183 Q. Your wife did.

7 And she would input the information  
8 based on what you told her to put in?

9 A. Yes.

10 184 Q. Yeah, okay. Now who would keep track,  
11 when you sent over an invoice, who would keep track of  
12 whether or not the invoice was paid? Like would it be  
13 your wife or yourself, like how would you --

14 A. Myself.

15 185 Q. -- because you said you -- yourself.  
16 So you didn't, because you didn't have an accounting  
17 system, you just keep track in your head of which  
18 invoices were unpaid and which were paid?

19 A. Yes.

20 186 Q. Okay, I have no further questions.  
21 Thank you, Mr. Fattah.

22 A. You're welcome.

23

24 --- PROCEEDINGS CONCLUDED FOR THE DAY AT 11:00 a.m.

25

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I hereby certify that the foregoing is a full, true, and correct transcription of all of my stenographic notes to the best of my ability so taken at the Cross-Examination of **HAYSAM FATTAH** held at the office of Nimigan Mihailovich Reporting Inc. on Friday, the 26th day of August, 2016.

CERTIFIED BY:

  
\_\_\_\_\_  
Christina Schmitz, CSR, RPR

Certified Stenographic Reporter  
Registered Professional Reporter

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## **TAB 2**

# JANUARY 2014

SUNDAY

DECEMBER 2013  
S M T W T F S  
1 2 3 4 5 6 7  
8 9 10 11 12 13 14  
15 16 17 18 19 20 21  
22 23 24 25 26 27 28  
29 30 31

MONDAY

FEBRUARY 2014  
S M T W T F S  
1  
2 3 4 5 6 7 8  
9 10 11 12 13 14 15  
16 17 18 19 20 21 22  
23 24 25 26 27 28

TUESDAY

7 SUZY Q2  
Mike 8  
Mike 8

WEDNESDAY

1 New Year's Day

8 SUZY Q2  
Mike 8  
Mike 8

THURSDAY

2

9 SUZY Q2  
Mike 8  
Mike 8

FRIDAY

3

Mike 8

SATURDAY

4

SUZY Q2  
Mike 8

Ask Sherwin-Williams™



www

NOTES

Peter 5 days

Mike 6 days

> 11 days

Peter 1100x149.50x  
\$1299.95

Mike 96x149.50x  
\$1084.80

~~Peter 1100x149.50x  
\$1299.95~~

> 2530x325.90  
\$2858.90

12

13 SUZY Q2  
Mike 8  
Mike 8  
Ave Rd  
Peter 8

19

20 Martin Luther King Jr.  
SUZY Q2  
Mike 8  
Peter 8

26

27 SUS Q Ph2  
Peter 8

16

SUZY Q  
Mike 8  
315 Hammersly Blvd  
Mike 8  
Lait 8  
Peter 8

23

1 SUZY Q  
Peter 8

17

SUZY Q Ph 2  
Mike 8  
Mike 8  
Mike 8  
Mike 8  
Ave Rd  
Peter 8  
Lait 8

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SUS Q Ph2  
Peter 8

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SUS Q Ph2  
Peter 8

31

SUS Q Ph2  
Peter 8  
Lait 8

9 days Peter

# FEBRUARY 2014

Ask Sherwin-Williams™



NOTES

SUNDAY

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

JANUARY 2014

MARCH 2014

S M T W T F S  
1 2 3 4  
5 6 7 8 9 10 11  
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S M T W T F S  
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Grounds Day

Family Day  
(Direct Employees)

President's Day (U.S.)

