

1 to the discovery of admissible evidence. Further, this
2 request seeks confidential and proprietary information which
3 would cause Dynasty Development Management, LLC irreparable
4 harm if disclosed to third parties, correct?

5 A Correct.

6 Q And then your response turning to Exhibit G to
7 response to request number four was a similar objection and
8 then that the request has been responded to by the ELN Trust
9 and that you incorporate their response, correct?

10 A That's correct.

11 Q Okay. And to your knowledge, none of these -- no
12 general ledgers, general journals, accounting records, cash
13 disbursement journals have been produced to us, correct?

14 A I think -- correct.

15 Q Now if you'll go to request number six. And in that
16 request we stated please produce any and all year end
17 financial statements both audited and unaudited included but
18 not limited to balance sheets, statements of profit and loss,
19 statements of changes and financial position and notes to
20 financial statements for Dynasty Development Management, LLC,
21 the Wyoming Downs race track or any trust or business entity
22 including but not limited to corporations, limited liability
23 companies and partnerships owned or managed by which you hold
24 an interest or have held an interest at anytime during the

1 past three years in Wyoming Downs or any of -- all other real
2 property situated in the state of Wyoming for 2011, 2012 and
3 the current calendar year to date. With regard to the current
4 year, please produce all periodic, monthly, quarterly, et
5 cetera statements. That was the question, correct?

6 A Correct.

7 Q And the response from the ELN Trust was objection,
8 this request seeks documents that are neither relevant to the
9 December 11, 2013 evidentiary hearing nor calculated to lead
10 to the discovery of admissible evidence. Further, this
11 request seeks confidential and proprietary information which
12 would cause Dynasty Development Management, LLC irreparable
13 harm if disclosed to third parties, correct?

14 A Correct.

15 Q And your response was largely the same that we've
16 discussed, that you basically stated an objection and
17 incorporated their response.

18 A Yes.

19 Q And to -- to your knowledge, we have not been
20 provided with any such financial statements to -- to this day,
21 correct?

22 A To my knowledge.

23 Q To your knowledge, that's true.

24 A That's true.

1 Q Okay. Number seven. Now you testified about
2 certain -- certain transactions related to this property,
3 right?

4 A Yes.

5 Q Financial transactions? Now request number seven
6 says please produce any and all bank account or investment
7 account statements from January 1, 2011 to present date for
8 all bank and investment accounts from which monies have been
9 expended, withdrawn, transferred and/or leverage for the
10 purchase of Wyoming Downs or operation of Wyoming Downs or
11 purchase or operation of any other real property or gaming
12 venture in the state of Wyoming during such time period,
13 correct?

14 A Correct.

15 Q And your response was -- or the ELN Trust response
16 was objection, this request seeks documents that are neither
17 relevant to the December 11, 2013 evidentiary hearing nor
18 calculated to lead to the discovery of admissible evidence.
19 Further, this request seeks confidential and proprietary
20 information 3which would cause Dynasty Development Management,
21 LLC irreparable harm if disclosed to third parties, correct?

22 A Correct.

23 Q And your response turning to Exhibit G to number
24 seven was the same -- you object -- objected that it wasn't

1 relevant and not likely to lead to discovery of admissible
2 evidence and then again just incorporated their answer as
3 though you said it there, correct?

4 A Correct.

5 Q Okay. And to your knowledge during -- prior to the
6 motion for summary judgment that we filed, were any bank
7 statements that were request here produced to us?

8 A No.

9 Q And now request number eight, you'll see looking at
10 either Exhibit G or K requests a copy -- please produce a copy
11 of all documents relating or otherwise pertaining to the
12 purchase, sale, encumbrance and/or transfer of any interest in
13 the real property and racetrack known as Wyoming Downs or any
14 other real property situated in the state of Wyoming during
15 2011, 2012 and the current calendar year to date.

16 Included in this request is all documentation
17 related to the purchase and sale of Wyoming Downs or any other
18 real property situated in the state of Wyoming included but
19 not limited to all closing statements, deeds, notes, mortgages
20 and/or other evidence of ownership and indebtedness. And the
21 response was objection, this request seeks documents that are
22 neither relevant to the December 11, 2013 evidentiary hearing
23 nor calculate to lead to the discovery of admissible evidence.
24 Further, this request seeks confidential and proprietary

1 information which would cause Dynasty Development Management,
2 LLC irreparable harm if disclosed to third parties.
3 Notwithstanding and without waiving said objection, please see
4 documents Bate Number Wyoming Down 0001 through 54, 57 through
5 85 and 89 through 163, correct?

6 A Correct.

7 Q Okay. Now I -- you -- you've seen the documents
8 related to Wyoming Downs that were produced in this matter?

9 A Yes.

10 Q Okay. And in those documents that are referenced in
11 response to request number eight, there are no bank statements
12 actually in those documents. That's correct?

13 A I don't believe there are any.

14 Q Okay. Now request number nine, you testified about
15 your -- your belief of the licensing and how it would be
16 affected by -- by Lyni -- if Lynita was owed -- given an
17 ownership interest in Wyoming Downs, correct?

18 A I'm sorry, what was the question?

19 Q You testified you were asked about whether -- what
20 effect you thought awarding Lynita in ownership interest in
21 Wyoming Downs would have on your licenses, correct, and what
22 licenses the company has?

23 A Yes.

24 Q Now request number nine, you'll see request please

1 produce a copy of all gaming, horseracing and other state or
2 federal licenses relating to horseracing and/or wagering on
3 horseracing issue to you, Dynasty Development Racing, LLC, any
4 other entity owned or managed by you or any employee of any
5 entity trust or entity owned or managed by you, correct?

6 A Correct.

7 Q Okay. And the response from the ELN Trust was
8 objection, this request seeks documents that are neither
9 relevant to the December 11, 2013 evidentiary hearing nor
10 calculated to leave to the discovery of admissible evidence,
11 correct?

12 A Correct.

13 Q Okay. And your response if you turn to Exhibit G
14 was you stated that you -- you objected on the same basis and
15 then you incorporated the response of the distribution
16 trustee, correct?

17 A Correct.

18 Q Okay. And to your knowledge, it's true that we have
19 never had -- never been provided with any such -- copies of
20 any such licenses, correct?

21 A Correct.

22 Q Has requested in request number nine.

23 A Correct.

24 Q Okay. Now request number 10 requested a please

1 produce a copy of all applications for gaming, horseracing and
2 other state or federal licenses relating to horseracing and/or
3 wagering on horseracing by you, Dynasty Development Racing,
4 LLC, any other entity owned or managed by you or any employee
5 of any entity, trust or entity owned or managed by you
6 regardless of whether such licensed was ultimately approved,
7 issued or granted by the issuing authority.

8 And the response from the ELN Trust was objection,
9 this request seeks documents that are neither relevant to the
10 December 11, 2013 evidentiary hearing nor calculated to lead
11 to discovery of admissible evidence. Further, this request
12 seeks confidential and proprietary information which would
13 cause Dynasty Development Management, LLC irreparable harm if
14 disclosed to third parties, correct?

15 A Correct.

16 Q Okay. And your answer in your Exhibit G was you
17 stated the same objection and then you incorporated their
18 response again, correct?

19 A Correct.

20 Q And to your knowledge, we have never actually been
21 provided with any copies of such applications requested in
22 request number 10, correct?

23 A Not that I'm aware of.

24 Q And now the final one, if you'll go to request

1 number 11 -- well, actually, we covered 11 and 12. Request
2 number 11 is please produce an accounting of the disposition
3 of any of all funds received from the mortgage or encumbrance
4 of the real property and racetrack known as Wyoming Downs or
5 any other properties situated in the state of Wyoming during
6 2011, 2012 and the current calendar year to date. Please also
7 produce any and all bank or investment account statements,
8 cancelled checks and other documents evidencing such
9 disposition of funds, correct? That was the question.

10 A Correct.

11 Q And you testified that some of those funds were used
12 for various purposes during your testimony, correct?

13 A Correct.

14 Q Okay. And you're -- the response to request number
15 11 from the ELN Trust was objection, this request exceeds the
16 scope of Nevada Rule of Civil Procedure 34 and such rule does
17 not require a party to prepare an accounting, right?

18 A Correct.

19 Q Okay. And your response was in Exhibit G that this
20 request seeks -- objection, this request seeks documents that
21 are neither relevant to the December 11, 2013 evidentiary
22 hearing nor calculated to lead to the discovery of admissible
23 evidence and then incorporated the response of the
24 distribution trustee, correct?

1 A Correct.

2 Q And -- and to your knowledge at least prior to our
3 motion for summary judgment no bank or investment account
4 statements, cancelled checks and other documents evidencing
5 such disposition of funds, the -- the mortgage or encumbrance
6 funds were ever produced to us, correct?

7 A Correct.

8 Q Okay. Now the final request number 12 was please
9 produce a copy of any and all other documents required to be
10 disclosed by Nevada Rules of Civil Procedure Rule 16.2 which
11 have not been provided in response to any other request
12 contained above, correct?

13 A Correct.

14 Q And the response from the ELN Trust was just to see
15 the documents that were attached to the response, correct?

16 A Correct.

17 Q And your response was all documents are in the
18 possession of the Eric L. Nelson Nevada -- or Eric L. Nelson
19 Trust and had been produced in the Eric L. Nelson Nevada Trust
20 distribution trustee, answer Defendant Lynita Sue Nelson's
21 first set of request for production of documents regarding
22 Wyoming Downs, correct?

23 A Correct.

24 MR. KARACSONYI: I move for the admission of Exhibit

1 G and K. I think it just --

2 MS. FORSBERG: You already did that.

3 MR. SOLOMON: I thought K was already in and I
4 thought G was in, but I have no objection.

5 MR. KARACSONYI: K is in.

6 THE COURT: They have already been in admitted, G
7 and --

8 MR. KARACSONYI: Okay. And Exhibit H was admitted.
9 Okay. Now I would like to publish the deposition of Mr.
10 Nelson on November 21st, 2013, Your Honor.

11 MR. SOLOMON: No objection.

12 MR. KARACSONYI: I have also attached copies of
13 Exhibit J and I would like to admit it for the purpose of
14 showing the responses so that the supreme court has a record
15 of the responses that were -- that we're going to go over here
16 with the -- with the Court.

17 MR. DICKERSON: So for the record, it's being
18 accepted as being published and we're also having it marked as
19 an exhibit for the record.

20 THE COURT: So Exhibit J I think they said they --
21 no objection as being --

22 MR. SOLOMON: No objection.

23 MS. FORSBERG: No objection.

24 THE COURT: All right.

(Defendant's Exhibit J admitted)

BY MR. KARACSONYI:

Q Now at your deposition you were asked various questions about the -- about the -- your acquisition of Wyoming Downs, correct?

A Correct.

Q Now at that time you actually couldn't recall how you came to find out that Wyoming Downs was available for purchase, correct?

A Correct.

Q Okay. And you couldn't recall how you located Henderson Capital Group, LLC, correct?

A Correct.

Q In fact, you couldn't even recall who you dealt with, anybody associated with Henderson Capital Group, LLC, correct?

A Well, I knew that like the secretary and but not anyone in particular that I had, no.

Q You couldn't identify anyone by name except for possibly some gentleman named Dennis --

A Yes.

Q -- last name unknown.

A Yes.

Q Correct?

1 A Uh-huh (affirmative).

2 Q Okay. And at that deposition you were asked various
3 questions which you felt were outside the scope of these
4 proceedings, correct?

5 A Correct.

6 Q And you refused to answer those questions, correct?

7 A Correct.

8 Q Can you turn --

9 A I don't have it.

10 Q Oh, it's in your exhibits, Exhibit J in the exhibit
11 book.

12 A Oh, in this one? Okay. Sorry.

13 Q Okay. You actually wouldn't answer the question
14 about whether anyone else has an ownership interest in Wyoming
15 Downs besides Dynasty, correct?

16 A Where are you at?

17 Q Page 26. Now I asked you on Line 19 question,
18 besides Dynasty, does anyone else have an ownership interest
19 in Wyoming Downs and your answer was that would be outside the
20 scope, correct?

21 A Correct.

22 Q And you never answered that question at deposition,
23 did you?

24 A That's correct.

1 Q Now if you'll turn to Page 30, I asked you at Line 2
2 does Dynasty own a hundred percent of Wyoming Downs. And your
3 answer was in the scope of the understanding from the
4 questioning, if I understand this correctly, when I purchase
5 the facility on the 11th enclosed yes, then the question was
6 so when the property was purchased Dynasty owned a hundred
7 percent of Wyoming Downs. Answer, yes. Question, did Dynasty
8 own a hundred percent of Wyoming Downs on the date of your
9 divorce from Mrs. Nelson. And your answer was that is beyond
10 the scope, correct?

11 A Correct.

12 Q And you actually didn't ever answer that question at
13 a deposition whether or not Dynasty even owned a hundred
14 percent of -- of the -- of Wyoming Downs on the date of your
15 divorce, correct?

16 A Correct.

17 Q And if you look at it starting at Line 15, I asked
18 so you're refusing to answer that question and your answer was
19 that is beyond the scope of when I purchased it and when I
20 closed. And my question so it is your position that the only
21 questions you have to answer today are questions between the
22 time prior to the purchase up until the time of close, is that
23 correct. Answer, that's correct. Question, and you're
24 refusing to answer any other questions, answer, that is

1 correct. That was your testimony, correct?

2 A Yes.

3 Q Okay. Okay. Now you also didn't recall at your
4 deposition any of the specific people you asked for a loan
5 other than Henderson Capital, LLC, correct?

6 A Correct.

7 Q Now if you'll turn to Page 38, I asked you the
8 following the questions and received the following answers.
9 At Line 4 -- and at that time Dynasty owned a hundred percent
10 of Wyoming Downs, correct? Yes. How much is still owed to
11 Henderson Capital Group, LLC on the original 700,000 mortgage.
12 Answer, that would be outside the scope of this deposition.
13 Question, so you are refusing to answer that question.
14 Answer, yes. Then I asked counsel do you support his refusal
15 to answer, Mr. Luszeck, correct. Did I read that correctly?

16 A I believe so.

17 Q Okay. And you wouldn't answer and you never did
18 answer at deposition whether any money or no money was owed to
19 Henderson Capital Group at the time of your deposition,
20 correct?

21 A Correct.

22 Q Now on Line 18 I asked you since Wyoming Downs was
23 acquired, what has been done to approve the property. And
24 your answer was that is outside the scope of this deposition,

1 correct?

2 A Correct.

3 Q Okay. Now I went on to ask you a series of
4 questions at the bottom of Page 38. I am going to go through
5 a series of questions and please indicate to me whether you
6 are willing to answer any of the questions and then I asked
7 your counsel -- counsel if you could indicate to me if there
8 is anything that you are going to instruct your client to
9 answer, I would appreciate that as well, correct?

10 A Correct.

11 Q And -- and Mr. Luszeck, your coun -- the counsel for
12 the ELN Trust indicated that he will do, right?

13 A Correct.

14 Q And then I asked you the following series of
15 questions. I received the following series of answers
16 starting at Line 7, Page 39. Question, what licensing was
17 required to operate Wyoming Downs. Answer, that would be
18 outside the scope of this deposition. Question, what
19 legislation was required to allow Wyoming Downs to operate as
20 a racetrack. Answer, that would be outside the scope of this
21 deposition. I don't know. Question, how many employees work
22 at Wyoming Downs. Answer, that is outside the scope of this
23 deposition. Question, who are the employees for Wyoming
24 Downs. Answer, that would be outside the scope of this

1 deposition. Question, what events or races have occurred at
2 Wyoming Downs since it was acquired. Answer, that would be
3 outside the scope of this deposition. Question, what was the
4 attendance of the race events at Wyoming Downs since it was
5 acquired. Answer, that would be outside the scope of this
6 deposition. Question, what were the profits from the various
7 race events that occurred at Wyoming Downs after it was
8 acquired. Answer, that would be outside the scope of this
9 deposition.

10 Question, where have the profits been deposited from
11 the racing operations at Wyoming Downs after Dynasty's
12 acquisition of Wyoming. Answer, that would be outside the
13 scope of this deposition. Question, what money have you
14 personally received from the operation of Wyoming Downs.
15 Answer, that would be outside the scope of this deposition.
16 Question, have any profits been transferred to any other
17 entity from Dynasty from Wyoming Downs. Answer, that would be
18 outside the scope of this deposition.

19 Question, has the ELN Trust received any profits
20 from the operation of Wyoming Downs. Answer, that would be
21 outside the scope of this deposition. Question, what are the
22 operating expenses for the operation of Wyoming Downs.
23 Answer, that would be outside the scope of this deposition.
24 Where are the gaming revenues for Wyoming Downs. That would

1 be outside the scope of this deposition.

2 Can you explain to me the offtrack betting rights
3 for Wyoming Downs? That would be outside the scope of this
4 deposition. What are the future plans for the operation of
5 Wyoming Downs? That would be outside the scope of this
6 deposition. Is there any new legislation on the horizon which
7 you believe will affect Wyoming Downs. That would be outside
8 the scope of this deposition. Are you conducting any lobbying
9 efforts for -- it says lobbying. Lobbying efforts for Wyoming
10 Downs for additional legislation. That would be outside the
11 scope of this deposition.

12 Did I read that correctly?

13 A I believe so.

14 Q Okay. And then Mr. -- Mr. Luszeck and Ms. Forsberg
15 confirmed that they would not instruct you to answer the
16 question, correct?

17 A Correct.

18 Q Or any of those questions, correct?

19 A Correct.

20 Q Okay. Okay. And then one final time at Page 44,
21 starting at Page 44. I asked you another series of questions
22 and it indicated for you or your counsel, either of them, to
23 indicate whether or not they would instruct you to answer or
24 whether you would answer, correct?

1 A Correct.

2 Q Okay. And we'll go through those. Page 44, Line
3 22. Does Dynasty own any other property other than Wyoming
4 Downs. That would be outside the scope of this deposition.
5 Does Dynasty own any bank accounts in between yes, in between
6 the time of purchase and yes, they would have an account, can
7 you list for us the specific accounts held by Dynasty
8 Development since the time of creation to present date. From
9 the time of the purchase it would be one. What is that bank
10 account. Where is that located. That would be -- I
11 apologize.

12 You don't know where the bank account for Dynasty is
13 held. I believe it is at City National. And is that bank
14 account still open. Yes. Is that the only bank account that
15 Dynasty has had for its operation. I believe, ye. Does
16 Dynasty own any other real property. That's outside the scope
17 of this deposition. Does Dynasty have any other type of
18 accounts other than the one bank account at City National.

19 If we are being specific from the date of the
20 purchase or the auction to the closing, that would be the only
21 account. But after that date, have there been any other
22 accounts open for Dynasty and that would be outside the scope
23 of this deposition. Are there any other long term debts
24 associated with Wyoming Downs other than the mortgage.

1 Between the auction period to the closing this is the only
2 debt. Has Wyoming Downs incurred any other debt since the
3 time of closing. And that would be outside the scope of --
4 outside of this deposition.

5 Has Dynasty incurred any other debts other than the
6 mortgage since the time of closing of Wyoming Downs. That
7 would be outside the scope of this deposition. What are the
8 current liabilities of Dynasty other than the mortgage. That
9 would be outside the scope of this deposition. Does Dynasty
10 have any plans to acquire additional property in the future.
11 That would be outside the scope of this deposition.

12 Did I read that correctly?

13 A I believe so.

14 Q Now if you'll turn to the promissory note which was
15 admitted as Exhibit 6.

16 A I have it.

17 Q This -- the second paragraph indicates that the full
18 principal loan amount is due and payable in full 12 months
19 from the date of execution of the note, correct?

20 A That's correct.

21 Q Okay. And the note is signed January 4, 2012.

22 A Correct.

23 Q And the 12 months from January 4, 2012 is January 4,
24 2013, correct?

1 A Correct.

2 Q And that was approximately or almost exactly six
3 months prior to the notice -- or the entry of a divorce decree
4 in this case, correct?

5 A Correct.

6 MR. KARACSONYI: I have no further questions, Your
7 Honor.

8 THE COURT: Ms. Forsberg, do you have any questions
9 you want to ask?

10 MS. FORSBERG: No, I don't have any questions, Your
11 Honor.

12 THE COURT: Any redirect, counsel?

13 REDIRECT EXAMINATION

14 BY MR. SOLOMON:

15 Q Mr. Nelson, did you see anywhere in Exhibit K where
16 you were requested to produce a document whereby you repaid
17 BanOne \$75,000?

18 A I'm sorry, where is that located, the question is?

19 Q I don't think it's there, but anywhere in Exhibit K
20 where you were asked to produce specifically any documents
21 that would have included the repayment of the BanOne 75,000.

22 A No.

23 MR. SOLOMON: I have nothing further.

24 MR. KARACSONYI: I have one question and then a

1 followup. I have no questions.

2 THE COURT: Thanks.

3 THE WITNESS: Am I done?

4 THE COURT: Mr. Nelson, you're --

5 THE WITNESS: Thank you. Just leave this stuff
6 here?

7 THE COURT: Yeah, you can just leave those exhibits
8 there, thanks.

9 MR. SOLOMON: We have nothing further, Your Honor.

10 THE COURT: Well, it's about 10 after 12:00. Do you
11 guys want to go through?

12 MR. KARACSONYI: Yeah, we're --

13 MR. DICKERSON: We're done.

14 MR. SOLOMON: Ready to argue --

15 MR. KARACSONYI: We're done.

16 MR. SOLOMON: -- if that's what Your Honor --

17 MR. KARACSONYI: We're ready to argue closing
18 arguments, Your Honor.

19 MR. SOLOMON: Then we can have our Friday, Your
20 Honor, what's left of it. Ready? Thank you, Your Honor.

21 We're here today as Your Honor well knows because you entered
22 a divorce decree on January -- sorry, June 3rd. I can't keep
23 the years straight either. 2013. And held that you were
24 quote, without sufficient information to make a determination

1 as to the disposition of the property. And you're referring
2 to Wyoming Downs.

3 On June 17th, 2013 Lynita filed a motion to amend or
4 alter judgment or for declaratory related relief we shall call
5 the motion to amend wherein she sought among other things for
6 the Court to award her a 50 percent interest in Wyoming Downs.

7 At the hearing that occurred on that motion after
8 briefs were filed, that hearing was July 22nd, Your Honor,
9 2013. This Court said and I quote I would not be inclined
10 just to give Ms. Lynita half of Wyoming Downs, that's a
11 bracket, you meant Wyoming Downs. It was the property.
12 Without evidence or some basis on why it should be awarded or
13 anything on that this can look at because I did maintain as
14 much as I could the integrity of the trust to protect both
15 parties from adjustment creditors.

16 The Court also said I'm just not setting aside the
17 trust to be -- to begin with. I try to trace money that fall
18 that came from one thing to try to do what was fair and just
19 under the trust while maintaining the trust. I said here's
20 why I did this on this one with Wyoming. That came late. I
21 don't know where the money came from.

22 And then subsequently the Court at another hearing,
23 this was the February 25, 2014 status check amplified more
24 what you wanted to hear and why you wanted to hear it with

1 respect to Wyoming Downs. And this is from the transcript of
2 February 25, 2014 at 14:02:17. The Court said I have no doubt
3 my concern with the Downs to be quite honest is that it came
4 on a motion to release the money to buy it saying there's no
5 way they can buy it unless they release the money, then it got
6 purchased. I want to make sure there's no funny business in
7 the purchase so I can trace to where it came from to see if
8 any properties was used that I had awarded to Lynita in the
9 divorce decree.

10 If that was used on that, some stuff that might have
11 been transferred, I don't know, that was my concern to be
12 quite honest to make sure there's no funny business where I
13 can trace where it came from being that there are some things
14 being moved from Lynita's trust to the other trust.

15 I know that the Downs was purchased plus they owned
16 it, sold it, they came back. I just want to make sure that it
17 was straight up and down so I know how it got purchased. It
18 was purchased just so I have some findings of that. So just
19 -- I just really want to see how the Downs was purchased, how
20 it came from and to make sure there were no shenanigans and
21 what was used to do it, what collateral was pledged to see if
22 there was anything that had been awarded to Lynita in the
23 decree or something that was her property that got transferred
24 into the other trust to put collateral for that property.

1 That's kind of what I was looking for to kind of trace it to
2 see how it came in because of the notion I had was that it
3 could not be purchased without that money being released and
4 then it got purchased.

5 At the July 22nd hearing, we also talked about what
6 was needed and what this Court thought was needed to get to
7 the questions that you had. And the transcript reflects and
8 I'm -- and quotes that it was focusing -- and this is a quote,
9 focusing right now on the acquisition itself. You said that
10 you thought the discovery needed for that, what you needed to
11 know based upon what you have already articulated was your
12 concern would be you called the evidentiary hearing would be
13 on the very limited issue. That's the quote. And you
14 couldn't even understand exactly what discovery would be
15 needed other than the documents which you thought Lynita
16 already possessed.

17 We took you at face value Your Honor and -- and in
18 good faith produced everything that we had that had to do with
19 the acquisition of Wyoming Downs. You know it's our position
20 that that asset is owned by an entity that's wholly owned by
21 the ELN Trust and that it was 100 percent debt financed.
22 There was nothing that this Court awarded to Lynita that was
23 used to acquire that property.

24 I don't know if they're going to try and confuse you

1 with respect to that \$75,000, but this Court did award
2 specific properties from BanOne. I think there was 17 of them
3 to Lynita, specifically to equalize another transaction, but
4 it did not award BanOne to her. It did not award to her any
5 of the funds from BanOne. And in any case all that happened
6 was that \$75,000 came out of BanOne. They had a right to do
7 it because there's no injunction preventing in this ordinary
8 course of the ELN Trust business. It was led to -- give the
9 earnest money deposit. And as soon as we have money we give
10 it back to BanOne.

11 The monies that the Court ordered to be segregated
12 for -- or to be awarded to Lynita had been segregated and
13 deposited and they're tied up, there's nothing that they can
14 show that any of the assets from Lynita or LSN Trust were used
15 in any way, shape or form to make this acquisition. And
16 there's nothing in the decree that would suggest anything to
17 the sort.

18 Yes, we have refused to answer those questions that
19 they tried to shotgun. You saw the request to produce. It
20 went far beyond what this Court wanted to hear about. It went
21 into the deepest recesses of everything that has ever happened
22 not only in the time of acquisition of 2011, but they wanted
23 12 and they wanted 13. They wanted everything. Cannot do
24 what the operation of that business before they proved and we

1 believe can't prove that they have any interest in it
2 whatsoever.

3 I've been doing this a long time, Your Honor. I
4 know you've been on the bench and -- and practiced law too.
5 The standard procedure is if somebody shotguns that type of
6 discovery at you and your position is that they are not
7 entitled to it because they don't have an interest in it and
8 they don't have the right to that information is you object to
9 it and you refused to produce it.

10 You know the consequences. The consequence is if
11 you don't produce it, I can't affirmatively produce it at
12 trial. That's -- that's the decision I make. I understand
13 that. But if they want it and they want some type of
14 evidentiary standard on it, they got to file a motion to
15 compel and then the Court can deal with what -- are they
16 entitled to that before they even prove they have an ownership
17 interest in this or otherwise entitle the information, should
18 I create some type of protective order to keep it confidential
19 so that business can't be ruined, I mean, those are all the
20 issues that are done if they were to pursue that.

21 We gave them and we have produced in this Court
22 today all the evidence you need to make the decisions that you
23 said you needed to know with respect to how to deal with this
24 asset. And I don't think there's any doubt about that. You

1 know how it was acquired, how much it was acquired for, how it
2 was financed, how it was that even though Eric was relying
3 probably wrongfully in this -- as it turned out to get that
4 1.5 released or thinking you can get some of that released.
5 Even though he was initially relying upon that, he was still
6 able to do it after the fact by finding a hard money launder
7 on behalf of Dynasty to put up the money to acquire it. And
8 the project that Lynita didn't want anything to do with,
9 objected to, claim Mr. Dickerson, if you'll look at the
10 transcript of that hearing, he says I'm going to ask for that
11 \$75,000 to come back. Well, guess what. It did come back.

12 They don't want anything to do with it. And Your
13 Honor will certainly remember the testimony of Lynita that I
14 asked and elicited from her on cross examination in my phase
15 of the trial that she didn't want anything to do with gaming
16 and liquor properties, moral aversion to it. Now not only
17 they apparently want something, they want to know everything
18 about it and get into complete ownership, I guess.

19 All information with respect to Wyoming Downs other
20 than what we produced is either not responsive to what the
21 Court asked us to produce and -- or has none of their business
22 unless and until this Court determines that they have some
23 interest in it somehow. And that's our position and I think
24 it's a correct position.

1 Your Honor decided when you entered the decree of
2 divorce as you've already -- as I already quoted to keep the
3 trust intact and to try and recompense Lynita in a way that
4 you thought was fair by erecting constructive trust and making
5 other divisions to take the assets that you thought were
6 unfairly contributed to Eric's trust that should have left or
7 been shared in Lynita's. And you did that through a 70 some
8 page decree asset by asset trying to trace what happened to
9 the assets. And if you thought Eric's trust got an advantage
10 in some deal, you created some remedy in order to even it out.

11 That analysis doesn't apply to Wyoming Downs at this
12 stage because you already -- there was nothing done in any
13 way, shape or form to use any of Lynita's assets or any of her
14 cash or any of her collateral or anything to acquire Wyoming
15 Downs and you know that's true because you saw how it was
16 acquired. It was acquired by pure debt.

17 And we're not asking her to pay that debt unless
18 Your Honor is going to award her some of it. We're not asking
19 her to do any of that. It's none of her business. It's not
20 her asset, it's not her trust asset, it never was. When
21 property is -- and Your Honor knows this, when property is
22 transferred to an irrevocable trust, it doesn't belong to
23 either of the parties at that point.

24 Yeah, you can do what you did and say well, hold on.

1 That trust has assets that should have come -- that came from
2 her and should go back to her and she could reckon that.
3 That's one remedy and -- and I understand that as a matter of
4 concept. But you can't treat it as community property at that
5 point because it's a trust asset under Nevada law. It's an
6 irrevocable trust and the statute explicitly states that the
7 parties don't own that. They have no legal estate in the
8 capital, principal or corpus of the estate under 160 -- Nevada
9 Revised Statutes 166.130.

10 The Court found in this decree that ELN was
11 established as a self sale of the spendthrift trust in
12 accordance of 166.1.020. And there is simply no legal
13 authority that allows Lynita to assert a community interest
14 and property that's not even owned by Eric. Especially is
15 that true where she can't trace any community property to its
16 acquisition.

17 The Court also in its decree indicated that the
18 parties have -- had entered into a separate property agreement
19 and divided their property and that the ELN Trust was funded
20 with the separate property that had been so divided.

21 Springer vs. Springer, 110 Nev. 855 (1994) makes it
22 clear that once property has become separate it is presumed to
23 maintain that character and some direct -- until some direct
24 evidence to the contrary is made to appear. Transmutation

1 from separate property to community property must be shown by
2 clear and convincing evidence.

3 Here, we don't even technically have that in play
4 because it's not even Eric's separate property that was in the
5 ELN Trust because under well established statutory state law
6 of Nevada he doesn't even own a legal interest in the ELN
7 Trust property. It's owned by the trust.

8 It's really that simple, Your Honor. We tried our
9 best to straight up answer the Court's questions to prove to
10 you that this property was acquired straight up through the
11 loan process, nothing to do with Lynita's interests or her
12 community property. And it's not necessary or even
13 appropriate to award her any type of interest therein.

14 Now maybe I should save this for reply, but I'm
15 anxious to get it out here on Friday and I'm going to say it.
16 If the Court does find somehow that Lynita is entitled to
17 community property interest, we have a bunch of problems. I
18 mean, we've got a serious -- we got liquor and gaming
19 licensing. We got all sorts of subsequent events that have
20 happened that the Court would have to know about that, that
21 would become relevant for the first time. All of which can be
22 avoided by conveying to Lynita of something of equivalent
23 value because she never wanted anything to do with gaming and
24 -- and liquor anyway. And you know darn well they can't agree

1 on anything. What a disaster that would be if you put them
2 both in the same entity.

3 I think the only objective evidence regarding value,
4 everything in this divorce was valued I believe as of April
5 12, 2012 or '11 -- 2012 mostly through Larry Bertsch's
6 efforts. I mean, the only objective evidence that's been
7 raised and nothing prevented this side from going out and
8 getting any -- any evidence they wanted affirmatively, none of
9 which they produced, notice they didn't go to Henderson
10 Capital. Notice they didn't go to the banks. Notice they
11 didn't do anything. They're just trying to rely on their
12 theory that somehow everything's open wide and -- and because
13 we take the position that they're not entitled to that
14 information til they show some type of interest that somehow
15 this should all be held against us and big sanctions should be
16 awarded and they should be awarded half the property with who
17 knows what assumptions they want to make.

18 Frankly, the only objective evidence regarding value
19 of the acqui -- the date of acquisition of divorce is that the
20 property sold for \$440,000. Maybe you can argue Henderson
21 Capital, thought it was worth \$700,000, because they were
22 willing -- now it was probably more like six because they're
23 only getting really good -- they're going to come out of
24 pocket six. But even if you assumed it was 700,000 and that

1 was some type of evidence of what somebody thought this
2 property was worth at the date of acquisition or date of
3 divorce.

4 Where does that leave us? It's 700,000 minus the
5 purchase price of 440 gives us what, \$268,000 net value? Each
6 of them get a hundred and 30,000 of it. And that's a possible
7 remedy if you think there's community property. We submit
8 however there's not community property interest in here, that
9 it -- the Court specifically maintained the integrity of the
10 trust. Nothing was done inequitable in any way, shape or form
11 to give this trust an interest in another asset that anyway
12 use any capital or any resources of Lynita or her trust.

13 And we believe the proper decision is that the court
14 should so find and end that issue so that we can deal with all
15 the other ones that need to be dealt with in the expeditious
16 filing. Thank you.

17 THE COURT: Thank you, counsel.

18 MR. KARACSONYI: First, I want to point out that
19 some of the representations about the prior testimony are
20 inaccurate. Lynita's testimony wasn't that she was throughout
21 the entire marriage adverse to gaming or and wanted nothing
22 to do with it. Her testimony was although she was against it,
23 she was against it initially when the idea was approached that
24 she supported her husband and stood by him. And as you found

1 in the decree, her support and reliance on her husband of 30
2 years was largely what turned out to be to her detriment.

