

136.426

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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E. I. DU PONT DE NEMOURS & COMPANY
INC.

Plaintiff,

-against-

THE CITY OF NEW YORK, TULLER & MOOSMAN INC.,
JOHN KENNEDY & COMPANY, INC., SARGENT BUILD-
ING SPECIALTIES CO., COLONIAL SAND & STONE
CO. INC., KALMAN STEEL CO. INC., GROSS,
AUSTIN & IRELAND, LIBERTY MUTUAL INSURANCE
COMPANY, JOSEPH COUNIHAN, MARY COUNIHAN,
COUNIHAN BROS. INC., TAGGART PLUMBING COM-
PANY and J. P. DUFFY CO. INC.

Defendants.
----- X

WILLIAM MOOSMAN, Secretary of the Defendant,
TULLER & MOOSMAN INC., one of the defendants herein, appear-
ing herein on the 2nd day of January, 1934, pursuant to
notice for his examination before trial, dated December 13th,
1933, and pursuant to a stipulation of the Attorneys for the
respective parties dated December 28th, 1933, and having
duly sworn true answers to give to all questions propounded to
him, testifies as follows:

IT IS STIPULATED AND AGREED, that the original
of this examination need not be filed in Court pursuant to
Rule therefor, but that the same may be used at the trial
with the same force and effect as if the said examination were
in fact filed.

IT IS FURTHER STIPULATED AND AGREED, by and
between the Attorneys for the respective parties hereto that
the examination may be taken before SADELLE STRAUSS, as a
Notary Public, instead of before the Justice presiding at

Special Term Part 2 of the Kings County Supreme Court, as designated in the notice of examination before trial.

Attorneys for Plaintiff

Attorneys for Defendant,
Tuller & Moosman, Inc.

Appearances:

Harry E. Herman, of the firm
of Herman & Ernst, Attorneys
for the Plaintiff

Philip Novick, Attorney for
the Defendant, Tuller & Moos-
man, Inc.

CITY, COUNTY & STATE OF NEW YORK : SS:

WILLIAM MOOSMAN, having first been duly sworn by Sadelle Strauss, a Notary Public named in the stipulation herein, testifies as follows:

BY MR. HERMAN:

Q. Mr. Moosman, you are the Secretary of Tuller & Moosman, Inc.? A. Yes sir.

Q. And Tuller & Moosman, Inc. is a domestic corporation? A. Yes sir.

Q. Were you such Secretary in the year 1932 and in the year 1933? A. Yes sir.

Q. Isidor Tuller is the President of Tuller & Moosman, Inc.? A. Yes sir.

Q. And was such President in 1932 and 1933? A. Yes, sir.

Q. Were you both such officers in 1931? A. Yes, sir.

Q. Did your Company enter into a contract with the defendant, John Kennedy & Company, Inc. with respect to painting work to be done at the Queens General Hospital? A. Yes sir.

Q. Was that contract in writing? A. Yes, sir.

Q. Have you got that contract here? A. Yes.

Q. Your Attorney hands me a paper bearing date the - day of May, 1931 and I show it to you and ask you whether this is the contract between Tuller & Moosman, Inc. and John Kennedy & Company, Inc. with respect to the work to be done by you at the Queens General Hospital. A. Yes sir.

By Mr. Herman - I offer this contract in evidence as Plaintiff's Exhibit 1.

Q. Outside of this Plaintiff's Exhibit 1, have

you any other contract in writing with John Kennedy & Company, Inc. with respect to any work on Queens General Hospital?

A. No sir.

Q. Have you any oral contract with John Kennedy & Company Inc. with respect to any other work than shown in Plaintiff's Exhibit 1 on this job? A. No.

Q. Did you fully complete the work called for by plaintiff's Exhibit 1. A. Fully completed subject to final inspection.

Q. Has there been a final inspection? A. No.

Q. When did you fully complete the contract.

A. Completed subject to retainer, I have finished it some time in March or April.

Q. Have you got the date when you did the last item of work on this job? A. Some time in June.

Q. Have you it in some of your memoranda or data?

A. I can get it.

Q. How much money did you receive from John Kennedy & Company, Inc. on account of the work called for by Plaintiff's Exhibit 1? A. I don't recall offhand. I would also have to give it to you from the records.

Q. Do you keep books to show how much you received and the dates of the receipts of these moneys? A. I do.

Q. Until you refresh your recollection as to the exact amount you received, how much do you now say you received on account of plaintiff's Exhibit 1. A. \$43,000.

Q. Are the specifications in writing? A. Yes.

Q. Have you got the copy of the specifications?

A. I haven't any with me, but I can produce it.

Q. Have you one in your office? A. I believe

we have it in the office.