# MARCH 2014

SUNDAY

FEBRUARY 2014

S	M	T	W	T	F	S
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2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

MONDAY

APRIL 2014

S	M	T	W	T	F	S
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20	21	22	23	24	25	26
27	28	29	30			

TUESDAY

WEDNESDAY

2

3

4

5

6

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8

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10

11

12

13

14

15

16

17

18

19

20

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28

29

30

31

Ask Sherwin-Williams™

THURSDAY

FRIDAY

SATURDAY

1

2

3

4

5

6

7

8

NOTES

144 Park St Watersloo

602-604-607

505-501-504-509

402-403



10 (649)

8 SUZ Q

ERKEN  
Pondali  
Bill  
Kam  
Mike  
ERKEN  
Bill  
Kam  
Mike

15 144 PARK ST

ERKEN  
ERKEN  
Pondali  
Bill  
Kam  
Mike

22

21

ERKEN  
ERKEN  
Pondali  
Bill  
Kam  
Mike

29

28

SUZ Q  
Mike  
ERKEN  
Pondali  
Bill  
Kam  
Mike

6

7

SUZ Q  
ERKEN  
Pondali  
Bill  
Kam  
Mike

13

14

SUZ Q  
Mike  
ERKEN  
Pondali  
Bill  
Kam  
Mike

20

ERKEN  
ERKEN  
Pondali  
Bill  
Kam  
Mike

27

SUZ Q  
Mike  
ERKEN  
Pondali  
Bill  
Kam  
Mike

Daylight Savings Time Begins

17 St. Patrick's Day

24 St. Patrick's Day

31 St. Patrick's Day

4 Mardi Gras

5 Ash Wednesday

11

12

18

19

20

Spring Equinox

25

26

27

St. Patrick's Day

# APRIL 2014

SUNDAY

MARCH 2014

S	M	T	W	T	F	S
		1				
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

6 London  
ERKEN 8

MONDAY

MAY 2014

S	M	T	W	T	F	S
		1	2	3		
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

7 SUZ Q  
w/v, 8  
w/m  
ERKEN 8

TUESDAY

1 SUZ Q  
Special Foods Day

ERKEN 8

8 Waterloo  
w/v, 8  
w/m  
ERKEN 8

WEDNESDAY

2 London Wm

ERKEN 8

9 Waterloo  
w/v, 8  
w/m  
ERKEN 8

THURSDAY

3 London Wm

ERKEN 8

10 Remarkham  
w/v, 8

FRIDAY

4 SUZ Q

ERKEN 8

11 1/4 Wakefield  
w/v, 8  
w/m

SATURDAY

5

ERKEN 8

12

13

Easter

20

Easter

21

Easter Monday (Can.)  
9.01-9.05.97.9.08-9.09.910

22

23

15

w/v, 8  
w/m  
ERKEN 8  
Pandile

16

w/v, 8  
w/m  
ERKEN 8  
Pandile

18

Special Foods

19

24

25

26



ERKEN NOTES  
 1840's 1840  
 23920  
 207920  
 10 days  
 7 1810  
 23920 2580  
 241540 281840  
 Mike 325  
 460  
 36180  
 5000  
 5650

Ask Sherwin-Williams™

# MAY 2014

SUNDAY

S	M	T	W	T	F	S
						APRIL 2014
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MONDAY

S	M	T	W	T	F	S
						JUNE 2014
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