3 There's two theories really. There's two ways that
4 -- that you can look at this. The first way is if you look at
5 the subject of community property law, this is a slam dunk and
6 this is a -- this -- there's really not much to be decided.
7 Under community property law, any asset acquired during
8 marriage is presumed to be the community property of the
9 parties. It doesn't matter whether either party -- both
10 parties wanted to be involved. That's completely irrelevant.
11 If that were relevant, then every party in a divorce action
12 would start investing monies and say hey, all the profits are
13 mine, Judge, because she didn't want anything to do with it.
14 Just used community property willy-nilly and whatever they
15 would like.

16 So that's really irrelevant that the only question
17 would be when was it acquired. And if it's acquired during
18 marriage, then the presumption is it's community property.
19 And they have to prove by clear and convincing evidence that
20 it's separate property. Well, they haven't done that. They
21 haven't done that twice now. They didn't do it today. You
22 didn't hear any evidence today of showing a separate property
23 source or any testimony that -- that there was a separate
24 property source for the acquisition if you view all the

1 property to be community property.

2 And at trial they weren't able to trace back all the
3 property to today's property. In fact, you found extensive,
4 that's probably even an understatement, commingling of assets
5 between two separate two -- two different trusts.

6 So under community property law, you would have to
7 find that this is a community property assets and he cannot
8 choose when he divests her of her interest. He cannot say you
9 know what, Judge, I had purchased community property, but I
10 think a good time to value her interest would be on the date
11 of acquisition. It's not an op -- it's not an option. They
12 continued to hold it as community property until today. And
13 the value, if you were going to determine a value and not
14 leave them joined owners would be as of today.

15 Now they say well, you should award her a value
16 because you didn't see any evidence of what possibly the
17 ramifications could be of making her joint ef -- joint owner.
18 Well, they didn't present any evidence on that. In fact, they
19 excluded -- they denied us all evidence on licensing,
20 applications, things of that nature. So that's true --
21 certainly isn't a basis to -- to deny her a continued
22 ownership of the property.

23 You don't have enough information to value the
24 property if you were going to award her a value. If you were

1 going to award her a value, we would have to go -- go ahead
2 and have the business value by -- by somebody's who's -- who's
3 qualified to do those types of things, to -- to offer an
4 opinion of the value of the property, someone like Steve
5 Nicolatus. Then we would finally get the records that you
6 wanted from day one.

7 It's interesting -- and before I get to that, the
8 other theory, the second theory you could proceed under is the
9 fact that you can't really determine that he did this with his
10 property. Why was he able to acquire Wyoming Downs? Because
11 he got 75,000 from BanOne, LLC.

12 If you look at Page 47 of your decree and I -- I've
13 been accused that this may be trying to mislead you, but I'll
14 -- I'll read it verbatim and maybe -- maybe -- I guess the
15 Court can make that decision. It is further -- further
16 ordered that the following properties shall remain in or be
17 transferred into the LSN Trust. BanOne, LLC, \$1,184,236.

18 Now if you only meant by that that she only gets
19 certain specific properties in there, then -- then perhaps
20 I've -- I've -- you know, I've misstated this, but it says
21 that she's awarded BanOne, LLC here.

22 So if she's awarded BanOne, LLC, then they have used
23 and done exactly what you stated which was used property that
24 was awarded to her or take their own -- a loan that he decided

1 to give to himself with her property to purchase -- to -- to
2 make this purchase.

3 But why is he able to get financing? He's able to
4 get financing for the purchase because he has all these assets
5 that belong to her that are inextricably linked with her
6 assets. You go through your divorce decree. You make
7 extensive findings of the number of properties, the sheer
8 volume of the property that he stole from her. Essentially
9 now we can -- might as well just call it what it is. It was a
10 stealing that he stole from her over their 30 years of
11 marriage.

12 You have the Wyoming OTB properties oddly enough,
13 ironically enough. The High Country Inn in Wyoming ironically
14 enough. You have Lindell, Russell Road. These are millions
15 of dollars of assets that are held in the ELN Trust as he's
16 doing this transaction but he's saying he has no interest in
17 those.

18 So even if you weren't to apply community property
19 law, you could easily find that there are properties at this
20 juncture in time are inextricably intertwined which is -- has
21 already been found by the Court and that any transaction at
22 this time should be treated as the trans -- transaction that
23 -- that she has an interest in.

24 They have not even proven to you the -- the evidence

1 they have offered does not show to you that any of the down
2 payment monies, the 75,000 was returned. If you looked at
3 their exhibit from Mr. Bertsch, it doesn't show in there
4 anywhere where it was returned. They won't give you the
5 documentary evidence.

6 Now that turns to -- to really a critical point in
7 this and that was what they brought up that -- that you had
8 asked for all this information. And I don't know how this
9 helps them. They quoted you and saying I want to trace it. I
10 want to see it. He said at one hearing, I discussed at the
11 last hearing that they could bury you in the information. We
12 made the request. They never ever produced a single bank
13 statement.

14 Why would Eric Nelson if his whole theory is that he
15 borrowed all the money at deposition, not answered the
16 question and refused to answer the question of whether or not
17 money was still owed to on the mortgage. Why wouldn't they
18 just give you copies of all the statements? Why wouldn't they
19 produce that to us? Why wouldn't they produce the banking
20 documents to us if there was nothing to hide? You've already
21 found the credibility in this case that Mr. Nelson lacks.

22 Why not just give us the documentary evidence to
23 show that your theory of the case is at least factually
24 correct? This is one of the worst cases of hiding the ball

1 I've ever seen. Maybe I haven't been doing this as long as
2 Mr. Solomon. But in seven years I have never seen appear at
3 deposition and refuse to answer questions to the extent that
4 it was done here that don't have to do with an attorney/client
5 privilege or some other -- some other basis.

6 I mean, the amount of questions, the lack of good
7 faith in responding to discovery, well, Judge, they -- they --
8 this -- their -- their discovery response goes outside the
9 scope of -- of what you wanted. Well, what did you do to at
10 least provide documents that were within the scope of what I
11 wanted?

12 Certainly you must have thought that some bank
13 statements would be helpful in this case. Even if it was the
14 one or month or three months that they thought was -- would
15 show the trace -- the monies that went in and out of the
16 transaction. But they wouldn't give that to -- to you. They
17 wouldn't give that to us.

18 The only evidence that you have, objective evidence,
19 is you have the promissory note. Requires that the note be
20 paid off in 12 months. Other than that, you have no other
21 evidence. You can only infer that it was paid according to
22 its terms because he still holds it. If that's the case, then
23 not only do you have 75,000 from BanOne, LLC going to this
24 property during the marriage and apparently some hundred

1 thousand dollar payment that was due upon the initiation of
2 the loan which has never been documented but is discussed and
3 was admitted that it was paid.

4 But you also have an additional 600,000 being paid
5 from some source, but nobody will show you that. Nobody can
6 prove to the contrary. The fact of the matter is that you --
7 they wanted to determine what you needed, what you needed to
8 make a decision. And they wanted to limit us to what they
9 felt they needed. And by doing so they haven't been able to
10 provide to you with any documents that would show you that A,
11 that this was property acquired from separate property or B,
12 that this was property acquired from some source other than
13 sources belonging to both parties.

14 So for those reasons and in equity, Ms. Nelson
15 should be given a -- a 50 percent interest in Wyoming Downs.

16 THE COURT: Thank you. Ms. Forsberg.

17 MS. FORSBERG: Thank you, Your Honor. I'm going to
18 be much more brief, because I think really it boils down --
19 are you okay? It boils down to a couple of things. The
20 bottom line question if we cut through the rest of this is
21 that is the Court going to honor its statement when it said
22 look, what I want to know is was it collateralized by LSN
23 properties. That's what the Court said when it said I need to
24 know more. I need to know what was used to collateralize it.

1 It's now been proven to everyone in this courtroom
2 that it was more than a hundred percent collateralized. They
3 -- he -- it was collateralized by ELN getting a loan that was
4 even bigger than the original purchase price.

5 So I guess the bottom line is Your Honor that you
6 limited the scope by saying it's as of the purchase. I want
7 to see where the funds came from. And they don't like the
8 fact that you have limited the scope. And so they're making
9 all this noise about how much we wouldn't give them or the ELN
10 Trust wouldn't give them or because the Court limited the
11 scope.

12 So the bottom line comes down to whether the Court's
13 going to honor its statement saying that it needs to know
14 where the collateral was from was it collateralized or did he
15 get a hundred percent loan.

16 MR. SOLOMON: Just real briefly, Your Honor. Just
17 to respond to some of Mr. Josef's comments and handle it.
18 Your Honor remembers the testimony and -- and the position
19 that Lynita and her trust took at not only at the trial but at
20 the subsequent hearings leading up to here. They don't want
21 anything to do with Wyoming Downs. They don't want to
22 purchase. They didn't want the 1.5 used for it. They wanted
23 75 repaid. They got all that. Now they got all that and they
24 still want it.

1 On the community property theory, counsel's right on
2 what he said, but the converse is also true that any asset
3 acquired with separate property is separate property. And
4 certainly he -- any property acquired by a trust which is not
5 even community or separate property. It has nothing to do
6 with the community property presumption or the separate
7 property presumption.

8 The commingling argument's interesting. The
9 commingling concept is a community property concept admittedly
10 but it didn't have anything to do with two trusts. If one
11 trust steals from another trust or commingles stuff, then you
12 come into court and you ask the Court to uncommingle it or
13 have it repaid. It doesn't create -- and -- and that's what
14 this Court in essence tried to do in -- in its decree. It
15 went through each of the transactions and tried to say oh,
16 hold on. This -- this was something that came from Lynita and
17 the profit was made on it and here was the amount. So we
18 weren't going to send something back to equalize that. That
19 -- that's the remedy you get. It doesn't change the character
20 of what's in the trust until the award's made.

21 BanOne, that argument's interesting. Take a look
22 at your findings, Your Honor. I can read some of them. And
23 these are quotes. The Court -- this is from the decree. The
24 Court further finds that BanOne, LLC currently holds 17

1 properties worth \$1,184,236. It's on Page 20, Lines 2 to 9.
2 The same page. The Court further finds that equity and
3 justice demands the LSN receive just compensation and then out
4 of 1.2 million for the sale of High Country Inn in order to
5 avoid the ELN Trust from being unjustly enriched and therefore
6 LSN Trust should be awarded BanOne, LLC properties held by the
7 ELN Trust with a comparable value of \$1,184,236. That's also
8 Page 20, Lines 2 to 9.

9 And then the Court further finds that based upon the
10 property distribution that we addressed hereafter -- here and
11 after, Mrs. Nelson will receive some income producing
12 properties, Lindell, Russell Road, some of the BanOne, LLC
13 properties, close paren, that's at Page 36, Line 20 to 23.

14 So my statement was correct that she received BanOne
15 property. She didn't receive any of the cash that was there.
16 And even if she did, what it was is another loan. \$75,000 was
17 taken out of BanOne for a period of time and repaid.

18 But the real source of money and really the only
19 source of money for this acquisition which was proved without
20 dispute was the hard money loan that the trust or the entity
21 owned by the trust took out. That was the acquisition.
22 That's where it was -- the money came from. That's where the
23 money was sourced. And Lynita had no interest in that
24 whatsoever for trust. They had no interest in that

1 whatsoever. And there's no legal basis for her to be awarded
2 or her trust to be awarded interest in Wyoming Downs.

3 MR. KARACSONYI: I would just point out --

4 THE COURT: I'll give you a brief rebuttal because I
5 really didn't say whose burden it was. So I'll give you a --

6 MR. KARACSONYI: Okay.

7 THE COURT: -- really quick rebuttal --

8 MR. KARACSONYI: On the BanOne --

9 THE COURT: -- and then we'll call it a day.

10 MR. KARACSONYI: The BanOne -- the reason you
11 referred to some of the BanOne properties, you obviously
12 awarded her all the ones in BanOne, LLC because you listed the
13 value. The reason it says that is because there's BanOne, LLC
14 and BanOne Arizona properties. She clearly got all of the
15 assets of BanOne, LLC and you noticed they didn't read the
16 order. They only read the findings.

17 The other thing that -- the only other fact that I
18 would point out to the court is the 75,000 when he took it, he
19 said it was a risky venture. He gave himself a loan, a
20 property that was ultimately awarded to her and prop -- and
21 held properties that were awarded to -- that were inter --
22 inextricably intertwined which he used to get a loan. I'm --
23 I'm sure they gave him a loan on the basis of his extensive
24 holdings.

1 But he used this 75,000. He hadn't even asked for
2 permission. So basically he took what he called a loan. I
3 wonder if what would have happen if he couldn't have closed
4 and the 75,000 was lost. I'm sure they would be standing here
5 today saying that they owed back the 75,000 or calling it a
6 loan. It would have just been a lost investment.

7 He took a risk with her \$75,000 and then filed a
8 motion after already taking the risk. And he was able to do
9 that freely because he had free reign of -- of all the
10 property. So I would just point that out to the Court and
11 again, and we believe it's clear that she should -- is
12 entitled to interest in the property.

13 THE COURT: Thanks, counsel. As far as -- I think
14 we have a post motion coming up I think on -- I think June 4th
15 I think is the order to show cause which is separate I
16 believe.

17 MR. KARACSONYI: I finished it, yeah.

18 THE COURT: Yeah, we got the motion on June 16th for
19 the Pebble Beach residence?

20 MR. KARACSONYI: Yes.

21 MR. SOLOMON: I'm not involved in either of those,
22 am I?

23 MS. FORSBERG: No, not --

24 THE COURT: No.

1 MS. FORSBERG: -- at all. Your Honor, the other
2 thing about -- I -- I was talk to Mr. Karacsonyi today, we're
3 going to need to probably move the -- the 16th, 17th, because
4 I'm planning on being gone for the baby.

5 THE COURT: Oh, yeah. Your daughter.

6 MS. FORSBERG: Remember we talked about that? I
7 mean --

8 THE COURT: Your daughter. I'm thinking that --

9 MR. KARACSONYI: But I think that is in the ELN
10 Trust issue now.

11 MR. SOLOMON: Which?

12 MR. KARACSONYI: The Pebble Beach.

13 THE COURT: Pebble Beach, I don't --

14 MR. SOLOMON: I'm not aware of it.

15 THE COURT: Yeah, I don't remember the --

16 MR. LUSZECK: Not that I know. Well, yeah, but I
17 don't think --

18 MR. SOLOMON: I'm -- I'm just not available that
19 day. That's why I asked.

20 THE COURT: So I think since we'll be back to it, it
21 will be a time to come back to give a decision. You know,
22 with the -- the recent supreme court decision, do you think
23 it's possible to get this matter resolved, tie everything up
24 in one big package? Is it worth the time to pursue it or not?

1 I know we've been around the block 19 times, but it looked
2 like -- I thought Mr. Solomon makes some statements at the
3 beginning indicating that there might be something coming in
4 horizon that might surprise people. So I don't know if that
5 something is worth the time to try to, because you know
6 exactly what's going to happen.

7 I have options. I can release all the money to
8 Lynita on that and have you guys deny your stay and then have
9 you go up to the supreme court to try to get a stay on that
10 and I would give you time of course to get that filed on that.
11 I'm not sure what the supreme court meant when it said under
12 these circumstances. I don't know if they were saying well
13 since it was secured he wasn't worried about that. They could
14 get more enjoin -- they can get more injunctions or pursue
15 more injunctions if they thought that was, you know,
16 beneficial.

17 So I wasn't sure what the supreme court meant when
18 they mentioned that. They could have just denied it straight
19 out. So I don't know if they were saying that the reason they
20 weren't overly concerned was because the property's enjoined
21 and they can enjoy more property if the Court could if they
22 thought it was irreparable.

23 The other options that I can give Lynita a portion
24 of that money which I would be inclined to do for sure as far

1 as she's been sitting out there and -- and Mr. Nelson and to
2 the trust was -- gave them their 500,000 right up front. I
3 could have froze that up to the power and leverage on the
4 other side and fine, she waits for her money, you can wait for
5 your money. But I didn't want to do that because I thought
6 that was the investment issues on that. So I made some
7 equities. So there's things I can do on that to push the
8 issue one way or the other.

9 My thing on that, do you think even sitting out and
10 try to resolve one big package because it depends what the
11 supreme court does and if I release all that and they do stay
12 on the supreme court would grant the stay or not, I'm reading
13 their decision. I don't know if that injunction is big to
14 them. This -- as if they -- the injunction was there and then
15 they would deny the stay if it wasn't there. Maybe they do
16 the stay to enjoin it again. So I'm trying to think through
17 where they're going. Yeah.

18 MR. DICKERSON: All we have is her money has been
19 tied up for over nine months.

20 THE COURT: Exactly.

21 MR. DICKERSON: He has full use of everything. He's
22 got full use of --

23 MR. SOLOMON: Your Honor, in answering your question
24 --

1 THE COURT: Yeah, I mean --

2 MR. SOLOMON: -- I would be more than happy to sit
3 down with Mr. Dickerson and --

4 THE COURT: Is it worth the time? I know we've been
5 around 19 --

6 MR. SOLOMON: -- we can spend next week and see if
7 we can reach an agreement.

8 MR. DICKERSON: I -- I would certainly like a ruling
9 --

10 THE COURT: Because maybe --

11 MR. DICKERSON: -- out of you and if we can work
12 something out from there. But we need a ruling and the
13 problem is the history. I've -- I've worked with this case
14 for it seems like six years now. You know we've made numerous
15 efforts to try to get the case resolved.

16 THE COURT: I mean, we had it settled a couple of
17 times and it came back during the eve of some --

18 MR. DICKERSON: We're dealing with a very litigious
19 individual.

20 THE COURT: I just want to get it out there. Not
21 that they --

22 MR. SOLOMON: You're talking about Lynita, right?

23 THE COURT: If they thought it was worth the time to
24 get it resolved in one big package, fine. I'm fine making my

1 rulings. As far as the release of the 8.68, whatever it was,
2 did you want to put a record on that or not? I mean, as far
3 as that, I said I'm going to -- I haven't digested it yet. I
4 got to read to the supreme court decision again and see what
5 they're saying on that. But as I said, I got options. I can
6 release the whole thing. On your appeal and I can, you know,
7 deny the stay which I'd be inclined to do to be quite honest
8 and then go to the supreme court and see if they would stay
9 and re-enjoin. If I did that, I would give you, you know, a
10 day or two to follow your stay on that supreme court. Could
11 rule on that, because otherwise you'll be kind of undermining
12 the supreme court. So that's several things I can do that.

13 MR. DICKERSON: The case where the fairness is.

14 THE COURT: Yeah. Yeah.

15 MR. DICKERSON: She really hasn't been treated
16 fairly and I'm not --

17 THE COURT: Yeah. I --

18 MR. DICKERSON: -- complaining.

19 THE COURT: No.

20 MR. DICKERSON: The problem is she has no -- she's
21 had to sell her home. She's had to go to work. He's not
22 giving her any money. He's given everybody else money, but he
23 -- she has nothing. So she has to sell her home just to be
24 able to survive. She's put in a -- a real difficult

1 predicament and she needs money. And she needs the money that
2 this Court has awarded to her. She's not even receiving the
3 income --

4 MR. KARACSONYI: From BanOne. I mean --

5 MR. DICKERSON: These --

6 MR. KARACSONYI: -- these -- I don't think the
7 injunction --

8 MS. FORSBERG: It's not even --

9 MR. KARACSONYI: -- I think it's clear she can at
10 least get that today. I mean, from now on from today forward
11 she's the legal owner of the properties of BanOne, LLC and
12 Lindell. And they can take it up with the supreme court, but
13 she should at least get the income from those properties.
14 That was never even stayed. Their concern was their argument
15 was we will be irreparably harmed because real property is
16 unique and it can be sold, encumber leverage, which by the way
17 that argument goes both ways. But that's neither here nor
18 there.

19 You enjoin that, but what -- what irreparable harm
20 do they have if she is collecting the monthly rents at least
21 from her property now? She should get that immediately today.
22 I mean, and if they argue that's irreparable harm, well, to
23 them -- well then what is it to her? Because she's
24 irreparably harm in the same manner because she's not getting

1 it. And she's the one who has the better claim as of today.
2 They're the one who needs -- ones who need to take up an
3 appeal. I mean, she can get all that monthly income and be in
4 charge of that. That would be a huge start, have the checks
5 directly sent to her so that he doesn't start deducting health
6 insurance.

7 MR. SOLOMON: I think what the supreme court
8 intended by that order was for this Court to make a decision,
9 this final thing so this thing goes up on appeal and we can a
10 file a motion to stay. The Court can rule whatever it wants
11 to on that and we can try and get whatever it needs to be done
12 stayed. That's where I think the procedural posture of this
13 is and that's what was intended by the supreme court.

14 I told you before and I meant it seriously, we will
15 make some proposal that they may not love. I guarantee you we
16 won't love it either, whether or not they accept it. And
17 we'll also propose it to the Court at the appropriate time of
18 getting her some type of money cash flow out during the
19 pendency of the appeal that we think --

20 MR. DICKERSON: We've made an effort.

21 MR. SOLOMON: -- it will be reasonable and it won't
22 --

23 MR. SOLOMON: Haven't made --

24 MR. SOLOMON: -- be everything they claim they're

1 entitled to, but it will be a heck of a lot more than what we
2 claim they're entitled to because that's where we are in the
3 position of this case.

4 MR. DICKERSON: The whole concept is to start --

5 MR. SOLOMON: And I'm more than happy to talk to Mr.
6 Dickerson about that million and to get this back in front of
7 the Court on that issue.

8 THE COURT: And we're coming back on --

9 MR. DICKERSON: Well, I've been sitting around for
10 six years.

11 THE COURT: Yeah, we're coming back on June 4th for
12 the order to show cause. So that would be a good time for me
13 to give my rulings. I know you're not part of that, but does
14 that work for you just to give rulings if that help gets this
15 case moving? That also -- that also gives you a week --

16 MR. SOLOMON: That's all I need. I am here on June
17 4th, Your Honor.

18 MS. FORSBERG: I'm here.

19 THE COURT: Since when? When -- June 4th, next --

20 THE CLERK: Next Wednesday.

21 MR. DICKERSON: Are we going forward with the -- the
22 evidentiary hearing? Is that the date that --

23 THE COURT: I believe it was that --

24 MS. FORSBERG: That is the evidentiary hearing.

1 MR. KARACSONYI: The finalization.
2 THE COURT: Yeah, that's day two. Yeah.
3 MR. KARACSONYI: Yeah.
4 MR. SOLOMON: The evidentiary hearing on what?
5 MR. DICKERSON: We're -- we're available.
6 MS. FORSBERG: On an order to show cause.
7 THE COURT: Order to show cause. You guys aren't
8 involved in that, but I thought --
9 MS. FORSBERG: You're not involved.
10 THE COURT: -- since the parties --
11 MR. SOLOMON: Thank you.
12 THE COURT: -- would be here, if you're available
13 there will be a time that --
14 MS. FORSBERG: That's what you're looking at --
15 MR. SOLOMON: I -- I can come on that day but I
16 don't want to sit on that hearing if I don't have to.
17 THE COURT: -- give a ruling before, yeah. No, I --
18 what time would that be set for?
19 THE CLERK: That's set at 9:00.
20 THE COURT: I can --
21 MR. KARACSONYI: We'll do that at the start.
22 THE COURT: Yeah.
23 MR. KARACSONYI: For the --
24 MR. DICKERSON: 9:00 o'clock.

1 MS. FORSBERG: At the start.
2 THE COURT: Yeah, we --
3 MR. SOLOMON: All right.
4 THE COURT: -- do that --
5 MR. SOLOMON: That's fine.
6 THE COURT: -- and give you findings on that. That
7 gives you a couple of days to maybe talk a little bit to see
8 if there's some other issues that could be resolved and that
9 way I'll be making a decision on the injunction because I
10 think that's the key issue.
11 MR. DICKERSON: That's acceptable.
12 MR. SOLOMON: What's it at, June 4th?
13 THE COURT: Yeah, June 4th, 9:00 o'clock. And then
14 we'll start the --
15 MS. FORSBERG: He looked at me like I'm not going to
16 be here, but --
17 MR. KARACSONYI: I'll be here, Your Honor.
18 THE COURT: No, but I mean, you're going to be here,
19 right?
20 MS. FORSBERG: I'll be here.
21 THE COURT: Now you're here for the trial, so --
22 MS. FORSBERG: I'm here.
23 MR. KARACSONYI: And that would allow the appeals
24 process to start and everything.

1 THE COURT: Yeah.

2 MR. KARACSONYI: I think -- okay. I'll look back
3 and see if there's any other outstanding orders or anything --

4 MS. FORSBERG: 9:00 o'clock.

5 MR. KARACSONYI: -- that need to be wrapped up.

6 THE COURT: Yeah, I know you got the two. I'll
7 check. I know I signed the competing orders. I'll have to
8 check Mr. Courtney. I know that --

9 MR. SOLOMON: Your Honor, I can make 9:00 o'clock,
10 but I have to be back in my office at 10:30. Would that be
11 enough time?

12 THE COURT: Sure.

13 MS. FORSBERG: You're going to go -- he's going to
14 go first on that he said.

15 THE COURT: Okay. And why don't you guys go first
16 that way you can leave.

17 MR. SOLOMON: Thank you.

18 THE COURT: Do we have anything else that day that
19 we get to --

20 MS. FORSBERG: Just us --

21 THE COURT: So we'll do that and then just start the
22 trial afterwards. That way we get you out. All right.
23 Thanks, everyone.

24 MS. FORSBERG: Thank you, Your Honor.

1 MR. SOLOMON: Thank you, Your Honor. We'll see you
2 then.

3 THE COURT: Thank you. I'll see you --

4 MR. KARACSONYI: Thank you, Your Honor.

5 THE COURT: -- on June 4th at 9:00 o'clock.

6 MS. FORSBERG: June 4th. Yeah. Yeah.

7 (PROCEEDINGS CONCLUDED AT 12:55:36)

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and
10 correctly transcribed the digital proceedings in the
11 above-entitled case to the best of my ability.

12
13 *Adrian Medrano*

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15 Adrian N. Medrano

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JUL 11 2014

John D. Schuman
CLERK OF COURT

COPY

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC NELSON,

Plaintiff,

VS.

LYNITA NELSON,

Defendant.

CASE NO. D-09-411537-D

DEPT. L

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: DECISION

WEDNESDAY, JUNE 4, 2014

APPEARANCES:

THE PLAINTIFF:

FOR THE PLAINTIFF:

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RHONDA FORSBERG, ESQ.

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FOR THE DEFENDANT:

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2 P R O C E E D I N G S

3 (PROCEEDINGS BEGIN AT 09:16:54 AS FOLLOWS:)

4
5 THE COURT: In the matter of the Nelson matter, case
6 number D-411537. We'll get everyone's appearance for the
7 record. We'll start -- we'll go right to left, I guess.
8 Easier for the court reporter-- maybe we'll go left to right.

9 MR. SOLOMON: It's your right.

10 THE COURT: There you go. Mr. Solomon, sir --

11 MR. SOLOMON: I'm sorry. All right. I'll start.
12 Mark SOLOMON, bar number 418, on behalf of the distribution
13 trustee of the ELN trust.

14 MR. LUSZECK: Jeff Luszeck, bar number 9619 on
15 behalf of the distribution trustee of the ELN trust.

16 MS. FORSBERG: Good morning, Your Honor. Rhonda
17 Forsberg, 9557, on behalf of Eric Nelson, who is present to my
18 right.

19 THE COURT: Good morning, Mr. Nelson.

20 MR. NELSON: Good morning.

21 THE COURT: Okay.

22 MS. PROVOST: Good morning, Your Honor. Katherine
23 Provost, bar number 8414. And seated to my left, Joseph
24 Karacsonyi, bar number 10634, and Robert Dickerson, bar number

1 945, present with Lynita Nelson, who is all the way down at
2 the end of the table on my left.

3 THE COURT: Good morning, Ms. Nelson, as well. This
4 is the time set for the Court's determination as to the
5 Wyoming Downs property, and also to address some of the other
6 issues. I did get -- I think it was faxed, a courtesy copy to
7 the Court from Mr. Solomon's office, with a status report and
8 request for stay pending entry of final decree of divorce. I
9 assume counsel's got a copy of that so we can address that
10 appropriate if we have everybody here.

11 I have reviewed the testimony and the documents that
12 were admitted into evidence, and they are with -- with this
13 case -- the real issue on this case is Wyoming Downs. The
14 Court was concerned, as I said several times on there, there's
15 the information to this Court and the very litigious matter on
16 that was trying to get sufficient information to make
17 decisions that are fair and just in accordance with the law.
18 I felt I did not have that at the time of the decree last June
19 3rd as to Wyoming Downs. I had some concerns about if -- how
20 it was purchased, due to the fact that we had a motion to
21 release money to purchase it, and the Court denied that. Then
22 it was purchased, and I noticed that that motion to release
23 that money was I think a week or so after the property was
24 even purchased, or at least an agreement to purchase that.

1 So I had some concerns, so I wanted to make sure
2 that I felt I had information. My concern in this case, this
3 Court, in the interest of what I felt was both the parties
4 interests to try to protect the assets from creditors, and
5 give them the benefit of the spendthrift trust. Court went to
6 great efforts through the divorce decree to try to maintain
7 that in fairness to the parties, and to protect assets from
8 creditors, yet looked at the issues of the equity, principals,
9 to family matters through divorce, and also the fairness as
10 far as a different constructive trust (indiscernible) to try
11 to do fair and just for the parties and equity, as well. I
12 looked at this property.

13 I think it's -- as far as the purchase. I did look
14 at the exhibits, and the promissory note. It's clearly
15 noticed that this property was purchased between on or about
16 November 16th, 2011, through the Dynasty Development and
17 Management, LLC, and it looked like they would start with a
18 \$75,000 earnest money loan from BanOne. Looked like the
19 purchase price was \$400,000 with a 40,000 buyer's premium.
20 The Court had denied the release of those proceeds from the
21 1.568, which I think had been enjoined. And it looked like
22 the property sought other lenders. Looks like it was financed
23 through Henderson Capital, a hard money lender, basically debt
24 financed. Looking at the testimony in the promissory note,

1 looks like a promissory note of 700,000 was acquired on or
2 about January 4th, 2012, on that \$700,000 proceeds.

3 There was a \$400,000 price, 40,000 buyer's premium,
4 about \$30,839 in settlement charges, 10,000 for an extension
5 fee as they could not pay that within the 12 months, which
6 came out to about 480,839. Of that \$700,000 loan, 100,000 was
7 taken off the top for prepayment of fees and interest, so
8 basically about 600,000 then was lent out. There was a
9 \$75,000 deposit from the BanOne earnest money, and \$175 I
10 think and 46 cents for taxes, which came out to a total of
11 about 675,175.46. And if you subtracted the 480,839 in the
12 costs, it came out to about 194,336.46 as equity you were able
13 to pull out. According to Mr. Nelson, out of those proceeds,
14 they -- they repaid the earnest money to BanOne, the 75,000.
15 So basically, according to the testimony of Mr. Nelson that
16 there was new money, about 119,336.41. So that's kind of how
17 the financing went from this Court with the numbers.

18 The real issue on this is was this community
19 property, and therefore, Ms. Lynita or the -- would have an
20 interest. The parties were married, of course, at the time.
21 The concern I had in this Court is the trust, that this Court
22 did maintain the integrity of the trust. It was clear from
23 the testimony the parties from the trial that the parties
24 intended to have the trust maintain that, and from this

1 Court's finding for the intent to con -- to protect from third
2 party creditors, so I tried to give that protection, and then
3 do equity as I thought was fair, based on some of the
4 transactions, which I thought was properties being transferred
5 from the LSN trust, the ELN trust for the benefit of the ELN
6 trust, and to the detriment of LSN trust. So I tried to deal
7 that with equity principals of constructive trusts, and things
8 like that, so I could maintain the trusts for the protection
9 from the creditors, while also doing fair.

10 I thought there were some violations of fiduciary
11 duties by Mr. Nelson as a spouse in those transactions, also
12 as investment trustee from Ms. Lynita, as that was spelled out
13 in the divorce decree. I didn't have those equity issues in
14 this case. (Indiscernible) equity issues on that since these
15 proceedings, and with the protracted litigation, Ms. Lynita
16 was not taking advice from Mr. Nelson any more, and they were
17 keeping those trusts separate and distinct at least from that
18 point, due to the fact of the pending divorce, so I didn't
19 have those equity principals of constructive trust, fiduciary
20 breaches of a spouse, or investment trustees. So I didn't
21 have those equity principles here.

22 So what it came down to was is this community
23 property, because they were married, and anything acquired
24 during marriage presumed to be community property. I did not

1 Nelson has filed a custody motion pursuant to the
2 One-Judge/One-Family rule. That's --

3 MS. FORSBERG: I called both departments to make
4 sure and both departments --

5 MS. PROVOST: They --

6 MS. FORSBERG: -- said that it's supposed to be
7 moved -- your -- your department double checked Laurie -- I
8 double checked with Laurie and I double checked with them.
9 They said it seems that --

10 MR. NELSON: (Indiscernible) get out of here.

11 MS. FORSBERG: -- the other department can handle
12 that you want to be done with it. That's what I was advised.
13 And it's a simple matter --

14 THE COURT: Noone talked to me.

15 MS. FORSBERG: -- between the other department.

16 THE COURT: Maybe my staff once they get done with
17 it, I'm not so sure.

18 MS. PROVOST: I would say pursuant to
19 One-Judge/One-Family I don't see any sense in these parties
20 having to start and -- and raise --

21 MS. FORSBERG: Well, they're going to have to always
22 do this --

23 MS. PROVOST: -- issues in front of another judge.

24 MS. FORSBERG: -- until Carli gets to be 18. So

1 this is a Carli in your department. I called your department,
2 Your Honor.

3 THE COURT: Okay.

4 MS. FORSBERG: So we'd like it to stay where it's
5 at.

6 THE COURT: Okay. Well, let me check. Noone told
7 me about that. So I'll check. But that's been set for
8 January?

9 MS. PROVOST: It's set on January 7th right now in
10 Department L which that judge has absolutely --

11 THE COURT: Are you --

12 MS. PROVOST: -- no knowledge of these parties or
13 any of the issues or the history of this case, so I mean, the
14 Eighth Judicial District does have a One-Judge/One-Family
15 policy.

16 MS. FORSBERG: And that's why I specifically called
17 to --

18 THE COURT: Yeah.

19 MS. FORSBERG: -- ask her to --

20 THE COURT: Let me check. Somebody might have --
21 noone talked to me about that, so it might have been JEAs that
22 sat there and figured that.

