

Fenix TX

Case Study Narrative

By

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Fenix TX
Case Study Narrative

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Fenix TX

Henry Anderson and Richard Simmons met in 1994 while working at Richardson Construction Company in Omaha, Nebraska. Henry was the office manager, and Richard was a superintendent. Soon after working together, Henry, Richard, and their families became inseparable, good friends. Deciding they no longer wanted to work for someone else, Henry and Richard developed aspirations to start their own business together. Henry had a large amount of capital to start the business, and Richard understood the subtleties of managing construction projects. Having the financial backing and the experience, Henry and Richard started Fenix Construction in Ogden, Utah in July of 1997. Henry supplied 80% of the investment and Richard supplied the other 20%.

Soon after its inception, Fenix Construction became one of the largest construction companies in northern Utah. Between the years 2000 and 2003, the company had a total net income of \$14.6 million. In 2004, they continued their trend of large earnings. Although Fenix was making a lot of money, Henry and Richard had an unwritten rule to leave as much money in the business as possible in order to enable acquisitions of other construction companies and enable future growth.

In June of 2004, Richard grew tired of leaving large amounts of money in the bank accounts of Fenix because he had a lot of ideas for personal items he was interested in purchasing. Henry, on the other hand, was preparing to acquire a construction company and wanted to leave the bank accounts full to prevent going into debt for the purchase.

Richard came up with a plan to make his purchases without letting Henry know; even though by doing so, Richard knowingly would violate the partnership agreement's provision that required each partner to maintain their initial ownership percentages (see

Exhibit B). On June 5, 2004, Richard began taking funds from Fenix' bank account and he made his first purchase. His first purchase was a 2004 Ford Mustang for \$25,980 (see Exhibit F). From June 2004 to November 2004, Richard made purchases with company funds for a \$51,198 truck and a \$35,000 house remodel (see Exhibits G and H). In 2004, Richard spent a total of \$112,178, all funds he took from Fenix.

On December 11, 2004, Richard decided to clear his guilty conscience. He prepared a way to tell Henry about the purchases and to repay Fenix (see Exhibit A). He included the receipts of all of his expenditures. Henry was very pleased that his good friend had been honest and he accepted the repayment proposal. As part of the repayment plan, Henry and Richard agreed to an amendment to the partnership agreement that would give direction for future situations such as this (see Exhibit C). By the end of 2005, Richard followed the repayment plan and cleared his debt.

As 2006 rolled around, Richard regained his desire to spend more of the company's earnings and began once again to take money without Henry knowing (see Exhibits I and J). On February 2, 2006, Laura Schlessinger, Fenix' secretary, noticed that Richard was embezzling money. As she walked over to Henry's desk to relay to him what she had seen, she decided instead to confront Richard by sending him an email (see Exhibit E). Richard convinced Laura that the money was for his family and that his family was having financial difficulty. Laura had her doubts because she knew that Richard's Christmas check in 2005 was for \$200,000, but she agreed to be quiet.

During 2006, having nobody to stop him, Richard took an estimated \$700,000 from Fenix. The total amount was not completely substantiated, but some receipts were found for purchases of \$86,000 worth of real estate and \$7,000 worth of band equipment

(see Exhibits K and L). Meanwhile, Henry was completely clueless and continued his trust of and friendship with Richard.

In December of 2006, Henry was contemplating purchasing another very large construction company. This time he would need to take out a loan. To do so, he needed to have an audit from the local accounting firm, Rock Accounting. Richard knew of the audit and scrambled to pay back some of the money he had embezzled. After determining that he could not repay the money in time, Richard made digital copies of nine years worth of priceless trade secrets that belonged to Fenix to start his own construction company.

On December 20, 2006, the truth was revealed to Henry. He received a letter from the auditor noting the discrepancy between the book ownership percentage and the actual ownership percentage (see Exhibit D). Henry knew what was going on and his heart sunk. What should he do? Should he give Richard one more chance? Should he end his longtime friendship with his family friend and partner by initiating the buyout of Richards' share of the company according to the amendment to the partnership agreement (see Exhibit C)? And the hardest question of all, should he ensure that Richard gets what he deserves by pressing charges for embezzling company funds and stealing company trade secrets, which would most likely send Richard to prison? Henry needs help.