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NOTES

4

5 SUZ & B

6 SUZ & B  
Gabriel & tow men

7 SUZ & B  
wm London  
Gabriel & tow men  
144 PARK AVE

8

9 Wm London  
Gabriel &  
144 PARK AVE  
Gabriel &  
1 man &

10

11

Mother's Day

12 144 PARK ST  
Gabriel 3 men

13 144 PARK ST  
Gabriel 3 men

14 144 PARK ST  
Gabriel 3 men

15

16 144 PARK ST  
Gabriel 3 men

17

Armed Forces Day

18

19 Victoria Day (Canu)  
off

20 144 PARK ST  
Gabriel 3 men

21 16 hrs  
off  
Gabriel 3 men

22

23 Wm London  
8 hr  
8 hr  
8 hr

24

Wm London  
8 hr  
8 hr  
8 hr

25

26 144 PARK ST  
National Day (U.S.)  
8 hrs  
8 hrs  
Gabriel 3 men

27 144 PARK ST  
Gabriel 3 men

28 mody option  
SUZ & B  
144 PARK ST  
Gabriel 3 men

29

30 144 PARK ST  
Gabriel 3 men

31

# JUNE 2014

Ask Sherwin-Williams™



NOTES

7 x 2400  
312 Hst  
#2712  
280 x 45 = 12600

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2 144 Park st Gabriel 3men	3 144 Park st Gabriel 3men	4 144 Park st Gabriel 3men	5 144 Park st Gabriel 3men	6 144 Park st Gabriel 3men	7 Ho
8	9 144 Park st Gabriel 3men	10 144 Park st Gabriel 3men	11 144 Park st Gabriel 3men	12 144 Park st Gabriel 3men	13 144 Park st Gabriel 3men	14 144 Park st Plan Day (U.S.)
15	16 144 Park st Gabriel 3men	17 144 Park st Gabriel 3men	18 144 Park st Gabriel 3men	19 144 Park st Gabriel 3men	20 144 Park st Gabriel 3men	21 Summer Substitute off
22	23 144 Park st Gabriel men 3	24 144 Park st Gabriel men 3	25 144 Park st Gabriel 3men	26 144 Park st Gabriel 3men	27 144 Park st Gabriel 3men	28 144 Park st Gabriel 3men
29	30 144 Park st Gabriel 3men					

MAY 2014							JULY 2014						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
4	5	6	7	8	9	10	6	7	8	9	10	11	12
11	12	13	14	15	16	17	13	14	15	16	17	18	19
18	19	20	21	22	23	24	20	21	22	23	24	25	26
25	26	27	28	29	30	31	27	28	29	30	31		



# JULY 2014

SUNDAY

JUNE 2014

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MONDAY

AUGUST 2014

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

TUESDAY

144 Park St  
Canada Day (Can.)

1  
Gabriel 2 men  
andy 8

2  
8:30 8

8  
144 Park St  
12:15  
Andy 8  
Gabriel 3 men  
Andy 8

WEDNESDAY

144 Park St

2  
Gabriel 3 men  
andy 8

8  
144 Park St  
12:15  
Andy 8  
Gabriel 3 men

16  
144 Park St  
Gabriel 3 men  
andy 8

THURSDAY

144 Park St

3  
Gabriel 3 men  
andy 8

8  
2:30 8

10  
144 Park St  
12:15  
Andy 8  
Gabriel 2 men

FRIDAY

144 Park St  
Independence Day (U.S.)

4  
Gabriel 3 men

11  
144 Park St  
Andy 8  
Gabriel 2 men

SATURDAY

5  
off

12  
144 Park St  
Andy 8  
Gabriel 2 men

SUNDAY

JUNE 2014

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MONDAY

7  
SUZQ  
12:15  
144 Park St  
Gabriel 2 men

TUESDAY

144 Park St  
Canada Day (Can.)

1  
Gabriel 2 men  
andy 8

8  
144 Park St  
12:15  
Andy 8  
Gabriel 3 men  
Andy 8

WEDNESDAY

144 Park St

2  
Gabriel 3 men  
andy 8

8  
144 Park St  
12:15  
Andy 8  
Gabriel 3 men

16  
144 Park St  
Gabriel 3 men  
andy 8

THURSDAY

144 Park St

3  
Gabriel 3 men  
andy 8

8  
2:30 8

10  
144 Park St  
12:15  
Andy 8  
Gabriel 2 men

FRIDAY

144 Park St  
Independence Day (U.S.)

4  
Gabriel 3 men

11  
144 Park St  
Andy 8  
Gabriel 2 men

SATURDAY

5  
off

12  
144 Park St  
Andy 8  
Gabriel 2 men



NOTES

Ask Sherwin-Williams™

SATURDAY

FRIDAY

THURSDAY

FRIDAY

WEDNESDAY

TUESDAY

MONDAY

SUNDAY

12

11

10

9

8

7

6

19

18

17

16

15

14

13

26

25

24

23

22

21

20

31

30

30

30

29

28

27

# AUGUST 2014

Ask Sherwin-Williams™



NOTES

SUNDAY		MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
<b>JULY 2014</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31		<b>SEPTEMBER 2014</b> S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30					
<b>3</b>		<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
		144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8
<b>10</b>		<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
		144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8
<b>17</b>		<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>
		144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8
<b>24</b>		<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>
		144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8	144 PARK ST Gabriel 3 men no 8
<b>31</b>							

