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# MUDDY BREWING MEDIATION

## Confidential Information for B.Z Boone, Plaintiff Brewery Owner-Developer

You are B.Z. Boone, principal and owner of a local development company – Boone Properties - that has done various commercial and residential projects in area for many years. Boone’s most recent project is Boone’s Brewery; you have invested heart and soul and a lot of capital into this one.

As you explained confidentially to your lawyer, in retrospect, it would have been wise to consider George Groban’s inexperience when assembling the architect/general contractor team for this project. Because you trusted his father, you didn’t investigate the company’s reputation or recent performance. At the time, Boone Development was running several other projects. This does not excuse Rorie’s or Groban’s negligence, but it might have avoided the expensive consequences.

You admit (to yourself only) that, as an experienced developer, perhaps you should have taken more care to inspect the property’s location abutting a sloped hill by the river. And it would have been good to pay attention to the disclaimers in the structural engineer’s report. Hindsight is 20/20. Still, you told the structural engineer that his drawings and calculations should assume a restaurant with patio openings. You recognized that these openings, involving removal of part of the brick exterior walls – could impact the overall structure and weight capacity. That’s why you hired a structural engineer in the first place.

You anticipate that Rorie and their lawyer will blame you for failing to go back to check with the structural engineer after the purchase, when you decided to locate the brewing equipment, storage, and cellaring in the building. They’ll claim you were familiar with the brewing process, and the extra weight of equipment and beer production, and you should have asked the structural engineer to re-run his calculations and drawings. Or they’ll try to blame you for not telling Rorie or Groban that the engineer’s work was done without considering brew operation.

Blame just as easily goes Rorie’s way. You gave the engineer’s full report to Rorie, with all its plans, drawings, and calculations. They do not mention brewing operations. Rorie could easily have seen that, just as easily as Rorie could have seen the engineer’s disclaimer regarding soil conditions. Rorie is the design professional and had an obligation to alert you to any need for additional structural engineering analysis. Of course, you would have obtained that analysis if Rorie had alerted you to a potential problem. You reject Rorie’s claim to have raised the soil issue with you and Groban. Never mind articles about “constructed memory.” That’s fabricated memory for sure.



Your lawyer has explained that Groban's bankruptcy means you won't be able to collect much of anything for their mistakes. Rorie and Rorie Space Design and their insurer are the only realistic source of compensation for what the building debacle has cost.

- Regarding 20 bathrooms with leaky wall fan flashing and mis-chosen faucets

You now see and your expert confirms ambiguities in Rorie's flashing detail plans for installing bathroom wall fan units. An experienced general contractor should have known what to do or should have checked. However, that is the purpose of an architect's supervision responsibility. And, if an architect is going to provide sloppy, unclear plans, they had better show up at the site more often.

You are particularly angry about wall fan flashing leaks because you raised the problem with Rorie early on and nothing was done. No doubt, Rorie has conveniently forgotten this. As a result, mildew has no doubt built up behind the exterior wall in up to 20 bathrooms, increasing the cost of repairs.

There's no excuse for the faucets in those fancy above-counter sinks. The faucet product information page suggests a certain sink depth and height. All Rorie had to do was read the product sheet and test one; the problem would have been clear before 20 were installed.

You told your lawyer to estimate a cost of \$4,500 per bathroom - \$90,000 for 20 bathrooms - including replacement faucets, new flashing, and wall repairs by the wall fan units. You acknowledge that this may be a bit high, but you do believe \$3,500 per unit, or \$70,000, would be needed to assure that the repairs are done properly.

Of course, the mudslides and sinking foundation are what caused the major damages in raw costs and business disruption. When you bought the building, you did it with a rough business plan that included projected rental income within a month or so after completion of construction. If you had known then that additional structural work would be required, you would have paid less for the building or walked away from the deal.