23 MS. FORSBERG: And I talked to Laurie so the Court
24 understands.

1 THE COURT: -- with the juvenile, yes, my JEA would
2 -- my juvenile think -- figured that I probably had enough on
3 my plate, but let me look at that because we got the history.
4 As far as all the issues on the -- the custody, you guys had
5 resolved that early on. That wasn't really --

6 MS. PROVOST: Yeah, apparently --

7 THE COURT: -- too contentions, but --

8 MS. PROVOST: -- there's a modification request.

9 But we would want that heard by this Court, Your Honor. I
10 mean, it makes zero sense for these parties to be litigating
11 in two different departments.

12 THE COURT: Let me check that with Judge -- Judge --

13 MS. FORSBERG: Yeah, we can tie you forever to this
14 case, Your Honor. I don't think that was your intent either.

15 THE COURT: I think that's what's hap -- I think
16 that's what's happening I'll -- as far as that, do you have --
17 can you itemize which -- which properties have leveraged that
18 are -- that the Court awarded to Ms. Lynita pending the thing
19 and how much are leveraged for and what you're doing to doing
20 it? Because as long as you're unwinding them, I'm fine just
21 as long as they know. That's all they want to know so they
22 can --

23 MR. KARACSONYI: If we have a due date, a reasonable
24 due date.

1 MR. NELSON: It's the -- it's the -- was the house
2 is here in Nevada --

3 THE COURT: Which house?

4 MR. NELSON: Excuse me?

5 MS. PROVOST: All of the Ban One (ph) properties.

6 MR. NELSON: The Nevada Ban One properties that my
7 trust owned I leveraged. And I'm deleveraging them. And the
8 Russell Road property which I'm deleveraging that. The -- in
9 December I think I gave you a full report on that. That would
10 be deposited at those areas there.

11 Now remember, the State Supreme Court ruled those
12 are still mine. So I'm not being able to manage anything, I'm
13 having to sell everything to do that. So I think if I have
14 more --

15 MS. PROVOST: That's not what the State Supreme
16 Court ruled.

17 MR. NELSON: -- motions and more motions and more
18 motions, Your Honor --

19 THE COURT: This costs --

20 MR. NELSON: -- this is just burying me.

21 THE COURT: So basically it's the Nevada Ban One
22 you're saying were leveraged and ones that --

23 MR. NELSON: None of Lynita's.

24 MR. KARACSONYI: Russell Road.

1 MR. NELSON: Nothing of Lynita's.

2 THE COURT: And the Russell Road is the --

3 MR. KARACSONYI: Everything we -- we're awarded from
4 the trust -- I mean, do we have a time frame then for him to
5 unleverage?

6 MR. NELSON: I -- I leveraged none of Lynita's
7 assets.

8 MR. KARACSONYI: Well, Lynita --

9 MR. NELSON: I want to make that clear.

10 MR. KARACSONYI: No.

11 MR. NELSON: I didn't leverage any --

12 MR. KARACSONYI: Well, he --

13 MR. NELSON: -- of her stuff.

14 MR. KARACSONYI: Be -- because this is a game --
15 this is a word game.

16 MR. NELSON: Well, no. No.

17 MR. KARACSONYI: He said that the supreme court has
18 ruled that those are still his. No, the -- the supreme court
19 hasn't ruled those are still his. The -- you have ruled those
20 are hers --

21 THE COURT: And they're stayed --

22 MR. KARACSONYI: -- and that's the only order. So
23 that's the -- so we just want to know -- I mean, Your Honor
24 has made specific rulings -- I remember earlier today you said

1 well, you know, I'm not going to change anything up because
2 I'm already -- feel good that we've already secured her
3 assets. That's all we're trying to accomplish. Well, we
4 don't know that. We can't rest assured that her assets are
5 secure, because we don't -- nobody will provide us
6 information.

7 THE COURT: What does that --

8 MR. KARACSONYI: We just want to know --

9 MS. FORSBERG: Just provide the information, Your
10 Honor.

11 THE COURT: When -- when's our hearing --

12 MR. KARACSONYI: That was the information -- well,
13 thank you.

14 THE COURT: When's our hearing in December?

15 MS. PROVOST: There are no hearings pending Your
16 Honor other than the January 7th hearing.

17 THE COURT: Well, then we have a trial set for a
18 Wyoming Downs --

19 MR. KARACSONYI: We have a December 11th trial?

20 MS. FORSBERG: Yeah, December 11th, that -- that --

21 THE COURT: December 11th is the trial?

22 THE CLERK: December 11th at 1:30.

23 THE COURT: That's for the Wyoming Downs?

24 MR. KARACSONYI: Yes.

1 THE COURT: What we're going to do, I'm going to
2 want a full accounting for -- at the -- on -- what -- what day
3 is that December 11th? I want to make sure so we get a time
4 frame so we know exactly where we're at.

5 MR. DICKERSON: It's a Wednesday.

6 MS. PROVOST: It's a Wednesday.

7 THE COURT: Just in case. So what's the Friday
8 before?

9 THE CLERK: The 6th.

10 THE COURT: That way you got a couple times to look
11 at it. The 6th. We're going to -- you requested by the trial
12 date that's coming up a little bit over about two months.
13 We'll have you provide an accounting of exactly how much is
14 lever -- leveraged of the properties, how much is still owed
15 leverages and what the policies for unwinding and see what
16 type of time frame. That way I'll give you a time frame to
17 have those unleveraged by a certain time. But that gives you
18 a time to resolve it, give them a chance. And we're going to
19 be here on December 6th. You can look at -- I mean, December
20 11th. You can look at December 6th so you can address it
21 before we start on December 11th if there's any --

22 MR. KARACSONYI: Thank you.

23 THE COURT: -- issues you have or if there's any
24 funny business going on, fair enough?

1 MS. FORSBERG: Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. KARACSONYI: And that'll include actual backup
4 documentation of the leveraging?

5 THE COURT: Absolutely. The documents of what is
6 leveraged with specified leverage, how much is leveraged, any
7 documentation so they know and what's being to un --
8 unleverage them.

9 MS. FORSBERG: Thank you, Your Honor.

10 MR. NELSON: Which is fine, but I think we're
11 focusing on what's left on the leveraging side of it by the
12 11th. If -- if they're all deleveraged --

13 THE COURT: Yeah, if they're all deleveraged --

14 MR. NELSON: -- I mean, what am I going to --
15 produce this much documents?

16 THE COURT: No. If they're all --

17 MR. NELSON: Okay.

18 THE COURT: If there -- if there's --

19 MS. FORSBERG: If they're all --

20 THE COURT: -- no leverage on any of the properties,
21 then they're fine with that.

22 MR. KARACSONYI: And he'll make that representation
23 in open court?

24 MR. NELSON: Yes.

1 MS. FORSBERG: Yes.

2 THE COURT: Yeah, we'll get it under oath and we'll
3 get -- if you want all that, we will on that.

4 MR. KARACSONYI: Okay.

5 THE COURT: Okay. That way you know exactly what it
6 looks like. That way we can address it before the December
7 11th hearing if you think there's anything -- by that time
8 maybe we'll have a decision from the supreme court.

9 MS. FORSBERG: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. FORSBERG: You're optimistic.

12 THE COURT: I'm always optimistic. Thanks,
13 everybody.

14 (PROCEEDINGS CONCLUDED AT 14:34:09)

15 * * * * *

16 ATTEST: I do hereby certify that I have truly and
17 correctly transcribed the digital proceedings in the
18 above-entitled case to the best of my ability.

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Adrian Medrano

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Adrian N. Medrano

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1 TRANS

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5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

9 ERIC L. NELSON,)
10 Plaintiff,) CASE NO. D-09-411537-D
11 vs.) DEPT. L
12 LYNITA NELSON,) (SEALED)
13 Defendant.)

14
15 BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: NON-JURY TRIAL

17 FRIDAY, MAY 30, 2014

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INDEX OF WITNESSES

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FRIDAY, MAY 30, 2014

INTERVENER'S WITNESSES

ERIC NELSON	18	73	111	--
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ADMITTED

FRIDAY, MAY 30, 2014

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1 LAS VEGAS, NEVADA

FRIDAY, MAY 30, 2014

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 10:05:02)

4

5 THE COURT: Number D-411537. We'll get everyone's
6 appearances for the record. We'll start counsel for the --

7 MR. SOLOMON: Thank you, Your Honor.

8 THE COURT: -- Trust.

9 MR. SOLOMON: Mark Solomon, bar number 418, on
10 behalf of the ELN Trust.

11 THE COURT: Thank you.

12 MR. LUSZECK: Jeff Luszeck, bar number 9619, on
13 behalf of the distribution trustee the ELN Trust.

14 THE COURT: Thank you.

15 MS. FORSBERG: Good morning, Your Honor. Rhonda
16 Forsberg, 9557, on behalf of Eric Nelson and Eric Nelson is
17 present to my right.

18 THE COURT: Good morning, Eric.

19 MR. KARACSONYI: All right. Josef Karacsonyi,
20 10634, on behalf of Lynita Nelson and Robert Dickerson, 945,
21 on behalf of the Defendant.

22 THE COURT: Good morning, Ms. Lynita. Everybody
23 ready to go? Any preliminary matters before we jump right
24 into it?

1 MR. KARACSONYI: A couple, Your Honor. We have the
2 order from the motion in limine and motion to a summary
3 judgment and it's fully signed by everybody. And then the
4 other preliminary matter we have is I -- I think the Court's
5 aware that the supreme court has dismissed the petitions --
6 writ of -- of petitions for writ of prohibition and the -- has
7 dissolved the temporary stays.

8 We are -- we have brought an order prepared today to
9 have the 1.068 million or the blocked account transferred to
10 Ms. Nelson now that there's no longer a temporary stay in
11 effect and now that the supreme court has dismissed the
12 petitions. And I believe Mr. Bertsch and Mr. Miller are here
13 today and they have funds that are due to them from those
14 blocked account too. So we've brought an order to release the
15 funds from the blocked account now that everybody's been
16 resolved.

17 THE COURT: Thank you. Any --

18 MR. SOLOMON: Yes, Your Honor. We are -- depending
19 on how this Court resolves the hearing today, I think the
20 supreme court order anticipated that reasonable writs were
21 dismissed is this would go up on appeal immediately after this
22 hearing and we're going to be asking for another stay. I
23 would like to orally file a motion for stay or at least orally
24 present a motion for stay and have Your Honor rule on that in

1 connection with any appear to file.

2 THE COURT: Anything from you?

3 MS. FORSBERG: No, Your Honor. I agree with Mr.
4 Solomon.

5 THE COURT: Yeah, you know, I had read the decision
6 by the supreme court and I'm -- I'm looking at Page 3 on the
7 last -- the next sentence. It says thus the district court
8 has at least in part enjoined transfer of the assets at issues
9 in these petitions to the extent that any party seeks an
10 injunction that is not addressed by the district court order
11 currently in effect, such relief may be sought and the
12 district court under these circumstances given availability of
13 an appeal they denied the writ. So one, the supreme court is
14 trying to tell me that part of the reason they denied it was
15 because those funds were enjoined. So I'm not sure if that's
16 what they mean by it to be honest is I just read the order.
17 So I haven't looked into it anymore. But that's my concern if
18 that's why they denied the writ was because of the injunction,
19 so --

20 MR. KARACSONYI: Well, it seems to me that they
21 leave to Your Honor the issue of injunctions. I mean, the --
22 the point -- if -- if they had ruled the other way and ruled
23 in their favor, I'm sure they would be standing here today
24 asking the same thing of you. I mean, the point is she has no

1 money. And she's basically had to liquidate assets and now
2 she's working a -- practically a minimum wage job. And she's
3 sacrificing her future, her future ability to -- to support
4 herself while this process is going on. And they want to hold
5 all the assets until they're done -- good and done litigating.

6 Well, that's not how it works and we should be -- we
7 should be given assets that were awarded to us. And if they
8 want to take it up on appeal, they can do that and they
9 certainly have that right. But at this time there's no reason
10 not to give the assets that were duly award to Ms. Nelson to
11 Ms. Nelson.

12 THE COURT: Okay.

13 MR. SOLOMON: I'm just going to repeat myself Your
14 Honor so I don't want to do that and belabor it. I -- I think
15 that the order was clear, maybe not as clear as it could have
16 been to the supreme court. But I think what was intended was
17 they -- everything's in place. Everything's enjoined or we
18 have a hearing today, this is going to end this matter, it's
19 going to end up on appeal and we'll file appropriate motion to
20 stay pending appeal.

21 I don't think -- I think maybe counsel will be
22 surprised what our motion's going to say. We're going to try
23 and present something equitable to keep the parties going
24 during the course of appeal and just prevent irreparable

1 injury on our motion. So I would ask for that just be
2 reconsidered at that point.

3 THE COURT: Okay. Why don't we get this started and
4 let me think about it a little bit. I got -- I have some
5 options. I can release the whole funds. I can release part
6 of it in order to make sure there's some security there. I
7 was anticipating some of these arguments to be honest when I
8 looked at it yesterday but I didn't -- I was in trial all day
9 to late last night. I think there's ways I can do to release
10 some of the funds that it would still make sure it's secure so
11 there will be no irreparable harm pending appeal. So I would
12 look at that.

13 I think Mr. Bertsch deserves to be paid. They've
14 been waiting a long time. I think Ms. Nelson is probably
15 entailing some money on that to keep her going on that. So I
16 was inclined to look at that too. So I was thinking perhaps
17 to release the spousal support. Forgot how much I gave on
18 that to look on that lump sum, because I think there was 1
19 point something million, 1.2 is it?

20 MR. KARACSONYI: 1. -- oh, that -- that was enjoined
21 was 1.068 million.

22 THE COURT: That --

23 MR. LUSZECK: That was enjoined. The spousal
24 support was -- I forget the number. I think it -- I have the

1 decree right here. I think it's --

2 THE COURT: I'll look at that and why don't we get
3 this started so we'll get it done, because what happens today
4 whether that impact and I'll give you some time if you want to
5 file an appeal or any stage we can do that. But I think
6 there's some options I can do. I -- there's enough with the
7 supreme court basically would saying since the property had
8 been enjoined they weren't going to look for extraordinary -
9 relief where they were trying to tell me something that they
10 want enjoined or consider further enjoinments or injunction.
11 I'm not sure.

12 MR. KARACSONYI: And if we're filing appeals, what's
13 grossly inequitable is he still has control of all his assets.
14 So --

15 THE COURT: And you got --

16 MR. KARACSONYI: -- only one party it doesn't -- it
17 --

18 THE COURT: And you got this fine --

19 MR. KARACSONYI: -- it -- the equity's not --
20 there's no equity there.

21 THE COURT: And you got his --

22 MR. KARACSONYI: And --

23 THE COURT: -- 500,000 right --

24 MR. KARACSONYI: Right.

1 THE COURT: -- off the top when that --

2 MR. KARACSONYI: He has the --

3 THE COURT: -- was all frozen.

4 MR. KARACSONYI: -- 500,000. He has all the other
5 properties. So if we file an appeal, are you going to stay
6 any distribution to the ELN Trust of properties that they have
7 right now? I mean, they should have all their assets frozen
8 then, all of the assets. I mean, that would be the only fair
9 solution then if it's where -- if we're -- if we're going to
10 -- if we're going to do this in equity.

11 MR. SOLOMON: Well, it would be the assets in
12 controversy, Your Honor, number one to be looked at. And --
13 and two, I think --

14 MR. KARACSONYI: Well, everything was in
15 controversy. All the property was in controversy.

16 MR. SOLOMON: No, I don't think you were asking for
17 a hundred percent. So -- ever. Although --

18 MR. DICKERSON: But you only heard 50 percent. We
19 get tie up.

20 MR. SOLOMON: Yeah, well --

21 MR. DICKERSON: He gets good. But you could have
22 given her any --

23 MR. SOLOMON: -- that -- that's in controversy. So
24 with respect to the assets or controversies, that's what we

1 have to look at. And again, we intend to propose a plan which
2 Your Honor can consider as we know. We have first have to
3 bring the motion for stay before Your Honor before we can take
4 it up to supreme court anyway after the appeal is right. And
5 we intend to try and put it in some terms that I -- are fair
6 and reasonable. And hopefully the Court will agree and that's
7 where this should be decided.

8 THE COURT: Okay. Mr. Dickerson, do you want to be
9 heard on this before we jump to --

10 MR. DICKERSON: I don't think I want to -- and --
11 and since we have Mr. Bertsch here, the order we prepared was
12 releasing the monies to Lynita and Lynita then would pay the
13 monies to Mr. Bertsch and he had no objection to that. So I
14 don't know if he -- he wants to express a -- a position on
15 that, if you -- if it's your intent to get him paid and I -- I
16 agree he should be paid and monies should also be distributed
17 to Lynita, we have to prepare an appropriate order.

18 We just thought it was easier for one party to go to
19 Nevada -- Bank of Nevada, obtain the check and then we'll
20 disburse the funds accordingly, but --

21 MR. SOLOMON: And our -- is it 60?

22 MR. KARACSONYI: 32 --

23 MR. SOLOMON: I believe the amount was --

24 MR. KARACSONYI: I think I'll take 50.

1 THE COURT: I'll -- I'll let Mr. Bertsch is earned
2 what --

3 MR. KARACSONYI: It's 30 --

4 MR. SOLOMON: May I ask?

5 THE COURT: Yeah.

6 MR. KARACSONYI: It's 32,858, I think.

7 MS. FORSBERG: Oh, it was the other --

8 MR. BERTSCH: It's 35,258.

9 MR. KARACSONYI: 35,258. Sorry.

10 MR. SOLOMON: Wait, if this would help, we would
11 stipulate to release that amount without prejudice to any
12 argument and have that go to Mr. Bertsch at this time.

13 THE COURT: Let's get that part done. We'll make
14 sure we get an order at close today to make sure Mr. Bertsch
15 gets paid. He's waited a long time. And I'm -- let me think
16 about this for a second. As I said, I have a couple of
17 options. I can release the whole thing. I can also release a
18 lump sum to Ms. Lynita to help her cover any sharp falls on
19 that. That would still have done security. I know Ms. Lynita
20 has half interest in the cabin in Utah. So I think that's
21 collateral there if the supreme court thought I was wrong on
22 that. So I think there's ways I can do it to make sure that
23 -- that they're protected to at least get a motion in front of
24 the supreme court appropriately and give Ms. Lynita funds to

1 operate on that, because I was thinking about it and I haven't
2 had a chance to adjust it. But I was thinking that it's been
3 awhile on that in fairness for equity.

4 I did not freeze up the 500,000 which I could have.
5 The 1568 I could have froze that, but I didn't want to do that
6 because I wanted hopefully the matter to be resolved and we
7 would be done with that. That didn't work out the way we
8 wanted.

9 The purpose of that lump sum was to give Ms. Lynita
10 money as to the property started generating a revenue so she
11 can liquidate as she thought appropriate and not get hit real
12 bad with taxes and to give Mr. Nelson a lump sum so he can
13 invest it and keep his business going. Didn't work out as I
14 planned. But let me think about that for a second and I want
15 to get this done. And then I'll -- I'll definitely by the
16 release and part of the funds -- all those funds and give you
17 guys a chance to prepare.

18 MR. DICKERSON: And -- and with that, I know that
19 Mr. Bertsch is represented by legal counsel. We would be more
20 than happy depending on what your decision is, we can prepare
21 a -- a single order that would address all these issues and I
22 can make contact with Mr. Bertsch after this. I'm sure you
23 guys want to sit here for the next few hours listening to
24 what's going on, but --

1 THE COURT: I thought he enjoyed the pleasure of our
2 company. I thought he was just here -- nowhere else he would
3 rather be. So the parties have already agreed on that. We'll
4 make sure Mr. Bertsch that you get paid the 35,258 whether
5 it's a separate check or to Ms. Lynita. We'll make sure that
6 that's a part of the order by that close today for you. All
7 right. Okay. And we'll advise an order afterwards. And as I
8 said, all I can think about all the issues and read that
9 decision again in more detail. Thanks.

10 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

11 THE COURT: You got the one order you want me to --

12 MR. KARACSONYI: Yeah, the submitted the -- did I
13 hand it?

14 MS. FORSBERG: I handed it already.

15 MR. KARACSONYI: Did I hand it already?

16 MS. FORSBERG: You did over there. But no?

17 THE COURT: Let's get that one order done before we
18 lose it and then --

19 MR. KARACSONYI: Maybe I put it back away. Okay.
20 Okay. Here it is, Your Honor. It's signed by everybody. We
21 also were -- a couple of other just housekeeping matters. I
22 think we're waiting a decision on whether he can deduct a
23 health insurance from the Lindell income in an accounting of
24 what she's owed from Lindell. And I -- I just wanted to bring

1 that to the Court's --

2 THE COURT: Is that --

3 MR. KARACSONYI: -- attention.

4 THE COURT: Was that order that was recently
5 submitted to me last month? Or no, for the -- was that from
6 the October hearing or --

7 MR. KARACSONYI: I think this was the one you took
8 under advisement.

9 MR. DICKERSON: You took under submission.

10 THE COURT: August 16th?

11 MR. DICKERSON: You took this under submission.

12 THE COURT: At the August 16th order? Because I
13 think I have a draft on my desk.

14 MR. DICKERSON: Yes.

15 THE COURT: Okay. Let me check this. Let me check
16 --

17 MR. KARACSONYI: I think it was --

18 MR. DICKERSON: Yes.

19 MR. KARACSONYI: -- from August.

20 MR. DICKERSON: Yes.

21 THE COURT: And my law clerk's gone today, so what
22 is it for -- that was for the --

23 MR. KARACSONYI: Was it August?

24 MR. LUSZECK: I'm not sure. I just know there is a

1 couple of competing orders from different hearings.

2 MR. KARACSONYI: From October 21st there were
3 competing orders. I knew --

4 MR. LUSZECK: Yeah.

5 MR. KARACSONYI: -- that. There were two competing
6 orders from October 21st and --

7 THE COURT: I thought I signed one of those, no? I
8 thought I had signed a competing order I thought.

9 MR. KARACSONYI: I haven't seen one yet.

10 MS. FORSBERG: And we haven't seen it.

11 MR. KARACSONYI: And then there's -- there was --

12 THE COURT: That's the one from the Lindell?

13 MR. KARACSONYI: -- one issues taken under
14 advisement, Lindell expenses and accounting and what she's
15 owed from Lindell.

16 THE COURT: Okay. Let me check those. My law
17 clerk's not in the office but I'll check it. But I know I had
18 the competing orders. I thought I signed one of those, but
19 not only the August one. We just did a -- my review. So
20 we'll get that out for you. Anything else before we jump
21 right into it? Do you want a brief opening statement?

22 MR. SOLOMON: Your Honor, I we filed cross motions
23 for summary judgment. We fully briefed this issue. Unless
24 you want it, I would propose we just put the testimony on and

1 we'll argue it again.

2 MR. KARACSONYI: That's fine with me.

3 THE COURT: You okay with that?

4 MS. FORSBERG: Yes, Your Honor.

5 THE COURT: Are we ready to go?

6 MR. SOLOMON: Yes, we are. I really don't know who
7 has the burden here, but I don't care. I'll be glad to start.

8 MR. KARACSONYI: I'm glad to start too.

9 MR. SOLOMON: I mean --

10 THE COURT: Does it matter?

11 MR. SOLOMON: All right. All right. Mr. Nelson, do
12 you want to take the stand?

13 THE COURT: Okay. Mr. Nelson, right up there and
14 we'll get you -- you can bring your water up there if you want
15 Mr. Nelson so you --

16 MR. LUSZECK: This stack has one for the Judge and
17 -- oh, sorry.

18 THE CLERK: You do solemnly swear the testimony
19 you're about to give in this action shall be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: Yes.

22 ERIC NELSON

23 called as a witness on behalf of the Intervener and being
24 first duly sworn, testified as follows on:

DIRECT EXAMINATION

THE CLERK: Please state your name for the record.

THE WITNESS: Eric Nelson.

THE COURT: Why don't we canvass my proposed witnesses to see if they ever testified before but I know you have, so I think we partake of that. Counsel, you may begin at your pleasure.

MR. SOLOMON: Your Honor, my understanding I want to confirm before we get --

MR. KARACSONYI: Has he been sworn in?

MR. SOLOMON: -- going is that everybody has our binder of proposed exhibits including Your Honor. Should be an official one the Court has with a list, a courtesy copy, binder for Your Honor. The witness now has one and counsel has one.

THE COURT: Everybody's got copies? Okay. Yeah. Yes, he's been sworn in.

BY MR. SOLOMON:

Q Mr. Nelson, would you turn to Exhibit 1 in that binder?

A Yes, I have it.

MR. SOLOMON: Well, I thought he was sworn in.

MS. FORSBERG: Did you swear him in?

THE COURT: Did you swore him?

1 THE CLERK: Yes.

2 THE COURT: Yeah, they swore him up.

3 MS. FORSBERG: Oh, okay. Sorry. You did that when
4 we were --

5 MR. SOLOMON: I thought I heard that.

6 MR. LUSZECK: Okay. I wasn't sure.

7 MS. FORSBERG: I wasn't sure.

8 MR. LUSZECK: Thank you.

9 Q All right. What is Dynasty Development Management,
10 LLC?

11 A That's an LLC that purchased the racetrack at
12 Wyoming Downs, a racetrack.

13 Q Okay. When was it formed?

14 A It was formed April 25th of 2011.

15 Q Okay. And the racetrack wasn't purchased for many
16 months thereafter, is that correct?

17 A Yes, it was designed for a holding company just in
18 the event that I did purchase property we would put it in an
19 LLC.

20 Q Okay. Is that one of the ELN Trust ordinary --

21 MR. KARACSONYI: Objection, leading.

22 THE COURT: Overruled. I take it --

23 MR. SOLOMON: I didn't have a question out before
24 the objection.

1 BY MR. SOLOMON:

2 Q Does ELN routinely form LLCs for purposes of having
3 them available to perform transactions in the futures?

4 A Yes.

5 Q And this is one instance of that?

6 A Yes.

7 Q And there was another Dynasty involved in this case.
8 What was the name of that Dynasty entity?

9 A Dynasty Development Group which the -- was the
10 Mississippi assets. And it gets confusing that's for sure.

11 Q Did Dynasty Development Management, LLC, the one
12 that's shown in Exhibit 1 have anything to do with that group?

13 A Nothing.

14 Q Now under this operating agreement --

15 MR. SOLOMON: Well, we offer Exhibit 1, Your Honor.

16 Q That's your signature on the bottom as manager?

17 A Yes.

18 MR. KARACSONYI: No objection.

19 MR. SOLOMON: Offer 1.

20 THE COURT: No objection. Hereby admitted as
21 Exhibit Number 1.

22 (Intervener's Exhibit 1 admitted)

23 BY MR. SOLOMON:

24 Q It indicates that the Eric L. Nelson Nevada trust is

1 the initial sole member, is that correct?

2 A Correct.

3 Q And at the time this entity was formed in or about
4 April of 2011 did it have any assets?

5 A No.

6 Q Does the ELN Trust -- I know it says the initial
7 sole member, but was the ELN Trust the sole member of this
8 entity at formation?

9 A Yes.

10 Q Has Lynita or LSN Trust ever possessed a membership
11 interest in this entity?

12 A No.

13 Q All right. You got a head of me a little bit by
14 your answer in the opening question, but did Dynasty ever
15 acquire any property?

16 A Up to this time, no.

17 Q Ever.

18 A No.

19 MR. KARACSONYI: Would just -- which Dynasty are we
20 -- are we just going to refer to this as Dynasty for the rest
21 --

22 MR. SOLOMON: That was my intention since the other
23 one doesn't have any role in it, is that okay?

24 MR. KARACSONYI: Yeah, that's fine.

1 MR. SOLOMON: All right.

2 MR. KARACSONYI: I just want to make sure we're
3 clear.

4 BY MR. SOLOMON:

5 Q Do you understand that when I'm talking about
6 Dynasty now unless I make a change I'm talking about Dynasty
7 Development Management, LLC.

8 A No.

9 Q Right?

10 A Right. I'm sorry.

11 Q Listen to the question. After this date did it ever
12 acquire property, ever?

13 A The racetrack.

14 Q Thank you. When did you first become aware of the
15 opportunity to reacquire Wyoming Downs again?

16 A I think it was about 30 -- possibly up to 60 days
17 before the auction.

18 Q Okay. And how did you learn about the opportunity
19 to perhaps require it?

20 A Not quite sure, but I think someone called me or I
21 read it in the newspaper or -- or an article was sent to me.
22 Not -- not really quite clear on that.

23 Q All right. Would you take a look at Exhibit 2?

24 A Yes.

1 Q Do you recall ever seeing an advertisement such as
2 this announcing the auction of this property?

3 A Yes.

4 Q Does that refresh your recollection of how you found
5 out about it?

6 A Well, this is one source. Definitely I saw this.
7 But maybe somebody called me on it too and I can't recall. So
8 I apologize.

9 Q And Exhibit 2 indicates that the auction was going
10 to take place on Wednesday, November 16th, 2011. Was that in
11 fact the date that the auction occurred?

12 A Yes.

13 Q Now the article also in that same first paragraph
14 indicates that there was going to be a minimum bid of
15 \$400,000. Were you aware of that prior to the time of the
16 auction?

17 A Yes.

18 Q Did you believe that Wyoming Downs racetrack may be
19 worth the \$400,000 minimum bid?

20 A I believed it was.

21 Q Why?

22 A Just because it has, you know, some land value, the
23 infrastructure there. And I thought it was worth 400.

24 Q All right. What if anything did you do to

1 investigate the opportunity to purchase that property?

2 A Well, I went through the due diligence package and
3 just refreshed myself on the facility itself.

4 Q You have of course been aware of that facility in
5 the past and through the trust that owned that property.

6 A Yes.

7 Q What had happened to that property since you last
8 were familiar with it?

9 A They operated at several years and they closed it
10 down for I think three, four years. And so it was just a -- a
11 vacant racetrack.

12 Q All right. Would you turn to Exhibit 3?

13 MR. SOLOMON: Do you have any objection to Exhibit
14 2?

15 MR. KARACSONYI: No.

16 MR. SOLOMON: Offer 2, Your Honor.

17 THE COURT: Hereby admitted -- admitted as Exhibit
18 Number 2.

19 (Intervener's Exhibit 2 admitted)

20 THE COURT: Ms. Forsberg, do you have any objection?

21 MS. FORSBERG: No objection, Your Honor.

22 BY MR. SOLOMON:

23 Q All right. Turning to Exhibit 3, this appears to
24 say it's an auction services registration form and it contains

1 your name for the entity Dynasty and your title as manager.

2 And is that your signature to the right where it says manager?

3 A Yes.

4 Q And what is this document?

5 A It's a registration form when you sign up at the
6 auction that you just, you know, they give you disclosures on
7 buyer and seller.

8 Q Okay. And it's dated November 16, 2011. Is that
9 truly dated?

10 A Yes.

11 MR. SOLOMON: We offer 3, Your Honor.

12 MR. KARACSONYI: No objection.

13 MS. FORSBERG: No objection.

14 THE COURT: Hereby admitted as Exhibit Number 3.

15 (Intervener's Exhibit 3 admitted)

16 BY MR. SOLOMON:

17 Q Was any money required to participate in the
18 auction?

19 A That had a cashier's check for \$75,000.

20 Q And did you present a cashier's check for \$75,000 to
21 bid?

22 A Yes.

23 Q And where did you obtain this 75,000?

24 A Came from the BanOne properties but in essence from

1 my trust.

2 Q And would you turn to Exhibit 14?

3 A Yes.

4 Q And does that reflect that \$75,000 withdrawal from
5 the BanOne, LLC account on November 15th the day before the
6 auction?

7 A Yes.

8 Q And was that money used to acquire the cashier's
9 check --

10 MR. KARACSONYI: Objection to leading, Your Honor.

11 THE COURT: Sustained.

12 BY MR. SOLOMON:

13 Q What was the 75,000 used for?

14 A For the earnest money deposit to bid on the
15 property.

16 Q And is that reflected in Exhibit 15?

17 A Yes.

18 MR. KARACSONYI: Let me just object, Your Honor.

19 This wasn't produced during discovery. What are you referring
20 to?

21 MR. SOLOMON: I can't hear you.

22 MR. DICKERSON: What exhibit?

23 MR. SOLOMON: 15.

24 MR. KARACSONYI: Same objection, Your Honor. It

1 wasn't presented during discovery.

2 MR. SOLOMON: Your Honor just entered an order
3 saying that it was admissible. Anything that was produced --
4 attached to the pleadings or discovery --

5 MR. KARACSONYI: During the discovery process and
6 prior, not --

7 MR. SOLOMON: Read the order yourself, Your Honor.
8 It's very clear. It says anything that's attached as exhibits
9 to our pleadings or in produced was the only thing that would
10 be allowed at this hearing. This was attached prior to the
11 prior hearing, they're aware of it and --

12 MR. KARACSONYI: This is -- this is --

13 THE COURT: Is this the two exhibits that you had
14 objected to at the last motion --

15 MR. KARACSONYI: Yes, exactly.

16 THE COURT: -- saying it had not been promoted -- it
17 had not been prepared to you -- presented to you in discovery
18 and then it came in on a motion and you --

19 MR. KARACSONYI: Exactly. We objected to it. And
20 the reason is because if -- after the deposition and after the
21 closing of discovery you start attaching documents to papers
22 with the Court. Guess what, we don't have an opportunity to
23 conduct discovery with those documents. We never had the
24 benefit of them. In fact, they refused to provide all bank

1 statements during the course of discovery as I can show the
2 Court in our exhibits. I would be happy to go through those
3 if they wanted -- if they -- if they disagree, but I don't
4 think they will.

5 MR. SOLOMON: Well, I will, because they were
6 produced to Mr. Bertsch and they're in his report and he
7 report the \$75,000 back in early 2012. So the Court -- and
8 they have been fully aware of this for months and months. And
9 even before the -- way before anything happened with respect
10 to this issue. It's a non-disputed fact Your Honor that this
11 \$75,000 was in fact withdrawn from ELN Trust assets and
12 deposited and then repaid shortly thereafter.

13 MR. KARACSONYI: It's actually Your Honor, it is --
14 what -- if they want to refer to Mr. Bertsch's report, it does
15 show that monies went from the ELN Trust towards the Wyoming
16 purchase. But regardless of the fact, if I request bank
17 statements, okay, and they won't provide them to me, they
18 refused. They categorically refused and I can -- we have the
19 discovery and we can all read it together that they cannot
20 rely on those documents. It is inherently unfair for them to
21 start presenting documents that they only provide after the
22 discovery.