Q. At the time when you entered into Plaintiff's Exhibit 1, did you get a copy of the specifications? A. We did.

Q. And you kept that copy in your office? A. I believe so.

Q. And you will make an effort to find it?
A. I will.

Q. And produce it at the next hearing if you find it? A. Yes, if I find it.

Q. Have you also received copies of plans at the time you signed Exhibit 1. A. Plans for all buildings.

Q. By all buildings you mean all buildings comprising Queens General Hospital? A. Yes.

Q. Those plans you still have? A. Yes.

Q. Do you mind producing those at the next hearing?
A. Yes.

Q. Are you claiming from John Kennedy & Company, Inc. for any work that you did which you claim is not called for by Plaintiff's Exhibit 1 and the plans and specifications?
A. Yes.

Q. I understand you to say that you wrote letters of protest to John Kennedy & Company, Inc. when a request was made upon you to do work which you considered was not within plaintiff's Exhibit 1, and the plans and specifications?
A. Right.

Q. Have you copies of those letters? A. I have.

Q. Do you mind producing copies of those letters at the next hearing? A. On the advice of my Attorney I will.

Q. After you made these written protests you

did do the work asked of you to be done, which you considered outside of the contract, Plaintiff's Exhibit 1, and the plans and specifications? A. I did.

Q. Do any of your books show the items of work done by you and the fair and reasonable price therefore.

A. We have nothing tallied in money.

Q. Those consist of material and labor? A. Mostly labor.

Q. And have you any entries in your books to show how many men and how many days labor you devoted to those extras? A. I assume we do, but I am not sure.

Q. When you said a moment ago that you had not tallied them, you mean by that you have not counted up the total? A. Right.

Q. But your books contain the items from which you can make the tallies? A. The books should show the time that it took.

Q. Would your books also show the men that were engaged in those extras. A. No.

Q. The books would simply show the number of men engaged on these extras and dates? A. I assume that it would show the number of men, and possibly not. Possibly it would only show the amounts of moneys expended every day or every day.

Q. Do I understand you to say that you have what is called a daily sheet? A. Yes.

Q. And this daily sheet is printed? A. Yes.

Q. Do these sheets show the name of every man on the job each day? A. Yes.

Q. Does the man write his own name on that sheet every day? A. He does.

Q. Who prepares the sheet? A. The daily sheet is a printed form and the name of each man daily is put there by the man himself. This sheet is at the shanty in the building or in one of the rooms, and as each man appears for work during that day he signs his name.

Q. Does he at the end of the day sign the number of hours he works. A. No.

Q. Who ascertains the number of hours? A. I keep the record of the time.

Q. This sheet was daily taken from the building down to the office. A. That is right.

Q. This daily sheet is kept by you for one week. A. Yes.

Q. At the end of a week a weekly sheet is made out of the daily sheet? A. Yes.

Q. Who makes the weekly sheet? A. The office.

Q. What does the weekly sheet contain? A. The weekly sheet is also printed and the weekly sheet contains the names of the men and the number of days put in by each man at each job.

Q. Each weekly sheet contains the name of one man and the number of days that he worked upon a particular job during that week and the number of hours each day. A. Yes.

Q. These weekly sheets, are they signed by the men? A. Sometimes they are and sometimes they are not. But when they are not signed on the weekly sheet, then we have a separate receipt taken from the men every time he is paid.

Q. When you do extra work have you any entries anywhere showing that men are engaged in extra work and how long? A. Yes.

Q. What entries or what records do you keep, or did you keep, to show the extra work that was done by you on

the Queens General Hospital. A. I give in the amount of labor it took to perform the certain items.

Q. Where do you get the certain items and where do you get the amount of labor? A. I made a special notation.

Q. You mean at the time the work was done you made a special notation? A. Yes.

Q. By the special notation you mean what men were engaged in doing extra work? A. Not what men. So many men were working on this item.

Q. And is that the only record you have to show what men did this extra work? That is the only record to show how long it took? A. That is the only record I have.

Q. Do your daily sheets or weekly sheets indicate on them whether the men working the job during that day or during that week were working on extra work? A. No, the daily sheet did not indicate anything, nor the weekly sheet.

Q. Would there be any book in your possession indicating what charge is to be made on the Queens General Hospital for extra work? A. There would.

Q. Do you now say that there is such a book.
A. There should be some records in our office indicating the time it took to perform this extra work. That is my basis of the claim.

Q. Will you look through your records and see if you can find such book and produce it at the next hearing?
A. I will try to find it.

Q. Have you any idea at the present time how much your claim against John Kennedy & Company, Inc. is for these extras? A. No.

Q. Whatever the amount of the claim is will appear from these data and records that you speak of? A. It

will appear from the footage, the value, and I don't believe it will appear from the time whatsoever, because time is not considered in Court on extras.

Q. Your claim then from the City, is for the fair and reasonable value? A. That is going to be our claim. If they are asking for time we will have to produce it.

Q. At any rate, you are prepared to testify with respect to these extras, both as to the fair and reasonable value of the extra work you did, and as to the time that it took, is that right? A. I am prepared to testify as to any indications that I can show from the records, or from recollections or whatever it was.

