

In The
Supreme Court of Virginia

RECORD NO. 992543



MID-EAST SERVICES, INC.,

Appellant,

v.

ENTERPRISE FORD TRACTOR, INC.,

Appellee.

APPENDIX

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Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

MID-EAST SERVICES, INC.,

Plaintiff,

v.

ENTERPRISE FORD TRACTOR, INC.,

SERVE: Robert E. Owens
Registered Agent
1939 Route 17
Yorktown, VA 23693

Defendant.

Law No. 7297

JURY TRIAL DEMANDED

MOTION FOR JUDGMENT

Plaintiff Mid-East Services, Inc., ("Mid-East"), by counsel, for its Motion for Judgment against Defendant, Enterprise Ford Tractor, Inc. ("Enterprise"), states as follows:

1. Plaintiff Mid-East Services, Inc., is a North Carolina corporation, with an office in Dunn, North Carolina.
2. On information and belief, Defendant Enterprise Ford Tractor, Inc., is a Virginia corporation with its principal place of business in York County, Virginia.
3. On information and belief, Enterprise is a merchant, supplier and distributor of Ford tractors, related equipment and other goods.
4. On or about June 5, 1997, Mid-East contracted with Enterprise for the purchase of the following equipment:

(a) Three (3) Ford 3930 Tractors bearing serial numbers BD75257, BD66341

Filed in the Clerk's Office the 9th day of January 1998
1 9:01 am
Writ Tax \$ 25.00
Fee 150.00
Deposit 12.00
Total Paid \$ 195.00
Teste: Nancy B. Kane, Clerk 1
Kristen N. Potter D.C.

and BD81464;

(b) Five (5) Alamo Flails bearing serial numbers 15386, 16159, 15992, 15385 and

_____;

(c) One (1) Swing Trim; and

(d) One (1) Bush Hog.

5. The contract price for those items listed in Paragraph 4 was \$38,500.00. A copy of the offer letter from Enterprise is attached as Exhibit A and fully incorporated.

6. Mid-East on or about June 6, 1997, paid Enterprise the agreed price of \$38,500.00 for the equipment. A copy of the Mid-East check is attached as Exhibit B and fully incorporated.

7. As part of the inducement to Mid-East to enter into the contract Enterprise stated it had full ownership and authority to sell the equipment free of liens.

8. On or about June 18, 1997, Mid-East accepted Enterprise's offer and paid Enterprise an additional \$9,000.00 to purchase an additional Ford Tractor, Serial Number BD75226. A copy of the Enterprise offer letter is attached as Exhibit C and fully incorporated. The equipment listed in Paragraph 4 and in this Paragraph will be referred to hereafter, collectively, as the "Equipment."

9. As an inducement to Mid-East to enter that contract, Enterprise stated that it had full authority to sell the tractor and would deliver the tractor free of liens.

10. After Mid-East paid Enterprise the aggregate sum of \$47,500.00 and took possession of the Equipment, Mid-East was notified that Enterprise was not the owner of the Equipment.

11. United Leasing Corporation, a Virginia corporation, appeared with a court order from Hanover County, Virginia, granting it possession of the Equipment Mid-East purchased from Enterprise.

12. At the time United Leasing Corporation sought possession, Mid-East was using the Equipment on a job at Fort Bragg, North Carolina.

13. United Leasing Corporation agreed to lease the Equipment to Mid-East for use in completing Mid-East contract. From July 1, 1997, until August 31, 1997, Mid-East paid United Leasing Corporation \$5,000.00 for the use of the Equipment.

14. On or about August 31, 1997, United Leasing Corporation took possession of the Equipment from Mid-East.

**COUNT I
BREACH OF EXPRESS CONTRACT**

15. Paragraphs 1-14 are incorporated by reference and realleged as if again set forth fully.

16. Mid-East fully performed its obligations under the contracts by paying Enterprise the contractually agreed sum of \$47,500.00.

17. Enterprise violated the contracts by failing to deliver the Equipment outright and free of liens as contractually promised.

18. To mitigate its damages upon Enterprise's breach, Mid-East paid an additional \$5,000.00 to lease replacement equipment.

19. To date Enterprise's breach of its contractual obligations has caused Mid-East losses equal to Fifty-Two Thousand Five Hundred and 00/100 Dollars (\$52,500.00).

**COUNT II
FRAUD**

20. Paragraphs 1 through 19 are incorporated by reference and realleged as if again fully set forth.

21. Enterprise made and affirmed erroneous representations regarding its ownership and ability to deliver clear title to the Equipment free of all liens.

22. These misrepresentations were of a material fact to the contracts and induced Mid-East to accept the offers and purchase the Equipment.

23. Enterprise knew, or should have known, at the time of representations, that the representations were erroneous and misleading.

24. Enterprise failed to provide adequate safeguards to prevent the dissemination of erroneous information and failed to act to correct such erroneous information when it knew or should have known of such errors. Such actions were willfully, recklessly and grossly negligent.

25. In the alternative, Enterprise negligently and carelessly made misrepresentations about its ability to deliver title to the Equipment free of all liens.

26. The misrepresentations were made with the intent to induce Mid-East to purchase the Equipment from Enterprise.

27. Mid-East relied upon the misrepresentations when it paid Enterprise \$47,500.00 for the Equipment and was damaged when it did not receive the Equipment free of liens as promised by Enterprise's misrepresentations.

28. Enterprise knew or should have known that Mid-East was relying on these material misrepresentations.

29. Mid-East's reliance on these misrepresentations was reasonable.

30. Enterprise's willful and knowing misrepresentations caused Mid-East to suffer damages in the amount of \$52,500.00.

31. In the alternative, Enterprise's negligent and careless misrepresentations caused Mid-East to suffer damages in the amount of \$52,500.00.

32. Enterprise's willful and intentional misrepresentations entitle Mid-East to a recovery of punitive damages.

**COUNT III
VIOLATION OF VIRGINIA CODE SECTION 18.2-217**

33. Paragraphs 1 through 32 are fully incorporated by reference and realleged as if again set forth.

34. Enterprise offered for sale to Mid-East, a member of the public, certain Equipment and goods with the intent not to sell those goods on the terms offered.

35. Enterprise's actions violated Virginia Code Section 18.2-217(a), and caused Mid-East to suffer losses in the amount of \$52,500.00.

36. Enterprise's violation of Virginia Code Section 18.2-217 allows Mid-East to recover its losses of \$52,500.00 and its reasonable attorneys fees under Virginia Code Section 59.1-68.3.

**COUNT IV
VIOLATION OF VIRGINIA COMMERCIAL CODE-SALES**

37. Paragraphs 1 through 36 are fully incorporated by reference and realleged as if again set forth.

38. On June 5, 1997, and June 18, 1997, Enterprise made firm offers to sell the

Equipment, free of liens to Mid-East, which offers were accepted by Mid-East making the agreed payments to Enterprise.

39. Enterprise failed to deliver the purchased Equipment free of liens as promised and as required by Virginia Code Section 8.2-312, 1950, as amended.

40. Enterprise's failure to perform its contractual obligations, violates Virginia Code Sections 8.2-206, 8.2-301, 8.2-312, 1950, as amended. 8.2-313 and 8.2-721.

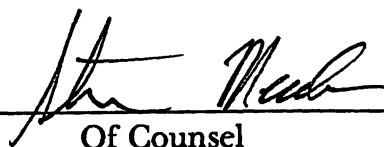
41. Such violations entitle Mid-East to recover its contract damages of \$52,500.00, and its losses incurred in mitigation of Enterprise's breaches pursuant to Virginia Code Section 8.2-711, 8.2-712, 8.2-715 and 8.2-721, 1950, as amended.

42. Mid-East demands a jury trial of this matter.

THEREFORE, Plaintiff Mid-East Services, Inc., requests judgment against Defendant Enterprise Ford Tractor, Inc., in the sum of Fifty-Two Thousand Five Hundred and 00/100 Dollars (\$52,500.00), with interest accruing from the date of each payment by Mid-East, plus \$50,000.00 in punitive damages, such other damages as may be shown at trial, plus court costs and for such other and further relief as this Court shall deem mete.

MID-EAST SERVICES, INC..


BY: _____


Of Counsel

Steven A. Meade, Esq.
Virginia State Bar #37150
PATTEN, WORNOM & WATKINS, L.C.
12350 Jefferson Avenue
Suite 360
Newport News, Virginia 23602
(757) 249-1881

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Judgment was sent by first class mail, postage prepaid, to counsel for Defendant, Cecil G. Moore, Esq., 13185 Warwick Boulevard, Newport News, Virginia 23602-8343, this 9th day of January, 1998.



Steven A. Meade, Esq.

ENTERPRISE FORD TRACTOR, INC.

1039 ROUTE 17
YORKTOWN, VA. 23693
767 895 7811
FAX 767 895 2660

Fax Transmission

TO: ROBERT PHILLIPS

FAX#: 910 892 1897

FROM: BRUCE STRACK

RE: EQUIPMENT

PAGES: 1

DATE: 6/5/97

COMMENTS:

CHECK IN THE AMOUNT OF (\$47000.00)

will PAY FOR: (3) FORD 3930's S/N BD75257 9
S/N BD66341 9
S/N BD81464 9

(5) ALAMO FLAHS S/N 15386 150
S/N 16157 150
S/N 15992 150
S/N 15785 150
S/N ? 150

(1) SWING TRIM S/N ? 2000
(1) BUSH HOG S/N ? 2000

~~\$38,500~~ 50
X

8,500
X

~~\$38,500~~



MID-EAST SERVICES, INC.
P.O. BOX 1477
DUNN, N.C. 28334

UNITED CAROLINA BANK
DUNN, N.C. 28334

66-822
531

No. 023993

CHECK NO.

DATE

AMOUNT

PAY
TO THE
ORDER
OF

ENTERPRISE FORD TRACTOR, INC.

6-6-97

\$38,500.00

MID-EAST SERVICES, INC. PAYROLL ACCOUNT

R. S. Phillips

⑈023993⑈ ⑆053108221⑆0842033852⑈

PENGAD-Beyonne, N. J.

EXHIBIT

B



NEW HOLLAND

ENTERPRISE FORD TRACTOR, INC. ✓

1939 Rt. 17 • Yorktown, VA 23693

Phone: (804) 595-7611

892-1896

ATTN: ROBERT PHILLIPS

PER OUR CONVERSATION, YOU HAVE A SIGNED
RETAIL SALES AGREEMENT WITH BILL HALL OF
YORK RIVER SERVICES FOR A 3930 S/N BD75226
IN THE AMOUNT OF \$9000. IF YOU SEND
US THE MONEY WE WILL FORWARD IT TO
NEW HOLLAND TO RELEASE THE LEIN.

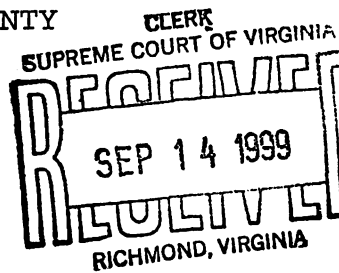
pd 6/18/97
JH 24201

THANKS,
BRUCE



1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR YORK COUNTY



MID-EAST SERVICES, INC.,

Plaintiff,

vs.

LAW NO. 7297

ENTERPRISE FORD TRACTOR, INC.,

Defendant.

BEFORE: THE HONORABLE THOMAS B. HOOVER, JUDGE

DATE: July 15, 1999

-----oOo-----

APPEARANCES:

STEVEN A. MEADE, ESQ.
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Newport News, Virginia 23602-6956
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Newport News, Virginia 23606

and

CECIL G. MOORE, ESQ.
Law Offices of Cecil G. Moore
13185 Warwick Boulevard
Newport News, Virginia 23602-8343
Counsel on behalf of the Defendant

Reported by: Linda M. Spelce, RMR

11

LEWIS & DeBERRY
Reporting Service

Filed in the Clerk's Office, Circuit Court, York Co., Va.

the 17 day of August 1999

Tested 1:36pm

Nancy B. Kane, Clerk

D.C.

I N D E X

- - -

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>IN EVD.</u>
ON BEHALF OF THE PLAINTIFF:			
1	Fax		29
2	Confirmation of Purchase of		
	Fourth Tractor		30
3	Photocopies of Two Checks		31
4	Lease Agreement		32
5 & 6	Two Checks		33
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ON BEHALF OF THE DEFENDANT:			
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4	One Financing Statement		71

BY MR. MEADE:

Q. Mr. Phillips, please state your full name.

A. Robert L. Phillips.

Q. And your business address?

A. My business address is 910 South Clinton Avenue, Dunn, North Carolina.

Q. And what is your business, sir?

A. My business is Mid-East Services, and we do general contracting work for the United States Government at military bases.

Q. When you say general contracting, can you give us some examples of what your company is involved in?

A. Well, primarily, we're involved in warehousing, logistics supply services and garbage collection and disposal.

Q. Do you normally enter into mowing and maintenance contracts?

A. Generally, no, we do not.

Q. And you were an owner and operator of Mid-East during the period of June '97 to September '97?

A. That's correct, yes.

Q. And briefly describe to us how this first contact with Enterprise Ford Tractor happened.

A. We were contacted by Fort Bragg, North

1 Carolina. We are a contractor, do a lot of different type
2 stuff at Fort Bragg, as I've indicated. They were in the
3 process of defaulting York River Services on their
4 grass-mowing contract, and they contacted us to see if we
5 had an interest in coming down and taking over a short-term
6 emergency procurement to handle that particular service
7 until they could get a contractor in place. At that time I
8 was down at Fort Bragg spending various time there getting
9 this contract arrangement lined up, and Enterprise Ford
10 just came in through general discussion, I guess you'd say,
11 through different people at Fort Bragg.

12 Q. So you mean the name was raised by
13 others?

14 A. Yes, uh-huh.

15 Q. Now, at that time you also had contact
16 with Bill Hall. Tell us about those discussions.

17 A. My contact with Bill Hall was somewhat
18 limited. He obviously is a defaulting contractor. He was
19 in and out of Fort Bragg at the time I was in and out of
20 Fort Bragg. I was on my way in; he was on his way out. We
21 passed numerous times in and around the compound area that
22 he used to secure his equipment.

23 Q. And the compound was on base at Fort
24 Bragg?

25 A. Yes, sir, right.

1 Q. And tell us about the discussions about
2 purchasing the equipment from Mr. Hall.

3 A. Well, I had -- obviously, under the
4 circumstances it's always convenient or a good idea if you
5 can purchase equipment from the existing contractor rather
6 than going out and procuring new equipment. Mr. Hall had
7 various pieces of equipment there in the compound.
8 Obviously, he did not need them anymore, and we did enter
9 into discussions with him about purchasing some various
10 pieces of that equipment, yes, sir.