# SEPTEMBER 2014

SUNDAY	MONDAY	TUESDAY	WEDNESDAY
	<b>1</b> Labor Day (USA) National Day (Canada)	<b>2</b> 144 Park St Gabriel 3 men no 8	<b>3</b> 144 Park St Gabriel 3 men no 8
<b>7</b> off	<b>8</b> 144 Park St Gabriel 3 men no 8	<b>9</b> 144 Park St Gabriel 3 men no 8	<b>10</b> 144 Park St Gabriel 3 men no 8
<b>14</b> off	<b>15</b> 144 Park St Gabriel 3 men no 8	<b>16</b> 144 Park St Gabriel 3 men no 8	<b>17</b> 144 Park St Gabriel 3 men no 8
<b>21</b> off	<b>22</b> 144 Park St Gabriel 3 men no 8	<b>23</b> 144 Park St Gabriel 3 men no 8	<b>24</b> 144 Park St Evens at Stoddon Gabriel 3 men no 8
<b>28</b> off	<b>29</b> 144 Park St Gabriel 3 men no 8	<b>30</b> 144 Park St Gabriel 3 men no 8	

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THURSDAY	FRIDAY	SATURDAY
<b>4</b> 144 Park St Gabriel 3 men no 8	<b>5</b> 144 Park St Gabriel 3 men no 8	<b>6</b>
<b>11</b> 144 Park St Gabriel 3 men no 8	<b>12</b> 144 Park St Gabriel 3 men no 8	<b>13</b>
<b>18</b> 144 Park St Gabriel 3 men no 8	<b>19</b> 144 Park St Gabriel 3 men no 8	<b>20</b>
<b>25</b> 144 Park St Gabriel 3 men no 8	<b>26</b> 144 Park St Gabriel 3 men no 8	<b>27</b>

AUGUST 2014							OCTOBER 2014							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	
				1	2						1	2	3	4
3	4	5	6	7	8	9	5	6	7	8	9	10	11	
10	11	12	13	14	15	16	12	13	14	15	16	17	18	
17	18	19	20	21	22	23	19	20	21	22	23	24	25	
24	25	26	27	28	29	30	26	27	28	29	30	31		



NOTES

# OCTOBER 2014

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NOTES

SUNDAY

SEPTEMBER 2014  
S M T W T F S  
1 2 3 4 5 6  
7 8 9 10 11 12 13  
14 15 16 17 18 19 20  
21 22 23 24 25 26 27  
28 29 30

MONDAY

NOVEMBER 2014  
S M T W T F S  
1  
2 3 4 5 6 7 8  
9 10 11 12 13 14 15  
16 17 18 19 20 21 22  
23 24 25 26 27 28 29

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

5

off

6 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

7 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

8 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

12

off

13 Columbus Day (H.S.)  
Thanksgiving Day (H.S.)  
off

14 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

15 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

19

off

20 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

21 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

22 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

26

27 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

28 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

29 144 Park St  
Gabriel 3 men  
10/1 8  
no 8

2

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

3

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

9

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

10

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

16

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

17

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

23

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

24

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

30

144 Park St  
Gabriel 3 men  
10/1 8  
no 8

31

144 Park St  
Halloween  
Gabriel 3 men  
10/1 8  
no 8

18 144 Park St  
Gabriel 3 men

25

# NOVEMBER 2014

Ask Sherwin-Williams™



NOTES

SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY

OCTOBER 2014  
S M T W T F S  
1 2 3 4  
5 6 7 8 9 10 11  
12 13 14 15 16 17 18  
19 20 21 22 23 24 25  
26 27 28 29 30 31

DECEMBER 2014  
S M T W T F S  
1 2 3 4 5 6  
7 8 9 10 11 12 13  
14 15 16 17 18 19 20  
21 22 23 24 25 26 27  
28 29 30 31

