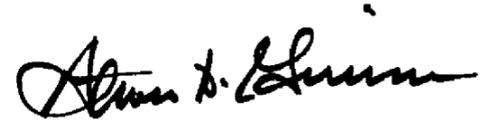


Exhibit 13



CLERK OF THE COURT

1 **NOAS**
2 H. STAN JOHNSON, ESQ.
3 Nevada Bar No. 00265
4 sjohnson@cohenjohnson.com
5 MICHAEL V. HUGHES, ESQ.
6 Nevada Bar No. 13154
7 mhughes@cohenjohnson.com
8 Suite 100
9 255 East Warm Springs Road
10 Las Vegas, Nevada 89119
11 Telephone No. (702) 823-3500
12 Facsimile No. (702) 823-3400
13 *Attorneys for Plaintiff-Appellant*
14 *Yacov Jack Hefetz*

11 No. A-11-645353-C

Dept. No. XXVIII

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
13 **STATE OF NEVADA IN AND FOR**
14 **THE COUNTY OF CLARK**

15 YACOV JACK HEFETZ,
16
17 Plaintiff-Appellant,

18 v.

19 CHRISTOPHER BEAVOR,
20
21 Defendant-Appellee.

22 **NOTICE OF APPEAL**

23
24 Notice is hereby given that Plaintiff-Appellant, Yacov Jack Hefetz, by and
25 through his counsel, H. Stan Johnson, Esq., and Michael V. Hughes, Esq. of the
26 law firm of Cohen-Johnson, LLC, hereby appeals to the Supreme Court of Nevada
27 from the Order: (1) Granting Defendant Christopher Beavor's Motion For
28 Attorneys' Fees and Costs (hereinafter referred to as the "Order") entered in this

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

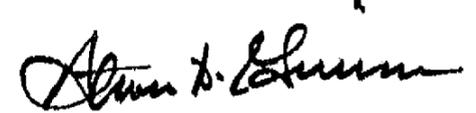
1 above-captioned action on the 3rd day of September, 2015. A copy of the Notice of
2 Entry of Order with the attached Order is enclosed herewith as **Exhibit 1** and a
3 copy of the Court Minutes arising from the hearing on August 19, 2015 is enclosed
4 herewith as **Exhibit 2**.

5 Dated as of this 15th day of September, 2015.

6
7 By: Michael V. Hughes
8 H. Stan Johnson, Esq.
9 Nevada Bar No. 00265
10 Michael V. Hughes, Esq.
11 Nevada Bar No. 13154
12 Suite 100
13 255 East Warm Springs Road
14 Las Vegas, Nevada 89119
15 Telephone No. (702) 823-3500
16 Facsimile No. (702) 823-3400
17 *Attorneys for Plaintiff-Appellant*
18 *Yacov Jack Hefetz*

19
20
21
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23
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27
28
COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

EXHIBIT 1


CLERK OF THE COURT

1 NEOJ
DICKINSON WRIGHT PLLC
2 JOEL Z. SCHWARZ
Nevada Bar No. 9181
3 Email: jschwarz@dickinsonwright.com
GABRIEL A. BLUMBERG
4 Nevada Bar No. 12332
Email: gblumberg@dickinsonwright.com
5 8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
6 Tel: (702) 382-4002
Fax: (702) 382-1661
7 *Attorneys for Christopher Beavor*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 YACOV JACK HEFETZ,

12 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

13 vs.

14 CHRISTOPHER BEAVOR,

15 Defendant.

16
17 NOTICE OF ENTRY OF ORDER

18 NOTICE IS HEREBY GIVEN that an Order Granting Defendant Christopher Beavor's
19 Motion for Attorneys' Fees and Costs was entered on September 1, 2015, a copy of which is
20 attached hereto.

21 DATED this 3rd day of September 2015.

22 DICKINSON WRIGHT PLLC

23

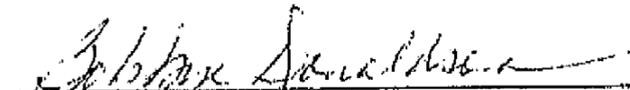
24 _____
JOEL Z. SCHWARZ
Nevada Bar No. 9181
25 GABRIEL A. BLUMBERG
Nevada Bar No. 12332
26 8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210
27 Tel: (702) 382-4002
Attorneys for Christopher Beavor
28

DICKINSON WRIGHT
8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210

1 CERTIFICATE OF SERVICE

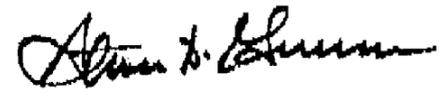
2 The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 3rd
3 day of September 2015, she caused a copy of **Notice of Entry of Order** to be served by
4 electronic service in accordance with Administrative Order 14.2, to all interested parties, through
5 the Court's Odyssey E-File & Serve system to:

6 H. Stan Johnson, Esq.
Email: sjohnson@cohenjohnson.com
7 Michael V. Hughes, Esq.
Email: mhughes@cohenjohnson.com
8 COHEN-JOHNSON, L.L.C.
255 East Warm Springs Road, Suite 100
9 Las Vegas, NV 89119
Attorneys for Yacov Hefetz

10 
11 Bobbye Donaldson, an employee of
Dickinson Wright PLLC

12
13
14
15
16
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21
22
23
24
25
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28
DICKINSON WRIGHT PLLC
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210

ORIGINAL



CLERK OF THE COURT

1 **ORDG**
DICKINSON WRIGHT PLLC
2 **JOEL Z. SCHWARZ**
Nevada Bar No. 9181
3 Email: jschwarz@dickinsonwright.com
GABRIEL A. BLUMBERG
4 Nevada Bar No. 12332
Email: gblumberg@dickinsonwright.com
5 8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
6 Tel: (702) 382-4002
Fax: (702) 382-1661
7 *Attorneys for Christopher Beavor*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 **YACOV JACK HEPETZ,**

12 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

13 vs.

14 **CHRISTOPHER BEAVOR.**

15 Defendant.

ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR ATTORNEYS' FEES AND COSTS

17
18
19 Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs
20 ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having
21 reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause
22 appearing therefore, the Court hereby finds as follows:

23
24 **IT IS HEREBY ORDERED** that the Defendant's Motion for Attorney's Fees is
25 **GRANTED.** Defendant is the prevailing party, having obtained a dismissal without prejudice.
26 Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the
27 amount of \$15,000.00.

28 Defendant's Offer of Judgment was both timely and reasonable in the amount especially

9/1/15 (28)

DICKINSON WRIGHT
8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-7710

DICKINSON WRIGHT
8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2219

1 given the circumstances under which the Plaintiff had been advised prior to the filing of the
2 motion to dismiss that the One-Action Rule would resolve the situation.

3 In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's
4 counsel was very good; (2) the character and difficulty of the work was reasonable in nature and
5 particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or
6 results that would satisfy the *Brunzell* factors. It was the amount of time spent following the
7 Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total
8 award of attorneys' fees to \$15,000.00.

9 IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is
10 GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's
11 memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded
12 costs in the amount of \$338.48.

DISTRICT COURT JUDGE
DATED: 8-28-15

17 Submitted by
18 DICKINSON WRIGHT PLLC

19
20
21 JOEL Z. SCHWARZ
22 Nevada Bar No. 9181
23 Email: jschwarz@dickinsonwright.com
24 GABRIEL A. BLUMBERG
25 Nevada Bar No. 12332
26 Email: gblumberg@dickinsonwright.com
27 8383 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113
Tel: (702) 382-4002
Fax: (702) 382-1661
Attorneys for Christopher Beavor

EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

August 19, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

August 19, 2015 Chambers Motion for Attorney Fees
and Costs

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

PARTIES

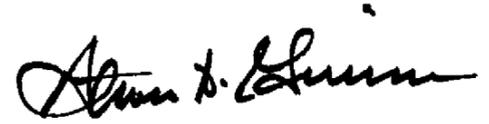
PRESENT: None

JOURNAL ENTRIES

- Motion for Costs are GRANTED as no timely Motion to Retax was submitted. Motion for Attorney's Fees are GRANTED. Defendant prevailed and got the Complaint dismissed even though it was without prejudice. Attorney fees are appropriate pursuant to the offer of judgment and are awarded in the amount of \$15,000.00. This Court reduced the attorneys' fees as the billing seemed excessive post offer of judgment. In discussing the Brunzell factors, the quality of the work done was very good; the character and difficulty of the work was reasonable in nature and particularly so given that it resolved the case. It was the amount of time spent that this Court felt was excessive and therefore reduced the total award of attorneys' fees to \$15,000.00. The Defendant did achieve appropriate results or results that would satisfy the Brunzell factors. The Offer of Judgment was both timely and reasonable in the amount especially given the circumstances under which the Plaintiff had been advised prior to the filing of the motion that the One-Action Rule would resolve the situation. Prevailing party to prepare the order pursuant to EDCR 7.21.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Joel Schwarz, Esq. (Dickinson Wright) and Stanley Johnson, Esq. (Cohen-Johnson)

Exhibit 12



CLERK OF THE COURT

1 **NEOJ**
2 **DICKINSON WRIGHT PLLC**
3 **JOEL Z. SCHWARZ**
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 **GABRIEL A. BLUMBERG**
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 *Attorneys for Christopher Beavor*

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **YACOV JACK HEFETZ,**

12 Plaintiff,

13 vs.

14 **CHRISTOPHER BEAVOR,**

15 Defendant.

CASE NO. A-11-645353-C
DEPT. XXVIII

16
17 **NOTICE OF ENTRY OF ORDER**

18 NOTICE IS HEREBY GIVEN that an Order Granting Defendant Christopher Beavor's
19 Motion for Attorneys' Fees and Costs was entered on September 1, 2015, a copy of which is
20 attached hereto.

21 DATED this 3rd day of September 2015.

22 **DICKINSON WRIGHT PLLC**

23 
24 _____
25 **JOEL Z. SCHWARZ**
26 Nevada Bar No. 9181
27 **GABRIEL A. BLUMBERG**
28 Nevada Bar No. 12332
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210
Tel: (702) 382-4002
Attorneys for Christopher Beavor

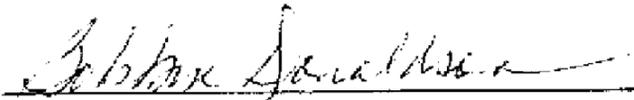
DICKINSON WRIGHT PLLC

8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210

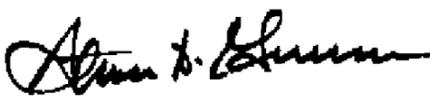
CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 3rd day of September 2015, she caused a copy of **Notice of Entry of Order** to be served by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system to:

H. Stan Johnson, Esq.
Email: sjohnson@cohenjohnson.com
Michael V. Hughes, Esq.
Email: mhughes@cohenjohnson.com
COHEN-JOHNSON, L.L.C.
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz


Bobby Donaldson, an employee of
Dickinson Wright PLLC

ORIGINAL



CLERK OF THE COURT

1 **ORDG**
DICKINSON WRIGHT PLLC
2 **JOEL Z. SCHWARZ**
Nevada Bar No. 9181
3 Email: jschwarz@dickinsonwright.com
GABRIEL A. BLUMBERG
4 Nevada Bar No. 12332
Email: gblumberg@dickinsonwright.com
5 8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
6 Tel: (702) 382-4002
Fax: (702) 382-1661
7 *Attorneys for Christopher Beavor*

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **YACOV JACK HEFETZ,**
12 Plaintiff,
13 vs.
14 **CHRISTOPHER BEAVOR,**
15 Defendant.

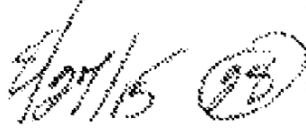
CASE NO. A-11-645353-C
DEPT. XXVIII

16
17 **ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR**
18 **ATTORNEYS' FEES AND COSTS**

19 Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs
20 ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having
21 reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause
22 appearing therefore, the Court hereby finds as follows:

23 **IT IS HEREBY ORDERED** that the Defendant's Motion for Attorney's Fees is
24 **GRANTED.** Defendant is the prevailing party, having obtained a dismissal without prejudice.
25 Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the
26 amount of \$15,000.00.

27 Defendant's Offer of Judgment was both timely and reasonable in the amount especially
28



DICKINSON WRIGHT
8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2710

1 given the circumstances under which the Plaintiff had been advised prior to the filing of the
2 motion to dismiss that the One-Action Rule would resolve the situation.

3 In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's
4 counsel was very good; (2) the character and difficulty of the work was reasonable in nature and
5 particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or
6 results that would satisfy the *Brunzell* factors. It was the amount of time spent following the
7 Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total
8 award of attorneys' fees to \$15,000.00.

9 IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is
10 GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's
11 memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded
12 costs in the amount of \$338.48.

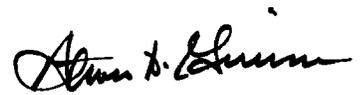
13
14 
15 DISTRICT COURT JUDGE
16 DATED: 8-28-15

17 Submitted by
18 DICKINSON WRIGHT PLLC

19 
20 JOEL Z. SCHWARZ
21 Nevada Bar No. 9181
22 Email: jschwarz@dickinsonwright.com
23 GABRIEL A. BLUMBERG
24 Nevada Bar No. 12332
25 Email: gblumberg@dickinsonwright.com
26 8383 West Sunset Road, Suite 200
27 Las Vegas, Nevada 89113
28 Tel: (702) 382-4002
Fax: (702) 382-1661
Attorneys for Christopher Beavor

VEGAS 65530-1 33065v1

Exhibit 11



CLERK OF THE COURT

Electronically Filed
Jul 20 2015 10:19 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 **NOAS**
2 H. STAN JOHNSON, ESQ.
3 Nevada Bar No. 00265
4 sjohnson@cohenjohnson.com
5 MICHAEL V. HUGHES, ESQ.
6 Nevada Bar No. 13154
7 mhughes@cohenjohnson.com
8 Suite 100
9 255 East Warm Springs Road
10 Las Vegas, Nevada 89119
11 Telephone No. (702) 823-3500
12 Facsimile No. (702) 823-3400
13 *Attorneys for Plaintiff-Appellant*
14 *Yacov Jack Hefetz*

11 No. A-11-645353-C

Dept. No. XXVIII

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
13 **STATE OF NEVADA IN AND FOR**
14 **THE COUNTY OF CLARK**

15 YACOV JACK HEFETZ,
16
17 Plaintiff-Appellant,

18 v.

19 CHRISTOPHER BEAVOR,
20
21 Defendant-Appellee.

22 **NOTICE OF APPEAL**

23
24 Notice is hereby given that Plaintiff-Appellant, Yacov Jack Hefetz, by and
25 through his counsel, H. Stan Johnson, Esq., and Michael V. Hughes, Esq. of the
26 law firm of Cohen-Johnson, LLC, hereby appeals to the Supreme Court of Nevada
27 from the Order: (1) Granting Defendant's Motion To Dismiss Pursuant To NRS
28 40.435; And (2) Vacating As Moot Defendant's Motion For Leave To Reopen

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

1 Dispositive Motion Deadline (hereinafter referred to as the "Order") entered in this
2 above-captioned action on the 17th day of June, 2015. A copy of the Notice of
3 Entry of Order with the attached Order is enclosed herewith as **Exhibit 1** and a
4 copy of the Court Minutes arising from the hearing on June 9, 2015 is enclosed
5 herewith as **Exhibit 2**.

6 Dated as of this 14th day of July, 2015.

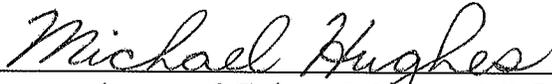
7
8 By: Michael Hughes
9 H. Stan Johnson, Esq.
10 Nevada Bar No. 00265
11 Michael V. Hughes, Esq.
12 Nevada Bar No. 13154
13 Suite 100
14 255 East Warm Springs Road
15 Las Vegas, Nevada 89119
16 Telephone No. (702) 823-3500
17 Facsimile No. (702) 823-3400
18 *Attorneys for Plaintiff-Appellant*
19 *Yacov Jack Hefetz*
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CERTIFICATE OF SERVICE

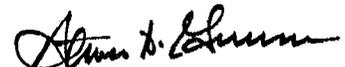
The undersigned hereby certifies that, on the 14th day of July, 2015, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served upon each of the parties set forth below via U.S. First-Class Mail and Odyssey E-Filing System pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure and Rule 8.05 of the Eighth Judicial District Court Rules:

Joel Z. Schwarz, Esq.
Gabriel A. Blumberg, Esq.
Dickinson Wright PLLC
8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Email: jschwarz@dickinsonwright.com
Email: gblumberg@dickinsonwright.com
Attorney for Defendant-Appellee
Christopher Beavor


An employee of Cohen-Johnson, LLC

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

EXHIBIT 1



CLERK OF THE COURT

1 NEOJ
2 DICKINSON WRIGHT PLLC
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 *Attorneys for Christopher Beavor*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.

15
16 NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that an Order: (1) Granting Defendant's Motion to Dismiss
18 Pursuant to NRS 40.435; and (2) Vacating as Moot Defendant's Motion for Leave to Reopen
19 Dispositive Motion Deadline was entered by the Court on June 17, 2015. A copy of the order is
20 attached hereto.

21 DATED this 18th day of June 2015.

22
23 DICKINSON WRIGHT, PLLC

24
25 
26 _____
27 JOEL Z. SCHWARZ, Nevada Bar No. 9181
28 Email: jschwarz@dickinsonwright.com
8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Tel: (702) 382-4002
Attorneys for Christopher Beavor

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CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright, PLLC, hereby certifies that on the 18th day of June 2015, she caused a copy of the foregoing Notice of Entry of Order, to be hand-delivered to and transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

COHEN-JOHNSON, LLC
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
Email: sjohnson@cohenjohnson.com
MICHAEL V. HUGHES, ESQ.
Nevada Bar No. 13154
Email: mhughes@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz


Bobbye Donaldson, an employee of
DICKINSON WRIGHT, PLLC

Alvin J. ...
CLERK OF THE COURT

1 ORD
2 DICKINSON WRIGHT PLLC
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 Attorneys for Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.

15
16 ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS
17 40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR
LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE

18 The Court, having reviewed and considered Defendant's Motion to Dismiss Pursuant to
19 NRS 40.435 (the "Motion to Dismiss") and Defendant Christopher Beavor's Motion for Leave to
20 Reopen Dispositive Motion Deadline (the "Motion to Reopen") filed by Defendant Christopher
21 Beavor ("Defendant"), the Opposition to the Motion to Dismiss and the Opposition to the
22 Motion to Reopen filed by Plaintiff Yacov Hefetz ("Plaintiff"), and Defendant's Reply in
23 support of the Motion to Dismiss and Reply in support of the Motion to Reopen; having heard
24 hearing argument from counsel for Plaintiff and Defendant at the June 9, 2015 hearing on the
25 foregoing filings, and good cause appearing therefore, the Court HEREBY FINDS AND
26 CONCLUDES:

27 (1) The Motion to Dismiss is appropriate and timely pursuant to Nevada Revised
28 Statutes ("NRS") 40.435;

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Rule(s)	<input type="checkbox"/> Judgment of Acquittal

6/17/15 (AB)

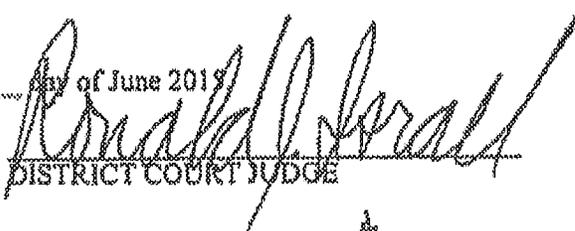
1 (2) Proceeding solely with a claim for breach of guaranty against Defendant violates
2 Nevada's one-action rule;

3 (3) Pursuant to NRS 40.495(5)(d), there can be no waiver of the one action rule by
4 Defendant where his principal residence secures the underlying indebtedness upon which
5 Plaintiff seeks to recover pursuant to his claim for breach of guaranty;

6 (4) Plaintiff has not released or re-conveyed his purported security interest in
7 Plaintiff's principal residence, thereby warranting dismissal of Plaintiff's claim for breach of
8 guaranty pursuant to NRS 40.435.

9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current
12 trial date and all other dates scheduled in this matter are vacated. In addition, Defendant's
13 Motion to Reopen is DENIED AS MOOT.

14 IT IS SO ORDERED this 17 day of June 2015

15 
16 DISTRICT COURT JUDGE

17 Prepared by:

18 DICKINSON WRIGHT, PLLC

19 
20
21 JOEL Z. SCHWARZ
22 Nevada Bar No. 9181
23 Email: jschwarz@dickinsonwright.com
24 GABRIEL A. BLUMBERG
25 Nevada Bar No. 12332
26 Email: gblumberg@dickinsonwright.com
27 8383 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113
Tel: (702) 382-4002
Fax: (702) 382-1661
Attorneys for Christopher Beaver

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Approved as to form and content:

COHEN-JOHNSON, LLC

Michael Hughes

H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
Email: sjohnson@cohenjohnson.com
MICHAEL V. HUGHES, ESQ.
Nevada Bar No. 13154
Email: mhughes@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz

EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

June 09, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

June 09, 2015 9:00 AM All Pending Motions All Pending Motions
(06/09/15)

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

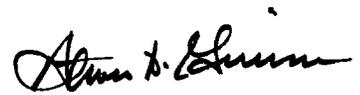
PARTIES

PRESENT: Hughes, Michael V. Attorney for Plaintiff
Schwarz, Joel Z. Attorney for Deft. C. Beavor

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 40.435...DEFENDANT
CHRISTOPHER BEAVOR'S MOTION TO REOPEN DISPOSITIVE MOTION DEADLINE

Arguments by Counsel. Mr. Schwarz advised they could not waive the one action rule and Plaintiff should release the security or dismiss. Mr. Hughes noted the security interest is under water and the statute of limitations has expired. Conference at the Bench. Court noted the past history of the case. Court stated its findings and noted Defendant's Motion is appropriate and ORDERED, Deft's Motion to Dismiss, GRANTED Without Prejudice. Court noted Plaintiff has not agreed upon a course of action to amend the action and the one action applies. COURT FURTHER ORDERED, Deft's Motion to Reopen Dispositive Motion Deadline, Denied as MOOT and Trial Dates, VACATED. Mr. Schwarz to prepare the order. CASE CLOSED.



CLERK OF THE COURT

1 **ASTA**
2 H. STAN JOHNSON, ESQ.
3 Nevada Bar No. 00265
4 sjohnson@cohenjohnson.com
5 MICHAEL V. HUGHES, ESQ.
6 Nevada Bar No. 13154
7 mhughes@cohenjohnson.com
8 Suite 100
9 255 East Warm Springs Road
10 Las Vegas, Nevada 89119
11 Telephone No. (702) 823-3500
12 Facsimile No. (702) 823-3400
13 *Attorneys for Plaintiff-Appellant*
14 *Yacov Jack Hefetz*

11 No. A-11-645353-C

Dept. No. XXVIII

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
13 **STATE OF NEVADA IN AND FOR**
14 **THE COUNTY OF CLARK**

15 YACOV JACK HEFETZ,
16
17 Plaintiff-Appellant,

18 v.

19 CHRISTOPHER BEAVOR,
20
21 Defendant-Appellee.

22 **CASE APPEAL STATEMENT**

23 PLEASE TAKE NOTICE THAT Plaintiff-Appellant, Yacov Jack Hefetz, by
24 and through his counsel, H. Stan Johnson, Esq., and Michael V. Hughes, Esq. of
25 the law firm of Cohen-Johnson, LLC, hereby files his **Case Appeal Statement**
26
27 with the Nevada Supreme Court and, therefore, states as follows:
28

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

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I. Name of Appellant filing the Case Appeal Statement

Plaintiff-Appellant Yacov Jack Hefetz is the appellant filing this Case Appeal Statement.

II. Identify the Judge Issuing the Decision, Judgment, or Order from which the Appeal is Taken

District Court Judge Ronald J. Israel is the District Court Judge who issued the decision and order from which the pending appeal is taken. He is a District Court Judge in the Eighth Judicial District Court for the State of Nevada.

III. Identify Each Appellant and the Name and Address of Counsel for Each Appellant

The Appellant is Yacov Jack Hefetz. His legal counsel is H. Stan Johnson, Esq. and Michael V. Hughes, Esq. of the law firm of Cohen|Johnson, LLC located at Suite 100, 255 East Warm Springs Road, Las Vegas, Nevada 89119. The telephone number of the law firm of Cohen|Johnson, LLC is (702) 823-3500.

IV. Identify Each Respondent and the Name and Address of Appellate Counsel, if known, for Each Respondent (if the name of a Respondent's Appellate Counsel is Unknown, indicate as much and provide the Name and Address of that Respondent's Trial Counsel)

The Respondent is Christopher Beavor. His legal counsel is Joel Z. Schwarz, Esq. and Gabriel A. Blumberg, Esq. of the law firm of Dickinson Wright PLLC, Suite 200, 8383 West Sunset Road, Nevada 89113.

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V. Indicate whether any Attorney identified above in Response to Question 3 or 4 is not Licensed to Practice Law in Nevada and, if so, whether the District Court granted that Attorney Permission to Appear under SCR 42 (attach a copy of any district court order granting such permission)

All attorneys identified in response to Question Nos. 3 and 4 are licensed to practice law in the State of Nevada.

VI. Indicate whether Appellant was represented by Appointed or Retained Counsel in the District Court

Plaintiff-Appellant Yacov Jack Hefetz was represented by retained counsel in the District Court. That counsel was H. Stan Johnson, Esq. and Michael V. Hughes, Esq. of the law firm of Cohen|Johnson, LLC located at Suite 100, 255 East Warm Springs Road, Las Vegas, Nevada 89119. The telephone number of the law firm of Cohen|Johnson, LLC is (702) 823-3500.

VII. Indicate whether Appellant is represented by Appointed or Retained Counsel on Appeal

Plaintiff-Appellant Yacov Jack Hefetz was represented by retained counsel in the Nevada Supreme Court. That counsel is H. Stan Johnson, Esq. and Michael V. Hughes, Esq. of the law firm of Cohen|Johnson, LLC located at Suite 100, 255 East Warm Springs Road, Las Vegas, Nevada 89119. The telephone number of the law firm of Cohen|Johnson, LLC is (702) 823-3500.

1 **VIII. Indicate whether Appellant was granted leave to proceed in Forma**
2 **Pauperis, and the Date of Entry of the District Court Order granting**
3 **such Leave**

4 The Appellant is not proceeding in Forma Pauperis and was, therefore,
5 never granted leave to proceed in Forma Pauperis.

6 **IX. Indicate the Date the Proceedings Commenced in the District Court**
7 **(e.g., date when complaint, indictment, information, or petition was**
8 **filed)**

9 The above-captioned proceedings commenced in District Court on July
10 21, 2011 with the filing by Plaintiff-Appellant of a Verified Complaint.

11 **X. Provide a Brief Description of the Nature of the Action and Result in**
12 **the District Court, including the Type of Judgment or Order Being**
13 **Appealed and the Relief Granted by the District Court**

14 This case involves the breach by Defendant-Appellee Christopher Beavor
15 of a payment guaranty in favor of Plaintiff-Appellant Yacov Hefetz, the
16 affirmative defense of the “One Action Rule” arising under NRS § 40.430, and the
17 District Court’s failure to articulate the legal standard and facts needed to justify
18 why it favored dismissing the above-captioned proceedings without prejudice as
19 opposed to granting a continuance of the above-captioned proceeding with an order
20 directing that the pleadings be amended to bring the case into compliance with
21 NRS § 40.430. *See* NRS § 40.435.

22 In this case, Plaintiff-Appellant Yacov Hefetz filed on July 21, 2011 a
23 Verified Complaint which set forth only a claim for breach of a payment guaranty.
24 Defendant-Appellee Christopher Beavor responded to the Verified Complaint by
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1 filing an Answer and Counterclaim and then subsequently a First Amended
2 Counterclaim. Defendant-Appellee Christopher Beavor, however, never raised in
3 his Answer the affirmative defense of the “One Action Rule.” That omission
4 resulted in the case going to a trial in which a final judgment in the amount of zero
5 dollars was entered in favor of the Defendant-Appellee Christopher Beavor. The
6 final judgment was vacated on a Plaintiff-Appellant Yakov Hefetz’s motion for a
7 new trial. A few months before the new trial was set to occur in October, 2015,
8 Defendant-Appellee Christopher Beavor moved to dismiss the verified complaint
9 on the grounds that it violated the “One Action Rule” arising under NRS § 40.430.
10 The District Court granted that dismissal motion as appropriate and timely under
11 NRS § 40.435. In so doing, the District Court found that: (1) there can be no
12 waiver of the “One Action Rule” where the Defendant-Appellee’s principal
13 residence secures the underlying payment guaranty; and (2) dismissal was
14 warranted where the Plaintiff-Appellant had not released or re-conveyed his
15 security interest.
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21 Notwithstanding the preceding findings of fact and conclusion of law, the
22 District Court did not articulate the legal standard or facts needed to justify why it
23 favored dismissing the above-captioned proceedings without prejudice as opposed
24 to granting a continuance of the proceeding with an order directing that the
25 pleadings be amended to bring the case into compliance with NRS § 40.430. The
26 District Court also failed to recognize that no economic value whatsoever secured
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the payment guaranty to the Defendant-Appellee's principal residence since that residence has a market value of less than \$530,000 and the amount of the first deed of trust and the second deed of trust on that residence greatly exceed \$530,000.00. As a result, the payment guaranty and its third deed of trust on that residence are not secured by any economic value in the Defendant-Appellee's principal residence.

XI. Indicate whether the Case has previously been the subject of an Appeal to or Original Writ Proceeding in the Supreme Court and, if so, the Caption and Supreme Court Docket Number of the Prior Proceeding

The case has been the subject of a prior appeal to the Nevada Supreme Court. That case had the caption of *Christopher Beavor v. Eighth Judicial District Court of the State of Nevada* and was assigned Nevada Supreme Court docket number 65656.

XII. Indicate whether this appeal involves child custody or visitation

The pending appeal does not involve child custody or visitation issues.

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XIII. If This is a Civil Case, Indicate Whether This Appeal Involves the Possibility of Settlement

The pending appeal involves a civil case for which there does not appear to be the possibility of settlement.

Dated this 14th day of July, 2015

COHEN|JOHNSON, LLC

By: Michael V. Hughes
H. Stan Johnson, Esq.
Nevada Bar No. 00265
Michael V. Hughes, Esq.
Nevada Bar No. 13154
Suite 100
255 East Warm Springs Road
Las Vegas, Nevada 89119
Telephone No. (702) 823-3500
Facsimile No. (702) 823-3400
Attorneys for Plaintiff-Appellant
Yacov Jack Hefetz

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 14th day of July, 2015, a true and correct copy of the foregoing **Case Appeal Statement** was served upon each of the parties set forth below via U.S. First-Class Mail and Odyssey E-Filing System pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure and Rule 8.05 of the Eighth Judicial District Court Rules:

Joel Z. Schwarz, Esq.
Gabriel A. Blumberg, Esq.
Dickinson Wright PLLC
Suite 200
8383 West Sunset Road
Las Vegas, Nevada 89113
Email: jschwarz@dickinsonwright.com
Email: gblumberg@dickinsonwright.com
Attorney for Defendant-Appellee
Christopher Beavor


An employee of Cohen-Johnson, LLC

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

Yacov Hefetz, Plaintiff(s)
 vs.
Christopher Beavor, Defendant(s)

§
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§

Location: **Department 28**
 Judicial Officer: **Israel, Ronald J.**
 Filed on: **07/21/2011**
 Cross-Reference Case Number: **A645353**

CASE INFORMATION

Statistical Closures

06/10/2015 Motion to Dismiss (By Defendant)
 03/04/2013 Jury Trial

Case Type: **Breach of Contract**
 Subtype: **Guarantee**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Arbitration Exemption Granted

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-11-645353-C
Court	Department 28
Date Assigned	07/21/2011
Judicial Officer	Israel, Ronald J.

PARTY INFORMATION

Plaintiff	Cohen, Alis Removed: 06/26/2012 Dismissed	Iglody, Lee I. <i>Retained</i> 702-800-5482(W)
	Hefetz, Yacov Jack	Johnson, Harold Stanley <i>Retained</i> 702-823-3500(W)
Defendant	Beavor, Christopher	Schwarz, Joel Z. <i>Retained</i> 775-343-7500(W)
	Beavor, Samantha Removed: 06/10/2015 Dismissed	
Counter Claimant	Beavor, Christopher	
	Beavor, Samantha	
Counter Defendant	Cohen, Alis Removed: 10/21/2011 Data Entry Error	Iglody, Lee I. <i>Retained</i> 702-800-5482(W)
	Hefetz, Yacov Jack	Johnson, Harold Stanley <i>Retained</i> 702-823-3500(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

07/21/2011	 Document Filed Filed by: Plaintiff Hefetz, Yacov Jack <i>Verified Complaint</i>	
07/21/2011	Case Opened	
07/22/2011		

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

 Initial Appearance Fee Disclosure
Filed By: Plaintiff Hefetz, Yacov Jack
Initial Appearance Fee Disclosure

09/21/2011  Affidavit of Service
Filed By: Plaintiff Hefetz, Yacov Jack
Affidavit of Service of Christopher Beavor

09/27/2011  Affidavit of Service
Filed By: Plaintiff Hefetz, Yacov Jack
Affidavit of Service of Samantha Beavor

10/21/2011  Initial Appearance Fee Disclosure
Filed By: Defendant Beavor, Christopher
Initial Appearance Fee Disclosure

10/21/2011  Answer and Counterclaim
Filed By: Defendant Beavor, Christopher
Defendants' Answer to Complaint and Counterclaim

11/01/2011  Reply to Counterclaim
Filed by: Counter Defendant Cohen, Alis
Reply to Counterclaim

11/28/2011  Demand for Jury Trial
Filed By: Defendant Beavor, Christopher
Demand for Jury Trial

12/12/2011  Joint Case Conference Report
Filed By: Plaintiff Hefetz, Yacov Jack
Joint Case Conference Report

12/16/2011  Commissioners Decision on Request for Exemption - Granted
Party: Plaintiff Hefetz, Yacov Jack
Commissioner's Decision On Request For Exemption - Granted

12/28/2011  Scheduling Order
Scheduling Order

12/30/2011  Order Setting Civil Jury Trial
Filed By: Plaintiff Hefetz, Yacov Jack
Order Setting Civil Jury Trial

02/21/2012  Motion for Leave to File
Party: Defendant Beavor, Christopher
Defendants' / Counterclaimants' Motion for Leave to Amend Counterclaim

02/22/2012  Certificate of Service
Filed by: Defendant Beavor, Christopher
Certificate of Service

02/27/2012  Notice of Change of Address
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Change of Address

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

- 03/01/2012  Arbitration File
Arbitration File
- 03/27/2012  **Motion to Amend** (3:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 02/21/2012 Motion for Leave to File
Defendants' / Counterclaimants' Motion for Leave to Amend Counterclaim
- 04/09/2012  Counterclaim
Filed By: Counter Claimant Beavor, Christopher
First Amended Counterclaim
- 04/23/2012  Reply to Counterclaim
Filed by: Plaintiff Hefetz, Yacov Jack
Reply to First Amended Counterclaim
- 05/16/2012  Affidavit of Service
Filed By: Plaintiff Hefetz, Yacov Jack
Affidavit of Service - Gary Frey
- 05/29/2012  Stipulation and Order to Extend Discovery Deadlines
Filed By: Plaintiff Hefetz, Yacov Jack
Stipulation and Order to Extend Discovery Deadlines
- 06/06/2012 **CANCELED Status Check** (9:15 AM) (Judicial Officer: Israel, Ronald J.)
*Vacated - per Stipulation and Order
S&O To Extend Discovery rec'd in Dept. 5/24/12./sj*
- 06/08/2012  Order Setting Civil Jury Trial
Order Re-Setting Civil Jury Trial
- 06/26/2012  Stipulation and Order for Dismissal
Filed by: Plaintiff Hefetz, Yacov Jack
Stipulation and Order
- 06/26/2012 **Order of Dismissal** (Judicial Officer: Israel, Ronald J.)
Debtors: Christopher Beavor (Defendant), Samantha Beavor (Defendant)
Creditors: Alis Cohen (Plaintiff)
Judgment: 06/26/2012, Docketed: 07/05/2012
- 06/29/2012  Notice of Entry
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry
- 07/03/2012  Notice of Entry of Order
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order
- 08/13/2012 **CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
*Vacated - per Stipulation and Order
S&O To Extend Discovery rec'd in Dept. 5/24/12./sj*
- 08/15/2012  Order Setting Settlement Conference
Filed By: Plaintiff Hefetz, Yacov Jack
Order Setting Settlement Conference

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

08/15/2012  **Status Check** (9:45 AM) (Judicial Officer: Israel, Ronald J.)

08/27/2012 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Gates, Lee A.)
Vacated - per Stipulation and Order
S&O To Extend Discovery rec'd in Dept. 5/24/12./sj

09/04/2012 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Stipulation and Order
S&O To Extend Discovery rec'd in Dept. 5/24/12./sj

09/10/2012  **Status Check: Status of Case** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

09/11/2012  Motion for Partial Summary Judgment
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Motion for Partial Summary Judgment

09/21/2012  **Settlement Conference** (9:00 AM) (Judicial Officer: Bonaventure, Joseph T.)

10/09/2012  Opposition to Motion
Filed By: Defendant Beavor, Christopher
Defendants' / Counterclaimants' Opposition to Motion for Partial Summary Judgment

10/11/2012  Stipulation and Order
Filed by: Defendant Beavor, Christopher
Stipulation & Order to Continue Plaintiff's Motion for Partial Summary Judgment

10/12/2012  Notice of Entry of Stipulation and Order
Filed By: Defendant Beavor, Christopher
Notice of Entry of Stipulation & Order

10/16/2012  Reply in Support
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Reply in Support of Motion for Partial Summary Judgment

10/19/2012  Supplemental
Filed by: Defendant Beavor, Christopher
Supplement to Defendants'/Counterclaimants' Opposition to Plaintiff's Motion for Partial Summary Judgment

10/19/2012  Response
Filed by: Defendant Beavor, Christopher
Defendants'/Counterclaimants' Response to Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment

10/22/2012 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

10/22/2012 **Motion for Partial Summary Judgment** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
Plaintiff's Motion for Partial Summary Judgment

10/22/2012 **Status Check** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
STATUS CHECK: OUTCOME OF SETTLEMENT CONFERENCE

10/22/2012  **All Pending Motions** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

11/01/2012  Notice of Change of Address
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Change of Address

11/05/2012  **Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

11/12/2012  Notice of Entry of Order
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order

11/13/2012 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge

11/21/2012  Order Setting Civil Jury Trial
Order Re-Setting Civil Jury Trial

01/15/2013  **Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

01/29/2013  **Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
01/29/2013, 01/31/2013

02/08/2013  Pre-trial Memorandum
Filed by: Plaintiff Hefetz, Yacov Jack
Joint Pretrial Memorandum

02/25/2013  Brief
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's EDCR 7.27 Brief

02/25/2013  **Jury Trial** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
02/25/2013-03/01/2013

02/25/2013  Jury List
Party: Plaintiff Hefetz, Yacov Jack

02/27/2013  Transcript of Proceedings
Excerpt of Jury Trial - Day 1 Defendant's Opening Statement

03/01/2013  Jury List
Party: Plaintiff Hefetz, Yacov Jack
Amended Jury List

03/01/2013  Verdict
Party: Plaintiff Hefetz, Yacov Jack

03/01/2013  Jury Instructions
Party: Plaintiff Hefetz, Yacov Jack
Court's Instructions To the Jury

03/01/2013  Proposed Jury Instructions Not Used At Trial
Plaintiff's Proposed Jury Instructions Not Used At Trial

03/01/2013 **Verdict** (Judicial Officer: Israel, Ronald J.)

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

Debtors: Yacov Jack Hefetz (Plaintiff)
Creditors: Christopher Beavor (Defendant)
Judgment: 03/01/2013, Docketed: 03/05/2013

- 03/04/2013  Order to Statistically Close Case
Civil Order To Statistically Close Case
- 03/06/2013  Motion for Judgment
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff Motion for Judgment
- 03/19/2013  Substitution of Attorney
Filed by: Plaintiff Hefetz, Yacov Jack
Substitution of Counsel
- 03/25/2013  Withdrawal of Attorney
Filed by: Defendant Beavor, Christopher
Notice of Withdrawal of Attorney
- 04/16/2013  **Status Check: Settlement Documents** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Status Check: Settlement Documents re: Samantha Beavor
- 05/15/2013  **Status Check: Settlement Documents** (3:00 AM) (Judicial Officer: Israel, Ronald J.)
05/15/2013, 06/13/2013, 07/09/2013, 08/08/2013
STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR/STATUS OF CASE
- 05/21/2013  Judgment
Filed By: Counter Claimant Beavor, Christopher; Defendant Beavor, Christopher; Defendant Beavor, Samantha; Counter Claimant Beavor, Samantha
- 05/21/2013  Notice of Entry of Judgment
Filed By: Defendant Beavor, Christopher
- 05/21/2013 **Judgment Upon the Verdict** (Judicial Officer: Israel, Ronald J.)
Debtors: Yacov Jack Hefetz (Plaintiff)
Creditors: Christopher Beavor (Defendant)
Judgment: 05/21/2013, Docketed: 05/29/2013
- 06/07/2013  Recorders Transcript of Hearing
Transcript of Proceedings Jury Trial - Day 3 February 27, 2013
- 06/07/2013  Recorders Transcript of Hearing
Transcript of Proceedings Jury Trial - Day 5 March 1, 2013
- 06/07/2013  Recorders Transcript of Hearing
Transcript of Proceedings Jury Trial - Day 2 February 26, 2013
- 06/10/2013  Motion for New Trial
Filed By: Plaintiff Hefetz, Yacov Jack
Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
- 06/20/2013  Opposition

CASE SUMMARY

CASE NO. A-11-645353-C

Filed By: Defendant Beavor, Christopher
Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)

- 07/02/2013  Reply to Opposition
 Filed by: Plaintiff Hefetz, Yacov Jack
Reply to Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
- 08/07/2013  **Motion for New Trial** (3:00 AM) (Judicial Officer: Israel, Ronald J.)
 Events: 06/10/2013 Motion for New Trial
Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
- 08/07/2013  Motion for Attorney Fees
 Filed By: Counter Claimant Beavor, Samantha
Defendant's Motion for Attorney Fees
- 08/28/2013  Motion to Reconsider
 Filed By: Defendant Beavor, Christopher
Defendant Christopher Beavor's Motion for Reconsideration
- 08/29/2013  **Status Check: Trial Setting** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
- 08/29/2013 **CANCELED All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Vacated - On in Error
All Pending Motions (08/29/13)
- 09/04/2013  Order Setting Civil Jury Trial
Order Setting Civil Jury Trial
- 09/05/2013  Order Granting Motion
 Filed By: Counter Defendant Hefetz, Yacov Jack
Order
- 09/09/2013  Notice of Entry of Order
 Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order
- 09/17/2013  Opposition to Motion
 Filed By: Plaintiff Hefetz, Yacov Jack
Opposition to Defendant's Motion for Reconsideration
- 09/24/2013  Certificate of Service
 Filed by: Defendant Beavor, Christopher
Certificate of Service
- 09/25/2013  Opposition to Motion
 Filed By: Plaintiff Hefetz, Yacov Jack
Opposition to Defendant Samantha Beavor's Motion for Attorneys Fees
- 09/26/2013 **Motion for Attorney Fees** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
09/26/2013, 10/24/2013
 Events: 08/07/2013 Motion for Attorney Fees
Defendant's Motion for Attorney Fees

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

09/26/2013 **Motion For Reconsideration** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 08/28/2013 Motion to Reconsider
Defendant Christopher Beavor's Motion for Reconsideration

09/26/2013  **All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
All Pending Motions (09/26/13)

10/04/2013  Supplement
Filed by: Defendant Beavor, Samantha
Supplement to Defendant Samantha Beavor Motion for Attorney's Fees

10/04/2013  Certificate of Service
Filed by: Defendant Beavor, Samantha
Certificate of Service

10/21/2013  Opposition
Filed By: Plaintiff Hefetz, Yacov Jack
Opposition to Supplement to Defendants Samantha Beavor's Motion for Attorney's Fees

10/24/2013 **Status Check** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Status Check: Dismissal /S. Beavor

10/24/2013  **All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
All Pending Motions (10/24/13)

11/14/2013  Order
Filed By: Plaintiff Hefetz, Yacov Jack
Order

11/14/2013  Findings of Fact, Conclusions of Law and Order
Filed By: Defendant Beavor, Christopher
Findings of Fact, Conclusion of Law and Order

11/15/2013  Notice of Entry of Order
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order

11/15/2013  Notice of Entry of Order
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order

11/25/2013  Motion to Stay
Filed By: Counter Claimant Beavor, Christopher
Defendant Christopher Beavor's Motion for Stay of Proceedings

01/07/2014  **Motion For Stay** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 11/25/2013 Motion to Stay
Defendant Christopher Beavor's Motion for Stay of Proceedings

01/07/2014 Notice of Stay
Stay proceedings 01/07/14

02/20/2014 **CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

03/11/2014 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge

03/17/2014 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge

05/13/2014  **Status Check: Status of Case** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
05/13/2014, 08/13/2014, 11/12/2014, 12/11/2014
Status Check: Status of Case//Resetting Trial

10/01/2014  **Motion to Withdraw As Counsel**
Filed By: Defendant Beavor, Christopher
Notice of Motion to Withdraw as Counsel for Defendant Christopher Beavor

11/05/2014  **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 10/01/2014 Motion to Withdraw As Counsel
Hofland & Tomscheck's Motion to Withdraw as Counsel for Defendant Christopher Beavor

12/30/2014  **Order Setting Civil Jury Trial**
Order Re-Setting Civil Jury Trial

01/20/2015  **Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

01/21/2015  **Notice of Appearance**
Party: Defendant Beavor, Christopher
Notice of Appearance

01/27/2015  **Order Setting Settlement Conference**
Order Setting Settlement Conference

01/27/2015  **Order Setting Civil Jury Trial**
Order Re-Setting Civil Jury Trial

02/03/2015 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge

02/09/2015 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge

02/26/2015  **Settlement Conference** (1:00 PM) (Judicial Officer: Scotti, Richard F)

03/05/2015  **Motion in Limine**
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Motion in Limine Concerning The Exclusion Of The Contents Of Settlement Negotiations

03/05/2015  **Motion in Limine**
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Motion in Limine Concerning The Exclusion of References To National Origins And Religious Beliefs.

03/25/2015  **Response**
Filed by: Defendant Beavor, Christopher

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

Response to Plaintiff's Motion in Limine Concerning the Exclusion of References to National Origins and Religious Beliefs

- 03/25/2015  Opposition to Motion in Limine
Filed By: Defendant Beavor, Christopher
Opposition to Plaintiff's Motion in Limine Concerning the Exclusion of the Contents of Settlement Negotiations
- 03/30/2015  Transcript of Proceedings
Transcript of Proceedings Jury Trial - Day 1 February 25, 2013
- 03/30/2015  Transcript of Proceedings
Transcript of Proceedings Jury Trial - Day 4 February 28, 2013
- 03/31/2015  **Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)
- 04/01/2015  Reply in Support
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Reply In Support Of The Motion In Limine Concerning The Exclusion Of The Contents Of Settlement Negotiations
- 04/06/2015  Pre-Trial Disclosure
Party: Plaintiff Hefetz, Yacov Jack
Plaintiff's Pre-Trial Disclosures Pursuant To NRCPC 16.1(A)(3)
- 04/06/2015  Notice
Filed By: Defendant Beavor, Christopher
Notice of Disassociation of Counsel
- 04/07/2015  Order Setting Civil Jury Trial
Order Re-Setting Civil Jury Trial
- 04/07/2015 **Motion in Limine** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 03/05/2015 Motion in Limine
Plaintiff's Motion in Limine Concerning The Exclusion Of The Contents Of Settlement Negotiations
- 04/07/2015 **Motion in Limine** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 03/05/2015 Motion in Limine
Plaintiff's Motion in Limine Concerning The Exclusion of References To National Origins And Religious Beliefs.
- 04/07/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
All Pending Motions (04/07/15)
- 04/14/2015 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Becker, Nancy)
Vacated - per Judge
- 04/20/2015 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)
Vacated - per Judge
- 05/07/2015  Motion to Dismiss
Filed By: Defendant Beavor, Christopher
Defendant's Motion to Dismiss Pursuant to NRS 40.435
- 05/08/2015

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

-  Order Setting Settlement Conference
Order Setting Settlement Conference
- 05/08/2015  Motion
Filed By: Defendant Beavor, Christopher
Defendant Christopher Beavor's Motion to Reopen Dispositive Motion Deadline
- 05/08/2015  Order Granting Motion
Filed By: Plaintiff Hefetz, Yacov Jack
Order Granting Plaintiff's Motion In Limine Concerning National Origins and Religious Beliefs
- 05/08/2015  Order Denying Motion
Filed By: Defendant Beavor, Christopher
Order Denying Plaintiff's Motion In Limine Concerning the Exclusion of the Contents of Settlement Negotiations
- 05/11/2015  Notice of Entry of Order
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order
- 05/11/2015  Notice of Entry of Order
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Entry of Order
- 05/14/2015  **Settlement Conference** (10:30 AM) (Judicial Officer: Kishner, Joanna S.)
- 05/19/2015  Opposition to Motion to Dismiss
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Opposition To Defendant's Motion To Dismiss Pursuant To NRS 40.435
- 05/20/2015  Opposition to Motion
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Opposition To Defendant's Motion To Reopen Dispositive Motion Deadline
- 06/02/2015  Reply in Support
Filed By: Defendant Beavor, Christopher
Defendant's Reply in Support of Motion to Dismiss Pursuant to NRS 40.435
- 06/02/2015  Reply in Support
Filed By: Defendant Beavor, Christopher
Defendant Christopher Beavor's Reply in Support of Motion to Reopen Dispositive Motion Deadline
- 06/04/2015  Notice of Change of Address
Filed By: Defendant Beavor, Christopher
Notice of Change of Firm Affiliation and Address
- 06/09/2015 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 05/07/2015 Motion to Dismiss
Defendant's Motion to Dismiss Pursuant to NRS 40.435
- 06/09/2015 **Motion** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
Events: 05/08/2015 Motion
Defendant Christopher Beavor's Motion to Reopen Dispositive Motion Deadline

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

06/09/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)
All Pending Motions (06/09/15)

06/10/2015  Order to Statistically Close Case
Civil Order To Statistically Close Case

06/17/2015  Order For Dismissal Without Prejudice
Filed By: Defendant Beavor, Christopher
Order: (1) Granting Defendant's Motion to Dismiss Pursuant to NRS 40.435; and (2) Vacating as Moot Defendant's Motion for Leave to Reopen Dispositive Motion Deadline

06/17/2015 **Order of Dismissal Without Prejudice** (Judicial Officer: Israel, Ronald J.)
Debtors: Yacov Jack Hefetz (Plaintiff)
Creditors: Christopher Beavor (Defendant), Samantha Beavor (Defendant)
Judgment: 06/17/2015, Docketed: 06/18/2015

06/18/2015  Notice of Entry of Order
Filed By: Defendant Beavor, Christopher
Notice of Entry of Order

06/19/2015  Motion
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice

06/23/2015  Notice of Change of Hearing
Notice of Change of Hearing

06/25/2015  Memorandum of Costs and Disbursements
Filed By: Defendant Beavor, Christopher
Memorandum of Costs and Disbursements

07/07/2015  Opposition to Motion
Filed By: Defendant Beavor, Christopher
Defendant's Opposition to Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal without Prejudice

07/08/2015  Motion for Attorney Fees
Filed By: Defendant Beavor, Christopher
Defendant Christopher Beavor's Motion for Attorneys' Fees and Costs

07/14/2015  Reply in Support
Filed By: Plaintiff Hefetz, Yacov Jack
Plaintiff's Reply In Support Of The Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice

07/14/2015  Notice of Appeal
Filed By: Plaintiff Hefetz, Yacov Jack
Notice of Appeal

07/14/2015  Case Appeal Statement
Filed By: Plaintiff Hefetz, Yacov Jack
Case Appeal Statement

DEPARTMENT 28
CASE SUMMARY
CASE NO. A-11-645353-C

07/22/2015	Motion (3:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 06/19/2015 Motion <i>Plaintiff's Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice</i>
08/19/2015	Motion for Attorney Fees and Costs (3:00 AM) (Judicial Officer: Israel, Ronald J.)
09/22/2015	CANCELED Pre Trial Conference (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
10/06/2015	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
10/12/2015	CANCELED Jury Trial (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>

DATE	FINANCIAL INFORMATION	
	Defendant Beavor, Samantha	
	Total Charges	30.00
	Total Payments and Credits	30.00
	Balance Due as of 7/16/2015	0.00
	Defendant Beavor, Christopher	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 7/16/2015	0.00
	Plaintiff Hefetz, Yacov Jack	
	Total Charges	524.00
	Total Payments and Credits	524.00
	Balance Due as of 7/16/2015	0.00

CIVIL COVER SHEET

Clark County, Nevada

A - 1 1 - 6 4 5 3 5 3 - C

Case No. _____

XXVIII

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): YACOV HEFETZ AND ALIS COHEN

Defendant(s) (name/address/phone): CHRISTOPHER BEAVOR AND SAMANTHA BEAVOR

Attorney (name/address/phone):

Lee I. Igloody, Esq.
9555 S. Eastern, # 280
Las Vegas, NV 89123

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

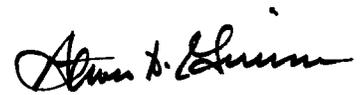
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

7/21/11

LIH



CLERK OF THE COURT

1 **ORD**
DICKINSON WRIGHT PLLC
2 JOEL Z. SCHWARZ
Nevada Bar No. 9181
3 Email: jschwarz@dickinsonwright.com
GABRIEL A. BLUMBERG
4 Nevada Bar No. 12332
Email: gblumberg@dickinsonwright.com
5 8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
6 Tel: (702) 382-4002
Fax: (702) 382-1661
7 *Attorneys for Christopher Beavor*

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.
15

16 **ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS**
17 **40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR**
LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE

18 The Court, having reviewed and considered Defendant's Motion to Dismiss Pursuant to
19 NRS 40.435 (the "Motion to Dismiss") and Defendant Christopher Beavor's Motion for Leave to
20 Reopen Dispositive Motion Deadline (the "Motion to Reopen") filed by Defendant Christopher
21 Beavor ("Defendant"), the Opposition to the Motion to Dismiss and the Opposition to the
22 Motion to Reopen filed by Plaintiff Yacov Hefetz ("Plaintiff"), and Defendant's Reply in
23 support of the Motion to Dismiss and Reply in support of the Motion to Reopen; having heard
24 hearing argument from counsel for Plaintiff and Defendant at the June 9, 2015 hearing on the
25 foregoing filings, and good cause appearing therefore, the Court HEREBY FINDS AND
26 CONCLUDES:

27 (1) The Motion to Dismiss is appropriate and timely pursuant to Nevada Revised
28 Statutes ("NRS") 40.435;

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Delt(s)	<input type="checkbox"/> Judgment of Arbitration

6/17/15 (EB)

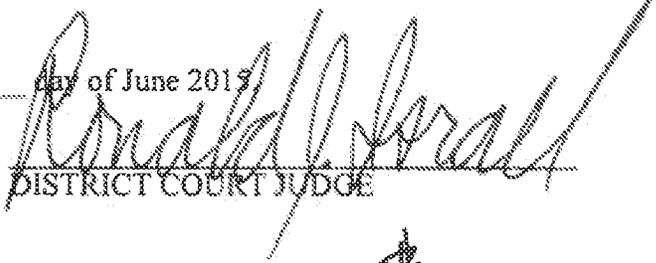
1 (2) Proceeding solely with a claim for breach of guaranty against Defendant violates
2 Nevada's one-action rule;

3 (3) Pursuant to NRS 40.495(5)(d), there can be no waiver of the one action rule by
4 Defendant where his principal residence secures the underlying indebtedness upon which
5 Plaintiff seeks to recover pursuant to his claim for breach of guaranty;

6 (4) Plaintiff has not released or re-conveyed his purported security interest in
7 Plaintiff's principal residence, thereby warranting dismissal of Plaintiff's claim for breach of
8 guaranty pursuant to NRS 40.435.

9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current
12 trial date and all other dates scheduled in this matter are vacated. In addition, Defendant's
13 Motion to Reopen is DENIED AS MOOT.

14 IT IS SO ORDERED this 17 day of June 2015

15 
16 DISTRICT COURT JUDGE

17 Prepared by:

18 DICKINSON WRIGHT, PLLC

19 
20
21 JOEL Z. SCHWARZ
22 Nevada Bar No. 9181
23 Email: jschwarz@dickinsonwright.com
24 GABRIEL A. BLUMBERG
25 Nevada Bar No. 12332
26 Email: gblumberg@dickinsonwright.com
27 8383 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113
Tel: (702) 382-4002
Fax: (702) 382-1661
Attorneys for Christopher Beavor

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Approved as to form and content:

COHEN-JOHNSON, LLC

Michael Hughes

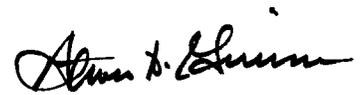
H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265
Email: sjohnson@cohenjohnson.com

MICHAEL V. HUGHES, ESQ.
Nevada Bar No. 13154

Email: mhughes@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119

Attorneys for Yacov Hefetz



CLERK OF THE COURT

1 NEOJ
2 DICKINSON WRIGHT PLLC
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 *Attorneys for Christopher Beavor*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.

15
16 NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that an Order: (1) Granting Defendant's Motion to Dismiss
18 Pursuant to NRS 40.435; and (2) Vacating as Moot Defendant's Motion for Leave to Reopen
19 Dispositive Motion Deadline was entered by the Court on June 17, 2015. A copy of the order is
20 attached hereto.

21 DATED this 18th day of June 2015.

22
23 DICKINSON WRIGHT, PLLC

24
25 
26 JOEL Z. SCHWARZ, Nevada Bar No. 9181
27 Email: jschwarz@dickinsonwright.com
28 8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Tel: (702) 382-4002
Attorneys for Christopher Beavor


CLERK OF THE COURT

1 ORD
2 DICKINSON WRIGHT PLLC
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 Attorneys for Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,
11
12 Plaintiff,
13 vs.
14 CHRISTOPHER BEAVOR,
15 Defendant.

CASE NO. A-11-645353-C
DEPT. XXVIII

16 ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS
17 40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR
18 LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE

19 The Court, having reviewed and considered Defendant's Motion to Dismiss Pursuant to
20 NRS 40.435 (the "Motion to Dismiss") and Defendant Christopher Beavor's Motion for Leave to
21 Reopen Dispositive Motion Deadline (the "Motion to Reopen") filed by Defendant Christopher
22 Beavor ("Defendant"), the Opposition to the Motion to Dismiss and the Opposition to the
23 Motion to Reopen filed by Plaintiff Yacov Hefetz ("Plaintiff"), and Defendant's Reply in
24 support of the Motion to Dismiss and Reply in support of the Motion to Reopen; having heard
25 hearing argument from counsel for Plaintiff and Defendant at the June 9, 2015 hearing on the
26 foregoing filings, and good cause appearing therefore, the Court HEREBY FINDS AND
27 CONCLUDES:

28 (1) The Motion to Dismiss is appropriate and timely pursuant to Nevada Revised
Statutes ("NRS") 40.435;

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Arbitration

6/17/15 (EB)

1 (2) Proceeding solely with a claim for breach of guaranty against Defendant violates
2 Nevada's one-action rule;

3 (3) Pursuant to NRS 40.495(5)(d), there can be no waiver of the one action rule by
4 Defendant where his principal residence secures the underlying indebtedness upon which
5 Plaintiff seeks to recover pursuant to his claim for breach of guaranty;

6 (4) Plaintiff has not released or re-conveyed his purported security interest in
7 Plaintiff's principal residence, thereby warranting dismissal of Plaintiff's claim for breach of
8 guaranty pursuant to NRS 40.435.

9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current
12 trial date and all other dates scheduled in this matter are vacated. In addition, Defendant's
13 Motion to Reopen is DENIED AS MOOT.

14 IT IS SO ORDERED this 17 day of June 2015
15 
16 DISTRICT COURT JUDGE

17 Prepared by:
18
19 DICKINSON WRIGHT, PLLC

20 
21 JOEL Z. SCHWARZ
22 Nevada Bar No. 9181
23 Email: jschwarz@dickinsonwright.com
24 GABRIEL A. BLUMBERG
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26 Email: gblumberg@dickinsonwright.com
27 8383 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113
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Attorneys for Christopher Beaver

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Approved as to form and content:

COHEN-JOHNSON, LLC

Michael Hughes

H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
Email: sjohnson@cohenjohnson.com
MICHAEL V. HUGHES, ESQ.
Nevada Bar No. 13154
Email: mhughes@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

March 27, 2012

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

**March 27, 2012 3:00 AM Motion to Amend Defendants' /
Counterclaimants'
Motion for Leave to
Amend Counterclaim**

HEARD BY: Israel, Ronald J.

COURTROOM:

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, there being no opposition and good cause, COURT ORDERED, Deft's Motion for Leave to Amend Counterclaim, GRANTED. Defendants have 30 days from today (03/29/12) to file the amended counterclaim.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Lee Iglody, Esq. and Marc Saggese, Esq.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

August 15, 2012

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

August 15, 2012 9:45 AM Status Check

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Iglody, Lee I. Attorney
 Saggese, Marc A. Attorney

JOURNAL ENTRIES

- Ms. Iglody noted a settlement conference would be productive. Colloquy regarding scheduling options for a settlement conference with a Senior Judge or private Judge. Court directed Counsel to call to schedule and to have available dates before the end of October. Court noted it would not move the trial date at this time. Mr. Iglody requested matter be continued two weeks for Counsel to find a mediator and move the motion deadline out two weeks. Mr. Saggese stipulated in open court. At the request of Counsel COURT ORDERED, Matter set for a status check regarding the status of the case.

09/10/12 9:00 AM STATUS CHECK: STATUS OF CASE (Courtroom 15D)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

September 21, 2012

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

September 21, 2012 9:00 AM Settlement Conference

HEARD BY: Bonaventure, Joseph T. **COURTROOM:**

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Clerk not present. Senior Judge Bonaventure conducted the conference; however, matter did not settle. TRIAL STANDS.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

October 22, 2012

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

October 22, 2012 9:30 AM All Pending Motions

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15D

COURT CLERK: Tiffany Lawrence

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Iglody, Lee I. Attorney
 Saggese, Marc A. Attorney

JOURNAL ENTRIES

- STATUS CHECK: OUTCOME OF SETTLEMENT CONFERENCE...Case did not settle.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT...COURT ORDERED, Defts' Response to Pltf's Reply STRICKEN. Arguments of counsel regarding whether Defts are entitled to an off-set judgment; whether Pltf qualified to possess the note. COURT stated FINDINGS and ORDERED, Motioned DENIED.

PRE TRIAL CONFERENCE...Counsel anticipate 5 days for trial.

Mr. Iglody to prepare the Order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

January 15, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

January 15, 2013 9:30 AM Pre Trial Conference

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Iglody, Lee I. Attorney
 Saggese, Marc A. Attorney

JOURNAL ENTRIES

- Mr. Iglody present and noted he did not see opposing Counsel. Mr. Iglody further noted settlement was unlikely and estimated trial to be four days. Court trailed matter for Counsel.

Later Recalled: Mr. Saggese not present. COURT ORDERED, Matter CONTINUED, for Counsel to appear.

LATER RECALLED: Mr. Iglody and Mr. Saggese present. Mr. Saggese noted there would be no settlement. Counsel requested trial to be set for either the week of 02/25/13 or 03/04/13. Court to confirm trial date at calendar call. Court vacated continued date previously set.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

January 29, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

January 29, 2013 9:30 AM Calendar Call

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Iglody, Lee I. Attorney
 Saggese, Marc A. Attorney

JOURNAL ENTRIES

- Mr. Iglody announced ready and estimated 4 days. Mr. Saggese advised he may have a potential Federal Court Trial and will travel Thursday to the hearing to confirm that trial. Colloquy regarding trial scheduling. Counsel agreed if the Federal Court Trial does not proceed, they would be starting trial on 02/25/13. COURT ORDERED, Matter CONTINUED, Counsel to notify the Judicial Executive Assistant (JEA) following the Federal Court hearing and inform this Court of Mr. Saggese's availability and confirm or vacate this Court's tentative trial date.