11 Q. And what did those discussions or how did
12 those discussions conclude?

13 A. Well, actually, we had agreed I think
14 again on the 3rd or 4th, I believe, as I've indicated, that
15 we would buy various pieces of equipment from Mr. Hall. As
16 the day -- the days developed on and we began to have
17 questions as to whether Mr. Hall was legitimate or not and
18 of moral character, if you'd allow me to say that. We
19 entered into a contract on I think the 4th of June at my
20 office with Mr. Hall to purchase several pieces of
21 equipment.

22 As these discussions in my office
23 progressed and as I received phone calls and discussions
24 with other people that same evening at Fort Bragg, I began
25 to question whether or not Mr. Hall was legitimate. And so

1 I developed some concerns that I was doing the wrong thing
2 by purchasing the equipment from him.

3 Q. Was there any specific event that
4 triggered your suspicions about Mr. Hall?

5 A. One in particular was when we sat down to
6 sign the agreement, I assumed I was buying the equipment
7 from York River Services I think is the name of the
8 company.

9 THE COURT: Who's the company? Excuse
10 me. Is that the company? Who is York River Services?

11 THE WITNESS: They were a firm that was
12 my predecessor on the contract. They were performing the
13 contract and were defaulting.

14 THE COURT: Mr. Meade, I need some
15 information here. Is Bill Hall the same as York River
16 Contracting?

17 MR. OVERMAN: He's the principal.

18 MR. MEADE: He's the principal
19 owner/operator.

20 THE COURT: So Bill Hall we're talking
21 about is not an individual but a representative for York
22 River?

23 MR. MEADE: Yes, sir, although I think
24 we're about to get some testimony that will show he was
25 doing a little of both.

1 THE COURT: Okay.

2 THE WITNESS: So anyway, Mr. Hall, as we
3 were -- I called my attorney there in Dunn or one of the
4 attorneys I use locally and asked him did he have a blank
5 bill of sale, because I was in the process of buying some
6 equipment. He said he did. I ran by and picked it up. He
7 showed me where to fill it out and this kind of thing. It
8 was basically a simple transaction type piece of paper.

9 At that time I was back in my office.
10 Mr. Hall came in from Fort Bragg. We sat down. We started
11 filling out paperwork. He said, "Well, I don't want to --
12 I want you to fill it out in my name personally and pay me
13 personally rather than the corporation."

14 MR. OVERMAN: Your Honor, I'm going to
15 object to the hearsay, if the Court please.

16 THE COURT: Sustain the objection. You
17 can't tell me what Mr. Hall said. He's not here apparently
18 today, correct?

19 MR. MEADE: No, he's not here, Your
20 Honor, but I believe it's not offered for the truth but for
21 its effect on the listener. This is the reason that he
22 stopped the contract with Mr. Hall. We don't care,
23 frankly, whether Mr. Hall is entitled to have that --

24 THE COURT: You can ask him the question,
25 after a conversation with Mr. Hall, what action did you

1 take?

2 MR. MEADE: Okay.

3 THE COURT: Sustain the objection.

4

5 BY MR. MEADE:

6 Q. Could you answer the judge's question,
7 just simply what did you do after these discussions with
8 Mr. Hall when he wanted this check personally made?

9 A. I had reason to have more concern that
10 something was not kosher with Mr. Hall. So I -- we went
11 ahead and completed the transaction. But as Mr. Hall left,
12 he was in a hurry to get back to Virginia. As he left the
13 office, we continued to make phone calls later in the
14 evening, talking with various people at Fort Bragg and what
15 have you, and we just had some concern or I had some
16 concern that Mr. Hall was not legitimate. And so what I
17 did the next morning was cancel the check.

18 Q. So you stopped payment on the check?

19 A. Stopped payment on the check, yes.

20 THE COURT: Excuse me. When you say you
21 completed the transaction, you-all finished the bill of
22 sale, you did give him a check?

23 THE WITNESS: Yes, sir.

24 THE COURT: And you made the check out in
25 the name of William Hall?

1 THE WITNESS: That's correct.

2 THE COURT: And then the next day you
3 said because of your suspicions you stopped payment on the
4 check?

5 THE WITNESS: Yes, sir. In fact, we
6 would have stopped it that afternoon but it was like 6 or 7
7 o'clock into the evening, so we did it the first thing the
8 next morning.

9 THE COURT: All right. Go ahead, Mr.
10 Meade.

11 MR. MEADE: Thank you, Your Honor.

12
13 BY MR. MEADE:

14 Q. And what was your next step regarding the
15 equipment?

16 A. I'm sorry?

17 Q. What was the next step you took regarding
18 the equipment on the 5th of June?

19 A. I think on the 5th of June was the time
20 that I had contacted Enterprise Ford.

21 Q. Tell us about that conversation.

22 A. Contacted Mr. Strack at Enterprise Ford
23 sometime around the 5th, I believe it was, and discussed
24 the equipment matter with him. At that time he indicated
25 to me that the equipment did in fact belong to Enterprise

1 Ford, and I asked him did he want to sell it. And he said
2 of course he did.

3 Q. All right. And what happened at that
4 point?

5 A. At that point we negotiated the price,
6 and he sent me down a bill of sale, which ended up being
7 incorrect in terms of the numbers, because there were some
8 various pieces that were or were not involved. At that
9 time we renegotiated those over the telephone, we came to
10 an agreement of \$38,500 for the equipment that I was
11 concerned or wanted. And we sent him up a check and then
12 everything was fine.

13 Q. In general terms, what was the equipment
14 that was actually included with Enterprise Ford? We don't
15 need serial numbers, but can you tell me in general terms
16 what this was?

17 A. There were three tractors, three or four
18 flail mowers and a couple other implements, I think a swing
19 trim or a Bush Hog, just a couple of various small --
20 smaller pieces.

21 Q. And where was the -- you mentioned
22 earlier a price that had to be renegotiated. Where did
23 that number, the original number originate?

24 A. The original number originated I think
25 from the bill of sale about the amount of money I had

1 agreed to pay Mr. Hall. I was willing to pay Enterprise
2 Ford the same amount I had agreed to pay Mr. Hall, which I
3 thought was the fair market value, which was the \$47,000.
4 However, the bill of sale from Mr. Hall included various
5 other equipment that was not under Enterprise Ford's
6 possession or they claimed ownership to. So when the bill
7 was adjusted, it went from forty-seven down to the
8 thirty-eight five.

9 Q. And that was because it was equipment
10 that Enterprise didn't have the right to convey?

11 A. That's correct, yes.

12 Q. Now, how did you confirm this agreement
13 with Enterprise Ford?

14 A. Well, here again, I had talked with
15 Transcontinental Services, the company that's in my local
16 area that does a lot of business -- I understood did a lot
17 of business with Enterprise Ford. And I called Stanley
18 Carroll, and I said, "I'm in the process of negotiating a
19 deal with Enterprise Ford. Do you know anything about
20 these people?"

21 MR. OVERMAN: Your Honor, I object to
22 whatever they said.

23

24 BY MR. MEADE:

25 Q. Don't tell me -- you don't need to tell

1 me what Mr. Carroll said. Simply tell me why you
2 proceeded.

3 A. I proceeded because I was under the
4 impression I was dealing with a reputable dealership and I
5 was purchasing equipment.

6 Q. Now, let me go back and just ask how did
7 you confirm this agreement for the purchase of these items
8 for \$38,500?

9 A. I asked Mr. Strack to send me down a
10 receipt or bill of sale.

11 Q. Did that happen?

12 A. Yes.

13 Q. When did you receive that?

14 A. I guess it would have been the 6th or 7th
15 maybe.

16 Q. What action did you take once you
17 received that fax from Mr. Strack?

18 A. Stuck it in the file and mowed the grass.

19 Q. Did you make a payment?

20 A. Oh, yeah, I had already sent him a check,
21 yes. I think I sent him a check prior to or either about
22 the same time as he sent me the fax or the bill of sale.

23 Q. Now, during the negotiations or
24 discussions with Mr. Strack, were there discussions about
25 any liens against the property?

1 A. The only liens I recall being discussed
2 was the Ford Motor Credit or Newholland, whoever does their
3 floor planning or in-house financing.

4 Q. And what did you understand that to be?

5 A. I understood that Mr. Strack, when he
6 received the money, that they would be paid off. You know,
7 whatever their floor planning or in-house financing was.

8 Q. "They" being Enterprise Ford would be
9 paid off, or was that Newholland?

10 A. Newholland, yeah.

11 Q. And did you understand that you would
12 have to return this equipment to Enterprise Ford or
13 Newholland at any point?

14 A. No, no. I understood nothing other than
15 I had bought three tractors at that time from Enterprise
16 Ford.

17 Q. Once you paid the payment, what was your
18 understanding about your ownership of the equipment?

19 A. I assumed it was mine.

20 Q. Were there any claims by anyone else, any
21 third parties, to it?

22 A. I'm sorry?

23 Q. Did you think there were any claims by
24 any third parties at all?

25 MR. OVERMAN: Now, Judge, he's kind of

1 leading just a little bit, but --

2 THE COURT: I sustain the objection.
3 Please rephrase.

4
5 BY MR. MEADE:

6 Q. What was your understanding about the
7 title to the property once you had made payment?

8 A. I had no reason to believe other than
9 that when I made the payment, the property was turned over
10 to me in full.

11 Q. During those discussions with Mr. Strack,
12 did he ever mention to you United Leasing or any other
13 financing against the property?

14 A. Not to my knowledge, no.

15 Q. Now, there was a second transaction
16 involving another tractor. Tell us about that.

17 A. Sometime, I guess about maybe three weeks
18 later, two or three weeks later, there was another tractor
19 that had been left there at Fort Bragg, kind of sitting
20 over in the corner. We had initially knew the tractor was
21 there. We didn't know whether or not we actually needed
22 that tractor. As we got about two or three weeks into the
23 contract, we realized we could use the additional piece of
24 equipment. At that time I contacted Mr. Strack at
25 Enterprise Ford and asked him about the tractor.

24

1 He said -- here again, he indicated to me
2 that it did in fact belong to Enterprise Ford. I said,
3 "Would you like to sell it?" He said, "Sure." I offered
4 him the same price I paid for the other three per unit,
5 which is 9,000. I sent him up a check and he sent me down
6 a receipt. And here again, everything was fine.

7 Q. How did he send the receipt?

8 A. He faxed it down.

9 Q. What was the extent of those
10 discussions? Were there several phone calls?

11 A. I don't know that there was too many,
12 no. I don't recall exactly. Probably one or two
13 discussions and it was a done deal.

14 Q. Was there any discussion at that point
15 about liens against that particular tractor?

16 A. I do not recall any, no.

17 Q. And what was your understanding again
18 about what your ownership would be once you had paid the
19 9,000?

20 A. Well, again, I sent him a check, he sent
21 me the receipt, and I assumed I owned the tractor. I had
22 bought it from Enterprise Ford.

23 Q. Now, tell us about how the equipment came
24 to be repossessed or taken from you.

25 A. It was sometime toward the end of June.

1 We were down at Fort Bragg and the -- a Mr. Lerner, I think
2 was his name, from United Leasing came by the office, which
3 I had met him earlier in -- because, as I indicated, he had
4 been in and out of Fort Bragg. He came in and presented me
5 with some papers that indicated to him that he had liens on
6 the equipment, he was there to get it.

7 Of course, at that time I told him he
8 would have to present me with legal or proper authority
9 before I would release the equipment to him. And he said
10 he would be back the next day, and he was the next morning
11 with the sheriff's deputy to repossess the equipment.

12 Q. And what happened on that day?

13 A. They were there to repossess the
14 equipment. At that time I entered discussions with Mr.
15 Lerner, Jim Lerner I believe was his name, to retain the
16 equipment temporarily till we could resolve the matter.

17 Q. And how did you get him to agree to that?

18 A. I agreed to lease the equipment from him
19 if in fact it was his, which the sheriff indicated it was,
20 or he had the lien. So at that time I entered into a lease
21 agreement with him to keep the equipment on Fort Bragg for
22 two additional months.

23 Q. How much did you have to pay him for that
24 lease?

25 A. 2,500 a month.

1 Q. For all the equipment including the
2 fourth tractor?

3 A. That's correct, yes.

4 Q. And --

5 THE COURT: Excuse me. These are all
6 four tractors?

7 THE WITNESS: At this time there were
8 four involved, yes, sir.

9 THE COURT: All right.

10 MR. MEADE: I'm sorry, Your Honor. Did
11 you say four or Ford?

12 THE COURT: I meant four.

13 THE WITNESS: Yes.

14 THE COURT: The number four.

15 MR. MEADE: I wanted to make sure.

16 THE WITNESS: Yes.

17

18 BY MR. MEADE:

19 Q. And did you in fact continue to use the
20 equipment under the lease?

21 A. Yes, I did.

22 Q. For how long?

23 A. For the months continued on through July
24 and August. At the end of August we --

25 Q. So two -- I'm sorry, go ahead.

1 A. At the end of August we had completed the
2 requirement at Fort Bragg.

3 Q. And so how much did you pay him for July
4 and August?

5 A. 2500 each month, 5,000 for the total.

6 Q. And what happened to the equipment at the
7 end of the lease at the end of August?

8 A. At the end of August United Leasing came
9 down and picked the equipment up.

10 Q. Now, once United Leasing had appeared and
11 asked for possession of the equipment, did you call or
12 communicate with Enterprise Ford about that?

13 A. I'm sorry?

14 Q. Once United Leasing made their claim to
15 the equipment in late June, did you communicate with
16 Enterprise Ford about that?

17 A. Oh, sure, yeah.

18 Q. And what happened?

19 A. I don't recall other than just obviously
20 expressing my grief with the situation that, you know, I
21 had purchased the tractors and now someone's come and
22 claimed and took -- you know, claimed the liens and taken
23 it away. I was obviously a little upset.

24 Q. How did Enterprise Ford respond?

25 A. They offered no relief.

1 THE COURT: Sir?

2 THE WITNESS: They offered me no relief.

3 THE COURT: No relief.

4 THE WITNESS: Yeah.

5 THE COURT: All right.

6 THE WITNESS: And I made numerous
7 contacts with Mr. Strack and Mr. Owens. In fact, at this
8 point I obviously tried to go as high up the ladder with
9 Enterprise Ford as I could with Mr. Owens, tried to explain
10 to him the situation I felt like he had done, he had done
11 me wrong.