2 Daylight Savings Time Ends  
off

3 144 Park St  
Gabriel 3 men  
10/18  
no 8

4 144 Park St  
(Vacation Day (U.S.))  
Gabriel 3 men  
10/18  
no 8

5 144 Park St  
Gabriel 3 men  
10/18  
no 8

9 off

10 144 Park St  
Gabriel 3 men  
10/18  
no 8

11 144 Park St  
(Halloween (U.S.))  
(Reinsurance Day (Can.))  
Gabriel 3 men  
10/18  
no 8

12 144 Park St  
Gabriel 3 men  
10/18  
no 8

16 off

17 144 Park St  
Gabriel 3 men  
10/18  
no 8

18 144 Park St  
Gabriel 3 men  
10/18  
no 8

19 144 Park St  
Gabriel 3 men  
10/18  
no 8

23

24 144 Park St  
Gabriel 3 men  
10/18  
no 8

25

26

6 144 Park St  
Gabriel 3 men  
10/18  
no 8

6 144 Park St  
Gabriel 3 men  
10/18  
no 8

7 144 Park St  
Gabriel 3 men  
10/18  
no 8

8

9

13 144 Park St  
Gabriel 3 men  
10/18  
no 8

14 144 Park St  
Gabriel 3 men  
10/18  
no 8

15 144 Park St  
Gabriel 3 men

27

Thanksgiving

28

29

20 144 Park St  
Gabriel 3 men  
10/18  
no 8

21 144 Park St  
Gabriel 3 men  
10/18  
no 8

22

30

# DECEMBER 2014

SUNDAY	MONDAY	TUESDAY	WEDNESDAY
	<b>1</b>	<b>2</b>	<b>3</b>
<b>7</b> Pearl Harbor Day (H.S.)	<b>8</b>	<b>9</b>	<b>10</b>
<b>14</b>	<b>15</b>	<b>16</b> Hanukkah Begins at Sunset	<b>17</b>
<b>21</b> Winter Solstice	<b>22</b>	<b>23</b>	<b>24</b>
<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b> New Year's Eve

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THURSDAY	FRIDAY	SATURDAY
<b>4</b>	<b>5</b>	<b>6</b>
<b>11</b>	<b>12</b>	<b>13</b>
<b>18</b>	<b>19</b>	<b>20</b>
<b>25</b> Christmas	<b>26</b> Ascendat Boys, Brooming Day (Copt)	<b>27</b>

NOVEMBER 2014							JANUARY 2015							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	
						1						1	2	3
2	3	4	5	6	7	8	4	5	6	7	8	9	10	
9	10	11	12	13	14	15	11	12	13	14	15	16	17	
16	17	18	19	20	21	22	18	19	20	21	22	23	24	
23	24	25	26	27	28	29	25	26	27	28	29	30	31	



NOTES

# TAB 3

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE CONSTRUCTION LIEN ACT,  
R.S.O. 1990, c. C.30, AS AMENDED

AND IN THE MATTER OF AN APPLICATION MADE BY **144 PARK LTD.**  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED

-----  
COURT FILE NO. CV15-10843-00CL  
-----

CONTINUED CROSS-EXAMINATION OF **HAYSAM FATTAH**

--- VOLUME 2 ---

SEPTEMBER 20, 2016

Nimigan Mihailovich Reporting  
Hamilton, Ontario - 905-522-1653 - nmreporting.com



Court File No. CV15-10843-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,

R.S.O. 1990, c. C.30, AS AMENDED

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

-----  
--- This is the Continued Cross-Examination of **HAYSAM FATTAH**  
on his Affidavits sworn April 26, 2016 and June 16, 2016,  
taken at the offices of Nimigan Mihailovich Reporting,  
One James Street South, 7th Floor, Hamilton, Ontario,  
L8P 4R5, on Tuesday, the 20th day of September, 2016.

-----  
**V O L U M E 2**  
-----

**A P P E A R A N C E S :**

Derek A. Schmuck, Esq. - for Sereen Painting Ltd.

Sam P. Rappos, Esq. - for Collins Barrow Toronto Limited,  
Court-Appointed Trustee.