01/31/13 11:00 AM CONFERENCE CALL: CALENDAR CALL

02/25/13 9:00 AM JURY TRIAL (4 Days) Tentative

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

January 31, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

January 31, 2013 11:00 AM Calendar Call

HEARD BY: Israel, Ronald J. **COURTROOM:**

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Mr. Saggese's Office called and stated Mr. Saggese Federal Trial was continued, Therefore this Trial set for 02/25/13 may proceed. TRIAL STANDS. Mr. Iglody called and was notified by Mr. Saggese's Office and confirmed by chambers, the current trial date is a firm date.

02/25/13 9:00 AM JURY TRIAL (4 Days)

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 25, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

February 25, 2013 9:30 AM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court received a copy of Plaintiff's brief and Court noted this should have been a Motion In Limine prior to trial. Arguments by Counsel. Court suggested Court could hear the issue and sanction Counsel. Mr. Iglody agreed to set aside his request regarding excluding testimony of close relations. Colloquy regarding the trial protocol. Counsel agreed to last two jurors as the secret alternates. Counsel further agreed to Plaintiff's Rebuttal Witness to be taken out of order. Colloquy regarding stipulated exhibits. (See worksheets).

PROSPECTIVE JURY PANEL PRESENT: Jury and two secret alternates selected and sworn. Opening statements by Counsel. EXCLUSIONARY RULE INVOKED. Testimony and exhibits presented (see worksheets).

Evening recess.

A-11-645353-C

02/26/13 11:30 AM Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 26, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

February 26, 2013 11:00 AM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Clerk took the roll of the Jury. Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Court admonished Mr. Saggese regarding comments that could be prejudicial and instructed Mr. Saggese not to refer to the Plaintiff as an Israeli and if Counsel uses these type of comments in this trial again, Court will then declare a mistrial. Mr. Saggese stated his reason for the use of his comments and apologized to the Court and all parties. Upon Court's inquiry regarding a curative instruction, Mr. Iglody noted he would wait, to see if it becomes necessary.

JURY PRESENT: Plaintiff's Rebuttal Witness taken out of order as stipulated prior to trial. Further testimony and exhibits presented. (See worksheet).

Evening recess.

A-11-645353-C

02/27/13 10:00 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 27, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

February 27, 2013 10:00 AM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein
Phyllis Irby

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

JOURNAL ENTRIES

- ***Court Clerk: Kathy Klein 10:00am -11:30am

OUTSIDE THE PRESENCE OF THE JURY: Counsel stipulated to admit additional exhibits. Counsel further agreed not to bring up the issue regarding Alis Cohen. Colloquy regarding trial scheduling.

JURY PRESENCE: Clerk took the roll of the jury. Plaintiff Rested. Testimony and exhibits presented. (See worksheets).

***Court Clerk: Phyllis Irby 1:00pm - 5:00pm

OUTSIDE THE PRESENCE OF THE JURY. Parties have made a partial settlement with Samantha Beavor. Parties have stipulated to put the negotiations on the record.

Mr. Hulet informed the Court one party on the defense side has settled out; Ms. Samantha Beavor. Mr. Hulet stated the terms of the settlement are that Pltf Jack Hefetz is settling with Deft Samantha

Beavor for complete and full mutual release between Samantha Beavor and Jack Hefetz. Both clients agree to release by April 15th the Deed of Trust she resides in the condo on Domnus Lane within 15 DAYS, extending the condition of the settlement is that Samantha Beavor agree not to aid, abet, move or participate in any transfer of assets of her ex-husband Christopher Beavor. We agree to go by the uniform fraudulent transfer act as it pertains to the assets. If the condition is violated or if settlement is breached, parties agree to have liquidated damage clause provision of ONE MILLION (\$1,000,000.00) DOLLARS by the Pltf against the Deft. Mr. Hulet requested a status be set to have the necessary paperwork Stip & Order, Settlement documents and the Deed of Trust in order. COURT ORDERED, STATUS CHECK SET.

4-16-13 9:00 AM STATUS CHECK: SETTLEMENT DOCUMENTS (DEPT. XXVII)

JURY PRESENT. Testimony and exhibits presented (see worksheets). COURT ORDERED, MATTER CONTINUED. Jury recessed for the evening.

02/28/13 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 28, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

February 28, 2013 10:30 AM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding Plaintiff's rebuttal witness to be taken out of order. Mr. Saggese objected. Upon review of the trial schedule and the witness schedule, Court will allow Plaintiffs Rebuttal witness to be called later today.

JURY PRESENT: Clerk took the roll of the jury. Testimony and exhibits presented. (See worksheets). Counsel agreed to call Plaintiff's second rebuttal witness out of order. Further Testimony and exhibits presented. Defendant/Counterclaimant rested.

OUTSIDE THE PRESENCE OF THE JURY: Plaintiff moved for a 50(a) Motion and provided the Court and Counsel a copy of the motion. Court directed Counsel to file with the Clerks Office and arguments will be heard tomorrow regarding this motion. Colloquy regarding scheduling issues. Counsel to argue the 50(a) Motion and jury instructions.

Evening recess

A-11-645353-C

03/01/13 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

March 01, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

March 01, 2013 10:30 AM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding Samantha Beavor, Defendant, reached an agreement and will no longer be listed as a Defendant in the trial. Arguments by Counsel regarding Plaintiff's 50(a) Motion. Court stated its findings and ORDERED, Plaintiff's 50 (a) Motion, GRANTED; Defendant's Counter-Claims Dismissed. Discussions regarding jury instructions and verdict form. Instructions settled 1-34.

JURY PRESENT: Clerk took the roll of the jury. Court advised the Jury, Samantha Beavor and the Counter-Claims will no longer be an issue in this trial. Court instructed the jury. Closing arguments by Counsel. Marshal and Law Clerk sworn and given charge of the jury. Court Thanked and released the alternate jurors. Amended Jury List Filed in Open Court.

At the hour of 2:38 p.m. the jury retired to deliberate.

At the hour of 4:20 p.m. Jury returned with a Defense Verdict.

Jury polled. Court Thanked and excused the Jury.

Court adjourned.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

August 29, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

August 29, 2013 9:00 AM Status Check: Trial Setting

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Morris, Brian A., ESQ Attorney
 Tomsheck, Joshua L. Attorney

JOURNAL ENTRIES

- Mr. Morris noted both law firms are new on this case. Colloquy regarding schedules. COURT ORDERED, Jury Trial, SET. The Judicial Executive Assistant (JEA) to issue a trial order. At the request of Counsel, COURT ORDERED, The upcoming Motion for Attorney Fees and Motion for Reconsideration be reset together on the hearing calendar.

09/26/13 9:00 AM MOTION FOR ATTORNEY FEES...MOTION FOR RECONSIDERATION

02/20/14 9:30 AM PRE-TRIAL CONFERENCE

03/11/14 9:30 AM CALENDAR CALL

03/17/14 1:30 PM JURY TRIAL

10/24/13 9:00 AM STATUS CHECK: DISMISSAL/S. BEAVOR...DEFT'S MOTION FOR ATTORNEY FEES

CLERK'S NOTE: Following Court, Court noted Mr. Tomsheck may file a written motion for a stay for both sides to brief. A copy of this minute order was placed in the attorney folder(s) of: Joshua Tomsheck, Esq. (Hofland & Tomsheck) and H. Stanley Johnson, Esq. (Cohen-Johnson) and Marc Saggese, Esq.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

October 24, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

**October 24, 2013 9:00 AM All Pending Motions All Pending Motions
(10/24/13)**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: H. Stanley Johnson Attorney
 Saggese, Marc A. Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR ATTORNEY FEES...STATUS CHECK: SAMANTHA BEAVOR

Mr. Johnson noted the settlement with Samantha Beavor was done. Colloquy regarding the Motion for Attorney Fees, and Mr. Johnson's appearances for the past hearings. Court trailed the matter. Later recalled. Court noted Mr. Hefetz had changed Counsel and delayed this matter. COURT ORDERED, Motion for Attorney Fees, DENIED, Court finds no one had placed the terms on the record.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

January 07, 2014

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

**January 07, 2014 9:00 AM Motion For Stay Defendant
Christopher Beavor's
Motion for Stay of
Proceedings**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Tomsheck, Joshua L. Attorney

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, Stay of Proceedings, GRANTED. Upon Court's inquiry, Mr. Tomsheck advised he would file the writ now. COURT FURTHER ORDERED, Trial Dates, VACATED and Matter set for a status check as to the status of the case and to reset trial. Case STAYED pending Supreme Court decision.

05/13/14 9:00 AM STATUS CHECK: STATUS OF CASE // RESETTING TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 26, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

February 26, 2015 1:00 PM Settlement Conference

HEARD BY: Scotti, Richard F COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Keri Cromer

RECORDER:

REPORTER:

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hughes, Michael V., ESQ	Attorney
	Schwarz, Joel Z.	Attorney

JOURNAL ENTRIES

- Court reviewed the settlement conference process with all parties and advised they must participate in good faith; further advised that anything spoken about by either side would remain confidential. Upon Court's inquiry, Mr. Schwarz indicated that Judge Israel inquired about the possibility of scheduling a settlement conference during their Pre-Trial Conference, and both sides stated they were open to having one. Counsel advised it would be best to move forward with the settlement conference with both sides separated due to the history of the case. Mr. Hughes advised they were open to a constructive settlement and that there was room for negotiation. Settlement conference conducted. Court advised the parties conducted a good faith settlement; however, the matter did not settle. Matter REFERRED back to its originating department for further proceedings.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

March 31, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

March 31, 2015 9:30 AM Pre Trial Conference

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Hughes, Michael V., ESQ Attorney
 Schwarz, Joel Z. Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Counsel announced ready and estimated 5 days for trial. Counsel stated the dates that they would be unavailable for trial, the week of April 20th and May 4th. Mr. Hughes asked if the Pre-Trial Memorandum could be due after the Motions In Limine. Court will allow the filing of the Pre-Trial Memorandum by April 14th. Colloquy regarding the pending Motions In Limine and the unsuccessful settlement conference.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

April 07, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

April 07, 2015 9:00 AM All Pending Motions All Pending Motions
(04/07/15)

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Hughes, Michael V., ESQ Attorney
 Schwarz, Joel Z. Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION IN LIMINE CONCERNING THE EXCLUSION OF REFERENCES TO NATIONAL ORIGINS AND RELIGIOUS BELIEFS: Colloquy regarding avoiding references. Upon Court's inquiry of Counsel holding a meet and confer, Mr. Hughes stated he had failed to set it up. Mr. Schwarz advised the references regarding the national origins or religion may be seen from the evidence and facts presented in trial and should have no bearing on this case. Arguments by Counsel. COURT ORDERED, Motion GRANTED. Moving Counsel to prepare the order.

PLAINTIFF'S MOTION IN LIMINE CONCERNING THE EXCLUSION OF THE CONTENTS OF SETTLEMENT NEGOTIATIONS: Arguments by Counsel. Court inquired if Plaintiff was seeking the amount of the settlement or that they had a settlement. Court further noted Defendants never sought to enforce the settlement. Colloquy. Court stated this was a new trial and the previous stipulations for evidence is not in the new trial. COURT stated its findings noting this is a question for the jury and ORDERED, Motion In Limine, DENIED. Plaintiff's Counsel to prepare the order.

Colloquy regarding Defendant's Order Shortening Time that the Court just received. Mr. Schwarz advised the Motion is a one action rule and not able to waive; Further stating his Client was a Nevada

resident and his property is located in Nevada, the deed of trust is on Defendant's house. Conference at the bench. Court noted Counsel is not ready for trial and ORDERED, Trial VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. COURT FURTHER ORDERED, All Parties to a Settlement Conference. Counsel to notify chambers with three dates where all parties are available, by next Friday. Court noted they may schedule in Dept. XXX, set a private mediation, or find a Judge that is available. Mr. Schwarz noted the Order Shortening Time is no longer needed.

09/22/15 9:30 AM PRE-TRIAL CONFERENCE

10/06/15 9:30 AM CALENDAR CALL

10/12/15 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

May 14, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

May 14, 2015 10:30 AM Settlement Conference

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES

PRESENT: Beavor, Christopher Defendant
 Hefetz, Yacov Jack Plaintiff
 Johnson, Harold Stanley Attorney
 Schwarz, Joel Z. Attorney

JOURNAL ENTRIES

- SETTLEMENT CONFERENCE

All parties and counsel present. Settlement options discussed with no settlement reached.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

June 09, 2015

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

June 09, 2015 9:00 AM All Pending Motions All Pending Motions
(06/09/15)

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Hughes, Michael V., ESQ Attorney
 Schwarz, Joel Z. Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 40.435...DEFENDANT
CHRISTOPHER BEAVOR'S MOTION TO REOPEN DISPOSITIVE MOTION DEADLINE

Arguments by Counsel. Mr. Schwarz advised they could not waive the one action rule and Plaintiff should release the security or dismiss. Mr. Hughes noted the security interest is under water and the statute of limitations has expired. Conference at the Bench. Court noted the past history of the case. Court stated its findings and noted Defendant's Motion is appropriate and ORDERED, Deft's Motion to Dismiss, GRANTED Without Prejudice. Court noted Plaintiff has not agreed upon a course of action to amend the action and the one action applies. COURT FURTHER ORDERED, Deft's Motion to Reopen Dispositive Motion Deadline, Denied as MOOT and Trial Dates, VACATED. Mr. Schwarz to prepare the order. CASE CLOSED.

DISTRICT COURT
 CLARK COUNTY, NEVADA
Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor
 Case No. A645353

February 25, 2013 Trial

Stipulated Exhibit List

PLAINTIFF'S EXHIBITS

Exhibit	Description	Objection	Offered	Admitted
P1.	Loan, Guaranty and Deeds of Trust Documents Bate No . 000001-000167		Stip	02/25/13
P2.	Defendants' Answer and Counterclaim and Verified Complaint		Stip	02/25/13
P3.	Assignment documents Bate No. Hefetz Toluca Lake 001-014		Stip	02/25/13
P4.	Ch 11 plan documents Bate No. Hefetz Toluca Lake 015-038		Stip	02/25/13
P5.	Plan description		Stip	02/25/13
P6.	Power of Attorney 170 171		Stip	02/25/13
P7.	Copy of Bank Statement with evidence of wire of funds from Hefetz to Frey		Stip	02/25/13
P8.	Alis Cohen Assignment Documents -not Provided by Counsel			
P9	Exhibit 7 from Christopher Beavor		STP	2/27/13
P10	Exhibit 10 from Christopher Beavor		STP	2/27/13

DISTRICT COURT
CLARK COUNTY, NEVADA
Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor
Case No. A645353

February 25, 2013 Trial

Stipulated Exhibit List

DEFENDANTS' EXHIBITS

Exhibit	Description	Objection	Offered	Admitted
D1.	Eighteen payments to Herbert Frey Revocable Family Trust for monthly installments of one thousand two hundred fifty dollars (\$1,250.00).		Stip	02/25/13
D2.	Mutual Release and Payment Agreement between Christopher Beavor, Samantha Beavor, C&S Holdings, LLC, Brian Head Lofts, LLC, Herbert Frey and his successors, and the Herbert Frey Revocable Family Trust dated November 22, 1982		Stip	02/25/13
D3.	Cashier's Check from Silver State Realty & Investment to the Herbert Frey Revocable Family Trust, dated January 4, 2011, in the amount of one thousand dollars (\$1,000.00).		Stip	02/25/13
D4.	Secretary of State Entity Details for Star Development, LLC, listing Yacov Hefetz and Gary M. Frey, as Managers in 2010		Stip	02/25/13
D5.	Proposed Settlement Agreement, Release of Guarantees and Reconveyance of Deeds of Trust between Christopher Beavor, Samantha Beavor, Robert A. Rink, Alan R. Floyd, Herbert Frey and Herbert Frey, as Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982.		Stip	02/25/13
D6.	Substitution of Attorney for Toluca Lake Vintage, LLC, dated April 24, 2009		Stip	02/25/13
D7.	Toluca Lake Vintage, LLC, Voluntary Petition for Bankruptcy, United States Bankruptcy Court, Central District of California – SFV Division		Stip	02/25/13
D8.	Toluca Lake Vintage, LLC, List of Creditors Holding 20 Largest Unsecured Claims, United States Bankruptcy Court, Central District of California – San Fernando Valley Division.		Stip	02/25/13

DISTRICT COURT
CLARK COUNTY, NEVADA
Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor
Case No. A645353

February 25, 2013 Trial

Stipulated Exhibit List

DEFENDANTS' EXHIBITS

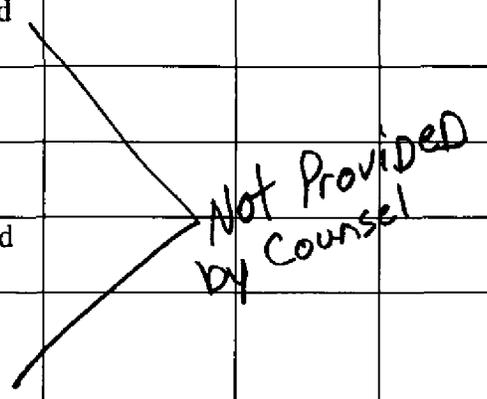
Exhibit	Description	Objection	Offered	Admitted
D9.	Toluca Lake Vintage, LLC, Notice of Bankruptcy Case Filing under Chapter 11 of the United States Bankruptcy Code, United States Bankruptcy Court, Central District of California, entered on May 14, 2009		Stip	02/25/13
D10.	Notice of Commencement of Bankruptcy Case and of Automatic Stay [11 U.S.C. § 362] dated May 14, 2009		Stip	02/25/13
D11.	Notice of Motion and Motion for Order Approving Settlement Agreement by and Between Debtor, Chinatrust Bank (U.S.A.), and Others Pursuant to F.R.B.P. 9019(a); Memorandum of Points and Authorities; Declaration of Victor A. Sahn in Support Thereof, dated January 21, 2010		Stip	02/25/13
D12.	Objection to Emergency Ex Parte Application for Hearing on Debtor's Emergency Motion for Order Authorizing and Approving: (1) A Modification of the Order Approving Settlement Agreement By and Between Debtor, Chinatrust Bank and Others [Docket No. 44]; Etc., dated May 10, 2010		Stip	02/25/13
D13.	Declaration of Christopher Beavor in Opposition to Motion to Modify, dated May 17, 2010.		Stip	02/25/13
D14.	Order Granting Emergency Ex Parte Motion for Order Authorizing and Approving: (1) Modification of the Order Approving Settlement By and Between Debtor, Chinatrust Bank and Others [Docket No. 44]; (2) Granting Chinatrast Bank Relief from Automatic stay and Related Relief; and (3) Debtor's Execution of Certain Documents and Agreements in Connection with the Purchase of the Chinatrust Bank Loan by Debtor or a Successor in Interest and Certain Other Relief, dated May 18, 2010.		Stip	02/25/13

DISTRICT COURT
 CLARK COUNTY, NEVADA
Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor
 Case No. A645353

February 25, 2013 Trial

Stipulated Exhibit List

DEFENDANTS' EXHIBITS

Exhibit	Description	Objection	Offered	Admitted
D15.	Notice of Motion and Motion for Final Decree Closing Chapter 11 Case: Memorandum of Points and Authorities and Declaration of Victor A. Sahn in Support Thereof [11 U.S.C. § 350 (a); Fed. R. Bankr. P. 3022 and Loc. Bankr. R. 3020-1(d)], citing satisfaction of the Herbert Frey Revocable Family Trust Claim		Stip	02/25/13
D16.	Chapter 11 Bankruptcy Petition filing regarding Toluca Lake Vintage, LLC, Case No. 1:09-bk-15680-GM, dated May 18, 2009 (BATES No. 002193-002225)		Stip	02/25/13
D17.	*Omitted			
D18.	*Omitted			
D19.	Email from Christopher Beavor to Wayne Krygier dated January 7, 2011	 Not Provided by Counsel		
D20.	Email from Christopher Beavor to Yacov Hefetz dated February 1, 2011			
D21.	Email from David Haberbusch, Esq., to Christopher Beavor, dated April 26, 2010			
D22.	Email communications between Christopher Beavor and Robert Rink, dated January 26, 2010			
D23.	Email communications between Christopher Beavor, David Haberbusch, Robert Rink, and Gary Frey dated May 11, 2010			
D24	Exhibit from Mr. Hefetz - Deposition # 7	2/26/13	Stp	2/26/13



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

H. STAN JOHNSON, ESQ.
255 E. WARM SPRINGS RD., SUITE 100
LAS VEGAS, NV 89119

DATE: July 16, 2015
CASE: A645353

RE CASE: YACOV JACK HEFETZ vs. CHRISTOPHER BEAVOR

NOTICE OF APPEAL FILED: July 14, 2015

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

YACOV JACK HEFETZ,

Plaintiff(s),

vs.

CHRISTOPHER BEAVOR,

Defendant(s),

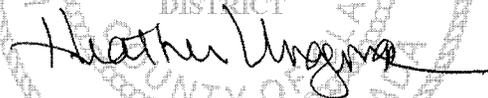
Case No: A645353

Dept No: XXVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 16 day of July 2015.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

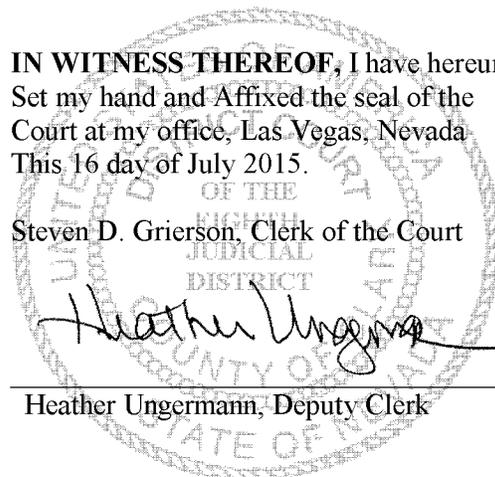


Exhibit 10

1 **ROC**
DICKINSON WRIGHT PLLC
2 JOEL Z. SCHWARZ
Nevada Bar No. 9181
3 Email: jschwarz@dickinsonwright.com
GABRIEL A. BLUMBERG
4 Nevada Bar No. 12332
Email: gblumberg@dickinsonwright.com
5 8383 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
6 Tel: (702) 382-4002
Fax: (702) 382-1661
7 *Attorneys for Christopher Beavor*

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.

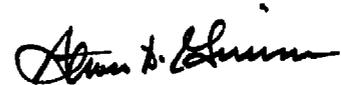
15
16 **RECEIPT OF COPY**

17 **RECEIPT IS HEREBY ACKNOWLEDGED** by the undersigned on this 18th day of
18 June 2015, that a copy of the Notice of Entry of Order (1) Granting Defendant's Motion to
19 Dismiss Pursuant to NRS 40.435; and (2) Vacating as Moot Defendant's Motion for Leave to
20 Reopen Dispositive Motion Deadline was received this date.

21 COHEN-JOHNSON, LLC

22
23 *Michael V. Hughes*
H. STAN JOHNSON, ESQ.

24 Nevada Bar No. 00265
Email: sjohnson@cohenjohnson.com
25 MICHAEL V. HUGHES, ESQ.
Nevada Bar No. 13154
26 Email: mhughes@cohenjohnson.com
27 255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
28 *Attorneys for Yacov Hefetz*



CLERK OF THE COURT

1 NEOJ
2 DICKINSON WRIGHT PLLC
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 *Attorneys for Christopher Beavor*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.

15
16 NOTICE OF ENTRY OF ORDER

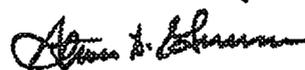
17 PLEASE TAKE NOTICE that an Order: (1) Granting Defendant's Motion to Dismiss
18 Pursuant to NRS 40.435; and (2) Vacating as Moot Defendant's Motion for Leave to Reopen
19 Dispositive Motion Deadline was entered by the Court on June 17, 2015. A copy of the order is
20 attached hereto.

21 DATED this 18th day of June 2015.

22 DICKINSON WRIGHT, PLLC



23
24
25 JOEL Z. SCHWARZ, Nevada Bar No. 9181
26 Email: jschwarz@dickinsonwright.com
27 8383 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113
Tel: (702) 382-4002
Attorneys for Christopher Beavor



CLERK OF THE COURT

1 **ORD**
 2 **DICKINSON WRIGHT PLLC**
 3 **JOEL Z. SCHWARZ**
 Nevada Bar No. 9181
 Email: jschwarz@dickinsonwright.com
 4 **GABRIEL A. BLUMBERG**
 Nevada Bar No. 12332
 Email: gblumberg@dickinsonwright.com
 5 **8383 West Sunset Road, Suite 200**
 Las Vegas, Nevada 89113
 6 **Tel: (702) 382-4002**
Fax: (702) 382-1661
 7 *Attorneys for Christopher Beavor*

8 **DISTRICT COURT**
 9 **CLARK COUNTY, NEVADA**

10 **YACOV JACK HEFETZ,**

11 **Plaintiff,**

CASE NO. A-11-645353-C
DEPT. XXVIII

12 **vs.**

13 **CHRISTOPHER BEAVOR,**

14 **Defendant.**

15

16 **ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS**
 17 **40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR**
LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE

18 The Court, having reviewed and considered Defendant's Motion to Dismiss Pursuant to
 19 NRS 40.435 (the "Motion to Dismiss") and Defendant Christopher Beavor's Motion for Leave to
 20 Reopen Dispositive Motion Deadline (the "Motion to Reopen") filed by Defendant Christopher
 21 Beavor ("Defendant"), the Opposition to the Motion to Dismiss and the Opposition to the
 22 Motion to Reopen filed by Plaintiff Yacov Hefetz ("Plaintiff"), and Defendant's Reply in
 23 support of the Motion to Dismiss and Reply in support of the Motion to Reopen; having heard
 24 hearing argument from counsel for Plaintiff and Defendant at the June 9, 2015 hearing on the
 25 foregoing filings, and good cause appearing therefore, the Court **HEREBY FINDS AND**
 26 **CONCLUDES:**

27 (1) The Motion to Dismiss is appropriate and timely pursuant to Nevada Revised
 28 Statutes ("NRS") 40.435;

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Abandonment

6/16/15 (EB)

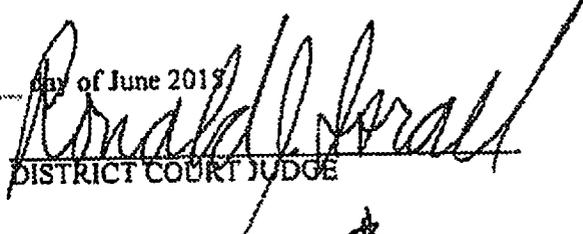
1 (2) Proceeding solely with a claim for breach of guaranty against Defendant violates
2 Nevada's one-action rule;

3 (3) Pursuant to NRS 40.495(5)(d), there can be no waiver of the one action rule by
4 Defendant where his principal residence secures the underlying indebtedness upon which
5 Plaintiff seeks to recover pursuant to his claim for breach of guaranty;

6 (4) Plaintiff has not released or re-conveyed his purported security interest in
7 Plaintiff's principal residence, thereby warranting dismissal of Plaintiff's claim for breach of
8 guaranty pursuant to NRS 40.435.

9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current
12 trial date and all other dates scheduled in this matter are vacated. In addition, Defendant's
13 Motion to Reopen is DENIED AS MOOT.

14 IT IS SO ORDERED this 17 day of June 2015

15 
16 DISTRICT COURT JUDGE

17 Prepared by:

18 DICKINSON WRIGHT, PLLC

19 
20
21 JOEL Z. SCHWARZ
22 Nevada Bar No. 9181
23 Email: jschwarz@dickinsonwright.com
24 GABRIEL A. BLUMBERG
25 Nevada Bar No. 12332
26 Email: gblumberg@dickinsonwright.com
27 8383 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113
Tel: (702) 382-4002
Fax: (702) 382-1661
Attorneys for Christopher Beavor

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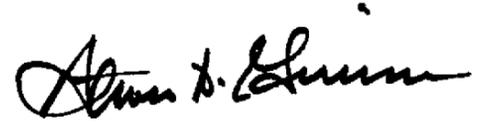
Approved as to form and content:

COHEN-JOHNSON, LLC

Michael Hughes

H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
Email: sjohnson@cohenjohnson.com
MICHAEL V. HUGHES, ESQ.
Nevada Bar No. 13154
Email: mhughes@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz

Exhibit 9



CLERK OF THE COURT

1 **NOE**
2 **COHEN-JOHNSON, LLC**
3 H. STAN JOHNSON
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 BRIAN A, MORRIS, ESQ.
7 Nevada Bar No. 11217
8 bam@cohenjohnson.com
9 255 W. Warm Springs Rd., Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone: (702) 823-3500
12 Facsimile: (702) 823-3400
13 *Attorneys for Plaintiffs*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 YACOV JACK HEFETZ, an individual,

11 Plaintiff,

12 vs.

Case No.: A645353

Dept. No.: XXVIII

13 CHRISTOPHER BEAVOR, an individual;
14 SAMANTHA BEAVOR, an individual; DOES I
15 through X and ROES ENTITIES I through X,
16 inclusive,

Defendants.

17 **NOTICE OF ENTRY OF ORDER**

18 NOTICE IS HEREBY GIVEN that the ORDER RE: Plaintiff's Motion for New Trial of
19 in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV) was entered in the
20 above-captioned case on the 5th day of September, 2013, a copy of which is attached hereto.

21 Dated this 9th day of September, 2013.

22 COHEN-JOHNSON, LLC

23
24 By: /s/ H. Stan Johnson
25 H. STAN JOHNSON, ESQ.
26 Nevada Bar No. 0265
27 BRIAN A. MORRIS, ESQ.
28 Nevada Bar No.: 11217
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

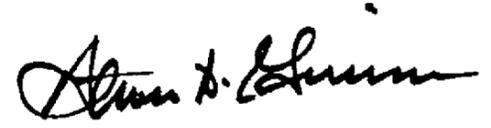
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CERTIFICATE OF MAILING

I hereby certify that on the 9th day of September, 2013, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** upon each of the parties by facsimile transmission and by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

Joshua Tomscheck, Esq
Nevada State Bar No. 9210
Hofland & Tomscheck
228 South Fourth Street, First Floor
Las Vegas Nevada 89101
Facsimile (702)731-6910
Attorney for Defendant

/s/Nelson Achaval
An Employee of COHEN-JOHNSON, LLC


CLERK OF THE COURT

1 **ORDR**
2 **COHEN-JOHNSON, LLC**
3 H. STAN JOHNSON
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 BRIAN A. MORRIS, ESQ.
7 Nevada Bar No. 11217
8 bam@cohenjohnson.com
9 255 W. Warm Springs Rd., Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone: (702) 823-3500
12 Facsimile: (702) 823-3400
13 *Attorneys for Plaintiffs*

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 YACOV JACK HEFETZ, an individual,
12 Plaintiff,
13 vs.
14 CHRISTOPHER BEAVOR, an individual;
15 SAMANTHA BEAVOR, an individual; DOES I
16 through X and ROES ENTITIES I through X,
17 inclusive,
18 Defendants.

Case No.: A645353
Dept. No.: XXVIII

17 **ORDER**

18 THIS MATTER having come before this Court on August 7, 2013 in Chambers on
19 Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding
20 Verdict (JNOV); Plaintiff, Yacov Hefetz, having been represented by H. Stan Johnson, Esq. of
21 Cohen-Johnson, LLC, and Defendant, Christopher Beavor, having been represented by Joshua
22 Tomscheck, Esq. of Hoffland & Tomscheck; upon review of all the papers and pleadings on file in
23 this matter; being fully advised regarding the same; and good cause appearing:

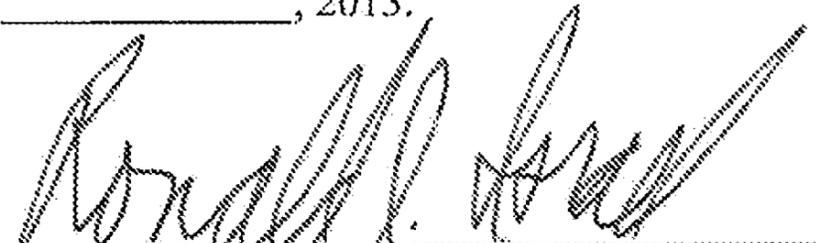
24 Court notes Defendant's opposition only addressed the timeliness of Plaintiff's Motion
25 for New Trial and Defendant was incorrect as to the proper procedure pursuant to EDCR.
26 Therefore, there was no opposition on the merits.

27 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion
28 for New Trial is **GRANTED**;

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

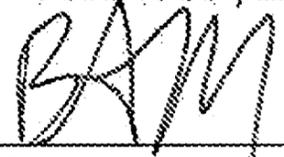
1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that matter be set for
2 status check to reset trial.

3 Dated this 3 day of Sept, 2013.

4
5
6 
7 DISTRICT COURT JUDGE

8 Submitted by:

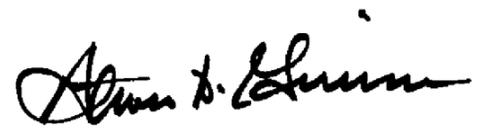
9 COHEN-JOHNSON, LLC

10 

11 _____
12 H. Stan Johnson, Esq.
13 Nevada Bar No.: 00265
14 Brian A. Morris, Esq.
15 Nevada Bar No.: 11217
16 255 E. Warm Springs Road, Ste. 100
17 Las Vegas, NV 89119
18 *Attorneys for Plaintiffs*

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

Exhibit 8



CLERK OF THE COURT

1 **MNTR**
2 **COHEN-JOHNSON, LLC**
3 H. STAN JOHNSON
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 BRIAN A, MORRIS, ESQ.
7 Nevada Bar No. 11217
8 bam@cohenjohnson.com
9 255 W. Warm Springs Rd., Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone: (702) 823-3500
12 Facsimile: (702) 823-3400
13 Attorneys for Plaintiffs

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 YACOV JACK HEFETZ, an individual,
12
13 Plaintiff,
14 vs.
15 CHRISTOPHER BEAVOR, an individual;
16 SAMANTHA BEAVOR, an individual; DOES I
17 through X and ROES ENTITIES I through X,
18 inclusive,
19 Defendants.

Case No.: A645353
Dept. No.: XXVIII

17 **MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR JUDGMENT**
18 **NOTWITHSTANDING VERDICT (JNOV)**

19 COME NOW, Plaintiff, YACOV JACK HEFETZ, by and through his attorneys of record
20 H. Stan Johnson, Esq. of Cohen-Johnson, LLC, and pursuant to Nevada Rule of Civil Procedure
21 (NRCP) 59, hereby filed this Motion for New Trial, or in the Alternative Motion for Judgment
22 Notwithstanding Verdict (JNOV) and hereby mover for an Order granting his Motion.

23 This Motion is made and based upon the following Points and Authorities, all papers
24 and pleadings on file herein, the Affidavit of H. Stan Johnson, Esq., attached hereto, and any

25 ///

26 ///

27 ///

28 ///

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

POINTS AND AUTHORITIES

I.

FACTS

The civil case Yacov Jack Hefetz vs. Christopher Beavor (hereinafter referred to as Hefetz v. Beavor) was heard before a jury between February 26, 2013 through March 1, 2013. The case arose out of Defendant's failure to meet his obligations as guarantor of a defaulted personal loan in the amount of \$6,000,000.00.

On or about March 29, 2007, Defendant entered into a Loan Agreement whereby Borrower procured a loan in the amount of \$6,000,000.00 (the "Loan") from lender the Herbert Frey Revocable Family Trust ("Lender"). As part of the inducement for the loan, Defendant signed an unconditional and irrevocable personal guarantee of full and prompt payment of the principal and interest due and owing on the Loan.

Defendants agreed to repay the Loan "regardless of any defense, right of set-off or claims which [Defendants] may have against [the holder of the Loan]," and agreed to "refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which [Defendants] may have" against the Lender or holder of the Loan.

Defendants further agreed that the holder of the Payment Guaranty may enforce its terms "without necessity at any time of resorting to or exhausting any other security or collateral" given in connection with the Loan.

On or about July 6, 2011, the principal Mr. Frey, assigned Plaintiff Hefetz and Alis Cohen all of Lender's right, title and interest in and to the Payment Guaranty. Frey assigned the Personal Guaranty (and other Loan documents) to Hefetz because he has cancer and was getting too old to pursue Defendants. Alis Cohen subsequently assigned her rights under the Payment Guaranty in full to Hefetz.

///

///

///

II.

STATEMENT OF PRIOR PROCEEDINGS

On March 1, 2013 the Court granted a directed verdict as to all the Defendants counter-claims. The Plaintiff's case went to verdict and a jury verdict in favor of the defendant was entered in the above captioned matter. On March 25, 2013 Marc Saggese, Attorney for the Defendant, withdrew from the case. On March 29, 2013, H. Stan Johnson, Esq. of Cohen Johnson LLC substituted in as Counsel for the Plaintiff. On May 21, 2013 Marc Saggese served a Notice of Entry of Judgment. This Motion for a New Trial and/or Amendment of Judgment is being timely filed within 10 days of the service of the Notice of Entry.

III.

LEGAL ARGUMENT

Motions for New Trial are governed by NRCPP 59 which provides in pertinent part:

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

[As amended; effective January 1, 2005.]

(b) Time for Motion. A motion for a new trial shall be filed no later than 10 days after service of written notice of the entry of the judgment.

Plaintiff seeks a new trial based on the following grounds pursuant to NRCPP 59:

1 **(A) Irregularity in the proceedings of the court, jury, master, or adverse party, or any**
2 **order of the court, or master, or abuse of discretion by which either party was prevented from**
3 **having a fair trial;**

4 At the trial of this matter, the Defendant referred in his opening statement to an unsigned
5 offer of settlement negotiations which Defendant sent to non-party Frey. At the time, the
6 evidence may have been admissible for the limited purpose of supporting the Defendants'
7 counterclaim that Plaintiff fraudulently prevented Mr. Frey from accepting the offer. However,
8 once the Counterclaims were dismissed as a matter of law, the use of this evidence concerning
9 what at best could be described as a "settlement negotiation" by Plaintiff constituted plain error
10 since any testimony or evidence concerning settlement negotiations is impermissible at trial as a
11 matter of Nevada law. Plain error is defined in NRS 178.602 as "Plain errors or defects
12 affecting substantial rights may be noticed although they were not brought to the attention of the
13 court". Since when the evidence was initially introduced it might have been applicable no
14 objection would have been sustained. Unfortunately, once the Counter-claims were dismissed
15 the "bell" could not be unrung, and Defendant improperly used this inadmissible evidence for an
16 impermissible purpose. Defendant argued the implications of this settlement offer on the issue
17 of liability in his closing statement (See Transcript of Day 5 P. 63 attached hereto as Exhibit 2)
18 in clear violation of Nevada Revised Statute,48.105 which provides:

19 1. Evidence of:

20 (a) Furnishing or offering or promising to furnish; or

21 (b) Accepting or offering or promising to accept, a valuable consideration
22 in compromising or attempting to compromise a claim which was disputed
23 as to either validity or amount, is not admissible to prove liability for or
24 invalidity of the claim or its amount. Evidence of conduct or statements
made in compromise negotiations is likewise not admissible.

25 Defendant's intentional violation of Nevada law prevented the Plaintiff from obtaining a
26 fair trial. Defendant argued and improperly misled the jury into thinking that the original owner
27 of the personal guaranty, Mr. Frey intended to accept the settlement offer, but was prevented
28 from doing so by the improper conduct of the Plaintiff. Defendant was unable to adduce any

1 evidence in support of this argument at trial, and his implications were refuted by the testimony
2 of both the Plaintiff and Mr. Frey. Under these circumstances evidence and argument resulted in
3 unfair prejudice to the Plaintiff, by asking the jury to use this evidence for an impermissible
4 purpose. Such prejudice was so egregious that no objection was necessary to preserve the issue
5 for reconsideration either in a motion for new trial or on appeal.

6 **(B) Misconduct of the jury or prevailing party;**

7 Defendant's also engaged in repeated acts of misconduct which while objected to and to
8 which the objections were sustained no admonishment was given to the jury. In this case on
9 several occasions, both in argument and in testimony, Counsel for the Defendant repeatedly
10 referred to the Plaintiff as "an Israeli businessman". When admonished by the Court, Counsel's
11 attempted justification of the remarks demonstrated that his intention was clearly to inflame and
12 prejudice the jury against the Plaintiff based on Mr. Hefetz's being Jewish. In fact Counsel's
13 remarks outside the presence of the jury, reek with the offensiveness of his conduct, and are
14 replete with slanderous characterization which encouraged the jury to view the Plaintiff through
15 the historical inaccuracies concerning the business practices of Jews since Shakespeare created
16 Shylock. (See transcript of proceedings Day 2 P. 31-37 attached hereto as Exhibit 1). At that
17 point the Court sui sponte admonished Defense Counsel that a another instance of this egregious
18 conduct would result in a mistrial. A discussion then occurred between the Court and Plaintiff's
19 counsel concerning the effectiveness and practicality of a curative instruction. Plaintiff's counsel
20 was faced with the conundrum of having the Court admonish the jury, and thereby emphasizing
21 the offensive characterization, or letting it go unremarked upon and hope that the remark had not
22 prejudiced the jury. When the verdict was returned for the Defendant in the face of the
23 uncontroverted evidence mandating a verdict for the Plaintiff, the damage was already done, and
24 the only available relief is a new trial. Lioce v. Cohen 174 P. 3d 973, (Nev. 2008). While this
25 unprincipled attack alone constitutes grounds for a new trial, the remarks also constituted an
26 attack implying that Mr. Hefetz was not a citizen of the United States and not merely Israeli by
27 birth but was a foreign national. This was an improper appeal to Post 9/11 xenophobia, implying
28

1 that a true blue American (Defendant) should not be accountable to some foreigner (Plaintiff)
2 who doesn't belong here and is using unscrupulous business methods to take advantage of
3 American citizens.

4 **(C) Accident or surprise which ordinary prudence could not have guarded against;**

5 Just as no jury admonishment could have prevented the prejudicial effects of the
6 Defendant's egregious comments concerning Mr. Hefetz's being Jewish, no reasonably prudent
7 attorney would have anticipated that another officer of the Court would engage in such back-
8 alley tactics. In fact a reasonably prudent counsel would have considered bringing a motion in
9 limine to preclude such remarks as not only unnecessary, but demeaning to the dignity of the
10 Court, and an unprovoked attack on the integrity of opposing counsel. That such a motion turns
11 out to have been necessary, is a sad commentary on civility as well as grounds justifying a new
12 trial.

13 **(D) Manifest disregard by the jury of the instructions of the court;**

14 The uncontroverted evidence adduced at trial establishes Plaintiff's right to a verdict.
15 Whether or not the jury might have reduced the damages due on the note to less than its face
16 value of \$6,000,000.00 should not have precluded the finding of liability. In fact, it initially
17 appeared as though that was what the jury intended since the original verdict form showed a
18 judgment for Plaintiff with a zero next to his name. Upon polling the jury members stated that
19 the verdict was instead a finding of non-liability in favor of the Defendant. This finding was in
20 clear disregard of the evidence. The only possible explanations for this verdict must lie in the
21 Defendant's improper conduct during the trial. Either as the result of the slurs against the
22 Plaintiff, or the improper argument concerning the meaning of the settlement offer, the
23 Defendant effectively argued for and obtained jury nullification. Jury nullification is defined as

24 [a] jury's knowing and deliberate rejection of the evidence or refusal to apply
25 the law either because the jury wants to send a message about some social issue
26 that is larger than the case itself or because the result dictated by law is contrary to
the jury's sense of justice, morality, or fairness (op.cit. 174 P.3d 982-983)

27 ///

1 That Defendant was asking the jury to ignore the law, is shown in his final arguments to
2 the jury. Not only did Counsel compare his client to a homeowner who was caught in the
3 mortgage crisis, by implication comparing the Plaintiff's conduct to that of the egregious conduct
4 of some banks in foreclosure proceeding, and attempting to have the jury identify and
5 sympathize with the Defendant. (See Exhibit 2 P. 56) Without any supporting evidence,
6 Defendant's Counsel asked the jury, to ignore the rulings of the bankruptcy court and believe
7 that the Bankruptcy Court's order was the result of fraud by the Freys and Plaintiff. Defendant's
8 Counsel again without evidence argued that the unsigned documents were in fact prepared, by
9 Mr. Frey, stating that the fact that similar fonts were used evidenced that the same person drafted
10 them.(See Exhibit 2 P. 58, 65). This argument is not only improper but absent an expert who
11 testified that the documents were produced by the same computer and printer, were improper
12 testimony by Counsel. Finally, Defendant's Counsel urged the jury to go into the jury room and
13 "do justice. Whatever you determine that is." (Exhibit 2 P. 69 ll 20-21). This is a clear appeal for
14 jury nullification, asking them to substitute their personal feeling about justice and fairness for
15 the law and again constitutes grounds for the granting of a new trial.

IV

CONCLUSION

18 Plaintiff was entitled to a fair and unprejudiced jury trial where the jury was not subjected
19 to inadmissible evidence being used for an improper purpose. Scurrilous attacks on his ethnicity
20 religion, and citizenship prevented the Plaintiff from obtaining a fair trial and resulted in jury
21 nullification. The evidence supported a verdict in favor of the Plaintiff, and he should be granted
22 the opportunity to present his case to a truly impartial jury, untainted by the inflammatory and
23 improper conduct present in the first trial. Therefore Plaintiff asks this Honorable Court to:

- 24 1. Enter an order vacating the judgment;
- 25 2. Granting the Plaintiff a new trial on the merits;
- 26 3. Granting the Plaintiff a Judgment Not On the Verdict.

27 ///

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4. Such other and additional relief as this court deems equitable and just.

DATED this _____ day of June, 2013.

Respectfully submitted,

COHEN-JOHNSON, LLC

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 0265
BRIAN A. MORRIS, ESQ.
Nevada Bar No.: 11217
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

CERTIFICATE OF MAILING

1
2 The undersigned hereby certifies that on the 10th day of June, 2013, a true and correct
3 copy of the foregoing **MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION**
4 **FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)** was served by placing a
5 copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the
6 following:

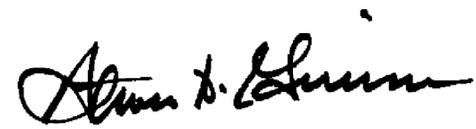
7
8 Christopher Beavor
9 1930 Village Center Cir. #3231
10 Las Vegas, Nevada 89134
11 Defendant in Proper Person

12 Cc: Marc A. Saggese, Esq.
13 SAGGESE & ASSOCIATES, LTD.
14 732 s. Sixth Street, Suite 201
15 Las Vegas, Nevada 89101
16 **Facsimile: 702-778-8884**
17 marc@maxlawnv.com
18 Prior Counsel for Defendant, Christopher Beavor

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27
28

/s/Nelson Achaval
An Employee of COHEN-JOHNSON, LLC

Exhibit “1”



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

YACOV HEFETZ,)
)
) Plaintiffs,)
)
) vs.)
)
) CHRISTOPHER BEAVOR,)
)
) Defendant.)
_____)

CASE NO. A645353
DEPT NO. XXVIII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 2

TUESDAY, FEBRUARY 26, 2013

APPEARANCES:

For the Plaintiff: LEE I. IGLODY, ESQ.
JEFFREY L. HULTET, ESQ.

For the Defendant: MARC A. SAGGESE, ESQ.

RECORDED BY JUDY CHAPPELL, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

I N D E X

WITNESSES FOR THE PLAINTIFF:

YACOV HEFETZ

Direct Examination By Mr. Iglody	4
Cross-Examination By Mr. Saggese	18

WAYNE KRYGIER

Direct Examination By Mr. Hulet	39
Cross-Examination By Mr. Saggese	60
Redirect Examination By Mr. Hulet	99
Redirect Examination By Mr. Iglody	125
Further Recross-Examination By Mr. Saggese	133
Further Redirect Examination By Mr. Iglody	134

1 **LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 26, 2013, 11:29 A.M.**

2 * * * * *

3 (Excerpt of proceedings.)

4 (Prior proceedings not transcribed.)

5 (Outside the presence of the jury.)

6 THE COURT: Anything to deal with outside the
7 presence?

8 MR. SAGGESE: Nothing from defense.

9 THE COURT: I had to sign some search warrants.

10 THE CLERK: This is Case No. A645353, Yacov Hefetz
11 vs. Christopher Beavor.

12 (Pause in proceedings.)

13 THE COURT: Don't forget you guys need to meet. I
14 have a proposed verdict form, but you need to meet tonight to
15 go over verdict forms and Jury Instructions 3, 2, and separate
16 pile that aren't -- do you think --

17 THE MARSHAL: All rise.

18 THE COURT: -- we'll be done by 5:30 today?

19 MR. IGLODY: I hope so, but I don't know, the way
20 we've been going.

21 (Jury reconvenes at 11:33 a.m.)

22 THE COURT: Be seated. Call roll.

23 (Jury roll called.)

24 THE COURT: Just so you understand, probably this
25 afternoon, and it's very common, we'll call -- we may need to

1 call a witness out of order. The parties do that in order to
2 accommodate somebody's schedule depending on the witness or
3 whatever it might be. So that probably is what's going to
4 happen this afternoon, I think.

5 So plaintiff, call your next witness.

6 MR. IGLODY: Thank you, Your Honor. We'd like to
7 call Yacov Hefetz to the stand.

8 YACOV HEFETZ, PLAINTIFF'S WITNESS, SWORN

9 THE CLERK: Please be seated. Please state your name
10 and spell it for the record.

11 THE WITNESS: My name is Yacov Hefetz, H-E-F-E-T-Z.

12 DIRECT EXAMINATION

13 BY MR. IGLODY:

14 Q Thank you, Mr. Hefetz. You're the plaintiff in
15 this matter, are you not?

16 A Yes.

17 Q Can you briefly explain why it is you're in the
18 courtroom today?

19 A I'm here, they called me since I didn't to force
20 the guaranty that I have for Mr. Chris.

21 Q The defendant?

22 A Defendant, yes.

23 Q I see you hesitating. What's -- what's your
24 mother tongue?

25 A Hebrew.

1 Q How long have you been in the United States?

2 A I've been in and off. I came here as a young
3 man and I left the country and then I came back. Since I came
4 back was 15 years.

5 Q Now, you brought this claim as a guaranty
6 contract action against the defendants. Can you go ahead and
7 explain why it is you brought a contract guaranty claim
8 against the defendants in this case?

9 A Because they guaranty dedicate that I -- I -- we
10 should get paid, you know, the \$6 million, and we do not get
11 paid.

12 Q Let's go ahead and look at what's been marked as
13 Exhibit 1 on the binder in front of you, P1. Go ahead and
14 look through that real quick, and particularly the first five
15 pages.

16 A Yes.

17 Q You recognize those documents?

18 A Yes. That's the guaranty from Chris to us.

19 Q Okay. What is the face amount of the guaranty?

20 A \$6 million.

21 Q I'm looking at the guaranty and it is made out
22 to Herbert Frey as Trustee or the Herbert Frey Revocable
23 Family Trust 1982; do you see that?

24 A Yes, sir.

25 Q Okay. So how is it you ended up with this

1 guaranty?

2 A Mr. Frey is my partner. We were partner this
3 long. And since he is very [indiscernible] and is very old,
4 he -- he assigned the guaranty to, you know, to me.

5 Q Now, Exhibit 1 is about let's say two inches
6 thick, am I right?

7 A Yes, sir.

8 Q Okay. So we established yesterday that there's
9 multiple documents in there, right?

10 A Yes, sir.

11 Q Now, why is it you're only suing on the
12 five-page guaranty and none of the other documents?

13 A Because the guaranty dedicated absolutely
14 unconditional and unrevocable to pay back the \$6 million.

15 Q Let's talk about that \$6 million number. How
16 much money did you contribute to the loan to Toluca Lake?

17 A I -- I paid \$2.2 million against the 4.4.

18 Q Let me show you Exhibit 7; if you mind turning
19 to P7, please.

20 A Yes.

21 Q Do you remember -- I mean, do you recognize P7?

22 A Yes, sir.

23 Q What is P7?

24 A Those are my bank statement showing that I
25 transfer from my account to Mr. Frey account the \$2.2 million.

1 Q For the record, to be exact, it's \$2,214,875; is
2 that right?

3 A Yes, sir.

4 Q Okay.

5 A That's what they're showing on the documents.

6 Q Real quick, could you turn to Exhibit P3.

7 A Yes, sir.

8 Q Now, you remember Herbert Frey was here
9 yesterday, correct?

10 A Yes, sir.

11 Q And we spent some time on P3?

12 A Definitely.

13 Q What I'd like to ask you is do you recognize the
14 P3 documents that you just went through?

15 A Yes.

16 Q Okay. And in those, the -- the P3 exhibit,
17 there's an assignment of a host of different loans,
18 guaranties, note documents and whatnot. But let me ask you,
19 in that -- is the assignment of the guaranty to you in Exhibit
20 P3?

21 A Yes, sir.

22 Q Now, you were assigned some other documents as
23 well; is that right?

24 A Yes.

25 Q Okay. But we're only suing on the guaranty.

1 Why is that again?

2 A Because the guaranty is very clearly and saying
3 that's unconditional, unrevocable to pay back the \$6 million.

4 Q Let me ask you, if -- if you were to recover,
5 for some reason, \$6 million as a result of this guaranty
6 contract at issue here, what would your plans be in regards to
7 Herbert Frey?

8 A Herbert Frey is my partner and whatever we
9 recover, we will share it 50/50.

10 Q I notice in P3 that the assignees, the person
11 who was assigned all those documents, including the guaranty,
12 includes you and somebody named Alice Cohen [phonetic]. Do
13 you know who Alice Cohen is?

14 A Alice Cohen is my oldest sister and she was
15 involved with my portion of the money. She's very sick.
16 She's -- she has cancer and she cannot handle anything. She
17 cannot move. She's from time to time in the hospital. And
18 she -- she gave me power of attorney to, you know, to
19 represent her and help me out, also.

20 Q Real quick, go to Exhibit P6.

21 A Yes, sir.

22 Q Do you recognize that document?

23 A Yes.

24 Q What is it?

25 A It's a power of attorney from my sister to me.

1 Q What is the date of the power of attorney?

2 A It's 11 of October, 2005.

3 Q Now, turn real quick to Exhibit 7 again, P7.

4 A P7.

5 Q Bank statements.

6 A Yes.

7 Q Now, the money that -- the origination account
8 for the monies, the \$2.2 million that you put in, is it
9 correct that one of those accounts was a shared account
10 between you and your sister?

11 A Yes, sir.

12 Q And you administer that account?

13 A Yes, sir.

14 Q Have you and your sister come to an agreement as
15 to what would happen if for some reason you're able to recover
16 anything on the guaranty?

17 A I promise my sister regardless what's happening
18 that she will get the money back.

19 Q Let's go back to P1. Now, in P1 we already
20 established as a host of loan documents, guaranties, deeds of
21 trust, loan agreements, promissory notes, et cetera.

22 A Yes, sir.

23 Q Do you know what a deed of trust is?

24 A Yes, sir.

25 Q What is a deed of trust?

1 A Deed of trust, it's a -- you -- a recording, a
2 lien on properties that's -- that are guaranteed to you.

3 Q To do what?

4 A They're guaranty in case anything happen you can
5 -- you can foreclose on it.

6 Q Do you know if you had deeds of trust assigned
7 to you that the defendants had given?

8 A Yes, sir. That's in the documents.

9 Q Do you know if the defendants still have any of
10 the properties upon which they issued a deed of trust?

11 A Yeah. They're living in some of them. They're
12 -- it's separate, live in different property.

13 Q Why haven't you foreclosed on these properties?

14 A It's about I didn't want to see the -- the
15 gentleman out of the house in the street, and second of all
16 I'm not in the -- I'm not in the foreclosure business.

17 Q Let's go back and talk about the guaranty.
18 We're going back in time so we're now in 2007, okay, and 2008.
19 When did you invest your \$2.2 million with Herbert Frey
20 towards this loan?

21 A 2007. 2008, I'm sorry.

22 Q Because in P7 the date of the transfer --

23 A P --

24 Q -- of the money --

25 A -- in P7 the --

1 Q -- to Herbert Frey.

2 A Generally, 2008.

3 Q Okay. Now, what was your understanding in
4 January of 2008 when you gave the money to Mr. Frey of what
5 the Toluca Lake project was?

6 A Toluca Lake was a project of 45 upgrade
7 condominium in a very luxury area in Toluca Lake, you know,
8 California and Los Angeles. And with the, you know, a rooftop
9 pool. And there was supposed to be very successful project.

10 Q We already established through various forms of
11 evidence that \$4.4 million were contributed by Herbert Frey
12 towards the loan at Toluca Lake, you said you contributed 2.2.
13 My question is, how exactly were you planning to make money on
14 the Toluca Lake project?

15 A We were promised, for the loan that we gave, the
16 \$4.4 million, to receive when the project is done \$6 million.

17 Q So, do the math for me, what were you expecting
18 between you and Herbert as a profit on the Toluca Lake
19 project?

20 A The profit was \$1.6 million.

21 Q Approximately?

22 A Approximately.

23 Q Okay. Now, if Toluca Lake had been successful,
24 completed, sold, famous movie stars moved in and made a lot of
25 money, were you and Herbert going to make any more than the \$6

1 million?

2 A No.

3 Q Well, who was going to make all that money?

4 A The developer, Chris.

5 Q Who is?

6 A Chris. The defendant.

7 Q Well, what about the downside; what if the
8 project failed, which we're here for today, what was -- what
9 were you -- what were you supposed to receive?

10 A We were guaranteed to receive the \$6 million.

11 Q Did you have any involvement with the Toluca
12 Lake project besides putting in your \$2.2 million?

13 A I visit the project a couple of times.

14 Q Did you have any input into the development of
15 the project itself?

16 A No.

17 Q Did you have any involvement in the eventual
18 Chapter 11 bankruptcy by Toluca Lake Vintage, the manager of
19 Toluca Lake?

20 A No, not at all.

21 Q Have you heard of a company called Star
22 Development, LLC?

23 A That was my LLC.

24 Q Can you explain Star Development's involvement
25 in the whole Toluca Lake project?

1 A Star Development was owned by me, my son.

2 Q What's his name?

3 A Sean Hefetz. We were planning to start a new
4 development in Las Vegas and when Gary and Wayne Krygier, and
5 I present Mr. Frey, who to get him out of the trouble of the
6 guaranty of the \$22 million for the bank, they immediate --
7 they immediately LLC to use, so I volunteer to let them use my
8 LLC, Star Development. I remove my son from being a partner
9 in it and we add Mr. Frey and Gary and Wayne Krygier as the
10 managers.

11 Q Do you remember what year that was, roughly?

12 A Not exactly.

13 Q If I told you that it was early 2009, would that
14 sound right?

15 A Yeah, it sound right.

16 Q Did you give Gary Frey or Wayne Krygier
17 direction on how to run either Star Development or Toluca
18 Lake?

19 A Not at all. I know no knowledge on this and I
20 never been involved in something like that. And they were
21 instructed by Mr. Frey and he trust them. They did every --
22 all the decision.

23 Q This is early 2009 that we're talking about when
24 all the events that we're here for occurred. In early 2009
25 did you have other things going on in your life?

1 A I have several business, several other
2 businesses.

3 Q In your relationship with Herbert, is that
4 something that had happened in the past where each of you
5 would take on a different project, or was this new?

6 A Yes.

7 Q Clarify.

8 A Mr. Frey was handling that investment.

9 Q Toluca Lake?

10 A Toluca Lake. I had a clothing business, I had a
11 couple of, you know, bars, and we used to do some investment
12 in loans. And I used to handle the loans.

13 Q So, to clarify going forward, once again, did
14 you have any involvement or decision making authority in
15 regards to the Chapter 11 filing by Toluca Lake Vintage?

16 A Not at all.

17 Q Were you a guarantor against the construction
18 loan?

19 A No. Mr. Frey was guaranty on the \$22 million.

20 Q Do you know if he was sued on those \$22 million?

21 A Yeah. He was sued.

22 Q Do you have any interest in Toluca Lake in any
23 way, shape, or form today?

24 A Not at all.

25 Q Have you been paid any amounts by anyone towards

1 the \$6 million guaranty on the Toluca Lake project?

2 A Not -- not at all.

3 Q You heard opposing counsel in his opening
4 statement describe an event that supposedly occurred in the
5 office that you and Herb shared. Was there such an event?

6 A Chris came to the office to see Mr. Frey. Mr.
7 Frey was not there. He wanted to discuss some document with
8 him. He left it at the office. And I notify Mr. Frey that he
9 has some document in the office. And I heard what it's all
10 about. And Mr. Frey said that he doesn't -- he not
11 interesting and does not comment. And I notify Chris to come
12 and pick them up.

13 Q Now, those documents that we're talking about,
14 was that a release agreement?

15 A It was a release agreement that Chris brought to
16 Mr. Frey and I didn't know anything about it, I was in shock
17 about it and Mr. Frey didn't know anything about it. And Mr.
18 Frey just asked me to send back the document to Chris.

19 Q Did Chris also attempt to deliver some checks?

20 A I believe there was checks in the documents.

21 Q To your knowledge did Herbert Frey ever sign the
22 release agreement?

23 A Not at all.

24 Q To your knowledge did he ever cash any of the
25 checks?

1 A Not at all.

2 Q To your knowledge was there ever an agreement
3 between Herbert Frey, or you for that matter, and the
4 defendants to release them from their obligation?

5 A Not at all.

6 Q Now, defendants have claimed that you're a
7 mortgage broker. Do you know what a mortgage broker is?

8 A I know what's a mortgage broker is, but I'm not.

9 Q Okay. What is a mortgage broker?

10 A Mortgage broker is an agent that -- I think
11 Chris is a mortgage broker. Mortgage broker is -- is helping
12 the customers to get loans. I mean, mortgage for houses.

13 Q Anything else?

14 A Not at all.

15 Q Have you ever held yourself out to be a mortgage
16 broker?

17 A Not at all.

18 Q If I go to your office now is there going to be
19 a sign outside saying that you do mortgage brokering?

20 A Not at all.

21 Q What kind of business are you in again now?

22 A Right now my office is in one of my businesses,
23 it's a clothing business in the Flamingo hotel. And I own few
24 bars.

25 Q Let me just recap some of the dates here to make

1 sure that we're clear.

2 We already established that the guaranty was signed
3 in March of 2007, and I'll just represent that to you as
4 supported by the record. We saw in Exhibit 7 in your
5 testimony that there is a transfer of \$2.2 million from you to
6 Herbert Frey in January 2008, right?

7 A Yes, sir.

8 Q We also know that in Exhibit 3 and pursuant to
9 the testimony yesterday that you heard sitting here by Herbert
10 Frey that there was an assignment to you in 2011.

11 A Yes.

12 Q Do you remember that?

13 A Yes, sir.

14 Q Okay. So my question is, the project started in
15 2007, you invested in 2008, there were problems with the
16 project in 2009. Why is it you're receiving an assignment in
17 2011?

18 A We were waiting to see what's going to be in the
19 budget. We try to -- Mr. Frey tried to save it. They were
20 looking for loans. And we were waiting to see what's going to
21 be the end result of it before we do anything else.

22 Q When you say the end result, are you referring
23 to the bankruptcy?

24 A In the beginning to try to get loans, to finish
25 the projects, and the bankruptcy, as well. Up to the less

1 action that was to...

2 Q Do you know when the bankruptcy plan at issue
3 for Toluca Lake was approved, roughly?

4 A I don't remember exactly. I think it's 2011.

5 Q Do you know when the bankruptcy was closed, by
6 chance?

7 A I'm not old. Don't hold me against it. I think
8 it's the end of 2011.

9 MR. IGLODY: Pass the witness.

10 CROSS-EXAMINATION

11 BY MR. SAGGESE:

12 Q Mr. Hefetz, you have testified and Mr. Frey has
13 testified that, in fact, you two have been in business
14 together for approximately 40 years?