Exhibit A
Repayment Proposal

Repayment Proposal to Fenix Construction

12/11/2004

Mr. Henry Anderson

Recently I (Richard Simmons) have been engaged in some less than honorable dealings. I have been using company money to purchase items for my family; however, the seriousness of this offence has been weighing heavily on me lately. I propose to repay 80% of the money used in order to maintain the 20/80 required in the partnership agreement. I will also deduct the 20% of the total from my scheduled pay in 2005. I propose to repay the company for the following items:

Items	Total cost/item	80% of total cost	20% of total cost
Car	\$ 25,980.00	\$ 20,784.00	\$ 5,196.00
House Remodel	\$ 35,000.00	\$ 28,000.00	\$ 7,000.00
Truck	\$ 51,198.00	\$ 40,958.40	\$ 10,239.60
Total	\$ 112,178.00	\$ 89,742.40	\$ 22,435.60

- I presently owe the company a total of \$112,178.00 according to this proposal.
 - a. If accepted I will return \$89,742.40 in cash to the company.
 - b. The amount of \$22,435.60 is to be deducted from my scheduled pay in 2005.

Richard Simmons

Richard Simmons

Henry Anderson

Henry Anderson

Notarized signature

Lawrence Hughes

Upon signing this document becomes a legal and binding contract. Also by signing this contract, Amendment 1.1 legally becomes part of Fenix Construction's policy statement.

Exhibit B
Partnership Agreement

Selections from Partnership Agreement for Fenix Construction

<u>Partner Names</u>	<u>Ownership Percentage</u>
Henry Anderson	80%
Richard Simmons	20%

Ownership Percentage Agreement

All owners of this partnership agree to maintain ownership percentages as shown on this agreement. Any changes to the ownership percentage must be facilitated in accordance with the “Changes in Partnership Agreement” clause of the partnership agreement.

Buyout Options

A buyout of another partner’s share by another partner can only occur in accordance with the “Changes in Partnership Agreement” clause of the partnership agreement.

Selling Options

A sale of any partners’ share to any buyer can only occur in accordance with the “Changes in Partnership Agreement” clause of the partnership agreement.

Changes in Partnership Agreement

Changes in the partnership agreement can be initiated in two different ways.

- 1) The first approach to change the partnership agreement is a new agreement by all partners who appear on this agreement. The current agreement will be nullified and replaced by the new agreement. All partners must sign the new agreement in the presence of a licensed notary.
- 2) The second approach to change the partnership is adding an amendment to the agreement. This amendment can use either the first or second approach in the Changes in Partnership Agreement clause. The amendment will not affect the original partnership agreement. The amendment must be signed by each partner in the agreement to become part of the partnership agreement.

Exhibit C
Amendment to the Partnership Agreement

The partnership will be amended with the following:

The “Changes in Partnership Agreement” section will now be initiated in three different ways. The third approach to initiating change is:

3) The third approach to change the partnership agreement can be initiated by one or more of the partners because of a dispute. This change in agreement will result in a new partnership agreement. The dispute will be overseen by an agreed upon arbitrator. All partners must accept the decision of the arbitrator. If a partner decides not to follow the ruling of the arbitrator, the partner will have the option to sell their share of the partnership to the other partners according to the value determined by the arbitrator. All partners who accept the arbitrator decision must sign the new agreement or sell their share according to the value determined by the arbitrator.

Richard Simmons

Richard Simmons

Henry Anderson

Henry Anderson

Notarized signature

Lawrence Hughes

Exhibit D
Audit Report

Rock Accounting
3988 River Bend Street
Provo, UT, 22344
December 20, 2006

Henry Anderson
Owner
Fenix Construction
112 10th Street
Idaho Falls, ID 83401

Dear Henry Anderson:

According to our audit records, we show that there is a discrepancy between the book ownership percentage and the actual ownership percentage. The bustle of the end of the year often interrupts one's normal routine, so perhaps you forgot to account for funds transferred in or funds transferred out of the partnership for book purposes.

Please provide us with additional information regarding the situation so that we can provide you with a qualified opinion on your financial statements.

Thank you for your cooperation.