REPORTED BY: Bonnie Lynn van der Meer, C.S.R.

**I N D E X   O F   P R O C E E D I N G S**

<b>DESCRIPTION</b>	<b>PAGE</b>
WITNESS: Haysam Fattah; Previously Affirmed.....	45
Cross-Examination by Mr. Rappos (Cont'd).....	45

---[ Reporter's note: The following indices of undertakings, under advisements and refusals are provided for the assistance of counsel and do not purport to be complete or binding on the parties herein. ]

**I N D E X   O F   U N D E R T A K I N G S**

The questions/requests undertaken appear on the following pages/lines: (None).

**I N D E X   O F   U N D E R   A D V I S E M E N T S**

The questions/requests taken under advisement appear on the following pages/lines: (None).

I N D E X   O F   R E F U S A L S

The questions/requests refused appear on the following pages/lines: (None).

I N D E X   O F   E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE/LINE
	(None)	

-----

**HAYSAM FATTAH,**

having first been duly affirmed on August 26th, 2016,

said affirmation continuing to be in effect,

continued to be cross-examined and testified as follows:

--- UPON COMMENCING AT 1:56 P.M.

**CROSS-EXAMINATION BY MR. RAPPOS: (CONT'D)**

187 Q. Good afternoon, Mr. Fattah.

A. Good afternoon.

188 Q. Do you understand that today is a continuation of your Cross-Examination from August 26th?

A. Yes.

189 Q. Okay. And do you understand that you are still under oath?

A. Pardon?

190 Q. Do you understand that you are still under oath in the answers you are giving today?

A. Yes.

191 Q. Okay. Mr. Fattah, during your last Examination, you gave an undertaking to look for and deliver, if found, a copy of your agenda from 2014.

There is an agenda before you. Is that the agenda you used in 2014?

A. Yes.

192 Q. Okay. So the information contained in that agenda was written by you?

A. Yes.

193 Q. And that was written during the year of  
2014?

A. Yes.

194 Q. Okay. And, Mr. Fattah, I'm not sure if you  
can -- you can just give some background.

Originally, I heard from Mr. Schmuck that  
you couldn't find the calendar or diary, and then two weeks  
later, you were able to find it.

A. Yes.

195 Q. Was it misplaced or did you -- what was the  
circumstances that you were -- thought it was lost and then  
you were able to find it.

Can you explain?

A. Yeah. Like, usually, I keep them in my home  
and by sudden, I saw it in my car. Like, I was looking and  
I saw in my car had a lot of paperwork, so I found it.

196 Q. Okay. But when you originally looked for  
it, you thought it was in your house?

A. Yes.

197 Q. And you couldn't find it?

A. Yeah. I couldn't find it.

198 Q. So that's why you told Mr. Schmuck that--

A. Yes.

199 Q. --you couldn't find it. Okay.

So, Mr. Fattah, I am going to take you to a couple of pages in your 2014 calendar. I just have a few questions, so you can help me understand some of the notations and the notes--

A. Sure.

200 Q. --that you've written in the calendar.  
So I'm going to go to July 2014.

A. July?

201 Q. Yeah. If you can flip that open for me, please.

A. Mm-hmm.

202 Q. So the reason, Mr. Fattah, that I have focussed on July is, that is the first month that is referenced in the unpaid invoices.

I'm looking at Invoice Number 76, dated September 23rd, 2014.

MR. RAPPOS: I'm not sure, Mr. Schmuck, if you have an extra copy of...

MR. SCHMUCK: No. I didn't bring my whole file.

BY MR. RAPPOS:

203 Q. I can show a copy to you.

The reference is from July 28th, 2014, and then there's one for August 11th, so I'm just going to ask questions about that time period in the calendar, just so I

understand the notations on those two months.

So, Mr. Fattah, I was hoping you could explain to me, for instance, let's look at July 10th, 2014.