15 A We've been friend for 40 years.

16 Q How long have you been in business together?

17 A A long time.

18 Q How many years?

19 A I don't recall, but for a long time.

20 Q 20 years?

21 A Approximately.

22 Q So this document here, which has been produced
23 and referenced by opposing counsel, Exhibit P7, this is
24 allegedly a transfer of funds from you to Mr. Frey, is that
25 was this is supposed to be?

1 A Yes, sir.

2 Q What proof do you bring to the jury, to the
3 Court, that the receiving entity is, in fact, Mr. Frey?

4 A It's dedicated under transfer to Mr. -- you
5 know, from my account to his account.

6 Q Okay.

7 A You can see it.

8 Q I see it. What proof do you have that that
9 amount was in relation specifically to this business
10 transaction?

11 A I have some notes from Mr. Frey that he signed
12 for it.

13 Q Did you produce the notes to me or to your
14 counsel to give to me?

15 A I believe so.

16 Q Similarly, P7, Bates stamp 002; can you point
17 and reference the dollar amount on this particular document?

18 A I can say that I -- I withdraw 1,000,070.

19 Q Okay. So on January 14th you withdraw --

20 A From my account.

21 Q -- for the jury it's the last line on the
22 bottom. You withdraw \$1,000,070?

23 A Yes, sir.

24 Q \$1,070,000?

25 A 70,000, yes.

1 Q \$1,070,000. And you withdraw that from a money
2 market; is that accurate?

3 A Yes, sir.

4 Q Okay. Do you have -- or have you provided
5 subsequent documentation that establishes that this went to
6 Mr. Frey in relation to this deal?

7 A Yes, sir. I have a deposit slip. I have a
8 deposit slip for \$1 million that went to Mr. Frey -- Mr. Frey.

9 Q Do you have the transaction and are you
10 referring to this?

11 A Yeah. Page No. 006.

12 Q What --

13 A You can see the deposit slip and where the money
14 went to.

15 Q You're referring to this?

16 A Yes, sir.

17 Q Now, is this a -- a piece of paper you fill out
18 at the bank and make a deposit?

19 A Yes, sir.

20 Q Okay. In relation to this particular deposit,
21 what proof have you provided that this is in relation to
22 Toluca Lake?

23 A When I gave Mr. Frey the \$2.2 million, I receive
24 a note that's -- he's put me as a partner on that loan.

25 Q Let me ask you this: How many transactions have

1 you had with Herbert Frey, senior Frey, in the last 10 years?

2 A Plenty.

3 Q Millions and millions?

4 A Probably, yes.

5 Q And do you designate on the transaction -- it
6 may say Herbert Frey and that you've had millions go back and
7 forth over 10 years, but do you designate on the transaction
8 what it's for?

9 A In that particular case we had the note that's
10 attached to the -- to the guaranty of -- of Chris.

11 Q Which notes are -- are you referring to? In --
12 in relation to the -- the deposits or transfers or
13 withdrawals --

14 A That deposit --

15 Q -- you've shown?

16 A -- Mr. Frey was with me at the bank and he order
17 deposit.

18 Q No, but my question's a little more narrow. And
19 that is what type of -- because, you know, there's millions
20 and millions of dollars going back and forth between you two.
21 My question is what proof do you have that this particular --
22 these particular transfers were in relation specifically to
23 Chris Beavor?

24 A Everybody heard Mr. Frey yesterday that I gave
25 him \$2.2 million against that guaranties. That's one proof.

1 And beside that, we had piece of paper.

2 Q Now, a couple of things that I would like to get
3 to that you referenced -- and I'll get these out of the way --
4 on direct when your attorney was asking you some questions.
5 One of them is you had said you referred to the guaranty was
6 from Chris to us. Do you remember saying that on direct?

7 A I said to us, it's to Mr. Frey, as I know that
8 I'm going to be partner of the deal.

9 Q But you understand that --

10 A On the loan.

11 Q -- the loan was provided to Toluca Lake?

12 A No. The loan was to Mr. Chris.

13 Q Well, the loan was provided --

14 A To use in Toluca Lake, the loan was to Mr.
15 Chris.

16 Q Well, let's take a look at that, then. So --

17 A I'm not a lawyer, I don't --

18 Q -- make sure you understand.

19 A Okay.

20 Q You have all the same things I have in front of
21 you, and this is P1?

22 A P1.

23 Q Bates stamps starting with 21.

24 A What Bates?

25 Q 0021 under P1. All right. You see -- and that

1 is the loan agreement you showed the jury. So this particular
2 document, you're looking at it?

3 A Yes.

4 Q This is the loan agreement between Herbert Frey
5 and Toluca Lake.

6 A Yeah. It look like it. I'm not a lawyer. I
7 don't understand and paperwork. Mr. Frey was handling it. As
8 much as I know we loaned Chris the money to -- to do the, you
9 know, developments.

10 Q So, page 32, the loan you're referring to when
11 you say loan is signed by whom?

12 A By Mr. Frey and --

13 Q Above that?

14 A -- and Christopher Beavor.

15 Q Christopher Beavor --

16 A As manager for Toluca Lake.

17 Q Right. Christopher Beavor as manager --

18 A Yes.

19 Q -- of Toluca Lake?

20 A Yes.

21 Q And you understand that the loan is secured by
22 the project?

23 A Secure by Chris, by the guaranty.

24 Q Or -- or is the loan, this loan, secured by the
25 value of the project?

1 A I don't think so, because the loan of the bank
2 was secured by the project.

3 Q And that's the \$22 million China Trust Bank?

4 A Yes. It was secured by the project and by Mr.
5 Frey.

6 Q Let me ask you this. In going through these --
7 can you read English?

8 A Not -- not as good as you.

9 Q Well, you know, more -- more generically,
10 regardless of -- for you and only in relation to you --

11 A English is my second language. And I never went
12 -- I never went to school in America.

13 Q So the question is how well do you read English?

14 A Not well.

15 Q The documents that you have signed, can you
16 testify here that you read them and understood them?

17 A I read little bit with my -- with the gentleman
18 that was in my office and I believe I understood exactly what
19 they're saying.

20 Q And -- and going back to direct, because I would
21 like to get through these, Alice Cohen, she -- she's currently
22 sick, correct?

23 A Very sick, very ill.

24 Q She lives in Israel?

25 A Yes. She's my oldest sister.

1 Q And you -- are you an Israeli citizen?

2 A Yes, sir.

3 Q Another thing that came up, the homes,
4 Samantha's condominium; are you familiar with Samantha's
5 condominium?

6 A What do you mean -- what do you mean by --

7 Q Where Samantha currently --

8 A I know she live in --

9 Q -- lives?

10 A -- condominiums.

11 Q Right. And --

12 A Yeah.

13 Q -- and you have some form of a lien on her
14 title?

15 A That's what Mr. Frey had from the beginning.

16 Q What I'm getting at is, on direct counsel made
17 it seem like, you know, this is just about money, there's no
18 real estate involved in this at all. But, in fact, you do
19 have her condo that she lives in tied up, do you not?

20 A I don't have it. I mean, she have it and she
21 live in it. And I believe it's guaranty against the loan.

22 Q And the same thing with Chris's house, where he
23 currently resides, he -- he can't do anything with that house,
24 right? You control it.

25 A I can foreclose on it if I wanted to, but I

1 don't --

2 Q Correct.

3 A -- want to do it.

4 Q And so, in other words, you have liens on her
5 condo where she resides and Chris's house where he lives?

6 A Yes.

7 Q Right now?

8 A Yes. I think so, yes. I think what it is.

9 Q And you have not to this day released those
10 liens on the property?

11 A No. I didn't receive -- I didn't receive
12 anything of the -- of the amount that was the guaranty for.

13 Q Now, in -- in references, these are just notes I
14 made on -- on direct. You invested money with Mr. Frey and
15 Mr. Frey signed a promissory note with you on this Toluca Lake
16 project, right? We have that --

17 A [Indiscernible] confusing [indiscernible].

18 Q I'll -- I'll show you. You have your own
19 promissory note with Mr. Frey. And when I say Mr. Frey,
20 there's the son and the father, the man --

21 A The father.

22 Q -- who testified yesterday.

23 A Yeah. Mr. Herbert Frey.

24 Q You had an agreement with him, a promissory
25 note. And that you -- you -- is that your signature there on

1 the bottom? Let me get some --

2 A Yes, yes, yes.

3 Q You're familiar with this document?

4 A Yes, sir.

5 Q And essentially this document is another
6 promissory note that -- that says you're going to give Toluca
7 Lake project X amount of dollars and you're going to secure
8 for that money a certain interest in the perhaps profits or
9 the property; is that accurate?

10 A Yes.

11 Q And that didn't come to fruition; it didn't
12 happen, because the project went into bankruptcy, correct?

13 A Yeah. Because the developer, he brought it to
14 -- to in default.

15 Q So the agreement you actually have for that \$2
16 million investment you reference is between Herbert Frey and
17 you. You gave it to Herbert Frey?

18 A Yeah. But he attached the guaranty to these
19 notes.

20 Q You gave the money to Herbert Frey --

21 A Yes.

22 Q -- and he invested your money in Toluca Lake?

23 A Yes.

24 Q It went bankrupt.

25 A As I understand it, that note, I'm not a lawyer,

1 he attached that note to the guaranty of Chris.

2 Q So, this particular document, did you ever take
3 action on this and pursue Mr. Frey for the money you gave him
4 that he invested that was lost?

5 A Mr. Frey and I, we -- we partners in the loan of
6 -- that we gave to Chris.

7 Q But do you remember when -- do you remember
8 yesterday when Mr. Frey was asked if I -- I asked him if he
9 thought Chris has the ability to actually pay \$6 million, and
10 he laughed; do you remember that?

11 A I don't recall.

12 Q You know Chris never had the ability to pay \$6
13 million, correct?

14 A In his age I didn't have \$6 million, either.

15 Q Right. But I'm talking about what you knew
16 about him. You knew he didn't have the \$6 million. In other
17 words, the -- the value of the note is in the property?

18 A Well, he said that he has 10, 12 properties in
19 Las Vegas and he has a big company. And I came to his office.
20 His office was, you know, 10 times bigger than my office, and
21 so many employees. And he seemed like he was, you know, very
22 big businessman.

23 Q But just like Herbert Frey laughed when I asked
24 if he believed Chris had \$6 million or any variation in seven
25 figures to pay, he laughed, you know Chris doesn't -- does not

1 have millions of dollars?

2 A I don't know this for fact. I don't know that
3 for a fact.

4 Q You don't know that for a fact?

5 A No.

6 Q When you made this loan, you invested in real
7 estate, correct? Essentially.

8 A It's not -- I invest with -- with the
9 development to build up a project that's he represent --

10 Q And it failed. And it -- and --

11 A -- he represent it, you know, the project is
12 very well.

13 Q Right.

14 A But I don't take anybody for his wealth, I took
15 a guaranty. The condition that I give the money to Mr. Frey
16 that we receive personal guaranty, unrevocable and
17 uncondition --

18 Q Okay. So --

19 A -- guaranty to receive our money. Otherwise, I
20 will go and be a partner. If we make \$100 million, I will get
21 part of it.

22 Q Okay. So just like --

23 A But for me was enough to make --

24 Q -- a home --

25 A -- little money, but to be guaranties.

1 Q Just like a homeowner promises the bank that
2 they'll pay back this mortgage someday --

3 A No, it's different.

4 Q Hear my question first and then you can disagree
5 with it.

6 A Okay.

7 Q Just like a homeowner promises a bank I will pay
8 you back, if the value of the property is cut in half, if it
9 becomes impossible for the homeowner to pay him back, you
10 know, they promised to pay. It's a promissory note, a
11 mortgage. But because of economic conditions perhaps the
12 homeowner, the situation becomes impossible. Isn't that what
13 happened with Toluca Lake?

14 A No. Homeowners, as I know and when I have few
15 homes, we continue to pay the mortgage with hope that the
16 market will flip back and you still have the same house.

17 Q And that didn't happen with Toluca Lake?

18 A Toluca Lake was in default. In construction
19 default.

20 Q So Toluca Lake didn't bounce back. And as a
21 result of its failure to bounce back and the bankruptcy, you
22 and everyone else lost money in this project?

23 A I don't think I lost it. I have guaranty to
24 receive the money back.

25 Q But you understand the guaranty was essentially

1 based on the success of the project. You knew Chris --

2 A No.

3 Q -- Beavor didn't have the money --

4 A No. It doesn't say like that.

5 Q -- you knew he did not have the money to pay you
6 back and it was based on the --

7 A The guaranty doesn't -- the guaranty does not
8 say what you're telling me.

9 Q You knew as a businessman, a successful, very
10 wealthy Israeli businessman, that the fact that this
11 project --

12 THE COURT: Counsel, approach. Approach. As a
13 matter of fact, this is a good time to take a break and do our
14 -- our lunch. So, ladies and gentlemen, I'm going to give you
15 the admonishment. We'll be back at 12:15. During this recess
16 you're admonished not to talk or converse amongst yourselves
17 or with anyone else on any subject connected with this trial
18 or read, watch, or listen to any report or other commentary on
19 the trial or any person connected with this trial by any
20 medium of information including without limitation newspapers,
21 television, radio, or Internet, or form or express any opinion
22 on any subject connected with the trial until the case is
23 finally submitted to you.

24 We're in recess till 1:15.

25 (Jury recesses at 12:13 p.m.)

1 THE COURT: Now, counsel, I allowed you to ask him or
2 you discussed the fact that he was Israeli one time. What was
3 the relevance, other than to prejudice the jury, as your
4 statement that he's an Israeli businessman?

5 MR. SAGGESE: Because he's --

6 THE COURT: Because I'm offended.

7 MR. SAGGESE: He's -- he's --

8 THE COURT: If he was black, are you going to say
9 he's a black businessman?

10 MR. SAGGESE: No. But if there was a certain area of
11 expertise that he had and -- and by virtue of him -- I mean,
12 he's an intelligent -- I -- I feel comfortable saying he's an
13 intelligent Israeli businessman. Because I think the -- the
14 implication --

15 THE COURT: I think that's highly offensive.

16 MR. SAGGESE: You think so?

17 THE COURT: It's offensive to me. What's your
18 ethnicity?

19 MR. SAGGESE: Italian.

20 THE COURT: So, if I said, Well, he's a very fine
21 Italian attorney, would that be appropriate? I don't think
22 so.

23 MR. SAGGESE: Well, Italians are not necessarily good
24 lawyers.

25 THE COURT: Counsel, your argument is absolutely --

1 MR. SAGGESE: Do you know what I mean?

2 THE COURT: -- without merit. I think your -- your
3 intent is to prejudice the jury, and I'm very close to
4 declaring a mistrial.

5 MR. SAGGESE: I disagree, Your Honor. Let me -- let
6 me put it in perspective. If this was --

7 THE COURT: Go ahead, make a record. Because you're
8 really on thin ice.

9 MR. SAGGESE: If this was a -- a chef and I said,
10 You're a successful Italian chef, absolutely, I believe that
11 that would be consistent and it would point out the fact that
12 he is not -- this is not his first foray. He's a successful
13 Israeli businessman.

14 THE COURT: If you had said he's a successful
15 businessman, that would have been absolutely appropriate.
16 What's the relevance of the fact that he -- first of all, I
17 think he's an American citizen.

18 Aren't you?

19 THE PLAINTIFF: Yes, sir.

20 THE COURT: And second of all, the fact that he's
21 Israeli -- what possible relevance does that have other than
22 to try to prejudice the jury in some manner?

23 MR. SAGGESE: Absolutely, I don't see how that would
24 prejudice the jury. It would show that he has a significant
25 or superior level of business acumen. I think that's a

1 compliment, if anything. It's an absolute --

2 THE COURT: I find that offensive, too, that all
3 Israelis are -- are good businessman, all Jews are --

4 MR. SAGGESE: That's --

5 THE COURT: -- good at business? Counsel, there's no
6 way you can justify that. Except that you are trying to
7 prejudice the jury.

8 MR. SAGGESE: I would never do that. And it's so
9 significant and valuable that I wouldn't even try that.

10 THE COURT: You know how many -- I -- I don't
11 understand why you haven't objected to the relevance of this
12 whole thing several times, but that's your -- that's --

13 MR. IGLODY: Well, I stood up to make my objection,
14 and then you called it. Because I was --

15 MR. SAGGESE: It's -- it --

16 MR. IGLODY: -- I -- I let it go a little bit. I was
17 like, all right, if he really wants to go there. But then
18 finally I stood up --

19 THE COURT: This is the second time.

20 MR. IGLODY: -- to object.

21 THE COURT: I'm admonishing you.

22 MR. SAGGESE: I won't reference it again.

23 THE COURT: If you do it a third time --

24 MR. SAGGESE: I won't.

25 THE COURT: -- I'm declaring a mistrial.

1 MR. SAGGESE: I won't reference it again. To me it
2 doesn't, you know, it doesn't strike -- I didn't mean to make
3 it cause such a response. But I'm just stating a fact of the
4 case and it is, in fact, true. He's born and raised and he --
5 that those are -- that's his basis of knowledge.

6 THE COURT: Well, you know, it's --

7 MR. SAGGESE: It's certainly not done to inflame --

8 THE COURT: -- just as offensive at the Academy
9 Awards when they made jokes about the fact that Jews control
10 the cinema. And if you think that's appropriate, well, okay,
11 you can do that. But not in my courtroom.

12 MR. SAGGESE: Fair enough.

13 THE COURT: And --

14 MR. SAGGESE: I apologize. I -- honest to God, I'm,
15 you know, I'm speaking the way I'm laying the facts as they
16 are. This is, you know, you're not -- in other words you're
17 not -- I'm laying it out and I just spoke it with -- honest,
18 Your Honor, you know me better than that to try and --

19 THE COURT: I -- I understand --

20 MR. SAGGESE: -- you said inflame the jury.

21 THE COURT: -- I -- the first time, fine. You know,
22 you were trying to explain where he's from. The second time
23 under this particular circumstance, directly, yes. It's not
24 relevant and it is offensive. And what he -- his ethnicity, I
25 would no longer -- I would no more allow you to say, Well,

1 you're a black American and whatever. Or an Italian American,
2 or what exactly. I wouldn't -- ethnicity has no place and
3 justice is supposed to be blind. So we're not going to
4 discuss that any further.

5 All right. We're in recess.

6 MR. IGLODY: What time do we come back?

7 THE MARSHAL: 1:15.

8 THE COURT: 1:15.

9 MR. SAGGESE: Again, my apologies, Your Honor.

10 THE COURT: Fine. Don't do it again.

11 MR. SAGGESE: I don't want you viewing me differently
12 than you may have 10 minutes ago.

13 THE COURT: All right.

14 MR. SAGGESE: I apologize. Won't happen again.

15 (Court recesses at 12:18 p.m., until 1:33 p.m.)

16 (Outside the presence of the jury.)

17 THE COURT: We're on the record. So I thought a lot
18 about declaring a mistrial over the break. And I reviewed the
19 tape again. And once again, just so you understand, Mr. --
20 and I, you know, we've never -- it's Saggese?

21 MR. SAGGESE: Uh-huh.

22 THE COURT: Saggese. Mr. Saggese, your comments that
23 you thought you were giving him a compliment that he was an
24 Israeli -- good -- a good Israeli businessman totally ignores
25 or something the -- I mean, that -- that's just stereotyping

1 him as a -- a good Jewish businessman. And as I said, so I
2 understand that apparently you don't see it as offensive, but
3 I can tell you it is.

4 So my question to the plaintiff's counsel is do you
5 want a curative instruction?

6 MR. IGLODY: The problem with a --

7 THE COURT: Or do you just want to move on?

8 MR. IGLODY: The problem with a curative instruction,
9 and this is difficult for us, is, of course, when you give a
10 curative instruction, you just draw attention to it.

11 THE COURT: Highlights it, yes.

12 MR. IGLODY: And that -- and that creates the
13 problem. If it would please the Court I think perhaps you can
14 reserve on that issue for now, depending on how the rest of
15 the examination goes. And if necessary, that can be addressed
16 perhaps before we issue the jury instructions, depending on
17 whether it's necessary. At some point I have to rely on the
18 jury's good discretion to see past these inflammatory
19 statements.

20 THE COURT: Okay. Then we'll continue.

21 MR. HULET: Your Honor, I have one thing before we
22 bring in the jury. Wayne Krygier is here from North Dakota.
23 We discussed him earlier. And we'd like to bring him in now
24 if possible, to be out of order, to make sure we can get his
25 testimony done before [indiscernible].

1 THE COURT: I assume you have a significant amount
2 more of cross-examination?

3 MR. SAGGESE: You know, not a crazy amount. Maybe
4 another hour.

5 THE COURT: And in that case we'll take him out of
6 order. I don't see how -- otherwise, we're at 1:30, that
7 would be 2:30, with a break, more like 3:00 and -- and since
8 we have to get him done today... how much -- how long is he
9 going to take?

10 MR. IGLODY: For me about a half hour direct. I
11 don't know how long the cross will be.

12 THE COURT: An hour of cross?

13 MR. SAGGESE: Maybe even less.

14 THE COURT: Well, I don't want to risk it. We told
15 them we're going to do it out of order, so let's just go ahead
16 and take him to start. I think that's the only way to make
17 sure he's out of here.

18 And just so you understand, at a quarter to 5:00, the
19 court staff is on overtime. And the county doesn't pay the
20 overtime, you guys pay the overtime. We went late yesterday.
21 We didn't have much because he was in the middle of it, et
22 cetera. You can choose, if you want, to go till 6:00. I have
23 no problem with that. But because of all kinds of, you know,
24 budget things, you guys are paying for any overtime that, I
25 believe it's quarter to 5:00, right? Because they have to

1 finish stuff up in order to get out of here. It's not a lot,
2 it's like \$100 per side. But I just want you to be aware of
3 that.

4 So today we have to certainly get this out-of-state
5 guy done and then hopefully finish with the cross. But I
6 think for safety let's take this out-of-state guy and get him
7 done. So anything else?

8 MR. IGLODY: No.

9 THE COURT: Okay. Let's go.

10 THE MARSHAL: All rise for the presence of the jury.

11 (Jury reconvenes at 1:38 p.m.)

12 THE COURT: All right. Be seated. Okay. The
13 parties acknowledge the presence of the jury?

14 MR. SAGGESE: We do.

15 MR. IGLODY: We do.

16 THE COURT: Thank you. We're going to take, as I
17 said before, one of the witnesses out of order.

18 So go ahead and proceed.

19 MR. HULET: Your Honor, we call Wayne Krygier.

20 WAYNE KRYGIER, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: Please be seated. Please state your name
22 and spell it for the record.

23 THE WITNESS: Wayne Krygier, W-A-Y-N-E K-R-Y-G-I-E-R.

24 THE COURT: Proceed.

25 MR. HULET: Thank you.

1 DIRECT EXAMINATION

2 BY MR. HULET:

3 Q Good afternoon, Mr. Krygier. Thank you for
4 coming from North Dakota.

5 Q Could you please, just for some background
6 information, let us know what your occupation is?

7 A I'm a real estate developer.

8 Q And how long have you been a real estate
9 developer?

10 A Over 35 years.

11 Q Where have you developed real estate?

12 A In Canada, United States, mostly in Las Vegas,
13 and now in North Dakota.

14 Q Are you familiar with a project by the name of
15 Toluca Lake?

16 A Yes, I am.

17 Q And how did you become familiar with that
18 project?

19 A I was approached by Herbert Frey to get
20 involved.

21 Q What's the nature of the Toluca Lake project?

22 A I believe it was a condominium project in Toluca
23 Lake, California.

24 Q And you mentioned that you were called to work
25 on the project by Herbert Frey; do you remember when that was?

1 A Spring of 2009. April, May, something like
2 that.

3 Q And what -- what were your marching orders from
4 Mr. Frey when he contacted you?

5 A He briefly explained to me that he invested some
6 money with some developers to build a project in Toluca Lake,
7 I think it was 54 condominiums in two buildings. And that
8 they got in trouble and the bank was in default -- the loan
9 with the bank was in default. And he knew I was involved in
10 real estate, he asked me if I would advise him.

11 Q All right. And was he being sued by China Trust
12 Bank at that time; do you remember?

13 A Yes, he was personally being sued here in Nevada
14 against a personal guaranty that he had given to the bank for
15 I think it was a \$23 million construction loan.

16 Q Do you know if anybody else was the -- was a
17 guarantor on that construction loan?

18 A Chris Beavor, Allen Floyd, and possibly another
19 gentleman, Ron Rinker, and I believe Chris's wife or ex-wife,
20 I'm not sure, Samantha.

21 Q Do you -- you mentioned that Mr. Frey was being
22 sued on his personal guaranty in Nevada. Do you remember --
23 do you know if any of the other guarantors were also being
24 sued?

25 A I know they had guaranties to the bank, but I

1 don't know if the bank had actually taken action directly
2 against those.

3 Q What was the status of the project around April
4 2009 when you came in?

5 A It was stagnant, basically. There was no
6 construction. It was abandoned. One building on one side of
7 the street was substantially completed, the other building on
8 the other side of the street was in -- lumber was up. It
9 looked like it had sat for quite a few months, because the
10 nails were rusting out the -- the wood.

11 Q And do you know if China Trust, if the -- if the
12 project itself, the real property was collateral for the China
13 Trust Bank construction loan?

14 A I believe it was. They had a...

15 Q And around April 2009, was China Trust Bank
16 taking any actions to try and secure -- protect its interest
17 in that real property?

18 A They started foreclosure on -- on the property.

19 Q Anything else?

20 A I think they had filed a motion to appoint a
21 receiver and remove Toluca Lake developers Chris Beavor and
22 Allen Floyd.

23 Q Okay. And what's a receiver?

24 A A receiver is appointed by the court to follow
25 out the rights of and obligations of a borrower and a lender.

1 Q So, in this case, if a -- if a receiver had been
2 appointed, who would have controlled the project at that
3 point?

4 A The receiver and reported to the courts.

5 Q What specifically were you asked to do at that
6 time?

7 A The fact that Mr. Frey was being sued
8 personally, he was extremely concerned, obviously, of the --
9 of that obligation and that exposure that he had, and he had
10 asked me if I could get involved and hopefully get his
11 personal guaranty back without having exposure financially.

12 Q You said you got involved. Did you get involved
13 individually or was it through some sort of an entity or other
14 structure?

15 A I was involved through a entity called -- just
16 slipped my mind. Frey --

17 Q There's been some discussion of Star
18 Development, is that --

19 A Right. Right. That's it. Star Development. I
20 was one of the managing members of Star Development that I
21 believe was owned by Herb Frey and Yacov Hefetz.

22 Q And that was going to be my next question. Do
23 you know why there was a decision made to -- to use Star
24 Development to try and clear up this mess?

25 A There was very little time to -- to assess what

1 was going on. The bank was pushing hard to get a receiver
2 appointed and remove Chris Beavor and Allen Floyd. And the
3 decision was made by, I believe, Mr. Frey that they would use
4 a company that was already in existence and was owned. And I
5 was put on as an additional managing member so we could use
6 that vehicle to facilitate.

7 Q I'm going to show you what has been marked as
8 Exhibit D16. If you could take that huge binder there, flip
9 to the very last exhibit, I believe. This is an exhibit
10 that's already been stipulated and admitted into evidence.

11 Do you see -- are you at Exhibit D16?

12 A Yes, I am.

13 Q Will you flip to -- through about 15 pages until
14 you see at the very bottom right-hand corner it'll say 2208.

15 A Yes.

16 Q I'll have you take a look at that and then also
17 look at 2209. I'll ask you is that -- is that your signature
18 on the bottom of 2209?

19 A Yes, it is.

20 Q And could you briefly explain what the purpose
21 of this resolution?

22 A It was a resolution authorizing the managers,
23 Gary Frey and myself, to voluntarily petition the Toluca Lake
24 Vintage, LLC into bankruptcy.

25 Q What was Toluca Lake Vintage, LLC, what was

1 that? Was that an entity?

2 A It was the development entity that owned the
3 property called Vintage Condominiums that borrowed the money
4 from China Trust.

5 Q So Toluca Lake Vintage was the borrower, was the
6 named borrower on the construction loan; is that right?

7 A Yes.

8 Q Okay. Now, there's a resolution here that said
9 that it's in the best interests of -- I'm reading the top line
10 -- "It's in the best interests of the limited liability
11 company to file a voluntary petition." Did that occur?

12 A Yes, it did.

13 Q Do you see Mr. Hefetz's signature on pages 2209
14 or 2208?

15 A No, I do not.

16 Q I'm going to zoom out and kind of go 30,000 foot
17 level now. Just generally speaking, what were your daily
18 duties as you came in as part of Star Development and kind of
19 took over the project; can you just say what you did on a
20 daily basis?

21 A One of the first things I did was I spent a lot
22 of time with Chris Beavor, get up to speed, get some history,
23 understand what his involvement was, what his take was on why
24 the note was in default. Some ideas, how to move forward. I
25 then made contact with the lender, China Trust, to find out

1 what their -- their feelings and mood was to resolve this
2 issue. And basically continued day to day on those -- those
3 bases.

4 Q Did you have interaction with the attorneys that
5 handled the Toluca Lake bankruptcy?

6 A Yes. A gentleman by the name of Victor Saan
7 [phonetic].

8 Q How often did you communicate with him?

9 A At the earliest stage, sometimes daily.

10 Q Were you the -- would you say you were the point
11 person for those communications?

12 A I share that position with Gary Frey. And as it
13 further developed and it became more and more day to day with
14 myself.

15 Q Now, you mentioned before your marching orders
16 were tried to limit Mr. Frey's liability under the
17 construction loan, personal liability. Were you successful?

18 A Yes, I was.

19 Q Can you explain why you say you were successful?

20 A Initially the goal was to maintain control of
21 the -- of the company and by putting it into bankruptcy we
22 were able to stop the receiver, a stay I guess is the
23 terminology. And it allowed us time to talk and negotiate
24 with the lender, China Trust, to see if they would be
25 receptive to something less of full payment, and get some more

1 time to see if -- if things can work out. And ultimately the
2 note was sold to a third party. And as a condition of the
3 note being sold, personal guaranties were released to Mr.
4 Frey, I believe Chris Beavor got his personal guaranty back,
5 as well as Allen Floyd and Samantha Beavor and anybody who had
6 guaranties, they were all released.

7 Q You mention as a result of the bankruptcy that
8 there was a stay in the receivership action. So because
9 Toluca Lake filed bankruptcy, China Trust Bank was not able to
10 put any receiver over the project; is that what you're saying?

11 A That is correct.

12 Q Okay. And what happened to the foreclosure
13 action they commenced as a result of the bankruptcy?

14 A That also was stayed.

15 Q Now, were there mechanic's liens on the
16 property?

17 A Yes.

18 Q Can you explain what a mechanic's lien is,
19 briefly?

20 A A mechanic's lien is a avenue that a sub trader
21 contractor can lien the property to secure their legal rights
22 to any outstanding payments that were never made to them. And
23 in this case I believe there's maybe 20 sub trades or
24 contractors that were not paid, and the lien amounts, some of
25 them were duplicated, but they were in excess of \$6 million.

1 Q And what happened to those mechanic's liens as a
2 result of the -- the bankruptcy?

3 A As part of the sale of the note and the asset,
4 eventually I negotiated with each individual one to a
5 substantially lesser amount for them to release their interest
6 in the property so we'd be able to sell and -- and satisfy the
7 banks.

8 Q So, just to recap, as a result of the bankruptcy
9 -- and correct me if I'm wrong -- the personal guaranties that
10 Mr. Frey, Mr. Beavor and others had on the \$22 million
11 construction loan was released, correct?

12 A That's correct.

13 Q The receivership action was stayed, correct?

14 A That's correct.

15 Q The foreclosure action commenced by China Trust
16 Bank was stayed?

17 A That's correct.

18 Q And you were able to resolve and negotiate a
19 reduction of around \$6 million in mechanic's liens, correct?

20 A Correct. And got substantial subcontractors
21 money.

22 Q Now, you mentioned that a third party purchased
23 the China Trust construction loan. How did that come about,
24 could you explain? I mean, let me clarify my question. Did
25 you just go out and put a notice on Craigslist and say, We

1 have a loan for sale?

2 A No. Through our own personal contacts we tried
3 to reach out to consulting companies to -- companies that
4 actually do that for a living and put projects that are in --
5 in trouble with capital to either joint venture or outright
6 purchase. And we contacted a company, I think it's Preferred
7 Capital if I'm not mistaken, Tim Meyers, or -- Tim Meyers, I
8 think is the principle. And we actually hired him and
9 ultimately he brought, in a very short time period, 8 or 10
10 different financial vehicles to see if they would be
11 interested in either taking out the loan, adding more money,
12 or outright purchasing the property.

13 Q So just to make sure I'm understanding, you got
14 this China Trust loan sitting here. And you're trying to find
15 somebody to buy the loan, right? So you hire a consulting
16 company, Preferred Capital, to help you try and find somebody
17 to buy that loan; is that right?

18 A That's correct.

19 Q Okay. And you said that Preferred Capital
20 brought 8 to 10 different potential purchases of the loan to
21 you?

22 A That's correct.

23 Q And did they purchase the loan?

24 A One -- one company, Cityview, ultimately did
25 purchase the loan.

1 Q So the loan was eventually purchased as a result
2 of Preferred Capital's efforts, purchased the China Trust
3 loan, right?

4 A That's correct.

5 Q Now, does Mr. Hefetz have an ownership interest
6 in Cityview?

7 A No. Not that I'm aware of, I don't believe he
8 has.

9 Q Does Mr. -- did Mr. Frey have an ownership
10 interest in Cityview?

11 A No.

12 Q Now, you've explained what your marching orders
13 were and what you were able to do as a result of your efforts.
14 Were you paid for your services?

15 A Yes, I was.

16 Q And how much were you paid? Well, let me back
17 up.

18 How were you paid?

19 A It really wasn't clearly established at the
20 beginning because we weren't sure how extensive the work was
21 going to be and whatnot. And as we got involved, it was
22 agreed upon that I would receive from the new purchaser as a
23 consultant -- consultant fee of \$5,000 a month for 20 months.
24 I would receive \$100,000.

25 Q So you -- as a consultant for Cityview, you were

1 paid by them, right?

2 A Correct.

3 Q And did you receive any other payment for your
4 efforts?

5 A I also received a -- a 2010 Volkswagen CC from
6 Mr. Frey as appreciation of -- appreciation and gratitude.

7 Q Did Mr. Hefetz give you any money?

8 A No, he did not.

9 Q How long were you involved in the process? You
10 mentioned you started in April 2009. When did you finish your
11 day-to-day activities with the project?

12 A The -- the -- I would see it as twofold. The
13 first phase of that completed around June, I think it was June
14 4th of 2010, when the note was sold and the property changed
15 hands. And then periodically I'd be involved for the next
16 several months more so, and then weaning off over the next 20
17 months.

18 Q Who did you report to during this entire
19 process?

20 A Prior to June 4th I reported to Herbert Frey,
21 then after June 4th I didn't really report, but I made myself
22 available to any questions or clarifications that Cityview
23 required.

24 Q Were you ever required to report to Mr. Hefetz?

25 A No, I was not.

1 Q Did Mr. Hefetz have any involvement in the
2 bankruptcy?

3 A No, he did not.

4 Q Now, when you first received your assignment and
5 marching orders to go help out with the project, did you ever
6 meet with Mr. Beavor?

7 A Yes, I did.

8 Q What did you discuss at that time?

9 A Chris attempted to explain the history of the
10 project and how and where we were situated, vis-à-vis the
11 bank, vis-à-vis timelines, schedules and development.

12 Q And what did he say about the timelines,
13 schedules and development?

14 A He indicated that they were slow to get their
15 construction off the ground due to some ADA handicap
16 modifications the architect had to do, and that had set them
17 back, I don't know, six to eight months from their intended
18 construction schedule.

19 Q And what did you at that point say to him?

20 A I said in a development it's quite typical to
21 have changes and delays and whatnot, especially with handicap
22 and architectural approvals. And I had asked him if the bank
23 was aware of that and that he had made the necessary
24 amendments to his loan documents to reflect any critical dates
25 of completion and whatnot related to that late start.

1 Q And what did he say?

2 A He said no.

3 Q Now, did you review the China Trust loan
4 documents as part of the bankruptcy?

5 A Not thoroughly. I had access to parts and
6 clauses, paragraphs that I think Chris had pointed out
7 throughout our communications.

8 Q And did you have -- did you review project
9 sheets for the project?

10 A There were project sheets, there were loan draws
11 we reviewed the previous several months and I believe there
12 was a couple of months, February, March, quite possibly April
13 that were -- never got funded because the bank had already
14 stopped funding.

15 Q And based on your review of those project sheets
16 and loan draws, do you know -- in your view, why did the
17 project fail?

18 A The developer didn't meet the obligations that
19 they set out to do when they borrowed the money from the bank.

20 Q Now, when you showed up to help out with the
21 project, what was Mr. Beavor's attitude towards your arrival?

22 A Can you ask that question again, please?

23 Q Well, did -- well, let me ask it more plaintive.
24 Did Mr. Beavor have any objection to you coming in and helping
25 out with the project?

1 A No. Actually, he welcomed it. I don't believe
2 Chris Beavor or Allen Floyd have -- had ever built a
3 multi-family for-sale product. I believe their expertise was
4 renovation or single-family homes. And he was aware that I
5 had built many apartments, multi-family homes in Las Vegas,
6 and that I was a dear friend of Mr. Frey's and he welcomed my
7 involvement.

8 Q Did he ever object to Toluca Lake filing
9 bankruptcy?

10 A No, he did not.

11 Q Let me show you in that same exhibit, that one
12 that you had open on D16, just flip to the next two pages.
13 They'll be numbers 2210 and 2211. If you take a look at that.
14 Take a look at both pages.

15 The first question I'm going to have for you is do
16 you see Mr. Hefetz's signature anywhere on that document?

17 A No, I do not.

18 Q See Mr. Beavor's signature on that document?

19 A Yes, I do.

20 Q And the title of the document is "Notification
21 of Replacement of Manager." Do you remember seeing this
22 document at the time?

23 A Yes, I do.

24 Q And what do you remember the effect of that
25 document being?

1 A It provided for Star Development to be appointed
2 as a manager and negotiate with the bank in all matters
3 pertaining to Toluca Lake Vintage, LLC.

4 Q Now, if you look on the -- on 2210, halfway down
5 it says, "Acceptance of removal as manager." And then it
6 says, "C&S Holdings hereby accepts and acknowledges its
7 removal and its manager." Do you remember what C&S Holdings
8 was?

9 A The company that Chris Beavor was the manager of
10 and it -- it perhaps was the managing member of Toluca Lake
11 Vintage, LLC. But I don't recall at this point.

12 Q Did you ever make any promises to Mr. Beavor
13 that in exchange for his agreement to consent to the Toluca
14 Lake bankruptcy that he would be released from his personal
15 guaranty obligations to Mr. Frey?

16 A No, never.

17 Q Did you hear -- ever hear anyone make that
18 promise to Mr. Beavor?

19 A No, I did not.

20 Q Now, you testified that you worked with
21 Preferred Capital to facilitate a purchase of the loan, the
22 construction loan, right? Did Mr. Beavor ever approach you
23 about a third party he had found to maybe purchase the loan?

24 A Chris would periodically share with me some
25 information that he had that there were many people interested

1 to take over this project and correct all the mistakes and
2 make it viable. And it never substantiated to anything. More
3 than welcome, that was the purpose of my -- my tender, was to
4 get Mr. Frey and anybody else as a byproduct off their
5 personal guaranties, and if somebody would step up to the
6 plate and do that, I wouldn't have to go through what I was
7 doing. So.

8 Q So you were willing to listen to anybody who
9 could potentially buy the loan?

10 A The goal was to get the personal guaranties back
11 from -- from the bank. And if somebody had money and that
12 facilitated, yes, that's correct.

13 Q Did Mr. Beavor ever produce anybody with money?

14 A No, he did not.

15 Q Now, did you attend the Toluca Lake bankruptcy
16 hearings?

17 A Yes, I did.

18 Q Was Mr. Beavor at the bankruptcy hearings?

19 A He was at some.

20 Q Did he -- was he ever to -- able to speak to the
21 judge at the hearings?

22 A Yes, he did.

23 Q Did he have any complaints that he voiced to the
24 judge?

25 A Yes. We were in front of the bankruptcy judge

1 asking for approval of our -- our restructuring plan and
2 whatnot for the bankruptcy. And Mr. Beavor spoke to the judge
3 and told him that he didn't think the judge should approve the
4 plan because it didn't include his personal release of a loan
5 or payment he owed Mr. Frey.

6 Q Did the Court listen to all of Mr. Beavor's
7 complaints, issues?

8 A They listened extensively and the judge
9 commented that what she had in front of her and her --

10 MR. SAGGESE: Objection. Calls for speculate -- I
11 mean, hearsay.

12 THE COURT: Well, who -- who is this that you're
13 talking -- a judge --

14 THE WITNESS: The bankruptcy judge. He asked me if
15 the -- if the judge listened to Chris Beavor, so I was
16 responding to that.

17 THE COURT: Okay. But as far as what the judge said,
18 that is hearsay.

19 THE WITNESS: Okay.

20 THE COURT: I'm sustaining the objection.

21 MR. HULET: Your Honor, would -- would it be subject
22 to judicial notice because they were operative statements and
23 public --

24 THE COURT: If you have a transcript or something.

25 MR. HULET: Okay. Okay.

1 THE COURT: Otherwise it's hearsay.

2 BY MR. HULET:

3 Q But Mr. Beavor was able to voice all of his
4 complaints to the bankruptcy judge, correct?

5 A Yes, he was.

6 Q And the bankruptcy plan was confirmed?

7 A No, it was not. At Chris Beavor's request, he
8 asked to delay it so he could bring legal counsel to represent
9 him in this matter. And I think it was rescheduled two weeks
10 out and we had another hearing two weeks later.

11 Q And was -- after listening to those complaints
12 was the bankruptcy confirmed, the plan?

13 A Yes, it was.

14 Q Did you communicate with Mr. Hefetz during this
15 time period?

16 A I don't recall. Perhaps I very briefly might
17 have.

18 Q Did he give you any directives on how to handle
19 the bankruptcy?

20 A None whatsoever.

21 Q Did he give you any directives prior to the
22 bankruptcy?

23 A No.

24 Q Now, did you ever receive directions from
25 anybody to negotiate with Mr. Beavor, Mrs. Beavor, with

1 respect to their release of their personal guaranty of the \$6
2 million loan?

3 A No, I was not.

4 Q Did you ever discuss a release with Mr. Beavor?

5 A Yes, I did.

6 Q And can you summarize those discussions?

7 A I'm not sure when -- when, but it might have
8 been the latter part of 2010. Chris Beavor approached me and
9 asked me if Mr. Frey would be interested or willing to release
10 his personal guaranties. And I responded that I had no idea,
11 but if he would like I would be prepared to ask Mr. Frey if he
12 had any interest. But I felt if he did, it would have to be a
13 proposal that included initial payments to get that -- to buy
14 that release or to -- to settle out.

15 Q And did Mr. Frey ever agree to a release?

16 A No, he did not.

17 Q Did you or Mr. Frey ever prepare a written
18 release agreement?

19 A No, we did not.

20 Q And at some point did Mr. Hefetz kind of take
21 over those discussions with Mr. Beavor?

22 A Yes, he did.

23 Q Do you remember when that was?

24 A Early 2011, January, February.

25 MR. IGLODY: Pass the witness.

1 THE COURT: Cross.

2 CROSS-EXAMINATION

3 BY MR. SAGGESE:

4 Q Good afternoon.

5 A Good afternoon.

6 Q You had mentioned on direct examination that you
7 have been a real estate developer for 35 years; is that
8 correct?

9 A That is correct.

10 Q And are you licensed? Are you a licensed
11 mortgage broker?

12 A No, I am not.

13 Q Do you know if Herbert Frey is a licensed
14 mortgage broker?

15 A I do not know.

16 Q Do you know if plaintiff, Mr. Hefetz, is a
17 licensed mortgage broker?

18 A I do not know.

19 Q What is your understanding of the requirement
20 for a mortgage license the state of Nevada?

21 A I've no understanding.

22 MR. HULET: Objection, legal conclusion.

23 THE COURT: Overruled. He doesn't have an
24 understanding.

25 BY MR. SAGGESE:

1 Q The -- when property, when a loan is given and
2 secured by property, is that a mortgage transaction, if you
3 know?

4 A I'm sorry, ask the question again.

5 Q When property -- when a loan is given secured by
6 real property, more specifically real property, is that
7 considered a mortgage?

8 A I believe so.

9 Q And the loan provided by Mr. Frey to the
10 project, if you know, was secured in part by the project, the
11 Toluca Lake project?

12 A I don't know.

13 Q Well, you were very intimately involved in the
14 bankruptcy, were you not?

15 A Correct.

16 Q So you knew what finances and loans were secured
17 by Toluca Lake and which were not, right?

18 A Yes.

19 Q And in regard to that bankruptcy, it was your
20 goal, as you testified on direct, it was your goal to have
21 Toluca Lake as a project go into bankruptcy to protect Mr.
22 Frey and his personal guaranties, correct?

23 A It was all of our goals, yes, and to get all of
24 the guaranties back, yes.

25 Q Right. Except Chris Beavor's guaranty?

1 A You're mixing two things up. You're -- I was
2 talking about a \$23 million first mortgage to China Trust that
3 Toluca Lake Vintage, LLC, borrowed. That's the -- that's the
4 guaranty I was talking about.

5 Q Okay. So there's a --

6 A I -- I had no involvement to deal with Mr. Frey
7 and Chris Beavor's loans other than Chris requesting me to see
8 if Mr. Frey would -- would release it, I don't know, 18 months
9 later.

10 Q Okay. So if there's a \$22 million outstanding
11 China Trust loan, you were brought on in regard to the Toluca
12 Lake project to protect personal financial interests of Mr.
13 Frey; is that accurate?

14 A No. I was brought on to assist Mr. Frey in an
15 effort that China Trust would not go after -- would not be
16 successful in getting a judgment and causing him to lose \$22
17 million or whatever the loan amount was.

18 Q So you were brought on the Toluca Lake project
19 in an effort to protect the guaranties put forth by Mr. Frey
20 to China Trust Bank?

21 A Correct.

22 Q And you were not -- you had no care or concern
23 about Chris Beavor and his personal guaranties related to this
24 project; is that accurate?

25 A Not that I didn't have any concern, but I had no

1 obligation. Chris didn't ask me other than what I mentioned
2 later on, 18 months later, to reach out to see if something
3 could happen with his loan.

4 Q But certainly you understand that Chris was the
5 manager of Toluca Lake project and this was a project he was
6 running and had an interest in; you know that?

7 A Of course.

8 Q So when you were brought on, you were brought on
9 for the sole purpose of protecting Mr. Frey and his personal
10 assets?

11 MR. HULET: Objection. Misstates testimony.

12 THE COURT: Overruled. This is cross.

13 THE WITNESS: May I answer the question?

14 THE COURT: Yes.

15 THE WITNESS: Yes. Mr. Frey asked me to.

16 BY MR. SAGGESE:

17 Q In other words, as you talked to the jury and
18 you mentioned this notification -- and I have notes on there,
19 so I won't put that up -- but that notification of replacement
20 of manager, you talked about that on direct, you recall the
21 document, right?

22 A Yes.

23 Q And that document with these signatures --

24 THE CLERK: Exhibit?

25 MR. SAGGESE: You know, it is, I don't have it.

1 THE WITNESS: Exhibit D16.

2 MR. SAGGESE: E16, correct. And Bates stamps 2210
3 and 2211.

4 BY MR. SAGGESE:

5 Q And you see the signature page, Herbert Frey,
6 Chris Beavor, and Gary Frey?

7 A Yes.

8 Q Now, the last signature says Gary Frey, Star
9 Development, correct?

10 A Yes.

11 Q And what this document did was replace Chris
12 Beavor as the manager, notification of replacement of manager
13 of his project, essentially, Toluca Lake, and replaced it with
14 Star Development?

15 A Yes.

16 Q Okay.

17 A I'm not an attorney, but I believe that's what
18 it is. The document is the document.

19 Q Now, once Star Development became manager of
20 this project, Star Development is Gary Frey, correct?

21 A I -- I don't understand what you mean "is" -- is
22 what?

23 Q Well, a corporation can only act or exist
24 through human beings, right?

25 A I understand. But I don't understand the word

1 "is." Is he the owner --

2 Q Is --

3 A -- is he a manager --

4 Q -- the word --

5 A -- is he -- I'm not sure, please...

6 Q Well, the company is, meaning it's comprised of
7 the people who own it or the managers, people who started it.

8 A I don't believe Gary Frey is an owner, if that's
9 the question.

10 Q Okay.

11 A If he's an officer, I believe he's an officer.

12 Q Or a --

13 A That was with clarification --

14 Q -- or a manager --

15 A -- I didn't quite understand the question.

16 Sorry to interrupt.

17 Q Okay. Star Development was created by whom?

18 A I don't know.

19 Q Would you have any reason to disagree that Star
20 Development was created by Mr. Hefetz?

21 A I don't know.

22 Q But yet you were behind replacing my client with
23 Star Development, you don't know who Star Development is?

24 A Earlier on I said Star Development was a company
25 that existed prior to my involvement. And because of the

1 short timeframe of trying to stop a receivership taking Chris
2 Beavor away from his duties, the decision was made to use Star
3 Development, a company that I was not involved in prior to
4 that date, so I'm not clear who -- who initiated it, whether
5 it was Mr. Frey, Mr. --

6 Q Hefetz.

7 A -- Mr. Hefetz, I don't know. All I know is this
8 document is -- was -- was facilitated to do what you just said
9 it did.

10 Q Is it fair to say that at this point when Mr.
11 Beavor was removed as manager and Star Development was
12 replaced as the manager, that that move was done to protect
13 the interests of Mr. Frey?

14 A No.

15 Q And is it fair to say that Mr. Beavor's
16 interests were no longer protected?

17 A That's not correct.

18 Q Now, you had mentioned on direct that Mr. Beavor
19 welcomed you, essentially, and he had no issue with the filing
20 of the bankruptcy, the Chapter 11 bankruptcy, and this is to
21 reiterate so we're all on the same page, that Mr. Beavor had
22 no objection to the filing of a Chapter 11 bankruptcy on the
23 \$22 million China Trust loan. Is that accurate?

24 A Repeat that question, please.

25 Q Mr. Beavor had no issue with or did not protest

1 the filing of a Chapter 11 bankruptcy on the \$22 million China
2 Trust note?

3 A Correct.

4 Q But yet it required a replacement of him as
5 manager to accompany Mr. Hefetz's control?

6 A Was that a question?

7 Q Yeah. The question is, yet -- and you can agree
8 or disagree. The answer from you would be yes or no. And
9 yet, still, the evidence says that Mr. Beavor had to be
10 replaced by Star Development and then Star Development filed
11 the Chapter 11 bankruptcy?

12 A It was a procedure that Mr. Beavor consented to
13 by his signature on that document.

14 Q Certainly if Mr. Beavor consented and he was
15 manager, he would just file the Chapter 11 bankruptcy and sign
16 it himself?

17 MR. HULET: I'm going to object, Your Honor. Mr.
18 Beavor is not the manager.

19 THE COURT: I think it calls for a legal opinion, if
20 that's what your objection was. So as far as it
21 [indiscernible], if you know --

22 MR. SAGGESE: Okay.

23 THE COURT: -- you can answer.

24 BY MR. SAGGESE:

25 Q In other words, these signatures which are the

1 second page from the notification of replacement of manager,
2 it essentially says, and you're familiar, that Chris Beavor,
3 C&S Holdings, is to be replaced by Star Development.

4 A That's what the document says.

5 Q Correct. Less than 24 hours, May 13th, 2009,
6 the same day the Chapter 11 bankruptcy is filed, correct?

7 A Correct.

8 Q But yet you're saying Mr. Beavor consented to
9 it, but still had to be replaced?

10 A I'm -- I'm confused. Maybe ask Chris the
11 question. I can't answer why Chris did that or why he didn't
12 do it. I know what I did.

13 Q Or why it was required. Let me ask you this.
14 You referenced, you know, rusty nails and issues related to
15 the project when you first saw it. Isn't it a fact that the
16 documents established that building of Tower 1 was 70 percent
17 complete and the second building was 50 percent complete?

18 A I don't recall those numbers, those percentages.
19 But I think it may have been complete. A building with rusty
20 nails and wood, maybe 50 percent, maybe 40 percent. I don't
21 know.

22 Q And you also referenced on direct that Mr. Frey
23 was being sued personally with China Trust Bank and you were
24 brought in?

25 A In -- in Nevada courts --

1 Q Okay.

2 A -- in addition to what was going on in
3 California courts.

4 Q And after Mr. Beavor was replaced as the manager
5 and Star Development was put in place as the manager, a
6 Chapter 11 bankruptcy was filed, correct?

7 A Correct.

8 Q And ultimately, to use your word, you were
9 successful in getting all of Mr. Frey's personal guaranties
10 released?

11 A Using my words --

12 Q Successful.

13 A -- successful of Mr. Frey's, Chris Beavor's,
14 Allen Floyd, and any other -- and Samantha Beavor, any other
15 borrowers that had liability to \$23 million loan, yes.

16 Q And -- okay. So -- and I heard that on direct,
17 which, when you say part of what you accomplished was getting
18 Chris Beavor, you said everyone's guaranties were released and
19 you included Samantha Beavor and Chris Beavor as individuals
20 whose personal guaranties were released. Is that accurate?

21 A That is accurate.

22 Q Okay. Now, that sentence with a period at the
23 end of it is not totally accurate, is it? Meaning -- and I'll
24 explain if that's confusing -- meaning everyone involved in
25 Toluca Lake's projects, personal guaranties were not released,

1 period. They were released solely and exclusively on the
2 Toluca Lake project loan to China Trust Bank.

3 A The question that I was asked under oath was
4 what -- what I was brought here to do for Mr. Frey. And it
5 all referenced the \$23 million loan to China Trust. There was
6 no reference to what Chris Beavor had as loans as to
7 investors. And this is the \$23 million loan to China Trust.
8 That is an accurate statement that everybody who had exposure
9 to a \$23 million loan with China Trust on the Toluca Lake
10 Vintage, LLC, did not have any more exposure when I concluded
11 my -- my dealings.

12 Q And it's my understanding, and for the record,
13 it's \$22 million. It's a \$22 million loan. Fair enough
14 either way.

15 A It's a lot of money.

16 Q It is. And Mr. Frey was forgiven of all that
17 debt, correct?

18 A Along with all the other guarantors.

19 Q Along with everyone else.

20 A Right.

21 Q Do you see how that could be misleading and --

22 A Not at all.

23 Q Okay. Now, in reference to that bankruptcy,
24 where you said on direct that Mr. Beavor had filed an
25 objection and -- and made -- made some -- I forget how you

1 phrased it, a speech or...

2 A Say again.

3 Q He -- he went on ad nauseam to the -- to the
4 judge in relation to what was happening. Maybe I misheard
5 that. But I -- did you reference something about Chris
6 objecting to the bankruptcy at some point during this
7 bankruptcy?

8 A Yes, he did.

9 Q Okay.

10 A He was heard.

11 Q Now --

12 A As well with his attorneys.

13 Q -- was his objection consistent with saying
14 that, Wait a minute, everyone's guaranties are supposed to be
15 released on this and I'm the only who's not being completely
16 released, everyone else is. Not me and my release with Mr.
17 Frey. Was that his complaint, saying, Wait a minute --

18 A Yes, that was his complaint.

19 Q Okay. So as you testify here today, I mean, I'm
20 an attorney, I hear you say I was brought on to take over this
21 project, well, to guide the takeover of the project and
22 replace or assist in replacing Mr. Beavor with Star
23 Development in conducting a Chapter 11 bankruptcy for the
24 purposes of --

25 A Getting the guaranty back from China Trust.

1 Q Yes.

2 A Very clear.

3 Q Understood. Understood. Hear me out.

4 A Certainly.

5 Q If you're making representations, and counsel --
6 you mentioned, what was the lawyer's name, Victor Saan?

7 A Yes.

8 Q If counsel is making representations to Mr.
9 Beavor, and you're making representations to Mr. Beavor that,
10 let us control the company, and then when this is all said and
11 done, after this Chapter 1 goes through, everyone's going to
12 be forgiven of their agreements. Because that -- that's --

13 A That's not what was said.

14 Q Okay. Hold on.

15 A I guarantee you --

16 Q Let -- let me --

17 A -- Mr. Saan --

18 Q -- let me ask the question --

19 A -- as -- as this collared lawyer --

20 Q -- let me ask the question.

21 A -- would not tell Chris Beavor that his personal
22 guaranty to Herbert Frey would be released.

23 Q But you said it yourself that everyone's
24 personal guaranty was released, period.

25 MR. HULET: Objection. [Indiscernible] testimony.

1 BY MR. SAGGESE:

2 Q And I'm asking --

3 A Excuse me.

4 MR. HULET: It's misstating his testimony.

5 THE WITNESS: This is not what I heard.

6 THE COURT: I'm going to sustain -- I'm going to
7 sustain the objection that's not the facts in evidence.
8 Rephrase.

9 MR. SAGGESE: Okay.

10 BY MR. SAGGESE:

11 Q Okay. To the extent that this is a true
12 statement, do you -- do you believe that this could be
13 misleading, by filing a Chapter 11 bankruptcy, the personal
14 guaranties on the Toluca Lake project are going to be wiped?

15 A Absolutely not.

16 MR. HULET: I'm going to object. I'm going to
17 object, Your Honor. I don't think there's any testimony that
18 representation was made.

19 MR. SAGGESE: Well, it was a hypothetical.

20 THE COURT: I don't know about the question
21 [indiscernible].

22 MR. SAGGESE: It was a hypothetical. I'm just
23 asking, said like that by perhaps the --

24 MR. HULET: Objection. Improper hypothetical.

25 THE COURT: Overruled. This is cross-examination.

1 Go ahead.

2 BY MR. SAGGESE:

3 Q You know, asked -- asked like -- excuse me.
4 Asked like that, and if communicated by the attorney hired by
5 Mr. Frey to manage this, Victor Saan, and communicated, I
6 heard some variation of that on direct, do you see where that
7 could be misleading?

8 A You're speculating if he said --

9 Q Hypothetical.

10 A -- this, would this sound like this.

11 Q Right.

12 A I've sat here all -- these last hour and a half,
13 I am not -- I'm clear as a bell. I did not hear any
14 possibility that my involvement was to release Chris Beavor's
15 personal guaranty from Mr. Frey. I said it on numerous
16 occasions, very clear, that my involvement was with the China
17 Trust, \$23 million, which you kindly corrected me to be \$22
18 million. In the bankruptcy hearings when we asked for this
19 plan to be approved, Chris brought up this same confusion that
20 you seem to be having, and the judge said, This is not my
21 jurisdiction. This is the \$22 million-and-change loan. What
22 you have with Mr. Frey you can deal with as you want. And she
23 was perplexed that we were bringing on a silver platter to
24 Chris Beavor a \$22 million release of his personal guaranty
25 and he was objecting to it.

1 Q What personal guaranty of \$22 million are you
2 referring to from Chris to China Trust?

3 A I'm referring to when the loan documents were --
4 were signed by Toluca Lake Vintage, LLC. There were several
5 guaranties.

6 Q I'm -- go ahead.

7 A Herb -- by Herbert Frey, I believe by Chris
8 Beavor, by Allen Floyd, by Samantha Beavor. I think the loan
9 amount was 23, you corrected me, 22, I think the outstanding
10 loan that was drawn was in the \$14 million range. That's the
11 personal guaranty that I've referred from day one sitting in
12 this courtroom.

13 Q Well...

14 A Sorry. Go ahead.

15 Q There's been no evidence presented that Mr.
16 Beavor's associated in any way, shape, or form with the
17 guaranty to China Trust Bank; are you aware of that?

18 A I was aware that there were personal guaranties.
19 That various companies had offered up as individuals to --

20 Q Specifically Chris Beavor, though.

21 THE COURT: Let him answer the question. Are you
22 done?

23 THE WITNESS: Yes, I'm done. And yes.

24 BY MR. SAGGESE:

25 Q Specifically Chris Beavor, do you have any

1 independent recollection or any documents that you could point
2 to where he was involved in the \$22 million loan from China
3 Trust?

4 A I need you to repeat the question, because I'm
5 not clear what you just asked me.

6 Q The question was do you have any documentary
7 proof or any evidence to establish that Mr. Beavor or his wife
8 was a personal guarantor in the China Trust Bank \$22 million
9 loan?

10 A I believe I've seen documents in Steven
11 Gilmore's office who was a consultant to Mr. Frey and Chris
12 Beavor that did show personal guaranties from Chris Beavor and
13 his wife.

14 Q Do you know if Mr. Hefetz's attorney has those
15 documents or provided them as part of this case?

16 A I just flew in from North Dakota. I'm here to
17 answer my questions as best as I can recall them, and I -- I
18 don't know what he has.

19 Q Okay. If, hypothetically, it comes to be known
20 that Mr. Beavor, in fact, had no personal guaranty associated
21 with the \$22 million loan, would you be consistent with your
22 opinion that he would be crazy not to accept this silver
23 platter Chapter 11 bankruptcy you're referencing?

24 A I may not use the word crazy, but I think he
25 would be very happy, because if he intended to satisfy his

1 obligations to Mr. Frey of his \$4 million loan or personal,
2 whatever that loan is, I'm sure Mr. Frey would feel better
3 that he didn't have another \$20-some million obligation on top
4 of that. So yes, I would be consistent with that --

5 Q Well, do you --

6 A -- Mr. Beavor would be happy.

7 Q So do -- did you come to know that to this day
8 either way whether or not Mr. Beavor acquiescing to this
9 Chapter 11 bankruptcy earned him any favor with Mr. Frey in
10 relation to that \$4 million loan?

11 A I have no idea.

12 Q If the Toluca Lake project was completed, let's
13 say a back-up lender was brought in like you had discussed on
14 direct, and it was completed, would -- would it have been a
15 profitable entity?

16 A No idea.

17 Q Don't know?

18 A No, I do not know.

19 Q You referenced on direct the settling with
20 contractors who actually had outstanding bills on the project;
21 do you remember that?

22 A Yes.

23 Q And that was part of the bankruptcy, or was it
24 part of the bankruptcy?

25 A Yes, it was.

1 Q Now, do you recall and are you familiar with a
2 -- a 30 percent return on the amount owed versus the amount
3 they would accept in pay if properly negotiated?

4 A I'm not sure if it was 30 percent, but yes,
5 there was a mechanism involved.

6 Q And who received those funds for that successful
7 cram-down of the contractors' bills?

8 A Mr. Frey, I believe, received it as a set-off
9 against his legal expenses.

10 Q So, in other words, do you remember a ballpark
11 figure of the amount owed contractors when the project went
12 into bankruptcy?

13 A I think I said it was \$6 million. But I just,
14 off memory, not sure.

15 Q So \$6 million was kind of due and owing to what,
16 dry wallers, framers, like this kind of thing?

17 A No. \$6 million was the mechanic's liens that
18 were encumbering the property.

19 Q Okay. Define a mechanic's lien.

20 A I'm not a lawyer. A mechanic's lien, I think
21 earlier I told you, was a legal right that a subcontractor or
22 a contractor has to secure their interest in a project in the
23 event they don't get paid.

24 Q So it could be a dry waller?

25 A Could be anything. We were talking about the

1 dollar amount and you asked me if the \$6 million is the amount
2 that was owed. And I was clarifying no, it wasn't \$6 million,
3 it was over \$6 million that was liened on the property. Two
4 different statements.

5 Q Okay. Try and follow me on this. I'm trying to
6 get to the mechanic's lien and what comprises a mechanic's
7 lien in relation to this particular project. By way of
8 example, who are some unpaid parties? Not by name, but by
9 trade.

10 A Anybody who did work on the project I would
11 assume is an unpaid party and didn't get paid.

12 Q Okay. So for my own understanding, there was \$6
13 million of outstanding bills that contractors had submitted
14 after they had done work on the Toluca Lake project as you
15 went into bankruptcy?

