

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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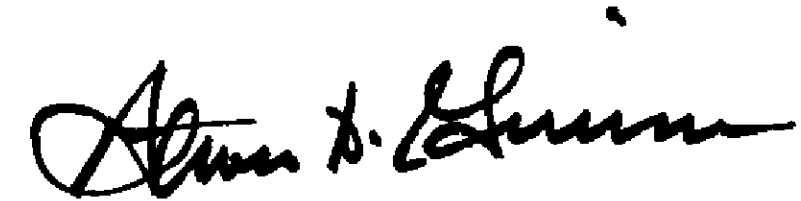
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# **Exhibit “2”**



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

YACOV HEFETZ,	)	
	)	CASE NO. A645353
Plaintiffs,	)	DEPT NO. XXVIII
vs.	)	
	)	
CHRISTOPHER BEAVOR,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

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.

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## **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 a 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 executorial [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.)

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

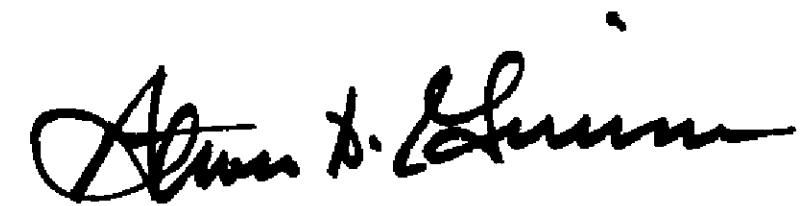
**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON

# Exhibit “3”



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

YACOV HEFETZ,	)	
	)	
Plaintiffs,	)	CASE NO. A645353
	)	DEPT NO. XXVIII
vs.	)	
	)	
CHRISTOPHER BEAVOR,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

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.

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## **I N D E X**

### **WITNESSES FOR THE DEFENDANT:**

CHRISTOPHER BEAVOR

Direct Examination By Mr. Saggese 8

Cross-Examination By Mr. Iglody 73

1       **LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 27, 2013, 10:28 A.M.**

2                   \* \* \* \* \*

3                   (Outside the presence of the jury.)

4       THE MARSHAL: The court is in session.

5       THE CLERK: Case No. A645353, Yacov Hefetz v. Chris  
6 Beavor.

7       THE COURT: So do you have something outside the  
8 presence?

9       MR. IGLODY: Just two -- two minor housekeeping  
10 matters, Your Honor.

11       We've been discussing the addition of two more  
12 stipulated exhibits. Yesterday, as the Court noted, they  
13 introduced Exhibit 7 to my client's deposition, which we had  
14 no objection to, which we stipulated to, which is now in  
15 evidence. Today, in anticipation of my cross of the defendant  
16 in this matter, we agreed and stipulated that his deposition  
17 Exhibits 7 and 14 would be marked Plaintiff's 9 and 10  
18 respectively and admitted into evidence pursuant to  
19 stipulation.

20       THE COURT: Is that correct?

21       MR. SAGGESE: That's correct, Your Honor.

22       THE COURT: Okay.

23       MR. IGLODY: And then one more housekeeping matter  
24 before we rest. As the Court might be aware, the -- the  
25 sister of the plaintiff, you know, resides in Israel and is

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

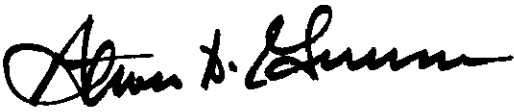
1 to proceed with the jury instruction, which, by the way,  
2 probably little bit of a stressed out argument, I think. And  
3 then, of course, closing and -- and deliberation.

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.

  
CLERK OF THE COURT

MNTR  
COHEN-JOHNSON, LLC  
H. STAN JOHNSON  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
BRIAN A. MORRIS, ESQ.  
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Facsimile: (702) 823-3400  
Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual,  
  
Plaintiff,  
  
vs.  
  
CHRISTOPHER BEAVOR, an individual;  
SAMANTHA BEAVOR, an individual; DOES I  
through X and ROES ENTITIES I through X,  
inclusive,  
  
Defendants.

Case No.: A645353  
Dept. No.: XXVIII

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

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

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

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1 and all oral argument as may be allowed at the time of hearing.