23 THE COURT: Let's just talk about Exhibit 15 because
24 we kind of skipped over 14. I wasn't -- I --

1 MR. KARACSONYI: 14 too was never provided. Now if
2 they want to go into Mr. Bertsch's report and rely upon that,
3 then that's a different story. But to start presenting new
4 checks and new documents that they didn't provide prior to
5 discovery that I didn't have the opportunity to ask Mr. Nelson
6 is not -- isn't equitable. And they're redacted. They didn't
7 even -- these aren't even true and correct -- they can't --
8 they -- this isn't even a true and correct copy. They kept --
9 they chose what they would redact. How could you rely on
10 this?

11 THE COURT: Why don't we move forward on this. So
12 I'm not going to admit Exhibit 14 and 15 at this time. Let's
13 get our testimony and that may resolve with the testimony and
14 cross examination. I got to look at the discovery, because
15 and if it was not provided to you and a fair opportunity on
16 that, then one sanction the Court can is not allow it to be
17 admitted. But why don't we move forward at this time. I'm
18 not going to admit 14 and 15 at this moment so that way we get
19 moving forward so we don't get bogged down.

20 BY MR. SOLOMON:

21 Q All right, Mr. Nelson. Who -- you attended the
22 auction on that date, correct?

23 A Yes. Yes, sir.

24 Q And did you make a bid --

1 A Yes.

2 Q -- on behalf of the ELN -- I'm sorry, on behalf of
3 Dynasty?

4 A Yes.

5 Q Okay. And were you the -- was Dynasty the winning
6 bid?

7 A Yes.

8 Q And how much was the bid?

9 A \$400,000.

10 Q Now would you turn to Exhibit 4?

11 MR. SOLOMON: Did I offer 3? I'm sorry.

12 MR. KARACSONYI: Yes, you did. It was stipulated to
13 too.

14 THE COURT: 2 and 3 have been admitted.

15 MR. SOLOMON: Been admitted? Thank you.

16 Q Exhibit 4, can you tell the Court what that is?

17 A This is the real estate purchase and sales
18 agreement.

19 MR. KARACSONYI: And I'll streamline this for you.

20 There's no objection to that.

21 MS. FORSBERG: No objection, Your Honor.

22 THE COURT: 4 will be admitted as well without
23 objection.

24 (Intervener's Exhibit 4 admitted)

1 BY MR. SOLOMON:

2 Q All right. The first page of -- if appears to be a
3 summary statement. Let's go through that. It says the date
4 of the agreement was November 16th, 2011, the same date as the
5 auction.

6 A Yes.

7 Q And the seller was Wyoming Racing, LLC. And that
8 was your -- the seller?

9 A Yes.

10 Q And the purchaser was Dynasty Development --

11 A Yes.

12 Q -- correct? And it reflects that your high bid of
13 400,000. What is the \$40,000 below in item six?

14 A A broker premium or buyer premium.

15 Q So the total purchase price reflected here was
16 440,000. That would have been your opening bid plus the buyer
17 premium, correct?

18 A Yes.

19 Q And the initial earnest money deposit was the
20 \$75,000 you testified that you gave as a cashier's check?

21 A Yes.

22 Q And it indicates the closing date was going to be
23 December 16, 2011, do you see that?

24 A Yes.

1 Q Now Exhibit B to that Exhibit 4, is a list of
2 equipment, fixtures and personal property. Do you see that?

3 A Yes.

4 Q Did you try and inspect the property to determine
5 whether or not that was there and what condition it might be
6 in?

7 A After the sale I looked at the inventory.

8 Q And what was the -- what was your observation
9 relative to that?

10 A Part of it was there. Part wasn't very, very poor
11 condition and I didn't put any value on it.

12 Q Now how did Dynasty intend to finance the property
13 at the time that it entered into real estate purchase and
14 settlement agreement?

15 A I had hope to retrieve 50 percent of the --
16 unfortunately Dynasty Development Group money that was being
17 held in a blocked account trying to -- oh, I thought I could
18 get that released from the Court.

19 Q Okay. And that was the approximate 1.5 million
20 dollars that was in David Stephen's (ph) trust account?

21 A Yes.

22 Q And what was the source of those funds?

23 A They were from the Silver Slipper transaction which
24 was a gaming property that was held exclusively by Wyoming --

1 excuse me, by Dynasty Development Group which was owned
2 entirely by the Eric L. Nelson Trust.

3 Q And did the ELN Trust file a motion requesting that
4 this Court release the funds from Mr. Stephen's trust account
5 to finance the purchase of Wyoming Downs.

6 A I believe so.

7 Q And did you attend the hearing?

8 A Yes.

9 Q And what happened with respect to that request?

10 A It was denied.

11 Q What position did Lynita take regarding utilizing
12 the 1.5 million or any part of it to purchase Wyoming Downs?

13 A I believe they were adamantly opposed to it.

14 Q And after the release of the 1.5 million dollars was
15 denied, was there any colloquy that you had with the Court
16 relative to the possibility of buying it with other source,
17 with other funds?

18 A I'm sorry, what was the question?

19 Q Yes, after the Court denied the release of the 1.5,
20 did you have any colloquy with the Court relative to the
21 potentiality of using other funds or other resources to
22 acquire that property?

23 A Well, I asked the Court if I could purchase a
24 property if we found funds outside of that, because the Court

1 said you couldn't use any of the funds --

2 MR. KARACSONYI: Objection, hearsay.

3 A -- for that. I'm sorry.

4 THE COURT: As far as you saying this is on the
5 record, I'll have to look at it then --

6 MR. SOLOMON: And it's never hearsay if it's what he
7 says, so --

8 MR. KARACSONYI: So he was saying --

9 MR. DICKERSON: It is hearsay.

10 MR. KARACSONYI: -- what the Judge said.

11 THE COURT: And I'm --

12 MR. DICKERSON: And it is hearsay.

13 THE COURT: Yeah.

14 MR. DICKERSON: He can't offer any statements of
15 himself. And we could offer statements of his, but he cannot
16 offer statements of his. And that's -- and that's the --
17 that's the Rules of Evidence. Pretty simple.

18 THE COURT: On that motion on that, I remember what
19 I -- what happened at that motion. I remember I denied it,
20 but I don't remember we talked about the purchase outside, but
21 I'll look at that. I'll review that tape again. We have so
22 many motions that I -- I know we did -- deny that. I don't
23 know if we -- I don't remember talking about purchasing
24 outside of that, but I'll look at that record.

1 MR. SOLOMON: Okay.

2 THE WITNESS: Well, do I finish the question?

3 MR. SOLOMON: Sure.

4 THE WITNESS: My understand --

5 MR. DICKERSON: We have an objection, Judge. And I

6 --

7 THE COURT: Sustained. I don't think -- I'll look
8 -- I'll look at what happened on that. I'll look at the total
9 video on that to see on that, because I --

10 BY MR. SOLOMON:

11 Q I'll ask it this way. What was your understanding
12 of what you could possibly do after that hearing relative to
13 the acquisition?

14 MR. DICKERSON: Which we also object. His
15 understanding has no relevance, Your Honor. It's what
16 happens.

17 MR. SOLOMON: It really -- certainly has relevance.

18 THE COURT: Overruled. I think he can give -- it's
19 rather not for the truth contained there and what his
20 understanding or his strategy I guess he could say for the
21 purchase of it.

22 THE WITNESS: My understanding was if I wanted to
23 purchase Wyoming Downs and save the \$75,000 deposit that I
24 would have to find outside financing and that was going to be

1 acceptable to the Court and to the trust.

2 BY MR. SOLOMON:

3 Q Okay. Were you aware of any injunction whatsoever
4 that would prevent the ELN Trust or its entities from
5 acquiring properties at that point?

6 A Definitely not.

7 Q Was Dynasty able to close within the 30 days of the
8 real estate agreement of -- of December 16, 2013?

9 A No.

10 Q I'm sorry, 2011. The answer is no?

11 A No.

12 Q Was the \$75,000 deposit in jeopardy if you couldn't
13 close or extend?

14 A Close, yes.

15 Q And what did you do to try and keep that transaction
16 alive at that point?

17 A Oh, I started to seek out third party fund --
18 funding from hard money lenders and see if I could
19 collateralize the facility itself.

20 Q What did you do about the closing date that was set
21 for December 16?

22 A I tendered an additional \$10,000 I believe to -- or
23 offered 10,000 to extend a 30 day extension to find funding.
24 And release the \$75,000 to them.

1 Q Would you turn to Exhibit 5? And do you recognize
2 this document titled addendum to purchase agreement?

3 A Yes.

4 Q And is that your signature on behalf of Dynasty on
5 December 1, 2011?

6 A Yes.

7 MR. DICKERSON: Stipulated.

8 MR. SOLOMON: Offer Exhibit 5.

9 THE COURT: Any objection?

10 MS. FORSBERG: No objection, Your Honor.

11 THE COURT: Hereby admitted as Exhibit Number 5.

12 (Intervener's Exhibit 5 admitted)

13 BY MR. SOLOMON:

14 Q Is this the agreement by which you were able to
15 extend the close of escrow from December 16th?

16 A Yes.

17 Q And the terms say that the close of escrow shall be
18 honored before January 6, 2012, is that correct?

19 A That is correct.

20 Q And the \$75,000 that you had deposited as earnest
21 money would be immediately released to the seller, was that
22 done?

23 A Yes.

24 Q And that you will pay an additional 10,000 upon

1 close of escrow for the granting of extension.

2 A Yes.

3 Q Does that refresh your recollection that you didn't
4 in fact have to pay the \$10,000 at the time you got the
5 extension but rather the 10,000 would be payable at close?

6 A That is correct.

7 Q Now after the hearing that eluded to or you sought
8 the release of -- part or all of the 1.5 million dollars, were
9 you able to obtain alternate financing?

10 A I was prior to the close of escrow. Prior to
11 January 6 I was.

12 Q And did ELN or Dynasty do to obtain an alternate
13 financing?

14 A We signed loan agreements against the racetrack
15 facility.

16 Q Okay. Were you able to locate a lender?

17 A Yes.

18 Q And who was that?

19 A Henderson Capital.

20 Q And what is Henderson Capital?

21 A They're a lending source basically in my opinion a
22 hard money lender.

23 Q Had you or ELN or dynasty have any prior
24 transactions with Henderson?

1 A No prior transactions.

2 Q And how did you find Henderson?

3 A They were on my list of people that have finding
4 that I contacted.

5 Q And did Henderson Capital ultimately agree to fund
6 your purchase of Wyoming Downs?

7 A Yes.

8 Q Would you turn to Exhibit 6? Exhibit 6 appears to
9 be a copy of a promissory note in the principal amount of
10 \$700,000 dated January 4, 2012 and signed by you as the
11 manager of Dynasty on the same date. Do you recognize it as
12 such?

13 A Yes.

14 MR. SOLOMON: Offer 6, Your Honor.

15 MS. FORSBERG: No objection

16 MR. KARACSONYI: No objection.

17 THE COURT: Hereby admitted as Exhibit Number 6.

18 (Intervener's Exhibit 6 admitted)

19 BY MR. SOLOMON:

20 Q I -- in this promissory note, it indicates in the
21 first paragraph that the borrower Dynasty Development
22 Management agrees to these terms says in the second paragraph
23 that the loan is due and payable in 12 months from execution.
24 That's the maturity date. Do you see that?

1 A Yes.

2 Q Then it goes on to say to induce creditor to extend
3 the aforementioned loan debtors agree to be creditor \$100,000
4 payable upon execution of this note which shall act as full
5 prepayment of interest and fees related to the aforementioned
6 loan plus all reasonable third party costs. Do you see that?

7 A Yes.

8 Q All right. So Henderson Capital agreed to lend you
9 700,000 but really only gave you 600,000 because they took a
10 hundred back to pay themselves, is that correct?

11 A That's correct.

12 Q Now let me call your attention to the fifth
13 paragraph down. It says if upon completion of the 12 month
14 loan period debtor fails to pay the outstanding principle
15 balance of this note, any late penalty or rate of interest on
16 the principal loan amount or outstanding principal balance
17 heretofore contemplated shall no longer apply and a rate of
18 interest equal to one and one-half percent monthly, 18 percent
19 annually on the outstanding principal balance shall apply. Do
20 you see that provision?

21 A Yes.

22 Q Did that provision later come into play?

23 MR. KARACSONYI: Objection, Your Honor. He can't
24 testify about this. This is absolutely excluded. We

1 requested all the documents related to any payout. We asked
2 him if they owed money. We requested all the bank statements
3 to show the servicing of the mortgage and they refused to
4 provide it. He is excluded from testifying about this
5 subject.

6 MR. SOLOMON: The question didn't even have to do
7 with payout, Your Honor. The question has to do whether or
8 not this provision became applicable.

9 MR. KARACSONYI: Would he like to --

10 MR. SOLOMON: It had nothing to do with payments.
11 Payments weren't made.

12 MR. KARACSONYI: Yes.

13 MR. SOLOMON: That's the whole paid.

14 MR. KARACSONYI: He's trying to get him to testify.
15 Don't try to confuse it. I mean, the question is did -- was
16 it paid -- basically the question is was it paid by the 12
17 months or was there interest incurred. And the answer is
18 well, you didn't provide that in discovery. You refuse to
19 provide it. So he can't testify to this.

20 MR. SOLOMON: What --

21 MR. KARACSONYI: The motion in limine covers it.

22 MR. SOLOMON: What would he provide that he didn't
23 pay -- made payment, Your Honor? What would be provided that
24 he didn't make any payment?

1 MR. KARACSONYI: Okay. Well, I can answer that
2 question. Let me --

3 MR. SOLOMON: In the addendum question.

4 MR. KARACSONYI: Let me answer the question.

5 MR. SOLOMON: I'm in the addendum covers.

6 MR. KARACSONYI: Let me answer the question. We
7 asked for all the bank statements. If you give us the bank
8 statements, we could verify and see whether payments were made
9 or not made. But if you won't give us the bank statements to
10 show whether payments were made or not made on the loan, then
11 we can't obviously confirm. We can't even ask him about it.
12 When we ask him about it, it's outside the scope.

13 So he's not allowed to testify in this subject. I'm
14 happy -- I have in our book the request for production and I'm
15 happy to sit here and open them up and read them together and
16 read their response. And I've got all their responses with a
17 lack of bank statements. And we can go through that and see
18 that they denied us all this information.

19 MR. SOLOMON: Your Honor, this argument is
20 fallacious. The -- it's already been covered by a hearing
21 that said we can't introduce any evidence that they asked and
22 we refused to give. And so we're not preventing any documents
23 on this. We didn't ask the question in any deposition.
24 Didn't seek a motion to compel. Didn't subpoena any bank

1 records. There's absolutely no support and law for the type
2 of breadth of sanction that he's trying to ask this court to
3 do at this point. The Court's entered a sanction. It's in
4 the order. We're complying with the order. And the order is
5 clear that I can't ask him a question that was directly asked
6 -- asked of him at deposition that he refused to answer, but
7 to say that because we didn't produce all bank statements or
8 -- or something like that and therefore we can't talk about
9 what he has personal knowledge of goes well beyond any
10 sanction order that this Court has ordered or I believe could
11 order.

12 MR. KARACSONYI: The order says that any evidence
13 information that wasn't provided. Basically what he's trying
14 to do is say -- is do this. Okay. It's like if he -- if we
15 ask for January's -- all the bank statements, he doesn't give
16 it to us. Then he comes here and says well, what's -- what
17 did you do from this bank account in January. Well, you
18 didn't ask him what he did from that bank account in January.
19 The point is they excluded -- they deprived us of the
20 information to be able to verify anything -- any testimony on
21 this subject.

22 And listen, the request for production is clear. It
23 was asked. Can you please provide us -- we asked several
24 times in each of them in request number six for year end

1 financial statements. Request four, accounting records.
2 Request two, all financial statements related to Dynasty and
3 Wyoming Downs. Request seven was bank account or investment
4 account statements. And they refused to give us those. They
5 told us it was outside the scope. They sat there and then at
6 deposition supported Mr. Nelson's dictation of what's outside
7 the scope.

8 So to allow them to testify on this subject that
9 they wouldn't give you documents related to is gross
10 inequitable. In fact, we do have legal authority. The Court
11 heard it last time and -- and considered it was Blanco v.
12 Blanco. It's a very recent brand new supreme court case where
13 they reiterated the fact that they have held that it is
14 inequitable to allow a party to present evidence that they
15 refused to provide during discovery.

16 MR. DICKERSON: Moreover, Your Honor --

17 MR. SOLOMON: Your Honor --

18 MR. DICKERSON: Moreover, they're off -- they're
19 attempting to offer parole evidence with respect to a document
20 outside the four corners of the document. The document speaks
21 for itself.

22 MR. SOLOMON: No, we're not. We're -- I'm asking
23 him whether or not he made any payments. It's --

24 MR. DICKERSON: The document --

1 MR. SOLOMON: -- zero payments.

2 MR. DICKERSON: The document speaks for itself.

3 MR. SOLOMON: It does not speaks for itself.

4 MR. DICKERSON: And it provides as to when payment
5 is to be made and he's offering parole evidence purportedly
6 what -- what I would imagine is to go outside the -- the four
7 corners of that document and say no, we didn't comply with
8 that. But they didn't provide us with any documentation to
9 support that.

10 MR. SOLOMON: Your Honor, it's a negative. There's
11 no document that would support it. The only question I asked
12 at the deposition is how much is still owed on the Henderson
13 Capital Group, LLC on the original \$700,000. And that was
14 dealt with way after the divorce.

15 MR. KARACSONYI: And you said --

16 MR. SOLOMON: So with that, it was outside the scope
17 because it had nothing to do with the acquisition.

18 THE COURT: At this time I'm going to overrule it.
19 He can answer questions on that. I'm not going to admit
20 Exhibit Number 6. I'm going to need to look at your book of
21 everything you discovered. I can always strike it from the
22 record --

23 MR. KARACSONYI: So Exhibit 6 --

24 THE COURT: -- so we can get this done.

1 MR. KARACSONYI: -- is -- is fine. It's the
2 question --

3 THE COURT: Just the testimony?

4 MR. KARACSONYI: -- about what -- see, can I at
5 least tell Your Honor what -- what we asked and -- and here it
6 is. We asked in our request for production we said and -- and
7 this -- there is a number that would cover this, but we said
8 please produce any and all bank account or investment account
9 statements from January 1, 2011 to present date for all bank
10 and investment accounts from which monies have been expended,
11 withdrawn, transferred and/or leveraged from the purchase of
12 Wyoming Downs or operation of Wyoming Downs or purchase or
13 operation of any other real property or gaming venture in the
14 state of Wyoming during such time period.

15 We also asked on request eight please produce a copy
16 of all documents relating to or otherwise pertaining to the
17 purchase, sale, encumbrance and/or transfer of any interest in
18 the real property and race track known as Wyoming Downs or any
19 other real property that's situated in the state of Wyoming
20 during 2011, 2012 and the current calendar year to date.
21 Included in this request is all document related to the
22 purchase and sale of Wyoming Downs or any other real property
23 situated in the state of Wyoming included but not limited to
24 all closing statement, deed, mortgage, other evidence of

1 indebtedness and ownership.

2 We also asked for anything else pertaining and we
3 asked for all their financial records. How can he say that we
4 didn't make payments when he won't give us the financial
5 statements? And we can go through those requests too. I
6 mean, the year end profits. Anything. Everyone of these was
7 said no. I mean, a copy of -- a copy of all financial
8 statements prepared for Dynasty Developments was request
9 number two or Wyoming Downs. A copy of all tax information
10 and tax returns was request number three. All accounting
11 records, general ledgers, general journals, cash disbursements
12 for Dynasty and the racetrack was request number four.

13 He won't give us those but then he's going to sit
14 here and testify well, I didn't make any payments. Well,
15 guess what. You don't -- we had no change to verify that. We
16 have nothing to look at. We have nothing.

17 MR. DICKERSON: And this is a witness the Court has
18 already found not to be credible on at least three or four
19 different occasions.

20 MR. KARACSONYI: So that's our objection.

21 MR. SOLOMON: Your Honor, we are not admitting any
22 of those records that we --

23 THE COURT: Over -- overruled.

24 MR. SOLOMON: -- used for this, any of it.

1 THE COURT: You can ask -- ask him the question.
2 What probative value it has this Court will take appropriately
3 and I will look at all the discovery requests that you had
4 specifically, but we'll testify and the Court can determine
5 the admissibility of any of his testimony. I can strike it.
6 We don't have a jury here, but let's get this moving forward
7 on that. And again, the Court has made findings on that as
8 far as the probative value, based history. They cannot
9 substantiate with corroborating evidence, that would go to the
10 probative value. You can continue, counsel.

11 MR. SOLOMON: Thank you.

12 BY MR. SOLOMON:

13 Q Would you turn to Exhibit 8 -- I'm sorry, 7.

14 A Yes.

15 Q And do you recognize this as a copy of a mortgage,
16 power of a sale that you executed on behalf of Dynasty on
17 January 12th, 2004 to provide a security for the \$700,000 loan
18 extended by Henderson?

19 A Yes.

20 MR. SOLOMON: What's that?

21 MR. KARACSONYI: You have the date wrong.

22 MR. SOLOMON: Oh.

23 MR. KARACSONYI: You said January 12, 2004.

24 MR. SOLOMON: Sorry, January 4, 2012. Apparently

1 transposed the question.

2 Q Do you understand the question with that change?

3 A Yes.

4 MR. SOLOMON: Offer --

5 Q Did you sign that?

6 A I did.

7 MR. SOLOMON: Offer 7, Your Honor.

8 MS. FORSBERG: No objection

9 MR. KARACSONYI: No objection.

10 THE COURT: As to 6, did you object to 6 being
11 admitted, the promissory note? I know you object to the
12 testimony, but did you object to --

13 MR. SOLOMON: They objected to neither, Your Honor.
14 They stipulated to --

15 MR. DICKERSON: No objection.

16 MR. KARACSONYI: We stipulated to 6.

17 (Intervener's Exhibit 7 admitted)

18 MR. SOLOMON: I'm sorry, I didn't hear, Your Honor.
19 Is -- is 7 admitted?

20 THE COURT: Yeah, they stipulated.

21 MR. SOLOMON: Thank you.

22 THE COURT: Yeah.

23 BY MR. SOLOMON:

24 Q All right. Would you turn to Exhibit 8?

1 A Okay.

2 Q And is this document entitled amendment to operating
3 agreement of Dynasty Development Management, LLC executed by
4 you on January 5, 2012 on behalf of the Eric L. Nelson Trust?

5 A Yes.

6 Q And it's also executed by Lana Martin as
7 distribution trustee.

8 A Yes.

9 Q And what was the purpose of this amendment for the
10 operating agreement?

11 A It was just one of the requested documents that --
12 that Henderson Capital Group requested.

13 Q Okay. And the third paragraph of that first page of
14 that document indicates that Henderson is appointed as a
15 co-manager with a limited role that's defined in there. Do
16 you see that?

17 A Yes.

18 Q So the purpose was to give them some control of the
19 entity while the loan was outstanding?

20 A Yes.

21 MR. SOLOMON: Did I offer --

22 MS. FORSBERG: You didn't.

23 MR. SOLOMON: -- 8? Offer it now.

24 MR. KARACSONYI: Okay.

1 MS. FORSBERG: No objection.

2 MR. KARACSONYI: No objection.

3 THE COURT: Hereby admitted as Exhibit 8.

4 (Intervener's Exhibit 8 admitted)

5 BY MR. SOLOMON:

6 Q Can you turn to Exhibit 10?

7 A Okay.

8 Q Is that your signature on the bottom of Page 3 of --
9 of Dynasty?

10 A Yes.

11 Q And is this the final as reflected on Page 1 the
12 final settlement statement or the acquisition of Wyoming Downs
13 by Dynasty?

14 A Yes.

15 MR. SOLOMON: We would offer 10, Your Honor.

16 MS. FORSBERG: No objection.

17 MR. KARACSONYI: No objection except only to the
18 extent that -- that we didn't get any statements to verify any
19 of this cash to the borrower. So if they go outside the scope
20 of that, they -- that's for the purpose of just showing the
21 settlement statement that if they --

22 THE COURT: Hereby admitted as Exhibit 10 with the

23 --

24 (Intervener's Exhibit 10 admitted)

1 BY MR. SOLOMON:

2 Q All right. Let's go through the first page.

3 Indicates that the -- on Line 101, do you see that?

4 A Yes.

5 Q The contract sells for 440,000. That was the bid
6 plus the buyer's premium, correct?

7 A Yes.

8 Q And it says settlement charges on Line 103 of
9 \$30,839?

10 A Yes.

11 Q And additional funds for extension, that was the
12 agreement that you signed saying you would have paid --
13 Dynasty payment at your \$10,000 at close?

14 A Yes.

15 Q And so the gross amount due from borrower shown on
16 Line 20 of \$480,839, do you see that?

17 A Yes.

18 Q And then on Line 201 it says deposit earnest money
19 of 75,000, that's the 75,000 we talked about earlier, correct?

20 A Yes.

21 Q And it says the principle amount of new loan
22 600,000. Do you see that?

23 A Yes.

24 Q That would be the \$700,000 note minus the hundred

1 thousand you prepaid?

2 A That's correct.

3 Q And in Lines 2 -- 211, it says there is an
4 adjustment for taxes in the amount of a hundred and
5 seventy-five dollars and forty-six cents. Do you see that?

6 A Yes.

7 Q Indicates then that Line 220 that the total amount
8 of paid for -- or for borrower would be \$675,175.46. Do you
9 see that?

10 A Yes.

11 Q All right. And then the reconciliation of that at
12 the bottom, it says that -- takes that \$480,839 from Line 120,
13 reinserts it in Line 309 and takes the \$675,175.46 from line
14 220 and reasserts it at 302 showing a difference of
15 \$194,336.46. Do you see that?

16 A Yes.

17 Q So at the close of escrow based upon the loan you
18 were actually able to pull out about a hundred -- a little
19 over a hundred and ninety-four thousand dollars out of the
20 equity of the property, is that correct?

21 A Well, that included the \$75,000 earnest money
22 deposit. So from the lender side of it it would be a hundred
23 and ninety-four thousand minus the 75, but approximately --
24 what is that, a hundred and twenty thousand dollars of new

1 money.

2 Q And did you pay back the \$75,000 to the loan?

3 A Yes.

4 MR. KARACSONYI: Objection. Objection. He's -- he
5 didn't produce any documents related to that. He didn't show
6 any of that. He's got nothing to prove that.

7 MR. SOLOMON: I don't have to produce it. He has
8 personal knowledge that he paid back \$75,000 and they have the
9 document and it was attached to -- as an exhibit to pleadings
10 in the motion for summary judgment.

11 MR. KARACSONYI: Exactly.

12 MR. SOLOMON: But more importantly, the failure to
13 produce a document does not mean that you -- meaning under
14 your order because it's explicit that you can't produce the
15 document, but I don't think that's applicable here because
16 that order says if it wasn't attached to pleadings. It
17 doesn't say attached to pleadings prior to any particular date
18 number one. It says more importantly it does -- if he has
19 personal knowledge that the money was paid back, he's allowed
20 to testify to that whether or not the Court allows him to
21 produce the document.

22 THE COURT: Well, I think he can testify as far as
23 how much probative value the Court gives on it without
24 supporting documentation I guess is for the Court to determine

1 based on credibility and other issues on that. So --

2 MR. DICKERSON: That's our problem is we are left in
3 a position -- we -- we have nothing to show otherwise and that
4 -- that's a problem is we're dealing with a man whose
5 credibility has already been determined.

6 MR. SOLOMON: Hogwash. They could have brought any
7 motion they wanted to. They chose to sit on their rear ends
8 and do nothing, Your Honor, and rely upon this type of
9 argument.

10 MR. DICKERSON: No, it's not --

11 MR. SOLOMON: That's not good.

12 THE COURT: You can go.

13 MR. DICKERSON: It's not our burden. It is not our
14 burden. If -- if that's --

15 MR. SOLOMON: It is your burden --

16 MR. DICKERSON: If that's the choice they choose to
17 take.

18 MR. SOLOMON: -- if you deny his testimony.

19 THE COURT: You can --

20 MR. DICKERSON: They've dug the holes for
21 themselves.

22 MR. KARACSONYI: Oh, the order?

23 THE COURT: Continue the questioning. And again, as
24 far as the probative value and the stuff with the documents,

1 this Court will cooperate in any final determination.

2 MR. KARACSONYI: I didn't realize I had it in front
3 of me.

4 BY MR. SOLOMON:

5 Q Would you turn to Exhibit 15?

6 A Yes.

7 MR. KARACSONYI: You've already ruled on this. I
8 mean --

9 MR. SOLOMON: I'm sorry, 16.

10 MR. KARACSONYI: Same objection as before, Your
11 Honor. You already ruled against 15 and 14.

12 MR. SOLOMON: Not ruled at all. I didn't even ask
13 the question.

14 MR. KARACSONYI: For the same reasons. You -- but
15 --

16 MR. SOLOMON: I haven't asked a question yet,
17 counsel.

18 THE COURT: 16 is it? You can --

19 MR. SOLOMON: Thank you.

20 BY MR. SOLOMON:

21 Q When did you pay the \$75,000 back to BanOne?

22 MR. KARACSONYI: The same objection.

23 THE COURT: Overruled.

24 MR. KARACSONYI: You know, we can't verify it

1 because he's not giving us the documents, the supporting
2 documents.

3 MS. FORSBERG: The Court's overruled.

4 THE COURT: But he can answer.

5 THE WITNESS: February 8th, 2012.

6 MR. KARACSONYI: This is improper, Your Honor. He's
7 refreshing his recollection before he even asked him the
8 question. He's got documents in front of him.

9 THE COURT: And why don't you testify from your
10 memory first without looking at the documents.

11 THE WITNESS: Sometime after the close of escrow
12 within 30 days I believe approximately.

13 BY MR. SOLOMON:

14 Q Okay. And did you use some of that hundred and
15 ninety-four thousand dollars that we just saw that you got out
16 of the close of escrow to do that?

17 MR. KARACSONYI: Objection.

18 A Yes.

19 MR. KARACSONYI: We requested those financial
20 documents during discovery and were provided with them.

21 THE COURT: Objection noted. He can -- he can
22 testify and the documents itself will not be admitted and it
23 becomes a probative value based on credibility and other
24 issues in the issues this Court. The Court will incorporate

1 that all in its findings. You can continue, counsel.

2 MR. SOLOMON: I would offer 16, Your Honor.

3 MS. FORSBERG: No objection.

4 MR. KARACSONYI: Objection. That's the same as 14
5 and 15. Wasn't produced. They're redacted statements. You
6 -- you can't -- this isn't --

7 THE COURT: Sustained. It will not be admitted at
8 this time.

9 MR. SOLOMON: Okay. Can I at least respond Your
10 Honor --

11 THE COURT: Sure.

12 MR. SOLOMON: -- for the record?

13 THE COURT: Sure.

14 MR. SOLOMON: Your Honor has signed an order and on
15 Page 3 of the order, Line 13 it says it's further ordered that
16 Lynita's request for a motion in limine is granted in part.
17 The Court will exclude a trial any testimony, information,
18 evidence neither requested regarding Dynasty Development
19 Management, LLC and Wyoming Downs during the course of
20 discovery which was not previously provided in response to
21 discovery or in filings with the court. This was provided in
22 filings with the court and that question --

23 MR. KARACSONYI: I agree. Previously provided. It
24 talks about her requesting during discovery and anything they

1 previously provided I agree. Hey, we had it then. We had at
2 least an opportunity to look at it but it wasn't previously
3 provided. When it was provided, it's after discovery closed.
4 If -- if that's the position, I mean, then that would be a
5 great strategy for everybody in every trial. Just start
6 producing doc -- move for summary judgment.

7 THE COURT: He's just raising the record. For this
8 time 16's not going to be admitted. The testimony can stand
9 by itself.

10 BY MR. SOLOMON:

11 Q All right. Indicated that \$75,000 was paid from the
12 hundred and ninety-four thousand dollars coming out of escrow.
13 What did Dynasty do with the remaining hundred and nineteen
14 thousand three hundred and thirty-six dollars and forty-six
15 cents?

16 A The -- for the repairs at the racetrack and
17 operation --

18 MR. KARACSONYI: Objection.

19 A -- expenses.

20 MR. KARACSONYI: Same objection.

21 THE COURT: Overruled. You can --

22 MR. KARACSONYI: He wouldn't give us financial
23 statements on the racetrack.

24 THE COURT: As far as he -- he can testify as far as

1 what the value the Court puts on it based on -- without
2 supporting documentation we'll get to the probative value on
3 that, but let's get this moving forward, so --

4 THE WITNESS: So the expenses -- to cover expenses
5 and operations of the racetrack.

6 BY MR. SOLOMON:

7 Q Okay. And was that a requirement of the mortgage,
8 Exhibit 7, at section 4?

9 A Yes.

10 Q And pursuant to that terms of Exhibit 7 mortgage,
11 who was required to pay taxes on Wyoming Downs?

12 A Wyoming -- Dynasty Development Management.

13 Q And were those taxes paid?

14 A Yes.

15 Q And pursuant to the terms of the mortgage, was
16 Dynasty required to maintain insurance on Wyoming Downs?

17 A Yes.

18 Q And were those paid?

19 A Yes.

20 Q All right. Was Dynasty able to repay the promissory
21 note when initially due on January 4, 2013?

22 MR. KARACSONYI: Objection, Your Honor. They
23 wouldn't give us any of the financial statements. They
24 wouldn't give us any bank statements, nothing to verify this

1 answer to this question.

2 MR. SOLOMON: It's the same objection over and over
3 again. It's the same argument.

4 MR. KARACSONYI: I have to make the --

5 MR. SOLOMON: It's the same --

6 THE COURT: And he still -- and he's got to make the
7 objection to each one. The supreme court said there's no
8 continuing objection so he has to do it each time on that.
9 Overruled at this time.. As far as them, we're going to get
10 this stuff out there and I'll make findings. I'll exclude --
11 evidence is not proper on that. I'll go through on that and
12 make detailed findings. But at least let's get a record so we
13 can get the matter resolved.

14 MR. SOLOMON: Thank you, Your Honor.

15 BY MR. SOLOMON:

16 Q Was Dynasty able to pay the mortgage -- I'm sorry,
17 the promissory note when initially due under accordance of
18 this terms on January 4, 2013?