16 A I apologize if I'm not being clear. What I was
17 trying to explain was there was 6 --

18 Q I have a question --

19 A Okay.

20 Q -- and I just wanted to ask --

21 A When you reference \$6 million, I have a hard
22 time answering.

23 Q Or \$8 million, or regardless of the amount.

24 A Could we not talk about the dollar amount and
25 ask the question again. Because I think many people --

1 Q I --

2 A -- lien for the same amount of work twice and
3 three times, it's quite common to do that. So the \$6 million
4 might very well have been overstated.

5 Q Okay.

6 A That's all I wanted to point out.

7 Q So was not 8, it was 6, but it might have been
8 overblown?

9 A I never mentioned 8. I mentioned 6. And it's
10 not being overblown --

11 Q I didn't say you mentioned 8. I was just saying
12 it's not a --

13 A Okay.

14 THE COURT: Let him answer the questions.

15 BY MR. SAGGESE:

16 Q So it's not --

17 THE COURT: [Indiscernible] your answer?

18 THE WITNESS: I don't know what overblown -- if a
19 subtrade did work, they liened the property. If the general
20 contractor did work, he liens the property. If the supplier
21 who provided the material for the work, he liens the property.
22 That, I guess, is how it gets overstated.

23 BY MR. SAGGESE:

24 Q Okay. So your best recollection in this
25 bankruptcy, what was the amount, whether or not it be

1 double-billed or -- what was the amount that was outstanding
2 to contractors who had did completed work on the project?

3 A Same amount I said earlier, I said around \$6
4 million.

5 Q Okay. And as part of the bankruptcy, Chapter
6 11, you referenced that if negotiators or whoever could get
7 the money down, the amount owed down, they would earn a
8 percentage of that, and that's accurate?

9 A They would share in some of the savings.

10 Q And you said Mr. Frey would receive some of that
11 money, all of it, a portion of it?

12 A Some of it.

13 Q So by way of hypothetical, if there was \$6
14 million worth of outstanding bills from contractors, and
15 through this bankruptcy it was negotiated that it would be \$1
16 million for full and final satisfaction of all those debts.
17 The difference being \$5 million, correct? The difference
18 between 6 million and 1 million. What was actually arguably
19 owed and what was agreed upon by the contractors to take short
20 money in an effort to close the bankruptcy, right, 5 million
21 would be the difference?

22 A Right.

23 Q 5 million would -- you won't even give me that?
24 That the difference between 6 million and 1 million is 5
25 million?

1 A No, I agree with that.

2 Q Okay.

3 A Your math is correct.

4 Q Okay.

5 A You used the word hypothetical.

6 Q It is a hypothetical.

7 A And you're using a 5 million number. It's a
8 pretty big number. In this particular case --

9 Q It's a hypothetical.

10 A -- it was a few hundred thousand dollars. There
11 was no million dollars involved, as I tried to explain
12 earlier, that the 6 million was overstated as you used your
13 terminology. The actual amount of the liens was -- was
14 probably 50, 60 percent less. And the reduced amount amounted
15 to a few hundred thousand dollars that was shared. Not 5
16 million in your hypothetical. It's -- to me --

17 Q Or --

18 A -- it sounds misleading. Wow, there's 5
19 million.

20 Q Right.

21 A It was a few hundred thousand dollars. Not even
22 close to what I think the legal bills were to run the
23 bankruptcy.

24 Q All right. So --

25 A So, but that's...

1 Q -- but back -- back to the hypothetical. If
2 there was \$6 million owed to contractors who had completed
3 work, which you had said that's a rough estimate of the number
4 in the bankruptcy pleading, and it was negotiated down to a
5 million --

6 A I'm sorry. I can't answer it because you said
7 that I say was owed. It was not owed --

8 Q It's a hypothetical --

9 A -- it was liened on the property.

10 Q All right. Let's try this.

11 A You're using a hypothetical number.

12 Q Okay. Let's try to say --

13 A So why don't we use 60 million?

14 Q Let's use 60 million.

15 A Okay. That would be better.

16 Q That way you can't argue with me about it.

17 A Correct. Correct.

18 Q So it's 60 million. For 60 million --

19 hypothetical -- \$60 million, and I'm glad you -- you brought
20 -- you brought that up. \$60 million owed to contractors who
21 completed work, drywalling, framing, all kinds of stuff.

22 Okay. \$60 million. The project goes into bankruptcy.

23 In the bankruptcy pleading is language that -- how
24 reduced that amount could get, there will be profit sharing by
25 -- and you referenced one person, Mr. Frey; is that accurate

1 so far?

2 A No.

3 Q Okay.

4 A In the bankruptcy pleading or agreement,
5 whatever you call it, there was a dollar amount established.

6 Q Okay.

7 A And I believe it was substantially less --

8 Q Oh, no, no. I'm -- I'm just --

9 A Well, you asked hypothetical and you --

10 Q It's a hypothetical.

11 A Well, I can't answer that. Sorry. I don't know
12 how to answer.

13 Q Can't wrap your mind -- it's a simple
14 hypothetical. I'm just trying to get to let's say the
15 difference between 60 million and they cram it down to 10
16 million. The difference is 50 million, to use your numbers.
17 And there's a 30 percent profit sharing on behalf of Mr. Frey
18 for the difference between what was owed, allegedly, and what
19 was successfully paid to satisfy everyone.

20 A Hypothetical, that is correct.

21 Q Okay.

22 A But in the document that -- the court document
23 of the bankruptcy did not use hypothetical, it used a much
24 smaller number that resulted in a few hundred thousand dollars
25 that was saved.

1 Q Back to the hypothetical, 30 percent of the 50
2 million that was saved, because we're going with your number,
3 60 million, 50 million was saved, and the contractors got less
4 30 percent of 50 million is what, do you know?

5 A \$15 million.

6 Q \$15 million. So going with the hypothetical,
7 consistent a 30 percent, \$15 million would be part of the
8 profit sharing; this is all hypothetical.

9 A Yes.

10 Q Right?

11 A Yes.

12 Q And you referenced the individual that received
13 the funds from the profit sharing, you mentioned Mr. Frey,
14 Herbert Frey.

15 A The couple hundred thousand dollars.

16 Q Okay.

17 A We're not doing hypothetical now.

18 Q Right.

19 A You asked me a question, the funds that Mr. Frey
20 received. It was not 15 million, it was not 6 million.

21 Q Right.

22 A It was a couple hundred thousand dollars --

23 Q Okay.

24 A -- to offset his legal fees.

25 Q So, they -- were they motivated to minimize the

1 amount of money that was paid to the contractors?

2 A I'm sorry, who was motivated?

3 Q Well, whoever was involved in the bankruptcy and
4 negotiating the amount from what was owed to what was paid?
5 If you know. And if you don't know, you can say you don't
6 know.

7 A Don't know.

8 Q Okay. Now, you had testified earlier that you
9 were not sure if Mr. Hefetz was, in fact, associated with Star
10 Development, or was an owner.

11 A No, I don't think I said that.

12 Q Well, what -- do you recall what you said in
13 relation to his involvement?

14 A I recall saying that I believe Mr. Frey and Mr.
15 Hefetz were the owners of Star Development, the company that
16 was formed prior to my involvement.

17 Q Okay. So you -- all right. So you said Mr.
18 Frey and Mr. Hefetz were, in fact, individuals involved in
19 Star Development?

20 A That was my belief.

21 Q Okay.

22 A I did not see any documents, I don't recall
23 reflecting on...

24 THE COURT: Is this a good time for a break?

25 MR. SAGGESE: Yeah. Sure.

1 THE COURT: We've been going over an hour or so.
2 Take a 10-minute break.

3 Ladies and gentlemen, during this recess, you're
4 admonished not to talk or converse amongst yourselves or with
5 anyone else on any subject connected with this trial or read,
6 watch, or listen to any report of or commentary on the trial
7 or any person connected with this trial by any medium of
8 information including without limitation newspapers,
9 television, radio, or Internet, or form or express any opinion
10 on any subject connected with the trial until the case is
11 finally submitted to you.

12 Take a 10-minute recess.

13 (Court recesses at 2:45 p.m., until 3:13 p.m.)

14 (Outside the presence of the jury.)

15 THE MARSHAL: Come to order. Court is back in
16 session.

17 THE COURT: Be seated. Anything we need to talk
18 about outside the presence?

19 Okay. Go get them.

20 THE MARSHAL: All rise for the presence of the jury.

21 (Jury reconvenes at 3:14 p.m.)

22 THE COURT: Be seated. Do the parties acknowledge
23 the presence of the jury?

24 MR. SAGGESE: We do.

25 MR. IGLODY: We do.

1 THE COURT: Please continue.

2 CROSS-EXAMINATION (CONT.)

3 BY MR. SAGGESE:

4 Q Hello again, Mr. Krygier.

5 THE COURT: You're still under oath.

6 THE WITNESS: Yes.

7 BY MR. SAGGESE:

8 Q Some questions in relation to a mutual release.
9 Are you familiar with or did you ever hear about a mutual
10 release and payment agreement between Mr. Beavor and Herbert
11 Frey?

12 A No.

13 Q Had you -- you referenced it on direct, did Mr.
14 Frey ever communicate to you his position on the debt owed by
15 Mr. Beavor, Toluca Lake in this project, specifically the \$6
16 million note?

17 MR. HULET: Object to hearsay, Your Honor.

18 THE COURT: I'm going to sustain it [indiscernible].

19 BY MR. SAGGESE:

20 Q Did -- without --

21 THE COURT: Did you say --

22 BY MR. SAGGESE:

23 Q -- did he communicate?

24 THE COURT: -- this statement? Repeat the question.

25 BY MR. SAGGESE:

1 Q The question was did Mr. Herbert Frey ever
2 communicate to you one way or the other his position on the
3 debt?

4 THE COURT: All right. He's a party. I'm going to
5 allow it.

6 MR. HULET: He's not a party, Mr. Frey's not a party.

7 THE COURT: Oh, this is the son, okay.

8 MR. SAGGESE: Herbert Frey, the father. Not the
9 content of the communication, but whether or not he
10 communicated.

11 THE COURT: Okay. Since you rephrased it, go on.

12 BY MR. SAGGESE:

13 Q So did Mr. Herbert Frey ever communicate to you
14 one way or the other in relation to his position on the \$6
15 million to the Toluca Lake project?

16 A Only when Chris Beavor made an offer.

17 Q Okay. And are you familiar with Mr. Herbert
18 Frey's willingness or lack thereof to accept the offer?

19 A Somewhat.

20 Q Have -- have you ever been privy to
21 communications related to the mutual release and payment
22 agreement?

23 A Yes.

24 Q And what types of communications are you
25 referring to?

1 A Chris Beavor came to me and asked if Mr. Frey
2 would be prepared to release his mutual -- mutual releases of
3 his personal guaranty.

4 Q Okay. Did you ever communicate via e-mail in
5 relation to this --

6 A Probably.

7 Q -- settlement offer?

8 A But I don't specifically recall.

9 Q Okay.

10 MR. SAGGESE: Your Honor, what was attached as a
11 exhibit to the deposition, which the parties agreed in advance
12 that anything attached to a deposition we -- we could utilize
13 almost as stipulated. So that's what I have. I talked to
14 them at the break.

15 MR. HULET: That's correct, Your Honor.

16 THE COURT: Okay.

17 MR. SAGGESE: If I may approach the witness.

18 THE COURT: Yes. Go ahead.

19 BY MR. SAGGESE:

20 Q Because this along with everything else isn't in
21 the binder.

22 MR. HULET: Your Honor, we just ask for the exhibit
23 -- what exhibit is it?

24 MR. SAGGESE: It's 1, but there are two or three back
25 to back on one.

1 MR. HULET: And whose deposition?

2 MR. SAGGESE: Chris -- Mr. Hefetz's deposition.

3 MR. IGLODY: Okay. So this is Exhibit 1 to the
4 Hefetz deposition?

5 MR. SAGGESE: Yes.

6 MR. IGLODY: Okay.

7 MR. SAGGESE: And it's probably three documents deep.

8 MR. IGLODY: Okay.

9 THE COURT: Because I -- you're using it to refresh
10 his memory?

11 MR. SAGGESE: Yes. In relation to communications he
12 had [indiscernible].

13 BY MR. SAGGESE::

14 Q I'm showing you --

15 MR. SAGGESE: And for the Court's purpose, shall we
16 mark it as whatever would be next in line for defense?
17 Defense exhibit?

18 THE CLERK: Is this just to refresh his memory?

19 MR. SAGGESE: Yeah. And I won't move it into
20 evidence.

21 THE CLERK: [Indiscernible]

22 THE COURT: As a -- for identification purposes.

23 THE CLERK: [Indiscernible.] We can mark it as the
24 Plaintiff's 24.

25 THE COURT: [Indiscernible.]

1 BY MR. SAGGESE:

2 Q Okay. Do you --

3 MR. HULET: Your Honor, I'm having a hard time
4 identifying this in my packet. Can you -- is there a Bates
5 number?

6 MR. SAGGESE: There isn't, because it's an exhibit to
7 a [indiscernible].

8 Court's indulgence.

9 (Pause in proceedings.)

10 THE COURT: Did you see it?

11 MR. SAGGESE: They have.

12 MR. HULET: Yes, I have.

13 THE COURT: Any objection to him -- I guess he's
14 using it to refresh his recollection. Which anything can be
15 used --

16 MR. HULET: My understanding is -- my understanding
17 is we stipulated prior to the trial that the exhibits to the
18 deposition would be admitted.

19 THE COURT: Then go ahead and show it to him.

20 BY MR. SAGGESE:

21 Q So just -- I know we're making a big --

22 THE COURT: For the record, it's Exhibit 7 of Mr.
23 Hefetz's deposition.

24 MR. SAGGESE: That is correct.

25 THE COURT: Thank you.

1 BY MR. SAGGESE:

2 Q Sir, do you recognize that?

3 A No, I do not.

4 Q Can you tell us what it is?

5 A It's an e-mail from a person, Alexis Vardoulis
6 [phonetic], to --

7 Q Starting at the bottom, let's start like this.

8 A Okay. I'm --

9 Q What's the subject of the e-mail? The first?

10 A I usually read from the top down. But --

11 Q Well, e-mails go in reverse.

12 A Oh, okay.

13 Q E -- e-mail strings go in reverse.

14 MR. HULET: Your Honor, he testified that he didn't
15 know. Is he just reading the e-mail?

16 THE WITNESS: Yeah.

17 THE COURT: Well, if it's -- if you stipulated to
18 admit it --

19 MR. SAGGESE: The purpose is --

20 MR. HULET: So he's just going to read -- okay.

21 MR. SAGGESE: And it's used to refresh his
22 recollection.

23 MR. HULET: Okay.

24 MR. SAGGESE: If he recalled it, I wouldn't need the
25 e-mail.

1 THE COURT: They stipulated to admit it.

2 BY MR. SAGGESE:

3 Q So e-mails are -- are actually bottom-up.

4 A Okay. So --

5 Q Starting at the bottom, what's the subject?

6 A "Edited partial release Beavor."

7 Q Okay. And who is it e-mailed to?

8 A Jack Hefetz.

9 Q And Jack Hefetz, it's another -- it your
10 understanding that Jack Hefetz is a -- is Yacov Hefetz --

11 A Correct.

12 Q -- or Jacob Hefetz?

13 A Correct.

14 Q Okay.

15 A Correct.

16 Q And who else is on the --

17 A I was copied, cc'd.

18 Q It says "cc: Wayne Krygier"?

19 A Krygier, yes.

20 Q Sorry. Krygier. And -- and the subject is --
21 what's the subject, so we're all on the same page?

22 A "Edited partial release Beavor."

23 Q Okay. Now, same exhibit, following page is --
24 which would be Hefetz Deposition, Exhibit 7, subsequent pages.
25 Do you recognize that document? I'll give you a second to

1 read through it.

2 A No, I do not.

3 Q Have you ever -- so you've never seen this
4 document?

5 A I don't recognize it.

6 Q Do -- do you dispute that you were cc'd on the
7 e-mail?

8 A The document appears that I was cc'd. I don't
9 recall receiving it. I don't recall reading it. But I could
10 very well have. That's my e-mail address.

11 Q Okay. And at the bottom of the e-mail there is
12 reference to an attachment; is that accurate?

13 A That's correct.

14 Q So it's your testimony that you may have
15 received this release, but you don't remember?

16 A That is correct. I may have very well received
17 it. But I do not remember it.

18 Q And the originator of the e-mail is Ofir Ventura
19 [phonetic]. Do you know Ofir Ventura?

20 A Yes, I do.

21 Q Okay. Tell us who Ofir Ventura is.

22 A I believe he's an attorney.

23 Q Okay. So attached to the e-mail that you were
24 cc'd on from an attorney, Ofir Ventura, with an attachment of
25 this mutual release, are we on the same page so far? It all

1 seems to be consistent?

2 A That's what the e-mail said, yes.

3 Q Okay. Would you have reason to -- I could give
4 you an opportunity to read it. I just, for brevity's sake,
5 will represent to you, and -- and if you believe there is
6 reason it is inaccurate, please correct me, I'm sure you will,
7 that this was a proposed mutual release and payment agreement
8 between Mr. Beavor, his company, C&S Holdings, and Herbert
9 Frey. And in looking at the first paragraph, you can see that
10 those are the parties. Does that sound accurate?

11 A It appears what you've said is accurate.

12 Q Do you have any independent recollection of
13 speaking to Mr. Frey in relation to whether or not he would
14 accept separate checks for a total amount from Chris Beavor as
15 an exchange for a mutual release on the \$6 million loan?

16 A In relation to this exhibit you sent me or just
17 in general?

18 Q Let's start with in general and then -- let's
19 start with in general.

20 A Okay. I would rather start with the document in
21 front of me.

22 Q Well...

23 A This wasn't sent by me or to me. I was just
24 copied.

25 Q Right.

1 A So it's -- I wasn't party to it. In my earlier
2 testimony I told you that early 2011 I was no longer involved
3 in assisting Chris Beavor or discussing with Chris Beavor any
4 releases. This is dated after that period. So I wasn't
5 involved in this document.

6 Q Okay.

7 A I may have been copied. I may have read it.
8 But at this time and several years later, or year and a half,
9 two years later, I don't recall.

10 Q Okay.

11 A Now, with regards to your current question --

12 Q Yes. So that was in relation to specific, now
13 let's go back to general, which was do you remember hearing
14 maybe in passing or over a glass of wine or you're talking and
15 there's some reference to, with Mr. Herbert Frey, multiple
16 checks representing the consideration for a mutual release in
17 payment agreement from Mr. Frey?

18 A Okay. What I do remember is Chris approached me
19 and said, Do you think Mr. Frey will release my guaranty.

20 Q My question is relation to the communications
21 between you and Mr. Frey. And just generically, do you
22 remember communicating with him in relation to a mutual
23 release and agreement on the \$6 million note?

24 MR. HULET: I'll object to extent it calls for
25 hearsay, the answer.

1 THE COURT: Not sure it calls for hearsay. I'm going
2 to overrule it.

3 THE WITNESS: Okay. Sorry. Ask the question once
4 more and I'll try and answer it.

5 BY MR. SAGGESE:

6 Q The question is do you recall having
7 communications, and not the content of the communications,
8 because that could be hearsay. But do you recall
9 communicating with Mr. Hefetz in relation to multiple checks
10 from Chris representing his part of an agreement, which would
11 be a mutual release of their claims against each other and the
12 \$6 million debt?

13 A I don't recall specific payments of checks
14 discussed with Mr. Frey.

15 Q So I can -- I'll ask you that. And were you
16 aware that an amount would be break -- broken down over 15
17 separate checks, and that would be what Mr. Beavor would
18 produce; were you aware of how -- even Mr. Beavor's attempts,
19 how the mutual release and agreement would be achieved, did
20 you have any understanding of the details?

21 A Yes. I was trying to answer that earlier. If
22 you'd like I can answer it now.

23 Q Just stick with me. So the mutual release and
24 the details of it, multiple checks, you were familiar with, or
25 no? I mean --

1 A Yes. Chris Beavor informed me of all of the --
2 the dealings he wanted to do.

3 Q Okay. And you don't have an independent
4 recollection of communicating with Mr. Frey and Mr. Frey's
5 intention in relation to this agreement?

6 A You asked about checks or something, I thought
7 that was your question.

8 Q Well, no, it's the next question. Next
9 question.

10 A I -- I don't recall.

11 Q Okay.

12 MR. SAGGESE: Court's indulgence. Pass the witness.

13 THE COURT: Redirect.

14 MR. HULET: One moment.

15 THE COURT: We need a copy of that for the record.

16 REDIRECT EXAMINATION

17 BY MR. HULET:

18 Q I promise I won't ask any hypotheticals. Taking
19 a look at Exhibit 7 to Mr. Hefetz's deposition. Is there a
20 signature on --

21 A I don't have a copy of it anymore. Thank you.
22 No, there's --

23 Q Look at the last page of the release agreement.
24 See any signatures on there?

25 A Yeah. There's no signatures with rank.

1 Q Who paid for the legal fees for the Toluca Lake
2 bankruptcy?

3 A Mr. Frey, Herbert Frey.

4 Q Do you remember the amount of the legal fees,
5 approximately?

6 A Over \$250,000.

7 Q And the amount of the -- the profit sharing on
8 the reduction on the mechanic's lien, was that less than the
9 -- the total amount of attorney fees?

10 A It was capped and I believe it was very close to
11 that number. Maybe slightly tens of thousands, not \$6 million
12 more. Tens of thousands.

13 Q Now, you testified that when you -- in April
14 2009, when you first went to the project -- I don't want to
15 put words in your mouth, what percentage did you say the one
16 building was complete?

17 A It was probably 70, 75 percent. I did --

18 Q How about the other one?

19 A And the other one, it didn't appear to be 50,
20 maybe 40. But I didn't do a thorough check through it all.

21 Q Do you remember a specific time period or same
22 month and year when under the China Trust loan the
23 construction was supposed to be complete?

24 A Those substantial completions I think were
25 August or September.

1 Q Of what year?

2 A Of 2008.

3 Q So substantial completion was required by
4 September or August of 2008. But you were there in April of
5 2009, and one building was 70 percent and the other one was
6 less than 50; is that right?

7 A That's correct.

8 Q Did at any time Mr. Frey say to you, Wayne, I
9 want you to go in and make that project fail?

10 MR. SAGGESE: Objection. Calls for hearsay.

11 THE COURT: Sustained.

12 BY MR. HULET:

13 Q We went through some documents that showed
14 signatures on the 13th of May. Remember that? We looked at a
15 resolution of the board of directors. And then the same day
16 there was a -- an agreement that the new manager would take
17 Toluca Lake through bankruptcy; remember those exhibits?

18 A Yes.

19 Q Had you had discussions prior to that day with
20 Mr. Beavor and others with respect to the plan of action?

21 A Yes.

22 Q You didn't just decide that day to do
23 everything?

24 A No. We had numerous hour-long meetings.

25 Q How many meetings would you say?

1 A A few.

2 Q Over what time period?

3 A A week or so.

4 Q So it wasn't just one day?

5 A That's correct.

6 Q And is it your testimony that Mr. Beavor was a
7 individual guarantor of the China Trust loan?

8 A I was under the impression he was.

9 MR. HULET: No further questions.

10 THE COURT: Cross.

11 MR. SAGGESE: None, Your Honor.

12 THE COURT: Questions from the jury? No questions
13 from the jury? You may step down.

14 THE WITNESS: Thank you.

15 THE COURT: I think this is the second trial in a row
16 we've had a water accident.

17 (Pause in proceedings.)

18 THE COURT: Okay. Let's recall the witness. You are
19 still under oath.

20 THE WITNESS: I think you want this document back
21 now.

22 THE COURT: What's that?

23 THE WITNESS: I think you want this back. What about
24 this?

25 CROSS-EXAMINATION (CONT.)

1 BY MR. SAGGESE:

2 Q All right. Can you restate your name for the
3 record?

4 A Yacov Jacob Hefetz.

5 Q Sir, how well do you know the witness that just
6 testified, Wayne Krygier?

7 A I've known him for 20 years.

8 Q Now, he is not a listed manager or owner of Star
9 Development, is he?

10 A He's -- no, the owner of Star Development is Mr.
11 Frey and myself, and he was a manager along with Gary Frey.

12 Q Okay. Now, Star Development is the company that
13 replaced Chris and C&S Holdings as manager of Toluca Lake; is
14 that correct?

15 A I'm not recalled, I'm not a lawyer. I just
16 volunteer, let Mr. Frey use the company.

17 Q Star Development?

18 A Yes, sir.

19 Q Okay. And Star Development is your company?

20 A I used to be part of it.

21 Q Okay. And when Mr. Beavor was relieved of his
22 position as manager of Toluca Lake, do you know if Star
23 Development took over management?

24 A I believe so.

25 Q And then are you aware that that same day they

1 filed Chapter 11 bankruptcy?

2 A I just heard it from Mr. Wayne Krygier.

3 Q Okay. Is it your testimony you don't have
4 and/or make any decisions for your company, Star Development?

5 A Not when they took it over for use as the -- you
6 know, taking over the budget, try to fix the -- what's left
7 out of it.

8 Q So when Star Development was used to take over
9 the project and same day put it into bankruptcy, you're saying
10 that you didn't have any active involvement in that?

11 A I was -- I was not actively involved in Star
12 Development.

13 Q At the time when Star Development, your company,
14 put Toluca Lake into Chapter 11 bankruptcy, was it your
15 understanding that Wayne Krygier, who just testified, was
16 managing that?

17 A Along with Mr. Gary Frey.

18 Q Okay.

19 A I believe both of them.

20 Q So Gary Frey, which is Herbert Frey's son --

21 A Yes, sir.

22 Q -- and Wayne Krygier were in charge of the
23 Chapter 11 bankruptcy --

24 A Yes.

25 Q -- for Toluca Lake? Did Wayne Krygier, the

1 individual who just testified, if you know, did he have any
2 involvement in the Toluca Lake project up until when Mr. Frey
3 brought him in for this bankruptcy?

4 A I don't think so. I'm not recalled. I don't
5 think so.

6 Q Is it your understanding that Mr. Krygier and
7 Gary Frey, Herbert Frey's son, were brought in on this project
8 to protect Mr. Frey?

9 A Yes, sir.

10 Q Did they exclude Mr. Beavor, or don't you know,
11 in -- in protecting --

12 A Just heard Mr. Krygier say that it was with lots
13 of meeting with Chris about the issues.

14 Q Okay. Now, do you have an understanding, if the
15 project, Toluca Lake, was actually completed, if it would have
16 been profitable?

17 A It would -- if it was not in default and Mr.
18 Chris will -- will run the budget the way he promise from the
19 beginning and it will not be in default, and as Wayne Krygier
20 say that he allows the bank for extension as we needed, and
21 probably it was not possible.

22 Q And if Toluca Lake was profitable -- this is
23 only if you know -- would your note or Mr. Frey's note with
24 Mr. Beavor been payable?

25 A I don't understand your question.

1 Q In other words, are you familiar with the
2 maturity date of the note between Mr. Beavor and Mr. Frey when
3 it became due?

4 A I'm not recalled.

5 Q But it's your understanding if the project was
6 completed that it would have been profitable?

7 A It was profitable for us from the beginning,
8 from the day one, that we gave the 4.4 million we were
9 promised to get 6 million --

10 Q So --

11 A -- regardless what, if it was profitable or not
12 profitable.

13 Q So the decision, if you know, the decision to
14 put the project into bankruptcy was done for the purposes of
15 protecting Mr. Frey's assets?

16 A To protect his personal guaranty to the bank
17 after the -- after the default, the bank went after Mr. Frey
18 because they told he is the only can pay the, you know, the
19 debts that they loaned, the part of the 22 millions that they
20 give, you know, they tried to save it.

21 Q So, to protect Mr. Frey's personal guaranty or
22 relieve him of that personal guaranty he had with China Trust
23 Bank, the decision was made to file for a Chapter 11
24 bankruptcy and that would eliminate the guaranty Mr. Frey had
25 to China Trust Bank?

1 A That's what I understood, yeah.

2 Q Okay. And what --

3 A I'm not a lawyer, but that's what I understood.

4 Q All right. And as we sit here today are you
5 aware or did you come to know that that was a successful
6 action to take?

7 A I believe so, because Mr. Frey got out of the
8 guaranties. The bank got most of the money back and everybody
9 else was released from the guaranties to the \$22 million.

10 Q Now, is it accurate to say that -- strike that.

11 Do you have any personal knowledge as to whether or
12 not Mr. Frey could have asked for a bank extension and made an
13 effort to complete the project; do you know?

14 A He made the effort to complete the profit, at
15 the time he was invest a lot of money in everywhere. And he
16 didn't have the money available and he couldn't get the loans.
17 But they tried to do it.

18 Q So, if Mr. Herbert Frey signed extensions, would
19 the project have been able to continue versus that Chapter 11
20 bankruptcy?

21 A Oh, the bank -- not us folks. No, the bank
22 asked for money, not for extension.

23 Q Okay. And --

24 A They ask for a lot of money out of pocket.

25 Q Had -- had the -- now, the bank is asking for

1 money and the extension would be asking the bank to hold off
2 in their request for money; is that accurate?

3 A I remember that Mr. Frey came and asked me for
4 more money and all my money was tied. I didn't have any money
5 to add, I did not, to give more money for that project.

6 Q Okay. And what do you recall was Mr. Gilmore's
7 role? We heard from Wayne Krygier, and Mr. Gilmore is
8 deceased. Do -- you can you tell us what your understanding
9 of his role was?

10 A Mr. Gilmore was advisor for Mr. Frey to overlook
11 over the project and I understood that he got mislead and he
12 felt guilty and he got very sick.

13 Q What was the first word? He what?

14 A Mislead by the project manager, by the -- I
15 believe by Chris.

16 Q Misled?

17 A Misled, yes. Thank you for the correction.

18 Q So the project going into bankruptcy, what we've
19 heard, was a strategic decision by Wayne Krygier, perhaps Mr.
20 Gilmore --

21 A Mr. Gilmore was very sick. He was -- he got
22 sick at the time.

23 Q Okay. So, we'll say the decision to put the
24 property into -- or the project into bankruptcy was not Chris
25 Beavor's decision; is that accurate?

1 A I believe it was Wayne Krygier and Gary Frey.

2 Q Now, you remember when we went over the
3 allonges; do you remember those?

4 A Excuse me?

5 Q The allonge, the assignment.

6 A Okay.

7 Q It's Plaintiff's 3. And, you know, we -- we
8 talked about these at some point. And this -- this is what
9 you -- this top one, Bates stamp 001 dated July 6, 2011, this
10 is the allonge that represents the \$6 million?

11 A Yes. I could see it over here.

12 Q And if you recall with Mr. Frey, he assigned all
13 of these to you, correct?

14 A Yes.

15 Q And this -- the first one was for 6 million, and
16 the second one is for how much, can you look at the screen?

17 A 5 million.

18 Q And then the next one --

19 A Another half a million.

20 Q And the next one?

21 A 2,291,490.

22 Q And the next one?

23 A Whether or not to remember.

24 Q And this is a -- a general assignment of all?

25 A Yes, sir.

1 Q Now, if you remember, when Herbert Frey was
2 testifying, we talked about the -- these assignments, too,
3 being approximately \$9.9 million; do you remember that?

4 A We talked about \$6 million. That's the -- the
5 way the lawyer build the document, we are not lawyers.

6 Q Uh-huh.

7 A I mean, that's why we pay lawyers to do the
8 work.

9 Q Each --

10 A And the lawyer based on all the document that we
11 have here, that's the way he base all the assignment.

12 Q So --

13 A I -- I don't understand why, but that's the way
14 he did it. Maybe the first one cover the second one, and then
15 the 6 million cover all -- all four of them. I don't know --
16 I don't know how to do it.

17 Q Well, you are asserting that each of these
18 individual documents provides you with the authority to pursue
19 -- well, the \$6 million --

20 A The \$6 million guaranty that's promised to be --
21 to be paid back for the \$4.4 million.

22 Q Provides you --

23 A That's what we're doing.

24 Q Right. Provides you -- because you weren't a
25 party to the initial loan between --

1 A I was a party of the initial loan.

2 Q Not between Chris and Mr. Frey.

3 A No.

4 Q Right.

5 A Between me and Mr. Frey.

6 Q So Mr. -- right. Yeah, you two are a party.

7 But Mr. Frey, Mr. Beavor, and Toluca Lake came to an
8 agreement. And the \$6 million allonge assignment gives you
9 the right, you're saying, to pursue that debt?

10 A Yes, sir.

11 Q Even though you weren't a party to it?

12 A Yes, sir.

13 Q And all of these were assigned to you. And my
14 question is do you believe you could legally pursue each of
15 these independent --

16 A No, I believe I pursued the 6 million only.

17 Q Well, the assignment of, let's say, the \$2.2
18 million, is that something that you believe you could pursue?

19 A It's part of the 6 million. It's not separate.
20 It's part of the 6 million.

21 Q It doesn't say that in any of these assignments?

22 A Well, you're a lawyer. You should read it. I
23 don't know how to read it.

24 Q I -- I did read it.

25 A Okay.

1 Q And I'm just saying that you've been given the
2 right to pursue \$9.9 million --

3 A No, sir. I'm pursuing \$6 million.

4 Q So these additional assignments that you have
5 provided and that we have that the jury has seen are not
6 enforceable?

7 A I don't know why the lawyer --

8 MR. IGLODY: Objection. Calls for legal conclusion.

9 THE WITNESS: -- made the document like this.

10 THE COURT: Sustained. It calls for a legal
11 conclusion.

12 MR. SAGGESE: Okay.

13 BY MR. SAGGESE:

14 Q Would you -- not legally, but would you ever
15 attempt to -- to collect on these others?

16 A I didn't even -- I didn't try till today and I'm
17 not going to try in the future. I just tried to get what I've
18 been promise.

19 Q Now, what is your understanding of your
20 obligation to have a license to -- in the state of Nevada to
21 trade notes and loans with property as collateral?

22 A I don't believe I need a license and especially
23 the time that we did it, if I needed a license, I believe my
24 lawyer will advise me in the license.

25 Q I think I asked you --

1 A I follow the law.

2 Q Okay. I think I asked you, and you may have
3 answered when you were previously on the stand, do you know if
4 Mr. Frey, Herbert Frey had a mortgage license?

5 A We don't have a mortgage license and we don't do
6 mortgage.

7 MR. SAGGESE: Court's indulgence. We believe it's
8 P1, the document. And the issue is -- for the Court, P1 is
9 probably 10 or 12 documents, so it's hard to designate.
10 Although it's in P1.

11 THE CLERK: [Indiscernible.]

12 MR. IGLODY: It's cut off. It's 01-something.

13 THE COURT: Is there any objection?

14 MR. IGLODY: I'm not -- no, Your Honor.

15 THE COURT: Okay.

16 BY MR. SAGGESE:

17 Q And -- and very briefly with this document. And
18 I'll show it to you so you [indiscernible].

19 A And I see it over here?

20 Q I don't think so.

21 A Can you read it for me?

22 Q No. [Indiscernible.] Take a peek at that and
23 tell me if you recognize that?

24 A I recognize it.

25 Q All right.

1 A That's what I got from Mr. Frey when I paid him
2 the \$2.2 million.

3 Q Okay. So it's essentially an agreement between
4 you and -- and Mr. Frey?

5 A I believe so.

6 Q When you gave him the -- the initial 2.2? Now,
7 do you see --

8 A 2,214,875.

9 Q Yes. That's the exact amount. Do you -- do you
10 see the second paragraph, the first sentence? And I'll read
11 it to you.

12 A Okay.

13 Q It says, "Whereas on August 23rd, 2007, the Frey
14 Trust made a second" -- excuse me -- "made a secured second
15 mortgage note and deed of trust, hereinafter referred to as
16 note and deed of trust, in the amount of \$6 million to the
17 Toluca Lake Vintage, LLC, a California Limited Liability
18 Company as a participating equity mortgage for the development
19 of the Toluca Lake Vintage Condominiums at," and then it has a
20 bunch of numbers, Woodbridge, Toluca Lake.

21 Now, this is the agreement that you had with Mr. Frey
22 when you gave him the initial contribution, correct?

23 A That's the way we word it, we did it in
24 in-house, in the office. And that was not made by lawyers.
25 And that was a document between us in -- in-office document.

1 Q And -- and the document referenced --

2 A I wish we had done it with the lawyer, but this
3 is the way I word it.

4 Q Did you draft this document?

5 A I was helping my secretary to draft it.

6 Q But it does reference that on August 23rd, 2007,
7 the Frey Trust made a second -- a secured second mortgage note
8 and deed of trust --

9 A I probably -- I probably made mistake by call it
10 mortgage. That was a loan. And all -- all the other document
11 showing as a loan.

12 Q Okay. So you're saying that this document,
13 where it refers to the note as a secured second mortgage note
14 and deed of trust --

15 A No, I am saying --

16 Q -- is incorrect?

17 A -- it's the only document that mention mortgage,
18 that was in-house document. All the other document showing
19 there's a loan. Loan.

20 Q Well, the specific question is, and you're
21 saying that this is incorrect?

22 A Probably.

23 Q All right. Let me get to -- there's been some
24 discussion, you heard Mr. Krygier take the stand and testify.
25 There's been some discussion regarding a mutual release and

1 payment agreement between Mr. Beavor and Herbert Frey.

2 A Mr. Beavor approached Wayne Krygier.

3 Q Okay. Well, I'm talking about just --

4 A To see if he could help him.

5 Q All right. Just what you know.

6 A Yes.

7 Q So you -- you -- you've come to know of the
8 potential of a release of the \$6 million construction loan on
9 the Toluca Lake --

10 A If I was Mr. Beavor I would wish to do the same
11 thing.

12 Q Well, the question is you are now familiar with
13 that release, are you not?

14 A Yeah. After all this discuss, yes.

15 Q Do you have a recollection of my client trying
16 to physically walk into essentially your and Mr. Frey's office
17 to give him the document that was the release and the --

18 A He try. He walked.

19 Q Yeah. That's what I'm saying.

20 A He came -- was welcome to the office.

21 Q So Chris walked in and were you present?

22 A I was the only one in the office, yes.

23 Q So you know the time I'm talking about?

24 A Yes, sir.

25 Q And was Mr. Frey present?

1 A No.

2 Q And Chris came with some documents with him,
3 correct?

4 A Yes, sir.

5 Q And those documents, did you ever see them?

6 A He show it to me.

7 Q When he came in, he showed them to you?

8 A Yes, sir. Yeah.

9 Q And he told you that they were documents that
10 would release him from the \$6 million, the construction loan,
11 and do you recall did he have a series of checks with him,
12 too?

13 A Yes, sir.

14 Q Okay. Do you remember how many checks he
15 brought?

16 A No.

17 MR. SAGGESE: I'm going to show the witness what's
18 been marked D1.

19 Q I guess you have a D1 in there if you want to
20 look at it.

21 A That's okay. You can show it. Let's do it
22 faster.

23 Q Do those look like the series of checks that --

24 A I don't remember. That was long ago. But it's
25 possible.

1 Q What -- how long ago was it?

2 A I don't remember.

3 Q Well, what's the date on the check? Maybe
4 that'll...

5 A Every check has different dates.

6 Q And they're what, about a month apart?

7 A [Indiscernible] yes. It's a month apart. Yes.

8 Q And so each check -- and if you want to go
9 through them all, you can -- they're each a month apart,
10 correct?

11 A Yes, sir.

12 Q And are they for the same amount?

13 A Yes, sir.

14 Q How much is each check made for?

15 A \$1,250.00.

16 THE CLERK: Is this all of Exhibit --

17 MR. SAGGESE: Yes, D1.

18 BY MR. SAGGESE:

19 Q And so each of these checks represents \$1,250 a
20 month and they're about 30 days apart?

21 A Yes, sir.

22 Q And you -- you don't -- I forget how you
23 answered, but do you have a recollection of these checks as
24 part of --

25 A You forget lots of things.

1 Q What's that?

2 A You forget lots of things.

3 Q Me?

4 A Yeah. You ask me before if I could prove that I
5 -- that I give Mr. Frey the \$2.2 million, which you have the
6 document in your hand.

7 Q So --

8 A You try to confuse me or something.

9 Q No. I -- honestly, I would not want to do that.

10 A Okay.

11 Q I'm trying to be as clear as possible.

12 THE COURT: Just answer the question, please. Move
13 quicker.

14 BY MR. SAGGESE:

15 Q The question being, do you have an independent
16 recollection of these checks being a part of the release --

17 A That's what Mr. Chris, you know, show it to me,
18 I didn't read it. I didn't calculate how many -- how much
19 money. I just put it back in the envelope.

20 Q Okay. So --

21 A And we can leave it as Mr. Frey desk.

22 Q What was your initial impression or response to
23 Chris when he showed up with this mutual release?

24 A I don't remember.

25 Q Mr. Frey was not there?

1 A No. I told you he was not there.

2 Q And were you instructed to give Mr. Frey the
3 settlement agreement?

4 A Yeah, the envelope.

5 Q Okay. And did you ever give it to him?

6 A Mr. Frey come to the office from time to time
7 and I told him, just the envelope that's the paper that Mr.
8 Chris told -- told me that he discuss with Mr. Frey about
9 forgiveness of the debt. Mr. Frey said, No, you can send him
10 back the paper. My secretary call Mr. Chris to come to pick
11 it up and it was sitting there for two or three weeks before
12 he came to pick it up.

13 Q So is it fair to say that your impression or how
14 you -- is it fair to say that you were surprised by the
15 potential agreement between Mr. Frey and Mr. Beavor?

16 A There was no -- between Mr. Frey, there was
17 Chris with himself.

18 Q Okay. So when you saw it, did you tell Mr. Frey
19 you should or should not do this?

20 A I'm Mr. Frey partners. But I didn't discuss
21 with him. He immediately refuse. So I didn't have to discuss
22 with him.

23 Q And this was before you were assigned the right
24 to these allonges, right?

25 A Yes.

1 Q This occurred before --

2 A I believe so. I don't remember exactly.

3 Q Okay. And do you remember at deposition being
4 -- being asked a question --

5 MR. SAGGESE: And this is page 83 of his deposition.

6 Q "Question: And then you had a conversation with
7 Mr. Frey saying you don't want to do this, or correct me if
8 I'm wrong, you told him you shouldn't do this. You tell me,
9 what did you say?" And you answered, "I show it to Mr. Frey
10 and I said, What is this? What is this all about, you know.
11 And then I told him, Do you plan to give up the notes?
12 Because I'm not."

13 Do you remember saying that at deposition?

14 A I don't remember.

15 Q Was -- when you say, "Do you plan to give up the
16 notes? Because I'm not," were those notes truly -- in your
17 head, were those notes truly yours to give up or not?

18 A Well, if I say that, I say if he's giving up the
19 notes, I'm going to keep my notes. Mr. Frey.

20 Q Can you understand that the notes and the
21 agreement and the construction loan was between Mr. Frey and
22 Mr. Beavor, not you?

23 A No, but if -- I wish Mr. Frey would give it up,
24 so I will be -- will be easier for me to collect from Mr. Frey
25 the \$2.2 million.

1 Q To collect from Mr. Frey or to collect from Mr.
2 Beavor?

3 A Yeah, based on that note that you have on your
4 -- on the desk over there.

5 Q To collect from Mr. Frey or collect from Mr.
6 Beavor, it'd be easier?

7 A Any of -- any of them.

8 Q Do you remember being asked in a deposition --

9 THE COURT: You need to publish the deposition. I
10 should have said that before. If you're going to ask him to
11 read from the depo.

12 MR. SAGGESE: Okay. You mean a certified copy type
13 of ceremonial opening with the envelope?

14 THE CLERK: [Indiscernible.]

15 THE COURT: I don't think it needs to be a
16 ceremonial, but yes [indiscernible].

17 MR. SAGGESE: Okay.

18 BY MR. SAGGESE:

19 Q Let me ask you this without reading straight
20 from the deposition. Do you remember asserting to Mr. Frey
21 that we're not doing this? You're not telling Mr. Frey,
22 You're not going to let Chris off, you can't let Chris off, no
23 way. Do you remember having that kind of conversation?

24 A I had lots of conversations with Mr. Frey and I
25 did lots of business with him. And I don't remember day to

1 day what I discuss with Mr. Frey.

2 Q Is it fair to say Mr. Frey was inclined to
3 release Chris, but you said no and interfered because you
4 wanted to collect on what you contributed?

5 A Mr. Frey never wanted to forgive that note, and
6 that's what he say yesterday very clearly, that he never
7 promised to give that -- to give away that note.

8 Q But you were asked a series of questions in
9 relation to this mutual release and those checks, and your
10 response previously was that we decided not to do it, or we
11 didn't want to do it; we being you and Mr. Frey.

12 A I don't remember what I told you, but Mr. Frey
13 yesterday said very clearly he never promise and he never was
14 planning.

15 Q I'm talking about what you said, though, only.

16 A I don't remember what I said to you.

17 Q So during the discussions with Mr. Frey in
18 relation to releasing Chris for these checks, let me ask you
19 this: Do you remember what the checks represented?

20 A No.

21 Q And do you remember -- I mean, you heard on
22 direct examination of Mr. Krygier, actually it was
23 cross-examination of Mr. Krygier, you heard the name Ofir
24 Ventura?

25 A Ofir Ventura? I heard the name before, yeah.

1 Q Yeah. And he's an attorney?

2 A He's attorney, he's the son of my best friend.

3 Q And do you know if he drafted the release that
4 Chris brought to you?

5 A I don't believe so and I don't think so.

6 Q But let me ask you -- let me ask you it this
7 way. If, hypothetical, Mr. Frey says everybody lost on the
8 project, my \$22 million, that whole -- everything's been
9 forgiven in bankruptcy. Hypothetical, he says --

10 A Everybody lost on the project. Everybody lost
11 little bit.

12 Q Everybody lost. Hypothetical, he says to you,
13 You know what, I'm going to release this kid. I'm going to
14 sign it off, he's going to pay 25,000 legal fees, I'm going to
15 sign this off. Hypothetical, if that occurred, would you stop
16 him?

17 A I don't like to take hypothetical, and I cannot
18 stop Mr. Frey from doing, nobody can stop Mr. Frey from doing
19 anything he want.

20 Q So the question's a little different than can
21 you stop Mr. Frey. The question is would you attempt to talk
22 some sense into Mr. Frey or convince him that, Hey, I
23 contributed, I'm not giving mine up.

24 A I'm entitled to -- to put my opinion, because I
25 put \$2.2 million to receive \$3 million.

1 Q So you did put your opinion?

2 A And there was guaranty.

3 Q So you did put your opinion in?

4 A I don't remember what did I say at the time, but
5 we -- we never discussed to give up that guaranty.

6 Q Okay.

7 MR. SAGGESE: Just a couple more questions, Your
8 Honor.

9 Q In relation to what Mr. -- is it Krygier?

10 A Mr. Krygier.

11 Q Krygier. In relation to what Mr. Krygier was
12 testifying about, that the -- the 30 percent that is profit in
13 the Chapter 11 bankruptcy on the amount owed to the
14 contractors versus the amount they finally settled for. Were
15 you familiar with that?

16 A No. I -- it is the first time I heard about it.

17 Q And -- and if there was profits to be gained
18 from that, did Star Development make any of it?

19 A I have no idea. I never heard about it. I
20 never knew that Krygier managed to get the money back. But he
21 said that he might -- he probably got two -- \$200,000. And I
22 heard from Mr. Frey that he pay more than half a million
23 dollar to do the bankruptcy to save -- to save his guaranty.

24 MR. SAGGESE: No further questions.

25 THE COURT: Redirect.

1 REDIRECT EXAMINATION

2 BY MR. IGLODY:

3 Q Mr. Hefetz, we heard you and counsel engage in a
4 dialogue regarding the different notes that were involved and
5 the transfer of the various loan agreements that were Exhibit
6 P1 that's in front of you; do you remember that?

7 A Yes, sir.

8 Q Okay. You established earlier in your direct
9 testimony that amongst the documents that were transferred to
10 you were, for example, deeds of trust; do you remember that?

11 A Yes, sir.

12 Q And promissory notes?

13 A Yes, sir.

14 Q And a loan agreement?

15 A Yes, sir.

16 Q And various different guaranties?

17 A Yes, sir.

18 Q Okay. Do you have any independent knowledge
19 whatsoever as to what an allonge is?

20 A That's the first time I heard that, you know,
21 the word.

22 Q And if I told you under Nevada law an allonge is
23 how you transfer a promissory note and not a guaranty, would
24 that make sense to you?

25 A I have no knowledge. I have no knowledge.

1 Maybe.

2 Q Would you turn to Exhibit P3. We've talked
3 about that one quite a bit, haven't we?

4 A Yes, sir.

5 Q Why don't you leaf through and get to something
6 that's called an assignment.

7 A Yes.

8 Q And I think it's the second page. Does it
9 reference the guaranty executed in March 2007 with Chris and
10 Samantha Beavor? If not, I'll... 009. Towards the bottom.

11 (Pause in proceedings.)

12 Q I'll withdraw the question. Mr. Hefetz, when
13 you had your attorneys draft these agreements, it was your
14 understanding that you were getting assigned, amongst other
15 things, the guaranty that we are here for today; is that
16 right?

17 A Yes.

18 Q And you don't actually know whether it was done
19 by an allonge or an assignment under Nevada law, do you?

20 A No.

21 Q Okay. Suffice it to say, though, that's the
22 only thing you're suing on; is that right?

23 A Yes, sir.

24 Q The guaranty?

25 A Yes, sir.

1 Q For how much?

2 A \$6 million.

3 Q During your direct examination and in the
4 cross-examination, we had discussions regarding your
5 involvement with Toluca Lake. And I would like to clarify it,
6 because there was some confusion regarding the terminology
7 that was used. Did you consider yourself to be an investor in
8 Toluca Lake?

9 A Never.

10 Q Did you consider yourself to be a lender to
11 Toluca Lake?

12 A I was part of the lender. I was partner with
13 Mr. Frey.

14 Q Now, we established earlier --

15 A No. We gave a loan.

16 Q Go ahead.

17 A I'm sorry. I don't --

18 Q No, go ahead. Please. I apologize.

19 A I -- as much as I believe Mr. Frey and myself --
20 I mean, Mr. Frey gave a loan and I invest in that loan.

21 Q And the profit that you expected to make on that
22 loan, how did you expect to make that again?

23 A We -- I mean, Mr. Frey loaned \$4.4 million, half
24 of it was mine. And we were supposed to get \$6 million, so
25 the profit was 1.6 divided by two.

1 Q Which is 800,000?

2 A 800,000 each.

3 Q So 2.2 was supposed to get you 3, basically?

4 A Yes, sir.

5 Q Thank you.

6 MR. IGLODY: No more questions.

7 THE COURT: Recross?

8 MR. SAGGESE: Nothing, Your Honor.

9 THE COURT: Questions from the jury?

10 UNIDENTIFIED JUROR: I have one question.

11 THE COURT: You have to write a question down. Put
12 your badge number on it.

13 Counsel, approach.

14 (Off-record bench conference.)

15 THE COURT: Court's Exhibit 5. Mr. Hefetz stated the
16 bank got their money back, what does that mean? How?

17 THE WITNESS: The bank initially buy, I believe,
18 around 11 million and when they sold the note, they sold it
19 for 8-and-a-half millions. So they lost part of the money.
20 Between the 11 to 8-and-a-half millions.

21 THE COURT: Court's Exhibit 6. What was total
22 construction budget? I'll let you answer that one first.

23 THE WITNESS: The total construction budget was \$22
24 million.

25 THE COURT: How was 4.4 million part of construction

1 budget.

2 THE WITNESS: The 4.4 I believe they used to buy the
3 land and prepare the land for construction.

4 THE COURT: How much of 4.4 million was expended by
5 project at time of BK?

6 THE WITNESS: I have no detail on this. The
7 developer took the money, part of it was his profit. All
8 along he was pulling money from the budget to pay his expenses
9 and -- and profit.

10 THE COURT: Court's Exhibit 4. What was the date on
11 the first check given to Mr. Hefetz by Mr. [indiscernible] at
12 their meeting.

13 Mr. Beavor. Sorry. Mr. Beavor.

14 THE WITNESS: I believe the -- in March 1st, 2012,
15 and there was about \$25,000.

16 THE COURT: Court's Exhibit 3. In your --

17 UNIDENTIFIED JUROR: I'm sorry -- I'm sorry. What
18 was the date?

19 THE WITNESS: I just saw it. I don't remember. I
20 think March 1st --

21 MR. IGLODY: I'm sorry --

22 THE WITNESS: -- 2012.

23 MR. IGLODY: -- Your Honor, if -- if they're sitting
24 in the book in front of him, maybe he could just look so we
25 know what we're talking about.

1 THE COURT: It's -- it's an exhibit you'll be given
2 at the end in order to take back.

3 Counsel, approach.

4 (Off-record bench conference.)

5 THE COURT: Were the checks cashed? Who cashed them?

6 THE WITNESS: None of the check was cashed, none of
7 the check was accepted.

8 THE COURT: When you stop being a member -- okay.
9 When you stop being a member of Star Development -- with a
10 question mark. I guess it's when did you stop being?

11 THE WITNESS: I believe when the -- when Star
12 Development was -- after the bankruptcy or something. I don't
13 know who's the -- who's the -- who was running Star
14 Development. I -- Star Development was running by Gary Frey
15 and Wayne Krygier and I was not involved till the end of the
16 -- of the -- what they did with it.

17 THE COURT: And how many years have you been --

18 UNIDENTIFIED JUROR: I want to -- sorry.

19 THE COURT: No -- no, you have to write it down, you
20 have a question.

21 How many years have you been granting loans?

22 THE WITNESS: I believe 10 years.

23 THE COURT: Any followup from the plaintiffs?

24 MR. IGLODY: Yeah. I just will do a brief redirect.

25 THE COURT: Just regarding those issues.

1 MR. IGLODY: Of course, Your Honor. Thank you.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. IGLODY:

4 Q The question was how many years have you been
5 granting loans. Your -- we established earlier that you're a
6 businessman, right?

7 A Yes, sir.

8 Q You invest in different projects; is that right?

9 A Yes, sir.

10 Q Okay. How did you understand the terms "loans"
11 when you were just asked that question?

12 A When you come and ask me for a thousand dollar,
13 I give you a thousand dollar and you're supposed to pay me
14 back a thousand dollar.

15 Q And -- and have you loaned those to other
16 business people?

17 A Yes, sir.

18 Q Some of them involving real estate?

19 A Yes.

20 Q And some involving other business ventures?

21 A Yes.

22 Q And to clarify, do you issue mortgages?

23 A No.

24 Q Do you buy and sell mortgages?

25 A No.

1 Q Thank you.

2 THE COURT: Defendants.

3 FURTHER RECROSS-EXAMINATION

4 BY MR. SAGGESE:

5 Q Just followup to -- to that. You've been
6 lending money for 10 years?

7 A Yes, sir.

8 Q And you lend money secured by real estate?

9 A Not recall.

10 Q It's your testimony that you don't remember if
11 you, in the last 10 years, gave a loan that was secured by
12 real estate, property?

13 A I'm not recall. I -- lots of the loans that was
14 in the handling by Mr. Frey. So he would do all the documents
15 and all those things and I don't recall.

16 Q Okay.

17 MR. SAGGESE: Nothing further.

18 THE COURT: Counsel, approach. We have one more.

19 (Off-record bench conference.)

20 THE COURT: This is Court's Exhibit 7. What was the
21 purpose of the other three allonges, if you know, and were
22 they part of the bankruptcy?

23 THE WITNESS: The allonges was not part of the
24 bankruptcy. And the way the lawyer made the documents, the
25 way I understood the -- all the loan guaranties, I don't

1 understand, but I know that I was assignment \$6 million
2 guaranty.

3 THE COURT: Any follow-up, plaintiffs? Follow-up?

4 MR. IGLODY: Yeah, real quick.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. IGLODY:

7 Q In follow up to what we were talking about in
8 terms of the allonges, right, once again, as of right now do
9 you know what allonge is?

10 A I know what assignment and I assume that's the
11 same thing, or?

12 Q But the question, do you know what it is?

13 A I believe that's the transfer -- the transfer --
14 the guaranty.

15 Q So, suffice to say you don't know?

16 A No.

17 Q Do you hold yourself out to the public as being
18 somebody who's willing to buy and sell loans secured by real
19 estate?

20 A No, sir. I -- I stated, I don't buy loans, I
21 don't sell loans.

22 Q Thank you.

23 THE COURT: Any follow-up?

24 MR. SAGGESE: No, Your Honor.

25 THE COURT: Thank you. You may step down. It's

1 4:30. I have to sign a warrant. So we're going to take our
2 evening break. We'll have you come back at 10:00 a.m.
3 tomorrow. 10:00 a.m.

4 During this recess you're admonished not to talk or
5 converse amongst yourselves or with anyone else on any subject
6 connected with this trial or read, watch, or listen to any
7 report of or commentary on the trial or any person connected
8 with this trial by any medium of information including without
9 limitation newspapers, television, radio, or Internet, or form
10 or express any opinion on any subject connected with the trial
11 until the case is finally submitted to you.

12 I'll see you at 10:00 a.m. tomorrow. Thank you.

13 (Court recessed for the evening at 4:34 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

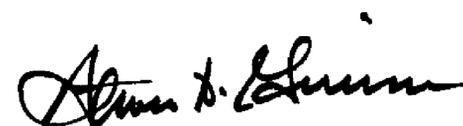
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON

Exhibit “2”



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

YACOV HEFETZ,)
)
) Plaintiffs,)
)
) vs.)
)
) CHRISTOPHER BEAVOR,)
)
) Defendant.)
)

CASE NO. A645353
DEPT NO. XXVIII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, MARCH 1, 2013

APPEARANCES:

For the Plaintiff: LEE I. IGLODY, ESQ.
JEFFREY L. HULTET, ESQ.

For the Defendant: MARC A. SAGGESE, ESQ.

RECORDED BY JUDY CHAPPELL, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

I N D E X

CLOSING ARGUMNETS:

By Mr. Iglody	39
By Mr. Saggese	55
By Mr. Iglody	70

1 **LAS VEGAS, NEVADA, FRIDAY, MARCH 1, 2013, 9:36 A.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE CLERK: Case No. A645353, Yacov Hefetz v.
5 Christopher Beavor.

6 THE COURT: Good morning.

7 MR. SAGGESE: Good morning.

8 THE COURT: I guess first -- well, is there anything
9 before the 50(a) motion?

10 MR. IGLODY: I don't think so.

11 THE COURT: Did you have a written opposition?

12 MR. SAGGESE: No, Your Honor.

13 THE COURT: Okay. Go ahead and make your motion. I
14 -- I did read this stuff, so there shouldn't be a lot you need
15 to add.

16 MR. IGLODY: No. In that case, Your Honor, just real
17 briefly, as we pointed out in our motion and which we believe
18 the evidence has been submitted to the Court, confirms on
19 their claims in regards to actions by Star Development, they
20 don't have a claim against Yacov Hefetz. I think we briefed
21 pretty thoroughly the 645(b) issue. And I think we
22 established a trial -- and, frankly, we did it before trial --
23 the nonexistence of a contract to interfere with on the
24 interference claim.

25 Thank you, Your Honor.

1 THE COURT: Thank you for your brevity. And just so
2 it's clear, because sometimes, you know, the captions aren't
3 100 percent, that counterclaims were only against Yacov
4 Hefetz, correct?

5 MR. SAGGESE: Yes. Sounds right.

6 THE COURT: Okay. Opposition.

7 MR. SAGGESE: How do we want to do it, Your Honor?
8 Just go --

9 THE COURT: Well, go one at a time. Yeah, I'd
10 appreciate that. So let's start with the -- the order they
11 went in. Just take the one that I -- I went through and I
12 told you before, although that's actually an out-of-order, but
13 for the last one, the statute.

14 MR. SAGGESE: Okay. Yeah. Your Honor, in relation
15 to that, you know, the statute, which I have a copy of it, we
16 kind of broke it down in the -- the jury instructions, it
17 simply says that a loan given secured by real estate or
18 property will be a mortgage, considered a mortgage, or a
19 mortgage broker. So any time -- and because they're hard
20 money lenders, they're not complying with the rules associated
21 with providing a loan secured by the property. In this case,
22 the main loan was secured by Toluca Lake.

23 And as I pointed out, I think on direct -- oh,
24 cross-examination, the agreement between Mr. Hefetz and Mr.
25 Frey on the transfer of that loan secured by Mr. Beavor's

1 house, Mrs. Beavor's house, and the underlying loan on Toluca
2 Lake was rightfully referred to as a second deed of trust
3 mortgage. And it is. So in Nevada it is required via that
4 statute that individuals who are engaging in transactions,
5 providing money in exchange for an agreement in relation to
6 secured repayment through property, have to get a license.

7 Now, if you look a little deeper into the license,
8 it's because it lays out all of the rules of which opposing
9 counsel wants to say we don't have a claim for, which is
10 duties owed, there's a significant list of the fiduciary
11 duties that are owed from a lender. And it really transpires
12 to homes, to any loan given in exchange for secured -- that is
13 secured by real estate.

14 So within that and the class you've got to take and
15 the things they teach you --

16 THE COURT: So you're saying every hard money loan,
17 the individual who makes it is a -- is a mortgage -- wait --

18 MR. SAGGESE: Secured by real estate.

19 THE COURT: -- is a specific -- a mortgage -- I had
20 it right here. Anyway, mortgage broker or a mortgage agent.

21 MR. SAGGESE: Right. And I'll -- I have the statute
22 here with the definitions. A mortgage agent, it says an
23 employee of a mortgage broker who's required to be licensed.

24 THE COURT: All right. We don't have that.

25 MR. SAGGESE: Okay. So mortgage broker is a person

1 who holds himself out for hire to serve as an agent for any
2 person in an attempt to obtain a loan which will be secured by
3 a lien on real property, holds himself or herself out for hire
4 to serve as an agent for any person who has money to lend,
5 which is exactly what Hefetz, or Herbert Frey is, a lender,
6 and Hefetz secured -- Hefetz secured that -- I forget the
7 proper term for it -- second mortgage deed of trust is what
8 the document was titled.

9 THE COURT: I think we can speed this up to a certain
10 extent, because there are four causes of action. And all of
11 them require damages. Now, we haven't even begun to get into
12 the fact that you sued Hefetz and you didn't file a claim
13 against the -- what's his name -- the guy --

14 MR. SAGGESE: Herb Frey?

15 THE COURT: -- who -- who started this. Hefetz only
16 assumed the personal guaranty. So -- but let's -- let's cut
17 to the -- one of the issues, damages. What's your damages?

18 MR. SAGGESE: Well, by virtue of being -- having to
19 go through this process and the loss associated with the title
20 encumbrances on his two -- on his wife's condo and his
21 property, he's been unable to take any action on that property
22 and he's suffered damages as a result of this case, those
23 liens, not to mention being put through this -- through the
24 process.

25 THE COURT: That's all speculative. You haven't

1 given me or the jury this -- this is our \$10,000 we lost from
2 trying to sell a property and not doing it.

3 MR. SAGGESE: Fair enough. Second issue would be --

4 THE COURT: Well, that throws out most all of your
5 claims.

6 MR. SAGGESE: Your Honor, the basis of the case is
7 the \$6 million liability. His actions have exposed my client
8 to \$6 million liability when there should be zero dollars in
9 liability, because we've established through multiple
10 witnesses that but for his interaction with the existing
11 contract between Hefetz -- excuse me, between Herb Frey, the
12 existing contract between Herb Frey and my client, but for his
13 actions, this -- we would not be here and there'd be no -- so
14 the -- so the damages are \$6 million. The -- the liability on
15 \$6 million.

16 THE COURT: That's --

17 MR. SAGGESE: It's a second way --

18 THE COURT: This is your counterclaim against Hefetz
19 on a personal guaranty for \$6 million. Now, I understand for
20 purposes of the jury you have brought in the -- the bankruptcy
21 action, which, quite frankly, had there been a motion in
22 limine, as I said before, none of that would have come in.
23 None of that should have come in.

24 MR. SAGGESE: I agree.

25 THE COURT: This is an action on a personal guaranty

1 on a -- and you're the first time -- I've not heard anybody
2 say this was -- which it was -- a hard money loan for -- for
3 -- to get the property to -- to get this project going. So
4 that's all it was and yet the -- now, I'm not precluding your
5 defenses on the issue of the guaranty.