12

13 BY MR. MEADE:

14 Q. And who is Mr. Owens?

15 A. At that time I believe and I still do
16 believe to be the owner of Enterprise Ford.

17 MR. MEADE: Your Honor, may I approach
18 the witness?

19 THE COURT: The bailiff will handle any
20 documents that you have.

21

22 BY MR. MEADE:

23 Q. Mr. Phillips, I've asked you to look at a
24 document. Do you recognize that?

25 A. Yes, I do.

1 Q. What is it, please?

2 A. This is the receipt or bill of sale I
3 received from Enterprise Ford for the initial purchase.

4 Q. All right. So this is for the --

5 MR. OVERMAN: If the Court please, I'm
6 going to object to him testifying that it's a bill of
7 sale. The Court can look at the document itself and make a
8 conclusion as to what it is, but it's a fax.

9 THE COURT: Well, I haven't seen it yet,
10 but just go ahead and refer to it as a document instead of
11 putting an official title on it.

12 MR. OVERMAN: All right, sir.

13 MR. MEADE: I do have a copy for the
14 Court if you'd like, Your Honor, so you can look at it as
15 we discuss it.

16 THE COURT: All right.

17

18 BY MR. MEADE:

19 Q. Mr. Phillips, so this is a fax that you
20 received?

21 A. Yes, uh-huh.

22 Q. All right. And this describes the
23 amounts that we were discussing earlier?

24 A. Yes, it does.

25 Q. And the \$47,000 amount is the amount that

1 you testified was this --

2 A. That's correct, yes.

3 Q. And which handwriting on here is yours,
4 sir?

5 A. The figures out to the far right, nine,
6 nine, 1500, 2,000, thirty-eight five. And over to the far
7 left is circled, circled numbers, those are my figures.

8 Q. And the \$38,500 amount, where did you or
9 when did you discuss that with Bruce Strack?

10 A. Again, on or about the 5th, 6th or 7th we
11 were negotiating this deal.

12 Q. And once you received this fax from Mr.
13 Strack, what did you do?

14 A. I'm sorry?

15 Q. Once you had received the fax from Mr.
16 Strack, what did you do?

17 A. Put it in the file.

18 Q. And did you actually send the money?

19 A. Oh, I think I sent the money about either
20 before he actually sent me the fax or either right after.
21 I don't know. I'm not sure. At or around the same time.

22 MR. MEADE: Your Honor, we'd move to
23 enter this into evidence as Plaintiff's Exhibit A.

24 MR. OVERMAN: We have no objection.

25 THE COURT: All right. This will be

1 marked as Plaintiff's Exhibit Number 1.

2 MR. MEADE: One, yes, sir.

3 THE COURT: It is introduced without
4 objection.

5 MR. OVERMAN: It's also been admitted to
6 under the requests for admissions.

7 THE COURT: Sir?

8 MR. OVERMAN: These documents have been
9 admitted to under the requests for admissions.

10 THE COURT: All right.

11

12 (Whereupon, Plaintiff's Exhibit Number 1
13 was marked and received in evidence.)

14

15 BY MR. MEADE:

16 Q. Mr. Phillips, I've asked you to look at a
17 second document. Do you recognize this document?

18 A. Yes sir.

19 Q. Tell us what it is, please.

20 A. I'm sorry?

21 Q. Tell us what it is, please.

22 A. Let me read it, if I may.

23 I guess this was a confirmation of my
24 discussion with Mr. Strack about the purchase of the fourth
25 tractor.

1 Q. Purchase of the fourth tractor?

2 A. I think that's correct, yes, sir.

3 Q. So this is the second transaction?

4 A. Yes, sir.

5 Q. And do you recall receiving this fax?

6 A. Yes, I do.

7 Q. All right. Once you had received this
8 fax, what did you do?

9 A. Sent Mr. Strack up a check for the 9,000
10 to pay for the tractor.

11 MR. MEADE: Your Honor, we'd move to
12 enter this exhibit as Plaintiff's 2.

13 THE COURT: Any objection?

14 MR. OVERMAN: No objection.

15 THE COURT: Marked and introduced without
16 objection as Plaintiff's Exhibit Number 2.

17

18 (Whereupon, Plaintiff's Exhibit Number 2
19 was marked and received in evidence.)

20

21 BY MR. MEADE:

22 Q. Mr. Phillips, can you identify this
23 document?

24 A. Yes. This is the copies of the two
25 checks that were sent to Enterprise Ford to pay for the

1 tractors we purchased.

2 Q. All right.

3 A. And the related equipment.

4 Q. I'm sorry?

5 A. And the related equipment.

6 Q. And the amounts of those checks?

7 A. 9,000 and 38,500.

8 MR. MEADE: Your Honor, we'd move to
9 admit this as exhibit Plaintiff's 3.

10 MR. OVERMAN: No objection.

11 THE COURT: It will be marked and
12 introduced without objection as Plaintiff's Exhibit Number
13 3, the two checks, photocopies of the two checks.

14
15 (Whereupon, Plaintiff's Exhibit Number 3
16 was marked and received in evidence.)

17
18 BY MR. MEADE:

19 Q. Mr. Phillips, again, can you look at this
20 document and see if you recognize it, sir?

21 A. Yes. This is the lease agreement that I
22 entered into with United Leasing, obviously, on the 1st day
23 of July.

24 Q. And this is the lease where you testified
25 you paid \$2500 a month to continue using your equipment?

1 A. That's correct, yes, sir.

2 Q. That is your signature at the end or,
3 actually, your brother's signature and your signature at
4 the end of the document?

5 A. Yes, that's correct.

6 MR. MEADE: Your Honor, we'd move to
7 admit this as Exhibit 4.

8 MR. OVERMAN: No objection.

9 THE COURT: No objection. It will be
10 marked and introduced as Plaintiff's Exhibit Number 4.

11

12 (Whereupon, Plaintiff's Exhibit Number 4
13 was marked and received in evidence.)

14

15 MR. OVERMAN: Something on there that's
16 not relevant, so we're just going to mark it off.

17 MR. MEADE: It has an extra check on
18 here, Your Honor, so we're going to mark through it and
19 fold it over and submit it to the witness.

20 MR. OVERMAN: We don't have any objection
21 to the entrance of this document, if the Court please.

22 THE COURT: With the modification?

23 MR. OVERMAN: Yes, with the
24 modification.

25 THE COURT: What I've done, gentlemen --

1 you want just the bottom half for the exhibit?

2 MR. MEADE: Yes, Your Honor.

3 THE COURT: I've torn off the top half.

4 I just have in front of me now the check from Mid-East
5 Services in the amount of \$2,500, check number 024423. Mr.
6 Overman, you said you had no --

7 MR. OVERMAN: I have no objection to it
8 being introduced in evidence.

9 THE COURT: This check will be marked and
10 introduced without objection as Plaintiff's Exhibit Number
11 5.

12 MR. MEADE: Your Honor, I believe we have
13 one more check which I think Mr. Overman is indicating he
14 had no objection. This is the second payment on the lease
15 for August dated 7-22, check number 24731.

16 THE COURT: Any objection?

17 MR. OVERMAN: No objection.

18 THE COURT: Plaintiff's Exhibit Number 6
19 marked and introduced without objection. All right.

20

21 (Whereupon, Plaintiff's Exhibit Numbers 5
22 and 6 were marked and received in evidence.)

23

24 BY MR. MEADE:

25 Q. Mr. Phillips, once you had communicated

1 sticker that it's for ID only, Number 7.

2
3 (Whereupon, Plaintiff's Exhibit Number 7
4 was marked for purposes of identification.)

5
6 BY MR. MEADE:

7 Q. Mr. Phillips, to date have you received a
8 refund of any of your money that you paid to Enterprise
9 Ford Tractor?

10 A. No, sir, I have not.

11 Q. And do you have the use of the equipment
12 at this time?

13 A. I do not, no.

14 Q. And did United Leasing or any other third
15 party make any payment to you for that equipment?

16 A. No, sir, it did not.

17 Q. So your total losses are \$52,500 at this
18 point?

19 A. That sounds correct, yes.

20 Q. Plus attorney's fees?

21 A. Yes, sir.

22 MR. MEADE: Thank you, Mr. Phillips. No
23 further questions.

24 THE COURT: Mr. Overman, any questions?

25 MR. OVERMAN: Yes, sir, I've got one or

1 two.

2 THE COURT: All right.

3

4 CROSS-EXAMINATION

5

6 BY MR. OVERMAN:

7 Q. Mr. Phillips, how long have you been in
8 this kind of business?

9 A. Eighteen, 20 years.

10 Q. Eighteen, 20 years? And when you buy
11 equipment from people, do you normally have your attorney
12 or yourself check the title on it and see who it belongs
13 to?

14 A. When I'm dealing with what I consider
15 reputable people, I do not, no.

16 Q. And you considered Mr. Hall to be a
17 reputable person?

18 A. I'm sorry?

19 Q. You consider Mr. William T. Hall to be a
20 reputable person?

21 A. No, I do not.

22 Q. Okay. I would show you a contract. What
23 I've handed you is a bill of sale made June the 4th between
24 William T. Hall, the owner of this property, to your
25 corporation. Is that correct?

1 that this may be where the equipment came from.

2 Q. Okay. And you called up to find out if
3 any money was owed on this equipment, did you not?

4 A. I did not, no.

5 Q. No, you didn't? What did you call for?

6 A. I talked with -- I called Enterprise Ford
7 to see if they had an interest in selling me the equipment
8 after they had indicated to me that it belonged to them.

9 Q. You're telling this Court they told you
10 they owned the equipment?

11 A. That's correct.

12 Q. You've got a contract in hand to buy it
13 from Hall and you're in possession of this equipment, are
14 you not?

15 A. That's correct, that's right.

16 Q. And you're calling Enterprise, and you're
17 saying that they told you they owned the equipment?

18 A. That's correct.

19 Q. What made you think they owned the
20 equipment other than what Mr. Hall was telling you or what
21 Enterprise was telling you?

22 A. Here again, the people at Fort Bragg
23 indicated that -- and I think it was Mr. Phil Williams
24 who's the project manager, that he thought the equipment
25 belonged to Enterprise Ford.

1 A. "Per our con" -- you want me to read the
2 whole thing?

3 Q. Yes.

4 A. "Per our conversation, we have signed a
5 retail sales agreement with Bill Hall of York River for a
6 3930 serial number" et cetera "in the amount of \$9,000. If
7 you send us the money, we will forward it to Newholland to
8 release the lien."

9 Q. All right, sir. What did you think that
10 meant?

11 A. I assumed that Newholland was a floor
12 planner for Enterprise Ford, and just like any dealer, when
13 you buy equipment from them, they obviously send off a
14 portion of that to pay the floor plan. That's what I
15 assumed it was.

16 Q. It refers to your contract with Bill
17 Hall. What did you think that meant?

18 A. I didn't have any idea what that meant.
19 Still don't.

20 Q. Well, did you think Enterprise Ford owned
21 this equipment also?

22 A. I was led to believe they did, and that's
23 the reason I purchased it from them, sir.

24 MR. OVERMAN: I don't have any further
25 questions.

1 Q. And back in June of '97, what was your
2 position with the company?

3 A. I was vice-president.

4 Q. All right, sir. Did there come a time --
5 well, first, let me ask you this: You had a series of
6 dealings over the years with Mr. Hall?

7 A. Oh, yes, quite a bit. Not directly with
8 me and the prior general manager, but I met Mr. Hall many,
9 many times.

10 Q. Mr. Strack, I'm going to hand you two
11 documents that appear to be financing statements recorded
12 in Gloucester and certified. See if you can recognize
13 those.

14 A. Yes, sir, I do.

15 Q. And what was that for? What are those
16 financing statements for?

17 A. For the equipment that York River had
18 financed with Newholland Credit, purchasing them through
19 us.

20 Q. Well, the financing statement is in your
21 company's name. Did you have full recourse paper on that?

22 A. Yes. We guaranteed the note.

23 Q. Why?

24 A. It was -- I wasn't directly involved at
25 that time. The general manager, as you see who signed it,

1 A. Had never met him or heard of him before.

2 Q. Ever heard of his company?

3 A. No.

4 Q. Okay. Apparently, they have military

5 contracts here on the Peninsula also?

6 A. Which company has military contracts?

7 Q. Mid-East.

8 A. No, I've never heard --

9 Q. They've never dealt with you and never

10 bought any equipment from you?

11 A. Never.

12 Q. What was the conversation between you and

13 Mr. Phillips when he called?

14 A. He called stating he was buying these

15 pieces of equipment that's been discussed.

16 Q. Who did he say he was buying the

17 equipment from?

18 A. From Bill Hall.

19 Q. Okay.

20 A. Of York River.

21 Q. And what did you tell him about that?

22 A. I told him just make sure that he knew

23 who he was dealing with, and he then told me that he had

24 been talking to people that have told him the same thing.

25 So I said, "Let me check our file." I pulled the contracts

1 that were done in '94 and saw that our prior general
2 manager had signed a full guarantee on the contract. I
3 told him there was a lien --

4 Q. Where was that paper with? Who had that
5 paper?

6 A. We keep a copy of all contracts.

7 Q. Yeah, but where was -- was it sold to
8 someone, the financing?

9 A. Newholland Credit.

10 Q. Newholland Credit is --

11 A. At that time it was Ford Newholland
12 Credit.

13 Q. All right. I'm not familiar, but it's
14 like an automobile company, they have their own financing;
15 is that correct?

16 A. Yeah, for their own equipment. It has
17 nothing to do with us. We just do the paperwork.

18 Q. And what did you tell Mr. Phillips about
19 any liens on the property?

20 A. I told him that Newholland did have a
21 lien and I had to call them to see what payoffs were.

22 Q. All right. And what did he tell you?

23 A. He told me the prices that he had with
24 Bill Hall or that they had agreed on in their contract.

25 Q. And how much was that, do you remember?

1 A. Forty-seven five or forty-seven even,
2 whatever that was.

3 Q. Okay.

4 A. And when I called Newholland, they gave
5 me payoffs of about 10,500 per tractor and different prices
6 for the mowing equipment. And when I called Robert
7 Phillips back and told him that, he said that he wasn't
8 going to pay anything over the 9,000 per tractor and the
9 different amounts per piece of equipment. So I called
10 Newholland Credit back and asked if they would accept that.

11 Q. To release the liens?

12 A. To satisfy their lien. And they said
13 that that would be absolutely better than nothing. I then
14 told Robert Phillips that and he accepted.

15 Q. Okay.

16 A. To pay the same price.

17 Q. So how much did he pay to release these
18 liens at that point, how much was the check for?

19 A. The initial check was 38,500, and I can
20 tell you how that was distributed if you'd like.

21 Q. Yes, sir.

22 A. We sent 30,000 to Newholland Credit based
23 on the amount -- of the serial numbers that we were -- that
24 we received a check for, sent that to Newholland Credit.
25 And being that he had a contract with Bill Hall, it was to

1 my belief and understanding that the rest of the money
2 should go towards Bill Hall's past-due account with us.