19 A No.

20 Q Did you advise Henderson Capital that Dynasty could
21 not pay?

22 A Yes.

23 MR. KARACSONYI: Objection, hearsay.

24 MR. SOLOMON: What's the objection? I'm sorry.

1 MR. KARACSONYI: Plus he didn't --

2 MS. FORSBERG: Hearsay.

3 MR. KARACSONYI: Again, the same objection. It's to
4 the form of the question.

5 MR. SOLOMON: Your Honor, it's --

6 THE COURT: Overruled.

7 MR. SOLOMON: -- offered of fact.

8 THE COURT: Overruled. You can -- you can answer
9 the question.

10 BY MR. SOLOMON:

11 Q Pursuant to the terms of the promissory note which
12 is Exhibit 6 if you go back for that -- I'm sorry? Oh, I'm
13 sorry. I thought you did. Did you answer whether you advised
14 Henderson Capital that you could not pay?

15 A Yes. Could not pay.

16 Q Now would you turn to Exhibit 6? The paragraph that
17 says if upon completion of the 12 month loan period if debtor
18 fails to pay, what happened as a result of your inability to
19 make the promissory note payment on as due on January 4th,
20 2013?

21 MR. KARACSONYI: Objection.

22 A The interest increased to 18 --

23 MR. KARACSONYI: I just want to note my objection to
24 the question for the same basis that I've laid out.

1 THE COURT: Yeah, well, I'll take the objection.

2 Overruled. You can --

3 THE WITNESS: The interest rate of 18 percent kicked
4 in and they agreed to extend it.

5 BY MR. SOLOMON:

6 Q Would you turn to Exhibit 9? Is that a true and
7 correct copy of the bill of sale that accompanied the purchase
8 of the personal property associated with Wyoming Downs --

9 A Yes.

10 Q -- on or about January 5, 2012?

11 A Sorry, yes.

12 Q Is that your signature on the second page thereof on
13 behalf of Dynasty?

14 A Yes.

15 MR. SOLOMON: Offer 9.

16 MS. FORSBERG: No objection.

17 THE COURT: No objections?

18 MR. DICKERSON: No objection.

19 MR. SOLOMON: Turn to Exhibit 11.

20 THE COURT: 9 will be admitted.

21 (Intervener's Exhibit 9 admitted)

22 BY MR. SOLOMON:

23 Q Is Exhibit 11 a true and correct copy of a special
24 warranty deed that Dynasty received upon close of escrow from

1 Wyoming Racing, LLC?

2 A Yes.

3 MR. SOLOMON: Offer 11.

4 MR. KARACSONYI: No objection.

5 MS. FORSBERG: No objection.

6 THE COURT: Hereby admitted as Exhibit 11.

7 (Intervener's Exhibit 11 admitted)

8 BY MR. SOLOMON:

9 Q Turn to Exhibit 12. Is Exhibit 12 a true and
10 correct copy of an assignment and assumption agreement that
11 you received at the close of escrow transferring the
12 intangibles to Wyoming Downs to Dynasty?

13 A Yes.

14 MR. SOLOMON: Offer 12.

15 MS. FORSBERG: No objection.

16 MR. KARACSONYI: Okay. No objection.

17 THE COURT: Hereby admitted as Exhibit 12.

18 (Intervener's Exhibit 12 admitted)

19 MR. KARACSONYI: What did you describe it as?

20 MR. SOLOMON: It's an assignment and assumption of
21 the obligations related to the intangibles.

22 MR. KARACSONYI: From what? It says this is from
23 Wyoming Racing to --

24 MR. SOLOMON: Right.

1 MR. KARACSONYI: -- Dynasty.

2 MR. SOLOMON: Exactly.

3 MR. KARACSONYI: Oh.

4 BY MR. SOLOMON:

5 Q Do you believe that Lynita or the LSN Trust have any
6 interest in Wyoming Downs?

7 MR. KARACSONYI: Objection, calls for a legal
8 conclusion.

9 THE COURT: Overruled. He can give his opinion as
10 far as if they have any legal basis. The Court will decide,
11 but he can give his opinion, I guess.

12 THE WITNESS: No, I didn't think she had any
13 interest whatsoever.

14 BY MR. SOLOMON:

15 Q Why not?

16 A Because we had two separate trusts. I believe that
17 my trust was -- was run in accordance to Mr. Bertsch and Mr.
18 Gerety had showed that the trusts were separated from funding.
19 I thought I had an -- an understanding with the Court that I
20 could buy this outside of the LSN claim for community property
21 if I didn't use any of those funds. It was a gaming property
22 that she was adamantly opposed to gaming and liquor and -- and
23 they were adamantly opposed at the time that they didn't want
24 me to purchase that or not to include any of their funds, that

1 they didn't want anything to do with it. I thought it was
2 perfectly clear.

3 Q Okay. If the Court were to award Lynita or LSN
4 Trust interest in Wyoming Downs, will it create any licensing
5 issues or other issues for Wyoming Downs?

6 MR. KARACSONYI: Objection, lack of foundation.
7 Calls for speculation and legal conclusion.

8 THE COURT: Overruled. He can answer. I think
9 we've gone through this with the Mississippi Gaming and the
10 licensing -- the game and license, but he can give his
11 understanding of whether it's accurate or not on that, but I
12 do know about the licensing and who's on it, if you got gaming
13 license, anybody else on it that has to be approved that they
14 we went through this, added for item on the Mississippi
15 property for licensing. So he can answer for what it's worth.
16 You can answer it.

17 THE WITNESS: After what prior experiences of having
18 about 15 different gaming licenses, Lynita never participated
19 in any of them, because she would have had to have gotten the
20 license.

21 MR. DICKERSON: It's non-responsive, Your Honor.
22 He's non-responsive to the question.

23 THE COURT: Restate the question for him.

24 BY MR. SOLOMON:

1 Q Yeah, the question is would an award of this
2 property to Lynita or LSN create any licensing or other issues
3 for you? Can you speak to that?

4 A I believe it would have severe impact on the
5 facility because she is a non-licensee. And she would have to
6 get licensed.

7 Q What specifically would be the issue?

8 A The issue would be you would have several owners
9 that would be fighting going into a privileged license
10 scenario which the -- I believe the gaming commission would be
11 hard pressed to allow warring factions as you would say to be
12 involved in a license like that.

13 MR. KARACSONYI: Objection, he's speculating Your
14 Honor on what the --

15 MR. DICKERSON: Move to strike.

16 MR. KARACSONYI: -- register.

17 THE COURT: Sustained.

18 BY MR. SOLOMON:

19 Q In addition to the gaming license that's held and
20 with respect to this property, are there liquor licenses?

21 MR. KARACSONYI: Objection, Your Honor. They
22 refused to produce any licenses or a license application
23 during the course of discovery.

24 MR. SOLOMON: The same -- still testified to --

1 MR. KARACSONYI: So he can --

2 MR. SOLOMON: -- his personal knowledge.

3 MR. KARACSONYI: So they can just deny us all the
4 documents and just have him testify as whatever he wants to
5 make up.

6 MR. SOLOMON: Then file a motion to compel if you
7 think he can --

8 MR. KARACSONYI: Motion to compel. That's -- that's
9 equitable. So he can say get lost and then we're stuck.

10 THE COURT: As far as that, I'm -- the value that
11 the Court puts on his testimony based on past history without
12 the cooperating documents is a matter for credibility and
13 determination on that. Then again, I'll look at everything
14 and we'll get a nice record set and I'll look at your --
15 everything you asked and determined what should have been
16 provided or not provided. But I want to get a nice record
17 going because we sure may not end here. So I want to get a
18 nice record so any other court can do what they need to do.
19 BY MR. SOLOMON:

20 Q It's a liquor license.

21 A Yes, it is a liquor license.

22 Q Is that a privileged license also?

23 A That is definitely a privileged license.

24 Q Has Lynita ever to your knowledge obtained a liquor

1 license?

2 A 100 percent not.

3 MR. KARACSONYI: Objection, calls for speculation.

4 A That I'm aware of.

5 THE COURT: Overruled. I think we talked about the
6 licensing and the Mississippi and Ms. Lynita said she could
7 apply and get licensing, just go to the formality. I think
8 she said she was willing to do it as far as the Mississippi
9 property. So I'm very familiar with the licensing that's been
10 -- you can continue, counsel.

11 BY MR. SOLOMON:

12 Q Now would you turn to Exhibit 13? Can you recall
13 that Mr. Bertsch filed a report to the Court a source of
14 application and funds through -- pursuant in April 10, 2012
15 hearing?

16 A Yes.

17 Q An opportunity to review that in the past?

18 A I have.

19 Q Direct your attention to a page or two. There is
20 exhibits behind this report. And the first exhibit is -- I
21 want you to look at is --

22 MR. DICKERSON: Do you want to offer this first? We
23 have no objection.

24 MR. SOLOMON: It's already been submitted to the

1 Court.

2 MR. DICKERSON: Yeah, we have no objection.

3 MR. SOLOMON: It's in the court record.

4 MR. DICKERSON: We have no objection for it coming
5 in to as evidence.

6 MR. SOLOMON: Fine. It's offered. I --

7 MS. FORSBERG: No objection.

8 THE COURT: Exhibit 13?

9 MR. KARACSONYI: Yeah, I think it's already been
10 admitted to the last -- it was admitted last time.

11 THE COURT: Hereby admitted as Exhibit Number 13.

12 (Intervener's Exhibit 13 admitted)

13 BY MR. SOLOMON:

14 Q All right. Would you turn to Exhibit D-4? It's the
15 separating pages about old exhibit D -- no, B-4.

16 A Okay. B-4?

17 Q Yes.

18 A Yes.

19 Q And have you got to the page behind that cover
20 sheet, the actual report?

21 A Yes, I have it.

22 Q All right. So it's three-quarters down at the left.
23 It says applications. Do you see that?

24 A Yes.

1 Q And it says Wyoming Downs asset. Do you see that
2 line?

3 A Yes.

4 Q And then to the right of that on -- in November of
5 2011 which was the date you previously testified deposited
6 \$75,000 earnest money. Is that the -- it shows \$75,000. Is
7 that the \$75,000 that was used for the earnest money?

8 A Yes.

9 Q At any time prior to the divorce being entered on
10 June 3rd, 2012 --

11 MR. KARACSONYI: 13. 13.

12 MR. SOLOMON: 13. I'm sorry. I'm a year off.

13 Q Had Dynasty or anybody else made any payment on the
14 Henderson Capital loan other than the prepayment of a hundred
15 thousand dollars?

16 MR. KARACSONYI: Objection, same objection. They
17 wouldn't give us any documents.

18 THE COURT: I'll note the objections. It's
19 overruled. You can answer.

20 THE WITNESS: No.

21 MR. SOLOMON: No further questions.

22 MR. KARACSONYI: Can I take a quick recess to use --

23 THE COURT: Take a five minute break, bathroom
24 break.

1 (Off record)

2 THE COURT: Okay. Now we're back on the record.

3 This is the continuation of the Nelson matter, case number
4 D-411537. We took a brief recess. We're ready to pick up
5 with our cross examination.

6 CROSS EXAMINATION

7 BY MR. KARACSONYI:

8 Q Okay. Mr. Nelson, you formed Dynasty Development
9 Management on April 25th, 2011, correct?

10 A I believe that to be correct, yes.

11 Q And that was prior to the entry of the divorce
12 decree in this matter, correct?

13 A Yes.

14 Q And you testified that the initial sole member of
15 Dynasty was the ELN Trust, correct?

16 A Yes.

17 Q And you are the investment trustee of the ELN Trust?

18 A Yes.

19 Q You're also the sole manager of Dynasty.

20 A Yes.

21 Q And you -- you indicate that you formed Dynasty to
22 hold assets you were going to attempt to purchase, correct?

23 A Yes.

24 Q And you actually make the decisions with respect to

1 the investments of Dynasty.

2 A Yes.

3 Q And on November 16th you entered into a contract to
4 purchase Wyoming Downs. November 16, 2011 you entered into a
5 contract to purchase Wyoming Downs.

6 A On November?

7 Q Yes.

8 A No, actually said April. On November, yes.

9 Q And Wyoming Downs it consists of a racetrack?

10 A Yes.

11 Q Approximately 200 acres.

12 A Yeah, a hundred and eighty-six acres.

13 Q Grandstand seating for individuals.

14 A Yes.

15 Q Okay. Horse stalls or stables.

16 A Yes.

17 Q Trainers areas.

18 A Yes.

19 Q Okay. And you obtained the property in an auction
20 you indicated, correct?

21 A Correct.

22 Q Okay. And at the auction you actually brought with
23 you 75,000 but you indicated it was for BanOne, LLC, correct?

24 A Yes.

1 Q Okay. And the 75,000 that you brought from BanOne,
2 LLC was your earnest money deposit.

3 A Yes.

4 Q That you indicated that putting that as an earnest
5 money deposit was risky because it could be lost if you
6 couldn't finish -- complete the transaction, correct?

7 A Yes.

8 Q And it's true though that actually you didn't
9 request permission from the Court to dissolve the injunction
10 over the 1.5 million until November 29th, 2011, correct?

11 A I believe that to be true.

12 Q So it wasn't until after you had already given the
13 deposit that you requested permission to release the funds to
14 complete the purchase, correct?

15 A Yes.

16 Q Okay. And it was your decision as investment
17 trustee to participate in the auction, correct?

18 A Yes.

19 Q And you bid on Wyoming Downs because you thought it
20 was a good investment.

21 A Yes.

22 Q Now the promissory note that we looked at indicates
23 that it was for 700,000, correct?

24 A Yes.

1 Q But you actually had to pay a hundred thousand
2 immediately upon the sale according to -- or upon the
3 signature of the promissory note, correct?

4 A Yeah, preparing interest, yes.

5 Q So a hundred thousand was paid to Henderson capital
6 group for the -- for the initial -- to -- to prepay the
7 interest, correct?

8 A Yes, and he's funded 600,000.

9 Q And -- and okay. And -- and they received their
10 initial hundred thousand dollar payment, is that correct?

11 A Yes.

12 Q Okay. And prior to the time that you acquired title
13 to Wyoming Downs or Dynasty acquired title to Wyoming Downs,
14 Dynasty didn't own any other assets, correct?

15 A Not that I'm aware of.

16 Q That was actually the first asset that Dynasty
17 acquired, correct?

18 A Yes.

19 Q Frank Lamb is -- was an executive director of
20 Wyoming Pari-Mutuel Commission at one point, correct?

21 A Yes.

22 Q Okay. And you actually in 2000 -- in 2012 Frank
23 Lamb was paid from the ELN Trust \$12,067.33, correct?

24 A I'm not sure.

1 Q Okay. Can you turn to Exhibit 13? And I'd like you
2 to turn to the 2012 consolidated detail.

3 A I'm sorry, in what exhibit?

4 Q That would be Exhibit C-4.

5 A C-4?

6 Q Yes.

7 A I have C-4.

8 Q Okay. And if you turn to the second page, you'll
9 see a category called and other individuals. Do you see that?
10 Brianna Ramos (ph) --

11 A Yes.

12 Q -- stated here. And if you look at the last
13 individual listed there by Mr. Bertsch, it's Frank Lamb,
14 correct?

15 A Yes.

16 Q And it shows there that \$12,067.33 was paid to Mr.
17 Lamb during 2012, correct?

18 A Yes.

19 Q Okay. And if you look further down that you
20 testified that the only monies that were paid to Henderson
21 Capital Group were the 75,000, correct? And the hundred
22 thousand.

23 A And where -- where are you looking?

24 Q Is that -- that was your testimony, correct?

1 A I'm sorry?

2 Q That you only paid the Henderson Capital for the
3 note only received the 75,000, correct?

4 A I'm sorry? I didn't understand the question.

5 Q That Henderson Capital only received the hundred
6 thousand dollar prepayment of interest was the only monies
7 they received for the -- for the note, correct?

8 A Well, you mean at time of funding?

9 Q Yes.

10 A They -- yeah, they had the money returned to them
11 plus they have -- we've had some closing costs I'm sure.

12 Q But you also indicated that prior to the -- prior to
13 the divorce -- or prior to the 12 month period that they
14 didn't receive any other monies, correct?

15 A That they didn't receive any monies whether the
16 closing costs if you're interpreting legal costs or closing
17 costs, I'm not sure.

18 Q If you look here, the -- if you look at other
19 companies, the last one listed is Henderson Capital Group,
20 LLC, correct?

21 A Yes.

22 Q And it indicates that actually 2500 was paid to
23 them, correct?

24 A Yes.

1 Q Okay. Now if you'll go to the 2012 consolidated
2 report which is Exhibit B-2.
3 A I'm sorry?
4 Q B-2 of Exhibit 13.
5 A B -- B-2?
6 Q Yes.
7 A Okay. Okay. I have it.
8 Q If you look there under applications, do you see
9 those applications?
10 A Yes.
11 Q And it lists Wyoming Downs for 2012 \$4800, correct?
12 A Under applications?
13 Q Yes.
14 A I don't see it.
15 Q Wyoming Downs asset --
16 A That's a blank.
17 Q Okay. Maybe we're on the -- the -- are you on
18 Exhibit B2?
19 A Now Exhibit B2.
20 Q B5. I'm sorry.
21 A That's all right. That's all right. B5.
22 Q I read it backwards.
23 A Okay. I have it.
24 Q Now if you go down to applications --

1 A Yes.

2 Q -- and you see Wyoming Downs, it lists that the 4800
3 was paid from the ELN Trust towards Wyoming Downs in 2012,
4 correct?

5 A Yes.

6 Q Okay. And that was in March 2012, correct?

7 A Yes.

8 Q Okay. And then if you go to the 2011 consolidated
9 which is the exhibit immediately prior to Exhibit 13 before.

10 A Yes.

11 Q It lists there for 2011 76,000 paid for Wyoming
12 Downs.

13 A Yes.

14 Q Now if you can go to the -- what other questions on
15 that one? Okay. I'd like to show you what I'm going to now
16 have be our Exhibit K.

17 A Thank you.

18 Q Sorry, I'm having --

19 MS. FORSBERG: Is this an additional exhibit in --
20 in addition --

21 MR. KARACSONYI: Yes.

22 MS. FORSBERG: -- to your book? Do you have a copy?

23 MR. KARACSONYI: Yeah.

24 MS. FORSBERG: Can you pass that down?

1 MR. KARACSONYI: But these are -- I'm going to
2 represent to you these are the answers, the distribution
3 trustee's answers to Lynita Nelson's first set of request for
4 productions of documents regarding Wyoming Downs. Do you guys
5 have any objection to this? Obviously you produced it to
6 production.

7 MR. SOLOMON: No objection.

8 MR. KARACSONYI: Okay.

9 MS. FORSBERG: No objection.

10 MR. KARACSONYI: Now I move to admit this to show
11 the -- the scope of not all the individual documents but the
12 scope of the responses, Your Honor.

13 THE COURT: Any objection?

14 MR. SOLOMON: No objection.

15 MS. FORSBERG: No objection.

16 THE COURT: Hereby admitted as Exhibit K.

17 (Defendant's Exhibit K admitted)

18 BY MR. KARACSONYI:

19 Q If you can turn to Page 3, you see request number
20 two was please produce copies of all financial statements
21 prepared for Dynasty Development Management, LLC, the Wyoming
22 Downs racetrack and any and all other business entities
23 including but not limited to corporations, limited liability
24 companies and partnerships owned or managed by you which

1 showed an interest or have held an interest at any time during
2 the past three years in the real property and racetrack known
3 as Wyoming Downs or any other real property situated in the
4 state of Wyoming during 2011, 2012 and the current calendar
5 year to date including but not limited to interim financial
6 statements prepared for the purpose of obtaining a loan,
7 credit line or credit rating during such time period.

8 And the response, correct, was objection, this
9 request seeks documents that are neither relevant to the
10 December 11, 2013 evidentiary hearing nor calculated to lead
11 to the discovery of admissible evidence. Further, financial
12 statements is not a defined term. This request also seeks
13 confidential and proprietary information which would cause
14 Dynasty Development Management, LLC irreparable harm if
15 disclosed to third parties, correct?

16 A Is that a question?

17 Q Yes, was that the response -- that was the response.
18 I -- I read that correctly.

19 A I didn't say objection, but it was a --

20 Q Did I read that correctly?

21 A I believe so, yes.

22 Q Okay. And it doesn't indicate here that any
23 documents have been provided in response to this request,
24 correct?

1 A Not that I'm aware of.

2 Q Now I want to show you for a second -- I'm going to
3 go through the rest of those. Exhibit -- if you could turn to
4 our Exhibit -- do you have our exhibit book up there? I
5 apologize.

6 A These two.

7 Q The -- the other book?

8 MR. KARACSONYI: And maybe I have an extra -- no?

9 THE MARSHALL: Yeah, I had to place two of them --

10 MR. KARACSONYI: Oh, okay. Yeah, I brought an extra
11 copy. Okay. Yes. This is correct.

12 THE MARSHALL: So this is the one.

13 THE WITNESS: Okay.

14 MR. KARACSONYI: Yes. Oh, did I have -- did I give
15 a copy to the Court to mark and admit? Okay.

16 THE MARSHALL: You did --

17 THE CLERK: The Judge has one.

18 MR. KARACSONYI: Oh, okay. The witness -- can we
19 use the witnesses? Just keep it -- that way he can look at
20 the -- thank you.

21 MR. DICKERSON: We may have an extra one over here I
22 think. There was one -- are we missing one?

23 THE MARSHALL: Do you have a big binder? Remember,
24 that we gave you this one.

1 MS. FORSBERG: Oh, okay. Just making sure.
2 THE MARSHALL: Just in case you needed to see that.
3 THE WITNESS: Yeah. Thank you.

4 BY MR. KARACSONYI:

5 Q Okay. And I want to turn also then to Exhibit H.

6 A H?

7 Q Yes.

8 MR. KARACSONYI: Sorry, will you stipulate to this
9 one or do I need to do that?

10 MR. SOLOMON: Well, wait. Are you offering it?

11 MR. KARACSONYI: Yes.

12 MR. SOLOMON: Yes, of course I'll stipulate to it.

13 MS. FORSBERG: No objection.

14 THE COURT: Hereby admitted as Exhibit H.

15 (Defendant's Exhibit H admitted)

16 BY MR. KARACSONYI:

17 Q Now you were -- the -- there was a subpoena served
18 upon Dynasty Development Management for the person most
19 knowledgeable regarding the ownership and acquisition of
20 Wyoming Downs, correct?

21 A Yes.

22 Q And there was also a subpoena served upon you
23 individually to appear for a deposition, correct?

24 A Yes.

1 Q And actually, those two -- those two depositions
2 were consolidated to one time and location because you were
3 the person to serve as both -- for both deponents.

4 A I believe so.

5 Q So you were actually the person designated as the
6 person most knowledgeable about the ownership and acquisition
7 of Wyoming Downs, correct?

8 A Yes.

9 Q Now if you'll turn to Exhibit G.

10 A I have it.

11 Q Now these are actually your responses to the request
12 for production in your individual capacity, correct?

13 A I believe so.

14 MR. KARACSONYI: I move to admit that exhibit as
15 well, Your Honor. Exhibit G.

16 MR. SOLOMON: We have no objection.

17 MS. FORSBERG: No objection.

18 THE COURT: Hereby admitted as Exhibit G.

19 (Defendant's Exhibit G admitted)

20 BY MR. KARACSONYI:

21 Q And I would look -- like you to look at Exhibit G
22 and Exhibit K.

23 A I don't have a K.

24 Q The K is the one that we handed you, the packet.

1 A Okay.

2 Q Oh, okay. Now you -- you responded to the same
3 request for production that -- that the ELN Trust was served
4 with, correct?

5 A I believe so.

6 Q And if you look -- your response to the request
7 number two that we previously read was objection, this request
8 seeks documents that are neither relevant to the December 11,
9 2013 evidentiary hearing nor calculated to lead to the
10 discovery of admissible evidence. Further, financial
11 statements is not a defined term. This request has been
12 responded to an Eric L. Nelson Nevada Trust distribution
13 trustee's answer to Defendant Lynita Sue Nelson's first set of
14 request for production of documents regarding Wyoming Downs
15 and Eric L. Nelson individual hereby incorporates the response
16 of the distribution trustee as if set forth for the hearing,
17 correct? That was your response.

18 A My response?

19 Q Yes.

20 A Well, someone typed it. I mean, I didn't say all
21 that.

22 Q But this is -- this is a response submitted on
23 behalf of you, correct?

24 A Oh, yes.

1 Q Now if you turn to Exhibit K.

2 A K.

3 Q First of all to your knowledge, were any financial
4 statements for Dynasty Development or Wyoming Downs ever
5 produced to us?

6 A I believe we gave you the closing statements and the
7 purchasing the facility, purchasing. And the closing
8 documents.

9 Q Okay. But nothing further, correct?

10 A I don't believe anything further.

11 Q Okay. Now request Number 3 requested -- and this is
12 the same whether you're looking at Exhibit K or Exhibit G, but
13 because you're both responding. But please produce a copy of
14 all tax information, tax returns, postdate and federal and all
15 declarations of estimate of tax prepared by or on behalf of
16 Dynasty Development Management, LLC or any and all other
17 business entities including but not limited to corporations,
18 limited liability companies and partnerships owned or managed
19 by you which hold an interest or have held an interest at
20 anytime during the past three years in Wyoming Downs or any
21 and other real property situated in the state of Wyoming
22 during 2011, 2012 and the current calendar year-to-date
23 included but not limited to K1 statements.

24 This request includes without limitation all drafts

1 of any such documentation during such period of time. This
2 request further includes but is not limited to correspondence
3 or other statements or documents received from the IRS or any
4 -- Internal Revenue Service or any other taxing authority
5 regarding any tax liability, credit, debt, interest,
6 assessment or penalty during such period of time. That was
7 the request, correct?

8 A Yes.

9 Q Okay. And the response by the ELN Trust was
10 objection, this request seeks documents that are neither
11 relevant to the December 11, 2013 evidentiary hearing nor
12 calculate to lead to the discovery of admissible evidence.
13 Further, this request seeks confidential and proprietary
14 information which would cause Dynasty Development Management,
15 LLC irreparable harm if disclosed to third parties, correct?

16 A Yes.

17 Q Okay. And your -- your response turning to Exhibit
18 G was basically incorporating the same response of the
19 distribution trustee, correct?

20 MR. SOLOMON: Your Honor, this is taking a lot of
21 unnecessary time. The documents are in. They're not objected
22 to. Counsel are going to argue. They say what they say. All
23 he's asking is what this says, quoting it and asking is that
24 what it says. There's no followup questions. This is --

1 MR. DICKERSON: What's the objection?
2 MR. SOLOMON: The objection is that it's --
3 MS. FORSBERG: The document speaks for itself.
4 MR. SOLOMON: -- meaningless. It is --
5 MR. DICKERSON: I don't recall that --
6 MR. SOLOMON: It's not --
7 THE COURT: I think he's --
8 MR. SOLOMON: It's already in evidence. It's --
9 THE COURT: I think he's --
10 MR. SOLOMON: -- subject to argument, but no need to
11 waste our Court's time reading documents that are in evidence
12 and are not adding anything to it.
13 MR. DICKERSON: I don't remember learning that
14 objection in evidence.
15 THE COURT: Overruled. He can lay a thing on there
16 to show his basis for why he thinks the Court should not admit
17 the evidence, testimony or otherwise.
18 MR. KARACSONYI: Yeah, his prior testimony about the
19 financials.
20 THE COURT: Now you said Exhibit G?
21 MR. KARACSONYI: Yeah, I was going -- but I'm going
22 back and forth between Exhibit G and K. They're the same
23 request, but they're different responses. They're the same --
24 they're -- they're his responses and the ELN Trust response.

1 THE COURT: Well, I got -- maybe I got it wrong. I
2 got G as affidavit of Eric Nelson and a response to order to
3 show cause. I think we have a different -- we have --

4 MR. KARACSONYI: Oh, that's -- I think you have it
5 for the last evidentiary hearing.

6 THE COURT: So you didn't give us one for this one?

7 MR. KARACSONYI: I thought I did.

8 THE COURT: This is the one they gave me, but this
9 is the one from the last one. Okay. That's why.

10 MR. LUSZECK: We dropped off --

11 THE COURT: Okay. This is the one they -- think
12 they sent the wrong one down.

13 THE CLERK: Yeah.

14 THE COURT: My law clerk's not here today, so I
15 think they sent the wrong exhibit book. Do you have an extra
16 one? If not, send an email to Laurie to get it down.

17 THE CLERK: Do you need an extra one?

18 THE COURT: Yeah, you must -- you dropped it off.
19 She must have sent the wrong one --

20 MR. KARACSONYI: Yeah, we --

21 THE COURT: -- because the law clerk's not there.

22 MR. KARACSONYI: Yes. Sorry, Your Honor.

23 THE COURT: That's okay.

24 MR. KARACSONYI: Okay. Exhibit G. And then K is

1 the one we brought in by hand.

2 THE COURT: You brought.

3 BY MR. KARACSONYI:

4 Q And to your knowledge, no -- none of these tax
5 record -- no such tax records have been produced to us, is
6 that correct?

7 A That's correct.

8 Q Now request number four requested all account --
9 please produce all accounting records, e.g., general ledgers,
10 general journals, cash disbursement journals, et cetera, for
11 Dynasty Development Management, LLC, the racetrack and/or real
12 property known as Wyoming Downs or any and all other business
13 entities including but not limited to corporations, limited
14 liability companies and partnerships owned or managed by you
15 which hold an interest or have held an interest at any time
16 during the past three years in Wyoming Downs or any other real
17 property situated in the state of Wyoming for the business
18 years beginning January 1, 2011 through the present showing
19 all transactions occurring during such period -- said period
20 of time, correct?

21 A That's correct.

22 Q And the response from the ELN Trust was objection,
23 this request seeks documents that are neither relevant to the
24 December 11, 2013 evidentiary hearing nor calculated to lead

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, Distribution Trustee
of the Eric L. Nelson Nevada Trust dated
May30, 2001,

Appellant/Cross Respondent.

vs.

LYNITA SUE NELSON, Individually and in
her capacity as Investment Trustee of the
LSN NEVADA TRUST dated May 30,
2001; and ERIC L. NELSON, Individually
and in his capacity as Investment Trustee of
the ELN NEVADA TRUST dated May 30,
2001;

Respondents/Cross-Appellants.

MATT KLABACKA, as Distribution
Trustee of the Eric L. Nelson Nevada Trust
dated May30, 2001,

Appellants,

vs.

ERIC L. NELSON; LYNITA SUE
NELSON, INDIVIDUALLY; AND LSN
NEVADA TRUST DATED MAY 30, 2001,

Respondents.

Supreme Court Case No. 66772

District Court Case No. D-09-

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**RECORD ON APPEAL
VOLUME 22**

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Supreme Court Case 66772 Consolidated with 68292 In the Matter of: Klabacka v. Nelson et al.