2 DATED this 10<sup>th</sup> day of June, 2013.

3 COHEN-JOHNSON, LLC

4  
5 By: /s/ H. Stan Johnson  
6 H. STAN JOHNSON, ESQ.  
7 Nevada Bar No. 0265  
8 BRIAN A. MORRIS, ESQ.  
9 Nevada Bar No.: 11217  
10 255 W. Warm Springs Rd., Ste. 100  
11 Las Vegas, Nevada 89119  
12 Attorneys for Plaintiff

13 **NOTICE OF MOTION**

14 TO: CHRISTOPHER BEAVOR, Defendant; and

15 PLEASE TAKE NOTICE that the forging Motion will be considered on the 17 day  
16 of July, 2013 at In Chambers XXVIII in Department \_\_\_\_\_ or as soon thereafter  
17 as counsel may be heard.

18 Dated this 10<sup>th</sup> day of June, 2013.

19 COHEN-JOHNSON, LLC

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

**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 Guarantee. 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.

///

///

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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 NRCP 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 NRCP 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

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

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

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

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

25 [a] jury's knowing and deliberate rejection of the evidence or refusal to apply  
26 the law either because the jury wants to send a message about some social issue  
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.

#### 16 IV

#### 17 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 ///

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

2  
3 DATED this \_\_\_\_\_ day of June, 2013.

4 Respectfully submitted,

5  
6 COHEN-JOHNSON, LLC

7 By: /s/ H. Stan Johnson  
8 H. STAN JOHNSON, ESQ.  
9 Nevada Bar No. 0265  
10 BRIAN A. MORRIS, ESQ.  
11 Nevada Bar No.: 11217  
12 255 W. Warm Springs Rd., Ste. 100  
13 Las Vegas, Nevada 89119  
14 Attorneys for Plaintiff  
15  
16  
17  
18  
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**CERTIFICATE OF MAILING**

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

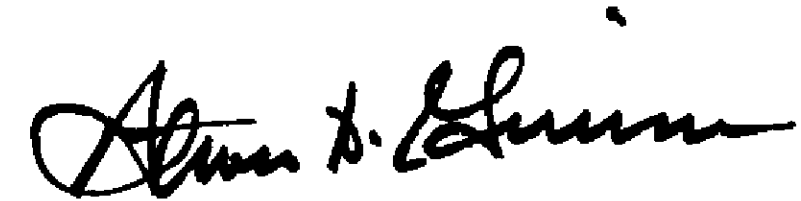
Christopher Beavor  
1930 Village Center Cir. #3231  
Las Vegas, Nevada 89134  
Defendant in Proper Person

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

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

# **Exhibit “1”**





CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

YACOV HEFETZ,	)	
	)	CASE NO. A645353
Plaintiffs,	)	DEPT NO. XXVIII
vs.	)	
	)	
CHRISTOPHER BEAVOR,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

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.

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

                  KARR REPORTING, INC.

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 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?

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**IN THE SUPREME COURT OF THE  
STATE OF NEVADA**

YACOV JACK HEFETZ;

Appellant,

v.

CHRISTOPHER BEAVOR,

Respondent.

Case No.: 70327

District Court Case No.: A-11-645353

Dept. No.: XXVII

Electronically Filed  
Jul 12 2016 11:59 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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**APPELLANT'S OPENING BRIEF – APPENDIX VOLUME III**

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## TABLE OF CONTENTS

<u>Tab No.</u>	<u>Page No.</u>	<u>Date</u>	<u>Document</u>
<b><u>VOLUME I</u></b>			
1	001	7/21/2011	Verified Complaint
2	0029	10/21/2011	Defendants' Answer to Complaint and Counterclaim
3	0045	11/01/2011	Reply to Counterclaim
4	0055	12/28/2011	Scheduling Order
5	0058	12/30/2011	Order Setting Jury Trial
6	0063	4/09/2012	First Amended Counterclaim
7	0077	4/23/2012	Reply to First Amended Counterclaim
8	0088	5/29/2012	Stipulation and Order to Extend Discovery Deadlines
9	0091	6/08/2012	Order Re-Setting Civil Jury Trial
10	0096	6/29/2012	Notice of Order Re: Dismissal of Alis Cohen
11	0100	7/03/2012	Notice of Order Re: Stipulation and Order to Extend Discovery Deadlines
12	0106	9/11/2012	Plaintiff's Motion for Partial Summary Judgment
<b><u>VOLUME II</u></b>			
12 (Cont.)	246	9/11/2012	Plaintiff's Motion for Partial Summary Judgment
13	0319	10/09/2012	Defendants' / Counterclaimants' Opposition to Motion for Partial Summary Judgment
14	0396	10/16/2012	Plaintiff's Reply in Support of Motion for Partial Summary Judgment
15	0407	10/19/2012	Supplement to Defendants' / Counterclaimants' Opposition to Motion for Partial Summary Judgment
16	0415	10/19/2012	Defendants'/Counterclaimants' Response to Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment
17	0421	11/12/2012	Notice of Entry of Order Re: Order Denying Motion for Partial Summary Judgment and Granting Motion to Strike