3 Q. How much was applied the Bill Hall's
4 past-due account?

5 A. \$8500.

6 Q. And was that with Mr. Hall's permission?

7 A. Yeah. I discussed it with him.

8 Actually, he called me because he I guess knew the check
9 had stopped or something, and I talked to him about it.
10 And his account was over 20,000, and he said that would be
11 fine.

12 Q. All right, sir. Did you ever represent
13 to these people that Enterprise Ford owned the title to
14 this equipment?

15 A. No. We've been doing business for almost
16 30 years and we know when something's not ours.

17 Q. I mean, there was no doubt that it was
18 Mr. Hall's equipment?

19 A. Yeah, no doubt about it.

20 Q. Were you aware of any secondary financing
21 at that point?

22 A. No, sir.

23 Q. First lienholder's not notified or you
24 have no way of knowing whether he's put subsequent liens on
25 it?

1 A. No, sir, has nothing to do with us.

2 Q. All right, sir. The second transaction,
3 apparently, he calls back several days later or right
4 around the 18th, I guess, 17th, and wants to purchase an
5 additional tractor; is that correct?

6 A. Yes, sir.

7 Q. And what was the transaction on that?

8 A. It was \$9,000, and I was very specific in
9 my second fax because of the way things were going and who
10 was involved, being Bill Hall, one.

11 Q. Okay. What made you more cautious and
12 not be so informal on the second one, so to speak? What
13 had you learned in the meantime?

14 A. That United Leasing had a second lien on
15 the equipment.

16 Q. How did you know that?

17 A. They called us.

18 Q. United Leasing did?

19 A. Yes.

20 Q. And did you pass that on to Mr. Phillips?

21 A. Yes.

22 Q. And did he --

23 A. He was aware of it also.

24 Q. He was aware of it?

25 A. He had said he had talked to Mr. Lerner.

1 Q. Okay. And, again, did you represent that
2 you owned this property?

3 A. No, sir.

4 Q. And he paid \$9,000, which what did you do
5 with the \$9,000?

6 A. Sent the whole 9,000 to Newholland.
7 That's what they required.

8 Q. And that was to release their lien; is
9 that correct?

10 A. Yes, sir.

11 Q. Have you at any time tried to lead these
12 people astray and tell them that you owned the property?

13 A. No. I actually thought we were going to
14 form a relationship with another mowing contractor.
15 They're our bread and butter customer. We have about six
16 or seven, and they're big contractors.

17 MR. OVERMAN: All right, sir. Answer
18 plaintiff's questions.

19 THE COURT: Before that, Mr. Overman, the
20 Defendant's Exhibit Number 4 with the five financing
21 statements --

22 MR. OVERMAN: Judge, we need to introduce
23 that into evidence, if the Court please.

24 THE COURT: It's been introduced, but I
25 was looking through there, and there are items here that

1 have nothing to do with this case.

2 MR. OVERMAN: Yes, sir. There are some
3 that are and some that are not, if the Court please.

4 THE COURT: Well, why would you submit
5 them, like a John Deere backhoe? That doesn't have
6 anything to do with this case.

7 MR. OVERMAN: No, sir, it doesn't.

8 THE COURT: Why did you introduce it?

9 MR. OVERMAN: Probably because I didn't
10 proofread it too close.

11 THE COURT: Let's proofread them today.

12 MR. OVERMAN: Yes, sir.

13 THE COURT: Three Excel mowers, two Alamo
14 interstate rear flail units, that may be involved here. I
15 need some confirmation on that. And a Chevrolet Kodiak and
16 a Dodge pickup. Does that financing statement -- that's
17 from book one, page 532. Does that have anything to do
18 with this case?

19 MR. OVERMAN: The flails do.

20 THE WITNESS: The flail mowers do.

21 THE COURT: The two Alamo interstate rear
22 flail units and side wings mounted on Ford tractor model
23 6640S.

24 THE WITNESS: Yes, sir.

25 THE COURT: That's the same mower we're

1 dealing with here?

2 THE WITNESS: Those are the same mowers.

3 MR. MEADE: Your Honor, I believe the
4 testimony was that these are 3930 tractors. It's not the
5 same tractor.

6 THE COURT: I heard that. That's why I
7 asked and emphasized Ford tractor model 6640S.

8 THE WITNESS: It's the mowers on them
9 that are in question.

10 THE COURT: Right. So they've been
11 switched from the Ford tractor 6640S to the 3930?

12 THE WITNESS: Yes, sir. They switch as
13 easy as switching a plow or a disk or something. They just
14 hitch the mount to the three-point hitch.

15 THE COURT: All right. And what about
16 then the third item here, two Excel Hustler commercial
17 mowers with a Kohler Command engine, 22 horsepower? That's
18 not this matter either?

19 THE WITNESS: No, sir.

20 THE COURT: Two Excel Hustler, it says
21 Bac, B-a-c, Pacs, P-a-c-s, eight-bushell collection
22 system. We're dealing with a small garden mower and a
23 tractor system on that, aren't we?

24 THE WITNESS: Yes, sir.

25 THE COURT: With an Excel edger model.

1 That doesn't have anything to do with this case, does it?

2 THE WITNESS: No, sir, it does not.

3 THE COURT: Should that have been
4 submitted, Mr. Overman?

5 MR. OVERMAN: No, sir, it shouldn't have
6 been submitted.

7 THE COURT: The next, book one, page 249,
8 1995 Excel Hustler commercial mower, and an Excel Hustler,
9 again, BacPac eight-bushell system. That's just a garden
10 tractor, correct?

11 THE WITNESS: Yes, sir, or just some
12 grass-cutting piece of equipment.

13 THE COURT: It doesn't have anything to
14 do with this case?

15 THE WITNESS: No, sir.

16 THE COURT: 1994 Dewey model ATM, diesel
17 slope mower. Does that have anything to do with this
18 case?

19 THE WITNESS: No, sir.

20 THE COURT: So of your five financing
21 statements, Mr. Overman, one and only one is relevant to
22 this case?

23 MR. OVERMAN: Yes, sir.

24 THE COURT: I'll leave that marked as now
25 one financing statement on Defense Exhibit Number 4. I

1 don't appreciate that being submitted to the Court without
2 you having read it.

3 MR. OVERMAN: Yes, sir.

4 THE COURT: It's sloppy and inexcusable.

5 All right, Mr. Meade, do you have some
6 questions on cross?

7 MR. MEADE: I do, Your Honor.

8
9 CROSS-EXAMINATION

10
11 BY MR. MEADE:

12 Q. Good morning, Mr. Strack. At the time
13 you were Enterprise Ford Tractor vice-president when these
14 transactions occurred, your scope of work or duties
15 included supervising all sales transactions?

16 A. Yes, sir.

17 Q. And you actually didn't answer the phone
18 when Mr. Phillips called, as I understand it. It was
19 referred to you because you were sales manager?

20 A. Yes.

21 Q. Why was that, because it was an unusual
22 call?

23 A. No, I can't be specific because I don't
24 recall, but when there is a sales call, they just announce
25 a sales call on whatever appropriate line that call is

1 coming in on.

2 Q. So you don't recall exactly how you came
3 to pick up the phone?

4 A. Just a sales call.

5 Q. All right. Now, you've described
6 yourself as basically taking calls from Mr. Phillips with
7 offers, conveying those to Newholland and then going back
8 to Mr. Phillips until finally a consensus was reached; is
9 that accurate?

10 A. That's very accurate.

11 Q. So you were acting basically as the
12 negotiations middleman for this initial transaction?

13 A. That is exactly right.

14 Q. And your understanding was that if
15 Newholland was paid off, Enterprise Ford Tractor's lien
16 would also be released?

17 A. We did not have a -- the first lien.
18 Newholland had the lien. We were just guaranteeing that if
19 they were not paid, we would pay.

20 Q. Your UCC search didn't turn up any UCC-1s
21 for Newholland, though, did it?

22 A. They were -- they're not in that search,
23 no.

24 Q. And your understanding is this search was
25 from the State Corporation Commission's records and it's a

1 full search, right?

2 A. I don't know if that search was from the
3 county or from the state.

4 Q. Okay. But if it's county or state, your
5 understanding is that it was a full search, showed all
6 liens against York River Services? Is that your
7 understanding, sir?

8 A. I personally had the lien handled by the
9 lawyer. I mean, the search handled by the lawyer.

10 Q. So you don't have any personal knowledge
11 about the liens or what was on it other than what was in
12 your contract?

13 A. Oh, Newholland faxed me their liens.

14 Q. Now, when Enterprise Ford Tractor
15 guarantees the loan, that basically means you step into the
16 shoes of your customer, right?

17 A. Pardon me?

18 Q. When you guarantee this loan for York
19 River Services in this case, that means Enterprise is
20 vouching for payment by York River Services?

21 A. In the case that he defaults.

22 Q. And so if he defaults, Newholland has to
23 be paid, and that's got to come from Enterprise Ford
24 Tractor?

25 A. That's correct.

1 Q. So at the time that you received a call
2 from Mr. Phillips, I think you've testified the approximate
3 balance to Enterprise was \$20,000.

4 A. The balance from Bill Hall's company,
5 York River Services.

6 Q. Yes, sir, I'm sorry. From York River
7 Services to Enterprise Ford was about approximately
8 \$20,000?

9 A. Yes, sir.

10 Q. And of the 38,500, you sent 30,000 to
11 Newholland?

12 A. That is correct.

13 Q. And that was on part of your guarantee to
14 them?

15 A. That is correct.

16 Q. And the rest stayed with Enterprise Ford?

17 A. It was applied to Bill Hall's account,
18 because that money was due him.

19 Q. Did you later have to pay that money to
20 Newholland?

21 A. No. They had -- there was different
22 serial numbers. They had no lien on that, and to my
23 knowledge, it was due Bill Hall.

24 Q. You personally wrote the fax dated June
25 5, '97, the first transaction fax?

1 A. Yes.

2 Q. And you signed that and sent it to Mr.
3 Phillips in North Carolina?

4 A. I didn't sign it, to my knowledge. Can I
5 look at it?

6 Q. Sure, absolutely.

7 A. No, it's just the everyday same fax
8 transmission that we use.

9 Q. But on the third line where it says "From
10 Bruce Strack," you actually wrote that in your handwriting?

11 A. Yeah, yeah, that's my handwriting.

12 Q. And you did it so Mr. Phillips would know
13 who the fax was from?

14 A. That's correct.

15 Q. So you intended it basically as your
16 signature? It's not a signature in cursive writing, but --

17 A. We don't use fax transmissions as
18 contracts, especially on equipment that's not owned by us.

19 Q. Okay. You wrote on this first fax that
20 the check for 47,000, which did not ever change, will pay
21 for this equipment?

22 A. Yes, to the best of my knowledge,
23 that's -- it's exactly correct.

24 Q. So Mr. Phillips would not have to return
25 this equipment to Enterprise at any point?

1 A. Right. And he never would be required to
2 do that.

3 Q. Newholland would not have any lien
4 against this equipment because you're paying them off?

5 A. That's correct.

6 Q. You're not aware of any third-party liens
7 at that point, so you tell him "It's yours"?

8 A. Yes.

9 Q. And when you received the check for
10 \$38,500, there's no dispute about payment, that was the
11 amount that was agreed?

12 A. Yeah, it was agreed a day or so after
13 that fax.

14 Q. And he sent the check and you received
15 that?

16 A. I sent the check and I received it?

17 Q. I'm sorry. Mr. Phillips sent you the
18 check and you received it?

19 A. And I received it, for thirty-eight five,
20 yes, sir.

21 Q. Yes, sir. Did you record a UCC
22 termination statement?

23 A. No, that is not our responsibility.

24 Q. Is it Newholland's responsibility to
25 record a financing statement, termination statement for

1 Enterprise Ford?

2 A. From what I understand, they expire in
3 five years.

4 Q. So you just leave it on record until it
5 expires?

6 A. Or the person that the lien's name is
7 under, which was York River, they may stop the UCC. That's
8 to my understanding.

9 Q. Although the lien attaches to the
10 equipment solicited, so if you list two Alamo flails, for
11 example, and then transfer those to another person,
12 Mid-East, that lien will follow the equipment, right?

13 A. The lien would exist unless York River or
14 Newholland canceled it, yes.

15 Q. But Enterprise Ford didn't do anything to
16 terminate the UCCs on that equipment?

17 A. No, sir.

18 Q. And Mr. Phillips called you again on July
19 17th or thereabouts?

20 A. No, there were probably a conversation or
21 two in between there.

22 Q. But nothing resulted from those
23 conversations, no purchases? The second transaction was
24 solely for the fourth tractor?

25 A. Yes, that is correct.

57

1 Q. And you testified that you were very
2 specific on the second fax because of Bill Hall's
3 involvement?

4 A. Well, his presence, I had come to find
5 out, in anything was probably shaky. But I was very
6 specific because United Leasing called me.

7 Q. And they called you before this second
8 transaction occurred?

9 A. Yes, stating that about -- there was
10 probably -- that equipment they felt was theirs and they
11 had discussed that with Robert Phillips.

12 Q. All right. Do you know the date that
13 they called you and told you that?

14 A. No, sir.

15 Q. Did you make any notes of this
16 conversation?

17 A. No. I didn't feel I had any reason to.

18 Q. Why did you include Newholland's lien on
19 the fax but not include the lien of United Leasing, if you
20 were aware of it?

21 A. It had nothing to do with us.

22 Q. I'm sorry?

23 A. It has nothing to do with us. I wasn't
24 profiting from this transaction. There was -- we didn't
25 deal with United Leasing. I felt no responsibility to

1 them.

2 Q. You didn't profit from this transaction,
3 although it did reduce the debt owed to your company by
4 \$8400 at least?

5 A. That's correct.

6 Q. And that's not profit, repayment of debt?

7 A. Not to my knowledge, that's not profit.
8 That's cash flow.

9 Q. And you don't deal with United Leasing,
10 you say?

11 A. Not on this transaction.

12 Q. All right. But you do other transactions
13 with United Leasing as a financing company, right?

14 A. The last one was probably in '95 or 6, I
15 would say.

16 Q. And then you were using them for your
17 high-risk clients?

18 A. Yes.

19 Q. Customers? And so although you knew
20 about this lien from United Leasing, when you faxed Mr.
21 Phillips you didn't bother to put that in the fax is what
22 you're telling us?

23 THE COURT: Didn't bother to what?

24 BY MR. MEADE:

25 Q. To put that lien in the fax.

1 A. That's right. We discussed it on the
2 telephone, and I only put in the fax what was relevant to
3 what I was doing.

4 Q. All right. Did the amount of the payment
5 to United or, excuse me, to Newholland satisfy all their
6 liens for York River?