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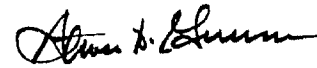
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7	07/11/2011	Notice of Filing Income and Expense Reports for: (1) Banone, LLC and (2) Dynasty Development Group	1684 - 1712
10	02/16/2012	Notice of Filing Source and Application of Funds for Banone-AZ, LLC	2362 – 2389
11	04/11/2012	Notice of Filing Source and Application of Funds for Dynasty Development Group, LLC	2645 – 2677
9	12/08/2011	Notice of Filing Source and Application of Funds for Eric L. Nelson Nevada Trust	2060 - 2095
11	04/23/2012	Notice of Filing Source and Application of Funds Pursuant to April 10, 2012 Hearing	2678 – 2709
8	10/03/2011	Notice of Filing Summary Appraisal Report of +202.50 Acres of Agricultural/Residential Land (Uinta County, Wyoming)	1854 - 1859
8	10/06/2011	Notice of Submission of First Billing for Fees and Expenses of Forensic Accountants	1860 -1884
11	04/09/2012	Opposition to Countermotion for Receiver, Additional Injunction and Fees and Costs	2630 – 2642
21	08/23/2013	Opposition to Imposition of Charging Order and Appointment of Receiver	5043 – 5066
10, 11	03/26/2012	Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2495 – 2594
20	06/18/2013	Opposition to Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert; and Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	4799 – 4812
16	07/20/2012	Opposition to Motion in Limine to Exclude to Exclude from Trial the Testimony and Report of Daniel T. Gerety, CPA, Layne T. Rushforth, Esq. and Any Purported Experts Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trusts' Pre-Trial Memorandum; and Counter-Motion to Continue Trial and for Attorneys' Fees and Costs	3803 – 3838

8, 9	12/01/2011	Opposition to Motion to Dismiss and Countermotion for an Award of Attorneys' Fees and Costs	2000 - 2040
9	12/07/2011	Opposition to Motion to Dissolve Injunction and Countermotion for an Aware of Attorneys' Fees and Costs	2041 - 2059
30	07/11/2012	Order entered in Case D-09-411537-D	7471 - 7479
20	06/19/2013	Order for Payment of Funds Pursuant to June 3, 2013 Decree of Divorce	4847 - 4850
30	08/09/2011	Order in Case No. D-09-411537-D	7400 - 7402
6	11/17/2010	Partial Transcript, Non-Jury Trial, November 17, 2010	1256 - 1435
6	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1436 - 1499
6, 7	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1500 - 1605
21	09/27/2013	Plaintiff Eric Nelson's Response to Lynita's Response to Court Ordered Accountings Provided by Eric Nelson	5242 - 5246
19	08/31/2012	Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001	4551 - 4610
30	01/28/2005	Promissory Note in favor of Lana Martin	7488
30	01/28/2005	Promissory Note in favor of Robert A. Martin	7489
29	09/25/1999	Real Estate Records for 5220 E. Russell Road, Las Vegas, Nevada (UUUU)	7017 - 7049
	06/06/2013	Receipt of Copy regarding Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4753 - 4754
8	09/19/2011	Reply to Counterclaim and Answer to Cross - Claim	1802 - 1805
24, 25	01/14/2015	Reply to ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Eric Nelson's Opposition to Defendants Motion to Enforce June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Opposition to Eric Nelson's Countermotion	5941 - 6076
11	05/22/2012	Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by Eric Nelson	2713 - 2738
22	10/14/2013	Reply to Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs	5255 - 5265

20	07/11/2013	Reply to Opposition to Defendant's Motion to Amend or Alter Judgement, for Declaratory and Related Relief and Joinder to Opposition	4851 – 4869
21	08/30/2013	Reply to Opposition to Imposition of Charging Order and Appointment of Receiver and Requests for Injunction and Fees and Costs	5067 – 5087
11	04/04/2012	Reply to Opposition to Motion for Payment of Attorneys' Fees and Costs	2595 – 2623
9	12/09/2011	Reply to Opposition to Motion to Dismiss and Countermotion for An Aware of Attorneys' Fees and Costs	2096 - 2123
9	12/09/2011	Reply to Opposition to Motion to Dissolve Injunction and Opposition to Countermotion for an Aware of Attorneys Fees and Costs	2124 -2139
22	10/15/2013	Reply to Plaintiff Eric Nelson's Response to Court Order Accountings	5266 - 5287
27, 28, 29	07/05/2012	Report of Gerety & Associates (Admitted as Intervenor Trial Exhibit 168)	6550 – 7014
21	08/30/2013	Response to Court Order Accountings Provided by Eric Nelson	5088 – 5147
19	09/28/2012	Response to Defendant Lynita S. Nelson's Post-Trial Memorandum on Trust Issues	4628 – 4657
29	01/21/2002	Soris Original Mortgage – (Wyoming Property) – (Admitted as Nelson Exhibit 41C)	7050 – 7068
8	08/24/2011	Summons directed to Eric Nelson	1779 -1782
8	08/24/2011	Summons directed to Lynita Sue Nelson	1783 -1786
11	04/05/2012	Supplement to Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2624 – 2629
	10/08/2012	Supplement to Verified Memorandum of Attorneys' Fees and Costs	4658 – 4682
26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
12	07/06/2012	The Eric L. Nelson Nevada Trust's Pretrial Memorandum	2783 – 2849
26	07/13/1993	The Eric L. Nelson Separate Property Trust (Admitted as Intervenor Trial Exhibit 7)	6313 – 6341
26	05/30/2001	The LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 25)	6395 - 6433
26	07/13/1993	The Nelson Trust (Admitted as Intervenor Trial Exhibit 5)	6283 - 6311
20, 21	08/01/2013	Transcript Re: All Pending Motions	4991 – 5039
21	09/05/2013	Transcript Re: All Pending Motions	5154 – 5229
22	10/21/2013	Transcript Re: All Pending Motions	5288 – 5347
25	01/26/2015	Transcript RE: All Pending Motions	6077 – 6225
22, 23	06/04/2014	Transcript RE: Decisions	5495 – 5552

20	06/19/2013	Transcript Re: Motion	4813 – 4846
20	07/22/2013	Transcript Re: Motion	4876 – 4990
10	02/23/2012	Transcript regarding Decision	2390 – 2424
10	01/31/2012	Transcript relating to Motion	2273 – 2361
4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
4, 5, 6	10/20/2010	Transcript, Non-Jury Trial, October 20, 2010	991 – 1255
1, 2	08/30/2010	Transcript, Non-Jury Trial, Volume 1 from August 30, 2010	40 – 258
2	08/31/2010	Transcript, Non-Jury Trial, Volume 2 from August 31, 2010	259 - 441
2, 3	08/31/2010	Transcript, Non-Jury Trial, Volume 3 from August 31, 2010	442 – 659
3,4	09/01/2010	Transcript, Non-Jury Trial, Volume 4 from September 1, 2010	660 –848
13, 14	07/17/2012	Trial Transcript Re: Non-Jury Trial	3181 – 3406
14, 15	07/18/2012	Trial Transcript Re: Non-Jury Trial	3407 – 3584
22	05/30/2014	Trial Transcript RE: Non-Jury Trial	5348 – 5494
15	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3585 – 3714
16	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3839 – 3943
17	07/24/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4050 – 4187
18	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4279 – 4447
15, 16	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3715 – 3802
16, 17	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3494 -4049
17, 18	07/24/2013	Trial Transcript Re: Non-Jury Trial – Vol. II	4188 – 4278
18, 19	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	4448 -4514
12, 13	07/16/2012	Trial Transcript Volume I	2930 – 3120
13	07/16/2012	Trial Transcript Volume II	3121 – 3180
26	02/17/2009	Trust Agreement of the Total Amendment and Restatement of the Nelson Trust (Admitted as Intervenor Trial Exhibit 14)	6351 – 6381
30	03/31/2011	Trust Ownership-Distribution Report of Larry Bertsch (Admitted as Exhibit GGGGG at Tab 9)	7397 – 7399
19	09/28/2012	Verified Memorandum of Attorneys' Fees and Costs	4611 – 4627



CLERK OF THE COURT

1 **ORDR**
2 **THE DICKERSON LAW GROUP**
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12 **Attorneys for LYNITA SUE NELSON**

13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **FAMILY DIVISION**

15 **CLARK COUNTY, NEVADA**

16 **ERIC L. NELSON,**)
17)
18 **Plaintiff/Counterdefendant,**)
19 **v.**)
20)
21 **LYNITA SUE NELSON,**)
22 **Defendant/Counterclaimant.**)

CASE NO. D-09-411537-D
DEPT NO. "O"

23 **ERIC L. NELSON NEVADA TRUST**)
24 **dated May 30, 2001, and LSN NEVADA**)
25 **TRUST dated May 30, 2001,**)
26)
27 **Necessary Parties (joined in this**)
28 **action pursuant to Stipulation and**)
29 **Order entered on August 9, 2011)**)

30 **LANA MARTIN, as Distribution Trustee of**)
31 **the ERIC L. NELSON NEVADA TRUST**)
32 **dated May 30, 2001,**)
33)
34 **Necessary Party (joined in this action)**)

pursuant to Stipulation and Order)
entered on August 9, 2011)/ Purported)
Counterclaimant and Crossclaimant,)

V.

LYNITA SUE NELSON and ERIC
NELSON,

Purported Cross-Defendant and Counterdefendant

LYNITA SUE NELSON,

Counterclaimant, Cross-Claimant,
and/or Third Party Plaintiff,

V.

ERIC L. NELSON, individually and as the)
Investment Trustee of the ERIC L. NELSON)
NEVADA TRUST dated May 30, 2001; the)
ERIC L. NELSON NEVADA TRUST dated)
May 30, 2001; LANA MARTIN, individually,) and as the current and/or former Distribution)
Trustee of the ERIC L. NELSON NEVADA)
TRUST dated May 30, 2001, and as the)
former Distribution Trustee of the LSN)
NEVADA TRUST dated May 30, 2001);)

Counterdefendant, and/or
Cross-Defendants, and/or
Third Party Defendants.

ORDER FROM SEPTEMBER 4, 2013 HEARING
REGARDING PAYMENT OF LINDELL PROFESSIONAL PLAZA INCOME

This matter coming on for a Status Check hearing on this 4th day of September, 2013 before the Honorable Frank P. Sullivan; Robert P. Dickerson, Esq., Katherine L. Provost, Esq., and Josef M. Karacsonyi, Esq., of the Dickerson Law Group, appearing

1 on behalf of Defendant, Lynita Nelson, and Defendant being present; Rhonda K.
2 Forsberg, Esq., of Radford K. Smith, Chtd., appearing on behalf of Plaintiff, Eric
3 Nelson, and Plaintiff being present; and Jeffrey P. Luszeck, Esq., of Solomon, Dwiggin
4 & Freer, Ltd., appearing on behalf of the Distribution Trustee of the Eric L. Nelson
5 Nevada Trust. The Court having received and reviewed the papers on file herein, and
6 having heard the arguments of counsel and the parties, and good cause appearing
7 therefore,

8 THE COURT HEREBY ORDERS that Eric and/or the ELN Trust shall pay to
9 Lynita and/or the LSN Trust one-half (1/2) of the net income collected by the Lindell
10 Professional Plaza on an ongoing monthly basis, such monthly payments occurring on
11 or before the first (1st) of each month, beginning October 1, 2013 (which shall be
12 payment of the August 2013 net income).

13 IT IS FURTHER ORDERED that Eric and/or the ELN Trust shall continue to
14 account for all income and expenses of the Lindell Professional Plaza on an ongoing
15 monthly basis and shall provide Lynita and her counsel with a copy of a monthly
16 accounting simultaneously with each payment to Lynita and/or the LSN Trust as
17 required by the foregoing Order.

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1 IT IS FURTHER ORDERED that this Court shall defer its ruling on the
2 propriety of any reductions in the gross income which have been deducted by Eric
3 and/or the ELN Trust prior to payment to Lynita and/or the LSN Trust of one-half
4 (1/2) of the net income collected by the Lindell Professional Plaza during the period
5 of time January 1, 2010 through July 31, 2013, and shall review the papers submitted
6 by the parties concerning this issue, with a ruling on the issue anticipated at the
7 scheduled October 2, 2013 hearing.

8 DATED this 23rd day of September, 2013.

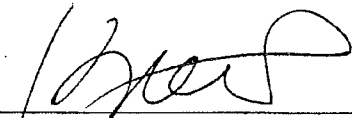
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11 DISTRICT COURT JUDGE kg
FRANK P SULLIVAN

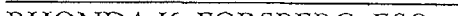
12 Submitted by:

Approved as to Form and Content:

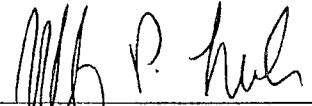
13 THE DICKERSON LAW GROUP

LAW OFFICE OF RADFORD J.
SMITH, CHTD.

14 
15
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Las Vegas, Nevada 89129
27 Attorneys for ELN Nevada Trust

28  Distribution Trustee of the

RECEIVED
10/21/13

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13
14
15 EIGHTH JUDICIAL DISTRICT COURT
16 FAMILY DIVISION

17 CLARK COUNTY, NEVADA

18 ERIC L. NELSON,
19
20 Plaintiff/Counterdefendant,

21 v.

22 LYNITA SUE NELSON,
23
24 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. O

Date of Hearing: 10/21/13
Time of Hearing: 1:30 p.m.

25 ERIC L. NELSON NEVADA TRUST
26 dated May 30, 2001, and LSN NEVADA
27 TRUST dated May 30, 2001,

28 Necessary Parties

29 LANA MARTIN, as Distribution Trustee of
30 the ERIC L. NELSON NEVADA TRUST
31 dated May 30, 2001,

32 Counterclaimant
33 and Crossclaimant,

34 v.

35 LYNITA SUE NELSON and ERIC
36 NELSON,

1 Cross-Defendant and
2 Counterdefendant,

3 LYNITA SUE NELSON,

4 Counterclaimant, Cross-Claimant,
5 and/or Third Party Plaintiff,

6 v.

7 ERIC L. NELSON, individually and as the
8 Investment Trustee of the ERIC L. NELSON
9 NEVADA TRUST dated May 30, 2001; the
10 ERIC L. NELSON NEVADA TRUST dated
11 May 30, 2001; LANA MARTIN, individually,
12 and as the current and/or former Distribution
13 Trustee of the ERIC L. NELSON NEVADA
14 TRUST dated May 30, 2001,

15 Counterdefendant, and/or
16 Cross-Defendants, and/or
17 Third Party Defendants.
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REPLY TO OPPOSITION TO
COUNTERMOTION/PETITION FOR APPOINTMENT OF AUTHORIZED
TRUSTEE AND FOR FEES AND COSTS

COMES NOW, LYNITA SUE NELSON ("Lynita"), by and through her
counsel, ROBERT P. DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of
THE DICKERSON LAW GROUP, and respectfully submits for the Court's
consideration her Reply to Opposition to Countermotion/Petition for Appointment of
Authorized Trustee and for Fees and Costs ("Reply").

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1 This Reply is made and based upon the pleadings and papers already on file
2 herein, the Points and Authorities attached hereto, and any other evidence the Court
3 may adduce at the hearing on this matter.

4 DATED this 14th day of October, 2013.

5 THE DICKERSON LAW GROUP

6
7 By Robert P. Dickerson
8 ROBERT P. DICKERSON, ESQ.
9 Nevada Bar No. 000945
10 JOSEF M. KARACSONYI, ESQ.
11 Nevada Bar No. 010634
12 1745 Village Center Circle
13 Las Vegas, Nevada 89134
14 Attorneys for Defendant, LYNITA NELSON
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POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant, ERIC L. NELSON ("Eric"), purported Successor Distribution Trustee for the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN Trust"), NOLA HARBER ("Ms. Harber"), and Counsel for the ELN Trust, continue to take unjustifiable positions in this action and to defend same by trying to convince the Court that no one understands how to read a trust agreement or Nevada law other than them. The express language of the ELN Trust, Section 11.3, requires that if a trustee is removed only "an individual who is an 'independent' Trustee pursuant to Internal Revenue Code Section 674, as amended, or (2) a Nevada bank or Trust company," can be appointed as successor trustee. Ms. Harber has represented that Lana Martin ("Ms. Martin") no longer serves as Distribution Trustee of the ELN Trust, and has requested to substitute into this action as the purported successor Distribution Trustee of the ELN Trust. As part of the Court's continuing jurisdiction over the ELN Trust, the Court should require that a duly authorized trustee appear in this action.

II. FACTUAL STATEMENT

The facts relevant to the instant requests by the parties were previously set forth in Lynita's Opposition to Motion to Substitute Parties, and Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs ("Opposition and Countermotion"), and are not restated herein. In her Reply to Opposition to Motion to Substitute Parties and Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs, Ms. Harber alleges that Lynita made certain misrepresentations in her Opposition and Countermotion regarding the Court's findings in its Decree of Divorce, and the evidence adduced at trial. Lynita does not respond to such false allegations herein, as the Court is well aware of its findings and the evidence adduced at trial, and able to decide which party has been accurate or not regarding same.

1 **III. LEGAL ANALYSIS**

2 **A. The Court Should Appoint An Authorized Trustee To Serve As Distribution**
3 **Trustee Of The ELN Trust**

4 As set forth in Lynita's Opposition and Countermotion, Ms. Harber's request
5 to substitute into this action should be denied because Ms. Harber is not permitted to
6 serve as Distribution Trustee of the ELN Trust by its express terms. The ELN Trust
7 has been a party to this action since August 19, 2011, when it voluntarily appeared
8 through Ms. Martin and filed its Answer to Eric's Complaint for Divorce, and
9 Counterclaim and Cross-Claim for declaratory relief against Eric and Lynita. Ms.
10 Harber now seeks to substitute into this action in the place and stead of Ms. Martin,
11 even though she cannot validly serve as Successor Distribution Trustee of the ELN
12 Trust. The Court should require that a validly acting Distribution Trustee appear on
13 behalf of the ELN Trust.

14 To the extent the Court believes that Lynita is required to request that the ELN
15 Trust have a validly acting Distribution Trustee appear in this action, even though the
16 ELN Trust made itself a party to this action over two (2) years ago and is subject to the
17 Court's continuing jurisdiction, then the points and authorities set forth in Lynita's
18 Opposition and Countermotion, and below, support such request. However, the
19 burden should not lie with Lynita to request compliance with the ELN Trust agreement
20 in this continuing action.

21 (a) *Section 11.3 of the ELN Trust expressly requires that a removed trustee be*
22 *replaced by either an independent trustee pursuant to IRC 674, or a Nevada bank*
or trust company.

23 Section 11.3 of the ELN Trust provides as follows:

24 11.3 Trust Consultant. JEFFREY L. BURR, LTD., a Nevada
25 Corporation (herein known as the "Consultant" to the Trust), shall have
26 the right and power by giving ten (10) days written notice to the Trustee
27 to remove any Trustee named herein (except the Trust Consultant may
28 not remove the Trustor as a Trustee hereunder) and/or any Successor
Trustee, and to appoint either (1) an individual who is an
"independent" Trustee pursuant to Internal Revenue Code Section
674, as amended, or (2) a Nevada bank or Trust company to serve
as Trustee or as Co-Trustees of the Trusts created hereunder. In the

1 event of the death, resignation, incompetency, dissolution or failure to
2 serve of any Trustee, then the Trust Consultant shall have the power to
appoint a Successor Trustee as provided above.

3 As stated in Lynita's Opposition and Countermotion, Internal Revenue Code, Section
4 674(c), defines the term "independent trustee" as being a person or entity other than
5 the grantor of a trust who is not "*related or subordinate parties who are subservient to*
6 *the wishes of the grantor.*" IRC 672(c) defines "related or subordinate party" under
7 IRC 674 as including the grantor's [Eric's] "sister" (such as Ms. Harber), "an employee
8 for the grantor" (such as Ms. Martin), and "a subordinate employee of a corporation
9 in which the grantor is an executive" (again such as Ms. Martin). IRC 672(c) further
10 provides that "a related or subordinate party shall be presumed to be subservient to the
11 grantor in respect of the exercise or nonexercise of the powers conferred on him unless
12 such party is shown not to be subservient by a preponderance of the evidence."

13 Ms. Harber attempts to overcome the express language of Section 11.3 of the
14 ELN Trust by stating that anybody can be an "independent trustee" under IRC 674
15 because the ELN Trust is a "grantor trust." Ms. Harber acknowledges, however, that
16 the only reference to "independent trustee" in IRC 674 is in the heading to IRC
17 674(c), the provision relied upon by Lynita. If the Trust Consultant could remove a
18 trustee and appoint any person to serve as successor trustee, then there would have
19 been no need to reference an "independent trustee" pursuant to IRC 674, which term
20 is only referenced in IRC 674(c). Instead, Section 11.3 could have simply read that
21 the Trust Consultant could appoint either "any other person," or a "Nevada bank or
22 Trust company" to serve as successor trustee. The ELN Trust Agreement, however,
23 expressly requires an "independent trustee' pursuant to [IRC 674]," and the only
24 definition of such an "independent trustee" under IRC 674 is found in 674(c).
25 Accordingly, the Court should enforce the formalities of the ELN Trust and appoint
26 an "independent trustee" or Nevada bank or trust company as Distribution Trustee of
27 the ELN Trust, and substitute such trustee into this action.

28 . . .

1 (b) *Lynita has the right to maintain her request as a Trustee of the ELN Trust, and*
2 *interested person in the affairs of the ELN Trust.*

3 Ms. Harber argues that Lynita cannot request that the terms of the ELN Trust
4 Agreement be complied with because she is not an “interested person.” Again, this
5 argument ignores the express language of Nevada law, and the ELN Trust.

6 As set forth in Lynita’s Opposition and Countermotion, Lynita was never
7 properly removed as first nominated Successor Investment Trustee of the ELN Trust.
8 Accordingly, Lynita remains a trustee of the ELN Trust pursuant to NRS 132.355
9 (“‘Trustee’ includes an original, additional or successor trustee, whether or not
10 appointed or confirmed by a court.”). As a “trustee,” Lynita has the right to maintain
11 a proceeding to remedy a breach of the ELN Trust:

12 NRS 163.115 Breach of trust by trustee: Maintenance of proceeding;
13 permissible purposes for maintenance of proceeding; nonexclusivity of
remedies; method of commencing proceeding.

14 1. If a trustee commits or threatens to commit a breach of trust, a
15 beneficiary or cotrustee of the trust may maintain a proceeding for any
of the following purposes that is appropriate:

16 (a) To compel the trustee to perform his or her duties.

17 (b) To enjoin the trustee from committing the breach of trust.

18 . . .

19 (d) To appoint a receiver or temporary trustee to take possession of the
20 trust property and administer the trust.

21 (e) To remove the trustee.

22 . . .

23 Additionally, Lynita is indisputably an “interested person” in the affairs of the ELN
24 Trust, as defined by NRS 132.185(1):

25 “Interested person” includes, without limitation, an heir, devisee, child,
26 spouse, creditor, settlor, beneficiary and any other person having a
27 property right in or claim against a trust estate or the estate of a
28 decedent, including, without limitation, the Director of the Department
of Health and Human Services in any case in which money is owed to the
Department of Health and Human Services as a result of the payment of
benefits for Medicaid. The term includes a person having priority for

1 appointment as a personal representative and other fiduciaries
2 representing interested persons. The meaning as it relates to particular
3 persons must be determined according to the particular purposes of, and
4 matter involved in, a proceeding.

5 Pursuant to the Court's Decree of Divorce, Lynita is a creditor of the ELN Trust, and
6 has a "property right in or claim against" the ELN Trust estate. The fact that Ms.
7 Harber has requested writs from the Nevada Supreme Court, purportedly on behalf of
8 the ELN Trust, does not change Lynita's status. Accordingly, as such an "interested
9 person," Lynita has the right to maintain this countermotion/petition¹ to enforce the
10 provisions of the ELN Trust with respect to the appointment of a Successor
11 Distribution Trustee. NRS 164.015 (1).

12 Ms. Harber's argument that the Court cannot compel the ELN Trust and Jeffrey
13 Burr, Esq., to comply with the terms of the ELN Trust by appointing an authorized
14 trustee pursuant to Section 11.3 of the ELN Trust is absurd. If this argument was
15 accepted, there would be no remedy to enforce the terms of a trust agreement or
16 remedy a breach. Certainly the statutes cited by Lynita allow for the Court to enforce
17 the express terms of the ELN Trust.

18 (c) *The Court has jurisdiction to decide Lynita's request.*

19 Ms. Harber argues that the Court lacks jurisdiction over the ELN Trust "for the
20 same reasons set forth in the ELN Trust's Motion to Dismiss Amended Third-Party
21 Complaint and Motion to Strike previously filed on January 17, 2012." The Court has
22 already heard such arguments by the ELN Trust, and properly ruled that it has
23 jurisdiction over the ELN Trust in this matter. See Order From February 23, 2012
24 Hearing Partially Granting ELN Trust's Motion To Dismiss Third-Party Complaint
25 Without Prejudice, pgs. 3-5, filed August 29, 2012.

26 ...

27 ...

28 ¹ "Petition' means a verified written request to the court for an order." NRS 132.270.

1 (d) *Lynita is not required to give notice of her request that the terms of the ELN Trust*
2 *be complied with in this action.*

3 As set forth above, the ELN Trust voluntarily appeared in this action on August
4 19, 2011, with the filing of its Answer to Eric's Complaint for Divorce, and
5 Counterclaim and Cross-Claim for declaratory relief against Eric and Lynita. Ms.
6 Harber now seeks the Court's permission to substitute into this action in the place and
7 stead of Ms. Martin, pursuant to NRCp 25(c). As part of its continuing jurisdiction
8 over the ELN Trust, which jurisdiction was invoked by the ELN Trust initially, the
9 Court should require that a validly acting Distribution Trustee appear on behalf of the
10 ELN Trust in this action. Lynita should not be required to maintain such request or
11 provide notice of same over two (2) years after this action was initiated. To the extent
12 the Court believes that Lynita is required to request compliance with the ELN Trust
13 agreement in this matter in order to oppose Ms. Harber's impermissible request to
14 substitute into this action, and to give notice to interested parties, Lynita respectfully
15 requests that the Court continue her request to another date so that she may mail
16 notice of same to the parties' children.

17 C. Lynita Should Be Awarded Fees And Costs For Having To Defend Against Ms.
18 Harber's Motion

19 For the reasons set forth in Lynita's Opposition and Countermotion, Lynita
20 should be awarded her attorneys' fees and costs for having to defend against Ms.
21 Harber's motion. Ms. Harber's assertion that Lynita should not be awarded fees and
22 costs because her motion was filed solely to "appease" Lynita should be wholly
23 disregarded; if the motion was truly not required Ms. Harber could have chosen to
24 forego same.

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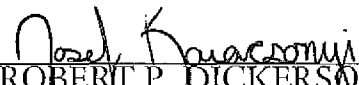
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1 IV. CONCLUSION

2 For the reasons stated above and in Lynita's Opposition and Countermotion,
3 Nola Harber's request to substitute into this action in the place of Lana Martin should
4 be denied, and an "independent trustee" or Nevada bank or trust company should be
5 appointed by the Court as Distribution Trustee of the ELN Trust and substituted into
6 this action. Lynita should also be awarded fees and costs for having to defend against
7 Eric's continued attempts to ignore trust formalities.

8 Dated this 14th day of October, 2013.

9 THE DICKERSON LAW GROUP

10 
11 ROBERT P. DICKERSON, ESQ.
12 Nevada Bar No. 000945
13 JOSEF M. KARACSONYI, ESQ.
14 Nevada Bar No. 010634
15 1745 Village Center Circle
16 Las Vegas, Nevada 89134
17 Attorneys for LYNITA SUE NELSON
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I HEREBY CERTIFY that I am this date depositing a true and correct copy of
REPLY TO OPPOSITION TO COUNTERMOTION/PETITION FOR
APPOINTMENT OF AUTHORIZED TRUSTEE AND FOR FEES AND COSTS, in
the U.S. Mail, postage prepaid, to the following opposing counsels at their last known
address on the 14th day of October, 2013:

RHONDA K. FORSBERG, ESQ.
RADFORD J. SMITH, CHARTERED
64 North Pecos Road, Ste. 700
Henderson, Nevada 89074
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MARK A. SOLOMON, ESQ.
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Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants

J. Kalman
An employee of The Dickerson Law Group

1 RPLY
THE DICKERSON LAW GROUP
2 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
3 KATHERINE L. PROVOST, ESQ.
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Attorneys for LYNITA SUE NELSON

7
8 EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

9 CLARK COUNTY, NEVADA

10 ERIC L. NELSON,
11 Plaintiff/Counterdefendant,
12 v.
13 LYNITA SUE NELSON,
14 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

15 ERIC L. NELSON NEVADA TRUST
16 dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

17 Necessary Parties (joined in this
18 action pursuant to Stipulation and
19 Order entered on August 9, 2011)

20 LANA MARTIN, as Distribution Trustee of
21 the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

22 Necessary Party (joined in this action
23 pursuant to Stipulation and Order
24 entered on August 9, 2011)/ Purported
Counterclaimant and Crossclaimant,

25 v.

26 LYNITA SUE NELSON and ERIC
27 NELSON,

28 Purported Cross-Defendant and
Counterdefendant,

1 LYNITA SUE NELSON,
2 Counterclaimant, Cross-Claimant,
3 and/or Third Party Plaintiff,
4 v.
5 ERIC L. NELSON, individually and as the
6 Investment Trustee of the ERIC L. NELSON
7 NEVADA TRUST dated May 30, 2001; the
8 ERIC L. NELSON NEVADA TRUST dated
9 May 30, 2001; LANA MARTIN, individually,
10 and as the current and/or former Distribution
11 Trustee of the ERIC L. NELSON NEVADA
12 TRUST dated May 30, 2001, and as the
13 former Distribution Trustee of the LSN
14 NEVADA TRUST dated May 30, 2001);
15 Counterdefendant, and/or
16 Cross-Defendants, and/or
17 Third Party Defendants.

13 **REPLY TO PLAINTIFF ERIC NELSON'S**
14 **RESPONSE TO COURT ORDERED ACCOUNTINGS**

15 COMES NOW Defendant, LYNITA SUE NELSON ("Lynita"), by and through
16 her attorneys, ROBERT P. DICKERSON, ESQ., and KATHERINE L. PROVOST,
17 ESQ., of THE DICKERSON LAW GROUP, and hereby files this Reply to the
18 Response to the Court ordered accountings filed by Eric Nelson ("Eric") on September
19 27, 2013. Contained within this Reply is Lynita's response to Eric's court filing as
20 well as her objection to the accounting for the Lindell Professional Plaza for the month
21 of August 2013 as received from Eric, a copy of which is attached hereto as **Exhibit**
22 **A.**

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1 I. **LYNITA's REPLY TO ERIC'S RESPONSE TO COURT ORDERED**
2 **ACCOUNTINGS**

3 With respect to Eric's Response to the Court ordered accountings, Lynita replies
4 as follows:

5 A. Revenue Discrepancies

6 (1) New Life Church - Lynita has not been provided an updated
7 General Ledger for the months January - July 2013. Therefore, she cannot determine
8 if Eric has accurately reflected the payments from New Life Church which either she
9 or Eric actually received. Lynita requests provision of an updated General Ledger for
10 the months January - July 2013. Assuming Eric has corrected the General Ledger as
11 suggested in Lynita's August 30, 2013 Response to Accountings this concern is
12 resolved.

13 (2) Payment of Rent For Suite 201 - Eric's Response alleges that he
14 should not be required to pay rent for maintaining the entirety of the 2nd floor of the
15 Lindell Professional Plaza as his offices because his companies "have done all of the
16 heavy lifting of handling the day to day crises with both trusts properties". This is not
17 a legitimate justification for occupying valuable tenant space without the payment of
18 rent. Additionally, Eric is already charging to the Lindell Professional Plaza and
19 deducting from gross revenue, an administrative expenses (paid to Eric's employee,
20 Rochelle McGowan) and a maintenance expense (paid to Eric's nephew, Lance Liu).

21 Lynita renews her request set forth in August 30, 2013 Response to Accountings
22 that \$3,200.00 per month rental income (\$1.00 per square foot for the 3,200 square
23 foot space occupied by Eric's various business operations) should be included and
24 assumed in the Gross Revenue received by the Lindell Professional Plaza prior to the
25 determination of net profits which are to be paid to Lynita. This is reasonable request
26 as the information set forth in the appraisal report filed September 14, 2011 in this
27 action determined the average market rent for the property is \$.99 per square foot.

28 ...

1 The appraised value of the Lindell Professional Plaza included the forecasted payment
2 of market rent by Eric Nelson for Suite 201 at \$1.00 per square foot.

3 Applying a \$3,200.00 per month rental payment for the space occupied by Eric's
4 various businesses for the months since the parties' divorce (June - October 2013), the
5 total outstanding rent is \$16,000.00 (\$3,200.00 x 5 months), with one-half (1/2) of
6 this, **\$8,000.00** being owed to Lynita.

7 B. Expense Discrepancies

8 (1) Labor/Wage Allocation - Having now been provided with the
9 general ledger for the payment of wages as documentation supports the stated expenses,
10 Lynita no longer opposes the reasonableness of the stated expenses. Had these ledgers
11 been provided initially, this dispute could have been wholly avoided.

12 (2) Children's Health Insurance Premiums - During the pendency of
13 the divorce Eric was to abide by the Joint Preliminary Injunction and maintain the
14 status quo, which included the family medical insurance. The information presented
15 at trial by the Court's expert, Larry Bertsch, confirmed that the family medical
16 insurance premiums were being paid by Dynasty Development Group not Lindell
17 Professional Plaza.

18 Eric's attempt to rely upon NRS 125B.080(7) to shift the burden for Carli's
19 medical insurance premiums is misguided. The June 3, 2013 Decree of Divorce clearly
20 states at page 49, lines 16-17 that **"IT IS FURTHER ORDERED that Mr. Nelson**
21 **shall maintain medical insurance coverage for Carli."** Eric can accomplish this in
22 any way he desires. However, he cannot include this expense as a deduction from the
23 Gross Revenue of Lindell Professional Plaza as to do so results in Lynita bearing this
24 expense which this Court required by paid personally by Eric.

25 Further, as stated in Lynita's initial response to the accountings provided by
26 Eric, Garrett is no longer a minor child, therefore neither party has a legal obligation to
27 maintain health insurance for Garret. Obviously Lynita desires for Garrett to have
28 health insurance. If Eric desires to pay for Garrett's health insurance from his share of

1 the net sales proceeds attributable to Lindell Professional Plaza then that is his
2 prerogative. Lynita, however, cannot afford to do so at this time and objects for any
3 expense related to Garrett's health insurance to be deducted from the Gross Revenue
4 of Lindell Professional Plaza. Pursuant to the June 3, 2013 Decree of Divorce , Lynita
5 continues to share 50/50 for any medical expenses not paid by medical insurance
6 covering Carli.

7 Lynita is owed \$2,080.00 for the children's medical insurance premiums
8 improperly deducted from her portion of the Lindell Professional Plaza income in
9 2010. Lynita is owed \$2,613.34 for the children's medical insurance premiums
10 improperly deducted from her portion of the Lindell Professional Plaza income in
11 2011. Lynita is owed \$3,112.36 for the children's medical insurance premiums
12 improperly deducted from her portion of the Lindell Professional Plaza income in
13 2012. Lynita is owed \$3,570.00 for the children's medical insurance premiums
14 improperly deducted from her portion of the Lindell Professional Plaza income to date
15 in 2013. This totals \$11,675.70 for improperly deducted children's medical
16 insurance premiums.

17 Additionally, Lynita is owed \$5,792.19 for Lynita's medical insurance
18 premiums improperly deducted from her portion of the Lindell Professional Plaza
19 income in 2010. Lynita is owed \$7,423.64 for Lynita's medical insurance premiums
20 improperly deducted from her portion of the Lindell Professional Plaza income in
21 2011. Lynita is owed \$8,747.24 for Lynita's medical insurance premiums improperly
22 deducted from her portion of the Lindell Professional Plaza income in 2012. Lynita
23 is owed \$4,380.05 for the Lynita's medical insurance expenses improperly deducted
24 from her portion of the Lindell Professional Plaza from January through May 2013.
25 This totals \$26,342.88 for Lynita's improperly deducted medical insurance premiums.

26 II. LYNITA's RESPONSE TO AUGUST 2013 ACCOUNTING

27 With respect to the August 2013 accounting for the Lindell Professional Plaza,
28 Lynita has the following concerns:

1 A. Expense Discrepancies


2 (1)Property Tax Expense - Eric has indicated a deduction of \$9,376.30
3 for payment of property taxes. Lynita does not dispute that this payment was made,
4 but rather, that it was necessary to pay this amount in the month of August 2013. As
5 set forth on the Property Account Inquiry obtained from the Clark County Treasurer's
6 Office, quarterly tax payments are due August 19th, October 17th, January 6th, and
7 March 3rd. The quarterly payment owed for the Lindell Professional Plaza is \$2,874.31
8 per quarter. *See Exhibit B.* The payment actually made by Eric during the month of
9 August 2013 has no numeric relation to the quarterly tax payments owed by the
10 Lindell Professional Plaza. Rather, the same appears to be an arbitrary number decided
11 by Eric to be paid toward property taxes.

12 Specifically, had Eric desired to pay three (3) quarters of property taxes in the
13 month of August, that number would have been \$8,622.93. Had Eric desired to pay
14 the 2013-2014 property tax bill in full, that number would have been \$11,497.22.
15 Rather than pay only what was due and owing in the month of August 2013
16 (\$2,874.31), Eric arbitrarily paid a higher figure, thus reducing the net profits of
17 Lindell Professional Plaza to be divided with Lynita. Lynita objects to the tax
18 payments being handled in this manner. An adjusted balance sheet for Lindell
19 Professional Plaza for August 2013 is attached as **Exhibit C**. Based upon the adjusted
20 balance sheet, Lynita would owe Lindell Professional Plaza **\$231.86** for payment of
21 expenses in August 2013.