6 But we're talking about now your counterclaim for
7 damages and let's go through them. Let's go -- first of all,
8 for fraud. For fraud you have to show -- you've talked about
9 some fraud that happened in the bankruptcy. That's a separate
10 case. If you had a cause of action or -- and you -- he did.
11 He brought up -- he said in the middle of the bankruptcy, I
12 don't agree, I don't do this, whatever. Aside from the fact
13 that it wasn't his bankruptcy, the -- there -- he has no cause
14 of action or standing to allege fraud here regarding a
15 bankruptcy. He can reopen it. He can reopen it and go back
16 and say there was fraud.

17 MR. SAGGESE: Well, your --

18 THE COURT: So.

19 MR. SAGGESE: On that note, to -- to the extent that
20 how does that permeate this case? Well, the only reason why
21 that -- this particular guaranty wasn't part of that
22 bankruptcy, and why it currently exists is the fraudulent
23 document that was --

24 THE COURT: It was never -- it was never intended.
25 That's what a personal guaranty is for. I mean, maybe --

1 MR. SAGGESE: No --

2 THE COURT: -- maybe a jury doesn't understand --

3 MR. SAGGESE: -- all their personal guarantees --

4 THE COURT: -- that, but I do.

5 MR. SAGGESE: No, Your Honor --

6 THE COURT: That's my job.

7 MR. SAGGESE: -- all their personal guarantees were
8 forgiven. And -- and I -- all of their personal -- every
9 personal guaranty was forgiven.

10 THE COURT: His personal guaranty to the bank was
11 forgiven because of the property. This was a personal
12 guaranty on a hard money loan.

13 MR. SAGGESE: There's not a difference legally --

14 THE COURT: It's separate. So --

15 MR. SAGGESE: -- between a personal guaranty to a
16 bank --

17 THE COURT: -- I --

18 MR. IGLODY: That's incorrect, Your Honor.
19 Objection.

20 THE COURT: No. You know, we're -- we're not arguing
21 to a jury. So let's go -- fraud. You have not -- not raised
22 not one issue regarding fraud by Mr. Hefetz regarding his
23 interaction whatsoever with the defendant counterclaimant
24 regarding the guaranty. In addition, you haven't shown any
25 damages suffered by Mr. Beavor, who's the only one in the case

1 now, Ms. Samantha Beavor is no longer in the case. So you
2 have not shown any damages regarding the -- regarding -- or a
3 counterclaim against him, not Star whatever -- Star
4 Investments, Star Development.

5 And I agree with their -- their argument that this
6 was a LLC, there's nothing in here showing a reason to pierce
7 the LLC regarding Hefetz's actions after, which -- which I
8 don't think there's any conflicting testimony after the bank
9 had started foreclosure action. So there is no relationship
10 whatsoever between Hefetz's actions and the fact that they are
11 now going after him for the personal guaranty.

12 In addition, there is -- you don't get damages from
13 whatever fraud someone else did in another case which you have
14 the right to -- and he did, apparently object to -- regarding
15 the -- the bankruptcy. I can't change that. And I certainly
16 can't enter a ruling contradictory to the bankruptcy. And
17 that's what you're asking me to do is change the terms of the
18 bankruptcy by saying that this should be part of the
19 bankruptcy. It was not, and that's all it is.

20 I'm dismissing the counterclaim on fraud. I'm
21 granting the 50(a) on fraud.

22 Breach of fiduciary -- by the way it says bread, not
23 breach. That's --

24 MR. SAGGESE: Just to clarify, Your Honor --

25 THE COURT: I just like sometimes where there's

1 typos. And believe me, I do them all the time, too.

2 Okay. Defendants have not stated a prima facie case
3 for breach of fiduciary duty. What's the breach of fiduciary
4 duty by Mr. Hefetz regarding the \$6 million loan? And what
5 are your damages --

6 MR. SAGGESE: Well, our counter --

7 THE COURT: -- once again?

8 MR. SAGGESE: -- okay. Our counterclaims don't only
9 have to be related to the \$6 million. We can have a
10 counterclaim for any action. So, I mean, to have -- to have
11 to have it married to the \$6 million guaranty is not
12 necessary.

13 The breach of fiduciary duty and the other breaches
14 that we've listed, I clearly -- Star Development, which is Mr.
15 Hefetz, and that representations Mr. Hefetz had made and at
16 these meetings that names were listed, who was there, the
17 representations made to Toluca Lake which was 100 percent
18 owned by Chris Beavor, Samantha Beavor, Rob Rink, and Allen
19 Floyd, absolutely a duty is owed. When a management company
20 comes in and ultimately says, We're going to fix your project
21 that you come up with, you created, you started, we're going
22 to manage it, and we're going to work in the best interests of
23 everybody, is the language they used is we're going to beat
24 the bank up, we're a team, we're unified, the management
25 company comes in.

1 And a corporation can only act through human beings.
2 A corporation is nothing if it's not a human being.

3 THE COURT: But didn't sue the LLC.

4 MR. SAGGESE: I'm -- we're -- we're not --

5 THE COURT: You did not sue Star Development.

6 MR. SAGGESE: Your Honor --

7 THE COURT: They're not a party to this action.

8 MR. SAGGESE: And I'm talking about the actions of
9 Mr. Hefetz in having the actual owners believe that there was
10 a relationship, a partnership, an agreement, we were going to
11 move this forward together. They came in and they acted in
12 their own best interests to the detriment of Toluca Lake and
13 its owners.

14 You know, ultimately, Christopher Beavor was only
15 sued in his own name, too. And I don't see any big issue with
16 the Court and it doesn't say Christopher Beavor and C&S
17 Holding. So I would like to lodge --

18 THE COURT: He was sued on the personal guaranty of
19 \$6 million. That's how it should have been done and not to --
20 you may have had your right to sue Star Development, and that
21 would be a horse of a different color, as they say. You sued
22 Mr. Hefetz, there was -- it's been years, there was plenty of
23 time to sue Star Development. It isn't some secret that they
24 were the LLC, we've talked about it a thousand times. You're
25 now trying to sue Mr. Hefetz for fraud and breach of fiduciary

1 duty as an individual. And you haven't --

2 MR. SAGGESE: You know, unfortunately, it's tied into
3 the mortgage, the NRS 645, which in, if you're going to
4 provide money secured by property, you owe a series of duties.
5 They ignore those, they don't do those, they can swoop in as
6 an individual and take over a project and, you know, that's my
7 argument, that in fact they're acting as a mortgage broker who
8 comes in, provides money, takes over a project, but doesn't
9 give any duties, zero duties, as an individual. Because a
10 mortgage license and a -- is an individual item you would have
11 under your name and it would come associated with duties owed.
12 There's separate documents you've signed with an individual
13 that say, I promise to do this on your behalf, that on your
14 behalf. We've all seen these and signed these documents.
15 Therein lies the impetus to make sure that NRS 645 was in
16 there, because associated with that are the duties. As an
17 individual.

18 THE COURT: And on B, the breach of fiduciary duty,
19 as I stated before, you may have had a claim against Star
20 Development, who stepped in. You sued Mr. Hefetz
21 individually, you -- if Coca-Cola does something wrong, you
22 can't sue the -- the president of Coca-Cola, that's basic law.
23 I'm dismiss --

24 MR. SAGGESE: Yeah. But you -- you --

25 THE COURT: We're done on that.

1 MR. SAGGESE: Can I just say --

2 THE COURT: I'm dismissing it. We're done.

3 MR. SAGGESE: Not to change your mind -- I'm not
4 trying to change your mind.

5 THE COURT: We're done on that. This is going to
6 take forever. You can -- hey, that's what the Supreme Court's
7 for.

8 Defendant, this is C, breach of implied covenant of
9 good faith and fair dealing. We have the same problems. If,
10 in fact, Mr. -- or Star owed them a duty, which I tend to
11 think they might have, what is -- you sued Hefetz personally.
12 The requirements, I'm reading from the requirements, he
13 breached the -- Star, or in this case, your -- you would be
14 arguing Hefetz breached the covenant performing in a manner
15 unfaithful of the purpose of -- of the contract. He got --
16 and -- and you -- you understand this. He got Mr. Beavor
17 released from a \$22 million personal guaranty in the -- in the
18 -- where you -- bankruptcy. In the bankruptcy.

19 And, I mean, aside from that, and once again suing
20 Hefetz personally pretty much forecloses all of these. But
21 I'll go over them individually.

22 MR. SAGGESE: You can just dismiss them all, Your
23 Honor. That's fine.

24 THE COURT: Well, I want to put on the record --

25 MR. SAGGESE: We don't have to waste time.

1 THE COURT: -- why I'm doing it.

2 MR. SAGGESE: I understand. And it's -- you could
3 say it's that reason for all those.

4 THE COURT: Okay. And I -- and also there's been no
5 showing of damages. And the key issue, you can't say I
6 couldn't -- they put a lien on my house and I couldn't do this
7 or that when in fact you haven't showed that he attempted to
8 do a sale and -- or he attempted to get, or he got a valuation
9 on his property and it's worth \$10,000 less because there's a
10 lien on it, or --

11 MR. SAGGESE: Fair enough.

12 THE COURT: -- any of that. So --

13 MR. SAGGESE: I -- I just --

14 THE COURT: -- that goes to -- yeah. Go ahead.

15 MR. SAGGESE: Just the additional point on damages,
16 remember, I know you -- you've heard a \$22 million guaranty
17 relieved of Chris and ultimately the agreement was that they
18 would all be relieved of all, and that's all agreement. So he
19 was relieved of 22, but he wasn't relieved of 6, that was he
20 was duped and ultimately surrendered the company in an effort
21 to, Okay, everybody's going to be forgiven. That didn't
22 happen. So the damage is the \$6 million pending note that is
23 due.

24 THE COURT: Which brings up another issue and it's
25 only -- it only came out as a afterthought. The -- the

1 defendant and counterclaimant stands to make some money that
2 apparently hasn't even been talked about when the new -- the
3 -- the bank in -- in place, or that -- or that is the
4 developer in place ends up selling this. He's still -- again,
5 it was like as an afterthought, is getting 25 -- I think it
6 was 25 percent, excuse me, the Toluca Lake, which he is a
7 member of, stands to get 25 percent of the profits of this
8 project and it doesn't sound like he's even gone and talked or
9 investigated with anybody as to whether or not he can be
10 expecting \$100 million paid to him tomorrow.

11 MR. SAGGESE: For -- for clarification, the -- that
12 profit sharing is as each condo sells and the representation
13 by Gary Frey is that it -- they're all sold. They don't sell
14 the tower as a whole. They sell each unit.

15 THE COURT: I understand.

16 MR. SAGGESE: And they're all sold.

17 THE COURT: So has anyone even inquired of this
18 corporation as to what the --

19 MR. SAGGESE: I --

20 THE COURT: -- outcome is?

21 MR. SAGGESE: We should have in discovery, because
22 that was part of his frustration that in relation, he's like,
23 We all got screwed because none of us got money and where did
24 the money go? We believe we weren't able to establish it, but
25 we have pretty good reason to believe that Star Development or

1 Gary Frey or these guys took part.

2 Gary said he didn't receive any money since on that,
3 but -- and we couldn't show that --

4 THE COURT: Nobody is -- nobody is taking a
5 deposition of any of the people that -- what's the name of
6 that -- that new company to find out, nobody even inquired,
7 that's -- I don't understand. So that is yet another reason
8 why all of these -- as far as the violation of 645, I think
9 that -- just so that's separately, I don't think he -- Hefetz,
10 and again, these are all against Hefetz -- violated 645(b).
11 He assumed a personal guaranty and all of the -- the notes on
12 that. He wasn't a party to the initial, which is what I think
13 you're arguing, initially that the -- that the personal
14 guaranty was secured by property. And if, in fact, all of
15 that -- and it may, in fact be true. Still leaves me as a big
16 question mark as why Mr. Frey, who I think -- yeah, Frey, I'm
17 getting all the names -- isn't -- if anything, if you had a
18 case, you may have had a counterclaim against Frey, excuse me,
19 all the entities, his entities, the Star entity, the -- Mr.
20 Frey's LLC, et cetera. But that's not what we have here.

21 MR. SAGGESE: And to address the last thing, so we --
22 tortious interference, that is exclusively Mr. Hefetz. His
23 own individual actions, his physical interception of the
24 document, his own testimony goes to the interference with the
25 agreement. And we're not talking about Star Development and

1 the contract that existed was the contract between Hefetz --
2 I'm sorry, was the contract between Herbert Frey and Chris
3 Beavor. That \$6 million contract. And in this case, more
4 specifically, a guaranty. That was interfered with 100
5 percent, shown multiple times by the actions of Hefetz, who
6 said, He ain't signing this. He ain't signing this because I
7 got money in this. That is interference with the relationship
8 between Chris Beavor and Herb Frey. And a valid existing
9 contract was in place. It was going to be resolved for
10 \$24,000.

11 Instead of it being resolved for \$24,000, and there
12 are three separate drafted documents that would have reflected
13 their agreement, but it was intercepted. So the existing
14 contract is the underlying guaranty. The actions, the
15 tortious interference we've discussed, couple, two, three
16 witnesses have referenced it. And the outcome and the
17 damages, the existence of a \$6 million note.

18 So on that, Your Honor, I'm going to ask that that go
19 forward. It has nothing to do with Star Development. It was
20 the fact that Yacov Hefetz and Herb Frey had an office, the
21 Flamingo, with desks close together, and Chris happened to
22 walk in to finalize the agreement when Herb Frey was not there
23 and Yacov was. And, Hell no, you ain't -- he ain't signing
24 this. And that's that tortious interference. That has been
25 established. Or is -- to -- to say it's a matter for the jury

1 to decide if he interfered with Herb Frey's relationship with
2 Chris.

3 And they may say no, Herb Frey said here, you know,
4 they may believe this side and say, Yeah, Herb Frey, he wasn't
5 going to do it. He -- he wanted this kid to pay him. Or they
6 may say, Yeah, Herb Frey totally had all the intentions in the
7 world of letting this kid off the hook of that contract, and
8 instead he physically interfered, he verbally interfered, and
9 he --

10 THE COURT: What's wrong with that?

11 MR. SAGGESE: That's called the tortious --

12 THE COURT: There's the --

13 MR. SAGGESE: -- tortious --

14 THE COURT: -- no, that's --

15 MR. SAGGESE: -- interference --

16 THE COURT: -- that's absolutely not.

17 MR. SAGGESE: -- contractual relations.

18 THE COURT: Any time -- are you saying any time an
19 individual, a husband tells the wife, I don't want you buying
20 that, I don't want you to sign that, I don't want you to
21 whatever, that's tortious interference?

22 MR. SAGGESE: A husband and a wife buying a --

23 THE COURT: Or, okay, partners. I don't want you to
24 -- partners. Law partners. Let's use that. Right down to
25 the chase. Law partners. I want to buy a building. I don't

1 want you go buy a building. I want to get a loan for \$20
2 million. No, no, no, no. We're not going to do that. We're
3 not -- oh, a copier. Make it whatever you'd like to make it.
4 And you say, Absolutely not, I -- that -- we're not going to
5 do that.

6 MR. SAGGESE: Yeah, I think that, you would be right,
7 is not tortious interference. When there is an existing
8 contract where someone is on the hook --

9 THE COURT: Well, okay.

10 MR. SAGGESE: -- to pay \$6 million --

11 THE COURT: And I need to know, you tell me, what was
12 the existing contract?

13 MR. SAGGESE: The guaranty, the basis of his lawsuit.
14 The guaranty to pay \$6 million. That's a contract. And that
15 was -- that was going to be --

16 THE COURT: And that was in effect before?

17 MR. SAGGESE: Yeah.

18 THE COURT: And it was in effect after. What you're
19 trying to argue is a settlement negotiations, which, as I've
20 said before, never should have come in there at all, but the
21 plaintiff allowed it to for some unknown reason, settlement
22 negotiations came in regarding what -- and they weren't --
23 they weren't done. You're not asking me to enforce settlement
24 -- an unsigned document that was -- was brought in there, and
25 he told them, Don't do this, I don't think you should, and

1 you're saying that's tortious interference?

2 MR. SAGGESE: Well, let me -- absolutely. And let me
3 ask you this, Your Honor, what -- could you give me an example
4 of under the law, and what is your understanding of tortious
5 interference with contractual relations?

6 THE COURT: Absolutely. You have a contract to
7 perform at the Stardust -- Stardust, I picked one that's gone.
8 At the -- at the MGM. And I say, I'll give you \$10 million to
9 do my birthday party that night. That's tortious
10 interference.

11 MR. SAGGESE: Okay. How about an existing contract
12 to --

13 THE COURT: All right. We're not going to go on and
14 on. You can take it up. For the record, I absolutely do not
15 find any basis in law for the fact that Mr. Hefetz may have
16 absolutely -- verbally told Mr. Deavor [sic] not to sign the
17 settlement agreement discussions between -- as they've said,
18 friends or partners or anything else regarding, Hey, you
19 shouldn't do this, an unsigned settlement agreement that never
20 got consummated, and whether he said, You're out of your mind
21 if you sign this or not, to me does not in any way, shape, or
22 form come to the legal grounds for tortious interference.

23 Now, as I said, I think I gave a reasonable example.
24 If you have a contract to perform, et cetera, whatever, and
25 you say, I'll give you \$5 million not to, but we have a

1 settlement negotiations where he -- and I'm taking it on your
2 best thing. He said, Don't sign these, you're crazy if you
3 sign these.

4 MR. SAGGESE: I'm not letting you sign this, he said.

5 THE COURT: I'm not letting you sign this.

6 MR. SAGGESE: And he physically intercepted the
7 document.

8 THE COURT: Well, that -- there's no evidence that --
9 to that effect.

10 MR. SAGGESE: Well, he was --

11 THE COURT: The evidence is he handed it to him -- he
12 handed it to him and said, Give it to Mr. -- Mr. -- what's his
13 name again?

14 MR. IGLODY: Frey.

15 THE COURT: Frey, and -- and whether or not -- and as
16 a matter of fact I thought Mr. Frey said he -- he was made
17 aware of them and didn't sign them. In any event, I don't
18 think that there's -- that this any way, shape, or form comes
19 up to the legal grounds for tortious interference.

20 MR. SAGGESE: And just as a point, I'm assuming the
21 Court is saying at least one of the elements was met in that
22 is a valid existing contract, the \$6 million guaranty that was
23 interfered with. Because if you're going to --

24 THE COURT: No.

25 MR. SAGGESE: So there wasn't a valid --

1 THE COURT: The interference is with a settlement
2 agreement.

3 MR. SAGGESE: That would have effected the underlying
4 contract.

5 THE COURT: And then that's --

6 MR. SAGGESE: You're saying a payment of \$5 million
7 to interfere with an existing contract is legit, I'll pay you
8 \$5 million not to perform --

9 THE COURT: We're done. We're done. I've said it.
10 You can take it up. I absolutely have stated it as best I
11 can.

12 Okay. Those are the counterclaims. The
13 counterclaims which in my mind should never have gotten this
14 far, but again, plaintiffs -- I'm not sure why they allowed
15 the settlement documents in, et cetera. It was, in my mind, a
16 waste of at least two days of this trial.

17 So, jury instructions. What are your disputed
18 instructions? I assume, well, I removed by my rulings several
19 of the disputed instructions.

20 Negligence, per se, comes out. Mortgage broker.

21 MR. IGLODY: I'm going through, Your Honor.
22 Apologize. One moment. I want to make sure I get out the
23 counterclaims.

24 THE COURT: I'm going to take out this part about the
25 counterclaims. There's no more counterclaims.

1 I've never seen jury instruction where you read the
2 complaint.

3 MR. IGLODY: I'm sorry. What did you say, Your
4 Honor?

5 THE COURT: According to -- this was your proposed --

6 MR. IGLODY: Yes, sir.

7 THE COURT: -- court -- does the counsel for the
8 plaintiff or defendant desire to have the complaint and answer
9 read?

10 MR. IGLODY: And the question was if -- at this point
11 maybe not now.

12 THE COURT: Well, I've never seen or done that in
13 over two years.

14 MR. IGLODY: Okay. Then we're out.

15 THE COURT: And they're not -- well. That's for
16 before the trial.

17 MR. IGLODY: It looks like on the preliminary ones
18 right up until the contract one that we -- hold on. Know
19 what, we have to get rid of the clear and convincing
20 instruction, because we don't have that counterclaim anymore.
21 Preponderance stays in because we have a preponderance claim.
22 I also have to take out their counterclaims under the jury --
23 the 2.3 -- may I approach?

24 THE COURT: Sure. Why don't you guys take 15 minutes
25 and go over -- this should resolve a lot of -- and try to come

1 up with a set that has the -- at least that stuff taken out.

2 MR. IGLODY: Okay. We'll do that right now.

3 THE COURT: All right. We'll be in recess.

4 (Court recesses at 10:11 a.m., until 11:09 a.m.)

5 (Outside the presence of the jury.)

6 THE COURT: So we've got all of the instructions now.

7 Make it simple. Has the plaintiff reviewed the proposed
8 verdict form?

9 MR. IGLODY: Your Honor, we reviewed the -- yes. The
10 one that -- yes.

11 THE COURT: The verdict form, I'm saying.

12 MR. IGLODY: The verdict form for plaintiff, yeah.

13 THE COURT: Are you agreeable to the verdict form?

14 MR. IGLODY: We are agreeable to the verdict form.

15 THE COURT: Defendant, have you reviewed the proposed
16 verdict form?

17 MR. SAGGESE: Yes.

18 THE COURT: Are you agreeable to the proposed verdict
19 form?

20 MR. SAGGESE: Yes, Your Honor.

21 THE COURT: Thank you. Okay. I have in front of me
22 the proposed instructions and I will read a line of them so we
23 know they're in order. Other than the proposed instructions,
24 the plaintiffs offered a proposed instructions --

25 You have a copy of that? Right. Okay. So

1 plaintiff's proposed jury instruction, it's -- all right.

2 Well, there's no -- I'm going to put on it No. 1. You want to
3 put anything on the record why you wanted that?

4 MR. IGLODY: I'm sorry, Your Honor. Which one are
5 you directing us to?

6 THE COURT: This is the one because Hefetz and
7 Beavors are parties to the contract at issue, and I said that
8 I wasn't going to give that with the names of the individuals,
9 so we want to put it on the record; are you withdrawing that?

10 MR. SAGGESE: We withdrew that because we had it
11 covered.

12 THE COURT: Come here and look at it.

13 MR. IGLODY: Yeah, I'll look at it. Apologize. I
14 kind of lost track here.

15 This one here?

16 THE COURT: Yes.

17 MR. IGLODY: I now instruct you -- oh, I see what
18 you're saying. Yes, Your Honor, we -- we've waived on that
19 one.

20 THE COURT: You've withdrawn it?

21 MR. IGLODY: Yeah, that's correct.

22 THE COURT: Okay. So it's withdrawn. Defendants
23 offered, I believe over the objection of the plaintiffs, Jury
24 Instruction -- although I haven't numbered it yet, "In every
25 contract there's an implied promise of good faith and fair

1 dealing obligating the parties to pursue their contractual
2 rights in good faith." Plaintiff opposed that instruction; is
3 that correct, or?

4 MR. IGLODY: Only -- we sought clarification mostly,
5 Your Honor, and that was regarding the -- the counterclaim.
6 But to the extent that the Court is going to offer it, the
7 plaintiff does not have an objection.

8 THE COURT: Okay. I'm offering -- I'm going to give
9 it.

10 MR. IGLODY: Thank you, Your Honor.

11 THE COURT: Whatever, if that was an objection. So
12 does the plaintiff wish to offer any other jury instructions?

13 MR. IGLODY: No. The stipulated set you have before
14 you, subject to that one little clarification that your JA was
15 going to do for us, is the stipulated set between plaintiff
16 and defendant.

17 THE COURT: I don't know what you're referring to.

18 MR. IGLODY: There had been a stipulated fact jury
19 instruction, the stipulated fact that we proposed was that the
20 defendants had entered into a guaranty contract. The
21 modification the defendants asked for and that we agreed to
22 was the language that I think the exact wording was, the
23 Beavors entered into a guaranty contract with Herbert Frey.
24 That's -- that's the modification --

25 THE COURT: Is that contained in the set you gave me?

1 MR. IGLODY: We passed it back to the JEA. Was it in
2 that set? I'm sorry, Your Honor. Apparently it isn't in
3 front of you. I --

4 THE COURT: Okay. Fine.

5 MR. IGLODY: Yeah.

6 THE COURT: And the defendants, are you agreeable to
7 the set that is in front of me?

8 MR. SAGGESE: Yes.

9 THE COURT: Do you have any additional proposed jury
10 instructions you wish to offer?

11 MR. SAGGESE: No, we do not. The one caveat
12 consistent with what the Court had requested was not using
13 names. It doesn't matter to me. But you could say defendant
14 entered into a contract with Herbert Frey versus Beavor
15 entered into a guaranty contract with Mr. Frey. If you don't
16 -- if you're not worried about the consistency, I don't mind.

17 THE COURT: Okay. So you're not objecting --

18 MR. SAGGESE: No, I wouldn't.

19 THE COURT: -- as far as that. Okay. So here we go.
20 I'll read the first line or two of the instruction and then
21 number it. If there's a problem that's incorrect, tell me.

22 "You're admonished that no juror may declare to a
23 fellow juror." Instruction 1.

24 "Your purpose as jurors is to find and determine the
25 facts." Number 2.

1 [Indiscernible] "goes on under our system of civil
2 procedure, you are the sole judge of facts."

3 "If in these instructions any rule, direction, or
4 idea is repeated." Number 3.

5 "The masculine form is used" is No. 4.

6 "The evidence which you are to consider" is No. 5.

7 "Although you are to consider only the evidence" is
8 No. 6.

9 "The credibility or believability of a witness" Is
10 No. 7.

11 "If during the trial" is No. 8.

12 "In determining whether any proposition has been
13 proved" is No. 9.

14 "Certain testimony has been read into evidence" is
15 No. 10.

16 "During the course of the trial you have heard
17 reference made to interrogatory" is No. 11.

18 "As permitted by law the parties served" is 12.

19 "If counsel for the parties have stipulated" is 13.

20 "A person who has special knowledge, skill, or
21 experience" is 14. Was there any expert witnesses?

22 MR. IGLODY: The only reason we left that in was
23 because we had some people testify they were developers with
24 40 years' experience and their estimation the project was
25 X-percent complete, and then we had people who said that they

1 have no experience saying it was Y-percent complete. Other
2 than that, no.

3 THE COURT: All right. You stipulated to it, so I'm
4 not going to -- it's superfluous or innocuous. I don't know
5 that it's...

6 "Whenever in these instructions," it should say, and
7 it says, "Whenever in these instruction." "Whenever in
8 these..." All right. That's 15. I'm not going to spend an
9 hour redoing one S.

10 "The preponderance or weight of evidence is not
11 necessary" is 16.

12 "A contract is a promise" is No. 17.

13 "The essential elements of a breach of contract" is
14 18.

15 Number 19 I'm not -- we have to redo. I'm not going
16 to have it with Wite-Out.

17 But, "A contract is a legally enforceable promise"
18 will be 19.

19 "Hefetz asserts" -- is this the one that "the Beavors
20 breached their contractual obligation"?

21 MR. IGLODY: Not yet. It's coming later.

22 THE COURT: All right. Well, that should be
23 defendant -- no, plaintiff asserts.

24 MR. SAGGESE: The defendant breached their
25 contractual obligation.

1 THE COURT: Correct.

2 MR. SAGGESE: Number 20.

3 THE COURT: Thank you. All right. That'll be
4 correct, then.

5 "For the purpose of this trial, the parties have
6 stipulated" is 21.

7 MR. SAGGESE: And that's the one with the --

8 MR. IGLODY: With the correction that they're doing.

9 MR. SAGGESE: That they're doing? Okay.

10 THE COURT: All right. So do you want to put the --
11 instead of "The Beavors entered" -- "The Beavors entered,"
12 sorry, that "the defendant entered into a guaranty contract --

13 MR. SAGGESE: Herbert Frey.

14 THE COURT: That'll have to say Herbert Frey. Is --

15 MR. SAGGESE: Right.

16 THE COURT: Is that how you want it to say?

17 MR. SAGGESE: Yes, sir.

18 MR. IGLODY: That works.

19 THE COURT: All right. "The defendants entered into
20 agreement..."

21 "Hefetz was not a party to the original guaranty
22 should the plaintiff, however he may bring a claim because..."
23 What was that, 20?

24 MR. IGLODY: 22, right?

25 THE COURT: Okay. So 22 will have to read,

1 "Plaintiff was not a party to the original guaranty contract.
2 However, he may bring a claim for breach of the guaranty
3 contract because Herbert Frey, the original lender, through
4 the Hefetz Family Trust, transferred the rights under the
5 guaranty contract to plaintiff."

6 MR. IGLODY: Actually, you know, that's a typo. I
7 apologize, Your Honor. That should be the Frey Family Trust.
8 Oh, jeez.

9 THE COURT: Okay. The rest of it I think is okay.
10 "A party to a contract."

11 You'd better tell Sandy to stay around to get all
12 this stuff.

13 So this is No. 23, "A contract must be interpreted so
14 as to give effect." 23.

15 24, "While interpreting a contract."

16 25, "A party cannot prevail on a breach of contract
17 claim." "A party who has promised to perform is condition,"
18 No. 26.

19 Number 27, it should say, "Plaintiff claims to be
20 entitled to a liquidated amount," parentheses, "specific
21 [indiscernible] of the plaintiffs -- defendants breach of a
22 guaranty..." Okay.

23 "Waiver is the voluntary and intentional
24 relinquishment" is 28.

25 "Contract damages are intended to place" is 29.

1 "Court has given you instructions" is 30.

2 "It is your duty as jurors" is 31.

3 "If during your deliberation you should desire" Is
4 32.

5 "You are to retire" is 33.

6 "Now you will listen to arguments" is 34. But
7 there's no place for me to sign, so that has to be. Okay.
8 It's 11:25. This is going to take at least 30 minutes. I'm
9 going to send them to lunch and have them come back at a
10 quarter to 1:00. This is -- yeah, this is going to take 25
11 minutes. Where's Chris?

12 Did -- was part of those -- was this, "In every
13 contract there's an implied," did I read that? That was in
14 there, right?

15 Tell them to go to lunch, be back here at quarter to
16 1:00. We still have a half hour, it's -- by 11:30. So.
17 Okay. Right. So you gave them -- all right.

18 THE MARSHAL: 12:45?

19 THE COURT: What?

20 THE MARSHAL: 12:45?

21 THE COURT: Yeah. Because then she has to make 10
22 copies, also. So. Okay. Well, we'll be in recess.

23 (Court recesses at 11:25 a.m., until 11:30 a.m.)

24 (Outside the presence of the jury.)

25 THE COURT: On the record. The -- you agreed to this

1 verdict form, but it has the counterclaims, which I dismissed.
2 So I don't think we can do that. It would certainly confuse
3 the jury, correct?

4 MR. IGLODY: Correct.

5 THE COURT: Certainly on your -- I -- whether or not
6 you agree with my dismissing, do you agree we need to change
7 the verdict form?

8 MR. SAGGESE: I'm devastated. And yes, I'm kidding.
9 I'm kidding, Your Honor.

10 Yes, I agree --

11 THE COURT: You know, we -- we disagree. I told my
12 daughter the other day, she disagreed with me on something. I
13 said, Hey, that's the way it goes.

14 MR. SAGGESE: Yeah. No --

15 THE COURT: So we disagree. But as far as the
16 verdict form, we have to change that also, correct?

17 MR. SAGGESE: Yes, Your Honor.

18 MR. IGLODY: Well, yes. Yes.

19 THE COURT: We will take out the -- and also,
20 although Samantha Beavor is still in there in the caption, my
21 understanding is the stipulation was to dismiss her also. So
22 we need to take her out, correct?

23 MR. IGLODY: Any objection?

24 MR. HEFETZ: No, I have no objection. Yes.

25 THE COURT: Okay. So --

1 MR. HEFETZ: I have nothing against anyone.

2 THE COURT: -- no objection for both sides. We'll
3 get that done, too.

4 MR. IGLODY: And as long as you're standing there,
5 Your Honor, one quick question. Is that to be addressed in
6 our closings or is the Court going to address that at all, the
7 fact that we kind of did opening statements about claims and
8 counterclaims and now we're doing a closing with just one
9 claim? Is that going to be clarified for them through closing
10 or are you going to say something or how do you want to handle
11 it, Your Honor?

12 THE COURT: You know, I just -- that's -- I don't
13 know if we even need to address it. What's your --
14 defendants, what's your --

15 MR. SAGGESE: I'll leave it up to the Court. I think
16 there -- there's two options. You said there's nothing to be,
17 you know, we're not going to --

18 THE COURT: I said --

19 MR. SAGGESE: Right. There's nothing to be
20 determined from the fact that they are no longer part of the
21 case. You're not to consider counterclaims. Or you -- we
22 could just be silent on it. You know, it's up to the Court.

23 THE COURT: I guess I could just say the
24 counterclaims are not an issue anymore.

25 MR. IGLODY: That would be sufficient for us, Your

1 Honor.

2 THE COURT: Any objection?

3 MR. SAGGESE: No objection. And then in regard to
4 Samantha, do you want to say Samantha has been dismissed or
5 Samantha is no longer a party?

6 THE COURT: I thought I did.

7 MR. IGLODY: You did.

8 THE COURT: Didn't I?

9 MR. IGLODY: And that's sufficient for us. I don't
10 know if we need any more than that.

11 MR. SAGGESE: Just because my opening's similar to --

12 MR. IGLODY: Oh. Well, you -- we can reiterate that
13 Samantha's no longer in the case and the jury should infer
14 nothing from that and just move on. Like you did before, Your
15 Honor. I mean, he's right. Somebody said they might have
16 forgotten you've said that already.

17 THE COURT: All right. So are you asking me to tell
18 the jury that, something?

19 MR. IGLODY: I think, Your Honor, that would be the
20 cleanest way to do it, but --

21 THE COURT: And do you want me to or no?

22 MR. SAGGESE: I don't care, Your Honor. I'm going to
23 leave it up to you.

24 THE COURT: Okay. All right. I'll -- I'll say that
25 the counterclaims are not -- the counterclaims and Samantha

1 Beavor -- or counterclaims are no longer an issue and Samantha
2 Beavor is -- is not part of the case.

3 MR. IGLODY: Thank you.

4 THE COURT: We need to revise that again.

5 MR. SAGGESE: Thank you.

6 (Court recesses at 11:34 a.m., until 12:57 p.m.)

7 (Outside the presence of the jury.)

8 THE COURT: Why don't you look at these one last
9 time.

10 (Pause in proceedings.)

11 THE COURT: All right. So, counsel for the
12 plaintiff, are you familiar with jury instructions 1 through
13 34 and you've checked them and these are now correct?

14 MR. IGLODY: Still looking.

15 (Pause in proceedings.)

16 MR. SAGGESE: Defendant's satisfied, Your Honor.

17 THE COURT: Thank you.

18 MR. IGLODY: One moment. Sorry. Okay. Yes, Your
19 Honor. We agree.

20 THE COURT: All right. Thank you. And you've
21 reviewed the final verdict form?

22 Plaintiff's familiar and reviewed the verdict form?

23 MR. IGLODY: Yes.

24 THE COURT: Defendants --

25 MR. SAGGESE: Yes.

1 THE COURT: -- familiar and reviewed it? Thank you.
2 Did you make an extra? All right. Maybe there's an
3 extra.

4 Okay. Go get them. So is it okay to say we resolved
5 the counterclaims, or what do you want me to say? That
6 they're --

7 MR. IGLODY: I prefer we say the counterclaims are no
8 longer an issue and just leave it at that.

9 THE COURT: Okay. Okay. Counterclaims are no longer
10 an issue. Any problem with that, defense?

11 MR. SAGGESE: No.

12 THE COURT: I already said about Mrs. Beavor, so I
13 don't -- I don't see any reason to repeat it.

14 MR. IGLODY: As you wish, Your Honor.

15 THE COURT: Defendant?

16 MR. SAGGESE: No preference.

17 THE COURT: I mean, I think we dealt with that. So.
18 Okay.

19 THE MARSHAL: All rise for the presence of the jury.

20 (Jury reconvenes at 1:02 p.m.)

21 THE COURT: Please be seated. Call the roll.

22 (Jury roll call.)

23 THE COURT: Thank you. Ladies and gentlemen, the --
24 I just want to, before we get started, the counterclaims in
25 the matter are no longer an issue. I'm going to read the

1 instructions to you. Each of you has your own copy of
2 instructions so that you may follow along and take these
3 instructions with you to the jury room. Additionally, a copy
4 of the verdict form will be given to you in the deliberation
5 room.

6 (Jury instructions read, not transcribed.)

7 THE COURT: Plaintiffs.

8 MR. IGLODY: Thank you.

9 THE COURT: Closing.

10 PLAINTIFF'S CLOSING ARGUMENT

11 MR. IGLODY: Ladies and gentlemen of the jury, as the
12 judge indicated, this is our opportunity to provide the
13 closing statement to you in regards to this case.

14 As you recall we started with our opening statements.
15 And in my opening statement I had indicated to you, in a
16 slightly healthier voice, unfortunately, at the time, that
17 what we're here to do is have you uphold the guaranty contract
18 that we came here as -- with as our sole and solitary claim.

19 As we established at trial, you recall various
20 witnesses agreed on a few key dates as well as the documentary
21 evidence. One of the key dates we all agreed on was in March
22 of 2007, is when the guaranty contract had been entered into.
23 We saw throughout the course of testimony that in March of
24 2007 there were quite a few agreements that were entered into.
25 You may recall there was an operating agreement for the Toluca

1 Lake Vintage entity that was going to run the project. There
2 was that first amendment to the operating agreement, to the
3 original operating agreement, clarifying Herbert Frey's rights
4 as a lender should he need to enforce his lender's rights in
5 regards to the entity.

6 You saw, of course, the loan guaranty that we are
7 pursuing right now, asking this Court -- this jury to uphold
8 for us. We also saw that there was a transfer in assignment
9 to my client in 2011. And in between those two events we had
10 found out that there had been significant issues with China
11 Trust Bank regarding the construction and the delay in the
12 construction and the disbursement of funds in April and May of
13 2009 and that bankruptcy was filed. And we found out that in
14 late 2010 the bankruptcy court, over the objection of Mr.
15 Beavor, the defendant here, after reviewing the evidence
16 submitted to it, made a determination that the final outcome
17 of the Chapter 11 was to buy out the project by somebody
18 called Cityview and that there was going to be a flow-back to
19 Toluca Lake Vintage, and supposedly there was going to be in
20 part one to Star Development. And as we established, Wayne
21 Krygier got a consulting fee for \$100,000.

22 That was the outcome of the bankruptcy, that was, in
23 effect, the end of the Toluca Lake Vintage project that had
24 started out as a promising dream in March of 2007.

25 What I would like to do is highlight briefly some of

1 the key language in the guaranty agreement or contract that we
2 are seeking to have this court enforce. It's exhibit 1 in the
3 exhibit binder. Now, as the Court indicated when it was
4 reading the instructions, it's to be taken by you as a fact,
5 an established fact, that this guaranty contract was entered
6 into originally in 2007 between the defendant and Mr. Frey,
7 Herbert. And you heard Herbert talk about that.

8 Point your attention briefly to Section A in the
9 Recitals. And in the Recitals it says that "the aggregate
10 amount of \$6 million is the amount that this guaranty is for."
11 The \$6 million. That is the liquidated amount that we're
12 asking this Court to enforce in favor of plaintiff against the
13 defendants.

14 Now, because this is a unconditional guaranty as
15 opposed to a loan agreement, there's other language in here
16 that I want to make clear that we're relying on in the
17 enforcement of this guaranty contract.

18 Section D of the Recitals says, and I'll just read
19 it, "Lender" -- that would be Herbert Frey at the time --
20 "Lender has relied on the statements and agreements contained
21 herein in agreeing to make the loan. The executional [sic]
22 delivery of this guaranty by guarantor," which is the
23 defendant, "is a conditioned precedent to the making of any
24 loan by the lender."

25 We heard Herbert testify that he had his lieutenant,

1 deputy, whatever you want to call him, Mr. Gilmore, who's now
2 deceased, basically set up this whole transaction. And there
3 was a sheaf of documents. It's Exhibit 1. You can go through
4 them when you hit the deliberation room. And there's a lot of
5 loan agreements, promissory notes, guaranties, deeds of trust,
6 lots of documents. We already established that. But this
7 guaranty is the guaranty that the lender relied upon in making
8 his advance of not just the \$4.4 million, but more
9 significantly the co-signing on that \$22 million loan that
10 made this whole project, in other words, that made the dream,
11 the Toluca Lake Vintage 45-unit luxury condominium complex
12 with the pool, a possibility.

13 And I'll read this and I'll just point it out with my
14 pen, because once again this is the language of the agreement
15 we are seeking to enforce here today. "Now, therefore,
16 intending to be legally bound, guarantor," once again, the
17 defendant, "in consideration of the matters described in the
18 Recitals, which Recitals are incorporated herein and made a
19 part hereof, and for other good and valuable consideration
20 [indiscernible] insufficiency of which are acknowledged hereby
21 covenants and agrees for the benefit of the lender and its
22 respective successors, endorsees, transferees, participants,
23 and assigns as follows: Guarantor absolutely,
24 unconditionally, and irrevocably guarantees full and prompt
25 payment of the principle and interest of the notes when due

1 whether at state of maturity upon acceleration or otherwise
2 and at all times thereafter, and the full and prompt payment
3 of all sums which now may be or hereafter become due and owing
4 under the notes, the loan agreement, and the other loan
5 documents, the full, prompt and complete performance of all
6 borrower obligations under each and every covenant listed in
7 the loan documents, and then full and prompt payment of any
8 enforcement costs."

9 Because, unfortunately, it sometimes seems that
10 attorneys get paid by the word and not by the hour, there's
11 more. But it's important, because this language has meaning,
12 and it's the importance of which that we are relying upon in
13 the enforcement action before you today.

14 Just a few more sections to be clear. And once
15 again, this document will be with you in your deliberations if
16 you care to look at it yourself.

17 Number 2. "In the event of any default by the
18 borrower in the payment of the indebtedness after the
19 expiration of any applicable cure or grace period, guarantor
20 agrees on demand by lender or the holder of the note to pay
21 the indebtedness regardless of any defense, right of setoff,
22 or claims which borrower or guarantor may have against the
23 lender or the holder of the note."

24 And then there's more. "All of the remedies set
25 forth herein and provided for in any of the loan documents or

1 at law or in equity shall be equally available to the lender
2 and the choice by lender of one such alternative over another
3 shall not be subject to question or challenge by the guarantor
4 or any other person, nor shall any choice be asserted as a
5 defense, setoff, or failure to mitigate damages in any action,
6 proceeding, or counteraction by lender to recover or seeking
7 any other remedy under this guarantee, nor shall such choice
8 preclude lender from subsequently electing to exercise a
9 different remedy."

10 And one more before -- well, two more, real quick.
11 Section 4. "The guarantor" -- once again, defendant --
12 "further guarantees the -- the guarantor's liability as
13 guarantor shall not be impaired or affected by any renewals or
14 extensions which may be made from time to time with or without
15 the knowledge or consent of the guarantor of the time of the
16 payment of interest or principle under the notes or by any
17 forbearance or delay in collecting interest or principle under
18 the notes, or by any waiver by lender under the loan
19 agreement, deeds of trusts, or any other loan documents, or by
20 lender's failure or election not to pursue any other remedies
21 it may have against the borrower or guarantor or by any other
22 change or modification of the notes, loan agreement, deeds of
23 trust, or any other loan documents" -- apologize -- "loan
24 documents, or by lender's failure election not to pursue any
25 other remedies it may have against the borrower or guarantor

1 or by other change or modification," and it actually goes on.
2 It's one of the longest sentences in here.

3 And I want to bring your attention to one more
4 section in here. Here we go. And -- and again, sometimes
5 people wonder why attorneys are wordy. But, "This is an
6 absolute present and continuing guarantee of payment and not
7 of collection. Guarantor agrees that this guaranty may be
8 enforced by lender without the necessity at any time of
9 resorting to or exhausting any other security or collateral
10 given in connection herewith or with the notes, loan
11 agreement, deeds of trust, or any other loan documents through
12 foreclosure or sale proceedings as the case may be under the
13 deeds of trust or otherwise, or resorting to any other
14 guaranties and without limiting the generality of the
15 foregoing guarantor waives any rights the guarantor may have
16 under Nevada's One Action Rule," which didn't apply here.

17 Let -- let me tie in the importance of the language
18 in this guaranty that we have brought to you in this
19 proceeding. You'll recall in the opening statement I said our
20 case is very simple, we have one claim. A guaranty claim. An
21 enforcement of a guaranty contract claim. We suggested to you
22 that the evidence would show that there's not really any
23 question that the guaranty had been entered into, that the
24 guaranty had to end up being transferred to my client, Yacov,
25 who had some money in the deal from day one, but that's

1 irrelevant, because as the current assignee, in legal terms,
2 or holder of the note, he has all the enforcement powers that
3 the original recipient of the note -- I mean, the guaranty
4 would have had, which was Herbert Frey.

5 You heard our first witness was Herbert Frey.
6 Herbert Frey came in here, an older man. But he remembered
7 the gist of it. Gilmore, big condominium project in
8 California, Hey, it sounds good, what do I need to do? All
9 right, I'll advance some money, I'll cosign on a loan. And
10 Gilmore went out and had defendant sign a lot of paperwork.

11 You'll recall the entity that owned the deal, if you
12 will, the Toluca Lake Vintage entity, the one that ended up in
13 bankruptcy, was owned by three people. Heard about Allen
14 Floyd, we saw Robert Rink. And then obviously the defendant,
15 Chris Beavor and his then-wife, Samantha.

16 Intentionally, the documentation talks about loans
17 and guaranties and the power of the lender. In particular the
18 power that was assigned to the lender by the Toluca Lake
19 Vintage at the very beginning of the transaction, which said
20 if things go wrong, you, lender, can come in and take over
21 management. Well, we know that something happened, because in
22 May 13, 2009, Herbert Frey sent his son and Wayne off to
23 California. That was established, uncontradicted in the
24 evidence.

25 In my opening statement I'd suggested to you that our

1 case is really, really simple. He signed the guaranty, you
2 guaranty performance, you're going to perform, that's what
3 we're asking for. It's a promise. Keep your promise.

4 We also told you that the defense was going to raise
5 a whole slew of issues, the sum total of which is, Oh, it's
6 not my fault. You heard Wayne Krygier testify what he found
7 when he got there. You heard Gary Frey testify to what he
8 found when he got there. You heard defendant say, Well, Herb
9 needed to sign an extension, everything would have been okay.
10 And we weren't in default. But wait, we kind of were, because
11 the bank was already suing us. But really the bank shouldn't
12 have been suing us because they, too, had promised me
13 something that apparently was never reduced to writing,
14 either.

15 Oh, it's not my fault, I ran the project, but really,
16 you know, these other people ran the project. Yeah, I mean, I
17 got the call when I was in Mexico that there was a
18 receivership action pending, but that's okay, because I took
19 care of it. Oh, well, 50 percent done or 30 percent or 60
20 percent done on one building or 40 percent or 60 percent or 75
21 complete on the other building. All right, the completion
22 date was September 2008, but okay, so the buildings were half
23 done in May of 2009, but you see, that wasn't a default, that
24 wasn't -- on and on. Oh -- oh, and I had a lender. He was
25 going to give me money and I was going to finish the

1 buildings, but then Herbert took it from me and he threw me
2 out. And then as part of his condition for throwing me out he
3 was going to release me from my guaranty. And then it just
4 goes on and on. I mean, literally, it goes on and on. And we
5 heard that when he testified about -- self-contradicting
6 testimony, but also the endless excuses.

7 Working backwards on the order of witness testimony,
8 Robert came in. And although Robert works with Chris today
9 and he admitted that pretty much most of the information he
10 got was from Chris, as it was with Herbert until May of 2009,
11 he knows that they're supposed to get a share of whatever
12 Cityview was able to do with this project in the end. The
13 number he said was 25 percent. You heard Gary, who was the
14 gentleman who is still technically the one representing the
15 bankruptcy, who had signed the original petition. Gary Frey,
16 the successful developer, the son of Herbert Frey, say, yeah,
17 there's a Cityview deal. Cityview puts back to the debtor
18 X-amount. Star Development tried to get more, judge wouldn't
19 let it happen. Instead, Star Development could have gotten
20 some additional monies in exchange for the 400 or 500 in fees
21 that they'd spent on the bankruptcy. But you also heard him
22 say that none of that ever came back.

23 And then we all agreed that Wayne, for his efforts in
24 reducing mechanic's liens, got beyond \$100,000. No one,
25 except for Chris's baseless testimony, nobody came up here and

1 said, Oh, Herbie finished the building, Herbie's rolling in
2 the cash, Herbie's doing great. All right. Except for Chris
3 Beavor's testimony you have nothing that says it was Herbie
4 who ran the project into the ground. Herbie was a lender.
5 Herbie trusted Chris. He said so. He thought the project had
6 potential. And on paper it did: 45 luxury units, rooftop
7 pool, California, perfect weather 300 days a year, sounds like
8 a great idea. And if it had panned out it probably would have
9 been a great idea.

10 And that was another thing, too. In the testimony
11 you heard and in the documents you saw, the structure of the
12 deal was pretty clear. As a lender, Herb Frey, and then later
13 Yacov Frey -- I mean Yacov Hefetz, I apologize -- were going
14 to make a cool \$1.6 million approximately, based upon their
15 4.4 investment. Right? You put in 4.4, you get 6 back,
16 unconditionally, absolutely, irrevocably. And in exchange you
17 carry the risk of \$22 million loan. Well, it turns out that
18 risk for the \$22 million loan turned out to be a way bigger
19 risk than they realized. But this is how things happen.

20 There had been some argument at the beginning of the
21 case that somehow my client, Yacov Hefetz, had machinations or
22 had gotten involved somehow in 2009 with the administration of
23 Toluca Lake and eventually the filing of the bankruptcy. But
24 every single body who testified talked about Star Development,
25 Wayne -- Wayne Krygier and Gary Frey. My client got the

1 assignment July of 2011. The bankruptcy was almost closed at
2 that point and the plan had been approved six months earlier.

3 Any claim, any claim by the defendant that somehow
4 Yacov Hefetz in any way, shape, or form hindered performance
5 by defendant has been refuted repeatedly at trial. Not just
6 with the testimony, of course, of my client, Yacov Hefetz, but
7 also through testimony of Herb Frey, testimony of Wayne
8 Krygier, and testimony of Gary Frey.

9 And there's something else that the testimony was
10 remarkably consistent on, and that's the co-called waiver of
11 the guaranty. Do you recall in opening statements there was a
12 promise made to you that they were going to show that Herbert
13 Frey had agreed to forgive the debt. It was expressed in the
14 \$6 million guaranty.

15 What you ended up hearing was Herbert Frey himself
16 say, I never even talked to him. I never even talked to him.
17 Wayne Krygier saying, Yeah, he kept asking me, Hey, is there
18 anything I get relieved, is there any way I can get relieved?
19 I'll work on it. Never happened.

20 Gary Frey saying, Look -- because he said Chris had
21 asked him repeatedly, Hey, is there any way I can get off? Is
22 there any way I can get off? And guess what? He said, if you
23 recall, I told him, Put something on paper. You heard this
24 wild story about how he had an agreement and somehow Yacov
25 didn't let Herbie sign or something along those lines.

1 Well, right then and there you have the statement
2 that you need to confirm that there was no agreement to let
3 him go. Because if the agreement was never entered into, it
4 didn't exist. His argument is, Oh, maybe Yacov was more
5 persuasive than he was, to the extent that that interchange --
6 interaction ever happened. But that still establishes the
7 fact that matters, which is there was no agreement, so why is
8 that a defense to your unconditional, irrevocable guaranty?

9 And the answer to that, we submit to you, is it
10 isn't. It's not. It's definitely the hallmark of a desperate
11 man trying to avoid responsibility for what happened at the
12 construction project. It's definitely the desperate attempt
13 by a man to avoid his obligations freely entered into at the
14 beginning of a project that potentially, as you recall from
15 testimony in the opening statement by defense, it potentially
16 could have made him very wealthy. It would have gotten
17 Herbert 1.6 period, if they had hit a home run, everything
18 from there north belonged to him. He took a risk, he gambled.
19 He gambled with somebody else's money, and now he doesn't want
20 to pay.

21 In the opening they had suggested some sort of
22 parallel to essentially a innocent homeowner situation. In
23 other words, the market didn't do so well in 2008, '09, '10,
24 as we all know. It's common knowledge. Two things about that
25 I need to put some emphasis on. First one is, we're not

1 talking about somebody who purchased a home and then from one
2 day to the next it was worth half as much as what he bought.
3 It's not a consumer transaction by any means.

4 This is a successful real estate whiz who decided to
5 see if he could go one step up further the chain and become
6 even more successful, who approached a lender and said, this
7 is my dream, will you finance it? And the lender said, Sure,
8 I'll sign the \$22 million guaranty, I'll cosign on the loan
9 and, you know, I'll extend you a couple million dollars to buy
10 land and start the improvements. And all I'm going to ask is
11 that no matter what happens, I get at least my 6, so I can
12 justify my internal rate of return what my net income is going
13 to be on this deal. Go forth. Go make yourself money.
14 That's it.

15 But the condition, as we read from the guaranty, was
16 you're responsible to make sure that no matter what happens
17 that I'm going to get back my 6. This is not an innocent
18 homeowner. This is two sophisticated -- one albeit probably
19 more sophisticated just because he's walked the earth longer
20 -- businessmen getting together and making a deal, exchanging
21 promises.

22 Herbie, no question about it, fulfilled his promises.
23 Gave him the money, signed on the notes, signed on the
24 guaranties, made the building of what was finally built
25 possible. And asked in return is, Well, complete the project

1 on time. Well, that didn't work out. And honor your
2 guaranty. Well, that's why we're here today.

3 The second part of that statement that I draw your
4 attention upon is even though absolutely no evidence was
5 presented in any way, shape, or form of his supposedly having
6 somebody lined up to finish the construction for him, the
7 credibility of his statement, his self-serving statement that
8 was backed up by absolutely nothing in the record, is on the
9 one hand, excuse me for my debts, because the market exerted
10 forces beyond my control; on the other hand, in the midst of
11 this terrible housing market, I had some guy with \$20 million
12 to spare that was going to help me finish this project that
13 had already ran into default on another bank.

14 There's nothing there. His attempts to blame the
15 lender for his failures as a contract -- as a construction
16 manager, as the visionary, if you will, for the Toluca Lake
17 Vintage idea, the dream, is ludicrous. And we're asking you
18 disregard that and enforce the guaranty as it is written.

19 I'm going to go through just a few jury instructions
20 because I wanted to have an opportunity to -- to talk about
21 them briefly.

22 Jury Instruction 25 is the -- the fraudulently
23 induced instruction, if you will. One of their arguments,
24 which, frankly, didn't come up at trial much, but still is one
25 of their arguments so I have to address it in my closing

1 statement, is that somehow defendant, Mr. Beavor was
2 fraudulently induced to enter in this contract that we're
3 claiming here and asking the Court to uphold.

4 I want to point out the -- the part that's important
5 for the weighing of the evidence. When a party makes a claim
6 or defense, the burden of proof rests on them. You heard the
7 judge discuss preponderance, preponderance being the scale
8 moves for or against the party making the assertion. But when
9 you allege fraud, the burden is heavier. To be exact, fraud
10 is -- on the bottom -- fraud is never presumed, it must be
11 clearly and satisfactorily proved by the party asserting the
12 defense, I mean, for -- asserting the defense of fraudulent
13 inducement.

14 One of the things that I think everybody agreed on is
15 that at least as of March 2007, as is often the case at the
16 beginning of any, you know, entrepreneurial idea, everybody
17 was in the deal together. They were excited. Defendant was
18 going to get his money and his cosigner to go ahead and make
19 it possible for them to break ground and build the dream, and
20 the lender, Herbert Frey, had the opportunity of the
21 satisfaction of making some money while helping some kid
22 through his next stage of development. We submit to you
23 there's absolutely no evidence and definitely no satisfactory
24 and clear evidence in that regard.

25 My emphasis of any particular instruction does not

1 lessen the importance of any other instruction, but there's
2 just a few that I wanted to highlight and I want to make that
3 clear.

4 Instruction No. 22 is the instruction that discusses
5 the assignment or transfer of the guaranty. The
6 uncontradicted testimony is that at one point Herbert was the
7 beneficiary of the guaranty and then assigned those rights to
8 my client, which is why my client stands before you today
9 seeking to uphold the guaranty contract.

10 And Instruction 12. You may recall during the
11 cross-examination of the defendant, Mr. Beavor, I ended up
12 having to pull out their responses to request to admit where
13 they had admitted that they had entered into this
14 unconditional, irrevocable guaranty in 2007 with Herbert Frey
15 to the extent that that should be an issue.

16 I'll have another opportunity to briefly address you
17 before you go to deliberations and I thank you for your time
18 so far.

19 THE COURT: Thank you. Defense.

20 DEFENDANT'S CLOSING ARGUMENT

21 MR. SAGGESE: Ladies and gentlemen of the jury -- All
22 right, ladies and gentlemen of the jury, why are we here?
23 We're not here because there's some basic cookie-cutter
24 guaranty that my client owes Mr. Hefetz. Obviously there's
25 much more to the story. I told you in opening a bit of

1 blueprint of what would happen, what I thought the evidence
2 would show was consistent.

3 What I have in my hand is the operating agreement for
4 Toluca Lake Vintage. You all are going to have a binder, you
5 can see it. What this is, is the creation of the company that
6 was Chris Beavor's and Samantha Beavor's opportunity, as Mr.
7 Iglody had said, you know, to move up in the world, you know,
8 to have a big project and maybe make some good money, real
9 estate.

10 You see on the last page who the parties are that
11 created this company, Toluca Lake, Chris Beavor, Allen Floyd,
12 Rob Rink. If you remember, Rob testified.

13 Now, I want you to listen, and there's a jury
14 instruction that says apply your common sense. My client's
15 dream was this company. Chris. At some point he relinquished
16 total control of his project. Unadulterated [sic] control to
17 another entity. No one in original party to this agreement to
18 create Toluca Lake. Why? Why? Because of the real estate
19 economic collapse. They want to say Chris did shoddy work now
20 -- how many, what is it, seven, six years later? -- there's
21 finger pointing, oh, rusty nails, he did a terrible job. One
22 of the buildings was 70 percent complete. One of them was 50
23 percent complete. I can't build a doghouse; a birdhouse I
24 couldn't build. If my client accomplished building one tower
25 70 percent, well, congratulations. Impressive. And another

1 building 50 percent, impressive.

2 And -- and they were at that stage when he turned his
3 company over. Why do you do that? Because there's an
4 economic collapse, real estate values are dropping
5 drastically, and the investors are saying, Hey, this is not
6 good. Not that there's rusty nails. Not that it's not done
7 well, that Chris is a failure. But this is not going to be
8 profitable and we have money out there. We don't want to get
9 crushed.

10 So here's the plan. And this is why I need you to
11 listen real clear here, because this is the part -- this is
12 the case. Here's the plan. We're going to do this, beat up
13 the bank, file bankruptcy, and we're all going to be forgiven
14 of our personal guaranties. All you've got to do, Mr. Beavor,
15 real easy, all you've got to do is sign over power so we could
16 walk this into bankruptcy and everyone's going to be forgiven.

17 You heard that testimony. They had to catch
18 themselves a couple of times. They had to stop and say, Well,
19 not everybody. Even though two minutes before they said,
20 Well, we wanted to file Chapter 11 bankruptcy so that
21 everybody could be forgiven of their guaranties. Everyone to
22 China Trust. Not everyone.

23 Can you picture that meeting with the individuals
24 sitting there, Star Development, the guys with 40 years
25 experience, they do this from South Dakota, they fly around,

1 they [indiscernible] listen, we're all going to -- we're all
2 going to get our guaranties forgiven, just play ball.

3 Play ball and we're all going to get our guaranties
4 forgiven. Didn't happen. Now the guaranty was transferred in
5 2011 by an allonge to Mr. Hefetz, who his own lawyer says he
6 didn't even have anything to do with it. It's what I heard
7 him say. Minor player, had nothing to do with it. Four years
8 later he gets the right, but he's not a party to what went
9 down. And I'll show you, it's right here. This is very
10 telling. D-5, Exhibit D-5. This is, albeit, an unsigned
11 settlement release. Unsigned. But if you notice, it looks
12 like all of the documents, the font -- this is the unsigned
13 document. It's the same font used by Frey in all of his
14 documents. And you can take a look at this in D-5 and say,
15 like, Yeah, it is exactly all the same font. And who prepared
16 it? The Freys.

17 I want to point you to a specific part. Who are the
18 parties to this settlement agreement dated April of 2010? Not
19 signed, albeit. Herbert Frey and his trust; C&S, Christopher
20 and Samantha; Robert Rink, he testified; Allen Floyd;
21 Christopher and Samantha Beavor as Beavors, husband and wife
22 individuals, with Rink, they're the C&S parties, okay. I will
23 show you more.

24 This is exclusively in regard to why we're here. The
25 \$6 million note. Not a \$22 million note. Nothing -- strip it

1 all away. The \$6 million guaranty that this man holds. This
2 is what it's talking about.

3 In connection with the loan agreement dated March
4 29th, 2007, the Frey Trust, Borrower, in the aggregate amount
5 of \$6 million, the Frey loan. That's what he's here on. The
6 loan is evidenced by the promissory note.

7 I'm going to take you to the next page. At the top
8 it mentions that the borrower also obtained a \$22 million
9 China Trust loan. Below that the Beavors executed a guaranty.
10 That's what we're here on, that guaranty.

11 Now, here's the -- here's the part -- remember the
12 date, April of 2010. This was produced by Frey. The
13 agreement. This is the case. If you -- if you -- if you
14 believe that that's -- that ink says what it says, I know it's
15 not signed, but I'm talking about the inducement. What
16 motivated my client to turn over his dream company to these
17 guys? Why would my client say, Here, take it all, but I'm
18 still on the hook for \$6 million? He wouldn't. Because he
19 had this, "In consideration of the foregoing and other good
20 and valuable consideration, parties agree."

21 "In consideration of the Frey parties executing this
22 agreement, the Beavors shall execute the China Trust
23 settlement agreement and deliver it to the Frey parties."
24 Deliver it. In other words, the Beavors will agree to go into
25 bankruptcy, to put Toluca Lake, their company, into

1 bankruptcy. And in exchange for Chris and Samantha agreeing,
2 of course, it makes sense, it's common sense. In exchange for
3 handing over his whole company, he's 100 percent owner with
4 Allen Floyd and Robert Rink and his wife. "In exchange for
5 handing over 100 percent to Star Development and the Freys,
6 the Frey parties hereby waive release and forever discharge
7 Chris and Samantha or any person associated with them,
8 including subsidiaries," blah, blah, blah, blah, "of any and
9 all causes of action, claims, suits, complaints, demands,
10 accounts, attorney fees," blah blah, blah, blah, blah. Was
11 not signed.

12 So my client is told the following. Give us the
13 company, you're way leveraged, the market's collapsing,
14 dream's over, dude. Party's over, you ain't going to make any
15 money, this thing is going in the toilet, and we are the
16 experts and we'll save it.

17 Chris had no other horse in this race. \$6 million
18 was the utmost important thing that he have forgiven,
19 evidenced by this document which is produced by the Freys,
20 unsigned. Unsigned. Chris agrees and says, Yeah, I don't
21 want to be on the hook for \$6 million. It's 2007, 2008, 2009,
22 the economy's collapsed, you're not going to be able to sell a
23 condo. I mean, let's be honest. We're in trouble. So let me
24 turn it over to the guys who know what they're doing and
25 everybody gets washed.

1 Everybody got washed of their debt to China Trust
2 Bank. \$22 million in loans, washed by Star Development and
3 those parties. Not Chris. His particular \$6 million note is
4 still alive. I argue it is not.