7 A. No, sir. We still took recourse on
8 several pieces.

9 Q. So you owed Newholland for York River's
10 default, because you were guarantor?

11 A. Yes.

12 Q. And you had talked at least with Mr. Hall
13 after this first transaction, and he told you it was okay
14 to apply the funds to his debt?

15 A. Yes.

16 Q. All right. When did that happen?

17 A. I don't remember which day, but it was a
18 couple days after, not long.

19 Q. A couple of days after which?

20 A. After the June 5th discussions.

21 Q. And did he tell you at that point what
22 equipment he still had and where it was?

23 A. No. He claimed he had scrapped several
24 pieces, used them for parts, and the ones that were there,
25 there was only three pieces that I recall that were found.

1 Q. And was Newholland satisfied with the
2 moneys that Enterprise Ford sent down?

3 A. Yes, it satisfied our recourse.

4 (Pause.)

5 Q. Have you had a chance to read it, Mr.
6 Strack?

7 A. Yes, sir.

8 Q. Do you recognize this document?

9 A. Yes, sir.

10 Q. What is it, please?

11 A. It is a fax from Newholland Credit to
12 Enterprise Ford.

13 Q. To you?

14 A. Yes.

15 Q. Do you recall receiving this fax about
16 the time of the transaction?

17 A. Uh-huh, yes, sir.

18 Q. I believe the date on it actually in the
19 top left corner is July 9. It's very difficult to read.
20 Does that sound about right?

21 A. That sounds about right.

22 Q. All right. In the second -- I guess it's
23 the third sentence in the second line, it says "Newholland
24 Credit has been paid 27,000 for" --

25 THE COURT: Where is that?

1 you --

2 Q. Yes, sir. You had paid some of that to
3 Newholland on your guarantee?

4 A. The 14,000 was an open account that was
5 past due.

6 Q. So that part wasn't guaranteed solely,
7 this \$102,000 purchase?

8 A. That's correct.

9 Q. The Newholland lien, at the time you
10 talked to them in early June '97, exceeded the amount of
11 the -- on these items of equipment, exceeded the amounts
12 that were owed; is that correct?

13 I can do a better job. Let me rephrase
14 that.

15 A. Okay.

16 Q. The particular items that we're dealing
17 with on the first fax, June 5, 1997, the amounts that were
18 being paid by Mid-East Enterprises were less than the
19 amount owed to Newholland on each of those items?

20 A. That is correct.

21 Q. It was below market, in fact?

22 A. Yes.

23 Q. Mr. Strack, there was no reason, when you
24 sent the second fax, that you could not have simply listed
25 in there "The lien to United Leasing will not be released,"

1 is there?

2 A. None other than I didn't feel it had
3 anything relevant to us. I was clear with him over the
4 phone of it, and he insisted on trying to get this tractor,
5 so I put exactly what needed to be done for him to release
6 Newholland's lien.

7 Q. On the fourth tractor did you tell Mr.
8 Phillips that he would have to return that tractor or that
9 he may have -- lose the tractor to anyone else?

10 A. Oh, yes, on that one it was very possible
11 United Leasing could come into play.

12 Q. You just didn't put it into the specific
13 fax?

14 A. That's correct.

15 MR. MEADE: Thank you.

16

17 REDIRECT EXAMINATION

18

19 BY MR. OVERMAN:

20 Q. Mr. Strack, along that same point, you
21 and Mr. Phillips had a discussion about the second tractor?

22 A. Yes.

23 Q. And was he aware that there was another
24 lien on the property?

25 A. Yes.

1 Q. And that was to?

2 A. United Leasing.

3 Q. United Leasing. And he wanted to buy the
4 tractor anyhow from Mr. Hall; is that correct?

5 A. That's correct.

6 Q. And you were going to pay --

7 THE COURT: I assume -- you said the
8 second tractor. That's the fourth tractor, the last
9 tractor?

10 THE WITNESS: The fourth tractor.

11 THE COURT: The second transaction?

12 THE WITNESS: The second fax, yes.

13 THE COURT: Excuse me.

14

15 BY MR. OVERMAN:

16 Q. And you were paying off the liens to
17 Newholland?

18 A. That's correct.

19 Q. Just like you had in the first
20 transaction?

21 A. That's correct.

22 Q. Did you ever lead this man astray? Was
23 there any reason for you to tell him that you owned the
24 property when in fact you didn't own it?

25 A. No, actually, to stay in business you

1 need to keep your customers, and that's not a good way of
2 getting a customer.

3 MR. OVERMAN: All right. That's all the
4 questions I have.

5 THE COURT: All right. Anything else?

6 MR. MEADE: No, sir.

7 THE COURT: I have a few questions to
8 clarify some confusion that I have. Defendant's Exhibit
9 Number 1 is what's labeled a bill of sale from William Hall
10 to Mid-East Services on June 4 of 1997 in the amount of
11 \$47,000, and it lists the equipment. And your fax is sent
12 the next day, June 5th, and you make reference to the same
13 amount, a check in the amount of \$47,000 will pay for, and
14 you list the three tractors, the five Alamo mowers, the
15 swing trim and the Bush Hog mower.

16 THE WITNESS: Yes, sir.

17 THE COURT: And as Mr. Phillips
18 testified, the figures on the far right-hand margin that
19 are slightly less bold and the figures on the left-hand
20 margin that, again, are slightly less bold, those are --
21 the marginal figures are Mr. Phillips' handwriting,
22 correct?

23 THE WITNESS: Yeah, that's what I've been
24 told, sir.

25 THE COURT: Not yours anyway?

1 THE WITNESS: That's correct.

2 THE COURT: Everything in the middle is
3 yours?

4 THE WITNESS: That is correct.

5 THE COURT: Explain to me what you mean
6 by a check in the amount of 47,000 will pay for this
7 equipment.

8 THE WITNESS: I never did see his
9 contract between him and Bill Hall. I was told the amount
10 of money and I was told --

11 THE COURT: By Mr. Phillips?

12 THE WITNESS: Yes, sir. And if we would
13 have received 47,000, we would have sent the same amount to
14 Newholland and applied the rest to Bill Hall's account. He
15 wanted to back out of the other 8500 because he discovered
16 a different lienholder -- I don't know who or anything
17 about it -- on other various pieces, and said that
18 thirty-eight five was what he intended to send. I also
19 added it up myself just on scratch scrap paper, and told
20 him that would take care of those items listed on the fax.

21 THE COURT: So then tell me what you mean
22 by the check in the amount of 47,000 will pay for these
23 items.

24 THE WITNESS: All right. He had an
25 existing contract.

1 THE COURT: Who is "he"?

2 THE WITNESS: Robert Phillips, with Bill
3 Hall. Robert Phillips had an existing contract that I had
4 been told about by Robert Phillips. If he sent that money
5 to us and we released the only lien we knew about, then
6 that would pay for those units and they would be his.

7 THE COURT: Okay.

8 THE WITNESS: We have actual contracts,
9 sir, when we do sell equipment.

10 THE COURT: Then you're more precise on
11 Plaintiff's Exhibit Number 2 in the second transaction on
12 the fourth tractor. And you again make reference to retail
13 sales agreement with Bill Hall, \$9,000. "If you send us
14 the money, we will forward it to Newholland to release the
15 lien."

16 THE WITNESS: Yes, sir. I knew at that
17 time I needed to be very specific.

18 THE COURT: Why weren't you that specific
19 on this first, using the same type of language on the first
20 fax, saying that the check in the amount of 47,000 will
21 release the lien of Newholland on the following equipment?

22 THE WITNESS: Because I did not know of
23 the second lien. I knew that it would satisfy the purchase
24 of those from Bill Hall.

25 THE COURT: And you would have sold the

1 equipment again to William Hall or to his company, York
2 River Services, Inc.?

3 THE WITNESS: Originally. We had to send
4 the money to Newholland, because we had recourse on that
5 contract.

6 THE COURT: All right. So your
7 relationship to this equipment was simply through
8 Newholland's lien?

9 THE WITNESS: That's it.

10 THE COURT: You were not the owner of
11 that equipment?

12 THE WITNESS: No, sir.

13 THE COURT: Did Mr. Phillips know that?

14 THE WITNESS: Oh, yes, sir, very much so.

15 THE COURT: How was he aware of that?

16 THE WITNESS: We told him that there was
17 a lien on it with Newholland.

18 THE COURT: Who told him?

19 THE WITNESS: I told him, sir.

20 THE COURT: So what did you tell Mr.
21 Phillips? Who did you tell Mr. Phillips was the owner of
22 the equipment?

23 THE WITNESS: Bill Hall. And I told him
24 that he would own that if the first lien was taken care
25 of.

1 THE COURT: Any other questions of your
2 witness?

3 MR. OVERMAN: No, sir.

4 THE COURT: Mr. Meade, any other
5 questions?

6 MR. MEADE: No, sir.

7 THE COURT: All right, thank you, sir.
8 You may be seated next to your attorney.

9 MR. OVERMAN: Defense rests, if the Court
10 please.

11 THE COURT: All right. Mr. Meade, any
12 rebuttal evidence?

13 MR. MEADE: No, Your Honor.

14 THE COURT: All right. If that's all the
15 evidence in the case, then I'll hear from the plaintiff
16 first in closing argument.

17 Mr. Meade.

18 MR. MEADE: Thank you, Your Honor. Much
19 as we expected, Your Honor, there's not a great line of
20 dispute about the facts in this case. Clearly, the
21 transaction happened. Both parties intended it to happen.
22 There was an agreement reached, there were funds exchanged
23 that were intended to take this transaction and convey the
24 property to Mr. Phillips' company.

25 The only factual dispute I think to be

1 resolved here is whether in the second transaction on the
2 single tractor only Mr. Phillips was actually told that
3 there was a lien by a third party, United Leasing. And if
4 he was told that, was he told specifically enough that he
5 understood the difference between this floor plan lien,
6 which is behind all the equipment, or that the fact that
7 this is a complete third party, nothing we can do about it
8 type of situation and you're going to have to resolve that
9 with them.

10 Well, if he were, it's simple enough to
11 be very specific in the fax. He put Newholland in there.
12 Why not simply put "and there will be an unreleased lien to
13 United Leasing"? We go to all the trouble on this case on
14 the second tractor that had been done. Very easy to do, no
15 reason he could not do that. I think that the evidence
16 supports, the documentary evidence which is unchanged since
17 1997, supports better than the two memories of the two
18 gentlemen, a five-minute phone conversation. The fact that
19 what happened here was some confusion about the lien.

20 Now, on the first one I don't think
21 there's any confusion. Mr. Strack has testified at least
22 twice here today that he thought he's getting it free and
23 clear, and that's what he conveyed to Mr. Phillips for
24 Mid-East, you get this equipment free and clear once we
25 release the lien. The defense here seems to be that "We

1 had no obligation to clear that up for him." Well, yes,
2 you do. If you're a dealer, you're a merchant of goods of
3 this kind, the UCC imposes that duty on you. And if you're
4 not you can exclude it, and it tells you how to do that in
5 8.2-312.

6 THE COURT: Well, let me ask you this. I
7 interrupt you and I apologize, but it helps me to figure
8 out what's going on here. Your argument that you just made
9 applies, doesn't it, if the Court finds that Enterprise
10 Ford was the owner of the equipment selling it to Mr.
11 Phillips as opposed to being just a lienholder?

12 MR. MEADE: I think it applies -- and
13 I'll maybe hedge a bit to make sure I understand the
14 question.

15 THE COURT: All right.

16 MR. MEADE: It applies to them
17 irrespective. If they represented, which is the testimony,
18 that they owned this and had the right to convey it --

19 THE COURT: No, let's back up.

20 MR. MEADE: Okay.

21 THE COURT: Let's assume that Enterprise
22 Ford is not the owner and they are only handling the
23 financing for Newholland as their agent. They don't
24 have -- as holding the financing statement, the first
25 financing statement on this equipment, they don't have any

1 duty to disclose to Mr. Phillips that there's another
2 financing statement on the same equipment, correct?

3 MR. MEADE: I think that -- and if we
4 assume those things to be correct, that's true.

5 THE COURT: I mean, I think that's what
6 the whole point of the case is. Your evidence, you submit,
7 is that Enterprise Ford was the owner of the equipment and
8 selling it as a dealer and as the owner of the equipment to
9 Mr. Phillips. And Mr. Overman's position is for his client
10 that Enterprise Ford was not the owner, that they had
11 earlier sold it to Mr. Hall or to York River Services and
12 that they simply held a lien on the equipment, and that
13 that's all they were was a lienholder.

14 MR. MEADE: I agree with that with one
15 slight variation, Your Honor. I think they acted as if
16 they own it and they thought they had the right to sell
17 this equipment to Mr. Phillips and his company at the time
18 it happened. I don't think as a technical legal question,
19 there's no question they didn't have ownership. They would
20 have to go through repossession through Article 9 in order
21 to do that.

22 THE COURT: How did they act as the
23 owner?

24 MR. MEADE: They took it, they negotiated
25 the sale, pushed it down to Mr. Phillips or told him that

1 they could sell it to Mr. Phillips, and Bill Hall ratified
2 that. They were actually acting as a dealer for all
3 three -- I guess four parties. They're acting for
4 themselves, they're acting as lienholder, they're acting
5 for Bill Hall of York River Services, and they're acting
6 for Newholland. And they have the right at that point to
7 sell this equipment. And Bill Hall ratified that. He
8 said, "You sell it," so I guess he gave up his rights under
9 Article 9 if he wanted them, "and we're all fine, it would
10 clear up the lien." Everyone thought that including
11 Mid-East Enterprises.

12 That wasn't the case, of course. United
13 Leasing had some blanket lien out there that Mr. Strack
14 wasn't aware of and never made any comment about it at that
15 point. Didn't even have knowledge of it at that point.
16 And you're right, normally they would not have a duty to do
17 that. But the UCC says if you're going to sell this
18 equipment as a dealer and as a merchant, you have that
19 obligation. And I think ownership, technically that's
20 exactly right. They never transferred, there's no title
21 between him and Bill Hall.

22 THE COURT: But, again, if they're only
23 acting as the lienholder, they have no obligation to inform
24 Mr. Phillips about anyone else having a lien on that
25 equipment.

1 MR. MEADE: And that's precisely why this
2 provision is applicable here. If they had acted as a
3 lienholder, which they did not, they would have to
4 repossess the equipment, judicial or at least public notice
5 and sale under Article 9. That gives Mr. Phillips the
6 alert. And that's the whole purpose for the commentary to
7 this section talks about in the UCC, this only applies if
8 they have not done that. It doesn't apply because he would
9 be on notice and he would have actual knowledge if it were
10 a foreclosure sale, if it were an insurance sale. But for
11 a lienholder sale, they didn't act as a lienholder. They
12 didn't repo, they didn't provide any title, they didn't
13 even think a contract was required. It was just
14 transferred.