Sincerely,

Maria Restivo

Maria Restivo
ROCK ACCOUNTING

Enclosure

Statement

Exhibit E
Correspondence between Richard Simmons and Laura Schlessinger

From: lauraschlessinger@fenixconstruction.com
Sent: February 2, 2006 10:06 AM
To: richardsimmons@fenixconstruction.com
Subject: Company Funds

While doing my routine review of company receipts, it has come to my attention that you are once again withdrawing large sums of money from the company account. Specifically, the \$13,000 paid to All American Yards for landscaping on January 16th and a recent trip to FIVE-O Skate Shop amounting in \$916.90 on January 30th. It is apparent that these withdraws are not company business and are not being matched by Mr. Anderson according to the partnership agreement. Please remedy this situation. It would be embarrassing for all involved if Mr. Anderson learned of this, especially since you just resolved your expenditures last year.

Sincerely,
Laura Schlessinger

From: richardsimmons@fenixconstruction.com
Sent: February 2, 2006 11:33 AM
To: lauraschlessinger@fenixconstruction.com
Subject: RE: Company Funds

I realize how bad this makes me look, but I assure you I am not in the wrong. I honestly intend to make everything right. However, my family is experiencing financial problems right now. I simply must provide for my family, you understand. Please help me. Don't tell Mr. Anderson. He doesn't really need to know. I will take care of everything when I can.

Sincerely,
Richard Simmons

From: lauraschlessinger@fenixconstruction.com
Sent: February 2, 2006 1:57 PM
To: richardsimmons@fenixconstruction.com
Subject: RE: Company Funds

I am sorry to hear that your family is struggling financially. As long as you promise to set everything right, what Mr. Anderson doesn't know won't hurt him. Please send my regards to your family.

Sincerely,
Laura Schlessinger

Exhibit F



SALES RECEIPT

BROADWAY FORD

BUILD FORD TOUGH

1273321
JUNE 5, 2004

223 BROADWAY Idaho Falls, ID 83401
Phone 208.222.3333 Fax 208.333.4444
www.broadwayford.com

SOLD TO Richard Simmons
Fenix Construction
112 10th street
Idaho Falls, ID 83402
208.223.4554
Customer ID ABC12345

PAYMENT METHOD	CHECK NO.	JOB
CHECK	2300	MISC

QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
1	Mustang	Ford Mustang	26,979.99	999.99	25,980.00
				TOTAL DISCOUNT	999.99
					25,980.00
				SUBTOTAL	25,980.00
				SALES TAX	Included
				TOTAL	25,980.00

Exhibit G

**BMC
WEST**

INVOICE

BMC WEST
234 Anderson Idaho Falls, ID 83401
208.529.3398

DATE: JUNE 21,2004
INVOICE # 2834

TO Richard Simmons
Fenix Construction
112 10th Street
Idaho Falls, ID 83401
208.223.4554
Customer ID ABC12345

SHIP Richard Simmons
TO 1304 Chesterfield Ln.
Idaho Falls, Id 83401
208.529.3433

JOB	PAYMENT TERMS
	Due on receipt

DESCRIPTION	TOTAL
Finance charge on overdue balance at 1.5%	
250 2x4 studs	600.00
1000 LF Romex wire	500.00
Lighting Trim kits	600.00
30 Can Lights	180.00
Insulation	1,500.00
Sheet Rock	3,000.00
Paint	2,500.00
Trim	1,500.00
Carpet Pad	1,500.00
Carpet	5,000.00
Tile	1,000.00
Grout	200.00
Labor	16,920.00
	TOTAL DUE 35,000.00

Make all checks payable to BMC WEST

Thank you for your business!

Exhibit H



SALES RECEIPT

BROADWAY FORD

BUILD FORD TOUGH

1273321

NOVEMBER 15, 2004

223 BROADWAY Idaho Falls, ID 83401

Phone 208.222.3333 Fax 208.333.4444

www.broadwayford.com

SOLD TO Richard Simmons
 Fenix Construction
 112 10th street
 Idaho Falls, ID 83402
 208.223.4554
 Customer ID ABC12345

PAYMENT METHOD	CHECK NO.	JOB
CHECK	2099	MISC

QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
1	F250	Power Stroke 4x4	43,999.99	999.99	43,000.00
1	33454	Bed liner	200.00	200.00	0
1	2232	6" Lift Kit	3,500.00	0	3,500.00
4	4587	20" Wheels	250.00	0	1,000.00
4	3343	35" Tires	200.00	0	800.00
TOTAL DISCOUNT				1,199.99	48,300.00
SUBTOTAL					48,300.00
SALES TAX					2,898.00
TOTAL					51,198.00

Exhibit I

ALL AMERICAN YARDS

INVOICE

YOU CAN DO IT.