5 What we also have, and you'll have, is evidence of
6 Mr. Beavor voluntarily turning over his company to Star
7 Development. And you'll have those documents. And they're
8 clear. C&S Holdings as manager of the project agrees to give
9 all control to Star Development. Star Development's supposed
10 to be acting in the best interest of the project, which, in
11 essence, if saving everyone from their guaranties was acting
12 in the best interest of the project, then they would have done
13 what they said they were going to do. The reason why Chris
14 and Sam turned over their claim to their dream company, 100
15 percent owners, they gave it up in exchange for being
16 forgiven. It didn't happen. Now, remember that was April of
17 2010.

18 And the consideration for that, quote, settlement
19 agreement was the forgiveness of the \$8 million. That was
20 April 2010. You're going to have all the bankruptcy docs with
21 you. October of 2010, the bankruptcy goes through. He blows
22 through the ceiling. What? How did that happen? I didn't
23 agree, because I haven't been included on the total
24 forgiveness. So he runs and files an emergency objection and
25 says ultimately, Wait a minute, I didn't agree. But you know

1 who said he agreed? Victor Saan signed an affidavit, all
2 parties to this project are in agreement with this bankruptcy.
3 False. Not true. Now -- and it -- and it goes through. The
4 bankruptcy goes through. Now poor Chris has no leverage.

5 Everyone's forgiven on the particular massive loan.
6 Everyone is forgiven except Chris. And he lost his leverage.
7 Remember, his original leverage was that agreement in April of
8 2010 that was unsigned. The agreement said in exchange for
9 you agreeing to give us control and going into bankruptcy and
10 signing the China Trust agreement, in exchange for you signing
11 the China Trust agreement, which was the bankruptcy, we'll
12 forgive you the \$6 million, that's gone, because they
13 fraudulently filed a court document that said ultimately all
14 parties agree. They didn't.

15 So Chris has very little leverage now. Now he's in a
16 position where the poor kid doesn't have much left, because he
17 can't control the powers that be. He's relinquished power to
18 Star Development. They're running the show. The bankruptcy
19 already moved forward. What leverage does he have? He's
20 concerned. So it's his testimony that communicates with
21 Herbert Frey. And Herbert Frey seems like a super nice guy,
22 and I could picture it. And it has the indicia of
23 reliability, it's just a fancy way of saying it seems true,
24 that the old man would say, All right, everyone was forgiven.
25 Everybody lost money on the project. Everyone in America lost

1 money on their home, just about. Real estate crash, okay,
2 Chris. All right.

3 And Chris says, I'll pay your legal fees to get this
4 done. And then you'll see in an unsigned, unfortunately,
5 Chris's attempt, see at the top, "Mutual Release and Payment
6 Agreement" made between Chris Beavor and Samantha Beavor and
7 Herbert Frey, an individual, and Herbert Frey and his trust.
8 And at the bottom is the leverage. "Chris Beavor shall pay a
9 total sum of \$23,500." All he's got spread out in the form of
10 a sad, sad thousand dollar cashier's check, and then spread
11 out over 18 checks of \$1,250. This is all the leverage he's
12 got now. And Herbert Frey in some respect has softened up and
13 said, you know, everyone's forgiven. Pay my legal feels, \$25
14 grand, forget it, call it a wash. Everybody got discharged.
15 Everybody got discharged in the bankruptcy. So go ahead.

16 The date of this matters. And by no means am I
17 saying these are signed agreements. They are evidence and the
18 jury instructions will walk you through, they are evidence
19 that tend to show you fill in the blanks, you can create the
20 picture from circumstantial evidence. There's a great -- a
21 lot of judges use this example. They say, you know, you can
22 go outside and you can see that the trees are all wet and the
23 ground is all wet and the grass is all wet and everything's
24 all -- every car's wet, everything's wet. And you can say it
25 rained. You didn't see it rain. You didn't get wet under the

1 rain. But you know it rained.

2 So these documents, unsigned, dammit, not
3 enforceable. But they are part and parcel of a picture
4 wherein you're authorized to say, I see how this went down. I
5 see what happened. And the date of this being January 2011.
6 The next page does not have signatures on it. That's just Sam
7 and Chris, January of 2011.

8 Now, as the story goes, as I told you in opening that
9 the evidence would show, and it did, that Mr. Beavor made an
10 effort to bring his down payment and the checks, which were
11 postdated a month apart, with his settlement agreement to Herb
12 Frey, who shared an office with this man. This man said, He
13 ain't signing this. I've got money in this race. I invested
14 money in this thing, after the fact, I forget the year, 2010,
15 2011. Even though the money was disbursed in 2007 and '08. I
16 invested later and I have an agreement with Herb Frey that I'm
17 going to get my money back, so no way is he signing this.

18 And Chris is like, This is an agreement between Herb
19 and I. Please give it to him, please have him sign it. No.
20 No way. And he doesn't.

21 So January 2011, that's when I told you Chris went --
22 he went to, I think he said, the Flamingo where their offices
23 were, they shared an office, two desks right together, very
24 intimate. It's hard to -- even if both were there, you have
25 to address Mr. Hefetz. That happens January of 2011. And

1 friends, for 40 years with Herbert Frey, of course Herbert
2 Frey is going to go, All right, man, I'm done with this.
3 Enough of this stress. You're killing me with this. It's
4 2011, this is disbursed in 2010. Four years old, I'm sick of
5 it. I'll sign it to you.

6 So the date of this assignment logically follows the
7 story, is July 6th, 2011. Six, seven months later, after the
8 moment where Chris had the okay and the papers and he was
9 going to deliver them and get them signed and be done with
10 this forever, because he should have been forgiven pursuant to
11 the original document, signed -- unsigned by Freys but written
12 by the Freys, in which it said in exchange for agreeing to the
13 bankruptcy and putting your dream company into bankruptcy,
14 you'll be forgiven of the \$6 million note. That didn't
15 happen. Mr. Hefetz intercepted. The second change, pay my
16 legal fees and we'll let you off the hook, didn't happen. And
17 then, yes, July 6, 2011, and assignment is made.

18 Remember, it wasn't exclusively do or die. In other
19 words, it wasn't -- there was one option. Chris either put
20 this in the bankruptcy or that -- that was it. It wasn't
21 true. You heard testimony, and I'll remind you, because it
22 contravenes, and I could have objected, misstates the
23 testimony. He -- counsel said there was no evidence
24 whatsoever that Chris had backup financing to finish the
25 project and get everybody paid. That's not true. Rob Rink

1 sat right here and he also told you that he was at a meeting
2 or two with Star Development as they said, This is the
3 direction we're going to go. Not everything came from Chris,
4 of course, he -- \$500,000, you don't think he had his ear out?
5 He knew it was going on and he checked on what was going on
6 and he found out that there was another investor. And if you
7 remember, I hope this stuck out, Rob Rink said not only did I
8 know there was another investor, but I met him and he showed
9 up at our office with a letter of intent. And if you take a
10 letter of intent from someone like that, they're bound.
11 They're the investor and they're going to provide the funds.

12 MR. IGLODY: I object. Misstates the law.

13 THE COURT: Sustained.

14 MR. SAGGESE: He produced a letter of intent, so
15 there was an option. And if Chris was given an option to
16 utilize that individually, he could have. And potentially the
17 project could have been completed and everybody could have
18 been paid. And Rob Rink wouldn't have lost \$500,000 of his
19 mom's and his sister's and everybody -- but it didn't happen.
20 Because a declaration was filed that said Rob Rink agreed with
21 the bankruptcy; he didn't. A declaration was filed that Chris
22 Beavor agreed with the bankruptcy; he didn't. And once this
23 was -- the carrot was, All right, we'll forgive you the \$6
24 mil. That never happened, either.

25 Let me touch on a couple of jury instructions and

1 then I will be finished. Because I think you know what
2 happened here and I think you're going to return the right
3 verdict, which is in favor of the defendant. And I will touch
4 on a couple of these.

5 You know, I do -- so many of these are
6 self-explanatory. And you're an intelligent jury and I have
7 full faith that you're going to read these and go, Yeah, it
8 makes total sense. Sometimes I like to interpret the
9 particular instruction as it applies to this case. But they
10 all apply to this case.

11 Instruction No. 26. It says, "A party whose promise
12 to perform is conditioned on the occurrence of one or more
13 facts, events or circumstances, is bound to perform only if
14 the facts, events, or circumstances occur." Someone who is
15 bound by their promise to perform is only bound by their
16 promise to perform, only if the facts, events, or
17 circumstances occur. What am I referring to? The promises,
18 the documents, and the assurances of the forgiveness of the \$6
19 million guaranty.

20 "However, the occurrence of one -- the occurrence of
21 one or more conditions is excused if the condition is waived
22 and there is a reliance on the waiver.

23 "2. The party asserting the condition is precluded
24 from asserting their legal rights by their own conduct." He
25 wants to say he has a lawful assignment. Hey, everyone went

1 bankrupt, everybody got forgiven. But I got this lawful
2 assignment. But if it was obtained, the -- the -- a guaranty
3 exists only because of misconduct, well, then that interferes
4 with his righteousness to that document.

5 And then No. 3, "The party asserting the condition
6 voluntarily prevented or made impossible the occurrence of the
7 condition." Well, the party asserting the condition arguably
8 prevented the releases from being signed when they were
9 handling -- Hey, or sign this. He ain't signing this, I got
10 \$2 million in this. He ain't signing that.

11 So No. 3, if you want to assert that you have a
12 righteous document, you can't be involved with the condition
13 that interfered with it being legal.

14 Now, I'm going to just say this. There's another
15 instruction in there that says something along the lines of
16 believe the witnesses -- or something like that -- based on
17 their relationships with the parties and take what they're
18 saying with the common sense understanding that whatever the
19 relationship to the parties is. I'm sure it's artfully
20 written in the instruction.

21 The point being that Herb Frey has been close friends
22 and business associates with Mr. Hefetz for almost 40 years.
23 Gary Frey is Herbert Frey's son. Wayne Krygier is employed by
24 Herbert Frey. And I'll tell you what, their testimony wasn't
25 that damaging. Even with those super tight relationships,

1 still it wasn't earth shattering, Whoa, how are we going to go
2 -- boy, that was -- we're done. That's -- that's it, we're
3 done. No, I didn't hear -- I'm taking notes on my -- eh, eh.
4 Next comment.

5 Usually there's an uphill battle in relation to the
6 relationship between the witness when they're on the same
7 side. I mean, it's so hot, one-sided. It wasn't. Because
8 they were obligated to walk the line of the truth. And when
9 you're obligated to walk the line of the truth, you can't go
10 too far off. You can't. Because then it'll all come apart.
11 And then it'll be like, Ah, go, go -- you know, we'll have a
12 gotcha moment. So they can't vary too far from the truth, but
13 they can say just enough to keep his supposed right to this \$6
14 million alive. I submit to you it is not.

15 And I'm going to ask you to go back in the jury room,
16 review some of the documents, whatever you need to be
17 comfortable in your decision, because this is where justice
18 happens, right here. This is where justice happens. This is
19 the great equalizer between any entities. It's justice. And
20 you're expected to go in the deliberation room and do justice.
21 Whatever you determine that is. Come out of there, you give
22 your verdict, and that, by law, is justice. And I'm going to
23 ask that you return a verdict in favor of the defendant,
24 Christopher Beavor, and do justice. Thank you.

25 THE COURT: Thank you. Plaintiff, rebuttal.

1 PLAINIFF'S REBUTTAL ARGUMENT

2 MR. IGLODY: Yeah. I don't know where to start, but
3 I guess I'll start with the justice statement. There's no
4 question that we're here for justice. There's no question
5 that we had the defendant sit up there and tell
6 self-contradictory stories about, Oh, I had financing, but I
7 didn't. Oh, they promised to release me from the \$6 million,
8 even though I'd signed away the right to run the project two
9 years earlier and the agreement that said I was being relieved
10 of my duties references this first amendment to the agreement
11 that the lender had procured to secure his loan to our
12 dreaming entrepreneur here, who's great at making promises but
13 not keeping them.

14 His testimony is I have this unsigned settlement
15 agreement, and you, jury, should go back to that deliberation
16 room, look at the unsigned agreement that nobody agreed to,
17 and use that language to defeat this agreement that I signed.
18 You will find no jury instruction anywhere in the packet
19 that's been given to you that says you can take an unsigned
20 agreement that everybody testified was never agreed to and
21 never signed and use that to defeat an agreement that was
22 executed, that was signed, and no matter how long it took me
23 to get him to admit it when he was on the stand, it was, in
24 fact, his signature. He did sign it.

25 He took millions of dollars from people who worked

1 hard to make that money. These are not banks that plug into
2 the federal reserve and pull credit for free courtesy of the
3 central bank. These are men that worked their lives to
4 accumulate this money. They're sympathetic to people like
5 Chris in 2007 because they themselves had dreams once,
6 somebody gave them their first loan, they took it, and they
7 made something of it. Like my client, for example, has a
8 couple of bars and clothing stores.

9 They lent them the money on certain conditions. One
10 of those conditions was a guaranty that unconditionally
11 promised, no matter what happens, I'm good for that much of
12 it.

13 He has this self-serving statement that even though
14 they had no requirement at law to even seek his consent to
15 take over the entity, they promised him the \$6 million waiver.
16 Then he says they promised me the \$6 million waiver to sign
17 off on the settlement agreement and bankruptcy. Which he
18 himself said he never signed. He said they promised me this
19 \$6 million waiver if I went along with the bankruptcy. But he
20 himself tried to torpedo it with his objection. He himself
21 went before the judge and argued, Don't wipe out \$22 million
22 of debt until I'm wiped out of my 6. And the judge quite
23 correctly said, I'm sorry, this is not your bankruptcy. This
24 is Toluca Lake's bankruptcy. I'm wiping out everybody's debt
25 but Toluca Lake. You want yours wiped out, go find your own

1 bankruptcy.

2 This constant misstatement of what the bankruptcy
3 court did is outrageous. Because what he's asked you to do is
4 take a court of competent jurisdiction, a bankruptcy court,
5 exercising its rights under the Constitution, in a bankruptcy,
6 and second-guess them by saying, Oh, no, yeah, Chris wasn't in
7 the bankruptcy, but we should go ahead and make him part of it
8 somehow. If he wants to do that, he's welcome to go back to
9 Los Angeles right now and reopen that bankruptcy and see what
10 he can get. He did his shot, he gave it his best shot, and he
11 got nothing, quite rightfully so.

12 Much ado about somehow, again and again, I had
13 financing. But, you know, the market tanked. There was no
14 way we could have finished this project. There's no way we
15 were going to make money. I'm sorry, which one of it is it?
16 Stick to one story. Speaking of walking a narrow line and not
17 walking too far away from it. Okay, I had financing to finish
18 it, no problem. I had people with LOIs ready to finish this
19 project. Oh, but there's no way we can finish the project
20 because nobody's going to make money, the project's over.
21 Which one is it?

22 It let it go to bankruptcy but I had money? If you
23 had money, put it up, finish the project. Oh, Herbert should
24 have signed the extension, he should have come out of pocket
25 for \$3 million to get the extension from the bank. Well, if

1 you had the money, why didn't you do it?

2 But you know what, the good news is -- the good news
3 is that when you go through your jury instructions, you're
4 going to see nothing in there that says we want you here now,
5 ladies and gentlemen of the jury, to judge who's more
6 responsible for the fact that Chris couldn't finish this
7 project. There's nothing in those jury instructions for you
8 to determine whether one building was 50 percent done, 60
9 percent done, 70 percent done, the China Trust was good or bad
10 or the China Trust also violated their, you know, unwritten
11 verbal promise to help Chris out. Whatever the story is.
12 There's nothing in there on that.

13 What's in there is was there an agreement. As a
14 matter of fact, it's already stipulated that there was. And
15 really, the sum total of all the other jury instructions is
16 that they honor their commitment. I read you a language, and
17 I'm not going to do it anymore. But it's clear, absolutely
18 clear, that they didn't. Because to honor the agreement he
19 would have had to come up with money.

20 And he brought up one more really important thing I
21 have to address, even though I shouldn't have to. But I will.
22 He says to you in the proposed settlement agreement, Oh yeah,
23 yeah, if -- you know, if Herbert had signed this, it would
24 have released Allen and -- and Robert. Well, guess what, you
25 don't see us suing Allen and Robert, do you? Allen and Robert

1 didn't run that project into the ground. You know who ran it
2 into the ground and refuses to accept any responsibility?

3 That man right there.

4 But I don't have to explain that to you, because as a
5 matter of law, a holder of an unconditional guaranty doesn't
6 have to justify why he elected one remedy or another. I don't
7 have to tell you why we went after the party that we think was
8 responsible for wasting millions of our dollars.

9 And one more time, the whole story is that somehow
10 Herbert was going to agree to something but never did, where
11 he was going to get \$25,000 for his, as he called it,
12 attorneys fees. You already saw from the testimony, and it's
13 in the bankruptcy court plan disclosure statement, he was
14 almost 500 deep when Chris came to him with his \$25,000. Of
15 all the statements that he -- self-contradictory statements,
16 self-serving statements that Chris makes, the idea that
17 somehow his \$25,000 was going to have any influence on a man
18 who just lost half a million dollars trying to defend himself
19 in a \$22 million claim, is, frankly, ludicrous and fails on
20 its own.

21 The fact of the matter is, project failed, Chris did
22 have a choice, Chris made his choice. The project didn't fail
23 because they couldn't sell the condominium units. The project
24 failed because the guy never finished them. He told you
25 himself he was in Mexico when he found out the bank was about

1 to close down on the project. He had a choice. He could have
2 done what anybody else who's holding onto millions and
3 millions and millions of dollars of other people's money has
4 the same choice. You work through the night, you work 24/7,
5 you burn that candle. You don't come up with excuses. You
6 finish the damn project. At least one of the buildings so we
7 could sell some units and get some cash and stop the bank from
8 foreclosing.

9 So don't let him tell you it was about, Oh, I didn't
10 have any choices. Yeah, he did. He sat on that thing for two
11 years. And he could have finished it and then we wouldn't be
12 here. And whether we sold them for a million dollars apiece
13 or half a million apiece or whatever the heck it is, the
14 Toluca Lake market, such as it is, for rooftop condominium
15 complexes with subterranean garages, at least we would have
16 had a choice. But we didn't. Because he failed. And we
17 asserted and exercised every lawful right that we had, and now
18 we're looking to enforce the last remaining one. The guaranty
19 agreement. The unconditional irrevocable guaranty agreement.

20 Ladies and gentlemen of the jury, when you go back,
21 we think that you're going to find that the only proper
22 verdict is a verdict for \$6 million in favor of the plaintiff
23 and against the defendant. Thank you.

24 THE COURT: Thank you, counsel. Clerk will now swear
25 in the officers to take charge of the jury.

1 (Officers sworn.)

2 THE COURT: Okay. Ladies and gentlemen, before we go
3 much further, I want to thank everybody who has spent the time
4 and effort. I will -- or I do have to tell you the names of
5 the two alternates. I want to thank them. They're going to
6 go -- you're going to go, the alternates, with Lea. She will
7 get your name and phone numbers so in case there's a problem
8 we can call you in to serve as a substitute juror.

9 So Juror Tyrus Bouterie and Lisa Suerdieck, I hope --
10 I'm sure I mispronounced them -- go with Lea. And the other
11 jurors will go with Chris. Chris will be -- get all the
12 exhibits and everything and bring them back with you -- or
13 bring them back to the jury deliberation room.

14 (Jury recesses at 2:37 p.m.)

15 THE COURT: We are outside the presence of the jury.
16 Counsel, leave your cell phone numbers. Do you wish to have
17 your clients come back for the verdict? Or if they're
18 available we can give them all -- you can give all the cell
19 phone numbers to Kathy and she'll contact everybody.

20 We're in recess.

21 (Court recesses at 2:37 p.m., until 4:11 p.m.)

22 (Outside the presence of the jury.)

23 THE COURT: Please be seated. I'm told we have a
24 verdict. Go get them.

25 (Pause in proceedings.)

1 THE MARSHAL: All rise for the presence of the jury.

2 (Jury reconvenes at 4:13 p.m.)

3 THE COURT: Please be seated. Will the parties
4 acknowledge the presence of the jury?

5 MR. SAGGESE: We do.

6 MR. IGLODY: We do.

7 THE COURT: Ladies and gentlemen of the jury, have
8 you reached -- have you chosen a foreperson? And if so, who
9 is the foreperson?

10 JUROR NO. 1: I am.

11 Thank you. Have at least six of the jurors come to a
12 decision on the issues presented to the jury?

13 JUROR NO. 1: Yes.

14 THE COURT: Please hand the marshal the decision.

15 The clerk will now read the verdict of the jury.

16 THE CLERK: District Court Clark County, Nevada, Case
17 No. 645353, Department 28, Yacov Hefetz, Plaintiff, vs.
18 Christopher Beavor, Defendant. Verdict form.

19 We, the jury in the above-entitled action, find for
20 the plaintiff, zero. Dated this 1 day of March, 2013.
21 Foreperson, Holly Howard.

22 Ladies and gentlemen, is this your verdict as read?

23 FEMALE SPEAKER: No.

24 THE CLERK: I have a zero for the defendants.

25 FEMALE SPEAKER: For the defendants.

1 THE CLERK: It's on the defendant line.

2 FEMALE SPEAKER: [Indiscernible] it said for the
3 defendant.

4 THE CLERK: What do you mean for the defendant?

5 THE COURT: Is there a problem?

6 MALE SPEAKER: Yes.

7 THE COURT: What's the problem?

8 MALE SPEAKER: I think the form's incorrect.

9 THE COURT: Poll the jury.

10 THE CLERK: Holly Howard, is this your verdict as
11 read?

12 FEMALE SPEAKER:

13 JUROR NO. 1: Yes.

14 THE CLERK: Kevin Schons --

15 FEMALE SPEAKER: It's not.

16 MALE SPEAKER: No, it's not.

17 FEMALE SPEAKER: It's not. That's not... There
18 should be an X on the defendant line. We find for the
19 defendant X.

20 THE MARSHAL: Go back in for five minutes?

21 THE COURT: Hang on. Okay. Hmm, I've never had
22 this. And I've been on over two years now. Ask them
23 individually if they find for the plaintiff or for the
24 defendant. Read their name individually and find for the
25 plaintiff or the defendant.

1 THE CLERK: Holy Howard, do you find for the
2 plaintiff or the defendant?

3 THE RECORDER: If you can speak up just a little bit.

4 JUROR NO. 1: The defendant.

5 THE CLERK: Kevin Schons, do you find for the
6 defendant -- or the plaintiff or the defendant?

7 JUROR NO. 2: I find for the defendant.

8 THE CLERK: Jessie Saulson, do you find for the
9 plaintiff or the defendant?

10 JUROR NO. 3: For the plaintiff.

11 THE CLERK: Tammy Christensen, do you find for the
12 plaintiff or the defendant?

13 JUROR NO. 4: Defendant.

14 THE CLERK: Victoria Soto, do you find for the
15 plaintiff or the defendant?

16 JUROR NO. 5: The defendant.

17 THE CLERK: Jerry Jones, do you find for the
18 plaintiff or the defendant?

19 JUROR NO. 6: Defendant.

20 THE CLERK: Rebecca Lopez, do you find for the
21 plaintiff or the defendant?

22 JUROR NO. 7: Defendant.

23 THE CLERK: Astrid Guzman, do you find for the
24 plaintiff or the defendant?

25 JUROR NO. 8: Defendant.

1 THE COURT: Thank you. The verdict form reflects a
2 zero instead a, I suppose, an X or a checkmark for the
3 defendant. But clearly the jury, by a majority, found for the
4 defendant.

5 The verdict will be recorded. Ladies and gentlemen,
6 I want -- I want to thank you for your service. It's been a
7 long week, and I know it's -- a lot of times it's certainly
8 inconvenient, changes in times, et cetera. We appreciate your
9 service. It's, as I said, both a privilege and a duty to
10 support the judicial system and you've done all of that. I
11 hope you will be proud of your service as jurors. It's never
12 easy in -- in reaching decisions. But you paid attention the
13 whole time and certainly carried out your service.

14 At this time, I'm going to release you. You can --
15 you're free to go. You're free to talk about the case. If
16 you don't want to talk about the case, you don't have to talk
17 about the case. You do have to go down to the third floor
18 jury services and tell them that you're finished and the case
19 is over.

20 The parties very often, the attorneys would very
21 often like to talk to you and ask you questions in order to
22 improve their presentation or basically get information and
23 feedback. If you want to talk to them you're free to do so.
24 If you don't, just tell them you don't want to.

25 It's never come to my attention that anybody's been

1 bothered, this certainly isn't a high profile trial or
2 anything. If anybody does bother you, contact my office.
3 This is Department 28. And we will make sure that it
4 immediately stops. Nobody is going to -- this is just not the
5 case where anybody's going to do that, but in that unlikely
6 event.

7 I really do, as I said, once again appreciate and
8 thank you. I would like to have you go back to the jury room
9 for one brief minute where I can personally thank you. And
10 that's it. Thank you and you're excused.

11 (Jury adjourned at 4:20 p.m.)

12 THE COURT: Okay. Thank you, counsel. We're in
13 recess.

14 (Court adjourned at 4:20 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

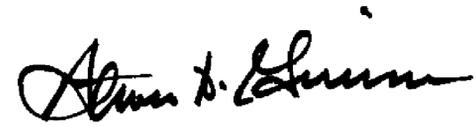
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON

Exhibit “3”



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

YACOV HEFETZ,)
)
Plaintiffs,)
vs.)
)
CHRISTOPHER BEAVOR,)
)
Defendant.)
_____)

CASE NO. A645353
DEPT NO. XXVIII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, FEBRUARY 27, 2013

APPEARANCES:

For the Plaintiff: LEE I. IGLODY, ESQ.
JEFFREY L. HULTET, ESQ.

For the Defendant: MARC A. SAGGESE, ESQ.

RECORDED BY JUDY CHAPPELL, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

I N D E X

WITNESSES FOR THE DEFENDANT:

CHRISTOPHER BEAVOR

Direct Examination By Mr. Saggese 8

Cross-Examination By Mr. Iglody 73

1 ill and she's elderly. What we did is we have a -- an Israeli
2 affidavit, which apparently we're there, they do it by, you
3 know, attorneys. But anyway, where she essentially gave it to
4 him just to make -- signed to him just in case her interests,
5 so to speak, since he manages her affairs anyway. We don't
6 need it to proceed in the claim as we have it now. But we
7 brought it with us just in case it became an issue. And
8 opposing counsel can confirm we agreed that it's not an issue
9 in terms of the right to proceed to the extent that, of
10 course, the Court and the jury finds that my client had a
11 right to proceed on the guaranty. But the issue of Alice
12 Cohen not being here, pursuant to our June stipulation of
13 2012, would not be an issue for the defense.

14 THE COURT: Okay. Is that correct?

15 MR. SAGGESE: That's correct.

16 THE COURT: All right. Anything else?

17 MR. IGLODY: No, Your Honor.

18 THE COURT: Okay. Okay. We'll have you -- I'll ask
19 you and you can -- if you're going to rest, you can put it in
20 front of the jury and then you'll go.

21 What witnesses are we expecting today, your clients?

22 MR. SAGGESE: My client, perhaps his wife, ex-wife,
23 and Rob Rink.

24 THE COURT: I'm sorry?

25 MR. SAGGESE: Rob Rink.

1 MR. IGLODY: Robert Rink, yeah.

2 THE COURT: You think we'll get those done today?
3 You're hopeful?

4 MR. SAGGESE: I would love to.

5 THE COURT: All right. Have you had a chance to talk
6 about the verdict forms and the jury instructions?

7 MR. SAGGESE: Instructions, yes. The verdict form
8 I've seen, plaintiffs and --

9 Did we submit a --

10 THE COURT: All right. Then you guys will certainly
11 have tonight to discuss that. You're going to be done with
12 witnesses certainly tomorrow, right?

13 MR. IGLODY: Once again, it's hard to predict how
14 long everything's going to take.

15 THE COURT: I understand.

16 MR. IGLODY: As of now the only rebuttal witness we
17 have left since we called Wayne out of order is a gentlemen
18 named Gary Frey, which of course will be Herbert Frey's son.
19 And we had anticipated having him come on Thursday. If for
20 some reason things go remarkably quick today, I can go out in
21 the hallway and try to see if I can get him down here today.
22 But barring that, we would expect Gary Frey as the last one as
23 our rebuttal, and that would be definitely by tomorrow
24 morning. I don't have much for him. I just want to, you
25 know, get some points in. And then after that we'd be ready

1 to proceed with the jury instruction, which, by the way,
2 probably little bit of a stressed out argument, I think. And
3 then, of course, closing and -- and deliberation.

4 THE COURT: Okay. We'll go over this evening, go
5 over agreed-to jury instructions and a verdict form or verdict
6 forms so we can go over that. Apparently the juror that's an
7 attorney has a motion at, like, 8:00, so -- and I have
8 calender, anyway. So we won't be starting -- I won't have
9 them here until 11:00. But if you guys want to get here at
10 like 10:30, maybe we can go over a few things and maybe
11 resolve it. If not, you know, we'll deal with it.

12 MR. IGLODY: And along those lines, because we have
13 been exchanging e-mails, and obviously we disagree on some
14 things. But in my proposed jury -- jury instructions, I have
15 just jury instruction blank, blank, blank, blank, and then I
16 have for my verdict form just a caption with a verdict, you
17 know, plaintiff, defendant, special verdict, and whatnot. Is
18 that how the Court wants it, on numbered ones, so you can
19 switch in and out or how do you want it done?

20 THE COURT: Are you talking about cites or...

21 MR. IGLODY: Well, no. I have citations for every
22 jury instruction. But what I'm saying is in the past the way
23 judges have done it is they just pick them up and mix them up
24 and then we number them afterwards so that there's no
25 confusion.

1 THE COURT: Well, we'll -- obviously, there might be
2 a disagreement as to the order, so as far as initially,
3 certainly no numbers. But at -- when you -- when we get it
4 all resolved, I don't care, I can fill in the numbers or you
5 can do it on the computer. But, you know, once we get it
6 resolved initially, I guess it certainly doesn't matter,
7 because there's going to be disagreement on the order. Or
8 there might be. So that's one thing you guys can talk about
9 this afternoon or this evening.

10 MR. IGLODY: And should we come prepared with extra
11 clean sets or do you just want the marked ones with the
12 citations for now?

13 THE COURT: Well, I guess it depends how far along we
14 get. You're mostly proposing, at least I would certainly hope
15 the pattern instructions.

16 MR. IGLODY: Mine are almost exclusively pattern
17 instruction.

18 THE COURT: If there's any outside those, you know,
19 we'll have to certainly discuss. But, obviously, my
20 preference is to use the pattern instructions. But, you know,
21 I wouldn't worry about it. We can get them, you know, get a
22 clean set, once we get it all resolved.

23 Okay.

24 MR. IGLODY: Thank you.

25 THE COURT: Okay.

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(Pause in proceedings.)

THE MARSHAL: All rise for the presence of the jury.

(Jury reconvenes at 10:36 a.m.)

THE COURT: Please be seated.

(Jury roll call.)

THE COURT: Good morning, ladies and gentlemen. For those of you who were here early, it was sort of, I guess, some excitement. Seems like fire alarms and things go off a lot here. But that's a whole other story.

We're going to be starting tomorrow at 11:00 to accommodate some scheduling stuff, plus I have morning calender, anyway. And I'll remind you again at the end of the day, so starting at 11:00.

Okay. Plaintiff.

MR. IGLODY: We rest, Your Honor.

THE COURT: Thank you. Defense.

MR. SAGGESE: The defense would like to call Christopher Beavor.

CHRISTOPHER BEAVOR, DEFENDANT'S WITNESS, SWORN

THE CLERK: Please be seated. Please state your name and spell it for the record.

THE WITNESS: Christopher Lee Beavor,
C-H-R-I-S-T-O-P-H-E-R L-E-E B-E-A-V-O-R.

DIRECT EXAMINATION

BY MR. SAGGESE:

1 Q Good morning, Mr. Beavor.

2 A Good morning.

3 Q Please start by describing to the jury your
4 relationship to the parties, starting with Samantha Beavor.

5 A Samantha Beavor is currently my ex-wife, at the
6 time, my wife.

7 Q At the time specifically, at the time of --

8 A The development, the guaranties, and the
9 documents in question.

10 Q Okay. And Mr. Hefetz, plaintiff.

11 A Mr. Hefetz was a associate, a friend, and a
12 lender in -- in the business dealings.

13 Q How long have you known Mr. Hefetz?

14 A From today.

15 Q In your entire life?

16 A Since approximately the end of 2005. So eight
17 -- eight years.

18 Q Okay. And as you were about to say, how long
19 had you known him up until the Toluca Lake project, till you
20 two came together on that?

21 A Approximately two years.

22 Q And you understand clearly why we're here,
23 correct?

24 A Yes.

25 Q And you understand that Mr. Hefetz is suing you

1 on a particular note?

2 A That's correct. I do.

3 Q And you understand you have counterclaims
4 against Mr. Hefetz?

5 A I do.

6 Q Okay. Tell us about how you two came together,
7 specifically how you and plaintiff came together on the Toluca
8 Lake project?

9 A Well, I had been doing business with Mr. Frey as
10 a lender and a partner, and in terms of a partnership, I
11 was --

12 Q And Mr. Frey is -- what's his first name?

13 A Herbert Frey.

14 Q Now, have we heard from that particular Frey
15 yet?

16 A Yes. He spoke two days ago.

17 Q Okay. Herbert Frey.

18 A Senior.

19 Q Herbert Frey --

20 A There's Gary --

21 Q -- Senior?

22 A Right.

23 Q And you had done previous business with Frey
24 Senior?

25 A Yes.

1 Q Okay. So go ahead, in a narrative form, you...

2 A Well, at the time when we were doing business, I
3 was approximately 31, 32 years of age. I'd done -- they'd all
4 mentioned prior. I had little to no experience, like Wayne
5 had mentioned yesterday, in construction or development at all
6 with -- with multi-family units. I had some great ideas with
7 some rooftop pool, I was familiar with real estate sales. And
8 Mr. Gilmore, who is a representative agent of the Freys,
9 Yacov, Star Development, was also a long-term developer here
10 that had passed away since this event.

11 Q And that's the Mr. Gilmore that we've heard that
12 was involved with the project but is now deceased, correct?

13 A Correct. Correct.

14 Q Okay.

15 A He's a long-standing member of our community
16 here, did a lot of development projects for 30-some-odd years
17 with Yacov, Mr. Frey, and I believe with possibly Wayne
18 Krygier. And they came in and said, We want to be your
19 partners, we like your ideas. We like where you're going. We
20 want to be able to lend money to you for the next 20 to 30
21 years. We want to get behind you and be -- be your partner
22 and we'll support you in all of your ideas or development
23 deals that you bring to the table that we support.

24 And in general I was told that, you know, we do
25 business on handshakes, and if we like you and trust you, we

1 wouldn't be doing -- we wouldn't be doing any business with
2 you if we didn't like you and trust you, period. And that any
3 and all documents, or in the event of somebody were to pass
4 away, or somebody were -- was to completely steal something or
5 completely do some fraudulent acts and, you know, run across
6 these. But other than that... And I think that's why I
7 believe personally in the testimony you heard that a lot of
8 them didn't know what was even in these documents giving out
9 millions of dollars.

10 Q So, we -- we --

11 MR. IGLODY: Can I just interpose an objection and a
12 motion to strike. We're talking about hearsay testimony and
13 about a decedent.

14 THE COURT: As to the part regarding the person who's
15 no longer with us, I'm striking his testimony. And this is
16 direct, so a narrative isn't appropriate.

17 MR. SAGGESE: Okay. Could we approach for a second?

18 THE COURT: Sure.

19 (Off-record bench conference.)

20 BY MR. SAGGESE:

21 Q All right. Mr. Beavor, you had -- so you had
22 met and formed a relationship with Mr. Frey, Herbert Frey?

23 A Through Steve Gilmore.

24 Q Through Steve Gilmore. And through that
25 relationship you had -- well, you tell me, were you introduced

1 to Mr. Hefetz through Herbert Frey or did you meet him a
2 different way?

3 A I first met Yacov for a hard money loan in a
4 small cafe in Green Valley.

5 Q Okay. And how did you come to know who he was?

6 A Through my general contractor, Allen Floyd.

7 Q So you were introduced to Mr. Hefetz through
8 Allen Floyd. Do you remember the approximate year when you
9 first met with him in Green Valley?

10 A 2006, 2007.

11 Q Okay.

12 A Right at the time.

13 Q Now, let's get to --

14 A The beginning of 2006.

15 Q -- Toluca Lake, because there are many parties
16 involved in Toluca Lake, but specifically this case is about
17 you and Mr. Hefetz. So I want to tailor our
18 question-and-answer session to your relationship with Mr.
19 Hefetz and undertakings with Mr. Hefetz.

20 How did you first interact with Mr. Hefetz solely on
21 the basis of Toluca Lake? How did you come to interact with
22 him?

23 A Well, Steve Gilmore was -- was the
24 representative that facilitated and represented Mr. Frey as
25 the lender and oversaw. Like I said, they were mentoring me

1 and they had a full say-so on almost every e-mail and
2 everything that I did. I never touched the money, they
3 approved every loan, every document.

4 Q The question is how did you come to meet Mr.
5 Hefetz?

6 A Eventually I'd come to find out at the time
7 prior to them filing bankruptcy that -- that he, in fact, had
8 some involvement via through Mr. Frey. And --

9 Q So it's --

10 A -- that they were going to come together and had
11 a plan and they wanted me to follow their plan.

12 Q So, your -- your first interaction with Mr.
13 Hefetz was through Star Development in regard to Toluca Lake?

14 A For this particular project, yes.

15 Q And what did you come to know about Star
16 Development? I mean, did you -- did you know who it was? Did
17 you know it was Hefetz or did you --

18 A At the -- at the day that it came about to me I
19 was told that it was Mr. Frey's company, that they were
20 setting up an entity to beat up the banks, that they were
21 creating a separate entity to play it good cop/bad cop.

22 Q By whom were you told this?

23 A By Steve Gilmore, Gary Frey, and Mr. Frey.

24 Q Okay. And you've seen documents and the jury
25 has seen some documents in relation to a substitution of

1 manager on Toluca Lake; are you familiar with those documents?

2 A Yes.

3 Q Okay. Now, for a little foundation, were you
4 individually or did you have a company that was the manager of
5 Toluca Lake?

6 A Yes. C&S Holdings was the manager of Toluca
7 Lake, which was -- I was a member and my wife at the time,
8 Samantha, was a member.

9 Q So you two had a company called C&S Holdings?

10 A That's correct.

11 Q The C is...

12 A Chris and the S is Samantha.

13 Q Okay. And that company was the manager of
14 Toluca Lake?

15 A That is correct.

16 Q And what percentage ownership of the Toluca Lake
17 project did you have, you know, in writing, in paper -- on
18 paper?

19 A It was approximately 67 and a half percent.

20 Q Okay. And that was 67 percent of the project
21 was owned by C&S Holdings?

22 A That's correct.

23 Q Which is you and Samantha Beavor?

24 A That's correct.

25 Q Okay. Now, back to the introduction of Star

1 Development into the project.

2 A Now, on the ownership, I just wanted to comment,
3 because you said 67 percent ownership. But the way all the
4 agreements were written, that -- that -- it specifically said
5 on the agreements that anything and -- basically that I did
6 was controlled and I had to get approval by the Freys. And
7 that's why Gilmore was put in place in the loan agreement
8 while he was paid \$5,000 a month, because, again, it was all
9 of their money and I didn't know where their money was coming
10 from. But they were making all of those decisions and telling
11 me, basically, what to do. And if you thoroughly read all of
12 those documents, anything and anything that I was to do, I
13 needed to get approval for them.

14 Q Well, let me ask you this. In relation to that
15 document I referenced where you were removed or you resigned
16 as the manager of C&S Holdings, or as the manager of Toluca
17 Lake, and -- and was replaced the same day by Star
18 Development, if you know, why were you prohibited from
19 yourself and putting the project into bankruptcy? Why did you
20 have to be removed so that Star Development can put it into
21 Chapter 11 bankruptcy?

22 A Well, it was a -- it was a unique situation in
23 2007. It was right prior to the economic collapse. And when
24 you develop you purchase land first, and then once you own the
25 land you create a development project. You create plans,

1 ingress, egress, parking, he designed the plan for the lot in
2 Los Angeles. And so we had to purchase the land, do the
3 designs, and then you take the plans and you bring it to a
4 bank for a construction loan, which is the \$22 million
5 construction loan that we're talking about with China Trust
6 Bank.

7 So at the time, Mr. Frey had given us -- give Toluca
8 Lake Vintage a 6 million -- a 4.4 million approximate loan
9 amount to acquire the land. That money was paid into escrow
10 to close on the land. And then a part of that money was --
11 was given to engineering and architectural firms to complete
12 the design so we could take and collateralize that land. So,
13 in the beginning, Mr. Frey had a first trust deed prior to
14 China Trust. He was in first position on the land, owned the
15 land. And then --

16 Q Even though he was first position on the land,
17 owned the land, you were still manager of the project, in
18 those --

19 A I was still the manager of the project under a
20 very strict loan agreements, guidance. Meaning that anything
21 that I did I had to get approval in writing.

22 Q So let me ask you -- I'll re-ask you the
23 question. You gave me a tailored answer and that is, I know
24 you have a lot to say. But a tailored answer.

25 Were you able to put the project into Chapter 11

1 bankruptcy --

2 A Could I have done this? Yes.

3 Q -- if you wanted? Okay. So why -- why did Star
4 Development force you to resign and do it themselves?

5 A Well, in -- in the specific meeting with Mr.
6 Frey, Gary Frey, Steve Gilmore --

7 Q And without saying what specific people said
8 specifically, you can tell us what was the outcome of that
9 meeting or what was determined at that meeting. But to avoid
10 hearsay, I -- I don't want you to say, Steve Gilmore said,
11 this person said.

12 A Well, I was just saying at the meeting and in
13 the meeting where everyone's conversing and a lot of people
14 are talking on multiple points and reasoning.

15 Q So this meeting takes place, and as a result of
16 the meeting you understand what?

17 A Well, what had happened was I had left the
18 country on a vacation to Mexico, is how this receivership,
19 China Trust Bank, had happened. But -- and -- and I -- to go
20 into this meeting of why it happened, if I could explain of
21 how we got to that point with China Trust Bank, is -- if
22 that's okay to help me with that answer.

23 Q Well, I want you to just stay on course, because
24 it could take a very long time. So what we want to do is --

25 THE COURT: This works best if he asks the

1 question --

2 THE WITNESS: I understand.

3 THE COURT: -- and you answer the question. So
4 answer his questions and don't --

5 Thank you.

6 THE WITNESS: Well, I remember everything and
7 [indiscernible].

8 BY MR. SAGGESE:

9 Q Right. And again, we understand that you have a
10 lot to -- to say. But what we would prefer is just -- doesn't
11 have to be a short answer, but answer the question
12 specifically. And -- and that is, as a result of that meeting
13 you referenced, what -- what did you come to know? What was
14 determined by that meeting?

15 A That that -- that they were all experienced,
16 that they were there to mentor me, that we were all
17 partnership, that it was all their money and they knew I
18 didn't have any millions of dollars. And that for them to
19 make a decision and for them -- that they'd been doing this
20 for over 40 years, developing a big percentage of Las Vegas
21 and multiple projects like you heard from Wayne, from Canada
22 to L.A. to Vegas, for decades. That they've been through
23 economic collapses before and that they knew how to beat up
24 the bank, and that we were all going to stick together. And
25 that the bank was doing wrong. And that they know exactly

1 what to do and how to do it, and that they were going to
2 appoint legal counsel for me and they were going to appoint
3 legal counsel for the company and they were going to pay for
4 legal counsel for themselves. And --

5 Q Now, we -- so we're all on the same page, when
6 you say they, as a basis of understanding, they would
7 include --

8 A Mr. Frey, Gary Frey, his son, probably a trustee
9 of his trust, Frey Family Trust.

10 Q And Gary Frey, was he an owner or managing
11 member of Star Development, Gary Frey?

12 A Gary Frey -- and when this was happening and
13 they formed it --

14 Q Yes or no.

15 A -- specifically just for this action or this
16 beating up the bank strategy to get their money and make
17 money, that I didn't go on to -- to secretary of state, I was
18 going off their word. So at that meeting, for me to say who
19 -- did I know who the owners or members or managers were?
20 They were just saying, Look, we're Star Development. So, that
21 meaning Gary Frey and Herbert Frey, I believed at that time.

22 Q Okay. Have you come to know who is, in fact,
23 owners and managing members of Star Development?

24 A Yeah. I follow it now. Depending on where our
25 case goes, at some points it's Yacov, and if the case, I

1 notice that he comes off and puts his son, and so I -- yeah,
2 I've been following it over the last few years as they add and
3 take off.

4 Q So at a meeting, do you have an approximate date
5 of that meeting wherein a strategy was discussed in relation
6 to --

7 A It would have been approximately April-ish of
8 2008.

9 Q And do you remember the approximate date of the
10 promissory note --

11 A 2000.

12 Q -- that you had signed?

13 A I believe it was in 2007.

14 Q Yeah. If I -- if I represented to you it was
15 March of 2007, does that ring a bell?

16 A Yes.

17 Q So about one year later, discussions are being
18 had by essentially the individuals who put up the money. Is
19 that accurate? Discussions are being had in relation to the
20 future of --

21 A Well, I had --

22 Q -- hold on.

23 A -- counsel --

24 Q Hold on. For the future of Toluca Lake,
25 discussions are being had in relation to the future of Toluca

1 Lake by the individuals who put up the money for the project?

2 A That is correct.

3 Q And as a result of those meetings, was a
4 decision made to remove you as manager?

5 A Yes. I -- I had counsel at the time, Ballard
6 Spahr, who represented the company, and not me as an
7 individual, but Toluca Lake. And there was a receivership
8 motion put into place, because Mr. Frey -- when we -- when all
9 the original agreements were put into place, the loan with
10 China Trust Bank was not a part of that loan agreement. And
11 all of the agreements that we -- that were put into place,
12 including the guaranty, the loan agreement, the deed and the
13 note, none of it took into account that China Trust Bank was
14 -- or Mr. Frey was also going to be the borrower on the main
15 loan. And in that main loan, and with the loan with Mr. Frey,
16 it said if we defaulted or did anything on the first loan,
17 that it automatically triggered my guaranty, my unlimited
18 guaranty, now that I've come to know it later.

19 Q So let's get more specific on that. Because we
20 can't speak in generalities so the jury can understand. When
21 you say the main loan, you're referring to a \$22 million China
22 Trust loan?

23 A Yes.

24 Q That's the main loan?

25 A That's correct. Mr. Frey became a -- as a

1 borrower and a guarantor on that loan, and then he -- part of
2 the strategy was we weren't behind in schedule. We were doing
3 a complex roof on a fault line in Los Angeles with a rooftop
4 pool. And we had pre-agreed agreements with China Trust Bank
5 for extensions. But in that extension you had to sign off on
6 the extension requesting it. It's already there, we're not
7 begging, we don't need it. It was already agreed into a
8 300-plus page loan agreement.

9 Then what had happened was, is when the market
10 started collapsing and the banking was starting to collapse
11 all over, from Lehman Brothers, banks were going under, you
12 know, it was in the news in L.A., IndyMac was going under,
13 China Trust Bank, which is really Bank of Taiwan for political
14 reasons for them, but they were starting to freeze up, they
15 had no capital. And so the Freys that are very complex and
16 been through the '87 -- been through multiple collapses in
17 historical real estate calender, they said this is our --

18 MR. IGLODY: I think we're going to a little bit in a
19 narrative, plus a little bit of an expert testimony.

20 MR. SAGGESE: If you have an objection, you can lodge
21 an objection.

22 MR. IGLODY: Objection.

23 MR. SAGGESE: But a speaking objection, please.

24 MR. IGLODY: Objection.

25 THE WITNESS: So --

1 MR. SAGGESE: There's an objection.

2 THE WITNESS: Yeah, I'm sorry.

3 MR. SAGGESE: Stop.

4 THE COURT: Hang on. I'm -- joking. I'm going to
5 sustain the objection as to narrative. Again, just -- it'll
6 go really a lot faster, let him ask the question, answer the
7 question --

8 THE WITNESS: I'm sorry.

9 THE COURT: -- I'm sure he'll get to a follow-up.
10 It'll go much quicker.

11 BY MR. SAGGESE:

12 Q Yeah. So stay with me. I understand.

13 A I know, I'm just trying to explain in a nutshell
14 in 30 minutes --

15 Q Too big of a picture for this.

16 A Okay.

17 Q It's -- it's just -- let's -- stay with me. And
18 certainly I'm not being rude if I interrupt you and I'm not
19 being disagreeable if I stop you. But stick with me.

20 Based on meetings and the decisions of the
21 individuals, the Freys and Star Development that provided some
22 funding for the project, a determination was made to file
23 bankruptcy, correct?

24 A A determination from -- from them. They removed
25 me and they said that -- that we're going to work in your best

1 interests as a fiduciary agent for the whole project and that
2 we're not only going to recover our money that is owed to us,
3 we're -- that we're going to profit and you're going to get
4 paid, Chris, the money that is owed to you and profit.

5 Q Okay. So you were put in a position where, and
6 correct me if I'm wrong, but you were put in a position where
7 you believed, as they had stated to you, Star -- Star
8 Development, that if the bankruptcy Chapter 11 went forward,
9 everyone would be forgiven of their personal guaranties; was
10 that your understanding?

11 A Absolutely. And they appointed their own legal
12 counsel. They -- they asked me to relinquish all of my legal
13 counsel and representation.

14 Q Okay. So let -- let me -- let me walk you
15 through that. So you referenced Ballard Spahr before. You
16 had your own lawyer, or the project had its own lawyer,
17 correct?

18 A Yeah. Yes. I feel bad --

19 Q Okay. So you had -- you had your own lawyer or
20 the project had its own lawyer. Did you fire or let go or
21 stop having --

22 A Against their advice, they thought I was crazy.
23 They did tell me --

24 Q Not what they told you. I'm just asking you a
25 specific --

1 A Yes.

2 Q -- tailored question. Did you let your attorney
3 go?

4 A Yes.

5 Q And did you let your attorney go upon advice of
6 -- of Star Development, Gary Frey, and the individuals
7 behind --

8 A Yes. Based on our agreement.

9 Q -- the money matter, which would be --

10 A Our agreement.

11 Q -- Herbert Frey, Gary Frey.

12 A Yes.

13 Q And you say based on your agreement. Give me a
14 summary of that agreement.

15 A A summary of that agreement was Chris, we know
16 what we're doing, we're asking you to relinquish counsel.

17 Q Without putting it in terms of someone
18 speaking --

19 A Okay.

20 Q -- what was your --

21 A The agreement was that -- that --

22 Q Just let me ask the questions. Please.

23 A Okay. Go ahead.

24 Q What was your understanding of the agreement
25 between the individuals who had the money and the loan with

1 China Trust Bank and you about bankruptcy and moving forward,
2 from bankruptcy forward? What was your understanding of the
3 agreement? Not -- not what did they tell you.

4 A The understanding of the agreement was -- was
5 they were going to provide legal counsel for me, that they
6 were going to --

7 Q Did they?

8 A Yes.

9 Q Okay.

10 A That --

11 Q Do you remember the lawyer's name?

12 A Haberbusch [phonetic].

13 Q Do you remember his first name?

14 A I -- I never met him other than in court when I
15 fired him in front of the judge for fraud, or lying.

16 Q Okay. So Haberbusch was supposedly an attorney
17 handling your best interests; at least that's what you
18 believed?

19 A Paid by them, retained by them, I never paid him
20 one penny. So a lot of lawyers don't work for free. But
21 that's correct.

22 Q So you were under the impression that if you
23 followed Star Development's lead in filing for bankruptcy and
24 putting the project into bankruptcy, that you would have an
25 attorney that represented you and was paid for?

1 A Yes.

2 Q And that this attorney would be looking out for
3 your best interests?

4 A Including Star Development working, looking out
5 for my best interests.

6 Q Okay. And -- and you believe that because what,
7 because Star Development was managing Toluca Lake--

8 A Well, they were the manager of Toluca Lake and
9 they kept me on as a member for -- for actually, I believe,
10 for tax purposes, because if the debt went bad, they would put
11 -- if they took over the membership of Toluca Lake and they
12 wrote off their bad debt and it would flow back to them, they
13 wouldn't get the tax write off. So they kept me in as a
14 member, since I didn't have any money or losses, so they could
15 write off the debt that would flow into me. So what they --

16 Q Well, let me ask -- let me ask you this, more
17 specifically. You believed that you were essentially part of
18 the plan of Star Development and Herbert Frey, who funded the
19 -- the project. Is that -- is that accurate?

20 A That's correct.

21 Q Their plan. In other words, and you understood
22 their plan to be that they would file a Chapter 11 bankruptcy.
23 And as we've heard in open court, everyone would be forgiven
24 of their personal guaranties?

25 A Absolutely.

1 Q I -- I believe we heard it from two witnesses, I
2 believe Hefetz -- Mr. Hefetz said everyone would be forgiven
3 of their personal guaranties, and I believe Wayne Krygier, if
4 you recall, stated the goal was file bankruptcy and everybody
5 would be relieved from their personal guaranties. You
6 believed that to be true?

7 A Absolutely.

8 Q And you thought you were part of everyone?

9 A Well, they -- well, they had a fiduciary
10 responsibility, I believe, in business ethics. They were
11 managing Toluca Lake, and as a manager of a company they're
12 supposed to work in the best interests of the owners. So if I
13 was still 67 percent --

14 MR. IGLODY: Objection, Your Honor. State -- and
15 motion to strike. He's stating some kind of legal conclusion
16 here. Thank you.

17 THE COURT: I'm going to sustain the objection.
18 Again, he's going to ask the questions. Direct your answers
19 to the questions.

20 THE WITNESS: Okay.

21 THE COURT: You don't need to give a narrative.

22 THE WITNESS: Okay.

23 THE COURT: Please.

24 BY MR. SAGGESE:

25 Q Maybe tomorrow no coffee.

1 A All right. Okay. Sorry.

2 Q I understand you're a little excited. But for
3 purposes of flow, like the judge said, I'll ask you a
4 question, you answer it, we'll move along.

5 Ultimately, did you come to realize that the plan you
6 thought you were part of, that, all right, we'll let this
7 project go into bankruptcy, you're 67 percent owner, we'll let
8 it go into bankruptcy, everyone's forgiven of their personal
9 guaranties. Were you -- did you come to find out that you
10 weren't part of that plan?

11 A Yes. By chance. By luck.

12 Q Okay. Tell us about that. How did -- and, you
13 know, let's keep it --

14 A Keep it narrative and answer the questions.

15 Q How did you discover that you were not going to
16 be forgiven of your personal guaranty, representations being
17 everyone is going to be forgiven of their personal guaranties?
18 Briefly, how did you find out?

19 A How did I find out? We were right towards the
20 end of settling with China Trust Bank, settling the
21 bankruptcy, everyone was going to walk away from the table,
22 the bank, the Freys, everyone was supposed to walk away happy,
23 including the community that we were developing the project.

24 Q Okay.

25 A And I start reading the final pleadings myself

1 and motions. And I read a motion that was filed on a February
2 date and I was reading a court date where they were going to
3 approve this motion. And we were drafting up paperwork, legal
4 paperwork, to relinquish all the -- the guaranties, the notes
5 against my house that I lived in. And I noticed on a piece of
6 paperwork I believe dated February 13th from Victor Saan
7 [phonetic] on a legal declaration to federal court, it
8 stated --

9 Q Now, for -- for everyone's understanding, who's
10 Victor Saan?

11 A He is the bankruptcy attorney hired by Mr. Frey
12 to represent Toluca Lake, which I was -- was an owner of
13 Toluca Lake, to represent Toluca Lake.

14 Q Now, he's -- he's different than, obviously,
15 David Haberbush or attorney Haberbush that you referenced
16 earlier, right?

17 A That's correct. He represents Toluca Lake,
18 which I was an owner of --

19 Q When you say he, who he?

20 A Victor Saan.

21 Q Represent Toluca Lake?

22 A Toluca Lake in the bankruptcy proceedings.

23 Q And Haberbush represents?

24 A Haberbush was supposed to represent Christopher
25 Beavor, Samantha as individuals with our guaranties against

1 the bank and throughout the project.

2 Q Do you know if Haberbush worked in conjunction
3 with Victor Saan?

4 A Victor Saan, Haberbush, and Mark Fields that
5 represented personally Mr. Frey all worked together for 25
6 years at a large firm in L.A.

7 Q Okay.

8 A I believe it's on the statement.

9 Q So you discover --

10 THE COURT: Counsel, we need to take a short break.
11 Sometimes my staff needs to take a break.

12 So we're going to take a 10-minute recess. During
13 this recess you're admonished not to talk or converse amongst
14 yourselves or with anyone else on any subject connected with
15 this trial or read, watch, or listen to any report of or
16 commentary on the trial or any person connected with this
17 trial by any medium of information including without
18 limitation newspapers, television, radio, or Internet, or form
19 or express any opinion on any subject connected with the trial
20 until the case is finally submitted to you.

21 We'll take a short recess.

22 (Jury recesses at 11:10 a.m.)

23 THE COURT: Cathy has to go and we won't have a
24 substitute. And so we're coming back -- we'll come back at
25 1:15. And Chris will -- because Chris will let the jury go

1 and we'll come at 1:15.

2 (Court recesses at 11:25 a.m., until 2:56 p.m.)

3 (Outside the presence of the jury.)

4 MR. IGLODY: A partial settlement, I guess.

5 MR. SAGGESE: One -- one party settled. Samantha
6 Beavor has settled out.

7 THE COURT: Okay.

8 MR. SAGGESE: Doesn't mean much for you or I as far
9 as the trial moving forward.

10 THE COURT: Did you work on the other, or?

11 MR. IGLODY: Yes. We gave it a shot.

12 THE COURT: Okay. That's all I can ask. Okay. So
13 other than that, basically we continue. Right?

14 MR. IGLODY: Well, here's what we had envisioned,
15 depending on what the Court would like to do. We'd envisioned
16 putting our settlement on the record.

17 THE COURT: Okay.

18 MR. IGLODY: And then at that point excusing Samantha
19 Beavor. And then depending on if the Court will indulge it,
20 maybe getting some sort of clarification to the jury along the
21 lines of there's a party not here pursuant to confidential
22 [indiscernible], don't read into -- read any -- don't give it
23 any weight, don't read anything into it, and let's proceed
24 with Mr. Beavor. And then he takes the stand. In other
25 words, don't have them looking at the empty chair going, Well,

1 what happened? Because that might tie them up.

2 Other than that, we -- that's it.

3 THE COURT: I don't think they -- well, okay. All
4 right. Let's put the settlement on the record and we'll --
5 I'll think about what we need to do. I don't think they're
6 going to care that much. The trial's going to keep going and
7 the fact that there's one less party, they may or may not even
8 notice.

9 But, okay, what are the terms of the settlement?

10 MR. IGLODY: The terms of the settlement --

11 THE COURT: Or are you not disclosing them? As long
12 as you've agreed to dismiss her, what do you want to put on
13 the record?

14 MR. IGLODY: Yeah. We're just putting on the record,
15 just to put on the record, obviously not for the jury, the
16 terms of the settlement are that Yacov Hefetz is settling with
17 defendant Samantha Beavor for complete and full release
18 between Samantha Beavor and Yacov Hefetz. Obviously, we have
19 claims and [indiscernible] pending, so it would be a mutual
20 release --

21 THE COURT: Mutual releases.

22 MR. IGLODY: The client agrees to release by April
23 15, assuming all her paperwork's executed by then, the deed of
24 trust against the condominium that she resides in at Domnus
25 Lane, D-O-M-N-U-S, with a 15-day extension just in case with

1 title, you never know.

2 The condition of the settlement, the condition of the
3 release, and the condition of them going separate ways is that
4 Samantha agree that she will not aid, abet, or participate in
5 any attempt to take, move, transfer, hide, shelter, any assets
6 of her ex-husband Christopher Beavor in any way, shape, or
7 form, and we agreed to generally go by the uniform fraudulent
8 transfer act, definitions as it pertains to assets. And the
9 agreement has the only exception of, obviously, there's no
10 child support at the moment. They do have one child together.
11 Obviously, if a court of competent jurisdiction orders child
12 support, that would not fall under the purview of what we're
13 contemplating in this agreement. That is a condition.

14 If the condition is violated, in other words, if
15 settlement agreement is breached, we agreed upon mutually to
16 have a liquidated damages clause provision. The liquidated
17 damages clause would be \$1 million, which obviously is a
18 reduction of the \$6 million judgment that's currently being
19 pursued by the plaintiff against the defendant. And what we
20 were hoping for was first to have everybody consent to it on
21 the record so that we're clear that everybody's consented,
22 including Mr. Beavor, Christopher Beavor, since he's currently
23 a codefendant with her and represented by same counsel.

24 And then we were hoping maybe the Court would indulge
25 a status check just to make sure we're getting all the

1 paperwork done.

2 THE COURT: Is that your understanding of the
3 agreement?

4 MR. SAGGESE: That is, Your Honor. Other than having
5 a -- the other codefendant have to agree, I don't think that's
6 necessary. But, yeah, that sounds essentially correct.

7 And just to expand slightly, a liquidated damages
8 clause is in effect if -- and this is pursuant to our
9 discussion -- you know, it becomes known that Mr. and Mrs.
10 Beavor are moving assets of any significant value and to avoid
11 Mr. Hefetz. I think we're all -- we're all in agreement with
12 that and understand that their marriage is over, their
13 relationship is over, they don't have assets in common. And
14 the likelihood of that is slim. But we agreed to that
15 liquidated damages clause, because should by some fortune Mr.
16 Beavor come upon a lot of money, and instead of having to give
17 it to Mr. Hefetz if he should lose this case, he signs it over
18 to his wife, that would be a violation of the agreement.

19 THE COURT: Okay. Mr. Hefetz, are you agreeable to
20 that?

21 THE PLAINTIFF: Yes, sir. I'm sorry.

22 THE COURT: Thank you.

23 THE PLAINTIFF: I would like to make her life easy
24 and get out of their responsibility.

25 THE COURT: Okay. And Samantha Beavor, am I

1 pronouncing it right, are you agreeable to that?

2 MS. BEAVOR: Absolutely.

3 THE COURT: And since there's certainly no time to do
4 a good faith settlement, and they are separate, Mr.
5 Christopher Beavor, are you agreeable to that?

6 MR. BEAVOR: I'm agreeable from what I heard, yes.

7 THE COURT: Okay. Then we have a settlement for
8 Samantha Beavor and -- or Beavor. And you're free to go.

9 MR. IGLODY: Could we set -- set a status check just
10 to confirm we have a stip in order, settlement paperwork,
11 release of deed of trust, things like that?

12 THE COURT: That's fine. How long do you think?

13 MR. IGLODY: Mark, 30 days, just to make sure?

14 MR. SAGGESE: 30 days will be enough.

15 THE COURT: Make it 45 days.

16 MR. IGLODY: 45, okay.

17 THE COURT: I've got a -- let's see now, today's the
18 27th.

19 THE CLERK: April 16th, 9:00 a.m.

20 MR. IGLODY: April 16th, 9:00 a.m.?

21 THE CLERK: Yes.

22 MR. IGLODY: Okay.

23 THE COURT: Okay. Thanks. Okay. So, as far --
24 that's fine. As far as telling the jury -- I don't see any

25 Reason to say she's been excused. But if you want --

1 I --

2 MR. IGLODY: The only concern, obviously, is, you
3 know, they read anything into it saying, Oh, you see, they
4 never had anything to begin with or anything goofy like that.
5 That's --

6 THE COURT: That's why I'm saying that just she's
7 excused and she's not here.

8 MR. IGLODY: Maybe an advisement that they don't read
9 anything into it or give it any weight or something like that.
10 That's the only reason I'm concerned.

11 THE COURT: I don't have any problem with that.

12 MR. SAGGESE: He can say exactly that. Don't read
13 anything into it.

14 THE COURT: Okay. I have to sign a warrant, so have
15 a seat and -- and maybe you can talk some more.

16 MR. SAGGESE: You never know.

17 THE COURT: It won't hurt.

18 (Court recesses at 3:04 p.m., until 3:35 p.m.)