Q. Do your records, as you remember it, indicate how many men and during what period of time they were employed by you in the doing of these extra items? A. I believe it will show. There must be some record.

Q. Do you pay these men in accordance with some specified daily wage? A. Yes.

Q. Was this a union job? A. Yes.

Q. Did you pay to these men the union scale of wages prevailing during the time of this contract, plaintiff's Exhibit 1. A. Yes, sir.

Q. In addition to the claim for extra labor for this extra work, are you also claiming against John Kennedy & Company for extra material in connection with this extra work? A. Yes.

Q. Have you any entries in any of your books to show what extra materials you purchased for this extra work? A. I don't know. They may be cash purchases. There was certain chemicals that we had to use - flake white, and Japan colors.

Q. At any rate, whatever extra materials you used, you bought for cash or there are bills to show. Do you mind having the items of cash that you expended and the bills to show the value of the materials used for this work? A. I do not promise it. I will take it up with our accountant to see if it can be worked out. My intentions were to add Material to labor, as anyone would. And that is how I dovetailed my material cost in addition to these extra labors, but whether I will be able to pick it out I do not know.

Q. You say that the items of materials bears a relation to the total as blank to blank. A. It all depends on the work.

Q. On this particular job? A. I have got to study that first.

Q. Do you mind at the next hearing producing the invoices that were sent to you by the plaintiff in this action between September 6th, 1932 and January 31st, 1933. A. Yes, my attorney can produce them.

The further examination of this witness is adjourned to the 9th day of January, 1934, at the office of plaintiff's attorneys, 123 East 42nd Street, Manhattan, New York City, at three o'clock.

Continued examination of Mr. WILLIAM GOODMAN,
pursuant to the stipulation adjourning said
examination to the 15th day of January, 1934,
and further adjourning the said examination
to January 18th, 1934, held at the office of
Herman & Ernst, Esqs., 122 E. 42nd Street,
New York City.

PRESENT:

HARRY E. HERMAN Esq.
-for the plaintiff

PHILIP NOVICK, Esq.
-for the defendant
Tuller & McCann, Inc.

By Mr. Herman:

Q. You were asked last time as to whether you
have any memoranda as to the date when you completed this
work and you stated that you could get it. Have you got such
memoranda? A. Yes, sir.

Q. Did you refresh your memory? A. Yes.

Q. When was the work completed? A. May 12, 1933.

Q. You also stated at the last examination
that you would look at your records to find out what moneys
you have received from John Kennedy & Company on account of
the payments due you. Have you looked at such records?
A. Yes.

Q. Have you got the record here? A. I have it
in my memory.

Q. What is the amount of money that you have
received from John Kennedy & Company? A. We received
\$43,270.

Q. Can you state at the present time when you
received these various payments? A. No.

Q. Have you any records in your office to
state when you received the payments and the amounts of
each payment. A. After having refreshed my recollection

from the records in my office I state that the following are the payments which have been made and the dates thereof:

1932		1933	
May 12	\$3000.	Jan. 6	\$1000.
June 8	2000.	11	2000.
July 13	3000.	24	2500.
Aug. 6	1000.	Feb. 1	3000.
Sept. 8	2000.	8	2500.
14	1500.	15	2400.
Oct. 19	2000.	23	1500.
Nov. 8	1800.	Mar. 1	2000.
15	1500.	Cash	500.
23	1000.	Adv. cash on job at	
Dec. 10	5000.	various times to	
28	2000.	Moosman	270.
		Total	\$43270.00

Q. You stated at the last hearing that there were printed specifications. Have you produced a copy of the printed specifications? A. I have not been able to find a printed copy of the specifications, although I have looked for them carefully.

Q. You stated at the last hearing that you received copies of plans at the time you signed Exhibit L. Have you the plans with you? A. No. They are too bulky to carry and you are at liberty to look at them at any time in my office, and if you find it necessary to examine me further in connection with them, I shall submit myself to such examination without further notice.

Q. You further testified at the last hearing that you wrote letters of protest to John Kennedy & Company with respect to items of extras which you claimed were not in the plans and specifications. Have you copies of those letters? A. I have in the office.

Q. Will you produce those letters at the next hearing. A. Yes.

Q. Has John Kennedy & Company any claim against you by reason of failure to complete the work or for any other reason? A. He has made certain claims.

Q. Have you correspondence between yourself and John Kennedy & Company with respect to any claims against you? A. Yes.

Q. By claims I mean any effects that he has against any amount of money that you claim is due from John Kennedy to you? A. Yes.

The further examination of the witness, William Kooman, is adjourned to Thursday, January 25th, 1934,

Continued examination of Mr. WILLIAM MOOSMAN,
pursuant to the stipulation adjourning said
examination to this date, to wit, February 14,
1934, held at the office of Herman & Ernst,
122 East 42nd Street, New York City, at 3 P.M.

PRESENT:

HARRY E. HERMAN, ESQ.,
for the Plaintiff

PHILIP NOVICK, ESQ.
for the Defendant,
Ruller & Moosman, Inc.