15 THE COURT: Aren't they entitled as
16 lienholders to negotiate for Newholland as Newholland's
17 agent and to say on the tractor, "When you send us" --
18 let's look at the fourth tractor.

19 MR. MEADE: Okay.

20 THE COURT: You send us four -- you send
21 us \$9,000 and we will release the lien. Enterprise Ford is
22 acting for Newholland and they're part of the Newholland
23 dealership, as shown on their letterhead.

24 MR. MEADE: Yes, sir.

25 THE COURT: Basically saying while the

1 lien may be more than \$9,000 -- I think the evidence has
2 been factually that it was -- if you send us \$9,000, we'll
3 release the Newholland lien. Aren't they at that point
4 just acting as a lienholder that's negotiating, saying,
5 "Look, 9,000 is better than nothing. If you send us nine,
6 we'll write off any excess."

7 MR. MEADE: I think that's between
8 Newholland and Enterprise, absolutely. There's no question
9 Newholland apparently authorized them to act for them.

10 THE COURT: And as far as Mr. Phillips is
11 concerned, if he sends \$9,000, he has nothing to worry
12 about as far as Enterprise Ford or Newholland coming after
13 the equipment.

14 MR. MEADE: Or Bill Hall. I mean,
15 apparently, at that point he told him "We've been talking
16 to Bill Hall." So I think, yeah, they're all rolled in one
17 ball. Mr. Strack is caught in the unfortunate position of
18 acting as middleman for everyone. I also concede we have
19 not proven actual fraud. There's no question if he acted
20 and misrepresented, which I think he did, it was
21 innocently. I mean, he did not do it on purpose. He
22 didn't even have the knowledge the first time, he's
23 testified. And we don't have any evidence to the contrary,
24 so we don't have any actual fraud.

25 But constructive fraud, absolutely. He

1 has testified twice he is going to own it, he's going to
2 have it outright. That's exactly what the fax says it will
3 pay for. I mean, we brought the Black's Dictionary. We
4 don't need it. We all know what "pay for" stands for,
5 relief of a debt, consideration for goods exchanged. He
6 paid for this equipment to Enterprise, who's acting as
7 owner.

8 THE COURT: Well, again, when you make
9 that mention of "will pay for," and I agree that's very
10 important, it's still in reference to the \$47,000.

11 MR. MEADE: Yes, sir. And I think
12 that's -- I think there's no question or no dispute, at
13 least from my understanding, that the parties negotiated a
14 difference. What happened was the fax went down, my client
15 got it, looked at it, called back and they agreed on
16 thirty-eight five. And the reason was this equipment under
17 47 that was not --

18 THE COURT: And that's what he testified
19 to.

20 MR. MEADE: Yes, sir. And that's the
21 reason that it changed. I don't think there's any dispute
22 that thirty-eight five was for this equipment at the heart
23 of this litigation.

24 THE COURT: All right. Go ahead.

25 MR. MEADE: All right. And so, again,

1 coming back to the fourth tractor, that's a more difficult
2 case, because it requires the Court to actually resolve the
3 factual dispute, which is did they tell him or did they
4 not. And I don't think we have enough factual evidence
5 about this phone call. One says yes, one says no. A
6 classic "he said/she said." Except that we have again this
7 very specific fax, which is not -- I mean, it doesn't
8 mention the United Leasing lien. Did he know about the
9 lien at that time, and if he did, why wouldn't he have put
10 it in there? That would have covered his tail more than
11 anyone else's, frankly. It would have had the added
12 benefit of protecting Mr. Phillips' company, but it would
13 have protected Enterprise Ford more than anyone else,
14 because they're conveying, they're taking money in and
15 saying, "We've got clean title, go use the equipment, it's
16 all yours, you'll never have to give it back." That's all
17 the actual evidence I think it really boils down to.

18 There's no question that we ended up
19 paying an additional \$5,000 to use it for two months, the
20 same equipment we had already paid for with \$47,500. And I
21 think there's also no dispute that all these events
22 actually occurred and they all occurred in just this
23 sequence. The only I guess dispute or the biggest event I
24 see here is the question of which legal theory most closely
25 fits or does more than one fit. I think more than one

1 fits. Obviously, actual fraud is out. I think
2 constructive fraud has been shown.

3 He said, "I told Mr. Phillips or I
4 conveyed to Mr. Phillips he's going to have this equipment
5 free and clear." That's a misrepresentation. It's
6 innocent, but the law of Virginia is that innocent or
7 negligent misrepresentation is constructive fraud.
8 Obviously, we relied on that in purchasing the equipment or
9 we would have tried to negotiate a lower price, and we were
10 injured to the extent of the entire amount of the equipment
11 plus the \$5,000 on top.

12 As to the breach of contract, these two
13 faxes show there was an agreement, and there's been
14 testimony from both sides that showed basically the
15 agreement. The only question is whether it was an
16 agreement to sell or an agreement to do what? And that's I
17 think the easiest question here. If Mr. Phillips was not
18 getting, by these two transactions, title to this
19 equipment, what was he getting? I mean, what were they
20 trying to convey to him? Why would Mid-East gratuitously
21 pay these liens for York River Services? There's no
22 explanation for that. There's no reasonable or logical
23 answer for that. This was a purchase transaction.
24 Everyone thought so. So we have a contract, we have a
25 breach because there's no good title, and, again, the

1 damages are 52,500.

2 Now, the last two counts that we have,
3 one, being the warranty of good title is very
4 straightforward. And the statutory language is in a
5 contract for sale a warranty by the seller, not the owner,
6 the seller, that title conveyed shall be good and is
7 transferred rightfully, and the goods shall be delivered
8 free from any security interest or other lien or
9 encumbrance about which the buyer at that time has no
10 knowledge.

11 And, again, the official comment I
12 mentioned earlier says "Knowledge here referred to in
13 Subsection 1(b) is actual knowledge as distinguished from
14 notice." What's the UCC trying to do? Very simply,
15 protect a buyer in this situation, because he has no reason
16 to suspect that there is anything wrong with the title to
17 this equipment.

18 And it actually I think is probably more
19 applicable in car cases, and that's where you see the cases
20 come from. The only reported case in Virginia on a
21 warranty of title is an express warranty on a car. And in
22 that case they traded the car in, the dealership thought it
23 was getting good title, it turns out there was a problem
24 with the title, and they had to come back and sue the
25 person -- I don't believe it was a purchaser problem, the

1 man that sold it to them. And the Court said yes, that
2 violates the warranty of good title.

3 THE COURT: On that case, though, the car
4 dealer had already repossessed the vehicle, right?

5 MR. MEADE: This was not actually a
6 repossession case. This was a case where the buyer comes
7 in off the street, wants to trade his vehicle in. His
8 vehicle has bad title, so there's really two transactions.
9 The dealer then takes it and tries to flip it to another
10 dealer, find outs there's bad title, brings it back to
11 their seller, in fact, and says, "You warranted good
12 title." And there was an express warranty in the
13 conveyance on the transaction in that case.

14 THE COURT: Okay. So it was a consumer.

15 MR. MEADE: Yes.

16 THE COURT: I think that's the best
17 term. The consumer was trying to trade in his car to the
18 dealer and the consumer was representing to the car dealer
19 that "I want to trade my car in and the title is clear"
20 when in fact it was not.

21 MR. MEADE: Exactly, yes, sir. And
22 that's the only case in Virginia, as noted by the Code of
23 Virginia editors. There is no case on implied warranty or
24 actually have they resolved the question. But, again, the
25 statutory language is very clear. The contract by a

1 seller, if the title is conveyed, shall be good and is
2 transferred rightfully, and the goods are delivered free
3 from any security interest that Mr. Phillips didn't have
4 actual knowledge of. So there's no question on the first
5 transaction that at the very least that's exactly what
6 happened. It was a warranty of good title that's
7 breached.

8 And there's also I think a factual
9 dispute to be resolved, but nonetheless, I think the
10 documentary evidence supports Mr. Phillips' version of the
11 events. And here I don't think Mr. Strack is lying. I
12 think both witnesses remember obviously what they think
13 they remember. But one of them is wrong, and I think Mr.
14 Phillips is supported by the documentary evidence.

15 Now, as to the final count, we had a
16 count for Section 18.2-312, which also pulls in damages
17 from Section 59.1-68.3. And this basically says any person
18 that offers for sale any goods and that does not sell as
19 offered violates this section and entitles an individual to
20 bring an individual action for damages under this other
21 section. And, again, it provides the same damages,
22 frankly, 52,500, but it's important because it does allow
23 Mid-East to recover their reasonable attorney's fees in
24 order to put themselves back to zero, and that's all
25 they're asking here, "Let's go back to where we were. Give

1 us back our money, because we don't have any goods that you
2 sold us, and we'll all be back to even." And I think
3 that's exactly true.

4 Enterprise Ford Tractor did exactly what
5 probably any seller in that position would do. They
6 bettered their own position at the expense, maybe
7 innocently, of Mid-East, but that nonetheless is exactly
8 what happened. Breach of agreement. Enterprise is
9 entitled -- excuse me, Mid-East is entitled to recover the
10 52,500, and we think attorney's fees as well under that
11 statute.

12 THE COURT: Mr. Overman or Mr. Moore.

13 MR. MOORE: Good morning again, Your
14 Honor.

15 THE COURT: Good morning.

16 MR. MOORE: Judge, as succinctly as I
17 possibly can start with this, it seems to me like what we
18 have here is a very straightforward case. And the Court
19 has elucidated some of that in his comments from the
20 bench. A comment has been made as to the responsibility of
21 Enterprise Ford Tractor to in effect protect the status of
22 Mid-East Services in their transactions with Mr. Hall. We
23 have somehow or another been brought into this situation,
24 and the Court is being told that we have a responsibility
25 to see that the title to the equipment that Mid-East is

1 purchasing from Bill Hall is clear.

2 Here we have equipment located in the
3 State of North Carolina where there's a contract negotiated
4 in the State of North Carolina between Mid-East and Bill
5 Hall to purchase equipment. Then we have a situation where
6 the purchaser of that piece of equipment becomes wary of
7 the seller and makes contact with the holder of the lien.

8 Now, we have certainly the evidence of
9 the seller -- excuse me, from the evidence of Mid-East
10 Services, Mr. Phillips, that he discussed the situation
11 with several individuals in that vicinity, who advised him
12 that he better make sure that he had good title.

13 Now, what did Mr. Phillips do? He made a
14 phone call to someone that he was advised or a suspicion
15 held a lien on this piece of equipment. He knew he wasn't
16 buying it from him, because he had already signed the
17 contract with Bill Hall. He then makes no effort except
18 getting a contract, form contract from his attorney in
19 North Carolina, to do what any astute businessman would do
20 making a purchase of this size. Something that he's on
21 notice statutorily.

22 A lot has been made of the statutes
23 today. Those statutes bite him as well as they bite anyone
24 else. He had a responsibility under those sections of the
25 code to check to make sure that there were no liens on this

1 property other than the lien he was negotiating to have
2 released by Enterprise Ford. But he relies on Enterprise
3 Ford to take care of him. He doesn't check any of those
4 records.

5 Now, the testimony by Enterprise Ford's
6 witness, Mr. Strack, is that at no time did he represent to
7 Mr. Phillips that he owned this property and was selling it
8 to him. He also made a comment, which I think is rather
9 succinct, that it would be foolish of him to perpetrate
10 that kind of fraud on a contractor. That would reach out
11 past the State of North Carolina well into Virginia, and it
12 wouldn't take long for that kind of word to get around.
13 And it would also impact on the one person that probably
14 keeps these dealers in business, and that is Newholland.
15 He had to play fair with them, particularly when he had
16 recourse paper.

17 One might ask why did Mr. Strack get
18 involved in this thing the way he did. Well, I think that
19 answer is fairly clear. He had recourse paper. It was
20 going to recourse on him, and it did recourse on him to
21 some extent. We can talk about fraud, but I can't see any
22 fraud here. I mean, look at the statutes and read them all
23 you want, but Mr. Phillips went into this transaction with
24 his eyes open, purchased that equipment. He sent the money
25 up, and that money was placed where it should have been

1 placed based on the documentation, the contract between
2 himself and Bill Hall and the liens on this piece of
3 equipment -- on these pieces of equipment held by
4 Newholland.

5 I say again that all could have been
6 solved very easily by checking, and he would have found out
7 that United Leasing had these subsequent leases on this
8 property. That would have stopped the whole situation. He
9 would have cleared it with him or walked away from the
10 deal. He now says we should have -- "we" being the
11 defendant should have cleared that for him, should have
12 checked the UCC warranties. And I submit to the Court
13 there's absolutely no responsibility on him to do that,
14 because they weren't selling him anything, and that was
15 made very clear in the testimony by Mr. Strack. He didn't
16 sell him any equipment. He was going to take care of
17 getting those liens released. Why wouldn't he negotiate
18 that once he was contacted? Because he was protecting his
19 position on that recourse paper.

20 And it's unfortunate that the language
21 may have been used in that first fax that was sent out, but
22 the testimony evens itself out when you listen to what Mr.
23 Phillips told you and what Mr. Strack told you. Mr.
24 Phillips knew that he was simply paying off those liens,
25 because he even changed the figures on them. So he got

1 what he bargained for as far as Enterprise Ford. What he
2 didn't get was the fact that there was the subsequent liens
3 or subsequent liens on this property benefitting United
4 Leasing. I don't know if it's in evidence, and if it's
5 not, Court please correct me, but there was subsequent
6 action taken in Hanover County just to be able to recapture
7 this equipment.

8 THE COURT: I don't think that's in
9 evidence. I have heard that United Leasing did repossess
10 the --

11 MR. MOORE: That's correct, Your Honor.
12 United Leasing appeared in North Carolina and presented the
13 evidence that they did have this lien and the Court order
14 got it for them. I say to the Court there's no
15 constructive fraud here. All he had to do was check this
16 out and they would have found out that was the case. There
17 was no sale made here, because there couldn't have been a
18 sale. Didn't own the equipment. As a matter of fact, Mr.
19 Phillips had to know that Enterprise Ford didn't own this
20 equipment, because he had signed the contract with the
21 person who said he owned it, and he was never told by
22 Enterprise Ford that they owned the equipment and were
23 selling it to him. He was buying equipment, as I recall,
24 that wasn't even included in any lien held by Enterprise
25 Ford or, excuse me, by Newholland. So he had to know that

1 there was more to this transaction than just Newholland and
2 Enterprise Ford.

3 I submit to the Court that there's been
4 no evidence here that Enterprise Ford defrauded him, that
5 Enterprise Ford sold him a piece of equipment or pieces of
6 equipment which had liens on them and they could not
7 deliver good title. And they weren't a dealer/merchant in
8 this classic sense of the case. They were simply after the
9 transactions seeing that those liens were released so that
10 they could do what they told him they would do.