18	0426	11/21/2012	Order Re-Setting Civil Jury Trial
19	0431	3/01/2013	Court Minutes Re: Jury Trial
20	0434	3/01/2013	Verdict Form
21	0435	3/06/2013	Plaintiff's NRCP 50(a) Motion for Judgment as a Matter of Law on Defendants' Counterclaims
22	0451	5/15/2013	Court Minutes Re: Status Check for Settlement Documents for Dismissal of Samantha Beavor
23	0453	5/21/2013	Judgment
24	0457	5/21/2013	Notice of Entry of Judgment
<b><u>VOLUME III</u></b>			
25	0463	6/10/2013	Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
<b><u>VOLUME IV</u></b>			
25 (Cont.)	0700	6/10/2013	Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
26	0789	6/20/2013	Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
27	0795	7/02/2013	Reply to Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
28	0802	9/04/2013	Order Setting Civil Jury Trial
29	0805	9/09/2013	Notice of Entry of Order Re: Motion for New Trial or Alternatively Motion for Judgment Notwithstanding Verdict (JNOV)
30	0809	9/26/2013	Transcript of Proceedings Re: Defendant's Motion for Reconsideration of Motion for Attorney Fees
31	0822	12/03/2014	Order Setting Civil Jury Trial
32	0825	1/27/2015	Order Re-Setting Civil Jury Trial
33	0829	4/07/2015	Order Re-Setting Civil Jury Trial
<b><u>VOLUME V</u></b>			
34	0833	5/07/2015	Defendant's Motion to Dismiss Pursuant to NRS 40.435

35	0858	5/08/2015	Defendant Christopher Beavor's Motion to Reopen Dispositive Motion Deadline
36	0948	5/19/2015	Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to NRS § 40.435
37	0995	5/20/2015	Plaintiff's Opposition to Defendant's Motion to Reopen Dispositive Motion Deadline
38	1007	6/02/2015	Defendant's Reply in Support of Motion to Dismiss Pursuant to NRS 40.435
39	1014	6/2/2015	Defendant Christopher Beavor's Reply in Support Motion to Reopen Dispositive Motion Deadline
40	1029	6/09/2015	Transcript of Proceedings: Defendant's Motion to Dismiss Pursuant to NRS 40.435 and Motion to Reopen Dispositive Motion Deadline
41	1035	6/18/2015	Notice of Entry of Order Re: Motion to Dismiss Pursuant to NRS 40.435 and Motion to Reopen Dispositive Motion Deadline
42	1040	6/19/2015	Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal Without Prejudice
43	1049	6/25/2015	Memorandum of Costs and Disbursements
44	1060	7/07/2015	Defendant's Opposition to Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal without Prejudice
<b><u>VOLUME VI</u></b>			
45	1070	7/8/2015	Defendant Christopher Beavor's Motion for Attorneys' Fees and Costs
46	1098	7/14/2015	Notice of Appeal
47	1109	7/14/2015	Plaintiff's Reply in Support Of The Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice
48	1120	7/16/2015	Plaintiff's Opposition to Defendant's Motion for Leave to Strike Reply; or, in the alternative, Motion to File Sur-Reply
49	1131	7/18/2015	Plaintiff's Opposition to Defendant's Motion For An Award Of Attorneys' Fees and Costs
50	1149	7/21/2015	Plaintiff's Opposition to Defendant's Motion for Leave to Strike Reply; or, in the alternative, Motion to File Sur-Reply
51	1155	7/24/2015	Notice of Entry of Order Re: Motion to Re-Open and Motion or Reconsideration

52	1162	8/12/2015	Defendant Christopher Beavor's Reply in Support of Motion for Attorneys' Fees and Costs
53	1171	8/17/2015	Defendant Christopher Beavor's Supplement to Reply in Support of Motion for Attorneys' Fees and Costs
54	1186	8/19/2015	Court Minutes Re: Motion for Attorney's Fees and Costs
55	1188	9/03/2015	Notice of Entry of Order Re: Motion for Attorneys' Fees and Costs
56	1192	9/15/2015	Notice of Appeal
57	1202	4/21/2016	Notice of Entry of Order Granting Plaintiff's Rule 50(a) Motion
58	1211	4/29/2016	Notice of Appeal