BY MR. HERMAN:

Q. Since the last examination have you ascer-
tained whether you have the specifications for the job?

A. Yes.

Q. Those specifications are in the office of
your Attorney? A. Yes.

Q. You also have the plans? A. I have.

Q. And these are also in your office? A. Yes.

Q. At the first examination held at this office
you stated that you have copies of letters sent by you to
John Kennedy & Company, and letters received by it with ref-
erence to extras. Have you now copies of these letters?

A. Yes, sir.

Q. You show me copy of a letter dated April
7th, 1932, addressed to John Kennedy & Company. Does this
refer to the radiators? A. Yes.

By Mr. Herman: I offer this letter in
evidence as Exhibit A of this date.

Q. The letter that you show me from John Kennedy
& Company, of April 11th, 1932, is in reply to the one of
Exhibit A of this day? A. Yes.

By Mr. Herman: I offer this letter in
evidence as Exhibit B of this date.

Q. You now show me a letter of April 12th, 1932. Is that your reply to the Exhibit B of this date?

A. Yes.

By Mr. Herman: I offer this letter in evidence as Exhibit C of this date.

Q. You now show me a copy of letter dated September 6th, 1932, written to John Kennedy & Company. Has this letter to do with the painting of the radiators and the dados and two inch stripes? A. Yes.

By Mr. Herman: I offer this letter in evidence as Exhibit D of this date.

Q. I now show you a letter written by John Kennedy & Company, dated October 3rd, enclosing a letter of the architect, Jones & Kleist, dated September 30, 1932, and ask you if you received those? A. Yes.

By Mr. Herman: I offer this letter in evidence as Exhibit Da and Da(1) of this date.

Q. I show you a letter of John Kennedy & Company dated October 7th, 1932, and ask you if you received that? A. Yes, sir.

By Mr. Herman: I offer this letter in evidence as Exhibit E of this date.

Q. I show you copy of a letter dated November 15th, 1932, written and sent to John Kennedy & Company by Ernest P. Seelman, and ask you if that is a correct copy of that letter. A. I assume so. Mr. Seelman, who was then my Attorney, said that such a letter was sent.

By Mr. Herman: I offer this letter in evidence as Exhibit F of this date.

Q. I show you a letter dated November 15th, 1932, addressed to John Kennedy & Company by Tuller & Moosman and ask you if this is a copy of a letter sent to that Company. A. Yes.

By Mr. Herman: I offer this letter in evidence as Exhibit G of this date.

Q. I show you a copy of a letter signed John Kennedy & Company, and addressed to Messrs. Sullivan W. Jones and John E. Kleist, dated November 1932, and ask you if you received this copy from John Kennedy & Company? A. Yes.

By Mr. Herman: I offer this letter in evidence as Exhibit H of this date.

Q. The letters that have been introduced in evidence this day, beginning with Exhibit A and ending with Exhibit H, inclusive, refer to all your items for extras for which you have made claim? A. Yes.

Q. And these items are for the laundry and garage brick walls, dados, cement plaster and stair halls, striping and radiation? A. Yes.

Q. What did you do with reference to the laundry and garage brick walls? A. I painted them with three coats of paint.

Q. Did you estimate the number of feet of painting? A. Yes.

Q. What is that estimate? A. 14,800 feet.

Q. What at that time was the fair and reasonable charge per foot? A. 12¢

Q. That makes a total for that item of \$3,000. A. Yes.

Q. What did you do with the dados, cement plaster and stair halls? A. That was painted.

Q. What do you estimate as the number of feet? A. 118,440 feet.

Q. What at that time was the fair and reasonable charge per foot? A. 8¢ per foot.

Q. What was the total for that item?

A. \$9,475.20.

Q. What does the item of striping consist of?

A. The item of striping consisted of putting on three coats of striping six feet from the ground, on such places where ordered by the architect, including stair halls of all buildings.

Q. How many feet did that consist of? A. 19,368 feet.

Q. What was the fair and reasonable value at that time per foot? A. 25¢

Q. How many coats did you put on? A. Three coats.

Q. That makes it the equivalent of how many feet? A. 60,000.

Q. And what is the total for that item?

Q. \$15,000.

Q. I notice that you have an item of radiation - \$9,000. What did that consist of? A. That consists of painting all radiators throughout all the seven buildings, two coats of specified paint and enamel.

Q. This makes a total claim that you have asserted against the City for these items of ^{extras of} \$38,475.20? A. Yes.

Q. Did you keep any account of the number of men engaged in doing this work and the times when they were doing it? A. I don't know the number of men but we have got the cost on it.

Q. What do you mean by having the cost on that item. A. I will say that if I told the girl that we have had six men working on radiators for that day, she would probably put down cost of six men's labor per day.

Q. Does the same method hold true with respect to the painting of the laundry and garage brick walls, and the dados, cement plaster, stair hall and striping? A. Yes sir.