22 Dated this 15th day of October, 2013.

23 THE DICKERSON LAW GROUP

24
25 By


ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
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Attorneys for Defendant

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am serving via U.S. Mail (with a courttest copy bring
emailed to the same) to Plaintiff's counsel and to counsel for the Eric L. Nelson Nevada
Trust, a true and correct copy of the foregoing **RESPONSE TO COURT ORDERED
ACCOUNTINGS PROVIDED BY ERIC NELSON** to the following at their last
known addresses on this 15th day of October, 2013.

RHONDA K. FORSBERG, ESQ.
RADFORD J. SMITH, CHARTERED
64 North Pecos Road, Ste. 700
Henderson, Nevada 89074
Attorneys for Plaintiff

MARK A. SOLOMON, ESQ.
SOLOMON, DWIGGINS, FREER & MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants


An employee of The Dickerson Law Group

EXHIBIT A

**Lindell Professional Plaza
Income Statement
For the Month Ending August 31, 2013**

	Aug , 2013
Revenues	
Rental Income - LPP	6,700.00
Total Revenues	6,700.00
Gross Profit	6,700.00
Expenses	
Wages Expense - Administrative Lindell	689.38 *
Wages Expense - Maintenance Lindell	725.00 **
Property Tax Expense - LPP	9,376.30
Maintenance & Repairs - LPP	418.89
LPP (Bldg) Waste Expense	72.47
LPP (Bldg) Sewer/Water Exp	719.11
Total Expenses	12,001.15
Net Income	(\$ 5,301.15)

**25% of Wages allocated toward Lindell administrative/Acctng/operating - Labor costs*

***25% of Wages allocated toward Lindell Maintenance - Labor costs*

Net Income Lindell Professional Plaza (\$ 5,301.15)

Carli/Garett Health Insurance Premiums Paid August (\$714.00)

Total Net Income after monies pd for kids insurance (\$6,015.15)

50% of net income due to LSN (\$ 3,007.58)

Health/Dental Insurance Lynita Portion August
Premiums Paid (\$876.01)

Total Income due after monies collected by LSNT (\$ 3,883.59)

General Ledger
For the Period From Aug 1, 2013 to Aug 31, 2013

Account ID	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
4010-00-50-000	8/1/13			Beginning Balance			
Rental Income - LPP	8/7/13	1251	CRJ	Apex Properties - ste 105 August Rent		1,200.00	
	8/7/13	1066	CRJ	Nguyen Lan - Ste 106 August Rent		700.00	
	8/13/13	8415	CRJ	Dr. Stock - Rent - Ste 101 August		1,800.00	
	8/31/13	1369	CRJ	New Life Mission - Rent August		3,000.00	
				Current Period Change		6,700.00	-6,700.00
	8/31/13			Ending Balance			

General Ledger
For the Period From Aug 1, 2013 to Aug 31, 2013

Account ID	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
6000-00-00-000	8/1/13			Beginning Balance			
Wages Expense	8/6/13	Corp PR	GENJ	P/R W/E 8/2/13	1,491.80		
	8/20/13	Corp PR	GENJ	P/R W/E 8/16/13	1,265.71		
				Current Period Change	2,757.51		2,757.51
	8/31/13			Ending Balance			2,757.51

25% of administrative fees	689.38
----------------------------	--------

Banone, LLC (NEW)
Journal
For the Period From Aug 1, 2013 to Aug 31, 2013

Date	Check #	Account ID	Line Description	Debit Amount	Credit Amount
8/1/13	3036	6655-00-00-000	fee	2,900.00	
		1020-00-10-000	Lance Liu		2,900.00
Total				2,900.00	2,900.00

25% of labor fees	725.00
-------------------	--------

Labor

General Ledger
For the Period From Aug 1, 2013 to Aug 31, 2013

Account ID	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
6100-00-50-000	8/1/13			Beginning Balance			
Property Tax Expense - LI	8/23/13		CDJ	Clark County Treasurer - lindell property tax	9,376.30		9,376.30
				Current Period Change	9,376.30		9,376.30
	8/31/13			Ending Balance			

General Ledger
For the Period From Aug 1, 2013 to Aug 31, 2013

Account ID	Date	Reference	Jml	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
6350-00-50-000	8/1/13			Beginning Balance			
Maintenance & Repairs-LPP	8/1/13		CDJ	NV Energy - lindell house power	40.31		
	8/13/13		CDJ	Home Depot - lindell materials ste 106	40.85		
	8/13/13		CDJ	Thyssenkrupp - elevator maintenance	117.73		
	8/14/13	3044	CDJ	Francisco Lopez - tile in bathroom st 102	220.00		
				Current Period Change	418.89		418.89
	8/31/13			Ending Balance			418.89


General Ledger
For the Period From Aug 1, 2013 to Aug 31, 2013

Account ID	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
7010-00-50-002	8/1/13			Beginning Balance			
LPP (Bldg) Waste Expense	8/13/13		CDJ	Republic Services - lindell garbage addl due	72.47		72.47
	8/31/13			Current Period Change	72.47		72.47
				Ending Balance			

General Ledger
For the Period From Aug 1, 2013 to Aug 31, 2013

Account ID	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
7010-00-50-003	8/1/13			Beginning Balance			
LPP (Bldg) Sewer/Water Exp	8/13/13		CDJ	CC Water Reclamation - lindell sewer	534.62		
	8/22/13		CDJ	Las Vegas Valley Water - lindell water	184.49		
				Current Period Change	719.11		719.11
	8/31/13			Ending Balance			719.11

EXHIBIT B

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ePayments

Monday, October 14, 2013

[Clark County](#) > [Departments](#) > [Treasurer](#) > Tax Collection

Treasurer: Property Tax Collection

Property Tax Collection

Tax rates are set in June of each year. Tax bills are prepared and mailed out by **August 1st** of each year. Property taxes are due on the third Monday in August. However, the property owner may elect to pay in installments if the taxes on a parcel exceed \$100.00. The installments due dates for fiscal 2013-2014 tax year are:

For Fiscal Year 2013-2014
(July 1, 2013 to June 30, 2014)

Installment	Due Date	Last Day to Pay without Penalty
1st	Monday August 19, 2013	August 29, 2013
2nd	Monday October 7, 2013	October 17, 2013
3rd	Monday January 6, 2014	January 16, 2014
4th	Monday March 3, 2014	March 13, 2014

Future Due Dates:

[Fiscal Year 2014-2015](#)[Fiscal Year 2015-2016](#)[Fiscal Year 2016-2017](#)

The Nevada legislature has established four tax installment due dates for each fiscal year (July 1 to June 30) as shown above. **Tax bills are mailed only once each year.**

If you purchase real property during the tax year, you are responsible for any taxes not paid as of the close of escrow. Please call the Treasurer's Office (455-4323) to request a duplicate bill. As stated in [NRS 361.480](#) failure to receive an individual tax bill does not excuse the taxpayer from the timely payment of his taxes.

There are 112 tax districts in Clark County. The tax rates for these districts are based on the amount of monies budgeted to them for the necessary maintenance and improvements for their facilities and services. The tax monies collected for the districts must pay for schools, roads, police and fire protection, along with all other services that a taxpayer demands and desires from local government. These tax rates vary depending on the type of services provided to each district.

Property Account Inquiry - Summary Screen

[New Search](#)
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[Assessor](#)
[Clark County Home](#)

Parcel ID	163-13-205-001	Tax Year	2014	District	417	Rate	2.9328
-----------	----------------	----------	------	----------	-----	------	--------

Situs Address:	3611 LINDELL RD SPRING VALLEY
----------------	-------------------------------

Legal Description:	ASSESSOR DESCRIPTION: PARCEL MAP FILE 86 PAGE 73 LOT 1GEOID: PT SE4 NW4 SEC 13 21 60
--------------------	--

Status:	Property Characteristics		Property Values		Property Documents	
Active	Special Improvement Dist	88 / 7510 P	Land	73959	2013073002961	7/30/2013
Taxable	Tax Cap Increase Pct.	4.2	Improvements	318063	2013073002961	7/30/2013
	Tax Cap Limit Amount	11980.10	Total Assessed Value	392022	2013073002961	7/30/2013
	Tax Cap Reduction	0.00	Net Assessed Value	392022	2013073002961	7/30/2013
	Land Use	3-35: PROFESSIONAL AND BUSINESS SERVICES	Exemption Value New Construction	0	2007032803565	3/28/2007
	Cap Type	Other	New Construction - Supp Value	0	2007032803565	3/28/2007
	Acreage	.98			01082201118	8/22/2001
	Supplemental Tax	0.00				

Role	Name	Address	Since	To
Owner	BANONE L L C	3611 S LINDELL RD #201 , LAS VEGAS, NV 89103-1241 UNITED STATES	8/8/2013	Current
Owner	L S N NEVADA TRUST	3611 S LINDELL RD #201 , LAS VEGAS, NV 89103-1241 UNITED STATES	8/8/2013	Current

Summary

Item	Amount
Taxes as Assessed	\$11,497.22
Less Cap Reduction	\$0.00
Net Taxes	\$11,497.22

PAST AND CURRENT CHARGES DUE TODAY

Tax Year	Charge Category	Amount Due Today
2014	Property Tax Principal	\$2,874.31
CURRENT AMOUNTS DUE as of 10/14/2013		\$2,874.31

NEXT INSTALLMENT AMOUNTS

Tax Year	Charge Category	Installment Amount Due
2014	Property Tax Principal	\$2,874.31
NEXT INSTALLMENT DUE AMOUNT due on 1/6/2014		\$2,874.31

TOTAL AMOUNTS DUE FOR ENTIRE TAX YEAR

Tax Year	Charge Category	Remaining Balance Due
2014	Property Tax Principal	\$8,622.93
2014	Las Vegas Artesian Basin	\$0.00
TAX YEAR TOTAL AMOUNTS DUE as of 10/14/2013		\$8,622.93

PAYMENT HISTORY	
Last Payment Amount	\$9,376.30
Last Payment Date	8/30/2013
Fiscal Tax Year Payments	\$9,376.30
Prior Calendar Year Payments	\$13,278.96
Current Calendar Year Payments	\$9,376.30

EXHIBIT C

Lindell Professional Plaza
Income Statement
For the Month Ending August 31, 2013

Revenues	Aug, 2013
Rental Income - LPP	6,700.00

Total Revenues	6,700.00
----------------	----------

Gross Profit	6,700.00
---------------------	-----------------

Expenses

Wage Expense - Administrative Lindell	689.38*
Wage Expense - Maintenance Lindell	725.00**
Property Tax Expense - 1 st Q - LPP	2,874.31
Maintenance and Repairs - LPP	418.89
LPP (Bldg) Waste Expense	72.47
LPP (Bldg) Sewer/Water Expense	719.11

Total Expenses	4,123.40
----------------	----------

Net Income	\$2,576.60
-------------------	-------------------

***25% of wages allocated toward Lindell administrative/Acctg/operating - Labor costs**

**** 25% of wages allocated toward Lindell Maintenance - Labor costs**

Net Income Lindell Professional Plaza	\$2,576.60
--	-------------------

50% of Net Income Due to LSN	\$644.15
-------------------------------------	-----------------

Health/Dental Insurance Lynita Portion	
August Premiums Paid	(\$876.01)

Total Income due after monies collected by LSNT	(\$231.86)
--	-------------------

1 TRANS

2
3
4 COPY

FILED

OCT 28 2013

Frank P. Sullivan
CLERK OF COURT

5
6 EIGHTH JUDICIAL DISTRICT COURT
7 FAMILY DIVISION
8 CLARK COUNTY, NEVADA
9

10 ERIC L. NELSON,)
11 Plaintiff,)
12 vs.)
13 LYNITA NELSON,)
14 Defendant.)
15

CASE NO. D-09-411537-D

DEPT. L

(SEALED)

16 BEFORE THE HONORABLE FRANK P. SULLIVAN
17 DISTRICT COURT JUDGE
18

19 TRANSCRIPT RE: ALL PENDING MOTIONS

20 MONDAY, OCTOBER 21, 2013
21
22
23
24

1 APPEARANCES:

2 The Plaintiff:
3 For the Plaintiff:

ERIC L. NELSON
RHONDA FORSBERG, ESQ.
64 N. Pecos Rd., #700
Henderson, Nevada 89074
(702) 990-6448

5 The Defendant:
6 For the Defendant:

LYNITA NELSON
JOSEF KARACSONYI, ESQ.
KATHERINE PROVOST, ESQ.
ROBERT PAUL DICKERSON, ESQ.
1745 Village Center Cir.
Las Vegas, Nevada 89134
(702) 388-8600

9 The Trustee:
10 For the Trustee:

DBA DISTRIBUTION TRUSTEE
OF ELN NEVADA TRUST
JEFFREY P. LUSZECK, ESQ.
9060 W. Cheyenne Ave.
Las Vegas, Nevada 89129
(702) 853-5483

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 13:39:37)

4
5 THE COURT: This is the time set in the matter of
6 Eric Nelson and Lynita Nelson, case number D-411537. Can we
7 have everybody's appearance just for the record? We'll start
8 with our Trust.

9 MR. LUSZECK: Jeff Luszeck on behalf of the
10 distribution trustee of the ELN Trust.

11 THE COURT: Good to see you, Mr. Nelson.

12 MS. FORSBERG: Good afternoon, Your Honor. Rhonda
13 Forsberg, 9557, on behalf of Mr. Nelson.

14 THE COURT: Thank you.

15 MR. KARACSONYI: Josef Karacsonyi, 10634, with
16 Katherine Provost, 8414, Bob Dickerson, 945, Ms. Nelson and
17 Melissa Antanassio (ph).

18 THE COURT: Good to see you again, Ms. Lynita. This
19 was on the -- and all my paperwork laid out. We have a -- I
20 guess a -- a couple issues. One was the motion for the -- to
21 substitute in the distribution trustee and I guess the other
22 issue was the money, the 1,068,000 about the trust fund.
23 There was some concerns raises, but it was not placed -- it
24 was placed in the count picked by the depart -- by the trust,

1 but not the input from the department -- I mean from the --
2 sorry, I just finished DFS all day, so I'm in department
3 stuff. From Ms. Lynita's concern on that. That's with the
4 mel -- and -- and that is basically Mr. Martin who has -- has
5 some concerns on that.

6 So I thought we could do that by telephone, but
7 since we were coming up for this hearing, I figure we see if
8 we get it resolved at this hearing since we have everybody
9 here instead of setting up a -- a telephone conference to try
10 to resolve it.

11 This is your motion. I have read the motions and
12 oppositions and the reply. Anything you want to add, update
13 or highlight from the motion?

14 MR. DICKERSON: We also have accounting issues that
15 were -- it's non-calendar for today.

16 THE COURT: Okay. Okay. As far as the motion for
17 the -- I was concerned about your motion, because when I read
18 the trust on there, it looks like Mr. -- Mr. Burr (ph) can
19 make that determination and appoint it and it looks like your
20 own motion said well, it was not necessary. They were coming
21 to the court anyway. Mr. Burr can appoint and the trustee
22 anyways with the notice -- 10 day notice and the concerns
23 raised by Mr. Lynita Nelson's was that the fact that the --
24 Ms. Harbor (ph) is related and therefore would not fulfill the

1 requirement of being someone that under the IRS code 674 and
2 that was their concern or a bank or trust company. So that
3 was kind of the nut in that. As far as did you concede the
4 fact that it wasn't required for a court order to substitute
5 in or --

6 MR. LUSZECK: Well, no. The whole -- our -- our
7 position is still is I don't necessarily believe it is
8 necessary, because NRCP 25C states in case of any transfer of
9 interest, the action may be continued by or against the
10 original party. Our position has always been that the
11 interested party here is the distribution trustee. And albeit
12 though the actual person who serves in that capacity may have
13 changed, that office still remains a party to the case.

14 The whole reason why we even moved was due to
15 opposing counsel's stated concerns that, you know, perhaps a
16 divorce decree wouldn't be able to be enforced against Nola
17 (ph) Harbor who is -- is currently serving as the distribution
18 trustee or that somehow the ELN Trust may continually change
19 the distribution trustee from person to person to somehow to
20 alleviate this Court's orders. So the sole purpose why we
21 filed the motion to substitute was to alleviate those
22 concerns.

23 Obviously what we figured was going to be a pretty
24 straightforward motion has turned into an opposition and a

1 countermotion to remove. As a practical matter, I -- I don't
2 even see how this Court can hear their countermotion to remove
3 the distribution trustee because they didn't abide by the
4 notice requirements set forth in NRS 155.1 -- 010. I mean,
5 anytime a petition of this magnitude is brought before any
6 court sitting in probate, you have to give 10 days notice to
7 all the interested parties. That here clearly wasn't done.

8 Although the trust does reference IRC 1 -- or I'm
9 sorry, 7 -- sorry, 764 --

10 THE COURT: 764, yeah.

11 MR. LUSZECK: We don't even get there because it's a
12 grantor trust. The 764 only see -- only applies if it's a
13 non-grantor trust. Here, the grantors of the trusts are taxed
14 individually. So it's a grantor trust. You don't even get to
15 IRC 764. And even if you did, that doesn't get you to where
16 opposing counsel is getting with the definition of an
17 independent trustee. 764 doesn't even define independent
18 trustee. 764C, all that it does is it talks about exceptions
19 for an independent trustee. So even if that is applicable, it
20 -- it doesn't set forth and get to the point where opposing
21 counsel is trying to get it with respect to having Ms. Harbor
22 being unable to serve.

23 Mr. Burr made that decision to appoint her as the
24 distribution trustee. On November 22nd, 2010, Mr. Burr stated

1 in open court in conjunction with questions regarding Ms.
2 Nelson's trust. Mr. Burr was asked so now can Lynita Nelson
3 force you to change distribution trustee. Mr. Burr responded
4 no.

5 Mr. Burr was then asked okay, so you're an
6 independent person. Mr. Burr said right. Then Mr. Burr was
7 asked can Judge Sullivan order you to change distribution
8 trustee in a forced order and Mur -- Mr. Burr responded no.
9 And that's our position, Your Honor, is Mr. Burr has the
10 authority to change as trust consultant, has the authority to
11 change the distribution trustee. We do not believe that this
12 Court has authority to do that and that's exactly what
13 opposing counsel is seeking to do.

14 THE COURT: Thank you. We'll do this issue first
15 and we'll get on to other issues and address the accounting
16 issues separately.

17 MR. KARACSONYI: Okay. Our position has been all
18 along Your Honor that the trust formalities here have not been
19 followed. They want to maintain the guise as we wrote in
20 there and got called liars for it, but the guise of being an
21 actual Nevada self settled spendthrift trust. But they don't
22 want to follow their own trust provisions.

23 This whole thing about we don't get to this IRC
24 provision is ludicrous, because we get there in the expressed

1 language of the trust document. If you didn't need to get
2 there or if it wasn't intended that anyone would go there,
3 then there would have been no need to mention -- reference a
4 section. There's only two possibilities, an individual who is
5 an independent trustee pursuant to IRC Section 764, Nevada
6 Bank & Trust Company.

7 Perhaps their position is that the first section
8 there is not applicable. Perhaps it's that an individual who
9 is an independent trustee pursuant to IRC isn't appropriate in
10 this case. Well, then there's only one other person, a Nevada
11 bank or trust company. It doesn't say or any other person. I
12 mean, that's their argument. It's as though they think we
13 can't read. I mean, they -- they act as though nobody
14 understands this stuff except the trust lawyers.

15 Well, look, this is an expressed document. These
16 are expressed requirements. It's right there. It doesn't say
17 or any other person. It doesn't say if IRC 674 is applicable
18 which by the way, it's not because this is a grantor trust.
19 We're just kind of putting this here superfluously. It
20 doesn't say that. So those are the two options.

21 Now they want to maintain the guise of being a valid
22 trust. Then they should comply with their own trust
23 documents. This Court has the right to protect the dignity of
24 these proceedings by insisting that the actual -- that an

1 actual distribution trustee appear on their behalf. And they
2 say well, we didn't give the notice requirement. Why should
3 we be force to make them comply with their own trust?

4 If they want to just stipulate to the fact which I
5 think this Court has already found and again, they said we
6 misrepresented, that this isn't a valid trust, at the last
7 hearing you said that if this comes back, you may just
8 invalidate the trust that your purpose was just to keep the
9 trust as a faction just to protect the parties because you
10 thought you could reach your -- the -- the relief that you
11 ordered through other means. But of they want to maintain
12 this facade, then they should be required to comply with the
13 terms of their own trust.

14 Now they say that well, the -- now they're referring
15 to the office of the distribution trustee, this is a new
16 argument. The -- all along from the start of this case when
17 we've named the trust, they said you can't name a trust. You
18 can't name -- you have to name an individual. They cited
19 these cases, *Cosi v. Carpenter* (ph). It is well settled that
20 a party to a litigation is -- is either a natural or an
21 artificial person. So the original person continues the
22 action unless the new party in interest is substituted on
23 motion.

24 So they're saying well, we don't need a motion to

1 substitute. Well, you absolutely need a motion to substitute,
2 because otherwise Lana Martin is the party. Hey, you know, if
3 you want to take your chances with the Nevada Supreme Court
4 and say -- and -- and have them find that Nola Harbor has no
5 standing, you could have taken your chances. Don't act like
6 we made you bring this motion. We just pointed out the
7 obvious that you were bringing the motion in the name of a
8 party who is not even a party to the action.

9 Now they say well, we should get attorney's fees.
10 They may -- we did this to appease them and now they're saying
11 we're doing it incorrectly. Look, you could have rolled the
12 dice. The fact is they need this motion. They know they need
13 this motion, because they're filing on behalf of somebody who
14 was just a witness prior, somebody who wasn't even a party.

15 This stuff about Jeffery (ph) Burr, Jeffery Burr
16 doesn't have the ability, he said -- Jeffery Burr testified to
17 all of us that you don't have the ability to make a change?
18 Well, that's ridiculous.

19 So under their interpretation of the law, a trustor
20 -- a trust advisor can go ahead and violate all the terms of
21 the trust agreement and just name any person in the world and
22 there is not a court in this state that can do a thing about
23 it. I mean, that's basically the argument.

24 You can't do anything about it, Judge. Well, we

1 pointed out you can do something about it, Judge. You can do
2 what -- you can make them follow their own procedures and name
3 a proper party to this action under all the authority we
4 requested and under the basic fact that they're requesting a
5 substitution and you have the right to have a proper party
6 before you.

7 So that's our arguments. I think we laid it all out
8 in the opposition reply. If Your Honor has anymore questions
9 about it, we're more than happy to address them. But
10 otherwise, just responding to their -- their points.

11 THE COURT: Thank you. Any quick rebuttal?

12 MR. LUSZECK: Yeah, it's -- it's funny how they're
13 accusing us of not file -- following the trust when they're
14 not even following the most basic tenants of trust law with
15 respect to notice of their parties.

16 He keeps harping on 674. That's not what he's
17 trying to apply. He's tried to apply IRC 672 which is not
18 mentioned in the trust provision. Because of that, you can't
19 just look to IRC 672 as opposed to 674 which is exactly what
20 they're trying to do here. Jeffery Burr did testify that he
21 did not believe that you can order change of distribution
22 trustee in a forced order. That's what he testified to. I'm
23 not making that up. Put it on Page 4 on my pleading. So it's
24 our opinion that this Court does not have authority to do that

1 and that -- that needs to come from Jeffery Burr.

2 MR. NELSON: And he did approve it.

3 THE COURT: And I think he --

4 MR. LUSZECK: He did it. And he approved it. It's
5 not -- it's not what the trustee did. It's -- Jeff Burr made
6 this decision and he made that change.

7 THE COURT: I think he also testified that he didn't
8 file under rules and give people 10 day notice when he made
9 changes in the past.

10 MR. LUSZECK: Your Honor, that -- that's irrelevant
11 though. But the distribution trustee knew that it was
12 occurring. The distribution trustee is the only one that
13 could object to that. She didn't object to it.

14 THE COURT: Well -- well, you know, this case will
15 go on and on and on as far as I'm going to deny the motion.
16 Noone's asked for my input on this before. They move back and
17 forth with distribution trustees from back and forth with Mr.
18 Burr. He was under attack for not following the formalities.
19 I made it real clear in my divorce decree that the supreme
20 court -- depending what they do on that came back to me on a
21 question for this Court that I would invalidate the trust
22 because I don't think they've been following the rules or
23 procedures or doing wily-nilly and why now all of a sudden
24 they want an order from the court and there's the substituted

1 parties on that and they haven't done it before.

2 I'm not sure if that could impact a writ that's up
3 there. I don't know if that's something that could be a -- a
4 flaw that maybe the writ would address that could say they
5 didn't file the formalities or they -- the distribution
6 trustees, that could be used against him for -- but the fact
7 that it take -- it speaks it speaks for itself.

8 11.3 says that Jeffrey Burr has a power given 10
9 days written notice to the trustee to remove any trustee
10 within except the trust consultant may not remove the trust
11 off course and any -- or a successor trustee and to appoint
12 either one an individual who is an independent trustee
13 pursuant to IR -- Internal Revenue Code 674. I don't know why
14 you put that in there if it has no reference on that or
15 reference 672. Why put it in there? Just say that he has the
16 right to appoint whoever he wants to a Nevada bank or trust
17 company to show his trustee. So that's in there. So I'm not
18 sure the purpose of that being in there. Do you have anything
19 other --

20 MR. LUSZECK: Yeah, Your -- Your Honor, there are
21 standard provisions you put in all types of trusts. Jeffrey
22 Burr testified that it's a grantor trust and that language
23 would be inapplicable because it's a grantor trust.

24 THE COURT: Well, basically they just do trust on

1 that and they charge these people tens of thousands of dollars
2 and just use a boilerplate and don't make it individual to the
3 trust. I mean --

4 MR. LUSZECK: Yeah. Most trusts have boilerplate
5 language.

6 THE COURT: Well -- well, then I wouldn't pay that
7 kind of money for it if they do boilerplate. I'd take it off
8 line myself, because this is a -- grantor trust shouldn't be
9 in there, then it shouldn't be there. So to put purpose on
10 what they -- what he can do. He can appoint him and at the
11 discretion, whatever, fine. I don't know why they put it in
12 there. Whoops, it's just standard. Well, you read the whole
13 document and it's in there. So I don't know why they put it
14 in there if that's sloppy. Then I should -- sure as heck
15 wouldn't pay that kind of money for -- if they put provisions
16 in there they didn't apply, I figured you would take a
17 standard one and you would modify it to fit your specific
18 trust if you're paying that kind of money. But maybe I don't
19 get it, but to me, you look at it and you do a standard trust
20 and you modify it to fit the particular trust you're doing.

21 So I don't know why that language is in there. If
22 it didn't belong in there, it shouldn't be in there. It
23 should have been modified for the grantor trust and not even
24 put that in there because that's been a point of litigation

1 five --

2 MR. LUSZECK: Your Honor --

3 THE COURT: -- or six times already.

4 MR. LUSZECK: The trust specifically states that it
5 is a grantor trust --

6 THE COURT: Yeah.

7 MR. LUSZECK: -- and that's what Mr. Burr testified
8 to.

9 THE COURT: Exactly. And why have it in there and
10 why it states the grantor trust and put language. It doesn't
11 mean anything on that. To me, it's sloppy. And if it's
12 sloppy, then so be it. But the fact is if you say it's a
13 grantor trust and that wouldn't apply, then why put it in
14 there. So but that's been a point. That's about the fourth
15 time I've heard that argument. But I'm denying the motion to
16 substitute and I'm denying the countermotion to appoint
17 someone. I'm not getting into that stuff. I'm not going to
18 get into an appoint and appoint someone that is a
19 non-interested or a non-related party. We've litigated that
20 several times already. Supreme court makes their ruling that
21 may resolve the issues. If not, if it comes back to me, then
22 I'll resolve those issues. But I'm not stepping into this
23 stuff at this point.

24 We've been going around and around on that. We've

1 had Mr. Burr testify to notice, lack of notice. We've gone
2 around the block on that. I am denying the motion to
3 substitute the parties. I'm also denying the opposition there
4 to -- to -- for me to appoint a specific distribution trustee.
5 The issue is that I'm going to check the -- the monies we had
6 that we're going to deal with that to protect the money not
7 disappearing. That was my concern that if you had someone
8 that was going to be slick, that the distribution could try to
9 circumvent the order of this court, I think I got that
10 protected in this previous orders I did. So I'm not overly
11 worried about the distribution trustee doing anything
12 nefarious because the fact we're going to talk about where
13 that 1,068,000 is.

14 We're also going to talk about the other property I
15 said that any property awarded to Ms. Lynita was not to be
16 dissipated in any manner or any claims against it until the
17 matter got resolved by the supreme court. So I think that
18 will protect those issues. And as I said, they've been doing
19 this several distribution trustees without any involvement
20 from the court before. So they've been doing it that way.
21 You might as well keep doing it the way they've been doing it
22 and let the supreme court decide if there's any need to
23 address it or not, if that would impact your writ, then there
24 -- there were some concerns that this was done because that

1 was challenged that they didn't.

2 Basically on one of their challenges to a writ that
3 the effect that they failed to follow that procedures could be
4 grounds. But I think I made my divorce decree real quick --
5 real clear. I think I made a specific finding that in the
6 event that I felt clearly I could invalidate the trust. That
7 -- because that gave indication where I was going in case
8 supreme ruled otherwise that I would invalidate the trust
9 based on the formalities, the -- the concerns about the
10 conflict of interest I felt and a breach of fiduciary duties
11 that that could invalidate the trust, but I'll leave that to
12 the supreme court to decide, because my goal was not to
13 invalidate trust if I didn't have to if I could achieve the
14 divorce decree.

15 Based on what I'll do on that, that we'll protect
16 everybody from third party creditors because I could see
17 lawsuits coming out. So that's protect both sides and I think
18 that was my finding on that. So to restate, I'm denying the
19 motion and the countermotion for me to specifically appoint
20 distribution trustee or to substitute parties.

21 As far as another issue we have is do you want to
22 deal with the funding issue as far as the account that was in
23 issue? Are you prepared for that issue as far as -- because
24 we said we would do it by phone conference. They were

1 concerned about where the monies at.

2 MR. LUSZECK: Yeah.

3 THE COURT: Okay. I figured since we were coming
4 here, let's see if we can get that done and then we'll look at
5 the accounting issues, third issues and I think there's also
6 an issue about the memorandum costs.

7 MR. KARACSONYI: On the 1.068 million, I know the
8 Court has our memorandum that we submitted to the court.

9 THE COURT: You're concerned because Mr. Martin is
10 the husband of Lana Martin. They had some business
11 transactions with the trust and some issues going on that. So
12 he felt it really was --

13 MR. KARACSONYI: They never communicated. When Ms.
14 -- when Ms. Nelson and the -- and the LSN Trust had accounts
15 there, they never communicated with her. The relationship
16 between Mr. Martin and Mr. Nelson has been well established.
17 We have received these letters. The documents don't even seem
18 to support the letters that this -- there was a million that
19 came five days after. We were told that the monies were
20 already there. I don't know what that -- what the cause of
21 that was. But we just don't feel comfortable with it.

22 The order was that you're supposed to meet and
23 confer and act in good faith. And I know that counsel and I
24 had a little disagreement over this, but when I asked them

1 please -- look, here are our suggestions. Trust account or --
2 or even David Stephens account who represented Mr. Nelson. We
3 -- they came back and said no, we just don't think that's
4 appropriate and we're not going to negotiate with you. I said
5 I -- that's not what the judge ordered. I wrote that in an
6 email. I don't think that's what the judge ordered.

7 Are you going to -- are you going to defend that
8 position in front of the court? And they said look, we'll get
9 back to you and then they said well, we conferred with the ELN
10 Trust again and they said no. And I said well, we were
11 looking forward to receiving some -- some alternatives.

12 So the order was to find a place that everybody was
13 comfortable with and that was interest bearing. This one
14 doesn't even have interest. We called around. Bank of Las
15 Vegas on an investment account and it's important that it's an
16 investment account because that offer is 1.5 million in
17 insurance. Will give us .1 to .15 percent on the monies. Now
18 it's a large sum of monies, so even a nominal percentage like
19 that will add up over time depending on how long the writ
20 takes.

21 But the bottom line is there's no negotiation here.
22 This is again somebody imposing their will one person and
23 pointing his will on another person. And this has happened
24 throughout. And there's no reason that Ms. Nelson who is

1 legally entitled to those monies as of this moment shouldn't
2 feel comfortable that they're in a place where those monies
3 won't disappear. So we ask that the Court allow for that to
4 happen and put it in a place, title it in re Nelson or some
5 way where it doesn't show ownership to either parties so
6 nobody could try to play any funny business and leverage --
7 leverage against it. And let's put it in a bank that
8 everybody is comfortable with.

9 THE COURT: Thank you. Counsel.

10 MR. LUSZECK: Your Honor, it's interesting how they
11 always accuse the trust of being controlling, but whenever --
12 they're always demanding that we do things that they want. I
13 mean, the order specifically stated that if we can't come to
14 an agreement, the trust should put in a blocked account of its
15 choosing by such deadline.

16 MR. KARACSONYI: Temporarily. Where is the word
17 temporarily?

18 MR. LUSZECK: It's sure not after that. This is
19 from your motion.

20 THE COURT: My minutes say he has transferred the
21 money into a blocked interest bearing account no later than
22 Friday, September 6th. The parties shall attempt to reach an
23 agreement on the specific bank account. And with that front
24 shall be in placed. If the parties aren't able to reach such

1 agreement, the court will make a decision if we have to do a
2 --

3 MR. LUSZECK: Exactly.

4 THE COURT: -- telephone conference instead of -- if
5 they're unable to reach an agreement by Friday, September 6th,
6 the ELN Trust will put -- set funds temporarily into a blocked
7 account of its choosing and provide documentation to the other
8 parties that the monies have been transferred as ordered and
9 we would deal with it later. So the issue is temporarily if
10 you guys couldn't resolve it.

11 MR. LUSZECK: Exactly. And that's what we're here
12 today to talk about. BNY Mellon is a national bank with a
13 great reputation. They have been provided with a copy of this
14 Court's orders that the monies are to be placed in a blocked
15 account. I don't believe -- I can't fathom that BNY Mellon is
16 going to transfer the money out at the behest of anybody
17 except this Court and risk liability in the amount of 1. --
18 what is it, over \$1,000,000.