Fortunately, your original business plan had been conservative on rental projections for the office spaces. Based on the market at the time, you estimated monthly rental for each space at \$7,500. Later, as local rents were rising and the building space design and interior were obviously spectacular, you listed them at \$8,000 per month. At this point, given the mudslide fiasco, you are concerned about whether any business would rent these spaces in the near term. You'd be willing to let them go at the \$7,500 per month price point, or even \$7,000 if a renter would come in immediately and take a long-term lease.

Rental business aside, you are adamant that Rorie and their insurer must pay for what was professional malpractice. Yes, you asked Rorie to come up with a design to extend outdoor patios from the restaurant and lower level serving areas and include a brewery, cellaring, and storage. Rorie did that. However, Rorie was also required to consider the older building structure and the hill into which it was built. As the design professional, Rorie was



obligated to design so as to avoid risk of a sagging foundation or hillside mudslides. If that wasn't possible, Rorie was obligated to tell you so. Or, at least, Rorie should have requested additional structural engineering calculations. You've heard Rorie may claim to have raised "water concerns" with you and Groban, but you have absolutely no memory of that. If Rorie had been clear and direct about the possible consequences, you would remember it.

You also anticipate Rorie may blame Groban and argue that Groban also had a professional obligation to recognize the site risks. It would have been nice if Groban had been smart enough to see the risks, or suggest that you consult a structural engineer. Groban would no doubt say that he had a right to rely on the architect's plans, as written. Given that Groban Construction is now bankrupt, Groban can say whatever he wants. In your mind, Groban's failure shouldn't excuse Rorie's. You will defer to your lawyer here.

You now face enormous unanticipated costs and your insurer has already committed to large sums that should also be recovered from Rorie or Rorie's insurer. These include:

- The \$90,000 in bathroom repairs referenced earlier;
- \$100,000 to repair water damage to interior restaurant walls and furnishings;
- \$80,000 for replacement sliding wall window units;
- \$40,000 for sliding glass doors and frames on bottom and ground floor levels;
- \$60,000 for installation and finishing work;
- \$1,000,000 for foundation and structural improvements; and
- \$848,000 (\$212,000 per month in lost business revenues – rental income, beer, and restaurant revenues for at least 4 months)

Your "round figure" claim of \$10,000,000 has a lot of padding, but it accounts for diminished resale value of the building, increased future risk, slower revenue flows even after 4 months, and your time and aggravation. Your lawyer didn't call you on it, but you are aware that the lost revenue numbers are based on gross revenue projections. Lost profits – net revenues would be about 25% (more on rental income, less on restaurant and beer operations).

Your lawyer said your case is strong: you are likely to succeed against the architect even if Groban is judgment proof. You suspect Groban's insurance had lapsed too, and they had no coverage for this. The lawyer explained "joint and several liability" to mean that if Rorie is liable on a claim, they are liable for all of it if Groban can't pay. The lawyer recommended suing Rorie personally to protect against the possibility that Rorie Space and Design might eventually be judgment proof too. You have not talked to the lawyer about the likely level of damages that would be awarded. Your lawyer has told you that the trial would be lengthy, bad for your reputation as an owner/developer, and costly - probably up to \$50,000 in experts and \$100,000 in lawyer's fees.

You authorized the lawyer to file suit, and the lawyer had reviewed with you the liability and damages theories in drafting the complaint. You hadn't spoken with your lawyer for a while before the recent call to suggest mediation of the case.



Since then, you have thought a great deal about the business practicalities involved: you don't know whether Rorie or Rorie Space Design could pay a sizeable judgment. You don't know their level of insurance coverage though the lawyer said that will be discoverable.

Rorie Space Design is not a one-person shop; it includes a team of architects and designers. However, you have no idea what their margins or cash flow are. One possibility is that Rorie might pay some part of what's owed to you in design services for renovation work in your home and in another 10-unit rental townhouse development you own nearby. You did like Rorie's design approach. (You know your wife will too.) Rorie is bright and young and no doubt has learned much from this mess. Thank goodness for insurance! In any event, you would team up with a more experienced general contractor next time or do the general contracting yourself. You estimate that the reasonable value of the architect's services for these two projects would be \$40,000 - \$50,000.