11 THE COURT: All right. Mr. Meade,
12 anything else?

13 MR. MEADE: Thank you, Your Honor. I'm
14 going to commit a sin I tell my students not to do and say
15 I have two brief points. First, Bill Hall is not a party
16 here, because Bill Hall didn't sell this equipment. He
17 ratified and let Enterprise Ford Tractor work as his agent
18 in selling it. And, secondly, everything else aside, the
19 warranty of good title very clearly says a seller. Mr.
20 Strack thinks he's the seller. He sold this equipment. He
21 was going to -- Mid-East was going to take it free and
22 clear without any liens. It's that simple.

23 THE COURT: All right. Let's go back and
24 look at some of the background in this case. If there are
25 any mistakes here, like Mr. Moore said or Mr. Meade,

1 rather, said, they're innocent misrepresentations, if there
2 are any. The real bad guy in this case is the one who's
3 not here, William Hall. William Hall buys this equipment,
4 this Ford equipment from the Newholland Ford dealership,
5 Enterprise Ford. He defaults on his contract apparently
6 down in Fort Bragg, where I think from what I've heard
7 here, Ford Bragg fired him and they turned to Mr. Phillips
8 or Mid-East, who doesn't do this type of work normally,
9 from what he was saying, and they need him to basically
10 finish up this mowing contract on a short-term basis at
11 Fort Bragg.

12 And Mr. Phillips at Mid-East decides to
13 get involved and pick up the contract and provide the
14 service and says, "Well, we'll just buy the equipment from
15 Mr. Hall and then we'll provide the men to cut the grass."
16 That was the plan. And there's a bill of sale, the only
17 bill of sale that I've seen here today from Bill Hall to
18 Mid-East Services. Plaintiff's Exhibit Number 2, which was
19 called by Mr. Meade a bill of sale, Mr. Overman objected to
20 that and properly so. That's not a bill of sale.

21 And the issue here, as Mr. Moore pointed
22 out, is is Enterprise Ford, are they acting as an owner of
23 this equipment or are they acting as an agent for the
24 owner, as Mr. Meade would present, in some type of a
25 dealership capacity, either acting for themselves as owner

1 or as agent for Mr. William Hall. Or are they simply
2 acting as a lienholder, an agent for Newholland Ford, where
3 they're interested in protecting themselves to some extent,
4 because they have guaranteed Mr. Bill Hall's loan with
5 Enterprise Ford or with Newholland, rather, and that if Mr.
6 Hall doesn't pay, Enterprise Ford is going to have to pay.
7 And, again, the only bill of sale here is the one for
8 \$47,000 between William Hall and Mid-East Services. The
9 check was paid but the check was immediately canceled.

10 And what I have here, basically, the
11 first issue is was the defendant, Enterprise Ford, acting
12 as agent for the seller, were they acting as the seller
13 themselves or some type of dealer or just a lienholder or
14 an agent for the lienholder? Clearly from what I've heard
15 here today, they are acting only as lienholder or agent for
16 the lienholder. They're not the seller, they're not the
17 dealer, they're not an agent for the seller.

18 This equipment was sold to Mr. William
19 Hall, and Hall still owned it and was not only possessor
20 but the owner of it until United Leasing came down with the
21 papers and repossessed it, and only at that time, which
22 actually it was in the possession of Mr. Phillips' company
23 at that time, the legal owner of that was William Hall. He
24 may have owed a lot of money on it, but he was the owner.

25 Plaintiff's Exhibit Number 2 is the

1 easier one to look at first in regard to the second
2 transaction on the fourth tractor. It is very clear. You
3 have a signed -- this is Mr. Phillips. You have a signed
4 sales agreement with Bill Hall of York River Services on
5 the tractor in the amount of \$9,000. "If you send us the
6 money, we will forward it to Newholland to release the
7 lien." Sales contract with William Hall as owner for York
8 River Services. They're clearly saying in that second
9 transaction, "You send us the 9,000 and we will forward it
10 to Newholland to release the lien."

11 I don't know whether Mr. Phillips didn't
12 understand the process as to how to buy property from
13 someone like Mr. Hall, who apparently is -- it sounds to me
14 like he's gone bankrupt now and someone who you can't
15 really represent as an honest person. But that's clear.
16 Enterprise Ford was acting only as an agent for the
17 lienholder, and they were doing that, as Mr. Moore
18 mentioned, because they had a recourse and wanted to
19 protect themselves as well.

20 On the Plaintiff's Exhibit Number 1, that
21 is not a bill of sale. Again, it makes reference to the
22 \$47,000 figure, which is the figure from the bill of sale.
23 Those matters are talked about. Mr. Phillips maybe
24 misunderstood, but Ford Enterprise was not the seller.
25 They're simply the lienholder. And they were saying, "You

1 send us the amount of 38,500 and we will see to it that the
2 Newholland lien is released and you don't need to worry
3 about those people." And that in fact was done. The
4 foreclosure was not done by Ford Newholland. It was done
5 by United Leasing.

6 And I find in favor of the defendant, and
7 the plaintiff's case is dismissed.

8 MR. OVERMAN: Thank you, Your Honor.

9 MR. MOORE: Thank you, Your Honor.

10 MR. BRUCE STRACK: Thank you, sir.

11 MR. MEADE: Your Honor, if you would note
12 our objections for the record.

13 THE COURT: Yes, sir. I need Mr. Overman
14 or Mr. Moore to please prepare an order to that effect,
15 that the Court finds in favor of the defense and that the
16 case is dismissed. Send it, please, to Mr. Meade for his
17 endorsement. He can note whatever objections he thinks are
18 proper.

19 MR. OVERMAN: I'll prepare the order,
20 Judge.

21 MR. MEADE: Thank you, Your Honor.

22 THE COURT: All right, Mr. Overman, if
23 you will do that then. And let me give you a date just to
24 have the paperwork here. August 5, about three weeks off.
25 Will that give you enough time to prepare it?

ENTERPRISE FORD TRACTOR, INC.

1089 ROUTE 17
YORKTOWN, VA 23093
757 895 7811
FAX 757 895 2660

Fax Transmission

TO: ROBERT PHILLIPS

FAX# 910 892 1897

FROM: BRUCE STRACK

RE: EQUIPMENT

PAGES: 1

DATE: 6/5/97

COMMENTS:

CHECK IN THE AMOUNT OF (\$47000.00)

WILL PAY FOR: (3) FORD 3930'S

S/N	BD75257	9
S/N	BD66341	9
S/N	BD81464	9

(5) ALAMO FLAHS

S/N	15386	1500
S/N	16157	1500
S/N	15992	1500
S/N	15385	1500
S/N	?	1500

(1) SWING TRIM

S/N	?	2000
-----	---	------

(1) BUSH HOG

S/N	?	2000
-----	---	------

~~\$38,500.00~~

PLAINTIFF'S
EXHIBIT

1

EXHIBIT "A"



NEW HOLLAND

ENTERPRISE FORD TRACTOR, INC. ✓

1939 Rt. 17 • Yorktown, VA 23693

Phone: (804) 595-7611

892-1896

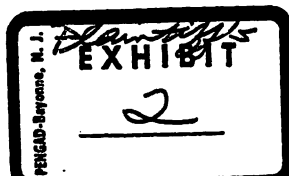
ATTN: ROBERT PHILLIPS

PER OUR CONVERSATION, YOU HAVE A SIGNED
RETAIL SALES AGREEMENT WITH BILL HALL OF
YORK RIVER SERVICES FOR A 3930 S/N BD75226
IN THE AMOUNT OF \$9000. IF YOU SEND
US THE MONEY WE WILL FORWARD IT TO
NEW HOLLAND TO RELEASE THE LEIN.

pd 6/18/97
JH 24201

THANKS,
BRUCE

93



MID-EAST SERVICES, INC.

P.O. BOX 1477
DUNN, N.C. 28334

UNITED CAROLINA BANK
DUNN, N.C. 28334

88-822
531

No. 024201

CHECK NO.

Nine Thousand And 00/100 Dollars***

DATE

AMOUNT

6/18/97

**9,000.00

PAY
TO THE
ORDER
OF

Enterprise Ford
1934 Rt. 17

Yorktown, VA 23693

MID-EAST SERVICES, INC. PAYROLL ACCOUNT

⑈024201⑈ ⑆053108221⑆0842033852⑈

⑈0000900000⑈

MID-EAST SERVICES, INC.

P.O. BOX 1477
DUNN, N.C. 28334

UNITED CAROLINA BANK
DUNN, N.C. 28334

88-822
531

No. 023993

CHECK NO.

DATE

AMOUNT

6-6-97

\$38,500.00

PAY
TO THE
ORDER
OF

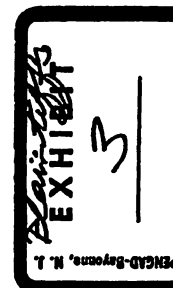
ENTERPRISE FORD TRACTOR, INC.

MID-EAST SERVICES, INC. PAYROLL ACCOUNT

⑈023993⑈ ⑆053108221⑆0842033852⑈

⑈0003850000⑈

94



STATE OF NORTH CAROLINA
COUNTY OF HARNETT

LEASE
(WITH OPTION TO PURCHASE)

THIS LEASE AGREEMENT made this the 1 day of July, 1997, by and between United Leasing Corporation, a Virginia Corporation, of Mechanicsville, Virginia, hereafter referred to as Lessor and Mid-East Services, a North Carolina Corporation, of Post Office Box 1477, Dunn, Harnett County, North Carolina, hereafter referred to as Lessee.

WITNESSETH:

That for and in consideration of the rents, covenants and agreements hereinafter set forth, to be kept and performed by the Lessee, the Lessor does hereby lease and rent unto the Lessee, for the term hereinafter specified that certain personal property hereinafter described.

1. Leased Property: Lessor hereby leases to the Lessee the following described:

Ford Tractors:
3930 S/N BD75257
3930 S/N BD66341
3930 S/N BD81464
3930 S/N BD75226

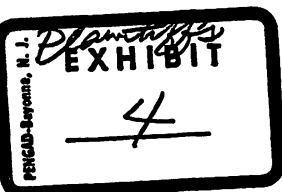
Alamo Flails:
S/N 15386
S/N 16159
S/N 15992
S/N 15385
S/N 15384

1 Swing Trim S/N 10ST80
1 Bush Hog Model 406

2. Term: This Lease shall be for a month to month basis and it shall begin on July 1, 1997 and to continue each month thereafter unless terminated by the Lessor or Lessee with ten (10) days written notice.

3. Rental: The Lessee shall pay the sum of Twenty Five Hundred No/100 Dollars (\$2500.00) per month rental beginning July 5, 1997 and continuing the 5th day of each month during the term of this Lease.

4. Indemnification and Save Harmless: Lessee shall indemnify and save harmless the Lessor against all liability arising during the lease term, occasioned wholly or in part by any



act or omission of the Lessee and/or employees.

5. Repairs and Maintenance: The Lessee shall keep the property in good state of repair at the sole expense of the Lessee, and return the same as is to the Lessor at the expiration of this Lease, allowing for ordinary wear and tear.

6. Option to Purchase: It is expressly understood that during the term of this Lease and contingent upon the faithful performance of all terms and conditions by the Lessee that the Lessor does grant to the Lessee the right and option to purchase said property upon the following terms and conditions:

Lessee shall have the right to purchase for the sum of \$20,000.00. Should the Lessee exercise the option to purchase as herein provided, said Lessee shall be given credit for all lease payments in the amount of \$2500.00 each paid during the term of this Lease as a credit against said purchase price.

This option to purchase shall terminate upon default or termination of this Lease.

7. Default: If the Lessee shall fail or neglect to do or perform any matter or thing herein agreed to be done and performed by him and shall remain in default thereof for a period of Ten (10) days after written notice from the Lessor calling attention to such default, the Lessor may declare this Lease terminated and take immediate possession of the property hereinabove described, without prejudice to any other legal remedy he may have on account of such default.

8. Remedies: All remedies of the Lessor are cumulative, and may to the extent permitted by law be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. Nor failure on the part of the Lessor to exercise, and no delay in exercising any right or remedy shall operate as a waiver thereof unless specifically waived by the Lessor in writing; nor any single or partial exercise by the Lessor of any right or remedy preclude any other right or remedy.

9. Notices: All notices required under the terms of this Lease shall be sent by registered or certified mail to the address

below:

LESSOR: United Leasing Corporation
Post Office Box 1022
Mechanicsville, VA 23111

LESSEE: Mid-East Services, Inc.
910 S. Clinton Avenue
Dunn, NC 28334

10. Partial Invalidity: If any provisions of this Lease are in conflict with any statute or rule of law, then such provision shall be deemed null and void to the extent that they may conflict therewith, but without invalidation the remaining provisions hereof.

11. Binding Effect: This Lease shall be binding upon the Lessor and Lessee and their respective legal representatives, successors and assigns.

12. Entire Agreement: This Lease Agreement shall be considered to be the entire agreement between the parties hereto pertaining to the devised premises. All negotiations and all agreements acceptable to both parties are included herein. The laws of the State of North Carolina shall govern the validity, interpretation, performance and enforcement of this Lease Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Lease Agreement, in duplicate originals, one of which is retained by each of the parties, the day and year first above written.

LESSOR: United Leasing Corporation

ATTEST (SEAL)



Corporate Secretary

PLEASE
SIGN

By:

[Signature] (SEAL)
SENIOR VICE PRESIDENT

LESSEE: Mid-East Services, Inc.

PLEASE
SIGN

By:

[Signature] (SEAL)
Lester Ray Phillips,
President

ATTEST:

(SEAL)



Robert L. Phillips
Corporate Secretary

STATE OF Virginia
COUNTY OF Hamover



I, Myra L. Morgan, a Notary Public of the County and State aforesaid, certify that Dale L. Johnson personally came before me this day and acknowledged that he/she is Secretary of United Leasing Corporation, a Virginia corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its ~~President~~, S.R.P. sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and official stamp or seal, this 9th day of July, 1997.

Myra L. Morgan
NOTARY PUBLIC

My commission expires: March 31, 2001

STATE OF NORTH CAROLINA
COUNTY OF HARNETT



I, Angela R. Sills, a Notary Public of the County and State aforesaid, certify that Robert L. Phillips personally came before me this day and acknowledged that he is Secretary of Mid-East Services, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 3rd day of July, 1997.

Angela R. Sills
NOTARY PUBLIC

My commission expires: 4-30-2001

L:\LYTCH\SHARE\RELEASE.MBS

MID-EAST SERVICES, INC.