Q. But you have no entry anywhere in your books showing the number of men engaged and when they were engaged in doing these particular items of extra work? A. I have shown when that was done every day, but I don't know if we have a memorandum showing the amount of men. I don't know.

Q. Do any of your books show separately the number of men and the dates when they worked on these items of extras? A. Yes sir.

Q. What would a book of that kind be called? A. A ledger.

Q. Do you mean by that a loose leaf ledger? A. Yes.

Q. So the number of sheets composing the loose leaf ledger would show accurately the number of men and the times when they worked on these separate items? A. They might not show the number of men, but they would show the amount paid for these various extra items from time to time and this amount paid is calculated upon the number of men employed.

Q. Union wages? A. The rate of payment was at the Union rate scale of \$11.30 for men coming from the Brooklyn Union, and \$10. for men coming from Queens.

Q. By whom are these ledger entries made. A. By the accountant and bookkeeper.

Q. And where does the accountant get the data to enter into these ledgers? A. The accountant gets it from me and I get it from the job.

Q. On the job do you keep a time book? A. On the job I kept a time book.

Q. Is it not your practice to have what is called a daily time sheet? A. That's right.

Q. In that daily time sheet each man writes his own name on that date showing the number of hours he worked on that day. Is that time sheet transferred into a time book? A. That daily sheet is sent to the office.

Q. How did you make your entries into the time book. A. I had no time book.

Q. By that you mean you kept no time book on the job? A. No. I kept time but not in a book.

Q. Did anyone else keep time on the job? A. No.

Q. What do you mean that you didn't have a time book but you kept the time anyway. A. I would say, for this and this date, - so many men, and at the end of the day I would say - so many men worked, and give her the moneys.

Q. From this information you gave to the girl she made out the payroll each week? A. Right.

Q. That is the only information she got for the payroll? A. I was the only one who gave her the information as to that job or as to any other question.

Q. And the way you arrived at this information is by noting the number of men each day, and putting it in some form and you notified the girl each day? A. Yes.

Q. Have you still got that book? A. I may still have the daily time sheets that I prepared, but I am not sure.

Q. Have you still the weekly time sheets that are signed by the men themselves. A. Perhaps. I have to look it up.

Q. Have you the names of the men from the beginning of the job to the end that were working on this contract.

A. The names will appear on the weekly time sheets.

Q. In the matter of the extras that you did for DuPont, did you there keep separate books showing the number of men. A. I have kept the moneys expended daily for that work.

Q. Where did you get the number of men that were working on these DuPont items daily. A. I kept ^{it} the same way as the rest of the records.

Q. In respect to those items of extras for DuPont did you keep the names of the men and the number of men daily in a separate record? A. No names, only the number of men.

Q. Have you any record in your office showing the number of men and the dates that each man worked on the items of extras which you are claiming against the DuPont Company from the time when the first trouble started until the end. A. Yes, I have.

Q. And would you keep that record yourself? A. Every record I kept myself.

Q. And did you keep it from day to day? A. Every day.

Q. And you still have that record? A. Yes sir.

Q. Did you receive any part of the \$36,475.20 on account of the extras which you claim against John Kennedy & Company? A. No.

Q. Did you receive any amount above the \$43,370. that you say you received from John Kennedy & Company? A. No sir.

Q. Does John Kennedy & Company admit owing you any part of the \$36,475.20. A. No.

Q. According to your records your contract price was \$49,000. A. Yes.

Q. And the amount you received \$43,370. A. Yes.

Q. The difference owing you from John Kennedy & Company, outside of the extras, is \$5730. A. Yes, that's my claim.

Q. Is there any claim made by John Kennedy & Company against you to offset this \$5,730.? A. Some of it.

Q. What claims does he make? A. He claims an item of \$1200. for cleaning all bucks, windows and iron stairs. He claims \$150. for damages resulting to marble in various buildings. He claims \$80. to make forty horses, and he also claims \$6. for hanging doors on lockers. He claims \$154. for cleaning rubbish on the job; \$41.31 per month interest on a deposit of \$2262. made to bond the mechanic's lien filed by Dupont Company from July 5th, 1933; and also \$250. for legal expenses in connection with the bonding of this lien; \$30. for two broken doors on the sixth floor of Building B; \$212. for use of elevator operator and power in elevator shafts in Buildings A and B; \$32. for use of elevator in Building E; \$4000., being at the rate of \$400. per day,

for heating the building during the delay in the performance of the work brought about as a result of the controversy between Dupont and Tuller & Moosman.

With respect to this last item of heating, I understand from Kennedy & Company, that it would be willing to waive it in case of a settlement with Dupont.

There is a claim for a certain number of square feet of painted surface which will have to be redone. On January 3rd, 1934, Kennedy wrote a letter to Tuller & Moosman fixing the amount of the square feet at 18,508. Subsequently Mr. Kennedy called me on the telephone and stated that he received a letter or notice from the architect that the amount of square feet is over 36,000.

Further examination of this witness
adjourned to February 16th, 1934,
at office of Mr. Novick at 3:30.