183 Fairfield LN
 Idaho Falls, ID 83401
 Phone 509.555.0190 Fax 509.555.0191

INVOICE #[**100**]
 DATE: JANUARY 16, 2006

TO:
 Richard Simmons
 Fenix Construction
 112 10th Street
 Idaho Falls, ID 83401
 208.223.4554

FOR:
 Landscape Restaurant
 P.O. box 1235

DESCRIPTION	AMOUNT
Top Soil Fill	2,500.00
Retaining Wall	2,500.00
Curbing	1,000.00
Sod	2,000.00
Bark	1,500.00
Flowers	800.00
Trees	1,500.00
Landscape Rocks	700.00
TOTAL	12,500.00

Make all checks payable to ALL AMERICAN YARDS

Payment is due within 30 days.

If you have any questions concerning this invoice, contact John Don't 1.800.223.1123

Thank you for your business!

Exhibit J

FIVE-O SKATE
SHOP

Sales Receipt

SKATE OR DIE

JANUARY 30, 2006
RECEIPT # 29878

Sold To RICHARD SIMMONS
FENIX CONSTRUCTION
223 BROADWAY
Idaho Falls, ID 83402
208.223.4554
Customer ID DEF678910

PAYMENT METHOD	CHECK NO.	JOB
CHECK	3009	MISC

QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
1	2349	Snow Board	450.00	45.00	405.00
1	3944	Snowboard Boots	200.00	20.00	180.00
1	958	Bindings	300.00	20.00	280.00
Total Discount				85.00	865.00
Subtotal					865.00
Sales Tax					51.90
Total					\$916.90

Thank you for your business!

Exhibit K

BILL OF SALE

John Johnson, seller, of 3623 River Side Lane, Snow Flake, Mohave County, Arizona, in consideration of \$86,000.00 paid me by Richard Simmons, buyer, of 3623 River Side Lane, Snow Flake, Mohave County, Arizona, receipt of which is acknowledged, do grant, sell, transfer, and deliver to buyer the following goods: Commercial Building and Lot 32.

Buyer shall have all rights and title to the goods in Himself and His executors, administrators, and assigns.

Seller is the lawful owner of the goods, and the goods are free from all encumbrances. Seller has good right to sell the goods and will warrant and defend the right against the lawful claims and demands of all persons.

Seller has executed this bill of sale at 3623 River Side Lane Snow Flake, AZ on March 10, 2006.

John Johnson

John Johnson

Exhibit L

<i>Date</i>	<i>Your Order #</i>	<i>Our Order #</i>	<i>Sales Rep.</i>	<i>FOB</i>	<i>Ship Via</i>	<i>Terms</i>	<i>Tax ID</i>
10/10/2006	56565	3333	Rocky				

<i>Quantity</i>	<i>Item</i>	<i>Units</i>	<i>Description</i>	<i>Discount %</i>	<i>Taxable</i>	<i>Unit Price</i>	<i>Total</i>
1	135		Electric guitar			\$800.00	\$800.00
2	333		Jamboree			\$60.00	\$60.00
1	2232		Drum Set			\$1,500.00	\$1,500.00
1	544		Keyboard			\$2,000.00	\$2,000.00
1	3333		Microphone/stand			\$2,640.00	\$2,640.00
						Subtotal	
						Tax	included
						Shipping	
						Miscellaneous	
						Balance Due	\$7,000.00

P.O. Box 45 Idaho Falls 5656 Lane 83401 United States
 Phone: (208) 555-0167 Fax: (208) 555-0168 E-mail: Richard@gmail.com Web site: www.thebeat.com
Invoice #: 112
Invoice Date: 10/10/2006
Customer ID: Y-12345

REMITTANCE
Customer ID: 23
Date: 10/10/2006
Amount Due: \$7,000
Amount Enclosed: \$7,000

3798 Hoover Rd
 Idaho Falls, Id 83401

I N V O I C E

Exhibit M

Flow Chart of Events
For Fenix Construction Embezzlement Scandal