A. Mm-hmm.

204 Q. On the top of the date, it says "144 Park Street".

A. Mm-hmm.

205 Q. Then there is a notation there that I can't make out. It says -- there's a notation, "eight hours". Underneath, it says "Andy, eight hours"--

A. Mm-hmm.

206 Q. --and then "Gabriel, two men"?

A. Mm-hmm.

--- (COURT REPORTER APPEALS.)

THE WITNESS: Yes.

BY MR. RAPPOS:

207 Q. Can you explain what those notations refer to?

A. The... The "Gabriel", "Gabriel", he was working with three men -- guy -- he has three guys.

208 Q. Okay.

A. So all the time, I mark, like, if it's three guys, I put "three men" or is it two guys, I put "two men".

209 Q. Okay. So when you say "two men", how many hours would they have worked that day?

A. They're 16. 16 hours for two men.

210 Q. Okay. So every time in your calendar, when you referred to "Gabriel" plus the amount of men, it's eight hours per man that day, per--

A. Yes.

211 Q. --man?

A. Yes.

212 Q. Okay. And what about the...? There's "Andy, eight hours". I just can't read -- what's the top notation I can't read? Is that a name or...?

A. Is it -- do you mean beside the "eight"?

213 Q. So what's that?

A. Oh. That's because I write it in my language. It's a name. It's "Rashad". His name, "Rashad", so I -- I make it on (sic) Arabic.

214 Q. Okay.

A. I write it down.

215 Q. Okay. So where I see similar notations like that, let's say on July 17th, if you go down one week,--

A. Uh-huh.

216 Q. It says "Gabriel, three men"?

A. Yes.

217 Q. So that would be 24 hours that day, for Gabriel?

A. Yes.



218 Q. And then there's two notations.

That's both names in Arabic?

A. Yes.

219 Q. Okay.

A. "Rashad" and "Mohammed".

220 Q. Okay. Now, is there anyone -- if you look it throughout the month, on the Arabic names,--

A. Mm-hmm.

221 Q. --is it always the same two men?

A. Yeah. Yes. And there -- there one, if you go up, on the 3rd of July,--

222 Q. Yeah.

A. --there's a guy, name "George". Yeah. You see that?

223 Q. Yeah.

A. Yeah. That's "George".

224 Q. That's "George" in Arabic?

A. That's -- yeah. In Arabic, I write it down, yes.

225 Q. Okay. And then the same would be, if you look at the next month, in August, again, if I choose August 1st,--

A. August 1st.

226 Q. --it says "144 Park Street", "Gabriel, three men"?

A. Yes.

227 Q. And then, so there's an Arabic name.

A. "Rashad" and "Mohammed", yeah. "Eight hours" and "eight hours".

228 Q. Eight hours each?

A. Yes.

229 Q. Okay. Now, in the calendar for these months, you just wrote down the amount of hours that they were -- that men were at 144 Park; correct?

A. Yes.

230 Q. Right. So the calendar doesn't refer to what they were specifically working on that day?

A. No.

231 Q. No. Okay.

And that information, you say, is what's in your invoice; correct?

A. Yes.

232 Q. About the work that was done?

A. Yes.

233 Q. Okay. Now, this calendar is -- other than the invoices, this is the only document you have that sets out the work that was done in each of these months.

Is that fair to say?

A. Yes.

MR. RAPPOS: Okay. Okay, Mr. Fattah. I

apologize for having to bring you here, but those are all my questions.

I just wanted to get some--

THE WITNESS: No. That's--

MR. RAPPOS: --clarification on --

THE WITNESS: --my pleasure.


MR. RAPPOS: -- on the notes on the chart.

So I have no further questions for the --  
for Mr. Fattah. Thank you for coming today.

THE WITNESS: You're welcome.

--- [ ENDING TIME: 2:03 P.M. ]

Certified correct:



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Bonnie Lynn van der Meer, C.S.R.

Chartered Shorthand Reporter

Commissioner of Oaths (expires August 4, 2019)

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**IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

Court File No. CV15-10843-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**SUPPLEMENTARY  
RESPONDING MOTION RECORD**  
(re motion of Sereen Painting Ltd.)  
(returnable October 5, 2016)

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