19 THE COURT: Yeah, one million, sixty-eight.

20 MR. LUSZECK: Can't fathom if they're going to do
21 that. I don't understand the concern that somehow this money
22 is going to dissipate. It's just not going to happen. The
23 money is there, it's in a blocked account. It's not going to
24 be moved without further order of this Court and she's not

1 harmed by this money being kept in there.

2 She says she's legally entitled to these monies, but
3 that issue is in front of the supreme court.

4 THE COURT: The supreme court.

5 MR. LUSZECK: Right now it's still the assets of the
6 ELN Trust where it'll remain until the supreme court makes its
7 decision. There's no harm here with the money staying there
8 just as there was no harm with the monies staying with Mr.
9 Stephens. If there had been a -- a good explanation as to why
10 this money needs to be moved, maybe the ELN Trust would change
11 its mind. But there's no reason. It's in a blocked account.
12 It's a well respected, well recognized bank. There's -- I
13 still haven't heard a reason other than she just doesn't feel
14 comfortable. The money is there, it's not going to be moved.
15 I just don't -- still don't understand why there's a need to
16 move it.

17 THE COURT: There's no interest albeit, right? It's
18 a zero interest --

19 MR. LUSZECK: It's my understanding that's being
20 worked on right now. I mean, this is a -- this is a large
21 amount of money, Your Honor.

22 THE COURT: I know. In fact, that's what I'm
23 worried about.

24 MR. LUSZECK: Setting up -- setting up account -- we

1 were here on a Wednesday.

2 THE COURT: Yeah.

3 MR. LUSZECK: This Court ordered us to have it in
4 account within two days. The ELN Trust did its best efforts
5 to do that and trying to get everything else in order.

6 MR. KARACSONYI: It's seven weeks later.

7 THE COURT: Right, well, yeah, the concern on that
8 was that -- their concern raised on that the transfer from
9 Attorney Stephens based on my order, I should have made it
10 clear with the order on that to transfer the money different
11 so they could get his money out and not tie it up there. But
12 the concerns came from that said that that money got
13 transferred, all of it. And therefore that they could access
14 to Mr. Nelson getting it through distributions to circumvent
15 the court order. That was the concern that was raised on that
16 with the money leaving otherwise. They probably should have
17 left that at Mr. Stephens' account, at least the 1,068,000
18 would have probably made it a lot of easier because he was
19 getting interest on that. It would have made it a lot
20 clearer, but I think he probably wanted to get out of it as
21 soon as possible too. So he -- that was where the concern got
22 raised.

23 As far as -- any rebuttal you want on that?

24

1 MR. KARACSONYI: No, I mean --

2 THE COURT: You were concerned about the money even
3 ever got transferred to five days later, is that right? I
4 think --

5 MR. KARACSONYI: Right.

6 THE COURT: -- September 11th --

7 MR. KARACSONYI: And then one of it, 70,000 came
8 from Big Fish, LLC, his brother. The --

9 MR. LUSZECK: Why does that matter?

10 MR. KARACSONYI: And they said -- they said --

11 THE COURT: Yeah.

12 MR. LUSZECK: It doesn't matter.

13 MR. KARACSONYI: Is the brother going to make a
14 claim --

15 THE COURT: As -- as long as the money is there.

16 MR. KARACSONYI: -- to the monies later?

17 MR. LUSZECK: How does that matter? Why would it
18 matter?

19 THE COURT: Hey.

20 MR. LUSZECK: The money was supposed to be
21 transferred and it was.

22 THE COURT: Don't argue. Don't argue. He gets to
23 talk and you get the thing on that.

24 MR. KARACSONYI: All I'm saying is look, there's --

1 THE COURT: I don't care as long as the money is
2 there.

3 MR. KARACSONYI: Right.

4 MR. LUSZECK: That's right.

5 THE COURT: I don't care where it came from.

6 MR. KARACSONYI: I mean, look.

7 THE COURT: Yeah.

8 MR. KARACSONYI: They tell you oh, well, we're
9 working on it. It -- it was a rush, but it's been six weeks,
10 Judge. I mean, we weren't afforded any input. That's the
11 bottom line. It's a control issue with him and she's not
12 comfortable with it. She's just not comfortable with it. And
13 I mean, it's basically -- it's whether they want to say it or
14 not, it's her money. I mean, that's the order. That's the
15 outstanding order. They keep saying well, it's -- it's the
16 ELN Trust. No, they always want to treat everything like it's
17 still theirs.

18 Until the supreme court says otherwise, the decision
19 has been made. So those monies should be transferred to -- to
20 Bank of Las Vegas. We'll -- we'll accept any bank. Why
21 haven't they suggested alternatives? They said well, if we
22 heard her reasons, well you know what, you've heard her
23 reasons now. And then he says but those aren't valid reasons.
24 So what reasons are valid reasons and do they get to decide

1 that? She has valid concerns. We've set them forward. Now
2 are they prepared to adjust to do what you ordered in the
3 first place and that's try to reach an agreement? Name a
4 bank. Name a bank. Throw one out there. Let's get a dart
5 board. Put banks on the dart board and throw darts. I mean,
6 do something, but don't make us get stuck with your decision.

7 MR. LUSZECK: I don't see what you need to do here,
8 Your Honor.

9 MR. KARACSONYI: And Lana's still a party to this
10 action as of your order today. So we have an interested
11 party's husband holding the monies.

12 MR. LUSZECK: In a blocked account. Before it was
13 the ex attorney of our party. It doesn't matter. It's there.
14 Before today we didn't even have a different option for them.
15 Now they're talking about Bank of Las Vegas. They never
16 provided us with any alternatives. They just objected for it
17 to be BNY Mellon

18 THE COURT: You --

19 MR. LUSZECK: It's not hurting anybody for staying
20 there. Just because she's not comfortable with it. Maybe if
21 it's transferred to Bank of Las Vegas, my comfortable is not
22 -- my client is not going to feel comfortable with that. Your
23 Honor, it's not going to be moved. There's an order holding
24 it in place.

1 THE COURT: I can see why there was concerns on
2 that. This Court made specific findings as a credibility and
3 issues in the divorce decree as the concerns raised by this
4 Court very specific. The issue is I don't know why it was a
5 problem just getting a bank, any bank on there. I don't know
6 why the parties couldn't sit down or read the emails, why he
7 just couldn't sit down and say well, do Bank of Las Vegas or
8 Bank of whoever it is on that to put it in a blocked account
9 with the interest so that noone had quote, control over it.
10 But apparently, everything in this case is difficult to
11 achieve. I do understand their frustration. You got Mr.
12 Martin. He's the president. I imagine he's a straight
13 shooting guy on that that BN Mellon is not going to do
14 anything that would jeopardize their integrity I would guess,
15 whether Mr. Martin is a president or not.

16 But the same token, why not just find a trust
17 account that handles it and gives interest and puts it in
18 right now so I don't see -- I don't see -- you're only
19 concerned about moving it. I don't see -- they're over
20 concerned anyone's going to steal it. But the fact is why
21 don't they just sit down and just pick a bank that would --
22 wasn't affiliated with you guys, wasn't affiliated with them.
23 We wouldn't be here today. It seem like it could have been a
24 lot easier, especially an interest bearing account. I just

1 don't see the -- the issue on that.

2 I'm going to order to be placed in an interest
3 bearing account, the Bank of Las Vegas. Should be another
4 bank you guys want to come up to that gives better interest.
5 Right now we're talking about interest being .1 percent or 1.5
6 percent. I think interest bearing should be -- it should be
7 put in the name of in re Nelson so that noone can claim
8 ownership to it until it gets done with it. The whole purpose
9 was to wait what the supreme court says. If they find --
10 well, adjusted accordingly on a balance, I don't see the big
11 deal over it either way whether it's an inconvenience to a
12 party on that. I don't see why it would be in a -- why --
13 just issued a check, transfer it to Bank of Las Vegas that you
14 come up with another bank. If you check the Bank of Las Vegas
15 to see about the percentages --

16 MR. LUSZECK: The first I heard about Bank of --

17 THE COURT: Okay.

18 MR. LUSZECK: -- Las Vegas was today, Your Honor.

19 THE COURT: If you can come up with a better
20 interest, I'm fine, but right now I'm going to order to please
21 pay -- either place in the -- Bank of Las Vegas or other --
22 let's do the Bank of Las Vegas. Let's set our opposition to
23 an interest bearing account which would provide either .1
24 percent, up to .15 percent. If you can find another bank that

1 provides a higher return, I'd be glad to do that. But right
2 now, we're going to order it to be transferred. 48 hours, is
3 that enough time? Is 48 hours enough time to get it
4 transferred? I don't know what they have to do with
5 transfers.

6 MR. LUSZECK: How much time are we going to have to
7 look at another bank, Your Honor? Two weeks.

8 MR. KARACSONYI: Six weeks already.

9 THE COURT: Well, I figured 48 hours would give you
10 a chance if you looked at 24 hours to look --

11 MR. KARACSONYI: That's fine with us.

12 THE COURT: -- look at banks and make -- call around
13 and --

14 MR. KARACSONYI: We're open.

15 MR. LUSZECK: But just give him the money.

16 THE COURT: And make the transfer on that. If you
17 -- if you want to give him the money, that's fine too and put
18 it in their account, I'm fine.

19 MR. KARACSONYI: We'll put it in our attorney
20 address account. We're happy to do that.

21 THE COURT: If you want to that or put it in -- I'm
22 sure that you may want to talk to counsel before you do that.
23 We're going to order it to be placed in the -- give you 48
24 hours to check with other banks if you get a better interest

1 and then I think it should be transferred within 24 hours I
2 would guess. Is that -- I don't know if the transfers take
3 longer. I don't know what they need to do. So I'm going to
4 order to be placed in the Bank of Las Vegas by the close of
5 business on Thursday since Friday is a holiday, a state
6 holiday at least. I imagine that -- is the Bank of Las Vegas
7 a state bank? Because they'll be closed on that day.

8 MR. DICKERSON: They'll all be closed.

9 THE COURT: They'll all be closed on fri.

10 MR. LUSZECK: Your Honor, and to be quite frank, I
11 don't know how long it takes to move that type of an amount
12 anyways.

13 THE COURT: Yeah.

14 MR. LUSZECK: I don't know if it's a wire or a
15 cashier's check.

16 THE COURT: Yeah.

17 MR. LUSZECK: I don't know --

18 THE COURT: Yeah.

19 MR. LUSZECK: -- how long it takes.

20 THE COURT: Yeah, let us know if there's an issues
21 on that.

22 MR. LUSZECK: We'll -- we'll do -- we'll do what we
23 can, but I'm just telling you I don't know if that's going to
24 be --

1 THE COURT: Just let us --

2 MR. LUSZECK: -- able to happen by Thursday.

3 THE COURT: Just communicate with the other side so
4 you don't -- there's any funny business. That's all.

5 MR. KARACSONYI: Well, but if they initiate the
6 transfer and it takes a day, that's fine.

7 THE COURT: Yeah, I don't know --

8 MR. KARACSONYI: We understand that.

9 THE COURT: Yeah, I don't know how it does it.

10 MR. KARACSONYI: We just want to see the transfer
11 initiated.

12 THE COURT: So give you until Wednesday at 5:00
13 o'clock to check out other banks and then the money to be
14 transferred to the Bank of Las Vegas unless it's otherwise
15 agreed upon if there's another bank with a better return by
16 the close of business on Thursday, whatever that day is by
17 5:00 o'clock.

18 MR. KARACSONYI: To be clear, the Bank of Las Vegas
19 has like an investment bank and regular bank. And so -- so it
20 would be --

21 THE COURT: We want to make sure it's an investment
22 bank.

23 MR. KARACSONYI: -- the investment portion of their
24 investment account.

1 THE COURT: It should be an investment account,
2 because I understand --

3 MR. KARACSONYI: The 1.5 --

4 THE COURT: -- those are federally insured for 1.5
5 million. I don't think the other ones are insured, is that --

6 MR. KARACSONYI: Right.

7 THE COURT: -- is that your understanding?

8 MR. KARACSONYI: They're only 250,000 on a --

9 MR. LUSZECK: I don't know, Your Honor.

10 MR. KARACSONYI: -- regular deposit.

11 THE COURT: Just make sure they're federally insured
12 to cover your money. And if you come up with a better
13 interest you guys agree, fine.

14 MR. KARACSONYI: Okay. We'll prepare the order and
15 send it down, Your Honor.

16 THE COURT: Okay. Make sure it's an investment
17 account --

18 MR. KARACSONYI: And we'll send it to him.

19 THE COURT: -- so that it's insured for over the 1.5
20 million and make sure that one million, sixty-eight is insured
21 because I think the other one is only insured by a quarter
22 million, I think. But if you guys come --

23 MR. KARACSONYI: I even -- we'll even help set up
24 the account, Your Honor.

1 THE COURT: Now if you guys --

2 MR. KARACSONYI: Make sure it's set up and titled
3 correctly.

4 THE COURT: Now -- prepare the order. And the last
5 issue I think was an accounting issue, is that where we're --

6 MR. LUSZECK: Yes, Your Honor.

7 THE COURT: -- we want to --

8 MS. PROVOST: I'll just stand up. Your Honor, this
9 has actually been carried over I think --

10 MR. LUSZECK: I --

11 MS. PROVOST: -- two times --

12 MR. LUSZECK: Sorry, really quick.

13 MS. PROVOST: Yeah.

14 MR. LUSZECK: If this is just the accounting issue,
15 this doesn't involve me.

16 MS. PROVOST: You can get out of here if you want
17 to.

18 MR. LUSZECK: Can I leave? Is that okay?

19 THE COURT: Yeah. The other issues on the
20 attorney's fees that they had done on the cost --

21 MR. LUSZECK: Oh, yes.

22 THE COURT: -- I'm going to defer that. I'm not
23 making any findings on that. I think the supreme court
24 decision might help me if people do have a right to file writs

1 or appeals. Again, if the supreme court came up and made some
2 findings they thought it was frivolous that would definitely
3 impact my award of attorney's fees. I know you've asked for
4 attorney's fees from June 1st through the end of August. And
5 the current -- I have kept a -- I remember -- I think it was
6 79,000 and some change and I think 3100 for costs. I would
7 defer that until I finally get a decision from the supreme
8 court, because that could impact -- the supreme court may rule
9 in the trust and say I'm all wet. Then that would justify
10 their attorney's fees. It may go the other way saying it's
11 frivolous.

12 So this time, I'm not going to -- I'm going to defer
13 any decisions as to fees and costs from the June 1st decision
14 date currently.

15 MR. LUSZECK: Okay.

16 THE COURT: Get that way to --

17 MR. LUSZECK: Thank you.

18 THE COURT: As far as the accounting, let's see
19 where we're at with the accounting principals and accounting
20 issues and see if we can help you out on that.

21 MS. PROVOST: Thank you, Your Honor. We've -- I
22 think we've deferred on the accounting issues twice so far so
23 that both sides would have the to brief it.

24 THE COURT: To look at them, right.

1 MS. PROVOST: It's been briefed by both sides
2 inclusive of our last brief that was filed in response to the
3 August accounting that was received on October 1st. And it's
4 set forth in our brief to you that was filed on October 15th
5 of this year. The three remaining that we have with the
6 accountings that have been provided for the years 2010 through
7 2013 are the insurance costs that are being deducted by Eric
8 Nelson for the children's insurance, the insurance costs that
9 were deducted for Lynita Nelson's insurance from 2010 through
10 the date of the divorce and then the rent that is not being
11 paid by Eric Nelson for occupancy of 3200 square feet of the
12 Lindale office building from the time of the divorce to
13 present which is five months.

14 That October 15th filing does break down those
15 numbers at \$3200 -- or hundred -- or \$1 per square foot, 3200
16 square feet times five months, that's \$16,000 and we've
17 requested that the -- Mr. Nelson via whatever entity he
18 proposes pay to Mrs. Nelson the \$8,000 that is due for her
19 share of the Lindale professional property -- or professional
20 clause of monies. That would be the rent from the time of the
21 divorce til now for the occupancy that he continues to
22 maintain and that he continue to be -- make a 3200 payment.
23 That's reflected on the general ledger as income to Lindale
24 Professional Plaza. Or if he doesn't want to reflect it, that

1 that's just money that's owed to Lynita at this point in time,
2 because he can't continue to maintain an entire floor of an
3 office building under the guise of well, but I control the
4 trusts and I do all the trust work. That's his excuse. His
5 excuse is I shouldn't have to pay rent because I control the
6 trusts and I do all the trust work there. And so I shouldn't
7 have to pay any rent for the -- the 3200 square feet that I
8 occupy. That's valuable office space. She's entitled to rent
9 for that.

10 We've gone over the insurance for the children.
11 Your Honor specifically ordered during the pendency of the
12 case that the status quo be maintained. That included being
13 -- having the insurance paid for the family. And then post
14 divorce in your decree, you specifically state that it is Eric
15 who will maintain the minor children's insurance. He
16 continues to deduct from Lindale Professional Plaza the amount
17 for the children's insurance and charges half of that to
18 Lynita. From 2010 through the August 2013 accounting she's
19 owed \$11,675.70 for children's insurance reimbursements.

20 And then with respect to Lynita's insurance again
21 during the pendency of the action, you ordered that status quo
22 be maintained which meant that Eric was to continue to provide
23 Lynita's health insurance from 2010 until May of 2013, your
24 decree being issued on June 3rd. The amount that was deducted

1 from Lynita's share of Lindale Professional Plaza is
2 \$26,342.88.

3 We have asked for reimbursement for that. When we
4 addressed the August accounting that we just received, we
5 noted that for some reason they prepaid taxes three-quarters
6 of a year, but not even the right amount of taxes. We don't
7 understand why they did that. It wasn't something that was
8 discussed with the co-owner of the property about doing.
9 There was only one quarterly tax payment owed. We've provided
10 you with an adjusted balance sheet that reflects that if you
11 had only paid that one quarterly tax payment that was due as
12 opposed to some random number, at the end of that month
13 because of the quarterly tax payment Lynita would owe \$231.86
14 to Lindale Professional Plaza.

15 So covering the numbers that I went through and
16 subtracting out the \$231.86 that she would owe to Lindale
17 Professional Plaza, the amount that we believe is owed to Mrs.
18 Nelson from 2010 to present for her interest in the proceeds
19 that have been received by Lindale Professional Plaza is
20 \$45,786.72. I mean, the whole purpose of these accounting is
21 to ensure that as a co-owner Mrs. Nelson is receiving the
22 monies that are due to her.

23 If you recall, your initial order, Your Honor, was
24 that Eric should provide the accountings and write a check for

1 what he believe the net amounts were, but that it would be
2 subject to your review and that you would have the right to
3 amend that if you found that he had improperly deducted
4 things. We've set forth what we believe he's improperly
5 deducted and we're asking for you to make those corrections to
6 the accounting and ensure that she does actually receive what
7 is due to her as a co-owner of the property.

8 THE COURT: Okay. Ms. Forsberg.

9 MS. FORSBERG: Thank you, Your Honor. A couple of
10 -- let's start with the rent. We'll start in the same order
11 they went in to try to keep it simple, Your Honor.

12 THE COURT: Okay.

13 MS. FORSBERG: It breaks down to \$1600 percent month
14 in managerial fees. She seems to think -- Ms. Provost seems
15 to be stating that it's to do with managerial fees of the
16 trust. The fees are properties we're talking about, Your
17 Honor. \$1600 is roughly less than three times Mr. -- three
18 hours of Mr. Dickerson's time. So I think that's a reasonable
19 amount for managerial fees for these properties. We're not
20 talking just one property as well as you know that.

21 The other issue is Your Honor so that \$1600 a month
22 if you break down that 3200 divide it in half, that's where I
23 got the number so the --

24 THE COURT: Okay.

1 MS. FORSBERG: -- the Court can follow. I think
2 that's a reasonable fee. That and then we've accounted for
3 the accounting fees and -- and for maintenance fees. And
4 that's the managerial portion. So \$1600 is more than
5 reasonable. I don't think any of us attorneys would be
6 willing to do -- manage those kind of properties for \$1600 a
7 month, Your Honor.

8 This -- the next issue Your Honor is health
9 insurance. It's just comical that she wants all the benefit
10 of all the rems all the way back but wants none -- no -- no
11 expenses. That's one of the expenses. You said to maintain
12 it the way they've been doing it. They've always paid their
13 -- their expenses out of their companies. That's how they
14 have maintained it. But now she wants us to look back as a
15 Monday morning quarterback and say no, you shouldn't have paid
16 that way back two, three years ago and you shouldn't have paid
17 this way back here.

18 That is unreasonable, Your Honor, at best. I mean,
19 the fact that she doesn't think she should have to share in
20 her children's insurance or in her insurance for that period
21 of time or that the businesses should have, that's ridiculous.

22 In addition, one of things that's really interesting
23 in their motions, I guess it's kind of weird because I wrote
24 it as a response. They didn't really write it as a motion.

1 So in their response on the issues of -- they don't want
2 Garrett covered. Most plans you cover the family. It's all
3 the children. It doesn't matter if you have one or if you
4 have five. So she wants us to take Garrett off and leave him
5 uncovered. That just seems ridiculous. Their reply repeats
6 in there that he can cover Garrett, but let him cover Garrett.
7 Really? If it's the same cost for Carli and Garrett, you want
8 us to kick the kid off the insurance while he's in college.
9 The -- the one thing that we know that -- that insurance goes
10 on now until 26. It used to be 24 before these recent changes
11 in legislation. He should be able to stay on as long as it
12 doesn't cost her an extra penny in her half.

13 They also state Your Honor that it says -- your
14 decree says maintain insurance. It doesn't show how they
15 divide the cost. There's a statute specifically about that
16 that says you divide the costs equally. The Court didn't say
17 it shouldn't be divided equally.

18 You know, Mr. Nelson is always -- still maintaining
19 that that's how it always works in all the decrees, but of
20 course they want it different. They want all the benefit,
21 none of the burden of anything. None of the burden of their
22 children, none of the burden of the cost of -- of her
23 insurance, nothing, just, you know, pigs get fed, hogs to get
24 slaughtered. It seems like that's what she wants to do.

1 Everything should go to his cost. That's inappropriate, Your
2 Honor.

3 The last issue, taxes. How they've always done
4 taxes is if they could pay the whole amount, they would always
5 pay the whole amount. But in this case they had to pay one
6 payment and then all of it, the rest of it. That's where the
7 balance of the taxes is. This again is Monday morning quarter
8 backing. You want to go back and say that they shouldn't pay
9 it this way, it's a tax -- it's taxes. It's not like it's,
10 you know, a big -- that they paid something that they didn't
11 need. They have to pay the taxes. They don't have a choice
12 to pay the taxes. Whether they pay it quarterly or not,
13 certainly that's a business decision. But as this Court has
14 repeated over and over and over again, Mr. Nelson has been a
15 good businessman. He's done this the right way to even
16 inquire or they wouldn't have any businesses. So I think to
17 now chastise him for paying the whole taxes, yeah, they paid
18 it in two payments as much as they could that month and the
19 other but then punish him, that's unfair, Your Honor.

20 So I think again the accountings have been accurate.
21 As you saw, they also backed down on a lot of their things
22 already, but these are the last three items we have. 1600 is
23 reasonable for managerial fees. I don't see that Mr.
24 Dickerson or anybody on any side of this table would do it for

1 that on either table. The insurance, it should be split
2 between the two forensic them and taxes, Your Honor.

3 MS. PROVOST: Very, very quickly, Your Honor. And
4 first of all, the -- the concept of backing down, we had
5 questions about the accounting and asked for information. If
6 that is causing an issue to ask for information that supports
7 the statements that are made, then I don't understand how any
8 business operates, because I know at least in our law practice
9 I review the books and accounts and if I have questions, I
10 either get an -- a statement from Mr. Dickerson looking at the
11 -- the questions or I get a statement from our accountant.
12 But as someone who has access to books and records, as a
13 co-owner of a business, she should have the right to question
14 things. When we found that the verification that was provided
15 coincided with the amounts, we said sure, not a problem
16 anymore. I think that's how you run a business.

17 Taxes, she says it's a business decision. Business
18 decisions require the input and information with a co-owner.
19 She's a co-owner. He keeps forgetting that. He doesn't to
20 recall that she's a co-owner or let her have any influence
21 over it. He says, you know, let him have his \$1600 a month as
22 a managerial fee.

23 She was willing to manage the property and take care
24 of the tenants. If you recall, Your Honor, she started doing

1 that. She sent the letters to the tenants and said send the
2 rents here, send your problems here. She started fixing
3 things that were broken. She started doing what a building
4 owner does. She started managing the property. Eric decided
5 nope, I'm sending them a letter telling them they better not
6 do it and if they do it, they're going to get in trouble
7 because I'm the one in charge and I'm the one in control. And
8 he took it all back. And now he wants to claim give me my
9 managerial fee for doing so. She's willing to do it. She
10 tried to do it. He took it away.

11 Now charging -- charge, you know, Mr. Dickerson's
12 time. Mr. Dickerson hasn't even charged Lynita the first
13 time. He's sitting here gratis today. He's been sitting here
14 gratis at the last couple of hearings. You know, he's -- he
15 -- I don't see where his time has anything to do with it.

16 Health insurance, they talk about well, he has
17 always paid the insurance from all of the companies from all
18 of the companies. But now that he has to start paying Lynita
19 for her share of the Lindale Professional Plaza, now all of a
20 sudden the insurance is only coming from Lindale Professional
21 Plaza, not from all of the companies. Which by the way for
22 the last four years at least he's kept a hundred percent of
23 all of the profits of all of the companies. So it's not
24 farfetched that he should have to pay for the cost of the

1 insurance as he's the only one that was getting anything as
2 she's gotten nothing, no temporary support, no share of the
3 business income, nothing.

4 And finally, two things. The decree says the
5 argument -- that the decree says to maintain insurance, but it
6 doesn't say who has to pay for it. Come on, Your Honor. This
7 -- this isn't your first decree that you've written. This
8 isn't your first time around the block. It's not mine. It's
9 not Ms. Forsberg's. I understand the Nelsons have never been
10 divorced, but other than the Nelsons, I think everyone else
11 in this room knows what it means when it says that the party
12 is required to maintain the insurance. That includes paying
13 for the insurance, Your Honor.

14 And finally, you know, these attacks about Garrett
15 and that she's trying to make it so Garrett is uninsured and
16 she can't -- you know, she wants to toss Garrett off the
17 insurance. She's never once said toss Garrett off the
18 insurance. What she said is Garrett's an adult, like it or
19 not. As an adult child, it's a moral decision whether either
20 of these parties just chooses to insure him. If it costs Mr.
21 Nelson nothing more to keep Garrett on the insurance, by all
22 means, keep Garrett on the insurance. But don't make Lynita
23 pay for something that she's not required to do. Your Honor's
24 decree was that Eric is to maintain the insurance. That

1 includes paying for it. Obviously, you only have jurisdiction
2 over the order for the minor child which is Carli and that is
3 the point that we made in all of our pleadings.

4 THE COURT: As far as I think their -- that the
5 management fees, I think there is some entitlement to
6 management fees. What's a fair amount? I don't know. I
7 never -- I'll have to look at those accountings and see what
8 the issues come down to and what the management fee, how much
9 he charge an hour and how many hours are -- are spent on that.
10 That's the concern on that. I never get good documents. I
11 just get --

12 MS. PROVOST: That's what the management fees that
13 he's deducting to pay to Rochelle McGowan already are, Your
14 Honor.

15 MS. FORSBERG: Those are accounting fees. Those are
16 different than managerial fees.

17 THE COURT: The exact -- so I'm going to familiarize
18 myself with those documents again. I'm going to look at those
19 numbers, but I think there is definitely entitled to proceeds
20 for rent. People don't get free rent. They don't get free
21 rent from day one. That's -- and I think a dollar a square
22 foot is very reasonable. And that's probably the bottom line
23 of square footage now. I don't know what the economy how it's
24 fluctuated, but a dollar a square foot is very fair and

1 reasonable. I think she's entitled to the rental for that
2 time forward and you're entitled to some type of management
3 fees for managing.

4 What's fair and reasonable? I'll have to look at
5 those numbers to see whether or not Ms. Lynita is willing to
6 do the management. Of course the letters went out, send that
7 and you counter with letters don't do that. So instead of
8 just sitting there and she's a co-owner. And of course you
9 guys aren't going to be able to co-own businesses because of
10 where we're at today. Unfortunately, we can't said to move
11 forward on that and that's just the way it is until the
12 supreme court rules.

13 But the fact is on the health insurance and for the
14 children on that, it was my intention that Mr. Nelson pay for
15 the minors as far as the spouse. I need to look at that to
16 see what time frame to make sure that those time frames jive
17 with my decisions on that to see how far back would be far to
18 go back. But I did maintain the status quo so that we
19 consider those funds. So I think there needs to be some
20 adjustments. Go through the numbers and write out an order
21 with specific numbers, but there's no doubt you're entitled to
22 some type of credit for the health insurance. Whether it's
23 the full amount that's requested or not, I'm not sure if
24 that's fair and just, but I'm going to look at those numbers

1 and go through from different dates and see what would be
2 best.

3 Right now you're looking at a -- I think you said
4 11,675 was your request for the children. 26,342.88 was for
5 Ms. Lynita's and that there was the other amount, the 8,000
6 was -- was the --

7 MS. PROVOST: The 8,000, Your Honor, was with
8 respect to the -- the rents for the last five months for
9 Eric's space.

10 THE COURT: Because that came out from the half of
11 the 16,000 and --

12 MS. PROVOST: Exactly.

13 THE COURT: -- 3200 --

14 MS. PROVOST: Uh-huh (affirmative).

15 THE COURT: -- square feet. That has \$1 came up to
16 16,000 and half of that for the five months as a partial owner
17 would be the 8,000 for the rent which came out to the 45,000.

18 MS. FORSBERG: It was 1600 percent month, Your
19 Honor.

20 THE COURT: Yeah. And --

21 MS. FORSBERG: Managerial fee.

22 THE COURT: And cut that half to the -- all right.
23 Let me take those on and I'll turn this around quickly for
24 you, because I want to try to get these decisions out there

1 because I get backlogged with things going on there, so I want
2 to look at those numbers again to refresh my memory. I got to
3 look at those accounting numbers again to be honest with you
4 and go through all those numbers again, because I didn't
5 really review those before this hearing to be honest.

6 MS. PROVOST: When you issue the specific order --
7 order, Your Honor, we do request a due by date, a -- a direct
8 payment date, because otherwise --

9 THE COURT: Try to get it done, otherwise --

10 MS. PROVOST: -- if -- if it's left in limbo, we
11 don't know when we'll ever receive it.

12 MS. FORSBERG: That's presuming there is an amount,
13 so --

14 MR. KARACSONYI: Your Honor, just --

15 THE COURT: Yes.

16 MS. FORSBERG: We already have one person arguing
17 this. Are we going to have three of us arguing it again?

18 MR. KARACSONYI: No. No. This is another issue.
19 You had eluded to it earlier. I know it's not on for hearing,
20 but I don't want to waste the parties' time and -- and monies
21 and we know how difficult it is the disagreements between the
22 parties. I had asked Ms. -- at the last hearing Mr. Nelson
23 had said that some of the properties may have been leveraged
24 and you ordered them to unleverage it. I had sent an email to

1 Ms. Forsberg approximately the time of the transfer of the --
2 the joined funds about September 6th asking her to provide
3 proof of whatever was leveraged and that things were
4 unleveraged.

5 I haven't received a response. I prefer not to file
6 a motion and cost the parties money just to find out that an
7 order was complied with. If we could just have a date for
8 Eric as investment trustee --

9 MS. FORSBERG: Actually, Your Honor, I believe
10 they've done that in request for production of documents. You
11 guys did that, so --

12 MR. KARACSONYI: No, that was actually -- that's
13 actually the request for production of documents. If --

14 MS. FORSBERG: That's not due yet.

15 MR. KARACSONYI: They reference only to Wyoming
16 Downs. That's for the upcoming trial.

17 THE COURT: For the upcoming hearing.

18 MR. KARACSONYI: Yeah, once she reads those she'll
19 see that. But in the meantime, if we could just -- if we
20 could just get an order on that, that would be great. Just so
21 we have a time frame for them to show us the proof of that so
22 we don't --

23 MS. FORSBERG: Your Honor, again --

24 MR. KARACSONYI: -- have to file a motion.

1 Otherwise, I'm more than happy to file the motion if the Court
2 thinks that's necessary.

3 MS. FORSBERG: In response, Your Honor, a couple of
4 issues. First of all, we should have -- that should have been
5 something that was brought up with Mr. Luszeck here of course.

6 THE COURT: Yeah.

7 MS. FORSBERG: But the other issue is this, Your
8 Honor, is that you ordered him to unwind it. He's unwinding
9 it. That's what you told him to do. He had told you what he
10 had done, he's unwinding it.

11 MR. KARACSONYI: Okay. Well, a different issue.

12 MS. FORSBERG: But they want to go through more
13 costs and more fees and run up more fees --

14 MR. KARACSONYI: I'm not trying to.

15 MS. FORSBERG: -- and that's ridiculous.

16 THE COURT: Exactly. Exactly. What are we
17 unwinding, any other properties?

18 MR. NELSON: Yes, sir. I'm -- I'm unwinding it.
19 I'm -- I'm leveraging my house, I'm selling all my properties
20 in Arizona to unleverage everything and pay off all the
21 liabilities with source that I was -- you know, I'm -- I'm
22 trying to cleanup the lawsuits that I got stuck with and --
23 but it's going to be done. It's -- it's on a timely fashion.
24 All the homes are listed. The payoffs are going accordingly

1 and our next update we're think we're back in here in
2 December, hopefully I can give you a full report that
3 everything is cleared up.

4 THE COURT: Is the property that you got
5 specifically that you had concerns about? I know he said he
6 had fund that and he was going to kind of wheel and deal and
7 get out of --

8 MR. KARACSONYI: Well, that's so vague. I mean, I
9 -- I -- we just wanted to know which properties you leveraged,
10 how much you leveraged them for and what are you doing to
11 unwind them. I mean, look. If they want us to file the
12 motion, we'll be back in here and then we're going to request
13 attorney's fees, because we just want to know that an order
14 has been complied with.

15 MS. FORSBERG: Your Honor, I believe we're back here
16 in December, so we'll bring you all the --

17 MR. NELSON: I'll give you a status update at that
18 time.

19 MS. PROVOST: Are you -- are you referring to his
20 custody motion?

21 MS. FORSBERG: No. No. No. That's a different
22 department.

23 MR. NELSON: January.

24 MS. PROVOST: Well, I will ask Your Honor, Mr.