19 (Outside the presence of the jury.)

20 THE COURT: So, be seated. Is that a no-go?
21 Anything we need to deal with outside the presence?

22 MR. SAGGESE: Nothing from the defendant, Your Honor.

23 MR. IGLODY: No, Your Honor. Thank you.

24 THE COURT: Okay. Go get them.

25 MR. SAGGESE: So, 3:30 to 4:45 today?

1 THE COURT: Pretty much. Who's the next witness?

2 MR. SAGGESE: We were already in --

3 MR. IGLODY: We're continuing.

4 THE MARSHAL: All rise for the presence of the jury.

5 (Jury reconvenes at 3:36 p.m.)

6 THE COURT: Please be seated. Parties acknowledge
7 the presence of the jury.

8 MR. IGLODY: Yes, Your Honor.

9 THE COURT: Defense, acknowledge the presence of the
10 jury?

11 MR. SAGGESE: Yes, Your Honor.

12 THE COURT: Sorry, ladies and gentlemen. We have
13 been working. So we will continue.

14 Ms. Samantha Beavor is not going to be -- be in court
15 and you are not to draw any inference regarding that at all.

16 Okay.

17 MR. SAGGESE: All right. Your Honor, we'd like to
18 recall to the stand Mr. Beavor.

19 Still under oath.

20 THE COURT: Go ahead and swear him again. It's...

21 CHRISTOPHER BEAVOR, DEFENDANT'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated. State and
23 spell your name for the record.

24 THE WITNESS: Christopher Lee Beavor,

25 C-H-R-I-S-T-O-P-H-E-R L-E-E B-E-A-V-O-R.

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DIRECT EXAMINATION (Continued)

BY MR. SAGGESE:

Q Mr. Beavor, just to get us back on track, what -- Toluca Lake originally as a project was operated exclusively by you as manager of C&S Holdings. For how long were you the only entity involved?

A As the manager?

Q Yes.

A As the manager, I was the sole manager for approximately 18 months.

Q And you recall a entry of Star Development in relation to the Toluca Lake project?

A Yes.

Q When did they come on the scene?

A In approximately April of 2009. According to the documents, around that period.

Q April 2009, and --

A May -- or was it May of '09. I mean, they -- they came and approached me in April, but the actual documents, I believe --

Q April of 2009?

A '09.

Q And the project was started what month and year?

A The loan started in 2007.

Q So the loan was put into place and as you had

1 testified earlier that the loan was utilized initially for the
2 purposes of purchasing the land that would be Toluca Lake; is
3 that right?

4 A That's correct. Or Mr. Frey was the first
5 trustee holder.

6 Q So the land was purchased in relation to the
7 loan which was given in 2007, and two years later after the
8 project was underway Star Development came in and took over
9 management, correct?

10 A That's correct. Like I said, they've been under
11 -- I've been under their guidance for the entire construction.

12 Q Star Management?

13 A Some of the members and advisors.

14 Q Star Development, it's called. Yeah.

15 A Yeah, prior to Star Development actually being
16 legally formed.

17 Q Okay. So the individuals who ultimately legally
18 formed Star Development, you're saying they were involved to
19 one -- you know, to some extent?

20 A To some extent, yes. Some extent.

21 Q So there -- there came a point where you were
22 asked to resign as manager of the project, correct?

23 A That is correct.

24 Q Okay. And you were 67 percent owner of the
25 project?

1 A Yes. And still -- still have ownership -- had
2 ownership at the time that they took it over.

3 Q Okay. And were there other percentage owners
4 involved?

5 A There was Rob Rink via Essential Investments.

6 Q What was his percentage, if you know?

7 A Approximately 7 percent. And there was clear --
8 Allen Floyd.

9 Q Do you know what his percentage ownership was?

10 A Around 27 percent via his construction company.
11 I don't know his legal entity.

12 Q So, once you were approach -- well, tell us, who
13 approached you in relation to putting the company into
14 bankruptcy, or the project into bankruptcy?

15 A Well, the -- Steve Gilmore, Gary Frey and Wayne
16 Krygier, and Herbert Frey, Sr.

17 Q Okay. And were representations -- and -- and
18 these individuals, I heard a couple of names, are any of them
19 associated with Star Development?

20 A Yes.

21 Q And Star Development is a company owned in part
22 by plaintiff?

23 A That's correct. Yacov Hefetz.

24 Q And these individuals recommended what action
25 for the project?

1 A They recommended -- I -- they -- I had a legal
2 counsel representing Toluca Lake and we had a strategy and
3 financing to complete the project and had the ability to pay
4 everybody back, China Trust in its entirety, all the
5 contractors in their entirety, and including the 6 -- the 4.3
6 plus the profit for them, where I wasn't going to get
7 anything, but everyone was supposed to be paid off.

8 And they said no, we can make better money, we can --
9 and just release us. We'll file bankruptcy. I said I didn't
10 want to do that. And without -- without -- they said, Well,
11 we'll release you of any and all obligations. We've been
12 doing this for 40 years, we know how to do this. Just -- we
13 will give you counsel, we will pay for everything, and we'll
14 be done with it.

15 And I felt, because I'm like, this is their money,
16 that -- that although I'm making the decisions and I had no
17 ability to pay them back the 6 million, as Mr. Frey testified,
18 when they gave me the original loan, that I -- I said, Okay.
19 Here, you -- they forcefully took over as manager to represent
20 myself, Robert Rink, and Allen Floyd through their entities as
21 owners.

22 Q Let me -- let me stop you there.

23 A I'm sorry.

24 Q So Robert Rink, Allen Floyd, and yourself
25 comprised what percentage ownership of Toluca --

1 A 100 percent of Toluca Lake.

2 Q The three of you percentage ownership would
3 total 100?

4 A Yes.

5 Q And you three, if this is what I just heard, you
6 three had a plan of -- of finding supplemental, what is it,
7 backing, loan, what -- supplemental --

8 A We not only had a plan, that information was
9 actually submitted to the bankruptcy court in our opposition
10 of the lender and an affidavit saying that they had the
11 financing and had the money and the ability to complete the
12 project.

13 Q Okay. So if the project -- if -- if your plan
14 went forward, you were anticipating completing the project?

15 A Yes. Keep in mind this was in a good area of
16 Los Angeles. It wasn't as hard hit as the Las Vegas
17 community. So, yes.

18 Q So, you would have -- you anticipated, it was at
19 least your hope you, Robert Rink, and Allen Floyd complete the
20 project with the funding that you referenced, you submitted to
21 the bankruptcy court to tell the court it existed. You wanted
22 to complete the project. And you believed everyone would be
23 paid back?

24 A Yes.

25 Q An --

1 A And under that plan --

2 Q Hold on.

3 A -- that would have.

4 Q An alternative from the individuals, Star
5 Development and Herbert Frey, an alternative -- and they are
6 the individuals who put a majority, if not all of the money
7 initially, was presented to you, correct?

8 A That's correct.

9 Q And that was in the form of a Chapter 11
10 bankruptcy?

11 A That's correct.

12 Q And that was against the China Trust \$22 million
13 full project note?

14 A That's correct. Their action caused the
15 guaranty and all the documents within there to go bad with
16 their own actions. So they -- they loaned me the money and
17 they -- they made the entity default on itself. And then
18 later, the years later now are coming after me for something
19 that they did and then had control.

20 Q Now, making entity default on itself, was Mr.
21 Frey in a position, Herbert Frey in a position to extend the
22 deadline for the debt repayment?

23 MR. IGLODY: Objection.

24 THE WITNESS: Yes.

25 MR. IGLODY: Calls for speculation.

1 THE COURT: Sustained.

2 BY MR. SAGGESE:

3 Q Do you have personal knowledge --

4 THE COURT: Your answer will be stricken.

5 BY MR. SAGGESE:

6 Q Do you have personal knowledge as to what was
7 required to extend the deadline for paying back China Trust
8 Bank? Do you know what was necessary?

9 A Yes.

10 Q Okay. And how did you come to know this
11 information about what was required by China Trust Bank?

12 A Well, I was a guarantor borrower and the manager
13 of Toluca Lake. We had -- because it was a -- a very unique
14 development project with a rooftop pool in Los Angeles, and
15 putting a rooftop pool in an earthquake zone area requires a
16 lot of engineering. And so we had already pre degree [sic] in
17 the 300-plus page loan agreement that we already had automatic
18 extensions granted and that it only required the signatures of
19 the guarantors to request that automatic extensions.

20 Q And who were -- who were the guarantors you're
21 referring to?

22 A Mr. Frey, Robert Rink, Allen Floyd, myself, and
23 Samantha.

24 Q So if all the parties agreed and signed the
25 extension, China Trust Bank would -- was an automatic

1 extension, as you referred to it?

2 A That's correct. And then when we requested the
3 group, Toluca Lake and myself requested that automatic
4 extension, we were not negotiating it, it was already agreed
5 to, Mr. Frey at that point denied signing that document.

6 Q And did you come to understand why that decision
7 not to sign as one of the guarantors to extend the note to
8 China Trust, why that occurred, why that action was taken?

9 A Well, at that time China Trust Bank had owed us
10 -- we had a floating prime rate, and China Trust had committed
11 -- we had a proceeding. China Trust had owed or requested
12 some additional funds that were not agreed to in the agreement
13 and asked us to waive some rights in the automatic extension.
14 And at the end of the day we wanted to just complete the
15 project and pay everybody back. And Mr. Frey along with Star
16 Development Group, they separated and they came up with a plan
17 and approached me and said, Look, it's time for you to walk
18 away. We're the experienced people in this group. We're --
19 you're just going to need to follow what we say.

20 Q So, in the -- and that was the Chapter 11
21 bankruptcy, and there came -- it came to a point where you had
22 objected to the Chapter 11 bankruptcy proceedings in
23 California; do you remember that?

24 A Yes.

25 Q Okay. And what triggered this objection that

1 you made the Court aware of?

2 A I was reading court documents from counsel that
3 they were paying for that they put into place to represent me
4 in terms of paperwork, although I never met this attorney.
5 And I was reading an e-mail document. And on the first page
6 there was a statement stating that all the parties have come
7 up with an agreement, meaning the Star Development Group, Mr.
8 Frey, myself, all the guarantors, and it was an approval for a
9 -- what they called a global settlement agreement, meaning
10 where the bank got cleared, I was cleared of all the
11 guaranties, other testimony, other witnesses were testifying
12 for the last few days about this global release of guaranties.

13 And in this agreement, there was a statement in the
14 declaration to the Federal Bankruptcy Court that all parties
15 had mutually agreed to this agreement, that everybody had good
16 will and everybody had negotiated in good faith. And this
17 declaration was filed with the bankruptcy.

18 And myself, Rob Rink, Samantha, and the guarantors
19 that were then the owners of Toluca Lake had never seen this
20 agreement once. And so this declaration obviously was falsely
21 filed to the Federal Bankruptcy.

22 Q Do you know who -- we know counsel would file a
23 -- a pleading. But do you know who specifically, if you know,
24 was responsible for filing an affidavit that stated -- let's
25 keep it to just you, because Samantha's not here, any other

1 parties were not parties, just you -- do you know who caused
2 to be filed the document that alleged you were in agreement
3 with the settlement in the bankruptcy which you saw --

4 A I would imagine the group that was paying the
5 attorneys to file those documents.

6 Q Not -- not who you imagine. If you know. Do
7 you know who filed that particular affidavit? In other words
8 --

9 A Who filed it is -- was Victor Saan, the attorney
10 hired by Star Development.

11 Q Okay.

12 A And paid for by Star Development.

13 Q Okay. So --

14 A And was taking direct orders for Star
15 Development.

16 Q So Star Development hired Victor Saan. Victor
17 Saan you believed as an attorney was representing your best
18 interests, but you discovered that an affidavit was filed in
19 the Chapter 11 bankruptcy ultimately saying that you agreed
20 when, in fact, you did not?

21 A That's --

22 Q Or -- or you could clarify -- I mean, that's --

23 A That's correct. And then I -- I fired my
24 attorney. The first time I met him was in court, but I fired
25 him for this -- well, he -- I -- I called him up and he

1 prepared some declaration, which I believe is evidence
2 somewhere, that he retracted that we didn't see it. And they
3 filed an ex parte motion on a Friday, which means it's an
4 emergency motion all of a sudden, before I could get into
5 court, because I had no money, and I had no way of paying for
6 legal representation, especially in Los Angeles. So they
7 filed an ex parte on a Friday so court was on Monday. So, to
8 go into L.A. against some of the largest lawyers in -- in
9 California. And so I went there and I terminated my legal
10 counsel in front of the judge --

11 Q What was that individual's name?

12 A Haberbush. Davie Haberbush.

13 Q And Haberbush was in the same law firm as Victor
14 Saan?

15 A They had all worked together. There's three
16 attorneys. They had worked together for 10-plus years at the
17 same law firm. But at this point they'd all separated into
18 their own practices.

19 Q But what -- what -- in your binder there, it
20 should be in there, is marked D14. Can you turn to that? And
21 this is a pre-agreed-upon Exhibit D14. I know that's hard to
22 turn those pages.

23 Do you -- tell the -- tell the ladies and gentlemen
24 of the jury what D14 is, title of the document.

25 A United States Bankruptcy Court, Central District

1 California, it says, "Order granting emergency ex parte motion
2 for approving a modification of the order approving the
3 settlement agreement between debtor, China Trust Bank, and all
4 others."

5 Q Okay. Let me stop you there. So this was the
6 document you were referring to when we were just talking,
7 correct?

8 A Yes, one of them. And it was -- there was lots
9 of exhibits.

10 Q I understand there is a series of bankruptcy
11 documents and they will be going back with the jury that they
12 could see them all. But for purposes of what you and I were
13 discussing on direct examination, Exhibit D14, is that
14 document -- what -- what is that document, without the title,
15 but, you know, an explanation as to what it is.

16 A Well, this is the actual order that was finally
17 approved from that proceeding for my -- and I had a limited
18 understanding of how it worked. But when a lawyer submits a
19 document, a judge typically will rule that it's valid and will
20 sign off on it or an order or publish it out to the people
21 that are involved.

22 Q Well, let me -- let me -- I'll ask you a
23 question. You can give me a direct answer to it.

24 In looking at this -- and if you need time to look
25 through it and make sure we're on the same page, is this the

1 order related to your emergency motion that you put on in
2 relation to what we were discussing -- discussing?

3 A A majority of it. But when I actually --
4 actually after I terminated counsel and the judge heard of
5 what they were trying to do, which was to turn all the funds
6 from Toluca Lake, which is the debtor in possession, were the
7 funds from the bankruptcy, because there was a -- a
8 partnership agreement with the person that was finishing the
9 project as of today, where profits were supposed to be 25
10 percent given back to Toluca Lake to pay back the debtors,
11 they somehow on their own order that they created said that
12 all the funds from the development were going to go to Star
13 Development.

14 And so when I fired my attorney and made a big
15 commotion, the judge actually read it, because she was just
16 going to sign off on it. And she said, Whoa, this is wrong.
17 So she corrected their order and said, No, the funds aren't
18 going to go to Star, they're going to go to Toluca Lake and
19 we're going to maintain this. And then she also said, I'm
20 going to add the section in here where -- normally when you --
21 they -- she gives a final order in a bankruptcy, it's final.
22 You can't come back and say, He said, she said, or make
23 claims. It's done. And she said, Okay, I don't -- there's
24 something -- I'm not here to rule on that --

25 Q Just stick to what is in the order versus what

1 she said.

2 A Okay. Well, it's here in the order, I can read
3 it.

4 Q Okay. Well, then, let's stick to what's in the
5 order, if you want to refer to a particular page.

6 A On page 4 she -- the judge ordered,
7 "Notwithstanding to the contrary of the order, all rights,
8 remedies, defenses, and claims of the debtor and its members,"
9 me being a member, "including but not limited to Essential
10 Investments, C&S Holdings, Rocket Construction," which was the
11 general contractor, Allen Floyd, "collectively as Christopher
12 Beavor, Samantha Beavor, C&S Holdings, Bryan Head, LLC
13 Company, and on the other hand Herbert Frey Revocable Trust
14 dated and all other parties on hand that they have against
15 each other are preserved.

16 "And further, notwithstanding on the contrary, all
17 compensation to Star Development for any entity controlled by
18 Frey, except for Section B, Advisory Services Revenue Share
19 Agreement" --

20 Q And let me --

21 A -- "shall be paid to the debtor."

22 Q And the debtor --

23 A Which was --

24 Q -- the debtor being who?

25 A Toluca Lake, which I'm a member of Toluca Lake.

1 Q Okay.

2 A Which I have not received any compensation, it's
3 still in the control of Mr. Hefetz and Star Development.

4 MR. IGLODY: I'll object to that. That's not in
5 evidence and it contradicts the order itself. Motion to
6 strike.

7 THE COURT: That's appropriate for cross-examination.
8 The document you stipulated, the document's in evidence, the
9 jury can review the document.

10 BY MR. SAGGESE:

11 Q So Mr. Beavor, you at some point made a
12 realization that, in fact, the attorneys that were expected to
13 represent your best interests, you made the personal
14 determination that they weren't acting in your best interest?

15 A Well, we'd never seen that document and he's
16 representing that he presented it to and everybody had -- and
17 we'd never seen the document. So, obviously, it was --

18 Q So you know in the end that everyone, and this
19 is to use the language of previous witnesses, that everyone's
20 guaranties were forgiven?

21 A That's what -- correct.

22 Q Except whose?

23 A Samantha and mine, those only two people.

24 Q Okay. And you objected to that and it's your
25 opinion that the judge, based on this order that the jury

1 could look at, carved out an exception for rights and remedies
2 that you may have?

3 A Well, that's correct. That's what it's here
4 for.

5 Q Okay. Let's move on. When you originally
6 signed the loan and promissory note and the guaranty, which is
7 the basis of plaintiff's claim with Mr. Frey, was Mr. Hefetz
8 involved in that transaction at all?

9 A At the time that I signed the agreements at
10 title company here, I was not aware that Yacov Hefetz was
11 involved.

12 Q And at the time you signed a -- the guaranty and
13 the promissory note and the loan agreement referencing monies
14 to be used to purchase land that would comprise Toluca Lake,
15 was Star Development, Yacov Hefetz's company, involved?

16 A I'm sorry. Could you repeat the question?

17 Q And I will submit to you it's March of 2007 when
18 you signed the promissory note, the loan agreement, and the
19 guaranty with Mr. Frey, Herbert Frey. Was Star Development
20 involved in that transaction at all?

21 A Not that I'm aware of. Not that I'm aware of at
22 that time.

23 Q And was it -- what was your understanding in
24 relation to the monies you were borrowing, what would it be
25 secured by, if anything?

1 A The project -- the only way that we could -- the
2 -- the money was never given to me, it was -- it was always in
3 duly brought into the land, do a title company, and also I
4 believe they had title insurance, and I don't know if they put
5 a title insurance claim in for the money, too. But they --
6 the money would go right into title, would be cleared out in
7 expenses, there'd be lien releases, and I'm sorry, I'm getting
8 off track.

9 Q And it was utilized -- it was utilized
10 originally to purchase the land, Toluca Lake, correct?

11 A Purchase the land and pay for bills to develop
12 the project.

13 Q So, in other words --

14 A And the only way -- the only way that I was ever
15 to pay that money back and in the agreement was to finish --
16 build a project, finish it, sell them, and the money was never
17 even going to go to me. It was all paid off. Just like if
18 you buy a house and get a loan from Chase and you sell it to
19 your friend or a neighbor, it goes to title and they pay off
20 the loan. They don't give you the money to pay off Chase.

21 Q So the -- the loan was provided to Toluca --
22 Toluca Lake, and it was to secure land?

23 A That's correct.

24 Q And it was secured by the project?

25 A And a first trust deed position at the time.

1 Q Okay. Was there ever an understanding that you
2 would -- or had the resources to pay back the \$6 million
3 yourself, individually, Chris Beavor, versus manager of Toluca
4 Lake or manager of C&S?

5 MR. IGLODY: Objection. Relevance.

6 THE COURT: Sustained.

7 BY MR. SAGGESE:

8 Q Let me ask you this. The note is for \$6
9 million, and that's what the lawsuit is. But we've come to
10 know that 4.4 was originally distributed for the land,
11 correct?

12 A That's correct.

13 Q And we've also come to know that 2.2 or 2.4
14 million of it allegedly comes from Mr. Hefetz, and the other
15 half was Mr. Frey, at least that's what Mr. Hefetz testified
16 to; does that sound right?

17 A Yeah. From the -- from my testimony, it was all
18 Mr. Frey's money, and later Mr. Frey, I guess, needed some
19 money and went to Yacov and Yacov gave him some cash.

20 Q Right. And that is evidenced by the exhibits
21 the jury could see, the assignment. Do you know the year of
22 the assignment in which Mr. Frey assigned the note or the
23 right to pursue the note against you; do you remember that?

24 A I believe it is 2011, shortly after he took the
25 contract out of my hand of the settlement.

1 Q And -- and let me ask you this. 4.4 million --
2 \$6 million note, how much of that money did you take or put in
3 your pocket or put under your bed or in a mattress or in a
4 bank account?

5 A Zero. Matter of fact, I -- part of that money
6 that Wayne Krygier spoke about yesterday in testimony, about
7 cramming down and negotiating, I believe around a half a
8 million of it was owed to C&S Holdings, which also was zero
9 was collected on that, also.

10 Q Okay.

11 A For staff and employees that I employed to
12 manage the project.

13 Q Now, in relation to that document that was filed
14 in the Chapter 11 bankruptcy, it was an affidavit signed by
15 whom; do you remember who signed and submitted the affidavit,
16 specifically the one that said you, because you're the only
17 one at this point in this case that matters, what you agreed
18 to this global settlement with China Trust and you're on
19 board. Who -- who signed that affidavit that went into the
20 bankruptcy court? If you know, because you may not know.
21 There's a lot of documents.

22 A I don't -- I don't -- who signed that specific
23 -- the declaration was from Victor Saan, the attorney
24 representing Star Development.

25 Q Okay. And Victor Saan signed the affidavit that

1 said above it -- above the signature --

2 A That he spoke with Star Development and all
3 parties.

4 Q -- and Star Development is Yacov Hefetz. And
5 the affidavit said Star Development has relayed, that you
6 agree, essentially, and you found that to be objectionable,
7 accurate?

8 A Yes. That's accurate.

9 Q When you made -- when you made this realization
10 that you were not included in the discussions related to the
11 settlement, did you notify anybody? Did you make a --

12 A The first phone call I made was to my attorney
13 that I'd never met that was supposed to be representing me.

14 Q Okay.

15 A And --

16 Q Did you call -- let me ask you, did you call
17 anybody else?

18 A I called the -- Rob Rink, the owners of Toluca
19 Lake, who also have lost hundreds of thousands of their money,
20 and let them know that there was a settlement that we had not
21 seen that is being put forth to the courts.

22 Q So the way you addressed your dissatisfaction
23 was getting another lawyer and filing an objection to the
24 bankruptcy proceeding; is that accurate?

25 A Yes. I went down and I hired the state bar

1 attorney. Well, I -- I represented myself and there wasn't
2 enough time because they filed an ex parte motion. And I -- I
3 called Gary Frey, I called Wayne, everybody went silent on the
4 phone, nobody would call me back, and there was some emergency
5 motion quickly that I discovered something, and they were
6 going to try to just cram it down and get it signed off on
7 Monday.

8 And then I showed up, all the bank attorneys were
9 mad, because it was time and I was a nobody in the case.

10 Q All right. Let's move ahead to mutual release.
11 Did there come a time when, in light of your dissatisfaction
12 with the -- the bankruptcy, that you discussed with Herbert
13 Frey, the original lender, and agreement or an opportunity for
14 you to be finally removed from your personal guaranty?

15 A Well, from the beginning when they came there
16 they absolutely said, We're going to release you of all
17 obligations right from the beginning. And --

18 Q But that ended up not being true.

19 A That's correct. Rob was there, everybody was
20 there. We were all under the -- the same agreement. And as
21 they spoke before, I believe testified, and I was under the
22 understanding that every -- we all make deals...

23 Q But did you -- let me keep you on track. Did
24 you -- you know, at that point did you feel tricked?

25 A Absolutely.

1 Q And -- and did there come a point in time when
2 you reached out to Herbert Frey, the older gentleman who
3 testified first in this case, the individual who originally
4 put forth the actual money for Toluca Lake to purchase the
5 property, 4.4; did you have an opportunity to discuss with him
6 an opportunity or an agreement or a contract for you to be
7 released from your personal guaranty like everyone else was?

8 A Yes.

9 Q Okay. And did you ever get your hands on a
10 written mutual release?

11 A December 30th, 2010, Wayne Krygier sent me an
12 e-mail prepared by, I believe, some of the testimony. I don't
13 know if it's in the records of that attorney that was friends
14 with Yacov Hefetz, that they prepare. And they had sent me
15 the document, said it was a done deal, to sign, to bring these
16 checks and cashier's checks for \$24,000 for the legal fees,
17 because they were too busy and didn't have time to actually
18 prepare the document. So I printed it out, signed the
19 documents, got the checks, went down to their offices.

20 Q Let me back you up a little bit. Wayne Krygier
21 testified that the attorney that you're referencing in that
22 e-mail string was Ofir Ventura; does that name ring a bell?

23 A I've never heard of him and --

24 Q So he's not your lawyer?

25 A Absolutely not.

1 Q So, you didn't have your lawyer draft the mutual
2 release and agreement to -- to be released from your guaranty,
3 did you? Or you didn't cause an attorney to -- to write it,
4 either?

5 A No.

6 Q So, to the best of your knowledge, Ofir Ventura
7 represented -- as an attorney, represented who?

8 A Star Development and -- and Mr. Frey.

9 Q And I will show you -- I'll have you look at
10 Exhibits D1 and D2, and these will be back with the jury to
11 look at. Let's start with D2.

12 Get to D2 yet? Let me know when you're there.

13 A I'm there.

14 Q All right. Now, on D2 you're looking at?

15 A Yes.

16 Q What's the title of D2?

17 A "The Mutual Release and Payment Agreement."

18 Q Okay. Now, do you remember this particular
19 document, seeing this document?

20 A Absolutely, yes. I do.

21 Q Okay. And you received this document from whom?

22 A Wayne Krygier via Mr. Frey.

23 Q Okay. And this document, I don't know if you
24 need to look through it or you have it committed to memory,
25 probably, the -- the contents of this document, if you can

1 summarize, are what?

2 A Well, I was to release Mr. Frey for any and all
3 damages that I might have had from possibly the
4 misrepresentations made in Federal Bankruptcy Court, so I was
5 releasing him of -- of some of what we perceived as wrongful
6 acts. And I was -- I was -- he was -- we were supposed to
7 mutually release each other from any and all claims.

8 Q Okay. And one of the claims -- and for you the
9 claim was the guaranty?

10 A Yeah, it's all. We were supposed to wash each
11 other's hands and --

12 Q And -- and be specific.

13 A -- everything be finished.

14 Q Which guaranty --

15 A Guaranties, notes, deeds.

16 Q Which guaranty were you primarily --

17 A The \$6 million guaranty --

18 Q Okay.

19 A -- that we're here in court today to discuss.

20 Q And in exchange for everybody to go their
21 separate ways, the bottom under "Payment amount" on the first
22 page, D2, "Payment amount," do you see that?

23 A Yes.

24 Q You were to pay \$23,500 at \$1,000 down, and then
25 18 checks of \$1,250?

1 A Yes. That was all the money [indiscernible] I
2 could afford.

3 Q Say that again?

4 A Yes, that's the payments and -- and all the
5 money that I had or could afford to pay at the time.

6 Q So --

7 MR. SAGGESE: Court's indulgence. Better get this
8 guy some water. You ought to give him a -- you all right over
9 there? Want some water?

10 BY MR. SAGGESE:

11 Q Now, Mr. Beavor, what's been marked as Exhibit
12 D1, flip that over, and you're on D2, because we'll jump back
13 to that. Okay.

14 Do you recognize that?

15 A Yes, I do.

16 Q And what's the check number on that?

17 A 1993.

18 Q And the amount?

19 A \$1,250.

20 Q And the next check?

21 A The check number?

22 Q Yeah.

23 A Was 1994 for \$1,250.

24 Q Okay. Is the month changed on that?

25 A Yes. It's -- it goes from February 1st to March

1 1st.

2 Q Okay. Last one was March 1st. And the date on
3 this check?

4 A March 1st, 2011.

5 Q Take a look again.

6 A I mean April, I'm sorry.

7 Q 4/1 for \$1,250?

8 A May 1st, 2011.

9 Q For \$1,250?

10 A June 1st, 2011.

11 Q All payable to who?

12 A Herbert Frey Revocable Family Trust. July 1st,
13 2011, Herbert Frey.

14 Q 1250?

15 A August 1st, 2011, Herbert Frey Revocable Family
16 Trust.

17 Q 1250. And I will submit to you and you can look
18 at the ones in front of you, there are a total of 15 checks
19 here, the last check number 2010; is that accurate?

20 A Yes.

21 Q Made out to the Herbert Frey Revocable Trust,
22 correct?

23 A That is correct.

24 Q Dated July 1st, 2012?

25 A That's correct.

1 Q And that would have been the final payment on
2 your mutual release agreement?

3 A That's correct.

4 Q And then pursuant to D1 -- excuse me, D2, page 2
5 of -- of D2, as the jury has seen, I'll show it again. It
6 says, "Immediately upon the mutual execution of this
7 agreement, Beavor shall pay the sum of \$1,000." That was an
8 initial payment of \$1,000, correct?

9 A Yes. Yacov took that. He has a cashier's
10 check.

11 Q And is this the cashier's check that represented
12 the \$1,000 that was the down payment on your mutual release
13 with Herbert Frey?

14 A Yes.

15 Q And that release was of your guaranty on the \$6
16 million loan in 2007 from the Toluca Lake project?

17 A Yes.

18 Q Now, D2, the actual release, can you flip ahead
19 a few pages, three, four, five pages, they're not paginated,
20 it's the signature page. You see that signature page?

21 A Yes, I do.

22 Q Whose -- whose signature is first?

23 A The first signature is my signature versus C&S
24 Holdings and Bryan Head Loss [phonetic].

25 Q Okay. And that signature is dated what,

1 January --

2 A January 3rd, 2011.

3 Q Okay.

4 A And like I said, I have that e-mail, December
5 30th, 2010. So this is 11 days --

6 Q And this \$1,000 down payment is dated when?

7 A January 4th, 2011.

8 Q And you signed this document January 3rd?

9 A That's correct. So I signed the document, and
10 then I got the -- as soon as they gave it to me on the 30th, I
11 printed -- had Samantha sign it and then I went to the bank.

12 Q Okay. And the signature below your signature is
13 whose?

14 A My -- or Samantha Beavor's signature and my
15 signature.

16 Q And that's your ex-wife at the time
17 [indiscernible]?

18 A That's correct.

19 Q Now, the next page, the next signature page is
20 blank. That accurate?

21 A Yes.

22 Q It says Herbert Frey Trustee, and Herbert Frey
23 individually, and there are no signatures, right?

24 A That's correct.

25 Q And I want you to tell in a question-and-answer

1 format the ladies and gentlemen of the jury how it came to be
2 that this document did not get signed by Herbert Frey?

3 A I went down to Mr. Frey's office in the
4 Flamingo.

5 Q On what -- at what -- on what day, if you
6 remember?

7 A Within a day or two of that day I got the
8 cashier's check, maybe on --

9 Q That's January 3rd.

10 A -- within a day or two. Within a day.

11 Q So you go down to Mr. Frey's office, where is
12 it?

13 A Located in the Flamingo Casino.

14 Q Okay. And does he share an office with anybody
15 at that time?

16 A At that time Mr. Frey's desk and Yacov's desks
17 are right next to each other in an office in the back rooms of
18 the Flamingo.

19 Q Literally their desks are touching?

20 A Yes.

21 Q Okay. I mean, is there a cubicle between --

22 A No, they're just touching. You could reach out
23 and look at each other.

24 Q Okay. So you entered that office. And you're
25 looking to finalize this with Mr. Frey, Herbert Frey?

1 A Yes.

2 Q And it doesn't quite --

3 A This is Mr. Frey's document to me and the
4 settlement, so yes, I --

5 Q So you go to his office --

6 A -- find his document --

7 Q -- you have the cashier's checks, you're ready
8 to finally be released from your guaranty.

9 A As he's always promised.

10 Q And you go and you were met by whom?

11 A Yacov Hefetz.

12 Q And that's the plaintiff?

13 A That's correct.

14 Q And tell me about the interaction.

15 A I said, Is Mr. Frey here? I'm here to drop off
16 our settlement. I said, I look forward to moving past this
17 and doing business together on other deals. All excited, I'm
18 excited. And he goes, What are you talking about? And he
19 grabs the contract out of my hand and he thumbs through it and
20 he turned red and got all upset and said, Absolutely I'm not
21 having Mr. Frey sign this document, over my dead body, this
22 won't happen, and I will do anything and everything for this
23 not to happen.

24 Q Did you -- did you -- did you protest, did you
25 argue, what did you do in response --

1 A I walked --

2 Q -- so I know.

3 A -- I mean, I just walked out. He seemed very...

4 Q Did you take your checks back with you?

5 A No. He had the cashier's checks, the checks,
6 and the document.

7 Q Did you -- and he kept the document?

8 A Yes.

9 Q So, to this day you were never --

10 A I still don't have any -- I have not received
11 back the cashier's checks, checks.

12 Q Now, have you come to find out why, as you sit
13 here today, why Mr. Frey agreeing to release you of your \$6
14 million guaranty might upset him?

15 A Well, now I know. At the time Mr. Frey said he
16 had some health concerns and that this whole transaction was
17 very upsetting for him. And --

18 Q I mean, as far as Mr. Hefetz's position in
19 having an interest in the Toluca Lake project or monies that
20 he believes are subject to your mutual release; do you
21 understand what I'm saying?

22 A Yeah. At that time I didn't know I was -- had
23 -- that I was dealing at all with -- it was just with Mr. Frey
24 and I, and that was the agreement, and that --

25 Q But have you come to find out why Mr. Hefetz has

1 interjected himself and --

2 A Well, it appears that those two had an agreement
3 that had nothing to do with me and that he gave Mr. Frey some
4 cash --

5 Q So you know today --

6 A -- as of today, but not --

7 Q -- that Mr. Hefetz had an agreement or a deal
8 with Mr. Frey that he would provide some money, half of the
9 money, after the fact, couple years later, from what I
10 understand, to provide, to offset the cost of the purchase of
11 the Toluca Lake land?

12 A That's correct. That's correct.

13 Q Okay.

14 MR. SAGGESE: Court's indulgence.

15 Q Let me ask you a couple of questions backing up
16 a little bit. When you were managing this project as C&S
17 Holdings, Christopher and Samantha, you were the manager. Up
18 until the point that Star Development showed up on the scene,
19 which is Hefetz and Gary Frey and Mr. Hefetz's son, Shan
20 Hefetz, you were -- let me put it this way.

21 Did they come on the scene, Star Development, and
22 assure you that they would be working with you, that you were
23 both on the same -- that you both intended on moving the
24 project forward, or what was their representation? Were you a
25 team? Were you -- or were you separate? In other words, did

1 they try and alienate you or did they -- what was the
2 relationship between let's say C&S Holdings and Star
3 Development when they first came on the scene?

4 A That they brought their 40 years experience,
5 that they were partners, and Star Development as a manager of
6 Toluca Lake, which I'm a member, is supposed to, even in the
7 operating agreement, is supposed to work in a fiduciary
8 responsibility to do what's in the best interests of Toluca
9 Lake and its members, which would be myself, Samantha, and
10 Robert Rink, and Allen Floyd, all the ones that didn't get a
11 dime out of it, all of the people that didn't get the guaranty
12 releases on it.

13 Q But you -- the names you just mentioned were the
14 sum total of 100 percent ownership?

15 A That's correct.

16 Q Star Development comes on as Star Development
17 essentially communicates to you that as a team, seen as a
18 unified front you're going to move the project forward, or if
19 strategically put it into bankruptcy, it's a unified front.
20 In other words, they were not antagonistic and like, you're --
21 you know, it was more like, are we going to do this as a team;
22 is that accurate?

23 A Absolutely accurate.

24 Q And it didn't work out that way, did it?

25 A Not until I read the documents did he even find

1 out that all along they'd been fraudulently stating facts that
2 were -- had no truth --

3 Q And -- but the facts specifically that you
4 agreed to the settlement --

5 A All of these agreements that we've all been
6 working in good faith and we've actually been being told lies
7 every month through e-mails through Gary Frey's Star
8 Development.

9 Q All right.

10 A And Wayne Krygier.

11 MR. SAGGESE: Now, Your Honor, I'm going to pass the
12 witness. And reserve for redirect.

13 THE COURT: Thank you. Direct -- or cross.

14 CROSS-EXAMINATION

15 BY MR. IGLODY:

16 Q Chris, you said that when Star Development
17 through Herbert Frey and Steve Gilmore and Gary Frey came to
18 you, they said that they were you, as you said, partners and
19 you were going to work together. Now, at that time, they
20 weren't your partners, were they?

21 A Well, define partner.

22 Q Well, you define partner for me and how you
23 think, you used the word during your direct, I'd like you to
24 tell me --

25 A People that exchange money --

1 Q -- what you think partner is.

2 A -- work together, share in profit, have the same
3 ideals, same goals, same understanding, that are forth and
4 honest with each other I would consider partners.

5 Q We'll get back to honesty in a little bit. Now,
6 let's talk about a couple of names to clarify your concept of
7 partnership. Let's talk about, for example, Allen Floyd.

8 Allen Floyd was on the project with you, wasn't he?

9 A He was the general contractor.

10 Q But he was also a member of Toluca Lake Vintage,
11 wasn't he?

12 A Yes, he was.

13 Q With you as another member of Toluca Lake
14 Vintage?

15 A C&S Holdings, yes, was in --

16 Q Through C&S Holdings, did you consider him a
17 partner?

18 A Allen Floyd?

19 Q Yes.

20 A Yes.

21 Q Robert Rink. Robert Rink was with you on the
22 project, was he?

23 A When you say on the project...

24 Q Was he a member of Toluca Lake Vintage?

25 A Yes. Essential Investments through his --

1 Q Through Essential Investments.

2 A Yes.

3 Q And that is important to point out. Everybody
4 had their ownership interest through a different entity, C&S
5 Holdings for you and Samantha, Rocket Construction for Allen,
6 and Essential Investments for our friend Robert Rink, right?
7 Is that correct?

8 A That is correct.

9 Q Okay. And the three of you comprised
10 essentially all of the members of Toluca Lake Vintage; is that
11 right?

12 A Besides the revenue share agreements. But we
13 were the members, but not the sole owners and controllers of
14 the -- of the entity.

15 Q Well, but let's be clear about our terms here,
16 because I want to make sure that we're using our language
17 correctly. Toluca Lake Vintage, an entity, a limited
18 liability company; is that right?

19 A That is correct.

20 Q And as a limited liability company it had three
21 members; is that right?

22 A That's correct.

23 Q And between the entities that we discussed it
24 was you, basically, Allen, and Robert; is that right?

25 A That's correct.

1 Q And you were the majority owner of Toluca Lake
2 Vintage; is that right?

3 A That's correct.

4 Q Toluca Lake Vintage was the borrower from both
5 China Trust and Herbert Frey; is that right?

6 A That's correct.

7 Q So Toluca Lake Vintage, the three of you, did
8 you consider them to be your partners?

9 A Yes, I considered China Trust Bank, all the
10 lenders, and --

11 Q Let me be clear.

12 A -- everybody partners in a transaction.

13 Q Apparently I wasn't clear. Allen and Robert,
14 your co-members at Toluca Lake Vintage, did you consider them
15 to be your partners?

16 A Yes.

17 Q Now, let me drill down on that a little bit
18 since we were using that term a lot and I want to be clear
19 what we mean by that.

20 When they participated with you in the construction
21 of Toluca Lake Vintage, if Toluca Lake Vintage had been
22 phenomenally successful, movie stars moving in, okay, Esquire
23 Magazine, whatever, okay, they would have shared with you in
24 the profits, wouldn't they have, Allen and Robert?

25 A And Mr. Frey, yes.

1 Q I'll get to Mr. Frey in just a second.

2 A Oh, I thought you were asking who would share.

3 Q No, no, no.

4 A I'm sorry.

5 Q Would Robert and Allen, your co-members in
6 Toluca Lake Vintage share with you the phenomenal profits if
7 the project had been successful?

8 A I don't know about phenomenal, but they would
9 share in the profits.

10 Q And one of the reasons they would share in the
11 profits is because they were members with you in Toluca Lake
12 Vintage; is that right?

13 A That's correct.

14 Q Now, Herbert Frey was never a member of Toluca
15 Lake Vintage, was he?

16 A Not that I'm aware of.

17 Q Well, I'm sorry, but I can't let you go on that
18 one. I need you to tell me to the best of your ability
19 whether or not Herbert Frey was a member of Toluca Lake
20 Vintage of which you were a 65 or 67.1, whatever it was,
21 percentage member?

22 A Well, at this time we're still waiting for the
23 K1s from Gary Frey, and it was still unknown at this moment if
24 -- if Herbert Frey took the membership. So when I get those
25 K1s -- for the best of my ability, up until approximately 12

1 months ago he was not listed as a member.

2 Q All right. Well, let's --

3 A But I don't know at this point if he's not a
4 member or not.

5 Q We can do this instead. Just -- that's fine.
6 Let's go back to 2007. All right. In 2007, did Toluca Lake
7 Vintage have Herbert Frey as a member?

8 A He had a prearranged assignment of membership in
9 his possession that he could record at any time, so he had an
10 interest in the membership ownership.

11 Q You know --

12 A So I don't know what kind of -- when you say
13 ownership, if -- when you have some type of a document that
14 says you have the assignment and membership of owners --
15 assignments of ownership, I -- you're an attorney. I'm not.

16 Q Fair enough.

17 A Would that be considered some type of ownership?

18 Q Fair enough. And it is important for us to use
19 our language carefully. So let's go ahead and drill down a
20 little bit more.

21 When you were a member of Toluca Lake Vintage, did
22 you ever have member meetings?

23 A Yes.

24 Q Who was responsible for sending out the notices
25 for the member meetings of Toluca Lake Vintage?

1 A My secretary.

2 Q To your knowledge, did you ever address an
3 envelope to Herbert Frey as a member of Toluca Lake Vintage to
4 appear at your annual meeting?

5 A If you look at the loan agreement somewhere in
6 this evidence folder, Mr. Gilmore was listed as the agent
7 representative of Mr. Frey, and he was to be notified and
8 informed of every decision that the company made.

9 Q So, let's go back. To your knowledge, did you
10 ever have a member meeting where Mr. Frey was listed as a
11 member of entity, Toluca Lake Vintage?

12 A Mr. Gilmore was notified of our decisions,
13 members, and because of that, because Mr. Frey held in his
14 possession a pre-signed agreement of assignment of membership.

15 Q I'll try one more time. We already established
16 Robert, Allen, and you, through entities, members of Toluca
17 Lake Vintage. That much we have down, all right. What I'm
18 trying to establish is whether or not at any time Herbert Frey
19 had an actual membership in Toluca Lake Vintage. That's all
20 I'm trying to get to. If you know the answer, great. If you
21 don't, just say no and we'll move onto the next one.

22 A No. Let's move on.

23 Q Okay. Now, you were talking about what you
24 called I think it was -- was it an assignment of economic
25 interest?

1 A An assignment of membership interest.

2 Q An assignment of membership interest?

3 A Yes.

4 Q And you said it was somewhere in my documents,
5 right? You said it was somewhere in our documents?

6 A I said in the documents there was a loan
7 agreement and a note where Mr. Gilmore received compensation
8 and received approval and made decisions.

9 Q Okay. You want to point that to me -- you want
10 me out to that, where Gilmore had this?

11 MR. IGLODY: Are we going to 4:45, Your Honor?

12 THE COURT: It's only 10 minutes, yeah.

13 MR. SAGGESE: Your Honor, on that note, can we
14 approach?

15 THE COURT: All right.

16 (Off-record bench conference.)

17 THE WITNESS: Do you have a sticky tab? I'm like,
18 there's a few documents in here.

19 BY MR. SAGGESE:

20 Q I'm sorry?

21 A If you have a sticky tab, I'll tab --

22 Q Just tell me the page number, or exhibit number.

23 A There's page 118 called the Operating Agreement
24 for Toluca Lake.

25 Q P, D, D, P, which tab number?

1 A I'm sorry. P9, Exhibit 7, page 118. Third --

2 Q Read -- read --

3 A -- third paragraph --

4 Q -- read the top of it.

5 A "Amendment to the Operating Agreement for Toluca
6 Lake Vintage."

7 Q Which amendment, first amendment?

8 A The first amendment.

9 Q Okay.

10 A And dated March 27, 2007.

11 Q Okay.

12 A Do you want me to keep reading?

13 Q Yeah. I'd like you to read the first paragraphs
14 and then the first numbered paragraph.

15 A The first paragraphs, "Operating Agreement of
16 Toluca Lake, a California Limited Liability Company, effective
17 March 27, 2007, capitalized" --

18 Q Go ahead.

19 A -- "capitalized terms used herein and not
20 authorized -- otherwise defined herein are used with the
21 meanings given them in the agreement. For good and valuable
22 consideration the receipt of sufficiency of which are hereby
23 acknowledged, the undersigned being all members of the
24 company," so the undersigned being all members of the company,
25 "do hereby agree to amend the agreements. And the members on

1 behalf of themselves and behalf of the company do agree that
2 until such time as of all the company's indebtedness [sic] to
3 Herbert Frey, Trustee of Herbert Frey Revocable Trust, and all
4 obligations related therein by arising from the loan in the
5 principle of 6 million as described in the loan agreement,"
6 which that loan agreement will have Mr. Gilmore, "the
7 promissory notes related to and all agreements entered into
8 with or for the benefit of lender related or such loan
9 documents are satisfied in full. If lenders or lenders'
10 designee," which I would assume Mr. Gilmore is a designee,
11 "and any or other persons or entity acquires all or any
12 portion of the membership interest, which is security interest
13 was granted in the assignment hereby defined and succeeds to
14 all or any portion of the rights and interest including voting
15 and managerial rights of any member in the company the
16 following provisions shall be included in this operating
17 agreement and shall control over the provisions of this
18 agreement to the contrary."

19 Q Thank you. Just going to go ahead and place
20 that there. Now, this was an agreement that Toluca Lake
21 Vintage was following up with -- and I'm just putting the
22 signature page there just to clarify -- so now we're in 2007,
23 right. In March 29, 2007, Christopher Beavor, Allen Floyd,
24 and Robert Rink, through their respective entities as members
25 of Toluca Lake Vintage signed off on this first amendment to

1 the operating agreement; is that right? I'm looking at it
2 right now. Are you looking at it?

3 A Yes.

4 Q Okay. So those are the signatures, you
5 recognize them?

6 A Yes.

7 Q And thank you for reading that lengthy
8 lawyer-ese paragraph. But in there, they're saying in
9 consideration of the \$6 million to Herbert Frey, that they're
10 saying -- and allow -- allow me to go ahead and try to
11 interpret and if we don't like that, we'll just go ahead and
12 continue reading, that as security for his loan to Toluca Lake
13 Vintage, he can go ahead and take over Toluca Lake Vintage to
14 protect his \$6 million loan if it becomes necessary. Is that
15 roughly summarize what we're talking about?

16 A Basically. And that he's in control and these
17 are to approve everything.

18 Q Well, if we have to read the whole thing, we
19 will. But I want to clarify that this agreement was if it
20 should become necessary and arise that he can step in and take
21 over control of Toluca Lake Vintage. Please, go ahead.

22 A Do you want me to continue reading or answer yes
23 or no?

24 Q Yeah. Do you disagree with me that he had that
25 right?

1 A He did have that right.

2 Q He exercised that right two years later in May
3 of 2009 when he put Gary and Wayne in charge through Star
4 Development of Toluca Lake Vintage; is that right?

5 A I was under the understanding that Steve
6 Gilmore, and that I needed full approval to make any
7 decisions. And that I was 31 years old and they were here to
8 mentor --

9 Q I thought you were 32 at the time.

10 A 31 to 32, depending upon which month we're
11 talking about in the transaction.

12 Q So going back to my question, though, in May of
13 2009, pursuant to this agreement you pointed out for us,
14 Herbert Frey put his son and Wayne Krygier through Star
15 Development in charge of Toluca Lake Vintage; is that right?

16 A That's correct. So he was giving them
17 directive; that is correct.

18 Q Now --

19 A He did.

20 Q Now, in your -- in your direct, we looked at the
21 exhibits with the signed resolution by all the members
22 agreeing to Star Development with Wayne Krygier and Gary Frey
23 coming in to take over Toluca Lake Vintage; is that right?
24 Let's go ahead and pull up those --

25 A That's -- yeah, could you show me that document?

1 Q Sure. All right. Let's look at D8. Look at
2 D8, and then turn -- let's just be accurate here, one, two,
3 three, four, five -- five pages.

4 A D8, five pages deep.

5 Q Defendant's exhibit, yes. 8.

6 A Am I in the right --

7 Q Take your time, it's on the tabs. And then go
8 five pages deep --

9 A So [indiscernible].

10 Q -- go past the schedule of creditors.

11 A One, two, three --

12 Q That's right.

13 A -- four, five.

14 Q And now we're looking at the Resolution of the
15 Board of Directors of Toluca Lake Vintage, right?

16 A Yeah. I -- I was unaware that we had a board of
17 directors.

18 Q Yeah. You know, the term of art -- it's very
19 interesting you point that out, since we had so much trouble
20 with partner, but it is correct. It should be a member's
21 resolution. Let's go back -- let's go further a few pages,
22 because we might as well do this chronologically correct?

23 A Okay.

24 Q Go down three more pages, and you might remember
25 this one. If not, it doesn't matter. This is the signature

1 block for the notification of replacement of manager. And we
2 talked about this yesterday when Herbert was here. And
3 Herbert Frey signed it, Christopher Beavor signed it, and Gary
4 Frey signed it. You see that? You can look at the page ahead
5 of it so you know what I'm talking about.

6 A I do see it.

7 Q Okay. And do you remember signing off on that?

8 A I do.

9 Q All right. And -- and for Star Development, we
10 see Gary Frey listed there, right?

11 A I do.

12 Q And then for C&S Holdings, we see the
13 Christopher Beavor, yeah?

14 A I do.

15 Q And then we see, of course, Herbert Frey, which
16 we've already established, right?

17 A I do.

18 Q So, here we have -- oh, and I forgot the date.
19 The date was May 13, 2009, yeah? Does that sound right to
20 you, based on what -- you can look at the original, it's
21 probably a better quality than the video screen.

22 A I -- I do.

23 Q So here we are, May 13, 2009. Herbert puts Gary
24 in there. And Gary is taking over the company. Because on
25 the page 2 of this thing that we signed it says, sure enough

1 -- come on, let's see if I can do this right. It says --
2 oops. Here we go.

3 "Notification of Replacement of Manager." Which was
4 you. "Please take notice that pursuant to the voting rights
5 established in the first amendment to the operating agreement"
6 -- that's what we were looking at earlier, right? Yes?

7 A Yes.

8 Q "Of Toluca Lake Vintage, LLC, Herbert Frey,
9 trustee of the Herbert Frey Revocable Family trust, et cetera,
10 et cetera, hereby votes and elects to replace the manager of
11 Toluca Lake, C&S Holdings," you, "with Star Development,"
12 right? Am I basically summarizing that?

13 A Well, my question to you would be is how can he
14 vote to replace if he's not a member?

15 Q That's actually a very good question. And I'm
16 just going to go ahead and ask that back to you.

17 A Well, you asked me if he was a member earlier.

18 Q We talked earlier about when you think Herbert
19 Frey became a member of Toluca Lake Vintage. And I tried to
20 go back to 2007 to find out if he was a member of 2007. And
21 what we found instead was that we had, in effect, a security
22 agreement, the first amendment to the operating agreement, say
23 that none of you guys --

24 MR. SAGGESE: Objection. Counsel's testifying.

25 MR. IGLODY: No, no. I'm just trying to --

1 MR. SAGGESE: Making a statement.

2 THE COURT: Ask a question.

3 MR. IGLODY: Sure.

4 BY MR. IGLODY:

5 Q We saw on the first amendment to operating
6 agreement that you guys were not allowed to amend away the
7 first amendment to the operating agreement; you remember that?
8 That was a condition.

9 A Who was not allowed?

10 Q Toluca Lake Vintage. Its members.

11 A Was not allowed to do what?

12 Q Change --

13 A Could you show me where this says in the
14 document?

15 Q Yeah. Let's go back to it. No problem. Let's
16 go back to what you were looking at, which was P9.

17 A I probably go off what's the IRS filed
18 documents.

19 Q I'm sorry, what did you say?

20 A For the membership.

21 Q We're not here to talk about the IRS. We're
22 here to talk about the operation of an entity. And it goes a
23 lot smoother if you just answer the questions.

24 A Okay. So P9?

25 Q So P9 was the First Amendment to Operating

1 Agreement we talked about, the one that you pointed out to me
2 when I asked you about the membership interest. If you would
3 turn to that, please.

4 A I have P9.

5 Q All right. Why don't you take a minute to look
6 at it, because I don't want to read any more.

7 A Do you want me to look at it or do you want me
8 to read it?

9 Q No, look at it. Because we have a disagreement
10 here and I want to make clear -- I want to make sure that we
11 understand. Because it's very important to me and to this
12 case. As of the date of this agreement, P9, the First
13 Amendment to the Operating Agreement for Toluca Lake Vintage,
14 okay, which was signed off on by the three members of Toluca
15 Lake Vintage, it says here, and tell me if you disagree, we'll
16 read the whole thing, that there is a \$6 million loan at
17 Toluca Lake Vintage from Herbert Frey's Trust. Does that
18 sound right to you?

19 A Yes.

20 Q And that in consideration of that, the members
21 of Toluca Lake Vintage grant to Herbert Frey the right to step
22 in and take over complete management of Toluca Lake Vintage to
23 protect his security interest.

24 A To take over management or to take over
25 membership?

1 Q Well, the document's in front of you. And if we
2 have a dispute about that, you go ahead and tell me. I know
3 what I think, but you're the one answering the questions.

4 A But you -- no, are we reading it or what you
5 think?

6 Q No, I'm asking you to answer the question.

7 A So the question is?

8 Q As of March 29, 2007, was Herbert Frey 100
9 percent of Toluca Lake Vintage?

10 A Was Herbert Frey of March 7th?

11 Q March 29, 2007.

12 A March 29th?

13 Q We're looking at the first amendment to the
14 operating agreement.

15 A Oh, because it said March 27th, so I was
16 confused.

17 Q March 27th, I apologize.

18 A Okay.

19 Q March 27th, 2007. Right? Because we're trying
20 to figure out when Herbert Frey becomes a member?

21 A I see the document, March 27th. I was confused
22 with the 29.

23 Q Was he a member at that time?

24 A I was unaware that he was a member on this
25 particular date.

1 Q Doesn't quite answer the question. Was he a
2 member on March 27 of 2007?

3 A No.

4 Q In fact, if we turn to the next page, Bates
5 stamp 119, we see the members of Toluca Lake Vintage signing
6 off on this security agreement for Herbert Frey and his trust,
7 right? Christopher Beavor, Allen Floyd, and Robert Rink; did
8 I read that correctly?

9 A Yes, you did read that correctly.

10 Q So, because we were trying to get to membership
11 to get back to partnership as of at least March 29th -- March
12 27, 2007, we can all agree that Herbert Frey was not a member
13 of Toluca Lake Vintage; is that right?

14 A I'll agree to that statement.

15 Q And since you pointed it out to us, he did, in
16 fact, have -- and you're right about this -- the power
17 pursuant to this agreement to make himself the exclusive
18 manager of Toluca Lake Vintage, because each one of you signed
19 off all of your ability to make managerial decisions to him if
20 he elected to use them.

21 A An exclusive manager or a member?

22 Q Manager.

23 A Okay. I'll have to read that. Did you read
24 that?

25 Q I'll tell you what --

1 MR. IGLODY: Is this a good time for a break, Your
2 Honor? He can read it overnight?

3 THE COURT: It is, yes.

4 MR. IGLODY: Okay. Thank you.

5 THE COURT: All right. Ladies and gentlemen, we'll
6 take our evening break.

7 MR. IGLODY: At least we know where we start
8 tomorrow.

9 THE COURT: All right. Ladies and gentlemen, we're
10 going to start at 10:30 tomorrow. During this recess you're
11 admonished not to talk or converse amongst yourselves or with
12 anyone else on any subject connected with this trial or read,
13 watch, or listen to any report of or commentary on the trial
14 or any person connected with this trial by any medium of
15 information including without limitation newspapers,
16 television, radio, or Internet, or form or express any opinion
17 on any subject connected with the trial until the case is
18 finally submitted to you.

19 I have, as I said before, just so you understand, I
20 have morning calender. And some of those matters went away.
21 They resolved. So we can start -- I think I'd said 11:00. We
22 can start a little earlier to make sure we get this thing done
23 quickly. So 10:30. We'll see you tomorrow at 10:30.

24 Are you going to be done by 11:00, Juror No. --

25 UNIDENTIFIED JUROR: I don't know, Your Honor. I

1 would try to go the earliest that I could to my court hearing
2 and I will try to get through here as soon as I can.

3 THE COURT: All right. To make it safe so you don't
4 have to wait, make it 11:00. 11:00. Sorry, I forgot about
5 that, that it was...

6 UNIDENTIFIED JUROR: Thank you, Your Honor.

7 THE COURT: No problem.

8 (Jury recesses at 4:52 p.m.)

9 THE COURT: Counsel, we're outside the presence, but
10 we're still on the record. I just want the record to reflect,
11 in case this goes up, well, first of all, hopefully you guys
12 will talk tonight if you're going to talk about settlement,
13 and as I said, if this gets appealed, I was still not clear
14 why settlement negotiations were stipulated to be admitted
15 into evidence. It's against all the rules I know about. But
16 in any event I'm not trying the case. And the stipulation is
17 the stipulation. And so we wasted more than a half hour on
18 that.

19 Aside from that, please talk. You also have to get
20 jury instructions and verdict form together. Because we've
21 got to have all that done by tomorrow, assuming -- well,
22 certainly we have to do closings on Friday. And we've got
23 some witnesses to get through tomorrow. Okay.

24 Anything else we needed to discuss outside?

25 MR. SAGGESE: No, Your Honor.

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THE COURT: All right. Thank you.

MR. SAGGESE: Thank you.

(Court recessed for the evening at 4:54 p.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

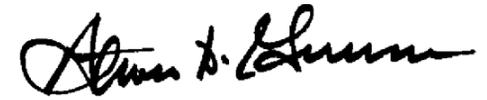
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

Exhibit 7



CLERK OF THE COURT

1 NJUD
2 MARC A. SAGGESE, ESQ.
Nevada Bar No. 7166
3 SAGGESE & ASSOCIATES, LTD.
732 S. Sixth Street, Suite 201
4 Las Vegas, Nevada 89101
Telephone 702.778.8883
5 Facsimile 702.778.8884
6 Marc@MaxLawNV.com
Attorney for Defendant Christopher Beavor

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ, an individual,

11 Plaintiff,

12 vs.

13 CHRISTOPHER BEAVOR, an individual;
14 SAMANTHA BEAVOR, an individual; DOES I
through X and ROE ENTITIES I through X,
15 inclusive,

16 Defendants.

Case No.: A-11-645353-C
Dept. No.: XXVIII

17
18 NOTICE OF ENTRY OF JUDGMENT

19 PLEASE TAKE NOTICE that the JUDGMENT was duly entered in the above referenced
20 case on the 17th day of May, 2013.

21 DATED this 21ST day of May, 2013.

22 /s/ MARC A. SAGGESE, ESQ.

23 MARC A. SAGGESE, ESQ.
Nevada Bar No. 7166
24 SAGGESE & ASSOCIATES, LTD.
732 S. Sixth Street, Suite 201
25 Las Vegas, Nevada 89101
Telephone 702.778.8883
26 Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendant Christopher Beavor

1 **CERTIFICATE OF SERVICE**

2 THIS IS TO CERTIFY that on the 21st day of May, 2013, a copy of the foregoing
3 **NOTICE OF ENTRY OF JUDGMENT** was sent via facsimile and in a sealed envelope via
4 US Mail, with postage fully pre-paid thereon, to the following counsel of record,
5

6 H. Stan Johnson, Esq.
7 Brian A. Morris, Esq.
8 Cohen-Johnson, LLC
9 255 E. Warm Springs Road, Ste. 100
Las Vegas, NV 89119
702.823.3400

10 and that there is regular communication between the place(s) of mailing and the place(s) so
11 addressed.
12

13 /s/ Lin Smith

14 _____
15 An Employee of Saggese & Associates, Ltd.
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JUDG
MARC A. SAGGESE, ESQ.
Nevada Bar No. 7166
SAGGESE & ASSOCIATES, LTD.
732 S. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual,

Plaintiff,

Case No.: A-11-645353-C
Dept. No.: XXVIII

vs.

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual; DOES I
through X and ROE ENTITIES I through X,
inclusive,

Defendants.

JUDGMENT

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual,

Counterclaimants,

vs.

YACOV JACK HEFETZ, an individual; DOES I
through X; and ROE CORPORATIONS 1
through 10, inclusive,

Counter-Defendant.

...
...
...

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS	
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non-Jury Trial		<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Jdgmt or Arb Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial		<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Mtn to Dis (by deft)	<input type="checkbox"/> Transferred			<input type="checkbox"/> Judgment Satisfied/Paid in full

5/14/19 (28)

1 **I. JUDGMENT ON JURY VERDICT**

2 This action came on for trial before the Court, Honorable Ronald J. Israel, District Judge,
3 presiding and a jury on February 25, 26, 27, 28, and March 1, 2013, the issues having been duly
4 tried and the jury having duly rendered its verdict on March 1, 2013, the Court enters this
5 Judgment pursuant to N.R.C.P. 54.
6

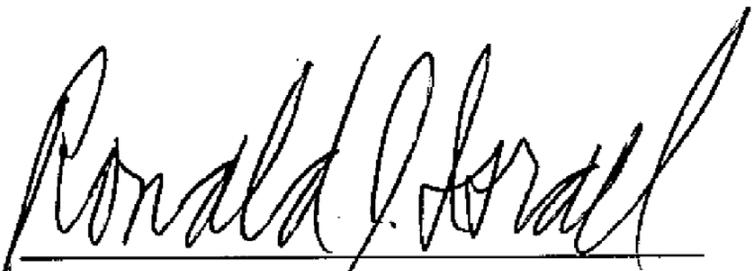
7 IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in
8 favor of Defendant Christopher Beavor.
9

10 **II. NOTICE OF ENTRY OF JUDGMENT**

11 Within ten (10) days after entry of this Judgment, Defendant shall serve written notice of
12 such entry, together with a copy of this Judgment, upon Plaintiff and shall file notice of entry
13 with the clerk of the court.
14

15 IT IS SO ORDERED.

16 DATED this 17 day of May, 2013.

17
18 
19 DISTRICT COURT JUDGE 

20 Respectfully Submitted,

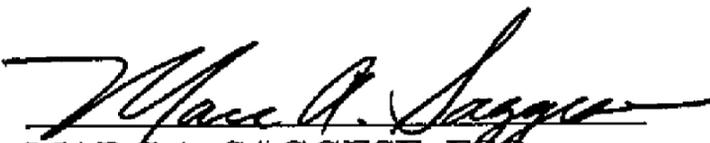
21
22 
23 **MARC A. SAGGESE, ESQ.**
24 Nevada Bar No. 7166
25 **SAGGESE & ASSOCIATES, LTD.**
26 732 S. Sixth Street, Suite 201
27 Las Vegas, Nevada 89101
28 Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

EXHIBIT 1

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MAR 01 2013 4:23pm

BY Kathy Klein
KATHY KLEIN, DEPUTY

YACOV JACK HEFETZ, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 CHRISTOPHER BEAVOR, an)
 individual,)
)
 Defendant.)
)
 _____)

CASE NO: A-11-645353-C
DEPT NO: XXVIII

VERDICT FORM

We, the jury in the above-entitled action find:

For Plaintiff _____

For Defendant 0

If you find in favor of Plaintiff: \$ _____

DATED this 1 day of March, 2013.