Continued examination of Mr. WILLIAM MOOSMAN, pursuant to the stipulation adjourning said examination to this date, to wit, February 27th, 1934, held at the office of Herman & Ernst, 122 East 42nd Street, New York City, at 3 P.M.

PRESENT:

Harry E. Herman, Esq.
for the Plaintiff

Harry Novick, Esq.
for the Defendant,
Tuller & Moosman, Inc.

BY MR. HERMAN:

Q. Mr. Moosman, I show you fifty-four invoices which your counsel hands me and ask you whether you received these from the plaintiff? A. They were received in the office.

By Mr. Herman: I offer in evidence 54 invoices beginning with December 6, 1932 and ending with January 31st, 1933, as Plaintiff's Exhibit 1 as of February 27th, 1934.

Q. Was the merchandise shown on this Exhibit #1 of this date, delivered to the job? A. Yes sir.

Q. Was all of this merchandise delivered to the job pursuant to your order? A. Not pursuant to my order.

Q. Was it pursuant to the order of anyone in your office? A. I couldn't say.

Q. Will you look through these invoices and state which were not pursuant to your order. A. Invoices beginning with September 6th, 1932 and extending to but not inclusive of December 30th, 1932 were ordered by my office through my authority, except certain samples, as follows:

Invoice September 6, 1932	.60
Invoice September 13, 1932	.58
Invoice of September 26, 1932	.58
Invoice of October 13, 1932	.52
Invoice of November 13, 1932	2.27
Invoice of December 23rd, 1932	1.03
Invoice of December 29th, 1932	8.41
(The entire invoice)	
Invoice of December 29th, 1932	8.50

Q. With respect to invoice dated December 30th, 1932, to and inclusive of January 31st, 1933 - was the mer-

merchandise called for by these invoices ordered by you or by your office with your authority. A. No, with the following exceptions:

Invoice of January 30, 1933	\$21.28
Invoice of January 23, 1933	95.00
Invoice of January 27, 1933	34.00
Invoice of January 30, 1933	300.00

Q. You state then, that the invoices of December 30, 1932 for \$189.63 was not ordered? A. No.

Q. Was the invoice of January 4th, 1933 for \$325. ordered? A. No, sir.

Q. Was the invoice of January 9th for \$124.80 ordered? A. No, sir.

Q. Was the invoice of January 10th for \$488. ordered? A. No, sir.

Q. Was the invoice of January 10th for \$716.30 ordered? A. No.

Q. Was the invoice of January 11th for \$200. ordered? A. No.

Q. Was the invoice of January 13th for \$2.21 ordered? A. No.

Q. With respect to those invoices that you have just testified had not been ordered by you or by your authority, did you know that the merchandise was received? A. Yes, sir.

Q. Did you ask any of the DuPont representatives to send it to you? A. No, sir.

Q. Was this merchandise that you say was not ordered, used upon the building? A. Some, not all.

Q. What part of the merchandise that you have just testified as not having been ordered by you but as having been received, was in fact not used in the building.

A. 3 barrels, 31 gallons each, light ivory; three barrels of white.

The further examination of this witness is adjourned to the 28th day of February, 1934, at the office of plaintiff's attorneys, 122 East 42nd Street, Manhattan, New York City, at 3:30 o'clock.

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Continued examination of Mr. William Moesman pursuant to the stipulation adjourning said examination to the 28th day of February, 1934, held at the office of Herman & Ernst, Esqs., 122 East 42nd Street, New York City, at 3:30 PM.

BY MR. HERMAN:

Q. Can you tell from which shipment these barrels which you referred to in the last examination came? A. No, I cannot.

Q. The merchandise which you ordered, either directly or through your office with your authority, was that intended for use at the Queens General Hospital? A. It was.

Q. Have you looked up your records to find out how much you paid to the plaintiff in this action from March 8th, 1932 to January 31st, 1933? A. Yes.

Q. Please state what moneys you paid between those dates. A. We made the following payments:

On May 15th, 1932	\$209.40
On September 15th, 1932	275.75
On November 15th, 1932	345.20
On December 10th, 1932	600.00

Q. Did you between March 8th, 1932 and June 28th, 1932, receive any further merchandise from the plaintiff?

By Mr. Kovish: Objected to as not within the confines of the pleadings and not within the confines of the notice of examination.

Q. Did you on March 8th, 1932 receive merchandise

of the value of \$43.31.

By Mr. Novick: Same objection.

Q. Did you on the same day receive at the Queens General Hospital, merchandise of the value of \$26.18.

By Mr. Novick: Same objection.

Q. Did you on March 14th, receive merchandise at the Queens General Hospital of the value of \$188.40?

By Mr. Novick: Same objection.

Q. Did you on March 24th, receive merchandise at the Queens General Hospital of the value of \$132.50.

By Mr. Novick: Same objection.

Q. Did you on April 22nd receive merchandise at the Queens General Hospital of the value of \$21.00.

By Mr. Novick: Same objection.