P.O. BOX 1477
DUNN, N.C. 28334

UNITED CAROLINA BANK
DUNN, N.C. 28334

66-822
531

No. 024423

CHECK NO.

Twenty-five Hundred And 00/100 Dollars*****

DATE

AMOUNT

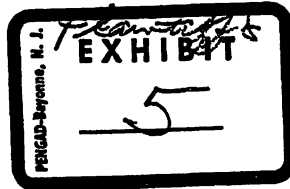
7/03/97

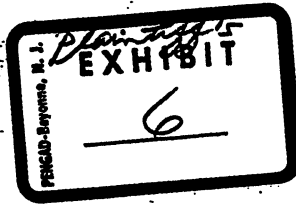
**2,500.00

United Leasing Corporation

MID-EAST SERVICES, INC. PAYROLL ACCOUNT

⑈024423⑈ ⑆053108221⑆0842033852⑈





MID-EAST SERVICES, INC.

P.O. BOX 1477

DUNN, N.C. 28334

UNITED CAROLINA BANK

DUNN, N.C. 28334

66-822

531

NO. 024731

CHECK NO.

Twenty-five Hundred And 00/100 Dollars***

DATE

AMOUNT

15012260

7/22/97

**2,500.00

#4281

United Leasing Corp.
Attn. Jim Lerner
5960 Chamberlayne Rd.
Mechanicsville, VA 23111-1022

MID-EAST SERVICES, INC. PAYROLL ACCOUNT

024731 0531082210842033852

1100

*Defendant's
Exhibit 1*

EXHIBIT

*Defendant's Ex. 1
4-28-98 MB*

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

BILL OF SALE

THIS BILL OF SALE, made this 4th day of June, 1997, by William T. Hall, party of the first part to Mid-East Services, Inc., party of the second part;

WITNESSETH:

That said party of the first part, for and in consideration of the sum of \$47,000.00 and other valuable considerations paid to him by party of the second part, the receipt and sufficiency of which are hereby acknowledge by the party of the first part, have bargained and sold by these presents doth bargain, sell and convey unto said party of the second part, its successors, representatives, heirs and assigns, all of its title and interest in certain personal property and more particularly described as follows:

3 each Ford Tractors S/N:	BD752574, BD66341, BD81464
5 each Alamo Flail Mower S/N:	15386, 16159, 15992, 15385, 1- no number
1 Swing Trim	
1 500 Gal Fuel Tank	
1 Red Bush Hog	
2 Storage Vans 20'	
1 Storage Van 40'	
1 Base Radio Station	
9 Hand Held Radios	


TO HAVE AND TO HOLD the same unto the said party of the second part and its successors, representatives, heirs and assigns forever.

And the said party of the first part covenants that he is seized of said property in fee and has the right to convey the same in fee simple, that the same is free and clear of all encumbrances, and that he will warrant and defend the title thereto against all other lawful claims of all persons whomsoever, except as otherwise indicated herein. However, all of

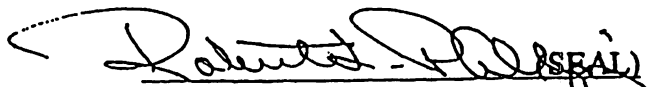
said property is being transferred "as is and where is" and party of the first part makes no warranties as to the condition of any of said property.

IN TESTIMONY WHEREOF, said party of the first part does hereunto set his hand and seal the day and year first above written.


WITNESS

 (SEAL) 227-84-8371
PARTY OF THE FIRST PART


WITNESS

 (SEAL)
PARTY OF SECOND PART

Register 5
Exhibit 2

This **FINANCING STATEMENT** is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

1. Debtor(s) (Last Name First) and address(es)

York River Services, Inc.
P.O.Box 8
Hayes, Virginia 23072

2. Secured Party(ies) and address(es)

Enterprise Ford Tractor, Inc.
P.O.Box 1322
Grafton, Va. 23692

3. Maturity date (if any):

For Filing Officer (Date, Time, Number, and Filing Office)

94-119

FILED

PM 3:20

CLERK'S OFFICE
GLoucester County, Virginia

4. This financing statement covers the following types (or items) of property:

Ford 3930 CA554C Serial # BD68725 (Tractor)
Ford 3930 CA51WX Serial # BD66341 (Tractor)
Ford 1620AJ4137 (Tractor)
Ford 72" Mower 914 Serial #A4U0020
Ford 1620 4WD Tractor AJ4137 Serial #UJ21112
Ford 72" Mower 914 Serial # A3Q0019
Ford 1520 4WD Tractor AH4137 Serial #UH30016
Ford 72" Mower 914 Serial #A4U0087
Woods Mower C114 Serial # 6470
Woods Mower 9204 Serial # 1200

5. Assignee(s) of Secured Party and Address(es)

FMCCU
P.O.Box 396
Mountville, Pa. 17554

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check ☒ if so)

☐ already subject to a security interest in another jurisdiction when it was brought into this state.

☐ which is proceeds of the original collateral described above in which a security interest was perfected:

Filed with:

Gloucester County CC
Gloucester, Va. 23061

Check ☒ if covered: ☐ Proceeds of Collateral are also covered. ☐ Products of Collateral are also covered. No. of additional Sheets presented:

York River Services, Inc.

Enterprise Ford Tractor, Inc.

By: [Signature]
Signature(s) of Debtor(s)

Title

By: [Signature]
Signature(s) of Secured Party(ies)

Title

(1) Filing Officer Copy-Alphabetical

STANDARD FORM - FORM UCC-1.

(For Use In Most States) COPY-TESTE:

CHARLES E. KING, JR., CLERK

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Defendant 5
Exhibit 3

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:		3. Maturity date (if any):
1. Debtor(s) (Last Name First) and address(es) <i>see 204</i> York River Services P.O. Box 8 Hayes Va. 23072	2. Secured Party(ies) and address(es) Enterprise Ford Tractor, Inc. P.O. Box 1322 Grafton, Va. 23692	For Filing Officer (Date, Time, Number and Filing Office) 94-209 FILED 1994 OCT 28 AM 9:47 CIRCUIT CLERK'S OFFICE LOUISVILLE, VIRGINIA CLERK C. E. KING, JR. BY <i>[Signature]</i>
Tax ID/Social Security No.	Tax ID/Social Security No.	
4. This financing statement covers the following types (or items) of property: <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> New Ford 3930 S/N BD60733 New Ford 3930 S/N BD75257 New Ford 3930 S/N BD75226 New Ford 3930 S/N BD77637 New Ford 3930 S/N BD60632 New Ford 3930 S/N BD81464 New Ford 1520 S/N UH30428 New Ford 1520 4wd S/N UH30357 New Ford 1620 S/M UJ21593 New XXXX Saxon blower s/n 1105 New Saxon Blower s/n 1106 </div> <div style="width: 48%;"> New Landpride Pulverizer S/n 126118 New Landpride tiller s/n 126526 New Landpride Box s/n 126408 New Woods Mower s/n 6610 New Woods Mower s/n 6616 New Woods Mower s/n 6430 New Kubota tractor s/n 11343 New Alamo Flail s/n 14918 New Alamo flail s/n 14919 New Alamo flail s/n 15384 New Alamo flail S/n 15385 </div> </div>		
This statement is filed without the debtor's signature to perfect a security interest in collateral. (check <input checked="" type="checkbox"/> if so) <input type="checkbox"/> already subject to a security interest in another jurisdiction when it was brought into this state. <input type="checkbox"/> which is proceeds of the original collateral described above in which a security interest was perfected:		5. Assignee(s) of Secured Party and Address(es) F.M.C.C.
Check <input checked="" type="checkbox"/> if covered: <input type="checkbox"/> Proceeds of Collateral are also covered. <input type="checkbox"/> Products of Collateral are also covered. No. of additional Sheets presented:		Filed with: XXXXXX Charles E. King Jr. Clerk of C.C.
By: <i>William T. Hall</i> <i>Rosa Diaz Hall President</i> <i>Fernando S. Diaz Vice Pres.</i> Signature(s) of Debtor(s)		ENTERPRISE FORD TRACTOR, INC. By: <i>[Signature]</i> <i>General Manager</i> Signature(s) of Secured Party(ies)

(1) Filing Officer Copy - Alphabetical

STANDARD FORM - FORM UCC-1.

A COPY-TESTE:
CHARLES E. KING, JR., CLERK

By *[Signature]* Dep. Clerk

Defendant's
Exhibit 4

BOOK 1 PAGE 532

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:		3. Maturity date (if any):
1. Debtor(s) (Last Name First) and address(es) York River Services, Inc. P. O. Box 8 Hayes, VA 23072	2. Secured Party(ies) and address(es) United Leasing Corporation P. O. Box 1022 Mechanicsville, VA 23111	For Filing Officer (Date, Time, Number, and Filing Office) #96-74
Tax ID/Social Security No.	Tax ID/Social Security No.	
4. This financing statement covers the following types (or items) of property: 3-Excel Mowers Model 4600, 1-Excel Mower Model 2500 2-Alamo Interstaters w/rear flail units and side wings mounted on Ford Tractors Model 6640S, 1-1995 Chevrolet Kodiak LO-PRO S/N 1GBE6H1J5SJ104754, 1-Dodge 1500 Pickup, S/N 387HF13Z9TG143501 Additional Collateral - See List Various Equipment		5. Assignee(s) of Secured Party and Address(es) Virginia First Savings P. O. Box 2009 Petersburg, VA 23804

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check <input checked="" type="checkbox"/> if so)	Filed with:
<input type="checkbox"/> already subject to a security interest in another jurisdiction when it was brought into this state. <input type="checkbox"/> which is proceeds of the original collateral described above in which a security interest was perfected:	Gloucester County
Check <input checked="" type="checkbox"/> if covered: <input checked="" type="checkbox"/> Proceeds of Collateral are also covered. <input type="checkbox"/> Products of Collateral are also covered. No. of additional Sheets presented:	

York River Services, Inc.
By: William J. Hall
Signature(s) of Debtor(s)

United Leasing Corporation
By: Dale S. Johnson
Signature(s) of Secured Party(ies)

(1) Filing Officer Copy - Alphabetical

STANDARD FORM - FORM UCC-1.

A COPY-TESTE:
CHARLES E. KING, JR., CLERK

By: Charles E. King, Jr. Dep. Clerk

105

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

MID-EAST SERVICES, INC.,

:

Plaintiff,

:

v.

: LAW NO. 7297

ENTERPRISE FORD TRACTOR, INC.,

:

Defendant.

:

ORDER

THIS DAY came the Plaintiff, MID-EAST SERVICES, INC., by Counsel and in person, and the Defendant, ENTERPRISE FORD TRACTOR, INC., by Counsel and in person, and after hearing evidence with respect to the claim of the Plaintiff, MID-EAST SERVICES, INC., the Court is of the opinion that the Plaintiff, MID-EAST SERVICES, INC. has not proven its case on any count and, therefore, the Defendant should prevail.

Therefore, it is;

ORDERED, ADJUDGED and DECREED that the Defendant, ENTERPRISE FORD TRACTOR, INC., be, and the same hereby is, dismissed with prejudice with respect to the claim of the Plaintiff, MID-EAST SERVICES, INC.

ENTERED this 5th day of August, 1999.


JUDGE

I ASK FOR THIS:



G. Curtis Overman, Jr., p.d.
VSB #6867

G. Curtis Overman, Jr., P.C.
716-A Thimble Shoals Blvd.
Newport News, VA 23606
Telephone: (757) 873-0058
Facsimile: (757) 873-3774

Cecil G. Moore
Co-Counsel for Defendant
13185 Warwick Blvd.
Newport News, VA 23602
Telephone: (757) 877-0255
Facsimile: (757) 872-7534

HAVE SEEN & OBJECTED TO ON THE FOLLOWING GROUNDS:

1. the decision disregards the sole testimony about ownership of the equipment at issue;
2. the decision disregards the sole testimony that the title owner of the equipment granted permission to the defendant to sell the equipment at issue;
3. the decision disregards the defendant's witness testimony about his understanding of the sales transaction;
4. the decision fails to apply Virginia Code § 8.2-312;
5. the decision fails to apply Virginia Code § 18.2-217;
6. the decision fails to apply the constructive fraud law of Virginia;
7. the decision improperly allows the defendant the protections of a secured lienholder when the defendant did not follow any of the requirements of Virginia Commercial Code Article 8.9;
8. the decision improperly disregards the substance of the transaction in favor of a title ownership requirement not present in Virginia Commercial Code Article 8.2 or otherwise in Virginia law;
9. the decision disregards that without a purchase there was a complete lack of consideration and no meeting of the minds for a contract; and
10. for all reasons and arguments presented to the Court at trial.



Steven A. Meade, p.q.

VSB # 37150

PATTEN, WORNOM & WATKINS, L.C.
12350 Jefferson Avenue, Suite 360
Newport News, VA 23602
Telephone: (757) 249-1881
Facsimile: (757) 249-1627

ASSIGNMENT(S) OF ERROR:

1. THE TRIAL COURT ERRED IN NOT APPLYING VIRGINIA COMMERCIAL CODE § 8.2-312 WHICH IMPOSES A WARRANTY OF GOOD TITLE IN EVERY SALES TRANSACTION.
2. THE TRIAL COURT ERRED IN NOT APPLYING VIRGINIA COMMERCIAL CODE § 8.2-403(2) TO TRANSFER OWNERSHIP TO MID-EAST WHERE THE TITLE OWNER ENTRUSTED THE GOODS TO ENTERPRISE AND THE UNDISPUTED TESTIMONY WAS THAT ENTERPRISE'S ACTIONS IN TRANSFERRING THE GOODS TO MID-EAST WERE APPROVED AND RATIFIED BY THE PRIOR TITLE OWNER.
3. THE TRIAL COURT ERRED IN RULING THAT A FORMAL BILL OF SALE WAS REQUIRED TO TRANSFER OWNERSHIP OF THE GOODS TO MID-EAST.
4. THE TRIAL COURT ERRED WHEN IT DISREGARDED THE COMPLETE FAILURE OF CONSIDERATION WHERE THE PARTIES INTENDED TO TRANSFER THE GOODS WITH GOOD TITLE AND MID-EAST PAID ENTERPRISE BUT RECEIVED GOODS WITH DEFECTIVE TITLE AND ENTERPRISE REFUSED TO RETURN MID-EAST'S CONSIDERATION.
5. THE TRIAL COURT ERRED WHEN IT FOUND ENTERPRISE TO BE ACTING SOLELY AS A LIENHOLDER WHEN THE EVIDENCE SHOWED ENTERPRISE TOOK NO ACTIONS REQUIRED BY THE VIRGINIA COMMERCIAL CODE, ARTICLE 8.9 – SECURED TRANSACTIONS.