Holly Howard
FOREPERSON

RECEIVED
MAR 04 2013
CLERK OF THE COURT

A-11-645353-C
VER
Verdict
2270479


Exhibit 6

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 01 2013 4:23pm

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: *Kathy Klein*
KATHY KLEIN, DEPUTY

YACOV JACK HEFETZ, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 CHRISTOPHER BEAVOR, an)
 individual,)
)
 Defendant.)
 _____)
)

CASE NO: A-11-645353-C
DEPT NO.: XXVIII

VERDICT FORM

We, the jury in the above-entitled action find:

For Plaintiff _____.

For Defendant 0.

If you find in favor of Plaintiff: \$ _____.

DATED this 1 day of March, 2013.

Holly Howard
FOREPERSON

RECEIVED
MAR 04 2013
CLERK OF THE COURT

A-11-645353-C
VER
Verdict
2270479


Exhibit 5

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

March 01, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

March 01, 2013 10:30 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney for Plaintiff
	Iglody, Lee I.	Attorney for Plaintiff
	Saggese, Marc A.	Attorney for Defendant

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding Samantha Beavor, Defendant, reached an agreement and will no longer be listed as a Defendant in the trial. Arguments by Counsel regarding Plaintiff's 50(a) Motion. Court stated its findings and ORDERED, Plaintiff's 50 (a) Motion, GRANTED; Defendant's Counter-Claims Dismissed. Discussions regarding jury instructions and verdict form. Instructions settled 1-34.

JURY PRESENT: Clerk took the roll of the jury. Court advised the Jury, Samantha Beavor and the Counter-Claims will no longer be an issue in this trial. Court instructed the jury. Closing arguments by Counsel. Marshal and Law Clerk sworn and given charge of the jury. Court Thanked and released the alternate jurors. Amended Jury List Filed in Open Court.

At the hour of 2:38 p.m. the jury retired to deliberate.

At the hour of 4:20 p.m. Jury returned with a Defense Verdict.

Jury polled. Court Thanked and excused the Jury.

A-11-645353-C

Court adjourned.

Exhibit 4

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

February 25, 2013

A-11-645353-C Yacov Hefetz, Plaintiff(s)
vs.
Christopher Beavor, Defendant(s)

February 25, 2013 9:30 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

PARTIES

PRESENT:	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney for Plaintiff
	Iglody, Lee I.	Attorney for Plaintiff
	Saggese, Marc A.	Attorney for Defendants'

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court received a copy of Plaintiff's brief and Court noted this should have been a Motion In Limine prior to trial. Arguments by Counsel. Court suggested Court could hear the issue and sanction Counsel. Mr. Iglody agreed to set aside his request regarding excluding testimony of close relations. Colloquy regarding the trial protocol. Counsel agreed to last two jurors as the secret alternates. Counsel further agreed to Plaintiff's Rebuttal Witness to be taken out of order. Colloquy regarding stipulated exhibits. (See worksheets).

PROSPECTIVE JURY PANEL PRESENT: Jury and two secret alternates selected and sworn. Opening statements by Counsel. EXCLUSIONARY RULE INVOKED. Testimony and exhibits presented (see worksheets).

Evening recess.

02/26/13 11:30 AM Jury Trial

Exhibit 3

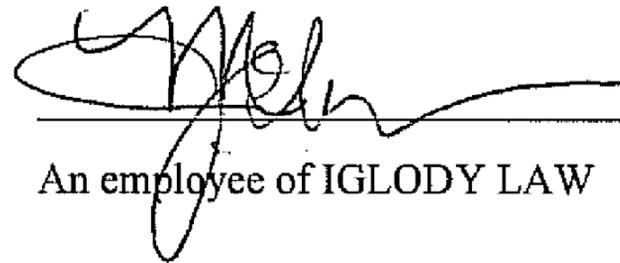
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 29th day of June, 2012, I served a copy of foregoing Notice of Entry of Order, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

SAGGESE & ASSOCIATES, LTD.

Marc A. Saggese, Esq.
732 S. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Tel: (702) 778-8883
Attorney for Defendant


An employee of IGLODY LAW

LEE IGLODY, ESQ.
3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 425-5366 FAX: (702) 446-5148

ORIGINAL

CLERK OF THE COURT

1 Lee I. Iglody, Esq.
2 Nevada Bar #: 7757
3 3960 Howard Hughes Pkwy, Suite 600
4 Las Vegas, NV 89123
5 Tel: (702) 425-5366
6 Fax: (702) 446-5148
7 Email: Lee@Iglody.com
8 *Attorney for Plaintiffs*

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 YACOV JACK HEFETZ, an individual, and)
9 ALIS COHEN, an individual,)
10)
11 *Plaintiffs,*)

CASE NO: A-10-645353-C
DEPT NO.: XXVIII

12 vs.)

STIPULATION AND ORDER

13 CHRISTOPHER BEAVOR, an individual,)
14 and SAMANTHA BEAVOR, an individual,)
15 DOES I – X and ROE ENTITIES I – X,)
16 inclusive)
17 *Defendants.*)

18 **STIPULATION**

19
20 Plaintiff/Counter-defendant YACOV JACK HEFETZ (“Hefetz”) and Plaintiff ALIS
21 COHEN (“Cohen”)(collectively, “Plaintiffs”), by and through their undersigned counsel, and
22 Defendants/Counterclaimants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR
23 (“Defendants”), by and through their undersigned counsel, hereby stipulate as follows:

24 (1) Cohen is hereby dismissed from this action and removed from the case caption
25 with the parties to bear their own attorneys’ fees and costs as to Cohen’s claims against
26 Defendants in this action; Defendants have not asserted any counterclaims against Cohen.
27
28 ...

LEE IGLODY, ESQ.
3960 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
(702) 425-5366 FAX: (702) 446-5148

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(2) Plaintiff Hefetz shall be listed as sole Plaintiff in the caption henceforth.

DATED this ____ day of June, 2012.

DATED this 5 day of June, 2012.

LII

Marc A. Saggese

Lee I. Iglody, Esq.
Nevada Bar #: 7757
3960 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169
Tel: (702) 425-5366
Attorney for Plaintiffs

Marc A. Saggese, Esq.
Nevada Bar #: 7166
732 S. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Tel: (702) 778-8883
Attorney for Defendants

ORDER

Based upon the foregoing Stipulation, and for good cause show,

IT IS HEREBY ORDERED that Cohen is hereby dismissed from this action and removed from the case caption with the parties to bear their own attorneys' fees and costs as to Cohen's claims against Defendants in this action.

IT IS FURTHER ORDERED that Plaintiff Hefetz shall be listed as sole Plaintiff in the caption henceforth.

IT IS SO ORDERED this 25 day of June, 2012.

Ronald A. ...
DISTRICT COURT JUDGE

Prepared and Submitted by:

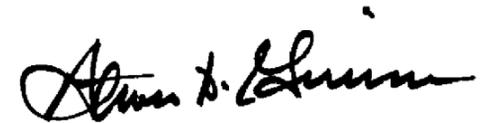
LII

Lee I. Iglody, Esq.
Nevada Bar #: 7757
3960 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: (702) 425-5366
Attorney for Plaintiffs

SV

LEE IGLODY, ESQ.
3960 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
(702) 425-5366 FAX: (702) 446-5148

Exhibit 2



CLERK OF THE COURT

1 **ACTCM**
2 **MARC A. SAGGESE, ESQ.**
Nevada Bar No. 7166
3 **SAGGESE & ASSOCIATES, LTD.**
732 S. Sixth Street, Suite 201
4 Las Vegas, Nevada 89101
Telephone 702.778.8883
5 Facsimile 702.778.8884
6 Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 YACOV JACK HEFETZ, an individual; and
ALIS COHEN, an individual,

11 Plaintiffs,

12 vs.

13 CHRISTOPHER BEAVOR, an individual;
14 SAMANTHA BEAVOR, an individual; DOES I
15 through X and ROE ENTITIES I through X,
inclusive,

16 Defendants.

18 CHRISTOPHER BEAVOR, an individual;
19 SAMANTHA BEAVOR, an individual,

20 Counterclaimants,

21 vs.

22 YACOV JACK HEFETZ, an individual; DOES I
23 through X; and ROE CORPORATIONS 1
24 through 10, inclusive,

25 Counter-Defendant.

Case No.: A-10-645353-C
Dept. No.: XXVIII

FIRST AMENDED COUNTERCLAIM

26 COMES NOW, Counterclaimants CHRISTOPHER BEAVOR and SAMANTHA
27 BEAVOR, by and through the undersigned counsel, and hereby asserts the following
28 Counterclaim against Counter-Defendant YACOV JACK HEFETZ, as follows:

- 1 8. Counterclaimants signed a personal guarantee to said loan.
- 2 9. Lender then recorded a deed of trust against Counterclaimants' two Nevada
3 properties as collateral to secure the loan. Said properties are located at 905 Domnus Lane, Unit
4 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
- 5 10. One provision of the loan was if Borrower were to file bankruptcy, the loan would
6 default.
- 7 11. Said Loan was utilized as a down payment for the real estate project to include the
8 purchase price for the land, engineering, marketing, and architects.
- 9 12. Unbeknownst to Counterclaimants, Counter-Defendant Hefetz had contributed
10 two million dollars (\$2,000,000.00) of the \$6,000,000.00 loan from Lender to Borrower, which
11 was not disclosed or documented.
- 12 13. After eighteen months of construction of the real property project in Los Angeles
13 County, California, the bank backing the project ceased funding the loan, halting construction.
- 14 14. The bank then filed an Ex Parte Motion in April 2009 for a receivership to take
15 control of the real estate project.
- 16 15. Following the filing of said motion, Counterclaimants were contact by Lender and
17 Counter-Defendant Hefetz with a strategy: for Counterclaimant to terminate his legal counsel
18 and retain Counter-Defendant's attorney to file a Complaint against the bank originally funding
19 the loan. In turn, Borrower should then file bankruptcy, but Counterclaimants would be released
20 from all obligations and personal guarantees under the loan, and the deeds of trust would be
21 released against Counterclaimants' properties.
- 22 ...
- 23 ...
- 24 ...
- 25 ...
- 26 ...
- 27 ...
- 28 ...

1 16. Lender then appointed Star Management, LLC, as Manager of Toluca Lake
2 Vintage, LLC, on May 13, 2009. Counter-Defendant Hefetz was Manager of Star Development,
3 LLC.

4
5 17. On May 14, 2009, Counter-Defendant Hefetz, as Manager of Star Development,
6 LLC, which was Manager of Toluca Lake Vintage, LLC, caused Toluca Lake Vintage, LLC, to
7 file bankruptcy, causing the loan to default and the \$6,000,000.00 to become due to Lender.

8 18. Pursuant to prior negotiations with Lender, Counterclaimants were to be released
9 from all obligations and personal guarantees under the loan after the filing of the bankruptcy, and
10 the deeds of trust were to be released against Counterclaimants' properties.

11
12 19. Bankruptcy proceedings were initiated in the Central District of San Fernando
13 Valley, California, Case No. 1:09BK15680-GM.

14 20. Following the bankruptcy proceedings in court, Counter-Defendant Hefetz
15 reported fraudulent statements to his legal counsel, causing said counsel to file false affidavits
16 with the court stating that Counterclaimants had reached a global settlement agreement with the
17 bank funding the loan, when Counterclaimants had never been briefed on the issue and had never
18 been presented with the purported settlement documents for review.

19
20 21. A settlement agreement was not presented to Counterclaimants until
21 approximately three (3) months after said affidavits were filed and approved by the court for the
22 bankruptcy proceedings.

23
24 22. Upon learning this information, Counterclaimants contacted counsel retained by
25 Lender on Counterclaimants' behalf and alerted said counsel of the fraudulent actions being
26 committed by Counter-Defendant Hefetz, as he filed an Ex Parte Motion to finalize the
27 bankruptcy settlement, the terms of which Counterclaimants had not agreed.
28

1 23. Upon reviewing the settlement information, Counterclaimants discovered that
2 said settlement documents release Counterclaimants from their obligations to the bank, but not
3 their obligations and personal guarantees to Lender, which had previously been agreed upon.
4

5 24. New counsel was retained by Counterclaimants, at which time oppositions to said
6 bankruptcy proceedings were filed to expose the fraudulent activities that had taken place on the
7 part of Counter-Defendant Hefetz.

8 25. Upon the filing of said affidavits, the bankruptcy court issued a Section 363(b)
9 ruling and stated that good faith dealings had not taken place, and claims were preserved against
10 Lender, Star Development, LLC, and Counter-Defendant Hefetz.
11

12 26. In December 2010, Counterclaimants were contacted by Wayne Krieger, another
13 Manager of Star Development, LLC, that release documents had been drafted for
14 Counterclaimants' signature that were to release all claims against Lender, and in turn, released
15 Counterclaimants of all obligations and personal guarantees from the \$6,000,000.00 loan, as well
16 as release of the deeds of trust recorded against Counterclaimants' properties.
17

18 27. Counterclaimants signed the settlement agreement, and agreed to remit
19 \$23,000.00 for payment of associated legal fees.
20

21 28. In January 2011, Counterclaimant Christopher Beavor proceeded to personally
22 drop off all settlement documents and payments for legal fees to Lender.

23 29. Counter-Defendant Hefetz was in Lender's office at the time of
24 Counterclaimant's arrival, and physically grabbed the settlement agreement from
25 Counterclaimant and stated that he would not allow Lender to sign the settlement documents
26 releasing Counterclaimants of all obligations under the loan.
27

28 ...

1 43. Counterclaimants justifiably relied upon the representations of Counter-Defendant
2 Hefetz and followed through with his recommendations, as they were eager to be released from
3 the prior obligations and guarantees under the terms of the loan.
4

5 44. Counterclaimants were not fully informed of all proceedings surrounding the
6 bankruptcy as Counter-Defendant Hefetz caused fraudulent affidavits to be filed with the Central
7 District of San Fernando Valley, California, Case No. 1:09BK15680-GM, by Counter-Defendant
8 Hefetz, stating that there existed a global settlement agreement that would have released all
9 parties to the \$6,000,000.00 loan, when in fact, Counterclaimants had not been informed of said
10 agreement at all.
11

12 45. Specifically, only upon reviewing the settlement information some three (3)
13 months following its submission to the Court by Counter-Defendant Hefetz, Counterclaimants
14 discovered that Counter-Defendant Hefetz never had any intention of releasing Counterclaimants
15 from their obligations, personal guarantees, or deeds of trust for properties, as all settlement
16 documents only outlined Counterclaimants' release from obligations to the bank, but not their
17 obligations and personal guarantees to Lender, which had previously represented to
18 Counterclaimants.
19

20 46. As a direct and proximate result of Counter-Defendant's actions,
21 Counterclaimants have suffered damages in excess of ten thousand dollars (\$10,000.00).
22

23 47. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
24 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
25 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
26

27 48. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
28 retain an attorney and have incurred attorney's fees and costs.

1 **THIRD CLAIM FOR RELIEF**

2 **Breach of the Covenant of Good Faith and Fair Dealing**

3 49. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1
4 through 48 above as though fully set forth herein.

5 50. Every contract contains an implied covenant of good faith and fair dealing.
6 Counter-Defendant Hefetz breached said Covenant of Good Faith and Fair Dealing when he
7 misrepresented the terms of the global settlement agreement during the bankruptcy proceedings.
8

9 51. Counter-Defendant further breached said Covenant of Good Faith and Fair
10 Dealing when he failed to allow Counterclaimants to be released from their obligations and
11 personal guarantees under the loan from Lender, holding them personally responsible for all
12 monies due, as well as holding liens against their properties.
13

14 52. Counterclaimants suffered damages in excess of ten thousand dollars
15 (\$10,000.00) as a result of Counter-Defendant's breach of said Covenant of Good Faith and Fair
16 Dealing.
17

18 53. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
19 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
20 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
21

22 54. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
23 retain an attorney and have incurred attorney's fees and costs.

24 **FOURTH CLAIM FOR RELIEF**

25 **Breach of Fiduciary Duty**

26 55. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1
27 through 54 above as though fully set forth herein.
28

1 56. Counter-Defendant Hefetz, as Manager of Star Development, LLC, and Star
2 Development, as Manager of Toluca Lake Vintage, LLC, owed a fiduciary duty to
3 Counterclaimant, owner of Toluca Lake Vintage, LLC.
4

5 57. Counter-Defendant Hefetz breached that fiduciary duty when he caused, through
6 Star Development as Manager, false information to be relayed to Star Developments's counsel,
7 causing fraudulent affidavits to be filed with the Central District of San Fernando Valley, Case
8 No. 1:09BK15680-GM, by stating that there existed a global settlement agreement that would
9 have released all parties to the \$6,000,000.00 loan.
10

11 58. Counter-Defendant Hefetz further breached that duty when he failed to act for the
12 benefit of Counterclaimants by failing to include Counterclaimants in said settlement agreement
13 to release Counterclaimants from their obligations to and personal guarantees to Lender, which
14 had previously been agreed upon.
15

16 59. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in
17 excess of ten thousand dollars (\$10,000.00).
18

19 60. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
20 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
21 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
22

23 61. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
24 retain an attorney and have incurred attorney's fees and costs.
25

FIFTH CLAIM FOR RELIEF

Tortious Interference with Contractual Relations

26 62. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1
27 through 61 above as though fully set forth herein.
28

1 72. The Herbert Frey Revocable Family Trust dated November 22, 1982 (Lender) is
2 an unlicensed mortgage broker who transferred the note to Counter-Defendant Hefetz, also an
3 unlicensed mortgage broker, in violation of NRS 645B.
4

5 73. Counter-Defendant Hefetz and Lender do not meet the exception to the license
6 requirement as designated in NRS 645B.015, as the transfer of the \$6,000,000.00 note was
7 secured by Counterclaimants' real property, and was, at all times an unlawful transfer of a
8 secured transaction.
9

10 74. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in
11 excess of ten thousand dollars (\$10,000.00).

12 75. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
13 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
14 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
15

16 76. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
17 retain an attorney and have incurred attorney's fees and costs.
18

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Exhibit 1

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

A - 1 1 - 6 4 5 3 5 3 - C

XXVIII

I. Party Information

Plaintiff(s) (name/address/phone): YACOV HEFETZ AND ALIS COHEN

Defendant(s) (name/address/phone): CHRISTOPHER BEAVOR AND SAMANTHA BEAVOR

Attorney (name/address/phone):

Lee I. Iglody, Esq.
9555 S. Eastern, # 280
Las Vegas, NV 89123

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Act/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

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CLERK OF THE COURT

1 **COMP**
2 Lee I. Iglody, Esq.
3 Nevada Bar #: 7757
4 9555 S. Eastern Avenue, Suite 280
5 Las Vegas, NV 89123
6 Tel: (702) 425-5366
7 Fax: (702) 446-5148
8 Email: Lee@Iglody.com
9 Attorney for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 YACOV JACK HEFETZ, an individual, and)
10 ALIS COHEN, an individual,)
11 Plaintiffs,)

CASE NO: A - 1 1 - 6 4 5 3 5 3 - C
DEPT NO.: XXVIII

12 vs.)

VERIFIED COMPLAINT

13)
14 CHRISTOPHER BEAVOR, an individual,)
15 and SAMANTHA BEAVOR, an individual,)
16 DOES I - X and ROE ENTITIES I - X,)
17 inclusive)
18 Defendants.)

19 Plaintiffs YACOV JACK HEFETZ and ALIS COHEN (collectively, "Plaintiffs"), by and
20 through their counsel, Lee Iglody, Esq., hereby complain and allege against Defendants
21 CHRISTOPHER BEAVOR and SAMANTHA BEAVOR (the "Guarantors") and DOES I - X
22 and ROE ENTITIES I - X, inclusive, (collectively, "Defendants") as follows:

23 **I. NATURE OF THE ACTION**

24 1. This action is necessary as a result of Defendants' failure to meet their joint and
25 several obligations as guarantors of a defaulted loan in the principal amount of \$6,000,000.00.

26 **II. PARTIES, JURISDICTION AND VENUE**

27 2. Plaintiff Yacov Jack Hefetz is and was at all relevant times hereto an individual
28 that resides in Clark County, Nevada.

LEE IGLODY, ESQ.
9555 S. Eastern Ave., Suite 280
Las Vegas, Nevada 89123
(702) 425-5366 FAX: (702) 446-5148

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1 3. Plaintiff Alis Cohen is and was at all relevant times hereto an individual that
2 resides in Clark County, Nevada.

3 4. Defendant Christopher Beavor is and was at all relevant times hereto an
4 individual residing in Clark County, Nevada.

5 5. Defendant Samantha Beavor is and was at all relevant times hereto an individual
6 residing in Clark County, Nevada.

7 6. Defendants designated herein as Does and Roe Entities are individuals and legal
8 entities that are liable to Plaintiffs for the claims set forth herein. In addition to possible alter
9 egos of the above-named Defendants, if discovery should reveal the individual Defendants, or
10 any of their trusts, affiliated entities, family members or ex-spouses are participating in
11 fraudulent transfers for the purpose of avoiding claims such as Plaintiffs' set forth in this
12 Complaint, then members of these entities, trusts and/or third-party transferees, including but not
13 limited to, individual transferees and/or new entities formed for the purpose of holding property
14 and assets, shall be added as Defendants herein. Any transactions and the true capacities of Does
15 and Roe Entities are presently unknown to Plaintiffs and, therefore, Plaintiffs sue said
16 Defendants by such fictitious names. Plaintiffs will amend this Complaint to assert the true
17 names and capacities of such Doe and Roe Entities when more information has been ascertained.

18 7. The majority of Defendants' wrongful acts occurred and/or arose from or in Clark
19 County, Nevada, and the loan documents at issue provide for jurisdiction and venue in Las
20 Vegas, Clark County, Nevada. Thus, jurisdiction is proper in the courts of this state and venue is
21 proper in this judicial district.

22 **III. GENERAL ALLEGATIONS**

23 8. On or about March 29, 2007, Toluca Lake Vintage, LLC ("Borrower") entered
24 into a Loan Agreement whereby Borrower procured a loan in the amount of \$6,000,000.00 (the
25 "Loan") from a lender, the Herbert Frey Revocable Family Trust ("Lender"). True and correct
26 copies of the Loan Agreement (without exhibits) and the Promissory Note evidencing the Loan
27 are attached hereto as **Exhibits 1 and 2** respectively.
28

LEE IGLODY, ESQ.

9555 S. Eastern Ave., Suite 280

Las Vegas, Nevada 89123

(702) 425-5366 FAX: (702) 446-5148

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19. Guarantors failed to meet their guarantee obligations upon Borrower's default.

20. Lender assigned to Plaintiffs all of Lender's right, title and interest in and to the Loan, including all documents evidencing, securing, guaranteeing or otherwise executed in connection with the Loan, which encompassed Guarantors' Payment Guarantee.

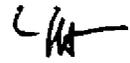
21. Guarantors' failure to meet their guarantee obligations has damaged Plaintiffs in an amount in excess of \$10,000.00.

22. It has been necessary for Plaintiffs to retain the services of attorneys to prosecute their claims, and Plaintiffs are thereby entitled to an award of reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for judgment in its favor and against Defendants as follows:

1. For judgment in favor of Plaintiffs and against Defendants, jointly and separately, in an amount to be determined at trial, in excess of \$10,000;
2. For prejudgment interest;
3. For attorneys' fees and costs; and
4. For any such other and further relief as the Court deems just and proper under the circumstances

Dated this 20th day of July, 2011.



Lee I. Iglody, Esq.
Nevada Bar #: 7757
Email: Lee@Iglody.com
Attorney for Plaintiffs

LEE IGLODY, ESQ.
9555 S. Eastern Ave., Suite 280
Las Vegas, Nevada 89123
(702) 425-5366 FAX: (702) 446-5148

VERIFICATION

1 Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the
2 foregoing Verified Complaint and knows the contents thereof; that the pleading is true of his
3 own knowledge, except as to those matters stated on information and belief, and that as to such
4 matters he believes it to be true.
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8 Date: 7/18/2011

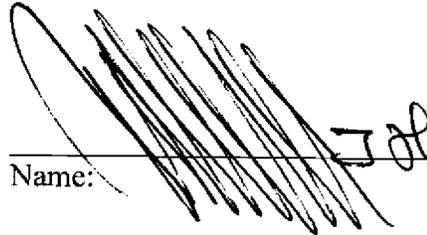
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EXHIBIT 1

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement"), is made and entered into as of March 29, 2007 by and between Toluca Lake Vintage, LLC, a California limited liability company ("*Borrower*"), and Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("*Lender*").

SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth respectively after each:

"Acquisition Financing" shall have the meaning set forth in Section 6.7.

"Agreement" means this Loan Agreement.

"Beavor" shall mean Christopher Beavor and Samantha Beavor, each an individual.

"Borrower" means Toluca Lake Vintage, LLC, a California limited liability company.

"Brian Head Deed of Trust" shall have the meaning set forth in Section 4.1(b).

"Brian Head Property" shall have the meaning as described in Exhibit A attached hereto.

"Business Day" means any day on which banks in the State of Nevada are open for business.

"C&S" shall mean C&S Holdings, LLC, a Nevada limited liability company.

"Deeds of Trust" mean (a) the Brian Head Deed of Trust, (b) the Nevada Deed of Trust, and (c) the Toluca Lake Deed of Trust.

"Event of Default" shall have the meaning set forth in Section 7.1.

"Financing Notice" shall have the meaning set forth in Section 6.7.

"Governmental Agency" means any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public utility.

"Guarantors" mean, collectively, Beavor; C&S; and Brian Head Lofts, LLC, a Utah limited liability company.

"Guaranty" means, collectively, the Payment Guaranty executed by each Guarantor in favor of Lender, either as originally executed or as it may from time to time be supplemented, modified or amended.

"Improvements" means any and all improvements now existing or hereafter constructed on the Toluca Lake Property.

"Interest Reserve" means that portion of the Loan funds allocated to interest reserve pursuant to Section 3.2 below.

"Laws" means, collectively, all federal, state and local laws, rules, regulations, ordinances and codes.

"Lender" means Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982.

"Loan" means the loan to be made by Lender to Borrower pursuant to Section 3 hereof.

"Loan Documents" means, collectively, this Agreement, the Notes, the Deeds of Trust, the Guaranty and the Security Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified or amended, together with any other documents or instruments which may at any time be executed by Borrower in connection with the Loan.

"Nevada Deed of Trust" shall have the meaning set forth in Section 4.1(c).

"Nevada Property" shall have the meaning as described in Exhibit A attached hereto.

"Notes" mean the Phase I Note and the Phase II Note, executed by Borrower in favor of Lender to evidence the Loan, either as originally executed or as it may from time to time be supplemented, modified or amended.

"NRS" means the Nevada Revised Statutes, as amended from time to time.

"Person" means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization or otherwise.

"Personal Property" means all present and future personal property of Borrower of every kind and nature, whether tangible or intangible, now or hereafter located at, upon or about the Toluca Lake Property, or used or to be used in connection with or relating to or arising with respect to the Toluca Lake Property, including but not limited to the property described in the Toluca Lake Deed of Trust.

"Phase I Loan Amount" shall have the meaning set forth in Section 3.1(a).

"Phase I Note" shall have the meaning set forth in Section 4.1(a).

"Phase II Note" shall have the meaning set forth in Section 4.1(b).

"Preferred Return" shall have the meaning set forth in Section 4.2(a).

"Property" means, collectively, the Real Property, the Personal Property and any buildings, structures, or improvements now or hereafter located on all or any portion of the Real Property.

"Real Property" means, collectively, (a) the Brian Head Property, (b) the Nevada Property, and (c) the Toluca Lake Property, all as more particularly described in Exhibit A attached hereto.

"Security Agreement" shall have the meaning set forth in Section 4.1(e).

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"Security Documents" means the Deeds of Trust, the Guaranty and the Security Agreement.

"Toluca Lake Deed of Trust" shall have the meaning set forth in Section 4.2(b).

"Toluca Lake Property" shall have the meaning as described in Exhibit A attached hereto.

"Unit" means each residential condominium unit created by Borrower on the Toluca Lake Property.

1.2 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the members of the relevant class. Any reference to the Loan Documents and other instruments, documents and agreements shall include such Loan Documents and other instruments, documents and agreements as originally executed or as the same may be supplemented, modified or amended.

1.3 Accounting Terms. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis.

1.4 Exhibits. All exhibits to this Agreement, either as now existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference.

SECTION 2. RECITALS.

Borrower has applied to Lender for a Loan to complete the acquisition and development of the Toluca Lake Property. Lender is willing to make the Loan to Borrower on the terms and conditions contained in this Agreement and the other Loan Documents.

SECTION 3. THE LOAN.

3.1 Amount of the Loan. Subject to the terms and conditions set forth in this Agreement, Lender agrees to make a loan ("Loan") to Borrower in the aggregate principal amount of Six Million Dollars (\$6,000,000) (the "Loan Amount"), the disbursement of which by Lender is subject to the terms and conditions of the Loan Documents. The Loan Amount shall be disbursed to Borrower as follows:

(a) *Phase I.* Concurrently with the execution of this Agreement, Lender shall disburse to Borrower the sum of Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) (the "*Phase I Loan Amount*") in the amounts and according to the disbursement schedule attached hereto as Exhibit B. Of this amount, Borrower and Lender acknowledge and agree that One Hundred Sixty Four Thousand Dollars (\$164,000) shall be withheld by Lender as a loan fee, which shall be deemed nonrefundable and fully earned upon disbursement of the Phase II Loan proceeds as set forth in Section 3.1(b) below, and Seventy Seven Thousand Four Hundred Ninety Dollars (\$77,490) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase I Loan shall be evidenced by the Phase I Note.

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(b) *Phase II.* On June 20, 2007, Lender shall disburse to Borrower the sum of Six Million Dollars (\$6,000,000). Of this amount, Borrower and Lender acknowledge and agree that Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) shall be withheld by Lender and applied to pay and satisfy in full the Phase I Note, and One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase II Loan shall be evidenced by the Phase II Note.

3.2 Interest Reserve. A portion of the Loan Amount, in the amounts set forth in Section 3.1 above, shall withheld by Lender and applied as interest reserve for its benefit (the "*Interest Reserve*"). Interest accrued on the then outstanding Loan Amount shall be paid from a portion of the Interest Reserve upon presentation of a monthly interest statement by Lender to Borrower, without the necessity of any instruction or request from Borrower. Except as provided in this paragraph, the funds in the Interest Reserve shall never be used for any other purpose. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, but not limited to, the obligation to pay interest accruing under the Note.

3.3 Prepayment. Borrower may prepay the Loan, in full or in part, at any time.

3.4 Security. The indebtedness evidenced by the Notes, and all other indebtedness and obligations of Borrower under the Loan Documents, shall be secured as set forth in Section 4. The Guaranty and the obligations of any Guarantor thereunder shall be unsecured.

SECTION 4. LOAN DOCUMENTS AND SECURITY.

4.1 Phase I Loan. Upon disbursement of the Phase I Loan, Borrower shall deliver to Lender the following:

(a) A promissory note in the principal amount of the Phase I Loan Amount bearing interest at the rate of twelve percent (12%) per annum (the "*Phase I Note*"), unless said rate is reduced to eight percent (8%) per annum by reason of a failure by Lender to timely fund the Phase II Loan Amount as set forth in Section 7.2(b);

(b) A Deed of Trust executed by C&S, as grantor, encumbering the Brian Head Property as a first priority lien (the "*Brian Head Deed of Trust*");

(c) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Beavor, as grantor, encumbering the Nevada Property as a second priority lien (the "*Nevada Deed of Trust*");

(d) A Payment Guaranty executed by each Guarantor in favor of Lender; and

(e) A Security Agreement and Assignment of Membership Interest by and between C&S; Rocket Construction, Inc., a California corporation; and Essential Investments, LLC, a Nevada limited liability company, collectively, as assignor, and Lender, as assignee (the "*Security Agreement*").

4.2 Phase II Loan. Upon disbursement of the Phase II Loan, Borrower shall deliver to Lender the following:

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(a) A promissory note in the principal amount of the Phase II Loan bearing interest at the rate of fifteen percent (15%) per annum plus a preferred return ("*Preferred Return*") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000), in the form attached hereto as Exhibit C (the "*Phase II Note*"). Upon delivery of the Phase II Note, the Phase I Note shall be deemed paid and satisfied in full and Lender shall return the Phase I Note to Borrower marked "Paid in Full"; and

(b) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Toluca Lake Property as a second priority lien (the "*Toluca Lake Deed of Trust*"), in the form attached hereto as Exhibit D. Borrower and Lender acknowledge and agree that the Phase II Loan proceeds will be used by Borrower to acquire the Toluca Lake Property and that the Toluca Lake Deed of Trust will be delivered to Lender concurrently with close of escrow by Borrower for the Toluca Lake Property.

SECTION 5. REPRESENTATIONS AND WARRANTIES BY BORROWER.

5.1 Formation, Qualification and Powers of Borrower. Borrower is a limited liability company duly formed and validly existing under the laws of the State of California and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform all of its obligations under the Loan Documents.

5.2 Authority and Compliance with Instruments and Government Regulations. The execution, delivery and performance by Borrower of all of its obligations under each Loan Document have been duly authorized by all necessary action and do not and will not:

(a) require any consent or approval not heretofore obtained of any Person holding any security or interest or entitled to receive any security or interest in Borrower;

(b) violate any provision of any organizational document or certificate of Borrower;

(c) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to any property now owned or leased or hereafter acquired by Borrower;

(d) violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Property, which violation would have a material, adverse impact thereon; or

(e) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which Borrower or any property of Borrower, is bound or affected; and Borrower is not in default in any respect that is materially adverse to the interest of Lender or that would have any material adverse effect on the financial condition of Borrower or the conduct of its business under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in Sections 5.2(d) and 5.2(e).

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Guaranty: 5.3 Execution of the Guaranty by the Guarantors. The execution and delivery of the

- (a) have been duly authorized by all necessary action;
- (b) do not require the consent, authorization or approval of any Governmental Agency or Person;
- (c) will not result in the creation of any lien or other claim of any nature upon or with respect to the property of the Guarantors, other than as may be set forth in the Guaranty; and
- (d) will not violate any provision of any Law having applicability to the Guarantors, in a manner which would have a material, adverse impact on any Guarantors; and, when executed and delivered, the Guaranty will constitute the legal, valid and binding obligation of the Guarantors enforceable against the Guarantors in accordance with its terms.

5.4 No Governmental Approvals Required. No authorization, consent, approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is or will be required to authorize, or is otherwise required in connection with:

- (a) the execution, delivery and performance by Borrower and the Guarantors of the Loan Documents; or
- (b) the creation of the liens, security interests or other charges or encumbrances described in the Security Documents; except that filing and/or recording may be required to perfect Lender's interest under the Security Documents.

5.5 Binding Obligations. The Loan Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Borrower and the Guarantors, as the case may be, enforceable against them in accordance with their respective terms.

SECTION 6. AFFIRMATIVE AND NEGATIVE COVENANTS.

Until payment of the Notes in full and performance of all obligations of Borrower under the Loan Documents, unless Lender otherwise consents in writing:

6.1 Compliance with Requirements. Borrower shall comply with all conditions, covenants, restrictions, leases, easements, reservations, rights and rights-of-way and all applicable Laws and other requirements relating to the Property, and obtain all necessary approvals, consents, licenses and permits of any Governmental Agency.

6.2 Sale or Other Encumbrances. Borrower specifically agrees that:

- (a) In order to induce Lender to make the Loan, Borrower agrees that if the Property or any part thereof or any interest therein, shall be sold, assigned, transferred, or conveyed, except as shall be specifically hereinafter permitted or without the prior written consent of Lender, then Lender, at its option, may declare the Notes, and all other obligations hereunder, to be forthwith due and payable. Except as shall be otherwise specifically provided herein, (a) a change in the legal or equitable ownership of the Property whether or not of record, or (b) a change in the form of entity or ownership (including the hypothecation or encumbrance

thereof) of the stock or any other ownership interest in Borrower shall be deemed a transfer of an interest in the Property; provided, however, that any transfer of the Property or any interest therein to an entity which controls, is controlled by or is under common control with Borrower shall not be considered a transfer hereunder.

(b) Borrower may request Lender to approve a sale or transfer of the Property to a party who would become the legal and equitable owner of the Property and would assume any and all obligations of Borrower under the Loan Documents. Lender shall not be obligated to consider or approve any such sale, transfer or assumption or request for the same. However, upon such request, Lender may impose limiting conditions and requirements to its consent to an assumption.

(c) In the event ownership of the Property, or any part thereof, becomes vested in a person or persons other than Borrower, the Lender may deal with such successor or successors in interest with reference to the Notes or the Deeds of Trust in the same manner as with Borrower, without in any way releasing, discharging or otherwise affecting the liability of Borrower under the Notes, the Deeds of Trust or the other Loan Documents.

6.3 Payment of Taxes, Assessments and Charges. Borrower shall pay, prior to delinquency, all taxes, assessments, charges and levies imposed by any Governmental Agency which are or may become a lien affecting the Property or any part thereof, including, without limitation, assessments on any appurtenant water stock; except that Borrower shall not be required to pay and discharge any tax, assessment, charge or levy that is being actively contested in good faith by appropriate proceedings, as long as Borrower has established and maintains reserves adequate to pay any liabilities contested pursuant to this Section in accordance with generally accepted accounting principles and, by reason of nonpayment, none of the property covered by the Security Documents or the lien or security interest of Lender is in danger of being lost or forfeited.

6.4 Insurance. Borrower shall at all times maintain the following policies of insurance:

(a) prior to completion of the Improvements, builder's "all risk" insurance ("completed value" form), including "course of construction" coverage, covering the Improvements and any Personal Property;

(b) from and after completion of the Improvements, property "all risk" Insurance covering the Improvements and any Personal Property;

(c) commercial general liability insurance in favor of the Borrower (and naming Lender as an additional insured) in an aggregate amount not less than \$2,000,000 (or such greater amount as may be specified by Lender from time to time) combined single limit; and

(d) such other insurance as may be required by applicable Laws (including worker's compensation and employer's liability insurance) or as Lender may reasonably require from time to time (including "all risk" insurance with respect to any other improvements now or in the future located on the Toluca Lake Property and comprehensive form boiler and machinery insurance, if applicable, rental loss insurance and business interruption insurance).

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6.5 Physical Security of Property. Borrower shall take appropriate measures to protect the physical security of the Property.

6.6 Reporting and Requirements. Borrower shall cause to be delivered to Lender, in form and detail satisfactory to Lender promptly upon Borrower's learning thereof, notice of:

- (a) any litigation affecting or relating to Borrower, and/or the Guarantors, and the Property;
- (b) any dispute between Borrower and any Governmental Agency relating to the Property, the adverse determination of which would adversely affect the Property;
- (c) any threat or commencement of proceedings in condemnation or eminent domain relating to the Property;
- (d) any Event of Default or event which, with the giving of notice and/or the passage of time, could become an Event of Default; and
- (e) any change in the Manager of Borrower, as defined in Borrower's Operating Agreement.

6.7 Approval of Toluca Lake Property Financing. Borrower and Lender acknowledge and agree that Borrower intends to obtain a loan for the acquisition of the Toluca Lake Property and construction of a condominium project thereon (the "Acquisition Financing"). The Acquisition Financing shall be secured by a deed of trust encumbering the Toluca Lake Property as a lien superior in priority to the Toluca Lake Deed of Trust. Except as set forth herein, the terms of the Acquisition Financing shall be subject to the written approval of the Lender within its commercially reasonable discretion. Borrower shall deliver written notice (the "Financing Notice") to Lender describing the terms of the Acquisition Financing no later than fifteen (15) days prior to the scheduled close of escrow. In the event Borrower does not receive written notice from Lender within five (5) days after delivery of the Financing Notice to Lender disapproving the proposed terms of the Acquisition Financing, the Acquisition Financing shall be deemed approved by Lender. Notwithstanding the foregoing, Borrower shall not be required to obtain Lender's consent to the Acquisition Financing if the interest rate therefor does not exceed three percent (3%) over the prime rate then charged by major money center banks in the United States and the loan origination fee does not exceed one percent (1%) of the principal loan amount. Borrower and Lender acknowledge and agree that during the term of the Loan, the aggregate principal amount of all indebtedness secured by the Toluca Lake Property, including the Acquisition Financing and the Loan, shall not exceed Twenty Six Million Dollars (\$26,000,000).

SECTION 7. EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT.

7.1 Events of Default. The occurrence of any one or more of the following, whatever the reason therefor, shall constitute an Event of Default hereunder:

(a) Borrower shall fail to pay when due any installment of principal or interest on the Notes or any other amount owing under this Agreement or the other Loan Documents, and such failure shall continue uncured as of ten (10) calendar days after Borrower receives written notice of such failure; or

(b) Borrower or any Guarantor shall fail to perform or observe any term, covenant or agreement contained in any of the Loan Documents on its part to be performed or

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observed, other than the failure to make a payment covered by Section 7.1(a), and such failure shall continue uncured as of thirty (30) calendar days after Borrower receives written notice of such failure; provided, however, that if Borrower has commenced to cure the default within said thirty (30) day period and is diligently pursuing such cure, but the default is of such a nature that it cannot be cured within thirty (30) days, then the cure period shall be extended for the number of days necessary to complete the cure, but in no event shall the total cure period be longer than sixty (60) days (the cure period set forth in this Section 7.1(b) shall not apply to any other Events of Default); or

(c) any representation or warranty in any of the Loan Documents or in any certificate, agreement, instrument or other document made or delivered pursuant to or in connection with any of the Loan Documents proves to have been incorrect in any material respect when made; or

(d) Borrower (which term shall include any entity comprising Borrower) is dissolved or liquidated, or otherwise ceases to exist, or all or substantially all of the assets of Borrower or any Guarantor are sold or otherwise transferred without Lender's written consent; or

(e) Borrower or any Guarantor is the subject of an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer (the "Receiver"); or a Receiver is appointed without the application or consent of Borrower or any Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) calendar days; or Borrower or any Guarantor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceedings relating to it or to all or any part of its property under the laws of any jurisdiction; or any similar proceeding is instituted without the consent of Borrower or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, attachment, execution or similar process is issued or levied against all or any part of the Property of Borrower or any Guarantor, and is not released, vacated or fully bonded within sixty (60) calendar days after such issue or levy.

7.2 Remedies Upon Default.

(a) Upon the occurrence of any Event of Default, Lender may, at its option, do any or all of the following:

(i) declare the principal of all amounts owing under a Note, this Agreement and the other Loan Documents and other obligations secured by the Security Documents, together with interest thereon, and any other obligations of Borrower to Lender, to be forthwith due and payable, regardless of any other specified maturity or due date, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, and without the necessity of prior recourse to any security;

(ii) terminate any right of Borrower to receive any additional advance;

(iii) terminate all rights of Borrower and obligations of Lender under the Loan Documents;

(iv) exercise its right and power to sell, or otherwise dispose of, the Personal Property, or any part thereof, and for that purpose may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process to the extent permitted by law, enter upon any premises on which the Personal Property or any part thereof may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Lender's option Borrower shall assemble the Personal Property and make it available to the Lender at the place and the time designated in the demand; and

(v) exercise any and all of its rights under the Loan Documents, including but not limited to the right to take possession of and foreclose on any security, and exercise any other rights with respect to any security, whether under the Security Documents or any other agreement or as provided by Law, all in such order and in such manner as Lender in its sole discretion may determine.

(b) If Lender shall fail to perform any obligation under this Agreement, including, without limitation, timely disbursement of the funds as set forth in Section 3.1, Borrower shall be entitled to all or any of the following remedies:

(i) in the event Lender fails to timely disburse funds as set forth in Section 3.1, the interest rate under the Phase I Note shall be reduced from twelve percent (12%) to eight percent (8%) per annum effective as of the date of Lender's failure to so fund; and

(ii) pursue an action to specifically enforce the performance of any and all provisions of this Agreement, including, without limitation, Section 7.2(b)(i).

SECTION 8. MISCELLANEOUS.

8.1 Performance by Lender. In the event that Borrower shall default in or fail to perform any of its obligations under the Loan Documents, Lender shall have the right, but not the duty, without limitation upon any of Lender's rights pursuant thereto, upon no less than fifteen (15) calendar days prior written notice, to perform the same, and Borrower agrees to pay to Lender, within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.2 Actions. Provided Borrower has not promptly so acted, Lender shall have the right to commence, appear in, and defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds, and in connection therewith Lender may pay necessary expenses, employ counsel, and pay reasonable attorneys' fees. Borrower agrees to pay to Lender within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.3 Advances Obligatory. Anything herein to the contrary notwithstanding, it is specifically understood and agreed that any advances made by Lender pursuant to this Agreement,

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including, but not limited to, all funds advanced by Lender, shall be deemed advanced by Lender under an obligation to do so.

8.4 Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that, as provided herein, Borrower may not assign its rights or interest or delegate any of its duties under this Agreement or any of the other Loan Documents without prior written consent of Lender.

8.5 Amendments: Consents. No amendment, modification, supplement, termination or waiver of any provision of this Agreement or any of the other Loan Documents, and no consent to any departure by Borrower therefrom, may in any event be effective unless in writing signed by Lender, and then only in the specific instance and for the specific purpose given.

8.6 Notices. All notices to be given pursuant to this Agreement shall be sufficient if given by personal service, by guaranteed overnight delivery service, by telex, telecopy or telegram or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the described addresses of the parties hereto as set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, the date of sending the telex, telecopy or telegram or two (2) days after mailing certified or registered mail.

BORROWER'S ADDRESS:

Toluca Lake Vintage, LLC
1930 Village Center Circle, Suite 3-231
Las Vegas, Nevada 89134
Attention: Christopher Beavor
Telephone: (702) 853-7900
Facsimile: (702) 947-6111

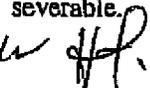
LENDER'S ADDRESS:

Herbert Frey, Trustee of the
Herbert Frey Revocable Family Trust
157 E. Warm Springs Road
Telephone: (702) _____
Facsimile: (702) _____

8.7 Governing Law. The laws of the State of Nevada, without regard to its choice of law provisions, shall govern enforcement of the Loan Documents.

8.8 Jurisdiction. Borrower and Lender, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submit to personal jurisdiction in the State of Nevada over any suit, action or proceeding by any person arising from or relating to the Notes, this instrument or any other of the Loan Documents, (ii) agree that any such action, suit or proceeding shall be brought in a state or federal court of competent jurisdiction sitting in Clark County, Nevada, (iii) submit to the jurisdiction of such courts, and (iv) to the fullest extent permitted by law, agrees that they will not bring any action, suit or proceeding in any forum other than Clark County, Nevada.

8.9 Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of all Loan Documents are declared to be severable.



8.10 Headings. Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.

8.11 Attorney's Fees. If any legal action or proceeding is initiated by a party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover the reasonable fees of attorneys and any other costs incurred in connection therewith.

8.12 Time of the Essence. Time is of the essence as to any and all provisions of this Agreement.

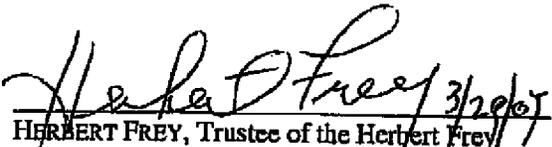
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

TOLUCA LAKE VINTAGE, LLC
A California limited liability company

By:  3/29/07
Christopher Beavor
Manager

LENDER:

 3/29/07
HERBERT FREY, Trustee of the Herbert Frey
Revocable Family Trust dated
November 22, 1982

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EXHIBIT 2

PROMISSORY NOTE

U.S. \$6,000,000.00

As of 8/23/07

FOR VALUE RECEIVED, Toluca Lake Vintage, LLC, a California limited liability company, having an address at 1930 Village Center Circle, Suite 3-231, Las Vegas, Nevada 89134 ("Maker"), hereby promises to pay to the order of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Payee"), having an address at 157 E. Warm Springs Road, Las Vegas, Nevada 89119, the principal sum of Six Million Dollars (\$6,000,000.00) or so much thereof as may be advanced from time to time, and interest from the date hereof on the balance of principal from time to time outstanding, in United States currency, at the rates and at the times hereinafter described.

This Note is issued by Maker pursuant to that certain Loan Agreement dated as of March 29, 2007, as amended, (the "Loan Agreement") entered into between Payee and Maker. This Note evidences the Phase II Loan (as defined in the Loan Agreement). Payment of this Note is governed by the Loan Agreement, the terms of which are incorporated herein by express reference as if fully set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1. **Interest.** The principal amount hereof outstanding from time to time shall bear interest until paid in full at the rate of fifteen percent (15%) per annum.

2. **Monthly Payments.** Interest only shall be payable in arrears on the first (1st) Business Day of each calendar month after the date hereof up to and including the Maturity Date in the amount of all interest accrued during the immediately preceding calendar month. All payments on account of the indebtedness evidenced by this Note shall be made to Payee not later than 11:00 a.m. Las Vegas, Nevada time on the day when due in lawful money of the United States and shall be first applied to late charges, costs of collection or enforcement and other similar amounts due, if any, under this Note and any of the other Loan Documents, then to interest due and payable hereunder and the remainder to principal due and payable hereunder.

3. **Maturity Date.** The indebtedness evidenced hereby shall mature on February 21, 2009, as such date may be extended by Maker as set forth herein ("Maturity Date"). Provided that an Event of Default does not exist under the Loan Documents, Maker shall have the right to extend the Maturity Date to 5/21/09 by delivering written notice to Payee of such extension at the address set forth above on or before 1/21/09. Moreover, provided that Maker has so extended the Maturity Date and an Event of Default does not exist under the Loan Documents, Maker shall have the right to further extend the Maturity Date to 8/21/09 by delivering written notice to Payee of such further extension at the address set forth above on or before 4/21/09. On the Maturity Date, the entire outstanding principal balance hereof, together with accrued and unpaid interest and all other sums evidenced by this Note, shall, if not sooner paid, become due and payable.

4. **Preferred Return.** In consideration for the Loan, Payee shall be entitled to receive a preferred return (the "Preferred Return") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00). The Preferred Return shall not bear interest hereunder and shall be payable upon the sale, transfer or conveyance of each Unit by Maker to any Person as follows: (a) to Payee, the

amount of Thirty Five Thousand Dollars (\$35,000.00); and (b) to The Gilmore Company, a Nevada corporation, at its offices located at _____, the amount of Five Thousand Dollars (\$5,000.00).

5. General Provisions.

(a) The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and the holder or holders hereof under the remainder of this Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(b) This Note and all provisions hereof shall be binding upon Maker and all persons claiming under or through Maker, and shall inure to the benefit of Payee, together with its successors and assigns, including each owner and holder from time to time of this Note.

(c) Time is of the essence as to all dates set forth herein.

(d) Maker agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Payee; and Maker consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Maker and without affecting its liability hereunder.

(e) If this Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, Maker promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable attorneys' fees and disbursements.

(f) All parties now or hereafter liable with respect to this Note, whether Maker, principal, surety, guarantor, endorsee or otherwise hereby severally waive presentment for payment, demand, notice of nonpayment or dishonor, protest and notice of protest, except as Lender

agrees to provide in the Loan Documents. No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Payee thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(g) THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Maker has delivered this Note as of the date first set forth above.

MAKER:

TOLUCA LAKE VINTAGE, LLC
A California limited liability company

By: 

Christopher Beavor
Manager

EXHIBIT 3

PAYMENT GUARANTY

THIS PAYMENT GUARANTY ("Guaranty") made as of March 29, 2007, by Christopher Beavor, an individual, and Samantha Beavor, an individual (collectively, "Guarantor"), to and for the benefit of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Lender").

RECITALS

A. On or about the date hereof Toluca Lake Vintage, LLC, a California limited liability company, ("Borrower") and Lender entered into that certain Loan Agreement ("*Loan Agreement*") whereby Lender agreed to make a secured loan (the "*Loan*") available to Borrower in the aggregate amount of Six Million Dollars (\$6,000,000), to finance the acquisition and development of the Toluca Lake Property. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Borrower will execute and deliver the Notes in favor of Lender, payment of which will be secured by (i) the Deeds of Trust made by Borrower in favor of Lender and (ii) the other Security Documents.

C. Guarantor will derive material financial benefit from the Loan evidenced and secured by the Notes, the Deeds of Trust and the other Security Documents.

D. Lender has relied on the statements and agreements contained herein in agreeing to make the Loan. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by Lender.

AGREEMENTS

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Lender and its respective successors, indorsees, transferees, participants and assigns as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees:
 - (a) the full and prompt payment of the principal of and interest on the Notes when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, and the full and prompt payment of all sums which may now be or may hereafter become due and owing under the Notes, the Loan Agreement and the other Loan Documents;
 - (b) the prompt, full and complete performance of all of Borrower's obligations under each and every covenant contained in the Loan Documents; and
 - (c) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 6 hereof).

All amounts due, debts, liabilities and payment obligations described in subsections (a) and (b) of this Section 1 shall be hereinafter collectively referred to as the "Indebtedness".

2. In the event of any default by Borrower in the payment of the Indebtedness, after the expiration of any applicable cure or grace period, Guarantor agrees, on demand by Lender or the holder of the Note, to pay the Indebtedness regardless of any defense, right of set-off or claims which Borrower or Guarantor may have against Lender or the holder of the Note.

All of the remedies set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be equally available to Lender, and the choice by Lender of one such alternative over another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies provided herein in part because they recognize that the choice of remedies in the event of a default hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower and/or Guarantor.

3. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which Guarantor may have against Borrower (c) waive any defense, right of set-off or other claim which Guarantor or Borrower may have against Lender, or the holder of the Note, (d) waive any and all rights Guarantor may have under any anti-deficiency statute or other similar protections, (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (f) waive any failure by Lender to inform Guarantor of any facts Lender may now or hereafter know about Borrower, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that Lender has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of Borrower's obligations. Credit may be granted or continued from time to time by Lender to Borrower without notice to or authorization from Guarantor, regardless of the financial or other condition of Borrower at the time of any such grant or continuation.

4. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor of the time for payment of interest or principal under the Notes or by any forbearance or delay in collecting interest or principal under the Notes, or by any waiver by Lender under the Loan Agreement, Deeds of Trust or any other Loan Documents, or by Lender's failure or election not to pursue any other remedies it may have against Borrower or Guarantor, or by any change or modification in the Notes, Loan Agreement, Deeds of Trust or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, or by the application of payments received from any source to the payment of any obligation other than the Indebtedness even though Lender might lawfully have elected to apply such payments to any part or all of the Indebtedness, it being the intent hereof that, subject to Lender's compliance with the terms of this Guaranty, Guarantor shall remain liable for the payment of the Indebtedness, until the Indebtedness has been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Notes, Loan Agreement, Deeds of Trust or other Loan Documents,

and may waive or release any provision or provisions of the Notes, Loan Agreement, Deeds of Trust and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Guarantor's obligations hereunder.

5. This is an absolute, present and continuing guaranty of payment and not of collection. Guarantor agrees that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Notes, Loan Agreement, Deeds of Trust or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Deeds of Trust or otherwise, or resorting to any other guaranties, and without limiting the generality of the foregoing, Guarantor waives any right Guarantor may have under the Nevada one action rule, Nevada Revised Statutes Section 40.430.

6. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Guarantor shall pay to Lender upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "*Enforcement Costs*"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

7. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable, as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Lender or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

8. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LENDER AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF LAS VEGAS, AND STATE OF NEVADA, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. LENDER

AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY NEVADA STATE OR UNITED STATES COURT SITTING IN THE CITY OF LAS VEGAS AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

9. Any indebtedness of Borrower to Guarantor now or hereafter existing is hereby subordinated to the payment of the Indebtedness. Guarantor agrees that, until the entire Indebtedness has been paid in full, Guarantor will not seek, accept, or retain for its own account, any payment from Borrower on account of such subordinated debt. Any payments to Guarantor on account of such subordinated debt shall be collected and received by Guarantor in trust for Lender and shall be paid over to Lender on account of the Indebtedness without impairing or releasing the obligations of Guarantor hereunder.

10. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Guarantor: Christopher Beavor
1930 Village Center Circle Suite 3-231
Las Vegas, Nevada 89134
Telephone: (702) 853-7900
Facsimile: (702) 947-6111

Lender: Herbert Frey, Trustee of the Herbert Frey
Revocable Family Trust dated November 22, 1982
157 E. Warm Springs Road
Las Vegas, Nevada 89119
Telephone: _____
Facsimile: _____

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

11. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor. If more than one party executes this Guaranty, the liability of all such parties shall be joint and several.

12. This Guaranty may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has delivered this Guaranty in the State of Nevada as of the date first written above.

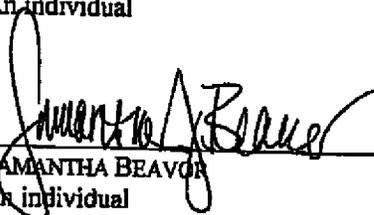
GUARANTOR:



3/28/07

CHRISTOPHER BEAVOR

An individual



3/28/07

SAMANTHA BEAVOR

An individual

1 **I. INTRODUCTION**

2 The district court’s rulings, orders and judgments, attached to this response,
3 have disposed of all issues and all parties in this case. As Appellant-Plaintiff
4 Yacov Jack Hefetz has timely filed notices of appeal from the orders adverse to
5 Plaintiff, this Court has jurisdiction over this appeal pursuant to Nev. R. App. P.
6 3A(b).

7 **II. BACKGROUND**

8 On July 21, 2011, Plaintiffs Yacov Jack Hefetz and Alis Cohen filed their
9 verified complaint against Defendant Christopher Beavor and Samantha Beavor
10 setting forth a claim for breach of a guaranty of a loan in the amount of \$6 million.
11 See Exhibit 1, Verified Complaint. On April 9, 2012, Defendants filed a
12 counterclaim against Hefetz alleging fraud, breach of the covenant of good faith
13 and fair dealings, breach of fiduciary duty, interference with contract, and
14 negligence. See Exhibit 2, First Amended Counterclaim. On June 29, 2012,
15 Notice of Entry of Order dismissing claims of Alis Cohen was filed and served,
16 attached as Exhibit 3. On February 25, 2013, trial commenced on Plaintiff Hefetz
17 claims and Defendants’ counterclaims. See Exhibit 4, Court Minutes dated
18 February 25, 2013. On March 01, 2013, the district court acknowledged parties
19 agreement that Defendant Samantha Beavor would no longer be a party to the
20 action and granted Plaintiff’s Rule 50(a) motion which dismissed all of
21 Defendants’ counterclaims against Hefetz. See Exhibit 5, Court Minutes dated
22 March 1, 2013. Also, on March 01, 2013, the jury entered a verdict in favor of
23 Defendant Christopher Beavor on Plaintiff’s remaining claims. See Exhibit 6,
24 Verdict. Based on the trial results, on May 21, 2013, Notice of Entry of Judgment
25 was filed and served, attached as Exhibit 7. On June 10, 2013, Plaintiff filed a
26 Motion for a New Trial or in the Alternative a Motion for Judgment
27

1 notwithstanding the Verdict (JNOV), which requested “granting the Plaintiff a new
2 trial. . . .” *See* Exhibit 8, Motion for New Trial, at p. 8:25-26. On September 09,
3 2013, Notice of Entry of Order was filed and served granting Plaintiff’s Motion for
4 a New Trial, attached as Exhibit 9. On June 18, 2015, Notice of Entry of Order
5 was filed and served, dismissing Plaintiff’s complaint, in its entirety, without
6 prejudice, which disposed of all remaining claims as to all remaining parties,
7 attached as Exhibit 10. Appellant-Plaintiff timely filed his Notice of Appeal on
8 July 14, 2015, attached as Exhibit 11. Notice of Entry of Order granting
9 Defendant’s motion for attorney fees and costs was filed and served on September
10 03, 2015, attached as Exhibit 12. Appellant-Plaintiff timely filed a notice of appeal
11 with respect to that order on September 15, 2015, attached Exhibit 13.

12 **III. ARGUMENT**

13 Pursuant to Nev. R. App. P. 3A(b), “an appeal may be taken from . . . [a]
14 final judgment entered in an action or proceeding commenced in the court in which
15 the judgment is rendered.” In *Lee v. GNLV Corp.*, 116 Nev. 424, 427-28, 996 P.2d
16 416, 418 (2000), this Court held that orders that “adjudicated the rights and
17 liabilities of all parties and disposed of all issues presented in the case, was final”
18 for purposes of appeal.

19 All claims asserted by Plaintiff Alis Cohen were dismissed by the Notice of
20 Entry of Order filed and served on June 29, 2012, attached as Exhibit 3.
21 Defendants’ counterclaims were dismissed when the district court granted Plaintiff
22 Hefetz’s Rule 50(a) motion. *See* Exhibit 5, Court Minutes dated March 1, 2013;
23 Exhibit 7, Notice of Entry of Judgment dated May 21, 2013. Plaintiff’s remaining
24 claims against Defendants were disposed of when the district court improperly
25 dismissed Plaintiff’s complaint, in its entirety, without prejudice. *See* Exhibit 10,
26 Notice of Entry of Order dated June 18, 2015. *See also Dredge Corp. v. Peccole*,
27

1 89 Nev. 26, 27, 505 P.2d 290, 290 (1973) (holding that “dismissing the action
2 without prejudice was a final judgment” which was subject to appeal); *Lee*, 116
3 Nev. at 426, 996 P.2d at 417 (clarifying “that a final judgment is one that disposes
4 of all the issues presented in the case, and leaves nothing for the future
5 consideration of the court, except for post-judgment issues such as attorney's fees
6 and costs”). Appellant-Plaintiff timely filed his Notice of Appeal on July 14, 2015.
7 *See* Exhibit 11, Notice of Appeal dated July 14, 2015.

8 Additionally, the district court improperly granted Defendant’s Motion for
9 attorney fees and costs on September 3, 2015. *See* Exhibit 12, Notice of Entry of
10 Order dated September 3, 2015. Appellant-Plaintiff timely filed a notice of appeal
11 with respect to that order on September 15, 2015, attached Exhibit 13. *See Lee*,
12 116 Nev. at 426, 996 P.2d at 417 (explaining that a “post-judgment order awarding
13 attorney's fees and/or costs may be appealed as a special order made after final
14 judgment, pursuant to NRAP 3A(b)(2)”). Appellant-Plaintiff’s Notices of Appeal
15 are therefore timely pursuant to Nev. R. App. P. 4(a) and 26(c), and therefore this
16 Court has jurisdiction pursuant to Nev. R. App. P. 3A(b).
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IV. CONCLUSION

For the forgoing reasons, this Court has jurisdiction over this appeal as the district court has adjudicated the rights and liabilities of all parties and disposed of all issues presented in the case, which deposition has been timely appealed by Appellant-Plaintiff Yacov Jack Hefetz.

Dated this 7^h day of March 2016

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ Chris Davis
H. Stan Johnson, Esq.
Nevada Bar No. 00265
Chris Davis, Esq.
Nevada Bar No. 06616
Michael V. Hughes, Esq.
Nevada Bar No. 13154
255 E. Warm Spring Road, Suite 100
Las Vegas, Nevada 89119

Attorneys for Appellant-Plaintiff

CERTIFICATE OF SERVICE

I certify that on March 7, 2016, pursuant to N.E.F.R. 7, I caused the **RESPONSE TO ORDER TO SHOW CAUSE** to be filed electronically with the Clerk of the Nevada Supreme Court. Pursuant to N.E.F.R. 9, notice of an electronically filed document by the Court “shall be considered as valid and effective service of the document” on the below listed persons who are registered users.

Joel Z. Schwarz, Esq.
Gabriel A. Blumberg, Esq.
Dickinson Wright PLLC
Suite 200
8363 West Sunset Road
Las Vegas, Nevada 89113
Email: jschwarz@dickinsonwright.com
Email: gblumberg@dickinsonwright.com
Attorney for Defendant-Respondent Christopher Beavor

DATED the 7th day of March, 2016.

/s/ Sarah Gondek
An employee of
COHEN|JOHNSON|PARKER|EDWARDS