Q. Did you on April 27th receive merchandise at the Queens General Hospital of the value of \$33.

By Mr. Novick: Same objection.

Q. Did you on April 28th receive merchandise at the Queens General Hospital of the value of \$10.50.

By Mr. Novick: Same objection.

Q. Did you on June 20th receive merchandise at the Queens General Hospital of the value of \$14.

By Mr. Novick: Same objection.

Q. Did you on June 24th receive merchandise at the Queens General Hospital of the value of \$2.40.

By Mr. Novick: Same objection.

Q. Did you on June 27th receive merchandise at the Queens General Hospital of the value of \$188.80.

By Mr. Novick: Same objection.

Q. Did you on June 27th receive merchandise at the Queens General Hospital of the value of \$3.84.

By Mr. Novick: Same objection.

Q. Did you on June 28th, receive merchandise at the Queens General Hospital of the value of \$15.12.

By Mr. Horick: Same objection.

Q. Did you on July 8th receive merchandise at the Queens General Hospital of the value of \$189.60.

By Mr. Horick: Same objection.

Q. Did you receive invoices for merchandise covering the dates just given?

By Mr. Horick: Same objection.

Q. Did you have any conversation with any member of the plaintiff corporation with respect to the purchase and sale of this material mentioned in the plaintiff's Exhibit 1 of February 27th, 1934? A. Yes.

Q. With whom? A. With Mr. Surtee and Mr. Snyder.

Q. When did you have that conversation?
A. Two were in December, 1931 and one in January, 1932.

Q. That conversation related to the purchase and sale of the merchandise? A. No.

Q. Did you have any conversation relating to the purchase and sale of the paints. A. Not at that time.

Q. When did you have such conversation? A. At

a later date in my office.

Q. What is the date? A. I don't remember.

Q. With whom was it? A. Mr. Surtee and Mr. Snyder again.

Q. What was said?

By Mr. Hovik: Objected to on the ground that it is not material and necessary in view of paragraph third in defendant's answer.

Q. Was anything said with respect to the price to be charged? A. No.

Q. Was anything at any time before September 6th, 1932 said with respect to the prices to be charged for these paints? A. Yes.

Q. When was that? A. It was all in the same month.

Q. Which same month? A. Before I bought the materials.

Q. Which month was that? A. Some time in January, 1932.

Q. What was said? A. They told me that if I buy their paints I buy it cheaper than any other concern in the City of New York, and also I would have no trouble at all with their materials to use on that job.

Q. Were any prices discussed? A. No.

Q. Were the prices shown in Plaintiff's Exhibit 1 of February 27th, 1934, discussed. A. Not then, no.

Q. When did they speak to you about these prices? A. Months later in the office of Dupont.

Q. By months later you mean when? A. I will

have to refresh my recollection in order to give you an idea.

Q. Was it months later than December 1931?

A. The best answer I can give if you would let me look into the first page, or you look yourself. It was in March 1932 I assume.

Q. What was said in respect to prices?

A. Mr. Proctor told me, he was the one that did most of the talking, that I will give you the best of prices that I have ever offered to anyone. I never yet gave anyone else as good a price as I am giving you.

Q. Is that all that was said? A. That's all.

Q. That is in respect to prices? A. That's all.

Q. Was anything else said with respect to the merchandise that the defendant was to deliver?

By Mr. Novick: Objected to.

Q. Was anything said as to how payments were to be made? A. Yes.

Q. When was that? A. I don't remember. It was at a later date that they talked about payment.

Q. How much later on? A. I don't know.

Q. What was said with respect to payment.

By Mr. Novick: Objected to.

Q. Was the matter of the manner of payments in writing or was it oral. A. It was oral.

Q. Was there ever any discussion between you or any member of the plaintiff corporation as to the prices to be charged for the various items shown in plaintiff's Exhibit 1 of February 27th, 1934. A. I did at that time.

Q. What time do you refer to? A. March 1932.

Q. What was said at that time about prices. A. It was said everything that was in the bills.-- what they would charge me.

Q. The prices that were discussed, are those prices shown in plaintiff's Exhibit 1 of February 27th, 1934.

A. Yes.

Q. How much of this \$8286.53 shown in Plaintiff's Exhibit 1 of February 27th, 1934, did you pay. A. I don't know.

Q. The payment of \$600. that you made on December 10th, 1933, was made on what account? A. On the entire account.

Q. By the entire account you mean an account in addition to one dated from September 8th, 1932 to January 31st, 1933?

By Mr. Novick: I object to the question.

Q. The payment that you made on November 15th, of \$365.20, on what account did you pay that? A. Just on account of materials, that's all.

Q. Was it on account of material from September 8th, 1932 to January 31st, 1933. A. I couldn't say, I know it was paid on account of that job.

Q. The payment that you made on September 15th, was that made on account of merchandise shown between the dates of September 8th, 1932 and January 31st, 1933. A. It was all on account of that job.

Q. The payment that you made on May 16th of \$209.40 on account of what was that made. A. Also on account of that job.

Q. I show you this statement and ask you whether you received the original of it. A. I couldn't tell you.

By Mr. Herman: I offer this statement for identification as Exhibit 1 as of this date.

Q. Was the payment of \$7688.53 demanded of you by the plaintiff? A. No.

Q. Has the Mechanic's Lien mentioned and described in the complaint been paid, waived, cancelled or discharged? A. I don't know.

Sworn to before me this
day of March, 1934.

Continued examination of Mr. William Hecaman pursuant to stipulation adjourning said examination to the 14th day of March, 1934, held at the office of Herman & Ernst, Esqs., 132 East 42nd Street, New York City, at 3:30 P.M.

PRESENT:

Harry E. Herman, Esq.
for the Plaintiff

Philip Novick, Esq.,
for the Defendant,
Tuller & Hecaman, Inc.

BY MR. HERMAN:

Q. At the last examination on February 28th, 1934, you were asked certain questions to which your Attorney objected. Are you now prepared to answer these questions?

A. Yes.

Q. Did you between March 8th, 1933 and July 8th, 1934, receive any further merchandise from the plaintiff?

A. Between March 8th, 1933 and July 8th, 1934, I did receive merchandise from the plaintiff.

Q. Did you receive invoices for this merchandise? A. Yes.

Q. Have you got those invoices here?

A. Yes.

Q. Your counsel hands me thirteen invoices covering the dates above referred to. I ask you whether these are the invoices which you received? A. Yes.

By Mr. Herman: I offer these invoices in evidence as Plaintiff's Exhibit 1 as of this date - without pencil notations.

Q. Was the merchandise shown in this Exhibit 1 of this date, actually received at the Queens General Hospital. A. No, not all of it.

Q. Can you state which was not received at the hospital. A. The following were not received at the job:

March 8th, 1932	\$43.31
March 8th, 1932	26.19
Of the invoice of March 14th, 1932, the first two items, amounting to \$28.50 were not received on the job. The balance was received at the job.	

April 22nd, 1932	21.00
April 27th, 1932	33.00
April 28th, 1932	10.50
June 20th, 1932	.71
June 24th, 1932	6.48
June 27th, 1932	8.64
June 27th, 1932	188.80
June 28th, 1932	15.12

Q. For the purposes of identification, would you say that the dates and the amounts of the invoices of plaintiff's Exhibit 1 of this date, whether received at the job or not received at the job, were the following:

March 8th, 1932	\$43.31
March 8th, 1932	26.19
March 14th, 1932	188.40
March 24th, 1932	132.60
April 22nd, 1932	21.00
April 27th, 1932	33.00
April 28th, 1932	10.50
June 20th, 1932	.71
June 24th, 1932	6.48
June 27th, 1932	188.80
June 27th, 1932	8.64
June 28th, 1932	15.12
July 8th, 1932	188.60

A. Yes.

Q. Was the merchandise mentioned in this Plaintiff's Exhibit 1 of this date, intended for the Queens General Hospital. A. Not all.

Q. Which was intended for the Queens General Hospital. A. All was intended for the Queens General Hospital, except all the white lead, and a great deal of the paste filler, and all samples were not intended for the purpose. Also some of the tinting colors, raw sienna, and burnt umber were not intended for the purpose.

Q. Do any of these thirteen invoices, of this Exhibit, show which are samples. A. None of it is marked samples.

Q. You were asked at the last examination what conversation you had with Mr. Surton and Mr. Snyder with reference to the purchase of the material for the Queens General Hospital, and stated you didn't remember the date of those conversations. Can you now state when that was? A. I cannot.

Q. Did that conversation relate to the purchase by you of the material for this job? A. No.

Q. When did you first have a conversation with these two men or either of them with reference to the purchase by you of material for that job? A. Some time before March 8th, 1932.

Q. When was it before March 8th? A. I don't remember.

Q. How long before March 8th? A. About ten or fifteen days.

Q. What was the conversation? A. I was told what prices I would have to pay and what materials I have got to use, and they agreed to ship it to me.

Q. Were the prices that you had to pay - did they correspond with the prices shown in Exhibit 1 of this date. A. Right, except the lead.

Q. What was said about the lead. A. There was nothing said about the lead. When I purchased the lead it was market price.

Q. What do you mean by that - market price?
A. Lead had a market. Today it is up and tomorrow it is down.

Q. Is the charge for the lead in the invoices referred to, the market price? A. It was at that time.

Q. Was anything said with respect to how payments were to be made? A. No.

Q. At no time? A. It was at a later date.

Q. What was said at a later date with respect to payments. A. That I should pay them the money as I got it. I shouldn't hold them back too long.

Q. Was that oral or in writing? A. Oral.

Q. And did you pay them as you got it?
A. I paid them ahead of time up until the time I stopped paying.

Sworn to before me this :
14th day of March, 1934. :

Isidore Strauss
Notary Public

William Moosman